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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Thomas William McGee, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARTY BROWN,

APPELLANT

APPELLATE CASE NO. 2025-001776

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	2023-GS-40-00090
COUNTY OF RICHLAND	)	2023-GS-40-00091
	)	2023-GS-40-00092
	)	
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
MARTY BROWN,	)	
DEFENDANT.	)	
_____	)	

August 25, 26, 27, 28, 2025
Columbia, South Carolina

B E F O R E:

THE HONORABLE WILLIAM THOMAS MCGEE, III, JUDGE,
and a jury.

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P R O C E E D I N G S

Monday, August 25, 2025

(WHEREUPON, proceedings convened at 12:18 PM.)

THE COURT: The jury pool is not in yet, but I'm just going through some of the stuff up here. Are there any objections to opposing party's voir dire?

MS. BROWDER: Not from the State.

THE COURT: Mr. Hayes?

MR. HAYES: I have no objection, Judge.

(Pause in proceedings.)

MR. HAYES: Judge, if I may just very briefly.

THE COURT: Sure.

MR. HAYES: Before they bring the jury in, Judge, my client is here. He's got some ankle chains on. The sheriff's office has told me they're going to keep those on. It's been my experience if the jury comes in and they sit in these first two rows for selection purposes, oftentimes, especially on the first row if they stand up or they look down, they can see down and they can see the chains which defeats the purpose of putting him in clothes anyway in the first place in my own view. So maybe I would ask the Court respectfully to, if we bring in the potential jurors, that we seat them in the third row and beyond.

THE COURT: Absolutely.

1 MR. HAYES: And also, when we go to stand,
2 oftentimes, Judge, we stand up and introduce ourselves.

3 THE COURT: Yes, sir.

4 MR. HAYES: I never want to look like I'm being less
5 respectful than the government in front of a jury in that
6 respect, but it's difficult to ask my client to stand and
7 turn.

8 THE COURT: Sure.

9 MR. HAYES: Because oftentimes, the chains will
10 jingle, right, and it gives it away right away. So I
11 would ask that both the defense and the government would
12 remain seated when introducing ourselves and our team in
13 that respect just so that it doesn't appear that one side
14 is more ---

15 THE COURT: Yes, sir. Any objection to that?

16 MS. BROWDER: No, sir.

17 THE COURT: Okay. We'll do that then.

18 All right. Yonas, if you'll just put them -- did
19 you say on the third row back?

20 MR. HAYES: The third row.

21 THE COURT: If you can put them back there just so
22 that they won't see that.

23 (Pause in proceedings.)

24 MR. HAYES: I mean, unless, Judge, you know, you
25 allow Mr. Brown to be out of the shackles altogether. I

1 mean, that would have to come from the Court, I think.

2 THE COURT: Well, is this -- I mean, if that works,
3 if this works, let's do that. Unless there's a big issue
4 with it. I thought that was a fair thing to ask. But if
5 you want to ---

6 MR. HAYES: No. That's fine.

7 THE COURT: Okay.

8 MR. HAYES: That's always been the work around in
9 the time that I've been doing it, Judge.

10 THE COURT: Yes, sir. Okay.

11 (WHEREUPON, the jury pool entered the courtroom at
12 12:27 PM.)

13 THE COURT: All right. Are we going to call the
14 next case,

15 MS. BROWDER: Yes, sir, Your Honor. At this time
16 the State calls the State of South Carolina vs. Marty
17 Brown, Indictment Number 2023-GS-40-0090, criminal sexual
18 conduct with a minor second degree; 2023-GS-40-0091,
19 exposure of private parts; and 2023-GS-40-0092,
20 contributing to the delinquency of a minor.

21 THE COURT: Thank you, ma'am.

22 Good afternoon, ladies and gentlemen. I appreciate
23 all of your patience. What we're going to do now is
24 select a jury for a trial that's going to begin tomorrow
25 morning. I know it's close to lunchtime, but this way,

1 if we do this, it shouldn't take very long, then
2 everybody can leave for the day and those that are
3 selected can come tomorrow rather than have you all come
4 back this afternoon and do this.

5 As the State mentioned, we are about to begin the
6 trial of the case of South Carolina against Marty Brown.
7 Before we select the jury, there are several questions
8 that I have to ask you.

9 Will the clerk please swear the jury panel.

10 THE CLERK: Yes, Your Honor.

11 Ladies and gentlemen, please stand and raise your
12 right hand to be sworn.

13 (WHEREUPON, the jury is duly sworn.)

14 JURY VOIR DIRE

15 THE COURT: All right. Ladies and gentlemen, thank
16 you again. I'm going to ask some questions. And if any
17 of these questions apply to you, please just stand and
18 I'll call on you. There may be more than one person so
19 we'll try to do that to keep things orderly.

20 Has anyone ever been related by blood or marriage to
21 either Marty Brown or Complainant If so, please
22 stand.

23 (No response.)

24 THE COURT: Has anyone ever had a close, personal or
25 social relationship with either Marty Brown or Complainant

1 [REDACTED]? If so, please stand.

2 (No response.)

3 THE COURT: The following is a list of possible
4 witnesses in this case. Please listen closely. Flynn
5 Tanner, former Richland County Sheriff's Department; Joe
6 Clark of the Richland County Sheriff's Department; Takeya
7 Lake; **Complainant** [REDACTED] Allison Foster; Jennifer Nguyen;
8 Christine Ocean; Nikki Acerra; Justin Martin; and Marty
9 Brown. These are possible witnesses in the case. It
10 might be that some don't testify. However, I want to ask
11 everyone has anyone ever been related by blood or
12 marriage to any of the people I have just listed or has
13 anyone ever had a close, personal or social relationship
14 with any of these people? If so, please stand.

15 (No response.)

16 THE COURT: Okay. I would at this time ask if the
17 lawyers could introduce themselves and the folks that
18 will be assisting with trial at this time. The State
19 first, please.

20 MS. BROWDER: Yes, sir, Your Honor. Anna Browder
21 with the Fifth Circuit Solicitor's Office. I'm deputy
22 solicitor there. And assisting me will be assistant
23 solicitor Jack Jackson and investigator Nikki Acerra.

24 THE COURT: All right. Mr. Hayes?

25 MR. HAYES: Good morning. My name is Scott Hayes.

1 I'm a solo practicing lawyer here. I have an office over
2 on Bull Street. I'm representing Mr. Brown in this case.

3 THE COURT: Thank you, sir.

4 Has any member of the jury panel ever been
5 represented by any of the attorneys involved in this case
6 or worked with any of the attorneys involved in this case
7 or their offices? If so, please stand.

8 (No response.)

9 THE COURT: Has anyone ever been related by blood or
10 marriage to or have you ever had a close, personal or
11 social relationship with any of the folks that have just
12 been introduced or their offices? If so, please stand.

13 (No response.)

14 THE COURT: Has any member of the jury panel or any
15 member of their family ever been a victim of a crime of
16 violence, sexual assault or any other type of assault?
17 If so, please stand.

18 Your Juror Number? Why don't we do this. Why don't
19 we step over here, if you would, please, sir.

20 All right. Yes, ma'am.

21 THE BAILIFF: Juror Number 219.

22 THE COURT: 219. You're Juror Number 19?

23 JUROR NUMBER 219: 219.

24 (WHEREUPON, the court reporter asked for
25 clarification.)

1 THE COURT: So with the fact that you have been a
2 victim of a sexual assault in the past, would that
3 prevent you from being fair and impartial such that you
4 could give the State and defense a fair ---

5 JUROR NUMBER 219: I honestly think it would.

6 THE COURT: Okay. I appreciate your patience,
7 ma'am. Thank you.

8 Juror Number 219 will be excused.

9 You may be excused.

10 THE BAILIFF: Juror Number 59.

11 THE COURT: Number 59. Good afternoon, sir.

12 JUROR NUMBER 59: I have a niece who was molested,
13 and the case was lost by the State.

14 THE COURT: Okay. All right. Does the fact that
15 your niece had that experience or was a victim in that
16 way, would that prevent you from being fair and impartial
17 such that you could give the defendant and the State a
18 fair trial?

19 JUROR NUMBER 59: I don't think I could be -- I
20 could be fair and impartial.

21 THE COURT: You could be?

22 JUROR NUMBER 59: Yes.

23 THE COURT: All right. So the fact that that
24 happened to your niece, you don't think that would affect
25 your ability be fair and impartial?

1 JUROR NUMBER 59: I would like it not to.

2 THE COURT: Well, would it?

3 JUROR NUMBER 59: There's a potential.

4 THE COURT: Okay. Well, I'll excuse you for this
5 case then, sir. I don't want to put you in a bad spot.

6 JUROR NUMBER 59: Okay. So I go back downstairs?

7 THE COURT: Yes.

8 Yonas, if they're excused, do they go back
9 downstairs?

10 THE CLERK: Yes.

11 THE COURT: Okay. Yes, sir. Thank you, sir. I
12 appreciate it.

13 JUROR NUMBER 59: Okay. Thank you.

14 THE BAILIFF: Juror 143.

15 THE COURT: 123. Oh, it's 43.

16 Good afternoon, Ms. Hill.

17 JUROR NUMBER 143: Hey, how are you?

18 THE COURT: I'm fine. How are you?

19 JUROR NUMBER 143: Yeah. So my mother-in-law was
20 stabbed. And she lived. She's fine. I think I could
21 still be ---

22 THE COURT: Fair and impartial to both the State and
23 the defendant?

24 JUROR NUMBER 143: Yes, I do. I do.

25 THE COURT: Thank you very much. I appreciate it.

1 THE BAILIFF: Juror 362.

2 THE COURT: I'm sorry. That number?

3 THE BAILIFF: 362.

4 THE COURT: Thank you.

5 Come on over, ma'am. Thank you. How does this
6 apply?

7 JUROR NUMBER 362: So I was sexually assaulted in a
8 previous relationship, and it was not a good
9 relationship. I'll just leave it at that.

10 THE COURT: Yes, ma'am. Would that experience that
11 you had in a prior relationship, would that prevent you
12 from being a fair and impartial juror such that you can
13 give the State and the defendant a fair trial?

14 JUROR NUMBER 362: No. I can look at all the
15 evidence objectively and keep my feelings out of it.

16 THE COURT: Okay. Thank you, ma'am. You can stay
17 with us. Thank you.

18 JUROR NUMBER 362: All right. Thank you, sir.

19 THE BAILIFF: Juror 244.

20 THE COURT: Good afternoon, ma'am.

21 JUROR NUMBER 244: Do you need my number?

22 THE COURT: Yes, ma'am.

23 JUROR NUMBER 244: 244.

24 THE COURT: Okay. Thank you. And how does this ---

25 JUROR NUMBER 244: I was roofied and sexually

1 assaulted like six months ago.

2 THE COURT: Okay. I'm so sorry to hear that. Would
3 that affect your ability to be fair and impartial in this
4 trial?

5 JUROR NUMBER 244: Yeah.

6 THE COURT: Okay. I'll excuse you, okay?

7 JUROR NUMBER 244: Thank you.

8 THE COURT: Thank you very much. Yes, ma'am. Thank
9 you.

10 THE BAILIFF: Juror 294.

11 THE COURT: Yes, sir.

12 JUROR NUMBER 294: Did you say a family member or
13 your family assaulted?

14 THE COURT: Yes. A violence or sexual assault or a
15 crime of violence. Yes, sir.

16 JUROR NUMBER 294: Any family member?

17 THE COURT: Yes, sir.

18 JUROR NUMBER 294: My nephew was murdered.

19 THE COURT: Okay. All right. And I hate to hear
20 that and that's an awful thing. There's not a murder
21 involved in this one. But the fact that your nephew was
22 a victim, obviously, of a violent crime, would that
23 affect your ability to be fair and impartial such that
24 you can give the State and the defendant a fair trial?

25 JUROR NUMBER 294: It wouldn't affect it, no.

1 THE COURT: It wouldn't affect it? Okay. Thank
2 you, sir. Appreciate it. You can stay with us. Thank
3 you, sir.

4 All right. Thank you very much. Just for the
5 record, we have excused Juror Numbers 219, 59 and 244.

6 All right. Has any member of the jury panel or any
7 member of their family ever been charged with or
8 convicted of a crime of violence, sexual assault or any
9 other type of assault? If so, please stand.

10 THE COURT: All right. Oh, I'm sorry. Yes, sir.
11 Please come down.

12 THE BAILIFF: Juror 306.

13 THE COURT: Yes, sir.

14 JUROR NUMBER 306: My nephew was convicted of
15 manslaughter. It was 20 years. And recently convicted
16 of assault.

17 THE COURT: He was?

18 JUROR NUMBER 306: Yes. A year ago.

19 THE COURT: Yes, sir. Does the fact that your
20 nephew was arrested and charged and convicted of either
21 of these or both of these crimes, would that prevent you
22 from being fair and impartial such that you could give
23 the State and the defendant a fair trial?

24 JUROR NUMBER 306: No. It wouldn't affect me.

25 THE COURT: It wouldn't have any effect on you?

1 JUROR NUMBER 306: No.

2 THE COURT: Okay. Thank you, sir. You can stay
3 with us.

4 All right. Have you or a close family member or
5 close friend ever been arrested -- well, excuse me. I
6 just asked that one.

7 All right. Have you or a close family member or
8 friend ever been accused of a nonconsensual sexual
9 contact? If so, please stand.

10 (No response.)

11 THE COURT: All right. Is any member of the jury
12 panel or any member of their immediate family related by
13 blood or marriage or a close, personal friend or
14 acquaintance of someone employed by law enforcement? Is
15 any member of the jury panel or any member of their
16 immediate family related by blood or marriage or a close,
17 personal friend of someone employed by law enforcement?
18 If so, please stand.

19 JUROR NUMBER 125: I don't know if it counts, but my
20 daughter-in-law works for the DOC.

21 THE COURT: All right. And your juror number,
22 ma'am?

23 JUROR NUMBER 125: 125.

24 THE COURT: Juror Number 125. Your daughter works
25 for the Department of Corrections?

1 JUROR NUMBER 125: Yes, sir.

2 THE COURT: All right. Does the fact that your
3 daughter works for the Department of Corrections, would
4 that affect your ability to be impartial such that you
5 could give both the defendant and the State a fair and
6 impartial trial?

7 JUROR NUMBER 125: I think I can.

8 THE COURT: You think you can be fair and impartial?

9 JUROR NUMBER 125: Yes. I can be fair and
10 impartial.

11 THE COURT: So that would not affect your ability to
12 be fair and impartial to both the defendant and the
13 State?

14 JUROR NUMBER 125: No, sir.

15 THE COURT: Okay. Thank you, ma'am. You may be
16 seated.

17 All right. Has any juror -- has anyone supported
18 the Richland County sheriff either by donations or
19 supporting the sheriff in his campaigns? If so, please
20 stand.

21 (No response.)

22 THE COURT: All right. Does any juror have such
23 strong feelings either for or against law enforcement
24 that would affect your ability be fair and impartial in
25 deciding a criminal case? If that applies to you, please

1 stand.

2 (No response.)

3 THE COURT: Does any juror have an opinion of the
4 defendant, Marty Brown, favorable or otherwise? If so,
5 please stand.

6 THE COURT: All right. Yes, sir. If you can come
7 down, please.

8 THE BAILIFF: Juror Number 367.

9 THE COURT: 367. Yes, sir.

10 JUROR NUMBER 367: Given the nature of this case, I
11 don't think I can do this. I don't -- I don't do well
12 with this.

13 THE COURT: Okay. All right. I'll excuse you.
14 Juror Number 367, you can go downstairs. Thank you.

15 All right. Has any member of the jury panel or any
16 member of their family -- excuse me. I'm sorry. Does
17 any member of the jury panel or any member of their
18 immediate family belong to or contribute to any
19 organization that supports prisoners' rights such as the
20 innocent project or any other similar entity? If so,
21 please stand.

22 Yes, ma'am?

23 JUROR NUMBER 319: Just to clarify. I wasn't paying
24 attention very much at first. Did you say have you ever
25 donated to it or just belong to it?

1 THE COURT: Yes. Does any member of the jury panel
2 or any member of their immediate family belong to or
3 contribute to any organization that supports prisoners'
4 rights such as the innocent project. Yes, ma'am. Your
5 juror number?

6 JUROR NUMBER 319: 319.

7 THE COURT: 319. And did you or one of your family
8 members?

9 JUROR NUMBER 319: Me.

10 THE COURT: All right. The fact that you have
11 contributed to this organization, would that prevent you
12 from being impartial in this case such that you could
13 give both the State and the defendant a fair trial?

14 JUROR NUMBER 319: No.

15 THE COURT: Okay. Thank you, ma'am.

16 Does any member of the jury panel or any member of
17 their immediate family belong to or contribute to any
18 organization that supports victims' rights such as MADD,
19 SADD, Sister Care or others?

20 Yes, sir? Your juror number?

21 JUROR NUMBER 116: Juror 116.

22 I periodically volunteer with the Richland County
23 Anti-Human Trafficking Task Force.

24 THE COURT: All right. Sir, the fact that you
25 periodically volunteer with that group, would that affect

1 your ability to be impartial such that you could not give
2 the State and the defendant a fair trial?

3 JUROR NUMBER 116: It might. I have strong feelings
4 about that.

5 THE COURT: Okay. All right. I'll excuse you, sir,
6 116, and you may go back downstairs.

7 Yes, ma'am.

8 JUROR NUMBER 143: Juror Number 143.

9 I mean, I've donated to Sister Care before, but I
10 don't believe that would make me -- I mean, it would not
11 allow me to be -- I can't even say the words. But I
12 would be unbiased.

13 THE COURT: Okay. It would not affect your ability
14 to serve as an impartial juror in this case.

15 JUROR NUMBER 143: That's exactly right.

16 THE COURT: Okay. Thank you, ma'am. You may be
17 seated.

18 Yes, ma'am?

19 JUROR NUMBER 140: Juror 140.

20 My parents donate to MADD and I donate to Sister
21 Care.

22 THE COURT: All right. Ma'am, the fact that you
23 donate or support those two organizations, would that
24 prevent you from being impartial in this case as a juror?

25 JUROR NUMBER 140: No.

1 THE COURT: Okay. Thank you.

2 Yes, sir?

3 JUROR NUMBER 306: I participated in a walk a mile
4 in her shoes over the years.

5 THE COURT: Your juror number, sir?

6 JUROR NUMBER 306: 306.

7 THE COURT: 306. All right. And the fact that you
8 participated in that event, sir, would that preclude you
9 from being fair and impartial in this case?

10 JUROR NUMBER 306: No.

11 THE COURT: So you believe that you can give both
12 the State and the defendant a fair trial?

13 JUROR NUMBER 306: Yes, sir.

14 THE COURT: Okay. Thank you, sir. You may be
15 seated.

16 Anyone else?

17 (No response.)

18 THE COURT: All right. Has any member of the jury
19 panel formed or expressed an opinion about any issue or
20 matter involved in this case? If so, please stand.

21 (No response.)

22 THE COURT: Is any member of the jury panel aware of
23 any bias or prejudice toward either the State or the
24 defendant in this case? If so, please stand.

25 (No response.)

1 THE COURT: Is there any member of the jury panel
2 that was a member of the grand jury which issued the
3 indictment in this case? If so, please stand.

4 (No response.)

5 THE COURT: Does any member of the jury panel know
6 of any reason whatsoever why he or she should not serve
7 as a juror in this case with particular emphasis being
8 placed on your ability to be fair and impartial to both
9 the State and the defendant? If so, please stand.

10 Yes, ma'am. If y'all would come up, please.

11 THE BAILIFF: Juror 125.

12 THE COURT: 125. Yes, ma'am.

13 JUROR NUMBER 125: I was sexually assaulted. And I
14 didn't bring a case, but ---

15 THE COURT: I will excuse you, ma'am.

16 JUROR NUMBER 125: Thank you.

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

18 Juror 125 is excused.

19 THE BAILIFF: Juror 368.

20 THE COURT: All right. Yes, sir?

21 JUROR NUMBER 368: Good morning.

22 THE COURT: Come on over. 368?

23 JUROR NUMBER 368: I was in law enforcement for
24 15 years in Colorado, and it's going to affect my ability
25 to ---

1 THE COURT: You believe that it would?

2 JUROR NUMBER 368: Uh-huh.

3 THE COURT: Okay. You don't believe you could be
4 fair and impartial? I'll excuse you.

5 JUROR NUMBER 368: I apologize.

6 THE COURT: No, no. Don't. Thank you for being
7 honest. Yes, sir.

8 368 is excused.

9 THE BAILIFF: Juror 276.

10 THE COURT: Yes, ma'am. Good afternoon.

11 JUROR NUMBER 276: I was molested as a child.

12 THE COURT: Thank you. I'll excuse you. 276.

13 THE BAILIFF: Juror 140.

14 JUROR NUMBER 140: This matter, I find it kind of
15 upsetting.

16 THE COURT: I'm sorry?

17 JUROR NUMBER 140: The sexual stuff with a minor, I
18 think I mentioned it, but I ---

19 THE COURT: You don't think you can be fair and
20 impartial with that subject matter?

21 JUROR NUMBER 140: I don't think so.

22 THE COURT: That's okay. We appreciate you being
23 honest, okay? You'll be excused. You can go back
24 downstairs.

25 All right. Does the State have any additional

1 questions it would like to have asked?

2 MS. BROWDER: No, sir.

3 THE COURT: The defense, any further questions?

4 MR. HAYES: Nothing further, Judge.

5 THE COURT: All right. Mr. Clerk?

6 THE CLERK: Yes, Your Honor.

7 THE COURT: You may give us a jury.

8 MR. HAYES: Judge, just to clarify on strikes,
9 Judge, it's five and ten for the defense, five for the
10 State?

11 THE COURT: Yes, sir.

12 JURY SELECTION

13 THE CLERK: Ladies and gentlemen of the jury panel,
14 when I call your number, you can come to the middle of
15 the courtroom facing your fellow jurors and bring all
16 your personal belongings with you.

17 Starting with Juror Number 288, 288.

18 What says the State?

19 MS. BROWDER: Please seat this juror.

20 THE CLERK: What says the defense?

21 MR. HAYES: Please seat the juror.

22 THE CLERK: Please have a seat in the jury box.

23 Juror Number 198, 198.

24 What says the State?

25 MS. BROWDER: Please seat this juror.

1 THE CLERK: What says the defense?

2 MR. HAYES: Please seat the juror.

3 THE CLERK: Please have a seat in the jury box.

4 Juror 319, 319.

5 What says the State?

6 MS. BROWDER: Please excuse this juror.

7 THE CLERK: Please have a seat in the back of the
8 courtroom.

9 Juror 298, 298.

10 What says the State?

11 MS. BROWDER: Please seat this juror.

12 THE CLERK: What says the defense?

13 MR. HAYES: Please seat the juror.

14 THE CLERK: Please have a seat in the jury box.

15 Juror 202, 202.

16 What says the State?

17 MS. BROWDER: Please excuse this juror.

18 THE CLERK: Please have a seat in the back of the
19 courtroom.

20 Juror Number 41, 41.

21 What says the State?

22 MS. BROWDER: Please seat this juror.

23 THE CLERK: What says the defense?

24 MR. HAYES: Please excuse the juror.

25 THE CLERK: Please have a seat in the back of the

1 courtroom.

2 Juror Number 20, 20.

3 What says the State?

4 MS. BROWDER: Please seat this juror.

5 THE CLERK: What says the defense?

6 MR. HAYES: Please seat the juror.

7 THE CLERK: Please have a seat in the jury box.

8 Juror 259, 259.

9 What says the State?

10 MS. BROWDER: Please excuse this juror.

11 THE CLERK: Please have a seat in the back of the
12 courtroom.

13 Juror Number 331, 331.

14 What says the State?

15 MS. BROWDER: Please seat this juror.

16 THE CLERK: What says the defense?

17 MR. HAYES: Please seat the juror.

18 THE CLERK: Please have a seat in the jury box.

19 Juror 359, 359.

20 What says the State?

21 MS. BROWDER: Please seat this juror.

22 THE CLERK: What says the defense?

23 MR. HAYES: Please seat the juror.

24 THE CLERK: Please have a seat in the jury box.

25 Juror 236, 236.

1 What says the State?

2 MS. BROWDER: Please seat this juror.

3 THE CLERK: What says the defense?

4 MR. HAYES: Just to clarify, 236, right?

5 THE CLERK: Yes, sir.

6 MR. HAYES: Please excuse the juror.

7 THE CLERK: Please have a seat in the back of the
8 courtroom.

9 Juror 315, 315.

10 What says the State?

11 MS. BROWDER: Please seat this juror.

12 THE CLERK: What says the defense?

13 MR. HAYES: Please excuse the juror.

14 THE CLERK: Please have a seat in the back of the
15 courtroom.

16 Juror 362, 362.

17 What says the State?

18 MS. BROWDER: Please seat this juror.

19 THE CLERK: What says the defense?

20 MR. HAYES: Please excuse the juror.

21 THE CLERK: Please have a seat in the back of the
22 courtroom.

23 Juror 261, 261.

24 What says the State?

25 MS. BROWDER: Please seat this juror.

1 THE CLERK: What says the defense?

2 MR. HAYES: Please seat the juror.

3 THE CLERK: Please have a seat in the jury box.

4 Juror 143, 143.

5 What says the State?

6 MS. BROWDER: Please excuse this juror.

7 THE CLERK: Please have a seat in the back of the
8 courtroom.

9 Counsel, let me review your strikes. State has used
10 four strikes, the defense has used four strikes.

11 Juror 355, 355.

12 What says the State?

13 MS. BROWDER: Please seat this juror.

14 THE CLERK: What says the defense?

15 MR. HAYES: Please seat the juror.

16 THE CLERK: Please have a seat in the jury box.

17 Juror 294, 294.

18 What says the State?

19 MS. BROWDER: Please seat this juror.

20 THE CLERK: What says the defense?

21 MR. HAYES: Please seat the juror.

22 THE CLERK: Please have a seat in the jury box.

23 Juror 282, 282.

24 What says the State?

25 MS. BROWDER: Please seat this juror.

1 THE CLERK: What says the defense?

2 MR. HAYES: Please excuse the juror.

3 THE CLERK: Please have a seat in the back of the
4 courtroom.

5 Juror 131, 131.

6 What says the State?

7 MS. BROWDER: Please seat this juror.

8 THE CLERK: What says the defense?

9 MR. HAYES: Please excuse the juror.

10 THE CLERK: Please have a seat in the back of the
11 courtroom.

12 Juror Number 1, Number 1.

13 What says the State?

14 MS. BROWDER: Please excuse this juror.

15 THE CLERK: Please have a seat in the back of the
16 courtroom.

17 Juror 184, 184.

18 What says the State? Or does the State challenge
19 for cause?

20 MS. BROWDER: No.

21 THE CLERK: What says the defense?

22 MR. HAYES: Please seat the juror.

23 THE CLERK: Please have a seat in the jury box.

24 Juror Number 110, 110.

25 Does the State challenge for cause?

1 MS. BROWDER: No.

2 THE CLERK: What says the defense?

3 MR. HAYES: Please excuse the juror.

4 THE CLERK: Please have a seat in the back of the
5 courtroom.

6 Juror Number 5, Number 5.

7 Does the State challenge for cause?

8 MS. BROWDER: No.

9 THE CLERK: What says the defense?

10 MR. HAYES: Please excuse the juror.

11 THE CLERK: Please have a seat in the back of the
12 courtroom.

13 Juror Number 197, 197.

14 Does the State challenge for cause?

15 MS. BROWDER: No.

16 THE CLERK: What says the defense?

17 MR. HAYES: Please seat the juror.

18 THE CLERK: Please have a seat in the jury box.

19 Juror Number 16, 16.

20 Does the State challenge for cause?

21 MS. BROWDER: No.

22 THE CLERK: What says the defense?

23 MR. HAYES: Please seat the juror.

24 THE CLERK: Please have a seat in the jury box.

25 Ladies and gentlemen, I'm going to call for two

1 alternates now. Juror Number 93, 93.

2 What says the State?

3 MS. BROWDER: Please seat this juror.

4 THE CLERK: What says the defense?

5 MR. HAYES: Please excuse the juror.

6 THE CLERK: Please have a seat in the back of the
7 courtroom.

8 Juror 229, 229.

9 What says the State?

10 MS. BROWDER: Please seat this juror.

11 THE CLERK: What says the defense?

12 MR. HAYES: Please seat the juror.

13 THE CLERK: Please have a seat in the jury box.

14 Juror 132, 132.

15 What says the State?

16 MS. BROWDER: Please seat this juror.

17 THE CLERK: What says the defense?

18 MR. HAYES: Please excuse the juror.

19 THE CLERK: Please have a seat in the back of the
20 courtroom.

21 Juror Number 4, Number 4.

22 What says the State?

23 MS. BROWDER: Please seat this juror.

24 THE CLERK: What says the defense?

25 MR. HAYES: Please seat the juror.

1 THE CLERK: Please have a seat in the jury box.

2 THE COURT: Ladies and gentlemen that did not get
3 selected, if y'all will please go downstairs. You will
4 receive further instructions there. Thank you all very
5 much.

6 (WHEREUPON, the remaining jury panel exits the courtroom
7 at 1:15 PM.)

8 THE COURT: I guess I should ask, any issues with
9 jury selection from the State?

10 MS. BROWDER: Yes, sir.

11 THE COURT: There is?

12 MS. BROWDER: Yes, sir. Still send them down.

13 THE COURT: Just send them down? Okay. All right.
14 Y'all go ahead. Y'all go ahead. Thank you.

15 THE COURT: All right. The lawyers want to come up
16 here real quick?

17 (WHEREUPON, a bench conference was held off the record.)

18 THE COURT: Ladies and gentlemen, if y'all would,
19 please, we've got a couple of issues to take care of
20 before we dismiss you all. I apologize. I thought we
21 were going to be able to do that, but we're not. If
22 y'all would please come back. You'll be excused now.
23 You'll come back at 2:30, in like an hour and 15 minutes.
24 If y'all can come back at 2:30. Thank you all very much.

25 (WHEREUPON, the jury exits the courtroom at 1:17 PM.)

1 THE COURT: All right. Yes, ma'am, Ms. Browder.

2 MS. BROWDER: Thank you, Your Honor. Under case law
3 under Batson, Your Honor, when we picked the jury just
4 now, the defense gets ten strikes, obviously, the State
5 gets five. The defense also gets two strikes for each
6 alternate. The defense used ten total strikes, eight for
7 the regular jury, Your Honor, and two for the alternates.
8 Of those ten strikes, nine were women, Your Honor. So we
9 would like them to give sufficient reasons for why that
10 group was stricken.

11 THE COURT: All right. Why don't we...

12 MR. HAYES: All right. Judge, I will do ---

13 THE COURT: Let's see. The first one I have is --
14 that the defense struck was Number 7; is that right?

15 MS. BROWDER: I have Number 41.

16 THE COURT: I'm sorry. I'm going by the different
17 number. I apologize. Number 41.

18 MR. HAYES: Judge, she's an insurance writer and
19 worked for Southern Mutual Church. Just as -- you know,
20 I don't strike them all, but I'm trying to remember
21 exactly what she -- how she appeared. There were a
22 couple just based on -- and I can probably do better with
23 those towards the end, but that was the first strike that
24 I had made, Judge. And I just remember she worked for
25 this -- she was an insurance underwriter. I mean, let me

1 try to come back to that one if I can.

2 THE COURT: Okay.

3 MR. HAYES: Some of the other ones with better
4 explanations, I guess.

5 THE COURT: All right. The second one that I have
6 is Juror Number 236. And that is -- that's the one, I
7 suppose, that was a male juror.

8 MR. HAYES: And candidly, Judge, I mean, some of it,
9 too, and just for the -- so for the benefit of my client
10 as well, Judge, my client didn't have the benefit of the
11 jury qualification process this morning. He wasn't
12 there, right? Obviously, he's sitting next to me.
13 During the jury selection, he and I sat in very close
14 proximity and spoke about every potential juror, right?
15 And I told him, advised him prior to jury selection that
16 if there was anything about any of these potential jurors
17 that struck him, they looked at him a certain way, they
18 just didn't leave him in a place that made him feel
19 comfortable, that he would tell me to strike them. And
20 we'll do our best to try to identify those. I didn't
21 mark them as we were going through. But there were
22 definitely times where my client made the call to strike
23 the juror where I said this was -- you know, and other
24 times he said this was -- it was my call to strike the
25 juror.

1 THE COURT: Right.

2 MR. HAYES: Okay.

3 THE COURT: Right. And in evaluating this, of
4 course, the defense opposing the Batson challenge has to
5 provide a race or a gender neutral explanation for the
6 challenge whether it was the lawyer or the defendant.
7 And you may have some notes on, some not.

8 MR. HAYES: So the next one, Judge, I do remember.
9 I remember commenting on ---

10 THE COURT: Hold on. Juror 315?

11 MR. HAYES: On Juror 236.

12 THE COURT: Oh, 236 is the male.

13 MR. HAYES: Right. I was surprised that he was 62
14 years old, Judge. By his look, he looked -- and then we
15 sat the other white male that was dressed nice right
16 behind him in the blue shirt. I think he had on a pink
17 shirt. But I remember observing him in jury
18 qualifications. He's an actuary for Aflac. He's an MBA.
19 He's very smart and he had -- was carrying a backpack.
20 And I just thought he was going to be a conservative
21 juror, Judge, and I thought it wouldn't be a leader for
22 -- the kind of leader that I would want to put on the
23 jury, frankly, and so I struck him.

24 THE COURT: All right. Next is Juror Number 315.

25 MR. HAYES: 315, again, we have a banker, Judge,

1 someone who is involved in keeping track of all these
2 accounts. And that's -- I mean, a banker for Optimus
3 Bank. Again, another smart person who's dealing with
4 money and these kinds of things is not something that I
5 thought would be favorable to my client.

6 THE COURT: All right. The next one I have is 362.

7 MR. HAYES: 362, Judge, was the victim of the sexual
8 assault that she came up with and talked about in the
9 voir dire process. I wasn't going to put a victim of
10 sexual assault on this jury.

11 THE COURT: All right. The next one is 282.

12 MR. HAYES: 282, again, we're back to accounting.
13 But this person also worked with the Boys and Girls Club.
14 And here in this case we have an alleged victim who was
15 13 at the time and we have someone who's involved in the
16 Boys and Girls Club. I thought that that would not be
17 favorable to my client.

18 THE COURT: All right. The next one is 131.

19 MR. HAYES: 131, Judge, I could be wrong about this
20 but I'm giving you a race- and gender-neutral reason.
21 This person appeared it was -- she wore a red flannel
22 shirt, she had on jeans, she worked for Amazon. But her
23 appearance, it was -- we struck this juror based on their
24 appearance and the way they presented. Not on the skin
25 color of the appearance, but how they were dressed and

1 how they conducted themselves.

2 THE COURT: All right. Next is 1. I apologize.
3 That was State's. I apologize. It's 110 was the next.

4 And, of course, Ms. Browder, I'll let you be heard
5 on all of these.

6 MS. BROWDER: Yes.

7 MR. HAYES: 110, I'm pretty sure that was the lady
8 who had kind of like the blonde bob cut, if I'm not
9 mistaken sort of. She had on a black top. It was the
10 way that she carried herself. She was someone that I
11 wasn't going to put on this jury even through the jury
12 qualifications, Judge. I mean, I recognize this juror
13 and I struck her right away. I mean, it wasn't going to
14 be somebody I put on the jury.

15 THE COURT: When you say you recognize her, I
16 mean ---

17 MR. HAYES: I recognized her from the jury
18 qualifications from this morning.

19 THE COURT: Oh, I thought you meant you recognized
20 her like you knew her.

21 MR. HAYES: No.

22 THE COURT: All right. Number 5, Juror Number 5.

23 MR. HAYES: Judge, this was the lady who -- she's 68
24 years old. Anyone who's at 65 or less doesn't have to be
25 here, right, or if you're -- whatever it is. But she's

1 not -- she doesn't have to be here. She could have
2 claimed an exemption and not been here. It's my
3 experience that people that are over 65 or over the
4 exemption that want to serve, right, are here with some
5 axe to grind. And as a general practice, I do not put
6 people who are exempt eligible on juries especially the
7 age one because what are they really here to do? And so
8 as a principle, anyone who falls in that age category I
9 strike.

10 THE COURT: All right. And then we get to the
11 alternates. And it looks like the first of the two
12 strikes for the alternates is Juror Number 93.

13 MR. HAYES: She lives in Chapin, Judge.

14 THE COURT: What's that? She lives in Chapin?

15 MR. HAYES: She lives in Chapin. It's my experience
16 the more conservative jurors in this county come from
17 Chapin.

18 THE COURT: All right. And the last one is Juror
19 Number 132.

20 MR. HAYES: I think that this was a young
21 19-year-old African-American female who was unemployed.
22 And based on the makeup of the jury to that point, I
23 didn't...

24 THE COURT: All right. And I think that the one
25 that you wanted to circle back with was ---

1 MR. HAYES: The first one because I'm trying to
2 remember who she was. I didn't make a note in my mind.

3 THE COURT: Three -- no. Wait. 41.

4 MR. HAYES: I'm trying to see if I wrote something
5 down or if this would have been one of the ones that my
6 client had indicated.

7 THE COURT: It says -- I don't know where Wordsworth
8 Drive is. It looks like she's an insurance underwriter
9 and Southern Mutual Church insurance.

10 MR. HAYES: Right.

11 THE COURT: I don't know if that's ---

12 MR. HAYES: I mean, that's what would have been the
13 information available to me. I'm trying to remember what
14 her appearance was specifically. I don't recall
15 precisely, Judge, but we didn't strike her because she
16 was a white lady. I mean, we sat white ladies on the
17 jury.

18 THE COURT: All right. Ms. Browder, I don't know if
19 you want to go down that list as well and then we can
20 kind of talk about each one. I just wanted to make sure
21 that I understood the process from the defense side
22 first. But I'm happy to hear from you.

23 MS. BROWDER: Thank you, Your Honor. I want to
24 start with the age ones. Under Robinson vs. Bon Secours,
25 which is 382 S.C. 224, where rationale of a 53-year-old

1 black female would be more identified with a 52-year-old
2 decedent in the case was found to be on its face
3 inherently discriminatory. In a case just because
4 somebody is -- under age, in this case, if somebody is
5 just 68 years old, that is not a specific reason to
6 strike them. He did not have a specific reason other
7 than she didn't take the exemption that she's offered
8 when the judge is specifically you can take the exemption
9 or not. That is not a specific reason.

10 THE COURT: And that's Juror Number 5; is that
11 right?

12 MS. BROWDER: Correct.

13 THE COURT: And what was that case again?

14 MS. BROWDER: Robinson vs. Bon Secours, 382 S.C.
15 224.

16 THE COURT: Okay.

17 MS. BROWDER: And then also, Your Honor, for
18 Number 93, just because she lives in Chapin, that is not
19 a specific reason. There's nothing specific about living
20 in Chapin that makes you a conservative or a Democrat. I
21 don't think political -- there's no reason to believe
22 she's a conservative other than the fact, according to
23 Mr. Hayes, that she lives in Chapin. There's
24 conservatives that live in Columbia, there's
25 conservatives that live in Irmo, there's conservatives

1 that live in Northeast. I mean, I don't see how that is
2 a gender-neutral reason that is provable and not just
3 thrown out there, Your Honor.

4 Regarding 131, because she was dressed in a red
5 flannel shirt and jeans, I'm not sure that that would be
6 inappropriate court attire. And under State v. Easler,
7 Your Honor, 327 S.C. 121, where defense counsel failed to
8 point out any specific examples of why the demeanor was
9 disliked and that reason was offered as an explanation
10 only after the previous explanation was rejected was not
11 racially or -- in that case it was racial, but that
12 wouldn't be gender neutral in this case just because
13 she's wearing a flannel shirt and jeans. I don't see
14 where that would be -- point out a specific example of
15 her demeanor.

16 Regarding the ones who just he thinks are too --
17 also, 110, Your Honor, just the way she carried herself,
18 that was not specific. He didn't say there was a
19 specific reason how she carried herself, what she did
20 that caused him to want to strike her. Just that he
21 didn't like the way she carried herself.

22 And as to the ones where they're just too smart,
23 Your Honor, they worked in banking or accounting or
24 insurance underwriter with numbers, this case has nothing
25 to do with numbers, Your Honor. It's a sexual assault

1 case. Numbers would not be something that would be
2 relevant in this case. I don't see why the fact that
3 somebody is working with numbers would be a reason to
4 strike them.

5 And, of course, 362, Your Honor, with her being a
6 sexual assault in a prior relationship, I understand that
7 one. I understand the Boys and Girls Club one. But the
8 other ones we do object to with either the fact they were
9 not specific such as they just live in a town, they were
10 age discriminatory as to the white female who was 68
11 years old because she didn't take an exemption was not
12 specific.

13 THE COURT: How many females are on the jury?

14 MS. BROWDER: Two, Your Honor. And then the
15 alternate, there's -- the two alternates are, but on the
16 actual jury, there's only two.

17 THE COURT: All right. Yes, sir. Mr. Hayes, how
18 about some of these?

19 MR. HAYES: Just very briefly. Judge, as an officer
20 of the Court, I'm not just making anything up. Okay.
21 I'm not in here -- if you decide that I've done something
22 improper, then that's the Court's prerogative. And I'm
23 not trying to do that. I'm trying to pick the jury the
24 fairest way I know how. Many of these jurors before they
25 got to the stand I told my client we're going to probably

1 strike this person, right? The minute we called the
2 number, we looked at it, we looked to see who it was.
3 Whatever it is, I can tell him, you know. And candidly,
4 I called almost every one of their strikes. They're
5 going to strike this person.

6 So, you know, but it is my -- I mean, the
7 information that we have available to us in this process
8 without lawyer-lead voir dire in this state is so
9 minuscule. It is ridiculous what we have to pick juries
10 on the amount of information that we really have.
11 Because what do we have? We know where they live. We
12 know what their job is. We know what their spouse does.
13 And we know if they, you know, like law enforcement or
14 not, if they have friends in the case, if they have an
15 aversion to whatever the issue matter, whatever the
16 subject of the trial is. That's really the extent of the
17 information that's available. And so you have a case
18 like this where you have Mr. Brown who faces 20 years or
19 more in this case and we have ten strikes and we're
20 trying to put together a jury that we can live with. We
21 have ten strikes to do that. We didn't use all ten of
22 our strikes. We used eight of our strikes. But we used
23 eight of our strikes and we were making judgments on the
24 limited information available.

25 And we're not striking people because they're white,

1 they're black, they're women or they're men. We are
2 trying to find people that are leaders for what we are
3 trying to accomplish, people that we think we might be
4 able to relate to just like the government is.

5 The government is trying to put witnesses on -- or
6 jurors on that think they might be able to relate to the
7 circumstances involved in the components that are
8 important to their case much like we are. And so in
9 doing that, while it may not be this perfect thing where,
10 you know, I wish we could just get my brain readout,
11 whatever it is, it would be scary in some respects, but
12 through the portions of this morning where we're actually
13 selecting this jury, if we could just get a brain readout
14 to say why did we do these things, I mean, I knew who the
15 Amazon driver was before she got up here in the red
16 flannel. It wasn't just what happened here. It's also
17 what happened in jury qualifications earlier and
18 different things that I took away from that.

19 So the only one that I really am having difficult
20 for, Judge, is the first one. I'm trying to remember
21 this lady. Usually, I'm pretty good about remembering
22 some article of clothing, some bag they were carrying,
23 some way they looked at me, some way they either appeared
24 interested or disinterested. I don't -- I don't recall.
25 I can't say to that one specifically what it was. But I

1 will say, you know, as a plaintiff's lawyer, I often look
2 at insurance underwriters and have a negative view
3 immediately of whoever that person is not because of
4 anything personal to them, but that's what they do.
5 Obviously, I'm Number 1 next week in Common Pleas Court.
6 I would never put this juror on my jury, right? And so
7 -- but sometimes that carries over to criminal court for
8 me, from time to time, when I'm evaluating how I think a
9 juror may make a determination about the case.

10 And so I understand the government's position. I
11 understand the motion. But at the same time, I'm here to
12 tell you as an officer of the Court that we didn't not
13 select jurors based on racial issues.

14 MS. BROWDER: Your Honor, just to be clear, this
15 isn't a racial situation that we're claiming Batson
16 under. It's gender, female versus male.

17 In addition, Your Honor, some of the males that were
18 placed on the jury had education such as they were
19 working with numbers or they were engineers or something
20 of that nature. So he put those that are similarly
21 situated to the women on the jury but then struck the
22 women who had the same type of job and education.

23 THE COURT: Which of the I guess some of the males
24 that were seated that had whether it's insurance or
25 banking or some kind of -- and my concern is, and

1 certainly this is not an indictment of anybody about any
2 motives or anything like that. I guess my concern off
3 the bat is of the five of the eight strikes -- well, five
4 of the seven strikes of women were white women and
5 there's not a white woman on the jury. And one of the
6 things that I am to consider is, you know, whether, I
7 guess, one group, whether it's racial or gender or
8 anything else, if there are strikes of a certain race or
9 gender and they were not objected to by the party
10 opposing the Batson, that's something that plays in that
11 party's favor, the nonmoving party's favor. In this
12 case, we have one African-American female and one
13 Mediterranean, is what she has identified herself as,
14 female. And let me look at some of the...

15 MS. BROWDER: Your Honor, Number 331 was a black
16 male who was a business analyst. Number 359 -- I'm sorry
17 -- 261 is a white male. He is an engineer.

18 MR. HAYES: 361.

19 THE COURT: One was 261.

20 What was the first one? I missed the first one.

21 MS. BROWDER: Number 331, a business analyst.

22 THE COURT: A master's degree.

23 MS. BROWDER: Yes, sir.

24 Those are the two that are I can say intelligent but
25 that have more education than the others.

1 THE COURT: All right. Anything further from the
2 State?

3 MS. BROWDER: No, sir.

4 THE COURT: Anything further from defense?

5 MR. HAYES: No, sir.

6 THE COURT: All right. Yonas, I know that they need
7 to pick a civil jury. They haven't done that yet.

8 THE CLERK: I don't know.

9 THE COURT: Okay. If you'll just make sure that
10 they don't take off for the day.

11 Give me about 20 minutes. Again, this is the first
12 Batson that I have. I've got -- I have some materials
13 and I've got some here that I haven't looked at here, but
14 I want to check just a couple of cases that y'all have
15 cited and then a couple that I've jotted down. So why
16 don't we stand in recess for about 20 minutes and I'll
17 have a decision.

18 (WHEREUPON, a recess is taken at 1:39 PM; proceedings
19 reconvened at 2:13 PM.)

20 THE COURT: All right. I looked over some of the
21 case law and some other issues on this as well as I
22 didn't do qualification this morning, but I did get a
23 copy of the jury pool so I was able to see a little more
24 about these folks. And in the Batson analysis, the first
25 step is the party asserts -- here the State -- that

1 asserts the challenge, they must make a prima facie
2 showing that the challenge was based on race or gender,
3 here gender. I think that was made, again, I believe of
4 the jury. Not the alternates, but the jury. I think
5 there were eight strikes. One was a male and then the
6 others I think -- so the other seven were females and I
7 believe that six of those were white females.

8 Then the second step requires the party opposing
9 Batson, here the defendant, to provide race neutral
10 explanation for each of the challenges. I think there
11 are some there that -- for example, the Boys and Girls
12 Club, the woman that she had a sexual assault in her
13 history, I certainly understand those. But there are
14 some that I don't believe that there was a gender-neutral
15 explanation for them. One of the examples was the
16 younger lady that was wearing -- I think it was by her
17 dress was identified. It was a flannel shirt or
18 something. And the Robinson case and some of the other
19 cases that the State pointed to, I think, support the
20 fact that there must be some race -- or here
21 gender-neutral explanation of them.

22 Also, some about -- the basis of some were that they
23 were either very smart or their credentials or
24 professions were relied upon because they were very
25 smart, worked with numbers or had advanced degrees. I

1 looked through, and there are some males that are on the
2 jury that also work with numbers, have advanced degrees
3 and that are involved in the same types of profession
4 that were discussed there.

5 And so the last step is I've got to determine
6 whether or not the challenge has proved purposeful
7 discrimination. And I certainly don't want to make any
8 implication that there was any, you know, maligned intent
9 or anything like that. I do know that -- and I
10 appreciate that the defendant also stated that he didn't
11 want certain jurors on the jury. I completely understand
12 that. That's certainly his right. However, even if it's
13 the defendant himself, there still must be compliance
14 with Batson in there.

15 So I am going to grant the motion, the State's
16 Batson motion. We will pick another jury in the morning.
17 I don't know exactly what the times and logistics of that
18 will be. Yonas will let us know what that is. But what
19 I plan to do is I will -- and, of course, I'll hear from
20 y'all in just a second. But what my plan is, is to bring
21 the jury that we picked in and to say something to the
22 effect of for reasons that you don't need to be concerned
23 with, we're going to put you back in the pool and we'll
24 need to repick a jury tomorrow morning. Some of you may
25 not be picked again, some of you may, but you're excused

1 for the rest of the day and just not dwell on it. And
2 then we'll have all this afternoon to -- if y'all want to
3 take a break for lunch because I know everybody's been
4 standing here. If you want to take a short break, that's
5 fine, but then we'll have the rest of the afternoon to
6 argue the pretrial motions that I know both of y'all have
7 let me know about.

8 Anything from the State about all of that?

9 MS. BROWDER: No, sir.

10 THE COURT: Anything from the defense?

11 MR. HAYES: Judge, just for the record, the
12 defendant submits that we did offer race-neutral or
13 gender-neutral reasons. Obviously, we'd like to reserve
14 the issue for appeal in the event that my client is
15 convicted. I guess the lesson is to take exact notes
16 about this. I mean, there are reasons why we struck each
17 one of these individuals, Judge.

18 THE COURT: Sure. I don't doubt that there are.
19 The analysis that I've got to go through, though,
20 requires certain -- certain evidence or certain showings.
21 And, you know, I know that she was the first one taken,
22 but, for example, Juror Number 41, there's not -- we
23 couldn't really figure out exactly what that one was.

24 MR. HAYES: And, Judge, to clarify, I think we
25 circled back around on that and I said from my

1 perspective, sometimes there's overlap in that but she
2 was an insurance adjuster. And sometimes that does cloud
3 my view of a potential juror, right, because of my
4 plaintiffs practice. And so that wouldn't be unusual for
5 me to look at that and strike a juror based on that
6 premise by itself.

7 THE COURT: Well, there's some others, again, as I
8 say, whether their jobs, their credentials, their
9 education didn't overlap. And, of course, one of the --
10 one of the factors that comes into play is, you know,
11 pretext generally will be established by showing that
12 similarly situated members of another gender were seated
13 on the jury. And in this case, again, I think that it
14 appears that some of the education, working with numbers,
15 conservative, smart, those kind of things, there were
16 some jurors that were struck on that basis. However, I
17 think that that would apply to some of the male jurors
18 that were seated also. There was one who works for Booz
19 Hamilton who has a master's degree. And I can't imagine
20 anybody that works more with numbers than somebody like
21 that. So, again, you're completely protected on the
22 record.

23 MR. HAYES: And, Judge, I didn't want to cut the
24 Court off and I apologize, but I would like to point out
25 that my strikes came on the one, two, three, four, five

1 -- I didn't make a single strike until the sixth juror.
2 Seven, eight, nine -- no. I didn't make another
3 strike ---

4 THE COURT: The first six, the State struck two.
5 They struck before you had a chance to. And also, the
6 first Number 2 juror wasn't on there. So really, it was
7 one, two -- it was really the third juror was the first
8 strike that was up to be stricken because of that.

9 And, again, I understand where you're coming from.
10 I know you need to preserve the record, but that's my
11 ruling after looking at the case law and the more
12 detailed demographic information about the jurors that
13 were seated and the jurors that were stricken.

14 MR. HAYES: Well, if I may, Judge, again, so of the
15 eight -- of the eight strikes I used, I didn't use one
16 until the sixth juror, and then I used one on Jurors 11,
17 12 and 13. Again, we don't have any idea, you know,
18 through the process here. It's not like we were provided
19 a short list.

20 Back in the day -- back in the beginning of my time
21 as a lawyer in these courtrooms, we would actually get
22 the short list. We would get the short list so I would
23 know what's coming, right? I could tell who is two,
24 three, four away. Here we're in the dark a bit so we
25 don't know who the clerk is going to call next. So there

1 is some strategy involved in holding strikes for people
2 you know you don't want to put on here. Like Ms. Hill
3 who she struck, 143, I was going to strike. She took
4 some of the strikes that I would have taken myself. She
5 took them. But you don't know who's coming next so you
6 have to hold strikes.

7 Then you get to certain thresholds in this process.
8 So we've got six jurors seated and I've only used one
9 strike, right? Now I have an opportunity to maybe use
10 some of these strikes for people that -- so it's
11 difficult to marry up and say, okay, this first set of --
12 all the jurors are going to have the same qualifications
13 that we're going to be able to, you know, impose this
14 universal standard that if they meet this criteria, that
15 we're going to strike them. Unfortunately, that's just
16 not the way it goes because you run out of strikes in no
17 time and now you're just stuck with whatever 12 you get,
18 right? And so there's going to be certain thresholds
19 that happened here for me in my experience that is going
20 to allow me to do things.

21 And, again, I do think that we've submitted, you
22 know, gender-neutral reasons for the -- and I'm sorry the
23 Court doesn't quite see it that way and I respect the
24 Court's ruling. But ---

25 THE COURT: This is nothing personal.

1 MR. HAYES: I would say that we struck Jurors 6, 11,
2 12, 13, 18, 19, 22 and 23, and we didn't use all of our
3 strikes. We kept two. And then in the process of
4 deciding the alternates, if it was truly indicative of
5 what that is, we could have struck these other women that
6 were ultimately put on the alternates. I ate a strike on
7 each one of those, and I just point that out for the
8 ultimate motive here. But I know it's a little bit, you
9 know, late for that, but I do want to say all that for
10 the record.

11 THE COURT: Yes, sir. And you're protected. And,
12 again, this is not -- this isn't a -- we'll pick another
13 jury tomorrow. Some of the same people may be here.
14 Some of the same people may be sat and some of them
15 won't. Everybody will have a full and fair opportunity
16 to pick a new jury tomorrow with the same number of
17 strikes. So I think that we'll pick a fair and impartial
18 jury.

19 I guess, you know, to the extent that there were
20 jurors excused, I guess we could -- do y'all have a
21 problem with once we get the list of just excusing those
22 same jurors or do you all want to go through that whole
23 process again?

24 MS. BROWDER: I think we would have to go through
25 the process again just because there would be other

1 jurors on the jury.

2 THE COURT: Right. No, no. I'd go through the
3 whole process with everybody. But if Juror Number 46
4 said that -- or, I don't know, I'm just making up a
5 number. If there's a juror that said that I can't be
6 impartial because I'm a police officer, which is one of
7 them, what he said, I mean, I can strike those people
8 from the pool, I guess, is what I'm saying.

9 MS. BROWDER: Yeah. I'm okay with that.

10 THE COURT: Mr. Hayes, do you want to just ---

11 MR. HAYES: Whatever you want to do, Judge.

12 THE COURT: All right. We'll just include them
13 then. And I've got the list here, and if they come up,
14 I'll just excuse them. We'll just pretend that this
15 didn't happen so that there's no issues surrounding
16 cutting anybody in or out. I don't want to create any
17 more issues than I already have.

18 All right. So the jury will come in in just a few
19 minutes. After I excuse them, do you all want to take
20 half an hour to get something to eat before we start
21 arguing or do you want to go right into it? It doesn't
22 make any difference to me.

23 MS. BROWDER: It's in your discretion, Your Honor.
24 I don't care.

25 MR. HAYES: I'm good, Judge.

1 THE COURT: Okay. We'll roll right into it then.
2 Like when I ask my family where they want to go eat,
3 nobody wants to say where they want to go eat. They say
4 where they don't want to go eat.

5 All right. Madam Bailiff, once the jury is in ---

6 THE CLERK: They are all here, Judge.

7 THE COURT: Okay. You can bring them on in.

8 (WHEREUPON, the jury entered the courtroom at 2:27 PM.)

9 THE COURT: Ladies and gentlemen of the jury, I have
10 what is some news that may be good for some or all of you
11 on some level. For reasons that y'all don't need to be
12 concerned with, we're going to need to re-pick a jury in
13 this case.

14 So what will happen now is that y'all will be
15 excused for the rest of the day. You'll receive
16 instructions tomorrow. You'll go back into the jury
17 pool. So there is a chance that y'all may not get picked
18 for a jury. And if you do not get picked for a jury this
19 week, you will not have to serve and you will be exempt
20 for the next three years from serving. So I apologize
21 for the delay. It's certainly nobody's fault. It's an
22 issue, again, that y'all don't need to be concerned with.
23 But I do thank you for your patience.

24 If y'all will please go back downstairs, they'll
25 give you further instructions on that. Thank y'all.

1 (WHEREUPON, the jury exits the courtroom at 2:29 PM.)

2 THE COURT: All right. We want to go ahead and head
3 right into the motions. Do y'all have any preference on
4 which ones to begin with? Do you just want to go down
5 the list? The Denno hearing first?

6 MS. BROWDER: We can do a couple of the other small
7 ones first. Investigator Joe Clark's parking right now.
8 He's our second witness.

9 THE COURT: No problem. Whichever one y'all want
10 to ---

11 MS. BROWDER: Your Honor, we can start with some of
12 the easy ones, the first being renewing all Rule 5 and
13 reciprocal Rule 5 discovery motions.

14 Obviously, Mr. Hayes just got on this about a month
15 or so ago. We have given him all the discovery in the
16 case. Anything he's had problems with or thought was
17 missing we have worked with him to make sure he's had
18 everything. So I don't know if he has something he
19 thinks we might not have given him, but I believe we've
20 given everything over to him. In addition, Your Honor,
21 we have not received anything in reciprocal Rule 5, so we
22 just ask if there is anything for reciprocal Rule 5, that
23 that be turned over now.

24 THE COURT: All right. Yes, sir, Mr. Hayes.

25 MR. HAYES: Judge, counsel is not in the possession

1 of any documentation that would be responsive to such a
2 reciprocal Rule 5, and I would request that the
3 government for the record state that they have provided
4 all the discovery available in this case to this point.

5 THE COURT: All right. Ms. Browder?

6 MS. BROWDER: Yes, sir. We have provided everything
7 to Mr. Hayes.

8 THE COURT: All right.

9 MS. BROWDER: Regarding use of witnesses' prior
10 convictions, Your Honor, the only witness that would be
11 testifying that has a prior conviction would be Complainant
12 [REDACTED]. She has assault and battery second degree, Your
13 Honor, from I believe it was last year, 2024. I do
14 believe that would be able to be used for impeachable
15 purposes. It is a juvenile conviction, Your Honor;
16 however, under the law, that is able to be used to be
17 impeached if she is to testify as a juvenile.

18 THE COURT: All right. Mr. Hayes, are you planning
19 to get into -- what was it again?

20 MS. BROWDER: Assault and battery second degree.

21 THE COURT: A&B second as a juvenile, do you plan on
22 -- that's the victim; am I right?

23 MS. BROWDER: Yes, sir.

24 THE COURT: Do you plan on getting into that or do
25 we have consent on that issue?

1 MR. HAYES: I mean, cross-examination, Judge, is a
2 little bit fluid for me, right? Just kind of see how --
3 you know, I don't have the opportunity like in the civil
4 world to depose **Complainant** to know exactly how she's
5 going to present, what's going to go on and how those
6 things are. From a timing perspective, you know, I have
7 a plan that if it's available to use, I may use it.
8 There may be reasons why I don't think it's necessary,
9 but I don't -- I can't say ---

10 THE COURT: As far as using the assault and battery
11 second charge or is it ---

12 MS. BROWDER: She was convicted. Well, it's an
13 adjudication.

14 THE COURT: Convicted, the conviction that she has
15 on her juvenile record, I guess, I mean, I'm happy to
16 rule on it, but I just -- usually, I ask -- sometimes
17 they just say I wasn't going to ask about that anyway.
18 Are you planning to ask about that or do I need to go
19 ahead and rule on it?

20 MR. HAYES: I don't know if I'm going to ask about
21 it or not. I'm not trying to be coy with the Court. I
22 promise you, I don't know. Again, you know, if it's
23 available there as an appropriate impeachment tool ---

24 THE COURT: Well, if she's a victim of an alleged
25 criminal sexual assault, what relevance would a juvenile

1 conviction for assault and battery second have? Because
2 I don't want it to get to that point where we've got to
3 object to it.

4 MR. HAYES: Well, what I would say, Judge, if they
5 put it in, right, I'm not going to object to it.

6 MS. BROWDER: Your Honor, we wouldn't object to it.
7 We believe it is admissible under the law as it's within
8 the last ten years and it carries more than a potential
9 year in prison. So if he wanted to ask about it, he
10 would be able under the law to ask about it, I do
11 believe.

12 THE COURT: Okay.

13 MS. BROWDER: I was just making sure everybody was
14 aware that she is the only one with a prior record and
15 that is what the prior record is.

16 THE COURT: The only reason I was asking is because
17 the State's pretrial Motion Number 4 says motion in
18 limine to prevent testimony.

19 MS. BROWDER: That's other stuff. Yeah. That's
20 different stuff.

21 THE COURT: Oh, okay. All right. Okay. So the A&B
22 second is fine then. Okay. All right.

23 MS. BROWDER: Yes, sir. I mean, he can't ask facts
24 about it, but he can ask that you have a conviction for
25 assault and battery.

1 THE COURT: Right, right. I'm sorry. I thought
2 that's what the motion in limine ---

3 MS. BROWDER: No, sir.

4 MR. HAYES: I think under 609(d), Judge, it talks
5 about juvenile adjudications. It says evidence of a
6 juvenile adjudication is admissible under the rule if the
7 conviction would be admissible.

8 THE COURT: That's fair game then.

9 MS. BROWDER: Yeah.

10 THE COURT: All right.

11 MS. BROWDER: The next, Your Honor, is the rape
12 shield statute. Under Section 16-3-659(1), evidence of
13 specific incidents of the victim's sexual conduct,
14 opinion evidence of her sexual conduct, and reputation
15 evidence of her sexual conduct is not admissible in
16 prosecutions under -- and it lists statutes. And this is
17 one of the statutes, Your Honor. We have filed a rape
18 shield motion, and so we're asking that the defense not
19 be able to go into anything regarding **Complainant's**
20 sexual history outside of what has occurred with
21 Mr. Brown.

22 THE COURT: All right. Mr. Hayes, do you intend to
23 or do you disagree with the fact that those specific
24 instances of sexual activity about a victim or persons
25 other than the defendant or the reputation, any of that,

1 do you believe that that is admissible or do you ---

2 MR. HAYES: No, sir, I don't.

3 THE COURT: Okay.

4 MR. HAYES: What's the cite on that? The rule, the
5 law?

6 MS. BROWDER: 16-3-659(1).

7 MR. HAYES: 359?

8 MS. BROWDER: 659. Yeah. 3-659.

9 MR. HAYES: 229.

10 THE COURT: South Carolina Rule of Evidence 412.

11 MS. BROWDER: Yes.

12 MR. HAYES: If I could just have -- beg the Court's
13 indulgence briefly.

14 THE COURT: Yes, sir.

15 (Pause in proceedings.)

16 MR. HAYES: Having read 16-3-659(1), Judge, I don't
17 believe that -- there are a few exceptions to this, but
18 in my understanding of the case, those exceptions would
19 be introduced to show origin of semen, pregnancy or
20 disease, about evidence, and none of those circumstances
21 are present in this -- in the incident action. And so,
22 frankly, Judge I don't have any intent to go anywhere
23 near the sexual history of **Complainant**.

24 THE COURT: All right. Thank you, sir. I
25 appreciate that. All right. So I'll grant that motion

1 without the objection. Obviously, if something comes up
2 -- none of us can tell the future. If something comes up
3 and you believe one of those exceptions apply, then we
4 can talk about that at sidebar before we get into it.

5 MR. HAYES: Or and the other part of it would be,
6 Judge, if the door somehow becomes open to any of that.

7 THE COURT: Right. Okay.

8 MR. HAYES: I mean, and understanding that
9 **Complainant**, I believe, anyway, is in the courtroom this
10 afternoon listening.

11 THE COURT: Yes, sir. All right.

12 MS. BROWDER: Next, Your Honor, which I don't
13 believe this is an issue but I just wanted to put it on
14 the record, we have given notice to Mr. Hayes on
15 August 5th under Section 19-5-520, which is the statute
16 that allows us to serve written notice of our intent to
17 offer cameras and surveillance video through affidavit by
18 the custodian so we don't have to charge the -- or call
19 the custodians to the stand. And that is for the ATM,
20 AllSouth Federal Credit Union ATM video, the Motor City
21 Market video and the Shealy cameras.

22 THE COURT: All right.

23 MR. HAYES: And, Judge, you know, I'm not -- if the
24 Court rules that the affidavits are within the rule and
25 admissible for that reason, then so be it. But the

1 defendant is not prepared to stipulate or consent to
2 that.

3 MS. BROWDER: And then that leaves, Your Honor,
4 the ---

5 THE COURT: What's that statute again, Ms. Browder?

6 MS. BROWDER: It's 19-5-520.

7 And, Your Honor, I can hand up a copy of our notice
8 to them and affidavits that...

9 THE COURT: Thank you, ma'am.

10 And the second to the last paragraph of this letter
11 August 5, 2025, says that sworn affidavits are
12 forthcoming and shall serve as means -- I see that these
13 are attached to what you gave me. These were provided to
14 defense counsel?

15 MS. BROWDER: Yes, sir. They were provided at the
16 same time.

17 THE COURT: Okay. All right. Mr. Hayes, anything
18 further?

19 MR. HAYES: Just briefly, Judge.

20 THE COURT: Yes, sir.

21 MR. HAYES: Judge, I mean, I understand that these
22 are affidavits. They all appear to be valid on their
23 face. They talk about what it is that's been produced.
24 One of them actually references my client by name. I
25 might ask the Court to consider redacting that part of it

1 as potentially prejudicial. But as far as the validity
2 of that, I think it's on their face. I really don't have
3 a challenge to that.

4 THE COURT: All right. Okay. So I will allow those
5 to come in through affidavit.

6 And you say, Mr. Hayes, the one -- let's see which
7 one of those. It looks like ---

8 MR. HAYES: I believe it's the middle one, Judge.

9 THE COURT: Yes. The second one.

10 MR. HAYES: It just says "in the Marty Brown
11 matter."

12 THE COURT: Right.

13 MR. HAYES: Like they're -- you know, like this is
14 like they're -- I don't know. Just the way that that --
15 the way that that reads, if it were to go back that
16 way ---

17 THE COURT: Well, is the jury going to see these?

18 MS. BROWDER: Technically, they will be attached to
19 the ---

20 THE COURT: To the video that goes back with them?

21 MS. BROWDER: Correct.

22 THE COURT: Okay. Well, do you have any objection
23 to just taking out "in the Marty Brown matter"?

24 MS. BROWDER: No, sir.

25 THE COURT: Okay. We'll do that. All right.

1 MS. BROWDER: And the only two we have left, Your
2 Honor, is the Jackson v. Denno and then the motion in
3 limine to prevent certain testimonies. I don't know
4 which one you'd rather do first. I know that Denno has
5 testimony that we need to hear.

6 THE COURT: All right.

7 MS. BROWDER: The other one's argument.

8 THE COURT: Whichever one you want to argue. Happy
9 to hear it.

10 MS. BROWDER: We'll go ahead and do Jackson
11 v. Denno.

12 THE COURT: All right.

13 MR. JACKSON: The State calls Flynn Tanner.

14 WHEREUPON,

15 FLYNN TANNER

16 After having been duly sworn, testified as follows:

17 THE CLERK: Thank you, sir. Please have a seat in
18 the witness stand and state your full name for the
19 record.

20 THE WITNESS: Flynn Lees Tanner.

21 DIRECT EXAMINATION

22 BY MR. JACKSON:

23 Q Mr. Tanner, where are you currently employed?

24 A I'm currently employed with Darlington County
25 Sheriff's Office.

1 Q And what's your role there?

2 A I'm a lieutenant over CID or Central Investigations
3 Division.

4 Q Where have you worked previously?

5 A Richland County Sheriff's Department for many, many
6 years.

7 Q When did you stop working there?

8 A I believe that would have been in February of 2022.

9 Q What was your role with the Richland County
10 Sheriff's Department?

11 A I was a senior investigator. At that time, I
12 retired in Special Victims Unit.

13 Q Were you working there in December of 2021?

14 A I was.

15 Q Were you working in that capacity in December of
16 2021?

17 A I was.

18 Q Were you working the case involving Marty Brown?

19 A Yes, I was.

20 Q Did you speak with him on December 17th of 2021?

21 A I believe so. Can I refer to my notes, make sure
22 that is the appropriate date?

23 Q Yes.

24 A (Reviews document) Yes, I did.

25 Q Where did you go to speak to him?

1 A I got information that he worked in the chicken
2 plant in West Columbia. So myself and I believe at that
3 time Sergeant Clark went over to that location to speak
4 with him.

5 Q Y'all got him from the chicken plant?

6 A What's that?

7 Q Y'all got him from the chicken plant?

8 A Yes. We went to the chicken plant and spoke to
9 their management, asked if it would be all right to speak
10 with him. And they brought him over to the office.

11 Q Was he placed in handcuffs at that time?

12 A No.

13 Q Was he placed in handcuffs at any time?

14 A No.

15 Q Okay. Did it appear that he was under the influence
16 of drugs or alcohol to the extent that it would impair
17 his ability to understand what was going on?

18 A No. Not at all.

19 Q Do you know if he had any physical or mental
20 disability to the extent that it would impair his ability
21 to understand what's going on?

22 A No.

23 Q Was he threatened or coerced in any way when y'all
24 are with him?

25 A Not at all.

1 Q Was he denied access to a telephone?

2 A No.

3 Q Was he denied access to the bathroom, food or drink?

4 A No, no.

5 Q At any time did he ever ask for an attorney?

6 A Yes.

7 Q Okay. Y'all got him from the chicken plant. What
8 did you do from there?

9 A Well, we spoke with him at the chicken plant briefly
10 and asked him if he would mind riding back to our office
11 to provide a statement. He agreed to do so. And once we
12 got there, I began to advise him. Stated he didn't
13 understand his rights, said he didn't have his glasses, I
14 believe, and invoked at that point -- or at some point he
15 invoked and cut off the conversation. And I drove him
16 back to the chicken plant.

17 Q Okay. Was he under arrest at any point?

18 A Not at any point.

19 MR. JACKSON: Okay. Beg the Court's indulgence.

20 BY MR. JACKSON:

21 Q Did he give a statement at any point?

22 A Yes. When management at the chicken plant called
23 him up, he came in the room with myself and Sergeant
24 Clark. Introduced ourselves. And we asked him if it was
25 okay if we spoke with him or did he mind speaking with

1 us. And he said no, he didn't. Then I asked him if he
2 knew **Complainant** At first he denied knowing her. And then
3 I asked him again, and he said he did know her.

4 I believe I asked him when the last time he saw her
5 was, and he said that he had picked her and a friend up
6 from I think it was maybe Broad River and Zimalcrest, if
7 memory serves. At some -- he said he saw her at some
8 club there or saw her at the corner on the club or
9 something of that nature and that he had taken her and
10 her friend across the bridge which I took to mean across
11 the bridge there at Broad River over -- over the highway
12 and dropped them off there.

13 At that point, that's when Sergeant Clark said,
14 well, we need to get a statement to that effect if we can
15 and would you mind riding back with us to our office.

16 Q So that was before he invoked his right to an
17 attorney?

18 A Yes.

19 Q Was he in custody at that point?

20 A No.

21 Q Okay.

22 A No. He volunteered to go with us.

23 Q Okay.

24 A And he also spoke with me on the way down there. I
25 believe he asked what **Complainant** was saying. And I simply

1 said, well, I thought that you had heard about this based
2 on what I had heard. He stated that, well, her family
3 had threatened him.

4 Q Was Marty Brown free to leave at any time?

5 A Yes, he was.

6 MR. JACKSON: Okay. Thank you.

7 THE COURT: Mr. Hayes?

8 CROSS EXAMINATION

9 BY MR. HAYES:

10 Q Lieutenant Tanner, Marty Brown was free to leave
11 when y'all were leaving the chicken plant to go to your
12 office in your car?

13 A Yeah.

14 Q How was he going to do that?

15 A Well, he volunteered to go with us, said he would.
16 If he would have said, hey, I don't want to do this, pull
17 over, I certainly would have. Or if he would have said
18 take me back, I certainly would have.

19 Q Well, eventually, he did say those things, right?
20 Wanting to take him back?

21 A Well, once he invoked, I can't recall whether he
22 said take me back or I said, okay, well, you know, you
23 invoked, well, I'll take you on back to the chicken
24 plant.

25 Q Okay. So chicken plant on West Columbia right

1 there, everyone knows where it is, right? The other side
2 of your Main Street bridge, right?

3 A Yep.

4 Q Okay. Your office is ---

5 A I believe so.

6 I'm sorry?

7 Q Your office is out on Pineview at the time?

8 A At the time, yes.

9 Q Okay. And so how would you have gotten out to
10 Pineview?

11 A How would I have gone to Pineview?

12 Q How would you have driven? What would your route
13 have been?

14 A I -- I don't recall the route. Most direct route.

15 Q Okay. Is your car outfitted with any kind of
16 interior camera that would have captured this
17 interaction?

18 A No.

19 Q Okay. Were you outfitted with a body camera during
20 your interaction with Mr. Brown on the morning of the
21 17th of February '21?

22 A No. That was -- at this particular time,
23 investigators didn't have them. This was, what, 2021?

24 Q Okay. No body cam.

25 A I didn't, no.

1 Q Okay. What about the interview rooms at the
2 sheriff's office at the time?

3 A Yes.

4 Q So would Mr. Brown invoking, would that be on video
5 somewhere?

6 A Yes, it would. I believe so.

7 Q So it was just you and Mr. Brown in the car at the
8 time or was now Captain Clark with y'all?

9 A No. Sergeant Clark wasn't -- wasn't in my vehicle.
10 He was in a separate vehicle, I believe. If memory
11 serves, I believe he was in a separate vehicle.

12 Q Okay. All right. And this room that you met with
13 Mr. Brown in at the chicken plant, is it like a break
14 room? a conference room? his supervisor's office? What
15 was it?

16 A It was like a conference room right there just off
17 the -- just off the office when you walk in.

18 Q Okay.

19 A That's where -- that's where their management just
20 said y'all can talk in here.

21 Q How big of a room is it?

22 A I don't know. Maybe 12x20. I'm just -- I'm
23 guessing.

24 Q Okay. So maybe about the size of the three chairs
25 on the jury box at the back of the wall?

1 A Might have been -- might have been wider and a
2 little bit longer.

3 Q Just bigger than that?

4 A I'm sorry?

5 Q Just bigger than that?

6 A Maybe -- maybe bigger from the corner there
7 (indicating) to the back of the wall and maybe a little
8 bigger.

9 Q Yes, sir. And there's a table in the conference
10 room?

11 A There was.

12 Q Okay. So Mr. Brown -- you go to the chicken plant,
13 you talk to Mr. Brown. You're in the room, right?

14 A Yes.

15 Q Sergeant Clark's in the room.

16 A Yes.

17 Q Who else -- eventually, they bring Mr. Brown in the
18 room. How many supervisors from the chicken plant are in
19 the room?

20 A There was nobody there but us three.

21 Q Okay. So they just showed you the room and said
22 we'll bring him over here?

23 A Well, we asked if they minded if we spoke with him.
24 And they said, yeah, they'd get him over there. So this
25 is the room we can talk in. And when he got there, I

1 don't recall our positions when he got there, what have
2 you, but yes. He walked in the room.

3 Q Okay. Did you tell the chicken plant what the
4 purpose of your visit was? I mean, outside of wanting to
5 talk to Marty Brown, did you tell them what the
6 investigation was about?

7 A I don't recall. I doubt that I would have spoken
8 about an ongoing investigation in depth, but I don't
9 recall what was said other than, you know, was it okay if
10 we talk with him.

11 Q Right. So you agree with me, though, that no law
12 enforcement went and pulled Mr. Brown off the floor to
13 come into this conference room to have this conversation,
14 right? It was some supervisor of his that would have to
15 get him.

16 A I don't know who got him.

17 Q Well, someone between the management team that you
18 spoke to and Mr. Brown, he got there somehow.

19 A He got there somehow somewhere between the folks at
20 the front desk.

21 Q Do you know, did that particular conference room
22 have video capabilities?

23 A I do not know.

24 Q So you agree with me Mr. Brown, at the time, he's
25 working on the floor of the chicken plant, right?

1 A I don't know where he works at the chicken plant. I
2 just -- we -- I was told that he was working at the
3 chicken plant. That's why we went over there to talk to
4 him.

5 Q All right. Well, were you sure that you had the
6 right Marty Brown?

7 A I'm sorry?

8 Q Were you sure that you had the right Marty Brown?

9 A Once we introduced ourselves and he told me that,
10 yes, he did know **Complainant** that's what we were there to
11 talk to him about.

12 Q Right. But how did you know Marty Brown -- how did
13 you know it was Marty Brown when he walked in the door?

14 A I don't recall how it was confirmed.

15 Q Okay.

16 A Again, you're talking years ago. But, obviously,
17 you know, I do some preliminary information gathering
18 before I go over there.

19 Q Well, I guess, I mean, I'm asking because, you know,
20 if they had gone and got the wrong guy and they got Mikey
21 Brown rather than Marty Brown and they brought him in the
22 room, how do you know that you were actually talking ---

23 A Well, I think once he did confirm that he did know
24 **Complainant** and that he had picked her up from the corner the
25 other night, her and her friend, then that's what we were

1 -- that's what we were asking to speak with him about.

2 Q Right. And I understand from your testimony from
3 your perspective he wouldn't have felt -- well, he was
4 free to leave, right?

5 A Yes.

6 Q But he's working in the chicken plant. He's being
7 summoned by some authority inside the chicken plant to
8 report to this conference room where law enforcement is
9 waiting for him, correct?

10 A I'm sorry. Can you ask that again?

11 Q Sure. So he's working at the chicken plant, and to
12 the best of your -- the best that you can say is that you
13 understand that he was summoned by some authority at the
14 chicken plant to report to this conference room where you
15 were.

16 A Well, I didn't say that he was summoned by some
17 authority. I said I didn't know how he got over there.

18 Q Well, you'd agree with me that he would have had to
19 have received the request to report to this conference
20 room from someone, right? I mean, he didn't just happen
21 to stumble in there on a break because he needed a soda
22 or something, did he?

23 A I don't believe so. As I said, I think somebody
24 went over there and got him at our request, yes.

25 Q Right. So what I'm saying is you can agree with the

1 idea that Mr. Brown reported to this conference room
2 under some authority being advised that someone wanted to
3 meet with him inside of this conference room, right?

4 A I don't know what transpired there. I just know
5 that he came over there. You keep -- you keep mentioning
6 this under some authority, under some authority. Again,
7 I don't know. We went there. We talked to a woman at
8 the front desk, asked her if we could speak with Marty
9 Brown, all right? Asked her if he worked there. I don't
10 recollect the specifications that we gave her, but I
11 believe that we were, you know, making sure that that was
12 Marty Brown. She said, yes, we could, and that they
13 would notify him.

14 Q Okay. But at the time you ---

15 A We -- we waited there. He came in. I asked him --
16 you know, introduced us -- introduced ourselves, asked
17 him if he wouldn't mind speaking with us.

18 Q So -- but at the time you're asking for Marty Brown,
19 just like being a name Brown is a common last name,
20 right? You would agree with that?

21 A Yes.

22 Q Okay. So you're saying you have a Marty Brown that
23 works here. You don't actually even know that this is
24 the Marty Brown you're looking for, do you?

25 A I believe I recognized him from his DL photo. But

1 yeah. Again, I'm there to ask him, you know, questions
2 about his side. Does he know this person? He identified
3 himself by saying that he did know her and that he had
4 picked her up the other night.

5 Q Right. I understand that. But he's entering the
6 room -- I know from your perspective that he was free to
7 leave, but the question -- the question really for the
8 Court in this particular hearing is, is really not some
9 layperson would have believed that they had the ability
10 to leave, right? You agree with that. I mean, this
11 isn't your first Jackson v. Denno.

12 A No. I don't agree with it. In fact, specifically,
13 he was asked would he mind speaking with us. All right.
14 He said he would not. He could have stopped at any time.
15 Specifically, he was asked, you know, would he mind going
16 back to our office with us. He said no, he would not.
17 We told him, hey, we'll bring you back.

18 Q But you would agree with me that Miranda and purpose
19 of Miranda, right, and whether or not someone's free to
20 leave and all those things, I mean, that's what this
21 hearing is about, right, statements that are made and
22 whether or not it's a real custodial interrogation that
23 would have required some reading of the Miranda rights?
24 Can we agree on that?

25 A What is it that you are asking me to agree to?

1 Q Well, I'm just saying that that's the legal
2 standard.

3 A You just said -- you just said custodial hearing.
4 He wasn't in custody.

5 Q Right. From your perspective as a law enforcement
6 officer, right, who had been doing this at the time
7 almost 25 years. You retired just after this, right?

8 A 28.

9 Q 28 years. Right. So you've been doing this for a
10 long time. So from your perspective, it's very clear.
11 But for some layperson, right, who may be not as versed
12 in the law and what the legal threshold, what the
13 standards are, the question is, is when you're called
14 into a room by your supervisors and met by two law
15 enforcement offices that want to talk to you, right,
16 whether or not they actually feel like they're free to
17 leave or not, right, becomes less clear. You can agree
18 with that.

19 A I don't necessarily agree with that. I think it was
20 abundantly clear to him he didn't have to talk to us and
21 he could have turned around and walked out.

22 Q Okay.

23 A Especially given my knowledge of his record. He was
24 very clear on his rights, I believe.

25 Q Did you tell him that you don't have to speak to us,

1 you can turn around and walk out of here?

2 A I'm sorry?

3 Q Did you tell him that? Did you tell him that he
4 didn't have to talk to you and he could turn around and
5 walk out of there?

6 A I think he knew he didn't have to talk to me because
7 when he got down to Pineview, he didn't.

8 Q Well, you don't know then. You're just speculating,
9 right? When you say "I think," I mean, that's what that
10 is. That's speculation.

11 A When he was read his rights, he invoked.

12 Q Okay. Why wouldn't you have read his rights to him
13 right there in the chicken plant before any conversation
14 transpired?

15 A Because at that point, all I'm doing is exploring
16 whether or not he even knows this individual. All I have
17 -- all I have is one account and one side I always try to
18 make sure that if I possibly can, I get the other side of
19 this story, you know, for exculpatory reasons. But maybe
20 he wanted to tell me something that, you know, I needed
21 to know. At that point, I hadn't -- you know, I hadn't
22 made any particular judgment.

23 Q So if Marty Brown was free to leave at any time
24 throughout this entire process, right, why would it have
25 been necessary to read him Miranda at all at the

1 sheriff's office?

2 A Well, that's -- that's really a matter of policy or
3 protocol, if you will. In fact, he's -- at that point,
4 we went back to get a statement, to get a formal
5 statement. In fact, that's what Sergeant Clark at the
6 time said, if memory serves. If you don't mind, if I can
7 just refer to my notes here.

8 MR. HAYES: Sure. I'd like to see what you have.

9 If I may approach the witness, Judge?

10 THE COURT: Yes, sir.

11 THE WITNESS: Yeah. Once he said that he had seen
12 her Saturday in the parking lot of the Jamaican Club over
13 by a barbershop at Zimalcrest and Broad River with
14 another girl and had given them a ride from the parking
15 lot across the bridge and dropped them off, that's when
16 Sergeant Clark stated we need to get that on the record
17 and asked him if he would mind coming to our office at
18 Pineview and Garners Ferry. Marty Brown said he did not
19 mind and he would go.

20 So we're going to get that on the record, a formal
21 statement, if you will. That's just, you know, a matter
22 of precaution if nothing else to -- you know, to go ahead
23 and advise him of his rights.

24 BY MR. HAYES:

25 Q Okay. And so he said this happened on February 17th

1 of 2021. That's when your conversation with Mr. Brown
2 is, right?

3 A I'm sorry. Say that again?

4 Q February 17th or December 17th?

5 A February 17th?

6 Q Yeah. I could have it wrong. I might have just
7 misheard. When ---

8 A No. I'm sorry. I know that I said -- this was
9 December 17th.

10 Q December 17th.

11 A Of 2021.

12 Q All right. So was this a Friday?

13 A I honestly do not recall what day that was of the
14 week.

15 MR. HAYES: Beg the Court's indulgence.

16 THE COURT: Yes, sir.

17 BY MR. HAYES:

18 Q In your notes anywhere, Investigator Tanner, do you
19 have a time identified when you arrived at the chicken
20 plant? What time was it?

21 A I don't believe I have the -- I don't believe I've
22 annotated any particular times that day.

23 Q Do you have any independent recollection beyond your
24 notes about what time you would have been down to the
25 chicken plant that day?

1 A I'm sorry. Can you say that again?

2 Q I mean, outside of your notes, do you have
3 independent recollection of what time it is that you
4 would have been at the chicken plant?

5 A No. I would -- honestly, I'd just be speculating.

6 Q Okay. Do you have any idea how long you were
7 actually at the chicken plant?

8 A A short period of time.

9 Q Short period of time being what?

10 A I mean, from the time that we walked in, asked him,
11 you know, could they confirm Marty Brown worked there,
12 the time that, you know, Marty Brown came over and you
13 can see, you know, it was a fairly short conversation, at
14 which point he agreed that, you know, he didn't mind
15 riding with us over to our office.

16 Q Do you have any idea how long Marty Brown had been
17 working at the chicken plant prior to your arrival on
18 this particular occasion?

19 A No, I do not.

20 MR. HAYES: No further questions, Judge.

21 THE COURT: Redirect?

22 MR. JACKSON: Yes, Your Honor. Briefly.

23 REDIRECT EXAMINATION

24 BY MR. JACKSON:

25 Q Investigator Tanner, did Marty Brown agree to speak

1 with y'all at the chicken plant?

2 A Yes, he did.

3 Q What if he had said he didn't want to?

4 A Well, I guess we would have walked out of there.

5 Q Okay. Did he agree to go with y'all back to the
6 Pineview office?

7 A Yes, he did.

8 Q So when he makes that statement at the chicken
9 plant, why did y'all then decide to go to the Pineview
10 office?

11 A Well, as I said, at that particular point when he
12 made the statement that he had, in fact, seen her
13 Saturday at the parking lot of the Jamaican Club at
14 Zimalcrest and Broad River with another girl and had
15 given them a ride to the parking lot across the bridge
16 and dropped them off, at that particular point, Sergeant
17 Clark stated that, stop, so we need to get it on the
18 record and asked him if he would mind coming with us to
19 our office at Pineview and Garners Ferry. Marty Brown
20 said he did not mind and would come, you know.

21 To answer the question about, you know, the reason
22 at that point was probably because it was clear that,
23 hey, he knew her and that was -- that was not consistent
24 with the information that I had. So at that point,
25 that's why we said, well, let's -- we'd better get a

1 statement.

2 Q At this point, he's not in custody.

3 A He's not.

4 Q Are there warrants out for his arrest?

5 A Not at all. Not at all.

6 Q In fact, when he indicated that he didn't understand
7 his rights and that he wanted an attorney, y'all quit
8 talking to him, correct?

9 A Yes.

10 Q And then you actually took him back to the chicken
11 plant?

12 A Yes. In fact, not only did I take him back to the
13 chicken plant as we said that we'd be happy to do, but I
14 cautioned him not to talk to me about it on the way back
15 because he had already invoked at that point.

16 Q Once he indicated that he had issues with speaking
17 with y'all, you ceased talking to him and took him back
18 to the chicken plant.

19 A Yes.

20 MR. JACKSON: Okay. Thank you.

21 THE COURT: All right. You may step down and be
22 excused, sir.

23 Well, just for -- go ahead. Call your next witness.

24 MR. JACKSON: The State calls Joe Clark.

25 ///

1 WHEREUPON,

2 JOSEPH CLARK

3 After having been duly sworn, testified as follows:

4 THE CLERK: Thank you, sir. Please have a seat in
5 the witness stand and state your full name for the
6 record.

7 THE WITNESS: Joseph Clark.

8 DIRECT EXAMINATION

9 BY MR. JACKSON:

10 Q Mr. Clark, where are you currently employed?

11 A Richland County Sheriff's Department.

12 Q How long have you been there?

13 A 23 years.

14 Q What's your role there?

15 A I'm a lieutenant over the Special Victims Unit.

16 Q Okay.

17 A Supervisor.

18 Q Were you employed in that position in December of
19 2021?

20 A I was.

21 Q Were you working the Marty Brown case?

22 A I was assisting Investigator Tanner with that case.

23 Q Did you go with Investigator Tanner on December 17th
24 of 2021 to speak with Marty Brown?

25 A I did.

1 Q Where did you all go?

2 A First we got -- I was in my vehicle, he was in his
3 vehicle. We were just doing -- we're hitting some
4 locations where people knew him, that kind of thing
5 trying to see if we could track him down so we could talk
6 to him. And we eventually went to the chicken plant in
7 West Columbia.

8 Q Did you speak with him there?

9 A At the chicken plant?

10 Q Yes, sir.

11 A Yes.

12 Q Okay. At that time, was he in custody?

13 A No.

14 Q Had y'all put handcuffs on him?

15 A No.

16 Q Did he agree to speak with y'all?

17 A He did.

18 Q What happened after you left -- well, did y'all
19 leave the chicken plant?

20 A Yes.

21 Q Why did you leave the chicken plant?

22 A At that point, he had indicated that he actually
23 knew the alleged victim. We knew we were talking to
24 Marty Brown at that point. And we just said we need to
25 get this -- I'd rather get this on audio and video as we

1 do per our investigations at that point. We didn't have
2 body cams, so it was easier just to say would you ride
3 with us over to Pineview and we can get a statement in
4 one of our interview rooms.

5 Q He agreed to go with y'all?

6 A He did.

7 Q At that point, was he in custody?

8 A No.

9 Q Was he in handcuffs?

10 A No.

11 Q Were there warrants out for his arrest?

12 A No.

13 Q Did you drive separately to Pineview?

14 A I did.

15 Q When y'all got to Pineview, what happened next?

16 A Went into an interview room briefly. I don't know
17 if I stayed in the whole time. I'm not sure. That would
18 be memorialized on the audio and video. We'd have that.
19 But I was present. And then I understood that he
20 invoked. And at that point per the agreement,
21 Investigator Tanner put him in the vehicle and drove him
22 back over to the chicken plant.

23 Q Were you there when he invoked?

24 A I don't recall. I could have been in the room. I
25 just don't remember.

1 Q Did you go back with him to the chicken plant?

2 A I did not.

3 Q Did it appear that Marty was under the influence of
4 any drugs or alcohol to the extent it would impair his
5 ability to understand what was going on?

6 A He didn't appear to be.

7 Q Did it appear that he had any physical or mental
8 disability to the extent that it would impair his ability
9 to understand what was going on?

10 A It did not.

11 Q Did y'all threaten or coerce him in any way?

12 A No.

13 Q And once he decided that he didn't understand his
14 rights, wanted an attorney, you ceased talking to him?

15 A Correct. We were done at that point.

16 Q In fact, he was taken back to the chicken plant.

17 A Correct.

18 MR. JACKSON: Nothing further.

19 THE COURT: All right. Mr. Hayes?

20 MR. HAYES: Thank you, Judge.

21 CROSS EXAMINATION

22 BY MR. HAYES:

23 Q You said per the agreement you would take him back
24 to the chicken plant. What was the agreement?

25 A That was a clear phrase. I don't know about

1 agreement. It was just we had a conversation with him
2 and explained that he was -- if he wouldn't mind riding
3 over with us back to Pineview to give a statement.

4 Q Okay. So he agreed to ride to Pineview to give you
5 a statement?

6 A That is correct.

7 Q Then you got there and he decided he wasn't going to
8 do that.

9 A Wasn't going to do what?

10 Q Give you a statement.

11 A He apparently invoked his right to counsel and we
12 stopped any questioning at that point.

13 Q Right. All right. So you're present in this
14 conference room with Investigator Tanner at the time?

15 A At the chicken plant?

16 Q At the chicken ---

17 A Yes, I was.

18 Q All right. The two of y'all. You were lieutenant
19 then?

20 A I'm not certain what -- 2021 I might have still been
21 a sergeant.

22 Q Okay. He would have been a sergeant too. Y'all
23 would have both been sergeant?

24 A He was senior investigator.

25 Q Okay. So you were his supervisor?

1 A That is correct.

2 Q All right. And he comes in. Y'all basically ask
3 him if he knows **Complainant** He answers -- originally is no,
4 right?

5 A He feigned knowledge of the alleged victim in the
6 beginning.

7 Q When you say "feigned knowledge," I mean, and I'm
8 not trying to like split hairs, but it's important,
9 right? Because you'd agree with me there is no video of
10 what he actually said in this conference room.

11 A Not that I know of, no.

12 Q Right. I mean, you're not outfitted with a body
13 cam, are you?

14 A No.

15 Q Okay. You don't know that the conference room is
16 being recorded in any way, do you?

17 A I do not.

18 Q Right. And if it was, you don't have a copy of it.
19 You didn't go back and get it.

20 A Not that I -- no. I don't remember doing that.

21 Q Right. I mean, you've never seen it if it exists,
22 right?

23 A It would be news to me.

24 Q Okay. Thank you. We can agree about that.

25 So it becomes important then when we're trying to

1 put statements in a hearing like this that allegedly had
2 come out of my client's mouth, what he actually said,
3 right, what he actually said that we believe to be
4 admissible for in this trial, and that's why we're having
5 this hearing to determine whether or not it would be.
6 But what is the statement specifically as the supervisor
7 that we're seeking to introduce? And that's really what
8 I'm trying to boil it down to, right? Because I think
9 you were here present. We didn't sequester for this
10 hearing.

11 I know, Judge, I'm going to ask a question in a
12 minute.

13 You were here so you heard Investigator Tanner's
14 testimony, right? And I understood it to say that did
15 you know **Complainant** And originally he said no. You were
16 saying he feigned knowledge. What did he say?

17 A What I recall was that he did not -- he did not --
18 he did not appear -- it seemed like he was saying -- not
19 seem like. He didn't know who she was, like he had never
20 heard that name before.

21 Q Okay. And so how would the question have been
22 presented to him? How was the question presented to him?

23 A I don't know specific words that were used. I know
24 her name was used and that's how he knew her. That's why
25 he -- for whatever reason, he didn't know that name.

1 Q Okay. Well, would it have just been one name?

2 Would it have been her full name?

3 A I don't recall.

4 Q Who would have been asking the questions, you or

5 Investigator Tanner?

6 A That would have been Investigator Tanner. It would

7 have been his case and I would just be assisting if I

8 could.

9 Q All right. So he didn't really know who she was.

10 He's asked a second time under Investigator Tanner's

11 direct examination, my client is, that is. He's asked a

12 second time you know **Complainant** and then he says, well,

13 yeah, I guess I do know her, right? I mean, what did he

14 say the second -- the response to the second question

15 regarding whether or not he knew this alleged victim?

16 A I don't remember the specificity of the words or the

17 sequence. I just -- it appeared that at that point his

18 memory was a little clearer and he remembered who she

19 was.

20 Q Investigator Clark -- or Lieutenant Clark, what can

21 you testify to from your own recollection of this that my

22 client said during this particular interaction in this

23 conference room?

24 A His specific words?

25 Q Yes.

1 A I wouldn't want to do that. I wouldn't want -- I
2 want to make sure -- I wouldn't -- I just was observing.
3 And when it became clear that he -- it appeared he knew
4 who we were talking about at that point, I felt it
5 prudent that we go ahead and get this on the record and
6 have him come to Pineview to give us a formal statement.

7 Q So basically, once you made the interpretation that
8 he understood there was a connection about who you were
9 asking about, that he understood who that person was, you
10 said, okay, we're not going to continue the line of
11 questioning here anymore. We're going to go back to the
12 office and get a more formalized statement.

13 A I suggested we go to Pineview and get a statement on
14 the record.

15 Q Okay. At that time, were y'all -- had just
16 recently, I guess, put in a video and audio taping
17 equipment in some of those conference rooms out there?

18 A I believe we were wired for sound and video 2019,
19 but don't hold me to that.

20 Q Okay.

21 A I was a strong proponent of having all of our
22 statements recorded.

23 Q I appreciate that.

24 So the limited statement or the limited interaction
25 at Pineview would be encompassed or captured in a video

1 then. You would expect that.

2 A Ask the question again.

3 Q I mean, when they got back to Pineview, you would
4 have put them in one of these wired-up conference rooms,
5 right? And whatever limited interaction there was with
6 Mr. Brown when he invoked, it would be -- it would be
7 recorded, right? It should be.

8 A Yeah. The statement would have been. We would have
9 gotten to Pineview and gone ahead and tapped in whatever
10 we needed to on the -- wherever the data interface they
11 call it, get the camera rolling, the mic would be
12 rolling, we'd make sure it was hot and then we'd go sit
13 in the room and speak at that point.

14 Q And all of that should be there, right?

15 A What I just described?

16 Q Yes. I mean, the interaction with Mr. Brown on this
17 particular day should be there for us to be able to
18 receive it.

19 A Him in that interview room should be recorded
20 completely, yes.

21 Q Right. That's my point.

22 And at any time when you were out at the chicken
23 plant, did y'all attempt to try to sit down at the
24 conference table and like handwrite out or use a laptop
25 or any other recording device to get this statement?

1 A No.

2 Q And so the best of your testimony for when it comes
3 to this particular issue would be you were there
4 observing the interaction between Mr. Tanner and
5 Mr. Brown, and when you saw that Mr. Brown had an idea
6 about what Mr. Tanner was talking about, you wanted to
7 stop it to go make a more formalized statement. That's
8 about the extent of your testimony on this issue, right?
9 You can't say with any specificity what my client
10 actually said.

11 A That's fair.

12 MR. HAYES: No further questions, Judge.

13 THE COURT: All right. Any redirect?

14 MR. JACKSON: None, Your Honor.

15 THE COURT: All right. You may step down and be
16 excused, sir.

17 All right. Next witness.

18 MR. JACKSON: That's all from the State, Your Honor.

19 THE COURT: All right. Mr. Hayes, anything?

20 MR. HAYES: Well, Judge, briefly for the record,
21 Judge, we would submit to the Court that there isn't a
22 basis for these particular statements to be admissible
23 before this jury in the case against Mr. Brown. Judge,
24 if he's out on the chicken plant floor and he's working
25 and he's being called by a supervisor, which we can only

1 surmise, but, you know, oftentimes when we deal with
2 evidence and circumstantial evidence where we rely on a
3 certain set of occurrences to be able to establish a
4 fact, and I don't think there's anything in the record to
5 suggest that Mr. Brown just happened to walk into this
6 room and be encountered by these two law enforcement
7 officials who were there by a short period of time even
8 by their own acknowledgement to get a candy bar, and
9 that's what he walked into. He's being called by
10 supervisors and being told there's law enforcement
11 officers that are in a room wanting to talk to him about
12 something. He's at his job. And I think when you put
13 someone in that particular situation, not only you have
14 -- you know, you have a problem with law enforcement, but
15 you potentially have a problem with your bosses, right?
16 Your job, your livelihood, all of these things are at
17 stake and you're trying to deal with this as a layperson
18 on the fly in order to minimize the exposure that you're
19 probably realizing in that particular moment.

20 And I think you have to put yourself in the position
21 of Mr. Brown in the way that he responds and deals with
22 law enforcement as a result of their appearance at his
23 job on this particular day. So whether or not he was
24 free to leave, you know, from a law enforcement and a
25 trained law enforcement perspective, it's less important,

1 I believe, than the shoes that Mr. Brown was actually
2 filling at the time.

3 He's being summoned by his superiors to a conference
4 room where there's two investigators waiting to talk to
5 him. He's almost in a position where you -- you know,
6 what do you do? You've got your bosses looking at you
7 one way and you've got law enforcement looking at you one
8 way and am I really free to leave or not? If I walk out
9 of here, what's going to be the other collateral
10 consequences that I'm not thinking about the bosses are
11 here or whatever are going to be. So am I allowed to go
12 or not go? They've come to my job. They corner me in
13 this conference room and I don't feel like I can, so,
14 yes, I have to give them something. And so ultimately,
15 that's maybe what happens, I guess.

16 There's really not any kind of recollection. I
17 mean, Lieutenant Clark can't even say with any real
18 clarity about what he actually said. I guess it's my
19 understanding that potentially the statements that
20 they're seeking introduction of are that initially he
21 says he didn't know the alleged victim. I think
22 Investigator Clark said that he kind of feigned some
23 knowledge initially, then later said, oh, yeah I know who
24 you're talking about. I gave them a ride last Saturday
25 and I took them across the bridge, which we don't have --

1 I think there was some speculation about what that bridge
2 and all those things were, but some acknowledgment that
3 he knew who the alleged victim was and gave them a ride
4 on Saturday and then later that he had been threatened by
5 the alleged victim's family.

6 I mean, from my perspective, there are three
7 statements. Unless I'm wrong and the government can tell
8 me that, I'm sure they will, but it's my understanding
9 that those would be the three particular statements that
10 they would seek admissibility of and they're all premised
11 on the idea that Mr. Brown volunteered this prior to any
12 kind of Miranda being read. Obviously, if it's a
13 custodial interrogation, they go there, he's not free to
14 leave. And if he feels like he's not free to leave in
15 response, I mean, then anytime that the person doesn't
16 feel like they're free to leave, Judge, that's when
17 Miranda is going to attach and it's going to be required.
18 The minute they actually do, I think it's not
19 unforeseeable based on how this played out that when they
20 finally do read him the Miranda rights and he realizes
21 that he has these things, even though he's really not
22 free to leave in the conference room based on the facts
23 and circumstances that led to his encounter with law
24 enforcement there, when they get him to Pineview and they
25 put him in the recorded room, they read him his Miranda

1 rights, then he decides that he wants to invoke his right
2 to a lawyer and there the interview stops. There is some
3 agreement that gets made in all of this process that, you
4 know, there might have been some kind of coined phrase
5 from law enforcement, but at the end of the day, they
6 have to show that he was free to leave.

7 And he didn't drive his own car over there. He --
8 you know, it wasn't like, hey, let's go outside and get
9 in our car and you follow me over here. That's not what
10 happened. They put him in a law enforcement vehicle, he
11 wasn't free to get out of that and they go to Pineview.
12 He invokes and he goes back.

13 So, Judge, I think that there is ---

14 THE COURT: Let me ask you one question. You say he
15 was brought in by his superiors, a boss or somebody went
16 down and say you come up here. There's some folks that
17 want to talk to you, or whatever it is. He walks in that
18 room and they're the two law enforcement folks, the two
19 witnesses that were in there, I think the testimony was
20 that there was no one else. The bosses weren't in there
21 at the time.

22 MR. HAYES: And that's Mr. Tanner's testimony. I
23 agree with that.

24 THE COURT: Right. So if -- I mean, I can see what
25 you're saying if the bosses were in there and it's like,

1 you know, hey, will you come back with us and the bosses
2 are looking. You know, if you've got nothing to hide,
3 you should go back with them. If you say, no, I'm not
4 going to go back with you, they may be suspicious. But
5 at that point, they don't know, right? I mean, I'm
6 trying to make that connection that you're saying that
7 you bring somebody in from their bosses that they might
8 feel compelled to cooperate, but the bosses wouldn't know
9 if he just said I'm not going to talk to you guys behind
10 closed doors, walked out and went back to his shift, they
11 may say they just asked him some questions, he answered
12 them and that's it. Or as in this case, they left with
13 him, that he was cooperating with them and going back,
14 how does that further your argument about voluntariness
15 or that he was not -- that he didn't realize that he had
16 the right to leave at that point?

17 MR. HAYES: Oh, because I think he's under a certain
18 level of scrutiny not only from law enforcement but also
19 within his employment at the time. I think just because
20 the boss isn't in the room doesn't mean that the boss is
21 not interested in what's going on. The boss probably
22 understands that there's a police investigation going on
23 and the last thing I want to do if an employee, and I
24 only have one, is under investigation, law enforcement
25 comes in, I mean, other than hoping that she would invoke

1 immediately, you know, I'm not going to sit around and
2 interfere or hinder what's going on with law enforcement.
3 I'm not going to bring a problem upon myself, right, so
4 depending on whatever they have going on. But that
5 doesn't mean that they didn't have any kind of interest
6 and weren't paying attention to how this unfolded and how
7 it ultimately resolved itself.

8 So, you know, Mr. Brown comes out and who's to say,
9 again, you know, they don't really remember what they
10 said to -- what they said when they got there? And --
11 you know, I mean, and I'm not trying to open it to
12 speculation, but they don't remember what they said and
13 what they told these bosses about it beforehand. So, you
14 know, depending on what that information really would
15 have been, which we won't know now about what it is that
16 they were there to talk to Marty Brown about, right?
17 Probably the more serious it is, the more interested they
18 become. And at the same time, you know ---

19 THE COURT: I thought Lieutenant Tanner said that he
20 went there and said to the lady there does Marty Brown
21 work here, is he here? Yes. Can we talk to him? They
22 brought him in and then asked him do you know her? No.
23 And then asked again do you know? Yes, I think. And
24 then that's when it happened at that point. That's my
25 recollection. Of course, the record will say whatever it

1 is.

2 MR. HAYES: Well, my recollection, Judge, because I
3 believe I asked him on cross-examination about did you
4 talk to the bosses about why you were there, right, and
5 he said he did not recall.

6 THE COURT: Right. Yeah. I think he said I didn't
7 recall but I would not have. But I don't ---

8 MR. HAYES: They probably wouldn't have disclosed
9 different things, but he couldn't say he didn't, right?

10 THE COURT: Right.

11 MR. HAYES: And that's to say -- and I use that as
12 an example to say that if Marty walks out of there and,
13 you know, they say what happened, that was fast and he
14 says, oh, he refused to talk to us, well, now Marty's
15 under the scrutiny of the employer.

16 THE COURT: Right.

17 MR. HAYES: Right? And so, you know, is he free to
18 leave or not in his own mind trying to navigate all of
19 these circumstances that he's dealing with not just with
20 law enforcement, with his job. Again, it's how you've
21 got to put yourself in Mr. Brown's shoes, not law
22 enforcement's shoes.

23 These are trained law enforcement officers, good
24 ones I acknowledge who I have a lot of respect for,
25 Judge. I know these guys and I know they do a good job.

1 But, you know, they're 25 years experience walking into a
2 conference room in that circumstances for somebody who's
3 a layperson who's working at a chicken plant, their level
4 of sophistication in navigating that particular
5 occurrence is going to be night and day different.

6 THE COURT: All right. Mr. Jackson, I've got a
7 similar question that Mr. Hayes does. What exactly -- so
8 is it the statements that were made inside that
9 conference room at the chicken plant, that's what y'all
10 would be seeking to have admitted?

11 MR. JACKSON: Your Honor, not necessarily for the
12 admissibility. It goes towards the weight of the
13 evidence. But that is what we're -- yes, sir.

14 THE COURT: Right. So in other words, I mean, well,
15 you've got, I guess, a couple things. You've got in that
16 room at the chicken plant, then you've got in the car on
17 the way to the station, you've got at the station and
18 then on the way back.

19 MR. JACKSON: Yes, sir.

20 THE COURT: So all that y'all are as far as the
21 Denno statement is what was said in that conference room
22 at the chicken plant.

23 MR. JACKSON: That's correct, Your Honor.

24 THE COURT: Okay. All right. Because I didn't see
25 anything and nobody said anything other than he invoked

1 as soon as he got to the station and they asked him
2 questions about that, so I just wanted to make sure there
3 wasn't anything spontaneous or like that.

4 How about what Mr. Hayes raises that you go to
5 somebody's place of work and you tell his boss to go get
6 him? What do you say about his argument that you
7 involved the bosses there, that there's some additional
8 pressure that may have made him feel like that at that
9 point in time when he's at his work he couldn't -- that
10 he wasn't free to leave and that it wasn't voluntary?

11 MR. JACKSON: Yes, sir, Your Honor. So the standard
12 we're looking at is whether an objectively reasonable
13 person would have considered himself in custody, was at
14 least available and was supported by the record. It's an
15 issue for the jury. It's whether -- that's State
16 v. Walker, Your Honor, whether a reasonable person would
17 believe himself to be in custody, not whether the
18 defendant himself believes that he was not free to leave.
19 That's State v. Evans.

20 Your Honor, this was narrowed down more in In Re
21 Drolshagen, as I'm probably pronouncing that wrong. But
22 in that case, the juvenile was questioned in the
23 principal's office while law enforcement was present and
24 school officials were present as well. I think that's
25 pretty similar to what happened here. And the Court

1 ruled in that case that he was not in custody at that
2 time.

3 Mr. Brown agreed to speak with law enforcement. As
4 soon as he said something that could have been
5 problematic, they took him to Pineview to get a more
6 official statement. At no time was he placed in
7 handcuffs. At no time was he placed in custody. He was
8 -- there were no warrants for his arrest at that time.
9 And as soon as he indicated that he had issues with what
10 was going on, he was immediately taken back to the
11 chicken plant. So as soon as he -- he was free to leave
12 at any time. As soon as he expressed a desire to leave,
13 he was taken back. Questioning ceased at that point.

14 Your Honor, the issue with the remembering what was
15 said at the chicken plant or not, that's all documented
16 in Investigator Tanner's file. I mean, he wrote down
17 what he heard, so we have evidence of that.

18 And there's no evidence that Marty didn't
19 understanding that he didn't have to talk. He agreed to
20 do it. He agreed to go to the plant. As soon as he felt
21 uncomfortable, he was taken back.

22 So, Your Honor, we would argue that he was not in
23 custody at this time. Law enforcement was just doing an
24 investigation. There were never warrants out for his
25 arrest. He was free to leave at any point. That would

1 be our argument, Your Honor.

2 THE COURT: All right. Mr. Hayes, anything further?

3 MR. HAYES: He did -- eventually, he did understand
4 that -- what was happening, right? And he invoked in
5 that moment. I mean, he -- so to say that he -- you
6 know, he was free to leave and all these thing that led
7 to this, but eventually, you know, when the rubber meets
8 the road and they want to get that statement, okay, when
9 they say, oh, it's problematic, they went there with the
10 intention of getting a statement from my client, right?
11 Whether or not he felt like he was free to leave at the
12 time they began this process, then ---

13 THE COURT: I think the testimony was that they
14 didn't know whether -- they only had one side and they
15 were just going there just to -- I mean, to see if this
16 was the right person or anything. I don't think that
17 there's any evidence that they went there -- that he was
18 a suspect and we're going there and we're going to get a
19 statement about what happened. At least that's not the
20 evidence as I recall.

21 MR. HAYES: Well, Judge, I mean, he's a suspect. I
22 mean, I'm not trying to be -- I'm not trying to be -- but
23 their -- they didn't just happen to the chicken plant
24 looking for -- they went to -- I mean, he's their
25 suspect. They have a name, right?

1 While they're looking for Marty Brown, Mr. Clark on
2 testimony said we've been kicking around town trying to
3 go to places that we thought we might be able to find
4 people that knew him so we could talk to him to find out
5 where we could find -- right? So he was a suspect at
6 this time. Like there's no -- I mean, I think the
7 evidence even in this hearing supports that based on
8 Investigator Clark's testimony about how they got there
9 on this particular day.

10 So he's been developed at this point as a suspect
11 and they're looking to get his side of it, right? And
12 when they go there and they start this conversation,
13 then, you know, the problem is -- well, the problem --
14 when Mr. Jackson says it becomes problematic, it's
15 problematic because they haven't offered him Miranda yet
16 and he's speaking, right? And whether or not he would
17 actually be free to leave or not in his own mind becomes
18 the question.

19 He agrees to go with law enforcement. The minute
20 that they do read him Miranda and he understands what his
21 rights are, he decides to invoke them. I think that's
22 telling about what Mr. Brown's mindset was at the time.
23 When they finally got him to wherever they got him to and
24 read him the Miranda, he just -- he invoked. If they had
25 done that at the beginning, he probably would have done

1 that at the chicken plant.

2 THE COURT: All right. In ruling on whether the
3 defendant's statement can be submitted to the jury, I
4 first have to determine under the totality of the
5 circumstances whether the defendant's statement was
6 knowingly, intelligently and voluntarily made. In making
7 this determination, there are four questions that I have
8 to answer. First is did he make the statement. And I
9 find that the State has proven by the preponderance of
10 the evidence that he did.

11 The second question is whether he was administered
12 Miranda before he was questioned by law enforcement. I
13 think the testimony, again, the totality of the
14 circumstances and the preponderance of the evidence show
15 at least the testimony from Lieutenant Tanner is that
16 they wanted -- they went there to see if he knew this
17 woman and asked if that was the Marty Brown, if that was
18 him. When -- and they asked in response to the question
19 of do you know this woman, at first he says no, then he
20 says yes and then he offers some information, they
21 immediately stop. They ask him if he wants to go -- if
22 he would go with them to the station to make a statement.
23 The evidence is that he did, and that once he invoked his
24 Miranda warnings, that they immediately ceased and took
25 him back to his workplace.

1 So I find that when he did -- that he was not in
2 custody when he made the statements at the chicken plant
3 and that he was free to leave at that point, that a
4 reasonable person would believe that they were free to
5 leave at that point. Again, I think that this would be a
6 different subject, maybe not in light of the case that
7 Mr. Jackson cited about the juvenile. I don't know how
8 that -- the fact the juvenile versus an adult may play
9 into it, I don't think it's necessary. But I think I
10 would have more of a question if he was with his bosses
11 in that room. But in this case, I think the only
12 evidence is that he wasn't. And if he had said, no, I
13 don't want to talk -- I know her but I don't want to talk
14 to you about it and he walked out, he didn't have to say
15 what went on in there. So I do find that it was
16 voluntary, the statement, and that he was not in custody.

17 The third question is did he knowingly and
18 intelligently waive his constitutional rights. Again,
19 this occurred prior to being mirandized. And I find that
20 he was not in custody and that he was free to leave in
21 that case.

22 And then, lastly, whether the statement was given
23 voluntarily. Again, I find that the State has proven by
24 a preponderance of the evidence that the answer to that
25 question is yes and that he was free to leave at that

1 point. He said that he would answer questions and then
2 he would go give a statement. He went with them and
3 ultimately invokes his right not to speak and they took
4 him back. And I think the testimony was on the ride back
5 he was also cautioned not to say anything at that point
6 because they couldn't speak to him anymore.

7 So therefore, I find that the analysis weighs in
8 favor of an admission statement is admissible. And, of
9 course, it will be up to the jury to determine whether or
10 not the State has proven the same answers to each of
11 these questions beyond a reasonable doubt. But for the
12 time being, I find that it has satisfied Denno.

13 Anything further from the State?

14 MR. JACKSON: No, Your Honor.

15 THE COURT: Anything further from the defense?

16 MR. HAYES: No, sir.

17 THE COURT: All right. What's the next one that we
18 have?

19 MS. BROWDER: Your Honor, the last one for the State
20 is motion in limine to prevent testimony or questions for
21 the witness **Complainant** regarding three separate
22 things: prior bad acts which would relate to her
23 runaways, she had several runaways with law enforcement
24 and other bad acts such as acting out at school events,
25 discipline, that sort of things; diagnosis of her

1 oppositional defiant disorder; and then prior allegations
2 of physical abuse against her mother. I don't know if he
3 intends to go into any of those so I'm not going to argue
4 them unless he intends to. But if he does, I'd like to
5 put on record the argument of why he should not be able
6 to go into any of these things.

7 THE COURT: Sure. Okay. And once again, just so
8 that I've got them, there's the diagnosis of ---

9 MS. BROWDER: Oppositional defiance ---

10 THE COURT: --- oppositional defiance, ODD disorder.
11 That she ran away?

12 MS. BROWDER: Runaways, yes. She had several
13 runaways.

14 THE COURT: Runaways.

15 MS. BROWDER: And then prior allegations of physical
16 abuse against her mother.

17 THE COURT: All right. So those three things?

18 MS. BROWDER: Yes, sir.

19 THE COURT: All right. Yes, sir, Mr. Hayes. Happy
20 to hear from you, sir.

21 MR. HAYES: Judge, as it relates to the runaway, I
22 think that on this particular occasion, on December 11th
23 or 10th, that evening, whatever -- must be the 10th based
24 on the timing, but was the time -- the first time at
25 least in my view of listening to some of the body cam and

1 watching the evidence that Complainant was a runaway. I
2 could be wrong about that. Maybe she ran away before
3 that. But it's my understanding based on the interviews
4 that's available, and the government, correct me if I'm
5 wrong, but this was the first time that she -- her
6 parents had reported her as a runaway some eight hours
7 before the alleged events here in this case. And I think
8 that is relevant to the case. I wouldn't necessarily go
9 into other runaway circumstances, especially if they came
10 after this particular event. But it's my belief on what
11 I've seen in the evidence -- and please, again, Anna,
12 correct me if I'm wrong.

13 MS. BROWDER: And I would agree, Your Honor, that
14 first runaway, this first one that's related to this is
15 -- I do believe that's admissible because it's part of
16 this situation. It would be any other ones.

17 MR. HAYES: But it would be -- it's the first one.
18 So anything else is ---

19 MS. BROWDER: Right.

20 MR. HAYES: --- just a subsequent runaway thing that
21 really probably wouldn't have -- I mean, even -- I mean,
22 I'm not here to waste the jury's time. Believe me. I
23 don't know how that would make any underlying fact of the
24 case more or less likely.

25 THE COURT: Right. So the runaway on the date of

1 the alleged incident is fair game.

2 MS. BROWDER: Correct.

3 THE COURT: But other instances where she may have
4 run away before or after don't have any relevance is the
5 State's argument. And so is that -- are you in line with
6 that, Mr. Hayes?

7 MR. HAYES: I can't say -- I can't be like, oh,
8 you've run away from home ten times.

9 THE COURT: Right.

10 MR. HAYES: I don't see where that would really --
11 where I'd be scoring -- where I would be making any
12 headway in a cross-examination if that's where I find
13 myself.

14 THE COURT: Okay. All right. Well, it sounds like
15 we're okay. And, again, if something unexpected comes up
16 and you feel that that -- if evidence comes out and you
17 feel that it's relevant based on something that you don't
18 know right now, we can -- let's just, you know, talk
19 about it at a break or before it gets injected into that.
20 But unless there's something unforeseen, it looks like
21 the parties agree that the runaway at least the day of
22 the incident is fair game, that others, at least, based
23 on what we now know are not.

24 MR. HAYES: I mean, I guess what she may be asking
25 about, I can see in my mind where it says stuff like

1 this, it talks about like past problems, I guess, and
2 they're kind of like summarized in like six words. And
3 runaway would just kind of be -- appear as one of them,
4 right? And it wouldn't be -- that evidence, Judge, if it
5 were to come in, I don't think it would come in through
6 **Complainant** I wouldn't ask her about it. But depending on
7 what the impact and the effect that it had on the
8 listener, right, and because she gives several statements
9 in this case. I mean, she gives one to a deputy, she
10 gives one to a sexual trauma nurse, she gives another one
11 to the METCAC people. I mean, I think she talks like at
12 least three or four even statements. And so depending on
13 what those records are with those witnesses, potentially,
14 I guess, but I still -- it wouldn't be anything very
15 specific. It would just be this is the person you're
16 dealing with, right? Yes. I mean, that would be -- but
17 that wouldn't be any, you know, particular thing about,
18 you know, she's got -- she gets into it with her mom. I
19 mean, I'm not saying that I -- but I wouldn't go into any
20 specific conduct but more maybe a generalization of
21 whatever it is depending on, again, what's coming out of
22 the witness stand.

23 THE COURT: Well, and y'all have a much better idea
24 about this case, obviously, than I do. But I can't think
25 of an instance where somebody running away after this

1 incident or anything would have any bearing on it. I'm
2 not saying that there isn't any. I'm just saying that if
3 you believe that it gets to that point and you want to
4 talk about or ask questions about other instances of
5 runaway other than the date of the incident, let's just
6 huddle up first.

7 MR. HAYES: I mean, I don't -- again, I'm not trying
8 to be like -- I'm not trying to be quarrelsome with the
9 Court or with the prosecutor, right? But I also am -- I
10 guess I'm not totally prepared to limit myself
11 altogether. But I don't -- I say that in good faith to
12 say that I don't -- I don't really foresee that becoming
13 something I get into.

14 THE COURT: Well, see, this is the trouble with in
15 limine sometimes is that you can't look ahead in the
16 future and say I know every single instance that this may
17 or may not come up. What I'm saying is the day of -- the
18 running away incident, the day of, is fair game. The
19 others are not unless something else comes -- unless I'm
20 presented with something else. If you question somebody
21 and you think that that opens the door for these others,
22 then just say I have an issue to discuss and we'll talk
23 about it. But until then, it's not to be raised.

24 MS. BROWDER: And, Your Honor, I just want to make
25 it clear. It's not just runaways we're asking about.

1 I'm concerned where he says, you know, this is who you're
2 dealing with. Just the fact that she in general might be
3 a bad kid at that time or might have some problems, I
4 don't see how that is relevant as to whether the sexual
5 assault occurred that night or not. Like acting out or
6 school events or, I mean, just in general who you're
7 dealing with, I don't see how that goes to a train of
8 truthfulness or untruthfulness.

9 THE COURT: Right.

10 MR. HAYES: I don't expect to ask anything about
11 school events.

12 THE COURT: Right. And, again, if you ask a
13 question that you think is over the line but, you know,
14 object, again, it's hard to draw exact down to the
15 millimeter what somebody can ask and what they can't ask.

16 And so I agreed with the proposition that you're
17 saying, Ms. Browder. In this case, she's a victim of a
18 crime. And whether or not she breaks curfew or whether
19 she gets in a fight with her mother or makes bad -- I
20 mean, none of that has any relevance that I can see at
21 this point. I'm not hearing any objections or any
22 position.

23 MR. HAYES: Well, Judge, and candidly, I mean, I
24 don't -- you know, the defense theory of the case
25 probably should -- isn't a secret but I'm not going to

1 just state it for the record right in front of the
2 prosecutor during pretrial. So some of it I'm not trying
3 to be coy with, but I'm not going to reveal.

4 THE COURT: I understand.

5 MR. HAYES: I mean, I'm sure that, you know, they're
6 experienced prosecutors, they can anticipate the things
7 that I'm probably likely to do. But at the same time,
8 you know, that's -- I mean, that's the way it is.

9 THE COURT: Yes, sir. All right.

10 MS. BROWDER: And, Your Honor, the second one was
11 the diagnosis of oppositional defiant disorder. We don't
12 believe he should be able to mention this diagnosis as
13 it's not relevant, again, to truthfulness or
14 untruthfulness. The definition for the oppositional
15 defiant disorder is angry or irritable mood,
16 argumentative defiant behavior and vindictiveness. None
17 of that implies lying or untruthfulness and we don't
18 believe they should be able to get into that.

19 THE COURT: Mr. Hayes? On whether she's been
20 truthful or not in some of her statements, obviously,
21 that -- you know, in this case that were made, but you're
22 not ---

23 MR. HAYES: Unless somehow the door becomes open to
24 explain discrepancies in evidence and it becomes
25 necessary, but even then I don't know that that answers

1 any of those questions. So I don't anticipate making
2 this case about something it's not.

3 THE COURT: All right.

4 MS. BROWDER: And finally, Your Honor, the prior
5 allegations of physical abuse against her mother. I
6 mean, if he's not going into that, I won't go into the
7 Boyter test and why it shouldn't be admissible. But if
8 he is, I'd like to go through that.

9 THE COURT: All right. Mr. Hayes?

10 MR. HAYES: I don't expect -- I don't expect to get
11 into that, Judge.

12 THE COURT: All right. So as to the -- as to all
13 these motions in limine, I grant them with the
14 stipulation that we've talked about that if the door is
15 opened or if defense counsel thinks that some information
16 has come out that would change that, I'm certainly happy
17 to hear it, but I don't want to hear it for the first
18 time in front while the jury is here. We can deal with
19 -- we can deal with those issues either at a break or at
20 a sidebar or something like that, make sure everybody's
21 protected on the record. But -- so that will be my
22 ruling as to those -- as to, I guess, the motion with
23 three subparts, I guess, is how we were treating it.

24 MS. BROWDER: Yes, sir.

25 THE COURT: All right.

1 MR. HAYES: Don't get into history with mama, right,
2 don't get into the diagnosis and don't get into the
3 problems at school.

4 MS. BROWDER: Or runaway. Just in general bad
5 behavior.

6 THE COURT: Right. The runaway, that this witness
7 is a bad person so you shouldn't believe them because
8 they stay out late, because they argue with their mother,
9 because they have this condition, because they ran away
10 from home. I mean, again, y'all have tried more cases
11 like this. Y'all know what it is generally. And there
12 may be a reason -- reasonable minds may differ as to one
13 or two questions that y'all will have to object and I'll
14 have to rule on, but I think everybody's on the same
15 page. If you're not, let me know and I'll make it clear.

16 MS. BROWDER: Yes, sir. That's all from the State,
17 Your Honor.

18 THE COURT: All right. From -- let me get -- so
19 those are the defense. Okay. I'm looking at the
20 defendant's proposed pretrial motions. Number 1, Denno,
21 we've addressed.

22 Defendant seeks to suppress any and all evidence
23 that is fruit of the poisonous tree. Is there any
24 instances ---

25 MR. HAYES: There's no specific evidence there,

1 Judge. Most of it I think we lack standing to challenge
2 anyhow. But in the event that it arises, I'll make a
3 contemporaneous objection.

4 THE COURT: All right. Next, prior acts pursuant to
5 404(b).

6 MR. HAYES: Judge, so I get into this a little bit.
7 I don't know exactly what would qualify. But, you know,
8 Investigator Tanner on direct in the -- or maybe it was
9 on cross, I'm not sure, but he talked about my client's
10 record and how long it was and how he was familiar,
11 right, with all the things that he should have been based
12 on his experience with the criminal justice system. I
13 added some words there, but that's basically what he
14 alluded to.

15 THE COURT: Right.

16 MR. HAYES: So, obviously, any -- you know, anything
17 to that extent would be appropriately excluded from the
18 -- in the government's presentation, and at the
19 appropriate time, I would ask the Court to advise my
20 client what if any record that he has would be admissible
21 in the event that he should testify.

22 THE COURT: All right. And I don't have that, but I
23 can certainly ---

24 MS. BROWDER: Your Honor, I don't intend to go into
25 anything prior. Obviously, during Jackson v. Denno it is

1 admissible for what he would know, wouldn't know, but
2 that would not be anything we do in direct.

3 In addition, from my review of Mr. Brown's record, I
4 don't believe there is anything on it that would be
5 admissible if he were to take the stand.

6 THE COURT: All right. Sounds good.

7 The next one, the defendant seeks to sequester the
8 government's witnesses during trial.

9 MR. HAYES: Understanding, Judge, the victim and one
10 investigator probably are appropriately left in the
11 courtroom during the government's presentation. We would
12 ask that all other witnesses be sequestered and not
13 consulted about whatever the testimony is. I mean,
14 there's sequestration and then there's other times where
15 I've seen, you know, the people in the hallway find out
16 what's going on during a break.

17 THE COURT: Sequestration light?

18 MR. HAYES: Right. So we're seeking a
19 sequestration.

20 THE COURT: All right.

21 MS. BROWDER: And, Your Honor, obviously, we ask for
22 the victim to be able to stay in here and Investigator
23 Tanner. We would also ask, Your Honor, my in-house
24 investigator Nikki Acerra, she is on the list in case
25 there were ever any impeachment issues, we'd ask that she

1 be able to stay in.

2 THE COURT: Any objection?

3 MR. HAYES: Yes, sir. I mean, a victim and one
4 investigator.

5 THE COURT: All right. What's the -- why again ---

6 MS. BROWDER: Your Honor, she's integral in how we
7 present -- not how we present the case but how we're
8 getting witnesses in the courtroom. She's the one that
9 goes gets our witnesses. She's the one if a witness
10 needs to be here that she transports them here. She is
11 purely on the witness list in case somebody gets up there
12 and says something they're not -- that they didn't say --
13 that they said previously. She has been involved in this
14 case from day one in our office. She is like the lead
15 investigator on the case but in our office.

16 THE COURT: You are not anticipating calling her
17 unless it's for impeachment purposes?

18 MS. BROWDER: Correct. I don't anticipate calling
19 her unless something goes really wrong.

20 MR. HAYES: She's present during **Complainant**
21 statement, the one you emailed me?

22 MS. BROWDER: As well as our victim advocate was
23 also present during **Complainant** statement. I mean, she's
24 not on the witness list, but...

25 THE COURT: All right. If she's not going to be

1 called except as for impeachment purposes, I think she
2 can stay.

3 MS. BROWDER: Thank you, Your Honor.

4 THE COURT: All the other witnesses, everybody else
5 is sequestered, capital S.

6 MR. HAYES: I mean, my only concern with that,
7 Judge, is while I kind of like the idea that the
8 government is going to impeach its own witnesses, I've
9 got to say, she would know exactly what it is that she's
10 impeaching, right? And that's the whole premise of the
11 sequestration is that you don't know exactly what the
12 live testimony is. I mean, I'm familiar with a divorce
13 case that happened last year -- or last week, in fact,
14 through a friend of mine. I don't do Family Court. But
15 the divorcee, the wife got on the stand and she said a
16 bunch of stuff. And then they had the witnesses
17 sequestered and her mother came in. She was the next
18 witness they called, and she didn't know what she said.
19 And she lied through her teeth the whole time,
20 contradicted every point that was made by the woman that
21 was getting divorced.

22 THE COURT: Right.

23 MR. HAYES: Right? If you have someone who is
24 listening to the live testimony and knows precisely what
25 it is, then the value of not knowing exactly what it is,

1 you're able to tailor your testimony, if that makes
2 sense. You're tailoring your testimony to a certain
3 place, right, for a certain objective. And you wouldn't
4 be doing that if you didn't know exactly what the
5 testimony was. And that's the purpose of sequestration.

6 THE COURT: All right. Well, every trial that I've
7 had they stayed in. But I'm going to look at that, all
8 right? I see what you're saying. I mean, you're kind of
9 sitting there watching it and, you know, if that's not
10 right, then I can get up and fix it.

11 MR. HAYES: Right. That's exactly my point. But if
12 you don't know because they're outside, they don't know
13 exactly what the problem is. And they probably fix it
14 all the same. But instead of, you know, starting at the
15 50 yard line, they're down there on the goal line.

16 THE COURT: All right. Let me take a look at that.
17 That's the last one that we have at least on my list of
18 pretrial motions from either the plaintiff or the
19 defendant. I'll take a look at that. And that just
20 hasn't come up. Usually, people have said, no, I'm fine
21 with the investigator staying in, but I don't know that
22 anybody's raised that. So to be honest with you, I'll
23 just need to take a look at it. It's not an argument
24 that I've heard. So I want to be fair and take a look at
25 it.

1 So I've got that the motions, the Rule 5, both
2 confirm that everything's okay.

3 The prior witness conviction -- the prior witness
4 convictions, the juvenile, the A&B second, that's fair
5 game.

6 The rape shield, I granted that without objection.

7 The video in by affidavit, I granted that.

8 The Denno motion, I found that it was voluntary and
9 satisfied the factors in Denno.

10 The prior bad acts, it looks like we had three
11 subparts: one was the runaway and general, I guess I
12 don't know what to call it, incidents with the victim.

13 And that the next was the oppositional defiance
14 disorder.

15 And then the last one was the allegations of abuse
16 versus the mother.

17 I granted the motions in limine as to all of those
18 subject to if the defense believes something -- if the
19 door's been opened or something comes up, that we'll
20 address that out of the presence of the jury.

21 The defendant's proposed motions, the first one was
22 Denno that we've addressed.

23 Fruit of the poisonous tree, I believe Mr. Hayes
24 said that he wasn't aware of anything in particular right
25 now or that there may not be some standing as to that.

1 But obviously, if there is any objection, you can
2 certainly make that.

3 Defendant's prior bad acts convictions or 404(b),
4 Ms. Browder said that she is not aware of anything that
5 would be admissible under that so I don't think there's
6 an issue there, but glad to hear otherwise.

7 And the government witness sequestration, I granted
8 that as to the victim can be in, Lieutenant Tanner can be
9 in and then I've got to take a look about the solicitor's
10 investigator. So that one's on my plate.

11 But I think everything else may have been decided;
12 is that right? Or just let me know. I just want to make
13 sure that all of these things have been tied.

14 MR. HAYES: The only -- I have one final point this
15 afternoon, Judge. And I understand the government's told
16 me they've given me everything that they have.

17 THE COURT: Right.

18 MR. HAYES: They booked Mr. Brown in an audio and
19 video recorded room somewhere on Pineview for some period
20 of time, and that video, my understanding the solicitor's
21 never seen, but they are responsible for all the things
22 that are in law enforcement's possession and turning
23 those things over. So it does make me have some concern
24 about what I have actually received, if I've got it all.

25 THE COURT: All right. Ms. Browder tells me that

1 she's -- first of all, what about this video or audio? I
2 don't know.

3 MS. BROWDER: Your Honor, I can hand up -- this is
4 from January 2024 when we pulled the Axon of every --
5 Axon is our evidence.com system -- pulled everything that
6 the law enforcement had put on there they've given us
7 that they had in their possession regarding it. That
8 video is not on there anywhere, Your Honor, so I'm not
9 sure what happened to the video, if it was accidentally
10 erased or what. But as far as I'm aware, we have handed
11 over everything to law enforcement -- I mean to the
12 defense that we've received from law enforcement and gone
13 through their file.

14 And I also gave -- I sent an email to Mr. -- or,
15 yeah, Mr. Hayes last week that I found I'd sent to Ms.
16 Goode previously of Riddle information from when we spoke
17 to **Complainant** where things might have changed a little bit
18 or additions or subtractions. So we have continually
19 continued to give over discovery as it's become available
20 to us, if something has come up, and we will continue to
21 do that if we are able to find something else or have
22 something else.

23 THE COURT: All right. And, Mr. Hayes, I hear what
24 you're saying. If you find that there's one thing out
25 there, you don't know what you don't know. And so it

1 looks like that -- at least based on what Ms. Browder
2 tells me that they've run that down as much as they can
3 as far as the video or audio is concerned. They just
4 don't have an answer for it. But she confirms on the
5 record that everything that she is aware of has been
6 produced. If something else comes up, you're certainly
7 welcome to raise it and we'll deal with evidentiary
8 issues at that time.

9 MR. HAYES: Yes, sir.

10 THE COURT: All right. Anything further from the
11 State before we adjourn?

12 MS. BROWDER: No, sir.

13 THE COURT: Anything from the defense?

14 MR. HAYES: No, sir.

15 THE COURT: All right. What we'll do in the morning
16 is Yonas, I guess, will let us know what the logistics
17 are in the morning, but we'll select -- we'll do voir
18 dire. I've got y'all's -- the same voir dire that
19 everybody was on board with. I'll do the exact same ones
20 again.

21 Once we pick a jury, I mean, if it's lunchtime, then
22 we'll let them go to lunch and start with general charge
23 and openings if we're done early enough. I'll ask you
24 all, because, again, I want to stay out of the way. If
25 y'all would rather wait until afterwards, I'll let y'all

1 figure out how you want to proceed at that time. All
2 right?

3 MS. BROWDER: Yes, sir.

4 THE COURT: Okay. Thank you. We'll be adjourned
5 until tomorrow morning.

6 (WHEREUPON, proceedings recessed at 4:03 PM.)
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Tuesday, August 26, 2025

(WHEREUPON, State's Exhibit Numbers 1 through 14 were
premarked for identification; proceedings reconvened at
12:32 PM.)

THE COURT: All right. We now have Mr. Brown here
in the courtroom and so, you know, again, I'm happy to do
everything exactly like we did it yesterday. I am
cognizant that it's 12:35 and that we're going to pick
this jury. And I believe once we pick them, we'll send
the jury out for lunch, come back at 2:00 or 2:30 and
then immediately start with opening statements then. Is
that plan okay with you, Ms. Browder?

MS. BROWDER: Yes, sir.

THE COURT: Mr. Hayes, is that okay?

MR. HAYES: No objection, Judge.

THE COURT: Okay. And so yesterday, of course,
there were several people -- and I may just go ahead and
do it the long way just to avoid any confusion. But what
I was thinking is if there were people, and I've got a
list of them, I'm sure y'all have it from yesterday, that
were excused because they were victims of prior sexual
conduct or sexual assaults or had a family member or, I
think, one person said he was a police officer and
couldn't be fair, there was somebody that said they had
some mental health concerns about sitting through it that

1 I excused, and so if those people stand up, we can all
2 gather and hear it again or I can say that I believe that
3 you were excused yesterday so I will excuse you today.

4 MS. BROWDER: As you state it right now, it makes me
5 think, though, if you say it that way, the jurors who
6 have not been in here before know that there was a jury
7 selection yesterday. Does that make sense? I didn't
8 think about it until you said it just now.

9 THE COURT: A lot of times trying to make things
10 easier makes it more complicated.

11 MS. BROWDER: Right.

12 THE COURT: I was trying to come at it from a good
13 place but I don't want to create issues where there are
14 none. So we'll just do it -- we'll pretend that
15 yesterday didn't happen. We'll call those people up. If
16 we get up there, we'll have, you know, are you Juror
17 Number 125? Yes. Okay. We can say sidebar and nobody
18 hears, okay, we'll excuse you today, you know, again.
19 Something like that so we won't have to get into it.
20 Some of them were kind of emotional about it.

21 THE BAILIFF: May I interject something? We got
22 confused yesterday. When you excused, we sent them in
23 the back, separate them from the jurors.

24 THE COURT: That's right. Let's do that. I was
25 told that ---

1 THE BAILIFF: If you excuse them, some of them walk
2 out the door. They were through for jury duty.

3 THE COURT: I didn't mean for them to like excuse
4 like you can go home. But I'll be more clear about that
5 today. I'll just tell them to go back and take a seat
6 and then one of you all, as they pass by you, you can
7 tell them where up there they need to sit.

8 All right. And I'm told that after Judge Coble
9 picked his jury, they send them back downstairs and
10 they'll be coming back up here and then we'll just start
11 off where we did yesterday. I'll recognize Ms. Browder,
12 call the case, and then we'll proceed from there. I've
13 got the same voir dire that I had yesterday. Of course,
14 if I misread anything, you know, y'all feel free to
15 object and then we'll select the jury.

16 Is there anything -- they'll start filing in, I
17 suppose, at some point. Is there anything that we need
18 to address before we start jury selection when they get
19 here?

20 MS. BROWDER: Your Honor, I just want there to be
21 some clarification of who is allowed to be struck at this
22 point after a Batson. Under State v. Franklin, the trial
23 judge can prohibit a strike against a potential juror who
24 was previously stricken in violation of Batson. Franklin
25 also says that a party may strike the same juror after

1 the first jury's been quashed after Batson if he has new
2 facts supporting the strikes. I just want some
3 clarifications on those.

4 THE COURT: Mr. Hayes?

5 MR. HAYES: Judge, I understand the Court's ruling
6 and I'm going to just back up just for a moment in
7 response to this. I think I picked my first jury in this
8 courthouse 19 years ago. I think I've picked 40 juries
9 in this building since then in criminal and civil cases
10 combined. I stand by every strike that I made yesterday.
11 Frankly, Judge, if they came up here today, I'd strike
12 them again. I feel almost compelled to strike them
13 again. I struck them to their face. So to be forced to
14 sit a juror who I struck yesterday, it's not my liberty
15 at stake.

16 And I'm not frustrated because of anything that has
17 to do with me. It's for my client. I'm the only thing
18 that stands between him and the government in this case,
19 and I'm trying to give him the best opportunity I can
20 through the jury selection process on the limited
21 information available that we have in putting people in
22 this box. And so to be forced by the government to allow
23 some juror that I struck to their face yesterday to me is
24 almost absurd. I stand by every strike that I made and I
25 would -- if I had to do it again, Judge, I know I was

1 frustrated. I went home last night and thought about it.
2 I would strike every person I struck yesterday again.

3 And I understand the Court's ruling. I'm not here
4 to quibble with that. I can't worry about what I can't
5 control. But who I put on this jury and who I use my ten
6 strikes with today I can control. And if we did it the
7 same way, I'd do it the same way. And I just say that as
8 a preliminary matter moving into this new selection.

9 Frankly, Judge, I would ask the Court to consider
10 removing anybody who was struck either by the defense or
11 by the government yesterday. I think there was 13
12 strikes that were used total between the two. Just take
13 them all out and don't have them in the panel that comes
14 up. I think it puts the government in a tough -- similar
15 position where you're basically asked to potentially have
16 to seat someone that they struck to their face yesterday.
17 I don't think that that's inherently fair to either side.

18 THE COURT: Well, is there any case law that
19 requires me to do that?

20 MS. BROWDER: No, sir, Your Honor. Not that I'm
21 aware of.

22 THE COURT: The reason I'm concerned about it is
23 because it would essentially be allowing the same strikes
24 of the same potential people.

25 And, listen, I'm not trying to tell -- I'm not

1 saying that you need to strike a certain person or you
2 can't strike a certain person. But what I'm saying is
3 yesterday, based on the analysis that I'm forced and I
4 have to take, there were some jurors that the purpose of
5 the strike I believe was not consistent, was not gender
6 neutral. If you want to strike the same number of
7 people, that's fine. We had ten men yesterday, two
8 women, and all the strikes except one were women.

9 My analysis stands. But if we get somebody else up
10 there and you -- I know there were a couple people where
11 you said I'm not sure exactly what it was, if you've got
12 a reason based on looking at whatever it is, that's fine.
13 I'm not saying you've got to pick Jane Doe or you've got
14 to strike Jane Doe. That's your decision. I'm not
15 getting involved in that. You've picked more juries than
16 probably most lawyers in this county have.

17 MR. HAYES: Well, Judge, and I say that because the
18 government stands up this morning and says what are the
19 rules, what are the limitations, can he really -- you
20 know, can you strike someone that -- you know, basically,
21 they're asking you for a ruling on a potential juror and
22 basically saying, hey, he can't strike this juror because
23 of whatever violation that occurred yesterday.

24 I'm not here to quibble with the Court's ruling from
25 yesterday, right? I'm not trying to relitigate that.

1 I'm doing my best to move on from it, Judge.

2 But the collateral consequences of this second
3 selection, right, and what the framework, what the ground
4 rules are, you know, when we're in the trenches chest
5 deep here trying to advocate for our clients, I guess,
6 you know, what I'm saying is I stand by the strikes. And
7 I say that because they're saying -- they're asking you
8 to limit my ability to strike them again when I would be
9 forced to almost sit a juror that I struck to their face
10 yesterday which strikes me as absurd. Like I can't be --
11 it's just -- it's inconceivable to me to think that I
12 would be forced to have to sit someone who I struck
13 yesterday.

14 THE COURT: Well, I'm looking at, what, the State
15 vs. Franklin?

16 MS. BROWDER: Yes, sir.

17 THE COURT: Is that what you're talking about?

18 MS. BROWDER: Yes, sir.

19 MR. HAYES: I mean, that would almost be a new
20 additional reason to the reasons I believe existed
21 yesterday. But I struck them to their face yesterday,
22 that that's an additional reason on top of the reasons I
23 already had.

24 THE COURT: Well, I'm just looking over -- looking
25 at that case of State vs. Franklin, 318 S.C. 47, from the

1 South Carolina Supreme Court. It says, "The majority of
2 jurisdictions addressing the question of whether the
3 trial judge may seat a juror improperly excluded in
4 violation of Batson have found no error in seating such a
5 juror. The rationale for allowing the trial judge the
6 discretion to seat the improper juror is sound. As noted
7 in People v. Moten..." And then it quotes from that
8 case. "To hold otherwise would inadvisably reward a
9 party for his own improper conduct, as would the
10 declaration of a mistrial, which, in my view, is an
11 inappropriate remedy where the Court is confronted with a
12 valid Batson challenge. The declaration of a
13 mistrial..." All right. So it gets into a mistrial.

14 So it sounds like that it's -- that it would be in
15 the Court's discretion whether to allow someone in that
16 was done yesterday. I'm not going to go through the list
17 of 12 people and two alternates yesterday and say you
18 can't strike her or you can't strike him with that. But,
19 you know, I believe that all -- I know this was my first
20 time having to deal with Batson. I think Ms. Browder
21 said it was hers. Mr. Hayes, you may have dealt with
22 this before.

23 MR. HAYES: I mean, I've dealt with it, Judge. I
24 mean, I -- and it's turned out both ways, candidly. I
25 mean, I'll be candid with the Court. There was another

1 Batson motion. But, I mean, I think I've -- probably
2 this is my third or fourth time being through this so I'm
3 not -- but it ---

4 THE COURT: So my point in saying that is that I
5 think we're all going to pay a much closer attention
6 today on the reasons for it. So if there is -- if Jane
7 Doe was stricken yesterday and you have looked over the
8 information and you believe that there is a sustaining
9 ground to strike her today, that's up to you. Of course,
10 it's up to Ms. Browder to object if she thinks that it's
11 not a valid one. I mean, we can do this round and round.
12 I assume that everybody's going to be in good faith in
13 their participation in these strikes. But I can tell
14 you, ten men and two women the way it was yesterday, it
15 just -- you know, there were few of them that were of
16 concern and hopefully we won't have to deal with it
17 today. But I'm not going to say you have to pick this
18 one but not that one. We'll see how it goes.

19 MR. HAYES: And I just want it to be clear for the
20 record. I acted in good faith yesterday. I stand by
21 everything I did, right?

22 And I do want the Court to know that I'm here in an
23 attempt to resolve this case. I'm not trying to play
24 games. I'm not trying to do anything. Like I'm trying
25 to -- I'm trying to seek the best interest of my client.

1 THE COURT: Yesterday I probably said half a dozen
2 times and I'll say it again, I do not believe that there
3 was any intent to do anything wrong. You're doing the
4 very best that you can. And it's a difficult job to
5 balance what your client's telling you with your
6 obligations and with limited information that you have.
7 I understand that. I'm not saying that you intended to
8 do anything improperly. Again, you've tried more cases
9 than probably 95 percent of the people in this county.
10 I'm just saying that the analysis that I'm forced to do,
11 and I stand by that as well. I mean, you can stand by
12 it. That's totally fine. I want to put that in the
13 rearview mirror, okay, and just we're going to start
14 today and be done with it. We're all good. We're all on
15 the same page.

16 MR. HAYES: And, again, Judge, I'm not trying to
17 belabor the point. The reason that I even address that
18 point, right, is because at the beginning, the government
19 is asking for ground rules about my ability to do what I
20 did with certain individuals again.

21 THE COURT: Well, it's not an unfounded request,
22 right? The Supreme Court said that there's discretion in
23 it. And so, again, you know, I'm not offering any
24 advisory, you know, advice about what's going forward,
25 but if there was an issue with one yesterday and that

1 same person is stricken whether by the State or by you,
2 then we'll have to deal with it at that time under the
3 exact same analysis. So, you know, I'm not going to --
4 I'm not going to preselect your strikes.

5 MR. HAYES: Yes, sir.

6 MS. BROWDER: Your Honor, I do want to add under
7 Franklin that it does say a party may strike the same
8 juror if he has new facts supporting the strike. So if
9 he's striking them based on the same -- I bring up, you
10 know, she's from Chapin. You can't strike her for that
11 reason. There has to be a new reason. He can still
12 strike them. There just has to be a new reason.

13 THE COURT: Right. That's right. And, again, there
14 were some yesterday that -- yeah. I think we're all on
15 the same page with that.

16 MR. HAYES: And, Judge, I know we're trying to get
17 on with the jury selection, but before we start the
18 trial, there are two things I would like to talk to the
19 Court about after maybe we select the jury. It has to do
20 with one with the pretrial my client has requesting about
21 the preliminary hearing recording. I've talked to the
22 Public Defender's Office. I'm trying to ascertain that
23 now. But my client wants me to address the Court about
24 that. And I do want to talk about one thing on the
25 pretrial matters before we start.

1 THE COURT: Okay. But after we send the jury out
2 and before we adjourn?

3 MR. HAYES: Yeah. Before we go to lunch maybe. But
4 we'll get the jury out of here first.

5 THE COURT: Right. And what I'm trying to do, y'all
6 remind me if I don't, I'm usually pretty good about it is
7 before we start or before we leave saying is there
8 something that we need to deal with before we bring these
9 folks in or before we adjourn. But if I forget to do
10 that, please throw something at me or tell me and we'll
11 make sure to do that before we all head out.

12 All right. Anything before we bring the panel in.

13 MS. BROWDER: No, sir.

14 THE COURT: All right. Mr. Hayes?

15 MR. HAYES: No, sir.

16 (WHEREUPON, the jury panel entered the courtroom at
17 12:48 PM.)

18 THE COURT: All right. Good afternoon, ladies and
19 gentlemen. Let me let you know I know we're at lunchtime
20 now. What we're going to do is to pick a jury and then
21 we'll dismiss everybody. The folks that are selected for
22 the jury will then have a chance to take lunch and then
23 come back and we'll start right off. And so we'll try to
24 move as expeditiously as we can.

25 Yes, ma'am, Ms. Browder.

1 MS. BROWDER: Thank you, Your Honor. At this time,
2 we call the State vs. Marty Brown, Indictment Number
3 2023-GS-40-0090, criminal sexual conduct with a minor
4 second degree; 2023-GS-40-0091, exposure of private
5 parts; and 2023-GS-40-0092, contributing to the
6 delinquency of a minor.

7 THE COURT: All right. Ladies and gentlemen of the
8 jury panel, we are about to begin the trial of the case
9 of the State of South Carolina vs. Marty Brown. Before
10 we select the jury, there are several questions that I
11 need to ask you.

12 Will the clerk please swear the jury panel.

13 THE CLERK: Yes, Your Honor.

14 Ladies and gentlemen of the jury panel, please stand
15 and raise your right hand to be sworn. After I give the
16 oath, please confirm with "I do."

17 (WHEREUPON, the jury panel is duly sworn.)

18 THE CLERK: Thank you. You may be seated.

19 JURY VOIR DIRE

20 THE COURT: All right. Ladies and gentlemen, if I
21 ask a question and it applies to you, if you would just
22 please stand in place. And when I call on you, please
23 start off with your juror number.

24 Has anyone ever been related by blood or marriage to
25 either Marty Brown or **Complainant** If so, please

1 stand.

2 (No response.)

3 THE COURT: Has anyone ever had a close, personal or
4 social relationship with either Marty Brown or Complainant
5 [REDACTED]? If so, please stand.

6 (No response.)

7 THE COURT: The following is a list of possible
8 witnesses in this case. Please listen carefully and then
9 I'll ask a question after the names: Flynn Tanner,
10 formerly of the Richland County Sheriff's Department; Joe
11 Clark of the Richland County Sheriff's Department; Takeya
12 Lake; Complainant [REDACTED] Allison Foster; Jennifer Nguyen;
13 Christine Ocean; Nikki Acerra; Justin Martin; and Marty
14 Brown. Has anyone ever been related by blood or marriage
15 to any of the people I have just listed or has anyone
16 ever had a close, personal or social relationship with
17 any of these people? If so, please stand.

18 (No response.)

19 THE COURT: At this time, I'd like for the attorneys
20 to introduce themselves to the jury panel and anybody
21 that is going to be assisting with the trial.

22 MS. BROWDER: Thank you, Your Honor.

23 I'm Anna Browder, deputy solicitor with the Richland
24 County Solicitor's Office. And assisting me is Jack
25 Jackson.

1 THE COURT: Mr. Hayes.

2 MR. HAYES: Good morning, ladies and gentlemen. My
3 name is Scott Hayes. I'm a solo practicing lawyer. I'm
4 here at the table myself and I represent Mr. Marty Brown
5 in this case.

6 THE COURT: All right. Has any member of the jury
7 panel ever been represented by any of the attorneys
8 involved in this case or their law firms in the case of
9 the solicitor working with the solicitor's office? If
10 so, please stand.

11 (No response.)

12 THE COURT: Has anyone ever been related by blood or
13 marriage to or have you ever had a close, personal or
14 social relationship with any of the attorneys involved in
15 this case or anyone in their respective offices? If so,
16 please stand.

17 (No response.)

18 THE COURT: Has any member of the jury panel or any
19 member of their family ever been a victim of a crime of
20 violence, sexual assault -- or sexual assault? If so,
21 please stand.

22 All right. If y'all would, please come this way to
23 your right. If you would line up there please.

24 THE COURT: All right. Yes, ma'am?

25 THE BAILIFF: Juror 143.

1 THE COURT: 143. Good afternoon, Ms. Hill.

2 JUROR NUMBER 143: Yeah. My brother-in-law was
3 stabbed.

4 THE COURT: Okay. And you ---

5 JUROR NUMBER 143: I could still be fair.

6 THE COURT: Okay. Fair and impartial. You could
7 give both the State and the defendant a fair and
8 impartial trial?

9 JUROR NUMBER 143: Absolutely.

10 THE COURT: Okay. Thank you, Ms. Hill.

11 THE BAILIFF: Juror 294.

12 THE COURT: Yes, sir.

13 JUROR NUMBER 294: My nephew was murdered.

14 THE COURT: Yes, sir. And I just remember speaking
15 with you yesterday. The fact that your nephew was a
16 victim of a terrible crime like that, is that something
17 that you can set aside such that you can give the
18 defendant and the State a fair trial?

19 JUROR NUMBER 294: Yes.

20 THE COURT: Okay. Thank you very much, sir. Stay
21 with us.

22 THE BAILIFF: Juror 59.

23 THE COURT: 59. Yes, sir. I think we spoke
24 yesterday.

25 JUROR NUMBER 59: Yes, sir. We did, yes, sir.

1 THE COURT: You had a relative ---

2 JUROR NUMBER 59: Yeah. The State of South Carolina
3 lost the evidence in the case.

4 THE COURT: Yes, sir. Can you set that aside and be
5 fair and impartial?

6 JUROR NUMBER 59: I can.

7 THE COURT: Okay. All right. So you can set that
8 aside and give both the State and the defendant a fair
9 and impartial trial?

10 JUROR NUMBER 59: Yes, sir.

11 THE COURT: Okay. Thank you, sir. You can stay
12 with us.

13 THE BAILIFF: 346.

14 THE COURT: Yes, ma'am. Please come. I think we
15 spoke yesterday.

16 JUROR NUMBER 346: No. I want to make sure I heard
17 the question right. So you said -- the question again?

18 THE COURT: If you or a close member of your family
19 have ever been a victim of assault or a violent crime.

20 JUROR NUMBER 346: My grandson got killed last year
21 (inaudible).

22 THE REPORTER: Judge, I'm having a hard time
23 hearing.

24 THE COURT: What's your juror number?

25 JUROR NUMBER 346: 346.

1 THE COURT: The fact that that happened to your
2 grandson, can you set that aside such that you can give
3 the State and the defense a fair and impartial trial in
4 this case?

5 JUROR NUMBER 346: Yes, sir.

6 THE COURT: Okay. Thank you, ma'am. You can stay
7 with us.

8 THE BAILIFF: Juror 70.

9 THE COURT: Good afternoon, ma'am. Yes, ma'am.

10 JUROR NUMBER 70: Criminal domestic violence. I was
11 the victim.

12 THE COURT: You are. So sorry to hear that. Would
13 you be able to set that aside and give the State ---

14 JUROR NUMBER 70: (Shakes head negatively.)

15 THE COURT: No? You cannot? Okay. I'll excuse
16 you. If you could please go sit up in the top part.
17 We'll excuse you from this trial, okay? Yes, ma'am.

18 All right. We're going to excuse Juror 70 from the
19 trial of this case.

20 THE BAILIFF: 342 coming.

21 THE COURT: Good afternoon, ma'am.

22 JUROR NUMBER 342: Good afternoon.

23 THE COURT: Yes, ma'am.

24 JUROR NUMBER 342: 342.

25 THE COURT: Yes, ma'am.

1 JUROR NUMBER 342: What do you need?

2 THE COURT: The question was have you or any member
3 of your family been a victim of a sexual assault or a
4 violent crime?

5 JUROR NUMBER 342: Yes.

6 THE COURT: Okay.

7 JUROR NUMBER 342: Domestic violence.

8 THE COURT: That's okay. Could you set that aside
9 and be fair and impartial ---

10 JUROR NUMBER 342: Probably not.

11 THE COURT: Okay. Thank you for your honesty, okay?
12 I appreciate that. If you will, just go sit in the upper
13 part up there. I'll excuse you from this case.

14 THE BAILIFF: Juror 51.

15 THE COURT: Good afternoon. Yes, ma'am.

16 JUROR NUMBER 51: My mother was (inaudible).

17 THE COURT: Sorry about that. The fact that your
18 mother was a victim of a crime like that, is that
19 something that you can set aside such that you could give
20 the State and the defendant a fair trial?

21 JUROR NUMBER 51: Yes.

22 THE COURT: All right. Thank you, ma'am.

23 THE CLERK: 15.

24 JUROR NUMBER 15: I'm Juror Number 15.

25 THE COURT: Yes, ma'am.

1 JUROR NUMBER 15: My grandmother was raped by a
2 young man that worked for her for years. And I was a
3 young, young child. It was a gray memory for me, but I
4 remember what my parents went through.

5 THE COURT: Is that -- would you be able to set that
6 aside such that you could give both the State and the
7 defendant a fair trial?

8 JUROR NUMBER 15: I think I can. I just wanted to
9 disclose that information.

10 THE COURT: No. I appreciate it.

11 JUROR NUMBER 15: I'll say yes. I feel pretty good
12 that I can set that aside, but I just wanted to be
13 transparent.

14 THE COURT: We appreciate that. I have to make sure
15 that you're 100 percent okay with that or not okay with
16 it. If you're not, it's fine. But we just want to make
17 sure that you ---

18 JUROR NUMBER 15: I think I'm okay. I just -- I
19 know I'm okay. I was so young I just remember what both
20 of my parents went through.

21 THE COURT: Okay. All right. Thank you very much.
22 We'll keep you.

23 JUROR NUMBER 15: Thank you.

24 THE BAILIFF: 232.

25 THE COURT: Good afternoon, ma'am.

1 JUROR NUMBER 232: My name is Tammy Montgomery.

2 THE COURT: Yes, ma'am. The question was whether
3 you or a member of your family had been a victim of
4 sexual assault or a violent crime.

5 JUROR NUMBER 232: Myself. Yes, sir.

6 THE COURT: Could you set that aside in this case?

7 JUROR NUMBER 232: No, sir.

8 THE COURT: Thank you very much for telling us that.
9 I'll excuse you from the trial of this case. If you
10 could go sit up at the top little area up there. Thank
11 you, ma'am.

12 JUROR NUMBER: Thank you.

13 THE COURT: Yes, ma'am.

14 All right. Thank you very much, ladies and
15 gentlemen. The next question is has any member of the
16 jury panel or any member of their family ever been
17 charged or convicted of a crime of violence or sexual
18 assault? If so, please stand.

19 All right. Yes, ma'am. If you could come down real
20 quick, please.

21 THE BAILIFF: 281, Your Honor.

22 THE COURT: 281. Yes, ma'am. I was just going to
23 ask you about what you have to tell us.

24 JUROR NUMBER 281: So my sister was charged with two
25 counts of improper conduct.

1 THE COURT: Okay. The fact that she was charged
2 with that crime, could you set that aside such that you
3 can give the State and the defendant a fair trial in this
4 case?

5 JUROR NUMBER 281: Yes, sir.

6 THE COURT: Okay. Thank you so much for telling us
7 that. Appreciate that.

8 All right. Has any member of the jury or a close
9 family member been accused of a nonconsensual sexual
10 conduct or contact? If so, please stand.

11 (No response.)

12 THE COURT: All right. Is any member of the jury
13 panel or a member of their immediate family related by
14 blood or a close, personal friend of someone employed by
15 law enforcement? If so, please stand.

16 All right. Yes, ma'am. We'll start on this side.
17 I'm sorry. Yes, ma'am. Back on the fifth row. Yes,
18 ma'am. I was going to say in the black top but I'm color
19 blind. It looks like all of you have black tops. Yes,
20 ma'am?

21 JUROR NUMBER 150: My uncle worked for Richland
22 County as a police officer.

23 THE COURT: What is your juror number?

24 JUROR NUMBER 150: 150.

25 THE COURT: 150?

1 JUROR NUMBER 150: Yeah.

2 THE COURT: Okay. And you said that your uncle
3 works or used to work?

4 JUROR NUMBER 150: He works still.

5 THE COURT: For?

6 JUROR NUMBER 150: Richland County.

7 THE COURT: Richland County Sheriff's Department?

8 JUROR NUMBER 150: (Nods head affirmatively.)

9 THE COURT: Okay. And the fact that your uncle
10 works for Richland County Sheriff's Department, could you
11 set that aside such that you can give both the State and
12 the defendant a fair trial?

13 JUROR NUMBER 150: Yes.

14 THE COURT: Okay. Thank you, ma'am. You may be
15 seated.

16 All right. We'll start here. That girl.

17 JUROR NUMBER 348: My husband works for Richland
18 County. Deputy sheriff.

19 THE COURT: Okay. And does the fact that your
20 husband works as a deputy sheriff for Richland County,
21 would that affect your ability to be impartial in this
22 case such that you can give both the State and the
23 defendant a fair trial?

24 JUROR NUMBER 348: (Shakes head negatively.)

25 THE CLERK: You have to use words, ma'am.

1 JUROR NUMBER 348: Oh, no.

2 THE COURT: You could not?

3 JUROR NUMBER 348: No.

4 THE COURT: Okay. Thank you, ma'am. Your Juror
5 Number?

6 JUROR NUMBER 348: 348.

7 THE COURT: 348. All right. I'll excuse you from
8 the trial of this case, but please don't leave us.

9 All right. Yes, ma'am.

10 JUROR NUMBER 281: My brother is a lieutenant at
11 Alvin S. Glenn Detention Center.

12 THE COURT: All right. And you're Juror Number 281?

13 JUROR NUMBER 281: Yes, sir.

14 THE COURT: And you said your brother?

15 JUROR NUMBER 281: Yes.

16 THE COURT: All right. The fact that your brother
17 works at Alvin S. Glenn, could you set that aside such
18 that you could be impartial and give both the State and
19 the defendant a fair trial?

20 JUROR NUMBER 281: Yes. I could set that aside.

21 THE COURT: Okay. Thank you, ma'am. You may be
22 seated.

23 Has any member of the jury panel ever supported,
24 volunteered or donated time or money to the campaign of
25 the Richland County sheriff? If so, please stand.

1 (No response.)

2 THE COURT: All right. Does any member of the jury
3 panel have such strong feelings either for or against law
4 enforcement that would affect your ability to be fair and
5 impartial in deciding a criminal case? If so, please
6 stand.

7 Oh. I'm sorry, sir. I didn't see you.

8 JUROR NUMBER 368: 368.

9 THE COURT: Okay. Come on down if you could,
10 please. Hello, sir. I remember we spoke yesterday. And
11 so you said you were in ---

12 JUROR NUMBER 368: Yes, sir. Law enforcement.

13 THE COURT: And that you don't think you can set
14 that aside.

15 JUROR NUMBER 368: Correct.

16 THE COURT: Okay. I'll excuse you from the trial of
17 this case. If you'll just stay with us, though.

18 JUROR NUMBER 368: Yes, sir.

19 THE COURT: Thank you.

20 All right. What was that juror number?

21 MS. BROWDER: 368.

22 THE COURT: All right. 368 is excused.

23 All right. Does any member of the jury panel have
24 such -- excuse me. Does any member of the jury panel
25 have an opinion of the defendant, Marty Brown, favorable

1 or otherwise? If so, please stand.

2 (No response.)

3 THE COURT: Does any member of the jury panel or any
4 member of their immediate family belong to or contribute
5 to any organization that supports prisoners' rights such
6 as the innocent project? If so, please stand.

7 (No response.)

8 THE COURT: Does any member of the jury panel or any
9 member of their immediate family belong to or contribute
10 to any organization that supports victims' rights such as
11 MADD, SADD, Sister Care or similar organizations? If so,
12 please stand.

13 Yes, ma'am.

14 JUROR NUMBER 143: I contributed to Sister Care.

15 THE COURT: And your Juror Number?

16 JUROR NUMBER 143: 143.

17 THE COURT: All right. And the fact that you
18 contributed to Sister Care, could you set that aside such
19 that you can be impartial and give both the defendant and
20 the State a fair trial?

21 JUROR NUMBER 143: I can.

22 THE COURT: Okay. Thank you, ma'am. You may be
23 seated.

24 THE BAILIFF: One more back here, Your Honor.

25 THE COURT: Oh, I'm sorry. Yes, ma'am.

1 JUROR NUMBER: I have also contributed to Sister
2 Care and participated in their fundraising walks or runs.

3 THE COURT: All right. And your juror number?

4 JUROR NUMBER 15: 15.

5 THE COURT: 5-0?

6 JUROR NUMBER 15: 1-5.

7 THE COURT: Oh, 1-5, 15.

8 All right. The fact that you have supported Sister
9 Care, could you set that aside and be impartial such that
10 you could give both the State and the defendant a fair
11 trial?

12 JUROR NUMBER 15: Absolutely.

13 THE COURT: Okay. Thank you, ma'am. You may be
14 seated.

15 All right. Has any member of the -- oh, I'm sorry.
16 Yes, ma'am.

17 JUROR NUMBER 342: I was a victim's advocate.

18 THE COURT: At Sister Care?

19 JUROR NUMBER 342: My Sister's House in Charleston.

20 THE COURT: Okay. The fact you were a victim's
21 advocate in that organization, could you set that aside
22 and be impartial such that ---

23 JUROR NUMBER 342: (Shakes head negatively) No.

24 THE COURT: Okay. All right. I'll excuse you,
25 ma'am.

1 THE CLERK: What's your number, ma'am?

2 THE COURT: Your juror number? I'm sorry?

3 JUROR NUMBER 342: Oh, it's 342.

4 THE COURT: 342. Thank you, ma'am.

5 All right. Has any member of the jury panel formed
6 or expressed an opinion about any issue or matter
7 involved in this case? If so, please stand.

8 (No response.)

9 THE COURT: Is any member of the jury panel aware of
10 any bias or prejudice toward either the State or the
11 defendant in this case? If so, please stand.

12 (No response.)

13 THE COURT: Is there any member of the jury panel
14 that was a member of the grand jury which issued the
15 indictment in this case? If so, please stand.

16 (No response.)

17 THE COURT: Does any member of the jury panel know
18 of any reason whatsoever why he or she could not serve as
19 a juror in this case with particular emphasis being
20 placed on your ability to be fair and impartial to both
21 the State and the defendant? If so, please stand.

22 All right. Ladies, if y'all could come down here,
23 please.

24 THE BAILIFF: Judge, 229.

25 THE COURT: 229. Yes, ma'am. Thank you.

1 JUROR NUMBER 229: I was an alternate yesterday
2 afternoon, and after sitting on it for 24 hours, I -- I
3 can't. With the charges, it's difficult.

4 THE COURT: All right. I'll excuse you ---

5 JUROR NUMBER 229: (Cross talk) biased towards --
6 for the prosecution.

7 THE COURT: Okay. I'll excuse you for the trial of
8 this case.

9 JUROR NUMBER 229: Okay.

10 THE COURT: If you'll just go sit in the upper area
11 up there.

12 JUROR NUMBER 229: Yes, sir. Thank you so much.

13 THE COURT: Yes, ma'am. I appreciate it.

14 THE BAILIFF: 281.

15 THE COURT: 281. Yes, ma'am.

16 JUROR NUMBER 281: I'm a DSS caseworker.

17 THE COURT: Oh, okay. I'll excuse you from this
18 case. If you'll just stay with us. Sit where that
19 bailiff will send you. If you'll just go up there.
20 Thank you so much.

21 THE BAILIFF: 276.

22 THE COURT: 276. Yes, ma'am.

23 JUROR NUMBER 276: I was molested as a child.

24 THE COURT: We'll excuse you from this case. Thank
25 you so much, ma'am. If you'll just sit in the upper part

1 up there.

2 All right. Anything from the State?

3 MS. BROWDER: No, sir.

4 THE COURT: Anything from the Defense?

5 MR. HAYES: Beg the Court's brief indulgence, Judge.

6 THE COURT: Yes, sir.

7 MR. HAYES: Nothing further from the defense, Judge.

8 THE COURT: Thank you very much.

9 MR. HAYES: Judge, can we approach?

10 THE COURT: Yes, sir. We're just making sure that
11 the list is up to date.

12 (WHEREUPON, a bench conference was held off the record.)

13 THE COURT: All right. Ladies and gentlemen, thank
14 you very much.

15 Mr. Clerk, if you can give us a jury.

16 JURY SELECTION

17 THE CLERK: Yes, Your Honor.

18 Ladies and gentlemen of the jury panel, when I call
19 your number, please come to the center of the courtroom
20 facing your fellow jurors and bring your personal
21 belongings with you.

22 Starting with Juror Number 235, 235.

23 What says the State?

24 MS. BROWDER: Please seat this juror.

25 THE CLERK: What says the defense?

1 MR. HAYES: Beg the Court's indulgence.

2 Please seat the juror.

3 THE CLERK: Please have a seat in the jury box.

4 Juror Number 30, 30.

5 What says the State?

6 MS. BROWDER: Please seat this juror.

7 THE CLERK: What says the defense?

8 MR. HAYES: Please excuse the juror.

9 THE CLERK: Please have a seat in the back of the
10 courtroom.

11 Juror Number 172, 172.

12 What says the State?

13 MS. BROWDER: Please seat this juror.

14 THE CLERK: What says the defense?

15 MR. HAYES: Please seat the juror.

16 THE CLERK: Please have a seat in the jury box.

17 Juror 227, 227.

18 What says the State?

19 MS. BROWDER: Please seat this juror.

20 THE CLERK: What says the defense?

21 MR. HAYES: Please seat the juror.

22 THE CLERK: Please have a seat in the jury box.

23 Juror Number 4, Number 4.

24 What says the State?

25 MS. BROWDER: Please seat this juror.

1 THE CLERK: What says the defense?

2 MR. HAYES: Please excuse the juror.

3 THE CLERK: Please have a seat in the back of the
4 courtroom.

5 Juror Number 71, 71.

6 What says the State?

7 MS. BROWDER: Please seat this juror.

8 THE CLERK: What says the defense?

9 MR. HAYES: Please seat the juror.

10 THE CLERK: Please have a seat in the jury box.

11 Juror Number 103, 103.

12 What says the State?

13 MS. BROWDER: Please seat this juror.

14 THE CLERK: What says the defense?

15 MR. HAYES: Please excuse the juror.

16 THE CLERK: Please have a seat in the back of the
17 courtroom.

18 Juror Number 177, 177.

19 What says the State?

20 MS. BROWDER: Please seat this juror.

21 THE CLERK: What says the defense?

22 MR. HAYES: Please seat the juror.

23 THE CLERK: Please have a seat in the jury box.

24 Juror 373, 373.

25 What says the State?

1 MS. BROWDER: Please seat this juror.

2 THE CLERK: What says the defense?

3 MR. HAYES: Please seat the juror.

4 THE CLERK: Please have a seat in the jury box.

5 Juror Number 41, 41.

6 What says the State?

7 MS. BROWDER: Please seat this juror.

8 THE CLERK: What says the defense?

9 MR. HAYES: Please excuse the juror.

10 THE CLERK: Please have a seat in the back of the
11 courtroom.

12 Juror Number 31, 31.

13 What says the State?

14 MS. BROWDER: Please seat this juror.

15 THE CLERK: What says the defense?

16 MR. HAYES: Please seat the juror.

17 THE CLERK: Please have a seat in the jury box.

18 Juror Number 66, 66.

19 What says the State?

20 MS. BROWDER: Please seat this juror.

21 THE CLERK: What says the defense?

22 MR. HAYES: Please excuse the juror.

23 THE CLERK: Please have a seat in the back of the
24 courtroom.

25 Juror Number 42, 42.

1 What says the State?

2 MS. BROWDER: Please seat this juror.

3 THE CLERK: What says the defense?

4 MR. HAYES: Please seat the juror.

5 THE CLERK: Please have a seat in the jury box.

6 Juror 204, 204.

7 What says the State?

8 MS. BROWDER: Please seat this juror.

9 THE CLERK: What says the defense?

10 MR. HAYES: Beg the Court's indulgence briefly.

11 Please seat the juror.

12 THE CLERK: Please have a seat in the jury box.

13 Juror 114, 114.

14 What says the State?

15 MS. BROWDER: Please seat this juror.

16 THE CLERK: What says the defense?

17 MR. HAYES: Beg the Court's indulgence.

18 THE COURT: Yes, sir.

19 MR. HAYES: Please excuse the juror.

20 THE CLERK: Please have a seat in the back of the
21 courtroom.

22 Juror 318, 318.

23 What says the State?

24 MS. BROWDER: Please excuse this juror.

25 THE CLERK: Please have a seat in the back of the

1 courtroom.

2 Juror 223, 223.

3 What says the State?

4 MS. BROWDER: Please seat this juror.

5 THE CLERK: What says the defense?

6 MR. HAYES: Please seat the juror.

7 THE CLERK: Please have a seat in the jury box.

8 Juror 130, 130.

9 What says the State?

10 MS. BROWDER: Please excuse this juror.

11 THE CLERK: Please have a seat in the back of the
12 courtroom.

13 Juror 238, 238.

14 What says the State?

15 MS. BROWDER: Please seat this juror.

16 THE CLERK: What says the defense?

17 MR. HAYES: Please seat the juror.

18 THE CLERK: Please have a seat in the jury box.

19 Juror 323, 323.

20 What says the State?

21 MS. BROWDER: Please seat this juror.

22 THE CLERK: What says the defense?

23 MR. HAYES: Please excuse the juror.

24 THE CLERK: Please have a seat in the back of the
25 courtroom.

1 Juror Number 15, 15.

2 What says the State?

3 MS. BROWDER: Please seat this juror.

4 THE CLERK: What says the defense?

5 MR. HAYES: Please excuse the juror.

6 THE CLERK: Please have a seat in the back of the
7 courtroom.

8 Juror 194, 194.

9 What says the State?

10 MS. BROWDER: Please seat this juror.

11 THE CLERK: What says the defense?

12 MR. HAYES: Please seat the juror.

13 THE CLERK: Please have a seat in the jury box.

14 THE COURT: Two alternates. Yes, sir.

15 THE CLERK: Juror 164, 164.

16 What says the State?

17 MS. BROWDER: Oh, please seat this juror.

18 THE CLERK: What says the defense?

19 MR. HAYES: Please excuse the juror.

20 THE CLERK: Please have a seat in the back of the
21 courtroom.

22 Juror 351, 351.

23 What says the State?

24 MS. BROWDER: Please seat this juror.

25 THE CLERK: What says the defense?

1 MR. HAYES: Please seat the juror.

2 THE CLERK: Please have a seat in the jury box.

3 Juror 136, 136.

4 What says the State?

5 MS. BROWDER: Please seat this juror.

6 THE CLERK: What says the defense?

7 MR. HAYES: Please seat the juror.

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

9 THE COURT: All right. Thank you, Mr. Clerk.

10 Anything from the State?

11 MS. BROWDER: No, sir.

12 THE COURT: Anything from the defense?

13 MR. HAYES: No, sir.

14 THE COURT: All right. Ladies and gentlemen of the
15 panel, the folks out here, I'm going to -- Yonas, do we
16 just need to send them downstairs?

17 THE CLERK: Yes.

18 THE COURT: Okay. Ladies and gentlemen that haven't
19 been selected, if y'all want to go back downstairs, I
20 think they're going to let you go. But if you'll go
21 ahead out now. I greatly appreciate your patience and
22 your help today.

23 (WHEREUPON, the remaining jury panel exits the courtroom
24 at 1:31 PM.)

25 THE COURT: All right. Ladies and gentlemen, thank

1 you. You've been selected as jurors in this case. I
2 greatly apologize that this has taken so long. It's 1:30
3 now. I'd like to give you some time to go get some
4 lunch. I know this is a little bit late. But why don't
5 we -- what, 2:30? 2:45?

6 MS. BROWDER: That's fine, Your Honor.

7 THE COURT: All right. Any preference about an
8 hour, hour and 15 from y'all?

9 UNIDENTIFIED JUROR: An hour's fine.

10 THE COURT: An hour's fine? Okay. Unless somebody
11 objects. All right. So if y'all will come back here at
12 2:30 we'll begin as soon as y'all get here.

13 Let me just remind you of one thing. I know that
14 y'all haven't heard any evidence yet, haven't seen any
15 witnesses or anything else, but please don't speak about
16 the case with anybody including each other. We'll start
17 the case in just a little while. And when we do, you'll
18 begin to see the evidence. Until that time, please keep
19 an open mind as to all issues in the case. Thank you so
20 much.

21 (WHEREUPON, the jury exits the courtroom at 1:33 PM.)

22 THE COURT: All right. The jury is out of the
23 courtroom. Is there anything we need to take care of
24 before we break for lunch from the State?

25 MS. BROWDER: Not from the State. No, sir.

1 THE COURT: Mr. Hayes?

2 MR. HAYES: Judge, thank you. Two things, I guess,
3 before we break this afternoon, Judge. This morning my
4 client in a meeting previously had talked about trying to
5 obtain a transcript from the preliminary hearing in this
6 matter. That would have been conducted probably sometime
7 during COVID. This is an older case at this point, and I
8 obviously wasn't his lawyer. I was appointed at the end
9 of last month.

10 THE COURT: Yes, sir.

11 MR. HAYES: In an attempt to try to understand what
12 the testimony that was provided at the preliminary
13 hearing, I've gone to the Public Defender's Office. He
14 was -- beg the Court's indulgence. Sometimes my voice
15 carries and it can carry through that hallway.

16 THE COURT: Oh, no, no. Totally fine.

17 MR. HAYES: And I know the jury is back there. But
18 he was represented by Alicia Goode of the Public
19 Defender's Office during that period of time. I tried to
20 talk to him and said in my experience I know what they
21 said basically in a probable cause hearing like that.
22 Law enforcement is going to take the stand, sort of tell
23 the whole truth and then they're going to read their
24 report. Based on the nature and allegation here, the
25 judge is likely to have bound it over.

1 I've asked him specifically what it is he thinks is
2 going to be there. He thinks that there is potential
3 impeachment evidence that would be available in such a
4 recording from the preliminary hearing. And I'm doing my
5 best in this moment to try to, you know, get a copy of
6 it. I've gone -- in this morning's break while we were
7 waiting on Judge Coble's jury to be selected, I've gone
8 to the Public Defender's Office and asked for them to
9 review their files to see if it may be available. I
10 think it's a general practice of theirs to record all the
11 preliminary hearings. But beyond that, then making a
12 specific request of 2500 Decker for a recording that
13 would have been three or four years old, I can only
14 imagine it would probably be a little bit like finding a
15 needle in a haystack even if you know what day and time
16 it transpired.

17 THE COURT: Yes, sir.

18 MR. HAYES: So I bring that to the Court's attention
19 because it is something that my client has asked me to
20 do. I'm trying to do it, but I'm not sure I'll ever get
21 full satisfaction on it.

22 THE COURT: All right. I appreciate you putting
23 that on the record. Obviously, if there's anything that
24 I can do, if they have it and they found it and they need
25 some kind of order or something like that, let me know.

1 I'll be glad to do it.

2 MR. HAYES: And one final thing, Judge. So in the
3 motions in limine yesterday, obviously, there was a
4 diagnosis that we agreed that we would basically not get
5 into.

6 THE COURT: Yes, sir.

7 MR. HAYES: These interactions with her mother that
8 we -- you know, I've talked to my client about, I
9 probably understand why they wouldn't be admissible in a
10 trial like this. But then there was this other idea
11 about being a runaway. And, Judge, as I went through the
12 evidence again last night, I considered and considered, I
13 continue to consider the case, you know, an hour is
14 forever. Five minutes is a lifetime in a criminal case
15 sometimes when you're dealing with discovery issues
16 because new things occur to you. So as I'm reading
17 through the documentation -- and the runaway thing, I
18 guess, is what I want to address with the Court whether
19 or not she's a runaway.

20 I think that the evidence in this case, anyway,
21 might establish the idea that this was maybe the first
22 time she was reported as a runaway but then she's run
23 away since then. There's a couple of reports that the
24 sheriff's office actually generated as a result of that.
25 And the only way that I can see them becoming relevant to

1 the allegation is her family sat down and talked to her
2 about her conduct in the night before when they reported
3 her a runaway before they -- before she levied this
4 allegation against my client.

5 So basically, in the hours leading to the alleged
6 event that we're here to litigate, she's reported as a
7 runaway by her parents. Her family sort of comes -- when
8 she comes home the next morning, her family comes around
9 and starts giving her a hard time and they're saying
10 things like, hey, your karma, you know, these kinds of
11 decisions are going to come back to bite you, you need to
12 stop doing this, you know. They're kind of giving her
13 the business about her being out all night and not coming
14 home. And that's when she says, oh, you mean like this,
15 and then she basically levies the allegation against
16 Mr. Brown that we're here in this criminal trial to
17 decide.

18 But I think it's important, Judge. It becomes
19 relevant because if she believed all of those things, the
20 karma and whatever her family was trying to feed her and
21 she says that this was a result of that -- which is what
22 she basically says in some of these interviews. At
23 different stages she says, oh, well, yeah, you know, that
24 might have been my karma, but then she decides to make
25 the same decision again and run away at a later time, I

1 think it lends itself to the idea is does the underlying
2 assertion against my client, does it make it more or less
3 likely. If it were more true than not, you would think
4 that someone wouldn't run away again. And I think it can
5 be relevant under that umbrella. I think that it could
6 be used to prove or disprove the existence of a fact.

7 So I think that it becomes relevant because if you
8 thought you run away and this is the karma that you get
9 for that and now you are -- you know, you're saying this
10 terrible thing happened to you and as a result of that
11 but then you continue to make the same decision, it
12 really is difficult to marry up with the allegations that
13 she levies against Mr. Brown as a result. And so for
14 that reason, I'm asking the Court to reconsider the
15 motion in limine on that point. And potentially, anyway,
16 I can see a pathway, a door being opened. And I'm not
17 doing it in front of the jury because the Court asked me
18 not to, right? But I can see a pathway potentially to
19 that -- those occurrences becoming important because they
20 sort of ---

21 THE COURT: So if -- and I haven't seen any of the
22 statements so I know nothing about any of this, but are
23 you saying that she somehow attributes what she alleges
24 your client did to some kind of karmic retribution for
25 running away and therefore if she believed that, that she

1 would not run away again because she would expect bad
2 things happen to her again?

3 MR. HAYES: Right. Potentially.

4 THE COURT: All right. Ms. Browder?

5 MS. BROWDER: Your Honor, I don't believe the
6 relevant -- the way the statement comes up and what she
7 would testify to is that her mom called her downstairs
8 and began lecturing her about staying out all night and
9 that sort of thing and not coming home and calls her
10 uncle. And then her uncle gets there, everybody -- and
11 says, well, everybody's got karma. She says, well, is
12 karma being raped? And so that's as to that particular
13 night, Your Honor. It has nothing to do with like she
14 may run -- and I don't know the details of this. I'm
15 just saying things like in general. She may run away
16 later because her mom was beating her. She may run away
17 not because she's scared that she's not going to get
18 raped because it didn't happen but because there's other
19 reasons that might contribute to that. It might be just
20 because she's a bad kid. It might be -- I mean, it's not
21 relevant to that particular night. It's just other bad
22 acts more likely than not to happen. It's not to show
23 that she made it up.

24 There's other evidence that shows that he was out
25 with her that night that's on video that corroborates

1 what she says. There's other evidence of other things
2 that she says. His girlfriend will testify that they
3 came to the house just like she said. So I don't think
4 the relevant to show that, Your Honor.

5 THE COURT: Okay. All right. Well, I'm not going
6 to change my ruling as of now, but as with all motions in
7 limine, Mr. Hayes, if you think that you get to a point
8 where that becomes an issue and she goes down that road
9 and you think the door is open, just either indicate that
10 we need a sidebar or that we need to have a discussion
11 outside the presence of the jury. If you want to do it
12 at that point, we can either hear a proffer or arguments
13 on that. So I'm not saying no under any circumstance,
14 but I'm saying based on what I know at this time, I'll
15 respectfully deny the motion to reconsider that ruling
16 yesterday.

17 All right. Anything further from the State before
18 we break for lunch?

19 MS. BROWDER: No, sir.

20 THE COURT: Anything from the defense?

21 MR. HAYES: No, sir.

22 THE COURT: All right. We will be back here at --
23 let's be back here a little bit before 2:30 so that we'll
24 be set to go once they get here.

25 (WHEREUPON, a recess is taken at 1:41 PM; proceedings

1 reconvened at 2:31 PM.)

2 THE COURT: We're on the record.

3 The jury is not here, but I'm told that they are all
4 present in the jury room. Is there anything from the
5 State that we need to do before we bring the jury in?

6 MS. BROWDER: The only thing I think we need to
7 address which we hadn't is whether our investigator,
8 Nikki Acerra ---

9 THE COURT: Oh, yeah. I'm going to let her stay in
10 here. I've checked a couple cases and asked around, and
11 I think that's fairly standard.

12 MS. BROWDER: Okay. And our first witness, she's
13 here but we have her sitting outside.

14 THE COURT: Okay. All right. Anything from the
15 defense before we bring the jury in?

16 MR. HAYES: Judge, I did learn from the Public
17 Defender's Office over the lunch hour that that
18 transcript or recording from the preliminary hearing in
19 the matter is not available. They don't have it. So I
20 don't know what -- beyond asking them for it, you know,
21 to ask the people that run Decker to get it, but I don't
22 know what kind of turnaround time. And, candidly, the
23 trial is likely to be over tomorrow.

24 THE COURT: All right. Did you reach out to them
25 yet or no?

1 MR. HAYES: I have not called Decker.

2 THE COURT: If at a break you want to do that, if I
3 can help expedite things, if they have it on a tape or
4 something even, I mean, whether it's transcribed or not,
5 but if they have something, I'll be glad to issue any
6 kind of order that I need to do to get it to move.

7 MR. HAYES: Yeah. I don't anticipate it to be any
8 kind of transcript. At best it would be an audio
9 recording.

10 THE COURT: Right. Okay. All right. Just let me
11 know if I can help.

12 MR. HAYES: Yes, sir.

13 THE COURT: All right. We can bring the jury in,
14 ma'am. Thank you.

15 (WHEREUPON, the jury entered the courtroom at 2:34 PM.)

16 THE COURT: All right. Ladies and gentlemen, thank
17 y'all for being promptly on time.

18 Mr. Clerk, if you could swear the jury in.

19 THE CLERK: Yes, Your Honor.

20 Ladies and gentlemen of the jury, please stand and
21 raise your right hand to be sworn. After I give you the
22 oath, please affirm with an "I do."

23 (WHEREUPON, the jury is duly sworn.)

24 THE CLERK: Thank you. You may be seated.

25 ///

JURY INSTRUCTIONS

THE COURT: All right. Ladies and gentlemen, we're going to begin the trial of the State vs. Marty Brown at this time. I want to give you some initial charges.

You've taken an oath in this case to try and reach a fair and just verdict, and you are expected to be and I'm sure that you will handle this in a professional, reasonable and ethical manner. Thank you again for accepting this very important responsibility and contribution to our justice system. It certainly cannot work without jurors.

Before we begin the actual trial of the case, I thought it might be helpful if I explain to you basically how a trial proceeds. First, the State will make an opening statement. An opening statement is not evidence. It is simply an outline to help you understand what that party expects the evidence will show. The defendant may, if he wishes, present an opening statement, but he does not have to for reasons that I will explain.

Following the opening statements, you will hear testimony and evidence in the case. This will consist of testimony from the State's witnesses as well as any physical exhibits that will be introduced into evidence.

Following the completion of the testimony, the attorneys will, again, have an opportunity to make what

1 is called a closing statement or a summation to you.
2 This is an opportunity for the attorneys to summarize the
3 case from their respective points of view. Again, these
4 arguments by lawyers are not evidence.

5 Following the closing statements by the attorneys, I
6 will instruct you on the law of South Carolina as it
7 pertains to the issues that have arisen in the case.
8 When I have completed my instructions to you, you will
9 then be permitted to begin your deliberations in order to
10 reach a verdict.

11 I also want to take a few minutes to tell you
12 something about your duty as jurors and to give you some
13 instructions. At the end of the trial, I will give you
14 more detailed instructions and they will control your
15 deliberations.

16 It will be your duty as jurors to decide from the
17 evidence what the facts are. You and you alone are the
18 judges of the facts. You'll hear the evidence, decide
19 what the facts are and then apply those facts to the law
20 which I will give you. That is how you will reach your
21 verdict. In doing so, you must follow that law whether
22 you agree with it or not.

23 The evidence will consist of the testimony of
24 witnesses, documents and other things received into
25 evidence as exhibits and any facts on which the lawyers

1 agree or which I may instruct you to accept.

2 You should not take anything I may say or do during
3 the trial as indicating what I think of the evidence or
4 what your verdict should be.

5 This is a criminal case brought by the State of
6 South Carolina. The State charges the defendant with
7 criminal sexual conduct with a minor or attempt, victim
8 age 11 to 14 years inclusive, obscene exposure of private
9 parts in a lewd and lascivious manner and contributing to
10 the delinquency of a minor.

11 The charges against the defendants are contained in
12 the indictments. The indictments are not evidence of
13 anything. They are simply the description of the charges
14 made by the State against the defendant.

15 The defendant in this case has pled not guilty to
16 all charges and is presumed innocent unless and until
17 proven guilty beyond a reasonable doubt. Proven guilty
18 beyond a reasonable doubt -- proof beyond a reasonable
19 doubt is proof that leaves you firmly convinced of the
20 defendant's guilt. A defendant has the right not to
21 testify and never has to prove his innocence or present
22 any evidence. The burden of proof is always upon the
23 State of South Carolina.

24 The following things are not evidence and you must
25 not consider them as evidence in deciding the facts of

1 this case: statements and arguments of the attorneys,
2 questions and objections of the attorneys, and testimony
3 that I instruct you to disregard.

4 Evidence may be direct or circumstantial. Direct
5 evidence is testimony by a witness about what that
6 witness personally saw, heard or did.

7 Circumstantial evidence is indirect evidence. That
8 is, it is proof of one or more facts from which one can
9 find another fact.

10 You are to consider both direct and circumstantial
11 evidence. The law permits you to give equal weight to
12 both, but it is for you and you alone to decide how much
13 weight to give any evidence.

14 There are rules of evidence which control what can
15 be received into evidence during the trial of this case.
16 When a lawyer asks a question or offers an exhibit into
17 evidence and a lawyer on the other side thinks that it is
18 not permitted by the rules of evidence, that lawyer may
19 object. If I overrule the objection, the question may be
20 answered or the exhibit may be received. If I sustain
21 the objection, the question cannot be answered or the
22 exhibit cannot be received. Whenever I sustain an
23 objection to a question or deny a motion to admit an
24 exhibit into evidence, you must ignore the question or
25 the existence of the exhibit, and you must not guess what

1 the answer would have been or what the exhibit may have
2 shown.

3 Sometimes it may be necessary for me to request that
4 you leave the courtroom while I discuss the attorneys'
5 legal questions that come up during the trial. If this
6 occurs, you should not speculate about our discussions or
7 the reason that you were asked to leave the room. This
8 is simply a procedure that the law requires when certain
9 legal issues arise.

10 There also may be occasions where I ask the
11 attorneys to approach the bench so that I can discuss a
12 legal issue with them in private. I will do this as
13 often as possible so that you will not be required to
14 leave the courtroom any more than is absolutely
15 necessary. Again, if I ask the attorneys to step up to
16 the bench or if I ask you to leave the courtroom, please
17 don't think that anybody is trying to hide anything from
18 you or keep any evidence from you. This is simply a
19 procedure used by lawyers and by all courts to determine
20 and decide legal issues.

21 In deciding the facts of this case, you may have to
22 decide which witnesses to believe and which witnesses not
23 to believe. You may believe everything a witness says or
24 only part of it or none of it. In deciding what you
25 believe, you may consider a number of factors including

1 the following: the witness's ability to see, hear or
2 know the things testified to; the quality of the
3 witness's memory; the witness's manner while testifying;
4 whether the witness has an interest in the outcome of the
5 case or any motive, bias or prejudice; whether the
6 witness was contradicted by anything the witness said or
7 wrote before the trial or by other evidence; and how
8 reasonable was the witness's testimony when considered in
9 the light of other evidence which you believe.

10 Until I advise you to begin your deliberations, you
11 must not discuss this case with anyone including each
12 other and including your friends, your family members and
13 anyone else involved in the case. This includes
14 discussions face to face and those by telephone, email,
15 text, blogs, social media or any other method of
16 communication.

17 You may not use a computer, cell phone or other
18 electronic device with communication capabilities at any
19 time while in the courtroom or during deliberations.
20 During your breaks for meals or overnight if necessary,
21 you may use these devices; however, you may not at any
22 time use these devices to get or send information about
23 this case. This includes information about a party, a
24 witness, an attorney or a court reporter, news accounts
25 about the case, research on any topics raised, any topics

1 you may think would be helpful in deciding the case or
2 any testimony presented by any witness.

3 During the course of the trial, please do not read,
4 listen to or watch any news reports about this case.
5 This includes anything that may be in the newspapers or
6 on the Internet, radio or television. You must not
7 consider anything you may have read or heard about the
8 case outside the courtroom whether before or during the
9 trial. After the case is submitted to you, you must
10 discuss it only in the jury room with your fellow jurors.

11 The attorneys and parties in this case have been
12 advised that they are not to talk to you at all, so if
13 you see anyone involved in the case in the hallway or out
14 front and they don't even say hello to you, they're not
15 being unfriendly. They're just following my
16 instructions.

17 It is very important that you keep an open mind and
18 not decide any issue in the case until all of the
19 evidence has been presented, the parties have made their
20 closing arguments and I have instructed you on the law in
21 this case. If you become aware of another juror's
22 violation of these instructions, you must inform me
23 immediately.

24 It is your responsibility to determine the guilt or
25 innocence of the defendant, and your verdict must be

1 based solely on the evidence as it's presented to you in
2 this trial and on the law as I instruct you during and at
3 the close of the trial.

4 Any exceptions to anything I've said from the State?

5 MS. BROWDER: No, sir.

6 THE COURT: From the defense?

7 MR. HAYES: None from the defense, Judge.

8 THE COURT: All right. Ladies and gentlemen, we
9 will now begin the trial. Ms. Browder or Mr. Jackson?

10 MR. JACKSON: Thank you, Your Honor. May it please
11 the Court.

12 THE COURT: Yes, sir.

13 OPENING STATEMENTS

14 MR. JACKSON: We all remember what it's like to be
15 13 years old. It's a really awkward time in everybody's
16 life and not just because of the physical changes that
17 your body is going through, but you're in a weird point
18 where you're not quite an adult and you're not quite a
19 child. You're kind of questioning how do you fit in in
20 the world, what to make of what's happening to you, what
21 your future's going to be like. It's a tough time for
22 everybody. And naturally, it creates some vulnerability
23 because you're trying to figure out what's going on.

24 When that vulnerability is created, well, you lean
25 on the people you trust, and you put your trust in the

1 people that you've known your whole life. Now, the flip
2 side of that, unfortunately, is that it creates an
3 opportunity for those same people to take advantage of
4 you. And that's what happened on December 11, 2021.

5 You see, **Complainant** 13 years old, had been in
6 a fight with her mother. Like a lot of 13-year-olds, you
7 also start to rebel a little bit, push the boundaries,
8 question what your parents are doing. We've all been
9 there.

10 So she's had an argument with her mom, and she's
11 just wandering around her neighborhood in the early
12 morning hours when who happens to drive by but the
13 defendant, Marty Brown.

14 Now, **Complainant** has known Marty her whole life, so
15 she's got no reason to not get in the car with him at
16 that point. So she gets in the car with Marty. He
17 decides that's a good time for them to hang out. So he
18 takes her to his house, goes inside, gets some alcohol
19 and some cups, comes back to the car and says let's drink
20 and let's smoke some. They then go to an ATM, to a
21 convenience store, get a vape and some papers to smoke
22 with and he has her smoke a little bit, drink a little
23 bit of alcohol. And then he takes her to the woods off
24 of Koon Store Road the early morning hours of
25 December 21st. Takes her back to an open area of the

1 woods away from the road, and that's when he sees his
2 opportunity.

3 Ladies and gentlemen, I represent the State of South
4 Carolina, and it's our duty to prove beyond a reasonable
5 doubt that Marty Brown is guilty of crimes that he's been
6 charged with. Now, that's the highest burden of proof
7 that there is. It means the kind of doubt that leaves
8 you firmly convinced. In order to do that, we've got to
9 prove a few elements.

10 Marty's been charged with criminal sexual conduct
11 with a minor in the second degree which means that he
12 committed a sexual battery on a victim ages 11 to 14.
13 He's also been charged with exposure of private parts
14 which means he exposed his private parts to another in a
15 lewd and lascivious manner. Finally, he's been charged
16 with contributing to the delinquency of a minor which
17 means that he encouraged, aided or caused someone under
18 the age of 18 to break the law.

19 Now, in order to do that, you're going to hear
20 testimony from **Complainant** She's going to tell you about
21 what happened that night. You're going to hear from the
22 investigator with Richland County Sheriff's Department
23 who worked this case, and he's also going to tell you
24 what Marty had to say about that night. You're going to
25 hear from some of the people that **Complainant** met with:

1 nurses, forensic interviewers. And you're going to hear
2 from some witnesses who can corroborate some of what
3 happened that evening as well.

4 Now, you're also going to see surveillance footage
5 of **Complainant** and Marty driving around. You're going to see
6 footage of them at the ATM. You're going to see footage
7 of them at that convenience store. But what you're not
8 going to see is what happened in the woods that night
9 because that kind of thing only happens in the dark. And
10 as we all know, what happens in the dark always comes to
11 light.

12 Ladies and gentlemen, I'm going to ask you to focus
13 on the facts of this case, focus on the evidence, focus
14 on the law, focus on Marty's actions and what happened on
15 December 11th of 2021, and I submit to you that at the
16 conclusion of the testimony and the evidence, the only
17 verdict that you can render is guilty.

18 Being 13 is hard enough. It shouldn't have to be
19 any harder when you're already in that vulnerable
20 position and have somebody take advantage of that. We're
21 here today to hold him accountable for doing that, ask
22 that you do so.

23 Thank you.

24 THE COURT: All right, Mr. Jackson.

25 Mr. Hayes?

1 MR. HAYES: Thank you, Judge. May it please the
2 Court.

3 Good afternoon, ladies and gentlemen. As I
4 introduced myself earlier, I'm Scott Hayes. I'm a solo
5 practicing lawyer here in Columbia. I've got an office
6 on Bull Street. I'm here today this afternoon in this
7 trial representing Marty Brown against the charges that
8 have been brought against him by the government and the
9 victim, the alleged victim in this case, **Complainant**

10 **[REDACTED]**.
11 So I'll talk to you a little bit about what some of
12 the issues that I see are going to be important in this
13 case. Credibility is going to be important in this case.
14 There's really, as the story goes from the alleged victim
15 anyway, only two people that are going to be present at
16 the time that these serious allegations of the sexual
17 battery and the exposure part happens. It's going to be
18 that she's going to allege that she was there and she's
19 going to allege that my client was there and that he was
20 a part of this.

21 **Complainant** has given a number of statements since
22 the time that this case started to unfold, but I want to
23 talk a little bit about how we got to where we are and
24 what the evidence I expect shows.

25 So sometime in the afternoon of December the 10th,

1 **Complainant**, the testimony is was going to be that she
2 gets into an altercation with her family and she's living
3 out in The Grove kind of in the St. Andrews area of town.
4 And she's getting into it with her mother and she's at
5 her friend's house. And her mom has an idea of where she
6 is. She goes over there to say you need to come home and
7 we need your phone and bring it home, come home now. And
8 she's like I haven't done anything wrong, I'm not going
9 to do that, so she winds up staying where she is. And
10 sometime as the day goes on, her mother for the first
11 time reports her as a runaway sometime around
12 nine o'clock or so that afternoon, that night, that
13 evening on the 10th.

14 So a little later goes on. Testimony is going to be
15 that **Complainant**, **Complainant** the alleged victim in
16 the case is at her friend's house somewhere within a
17 walking distance of The Grove, and she decides that she's
18 going to go home. She goes home about 10:15. And when
19 she gets there, she encounters her mother who's asking
20 questions and saying you need to stay home and this kind
21 of thing. And I think the testimony, the evidence will
22 be that **Complainant** doesn't really like this
23 confrontation that her mother presents, and so she walks
24 out the door. And she's not going to stay there anymore,
25 and she's going to go back to her friend's house. And

1 she does that. She goes back to her friend's house about
2 10:17. She's only home for about two minutes as this
3 unfolds.

4 So she goes over to her friend's house who I think
5 the testimony and the evidence is going to show her name
6 is A [REDACTED], and she spends some time. I think A's [REDACTED]
7 parents are home and A's [REDACTED] dad actually takes them to
8 McDonald's maybe around midnight to get something to eat.
9 And they get back to A's [REDACTED] house, and she recognizes
10 and I think the evidence and testimony will be that
11 Complainant [REDACTED] the alleged victim in the case,
12 recognizes that it's getting late and that I probably
13 need to go get home. But she winds up instead of going
14 home, she basically starts kind of just roaming the
15 streets in St. Andrews.

16 And she says that my client pulled up alongside her
17 at some point in time after midnight and said, hey, what
18 are you doing out here? She was cold, and he said, you
19 know, come, I'll give you a ride, right? And she says
20 that they rode around for a little while, and the
21 government is going to put these videos into evidence to
22 show the places that they went and the alleged things
23 that they did. And at the end of the night, right, she's
24 going to say that my client dropped her back off near her
25 house and she went and got home sometime around six in

1 the morning or so, was in front of her mother's door,
2 knocked, no one answered. She laid down on the concrete
3 on this December morning waiting for someone to answer
4 the door. And about an hour, hour and a half later they
5 let her in.

6 She went inside and she went upstairs until sometime
7 later that afternoon her family comes in and starts to
8 give her kind of the business about, hey, what are you
9 doing? You're making up -- what are you -- you're not
10 coming home, you're doing all this stuff, you know, we've
11 got this runaway report. You know, these things, you
12 can't do any of these decisions. And as she's
13 encountering that kind of confrontation from her family
14 about these things that she's not doing in their eyes,
15 right, she says, oh, well, hang on a second. I was
16 touched last night. And it got flipped on its head.

17 And from that time until now, she's given these five
18 different statements to five different people. There was
19 initially an officer that went over to the house,
20 Investigator Torres with the sheriff's office who took a
21 statement. Then she talked to a sexual assault nurse
22 examiner at the hospital. Then Investigator Tanner who
23 sits at the table here in this shirt, he's the lead
24 investigator in the case, he goes out. He tries to talk
25 to her. And then later she's examined by some other

1 forensic interviewers, right? And then in preparation
2 for trial at some point, she meets with investigators
3 from the solicitor's office. And she's given five
4 different statements, and they're all a little bit
5 different. And it comes down to one of those old
6 sayings: If you tell the truth the first time, you never
7 have to forget what you said.

8 Mr. Brown doesn't have to prove anything in this
9 case. He sits before you presumed innocent. He doesn't
10 have to prove his innocence. He doesn't have to prove
11 that this is a lie. He doesn't have to prove anything.
12 The government bears the burden of proving this case
13 which is beyond a reasonable doubt which Mr. Jackson
14 appropriately says is the highest burden there is in this
15 system of justice that we have in this country, right?
16 You might be familiar with the civil preponderance of the
17 evidence. If you're involved in a wreck case and two
18 people come into the courtroom and both say that they had
19 the green light but there's an intersection accident, I
20 had the green light, no, I had the green light, no I had
21 the green light, no, I had the green light, well,
22 nobody's taking responsibility. They didn't both have
23 the green light, right? We can all understand that. So
24 you come in and say somebody didn't have a green light,
25 and we ask a jury to decide that case.

1 And so you have to decide who do you believe. And
2 in that case, it's just the tipping of the scale. If you
3 had a scale and you put it in front of yourself like an
4 old scale you've seen anywhere else and you just put a
5 feather on the scale and it tips it ever so slightly in
6 one direction, you have carried the burden of evidence in
7 that case. That's called by the preponderance of the
8 evidence. Just slightly, just ever so slightly. Here
9 it's beyond a reasonable doubt.

10 Well, what is a reasonable doubt, right? It's
11 important. It's an important issue in the case, right?
12 There's a couple different ways to describe it, but I
13 describe it this way. If the evidence in the case causes
14 you to hesitate to act in rendering your verdict of
15 guilty, if you're hesitating, if you have questions and
16 you're hesitating to act and you're less than firmly
17 convinced because you have questions that you can't
18 satisfy in your mind about he's guilty, then we've met --
19 they have failed to meet their burden. We don't have a
20 burden to meet. I don't want to misspeak. They have to
21 prove this beyond a reasonable doubt which is to leave
22 you firmly convinced. So if you're hesitating to act and
23 feel less than firmly convinced, they have failed to meet
24 their burden of proof in this case. And in that event,
25 "not guilty" is the only verdict to be returned. So it's

1 important, right?

2 Mr. Brown has nothing to prove. He sits before you
3 sworn in this afternoon, it's three o'clock now, presumed
4 innocent. He enjoys that presumption until the close of
5 evidence, until the judge has instructed you on the law.

6 And I thought about the opening remarks from the
7 judge, too, a little bit. It was important. So you just
8 stood and took an oath. It's very important in this
9 case. And you said I'm going to do everything I'm
10 supposed to do as a juror. I appreciate that. We have
11 full confidence in you. That's why we're here, right?

12 But he also said you can't decide -- he asked you
13 not to decide any issue in the case until the close of
14 evidence and he's instructed you on the law. So if at
15 any time during this trial you're finding yourself ready
16 to render a verdict one way or the other, you're really
17 violating the oath you just took, right? You want to
18 maintain an open mind until all the evidence is in, until
19 he has instructed you on the law. And it's not until you
20 start your deliberation is that you can start to try to
21 bring and mold these things together. And you'll do that
22 collectively through conversation and deliberation about
23 what you actually believe the facts to be. Because the
24 facts as they were presented from the alleged victim in
25 this case vary. She told different people different

1 things. At the end of the day, there's only two people
2 there, and her credibility is at issue in the case.

3 You're not going to see any forensic evidence.
4 There's not going to be any DNA, any kind of anything.
5 There's going to be no forensic evidence that's going to
6 be presented to this jury at all that ties Mr. Brown to
7 the alleged events that they say occur, to all the acts
8 that they want to say that he's responsible for. And we
9 think that there's an explanation for it all, and we look
10 forward to trying to tie this up in the closing argument.

11 And at the end of the case, we're going to ask you
12 to return a verdict of not guilty because we believe that
13 the government is not going to be able to carry their
14 burden and leave you firmly convinced. You will be
15 hesitating to act. You'll be less than firmly convinced
16 of the evidence that they presented.

17 Thank you.

18 THE COURT: Thank you, Mr. Hayes.

19 The State may call it's first witness.

20 MS. BROWDER: The State calls Christine Ocean.

21 WHEREUPON,

22 CHRISTINE OCEAN

23 After having been duly sworn, testified as follows:

24 THE CLERK: Thank you, ma'am. Please have a seat in
25 the witness stand and state your full name for the

1 record.

2 THE WITNESS: Christine Ocean.

3 THE COURT: Ma'am, you can pull that microphone even
4 closer if you'd like to. Thank you.

5 DIRECT EXAMINATION

6 BY MS. BROWDER:

7 Q Ms. Ocean, where do you currently live?

8 A ■ Sharolyn Street, Sumter, South Carolina.

9 Q In Sumter. Prior to living in Sumter, did you live
10 in Columbia, South Carolina?

11 A Yes.

12 Q What address did you live there?

13 A ■ Ridgewood Avenue, Columbia, South Carolina.

14 Q And who lived with you at that address?

15 A Marty Brown.

16 Q And how did you know Marty Brown?

17 A We was just to talk.

18 Q Talk or date? Like what does "talk" mean?

19 A Date. Date.

20 Q How long did y'all date for?

21 A For about ten years.

22 Q Ten years.

23 And do you see Marty Brown in the courtroom today?

24 A Yes.

25 Q Can you describe to the jury what he's wearing?

1 A A black jacket, white shirt, brown and beige tie.

2 MS. BROWDER: Let the record reflect she's
3 identified Mr. Brown, Your Honor.

4 THE COURT: All right.

5 BY MS. BROWDER:

6 Q All right. So y'all dated for approximately ten
7 years. Due to your relationship with him, did you know a
8 young lady by the name of Complainant

9 A Yes.

10 Q And how did you know Complainant

11 A His sister used to babysit her and she used to come
12 to our house.

13 Q Okay. So Complainant used to come to your house?

14 A Yes.

15 Q And about how old was she when she would come to
16 your house?

17 A I think she was about 6 or 7.

18 Q Okay. When she was there, would Marty be there at
19 any point?

20 A Sometimes, because she used to come about.

21 Q Okay. And were you aware of how old Complainant was?

22 A Yes.

23 Q And based on your knowledge, was Marty aware of how
24 old Complainant was?

25 A I guess.

1 MR. HAYES: Objection.

2 MS. BROWDER: I said based on her knowledge, Your
3 Honor.

4 THE COURT: Overruled.

5 BY MS. BROWDER:

6 Q Based on your knowledge, are you aware that he knew
7 how old she was?

8 A I guess. I'm not sure. But I knew.

9 Q You definitely knew how old she was?

10 A Yes.

11 Q And you met her through?

12 A Marty's sister.

13 Q Through Marty's sister.

14 A Yeah. Neesa [phonetic].

15 Q So she had been hanging around y'all's house since
16 she was young.

17 A Yes.

18 Q I'm going to take you to the early morning hours of
19 December 11, 2021. Was Mr. Brown still with you at that
20 time?

21 A Yes.

22 Q And during those early morning hours, can you tell
23 the jury what you were doing?

24 A Asleep, acting like. I mean, I was on the chair
25 asleep.

1 Q Okay. Where at in your home?

2 A In the living room.

3 Q In the living room. Okay.

4 And while you were asleep in the chair at your home,
5 was Mr. Brown there?

6 A Not at the moment. He came in.

7 Q Okay. He came in. When did he come in,
8 approximately? Do you remember?

9 A No. I can't remember what time it was, but it was
10 like probably about twelve or one.

11 Q Okay. So it was about after midnight?

12 A Yes.

13 Q And when he came to the house, what happened?

14 A He came in the house, and the only thing I know, he
15 went back towards the kitchen and the dining room.

16 Q Okay. At that time, were you awake?

17 A I was woke.

18 Q Did he know you were awake? Or, I guess, did you
19 make it aware that you were awake?

20 A No.

21 Q Okay. And so you said he went back to the
22 kitchen?

23 A Back in that area, yes.

24 Q Do you know what he did back in that area?

25 A No.

1 Q About how long was he back in that area?

2 A Probably about five or ten minutes. Not long.

3 Q And after he was done in that area with whatever he
4 was doing, what did he do next?

5 A Walked back out the door.

6 Q Okay. And when he walked back out the door, did you
7 see him carrying -- or did you see him walk out the door?

8 A No. I was still had my head down like I was asleep.

9 Q Okay. And after he walked back out the door, what
10 did you do?

11 A Jumped up and looked out the window.

12 Q Okay. Why were you getting up to look out the
13 window?

14 A Just to see where he was going.

15 Q Okay. And where was he going?

16 A I don't know. He went to a car. Like his car was
17 parked in the next yard.

18 Q Okay. So he went to his car?

19 A Yes.

20 Q Okay. And what kind of car does he drive?

21 A It was a gold Tahoe or Expedition. It was one of
22 them. I know it was gold.

23 Q So it was a gold SUV of some sort?

24 A Yes, yes.

25 Q Okay. And where was that SUV parked?

1 A In the next-door neighbor yard.

2 Q So the neighbor's yard?

3 A Yes.

4 Q It wasn't parked in your driveway?

5 A No.

6 Q And could you see into the vehicle?

7 A I couldn't see into it, but I wasn't thinking like
8 that.

9 Q Okay.

10 A So I really looked to look.

11 Q Okay. So you couldn't tell or you didn't look to
12 see if anyone else was in the vehicle?

13 A Right.

14 Q How bright is it outside of your house if you were
15 looking over there into that vehicle?

16 A You could see. It was like a street light right
17 there.

18 Q Okay. But you couldn't see if there was anyone in
19 the vehicle or not?

20 A No.

21 MS. BROWDER: Okay. Beg the Court's indulgence.

22 No further questions, Your Honor.

23 Please answer any questions Mr. Hayes has for you.

24 THE COURT: All right. Mr. Hayes?

25 MR. HAYES: Thank you, Judge.

CROSS EXAMINATION

BY MR. HAYES:

Q All right. Ms. Ocean, so on this night that the prosecutor, Madam Solicitor was asking you about there, you were kind of like faking like you were asleep in the chair, right?

A Right. Because I heard when they pulled up, yeah. So I -- like I was asleep.

Q Yeah. When you say "they pulled up," you'd agree with me the only person that you knew to pull up was Marty.

A He pulled up.

Q Right?

A Right.

Q Okay. And he came in and you just kind of like kept on faking like you were asleep?

A Right.

Q So that he would think you were asleep?

A Right.

Q Okay. And you think that this happened between twelve and one?

A Yeah. It was like ---

Q Right? And you didn't see him leave with anything, right?

A Well, I didn't. But he went in and out. No, I did

1 not.

2 Q Right. You didn't see him leave with anything ---

3 A No.

4 Q --- right? You saw him. But then when he went out
5 the front door, and you jumped up and watched him walking
6 across to the car, right?

7 A It wasn't across. It was like right sideways. The
8 fence was -- our yard here, their yard here, so it was
9 like right around the corner.

10 Q Right. And so where he parked, though, Madam
11 Solicitor makes it sound like he's in this neighbor's
12 yard. And that may be true, but the reality is, this is
13 where Mr. Brown parked his car all the time, isn't it?

14 A We all -- both of us did. I parked my car there and
15 he parked his car there. Like if he cutting grass or
16 whatever, we parked the car there or whatever like that.

17 Q Right. So where he was parked at -- the point of
18 the question is where he was parked at isn't an unusual
19 place to be parked.

20 A No.

21 Q Right? I mean, it's a parking spot that you both
22 utilized fairly regular.

23 A Not regular, but yes. We did park our own car
24 there.

25 Q Yeah. Right. Okay. And you talked about there

1 being some light there. There's a -- I guess there's a
2 streetlight sort of right where you park the car?

3 A Yeah. I think it's right there. It was on the
4 corner, yes.

5 Q Right. So you'd agree with me that if there was
6 somebody in the car, you'd be able to see them if you
7 were looking for them. If you looked out the window and
8 you knew that there was somebody in the car or that you
9 could look out and see that there was someone in the car.

10 A But I would have never thought nobody was in the
11 car. I really wouldn't have.

12 Q But you can't say anybody was in the car, right?

13 A I just see that the car was parked there. And when
14 they left, I couldn't see anybody in the car. I cannot.

15 MR. HAYES: All right. Beg the Court's indulgence.

16 THE COURT: Yes, sir.

17 MR. HAYES: No further questions, Judge.

18 THE COURT: All right. Any redirect?

19 MS. BROWDER: No, sir.

20 THE COURT: All right. Thank you very much,
21 Ms. Ocean. You may step down and be excused.

22 THE WITNESS: All right. Thank you.

23 THE COURT: All right. State may call its next
24 witness.

25 MR. JACKSON: Thank you, Your Honor. The State

1 calls Allison Foster.

2 WHEREUPON,

3 ALLISON FOSTER

4 After having been duly sworn, testified as follows:

5 THE CLERK: Thank you, ma'am. Please have a seat in
6 the witness stand and state your full name for the
7 record.

8 THE WITNESS: My name is Allison Marie Foster.

9 DIRECT EXAMINATION

10 BY MR. JACKSON:

11 Q Dr. Foster, where are you currently employed?

12 A I am currently employed with the solicitor's office.

13 Q And how long have you been working there?

14 A Since July of 2023.

15 Q Where were you employed before working there?

16 A Prior to that I was employed as chief psychologist
17 at the Metropolitan Children's Advocacy Center.

18 Q How long did you work there for?

19 A For 28 years.

20 Q Okay. What all did your duties entail there?

21 A So for 17 years, I was the director there from 1995
22 to 2012, and so that encompassed a lot of duties. And
23 then but I would say my continuous duty from 1995 all the
24 way to 2022 was to conduct child forensic interviews.

25 And that involves interviewing children who were referred

1 by Child Protective Services and DSS or law enforcement
2 as part of an investigation of suspected child sexual
3 abuse or physical abuse or when they might be witnesses
4 to violent crime. And that had other duties as well:
5 training, attending team meetings with investigative team
6 members, various -- testifying, conducting research,
7 supervising other interviewers. But those were my main
8 duties.

9 Q Were you employed there -- you would have been
10 employed there on December 20th of 2021?

11 A Yes, I was.

12 Q Do you recall meeting with **Complainant**

13 A Yes, I do.

14 Q Did you observe her that day?

15 A I did.

16 Q Did she disclose to you the time and place the
17 incident had taken place?

18 A Yes, she did.

19 Q Where was that?

20 A She described being in a car, in Uncle Marty's car.
21 She described being parked in a field.

22 MR. HAYES: Judge, I'm going to object to hearsay.

23 MR. JACKSON: Your Honor, I think she can testify to
24 the time and place.

25 THE COURT: Sustained. You can ask it a different

1 way.

2 MR. JACKSON: Beg the Court's indulgence.

3 MS. BROWDER: May we approach, Your Honor?

4 THE COURT: Yes, ma'am.

5 (WHEREUPON, a bench conference was held off the record.)

6 THE COURT: All right. The objection again,

7 Mr. Hayes?

8 MR. HAYES: Well, Judge, it's a hearsay objection.

9 THE COURT: All right. The objection is based on
10 hearsay.

11 MR. JACKSON: Your Honor, under Rule 801(d)(1),
12 prior statement by a witness consistent with the
13 declarant's testimony of criminal sexual conduct case or
14 attempted criminal sexual conduct case where the
15 defendant [sic] is the alleged victim and the statement
16 is limited to the time and place of the incident.

17 THE COURT: All right. Mr. Hayes, anything further
18 on that?

19 MR. HAYES: Just very briefly. 801(e)(1)?

20 MR. JACKSON: Yes.

21 THE COURT: D.

22 MR. HAYES: (d)(1).

23 MS. BROWDER: (d)(1)(D).

24 MR. HAYES: So, Judge, I think I do have a matter of
25 law. Or we can do this on the sidebar.

1 THE COURT: Ladies and gentlemen, I hate to ask you
2 to go out, but just so that we're not wasting your time
3 sitting here, y'all might need to take a restroom break
4 or something. Why don't we break for about ten or
5 15 minutes. If you'll please step out to the jury room.

6 Again, please don't speak about this with anybody
7 including yourselves. Don't seek out or review any
8 information about the case, and keep an open mind until
9 you have received all the evidence and I have discharged
10 you to begin deliberations.

11 Thank you all.

12 (WHEREUPON, the jury exits the courtroom at 3:19 PM.)

13 THE COURT: All right. The jury is out of the
14 courtroom.

15 Yes, sir. I was going to overrule the objection
16 based on 801(d)(1)(D).

17 MR. HAYES: Right. And before we hatch this out in
18 front of the jury, Judge, I just thought it would be
19 appropriate for us not to do that.

20 THE COURT: That's okay.

21 MR. HAYES: But (d)(1)(D) says "consistent with the
22 declarant's testimony."

23 THE COURT: Right.

24 MR. HAYES: So as I understand it, the declarant in
25 this case would be Complainant She has not

1 testified. None of -- there is no testimony consistent
2 with the declarant's testimony. That is totally lacking
3 in this record anywhere. So there is no -- what they're
4 offering isn't consistent with the declarant's testimony
5 because there is no testimony from the declarant. That
6 is part of the rule. That's part of the requirement
7 under the rule. And because they don't have any
8 testimony from the declarant, there's a lack of
9 foundation to try to shoehorn testimony through this
10 witness in this manner.

11 THE COURT: Mr. Jackson.

12 MR. JACKSON: Your Honor, at the beginning of that
13 rule, it states, "The declarant and testifies at trial or
14 hearing and subject to cross-examination concerning the
15 statement." Your Honor, she's testifying next so she
16 will be subject to cross-examination concerning that
17 statement. So I think we can testify as to time and
18 place now being that she can be crossed on it next.

19 THE COURT: "The declarant testifies at the trial or
20 hearing and is subject to cross-examination concerning
21 the statement, and the statement is consistent with the
22 declarant's testimony in a criminal sexual conduct case
23 or attempted criminal sexual conduct where the declarant
24 is the alleged victim and the statement is limited to
25 time and place of the incident." How does that relate to

1 Ms. Foster here, though, I mean, if she is -- if she's
2 not the declarant in this? I mean, the reason why
3 earlier I said ask it another way, I mean, is there
4 another way to ask the witness, essentially, if she --
5 about where the time and place of this incident was or do
6 you need to put the victim on first? I don't know.

7 MR. JACKSON: Your Honor, I think since she's going
8 to be subject to cross-examination, we don't need to put
9 her up first. She can be crossed on that next. I still
10 think that Dr. Foster can testify.

11 THE COURT: All right. She's going to testify to
12 it.

13 Mr. Hayes, is the time and location of this alleged
14 assault in dispute?

15 MR. HAYES: I don't know about all that, Judge.
16 But, I mean, the reality is they're eliciting hearsay
17 testimony from this witness about what she would -- what
18 she advised Ms. Foster.

19 THE COURT: Right.

20 MR. HAYES: The declarant hasn't testified at this
21 point. So ---

22 THE COURT: Well, she is going to testify and she'll
23 be subject to cross-examination.

24 MR. HAYES: Right. Well, we don't know whether or
25 not it's consistent with -- I mean, it says that it's got

1 to be consistent with her testimony. We don't have any
2 testimony to be consistent or inconsistent with.

3 THE COURT: All right. I'm going to overrule the
4 objection. She's going to testify and be subject to
5 cross-examination about the time and place of the
6 incident. And she'll be up in just a few minutes, I
7 expect. And if she says it happened at one o'clock at
8 123 Main Street and she says something different, then
9 that will be something that can be explored on
10 cross-examination.

11 We've got just a couple minutes. If y'all want to
12 stand down or stand at ease for about five minutes, we'll
13 do so and then bring the jury back in.

14 (WHEREUPON, a recess is taken at 3:24 PM.)

15 THE COURT: I guess -- Mr. Hayes, I guess my
16 question in reading the rule is if it's -- so is it your
17 argument that this would be -- that this would be proper
18 if the victim had already testified?

19 MR. HAYES: Yes, sir. And yes. As long as the
20 testimony from the witness would be consistent with the
21 declarant's testimony.

22 THE COURT: Mr. Jackson, Ms. Browder, help me out
23 with this. I'm just not...

24 MR. JACKSON: Your Honor, we would argue that the
25 rule doesn't testify it has to be -- the rule doesn't

1 clarify whether or not she has to testify before the
2 statement or after. It's just that she testifies. She's
3 going to testify, so I think the statement can get in
4 under that reasoning. And if it's different, then
5 Mr. Hayes can cross-examine the victim.

6 THE COURT: I mean, I know the cases that we're
7 looking at up here refer to it as corroborative
8 testimony, and the wording -- the examples that we're
9 seeing appear to be folks that are testifying after a
10 victim or declarant to the extent of did he or she tell
11 you where this happened or when this happened, that it
12 was afterwards that it fits into -- I understand what
13 you're saying, Mr. Jackson, that she is going to testify,
14 but I'm not sure that the cases lean that way.

15 So I'm going to sustain the objection. If there's
16 another way to ask her that or another way to get the
17 information, you can certainly do so. But based on that
18 801(d)(1)(D), I will have to sustain it because, again,
19 the cases it appears -- in the language of the rule, it
20 appears that it's corroborated if she testifies, then
21 others can testify about what she told them about that
22 issue.

23 MR. JACKSON: Your Honor, we would ask that we be
24 able to recall Dr. Foster after **Complainant** testifies.

25 THE COURT: Okay. All right.

1 MR. JACKSON: Thank you.

2 THE COURT: Any objection to that, Mr. Hayes? I
3 mean, they can take witnesses in any order they want to
4 unless you point me to something else.

5 MR. HAYES: I mean, I understand, Judge. But this
6 is the way they called them.

7 THE COURT: Right.

8 MR. HAYES: I mean, I guess I would object to having
9 her recalled.

10 THE COURT: Okay. So if they call her, then that's
11 it. There's nothing that can be done anymore that she's
12 -- it's one and done and that's it.

13 MR. HAYES: Well, I mean, to preserve the record in
14 the interest of my client, Judge, I'm going to object.
15 Yes, sir.

16 THE COURT: All right. I'll respectfully overrule
17 that objection.

18 All right. So go ahead and call -- anything before
19 we bring the jury in from the State?

20 MS. BROWDER: No, sir.

21 THE COURT: From the defense?

22 MR. HAYES: No, sir.

23 MR. JACKSON: None, Your Honor.

24 THE COURT: Yes, ma'am. You can bring the jury
25 in.

1 MS. BROWDER: Do we want Ms. Foster to step down
2 first, Your Honor? That's what I prefer to do, and then
3 we can recall her after **Complainant** unless you want to
4 sustain the objection as to the record.

5 THE COURT: Mr. Hayes, I guess you have the right to
6 cross-examine her up to what she's been asked about right
7 now. Do you want to wait until she gets called up for
8 the bulk of her testimony.

9 MR. HAYES: No. I don't have any questions at this
10 time.

11 THE COURT: Okay. All right.

12 MS. BROWDER: I guess we can leave her there. You
13 can sustain the objection, and then Mr. Jackson can ask,
14 you know, we reserve the right to recall her.

15 THE COURT: All right. We'll put that on the
16 record.

17 (WHEREUPON, the jury entered the courtroom at 3:36 PM.)

18 THE COURT: Ladies and gentlemen, thank you very
19 much for your patience. And I'm going to sustain the
20 objection as to the last question that was asked.

21 MR. JACKSON: Your Honor, nothing further from the
22 State at this time. We'd ask that Dr. Foster be allowed
23 to step down, but we would reserve the right to recall
24 her.

25 THE COURT: All right. Dr. Foster, you may step

1 down, ma'am. And, Dr. Foster, if there's a chance she's
2 going to be recalled, if she could be sequestered.

3 MS. BROWDER: Yes, sir.

4 THE COURT: Okay. Thank you.

5 All right. The State may call its next witness.

6 MS. BROWDER: The State calls Complainant

7 WHEREUPON,

8 Complainant

9 After having been duly sworn, testified as follows:

10 THE CLERK: Thank you, ma'am. Please have a seat in
11 the witness stand and state your full name for the
12 record.

13 THE WITNESS: My full name is Complainant
14 [phonetic].

15 DIRECT EXAMINATION

16 BY MS. BROWDER:

17 Q Complainant how old are you?

18 A 17.

19 Q And who do you currently live with?

20 A My grandma.

21 Q And where do y'all live? What state?

22 A Charlotte, North Carolina.

23 Q And what grade are you in?

24 A 11th.

25 (Pause in proceedings for technical issues.)

1 BY MS. BROWDER:

2 Q All right. Complainant I'm sorry, what grade were you
3 in?

4 A 11.

5 Q Okay. And back in -- I guess what is your birthday?

6 A [REDACTED].

7 Q What year?

8 A [REDACTED].

9 Q And prior to living with your grandmother, back in
10 2021, who were you living with?

11 A My mom.

12 Q Okay. And where were you living with your mom?

13 A On Broad River, Columbia.

14 Q Okay. Here in Columbia.

15 All right. And what sort of things do you like to
16 do?

17 A Sleep. I don't really know. I like to sleep now
18 and work. Oh, I like to work.

19 Q Okay. Where do you work?

20 A I don't work nowhere right now. McDonald's.

21 Q Okay. And back in December of 2020, you said you
22 were living with your mom here in Columbia?

23 A Uh-huh.

24 Q Okay. You've got to say "yes" or "no."

25 A Yes, I was.

1 Q All right. And do you have any family that was
2 living around here at the time?

3 A Like in Columbia?

4 Q Yes. Back in 2021.

5 A Uh-huh. I had cousins that -- all of my family
6 stayed in Columbia except my grandma.

7 Q Okay. And when you say all of your family, you say
8 cousins? your mom?

9 A Yeah. My mom, my dad. All of my mama's brothers
10 and sisters, they all stay in Columbia.

11 Q So back in December of 2021, I'm going to take you
12 to December 10th, I guess, which is the night before this
13 happened, what were you doing that day?

14 A I was at a friend house. I went to her house
15 probably at six or maybe five. We had just got out of
16 school and I went over to her house. We wasn't doing
17 nothing. We was walking around. We went to the store.

18 Q And who is your friend?

19 A [REDACTED]

20 Q Okay. So y'all were walking around. Were you with
21 anybody else?

22 A No. Not at the time.

23 Q Not at that time?

24 A Uh-huh.

25 Q Did your mom know where you were at that point?

1 A Yes.

2 Q And you said y'all were walking around?

3 A (Non verbal answer.)

4 Q What were y'all doing while you were walking around?

5 A Tik-Toks, making video. Just being kids.

6 Q Okay. After y'all were doing that --- about how
7 long did y'all do that for?

8 A Hours. We went to her house and everything.

9 Probably -- I got there probably six or five, so we
10 probably did that until eight.

11 Q And how did you get to A's house?

12 A I walked. It was walking distance.

13 Q I was going to ask how far is it between your house
14 where you were living with your mom to A's house?

15 A Walking, maybe three minutes, five minutes. Not
16 even five. No. Three minutes.

17 Q Okay. So after y'all got done walking around about
18 eight o'clock, what did you decide to do then?

19 A I was still with her.

20 Q Okay.

21 A We -- my mom came. She told me -- she was yelling
22 at me, cursing at me, and she was telling me to come home
23 and that I haven't -- I wasn't answering her phone calls,
24 which I wasn't but my phone was dead. So she ---

25 Q Okay. Let's stop for a minute.

1 Okay. So your mom had been calling you?

2 A Uh-huh.

3 Q Okay. But what was wrong with your phone?

4 A It was dead.

5 Q Okay. So how were y'all doing Tik-Toks at that
6 point?

7 A Her phone.

8 Q Autumn's?

9 A Uh-huh. But my mama didn't have her number so she
10 couldn't call her.

11 Q Okay. All right. So your mama came and was mad at
12 you?

13 A Uh-huh.

14 Q What happened next?

15 A She left, and I just stayed with A [REDACTED]. Then we
16 went up to her house and was doing Tik-Toks. We ate.
17 Yeah. Up until like ---

18 Q Speak up just a little bit for me.

19 A Okay. Up until like one, one o'clock. We left from
20 her house, and we had met with some boys and we had
21 smoked with them.

22 Q Okay. And when you say "smoked," smoke cigarettes?

23 A Smoked weed. No. We smoked weed.

24 Q Smoked some weed.

25 A Uh-huh.

1 Q And how many boys were y'all with?

2 A Two.

3 Q Okay. Did anything else happen with those boys?

4 A Hu-uh.

5 Q You've got say "yes" or "no."

6 A No.

7 Q The court reporter is taking down everything ---

8 A I'm sorry.

9 Q --- so it makes it easier for her.

10 Okay. So they came over. Y'all smoked some weed.

11 What happened after that?

12 A We was with them for like an hour and some change.

13 And then it was like 4:30 by the time we had left from

14 with them. And she was going home. She was like her mom

15 was calling her to come home. No. It was like -- okay.

16 So we left. I was with her around one, and then the boys

17 -- I was still with one of the boys. Like me and her had

18 parted. She went home and I was with him.

19 Q Okay.

20 A And then I was with him. And when I was with him,

21 we was at his house. But they both stayed in the same

22 neighborhood, so I was still in her neighborhood. And

23 then after that, by four o'clock came and she was like --

24 by the time ---

25 Q She, who's she?

1 A The friend that I was with.

2 Q A

3 A Uh-huh.

4 Q Okay.

5 A By this time, she had came. We had a little -- she
6 was like her mom was calling her. She had to go in the
7 house. So at this point, I got to go home. Like I don't
8 got nowhere else to really go or nothing else to do. So
9 I started walking home.

10 Q Okay. So you were walking back home around 3:30,
11 four o'clock in the morning?

12 A (No verbal answer.)

13 Q Okay. And as you were walking back home, did you
14 come across anybody you knew?

15 A Yeah. Uncle Marty.

16 Q Who?

17 A Uncle Marty.

18 Q Uncle Marty?

19 A Yeah.

20 Q And how do you know Uncle Marty?

21 A He -- my mama and his niece are best friends, so we
22 just always be around each other. Not always, but -- and
23 his sister used to watch all my mom kids and his niece
24 kids. So he used to always be around.

25 Q Okay. So about how old do you think you were when

1 you met Uncle Marty?

2 A I knew Uncle Marty my whole life.

3 Q Okay. So you've known him your whole life?

4 A Yeah.

5 Q So you said you saw Uncle Marty on the way home.

6 How did you see Uncle Marty?

7 A I was -- I was walking like down -- it's kind of
8 like a curve. I don't know how to explain it. But I was
9 walking down and he was driving up. And then I guess he
10 seen me, and then he turned around and then he asked me
11 what I was doing out.

12 Q So you said he was driving. What was he driving; do
13 you remember?

14 A Yeah. A gold Tahoe. It was long.

15 Q Okay. And you said he saw you and turned around?

16 A Uh-huh.

17 Q Okay. And so when he turned around and came back up
18 to you, how did he start talking to you? Were you in the
19 car? out of the car? Where was he?

20 A No. I was outside the car. We started -- he -- he
21 just asked me what I was doing out so late. He was like
22 what you doing out here this late at night?

23 Q And what did you say?

24 A I was going to go home.

25 Q I'm sorry. You've got to speak up.

1 A (Cross talk) to go home. I don't really recall what
2 -- exactly what I said, but probably I was going to go
3 home. That's what I was ---

4 Q Okay. And when you told him you were about to go
5 home, what did he say?

6 A He told me to get in the car.

7 Q Okay. And at that point, do you know if he knew who
8 you were?

9 A He didn't. He didn't know who I was until shortly
10 after I got inside the car. I was like -- I think I said
11 something, and he was like your mama know you're out
12 here? And that's how I knew by that time he figured out
13 that -- who I was.

14 Q Okay. And so when you got in the car, was there
15 anybody else in the car?

16 A No.

17 Q Just you and Uncle Marty?

18 A Uh-huh.

19 Q And when you got in the car, did he say anything
20 next?

21 A Like?

22 Q I mean, I guess, tell me what happens next.

23 A We driving, and we drive -- we driving. He asked me
24 do I smoke weed? Do I drink? I told him, yeah, because
25 I did. And so he said he was going to pick up some weed.

1 And then at first we went to his house to go get the
2 bottle. Went to his house to go get a bottle.

3 Q Okay. I'm going to stop you just for a second. So
4 he picks you up somewhere along Broad River or near
5 there?

6 A Yeah. Like -- so like my house will be here. No.
7 Her house will be here, and then my house will be here,
8 but it's like a curve. So there will be a curve right
9 here. And then I was probably in the midst of right
10 here.

11 Q In the middle?

12 A Yeah. Of both houses.

13 Q Okay. And how long did it take you to get to Uncle
14 Marty's house from there, approximately?

15 A Probably ten, 15 minutes. Not long.

16 Q Okay. And so he said he was going to his house for
17 what reason?

18 A He -- he didn't say.

19 Q Okay. So when y'all get to his house, what happens?

20 A Nothing. We didn't park at his house. We parked at
21 the neighbor house. And he got out the car, and he told
22 me he was going to come back. I asked him could I go in
23 the house and pee, and he told me no, I couldn't go in
24 the house and pee.

25 So he went in the house and he came back. It was

1 fast, though. He told me he was going to be right back
2 out. So he came right back out, and he had a bottle and
3 some cups, like plastic red cups. He had those or
4 whatever.

5 Q And what kind of -- you said a bottle. What kind of
6 bottle?

7 A Of liquor. It was Cuervo. It was Cuervo. It was
8 the blue kind, blue streak or something like that.

9 So he got out of the car, came back. And so we
10 left. That was when we left his house. And so I kept
11 telling him like -- he was telling me to drink, but I
12 knew I wasn't going to be able to drink because I already
13 had to pee. So I was just like I've got to pee, I've got
14 to pee, I've got to pee. So he was just like, okay,
15 well, I'm just take you -- I just told him we could stop
16 -- like we didn't have to go in nowhere for me to use the
17 restroom. So he was like he was going to take me on the
18 side of the curb so I could pee.

19 So he took me and I pee.

20 Q And so when you -- as you say, when you pee, where
21 did you pee at?

22 A What you mean?

23 Q Like, I mean, are you in the car? outside the car?
24 in a gas station? I mean ---

25 A No. I got out the car, and we was on the side of

1 the road. Yeah. We was on the side of the road.

2 Q And where was Uncle Marty while you were doing that?

3 A In the car.

4 Q In the car?

5 A Uh-huh.

6 Q Okay. And was he looking at you or was he not
7 paying attention? Like where were you compared to where
8 he was?

9 A Like this is the car and this is me.

10 Q Okay. You said he stayed in the car?

11 A Uh-huh.

12 Q And what did you just say? You said he was looking
13 at ---

14 A He was watching me. He was watching me pee.

15 Q He was watching you pee?

16 A Uh-huh.

17 Q All right. So after you went to the restroom, what
18 happened next?

19 A We went to go pick up some weed.

20 Q Okay. Did you go anywhere? Where were y'all going
21 to get the weed; do you know?

22 A I don't recall where we went.

23 Q And were y'all going to have to pay for it?

24 A I wasn't.

25 Q Well, was he going to have to pay for it?

1 A I don't know. I don't know if it was like somebody
2 he knew or nothing like that. He just told me that he
3 was going to pick it up.

4 Q And did y'all make any stops along the way?

5 A Yeah. We went to the ATM.

6 Q Okay.

7 A Well, no. We didn't -- we went to the ATM, but we
8 went to the ATM after we got the weed. This is after the
9 fact. We went to the ATM, then went to the store.

10 Q Okay. So y'all went to pick up the weed first.

11 A Yeah.

12 Q Where did y'all go to do that? I mean, was it like
13 a gas station? a house? a trailer? I mean ---

14 A No. It was a house. It wasn't like -- yeah. It
15 was a house. It wasn't -- we didn't meet nobody or
16 nothing like that.

17 Q Okay. And did you get out of the car to go get it?

18 A Hu-uh. No, ma'am.

19 Q Okay. And after that, you said y'all went to the
20 ATM?

21 A Yes.

22 Q And what are you doing during all this time? While
23 he's going to get that, while he's at the ATM, what are
24 you doing?

25 A I'm in the car. You mean what I'm doing in the car?

1 Q Uh-huh.

2 A Drinking.

3 Q Drinking. Okay. And what are you drinking?

4 A The bottle that he brought out.

5 Q The liquor bottle?

6 A (Nods head affirmatively.)

7 Q And who gave that to you? Did your mom give it to
8 you?

9 A No. He gave it to me.

10 Q Uncle Marty gave it to you?

11 A Uh-huh.

12 Q And, what, were you drinking out of the bottle or
13 were you drinking out of something else?

14 A No. The cups. Remember I -- oh, sorry.

15 Q You're fine.

16 A The cups, the red cups that he brought out with the
17 bottle, I was drinking out of those.

18 Q You were drinking out of the red cup. All right.

19 So how much were you drinking; do you remember?

20 A No, I don't.

21 Q Okay. That's okay if you don't remember.

22 So after the ATM, when y'all left the ATM, where did
23 you go next?

24 A To the gas station.

25 Q And do you remember what gas station it was?

1 A Yes. It was Moto -- Moto. No. I don't remember.

2 Q Okay. Can you describe it in any way?

3 A Yeah. It -- it was blue, the -- like the printing
4 of the name of it, it was blue, whiteish. Yeah.

5 Q Okay. And at this point while you were with Uncle
6 Marty, you had smoked earlier in the night with A
7 and the boys?

8 A Uh-huh.

9 Q Is that yes? I'm sorry. You've got to say "yes" or
10 "no."

11 A Yes. Oh, sorry. I'm sorry.

12 Q So you had already smoked. Did that have any effect
13 on you?

14 A Like was I intoxicated?

15 Q Yes.

16 A Yeah.

17 Q You were already from that? Okay.

18 A Uh-huh.

19 Q So then you started drinking alcohol. How did the
20 alcohol affect you?

21 A I was tipsy because I don't drink. Well, yeah, I
22 didn't drink like then. I wasn't really a heavy drinker.
23 I used to smoke a lot.

24 Q Okay. And so at that point when you pull up to the
25 -- or not a gas station, I'm sorry -- the blue -- the

1 place with the blue writing and the blue -- market, how
2 were you feeling at that point?

3 A I wasn't tipsy at this point.

4 Q Okay.

5 A I was -- I wasn't tipsy. I was just -- I don't know
6 how to explain it to everyone. You do drink. Like make
7 -- feel good. I felt good.

8 Q Okay.

9 A That's the word I'm looking for.

10 Q All right. So when y'all got to -- what was the
11 point of going to the market there?

12 A To get cigars.

13 Q To get cigars? And what were y'all getting cigars
14 for?

15 A Weed that he had brought.

16 Q Okay. And what were you going to do with the cigars
17 and the weed?

18 A Smoke it.

19 Q Okay. And what do you use the cigars for for the
20 weed?

21 A To roll it up.

22 Q Okay. So kind of like to make a joint?

23 A Uh-huh.

24 Q Okay.

25 A Yes.

1 Q Did you get out of the car at the market?

2 A Yes.

3 Q Okay. And did you go in with Uncle Marty?

4 A Yes.

5 Q And when y'all got there, y'all went inside, you
6 bought the cigars and stuff?

7 A Wait. Can you ask it again?

8 Q Yeah. When y'all went inside, did y'all buy the
9 cigars when you went inside?

10 A Yes, ma'am.

11 Q Okay. Did y'all buy anything else?

12 A A vape.

13 Q A vape?

14 A (Nods head affirmatively.)

15 Q Okay. And when y'all left and got back in the car,
16 where did you go from there? Or what happened next?

17 A We went -- sorry. I'm cold. We -- after we left
18 the gas station, I don't know exactly -- like I didn't
19 know where we was going, so I was just riding. But we
20 went to the woods.

21 Q Okay. And while y'all were riding around this whole
22 time, what are y'all talking about?

23 A Nothing really. I mean, if we was, I don't really
24 recall the conversation.

25 Q Okay. So when y'all go to the woods -- why were

1 y'all going back to the woods? Did you know?

2 A No. Oh, I did ask. I didn't know, but I did ask.

3 Q Okay. And when you asked why y'all were going back
4 to the woods, did Uncle Marty respond to you?

5 A Yeah. He just said we was just going to -- so, I
6 mean, I'm underage, so of course he don't want nobody to
7 see that we're smoking together. So he said we was going
8 back there to smoke so nobody would see.

9 Q At that time, how old were you?

10 A 13.

11 Q 13?

12 A (Nods head affirmatively.)

13 Q Okay. So when y'all -- and do you know what -- you
14 said you didn't really know where y'all were at that
15 point. Do you know where you were in the woods at that
16 point or where the woods were?

17 A No. I knew -- I knew the road of the -- where we
18 were. I just didn't know where we were.

19 Q What was the road?

20 A Koon Store Road.

21 Q Koon Store Road?

22 A Uh-huh.

23 Q Okay. So when y'all get back in the woods, about
24 how far back in the woods do you go; do you know?

25 A No. But we went far, like real, real back there.

1 Q Okay. And how did y'all get back in the woods? I
2 know you were driving, but was there a road or was it
3 just kind of like terrain? Like how did y'all drive back
4 there?

5 A No. We just drove back there. But like I -- I
6 don't know how to explain. We just drove back there,
7 though. It wasn't like a regular road, like a pavement
8 road. It wasn't a pavement road.

9 Q Okay. So when y'all get back in the woods, tell the
10 jury what happens next.

11 A Got back there, and I started -- I was rolling up.
12 And I had ---

13 Q When you say "rolling up," what does that mean?

14 A Putting weed inside a cigar and like rolling it so
15 we can smoke.

16 Q Okay.

17 A I was rolling up and he was telling me to drink.
18 And I asked him was he drinking. And he wasn't drinking.
19 He said he only had a beer and he was only drinking beer.
20 And so that happened. And I finished rolling -- rolling
21 up. And then I asked him was he smoking. And he said
22 no. He wasn't smoking either.

23 So I end up lighting -- lighting a blunt. The blunt
24 is the cigar thingy. I end up lighting the blunt. And
25 so I smoke -- I don't think I smoked all of it because I

1 wasn't -- yeah. I don't think I smoked all of it.

2 So after that, he cut the car off and he put the
3 keys in like the bottom section. Like if you've got --
4 if you've got your car door and you've got your handlebar
5 right here, like how you open the car -- you go all the
6 way down to the little middle part on your side part
7 that's right here, he put the keys in there.

8 And he was telling me to give him a hug. Like he
9 kept telling me to come over. Like we were still sitting
10 regular, like in the car passenger, you know. We was
11 just sitting like that. But he kept telling me to give
12 him a hug. Like he was like come give me a hug. Come
13 give me a hug. He was telling me to come from my side to
14 his side to give him a hug. And I was like no. Hu-uh.
15 I can't give you no hug. Like hu-uh. I'm not doing it.

16 And then so eventually it was just like we had been
17 sitting there and he kept saying give me a hug. He kept
18 like -- I don't know.

19 So I -- so then he pulled out his private parts.

20 Q Okay, and when you say "his private parts" ---

21 A Yes.

22 Q -- what is that?

23 A His dick.

24 Q Okay. And when he pulled it out, where were you and
25 where was he?

1 A He was still in his seat. I was still in my seat.

2 We were still in our seats.

3 Q And when we pulled it out, did he say anything?

4 A No. He just kept telling me to give him a hug.

5 Q Okay.

6 A He told me to touch it.

7 Q Okay. And did you touch it?

8 A No.

9 Q And you said he kept telling you to give him a hug?

10 A Uh-huh.

11 Q Okay. And did you give him a hug?

12 A No.

13 Q And what did he do when you wouldn't give him a hug?

14 A He just like -- he was just like -- well, I don't
15 know. Like I can't -- I can't tell you exactly what he
16 said because I don't remember exactly what he said, but
17 -- I don't know. He just like...

18 Q What was he doing with his private part when he
19 pulled it out?

20 A He -- he wasn't like -- he was just stroking. He
21 was just stroking it.

22 Q Okay. And where was he looking while he was
23 stroking it?

24 A At me.

25 Q At you? And what were you doing?

1 A Nothing. I was just sitting there.

2 Q And at this point while he is looking at you
3 stroking his penis, what was going through your head?

4 A Nothing. I was praying. I was praying to God.
5 Nothing was going through my head.

6 Q What were you praying to God for?

7 A That I make it back home.

8 Q Now, at some point after you told him you wouldn't
9 give him a hug and he had been stroking his penis, what
10 happened next?

11 A I don't remember how he got over there or like what
12 was said before or after he got over there, but ---

13 Q You said "got over there." Where is "there"?

14 A My side. He came to my -- my side of the car. And
15 he was like pull your pants down or whatever. So I did.

16 Q And why did you pull your pants down when he told
17 you to?

18 A Because like -- I don't know. It's just like I
19 watch SVU a lot, and I'll be scared because like -- I
20 don't know. I already wasn't supposed to be outside.
21 Like I was already doing stuff I wasn't supposed to be
22 doing. Like -- and I think just the thought of like
23 dying in the woods it's just like I don't know. I just
24 wasn't ready. I wasn't ready yet. I was -- I was -- I
25 wasn't ready.

1 Q And when you pulled your pants down, was it just
2 your pants or was it your underwear, too?

3 A I had on shorts too.

4 Q Okay.

5 A So I had on pants, shorts and underwear. So I
6 pulled my pants and my shorts down.

7 Q And where did you pull them down to; do you
8 remember? Did you take them completely off?

9 A No. I pulled them down probably to my knees.

10 Q And at this point, I mean, obviously, you're 17 now
11 but you were 13, about how big were you at that point?
12 How tall are you?

13 A Five -- 5'1", 5'2".

14 Q And how tall are you now?

15 A 5'4".

16 Q So you're 5'1" or 5'2". How big was Uncle Marty
17 compared to you like heightwise?

18 A Uncle Marty was like 6'. I don't know. Uncle
19 Marty's tall now. So he was probably 6'.

20 Q Okay. And so when he comes over to your side on the
21 car, where is he -- where is he compared to you? Like is
22 he beside you on the seat? next to the ---

23 A No. He's behind me.

24 Q He's behind you?

25 A Uh-huh.

1 Q Okay. And so are you sitting facing him? Or ---

2 A No. I'm turned around.

3 Q And how did you get turned around?

4 A I turned around.

5 Q Okay. And why did you turn around?

6 A Because I asked him was we going to leave and he
7 told me no. He put the keys in the bottom of the thing.
8 It was just like I was stuck. I mean, I could have got
9 out of the car. I could have fought. But he's 6'1", 6'.
10 It's not -- I'm just not taking my chances.

11 Q Okay. And so he's behind you, your pants are to
12 your -- your shorts, pants are to your knees. What
13 happens next?

14 A I asked him not to do it.

15 Q Not to do what?

16 A Nothing. I asked him not to do nothing. I asked
17 him don't touch me. Like I was asking him is there any
18 way like, you know, we don't got to do this. And he
19 would -- he just like just -- he kept saying -- oh,
20 that's another thing. He kept saying just give me one
21 minute. He's like just give me one minute, just give me
22 one minute. All I need is one minute. And I was like
23 what you need one minute to do? He was like just give me
24 -- he just kept saying just give me one minute. He
25 didn't tell me what he was going to do or nothing. He

1 just was like just give me one minute.

2 Q Okay. And after he said "just give me one minute,"
3 what happened next?

4 A I gave him that minute.

5 Q And when you say you gave him that minute, what does
6 that mean?

7 A Like my pants was already down. And so he -- the
8 only reason he wasn't doing it -- like the only reason he
9 didn't penetrate me is because I wasn't like -- let me
10 not say that either. Hold on.

11 Q Let me ask you this. Where did he put his penis?

12 A In my butt.

13 Q Okay. Did he ever put it in your vagina?

14 A No.

15 Q And do you know why he didn't put it in your vagina?

16 A Yeah.

17 Q Why is that?

18 A I know now. I didn't know then.

19 MR. HAYES: Objection, Judge.

20 MS. BROWDER: I haven't asked a question yet.

21 BY MS. BROWDER:

22 Q So did he put it in vaginally?

23 A No.

24 Q Was anything going on with you woman-wise at that
25 time?

1 A No.

2 Q Okay.

3 A What you mean? Wait. What you mean? Like did I
4 have my cycle?

5 Q Yeah.

6 A Yeah.

7 Q Okay. So what -- sorry. Just tell me what that
8 means.

9 A My cycle?

10 Q Yeah.

11 A I was getting periods every month regularly.

12 Q So you were on your period?

13 A Uh-huh. Was I like at the time?

14 Q Yes.

15 A No.

16 Q Okay. Had you just finished your period or was it
17 about to start; do you know?

18 A I don't remember. I don't recall.

19 Q Okay. And you said he put it in your butt. He put
20 what in your butt?

21 A His private part.

22 Q And when he put it in your butt, you say "in," so it
23 actually penetrated it?

24 A Uh-huh.

25 Q You've got to say "yes" or "no."

1 A Yes.

2 Q Okay. When he put it in there, how did that feel?

3 A It was -- I don't know. It was -- it was -- I don't
4 know. It hurt. I don't know. It hurt.

5 Q It hurt?

6 A Uh-huh.

7 Q When you said you gave him that minute, can you tell
8 the jury a little bit how you know it was one minute?

9 A Yeah. Because I asked -- I don't -- I don't
10 remember if I asked or if he told me, but his phone was
11 on the middle thing.

12 Q The console?

13 A Yeah. That's the word. His phone was on the middle
14 console, and so he was like just give me one minute. And
15 I was like, bro, just come on, just one minute. And so
16 his phone -- I had turned his phone on, and it was 5:20
17 and -- I think 5:20. If I'm not mistaken, it was 5:20 in
18 the morning. And then -- and then he stuck it in. And
19 then I looked at the phone and it was 5:21. And I was
20 like, come on, bro, get off of me, get off of me, get off
21 of me.

22 Q So at 5:21 after it had been a minute, you told him
23 to get off of you?

24 A Uh-huh.

25 Q "Yes" or "no."

1 A Yes.

2 Q It's okay. I know.

3 Did he get off of you at that point?

4 A No.

5 Q What did he do?

6 A He just kept doing what he was doing in the
7 beginning.

8 Q Okay. Do you know about how long it lasted?

9 A Not long.

10 Q And how did it stop?

11 A I don't remember.

12 Q Okay. At some point, did he ejaculate? Do you know
13 if he ejaculated?

14 A Yeah. Because he didn't -- like he didn't know or
15 nothing while he was on me or nothing. After I was like
16 get off me, he finally got off me. He sat down in his
17 seat and he jerked off until he let it end.

18 Q Okay. And where did he ejaculate?

19 A What do you mean? Like in the car? He was in the
20 car in the driver's seat.

21 Q Okay. And I guess I'm asking did it go on the
22 steering wheel? Did it go on him? I mean ---

23 A No. It was on him.

24 Q It was on him?

25 A Uh-huh.

1 Q Okay. Once he ejaculated on himself, what did he do
2 next?

3 A Grabbed a paper towel from the backseat.

4 Q Okay. Cleaned himself up?

5 A Uh-huh.

6 Q And what did you do?

7 A Nothing. I just sat there.

8 Q Now, after this happened, did y'all stay back in the
9 woods?

10 A No. We left. We -- okay. So we left from one
11 place. And we was in the car, and I think I said
12 something that might have like made it seem like I was
13 going to tell or something like that. And he started
14 yelling at me, and he was cussing at me. He was like --
15 like his -- he was raising his voice. And like I don't
16 know. He was hitting the -- it was -- like I don't know.
17 But he was doing that. And so we went to another place.
18 Like -- like I guess he felt like I was going to tell,
19 and so we went somewhere else, just quick like somewhere
20 quick to just ---

21 Q And when you say "somewhere else," is that like a
22 gas station? Or is it ---

23 A No. Just some more woods.

24 Q Okay. Somewhere else in the woods?

25 A Yes.

1 Q Okay.

2 A Somewhere else in the woods.

3 So we went there. And I can't remember if we was
4 talking. I think we was talking. And I was telling him
5 like I'm not going to tell, I'm not going to tell, I'm
6 not going to tell nobody or something like that. And
7 then eventually, we left from the woods and he took me
8 home.

9 When he -- he took me home, I just wasn't -- like he
10 didn't drop me off at my house. Like we didn't go inside
11 my apartment complex or nothing. He dropped me off at
12 the apartment complexes right before you get to my house
13 or my apartment complexes.

14 Q Okay. And where did you -- did he say anything when
15 he dropped you off?

16 A Yeah. He was like, I think -- don't quote me on
17 this, but he either said we was going to do it again or
18 something. Something about next time. I don't know.
19 But he said something about next time like it was -- like
20 it was a next time.

21 Q Okay. And what did you say in response to that?

22 A Nothing.

23 Q So I guess he drives off. Where do you go?

24 A Home.

25 Q And when you get home, do you go inside?

1 A No. Not at first.

2 Q Why not?

3 A I knocked on the door and my mom (inaudible).

4 Q I'm sorry. Can you say that again?

5 A I knocked on the door. I didn't get no answer.

6 Q Okay. And was the door locked?

7 A Yes.

8 Q So what did you do?

9 A I sat down on the ground and I went to sleep.

10 Q At some point, did you go in the house?

11 A Yeah. I got back up at like seven and knocked on
12 the door again. And I went in the house.

13 Q And when you went in the house, who was living in
14 the house with you at that time?

15 A It was me, my mom, my little brother and my little
16 sister.

17 Q And how old were your little brother and little
18 sister if you were 13?

19 A My little sister was 11 or 12, and my little brother
20 was 3.

21 Q And when you went in the house, did you tell anybody
22 at that point what happened to you?

23 A No.

24 Q And why not?

25 A I think because I just -- I didn't want -- I wasn't

1 -- I didn't want to put Uncle Marty in jail. Like I knew
2 that if this situation was to happen or if like I tell
3 anybody about it, it would break up a lot of -- it would
4 break up a lot of stuff like because his niece is my
5 mom's best friend, but my mom don't got -- like she don't
6 talk to her siblings. So that was basically her sibling.
7 So everything -- like I had somebody to talk to. I could
8 go to my auntie. I don't know. It's just -- I just --
9 and then I've been to jail before, and I've just -- I
10 hate to see people in jail. Like it just break -- it
11 don't break my heart because some people deserve it, but
12 like that's not the place for anybody.

13 Q And just because you did mention you've been in
14 jail, have you been convicted before of assault and
15 battery second degree?

16 A Yes.

17 Q And so when you got home, you didn't tell because
18 you didn't want to break up the family and your mom's
19 best friend. Where did you go?

20 A Upstairs to my bathroom.

21 Q Okay. And what did you do when you got in the
22 bathroom?

23 A Took a bath.

24 Q And why did you take a bath?

25 A Because I just -- I don't know. I just felt

1 disgusting. Like I just wanted to wipe the whole day
2 away, wash the whole day away.

3 Q Now, when you got out of the bath, where did you go
4 then?

5 A To my room.

6 Q Okay. At some point, I guess, did this come out
7 about what happened with Uncle Marty?

8 A Yes.

9 Q Did you say "yes"?

10 A Yes.

11 Q Okay. How did it come out? And when was this? Is
12 it the same day or is it like weeks down the road?

13 A This is the same -- no, this is the same day.

14 Q Same day. Okay.

15 A I went downstairs and mama was yelling at me. She
16 was telling me like I don't need to leave the house no
17 more, I'm on punishment and stuff like that. And so she
18 called my uncle because my mom didn't really get on with
19 my uncle then. So she called my uncle, and my uncle came
20 over there. And he was like something, something,
21 something, you do a lot of stuff, karma going to come
22 back on you and stuff like that.

23 And so I was like what's karma? Jail?

24 And he was like, no, it don't got to just be jail.

25 And so I was like so can karma be rape?

1 And he was like yeah. But why are you asking that?
2 And so I was like nothing. I'm not asking for no reason.
3 I just wanted to know.

4 And then because I guess I asked the question, then
5 they called my daddy and they called everybody. They
6 started calling people to the house.

7 So they started asking me questions, like trying to
8 get me to tell about what happened with Uncle Marty. And
9 I was just telling them like there ain't nothing
10 happened. I was just asking a question. And then
11 eventually, my mama was like, well, if you don't tell us,
12 I'm just going to call the police on you and they'll get
13 you to tell them. And I didn't want that to happen. So
14 I was just like I might as well just tell them, and I
15 told.

16 I didn't tell them -- well, yeah, I did tell them.
17 I just told them -- at first all I told them was that I
18 was touched. I wasn't going to tell them by who or
19 nothing like that. But then it was just like they kept
20 asking who because they wanted to get the man that
21 touched me, so it was just like I had to tell them.

22 Q And did you make up that somebody touched you or
23 raped you just to get out of trouble?

24 A No. I still got in trouble. I was still in
25 trouble.

1 Q But did you make it up to get out of trouble?

2 A No.

3 Q And after you told what happened, do you remember
4 meeting with a -- going to a place and talking to a lady
5 about what happened and telling her what happened?

6 A (No verbal answer.)

7 Q Sorry. You've got to say "yes" or ---

8 A Yes.

9 Q Okay. I know. I know it's easy to fall back into
10 "uh-huh."

11 A I'm sorry. Yes.

12 Q Okay. And did you tell her what happened?

13 A Yes.

14 Q And then, I guess, at some point with law
15 enforcement, do you remember talking to the investigator
16 on the case?

17 A Yes.

18 Q And with the investigator, what did you do with the
19 investigator?

20 A Rode around to see where I was at -- where I was at.

21 Q Okay. And could you remember exactly where you were
22 at?

23 A (Shakes head negatively) No. I couldn't remember
24 exactly where, but I knew the vicinity of where I was at.

25 Q Okay. And who else went with y'all when you did

1 that?

2 A My dad.

3 Q And during the time that you were with the
4 investigator and your dad, you said you weren't able to
5 really tell where it was. Did you talk a lot during that
6 ride? Did you tell the investigator really where to go
7 or anything like that?

8 A I don't think I talked at all, really.

9 Q Okay. And why is that?

10 A I don't know. I still wasn't ready like for Uncle
11 Marty -- for Marty to go to jail still, but I still
12 didn't -- I still didn't want for him to go to jail.

13 Q Okay. And why was that?

14 A Because I love him. Like he's my uncle. And I love
15 his nieces and his nephews and his kids. Like I don't
16 know.

17 MS. BROWDER: Beg the Court's indulgence, Your
18 Honor.

19 BY MS. BROWDER:

20 Q All right. I'm going to -- all right. I'm going to
21 show you -- I'm going to show you first what's marked as
22 State's Exhibit 2, okay? You need a second?

23 A No.

24 Q State's Exhibit 2, okay? Do you recognize the
25 people in that photograph?

1 A Yes.

2 Q Who are they?

3 A Me and Marty.

4 Q And is that from that night?

5 A Yes.

6 Q Does that fairly and accurately represent you and
7 Uncle Marty that night?

8 A Yes.

9 Q Okay. I'm going to show you what's marked as
10 State's Exhibit 3. Do you recognize that?

11 A Yes.

12 Q And who do you see in that photograph?

13 A Me and uncle Marty.

14 Q Does that fairly and accurately represent the way
15 y'all were that night?

16 A Uh-huh. Yes.

17 Q State's Exhibit 4, do you recognize that photograph?

18 A Yes.

19 Q And who is in that photograph?

20 A Me and Uncle Marty.

21 Q Okay. And does that fairly and accurately represent
22 the way you looked that night?

23 A Yes.

24 Q I'm going to show you what's been marked as State's
25 Exhibit 6 and 7. Do you recognize those photographs?

1 A Yes.

2 Q And who is in those photographs?

3 A Me and Uncle Marty.

4 Q And do those fairly and accurately represent the way
5 y'all looked that night?

6 A Yes.

7 MS. BROWDER: At this time, Your Honor, we'd like to
8 enter State's Exhibits 2, 3, 4, 6 and 7.

9 THE COURT: Any objection?

10 MR. HAYES: Without objection.

11 THE COURT: All right. Without objection, so
12 entered.

13 (WHEREUPON, State's Exhibit Numbers 2, 3, 4, 6 and 7 were
14 admitted into evidence.)

15 MS. BROWDER: Publish to the jury, Your Honor?

16 THE COURT: Yes, ma'am.

17 BY MS. BROWDER:

18 Q State's Exhibit 2, I'm going to ask you to step down
19 real quick.

20 A Me?

21 Q Yeah. We're going to pull it up right here.

22 Okay. So this is State's Exhibit 2. Who is in this
23 photograph?

24 A Me.

25 Q Okay. Where are you? Can you point to it on the

1 photograph?

2 A (Indicating.)

3 Q Okay. And who is in the driver's seat?

4 A Uncle Marty.

5 Q Okay. And what vehicle are y'all in?

6 A The gold Tahoe.

7 Q And do you know where this picture was taken? It
8 might be easier if you look at the bigger one up there.

9 A No, it's not.

10 Q Okay. Or if you want to look at this one.

11 A No. I don't know.

12 Q That's you and him in the car?

13 A Uh-huh.

14 Q Okay. I'm going to show you State's Exhibit 4.

15 Okay. Do you recognize this photograph?

16 A Yes.

17 Q Okay. And where are you in that photograph?

18 A In the passenger's seat.

19 Q And what are you doing?

20 A Drinking.

21 Q And what are you drinking out of?

22 A A red Solo cup.

23 Q All right. So you're drinking out of a red Solo
24 cup?

25 A Yes.

1 Q And what is Uncle Marty doing in this photograph?

2 A Getting money.

3 Q You say getting money?

4 A Yes, ma'am.

5 Q So is this at the ATM?

6 A Yes, ma'am.

7 Q All right. State's Exhibit 6. All right. This
8 photograph, who is in this photograph?

9 A Me and uncle Marty.

10 Q Okay. And where was this taken?

11 A At the store.

12 Q At the store? Okay. And what were y'all doing at
13 the store?

14 A Getting cigars.

15 Q Okay. And this is inside the store?

16 A Yes.

17 Q Okay. And then State's Exhibit 7. Okay. Who is in
18 that photograph?

19 A Me and Uncle Marty.

20 Q And what are y'all doing in this photograph?

21 A About to get out -- I mean about to get in the car.

22 Q So this is leaving the store?

23 A Yeah.

24 Q Okay. Now, you were 13 years old at the time?

25 A Uh-huh.

1 Q Yes?

2 A Yes, yes, yes. I'm sorry.

3 Q That's okay.

4 The man that put his penis in your butt from 5:20 to
5 5:21, do you see him in the courtroom today?

6 A Yes.

7 Q Can you point him out for me and tell me what he's
8 wearing?

9 A He's right there. He got on a black suit, a white
10 shirt and a tie.

11 MS. BROWDER: Let the record reflect she's
12 identified the defendant.

13 THE COURT: Yes, ma'am.

14 BY MS. BROWDER:

15 Q And so you said he penetrated your butt with his
16 penis?

17 A Yes, ma'am.

18 Q And did he give you alcohol that night?

19 A Yes, ma'am.

20 Q Were you 21 yet?

21 A No.

22 Q Did you -- did he give you weed that night to smoke?

23 A Yes, ma'am.

24 Q Did you smoke it?

25 A Yes, ma'am.

1 Q And that same man, is that the same man you pointed
2 out earlier in the courtroom?

3 A Yes, ma'am.

4 Q And then the man who stroked his penis and
5 eventually ejaculated all over himself, is that the same
6 man that you identified in the courtroom?

7 A Yes, ma'am.

8 MS. BROWDER: At this time, I have no further
9 questions, Your Honor.

10 Please answer any questions that Mr. Hayes has for
11 you, okay?

12 THE COURT: All right. Mr. Hayes, cross-examine.

13 MR. HAYES: So, Judge, it may be a minute on the
14 cross-examination. I don't know if it's appropriate to
15 take a short break before that or do you want to push
16 forward?

17 THE COURT: Why don't y'all come up and we'll talk
18 about scheduling issues real quick.

19 (WHEREUPON, a bench conference was held off the record.)

20 THE COURT: All right. Ladies and gentlemen, we all
21 recognize it's been a long day for y'all, been back and
22 forth all over the place and it's getting a little bit
23 late. Rather than start and start getting past five
24 o'clock, we're going to go ahead and stop for the day,
25 and we'll begin tomorrow morning at 9:30. The bailiffs

1 will instruct you what time to be here and where to be.

2 Again, we greatly appreciate your attention. I will
3 caution you, again, before we break, please do not
4 discuss this case with anybody, each other or your
5 family, friends. They'll probably ask you when you get
6 home about what it's about. Just tell them that some
7 jerk judge said that you're not supposed to talk about
8 anything until y'all are finished and blame it on me.

9 Also, please don't look -- use social media or
10 anything like that to try to find out any information
11 about this or any publicity.

12 And lastly and very importantly, please don't
13 consider or make any judgments about any aspect of the
14 case until all of the evidence is in, I've charged you on
15 the law and discharged you to begin your deliberations.

16 So with that, thank you, again, very much and have a
17 nice evening. We'll see you first thing in the morning.

18 (WHEREUPON, the jury exits the courtroom at 4:32 PM.)

19 THE COURT: All right. The jury is out of the
20 courtroom.

21 We just had a sidebar where we were talking about
22 some scheduling issues, but go ahead and let them go
23 today. We'll start first thing in the morning at 9:30.

24 Is there anything from the State before we adjourn
25 for the day?

1 MS. BROWDER: No, sir.

2 THE COURT: Anything from the defense?

3 MR. HAYES: Judge, we would respectfully request
4 that there be some kind of cautionary instruction to the
5 witness not to discuss her testimony with the prosecutors
6 or any of the investigators or really anybody, for that
7 matter, as she's still under oath.

8 I understand it's a little unusual, but I do
9 appreciate the Court's understanding that it's getting
10 late, and depending on how this cross goes, there could
11 be some very technical components that are used in the
12 cross that could be a little bit time-consuming. They
13 could get restless.

14 THE COURT: All right. Complainant, you understand
15 we're just taking a break so you'll still be under oath
16 when you get here tomorrow. You're doing a great job
17 with the microphone. I know it's difficult with the
18 "yes" and nodding, and all of us have the same issue.
19 But if you would, please don't discuss your testimony
20 with anybody tonight. Tomorrow we'll start at 9:30, and
21 once you're finished, you'll be free to speak at that
22 time, okay?

23 THE WITNESS: Okay.

24 THE COURT: All right. Thank you, ma'am. You may
25 step down and be excused.

1 Anything further?

2 MS. BROWDER: No, sir.

3 MR. HAYES: I do. Just want to alert the Court, the
4 idea of the preliminary hearing, my assistant tells me
5 that they have maybe located what they believe could be a
6 copy of the recording.

7 THE COURT: Right.

8 MR. HAYES: They are saying it's not going to be
9 available to me today, that it may be available in the
10 morning.

11 THE COURT: Right.

12 MR. HAYES: Unfortunately, my assistant doesn't come
13 in until noon anymore, Judge. She used to be full time.
14 She's getting her own cleaning business going so she
15 cleans doctors' offices at night so she comes in and
16 works from twelve to four.

17 THE COURT: Right.

18 MR. HAYES: I don't know how I'm going to facilitate
19 getting it down here, but maybe we can find a way. Maybe
20 the good deputies of Region 5 will help me out.

21 THE COURT: Are they going to let you know when they
22 have it ready?

23 MR. HAYES: I've asked my -- I've asked them. I've
24 asked my assistant. She's left. But I'll call her and
25 find out.

1 THE COURT: But once you find out that it's ready,
2 we'll figure out if there's a way that we can help do
3 that so that you won't have to drive over there to get
4 that done if we're in the middle of proceedings.

5 MR. HAYES: We said 9:30; is that right?

6 THE COURT: I think, yes. 9:30 is when we'll start.

7 But, again, if you get a -- if they say we've got it
8 right here to pick up, I'll certainly hear from you about
9 how you want to try to get that. I understand that your
10 client wants to see that and so we'll make every effort
11 to get that.

12 MR. HAYES: I appreciate that.

13 THE COURT: Sure thing.

14 MR. HAYES: Thank you, Judge.

15 THE COURT: All right. Anything further?

16 MS. BROWDER: No, sir.

17 THE COURT: From the State -- I mean from the
18 defense?

19 MR. HAYES: No, sir.

20 THE COURT: All right. Okay. We'll stand adjourned
21 until tomorrow at 9:30.

22 (WHEREUPON, proceedings recessed at 4:35 PM.)
23
24
25

1 Wednesday, August 27, 2025

2 (WHEREUPON, proceedings reconvened at 9:55 AM.)

3 THE COURT: All right. Let's go ahead and get
4 ready. Is there anything from the State before we bring
5 the jury in?

6 MS. BROWDER: No, sir. I don't know if you want
7 **Complainant** to get back on the stand since that's where she
8 was when she left.

9 THE COURT: Sure. We can go ahead and do that.

10 Mr. Hayes, is there anything from the defense before
11 we get the jury in?

12 MR. HAYES: No, sir. Nothing from the defense.

13 THE COURT: All right. Madam Bailiff, if you'll get
14 the jury, please.

15 (WHEREUPON, the jury entered the courtroom at 9:56 AM.)

16 THE COURT: Ladies and gentlemen, thank you very
17 much and thank you for your patience. We had some
18 traffic issues this morning, and we appreciate your
19 patience.

20 At this time, **Complainant**, you are still under oath,
21 ma'am.

22 And, Mr. Hayes, your cross-examination, sir.

23 MR. HAYES: May it please the Court.

24 THE COURT: Yes, sir.

25 ///

CROSS EXAMINATION

BY MR. HAYES:

Q Good morning, Complainant .

A Good morning.

Q I think you testified you are 17 years old now,
right?

A Yes, sir.

Q And you're in the 11th grade?

A Uh-huh.

Q Back in December of 2021, you were 13?

A Yes.

Q And what grade would you have been in then?

A 8th grade, I think.

Q 8th grade?

A Yeah. 8th grade.

Q Okay. And I think that under your testimony on
direct, you had said that on the day you had come home
from school, and then about five or six you had gone over
to Autumn's; is that right?

A Uh-huh.

Q Is that ---

A Yes.

Q And I'm sorry. I'm not trying to give you a hard
time.

A No. I know. I'm sorry. Yes.

1 Q Just understand, I'm not trying to give you a hard
2 time. I just want a clear answer for the record.

3 A Yes.

4 Q You had been to school and then you had gone over to
5 Autumn's, right?

6 A Yes.

7 Q All right. And you were going to school at Olympia;
8 is that right?

9 A Yes.

10 Q And you were living with your mother and your two
11 younger siblings.

12 A Yes.

13 Q Okay. And at some point in time while you're
14 hanging out with A [REDACTED], y'all are having fun doing
15 Tik-Toks and things outside, I guess, making videos,
16 right?

17 A Yes.

18 Q And your mother had started trying to communicate
19 with you through your phone.

20 A Yes.

21 Q At some point, your phone had died.

22 A Yes.

23 Q Right? And so she actually was contacting A [REDACTED]
24 through A's [REDACTED] phone.

25 A No.

1 Q You don't recall that?

2 A No. She wasn't contact -- I'm telling you she
3 was...

4 Q She wasn't?

5 A No.

6 Q Okay. Complainant you've given a number of statements
7 in this case. I just want to run through them with you
8 to see if you recall them, okay?

9 A Okay.

10 Q But -- so the alleged occurrence that we're here to
11 talk about happened we can agree back on December 11th of
12 2021, right?

13 A Yes.

14 Q Okay. And so that day, later in the afternoon on
15 that particular day, you'd agree with me that your family
16 called law enforcement, right?

17 A Yes.

18 Q And law enforcement came to your house.

19 A Yes.

20 Q Right? And you talked to law enforcement that
21 afternoon, right?

22 A Yes.

23 Q You talked to Sergeant Torres of the Richland County
24 Sheriff's Office.

25 A Yes? I don't know.

1 Q You can't say it was Sergeant Torres, but you talked
2 to a ---

3 A Yeah. But I know I talked to -- yeah.

4 Q --- police officer, right?

5 A Uh-huh. Yes.

6 Q Okay. And you recall sitting in a bedroom or
7 sitting on a bed speaking to the officer on that
8 afternoon?

9 A Yes.

10 Q Okay. And so that was really the first time you had
11 talked to a law enforcement officer or some official
12 outside of your family about what occurred, right?

13 A I don't remember if she's the first, but I know that
14 she was one of the ones that came to the house.

15 Q Okay. So you had the responding officer and you
16 spoke to her?

17 A Uh-huh. Yes.

18 Q Okay. And you understand that that conversation was
19 captured on what's called a body cam.

20 A Yes.

21 Q Okay. All right. So you'd agree with me then after
22 you speak to the officer, you go to the hospital, right?

23 A Yes.

24 Q Okay. And you talked to some people at the hospital
25 about what occurred, right?

1 A Yes.

2 Q Okay. So that would be a second statement in this
3 particular case, right?

4 A Yes.

5 Q Okay.

6 A Well, no.

7 Q No?

8 A No.

9 Q Okay.

10 A Because I didn't give a statement at -- well, like
11 when me and the police officer was talking, the whole
12 point of me leaving my house was to go give a statement.
13 Like I was trying to tell her about it, but she wouldn't
14 let me talk. That was the whole point of me going.

15 So, what, is the body cam a statement?

16 Q Well, I mean, I'm just saying you did talk to the
17 law enforcement officer. You're saying now that the law
18 enforcement officer didn't allow you to talk?

19 A No. We spoke about it. We just couldn't go into
20 deep detail because she wanted to like -- she wanted to
21 make a report, I guess. Like she got my name, my --
22 probably what school I went to. Like she -- we talked.
23 She had to talk to me.

24 MR. HAYES: And beg the Court's indulgence, Judge,
25 but I do -- would like to take some notes, I guess, as

1 she's doing it. So if I'm looking down, that's what I'm
2 doing. I'm just telling the Court. Trying to keep up
3 with the things I need to come back to.

4 BY MR. HAYES:

5 Q All right. So in this initial conversation you had
6 at your residence with this reporting officer, she really
7 didn't let you talk.

8 A Yeah. No. We -- yeah. Well, she didn't let me
9 talk about the situation. She let me talk. She just
10 didn't let me talk about the situation.

11 Q Okay. All right. So then you went to the hospital,
12 right?

13 A Yes.

14 Q And you talked to some nurses and some people there
15 that are trained to deal with allegations that involve
16 sexual assault, right?

17 A Yeah.

18 Q Okay. So you did talk to them.

19 A Yes.

20 Q Okay. And I'm not trying to get you to agree with
21 everything, but that would be a second statement then
22 that you talked to these health providers.

23 A Yes.

24 Q Okay. And then some time a couple days later -- so
25 I think you were discharged from the hospital that same

1 day, right? They let you go home.

2 A Yes.

3 Q And they didn't keep you overnight.

4 A No.

5 Q You were there just a few hours, right?

6 A Yes.

7 Q Okay. And then a few days later, an investigator
8 from the sheriff's office, Investigator Tanner, you
9 recognize him here this morning, right?

10 A Uh-huh. Yes.

11 Q Okay. He came over and met with you and your folks,
12 right?

13 A Yes.

14 Q Right. And he attempted to talk to you about what
15 had happened.

16 A Yes.

17 Q Right?

18 A Yes.

19 Q And you spoke to him.

20 A Yes.

21 Q Okay. And so that would be a third statement,
22 right?

23 A Yeah.

24 Q Okay. Then a few days after that you gave what's
25 called a forensic interview with Dr. Foster.

1 A Uh-huh.

2 Q Right?

3 A Yes.

4 Q Allison Foster, you know who that is.

5 A No. I know I gave a statement, a forensic
6 statement, though.

7 Q A forensic statement, right?

8 A Uh-huh.

9 Q Okay. You went to the Metropolitan Children's
10 Advocacy Center and you sat and talked to the folks down
11 there, right?

12 A Yes.

13 Q And you would have no reason to disagree that it was
14 Dr. Foster that you spoke to.

15 A Ask it again?

16 Q I mean, you would have no reason to disagree that it
17 was Dr. Foster.

18 A No.

19 Q I mean, you can't say that it was Dr. Foster. You
20 don't have a reason to think that it wasn't, right?

21 A No.

22 Q But you agree that you spoke to them.

23 A Yes.

24 Q Okay. So that would be a fourth statement, right?

25 A Yes.

1 Q Okay. And then sometimes even after that you met
2 with Solicitor Browder. And let me see who else was
3 there. You met with Solicitor Browder; Mr. Jackson, the
4 second chair in this case; Nikki Acerra who I don't
5 believe is in the courtroom at the moment; and Tammy
6 Richey from the solicitor's office. That's actually
7 fast-forward probably over two years later, twenty --
8 maybe 26 months later in February of 2024. Do you recall
9 having a meeting with them?

10 A Yes.

11 Q Okay. So that would be a fifth statement.

12 A Yes.

13 Q Okay. And then you testified yesterday.

14 A Yes.

15 Q So there's six statements that you provided in this
16 case. You would agree with that.

17 A Yes.

18 Q Okay. All right. So we're talking about kind of at
19 the beginning of this, you know, your phone had died,
20 right? Circle back to lay the foundation where I was.
21 Your phone had died and I had asked you your mother was
22 texting A [REDACTED] or calling A [REDACTED] to get you to come home.
23 You said A [REDACTED] never texted your mother -- or your
24 mother never texted A [REDACTED]. That's what you said, right?

25 A Yeah.

1 Q Okay. And you recall being at the Metropolitan
2 Children's Advocacy Center back on the 20th of December
3 and giving this interview with Ms. Foster, right?

4 A Uh-huh.

5 Q Is that a "yes"?

6 A Yes.

7 MR. HAYES: Okay. If I may, Judge.

8 THE COURT: Certainly.

9 MR. HAYES: It's going to be at 1:25 on the second
10 part of that video.

11 THE WITNESS: Can I move this?

12 MR. HAYES: I don't have that, ma'am.

13 THE COURT: What's that?

14 THE WITNESS: I was asking if he was going to put it
15 on the screen, could I turn it around.

16 THE COURT: Yes. If it's played on that screen,
17 we'll absolutely turn that around as we did yesterday.

18 And this is? What is this that you're working on?

19 MR. HAYES: Well, so, Judge, this would be
20 impeachment evidence. Okay. There's a video recording
21 of the interview itself. She's, I think, answered
22 inconsistently with what she had -- the statement she had
23 previously provided. I'm going to show her a copy of
24 that, ask her.

25 THE COURT: Okay. Which statement is this?

1 MR. HAYES: This is from the forensic interview.
2 And I sort of laid that foundation, but I'll continue to
3 do that to say if you recognize yourself.

4 THE COURT: No, no. I just didn't know what it was.
5 I just wanted to ask if it was an exhibit or not.

6 MR. HAYES: No, sir. It's not an exhibit.

7 THE COURT: Okay.

8 MR. HAYES: This is just strictly for impeachment
9 purposes.

10 THE COURT: Yes, sir.

11 BY MR. HAYES:

12 Q We're going to do our best to get through this
13 together because it's going to be a little choppy. Would
14 it be okay if I stand up here just next to you for a
15 moment?

16 A Uh-huh.

17 Q Okay. Because my computer's not very good.

18 All right. So what I'm going to ask you to do is to
19 listen to yourself to this part of it, okay? All right.

20 Complainant before we start this, do you recognize
21 yourself in that video?

22 A Yes.

23 Q All right. And does that appear to be Dr. Foster?

24 A Yes.

25 Q Okay. And you recall speaking to her about this

1 event, right?

2 A Yes.

3 Q Okay. So what I'm going to ask you to do, ma'am, is
4 we're going to start this and play it for a few minutes
5 at 1:25, okay?

6 (WHEREUPON, a video recording was played for the witness
7 only.)

8 MR. HAYES: Tell me when you've heard enough.

9 (Pause in proceedings.)

10 BY MR. HAYES:

11 Q Okay? Have you heard enough?

12 A Uh-huh.

13 Q All right. So, Complainant, I'll ask you again, did

14 A -- did your mother contact A through her
15 phone because yours had died?

16 A This say -- in the interview it says that -- I said
17 that my mom texted A. And I didn't know about it
18 until we got in the house. That's what I just said on
19 there. I don't know. It's been three years. I mean,
20 like ---

21 Q Did she say she's got to come home now, right?

22 A Did -- wait. Ask it again?

23 Q You know, your mom texted A and said Complainant
24 needs to come home now, right? That's what she did.

25 A Yeah. At eight, uh-huh.

1 Q So your mother did text A .

2 A I just said she texted A .

3 Q Right. But, I mean, before that point, you said
4 that she never did.

5 A I'm still going to tell you I'm still -- like now as
6 of today, I still will tell you she did not text A .
7 I don't -- like it's been three years. I try every day
8 to forget this day, so I don't know. Like I'm going to
9 go based on what I said here, but...

10 Q But you agree that's what you told the officials
11 that were investigating.

12 A Yeah. You've got it on video.

13 Q Right. Okay. And, I mean, Complainant , what did
14 you do to prepare for your testimony here?

15 A What did I do to prepare for my testimony?

16 Q Yes, ma'am.

17 A This is not our first time -- this is our first time
18 going to trial. I -- I -- like I didn't come here
19 prepared for testimony because it's not like I don't have
20 to -- I feel like -- it's been three years. I'm kind of
21 over the whole -- I'm kind of over this case, really.
22 Like it took y'all three years to deal with it. I was
23 13. I needed it to be dealt with then, not now. Like
24 three years, like it's -- I done healed and everything
25 from -- from this. And it's just I don't -- I didn't

1 feel like I had to come prepared for testimony. Like I
2 don't know.

3 Even when I'm talking to Anna sometimes, she can ask
4 me stuff and I'll be like I don't -- I don't really
5 remember. I don't know. I can't tell you. Like I don't
6 know. I try every day, every day, every day to forget
7 this thing. Like do you see my mama here? No. You
8 don't see my mama. I don't have nobody so why would I
9 like waste my energy on trying to -- no.

10 So if I do say something or be like I don't know or
11 maybe switch up my words or say it happened and it didn't
12 happen, I really -- to be honest with you, if I'm being
13 totally honest, I wanted Marty locked up a long time ago
14 when this first happened. I'm not saying I don't want
15 him prosecuted today. That's not what I'm saying. But
16 if it don't happen, I just -- I'm just -- I just want to
17 be at peace with myself, really. That's it. That's it.
18 Just to have the trial is enough for me because I didn't
19 get that being -- so this was another thing. I don't --
20 I don't know. I'm just I'm up here for I don't know. I
21 don't really ---

22 Q You're over it.

23 A Yeah. Not over it. Just I'm trying to heal from
24 it. Like it's been three years. Like I can see if,
25 okay, it happened December and y'all came back at -- and

1 I'm not saying it's got nothing to do with you because
2 you can't tell them when they take the case. But I'm
3 just saying like if it would have happened then, it just
4 would have been different. Like I would have fought it
5 and fought it and fought it. But I don't know. Like
6 I've been fighting for three years for y'all to even take
7 the case, and now that it's took, it's just like -- I
8 mean, yeah, we're here and finally, but I didn't do all
9 the work now.

10 Q So we're here, right? And I'm not trying to belabor
11 the point. So what I'm hearing you say, though, to the
12 answer to my original question about what you did to
13 prepare for your testimony, you really didn't do
14 anything. You're just relying on your memory from that
15 time.

16 A Yeah.

17 Q Right? You didn't review any of these things, I
18 guess, right?

19 A No.

20 Q Okay. And you'd agree, though, that most of the
21 statements you made were made within a short period of
22 time with each other immediately following the event, the
23 alleged event. Like you made these statements, you know,
24 to the law enforcement officer, then within a couple
25 hours, you're talking to the people in the hospital,

1 right?

2 A Like I left my house after they came and I talked to
3 them?

4 Q Right. That's right.

5 A Yeah.

6 Q Okay. And then just a couple days after that that
7 you talked to the law enforcement officer, Mr. Flynn,
8 when he came to your house. It was just a couple days
9 after that, right?

10 A Yeah.

11 Q And it was just a couple days after that that you
12 spoke to Ms. Foster in the video that's in front of you
13 now, right?

14 A Yeah.

15 Q Okay. And so many of these statements were made
16 within a very short period of time immediately following
17 the allegation that you've pled, right?

18 A That I?

19 Q That you made against Mr. Brown.

20 A Wait. Ask the question again?

21 Q Many of the statements, four of the six statements
22 that you've made, right, happened immediately like right
23 after the alleged event, the act that you say occurred.
24 You can agree with that.

25 A I think all of them did.

1 Q Okay. Well, you had this meeting later with Deputy
2 Solicitor Browder in February of 2024, right? That was
3 when that meeting was that we talked about.

4 A Okay.

5 Q And then you gave your testimony yesterday.

6 A All right.

7 Q So that's three years, right?

8 A Uh-huh.

9 Q Okay. All right. And I know that you don't recall
10 every detail just relying on your memory. You're
11 acknowledging on the forefront that you're likely to get
12 some things wrong, I guess, right? Is that what you're
13 trying to do?

14 A Uh-huh.

15 Q Right? You would understand -- you understand why
16 these details are important, though.

17 A Yeah.

18 Q All right. And so your position kind of is, too,
19 when the original officer came, she really didn't let you
20 talk to -- she didn't let you talk to her about the
21 situation. That was your testimony, right?

22 A Yeah.

23 MR. HAYES: Right. Okay. If I may approach again,
24 Judge? Thank you.

25 THE WITNESS: You need me to put the earphones on?

1 BY MR. HAYES:

2 Q Yes, ma'am. In just a moment. I want to put the
3 other one in, okay?

4 A Okay.

5 Q This one I'm not entirely sure about. It's going to
6 be close. It went away on me.

7 Okay. Before we get too far into this, okay, do you
8 recognize ---

9 A Yes.

10 Q --- the building in that video?

11 A Yes.

12 Q Does that appear like it's the residence where you
13 lived with your mother and your brother and sister?

14 A Uh-huh. Yes.

15 MR. HAYES: Okay. If I may, Judge, and I'm not
16 trying to be disrespectful to the Court if I don't ask
17 every time. It's just an oversight. I'm trying to get
18 through this. You understand. Yes, sir. Thank you.

19 BY MR. HAYES:

20 Q Okay. The video comes in. Does that appear to be
21 your mother?

22 A Uh-huh.

23 Q Okay. Does that appear to be you, Complainant,
24 sitting on the bed ---

25 A Yes.

1 Q --- as she comes in?

2 A Uh-huh. Yes.

3 Q Okay. If you'll listen, you listen in your right
4 ear, okay?

5 (WHEREUPON, a video recording was played for the witness
6 only.)

7 BY MR. HAYES:

8 Q Okay. We're going to do it this way. Let me do
9 this.

10 So, **Complainant**, will you agree with me that in this
11 interview, you didn't identify Mr. Brown?

12 A I didn't identify him?

13 Q Yeah. You didn't say it was Mr. Brown, did you?

14 A I don't know. I didn't hear that part. I heard her
15 asking questions and I answered the questions.

16 Q Right. But, I mean, you ---

17 A Like you said I never spoke about him in the video.

18 Q Well, I'm not saying you didn't speak about him.
19 But what I'm saying is you didn't say it was Mr. Brown
20 that did these things.

21 A To her.

22 Q To her.

23 A No.

24 Q Okay.

25 A I don't -- no.

1 Q All right. It looks like she talked to you for --
2 what's the timestamp on that, ma'am? Can you see it?
3 About 21 minutes. So she talked to you for at least 20
4 minutes, though, right? About 20 minutes, give or take?

5 A No, no.

6 Q No?

7 A No.

8 Q Okay. Well you'd agree with me that she entered the
9 room with about -- at about three minutes or so after she
10 got there, right?

11 A Yes.

12 Q Okay. And at this point in the video, we're at
13 21 minutes and some change. She's still sitting on the
14 bed speaking to you.

15 A What's the question?

16 Q My question is, at 21 minutes into this video, she's
17 still sitting on the bed talking to you, right?

18 A On your timestamp on your computer.

19 Q Well, on the video. So at the bottom, Complainant
20 I'm not trying to play fast, but see this -- see this
21 number? That's how far they are into this video, right?

22 A Right.

23 Q Okay. So it looks like she's in there with you for
24 at least 20 minutes. You can agree with that, right?

25 A Yeah.

1 Q Right around 20 minutes, give or take?

2 A Yes.

3 Q Yes.

4 So your testimony here this morning is that she
5 really didn't give you a chance to talk about it, but she
6 did talk to you for 20 minutes.

7 A Yes.

8 Q Okay. Thank you.

9 All right. And so, Complainant I think yesterday at
10 some point in time you said, well, so just going back to
11 sort of where we are, A was texting -- your mother
12 was texting A, right, and saying Complainant needs to
13 come home, right?

14 A Yes.

15 Q Right? And eventually, your mother actually goes
16 over to where you're at at A's house and talks to
17 you.

18 A Yes.

19 Q Okay. And says come on, give me your phone. Get in
20 the car. Come home.

21 A Yes.

22 Q Right? She knew where you were, right? And you --
23 basically, your position at that point was it wasn't your
24 fault that your phone had died, right?

25 A Yes.

1 Q And you hadn't done anything wrong.

2 A Yes.

3 Q Right? And you were really kind of mad because this
4 was like the first time you had been able to go hang out
5 with a friend without like some kind of chaperone,
6 without a parent being around, right?

7 A Is that really why I was mad?

8 Q Yeah.

9 A No.

10 Q That's not why you were mad?

11 A No. I was more mad because she was cussing at me in
12 front of my homegirl. You're cussing me out in front of
13 my homegirl and I can show you that my phone is dead.

14 Q Right. Okay. I don't have to listen this time.

15 A Okay.

16 Q That last one I was looking for something.

17 MR. HAYES: And I wish my technology was better,
18 Judge. I'm sorry. My mentor doesn't even have a
19 computer.

20 BY MR. HAYES:

21 Q All right. So I'm going to have you listen, okay,
22 about what you told the forensic -- you agree, again,
23 this is you in the forensic interview, right?

24 A Yes.

25 Q I'm going to have you listen to what you told the

1 forensic interviewer about why you were mad.

2 (WHEREUPON, a video recording was played for the witness
3 only.)

4 BY MR. HAYES:

5 Q Okay. Can you hear it?

6 A Yes.

7 Q Okay. All right. So I'll ask you again,

8 **Complainant**. When you were in the forensic interview,
9 did you say something that's inconsistent with that, with
10 what you just testified about why you were mad?

11 A Yeah.

12 Q Okay. In the forensic interview, you'd agree with
13 me that you told her that, you know, you were mad because
14 this was your first time going out with friends without
15 your mom or a chaperone, right?

16 A Uh-huh.

17 Q And that she really didn't have any reason not to
18 trust you?

19 A Yes.

20 Q Right? Because you don't be with dudes, right?

21 A Yes.

22 Q Okay. And you were mad about that.

23 A Yes.

24 Q Okay. And so your mother, though, eventually, she
25 left **A's** house without you.

1 A Yes.

2 Q Right? And after she left, you'd agree with me that
3 you called your grandmother, didn't you?

4 A Probably.

5 Q Probably?

6 A Yeah. I don't recall.

7 Q You don't recall? Would reviewing that video help
8 your recollection about that?

9 A If you need me to hear it. I mean ---

10 Q Yeah. Would hearing what you said before help you
11 in your testimony this morning?

12 A Would it help me tell you that I called my grandma?

13 Q Yeah. If you called your grandma. Would it help
14 refresh your recollection about what you did? Or do you
15 have a clear recollection in your mind about whether or
16 not you did?

17 A No. I don't recall.

18 Q Okay. So would watching the video help you refresh
19 your memory?

20 A It's going to show me what I said three years ago.

21 Q I understand. But it would help you understand what
22 you said three years ago, right?

23 A Yeah.

24 MR. HAYES: All right. Judge, if I could play that
25 portion of the video for the witness.

1 THE COURT: All right.

2 (WHEREUPON, a video recording was played for the witness
3 only.)

4 BY MR. HAYES:

5 Q Can you hear it now?

6 A Can you go back for me?

7 Q Yes, ma'am.

8 A Oh, further than that.

9 Q Well, this is the part I'm asking you about, though.

10 A But I never said who I called in this. I just said
11 no home, just like home.

12 Q Can you hear -- is it there now? It's coming. It's
13 coming.

14 (WHEREUPON, a video recording was played for the witness
15 only.)

16 THE WITNESS: My mama's mom. It's my mama's mom.

17 BY MR. HAYES:

18 Q Your grandma.

19 A Yeah. It's my grandma.

20 Q Right?

21 A Uh-huh.

22 Q So you called her, right?

23 A Yeah.

24 Q And you were trying to like plead your case with
25 your grandmother; is that right?

1 A I was telling her what was going on.

2 Q Right. So you were kind of like pleading your case
3 with her and saying I didn't do nothing wrong, right? My
4 mom's giving me a hard time for no reason, right? I
5 didn't do anything.

6 A No. Well, I -- yes.

7 Q Right. And in this conversation you had with
8 grandmother, your grandmother was actually -- she always
9 takes your side, right?

10 A Uh-huh.

11 Q But in this case, she didn't take your side, did
12 she?

13 A No.

14 Q She took your mother's side.

15 A Yes.

16 Q And thought you needed to be going home, didn't she?

17 A Yes.

18 Q Okay. But you really didn't go home then, right?

19 You continue to hang out with A for a while.

20 A Yes.

21 Q Right? And then at some point in time, it got to be
22 ten o'clock or so, you decided I really probably need to
23 be getting home; is that right?

24 A Ten o'clock?

25 Q Some time. It got -- right? Well, you'd agree with

1 me that you went home at 10:17.

2 A I went home at 10:17?

3 Q That evening. Yes, ma'am. Do you agree with that?

4 A To my house. Not to A's house. To my
5 house ---

6 Q Yes, ma'am.

7 A --- where I stay at with my mama? No. I don't -- I
8 don't recall.

9 Q Okay. Would watching that video help you recall
10 that?

11 A Yeah.

12 (WHEREUPON, a video recording was played for the witness
13 only.)

14 BY MR. HAYES:

15 Q Okay. Can you hear it? Okay. What time did you go
16 home?

17 A It's 10:17.

18 Q 10:17. How do you know it was 10:17?

19 A Because I said it was 10:17.

20 Q Okay. And when you got home, you were confronted by
21 your mother, right?

22 A Yeah.

23 Q And she's still giving you -- she's telling you,
24 what, give me the phone and go to bed?

25 A Yeah.

1 Q Okay. And at that point, you still had -- it was
2 still your position that you hadn't done anything wrong,
3 right?

4 A Yes.

5 Q You were sticking to that I hadn't done anything
6 wrong.

7 A Yes.

8 Q Okay. And she continued to, you know, tell you give
9 me your phone and get out of here -- or go upstairs?

10 A Yes.

11 Q Okay. And you actually, within two minutes of that,
12 you left your house at 10:19 and went back to Autumn's,
13 didn't you?

14 A Yeah.

15 Q Okay. All right. And then when you got back to
16 Autumn's, you had -- A [REDACTED], she lived in The Grove,
17 right?

18 A Yes.

19 Q And you had an auntie that lived in The Grove too?

20 A Yeah. She didn't stay there. Her sister stayed out
21 there. But she stayed with ---

22 Q I don't want to misidentify, but is her name
23 Qudaysha [phonetic]?

24 A Quadaysha [phonetic].

25 Q Quadaysha.

1 A Uh-huh.

2 Q Okay. She stayed in The Grove, right?

3 A Yeah. With her sister. Her sister stayed out
4 there.

5 Q And so at that point when you get back to Autumn's,
6 your auntie is calling you, right?

7 A Yes.

8 Q And your grandma's calling you too.

9 A Yes.

10 Q Okay. And they're sending you messages, right,
11 saying you need to go home?

12 A Yes.

13 Q Okay. And your auntie actually came over to
14 A's house and y'all had a conversation outside,
15 right?

16 A Yes.

17 Q Okay. And she may have been telling you you need to
18 listen to your mom and you need to go home, right?

19 A Yes.

20 Q Okay. And -- but you didn't do that. You went back
21 into Autumn's.

22 A Yes.

23 Q Okay. And at some point later, you and A
24 became hungry; is that right?

25 A Yes.

1 Q And so her father took y'all to McDonald's.

2 A Yes.

3 Q Okay. All right. And I think yesterday when you
4 testified on direct examination, sometime after got back
5 from McDonald's, it is believed -- I understood your
6 testimony to be that you left with some boys from
7 A's about one o'clock; is that right?

8 A Yes.

9 Q Okay. And you and A had gone and you had
10 smoked weed with some boys from the neighborhood.

11 A Yes.

12 Q Okay. And actually, you and A had kind of
13 split up at that point. You were off with one boy and
14 she was off with another boy, right?

15 A Yes.

16 Q Okay. And so you had gone to this other boy's home.

17 A Yes.

18 Q Okay. You understand that yesterday that was the
19 first time that you had told anybody that particular part
20 of your story, don't you?

21 A Yes. What part?

22 Q About being with these boys. You'd never told any
23 of the law enforcement officials or medical providers
24 that you had spoken to about being out with boys until
25 yesterday from the witness stand.

1 A Huh?

2 Q Yesterday that was new information in this case. It
3 was the first time you've ever provided it. Do you agree
4 with that?

5 A Yes.

6 Q Okay. So you hung out with these boys and you even
7 went to this boy's house you testified yesterday, right?

8 A Yes.

9 Q Okay. All new information in this case.

10 So while you were -- and I understood your testimony
11 to be that while you were at this boy's house, A [REDACTED],
12 she went home, right?

13 A Yes.

14 Q Because in these statements before that you provided
15 to law enforcement, they were asking you, you know, why
16 didn't -- you weren't allowed to go back to A's [REDACTED] or
17 whatever it was, and A's [REDACTED] mother had said you
18 couldn't come back there, right?

19 A Yes.

20 Q But that was because y'all had split up and you were
21 with this other boy for those hours; isn't that correct?

22 A Yes.

23 Q But this is exactly the kind of behavior that you
24 had just denied in the forensic interview just a few
25 minutes ago, right, that you don't be out with boys like

1 this and your mother didn't have a reason not to trust
2 you on things like this.

3 A Yes.

4 Q Okay. All right. So after you leave the boy's
5 house and A won't let you come back, I think under
6 your testimony yesterday, you said initially, anyway,
7 that you hung out with the boy until about 4:30 in the
8 morning. Do you recall testifying to that?

9 A Yes.

10 Q And I think that on direct examination, the
11 solicitor tried to walk that back and said, well, it was
12 really about 3:30 or four, and you agreed with that at
13 that time. But originally, your testimony was 4:30?

14 A Yes.

15 Q Okay. All right. So you were walking, I guess,
16 back to your house? Is that where you were headed then?
17 Or you were roaming the streets?

18 A At what time?

19 Q Well, you were with the boy until about 4:30, right?

20 A Uh-huh.

21 Q Okay.

22 A I mean -- no. I mean, what time was I supposed to
23 be walking to my house that you -- that you know of?

24 Q Well, I'm asking you from your recollection.

25 A You just asked me is that the time that I was

1 walking from my house. I'm asking what time were you
2 talking -- were you saying.

3 Q You would agree with me your testimony yesterday was
4 that you hung out with a boy until 4:30.

5 A Uh-huh.

6 Q Right?

7 A Uh-huh.

8 Q Is that a "yes," ma'am?

9 A Yes.

10 Q All right. So you were there until -- so you
11 would have been walking sometime after that; is that
12 right?

13 A Yes.

14 Q Okay. And you were walking. Where did he live?

15 A Who?

16 Q The boy you were with.

17 A In The Grove.

18 Q He lived in The Grove?

19 A Yeah.

20 Q Okay. How do you know the boy?

21 A We went to school together.

22 Q How old is he?

23 A The same as just me or a year or two older. He was
24 in the same grade. We was in the same classes so we
25 wasn't far apart.

1 Q All right. Do you know what apartment in The Grove
2 he stayed in?

3 A No.

4 Q Isn't it that you didn't reveal this -- the time
5 that you spent with the boy with law enforcement because
6 you were trying to protect him?

7 A Yes.

8 Q So when you leave the boy's house, you're walking, I
9 guess, in that you're still in The Grove, A says you
10 can't come back to her house, so you're kind of on the
11 road, I guess, back to Carriage House which is where you
12 resided, right?

13 A That's where I what?

14 Q Carriage House, is that where y'all stayed?

15 A Uh-huh. Yes.

16 Q Okay. So you would have been walking back in that
17 direction?

18 A Yes.

19 Q Okay. And it's your testimony that at that point,
20 your Uncle Marty, Marty Brown, who you've identified in
21 this case, he just happened to drive by you; is that
22 right?

23 A Yes.

24 Q Okay. And y'all, I guess, agree to go hang out; is
25 that right? Kicking?

1 A Yes.

2 Q All right. Okay. Was there anybody with your Uncle
3 Marty at the time that you encountered him?

4 A Like that he was with before me?

5 Q Yeah.

6 A No.

7 Q I mean, was there anybody else in the car?

8 A Yeah. That's what I mean. No. Not before like I
9 got in the car, no.

10 Q Okay. There wasn't someone sitting in the
11 passenger's seat or in the ---

12 A I got in the passenger's seat.

13 Q Okay. There wasn't somebody else in the car.
14 That's my question.

15 A No.

16 Q Are you sure about that?

17 MS. BROWDER: Your Honor, asked and answered three
18 times.

19 THE COURT: Sustained. Sustained.

20 MS. BROWDER: Thank you.

21 THE WITNESS: It's okay.

22 Nobody was -- it was just he -- when he came, he was
23 in the driver's seat. And I opened the passenger door
24 and I was talking to him like that. Nobody else was in
25 -- in the passenger's seat.

1 BY MR. HAYES:

2 Q All right. So then y'all decide you're going to
3 hang out. Okay. It's your testimony that -- from
4 yesterday, anyway, that, I guess, you started riding
5 around. And y'all talked about smoking and drinking and
6 you told him you did those things; is that right?

7 A Yes.

8 Q Okay. All right. And I understood your testimony
9 yesterday to be that y'all went somewhere to get some
10 weed.

11 A Yeah.

12 Q Was that right?

13 A Uh-huh.

14 Q To like some house.

15 A Yes.

16 Q Is that right?

17 A Uh-huh.

18 Q But it wasn't Marty's house. I didn't understand
19 your testimony to be that you got it at Marty's house.
20 He went to some other house.

21 A Yeah.

22 Q Right? That was your testimony yesterday.

23 A Uh-huh.

24 Q Right? You understand that that particular piece of
25 information, that was the first time that you had

1 revealed that in this case to any authority in any of the
2 interviews that you had provided previously.

3 A You asked me do I know that?

4 Q Yeah. Do you know that? That's the first time that
5 you had told anybody that.

6 A Yes.

7 Q You know that?

8 A Yeah.

9 Q Okay. All right. And then you said you drove to
10 Marty's, right?

11 A Yeah.

12 Q Okay. And you said that he came out with Cuervo
13 Blue Streak; is that right?

14 A Yeah.

15 Q Okay. And I guess maybe prior to getting to his
16 house, it was your testimony that you had to pee; is that
17 right?

18 A Yeah.

19 Q And that you had told Marty that you needed to pee
20 and he said you couldn't go in the house.

21 A Yeah.

22 Q And so ultimately, when you left Marty's house, that
23 you had to pee on the side of the road, right?

24 A Yeah.

25 Q All right. You understand that the first time that

1 you ever provided that particular information was in the
2 meeting that you had with Ms. Browder and Ms. Jackson
3 [sic] and Ms. Ritchie and Mrs. Sarah back in February of
4 2022. Do you have any reason to disagree with that?

5 A No.

6 Q So you didn't tell any of the law enforcement
7 officials in the time leading right after that that that
8 had occurred.

9 A (No answer.)

10 Q Okay. So you went to the ATM. You went to a gas
11 station, right?

12 A Yes.

13 Q Complainant, you went to an ATM and went to a gas
14 station, right?

15 Okay. You claimed that you were drinking out of
16 this red cup while you were driving around, right? That
17 was in your testimony yesterday.

18 A Yes.

19 Q But when you talked to law enforcement or the
20 hospital officials, you told them that you weren't drunk,
21 right?

22 A Yes.

23 Q Okay. But you were high. But you agree that you'd
24 been smoking weed with these boys previously, right?

25 A Yes.

1 Q I mean, up until about 4:30 in the morning when you
2 left his house.

3 A Yes.

4 Q Okay. And then you say that he pulled down into
5 these woods and assaulted you, right?

6 A Yes.

7 Q Okay. So I want to talk a little bit about that. I
8 think you'd agree with me that he first started asking
9 for a hug under your testimony -- well, he wanted a hug;
10 is that right?

11 A Yes.

12 Q So when you were pulled in the woods, he was in the
13 passenger's seat -- or, I mean, he's in the driver's
14 seat. He's driving the vehicle. Excuse me.

15 A Yeah. I was ---

16 Q I'm sorry. I misspoke. I didn't mean to do that.
17 I was reading a note and I got distracted.

18 He was driving the car, right? You're in the
19 passenger car?

20 A In the passenger's seat.

21 Q Passenger's seat of the car.

22 A Yeah.

23 Q Right? And I think you identified yourself in these
24 pictures earlier, right?

25 A Yeah.

1 Q So what's been previously marked as State's
2 Exhibit 2, Complainant I'm showing you that picture,
3 okay? You recognize yourself in that picture, you
4 testified.

5 A Yes.

6 Q Right? And you said you recognized that to be your
7 Uncle Marty driving the car, right?

8 A Yes.

9 Q And that's his car; is that right?

10 A Yes.

11 Q Okay. And I think you described the car as like a
12 gold Tahoe or something like that, right? Gold SUV.

13 A Yes.

14 Q Okay. And the car itself, it looks like it has a
15 sunroof. But in between the two seats, right, there's a
16 console there?

17 A Are you asking me is there ---

18 Q Yeah. You were in there. I mean, I'm just -- it
19 might not be clear from the picture, but you were in it,
20 right? You'd agree with me that that particular style of
21 vehicle had a console that separated the passenger from
22 the driver's seat.

23 A It -- it was something to sit there for his phone to
24 sit on in the middle, yes.

25 Q Right. So it's not like, you know, some of those

1 old -- older style trucks that they used to make that had
2 the bench seat, right, where maybe there'd be a gearshift
3 in the middle and it would be one big bench seat. That's
4 not the style of seat it is. There's a console where you
5 can put your drinks and you can probably put some things
6 in the front, hold your phone and other things in between
7 the two seats, right?

8 A Yes.

9 Q Right?

10 A Either way, his phone was sitting in the -- yeah.
11 Yeah.

12 Q Right. Well, I mean, I guess my question is you
13 can't just like slide across from the driver's seat into
14 the passenger's seat or slide from the passenger's seat
15 into the driver's seat. You'd have to actually go over
16 the top of a console to do those things.

17 A Yeah.

18 Q Right?

19 A Yeah.

20 Q Okay. And oftentimes, they have consoles like that.
21 They have like a container where you could lift it up and
22 you can actually put things in and then close it and you
23 wouldn't even know that there was something maybe inside
24 of it, right?

25 A Yes.

1 Q Right? It had a console that style.

2 A Yes.

3 Q Okay. And so your allegation is is that he got you
4 to this wooded area, right, and at some point, he had
5 exposed himself to you, right?

6 A Yes.

7 Q And eventually, you became -- I guess your testimony
8 was you became resigned to the idea that you weren't
9 going to be able to go anywhere unless something were to
10 transpire.

11 A Yes.

12 Q Okay. And so your testimony about how this actually
13 took place was then that he -- in the front of this
14 Tahoe, he came over from the driver's side, over the
15 console, right?

16 A Uh-huh.

17 Q While you're in the passenger's seat; is that right?

18 A Uh-huh. Yes.

19 Q And he was in -- you and he then were both occupying
20 the space of this passenger's seat in the front of this
21 particular vehicle.

22 A Yes.

23 Q Right? And you'd agree with me that the seat wasn't
24 slid back or anything. He didn't slide the seat back.

25 A Yes.

1 Q Right? So you and he are both there in this place.

2 You describe yourself as 5'1" or 5'2", right?

3 A Yes.

4 Q Right? And I think you described your Uncle Marty
5 as being 6', right?

6 A Yes.

7 Q Okay. And so your allegation is is that once he
8 comes over and begins to touch you, that he -- you'd
9 agree with me that at the beginning of this, right, when
10 you first -- when you say that he first exposed himself,
11 he wasn't parked. He didn't have an erection; is that
12 right?

13 A Hu-uh.

14 Q I'm sorry, ma'am?

15 A No.

16 Q He did not have an erection.

17 A No.

18 Q Right? And at some point he comes over ---

19 A Wait. You said when he first started he wasn't
20 hard?

21 Q Right. When he first -- when he first exposed
22 himself to you, you said that he did not have an
23 erection.

24 A No.

25 Q He did not have an erection, right?

1 A No.

2 Q Okay. And you would agree with me that, actually,
3 under the allegations you made, that y'all have some kind
4 of -- well, strike that.

5 So at some point, though, he comes over the seat.
6 And you have pulled down -- I guess in your testimony, I
7 think -- and let me find it. So I think yesterday under
8 your testimony, the series of events, you'd agree with me
9 that you said that Mr. Brown came over to your side of
10 the vehicle, and when he got to that side of the vehicle,
11 he told you to pull your pants down.

12 A Yes.

13 Q To which you complied; is that right?

14 A Yes.

15 Q Okay. So he came over the center console. Y'all
16 are occupying the same space on the passenger's side of
17 this vehicle, and when he gets there, he's saying you
18 need to pull your pants down.

19 A Yes.

20 Q It's your testimony, I think, that you were wearing
21 underwear, jogger shorts -- or no -- sport -- like
22 sporting shorts and jogging pants; is that right?

23 A Yes.

24 Q Okay. And your testimony, you didn't actually
25 remove any of those things. You just pulled them down

1 far enough maybe to your knee; is that right?

2 A Yes.

3 Q Okay. And that somehow, while you're in this space
4 together, he attempts to penetrate you anally.

5 A Yes.

6 Q Okay. And your testimony is he does this twice.

7 A Yes.

8 Q Okay. The first time you testified that he really
9 couldn't penetrate you, right?

10 A Yes.

11 Q And y'all spoke about it and I guess you were
12 resigned to the idea that it was going to have to happen
13 again for you to be able to get out of there, right?

14 A I don't know.

15 Q Okay.

16 A I don't recall.

17 Q All right. Well, did it happen once or twice?

18 A I don't recall.

19 Q I think you also yesterday said that you didn't
20 recall how it stopped; is that right?

21 A Yes.

22 Q So you agree with me, if you can't recall how many
23 times it occurred and you can't recall how it stopped,
24 it's difficult for you to recall what happened.

25 A Huh?

1 Q It's difficult to recall what you say happened,
2 right?

3 A No. Not if I really sit and just think about it.
4 If I sit and just close my eyes and remember the day, no,
5 it's not going to be hard. But...

6 Q Well, you're not recalling it here, right?

7 A Huh?

8 Q You're not recalling it now. You're not recalling
9 it here.

10 A To you?

11 Q Right. In front of this jury.

12 A Like I'm saying I don't recall.

13 Q Right.

14 A Yeah.

15 Q You don't recall.

16 A Twice, once, it don't -- I don't -- I don't know.
17 No. I don't recall.

18 Q Okay. Well, you agree with me at some point in time
19 I think yesterday your testimony was anyway that he got
20 back into the driver's seat, right?

21 A Yeah.

22 Q So he crossed back over. He didn't -- he crossed
23 back over the console.

24 A Uh-huh.

25 Q And got back in the driver's seat.

1 A Yeah.

2 Q And when he got over there, you testified that he
3 basically brought himself to ejaculation, right?

4 A Yes.

5 Q Okay. Okay. And I think that your testimony was
6 that he got it on himself, right?

7 A Yes.

8 Q Right. And then you had to have gotten a paper
9 towel from the backseat to help him clean it up; is that
10 right?

11 A Yes.

12 Q Okay. All right.

13 A Yes.

14 Q In your conversation that you had with Investigator
15 Torres when she came to your house on the afternoon, the
16 first officer that you spoke to in the interview that we
17 have here, do you recall telling her that he ejaculated
18 on your butt?

19 A Yes.

20 Q You do?

21 A Yes.

22 Q And I think yesterday you said that after you left
23 the woods, you had said something like you were going to
24 tell on Marty and that Marty had gotten mad. Do you call
25 that testimony?

1 A Yes.

2 Q That would have been sometime after he ejaculated,
3 right?

4 A Yes.

5 Q Okay. In your forensic interview, do you recall
6 saying that or indicating that you had said something
7 like you were going to tell on him before any of this
8 occurred?

9 A Yes.

10 Q So you told -- yesterday your testimony was that you
11 told about telling on him before anything -- after this
12 had occurred, right?

13 A Wait. What?

14 Q You testified yesterday that you said something
15 about something that may have seemed like you might tell
16 on him, but this was after the ejaculation, right?

17 A Yes.

18 Q And when you talked to law enforcement or these
19 forensic folks, you had said that you had said something
20 to Marty about telling on him before any of this alleged
21 assault occurred.

22 A Yes.

23 MR. HAYES: Okay. So your testimony then that --
24 beg the Court's indulgence, Judge. I'm sorry. I'm just
25 reviewing some notes.

1 BY MR. HAYES:

2 Q I think that on your direct examination yesterday by
3 Ms. Browder, you said that you believe that this alleged
4 assault had occurred around 5:20 in the morning, right,
5 because his phone was on his console? You remember that
6 testimony?

7 A Yes.

8 Q Yes.

9 All right. On the morning that you spoke to
10 Ms. Foster ---

11 A Yes.

12 Q --- okay, before you provided this interview, when
13 you got in the room with her, you would agree with me
14 that y'all talked about other things, just what's going
15 on in life. You didn't just dive into what you were
16 there to talk about, right? You kind of talked about
17 some other things, just how you're doing, how's your
18 family, things like that, right?

19 A Yes.

20 Q Right? Just kind of like getting to know each other
21 a little bit, right?

22 A Yes.

23 Q Right? You'd agree with me then that during that
24 interview, she asked you what you had done kind of during
25 the day leading to the interview, right?

1 A Yes.

2 Q Okay. And when you kind of went through your
3 recitation of the day, you told her that you had gotten
4 up early that morning and gone down and got some blue
5 Hawaiian punch drink at 5:20 that particular morning,
6 right? Do you recall that? No? Would seeing the video
7 help your recollection?

8 A I say yes, I do.

9 Q You recall that?

10 A Uh-huh.

11 Q Okay. And so after you alleged that everything is
12 cleaned up and y'all are leaving, your Uncle Marty's
13 taking you back to the house, right?

14 A Yes.

15 Q Okay. And when you get there, he drops you off
16 somewhere not right in front of your house but somewhere
17 near it, either at the neighboring apartment complex or
18 somewhere in the apartment complex, right?

19 A Yes.

20 Q Okay. And so you just have to walk across a yard or
21 something like the grass or whatever to get home, right?

22 A Yes.

23 Q Right? So you agree with me you live kind of on the
24 end apartment at the Carriage Place.

25 A Yes.

1 Q Okay. And so when you get there, you testified you
2 thought it was six o'clock; is that right?

3 A Yes.

4 Q Okay. You knocked on the door.

5 A Yes.

6 Q No one answered.

7 A Yes.

8 Q Okay. And so at that time, I guess you either sat
9 at the door or was your testimony you went over to your
10 mom's car? And do you remember where you went when no
11 one answered the door?

12 A Yes.

13 Q Where did you go?

14 A I sat in my mom car.

15 Q You just sat there, right, December morning?

16 A I went to sleep.

17 Q Okay. You went to sleep outside by your mama's car?

18 A Yeah.

19 Q Right. And it was parked kind of right in front of
20 the apartment.

21 A Yeah.

22 Q Yeah. Okay.

23 And eventually, what, your mom comes out, opens the
24 door and sees you or you go back and knock again?

25 A Yeah.

1 Q Okay. And you go in the house, right?

2 A Yeah.

3 Q Okay. And when you get in the house, your mom,
4 she's kind of giving you the business about not coming
5 home, right?

6 A Yeah.

7 Q Right? And at that point, you understood that she
8 had reported you as a runaway the night before, right?

9 A Yeah.

10 Q Even though she knew where you were.

11 A Yeah.

12 Q At least in your own mind she knew where you were,
13 right?

14 A Yeah.

15 Q But you'd agree that there was a period of time you
16 were with some boy that nobody knew about, right?

17 A Yeah.

18 Q That really nobody knew about until yesterday.

19 A Yeah.

20 Q Okay. All right. So when you got home, she's kind
21 of giving you the business. And I think your testimony
22 was that you went upstairs and you got in the bath. That
23 was your testimony.

24 A Yeah.

25 Q Right? You recall getting in the bath?

1 A Yeah.

2 Q Okay. You would agree with me that in all the other
3 -- all the other times you were asked about this, you
4 told law enforcement you took a shower.

5 A I took a bath.

6 MR. HAYES: Okay. Judge, if I may approach.

7 (Pause in proceedings.)

8 MR. HAYES: Beg the Court's indulgence, Judge.

9 THE COURT: I'll tell you what. We've been going
10 for about an hour and ten, an hour and 15 minutes. Why
11 don't we take our midmorning break. We'll break for
12 15 minutes here and come right back.

13 Ladies and gentlemen of the jury, please, again,
14 remember not to discuss this case with anybody including
15 yourselves. Don't look at or seek out any information
16 about the trial of these issues. And lastly, please keep
17 an open mind as to all issues until I discharge you to
18 begin your deliberations.

19 Thank you very much.

20 (WHEREUPON, the jury exits the courtroom at 11:08 AM.)

21 THE COURT: Let the record reflect the jury is out
22 of the courtroom now.

23 I just thought it would be a good time for a break.
24 I know if you're like me, it's under the gun when you're
25 working with a computer sometimes so -- and it was a

1 natural point, I think, to take a break.

2 MR. HAYES: I feel all eyes, Judge, believe me, in
3 front of the jury. They're like, come on, lawyer. And
4 that's why I do appreciate the judge -- I appreciate Your
5 Honor from yesterday because if we were trying to do this
6 up against six o'clock yesterday, I would have lost them
7 all.

8 THE COURT: That's right.

9 All right. Okay. Well, we'll stand down for about
10 15 minutes.

11 Complainant, you may also step down to get some
12 water or use the restroom or anything like that. Okay.
13 All right.

14 (WHEREUPON, a recess is taken at 11:09 AM; proceedings
15 reconvened at 11:27 AM.)

16 THE COURT: Anything from the State before we bring
17 the jury in?

18 MS. BROWDER: No, sir.

19 THE COURT: Anything from the defense?

20 MR. HAYES: No, sir.

21 THE COURT: All right. Complainant, you got the
22 microphone and everything okay?

23 THE WITNESS: Yes, sir.

24 THE COURT: All right.

25 (WHEREUPON, the jury entered the courtroom at 11:28 AM.)

1 THE COURT: All right. Thank you, ladies and
2 gentlemen.

3 Mr. Hayes?

4 MR. HAYES: Thank you, Judge.

5 THE COURT: Yes, sir.

6 BY MR. HAYES:

7 Q All right. Complainant, I think when we left for
8 the morning break there, we were sort of in a place where
9 yesterday you testified that you had taken a bath and you
10 said you had recalled doing that, right?

11 A Yes.

12 Q Yes. Okay.

13 And I was asking if, you know, you had ever told or
14 recalled telling these interviewers that you had taken a
15 shower, and you said that you hadn't. You had always
16 taken a bath, right?

17 A Yes.

18 Q Okay. We were getting ready to play a portion of
19 the tape from your forensic interview. So...

20 All right. Let it play right there, okay?

21 (WHEREUPON, a video recording was played for the witness
22 only.)

23 BY MR. HAYES:

24 Q Okay?

25 A Yeah.

1 Q Okay. You told the forensic interviewer that you
2 took a shower, didn't you?

3 A I said I stayed in the shower for like an hour.

4 Q Right. But you said you took a shower.

5 A Yeah.

6 Q Okay. I mean, Complainant I see you laughing.
7 What's funny about this?

8 A I laugh when -- to stop from crying. It's my coping
9 mechanism, I guess. I don't know the word for -- I don't
10 know. It don't matter, though.

11 Q I mean is this amusement?

12 MS. BROWDER: Objection, Your Honor.

13 THE WITNESS: Is this ---

14 MS. BROWDER: Objection, Your Honor.

15 THE COURT: Overrule.

16 You may answer.

17 THE WITNESS: Is this amusement?

18 BY MR. HAYES:

19 Q Do you?

20 A Like do I get a kick out of it?

21 Q I guess, yeah.

22 A If you got touched, would you get a kick out of it?

23 Q Well, I'm asking you because you're laughing. I
24 mean, the reason I'm asking you ---

25 A And I answered the first question which would have

1 answered your second question, right?

2 Q Well, with all due respect, **Complainant**, I'm asking
3 the questions this morning, okay?

4 A I'm answering the questions.

5 Q And you agree with me that you have answered many of
6 the questions this morning differently over a course of
7 time through a series of interviews in different ways,
8 haven't you?

9 A Yes.

10 MR. HAYES: Okay. So sometime after you took the
11 shower, **Complainant** -- Judge, if I may approach just to
12 turn the computer just a little bit. It's obstructing my
13 view there.

14 BY MR. HAYES:

15 Q Sometime after you took your shower, **Complainant**,
16 your family members started coming over to the house,
17 right?

18 A Yes.

19 Q I mean, they were continuing to pursue you just like
20 they had the night before, right?

21 A Sure. Yes.

22 Q If I could have you just speak a little clearer,
23 please.

24 A Yes.

25 Q Okay. So I think was it your uncle -- is it Uncle

1 Tevan [phonetic]?

2 A You're asking me his name?

3 Q Yes.

4 A Yeah.

5 Q Uncle Tevan, right, he was one of the people that
6 came over and talked to you, right?

7 A Yes.

8 Q That's sometime that afternoon. So after you took
9 your shower when you got home -- and just because we took
10 a break, okay ---

11 A Yes.

12 Q -- to reset where we were, you had come home. Your
13 mother had opened the door. Y'all had an interaction,
14 right?

15 A Yes.

16 Q You went up. You took a shower, right?

17 A Yes.

18 Q And then you went to sleep, right?

19 A I went to sleep?

20 Q Yeah. You went to lay down after your shower.

21 A I don't think so. I don't know.

22 Q Well, you went to your room after -- yesterday in
23 your testimony you said you went to your room after your
24 bath, right?

25 A Yeah.

1 Q Okay. Right?

2 A Yes.

3 Q But you'd been out late. You got home late, right?

4 So after you shower, you went to sleep for a while.

5 A I don't think so.

6 Q You don't think so?

7 A (No answer.)

8 MR. HAYES: Beg the Court's indulgence briefly,
9 Judge.

10 BY MR. HAYES:

11 Q Complainant all right. I did put these in my ears,
12 so if you want to use a Kleenex or something, okay?

13 All right. So you don't believe that you went to
14 sleep. Do you recall telling investigators that after
15 you went -- after you showered, you had smoked off a vape
16 and went to sleep?

17 A Yeah. I don't know. Yeah.

18 Q All right. Well, you'd agree with me that after you
19 got out of the shower, you went to sleep, right?

20 A Yeah.

21 Q Okay. All right. So when you woke up then, you
22 have your mother's there, right? And she was still
23 wanting to talk to you about what happened last night,
24 right?

25 A Yeah.

1 Q And she's calling some family around, and they're
2 talking to you.

3 A Yeah.

4 Q Okay. And so you have Uncle Tevan is one of the
5 people there.

6 A Yes.

7 Q Who else do you recall being there?

8 A I don't know. My mama.

9 Q Your mama. Okay.

10 And they're talking to you, what, about you've got
11 to make good decisions and this thing about karma, right?

12 A Yeah.

13 Q Okay. That being out all night, these kind of
14 things, you know, could come back on you, right?

15 A Yeah.

16 Q And they're giving -- you're asking different
17 questions about, well, what could that look like, what
18 would that look like, right? Like would that be jail,
19 right? Didn't you ask them that?

20 A Yeah.

21 Q Okay. Would that be if someone touched me, right?

22 A Yeah.

23 Q Right. And it was about the time that you asked
24 that particular question that their reaction and their
25 response totally changed the dynamic of what was

1 happening, right?

2 A No.

3 Q No?

4 A I mean, yeah and no.

5 Q Okay. Well, isn't it that you said, well, if
6 somebody touched me or if I had been touched, right,
7 didn't they just start calling a bunch of people?

8 A No.

9 Q Right. They didn't call Little Mike and Big Mike?

10 A Who is Little Mike and Big Mike?

11 Q I don't know. They didn't call Little Mike and Big
12 Mike?

13 A Calling them for what?

14 Q Okay. Did your grandma come over about that time
15 and talk to you?

16 A I don't know. I don't really -- I don't -- no.

17 Q Okay. What about your auntie from The Grove? And I
18 know I'm going to mispronounce it, not on purpose, but
19 Quadaysha?

20 A Yeah. Probably. I don't know.

21 Q Okay. And they came over and they started asking
22 you a bunch of questions. And you don't really want to
23 talk to them, do you?

24 A No.

25 Q Okay. And ultimately, your mother calls law

1 enforcement, right?

2 A Yeah.

3 Q Okay. And it was shortly after that that Deputy
4 Torres where we started this cross-examination came to
5 your house.

6 A Yeah.

7 Q Right? And you provided your first interview.

8 A Yeah.

9 Q All right. And so you had all the statements that
10 we talked about, the one with the investigator, the one
11 with the sexual assault nurse, the one with Investigator
12 Tanner, the one forensic interview, the statements you
13 provided to the deputy solicitor and her team, that's
14 five, and then your testimony yesterday, right? Six
15 statements, right?

16 Do you recall -- you would agree with me that you
17 were asked by Ms. Foster in your forensic interview
18 whether or not you and A [REDACTED] had gone anywhere or done
19 anything that you weren't supposed to do.

20 A Yes.

21 Q She asked you that, right?

22 A Yes.

23 Q And you said no.

24 A Yes.

25 MR. HAYES: Beg the Court's indulgence. Beg the

1 Court's just very briefly indulgence. I'm going to grab
2 my computer, Judge.

3 BY MR. HAYES:

4 Q Complainant, you'd agree with me that when you were
5 interviewed at the hospital by a sexual assault nurse,
6 that you were laughing during that interview, weren't
7 you?

8 A Yeah.

9 MR. HAYES: No further questions, Judge.

10 THE COURT: Redirect, Ms. Browder?

11 REDIRECT EXAMINATION

12 BY MS. BROWDER:

13 Q Complainant, what do you do to try to keep from crying
14 and feeling pain?

15 A Laugh.

16 Q And why do you laugh?

17 A Because I won't cry.

18 Q So you won't cry?

19 A Yeah.

20 Q When you talked to investigator -- or not
21 investigator -- Deputy Torres on the night that she came
22 to your house right after you told your parents what
23 happened, did you want to tell a police officer about
24 being anally raped by your Uncle Marty?

25 A No.

1 Q I'm sorry. Say it louder.

2 A No.

3 Q And when you talked to the nurse at the hospital
4 while you were in stirrups getting a rape kit done, did
5 you want to be telling a nurse that you had never met who
6 was probing you about your Uncle Marty anally raping you?

7 A No.

8 Q And Investigator Tanner, a man you'd never met
9 before approximately the same age as Uncle Marty, did you
10 want to have to tell that man about being anally raped by
11 your Uncle Marty and what happened to you that night?

12 A No.

13 Q Did you want to have to talk to anybody about what
14 happened that night?

15 A No.

16 Q And why not?

17 A I told you yesterday. Like because I -- like I
18 don't remember.

19 Q Is that a night you said -- you testified earlier
20 that's a night you just want to forget.

21 A Yeah.

22 Q Are you able to forget being anally raped by Uncle
23 Marty?

24 A No. Like...

25 Q And when Mr. Hayes was asking about did you go from

1 A's house at 10:17 or all these other times, do you
2 remember times from three years ago? four years ago?

3 A Huh? Ask again.

4 Q Do you remember times that you do most things in
5 your life, for example, what time you go to A's
6 house from four years ago?

7 A No.

8 Q What time do you remember from that night? Is there
9 a specific time you do remember?

10 A Yeah.

11 Q What time is that?

12 A Passing the church, going down the road.

13 Q What time was it that Uncle Marty was raping you?

14 A 5:20, 5:21.

15 Q And why do you remember that time?

16 A Because it happened like ---

17 Q And that's the ---

18 A Just because I have ---

19 Q That's the time that you remember because it was the
20 most vivid time in your mind as he was raping you?

21 A Yes.

22 Q And you told these people that Uncle Marty drove a
23 gold type of Tahoe, right?

24 A Yeah.

25 Q In State's Exhibit 2, what's he driving in this?

1 A A gold Tahoe.

2 Q And is that from that night?

3 A Yeah.

4 Q Okay. And you told everybody that Uncle Marty and
5 y'all went to the ATM that night, right?

6 A Yes.

7 Q Where are y'all in State's Exhibit Number 4?

8 A ATM.

9 Q ATM.

10 And you told Dr. Foster ---

11 MR. HAYES: Ms. Browder, can you have her speak into
12 the mic?

13 MS. BROWDER: Yeah. Sorry.

14 BY MS. BROWDER:

15 Q Speak a little louder into the mic, okay?

16 And you told Dr. Foster and other people that you
17 were drinking out of red Solo cups that night, right?

18 MR. HAYES: Leading.

19 THE WITNESS: Yes.

20 THE COURT: Sustained. Ask it ---

21 BY MS. BROWDER:

22 Q What did you tell people you were drinking out of
23 that night?

24 A The red Solo.

25 Q The red Solo cup. In State's Exhibit 4, what are

1 you drinking out of in that photo?

2 A A red Solo.

3 Q A red Solo cup.

4 And I think the question was a little confusing when
5 Mr. Hayes asked it. When he was asking did it happen one
6 time or two times, I think the question was how many
7 times did he try to put it in.

8 A Twice.

9 Q Twice. Okay. How many times did he actually put it
10 in and rape you?

11 A Once.

12 MS. BROWDER: Once. Okay.

13 No further questions, Your Honor.

14 THE COURT: All right. Ma'am, you may step down.

15 MR. HAYES: Judge ---

16 THE COURT: There's no recross.

17 You may step down.

18 MR. HAYES: Judge?

19 THE COURT: Yes, sir. Y'all want to come up?

20 (WHEREUPON, a bench conference was held off the record.)

21 THE COURT: You may step down, ma'am. Thank you.

22 The State may call its next witness.

23 MR. JACKSON: Thank you, Your Honor. At this time,
24 the State recalls Allison Foster.

25 MR. HAYES: Judge, can we approach just very

1 briefly?

2 THE COURT: Sure.

3 (WHEREUPON, a bench conference was held off the record.)

4 WHEREUPON,

5 ALLISON FOSTER

6 After having been duly sworn, testified as follows:

7 THE CLERK: Thank you, ma'am. Please have a seat in
8 the witness stand and state your full name for the
9 record.

10 THE WITNESS: Allison Marie Foster.

11 DIRECT EXAMINATION

12 BY MR. JACKSON:

13 Q Dr. Foster, would you mind telling the jury again
14 what a forensic interview is?

15 A Sure. A forensic interview is a fact-finding
16 interview. It follows particular steps. It follows a
17 protocol. It tends to be video recorded. It takes place
18 in a child-friendly setting, typically at a children's
19 advocacy center by a trained professional such as myself.
20 And the purpose is to collect a statement from a child or
21 an adolescent, witness or suspected victim of some form
22 of child maltreatment or witness to violence.

23 Q Now, were you employed by the Metropolitan
24 Children's Advocacy Center on December 20, 2021?

25 A Yes, I was.

1 Q Do you recall meeting with Complainant

2 A Yes, I do.

3 Q Did you observe her that day?

4 A I did.

5 Q Did she disclose to you the time and place that the
6 incident took place?

7 A She did.

8 Q And where was that?

9 A (Reviews document) She described being in a car in
10 which she described as being her Uncle Marty's car. She
11 described being taken in the car to a field where they
12 were parked. In terms of place, I could say more about
13 place. In terms of time, this was in the early morning
14 hours of December 11, 2021. And specifically, she
15 describes looking at -- at one point looking at the
16 defendant's cell phone or being shown his cell phone and
17 seeing the time of 5:20 AM.

18 MR. JACKSON: Beg the Court's indulgence.

19 Nothing further from us.

20 THE COURT: All right. Mr. Hayes?

21 MR. HAYES: No questions, Judge.

22 THE COURT: All right. Ma'am you may step down.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: All right. The State may call its next
25 witness.

1 MS. BROWDER: The State calls Investigator -- or
2 Lieutenant Flynn Tanner.

3 WHEREUPON,

4 FLYNN TANNER

5 After having been duly sworn, testified as follows:

6 THE CLERK: Thank you, sir. Please have a seat in
7 the witness stand and state your full name for the
8 record.

9 THE WITNESS: Flynn Lees Tanner.

10 DIRECT EXAMINATION

11 BY MS. BROWDER:

12 Q And where are you currently employed?

13 A Darlington County Sheriff's Office.

14 Q In what capacity are you employed there?

15 A I am a lieutenant or supervisor over their Central
16 Investigations Division.

17 Q And prior to working in Darlington County -- I'm
18 sorry. You're leaning in a little bit. Is that kind of
19 -- hard of hearing a little bit?

20 A Yes, I am. In my right ear.

21 Q Okay. I'll try to speak loudly for you.

22 Prior to Darlington County, where were you employed?

23 A Richland County Sheriff's Department.

24 Q And how long were you employed with them?

25 A A little over 24 years, close to 25.

1 Q And in December of 2021, what was your title there?

2 A Senior investigator.

3 Q Okay. And what is a senior investigator?

4 A It's just an investigator that's been in
5 investigations for -- I'm not even sure how long it is,
6 where their transition is. But I've gone from sergeant
7 to investigator and been in investigations for quite a
8 while.

9 Q And what are your duties as a senior investigator?

10 A We're assigned incident reports. When we're
11 assigned those reports, it is incumbent upon us to
12 investigate those, determine probable cause, if there is
13 a crime, probable cause who committed the crime and to
14 charge those individuals.

15 Q Okay. And in December of 2021, were you working in
16 a particular division?

17 A I was in the Special Victims Unit.

18 Q And what does the Special Victims Unit cover?

19 A The Special Victims Unit covers crimes against the
20 elderly, crimes against juveniles and sexual crimes.

21 Q Sexual crimes?

22 A Criminal sexual conduct.

23 Q Okay. And just in general, when a criminal sexual
24 conduct case comes in with a minor, in general, what is
25 the process that you take to start looking at this case?

1 A Well, we will make contact with that minor's parents
2 or their custodian, go ahead and set up an interview with
3 the Metropolitan Children's Advocacy Center or a
4 children's advocacy center, depending upon location and
5 time available, that sort of thing.

6 Q And why do you set up an interview at the child
7 advocacy center? Why don't you just talk to the child?

8 A Because the children's advocacy center specializes
9 in those forensic interviews and speaking with children
10 of that age.

11 Q And deputies who go out to scenes, are they trained
12 to get statements from children?

13 A No, they're not.

14 Q What is a minimal facts interview? Have you -- in
15 law enforcement are you trained in what a minimal facts
16 interview is?

17 A I've been through a good bit of training. That does
18 not come to mind immediately.

19 Q Do you try to get as many details as you can from a
20 child if you personally are talking to them?

21 A I do not. I stay away from that. In certain
22 situations, I try to find out certain important data like
23 locations and things of that nature, but I try to stay
24 away from questioning them about the particulars of what
25 happened as far as the assault.

1 Q And is that what all the law enforcement officers
2 are trained to do at Richland County?

3 A That is what they're advised to do.

4 Q Now, did you become involved in a case where there
5 was a victim by the name of **Complainant**

6 A Yes, I did. I was assigned that case.

7 Q How did you become involved in that case?

8 A Well, that case was assigned to me and then I began
9 to pursue facts in that case.

10 Q Okay. And what is the first -- or when did you get
11 assigned that case?

12 A I believe it was December 15th, perhaps.

13 Q Of what year?

14 A Of 2021.

15 Q 2021.

16 Okay. And when you received and were assigned that
17 case, what is the first thing that you did?

18 A Can I refer to my notes?

19 Q Yes.

20 A (Reviews document.)

21 MR. HAYES: Judge, I'd like to see what the
22 investigator is reviewing.

23 MS. BROWDER: That's fine, Your Honor.

24 THE COURT: Okay.

25 THE WITNESS: I'm sorry. I didn't hear.

1 BY MS. BROWDER:

2 Q You said you're looking at your notes. When you're
3 the investigator and you investigate a case, do you
4 document what you do in any way?

5 A Yes, I do.

6 Q Okay. And how do you document it?

7 A Do an investigative follow-up. I generally keep up
8 with notes throughout the course of the case.

9 Q Okay. And why do you do that?

10 A To annotate what transpired, what things that were
11 said, things that would be important in the future.

12 Q Okay. And did you do that in this case?

13 A Yes, I did.

14 Q Okay. And would that investigative report help
15 refresh your memory of what you did?

16 A Yes, it would.

17 Q Is that your six-page report?

18 A Beg your pardon?

19 Q Is that your six-page report?

20 A Yes.

21 THE COURT: Has that been produced to defense?

22 MS. BROWDER: Yes.

23 MR. HAYES: Let me just ---

24 THE COURT: Yes, sir.

25 MR. HAYES: I have a copy of it, Judge.

1 BY MS. BROWDER:

2 Q All right. So looking at your report, what is the
3 first thing you did?

4 A Well, if I may, let me clarify. I believe I said
5 that I would have gotten it on the 15th. My first
6 notation is on the 15th. It's possible it may have been
7 assigned on the 14th and I didn't -- I didn't see it
8 until the 15th. But the first thing I did was spoke with
9 the victim's mother.

10 Q Okay. And after speaking with the victim's mother,
11 you were talking about this forensic interview. Did you
12 set up a forensic interview?

13 A I would have, yes.

14 Q Okay. And what is that process?

15 A It's an in-take request. It's just a document that
16 I would have filled out and sent to the Metropolitan
17 Children's Advocacy Center with some -- with some data on
18 there that they would want to know and asked them if they
19 would do an interview.

20 Q Okay. And when you spoke to the victim's mother,
21 what was her name?

22 A Takeya Lake.

23 Q Okay. And did you do anything -- or after you spoke
24 with the mother, what did you do?

25 A Again, I need to refer to my notes.

1 Q Yes.

2 A (Reviews document) Based upon something that
3 Ms. Lake had told me or our communication, I then asked
4 her if she would meet with me that afternoon. And she
5 called back, said she had a doctor's appointment but
6 would send the father and, again, based upon our
7 conversation, with the clothing and the victim. And they
8 came up to my office at Pineview.

9 Q Okay. And when they came to your office at
10 Pineview, what happened there?

11 A I took a paper bag from the victim's father which
12 contained a \$20 bill, a pair of tan pants, a pair of
13 black shorts or, slash, tights, and a pair of underwear.
14 I asked the victim if she felt she could show us where
15 the incident location was or where the store was that
16 they had told me she had gone to. She seemed a bit
17 doubtful but agreed to try, and we went out and looked
18 for those. I believe I followed them at that time in my
19 vehicle.

20 Q Okay. And were you eventually able to find that
21 store?

22 A Eventually. Not that day.

23 Q Okay. Okay. Did you speak to any other witnesses
24 -- okay. And, I guess, when you get a case of criminal
25 sexual conduct with a minor or any case, really, where

1 there's an allegation of some sort, do you just get the
2 victim's story and that's it?

3 A No.

4 Q Okay. And so what do you do instead of just getting
5 the victim's story? How do you continue to follow up?

6 A Well, as you can see, I gather as much information
7 as I can. I do not make any conclusions immediately
8 based upon reports or what have you. I gather all the
9 information that I can.

10 Q Okay. And did you try to speak with anybody else in
11 this case ---

12 A Yes, I did.

13 Q --- that were witnesses that had been mentioned to
14 you?

15 A Yes, I did.

16 Q Okay. And who was that?

17 A I called up Ms. Christine and I called Earlean
18 Goodman. And I wound up speaking to a Ms. Christine in
19 person on the 17th.

20 Q Of December?

21 A Christine Ocean.

22 Q Christine Ocean. She's who testified earlier today
23 or yesterday?

24 A Yeah.

25 Q Okay. And after you spoke with Christine, at some

1 point did you determine why you were still trying to get
2 information to speak with Marty Brown?

3 A Yes, I did.

4 Q And at that time who, I guess, was it your
5 understanding that **Complainant** had said assaulted her?

6 A Marty Brown.

7 Q Okay. So where did you try to meet with Marty Brown
8 at?

9 A I went to the chicken plant in West Columbia.

10 Q Okay. And what date was this?

11 A That was also on the 17th of December 2021.

12 Q Were you by yourself when you went?

13 A I was not.

14 Q Okay. Who was with you?

15 A Sergeant Joe Clark of the Richland County Sheriff's
16 Department.

17 Q Okay. And when you went to the chicken plant in
18 West Columbia, what did you do when you got there?

19 A We went to their main office and asked if Marty
20 Brown worked there. I'm not exactly sure the verbiage,
21 but asked if he worked there. They said that he did, and
22 we asked if we could speak with him.

23 Q Okay. And at that point, did you know what Marty
24 Brown looked like?

25 A Yes.

1 Q Okay. And how did you know what he looked like?

2 A It's one of the things that I do whenever I'm
3 assigned a case is go ahead and pull up information on
4 that individual. And through that I probably would have
5 pulled his driver's license and things of that nature
6 with the photo.

7 Q And when you did pull his driver's license, what was
8 his date of birth?

9 A I would have to refer to my notes.

10 Q That's fine. Go ahead.

11 A (Reviews document) [REDACTED].

12 Q So did that make him older than 18 on the date of
13 December 11, 2021?

14 A Yes. I believe that would have made him early 50s.

15 Q Okay. So when you got to the chicken plant, you
16 asked if Marty Brown worked there. What happened next?

17 A They said that he did, that they would -- they would
18 get him for us.

19 Q Okay. And where were you at in the chicken plant
20 when you got there?

21 A The main office is actually across the road from
22 what they call the chicken plant. And we were just
23 there. A one-story office building. And they asked us
24 if we would wait in a room that was right there beside
25 the lobby, I guess you could say.

1 Q Okay. And did Marty Brown end up coming into that
2 room?

3 A He did.

4 Q And when he came into that room and you begin to
5 speak with him, was anybody else in that room other than
6 you and Sergeant Clark?

7 A No. Just the three of us.

8 Q Okay. And when he came into that room, was he under
9 arrest in any way at that time?

10 A No. Not at all.

11 Q Was he allowed to leave at any time?

12 A Yes.

13 Q And did you force him to talk to you?

14 A No. We asked him if he would.

15 Q And when you asked him if he would, what did he say?

16 A He said he would.

17 Q And once he said he would talk to you, what did you
18 ask?

19 A I asked him if he -- if he knew **Complainant**

20 Q And what was his response to whether he knew
21 **Complainant**

22 A He said no.

23 Q He said no? And after he responded "no" to that
24 question, did you follow up with another question?

25 A I did. I was a little surprised at the answer and I

1 asked him again if he knew Complainant and then he said
2 that, yes, he did know Complainant

3 Q Okay. And after he acknowledged that he then knew
4 Complainant what happened after that?

5 A I asked him when was the last time that he had
6 talked to her or seen her, and he said that he had seen
7 her I believe it was Saturday morning. Again, if I can
8 refer to my notes real quick. (Reviews document) Yes.
9 He said he had seen her Saturday morning in the parking
10 lot of the Jamaican Club at Zimacrest and Broad River
11 with another girl and had given them a ride from the
12 parking lot, across the bridge and dropped them off.

13 Q So then he indicated it was Complainant and another
14 girl, and he picked them up and dropped them off.

15 A Yes.

16 Q Okay. After he confirmed that he had been with her
17 Saturday night -- or Saturday early morning hours, did
18 you then continue your investigation to try to figure out
19 what happened that night?

20 A I did.

21 Q Okay. And at that point, had Complainant had her
22 forensic interview?

23 A She had not.

24 Q Okay.

25 A In fact, I was called -- after I had left the

1 chicken plant, I was called by Metropolitan Children's
2 Advocacy Center, and they let me know that they had had a
3 cancellation and could have her interviewed on Monday the
4 20th of December.

5 Q Okay. And so after Marty denied knowing Complainant
6 then saying he did know her and he picked two girls up
7 and dropped them off, did you let him -- did he go back
8 to work eventually?

9 A Yes.

10 Q Okay. And you went and the forensic interview was
11 set up. After Complainant had her forensic interview, what
12 did you do investigative-wise to try to figure out some
13 things and get more information and evidence based on her
14 forensic interview?

15 A Well, I had learned that Complainant recalled which
16 store it was that they had gone to early that morning,
17 early that Saturday morning and at ATM. So I went to
18 those locations initially to make contact with the store
19 owner to see if they had video, that sort of thing, get
20 the information for a search warrant. I would have gone
21 to the ATM to identify the exact address and so forth and
22 get the information to obtain search warrants for both of
23 those locations for video.

24 Q Okay. And when you went to those locations, were
25 you able to find some video?

1 A Yes. We were able to obtain video from that
2 Saturday morning.

3 Q Okay. All right. I'm going to show you what has
4 been marked as State's Exhibit -- first is State's
5 Exhibit 10. Do you recognize this?

6 A (Reviews document) Yes, I do.

7 Q And what is that?

8 A That is a copy of the recording there for this
9 particular case from the AllSouth Federal Credit Union.

10 Q The ATM?

11 A Yes. From the ATM.

12 MS. BROWDER: At this time, Your Honor, enter
13 State's Exhibit 10.

14 THE COURT: Any objection?

15 MR. HAYES: No objection.

16 THE COURT: Without objection, so entered.

17 (WHEREUPON, State's Exhibit Number 10 was admitted into
18 evidence.)

19 MR. HAYES: Without objection, Judge.

20 BY MS. BROWDER:

21 Q I'll show you what's marked as State's Exhibit 11.
22 Do you recognize that?

23 A Yes, I do.

24 Q What is that?

25 A That is a copy of the security camera video for the

1 Motor City Market for this case.

2 MS. BROWDER: Okay. At this time, Your Honor, enter
3 State's Exhibit 10.

4 THE COURT: Any objection?

5 MR. HAYES: Without objection.

6 MS. BROWDER: Or sorry. That was 11, Your Honor.

7 THE COURT: All right. Without objection, so
8 entered.

9 (WHEREUPON, State's Exhibit Number 11 was admitted into
10 evidence.)

11 BY MS. BROWDER:

12 Q Show you what's State's Exhibit 9. Do you recognize
13 that?

14 A I do.

15 Q And what is that?

16 A This would be a copy of the video from the security
17 systems for Shealy cameras.

18 Q What are Shealy cameras?

19 A Shealy cameras are cameras that are set up at
20 different intersections and locations throughout the
21 county that constantly video and catch traffic,
22 intersections and so forth, vehicles going by, vehicle
23 licenses.

24 MS. BROWDER: At this time, Your Honor, enter
25 State's Exhibit 9.

1 THE COURT: Any objection?

2 MR. HAYES: Without objection.

3 THE COURT: No objection, so entered.

4 (WHEREUPON, State's Exhibit Number 9 was admitted into
5 evidence.)

6 BY MS. BROWDER:

7 Q All right. Now I'm going to show you this time
8 State's Exhibit 5, 8 and 12. Do you recognize those
9 photographs?

10 A I do.

11 Q And what are those photographs?

12 A The first one I'm looking at is a photograph of the
13 vehicle that Marty Brown was driving early that morning
14 rolling into the Motor City Mart.

15 Q And that's State's Exhibit 5. Okay.

16 A This photograph marked 8 would be the same, a
17 photograph of the vehicle that Marty Brown was driving
18 early that morning in the parking lot of the Motor City
19 convenience store.

20 Q Okay. And then what is 12?

21 A 12 would be a photograph of that same vehicle that
22 Marty Brown had driven at the corner of Zimalcrest and
23 Broad River at 3:38.

24 MS. BROWDER: At this time, Your Honor, enter
25 State's Exhibit 5, 8, and 12.

1 THE COURT: Any objection?

2 MR. HAYES: No objection.

3 THE COURT: Without objection, so entered.

4 (WHEREUPON, State's Exhibit Numbers 5, 8 and 12 were
5 admitted into evidence.)

6 BY MS. BROWDER:

7 Q All right. So I'm going to show you State's
8 Exhibit 12. Okay. So State's Exhibit 12, can you
9 explain to the jury, again, where is this photograph from
10 -- taken from?

11 A That is at the corner of Zimalcrest and Broad River
12 in Richland County.

13 Q Okay. And what is the timestamp on that?

14 A 03:38:28 AM.

15 Q What type of vehicle is in that photograph?

16 A That is an SUV.

17 Q Okay. Now I'm going to show you State's Exhibit --
18 I guess we'll go through the ATM first -- State's
19 Exhibit 2, 4 -- 2, 3 and 4. So State's Exhibit 2, why
20 did you go to get the videos from the ATM? What was the
21 investigative purpose for that?

22 A In order to corroborate the victim's statement that
23 both she and Uncle Marty or Marty Brown had been at that
24 location that morning.

25 Q Okay. And so State's Exhibit 2, is that from that

1 video?

2 A Yes.

3 Q Okay. And so were you able to confirm that Marty
4 Brown and **Complainant** had been at that ATM that morning?

5 A Yes, I was.

6 Q Okay. I'm going to show you what was State's
7 Exhibit 5. Where is this photograph taken or I guess the
8 snapshot from this video taken?

9 A That is the parking lot of the convenience store
10 they went to that morning.

11 Q Okay. And what vehicles are seen in that parking
12 lot?

13 A You can see Marty Brown's vehicle pulling in.

14 Q Okay. And what is the timestamp on that in the
15 bottom corner?

16 A At 04:24:31 that morning.

17 Q Okay. And then State's Exhibit 7, where is this
18 video snapshot taken from?

19 A That same parking lot of the convenience store there
20 at Magic [sic] Mart.

21 Q And based on your knowledge of the people involved
22 in this case and what you were looking for, who are the
23 two people seen in this video?

24 A Yes. That's Marty Brown and **Complainant**

25 Q And is this Motor City Market, is this in Richland

1 County?

2 A It is.

3 Q Okay. And the ATM, is that in Richland County?

4 A It is.

5 Q Okay. And after you had gotten those videos, were
6 you aware of where **Complainant** said this might have occurred,
7 the sexual assault?

8 A Yes.

9 Q Okay. And where was that?

10 A I'd have to refer to -- refer to my notes, but
11 within Richland County.

12 Q Okay. Did you, in fact, go to try to find this
13 place?

14 A I did.

15 Q And where did she indicate that it was potentially
16 off of? What road?

17 A I beg your pardon real quick. (Reviews document)
18 Off of Koon Store Road.

19 Q Is Koon Store Road in Richland County?

20 A It is. It's Richland County.

21 MS. BROWDER: Beg the Court's indulgence.

22 BY MS. BROWDER:

23 Q So after -- or, I guess, as law enforcement, are you
24 familiar with the laws of South Carolina?

25 A Yes.

1 Q And what is the legal drinking age in South
2 Carolina?

3 A I'm sorry?

4 Q Sorry. What is the legal drinking age in South
5 Carolina?

6 A 21.

7 Q Okay. And at the time of this, how old was **Complainant**

8 A 13 years old.

9 Q Okay. And you stated that Mr. Brown was in his
10 early 50s?

11 A Yes.

12 Q After you had gotten a forensic interview done with
13 **Complainant** you followed up with some of the things she said
14 to retrieve surveillance video and you spoke with
15 Mr. Brown. And Mr. Brown denied knowing her and then put
16 himself with her that early morning hours. Did you at
17 that time decide to make an arrest?

18 A Yes.

19 Q And who did you arrest for this?

20 A Marty Brown.

21 Q And do you see Marty Brown in the courtroom today?

22 A I do.

23 Q And can you identify him for the jury?

24 A Yes, ma'am.

25 Q Where is he?

1 A (Indicating) He's the man sitting right there.

2 Q And what is he wearing?

3 A Yellow button-down shirt, tie and dark jacket.

4 MS. BROWDER: Your Honor, have the record reflect
5 he's identified the defendant.

6 THE COURT: Yes, ma'am.

7 MS. BROWDER: No further questions, Your Honor.

8 THE COURT: Mr. Hayes?

9 MR. HAYES: Yes, sir.

10 CROSS EXAMINATION

11 BY MR. HAYES:

12 Q Mr. Tanner, good afternoon, sir.

13 A Good afternoon.

14 Q All right. Sir, so you're the lead investigator in
15 this particular matter; is that right?

16 A Yes.

17 Q Okay. And I guess you're designated that by one of
18 your superiors was Sergeant Clark. I think you talked
19 about Sergeant Clark being present at the chicken plant
20 with you. Would he have been the one that assigned you
21 the case?

22 A I can't say exactly who assigned me the case. It
23 might have been the sergeant, it might have been the
24 lieutenant. I don't recall.

25 Q All right. So as the lead investigator then, it

1 would be your responsibility to try to collect all of the
2 evidence that's available in the case; is that right?

3 A Yes.

4 Q Okay. So you'd be responsible for trying to make
5 sure that you have all the statements that were provided
6 by your alleged victim, right?

7 A If they give a statement, yes.

8 Q Right. I mean, anybody she would have talked to or
9 any record associated with what she says happened, you
10 would want to get that, right?

11 A Well, not anybody. You're saying like an official
12 statement? No. I mean, I speak to a ton of enough
13 people during the course of investigation. I don't take
14 an official statement from all of them.

15 Q Okay. Well, I don't necessarily mean like a formal
16 statement, but like any -- you know, I guess, like in
17 this case, right, you weren't the responding officer at
18 the home on the morning of the 11th, right?

19 A Correct.

20 Q That was Sergeant Torres. We can agree about that.

21 A Correct.

22 Q Right? You would want to make sure that that body
23 cam is preserved, though, right?

24 A If I can, yes.

25 Q Okay. Because that would be important, right?

1 A Yes.

2 Q Okay. So, I mean, and I just use that as an example
3 to say like you're going to want to make sure that you
4 collect all the things that are relevant and important to
5 the case.

6 A Again, if I can or, you know, if I deem them
7 relevant at the time. Who knows, you know, four years
8 later might -- what I might have thought was relevant,
9 you know, four years before, I don't know.

10 Q Right?

11 A I certainly try to gather everything I can that I
12 think is pertinent, yes.

13 Q Right. Sure. So, you know, as part of that, you
14 have this intake form that's filled out, she goes down
15 and she gives this forensic interview, right?

16 A As part of that -- as the intake form?

17 Q Right. Well, I'm just saying so the intake form and
18 the forensic interview, you said you left the chicken
19 plant to go either observe or be a part of the forensic
20 interview, right?

21 A No, no. What I said was after I left the chicken
22 plant, I got a call from the Metropolitan Children's
23 Advocacy Center in which they informed me that they would
24 have an opportunity to interview her, I believe, on the
25 20th. They were just informing. I believe we probably

1 thought it was going to be a little bit longer than that,
2 so they were just trying to -- trying to get her in
3 before we thought we were able to.

4 Q Okay. And you're working in the Special Victims
5 Unit at the sheriff's office. You investigate sex
6 crimes. How long have you been doing that prior to 2021?

7 A Honestly, I couldn't tell you. A good -- a good
8 long time.

9 Q I mean, years?

10 A Possibly years. But in investigations, you know,
11 they have different units, and I've been in many
12 different units. I couldn't tell you exactly how long I
13 had been in Special Victims Unit at that particular time.
14 I think it was years.

15 Q Okay. And you had been in investigations then for
16 years, right?

17 A Yes.

18 Q Okay. Do you know what year you were promoted to an
19 investigator at the sheriff's office?

20 A I don't. Response to that would be because I've
21 actually been an investigator twice. I've been an
22 investigator before I became a road supervisor, then went
23 to road supervisor, was promoted to sergeant, and then
24 after many years, it was my kids were very active in
25 athletics, I asked if I could go back to investigations.

1 And I don't recall what year that was.

2 Q It would have been around the time your kids were in
3 athletics, though, right?

4 A Yes.

5 Q So we could probably narrow it down. I'm not going
6 to hold your feet to the fire on a specific year, but
7 we're in 2021 and you've been back to investigations for
8 ten years?

9 A I don't know. I would say definitely around ten,
10 maybe more.

11 Q Okay. And so in that time that you've been an
12 investigator, you weren't always assigned to the Special
13 Victims Unit. What other kind of units does the
14 sheriff's office have that you would have been
15 investigating cases in?

16 A Major crimes, burglary.

17 Q So major crimes, that will be like murder,
18 kidnapping, right?

19 A Yes. Aggravated assaults.

20 Q Aggravated assault, armed robbery.

21 A No. Robbery is a different division. But
22 definitely aggravated assaults through homicide. And
23 I've worked burglary as well.

24 Q Okay. And so inside of that unit, you sort of have
25 a specialized focus of the kind of case you're dealing

1 with. But as an investigator, your process in the
2 evidence -- while the evidence may be a little bit
3 different in each case, it's all kind of generally the
4 same, right? I mean, you're just dealing with this one
5 kind of case, but as an investigator, your processes are
6 probably similar no matter what kind of case you're
7 investigating; is that fair?

8 A Similar, yes.

9 Q Okay. All right. So in this case then, you would
10 have been familiar that your alleged victim had talked to
11 Ms. Torres, right?

12 A I'm sorry. I beg your pardon. I couldn't
13 understand what you were saying.

14 Q I'm sorry. I can't -- my questions are horrible,
15 and I understand.

16 You would have understood that your alleged victim
17 in this case talked to Sergeant Torres on the day the
18 case was reported, right?

19 A I would have been from interviewing the report.

20 Q Okay. Did you ever have an opportunity to review
21 the body cam from that?

22 A Did I have an opportunity or did I?

23 Q Did you?

24 A I don't -- at what point?

25 Q At what point?

1 A Are you asking me a certain point?

2 Q Did you ever review the body cam?

3 A I don't recall.

4 MR. HAYES: Okay. And, Judge, I'm not -- can we
5 approach?

6 THE COURT: Sure.

7 (WHEREUPON, a bench conference was held off the record.)

8 BY MR. HAYES:

9 Q So you don't recall whether or not you reviewed the
10 report or the video by Sergeant Torres.

11 A I don't recall.

12 Q Okay. So did you have an opportunity then to review
13 the report that was generated by the sexual assault
14 nurse?

15 A At some point, yes, I would have.

16 Q Right. And that interview would have occurred at
17 the hospital, right?

18 A You mean **Complainant** interview with the SANE nurse?
19 Yes.

20 Q The sexual assault nurse. The SANE, that's what we
21 -- what does that stand for?

22 A It's the sexual assault nurse -- nurse examiner.

23 Q Okay. So the sexual assault nurse examiner would
24 have been someone that worked with the hospital, right?

25 A Yes.

1 Q That's not a sheriff's office or employee or
2 anything.

3 A Correct.

4 Q Okay. That's someone that when you get to the
5 hospital -- in this case, you would agree with me that
6 **Complainant** reported to Prisma.

7 A At this case, you want me to agree with you about
8 what?

9 Q That **Complainant** reported to Prisma. She went to
10 Prisma, the hospital.

11 A I don't recall exactly what hospital, but yes, it
12 probably would have been.

13 Q Okay. You would have reviewed the SANE nurse
14 report, right?

15 A At some point.

16 Q Okay.

17 A At some point, I would have gathered it, yes.

18 Q Right. And as a part of that, you would have got
19 the hospital records then, right?

20 A I don't know if I would have gotten the hospital
21 records. I would have gotten the SANE report and the
22 SANE kit and all that stuff.

23 Q Okay. You have gotten -- so you would not
24 necessarily have gotten the full hospital report from the
25 day that she would have gone there?

1 A I'm not saying that. I just don't know what you
2 mean by the hospital report. We get the -- we get the
3 SANE kit and, you know, the SANE exam notes.

4 Q Well, if I represented to you that there's a
5 hospital report in this case that's 65 pages, would you
6 have any reason to disagree with that?

7 A I wouldn't have any reason to disagree with it.

8 Q Right. Would you sit before this jury and say that
9 you've never seen the hospital records?

10 A I can't say if I have or I haven't.

11 Q Would reviewing them ---

12 A I would have gathered many documents for the case
13 jacket at some point before I left in February of 2022.
14 But it was a good long time ago so I don't -- I don't
15 recall the number or what it is that you're speaking of
16 exactly.

17 Q Well, if I showed them to you, would that help?

18 A I'm sorry?

19 Q If I showed them to you, would that help?

20 A It may.

21 MR. HAYES: If I may, Judge, briefly.

22 THE COURT: Yes.

23 BY MR. HAYES:

24 Q Mr. Tanner, I'm handing you some hospital records
25 there and ask you if you recognize those.

1 A (Reviews document) I honestly can't say one way or
2 another. I mean, they're -- I don't have any reason to
3 doubt you, but, you know I don't recall. There's a lot
4 of documents involved in this case.

5 I'm sorry. Did that not answer your question?

6 Q Well, I mean, I'm just trying to figure out what a
7 lot of documents are. What documents are there?

8 A There's all sorts of documents. There's the initial
9 incident report as we said, the METCAC report. That
10 would be the report from the individual that did that
11 forensic examination. There would be, you know, my
12 follow-up. They're requested to hand in certain
13 documents on the individual charged. I won't go into
14 those. Numerous documents. If you want to look at that
15 case jacket index, I think there's upwards around 31,
16 32 requests that you may or may not have.

17 Q Okay. So you have maybe 30 or 31 entries. Your
18 follow-up in this case, you would agree with me, is six
19 pages, right?

20 A Yes.

21 Q Okay. The incident report that's generated by
22 Sergeant Torres is four pages, right?

23 A Well, I don't know that I want to agree with you on
24 that. As I recall, it seems like she wrote the initial
25 report under the wrong case number and then did a

1 supplement to it. So I don't know if you're including
2 that. I'd have to go back and count them individually.

3 Q Okay. And then you have some -- I'm sure you
4 generated some reports and some entries related to these
5 exhibits that have been introduced into evidence, right?

6 A I may have, yes.

7 Q Okay. I mean, there's not going to be any entry in
8 this case that comes anywhere near 62 pages, is there?

9 A 62 was a lot, yes.

10 Q And your testimony is you don't know if you saw this
11 or not.

12 A That's correct.

13 Q Wouldn't it have been important to consider or take
14 into account what is in these records as part of your
15 investigation?

16 A Yes. It would if you're talking about when she went
17 for the SANE exam, yes. I don't know if those are
18 follow-ups or what they may have been. Also bear in
19 mind, again, this was December of 2021 and I left right
20 at the beginning of February 2022. I retired.

21 Q I usually don't carry this much paper around.

22 Okay. Well, you did review the SANE report, though,
23 right?

24 A I would have.

25 Q Okay. That would have been a part of what you

1 looked at?

2 A Yes.

3 Q Okay. And you'd agree with me that the SANE report
4 indicates that the rectum is normal.

5 MS. BROWDER: Objection, Your Honor. Hearsay.

6 THE COURT: Ask the question a different way,
7 please.

8 BY MR. HAYES:

9 Q You reviewed the SANE report, correct?

10 A I would have.

11 Q And through your investigation and your -- were you
12 able to determine whether or not the rectum was normal?

13 MS. BROWDER: Objection, Your Honor. It's still
14 hearsay.

15 THE COURT: Whether the what was normal?

16 MR. HAYES: The rectum.

17 THE COURT: Whether the record was normal?

18 MR. HAYES: The rectum.

19 THE COURT: Oh.

20 MS. BROWDER: Objection. It goes to hearsay that's
21 in a report that's not his, Your Honor.

22 THE COURT: Which report are you talking about that
23 you want him to confirm?

24 MS. BROWDER: The SANE report, Your Honor, written
25 by somebody else.

1 THE COURT: Has he said he read it?

2 MR. HAYES: Yes. He relied on it.

3 MS. BROWDER: He said he's reviewed it, Your Honor.

4 THE COURT: I mean, he can testify what he recalls
5 it said if he read it.

6 MS. BROWDER: Your Honor, may we approach?

7 THE COURT: All right. I'll tell you what. Let's
8 go ahead and take our lunch break now. We've been going
9 at it for about an hour and a half.

10 Ladies and gentlemen of the jury, we're going to
11 take our lunch break now. I remind you that during this
12 time, you're not to discuss the case in any manner with
13 anyone. This includes your fellow jurors, your friends,
14 family and anyone else. Please keep an open mind about
15 all issues in this case until you've been instructed to
16 begin your deliberations. We'll come back at -- we'll
17 start at two. So if you could be back a little bit
18 before two o'clock, and the bailiffs will tell you when
19 to be back.

20 Thank y'all.

21 (WHEREUPON, the jury exits the courtroom at 12:37 PM.)

22 THE COURT: I apologize. I just didn't know which
23 report you were referring to and whether it was in the
24 62 pages or not so I couldn't -- he said that he couldn't
25 remember if he read or not the 62 pages. So that's me.

1 I just didn't ---

2 MS. BROWDER: Here's my thing, Your Honor. He's
3 asking him to testify to something Jennifer Nguyen wrote
4 in her report as her opinion from the SANE examination.
5 He can't testify to what she did or didn't do and what
6 she says her opinion is regarding the rectum or anything
7 else. That is hearsay. It's the classic example of
8 hearsay. Just like he can't read a statement -- for
9 example, say I wrote a statement about something.

10 THE COURT: No, no. I get that. Again, I didn't
11 know what the purpose of -- I thought that you were
12 asking if he had seen a report that contained that just
13 to see whether it was in the 62 pages or not. I'm sorry.
14 I was looking at -- what's your response to the hearsay
15 objection? He can't just regurgitate a report that
16 somebody else wrote.

17 MR. HAYES: So this is kind of -- and I agree,
18 Judge. The way I asked the question the first time was a
19 hearsay type elicitation. I really didn't mean to do it
20 that way. There's other ways to do it. I'm better than
21 that. So I can fix the problem I created, right?

22 So this is where it comes down to. He's the lead
23 investigator in a sexual assault case.

24 THE COURT: Right.

25 MR. HAYES: I have no idea whether or not they're

1 going to call this SANE nurse or not.

2 THE COURT: Right.

3 MR. HAYES: I suspect not. But ---

4 THE COURT: Well, if they don't, then they can't get
5 the report in either.

6 MR. HAYES: But the report, okay, is somewhat
7 favorable to my client in that it shows a normal rectum.

8 THE COURT: Well, you can subpoena her to testify
9 but you can't get it in through somebody that didn't
10 write it, the truth of the matter asserted for that.
11 Whether or not a medical diagnosis was made by a party
12 that's not this witness, you can't get that report in or
13 that finding in through him.

14 MR. HAYES: Well, so if I could lay a record, Judge.
15 Okay. The sheriff's office does this consistently to
16 their benefit where they -- you know, Stan Smith is sort
17 of a legend in Richland County. He's held out. He
18 should be. He's one of the greatest investigators I know
19 in my lifetime. And he trains all of these
20 investigators. And I think the people at the solicitor's
21 office would agree with what I'm saying. But the product
22 of hearsay is not hearsay, and that's always been their
23 position.

24 THE COURT: I don't understand. I don't understand
25 that.

1 MR. HAYES: Well, so in a criminal investigation,
2 they'll take hearsay and they'll take statements from
3 people that they would not be introducible on their own,
4 but what law enforcement does in response to that or a
5 finding that they make after the hearsay that they've
6 accepted is the product of the hearsay is not hearsay.

7 THE COURT: I still don't understand that.

8 What I'm trying to boil this down to is that if
9 there's a report that was prepared by Ms. Nguyen and she
10 is not testifying and that report's not in evidence, you
11 can't get it in through this witness. You're going to
12 have to get somebody else. I mean, otherwise, there
13 would be no reason to call a pathologist or a coroner or
14 anybody else. You can just put somebody up and say
15 what's the report say.

16 MR. HAYES: And, again, I'm not trying -- this is
17 where I'm driving at. The line of -- he's investigating
18 a sexual assault that's alleged to have been involved
19 penile-anal penetration, right? And this particular
20 evidence where you have a normal rectum, wouldn't that be
21 something that he would consider in the investigation?

22 MS. BROWDER: Your Honor, under State v. King which
23 just came out in 2017, it overruled that investigators
24 can do that saying that's impermissible hearsay for an
25 officer, for example, in this case they -- in that case

1 say she learned there were three to four shots when she
2 talked to neighbors, that this serve no purpose except to
3 prove the truth of the neighbor's statements. And the
4 State did not argue it was necessary to explain the
5 officer's conduct or in the context of other testimony.
6 So it's this same situation that he can't backdoor the
7 hearsay as part of his investigative -- or why he made a
8 charge. They specifically address that issue in that
9 case so the investigators can no longer do that.

10 THE COURT: Right. And experts can consider things
11 that are hearsay in developing their opinion. But I
12 don't think that you can get that in through this guy. I
13 mean, you can subpoena this Ms. Nguyen or Dr. Nguyen or
14 whoever she is and ask her about that. But I don't think
15 that you can get her findings on some type of medical or
16 anatomical issue in through an investigator that there's
17 no foundation he has any expertise ---

18 MR. HAYES: So I can't say like through the course
19 of your investigation, was it determined that the rectum
20 of the alleged victim in this case is normal?

21 THE COURT: Well, if you could do that, then you
22 could say did you determine in this investigation what
23 the pathologist said and what was the cause of death and
24 what was -- I mean, why have any of these experts prepare
25 reports and offer expert opinions if you can just get

1 them in through anybody that's involved in the
2 investigation?

3 You're going to have to subpoena Ms. Nguyen or
4 address it another way. But I'm finding that -- I'm
5 sustaining the objection that you can't get in
6 Ms. Nguyen's findings that she apparently put in a report
7 about some kind of medical issue or anatomical issue
8 through this investigator.

9 MR. HAYES: Yes, sir.

10 THE COURT: And I don't know whether she's going to
11 testify or not. You can certainly call her if you want
12 to.

13 MR. HAYES: And, Judge, before we break for this
14 lunch break, I did want to put on the record, I did make
15 a contemporaneous sidebar ---

16 THE COURT: Hold on one second.

17 Lieutenant, you can step down. You're still under
18 oath, so please don't discuss your testimony until you're
19 finished testifying.

20 THE WITNESS: Yes, sir.

21 MS. BROWDER: And, sorry, just to go back to that
22 other thing real quick, I would ask when the jury comes
23 back out, that any questions that he asked be struck
24 regarding that.

25 THE COURT: Okay. If you'll just remind me before

1 they come in, I'll just say there were some questions.
2 I'll say something to the effect that there was a
3 reference to a report and I'm sustaining an objection as
4 to the questions that were asked about it. And you are
5 not to consider anything about that ---

6 MS. BROWDER: Thank you.

7 THE COURT: --- in your deliberations.

8 Yes, sir. And I know that you did make a
9 contemporaneous objection at a sidebar about the recross
10 examination. And the only reason that I know about this,
11 frankly, is that we had a murder case, I can't remember
12 where it was, somewhere in the Pee Dee, where we went to
13 the mat on this for like two hours. And so I've
14 discussed and been through the research on it a few
15 times.

16 Ms. Browder asked -- did the direct exam, you did
17 the cross-examine. Ms. Browder got up and she -- unless
18 somebody can tell me otherwise, she did not enter in any
19 new evidence, any new exhibits, she didn't raise any
20 issues that had not been covered in direct and cross. At
21 that point, she was either clarifying or summarizing or
22 giving her an opportunity to address some of the
23 questions that you asked.

24 MR. HAYES: Well, and so, Judge, I appreciate the
25 opportunity. So I do want to preserve this issue for

1 appeal.

2 I do believe that I should have been entitled to a
3 recross. I understand the Court's ruling. I'm not here
4 to quibble with it, but I am here to protect the interest
5 of my client to the best of my ability.

6 While I don't believe that Ms. Browder touched on
7 any new outside subject matter in the redirect, there was
8 confusion on recross about once or twice and how this
9 went about that the witness didn't seem to have a clear
10 memory. Ms. Browder stood up and clarified that point.
11 And I feel like, based on the clarification that was
12 provided by the witness, I should have been able to ask
13 questions about the clarification. Because when I sat
14 down and recross, it seemed to be unclear. And they
15 fixed that, and so I would have had further follow-up
16 with the witness about that particular issue as a
17 specific event. I mean, I wasn't going to -- it wasn't
18 going to be a long recross. It would have been probably
19 ten questions.

20 THE COURT: Right. And then she would have said,
21 well, I get to go again and then I get to go again and it
22 goes back and forth. And that's why I believe the rules
23 don't address a right of recross in the cases that I'm
24 looking at. I believe it's Rule 611(d) that addresses
25 some of this. But there is -- of course if Ms. Browder

1 had started going into some, you know, new issue or
2 introduced a new exhibit, you would be entitled to ---

3 MR. HAYES: Well, we would object ---

4 THE COURT: Hold on. Hold on. Then you could
5 either object at that point for beyond the scope of
6 recross. But if I overruled it and allowed her to raise
7 a new issue, then I would allow you to recross on that
8 new issue but not get into everything else.

9 In the cases that I've looked at here is one of
10 State vs. Robinson and the other is State vs. Gahagan.
11 And in Gahagan, the South Carolina Court of Appeals said
12 as to whether a trial court erred in not allowing Gahagan
13 to recross-examine a witness regarding a matter
14 introduced during redirect examination, so regarding a
15 matter introduced during examination. And then it cites
16 some case the right to and scope of recross examination
17 is within the sound discretion of the trial court. A
18 trial judge may impose reasonable limits on
19 cross-examination based upon concerns about, among other
20 things, harassment, prejudice, confusion of the issues
21 with the safety or interrogation that is repetitive or
22 only marginally relevant. And then it cites a case that
23 says absent the introduction of any new matter on
24 redirect examination, the rule is that
25 recross-examination is not required. Without something

1 new, a party has the last word with his own witness.

2 So again, whether or not -- I mean, you can argue,
3 well, she said she didn't remember and then the next time
4 she was asked about it she said that -- you know, that
5 she remembered some of it, that's certainly further
6 ground for you to argue. But, I mean, we can go back and
7 forth on this. You can say, well, you told me a few
8 minutes ago you didn't know that, and she said yeah, and
9 she stands up and says, well, now a few minutes ago you
10 said you did. I mean, we're not going to go back and
11 forth on that. Unless she raises a new issue or a new
12 exhibit or some new matter, I don't think that you've got
13 the right to recross that and I don't have any argument
14 before me that a new matter was raised. But you're
15 certainly preserved on that, and if you have anything
16 else ---

17 MR. HAYES: If I may. And, Judge, I sincerely want
18 to apologize for interjecting myself and interrupting the
19 Court when it's in its -- you know, making its ruling. I
20 certainly don't intend to be disrespectful in any way.

21 THE COURT: I didn't take it that way.

22 MR. HAYES: It's my nature sometimes if I don't -- I
23 feel like I'll forget it if I don't get it out, right?
24 So sometimes I just see an opportunity and attempt it.

25 THE COURT: No worries at all.

1 MR. HAYES: So from my perspective, Judge, I think
2 it's just more of a standard of practice in the years
3 I've been practicing that lawyers have been allowed to
4 recross. In this particular case, while it may not have
5 been a new matter with a new exhibit, it was a matter
6 that there appeared to be confusion on on recross that
7 was clarified on redirect -- or on regular cross. So
8 there was an issue that appeared to be confusion on
9 cross. It was clarified on redirect. And in that there
10 was an element of newness to the testimony.

11 THE COURT: Well, but, see, now you're trying to
12 bleed over and say that there's something new. There's
13 not. What you said was that she didn't raise anything
14 new, that there was a clarification. So let's just say,
15 for example, that in direct she said something happened
16 at 6:55. With you, you impeach her and you say -- and
17 she says, well, I guess it was at seven o'clock and then
18 she gets back up and clarifies it and says I think it was
19 6:57. You don't get to get up and say, no, it wasn't.
20 You said this. That's just back and forth. You can
21 argue to the jury if she clarified something that you
22 felt that she testified clearly on or if she said, no, I
23 know it now but I didn't know it when you talked to her,
24 then you can argue that. But, I mean, otherwise, we're
25 just going to keep going back and forth on every single

1 issue that was inconsistent in some way. Is that not
2 right? I mean, if I'm wrong, tell me.

3 MR. HAYES: I don't know, Judge. I mean, look. I
4 always assume when I walk into a courtroom I know the
5 least amount of law here. And if Justice Bowen
6 [phonetic] was here, he would echo that.

7 But I say that because I truly -- you know, I guess
8 in the trench warfare that we engage in as trial lawyers
9 sometimes, you know, I mean I've read 611(d). I read it
10 immediately following your ruling and I see that it's at
11 the discretion and I took just a minute to try to find
12 some case law on it to be able to preserve it for the
13 record. I really wasn't able to because I was trying to
14 use my phone in the middle of the trial while Sergeant
15 Tanner or Lieutenant Tanner is testifying. But ---

16 THE COURT: But, I mean, 611(d) does say but without
17 exception, he may be re-examined as to any matter brought
18 out during cross-examination. So, again, you know, as
19 long as -- I think it focuses on what the new matter is
20 and whether that would be, you know, unfair in some way
21 to do that. But if you're asking her and she says --
22 when you ask her I'm fuzzy on this, I'm vague about it, I
23 can't recall exactly and then she asks and she says, no,
24 it was 6:55, I mean, what are you going to say? A minute
25 ago you told me that it was fuzzy and it was vague and

1 you didn't remember and now you remember. Well, I mean,
2 you can argue that to the jury. But, I mean, otherwise,
3 you would be allowed to go through and ask for every
4 single thing that she clarified.

5 MR. HAYES: Right. And I understand. And I
6 understand the Court's ruling. And I'm not trying to
7 necessarily say it was a new thing. It wasn't like a new
8 thing that hadn't been talked about at all.

9 THE COURT: Right.

10 MR. HAYES: But it was a clarification that we
11 didn't have before. So I'm not going to say it was new,
12 but it's a clarification that until that moment we really
13 didn't have.

14 So I know I'm splitting a hair here, but what I'm
15 saying is but for the clarification, I probably really
16 wouldn't have had anything to ask about. But since we
17 had -- I had -- I did have follow-up on that one point
18 because when I was asking her about the same thing, she
19 didn't know.

20 THE COURT: Right. All right. And you're certainly
21 preserved as a contemporaneous objection that you made at
22 the sidebar, and certainly it's timely now to raise and
23 put that issue on the record. But I respectfully stand
24 by my ruling as to that issue earlier.

25 Is there anything else that we need to address out

1 of the presence of the jury before we take our lunch
2 break?

3 MS. BROWDER: Your Honor, I don't know if you want
4 to go ahead and do the colloquy with the defendant
5 regarding testifying. After Investigator Tanner is done,
6 we're going to have one more witness. So after that,
7 obviously, if he wants to talk to his attorney about it
8 over lunch, that's taken care of instead of ---

9 THE COURT: I'll defer to Mr. Hayes on that issue.
10 I will give that colloquy whenever you want me to.

11 MR. HAYES: We're prepared at any time, Judge.

12 THE COURT: Would you like for me to do it now or do
13 you want me to wait until after their next witness? I
14 don't know how long that's going to take, but it may be
15 short after. I'm not sure.

16 MS. BROWDER: And I guess that comes into play, too,
17 Your Honor. The next witness once he's done is probably
18 going to be about 15 to maybe 20 minutes. Then are we
19 going to go into closing if he doesn't testify or are we
20 just going to break and close in the morning? I'm just
21 trying to figure out ---

22 THE COURT: Again, I will defer to y'all as it --
23 I'm trying to think. If it comes back at two and let's
24 just say that Lieutenant Tanner is going to take another,
25 I don't know, 20 minutes-ish, maybe a little bit longer,

1 just call it 30, so we're at 2:30, the other may take
2 30 minutes with direct and cross-exam so we're at three
3 o'clock at that point, we'd take a break, we could take a
4 break at that point and do the Fifth colloquy or we can
5 do it now.

6 Would y'all want to begin if it's at three to
7 3:15-ish, would y'all want to go ahead and charge and
8 argue at that point or do y'all want to come back in the
9 morning? If you feel strongly about it one way or the
10 other, I'll certainly consider that or I'll make the
11 call. I just always like to let y'all try your case and
12 stay out of the way if y'all can agree to it. If you
13 can't, I'll be glad to do it.

14 MS. BROWDER: It doesn't matter to me, Your Honor.

15 MR. HAYES: I mean, Judge, I think the only -- you
16 know, to put the jury in a position where we're giving it
17 to them after four o'clock ---

18 THE COURT: Well, I don't know if -- I don't know
19 how long it would take to do all that. But, you know,
20 again, I'm told that four o'clock is kind of the witching
21 hour. But, again, if y'all want to see how it goes, then
22 we can make the call then. It may be much shorter. It
23 may be -- you know, so it's an easier call to make or it
24 may go to 3:45 or something. I don't know.

25 MR. HAYES: Well, the only other thing, Judge, would

1 be that we'd have to have a charge prepared.

2 THE COURT: Right.

3 MR. HAYES: So by two o'clock then when we start,
4 we're going to have to have -- and that's fine.

5 THE COURT: What I would suspect is -- what I would
6 suspect is that we could even do that during the -- yeah.
7 I mean, we could do it before the jury comes back or we
8 could do it when we take a break at three if we do it
9 that way.

10 MS. BROWDER: Either way it sounds like we're going
11 to be cutting it close. So I don't know if we just want
12 to call it and say we'll do it in the morning. That way
13 nobody's pressured.

14 THE COURT: Do you have a preference?

15 MR. HAYES: I guess from my perspective, Judge, I
16 don't want the jury to get this case at four or 4:30 and
17 -- I mean, usually, you know, when I have a jury
18 deliberating, that's the time I start looking for the
19 verdict because they want to go home.

20 THE COURT: Right.

21 MR. HAYES: And so, I mean, the last couple trials
22 I've had, they've come back right around five o'clock,
23 you know, because they're ready to leave. And so we're
24 asking them to start their deliberations in a case that's
25 serious to both sides.

1 THE COURT: Well, why don't we just plan on doing it
2 in the morning. That way we'll have some time to argue.
3 I mean, I'm sure you'll have motions that you want to put
4 at the end -- at the close of the State's evidence and
5 then maybe after your evidence, if any, at that point,
6 and then we'll be able to nail down the charges and the
7 verdict form and everything so that maybe we can see if
8 they want to start at nine o'clock tomorrow morning or
9 something like that. Or, you know, try to get it early
10 so that we don't bump into lunch unnecessarily as well.

11 MR. HAYES: Sure.

12 THE COURT: All right. And on the issue of charges
13 and verdict form, again, Grace is working on that.
14 She'll -- you know, we'll keep up with y'all on it if
15 there's some issues. I know Ms. Browder gave some that
16 we're going to look at and then we can go into that
17 later, too.

18 All right. Mr. Hayes, would you like me to give the
19 Fifth Amendment colloquy to your client now or would you
20 like me to wait until later?

21 MR. HAYES: Let's -- now is fair, Judge.

22 THE COURT: Okay. All right. If you could, please,
23 Mr. Brown, stand up and raise your right hand.

24 Mr. Clerk, if you could swear him in.

25 THE CLERK: Yes, Your Honor.

1 (WHEREUPON, MARTY BROWN is duly sworn.)

2 THE COURT: All right. You can sit down now if
3 you'd like to, Mr. Brown. Yes, sir.

4 All right. Mr. Brown, at this time, I'm going to
5 explain to you certain of your rights. If you do not
6 understand anything I say, please let me know. If you
7 want me to explain anything or repeat it -- if you want
8 me to repeat anything or explain it in more detail,
9 please let me know. Do you understand?

10 DEFENDANT BROWN: Yes, sir.

11 THE COURT: We've now reached the stage or we're
12 about to reach the stage of the trial where you may
13 present your defense. You have the right to claim the
14 protections given to you by the Fifth Amendment to the
15 Constitution of the United States. This amendment states
16 in part that, quote, no person shall be compelled in any
17 criminal case to be a witness against himself, end quote.
18 This means that you cannot be required to testify in this
19 case. You have the right to testify on your own behalf;
20 however, no one can make you testify. This is a personal
21 right and no one can waive this right except you.

22 If you decide to testify, you will be subject to the
23 same rules that govern other witnesses and you may be
24 examined and cross-examined on any relevant issue in this
25 case. In addition, if you have any convictions involving

1 dishonesty or false statements or for crimes punishable
2 by imprisonment for more than one year and this court
3 determines that the probative value of admitting this
4 evidence outweighs its prejudicial effect to you, the
5 solicitor will be able to introduce your record to attack
6 your credibility.

7 If you decide to testify, this decision on your part
8 must be freely, voluntarily and intelligently made with
9 knowledge of the protections given to you by the Fifth
10 Amendment and the consequences of your decision to
11 testify.

12 If you decide not to testify, I will instruct the
13 jurors that they cannot give the fact that you did not
14 testify any consideration whatsoever and that there is to
15 be absolutely no prejudice to you because you did not
16 testify.

17 It is left entirely up to you whether or not you
18 testify. You may talk with your attorney, your family
19 and friends, your preacher, anybody you want to, but the
20 final decision will be left entirely up to you. Do you
21 understand what I've explained?

22 DEFENDANT BROWN: Yes, sir.

23 THE COURT: Do you have any questions about what
24 I've explained to you?

25 DEFENDANT BROWN: I don't.

1 THE COURT: All right. And have you discussed with
2 your lawyer whether or not you should testify?

3 DEFENDANT BROWN: Yes, sir.

4 THE COURT: Do you wish to talk to your lawyer any
5 more before you make the final decisions?

6 DEFENDANT BROWN: I don't.

7 THE COURT: You have made a decision about whether
8 or not you want to testify in this case?

9 DEFENDANT BROWN: I do.

10 THE COURT: And you've had an opportunity to speak
11 with Mr. Hayes about this?

12 DEFENDANT BROWN: Yes, sir.

13 THE COURT: You've had all your questions answered
14 and understand the effect of doing so?

15 DEFENDANT BROWN: Yes, sir.

16 THE COURT: All right. Do you wish to testify?

17 DEFENDANT BROWN: I plead the Fifth.

18 THE COURT: All right. All right. If that's the
19 case, as I mentioned a few moments ago, I will instruct
20 the jury at the conclusion of this case that they are not
21 to consider that in any way when deliberating and
22 deciding on these charges. You understand that?

23 DEFENDANT BROWN: Yes, sir.

24 THE COURT: All right. Anything further from the
25 State before we break?

1 MS. BROWDER: No, sir.

2 THE COURT: Anything from the defense?

3 MR. HAYES: No, sir, Your Honor.

4 THE COURT: All right. Thank y'all. We'll be back
5 a little before two o'clock.

6 (WHEREUPON, a recess is taken at 1:01 PM; proceedings
7 reconvened at 2:03 PM.)

8 THE COURT: Grace is about to email the draft of the
9 charges and the verdict form to y'all.

10 So we're going to put Lieutenant Tanner back up.
11 He's still doing his cross. There he his. I couldn't
12 see behind it. So you'll finish with the cross. There
13 may or may not be some redirect. Then you'll call
14 another witness and we'll deal with that. And then
15 you'll rest?

16 MS. BROWDER: Yes, sir.

17 THE COURT: And then at that point, I guess we'll
18 need to take a break to do a directed verdict motion and
19 then we can talk about the charges then or do you want
20 to ---

21 MS. BROWDER: We can just have a little break at
22 that point just so we'll have a chance to look over them.

23 THE COURT: Sure. Yeah, yeah, yeah.

24 MS. BROWDER: Because I won't be able to look at
25 them until ---

1 THE COURT: Exactly. I'll give you as much time as
2 you want. I'm just trying to think if that's the -- or,
3 well, I guess, didn't we come down that we're just going
4 to do that tomorrow? So we can just do that after.

5 MS. BROWDER: That's fine.

6 THE COURT: We'll just do that later in the day or
7 after we send the jury home, and that way you can have
8 plenty of time.

9 All right. So we'll have those witnesses, rest.
10 You want to do -- I guess we send them out, do a directed
11 verdict and then say -- ask you, and then whatever you
12 choose to do. And then if you have no case or if you
13 have a case, whenever that's finished, any rebuttal, deal
14 with that. And if not, then that will be it and we'll
15 send the jury home and I'll tell them that we're going to
16 do charge and closings first thing tomorrow. Does that
17 sound like a plan? And that way we can deal with renewed
18 directed verdict and the jury charges and verdict form
19 after we cut them loose.

20 MS. BROWDER: Yes, sir. That's fine.

21 MR. HAYES: Yes, sir. And I appreciate that and I
22 appreciate the Court's consideration. I just think that
23 to give the case sometime late this afternoon just is not
24 fair to them. And so I do appreciate that.

25 Judge, I play with my cards usually pretty well up

1 on the table. I don't anticipate putting up a defense in
2 this case, to be candid with the Court. I do want to put
3 one thing on the record about the preliminary hearing
4 that we've talked about.

5 THE COURT: Right. Oh, yeah.

6 MR. HAYES: So I asked my assistant yesterday to do
7 her best to track it down. As we were breaking here
8 today, she has indicated that she had received word from
9 2500 Decker that it may be available and she took it upon
10 herself to go down there and try to pick it up. She got
11 there, and the person that is supposed to be in charge of
12 being able to do these things isn't around and nobody has
13 any idea what they're talking about. And I'm not trying
14 to run down 2500 Decker, but it's not a really well-run
15 court So it's not surprising that she's leaving
16 empty-handed. I did tell her that if we couldn't get it
17 this afternoon, it's probably fruitless to continue to
18 pursue it only in the respect that we're going to be done
19 this afternoon. So if we don't have it here, you know,
20 in the next 15 minutes, which we're not because she's
21 left 2500 Decker now without it, this is not going to be
22 available. And I want to put that on the record. I did
23 do everything within my power to try to track that down
24 at my client's request.

25 THE COURT: Certainly. And thank you for reminding

1 me and putting that on the record. I forgot that we had
2 talked about that yesterday. Okay. All right.

3 MS. BROWDER: I was just to remind you, Your Honor,
4 because you said to remind you to advise the jury if
5 there's anything ---

6 THE COURT: I will. I'll tell them there was a
7 question about a document and an objection and I've
8 sustained the objection. I'm sure they don't remember,
9 but to the extent they do, I'll say, you know, please
10 don't consider that question.

11 Also, just to let y'all know, I've appointed Juror
12 Number 31 as the foreman. So y'all tell him where to
13 sit. He's a preacher, and I typically try to do that
14 with them.

15 All right. Anything before we bring the jury in
16 from the State?

17 MS. BROWDER: No, sir.

18 THE COURT: Anything from the defense?

19 MR. HAYES: No, sir.

20 THE COURT: All right.

21 (WHEREUPON, the jury entered the courtroom at 2:08 PM.)

22 THE COURT: Thank you very much, ladies and
23 gentlemen. I appreciate it.

24 Two things before we get back to Lieutenant Tanner
25 is, first of all, Juror 31, I would ask that you serve as

1 the foreperson of this jury. I'll discuss later on what
2 that entails in my later charges.

3 Also, right before we took a break, there was a
4 question pending about a document. There was an
5 objection. I have sustained the objection and therefore,
6 ladies and gentlemen of the jury, I instruct you to
7 disregard that question. I've determined that it is not
8 proper evidence and that you should not consider it for
9 any purpose during your deliberations.

10 Mr. Hayes?

11 MR. HAYES: Thank you, Judge.

12 THE COURT: Yes, sir.

13 BY MR. HAYES:

14 Q So, Investigator Tanner, at some point, you met with
15 Complainant and her parents, right?

16 A Correct.

17 Q Okay. And you met with them in an effort to try to
18 identify the location that Complainant alleges this event
19 occurred at, right?

20 A Yes.

21 Q Okay. And when you were asking Complainant questions,
22 isn't it true that her father was responding for her?

23 A Yes. In some instances, yes.

24 Q Right. You'd ask Complainant a question, and her dad
25 would interject himself and provide whatever the answer

1 would lend itself to be.

2 A Yes. In some instances.

3 Q Okay. Well, in most instances, right?

4 A It may have been most instances, yes.

5 Q Okay.

6 A Not in every instance, but yes.

7 Q I mean, he really didn't let her get a word in, did
8 he?

9 A He seemed to be talking for her at that particular
10 meeting.

11 Q Okay. And that's really the only meeting that you
12 had with **Complainant** yourself.

13 A With **Complainant** herself?

14 Q Well, that you were -- the only meeting that you
15 were -- that you had with **Complainant** right?

16 A Oh, I actually met with her and her mother later
17 when I was collecting her phone that I recall without
18 looking over my notes.

19 Q Okay.

20 A Or she was there.

21 Q So the purpose of that meeting would have been to
22 have **Complainant** turn over her phone?

23 A When I met with her and her mother, yes, I believe
24 so.

25 Q Okay. Where was that at?

1 A The parking lot of her mom's apartment, I believe.
2 The apartment complex.

3 Q All right. And I think in that original meeting
4 that you had that we just spoke about, the first meeting
5 -- so you had two meetings then with **Complainant** right? One
6 with both of her parents, and then the second one where
7 she's giving you her phone?

8 A I'd have to go back and look. That's not my
9 recollection. Or I spoke with her mom on the phone and
10 her mom couldn't come down to our office at Pineview.
11 Her father came along with **Complainant** and I met them at
12 that point and I collected her clothing and then we went
13 out to see if she could recollect the exact location
14 along with where she had gone to the store and so forth.
15 And then, again, later I met with her mom. And I think
16 **Complainant** was there at a different time, if you will.

17 Q Okay. Right. And so you collected her clothing and
18 that was put into evidence?

19 A Yes.

20 Q Right? You'd agree with me that there's no DNA
21 evidence ---

22 MS. BROWDER: Objection, Your Honor. Hearsay.

23 MR. HAYES: He's the lead investigator, Judge. He
24 should know if there's evidence about this.

25 THE COURT: What's the question?

1 MS. BROWDER: May we approach for that, Your
2 Honor?

3 (WHEREUPON, a bench conference was held off the record.)

4 BY MR. HAYES:

5 Q All right. Mr. Tanner, I'm going to withdraw that
6 question. I'm gong to do this just a little bit
7 differently, okay?

8 So the first time that you met with **Complainant** and her
9 dad at Pineview, they brought a brown paper bag full of
10 her clothes, right?

11 A Yes.

12 Q Okay. And they turned that over to you, right?

13 A Yes.

14 Q All right. And you collected that as evidence in
15 the case.

16 A Yes.

17 Q Right. And you had it submitted for forensic
18 testing, correct?

19 A I -- I tagged it into evidence and later sent in a
20 request for it to be tested.

21 Q Okay. And you would have been having it tested for
22 whatever forensic value it would have, DNA, whatever ---

23 A DNA.

24 Q --- whatever it could produce, right?

25 A Well, for DNA anyway.

1 Q Right. So you submitted -- you took the clothing
2 and submitted it all for that, right?

3 A They were submitted.

4 Q Okay. And when you went to the chicken plant to
5 talk to Mr. Brown, he was working that day?

6 A He was.

7 Q Okay. And so tell me what -- I just want to
8 understand more clearly what happen. Do you remember
9 what time of day it is that you went to the chicken
10 plant?

11 A I don't recollect the exact time, no.

12 Q Okay. Do you have any idea what kind of shifts the
13 chicken plant runs over there for the guys that work?

14 A I do not, no. I don't know when the chicken plant
15 runs.

16 Q So when you got there, is there like a lobby area
17 that you speak to a receptionist? Or how does it go?

18 A There was somebody at a desk. When you walk in,
19 there's a desk to the immediate left as I recall. I
20 spoke with somebody there that's in the office, not the
21 plant itself. Again, as I said, that's -- the plant
22 itself is across the street from the main office.

23 Q Okay. So -- and you asked to speak to Marty
24 Brown?

25 A I believe I would have asked them if Marty Brown was

1 working there.

2 Q Okay. And they ---

3 A And can I speak with him, yes.

4 Q Okay. And so you stayed across the street, and
5 eventually, they brought someone across the street?

6 A Well, eventually, Marty Brown came over. I don't --
7 they showed us to a room that was immediately off of that
8 entry area, if you will, so we were in that room when
9 Marty Brown walked in.

10 Q Okay. And what kind of room was it?

11 A It looked like a conference room, like have a desk
12 and tables and so forth.

13 Q Could you see past the one desk that you encountered
14 when you came into that office area?

15 A Could I see past it?

16 Q Past it. Like could you see was there other offices
17 of other people that were working there or is it just one
18 desk with one person at it in this particular office that
19 you went into?

20 A I really don't recall if I saw others. I don't -- I
21 don't know. I would be speculating. I don't recall. It
22 looked like one -- one desk there, and I spoke to that
23 person. I don't recall necessarily seeing anybody else
24 there.

25 Q Okay. Do you have any idea how it came to be that

1 Marty Brown was notified that y'all were there to speak
2 to him?

3 A Other than me asking the -- I believe it was a lady
4 at the desk, no.

5 Q Do you recall observing any steps that she took to
6 get Marty to come over here to talk to you ---

7 A No.

8 Q --- who she talked to?

9 A I don't know. I believe she might have picked up
10 the phone, but I couldn't tell you.

11 Q Okay.

12 A Again, they showed us to that room, asked that we
13 wait there. So we did.

14 Q All right. And eventually, Marty comes in, right?

15 A Correct.

16 Q Okay. And you begin to kind of ask him about does
17 he know **Complainant** right?

18 A If he knew **Complainant** yes.

19 Q Right. And you'd agree with me that not everybody
20 knows everybody by their government name, right?

21 A I would agree.

22 Q Okay. Sometimes people go by different nicknames or
23 they're identified in different ways, right?

24 A Sometimes, yes.

25 Q Okay. And so when you're first asking him about

1 whether or not he knows Complainant under direct
2 examination, you made it sound like he said no. But
3 wouldn't it be fair to say that he didn't fully
4 understand who it was that you were talking about at the
5 time?

6 A Just to be clear, he said no, not make it seem.
7 That's what he said. So I asked him the same name again,
8 and then he did know who it was.

9 Q Did you do anything to try to help him understand
10 what it was that you were asking about? You just said do
11 you know Complainant he said no, and you said do you
12 know Complainant again?

13 A When he said -- when he said no, I recall that
14 surprising me given what I was told, you know, that close
15 enough she calls him uncle. So that's why I, you know,
16 was a little surprised and asked him again, you know, do
17 you know -- you know Complainant And then re recalled yes,
18 he did.

19 Q Okay. So in short order then, I mean, fairly
20 quickly right behind it you probably -- do you think that
21 you had like a surprised look on your face? Do you think
22 you reacted to that, do you recall?

23 A I may have.

24 Q Right. I mean, you've been doing this a long time,
25 right?

1 A Yes. Sorry.

2 Q So you said -- and, I mean, probably, what, if he
3 said no in the first five seconds, then he said he did
4 know her in the first ten, right?

5 A I'm sorry. Ask that again, please. I'm not sure I
6 understood.

7 Q So he comes in the room and you say do you know
8 Complainant and he says no, and then you say are you
9 sure you don't know Complainant he says, oh, yeah, I
10 know Complainant

11 A Well, that -- again, that was not what was led with
12 when he walked into the room. If you're asking at the
13 time frame in relation that when he walked into the room,
14 I introduced myself and Sergeant Joe Clark, told him we
15 were with the Richland County Sheriff's Department and
16 asked him if he would mind speaking with us.

17 Q Okay.

18 A So there was that exchange first. He said no, he
19 wouldn't. That's when he was asked if he knew Complainant
20 He said no. I do recall that being a surprise to me,
21 again, given the relationship that I was told that there
22 was with the family. And I asked him again, and he said
23 yes, he did.

24 MR. HAYES: Okay. Beg the Court's indulgence.

25 BY MR. HAYES:

1 Q Investigator Tanner, as part of your investigation,
2 you said you had pulled -- part of the reason that you
3 knew who Marty Brown was when he came into the room is
4 because you had done some preliminary background
5 inquiries on him, right? Like you ran his driver's
6 license?

7 A That's something I would do through normal course.

8 Q Right. So you knew where he lived, right?

9 A Not necessarily, especially if you're talking about
10 a driver's license. Just through running that, people
11 leave old addresses on their license all the time.
12 However, I had spoken with his -- with his ex-girlfriend
13 just prior to that. She's the one who told me that he
14 worked up there at the chicken plant. Christine Ocean
15 said that they do live together, although they were no
16 longer in a relationship.

17 Q Okay. And you'd agree with me that, through the
18 course of your investigation, you learned what vehicle
19 was alleged to have been involved in this event, right?

20 A Correct.

21 Q Okay. And did you do any investigation into the
22 vehicle?

23 A We did. Just prior to going and visiting Christine
24 Ocean, we had actually been looking for the vehicle. So
25 yes. It looks like I don't have in my notes the

1 specifics of the vehicle, but I would have it in my case
2 jacket.

3 Q Okay. And you agree with me that you never seized
4 the vehicle in this case, right?

5 A That is correct, yeah. Unable to find it. Tried to
6 track it down and could not. It wasn't where -- it
7 wasn't where it was registered to.

8 Q So your testimony is you could never locate the
9 vehicle?

10 A That's correct.

11 Q And that's the reason that it wasn't processed?

12 A That would be one reason, correct, yes, to my
13 recollection.

14 Q Sir, do you have any idea how Mr. Brown got to work
15 on the day that you went down to see him?

16 A I do not.

17 MR. HAYES: No further questions, Judge.

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

19 Any redirect?

20 MS. BROWDER: No, sir.

21 THE COURT: All right. Thank you very much,
22 Lieutenant. You may step down.

23 All right the State may call it's next witness.

24 MR. JACKSON: Your Honor, at this time, the State
25 calls Justin Martin.

1 WHEREUPON,

2 JUSTIN MARTIN

3 After having been duly sworn, testified as follows:

4 THE CLERK: Thank you, sir. Please take a seat in
5 the witness stand and state your full name for the
6 record.

7 THE WITNESS: Justin Andrew Martin.

8 DIRECT EXAMINATION

9 BY MR. JACKSON:

10 Q Mr. Martin, where are you currently employed?

11 A The Fifth Circuit Solicitor's Office.

12 Q How long have you worked there?

13 A Eight years.

14 Q Where were you employed previously?

15 A Before that I was working for Richland County
16 government in charge of their government access channel.

17 Q Okay. What is your role in the Richland County
18 Solicitor's Office?

19 A I'm a video analyst.

20 Q So do you receive a lot of videos?

21 A Oh, yes.

22 Q What do you do with those videos when you receive
23 them? And what kind of videos?

24 A I help acquire digital video evidence and other
25 digital evidence from law enforcement agencies throughout

1 the district. I help label and organize that information
2 and make sure it -- help make sure it gets out to the
3 defense attorneys. And I also do redactions, help -- for
4 trial edit out stuff that's not pertinent to cases,
5 troubleshoot technical issues that might be associated
6 with video evidence from proprietary video systems, and
7 just in general try to help make sure that evidence is
8 viewable for all the different parties that have a stake
9 in the case.

10 Q Do you alter those videos at all?

11 A Sometimes.

12 Q Why would you do that?

13 A Sometimes there might be a tremendous amount of
14 video that might be delivered to us from law enforcement,
15 and the volume of video that we get would not be very
16 easy to consume all of them in a specific case when there
17 would maybe only be 20 or 30 minutes of video that shows
18 any action that has any impertinence to the case when we
19 might receive 20, 30, 100 hours of video for a certain
20 case. Sometimes there might be information in the case
21 -- or in the video that's not appropriate for the Court
22 to be showing in front of a jury or in front of -- or to
23 be given out. It might have personal information for a
24 defendant or a victim or somebody else, so some of that
25 information has to be removed before it can be

1 distributed.

2 Q Did you receive any videos for this case?

3 A I did.

4 Q Do you recall what they were?

5 A Yes. We received some video from Statewide
6 Security. They have video cameras all throughout our
7 community. So we received two folders of videos from
8 some of their cameras in Columbia. We also received some
9 proprietary surveillance video from Motor City
10 convenience store I believe is what it was called, and in
11 addition to that, we received some proprietary
12 surveillance video from Southern Federal Credit Union I
13 believe is the name of it, an ATM located off of North
14 Main Street.

15 Q Do you recall how long those videos were?

16 A If you were to take the entirety of all the video
17 that we received for this case in regards to those
18 specific surveillance systems, it was roughly 25 hours of
19 video.

20 Q Okay. Did you alter any of those videos?

21 A I did cut out a tremendous amount of that volume as
22 none of -- a vast majority of the video that was provided
23 does not show any action that is -- shows the defendant
24 or the victim or anybody else associated with the case
25 performing any action in the video.

1 Q Did you do anything else with those videos for this
2 trial?

3 A I converted the video files from the ATM into an mp4
4 as those videos require a proprietary video playback
5 system that can occasionally be problematic depending on
6 your video system or whatever computer you're trying to
7 run it, and also the Motor City surveillance video was
8 also a proprietary video system that can be arduous to
9 open in the middle of a court proceeding.

10 Q Okay. Did you create anything for this trial with
11 those videos?

12 A I created a PowerPoint presentation.

13 MR. JACKSON: Your Honor, may I approach the
14 witness?

15 THE COURT: Yes, sir.

16 BY MR. JACKSON:

17 Q Approaching with State's Exhibit 14. Mr. Martin, do
18 you recognize that?

19 A Yes, sir.

20 Q How do you recognize it?

21 A It has my writing on the disk, and this is a disk
22 that I placed the -- this is just an optical disk that I
23 burned the PowerPoint presentation onto.

24 Q Did you watch this disk or go through this disk?

25 A Yes.

1 Q Is this a fair and accurate representation of what
2 you did for the videos in this case?

3 A Yes, sir.

4 MR. JACKSON: Your Honor, at this time, we submit
5 State's 14 into evidence.

6 THE COURT: Any objection?

7 MR. HAYES: No objection.

8 THE COURT: All right. No objection, so entered.

9 (WHEREUPON, State's Exhibit Number 14 was admitted into
10 evidence.)

11 MR. JACKSON: Your Honor, at this time, we'd also
12 ask to publish State's 14 to the jury.

13 THE COURT: Yes, sir.

14 MR. JACKSON: Your Honor, I'd also like to ask if I
15 can have Mr. Martin step down. We're going to use the
16 PowerPoint -- or the SmartBoard.

17 THE COURT: Yes, sir.

18 Mr. Hayes, if you want to move around if it's not
19 shown on these other ones, please do so.

20 (WHEREUPON, the following testimony took place as State's
21 Exhibit Number 14 was played in open court.)

22 BY MR. JACKSON:

23 Q All right. Mr. Martin, if you'll just go through
24 the PowerPoint. If you wouldn't mind describing to the
25 jury what we're going through as we get through it.

1 A Sure. This is just a still image taken from
2 satellite imagery from Google maps just kind of giving a
3 layout of the different places that we received the video
4 from.

5 So this is northern Columbia. This is downtown down
6 here. But this is North Main Street here going up this
7 way. This a Fairfield Road, that's Monticello, I-20.
8 This is Broad River Road. And here at this panel where
9 the dot is is the intersection of Zimalcrest and Broad
10 River. We received some video from Statewide
11 Surveillance who has a pod of cameras at that location.
12 Motor City convenience store is located here off of
13 Fairfield Road, and the AllSouth ATM is located in this
14 parking lot off of North Main.

15 So the first one that we received in order of the
16 timestamp of the time on the video that we received, this
17 is the -- chronologically the first camera angle. This
18 is roughly the position of the camera and the view that
19 it points down. This is, again, Broad River Road and
20 Zimalcrest. The camera's approximately right here and it
21 faces this direction. That's the approximate view angle
22 of that camera. And this is the video that we collected
23 from that.

24 You can see a champagne colored large SUV turning
25 right that's heading south on Broad River Road. The

1 timestamp on this is 3:38. Statewide Surveillance
2 cameras are -- it's common for those times to be
3 inconsistent, they're not always accurate, but at
4 approximately 3:38 on December 11, 2021.

5 Okay. And the next camera chronologically that
6 we're going to look at is from the ATM at the parking lot
7 here off North Main.

8 Okay. So this is a little bit closer view. This is
9 the ATM here in this parking lot. This is North Main.
10 So you can see that's where that video came from.

11 And we did receive three different camera angles
12 from this ATM. It's very common for ATM machines to have
13 multiple cameras on it. The first is the camera that's
14 directly above the little PIN number display screen.
15 It's a the fisheye lens. It gives you a really wide
16 angle of view. You can see the champagne colored SUV
17 pulling into the frame, and you have two individuals in
18 the vehicle here.

19 And these ATM surveillance systems are often tied
20 into the rest of the ATM which is networked in so the
21 timestamp on these is updated. It's extremely common for
22 these to be accurate. So this is at 4:09 a.m.

23 And there's two additional video angles of the same
24 action: one slightly from the front, one slightly from
25 the back. This is the exact same activity we just saw

1 from the fisheye lens. That camera would be right here.
2 But this did capture the subjects in the video so it was
3 included in the presentation.

4 Now, I don't -- there is a third angle. But, again,
5 this is just the exact same activity that was displayed
6 on the last two so I'm going to move forward.

7 And the last bit of surveillance video we got was
8 from the Motor City store which is located right here off
9 of Fairfield Road. A little bit closer. There's the
10 dot. That's where the store is. And I put a view angle
11 for the video that we received. This is in the front,
12 but there's some more video angles that I didn't put a
13 little map for showing the view angle from within the
14 store. There are a few other angles in the store.

15 So from this angle we'll see a champagne colored SUV
16 pull in the frame.

17 Once they enter the store, it switched to some
18 cameras that are inside.

19 And the time of the surveillance store's burned-in
20 image, the timestamp is at 4:27 AM.

21 And this camera system did pick up another angle of
22 them exiting the store. See the reflections faintly over
23 here as they approached the door.

24 They exit the same door that they entered from and
25 back out to the parking lot.

1 So after this, the car exits screen left which would
2 be north on Fairfield Road. That's all we see out of
3 that car from this surveillance video or any of the other
4 provided video (indicating throughout).

5 (End of video playback of State's Exhibit Number 14.)

6 BY MR. JACKSON:

7 Q Okay. Is that the extent of the PowerPoint?

8 A Yes, sir.

9 Q Okay. You can return to the stand. Thank you.

10 Mr. Martin, is this the extent of what you did for
11 this case?

12 A Yes, sir.

13 MR. JACKSON: Okay. Beg the Court's indulgence.

14 Please answer any questions the defense has.

15 THE WITNESS: Yes, sir.

16 THE COURT: Yes, sir, Mr. Hayes.

17 MR. HAYES: Yes, sir. Beg the Court's indulgence.

18 THE COURT: Yes, sir.

19 CROSS EXAMINATION

20 BY MR. HAYES:

21 Q All right. Mr. Martin, good afternoon, sir.

22 A Good afternoon.

23 Q All right. So before the eight years you spent with
24 the solicitor's office, you worked for Richland County
25 doing what? I'm sorry. I just missed that.

1 A I worked in the public information office. They
2 have a government access channel that the county would
3 use to air or broadcast their county council meetings. I
4 would produce content that was explaining different
5 activities from the government or the Richland County
6 government board meetings, council meetings. I would
7 technically direct, produce and distribute that
8 information and do maintenance on the actual video server
9 and corresponding switches required for that signal to
10 get from the office of 2020 Main Street out to Spectrum
11 and AT&T so that it could be broadcast on their systems.

12 Q Right. And so, I mean, that was over -- that was
13 some eight years ago. And with technology the way it is,
14 some of these videos, the first video they showed from
15 Broad River Road, right?

16 A Yes, sir.

17 Q What kind of system was that hooked up on?

18 A That's really a question for Statewide Security.
19 They do have different types of cameras that they use
20 based on whenever they do updates to a specific location.
21 I don't know the brand name of that specific system that
22 they were using there. They're pretty typically similar
23 now, but they do have some variations in the models and
24 the types of cameras, resolutions of the cameras that
25 they use. So there's a variety in there that I wouldn't

1 be able to speak to.

2 Q Right. So like, you know, for an everyday citizen
3 in Richland County when we're going through an
4 intersection, sometimes we can look up and see a camera
5 above us, right? You agree with that?

6 A Yes, sir.

7 Q Right? And those systems, are they maintained
8 generally by municipalities? by the county? by the State?

9 A It -- it varies greatly. Statewide -- Statewide
10 Security is a private company that -- I don't know how
11 they're financed, but they do get a lot of requests from
12 law enforcement to look for video during certain time
13 frames to see if they can see cars or certain individuals
14 of interest going by.

15 Q Would that fall in your purview and your
16 responsibilities set with the solicitor's office now?

17 A I just receive that content from investigators or
18 law enforcement. I don't, I guess, solicit or ask them
19 to look in a specific location at a specific time. By
20 the time -- typically, by the time that I'm involved in
21 the case is after they -- I mean, it's been several weeks
22 or months typically before we do a request for case
23 information on it, and then by that point, the
24 investigator has generally already collected the
25 information that they're going to be able to get.

1 Q Okay. So you receive -- I mean, how many cases a
2 week do you think you receive information on?

3 A For -- via -- I would have to say probably 40 or 50
4 a week.

5 Q 40 or 50 a week. So you're getting like maybe ten
6 -- eight to ten a day.

7 A Yes. Yes, sir.

8 Q Right? For eight years.

9 A Yes, sir.

10 Q Right. For different cameras that are basically all
11 over Richland County.

12 A That's right.

13 Q All right. So would it be fair to say then that
14 you're fairly familiar with where we might be able to
15 expect to find cameras on some of these main roads in
16 Richland County?

17 A That's a -- that's an interesting question. Yes.
18 You can -- if you're driving down the street, you can
19 take notice that utility poles, there's often boxes on
20 them. If there's like a white box and you see a little
21 half dome on there or four half domes, there's cameras
22 there.

23 Q Okay.

24 A Now, whether or not those cameras are operating or
25 properly functioning at that time, it's hard to say. It

1 would be on a case-by-case basis.

2 Q Right. Having the familiarity that you have, if
3 there's a camera malfunction, there's some -- they'll be
4 able to receive some kind of notice, I would think,
5 saying that there's a problem here.

6 A If the camera is networked, they would. The Shealy
7 cameras are largely un-networked. So -- or I say Shealy.
8 I apologize. The Statewide Security cameras are
9 un-networked, so that means that they wouldn't know --
10 like the camera system has no automated way to notify
11 that there's an issue with the timestamp. Or if that
12 location lost power for five minutes, then the timestamp
13 went down, the power comes back, the timestamp will be
14 off for a few minutes. They don't, I believe, receive
15 notification from those cameras that they are off-line.
16 They would only determine that there is an error in the
17 timestamp or that the camera was malfunctioning if they
18 went to that location to do maintenance at that specific
19 location.

20 Q Okay. So let's just take Broad River for example.
21 Okay. If I started at the beginning of Broad River, I'm
22 driving outbound out of town out towards Chapin or, you
23 know, out that direction, right, I'm taking Broad River
24 out, would it be fair to say that I should anticipate
25 that I'm going to encounter cameras run by the city on

1 Broad River?

2 A I have -- well, again, like I don't know if
3 Statewide Surveillance operates under the purview of the
4 city. They might have like some sort of contract, but
5 that's outside of my purview.

6 There are multiple surveillance systems absolutely
7 headed north out off of Broad River. Some of them are
8 Statewide Surveillance cameras, but there's a ton of also
9 private entities that have surveillance cameras.

10 Q And you've answered my question, I guess. That's
11 what I'm saying. So there'd be different providers that
12 might be recording a car if it were to leave Columbia on
13 Broad River Road and head in that direction. There might
14 be multiple entities that you could go and seize camera
15 footage from just driving down the road, right?

16 A Possibly, yes. Absolutely.

17 Q Right. And doing the job you've done, I'm sure --
18 have you ever encountered the license plate reader that
19 the sheriff's office uses?

20 A I forget the term that they use.

21 Q The LPR reader?

22 A I believe so. Yes, sir.

23 Q Right? Have you ever been asked to do anything with
24 that?

25 A Typically, that doesn't really require any

1 intervention on my part because those are very universal
2 file types. So when we get them, it is what it is. It
3 doesn't need any of our staff or defense attorneys don't
4 require any assistance with those items.

5 Q So what that is, though, and correct me if I'm
6 wrong, but my understanding is if I drive through a
7 location where they have a license plate reader, it will
8 take down like a timestamp and it will say that tag on
9 that vehicle drove through this intersection at this
10 time.

11 A I don't think that I have enough experience with
12 those specific cameras. I do more so video cameras. I
13 don't believe I've had to intervene with one of those so
14 I can't say for sure.

15 Q Okay. And the reason I ask is because when you said
16 -- you just testified that when you get those things, it
17 is kind of what it is. So I'm trying to understand when
18 you say "it is what it is" what that actually means for
19 someone that is unfamiliar with what data is being
20 captured.

21 A Okay. So when I said that, it was to say that I
22 don't have experience with those items because I don't
23 have to intervene or provide any assistance with them
24 because they're already functioning in a way that the
25 defense attorneys and the prosecutors can already

1 utilize. I usually get called in to assist with stuff
2 that causes technical issues.

3 Q Okay. But you are aware of the existence of this
4 particular program.

5 A Yes, sir.

6 Q And you do understand that it's being utilized in
7 Richland County, right?

8 A Yes, sir.

9 Q And it has been for some time.

10 A Yes, sir.

11 Q Mr. Martin, you testified that when this vehicle
12 left the gas station and when it came out, turned out,
13 you said he went right -- or north, excuse me. He went
14 north on Fairfield Road. You'd agree with me, though,
15 that the parking lot at the gas station you can turn
16 either direction out of?

17 A You certainly could. It's just in the video that
18 was provided, the car -- the SUV does not show at any
19 point going right. It only shows ---

20 Q Let me stop you right there. You'd agree with me it
21 doesn't show in the video -- the video that's in evidence
22 here doesn't show the vehicle actually going north, does
23 it?

24 A It doesn't show it leaving the parking lot, no.

25 MR. HAYES: Beg the Court's indulgence.

1 THE COURT: Yes, sir.

2 MR. HAYES: No further questions, Judge.

3 THE COURT: All right. Any redirect?

4 MR. JACKSON: No, Your Honor.

5 THE COURT: Thank you. You may step down, sir.

6 Thank you.

7 All right. The State may call its next witness.

8 MS. BROWDER: At this time, the State rests, Your
9 Honor.

10 THE COURT: All right. Thank you.

11 Ladies and gentlemen, the State has now presented
12 its case in chief and there's a legal matter that I need
13 to take up. So I'm going -- we've been going a little
14 over an hour now, so we'll take a very short break.
15 We'll have you back in in just a few moments. But,
16 again, please don't discuss this case amongst yourselves
17 or with anyone else, and please keep an open mind as to
18 all issues until you have been excused and instructed to
19 begin your deliberations. Thank you very much.

20 (WHEREUPON, the jury exits the courtroom at 3:02 PM.)

21 THE COURT: All right. The jury is out of the
22 courtroom.

23 Mr. Hayes, anything from you, sir?

24 MR. HAYES: Yes, sir. Thank you. Your Honor, at
25 this time, the defense would renew all previous motions

1 and objections for the record. Any issue that we believe
2 is appropriate for appellate review, we would ask that
3 those be preserved.

4 Judge, at this time, the defendant would move for a
5 directed verdict and submits to the Court that there is
6 not any direct or substantial circumstantial evidence
7 that would be competent or relied upon by this jury in
8 returning a verdict against my client. We would ask that
9 the Court grant the directed verdict in his favor.

10 THE COURT: All right. Ms. Browder? Mr. Jackson?

11 MS. BROWDER: Your Honor, we'd ask that you deny
12 that request. Under Rule 19 of South Carolina Criminal
13 Rules of Procedure, the trial judge must consider only
14 the existence or nonexistence of evidence and not its
15 weight and must be given in the light most favorable to
16 the State, Your Honor.

17 Regarding the criminal sexual conduct with a minor
18 second degree charge, **Complainant** testified that
19 Mr. Brown anally penetrated her. It lasted for a minute
20 by her count by watching the clock from 5:20 to 5:21.
21 The law does say that a victim's statement in criminal
22 sexual conduct case may not be corroborated. We do have
23 corroborating evidence as to her testimony as well
24 regarding what was going on previous to that regarding
25 the Motor City Market and the ATM as well as Christine

1 Ocean saying that they arrived at the house and parked in
2 the same spot that Complainant said they parked at, he came
3 in the house, was there for just a little bit and then
4 left. So I believe that is enough to get past a directed
5 verdict, Your Honor. The weight of the evidence would
6 then go to the jury as to that issue.

7 Regarding exposure of private parts in a lewd and
8 lascivious manner, Complainant testified that he took his
9 penis out prior to the sexual assault. He was stroking
10 it which was what her testimony said, wanting her to give
11 him a hug. That would be up to the jury whether it's
12 lewd and lascivious, Your Honor. I believe there is
13 enough evidence regarding that in the light most
14 favorable to the State.

15 And then contributing to the delinquency of a minor,
16 Your Honor, under that indictment, she must be under the
17 age of 18, which she testified she was 13 at the time.
18 The perpetrator in that case has to be over the age of
19 18. Investigator Tanner testified to the date of birth
20 for Mr. Brown.

21 In addition, Your Honor, Mr. Brown was encouraging
22 her by her testimony to drink alcohol. He actually gave
23 her liquor. And under South Carolina law, Your Honor,
24 she -- the drinking age is 21 and she was 13, so he was
25 enticing her to break the law, Your Honor. So we believe

1 there's enough for you to deny their motion.

2 THE COURT: All right. Rule 19 requires me to
3 direct a verdict in the defendant's favor if there is an
4 absence of any competent evidence tending to prove the
5 charges in the indictments. In considering a directed
6 verdict motion, I can only consider the existence or
7 nonexistence of the evidence and not its weight. Case
8 law holds that if there is any direct or any substantial
9 circumstantial -- substantial circumstantial evidence
10 tending to prove the guilt of the defendant, the case
11 should proceed and directed verdict should be denied. I
12 find that after the State's case there is sufficient
13 evidence which tends to prove the defendant's guilt or
14 from which his guilt may be fairly and logically deduced.
15 Whether the jury believes such evidence proves the
16 defendant's guilt on any or all of the charges against
17 the defendant beyond a reasonable doubt is an entirely
18 different matter. However, I do find that there is an
19 existence of such evidence, and therefore, I respectfully
20 deny the motion for a directed verdict.

21 All right. So at this time, do y'all want to bring
22 the jury back in? I'll recognize you, Mr. Hayes, and
23 then whatever it is you want to say, if you're not going
24 to put up a defense or whatever it is that you want to
25 say as to that. I'll ask -- well, I guess there wouldn't

1 be any rebuttal so I don't need to ask that. So then I
2 would just let the jury know that because of the hour,
3 that we will go ahead and excuse them so that we can get
4 some things done and we'll be ready to go with argue and
5 charge first thing tomorrow morning. Is that the plan?

6 MR. HAYES: That's good. But, I mean, Judge, I
7 think I do have one more thing for the record.

8 THE COURT: Sure.

9 MR. HAYES: And, Judge, I do this just out of an
10 abundance of caution to make sure that I am checking the
11 boxes that I need to check.

12 THE COURT: Sure.

13 MR. HAYES: So please understand that. And I may
14 have been distracted, Judge. I know there's testimony
15 about where this was alleged to have occurred and those
16 kind of things. There was really only one law
17 enforcement officer that testified: Mr. Tanner. And at
18 the beginning of his testimony, to some degree I was
19 distracted trying to look at that Rule 611(d) on the
20 cross-exam and some of the law there. And so I would
21 challenge the existence of jurisdiction in the case. I
22 just don't recall it being established, and I'm saying
23 that only to protect the record for myself.

24 THE COURT: All right.

25 MS. BROWDER: And, Your Honor, it was testified to

1 by Investigator Tanner. We went through all three
2 locations, the Motor City Market, the ATM as well as Koon
3 Road which is where he rode with her, that all of Koon
4 Road was that they drove in was in Richland County.

5 THE COURT: All right. Okay.

6 All right. So she sent those, and, obviously, y'all
7 need a little time. We'll let the jury go for the day so
8 that y'all have some time to look over the charges and
9 the proposed verdict form. And what we've done is just
10 included, I've got my standard charges and then we put in
11 the three charges. We put in the proposed charges from
12 Ms. Browder and highlighted them so you'll be able to see
13 what has been proposed by the State. And then what we'll
14 do is we'll go through them page by page and see if
15 there's any objections, changes, edits that we need to
16 make. And once we're done with that, then we'll get out
17 a full and final copy with all the edits on it.

18 MR. HAYES: So, Judge, my understanding, we'll stay
19 here until we have a full charge this afternoon?

20 THE COURT: Sure. But if you want, we can get early
21 tomorrow. If you feel that you need to have an
22 additional one as we go through, if you say I want one
23 on, I don't know, some defense and we can talk about
24 that, and then if you want to add it tomorrow, then we
25 can certainly be heard on that before we bring the jury

1 in.

2 MR. HAYES: Yes, sir.

3 THE COURT: Same thing for the State.

4 All right. So we'll bring the jury in. I'll let
5 them -- I'll turn it over to Mr. Hayes. When he says
6 that they rest, I'll let them go and then we can just
7 stand at ease and work on some of those things.

8 All right. Anything before I bring the jury in from
9 the State?

10 MS. BROWDER: No, sir.

11 THE COURT: Anything from the defense?

12 MR. HAYES: No, sir.

13 THE COURT: All right. Yes, ma'am.

14 (WHEREUPON, the jury entered the courtroom at 3:11 PM.)

15 THE COURT: All right. Mr. Hayes, the defense may
16 call its first witness.

17 MR. HAYES: Your Honor, the defense does not intend
18 to put up a case in this matter and the defense rests.

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

20 Ladies and gentlemen, you've now heard all the
21 evidence and testimony that's going to be offered in the
22 case. What is left is for me to charge you on the law.
23 But before that will be the closing arguments of counsel.
24 Given the late hour, we don't want to get that to you at
25 five o'clock or after or 4:30. So what we're going to

1 do, we've got some things to take care of so we're going
2 to let y'all go for the day. If y'all, we will start at
3 9:30 tomorrow morning. The bailiffs will let you know
4 what time you need to be here. But as soon as y'all are
5 here, we start court, we'll begin to get the final stages
6 of the case done.

7 I'll remind you, again, as we break this evening,
8 please don't discuss this with anybody at home or any
9 friends or with your fellow jurors. Please don't look at
10 any information or any coverage of this. I don't think
11 there is any, but please don't review any documents or
12 information about the case or search any out.

13 And then lastly, again, until you've heard the
14 closing arguments and the charges and I've sent you back
15 to begin deliberations, please keep an open mind about
16 all issues in the case.

17 Thank you very much, and have a nice evening.

18 (WHEREUPON, the jury exits the courtroom at 3:13 PM.)

19 THE COURT: All right. Let the record reflect that
20 the jury is of the courtroom now. We'll just stand at
21 ease. I know that y'all need to take a look at these
22 things. And we'll be -- I'm going to print out a copy
23 and look as well. I haven't been able to go through them
24 too. So why don't we take a little bit. If y'all want
25 to just let me know when y'all are ready, I guess you've

1 got your laptop. I don't know if ---

2 MR. HAYES: I do have my laptop, Judge.

3 And just before we break, before I forget, we didn't
4 put up a case but I want to make sure that I protect the
5 record again for myself. And, again, after we rest, I
6 want to renew all previous motions ---

7 THE COURT: Oh, yes, sir. I apologize. Thank you.
8 yes.

9 MR. HAYES: --- objections and appellate issues. I
10 ask that they be preserved for review. I want to renew
11 my previous motion for a directed verdict and renew that
12 now that we rested based on the same principles. I trust
13 the Court, based on the lack of any defense that we put
14 in, will ---

15 THE COURT: Yes, sir. Since there wasn't anything
16 additionally added, no, I understand your motion and I
17 will have the same ruling for the same bases that are on
18 the record as to the initial directed verdict.

19 MR. HAYES: Thank you.

20 THE COURT: Thank you.

21 All right. If anybody needs a printed copy or
22 anything, let me know if y'all want to look it over
23 on ---

24 MR. HAYES: I would prefer a printed copy.

25 THE COURT: Okay. Yeah.

1 MR. HAYES: She's got one for me.

2 THE COURT: All right. So I'll just be in the back.
3 If y'all just want to holler at me, text, call, whatever,
4 I'll come on back in. We'll stand in recess until then.

5 (WHEREUPON, a recess is taken at 3:15 PM; proceedings
6 reconvened at 4:07 PM.)

7 JURY CHARGE CONFERENCE

8 THE COURT: The only thing I think, Grace, I left
9 out the intent. I don't know if y'all need that or not.
10 But, again, we'll go through it.

11 And what we'll do this afternoon is taking all the
12 notes and everything, we'll send everybody a final
13 version tonight and then y'all can look it over and then
14 we'll get here a little bit early tomorrow and see if
15 there's any last little changes that we need to make.

16 All right. So I guess let's start with the -- we'll
17 go to page 2. I've got -- I typically will just have
18 something you've heard the evidence, now I'll explain to
19 you the thing. But before that, anybody have anything on
20 page 2?

21 MS. BROWDER: No, sir.

22 MR. HAYES: No, Your Honor.

23 THE COURT: All right. Page 3?

24 MS. BROWDER: No, sir.

25 MR. HAYES: No, sir.

1 THE COURT: All right. I put -- let's see. Okay.
2 Next is I moved up the charge, arrest and indictment are
3 not evidence. But, I mean, I'll tell you what. Why
4 don't we just keep it in order, and if y'all want to
5 change it, that's fine. So we'll just go to page 3.
6 Anything about number -- oh. 4, presumption of
7 innocence, anything on page 4?

8 MS. BROWDER: No, sir.

9 MR. HAYES: No, sir.

10 THE COURT: Page 5?

11 MS. BROWDER: Not from the State.

12 MR. HAYES: Yes, sir. I do have a proposed charge
13 on reasonable doubt. It's varied just a little bit from
14 Your Honor's charge.

15 THE COURT: Sure. Okay.

16 MR. HAYES: And I offer this, if I may approach the
17 bench.

18 THE COURT: Yeah. Absolutely.

19 MR. HAYES: This is a charge that -- so just to give
20 it a little bit of context, Judge, sort of back in the
21 beginning of my practice nearly 20 years ago, there were
22 really two different ways that reasonable doubt was
23 charged.

24 THE COURT: Yeah.

25 MR. HAYES: There was a hesitation-to-act charge

1 that some judges preferred, there was a firmly-convinced
2 charge ---

3 THE COURT: Right.

4 MR. HAYES: --- that others preferred. This
5 particular charge sort of melds the two together.

6 THE COURT: That's fine. Have you shared this with
7 Ms. Browder?

8 MR. HAYES: I have.

9 THE COURT: Are you okay with this one?

10 MS. BROWDER: I don't have a problem with that part.
11 I do have a problem with the last paragraph that's on the
12 second page, the mere suspicion however strong is not
13 enough to sustain a conviction, suspicion, blah, blah,
14 blah, blah. I would say that that should not be in
15 there. State v. Baker says it's not a good charge to say
16 that if you have a strong uncertainty.

17 THE COURT: Okay.

18 MS. BROWDER: And that's kind of similar to me. But
19 otherwise, the hesitate to act is fine.

20 MR. HAYES: And I offer it for the hesitate to act.

21 THE COURT: Okay. Here's what I'll do. I'll just
22 cross out the paragraph at the top of page 10 of the one
23 that you did and cross out the presumption of innocence
24 part up at the top. Is that ---

25 MR. HAYES: Well, that's just from -- so this -- we

1 took this from a charge.

2 THE COURT: I just didn't know if that was a
3 bleed-over since this is page 9 of 19.

4 MR. HAYES: Well, I took this from a case that I
5 recently tried, Judge, and I had my secretary scan this
6 to me. So that's why. It is a bleed-over. I don't know
7 what it's -- I just offer this for the reasonable doubt
8 portion.

9 THE COURT: On my page 4 which is the presumption of
10 innocence, so what we'll do is the last paragraph on page
11 4 of our draft charges has that in there. It says, you
12 know, the robe of righteousness. The presumption of
13 innocence is not a mere legal theory, it's not just a
14 legal phrase. It is a substantial right to which every
15 defendant is entitled unless you the jury are satisfied
16 from the evidence of the defendant's guilt beyond a
17 reasonable doubt.

18 MR. HAYES: Verbatim it's all there.

19 THE COURT: I mean, so just to make it easier since
20 that's in there already is I will X out that part, that
21 exact same part at the top of what you gave me.

22 MR. HAYES: Right. Yes, sir.

23 THE COURT: And then use that reasonable doubt.
24 I'll take this second page off that you gave me and I
25 will use this reasonable doubt instead of mine.

1 MR. HAYES: Thank you, Judge.

2 THE COURT: Uh-huh.

3 Do you all want the sympathy? This may have come
4 with a murder charge or something. Do y'all want that
5 in? Does anybody?

6 MR. HAYES: I believe it's appropriate, Judge.

7 THE COURT: Okay. Ms. Browder, any objection to
8 that?

9 MS. BROWDER: No, sir.

10 THE COURT: Okay. All right. So that's page 5 or
11 -- yeah. Page 5.

12 All right. Page 6, direct and circumstantial
13 evidence. Any objection?

14 MS. BROWDER: No, sir.

15 MR. HAYES: No objection.

16 THE COURT: All right. Next is page 7, credibility
17 of witnesses.

18 MS. BROWDER: No objection.

19 MR. HAYES: No objection.

20 THE COURT: All right. Next is -- okay. And you
21 may not have it in front of you, but there's a charge
22 about intent. We sent it but it's not -- you know, it
23 was sent after this one when I saw that I didn't include
24 it in the draft. If y'all want to ---

25 MS. BROWDER: I've read it, Your Honor. I'm fine

1 with that.

2 THE COURT: All right. Mr. Hayes?

3 MR. HAYES: Judge, candidly, I just -- I haven't
4 reviewed it.

5 THE COURT: Okay. It's a standard intent. Look at
6 it tonight.

7 MR. HAYES: Yes, sir.

8 THE COURT: And if we need to tweak it, that's fine.
9 It's just I forgot to put that one in. So if everybody's
10 okay with it tomorrow morning, we'll put the intent, just
11 slide that in as page -- you know, right after that
12 credibility of the witnesses.

13 All right. Then we go to -- okay. Next is charge,
14 arrest and indictment are not evidence.

15 MS. BROWDER: Are we skipping defendant's right to
16 remain silent?

17 THE COURT: Oh, I'm sorry. Yeah. That was page --
18 I'm sorry. I dropped this in my office. Yeah. Page 8,
19 defendant's right to remain silent. Anything? Any
20 objections to that one?

21 MS. BROWDER: No, sir.

22 THE COURT: Mr. Hayes?

23 MR. HAYES: No, sir.

24 THE COURT: All right. Now Number 9. And what I
25 was going to do is the last sentence there before the

1 list, I was going to move that to the top such that it
2 starts the indictments charge the defendant with one
3 count of sexual -- criminal sexual conduct with a minor
4 second degree, one count of exposure of private parts in
5 a lewd and lascivious manner and one count of
6 contributing to the delinquency of a minor. Paragraph,
7 the fact that the defendant was arrested, charged and
8 indicted in this case, on like that. Just put the bottom
9 part at the top so that they know what are in the
10 indictments that they're not to consider instead of
11 putting that at the end. Any issue with that?

12 MS. BROWDER: That's fine, Your Honor.

13 MR. HAYES: No issues, Judge.

14 THE COURT: All right. Next is the criminal sexual
15 conduct in the second degree. Now, the top of that part
16 is from us. The bottom is, you know, State requests to
17 add that in. Any issues from the State?

18 MS. BROWDER: No, sir. Other than I would like on
19 the second page "it's not a defense" to be in there.

20 THE COURT: Oh, right, right. I'm just saying as it
21 is right here, I would take out "state request,"
22 obviously.

23 MS. BROWDER: Right. Yeah.

24 THE COURT: But anything else?

25 Okay. Mr. Hayes, any issue?

1 MR. HAYES: No, sir.

2 THE COURT: All right. And so I'll just delete
3 "state request" there.

4 Next is contributing -- wait. Contributing to the
5 delinquency of a minor. Anything as to page 11,
6 Ms. Browder?

7 MS. BROWDER: No, sir.

8 THE COURT: Anything from the defense?

9 MR. HAYES: Judge, I guess when I read it, I
10 understand, I guess, the theory of it. So ---

11 THE COURT: I mean, I guess I could delete what is
12 the number -- I mean, the second dot. I mean, tell me --
13 sorry to interrupt. Go ahead.

14 MR. HAYES: Well, no. So, I mean, you're fine,
15 Judge.

16 I'm just -- so I'm just trying to put myself in the
17 jurors' position and considering what the instruction
18 would be. And so to include the language that the
19 State's requested, and I don't know if it would have some
20 limiting effect about their ability to impose what they
21 believe against the backdrop. I mean, it's in evidence.
22 She asked -- I mean, what -- what the request is is
23 actually in evidence. I think Deputy Solicitor Browder
24 asked Lieutenant Tanner on direct this very question.

25 THE COURT: Right.

1 MR. HAYES: And he said "yes."

2 THE COURT: Right.

3 MR. HAYES: And I think it's -- I think it's sort of
4 like a general -- you know, I think it's generally known,
5 right? Anyone -- and I don't think we have any juror
6 that's not 21, and if they're not 21, they certainly
7 understand that they can't purchase or consume alcohol
8 until they are. I just don't know how necessary that
9 particular -- that language is.

10 THE COURT: Right. All right. Ms. Browder?

11 MS. BROWDER: Your Honor, part of the statute that
12 we have to prove is violate any law or municipal
13 ordinance. Lieutenant Tanner did testify that it is
14 against the law to drink under the age of 21 or possess
15 under the age of 21. This is just simply stating that
16 that is -- it is unlawful for a person under the age of
17 21. We still have to prove that she was under 21 and
18 possessed it. But this is similar to possession of a
19 weapon during a violent crime. When you get the charge
20 for possession of a weapon during a violent crime, say,
21 for example, it's attempted murder, you then say
22 attempted murder is considered a violent crime under
23 South Carolina law. So I think it's very similar to
24 that.

25 THE COURT: All right.

1 MR. HAYES: I mean, I guess I really don't have any
2 -- I mean, I really don't think it affects much.

3 THE COURT: Okay. Well, I'll just -- I mean, I'll
4 leave it in. It doesn't have the marijuana part which I
5 think is probably a little -- you know, a little more
6 helpful. But I'll allow that aspect of it. You're
7 right. Everybody knows that, but just to the extent that
8 it's an accurate charge on the law.

9 MR. HAYES: Yes, sir.

10 THE COURT: So the three subparts there, just go
11 ahead and use all three of those? I'm fine with that. I
12 just wanted to add a question mark by that.

13 MS. BROWDER: I don't have a problem with that, Your
14 Honor.

15 THE COURT: Okay.

16 MR. HAYES: I mean, I'm fine with it. I think
17 that ---

18 THE COURT: What, leaving it as is?

19 MS. BROWDER: I think the indictment was the whole
20 bunch of them.

21 THE COURT: Okay.

22 MS. BROWDER: But those are the three that we would
23 be in on anyway.

24 THE COURT: All right. Page 12, any objections
25 there from the State?

1 MS. BROWDER: Yes, sir, Your Honor. Right at the
2 top it's exposure of private parts. Right under that it
3 says the defendant is charged with one count of criminal
4 sexual conduct with a minor. That just needs to be
5 changed to "exposure of private parts."

6 THE COURT: Got it. Thank you.

7 MS. BROWDER: Other than that, no, sir.

8 THE COURT: All right. Mr. Hayes, anything beyond
9 that correction?

10 MR. HAYES: No, sir.

11 THE COURT: All right. Then page 13 gets into just
12 the general duties of the jury. Anything there from the
13 State?

14 MS. BROWDER: No, sir.

15 THE COURT: Mr. Hayes?

16 MR. HAYES: No, sir.

17 THE COURT: And then the last page -- excuse me.
18 Page 14 is a continuation of that. Anything from that
19 from the State?

20 MS. BROWDER: No, sir.

21 MR. HAYES: No, sir.

22 THE COURT: All right. And then lastly it's
23 page 15. Anything from that?

24 MS. BROWDER: No, sir.

25 THE COURT: Mr. Hayes?

1 MR. HAYES: Nothing from the defendant, Your Honor.

2 THE COURT: I'm not trying to inject anything here,
3 but in some cases where there's multiple charges, I don't
4 know if we want to put in there that -- you know, I can't
5 remember whether there's something in this one or not
6 that says essentially they're each on their own, that
7 it's not -- you know, one fits. Okay. It does say
8 "unanimous as to each charge." So if y'all are fine with
9 that part in there.

10 MR. HAYES: And sometimes, Judge, I mean, in my
11 experience when you -- you know, judges often kind of
12 hold up the verdict form ---

13 THE COURT: Right.

14 MR. HAYES: --- and say, you know, they've got to be
15 listed in an order ---

16 THE COURT: Right.

17 MR. HAYES: --- you know, they're not listed in any
18 particular order. And, you know, you can make any
19 finding on each count that you want to. However you want
20 to do that, you know. But ---

21 THE COURT: Yeah. I was going to do that as well
22 with, you know, just typically just say there are three
23 questions here that you need to answer. They all need to
24 be unanimous and they're three separate questions that
25 y'all need to address and then just walk through that

1 before we send back the verdict form.

2 MR. HAYES: Yes, sir.

3 THE COURT: All right. So that's pages 1 through
4 15. The changes that we've noted will be made as to the
5 jury charges, and we will send those to y'all by email.
6 And it will say "final draft" in the re: line or whatever
7 so that tomorrow when y'all look at those tonight or
8 tomorrow morning, we'll just make sure that we made
9 everything, all the changes accurately. We'll run
10 through that real quick and then the verdict form.

11 The verdict form, we'll send that tonight, too.
12 It's very short. We're just doing the numbering of it
13 right now so rather than put y'all on the spot. It's
14 very simple. It's just I, II, III, unanimously find with
15 the signature spot. So we'll email that out with the
16 final draft for y'all to look at tonight.

17 MS. BROWDER: Okay.

18 THE COURT: So the jury shows up tomorrow morning.
19 I'll give the general charge about it's not evidence,
20 those kind of things. I'll recognize the State,
21 recognize you, Mr. Hayes, and then you'll get the last
22 word with no presentation of evidence or case and then
23 we'll go right into it.

24 MR. HAYES: Yes, sir.

25 THE COURT: And I'll let them know that we'll get

1 lunch. Is that right, Yonas? We'll be getting them
2 lunch tomorrow.

3 THE CLERK: It is now. Yes, sir.

4 THE COURT: Huh?

5 THE CLERK: Yeah. We'll get them lunch.

6 THE COURT: Okay. All right. It's all on Yonas.

7 Okay. All right. Is there anything that we need to
8 take care of before we leave from the State?

9 MS. BROWDER: No, sir.

10 THE COURT: From the defense?

11 MR. HAYES: No, sir.

12 THE COURT: All right. And if y'all need anything
13 at all, y'all have got my number and Grace's number and
14 email. Just reach out if anything comes up unexpected
15 tonight.

16 MS. BROWDER: Okay.

17 THE COURT: Otherwise, we'll start at 9:30. But if
18 we can get here maybe, you know, 15, 20 minutes early,
19 we'll make sure everything's all good.

20 Y'all have a good evening.

21 (WHEREUPON, proceedings recessed at 4:23 PM.)

22

23

24

25

1 Thursday, August 28, 2025

2 (WHEREUPON, proceedings reconvened at 9:29 AM.)

3 THE COURT: The page numbers might not be the same
4 because they made it a little bit bigger because my
5 eyesight's not so great, but other than that change, is
6 there anything in the final draft of the jury charges
7 that y'all saw that needs to be revised or edited in any
8 way from the State?

9 MS. BROWDER: No, sir.

10 THE COURT: Mr. Hayes?

11 MR. HAYES: No, sir.

12 THE COURT: Okay. And then the verdict form as
13 well, is there anything about the verdict form from the
14 State that we need to change or edit in any way?

15 MS. BROWDER: No, sir.

16 THE COURT: Mr. Hayes?

17 MR. HAYES: Candidly, Judge, I didn't print out the
18 verdict form. I apologized to the Court for that.

19 THE COURT: No problem. No. That's okay.

20 What we'll do is we've got a copy of the draft that
21 we went over yesterday for reference that we'll put in as
22 a court's exhibit, and then we'll also put in, obviously,
23 a copy of the final charges as approved -- as y'all just
24 approved them a moment ago as another court exhibit. So
25 those will be in but, obviously, not go back to the jury.

1 MR. HAYES: So, Judge, upon review of the verdict
2 form, I guess, and I could be -- I'm just guessing ---

3 THE COURT: Yes, sir.

4 MR. HAYES: So Indictment Number 91, that's the
5 contributing indictment?

6 THE COURT: Right.

7 MR. HAYES: Is that right? They're listed in this
8 order because ---

9 THE COURT: I don't know which one is which. If you
10 want to change the order, it doesn't make any difference
11 to me unless it does to the State.

12 MS. BROWDER: Your Honor, 90 is ---

13 THE COURT: Okay. 90, 92, 91 I think is what Grace
14 is saying. If you want Number 2 and 3 switched so that
15 they're sequentially with the indictments, we can
16 certainly do that.

17 MR. HAYES: Because you have the two -- we have the
18 two basically sex offenses separated by the contributing
19 offense.

20 THE COURT: Okay. We can flip those two so that
21 they'll be sequential from the 90. Then it will be 90,
22 91, 92 if we just switch II and III.

23 MR. HAYES: Yes, sir.

24 THE COURT: Okay.

25 MR. HAYES: And I only say it because, I mean, I

1 don't know what goes through a juror's mind or they'd say
2 why. But ---

3 THE COURT: I think it's just -- it may have just
4 been -- I mean, there was no reason to -- you know, rhyme
5 or reason for the order, but we'll flip those two.

6 MR. HAYES: Thank you, Judge.

7 THE COURT: Yes, sir.

8 Is that okay with the State?

9 MS. BROWDER: Yes, sir.

10 THE COURT: Okay. We'll do that before we take it
11 back.

12 All right. Is there anything else that we need to
13 take up before Mr. Brown shows up from you, Mr. Hayes?
14 Anything else?

15 MR. HAYES: Not in this matter, Judge.

16 (WHEREUPON, a discussion was held concerning another
17 matter.)

18 THE COURT: All right. Is there anything from the
19 State before we bring the jury in?

20 MS. BROWDER: No, sir.

21 THE COURT: Anything, Mr. Hayes, from the defense
22 before I bring the jury in?

23 MR. HAYES: No, sir.

24 THE COURT: All right. Ma'am, we can bring them in.

25 (WHEREUPON, the jury entered the courtroom at 9:52 AM.)

1 THE COURT: Good morning, ladies and gentlemen.
2 Thank y'all so much.

3 The parties have now presented their evidence in
4 this case. It is now time for that attorneys to make
5 their closing arguments. The arguments of the attorneys
6 are not evidence in this case. Their statements and
7 arguments are meant to help you understand the evidence
8 and apply the law to the evidence. You should disregard
9 any remark, statement or argument which is not supported
10 by the evidence presented during the trial or the law
11 that I will explain to you after the arguments.

12 Ms. Browder?

13 MS. BROWDER: Thank you, Your Honor. May it please
14 the Court.

15 THE COURT: Yes, ma'am.

16 CLOSING ARGUMENTS

17 MS. BROWDER: As I have aged and gotten older, my
18 kids have grown older, I started to realize that you
19 always hear about the days go by really fast, the years
20 fly by and you forget little moments. But there are
21 moments in everybody's lives that you remember that
22 define who you are, whether they're joyful of watching
23 your child graduate from high school, whether they're sad
24 because you have a family member die, or whether they're
25 painful, you have to watch your mother cry over her

1 mother's body as she passes away. For Complainant
2 one of the most painful moments of her life that is
3 unforgettable and defines her, the 60 seconds to 5:20 AM
4 on December 11, 2021, as she was being anally raped with
5 her pants and her shorts and her underwear at her knees
6 staring at a phone praying that that one minute is up.
7 And who was doing that to her was a man she trusted, a
8 man she grew up with. As she was 13 years old, a 52-year
9 man that she believed and loved betrayed her.

10 And as that moment ended at 5:21, it didn't end for
11 Complainant She has had to relive that day every day for
12 the past three years. She had to go tell people that she
13 didn't know about what happened to her, something people
14 don't want to talk about in general to maybe their even
15 friends. She had to go get a rape kit done, be in
16 stirrups while somebody gets stuff from her. She had to
17 come in here and get on the stand and look at 14 people
18 she has never met before in her life while the man who
19 rapes her sits right over there and tell again what
20 happened to her, and all this while she was still a
21 child.

22 Keep in mind this happened when she was 13. As she
23 sat up there, she was still only 17 years old. That may
24 be hard to forget sometimes because you're not thinking
25 about it. But she was still only 17 years old in the

1 11th grade and she had to sit there.

2 Now, you've had to sit here as well this week and
3 listen to something that nobody wants to think happens in
4 society because nobody wants to think that things happen
5 like this. But they do, ladies and gentlemen. And
6 Mr. Jackson and I thank you for sitting and listening
7 dutifully, and we're going to ask you at the end of this
8 to find Mr. Brown guilty. As you sit here, I want you to
9 remember **Complainant** journey, **Complainant** moment that defines
10 her for the rest of her life.

11 Now, before I get into a little bit of the witnesses
12 and facts and the evidence, I want to talk to you a
13 little bit about the law. Because as Mr. Jackson told
14 you and the judge is going to tell you, the State has the
15 burden of proving this case, and we welcome that
16 100 percent. It's proof beyond a reasonable doubt.

17 Now, what is proof beyond a reasonable doubt? Proof
18 beyond a reasonable doubt is that leaves you firmly
19 convinced. It's not proof beyond every doubt. And the
20 judge is going to tell you that it's not proof beyond
21 every doubt. Proof beyond a reasonable doubt, firmly
22 convinced. Because there's only certain things in life,
23 ladies and gentlemen, that we know for certainty. The
24 sun rises in the east, sets in the west, a mother has a
25 baby, and some other few things that you know with

1 certainty do happen. But, ladies and gentlemen, the only
2 people there that night in that truck in the back of the
3 woods was Marty Brown and Complainant So you just
4 have to be firmly convinced. And it comes down to do you
5 believe Complainant And I will get to in a little
6 bit why you should believe her and what corroborates what
7 she said happened night.

8 But I have to go through with you the three
9 different laws and the three different crimes that
10 Mr. Brown is accused of. The first is criminal -- I'll
11 start with contributing to the delinquency of a minor
12 because that's a little bit easier one to understand. So
13 what we have to prove is the victim was under 18 years of
14 age, which I don't think anybody's going to dispute that
15 Complainant was 13; the defendant is over 18 years of age,
16 which I don't think anybody's going to dispute that he
17 was 52 or in his early 50s at that time; and that he
18 knowingly and willingly encouraged, aided or caused a
19 minor to do any act which caused or influenced the minor
20 to -- and it can be either/or of these, okay, ladies and
21 gentlemen. Just one of these have to apply -- violate
22 any law or municipal ordinance in the State of South
23 Carolina. Well, it's unlawful to drink under the age of
24 21 years old. He gave her liquor, Cuervo, which if you
25 think about it, that was not something that Mr. Hayes

1 asked was she inconsistent about. She knew what kind of
2 liquor it was: Cuervo. And behave -- or behave in a way
3 which would willfully injure or endanger her morals or
4 health or the morals or health of others. He encouraged
5 her, financed her and helped her drink alcohol, stay out
6 till five o'clock in the morning, smoke weed, have sex
7 with her, which somebody under the age of 16 years old
8 cannot consent to sex in South Carolina. He's the one
9 that taught her to do that. He's the one that was a role
10 model for her.

11 So the second one is criminal sexual conduct with a
12 minor second degree. So in this case, the victim,
13 **Complainant** was between 11 and 14 years old, which in this
14 case, again, nobody is going to disagree that she was 13
15 at this time in December of 2021. And that sexual
16 battery was committed.

17 So sexual battery, and the judge will give you the
18 definition of this as well, is sexual intercourse or anal
19 intercourse or any intrusion, however slight, into the
20 genital or anal openings. In this case, you heard
21 **Complainant** testify to anal intercourse. So, again, it comes
22 down do you believe **Complainant** which she has corroborated.

23 So also the judge is going to tell you -- and this
24 shouldn't be an issue, but just in case it does come up
25 because I'm not going to get to talk to you again after I

1 sit down. Mr. Hayes is going to get to come up here and
2 speak and I'm just going to have to guess what he has to
3 say because I don't know. But mistake of age is not a
4 defense in South Carolina.

5 So obviously, you saw **Complainant** today or the other day
6 at 17 years old, and here she's 13 years old. Say --
7 just say you believe she looks like she was older. Well,
8 that doesn't apply in this case. One, mistake of age is
9 not a defense, but two, Marty Brown has known her all his
10 [sic] life. He is Uncle Marty. He knows how old **Complainant**
11 is. She would come over to his house to be babysitted by
12 his sister or his niece. So that is not a defense that
13 they want to get up there and say that he didn't know how
14 old she was.

15 And then last is exposure of private parts in a lewd
16 or lascivious manner. So what we have to prove is the
17 defendant exposes the private parts of his person, his
18 penis, in a lewd and lascivious manner, so masturbating
19 to the point of ejaculation, or masturbating beforehand
20 before the anal intercourse happened saying come hug me,
21 and then in the presence of another person, so **Complainant**

22 Now, we put up several witnesses. I believe we put
23 up five or six witnesses to show you what happened that
24 night. And as each one is testifying, you might be
25 what's the point of this witness? Think of it like a

1 puzzle. So you have puzzle pieces, and when you go to
2 put a puzzle together, all of them apart may not make
3 sense, but as they start coming together, they start
4 showing the big picture and they start showing the
5 picture as a whole. And, again, you kind of want to use
6 this for beyond a reasonable doubt. You can see this
7 picture. There's one puzzle piece missing or a couple
8 puzzle pieces missing, if you can still see the picture,
9 if you're still firmly convinced what that picture is,
10 you must find him guilty.

11 And Mr. Hayes was very clear at the beginning in his
12 opening that you took an oath and you must follow the
13 law. So take what he says seriously because the law of
14 South Carolina is you cannot rape a 13-year-old, you
15 cannot give them alcohol, you cannot give them weed and
16 you cannot masturbate to ejaculation in front of them.
17 But when you put those pieces together, which I'm going
18 to do right now with **Complainant** to show why you should
19 believe **Complainant** it's going to show that this event
20 happened.

21 So **Complainant** got up here on the stand, ladies and
22 gentlemen, and you watched her. And the judge is going
23 to tell you how you determine whether you find someone
24 credible or not, and you also get to use your common
25 sense.

1 So, you know, when you go to tell somebody your
2 story, whether it's your life story or just something
3 that happens, owning your story can be difficult
4 sometimes. Sometimes you don't want to talk about it.
5 You want to run from it. But courage starts with showing
6 up and being seen and being uncomfortable. And that's
7 what **Complainant** did. She sat up there and she was
8 uncomfortable. She was still only 17 years old telling
9 you what happened to her.

10 Mr. Hayes may get up here and be like, you know, she
11 was laughing, she was not taking this seriously.
12 Everybody copes with things differently, ladies and
13 gentlemen. I'm sure you know people in your life who
14 cope with things differently. You've seen examples of
15 that just in general. If you watch Friends, Chandler
16 Bing on Friends, when he's uncomfortable, he makes
17 completely inappropriate jokes. Or if you watch the Andy
18 Griffith Show when you were younger, Gomer Pyle at the
19 end as Sarge was laughing. They'd say, Sarge, why you
20 laughing when he shouldn't have been laughing. He goes,
21 son, Marines don't cry.

22 Everybody has a different way of dealing with what
23 happens to them. As she sat there and started laughing
24 after being there for an hour and ten minutes at that
25 point before a break was even taken and she was laughing,

1 she was trying not to cry. She'd been sitting there
2 uncomfortable being questioned about the worst day of her
3 life. What else was she supposed to do at that point to
4 keep from breaking down? There was one point, ladies and
5 gentlemen, when I was doing something with Mr. Hayes, you
6 may have recognized when I turned around I was like where
7 did she go? I didn't even know where she was. She was
8 bending over crying. It's just as things kept going
9 longer and longer, she didn't know what else to do,
10 ladies and gentlemen.

11 So to start with, what **Complainant** said, she first says,
12 you know, she's hanging out at her friend's house and
13 she's doing all these things. The defense asked her a
14 lot of questions about those saying she had
15 inconsistencies. Guess what, ladies and gentlemen?
16 Those things don't matter. Those things aren't relevant.
17 And if you think about it, and the judge is going to tell
18 you this as well, you can believe a part of a person's
19 testimony and disbelieve a part of a person's testimony.
20 Two things can be true at the same time. Was she with a
21 boy earlier that day? Yes. Just hanging out smoking
22 weed. She says it was 4 a.m.

23 Think about it. And this is just an example. Say
24 three years ago you broke your leg and somebody in the
25 hospital four or five days later in an interview asked

1 you, well, what were you doing about five hours earlier
2 exactly at 10:17? Do you remember who called you, what
3 they said, what were you all doing? You're not going to
4 remember that. But you're going to remember breaking
5 your leg. Just like you're not going to remember exactly
6 who called you, exactly what time you were hanging out
7 with the people, but you're going to remember being raped
8 by your Uncle Marty. You're going to remember those
9 details.

10 And ask yourselves, ladies and gentlemen, how many
11 details did he ask her about the actual assault? How
12 many did he ask her about going to the store or about
13 going to the ATM or about going to Christine Ocean's
14 house? Almost none, because those have remained
15 consistent throughout, throughout the time she talked to
16 Deputy Torres, throughout the time she talked to
17 Dr. Foster, throughout the time at the hospital,
18 throughout the time to Investigator Tanner, throughout
19 the time she talked to us, throughout the time she
20 testified on that stand. Six different statements he was
21 talking about.

22 How many questions did he ask her about the actual
23 assault and was there anything inconsistent about it?
24 Why is that? Is it because he wants you to forget about
25 that part of it and focus on the things that aren't

1 relevant? Or is it because they were consistent? Or
2 because it's both?

3 And if you think about it, I'm not a math person.
4 My mom is an English teacher. But if you do a line -- if
5 you're doing a line graph and you have a line that's
6 straight across and you have different points that you're
7 putting on this graph, points are -- and this is the
8 baseline. This is what happened. There's points here,
9 there, here, there, here, there, here, there, here,
10 there, but they still show that line. That line still
11 points to Mr. Brown sitting over there. It still points
12 to what happened that night.

13 She remembers the specific time. She remembers
14 going to Marty's house because he needed to go in and get
15 something for them, he went in and got alcohol and red
16 Solo cups.

17 Christine Ocean, the first person who testified who
18 you were probably like why is she testifying? What does
19 this have to do with anything? She was his girlfriend.
20 She testifies he came and he parked in the neighbor's
21 yard. That's what **Complainant** said. We went over there and
22 we parked kind of not next to the house but in a driveway
23 next to the house. He went in for a couple minutes, came
24 back out, got back in the car. That's corroborated.
25 Then we rode around for a while. We went to the ATM.

1 Oh, well, he picked me up first, you know, on the corner
2 of Broad River and Zimalcrest. Guess who's on the corner
3 of Broad River and Zimalcrest at 3:38 in the morning?
4 Marty Brown in his gold Tahoe. Corroboration.

5 So then they go to Christine Ocean's. They drive
6 around for a little bit because she said they drove
7 around for a little bit. Then they go to the ATM. And
8 the timestamp's not on here but it will be on the
9 PowerPoint that you have. They go to the ATM. Guess
10 what's corroborated? Going to the ATM. Guess what's
11 also corroborated? What's she's drinking out of right
12 here? A red solo cup. What's in that red Solo cup?
13 Cuervo. Alcohol.

14 Then she says, well, then we go to buy some stuff to
15 roll our weed with. 4:27 a.m., she couldn't even tell --
16 and if she's making this up, ladies and gentlemen, if you
17 remember what she said, she didn't know exactly what the
18 name of the store was at that time because she just
19 remembered it was blue. She didn't know the exact name
20 of it. If she was going to lie about something, she
21 would give you the exact name. She would give you --
22 she'd have everything straight, that they would
23 corroborate what she said and they were able to buy in
24 that store. And that's at 4:27 a.m. She's in there
25 wearing exactly what she said she was wearing that night,

1 buying the cigar so that they can roll their blunts.

2 Corroborated.

3 And remember, at 13 years old, 17 years old, what I
4 just used with the leg -- breaking your leg, you're not
5 going to remember the exact time of things. She said she
6 was with a boy earlier that night, 4:00. She says 4:00.
7 Well, clearly, she wasn't, ladies and gentlemen. 3:38
8 she's being picked up. Both things can be true. She
9 just doesn't remember the exact times, okay? These times
10 are going to give you the exact times and corroborate
11 everything that she said because those are the things she
12 remembers. She's not paying attention to times or dates
13 other than 5:20 a.m. Because that's the time she
14 remembers because that's the time that was most vivid in
15 her mind of what was going on.

16 And the defense may get up over here and say, you
17 know, she testified she was over it. She's I don't want
18 to be here. This was three years ago. Ladies and
19 gentlemen, first off, you did take the oath. You've got
20 to follow the law. But moving on doesn't mean quitting.
21 Moving on means choosing your happiness over your hurt,
22 your peace over your hurt. And that's what she told you
23 as she sat right there. I'm trying to have peace, I'm
24 trying to move on from this. I don't want to have to
25 relive this over and over again. So just because she's

1 moving on, don't hold that against her.

2 Now, the most important evidence in this case,
3 ladies and gentlemen, you've heard everything that she
4 says corroborated and pretty much none of the assault or
5 any questions asked about being inconsistent. It's Marty
6 Brown. When Marty Brown is confronted by Investigator
7 Tanner and Sergeant Clark at work, they say do you know
8 Complainant [REDACTED] is not a normal name, ladies and
9 gentlemen. Especially if Complainant is somebody you've
10 known for 13 years of her life and you saw several days
11 prior. You're going to know -- they might get up here
12 and try to say, well, he didn't know her government name.
13 If you don't know who it is, you don't go who? You go
14 who? I'm not sure if that's who? He flat-out said no.
15 I don't know Complainant And then when Investigator Tanner
16 was a little confused about that, he said you're sure you
17 don't know Complainant All of a sudden he did know
18 Complainant name and realized, well, maybe he knows
19 something.

20 But what does he say about Complainant at that point?
21 Yeah. I know Complainant I picked her and another girl up
22 the other night on the corner of Broad River and
23 Zimalcrest. Broad River and Zimalcrest. Well, guess
24 what, ladies and gentlemen, he lies about that too. He
25 didn't pick up two girls and drop them off across the

1 river, over the bridge. Because it's just him and
2 **Complainant** in this store. And if you remember looking at
3 the actual video, they're not talking to anybody in the
4 backseat. They're getting out of the car talking to each
5 other. Nobody turns around, be like, hey, are you okay
6 while we go inside? There's nobody else in that car.

7 At the ATM, and you'll remember and you'll get to
8 watch it too, they're not turning around talking to
9 anybody in the backseat. They're just talking to each
10 other. There is nobody else in that car. He did not
11 pick up two girls and then drop them off. He picked up
12 **Complainant**

13 Why would you lie about that? Why would you lie
14 about even knowing this person you've known all your
15 life? Because you know you did something wrong. And
16 then when confronted about it again and you give another
17 lie, why again lie about it? Because he didn't expect,
18 one, that she would tell anybody. And this may be what
19 they say. I don't know. **Complainant** made this up just to
20 get out of trouble. Well, she was already in trouble,
21 ladies and gentlemen. This wasn't to get out of trouble.
22 She was in trouble anyway. She'd already been as a
23 runaway. But we've been conditioned by society that just
24 because a victim isn't perfect means that they shouldn't
25 count. Ladies and gentlemen, that's not true. Nobody's

1 perfect.

2 And if you think about it, she was 13 years old.
3 Was this the urge that the defense wants you to have to
4 judge her from her lifestyle? Yes, she drank. Yes, she
5 smoked. Yes, she was roaming the streets when we would
6 have rather her been in bed at three o'clock in the
7 morning.

8 But ask yourself where do you learn this behavior as
9 a child? From the adults in your life. Adults like the
10 defendant. Adults that you trust. And instead of being
11 somebody she trusted, he preyed on that vulnerability.
12 He sought her out at 3:40 in the morning and said I've
13 got something for this. I know what she's like.
14 Nobody's going to believe her. I can do what I want. So
15 what did he do? He bought her alcohol. He bought her
16 weed. He then watched her drink and smoke and hoped
17 she'd be too high and too drunk to resist his plan.

18 Should we be judgmental of the 13-year-old who
19 engaged in this activity or the 52-year-old man who took
20 advantage of it, financed it and then did what he wanted
21 with it hoping that she would never say anything? But
22 where he was mistaken, ladies and gentlemen, that she
23 would actually speak up, that there were cameras that
24 would corroborate everything that she said, that his own
25 girlfriend would confirm him coming to the house that

1 night, parking in a spot that Complainant said that he
2 parked, coming in real quick and then leaving and then
3 being caught in his lie about not knowing her and then
4 changing his story.

5 The second thing they might say is, well, okay,
6 contributing to the delinquency stuff, that might be true
7 because obviously, you have the videos of those. But the
8 sex didn't happen. They can't prove that. Again, ladies
9 and gentlemen, are you going to rape a 13-year-old in the
10 middle of the gas station where everybody can see it
11 happen? No. Crimes like this happen in the dark. They
12 happen down a dirt path in the middle of the woods when
13 it's dark.

14 And it makes no sense, ladies and gentlemen, for
15 Complainant to tell the truth about one part and lie about
16 the other part. If she was telling the truth about this,
17 she was still going to be getting in trouble for being
18 out in the morning drinking and smoking. If you're going
19 to lie about being raped, why wouldn't you say you were
20 raped vaginally? Because that's just the -- I was going
21 to say that's probably the normal way most people think
22 you have sex. She's not going to say anally. She's not
23 going to make up anal sex.

24 And there's like I know he said in the opening
25 there's no forensic evidence. Well, guess what, ladies

1 and gentlemen? This isn't TV. This isn't CSI. Think
2 about it. She told you he, after it turned 5:21, went
3 about a little bit longer and then got off of her and
4 then he finished on himself. There's not going to be DNA
5 there, forensics, because he didn't ejaculate in her.
6 And then she went home, took a long shower or bath. All
7 that's going to be washed off anyway. So by the time she
8 gets anywhere, there's not going to be DNA because he
9 made sure that she felt disgusted and ashamed enough
10 about herself to have to go home and try to wash himself
11 off of her and what he did to her.

12 There's no denying that there's evil in this world,
13 but the light will always conquer the darkness. And for
14 **Complainant** while she was in the dark being raped by the one
15 man she trusted, Uncle Marty, her priority became what
16 that light was going to be for her. And that light was
17 the small phone light that showed what time it was. And
18 as she watched from 5:20 to 5:21, that was the light that
19 helped her get through what happened to her.

20 At this stage in **Complainant** young life, you heard her
21 testify, she has no support. She has nobody to help her.
22 Virtually every adult in her 17 years has let her down.
23 I ask you the jury to not add to that number. Take the
24 oath that the judge, the law that the judge is going to
25 give you, the oath that you took that Mr. Hayes wants you

1 to follow, and finally hold Mr. Brown responsible for
2 what happened on December 11, 2021, for praying on his
3 13-year-old say niece, she's not his actual niece, but
4 niece he's Uncle Marty to, hold him accountable for
5 praying on her, for getting her drunk and high so that he
6 can rape her and take what he wanted because he didn't
7 think anybody would believe her. Find him guilty.

8 Thank you.

9 THE COURT: All right. Thank you, ma'am.

10 Mr. Hayes?

11 MR. HAYES: May it please the Court.

12 THE COURT: Yes, sir.

13 MR. HAYES: Hello, ladies and gentlemen. I'm asking
14 you to hold the government accountable to the standard of
15 evidence that they have to prove in this case. I'm
16 asking you to follow the law just like I did in opening.
17 They've got to prove this case beyond a reasonable doubt,
18 and they haven't done it. There's not enough evidence in
19 this record to substantiate beyond a reasonable doubt.
20 The evidence in this case should cause you to hesitate to
21 act and leave you less than firmly convinced. Hold them
22 accountable.

23 Ms. Browder says she thinks I'm going to get up here
24 and say, oh, well, maybe Marty's guilty of contributing
25 to the delinquency and not guilty of the sex. She's

1 wrong about that. They haven't proven the contributing
2 to the minor either. They haven't proven anything. At
3 best, based on the evidence, they may have proved that
4 Marty gave her a ride because he said he did. That's in
5 evidence. And they have them in a car together.

6 What did Marty say when he said whatever it is? He
7 said he picked them up and took them across the bridge
8 and then they have videos across the bridge where he said
9 they went. That's what they have.

10 Every piece of physical evidence that you're going
11 to have in this case is going to be these pictures and
12 this videos. And they want to talk about the
13 contributing to the delinquency of a minor and that, you
14 know, it's this red Solo cup and that there's Cuervo in
15 it. Well, is there? How do we know that? There's no
16 Cuervo anywhere.

17 She said, oh, well, it's this red cup and this Solo
18 -- this red cup and this Cuervo because it came out of
19 Marty's house when he went to get it. Well, you know
20 what? When Christine Ocean testified in this case,
21 right, what did she say? She said she faked asleep and
22 she was kind of keeping her head down until Marty left.
23 And when he left, she popped up and ran to the window to
24 see him. She didn't see him carrying anything. That red
25 Solo cup could have come from anywhere and it could have

1 had anything in it.

2 And then they -- she said they went to the gas
3 station, right, and he bought a vape and they bought
4 these cigars, right? Well, we have the lead investigator
5 here from the sheriff's department, and they have the
6 video from the gas station where they went in and made
7 this purchase. There's going to be a record of the
8 transaction itself.

9 And I know I'm yelling, and I'm not yelling at you.
10 I'm sort of yelling at them. They have the burden in
11 this case. There's evidence that would be available
12 that's not before you. We have a man on trial for all
13 these things, and they've got to prove it. They could go
14 to the gas station and get the transaction report and say
15 what did you buy? Did we actually buy cigars? Did we
16 buy the vape? There'd be things that would be available
17 to corroborate all those things that they could go get.
18 They went and got the video. Where is that? It's not
19 here. You have to ask yourself why. Don't you think if
20 they could corroborate that, they would?

21 So they went to the ATM and the gas station
22 together. That's not contributing to the delinquency of
23 anybody. They haven't proven it.

24 They called five witness in this case. Ms. Ocean,
25 her testimony was really limited to what we've already

1 talked about here: where they parked. It wasn't
2 unusual. The government presented it in a way, though,
3 to say, oh, they parked next door and this kind of stuff
4 like he was doing something nefarious. He parks there
5 all the time. She said that. They both use the spot.
6 So it's not like he's trying to do anything. He's
7 parking where he usually parks.

8 Then they call **Complainant** We'll talk about her
9 testimony.

10 Then they call Dr. Foster who was one of the
11 forensic interviewers, right? One of the five statements
12 that she gave. But she gave a statement to the initial
13 officer that **Complainant** acknowledged. Came to the house,
14 and when that officer came to the house, she provided a
15 statement. Did they call that officer, the initial
16 responding officer to the case who talked to her for
17 20 minutes? No.

18 Then she went to the hospital. And Ms. Browder's
19 gone to great lengths to talk about the stirrups and how
20 uncomfortable that is. And I absolutely believe that to
21 be true. I understand that. So you go through this
22 protocol at the hospital, and you go through these things
23 when you make an allegation like this and you have to go
24 to the hospital and you talk to the sexual assault nurse
25 examiner, right, and they put you through these things.

1 Where -- in his opening, Mr. Jackson told you that
2 you'd hear from nurses that would corroborate **Complainant**
3 story. Did they call a single nurse in this trial? Did
4 they call any medical professional at all that would be
5 able to come in here and say in that examination, we
6 found these things and they corroborate what she said?
7 Is there any of that before you? Is that anywhere in
8 this record? And the answer is no. It's not. And you
9 have to ask yourself why is that? Don't you think if
10 they have it, if she had gone through that physical
11 examination and put her through all that and there was
12 anything there that corroborated what she said that they
13 would call that witness to make sure that you knew about
14 it? Why is that missing? Why didn't they call those
15 people? Because it doesn't exist.

16 And she says, oh, why would **Complainant** make it up? Why
17 would she say anything about it being in her butt rather
18 than just in a vaginal penetration? Well, depending on
19 different factors, right, you may say you may have to
20 have them examine that part of you, because the other
21 part might reveal itself to not be true immediately.
22 That's why.

23 So she goes through that process. Then she meets
24 with Investigator Tanner. And she meets with
25 Investigator Tanner -- you know, one of the things too

1 that was important, when she talked and she testified and
2 when she talked to the original investigating officer,
3 she told him that Mr. Brown, my client Marty Brown, had
4 ejaculated on her butt. That was her first story, he
5 came on my butt. Right?

6 So when they get -- when Mr. Tanner from the
7 sheriff's office, they turn over the clothes because
8 seemingly you have ejaculation on your butt, it includes
9 DNA, it would get on your clothes, you turn it over to
10 law enforcement for testing. They collected it. They
11 can submit it to testing. Where is that evidence? That
12 would corroborate her story. It would be objective
13 evidence to say -- it would make something more likely
14 than not if it was available. They don't have it. It's
15 not before you. Don't you think if they had it it would
16 be before you? They would have called in some experts,
17 some forensic people to say we tested these clothes, we
18 corroborated her story because his DNA is present in this
19 fashion and here it is? Don't you think that would be a
20 critical piece of evidence in a case like this? They
21 have the burden of proof.

22 They get with Investigator Tanner. They turn over
23 the clothes. I think there's maybe that first time,
24 though, they go out. They're trying to figure out where
25 it is that they -- this wooded place is.

1 And I find it interesting that they have these
2 videos from these different places throughout town. They
3 have the one out at Broad River and Zimacrest, but we
4 all living in Richland County know what the main
5 thoroughfares are here. They talked about the different
6 ones. And I'm sure the video would speak for itself or
7 whatever it is, but if it's North Main, it's Fairfield,
8 if it's whatever it is, right, there's all of these
9 camera systems available. Justin Martin from the
10 solicitor's office talked about that. The sheriff's
11 office has these different LPR readers that are
12 available. They can track your car. They can say, yeah,
13 this car went through this intersection. They have
14 videos to say this is where it is. Investigative tools
15 that are available today in 2025 allow for additional
16 corroboration that we didn't have in 1995, even 2005.
17 There were things that they could have done that were
18 available to them to know exactly where this car went to
19 a fair degree. Do they have any of that? No.

20 They collected **Complainant** phone as evidence in this
21 case. Did they introduce any evidence of that? No.

22 So then later, **Complainant** she's put through with a
23 forensic interview. And Dr. Foster testified who now
24 works for the solicitor's office as a prosecutor. But
25 she worked for the Metropolitan Child Advocacy Center

1 back in 2021, did this forensic interview with Complainant
2 and testified that she came in and made a statement which
3 Complainant we talked about.

4 After that, they called Investigator Flynn and then
5 they called Justin Martin to set up these videos that we
6 talked about.

7 So the prosecutor would have you believe that none
8 of these things that I asked about prior to the event,
9 the alleged event that Complainant says happened really
10 matter. I submit to you they do. She's a 13-year-old at
11 Olympia High School, comes home from the day and is out
12 with her friend and she's doing whatever. And whatever's
13 going on with the family, her mother's asking her to come
14 home. She's not coming home. She hasn't done anything
15 wrong. She's standing by that. She's sticking to it.
16 That was her testimony. I'm sticking to that. I didn't
17 do anything wrong.

18 In these times and things that I'm asking about, I'm
19 asking about them because it's what she's told people
20 when she was asked about it before. I don't play a role
21 in getting Complainant ready to testify, and that's why I
22 asked her what did you do to prepare. Because it became
23 apparent that she really didn't know. Did you watch the
24 videos? Did you review what you had said? What did you
25 do? I just wanted to understand. That's why I asked her

1 that. What did you do? Because it was apparent that she
2 didn't know.

3 And I wasn't trying to give her a hard time, but
4 those things were important. They were important enough
5 for her to tell them things like that in the beginning.
6 You know, you remember 10:17, you remember 5:20, you
7 remember these things. Those were important enough at
8 the time you said it, right? So I'm asking about that.
9 That's why.

10 But whatever's going on with this family, it's kind
11 of -- it's spiraling, right? Her mother comes. She's
12 not coming. She leaves. She goes and reports her as a
13 runaway. All of a sudden, her Aunt Quadaysha's coming
14 over to the house that she's at with her friend, wants to
15 talk to her saying you need to go home, you need to do
16 these things. She doesn't do it. She calls her
17 grandmother who's always on her side. And her
18 grandmother's like, no, you need to listen to your mom.
19 You need to go home. She doesn't do it.

20 So whatever's going on, she's getting a lot of
21 attention from her family for it and they're trying to
22 get her to go home. And she does. And she said in the
23 interview, she testified, she's like and they didn't have
24 any reason not to trust me. I'm not out doing anything.
25 I'm not with any kind of boys or anything. But for the

1 first time ever in this trial after she put her hand on
2 the Bible and swore to tell the truth that she got up
3 there and said for the first time I was with a boy until
4 late that night. She'd never told anybody that. She
5 hadn't told any of the previous investigators that. She
6 didn't tell the responding officer that. She didn't tell
7 the hospital people that. She didn't tell Investigator
8 Tanner that. She didn't tell the forensic interviewer
9 that. She actually had a meeting with the prosecutor and
10 her team sometime in February of 2024 and she didn't tell
11 them that then either. This is the first time we ever
12 hear that there is some other male figure that she's
13 spending time with admittedly under the influence. She's
14 smoking and doing whatever with him and they split up.
15 Her and A find -- they split up, right?

16 And for the longest time I really didn't understand
17 why A's mom wouldn't let someone like Complainant back
18 to the house. But after she testified, I finally did.
19 It's because Complainant was out hanging out with some guy in
20 his apartment somewhere else in The Grove that no one
21 knew about. What really was happening there? It was
22 someone she went to school with, that she knew?

23 So all of those inconsistencies that she had talked
24 about prior to the things that happened and the things
25 that she concealed by omission are important. Because

1 she is out doing things that she knows she's going to be
2 in trouble for, and when she comes home, she's confronted
3 by her mother and other family members about her conduct
4 and her behavior and what she's doing.

5 How do I -- how am I going to resolve this? How am
6 I going to resolve this? How am I going to resolve this
7 conflict? Everyone's mad at me, right? I have no one in
8 my life. How am I going to resolve this?

9 And they start talking about the different kinds of
10 karma that it could be. She's asking questions until she
11 asks the question about being touched or something. And
12 I'm sure it gets a response. And here we are. They have
13 this story about what Uncle Marty did.

14 The story that they want you to believe is
15 corroborated, but they've offered no evidence of that.
16 So the story, the important part of the story for them
17 would be they get and they go down in some woods
18 somewhere deep in the woods where it's dark and there's
19 no light. Remind you, the sheriff's office has tools
20 that would be available that they can use to try to
21 figure out where this is. It's on here.

22 And they get back so deep in the woods that she's
23 scared. They're in this Tahoe, and he's in the front
24 seat of it and she's in the passenger's seat. And
25 they're sitting there. He exposes himself. Before he

1 comes over -- I'm just trying to picture it. Driving my
2 car sitting in my driver's seat. I've got the steering
3 wheel. The steering wheel is going to come down probably
4 around my legs. Said Mr. Brown is about six feet tall.
5 And he's got this console that you would expect probably
6 to find in a vehicle like this. So probably going to
7 have some little compartment up front you can place
8 things in, a couple of cup holders, right, maybe one of
9 the things that opens up you can put some stuff in. But
10 it's going to be a clear divider between the two.

11 And he comes over the console while she's sitting in
12 the passenger's seat. So he's got to get from where he
13 is first out of this position and then maybe lay over the
14 console. And then he and she are going to occupy this
15 shared area in the passenger's side of the vehicle. He's
16 driven her all the way to the back of the woods where
17 there's no one around and this is the way it goes down?
18 They don't get out of the car? They don't do something?
19 He's going to come over the console like that and then
20 try to have sex in the front passenger's seat of the car?

21 And candidly, I did ask her questions about the
22 event itself. She was inconsistent about elements of
23 that. She was inconsistent about where he actually
24 ejaculated. She had two different versions of that
25 story. She was actually also inconsistent about -- at

1 some point she said he became mad because she was going
2 to tell on him, and it became obvious that, you know, to
3 her, I guess, she said that she was going to tell on him
4 and he got mad. But she really says that that happened
5 at two different parts of the encounter, one of -- the
6 first time she said it happened after. When she
7 testified on direct examination, she made it sound like
8 whatever the allegation she levies against my client
9 occurred and then she said something that made her think
10 that she was going to tell and then he got mad. But in
11 statements that she had provided previous to that,
12 basically, she said that she insinuated she was going to
13 tell on him before anything happened and he got mad about
14 that. Well, if that's true, why in the world would he
15 have ever done it?

16 Just looking at my notes. I'm a little out of order
17 here, so please forgive me.

18 But other things that they talk about being
19 corroboration, right, they want to say that going into
20 the store and buying the cigar is corroboration. Well,
21 under direct examination, she said that he bought her a
22 vape. And she testified about this vape. So actually,
23 whatever's happening, okay, in this -- in the car for
24 some period of time -- well, actually, I think she said
25 she opened the vape later, but that he had purchased her

1 this vape and had given it to her. Where's the vape?
2 Where is it? They have to offer evidence that
3 corroborates her story that proves this beyond a
4 reasonable doubt. They haven't introduced that into
5 evidence.

6 I mean, candidly, when I was attempting to ask
7 **Complainant** about the event itself, she said she didn't
8 remember to a number of my questions. Was it once or was
9 it twice? I don't remember. I don't recall. This is so
10 traumatizing, right? But on direct examination, the
11 deputy solicitor gets up and says, well, it's this, or
12 this, this, right? Right. Yeah, yeah, yeah. And just
13 right down the line like you'd expect. But on
14 cross-examination she wasn't that clear. She didn't have
15 those answers.

16 On direct examination, I think she said the first
17 time it happened it really didn't go very well because it
18 was -- you know, it wasn't going in. And so that's what
19 sort of facilitated this second event. And she said the
20 second time it went in because it was wet. And there's
21 really no explanation for why that was. And so what did
22 the deputy solicitor do? She tried to get her basically
23 to say that she was on her period at the time and that
24 would be the reason. She didn't do it. She didn't say
25 that. But that's basically what happened.

1 I'm not here to judge Complainant for her lifestyle.
2 That's not what this case is about. That's not the issue
3 before you. The issue before you is whether or not the
4 government has proven its case. And they haven't. So
5 they want to make it about other things.

6 So in the end, ladies and gentlemen, what are we
7 really left with? What are we left with? The
8 corroborating evidence that you have before you, videos
9 of them together, on the other side of the bridge. I
10 mean, this isn't easy. She's right. It's not. This
11 isn't an episode of Forensic Files where the government
12 is able to produce even the slightest piece of forensic
13 evidence to demonstrate that this happened. It's not
14 SVU. It's a little bit painstaking. It's not as
15 exciting. But in the end, whether it's TV or real life,
16 they have to prove the case beyond a reasonable doubt.
17 And if there was evidence to corroborate the stories that
18 she has told, you would have heard from a lot more
19 witnesses and there'd be a lot more evidence before you.
20 Marty Brown is not guilty.

21 Thank you.

22 CHARGE ON THE LAW

23 THE COURT: Thank you, sir.

24 All right. Let me move this screen real quick so I
25 can see everybody.

1 All right. Mr. Foreman and ladies and gentlemen of
2 the jury, you have heard the evidence and arguments of
3 both parties. I will now explain the law which you will
4 apply in this case.

5 I remind you that during this trial, you and I have
6 certain duties to perform. As the trial judge, it is my
7 responsibility to preside over the trial of this case and
8 I also have the duty to rule on the admissibility of
9 evidence offered during this trial. You are to consider
10 only the competent evidence before you. You must
11 disregard the testimony that I ordered to be stricken
12 from the record during this trial. You are to consider
13 only the testimony which has been presented from this
14 witness stand and any exhibits which have been made a
15 part of the record in this case.

16 I have the additional duty to charge you the law
17 applicable to this case. As the presiding judge, I am
18 the sole judge of the law -- excuse me -- I am the sole
19 judge of the law and it is your duty as jurors to accept
20 and apply the law as I now state it to you. If you
21 already have an idea as to what the law is or what the
22 law ought to be and it does not agree with what I now
23 tell you the law is, you must abandon this idea because
24 you are sworn to accept the law and apply the law exactly
25 as I state it to you.

1 In every case tried in this court before a jury, the
2 jury becomes the sole and exclusive judge of the facts in
3 a case. A trial judge cannot state, comment on or make
4 any statement to a trial jury about the facts. Since you
5 the jury are the sole judge of the facts in this case,
6 you are not to infer from anything I have said during the
7 progress of this trial in ruling upon the admissibility
8 of evidence or otherwise or anything that I say now
9 during the course of this instruction to you that I have
10 any opinion about the facts in this case. The law does
11 not allow me to have an opinion about the facts in this
12 case. This is a matter solely for you the jury to
13 determine. As jurors, it is your duty to determine the
14 effect, value and weight of the evidence presented during
15 this trial.

16 The defendant has pled not guilty to these three
17 indictments, and those pleas put the burden on the State
18 to prove the defendant guilty. A person charged with
19 committing a criminal offense in South Carolina is never
20 required to prove himself innocent. I charge you that it
21 is an important rule of the law that a defendant in a
22 criminal trial, no matter what the seriousness of the
23 charge may be, will always be presumed innocent of the
24 crime for which the indictment was issued unless guilt
25 has been proven by evidence satisfying you of that guilt

1 beyond a reasonable doubt. This presumption of innocence
2 does not end when you begin your deliberations, but it
3 accompanies the defendant throughout the trial unless you
4 reach a verdict of guilt based on evidence satisfying you
5 of that guilt beyond a reasonable doubt.

6 The presumption of innocence is like a robe of
7 righteousness placed about the shoulders of the defendant
8 which remains with the defendant unless it has been
9 stripped from the defendant by evidence satisfying you of
10 the defendant's guilt beyond a reasonable doubt.

11 The presumption of innocence is not a mere legal
12 theory. It is not just a legal phrase. It is a
13 substantial right to which every defendant is entitled
14 unless you the jury are satisfied from the evidence of
15 the defendant's guilt beyond a reasonable doubt.

16 The State has the burden of proving the defendant
17 guilty beyond a reasonable doubt. Some of you may have
18 served as jurors in civil cases where you were told that
19 it is only necessary to prove that a fact is more likely
20 true than not true such as by the greater weight of the
21 evidence. In criminal cases, the State's proof must be
22 more powerful than that. It must be beyond a reasonable
23 doubt as to each element charged.

24 So what is reasonable doubt in the law? A
25 reasonable doubt is the kind of doubt that would cause a

1 reasonable person to hesitate to act. Proof beyond a
2 reasonable doubt is proof that leaves you firmly
3 convinced of the defendant's guilt. There are very few
4 things in this world that we know with absolute
5 certainty, and in criminal cases, the law does not
6 require proof that overcomes every possible doubt. If,
7 based on your consideration of the evidence, you are
8 firmly convinced that a defendant is guilty of the crime
9 charged, you must find him guilty. If, on the other
10 hand, you think there is a real possibility that a
11 defendant is not guilty, you must give that defendant the
12 benefit of the doubt and find him not guilty.

13 A verdict in this case cannot be based upon
14 sympathy, passion, prejudice or emotion or some other
15 consideration not found in the evidence.

16 Now, there are two types of evidence which are
17 generally presented during a trial: direct evidence and
18 circumstantial evidence. Direct evidence directly proves
19 the existence of a fact and does not require deduction.
20 Circumstantial evidence is proof of a chain of facts and
21 circumstances indicating the existence of a fact.

22 Crimes may be proven by circumstantial evidence.
23 The law makes no distinction between the weight or value
24 to be given to either direct or circumstantial evidence.
25 However, to the extent the State relies on circumstantial

1 evidence, the circumstances must be consistent with each
2 other, and when taken together, point conclusively to the
3 guilt of the accused beyond a reasonable doubt. If these
4 circumstances merely portray the defendant's behavior as
5 suspicious, the proof has failed.

6 The State has the burden of proving the defendant
7 guilty beyond a reasonable doubt. This burden rests with
8 the State regardless of whether the State relies on
9 direct evidence, circumstantial evidence or some
10 combination of the two.

11 You must also determine the credibility of witnesses
12 who have testified in this case and the evidence
13 presented.

14 Credibility simply means believability.

15 It becomes your duty as jurors to analyze and
16 evaluate the witnesses and the evidence and determine the
17 credibility of those witnesses and evidence. In
18 determining the credibility of witnesses who have
19 testified in this case, you may believe one witness over
20 several witnesses or several witnesses over one witness;
21 you may believe a part of the testimony of a witness and
22 reject the remaining part of the testimony of that same
23 witness; you may believe the testimony of a witness in
24 its entirety or reject the testimony of a witness in its
25 entirety; you may consider whether any witness has

1 exhibited to you any interest, bias, prejudice or other
2 motive in this case; you may also consider the appearance
3 and manner of a witness while on the witness stand.

4 In order to establish criminal liability, criminal
5 intent is required. For example, the mental state
6 required to be proven by the State for a particular crime
7 might be purpose, intent, knowledge, recklessness or
8 criminal negligence.

9 Criminal intent must be proven by the State beyond a
10 reasonable doubt. Criminal intent is always a matter
11 that must be determined by the jury from the
12 circumstances existing at that time.

13 There is no way to prove intent to a mathematical
14 certainty. There's no way medical science can dissect a
15 person's brain and determine what the person had in mind,
16 so the law says that criminal intent may be inferred from
17 the circumstances shown to have existed. This is how you
18 make a determination of whether or not the element
19 requiring intent was present.

20 It is not necessary to establish intent by direct
21 and positive evidence, but intent may be established by
22 inference in the same way as any other fact by taking
23 into consideration the acts of the parties and all the
24 facts and circumstances of the case.

25 Criminal intent is a mental state of conscious

1 wrongdoing. You must determine what the defendant
2 intended to do based on the circumstances existing at
3 that time.

4 Criminal intent can arise from action or a failure
5 to act. It may arise from negligence, recklessness, or
6 an indifference to duty or to consequences that are
7 considered by the law to be equivalent of criminal
8 intent.

9 The fact that the defendant elected not to testify
10 is not a factor to be considered by you in any way in
11 your deliberations and in your consideration on the
12 question of whether the defendant is guilty or not
13 guilty. It must not be considered in any manner
14 whatsoever against the defendant. An accused has the
15 right to remain silent, and the assertion of that right
16 cannot be considered by you in your deliberations. Under
17 your oath, you are to reach no inference and draw no
18 conclusion whatsoever from the fact that the defendant
19 elected not to testify. His decision not to testify
20 should not even be discussed in the jury room. It is not
21 to enter your minds in making your decisions. The State
22 has the entire burden of proof and the accused has no
23 burden to prove anything at all.

24 The defendant has been charged with three
25 indictments in this case. These charges are criminal

1 sexual conduct with a minor second degree, contributing
2 to the delinquency of a minor and exposure of private
3 parts in a lewd and lascivious manner.

4 An indictment is simply the formal written notice
5 which contains the charge made against the defendant. It
6 is the formal document by which this case is brought into
7 court. I remind you that the fact that the defendant was
8 arrested, charged and indicted in this case is not
9 evidence in this case and cannot be considered by you as
10 evidence of guilt, nor does it create any presumption or
11 inference of guilt.

12 First, the defendant is charged with one count of
13 criminal sexual conduct with a minor second degree. The
14 State must prove beyond a reasonable doubt that the
15 defendant engaged in a sexual battery with the victim.

16 "Victim" means the person alleging to have been
17 subjected to criminal sexual conduct.

18 A sexual battery is sexual intercourse, cunnilingus,
19 fellatio, anal intercourse or any intrusion, however
20 slight, of any part of a person's body or of any object
21 into the genital or anal openings of another person's
22 body except when the intrusion is accomplished for
23 medically recognized treatment or diagnostic purposes.

24 The State must then prove beyond a reasonable doubt
25 that the victim was at least 11 years old who is less

1 than 14 years old at the time of the sexual battery.
2 Consent, willingness, indifference or ignorance on the
3 part of the minor, if any, as to what was taking place
4 does not in any way affect the charge of criminal sexual
5 conduct with a minor because a minor under the age of 16
6 cannot legally consent to sexual intercourse. Mistake of
7 age is not a defense to criminal sexual conduct of a
8 minor.

9 The defendant is also charged with one count of
10 exposure of private parts in a lewd and lascivious
11 manner. The State must prove beyond a reasonable doubt
12 that the defendant willfully and knowingly exposed his
13 private parts in a lewd and lascivious manner in the
14 presence of another person.

15 "Willfully" means voluntarily and intentionally with
16 the specific intent to do something the law forbids.

17 "Lewd" means obscene, lustful, indecent or
18 lecherous.

19 "Lascivious" means tending to incite lust, lewd,
20 indecent, obscene or tending to deprave the morals in
21 respect to sexual relations.

22 Lastly, the defendant is charged with contributing
23 to the delinquency of a minor. A minor is a person who
24 is less than 18 years old. The State must first prove
25 beyond a reasonable doubt that the defendant was over

1 18 years of age. The State must then prove beyond a
2 reasonable doubt that the defendant knowingly and
3 willfully encouraged, aided or caused a minor to do any
4 act which caused or influenced the minor to violate any
5 law or any municipal ordinance or become and be
6 incorrigible or ungovernable or habitually disobedient
7 and beyond the control of his or her parent, guardian,
8 custodian or other lawful authority or to behave in a way
9 which would willfully injure or endanger the minor's
10 morals or health or the morals or health of others.

11 It is unlawful for a person under the age of 21 to
12 purchase, attempt to purchase, consume or knowingly
13 possess alcoholic liquors.

14 Let me say something about your deliberations.
15 "Deliberation" is defined as careful consideration,
16 weighing up with a view to decision. The genius of our
17 jury system is that it allows 12 good men and women from
18 12 different backgrounds, life experiences and
19 perspectives to consider the evidence, talk about it and
20 ultimately reach a verdict.

21 We call them "deliberations" for a reason. You are
22 to consider the evidence in this case carefully and
23 deliberately and discuss it in a calm, thorough and
24 courteous manner. Listen to the views of all of your
25 fellow jurors. Consider other people's points and points

1 of view and talk through and discuss the evidence. And
2 remember, if you are doing something deliberately, you
3 are not in a big hurry and you should not be in a hurry
4 here. This case is very important to both sides, and
5 this is their only day in court.

6 When you retire to the jury room, you should discuss
7 the case with your fellow jurors to reach an agreement if
8 you can do so.

9 Your verdict must be unanimous. Each of you must
10 decide the case for yourself, but you should do so only
11 after you have impartially considered all the evidence,
12 discussed it fully with the other jurors and listened to
13 the views of your fellow jurors. Do not be afraid to
14 change your opinion if the discussions persuade you that
15 you should, but do not come to a decision simply because
16 other jurors think it is right.

17 It is important that you attempt to reach a
18 unanimous verdict, but, of course, only if each of you
19 can do so after having made your own decision. Do not
20 change an honest belief about the weight and effect of
21 the evidence simply to reach a verdict. In other words,
22 do not change your opinion solely for the sake of
23 reaching a unanimous verdict.

24 There are two possible verdicts for each of the
25 three charges which you may find in this case. There is

1 no significance whatsoever in the order in which I state
2 these possible verdicts. It is simply that one must be
3 stated first.

4 And what I wanted to do is we'll pass back the
5 verdict form, and there are three Roman numerals. And
6 they read: We the jury unanimously find the defendant,
7 Marty Brown, as to the charge of criminal sexual conduct
8 with a minor in the second degree, and then it states
9 "guilty" or "not guilty." You are to circle one after
10 your deliberations.

11 Number 2 is we the jury unanimously find the
12 defendant, Marty Brown, as to the charge of exposure of
13 private parts in a lewd and lascivious manner, and then
14 there is "guilty" or "not guilty" to circle.

15 And then lastly, Roman numeral III, we the jury
16 unanimously find the defendant, Marty Brown, as to the
17 charge of contributing to the delinquency of a minor
18 "guilty" or "not guilty" to circle.

19 And then at the bottom it requests that the jury
20 foreman both sign and date the verdict form.

21 Ladies and gentlemen, your verdict must be a
22 unanimous one as to each charge.

23 Mr. Foreman, when the jury agrees on the verdict,
24 you initial on the line next to the verdict on the
25 verdict form or sign it as your name as foreperson, then

1 inform the bailiff that you have reached a verdict. At
2 that time, we will receive you back in the courtroom.

3 I ask you now return to your jury room, but do not
4 begin deliberations until you are told by the clerk or
5 the bailiff to do so. There's some matters which must be
6 discussed with the attorneys before you begin your
7 deliberations, and we want to make sure that we have all
8 the exhibits in order before we send them back along with
9 the verdict form. So if you would -- please hold on just
10 a second.

11 Is there anything from the State?

12 MS. BROWDER: No, sir.

13 THE COURT: Anything from the defense?

14 MR. HAYES: No exceptions, Judge.

15 THE COURT: All right. So if y'all would please
16 retire to the jury room, and please don't begin
17 deliberations until I send word. Thank you.

18 (WHEREUPON, the jury exits the courtroom at 11:02 AM.)

19 THE COURT: All right. The jury is now out of the
20 courtroom.

21 Since there were no objections or exceptions to the
22 charge, if y'all want to come up and look at the exhibits
23 and make sure that everything is in order before we send
24 it back. I've got a copy of the verdict form right here
25 that we'll include with it. And I will -- also, if y'all

1 want to do that first, as soon as we're finished, I'll
2 bring the alternates out and let them go.

3 (Pause in proceedings; Court's Exhibit Numbers 1 and 2
4 were marked for identification; the alternate jurors
5 entered the courtroom.)

6 THE COURT: All right. Lady and gentleman, I
7 appreciate y'all's attention. I always say that this is
8 kind of like watching a movie and then sending somebody
9 out right before the ending of it. But the law in South
10 Carolina requires us to draw alternates in the case, that
11 we have a juror get sick or have some family emergency
12 come up, many times we've used both alternate. Many
13 times we had one before we even did opening statements.
14 So it's very important to have that or we'd have to go
15 through the whole thing again.

16 Fortunately or unfortunately, in this case, we were
17 able to keep all 12 of the jurors. And so at this point
18 in time, I will release you from your jury duty. You may
19 have made some friendships in there. You may want to
20 follow up and talk to them and see what the result is,
21 and you're certainly happy to do that. But I do, on
22 behalf of everybody here, want to thank you very much for
23 your time and your patience. This is not a very quick
24 and efficient system at some points, and we greatly
25 appreciate your patience and your hard work on this. So

1 thank you very much, and y'all may be excused if you
2 wish. Thank you.

3 (WHEREUPON, the alternate jurors exited the courtroom; a
4 recess is taken at 11:08 AM and the jury starts
5 deliberating; Court's Exhibit Number 3 was marked for
6 identification; proceedings reconvened at 11:36 AM.)

7 JURY QUESTIONS

8 THE COURT: And I had this marked as Court's Exhibit
9 Number 3. We received a note from the jury that states
10 as follows: Can we please have clarification on the law
11 regarding the charge of contributing to the delinquency
12 of a minor? Does the law extend to an adult picking up a
13 minor and driving them around and not taking them home?
14 Signed by the foreperson.

15 First of all, Mr. Hayes, do you want your client in
16 here?

17 MR. HAYES: I think so, Judge, just to protect
18 myself.

19 THE COURT: Okay. No, no. That's fine.

20 MR. HAYES: So he can understand in his own mind
21 what's ---

22 THE COURT: Absolutely. I'm not going to make any
23 decision.

24 If you can call down and see if we can get him.

25 I'm not going to make any decision, but why don't we

1 go ahead and start mulling over the possibilities here?

2 I guess I can bring them back in and just recharge them.

3 MS. BROWDER: That's what my suggestion was going to
4 be, Your Honor ---

5 THE COURT: Okay. All right.

6 MS. BROWDER: --- is just reread the contributing to
7 the delinquency of a minor charge.

8 THE COURT: Right. Is that how you ---

9 MR. HAYES: I have no objection to that.

10 THE COURT: Okay. Well, we'll just do that. But
11 I'm not going to make that decision or instruct them to
12 do that until you have an opportunity to explain that to
13 your client.

14 MR. HAYES: Yes, sir.

15 (Pause in proceedings.)

16 THE COURT: All right. I'll read it again,
17 Mr. Brown, just so that you can hear it as well. What
18 happens is sometimes the jury, if they have a question,
19 rather than do it verbally, we ask them to write it down
20 and then the foreperson to sign and give it to the
21 bailiff and they bring it to me, and then I read it out
22 loud and then we try to determine how to respond to it.
23 And in this case the note states: Can we please have
24 clarification on the law regarding the charge of
25 contributing to the delinquency of a minor. Does the law

1 extend to an adult picking up a minor and driving them
2 around and not taking them home? The foreperson has
3 signed it.

4 And so my inclination is simply to bring them back
5 in and to read just that section on failure to contribute
6 -- or, excuse me -- contributing to the delinquency of a
7 minor, just to read that charge again and to let them
8 know that that's all the guidance that I can give them
9 and that they're going to have to interpret that and
10 weigh any evidence that they deem appropriate.

11 Any objections from the State?

12 MS. BROWDER: No, sir.

13 THE COURT: Any objections from the defense?

14 MR. HAYES: No objection, Judge.

15 THE COURT: All right. Yes, ma'am. If you'd bring
16 them in.

17 (WHEREUPON, the jury entered the courtroom at 11:48 AM.)

18 THE COURT: Ladies and gentlemen of the jury, thank
19 you very much for your note. I have reviewed it and
20 we've spoken about it. And just for the record, it
21 states: Can we please have clarification on the law
22 regarding the charge of contributing to the delinquency
23 of a minor. Does the law extend to an adult picking up a
24 minor and driving them around and not taking them home?

25 So what I'm going to do is to read through the

1 charge again that talks about the elements and proof of
2 this charge.

3 The defendant is charged with contributing to the
4 delinquency of a minor. A minor is a person who is less
5 than 18 years old. The State must first prove beyond a
6 reasonable doubt that the defendant was over 18 years of
7 age. The State must then prove beyond a reasonable doubt
8 that the defendant knowingly and willfully encouraged,
9 aided or caused a minor to do any act which caused or
10 influenced the minor to, Number 1, violate any law or any
11 municipal ordinance; or, 2, become and be incorrigible or
12 ungovernable or habitually disobedient and beyond the
13 control of his or her parent, guardian, custodian or
14 other lawful authority; or, 3, to behave in a way which
15 would willfully injure or endanger the minor's morals or
16 health or the morals or health of others.

17 It is unlawful for a person under the age of 21 to
18 purchase, attempt to purchase, consume or knowingly
19 possess alcoholic liquors.

20 And so that is the charge on that -- on that charge
21 that is levied against the defendant that he has pleaded
22 not guilty to. So I will send you back so that you can
23 deliberate the evidence and apply the charge that I just
24 gave you to the facts as you find them.

25 Thank you.

1 (WHEREUPON, the jury exits the courtroom at 11:50 AM.)

2 THE COURT: All right. Any exceptions? Any
3 objections?

4 MS. BROWDER: No, sir.

5 MR. HAYES: No objections.

6 THE COURT: All right. We'll stand in recess
7 hopefully for a little while longer than that, at least
8 as far as notes are concerned.

9 (WHEREUPON, a recess is taken at 11:51 AM; Court's
10 Exhibit Number 4 was marked for identification;
11 proceedings reconvened at 3:34 PM.)

12 THE COURT: All right. I think y'all have had a
13 chance to look at this. We got a second note from the
14 jury. And it states: Please clarify the law regarding
15 the charge of criminal sexual conduct with a minor in the
16 second degree. Can we please hear the reading of this
17 charge/law once more. Signed the foreperson. And this
18 has been marked as Court's Exhibit Number 4.

19 I'm happy to hear from both of y'all, but I think
20 that they rightfully requested me to reread that charge
21 that has been approved by everybody. And unless y'all
22 have an objection, I'll call them in and do that.

23 MS. BROWDER: No objection.

24 MR. HAYES: No objections.

25 THE COURT: All right. Thank you.

1 (WHEREUPON, the jury entered the courtroom at 3:35 PM.)

2 THE COURT: Ladies and gentlemen, I've got your
3 second note. And just so I'll read it into the record:
4 Please clarify the law regarding the charge of criminal
5 sexual conduct with a minor in the second degree. Can we
6 please hear the reading of this charge/law once more,
7 signed foreperson.

8 First of all, I want to thank you again for asking a
9 question. Certainly, if I can be of any help or if we
10 can be of any help in your deliberations, we certainly
11 want to do that. So the answer is certainly I'll be glad
12 to do that again. So I'll read you the charge on South
13 Carolina law as it pertains to criminal sexual conduct in
14 the second degree.

15 First, the defendant is charged with one count of
16 criminal sexual conduct with a minor second degree. The
17 State must prove beyond a reasonable doubt that the
18 defendant engaged in a sexual battery with the victim.

19 "Victim" means the person alleging to have been
20 subjected to criminal sexual conduct.

21 A sexual battery is sexual intercourse, cunnilingus,
22 fellatio, anal intercourse, or any intrusion, however
23 slight, of any part of a person's body or of any object
24 into the genital or anal openings of another person's
25 body except when the intrusion is accomplished for

1 medically recognized treatment or diagnostic purposes.

2 The State then must prove beyond a reasonable doubt
3 that the victim was at least 11 years old but who is less
4 than 14 years old at the time of the sexual battery.
5 Consent, willingness, indifference or ignorance on the
6 part of the minor, if any, as to what was taking place
7 does not in any way affect the charge of criminal sexual
8 conduct with a minor because a minor under the age of 16
9 cannot legally consent to sexual intercourse. Mistake of
10 age is not a defense to criminal sexual conduct of a
11 minor.

12 And so those are the elements and that's the charge
13 of South Carolina law as to that charge, Mr. Foreman and
14 ladies and gentlemen.

15 Now I'll excuse you back to the jury room so that
16 you can continue deliberations. And thank you very much
17 once again.

18 (WHEREUPON, the jury exits the courtroom at 3:38 PM.)

19 THE COURT: All right. Let the record reflect the
20 jury has gone back to the deliberation room to continue.

21 Is there anything further from the plaintiff at this
22 time we need to address?

23 MS. BROWDER: No, sir.

24 THE COURT: Anything from that defense?

25 MR. HAYES: No, sir.

1 THE COURT: All right. Thank you very much, ladies
2 and gentlemen. We'll stand adjourned until we hear back
3 further.

4 (WHEREUPON, a recess is taken at 3:39 PM; proceedings
5 reconvened at 4:08 PM.)

6 THE COURT: I am advised that the jury has a
7 verdict. Just to let everybody know about the procedure,
8 when they come in, I'll have the foreman hand me the
9 verdict form so that I can make sure that it comports
10 with the format, they've not circled two things for one.
11 If it does conform, I'll hand it to the clerk of court
12 who will then publish it. I want to make sure that I let
13 everybody in the courtroom know that regardless of what
14 the outcome is, there is to be no yelling, no standing,
15 no jumping up and down, nothing. This is a serious event
16 and we'll treat it as such.

17 Anything from the State before I bring the jury in?

18 MS. BROWDER: No, sir.

19 THE COURT: Anything from the defense?

20 MR. HAYES: No, Your Honor.

21 THE COURT: All right. You can bring the jury in
22 now.

23 (WHEREUPON, the jury entered the courtroom at 4:09 PM.)

24 THE COURT: Mr. Foreman, I'm told that the jury has
25 a verdict.

1 JURY FOREPERSON: Yes, Your Honor. The jury has
2 reached a verdict.

3 THE COURT: All right. Thank you, sir. If you'll
4 hand it to the bailiff.

5 Thank you, sir.

6 All right. I find the form comports with -- is
7 properly filled out.

8 If you will please publish it, Mr. Clerk.

9 VERDICT

10 THE CLERK: Yes, Your Honor.

11 In the State of South Carolina, County of Richland
12 Court of General Sessions, Fifth Judicial Circuit,
13 Indictment Number 2023-GS-40-00090, 2023-GS-40-00091,
14 Indictment Number 2023-GS-40-00092, the State of South
15 Carolina vs. Marty Brown, defendant, we the jury
16 unanimously find the defendant, Marty Brown, as to the
17 charge of criminal sexual conduct with a minor in the
18 second degree not guilty. We the jury unanimously find
19 the defendant, Marty Brown, as to the charge of exposure
20 of private parts in a lewd manner guilty. We the jury
21 unanimously find the defendant, Marty Brown, as to the
22 charge of contributing to the delinquency of a minor
23 guilty. Signed Juror 31, foreperson. Dated
24 August 28, 2025.

25 Mr. Foreman, was this the verdict of the entire

1 jury?

2 JURY FOREPERSON: Yes.

3 THE CLERK: Thank you.

4 THE COURT: All right. Anything from the State?

5 MS. BROWDER: No, sir.

6 THE COURT: Anything from the defense? Mr. Hayes?

7 MR. HAYES: Yes, sir. I understand. I'm just
8 considering whether I'm going to ask that you poll the
9 jury or not.

10 THE COURT: Oh, yes, sir. I'm sorry.

11 MR. HAYES: Nothing from the defense.

12 THE COURT: All right. Ladies and gentlemen of the
13 jury, I want to thank you on behalf of everybody here,
14 all the parties, all the staff and everyone. The job
15 that you have is extremely valuable. Our system can't
16 work without it. As we said earlier, it's one of the
17 only places where 12 different people from 12 different
18 walks of life come together to judge others in the
19 community, and we're all grateful for your service here
20 this week. Thank you very much, and you are now excused.

21 (WHEREUPON, the jury exits the courtroom at 4:12 PM.)

22 THE COURT: All right. Anything from the State at
23 this time?

24 MS. BROWDER: No, sir. I mean, other than we need
25 to go do sentencing sheets.

1 THE COURT: Right, right. But I didn't know if
2 there was any posttrial, if y'all need any issues after
3 that.

4 MS. BROWDER: No.

5 THE COURT: Mr. Hayes, anything at this time from
6 the defense?

7 MR. HAYES: Nothing at this time from the defendant,
8 Your Honor.

9 THE COURT: All right. We'll stand at ease for a
10 few moments. I'd like to have a word with the jury real
11 quick.

12 (WHEREUPON, a recess is taken at 4:13 PM; proceedings
13 reconvened at 4:31 PM.)

14 THE COURT: Yes, ma'am, Ms. Browder.

15 MS. BROWDER: Thank you, Your Honor. I'm not going
16 to go into the facts, obviously, because you sat here
17 during the trial. I would like to put Mr. Brown's record
18 on the record as well as I know **Complainant** would like to
19 speak to Your Honor.

20 THE COURT: Yes, ma'am.

21 MS. BROWDER: And I will let you know what the State
22 is asking for.

23 Mr. Brown's record is a 1989 possession of crack
24 cocaine; 1992 resisting arrest; 1999 willful obstruction
25 of a law enforcement officer; 2000 PWID marijuana; 2004

1 unlawful neglect of a child, possession of a stolen
2 vehicle; 2006 distribution of crack second, resisting
3 arrest, and assault and battery high and aggravated
4 nature; 2012 giving false info to police; 2013
5 shoplifting; and 2020 open container.

6 THE COURT: All right.

7 MS. BROWDER: And **Complainant** does want to speak, Your
8 Honor.

9 THE COURT: Yes, ma'am. I'll be more than happy to
10 hear from anybody that needs to speak. Take your time,
11 ma'am.

12 **Complainant**: Okay. It's a note I wrote on December
13 the 17th of 2021.

14 Okay. December 10th was the worst day of my life.
15 I was molested by a man I trust. I asked myself and God
16 a lot why me? Why him? I never really got the answer I
17 was looking for, so then I thought maybe I was asking the
18 wrong question or maybe I was looking in the wrong places
19 for the answer.

20 I sit up at night and I cry and I think about what I
21 could have done differently for that to not have
22 happened. Sometimes I'm thankful that -- sometimes I'm
23 thankful to be alive and able to tell my story, and
24 sometimes I wish he would have just killed me.

25 I hate the fact that not many people understand me.