

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

APPEAL FROM OCONEE COUNTY
Court of General Sessions

DEC 30 2013

R. Lawton McIntosh, Circuit Court Judge

S.C. Supreme Court

Indictment No. 2010-GS-37-364A

The State.....Respondent,

v.

Anthony Clark Odom.....Appellant,

Volume I

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COUNTY OF

STATE

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO:

In violation of §

☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentation to Grand Jury.

(def.'s initials)

The plea is:

☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 7 days/months/years or ☐ under the Youthful Offender Act not to exceed 5 years and/or to pay a fine of \$ 100.00; provided that upon the service of 7 days/months/years and or payment of \$ 25.00; plus costs and assessments as applicable; the balance is suspended with probation for 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ - CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

_____ days/hours Public Service Employment

Total: \$ _____ plus 20% fee: _____ \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)	\$100	\$	100.00
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$	
§14-1-211 (A)(2)(DUI Surcharge)	\$12	\$	
§56-5-2995 (DUI Assessment)	\$25	\$	
§56-1-286 (DUI Breath Test)	\$500	\$	
Proviso 47.9 (Public Def/Prob)	\$25	\$	25.00
§14-1-212 (Law Enforce. Funding)	\$150	\$	
§14-1-213 (Drug Court Surcharge)	\$50	\$	
§50-21-114 (BUI Breath Test Fee)	\$40/ea	\$	5.00
§56-5-2942(J) (Vehicle Assessment)	\$5	\$	
Proviso 90.5 (SCCJA Surcharge)		\$	3.90
3% to County (if paid in installments)		\$	
TOTAL		\$	133.90

Clerk of Court/Deputy Clerk
Court Reporter:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-37-364A

AW#: DP

Date of Offense:

S.C. Code §:

CDR Code #:

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

County Detention Center,
Act not to exceed _____ years

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

prmts. of \$ _____ Beginning

\$ _____ Paid to Public Defender Fund

- NO Internet use; No Home Computer

Other- Shall Not be alone with unrelated

minors (under 18); shall not frequent places

frequented by minors if alone; shall

undergo psychological and/or psychological

treatment for Sexual Abuse and shall

☐ Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge

Judge Code:

Sentence Date

Adhere to prescription Drug Regimen
Sex offender Registry

STATE OF SOUTH CAROLINA)

COUNTY OF OCONEE)

The State of South Carolina,

Plaintiff,)

-vs-)

Anthony C. Odom,)

Defendant.)

IN THE COURT OF COMMON PLEAS

FILED OCONEE, SC.
BEVERLY H. WHITFIELD
CLERK OF COURT
2012 JAN 6 AM 10 42

COPY

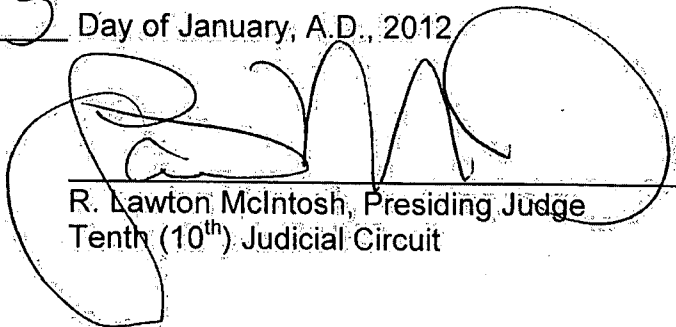
ORDER

CA No. 2010-GS-37-363A/2010-GS-37-364A

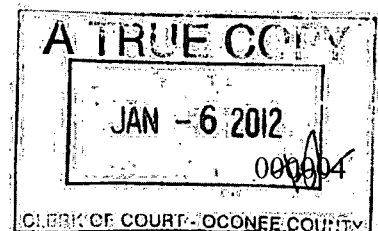
THIS MATTER IS BEFORE THE Court pursuant to Defendant, Anthony C. Odom's Motion for a new trial, timely filed November 21, 2011. The Defendant was tried before a jury and convicted of Criminal Solicitation of a Minor on November 10, 2011 in Oconee. He was represented by James B. Huff, Esquire, and Andy Johnston, Esquire. The State was represented by Megan B. Wines, Assistant Attorney General for the office of the South Carolina Attorney General.

After careful consideration, the Defendant's Motion for a New Trial is denied without oral argument.

IT IS SO ORDERED This 3 Day of January, A.D., 2012


R. Lawton McIntosh, Presiding Judge
Tenth (10th) Judicial Circuit

Anderson, South Carolina.



ODOM v. McMASTER (S.C. 8-6-2010)
Anthony Odom, Plaintiff, v. Henry D. McMaster, in his official
capacity as
the Attorney General of the State of South Carolina; David
Pascoe; J. Strom
Thurmond, Jr.; C. Kelly Jackson; William B. Rogers, Jr.; W.
Barney Giese;
Douglas A. Barfield, Jr.; Trey Gowdy, III; Jerry W. Peace;
Scarlett Wilson;
Christina T. Adams; Donald V. Myers; Edgar L. Clements, III;
Robert M.
Ariail; I. McDuffie Stone, III; Gregory Hembree; and Kevin S.
Brackett, in
their official capacities as South Carolina Circuit Solicitors,
Defendants.
C.A. No. 2:10-cv-00873-MBS.
United States District Court, D. South Carolina, Charleston
Division.
August 6, 2010

ORDER AND OPINION

MARGARET SEYMOUR, District Judge

BACKGROUND

This is an action for declaratory and injunctive relief. Plaintiff filed the within action on April 7, 2010, against Defendants Henry D. McMaster ("McMaster"), in his capacity as Attorney General of the State of South Carolina; and David Pascoe; J. Strom Thurmond, Jr.; C. Kelly Jackson; William B. Rogers, Jr.; W. Barney Giese; Douglas A. Barfield, Jr.; Trey Gowdy, III; Jerry W. Peace; Scarlett Wilson; Christina T. Adams; Donald V. Myers; Edgar L. Clements, III; Robert M. Ariail; I. McDuffie Stone, III; Gregory Hembree; and Kevin S. Brackett; in their official capacities as South Carolina Circuit Solicitors. Plaintiff alleges a claim for vindictive prosecution in violation

of his due process rights under the Fifth and Fourteenth Amendments of the United States Constitution and
Page 2

42 U.S.C. § 1983. Plaintiff seeks declaratory and injunctive relief

to prevent or discontinue state criminal proceedings against him for criminal solicitation of a minor in violation of S.C. Code

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§ 16-15-342. Plaintiff filed a motion for a Temporary Restraining

Order (TRO) on April 7, 2010. An emergency TRO hearing was held on April 9, 2010. The court denied Plaintiff a TRO because he failed to make the necessary showing on all four prongs of the test set out by the Supreme Court in *Winter v. Natural Resources Defense Council, Inc.*, 129 S. Ct. 365, 374-76 (2008). The Summons and Complaint were served on McMaster on April 15, 2010.

The case is before the court on McMaster's Motion To Dismiss, which was filed April 30, 2010. Plaintiff filed its response on May 12, 2009. McMaster filed a reply memorandum on May 28, 2010.

FACTS

The facts in the light most favorable to Plaintiff are as follow. Plaintiff was arrested in May 2006, and charged in Spartanburg County, South Carolina, with one count of criminal solicitation of a minor (hereinafter "Spartanburg Indictment"). This count is based on internet communications from March 2006 to

May 4, 2006, between Plaintiff and a Spartanburg County law enforcement officer who was acting in an undercover capacity (hereinafter "Spartanburg Communications"). Plaintiff's license to practice law in South Carolina was suspended on May 17, 2006 as a result of these charges.

The trial on the Spartanburg Communications (hereinafter "Spartanburg Trial") was originally set for May 2007 but was continued until July 2007 to allow Plaintiff's counsel an opportunity to review evidence of additional internet communications dated May 4, 5, and 6, 2006 between Plaintiff and a Westminster (Oconee County, South Carolina) law enforcement officer, who

Page 3

was also acting in an undercover capacity (hereinafter "Oconee County Communications"). The Oconee County Communications were not part of the Spartanburg Indictment. In July 2007, before the swearing of the selected jury in the Spartanburg Trial, the trial

court granted Plaintiff's motion to suppress evidence the state deemed crucial to its case. The State appealed. On March 30, 2009 the South Carolina Supreme Court reversed the suppression order, and the case proceeded to trial.

The Spartanburg trial began on February 22, 2010 and ended on March 2, 2010. The Oconee County Communications were not introduced at the Spartanburg Trial. At the end of the Spartanburg Trial, the court declared a mistrial due to a deadlocked jury. Shortly after the mistrial, the State submitted the Oconee County Communications charges to a grand jury. On April 12, 2010, the grand jury returned two indictments for criminal solicitation of a minor: one for internet communications dated May 4 and 5, 2006, and a second for communications on May 6, 2006.

Plaintiff alleges that he was told that the Oconee County Communications would not be prosecuted. Plaintiff contends that the State's decision to submit the Oconee County Communications to the grand jury was a reaction to Plaintiff's attempt to gain information in support of his defense in the Spartanburg Trial. Specifically, Plaintiff sought to discover the details surrounding the Oconee County undercover officer's arrest and subsequent termination from the force. Plaintiff also contends that two separate indictments for three communications in Oconee County over only three days, when compared with the single indictment in the Spartanburg Trial which covered seventeen separate communications over a two-month time period, is evidence of vindictive prosecution. Plaintiff argues that the nearly four years between the charged conduct and the actual charges for the Oconee County Communications is unusually long for this type of crime, also evidencing vindictive prosecution.

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Plaintiff seeks: (1) a declaration that the prosecution for the Oconee County Communications is impermissible as a violation of due process; (2) to permanently enjoin Defendants from prosecuting Plaintiff for the Oconee County Communications; and, (3) full discovery on his vindictive prosecution claim.

DISCUSSION

Younger Abstention

Defendant argues that the court should dismiss this case based on the *Younger* abstention doctrine. It is well established that, except under certain narrow circumstances, a federal district court should abstain from hearing a case to enjoin or stay an

ongoing state court proceeding. The United States Supreme Court, in *Younger v. Harris*, recognized a "national policy forbidding federal courts to stay or enjoin pending state court proceedings except under special circumstances." 401 U.S. 37, 41 (1971). The recognized three-prong test for *Younger* abstention is: "(1) an ongoing state judicial proceeding, instituted prior to any substantial progress [on the merits] in the federal proceeding; that (2) implicates important, substantial, or vital state interests; and, (3) provides an adequate opportunity for the plaintiff to raise the federal constitutional claim advanced in the federal lawsuit." *Nivens v. Gilchrist*, 319 F.3d 151 (4th Cir.

2003) (citing *Middlesex County Ethics Comm. v. Garden State Bar Ass'n.*, 457 U.S. 423, 432 (1982)).

The first prong of the *Younger* abstention doctrine requires that there be an ongoing state judicial proceeding. In *Hicks v. Miranda*, 422 U.S. 332 (1975), the Supreme Court found that the ongoing state judicial proceeding prong was met in a case where the federal suit was filed before the state criminal proceedings began. In *Hicks*, Miranda filed suit in federal court seeking to prevent the enforcement of an obscenity statute. 422 U.S. at 337.

The district court denied Miranda's request

Page 5

for a TRO, but ordered a three-judge panel to review the constitutionality of the statute. *Id.* at 338. Before the panel considered the constitutionality question, Miranda was added to a state criminal proceeding for violation of the obscenity statute.

Id. at 339. The federal panel subsequently declared the California statute unconstitutional. *Id.* at 341. On certiorari, the United States Supreme Court held that the district court should have abstained "where state criminal proceedings are begun

against the federal plaintiff[] [Miranda] after the federal complaint is filed[,] but before any proceedings of substance on the merits have taken place in the federal court, the principles of *Younger v. Harris* should apply in full force." *Id.* at 349.

Hicks indicates that in cases where state criminal proceedings are instituted after a plaintiff's federal complaint was filed and TRO hearing held, there is an ongoing state proceeding for the purposes of the first prong of the *Younger* abstention doctrine. 422 U.S. at 349. Because a TRO hearing is not a

proceeding of substance on the merits and no other proceedings have taken place in this case, the first prong of the *Younger* abstention doctrine has been met.

The second prong of the *Younger* abstention doctrine requires that the state proceeding implicate important, substantial, or vital state interests. The Fourth Circuit has recognized the efficient operations of a state's criminal justice system as an important, substantial, or vital state interest. *Nivens*, 319 F.3d at 154 (citing *Cooper v. Oklahoma*, 517 U.S. 348 (1996)).

Moreover, protecting minors from sexual predators is an important state interest. See *State v. Reid*, 679 S.E.2d 194, 201 n. 6 (S.C. Ct. App. 2009) (discussing South Carolina's important public policy of protecting minors from harm in the context of an internet solicitation of a minor case). Thus, the second prong of the *Younger* abstention doctrine has been met.

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The third prong of the *Younger* abstention doctrine requires that the state proceeding provide an adequate opportunity for the plaintiff to advance his federal constitutional claim. With regard to this prong, the Supreme Court has placed the burden on the federal plaintiff to show that state procedural law bars the presentation of his claim. *Pennzoil Co. v. Texaco*, 481 U.S. 1, 14

(1987). The Supreme Court stated: "when a litigant has not attempted to present his federal claim in related state-court proceedings, a federal court should assume that state procedures will afford an adequate remedy, in the absence of unambiguous authority to the contrary." *Id.* at 15. The Fourth Circuit, in applying *Younger*, explained that: "a federal court *must* abstain from interfering with an ongoing state proceeding where a litigant has an 'opportunity to raise and have timely decided by a competent state tribunal the federal issues involved' and . . .

no bad faith, harassment, or other exceptional circumstances dictate to the contrary." *Nivens*, 319 F.3d at 154 (citing *Middlesex*, 457 U.S. at 437) (emphasis added).

Plaintiff argues that his claim of vindictive prosecution cannot be adequately raised in state court because in a South

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Carolina criminal proceeding there is no right to discovery. The court disagrees. Both of the cases Plaintiff cites in support of his argument were decided prior to the creation of Rule 5 of the South Carolina Rules of Criminal Procedure, governing disclosure in criminal cases. S.C.R. Crim. P. 5. Rule 5 permits discovery in criminal cases:

[u]pon request of the defendant the prosecution shall permit the defendant to inspect and copy books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant.

Page 7

S.C.R. Crim. P. 5(a)(1)(C). Rule 5 also gives courts discretion to permit discovery if a party has refused to comply with a discovery request. S.C.R. Crim. P. 5(a)(2). The South Carolina Supreme Court has recognized the right to discovery for state criminal defendants. *State v. Northcutt*, 641 S.E.2d 873, 878 (S.C. 2007) (recognizing that Rule 5 creates a right to reciprocal discovery but does not compel defense experts to create written reports for the opposing side). Plaintiff cites no authority, nor provides examples, to support the proposition that his right of discovery under Rule 5 will be insufficient to adequately develop his vindictive prosecution claim. Plaintiff has failed to meet his burden of proving that state procedural law bars his federal constitutional claim.

In addition, in *State v. Fletcher*, 471 S.E.2d 702 (S.C. Ct. App. 1996) a criminal defendant was permitted to present a vindictive prosecution claim in that proceeding. *Id.* at 703. This case demonstrates that South Carolina courts are capable of hearing allegations of vindictive prosecution in criminal cases and indicates that state procedures are adequate to address Plaintiff's claim. Thus, the third prong of the *Younger* abstention doctrine has been met. Based on the foregoing, the court finds that *Younger* abstention is appropriate in this case

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unless one of the exceptions applies.

Exceptions to Younger Abstention

Courts have recognized exceptions to the *Younger* abstention doctrine where a state prosecution is: "(1) commenced in bad faith or to harass, (2) based on a flagrantly and patently unconstitutional statute, or (3) related to any other such extraordinary circumstances creating a threat of 'irreparable injury' both great and immediate." *Phelps v. Hamilton*, 59 F.3d 1058, 1063-64 (10th Cir. 1995) (citing *Younger*, 401 U.S. at 53-54). Plaintiff advances the bad faith exception to argue against the application of *Younger*.

The three factors courts use to evaluate the bad faith exception are:

Page 8

(1) [W]hether it was frivolous or undertaken with no reasonably objective hope of success; (2) whether it was motivated by the defendant's suspect class or in retaliation for the defendant's exercise of constitutional rights; and, (3) whether it was conducted in such a way as to constitute harassment and an abuse of prosecutorial discretion, typically through the unjustified and oppressive use of multiple prosecutions.

Phelps, 59 F.3d at 1064-65 (citing *Kugler v. Helfant*, 421 U.S. 117, 126 n. 6; *Younger*, 401 U.S. at 48). Mere allegations of bad faith do not suffice; a plaintiff "must prove bad faith or harassment before intervention is warranted." *Id.* at 1066 (citing *Perez v. Ledesma*, 401 U.S. 82, 85 (1971); *Juidice v. Vail*, 430 U.S. 327, 338 (1977)).

Plaintiff submits that his prosecution for the Oconee County Communications constitutes retaliation for the exercise of his constitutional rights in defending himself at the Spartanburg Trial. Plaintiff contends that his prosecution for the Oconee County Communications constitutes abuse of prosecutorial discretion due to the oppressive use of multiple prosecutions. Additionally, Plaintiff argues that this case should be allowed to move forward simply because bad faith is an inherent element

of his vindictive prosecution claim. McMaster disputes Plaintiff's allegations of prosecutorial misconduct and motivation for bringing charges on the Oconee County Communications, contending that this was a strategic decision. During the pendency of the Spartanburg trial, the position of Chief Prosecutor for the South Carolina Internet Crimes Against Children Task Force changed from David Stumbo to Megan Wines. Because prosecutors have discretion to decide which crimes to prosecute, this personnel change lends support to McMaster's strategy explanation. The court finds that Plaintiff has failed to prove bad faith. Therefore, abstention under the *Younger* abstention doctrine is appropriate.

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Rule 12(b)(6) Motion

Plaintiff argues that if this court looks outside the pleadings to decide the motion to dismiss, the Rule 12(b)(6) motion is converted into a motion for summary judgment, entitling Plaintiff to discovery. The Fourth Circuit has recognized that courts can take judicial notice of public information without converting a 12(b)(6) motion into a motion for summary judgment stating: "[i]n reviewing the dismissal of a complaint under Rule 12(b)(6), we may properly take judicial notice of matters of public record." *Sec'y of State for Defence v. Trimble Navigation Ltd.*, 484 F.3d 700, 705 (4th Cir. 2007) (citing *Hall v. Virginia*, 385 F.3d 421, 424 (4th Cir. 2004)). This court has routinely allowed reference to public records in 12(b)(6) motions to dismiss. See *Cobin v. Hearst-Argyle Television, Inc.*, 561 F. Supp. 2d 546, 550-51 (D.S.C. 2008) (explaining that a police report may be considered by the court in a 12(b)(6) motion as a matter of public record); *Tobin v. Bodman*, No. 1:06-492-RBH, 2007 WL 1068253, at *2, *4 (D.S.C. Mar. 29, 2007) (allowing proof of plaintiff's earlier conviction to bar a current claim of illegal arrest); *Larch v. Gintoli*, No. 8:04-1962CMBH, 2006 WL 895019, at *2 (D.S.C. Mar. 31, 2006) (permitting exhibits attached to defendant's 12(b)(6) motion to be considered by the court because the exhibits were public records from an earlier state court action).

Thus, the court may take judicial notice of the state court indictments without converting McMaster's 12(b)(6) motion into a motion for summary judgment.

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CONCLUSION

McMaster's motion to dismiss is **granted**. (Entry 11). The court will abstain from exercising jurisdiction in this case under the *Younger* abstention doctrine. Therefore, the entire case is dismissed without prejudice. Defendants Edgar L. Clements; C. Kelly Jackson; Gregory Hembree;

Page 10

William B. Rogers, Jr.; Christina T. Adams; Trey Gowdy, III; J. Strom Thurmond, Jr.; Robert M. Ariail; Douglas A. Barfield, Jr.; Kevin S. Brackett; David Pascoe; I. McDuffie Stone, III; Scarlett

Wilson; W. Barney Giese; Donald V. Myers; and Jerry W. Peace have

also filed motions to dismiss this case under the *Younger* abstention doctrine. These motions are now **moot**. (Entries 19, 20,

39, 40, and 41). Edgar L. Clement, III and C. Kelly Jackson's motion to amend or correct their motion to dismiss is also moot. (Entry 42).

IT IS SO ORDERED.

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)

INDICTMENT

CRIMINAL SOLICITATION OF A MINOR

At a Court of General Sessions, convened on April 12, 2010, the Grand Jurors of Oconee County present upon their oath:

That Anthony C. Odom, on or about May 6, 2006, did willfully and knowingly commit the crime of criminal solicitation of a minor. To wit: Anthony C. Odom, a person eighteen years of age or older, did knowingly contact and communicate with a person located in Oconee County that he reasonably believed to be under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity as defined in Section 16-15-375(5), or a violent crime as defined in Section 16-1-60, or with the intent to perform a sexual activity in the presence of the person reasonably believed to be under the age of eighteen. This is in direct violation of Section 16-15-0342, of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

OFFICE OF THE ATTORNEY GENERAL


HENRY McMASTER (MBW)
ATTORNEY GENERAL

WITNESSES

Sgt. Gordon Hopkins, WPD

ARREST WARRANT NUMBER

Direct Presentment

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: APR 12 2010

VERDICT

True Bill

000015

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-37-

363A

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

APRIL TERM 2010

THE STATE

vs.

ANTHONY C. ODOM

D.O.B. 6/22/1973

Indictment for

**CRIMINAL SOLICITATION
OF A MINOR**

SC Code: 16-15-0342

CDR Code: 2999

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED OCONEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2010 APR 12 P 3:17

BW

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF OCONEE)

CRIMINAL SOLICITATION OF A MINOR

At a Court of General Sessions; convened on April 12, 2010, the Grand Jurors of Oconee County present upon their oath:

That Anthony C. Odom, on or about May 4, 2006 and/or May 5, 2006, did willfully and knowingly commit the crime of criminal solicitation of a minor. To wit: Anthony C. Odom, a person eighteen years of age or older, did knowingly contact and communicate with a person located in Oconee County that he reasonably believed to be under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity as defined in Section 16-15-375(5), or a violent crime as defined in Section 16-1-60, or with the intent to perform a sexual activity in the presence of the person reasonably believed to be under the age of eighteen. This is in direct violation of Section 16-15-0342, of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

OFFICE OF THE ATTORNEY GENERAL



HENRY McMASTER (MBW)
ATTORNEY GENERAL

WITNESSES

Sgt. Gordon Hopkins, WPD

ARREST WARRANT NUMBER

Direct Presentment

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: APR 12 2010

VERDICT

True Bill

000017

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-37-

364A

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

APRIL TERM 2010

THE STATE

vs.

ANTHONY C. ODOM
D.O.B. 6/22/1973

Indictment for

CRIMINAL SOLICITATION
OF A MINOR

SC Code: 16-15-0342
CDR Code: 2999

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED OCONEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2010 APR 12 P 3:17

[Handwritten signature]

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Anthony C. Odom,

Plaintiff(s)

vs.

Alan Wilson, in his official Capacity as
Attorney General of the State of South Carolina
et. al.,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2011 - CP - 24 - 2032

(Please Print)

Submitted By: Brian McDaniel, Law Offc Brian McDaniel, LLC

Address: P. O. Box 2085

Beaufort, South Carolina 29907

SC Bar #: 68618

Telephone #: 843-379-5117

Fax #: 843-379-5118

Other:

E-mail: bmcDaniel@attorneymcdaniel.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

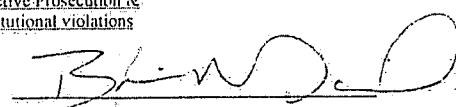
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Sexual Predator (510) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☒ Permanent Injunction (830) ☐ Forfeiture (840) ☒ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate Civil (910) ☐ Magistrate Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Administrative Law Judge (980) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☒ Other (699) Vindictive Prosecution & Constitutional violations		

Submitting Party Signature: 

Date: May 5, 2011

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

SCCA / 234 (5/04)

Page 1 of 2

000018

FOR MANDATED ADR COUNTIES ONLY

Florence, Horry, Lexington, Richland, Greenville**, and Anderson**

** Contact Respective County Clerk of Court for modified ADR Program Rules

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Case are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Cases which are appellate in nature such as appeals or writs of certiorari;
 - c. Post Conviction relief matters;
 - d. Contempt of Court proceedings;
 - e. Forfeiture proceedings brought by the State;
 - f. Cases involving mortgage foreclosures; and
 - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

SCCA / 234 (5/04)
M. HOTE BLAQUELEY
COUNTY CLERK
JULY 17 - 5 2010 10:49

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
ANTHONY C. ODOM

Plaintiff,

vs.

ALAN WILSON, in his official Capacity
as Attorney General of the STATE OF
SOUTH CAROLINA; DAVID PASCOE, J.
STROM THURMOND, JR.; ERNEST
FINNEY; WILLIAM B. ROGERS, JR.;
DANIEL E. JOHNSON; DOUGLAS A.
BARFIELD, JR.; BARRY BARNETT;
JERRY W. PEACE; SCARLETT WILSON;
CHRISTINA T. ADAMS; DONALD V.
MYERS; EDGAR L. CLEMENTS, III;
WILLIAM W. WILKINS, III; I.
MCDUFFIE STONE, III; GREGORY
HEMBREE; And KEVIN S. BRACKETT,
in their official capacities as SOUTH
CAROLINA CIRCUIT SOLICITORS

Defendants.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
C.A. NO.: 2011-CP-42- 2032

SUMMONS

(JURY TRIAL REQUESTED)

TO: ALL ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscribers hereunder at their offices located at 2015 Boundary Street, Suite 216, Post Office Box 2085, Beaufort, South Carolina, 29901, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in said Complaint.

LAW OFFICE OF BRIAN MCDANIEL, LLC

BY:


BRIAN D. MCDANIEL

Post Office Box 2085

2015 Boundary Street, Suite 216

Beaufort, South Carolina 29901

PHONE (843) 379-5117

FAX (843) 379-5118

ATTORNEY FOR THE PLAINTIFF

Beaufort, South Carolina
May 5, 2011

FILED
CLERK OF COURT
JULY - 6 2011
M. ROPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
ANTHONY C. ODOM

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MCDUFFIE STONE, III; GREGORY
HEMBREE; And KEVIN S. BRACKETT,
in their official capacities as SOUTH
CAROLINA CIRCUIT SOLICITORS

Defendants.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
C.A. NO.: 2011-CP-42- 2032

**COMPLAINT FOR IMMEDIATE
INJUNCTIVE AND OTHER RELIEF**

(JURY TRIAL REQUESTED)

TO: ALL ABOVE NAMED DEFENDANTS:

COMES NOW, the Plaintiff, Anthony C. Odom, demanding a jury trial and complaining of the
Defendants, Alan Wilson, in his official capacity as Attorney General of the State of South
Carolina (Hereinafter "AG") and all South Carolina Circuit Solicitors, as follows:

COMPLAINT

1. This is an action for declaratory and injunctive relief pursuant to 42 U.S.C § 1983

and the Declaratory Judgment Act, 28 U.S.C. § 2201 brought in this courts concurrent jurisdiction, as well as S.C. Codes §§ 15-53-10, 15-53-20, 15-53-60, 15-53-80, 15-53-90, and 15-53-110 brought by Anthony C. Odom ("Odom" or "Plaintiff") to enjoin the prosecution in violation of federal law, the U.S. Constitution, and Article 1, Section 3, South Carolina Constitution, and to obtain a declaration of the respective rights of the parties. Additionally, to declare S.C. Code § 16-15-342, known as Criminal Solicitation of a Minor, unconstitutional due to violation of the Equal Protection Clause under the Fourteenth Amendment of the US Constitution as well as the South Carolina Constitution, and enjoin its enforcement.

2. Odom is a citizen and resident of the County of Aiken, State of South Carolina, and has been involved in criminal litigation with the Office of the Attorney General for the State of South Carolina since 2006.

3. He was arrested on May 12, 2006 for an alleged violation of S.C. Code § 16-15-342.

4. This initial charge was brought in the County of Spartanburg, State of South Carolina (Spartanburg Charge). This charge has been called to trial on two separate occasions.

5. The first call of the case to trial was in July of 2007, which resulted in evidence being suppressed. The suppression of the evidence was ordered prior to the swearing of the selected jury. This suppression resulted in the order of the trial judge being appealed by the State of South Carolina.

6. During the pendency of the appeal the Office of the Attorney General for the State of South Carolina contacted the United States Attorney for the District of South Carolina to prosecute the Spartanburg Charge.

7. To date no federal charges have been brought.

8. The suppression order was overturned by the South Carolina Supreme Court in State v. Odom, 382 S.C. 144, 676 S.E.2d 124 (2009).

9. On February 22, 2010 the State of South Carolina called the Spartanburg Charge to trial for the second time. On March 2, 2010 the court granted a mistrial due to a deadlocked jury.

10. Defendant Alan Wilson ("Wilson" or "Defendant Wilson"), the Attorney General of the State of South Carolina, intends to prosecute additional charges in the County of Oconee, State of South Carolina (Oconee Communications). This charge would also be brought under S.C. Code § 16-15-342 and all facts relevant thereto have been known to the Office of the Attorney General since May of 2006 when the crime is alleged to have occurred.

11. In neither the Oconee Communications nor the Spartanburg Charge is it alleged Odom ever traveled to meet anyone.

12. In fact at a July 2007 hearing held in Spartanburg County, South Carolina, the then lead counsel on the Spartanburg Charge at the time David Stumbo, Esquire, stated that there was never any intention to bring the Oconee charge as a separate crime, but to attempt to use it as evidence of other bad acts. David Stumbo, Esq. is the immediate predecessor of Megan Wines, Esq. and was the Chief ICAC Prosecutor until July 2007. See excerpt for the official transcript from the July 9, 2007 hearing below:

RECEIVED
JUL 10 2007
CLERK OF COURT
Spartanburg County

11 THE COURT: ALL RIGHT. I JUST -- OBVIOUSLY YOU HAVE A
12 REASON WHY YOU WANT TO USE THEM.

13 MR. STUMBO: UNDER 404(B), YOUR HONOR, WE BELIEVE
14 SEVERAL OF THE EXCEPTIONS APPLY.

15 THE COURT: ALL RIGHT. DO YOU HAVE ANY INFORMATION TO
16 SUPPLEMENT, I MEAN, MR. SWERLING SAYS HE DOESN'T HAVE
17 ANYTHING TO BACK UP THESE STATEMENTS. DO YOU HAVE ANYTHING
18 THAT YOU CAN GIVE HIM?

19 MR. STUMBO: WE DON'T, YOUR HONOR. I ASKED THE
20 INVESTIGATOR. HE NEVER DID AN INCIDENT REPORT BECAUSE HE
21 NEVER -- WE NEVER INTENDED TO CHARGE, YOU KNOW, AT THAT TIME
22 IN OCONEE COUNTY. SO HE'S PROVIDED US WITH THE CHAT LOGS
23 AND CANTASIA, WHICH IS THE LIVE CAPTURE OF WHAT'S GOING ON
24 ON THE COMPUTER SCREEN.

25 THE COURT: ALL RIGHT.

13. Odom is entitled to immediate injunctive and declaratory relief preventing Defendant Wilson from continuing with criminal prosecution of Odom, because such prosecution, violates Odom's fundamental rights under the United States Constitution and South Carolina Constitution, as these new charges amounts to vindictive prosecution.

14. Additionally, S.C. Code § 16-15-342 violates the Equal Protection Clause of the Fourteenth Amendment of the US Constitution as well as the South Carolina Constitution and as such is an unconstitutional statute. As such S.C. Code § 16-15-342 should be declared unconstitutional and unenforceable.

15. On May 11, 2006 a search warrant was executed at the residence of Odom in the County of Aiken, State of South Carolina. Odom as a result gave a statement and then subsequently voluntarily waited three hours at the Aiken Department of Public Safety to allow the County of Spartanburg, State of South Carolina to obtain an arrest warrant.

16. As a result of the warrant for the Spartanburg Charge Odom was placed on interim suspension from the practice of law on May 17, 2006. Odom was engaged in private practice of law at the time of the arrest.

17. Odom's involvement in criminal litigation with the South Carolina Attorney General (AG) began on May 12, 2006 with his arrest for violation of S.C. Code § 16-15-342, also known as Criminal Solicitation of a Minor; which alleged Odom had communicated with and undercover officer in an Adult chat room called "South Carolina Romance".

18. Odom's bond hearing held on May 12, 2006, upon information and belief was specifically arranged to be televised at the request of the AG's office.

19. At the bond hearing held on the Spartanburg Charge Odom's counsel Andy Johnston, Esquire was notified by then Assistant Attorney General David Stumbo, Esq. (Stumbo), who was at the time the Chief ICAC Prosecutor, that an additional charge may be brought concerning alleged communications with an undercover officer operating out of the Town of Westminster, County of Oconee, State of South Carolina (Oconee Communications).

20. These communications allegedly occurred between May 4 and May 6, 2006 and occurred in an Adult chat room called "Romance South Carolina".

21. Upon information and belief the SC AG prosecutes all violations of S.C. Code 16-15-342 and controls the ICAC program.

22. During the pendency of the Spartanburg Charge, which was indicted by the Spartanburg County Grand Jury on June 22, 2006, there were several requests in writing made by Odom's counsel to Stumbo as to the existence of other communications besides the Spartanburg Charge. Stumbo responded to those requests specifically stating there were no other communications than the Spartanburg Communications.

23. The Spartanburg charges were scheduled for trial in May of 2007, at which time Stumbo informed Odom's lead counsel at the time, Jack Swerling, Esq., that there were in fact other alleged communications, the Oconee Communications.

24. At that time, Stumbo expressed his intent to use the Oconee communications as evidence of other bad acts under the South Carolina Rules of Evidence. Due to the late revelation of this evidence Stumbo agreed with Odom's counsel to continue the Spartanburg Charge.

25. The trial was then rescheduled to be called for trial in July 2006. During the hearing on the Oconee "Bad Act" evidence Stumbo made the statement shown above, that there was no intent by the AG or law enforcement to bring charges related to the Oconee Communications.

26. At this first trial evidence obtained via Orders (D Orders) under The Patriot Act were suppressed by the trial judge, before the swearing of the selected jury for the case. As a result of this suppression the State appealed the ruling, which was overturned by the South Carolina Supreme Court in State v. Odom, 382 S.C. 144, 676 S.E.2d 124 (2009).

27. Stumbo at the time of the first trial had left the AG's Office and was an Assistant Solicitor with the County of Lexington, South Carolina but had obtained special permission to continue with the prosecution.

28. Megan Wines, Esq. at the time had already taken over Stumbo's ICAC duties at the AG's office and was present and participated at the first trial on the Spartanburg Charge.

29. Also present at the trial was the undercover officer alleged to have been communicated with during the Oconee communications, officer Mark Patterson (Patterson).

30. During the pendency of the appeal the AG had only the Spartanburg Charge

reviewed by the S.C. US Attorney's Office.

31. To date, no federal charges have been brought.

32. In August 2006, and during the pendency of the Spartanburg Charge, Patterson left his former position to become an Aiken County Sheriff's Deputy.

33. On or about June 5, 2009 Patterson was arrested and subsequently fired from the Aiken County Sheriff's Office due to an alleged dispute with his wife.

34. The charges on Patterson were eventually dropped, however, Odom wished to obtain copies of the evidence. Said evidence allegedly includes voice communications of Patterson, pictures of text messages to his wife, and several statements by witnesses: (See Exhibit B, Letter from the City of Burnetown, County of Aiken, State of South Carolina.)

35. At the time of Patterson's firing the State had continued to indicate that the alleged communications would be use as bad act evidence.

36. Odom, through his counsel James B. Huff, Esq., made several attempts to obtain this documentation. It was subpoenaed and is considered Brady material. 37. The material requested has not been produced, but due to an order of the City Judge for the City of Burnetown, County of Aiken, State of South Carolina it is not to be destroyed (Exhibit B).

38. On or about February 18, 2010 Assistant Attorney General Megan Wines stated to Odom's counsel that Patterson had become upset due to the efforts by Odom's counsel to obtain the information regarding Patterson's arrest, so she (Wines) was just going to direct indict the Oconee Communications.

39. The Oconee communications are alleged to have occurred between May 4 and 6, 2006 and began in the Adult Chat Room "Romance South Carolina" and the February 2010 statement is the first indication, nearly 4 years after the alleged incident, that the State would

seek criminal charges on these communications.

40. On February 22, 2010 the Spartanburg Charge was called to trial for the second time. This Spartanburg Charge trial ended in a mistrial on March 2, 2010; due to a dead-locked jury.

41. During the trial, the State again stated after motions had been placed before the court, after the swearing of the jury, that the Oconee Communications might be used for bad act evidence. As such the court ordered at that time the State assist Odom in obtaining the information requested.

42. The State never presented the Oconee Communications and provided no assistance.

43. Furthermore, the Spartanburg Charge covers a time period between March 12, 2006 and May 4, 2006 and contains at least 17 separate communications, and resulted in a single indictment. The Oconee Charge(s) cover only two chats on only two separate days but, in contrast to the Spartanburg Charges, resulted in two indictments.

44. Odom asserts that the acts of the prosecutor in this action constitute a violation of Odom's Fifth Amendment Due Process Clause rights as well as his United States Constitutional rights afforded him by the Fourteenth Amendment. These facts present a case of vindictive prosecution. U.S. v. Wilson, 262 F.3d 305 (4th Cir. 2001).

45. The charges are being sought to penalize Odom for seeking information needed for his defense.

46. Upon information and belief, the failure of the State to obtain conviction on the Spartanburg Charge has resulted in more charges being prosecuted by the State in the pending action.

47. The length of time from the alleged event to the charge in this case (nearly 4 years) is highly unusual, and upon information and belief such delay has never occurred for a charge under S.C. Code §16-15-342.

48. All of these prosecutorial decisions have occurred either after the first trial or the second on the Spartanburg Charge.

49. Also it would have been beneficial for the State if they had sought indictment soon after the alleged incident if their true intent was seeking justice.

50. See letter (Exhibit C) of December 5, 2006 stating no further exam of Odom's computer would be performed.

51. Since this letter and after indictment of the Oconee Communications the State obtained a search warrant to conduct further exam on Odom's computer in relation to the Oconee chat, for which no notice was given to the Defendant (See Exhibit D Search Warrant).

JURISDICTION AND VENUE

52. This case arises under the U.S. Constitution and the laws of the United States and presents a federal question within this Court's concurrent jurisdiction under Article III of the Constitution and 28 U.S.C. §§ 1331 and 1343(a)(3). It seeks remedies under 28 U.S.C. §§ 2201 and 2202 and 42 U.S.C. §§ 1983 and 1988. Additionally, under S.C. Codes §§ 1 as well as S.C. Codes §§ 15-53-10, 15-53-20, 15-53-60, 15-53-80, 15-53-90, and 15-53-110 jurisdiction is established in this Court.

53. Venue is proper in this Circuit and Country per S.C. Code §15-7-30, as one of the Defendants upon information and believe resides within the County of Spartanburg, State of South Carolina and maintains a place of business herein, additionally many of the facts involved in this matter occurred or originated within this the County of Spartanburg, State of Carolina.

THE PARTIES

54. Plaintiff Odom is a citizen and resident of the County of Aiken, State of South Carolina.

55. Defendant Alan Wilson is the Attorney General of the State of South Carolina and is sued in his official capacity. He is the chief law enforcement officer of the State of South Carolina. Attorney General Wilson retains general prosecutorial authority to ensure that the laws are faithfully executed and has statewide authority to prosecute criminal cases. Pursuant to the Constitution of the State of South Carolina, Defendant Wilson is "the chief prosecuting officer of the State with authority to supervise the prosecution of all criminal cases in courts of record." S.C. CONST. ART. V, § 24.

56. Megan Wines, Assistant Attorney General is the Chief Prosecutor for the ICAC Program for the State of South Carolina.

57. Defendants David Pascoe, J. Strom Thurmond, Jr., Ernest Finney, William B. Rogers, Jr, Daniel E. Johnson, Douglas A. Barfield, Jr., Barry Barnett, Jerry W. Peace, Scarlett Wilson, Christina T. Adams, Donald V. Myers, Edgar L. Clements, III, William W. Wilkins, III, I. McDuffie Stone, III, Gregory Hembree and Kevin S. Brackett are the Solicitors for the sixteen Judicial Circuits in the State of South Carolina, and are sued in their official capacities as such. Defendant Barry Barnett is the Solicitor for the Seventh Circuit, which includes Spartanburg County, South Carolina.

58. Each of the persons named in paragraph 57 have authority to prosecute criminal violations in their respective circuits. The Solicitors have been named as defendants herein, and this Complaint seeks injunctive and declaratory relief with respect to them, because they are subordinates of Defendant Wilson who either may be compelled to act under his direction or may be directly or indirectly influenced to follow-through on the prosecution of Odom.

Causes of Action
Count I.

Violation of Odom's Rights as to Vindictive Prosecution under the Fifth Amendment and Fourteenth Amendment of the United States Constitution

59. Odom repeats and realleges paragraphs 1-58.

60. Odom must show that the prosecutor one acted with animus toward the defendant and that he would not have been prosecuted but for this animus.

61. The conduct of the prosecutor is retaliatory for both Odom attempting to acquire information which upset the State's witness and the failure to obtain a guilty verdict on the Spartanburg Charge.

62. This is shown by her statement to Odom's counsel; the timing of the indictments, as well as, the increase of the number of counts between the Spartanburg Charge and the proposed multiple indictments for the alleged Oconee Communications.

63. The facts show a realistic likely hood of vindictiveness and create a presumption of vindictiveness, which shifts the burden to the State. In particular due to the fact these decisions are all post trial. Additionally, other than the arrest of Patterson and his firing nothing has changed concerning the Oconee Communications since 2006.

64. Odom requests that an emergency restraining order be placed on Defendants to prevent them from further pursuing these charges.

65. Odom additionally prays that a permanent injunction be placed on Defendants to prevent the prosecution of such charges should they be indicted.

Count II

S.C. Code § 16-15-342 violates the Equal Protection Clause of the US Constitution and the Fourteenth Amendment as Applied to the States and the South Carolina Constitution.

66. Odom repeats and realleges paragraphs 1-65

67. Below are the excerpts from S.C. Code § 16-15-342 that are relevant to this cause of action:

(B) Consent is a defense to a prosecution pursuant to this section if the person under the age of eighteen, or the person reasonably believed to be under the age of eighteen, is at least sixteen years old.

(D) It is not a defense to a prosecution pursuant to this section, on the basis of consent or otherwise, that the person reasonably believed to be under the age of eighteen is a law enforcement agent or officer acting in an official capacity.

68. S.C. Code § 16-15-342 (B) gives an individual the complete defense of consent.

and it does so when "the person reasonably believed to be under the age of eighteen, is at least sixteen years old."

69. In S.C. Code § 16-15-342(D) this defense of Consent is taken away if the "person reasonably believed to be under the age of eighteen is a law enforcement agent or officer acting in an official capacity."

70. These two provisions ((B) and (D)) create two classes of persons. The first is a class (B Class) in which one believes they are communicating with someone under the age of eighteen, but are in fact communicating with someone sixteen or older, but the person believed to be less than eighteen years of age happens not to be "a law enforcement agent or officer acting in an official capacity." The B Class person has the defense of consent under S.C. Code § 16-15-342 (B).

71. In the second class (D Class) the Defendant believes they are communicating to someone under eighteen, but the individual is communicating with "a law enforcement agent or

officer acting in an official capacity." Under S.C. Code § 16-15-342(D) this D-Class individual would not have the defense of consent.

72. Below is listed the portion of S.C. Code § 16-15-342 that defines the crime:

A person eighteen years of age or older commits the offense of criminal solicitation of a minor if he knowingly contacts or communicates with, or attempts to contact or communicate with, a person who is under the age of eighteen, or a person reasonably believed to be under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity as defined in Section 16-15-375(5) or a violent crime as defined in Section 16-1-60, or with the intent to perform a sexual activity in the presence of the person under the age of eighteen, or person reasonably believed to be under the age of eighteen

73. Under the Fourteenth Amendment of the United States Constitution to violate the Defendant's rights to Equal Protection under the law certain showings must be made. One is that there exist similarly situated individuals.

74. Then one must show that there is disparate treatment under the law of the similarly situated individuals. Lastly, the State must have both a legitimate interest in treating the two individuals differently and must do so on a rational basis. Olson v. DHEC, 379 S.C. 57, 663 S.E.2d 497 (Ct.App. 2008), Wessel v. Glendening, 306 F.3d 203 (4th Cir. 2002), Village of Willowbrook v. Olech, 120 S.Ct. 1073, 528 U.S. 562 (2000)

75. Under S.C. Code § 16-15-342 it is clear that members of either the B class or D class would be similarly situated individuals. Both believe that the individual to whom they are communicating with is under Eighteen. Both have the required specific intent in the communication of "persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity as defined in Section 16-15-375(5) or a violent crime as defined in

Section 16-1-60, or with the intent to perform a sexual activity in the presence of the person under the age of eighteen, or person reasonably believed to be under the age of eighteen".

76. There is simply no objective difference between the B Class and D Class individual.

77. However, the B Class individual is communicating with someone over sixteen who is not a law enforcement agent or officer acting in an official capacity, while the D Class individual is communicating with a law enforcement agent or officer acting in an official capacity. The law under S.C. Code § 16-15-342(B) gives the member of B Class a complete defense, but denies it to the member of the D Class under S.C. Code § 16-15-342(D).

78. The law is not treating the two similarly situated individuals the same. One (B-Class) has a full defense while the other (D-Class) does not have a defense based on consent. This disparity is true even when the classes' intents, beliefs, and communications are identical. The Fourteenth Amendment of the United States Constitution is therefore implicated and violated.

79. It appears clear that the purpose of S.C. Code § 16-15-342 is to protect those under the age of sixteen from solicitation of both sexual activity as defined in Section 16-15-375(5) or a violent crime as defined in Section 16-1-60. With this being the expressed goal of the statute the State is unable to justify treating members of Class B and Class D so differently.

80. The State must have both a legitimate interest in treating the two individuals differently and must do so on a rational basis Wessel v. Glendening, 306 F.3d 203 (4th Cir. 2002). In this case there is none. Both hypothetical class members show the same criminal inclinations. Both class members are engaged in the same activity. Both class members are

equally dangerous to those under the age of sixteen. There is no legitimate interest in treating the two individuals differently.

81. Should it be found there is a legitimate interest to treat members of B Class and D Class differently the State must show it is doing so on a rational basis Wessel v. Glendening, 306 F.3d 203 (4th Cir. 2002).

82. Given the purpose of the statute there can be no such rational basis.

83. S.C. Code § 16-15-342(D) violates the Fourteenth Amendment of the United State Constitution. It does so by depriving the Defendant of equal protection under the laws of this State and the United States. The classes under this statute are identical. There is no compelling State interest or other interest of the State to do so. Additionally, there is no rational basis for the disparity in treatment of the two classes under the law.

84. Odom requests this Court find that S.C. Code § 16-15-342 does in fact violate Equal Protection as provided by the Fourteenth Amendment of the US Constitution and Article 1, Section 2 of the South Carolina Constitution. As such that an emergency and permanent injunction be placed upon the Defendants from enforcement of this statute.

Count III

Declaration of the Parties Respective Rights under 28 U.S.C. § 2201, as well as S.C. Codes §§ 15-53-10, 15-53-20, 15-53-60, 15-53-80, and 15-53-90

85. Odom repeats and realleges paragraphs 1-84

86. Odom's rights are being violated by the pursuit of charges based upon the Oconee Communications as vindictive prosecution.

87. Odom's rights are violated by being subject to prosecution and prosecuted for

alleged violations of S.C. Code 16-15-342, when such statute is unconstitutional in violation of the Fourteen Amendment of the United States Constitution and the South Carolina Constitution.

88. Odom requests this Court to enjoin the enforcement of S.C. Code §16-15-342, and declare that the prosecution of charges based on the Oconee Communications amounts to vindictive prosecution and enjoin these charges from being sought or prosecuted by the AG.

Count IV

42 U.S.C. § 1983

89. Odom repeats and realleges paragraphs 1-88

90. Odom's civil rights have been violated under color of state law due to prosecution that is vindictive.

91. Odom's civil rights have been violated under color of state law due to prosecution under an unconstitutional statute.

92. Odom requests monetary damages as allowed by law as well as attorneys fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

A. Declare the prosecution of Odom for the Oconee Communications is impermissible as a violation of Odom's Fifth Amendment Rights and Due Process as afforded him by the US Constitution and applied to the States by the Fourteenth

CLERK OF COURT
SOUTH CAROLINA
JULY-6 1989
H. HORT BLAOMERY

B. Permanently enjoin Defendants, their officers, agents, servants, and attorneys from prosecuting any case in regard to the Oconee Communications against Odom,

D. Permanently enjoin Defendants, their officers, agents, servants, attorneys, from the Enforcement of S.C. Code 16-15-342 due to its unconstitutionality.

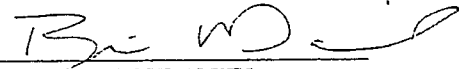
F. Award Odom his reasonable costs and attorney fees pursuant to 42 U.S.C. § 1988;

H. Grant Odom such other and further relief as the Court deems just and proper.

proper.

LAW OFFICE OF BRIAN MCDANIEL, LLC

BY:



BRIAN D. MCDANIEL

Post Office Box 2085

2015 Boundary Street, Suite 216

Beaufort, South Carolina 29901

PHONE (843) 379-5117

FAX (843) 379-5118

ATTORNEY FOR THE PLAINTIFF

Beaufort, South Carolina
May 5, 2011

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
MAY 5 2011
M. HOPE BLACKLEY

[NONE]

EXHIBIT A is omitted

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-11-01 BY 60322
N. HOPE BLACKLEY



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12/14/2009 15:21 FAX

0001/0001



TOWN OF BURNETTOWN
HOME OF THE SASSAFRAS FESTIVAL

Burnettown Police Department

3144 Augusta Road
Burnettown, SC 29851

Post Office Box 994
Bath, SC 29816

14 December 2009

Burnettown Municipal Court
ATT: Honorable Redger Edmonds
P.O. Box 994
Bath, SC 29816

Reference: Investigative Case File Mark Patterson Case 2009-01092

This is to serve as official notice of retention of above listed case file and in list a table of content thereof. The case file is to be secured by the court until a resolution of this matter per your order.

Incident report of Chief Smith reference above case number.
6 copies of photographs of texts on Ellen Patterson's cell phone
1 cd containing voicemails left on Ellen Patterson's cell phone
3 page written statement of Ellen Patterson
1 Page written statement of Calvin McCravy
1 letter from DR. Dewitt
Crime victim intake forms

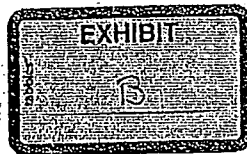
Sincerely,

Chief David Paul Smith
Burnettown Police Department

Town Hall
803-593-2676

Burnettown Police Department
David Paul Smith
Chief of Police
Office: 803-593-2100
Fax: 803-593-6275
ChiefDP@Burnettown.com

Police Department
803-593-2100



M. HOPE BLACKLEY
MAY - 5 AM 10:49
BURNETTOWN POLICE DEPARTMENT

000041

STATE OF SOUTH CAROLINA

Search Warrant

Form approved by
S.C. Law Enforcement
Section 17-13-140
March 15, 1978

COUNTY OF LEXINGTON

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF

COUNTY LEXINGTON

It Appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

Hitachi Deskstar 250 GB SATA HDD Serial Number T4CH8APE, item currently located in evidence storage at the South Carolina Law Enforcement Division Computer Crime Center located at 1731 Bush River Road. As a result of the execution of this search warrant, a search for any and all saved, archived or deleted data including but not limited to chat logs and or records related to the screen names "danger6552000", "Roge Wilson" and "a_upstategurl93", emails, ledgers, diaries, notes, documents, photographs and other items that reflect an interest in sexual activity between adults and minors. Also to be searched for are maps, directions, or internet searches that indicate travel or plans to travel to Oconee County or Westminster. All searches are pertaining to this investigation of Criminal Solicitation of a Minor

Now therefore, you are hereby authorized to search the subject premises described below, and to seize such property if found

DESCRIPTION OF PROPERTY

As a result of the execution of this search warrant, a search for any and all saved, archived or deleted data including but not limited to chat logs and or records related to the screen names "danger6552000", "Roge Wilson" and "a_upstategurl93", emails, ledgers, diaries, notes, documents, photographs and other items that reflect an interest in sexual activity between adults and minors. Also to be searched for are maps, directions, or internet searches that indicate travel or plans to travel to Oconee County or Westminster. All searches are pertaining to this investigation of Criminal Solicitation of a Minor

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to The Honorable

ADAMS
within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises

LEXINGTON, S.C.

September 7, 2010

SCC-A-51A (3-78)

[Signature]
Signature of Judge



2011 SEP 10 10:11 AM
M. HOLEY
CLERK
CLERK OF COURT
CLERK OF COURT
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

AFFIDAVIT

Personally appeared before me, one S/A Lucinda H McKellar
who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under
provisions of Section 17-13-100, 1976 Code of Laws of South Carolina, as amended, is located on the following premises
in this County: LEXINGTON

DESCRIPTION OF PROPERTY SOUGHT

As a result of the execution of this search warrant, a search for any and all saved, archived or deleted data including but
not limited to chat logs and or records related to the screen names 'danger6552000', 'Roge Wilson' and 'a_upstategurl93',
emails, ledgers, diaries, notes, documents, photographs and other items that reflect an interest in sexual activity between
adults and minors. Also to be searched for are maps, directions, or internet searches that indicate travel or plans to travel
to Oconee County or Westminster. All searches are pertaining to this investigation of Criminal Solicitation of a Minor.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

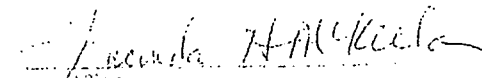
Heach Deskstar 250 GB SATA HDD Serial Number T4CH8APE. Item currently located in evidence storage at the South
Carolina Law Enforcement Division Computer Crime Center located at 1731 Bush River Road. As a result of the
execution of this search warrant, a search for any and all saved, archived or deleted data including but not limited to chat
logs and or records related to the screen names 'danger6552000', 'Roge Wilson' and 'a_upstategurl93', emails, ledgers,
diaries, notes, documents, photographs and other items that reflect an interest in sexual activity between adults and
minors. Also to be searched for are maps, directions, or internet searches that indicate travel or plans to travel to Oconee
County or Westminster. All searches are pertaining to this investigation of Criminal Solicitation of a Minor.

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

See attached affidavit.

Sworn to and Subscribed before me
this 7 day of Sept, 2010


Signature of Judge


Affiant
1409 Broad River Road
Columbia, SC 29210
(L.S.) 895-896-7601

2011 MAY -6 AM 10:49
M. HOPE BLACKLEY



HENRY MCMASTER
SECURITIES COMMISSIONER

December 5, 2006

Jack B. Swerling, Esquire
1720 Main Street, Suite 301
Columbia, SC 29601

Re: State v. Anthony C. Odom (2006-GS-42-2289)

Dear Mr. Swerling:

Thank you for your letter of November 30, 2006 inquiring about the forensic exam of Mr. Odom's computer. I received new some information from SLED last week regarding the progress of the exam, and can confirm that no further exam work has been done on the computer at the Computer Crimes Center. SLED does not intend to conduct a full forensics exam on Mr. Odom's computer. I will contact you this week and discuss the reason for this decision. The preview examination conducted on site at Mr. Odom's residence by SLED produced results that were disclosed in the "Preliminary Report" disc that I gave to you on June 30 in Spartanburg. The results of this preview exam will be the only evidence preserved from the computer for purposes of the prosecution of this case.

Thank you and I look forward to discussing these matters with you by phone this week.

With best wishes, I remain
Sincerely,

David M. Stumbo
Assistant Attorney General

RECEIVED
JAN 6 2006
M. NOPEBLACKLEY
JAN 6 2006
JAN 6 2006
JAN 6 2006

REMBERT C. DENNIS BUILDING • POST OFFICE



1549 • TELEPHONE 803-734-3970 • FACSIMILE 803-734-3677

000044

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

ANTHONY C. ODOM,)

Plaintiff,)

vs.)

HENRY D. McMaster, in his official)

capacity as ATTORNEY GENERAL)

OF THE STATE OF SOUTH)

CAROLINA; DAVID PASCOE; J.)

STROM THURMOND, JR.; C.)

KELLY JACKSON; WILLIAM B.)

ROGERS, JR.; W. BARNEY GIESE;)

DOUGLAS A. BARFIELD, JR.:)

TREY GOWDY, III; JERRY W.)

PEACE; SCARLETT WILSON;)

CHRISTINA T. ADAMS; DONALD)

V. MYERS; EDGAR L.)

CLEMENTS, III; ROBERT M.)

ARIAIL; I. MCDUFFIE STONE, III;)

GREGORY HEMBREE; AND)

KEVIN S. BRACKETT, in their)

official capacities as SOUTH)

CAROLINA CIRCUIT)

SOLICITORS,)

)

Defendants.)

CIVIL ACTION NO.: _____

**COMPLAINT FOR IMMEDIATE
INJUNCTIVE AND OTHER RELIEF**

Plaintiff Anthony C. Odom, by and through his attorney Brian D. McDaniel:

COMPLAINT
PRELIMINARY STATEMENT

1. This is an action for declaratory and injunctive relief pursuant to 42 U.S.C. § 1983 and the Declaratory Judgment Act, 28 U.S.C. § 2201, brought by Anthony C. Odom ("Odom" or "Plaintiff") to enjoin a threatened prosecution in violation of federal

law and the United States Constitution and to obtain a declaration of the respective rights of the parties.

2. Odom is a citizen and resident of the County of Aiken, State of South Carolina, and has been involved in criminal litigation with the Office of the Attorney General for the State of South Carolina (hereinafter "Attorney General" or "McMaster" or "Defendant McMaster") since 2006. Odom was arrested on May 12, 2006 for violation of S.C. Code § 16-15-342, with this initial charge being brought in the County of Spartanburg, State of South Carolina (hereinafter the "Spartanburg Charge"). The Spartanburg Charge, based upon alleged communications with an undercover officer in Spartanburg County, has been called to trial on two separate occasions. The first call of the case to trial was in July of 2007, which resulted in evidence being suppressed. The suppression of the evidence in that trial was ordered prior to the swearing of the selected jury.

3. The State of South Carolina appealed the trial court's order of evidence suppression. During the pendency of the appeal, the Office of the Attorney General for the State of South Carolina contacted the United States Attorney for the District of South Carolina to prosecute the Spartanburg Charge, but to date no federal charges have been brought. The suppression order from the trial Court was overturned by the South Carolina Supreme Court in State v. Odom, 382 S.C. 144, 676 S.E.2d 124 (2009). On February 22, 2010 the State of South Carolina called the Spartanburg Charge to trial for the second time. On March 2, 2010 the court granted a mistrial due to a deadlocked jury.

4. Defendant McMaster, the Attorney General of the State of South Carolina, has recently made, by and through his Assistant Attorney General Megan Wines, the Chief Prosecutor for the South Carolina Internet Crimes Against Children Task Force (ICAC) a threat to bring additional charges in the County of Oconee, State of South Carolina, due to alleged communications (hereinafter "Oconee Communications") (See 'Exhibit A', letter sent to Odom's trial counsel stating such dated March 16, 2010). These threatened charges would also be brought under S.C. Code § 16-15-342 and have been known to the Office of the Attorney General of South Carolina since May of 2006 when the crime is alleged to have occurred. The Exhibit A letter is the first written indication such charges would be brought. The conversation referenced in the letter is the first oral indication of such a threat to bring charges. Until the communications in 2010 referenced in the Exhibit A letter, the alleged conversations from those Oconee Communications were represented to the Plaintiff to be used only as evidence of other bad acts.

5. In fact at a hearing held in Spartanburg County, State of South Carolina the then lead counsel on the Spartanburg Charge at the time, David Stumbo, Esquire, stated that there was never any intention to bring a charge on the Oconee Communications as a separate crime, but to attempt to use it as evidence of other bad acts. David Stumbo, Esq. is the immediate predecessor of Megan Wines, Esq. and was the Chief ICAC Prosecutor until July 2007. See excerpt from the official transcript of July 9, 2007 pre-trial hearing attached to the Complaint as 'Exhibit B' hereto (see page 12 line 8 through page 13 line 22) in which Mr. Stumbo refers to the Oconee Communications and indicates the Attorney General's intent when stating that the

investigating officer “never did an incident report because he never—we never intended to charge, you known, at that time in Oconee County.”

6. Odom is entitled to immediate injunctive and declaratory relief preventing Defendant Attorney General from continuing to threaten Odom with criminal prosecution, because those threats in and of themselves do, and any following through on those threats would, violate Odom’s fundamental rights under the United States Constitution, as these new charges would amount to vindictive prosecution.

JURISDICTION AND VENUE

7. This case arises under the United States Constitution and the laws of the United States and presents a federal question within this Court's jurisdiction under Article III of the United States Constitution and 28 U.S.C. §§ 1331 and 1343(a)(3). It seeks remedies under 28 U.S.C. §§ 2201 and 2202 and 42 U.S.C. §§ 1983 and 1988.

8. Venue is proper in this district under 28 U.S.C. § 1391(b).

9. Assignment of this case to the Charleston Division of this Court is appropriate under Local Civil Rule 3.01(A)(1).

THE PARTIES

10. Plaintiff Odom is a citizen and resident of the County of Aiken, State of South Carolina.

11. Defendant Henry McMaster is the Attorney General of the State of South Carolina and is sued in his official capacity. McMaster is the chief law enforcement officer of the State of South Carolina. Attorney General McMaster retains general prosecutorial authority to ensure that the laws are faithfully executed and has statewide authority to prosecute criminal cases. Pursuant to the Constitution of the State of South

Carolina, Defendant McMaster is "the chief prosecuting officer of the State with authority to supervise the prosecution of all criminal cases in courts of record." S.C. CONST. ART. V, § 24.

12. Defendants David Pascoe, J. Strom Thurmond, Jr., C. Kelly Jackson, William B. Rogers, Jr, W. Barney Giese, Douglas A. Barfield, Jr., Trey Gowdy, III, Jerry W. Peace, Scarlett Wilson, Christina T. Adams, Donald V. Myers, Edgar L. Clements, III, Robert M. Ariail, 1. McDuffie Stone, III, Gregory Hembree and Kevin S. Brackett are the Solicitors for the sixteen Judicial Circuits in the State of South Carolina, and are sued in their official capacities as such. Defendant Scarlett Wilson is the Solicitor for the Ninth Circuit, which includes Charleston, South Carolina. Upon information and belief, Defendant Solicitors David Pascoe (Dorchester County), C. Kelly Jackson (Clarendon County), 1. McDuffie Stone (Colleton County), and Gregory Hembree (Georgetown County) either maintain residences within the Charleston Division, and/or have offices located in and transact business in the Charleston Division.

13. They each have authority to prosecute criminal violations in their respective circuits. The Solicitors have been named as defendants herein, and this Complaint seeks injunctive and declaratory relief with respect to them, because they are subordinates of Defendant McMaster who either may be compelled to act under his direction or may be directly or indirectly influenced to follow-through on his threats to prosecute Odom.

FACTS

14. On May 11, 2006 a search warrant was executed at the residence of Odom in the County of Aiken, State of South Carolina. Odom as a result gave a statement and

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then subsequently voluntarily waited three hours at the Aiken Department of Public Safety to allow the County of Spartanburg, State of South Carolina to obtain an arrest warrant.

15. As a result of the warrant for the Spartanburg Charge Odom was placed on interim suspension from the practice of law on May 17, 2006. Odom was engaged in the private practice of law at the time of the arrest.

16. Odom's involvement in criminal litigation with the South Carolina Attorney General (AG) began on May 12, 2006 with his arrest for violation of S.C. Code § 16-15-342, also known as Criminal Solicitation of a Minor, which alleged Odom had communicated with and undercover officer in an Adult chat room called "South Carolina Romance".

17. Odom's bond hearing, held on May 12, 2006, was televised.

18. At the bond hearing held on the Spartanburg Charge Odom's counsel Andy Johnston, Esquire was notified an additional charge may be brought concerning alleged communications with an undercover officer operating out of the Town of Westminster, County of Oconee, State of South Carolina (Oconee Communications). These Oconee Communications allegedly occurred between May 4 and May 6, 2006 and occurred in an Adult chat room called "Romance South Carolina".

19. The notification of the Oconee Communications was made to Mr. Johnston by then Assistant Attorney General David Stumbo, Esq. (Stumbo), who was at the time the Chief ICAC Prosecutor. Upon information and belief the South Carolina AG prosecutes all violations of S.C. Code 16-15-342 and controls the ICAC program.

20. During the pendency of the Spartanburg Charge, which was indicted by the Spartanburg County Grand Jury on June 22, 2006, several requests in writing were made by Mr. Odom's counsel as to existence of other communications besides the Spartanburg Charge, to which Stumbo, at that time, stated there were no additional communications.

21. The Spartanburg charges were first scheduled for trial in May of 2007, at which time, shortly before the scheduled trial date, Stumbo informed Odom's lead counsel at the time Jack Swerling, Esq. that there were in fact other alleged communications, the Oconee Communications.

22. Stumbo expressed his intent to use the Oconee communications as evidence of other bad acts under the South Carolina Rules of Evidence.

23. Due to the late revelation, and previous denial, of this evidence Stumbo agreed with Odom's counsel to continue the Spartanburg Charge for two months until, July 2007.

24. It was during a pre-trial hearing on July 9, 2007, concerning the alleged Oconee Communications, that Stumbo made the statements shown on the record to the court as referenced in Exhibit B (see pages 12 and 13 of the transcript) attached to this complaint, denying intent to charge Mr. Odom on the Oconee Communications.

25. At this first trial, in July 2007, evidence obtained via Orders (D Orders) under The Patriot Act per section 2703(D) was suppressed by the trial judge, before the swearing of the selected jury for the case.

26. As a result of this suppression the State appealed the ruling, which was overturned by the South Carolina Supreme Court in State v. Odom, 382 S.C. 144, 676 S.E.2d 124 (2009). The rehearing on this case was denied on May 13, 2009.

27. Stumbo at the time of the trial in July 2007 had left the AG's Office and was an Assistant Solicitor with the County of Lexington, State of South Carolina but had obtained special permission to continue with the prosecution. Megan Wines, Esq., at the time, had already taken over his ICAC duties at the AG's office and was present and participated at the first trial on the Spartanburg Charge in July 2007. Also present at the July 2007 trial was the undercover officer alleged to have been communicated with during the Oconee communications, Mark Patterson (hereinafter "Patterson").

28. During the pendency of the appeal described above, the AG had the Spartanburg Charge reviewed by the S.C. United States Attorney's Office.

29. No Federal charges to date have been brought.

30. Upon information and belief, during the pendency of the Spartanburg Charge, Patterson left his former position to become an Aiken County Sheriff's Deputy on or about August of 2006.

31. Upon information and belief, on or about June 5, 2009 Patterson was arrested and subsequently fired from the Aiken County Sheriff's Office due to allegations regarding a dispute with his wife.

32. The charges on Patterson were eventually dropped, however, Odom sought to inquire as to the nature of the evidence. There are allegedly voice communications of Patterson, pictures of text messages to his wife, and several statements by witnesses. (See Exhibit C, Letter from the City of Burnetown, County of

Aiken, State of South Carolina.) During the initial requests for this information the State had continued to indicate that the alleged Oconee communications was to be used as bad act evidence in pursuit of the Spartanburg Charge.

33. Odom through his counsel James B. Huff, Esq. made several attempts to obtain the Patterson related documentation. It was subpoenaed and is considered material available under Brady v. Maryland, 83 S.Ct. 1194, 373 U.S. 83 (1963). The material has not been produced, but due to an order of the City Judge for the City of Burnetown, County of Aiken, State of South Carolina it is not to be destroyed.

34. On or about February 18, 2010 Assistant Attorney General Megan Wines stated to Odom's counsel that Patterson had become upset due to the efforts to obtain the information on his arrest, so she was just going to Direct Indict the Oconee Communications. Upon information and belief, Assistant Attorney General Megan Wines had also become frustrated with the request for the Patterson information. At the time of this notification of intent to charge, the Oconee communications are alleged to have occurred approximately 3.5 years earlier between May 4 and 6, 2006 and began in the Adult Chat Room "Romance South Carolina". In addition, the Plaintiff and Defendant, at the time of the AG's decision to seek indictment on the Oconee Communications, had been involved in ongoing and extensive legal proceedings from the first trial, the appeal and the preparation for the second trial of the Spartanburg Charge.

35. Four days later, on February 22, 2010 the Spartanburg Charge was called to trial for the second time. This Spartanburg Charge trial ended in a mistrial on March 2, 2010; due to a dead locked jury.

36. During the trial the State again stated after motions had been placed before the court, after the swearing of the jury, that the Oconee Communications might be used for bad act evidence. As such the court ordered at that time the State assist Odom in obtaining the information requested. The State never presented the Oconee Communications at trial and provided no assistance or additional information.

37. Then by letter from Megan Wines, Esq (Wines) dated March 16, 2010 (which has been attached as an Exhibit A), it is stated the AG will seek indictments for each separate Oconee communication (2 indictments). In contrast, the Spartanburg Charge was a single indictment but covers a time period between March 12, 2006 and May 4, 2006 and contains at least 17 separate communications.

38. The Grand Jury for the County of Oconee, State of South Carolina meets on April 12, 2010, which, per the letter, is when the AG will attempt to acquire indictments on the Oconee Communications.

39. Odom asserts that the acts of the prosecutor in this action constitute a violation of Odom's Fifth Amendment Due Process Clause under the United States Constitution and rights afforded him by the Fourteenth Amendment. These facts present a case of vindictive prosecution. U.S. v. Wilson, 262 F.3d 305 (4th Cir. 2001).

40. The Oconee charges are being sought to penalize Odom for seeking information needed for his defense.

41. Additionally, the failure of the State to obtain conviction on the Spartanburg Charge has also resulted in more charges being threatened by the State in the Oconee Communications even though the number of alleged communications in Oconee is much less than in Spartanburg.

42. The facts at a minimum show a realistic likely hood of vindictiveness due to 1) the length of time and extensive litigation between Odom and the AG and 2) the previous statements from the AG that no charge for the Oconee Communications were ever contemplated, 3) that charge(s) on the Oconee Communications had not been pursued until almost 4 years after the alleged violation, and 4) that the AG has indicated it will seek 2 indictments for the new charges when they previously sought one charge in Spartanburg when the facts which are known regarding the alleged communications present no basis for this difference.

43. That upon information and belief, the length of time from alleged criminal event until when charged is highly unusual in a case such as this, and upon information and belief, this has never occurred for a charge under S.C. Code §16-15-342.

44. Significantly, the prosecutorial decisions to indict the Oconee Communications occurred either after the first or the second trial on the Spartanburg Charge and, upon information and belief, the decision to increase the number of indictments sought increased following the failure of the AG to convict in the second Spartanburg trial.

45. Also, under South Carolina case law and evidentiary standards it would appear more beneficial, in many respects, for the State to seek indictment on the Oconee Communications prior to trial on the Spartanburg Charges. This is so because the standard for admission of bad act evidence under Rule 404 B, SCRE, (which the AG indicated for years was the purposed use of the Oconee Communications) is reduced from the clear and convincing standard if the charge is indicted or convicted, State v. Ford, 334 S.C. 444, 513 S.E.2D 385 (1999).

Causes of Action

Count I

Violation of Odom's Rights as to Vindictive Prosecution under the Fifth Amendment and Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983

46. Odom repeats and realleges paragraphs 1-45.

47. Upon information and belief, the prosecutor, the South Carolina Attorney General acted with animus toward the defendant and that he would not have been prosecuted but for this animus.

48. The conduct of the prosecutor is retaliatory against Odom for attempting to acquire defense information, which upset the State's witness, frustrated attorney Wines, and due to the failure of the Attorney General to obtain a guilty verdict on the Spartanburg Charge, the length of time of the prosecution and the .

49. This retaliation is shown by Wines' statement to Odom's counsel; the timing of the indictments, as well as the increase of the number of counts between the Spartanburg Charge and the proposed multiple indictments for the alleged Oconee Communications.

50. The facts show a realistic likelihood of vindictiveness and create a presumption of vindictiveness, which shifts the burden to the State. In particular due to the fact these decisions are all post-trial. Additionally, other than the arrest of Patterson and his firing, nothing has changed concerning the Oconee Communications since 2006.

51. Odom requests full discovery be granted on this count, and that an emergency restraining order be placed on Defendants to prevent the proposed charges

from being presented for indictment to any Grand Jury or to obtain an arrest warrant based on the Oconee Communications.

52. Odom additionally prays that a permanent injunction be placed on Defendants from ever presenting the Oconee Communications for indictment, obtaining an arrest warrant, and that the injunction prevent the prosecution of such charges should they be indicted.

Count II

Declaration of the Parties Respective Rights under 28 U.S.C. § 2201

53. Plaintiff, Odom, repeats and realleges paragraphs 1-52

54. Plaintiff's rights are being violated by the pursuit of charges based upon the Oconee Communications as vindictive prosecution.

55. Odom requests this Court declare that the presentation or prosecution of charges based on the Oconee Communications amounts to vindictive prosecution and enjoin these charges from being sought or prosecuted by the Attorney General.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

- A. Declare that the threatened prosecution of Odom for the Oconee Communications is impermissible as a violation of Odom's Fifth Amendment Rights and Due Process as afforded him by the US Constitution and applied to the States by the Fourteenth Amendment, since such prosecution would be vindictive,

- B. Permanently enjoin Defendants, their officers, agents, servants, and attorneys from bringing, indicting recommending or prosecuting any case in regard to the Oconee Communications against Odom,
- C. Granting full discovery to Odom on the Vindictive Prosecution Count,
- D. Award Plaintiff reasonable costs and attorney fees pursuant to 42 U.S.C. § 1988; and
- E. Grant Odom such other and further relief as the Court deems just and proper.

s/ Brian D. McDaniel
Brian D. McDaniel
Federal I.D. No. 7856
PO Box 2085
Beaufort, SC 29901
(843) 379-5117
(843) 379-5118 fax
bmcdaniel@attorneymcdaniel.com

Attorneys for the Plaintiff
Anthony Clark Odom

Beaufort, South Carolina
April 7, 2010

000058

1 A. THE, ONE OF THE ISSUES REGARDING MY REPRESENTATION
2 OF MR. ODOM IN THIS CASE DEALING WITH THE SPARTANBURG
3 MATTER WAS THE AUTHENTICITY OF CERTAIN RECORDS DEALING
4 WITH YAHOO! AND BELLSOUTH. ANOTHER ISSUE WAS RECORDS
5 REGARDING ONE OF THE STATE'S WITNESSES, A MR. MARK
6 PATTERSON, AND MR. -- INVESTIGATOR MCGRAW WITH THE
7 SPARTANBURG SHERIFF'S DEPARTMENT.

8 I HAD SERVED SUBPOENAS AS TO A REQUEST TO OBTAIN
9 RECORDS REGARDING BOTH OF THESE GENTLEMEN, SOME HAVING TO
10 DO WITH DATES THAT THEY WERE ON DUTY OR OFF DUTY, AND
11 ALSO AS TO MR. PATTERSON TO OBTAIN DOCUMENTS REGARDING
12 HIS ARREST IN AIKEN COUNTY.

13 Q. OKAY. AND IF I CAN, I'D ASK YOU TO IDENTIFY
14 ANOTHER DOCUMENT. IF I CAN MAKE THE, WITH THE COURT'S
15 PERMISSION, MAKE THE PHONE RECORD A COURT'S EXHIBIT?

16 THE COURT: VERY WELL. THAT WILL BE COURT'S EXHIBIT
17 NUMBER 5, 6?

18 THE COURT REPORTER: SEVEN.

19 THE COURT: SEVEN. All right. THANK YOU.

20 THE WITNESS: AND IF YOU DESIRE, MR. MCDANIEL, THE
21 PHONE CALL WITH MS. WINES BEING 11:32. I THINK THE
22 OTHERS WERE IN SEQUENTIAL ORDER.

23 (MARKED FOR IDENTIFICATION WAS COURT'S
24 EXHIBIT 7, VERIZON PHONE RECORDS.)

25 THE WITNESS: I BELIEVE LATER ON THAT DAY I ALSO

1 SPOKE WITH MR. ODOM ON THAT BILL.

2 BY MR. MCDANIEL:

3 Q. DO YOU BELIEVE THAT'S ALSO REFLECTED IN THAT?

4 A. YES, SIR. I WOULD HAVE TO LOOK BACK, BUT I
5 BELIEVE THAT WOULD BE PROBABLY AT 3:20 P.M. AT THE
6 292-7027 NUMBER. I BELIEVE THAT WOULD BE CORRECT.

7 Q. AND THAT WAS A 31-MINUTE CALL, I BELIEVE,
8 ACCORDING TO THE RECORD?

9 A. YES, SIR, I BELIEVE THAT'S CORRECT.

10 Q. IF I CAN TAKE YOU TO THE SECOND SHEET I HANDED TO
11 YOU THERE, AND THIS APPEARS TO BE A COUPLE DAYS PRIOR TO
12 THAT: CAN YOU IDENTIFY WHAT THIS DOCUMENT IS?

13 A. YES, SIR. MANY TIMES IN MY OFFICE IF I'M TALKING
14 TO SOMEBODY ON THE PHONE, I'LL TRY TO MAKE A HANDWRITTEN
15 NOTE OF IT SO THAT BEFORE I WOUND UP HAVING SOME NEW
16 COMPUTER SOFTWARE WHERE I TRY TO TYPE IT IN, I FOUND IT
17 EASIER JUST TO MAKE A RECORD OF WHAT WAS DISCUSSED,
18 WHERE, WHO CALLED WHO, THINGS OF THAT SORT.

19 Q. And WHO WAS THIS PHONE NOTES OF RECORD OF THE
20 CALLER?

21 A. ON FEBRUARY 16 AT 10:25 A.M. I RECEIVED A PHONE
22 CALL FROM MS. WINES AND WE DISCUSSED SEVERAL TOPICS.

23 Q. OKAY. AND COULD YOU TELL US FROM YOUR RECORDS OR
24 YOUR MEMORY AND YOUR RECORDS WHAT THE TOPICS WERE?

25 A. YES, SIR. WE DISCUSSED A QUESTIONNAIRE THAT WE

1 ESTABLISH THAT WHEN THE DEFENDANT EXERCISES A RIGHT, HE
2 CLEARLY HAS THE RIGHT TO DO AND HE'S PUNISHED OR THERE'S
3 A PENALTY FOR DOING THAT, THERE'S AN EXACTING OF A PRICE.
4 AND THAT CAN BE CONSIDERED VINDICTIVE PROSECUTION.
5 ACCORDING TO *U.S. V. WILSON* AS WELL AS *UNITED STATES V.*
6 *JOHNSON*, (READING):

7 AN INDICTMENT MUST BE DISMISSED IF THERE'S A FINDING
8 OF EITHER ACTUAL VINDICTIVENESS OR OF A PRESUMPTION OF
9 VINDICTIVENESS HAS NOT BEEN REBUTTED OR OBJECTIVE
10 EVIDENCE JUSTIFYING THE PROSECUTOR'S ACTION IS NOT
11 ESTABLISHED.

12 WE WOULD LIKE TO FIRST PRESENT OUR EVIDENCE OF
13 VINDICTIVE PROSECUTION AND THEN ARGUE THE LEGAL ASPECTS
14 OF THE MOTION.

15 THE COURT: VERY GOOD.

16 MR. MCDANIEL: I'D LIKE TO PROFFER MR. JIM HUFF AS A
17 WITNESS TO PROFFER HIS TESTIMONY FOR THE COURT AS TO THE
18 EVIDENCE WE HAVE AND HIS TESTIMONY AS TO VINDICTIVE
19 PROSECUTION AT THIS TIME.

20 THE COURT: ALL RIGHT. ANY OBJECTION?

21 MS. WINES: WELL, NO, SIR, GO AHEAD.

22 THE COURT: VERY WELL, MR. HUFF, COME AROUND.

23 ///

24 ///

25 ///

1 ATTORNEY/CLIENT PRIVILEGE, THEY WEREN'T CREATED BY
2 MR. ANDERSON IN REPRESENTING MR. PATTERSON. I WAS
3 SEEKING THOSE RECORDS, WHICH I'VE CONTINUED TO DO.

4 THE STATE HAD SAID THAT THEY WOULD BE GLAD TO WORK
5 WITH US IN GETTING THOSE RECORDS, BUT THEY WERE
6 EVERYTHING BUT WORKING WITH US TO GET THOSE RECORDS SO
7 THAT I COULD SEE WHAT WAS THERE IN MY REPRESENTATION OF
8 MR. ODOM. SO I ISSUED A SUBPOENA TO MR. ANDERSON AND
9 THAT WAS IRRITATING TO MS. WINES.

10 I ALSO SERVED A SUBPOENA, I BELIEVE, ON LINDSEY
11 MCGRAW, THE INVESTIGATOR IN THE SPARTANBURG MATTER. AND
12 A QUOTE I HAD FROM MS. WINES WAS THAT, QUOTE, "I INSTRUCT
13 THE PEOPLE NOT TO TURN THINGS OVER." AND SHE STATED, AND
14 I WROTE HER WORDS AGAIN, "YOU DON'T HAVE SUBPOENA POWER."

15 BUT MY UNDERSTANDING OF THE CRIMINAL RULES OF THIS
16 STATE ARE THAT WE DO HAVE SUBPOENA POWER. BUT SHE WAS
17 APPARENTLY IRRITATED THAT I HAD SERVED SUBPOENAS IN THIS,
18 IN REPRESENTING MR. ODOM IN TRYING TO OBTAIN INFORMATION.

19 THE THIRD THING WAS THAT WE TALKED ABOUT MOTIONS,
20 DENNO HEARINGS, AND WHETHER WE WOULD STIPULATE TO THEY
21 WERE VOLUNTARY STATEMENTS. THAT'S NOTED ON MY DOCUMENTS.
22 LYLE ISSUES ON THE WESTMINSTER CHATS OF MR. PATTERSON,
23 WHETHER OR NOT THAT COULD BE ADMISSIBLE IN THE
24 SPARTANBURG TRIAL.

25 AND THEN MS. WINES GAVE ME INFORMATION AS TO WHO

1 HAD AGREED TO USE IN THE SPARTANBURG TRIAL, AND EVIDENTLY
2 I MADE AN INDICATION OF THE WORD "COPIES". I BELIEVE AT
3 THAT TIME THERE WAS SOME DISCUSSION AS TO HOW WERE WE
4 GONNA MAKE THE COPIES AND SUBMIT THOSE TO THE COURT, WHO
5 WAS GONNA PAY FOR THEM AND THE MAILING costs AND THINGS
6 OF THAT SORT, AND MS. WINES AND I DISCUSSED THAT.

7 THE SECOND TOPIC WAS THAT REGARDING MR. PATTERSON,
8 MARK PATTERSON, WHO IS THE INVESTIGATOR IN THIS OCONEE
9 PROSECUTION, I HAD A NOTE THAT SAID ANDY ANDERSON
10 SUBPOENA (MARK PATTERSON) IRRITATING TO ME. AND WHAT
11 MS. WINES HAD STATED TO ME WAS THAT MY SEEKING THOSE
12 RECORDS OF MR. PATTERSON'S ARREST IN ORDER TO LOOK AT
13 THEM AS TO WHETHER OR NOT THEY WOULD BE impeachable
14 EVIDENCE THAT MAY GROW FROM THEM OR WHETHER OR NOT I
15 MIGHT FIND EVIDENCE THAT MIGHT ASSIST MR. ODOM IN HIS
16 DEFENSE; THAT MS. WINES WAS NOT, QUITE HONESTLY WAS
17 IRRITATED THAT I HAD SERVED A SUBPOENA ON MR. PATTERSON'S
18 FORMER ATTORNEY, ANDY ANDERSON WHO IS AN ATTORNEY IN
19 AIKEN, SOUTH CAROLINA, WHO HAD REPRESENTED MR. PATTERSON
20 REGARDING THE, MR. PATTERSON'S ARREST.

21 AND SO I SERVED A SUBPOENA ON MR. ANDERSON SINCE I
22 WAS SEEKING DOCUMENTS THAT THE, AN AIKEN LAW ENFORCEMENT
23 AGENCY, THE BURNETTOWN POLICE DEPARTMENT, HAD TURNED, OR
24 PUBLIC documents, HAD TURNED OVER TO MR. ANDERSON. I
25 FELT THEY WERE STILL PUBLIC DOCUMENTS, THEY WERE NOT

1 OPTION TO FILE A MOTION TO QUASH AND HAVE IT HEARD BY A
2 JUDGE. I DON'T RECALL THAT EVER OCCURRING IN THIS CASE.

3 Q. ALL RIGHT. AND TO GO BACK TO THE PHONE CALL THAT
4 YOU HAD ON THE 18TH OR THAT YOU INDICATED FROM FEBRUARY
5 18TH, DID THAT CALL FOLLOW FROM ANY OF THESE SAME ISSUES?

6 A. YES, SIR. DO YOU WANT ME TO GIVE YOU BACK THIS
7 BLUE SHEET?

8 MR. MCDANIEL: YES, PLEASE.

9 LET'S MARK THAT AS A COURT'S EXHIBIT, WITH THE
10 COURT'S PERMISSION.

11 THE COURT: CERTAINLY. WE'LL GO OFF THE RECORD
12 WHILE YOU DO THAT.

13 THAT'S GONNA BE COURT'S EXHIBIT 8?

14 THE COURT REPORTER: YES, SIR.

15 (MARKED FOR IDENTIFICATION WAS COURT'S
16 EXHIBIT 8; HUFF LAW FIRM TELEPHONE MEMO.)

17 BY MR. MCDANIEL:

18 Q. COULD YOU TELL THE COURT ABOUT THE FEBRUARY 18TH
19 CONVERSATION AS YOU UNDERSTAND AT LEAST THE ISSUES AS
20 THEY FOLLOWED UP FROM THE FEBRUARY 16TH PHONE CALL?

21 A. THERE WERE A COUPLE OF ISSUES DURING THAT PHONE
22 CALL. THEY CENTERED AROUND AGAIN THE SUBPOENA RECORDS
23 FOR MR. PATTERSON AND HIS ARREST IN AIKEN COUNTY. ALSO,
24 THERE WAS THE ISSUE OF THE YAHOO! AND BELLSOUTH.
25 MS. WINES FELT THAT THE SUBPOENA OF MR. PATTERSON'S

1 COULD COME AND TESTIFY OR TALK TO ME REGARDING THE YAHOO!
2 AND BELLSOUTH RECORDS. SHE GAVE ME NAMES THERE.

3 AND WE TALKED ABOUT HOW MANY STATE WITNESSES MIGHT
4 APPEAR IN SPARTANBURG, AND SHE INDICATED ABOUT 12 TO 15,
5 QUITE A FEW OF THOSE MIGHT BE CHAIN-OF-CUSTODY WITNESSES.

6 Q. OKAY. AND WERE ANY OF THOSE POINTS PARTICULARLY
7 HEATED OR CONTENTIOUS AT THAT TIME?

8 A. WELL, AS INDICATED IN ITEM NUMBER 2, I, QUOTE, PUT
9 DOWN THAT MS. WINES STATED THAT THIS WAS IRRITATING TO
10 HER -- THAT WAS HER WORDS -- AND THAT SHE HAD INSTRUCTED
11 PEOPLE NOT TO TURN THINGS OVER AND SAID I DON'T HAVE
12 SUBPOENA POWER.

13 SHE WAS NOT PLEASED WITH MY REPRESENTATION OF
14 MR. ODOM, THAT I WAS SEEKING TO ZEALOUSLY REPRESENT MY
15 CLIENT, WHICH I'VE GOT AN ETHICAL OBLIGATION TO DO, AND
16 SHE WASN'T HAPPY. I MEAN, I'VE NEVER SEEN ANYBODY SAY
17 THAT THEY'VE INSTRUCTED SOMEBODY NOT TO HONOR A LAWFULLY
18 ISSUED AND SERVED SUBPOENA.

19 Q. DID YOU ADDRESS THAT WITH HER IN THAT CALL AS YOU
20 CAN REMEMBER?

21 A. WELL, I DON'T THINK THERE WAS ANYTHING TO ADDRESS,
22 AND I'M NOT AWARE OF ANY MOTION TO QUASH HAVING EVER BEEN
23 FILED. YOU KNOW, IF A LAWYER BELIEVES THAT A SUBPOENA IS
24 improvidently SERVED -- WHICH I DON'T THINK THERE CAN
25 BE -- BUT IF THERE IS SOME OBJECTION, THEY HAVE THE

1 RECORDS WERE IRRELEVANT TO THE CASE, AND THAT I FELT THEY
2 CERTAINLY WERE. SHE WAS NOT HAPPY THAT I WAS SEEKING THE
3 PRODUCTION OF THOSE RECORDS.

4 WE ALSO TALKED ABOUT WHETHER OR NOT WE WERE GOING
5 TO STIPULATE OR NOT TO THE YAHOO!-BELLSOUTH RECORDS. I
6 HAD NOT MADE A FIRM DECISION ON THAT YET, AND I BELIEVE
7 TRIAL WAS SET TO COME UP FAIRLY SOON. AND I BELIEVE AT
8 THAT TIME I TOLD HER THAT I WAS NOT GONNA BE ABLE TO
9 CONSENT TO THOSE RECORDS AND THAT SHE WOULD NEED TO PROVE
10 HER CASE.

11 Q. SO THIS WAS THE RECORDS FOR THE SPARTANBURG TRIAL
12 THAT WAS COMING UP IN FEBRUARY --

13 A. YES.

14 Q. -- AND THE STIPULATION OF THE YAHOO! RECORDS THAT
15 WERE, THEY WERE SEEKING TO SUBMIT IN THAT CASE?

16 A. YES.

17 Q. AND WHAT WAS THE RESPONSE TO THAT?

18 A. MS., WHEN I KEPT, I THINK I WAS VERY STRONG THAT I
19 WAS ENTITLED TO MR. PATTERSON'S ARREST RECORDS IN AIKEN
20 COUNTY, MS. WINES WAS FRUSTRATED DURING THAT CALL AND
21 STATED -- AND I QUOTE -- "FINE. WE'LL JUST INDICT HIM IN
22 OCONEE."

23 MY IMMEDIATE RESPONSE WAS THAT, I SAID, "MEGAN,
24 YOU KNOW THAT'S WRONG, BUT YOU DO WHAT YOU'VE GOT TO DO,
25 BUT YOU KNOW THAT'S WRONG."

1 Q. SO YOUR UNDERSTANDING WAS THE -- LET ME ASK YOU
2 THIS. WHAT WAS YOUR UNDERSTANDING OF WHY THEY WERE
3 INDICTING IN OCONEE COUNTY?

4 A. THE IMPRESSION I CERTAINLY GOT, AND IT WAS VERY
5 LOUD AND CLEAR TO ME -- AND I'VE BEEN DOING CRIMINAL
6 DEFENSE FOR SEVERAL DECADES -- WAS THAT WE WERE BEING
7 HARD WITH THE STATE IN GOING AFTER MR. PATTERSON'S ARREST
8 RECORDS TO SEEK IMPEACHMENT, AND THEY WERE JUST GONNA BE
9 JUST AS HARD BACK, AND THEY WERE JUST GONNA INDICT HIM IN
10 OCONEE. I FELT IT WAS A, "YOU'RE PUSHING HARD SO WE'RE
11 GONNA PUSH HARD BACK."

12 Q. WAS THIS AN ALTERNATIVE, "IF YOU SEEK THIS, THEN
13 WE WILL HAVE TO INDICT," OR WAS THIS A, "FINE, WE'RE JUST
14 GONNA INDICT," INDICATING THEY MADE THAT DECISION BASED
15 ON YOUR PUSHING?

16 A. MY IMPRESSION WAS THEY MADE A DECISION TO INDICT
17 IN OCONEE BECAUSE THEY WERE GETTING A LOT OF STATIC IN
18 BEING ABLE TO HAVE A SMOOTH SAILING IN SPARTANBURG, AND
19 SO THAT WAS MY CLEAR IMPRESSION.

20 Q. AND YOU VOICED THAT CONCERN TO MS. WINES IN THAT
21 CALL?

22 A. ABSOLUTELY DID.

23 Q. AND IS IT YOUR UNDERSTANDING THAT YOU ASKED FOR
24 ANYTHING THAT THE DEFENDANT DIDN'T HAVE A LEGAL RIGHT TO
25 OBTAIN IN THAT DEFENSE?

1 BE CLEAR, OF FEBRUARY OF 2010, WERE YOU UNDER THE -- DID
2 YOU HAVE ANY INDICATION FROM THE ATTORNEY GENERAL THAT
3 THEY WERE PLANNING TO PROSECUTE MR. ODOM IN OCONEE
4 COUNTY; DID THEY INDICATE THEY WERE GOING TO DO THAT?

5 A. NO, SIR. EVER SINCE THE BEGINNING OF THIS CASE IN
6 MAY OF 2006, UP UNTIL THE TIME OF MY PHONE CALL WITH
7 MS. WINES ON FEBRUARY 18, 2010, JUST SHY OF FOUR YEARS,
8 AND WITH MY DISCUSSIONS WITH MR. SWERLING, WITH MY
9 DISCUSSIONS WITH MR. ODOM AND WITH MS. WINES, THERE NEVER
10 WAS ANY DISCUSSION ABOUT PROSECUTING MR. ODOM HERE IN
11 OCONEE COUNTY.

12 WHAT HAD BEEN DISCUSSED AND WHAT I FELT THE STATE
13 WAS GOING TO DO, WAS TO -- AND THEY DID -- IN ARGUMENTS
14 IN THE SPARTANBURG PROSECUTION, THEY WANTED TO BRING IN
15 THE OCONEE COMMUNICATIONS INTO SPARTANBURG AS BASICALLY
16 LYLE ISSUES.

17 SO THAT'S WHY I WAS QUITE SHOCKED WHEN I WAS TOLD,
18 "WELL, FINE. WE'LL JUST INDICT HIM IN OCONEE."

19 MR. MCDANIEL: MARK THAT, PLEASE, AS A COURT'S
20 EXHIBIT, AS WELL, THE DECEMBER 5TH, 2006, LETTER.

21 (MARKED FOR IDENTIFICATION WAS COURT'S
22 EXHIBIT 18, LETTER DATED DECEMBER 5, 2006.)

23 MR. MCDANIEL: I BELIEVE THAT'S ALL THE QUESTIONS I
24 HAVE FOR THE WITNESS, YOUR HONOR.

25 THE COURT: DOES THE STATE HAVE ANYTHING?

1 MR. MCDANIEL: YOUR HONOR, WE WOULD WITHDRAW THE
2 MARCH 22ND LETTER AND JUST MARK THE OTHER THREE EXHIBITS.

3 THE COURT: I THOUGHT MARCH 22ND WAS A LETTER.

4 MR. MCDANIEL: I'M SORRY, Your Honor?

5 THE COURT: WHAT'S COURT'S EXHIBIT NUMBER 11?

6 THE COURT REPORTER: I HAVEN'T MARKED THEM YET. THE
7 LAST EXHIBIT WAS 11 AND IT WAS LETTER DATED FEBRUARY 24TH
8 '11.

9 THE COURT: FEBRUARY 24TH '11, All right.

10 (MARKED FOR IDENTIFICATION WAS COURT'S
11 EXHIBIT 12, LETTER DATED MARCH 25, 2011.)

12 (MARKED FOR IDENTIFICATION WAS COURT'S
13 EXHIBIT 13, EMAIL DATED MARCH 30, 2011.)

14 (MARKED FOR IDENTIFICATION WAS COURT'S
15 EXHIBIT 14, ORDER FOR CONTINUANCE.)

16 THE COURT: ALL RIGHT. YOU MAY PROCEED.

17 MR. MCDANIEL: THANK YOU.

18 BY MR. MCDANIEL:

19 Q. MR. HUFF, COULD YOU PLEASE IDENTIFY THE ARTICLE
20 THAT I HANDED YOU THERE? ARE YOU FAMILIAR WITH THIS?

21 A. YES, SIR. THIS -- I LIVE IN AIKEN COUNTY. WE'VE
22 GOT THE LOCAL AIKEN NEWSPAPER, IT'S CALLED *THE AIKEN*
23 *STANDARD*. AND I LOCATED A COPY OF THE PAPER DATED MAY
24 11, 2010. AND IT APPEARED THAT THIS WAS I BELIEVE JUST
25 BEFORE THE TRIAL IN -- EXCUSE ME -- IT WAS FOLLOWING THE

1 TRIAL IN SPARTANBURG. I BELIEVE THAT TRIAL WAS IN
2 FEBRUARY OF 2010.

3 THE ARTICLE AT THE TOP OF THE LOCAL NEWS WAS
4 MCMASTER: FORMER PROSECUTOR IS GUILTY. AND MR. MCMASTER
5 WAS ON THE POLITICAL STUMP TRYING TO RUN FOR
6 REELECTION -- AND EXCUSE ME, I THINK HE WAS RUNNING FOR
7 GOVERNOR AT THE TIME -- AND STATED THAT WE BELIEVE THAT,
8 AND I QUOTE FROM THE ARTICLE, (READING):

9 WE BELIEVE HE DID IT IN OCONEE AND WILL TRY HIM IN
10 OCONEE. WE DON'T CHARGE SOMEBODY UNLESS WE KNOW THAT
11 THEY ARE GUILTY AND WE KNOW WE HAVE THE EVIDENCE TO PROVE
12 THEY ARE GUILTY. THIS CASE IS ONE THAT NEEDS TO BE
13 TRIED. AND THAT HE BELIEVED THAT MR. ODOM WAS GUILTY.

14 Q. MR. HUFF, YOU PRACTICE IN CRIMINAL DEFENSE,
15 CORRECT?

16 A. YES, SIR.

17 Q. ARE YOU FAMILIAR WITH THE RULES OF PROFESSIONAL
18 CONDUCT?

19 A. YES, SIR. I WAS ON THE ETHICS ADVISORY COMMITTEE
20 FOR I THINK SOMEWHERE AROUND TEN YEARS.

21 Q. POINTING OUT ONE ADDITIONAL THING FROM THE
22 ARTICLE. IT SAID (READING): THESE KINDS OF CASES, THESE
23 PREDATORS THAT ARE ON THE INTERNET ARE DANGEROUS.

24 IS THERE ANYTHING YOU ARE FAMILIAR WITH IN THE
25 CODE OF CONDUCT THAT WOULD BE VIOLATED OR AT LEAST

1 18TH, 2010, OVER A YEAR, THAT YOU DIDN'T LIKE THIS ACTION
2 BEING BROUGHT.

3 MS. WINES: I'M SORRY?

4 THE COURT: I'M TALKING ABOUT THE PARTIES. I'M
5 TALKING ABOUT THE DEFENDANT, THE DEFENSE HERE. ISN'T
6 THAT WHEN THE INDICTMENT WAS RETURNED?

7 MS. WINES: I'M SORRY, JUDGE. I'M NOT SURE I'M
8 FOLLOWING YOUR QUESTION.

9 THE COURT: EXCUSE ME. I COULDN'T READ IT. I
10 THOUGHT IT WAS FEBRUARY THE 18TH. IT WAS ACTUALLY APRIL
11 THE 12TH, 2010. I APOLOGIZE.

12 MS. WINES: YOUR HONOR, I WAS JUST GONNA SUGGEST
13 THAT I DON'T HAVE ANY QUESTIONS FOR MR. HUFF IF YOU WOULD
14 LIKE HIM TO STEP DOWN.

15 THE COURT: WELL, LET ME ASK YOU THIS.

16 MS. WINES: YES, SIR.

17 THE COURT: AND I'M LEAVING IT ON THE RECORD. I'M
18 NOT HAVING A CONFERENCE WITH ATTORNEYS THAT DON'T TELL ME
19 EVERYTHING, UP FRONT AT LEAST.

20 WHAT DOES THE STATE INTEND TO DO?

21 MS. WINES: YOUR HONOR, THE STATE'S INTENTION IS TO
22 PROCEED WITH THE TRIAL OF THIS CASE, AND I DID MENTION
23 WHILE WE WERE IN EDGEFIELD THAT THERE WERE NUMEROUS
24 MOTIONS I ANTICIPATED BEING BROUGHT. THIS WAS MENTIONED
25 IN ---

1 I'LL PROVIDE IT TO COUNSEL.

2 MR. HUFF: JUDGE, WOULD I BE ALLOWED TO STEP DOWN?

3 THE COURT: I DON'T KNOW WHAT WE'RE GONNA DO RIGHT
4 NOW.

5 MS. WINES: I DON'T HAVE ANY QUESTIONS FOR MR. HUFF,
6 YOUR HONOR.

7 (DISCUSSION OFF THE RECORD BETWEEN MS. WINES
8 AND THE COURT REPORTER.)

9 MS. WINES: I WAS JUST MAKING NOTE THAT I HAD GIVEN
10 YOU THE ORIGINAL.

11 THE COURT: HERE'S THE ORIGINAL BACK; IT HASN'T BEEN
12 FILED.

13 MS. WINES: NO, IT HAS NOT BEEN FILED, YOUR HONOR.
14 I WAS WAITING TO FIND OUT WHAT HAPPENED IN COURT TODAY.

15 (THE COURT HANDS ORIGINAL BACK TO MS. WINES:)

16 (MR. HUFF LEAVES THE WITNESS STAND.)

17 MS. WINES: YOUR HONOR, WE'RE HAVING SOMEONE FILE
18 THE ORIGINAL. I'M PASSING A COPY UP TO YOU, YOUR HONOR.

19 THE COURT: All right. THIS IS THE CLERK FOR THIS
20 COURTROOM, NOT FOR FILING RECORDS IN THE CLERK'S OFFICE.

21 MS. WINES: YES, SIR. IF I MAY JUST BRIEFLY STATE,
22 YOUR HONOR, ONE OF THE REASONS WE WERE NOT SURE THIS
23 MOTION WAS ACTUALLY GONNA BE RAISED WAS BECAUSE OF WHAT
24 HAPPENED IN THE FEDERAL CASE WHERE IT WAS DISMISSED, SO
25 WE DIDN'T KNOW IF THE DEFENDANT STILL INTENDED TO PURSUE

1 IN OCONEE COUNTY.

2 SECONDLY, I DID ADVISE THAT I WOULD SEND INDICTMENTS
3 TO THE OCONEE COUNTY GRAND JURY PRIOR TO THE CALLING OF
4 THIS MATTER IN SPARTANBURG. MR. HUFF IS CORRECT. WE DID
5 HAVE A PHONE CALL, NUMEROUS PHONE CALLS. I'LL ADDRESS
6 THAT IN MORE DETAIL IN A MINUTE OR AS YOUR HONOR DEEMS
7 APPROPRIATE.

8 BUT IN LARGE PART THE BASIS FOR THAT COMMUNICATION
9 THAT I WOULD HAVE INDICTMENTS SENT TO THE OCONEE COUNTY
10 GRAND JURY RELATED TO MR. HUFF TRYING TO GET THE RECORDS
11 OF MARK PATTERSON FROM MARK'S CRIMINAL LAWYER, ANDY
12 ANDERSON. IT HAD COME TO THE POINT THAT WE WERE HAVING
13 DISCUSSIONS WITH JUDGE HAYES, AND JUDGE HAYES HAD ORDERED
14 THAT WE WOULD HAVE TO HAVE A HEARING ON WHETHER THOSE
15 RECORDS WERE COVERED BY ATTORNEY-CLIENT PRIVILEGE. AT
16 THAT POINT I FELT LIKE IT WAS BECOMING TOO COLLATERAL OF
17 AN ISSUE AND IT WAS MAKING THE SPARTANBURG CASE MUCH MORE
18 DIFFICULT THAN IT NEEDED TO BE.

19 I HAD BEEN FOLLOWING MY PREDECESSOR'S STRATEGY.
20 DAVID STUMBO'S NAME HAD BEEN MENTIONED. HE WAS THE ONE
21 WHO FIRST CALLED THE CASE IN SPARTANBURG FOR TRIAL BACK
22 IN 2007. AND HE WAS AT THE TIME LEAD COUNSEL FOR THE
23 STATE AND HE HAD MADE THE DETERMINATION OF USING THE
24 OCONEE CHATS AS POTENTIAL LYLE EVIDENCE. WE NEVER GOT
25 THAT FAR IN THE OFFICIAL CALLING OF THE CASE, Your Honor,

1 AND I DO BELIEVE THERE WAS A TRANSCRIPT AND I QUOTED IT
2 IN THE MEMORANDUM. I WOULD BE HAPPY TO PROVIDE A COPY OF
3 THAT PORTION TO YOUR HONOR WHERE MR. STUMBO SAYS
4 SOMETHING ALONG THE LINES OF "WE NEVER INTENDED TO ARREST
5 AT THAT TIME." NOWHERE IN THERE DOES IT SAY WE WOULD NOT
6 EVER DO IT. AND AGAIN, THAT WAS MR. STUMBO, NOT ME.

7 BEYOND THAT, IT IS MY UNDERSTANDING A PROSECUTOR CAN
8 CHANGE TRIAL STRATEGY. THAT IS EXACTLY WHAT THIS IS. I
9 FOLLOWED THE STRATEGY OF MY PREDECESSOR. IT SEEMED LIKE
10 A FAIRLY REASONABLE STRATEGY. BUT WHEN IT WAS BECOMING
11 SO COLLATERAL, IT DID NOT SEEM LIKE SUCH A REASONABLE OR
12 INTELLIGENT STRATEGY ON BEHALF OF THE STATE.

13 SO PRIOR TO THE CALLING OF THE TRIAL, I TOLD
14 MR. HUFF THAT WE WOULD SEND INDICTMENTS TO OCONEE COUNTY
15 AND WE WOULD DEAL WITH THE MATTER OF INVESTIGATOR
16 PATTERSON'S RECORDS IN OCONEE COUNTY.

17 WITH REGARD TO THE SUBPOENAS, I BELIEVE WHAT HE'S
18 SAYING IS CORRECT. I WOULDN'T SAY WITH 100 PERCENT
19 CERTAINTY, BUT I DO RECALL I WAS VERY IRRITATED, AND I
20 PROBABLY DID SAY SOMETHING ALONG THE LINES OF, YOU DO NOT
21 HAVE ANY SUBPOENA POWER WITH REGARD SPECIFICALLY TO AN
22 ADMINISTRATIVE SUBPOENA. WE ALL KNOW YOU CAN SUBPOENA
23 RECORDS TO COURT. I HAD NOT SEEN THE SUBPOENAS, BUT I
24 HAD BEEN ADVISED THAT THERE WAS A REQUEST FOR PRODUCTION
25 OF RECORDS PRIOR TO THE DATE OF TRIAL, WHICH I DID NOT

1 BELIEVE TO BE SOMETHING THEY HAD THE POWER TO DO.

2 MOREOVER, I STRESSED THAT I WOULD DO WHAT I COULD TO
3 GET THOSE RECORDS. IF THERE'S EVER A NEED OR EVER A
4 REQUEST FOR DISCOVERY, EVERYONE WHO HAS EVER WORKED WITH
5 ME KNOWS THAT I WILL DO MY BEST TO GET THOSE AND SHARE
6 THOSE. AND MY POINT WAS THE DISCOVERY PROCESS SHOULD
7 HAVE GONE THROUGH ME, THAT I WOULD HAVE DONE WHAT NEEDED
8 TO BE DONE TO GET THOSE RECORDS.

9 THAT'S ALL I CAN RECALL ON THAT SPECIFIC
10 CONVERSATION WITH REGARD TO THE SUBPOENAS AND MY
11 FRUSTRATION. AND I WAS FRUSTRATED THAT THE MATTER HAD
12 COME TO JUDGE HAYES ORDERING THAT WE WOULD HAVE A HEARING
13 ON ATTORNEY/CLIENT PRIVILEGE WITH REGARD TO MARK
14 PATTERSON'S RECORDS WHICH WERE NOT INSTRUMENTAL TO THE
15 SPARTANBURG TRIAL, Your Honor. THERE WAS GONNA BE
16 POTENTIAL LYLE EVIDENCE, AND I DON'T KNOW THAT WE WOULD
17 HAVE EVEN GOTTEN IT IN.

18 SO IT MADE SENSE TO ME AT THAT POINT THAT I BELIEVE
19 SEPARATE CRIMES HAD BEEN COMMITTED, IT MADE SENSE TO
20 CHANGE TRIAL STRATEGY AND TO GO AHEAD AND HAVE THOSE SENT
21 TO THE OCONEE COUNTY GRAND JURY, WHICH WAS DONE IN MAY.

22 AND WITH REGARD TO ANY SORT OF ANIMUS TOWARD THE
23 DEFENDANT, Your Honor WILL RECALL THAT WE DID HAVE
24 MR. ODOM ARRAIGNED HERE AND YOU DID THE ARRAIGNMENT AND I
25 AGREED TO A P.R. BOND, YOUR HONOR.

1 OBVIOUSLY SPEAKS FOR ITSELF -- BUT IF YOU COULD SUMMARIZE
2 IT WITHOUT READING THE WHOLE THING?

3 A. YES, SIR. MR. STUMBO RELATES TO MR. SWERLING THAT
4 THERE WAS A FORENSIC EXAMINATION TO BE CONDUCTED OF
5 MR. ODOM'S COMPUTER. MR. STUMBO STATES THAT HE RECEIVED
6 SOME INFORMATION FROM S.L.E.D. REGARDING THE PROCESS --
7 EXCUSE ME -- THE PROGRESS OF THAT, AND HE SAYS (READING):

8 AND CAN CONFIRM THAT NO FURTHER EXAM WORK HAS BEEN
9 DONE ON THE COMPUTER AT THE COMPUTER CRIMES CENTER.
10 S.L.E.D. DOES NOT INTEND TO CONDUCT A FULL FORENSICS EXAM
11 ON MR. ODOM'S COMPUTER. I'LL CONTACT YOU THIS WEEK TO
12 DISCUSS THE REASON FOR THAT DECISION. THE PREVIEW
13 EXAMINATION CONDUCTED ON SITE -- I BELIEVE THAT TO BE AT
14 MR. ODOM'S HOME -- YES, IT DOES SAY THAT -- ON SITE AT
15 MR. ODOM'S RESIDENCE BY S.L.E.D. PRODUCED RESULTS THAT
16 WERE DISCLOSED IN A PRELIMINARY DISK THAT I GAVE TO YOU
17 ON JUNE 30TH IN SPARTANBURG. THE RESULTS OF THIS
18 COMPUTER EXAM ARE THE ONLY EVIDENCE PRESERVED FROM THE
19 COMPUTER FOR PURPOSES OF THE PROSECUTION OF THIS CASE. I
20 LOOK FORWARD TO TALKING WITH YOU LATER IN THE WEEK BY
21 PHONE.

22 Q. AND THAT APPEARS TO BE ROUGHLY SEVEN MONTHS OR
23 SO -- I BELIEVE IF MY MATH -- NINE MONTHS, SEVEN MONTHS,
24 AFTER THE ARREST, OR THEREABOUTS, OF MR. ODOM?

25 A. YES. I BELIEVE -- I MAY BE WRONG, BUT I BELIEVE

1 important for you to watch as well.

2 Again, the Defendant has been indicted for two
3 charging counts of criminal solicitation of a minor.
4 Again, that is in no sense of the word evidence of the
5 allegations, it doesn't raise a conclusion or
6 presumption of his guilt. In fact, he has pled not
7 guilty to this charge. Therefore, the State of South
8 Carolina has the burden of proving beyond a reasonable
9 doubt each and every element of the charge of criminal
10 solicitation of a minor. At the end of this case it
11 will be your duty to decide whether or not the State of
12 South Carolina has, in fact, met that burden of proof.

13 Now, your purposes as jurors are to find facts. In
14 the vernacular of the law we simply say that the jury
15 are the finders of the facts. Therefore, if at any time
16 I do anything whatsoever that indicates to you that I
17 have a preference of how you are to find the facts, I'm
18 gonna ask you and I'm also going to instruct you to
19 disregard that. I can assure you I have no preference
20 one way or the other.

21 Our South Carolina Constitution doesn't allow me to
22 have an opinion as to the facts in the case. That is
23 solely your function. My job is more akin to a referee
24 to make sure that the process is followed, that the
25 State and the Defense each have a fair and impartial

1 THE FOREMAN: Yes, sir.

2 THE COURT: Very good. Did anybody attempt to talk
3 to you or did you speak with anybody about this case
4 during the lunch break?

5 THE FOREMAN: No, sir.

6 THE COURT: Very good.

7 Please swear the jury, Madam Clerk.

8 THE CLERK: Ladies and gentlemen, if you would
9 please stand and raise your right hands. (All comply.)
10 (Whereupon, the Jury was sworn.)

11 THE CLERK: Please be seated.

12 THE COURT: Thank you, ma'am.

13 Instructions by Court to Jury:

14 THE COURT: All right. Ladies and gentlemen of the
15 jury, we're about to start the case of the trial of the
16 State versus Anthony C. Odom, who has two indictments on
17 the charge of criminal solicitation of a minor. As I
18 told you at the beginning of this case or beginning this
19 morning, and I'll remind you again, the fact that this
20 gentleman has been indicted and charged and/or arrested,
21 it is not evidence of guilt and it does not raise a
22 presumption of guilt. The indictments are solely the
23 charging mechanism by which the State of South Carolina
24 brings charges before juries such as yourselves for a
25 determination of guilt or innocence.

1 this time ---

2 THE COURT: Okay, sir.

3 MR. HUFF: --- to expedite any type of review or
4 consideration of the Court and to be very brief in any
5 oral presentation.

6 THE COURT: All right, sir. Come around, please,
7 sir.

8 Have you provided Ms. Wines and the Attorney
9 General's Office a copy of your briefs?

10 MR. McDANIEL: Yes, sir. If I may present one to
11 the Court, Your Honor. (Handing document to Court.)

12 THE COURT: Please, sir. Thank you, sir.

13 All right. Would you state your name for the
14 record.

15 MR. McDANIEL: Yes, Your Honor, Brian McDaniel.

16 THE COURT: Okay, sir. Mr. McDaniel, I've got your
17 brief that declares that Code Section 16-15-342
18 unconstitutional on equal protection grounds; is that
19 correct?

20 MR. McDANIEL: That's correct.

21 THE COURT: Other than as outlined -- and if you
22 would make your brief a part of the record in this
23 matter, the Court's record, not the trial record, but if
24 you would add to that any additional arguments you may
25 make, please, sir.

1 **THE COURT:** Okay. All right. And let me do this.
2 I'm gonna let you do the in camera proffer if you want
3 to, but in the testimony I have to tell you that
4 certainly the rule would prohibit any extrinsic evidence
5 to impeach Mr. Patterson. I believe that unless you can
6 demonstrate that the charges go to the character for
7 truthfulness or untruthfulness you can't get into those
8 either. But I'll let you have a little leeway with that
9 regard and then I'll make a ruling. My preliminary
10 ruling without prejudice to the State or the Defense is
11 you cannot use it to attack his credibility at all.
12 Okay?

13 With that being said, is there anything further
14 from the State?

15 **MS. WINES:** No, Your Honor, not on that issue.

16 **THE COURT:** From the Defense?

17 **MR. HUFF:** Not on that issue.

18 **THE COURT:** Okay. Now, y'all can't keep telling me
19 not on that issue. What I'm trying to do is to narrow
20 it down as much as I can. I'm not going to make you try
21 your case in advance, but any other issues we can deal
22 with today right now from the State's perspective?

23 **MS. WINES:** Your Honor, I understood that defense
24 counsel wanted to go into motions to dismiss based on
25 First Amendment and equal protection. And I wanted to

1 object to even making argument on that, Your Honor,
2 based on Judge Macaulay's Order and Rule 4 of the
3 criminal procedure rules, Your Honor.

4 In this particular matter we have raised that Judge
5 Macaulay had already ruled on certain issues, one of
6 which was not referring to Mr. Odom's profession. They
7 agreed that we would abide by Judge Macaulay's ruling.
8 We do not think it's appropriate to reargue and take up
9 more time on the issues that have already been argued
10 and the orders have been issued. And I have a copy of
11 the Order signed by Judge Macaulay.

12 And I believe, Your Honor, with regard to equal
13 protection and First Amendment there was another written
14 order submitted by email. I don't have a signed copy of
15 that. We need to locate that. But there is an order
16 here that I know the parties received explaining -- this
17 is when the case was continued when he recused himself.
18 He just explains that, what has already been heard.

19 And it just says motion to dismiss based upon the
20 First Amendment was denied and Defendant's motion to
21 dismiss based on the 14th Amendment was denied. The
22 motion to dismiss based on estoppel by contract was
23 denied. I just -- and the 14th Amendment as I
24 understand it would be the equal protection. So I
25 object to any rehearing of those issues, Your Honor.

1 **THE COURT:** Okay. Did you brief those matters,
2 Mr. Huff, for the Court?

3 **MR. HUFF:** Judge, I believe, I believe we had filed
4 briefs on them. I'm not sure. We have amended briefs
5 with us. But I don't think Ms. Wines is saying that a
6 pretrial ruling of the Court ---

7 **THE COURT:** Let me tell you this. This gentleman
8 is on trial for his liberties. I'm gonna err on the
9 side of being cautious and grant him due process and I'm
10 gonna let him brief them. And if you would, if you have
11 those amended briefs, to the extent those were argued
12 before should help preserve the issue for you on appeal
13 if necessary. But I'll let you submit amended briefs on
14 those issues.

15 I thought, quite frankly, those issues had been
16 ruled on in prior cases, not this case but under this
17 statute it doesn't. There's not a First Amendment
18 right. I don't know about the due process argument.
19 But I thought that the State v. Dane (phonetic) ruled on
20 that, but I may be wrong.

21 **MR. HUFF:** Judge, I'm not sure. We can, and I
22 believe Mr. McDaniel is gonna argue that for Mr. Odom.
23 Bryan McDaniel is a member of the South Carolina Bar and
24 is involved in the civil matter in this case. We would
25 be more than happy to provide those briefs to you at

1 under equal protection and then a supplemental. And
2 then I will have the same with regard to the First
3 Amendment, so I'll go ahead and pass the whole packet up
4 to you.

5 THE COURT: Okay.

6 MS. WINES: They had been filed in the Oconee
7 Clerk's Office back in June, Your Honor. I'm giving you
8 copies that are signed but they are not clocked in, but
9 that they are filed.

10 I primarily rest on these memos. But in short let
11 me say it is the State's position that there is no
12 protected class. And in light of that, I would like to
13 just expand and say that as long as the Defendant
14 believes that he is talking to a minor, we are going to
15 charge him. It doesn't have anything to do with whether
16 the officer is undercover or what. As long as the
17 Defendant believes he's talking to a minor, we believe
18 that you can charge that.

19 And, yes, of course there is a potential defense,
20 but it does not mean that you can't charge and go to
21 court and have the jury decide what the Defendant
22 believed. The language says it is no defense if it is
23 an undercover officer in official capacity. We believe
24 the Legislature's intent was just to assist officers in
25 saying if you're an officer, there's no defense, it's

1 THE COURT: I understand. I'll note your
2 objection.

3 MS. WINES: Thank you, Your Honor.

4 THE COURT: Would you bring Officer Patterson back,
5 please.

6 (Whereupon, Officer Patterson and his girlfriend
7 returned to the courtroom.)

8 (Whereupon, the Jury entered the courtroom at
9 approximately 2:44 p.m.)

10 MR. HUFF: May it please the Court?

11 THE COURT: Yes, sir.

12 By Mr. Huff:

13 Q. Mr. Patterson, I believe where I might have been
14 was, this person on the internet, if they really
15 intended to have sex with someone less than eighteen,
16 and they reasonably believed that the person they are
17 communicating with is less than eighteen but they're at
18 least sixteen, and that sixteen-year-old agrees to the
19 communication, then that person would not violate the
20 statute, would they?

21 A. I don't believe so.

22 Q. I'm sorry?

23 A. I don't believe so, no, sir.

24 Q. Okay. Because even though the statute says that he
25 shouldn't have the intent to have engagement in sex or

1 sexual activity with somebody less than eighteen, if, in
2 fact, that person is sixteen and wants to do it, they
3 say it's not a violation, right?

4 A. Right.

5 Q. Okay. Is that a little confusing to you?

6 A. No, sir.

7 Q. Okay, good. Now, back in 2006, in May of 2006, how
8 old were you?

9 A. I believe I was thirty-two.

10 Q. Okay. Definitely over sixteen.

11 A. Yes, sir.

12 Q. Definitely over eighteen.

13 A. Yes, sir.

14 Q. Okay. So you were engaged in a conversation with
15 this Danger person, and your, your belief was that
16 Danger intended to have sex with somebody less than
17 eighteen; is that true?

18 A. Yes.

19 Q. And he reasonably believed that you were less than
20 eighteen?

21 A. Yes.

22 Q. But, in fact, you were over sixteen?

23 A. Yes.

24 Q. Now, so based upon what we just discussed, the
25 Danger fella would not be violating the statute?

1 official capacity, he has not violated the statute, has
2 he?

3 A. That's not for me to decide, sir.

4 Q. Whoa, sir.

5 A. I don't decide when they're in their official
6 capacity.

7 Q. You're the one investigating this case making an
8 accusation that some citizen has violated this law.

9 A. Yes, sir. I was in my official capacity at my
10 place of employment.

11 Q. I know you say that. My question to you is: If
12 you were not acting in your official capacity, then
13 there would be no violations of this statute, would
14 there?

15 A. I would assume not.

16 Q. You would assume not. Okay. Is that a no?

17 A. I'd give an explanation. It's not a yes-or-no
18 question, sir.

19 Q. Well, isn't it a requirement that the officer be
20 acting, that he be a law enforcement agent or officer
21 acting in his official capacity?

22 A. Yes.

23 Q. Okay. Because otherwise you're just like any other
24 more than eighteen-year-old person engaged in a sex chat
25 on the internet, right?

1 A. (No response.)

2 Q. If you are not an officer acting in their official
3 capacity, Mr. Patterson, you are just like any other
4 more than eighteen-year-old person who ---

5 MS. WINES: Objection, legal conclusion.

6 THE COURT: I'll allow it. Just, I think you made
7 your point. Would you move on with that line, please,
8 sir.

9 By Mr. Huff:

10 Q. So what's key here is whether or not you're acting
11 in your official capacity, right?

12 A. Right.

13 Q. If you are not acting in your official capacity,
14 there's not been a violation of the statute, right?

15 A. At home playing on your home internet for no
16 reason, yes.

17 Q. Yeah. Whether at home or not, if you are not
18 actually in the official capacity trying to investigate
19 one of these crimes, there's no violation because you're
20 over eighteen years of age.

21 MS. WINES: I --

22 THE COURT: I sustain the objection.

23 MS. WINES: Thank you, Your Honor.

24 MR. HUFF: Okay.

25

1 MR. SENN: All right. Nothing further.

2 THE COURT: Cross-Examination, Mr. Huff?

3 MR. HUFF: Briefly, Your Honor.

4 CROSS-EXAMINATION

5 By Mr. Huff:

6 Q. Chief Bannister, can you swear under oath today
7 what hours specifically that Mr. Patterson worked in May
8 of 2006?

9 A. No, I cannot.

10 Q. Okay. There certainly was a time schedule that
11 Mr. Patterson was supposed to work. You say -- I
12 believe you said they were regular hours?

13 A. Yes.

14 Q. You don't know what those hours were in 2006, do
15 you?

16 A. Not specifically, no.

17 Q. Okay. So, if Mr. Patterson got off work, let's say
18 he worked a seven-to-seven shift, 7 a.m. to 7 p.m., at 8
19 p.m. he would not be on duty in his official capacity,
20 would he?

21 A. That's correct.

22 Q. Okay. Because we know when you're on duty in your
23 official capacity because you're getting paid for it,
24 right?

25 A. In some cases, yes. Most instances, I should say,

1 investigation, were you?

2 A. No, sir.

3 Q. Okay. So, as far as any claim to conducting an
4 ICAC investigation through the Westminster Police
5 Department, that totally relies upon Mr. Patterson's
6 assertion that he did these?

7 A. That's correct.

8 Q. Or did them properly?

9 A. Correct.

10 Q. And I believe that every police officer at
11 Westminster Police Department has to have a bond on
12 them; is that correct? They have to take an oath, don't
13 they?

14 A. Yes.

15 Q. And they have to be bonded, as well, don't they?

16 A. I'm sure they do.

17 Q. Okay. And that's the requirement that every police
18 officer in the State of South Carolina has to have in
19 order to lawfully have the power of arrest, is to be
20 sworn under oath and to have a bond, correct?

21 A. Correct.

22 MR. HUFF: All right, thank you. No further
23 questions.

24 THE COURT: Any Redirect?

25 MR. SENN: Very limited, Your Honor.

1 the motion to dismiss for vindictive prosecution; is
2 that correct?

3 MR. McDANIEL: Yes, Your Honor, and I'm Brian
4 McDaniel.

5 THE COURT: Thank you, sir.

6 MR. McDANIEL: I'm going to pass up the briefs. If
7 I may, Your Honor? I appreciate the opportunity to make
8 this argument. I understand it was made pretrial. The
9 information was submitted previously in front of Judge
10 Macaulay in which we proffered Mr. Huff, and I
11 understand that Your Honor has that information.

12 THE COURT: Yeah. And I'm going to request, I do
13 not want to retrace new ground.

14 MR. MCDANIEL: That's fine. I don't want to go
15 back through all of that. I just wanted to put on the
16 record our belief as to the, I believe, most fundamental
17 grounds for this motion.

18 Your Honor, the indictment in this case under the
19 United States v. Johnson case must be dismissed if there
20 is actual vindictiveness or the presumption of
21 vindictiveness has not been rebutted.

22 In this case, in any of these cases, by punishing
23 the Defendant for doing what the law plainly entitles
24 him to do, the Court has found that to be indicative of
25 creating that presumption of vindictiveness.

1 **THE COURT:** Isn't the argument, Mr. McDaniel, that
2 because the Defendant required the State to go through
3 evidentiary foundation hoops, that they decided the week
4 before the trial in Spartanburg to indict him on two
5 counts in Spartanburg; the fact they had a lot more
6 counts in Spartanburg is indicative of their
7 vindictiveness. Is that your argument?

8 **MR. MCDANIEL:** That is the essential. What's
9 unique about this case is that we can demonstrate the
10 actual decision, when it was made. A lot of cases you
11 can't tell. In this case there was a phone conversation
12 Mr. Huff testified to in which the prosecution said
13 essentially, and they've admitted, if you're gonna ask
14 for this, if you're going to require this, then we're
15 gonna indict in Oconee County.

16 **THE COURT:** At the prior argument I had with
17 counsel, she denied that.

18 **MR. MCDANIEL:** Well, I'll refer you to the record,
19 meaning to the arguments made in the prior hearing. And
20 that is the denial is simply, no, we changed our
21 strategy during that conversation, and trying to
22 characterize the decision as they're changing strategy,
23 but clearly the decision was made at that time under
24 those circumstances. And I would ask you to review that
25 and review Mr. Huff's testimony on that.

1 or possibly not true. It could corroborate or dispute
2 what you're testifying to.

3 MS. WINES: Your Honor, I renew the objection. The
4 incident report is not evidence itself. I believe we're
5 trying to get into a discussion of ---

6 THE COURT: Just one second. Let me see the
7 attorneys up here, please.

8 MS. WINES: Yes.

9 (Whereupon, a discussion at sidebar was held
10 off the record.)

11 By Mr. Huff:

12 Q. Mr. Patterson, let me just kind of conclude for a
13 minute with this. Your policy says you are supposed to
14 prepare an incident report when you investigate a crime;
15 is that right?

16 A. Not all crimes, sir.

17 Q. ICAC, their policies say that you're supposed to
18 record and document everything that you do in an
19 undercover investigation; is that right?

20 A. Yes, sir.

21 Q. Okay. You did not do an incident report in this
22 case, did you?

23 A. No, sir. I didn't conclude my investigation.

24 Q. My question was you did not ---

25 MS. WINES: We have a matter of law, Your Honor.

1 Oh, the subpoenas. I wanted to clarify that. My
2 recollection on the subpoenas is there was an
3 administrative subpoena sent to Spartanburg for, I want
4 to say, time sheets. And I was upset because my
5 understanding about discovery is it should come through
6 me. And I offered to get them. I basically said, if
7 you just ask me, and I'll get the stuff if it's there,
8 and there is no administrative subpoena power, so I
9 thought it was improper to do it that way. That's my
10 recollection on that, Your Honor.

11 It wasn't that we were trying to avoid anything. I
12 was more than willing and happy to participate in
13 providing anything that may be out there. But there is
14 no administrative subpoena power.

15 THE COURT: I'm not sure what the rule has to do
16 with vindictiveness either, but...

17 MS. WINES: Okay. I just wanted to -- just in case
18 that concerns Your Honor, I thought of something that I,
19 I did not agree with the presentation of that. But
20 beyond that, if you don't mind if I could just check my
21 notes for one second and make sure I've hit everything.

22 THE COURT: Okay.

23 MS. WINES: Oh, Okay. Briefly, the
24 misrepresentation of the State Grand Jury. First of
25 all, I'm not clear if the Defendant is saying I

1 MS. WINES: Yes, sir.

2 THE COURT: --- we're gonna deal with them in
3 Oconee. And I'm not quite sure how we make that leap of
4 faith, please.

5 MS. WINES: Okay. My point was the issue was
6 dealing with Mark Patterson's records.

7 THE COURT: Right.

8 MS. WINES: And because we were to the point of
9 nobody had copies, much like the situation we've had
10 here in Oconee County. We were to the point of seeking
11 them from Andy Anderson. And so that was going to take
12 place at the beginning of the Spartanburg trial. Where
13 we should have been doing pretrial and selecting a jury
14 and that sort of thing in Spartanburg, we were going to
15 be having an attorney/client privilege hearing on Mark
16 Patterson's records.

17 And I felt like that was just becoming too
18 cumbersome. It wasn't prudent to proceed with trying to
19 admit bad act evidence if we were going to have to have
20 hearings about attorney/client privilege. It just
21 didn't ---

22 THE COURT: Well, let me ask you this: Am I
23 correct in understanding that what you are saying then
24 is we chose to indict him in Oconee on these two charges
25 because I did not want to have an attorney/client

1 hearing in Spartanburg prior to trial?

2 MS. WINES: It's not just because of that issue,
3 Your Honor. It had always been considered and we never
4 said -- well, I don't know what my predecessor said. My
5 understanding was that it was always stated at that time
6 we did not intend to seek prosecution in Oconee County.
7 And so in consultation with co-counsel and other folks
8 in my office we decided, because we were having all
9 sorts of collateral fallout, it just wasn't prudent to
10 seek -- we were -- the bottom line is, Judge, is we were
11 trying not to pile on charges in the first place.

12 THE COURT: Well, I understand ---

13 MS. WINES: And no good deed ---

14 THE COURT: Hold on. I have a question ---

15 MS. WINES: --- goes unpunished apparently.

16 THE COURT: --- because I'm curious.

17 I mean, we have Lyle hearings, we have *Jackson v.*
18 *Denno* hearings all the time. That's what we normally do
19 first day of trial if we can't get them done pretrial.

20 MS. WINES: Absolutely.

21 THE COURT: So I don't necessarily know that
22 avoiding a similar type of trial on bad act evidence or
23 Lyle type of evidence for Mr. Jackson would warrant a
24 re-indictment ---

25 MS. WINES: Okay. Let me ---

1 THE COURT: --- as well as having a Lyle hearing
2 with regard to Mr. Patterson's records.

3 MS. WINES: Yes, sir.

4 THE COURT: And what are the other reasons, if
5 there are any?

6 MS. WINES: Well, the other reasons are we had
7 probable cause to believe he committed a crime in Oconee
8 County ---

9 THE COURT: Right.

10 MS. WINES: --- and we always did.

11 THE COURT: Right. So the underlying thing. In
12 other words ---

13 MS. WINES: Maybe I'm not understanding. I'm
14 sorry.

15 THE COURT: No. It was a poorly worded question.
16 Clearly it wasn't the intention of the Attorney General
17 at some point to indict on the Oconee County chats.

18 MS. WINES: Yes, sir.

19 THE COURT: All right. And I guess my question is
20 geared towards why did that change in mentality occur?
21 In other words, why did you all of a sudden decide,
22 okay, now it's appropriate to indict for these Oconee
23 County charges?

24 And I know you explained to me the Mark Patterson
25 attorney/client and Lyle, okay?

1 THE COURT: --- or another indictment, and
2 particularly since there was two indictments.

3 MS. WINES: Sure. Let me expand on that, Judge.

4 THE COURT: Please.

5 MS. WINES: It's not just that we were going to
6 have a Lyle hearing. That's my point. We were more
7 than prepared to have a Lyle hearing.

8 THE COURT: Okay.

9 MS. WINES: We expected to have a Lyle hearing.

10 THE COURT: Okay.

11 MS. WINES: We were fully ready for that.

12 My concern was bringing up Andy Anderson from Aiken
13 to Spartanburg and taking additional time to have an
14 attorney/client privilege hearing before we even got to
15 the Lyle or in addition to the Lyle issues. I'm not
16 saying it was a Lyle problem, Your Honor. We were
17 prepared on that.

18 I'm saying the hearing on having attorney/client
19 privilege and whether we were gonna get Mark Patterson's
20 records, because it was my understanding that should the
21 Lyle stuff be admitted, it would be similar to the case
22 here, counsel would want time to review the records,
23 would want to potentially use impeachment evidence. I
24 have no idea what the records were.

25 THE COURT: How long did the trial take in

1 Spartanburg?

2 MS. WINES: From the beginning of jury selection
3 and pretrial, we started on Monday and we went through,
4 I believe we had a mistrial declared the following
5 Tuesday, Your Honor. I believe that's correct.

6 THE COURT: The following Tuesday?

7 MS. WINES: Yes, sir. Yes, sir. And so the point
8 being, as Your Honor knows, we already had a lot of
9 Spartanburg chats and it was just becoming too much, and
10 we felt that the Defendant did commit a crime in Oconee
11 County, we always felt that, but we were trying to do it
12 in one proceeding.

13 But because it was just getting to be this massive
14 thing, we felt that it was more prudent to seek
15 indictment in Oconee County, knowing that we would have
16 to deal with the Mark Patterson records then, but it
17 would be more appropriate in dealing with that case
18 where he was the lead investigator, Your Honor.

19 Does that make more sense?

20 THE COURT: Let me ask you to explain to me this.
21 What was -- articulate to me, if you can, the reasons
22 for indicting the Defendant here in Oconee County. I
23 know that you wanted to avoid having an attorney/client
24 hearing ---

25 MS. WINES: Uh-huh.

1 MS. WINES: Uh-huh.

2 THE COURT: Any reasons other than that?

3 MS. WINES: We felt that the two chats were more
4 aggressive, Your Honor. They were stronger. And quite
5 frankly, had I been lead counsel in the first place, I
6 might have done it in reverse order because of the
7 problems that we ended up having in Spartanburg. But we
8 already had it scheduled for trial, and I felt stuck to
9 proceed with Spartanburg, Your Honor.

10 THE COURT: Were you lead counsel in the first
11 case?

12 MS. WINES: No, sir.

13 THE COURT: Were you lead counsel in this case?

14 MS. WINES: Yes, sir.

15 THE COURT: Was it your decision to decide to
16 indict in this case?

17 MS. WINES: You mean the two indictments in Oconee
18 County?

19 THE COURT: Yes, ma'am.

20 MS. WINES: With advice and consent of my
21 supervisors, yes.

22 THE COURT: Okay. And you adopted the role in the
23 interim as being the lead counsel?

24 MS. WINES: I took over as lead counsel after the
25 case went up on appeal in Spartanburg.

1 THE COURT: Okay.

2 MS. WINES: But it had already been indicted and
3 was underway, and once the appeal was finished and we
4 were ready to proceed, Jack Swerling and I then began
5 scheduling trial. And we had, I thought, come up with a
6 date, and that was when Mr. Huff took over and I agreed
7 to wait. And he and I worked out the times.

8 THE COURT: All right. Under whose administration
9 was the decision to indict these Oconee County cases
10 made?

11 MS. WINES: Meaning who was the Attorney General?

12 THE COURT: (Nodded head.)

13 MS. WINES: Henry McMaster.

14 THE COURT: There wasn't a change in
15 administration?

16 MS. WINES: No, sir.

17 THE COURT: All right. Anything further?

18 MS. WINES: You had a question. I believe your
19 question, you also asked why we had two indictments?

20 THE COURT: Yes, ma'am, I did.

21 MS. WINES: Okay. That was because we ended up
22 with some what I'm gonna call confusion in Spartanburg.
23 We had lumped all the chats into one indictment. And
24 even going into the beginning of the trial, it just
25 seemed very confusing. But I was stuck with the

1 indictment at that point, Your Honor. And it just seems
2 cleaner and we have done most of our cases like that
3 since then. We'll select the chatter to indict on, and
4 then we'll do them separately, because it's just neater
5 to say where we think there was a day that there was a
6 crime, we do that as an indictment rather than lump them
7 all together.

8 I won't say we do that in all cases, Your Honor. I
9 would say where we feel like there are chats, that you
10 need more of a cumulative view of it or -- yeah,
11 cumulative -- we would still do one indictment
12 encompassing all the chats. However, the Oconee chats
13 we felt on both chats they could stand on their own.

14 THE COURT: All right. If I recall what you
15 testified to last week, I guess, when asked, I think
16 that the representation was made that you made the
17 comment that "I'll just indict him in Oconee" when
18 Mr. Huff proceeded to demand release of Mr. Patterson's
19 records. And, if I recall what you told me -- and you
20 correct me --

21 MS. WINES: Okay.

22 THE COURT: -- as an officer of the court that you
23 deny making that comment at that point in time. Is that
24 correct?

25 MS. WINES: I don't remember the exact language

1 that I used, Your Honor, but it was in the conversation.
2 Ultimately I told Mr. Huff we will deal with the Mark
3 Patterson issue in Oconee. We'll just indict him in
4 Oconee County. But, and obviously that's subject to the
5 grand jury actually issuing a true bill. That was just
6 a ---

7 THE COURT: Which is not very hard.

8 MS. WINES: I've actually had a no bill before, but
9 yes, sir, not in these cases.

10 THE COURT: I've never seen one.

11 MS. WINES: I have. I have had a no bill, but it
12 was when I was in Richland County.

13 THE COURT: Okay.

14 MS. WINES: But I understand Your Honor's point.
15 To answer your question, I think, I hope, it was in that
16 phone call that I communicated to Mr. Huff. And the
17 primary reason for that is I wanted to tell him that
18 before the trial because I didn't want allegations of
19 misconduct coming up after the trial. That was why I
20 made such a point of saying it on the phone to him right
21 then and there so that it was out in the open.

22 And I think I just need to finish one thought --

23 THE COURT: Okay.

24 MS. WINES: -- to clarify.

25 THE COURT: Okay.

1 MS. WINES: That ---

2 THE COURT: --- three years prior to the trial.

3 MS. WINES: That is correct. And I've already
4 explained to Your Honor, I guess it was yesterday, that
5 the delay from 2007 to 2010 was the appeal and the
6 change in counsel and I don't need to belabor that
7 point.

8 THE COURT: I got you. Okay.

9 MS. WINES: In summary, I don't believe frustration
10 amounts to vindictive prosecution, Your Honor.

11 THE COURT: All right, you guys. Thank you very
12 much for your argument. I'll take it under advisement.
13 I'll make a decision in the morning. I'll look at it
14 and think about it a little bit more.

15 Thank you again. I know that these cases are
16 heated. I know sometimes exchanges occur in the
17 courtroom, and with me, too, and to the extent I have, I
18 apologize to counsel. But everybody has been prepared
19 and everybody has been very aggressive, and that is how
20 you have been representing your clients' interests on a
21 very good basis.

22 9:00 in the morning, gentlemen and ladies.

23 MS. WINES: Thank you, Your Honor.

24 THE COURT: All right.

25 (Whereupon, Court adjourned at 7:09 p.m.)

1 Macaulay's rule on that. I think that -- at the
2 pretrial. I think I can and should rule on that again.
3 I'm gonna deny that motion. I don't believe you have a
4 Constitutional right to engage in sexual adult oriented
5 language or chat with minors. I deny it on equal
6 protection grounds.

7 Based on my review of the statutory scheme, there's
8 a rational basis between the treatment of
9 sixteen-year-olds versus other age based on the
10 statutory scheme allowed me to refer to. And I looked
11 up this morning the elements of CSC with a minor is for
12 somebody under sixteen, so it seems to tie in together
13 with that statutory scheme.

14 The motion to dismiss for untimely indictment is
15 denied. And the basis for that is what was argued by
16 Ms. Wines, and that is there was an appeal based on a
17 ruling that came out of Spartanburg that delayed things.
18 It delayed prosecution not only on this case, but other
19 cases. In addition, there was change of counsel and so
20 that delay is understandable.

21 The motion to dismiss for prosecutorial
22 vindictiveness I am not ruling at this stage. I will
23 hear from counsel on that before I make my ruling. I
24 know that I made an oral ruling through my law clerk
25 when I was out in school that I was denying the motion

1 MS. WINES: Correct.

2 THE COURT: Have you had an occasion to create a
3 profile.

4 MS. WINES: Yes.

5 THE COURT: And then ask him about the, the...

6 MS. WINES: Correct.

7 THE COURT: Okay.

8 MS. WINES: I don't intend to get into background
9 and training, just ---

10 THE COURT: We don't need to belabor the point.

11 MS. WINES: Right, okay. And I'm sure Mr. Huff
12 will stop me if I'm going in the wrong direction.

13 THE COURT: I will.

14 MS. WINES: Okay. Thank you, Judge.

15 THE COURT: Now do you feel comfortable with your
16 exhibit?

17 MS. WINES: No. They're, they're supposed to be
18 checking this for me. The Solicitor's Office is
19 apparently closed, so...

20 If you will bear with me, Judge. I'm sorry. I may
21 have another copy that's not highlighted that we can
22 use.

23 (Whereupon, a discussion was held off the record.)

24 MR. JOHNSTON: This is the motion to dismiss under
25 the First Amendment, Your Honor.

1 Q. All right. And do people on the Romance South
2 Carolina chat room talk about sex?

3 A. Yes.

4 Q. Okay. And basically isn't that a chat room where
5 adults go to to talk about sex?

6 A. I don't know what they do. That's up to each
7 individual person.

8 Q. But when you go there, Mr. Patterson, don't you see
9 everybody talking about sex?

10 A. Not everybody, sir.

11 Q. Okay. They're not talking about blue light
12 specials at K-Mart, are they?

13 A. Yes, sir, sometimes.

14 Q. Okay. The bulk of that chat room is emphasis on
15 sex; isn't that true?

16 A. I couldn't answer that. I hadn't done a study to
17 confirm it.

18 Q. Okay. But you chose to go there?

19 A. Yes, sir. That's where I conducted my
20 investigation.

21 Q. All right. You didn't go to a chat room that is
22 geared emphasis on minor children, did you?

23 A. Yes.

24 Q. Okay. Are you saying that Romance South Carolina
25 is, the emphasis is on minor children?

- 1 A. No. But minor children hang out there, sir.
2 That's why I go there.
3 Q. Okay. Do you have any evidence with you in court
4 today that minor children are on that website?
5 A. Not in court with me today.
6 Q. Okay. You can never really believe what somebody
7 writes in one of these sex chat rooms, can you?
8 A. It depends on the person, I imagine, sir.
9 Q. You can never truly believe that what the person
10 says about himself is true, can you?
11 A. I wouldn't say never, sir.
12 Q. Okay. Do people on these adult sex web sites or
13 chat rooms lie about their age?
14 A. Yes.
15 Q. Do they lie about who they are?
16 A. Yes.
17 Q. Do they lie about even what sex they are?
18 A. Yes.
19 Q. Men can say that "I'm a female"?
20 A. Yes, sir.
21 Q. Women can say that they are a male?
22 A. Yes, sir.
23 Q. White folks can say that they are from Mexico and
24 are Hispanics?
25 A. Yes, sir.

1 Q. They lie about what city they live in?

2 A. Some do.

3 Q. About their jobs or occupations?

4 A. Yes.

5 Q. Okay. They lie about a lot of stuff, don't they?

6 A. Yes.

7 Q. Because these chat rooms basically give you
8 anonymity, don't they?

9 A. To a point.

10 Q. Okay. To a point, that's right. And to a point
11 they get to say in these sex chat rooms, if it is an
12 eighty-year-old Hispanic female, they could say that
13 they are a twenty-one-year-old African-American male
14 that's a professional boxer and every bit of it would be
15 untrue.

16 A. That's correct, yes.

17 Q. Okay. So they get to role play out who they are
18 through the internet, don't they?

19 A. If they wanted to.

20 Q. Okay. And that goes on in the Romance South
21 Carolina chat room, doesn't it?

22 A. Sometimes.

23 Q. And one way that you can know whether or not the
24 person is telling the truth is if they send a photograph
25 or video cam image of themselves.

1 room, you have to represent that you are eighteen years
2 of age.

3 A. Not to log into the chat room, sir. It's just to
4 set up the account.

5 Q. Open the account, okay.

6 Now, you also -- the account information that you
7 log in with -- you are setting up an account to go into
8 Romance South Carolina. Okay? And you have to
9 electronically key in who you are and that you're
10 eighteen years of age.

11 A. For the account information, yes, sir.

12 Q. Okay. Where is your account information, where is
13 that of what you put in there?

14 A. I don't understand. What do you mean?

15 Q. Did you print it out? Did you preserve it? Did
16 you save it to show that you represented yourself as
17 being eighteen years of age?

18 A. That was preserved through Yahoo!'s records. We
19 didn't print that out.

20 Q. You didn't print that out, okay. Now, the -- you
21 also have a profile page?

22 A. Yes, sir.

23 Q. Okay. And the profile page, I think you testified
24 to, that is where you put up information that the other
25 person chatting with you can see how old you are, right?

1 Q. All right. And down here to the left does it say,
2 "to enhance the user experience and compliance with our
3 terms of service, Yahoo! chat is now available to users
4 who are eighteen years of age or older", right?

5 A. Yes.

6 Q. So what they're saying is, and of course I think
7 you've stated, you've got to be eighteen to get into
8 this chat room, right?

9 A. Yes, sir.

10 Q. And these up here says categories. Can we refer to
11 these little yellow things as folders?

12 A. Yes, sir.

13 Q. Okay. And the folder that you're going into is,
14 they have plus signs and minus signs and minus signs is
15 where you are going into, right?

16 A. No, sir.

17 Q. All right. That's not correct? Is that not what
18 opened when you hit something and it goes to minus,
19 that's not what you're opening?

20 A. That's when you're just un-classing it. It doesn't
21 exactly mean you're gonna enter that particular one.

22 Q. All right. But in this particular case that's
23 where you went, right?

24 A. I opened the romance folder.

25 Q. All right. And under romance they've got adult,

1 thousands nationwide that are online chatting, right?

2 A. Uh, no, sir. I don't know because that's not adult
3 sex chat rooms.

4 Q. Okay. According to you those are not adult sex
5 chat rooms.

6 A. No, sir.

7 Q. And did you bring any of the chats that you see in
8 this chat room with you today?

9 A. No, sir.

10 Q. Okay. All right. Thank you, sir.

11 But we know that this, the options you've got, when
12 you go to one of these and you're saying it's not -- did
13 you say it's not an adult chat room?

14 A. Sex chat rooms.

15 Q. Okay. So your options are, you could click on
16 adult and go to the states and you can open the states,
17 but the only option you've got under romance is adult by
18 location or friends?

19 A. No, sir. You're misunderstanding that set-up.

20 Q. Well, let me, let me ask you this. Romance, the
21 titles below it are adult by location and friends, and
22 you went in by location, right?

23 A. Yes, sir.

24 Q. Because you wanted to go to the South Carolina one.
25 Of course, we can't see it here, right?

1 THE COURT: I will.

2 MR. MCDANIEL: Again, if that is the case that
3 there was evidence that the action occurred, we believe
4 that that would create the presumption of an improper
5 vindictive motive in which they would then have to rebut
6 that there is some evidence to show that there wasn't an
7 improper and vindictive motive.

8 THE COURT: So let me make sure I understand.
9 Again, that you have actual or implied. If you have the
10 implied based on the circumstantial evidence surrounding
11 the charges, then you present that, then they have to
12 come back with a rebuttal based on the circumstantial
13 evidence or the implied vindictiveness?

14 MR. MCDANIEL: That's right.

15 THE COURT: Is there a requirement to rebut on
16 actual vindictiveness?

17 MR. MCDANIEL: If there's an actual vindictiveness
18 done, I don't think then the case should be dismissed.
19 I think it's only when the presumption exists, then it's
20 incumbent upon the prosecution then to rebut that
21 presumption.

22 THE COURT: Okay.

23 MR. MCDANIEL: We believe we've met that
24 presumption. I would ask the Court maybe after argument
25 to rule whether we met that presumption or whether we

1 November 9, 2011

2 9:00 a.m.

3 THE COURT: Is there anything from the State before
4 we begin?

5 Motions:

6 MS. WINES: Two very brief matters. I would love
7 to put something on the record I neglected to state last
8 night in reference to the motion to quash. It will be
9 very brief, Your Honor. And secondly ---

10 THE COURT: Motion to dismiss?

11 MS. WINES: Yes, sir. Motion to quash the
12 indictment, motion to dismiss, yes, sir.

13 THE COURT: All right.

14 MS. WINES: I recognized I just had one brief
15 comment I wanted to add to the record, not of a
16 substantive argument, Your Honor.

17 THE COURT: All right. We'll do that later.

18 MS. WINES: Yes, sir.

19 THE COURT: Anything else?

20 MS. WINES: The second issue, Your Honor, we have a
21 certified copy of the Defendant's DMV records I'll show
22 counsel at this time. And we are going to ask if Your
23 Honor could take judicial notice, and of course I'll
24 provide Your Honor with a copy here in just a second.
25 We're going to ask Your Honor to take judicial notice

1 pursuant to Rule of Evidence 201 under (b)(2) and (d).
2 We would ask for a judicial notice of the Defendant's
3 date of birth and an instruction to the jury as such.

4 THE COURT: His date of birth?

5 MS. WINES: His date of birth, Your Honor. Yes,
6 sir.

7 MR. HUFF: Your Honor, we would object to the
8 document. One, it's not been provided to us pursuant to
9 our discovery request. Secondly, it doesn't speak for
10 itself. You would need the record custodian to begin
11 with, and they can't assert the truthfulness of this
12 document.

13 THE COURT: Well, let me ask you this, Mr. Huff:
14 Would the defense be willing to stipulate as to the
15 Defendant's age?

16 MR. HUFF: No, sir, we would not.

17 THE COURT: Would not?

18 MR. HUFF: No, sir.

19 THE COURT: Okay. Let me see the document, please.

20 MR. HUFF: And, Judge, if we could for the record
21 note no different than the W-4 that Mr. Patterson, you
22 can't, not gonna stipulate to the honesty or integrity
23 or truthfulness of that document. You can't prove it by
24 the document.

25 THE COURT: Well, is the standard the same for the

1 accused as it is for a witness?

2 MR. HUFF: Yes, sir, I think it would be. I'm
3 trying to look at the rule now, Your Honor.

4 MS. WINES: Your Honor, we're not asking that the
5 document itself be introduced. We believe that it does
6 speak for itself under(b)2, Rule 201(b)2 (reading):

7 Capable of accurate and ready determination by
8 sources whose accuracy cannot reasonably be questioned.

9 As it is certified from the DMV, we believe you
10 cannot question it, and we would just ask that Your
11 Honor take judicial notice and instruct the jury, but
12 not to have the document itself be entered.

13 MR. HUFF: Judge, this is an element of the crime.
14 I don't think you can take judicial notice of an element
15 of a crime.

16 THE COURT: I disagree with that. Why would this
17 not be admissible since it's been certified under the
18 statutory scheme that allows these types of documents to
19 be used in court?

20 MR. HUFF: Judge, I've got to look. There are
21 different statutes that apply to DMV, and again, I think
22 that the State has not raised those.

23 THE COURT: Okay. I'm not aware of those statutes,
24 Mr. Huff.

25 When are you planning to have this?

1 **MS. WINES:** Your Honor, we would just ask that
2 judicial notice be given prior to the closing of the
3 State's case.

4 **THE COURT:** Okay. Let's take this up later. I'm
5 gonna give you all a chance to review it, please.

6 **MS. WINES:** Yes, sir. That's all we have this
7 morning. Otherwise we are ready to proceed.

8 **THE COURT:** All right. Mr. Huff, is the Defense
9 ready to proceed?

10 **MR. HUFF:** Yes, Your Honor, we are.

11 **THE COURT:** Okay. Bring the jury back in.

12 (Whereupon, a discussion was held off the record
13 between the Court and court reporter.)

14 (Whereupon, a short break was had.)

15 (Whereupon, the Jury entered the courtroom at
16 approximately 9:21 a.m.)

17 **THE COURT:** Good morning, Mr. Gibson, ladies and
18 gentlemen of the jury. As I do every morning, I'm gonna
19 ask if anyone read, seen, or heard anything about this
20 case. Have you?

21 **THE FOREMAN:** No, sir.

22 **THE COURT:** Very well. Are you ready to proceed?

23 **THE FOREMAN:** Yes.

24 **THE COURT:** Thank you very much.

25 Ms. Wines, you may call your next witness.

1 being eighteen years of age or older, correct?

2 A. Assuming they are telling the truth about their
3 age, yes, sir.

4 Q. Okay, yes, sir. All right, sir.

5 MR. HUFF: Give me one moment, if you would,
6 Mr. LaChance.

7 THE WITNESS: Okay, sir.

8 By Mr. Huff:

9 Q. Mr. LaChance, I've just got one final question for
10 you. These documents that I was provided with today,
11 these documents you've just discussed, State's 9 and 10,
12 that I was provided with this morning, were you provided
13 with these documents this morning as you came into
14 court?

15 A. Just these copies just this, just this morning.

16 Q. All right. And who gave you these copies this
17 morning?

18 A. The State's attorney.

19 MR. HUFF: All right. Thank you, no further
20 questions.

21 THE COURT: Any Redirect?

22 MR. SENN: Yes, Your Honor.

23 REDIRECT EXAMINATION

24 By Mr. Senn:

25 Q. Mr. LaChance, how did you verify these documents

1 MS. WINES: We agree as well. We don't seek to
2 admit the hard drive into evidence either. It was my
3 understanding for Your Honor we needed to describe it
4 for the record now, as to what was ---

5 THE COURT: What exhibits will be ---

6 MS. WINES: Yes.

7 THE COURT: --- subject to the stipulation on the
8 chain of custody?

9 MS. WINES: Yeah. So if it would help Mr. Huff, we
10 could just go ahead and take it out of the packaging and
11 have that marked and stipulate?

12 MR. HUFF: The identifying stickers are on the hard
13 drive inside the bag.

14 MS. WINES: Oh.

15 MR. HUFF: I mean, I don't know what it is why we
16 have got to ---

17 THE COURT: Please take it out and let him look at
18 it, then. While you're doing that, I'm gonna take
19 judicial notice of the Defendant's age as being June 22,
20 1973. And I will instruct the jury that they have to
21 accept as a conclusive fact that the Defendant's date of
22 birth is June 22, 1973. And I base that on the Statute
23 19-540 as far as certification of governmental records,
24 Rule 9017 authentication, and also Rule 201(b)(2) and
25 201(g).

1 THE COURT: What that means, ma'am, is that you are
2 free right now but you are still under subpoena and they
3 can call you back.

4 THE WITNESS: Yes, sir.

5 THE COURT: Thank you.

6 (Whereupon, the Witness was excused, subject to
7 re-call.)

8 THE COURT: Would you call your next witness,
9 please.

10 MS. WINES: Your Honor, if I could have just a
11 minute to confer with co-counsel, please?

12 THE COURT: Yes, ma'am.

13 (Whereupon, a discussion was had off the record.)

14 (Whereupon, a discussion was had at sidebar off the
15 record.)

16 THE COURT: All right. Mr. Gibson, ladies and
17 gentlemen of the jury, I have taken judicial notice of a
18 fact. That means that you are not allowed to debate
19 whether or not it's true or accurate. I charge you that
20 you must find as conclusive the fact that the
21 Defendant's date of birth is June 22nd, 1973. That's
22 June 22nd, 1973, and you shall not and you are not
23 allowed to debate that. You must accept that as a
24 conclusive fact.

25 Now, would you call your next witness, please,

1 for the arrival of the witness?

2 MS. WINES: No objection, Your Honor.

3 THE COURT: Does the Defense?

4 MR. HUFF: No, Your Honor.

5 THE COURT: Okay. Madam Clerk, would you please go
6 tell the jury solely "We're waiting for the arrival of
7 the witness."

8 THE CLERK: Yes, Your Honor.

9 THE COURT: Okay. Thank you.

10 (Whereupon, the Court and clerk leave courtroom.)

11 (Whereupon, a recess was taken.)

12 (Whereupon, the Court enters courtroom.)

13 THE COURT: Please be seated. Mr. Huff, my law
14 clerk advises me that your witness is here.

15 MR. HUFF: Yes, sir, Your Honor. We have the Clerk
16 from Westminster, she is here. And my other witness is
17 already at an earlier time of arrival than previously
18 mentioned.

19 THE COURT: Very good. Thank you.

20 Would you bring the jury in, please, sir.

21 MR. HUFF: Oh, Judge, we are preserving the
22 remaining motions and DV, if we're going into the
23 Defense side, we want to make sure that's ---

24 THE COURT: Without waiving your right to do so.

25 MR. HUFF: Thank you, Your Honor.

1 (Whereupon, Mr. Senn returned to the courtroom.)

2 MR. JOHNSTON: Your Honor, may it please the Court,
3 the defense would call Ms. Jennifer Adams.

4 THE CLERK: Ma'am, please come forward and be
5 sworn. Please place your left hand on the Bible and
6 raise your right hand. (Complies.)

7 Do you solemnly swear or affirm the testimony you
8 give the Court be the truth, the whole truth and nothing
9 but the truth?

10 THE WITNESS: I do.

11 THE CLERK: Thank you. Please be seated.

12 JENNIFER ADAMS,
13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 By Mr. Johnston:

16 Q. State your name, please, ma'am.

17 A. Jennifer Diane Adams.

18 Q. Where do you work?

19 A. City of Westminster.

20 Q. How long have you been employed by the City of
21 Westminster?

22 A. Eight years.

23 Q. What are your duties at the City of Westminster?

24 A. I'm a city clerk/treasurer.

25 Q. As part of your duties, do you have anything to do

1 A. I don't show anything to show him working. There's
2 nothing that's written there.

3 Q. If Mr. Patterson worked on Saturday, May the 6th,
4 would it have been the policy of the City of Westminster
5 that he should have so indicated on his time sheet?

6 A. Yes.

7 Q. I asked you in a phone conversation when I arranged
8 for your appearance today if you were familiar with a
9 bond or a surety bond that either the City of
10 Westminster or Officer Mark Patterson might have had at
11 the time that Officer Patterson worked for the City of
12 Westminster.

13 A. Yes, you did.

14 Q. To your knowledge -- first of all, would you have
15 such knowledge if, in fact, there were a bond of that
16 nature?

17 A. I would think so.

18 Q. All right. To the best of your knowledge, did
19 either the City of Westminster or Officer Mark Patterson
20 have a bond at the time that he worked as a police
21 officer for the City of Westminster?

22 A. Not to my knowledge.

23 MR. JOHNSTON: Beg the Court's indulgence one
24 moment.

25 THE COURT: Yes, sir.

1 sheet and I could not tell you that exact time.

2 Q. All right. So that would have been done before it
3 got to you?

4 A. Yes, sir.

5 Q. Okay. And what are you looking for when you
6 perform these examinations?

7 A. It depends on the type of case that we are working
8 on. In this particular case we were looking for screen
9 names.

10 Q. And you said you use EnCase software?

11 A. Yes, sir.

12 Q. Is that a software that's normally used for these
13 type of examinations?

14 A. Yes, sir. EnCase or FTK, which is short for
15 Forensic Tool Kit, is also a software that's primarily
16 used by forensic examiners.

17 MR. ANDERS: May I approach the witness, Your
18 Honor?

19 THE COURT: Yes, sir.

20 By Mr. Anders:

21 Q. I'm gonna hand you what's been previously marked
22 State's Exhibit 8. Could you tell the jury what this
23 is?

24 A. This is a copy of the forensic examination report
25 from my examination of the hard drive.

1 Q. Did you generate that report?

2 A. Yes, sir, I did.

3 Q. Okay. And that was in 2010, correct?

4 A. Yes, sir.

5 Q. Okay. And from whose hard drive did that report
6 come from?

7 A. From the hard drive submitted for Anthony Odom.

8 Q. And when you performed that examination and
9 generated that report, were the safeguards that you
10 described earlier for the jury in place?

11 A. Yes, sir.

12 Q. Okay. Would you tell the jury what you found?

13 A. Well, to further show that the safeguards were
14 taken, one of the first things we do with an initialized
15 case, which is an end script that EnCase uses, and it
16 gives an acquisition hash and a verification hash.
17 Those are really long, almost like your VIN that's
18 associated with your car.

19 It tells us that there's a bit-by-bit copy of that
20 acquisition hash that needs to match the verification
21 hash to show that we have, in fact, a bit-by-bit copy.
22 If during the copy process one piece of data was
23 changed, one pixel on a picture, those two numbers would
24 not match, but these two numbers matched in this case.

25 Q. Okay. Any items of interest found?

1 A. That is May 4th, 2006.

2 MR. SENN: Beg the Court's indulgence.

3 THE COURT: Yes, sir.

4 By Mr. Senn:

5 Q. Okay. Let me direct your attention back to Exhibit
6 9. Can you state the IP address listed there?

7 A. That is 68.220.79.51.

8 Q. And that is the screen name or account name
9 associated with that account log-in?

10 A. Correct. That is the IP address that Yahoo!
11 captured during that log-in session by that user account
12 screen name or that user account.

13 MR. SENN: Nothing further, Your Honor.

14 THE COURT: Cross-Examination?

15 MR. HUFF: May it please the Court?

16 CROSS-EXAMINATION

17 By Mr. Huff:

18 Q. Now, Mr. LaChance, you say you've been with Yahoo!
19 for about three years?

20 A. Yes, sir.

21 Q. All right. The documents that you have discussed
22 today, did you bring those -- where are you physically
23 located with Yahoo!? Where do you reside?

24 A. We reside in Sunnyvale, California.

25 Q. Okay. And did you physically go to the Yahoo!

1 representing that they are at least eighteen years of
2 age?

3 A. There are exceptions. Minors can register for an
4 account as long as they have certain parental consent,
5 but generally the Yahoo! terms of service requests or
6 requires that Yahoo! Users provide accurate information.

7 Q. Right. So evidently you do know about the
8 registration requirements of Yahoo!, don't you?

9 A. More or less.

10 Q. Okay. It also requires that you agree to provide
11 true, accurate, current, and complete information about
12 yourself as prompted by the services registration form
13 and that you maintain and properly update the
14 registration data to keep it true, accurate, current and
15 complete. Would that be what Yahoo! also requires?

16 A. That's what I would expect.

17 Q. Okay.

18 (Whereupon, the Defendant conferred with counsel
19 off the record.)

20 By Mr. Huff:

21 Q. Now, let me ask you, on the -- there is also, I
22 believe, a Yahoo! compliance guide for law enforcement.
23 Yahoo! has that as well, don't they?

24 A. We no longer distribute those. We did at one time.

25 Q. Yes, sir. And let me show you a copy of one. Does

1 this appear to be a copy of that? (Handing.)

2 A. Yes, sir, it does.

3 Q. All right, sir. And you don't distribute these
4 anymore; is that right?

5 A. That is correct.

6 Q. And one of the things, sir, I'm going to kind of
7 highlight a section here and I put quotes on it. If you
8 would, sir, read the section, I believe this is on Page

9 8. Are you there?

10 A. Yes, sir.

11 Q. From the beginning of that paragraph to where I've
12 ended the highlight right here, if you could read that
13 to the jury please, sir?

14 A. Yes, sir. It says, "Yahoo! does not store the
15 content for Yahoo! chat. Yahoo! chat made several
16 product changes in 2005. In July 2005 Yahoo! suspended
17 users' ability to create their own chat rooms. In
18 October 2005 Yahoo! restricted access to the chat
19 product to only those users who registered as being
20 eighteen years of age or older. The teen -- and "teen"
21 is in quotations -- the teen category and any associated
22 chat rooms were removed."

23 Q. Okay, sir. Thank you. So there's no more teen
24 chat rooms, and the ability to go, to use Yahoo! to go
25 into a chat room is only for those who are registered as

1 twenty-eight-year-old female. There is no reasonable
2 belief that anyone can hold that that photograph would
3 allow someone to believe it is a thirteen-year-old
4 female. Quite honestly, the testimony is preposterous.

5 Also, Your Honor, the chat room that was entered
6 into is a chat room that requires people to be over
7 eighteen years of age. What has been testified to is
8 that people lie in these chat rooms as to their intent
9 or who they are, and there is no admission by the
10 Defendant as to any reasonable belief he had, other than
11 through the testimony of Officer McKellar that Mr. Odom
12 never believed he was talking to a child, that he role
13 plays and fantasizes in these chat rooms. So it would
14 be speculative to submit this case to the jury on that
15 seminal issue that the State must prove as to reasonable
16 belief.

17 Additionally, the issue as to identification, Your
18 Honor. What is in testimony is there is a computer at
19 the Odom home. It was, the account was listed in the
20 name of Barbara Odom. BellSouth testified as to a
21 connection between Mr. McGraw and the computer at the
22 Odom residence that occurred on March 2006. This case
23 is only about what may have happened in May of 2006.

24 Judge, it is similar to a breach of trust case at a
25 grocery store when money is taken out of the till and

1 November 10, 2011

2 9:05 a.m.

3 The Court's Ruling on Prior Motions:

4 THE COURT: All right. As to a couple matters of
5 housekeeping. Under the motion for log-rolling, I'm
6 gonna deny that motion. I feel like after looking at
7 the statute it needs the necessity of germaneness.
8 Therefore, I'm denying that motion.

9 The motion to suppress the search warrants and the
10 fruits of those search warrants based on Franks is also
11 denied. I don't find that that there was any deliberate
12 falsification or misleading, any reckless disregard of
13 fact or truth, nor was there an omission including
14 exculpatory information.

15 That being said, there still remains a directed
16 verdict motion to be made. Would you like to do that
17 now?

18 MR. HUFF: Your Honor, I believe what is still
19 before the Court, if I am correct, is a motion that a
20 decision has not been made yet on vindictive
21 prosecution --

22 THE COURT: It has not, you are correct.

23 MR. HUFF: -- and the issue of estoppel by
24 contract, and that we had presented to the Court a new
25 brief on the First Amendment objection to this

1 prosecution.

2 THE COURT: That's denied. Estoppel by contract is
3 denied. I don't recall that motion being made, but to
4 the extent it was, there's no conduct on the part of the
5 State that would reasonably lead the Defendant to act on
6 adverse prejudice or to change his position
7 prejudicially so I'm gonna deny that.

8 I'm gonna remain with my ruling on the
9 prosecutorial vindictiveness. Quite frankly, it was a
10 close call, but I don't find that there was established
11 any actual malice or evidence that would rise to an
12 implied malice or vindictiveness. I think under the
13 circumstances the explanation given by the State was
14 reasonable, and given the wide discretion given to
15 prosecutors, the evidence doesn't amount to the level
16 that would give rise to the draconian remedy of
17 dismissing the warrants. So, therefore, I'm denying
18 that motion.

19 Anything further?

20 MR. HUFF: Judge, I believe there was a motion made
21 by co-counsel under Russell which was -- it has not been
22 made yet. The basis of the Russell motion ---

23 Further Motions:

24 MR. JOHNSTON: It will take less than a minute to
25 do it, Your Honor. First of all, if I could, I would

1 Danger6552000 was, in fact, danger.

2 This is not a case about the First Amendment. Is
3 it a First Amendment communication right to ask a
4 thirteen-year-old to "cum for me"? I don't think so.
5 This is not a case about actually touching a child.
6 This is not a case about getting in a car and going to
7 meet a child. If you've gotten that far, the statute
8 and the officers have failed. This is about the act of
9 communicating and getting a child to do something.

10 We've already gone over the law a little bit.
11 Let's just take another quick look back at what the
12 actual language says. It doesn't say that the person
13 over eighteen has to get in the car and go anywhere. If
14 you get in the car and go somewhere, that's another
15 crime. That's what would be or charged as attempted
16 criminal sexual conduct.

17 This statute was enacted in 2004, okay?

18 This is for communicating with, reasonably believed
19 to be under eighteen, with the intent of persuading,
20 inducing, enticing or coercing the person, the person
21 being one you believe to be under eighteen, that person,
22 to engage or participate in a sexual activity.

23 And remember, we've looked at sexual activity. It
24 doesn't mean have sex. It also includes masturbation.
25 Look at the chats in Oconee and Westminster. That's

1 what we've got. We've got all kinds of talk,
2 communication about sex. We have masturbation, we have
3 all kinds of things. Let's look back at these.

4 And before we actually go through it, let's also be
5 clear. It is an act of communicating. It is not those
6 thoughts. When those fingers hit those keys and you
7 communicate to a minor, that particular act is a crime
8 that is an act that meets all the elements.

9 (Puts enlarged chats up on easel.)

10 Welcome back to the chats. You will recall we had
11 Officer Patterson read them out to you up there on the
12 screen.

13 This chat occurring on May 4th at 11:20 we start
14 with: Hi, would you like to chat.

15 Danger6552000 is initiating a contact.

16 Within approximately five minutes -- well, I'm
17 sorry, within one minute, age, sex, location, and we
18 have an age up here. A_upstategurl: Thirteen, F,
19 Ocone. You?

20 The response is, Wow.

21 Within five minutes, ass bra. Danger6552000 is
22 asking her her ass and her bra size.

23 Just to continue going through these chats, and I
24 promise you I'm not gonna put all of them up here.
25 We're just to gonna hit some of the highlights to

1 anybody need a break?

2 (Jury confer in jury-box.)

3 **THE FOREMAN:** No.

4 **THE COURT:** All right. Ladies and gentlemen, this
5 is the substantive law that you must apply in this case.
6 And this is the law of criminal solicitation of a minor
7 as set forth in our Code Section 16-15-342, and sexual
8 activity as defined by our Code Section 16-15-365. The
9 Defendant is charged with solicitation of a minor.

10 (Reading):

11 The State must prove beyond a reasonable doubt that
12 the Defendant contacted or communicated with or
13 attempted to contact or communicate with a person who
14 was under the age of eighteen or a person the Defendant
15 reasonably believed to be under the age of eighteen, for
16 the purpose of or with the intent of persuading,
17 inducing, enticing or coercing the person to engage or
18 to participate in a sexual activity or a violent crime
19 or with the intent to perform a sexual activity in the
20 presence of a person under the age of eighteen, or a
21 person that the Defendant reasonably believed to be
22 under the age of eighteen.

23 "Sexual activity" is defined in South Carolina Code
24 Annotated 16-15-375, Subsection 5, as any of the
25 following acts or simulations thereof;

1 masturbation, whether done alone or with a human or
2 animal;

3 vaginal, anal or oral intercourse, whether done
4 with another human or an animal;

5 touching, in an act of apparent sexual stimulation
6 or sexual abuse, of the clothed or unclothed genitals,
7 pubic area or buttocks of another person, or the clothed
8 or unclothed breasts of a human female;

9 an act or condition that depicts bestiality,
10 sado-masochistic abuse, meaning flagellation or torture
11 by or upon a person who is nude or clad in undergarments
12 or in a costume which reveals the pubic hair, anus,
13 vulva, genitals, or female breast nipples, or the
14 condition of being fettered, bound, or otherwise
15 physically restrained on the part of the one so clothed;

16 excretory functions;

17 the insertion of any part of a person's body, other
18 than the male sexual organ, or of any object into
19 another person's anus or vagina, except when done as
20 part of a recognized medical procedure.

21 Ladies and gentlemen, I further charge you that
22 consent is a defense to a prosecution pursuant to this
23 section if a person under the age of eighteen or a
24 person reasonably believed to be under the age of
25 eighteen is at least sixteen years old.

1 sado-masochistic abuse, meaning flagellation or torture
2 by or upon a person who is nude or clad in undergarmets
3 or in a costume which reveals the pubic hair, anus,
4 vulva, genitals, or female breast nipples, or the
5 condition of being fettered, bound, or otherwise
6 physically restrained on the part of the one so clothed.

7 Now, the last two we have here are excretory
8 functions and the insertion of any part of a person's
9 body, other than the male sex organ, or of an object
10 into another person's anus or vagina, except as a
11 medical procedure.

12 So the point is, it isn't just sexual intercourse,
13 okay? And you have masturbation, vaginal or anal
14 intercourse, touching; all of these are defined as
15 sexual activity.

16 Now, the State welcomes this burden of proving this
17 case beyond a reasonable doubt and I'm gonna speak to
18 you again after Mr. Huff puts up his closing argument
19 and I'll go into the fact we believe we have met that
20 burden.

21 But now let me explain very briefly what reasonable
22 doubt is. And the Judge will instruct you at the end;
23 and, of course, whatever the Judge instructs you is what
24 you are to follow. But in hearing arguments between
25 myself and counsel, understand that the general

1 this case and you decide what these facts are by
2 evaluating and weighing the evidence that you heard
3 during this case. There is no way for you to do that in
4 a literal sense. I can't give you a set of scales to go
5 stack things up on. It is entirely a mental process
6 where you weigh and you evaluate and discuss all of the
7 evidence and you use your good common sense and sound
8 judgment when you make your findings of fact.

9 Now, what is evidence and what is not evidence?
10 First, obviously the sworn testimony both on Direct,
11 Cross-Examination or Redirect, regardless of whoever
12 called them, is evidence in this case.

13 In addition, the exhibits that were received into
14 evidence in this case is also evidence. Normally that
15 is all that's before you. However, in this case, but
16 due to the facts in this case I took judicial notice of
17 the Defendant's date of birth, and you must accept as a
18 conclusive fact the date of birth that I took judicial
19 notice of and that date of birth is June 22nd, 1973.
20 And by accepting that as a conclusive fact you may not
21 debate it, you shall not debate it, that is his
22 birthday.

23 Now, what is not evidence? I think I told you at
24 the beginning of this case but I'll tell you again.
25 Arguments, statements by these fine lawyers is not

1 have shocked or would shock the conscience of the
2 judicial system and that those, their actions have
3 violated Mr. Odom's right to due process and that was
4 the theory articulated in that federal case of U.S.
5 versus Russell.

6 THE COURT: Thank you, sir. I am denying that
7 motion.

8 Now, do we have anything further before we go to
9 the directed verdict motion?

10 MR. HUFF: Judge, there is. There is a motion. In
11 conducting our research last night, that the officer in
12 this case, Mr. Patterson, we would contend, is not a law
13 enforcement officer pursuant to the evidence presented
14 to the Court in the record.

15 THE COURT: Because he wasn't bonded?

16 MR. HUFF: He was not bonded. I would like to
17 present the Court the case State v. Boswell. And I'll
18 hand up some statutes as well throughout our code, if I
19 could provide those to the Court.

20 (Whereupon, Mr. Huff hands documents to counsel and
21 Court.)

22 MR. HUFF: Your Honor, if I could, the...

23 Your Honor, in the State of South Carolina a
24 municipal police officer must take an oath of office and
25 must be bonded in order to fulfill the office and uphold

1 the office of a law enforcement officer with the
2 authority to arrest and carry forth his duties.

3 Your Honor, in the -- I may have handed Your Honor
4 both copies of my case. If I did, apologies.

5 THE COURT: That's quite all right.

6 MR. HUFF: Judge, do you have a copy of State v.
7 Boswell in front of you?

8 THE COURT: Yes, sir.

9 MR. HUFF: That's all right. Then I gave you my
10 copy.

11 Your Honor, this was a case decided April 8, 2011,
12 of this year. It involves law enforcement activity of a
13 municipal police officer. The Court took up the issue
14 of a multi-jurisdictional agreement, and in that case
15 the Court even noted that a municipal police officer
16 must have a bond and that travels forth with him into
17 any adjoining county that he may go into in fulfillment
18 of that mutual aid agreement.

19 Your Honor, that's gonna be footnote 7, which cites
20 to Section 23-1-210. Your Honor, it's gonna state that,
21 I believe, in subsection ---

22 THE COURT: Hang on for a second, please.

23 MR. HUFF: Yes, Your Honor.

24 THE COURT: Okay, sir.

25 MR. HUFF: Your Honor, a municipal -- and I would

1 provide you with a copy of that statute as well.

2 (Whereupon, counsel hands document to counsel and
3 Court.)

4 That also requires that a municipal police officer
5 have a bond.

6 I have also provided the Court with a copy of
7 Section 22-9-30 dealing with oaths -- excuse me, with an
8 oath that's required of a police officer.

9 Your Honor, I would also provide you with a -- or
10 would cite to you Section 61-6-4510, 61-6-4510 that
11 states that (reading):

12 Municipal police officers have the power of
13 constables to enforce the provisions of this article in
14 cases arising within the municipal limits and, in
15 addition, have all the powers to enforce these
16 provisions as they have to enforce municipal ordinances.

17 And then it talks about fresh pursuit. That's
18 61-6-4510.

19 Under our codes of laws and statutory provisions,
20 Your Honor, municipal police officers basically are
21 governed by the statutory obligations imposed upon state
22 constables.

23 I would also present to the Court a copy of what I
24 believe is cited in the Boswell case I provided to the
25 Court, Section 5-7-110. It will address municipal

1 police officers. It will state, Your Honor, that
2 (reading):

3 Any municipality may appoint or elect as many
4 police officers as necessary for the proper law
5 enforcement in such municipality. Police officers shall
6 be vested with all the powers and duties conferred upon
7 constables, which require -- and constables are required
8 to have the bond, which we've also provided to the
9 Court.

10 Your Honor, even a Deputy Sheriff under 23-13-230
11 states that (reading):

12 Before entering upon the duties of his office, any
13 such duty shall take the oath prescribed by the
14 constitution and the statutes of this state. Any person
15 so appointed a Deputy Sheriff under the provisions of
16 this article shall execute the bond required of
17 constables. 22-9-20.

18 THE COURT: Let me ask you this, Mr. Huff. Is your
19 motion based on the failure of the employment file to
20 contain a copy or evidence of the bond?

21 MR. HUFF: No, sir. It's based on the fact that
22 the statute requires that in order to be a law
23 enforcement officer ---

24 THE COURT: I mean, I understand what you are
25 saying about the statute. Let me ask you this. I mean,

1 the only evidence that I recall during this trial that
2 concerns the bond is when you had the Clerk from
3 Westminster yesterday who brought Officer Patterson's
4 employment file, and the bond, proof of the bond was not
5 contained in that file.

6 MR. HUFF: Your Honor, we would cite you back to
7 Chief Bannister, Chief Scott Bannister, who testified.

8 THE COURT: Okay, sir.

9 MR. HUFF: And on Cross-Examination, besides
10 stating that there was no supervision of Mr. Patterson,
11 I specifically asked, and is a police officer with the
12 municipality required to have an oath and bond? He said
13 yes. So the ---

14 THE COURT: I guess my question goes to proof that
15 there is, in fact, no bond in existence or was no bond
16 in existence for Officer Patterson during the time frame
17 that's in question for this case.

18 MR. HUFF: Judge, that is, if you recall, the
19 statutory scheme of this statute. It says that
20 (reading):

21 A person over sixteen that engages in this type of
22 conduct, there is an absolute defense of consent.

23 Which as Officer Patterson admitted on Direct --
24 excuse me, on Cross would not be a crime. But for if
25 I'm a law enforcement officer, number one, and acting in

1 my official capacity, it would be a crime.

2 So that is an element of the offense in this case
3 that the State bears the burden of proving that he is a
4 proper law enforcement officer. Otherwise, he is
5 nothing more than an over-sixteen person consenting to
6 this conversation like me or you. That's the only thing
7 that would allow the State to go forward with this
8 prosecution. Because clearly he is over sixteen years
9 of age, as he admitted, and he consented to the
10 conversations.

11 So the only way the State can maintain this
12 prosecution is to prove as an element of this case that
13 Officer Patterson lawfully held the office of a law
14 enforcement officer.

15 What is in evidence and in the record is that the
16 statute requires that he have an oath and bond. The
17 Chief has said to be an officer with Westminster Police
18 Department he has to have an oath and bond. The Clerk
19 has said, I cannot find any bond in the file. We don't
20 have to prove that he didn't have it, the State has to
21 prove that he was a law enforcement officer.

22 And what is in the record is there is no such
23 proof, and proof, at least through the records clerk, is
24 there is no bond there. We don't bear the burden. The
25 State always bears the burden of proof on every issue of

1 the charge. And in this you do have the record.
2 There's no bond, even though it's required by law and
3 even the Chief knew that.

4 THE COURT: Yes, sir. I'll deny your motion.

5 Do you want to go ahead with your directed verdict
6 motion now? (No response.) Mr. Huff?

7 MR. HUFF: Yes, sir?

8 THE COURT: Are you ready to go with your directed
9 verdict?

10 MR. HUFF: Okay. I'm sorry, Your Honor. I
11 thought ---

12 THE COURT: That's okay.

13 MR. HUFF: Yes, Your Honor, I am.

14 Defendant's Motion for Directed Verdict:

15 MR. HUFF: Your Honor, in this case there are
16 several issues that must be proven in order for this
17 case to be submitted to the jury. It is readily
18 apparent that there are, in my opinion, four issues.
19 One, the intent of the person in the communication; two,
20 he has reason to believe; three, being a law enforcement
21 officer not, or acting in official capacity.

22 Your Honor, as to the reasonable belief in this
23 case that the person being spoken to was under eighteen,
24 the evidence you have in this case is a photograph that
25 was submitted to Danger. That is a photograph of a

1 there's more than one person that has access to that
2 cash register. The State has to prove who actually took
3 it. There is no evidence in this case that Mr. Anthony
4 Odom communicated with Officer Patterson in May of 2006.

5 The statements that Mr. Odom made to Ms. McKellar
6 involved another county, nothing charged with Oconee
7 County. So there is no evidence that proves that
8 Mr. Anthony Odom ever sat at a computer in his home and
9 communicated with Mr. Patterson. There is no such
10 evidence.

11 So for those reasons and for the bases of the
12 motions we have made in totality, we believe that the
13 proper result is for the Court to grant a motion for
14 directed verdict.

15 THE COURT: Thank you, sir.

16 Ms. Wines?

17 MS. WINES: Yes, Your Honor. Briefly in response,
18 as Your Honor is aware at this stage in the proceedings
19 the Court is concerned with the existence of evidence,
20 not its weight. And it is the State's position that
21 much of what Mr. Huff is pointing to does, in fact, go
22 to the weight, not the existence of evidence. And the
23 evidence must also be viewed in the light most favorable
24 to the State at this point.

25 With regard specifically to the picture, again that

1 I believe that was all the specifics that counsel
2 pointed out. I would just reiterate at this point it is
3 to be taken in the light most favorable to the State.

4 THE COURT: I understand, Ms. Wines.

5 Let me just say this. I agree with Mr. Huff that
6 it is extremely troubling to sit here and listen to this
7 case when law enforcement, who has a very tough job to
8 begin with, but they use a picture of a known
9 twenty-seven or twenty-eight-year-old person that they
10 would submit over to the, whoever the recipient of that
11 picture was, to try to catch somebody who is supposedly
12 a child sex abuser. And I think that's extremely
13 troubling.

14 However, with that being said, the evidence in this
15 case -- I agree with Ms. Wines -- is capable of more
16 than one inference. I'm not gonna weigh the evidence.
17 In viewed in the light most favorable to the State, it
18 is a question of fact for the jury to make a
19 determination of.

20 With that being said, are you ready to proceed with
21 your first witness, Mr. Huff?

22 MR. HUFF: We are, Your Honor.

23 THE COURT: Ms. Wines, is the State ready to
24 proceed?

25 MS. WINES: Yes, Your Honor. Thank you.

1 MR. HUFF: Yes, sir.

2 THE COURT: Now, Mr. Huff very rightfully brought
3 up to me that I did not give anyone the opportunity to
4 further their directed verdict motion before getting
5 into the State Reply case, so we will do that *nunc pro*
6 *tunc*, is what I'm trying to say. So I'm gonna let you
7 do that now.

8 Further Directed Verdict Motion by Defense:

9 MR. HUFF: Judge, we would renew the bases for our
10 motion for a directed verdict that we made at the
11 conclusion of the State's case. We believe even with
12 this additional testimony that you received this morning
13 as to the issue of intent, as to the issue of whether or
14 not the officer was on duty or not, and the issue of a
15 requirement of a bond and no proof entered by the State
16 that a bond was, in fact, filed and that the officer
17 would therefore lawfully be a law enforcement officer,
18 we are entitled to a motion for a directed verdict.

19 THE COURT: Thank you, sir.

20 MR. HUFF: For a directed verdict.

21 THE COURT: I'm gonna deny your motion.

22 Let me ask first. I like to do a charge
23 conference. One thing that I do in cases, I give
24 counsel a choice, as long as it's unanimously agreed
25 upon, to either argue their case after my charge on the

1 MR. HUFF: Yes, sir.

2 THE COURT: Bring the jury back in, please.

3 (Whereupon, the Jury entered the courtroom at 10:32
4 a.m.)

5 MR. HUFF: Judge, we would, if you would note for
6 the record something we need to bring up *nunc pro tunc*,
7 if we could. I know that we've got a witness who's
8 going to be called. If we'd be allowed to do that?

9 THE COURT: Do you need to do that now?

10 MR. HUFF: Uh...

11 THE COURT: How about you-all step up here, please.

12 MR. HUFF: Yes, sir.

13 (Whereupon, a sidebar conference was held off the
14 record.)

15 THE COURT: Does the State have a witness in reply?

16 MS. WINES: Yes, Your Honor. The State re-calls
17 Mark Patterson.

18 THE COURT: Yes, ma'am. Mark Patterson, you're
19 still under oath.

20 THE WITNESS: Yes, Your Honor.

21 MS. WINES: May it please the Court?

22 THE COURT: Yes, ma'am.

23 MS. WINES: Thank you.

24

25

1 A. No. I said that he made me believe that he
2 believed it was a thirteen-year-old from his chats.

3 Q. Your belief doesn't mean anything in this case,
4 does it? It's what the person you were talking to
5 believed.

6 MS. WINES: Objection. Argumentative, badgering.

7 THE COURT: Sustained.

8 By Mr. Huff:

9 Q. Mr. Patterson, do you have a bond on you as a
10 former, or as a Westminster police officer at the time,
11 do you have a bond on file with any Clerk of Court?

12 A. The bonds are held by the agencies themselves, sir.
13 Not personally.

14 Q. Do you have any -- did you have a bond at that
15 time?

16 MS. WINES: Asked and answered, Your Honor.

17 THE COURT: Overruled.

18 By Mr. Huff:

19 Q. Did you have any bond on you in May of 2006 at the
20 Westminster Police Department? Yes or no.

21 A. Sir, I can't answer that question because that's
22 something done by the agency, not personally by me, and
23 I would assume since it's a law enforcement agency, they
24 have bonds for their officers.

25 Q. But you know the thing that's interesting about

1 court, Mr. Patterson?

2 MS. WINES: Objection, Your Honor.

3 THE COURT: What is your objection?

4 MS. WINES: It's not a question, it's a statement.
5 It's argumentative.

6 THE COURT: Overruled.

7 By Mr. Huff:

8 Q. Assumptions -- here's my question: In a courtroom,
9 where somebody's freedom and reputation is on the line,
10 assumptions don't matter, do they?

11 A. No.

12 MR. HUFF: Thank you. No further questions.

13 THE COURT: Redirect?

14 MS. WINES: Very briefly, Your Honor.

15 FURTHER REDIRECT EXAMINATION

16 By Ms. Wines:

17 Q. Mr. Huff mentioned the Clerk. Isn't it true she
18 didn't say you weren't working?

19 A. That's true.

20 Q. Just that there's not any time listed on the sheet?

21 A. That's true.

22 Q. Is there a policy of recording shift work with the
23 department?

24 A. Yes, ma'am.

25 Q. And what is that?

1 need to bring up.

2 THE COURT: Okay. I'm gonna send this jury to
3 their jury room and I'll bring you back out here in a
4 few minutes, sir.

5 (Whereupon, the Jury left the courtroom at
6 approximately 10:52 a.m.)

7 THE COURT: All right. Mr. Huff?

8 MR. HUFF: Judge, we would have, I believe, one
9 witness as sur-reply and Mr. Johnston may be able to
10 address that to quicken this matter.

11 MR. JOHNSTON: May it please the Court? The
12 Defense would propose to call Ms. Beverly Whitfield, the
13 Clerk of Court for Oconee County. And she would
14 testify, according to my conversation with here earlier
15 today, that there is no bond and has been no bond on
16 file for Mr. Mark Patterson during the time that he was
17 a police officer. We can do it as one of two ways. We
18 could ---

19 THE COURT: Let me tell you how I want to do it.

20 MR. JOHNSTON: Yes, sir.

21 THE COURT: What I propose -- I'm not gonna let you
22 call any sur-reply to this jury. I'm gonna let you
23 proffer that evidence in the record, and I'll note your
24 objection to me not letting you put Ms. Whitfield on the
25 stand. I think that matter confuses the jury, quite

1 frankly. I don't necessarily believe -- now, I may be
2 wrong, but whether this officer has a bond or not would
3 invalidate the charges against the Defendant in this
4 matter.

5 That being said, that's a matter of law that can be
6 reviewed, but this officer testified that he thought the
7 agency had it. He also went through the academy, went
8 through the training and various things. I think that
9 under the circumstances that just confuses the issue.

10 That being said, would you tell us,
11 Mr. Johnston ---

12 MR. JOHNSTON: Yes, sir.

13 THE COURT: I keep wanting to call you Anderson.
14 I'm sorry.

15 MR. JOHNSTON: That's okay.

16 THE COURT: -- what you would propose the evidence
17 would show?

18 MR. JOHNSTON: Your Honor, we would propose the
19 evidence would show that there is no bond and has
20 never -- there never was a bond on file for Mark
21 Patterson as a police officer. Ms. Whitfield states to
22 me that she is familiar with the types of bonds that
23 police officers post, and she does have a number of
24 Deputy Sheriffs' bonds on file here in the courthouse.
25 She tells me that she's not familiar with the municipal

1 agency ever having posted bond, but she has specifically
2 checked for Mr. Patterson and there is none.

3 What I ask the Court to consider doing, is that
4 after you hear her proffered testimony, perhaps you
5 would consider taking judicial notice of that fact that
6 there is no bond.

7 THE COURT: I don't think I can take judicial
8 notice of that fact. Is there a state law that requires
9 that all bonds be posted in the courthouse?

10 MR. JOHNSTON: Yes, sir, we believe there is. Yes,
11 sir, we believe there is. Your Honor, there's Code
12 2-9-20.

13 THE COURT: First of all, let me just say this.

14 MR. JOHNSTON: Yes, sir.

15 THE COURT: I'm gonna let your proffer be, stand
16 instead of the testimony. I don't think we're gonna get
17 any more out of it than what you just told me. So I
18 think that is sufficient unless you think that is
19 deficient as a matter of law, that I have to let her
20 testify.

21 MR. HUFF: Judge ---

22 THE COURT: I think under the proffer that you tell
23 me what you would have anticipated bringing out, move it
24 again to be brought back into evidence, but I think you
25 are protected on the record.

1 MR. HUFF: Judge, but we do believe that one of the
2 issues in the statute is you must be a law enforcement
3 officer or there is no crime. And if the statutory
4 scheme, as we see it and read it in the statutes and in
5 the case I provided to the Court, requires that the
6 officer file a bond, which we believe it does.

7 And we believe 22-9-20 does states that he lodged
8 his bond in the form prescribed by law with the -- in
9 writing with the Clerk of Court, then -- and it does
10 state that no person not so qualified shall exercise the
11 powers of a constable, that that is an issue before the
12 Court and believe it would be a matter of evidence and
13 the Court can take judicial notice of it.

14 THE COURT: Thank you. I'm gonna refuse to do that
15 or decline to do that. I don't believe that actually is
16 a correct statement. But I believe under the
17 circumstances of this case that the Defense is protected
18 on the record in case I make a mistake, so you can have
19 it reviewed by a smarter and higher court than me at the
20 appropriate time as necessary.

21 And I'm gonna treat the statement by Mr. Johnston
22 as being the Defense's proffer and also take that as a
23 motion to have that evidence admitted into the trial and
24 I'm gonna deny that. And, also I'm gonna decline to
25 take judicial notice of the bond.

1 she got the family history. And in her opinion she had
2 this to say: He is not a pedophile. He's not a
3 traveler or, he's a talker. The MS has affected him.
4 He role -- and I didn't ask her this, she said this --
5 that he role plays his cyber sex fantasies. He doesn't
6 act on them, he role plays them. And that he has
7 stopped his cyber sex. And that may be why he and his
8 wife are still together. It takes a lot to sit in court
9 and listen to this.

10 Ladies and gentlemen, I told you there are -- we
11 also, in our trying to research the statute, found that
12 there are several issues that you need to consider and
13 make a decision on in reaching your verdict. One was
14 whether or not Mr. Patterson was a lawful law
15 enforcement officer.

16 Secondly, was he on duty acting in an official
17 capacity. And that's why we called the municipal clerk,
18 that's why we called the Chief -- I'm sorry, I believe
19 the State called the Chief. That's why we asked the
20 Chief about a bond and oath. We submitted to you that
21 to be a proper law enforcement officer, the Chief of
22 Westminster, Chief Bannister, I asked him, Do you know
23 for sure what hours Mr. Patterson worked?

24 No, I don't. Nobody really supervised him. He
25 came in when, as he wanted.

1 I asked him, To be a lawful Westminster police
2 officer, do you have to have a bond and oath?

3 He said yes.

4 And so that's why we asked the city clerk, do you
5 have a bond on Mr. Patterson?

6 She said no.

7 If they didn't properly bond and oath
8 Mr. Patterson, then, ladies and gentlemen, he wasn't a
9 law enforcement officer. We've presented to you the
10 best evidence we could get our hands on. You can
11 consider that. You can decide that they didn't do it
12 right. He didn't have a lawful law enforcement
13 authority, or you could ---

14 MS. WINES: Your Honor, I object. Judge, I believe
15 he's misstating the facts.

16 THE COURT: Overruled.

17 MR. HUFF: --- or you may decide that they have
18 done that properly. We can only present evidence to you
19 and you make that consideration.

20 We also brought to your attention the issue of him
21 being off-duty, not acting in official capacity.
22 Because in this case, and I believe Judge McIntosh will
23 tell you, it works like this, and I'll discuss the
24 statute very briefly.

25 One, let's agree there is no real live

1 this case and you decide what these facts are by
2 evaluating and weighing the evidence that you heard
3 during this case. There is no way for you to do that in
4 a literal sense. I can't give you a set of scales to go
5 stack things up on. It is entirely a mental process
6 where you weigh and you evaluate and discuss all of the
7 evidence and you use your good common sense and sound
8 judgment when you make your findings of fact.

9 Now, what is evidence and what is not evidence?
10 First, obviously the sworn testimony both on Direct,
11 Cross-Examination or Redirect, regardless of whoever
12 called them, is evidence in this case.

13 In addition, the exhibits that were received into
14 evidence in this case is also evidence. Normally that
15 is all that's before you. However, in this case, but
16 due to the facts in this case I took judicial notice of
17 the Defendant's date of birth, and you must accept as a
18 conclusive fact the date of birth that I took judicial
19 notice of and that date of birth is June 22nd, 1973.
20 And by accepting that as a conclusive fact you may not
21 debate it, you shall not debate it, that is his
22 birthday.

23 Now, what is not evidence? I think I told you at
24 the beginning of this case but I'll tell you again.
25 Arguments, statements by these fine lawyers is not

1 Now, there are two indictments, as I've said. Each
2 indictment is a distinct offense. That means that you
3 must decide each indictment separately based on the
4 evidence and the law applicable to that indictment and
5 uninfluenced by your decision on the other indictment.
6 That means the Defendant may be convicted or acquitted
7 on any or all of the offenses charged, and Mr. Foreman,
8 Mr. Gibson, you will be asked to write a separate
9 verdict for each indictment and I'll go over that with
10 you in a minute.

11 Now, the Defendant in this case has pled not guilty
12 to both of these indictments and therefore that puts the
13 burden of proof on the State of South Carolina to prove
14 the Defendant's guilt beyond a reasonable doubt. A
15 person charged with committing a crime in this state is
16 never required to prove himself innocent, and I charge
17 you that it is an important rule of law that a Defendant
18 in a criminal trial, no matter what the seriousness of
19 the charge may be, will always be presumed to be
20 innocent of the crime for which he was indicted and his
21 guilt has been proven by evidence which satisfies you,
22 the jury, of guilt beyond a reasonable doubt. Now, that
23 presumption does not end when you begin your
24 deliberations in just a few minutes but it accompanies
25 this Defendant throughout the trial until you, the jury,

1 reach a verdict of guilt based on evidence satisfying
2 you of guilt beyond a reasonable doubt.

3 The presumption of innocence has been described as
4 a robe of righteousness that's placed about the
5 shoulders of the Defendant which remains with the
6 Defendant until it has been stripped from his shoulders
7 by evidence presented satisfying you of his guilt
8 satisfying you beyond a reasonable doubt. And the
9 presumption of innocence is not a mere legal theory, it
10 is not a mere legal phrase. It is a substantial right
11 to which every Defendant is entitled unless you, the
12 jury, are satisfied of his guilt beyond a reasonable
13 doubt.

14 So that leads us to the question what is guilt
15 beyond a reasonable doubt?

16 Ladies and gentlemen, I am close to the end of my
17 first aspect of my charge and then I'll give you another
18 quick break.

19 But this is the law on reasonable doubt. A
20 reasonable doubt is the kind of doubt that would cause a
21 reasonable, sincere, honest and conscientious person to
22 hesitate to act in an important matter in their own
23 affairs. It is the kind of doubt that would cause a
24 reasonable, sincere, honest and conscientious person to
25 hesitate to act in an important matter in their own

1 have heard the arguments from these lawyers, it is my
2 duty to instruct you on the law which applies to this
3 case.

4 Now, my instructions to you will be in three parts.
5 The first part will be the rules that define and control
6 your job or your duties as jurors.

7 The next part -- and I'll let you know when we're
8 getting into each phase. The second part will be the
9 substantive law, in other words, the law that, what the
10 State must prove in order to make its case.

11 The third will be some considerations and
12 instructions about your deliberations themselves.

13 Now, the first part is the rules that control and
14 define your duties. As I told you at the beginning of
15 this case, that it is your job to find the facts from
16 the evidence that's presented here in this courtroom and
17 from no other place, from the witness stand, the sworn
18 testimony, and the exhibits that have been admitted into
19 evidence. To that you must apply the law as I give it
20 to you. You must follow the law and only the law that I
21 give to you and it is the only law that is applicable to
22 this case.

23 Further, you shall not be concerned about what you
24 feel like the law should be. You must accept it as I
25 give it to you, and this is not the place to try to

1 correct it.

2 You should not further be influenced by any
3 personal likes or dislikes, opinions, prejudice or undue
4 sympathy that you may have for one side or the other in
5 this case. Boiled down to is our most common form, what
6 that simply means is this, that you are to decide this
7 case solely from the evidence presented here in this
8 courtroom and in accordance to the law as I give it to
9 you right now. That is the oath that you took at the
10 beginning of this case.

11 Now, in following my instructions you are required
12 to follow all of it. You may not single out the ones
13 that you like and follow those and ignore the ones that
14 you don't like. I will tell you and charge you that
15 they are all equally important. And as I told you at
16 the beginning of this case, you should not and you shall
17 not read into anything I may have done, said, any
18 gestures I may have made throughout this case that
19 suggest to you one way or the other how you should find
20 the facts. And I tell you that I have no opinion on the
21 facts, our Constitution does not allow me to have an
22 opinion on the facts. I'm merely here as a referee to
23 make sure the process is followed and to instruct you on
24 the law as I'm doing now.

25 You and you alone are the judges of the facts in

1 Consent is not a defense to a prosecution pursuant
2 to this section if the person under the age of eighteen
3 or the person reasonably believed to be under the age of
4 eighteen is under the age of sixteen.

5 It is further not a defense to a prosecution
6 pursuant to this section on the basis of consent or
7 otherwise that the person reasonably believed to be
8 under the age of eighteen is a law enforcement agent or
9 officer acting in official capacity. However, if you
10 find that the law enforcement officer was not acting in
11 his official capacity at the time of the communication,
12 it would be a defense to the communications occurring
13 during that period.

14 Now, that is the substantive law that you must
15 apply, ladies and gentlemen, during your deliberations.

16 I would like to end by going over a few aspects
17 about your deliberations. And again, do not begin your
18 deliberations until we send word back to you very
19 shortly that it is appropriate. But I want to say that
20 you don't serve as jurors because you are partisans or
21 you are advocates for one side or the other. You were
22 chosen by both the State and the Defense because
23 everyone believed that you could be fair and impartial
24 and decide this case solely on the evidence without bias
25 or prejudice to one side or the other. In doing so you

1 form.

2 MS. WINES: Thank you.

3 (Whereupon, there was a discussion off the record
4 among counsel and the court reporter.)

5 (The Jury started deliberations at approximately
6 4:28 p.m.)

7 (There was a question from the Jury at
8 approximately 4:56 p.m.)

9 (Court's Ex. # 10, jury note, was marked for
10 identification and received in Court's evidence.)

11 THE COURT: There is a question. This is the
12 question: If an officer is not bonded, are they
13 considered an official police officer? Signed the
14 Foreperson.

15 I was thinking about that on the way up. Now, what
16 I intend to charge the jury, or at least my proposed
17 charge to the jury is that I did not charge them on the
18 law of bonding. They are only to apply the law that was
19 charged to them in this matter and that's not an issue
20 for them to consider.

21 Ms. Wines, what would be your position?

22 MS. WINES: I believe that sounds good to the
23 State, Your Honor.

24 THE COURT: And I know your objection to me not
25 letting that be an issue to be considered, but as to the

1 proposed, what would be your...

2 MR. HUFF: Judge, if you would let me confer with
3 co-counsel for a second, please?

4 THE COURT: Yes, sir.

5 (Counsel confer.)

6 MR. HUFF: Your Honor, may it please the Court, we
7 believe that although we have raised that as an issue,
8 you have charged the jury. A suggestion only, Your
9 Honor, would be that you might instruct the jury that,
10 You have heard all the evidence. I have given you my
11 charge, and I would ask that you continue with your
12 deliberations.

13 THE COURT: Okay. I note that request. I believe
14 that it would be more directional for the Jury that I
15 charge them that they are only to consider the law that
16 I charge them. That was not a proposition of law that
17 was given them. They are not to consider that
18 proposition for their deliberations, okay, sir? And
19 that's why I'm throwing it back and forth to you before
20 we bring them out and do any damage. But, I mean, that
21 certainly wasn't a charge, for them to consider that is
22 to consider matters beyond the law that was charged in
23 my view.

24 MR. HUFF: Judge, if you would note our objection,
25 I know we have made our objection as to this is an

1 element, and we had asked for the charge, and we know
2 that and we know the record is preserved.

3 THE COURT: Right. And you may be right and I
4 certainly may be wrong. But I feel like that would be
5 the proper response. But I do note your objection and I
6 think you preserved that issue certainly for review.

7 All right. With that being said, would you bring
8 the jury in, please.

9 (The Jury entered the courtroom at approximately
10 5:00 p.m.)

11 THE COURT: All right. Mr. Gibson, I have what is
12 a question from the jury, I believe, and this is the
13 question: If an officer is not bonded, are they
14 considered an official police officer? Signed you, the
15 Foreperson.

16 Is that the jury's question?

17 THE FOREMAN: Yes, sir.

18 THE COURT: All right. Ladies and gentlemen of the
19 jury, to answer your question, if you recall at the
20 beginning of my charge I told you that the only law that
21 you may consider is the law that I charge you that is
22 applicable to this case. Now, I have not charged you on
23 any proposition of bonding of an official police
24 officer, so therefore that is not a proposition of law
25 that you may consider in your deliberations. Okay, sir?

1 THE FOREMAN: All right.

2 THE COURT: Now I'm gonna ask the jury to go back
3 to the jury room and resume their deliberations, okay?

4 THE FOREMAN: Okay, thank you.

5 THE COURT: And actually wait for a minute before
6 you begin. We are going to have a small conference.
7 You may go back, but don't begin until I send word back,
8 please.

9 THE FOREMAN: All right.

10 (Whereupon, the Jury left the courtroom at
11 approximately 5:02 p.m.)

12 THE COURT: Other than your stated objection,
13 Mr. Huff, do you have any additional objection?

14 MR. HUFF: Other than just to flesh out more
15 specifically, Your Honor. The Chief of Police, as you
16 recall, the testimony was that his officer to be an
17 officer would have to have an oath and bond, and that's
18 why we believe it was proper to charge the jury with
19 that and it was for their consideration as a matter of
20 fact. Thank you. Nothing further.

21 THE COURT: Thank you, sir.

22 Ms. Wines?

23 MS. WINES: Nothing from the State, Your Honor.

24 THE COURT: Thank you very much. We are in recess
25 again.

1 MS. WINES: Thank you, Judge.

2 (Whereupon, the Jury resumed their deliberations at
3 approximately 5:03 p.m.)

4 (Whereupon, there was another question from the
5 Jury at approximately 7:07 p.m.)

6 (Court's Ex. # 11, jury note, was marked for
7 identification and received in court's evidence.)

8 THE COURT: This is the newest question. It says:
9 Can we review the Cross-Examination of Mr. Patterson on
10 11-8-11? Also the Cross-Examination of Chief Bannister
11 on 11-8.

12 Gentlemen, we don't have realtime here, as you very
13 well may know, so it's impossible to download it.
14 Another big consideration is the fact that we had a
15 significant number of objections throughout this case.
16 I'm not saying that's a problem, but that's just a fact.
17 And we have to be extremely careful about them hearing
18 it.

19 My suggestion -- and I'll be glad to hear from both
20 sides. Bring the jury in. I think you cross-examined
21 Mr. Patterson for hours. It was at least three.

22 MR. HUFF: Yes, sir.

23 THE COURT: And I want them to narrow down what
24 they're looking for ---

25 MR. HUFF: Yes, sir.

1 approximately 7:10 p.m.)

2 THE COURT: All right. Mr. Gibson, before we get
3 started, did everybody get their dinner okay?

4 THE FOREMAN: We got it ordered.

5 THE COURT: Okay. So it hasn't come in yet?

6 THE FOREMAN: No, sir.

7 THE COURT: Okay. Next is I received what appears
8 to be a jury question which asks: Can we review the
9 Cross-Examination of Mr. Patterson on 11-8-11, also the
10 Cross-Examination of Chief Bannister on 11-8?

11 Is that your question?

12 THE FOREMAN: Yes, sir.

13 THE COURT: Okay. Now let me do this. I've spoken
14 with these attorneys and I'm gonna ask you this. One
15 thing, we don't have the capability of, on our computers
16 to do realtime, meaning she just can't download all the
17 written testimony so that you will have it at your
18 fingertips.

19 What we do have available is the audio version of
20 the testimony, barring some technical difficulty, where
21 we can go back and play that. Now, Mr. Patterson's
22 testimony on Cross-Examination took several hours, I
23 believe, when it was being done. So I would ask you,
24 Mr. Gibson, if you could get in with your jury, find out
25 more specifically if you can pinpoint more of the

1 THE COURT: --- okay? And then get you back out
2 and let you do it. Okay? Is that fair enough?

3 THE FOREMAN: Yes, sir. Thank you.

4 THE COURT: Okay.

5 (Whereupon, the Jury left the courtroom at
6 approximately 7:14 p.m.)

7 THE COURT: Any additions or objections from the
8 State to the question and response to the jury?

9 MS. WINES: No, Your Honor.

10 THE COURT: From the Defense?

11 MR. HUFF: No.

12 THE COURT: Very good.

13 (Whereupon, there was a discussion off the record.)

14 (Whereupon, there was another note from the Jury at
15 approximately 7:18 p.m.)

16 THE COURT: Okay. This is from Mr. Patterson's.
17 It says Mr. Patterson's Cross. Requirement of an
18 officer to be bonded. Was he bonded? Official
19 capacity.

20 Those are the three things. And obviously they've
21 not necessarily listened to what I told them.

22 MS. WINES: Yes, Your Honor.

23 THE COURT: But it is evidence in this trial and
24 they asked to listen to it and they are entitled to
25 listen to it from what I can see. I can't tell them

1 "no."

2 MS. WINES: I agree if they've asked, they need to
3 hear it; however, we would ask that you reinstruct that
4 they are not, it is a matter of law that you have not
5 told them to weigh. However you want to phrase it,
6 Judge, is clearly your province.

7 THE COURT: I'm inclined to do that. I think I'm
8 right. I think you're not. I've been looking for more
9 information on that bond. Let's mark this.

10 (Court's Exhibit # 12 was marked for identification
11 and received in Court's evidence.)

12 (Whereupon, there was a discussion off the record
13 between the Court and court reporter, after which
14 there was a recess while the court reporter located
15 the requested testimony and went over it with the
16 Court and Law Clerk.)

17 (The following occurred at approximately 8:12 p.m.)

18 THE COURT: We found requests for 11-8-11. Bonding
19 information on cross. There are no questions on bond on
20 cross at all.

21 Official capacity was found to be between lines --

22 THE LAW CLERK: It starts at page 125, line 21 ---

23 THE COURT: -- through 128 line 1. (Referring to
24 pages of realtime draft of Tuesday, November 8, 2011, on
25 court reporter's computer screen, not the certified

1 transcript of record.)

2 Then they just wanted the cross of Chief Bannister.

3 MR. HUFF: I'm sorry, Your Honor?

4 THE COURT: They just wanted the Cross of Chief
5 Bannister. What I'm gonna do, because there are so many
6 objections, I'm gonna have my law clerk go down there
7 and read it to the jury, editing out the objection,
8 editing out my response, and just going through like
9 that. It shouldn't be more than a few pages.

10 Any objection to that approach from the State?

11 MS. WINES: No objection to that, Your Honor.
12 However, I renew the request that they be instructed
13 again as to bond ---

14 THE COURT: I'm not doing that, I don't think
15 that's appropriate.

16 MS. WINES: Yes, sir.

17 THE COURT: I'll note your request a minute ago
18 about some type of judicial notice of bond. I'm not
19 gonna do anything of that sort, okay?

20 MS. WINES: Yes, sir, I understand. If I may just
21 add, can we somehow make your instruction to the jury
22 more specific such as ---

23 THE COURT: I'm gonna charge them like I charged
24 them a minute ago.

25 MS. WINES: Okay, thank you.

1 THE COURT: All right, Mr. Huff?

2 MR. HUFF: And, Judge, we would state for the
3 record that the jury has not asked for a charge on the
4 law, they've asked just to hear testimony.

5 THE COURT: They were instructed to follow the law.
6 If they're talking about bond, they're not following the
7 law. Okay, sir? I understand your, I'll note your
8 objection. But I feel like based on the questions it is
9 appropriate to remind them that that is not a proper
10 proposition of law that they have been charged on and
11 they are not to consider that during deliberations.

12 Other than I note your objection.

13 Would you bring the jury in, please.

14 (Whereupon, the jury entered the courtroom at
15 approximately 8:15 p.m.)

16 THE COURT: Okay. Mr. Gibson, first let me tell
17 you we did a word search, and in the Cross-Examination
18 of Mr. Patterson there was no, on 11-8-11 there was no
19 reference to bond.

20 We have all the references to official capacity.
21 My law clerk is gonna read that to you. Because there's
22 objections we're gonna edit any objections and my
23 response to that that y'all were sent out of the
24 courtroom to hear, okay?

25 Then we're gonna have the Cross-Examination of

1 Chief Bannister read to you as well. Okay?

2 THE FOREMAN: Okay.

3 THE COURT: Okay. Let me remind you again, based
4 on your question, that I want to remind you that I
5 instruct you on the law. That's my job. You are the
6 finders of the fact. I can't intervene when your
7 function is fact-finders, nor can you intervene on my
8 job to instruct you on the law.

9 And I remind you again that the legal proposition
10 of a bond requirement was not charged to you in my legal
11 charge on the law, and it is not proper for you to
12 discuss the legal requirement for a bond because that's
13 not the law I charged to you, okay?

14 That being said, Mr. Sams (phonetic), my law clerk,
15 will read those passages to you now.

16 THE LAW CLERK: This is Mr. Huff's Cross of Officer
17 Patterson (reading):

18 Q. If, and let's bring it to this factual scenario, if
19 Danger intends to have sex with someone less than
20 eighteen but he is talking and reasonably believes that
21 he is talking to somebody who is less than eighteen,
22 but, in fact, he was talking to a
23 thirty-something-year-old police officer who is at home,
24 not acting in his official capacity, he has not violated
25 the statute, has he?

1 If you want me to do that, we'll send that back.

2 THE FOREMAN: That would be great.

3 THE COURT: Any objection from the State to me
4 sending my entire charge back?

5 MS. WINES: No, Your Honor, that will be fine.

6 THE COURT: From the Defense?

7 MR. HUFF: No, sir.

8 THE COURT: All right. I'm going to put that
9 together. I want you to go back and to begin your
10 deliberations. Somehow or another there was a mix-up in
11 the communications. I'm gonna double-check on my charge
12 to you guys. But be on standby and I'll send word with
13 Mr. Bibb for you to start, okay? But don't wait for my
14 charge to begin your deliberations.

15 THE FOREMAN: Okay.

16 THE COURT: Thank you very much.

17 (Whereupon, the Jury left the courtroom at
18 approximately 8:24 p.m.)

19 THE COURT: All right. Other than your previously
20 stated objection to my giving the charge again on the
21 bond, Mr. Huff, any objections to my directions or
22 questions to the jury?

23 MR. HUFF: No, sir.

24 THE COURT: Thank you very much.

25 Ms. Wines?

1 (Whereupon, the jury resumed their deliberations at
2 approximately 9:38 p.m.)

3 Verdict of the Jury:

4 (Whereupon, there was a verdict of the Jury at
5 approximately 9:53 p.m.)

6 (The Jury entered the courtroom at approximately
7 9:57 p.m.)

8 THE COURT: Mr. Gibson, I'm informed the Jury has
9 reached a verdict; is that correct?

10 THE FOREMAN: Yes, sir.

11 THE COURT: Is it unanimous?

12 THE FOREMAN: Yes, sir.

13 THE COURT: Would you pass the verdict form to the
14 bailiff, please, sir.

15 THE FOREMAN: (Complies.)

16 THE COURT: Would you like to publish this, please,
17 ma'am.

18 THE CLERK: State of South Carolina versus Anthony
19 C. Odom, Indictment Number 2010-GS-37-363 A. We, the
20 Jury, unanimously find that the Defendant, Anthony C.
21 Odom, is not guilty of criminal solicitation of a minor.

22 State of South Carolina versus Anthony Odom,
23 2010-GS-37-364 A, We, the Jury, unanimously find that
24 the Defendant, Anthony C. Odom, is guilty of criminal
25 sexual conduct [sic] with a minor.

1 failed to meet that burden. The decision is not the
2 only aspect, though, that we believe showed
3 vindictiveness.

4 As an idea, and I won't go into all the details of
5 what you already heard, but we did enter evidence from
6 back in December of 2006, a letter from the prosecutor
7 at that time saying they weren't gonna do any further
8 studies on Mr. Odom's computer, and as well as the fact
9 that they didn't intend to prosecute in Oconee County.

10 We entered into evidence and referenced to it the
11 notes from Mr. Huff in which he indicated that, the
12 phone call and his shock at this phone call in which he
13 had with the prosecution. And, in fact, his quote was,
14 "You know that's wrong," when he was talking to her, and
15 that's what he testified to.

16 In addition, we have two other things I think that
17 go towards this vindictiveness. We put into evidence
18 newspaper articles in which the Attorney General is
19 going around to newspapers saying he is guilty. That on
20 these chats, this former prosecutor is guilty and he's
21 publishing that in the paper telling that to the
22 interviewer. We argued and introduced how that was
23 violative of the Rules of Evidence and the rules of
24 professionalism, which we again believe tend to show
25 animus towards this particular Defendant.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

ANTHONY C. ODOM,) C/A No. 2:10-873
)
)
Plaintiff,)
)
)
VERSUS) Columbia, SC
) April 9, 2010
)
HENRY D. MCMASTER, etc.,)
et al.,)
)
Defendants.)
)
-----)

TELEPHONE CONFERENCE CALL
MOTION HEARING
BEFORE THE HONORABLE MARGARET B. SEYMOUR
UNITED STATES DISTRICT JUDGE

Appearances:

For the Plaintiff: BRIAN D. MCDANIEL, ESQ.
P.O. Box 2085
Beaufort, SC 29901

For the Defendants: DEBORAH R.J. SHUPE, ESQ.
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Stenotype/Computer-Aided Transcription

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1 THE COURT: Good afternoon, this is Judge Seymour.
2 We are here in the matter of Anthony C. Odom versus Henry
3 McMaster, et al., and we are here on the plaintiff's motion for
4 a temporary restraining order. I would like to find out at
5 this time who is on the line for the plaintiffs.

6 MR. MCDANIEL: Your Honor, Brian McDaniel.

7 THE COURT: All right. Anyone else?

8 MR. MCDANIEL: No, Your Honor.

9 THE COURT: And for the defendant?

10 MS. SHUPE: Deborah Shupe for Henry McMaster.

11 THE COURT: Anyone else on the line?

12 MS. SHUPE: Not that -- we have got some people
13 present, but they are not participating as such in the
14 argument.

15 THE COURT: All right. Who else is present?

16 MS. SHUPE: Assistant Attorney General Megan Wines
17 and Assistant Attorney General Curtis Pauling?

18 THE COURT: Pauling, how do you spell that?

19 MS. SHUPE: P-a-u-l-i-n-g.

20 THE COURT: All right. Anyone --

21 MS. SHUPE: Your Honor, I can barely hear you.

22 THE COURT: Anyone else on the line?

23 MS. SHUPE: No, that's it here.

24 THE COURT: I'm going to ask if you speak, would you
25 please state your name so that the court reporter can take down

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1 the name of the person who is speaking.

2 The plaintiff has filed a motion for a temporary
3 restraining order. And in the Fourth Circuit, the standard in
4 the Fourth Circuit, the Fourth Circuit has adopted the Winter
5 test in the case The Real Truth About Obama. And the plaintiff
6 has to make or the movant has to make a clear showing of four
7 requirements:

8 That the movant is likely to succeed on the merits,
9 that the movant is likely to suffer irreparable harm in the
10 absence of injunctive relief, that the balance of equities tip
11 in the movant's favor, and that an injunction is in the
12 public's interest. And the standard is a clear showing.

13 And so I'm going to ask Mr. McDaniel, I will hear
14 from you at this time with regard to your motion for temporary
15 restraining order.

16 MR. MCDANIEL: Thank you, Your Honor. We are making
17 this motion for a temporary restraining order based on
18 communications with the Attorney General's Office that they
19 intend to indict Mr. Odom on Monday, coming Monday, on two
20 charges for what we have alleged in the complaint as the Oconee
21 chat or the Oconee communications. And what we are --

22 THE COURT: They intend to ask the grand jury to
23 indict, right?

24 MR. MCDANIEL: That's correct.

25 THE COURT: And it's up to the grand jury whether or

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1 not to indict, correct?

2 MR. MCDANIEL: It is.

3 THE COURT: Okay.

4 MR. MCDANIEL: And I guess alternately they could
5 attempt to arrest Mr. Odom, as an alternate to taking him to
6 the grand jury.

7 It is our belief if that is done, one, it would
8 initiate those proceedings causing damage to Mr. Odom's
9 reputation and putting him into what they -- what we have
10 projected as being a hearing set for June of 2010, which is --
11 meaning, of course, expense and preparation for any criminal
12 trial would begin on his part immediately for that.

13 In addition, that this matter and the federal
14 charges -- the federal action that we brought would possibly be
15 superseded by the state action, so it's our intent to initiate
16 this action first --

17 THE COURT: Well, I'm not sure I'm following you.
18 This federal action would be superseded by the indictment, the
19 criminal action?

20 MR. MCDANIEL: As I expect the state, the Attorney
21 General's Office would make a Younger type of argument that the
22 proceedings had already begun in state court, and we wanted to
23 avoid that situation.

24 As for the evidence of vindictive prosecution, the
25 "likely to proceed on the merits" standard or elements, we

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1 believe in the -- I believe in the complaint -- in the motion
2 that has been filed, the evidence is, that we have, is limited
3 without discovery at this point.

4 But these are charges that are four years old, or
5 happened in May of 2006, almost four years ago, that there was
6 reference to them and they were known by the Attorney General's
7 Office at that time.

8 It was Attorney General Stumbo at that point who
9 initially mentioned those records that -- or those
10 communications, that subsequent attempts during 2006 to obtain
11 that by Mr. Odom's criminal counsel, that there was -- for some
12 reason it was indicated that they didn't have additional
13 communications.

14 They were found, or they were acknowledged in May of
15 2007, at which time the trial of other communications in
16 Spartanburg County had been scheduled for trial about that
17 time.

18 That trial was delayed until July of 2007 because
19 these Oconee communications were intended, or told to
20 Mr. Odom's counsel, they would be used as evidence of other bad
21 acts and to identify Mr. Odom.

22 And if I could just say, the Spartanburg charges for
23 which he has now gone to trial really two times have -- were --
24 took place for a period of March -- the beginning of March I
25 believe all the way to late April, early May 2006.

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1 The second Oconee communications are alleged in --
2 for two dates, May 4th and May 6th, and are only two days'
3 worth of chats, where the Spartanburg chats were in the teens.
4 I can't remember the exact number, but 15 or 16 different
5 chats.

6 In 2007 there was a pre-hearing matter on a number of
7 motions, but one of which was the use of the Oconee
8 communications in the Spartanburg charges that had been
9 brought. And at that time -- and I presented that as Exhibit B
10 in my complaint.

11 Attorney General Stumbo indicated that they did not
12 intend to bring these charges on the Oconee communications,
13 that there hadn't been -- the normal paperwork hadn't been done
14 as far as the incident report and some other things, and they
15 did not intend to bring those.

16 In July of 2007 Mr. Odom was -- they selected a jury
17 for trial, and then an order was made in that case by the judge
18 to suppress certain evidence. That order was appealed by the
19 Attorney General's Office, the Supreme Court ruled in their
20 favor, and a rehearing was denied in March of 2009 or May of
21 2009.

22 The officer that conducted the investigation in the
23 Oconee communications was a Mr. --

24 THE COURT: Let me just stop you on those facts. You
25 said a rehearing was denied? I thought there was a mistrial.

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1 MR. MCDANIEL: Well, there was a mistrial when they
2 brought the -- I'm talking about the rehearing by the court, or
3 reconsideration by the court. I'm sorry, maybe I misstated
4 that. The Supreme Court denied rehearing from --

5 THE COURT: Then it went to trial and there was a
6 mistrial?

7 MR. MCDANIEL: Correct. In February, this February
8 of 2010 they went to trial, a seven-day trial, it was a
9 mistrial, a hung jury.

10 THE COURT: All right.

11 MR. MCDANIEL: In August of 2009, it is my
12 understanding that Officer Patterson, who investigated the
13 Oconee communication, was arrested, something to do with a
14 marital dispute or marital disturbance, and he was fired from
15 his position with the -- at that time, the Aiken -- I believe
16 the Aiken -- fired from his position, I'm not sure exactly
17 where it was.

18 Mr. Odom's counsel attempted to get the information
19 and evidence surrounding why Mr. Patterson was fired, and
20 evidently issued subpoenas, had several communications over the
21 course with the Attorney General's Office, and he will testify
22 that those -- that seeking that information got somewhat
23 contentious.

24 THE COURT: Who is "he"?

25 MR. MCDANIEL: I'm sorry, Mr. Odom's criminal

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1 counsel, criminal trial attorney, Mr. Huff.

2 And just before the trial was set to go forward in
3 February of 2010, Assistant Attorney General Ms. Wines, Megan
4 Wines, evidently had a communication with Mr. Huff, Odom's
5 attorney, and indicated to him at that time that they -- that
6 Mr. Patterson, the officer, was very frustrated by the attempts
7 to gather this information on him and that they were therefore
8 just going to indict Mr. Odom on these charges.

9 Prior to that, there had been no -- the indication
10 and the belief had been that these were only going to be used
11 as evidence of other -- possibly a 404(b), evidence of other
12 bad acts or to identify Mr. Odom.

13 THE COURT: I guess I -- initially I guess I'm
14 failing to understand why a change in prosecution strategy, how
15 that -- why that's relevant but --

16 MR. MCDANIEL: Well, Your Honor, we believe the
17 change, the only substantial facts that happened with -- by the
18 time they changed their strategy was based on the claimant's
19 proper request for evidence they had a right to get.

20 And under the standard, if the decision to penalize
21 them or to pursue them in some more vigorous way is based on
22 the defendant simply asking for evidence they have the right to
23 get under the Brady law, then that is vindictive prosecution.

24 THE COURT: So that is your evidence of vindictive
25 prosecution, the fact they decided to move forward with an

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1 indictment regardless of what Patterson was doing, or what
2 Patterson was able to produce?

3 MR. MCDANIEL: That's partly it. That Officer
4 Patterson, that the only thing that had changed was that
5 Officer Patterson had been arrested and the defendant had been
6 requesting that information.

7 And the second part of it is, after the hung jury
8 where there had been only one indictment on the Spartanburg
9 communications, which are multiple communications, there are
10 now two indictments on the Oconee communications, which make up
11 only -- there are actually only two days' worth of chat
12 communications -- and that adding additional charges, when --
13 in that kind of situation is also evidence of an animus and a
14 prosecutorial vindictiveness against Mr. Odom.

15 This is being done where Mr. Odom hasn't been able to
16 practice law, has been suspended from the practice of law since
17 May of 2006 when he was arrested. It is going on four years,
18 and at this point the Attorney General's Office is intending to
19 indict two additional counts that they have known about since
20 May of 2006.

21 We believe they are doing it because of the hung jury
22 and -- essentially, and because of the frustration with the
23 criminal -- with Mr. Odom's counsel's attempts to get
24 information they had that they were entitled to get.

25 THE COURT: All right. Anything else?

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1 MR. MCDANIEL: That is the essential part of it. The
2 rest I would rely on our motion and the complaint. We believe
3 there would be additional communications and additional facts
4 that might more directly prove the plaintiff's case, but we
5 would need discovery to get those --

6 THE COURT: Just tell me, what is your irreparable
7 harm?

8 MR. MCDANIEL: Irreparable harm is one of the
9 violations of his constitutional rights by the vindictive
10 prosecution. Also the threatening of his liberty, the cost
11 of --

12 THE COURT: The irreparable harm, specifically you
13 said that his license, he's not practicing law, that's not
14 something new, right?

15 MR. MCDANIEL: No, that's been going on since --

16 THE COURT: All right. So what is the irreparable
17 harm if this goes forward on Monday? What is the change on
18 Monday?

19 MR. MCDANIEL: Well, one would be, he would be
20 subject to -- if they intend to do this, he would be -- the
21 legal expense he would incur in fighting it. He would need to
22 pay that and begin that defense immediately. His reputation
23 would be injured. Even now they have made -- the Attorney
24 General's Office, whether they have done it directly or not, it
25 has been highly televised --

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1 THE COURT: Well, he's been indicted before, correct?

2 MR. MCDANIEL: He has been indicted --

3 THE COURT: On the same charges, right? So, what

4 would be the difference?

5 MR. MCDANIEL: These are not the same charges.

6 THE COURT: But they are similar charges, right?

7 MR. MCDANIEL: Yes, it is under the same statute but

8 it's under different -- it's a different county, and it's two

9 additional charges that he has not had before.

10 THE COURT: All right. And what else?

11 MR. MCDANIEL: I believe that's all, Your Honor.

12 THE COURT: Let me hear from the state.

13 MS. SHUPE: Proceed?

14 THE COURT: Yes.

15 MS. SHUPE: Oh, okay. Like I said, I'm trying to

16 make sure I don't speak over you, Your Honor.

17 This is Deborah Shupe, I'm representing Mr. McMaster

18 in this. First of all, I just -- I guess I just want to put on

19 the record our concern that what is being sought is a TRO

20 against not only Mr. McMaster, but against all 16 solicitors,

21 and we don't know that anyone has been served with this.

22 We notice that this was filed on Wednesday, and we

23 did not know anything about it until Mr. McDaniel called me to

24 see about setting up this conference call.

25 THE COURT: Okay.

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1 MS. SHUPE: So, we just want to put on the record our
2 concerns that the parties that he is seeking to enjoin are not
3 necessarily represented here. This office hasn't -- hasn't
4 been authorized to represent them in this matter.

5 That said, before we even get to the elements of the
6 TRO, we are -- we do assert that the court should abstain from
7 hearing this because of the Younger doctrine.

8 And as you know, since we haven't had much time I
9 apologize if my arguments appear to be disjointed, but the
10 Younger argument is there to prevent federal court intervention
11 in what should be a state court issue, and Mr. Odom clearly has
12 the right to move to quash any indictment.

13 And the issue of his constitutional rights, the issue
14 of any vindictive prosecution would certainly be -- he could
15 move to quash the indictment at that time, and we would be
16 heard by the state court and the state court can certainly
17 decide those issues. And so under the Younger doctrine, we
18 would ask the court to abstain from making a decision in this
19 case.

20 First of all, let me just say there has only been one
21 trial in this case. The first trial did not get past jury
22 selection, the jury was not even sworn. And it was -- and
23 Mr. Odom's motion to dismiss -- or motion to suppress evidence
24 that led to the appeal, we tried our best to expedite the
25 appeal, but it was not until March of 2009 that the appeal was

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1 finally decided.

2 Immediately after -- and let me just say that we
3 appealed that not just because it affected this case -- it
4 essentially gutted our case against Mr. Odom because we
5 couldn't have the identifying evidence -- but it would have
6 dramatically impacted every other Internet crime case that we
7 had pending or might be pending. So, we felt that was one we
8 needed to take up, and it had nothing to do with an animus
9 toward Mr. Odom.

10 After that was successful, this office was prepared
11 immediately to go to trial. It was originally going to be
12 scheduled for August 2009, a mere five months after the opinion
13 came down, and that was only because Mr. Odom's counsel at that
14 time, Jack Swerling, his schedule would not allow it until
15 August. As we approached August, we learned that Mr. Swerling
16 was no longer involved and Mr. Huff was going to be taking over
17 as counsel.

18 Mr. Huff first told us he could do the August date,
19 then told us he couldn't. Then we tried to set it for October,
20 and they refused to stipulate to the document from Yahoo, the
21 authenticity of those documents, so it had to be put off until
22 we could get the Yahoo witness here.

23 And so that brings us to February. Now, it is true
24 that there were no charges brought on the Oconee chats. But at
25 no point, and even the transcript pages that Mr. McDaniel has

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1 cited and attached to his motion, there is no point in there
2 where the Attorney General's Office, or any prosecutor, agreed
3 to completely give up our right and authority to decide to
4 indict him in Oconee.

5 And I don't mean to be flippant, but it just seems to
6 me that this is a case of no good deed going unpunished. We
7 were trying to move the case forward. Once the appeal was
8 pending we knew -- we weren't going to indict him then because
9 we were still relying on the same D order.

10 We were trying to present, you know -- we weren't
11 trying to pile on, I guess is what I'm saying. And we -- but
12 we never, ever represented to Mr. Odom or any of his attorneys
13 that we were never going to indict. In fact, the words "at
14 that time" are in what Mr. Stumbo said at the hearing.

15 It was a strategic decision, Your Honor. We were
16 going to use those as other bad acts, and intended to do that.
17 But, again, we still maintain the right at all times to indict
18 him, even if we used it as a prior bad act.

19 We then, in the week leading up to trial -- and he is
20 correct in what he says about it being contentious, as far as
21 what Mr. Patterson's attorney filed. But the problem was --
22 first of all, he tried to get those records without going
23 through the AG's office. We were not even aware that he was
24 trying to get them until Mr. Patterson and his lawyer informed
25 us they had been served with a subpoena and there were

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1 attorney-client privilege issues.

2 And so when it became clear that we weren't going to
3 be able to resolve those issues, again, a strategic decision
4 was made to -- in fact, I think what was told to Mr. Odom's
5 attorney is, "We don't need to be worrying about that in this
6 case, we will just -- we will direct indict him in Oconee, this
7 is a collateral issue."

8 Your Honor, it became very clear this was going to be
9 an issue that was going to cause even more confusion for a
10 jury. So, we decided not to do that. Again -- but he was told
11 before this case was called for trial, he was told, "We intend
12 to direct indict him in Oconee."

13 And we went to trial -- and, Your Honor, that was
14 regardless of what happened in Spartanburg. I will go so far
15 as to say, even if he had been acquitted in Spartanburg, we
16 were going to indict him in Oconee.

17 We told him -- after the trial, we sent him a letter
18 in an effort to be civil and ethical and be up front, we sent
19 Mr. Huff a letter telling him, "This is when we are going to
20 indict him."

21 Now, the issue of multiple indictments, Your Honor,
22 is a direct result of some issues that came up during the
23 Spartanburg trial that we believe was because we had done one
24 indictment covering multiple chats.

25 And we felt that became a distraction and an issue

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1 that confused the jury. So that is the direct reason that we
2 have filed -- we intend to do two indictments in Oconee. It
3 again has nothing to do with an animus against Mr. Odom, it is
4 simply a strategic decision on the best way for us to present
5 our case.

6 And I would also note that he, you know, he talks
7 about the irreparable harm. Well, the federal courts have
8 already ruled, if all you are looking at is the possibility of
9 having to defend yourself against criminal charges, that is no
10 different than any other citizen who faces that.

11 And Mr. Odom already has these criminal charges
12 pending. The Spartanburg charges are still there, it is our
13 intent to retry that case. So -- but we have already said and
14 tried to get this on the docket in Oconee in June.

15 They have had these chats since 2007. We will work
16 with them however we can to help them get whatever they need
17 regarding Mr. Patterson, but we can only do so much. This is
18 an attorney-client privilege issue that Mr. Patterson is
19 entitled to assert, and we are perfectly willing to let the
20 trial court decide that issue. It's really not us that is
21 complaining about it, it was Mr. Harrison and Mr. Patterson and
22 his attorney. But we could get this case tried in June of 2010
23 and -- so there is really no additional delay because the
24 Spartanburg case is still out there.

25 THE COURT: Okay.

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1 MS. SHUPE: So I don't believe he has shown a
2 likelihood to succeed on the merits. I don't believe he can
3 show irreparable harm. I think the balance of equities do not
4 favor Mr. Odom, because none of the delays in this matter have
5 been caused by the state. And we have been forthcoming and
6 provided everything we could to satisfy their need for evidence
7 and the like.

8 But I will point out that the stuff he's trying to
9 get from Mr. Patterson's attorney is -- does not relate to a
10 conviction. Those charges were dismissed and are being
11 expunged, so it could not even be used for impeachment.

12 And so we were -- we were taking the position it was
13 irrelevant, but again we were perfectly willing to let the
14 court decide that. We are also perfectly willing to let -- we
15 anticipated a motion to quash the indictment, and we are
16 perfectly willing to argue that in the state court.

17 But the state court is qualified to make the ruling,
18 and we believe Mr. Odom is simply trying to do an end run
19 around the state court system and -- by filing this federal
20 action. And we do not believe the court should exercise
21 jurisdiction or issue any type of injunction.

22 THE COURT: Let me ask you this question, in Younger
23 the Supreme Court set forth a national policy that forbids
24 federal courts to stay or enjoin pending state court
25 proceedings, and a Younger abstention is appropriate when there

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1 is an ongoing state judicial proceeding.

2 So, is this an ongoing state judicial proceeding?

3 MS. SHUPE: Yes, Your Honor. And I would call your
4 attention to the Hicks v. Miranda case. That case is a United
5 States Supreme Court case 422 U.S. 332.

6 And it says, "The requirements of Younger v. Harris
7 could not be avoided on the ground that no criminal prosecution
8 was pending against appellee on the date the federal complaint
9 was filed."

10 He knows these things, we intend to present them at
11 the grand jury next week. We have told him that -- we told him
12 that a month ago. He knows that there is an ongoing criminal
13 case involving Mr. Odom, and this is simply one more part of
14 that ongoing criminal case.

15 THE COURT: All right. And so -- and there is an
16 adequate opportunity for him to present the federal claims in
17 the state proceeding?

18 MS. SHUPE: Absolutely, yes, Your Honor. He can move
19 to quash the indictment on the ground of vindictive
20 prosecution, we are fully prepared to respond to that. He can
21 raise his due process claims in the state court. Yes, ma'am.
22 And the court is perfectly capable of ruling on them.

23 THE COURT: All right. Anything else from the
24 plaintiff's attorney?

25 MR. MCDANIEL: Yes, Your Honor, I would just like to

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1 respond to two things. One is, the Younger argument is, you
2 know -- according to the Younger case, and perhaps when the
3 complaint was filed -- I don't know, I'm not familiar with the
4 Hicks case that was cited -- but in this case the action has
5 not begun.

6 In that case I don't know if they tried to relate it
7 back to when the complaint was filed, but in this case we are
8 having the hearing before the indictment. So there are not
9 ongoing -- there is not as if the state is in a judicial
10 proceeding, an ongoing state judicial proceeding. They may
11 plan to do something but that is not -- we do believe that the
12 federal court is the proper place: One, there is a
13 constitutional, federal constitutional issue.

14 Two, there is really no state jurisprudence on this
15 claim that I can find anywhere. This is almost entirely
16 litigated in federal court. I do not know the familiarity that
17 the state judges are going to have with the issue, nor -- in
18 this particular case, against the state's attorney general who
19 is probably running for governor, is going to be a particularly
20 unbiased forum to have this case heard. So, we do believe that
21 the federal court is the proper place.

22 And as to what's being characterized as strategic
23 decisions, certainly the Attorney General's Office can
24 characterize those things as strategic and they can come up
25 with an explanation for those, but we believe that the facts as

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1 they occurred create a presumption, this presumption that can
2 be created under the case law -- under the -- under the Wilson
3 case, the presumption of vindictiveness, based on how the --
4 the evidence as a whole. In particular, as Ms. Shupe has
5 indicated, the contentiousness around the evidence from
6 Mr. Patterson is irrelevant of whether or not that is going to
7 be used or what it is for, that is really not the issue.

8 They haven't turned it over, which again isn't the
9 issue, but it only goes to the point of -- when that came up,
10 that -- the plaintiff seeking that or Mr. Odom seeking that was
11 the basis for them to decide to indict him. That is not a
12 strategic decision, it's based on frustration.

13 I understand now they are saying, "Well, that was
14 because we were afraid of jury bias," but they had known that
15 since August, it didn't become -- the decision wasn't
16 apparently made until it kept being pressed by Mr. Odom's
17 attorney.

18 And as to multiple counts being brought in March, I
19 would say the same thing. Surely they can say that they
20 believe that the jury -- at this point say the jury might have
21 been confused by the single count in the Spartanburg case, I
22 don't know objectively how that has any basis -- have any basis
23 to know -- to know that. But certainly that's almost an
24 undefendable, unattackable position.

25 But based on what actually happened, I believe that

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1 the presumption is there that we should be able to move forward
2 with the case, with a presumption of vindictiveness, and then
3 allow discovery to flesh that out. And give Mr. Odom an
4 opportunity to discover the truth, the actual charge criteria
5 and how the decision was made.

6 Because it certainly, based on the facts that are
7 known, it doesn't appear that way. It appears as if this is a
8 response to what happened. That the closeness in time to the
9 hung jury and to the frustration with the attempts to get this
10 information indicate at least a circumstantial case supporting
11 a presumption of vindictiveness. And that's all, Your Honor.

12 THE COURT: All right.

13 MS. SHUPE: Your Honor, may I just respond to a
14 couple of points? I don't want to belabor this.

15 THE COURT: All right.

16 MS. SHUPE: First of all, we don't have the evidence
17 that he's looking for in our possession, and there are
18 attorney-client privileges. And we have said we will do
19 everything we can to assist, but we don't -- we can't waive the
20 privilege on behalf of Mr. Patterson.

21 As far as the Attorney General running for governor,
22 let me just note that I have found that to be a hindrance more
23 often than a help, when we are in court. So I don't think
24 that's an appropriate basis to make this motion.

25 And frankly, Your Honor, as prosecutors, we can make

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1 a strategic decision on how to present our case based on our
2 view of what is going to come across better to the jury, what
3 is going to confuse them, and what's not. And that's what this
4 was.

5 And you can look at the timing, but one thing they
6 overlook is, we told them before the case was tried that we
7 were going to do this. It didn't have anything to do with the
8 Spartanburg trial. It just didn't. And that's pretty clear.

9 THE COURT: All right. I think that what I'm going
10 to do is issue a text order within the next 30 minutes. I'm
11 going to end the hearing at this point and make my decision and
12 I will be issuing a text order.

13 MS. SHUPE: Okay. Thank you, Your Honor.

14 MR. MCDANIEL: Thank you, Your Honor.

15 THE COURT: Thank you.

16 (Thereupon, the proceedings were adjourned.)

17 * * * * *

18 CERTIFICATE OF REPORTER

19 I certify that the foregoing is a correct transcript
20 from my stenographic notes in the above-entitled matter.

21

22 s/ Gary N. Smith

June 8, 2011

23

24 Gary N. Smith, CM
25 Official Court Reporter
United States District Court
District of South Carolina

000197

1 State of South Carolina) In the Court of General Sessions
2 County of Oconee) Case No: 2011-GS-37-00363, '364
3 State of South)
4 Carolina,)
5 Plaintiff,)
6 -vs-) Partial Transcript of
7 Anthony Clark Odom,) Record
8 Defendant.) Pre-Trial Matters
9) Pages 1 through 27
10)
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25)

November 1, 2011
Anderson, South Carolina

B e f o r e:

The Honorable R. Lawton McIntosh, Judge.

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

Megan Wines
Jason Anders
Assistant Attorneys General
Attorneys for the State

James B. Huff, Esq.,
Attorney for the Defendant

Robin Sue Hild, FCRR, RPR
Circuit Court Reporter

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1 ** Start of Requested Certified Transcript of Record **

2 (Marked for identification was Pretrial State's
3 Exhibit 1, Spartanburg chats.)

4 (Marked for identification was Pretrial State's
5 Exhibit 2, search summary dated 9-8-10.)

6 (Marked for identification was Pretrial State's
7 Exhibit 3, search summary dated 8-31-07.)

8 THE COURT: This is the State versus Odom ranked
9 first for trial next week in Oconee County.

10 MS. WINES: Yes, Your Honor.

11 THE COURT: My law clerk tells me that we have a
12 Lyles issue as well as what else?

13 THE LAW CLERK: As well as the issue of
14 admissibility of the records which were expunged.

15 THE COURT: Which involve the Police Officer,
16 correct?

17 MR. HUFF: Yes, Your Honor.

18 THE COURT: Okay. Also, I'm advised -- and I'll
19 take this up first -- that there was some question as to
20 my ruling that the Interrogatories would go out to the
21 jury pool and that it had to do with, I believe the
22 State has some problems with the Order as drafted by
23 Mr. Huff; is that correct?

24 MS. WINES: Your Honor, I thought we were past that
25 issue.

1 THE COURT: That's what I thought, too.

2 MS. WINES: Yes, sir. No. The only issue I had at
3 this point was at this time was just wondering how we
4 were gonna have the information distributed.

5 THE COURT: Take it up with the Courthouse.

6 MS. WINES: Yes, sir.

7 THE COURT: Anything further as far as the
8 Interrogatories?

9 MS. WINES: Not at this time, Your Honor.

10 THE COURT: Mr. Huff?

11 MR. HUFF: No, Your Honor.

12 THE COURT: All right. I didn't know if you agreed
13 but, maybe it best.

14 The next would deal with the admissibility of or
15 discoverability of *Lyle* evidence. Whichever order you
16 would like to go in is fine with me.

17 MR. HUFF: We would be glad to go ahead and be
18 heard on the records on Mr. Patterson.

19 THE COURT: Okay.

20 MR. HUFF: Your Honor, we would call
21 Mr. Mark Patterson to the stand.

22 (Whereupon, Officer Mark Patterson was sworn by the
23 Court).

24 ///

25 ///

1 Whereupon,

2 Mark Patterson,

3 after first having been duly sworn, testified as
4 follows:

5 Direct Examination by Mr. Huff:

6 THE COURT: State your name for the record and
7 spell your last name.

8 THE WITNESS: Mark Patterson, sir.

9 THE COURT: Spell your last name, please.

10 THE WITNESS: P-a-t-t-e-r-s-o-n.

11 THE COURT: Thank you.

12 Mr. Huff?

13 MR. HUFF: May it please the Court, Ms. Wines.

14 By Mr. Huff:

15 Q. Now, Mr. Patterson, back in 2006 you were employed
16 by the Westminster City Police Department?

17 A. Yes.

18 Q. And when were you originally employed there?

19 A. I believe it was 2004. I don't remember the exact
20 dates, it's so long ago.

21 Q. And when did you leave Westminster?

22 A. 2006. August of 2006, I believe.

23 Q. All right. And I believe the accusations involved
24 in this case arise in, I believe, May of 2006?

25 A. Yes, sir, I believe.

- 1 Q. Okay. Now, you left Westminster in August of 2006.
2 Where did you go as far as employment after that?
3 A. Aiken County Sheriff's Office.
4 Q. All right. And do you know approximately what
5 month or year you became employed there?
6 A. August 2006.
7 Q. All right. So there was possibly a week or two
8 delay between leaving Westminster and starting --
9 A. One week.
10 Q. One week, okay.
11 Now, you were married at the time; is that right?
12 A. No, sir.
13 Q. When you went to Aiken County you were not married?
14 A. No, sir.
15 Q. Okay. Did you later become married while you were
16 living in Aiken County?
17 A. Yes, I did.
18 Q. When did you become married?
19 A. That would have been in September of 2007.
20 THE COURT: September '07?
21 THE WITNESS: Yes, sir.
22 THE COURT: All right.
23 By Mr. Huff:
24 Q. And who is Ellen Patterson?
25 A. That's my ex-wife.

- 1 Q. Your ex-wife?
- 2 A. Yes, sir.
- 3 Q. Is this the lady that you married in September of
- 4 '07?
- 5 A. Yes, sir.
- 6 Q. Okay. How did you know Ms. Patterson in 2006?
- 7 A. I did, I met her in December 2006, I believe. We
- 8 were friends.
- 9 Q. You met her in December 2006?
- 10 A. I believe so. It may have been in 2007, early '07.
- 11 Q. Okay. Well, let me ask you, were you arrested June
- 12 5th of 2009 in Aiken County?
- 13 A. (Pause) Yes.
- 14 Q. Did you understand the question?
- 15 A. Yes, sir. But I didn't think that valid.
- 16 Q. All right. So you were arrested in 2009. And were
- 17 you -- tell me, if you would, were you suspended from
- 18 the Aiken County Sheriff's Department at that time?
- 19 A. Yes.
- 20 Q. All right. And the -- what were your duties at the
- 21 Sheriff's Department at the time of your arrest?
- 22 A. I was an investigator.
- 23 Q. Okay. In what division?
- 24 A. I worked in the Juvenile Division.
- 25 Q. Okay. How long were you assigned to the Juvenile

1 Division at the Sheriff's Department?

2 A. I believe it was about a year and a half.

3 Q. When you started the Sheriff's Department, what

4 duties did you have?

5 A. I think I was on road patrol.

6 Q. Road patrol. How long were you on the road? Until

7 you became a juvenile investigator?

8 A. Yes, sir.

9 Q. Okay. Tell me, if you would, what transpired to

10 cause your arrest on June 5th of 2009 in Aiken County?

11 MS. WINES: Your Honor?

12 THE COURT: Rephrase that question, please,

13 Mr. Huff.

14 By Mr. Huff:

15 Q. You were accused of something in Aiken County,

16 accused of a crime, correct?

17 A. Yes.

18 Q. What crime were you accused of?

19 A. Unlawful communication.

20 Q. All right. And who arrested you on June 5th of

21 2009?

22 A. The Burnettown Police Department, sir.

23 Q. All right. What Officer --

24 THE COURT: Who?

25 THE WITNESS: The Burnettown Police Department,

1 sir.

2 THE COURT: I'm sorry. Which town? Burnetsown

3 [sic]?

4 THE WITNESS: Burnettown.

5 MR. HUFF: Burnettown.

6 THE COURT: Burnettown. I'm sorry.

7 MR. HUFF: I could spell that for the reporter.

8 It's B-u-r-n-e-t-t-o-w-n, Burnettown.

9 THE COURT: I'm sorry, go ahead.

10 MR. HUFF: Thank you, Your Honor.

11 By Mr. Huff:

12 Q. And that was Chief David Smith who made the arrest?

13 A. Yes, sir.

14 Q. All right. And what did -- how did your arrest

15 physically take place?

16 A. I don't understand your question.

17 Q. How did you physically get arrested? (Pause) Do

18 you not understand that?

19 A. I mean, did they take me to jail, put handcuffs on

20 me? Is that what you're asking?

21 Q. Yes, sir.

22 A. I don't completely understand.

23 Q. I guess that's what I was meaning by -- well, how

24 did you know that there was an arrest warrant for you?

25 A. There was never an arrest.

- 1 Q. All right, sir. What was there? Tell me what the
2 charging document was.
- 3 A. The charging document was a uniform traffic ticket,
4 yes.
- 5 Q. So we're gonna play semantics. Well, tell me about
6 this ticket. How did you learn that there was a ticket
7 for your arrest?
- 8 A. They read me the ticket after they wrote it.
- 9 Q. All right. Who is "they"?
- 10 A. Burnettown Police Department, Chief Smith.
- 11 Q. All right. Well, let's go back to, if you would
12 tell the Court how you were notified, who notified you,
13 where you were, what physically was going on when you
14 were arrested.
- 15 A. I was at my residence and they gave me a ticket.
- 16 Q. I'm sorry?
- 17 A. I was at my residence and they wrote me a ticket
18 for unlawful communication, told me that --
- 19 Q. Who wrote the ticket?
- 20 A. Chief David Smith.
- 21 Q. So he was at your house?
- 22 A. Yes, he was.
- 23 Q. All right. And did he take you into custody?
- 24 A. Yes, he did.
- 25 Q. And so what did he do to take you into custody?

- 1 A. He placed me in handcuffs and took me to the Aiken
2 County Detention Center.
- 3 Q. Okay. So you went straight from your house to the
4 Aiken County Detention Center?
- 5 A. Yes, I did.
- 6 Q. All right. And what happened when you got to the
7 Detention Center?
- 8 A. I went in front of a Judge, received a personal
9 recognizance bond and I was released.
- 10 Q. All right. So you went in to a Bond Court Judge?
- 11 A. Uh-huh.
- 12 Q. Do you recall who the Judge was?
- 13 A. Um, I don't remember.
- 14 Q. That's fine. That's fine. So did Chief Smith
15 place you in his patrol car and take you to the Aiken
16 County Detention Center?
- 17 A. Yes, he did.
- 18 Q. All right. And did he come in through the sally
19 port or come through the main doorway that the public
20 comes in to the Detention Center?
- 21 A. It was through the sally port.
- 22 Q. All right. And once you got to the Detention
23 Center, were you taken directly in, straight in to the
24 bond courtroom?
- 25 A. Yes, I was.

- 1 Q. Okay. You didn't stop anywhere?
- 2 A. No, sir.
- 3 Q. Okay. And at that point in time, I believe that
- 4 is, the Judge you say gave you a personal recognizance
- 5 bond?
- 6 A. Yes, sir.
- 7 Q. And so the Judge -- how long do you think you were
- 8 in Bond Court, approximately?
- 9 A. Five minutes.
- 10 Q. Okay. And what happened once the Judge set bond?
- 11 THE COURT: Do you have an objection, Ms. Wines?
- 12 MS. WINES: Your Honor, I do. I just don't see how
- 13 this case is relevant to the case at hand, and I
- 14 assume Mr. Huff is going somewhere with it, but the --
- 15 THE COURT: I've got your objection.
- 16 What's your relevancy, please?
- 17 MR. HUFF: Judge, I'm tracking the Statute that
- 18 will support my request for disclosure of the documents.
- 19 THE COURT: What Statute would that refer to, sir?
- 20 MR. HUFF: Your Honor, that's going to be 17-1-40.
- 21 THE COURT: Got it. Okay.
- 22 Overruled.
- 23 By Mr. Huff:
- 24 Q. You were in Bond Court for about five minutes. And
- 25 then what happens to you?

- 1 A. They released me on a personal recognizance bond.
- 2 Q. And did you walk back out through the front door or
- 3 did the --
- 4 A. I went back out through the sidewalk.
- 5 Q. And did Chief Smith drive you back to your house?
- 6 A. Yes, he did.
- 7 THE COURT: Let me stop you, Mr. Huff. I've got
- 8 17-1-40 in front of me. Show me where in the Statute
- 9 where we should be tracking.
- 10 MR. HUFF: Subsection C, Your Honor.
- 11 THE COURT: Hang on.
- 12 MR. HUFF: I'm sorry, Your Honor. I just have two
- 13 questions I'll be asking.
- 14 THE COURT: Let me just look at this first, please.
- 15 MR. HUFF: Yes, sir, Your Honor.
- 16 THE COURT: (Court reads Statute 17-1-40,
- 17 Subsection C.)
- 18 Okay. Go ahead.
- 19 MR. HUFF: Thank you, Your Honor.
- 20 By Mr. Huff:
- 21 Q. Okay. So, Mr. Patterson, during your arrest
- 22 process you never had a mugshot taken of you, did you?
- 23 A. No, sir.
- 24 Q. You never had any fingerprints taken of you, did
- 25 you?

- 1 A. No, sir.
- 2 Q. And who is Charles Barranco? You know him, don't
- 3 you?
- 4 A. Yes, sir.
- 5 Q. And is he not the Head of the Aiken County
- 6 Detention Center?
- 7 A. He is the Captain.
- 8 Q. Okay. And he is in charge of the Aiken County
- 9 Detention Center, correct?
- 10 A. Yes, sir.
- 11 Q. All right. And so, if he were to have researched
- 12 the records at the Aiken County Detention Center, he
- 13 would find exactly what you just said, that there are no
- 14 mugshots or fingerprints of your arrest regarding this
- 15 charge of unlawful use of telephone, wouldn't he?
- 16 A. I'm not familiar with their record keeping, sir.
- 17 Q. All right. Let me show you this document, if I
- 18 could. I know you may not be familiar with this
- 19 process, but I'll ask you to read that to yourself but
- 20 not make any comment about it yet.
- 21 A. (Complies and hands back to Counsel.)
- 22 Q. Okay, sir. Is this a letter that purports to be
- 23 from Captain Barranco from the Aiken County Sheriff's
- 24 Department?
- 25 A. Yes, sir.

1 Q. All right. Does it reflect what he found when he
2 made a search of his records regarding any fingerprints,
3 mugshot, or any records regarding your arrest that we
4 have been discussing in court today?

5 A. Yeah.

6 Q. All right. And does his letter reflect that he
7 found no indication that you were ever fingerprinted or
8 mugshot or had any documents regarding your entry into
9 the Aiken County Detention Center as a result of your
10 arrest in 2006?

11 A. That's true.

12 Q. All right. Would you dispute his assertion in his
13 letter? Would you deny that or disagree with it?

14 A. That they don't have any of that stuff?

15 Q. Yes, sir.

16 A. I don't know, sir.

17 Q. All right.

18 A. I don't know what records they have at the jail.

19 Q. But you would certainly know that the jail would
20 not have any records of you being fingerprinted there?

21 A. That is true.

22 Q. Or being mugshot?

23 A. That is true.

24 Q. And after your arrest, there were no fingerprints
25 taken of you whatsoever, were there?

1 A. No.

2 MR. HUFF: Your Honor, we would offer this in as a

3 Defendant's Exhibit.

4 THE COURT: Any objection?

5 MS. WINES: No objection.

6 THE COURT: It will be admitted without objection.

7 (Marked for identification and received in evidence

8 was Pretrial Defendant's Exhibit 1, letter dated

9 October 24, 2011, to James Huff, Esq., from Charles

10 D. Barranco, Captain, Aiken County Sheriff's

11 Office, Detention Division.)

12 MR. HUFF: As to the issue before the Court as to

13 this motion, I have no further questions of this

14 Witness.

15 THE COURT: Ms. Wines, Cross-Examination?

16 MS. WINES: No, Your Honor.

17 THE COURT: I assume by your comments that you are

18 asking Officer Patterson not be excused?

19 MR. HUFF: I'm asking that he not be excused at

20 this point, Judge.

21 THE COURT: You may step down.

22 THE WITNESS: Thank you, Your Honor.

23 (Witness leaves stand.)

24 THE COURT: Anything further?

25 MR. HUFF: Yes, Your Honor. Your Honor, we have

1 been attempting to obtain these records related to
2 Mr. Patterson's arrest, who you are aware is the Chief
3 Investigating Officer related to the charge pending
4 against my client and will be tried next week before
5 Your Honor. The State has consistently argued that the
6 records related to Mr. Odom's arrest -- excuse me,
7 Mr. Patterson's arrest should not be released to
8 Mr. Odom so that he might prepare a full and adequate
9 defense pursuant to his Constitutional rights.

10 And what you have before you is, testimony today is
11 that Mr. Patterson was never fingerprinted related to
12 his arrest in Aiken County.

13 Our Expungement Statute, 17-1-40, states that a
14 person may -- does not -- this Section does not apply to
15 a person who is charged with the violation of a state
16 criminal offense if the person is not fingerprinted for
17 the violation.

18 As such, the State's assertion that the records
19 related to Mr. Patterson's arrest should have been
20 expunged and should not -- that's one issue -- is not
21 correct and they should have never been expunged, and as
22 such, pursuant to our discovery request, pursuant to
23 *Brady* and Rule 5 and *Kyles v. Whitley*, they should have
24 been presented many, many, many months ago so that we
25 could prepare to defend the charge against Mr. Odom.

1 THE COURT: Ms. Wines?

2 MS. WINES: My response would be brief.

3 First, the State is allowed in Section 17-22-950,
4 which is actually controlling as to the expungement
5 itself -- in all candor to the Court, I'm not sure I
6 completely follow Mr. Huff's argument about the
7 fingerprints. I understand the language as written.
8 But I would need to take a further look at the authority
9 about that. I'm not sure that we would have the same
10 reading of that, and I would defer to Your Honor's
11 reading of the Statute.

12 THE COURT: What is your reading of that Statute,
13 17-1-40?

14 MS. WINES: 17-1-40, and as I understand it we're
15 looking at Subsection C discussing that a person is not
16 fingerprinted, as I understand it, this particular
17 Statute is talking about the destruction of the records,
18 not necessarily the expungement being ordered itself,
19 and that's where I see the difference, Your Honor.

20 But certainly I would have to perhaps do a little
21 more research. Not to say that's my final, but in
22 reading it just now, that would be my interpretation,
23 Your Honor.

24 And I believe as to whether the charge should and
25 could be expunged, and the method for expungement is

1 17-22-950, and as such, I'm pretty certain I have
2 previously handed up to Your Honor, and I've got extra
3 copies if we need the Expungement Order itself. If you
4 would just bear with me to get my hands on it again.
5 I'm sure Mr. Huff has a copy, but I'll...

6 MR. HUFF: I've got one.

7 MS. WINES: Okay. This is the actual Expungement
8 Order that was issued. And the State's position is that
9 once that expungement has occurred, regardless of
10 fingerprint or not, none of the records should be viewed
11 by anybody. And, you know, it's not that we are saying
12 the Defendant shouldn't have it in his defense --

13 THE COURT: Let me ask you this. Even if a case is
14 expunged, is there case law out there as to whether or
15 not you can bring up prior bad acts even in the face of
16 an expungement? It seems like I've read a case that
17 says that does not necessarily exonerate a person being
18 cross-examined about alleged prior bad acts. Is that
19 correct?

20 MS. WINES: I believe you are correct on that, Your
21 Honor. And then the State's position would be with
22 regard to these records the particular charge doesn't
23 meet the one-year felony and it doesn't meet the kind of
24 dishonesty that would be needed to bring in to impeach
25 the Witness, Your Honor.

1 THE COURT: Well, and let me see if I understand
2 what you are saying. I think I understand what you are
3 saying --

4 MS. WINES: Yes, sir.

5 THE COURT: -- and correct me, please, Ms. Wines.
6 But your argument is, Look, regardless of whatever
7 17-1-40 provides, the matter has been expunged, it's
8 over, it's done.

9 I believe what I'm hearing from Mr. Huff is,
10 regardless of the merit or lack of merit of whether or
11 not there should have been expungement under 17-1-40,
12 those records should not have been destroyed.

13 Isn't that correct?

14 MR. HUFF: Judge, and I know that Ms. Wines and I
15 have a long history in this case and I know that there
16 is a lot for you to catch up on. I know that what is in
17 the file --

18 THE COURT: That's a nice way of saying I'm not
19 catching the point, I believe.

20 MR. HUFF: What may assist the Court is the records
21 have never been expunged, and I could provide the
22 Court -- and I know Ms. Wines has a copy -- and I could
23 give the Court a little bit of history (handing).

24 THE COURT: Well, let me ask you this, Ms. Wines.
25 If the records had not been expunged --

1 MS. WINES: Yes, sir.

2 THE COURT: -- and case law allows for someone to
3 be cross-examined on prior bad acts --

4 MS. WINES: Yes, sir.

5 THE COURT: -- why should I not order that those
6 documents be provided to your motion *in limine* or your
7 objection to the Cross-Examination or use of those at
8 trial with the prohibition against Mr. Huff sharing
9 those documents with people or disseminating those
10 documents with anyone?

11 Mr. Huff, do you see the need to share these
12 documents with anyone whatsoever, including your expert
13 and your client?

14 MR. HUFF: No, Judge. As a matter of fact, one of
15 the letters, communications between Ms. Wines and I
16 probably last year was that it was our intent to obtain
17 these documents, and when the trial was over with to
18 return them to the Chief of Police in Burnetown to
19 follow suit if their Statute allowed their destruction,
20 but that was denied and to --

21 THE COURT: I interrupted Ms. Wines, so if you
22 could hang on.

23 Go ahead.

24 MS. WINES: That's fine, Your Honor.

25 I believe with our having a different take on

1 expunge, my opinion is that the Order means that the
2 records should be expunged and the fact that they exist
3 is in error and they should not be able to rely on the
4 fact that they are in existence because they just
5 shouldn't be there.

6 THE COURT: Well, do you disagree that the evidence
7 presented unequivocally establishes that the destruction
8 of records under 17-1-40 doesn't apply to the factual
9 scenario in this case, i.e., that is this gentleman was
10 taken in, bonded out on a PR, wasn't fingerprinted or
11 mugshot?

12 MS. WINES: Yes, Your Honor.

13 THE COURT: So that Section is inapplicable to the
14 facts in this case, correct?

15 MS. WINES: As I read it, Your Honor, and I would
16 be happy to do some further research on it.

17 THE COURT: But you are saying it doesn't matter.
18 Expungement is expungement whether or not it should be
19 carried out?

20 MS. WINES: Yes, Your Honor.

21 MR. HUFF: Just so I can give the Court a full
22 record -- and I know Ms. Wines has got copies of these
23 documents -- I'll hand these up and ask that they be
24 made Defendant's Exhibits as well so I could give you a
25 history of how we got to where we are before Your Honor

1 today.

2 And I believe this would be a factual chronology
3 that would be undisputed, is that Mr. Patterson was
4 arrested June 5th of 2009. My office learned of the
5 arrest and made an oral request from the Chief of Police
6 that arrested Mr. Patterson, on August 28th, a little
7 over two months later. I was instructed by the Chief to
8 give him a written request for those documents, which I
9 did on September 2nd, 2009.

10 I faxed -- what you have is my fax cover sheet and
11 letter to Chief Smith requesting a certified copy of his
12 department's investigation file of Mr. Patterson.
13 That's the documents I just gave you.

14 Subsequently, I never got those documents. I made
15 a note, and I will tell you as an Officer of the Court I
16 made a call to Chief Smith on November 2nd and stated
17 that I still don't have the documents.

18 And he said, Well, I never got your request. What
19 are you talking about.

20 So I sent him another request on December 8th.

21 I then found out that he had dismissed the charge
22 on November 4th. He didn't have an Order of Dismissal,
23 but that is what Chief Smith stated to me.

24 I was told that an Expungement Order had been
25 signed December 8th, which is also what is reflected in

1 what I believe Mrs. Wines has just provided to Your
2 Honor. Lawrence Brown is an attorney in Aiken County
3 who is the County Attorney, and it was suggested to me
4 that I contact -- by Chief Smith to contact Mr. Lawrence
5 Brown, the Attorney for the County. So I did that. I
6 was informed that Mr. Brown returned the documents over
7 to me. Later I was told by him that he would not do
8 that, that I needed to take it up with Judge Edmonds,
9 the Judge that signed the Order of Expungement.

10 Which I did. I made a call to Judge Edmonds and
11 asked for a hearing on the matter, which he granted to
12 Chief Smith and myself on December 11th. And Chief
13 Smith and I went to Judge Edmonds' office, we had a
14 hearing on the matter, and he orally ordered that he was
15 staying his, the Expungement Order and stated, quote,
16 that he was gonna hold onto the records until a Circuit
17 Court Judge told him what to do.

18 THE COURT: All right. Let me stop you there, if I
19 may. What I'm hearing from what you are telling me,
20 your plan, or your planned use of the information
21 gleaned from these records would be for impeachment
22 purposes?

23 MR. HUFF: And/or discovery. Judge, what I have
24 found in my years of practice and discovery, something
25 that looks totally mundane or unattractive or --

1 THE COURT: I mean, hold on. The question in this
2 trial is guilt or innocence of your client based on
3 things that dated back to 2006; is that correct?

4 MR. HUFF: Yes, sir.

5 THE COURT: Then how could something that could
6 have occurred or did occur in 2009 be relevant to that
7 whatsoever?

8 MR. HUFF: I'm sorry, Your Honor?

9 THE COURT: Other than for --

10 MR. HUFF: For impeachment purposes, yes, sir, just
11 to find out what was there.

12 THE COURT: So, let me stop you there. If it is
13 for impeachment purposes, and I think we all agree
14 that's what it's about, do you have your Rules of
15 Evidence with you?

16 MR. HUFF: Judge, I do not.

17 THE COURT: All right. I'm gonna give you all a
18 minute and let you all both look at this. Mine is
19 haggard and worn because I'm not very smart without it.
20 It looks like to me like that this Officer would have to
21 be a Witness on behalf of the State, so you would have
22 to be controlled by Rule 608, Evidence of Character or
23 Bias -- regarding Conduct or Bias of a Witness. Or it
24 couldn't be 609 because that is conviction of a crime
25 which did not happen in this case. And I'm gonna ask

1 you to take a minute, look at that Rule. I'm gonna get
2 some more coffee and come back and argue some more.
3 Here is my book and you are more than welcome to look at
4 that.

5 MR. HUFF: We've got one, Judge.

6 THE COURT: All right.

7 (Whereupon, the Court leaves the courtroom and
8 returns.)

9 THE COURT: Have both Counsel had time to review
10 the Rule 608 or applicable --

11 MS. WINES: Yes, Your Honor.. If we may approach
12 for a minute?

13 THE COURT: Sure.

14 (Discussion at sidebar.)

15 THE COURT: We'll be in recess for one moment.

16 (Court and Counsel leave courtroom and return.)

17 THE COURT: Please be seated.

18 All right. I'm gonna put this on the record.

19 Number one, I went back to argue the matter of
20 discovery of any documents of Officer Patterson.
21 Mr. Huff candidly admitted in oral argument that the
22 only use that he could make of these documents would be
23 for impeachment purposes of a witness, and since this
24 was not involving a conviction, it would be under 608 of
25 the Rules of Evidence. And I think everyone is in

1 agreement with that.

2 With that being said, Rule 608 says that you cannot
3 use extrinsic evidence to impeach a witness. Therefore,
4 the use at trial of these documents would be and is
5 going to be prohibited. However, under the general
6 scope of discovery that may lead to discoverable
7 information, I am going to order, and it seemed like the
8 parties were on their way towards agreeing to this, they
9 never did, I have told them that I was gonna rule that
10 those documents would be made available to Mr. Huff and
11 Mr. Huff only, and that excludes his client and any
12 witnesses, expert or otherwise, he may have; however, he
13 may utilize his staff. Do you have any Co-Counsel?

14 MR. HUFF: I do, Your Honor. The very astute Andy
15 Johnston from Spartanburg.

16 THE COURT: Okay. Well, obviously this prohibition
17 would not be against Co-Counsel or his staff. However,
18 they are under the same order, and if those documents
19 are somehow leaked out, there will be sanctions applied,
20 as you can imagine.

21 MR. HUFF: Yes, Your Honor.

22 THE COURT: All right. Now, I called the Counsel
23 to go back into the back room so I could attempt to call
24 the Clerk of Court in Oconee to find the most expedient
25 way for those documents to be made available to both

1 HAD MENTIONED BEFORE THAT THE INVESTIGATING OFFICER IN
2 THIS CASE IS BY THE NAME OF MARK PATTERSON. JUDGE,
3 MR. PATTERSON WAS ARRESTED IN AIKEN COUNTY, SOUTH
4 CAROLINA, AND WE HAD REQUESTED A COPY OF THAT
5 INVESTIGATION FILE TO FURTHER OUR SEARCH FOR DISCOVERABLE
6 EVIDENCE, DETERMINE WHAT QUESTIONS WE MIGHT HAVE TO ASK
7 MR. PATTERSON DURING THE TRIAL.

8 WHAT I HAD PROVIDED, IN MY REQUEST TO HAVE A COPY OF
9 THE AGENCY'S FILE, ALTHOUGH MY REQUEST WAS MADE PRIOR
10 TO -- THE CASE ULTIMATELY WAS *NOLLE PROS'D* BY THAT LAW
11 ENFORCEMENT AGENCY WHICH IS THE BURNETTOWN POLICE
12 DEPARTMENT. MY REQUEST FOR THE INFORMATION WAS MADE
13 PRIOR TO THAT DISMISSAL.

14 HOWEVER, THE CASE WAS THEN DISMISSED. AND PRIOR TO
15 DESTRUCTION OF THE FILE I BECAME AWARE THAT IT HAD BEEN
16 DISMISSED, HAD A MOTION HEARING IN FRONT OF THE LOCAL
17 CHIEF MAGISTRATE AND ASKED THAT THE FILE BE PRESERVED SO
18 THAT WE COULD LOOK AT IT IN OUR EFFORTS IN DISCOVERY IN
19 THIS CASE.

20 WHAT I PROVIDE TO YOU IS A LETTER FROM THE CHIEF OF
21 POLICE TO OUR CHIEF MAGISTRATE, Rodger Edmonds, STATING
22 THAT THE FILE HAS BEEN SECURED AND HAS BEEN KEPT AND WHAT
23 IS IN IT AS FAR AS THE ITEMS.

24 JUDGE, WE ARE ASKING THAT THE COURT ORDER THAT
25 COPIES AS LISTED HERE ON THIS DOCUMENT BE PROVIDED TO THE

1 STATE AND THE DEFENSE IN ORDER TO PREPARE FOR THIS CASE.

2 NOW, YOUR HONOR, DISCOVERY IS VERY MUCH LIKE FISHING
3 AT LAKE OCONEE. YOU PUT YOUR HOOK OVER THE WATER, OVER
4 THE SIDE OF THE BOAT, AND YOU SEE IF YOU CAN FIND A FISH.
5 WHEN YOU PULL IT UP, IT MAY BE TOO SMALL. IT MAY NOT BE
6 FOR YOU TO KEEP. THE ANALOGY IS THAT IT MIGHT BE
7 SOMETHING THAT IS NOT ADMISSIBLE AT TRIAL, THAT THE RULES
8 OF EVIDENCE WOULD EXCLUDE.

9 BUT IT, IT MIGHT BE ADMISSIBLE IN THE DEFENSE OF
10 MR. ODOM. IT ALSO MIGHT BE SOMETHING THAT, ALTHOUGH NOT
11 ADMISSIBLE, WOULD LEAD ME TO SOME OTHER ADMISSIBLE
12 EVIDENCE, AND THAT'S WHY OUR SUPREME COURT HAS SAID THAT
13 WHETHER OR NOT AN ITEM SOUGHT TO BE DISCOVERED IS
14 ADMISSIBLE AT COURT IS NOT THE STANDARD OR THE TEST; IT'S
15 WHETHER IT MIGHT EVEN LEAD TO SOME OTHER EVIDENCE THAT
16 MIGHT LEAD TO EVEN OTHER EVIDENCE THAT MIGHT BE
17 ADMISSIBLE AND BENEFICIAL TO THE PREPARATION OF THE CASE.

18 SO WE ARE ASKING, JUDGE, NOT KNOWING WHAT IS THERE,
19 WE CAN'T MAKE ANY CLAIM WHETHER OR NOT, ONE, THE EVIDENCE
20 IS SOMETHING THAT COULD BE ADMISSIBLE EITHER, OR USABLE
21 FOR IMPEACHMENT OR ADMISSIBLE IN OUR CASE-IN-CHIEF, OR
22 MIGHT LEAD TO SOME OTHER EVIDENCE.

23 I BELIEVE IT IS APPROPRIATE TO HAVE THE COURT ORDER
24 THIS INFORMATION BE DISCLOSED TO BOTH SIDES, WITH AN
25 ACCOMPANYING RESTRICTION THAT NEITHER SIDE CAN RELEASE

1 THIS INFORMATION TO ANYONE ELSE, AND THAT AT THE
2 CONCLUSION OF THE TRIAL OF THIS CASE, BOTH MS. WINES AND
3 MYSELF EITHER RETURN THESE DOCUMENTS OR EVIDENCE TO THIS
4 COURT OR TO THE TOWN OF BURNETTOWN FOR THEIR SUBSEQUENT
5 DISPOSITION.

6 AND I CERTAINLY WOULD BE AMENABLE TO THE COURT
7 ISSUING THAT TYPE OF ORDER. THAT PREJUDICES NO ONE AND
8 ALLOWS OUR DISCOVERY EFFORTS TO CONTINUE. BUT I DON'T
9 THINK IT IS, I DON'T THINK I NEED TO ARGUE THAT THE
10 DISCOVERY MAY LEAD TO DISCOVERABLE OR UNDISCOVERABLE
11 EVIDENCE. THANK YOU.

12 THE COURT: WELL, IT DOES, REASONABLY CALCULATED TO
13 LEAD TO DISCOVERY OF ADMISSIBLE EVIDENCE.

14 MR. HUFF: AND, JUDGE, WE DON'T KNOW WHETHER IT WILL
15 OR NOT.

16 THE COURT: I THINK THAT'S WHY OUR COURTS SAID THAT
17 YOU DON'T GO ON FISHING EXPEDITIONS. I MEAN, OTHERWISE
18 WE COULD GET INTO THOSE AREAS THAT HAVE NO ANSWER BUT
19 THEY CERTAINLY ARE INTRIGUING. "INQUIRING MINDS WANT TO
20 KNOW." I THINK THEY SELL A LOT OF NEWSPAPERS WITH THAT
21 BEING SAID.

22 ALL RIGHT.

23 MS. WINES: THANK YOU, YOUR HONOR. FIRST AND
24 FOREMOST, I WOULD JUST REITERATE THESE MATERIALS ARE
25 SUPPOSED TO BE EXPUNGED AND DESTROYED. I HAVE A QUESTION

1 that A HEARING WAS HELD TO HOLD THEM. BUT NEVERTHELESS
2 APPARENTLY THE RECORDS STILL EXIST. AND AT THIS POINT
3 THE STATE'S ARGUMENT IS THERE IS NO AUTHORITY FOR THE
4 DEFENSE TO HAVE THEM. THEY ARE NOT ENTITLED TO HAVE
5 THEM. BEYOND THAT, THERE IS NO NEED FOR THEM TO HAVE
6 THEM. I WOULD SUGGEST TO THE COURT IT IS A FISHING
7 EXPEDITION. THE LIST PROVIDES US, DOES NOT PROVIDE
8 ANYTHING THAT THE STATE BELIEVES WOULD LEAD TO ANYTHING
9 ADMISSIBLE IN COURT RELATIVE TO MR. ODOM.

10 ADDITIONALLY -- WELL, I'M JUST GONNA LEAVE IT AT THE
11 FACT THAT I JUST DON'T BELIEVE ANY OF IT IS RELEVANT, AND
12 THE DEFENSE IS SAYING THEY DON'T KNOW WHAT'S THERE, BUT
13 WE CLEARLY HAVE A LIST, AND IT JUST DOES NOT APPEAR TO ME
14 THAT IT WOULD LEAD TO ANYTHING DISCOVERABLE AS TO
15 MR. ODOM. BUT AGAIN, THE FOREMOST POSITION, IT'S
16 SUPPOSED TO BE EXPUNGED, THEY ARE NOT ENTITLED TO IT.

17 MR. HUFF: WELL, JUDGE, IN BRIEF RESPONSE?

18 THE COURT: PLEASE.

19 MR. HUFF: I'M A LITTLE CONCERNED AT THE TENOR OF
20 MS. WINES STATING THAT I QUESTION THE HEARING WAS HELD
21 WHEN I'VE JUST STATED AS AN OFFICER OF THE COURT THAT ONE
22 WAS.

23 THE COURT: SO NOTED.

24 MR. HUFF: THANK YOU, JUDGE.

25 THE COURT: All right.

1 MR. HUFF: AGAIN, WHAT THE STATE BELIEVES MAY LEAD
2 TO ADMISSIBLE EVIDENCE OR WHAT MAY BE IMPORTANT TO THE
3 DEFENSE IS NOT THE ISSUE. IT IS OUR OBLIGATION TO
4 INVESTIGATE THE CASE ON MR. ODOM'S BEHALF, TO SEE IF
5 THERE IS EVIDENCE THAT MAY BE BENEFICIAL TO EITHER THE
6 GUILT OF MR. ODOM OR HIS INNOCENCE OR TO SENTENCING.
7 THE STATE, IT APPEARS, WOULD LIKE TO STAND IN THE
8 WAY OF OUR EFFORTS TO DISCOVER ISSUES CONCERNING THE
9 STATE'S PRIMARY WITNESS. THAT IS PREJUDICIAL TO
10 MR. ODOM. I BELIEVE THE COURT HAS THE CLEAR AUTHORITY TO
11 PROTECT EVERYONE'S INTEREST HERE BY PUTTING A RESTRICTION
12 ON ANY DISSEMINATION OF THIS EVIDENCE ONCE THE COURT
13 ALLOWS BOTH MS. WINES AND I TO LOOK AT SOMETHING AND TO
14 LOOK AT THIS EVIDENCE.
15 IT MAY BE THAT WHAT IS THERE AND LOOKED AT IS
16 TOTALLY ADMISSIBLE ON CROSS-EXAMINATION OF MR. PATTERSON.
17 IT MAY BE THAT IT MAY NOT. BUT AS I'VE STATED, IT MAY
18 LEAD ME TO OTHER WITNESSES AND OTHER ITEMS THAT WE MIGHT
19 FIND TO BE BENEFICIAL TO MR. ODOM.
20 SO THE ISSUE IS THERE IS NO PREJUDICE TO EITHER
21 SIDE. IT SEEKS TO FULFILL THE GOAL OF JUSTICE IN THIS
22 CASE BY ALLOWING MR. ODOM TO PREPARE A CONSTITUTIONALLY
23 GUARANTEED FULL AND ADEQUATE DEFENSE, WITH PREJUDICE TO
24 NO ONE.
25 THE COURT: ALL RIGHT. MS. WINES, ANYTHING ELSE?

1 MS. WINES: BRIEFLY, YOUR HONOR. JUST TO CLARIFY.
2 I DID NOT MEAN TO SUGGEST THAT MR. HUFF WAS MISLEADING
3 THE COURT --

4 THE COURT: I DIDN'T THINK YOU DID.

5 MS. WINES: -- AS TO WHETHER A HEARING WAS HELD. MY
6 QUESTION WOULD BE WHO WAS PRESENT, YOUR HONOR.

7 BEYOND THAT, IN RESPONSE DIRECTED TO THE ARGUMENTS,
8 THERE IS NO CRIME HERE BECAUSE IT'S EXPUNGED, AND
9 THEREFORE WE NEED A PRIOR BAD ACT BY CLEAR AND
10 CONVINCING. BEYOND THAT, AS A BARE MINIMUM, IT WOULD
11 NEED TO LEAD TO IMPEACHMENT EVIDENCE, MR. PATTERSON'S
12 ABILITY TO TELL THE TRUTH, TRUTHFULNESS AND VERACITY,
13 THAT NATURE, AND THIS CHARGE WAS FOR UNLAWFUL
14 COMMUNICATION.

15 I JUST DO NOT BELIEVE THE DEFENSE HAS EXPLAINED WHY
16 THIS PARTICULAR INCIDENT IS GONNA LEAD TO ANY INFORMATION
17 OF THAT NATURE, AND IN PARTICULAR IN REGARD TO DISCOVERY
18 ON MR. ODOM. I JUST REITERATE WHAT I'VE ALREADY SAID.
19 YOUR HONOR, DOESN'T NEED TO HEAR IT AGAIN. BUT
20 ULTIMATELY THAT IS THE STATE'S POSITION. AND EVEN IF
21 IT'S ORDERED, I ANTICIPATE THAT WE WOULD OPPOSE IT DOWN
22 THE LINE AS WELL, YOUR HONOR.

23 THE COURT: I'M LOOKING AT RULE 5(D)(1), REGULATION
24 OF DISCOVERY IN CRIMINAL MATTERS. AND THEY DEAL WITH
25 PROTECTIVE AND MODIFYING ORDERS. (READING):

1 UPON MOTION BY A PARTY THE COURT MAY PERMIT THE
2 PARTY TO MAKE SUCH SHOWING IN WHOLE OR IN PART IN THE
3 FORM OF A WRITTEN STATEMENT TO BE INSPECTED BY THE JUDGE
4 ALONE. IF THE COURT ENTERS AN ORDER GRANTING RELIEF
5 FOLLOWING SUCH AN *EX PARTE* SHOWING, THE ENTIRE TEXT OF
6 THE PARTIES' STATEMENT SHALL BE SEALED AND RESERVED AND
7 THE RECORDS OF THE COURT TO BE MADE AVAILABLE TO THE
8 APPELLATE COURT FOR REVIEW.

9 AND THE SHOWING, OF COURSE, IS THE DISCOVERY AND
10 INSPECTION, THEY DENIED RESTRICTED OR DEFERRED AND MAKE
11 SUCH OTHER ORDER APPROPRIATE.

12 AS I MENTIONED, PERHAPS THE BETTER THING, NOW SEEING
13 A LIST OF WHAT WE WERE DEALING WITH -- IT LOOKS LIKE IT'S
14 NOT THAT EXTENSIVE -- SIX PHOTOGRAPHS; IT LOOKS LIKE
15 ONE -- I DON'T KNOW WHAT THAT IS -- IS IT A C.D.?

16 MR. HUFF: YES, YOUR HONOR, A C.D.

17 THE COURT: CONTAINING VOICE MAILS LEFT, A
18 THREE-PAGE WRITTEN STATEMENT, A ONE-PAGE WRITTEN
19 STATEMENT, AND A LETTER FROM DR. DEWITT, THE CRIME VICTIM
20 INTAKE FORMS. IT DOESN'T SEEM LIKE IT'S THAT MUCH. BUT
21 THE COURT, I THINK, IN ORDER TO PROTECT THE RECORD WOULD
22 PERHAPS EXERCISE ITS AUTHORITY UNDER THE RULE 5(D) TO
23 LOOK AT IT AND SEE.

24 SO I'M GOING TO DO THIS, MR. HUFF. I'LL PREPARE A
25 PROPOSED ORDER DIRECTING THE AUTHORITIES THERE IN

1 BURNETTOWN -- I NOTICE THAT THEIR POST OFFICE IS IN BATH,
2 SO -- TO FURNISH IT TO THE COURT. SO I'LL GIVE YOU A
3 TIME TO -- I'LL TREAT IT JUST LIKE ANY OTHER PROPOSED
4 ORDER, THAT OBVIOUSLY YOU SEND A COPY TO THE ATTORNEY
5 GENERAL AND THEN I WAIT FIVE DAYS BEFORE I DO ANYTHING
6 WITH ANY PROPOSED ORDER.

7 ALL RIGHT. NEXT?

8 MR. HUFF: JUDGE, WE HAVE A MOTION FOR, THAT I'LL
9 LET MR. JOHNSTON ADDRESS, AS TO THE FIRST AMENDMENT.

10 THE COURT: All right, MR. JOHNSTON.

11 MR. JOHNSTON: Your Honor, OUR PURPOSE IS MORE AS A
12 MATTER OF HOUSEKEEPING TODAY, I DO WANT TO INFORM THE
13 COURT THAT WE HAVE FILED A RULE 5, *BRADY*, AND *KYLES V.*
14 *WHITLEY* MOTION ASKING FOR THE ENUMERATED ITEMS IN RULE 5
15 TO BE PROVIDED TO US, THAT THE EXCULPATORY MATERIAL
16 REQUIRED BY *BRADY* BE PROVIDED TO US; AND FURTHER, THAT
17 ANY IMPEACHMENT MATERIALS, WHETHER THAT'S AS TO A STATE'S
18 WITNESS OR AS TO A POSITION THE STATE MIGHT TAKE IN
19 COURT, BE PROVIDED TO US UNDER THE U.S. SUPREME COURT
20 DECISION OF *KYLES V. WHITLEY*. I DON'T THINK THAT
21 PROBABLY THEY'VE RECEIVED EVERYTHING, AND WE JUST WANT
22 THAT ON THE RECORD THAT WE ARE REQUESTING THOSE
23 MATERIALS.

24 THE COURT: ALL RIGHT. IS THERE ANY PROBLEM WITH
25 THE REQUEST?

1 ESTABLISH THAT WHEN THE DEFENDANT EXERCISES A RIGHT, HE
2 CLEARLY HAS THE RIGHT TO DO AND HE'S PUNISHED OR THERE'S
3 A PENALTY FOR DOING THAT, THERE'S AN EXACTING OF A PRICE.
4 AND THAT CAN BE CONSIDERED VINDICTIVE PROSECUTION.
5 ACCORDING TO *U.S. V. WILSON* AS WELL AS *UNITED STATES V.*
6 *JOHNSON*, (READING):

7 AN INDICTMENT MUST BE DISMISSED IF THERE'S A FINDING
8 OF EITHER ACTUAL VINDICTIVENESS OR OF A PRESUMPTION OF
9 VINDICTIVENESS HAS NOT BEEN REBUTTED OR OBJECTIVE
10 EVIDENCE JUSTIFYING THE PROSECUTOR'S ACTION IS NOT
11 ESTABLISHED.

12 WE WOULD LIKE TO FIRST PRESENT OUR EVIDENCE OF
13 VINDICTIVE PROSECUTION AND THEN ARGUE THE LEGAL ASPECTS
14 OF THE MOTION.

15 THE COURT: VERY GOOD.

16 MR. MCDANIEL: I'D LIKE TO PROFFER MR. JIM HUFF AS A
17 WITNESS TO PROFFER HIS TESTIMONY FOR THE COURT AS TO THE
18 EVIDENCE WE HAVE AND HIS TESTIMONY AS TO VINDICTIVE
19 PROSECUTION AT THIS TIME.

20 THE COURT: ALL RIGHT. ANY OBJECTION?

21 MS. WINES: WELL, NO, SIR, GO AHEAD.

22 THE COURT: VERY WELL, MR. HUFF, COME AROUND.

23 ///

24 ///

25 ///

1 WHEREUPON,

2 JAMES HUFF,

3 after first having been duly sworn, testified as follows:

4 Direct Examination by MR. MCDANIEL:

5 Q. MR. HUFF, WOULD YOU PLEASE STATE FOR THE COURT THE
6 NATURE OF YOUR REPRESENTATION OF MR. ODOM, WHEN THAT
7 BEGAN IN THE INDICTMENTS IN WHICH YOU REPRESENTED HIM?

8 A. I BELIEVE I WAS RETAINED BY MR. ODOM -- I'D HAVE
9 TO LOOK BACK AT MY FILE -- I BELIEVE IN 2009, I BELIEVE.

10 Q. OKAY. AND WERE YOU ALSO REPRESENTING HIM WITH
11 REGARD TO A CRIMINAL MATTER ON SIMILAR CHARGES IN
12 SPARTANBURG COUNTY?

13 A. YES, SIR, I WAS.

14 Q. AND THOSE WERE ALSO WITH THE ATTORNEY GENERAL'S
15 OFFICE?

16 A. YES, SIR, WITH MS. WINES REPRESENTING THE ATTORNEY
17 GENERAL'S OFFICE.

18 Q. OKAY. LET ME -- IF I MAY APPROACH THE WITNESS AND
19 HAVE HIM IDENTIFY A DOCUMENT.

20 CAN YOU IDENTIFY WHAT THAT DOCUMENT IS?

21 A. YES, SIR. THIS IS A COPY OF MY OFFICE CELL PHONE
22 BILL REFLECTING CALLS THAT WERE MADE DURING THE MONTH OF
23 MARCH, 2010.

24 Q. DOES IT BEGIN IN FEBRUARY?

25 A. IT MAY. I ONLY HAVE PAGES 10 AND 11 BEFORE ME.

1 Q. OKAY. AND CAN YOU IDENTIFY THERE AT THE BOTTOM OF
2 THAT FIRST PAGE ANY CALLS THAT YOU CAN RECOGNIZE AS BEING
3 WITH ATTORNEY WINES?

4 A. YES. ON FEBRUARY 18 I WAS ON MY WAY TO MT.
5 PLEASANT, SOUTH CAROLINA, I HAD A WORKER'S COMPENSATION
6 DEPOSITION SCHEDULED WITH DR. RANDY WAID THAT DAY; AND ON
7 THE WAY THERE I RECEIVED A CELL PHONE CALL FROM
8 MS. WINES.

9 Q. OKAY. WE'LL COME BACK TO THAT CALL. BUT CAN YOU
10 IDENTIFY THE NEXT CALL AFTER THAT AND WHO THE CALL WAS TO
11 AND THEN THE CALL FOLLOWING THAT?

12 A. AS SOON AS -- WHEN THAT CALL ENDED, I CALLED MY
13 OFFICE AND SPOKE TO THEM FOR ONE MINUTE. THE NEXT ENTRY,
14 I BELIEVE, IS GOING TO BE THE OFFICE OF, OR CELL PHONE
15 NUMBER OF MR. JOHNSTON, MY CO-COUNSEL, WE SPOKE FOR 28
16 MINUTES. SPOKE BACK TO MY OFFICE. AND THEN I THINK THE
17 OTHER CALLS ON THAT PAGE WERE NOT RELEVANT, I BELIEVE, TO
18 THIS CASE.

19 Q. OKAY. AND THE CALL WITH MS. WINES, WHAT TIME DID
20 THAT CALL BEGIN?

21 A. IT CAME IN AT 11:32 A.M.

22 Q. OKAY. LET ME ASK YOU ABOUT THAT CALL AND IF YOU
23 CAN DESCRIBE THE NATURE OF THAT CALL AND SORT OF THE
24 CONVERSATIONS THAT YOU HAD THAT MIGHT HAVE LED UP TO THAT
25 TELEPHONE CALL.

1 A. THE, ONE OF THE ISSUES REGARDING MY REPRESENTATION
2 OF MR. ODOM IN THIS CASE DEALING WITH THE SPARTANBURG
3 MATTER WAS THE AUTHENTICITY OF CERTAIN RECORDS DEALING
4 WITH YAHOO! AND BELLSOUTH. ANOTHER ISSUE WAS RECORDS
5 REGARDING ONE OF THE STATE'S WITNESSES, A MR. MARK
6 PATTERSON, AND MR. -- INVESTIGATOR MCGRAW WITH THE
7 SPARTANBURG SHERIFF'S DEPARTMENT.

8 I HAD SERVED SUBPOENAS AS TO A REQUEST TO OBTAIN
9 RECORDS REGARDING BOTH OF THESE GENTLEMEN, SOME HAVING TO
10 DO WITH DATES THAT THEY WERE ON DUTY OR OFF DUTY, AND
11 ALSO AS TO MR. PATTERSON TO OBTAIN DOCUMENTS REGARDING
12 HIS ARREST IN AIKEN COUNTY.

13 Q. OKAY. AND IF I CAN, I'D ASK YOU TO IDENTIFY
14 ANOTHER DOCUMENT. IF I CAN MAKE THE, WITH THE COURT'S
15 PERMISSION, MAKE THE PHONE RECORD A COURT'S EXHIBIT?

16 THE COURT: VERY WELL. THAT WILL BE COURT'S EXHIBIT
17 NUMBER 5, 6?

18 THE COURT REPORTER: SEVEN.

19 THE COURT: SEVEN. All right. THANK YOU.

20 THE WITNESS: AND IF YOU DESIRE, MR. MCDANIEL, THE
21 PHONE CALL WITH MS. WINES BEING 11:32. I THINK THE
22 OTHERS WERE IN SEQUENTIAL ORDER.

23 (MARKED FOR IDENTIFICATION WAS COURT'S
24 EXHIBIT 7, VERIZON PHONE RECORDS.)

25 THE WITNESS: I BELIEVE LATER ON THAT DAY I ALSO

1 SPOKE WITH MR. ODOM ON THAT BILL.

2 BY MR. MCDANIEL:

3 Q. DO YOU BELIEVE THAT'S ALSO REFLECTED IN THAT?

4 A. YES, SIR. I WOULD HAVE TO LOOK BACK, BUT I
5 BELIEVE THAT WOULD BE PROBABLY AT 3:20 P.M. AT THE
6 292-7027 NUMBER. I BELIEVE THAT WOULD BE CORRECT.

7 Q. AND THAT WAS A 31-MINUTE CALL, I BELIEVE,
8 ACCORDING TO THE RECORD?

9 A. YES, SIR, I BELIEVE THAT'S CORRECT.

10 Q. IF I CAN TAKE YOU TO THE SECOND SHEET I HANDED TO
11 YOU THERE, AND THIS APPEARS TO BE A COUPLE DAYS PRIOR TO
12 THAT. CAN YOU IDENTIFY WHAT THIS DOCUMENT IS?

13 A. YES, SIR. MANY TIMES IN MY OFFICE IF I'M TALKING
14 TO SOMEBODY ON THE PHONE, I'LL TRY TO MAKE A HANDWRITTEN
15 NOTE OF IT SO THAT BEFORE I WOUND UP HAVING SOME NEW
16 COMPUTER SOFTWARE WHERE I TRY TO TYPE IT IN, I FOUND IT
17 EASIER JUST TO MAKE A RECORD OF WHAT WAS DISCUSSED,
18 WHERE, WHO CALLED WHO, THINGS OF THAT SORT.

19 Q. And WHO WAS THIS PHONE NOTES OF RECORD OF THE
20 CALLER?

21 A. ON FEBRUARY 16 AT 10:25 A.M. I RECEIVED A PHONE
22 CALL FROM MS. WINES AND WE DISCUSSED SEVERAL TOPICS.

23 Q. OKAY. AND COULD YOU TELL US FROM YOUR RECORDS OR
24 YOUR MEMORY AND YOUR RECORDS WHAT THE TOPICS WERE?

25 A. YES, SIR. WE DISCUSSED A QUESTIONNAIRE THAT WE

1 HAD AGREED TO USE IN THE SPARTANBURG TRIAL, AND EVIDENTLY
2 I MADE AN INDICATION OF THE WORD "COPIES". I BELIEVE AT
3 THAT TIME THERE WAS SOME DISCUSSION AS TO HOW WERE WE
4 GONNA MAKE THE COPIES AND SUBMIT THOSE TO THE COURT, WHO
5 WAS GONNA PAY FOR THEM AND THE MAILING costs AND THINGS
6 OF THAT SORT, AND MS. WINES AND I DISCUSSED THAT.

7 THE SECOND TOPIC WAS THAT REGARDING MR. PATTERSON,
8 MARK PATTERSON, WHO IS THE INVESTIGATOR IN THIS OCONEE
9 PROSECUTION, I HAD A NOTE THAT SAID ANDY ANDERSON
10 SUBPOENA (MARK PATTERSON) IRRITATING TO ME. AND WHAT
11 MS. WINES HAD STATED TO ME WAS THAT MY SEEKING THOSE
12 RECORDS OF MR. PATTERSON'S ARREST IN ORDER TO LOOK AT
13 THEM AS TO WHETHER OR NOT THEY WOULD BE impeachable
14 EVIDENCE THAT MAY GROW FROM THEM OR WHETHER OR NOT I
15 MIGHT FIND EVIDENCE THAT MIGHT ASSIST MR. ODOM IN HIS
16 DEFENSE; THAT MS. WINES WAS NOT, QUITE HONESTLY WAS
17 IRRITATED THAT I HAD SERVED A SUBPOENA ON MR. PATTERSON'S
18 FORMER ATTORNEY, ANDY ANDERSON WHO IS AN ATTORNEY IN
19 AIKEN, SOUTH CAROLINA, WHO HAD REPRESENTED MR. PATTERSON
20 REGARDING THE, MR. PATTERSON'S ARREST.

21 AND SO I SERVED A SUBPOENA ON MR. ANDERSON SINCE I
22 WAS SEEKING DOCUMENTS THAT THE, AN AIKEN LAW ENFORCEMENT
23 AGENCY, THE BURNETTOWN POLICE DEPARTMENT, HAD TURNED, OR
24 PUBLIC documents, HAD TURNED OVER TO MR. ANDERSON. I
25 FELT THEY WERE STILL PUBLIC DOCUMENTS, THEY WERE NOT

1 ATTORNEY/CLIENT PRIVILEGE, THEY WEREN'T CREATED BY
2 MR. ANDERSON IN REPRESENTING MR. PATTERSON. I WAS
3 SEEKING THOSE RECORDS, WHICH I'VE CONTINUED TO DO.

4 THE STATE HAD SAID THAT THEY WOULD BE GLAD TO WORK
5 WITH US IN GETTING THOSE RECORDS, BUT THEY WERE
6 EVERYTHING BUT WORKING WITH US TO GET THOSE RECORDS SO
7 THAT I COULD SEE WHAT WAS THERE IN MY REPRESENTATION OF
8 MR. ODOM. SO I ISSUED A SUBPOENA TO MR. ANDERSON AND
9 THAT WAS IRRITATING TO MS. WINES.

10 I ALSO SERVED A SUBPOENA, I BELIEVE, ON LINDSEY
11 MCGRAW, THE INVESTIGATOR IN THE SPARTANBURG MATTER. AND
12 A QUOTE I HAD FROM MS. WINES WAS THAT, QUOTE, "I INSTRUCT
13 THE PEOPLE NOT TO TURN THINGS OVER." AND SHE STATED, AND
14 I WROTE HER WORDS AGAIN, "YOU DON'T HAVE SUBPOENA POWER."

15 BUT MY UNDERSTANDING OF THE CRIMINAL RULES OF THIS
16 STATE ARE THAT WE DO HAVE SUBPOENA POWER. BUT SHE WAS
17 APPARENTLY IRRITATED THAT I HAD SERVED SUBPOENAS IN THIS,
18 IN REPRESENTING MR. ODOM IN TRYING TO OBTAIN INFORMATION.

19 THE THIRD THING WAS THAT WE TALKED ABOUT MOTIONS,
20 DENNO HEARINGS, AND WHETHER WE WOULD STIPULATE TO THEY
21 WERE VOLUNTARY STATEMENTS. THAT'S NOTED ON MY DOCUMENTS.
22 LYLE ISSUES ON THE WESTMINSTER CHATS OF MR. PATTERSON,
23 WHETHER OR NOT THAT COULD BE ADMISSIBLE IN THE
24 SPARTANBURG TRIAL.

25 AND THEN MS. WINES GAVE ME INFORMATION AS TO WHO

1 COULD COME AND TESTIFY OR TALK TO ME REGARDING THE YAHOO!
2 AND BELLSOUTH RECORDS. SHE GAVE ME NAMES THERE.

3 AND WE TALKED ABOUT HOW MANY STATE WITNESSES MIGHT
4 APPEAR IN SPARTANBURG, AND SHE INDICATED ABOUT 12 TO 15,
5 QUITE A FEW OF THOSE MIGHT BE CHAIN-OF-CUSTODY WITNESSES.

6 Q. OKAY. AND WERE ANY OF THOSE POINTS PARTICULARLY
7 HEATED OR CONTENTIOUS AT THAT TIME?

8 A. WELL, AS INDICATED IN ITEM NUMBER 2, I, QUOTE, PUT
9 DOWN THAT MS. WINES STATED THAT THIS WAS IRRITATING TO
10 HER -- THAT WAS HER WORDS -- AND THAT SHE HAD INSTRUCTED
11 PEOPLE NOT TO TURN THINGS OVER AND SAID I DON'T HAVE
12 SUBPOENA POWER.

13 SHE WAS NOT PLEASED WITH MY REPRESENTATION OF
14 MR. ODOM, THAT I WAS SEEKING TO ZEALOUSLY REPRESENT MY
15 CLIENT, WHICH I'VE GOT AN ETHICAL OBLIGATION TO DO, AND
16 SHE WASN'T HAPPY. I MEAN, I'VE NEVER SEEN ANYBODY SAY
17 THAT THEY'VE INSTRUCTED SOMEBODY NOT TO HONOR A LAWFULLY
18 ISSUED AND SERVED SUBPOENA.

19 Q. DID YOU ADDRESS THAT WITH HER IN THAT CALL AS YOU
20 CAN REMEMBER?

21 A. WELL, I DON'T THINK THERE WAS ANYTHING TO ADDRESS,
22 AND I'M NOT AWARE OF ANY MOTION TO QUASH HAVING EVER BEEN
23 FILED. YOU KNOW, IF A LAWYER BELIEVES THAT A SUBPOENA IS
24 improvidently SERVED -- WHICH I DON'T THINK THERE CAN
25 BE -- BUT IF THERE IS SOME OBJECTION, THEY HAVE THE

1 OPTION TO FILE A MOTION TO QUASH AND HAVE IT HEARD BY A
2 JUDGE. I DON'T RECALL THAT EVER OCCURRING IN THIS CASE.

3 Q. ALL RIGHT. AND TO GO BACK TO THE PHONE CALL THAT
4 YOU HAD ON THE 18TH OR THAT YOU INDICATED FROM FEBRUARY
5 18TH, DID THAT CALL FOLLOW FROM ANY OF THESE SAME ISSUES?

6 A. YES, SIR. DO YOU WANT ME TO GIVE YOU BACK THIS
7 BLUE SHEET?

8 MR. MCDANIEL: YES, PLEASE.

9 LET'S MARK THAT AS A COURT'S EXHIBIT, WITH THE
10 COURT'S PERMISSION.

11 THE COURT: CERTAINLY. WE'LL GO OFF THE RECORD
12 WHILE YOU DO THAT.

13 THAT'S GONNA BE COURT'S EXHIBIT 8?

14 THE COURT REPORTER: YES, SIR.

15 (MARKED FOR IDENTIFICATION WAS COURT'S
16 EXHIBIT 8; HUFF LAW FIRM TELEPHONE MEMO.)

17 BY MR. MCDANIEL:

18 Q. COULD YOU TELL THE COURT ABOUT THE FEBRUARY 18TH
19 CONVERSATION AS YOU UNDERSTAND AT LEAST THE ISSUES AS
20 THEY FOLLOWED UP FROM THE FEBRUARY 16TH PHONE CALL?

21 A. THERE WERE A COUPLE OF ISSUES DURING THAT PHONE
22 CALL. THEY CENTERED AROUND AGAIN THE SUBPOENA RECORDS
23 FOR MR. PATTERSON AND HIS ARREST IN AIKEN COUNTY. ALSO,
24 THERE WAS THE ISSUE OF THE YAHOO! AND BELLSOUTH.
25 MS. WINES FELT THAT THE SUBPOENA OF MR. PATTERSON'S

1 RECORDS WERE IRRELEVANT TO THE CASE, AND THAT I FELT THEY
2 CERTAINLY WERE. SHE WAS NOT HAPPY THAT I WAS SEEKING THE
3 PRODUCTION OF THOSE RECORDS.

4 WE ALSO TALKED ABOUT WHETHER OR NOT WE WERE GOING
5 TO STIPULATE OR NOT TO THE YAHOO!-BELLSOUTH RECORDS. I
6 HAD NOT MADE A FIRM DECISION ON THAT YET, AND I BELIEVE
7 TRIAL WAS SET TO COME UP FAIRLY SOON. AND I BELIEVE AT
8 THAT TIME I TOLD HER THAT I WAS NOT GONNA BE ABLE TO
9 CONSENT TO THOSE RECORDS AND THAT SHE WOULD NEED TO PROVE
10 HER CASE.

11 Q. SO THIS WAS THE RECORDS FOR THE SPARTANBURG TRIAL
12 THAT WAS COMING UP IN FEBRUARY --

13 A. YES.

14 Q. -- AND THE STIPULATION OF THE YAHOO! RECORDS THAT
15 WERE, THEY WERE SEEKING TO SUBMIT IN THAT CASE?

16 A. YES.

17 Q. AND WHAT WAS THE RESPONSE TO THAT?

18 A. MS., WHEN I KEPT, I THINK I WAS VERY STRONG THAT I
19 WAS ENTITLED TO MR. PATTERSON'S ARREST RECORDS IN AIKEN
20 COUNTY, MS. WINES WAS FRUSTRATED DURING THAT CALL AND
21 STATED -- AND I QUOTE -- "FINE. WE'LL JUST INDICT HIM IN
22 OCONEE."

23 MY IMMEDIATE RESPONSE WAS THAT, I SAID, "MEGAN,
24 YOU KNOW THAT'S WRONG, BUT YOU DO WHAT YOU'VE GOT TO DO,
25 BUT YOU KNOW THAT'S WRONG."

1 Q. SO YOUR UNDERSTANDING WAS THE -- LET ME ASK YOU
2 THIS. WHAT WAS YOUR UNDERSTANDING OF WHY THEY WERE
3 INDICTING IN OCONEE COUNTY?

4 A. THE IMPRESSION I CERTAINLY GOT, AND IT WAS VERY
5 LOUD AND CLEAR TO ME -- AND I'VE BEEN DOING CRIMINAL
6 DEFENSE FOR SEVERAL DECADES -- WAS THAT WE WERE BEING
7 HARD WITH THE STATE IN GOING AFTER MR. PATTERSON'S ARREST
8 RECORDS TO SEEK IMPEACHMENT, AND THEY WERE JUST GONNA BE
9 JUST AS HARD BACK, AND THEY WERE JUST GONNA INDICT HIM IN
10 OCONEE. I FELT IT WAS A, "YOU'RE PUSHING HARD SO WE'RE
11 GONNA PUSH HARD BACK."

12 Q. WAS THIS AN ALTERNATIVE, "IF YOU SEEK THIS, THEN
13 WE WILL HAVE TO INDICT," OR WAS THIS A, "FINE, WE'RE JUST
14 GONNA INDICT," INDICATING THEY MADE THAT DECISION BASED
15 ON YOUR PUSHING?

16 A. MY IMPRESSION WAS THEY MADE A DECISION TO INDICT
17 IN OCONEE BECAUSE THEY WERE GETTING A LOT OF STATIC IN
18 BEING ABLE TO HAVE A SMOOTH SAILING IN SPARTANBURG, AND
19 SO THAT WAS MY CLEAR IMPRESSION.

20 Q. AND YOU VOICED THAT CONCERN TO MS. WINES IN THAT
21 CALL?

22 A. ABSOLUTELY DID.

23 Q. AND IS IT YOUR UNDERSTANDING THAT YOU ASKED FOR
24 ANYTHING THAT THE DEFENDANT DIDN'T HAVE A LEGAL RIGHT TO
25 OBTAIN IN THAT DEFENSE?

1 A. NO, SIR. THE, AS FAR AS MY EFFORTS ON MR. ODOM'S
2 BEHALF, I'VE GOT AN ETHICAL OBLIGATION TO OBTAIN AS MUCH
3 EVIDENCE AS I POSSIBLY CAN ABOUT THE FACTS OF THE CASE,
4 ABOUT THE HISTORY OF WITNESSES THAT THE STATE INTENDS TO
5 CALL. AS A CHIEF JUSTICE ON THE U.S. SUPREME COURT SAID,
6 "EVEN IF I WERE TO KNOW THE TRUTH OF THE MATTER, MY JOB
7 AS A DEFENSE ATTORNEY IS TO THROW DOUBT UPON THEIR
8 TESTIMONY." I BELIEVE THAT WAS JUSTICE WHITE THAT STATED
9 THAT. SO I FELT I'M ENTITLED TO THOSE RECORDS TO FIND
10 OUT AND ASSESS THE CREDIBILITY OR BELIEVABILITY OF
11 MR. PATTERSON, I'D ISSUED A PROPER SUBPOENA, AND I WAS
12 ENTITLED TO THOSE RECORDS.

13 Q. THANK YOU.

14 IF I CAN PRESENT THE WITNESS WITH ONE ADDITIONAL
15 EXHIBIT ON THIS POINT.

16 CAN YOU IDENTIFY THAT DOCUMENT?

17 A. YES, SIR. THIS IS A PHONE CALL NOTE THAT MY
18 SECRETARY MADE, M.A. IS MELISSA ALTMAN. WHEN I RETURNED
19 FROM MT. PLEASANT THAT AFTERNOON, THERE WAS A MESSAGE
20 THAT A MARK ZWELLINGER (PHONETIC) OF YAHOO! HAD CALLED MY
21 OFFICE AT FIVE P.M. AND ASKED THAT I GIVE HIM A CALL THAT
22 EVENING BETWEEN EIGHT AND TEN O'CLOCK THAT NIGHT, AND IT
23 WOULD BE REGARDING WHETHER OR NOT WE WOULD ON BEHALF OF
24 MR. ODOM STIPULATE TO THE ADMISSIBILITY OF RECORDS
25 REGARDING YAHOO!.

1 Q. AND DOES THAT FOLLOW FROM THE CONVERSATION THAT
2 YOU HAD EARLIER IN THE DAY WITH MS. WINES?

3 A. IT APPEARED TO ME TO BE. I'D NEVER HEARD OF WHO
4 MARK ZWELLINGER WAS. AND THE PERSON MS. WINES HAD
5 MENTIONED TO ME TO DURING THE FEBRUARY 16TH CALL WAS A
6 JEFF STANFORD (PHONETIC). SO I CERTAINLY COULD BE WRONG.
7 BUT IT WOULD BE MY ASSUMPTION THAT SOMEBODY CONTACTED
8 MR. ZWELLINGER AND ASKED HIM TO GIVE ME A CALL. THAT'S
9 MY ASSUMPTION.

10 Q. AND THAT WAS THE -- THE YAHOO! CHATS WAS ONE OF
11 THE POINTS OF CONTENTION THAT YOU HAD MENTIONED FROM
12 EARLIER THAT SAME DAY; IS THAT CORRECT?

13 A. YES, SIR. Yes, sir. EARLIER ON THE 18TH, THAT'S
14 CORRECT.

15 MR. MCDANIEL: I'D LIKE TO SUBMIT THAT AS THE NEXT
16 COURT'S EXHIBIT.

17 THE COURT: VERY WELL.

18 ANY OBJECTION?

19 MS. WINES: NO, SIR.

20 MR. MCDANIEL: YOUR HONOR, I'D ALSO AT THIS TIME
21 LIKE TO --

22 THE COURT REPORTER: EXCUSE ME.

23 MR. MCDANIEL: I'M SORRY.

24 THE COURT: JUST A MINUTE.

25 (MARKED FOR IDENTIFICATION WAS COURT'S

1 EXHIBIT 9, PHONE CALL MESSAGE.)

2 THE COURT: YOU MAY PROCEED.

3 MR. HUFF: I'D LIKE TO SUBMIT AS A COURT EXHIBIT THE
4 COMPLAINT THAT'S BEEN FILED. I REPRESENT MR. ODOM IN A
5 CLAIM THAT'S BEEN FILED IN SPARTANBURG COUNTY. THERE'S
6 AN INDICATION THAT THE PROSECUTOR IS PLANNING TO PURSUE
7 HIM THERE AS WELL, AND I WOULD JUST LIKE TO SUBMIT INTO
8 THE RECORD THE ARGUMENTS MADE WHICH ARE essentially GONNA
9 BE THE SAME, SO THAT WITHOUT THE NEED TO DUPLICATE THAT,
10 JUST PUT IN THE COMPLAINT. IT'S A FILED COMPLAINT FROM
11 THE SPARTANBURG CASE, IF I MAY.

12 THE COURT: IT'S A COMPLAINT FILED BY WHOM AGAINST
13 WHOM?

14 MR. MCDANIEL: IT'S A COMPLAINT FILED BY MR. ODOM
15 AGAINST THE ATTORNEY GENERAL'S OFFICE FOR INCLUDING AN
16 ACTION FOR VINDICTIVE PROSECUTION.

17 THE COURT: IS IT A CRIMINAL ACTION OR A CIVIL
18 ACTION OR...

19 MR. MCDANIEL: IT'S A CIVIL ACTION.

20 THE COURT: CP-NUMBER?

21 MR. MCDANIEL: 24-2032- --

22 THE COURT: NOT SO FAST.

23 MR. MCDANIEL: I'M SORRY. IT'S A 2011-CP-24-2032.

24 THE COURT: VERY GOOD. IS IT JUST ONE?

25 MR. MCDANIEL: JUST ONE ACTION, Your Honor.

1 THE COURT: All right. VERY GOOD. HAVE IT MARKED.
2 (MARKED FOR IDENTIFICATION WAS COURT'S
3 EXHIBIT 10, CIVIL ACTION COMPLAINT IN CASE
4 NUMBER 2011-CP-24-2032.)

5 THE COURT: ALL RIGHT. YOU MAY PROCEED.

6 MR. HUFF: THANK YOU, YOUR HONOR. I'D LIKE TO
7 PRESENT MR. HUFF WITH ANOTHER DOCUMENT, IF I MAY.

8 THE COURT: OKAY. YOUR WITNESS.

9 BY MR. MCDANIEL:

10 Q. CAN YOU IDENTIFY THIS DOCUMENT?

11 A. IT'S A LETTER DATED FEBRUARY 24TH, 2011, A LETTER
12 FROM MS. WINES, IT'S A TWO-PAGE DOCUMENT, REGARDING *STATE*
13 *VERSUS ANTHONY ODOM*, THE, REGARDING THESE TWO INDICTMENTS
14 HERE IN OCONEE COUNTY. IT ADVISES ME THAT THE STATE
15 INTENDS TO CALL THE MATTER FOR TRIAL ON MONDAY, APRIL
16 11TH, AND THAT IF MR. ODOM DOES NOT APPEAR, THE TRIAL
17 WOULD PROCEED IN HIS ABSENCE AND A BENCH WARRANT WOULD BE
18 ISSUED FOR HIS ARREST.

19 IT INFORMS ME THAT THE STATE GRAND JURY CLERK HAD,
20 SPEAKS ABOUT THAT AND SAYS THAT THE STATE INTENDED TO
21 CALL MR. ODOM'S INDICTMENTS IN OCONEE FOR TRIAL ON APRIL
22 11TH. I THINK IT THEN WENT INTO ISSUES OF VOIR DIRE AND
23 THE QUESTIONNAIRE, STATING THAT THE STATE WOULD NOW
24 OBJECT TO THAT AND THAT ADDITIONALLY THE STATE
25 ANTICIPATES NUMEROUS PRETRIAL MOTIONS, WILL REQUEST THE

1 JUDGE HEAR ALL PRETRIAL MATTERS PRIOR TO THE DATE OF
2 TRIAL AND ISSUING A SCHEDULING ORDER TO THAT EFFECT.

3 THEY AGAIN ASKED WHETHER OR NOT WE WOULD STIPULATE
4 TO AUTHENTICITY OF YAHOO! AND BELLSOUTH RECORDS. AND
5 THAT (READING): ACCORDINGLY, PLEASE PLAN FOR TRIAL OF
6 THIS CASE THE WEEK OF APRIL 11TH.

7 SO BASICALLY THREE TIMES THEY TELL ME IT'S GOING
8 TO TRIAL APRIL 11TH, 2011, HERE IN OCONEE COUNTY.

9 MR. MCDANIEL: AND IF I CAN MARK THAT AS AN EXHIBIT,
10 AS WELL.

11 (MARKED FOR IDENTIFICATION WAS COURT'S
12 EXHIBIT 11, LETTER DATED FEBRUARY 24, 2011.)

13 THE COURT: ALL RIGHT. YOU MAY PROCEED.

14 MR. MCDANIEL: THANK YOU.

15 BY MR. MCDANIEL:

16 Q. AND ARE YOU AWARE WHETHER THERE WAS A TERM OF
17 COURT SCHEDULED PURSUANT TO THAT LETTER?

18 A. MY UNDERSTANDING WAS THERE WAS NOT A TERM OF
19 GENERAL SESSIONS COURT SCHEDULED FOR APRIL 11TH OF 2011.
20 WHEN I LOOKED AT THE COURT ADMINISTRATION OR SUPREME
21 COURT'S WEBSITE, IT SHOWED NO TERM OF GENERAL SESSIONS
22 COURT IN OCONEE COUNTY.

23 I THEN CHECKED WITH COURT ADMINISTRATION JUST TO
24 MAKE SURE WHAT WAS GOING ON. I SPOKE WITH MOTTE TALLY
25 THERE WITH COURT ADMINISTRATION. MY UNDERSTANDING WAS

1 ALWAYS THAT IS IF THERE WAS A TERM OF COURT SET, THE
2 SUPREME COURT HAS TO ISSUE AN ORDER OR ITS DESIGNEE,
3 BEING COURT ADMINISTRATION, WOULD ISSUE AN ORDER SETTING
4 SOME SPECIAL TERM OF COURT, THINGS OF THAT SORT. SO
5 THAT'S WHEN I TALKED WITH MR. TALLY AND WAS INFORMED THAT
6 HE LOOKED THROUGH ALL THE ORDERS AND THAT THERE WAS NO
7 ORDER SETTING A TERM OF OCONEE GENERAL SESSIONS COURT FOR
8 APRIL 11, 2011.

9 Q. DO YOU HAVE A BELIEF AS TO WHY MS. WINES WAS
10 INDICATING TO YOU THAT THERE WAS A TERM?

11 A. WELL, I BELIEVE THAT WHAT SHE INDICATED IN COURT'S
12 EXHIBIT 11 WAS THAT THERE WAS A TERM IN ANDERSON GENERAL
13 SESSIONS, BUT SINCE THE JUDGE THERE WAS NOT NEEDED, THAT
14 THAT TERM HAD BEEN CANCELLED, THAT THEY WERE GONNA TRY TO
15 MOVE THAT TO OCONEE COUNTY.

16 BUT THAT'S WHY I CHECKED WITH COURT ADMINISTRATION
17 AND FOUND THAT THERE WAS NO TERM SET.

18 BUT TOWARD THE END OF HER LETTER SHE SAYS
19 (READING): I BELIEVE THERE WILL BE SIGNIFICANT OR
20 NUMEROUS PRETRIAL MOTIONS AND WOULD LIKE THE JUDGE TO
21 HEAR THOSE PRETRIAL PRIOR TO THE DATE OF TRIAL AND ISSUE
22 A SCHEDULING ORDER.

23 WHEN I SPOKE WITH MS. WINES, WE HAD BEEN
24 REQUESTING TRANSCRIPTS FROM THE SPARTANBURG TRIAL BECAUSE
25 THERE COULD BE SIMILAR WITNESSES IN THIS CASE, AND I

1 CERTAINLY NEEDED THOSE. THE COURT REPORTER HAD BEEN
2 GIVEN ORDERS OF PROTECTION, IF YOU WILL, FROM THE COURT
3 ADMINISTRATION. I HAVE THOSE. AND SHE HAD, IF I RECALL
4 CORRECTLY, SOME, I THINK THE FAMILY COURT CLERK I BELIEVE
5 HAD RETIRED OR LEFT, AND SO SHE WAS HAVING TO DO DOUBLE
6 DUTY WHICH WAS PUTTING HER BEHIND, SIGNIFICANTLY BEHIND,
7 IN DOING TRANSCRIPTS. AND SO I WAS GOING TO BE
8 REQUESTING A CONTINUANCE OF ANY TERM OF COURT OR TRIAL
9 APRIL 11TH PURSUANT TO MS. WINES' LETTER.

10 AND THE CONVERSATION THEN WENT FORWARD AS TO,
11 WELL, THE ONLY WAY WE WILL AGREE TO A CONTINUANCE WOULD
12 BE IF WE TAKE UP PRETRIAL MATTERS DURING THAT WEEK AND
13 SET IT FOR APRIL 12TH, 2011.

14 Q. SO AT THAT TIME, THE TIME OF THE CONVERSATION, YOU
15 WEREN'T AWARE THAT THERE, AS YOU UNDERSTOOD LATER, THERE
16 WASN'T A TERM OF COURT, THOUGH; IS THAT CORRECT?

17 A. THAT'S CORRECT. THAT'S WHY I WENT BACK AND
18 CHECKED AND FOUND THAT THERE WAS NO TERM OF COURT SET BY
19 COURT ADMINISTRATION.

20 Q. AND SO IS IT YOUR UNDERSTANDING THERE WAS A
21 PURPOSE BEHIND, I GUESS JUST TO BE DIRECT, BUT THE
22 PURPOSE OF THAT INDICATION, WAS THAT MADE CLEAR TO YOU OR
23 DID YOU FORM A BELIEF AS TO THAT?

24 A. YOU KNOW, I DON'T KNOW WHAT INTENT IS. IT SEEMS
25 TO BE A MOVABLE TARGET. BUT I HAD THE SENSE THAT WE WERE

1 GOING TO HAVE TO BE IN TRIAL. WE CERTAINLY COULD FILE A
2 MOTION FOR CONTINUANCE, WHICH I BELIEVE I DRAFTED AND PUT
3 IN SOME INFORMATION REGARDING, AND I BELIEVE, I BELIEVE I
4 MAY HAVE SENT THAT TO MS. WINES. I'M NOT SURE. I'D HAVE
5 TO LOOK BACK AT MY RECORDS.

6 BUT IN A PHONE CONVERSATION WITH MS. WINES SHE
7 SEEMED TO BE IMMEDIATELY AGREEABLE THAT WE COULD CONTINUE
8 IT, BUT ONLY IF WE TOOK CARE OF PRETRIAL MOTIONS. SO I
9 WAS, I FEEL CONFIDENT THAT A JUDGE WOULD HAVE PROBABLY
10 GRANTED THE CONTINUANCE BECAUSE I DIDN'T HAVE THE
11 TRANSCRIPTS, BUT I WAS PUT IN AN EITHER/OR SITUATION: GO
12 TO TRIAL OR WE CONTINUE IT BY AGREEMENT AS LONG AS WE DO
13 PRETRIAL MOTIONS. THAT WAS THE WAY, THAT WAS THE
14 IMPRESSION I HAD.

15 Q. I WANT TO -- INSTEAD OF GOING THROUGH EACH OF
16 THESE DOCUMENTS INDEPENDENTLY, I'M JUST GOING TO HAND YOU
17 A SET OF DOCUMENTS THAT I WOULD LIKE FOR YOU TO IDENTIFY,
18 IF YOU WOULD, AND WE CAN MARK THEM SEPARATELY, WITH THE
19 COURT'S PERMISSION.

20 THIS MIGHT SPEED THINGS ALONG, TO ALLOW YOU IF YOU
21 WOULD IDENTIFY EACH OF THOSE AND WITH THE COURT'S
22 PERMISSION TO PRESENT THEM AS A COURT'S EXHIBIT. I
23 BELIEVE THE EARLIEST DATE IS MARCH 22ND.

24 A. THIS, THE DOCUMENT IS A LETTER THAT I RECEIVED
25 REGARDING MR. ODOM'S CASE, AND THE LETTER REFLECTS THAT

1 MS. WINES WOULD BE IN TOUCH WITH ME ABOUT THE TRIAL
2 SCHEDULE FOR APRIL 11 IN OCONEE.

3 Q. AND WHICH LETTER WAS THAT THAT YOU ARE REFERRING
4 TO?

5 A. A LETTER DATED MARCH 22ND.

6 Q. OKAY. AND IS THAT LETTER, IT APPEARS TO BE SIGNED
7 BY?

8 A. SOMEONE WITH THE ATTORNEY GENERAL'S OFFICE.

9 Q. OKAY. AND IT ALSO INDICATES THERE, MARCH 22ND,
10 THAT THE TRIAL DATE IS STILL BEING TOLD TO YOU AS APRIL
11 11TH, CORRECT?

12 A. THAT'S CORRECT.

13 Q. OKAY. COULD YOU IDENTIFY THE NEXT LETTER WHICH I
14 BELIEVE IS MARCH 25TH?

15 A. YES, SIR, I CAN. THIS IS A LETTER DATED MARCH
16 25TH TO ME FROM MS. WINES. IT STATES THAT MR. ODOM'S
17 CASE IS SET FOR TRIAL ON MONDAY, APRIL 11TH, AT THE
18 OCONEE COURTHOUSE, AND WANTED TO KNOW IF WE WERE GONNA BE
19 REQUESTING ANY CONTINUANCE FOR THAT.

20 IT STATES (READING): THE STATE WOULD APPRECIATE
21 BEING ADVISED IMMEDIATELY IF YOU INTEND TO REQUEST A
22 CONTINUANCE OF THE TRIAL FOR ANY REASON. SHOULD THE
23 REQUEST BE MADE AND GRANTED, THE STATE WILL RECOMMEND
24 PRETRIAL MATTERS BE HEARD BY A JUDGE THE WEEK OF APRIL
25 11, 2011, AND THEN SETTING A DATE CERTAIN FOR THIS TRIAL

1 BEING TODAY'S DATE, AND THE STATE WILL ASK THE COURT TO
2 ORDER ALL PRETRIAL MATTERS OCCUR PRIOR TO SWEARING THE
3 JURY.

4 AGAIN THEY ASKED AS TO WHETHER OR NOT WE WOULD
5 STIPULATE TO YAHOO! AND BELLSOUTH RECORDS. AND MS. WINES
6 DISCUSSED OBTAINING THE PICTURE INVESTIGATOR PATTERSON
7 USED AND SENT TO MR. ODOM ACCORDING TO THE STATE'S
8 VERSION OF THE EVIDENCE. AND THAT WAS THE SUBSTANCE OF
9 THE LETTER.

10 Q. AND AT THAT POINT YOU'RE ONLY MAYBE 17 DAYS, TWO
11 WEEKS OR SO FROM A TRIAL IF IT WENT FORWARD ON APRIL
12 11TH?

13 A. I THINK THAT WOULD BE CORRECT, YES, SIR.

14 Q. AND IS THAT YOUR UNDERSTANDING OF THE POSITION
15 THAT WAS BEING PUT FORTH TO YOU AT THAT POINT IN TIME,
16 MARCH 25TH?

17 A. YES, SIR. IT, THE THRUST CONTINUES TO BE THAT
18 WE'RE GOING TO TRIAL ON APRIL 11TH. AND THE WAY I TOOK
19 IT IN REPRESENTING MR. ODOM IS AS SHE STATES (READING):

20 PLEASE BE REMINDED PURSUANT TO CORRESPONDENCE
21 DATED FEBRUARY 24TH THAT WE INTEND TO CALL -- THE STATE
22 INTENDS TO CALL THE CASE APRIL 11TH. IF YOU ARE GONNA
23 ASK FOR A CONTINUANCE, AND IT'S GRANTED, THEN WE WANT TO
24 HAVE PRETRIAL MOTIONS BEFORE THE JURY IS SWORN.

25 AND IT SEEMED TO BE THAT THE THRUST OF THE STATE

1 WAS, WE WANT TO HAVE ALL MOTIONS HEARD BEFORE JEOPARDY
2 ATTACHES. ANYONE THAT DOES CRIMINAL PRACTICE UNDERSTANDS
3 THAT ONCE JEOPARDY ATTACHES, A RULING OF A JUDGE ARE
4 [SIC] BASICALLY IN STONE AT THAT POINT. IF RULINGS ARE
5 MADE BY A CIRCUIT JUDGE TO SUPPRESS EVIDENCE, THAT
6 PURSUANT TO *STATE V. MCKNIGHT*, THE PROSECUTION, ACCORDING
7 TO THE STATUTE, IF IT GUTS THE STATE'S CASE, IT ENDS THE
8 MATTER AND THEY HAVE NOTHING TO GO FORWARD WITH; SIMILAR
9 TO A POSSESSION OF DRUGS CASE AND THE DRUGS ARE
10 SUPPRESSED AND THROWN OUT BECAUSE OF AN ILLEGAL SEARCH,
11 THEN THERE IS NO CASE FOR THE PROSECUTION TO GO FORWARD
12 WITH.

13 ACCORDING TO SOUTH CAROLINA LAW THEY HAVE THE
14 RIGHT TO NOT ALLOW THE JURY TO BE SWORN AND APPEAL THAT
15 MATTER TO A HIGHER COURT, APPELLATE COURT. WHICH IS WHAT
16 OCCURRED WHEN MR. ODOM WAS REPRESENTED BY MR. JACK
17 SWERLING. THE (D) ORDERS IN THIS CASE WERE SUPPRESSED BY
18 THE TRIAL JUDGE IN SPARTANBURG. THE STATE'S POSITION WAS
19 THAT GUTTED THEIR CASE, THEY HAD NO EVIDENCE IN THAT CASE
20 ANYMORE, BECAUSE THE (D) ORDERS WERE TO GET THE
21 YAHOO!-BELLSOUTH RECORDS. WITH THOSE BEING SUPPRESSED
22 THERE WAS NOTHING TO PROSECUTE AND SO THE STATE APPEALED
23 IT.

24 WHAT HAPPENS, HOWEVER, IS THE STATE, WITH
25 UNLIMITED RESOURCES, AS OPPOSED TO A CRIMINALLY CHARGED

1 DEFENDANT WHO HAS FINITE RESOURCES; AND IT TOOK
2 BASICALLY -- AND I DON'T KNOW THE DATES, I WOULD SAY AT
3 LEAST WELL OVER A YEAR -- FOR THAT MATTER TO BE HEARD AND
4 DECIDED, AND I THINK AT SIGNIFICANT EXPENSE FINANCIALLY
5 AND EMOTIONALLY TO MR. ODOM, PARTICULARLY FINANCIALLY.

6 THE SUPREME COURT SAID THAT THE (D) ORDERS, IT WAS
7 LAWFUL FOR THE CIRCUIT COURT JUDGE IN SOUTH CAROLINA TO
8 SIGN THAT (D) ORDER UNDER THE FEDERAL STATUTE 18-27-03, I
9 BELIEVE (D), AND SAID THAT THE TRIAL COURT IN SPARTANBURG
10 COULD USE THOSE RECORDS PURSUANT TO A (D) ORDER AUTHORITY
11 KIND OF LIKE A SEARCH WARRANT.

12 THEY BASICALLY SAID, THE SEARCH WARRANT WE FIND
13 WAS PROPERLY ISSUED. THE STATE WOULD STILL HAVE TO CARRY
14 ITS BURDEN OF ADMISSIBILITY, BELIEVABILITY, THINGS OF
15 THAT SORT.

16 FROM A DEFENSE PERSPECTIVE, WE DON'T LIKE HAVING
17 PRETRIAL MOTIONS BECAUSE OF EXACTLY WHAT HAPPENED TO
18 MR. ODOM. HE GETS RUN OUT OF FINANCES EVENTUALLY AND THE
19 STATE CAN KEEP GOING BACK AND FORTH ALL THE TIME. I
20 THINK THAT WHEN A CIRCUIT JUDGE MAKES A RULING, IT'S A
21 RULING HE'S GONNA MAKE. I DON'T KNOW IF I'VE SEEN THEM
22 CHANGE VERY MUCH PRETRIAL VERSUS POST-TRIAL UNLESS
23 SOMETHING REALLY UNIQUE COMES OUT DURING THE TRIAL OR
24 DOESN'T COME OUT.

25 AND I KNOW UNDER OUR RULES OF PRACTICE PRETRIAL

1 MOTIONS ARE NOT REQUIRED BY THE RULE, BUT AS LONG AS THEY
2 ARE MADE IN OPEN COURT ON THE RECORD, WE DON'T EVEN HAVE
3 TO FILE WRITTEN MOTIONS. SO IT SEEMED TO ME THAT
4 MS. WINES WANTED TO HEAR PRETRIAL MOTIONS SO THAT IF THE
5 STATE DIDN'T LIKE THE RULING OF THE TRIAL JUDGE, THEY
6 WOULD STOP THE TRIAL AND APPEAL THAT UP.

7 AND PART OF MY PROTECTION OF MR. ODOM IS, IF HE
8 DOESN'T HAVE THE MONEY, IT DOES AN INJUSTICE TO HIM TO
9 HAVE TO KEEP GOING BACK TO AN APPELLATE COURT.

10 Q. MR. HUFF, REGARDLESS OF THE REASON OR THE MOTIVES
11 OF THE STATE AND THE DEFENSE, THE FACT WAS IN THAT CASE
12 IT WAS YOUR BELIEF THAT THE STATE WAS GIVING YOU
13 INACCURATE INFORMATION ABOUT THE REASONS WHY YOU SHOULD
14 DO YOUR PRETRIAL MOTIONS; IS THAT CORRECT?

15 A. WITH MY INVESTIGATION OF THE MATTER THERE WAS NO
16 TERM OF COURT SET IN OCONEE GENERAL SESSIONS COURT FOR
17 APRIL 11TH, I FELT THE INFORMATION I WAS GIVEN WAS NOT
18 CORRECT, AND THAT IF I WAS GOING TO NOT HAVE TO GO TO
19 TRIAL, THE STATE BASICALLY WAS, WE'RE GOING TO TRIAL, BUT
20 IF YOU'LL -- WE DON'T MIND CONTINUING IT SO LONG AS WE DO
21 PRETRIAL MOTIONS. SO I FELT LIKE MR. ODOM WAS BEING
22 PLACED IN A POSITION THAT WE HAD TO MAKE PRETRIAL
23 MOTIONS. OTHERWISE, WE WERE GOING TO TRIAL APRIL 11TH.
24 SUBSEQUENTLY I DETERMINED THAT WAS NOT CORRECT.

25 Q. LET ME ASK YOU TO IDENTIFY, IF I CAN, WHAT APPEARS

1 TO BE AN EMAIL, IF THAT'S CORRECT, IF YOU CAN IDENTIFY
2 THAT, DATED MARCH 30TH.

3 A. THIS WAS AN EMAIL BETWEEN THE COUNSEL AND THE
4 COURT REFLECTING THAT I HAD MULTIPLE REASONS TO REQUEST A
5 CONTINUANCE OF THE CASE AND THAT THE STATE HAD AGREED TO
6 CONTINUE CALLING THE CASE FOR TRIAL WITH CERTAIN
7 CONDITIONS, AND THOSE WOULD BE THAT THEY WOULD LIKE TO
8 TAKE ADVANTAGE OF THE COURT TIME OF APRIL 11TH TO HEAR
9 PRETRIAL MATTERS.

10 AND THAT SHE STATES (READING): MY ONLY REQUEST AS
11 FOR THOSE ISSUES IS ANY MATTERS OF SUPPRESSION BE HEARD
12 BEFORE THE JURY IS SWORN.

13 AGAIN, IF THERE ARE ANY SUPPRESSION MOTIONS THE
14 STATE WOULD LIKE TO HAVE THOSE HEARD PRE-JEOPARDY SO THAT
15 THEY COULD STOP THE CASE AND APPEAL IT IF THEY DIDN'T
16 LIKE THE DECISION. AND SO I THINK IT DISCUSSED WHEN
17 THAT, THOSE MOTIONS MIGHT BE HEARD. WE DISCUSSED THE
18 QUESTIONNAIRE AGAIN. AND THAT SHE WOULD LIKE TO SUBMIT A
19 PROPOSED ORDER ONCE I'D REVIEWED IT.

20 Q. IF YOU WILL IDENTIFY THE FINAL SET OF DOCUMENTS I
21 HANDED YOU THAT APPEAR TO BE DRAFTS OF AN ORDER FOR
22 CONTINUANCE.

23 A. I'VE GOT I BELIEVE FIVE PAGES IN ONE DOCUMENT. IT
24 LEADS OFF DESIGNATED AS AN ORDER FOR CONTINUANCE. IT
25 CITES IN THE SECOND SENTENCE, FIRST SAYING THAT

1 (READING):

2 BY CONSENT OF THE PARTIES AND UPON INFORMATION
3 FROM COUNSEL, THAT THE CASE IS SCHEDULED FOR TRIAL THE
4 WEEK OF APRIL 11, 2011, AND THAT THE DEFENDANT SEEKS A
5 CONTINUANCE. THE STATE DOESN'T OPPOSE IT, AND WITH THE
6 CONDITION AND REQUEST OF THE COURT THAT PRETRIAL MATTERS
7 BE HEARD APRIL 12, 2011, AND A TRIAL DATE CERTAIN FOR
8 JUNE 27TH.

9 IT THEN GOES ON AS TO POTENTIAL TRIAL ISSUES, THE
10 QUESTIONNAIRE, BRINGING IN WITNESSES AND, QUOTE, FURTHER,
11 (READING): THE STATE BELIEVES THIS CASE INVOLVES MATTERS
12 NECESSARY OR PRUDENT TO BE HEARD PRETRIAL ON APRIL 12TH,
13 AND THE DEFENDANT AGREES CERTAIN OF THESE MATTERS MAY BE
14 ADDRESSED ON SAID DATE.

15 THEY THEN ASK FOR A DATE CERTAIN FOR TRIAL AND A
16 PRETRIAL HEARING DATE HELD ON APRIL THE 12TH.

17 IT CITES THAT, AS I MENTIONED EARLIER, THE
18 SPARTANBURG TRANSCRIPT IS NOT AVAILABLE UNTIL AFTER APRIL
19 14, AND THAT AGAIN, QUOTE, THE STATE REQUESTS ANY
20 PRETRIAL MATTERS NOT HEARD APRIL 12TH BE HEARD PRIOR TO
21 SWEARING OF THE JURY.

22 IT LISTED ON THE SECOND PAGE CONSENT LINES FOR
23 MS. WINES AND I TO SIGN.

24 THE NEXT TWO PAGES OF THE EXHIBIT IS A MODIFIED
25 ORDER. IT IS SIGNIFICANT THAT IT DOES NOT STATE THAT

1 THERE IS A CONSENT -- I'M SORRY -- IT DOES, HAS A CONSENT
2 LINE ON THE SECOND PAGE. IT DOES, HOWEVER, TAKE OUT THAT
3 THERE WAS A TERM OF COURT SCHEDULED FOR APRIL 11, 2011.
4 I FIND THAT TO BE SIGNIFICANT.

5 BUT IT CONTINUES (READING): THE REMAINING
6 LANGUAGE THAT IT MAY BE NECESSARY TO HEAR, TO BRING IN
7 WITNESSES FROM AROUND THE STATE. THERE IS A WRITTEN
8 QUESTIONNAIRE THAT'S AT ISSUE, AND IT MIGHT BE PRUDENT TO
9 HEAR PRETRIAL MATTERS ON APRIL 12TH AND THAT WE, THE
10 DEFENDANT AGREES CERTAIN OF THESE MATTERS MAY BE
11 ADDRESSED ON THAT DATE, AND THAT THERE BE A PRETRIAL
12 HEARING SET FOR APRIL 12TH.

13 THAT WAS ALSO PROPOSED AND SUBMITTED AS A PROPOSED
14 CONSENT ORDER WHICH ALSO I DECLINED TO SIGN.

15 AND THEN THE LAST PAGE -- AND MS. WINES AND I HAD
16 DISCUSSED THIS ON THE PHONE THROUGHOUT AS WE TRIED TO GET
17 DOWN TO AN AGREED-TO ORDER. THE FINAL PAGE IS A ONE-PAGE
18 ORDER WHICH I BELIEVE I SUBSTANTIALLY TOLD MS. WINES WE
19 COULD AGREE TO THIS AS LONG AS THOSE OTHER THINGS WERE
20 TAKEN OUT AS FAR AS CONSENT AS FAR AS A DATE OF TRIAL
21 DURING APRIL 11. IT SIMPLY STATES THAT, THAT (READING):

22 WE WOULD AGREE THAT IT'S BENEFICIAL TO -- IT LOOKS
23 LIKE THE, THE FIRST SENTENCE REALLY IS NOT A COMPLETE
24 SENTENCE.

25 THE SECOND SENTENCE WOULD STATE THAT (READING):

1 THE STATE BELIEVES THAT THE CASE INVOLVES MATTERS THAT
2 OUGHT TO BE HEARD PRETRIAL, AND THE DEFENDANT AGREES
3 CERTAIN OF THESE MATTERS MAY BE ADDRESSED ON THAT DATE.
4 IT THEN ASKS FOR A PRETRIAL HEARING DATE OF APRIL 12.

5 Q. AGAIN, THESE ARE ALL DONE ON YOUR REPRESENTATION
6 FROM THE STATE THROUGHOUT THAT PROCESS THAT THERE WAS AN
7 OCONEE COUNTY JURY TERM FOR APRIL 11TH?

8 A. THAT'S CORRECT. AND ALL OF THESE DRAFTS WERE SENT
9 TO ME BY THE STATE.

10 MR. MCDANIEL: OKAY. AND IF I CAN MARK THOSE FOUR
11 DOCUMENTS IN ORDER AS COURT'S EXHIBITS?

12 THE COURT: ANY OBJECTION?

13 MS. WINES: NO OBJECTION.

14 THE COURT: WHAT NUMBERS WILL THEY BE?

15 THE COURT REPORTER: THEY WILL BE 12, 13, 14 AND 15.

16 MR. HUFF: YOUR HONOR, COULD I ASK THE COURT? I AM
17 HERE AS A WITNESS. WOULD IT BE IMPROPER OR OBJECTIONABLE
18 TO MS. WINES IF I HAVE A MOMENTARY COMMENT WITH
19 MR. MCDANIEL? I KNOW IT WOULD BE UNUSUAL, BUT IT'S UP TO
20 YOUR HONOR.

21 THE COURT: ANY OBJECTION?

22 MS. WINES: YES, I OBJECT.

23 THE COURT: VERY WELL. IN FACT, ONCE A WITNESS IS
24 SWORN, THEN THAT WITNESS IS THE COURT'S WITNESS AND NOT
25 SUBJECT TO COACHING OR PREPARATION.

1 MR. MCDANIEL: YOUR HONOR, WE WOULD WITHDRAW THE
2 MARCH 22ND LETTER AND JUST MARK THE OTHER THREE EXHIBITS.

3 THE COURT: I THOUGHT MARCH 22ND WAS A LETTER.

4 MR. MCDANIEL: I'M SORRY, Your Honor?

5 THE COURT: WHAT'S COURT'S EXHIBIT NUMBER 11?

6 THE COURT REPORTER: I HAVEN'T MARKED THEM YET. THE
7 LAST EXHIBIT WAS 11 AND IT WAS LETTER DATED FEBRUARY 24TH
8 '11.

9 THE COURT: FEBRUARY 24TH '11, All right.

10 (MARKED FOR IDENTIFICATION WAS COURT'S
11 EXHIBIT 12, LETTER DATED MARCH 25, 2011.)

12 (MARKED FOR IDENTIFICATION WAS COURT'S
13 EXHIBIT 13, EMAIL DATED MARCH 30, 2011.)

14 (MARKED FOR IDENTIFICATION WAS COURT'S
15 EXHIBIT 14, ORDER FOR CONTINUANCE.)

16 THE COURT: ALL RIGHT. YOU MAY PROCEED.

17 MR. MCDANIEL: THANK YOU.

18 BY MR. MCDANIEL:

19 Q. MR. HUFF, COULD YOU PLEASE IDENTIFY THE ARTICLE
20 THAT I HANDED YOU THERE? ARE YOU FAMILIAR WITH THIS?

21 A. YES, SIR. THIS -- I LIVE IN AIKEN COUNTY. WE'VE
22 GOT THE LOCAL AIKEN NEWSPAPER, IT'S CALLED *THE AIKEN*
23 *STANDARD*. AND I LOCATED A COPY OF THE PAPER DATED MAY
24 11, 2010. AND IT APPEARED THAT THIS WAS I BELIEVE JUST
25 BEFORE THE TRIAL IN -- EXCUSE ME -- IT WAS FOLLOWING THE

1 TRIAL IN SPARTANBURG. I BELIEVE THAT TRIAL WAS IN
2 FEBRUARY OF 2010.

3 THE ARTICLE AT THE TOP OF THE LOCAL NEWS WAS
4 MCMASTER: FORMER PROSECUTOR IS GUILTY. AND MR. MCMASTER
5 WAS ON THE POLITICAL STUMP TRYING TO RUN FOR
6 REELECTION -- AND EXCUSE ME, I THINK HE WAS RUNNING FOR
7 GOVERNOR AT THE TIME -- AND STATED THAT WE BELIEVE THAT,
8 AND I QUOTE FROM THE ARTICLE, (READING):

9 WE BELIEVE HE DID IT IN OCONEE AND WILL TRY HIM IN
10 OCONEE. WE DON'T CHARGE SOMEBODY UNLESS WE KNOW THAT
11 THEY ARE GUILTY AND WE KNOW WE HAVE THE EVIDENCE TO PROVE
12 THEY ARE GUILTY. THIS CASE IS ONE THAT NEEDS TO BE
13 TRIED. AND THAT HE BELIEVED THAT MR. ODOM WAS GUILTY.

14 Q. MR. HUFF, YOU PRACTICE IN CRIMINAL DEFENSE,
15 CORRECT?

16 A. YES, SIR.

17 Q. ARE YOU FAMILIAR WITH THE RULES OF PROFESSIONAL
18 CONDUCT?

19 A. YES, SIR. I WAS ON THE ETHICS ADVISORY COMMITTEE
20 FOR I THINK SOMEWHERE AROUND TEN YEARS.

21 Q. POINTING OUT ONE ADDITIONAL THING FROM THE
22 ARTICLE. IT SAID (READING): THESE KINDS OF CASES, THESE
23 PREDATORS THAT ARE ON THE INTERNET ARE DANGEROUS.

24 IS THERE ANYTHING YOU ARE FAMILIAR WITH IN THE
25 CODE OF CONDUCT THAT WOULD BE VIOLATED OR AT LEAST

1 IMPLICATED BY THESE TYPE OF PUBLIC STATEMENTS?

2 THE COURT: WHICH STATEMENTS ARE WE REFERRING TO?

3 MR. MCDANIEL: THE STATEMENTS THAT WERE RUN FROM
4 MR. MCMASTER.

5 THE COURT: NO. JUST READ THE STATEMENT AND THEN
6 THE RECORD THAT YOU ARE RELYING ON.

7 MR. MCDANIEL: OKAY. (READING): WE BELIEVE HE DID
8 IT IN OCONEE AND WILL TRY HIM IN OCONEE. WE DON'T CHARGE
9 SOMEBODY UNLESS WE KNOW THEY ARE GUILTY AND WE KNOW WE
10 HAVE THE EVIDENCE TO PROVE THEIR GUILT. THIS CASE IS ONE
11 THAT NEEDS TO BE CHARGED AND TRIED.

12 AND THEN HE SAID (READING): THESE KIND OF CASES,
13 THESE PREDATORS ON THE INTERNET ARE DANGEROUS.

14 AND THE HEADLINE, "FORMER PROSECUTOR IS GUILTY."
15 BY MR. MCDANIEL:

16 Q. OF COURSE, HE DIDN'T WRITE THE HEADLINE, BUT AS TO
17 THE STATEMENTS, ARE YOU AWARE OF ANY RULES WITH REGARD TO
18 THE PROSECUTION publicizing A CASE THAT MIGHT BE
19 VIOLATIVE OR IMPLICATED IN THAT?

20 A. YES, SIR. THE BEGINNING OF THE ARTICLE WHICH
21 STATES, AND THEY PUT IN QUOTES, MCMASTER SAYS HE KNOWS
22 THAT THE FORMER AIKEN COUNTY -- MR. ODOM IS GUILTY.

23 MY UNDERSTANDING AND RECOLLECTION IS RULE 3.6 AND
24 3.8 delve INTO THE PROPRIETY OF ATTORNEYS INVOLVED IN A
25 TRIAL OF A CASE. 3.6 HAS TO DO WITH PRETRIAL PUBLICITY

1 AND IS BASICALLY GONNA STATE THAT YOU DON'T PUT YOUR
2 PERSONAL OPINION -- I'D HAVE TO LOOK BACK AT THE RULE.
3 MY RECOLLECTION IS YOU DON'T GO TO THE MEDIA WITH A
4 PENDING, WHEN A CASE IS PENDING AND MAKE COMMENTS AS A
5 PROSECUTOR OR A DEFENSE ATTORNEY THAT YOU REASONABLY
6 BELIEVE COULD BE DISSEMINATED TO THE PUBLIC TO THROW
7 PREJUDICE INTO THE WIND, SO TO SPEAK, TO TAINT THE
8 PERSON'S RIGHT TO A FAIR AND IMPARTIAL JURY, OR MAKE
9 COMMENTS SUCH AS "WE KNOW THAT HE'S GUILTY."

10 BOTH SIDES SHOULD NOT MAKE SUCH COMMENTS TO THE
11 PUBLIC MEDIA IF THEY REASONABLY BELIEVE IT WOULD BE
12 PUBLISHED. WELL, IT CERTAINLY IS REASONABLE TO ME TO
13 BELIEVE THAT MR. MCMASTER, HE WAS TALKING TO THE
14 NEWSPAPER ABOUT A CASE THAT HIS OFFICE WAS PROSECUTING
15 AND HE WAS RESPONSIBLE FOR WHAT WAS BEING SAID IN THIS
16 CASE.

17 AND I CERTAINLY DON'T BELIEVE THAT PEOPLE IN
18 OCONEE OR SPARTANBURG COUNTY DON'T COME THROUGH AIKEN
19 COUNTY, DON'T SEARCH THE INTERNET REGARDING CASES OR
20 DON'T POSSIBLY HAVE FAMILY MEMBERS IN AIKEN COUNTY OR
21 FRIENDS WITH FOLKS IN OCONEE COUNTY. I QUITE FRANKLY
22 FELT IT WAS -- I WAS SPEECHLESS WHEN I HEARD WHAT
23 MR. MCMASTER HAD SAID.

24 I BELIEVE 3.8 HAS TO DEAL WITH SPECIAL DUTIES OF A
25 PROSECUTOR, WHICH I ALSO FELT WERE NOT BEING COMPLIED

1 WITH IN THIS CASE.

2 Q. WAS THIS ALONG THE SAME TIME OR SHORTLY AFTER
3 THINGS HAD GOTTEN CONTENTIOUS BETWEEN YOU AND THE
4 ATTORNEY GENERAL'S OFFICE, MS. WINES?

5 A. YES, SIR. I THINK IT HEATED UP.

6 Q. AND IT WAS AFTER THE PHONE CALL INDICATING, WHERE
7 SHE HAD INDICATED THAT I BELIEVE IN FEBRUARY OF 2010, I
8 BELIEVE YOUR TESTIMONY EARLIER WAS THAT THEY WERE GONNA,
9 FINE, THEY WERE JUST GONNA GO AHEAD AND INDICT HIM IN
10 OCONEE? WOULD THAT HAVE BEEN SHORTLY THEREAFTER?

11 A. YES, SIR, IT WOULD HAVE BEEN. AND IF -- YES, SIR,
12 IT WOULD HAVE BEEN.

13 MR. MCDANIEL: I'D LIKE TO SUBMIT THAT AS A COURT'S
14 EXHIBIT.

15 (MARKED FOR IDENTIFICATION WAS COURT'S
16 EXHIBIT 15, NEWSPAPER ARTICLE FROM THE AIKEN
17 STANDARD NEWSPAPER DATED MAY 11, 2010.)

18 MR. MCDANIEL: I'D LIKE TO ALSO SUBMIT A PARTIAL
19 TRANSCRIPT FROM THE APRIL 12TH, 2011, MOTION HEARING IN
20 FRONT OF YOUR HONOR, IF I COULD. IT'S JUST THE FIRST FEW
21 PAGES, PAGES 1 THROUGH 5 OF THAT TRANSCRIPT, AS A COURT'S
22 EXHIBIT.

23 (MARKED FOR IDENTIFICATION WAS COURT'S
24 EXHIBIT 16, PARTIAL TRANSCRIPT FROM APRIL
25 12TH, 2011, HEARING.)

1 MR. MCDANIEL: AND I'D LIKE TO PLACE INTO THE RECORD
2 AS WELL THE APRIL 9TH, 2010, THERE WAS A FEDERAL ACTION
3 THAT WAS INITIALLY FILED, IT WAS MOVED BACK AND DISMISSED
4 BECAUSE OF THE ABSTENTION DOCTRINE AND MOVED BACK TO
5 CIVIL COURT. BUT THERE WAS A HEARING ON THAT MOTION AND
6 I WOULD LIKE TO PUT THE TRANSCRIPT INTO THE RECORD AS
7 WELL AS A COURT'S EXHIBIT.

8 (Court's Ex. # 17, APRIL 9, 2010, FEDERAL
9 ACTION CIVIL MOTION, was marked for
10 identification.)

11 MR. MCDANIEL: I'D LIKE TO SUBMIT THIS DECEMBER 5,
12 2006, LETTER FOR MR. HUFF TO IDENTIFY.

13 BY MR. MCDANIEL:

14 Q. MR. HUFF, IS THAT PART OF THE RECORD THAT YOU
15 RECEIVED WHEN YOU TOOK OVER MR. ODOM'S DEFENSE IN THIS
16 CASE?

17 A. YES, SIR. THIS IS A LETTER DATED DECEMBER 5,
18 2006. IT'S A LETTER FROM DAVID STUMBO, ASSISTANT
19 ATTORNEY GENERAL, WRITTEN TO MR. JACK SWERLING. HE
20 REPRESENTED MR. ODOM FROM THE BEGINNING OF THE
21 SPARTANBURG CASE, AND HE SUBSEQUENTLY WITHDREW AND I
22 MOVED TO BE ALLOWED TO REPRESENT MR. ODOM. PART OF THE
23 DOCUMENTS THAT I RECEIVED FROM MR. SWERLING'S OFFICE,
24 ONCE I TOOK OVER THE CASE, WAS THIS DOCUMENT.

25 Q. AND YOUR UNDERSTANDING OF THAT DOCUMENT -- IT

1 OBVIOUSLY SPEAKS FOR ITSELF -- BUT IF YOU COULD SUMMARIZE
2 IT WITHOUT READING THE WHOLE THING?

3 A. YES, SIR. MR. STUMBO RELATES TO MR. SWERLING THAT
4 THERE WAS A FORENSIC EXAMINATION TO BE CONDUCTED OF
5 MR. ODOM'S COMPUTER. MR. STUMBO STATES THAT HE RECEIVED
6 SOME INFORMATION FROM S.L.E.D. REGARDING THE PROCESS --
7 EXCUSE ME -- THE PROGRESS OF THAT, AND HE SAYS (READING):

8 AND CAN CONFIRM THAT NO FURTHER EXAM WORK HAS BEEN
9 DONE ON THE COMPUTER AT THE COMPUTER CRIMES CENTER.
10 S.L.E.D. DOES NOT INTEND TO CONDUCT A FULL FORENSICS EXAM
11 ON MR. ODOM'S COMPUTER. I'LL CONTACT YOU THIS WEEK TO
12 DISCUSS THE REASON FOR THAT DECISION. THE PREVIEW
13 EXAMINATION CONDUCTED ON SITE -- I BELIEVE THAT TO BE AT
14 MR. ODOM'S HOME -- YES, IT DOES SAY THAT -- ON SITE AT
15 MR. ODOM'S RESIDENCE BY S.L.E.D. PRODUCED RESULTS THAT
16 WERE DISCLOSED IN A PRELIMINARY DISK THAT I GAVE TO YOU
17 ON JUNE 30TH IN SPARTANBURG. THE RESULTS OF THIS
18 COMPUTER EXAM ARE THE ONLY EVIDENCE PRESERVED FROM THE
19 COMPUTER FOR PURPOSES OF THE PROSECUTION OF THIS CASE. I
20 LOOK FORWARD TO TALKING WITH YOU LATER IN THE WEEK BY
21 PHONE.

22 Q. AND THAT APPEARS TO BE ROUGHLY SEVEN MONTHS OR
23 SO -- I BELIEVE IF MY MATH -- NINE MONTHS, SEVEN MONTHS,
24 AFTER THE ARREST, OR THEREABOUTS, OF MR. ODOM?

25 A. YES. I BELIEVE -- I MAY BE WRONG, BUT I BELIEVE

1 MR. ODOM WAS ARRESTED SOMETIME AT THE END OR MIDDLE OF
2 MAY OF 2006. SO IT PROBABLY WOULD BE ABOUT THAT, MAYBE
3 ABOUT SEVEN MONTHS.

4 Q. ARE YOU AWARE OF ANY FORENSIC EXAMS OR ANY EXAMS
5 OF MR. ODOM'S COMPUTER AFTER THIS DATE, DECEMBER 5TH,
6 THROUGH -- WELL, WHEN'S THE NEXT EXAM THAT YOU ARE AWARE
7 OF OF THIS COMPUTER?

8 A. MY UNDERSTANDING WAS -- I'D HAVE TO LOOK BACK AT
9 MY RECORDS. I BELIEVE THAT THERE WAS ANOTHER EXAMINATION
10 CONDUCTED PRIOR TO THE SPARTANBURG TRIAL, AND THEN I
11 RECEIVED A NOTICE THAT A SEARCH, A SEARCH WARRANT HAD
12 BEEN ISSUED AND A SEARCH CONDUCTED ON MR. ODOM'S COMPUTER
13 I BELIEVE WITHIN THE LAST 30 DAYS AS RELATED TO THIS
14 CASE, WHICH WAS A SURPRISE TO ME.

15 Q. OKAY. SO AS FAR AS YOU'RE AWARE, HAS THERE BEEN A
16 SPECIFIC EVALUATION OR EXAM OF THAT COMPUTER FOR, RELATED
17 TO THE OCONEE MATTER PRIOR TO THE RECENT EXAM THAT YOU'RE
18 TALKING ABOUT?

19 A. NO, SIR. MY UNDERSTANDING IT WAS NOTHING BECAUSE
20 MY UNDERSTANDING WAS FROM MATTERS THAT OCCURRED PRIOR TO
21 MY REPRESENTATION OF MR. ODOM WAS THAT THE ATTORNEY
22 GENERAL'S OFFICE NEVER INTENDED TO PROSECUTE MR. ODOM
23 HERE IN OCONEE. I'M NOT SURE I HAVE THE EXACT QUOTE, BUT
24 IT'S SOMETHING TO THE EFFECT THAT WE NEVER INTENDED TO
25 PROSECUTE HIM AT THIS TIME IN OCONEE. THAT WAS MADE

1 BACK, I THINK BACK IN 2006 BY MR. STUMBO.

2 MR. MCDANIEL: AND I WOULD REPRESENT TO THE COURT
3 THAT THE NEW WARRANT REFERRED TO IS IN THE CIVIL
4 COMPLAINT WHICH IS ATTACHED AS A COURT EXHIBIT.
5 BY MR. MCDANIEL:

6 Q. JUST FOR CLEAN-UP PURPOSES, ARE THERE PHONE
7 NUMBERS, OTHER PHONE NUMBERS ON THE EXHIBIT WE MARKED, I
8 BELIEVE THE FIRST ONE OF YOUR PHONE RECORDS THAT MIGHT
9 INCLUDE PERSONAL CALLS THAT YOU WOULD LIKE TO HAVE
10 REMOVED FROM THE OFFICIAL RECORD?

11 A. I DON'T THINK THERE ARE ANY THAT MY WIFE WOULD
12 OBJECT TO. BUT I WOULD, WITH THE COURT'S PERMISSION,
13 WOULDN'T MIND REDACTING PHONE CALLS THAT WOULD HAVE
14 OCCURRED PRIOR TO THE 18TH. THERE IS ONE OFFICE NUMBER
15 THAT'S PRIVATE THAT'S NOT GIVEN OUT TO THE PUBLIC, WHICH
16 I'D LIKE TO KEEP IT THAT WAY. BUT I WOULD APPRECIATE THE
17 ABILITY TO REDACT THE, ANY CALLS OCCURRING OUTSIDE OF
18 FEBRUARY 18TH, 2010, THAT HAS NOT BEEN TESTIFIED TO,
19 SHOULD THE STATE HAVE NO OBJECTION.

20 THE COURT: MS. WINES?

21 MS. WINES: NO OBJECTION.

22 THE COURT: WITHOUT OBJECTION, ALL PHONE CALLS AFTER
23 FEBRUARY 18TH, 2010, WILL BE REDACTED.

24 BY MR. MCDANIEL:

25 Q. MR. HUFF, PRIOR TO THE PHONE CALL, I JUST WANT TO

1 BE CLEAR, OF FEBRUARY OF 2010, WERE YOU UNDER THE -- DID
2 YOU HAVE ANY INDICATION FROM THE ATTORNEY GENERAL THAT
3 THEY WERE PLANNING TO PROSECUTE MR. ODOM IN OCONEE
4 COUNTY; DID THEY INDICATE THEY WERE GOING TO DO THAT?

5 A. NO, SIR. EVER SINCE THE BEGINNING OF THIS CASE IN
6 MAY OF 2006, UP UNTIL THE TIME OF MY PHONE CALL WITH
7 MS. WINES ON FEBRUARY 18, 2010, JUST SHY OF FOUR YEARS,
8 AND WITH MY DISCUSSIONS WITH MR. SWERLING, WITH MY
9 DISCUSSIONS WITH MR. ODOM AND WITH MS. WINES, THERE NEVER
10 WAS ANY DISCUSSION ABOUT PROSECUTING MR. ODOM HERE IN
11 OCONEE COUNTY.

12 WHAT HAD BEEN DISCUSSED AND WHAT I FELT THE STATE
13 WAS GOING TO DO, WAS TO -- AND THEY DID -- IN ARGUMENTS
14 IN THE SPARTANBURG PROSECUTION, THEY WANTED TO BRING IN
15 THE OCONEE COMMUNICATIONS INTO SPARTANBURG AS BASICALLY
16 LYLE ISSUES.

17 SO THAT'S WHY I WAS QUITE SHOCKED WHEN I WAS TOLD,
18 "WELL, FINE. WE'LL JUST INDICT HIM IN OCONEE."

19 MR. MCDANIEL: MARK THAT, PLEASE, AS A COURT'S
20 EXHIBIT, AS WELL, THE DECEMBER 5TH, 2006, LETTER.

21 (MARKED FOR IDENTIFICATION WAS COURT'S
22 EXHIBIT 18, LETTER DATED DECEMBER 5, 2006.)

23 MR. MCDANIEL: I BELIEVE THAT'S ALL THE QUESTIONS I
24 HAVE FOR THE WITNESS, YOUR HONOR.

25 THE COURT: DOES THE STATE HAVE ANYTHING?

1 MS. WINES: YOUR HONOR, I BELIEVE AT THE APPROPRIATE
2 TIME I WOULD JUST PREFER TO RESPOND WITH ARGUMENT.

3 THE COURT: WELL, I'M JUST CURIOUS. THIS IS
4 SOMETHING APPARENTLY THAT'S BEEN SUBMITTED TODAY.

5 MS. WINES: YES, SIR.

6 THE COURT: DID YOU GIVE THEM NOTICE THAT YOU WERE
7 GONNA BE FACED WITH A MOTION TO DISMISS DUE TO
8 PROSECUTORIAL VINDICTIVENESS?

9 MS. WINES: I CERTAINLY ANTICIPATED IT, YOUR HONOR.
10 WAS I GIVEN FORMAL NOTICE? NO. HOWEVER ---

11 THE COURT: LET ME EXPLAIN SOMETHING TO YOU.
12 THERE'S A REASON FOR THE NOTICE AND IT'S NOT ONLY JUST TO
13 ENTERTAIN ATTORNEYS, BUT THE COURT DOESN'T LIKE TO BE
14 BLIND-SIDED, EITHER.

15 MS. WINES: YES, SIR.

16 THE COURT: NOW I'M A LITTLE BIT -- WE'VE SPENT A
17 GOOD PART OF THE DAY SELECTING, QUALIFYING A JURY PANEL,
18 SELECTING A JURY FOR THE TRIAL OF THIS CASE, AND NOW I'M
19 HEARING SOMETHING THAT -- I'M NOT GONNA WASTE THE JURY'S
20 TIME TO TRY A CASE THAT ULTIMATELY IS GONNA BE DISMISSED
21 BECAUSE OF A MOTION FILED IN THE AFTERNOON AFTER THEY'VE
22 ALREADY BEEN DRAWN.

23 MS. WINES: YES, SIR. I COMPLETELY AGREE.

24 THE COURT: I MEAN, LISTEN. APPARENTLY YOU'VE KNOWN
25 SINCE FEBRUARY THE 10TH -- EXCUSE ME -- FEBRUARY THE

1 18TH, 2010, OVER A YEAR, THAT YOU DIDN'T LIKE THIS ACTION
2 BEING BROUGHT.

3 MS. WINES: I'M SORRY?

4 THE COURT: I'M TALKING ABOUT THE PARTIES. I'M
5 TALKING ABOUT THE DEFENDANT, THE DEFENSE HERE. ISN'T
6 THAT WHEN THE INDICTMENT WAS RETURNED?

7 MS. WINES: I'M SORRY, JUDGE. I'M NOT SURE I'M
8 FOLLOWING YOUR QUESTION.

9 THE COURT: EXCUSE ME. I COULDN'T READ IT. I
10 THOUGHT IT WAS FEBRUARY THE 18TH. IT WAS ACTUALLY APRIL
11 THE 12TH, 2010. I APOLOGIZE.

12 MS. WINES: YOUR HONOR, I WAS JUST GONNA SUGGEST
13 THAT I DON'T HAVE ANY QUESTIONS FOR MR. HUFF IF YOU WOULD
14 LIKE HIM TO STEP DOWN.

15 THE COURT: WELL, LET ME ASK YOU THIS.

16 MS. WINES: YES, SIR.

17 THE COURT: AND I'M LEAVING IT ON THE RECORD. I'M
18 NOT HAVING A CONFERENCE WITH ATTORNEYS THAT DON'T TELL ME
19 EVERYTHING, UP FRONT AT LEAST.

20 WHAT DOES THE STATE INTEND TO DO?

21 MS. WINES: YOUR HONOR, THE STATE'S INTENTION IS TO
22 PROCEED WITH THE TRIAL OF THIS CASE, AND I DID MENTION
23 WHILE WE WERE IN EDGEFIELD THAT THERE WERE NUMEROUS
24 MOTIONS I ANTICIPATED BEING BROUGHT. THIS WAS MENTIONED
25 IN ---

1 THE COURT: WELL, DO YOU THINK I LEFT MY CRYSTAL
2 BALL SOMEWHERE OUTSIDE OF EDGEFIELD? BECAUSE I DIDN'T
3 KNOW THAT WE WERE GONNA GET A VINDICTIVE PROSECUTION.

4 MS. WINES: I CERTAINLY WOULD NOT HAVE KNOWN WITH
5 ANY CERTAINTY, YOUR HONOR. I KNEW IT WAS RAISED
6 FEDERALLY AND CIVILLY.

7 THE COURT: IN OTHER WORDS, YOU, THE STATE, ALSO
8 WANT TO GO FORWARD WITH THE TRIAL OF THE CASE?

9 MS. WINES: YES, SIR, WE'RE PREPARED TO GO FORWARD
10 WITH THE TRIAL. AND I DO HAVE A MEMORANDUM OF LAW I
11 PREPARED IN ANTICIPATION OF THIS MOTION, AND I'LL BE
12 HAPPY TO ADDRESS ANY OF THE COURT'S CONCERNS AND RESPOND
13 IN KIND TO ARGUMENT. AND WAS PREPARED APRIL -- IT'S
14 DATED APRIL 11TH. I HAD IT PREPARED TO SUBMIT WHEN WE
15 WERE IN EDGEFIELD, YOUR HONOR.

16 THE COURT: WELL, THE MOTION HASN'T EVEN BEEN FILED.

17 MS. WINES: NO, SIR, WHICH IS WHY I DIDN'T WASTE THE
18 COURT'S TIME BY SUBMITTING IT. I DID NOT KNOW FOR SURE
19 WHETHER IT WOULD BE.

20 MR. MCDANIEL: YOUR HONOR?

21 THE COURT: YES.

22 MR. MCDANIEL: IF I COULD, THIS WAS FILED FIRST IN
23 FEDERAL COURT, WHICH WE THOUGHT WAS APPROPRIATE.

24 THE COURT: THIS ISN'T IN FEDERAL COURT. PLEASE
25 FORGIVE ME. THIS IS THE COURT OF GENERAL SESSIONS IN THE

1 10TH JUDICIAL CIRCUIT FOR OCONEE COUNTY, AND I HAVE NO
2 ACCESS TO FEDERAL FILES AT ALL. I HAVE NO IDEA.
3 APPARENTLY THIS MATTER HAS BEEN FLOATING AROUND WITH YOU.

4 BUT WHAT YOU DO NOT UNDERSTAND, APPARENTLY, IS IT'S
5 NOT YOU, NOT YOU, NOT EVEN THE DEFENDANT OR MR. HUFF THAT
6 HAS BEEN PUT OR IS GOING TO BE, OR COULD BE, PUT TO THE
7 INCONVENIENCE OF HAVING TO BE DRAWN ON A TRIAL FOR A CASE
8 AND WITH ALL GOOD INTENTIONS OF MEETING THEIR
9 RESPONSIBILITIES AND SOMEONE ELSE IS GOING TO DECIDE WHEN
10 AND WHERE IT'S GOING TO BE DONE.

11 AGAIN, AM I SUPPOSED TO BRING THE JURY BACK OR ARE
12 WE SUPPOSED TO STAY HERE ALL NIGHT LISTENING TO ARGUMENT
13 ON THIS?

14 MS. WINES: YOUR HONOR, MY SUGGESTION WOULD BE I
15 COULD HAND UP THE STATE'S MEMORANDUM.

16 THE COURT: VERY GOOD. VERY WELL. I'LL ACCEPT YOUR
17 SUGGESTION UNLESS SOMEBODY WANTS TO MOVE FOR A
18 CONTINUANCE. EVERYONE IS WAIVING THEIR RIGHTS FOR A
19 CONTINUANCE AT THIS POINT.

20 DO YOU UNDERSTAND THAT, MR. MCDANIEL?

21 MR. MCDANIEL: YES, SIR.

22 THE COURT: DO YOU UNDERSTAND THAT, MS. WINES?

23 MS. WINES: YES, SIR.

24 THE COURT: All right, VERY GOOD.

25 MS. WINES: YOUR HONOR, THAT'S THE ORIGINAL, AND

1 I'LL PROVIDE IT TO COUNSEL.

2 MR. HUFF: JUDGE, WOULD I BE ALLOWED TO STEP DOWN?

3 THE COURT: I DON'T KNOW WHAT WE'RE GONNA DO RIGHT
4 NOW.

5 MS. WINES: I DON'T HAVE ANY QUESTIONS FOR MR. HUFF,
6 YOUR HONOR.

7 (DISCUSSION OFF THE RECORD BETWEEN MS. WINES
8 AND THE COURT REPORTER.)

9 MS. WINES: I WAS JUST MAKING NOTE THAT I HAD GIVEN
10 YOU THE ORIGINAL.

11 THE COURT: HERE'S THE ORIGINAL BACK; IT HASN'T BEEN
12 FILED.

13 MS. WINES: NO, IT HAS NOT BEEN FILED, YOUR HONOR.
14 I WAS WAITING TO FIND OUT WHAT HAPPENED IN COURT TODAY.

15 (THE COURT HANDS ORIGINAL BACK TO MS. WINES:)

16 (MR. HUFF LEAVES THE WITNESS STAND.)

17 MS. WINES: YOUR HONOR, WE'RE HAVING SOMEONE FILE
18 THE ORIGINAL. I'M PASSING A COPY UP TO YOU, YOUR HONOR.

19 THE COURT: All right. THIS IS THE CLERK FOR THIS
20 COURTROOM, NOT FOR FILING RECORDS IN THE CLERK'S OFFICE.

21 MS. WINES: YES, SIR. IF I MAY JUST BRIEFLY STATE,
22 YOUR HONOR, ONE OF THE REASONS WE WERE NOT SURE THIS
23 MOTION WAS ACTUALLY GONNA BE RAISED WAS BECAUSE OF WHAT
24 HAPPENED IN THE FEDERAL CASE WHERE IT WAS DISMISSED, SO
25 WE DIDN'T KNOW IF THE DEFENDANT STILL INTENDED TO PURSUE

1 SUCH A MOTION.

2 THE COURT: WELL, WAS IT DISMISSED OR REMANDED?

3 MR. MCDANIEL: IT WAS DISMISSED DUE TO ABSTENTION,
4 YOUR HONOR. THEY JUST, SHE DIDN'T RULE ON ANYTHING. IT
5 WAS WITHOUT PREJUDICE FOR THE, THE SAME AS FOR THE STATE
6 COURT. AND I WOULD POINT OUT THAT THE STATE HAS ARGUED
7 ALL ALONG THAT THE PROPER PLACE TO ARGUE THIS IS IN FRONT
8 OF YOU.

9 THE COURT: WELL, WHY DIDN'T Y'ALL BRING IT HERE?

10 MR. MCDANIEL: THAT'S WHAT THE CURRENT MOTION IS
11 FOR.

12 THE COURT: YOU DIDN'T BRING IT HERE UNTIL THIS
13 AFTERNOON. I THINK THE FIRST APPEARANCE FORMALLY IN THE
14 COURTROOM WAS AT APPROXIMATELY 2:30 THIS AFTERNOON, AND
15 AT THAT POINT NOTHING HAD BEEN FILED IN THIS COURT.

16 ALL RIGHT. YOU MAY PROCEED, MS. WINES.

17 MS. WINES: THANK YOU, YOUR HONOR.

18 MR. MCDANIEL: YOUR HONOR, IF I MIGHT, IF WE'RE
19 STARTING ARGUMENTS?

20 THE COURT: YES, SIR.

21 MR. MCDANIEL: I'D LIKE TO OFFER -- I DON'T HAVE TO
22 PUT THEM UP AS WITNESSES, BUT I WOULD LIKE TO HAVE
23 ADDITIONAL, MR. JOHNSTON, WHO JUST RAN OUT, TO
24 CORROBORATE THE TELEPHONE CALL THAT MR. HUFF SAYS HE GOT
25 AND THEN REPORTED TO MR. JOHNSTON, THAT HE WILL TESTIFY

1 TO ESSENTIALLY THE SAME THING.

2 THE COURT: WELL, THAT'S HEARSAY, IS IT NOT? OR
3 HAVE WE RELAXED THE RULES OF EVIDENCE, AS WELL? IN FACT,
4 IT'S SELF-SUPPORTING HEARSAY, BOLSTERING HEARSAY, I
5 THINK, WHICH IS ABOUT AS comtemptable I THINK AS ANY.
6 YOU ARE SAYING YOU DON'T BELIEVE YOUR CLIENT OR YOUR
7 WITNESS, OR IN THIS CASE I'M NOT SURE WHAT THE
8 CHARACTERIZATION IS.

9 MR. MCDANIEL: THE ONLY OTHER THING THAT WE WOULD
10 LIKE TO STIPULATE TO IS THAT THERE WAS NOT A TERM OF
11 OCONEE COUNTY COURT SCHEDULED FOR APRIL 11TH, 2011.

12 THE COURT: NOW, THIS IS ONE THING I DO REMEMBER.
13 THERE WAS SOME CONFUSION. WE AT FIRST THOUGHT THIS WAS A
14 STATE GRAND JURY CASE, AND SO I WAS REALLY NOT CONCERNED
15 ABOUT IT. AND I DO REMEMBER BEING -- I THINK I WAS THE
16 ONE IN ANDERSON FOR THE TERM OF GENERAL SESSIONS AND
17 APPARENTLY THEY DIDN'T NEED IT AND SOMETHING WAS SAID,
18 WELL, LET'S MOVE IT UP TO OCONEE. AND THEN I FOUND OUT
19 IT ACTUALLY WAS NOT A STATE GRAND JURY CASE, IT WAS AN
20 OCONEE INDICTMENT, SO THAT ONLY MADE SENSE. BUT YOU
21 DON'T HAVE TO STIPULATE. THE RECORD REFLECTS THAT THERE
22 WAS A SPECIAL TERM OF COURT, OR AT LEAST THE GENERAL
23 SESSIONS IN ANDERSON WAS MOVED TO OCONEE, WHICH IS IN THE
24 10TH JUDICIAL CIRCUIT. IT IS DONE ALL THE TIME. IN
25 FACT, I THINK IT WAS DONE IN TIME TO HAVE A JURY PANEL

1 SUMMONED BECAUSE I'M LOOKING AT THE CLERK. WE WENT
2 THROUGH SOME DISCUSSIONS, DID WE HAVE ENOUGH TIME TO GET
3 ONE? AND THEN IT WAS LATER DECIDED WE DIDN'T NEED A
4 PANEL. NOW, WHAT OTHER STIPULATION DO YOU WANT?

5 MR. MCDANIEL: THAT'S ALL, YOUR HONOR.

6 THE COURT: DO YOU WANT TO PUT ME UNDER OATH?

7 MR. MCDANIEL: NO, YOUR HONOR.

8 THE COURT: I JUST TESTIFIED. ALL RIGHT. NOW,
9 MAYBE I'VE BEEN IN THE MOUNTAINS TOO LONG, I NEED TO GET
10 DOWN TO SOME OF THAT HEAVY AIR WE ALL BREATHE IN THE
11 MIDLANDS. ALL RIGHT. ANYTHING ELSE YOU WANT TO PUT ON
12 THE RECORD?

13 MR. MCDANIEL: NO, YOUR HONOR.

14 THE COURT: ALL RIGHT.

15 MS. WINES?

16 MS. WINES: YES, SIR. I'M NOT SURE IF I'M EXACTLY
17 RESPONDING TO WHAT MR. HUFF HAD TO SAY ON THE STAND OR
18 THE MEMORANDUM PUT UP. BUT FIRST LET ME SAY I DID
19 POTENTIALLY ANTICIPATE THIS MOTION, THAT'S WHY I PREPARED
20 THE MEMORANDUM A COUPLE OF MONTHS AGO. I WAS NOT SURE IT
21 WOULD BE RAISED.

22 THE BOTTOM LINE OF THE STATE'S POSITION AND MY
23 POSITION IN PARTICULAR IS, FIRST OF ALL, YOU WILL NOT
24 FIND IN THE RECORD OR NOTES OR ANYTHING OF ANY KIND
25 ANYWHERE THAT I EVER SAID WE WOULD NOT BRING A CASE HERE

1 IN OCONEE COUNTY.

2 SECONDLY, I DID ADVISE THAT I WOULD SEND INDICTMENTS
3 TO THE OCONEE COUNTY GRAND JURY PRIOR TO THE CALLING OF
4 THIS MATTER IN SPARTANBURG. MR. HUFF IS CORRECT. WE DID
5 HAVE A PHONE CALL, NUMEROUS PHONE CALLS. I'LL ADDRESS
6 THAT IN MORE DETAIL IN A MINUTE OR AS YOUR HONOR DEEMS
7 APPROPRIATE.

8 BUT IN LARGE PART THE BASIS FOR THAT COMMUNICATION
9 THAT I WOULD HAVE INDICTMENTS SENT TO THE OCONEE COUNTY
10 GRAND JURY RELATED TO MR. HUFF TRYING TO GET THE RECORDS
11 OF MARK PATTERSON FROM MARK'S CRIMINAL LAWYER, ANDY
12 ANDERSON. IT HAD COME TO THE POINT THAT WE WERE HAVING
13 DISCUSSIONS WITH JUDGE HAYES, AND JUDGE HAYES HAD ORDERED
14 THAT WE WOULD HAVE TO HAVE A HEARING ON WHETHER THOSE
15 RECORDS WERE COVERED BY ATTORNEY-CLIENT PRIVILEGE. AT
16 THAT POINT I FELT LIKE IT WAS BECOMING TOO COLLATERAL OF
17 AN ISSUE AND IT WAS MAKING THE SPARTANBURG CASE MUCH MORE
18 DIFFICULT THAN IT NEEDED TO BE.

19 I HAD BEEN FOLLOWING MY PREDECESSOR'S STRATEGY.
20 DAVID STUMBO'S NAME HAD BEEN MENTIONED. HE WAS THE ONE
21 WHO FIRST CALLED THE CASE IN SPARTANBURG FOR TRIAL BACK
22 IN 2007. AND HE WAS AT THE TIME LEAD COUNSEL FOR THE
23 STATE AND HE HAD MADE THE DETERMINATION OF USING THE
24 OCONEE CHATS AS POTENTIAL LYLE EVIDENCE. WE NEVER GOT
25 THAT FAR IN THE OFFICIAL CALLING OF THE CASE, Your Honor,

1 AND I DO BELIEVE THERE WAS A TRANSCRIPT AND I QUOTED IT
2 IN THE MEMORANDUM. I WOULD BE HAPPY TO PROVIDE A COPY OF
3 THAT PORTION TO YOUR HONOR WHERE MR. STUMBO SAYS
4 SOMETHING ALONG THE LINES OF "WE NEVER INTENDED TO ARREST
5 AT THAT TIME." NOWHERE IN THERE DOES IT SAY WE WOULD NOT
6 EVER DO IT. AND AGAIN, THAT WAS MR. STUMBO, NOT ME.

7 BEYOND THAT, IT IS MY UNDERSTANDING A PROSECUTOR CAN
8 CHANGE TRIAL STRATEGY. THAT IS EXACTLY WHAT THIS IS. I
9 FOLLOWED THE STRATEGY OF MY PREDECESSOR. IT SEEMED LIKE
10 A FAIRLY REASONABLE STRATEGY. BUT WHEN IT WAS BECOMING
11 SO COLLATERAL, IT DID NOT SEEM LIKE SUCH A REASONABLE OR
12 INTELLIGENT STRATEGY ON BEHALF OF THE STATE.

13 SO PRIOR TO THE CALLING OF THE TRIAL, I TOLD
14 MR. HUFF THAT WE WOULD SEND INDICTMENTS TO OCONEE COUNTY
15 AND WE WOULD DEAL WITH THE MATTER OF INVESTIGATOR
16 PATTERSON'S RECORDS IN OCONEE COUNTY.

17 WITH REGARD TO THE SUBPOENAS, I BELIEVE WHAT HE'S
18 SAYING IS CORRECT. I WOULDN'T SAY WITH 100 PERCENT
19 CERTAINTY, BUT I DO RECALL I WAS VERY IRRITATED, AND I
20 PROBABLY DID SAY SOMETHING ALONG THE LINES OF, YOU DO NOT
21 HAVE ANY SUBPOENA POWER WITH REGARD SPECIFICALLY TO AN
22 ADMINISTRATIVE SUBPOENA. WE ALL KNOW YOU CAN SUBPOENA
23 RECORDS TO COURT. I HAD NOT SEEN THE SUBPOENAS, BUT I
24 HAD BEEN ADVISED THAT THERE WAS A REQUEST FOR PRODUCTION
25 OF RECORDS PRIOR TO THE DATE OF TRIAL, WHICH I DID NOT

1 BELIEVE TO BE SOMETHING THEY HAD THE POWER TO DO.

2 MOREOVER, I STRESSED THAT I WOULD DO WHAT I COULD TO
3 GET THOSE RECORDS. IF THERE'S EVER A NEED OR EVER A
4 REQUEST FOR DISCOVERY, EVERYONE WHO HAS EVER WORKED WITH
5 ME KNOWS THAT I WILL DO MY BEST TO GET THOSE AND SHARE
6 THOSE. AND MY POINT WAS THE DISCOVERY PROCESS SHOULD
7 HAVE GONE THROUGH ME, THAT I WOULD HAVE DONE WHAT NEEDED
8 TO BE DONE TO GET THOSE RECORDS.

9 THAT'S ALL I CAN RECALL ON THAT SPECIFIC
10 CONVERSATION WITH REGARD TO THE SUBPOENAS AND MY
11 FRUSTRATION. AND I WAS FRUSTRATED THAT THE MATTER HAD
12 COME TO JUDGE HAYES ORDERING THAT WE WOULD HAVE A HEARING
13 ON ATTORNEY/CLIENT PRIVILEGE WITH REGARD TO MARK
14 PATTERSON'S RECORDS WHICH WERE NOT INSTRUMENTAL TO THE
15 SPARTANBURG TRIAL, Your Honor. THERE WAS GONNA BE
16 POTENTIAL LYLE EVIDENCE, AND I DON'T KNOW THAT WE WOULD
17 HAVE EVEN GOTTEN IT IN.

18 SO IT MADE SENSE TO ME AT THAT POINT THAT I BELIEVE
19 SEPARATE CRIMES HAD BEEN COMMITTED, IT MADE SENSE TO
20 CHANGE TRIAL STRATEGY AND TO GO AHEAD AND HAVE THOSE SENT
21 TO THE OCONEE COUNTY GRAND JURY, WHICH WAS DONE IN MAY.

22 AND WITH REGARD TO ANY SORT OF ANIMUS TOWARD THE
23 DEFENDANT, Your Honor WILL RECALL THAT WE DID HAVE
24 MR. ODOM ARRAIGNED HERE AND YOU DID THE ARRAIGNMENT AND I
25 AGREED TO A P.R. BOND, YOUR HONOR.

1 BEYOND THAT, I THINK WHAT I'D LIKE TO DO AT THIS
2 POINT IS JUST STRESS THE LAW, THAT THERE IS A TWO-PRONG
3 TEST FOR VINDICTIVENESS, YOUR HONOR, AND I DON'T BELIEVE
4 THAT THAT HAS BEEN MET BY THE DEFENDANT. AND WITHIN THE
5 MEMO I'LL, OF COURSE, LEAVE THAT TO YOUR HONOR TO READ AT
6 YOUR LEISURE AND DISCRETION.

7 BUT THERE HAVE BEEN 4TH CIRCUIT CASES AND SOUTH
8 CAROLINA CASES, AND ESSENTIALLY YOU HAVE A TWO-PRONG
9 TEST. THE PROSECUTOR ACTED WITH GENUINE ANIMUS TOWARD
10 THE DEFENDANT, AND BUT FOR THAT ANIMUS, THE DEFENDANT
11 WOULD NOT HAVE BEEN prosecuted. I DON'T BELIEVE THEY CAN
12 POINT TO ANYTHING WITH REGARD TO THAT.

13 And PRIMARILY, YOUR HONOR, IT IS A CHANGE in
14 STRATEGY. BRINGING UP LETTERS THAT I'VE SENT, I DON'T
15 REALLY UNDERSTAND HOW THAT'S RELEVANT OR WHAT THAT HAS TO
16 DO WITH ANYTHING IN TERMS OF SCHEDULING COURT. I BELIEVE
17 WE'VE ADDRESSED THE APRIL TERM OF COURT. I CAN GO INTO
18 THAT FURTHER IF WE NEED TO.

19 WITH REGARD TO THE NEWSPAPER ARTICLES --

20 THE COURT: IT WOULD HELP THE COURT BECAUSE I HAD TO
21 DO THAT OFF THE TOP OF MY HEAD OR FROM MY OWN
22 RECOLLECTION.

23 MS. WINES: YES, SIR. LET ME ELABORATE ON THAT
24 FURTHER.

25 THE COURT: THAT'S WHAT HAPPENS WHEN YOU PUT A JUDGE

1 IN A FACTUAL SITUATION RATHER THAN LOOKING AT THE LAW.
2 ALL RIGHT.

3 MS. WINES: YES, SIR. MY RECOLLECTION AND MY
4 UNDERSTANDING OF THE SITUATION IS THIS. I HAD INTENDED
5 TO CALL THE CASE FOR TRIAL SOMETIME AROUND FEBRUARY. I
6 DON'T REMEMBER IF I HAD GIVEN NOTICE OR WHAT. I CAN LOOK
7 THROUGH MY FILE FOR THAT. BUT IN THE BACK OF MY MIND I
8 WAS GETTING READY TO TRY THE CASE, AND INTERNALLY WITHIN
9 THE OFFICE, TALKING WITH MY IMMEDIATE SUPERVISORS, WE
10 WERE TRYING TO FIGURE OUT A TIME TO CALL THE CASE FOR
11 TRIAL, KNOWING THAT MR. HUFF HAD REQUESTED A MEETING WITH
12 ATTORNEY GENERAL WILSON.

13 SOMEWHERE ALONG THE SAME LINE OR SAME TIME FRAME I
14 WAS INFORMED BY, THROUGH STEPHANIE MCINTOSH THAT THE
15 STATE GRAND JURY HAD A TERM OF COURT IN ANDERSON FOR
16 APRIL 11TH AND THAT THAT WOULD NO LONGER BE NEEDED AND
17 THAT I SHOULD WORK WITH THE STATE GRAND JURY CLERK, JIM
18 PARKS, TO SEE IF WE COULD GET THAT TIME RESCHEDULED,
19 RATHER NOT WORK WITH HIM BUT JUST CHECK WITH HIM, THAT HE
20 WOULD WORK WITH THAT. AND, IN FACT, I DID TALK WITH --

21 THE COURT: WAS THERE TO BE A STATE GRAND JURY TERM
22 IN ANDERSON?

23 MS. WINES: IT WAS, YES, SIR.

24 THE COURT: AND THEY DIDN'T NEED IT AND THAT'S WHY
25 IT BECAME AVAILABLE FOR OCONEE?

1 MS. WINES: THAT'S CORRECT, YES, SIR. JIM PARKS, I
2 AM TOLD -- I CAN'T SPEAK TO WHAT WAS ACTUALLY DONE -- BUT
3 I WAS TOLD BY JIM PARKS THAT HE HAD WORKED WITH COURT
4 ADMINISTRATION TO GET THAT TERM OF COURT TRANSFERRED AS A
5 REGULAR GENERAL SESSIONS TERM IN OCONEE COUNTY WITH YOUR
6 HONOR AS THE PRESIDING JUDGE, AND I WAS TOLD IT WAS IN
7 TIME TO SWEAR OR TO HAVE A JURY PANEL.

8 THE ISSUE AT THAT POINT THEN BECAME CONSTRUCTION IN
9 THE COURTHOUSE. AND SO WE STARTED BUMPING UP CLOSER TO
10 THE TIME OF THE COURT DATE, AND IN LIGHT OF MY KNOWLEDGE
11 OF REQUESTS FOR TRANSCRIPTS, IT MADE SENSE TO ME TO GO
12 AHEAD AND HAVE A CONTINUANCE, BUT TO USE THE COURT'S TIME
13 THAT WAS MADE AVAILABLE TO CONDUCT PRETRIAL HEARINGS.

14 THE COURT: THAT ALSO BRINGS TO MIND THAT THAT WAS A
15 TIME THAT THE COURTHOUSE HERE WAS IN, BEING RENOVATED.

16 MS. WINES: YES, SIR.

17 THE COURT: AND AGAIN, MADAM CLERK, DO YOU REMEMBER
18 WHEN WE FINALLY GOT IN? WASN'T IT ABOUT THAT TIME?
19 ABOUT A WEEK BEFORE, MAYBE.

20 THE CLERK: WE GOT IN THAT WEEK BECAUSE WE HAD THREE
21 COURTS GOING THE SAME DAY, APRIL 11TH.

22 THE COURT: APRIL 11TH?

23 THE CLERK: APRIL 11TH. WE HAD NON JURY, COMMON
24 PLEAS, AND THEN STATE GRAND JURY.

25 THE COURT: OKAY. ALL RIGHT. NOW, AGAIN I'M GONNA

1 WAIT TILL MS. WINES FINISHES HER PRESENTATION, BUT I'M
2 GONNA TELL YOU WHAT I'M GONNA DO. I'M GONNA ASK, AND YOU
3 NEED TO CONSULT WITH YOUR CLIENT -- WELL, I GUESS
4 MR. MCDANIEL NEEDS TO CONSULT WITH HIS CLIENT AS TO
5 WHETHER YOU WANT ME TO RECUSE MYSELF BECAUSE OBVIOUSLY I
6 KNOW THINGS OUTSIDE THE PARTICULAR, THAT ADDRESS THE
7 FACTS OF THIS, OF YOUR MOTION. I KNOW A LITTLE BIT ABOUT
8 WHY CASES WERE DELAYED AND MOVED FROM ANDERSON TO OCONEE.

9 AND, YOU SEE, YOU HAVE PUT THE COURT, AND I'M NOT
10 SPEAKING OF MYSELF INDIVIDUALLY, BUT AS A REPRESENTATIVE
11 OF AN INSTITUTION, BEING THE COURT, IN A RATHER
12 INCONVENIENT POSITION. AND IF YOU FEEL THAT THAT IN ANY
13 WAY WILL PREJUDICE YOUR INTERESTS OR YOUR CLIENT'S
14 INTERESTS, AND THAT GOES WITH THE STATE, TOO, THEN I WANT
15 YOU TO EXERCISE THAT.

16 NOW, I'LL HEAR MS. WINES OUT AND THEN I'LL LET YOU
17 DECIDE. BUT WHEN YOU COMPLETE YOUR ARGUMENT, MS. WINES,
18 I'M GONNA ASK IF ANYONE WANTS ME TO RECUSE MYSELF AND
19 I'LL GIVE YOU TIME TO CONSULT WITH YOUR CLIENT.

20 MS. WINES: THANK YOU, YOUR HONOR. I WOULD ONLY
21 HAVE A LITTLE BIT FURTHER TO PUT ON THE RECORD. THE
22 MATTER OF YAHOO!, MARK ZWELLINGER. MY KNOWLEDGE OF THAT
23 BACK IN THE SPARTANBURG TRIAL WAS YAHOO! WAS UPSET THAT
24 THEY WERE GONNA HAVE TO COME TO SOUTH CAROLINA TO TESTIFY
25 BECAUSE APPARENTLY THEY WERE SHORT-STAFFED AND DIDN'T

1 HAVE ENOUGH PEOPLE TO BE FLYING ALL OVER THE COUNTRY.
2 AND SO CURTIS PAULING WAS TRYING THE SPARTANBURG CASE
3 WITH ME. CURTIS WAS IN CHARGE OF THE YAHOO! WITNESS.
4 JEFF STANFORD WITH YAHOO! WAS OUR CONTACT.

5 I DON'T KNOW WHO WAS DESIGNATED TO ACTUALLY COME
6 TESTIFY. BUT WE WERE ASKED -- I BELIEVE WE WERE ASKED
7 FOR MR. HUFF'S CONTACT INFORMATION. I DON'T RECALL IF WE
8 PROVIDED THAT OR WHAT, BUT WHAT I DO REMEMBER IS GETTING
9 A PHONE CALL FROM YAHOO! EXPLAINING THAT THERE HAD BEEN A
10 CONVERSATION WITH MR. HUFF ABOUT THE NATURE OF THE
11 TESTIMONY AND THAT AT THAT POINT IT WAS BELIEVED BY
12 YAHOO! THAT THE DEFENDANT WOULD STIPULATE TO AUTHENTICITY
13 OF THE RECORDS.

14 THAT WAS IN NO WAY ON THE STATE'S REQUEST. WE WERE
15 PREPARED TO BRING IN THE WITNESS. WE WERE IN PROCESS OF
16 BOOKING FLIGHTS, YOUR HONOR. SO FOR WHATEVER IT'S WORTH,
17 JUST TO CLARIFY ANYTHING ON THAT MATTER, LET ME JUST GO
18 AHEAD AND PUT THAT OUT THERE.

19 BUT THE BOTTOM LINE IS PROSECUTORS CAN CHANGE
20 STRATEGIES. I INHERITED THAT TRIAL. I WAS FOLLOWING THE
21 STRATEGY OF MY PREDECESSOR. IT DID NOT SEEM TO MAKE
22 SENSE OR BENEFIT THE STATE TO ME WHEN WE STARTED DEALING
23 WITH SUCH COLLATERAL MATTERS THAT WE NEEDED TO HAVE A
24 HEARING ON ATTORNEY-CLIENT PRIVILEGE. AND AT THAT POINT
25 IT SEEMED TO ME TO BE PRUDENT TO JUST GO AHEAD AND SUBMIT

1 THE INDICTMENTS TO OCONEE COUNTY, WHICH IS WHAT WE DID.

2 AND I'LL BE HAPPY TO ANSWER ANY QUESTIONS THAT YOUR
3 HONOR MAY HAVE, BUT I WILL JUST STAND ON THE MEMORANDUM
4 AT THIS POINT.

5 THE COURT: ALL RIGHT. RATHER THAN HEAR FURTHER
6 ARGUMENT AT THIS TIME, SINCE I'VE HEARD AT LEAST
7 PRESENTATIONS, BUT NOT FULL ARGUMENT, BY THE DEFENDANT,
8 I'M GOING TO TAKE A SHORT RECESS OF ABOUT TEN MINUTES, IT
9 WILL BE ABOUT 20 AFTER FIVE, FOR YOU TO DECIDE IF YOU
10 WANT ME TO HEAR THIS MATTER AND DECIDE IT. THE JURY HAS
11 NOT BEEN SWORN, DOUBLE JEOPARDY DOES NOT ATTACH.

12 BUT I WOULD ALMOST THINK THAT YOU -- WELL, I THINK
13 THERE WAS A CASE THAT'S CITED -- OH, GRACIOUS -- STATE
14 VERSUS OWENS, WHERE THEY SAID THAT JUDGES ARE NOT
15 SUPPOSED TO HAVE OPINIONS AND DEFINITELY THEY DON'T SHARE
16 THOSE OPINIONS IF THEY HAVE IT. SO RATHER THAN PREJUDICE
17 THIS CASE IN ANY WAY BY REASON OF HAVING KNOWLEDGE
18 OUTSIDE OF THE RECORD, I'M GOING TO GIVE YOU THAT TIME.

19 SO WE'LL TAKE ABOUT TEN MINUTES AND WE'LL COME BACK
20 AT 20 AFTER -- OR LET'S SAY 25 AFTER. THAT WILL GIVE US
21 15.

22 MR. MCDANIEL: THANK YOU, YOUR HONOR.

23 MS. WINES: THANK YOU, JUDGE.

24 (A RECESS WAS TAKEN.)

25 THE COURT: I GUESS I SHOULD RECOGNIZE THE DEFENDANT

I N D E X

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2	<u>WITNESSES</u>
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5	(There were no witnesses.)
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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6	(There were no exhibits.)		
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1 (The following proceedings were held on June
2 1, 2011.)

3 **THE COURT:** This is the case of State of South
4 Carolina versus Anthony C. Odom, indictments number
5 2010-GS-37-363 and 2010-GS-37-364. The State is
6 represented by Ms. Wines and Mr. Anders and Mr. Senn
7 and the defendant is represented by Mr. Huff and
8 Mr. Johnson.

9 If you could help the Court, what are the
10 motions pending before -- at this hearing?

11 **MS. WINES:** Your Honor, as I understand it,
12 what I anticipated to address today would be the
13 equal protection issue which was raised and argued
14 last time and my understanding was Your Honor may
15 rule on that today. I did pass up a memorandum, the
16 State's response, and provided that to the defense
17 as well.

18 There's been talk of a First Amendment issue.
19 I don't know if that's still the defendant's
20 intention to raise it. However, we have prepared a
21 memo and are prepared to argue that as well.

22 I believe we probably need to address the jury
23 questionnaire. The State would like to address any
24 stipulations that we can go ahead and take care of,
25 specifically with regard to stipulating to

1 authenticity of records received from Yahoo and Bell
2 South and chain of custody, that type of issue, Your
3 Honor. And the matter of Officer Patterson's arrest
4 records is still at issue, Your Honor. And I
5 believe that's all that we would really need to
6 address today as far as the State is aware, Your
7 Honor.

8 **THE COURT:** All right. Mr. Huff.

9 **MR. HUFF:** Your Honor, we would have a few
10 things further to address today. One would be, as
11 the Court may be aware, Mr. Odom, at the time of
12 these alleged acts, was a practicing attorney in the
13 State of South Carolina. In the trial we had in
14 Spartanburg, that was not allowed to be mentioned
15 during the trial of the case.

16 **THE COURT:** So there's a motion in limine?

17 **MR. HUFF:** It is a motion in limine to preclude
18 the State from mentioning in any manner the
19 occupation of Mr. Odom at the time of these alleged
20 acts. It has no bearing whatsoever as to whether or
21 not a crime has occurred or not. We believe it
22 would be overly prejudicial. The occupation of a
23 victim, the occupation of an accused has no bearing
24 on whether or not a statutory finding has been
25 violated.

1 And we would ask -- I don't know if the State
2 intends to try to place that before the jury in its
3 case. I have not spoken with Ms. Wines regarding
4 this prior to being here today. We have discussed
5 it, I think, previously in Spartanburg, but I will
6 go ahead and place it on the record now and she may
7 be able to illuminate me on what her intent would be
8 at this time.

9 **THE COURT:** Do you want to do that now, Ms.
10 Wines? Is that going to be an issue?

11 **MS. WINES:** Yes, Your Honor, that will be an
12 issue. I would state first we did anticipate that
13 coming up and I'm in the process of preparing a
14 memorandum, so anything I would say today I would
15 ask that the Court give time to submit an additional
16 memorandum on that issue.

17 The brief response, Your Honor, is we believe
18 that the defendant's occupation, specifically his
19 former occupation as a prosecutor, but also just his
20 occupation as an attorney, is relevant and would
21 assist the trier of facts in determining a fact at
22 issue, primarily, number one, whether Mr. Odom
23 actually intended to talk to a minor and, secondly,
24 if he intended to persuade --

25 **THE COURT:** Well, do lawyers talk to minors or

1 what?

2 **MS. WINES:** Yes, Your Honor. The State's
3 position would be it shows a level of intelligence
4 so when looking at the facts presented to the jury,
5 the jury would use that information to make their
6 own determination of what Mr. Odom knew to be true
7 at the time, which is an element the State needs to
8 prove.

9 **THE COURT:** Well, I'll let you brief it, but it
10 -- and, of course, it's a motion in limine, which is
11 subject to revisiting at the time of trial based on
12 the record at the time.

13 Mine really is a 403 concern. If it has any
14 probative value, is it outweighed by the prejudice?

15 **MS. WINES:** Yes, Your Honor.

16 **THE COURT:** So I think that's probably going to
17 be my decision at this point. I'm not sure if I
18 find that being an attorney makes you either smarter
19 or dumber. I've been one for 40 years now and plus
20 and I don't think I have any particular expertise on
21 anything. In fact, the older I get it appears the
22 less certainty I have of what I know.

23 **MS. WINES:** Yes, sir. That's the argument in a
24 nutshell. And prior to presenting you with a
25 memorandum, if I could just add briefly that there's

1 a little more to it factually.

2 Mr. Odom, as I understand it, he actually
3 prosecuted sex crimes against children and was on a
4 panel discussing teen sex and the law. And,
5 additionally, it's going to become an issue with
6 regard to his statement, his oral statement, to
7 Investigator McKeller.

8 **THE COURT:** Well, again, now that -- there's
9 always -- and that's where we have a motion in
10 limine is based on if the door is opened.

11 **MS. WINES:** Yes, sir.

12 **THE COURT:** In other words, if somebody goes to
13 the point of suggesting that this person is
14 diminished capacity or without knowledge of this
15 particular area, then, of course, I think that
16 impeachment would be appropriate, but now just to
17 throw out the fact that one is that -- his
18 occupation, then I might say that you could go back,
19 I think, it's Henry VI and the observation made by
20 Jack Cade as to whether lawyers should survive or
21 not, there's two views.

22 Actually, the text is that, one is that the
23 lawyers were what protect the public. And Jack Cade
24 said that, no, you had to do that to get forward.
25 So even what we are or what lawyers are is subject

1 to debate. So I'm not -- at this point, I would
2 think we would almost have to find it would --
3 balance it with a 403.

4 MS. WINES: Yes, Your Honor. I understand
5 that --

6 THE COURT: But I will accept any, what is it,
7 memorandum to help me because at the time, if it is
8 necessary to renew the motion or to consider the
9 issue, anything would be of great help.

10 All right. So that'll take care of that as far
11 as the question of occupation.

12 MS. WINES: Yes, sir.

13 THE COURT: Next? Anything else from the
14 defense? The jury questionnaire, of course, is the
15 primary thing that the defense has.

16 MR. HUFF: Yes, sir. I think that's pretty
17 significant especially with the time that it's being
18 brought in before the Court if it's --

19 THE COURT: All right. Well, let's look at the
20 questionnaire or at least the issue of this
21 questionnaire. I understand it was used in
22 Spartanburg?

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

24 THE COURT: Is this the same questionnaire?

25 MR. HUFF: It is verbatim. The only thing that

1 was changed is the word Spartanburg has been changed
2 to Oconee.

3 If I could address it with the Court, Ms. Wines
4 and I in Spartanburg discussed issuing a
5 questionnaire. I think it's pretty much common
6 sense that strangers coming into a very unusual
7 environment like a courtroom setting they find
8 foreboding and they're less inclined to reveal
9 personal feelings or embarrassing thoughts in a
10 public domain. I think that's just basic psychology
11 101.

12 **THE COURT:** Well, again, but we're not in a
13 psychology classroom, we're in a courtroom. And the
14 one thing the Court has to be concerned about is
15 anything that will taint the forum, if you would.

16 In other words, you don't want -- and this is
17 one of the concerns we always have, the only time
18 I've ever used a questionnaire is, of course, in
19 capital cases, but you have to be careful about
20 staking out potential jurors thereby suggesting
21 something to them that gets their mind on a
22 particular thing. That's why we're very careful
23 about how we instruct jurors not to discuss
24 anything, talk about the weather, not even
25 personalities of the parties or their

1 representatives.

2 So, I mean, that's the thing that the Court's
3 more concerned about than anything else is that we
4 all come into a courtroom based on what we are, but
5 my experience has been and is that the citizens who
6 are summoned for jury duty usually rise above their
7 experiences in most instances. In other words, they
8 realize the importance of what they do. And
9 regardless of their verdict, which I don't always
10 agree that I would have reached the same verdict,
11 but I've always, except for one instance, have felt
12 that they were properly considered.

13 So I'm not sure if I can sanitize or in some
14 fashion create the perfect juror. I think that's
15 really what the jury's about.

16 Now, of course, there is something, they have
17 preconceived notions that they bring into it. I
18 think that might be something, but not to suggest
19 something to them. In other words, if you ask them
20 about how many organizations and things like that, I
21 really need -- I'm not that familiar, I trust that
22 the questionnaires that you have are the
23 questionnaires that are the type that we use in
24 capital cases -- would not necessarily be
25 beneficial.

1 Moreover, I'm not -- and you say that you used
2 it in Spartanburg. Was that by agreement of the
3 parties?

4 **MR. HUFF:** That's correct, Your Honor.

5 **THE COURT:** Well, that does make a bit of a
6 difference. You know, I once served in a body that
7 could do anything with unanimous consent, so I know
8 what agreement of the parties, you know, can do.
9 But, yes, sir.

10 **MR. HUFF:** I think the purpose of the
11 questionnaire is to supplement and to assure the
12 purpose of voir dire and that's all it is. It's a
13 voir dire that the jurors can --

14 **THE COURT:** Well, let me ask you something, and
15 again I don't want to belabor the thing, but one of
16 the things I'm going to be careful about, have you
17 heard anything about this case and publicity or
18 outside sources and all of that. And if I send them
19 a questionnaire, I'm going to have to question them
20 individually as to every question on there. And to
21 me, I think it's different from what someone brings
22 into a courtroom and what we, as officers of the
23 court, send out and say, I want you to think about
24 these things.

25 And, you know, and I understand it that

1 questionnaires are a fact of life in capital cases,
2 but it also is impressed that that's where so far
3 the limited use is. I'm a little bit reluctant of
4 that doing particularly since it's not by agreement.

5 **MR. HUFF:** Judge, if I could, the purpose is to
6 make sure that we're able to select -- the Court,
7 first off, is able to assure itself that the jurors
8 do not have any of those known or, as the U.S.
9 Supreme Court says, Unknown biases or prejudices.
10 Those cases are cited in the motion that --

11 **THE COURT:** I'll look at it, but right now I
12 wouldn't count on it. I mean, it's not that I've
13 got a bias against an unknown or known, it's just
14 that, one, is that my purpose is not to, what is it,
15 to provide a perfect, you know, panel of angels or
16 anymore than, what is it -- and I'm not sure I want
17 to be judged by a panel of angels.

18 **MR. HUFF:** I don't think there is a perfect
19 jury, Judge.

20 **THE COURT:** Well, that's what I'm saying. And
21 I have all -- with all due deference to the United
22 States Supreme Court, I'm sure that -- well, the
23 thing is I will look at it and see. I'm just not --
24 I'm not sure that the benefit outweighs the
25 interference.

1 **MR. HUFF:** And, Your Honor, if I could just
2 reply. I think the benefit is twofold. One is that
3 the Court allows the jurors -- the issues here, this
4 isn't a DUI case, it's not a fraudulent check case.
5 It's something that has to do with sex with the
6 Internet and with an allegation of children, that I
7 would submit is something that is a hot button type
8 of issue that I don't think there is a juror that
9 doesn't have some feelings about that, pro or con.

10 **THE COURT:** You think somebody's in favor of
11 it?

12 **MR. HUFF:** I think somebody is not in favor of
13 sex with minors, but this has to do with the
14 Internet and use of Internet with no physical
15 contact whatsoever between living human beings. I
16 think some jurors, as we found in Spartanburg, feel
17 that there is the right under the First Amendment to
18 talk about anything as long as you don't act upon
19 it. There were other jurors on the other extreme
20 that felt to even fantasize in your own mind --

21 **THE COURT:** Let me ask you, is that -- and I
22 know the First Amendment is going to be one of the
23 issues we deal with. Do you think that is a factual
24 issue or a legal issue?

25 **MR. HUFF:** Judge --

1 **THE COURT:** The reason I ask, because as we all
2 know, trials are constructed in a certain fashion
3 where attorneys through witnesses and exhibits in
4 the like develop facts. And the court, right or
5 wrong or better for worse, is the final authority on
6 the law.

7 **MR. HUFF:** That's correct.

8 **THE COURT:** So I'm not sure if I want to have
9 them deciding issues before they get into a
10 courtroom where the presentation is limited to those
11 things that are relevant.

12 **MR. HUFF:** And, Judge --

13 **THE COURT:** And not what they're saying in the
14 cafe, on the street corners or anywhere else or even
15 in the churches, if you'll forgive me.

16 **MR. HUFF:** Yes, sir. The questionnaire that we
17 have provided to the Court does not require them to
18 decide facts --

19 **THE COURT:** Sir, you don't understand. Maybe
20 I've missed something. I'm trying to suggest to
21 you, it's not when you ask a juror, Have you heard
22 anything about this case, that's not the issue. The
23 issue is, Have you decided anything about this case.

24 And what you're suggesting is we throw out all
25 sorts of things and then we decide whether or not

1 they would be qualified as a juror. But go ahead.

2 Again, I'm listening to you.

3 MR. HUFF: Judge, if I could --

4 THE COURT: Well, let me ask you. In other
5 words, you want it, you object to it?

6 MR. HUFF: Yes, sir. And we believe that it --
7 being able to answer the questionnaire in the
8 privacy of their own home allows a juror to more
9 properly --

10 THE COURT: How do they understand the
11 question?

12 MR. HUFF: I'm sorry, Judge?

13 THE COURT: In their own home, who's going to
14 explain the question to them?

15 MR. HUFF: Nobody. And when we get to court,
16 nobody's going to explain it to them.

17 THE COURT: I beg your pardon. My questions on
18 all of my voir dire has to do with do you
19 understand.

20 MR. HUFF: Judge, our understanding of the
21 proposal of the questionnaire was when a juror
22 writes their answer, we are not going to go behind
23 it, ask them to explain it, contradict it, add to
24 it. We have their written answer. And if they
25 don't give any answer at all, we accept that and we

1 will draw the jury based upon what we get in
2 response.

3 But it's -- the question such that, do you
4 think that -- do you believe that thinking about
5 sexual activity or having sexual fantasies should be
6 a crime, just thinking about sexual fantasies, it
7 doesn't say with males, females, adult, young,
8 anybody, and jurors in Spartanburg responded that,
9 yes, that should be a crime.

10 Now, I'm not saying --

11 **THE COURT:** Let me ask you something. Now,
12 again, I'm going to use the analogy of the capital
13 qualification of a jury. Is it disqualifying if
14 they say they don't believe that somebody should be
15 executed?

16 **MR. HUFF:** Judge, I don't know if I can answer
17 that. This isn't a death penalty case.

18 **THE COURT:** Well, I'm just asking. But that's
19 what you're saying, these people are going to be
20 bound by what they are faced with in their homes
21 rather than in a court of law. In other words,
22 obviously, if you're not concerned about it, no,
23 you're not automatically excluded if you don't
24 believe -- if you believe everybody should be
25 executed, but you are excluded if you don't believe

1 a person should be executed.

2 MR. HUFF: That's correct.

3 THE COURT: All right. So, I mean, but those
4 are things, as I say, are examined in a court of law
5 not when it's in somebody's kitchen or, as I said
6 earlier, in the post office or cafe.

7 Again, I've heard and I'll read and I'll
8 consider, but I'm just trying to give you something
9 to act on and that is that at this point since we
10 have an objection to it, I'm reluctant to impose
11 upon the citizens as to what they are going to be
12 exposed to not in the courtroom where they respond
13 to their subpoena, but in their own homes where they
14 -- as they should have some privacy.

15 MR. HUFF: Judge, if that becomes your final
16 ruling, it would be our intent that these questions
17 be asked by the Court in open court on voir dire or
18 upon arrival at the courthouse where we would still
19 ask that they be allowed time to write their answers
20 prior to selection, we would ask that. And if
21 not --

22 THE COURT: Well, of course, when I qualify the
23 jury panel in this particular case, they will be
24 asked their voir dire. As to what the extent and
25 what the questions will be, of course it will be

1 something I must reserve my discretion.

2 MR. HUFF: Judge, are you intending to make any
3 ruling on these specific questions? I mean, I
4 understand --

5 THE COURT: No. At this point, I'm making a
6 ruling that I don't find that it would be
7 appropriate in this particular type of case, not
8 this type of case, in other words, a noncapital
9 case. I don't find that they're compelling.

10 Now, I'll consider them as I will everything,
11 but right now I've waited to decide whether or not
12 you could convince me or the State -- well, the
13 State has convinced me they object, that didn't take
14 too much to know where they stand. And I'm still
15 trying to figure out, and I'll be open about that,
16 as to whether or not it is a compelling thing that
17 we go into people's homes and we ask them, you know,
18 whether or not they think something should be a
19 crime or not.

20 MR. HUFF: And, Judge, and I understand your
21 ruling, I'm not trying to argue beyond what you've
22 just stated. I would simply state the clerk is
23 sending a somewhat of an abbreviated questionnaire
24 to the jury panel in the privacy of their home that
25 they've got to respond where they work and things of

1 that sort, I believe, their agent. So they're
2 getting something from the clerk that they've got to
3 respond to. But as far as the State's position
4 they're opposed to it, they give no basis --

5 **THE COURT:** Well, you know, again, I don't want
6 to be facetious, but you're getting me to that point
7 because unfortunately, as I'm limited in amount of
8 intelligence and wisdom, but you're getting awfully
9 close suggesting that we're going to be Lamont
10 Princeton. Do you know who Lamont Princeton was?

11 **MR. HUFF:** Yes, I do.

12 **THE COURT:** That we are to determine what evil
13 lurks in the hearts of people.

14 Now, to ask a person where he works and how far
15 did they go in school is altogether different and if
16 you want me to be Lamont Princeton, forget it. I'm
17 sorry. I think the public has a certain privacy or
18 privilege. So, therefore, let's move on. I
19 understand your -- at this point, just for the
20 purposes of scheduling and planning, I do not intend
21 to send a questionnaire in this particular case.

22 **MR. HUFF:** Judge, the other issue that we would
23 raise before the Court today would be a motion to
24 quash the indictments against Mr. Odom returned by
25 the Oconee County Grand Jury in that Oconee has no

1 jurisdiction or venue in this case.

2 **THE COURT:** Well, let me ask you, first of all,
3 the jurisdiction of the grand jury is based on the
4 jurisdiction of the Court of General Sessions. And
5 the last time I looked, the charges in the
6 indictments were within the jurisdiction of the
7 Court of General Sessions.

8 **MR. HUFF:** It's certainly within the
9 jurisdiction of General Sessions Court, but not the
10 Oconee General Sessions Court. The State --

11 **THE COURT:** Also understand that this is a
12 47 -- I mean, if it was a State Grand Jury case, it
13 would be a 47 number rather than a 1 through 46.
14 Now, that doesn't mean that there is exclusive
15 jurisdiction, it just means that there's
16 jurisdiction that can apply.

17 **MR. HUFF:** Judge, as to venue, we challenge --

18 **THE COURT:** Well, wait a minute. So in
19 jurisdiction, that's your issue, I overrule you on
20 your jurisdiction question.

21 **MR. HUFF:** I understand your ruling.

22 As to venue, no crime under this statute has
23 occurred in Oconee County. It is our position that
24 if this statute has been violated, it would have
25 solely been in the county of Aiken where the State

1 alleges Mr. Odom acted by using his computer. There
2 is no testimony or evidence that Mr. Odom ever set
3 foot in Oconee County, that the testimony that we
4 understand the State would present would be solely
5 that Mr. Odom acted in Aiken County.

6 THE COURT: So this is a venue question rather
7 than jurisdiction?

8 MR. HUFF: This is a venue question, yes, sir.
9 Under the statute --

10 THE COURT: What do you say about that --

11 MR. HUFF: Judge, if I could, under the
12 statute, it does not let venue float to some other
13 county like the homicide statute, the unlawful use
14 of telephone statute, the Computer Crimes Act
15 Statute, the fraud statute, which allows it to be at
16 either end whether something is sent or received.
17 We don't have that in this statute. The Legislature
18 specifically did not include that like they did in
19 other statutes. So it is our position that venue in
20 this case could only be held in Aiken County.

21 THE COURT: Very good.

22 All right. Madame Attorney General.

23 MS. WINES: Yes, Your Honor. I did not
24 anticipate this. However, I would say back in my
25 office, I have a case that we usually refer to when

1 this issue comes up.

2 The State's position is, first, as Mr. Huff
3 points out, the statute does not specify where venue
4 is proper, so the State's position is we can elect
5 which county. In this instance, we do have
6 communications in Oconee and Aiken County and we
7 believe we could have elected either county similar
8 to what happens in cases where you have an unlawful
9 use of telephone or unlawful communication.

10 THE COURT: Well, he says that that's limited,
11 that's exclusive venue as far as use of telephone.
12 And the statute limits it to just cases of unlawful
13 use of telephone.

14 MS. WINES: That's not my understanding.

15 THE COURT: Oh, I'm just curious.

16 MS. WINES: And, again, I'm sorry I cannot
17 think of the name of the case, but there's something
18 we usually refer to that's specifically in reference
19 to unlawful communication, we use that analysis.

20 THE COURT: Again, y'all have to forgive me, I
21 don't know that much about this case as you can well
22 tell, but was there any contact with Oconee County?

23 MS. WINES: Was there any contact with Oconee
24 County?

25 THE COURT: Right.

1 **MS. WINES:** Yes, Your Honor. The State's
2 position is the contact with Oconee County is that
3 the recipient of the communications, or at least one
4 of the recipients, was the undercover investigator,
5 Mark Patterson, with the Westminster Police
6 Department who was sitting in Oconee County at the
7 Westminster Police Department while conducting the
8 undercover chats with Mr. Odom. And, therefore,
9 were he actually the child that we believe Mr. Odom
10 believed him to be, the child would have been harmed
11 in Oconee County by the receipt of communication.

12 **THE COURT:** Well, let me -- and, again, y'all
13 unfortunately caught me in an afternoon where I
14 don't want to wax too much, but it's almost like a
15 noise in a forest. Is there a noise in a forest if
16 there's no one to hear it?

17 **MS. WINES:** I'm sure I can't answer that,
18 but --

19 **THE COURT:** If you can't hear it, there's no
20 noise.

21 **MS. WINES:** Right. I understand what you're
22 saying.

23 **THE COURT:** So, in other words, apparently for
24 a noise to exist, there has to be someone to receive
25 it, to hear it.

(1 All right. I'll look -- again, this is also
2 somewhat of a surprise to me. I would have been
3 prepared on the jurisdiction because I don't think
4 there's any question that the Court of General
5 Sessions regardless of where it is, if it has
6 jurisdiction over the offense, it has jurisdiction
7 over the trial.

8 MR. HUFF: Judge, if I could provide up, I just
9 was trying to look through my box and I did find
10 unlawful use of telephone and would cite to you
11 16 -- that statute for the crime is 16-17-430,
12 unlawful communication.

(13 The very next statute 440 cites, Venue for
14 prosecution, being that it would be in either county
15 where the telephonic communications originated or
16 the county where it was received. That is just one
17 statute where the Legislature has specifically acted
18 to give the prosecution the authority to go into
19 either county.

20 They did not do this in the criminal
21 solicitation of a minor statute. Similar to a
22 criminal statute must be strictly construed in cases
23 where in the old lottery days just selling drugs
24 within a half mile of school, I remember one fellow
(25 being prosecuted because he sold within a half mile

1 of a day care. The Supreme Court said, We didn't
2 include day care as a definition of a school. If
3 it's not in the statute, you can't do it.

4 In this case, the Legislature did not give the
5 prosecution the authority to, as Ms. Wines says,
6 elect on where we want to bring the prosecution.
7 The State has never had that authority. A crime is
8 always prosecuted in the venue where it has happened
9 and unless the Legislature has specifically stated
10 that the prosecution may elect, they cannot.

11 **THE COURT:** Well, do you think when they
12 adopted the statute that the State is proceeding
13 under, they were aware that there were other
14 statutes out there? That particularly, apparently,
15 this was a 1961 act, and perhaps I might be the
16 oldest one in this courtroom, but in 1961, I don't
17 remember the Internet and so I can't say that the
18 Legislature in 1961 when they put in this provision
19 for landline communication that they anticipated we
20 were going to have Internet.

21 So again, I'll listen -- I mean, I'll consider
22 whatever you have, but I don't think that the old
23 adage about, what is it, *expressio exclusio alterius*
24 means that just because one statute has a provision,
25 it doesn't mean every law that's ever passed

1 thereafter is abound by that statute. I think it
2 would be different if they went and had said they
3 don't want to have this unlike, you know, the
4 telephone prosecutions, but anyway.

5 **MR. HUFF:** Judge, and that saying came out of
6 the -- it was recited recently by the South Carolina
7 Supreme Court with the case of minors in possession
8 of alcohol and, prior to that, dealing with
9 possession of a weapon by a minor. And it basically
10 does state that if the Legislature has not included
11 it, they have intentionally excluded it.

12 When this statute was passed a couple of years
13 ago, the Internet certainly had been in existence
14 for many years and if the Legislature had intended
15 to allow --

16 **THE COURT:** How old is Bill Geddings?

17 **MR. HUFF:** Probably in his 60s I would say,
18 Judge.

19 **THE COURT:** All right. In '61, then that means
20 he was in his 20s, so I'm not sure -- again, you're
21 making good arguments and they'll be noted for the
22 record. Thank you. But, again, I don't find that
23 section 16-17-440 excludes prosecutions under the
24 statute here.

25 **MR. HUFF:** Judge, if I could cite for the

1 record and for your consideration, the Computer
2 Crimes Act in Title 16 does have a specific venue
3 provision in 16-16-30. And it says, For the
4 purposes of venue under this chapter, a violation of
5 this chapter is considered to have been committed in
6 the county in which the violation took place;
7 however, upon proper motion and the proper showing
8 before the judge, venue may be transferred if
9 justice would be better served by transferring it to
10 one of the other counties.

11 It has a specific venue statute. This is not a
12 Computer Crimes Act violation. It's its own
13 standalone statute. So this -- I cite this for the
14 Court's edification that when the Legislature
15 adopted the CSM statute I believe in 2002, it was
16 aware of the Internet, it was aware of Computer
17 Crime Acts crimes --

18 **THE COURT:** Well, I was referring to the one
19 that you were relying on at first.

20 **MR. HUFF:** Yes, sir. Yes, sir. And I was
21 trying to bring it more up-to-date showing you that
22 there are several statutes --

23 **THE COURT:** In other words, that's almost the
24 general, what is it, venue statute that applies to
25 all causes of action, civil and criminal, that the

1 ends of justice are to be served.

2 MR. HUFF: This occurs -- this venue statute
3 only applies to computer crime.

4 THE COURT: Well, again, but the same -- there
5 are venue statutes in every area of law. I'm sorry.
6 That's why we have venue statutes.

7 MR. HUFF: And, Judge, our statement and motion
8 is that there is not proper venue in Oconee as no
9 act under the statute has occurred outside of Aiken
10 County. My purpose in citing these other venue
11 statutes was --

12 THE COURT: So there was no contact with Oconee
13 County?

14 MR. HUFF: No, sir.

15 THE COURT: In other words, how did they get
16 your client's name?

17 MR. HUFF: Judge, I believe the way the
18 Internet works is somebody can type on a computer,
19 they send it to a --

20 THE COURT: I mean, so there was contact, but
21 it was computer contact.

22 MR. HUFF: That's correct.

23 THE COURT: I mean, in other words, if they --
24 it's not like a -- across the clouds or whatever.
25 There was some direct tangible lines of connection.

1 **MR. HUFF:** You type something --

2 **THE COURT:** I didn't ask -- just answer the
3 question, then you can explain it. Was there a
4 tangible connection?

5 **MR. HUFF:** I believe it goes through a wire.
6 There's no face-to-face tangible connection in this
7 case.

8 **THE COURT:** Tangible just means thing, actual
9 thing, not, what is it, specious.

10 **MR. HUFF:** It would be similar to a telephone
11 call I guess I would say, Judge, okay. That the
12 call goes through --

13 **THE COURT:** Got one end and the other end and
14 then there's a connection. In fact, if there's a
15 disconnect, then there is no connection. Very good.
16 But apparently there was a connection in this case.

17 **MR. HUFF:** And --

18 **THE COURT:** Well, the record speaks for itself.

19 **MR. HUFF:** It does, Judge, and that's why I say
20 even on the telephone statute, that's why they gave
21 specific venue statute. So that is our motion as to
22 venue, Your Honor.

23 **THE COURT:** All right. What's next? And I
24 deny the change of venue.

25 **MR. HUFF:** I'm sorry, Your Honor?

1 **THE COURT:** I say I deny your change of venue.

2 I find jurisdiction, deny your change of venue.

3 **MR. HUFF:** Judge, we have nothing else.

4 **THE COURT:** Anything else from the State?

5 **MS. WINES:** Just what I mentioned to Your Honor

6 at the beginning of the proceedings. If we want to

7 take it at your direction or I can throw something

8 out, whatever you prefer.

9 **THE COURT:** No, I'm asking you.

10 **MS. WINES:** Okay. Well, we would be

11 particularly interested in addressing if we could

12 get some stipulations on the record today, Your

13 Honor. We have some witnesses that we're going to

14 need to bring in from California and Georgia related

15 to authenticity of records received from Yahoo and

16 Bell South. In the Spartanburg trial, the defendant

17 did stipulate to authenticity of those records.

18 We're asking if he's able to do so --

19 **THE COURT:** Well, I would suggest, I hope it

20 won't be that way, but perhaps with your objection

21 to the questionnaire, they might want to do

22 something about --

23 **MS. WINES:** Yes, sir. And we're prepared to

24 bring them in, but we would like to know now if we

25 could before we start purchasing plane tickets.

1 **THE COURT:** All right. Well, that's a fair
2 enough question.

3 Have you had an opportunity to consider whether
4 or not you will stipulate as to the chain of custody
5 and authenticity?

6 **MR. HUFF:** Your Honor, we would not be able to
7 do that. I think the State would have to prove its
8 case.

9 **THE COURT:** Very good. It's noted.

10 **MS. WINES:** And, Your Honor, that was
11 specifically with regard to Yahoo and Bell South.
12 We would also ask if there's going to be any
13 stipulation as to chain of custody of the computer
14 equipment.

15 **THE COURT:** Mr. Huff.

16 **MR. HUFF:** I'm sorry, Judge. I was speaking
17 with co-counsel.

18 **MS. WINES:** The chain of custody for the
19 computer equipment.

20 **MR. HUFF:** Judge, we would allow the State to
21 present its evidence it feels is necessary to prove
22 its case.

23 **THE COURT:** Very well.

24 **MS. WINES:** And we would also ask if we're
25 going to need to have a Jackson-Denno hearing on the

1 voluntariness of the defendant's statement.

2 THE COURT: Is there a statement?

3 MS. WINES: There is an oral statement to
4 Special Agent McKeller, Your Honor.

5 MR. HUFF: Judge, I don't believe in this case
6 regarding the investigation by Mr. Patterson, any
7 statement has been made to Mr. Patterson at all, so
8 we would have to think about that.

9 MS. WINES: Based on that, we'll prepare to
10 have him there.

11 THE COURT: Well, that's fine because that's
12 exactly what you're going to do.

13 By the way, also remember all of these rulings
14 at this stage are subject to not only renewal, but
15 also revisiting.

16 MS. WINES: Yes, sir. And I believe that was
17 all that we wanted to inquire on in terms of
18 stipulations, Your Honor.

19 And as I'm looking at my notes, what that
20 leaves is the constitutional issues, certainly the
21 equal protection to get a ruling on that whenever
22 you're prepared. If we have any First Amendment
23 issues, I don't believe they've been raised, so
24 perhaps we don't. And I believe that leaves Mark
25 Patterson's records, Your Honor.

1 **THE COURT:** All right. I have been provided
2 with a memorandum in support of the State's
3 opposition, it's the equal protection and the First
4 Amendment. But do I have anything from the
5 defendant? I was a little surprised because I
6 looked at it and, you know, thought that maybe I had
7 missed something, not that I haven't --

8 **MR. HUFF:** Judge, I do. I do, I believe, need
9 to make one change to it. I may not have it
10 available for you today, but I could have it
11 available by ten o'clock in the morning.

12 **THE COURT:** No, that's all right, let's not
13 hurt yourself because this was as I saw noted, it's
14 dated today. When is this case scheduled?

15 **MS. WINES:** June 27th, Your Honor, so we have
16 some time.

17 **THE COURT:** So we're talking about three weeks.

18 **MS. WINES:** Yes, sir.

19 **THE COURT:** As I say, all of the Court's
20 rulings at this point are subject to review and
21 revisiting. I would like -- has there been any
22 discussion about First Amendment or equal protection
23 before?

24 **MS. WINES:** The equal protection, Your Honor,
25 we did have some oral argument presented at the last

1 hearing on, what, April 12th. The First Amendment,
2 defense counsel had provided us something and I
3 believe it may have been mentioned on the record,
4 but there has not been any argument presented.

5 **THE COURT:** Well, what I'm thinking of, how
6 about seeing if you can't -- you said tomorrow
7 morning, I'm not going to impose upon you.

8 All right, next week I'll be at home in Oconee.
9 Would it be possible to get to me those things that
10 you need on equal protection, First Amendment and
11 I'll need to -- if you have anything else to
12 consider on the jury questionnaire, by, I hate to
13 ruin your weekend, but if you could have it to me on
14 Monday, by Monday 5:00? And it doesn't have to be
15 that complete. I do better with authority than I do
16 argument as you can tell, I'm sorry.

17 All right. What's next? And -- well, the
18 stipulations are pretty, I think, clear unless y'all
19 can't agree to something.

20 **MS. WINES:** Your Honor, I believe that just
21 leaves the matter of Mark Patterson's records, the
22 arrest records, what we're going to do about that.

23 **THE COURT:** All right. Is that the arrest
24 records from somewhere in Nevada?

25 **MR. HUFF:** That's correct, Your Honor, from

1 Nevada.

2 THE COURT: All right, a beautiful place. And
3 you want them maintained, preserved and produced.

4 MR. HUFF: That's correct, Judge.

5 THE COURT: And the State, Madame Attorney
6 General?

7 MS. WINES: Your Honor, we, at the last
8 hearing, the State had an understanding of the
9 situation, but it had not been produced with any
10 sort of documents supporting what I thought to be
11 true about Mark Patterson's expungement. So once we
12 got back to the office, we looked into the matter
13 and I did submit a letter, of course cc'ing defense
14 counsel, with our further findings and supporting
15 documents. And the State's position is the records
16 of Mark Patterson's arrest should not exist. They
17 should have been destroyed over a year ago.

18 THE COURT: Well, the thing is they are still
19 apparently extant -- I mean, they are in existence.
20 So what's the objection?

21 MS. WINES: Well, the objection is we don't
22 even believe they relate to this case, but beyond
23 that --

24 THE COURT: That's called relevance.

25 MS. WINES: The first objections is -- yes,

1 sir. The first objection would be no one should
2 have them.

3 **THE COURT:** All right. Well, let me ask you
4 this. How would the records be relevant?

5 **MR. HUFF:** Judge, it's almost an impossibility
6 to answer, but I'll try. The chief investigating
7 officer of the State's case was arrested in
8 Burnettown accused of a crime. I know on written
9 paper what is held in that file. What the content
10 is, I don't know.

11 It's how can I tell you whether it's important
12 to Mr. Odom if I haven't been able to look. And I'm
13 trying to be as forthwith with the Court as I can.
14 As a defense attorney preparing a defense for
15 Mr. Odom, I've got to investigate and look at a lot
16 of things. And in many cases, I look at witnesses,
17 I look at facts, I look at documents and say that's
18 not important, that won't help the accused, that
19 won't help at sentencing.

20 **THE COURT:** Well, let me ask you something.
21 Very simply, if -- when you have your witness --
22 when the State provides you with your witness list,
23 you're entitled to certain records on the witnesses,
24 in other words, their convictions, but not every bad
25 act.

1 MR. HUFF: That's true.

2 THE COURT: Is that not what you're seeking
3 here? I mean, if there were convictions and
4 particularly convictions that would lend themselves
5 to impeachment under the rules, I could understand
6 it. I just, you know, if you had it, what would be
7 the relevance of it?

8 MR. HUFF: Judge, one issue that would be
9 relevant would be impeachment of the State's
10 witness.

11 THE COURT: On what grounds?

12 MR. HUFF: Well, I don't know what he said in
13 this case.

14 THE COURT: Let's say you think of the worst
15 thing an individual could say.

16 MR. HUFF: Let's say that --

17 THE COURT: Oh, you're talking about in the
18 case at hand.

19 MR. HUFF: In the case at hand where
20 Mr. Patterson was arrested.

21 THE COURT: Oh, you're talking about the case
22 in Nevada.

23 MR. HUFF: Yes, sir.

24 THE COURT: Not the one at hand in Ocone.

25 MR. HUFF: Yes, Your Honor.

1 **THE COURT:** Because obviously if this -- if the
2 allegations are correct, then, of course, the
3 defendant would know what Mr. Patterson said.

4 **MR. HUFF:** If Mr. Patterson --

5 **THE COURT:** Or transmitted.

6 **MR. HUFF:** If Mr. Patterson lied to the
7 investigating officer, I think that might be
8 relevant to his credibility or believability when he
9 takes the stand in this case. I don't know if he
10 did or he didn't. What his story was very well may
11 be in these documents. I just don't know --

12 **THE COURT:** Well, again, if it was in the
13 documents that he was a -- he actually did
14 misrepresent something, how would you use it in
15 court?

16 **MR. HUFF:** Judge, it's like trying to look in
17 the future and I don't know if I can give the
18 Court --

19 **THE COURT:** Well, no, we have rules of
20 evidence.

21 **MR. HUFF:** We certainly have rules of evidence.

22 **THE COURT:** And rules of evidence they limit
23 what you can do. You know, just as I said that, you
24 know, I'm concerned about other things that would
25 have more -- even if they are relevant, they are

1 material, I still worry about being prejudicial.
2 Now -- but I'm just curious, what would be the worst
3 case scenario that you think that would be in these
4 documents that you seek to...

5 MR. HUFF: Judge, I'm just having to speculate.
6 I just don't know.

7 THE COURT: Well, I'm sorry. I was just
8 thinking can you give me a rule of evidence that
9 would say that this is, you know, admissible?

10 MR. HUFF: Judge, without -- in candor, without
11 seeing --

12 THE COURT: You know the rules of evidence.
13 What rule of evidence would you use to use whatever
14 is in those records to impeach?

15 MR. HUFF: If it would go to the credibility of
16 the witness as to what was done or said by him as a
17 bad act as to whether --

18 THE COURT: Then, in other words, he has a
19 history of bad acts?

20 MR. HUFF: Judge, I don't know.

21 THE COURT: I mean, is it something that goes
22 to motive or -- I mean, I'm just curious. Otherwise
23 -- let me ask you, is all of this material
24 available?

25 MS. WINES: I've never seen it, Your Honor,

1 because it's been expunged.

2 MR. HUFF: Judge, my understanding is it is
3 available.

4 THE COURT: All right. What I'm going to do is
5 ask the State to prepare an order to have the
6 materials submitted to me in my capacity as
7 presiding judge for an in camera examination.

8 And I'll be honest with you, if there's nothing
9 in there, I'm not, you know, I'm a little bit not
10 impressed with the idea that the law has not been
11 followed, you know, by expunging the --

12 MS. WINES: I would just have one question with
13 regard to that order, Your Honor. I'm not sure who
14 actually is in possession. The last I heard, the
15 chief of police had them, but through the grapevine,
16 I've heard the chief magistrate has asked that the
17 documents be sent to him.

18 THE COURT: If you want them, who has them?

19 MR. HUFF: Judge, my understanding, according
20 to Ms. Wines, is our chief magistrate, who was the
21 magistrate that signed the order of expungement,
22 withheld that because of my motion. According to
23 her, he has them, which is Judge Edmonds.

24 THE COURT: When you say, Judge Edmonds --

25 MS. WINES: My letter said the chief had

1 possession of them. I've heard through the
2 grapevine that the judge has ordered them to come
3 back to the magistrate.

4 THE COURT: Well, let's do this. You do an
5 order instructing the chief and the magistrate --

6 MS. WINES: Okay.

7 THE COURT: -- whoever has possession of those
8 items that Mr. Huff's motion has been aimed at or
9 directed to is to produce them.

10 MS. WINES: Yes, sir.

11 THE COURT: Under seal.

12 But do be prepared that, what is it, if you
13 want to use them, to give the Court the benefit of
14 what you intended. You know, that's why we have
15 rules of evidence is to limit the wonderful
16 opportunity to say what we'd like regardless of its
17 effect.

18 MS. WINES: And how quickly would you like
19 those prepared, Your Honor?

20 THE COURT: As soon as possible.

21 MS. WINES: Okay.

22 THE COURT: I mean, it should be a fairly
23 simple order. In fact, you might even let them know
24 it's coming if they want to find out where it is.

25 MS. WINES: Yes, sir.

1 **THE COURT:** Anything else?

2 **MS. WINES:** The only other matter I would
3 raise, Your Honor, is just to remind the Court that
4 there were numerous motions raised in the
5 Spartanburg trial. And while we all recognize this
6 is not the same trial, we would ask that maybe we
7 have an actual scheduling order or another day if
8 the defense believes that they're going to have any
9 other motions that are of a pretrial nature, that we
10 do them before the jury is sworn. And I could
11 provide the Court with some examples that were
12 raised last time that have not been raised as yet.

13 Additionally, I've been --

14 **THE COURT:** Well, what are you anticipating?

15 **MS. WINES:** For example, Your Honor, we had a
16 Franks v. Delaware motion, a Russell motion, the
17 First Amendment motion, which I believe we're
18 covering. I'm also anticipating some sort of motion
19 to dismiss for prosecutorial vindictiveness. So if
20 we're going to raise that, maybe we need to raise
21 it.

22 **THE COURT:** Prosecutorial vindictiveness.

23 **MS. WINES:** Yes, sir. Of course, I'm happy if
24 it's not raised, but in light of some other things
25 that have occurred in the past and presently, we are

1 anticipating that.

2 And we also had a log rolling issue. There
3 were at least three or four issues that were raised
4 last time. You know, we're not saying they need to
5 be raised. We just want to put it out there.

6 THE COURT: Well, if you'll forgive me, Madame
7 Attorney General, I'm somewhat reluctant to take on
8 more than before me. If you'll forgive me the
9 agrarian analogy, I'm like a mule. I can only focus
10 on what's in front of me and if I tried to
11 anticipate everything that's out there, I'm afraid
12 I'd kind of bulk up and not be able to make any
13 progress, but I will take as they come up.

14 Now, of course, I would suggest to all of those
15 involved, now it's best to let the Court or anybody
16 else that you want to make a determination a little
17 advanced notice rather than blind siding them.
18 There's so many of the things, as I say, still will
19 be addressed at trial as the record is developed.

20 MS. WINES: Yes, sir. That's all we have at
21 this time.

22 THE COURT: All right. Anything else from the
23 defendant?

24 MR. HUFF: Not from the defense, Your Honor.

25 THE COURT: All right. Does Monday still look

1 all right for you for the First Amendment and the
2 equal protection and anything else that you might
3 have?

4 MR. HUFF: I'll have it ready for you.

5 THE COURT: All right. And you can e-mail it.
6 Forgive me, I don't require snail mail.

7 Let's see, as far as scheduling, you know, it's
8 a long way to Oconee. And if you don't have to make
9 it, you know, it would probably be better. Of
10 course, you can't have a record, I was going to
11 suggest a conference call or something like that,
12 but there would be no way to do a record.

13 Let's see what we have and either schedule
14 another hearing, in other words, a pretrial hearing,
15 or just rule and then that will give us a record.

16 MS. WINES: Yes, Your Honor.

17 THE COURT: All right.

18 MR. HUFF: Judge, I don't need it necessarily
19 on the record, but just looking, since it appears
20 the case will be tried on June 27th, that falls into
21 the weekend of July 4th being that following Monday.
22 Just for my edification --

23 THE COURT: How long was the case in
24 Spartanburg?

25 MR. HUFF: A week and a half. And my

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

December 27, 2013

A handwritten signature in black ink, appearing to read "Brian McDaniel", with a stylized flourish at the end.

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