

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Newberry County

Frank R. Addy, Circuit Court Judge

---

RECEIVED

JUL 9 2012

S.C. Supreme Court

JAMES WILLIE ELKINS, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

APPENDIX

---

WANDA H. CARTER  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON  
Attorney General

JOHN W. MCINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON  
Assistant Attorney General

P. O. Box 11549  
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

## INDEX

|                                                                                                             |     |
|-------------------------------------------------------------------------------------------------------------|-----|
| INDEX .....                                                                                                 | i   |
| TRIAL TRANSCRIPT .....                                                                                      | 1   |
| FINAL <u>ANDERS</u> BRIEF OF APPELLANT .....                                                                | 157 |
| <u>STATE V. ELKINS</u> UNPUBLISHED OPINION NO. 2010-UP-161<br>(S.C. Ct. App. Filed February 24, 2012) ..... | 168 |
| APPLICATION FOR POST-CONVICTION RELIEF .....                                                                | 170 |
| RETURN .....                                                                                                | 182 |
| AMENDED APPLICATION FOR POST-CONVICTION RELIEF .....                                                        | 187 |
| POST-CONVICTION RELIEF HEARING TRANSCRIPT .....                                                             | 192 |
| ORDER DENYING POST-CONVICTION RELIEF .....                                                                  | 225 |
| INDICTMENTS .....                                                                                           | 229 |

STATE OF SOUTH CAROLINA )  
 ) COURT OF GENERAL SESSION  
COUNTY OF NEWBERRY ) 2005-GS-36-400, 401  
 402, 403

STATE OF SOUTH CAROLINA )  
 VS. ) TRANSCRIPT OF RECORD  
 )  
JAMES WILLIE ELKINS )  
DEFENDANT )

DECEMBER 3, 2007  
NEWBERRY, SOUTH CAROLINA

B E F O R E:

HONORABLE EDWARD W. MILLER, JUDGE.

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

PATRICIA BOLEN, ASSISTANT SOLICITOR  
ATTORNEY FOR THE STATE

RAY WICKER, ESQ.  
ATTORNEY FOR THE DEFENDANT

JOY E. HOLSTON  
OFFICIAL COURT REPORTER

I N D E X   O F   W I T N E S S E S

(IC) - DENOTES IN CAMERA  
(DW) - DENOTES DEFENSE WITNESS  
(SW) - DENOTES STATE'S WITNESS

(SW) victim

DIRECT EXAMINATION BY MS. BOLEN: 36

CROSS-EXAMINATION BY MR. WICKER: 46

(SW) GWEN STONE

DIRECT EXAMINATION BY MS. BOLEN: 52

CROSS-EXAMINATION BY MR. WICKER: 53

REDIRECT EXAMINATION BY MS. BOLEN: 57

(SW) SUSAN BENTLEY

DIRECT EXAMINATION BY MS. BOLEN: 58

CROSS-EXAMINATION BY MR. WICKER: 67

REDIRECT EXAMINATION BY MS. BOLEN: 70

(SW) ROBERT DENNIS

DIRECT EXAMINATION BY MS. BOLEN: 71

(SW) PETE JOHNSON

DIRECT EXAMINATION BY MS. BOLEN: 74

CROSS-EXAMINATION BY MR. WICKER: 76

|    |                                       |     |
|----|---------------------------------------|-----|
| 1  | <u>(SW) CONNIE JOHNSON</u>            |     |
| 2  | DIRECT EXAMINATION BY MS. BOLEN:      | 76  |
| 3  | CROSS-EXAMINATION BY MR. WICKER:      | 79  |
| 4  |                                       |     |
| 5  | <u>(SW) DR. GRATIN SMITH</u>          |     |
| 6  | DIRECT EXAMINATION BY MS. BOLEN:      | 81  |
| 7  | CROSS-EXAMINATION BY MR. WICKER:      | 89  |
| 8  | REDIRECT EXAMINATION BY MS. BOLEN:    | 92  |
| 9  |                                       |     |
| 10 | <u>(DW) JAMES ELKINS</u>              |     |
| 11 | DIRECT EXAMINATION BY MR. WICKER:     | 99  |
| 12 | CROSS-EXAMINATION BY MS. BOLEN:       | 107 |
| 13 |                                       |     |
| 14 | <u>(SW)ODELL SCHUMPERT (REBUTTAL)</u> |     |
| 15 | DIRECT EXAMINATION BY MS. BOLEN:      | 113 |
| 16 | CROSS-EXAMINATION BY MR. WICKER:      | 116 |
| 17 |                                       |     |
| 18 |                                       |     |
| 19 | JURY CHARGE                           | 133 |
| 20 | CERTIFICATE OF REPORTER               | 153 |
| 21 |                                       |     |
| 22 |                                       |     |
| 23 |                                       |     |
| 24 |                                       |     |
| 25 |                                       |     |

EXHIBITSSTATE'S

| <u>NO.</u> | <u>DESCRIPTION</u> | <u>ID</u> | <u>EV</u> | <u>PAGE#</u> |
|------------|--------------------|-----------|-----------|--------------|
| 1          | ORDER OF BOND      |           | X         | 109          |
| 2          | SENTENCING SHEET   |           | X         | 110          |
| 3          | SENTENCING SHEET   |           | X         | 111          |

COURT'S EXHIBITS

|   |                    |   |  |     |
|---|--------------------|---|--|-----|
| 1 | JURY NOTE          | X |  | 147 |
| 2 | INDICTMENT/VERDICT | X |  | 147 |
| 3 | INDICTMENT/VERDICT | X |  | 147 |

12-3-07

1.062 5

## JURY SELECTION

CASE NO.: 05-GS-36-401, 402, 403

CASE NO.: 05-GS-36-400

JUDGE: Milka

PL./STATE: State

ATTORNEY: Patricia Boker

DEFENDANT: James Elkins

ATTORNEY: Ray Wicker

REPORTER: Cpl. H. H. H.

| JUROR NAME              | SEX | RACE | COURT | PLAINT. | DEF. | ACCEPT |
|-------------------------|-----|------|-------|---------|------|--------|
| 22 Barbara Cipriano     | FW  |      |       | ✓       | X    | - -    |
| 90 DAVID Ruff           | MB  |      |       | X       | -    | - -    |
| 142 Daniel Shealy       | MW  |      |       | ✓       | ✓    | ✓ ①    |
| 8 Harold Bowers         | MB  |      |       | ✓       | ✓    | ✓ ②    |
| 10 Miriam Brennan       | FW  |      |       | ✓       | X    | - -    |
| 67 Luanne Mayer         | FW  |      |       | ✓       | ✓    | ✓ ③    |
| 62 W.L. Kinard          | MW  |      |       | ✓       | ✓    | ✓ ④    |
| 31 ALAN Dawkey          | MW  |      |       | X       | -    | - -    |
| 118 Rhonda Yarbrough    | FW  |      |       | ✓       | X    | - -    |
| 94 Christopher Saverano | MW  |      |       | X       | -    | - -    |
| 133 Lewis DAVIS         | MW  |      |       | ✓       | ✓    | ✓ ⑤    |
| 146 James Wine          | MW  |      |       | ✓       | ✓    | ✓ ⑥    |
| 96 Christopher Shealy   | MW  |      |       | ✓       | ✓    | ✓ ⑦    |
| 85 Barbara Roberson     | FW  |      |       | ✓       | X    | - -    |
| 103 Gwendolyn Suber     | FB  |      |       | ✓       | X    | - -    |
| 144 Jessica Strother    | FB  |      |       | ✓       | ✓    | ✓ ⑧    |
| 104 Nancy Suber         | FB  |      |       | ✓       | X    | - -    |

12-3-2007

282

## JURY SELECTION

CASE NO.: 05-GS-36-400,401 <sup>402,403</sup> JUDGE: Milker  
 PL./STATE: State ATTORNEY: Patricia Bolen  
 DEFENDANT: Garth Ekins ATTORNEY: Ray Sichen  
 REPORTER: Joy Holton

| JUROR NAME        | SEX | RACE     | COURT | <u>State</u><br>PLAINT. | DEF. | ACCEPT |      |
|-------------------|-----|----------|-------|-------------------------|------|--------|------|
| 119 Elentia Young | FB  |          |       | ✓                       | ✓    | ✓      | (9)  |
| 40 Susan Lominal  | FW  |          |       | ✓                       | X    | --     |      |
| 69 Vicki Mays     | FW  | Forelady |       | ✓                       | ✓    | ✓      | (10) |
| 109 G.L. Warren   | MW  |          |       | ✓                       | ✓    | ✓      | (11) |
| 82 Daisy Ralford  | FB  |          |       | ✓                       | ✓    | ✓      | (12) |

Alternate  
 32 Renee Croese FW ✓ ✓ ✓ (1)

1           THE COURT: LADIES AND GENTLEMEN, AT THIS TIME I WILL  
2   INTRODUCE THIS CASE TO YOU. WE HAVE GOT, IT IS GOING TO  
3   BE THE CASE OF THE STATE VERSUS JAMES WILLIE ELKINS.  
4   THERE ARE FOUR INDICTMENTS THAT WILL BE TRIED DURING THIS  
5   TRIAL. THE FIRST INDICTMENT IS 05-400, IT IS AN  
6   INDICTMENT FOR CRIMINAL SEXUAL CONDUCT WITH A MINOR. IT  
7   ALLEGES THAT JAMES WILLIE ELKINS DID IN NEWBERRY COUNTY,  
8   SOUTH CAROLINA BETWEEN MAY 10 OF '05 AND MAY 29 OF '05,  
9   BEING OLDER THAN THE VICTIM WILLFULLY AND UNLAWFULLY  
10  COMMITTED CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE  
11  FIRST DEGREE IN THAT MR. ELKINS DID ENGAGE IN A SEXUAL  
12  BATTERY UPON A PERSON UNDER THE AGE OF 11 WHOSE NAME I  
13  WILL NOT READ AT THIS TIME. THE NEXT INDICTMENT IS 05-401  
14  AND THIS IS AN INDICTMENT FOR COMMITTING OR ATTEMPTING A  
15  LEWD ACT UPON A CHILD UNDER 16 YEARS OF AGE. THIS  
16  INDICTMENT ALLEGES THAT JAMES WILLIE ELKINS DID IN  
17  NEWBERRY COUNTY, SOUTH CAROLINA BETWEEN MAY 10 AND MAY 29  
18  OF 2005 BEING OVER THE AGE OF 14, HE DID UNLAWFULLY,  
19  WILLFULLY AND LEWDLY COMMIT OR ATTEMPT TO COMMIT A LEWD OR  
20  LASCIVIOUS ACT UPON OR WITH THE BODY OR ITS PARTS OF A  
21  CHILD UNDER THE AGE OF 16 WITH THE INTENT OF AROUSING,  
22  APPEALING TO OR GRATIFYING THE LUST OR THE PASSIONS OR  
23  SEXUAL DESIRES OF THE DEFENDANT OR THE SAID CHILD IN  
24  VIOLATION OF THE STATUTES AND LAWS OF THIS STATE. THE  
25  THIRD INDICTMENT IS 05-402, IT ALLEGES THAT MR. JAMES

1 WILLIE ELKINS DID IN NEWBERRY COUNTY, SOUTH CAROLINA ON OR  
2 ABOUT MAY 10 OF 2005 BEING OLDER THAN THE VICTIM DID  
3 WILLFULLY AND UNLAWFULLY COMMITTED CRIMINAL SEXUAL CONDUCT  
4 WITH A MINOR IN THE FIRST DEGREE. THAT IS THE DEFENDANT  
5 DID ENGAGE IN SEXUAL BATTERY UPON A PERSON UNDER THE AGE  
6 OF 11 YEARS IN VIOLATION OF STATUTES AND LAWS OF THE STATE  
7 OF SOUTH CAROLINA. THE FORTH INDICTMENT, 05-403 ALLEGES  
8 , THAT MR. JAMES WILLIE ELKINS DID IN NEWBERRY COUNTY, SOUTH  
9 CAROLINA BETWEEN MAY 10 AND MAY 29 OF 2005, BEING OVER THE  
10 AGE OF 14, THE DEFENDANT DID UNLAWFULLY AND WILLFULLY AND  
11 LEWDLY COMMIT OR ATTEMPT TO COMMIT A LEWD OR LASCIVIOUS  
12 ACT UPON OR WITH THE BODY OR ITS PART OF A CHILD UNDER THE  
13 AGE OF 16 WITH THE INTENT OF AROUSING, APPEALING TO OR  
14 GRATIFYING THE LUST OR PASSIONS OR SEXUAL DESIRES OF THE  
15 DEFENDANT OR THE CHILD IN VIOLATION OF THE STATUTES AND  
16 LAWS OF THE STATE OF SOUTH CAROLINA. NOW, LADIES AND  
17 GENTLEMEN, TO THESE INDICTMENTS MR. ELKINS HAS PLEAD NOT  
18 GUILTY AND AS SUCH CERTAIN RIGHTS ATTACH TO HIM. AND THEY  
19 BELONG TO ALL CITIZENS OF THIS COUNTRY AND THAT IS THAT  
20 EVERY PERSON WHO IS CHARGED WITH A CRIME IS PRESUMED  
21 INNOCENT UNLESS AND UNTIL THE STATE CAN PROVE THEM GUILTY  
22 BEYOND ANY REASONABLE DOUBT OF EACH AND EVERY ELEMENT OF  
23 EACH OFFENSE THAT THEY ARE CHARGED WITH. SO, ANYONE  
24 CHARGED WITH A CRIME IS PRESUMED INNOCENT, THE BURDEN IS  
25 UPON THE STATE WHO HAS MADE THE ALLEGATIONS TO PROVE THEIR

1 CASE AND BEYOND A REASONABLE DOUBT. SO, PLEASE KEEP THOSE  
2 THINGS IN MIND THROUGHOUT THE COURSE OF THESE PROCEEDINGS.  
3 I WOULD ALSO TELL YOU THAT INDICTMENTS ARE NOT EVIDENCE  
4 AND THEY SHOULD NOT BE CONSTRUED BY ANY OF YOU AND NO  
5 INFERENCE SHOULD BE TAKEN BY ANY OF YOU AS TO GUILT, THEY  
6 ARE JUST A PIECE OF PAPER, A DOCUMENT WHICH ALLOWS A CASE  
7 OR ALLEGATIONS TO WIND ITS WAY THROUGH THE COURT SYSTEM TO  
8 ARRIVE HERE FOR DISPOSITION. SO, LADIES AND GENTLEMEN,  
9 PLEASE KEEP THAT IN MIND AS WELL. BEFORE I GO ANY FURTHER  
10 I WOULD LIKE FOR THE ATTORNEYS INVOLVED IN THE ACTION TO  
11 PLEASE STAND AND INTRODUCE THEMSELVES AND THEIR CLIENT.

12 MS. BOLEN: I AM PATRICIA BOLEN FROM THE EIGHTH  
13 CIRCUIT SOLICITORS OFFICE. SEATED TO MY LEFT IS EUGENE  
14 BUBBA GRIFFITH ALSO FROM THE EIGHTH CIRCUIT SOLICITORS  
15 OFFICE. TO MY RIGHT IS HOLLY HARDING FROM THE SOLICITORS  
16 OFFICE AND CONNIE JOHNSON FROM THE SHERIFFS OFFICE.

17 MR. WICKER: I AM RAY WICKER AND MY LAW FIRM IS HERE  
18 IN NEWBERRY. WE ARE WICKER AND SENN, LISA SENN HAS BEEN  
19 MY PARTNER FOR 18 YEARS.

20 THE COURT: WOULD YOU INTRODUCE YOUR CLIENT, PLEASE,  
21 MR. WICKER.

22 MR. WICKER: YES, OF COURSE. MY CLIENT, MR. ELKINS,  
23 TURN AND FACE THE JURY.

24 MR. ELKINS: I AM JAMES WILLIE ELKINS AND I AM SURE  
25 EVERYBODY KNOWS ME.

1 THE COURT: WELL, THANK YOU, MR. ELKINS. THANK YOU  
2 VERY MUCH. NOW, LADIES AND GENTLEMEN, I HAVE QUALIFIED  
3 YOU TO SERVE DURING THIS TERM OF COURT. AND NOW I NEED TO  
4 ASK YOU SOME MORE QUESTIONS TO DETERMINE YOUR ELIGIBILITY  
5 OR YOUR QUALIFICATIONS TO SERVE ON THIS PARTICULAR CASE.  
6 SO, PLEASE REMEMBER YOU ARE UNDER OATH AND ANSWER THESE  
7 QUESTIONS HONESTLY AND FULLY. THE FIRST QUESTION IS, IS  
8 THERE ANY MEMBER OF THE JURY PANEL WHO IS RELATED BY BLOOD  
9 OR MARRIAGE OR HAVE A BUSINESS, PERSONAL OR SOCIAL  
10 RELATIONSHIP WITH MR. JAMES WILLIE ELKINS. IF SO, PLEASE  
11 STAND.

12 (NO RESPONSE.)

13 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL WHO  
14 IS RELATED BY BLOOD OR MARRIAGE OR HAVE A BUSINESS,  
15 PERSONAL OR SOCIAL RELATIONSHIP WITH ANY OF THE ATTORNEYS  
16 INVOLVED IN THIS MATTER OR ANY OTHER ATTORNEY IN THEIR  
17 PROSPECTIVE OFFICE OR LAW FIRM. IF SO, PLEASE STAND.

18 JUROR: PETE GRAFFAGNINO. I HAD BUSINESS  
19 RELATIONSHIP WITH MR. GRIFFITH, HE HANDLED MY DIVORCE  
20 CASE.

21 THE COURT: YES, YOUR NAME AND NUMBER.

22 JUROR: 52, MELODY HARRISON. MR. GRIFFITH HAS DONE  
23 ESTATE WORK FOR US AND I TEACH MR. GRIFFITH'S CHILDREN  
24 SUNDAY SCHOOL.

25 THE COURT: YES, SIR.

1 JUROR: LEWIS DAVIS, MS. SENN IS MY WIFE'S ATTORNEY.  
2 THE COURT: ALL RIGHT. YES, SIR.  
3 JUROR: VICKI MAYS, NUMBER 69, I HAVE USED MS. SENN  
4 FOR PERSONAL PURPOSES.  
5 THE COURT: EACH OF THOSE PERSONS WHO HAVE STOOD AND  
6 RESPONDED TO THE QUESTION. WOULD THE FACT THAT YOU ARE  
7 REPRESENTED BY ONE OF THESE ATTORNEYS OR A MEMBER OF THEIR  
8 FIRM OR YOU HAVE AN INVOLVEMENT WITH THEIR CHILDREN OR  
9 OTHERWISE, WOULD THAT IMPAIR YOUR ABILITY TO BE FAIR AND  
10 IMPARTIAL IN THIS CASE. YES, IF YOU WOULD STATE YOUR NAME  
11 AGAIN.  
12 JUROR: MELODY HARRISON.  
13 THE COURT: COULD YOU BE FAIR AND IMPARTIAL?  
14 JUROR: YES.  
15 THE COURT: WOULD YOU FOLLOW THE LAW UNDER YOUR OATH  
16 AS I WILL GIVE IT TO YOU?  
17 JUROR: YES.  
18 THE COURT: YES, MA'AM.  
19 JUROR: VICKI MAYS.  
20 THE COURT: COULD YOU BE FAIR AND IMPARTIAL TO BOTH  
21 THE STATE AND THE DEFENSE IN THIS MATTER?  
22 JUROR: YES.  
23 THE COURT: WOULD YOU BE ABLE TO FOLLOW THE LAW AS I  
24 GIVE IT TO YOU UNDER YOUR OATH?  
25 JUROR: YES.

1 THE COURT: YES, SIR.

2 JUROR: PETER GRAFFAGNINO. YES, I CAN BE FAIR AND  
3 IMPARTIAL.

4 THE COURT: YES, SIR.

5 JUROR: LEWIS DAVIS.

6 THE COURT: COULD YOU BE FAIR AND IMPARTIAL?

7 JUROR: YES.

8 THE COURT: COULD YOU FOLLOW THE LAW AS I GIVE IT TO  
9 YOU UNDER YOUR OATH.

10 JUROR: YES.

11 THE COURT: NOW, LADIES AND GENTLEMEN, IS THERE ANY  
12 MEMBER OF THE JURY PANEL WHO HAS ANY KNOWLEDGE ABOUT THE  
13 EVENTS ALLEGED IN THIS INDICTMENT, IN THESE INDICTMENTS.  
14 IF SO, PLEASE STAND.

15 (NO RESPONSE.)

16 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL,  
17 FAMILY MEMBER OR FRIEND WHO HAS EVER BEEN THE VICTIM OF OR  
18 CHARGED WITH ANY OF THE SAME TYPE OF OFFENSES THAT I HAVE  
19 READ TO YOU IN THESE INDICTMENTS. IF SO, PLEASE STAND.  
20 YES MA'AM, YOUR NAME.

21 JUROR: MARY SULIK.

22 THE COURT: YES, MA'AM.

23 JUROR: MY CHILDREN HAVE BEEN ABUSED.

24 THE COURT: THE FACT THAT YOUR CHILDREN HAVE BEEN  
25 INVOLVED IN THIS TYPE OF THING, WOULD THAT IMPAIR YOUR

1 ABILITY TO BE FAIR AND IMPARTIAL IN THIS CASE FOR BOTH THE  
2 STATE AND THE DEFENSE?

3 JUROR: I AM AFRAID SO.

4 THE COURT: THANK YOU, MA'AM. IS THERE ANY MEMBER OF  
5 THE JURY PANEL WHO IS AWARE OF ANY BIASED OR PREJUDICED  
6 TOWARDS EITHER THE STATE OR THE DEFENSE. IF SO, PLEASE  
7 STAND.

8 (NO RESPONSE.)

9 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL WHO  
10 IS A MEMBER OF OR A CONTRIBUTOR TO A GROUP IS THE PRIMARY  
11 CONCERN IN THE PROMOTION OF LAW ENFORCEMENT OR VICTIMS  
12 RIGHTS, EXAMPLES WOULD BE SADD, MADD OR CAVE? IF SO,  
13 PLEASE STAND.

14 (NO RESPONSE.)

15 THE COURT: IS THERE ANY JUROR WHO KNOWS OF ANY  
16 REASON WHATSOEVER WHY YOU SHOULD NOT SERVE IN THIS CASE IN  
17 PARTICULAR EMPHASIS UPON YOUR ABILITY TO BE FAIR AND  
18 IMPARTIAL TO BOTH THE STATE AND THE DEFENSE. IF SO,  
19 PLEASE STAND. YOUR NAME, SIR.

20 JUROR: BARRY WERTS.

21 THE COURT: COME ON UP. THE ATTORNEYS CAN APPROACH.

22 (WHEREUPON, A BENCH CONFERENCE WAS HELD WITH A  
23 JUROR.)

24 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, AT THIS  
25 TIME WE ARE GOING TO STRIKE THE JURY.

1 (WHEREUPON, THE JURY WAS IMPANELED AT APPROXIMATELY  
2 3:50 P.M. LOCATED BEHIND INDEX.)

3 THE COURT: I NEGLECTED TO ASK A QUESTION, I AM GOING  
4 TO READ A LIST OF POTENTIAL WITNESSES IN THIS CASE. I AM  
5 GOING TO WANT TO KNOW IF YOU ARE RELATED BY BLOOD OR  
6 MARRIAGE OR HAVE ANY BUSINESS, PERSONAL OR SOCIAL  
7 RELATIONSHIP WITH ANY OF THESE PERSONS. SO, PLEASE LISTEN  
8 CAREFULLY. victim , SUSAN BENTLEY, DR. GRATON  
9 SMITH, LIEUTENANT PETE JOHNSON, CONNIE JOHNSON, DETECTIVE  
10 ROBERT DENNIS, GWEN STONE. IS THERE ANY MEMBER OF THE  
11 JURY PANEL RELATED BY BLOOD OR MARRIAGE OR HAVE A  
12 BUSINESS, PERSONAL OR SOCIAL RELATIONSHIP WITH ANY OF  
13 THOSE PERSONS WHOSE NAMES I HAVE JUST READ. IF SO, PLEASE  
14 STAND. YES MA'AM, YOUR NAME.

15 JUROR: VICKI MAYS.

16 THE COURT: ALL RIGHT, MS. MAYS, NUMBER 69. WHO DO  
17 YOU KNOW?

18 JUROR: CONNIE JOHNSON.

19 THE COURT: YES SIR, MR. SHEALY.

20 JUROR: I KNOW MUCH OF THE LAW ENFORCEMENT INVOLVED  
21 IN THIS, THAT YOU SPOKE OF, BUSINESS RELATIONS WITH THEM.

22 THE COURT: OKAY, BUT YOU HAVE ALREADY TOLD ME THAT  
23 YOU CAN BE FAIR AND IMPARTIAL TO BOTH THE STATE AND THE  
24 DEFENSE, IS THAT TRUE?

25 JUROR: THAT IS TRUE.

1 THE COURT: AND YOU COULD FOLLOW THE LAW UNDER YOUR  
2 OATH, IS THAT CORRECT?

3 JUROR: YES, SIR.

4 THE COURT: MS. MAYS, IF YOU CAN STEP DOWN HERE WITH  
5 ME FOR A SECOND.

6 (WHEREUPON, A BENCH CONFERENCE WAS HELD WITH THE  
7 JUROR.)

8 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, THE  
9 REMAINING MEMBERS OF THE PANEL, CALL THE NUMBER ON THE  
10 CARD. I AM GOING TO RELEASE YOU AT THIS TIME AND I WILL  
11 ASK YOU TO CALL BACK TOMORROW AFTER 1:00 O'CLOCK AND THEN  
12 YOU WILL GET FURTHER INSTRUCTIONS. THANK YOU, YOU ARE  
13 EXCUSED AT THIS TIME.

14 (WHEREUPON, THE JURY PANEL WAS EXCUSED FROM OPEN  
15 COURT.)

16 THE COURT: AS I TOLD YOU, WE ARE ABOUT TO START THE  
17 TRIAL OF THIS CASE. WHAT I WANT TO TELL YOU IS WHAT WE  
18 HAVE IS A DISPUTE ABOUT THE FACTS IN THIS CASE. IT  
19 COULDN'T BE RESOLVED ANY OTHER WAY EXCEPT TO HAVE A TRIAL  
20 BY A JURY TO ASK TWELVE CITIZENS IN NEWBERRY COUNTY TO  
21 COME UP AND LISTEN TO THE EVIDENCE AND MAKE A DECISION  
22 ABOUT HOW TO RESOLVE THIS DISPUTE. AND THAT IS WHAT YOUR  
23 JOB IS AND WHAT WE ARE GOING TO ASK YOU TO DO TODAY AND  
24 OVER THE NEXT COUPLE OF DAYS. I WANT TO REMIND YOU THAT  
25 THESE INDICTMENTS THAT I READ TO YOU ARE NOT EVIDENCE AND

1 YOU SHOULD TAKE NO INFERENCE OF GUILT, YOU SHOULD INFER  
2 NOTHING FROM THEM. ALL THEY ARE ARE THE INDICTMENTS THAT  
3 ALLOW A CASE, AN ALLEGATION OR A CHARGE TO WIND ITS WAY  
4 THROUGH THE JUSTICE SYSTEM TO ARRIVE IN COURT FOR A  
5 DECISION ON THE MERITS OF THE CASE BY A JURY JUST LIKE  
6 YOURSELVES. SO, DON'T THINK THAT THOSE INDICTMENTS ARE  
7 EVIDENCE IN ANY WAY. I WANT TO TELL YOU AND REMIND YOU  
8 THAT SOME OF THE BASIC MOST IMPORTANT CONCEPTS IN OUR  
9 JUSTICE SYSTEM ARE THAT ANY TIME A CITIZEN IS CHARGED WITH  
10 A CRIME THAT CITIZEN IS PRESUMED INNOCENT UNLESS AND UNTIL  
11 THE STATE, THE STATE WHO HAS THE BURDEN OF PROOF AT ALL  
12 TIMES PROVES BEYOND ANY REASONABLE DOUBT EACH OF EVERY  
13 ELEMENT OF EACH OFFENSE THAT THEY HAVE ALLEGED OR CHARGED.  
14 SO, THE BURDEN ALWAYS STAYS ON THE STATE, A CITIZEN NEVER  
15 HAS TO PROVE HIMSELF INNOCENT AND THAT THE PROOF MUST BE  
16 BEYOND A REASONABLE DOUBT. NOW, IF YOU WATCH TELEVISION  
17 OR READ NOVELS, THERE IS A LOT WRITTEN AND ON TELEVISION  
18 AND IN THE MOVIES ABOUT TRIALS AND YOU CAN BREAK A TRIAL  
19 DOWN IN A SMALLER PART AS YOU WOULD LIKE AND DISSECT IT  
20 AND ANALYZE IT AND ALL THAT SORT OF THING. BUT I BREAK IT  
21 DOWN FOR OUR PURPOSES SO YOU WILL HAVE SORT OF A ROADMAP  
22 OF WHERE WE ARE IN A TRIAL INTO FIVE PARTS. THE FIRST  
23 PART WILL START IN JUST A FEW MINUTES AND THAT WILL BE THE  
24 OPENING STATEMENTS BY THE ATTORNEYS. THE NEXT PART WOULD  
25 BE AND IS THE MEAT AND POTATOES OF EVERY CASE, THAT IS THE

1 PRESENTATION OF THE TESTIMONY AND THE EVIDENCE IN THE  
2 CASE. AND EVIDENCE IS PRESENTED TO YOU IN ONE OF THREE  
3 WAYS. ONE BY WAY OF TESTIMONY BY THE WITNESS STAND RIGHT  
4 HERE UNDER OATH SUBJECT TO ALL OF OUR CONSTITUTIONAL  
5 PROTECTIONS. THE SECOND WOULD BE BY WAY OF PHYSICAL  
6 EVIDENCE OR DOCUMENTARY EVIDENCE SUCH AS, THINGS THAT  
7 MIGHT BE INTRODUCED IN THE TRIAL, ACTUAL PHYSICAL OBJECTS.  
8 AND THE THIRD WAY COULD BE WAY OF STIPULATION OF THE  
9 ATTORNEYS, WHERE THE ATTORNEYS AGREE THAT A FACT IS NOT IN  
10 DISPUTE AND YOU ALL ARE TO TAKE IT AS TRUE. I DON'T KNOW  
11 WHAT KIND OF EVIDENCE WILL BE PRESENTED IN THIS CASE BUT  
12 THOSE ARE THE THREE TYPES OF EVIDENCE THAT YOU MAY  
13 CONSIDER WHEN YOU DECIDE THIS CASE AND RENDER YOUR VERDICT  
14 AT THE END OF THE TRIAL. NOW, THE THIRD PART OF THE TRIAL  
15 ARE THE CLOSING ARGUMENTS OF THE ATTORNEYS. THAT IS WHERE  
16 THEY GET UP AT THE END OF THE CASE AFTER THE EVIDENCE HAS  
17 BEEN PRESENTED AND ARGUE OR ADVOCATE THEIR POSITION TO  
18 YOU. THE FORTH PART OF THE TRIAL WILL BE WHEN I GIVE YOU  
19 OR CHARGE YOU THE LAW IN THE CASE. AND THE FIFTH PART OF  
20 THE TRIAL WILL BE WHEN YOU ALL RETIRE TO YOUR JURY ROOM TO  
21 DELIBERATE THE CASE AND RESOLVE THE DISPUTE. THAT IS A  
22 ROADMAP FOR YOU TO KEEP IN MIND. YOU WILL KIND OF HAVE AN  
23 IDEA OF WHERE WE ARE. THE PARTS ARE NEVER THE SAME LENGTH  
24 AND I CAN TELL YOU THAT UNIVERSALLY, THE SECOND PART OF  
25 THE TRIAL, THE PRESENTATION OF THE EVIDENCE AND THE

1 TESTIMONY IS THE LONGEST PART OF THE TRIAL. NOW,  
2 THROUGHOUT THE COURSE OF THE TRIAL, I WILL ASK YA'LL TO DO  
3 SEVERAL THINGS AND FOR INSTANCE FROM TIME TO TIME I MAY  
4 EXCUSE YOU ALL FROM THE COURTROOM SO THAT WE CAN DISCUSS A  
5 LEGAL MATTER OUTSIDE OF YOUR PRESENCE. NOW, I DON'T WANT  
6 YOU TO THINK THAT WE ARE TRYING TO DECEIVE YOU, WE ARE  
7 TRYING TO HIDE SOMETHING FROM YOU MAYBE BUT WE ARE NOT  
8 TRYING TO DECEIVE YOU IN ANY WAY, WHEN I DISCUSS THESE  
9 MATTERS A LOT OF TIMES WE HAVE TO DECIDE WHETHER A PIECE  
10 OF EVIDENCE IS ADMISSIBLE AND I HOPE THAT YOU CAN  
11 UNDERSTAND THAT YOU ALL SHOULDN'T BE HERE TO HEAR THAT  
12 ARGUMENT BECAUSE IF IT IS NOT ADMISSIBLE THEN YOU ALL  
13 SHOULDN'T HEAR ABOUT IT ALL AND IF IT IS ADMISSIBLE THEN  
14 YOU WILL HEAR ABOUT IT. SO, FROM TIME TO TIME I WILL  
15 EXCUSE YOU FROM THE COURTROOM TO TALK ABOUT LEGAL MATTERS  
16 AND SUCH WITH THE ATTORNEYS. THERE WILL BE OTHER THINGS  
17 THAT I AM GOING TO ASK YOU TO DO BUT THREE MAIN THINGS  
18 THAT I ASK YOU TO DO. ONE IS THAT YOU KEEP AN OPEN MIND  
19 AND THAT IS EXTREMELY IMPORTANT, THAT IS WHY I ASKED ALL  
20 OF THOSE QUESTIONS ABOUT BEING FAIR AND IMPARTIAL. DON'T  
21 HAVE A PRECONCEIVED NOTION ABOUT HOW THIS CASE OUGHT TO BE  
22 DECIDED. YOU HAVE TO LISTEN TO THE EVIDENCE, YOU HAVE TO  
23 PAY ATTENTION THROUGH THE COURSE OF THE TRIAL TO RENDER  
24 THAT DECISION, KEEP AN OPEN MIND. THE SECOND THING I JUST  
25 TALKED ABOUT, PAY ATTENTION, LADIES AND GENTLEMEN. WHEN

1 YOU ARE BACK THERE DELIBERATING THIS CASE YOU NEED TO HAVE  
2 PAID ATTENTION SO THAT YOU WILL KNOW WHAT THE EVIDENCE IS.  
3 IF YOU THINK ABOUT, WE ALL KNOW, WE ALL WENT TO SCHOOL AND  
4 IF THERE WAS AN OPEN WINDOW ON A PRETTY SPRING DAY AND THE  
5 TEACHER WAS TALKING ABOUT SOMETHING WE DIDN'T LIKE, I  
6 DON'T KNOW ABOUT YOU ALL BUT I WAS LOOKING OUT THE WINDOW,  
7 OKAY. THAT IS ONE OF THE REASONS I DIDN'T MAKE STRAIGHT  
8 A'S, NOT EVEN CLOSE. BUT IN ANY EVENT WE ASK YOU TO PAY  
9 ATTENTION BECAUSE AT THE END OF THE TRIAL WHEN YOU  
10 DELIBERATE ON THIS CASE, WHEN YOU ARE TALKING ABOUT THE  
11 FACTS AND IT MAY BE A VERY IMPORTANT ISSUE IF YOU DIDN'T  
12 PAY ATTENTION AT THAT TIME YOU WILL BE AT A DISADVANTAGE  
13 IN THOSE DELIBERATIONS. SO, WE WOULD LIKE FOR ALL OF YOU  
14 TO PAY CLOSE ATTENTION AND USE YOUR COMMON SENSE  
15 THROUGHOUT THE COURSE OF THE TRIAL. AND FINALLY, LADIES  
16 AND GENTLEMEN, I AM GOING TO ASK AND INSTRUCT YOU NOT TO  
17 TALK ABOUT THIS CASE WITH ANYONE UNTIL YOU DELIBERATE THE  
18 CASE. YOU MIGHT ASK WHY I ASK THAT. WHEN YOU GO HOME  
19 TONIGHT AND YOU ARE WITH A FRIEND OR SPOUSE OR SOMEONE YOU  
20 DON'T EVEN LIKE AND YOU SAY YOU ARE IN A TRIAL AND THEY  
21 ASK YOU ABOUT IT BECAUSE THEY WILL WANT TO KNOW. AND IF  
22 YOU TALK ABOUT THIS CASE THAT PERSON SAYS SOMETHING, MIGHT  
23 HAVE AN IMPACT ON THE OUTCOME OF THIS TRIAL. AND IF YOU  
24 THINK ABOUT THAT THAT IS NOT FAIR TO THE PARTIES INVOLVED  
25 IN THIS CASE, THAT IS NOT FAIR TO YOUR FELLOW JURORS AND

1 IT IS NOT FAIR TO YOURSELF. THAT PERSON IS NOT SITTING UP  
2 HERE, IS NOT PAYING ATTENTION, KEEPING AN OPEN MIND AND  
3 PERFORMING THEIR CIVIC DUTY AND FOR THEM TO HAVE AN IMPACT  
4 ON THE OUTCOME OF THIS TRIAL WOULD NOT BE FAIR AND WOULD  
5 NOT BE RIGHT AND WOULD VIOLATE YOUR OATH. SO, DON'T TALK  
6 ABOUT THE CASE. AND WE DON'T WANT THEIR OPINION, YOU WERE  
7 SELECTED OUT OF THIS JURY POOL AND WE WANT YOUR OPINIONS  
8 AND YOUR IDEAS AND NO ONE ELSE'S. THE SAME IS TRUE, DO NOT  
9 DO RESEARCH, DON'T GO ON THE INTERNET, DON'T GO VISIT SOME  
10 SCENE THAT MIGHT BE MENTIONED DURING THE COURSE OF THE  
11 TRIAL. EVERYTHING THAT YOU NEED TO KNOW TO DECIDE THIS  
12 CASE YOU WILL HEAR IN THIS COURTROOM. I WANT TO TELL YOU  
13 THAT YOU ARE THE SOLE JUDGES OF THE FACTS IN THIS CASE. I  
14 AM NOT, YOU ARE AND IN FACT I AM NOT ALLOWED UNDER THE LAW  
15 TO HAVE AN OPINION ABOUT THE FACTS IN THE CASE. SO, DON'T  
16 THINK THAT ANYTHING THAT I MIGHT SAY OR DO DURING THE  
17 COURSE OF THE TRIAL THAT I HAVE AN OPINION BECAUSE THE LAW  
18 DOES NOT ALLOW ME TO HAVE AN OPINION. YOU ALL WILL BE THE  
19 SOLE JUDGES OF THE BELIEVABILITY OF THE WITNESSES AND THE  
20 EVIDENCE, YOU WILL ALL DETERMINE WHO TO BELIEVE, WHAT TO  
21 BELIEVE, HOW MUCH OF WHAT THEY SAY TO BELIEVE. IT IS ALL  
22 UP TO YOU AND NO ONE ELSE. NOW, THE SAME LAW THAT MAKES  
23 YOU THE SOLE JUDGES OF THE FACTS IN THIS CASE MAKES ME THE  
24 SOLE JUDGE OF THE LAW. SO, IF YOU THINK YOU HAVE SOME  
25 IDEA OF WHAT THE LAW IS OR WHAT THE LAW SHOULD BE AND IT

1 IS, CONFLICTS WITH OR IS DIFFERENT FROM WHAT THE LAW IS  
2 THAT I GIVE TO YOU THEN YOU SWEAR AN OATH TO SET YOUR OWN  
3 OPINION ASIDE AND APPLY THE LAW AS I GIVE IT TO YOU  
4 THROUGHOUT THE COURSE OF THIS TRIAL. NOW, I AM GOING TO  
5 EXCUSE YOU TO YOUR JURY ROOM, I NEED TO TALK TO THE  
6 ATTORNEYS BEFORE WE START THIS CASE. FOR INSTANCE,  
7 WHETHER OR NOT WE WILL START THE CASE OR WAIT UNTIL THE  
8 MORNING SINCE IT IS 4:20. THERE MAY BE OTHER LEGAL ISSUES  
9 THAT I DON'T KNOW ABOUT THAT WE MAY NEED TO ADDRESS. BUT  
10 WE WILL GET BACK TO YOU SHORTLY. I AM GOING TO ASK YOU TO  
11 DO ONE THING TO START WITH AND THAT IS, WE NEED A  
12 FOREPERSON, WE NEED SOMEONE TO SERVE AS THE JURY  
13 SPOKESPERSON IN THE COURTROOM AND THE MODERATOR OF THE  
14 DISCUSSIONS OR DELIBERATIONS AT THE END OF THE TRIAL.  
15 PLEASE TRY TO DO IT, IF YOU CAN'T THEN I CAN DO IT FOR  
16 YOU. SEE IF YOU CAN SELECT A FOREPERSON. PLEASE BE  
17 EXCUSED TO YOUR JURY ROOM.

18 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT.)

19 THE COURT: LET ME JUST TO TELL YOU, ASK YA'LL  
20 THROUGHOUT THE COURSE OF THE TRIAL, DON'T STAND FOR THE  
21 JURY. ANY ISSUES WITH RESPECT TO THIS JURY, BATSON  
22 MOTIONS?

23 MR. WICKER: NONE BY THE DEFENSE.

24 MS. BOLEN: NONE BY THE STATE, YOUR HONOR.

25 THE COURT: WHAT IS YOUR, IT IS 4:20.

1       MR. WICKER: I WOULD LIKE TO START OPENING STATEMENTS  
2 TOMORROW MORNING.

3       MS. BOLEN: YOUR HONOR, THE STATE WOULD LIKE TO DO  
4 THE OPENING STATEMENTS AND THE FIRST WITNESS WHO IS THE  
5 VICTIM IN THIS CASE TODAY. THE STATE BELIEVES THAT THE  
6 STATE WILL BE BRIEF IN ITS OPENING STATEMENTS. I JUST,  
7 BECAUSE OF THE AGE OF THE VICTIM, TO HAVE HER TESTIMONY  
8 TODAY WILL BE BENEFICIAL.

9       THE COURT: HOW LONG DO YOU ANTICIPATE HER TESTIMONY.  
10 IT IS PRETTY MEATY STUFF, ISN'T IT.

11       MS. BOLEN: IT IS YOUR HONOR.

12       THE COURT: EVEN IF WE, SHE WOULDN'T GET ON THE  
13 WITNESS STAND UNTIL QUARTER OF FIVE OR TEN TO FIVE. AND I  
14 AM VERY, VERY SYMPATHETIC TO A CHILD WITNESS, I AM  
15 CONCERNED ABOUT THIS JURY. HER TESTIMONY WILL TAKE AN  
16 HOUR.

17       MS. BOLEN: I WOULD ESTIMATE ABOUT AN HOUR, YOUR  
18 HONOR.

19       THE COURT: ARE THERE OTHER ISSUES THAT HAVE TO BE  
20 ADDRESSED BEFORE WE START THE CASE?

21       MS. BOLEN: NO, YOUR HONOR.

22       MR. WICKER: I DON'T THINK SO, YOUR HONOR. BUT I DO  
23 BELIEVE WE NEED TO START TOMORROW MORNING. IT IS LATE IN  
24 THE DAY, WE DON'T REALLY KNOW HOW LONG THE WITNESS WILL  
25 TAKE. I THINK THE JURY WILL BE BETTER OFF TO COME IN

1 TOMORROW AND THEM GO HOME AND COME BACK TOMORROW.

2 THE COURT: WHERE IS THE CHILD.

3 MS. BOLEN: YOUR HONOR, SHE IS BACK IN OUR OFFICE  
4 DOWN THE HALL.

5 THE COURT: IS THERE ANY QUESTION OF COMPETENCE, HOW  
6 OLD IS SHE, SHE IS 12?

7 MS. BOLEN: SHE IS 12, YOUR HONOR.

8 MR. WICKER: I HAVE NEVER SEEN HER.

9 THE COURT: WHAT DO YA'LL THINK. WHAT ARE YOUR  
10 CONCERNS?

11 MS. BOLEN: THIS HAS BEEN A VERY STRESSFUL ORDEAL FOR  
12 HER FOR A VERY LONG TIME. SHE HAS JUST GONE UNDER A LOT  
13 OF STRESS THROUGH ALL OF THIS, SHE IS READY TO TESTIFY, I  
14 JUST FEAR ANOTHER NIGHT OF GOING HOME AND HAVING TO WORRY  
15 ABOUT IT WILL BE DETRIMENTAL TO HER.

16 THE COURT: ALL RIGHT.

17 MR. WICKER: YOUR HONOR, I DON'T KNOW HOW LONG MY  
18 CROSS-EXAMINE IS GOING TO TAKE BECAUSE SHE IS THE STAR  
19 WITNESS FOR THE STATE. I JUST CAN'T IMAGINE PUTTING THAT  
20 CHILD ON HERE, WE CAN START IN THE MORNING.

21 THE COURT: LET'S DO THIS, I AM GOING TO ASK, TAKE  
22 THAT PHONE. ANYBODY ELSE HAVE A PHONE IN HERE THEY NEED  
23 TO MAKE SURE IT IS TURNED OFF BECAUSE I JUST CONFISCATED  
24 THIS ONE. I AM GOING TO CLEAR THE COURTROOM, I WANT TO  
25 SPEAK WITH THIS CHILD AND LET ME EXAMINE HER A LITTLE BIT.

1 DO YA'LL WANT TO DEAL, I DON'T KNOW WHO ALL THESE FOLKS  
2 ARE.

3 MR. GRIFFITH: YOUR HONOR, WE CAN LET THESE FOLKS BE  
4 EXCUSED AND COME BACK TOMORROW AND HAVE A BRIEF ROLL CALL  
5 BEFORE WE START THE TRIAL.

6 THE COURT: LET ME GET YA'LL TO BE HERE AT 9:00  
7 O'CLOCK IN THE MORNING, MAKE SURE YOU ARE BACK HERE OR THE  
8 MEN IN BLUE WILL BE OUT THERE TO FIND YOU.

9 (WHEREUPON, EVERYONE WAS EXCUSED FROM THE COURTROOM  
10 EXCEPT THE PARTIES IN THIS CASE.)

11 THE COURT: LET'S BRING HER IN. WHAT IS HER NAME?

12 MS. BOLEN: victim |

13 (WHEREUPON, victim | ENTERS THE COURTROOM.)

14 THE COURT: HEY, , HOW ARE YOU?

15 MS. victim : FINE.

16 THE COURT: victim | , HOW ARE YOU DOING?

17 MS. victim : FINE.

18 THE COURT: MY NAME IS NED MILLER, I AM THE JUDGE AS  
19 YOU CAN TELL. HOW ARE YOU TODAY?

20 MS. victim : FINE.

21 THE COURT: DO YOU KNOW WHY YOU ARE HERE?

22 MS. victim : YES, SIR.

23 THE COURT: CAN YOU TELL ME BRIEFLY WHY YOU ARE HERE?

24 MS. victim FOR A RAPE CHARGE.

25 THE COURT: TO TESTIFY, IS THAT RIGHT?

1 MS. victim': YES, SIR.

2 THE COURT: ARE YOU DOING OKAY?

3 MS. victim': YES.

4 THE COURT: ARE YOU IN SCHOOL?

5 MS. victim': YES, SIR.

6 THE COURT: WHAT GRADE ARE YOU IN?

7 MS. victim' : 1.

8 THE COURT: WHAT ARE YOU STUDYING THIS YEAR?

9 MS. victim' : I DON'T UNDERSTAND.

10 THE COURT: WHAT IS YOUR FAVORITE COURSE?

11 MS. victim' : SOCIAL STUDIES.

12 THE COURT: SOCIAL STUDIES, VERY GOOD. WHAT ARE YOU,  
13 WHAT ARE YA'LL STUDYING RIGHT NOW IN SOCIAL STUDIES?

14 MS. victim' : ABOUT THE FRENCH REVOLUTION.

15 THE COURT: GREAT. WHO IS THE HERO OF THE FRENCH  
16 REVOLUTION? YOU KNOW WHAT, I BET IF I ASK ANY LAWYER IN  
17 HERE THEY WOULD HAVE A HARD TIME WITH THAT. NOW, ARE YOU,  
18 HERE IT IS LATE IN THE DAY. I AM TRYING TO MAKE A  
19 DECISION ON WHETHER WE START THE CASE TODAY OR IN THE  
20 MORNING. ARE YOU OKAY?

21 MS. victim' : YES, SIR.

22 THE COURT: AND HAVE YOU BEEN IN THE COURTROOM  
23 BEFORE, SEEN THE COURTROOM A LITTLE BIT?

24 MS. victim' : YES, SIR.

25 THE COURT: OKAY. AND I WANT YOU TO UNDERSTAND THAT

1 AND I KNOW THAT YOU HAVE BEEN TOLD THIS, WHEN YOU ARE HERE  
2 IT IS A VERY SERIOUS AND SOLEMN PROCEEDING. AND IT IS  
3 EXTREMELY IMPORTANT TO TELL THE TRUTH, THE WHOLE TRUTH AND  
4 NOTHING BUT THE TRUTH. YOU UNDERSTAND THAT?

5 MS. victim: YES, SIR.

6 THE COURT: WOULD YOU BE ABLE TO DO THAT IN THE  
7 MORNING?

8 MS. victim: YES, SIR.

9 THE COURT: AS WELL AS YOU CAN DO IT TODAY?

10 MS. victim: YES, SIR.

11 THE COURT: AND YOU ARE GOING TO BE OKAY WITH THAT?

12 MS. victim: YES, SIR.

13 THE COURT: ALL RIGHT. DO YOU HAVE ANY QUESTIONS  
14 THAT YOU WANT TO ASK ME?

15 MS. victim: NO, SIR.

16 THE COURT: HAVE YOU EVER, WE WILL, THANK YOU. WE  
17 WILL TALK TO YOU, ANY QUESTIONS THAT YA'LL WANT TO ASK?

18 MR. WICKER: NO, SIR.

19 MS. BOLEN: NO, YOUR HONOR.

20 THE COURT: WHAT WE ARE GOING TO DO, MS. Minor ARE  
21 YOU OKAY?

22 MS. victim: YES, SIR.

23 THE COURT: THIS IS A HARD THING, VERY DIFFICULT. I  
24 AM GOING TO ASK YOU TO COME BACK IN THE MORNING. ARE YOU  
25 GOING TO BE OKAY WITH THAT?

1 MS. victim: YES, SIR.

2 THE COURT: ARE YOU SURE?

3 MS. Minor YES, SIR.

4 THE COURT: HERE IS A KLEENEX. IF YOU HAVE ANY  
5 QUESTIONS YOU MAKE SURE YOU WRITE THEM DOWN SO YOU CAN ASK  
6 ME. YOU HAVE A NICE NIGHT. THANK YOU, VERY MUCH. ALL  
7 RIGHT, BASED ON THE HOUR I WOULD LIKE TO, I AM GOING TO  
8 WAIT UNTIL TOMORROW TO START THE CASE. IT IS VERY SERIOUS  
9 FOR HER AND IT IS ALSO VERY SERIOUS FOR MR. ELKINS. SO,  
10 AND WHAT WE WILL DO IS RECEIVE THE JURY, WE WILL GET THEM  
11 SWORN AND WE WILL FIND OUT WHO THE FOREPERSON IS. IS  
12 THERE ANYTHING BEFORE WE BRING THE JURY?

13 MR. WICKER: NOTHING FROM THE DEFENSE.

14 MS. BOLEN: NOTHING FROM THE STATE, YOUR HONOR.

15 THE COURT: ALL RIGHT, BRING THEM IN.

16 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT  
17 APPROXIMATELY 4:35 P.M.)

18 THE COURT: DID YA'LL TAKE A VOTE, WHO DID YA'LL  
19 SELECT? MS. MAYS. LADIES AND GENTLEMEN, IT IS 4:30 AND  
20 WE THOUGHT ABOUT WE WILL TRY TO START THE CASE TONIGHT BUT  
21 WE ARE NOT GOING TO. OKAY. IT IS BETTER IF WE GET INTO  
22 IT AND RUN CONTINUOUSLY AS WE POSSIBLY CAN. SO, I AM  
23 GOING TO EXCUSE YA'LL, YA'LL WANT ME TO PUT YOU UP IN A  
24 MOTEL. WE WON'T DO THAT. THERE ARE TWO ASSIGNED SEATS,  
25 MS. MAYS, YOU HAVE ONE OF THEM. THE ALTERNATE HAS THE

1 OTHER ONE. THE FOREPERSON WILL SIT DOWN HERE, THE  
2 ALTERNATE BACK UP HERE. THE REST OF YOU CAN SIT WHERE YOU  
3 LIKE. I AM GOING TO ASK YA'LL TO STAND AND WE WILL GET  
4 YA'LL SWORN IN. LET ME REMIND YOU, DO NOT TALK ABOUT THE  
5 CASE WITH ANYBODY, I CAN'T EMPATHIZE TO YOU ENOUGH TO NOT  
6 TALK ABOUT THE CASE OR DO ANY KIND OF INDEPENDENT  
7 RESEARCH. AT THIS TIME WE WILL SWEAR YOU.

8 (WHEREUPON, THE JURY WAS SWORN AT APPROXIMATELY 4:37  
9 P.M.)

10 THE COURT: BE BACK IN YOUR JURY ROOM AT 9:30 IN THE  
11 MORNING. THANK YOU, VERY MUCH.

12 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT.)

13 THE COURT: ANYTHING BEFORE WE BREAK FOR THE EVENING?

14 MS. BOLEN: NOTHING FROM THE STATE, YOUR HONOR.

15 MR. WICKER: NOTHING FROM THE DEFENSE, YOUR HONOR.

16 THE COURT: ANY ISSUE ABOUT BOND?

17 MS. BOLEN: I DON'T BELIEVE THERE IS, I BELIEVE MR.  
18 ELKINS IS OUT ON BOND, YOUR HONOR.

19 THE COURT: DO YA'LL OBJECT FOR HIM TO REMAIN ON  
20 BOND.

21 MR. WICKER: HE WILL BE HERE IN THE MORNING.

22 THE COURT: THESE ARE SERIOUS CHARGES, WE WILL TAKE  
23 THE BOND OFF AND TAKE HIM INTO CUSTODY. OKAY.

24 MR. WICKER: ALL RIGHT.

25 THE COURT: YES, SIR. THE JURY IS SWORN.

1 MR. WICKER: OKAY.

2 THE COURT: THANK YOU VERY MUCH.

3 (WHEREUPON, THE TRIAL WILL RESUME THE NEXT MORNING AT  
4 9:30 A.M.)

5 THE COURT: ARE WE READY FOR THE STATE VERSUS ELKINS  
6 CASE?

7 MS. BOLEN: YES SIR, YOUR HONOR.

8 THE COURT: DO WE HAVE ANY ISSUES TO ADDRESS BEFORE  
9 WE BRING THE JURY IN?

10 MS. BOLEN: NOTHING FROM THE STATE, YOUR HONOR.

11 THE COURT: ANYTHING FROM THE DEFENSE?

12 MR. WICKER: NOTHING FROM THE DEFENSE, YOUR HONOR.

13 THE COURT: YESTERDAY WE HAD A DISCUSSION ABOUT THE  
14 PRESENCE OF THE JURY DURING, I MEAN THE PRESENCE OF THE  
15 AUDIENCE DURING THE VICTIM'S TESTIMONY. WOULD YOU LIKE TO  
16 ADDRESS THAT?

17 MS. BOLEN: YOUR HONOR, THE STATE WOULD LIKE TO  
18 ADDRESS BEFORE CALLING THE VICTIM BUT THE STATE AT THIS  
19 TIME WOULD LIKE TO STATE THAT THE VICTIM IN THIS CASE IS A  
20 JUVENILE AND THE STATE WOULD THEREFORE LIKE THAT DURING  
21 HER TESTIMONY THAT THE COURTROOM BE CLEAR OF ANYONE THAT  
22 IS RELATED TO THIS CASE.

23 THE COURT: ANYTHING FROM THE DEFENSE?

24 MR. WICKER: THE DEFENSE HAS NO OBJECTION, YOUR  
25 HONOR.

1 THE COURT: WELL, WE WILL DO THAT. WHEN DO YOU  
2 ANTICIPATE CALLING HER.

3 MS. BOLEN: YOUR HONOR, THE STATE WOULD ANTICIPATE  
4 CALLING HER AS THE FIRST WITNESS.

5 THE COURT: IN ORDER NOT TO DISRUPT THE FLOW OF THE  
6 PROCEEDINGS, THIS WITNESS WILL BE CALLED AFTER THE OPENING  
7 STATEMENTS.

8 MS. BOLEN: YES SIR, YOUR HONOR.

9 THE COURT: I AM GOING TO AT THIS TIME ASK THAT THE  
10 COURTROOM BE CLEARED OF ALL PERSONS NOT CONNECTED WITH  
11 THIS CASE. NOW, WHERE DO YOU WANT THEM OR DO THESE ALL  
12 HAVE BOND CARDS?

13 MS. BOLEN: YES SIR, THEY NEED TO REMAIN HERE BECAUSE  
14 THE SOLICITORS OFFICE NEEDS TO BE WORKING UP CASES WITH  
15 THEM. IF WE CAN INSTRUCT THEM THAT THEY ARE RELEASED AND  
16 INSTRUCT THEM TO BE BACK AT 11:30.

17 (WHEREUPON, THE COURTROOM IS CLEARED OUT FOR THE  
18 TESTIMONY OF THE WITNESS.)

19 THE COURT: LET'S BRING THE JURY IN, PLEASE.

20 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT  
21 APPROXIMATELY 10:08 P.M.)

22 THE COURT: MADAM FORELADY AND LADIES AND GENTLEMEN,  
23 WELCOME BACK. I HOPE YA'LL HAVE HAD A VERY PLEASANT  
24 EVENING LAST NIGHT. IF YOU WILL REMEMBER, WE ARE GOING TO  
25 START THE FIRST PART OF THE TRIAL WHICH ARE THE OPENING

1 STATEMENTS FROM THE ATTORNEYS. SO, I ASK AGAIN THAT YOU  
2 PLEASE GIVE YOUR FULL ATTENTION TO THESE OPENING  
3 STATEMENTS. THANK YOU.

4 MS. BOLEN: MAY IT PLEASE THE COURT.

5 THE COURT: YES, MA'AM.

6 MS. BOLEN: THANK YOU, YOUR HONOR. WHEN YOU ARE NINE  
7 YEARS OLD YOU BELIEVE YOUR PARENTS AND YOU TRUST YOUR  
8 PARENTS. IN THIS CASE IT IS ABOUT A VIOLATION OF THAT  
9 TRUST. NOW, THE DEFENDANT IN THIS CASE IS MR. ELKINS, HE  
10 IS NOT THE BIOLOGICAL FATHER OF THE VICTIM, HOWEVER IN  
11 EVERY OTHER WAY HE FUNCTIONED AS HER FATHER. SHE CALLS  
12 HIM DADDY, HER MOTHER LIVED WITH HIM, HE TOOK CARE OF THEM  
13 AND HE WAS NICE TO HER. THE VICTIM IN THIS CASE IS A GIRL  
14 BY THE NAME OF victim' .. AND HER MOTHER  
15 LIVED WITH MR. ELKINS WHO WAS ALSO KNOWN AS HOTPATCH WHICH  
16 IS PROBABLY WHAT YOU WILL HEAR PEOPLE REFER TO HIM TODAY,  
17 HOTPATCH. THEY LIVED WITH HIM BACK IN 2005, THEY LIVED AT  
18 HIS HOUSE, HE TOOK CARE OF THEM, HE PROVIDED THEM WITH  
19 FOOD AND A PLACE TO LIVE, TOOK CARE OF victim' SHE HAD  
20 NEVER HAD A FATHER FIGURE IN HER LIFE, SHE HAD NEVER HAD A  
21 FATHER. SO, SHE WAS VERY CLOSE TO HOTPATCH AND CALLED HIM  
22 HER DADDY. SHE REFERRED TO HIM AS HER DADDY, SHE THOUGHT  
23 OF HIM AS HER DADDY, SHE TRUSTED HIM AS ONE WOULD TRUST A  
24 PARENT. BUT THAT TRUST WAS VIOLATED IN MAY OF 2005, NOT  
25 ONCE BUT TWICE. TWO TIMES JAMES WILLIE ELKINS, THE MAN

1 THAT victim; - .. CONSIDERED TO BE HER FATHER RAPED HER,  
2 HE COMMITTED THE CRIME OF CRIMINAL SEXUAL CONDUCT. THE  
3 FIRST TIME WAS IN HIS HOUSE, HE ASKED HER MOTHER TO LEAVE  
4 AND GO TO THE STORE FOR SOME ERRANDS. WHILE THE MOTHER  
5 WAS GONE HE TOLD victim; TO TAKE OFF ALL OF HER CLOTHES.  
6 SHE THOUGHT HE WAS JOKING SO SHE LAUGHED AND SAID, WHAT  
7 ARE YOU TALKING ABOUT. AND HE ORDERED HER AGAIN TO TAKE  
8 OFF ALL OF HER CLOTHES. SO SHE DID, SHE WAS ONLY NINE  
9 YEARS OLD. THIS MAN WAS MUCH OLDER THAN HER. THEN HE  
10 RAPED HER RIGHT THERE IN THEIR HOUSE. HE TOLD HER NOT TO  
11 TELL ANYONE AND victim; WAS SCARED, victim; WAS TERRIFIED  
12 SO SHE DIDN'T TELL ANYONE, SHE DIDN'T TELL HER MOTHER, SHE  
13 DIDN'T TELL ANYONE AT SCHOOL, SHE DIDN'T TELL THE POLICE,  
14 SHE WAS SCARED BECAUSE HE TOLD HER NOT TO. THEN IT  
15 HAPPENED AGAIN, JUST ABOUT TWO WEEKS AFTER THE FIRST TIME.  
16 THIS TIME IT HAPPENED AT A FRIEND'S HOUSE, IT WASN'T AT  
17 THEIR HOUSE. THE SAME THING HAPPENED AND AGAIN, SHE  
18 COULDN'T BELIEVE IT HAPPENED, SHE WAS TERRIFIED. SHE TOLD  
19 HIM TO STOP, SHE CRIED, HE DIDN'T STOP. AND AGAIN HE TOLD  
20 HER, DON'T TELL ANYONE AND SHE DIDN'T BECAUSE SHE WAS  
21 SCARED OF HIM. THEN A COUPLE OF DAYS LATER victim; BEGAN  
22 TO HAVE A STOMACH ACHE, SHE TOLD HER MOTHER ABOUT IT AND  
23 THEY WENT TO THE EMERGENCY ROOM. WHEN SHE WAS AT THE  
24 EMERGENCY ROOM THROUGH THE EXAMINATION OF THE DOCTOR THERE  
25 WAS FOUND THAT THIS NINE YEAR OLD GIRL HAD A SEXUALLY

1 TRANSMITTED DISEASE. WHEN victim! WAS TOLD THIS SHE BROKE  
2 DOWN AND CRIED, SHE TOLD THE OFFICERS THERE ABOUT WHAT HAD  
3 HAPPENED TO HER. AFTER THAT SHE WENT TO A FORENSIC DOCTOR  
4 AND A FORENSIC INTERVIEWER, BOTH OF WHOM YOU WILL HEAR  
5 FROM TODAY. NOW, IN THIS CASE, THIS TRIAL IS NOT GOING TO  
6 BE LIKE THE ONES YOU SEE ON TELEVISION, LAW AND ORDER,  
7 CSI, THAT SORT OF THING. WE DON'T HAVE A LOT OF FANCY  
8 EXHIBITS, WE DON'T HAVE A LOT OF HIGH TECH EXHIBITS OR  
9 ANYTHING LIKE THAT. WHAT WE DO HAVE IS TESTIMONY FROM  
10 LIVE WITNESSES. AND YOUR JOB AS JURORS IS TO LISTEN TO  
11 THAT TESTIMONY AND OBSERVE THE WITNESSES AS THEY ARE  
12 GIVING THIS. ALL OF THE WITNESSES WILL BE RIGHT THERE IN  
13 THIS WITNESS CHAIR. LISTEN TO WHAT THEY SAY AND HOW THEY  
14 SAY IT, OBSERVE THEIR DEemeanor, THINK ABOUT WHAT IS THEIR  
15 CONNECTION TO THIS CASE, WHAT IS THEIR INTEREST, WHAT IS  
16 THEIR MOTIVATION. YOU WILL HEAR FROM victim! HERSELF.  
17 SHE WILL BE ABLE TO TELL YOU HOW THIS MAN, THE MAN SHE  
18 CALLED DADDY, VIOLATED HER TRUST IN ONE OF THE WORSE WAYS  
19 IMAGINABLE. YOU WILL ALSO HEAR FROM THE OFFICERS WHO  
20 RESPONDED TO THE SCENE AT THE HOSPITAL AND YOU WILL HEAR  
21 FROM TWO EXPERT WITNESSES. ONE FROM A DOCTOR AND ONE WHO  
22 IS A FORENSIC INTERVIEWER. AT THE END OF THE EVIDENCE  
23 YOUR JOB IS TO WEIGH THE EVIDENCE, THE TESTIMONY YOU HEARD  
24 FROM EACH WITNESS, THEIR CREDIBILITY, THEIR DEemeanor ON  
25 THE STAND, WHAT THEY SAY AND HOW THEY SAY IT. I JUST ASK

1 YOU TO LISTEN TO ALL OF THE EVIDENCE PRESENTED, ALL THE  
2 TESTIMONY THEN I WILL COME BACK TO YOU AT THE END OF THIS  
3 TRIAL AND ASK YOU TO FIND THE DEFENDANT, JAMES WILLIE  
4 ELKINS, GUILTY OF CRIMINAL SEXUAL CONDUCT WITH A MINOR,  
5 FIRST DEGREE AND LEWD ACT UPON A MINOR. NOW, THE JUDGE,  
6 AT THE END OF THE TRIAL WILL INSTRUCT YOU AS TO THE LAW.  
7 I JUST WANT TO GIVE YOU A BRIEF OVERVIEW OF THE LAW IN  
8 THIS CASE. CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST  
9 DEGREE, WHICH THE DEFENDANT HAS BEEN CHARGED TWO COUNTS OF  
10 SIMPLY MEANS ANY SORT OF SEXUAL INTERCOURSE WITH SOMEONE  
11 UNDER THE AGE OF 11. IT IS NOT REQUIRED OF ANY FORCE OR  
12 NOTHING LIKE THAT. IT IS DETERMINED BY THE VICTIM'S AGE.  
13 THE SECOND CHARGE HE HAS WHICH HE ALSO HAS TWO COUNTS OF  
14 IS LEWD ACT UPON A MINOR UNDER THE AGE OF 16. AND LEWD  
15 ACT, AS IT IS COMMONLY CALLED, REQUIRES EXACTLY WHAT IT  
16 SOUNDS LIKE. THE DEFENDANT COMMITS A LEWD OR LASCIVIOUS  
17 ACT ON THE BODY OF SOMEONE WHO IS UNDER THE AGE OF 16.  
18 THE JUDGE WILL INSTRUCT YOU MORE ON THE LAW LATER BUT I  
19 JUST WANTED TO OUTLINE TO YOU WHAT IT IS AND WHAT MR.  
20 ELKINS HAS BEEN CHARGED WITH. AND AT THE END OF THE CASE  
21 I WILL COME BACK AND ASK YOU TO FIND THE DEFENDANT GUILTY  
22 ON CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE AND  
23 LEWD ACT. THANK YOU.

24 MR. WICKER: MAY IT PLEASE THE COURT.

25 THE COURT: YES, SIR.

1 MR. WICKER: MS. BOLEN. MADAM FORELADY AND LADIES  
2 AND GENTLEMEN OF THE JURY. AS YOU KNOW I AM RAY WICKER  
3 AND AS YOU KNOW I REPRESENT THE DEFENDANT IN THIS CASE,  
4 JAMES ELKINS. MR. JAMES ELKINS TOLD ME LAST NIGHT THAT HE  
5 AND I ARE AGAINST THE REST OF THE WORLD TODAY. HE IS THE  
6 ONLY WITNESS I PLAN TO CALL, HE IS GOING TO DENY THE  
7 CHARGES. AND, OF COURSE, THE OTHER SIDE DISAGREES WITH  
8 THAT AND WE WOULDN'T BE HERE IF EVERYBODY AGREED. THEY  
9 ARE GOING TO TRY TO PROVE BEYOND A REASONABLE DOUBT THAT  
10 TWELVE PEOPLE THAT MY CLIENT COMMITTED THESE OFFENSES  
11 WHICH OF COURSE ARE VERY, VERY SERIOUS. IN THE UNITED  
12 STATES AND I HAVE BEEN A MEMBER OF THE BAR FOR 48 YEARS,  
13 WE BELIEVE, EVERYBODY IN HERE BELIEVES WITH ME THAT OUR  
14 COUNTRY IS GREAT. I HAVE BEEN IN TRIAL IN KOREA, VIETNAM,  
15 ETHIOPIA, GERMANY AND EVEN AUSTRIA AND I THINK ONE IN  
16 AUSTRALIA AND ONE IN ENGLAND. THEY DON'T HAVE THE SAME  
17 SYSTEM WE HAVE, THE BRITISH OF COURSE HAS A CLOSER SYSTEM  
18 THAN THE REST OF THEM. BUT WE HAVE BROUGHT IT FROM COMMON  
19 LAW AND MADE IT BETTER THAN WHAT THE BRITISH HAVE BECAUSE  
20 WE PUT TWELVE PEOPLE OUT THERE, YOU JUST HAPPEN TO BE THE  
21 TWELVE. NOW, EVERYBODY STRUCK PEOPLE THEY DIDN'T WANT, I  
22 HAD STRIKES LEFT OVER, THE OTHER SIDE HAD STRIKES LEFT  
23 OVER, YOU WERE CHOSEN TO BE HERE BY MYSELF AS WELL AS BY  
24 THE GOVERNMENT. AND YOUR RESPONSIBILITY IS AWESOME, IT  
25 HAS BEEN WRITTEN A NUMBER OF TIMES BY GREAT PEOPLE THAT

1 SERVING ON THE JURY IN AMERICA IS THE BEST AND GREATEST  
2 SERVICE YOU CAN GIVE YOUR COUNTRY EXCEPT PERHAPS DEFENDING  
3 YOUR COUNTRY WHEN AT THE TIME OF WAR, THEY MIGHT PUT THAT  
4 AHEAD. BUT MY CLIENT RELIES ON YOUR JUDGMENT. I DO WANT  
5 YOU TO TAKE NOTICE, STAY AWAKE. YOU HAVE TO LISTEN AT  
6 EVERY WORD THAT IS SAID, YOU HAVE TO LOOK AT THE PERSON  
7 WHO IS TESTIFYING, YOU HAVE TO THINK WHAT THE BODY  
8 LANGUAGE IS, YOU HAVE TO UNDERSTAND WHAT REASONABLE DOUBT  
9 IS, THE JUDGE WILL TELL YOU. AND YOU NEED TWELVE PEOPLE  
10 ON THIS COURT TO COME TO A CONSENSUS, COMPLETE AGREEMENT  
11 THAT MY CLIENT IS EITHER NOT GUILTY OR HE IS GUILTY BEYOND  
12 A REASONABLE DOUBT. THE BURDEN IS ON THE STATE TO PROVE  
13 THAT HE IS GUILTY BEYOND A REASONABLE DOUBT. YOU ARE  
14 LOOKING AT AN ALLEGED DEFENSE HERE WHERE AS FAR AS I KNOW  
15 IT WAS NEVER BUT TWO PEOPLE THERE AT THE SAME TIME WHEN  
16 THE OFFENSE OCCURRED, THE LITTLE GIRL AND MY CLIENT TOO.  
17 AND NOBODY ELSE, JUST THE TWO OF THEM. HE IS SAYING HE  
18 DIDN'T DO IT AND SHE IS SAYING HE DID DO IT. WE HAVE TO  
19 KEEP IN MIND THAT THIS OCCURRED TWO YEARS AND SIX MONTHS  
20 AGO. I HAVE BEEN ON THE CASE SINCE 18 OF JANUARY OF '06  
21 WHICH IS A YEAR AND TEN MONTHS AGO. AND ANOTHER CAUTION  
22 THAT I ALWAYS TELL JURORS, JUST IN CASE THAT YOU DO WHAT  
23 MATLOCK OR JAG DOES, THEY OFTEN LET THE DEFENSE ARGUE LAST  
24 WHICH IS NOT TRUE IN AMERICA. IF YOU PUT IN EVIDENCE AND  
25 IN THE O.J. SIMPSON CASE THERE WAS NO EVIDENCE PUT ON SO

1 HE GOT A CHANCE TO ARGUE LAST. WHERE WE PLAN TO PUT THE  
2 ACCUSED ON THE STAND AND NOT ONLY TESTIFY BUT LET THE  
3 OTHER SIDE CROSS-EXAMINE THEN WE DO NOT ARGUE LAST. SO,  
4 THE GOVERNMENT HAS THE LAST WORD AND I CAN TELL YOU THAT  
5 IS EXTREMELY IMPORTANT BECAUSE MOST OF MY LIFE I AM THE  
6 PROSECUTOR. I WAS THE CHIEF OF TRIAL BRANCH AT WEST  
7 FULTON FOR 15 MONTHS AND WE TRIED CASES SEVEN DAYS A WEEK,  
8 FIFTEEN MONTHS. AS A PROSECUTOR IN THE COURT SYSTEM OF  
9 THE UNITED STATES THE PROSECUTION GETS THE CHANCE TO ARGUE  
10 FIRST AND LAST, THE DEFENSE GOES BETWEEN. I AM A MEMBER  
11 OF THE DC BAR AND THE SOUTH CAROLINA BAR, I JUST CAUTION  
12 YOU ON THAT. THE OTHER THING IS THAT THE JUDGE TOLD YOU  
13 YESTERDAY TO KEEP AN OPEN MIND, DON'T MAKE YOUR MIND UP  
14 UNTIL THE LAST EVIDENCE IS FINISHED. YOU CAN MAKE YOUR  
15 MIND UP WHEN YOU GO TO THE JURY ROOM, EACH ONE OF YOU HAVE  
16 THE RESPONSIBILITY TO TALK AND TO DISCUSS THE CASE AND  
17 EVERYBODY HAS AN EQUAL RIGHT TO DISCUSS THE CASE. AND ALL  
18 OF YOU HAVE A CONSENSUS THAT MY CLIENT DID THESE THINGS  
19 BEYOND A REASONABLE DOUBT OR YOU ACQUIT HIM AND FIND HIM  
20 NOT GUILTY. WELL, I DON'T MIND TELLING YOU THAT THAT IS  
21 WHAT WE ARE GOING TO WORK FOR, IS TO FIND THIS MAN NOT  
22 GUILTY, HE IS 70 YEARS OLD, I AM 77. OBVIOUSLY IF HE IS  
23 CONVICTED OF ANYTHING, HE WILL SPEND THE REST OF HIS LIFE  
24 IN JAIL UNLESS HE LIVES TO BE 150, THIS IS A DEVASTATING  
25 CASE FOR HIM. AND WE EXPECT AND BELIEVE THAT ALL TWELVE

1 OF YOU ARE GOING TO GIVE US A FAIR TRIAL. AND REMEMBER  
2 WHEN SOMEBODY IS IN DOUBT IT IS NOT EVIDENCE, AS THE JUDGE  
3 SAID. I DON'T KNOW IF ANY OF YOU WERE IN THE COURTROOM ON  
4 MONDAY, THE GRAND JURY CAME BACK. THEY HAD A WHOLE BUNCH  
5 OF CASES, EVERYBODY CAME BACK WITH TRUE BILLS ON EVERY  
6 CASE. IN FACT, THEY COME BACK WITH A NO BILL, THEY WENT  
7 BACK IN THE SAME JURY, THEY CAME BACK IN A MURDER TRIAL  
8 AND GAVE THE--

9 MS. BOLEN: YOUR HONOR, I OBJECT TO THIS.

10 THE COURT: MR. WICKER, YOU ARE GOING WAY BEYOND THE  
11 SCOPE HERE.

12 MR. WICKER: I AM FINISHED, YOUR HONOR. SO, I AM  
13 CLOSING, WE DEPEND ON YOU, WE TRUST EVERY ONE OF YOU AND  
14 WE HAVE CONFIDENCE IN YOU. THANK YOU.

15 THE COURT: CALL YOUR FIRST WITNESS.

16 MS. BOLEN: THE STATE CALLS AS ITS FIRST WITNESS,

17 victim!

18 victim! , AFTER BEING DULY SWORN,

19 TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MS. BOLEN:

22 Q GOOD MORNING, victim!

23 A GOOD MORNING.

24 Q JUST SPEAK INTO THE MICROPHONE RIGHT THERE AND SPEAK  
25 UP SO THE JURY CAN HEAR YOU. CAN YOU SPELL YOUR LAST NAME

1 FOR THE RECORD.

2 A victim.

3 Q THANK YOU, victim' : victim' HOW OLD ARE YOU NOW?

4 A

5 Q WHEN IS YOUR BIRTHDAY?

6 A THE OF : .

7 Q WHERE DO YOU LIVE NOW?

8 A WITH MY GRANDMA.

9 Q IS THAT IN NEWBERRY COUNTY?

10 A YES.

11 Q AND ARE YOU IN SCHOOL RIGHT NOW, victim : .?

12 A YES, MA'AM.

13 Q WHERE DO YOU GO TO SCHOOL?

14 A - - - - - SCHOCL.

15 Q AND WHAT GRADE ARE YOU IN?

16 A . . . . .

17 Q DO YOU LIKE SCHOOL?

18 A YES, MA'AM.

19 Q WHAT IS YOUR FAVORITE SUBJECT?

20 A SOCIAL STUDIES.

21 Q WHAT DO YOU STUDY IN SOCIAL STUDIES RIGHT NOW?

22 A THE FRENCH REVOLUTION.

23 Q victim'., WHERE DID YOU LIVE BEFORE YOU LIVED WITH  
24 YOUR GRANDMA?

25 A I HAD LIVED WITH MY FRIEND AND BEFORE THAT I LIVED IN

1 SISTER CARE AND BEFORE THAT I LIVED WITH HOTPATCH.

2 Q WHEN YOU SAY, HOTPATCH, IS THAT HIS REAL NAME?

3 A NO, HIS NAME IS JAMES ELKINS.

4 Q AND WHEN YOU LIVED WITH HOTPATCH, WHO LIVED WITH YOU  
5 AND HOTPATCH?

6 A MY MAMA.

7 Q YOUR MAMA. DO YOU REMEMBER ABOUT HOW LONG THIS WAS  
8 WHEN YOU LIVED WITH HIM?

9 A I WAS IN THE : GRADE.

10 Q FOURTH GRADE, SO ABOUT TWO AND A HALF YEARS AGO IN  
11 2005?

12 A YES.

13 Q DO YOU REMEMBER ABOUT WHERE YOU LIVED WHEN YOU LIVED  
14 WITH YOUR MOTHER AND HOTPATCH?

15 A IT WAS LIKE BETWEEN POMARIA, I THINK, I THINK THE  
16 ADDRESS WAS !

17 Q AND THAT WAS IN NEWBERRY COUNTY?

18 A YES.

19 Q DID YOU LIVE WITH HOTPATCH?

20 A YES, AT THE TIME I DID.

21 Q HOW LONG HAD YOU LIVED WITH HIM, APPROXIMATELY?

22 A WE HAD LIVED THERE BEFORE THAT, HE HAD WENT TO JAIL,  
23 I DON'T KNOW HOW LONG..

24 Q WAS HOTPATCH NICE TO YOU?

25 A YES.

1 Q WHAT DID YOU CALL HIM WHEN YOU LIVED WITH HIM?

2 A DADDY.

3 Q DADDY. HAD YOU EVER HAD A FATHER FIGURE IN YOUR LIFE  
4 BEFORE?

5 A NO.

6 Q WAS HOTPATCH THE ONLY PERSON YOU CALLED DADDY?

7 A YES, MA'AM.

8 Q DID YOU TRUST HOTPATCH?

9 A YES, MA'AM.

10 Q Minor DID SOMETHING BAD HAPPEN WHEN YOU LIVED WITH  
11 HOTPATCH?

12 A YES, MA'AM.

13 Q CAN YOU TELL US WHAT HAPPENED?

14 A ONE DAY HE TOLD MY MAMA TO GO TO THE STORE. AND THE  
15 STORE WAS LIKE A LONG WAY FROM THERE.

16 Q JUST TAKE YOUR TIME?

17 A AND WHEN SHE WENT TO THE STORE HE CAME IN MY ROOM AND  
18 TOLD ME TO TAKE MY CLOTHES OFF.

19 Q OKAY, JUST TAKE YOUR TIME. WHAT DID YOU DO WHEN HE  
20 TOLD YOU TO TAKE YOUR CLOTHES OFF?

21 A I REALLY LOOKED AT HIM LIKE HE WAS JOKING ABOUT AND  
22 THEN I REALIZED HE WAS SERIOUS SO I TOOK MY CLOTHES OFF.

23 Q AND HOW OLD WERE YOU AT THE TIME?

24 A NINE AND A HALF.

25 Q NINE AND A HALF. NOW, WHERE IN THE HOUSE WERE YOU

1 WHEN THIS HAPPENED?

2 A IN THE LIVING ROOM BECAUSE HIM AND MY MAMA SLEPT IN  
3 THE PULLOUT BED.

4 Q SO, HE TOLD YOU TO TAKE OFF YOUR CLOTHES AND YOU DID  
5 THAT. WHAT HAPPENED NEXT, Minor

6 A HE TOLD ME TO LAY DOWN.

7 Q DID YOU LIE DOWN?

8 A YES, MA'AM.

9 Q WHERE DID YOU LIE DOWN?

10 A ON THE PULLOUT BED.

11 Q WHAT DID HE DO NEXT?

12 A HE PULLED HIS ZIPPER DOWN, HE PULLED HIS PRIVATE PART  
13 OUT, HE TOLD ME TO TAKE MY CLOTHES OFF, BUT HE DIDN'T TAKE  
14 HIS OFF.

15 Q HE DIDN'T TAKE HIS OFF, HE JUST PULLED DOWN THE  
16 ZIPPER AND THEN HE PULLED OUT HIS PRIVATE PART?

17 A YES, MA'AM.

18 Q AND WHAT DID HIS PRIVATE PART LOOK LIKE?

19 A NOT GOOD.

20 Q WHAT DID HE DO AFTER HE UNZIPPED HIS PANTS?

21 A HE PUT ON BABY LOTION.

22 Q PUT ON BABY LOTION, WHAT SORT OF LOTION?

23 A THE PINK BABY LOTION.

24 Q DID HE PUT IT ON HIMSELF, ON HIS PRIVATE PART?

25 A (THE WITNESS SHOOK HER HEAD IN THE AFFIRMATIVE.)

1 Q WHAT DID HE DO AFTER PUTTING THE LOTION ON HIS  
2 PRIVATE PART?

3 A HE STUCK IT IN MY PRIVATE PART.

4 Q DID THAT HURT?

5 A YES, MA'AM.

6 Q WHAT DID YOU DO WHEN HE STUCK HIS PRIVATE PART IN  
7 YOUR PRIVATE PART?

8 A I TOLD HIM TO STOP.

9 Q I KNOW THIS IS HARD, victim . . . DID HE STOP WHEN YOU  
10 TOLD HIM TO STOP?

11 A NO, MA'AM.

12 Q WHAT WAS THE POSITION WERE YOU, WERE YOU LIEING ON  
13 THAT PULLOUT?

14 A YES, MA'AM.

15 Q AND WHAT WAS HIS POSITION?

16 A HE WAS ON TOP OF ME.

17 Q HE WAS ON TOP OF YOU. DID HE HOLD YOU DOWN AT ALL,  
18 Minor

19 A NO MA'AM, BUT I COULDN'T GET UP.

20 Q YOU COULDN'T GET UP. WAS HE MOVING AT ALL?

21 A NO, MA'AM. HE WAS GOING UP AND DOWN, UP AND DOWN.

22 Q HE WAS GOING UP AND DOWN. WHAT HAPPENED AFTER THAT?

23 A MY MAMA HAD PULLED UP IN THE YARD BECAUSE HE HEARD  
24 THE CAR. HE WENT TO THE WINDOW AND HE TOLD ME TO PUT ON  
25 MY CLOTHES AND GO BACK TO MY ROOM.

1 Q DID YOU DO THAT?

2 A YES, MA'AM.

3 Q DID HE TELL YOU ANYTHING ELSE?

4 A NO, MA'AM.

5 Q DURING THIS INCIDENT DID HE TOUCH YOU ANYWHERE ELSE?

6 A ON MY BREAST.

7 Q ON YOUR BREAST. WHEN YOUR MOTHER CAME IN DID YOU

8 TELL HER?

9 A NO, MA'AM.

10 Q WHY DIDN'T YOU TELL HER?

11 A BECAUSE I WAS AFRAID OF HIM.

12 Q DID YOU BLEED AFTER THIS HAPPENED?

13 A YES, MA'AM.

14 Q DID THIS HAPPEN AGAIN, victim: .?

15 A YES, MA'AM.

16 Q ABOUT HOW MUCH AFTER THE FIRST TIME?

17 A ABOUT TWO WEEKS.

18 Q WHAT HAPPENED THAT TIME, WERE YOU AT THIS HOUSE WITH

19 HIM?

20 A WHO, JAMES' HOUSE? NO, I WAS AT HIS FRIEND'S HOUSE.

21 AND HE HAD TOLD MY MAMA THAT HE WAS GOING TO TAKE ME TO

22 THE STORE.

23 Q HE TOLD YOUR MOTHER HE WAS GOING TO TAKE JUST YOU TO

24 THE STORE?

25 A YES, MA'AM.

1 Q DID YOU GO TO THE STORE WITH HIM?

2 A YES, MA'AM.

3 Q THEN WHAT HAPPENED?

4 A HE TOOK ME TO HIS FRIEND'S HOUSE, EARL'S.

5 Q DO YOU KNOW ABOUT WHERE THAT FRIEND'S HOUSE WAS?

6 A I DON'T KNOW THE ADDRESS, IT IS JUST LIKE A ROAD UP  
7 IN FRONT OF OUR HOUSE AND THEN YOU TURN RIGHT AND YOU GO  
8 BACK UP A LITTLE BIT AND YOU TURN AGAIN AND THEN THERE IS  
9 HIS HOUSE.

10 Q WAS ANYONE AT HIS FRIEND'S HOUSE WHEN YOU GOT THERE?

11 A I GUESS HE KNOWED IT, I DON'T THINK HE HAD THE KEY TO  
12 HIS HOUSE SO HE JUST LEFT THE DOOR UNLOCKED.

13 Q SO THE DOOR IS UNLOCKED AND YOU AND YOUR DADDY,  
14 HOTPATCH WENT INSIDE AND THEN WHAT HAPPENED WHEN YOU GOT  
15 INSIDE, victim?

16 A HE TOLD ME TO TAKE MY CLOTHES OFF AGAIN.

17 Q WHAT DID YOU DO?

18 A I DID.

19 Q AND WHAT DID HE DO?

20 A HE PULLED HIS THING OUT, HIS ZIPPER.

21 Q SO, YOU GOT TO HIS FRIEND'S HOUSE, HE TOLD YOU TO  
22 TAKE YOUR CLOTHES OFF AND YOU DID AND THEN HE TOOK HIS  
23 PRIVATE PART OUT AGAIN?

24 A YES, MA'AM.

25 Q AND WHAT DID HE DO AFTER THAT?

1 A HE PUT HIS PRIVATE PART IN ME.

2 Q WHAT DID YOU DO?

3 A I TOLD HIM TO STOP AGAIN.

4 Q DID HE STOP?

5 A NO, MA'AM.

6 Q DID IT HURT?

7 A I GUESS HE STOPPED WHEN HE GOT READY AND WENT TO THE

8 STORE AND MY MAMA SAID, MY MAMA ASKED WHAT TOOK SO LONG

9 AND HE SAID, I KNOW A LOT OF PEOPLE AND HE TALKED TO A LOT

10 OF PEOPLE.

11 Q DID YOU TELL YOUR MOTHER WHAT HAPPENED THEN?

12 A NO, MA'AM.

13 Q victim, DO YOU REMEMBER GOING TO THE HOSPITAL?

14 A YES, MA'AM.

15 Q ABOUT HOW LONG AFTER THESE TWO INCIDENCES DID YOU GO

16 TO THE HOSPITAL, APPROXIMATELY?

17 A ABOUT THREE OR FOUR WEEKS.

18 Q AND WHY DID YOU GO TO THE HOSPITAL?

19 A MY STOMACH WAS ACHING, IT WAS HURTING AT NIGHT. AND

20 MY MAMA SAID IF IT DON'T STOP HURTING IN THE MORNING SHE

21 IS GOING TO TAKE ME TO THE DOCTOR. SO, THEIR FRIEND, HIS

22 NAME IS ROBERT, HE TOOK ME TO THE EMERGENCY ROOM. AND

23 WHEN HE TOOK ME TO THE EMERGENCY ROOM, HIM AND MY MAMA

24 SAID, AFTER HE TOOK ME TO THE EMERGENCY ROOM SHE SAID GO

25 GET HOTPATCH OUT OF JAIL.

1 Q SO, YOUR MOTHER TOOK YOU TO THE EMERGENCY ROOM?

2 A YES, MA'AM.

3 Q DID THE DOCTOR EXAMINE YOU AT THE EMERGENCY ROOM?

4 A YES, MA'AM.

5 Q DID YOU END UP TELLING YOUR MOTHER WHAT HAD HAPPENED  
6 AT THE EMERGENCY ROOM?

7 A YES, IT TOOK A LONG TIME THOUGH.

8 Q AND WHY DID IT TAKE A LONG TIME?

9 A BECAUSE I SAT DOWN AND THEY WERE LIKE, THE DOCTOR  
10 CAME IN AND SAID I HAD A DISEASE CALLED TRICHOMONAS. AND  
11 MY MAMA ASKED ME WHO I HAD BEEN HAVING SEX WITH. AND I  
12 WOULDN'T TELL HER AT FIRST UNTIL I SAID, I TOLD HER IF I  
13 TELL HER WOULD SHE PROMISE NOT TO GO BACK TO HOTPATCH.  
14 AND SHE TOLD ME, WHO IS IT. AND SHE KEPT SAYING IT AND I  
15 KEPT SAYING THE SAME THING UNTIL SHE SAID, IS IT HOTPATCH.  
16 AND I SAID YES.

17 Q AFTER THAT DID YOU GO BACK TO LIVE WITH HOTPATCH?

18 A NO, MA'AM.

19 Q WHERE DID YOU LIVE DIRECTLY AFTER THAT?

20 A I LIVED WITH MY COUSIN FOR A LITTLE BIT. AND THEN I  
21 WENT TO SISTER CARE.

22 Q DO YOU REMEMBER GOING TO ANOTHER DOCTOR IN GREENWOOD?

23 A YES, MA'AM.

24 Q DO YOU REMEMBER BEING EXAMINED BY HIM?

25 A YES, MA'AM.

1 Q DO YOU REMEMBER GOING TO A SORT OF COUNSELOR IN  
2 GREENWOOD?

3 A YES, MA'AM.

4 Q DO YOU REMEMBER TALKING WITH HER?

5 A YES, MA'AM.

6 Q Minor DO YOU SEE THE MAN WHO ASSAULTED YOU THOSE  
7 TWO TIMES IN THE COURTROOM HERE TODAY?

8 A YES, MA'AM.

9 Q COULD YOU PLEASE POINT HIM OUT TO THE JURY.

10 A THERE.

11 MS. BOLEN: MAY THE RECORD REFLECT THAT THE WITNESS  
12 JUST POINTED TO THE DEFENDANT, MR. ELKINS.

13 Q Minor I DON'T HAVE ANY MORE QUESTIONS FOR YOU AT  
14 THIS TIME. MR. WICKER IS GOING TO ASK YOU SOME QUESTIONS,  
15 PLEASE ANSWER ANY QUESTIONS THAT HE MIGHT HAVE AND THEN I  
16 MAY COME BACK AND ASK YOU A FEW MORE QUESTIONS.

17 CROSS-EXAMINATION

18 BY MR. WICKER:

19 Q victim I DON'T THINK WE HAVE EVER MET, IS THAT  
20 CORRECT?

21 A NO, SIR.

22 Q AS FAR AS I KNOW WE HAVEN'T. YOU ARE Minor

23 A YES, SIR.

24 Q DO YOU REMEMBER HOW LONG IT WAS THAT YOUR MOTHER  
25 LIVED WITH JAMES ELKINS AFTER THE LAST EVENT THAT YOU TOLD

1 US ABOUT?

2 A AFTER THE LAST--

3 Q WHAT I AM TRYING TO SAY, MY CLIENT LIVED WITH YOUR  
4 MOTHER, IS THAT CORRECT, YA'LL LIVED IN THE SAME HOUSE.

5 A MY MOTHER LIVED WITH HIM, YES SIR.

6 Q YOUR MOTHER--

7 A LIVED WITH HIM.

8 Q SHE PASSED AWAY, IS THAT RIGHT?

9 A YES, SIR.

10 Q OKAY, WHAT I AM ASKING YOU. AFTER THIS LAST INCIDENT  
11 CAN YOU REMEMBER ABOUT HOW LONG YOUR MOTHER STAYED IN THE  
12 SAME HOUSE WITH JAMES, WAS IT TWO WEEKS, THREE WEEKS OR A  
13 MONTH?

14 A AFTER THE INCIDENT?

15 Q YES.

16 A AFTER HE RAPED ME?

17 Q YES.

18 A ABOUT TWO WEEKS, AFTER THE LAST TIME?

19 Q YES.

20 A I DON'T UNDERSTAND.

21 Q AND WAS THAT BECAUSE YOU FINALLY TOLD HER ABOUT IT?

22 A NO, SIR.

23 Q YOU DIDN'T TELL HER ABOUT IT EVEN THEN?

24 A NO, SIR.

25 Q WHAT I AM TRYING TO SAY, SHE BROKE UP WITH JAMES AND

1 YA'LL MOVED OUT, IS THAT CORRECT?

2 A ARE YOU TALKING ABOUT AFTER THE RAPE?

3 Q BUT YOU HAD NOT TOLD HER ABOUT THAT YET, IS THAT  
4 CORRECT?

5 A NO, WE DIDN'T MOVE OUT AFTER THAT.

6 Q OKAY.

7 A I DON'T GET--

8 Q WHEN DID YOU FIRST TELL ANYBODY ABOUT THESE TWO  
9 INCIDENCES?

10 A WHEN HE WAS IN JAIL AND WHEN I WENT TO THE DOCTOR.

11 Q AND WHY DID YOU ACTUALLY GO TO THE DOCTOR, DO YOU  
12 REMEMBER?

13 A BECAUSE MY STOMACH WAS HURTING.

14 Q OKAY. NOW, YOU MENTIONED THE DOCTOR TOLD YOU, I  
15 THINK I AM CORRECT ON THIS, THAT YOU HAD A DISEASE THAT  
16 MIGHT HAVE COME FROM HOTPATCH?

17 A SAID I HAD TRICHOMONAS.

18 Q OKAY. AND DID THE DOCTOR SAY THAT THAT CAME FROM A  
19 PARTNER, A PERSON WHO HAD SEX WITH YOU?

20 A HE TOLD MY MAMA THAT I COULDN'T GET IT OFF OF A DOOR  
21 NOB, I COULDN'T GET OFF, I HAD TO GET IT FROM THAT WAY.

22 Q OKAY. NOW, DID THEY, DO YOU KNOW WHETHER OR NOT THEY  
23 CHECKED HOTPATCH FOR THAT DISEASE?

24 A I DON'T KNOW, I THINK THEY CHECKED ME AND MY MOTHER,  
25 MY COUSIN, SHE TOOK US TO GO GET THE MEDICINE.

1 Q SO, YOU ARE SAYING THAT YOU DON'T KNOW WHETHER THEY  
2 CHECKED HOTPATCH FOR THAT DISEASE?

3 A YES, SIR.

4 Q YOU DON'T KNOW THAT. WHEN, HOW LONG DID YOU LIVE IN  
5 THIS SAME HOUSE WITH HOTPATCH?

6 A A LONG TIME.

7 Q HOW LONG?

8 A A LONG TIME BECAUSE WHEN I WAS REAL LITTLE WE HAD,  
9 NOT REAL LITTLE BUT SIX OR SEVEN WE LIVED WITH HIM, HE  
10 WENT TO JAIL AND BECAUSE WE LIVED IN THE HOUSE BY OURSELF.  
11 WHEN HE CAME BACK MY MAMA MOVED OUT.

12 Q SO, MY CLIENT WAS ACTUALLY WAS IN JAIL FOR OTHER  
13 THINGS, NOT FOR ANYTHING THAT HAPPENED AT THE HOUSE AT  
14 THAT TIME?

15 A YES, SIR.

16 Q AND YOU AND YOUR MOTHER CONTINUED TO LIVE THERE, IS  
17 THAT CORRECT?

18 A NO, WE MOVED.

19 Q DID YOU MOVE AFTER THESE EVENTS TOOK PLACE?

20 A YES, SIR.

21 Q NOW, LET ME ASK YOU THIS NOW. DID YOUR MOTHER HAVE A  
22 DISAGREEMENT WITH HOTPATCH IS THE REASON SHE MOVED?

23 A DISAGREEMENT WHEN.

24 Q IN OTHER WORDS, THEY STARTED FUSSING AND SHE MOVED?

25 A ARE YOU TALKING ABOUT--

1 Q AFTER THIS?

2 A -- THE EVENT HAPPENED?

3 Q YES.

4 A NO. HE COULDN'T, HE WAS IN JAIL AT THAT TIME TOO.

5 Q OKAY. HE WAS IN JAIL FOR SOMETHING ELSE THOUGH, WAS  
6 HE NOT?

7 A YES, HE WAS IN JAIL.

8 Q HE WAS IN JAIL FOR SOMETHING ELSE. LET ME ASK YOU  
9 THIS, TRY TO REMEMBER. AT THE TIME HE WAS IN JAIL FOR  
10 SOMETHING ELSE YOU HAD NOT YET TOLD ANYONE, HAD YOU?

11 A ARE YOU TALKING ABOUT AFTER THE INCIDENT?

12 Q YES.

13 A NO, BECAUSE THAT SAME, THE DAY HE WAS IN JAIL, THE  
14 NEXT NIGHT, THE DAY HE WAS IN JAIL I TOLD MY MAMA MY  
15 STOMACH WAS HURTING. SHE TOLD ME IF MY STOMACH WAS STILL  
16 GOING TO BE HURTING IN THE MORNING SHE IS GOING TO TAKE ME  
17 TO THE DOCTOR. SO, THAT DAY HE WENT TO JAIL AND THE NEXT  
18 MORNING I WENT TO THE DOCTOR.

19 Q OKAY. NOW, YOU TOLD THE DOCTOR WHAT HOTPATCH DID TO  
20 YOU, IS THAT CORRECT?

21 A AFTER HE TOLD ME I HAD TRICHOMONAS AND I FOUND OUT  
22 WHAT THAT MEANS.

23 Q AND THAT WAS BECAUSE HE ASKED YOU WHO HAD ASSAULTED  
24 YOU SEXUALLY, IS THAT CORRECT. YOU TOLD THE DOCTOR THAT  
25 YOU HAD HAD SEX WITH HOTPATCH AFTER HE ASKED YOU WHO YOU

1 HAD SEX WITH, ISN'T THAT CORRECT?

2 A NO. AFTER HE ASKED, AFTER MY MAMA ASKED ME WHO I HAD  
3 SEX WITH?

4 Q YES.

5 A I STARTING CRYING AND THEN SHE WAS ASKING, KEPT  
6 ASKING ME AND I WOULDN'T TELL HER. THE REASON I DIDN'T  
7 TELL HER BECAUSE I THOUGHT HE WAS GOING TO BE MAD AT HER  
8 AND IT WOULD BE MY FAULT, BUT IT WASN'T MY FAULT.

9 Q AND BUT PRIOR TO THIS TIME, I AM TALKING ABOUT WHEN  
10 THE MOTHER AND HOTPATCH STARTED LIVING IN THE SAME HOUSE  
11 YOU ACTUALLY GOT ALONG VERY WELL WITH HOTPATCH AT THAT  
12 TIME, IS THAT CORRECT?

13 A YES, SIR.

14 Q AND YA'LL LIKED EACH OTHER, IS THAT CORRECT?

15 A YES.

16 Q I HAVE NO FURTHER QUESTIONS AND I THINK YOU ARE VERY  
17 BRAVE AND I WANT YOU TO DO GOOD IN SCHOOL. THANK YOU.

18 A YES, SIR.

19 THE COURT: ANY REDIRECT?

20 MS. BOLEN: THE STATE HAS NO REDIRECT.

21 THE COURT: THANK YOU, VERY MUCH. YOU CAN STEP DOWN.  
22 CALL YOUR NEXT WITNESS.

23 MS. BOLEN: THE STATE CALLS GWEN STONE.

24 GWEN STONE, AFTER BEING DULY SWORN, TESTIFIED AS  
25 FOLLOWS:

DIRECT EXAMINATION

1

2

BY MS. BOLEN:

3

Q GOOD MORNING, MS. STONE.

4

A GOOD MORNING.

5

Q MS. STONE, DO YOU KNOW victim ?

6

A YES.

7

Q AND HOW DO YOU KNOW HER?

8

A SHE IS MY NIECE.

9

Q SO, YOU ARE THE SISTER OF HER LATE MOTHER?

10

A YES.

11

Q BEFORE HER MOTHER DIED HOW OFTEN WERE YOU IN CONTACT

12

WITH Minor AND HER MOTHER?

13

A EVERY OTHER DAY, SOMETIMES WE WOULD TALK THREE OR

14

FOUR TIMES A DAY. I WOULD SEE HER MAYBE ONCE EVERY THREE

15

MONTHS.

16

Q SO, YOU TALKED TO HER SEVERAL TIMES A YEAR?

17

A YES.

18

Q DO YOU KNOW WHERE victim AND HER MOTHER WERE LIVING

19

IN ABOUT MAY OF 2005?

20

A YES, SHE WAS LIVING NEAR THIS FELLOWSHIP CHURCH

21

BECAUSE I WENT DOWN THERE ON SEVERAL TIMES SO I KNOW WHERE

22

SHE LIVED AT.

23

Q DO YOU KNOW WHO SHE LIVED WITH?

24

A YES, SHE LIVED WITH HOTPATCH.

25

Q HOTPATCH, IS THAT HIS REAL NAME?

1 A NO, I FOUND OUT HIS REAL NAME IS JAMES ELKINS.

2 Q DO YOU KNOW THAT victim AND HER MOTHER LIVED WITH  
3 HOTPATCH IN 2005?

4 A YES.

5 Q YOU KNOW THAT BECAUSE YOU TALKED WITH HER ON A  
6 REGULAR BASIS?

7 A YES.

8 Q DO YOU KNOW IF ANYONE LIVED AT THIS HOUSE BESIDES  
9 YOUR SISTER AND victim AND HOTPATCH?

10 A NO.

11 Q DID victim TELL YOU THAT SHE HAD BEEN SEXUALLY  
12 ASSAULTED?

13 A YES, SHE TOLD ME THAT.

14 Q DID SHE TELL YOU, WHAT IF ANYTHING DID SHE TELL YOU  
15 ABOUT WHERE THESE SEXUAL ASSAULTS OCCURRED?

16 A AT HIS HOUSE AND AT HIS FRIEND'S HOUSE.

17 Q WHAT, IF ANYTHING, DID SHE TELL YOU ABOUT WHEN THESE  
18 ASSAULTS OCCURRED?

19 A SHE TOLD ME WHEN, ONE TIME WHEN HER MOTHER WENT TO  
20 THE STORE AND ANOTHER TIME WHEN HE HAD TAKEN HER TO A  
21 STORE TO START WITH.

22 Q I DON'T HAVE ANY OTHER QUESTIONS FOR YOU, PLEASE  
23 ANSWER ANY QUESTIONS THAT MR. WICKER MAY HAVE.

24 CROSS-EXAMINATION

25 BY MR. WICKER:

1 Q GOOD MORNING.

2 A GOOD MORNING.

3 Q I AM RAY WICKER, AS FAR AS I KNOW WE HAVE NEVER MET,  
4 IS THAT CORRECT?

5 A THAT IS TRUE.

6 Q AND YOU ARE FROM NEWBERRY?

7 A I WAS BORN THERE.

8 Q OKAY AND HOW LONG HAVE YOU KNOWN HOTPATCH?

9 A EVER SINCE I WAS LITTLE.

10 Q SINCE YOU WERE A CHILD?

11 A YES.

12 Q AND THEY CALL HIM HOTPATCH MOST OF THE TIME SINCE YOU  
13 HAVE KNOWN HIM?

14 A YES.

15 Q OKAY. NOW, THIS LITTLE GIRL THAT TESTIFIED, victim,  
16 , HOW LONG HAVE YOU KNOWN HER?

17 A EVER SINCE SHE WAS BORN.

18 Q NOW, victim MOTHER WHO IS NOW DECEASED, HOW LONG  
19 DID YOU KNOW HER?

20 A EVER SINCE I WAS BORN, SHE WAS MY SISTER.

21 Q SO, YOU KNEW ALL THREE OF THESE FOLKS?

22 A YES.

23 Q LET ME ASK YOU THIS QUESTION, WHEN DID YOU LEARN  
24 FIRST THAT THIS HAD HAPPENED TO victim- .?

25 A WHEN SHE HAD GOT FROM THE HOSPITAL, IT WAS ON A

1 SATURDAY, I DON'T REMEMBER THE DATE. HER MOTHER CALLED  
2 ME.

3 Q HER MOTHER CALLED YOU?

4 A YES.

5 Q AND WHAT IS YOUR POSITION AGAIN?

6 A I AM HER AUNT, WE HAVE THE SAME FATHER BUT WE HAVE  
7 DIFFERENT MOTHERS.

8 Q YOU ARE victim's<sup>1</sup> 'S AUNT?

9 A YES.

10 Q AND YOU DID NOT KNOW ANYTHING ABOUT THIS UNTIL, WOULD  
11 THIS BE YOUR SISTER?

12 A YES.

13 Q CALLED AND TOLD YOU?

14 A YES. AND THEN I TALKED TO victim<sup>1</sup> .

15 Q TALKED TO WHO?

16 A victim<sup>1</sup> .

17 Q victim<sup>1</sup> , OKAY. AND victim's<sup>1</sup> TOLD YOU WHAT SHE SAID  
18 HAPPENED, YOU TALKED TO victim<sup>1</sup> ABOUT THE INCIDENT?

19 A YES.

20 Q THE TWO INCIDENTS, I BELIEVE?

21 A YES.

22 Q OKAY. AND SINCE THAT TIME HAVE YOU SEEN MUCH OF  
23 victim<sup>1</sup> ?

24 A YES, ON AND OFF.

25 Q ON AND OFF?

1 A YES.

2 Q AND SINCE THAT TIME HAVE YOU SEEN MUCH OF HOTPATCH?

3 A I HAVEN'T SEEN HIM SINCE HE WAS IN JAIL.

4 Q BUT YOU DIDN'T SEE HOTPATCH AT ALL, I WOULD SAY AFTER  
5 YOU TALKED TO victim's 'S MOTHER?

6 A NO.

7 Q YOU HAVEN'T SEEN HOTPATCH SINCE Minor MOTHER TOLD  
8 YOU ABOUT THIS?

9 A NO.

10 Q OKAY. PRIOR TO THAT YOU SAW HIM A GREAT DEAL?

11 A I SEEN HIM SOME.

12 Q OKAY. DO YOU KNOW WHAT CIRCUMSTANCES victim's.  
13 MOTHER WAS IN WHEN SHE AND HER DAUGHTER MOVED INTO  
14 HOTPATCH'S HOUSE?

15 A NO, NOT REALLY.

16 Q WELL, DID SHE HAVE A JOB?

17 A NO BUT SHE GOT ONE LATER.

18 Q AFTER SHE MOVED IN?

19 A YES.

20 Q SHE DID NOT HAVE A JOB WHEN SHE MOVED IN THOUGH, IS  
21 THAT CORRECT?

22 A YES.

23 Q SO, SHE AND victim]. WERE REALLY DESTITUTE AT THAT  
24 TIME, IS THAT CORRECT. I MEAN BY THAT, THEY DIDN'T HAVE  
25 ANYTHING AT THAT TIME, DID THEY?

1 A I DON'T KNOW.

2 Q OKAY. YOU DON'T KNOW WHY SHE MOVED IN WITH HOTPATCH?

3 A SHE WAS DATING HIM.

4 Q SHE HAD BEEN DATING HIM BEFORE THAT?

5 A YES.

6 Q OKAY, WE HAVE NO FURTHER QUESTIONS, THANK YOU.

7 THE COURT: REDIRECT.

8 MS. BOLEN: JUST VERY BRIEF.

9 REDIRECT EXAMINATION

10 BY MS. BOLEN:

11 Q MS. STONE, IS IT YOUR TESTIMONY THAT YOUR SISTER, WHO  
12 IS THE victim's MOTHER, AND HOTPATCH WERE IN A ROMANTIC  
13 RELATIONSHIP?

14 A YES.

15 Q HAS victim LIVED WITH YOU AT ALL THESE PAST FEW  
16 YEARS?

17 A WHEN SHE WAS LITTLE I USED TO KEEP HER AND I WOULD GO  
18 GET HER SOMETIMES AND BRING HER UP TO STAY WITH ME.

19 Q BUT SHE HASN'T LIVED WITH YOU ON A REGULAR BASIS?

20 A NO.

21 Q NO FURTHER QUESTIONS, THANK YOU.

22 THE COURT: THANK YOU, YOU CAN STEP DOWN.

23 MS. BOLEN: THE STATE CALLS SUSAN BENTLEY TO THE  
24 STAND.

25 SUSAN BENTLEY, AFTER BEING DULY SWORN, TESTIFIED

1 AS FOLLOWS:

2 DIRECT EXAMINATION

3 BY MS. BOLEN:

4 Q MS. BENTLEY, COULD YOU PLEASE SPELL YOUR LAST NAME  
5 FOR THE RECORD.

6 A B-E-N-T-L-E-Y.

7 Q THANK YOU, GOOD MORNING. MS. BENTLEY, WHAT IS YOUR  
8 OCCUPATION?

9 A I AM A COUNSELOR AND A INTERVIEWER AT THE SEXUAL  
10 TRAUMA AND COUNSELING CENTER IN GREENWOOD.

11 Q HOW LONG HAVE YOU WORKED AT THE SEXUAL TRAUMA CENTER  
12 IN GREENWOOD?

13 A ABOUT THREE YEARS.

14 Q CAN YOU PLEASE OUTLINE FOR THE COURT AND THE JURY  
15 YOUR TRAINING, EDUCATION, QUALIFICATIONS.

16 A I GOT MY BACHELORS DEGREE FROM THE UNIVERSITY OF  
17 HOUSTON AND MY MASTERS IN SOCIAL WORK AT THE UNIVERSITY OF  
18 SOUTH CAROLINA. I HAVE HAD ABOUT ELEVEN YEARS EXPERIENCE  
19 WORKING WITH VICTIMS, SEXUAL ABUSE, MOSTLY CHILDREN. I  
20 BEGAN AT THE DEPARTMENT OF SOCIAL SERVICES AS A TREATMENT  
21 WORKER AND AT THAT TIME I WAS GIVEN SOME INTENSIVE  
22 TRAINING SO I COULD HANDLE ALL OF THE SEXUAL ABUSE CASES  
23 FOR LEXINGTON COUNTY. I HAVE ALSO WORKED WITH SEXUAL  
24 VICTIMS AT THE LEXINGTON COUNTY JAIL. I HAVE, WHEN I  
25 MOVED TO GREENWOOD I WORKED FOR SIX MONTHS WITH WHAT IS

1 CALLED RAPE CRISIS, DOING COUNSELING WITH CHILDREN AND  
2 ADULT VICTIMS OF SEXUAL ABUSE. AND THEN I ALSO WORKED  
3 SEVEN YEARS AT THE DEPARTMENT OF JUVENILE JUSTICE WHERE I  
4 WAS A COUNSELOR FOR GIRLS AGE 12 TO 17. MANY OF THEM TOLD  
5 ME ABOUT SEXUAL ABUSE, COUNSELING IN THAT AREA.

6 Q WHAT SORT OF SPECIAL TRAINING HAVE YOU RECEIVED IN  
7 CHILD ABUSE COUNSELING?

8 A I HAVE BEEN TO A GOOD MANY TRAINING, MOST RECENTLY,  
9 MOST OF MY TRAINING HAS BEEN IN THE AREA OF FORENSIC  
10 INTERVIEWING OF SEXUAL ABUSE VICTIMS. I HAVE ATTENDED THE  
11 COURSE OF FINDING WORDS WHICH IS THE TECHNIQUE OF  
12 INTERVIEWING CHILDREN. I HAVE ALSO HAD THE ADVANCED  
13 COURSE OF FINDING WORDS.

14 Q CAN YOU EXPLAIN FOR THE COURT, I AM SORRY, I JUMPED  
15 AHEAD OF MYSELF. CAN YOU APPROXIMATE HOW MANY FORENSIC  
16 INTERVIEWS YOU HAVE DONE?

17 A I THINK IT IS PROBABLY AROUND 150.

18 Q HAVE YOU PREVIOUSLY BEEN QUALIFIED AS AN EXPERT IN  
19 THE FIELD OF FORENSICS INTERVIEWING AND PROVIDED TESTIMONY  
20 IN COURT?

21 A YES.

22 Q CAN YOU APPROXIMATE HOW MANY TIMES YOU HAVE BEEN  
23 QUALIFIED AS AN EXPERT?

24 A JUST ONCE.

25 MS. BOLEN: AT THIS TIME, YOUR HONOR, THE STATE WOULD

1 MOVE TO ADMIT MS. BENTLEY AS AN EXPERT IN THE FIELD OF  
2 FORENSIC INTERVIEWING AND CHILD ABUSE ASSESSMENT.

3 THE COURT: ANY VOIR DIRE?

4 MR. WICKER: NO OBJECTIONS TO THAT.

5 THE COURT: ALL RIGHT, WITHOUT OBJECTION.

6 MS. BOLEN: THANK YOU, JUDGE.

7 Q MS. BENTLEY, CAN YOU EXPLAIN WHAT A FORENSIC  
8 INTERVIEW IS?

9 A A FORENSIC INTERVIEW IS A VERY, IT IS STRUCTURED BUT  
10 IT IS NOT COMPLETELY STRUCTURED, IT IS CALLED  
11 SEMI-STRUCTURE INTERVIEW OF A CHILD IN A VERY CHILD  
12 FRIENDLY ENVIRONMENT IN WHICH WE GIVE THE CHILD AN  
13 OPPORTUNITY TO TELL THE SCENARIO OF ABUSE IF THERE IS A  
14 SCENARIO OF ABUSE. AND IN A WAY THAT IS NON-LEADING.

15 Q WHAT ARE THE RULES OR GUIDELINES THAT ARE SET FORTH  
16 IN A FORENSIC INTERVIEW THAT YOU SET OUT?

17 A THE CHILD IS INTERVIEWED PREDOMINATELY ALONE IN AN  
18 INTERVIEW ROOM WITH THE INTERVIEWER.

19 Q YOU MENTIONED NON-LEADING, CAN YOU EXPLAIN WHAT THAT  
20 IS?

21 A WE ASK OPEN ENDED QUESTIONS AS MUCH AS POSSIBLE. FOR  
22 EXAMPLE, IF THE CHILD TELLS US SOMETHING LIKE MY UNCLE  
23 HURT MY TUTU, WE WOULD FOLLOW UP WITH SOMETHING LIKE TELL  
24 ME ABOUT WHEN YOUR UNCLE HURT YOUR TUTU. SO, WE TRY NOT  
25 TO, LET THE CHILD TELL THE STORY, INITIATE ALL OF THE

1 INFORMATION.

2 Q SO IN OTHER WORDS, AN OPEN ENDED QUESTION IS ONE THAT  
3 IS NOT SUGGESTING AN ANSWER?

4 A RIGHT.

5 Q BEFORE YOU DO A FORENSIC INTERVIEW IS THE CHILD  
6 INFORMED OF THE GUIDELINES AND RULES OF THE INTERVIEW?

7 A YES, THEY ARE.

8 Q AND HOW DO YOU INFORM THE CHILD?

9 A AT THE BEGINNING OF THE INTERVIEW I LET THE CHILD  
10 KNOW THAT THERE ARE THREE VERY IMPORTANT RULES OF THE  
11 INTERVIEW. THE FIRST RULE IS THAT THE CHILD MUST ONLY  
12 TALK ABOUT THINGS THAT ARE REAL AND TRUE. THE SECOND RULE  
13 IS THAT IF THE CHILD DOES NOT KNOW THE ANSWER TO A  
14 QUESTION HE SHOULD NOT TRY TO GUESS AN ANSWER. AND THE  
15 THIRD RULE IS THAT IF THE CHILD SEES THAT I AM NOT  
16 UNDERSTANDING SOMETHING THAT HE SAYS HE IS TO CORRECT ME.

17 Q SO, THE THREE BIG RULES ARE, ONLY SPEAK ABOUT WHAT IS  
18 TRUE, NO GUESSING AND CORRECT--

19 A AND CORRECT ME.

20 Q HOW DO YOU MAKE SURE A CHILD UNDERSTANDS THESE RULES  
21 BEFORE YOU CONDUCT AN INTERVIEW?

22 A WITH YOUNG CHILDREN UNDER THE AGE OF 7 I DO A  
23 TRUTH/LIE TEST TO MAKE SURE THEY KNOW THE DIFFERENCE  
24 BETWEEN THE TRUTH AND A LIE. AND TO MAKE SURE THAT THEY  
25 KNOW THERE ARE CONSEQUENCES FOR NOT TELLING THE TRUTH.

1 Q WHAT ABOUT CHILDREN WHO ARE OVER 7.

2 A LIKE FOR INSTANCE, WHEN I AM TELLING THEM ABOUT  
3 CORRECTING ME I WILL GIVE THEM AN EXAMPLE. LIKE IF YOU  
4 TELL ME YOU HAVE A GRAY CAT. AND I SAY, OH, YOU HAVE A  
5 GRAND CAT. THEY ARE SUPPOSE TO SAY, NO, I HAVE A GRAY  
6 CAT. YOU TRY TO GIVE THEM SOME EXAMPLES.

7 Q ARE A CHILD'S PARENTS TYPICALLY PRESENT DURING AN  
8 INTERVIEW?

9 A NO, THEY ARE NOT.

10 Q AND WHY IS THAT?

11 A CHILDREN CAN BE INFLUENCED BY THEIR PARENTS WHEN THEY  
12 ARE TRYING TO ANSWER QUESTIONS. EVEN I THINK A LOOK FROM  
13 A PARENT MIGHT SUGGEST TO THEM WHAT THEY MAY OF SAID, IF  
14 THEY SHOULD OF SAID IT.

15 Q AND WHERE ARE THESE FORENSIC INTERVIEWS CONDUCTED?

16 A THEY ARE IN WHAT IS CALLED THE CHILDS ADVOCACY CENTER  
17 THAT IS HOUSED IN THE SEXUAL TRAUMA AND COUNSELING CENTER.

18 Q WHAT SORT OF ROOM DO THEY TAKE PLACE IN?

19 A IT IS IN A CHILD FRIENDLY ROOM WITH VERY FEW  
20 DISTRACTIONS.

21 Q IS ANYONE ALLOWED TO OBSERVE THE INTERVIEW?

22 A YES, WE STRONGLY ENCOURAGE THE AGENCY WHO REFERRED  
23 THE CHILD TO WATCH THE INTERVIEW AS IT IS BEING CONDUCTED.

24 Q HOW WOULD THEY WATCH IT?

25 A IT USED TO BE THAT WE HAD OBSERVERS WHO WATCHED

1 THROUGH A TOWAY MIRROR THAT WAS IN THE INTERVIEW ROOM AND  
2 THERE WAS ALSO MICROPHONES THAT THEY COULD LISTEN.

3 Q SO, THEY ARE NOT ACTUALLY PRESENT BUT THEY CAN  
4 OBSERVE?

5 A RIGHT.

6 Q WHAT SORT OF MEASURES DO YOU USE BEFORE CONDUCTING AN  
7 INTERVIEW TO ASSESS THE CHILD'S COMPETENCY?

8 A WE TALK TO THE PARENT AHEAD OF TIME AND FIND OUT IF,  
9 CERTAIN THINGS ABOUT THEIR MEDICAL CONDITION, IF THEY ARE  
10 HAVING ANY DEVELOPMENT DELAYS OR IF THEY HAVE SPEECH AND  
11 HEARING PROBLEMS. SOMETIMES I ASK ABOUT ATTENTION  
12 DEFICIT, PERHAPS IF THEY HAVE ANY ATTENTION DEFICIT  
13 PROBLEMS AND HAVEN'T HAD ANY MEDICINE THAT DAY, WE MIGHT  
14 RESCHEDULE.

15 Q DO YOU GET A FAMILY HISTORY FROM THE CHILD?

16 A YES, SOMEWHAT.

17 Q DO YOU ALSO OBTAIN A MEDICAL HISTORY OF THE CHILD?

18 A WE JUST ASK A FEW MEDICAL QUESTIONS.

19 Q WHEN YOU ARE ASSESSING A CHILD FOR A PHYSICAL OR  
20 SEXUAL ABUSE HOW DO YOU DETERMINE THE CHILD'S KNOWLEDGE OF  
21 HIS OR HER OWN ANATOMY?

22 A ONE PROCESS WE STAGE OF THE PROTOCOL THAT I USE IS  
23 CALLED TOUCH, WHAT WE DO IS SHOW THE CHILD ANATOMICAL  
24 DRAWINGS OF A GIRL AND A BOY AND WE ASK THE CHILD, AS WE  
25 POINT TO DIFFERENT PARTS OF THE BODY WE ASK IF THEY CAN

1 IDENTIFY, GIVE US THE NAME THAT THEY USE TO IDENTIFY THAT  
2 PART OF THE BODY. AND THEN WE LABEL THE DRAWING AND SO I  
3 CAN USE THE SAME LANGUAGE THAT THE CHILD USES DURING THE  
4 INTERVIEW.

5 Q CAN YOU EXPLAIN WHAT IS MEANT BY THE TERM, DELAYED  
6 REPORTING OR DELAYED DISCLOSURE?

7 A IT IS A VERY COMMON PRACTICE IN CHILDREN THAT HAVE  
8 BEEN ABUSED, THAT THEY DELAY REPORTING, THAT ABUSE CAN BE  
9 FOR A SHORT TIME OR FOR A LONG TIME.

10 Q IN YOUR TRAINING AND EXPERIENCE AS A FORENSIC  
11 INTERVIEWER, HOW MANY CASES HAVE YOU SEEN WHERE THERE HAS  
12 BEEN DELAYED REPORTING OR DELAYED DISCLOSURE?

13 A I WOULD SAY ALMOST ALL OF THEM.

14 Q ALMOST ALL OF THEM.

15 A PREDOMINATELY.

16 Q MS. BENTLEY, DID YOU CONDUCT A FORENSIC INTERVIEW  
17 WITH . . . victim . . . ?

18 A YES.

19 Q WHAT PERSON OR AGENCY REFERRED (victim) . . . TO YOU?

20 A THE NEWBERRY COUNTY SHERIFFS OFFICE.

21 Q IN YOUR OPINION DID (victim) . . . APPEAR TO BE COMPETENT  
22 FOR THIS INTERVIEW?

23 A YES, SHE DID. SHE WAS A LITTLE NERVOUS, NOT WANTING  
24 TO GO INTO THE INTERVIEW ROOM. SHE WAS ABLE TO ATTEND MY  
25 QUESTIONS AND TO ANSWER LOGICALLY.

1 Q AND IN YOUR OPINION DID <sup>victim</sup> KNOW THE DIFFERENT  
2 BODY PARTS?

3 A YES, SHE DID.

4 Q HOW DID YOU DETERMINE THIS?

5 A AS I SAID, BY POINTING TO THE DIFFERENT BODY PARTS  
6 AND HAVING HER IDENTIFY THEM.

7 Q WHAT WORDS DID SHE USE FOR THE BODY PARTS?

8 A SHE USED, FOR ALL THE BODY PARTS, WELL I HAVE THE  
9 DRAWINGS THAT I LABELED WHEN SHE GAVE ME THE BODY PARTS.

10 Q DO YOU RECALL WHAT SHE CALLED THE PENIS?

11 A SHE CALLED THE PENIS PRIVATE.

12 Q AND WHAT DID SHE CALL THE VAGINA?

13 A PRIVATE.

14 Q WHAT IF ANY SORT OF SAFEGUARDS DO YOU USE WHEN YOU  
15 ARE INTERVIEWING <sup>victim</sup> TO PREVENT ANY TYPE OF  
16 INFLUENCE?

17 A LIKE I SAID, SHE, WE STARTED THE INTERVIEW WITH  
18 <sup>victim</sup> ALONE IN THE ROOM WITHOUT ANYONE ELSE PRESENT. I  
19 DID ASK HER IF ANYONE HAD INFLUENCED HER AND HAD TOLD HER  
20 WHAT TO SAY. AND SHE SAID, NO.

21 Q WHAT IF ANYTHING DID <sup>victim</sup> RELATE TO YOU REGARDING  
22 THE TIMEFRAME OF THE SEXUAL ASSAULT?

23 A SHE DID NOT REALLY GIVE ME A TIMEFRAME, SHE GAVE ME A  
24 SEQUENCE.

25 Q DO YOU REMEMBER APPROXIMATELY WHAT THIS KIND OF

1 SEQUENCE WAS?

2 A I DON'T KNOW.

3 Q WHAT, IF ANYTHING, DID *victim* RELATE TO YOU  
4 REGARDING THE LOCATION OF THE SEXUAL ASSAULT?

5 A SHE SAID THE FIRST ASSAULT OCCURRED IN THE LIVING  
6 ROOM WITH THE PERSON SHE IDENTIFIED AS THE ABUSER.

7 Q AND THE SECOND ONE?

8 A AND THE SECOND ONE SHE SAID OCCURRED AT THE HOME OF  
9 FRIENDS OF THE ABUSER.

10 Q WAS THERE ANYTHING ABOUT *victim*'S FORENSIC INTERVIEW  
11 WITH YOU CAUSE YOU TO BELIEVE THAT IT WAS A RESULT OF A  
12 THIRD PARTY INFLUENCE?

13 A NOTHING WAS.

14 Q IN YOUR OPINION WAS *victim*'S DISCLOSURE TO YOU  
15 AFFECTED IN ANY WAY BY SUGGESTIBILITY OR COACHING?

16 A I DO NOT THINK SO.

17 Q DID YOU MAKE ANY RECOMMENDATIONS FOLLOWING *victim's*  
18 DISCLOSURE?

19 A YES, I DID.

20 Q AND WHAT RECOMMENDATION DID YOU MAKE?

21 A YOU WANT ME TO READ THEM OR GENERALLY?

22 Q JUST GENERALLY.

23 A I RECOMMENDED THAT SHE COMPLETE SEXUAL ABUSE  
24 COUNSELING TO DEAL WITH HER FEELINGS ABOUT THE ABUSE AND  
25 HER FEARS OF THE PERPETRATOR. I ALSO RECOMMENDED THAT THE

1 MOTHER HAVE COUNSELING TO PROCESS HER FEELINGS ABOUT THE  
2 ABUSE AND LEARN PARENTING SKILLS. OF COURSE, I  
3 RECOMMENDED THAT THEY HAVE NO FURTHER CONDUCT WITH THE  
4 ABUSER.

5 Q I HAVE NO FURTHER QUESTIONS FOR YOU AT THIS TIME, MS.  
6 BENTLEY. PLEASE ANSWER ANY QUESTIONS MR. WICKER HAS FOR  
7 YOU AND AFTER HE IS FINISHING QUESTIONING YOU I MAY COME  
8 BACK AND ASK YOU A FEW MORE QUESTIONS.

9 CROSS-EXAMINATION

10 BY MR. WICKER:

11 Q AS FAR AS I KNOW WE HAVE NEVER MET, IS THAT CORRECT?

12 A THAT'S CORRECT.

13 Q YOU LIVE IN GREENWOOD?

14 A YES.

15 Q OKAY. AND BASICALLY YOU WORK FOR THE STATE IN  
16 GREENWOOD?

17 A NO SIR, I WORK FOR THE SEXUAL TRAUMA COUNSELING  
18 CENTER AGENCY.

19 Q AND WHO RUNS THAT OFFICE?

20 A MARTHA B. STERNUP, (PHONETIC).

21 Q HOW LONG TOTALLY, COUNTING I DON'T KNOW HOW MANY  
22 MEETINGS YOU HAD WITH victim, HOW LONG DID YOU SPEND WITH  
23 HER?

24 A I WOULD ESTIMATE APPROXIMATELY A LITTLE OVER AN HOUR.

25 Q A LITTLE OVER ONE HOUR?

1 A NOT MORE THAN AN HOUR, ABOUT AN HOUR.

2 Q THE TOTAL TIME YOU SPENT WITH victim WAS NOT OVER  
3 ONE HOUR?

4 A THAT IS CORRECT.

5 Q YOU NEVER SAW HER BEFORE THAT OR AFTER THAT?

6 A THAT'S CORRECT.

7 Q NOW, WHEN YOU INTERVIEWED HER WAS THERE A TOWAY  
8 MIRROR SET UP SO THERE WAS SOMEONE WATCHING HER?

9 A YES.

10 Q YES?

11 A YES.

12 Q WAS THERE A RECORDING MADE?

13 A AT THAT TIME WE WEREN'T RECORDING OUR FORENSIC  
14 INTERVIEWS, WE DO THAT NOW BUT AT THAT TIME WE WERE NOT.

15 Q AND SO THE RECORD YOU HAVE ARE YOUR NOTES?

16 A BOTH MY NOTES AND THE NOTES OF ANOTHER EMPLOYEE OF  
17 THE CHILDS PLACE.

18 Q AND THIS WAS ABOUT TWO AND A HALF YEARS AGO THAT YOU  
19 TALKED TO HER?

20 A JUNE OF 2005.

21 Q OKAY. AND DID YOU KNOW HER MOTHER AT THAT TIME?

22 A I HAD JUST MET HER MOTHER.

23 Q OKAY. AND YOU TALKED TO HER MOTHER ABOUT victim ?

24 A YES, I DID.

25 Q HAVE YOU EVER MET HOTPATCH?

1 A NO.

2 Q YOU HAVE NEVER TALKED TO HOTPATCH?

3 A NO.

4 Q AND YOU HAVE NEVER TALKED TO ANYBODY ELSE CONCERNING  
5 THIS CASE BASICALLY EXCEPT victimi . AND HER MOTHER, WOULD  
6 THAT BE THE BIG TWO?

7 A I ASSUME I TALKED BRIEFLY TO SOMEONE AT THE SHERIFF'S  
8 OFFICE.

9 Q OKAY. NOW, THIS INTERVIEW CAME ABOUT BECAUSE OF THE  
10 VICTIM'S ADVOCATE ASK YOU TO DO IT OR WAS IT THE  
11 SOLICITOR'S OFFICE ASK YOU TO DO IT?

12 A THE VICTIM ADVOCATE AT THE SHERIFFS OFFICE ASK ME TO  
13 DO THIS.

14 Q OKAY. THAT WAS THE SHERIFFS OFFICE IN NEWBERRY?

15 A THAT'S CORRECT.

16 Q OKAY. WELL, THE SHERIFFS OFFICE IN NEWBERRY, THEY  
17 TOLD YOU PRETTY MUCH WHAT THEY, I GUESS, SUSPECTED, DID  
18 THEY NOT?

19 A THEY TOLD ME WHAT SHE HAD ALREADY REPORTED, YES.

20 Q AND DID YOU INQUIRE ABOUT THIS SEXUAL TRANSMITTED  
21 DISEASE SHE HAD?

22 A BEFORE THE INTERVIEW.

23 Q YOU DIDN'T EVEN KNOW ABOUT IT, DID YOU, EVEN TODAY?

24 A YES, I DID.

25 Q YOU DID KNOW ABOUT IT?

1 A I KNEW ABOUT IT BEFORE THE INTERVIEW.

2 Q BUT AS FAR AS, AS WHAT YOU TESTIFIED TODAY FROM  
3 MEMORY, BUT YOU HAVE A KEEN MEMORY, IS THAT RIGHT?

4 A NOT REALLY BUT I TRY.

5 Q I HAVE NO FURTHER QUESTIONS.

6 REDIRECT EXAMINATION

7 BY MS. BOLEN:

8 Q MS. BENTLEY, YOU STATED THAT YOU RECOMMENDED  
9 COUNSELING FOR victim's :-?

10 A YES.

11 Q EVEN THOUGH YOU MET WITH HER FOR AN HOUR YOU THOUGHT  
12 SHE WOULD BENEFIT WITH COUNSELING?

13 A I BELIEVE ANY VICTIM OF SEXUAL ABUSE WOULD BENEFIT  
14 FROM COUNSELING.

15 Q NOTHING FURTHER. THANK YOU.

16 THE COURT: THANK YOU, YOU MAY STEP DOWN. YA'LL COME  
17 UP.

18 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE  
19 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE  
20 JURY.)

21 THE COURT: LADIES AND GENTLEMEN, WE WILL TAKE A  
22 BREAK AT THIS TIME. DON'T DISCUSS THE CASE AND WE WILL BE  
23 BACK IN FIFTEEN MINUTES.

24 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR  
25 A BREAK.)

1 THE COURT: WE WILL TAKE FIFTEEN MINUTES.

2 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

3 THE COURT: BRING THE JURY IN, PLEASE.

4 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT  
5 APPROXIMATELY 11:30 A.M.)

6 THE COURT: CALL YOUR NEXT WITNESS.

7 MS. BOLEN: THE STATE CALLS ROBERT DENNIS TO THE  
8 STAND.

9 ROBERT DENNIS, AFTER BEING DULY SWORN, TESTIFIED  
10 AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MS. BOLEN:

13 Q STATE YOUR NAME, PLEASE.

14 A DETECTIVE ROBERT DENNIS AND I AM EMPLOYED AT THE  
15 NEWBERRY COUNTY SHERIFFS OFFICE.

16 Q DETECTIVE DENNIS, HOW LONG HAVE YOU BEEN EMPLOYED AT  
17 THE NEWBERRY COUNTY SHERIFFS OFFICE?

18 A I HAVE BEEN EMPLOYED AT THE NEWBERRY COUNTY SHERIFFS  
19 OFFICE FOR SEVEN YEARS NOW, PREVIOUSLY WORKING FOR THE  
20 NEWBERRY CITY FOR FIVE.

21 Q WHAT SORT OF TRAINING HAVE YOU RECEIVED AS AN  
22 INVESTIGATOR WITH THE SHERIFFS OFFICE?

23 A THROUGH THE TRAINING AT THE SHERIFFS OFFICE I HAVE  
24 MAINTAINED MY CERTIFICATION THROUGH THE SOUTH CAROLINA  
25 DEPARTMENT OF CRIMINAL JUSTICE AS WELL AS ANY ADDITIONAL

1 TRAINING THAT COMES AROUND. I HAVE ALSO BEEN TRAINED AS  
2 AN ADVANCED FORENSIC INTERVIEWER AT THE SHERIFFS OFFICE  
3 AND HAVE GONE TO SEVERAL SEXUAL ASSAULT CLASSES THAT WAS  
4 PRESENTED THROUGH THE CHILD'S ADVOCACY PLACEMENT OR THE  
5 CRIMINAL JUSTICE ACADEMY.

6 Q DETECTIVE DENNIS, WERE YOU WORKING IN YOUR CAPACITY  
7 AS A DETECTIVE ON MAY 29TH OF 2005?

8 A YES MA'AM, I WAS.

9 Q DID YOU HAVE OCCASION TO GET CALLED OUT TO THE  
10 NEWBERRY HOSPITAL?

11 A YES, MA'AM. ON THE MORNING OF 5/29/2005 I WAS  
12 NOTIFIED TO COME OUT TO NEWBERRY COUNTY MEMORIAL HOSPITAL  
13 BY LIEUTENANT PETE JOHNSON.

14 Q AND WHY DID LIEUTENANT PETE JOHNSON CALL YOU OUT?

15 A I RESPONDED DUE TO THE ALLEGATION OF A SEXUAL ASSAULT  
16 THAT OCCURRED TO A CHILD VICTIM AT THE HOSPITAL.

17 Q WHEN YOU ARRIVED AT THE HOSPITAL WHO DID YOU MEET  
18 WITH?

19 A ONCE I GOT TO THE EMERGENCY ROOM I MET WITH  
20 LIEUTENANT JOHNSON WHO INFORMED ME OF THE ALLEGATION AND  
21 THEN I MET WITH THE MOTHER OF THE CHILD, victim?

22 Q WHAT WAS victim's DEMEANOR WHEN YOU MET WITH  
23 HER?

24 A victim, AT THE TIME THAT I INTRODUCED MYSELF SHE WAS  
25 SHY, KIND OF REDREW FROM ME AND THAT IS WHEN I NOTIFIED

1 THE VICTIM'S ADVOCATE, CONNIE JOHNSON, TO COME OUT AND  
2 ASSIST US WITH THE CASE.

3 Q AND DID YOU SAY victim's MOTHER WAS ALSO  
4 PRESENT?

5 A YES MA'AM, AT THE TIME SHE WAS THERE.

6 Q WHAT, IF ANYTHING, DID victim DISCLOSE REGARDING THE  
7 TIME OF THE SEXUAL ASSAULTS?

8 A THE TIME PERIOD WE WERE LOOKING AT WAS BETWEEN 5/10  
9 OF 2005 UNTIL THE ACTUAL PRESENT REPORT DATE WHICH WAS  
10 5/29.

11 Q AND, DETECTIVE DENNIS, WHAT IF ANYTHING DID victim  
12 DISCLOSE TO YOU REGARDING THE PLACE OF THE ALLEGED  
13 ASSAULTS?

14 A THE PLACE THAT WAS DISCLOSED WAS victim  
15 ROAD WHICH IS IN THE CONSOLIDATED AREA OF NEWBERRY COUNTY.

16 Q DO YOU KNOW IF THIS IS WHERE victim LIVED?

17 A AT THE TIME THIS WAS WHERE victim WAS STAYING WITH  
18 HER MOTHER AND THEY WERE LIVING WITH JAMES ELKINS.

19 Q DETECTIVE DENNIS, I HAVE NO FURTHER QUESTIONS FOR YOU  
20 AT THIS TIME. PLEASE ANSWER ANY QUESTIONS MR. WICKER MAY  
21 HAVE OF YOU.

22 MR. WICKER: WE HAVE NO QUESTIONS, YOUR HONOR.

23 MS. BOLEN: THE STATE CALLS DETECTIVE PETE JOHNSON.

24 PETE JOHNSON, AFTER BEING DULY SWORN, TESTIFIED  
25 AS FOLLOWS:

DIRECT EXAMINATION

1  
2 BY MS. BOLEN:

3 Q LIEUTENANT JOHNSON, WHERE ARE YOU EMPLOYED?

4 A NEWBERRY COUNTY SHERIFFS OFFICE.

5 Q AND HOW LONG HAVE YOU BEEN WITH THE SHERIFFS OFFICE?

6 A I HAVE BEEN WITH THE SHERIFFS OFFICE FOR  
7 APPROXIMATELY THIRTEEN AND A HALF YEARS, FOR THE LAST TEN  
8 OF WHICH I HAVE BEEN A SUPERVISOR.

9 Q WHAT IS YOUR TRAINING AS A POLICE OFFICER?

10 A CERTIFIED THROUGH THE CRIMINAL JUSTICE ACADEMY IN  
11 1994, I HAD SUBSEQUENT TRAINING THROUGHOUT THE LAST  
12 THIRTEEN AND A HALF YEARS TO MAINTAIN THAT TRAINING, TO  
13 MAINTAIN MY CERTIFICATION.

14 Q AND WHAT ARE YOUR GENERAL DUTIES AS A SUPERVISOR?

15 A AS WELL AS ANSWERING CALLS AND WATCHING TRAFFIC AND  
16 MAINTAINING THE LAWS OF THE COUNTY, I ALSO OVERSEE A SHIFT  
17 OF, WHAT USED TO BE TWO ARE NOW AS MANY AS FOUR OTHER  
18 PEOPLE ON MY SHIFT.

19 Q WERE YOU WORKING IN YOUR CAPACITY AS A POLICE OFFICER  
20 ON MAY 29TH OF 2005?

21 A YES, MA'AM.

22 Q AND DID YOU HAVE OCCASION TO BE CALLED OUT TO THE  
23 NEWBERRY HOSPITAL?

24 A YES MA'AM, WE WERE NOTIFIED THAT THERE WAS A CALL  
25 REPORTED ON A SEXUAL ASSAULT AT THE ER THAT OCCURRED IN

1 THE COUNTY OF NEWBERRY.

2 Q UPON ARRIVAL AT THE HOSPITAL WHO DID YOU MEET WITH?

3 A I BELIEVE AT FIRST I MET WITH THE ER STAFF AND UPON  
4 BEING TOLD WHAT HAD OCCURRED I THEN MET WITH victim'  
5 AND HER MOTHER IN THE ROOM.

6 Q AND HER MOTHER AS WELL?

7 A YES, MA'AM.

8 Q DO YOU RECALL WHAT victim's' S DEMEANOR WAS WHEN YOU  
9 MET WITH HER?

10 A NOT REAL EAGER TO TALK TO ME, SHE WAS STILL UPSET  
11 ABOUT APPARENTLY WHAT HAD TRANSPIRED PRIOR TO MY ARRIVAL.

12 Q WHAT, IF ANYTHING, DID victim. DISCLOSE TO YOU  
13 REGARDING THE TIME OF THE SEXUAL ASSAULTS?

14 A WHEN I SPOKE WITH MS. victim\ I WAS INFORMED THAT THE  
15 ASSAULTS HAD OCCURRED APPROXIMATELY TWO WEEKS PRIOR TO THE  
16 29TH AND THEN AFTER THE FIRST ASSAULT, SHE SAID THE SECOND  
17 ASSAULT OCCURRED A COUPLE OF DAYS LATER.

18 Q AND WHAT, IF ANYTHING, DID victim' DISCLOSE TO YOU  
19 REGARDING THE PLACE OF THE SEXUAL ASSAULTS?

20 A SHE HAD INFORMED ME THAT THE FIRST TIME IT OCCURRED  
21 AT 1 ROAD WHICH WAS AT THE TIME HER  
22 RESIDENCE, WHERE HER AND HER MOTHER WERE RESIDING WITH MR.  
23 ELKINS. THE SECOND SHE TOLD ME HAPPENED ON . . .  
24 THEY WERE ABLE TO TELL ME IT WAS NEAR A CONSOLIDATED FIRE  
25 DEPARTMENT AND THAT IT WAS AT THE HOME OF A EARL DAVIS.

1 Q DID SHE TELL YOU ANYTHING ABOUT WHO MR. DAVIS WAS?

2 A NO, THEY DIDN'T SEEM QUITE FAMILIAR WITH HIM OTHER  
3 THAN IT WAS APPARENTLY A FRIEND OF MR. ELKINS.

4 Q THANK YOU, I HAVE NO FURTHER QUESTIONS. PLEASE  
5 ANSWER ANY QUESTIONS THAT MR. WICKER MAY HAVE.

6 CROSS-EXAMINATION

7 BY MR. WICKER:

8 Q LIEUTENANT JOHNSON, BEFORE YOU WENT OUT TO THE  
9 HOSPITAL SOMEONE HAD SORT OF BRIEFED YOU ON WHAT YOU WERE  
10 GOING OUT THERE FOR, I GUESS?

11 A ONLY THROUGH THE CALL I RECEIVED THROUGH THE  
12 DISPATCHER.

13 Q OKAY. WE HAVE NO FURTHER QUESTIONS, THANK YOU.

14 THE COURT: ALL RIGHT. THANK YOU, SIR, YOU CAN STEP  
15 DOWN.

16 MS. BOLEN: THE STATE CALLS CONNIE JOHNSON TO THE  
17 STAND.

18 CONNIE JOHNSON, AFTER BEING DULY SWORN,  
19 TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MS. BOLEN:

22 Q MS. JOHNSON, HOW ARE YOU EMPLOYED?

23 A I AM EMPLOYED WITH NEWBERRY COUNTY SHERIFFS OFFICE AS  
24 A LAW ENFORCEMENT VICTIM ADVOCATE.

25 Q CAN YOU EXPLAIN FOR THE COURT WHAT A VICTIMS ADVOCATE

1 IS?

2 A YES, A VICTIM ADVOCATE ASSIST ALL VICTIMS OF MAJOR  
3 CRIMES, VIOLENT CRIMES, ALSO ASSIST WITH TRANSPORT CRISIS  
4 RESPONSE TO THE HOSPITALS AND TRANSPORTATIONS TO SHELTERS.

5 Q HOW LONG HAVE YOU WORKED WITH THE SHERIFFS OFFICE AS  
6 A VICTIMS ADVOCATE?

7 A AS A VICTIM ADVOCATE, I HAVE BEEN AT THE SHERIFFS  
8 OFFICE FOR FIVE AND A HALF YEARS.

9 Q PRIOR TO THAT DID YOU WORK AT THE SHERIFFS OFFICE?

10 A I WORKED DISPATCH FOR TWO YEARS PRIOR.

11 Q AND WHAT SORT OF TRAINING HAVE YOU RECEIVED AS A  
12 VICTIM ADVOCATE?

13 A I RECEIVED TRAINING AND CERTIFICATION THROUGH THE  
14 SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY, ALSO RECEIVED  
15 TRAINING THROUGH THE SOUTH CAROLINA VICTIM ASSISTANCE  
16 ACADEMY.

17 Q WERE YOU WORKING IN YOUR CAPACITY AS A VICTIMS  
18 ADVOCATE ON MAY 29TH OF 2005?

19 A YES, I DID.

20 Q WERE YOU CALLED OUT TO THE NEWBERRY COUNTY HOSPITAL?

21 A YES.

22 Q WHAT WAS THE NATURE OF THE DISPATCH THAT YOU  
23 RECEIVED?

24 A I WAS NOTIFIED BY DISPATCH TO RESPOND TO THE ER IN  
25 REFERENCE TO A CHILD SEXUAL ASSAULT.

1 Q UPON ARRIVAL AT THE HOSPITAL WHO DID YOU MEET WITH?

2 A I MET WITH LIEUTENANT JOHNSON AND INVESTIGATOR ROBERT  
3 DENNIS.

4 Q AFTER MEETING WITH THEM DID YOU MEET WITH ANYONE ELSE  
5 THERE AT THE HOSPITAL?

6 A YES, I MET WITH THE VICTIM, [REDACTED] AND HER  
7 MOTHER.

8 Q IS THIS THE FIRST TIME YOU HAD MET victim? .?

9 A YES.

10 Q WHAT WAS HER DEMEANOR WHEN YOU MET WITH HER?

11 A victim WAS EXTREMELY UPSET, CRYING, REAL SHY AND  
12 TIMID, TOOK HER A LITTLE WHILE TO OPEN UP AND TALK TO ME.

13 Q DID [REDACTED] DISCLOSE ANYTHING TO YOU REGARDING THE  
14 TIME OF THE SEXUAL ASSAULTS?

15 A SHE HAD ADVISED THAT THE SEXUAL ASSAULT, THERE HAD  
16 BEEN TWO OCCURRENCES, THAT ONE OCCURRENCE HAD OCCURRED AT  
17 THE HOME AT [REDACTED] ROAD. AND THAT  
18 APPROXIMATELY TWO WEEKS LATER IT HAD OCCURRED AGAIN ON  
19 [REDACTED] DOWN FROM HER RESIDENCE AT ONE OF THE  
20 DEFENDANT'S FRIENDS.

21 Q AND DID SHE DISCLOSE ANYTHING REGARDING THE TIMEFRAME  
22 OF WHEN THESE ASSAULTS HAD OCCURRED?

23 A SHE DISCLOSED THAT IT HAD OCCURRED BETWEEN THE 10TH  
24 OF MAY OF '05 AND THE CURRENT DATE, THE 29TH OF MAY OF  
25 '05.

1 Q AND YOU SAY SHE WAS UPSET WHEN YOU FIRST MET WITH  
2 HER, WAS SHE CRYING?

3 A YES, EXTREMELY EMOTIONAL AND DISTRAUGHT.

4 Q HOW LONG DID YOU MEET WITH HER THERE AT THE HOSPITAL?

5 A WE WERE AT THE HOSPITAL FOR APPROXIMATELY 30 TO 45  
6 MINUTES.

7 Q DID YOU MEET WITH <sup>victim</sup> AFTER THAT AT ALL?

8 A YES, I MET WITH <sup>victim</sup> AND HER MOTHER NUMEROUS  
9 TIMES, TRANSPORTED THEM BACK AND FORTH TO GREENWOOD AND  
10 SISTER CARE SHELTER.

11 Q DID YOU MAKE ANY RECOMMENDATIONS TO Minor AND HER  
12 MOTHER?

13 A OBVIOUSLY NOT TO HAVE NO CONTACT WITH THE ACCUSED,  
14 ALSO REFERRED THEM TO THE CHILDS PLACE FOR COUNSELING.

15 Q I HAVE NO FURTHER QUESTIONS, MS. JOHNSON. PLEASE  
16 ANSWER ANY QUESTIONS MR. WICKER MAY HAVE FOR YOU.

17 CROSS-EXAMINATION

18 BY MR. WICKER:

19 Q LET ME ASK YOU JUST VERY BRIEFLY, DID SHE SAY THE  
20 DATE WAS 10, MAY OF 2005?

21 A THAT WAS THE DATE THAT WE WERE ABLE TO OBTAIN FROM  
22 HER, YES.

23 Q SHE ACTUALLY GAVE YOU THAT DATE?

24 A APPROXIMATELY THAT DATE.

25 Q WELL, SHE DIDN'T KNOW IT WAS MAY 10, DID SHE?

1 A SHE GAVE US APPROXIMATELY THAT DATE.

2 Q SO, IN OTHER WORDS, MY CONCERN IS, IS HOW DID SHE  
3 KNOW IT WAS THE 10TH DAY OF MAY IF SHE HADN'T TOLD ANYBODY  
4 ALL OF THIS TIME. YOU THINK SHE KNEW IT WAS THE 10TH OF  
5 MAY?

6 A I JUST KNOW WHAT SHE DISCLOSED TO US.

7 Q OKAY, I HAVE NO FURTHER QUESTIONS, THANK YOU.

8 THE COURT: ANY REDIRECT?

9 MS. BOLEN: NO, YOUR HONOR. YOUR HONOR, THE NEXT  
10 WITNESS WILL BE HERE AT 12:15.

11 THE COURT: THANK YOU, YOU CAN STEP DOWN. LADIES AND  
12 GENTLEMEN OF THE JURY, WE ARE GOING TO TAKE ANOTHER BREAK  
13 THIS MORNING. AND WE ARE EXPECTING TO START BACK IN ABOUT  
14 THIRTY MINUTES, YA'LL CAN WALK OUTSIDE FOR A MINUTE. YOU  
15 ARE EXCUSED AND WE WILL BE BACK AS SOON AS WE CAN.

16 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT.)

17 THE COURT: LET'S BE AT EASE.

18 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

19 THE COURT: BRING THE JURY IN, PLEASE.

20 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT  
21 APPROXIMATELY 12:25 P.M.)

22 MS. BOLEN: THE STATE CALLS DR. GRATIN SMITH TO THE  
23 STAND.

24 DR. GRATIN SMITH, AFTER BEING DULY SWORN,  
25 TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

1  
2 BY MS. BOLEN:

3 Q DR. SMITH, COULD YOU PLEASE SPELL YOUR NAME FOR THE  
4 RECORD.

5 A G-R-A-T-I-N.

6 Q DR. SMITH, WHAT IS YOUR OCCUPATION?

7 A I AM A PEDIATRICIAN AND I WORK AS AN ASSOCIATE  
8 PROFESSOR IN PEDIATRICS AT SELF MEMORIAL HOSPITAL IN  
9 GREENWOOD.

10 Q WHAT IS YOUR EDUCATION?

11 A I ATTENDED PUBLIC SCHOOLS IN SOUTH CAROLINA, IN AIKEN  
12 COUNTY UP THROUGH HIGH SCHOOL. I WENT TO CLEMSON AND THEN  
13 UNIVERSITY IN CHARLESTON FOR MY MD DEGREE AND THEN I DID  
14 MY PEDIATRIC TRAINING IN COLUMBIA AT PALMETTO RICHLAND.

15 Q SO, YOUR PEDIATRIC TRAINING, WAS THAT YOUR RESIDENCY?

16 A YES.

17 Q AND DID YOU ALSO DO AN INTERNSHIP?

18 A INTERNSHIP WAS FIRST YEAR OF RESIDENCY AND DID FAMILY  
19 MEDICINE AND THEN PEDIATRICS.

20 Q CAN YOU PLEASE TELL THE COURT ANY SPECIFIC TRAINING  
21 AND EDUCATION YOU HAVE RECEIVED IN THE AREA OF CHILD  
22 SEXUAL ASSAULT EXAMINATIONS.

23 A PART OF GENERAL PEDIATRIC TRAINING IN RESIDENCY LIKE  
24 I DID AT PALMETTO RICHLAND INCLUDES TRAINING IN CHILD  
25 ABUSE AND CHILD SEXUAL ABUSE AND SINCE COMPLETED A

1 RESIDENCY, PARTICIPATED IN CONTINUING EDUCATION COURSES  
2 THAT ARE HELD BY THE AMERICAN PEDIATRICS TO MAINTAIN GOOD  
3 STANDING, 40 HOURS EVERY 10 YEARS ARE REQUIRED. AND PART  
4 OF THAT TRAINING IS IN CHILD SEXUAL ABUSE.

5 Q AND HOW MANY YEARS OF EXPERIENCE APPROXIMATELY DO YOU  
6 HAVE IN CHILD SEXUAL ABUSE EXAMINATION?

7 A ABOUT 25.

8 Q ABOUT 25 YEARS. AND CAN YOU APPROXIMATE TO THE COURT  
9 HOW MANY CHILD SEXUAL ASSAULT EXAMINATIONS YOU HAVE DONE?

10 A OVER 100.

11 Q AND HAVE YOU PREVIOUSLY BEEN QUALIFIED AS AN EXPERT  
12 IN THE AREA OF CHILD ABUSE EXAMINATIONS IN COURT?

13 A I HAVE.

14 Q CAN YOU APPROXIMATE HOW MANY TIMES?

15 A PROBABLY 20 TIMES.

16 MS. BOLEN: YOUR HONOR, THE STATE WOULD ADMIT DR.  
17 SMITH AS AN EXPERT.

18 MR. WICKER: I HAVE NO OBJECTIONS.

19 THE COURT: ALL RIGHT, WITHOUT OBJECTIONS.

20 MS. BOLEN: THANK YOU, JUDGE.

21 Q DR. SMITH, DID YOU HAVE AN OPPORTUNITY TO EXAMINE  
22 THE VICTIM'S?

23 A YES.

24 Q DO YOU RECALL THE DATE OF THAT EXAMINATION?

25 A THAT EXAMINATION WAS JUNE THE 7TH OF 2005.

1 Q DID YOU OBTAIN A MEDICAL HISTORY OF Minor

2 A I DID.

3 Q AND WHY IS THE MEDICAL HISTORY NECESSARY FOR YOUR  
4 DIAGNOSIS AND TREATMENT?

5 A THE MEDICAL HISTORY IS VERY IMPORTANT BECAUSE IT  
6 HELPS ME TO DETERMINE HOW MUCH EXAMINATION I NEED TO DO  
7 AND WHAT KIND OF TREATMENTS ARE NEEDED.

8 Q AND WHAT WAS DISCLOSED IN HER MEDICAL HISTORY, WHAT  
9 WAS SIGNIFICANT ABOUT HER MEDICAL HISTORY?

10 A victim's DISCLOSED THAT ON OCCASION, ACTUALLY HAD  
11 SEXUAL CONTACT WITH AN ADULT MALE THAT INVOLVED VAGINAL  
12 PENETRATION.

13 Q AND WHY WOULD THE HISTORY THAT YOU RECEIVED FROM  
14 Minor WHY AND HOW WOULD IT BE RELATED TO A POSSIBLE  
15 SEXUAL ABUSE?

16 A I AM SORRY, I AM NOT SURE I UNDERSTAND.

17 Q WHY WOULD YOU OBTAIN THE MEDICAL HISTORY FROM Minor  
18 IN CONDUCTING YOUR EXAM FOR A CHILD SEXUAL ABUSE?

19 A PRIMARILY TO KNOW, TO MAKE SURE SHE IS EVALUATED FOR  
20 ANY COMPLICATIONS OR INFECTIONS OR ANY TREATMENT THAT SHE  
21 MIGHT NEED.

22 Q AND WHERE WAS THIS EXAMINATION THAT YOU DID FOR  
23 victim? . ?

24 A THIS EXAMINATION WAS CONDUCTED IN THE CHILDS PLACE IN  
25 GREENWOOD, A DIVISION OF THE SEXUAL TRAUMA CENTER.

1 Q WHAT TYPE OF EXAM DID YOU PERFORM ON Minor

2 A A GENERAL PHYSICAL EXAM FROM HEAD TO TOE, WITH  
3 EMPHASIS ON THE GENITAL AND ANAL USING SEXUAL INSTRUMENTS  
4 TO FACILITATE THAT EXAM.

5 Q DID YOU PERFORM A RAPE KIT OR WHAT IS COMMONLY CALLED  
6 A RAPE KIT ON victim?<sup>i</sup>?

7 A NO. A RAPE KIT WAS NOT DONE.

8 Q WHY WAS THAT?

9 A A RAPE KIT IS USED IN AN EXAMINATION THAT IS WITHIN  
10 72 HOURS OF THE ACTUAL SEXUAL OFFENSE. AND IN Minor  
11 CASE WE WERE WAY OUT PAST THAT.

12 Q SO, A RAPE KIT IS ONLY DONE WHEN THE INCIDENT IS DONE  
13 WITHIN 72 HOURS?

14 A RIGHT, ONLY IN ACUTE ASSAULT SITUATIONS.

15 Q AND WHAT SORT OF EXAM DID YOU PERFORM ON HER IN  
16 EXAMINING THE GENITAL AND ANAL REGION AREAS OF Minor

17 A SHE HAD WHAT IS CALLED A ORTHOSCOPIC EXAM USING AN  
18 INSTRUMENT CALLED COLPOSCOPE THAT IS A MAGNIFYING  
19 INSTRUMENT LIKE A SET OF BINOCULARS TO ALLOW US TO EXAM  
20 THE DISTANCE OF ABOUT TWELVE INCHES.

21 Q WHAT WERE YOUR FINDINGS DURING YOUR EXAM OF victim?<sup>i</sup>?

22 A ON victim's: EXAM SHE WAS NOTED TO BE WHAT IS CALLED  
23 A STAGE THREE PUBERTAL DEVELOPMENT, SHE HAD SIGNIFICANT  
24 PUBERTAL DEVELOPMENT OF THE BREAST, HAIR AND HER EXTERNAL  
25 GENITALS. GRADE FIVE IS COMPLETED INTO AN ADULT, GRADE

1 ONE WOULD BE A PREPUBERTAL CHILD ON SEXUAL  
2 CHARACTERISTICS. ON THIS EXAMINATION OF HER VAGINAL AREA  
3 victim WAS NOTED TO HAVE CHANGES IN THE HYMEN THAT WERE  
4 NOT NORMAL FOR A CHILD OF NINE YEARS OLD. SHE ALSO NOTED  
5 TO HAVE A VAGINAL ODOR THAT WAS NOT A NORMAL FINDING  
6 EITHER.

7 Q CAN YOU DESCRIBE WHAT WAS NOT NORMAL ABOUT THE HYMEN  
8 AREA OF victim's?

9 A THE HYMEN'S MEMBRANE, PARTS THAT PARTIALLY COVERS THE  
10 OPENING TO THE VAGINA AND IT CAN BE VERY VARIABLE IN  
11 NORMAL CHILDREN. BUT WHAT WAS ABNORMAL IN Minor CASE  
12 IS THAT THERE WERE PARTS OF THE HYMEN THAT WERE NOT THERE,  
13 THEY WERE WORN AWAY. SO, SHE HAD NARROWING EDGES.

14 Q AND YOU SAID IT WAS AN ABNORMAL FINDING FOR A CHILD  
15 OF NINE YEARS OLD?

16 A YES.

17 Q IN YOUR EXPERT OPINION CAN YOU TELL US WHETHER THE  
18 FINDINGS OF THE WIDENING OF HER HYMEN ARE CONSISTENT WITH  
19 A PENETRATING INJURY?

20 A THEY ARE CONSISTENT WITH A PENETRATING INJURY IN THAT  
21 THE TISSUE WOULD SUGGEST, A SIGNIFICANT SIZE COULD GET  
22 INSIDE OF THE VAGINA.

23 Q AND WOULD THAT TYPE OF A PENETRATING INJURY BE  
24 CONSISTENT WITH THIS CHILD'S MEDICAL HISTORY OF SEXUAL  
25 ASSAULT?

1 A YES.

2 Q YOU ALSO NOTED, DR. SMITH, THAT YOU OBSERVED A  
3 VAGINAL ODOR COMING FROM victim/ THAT WAS ABNORMAL. CAN  
4 YOU DESCRIBE THAT TO THE COURT?

5 A THAT ODOR IS, WAS KIND OF FISHY WHICH IS A TERM THAT  
6 IS USED IN THIS SITUATION AND THE VAGINAL DISCHARGE IS  
7 ONE.

8 Q DID YOU DO ANY SORT OF TEST OR EXAM OF THE VAGINAL  
9 DISCHARGE?

10 A THE VAGINAL DISCHARGE WAS SWABBED AND SENT FOR  
11 MULTIPLE TESTS.

12 Q AND WHAT WERE THE RESULTS OF THESE TEST?

13 A THE RESULTS SHOWED THAT victim' .. HAD AN INFECTION THAT  
14 IS CALLED TRICHOMONAS WHICH IS A PARASITE ORGANISM  
15 GENERALLY ASSOCIATED WITH SEXUAL CONTACT.

16 Q AND AS A MEDICAL DOCTOR, ARE YOU FAMILIAR WITH  
17 TRICHOMONAS?

18 A YES.

19 Q HOW IS TRICHOMONAS MOST COMMONLY SPREAD?

20 A MOST COMMONLY SPREAD THROUGH SEXUAL CONTACT.

21 Q IN YOUR 25 YEARS OF EXPERIENCE HAVE YOU EVER SEEN A  
22 CASE WHERE TRICHOMONAS IS NOT TRANSMITTED SEXUALLY?

23 A NO.

24 Q WHAT ARE THE SYMPTOMS OF TRICHOMONAS IN A FEMALE?

25 A IN A FEMALE THE MOST COMMON SYMPTOMS ARE VAGINAL

1 DISCHARGE, ODOR TO IT, SOMETIMES ITCHING, SOMETIMES  
2 BURNING, ABDOMINAL PAIN, PELVIC PAIN, SOMETIMES PEOPLE  
3 HAVE NO SYMPTOMS AT ALL.

4 Q AND HOW DO YOU TEST FOR TRICHOMONAS IN A FEMALE?

5 A THE MOST COMMON WAY TO TEST FOR THAT IS WHAT IS  
6 CALLED, YOU USE A SWAB USED TO SAMPLE THE VAGINAL  
7 SECRETIONS AND THEN IT IS OBSERVED UNDER A MICROSCOPE AND  
8 YOU CAN LOOK AT THE PRESENCE OF TRICHOMONAS OR OTHER  
9 INFECTIONS. THERE IS ALSO A TRICHOMONAS CULTURE WHERE A  
10 SWAB IS ACTUALLY PLACED AND INCUBATED AND ALLOW TO GROW  
11 FOR SEVERAL DAYS AND THEN IT CAN BE OBSERVED TO SEE IF  
12 TRICHOMONAS GROWS THERE. AND THEN THE LATEST THAT IS  
13 NEWER IS A DNA TEST THAT WHERE A SWAB IS ACTUALLY TREATED  
14 IN A LAB, NOT LOOKING FOR LIVING ORGANISMS BUT FOR DNA.

15 Q AND ONCE TRICHOMONAS IS DIAGNOSED IN A FEMALE HOW IS  
16 IT TREATED?

17 A IT IS SIMPLY TREATED WITH A DRUG CALLED  
18 METRONIDAZOLE.

19 Q AND HOW QUICKLY IS TRICHOMONAS CLEARED UP ONCE  
20 TREATMENT HAS BEGUN?

21 A IT CAN BE CLEARED UP, SEVERAL DAYS. IT CAN BE  
22 CLEARED UP IN A SINGLE VERY LARGE DOSE OF THAT DRUG.

23 Q WHAT ARE THE SYMPTOMS OF TRICHOMONAS IN A MALE?

24 A MOST MALES WHO HAVE TRICHOMONAS ARE ACTUALLY  
25 SYMPTOMATIC. THEY MAY HAVE AN INFECTION OF THE PROSTATE

1 GLAND.

2 Q HOW IS TRICHOMONAS TESTED FOR IN A MALE?

3 A IN A MALE IT IS USUALLY TESTED BY TAKING A SMALL SWAB  
4 THAT IS PLACED IN THE URETHRA AND THEN SEE BY CULTURE OR  
5 BY DNA OR LAB FOR THE PRESENCE OF TRICHOMONAS. THERE ARE  
6 TEST THAT INVOLVE SEMEN ANALYSIS THAT LOOK FOR  
7 TRICHOMONAS.

8 Q IN WHAT PERCENTAGE OF TRICHOMONAS TEST OF A MALE IS  
9 TRICHOMONAS FOUND?

10 A THE LITERATURE AND STUDIES THAT HAVE BEEN DONE OF  
11 TESTING MALES OF TRICHOMONAS IN A SINGLE TEST, AS MANY AS  
12 TWENTY FIFTY PERCENT OF CASES WERE NON-TRICHOMONAS.

13 Q WHEN A MALE IS TESTED AND HAS TRICHOMONAS, ONLY  
14 TWENTY TO FIFTY PERCENT OF CASES WITH TRICHOMONAS WOULD  
15 NOT BE DIAGNOSED THROUGH A TEST?

16 A RIGHT.

17 Q AND IS THE TREATMENT FOR TRICHOMONAS THE SAME FOR A  
18 MALE AS IT WOULD BE FOR A FEMALE?

19 A YES, IT IS.

20 Q AND HOW QUICKLY COULD TRICHOMONAS BE CLEARED UP IN A  
21 MALE?

22 A IN A MATTER OF DAYS.

23 Q IS THERE ANY OTHER WAY THAT TRICHOMONAS COULD BE  
24 PRESENT IN A MALE AND NOT BE DETECTED?

25 A THERE ARE STUDIES IN MALES THAT SPONTANEOUS, THAT THE

1 TRICHOMONAS DISAPPEARS WITH NO MEDICAL TREATMENT AND CAN  
2 BE AS HIGH AS TWENTY TO FORTY PERCENT. SO, A GOOD NUMBER  
3 OF MEN WHO HAVE TRICHOMONAS CAN GET OVER IT AND BE CURED  
4 OF IT WITHOUT ANY TREATMENT AT ALL.

5 Q IT CAN BE COMPLETELY CLEARED OUT OF THEIR SYSTEM  
6 WITHOUT MEDICAL TREATMENT?

7 A YES.

8 Q GOING BACK TO YOUR EXAMINATION OF 'victim' IT  
9 WAS YOUR TESTIMONY THAT YOUR FINDINGS OF 'victim' WERE  
10 WIDENING OF THE HYMEN AS WELL AS THE PRESENCE OF  
11 TRICHOMONAS. DID THESE FINDINGS LEAD YOU TO ANY  
12 CONCLUSION REGARDING HER MEDICAL HISTORY OF SEXUAL  
13 ASSAULTS?

14 A MY OPINION WAS THAT SHE HAD BEEN SEXUALLY ASSAULT  
15 BASED ON THE PHYSICAL EXAMINATION AND THE TRICHOMONAS  
16 INFECTION.

17 Q DR. SMITH, DID YOU RECEIVE ANY OTHER HISTORY FROM  
18 Minor THAT WOULD SUGGEST ANY OTHER CAUSE OF THIS HYMENAL  
19 WIDENING AND TRICHOMONAS OTHER THAN SEXUAL ASSAULT?

20 A NO, THE HISTORY WAS OBTAINED OF PRIOR INJURIES TO THE  
21 GENITAL AREA, THERE WASN'T ANY INJURIES.

22 Q THANK YOU, DR. SMITH, I HAVE NO FURTHER QUESTIONS FOR  
23 YOU AT THIS TIME. PLEASE ANSWER ANY QUESTIONS THAT MR.  
24 WICKER HAS FOR YOU.

25 CROSS-EXAMINATION

1 BY MR. WICKER:

2 Q DR. SMITH, I KNOW WE HAVE MET BEFORE, IT WAS OBVIOUS  
3 ON SOME KIND OF CASE LIKE THIS. NOW, HOW LONG DID YOU  
4 SPEND WITH victim? ?

5 A I SPENT ABOUT AN HOUR WITH HER.

6 Q ABOUT ONE HOUR. NOW, YOU HAD NEVER SEEN HER BEFORE  
7 OR AFTER THAT HOUR, HAD YOU?

8 A NO.

9 Q NOW, THESE TESTS THAT YOU RAN SHOWED THAT SHE HAD TWO  
10 DISEASES?

11 A NO, SHE HAD ONE, TRICHOMONAS.

12 Q OKAY. YOU DIDN'T, YOU NEVER MET MY CLIENT, DID YOU,  
13 HOTPATCH OR JAMES ELKINS?

14 A NO.

15 Q AND YOU NEVER ACTUALLY MET HIM AT ALL?

16 A NO.

17 Q DID YOU RECOMMEND THAT THEY TEST HIM FOR THIS  
18 DISEASE?

19 A THIS DISEASE, IT IS ALWAYS RECOMMENDED THAT ANY  
20 CONTACT BE TREATED.

21 Q HOW DID YOU ARRIVE THAT THIS WOULD ONLY BE  
22 DETRIMENTAL, MAYBE AS SMALL, I THINK YOU SAID TWENTY-SIX  
23 PERCENT OF THE TIME THAT IT WAS TRANSMITTED. I THINK THAT  
24 IS WHAT YOU SAID. IN OTHER WORDS, IF MY CLIENT HAD THAT  
25 DISEASE AND HE TOOK A TEST AND IT WAS NEGATIVE WHAT WOULD

1 THAT SAY?

2 A TO ME THAT WOULD SAY THAT THERE IS A TWENTY TO FORTY  
3 PERCENT CHANCE THAT ANY MALE THAT HAD TRICHOMONAS, TO ME  
4 IT DOESN'T MEAN THAT I DIDN'T HAVE IT.

5 Q IN OTHER WORDS, IT DOESN'T SPECIFICALLY TIE HIM, IF  
6 HE DID THIS AND IT WAS NEGATIVE, IT DOES NOT SPECIFICALLY  
7 TIE HIM TO THIS, IS THAT CORRECT?

8 A CORRECT.

9 Q NOW, YOU ALSO MENTIONED THAT HER VAGINA, I THINK YOU  
10 SAID WAS WORN AWAY?

11 A I SAID THE HYMEN, THE HYMEN USUALLY PARTIALLY  
12 ENCIRCLES AND HER EXAM THE AREA ON THE SIDE OF THE VAGINA  
13 WAS ALMOST NOT THERE.

14 Q WHAT I AM GETTING AT, IN YOUR PROFESSIONAL OPINION OF  
15 COURSE, COULD YOU TELL HOW MANY TIMES SHE HAD HAD SEX WITH  
16 A MAN?

17 A NO, SIR.

18 Q IN OTHER WORDS, COULD OF BEEN A GOOD MANY TIMES?

19 A YES, SIR.

20 Q AND YOU COULD NOT LIMIT IT TO TWO TIMES?

21 A NO.

22 Q NOW, I THINK YOU SAID YOU EXAMINED HER ON 7, JUNE OF  
23 '05, I THINK THAT WAS THE DATE YOU GAVE?

24 A YES, SIR.

25 Q AND THAT WAS IN GREENWOOD?

1 A RIGHT.

2 Q AND YOU DON'T KNOW WHETHER OR NOT MY CLIENT WAS  
3 CHECKED FOR THAT DISEASE?

4 A NO.

5 Q THANK YOU VERY MUCH AND AS FAR AS I AM CONCERNED YOU  
6 CAN BE EXCUSED IF THEY AGREE.

7 THE COURT: WELL, LET'S SEE IF THERE IS ANY REDIRECT  
8 EXAMINATION, THANK YOU MR. WICKER.

9 MS. BOLEN: JUST A BRIEF REDIRECT.

10 THE COURT: ALL RIGHT.

11 REDIRECT EXAMINATION

12 BY MS. BOLEN:

13 Q DR. SMITH, YOU SAID YOU SPENT ABOUT AN HOUR WITH  
14 victim ! DOING THE PHYSICAL EXAM AND THEN THE MORE SPECIFIC  
15 GENITAL EXAM?

16 A RIGHT.

17 Q AND CAN YOU JUST EXPLAIN A LITTLE BIT MORE ABOUT THE  
18 TESTING AND FINDINGS OF TRICHOMONAS IN ADULT MALES?

19 A REMEMBER I AM A PEDIATRICIAN AND THIS IS A MORE  
20 COMMON DISEASE IN ADULTS. MOST OF THE TIME IT IS  
21 DIAGNOSED IN WOMEN WHO DO NOT HAVE COMPLAINTS WHEN IT IS  
22 FOUND AND THEN IT IS RECOMMENDED THE SEXUAL PARTNERS BE  
23 TREATED. IT IS UNUSUAL FOR MEN TO BE TESTED, THE GENITAL  
24 IS THE COMMON SCENARIO. AND THE NOTABLE LITERATURE DOES,  
25 STUDIES, MEN WHO WERE KNOWN TO HAVE SEXUAL PARTNERS WITH

1 WOMEN WHO HAD TRICHOMONAS.

2 Q YOU ALSO TESTIFIED TRICHOMONAS CAN SPONTANEOUSLY  
3 CLEAR UP IN A MALE?

4 A YES.

5 Q REGARDING THE STATE IN WHICH YOU FOUND victim's  
6 HYMEN, THE WIDENING OF THE HYMEN THERE, IS THAT CONSISTENT  
7 WITH A PENETRATING INJURY?

8 A ARE YOU REFERRING TO THE WIDENING OF THE HYMEN OF THE  
9 OPENING?

10 Q YES, SIR.

11 A THAT IS TO ME LESS SPECIFICALLY IN THE ACTUAL  
12 NARROWING OF THE HYMEN ITSELF. BUT BECAUSE THE HYMEN IS  
13 NARROW THAT MAKES THE OPENING LARGER BUT THE APPEARANCE OF  
14 THE HYMEN, THAT CAN BE MORE SIGNIFICANT THAN THE ACTUAL  
15 MEASUREMENT, CENTIMETERS OF THE VAGINAL OPENING, THE  
16 APPEARANCE OF THAT HYMEN.

17 Q AND HOW EXACTLY DID YOU FIND THE HYMEN IN Minor  
18

19 A ON THE RIGHT AND LEFT SIDES, AT THE VAGINAL OPENING  
20 THERE WAS JUST A SPARE AMOUNT OF HYMEN TISSUE THERE.

21 Q AND WOULD THAT BE A NORMAL FINDING FOR A NINE YEAR  
22 OLD GIRL?

23 A THAT'S NOT POSSIBLE BUT VERY, NOT A NORMAL FINDING.

24 Q THANK YOU, DR. SMITH.

25 MR. WICKER: WE HAVE NOTHING FURTHER.

1 THE COURT: THANK YOU. MAY THIS WITNESS BE EXCUSED,  
2 PLEASE.

3 MS. BOLEN: YES, YOUR HONOR.

4 THE COURT: YOU ARE EXCUSED, DOCTOR.

5 MS. BOLEN: YOUR HONOR, THE STATE REST AT THIS TIME.

6 THE COURT: GREAT, THANK YOU VERY MUCH. MADAM  
7 FORELADY AND LADIES AND GENTLEMEN OF THE JURY, IT IS LUNCH  
8 TIME SO WE ARE GOING TO BREAK FOR LUNCH AT THIS TIME. YOU  
9 ARE FREE TO GO ON YOUR OWN, DON'T TALK ABOUT THE CASE WITH  
10 ANYBODY AND THAT INCLUDES THE BAILIFFS AND THE DEPUTIES,  
11 THEY ARE ON STRICT ORDERS NOT TO TALK TO YOU SO DON'T  
12 THINK THAT THEY ARE BEING RUDE OR ANYTHING. THEY WOULD BE  
13 IN HOT WATER WITH ME IF THEY DISCUSSED ANYTHING WITH YOU.  
14 SO, YA'LL BREAK FOR LUNCH AND BE BACK AT 2:15.

15 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR  
16 A LUNCH BREAK.)

17 THE COURT: ANYTHING AT THIS TIME?

18 MS. BOLEN: NOTHING FROM THE STATE AT THIS TIME.

19 MR. WICKER: YOUR HONOR, DOES THAT MEAN THAT THE  
20 PROSECUTION HAS RESTED?

21 THE COURT: YES, THEY HAVE RESTED THEIR CASE.

22 MR. WICKER: AND WE CAN START OUR CASE.

23 THE COURT: YES SIR, ANY MOTIONS?

24 MR. WICKER: I THINK I WILL MAKE A MOTION FOR A  
25 DIRECTED VERDICT TO FIND HIM NOT GUILTY BECAUSE I DON'T

1 BELIEVE THEY PRESENTED PROOF OF THE PRIMA FACIE CASE.

2 THE COURT: I AM GOING TO DISAGREE WITH YOU AND  
3 OVERRULE YOUR MOTION. NOW, MR. ELKINS, WILL YOU STAND FOR  
4 ME, PLEASE, RAISE YOUR RIGHT HAND.

5 JAMES ELKINS, AFTER BEING DULY SWORN, TESTIFIED  
6 AS FOLLOWS:

7 THE COURT: NOW, I WANT YOU TO UNDERSTAND THAT YOU  
8 HAVE AN ABSOLUTE CONSTITUTIONAL RIGHT TO TESTIFY IN THIS  
9 CASE AND YOU HAVE AN ABSOLUTE AND EQUAL CONSTITUTIONAL  
10 RIGHT NOT TO TESTIFY. IF YOU DECIDE NOT TO TESTIFY I  
11 WOULD INSTRUCT THE JURY THAT THEY COULD NOT CONSIDER THAT  
12 IN ANY FASHION WHATSOEVER IN THEIR DELIBERATIONS. THERE  
13 ARE CERTAIN STRATEGIC REASONS OR MOTIVES TO, IN SOME CASES  
14 TO TESTIFY AND IN OTHER CASES NOT TO TESTIFY. AND THOSE  
15 ARE THINGS YOU NEED TO TALK ABOUT WITH YOUR ATTORNEY. AND  
16 I DON'T KNOW AT THIS TIME WHETHER OR NOT YOU HAVE MADE A  
17 DECISION TO TESTIFY OR NOT. BUT I WANT YOU TO UNDERSTAND  
18 THAT YOU HAVE THOSE RIGHTS AND THAT YOU ARE THE ONE THAT  
19 MAKES THE DECISION AND NO ONE CAN FORCE YOU TO DO ONE  
20 THING OR THE OTHER. DO YOU UNDERSTAND THAT?

21 MR. ELKINS: YES, SIR.

22 THE COURT: DO YOU HAVE ANY QUESTIONS THAT YOU WOULD  
23 LIKE TO ASK ME ABOUT YOUR RIGHT TO TESTIFY OR NOT TO  
24 TESTIFY.

25 : I WANT TO TESTIFY.

1 THE COURT: OKAY. WELL, YOU TALK WITH YOUR ATTORNEY  
2 ABOUT IT, I JUST WANT TO MAKE SURE YOU UNDERSTAND ALL OF  
3 YOUR RIGHTS. OKAY.

4 MR. WICKER: FOR THE RECORD, YOUR HONOR, WE HAVE  
5 DISCUSSED THAT AT LENGTH AND HE WANTS TO TESTIFY.

6 THE COURT: OKAY.

7 MR. WICKER: HE UNDERSTANDS THE REPERCUSSIONS.

8 THE COURT: VERY GOOD. OF COURSE, YOU CAN CHANGE  
9 YOUR MIND RIGHT UP TO THE LAST MINUTE. HAVE A PLEASANT  
10 LUNCH AND BE BACK AT 2:15. THANK YOU.

11 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

12 THE COURT: ALL RIGHT, IS EVERYBODY READY.

13 MS. BOLEN: YOUR HONOR, THE STATE WOULD LIKE TO HAVE  
14 A HEARING REGARDING THE DEFENDANT'S CRIMINAL HISTORY  
15 UNDERSTANDING THAT MR. ELKINS WILL BE TESTIFYING ON HIS  
16 OWN BEHALF. AND THE STATE WILL IMPEACH HIM AS FAR AS HIS  
17 HISTORY. THE STATE HAS TWO CONVICTIONS WHICH FALLS UNDER  
18 RULE 609(A)(1) BEING CONVICTIONS WHICH MR. ELKINS COULD OF  
19 RECEIVED MORE THAN A YEAR THAT HAPPENED WITHIN THE PAST  
20 TEN YEARS. THE FIRST ONE IS A CONVICTION OF POSSESSION  
21 WITH INTENT TO DISTRIBUTE COCAINE AND THAT WAS IN 2002.

22 THE COURT: MR. WICKER, YOU WANT TO ADDRESS THAT?

23 MR. WICKER: DID YOU SAY YOU WERE NOT CONVICTED.

24 : I HAD SOME IN MY POCKET.

25 MR. WICKER: IT SAYS CHARGED, HE SAID HE HAS NEVER

1 BEEN CONVICTED OF IT.

2 THE COURT: WELL, DO YA'LL HAVE THE CERTIFIED  
3 INDICTMENT. LET ME JUST SAY THIS, YOU DON'T HAVE TO GIVE  
4 IT TO ME. IF IT COMES UP AND HE DENIES IT AND THEN WE,  
5 BUT WE INTEND TO IMPEACH HIM WITH A CONVICTION OF  
6 POSSESSION WITH INTENT TO DISTRIBUTE COCAINE I WILL ALLOW  
7 IT. WHAT IS THE OTHER ONE?

8 MS. BOLEN: THE SECOND FELONY IS BREAKING INTO A  
9 MOTOR VEHICLE, THIS WAS ON JULY 28TH OF 2003.

10 MR. WICKER: BREAKING INTO A MOTOR VEHICLE.

11 THE COURT: THAT IS AN OFFENSE THAT IS IMPEACHABLE  
12 UNDER THE RULES. IF HE DENIES IT, YA'LL CAN GET IN  
13 WHATEVER.

14 MS. BOLEN: AND THEN THE STATE HAS TWO THAT FALL  
15 UNDER 609(A)(2), CRIMES INVOLVING DISHONESTY, THERE ARE  
16 SEVERAL OF THOSE. THEFT BY DECEIT, TWO GUILTY CONVICTIONS  
17 ON MARCH 15TH OF THE YEAR OF 2000.

18 THE COURT: IS IT A SOUTH CAROLINA CONVICTION?

19 MS. BOLEN: IT IS, IT IS A NEWBERRY COUNTY.

20 THE COURT: PUT THEM ON NOTICE.

21 MS. BOLEN: WE ALSO HAVE A FILING A FALSE AFFIDAVIT  
22 TO OBTAIN A DRIVERS LICENSE AND A CONVICTION IN 1994. AND  
23 TWO COUNTS OF SWINDLING BOTH OF WHICH WERE CONVICTIONS IN  
24 FEBRUARY OF THE YEAR OF 2000.

25 THE COURT: YOU MENTIONED ONE THAT WAS MORE THAN TEN

1 YEARS OLD, AM I RIGHT?

2 MS. BOLEN: I AM SORRY, YOUR HONOR?

3 THE COURT: ONE OF THEM WAS MORE THAN TEN YEARS OLD.

4 MS. BOLEN: RIGHT. WELL, THAT WAS THE FALSE  
5 AFFIDAVIT TO OBTAIN A DRIVERS LICENSE WHICH GOES TO  
6 DISHONESTY WHICH I THOUGHT COULD BE OLDER THAN TEN YEARS  
7 OLD UNDER 609(A)(2).

8 THE COURT: WELL, LET ME READ THE SECTION. I THINK  
9 YOU HAVE GOT A TEN YEAR TIME LIMIT THAT APPLIES TO BOTH.  
10 I AM GOING TO ASK, I AM GOING TO RULE THAT YOU CANNOT  
11 IMPEACH HIM WITH THAT ONE.

12 MS. BOLEN: OKAY, THANK YOU, YOUR HONOR.

13 THE COURT: YOU ARE ON NOTICE TO WHAT THEY INTEND TO  
14 IMPEACH YOU WITH, MR. ELKINS. LET ME ASK YOU, STAND FOR  
15 ME, IF YOU WOULD. DO YOU, YOU HEARD WHAT THEY INTEND TO  
16 IMPEACH YOU WITH AND I DON'T KNOW, I DIDN'T LOOK AT HOW  
17 THEY INTEND TO PROVE IT. BUT HAVING HEARD THAT, IT IS  
18 GOING TO COME OUT IF YOU TAKE THE WITNESS STAND. DO YOU  
19 UNDERSTAND THAT THEY CAN QUESTION YOU ABOUT THOSE  
20 OFFENSES?

21 : YES.

22 THE COURT: I JUST WANT YOU TO KNOW THAT THAT WAS  
23 COMING, THE JURY WILL HEAR ABOUT IT. DOES THAT CHANGE  
24 YOUR MIND ABOUT WHETHER OR NOT YOU WANT TO TESTIFY?

25 : NO, SIR.

1 THE COURT: OKAY. ALL RIGHT. ANYTHING ELSE?

2 MR. WICKER: NOTHING BY THE DEFENSE, YOUR HONOR.

3 MS. BOLEN: NOTHING FROM THE STATE, YOUR HONOR.

4 THE COURT: LET'S BRING THE JURY BACK THEN.

5 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT  
6 APPROXIMATELY 2:30 P.M.)

7 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, I HOPE  
8 AND TRUST EVERYONE HAD A PLEASANT LUNCH. WE ARE READY TO  
9 PROCEED AT THIS TIME. MR. WICKER.

10 MR. WICKER: YOUR HONOR, WE WILL CALL OUR ONLY  
11 WITNESS, THE DEFENDANT IN THIS CASE, JAMES ELKINS.

12 JAMES ELKINS, AFTER BEING DULY SWORN, TESTIFIED  
13 AS FOLLOWS:

14 DIRECT EXAMINATION

15 BY MR. WICKER:

16 Q JAMES, I HAVE ALWAYS CALLED YOU HOTPATCH, IS THAT  
17 RIGHT?

18 A CORRECT.

19 Q NOW, WE ARE TALKING TO THE JURORS, THEY ARE THE ONES  
20 INTERESTED IN THIS SO YOU LOOK AT THE JURORS, TALK LOUD  
21 ENOUGH AND SLOW ENOUGH. CAN YOU DO THAT?

22 A YES.

23 Q CAN YOU GIVE THE JURY SOME IDEA OF HOW LONG WE HAVE  
24 KNOWN EACH OTHER?

25 A A LIFETIME.

1 Q A LIFETIME, OKAY. YOU HAVE KNOWN ME SINCE I HAVE  
2 GOTTEN OUT OF THE ARMY AT LEAST WHICH WAS 24 YEARS AGO, IS  
3 THAT CORRECT?

4 A CORRECT.

5 Q AND I HAVE REPRESENTED YOU FOR OTHER PROBLEMS THAT  
6 YOU HAVE HAD FROM TIME TO TIME?

7 A CORRECT.

8 Q AND YOU WOULD CALL FOR ADVICE FROM TIME TO TIME, IS  
9 THAT CORRECT?

10 A CORRECT.

11 Q OKAY. NOW, YOU HAVE HEARD ALL OF THE TESTIMONY SO  
12 FAR, DID YOU HEAR IT ALL?

13 A YES, I HEARD EVERYTHING.

14 Q NOW, I BELIEVE THE FIRST THING WE HAD TO DO WITH THIS  
15 IS YOU SIGNED A CONTRACT ON THE 18TH OF, I BELIEVE IT WAS  
16 THE 18TH OF JUNE OF '06?

17 A CORRECT.

18 Q AND YOU WERE IN JAIL THEN, WEREN'T YOU?

19 A YES, SIR.

20 Q AND SO YOU ALSO TALKED TO ME ABOUT THE CASE, IS THAT  
21 RIGHT?

22 A CORRECT.

23 Q HAVE YOU OR HAVE YOU NOT EVER ADMITTED DOING ANYTHING  
24 WRONG IN THIS CASE?

25 A NO, SIR.

1 Q YOU HAVE DENIED TO EVERYBODY WHO TALKED TO YOU?

2 A YES.

3 MS. BOLEN: YOUR HONOR, I NEED TO OBJECT TO THIS LINE  
4 OF QUESTIONING, HE IS LEADING THE WITNESS.

5 THE COURT: DON'T LEAD THE WITNESS.

6 Q I AM NOT GOING TO LEAD YOU BUT THEY SAID THIS  
7 OCCURRED BETWEEN MAY 10 AND MAY 29 OF 2005, TWO YEARS AND  
8 SIX MONTHS AGO AND I WOULD LIKE YOU TO TELL THE JURY WHAT  
9 YOU REMEMBER ABOUT THAT PERIOD IN YOUR LIFE.

10 A AT THIS PARTICULAR TIME I GOT STOPPED ON DEAD FIELD  
11 ROAD, THE OFFICER SAID I WAS DOWN IN THE CAR BUT I WASN'T,  
12 THE FELLOW THAT OWNED THE CAR WAS DRIVING SO THEY CARRIED  
13 ME TO JAIL. SO, I GOT 45 DAYS, WHILE I WAS DOING 45 DAYS  
14 AND HE PUT A \$2300.00 DOLLAR FINE ON ME SO I HAD TO SERVE  
15 THE 45 DAYS, I DIDN'T HAVE THAT KIND OF MONEY. SO, WHEN I  
16 GOT OUT I WENT HOME. SO, WHATEVER, I HAD SOME MONEY FOR  
17 DOING THE HOUSEWORK FOR THE BATHROOM AND THE FLOOR AND THE  
18 PORCH. AT THIS PARTICULAR TIME A FRIEND SAID YOU BETTER  
19 CALL THE SHERIFF, THEY HAVE GOT A WARRANT OUT ON YOU. I  
20 JUST GOT OUT OF JAIL. SO, I CALLED AND THEY SAID THEY GOT  
21 A WARRANT FOR RAPE. AND I SAID, WHO? AND THEY SAID  
22 victim! .. SO SURE ENOUGH ON FRIDAY ABOUT MIDNIGHT,  
23 ON FRIDAY NIGHT I OPENED THE DOOR AND THE OFFICER HAD A  
24 WARRANT. AT THIS PARTICULAR TIME I WAS SITTING IN JAIL TO  
25 JULY THE 19TH, I DON'T KNOW THE CORRECT DATE. I GOT SICK,

1 SO THEY TELL ME THEY WERE TREATING ME FOR THE GOUT, BUT  
2 THEY WERE DOING DNA, I DIDN'T KNOW IT. SO, I DIDN'T HEAR  
3 NO MORE FROM THEM WHEN THEY GOT THE DNA, HAIR, SPIT, BLOOD  
4 URINE, WHATEVER THEY ASKED FOR THEY GOT IT. SO, AFTER  
5 THAT I SIT IN JAIL UNTIL I CONTACTED MR. WICKER, FOR 14  
6 MONTHS AND A \$100,000.00 DOLLAR BAIL. AT THIS PARTICULAR  
7 TIME I WAS SUPPOSE TO GOTTEN ON THE 6TH TO COME TO COURT.  
8 SEE, WILL YOU DO ME SOME FAVOR, I DIDN'T MAKE IT THAT  
9 TRIP, I CAME UP APRIL THE 6TH OF '06. JUDGE WESTBROOK WAS  
10 HERE, HE IS DECEASED. HE CUT THE BAIL AFTER HE HEARD THE  
11 STATE'S EVIDENCE, WHICH THEY HADN'T TOLD ME. NOTHING ABOUT  
12 THE DNA UNTIL THEY TOOK ME OUT TO THE HOSPITAL AND GOT  
13 ANOTHER DNA. AT THAT TIME, I DON'T KNOW EXACTLY, THE LADY  
14 SOLICITOR PUT THE EVIDENCE ON THE TABLE AND THEY TOLD ME  
15 THEY GOT THE RESULTS BACK AND THEY WERE NEGATIVE AND WE  
16 DIDN'T KNOW NOTHING ABOUT IT.

17 Q LET ME INTERRUPT YOU FOR JUST A LITTLE BIT. WE WENT  
18 IN FRONT OF JUDGE MARC WESTBROOK NOW DECEASED AND GOT THE  
19 BOND REDUCED, IS THAT CORRECT?

20 A CORRECT.

21 Q YOU REMEMBER THAT?

22 A YES, SIR.

23 Q YOU HAVE BEEN IN JAIL HOW LONG BY THEM?

24 A ALMOST 14 MONTHS.

25 Q AND YOUR CHARGE IS THE SAME ONE YOU ARE ON TRIAL FOR

1 NOW, IS THAT CORRECT?

2 A CORRECT.

3 Q OKAY. DO YOU REMEMBER OR DO YOU NOT REMEMBER THAT  
4 YOU WERE TOLD--

5 MS. BOLEN: OBJECTION, THIS IS CALLING FOR HEARSAY  
6 STATEMENT.

7 Q WHAT WERE THEY CHECKING YOU FOR?

8 A THEY WERE CHECKING ME TO SEE OUT THERE FOR  
9 TRICHOMONAS OR WHATEVER THE WORD IS, SOME KIND OF DISEASE  
10 WHERE, ALL THE DNA CAME BACK NEGATIVE, WE DIDN'T SEE NO  
11 RESULTS FROM THAT UNTIL WE GOT INTO COURT WITH JUDGE  
12 WESTBROOK AND HE PUT IT ON THE TABLE.

13 Q SO, BASED ON WHAT WE PRESENTED TO JUDGE WESTBROOK,  
14 THE BOND WAS LOWERED SO YOU COULD GET A BONDSMAN?

15 A YES, SIR.

16 Q AND SINCE THAT TIME HAVE YOU BEEN OUT OF JAIL?

17 A I WAS BACK OVER THERE LAST NIGHT.

18 Q HAVE YOU OR HAVE YOU NOT BEEN IN ANY TROUBLE SINCE  
19 THEN WHILE YOU WERE OUT?

20 A I WENT TO A PARTY BACK IN MARCH THE 3RD, OF '07.  
21 3:00 OR 4:00 O'CLOCK IN THE AFTERNOON WHICH IS ON A  
22 SATURDAY. AND AT THIS PARTY, I NOTICE A CERTAIN,  
23 DIFFERENT ACTIVITIES GOING ON SO I CHOOSE TO LEAVE. I WAS  
24 GOING TO CALL A CAB, I DON'T KNOW WHAT SHE HAD AGAINST ME  
25 OR NOT, SHE CALLED THE POLICE. I GOT OUT THERE WAITING ON

1 THE CAB, I GOT IN THE CAB. I THOUGHT IT WAS THE CAB, IT  
2 WAS THE POLICE.

3 Q WHAT WERE YOU CHARGED WITH THEN?

4 A WHEN I GOT IN THE CAR, A, SIX HOURS LATER THEY COME  
5 AND SAID I HAD CRACK IN MY JACKET POCKET. A GUY AT THE  
6 PARTY SAID, NEVER SEEN THAT, THAT IS WHAT THEY TOLD ME.

7 Q WERE YOU OR WERE YOU NOT CHARGED WITH COCAINE OR  
8 CRACK?

9 A HE SAID CRACK.

10 Q WERE YOU CHARGED WITH IT?

11 A THEY GAVE ME A WARRANT.

12 Q HAS THAT WARRANT EVER BEEN DISPOSED OF?

13 A NO, SIR.

14 Q YOU THINK THAT WARRANT IS STILL AGAINST YOU, IS THAT  
15 CORRECT?

16 A I GUESS.

17 Q NOW, WHEN YOU FIRST MET victim's MOTHER, DO YOU  
18 REMEMBER?

19 A YES SIR, 2001.

20 Q COULD YOU TELL THE COURT HOW YOU MET HER?

21 A IT WAS ON 34, YOU MIGHT BE FAMILIAR, AROUND THE  
22 SKATING RING, IT WAS RAINING, COLD. SO, SHE SAID THE LADY  
23 SHE WAS LIVING WITH WHICH WAS EDNA ROOF HAD THROWN HER  
24 CLOTHES OUT. I TOOK HER HOME WITH ME JUST TO, SHE STAYED  
25 FOR TWO AND A HALF YEARS. I HAD NO IDEA WHAT WAS GOING

1 ON, I KNOW I WAS GOOD TO HER LIKE A FATHER.

2 Q HOLD ON JUST A MINUTE. YOU PICKED UP victim's 'S

3 MOTHER, YOU DIDN'T KNOW HER BEFORE THAT?

4 A I SEEN HER BUT I DIDN'T HAVE NO RELATIONSHIP OR  
5 NOTHING LIKE THAT.

6 Q DID YOU OR DID YOU NOT BECOME HER BOYFRIEND?

7 A AFTER FOUR OR FIVE MONTHS, WE TALKED IN AND OUT AND  
8 IT LED INTO A RELATIONSHIP.

9 Q DURING THIS TIME WHERE DID SHE LIVE?

10 A IN MY TRAILER.

11 Q IN THE TRAILER WHERE YOU ALSO LIVED?

12 A YES, SIR.

13 Q DURING THIS TIME DID victim ALSO LIVE THERE, DID SHE  
14 NOT?

15 A SHE LIVED THERE.

16 Q AND WHEN DID YOU MEET victim ?

17 A THE SAME NIGHT I PICKED HER UP, SHE WENT TO SCHOOL  
18 OVER ON BOUNDARY STREET, SHE GOT AND TRANSFERRED TO NANCE  
19 STREET.

20 Q victim AND HER MOTHER LIVED WITH YOU ABOUT  
21 HOW LONG?

22 A TWO AND A HALF YEARS.

23 Q HOW DID YOU AND victim's MOTHER PART WAYS?

24 A WELL, LIKE I TOLD YOU, I GOT THAT TICKET AND FOR 45  
25 DAYS I HAD NO IDEA OF WHAT WAS GOING ON. SO, THE HOUSE

1 HAD BEEN ROBBED AND EVERYTHING TAKEN OUT. I DIDN'T KNOW  
2 ANYTHING ABOUT THIS RAPE CHARGE UNTIL A FRIEND TOLD ME TO  
3 CALL THE SHERIFF, THAT THEY HAD A WARRANT OUT ON ME. I  
4 CALLED AND HE SAID HE DID.

5 Q YOU GOT OUT OF JAIL YOUR HOUSE WAS EMPTY?

6 A CORRECT.

7 Q YOU NEVER LIVED WITH THE <sup>victim</sup> . AGAIN, DID YOU?

8 A NO, SIR.

9 Q WHEN WERE YOU SERVED THE WARRANT THAT WE ARE HERE FOR  
10 TODAY?

11 A THE 10TH OR 11TH OF JUNE.

12 Q AND SINCE THAT TIME HAVE YOU OR HAVE YOU NOT  
13 COOPERATED WITH ALL OF LAW ENFORCEMENT?

14 A ANYTHING THEY ASK ME TO DO I DID IT.

15 Q AND TELL THE JURY THE THINGS YOU DID THEY ASKED YOU  
16 TO DO.

17 A WELL, FIRST APPROACHED ME AT THE JAIL HOUSE, LIKE I  
18 SAID I GOT SICK, I GOT TO WHERE I COULDN'T WALK AND THEY  
19 GOT SOME MEDICINE FOR ME. THEY TOOK BLOOD, HAIR, SPIT,  
20 TWO PILLS TO TAKE TWICE A DAY BUT ALL THE SAME TIME THEY  
21 WERE GETTING A DNA. DIDN'T HEAR NO MORE BACK FROM THEM  
22 UNTIL JUDGE WESTBROOK SAID SHE GOT THESE JULY THE 28TH,  
23 THAT I HAD NO KNOWLEDGE OF IT. AFTER THAT MR. WICKER, WE  
24 WENT TO COURT. IT WAS TOO LATE IN THE AFTERNOON TO TRY IT  
25 SO WE PASSED IT ON TO APRIL THE 6TH, THAT IS WHEN I

1 LEARNED THEY GOT ANOTHER DNA AND BOTH OF THEM COME BACK  
2 NEGATIVE. I STILL DIDN'T KNOW NO BETTER.

3 Q DID YOU EVER GET A REPORT FROM THESE TESTS?

4 A I GOT NOTHING.

5 Q HOW DID YOU KNOW THEY WERE NEGATIVE?

6 A WE READ IT AT THE COURT HOUSE.

7 Q SO, YOU HAVE SEEN THE REPORTS SHOWING NEGATIVE?

8 A SOLICITOR HAD THEM READY FOR ME, THE TWO OF THEM.

9 Q AND YOU DENIED EVERYTHING SO FAR, I BELIEVE, IS THAT  
10 CORRECT?

11 A YES, SIR.

12 Q I HAVE NO FURTHER QUESTIONS. DID YOU HAVE ANYTHING  
13 THAT YOU REALLY THINK SHOULD BE TOLD THAT IS LEGAL TO  
14 TELL?

15 MS. BOLEN: YOUR HONOR, THAT IS BROAD.

16 THE COURT: THAT IS INAPPROPRIATE, WE DON'T GIVE JUST  
17 NARRATIVE COMMENTS.

18 MR. WICKER: WE HAVE NO FURTHER QUESTIONS. LISTEN TO  
19 EVERYTHING THAT YOU ARE ASKED AND LOOK AT THE JURY AND  
20 TELL THEM THE ANSWER.

21 CROSS-EXAMINATION

22 BY MS. BOLEN:

23 Q MR. ELKINS, YOU SPOKE ABOUT GETTING A REDUCTION IN  
24 YOUR BOND IN FRONT OF JUDGE WESTBROOK?

25 A YES, MA'AM.

1 Q DO YOU REMEMBER APPROXIMATELY WHEN THAT WAS?

2 A I THINK IT WAS SOMEWHERE AROUND, IT WAS IN JUNE.

3 Q YOUR TESTIMONY SAID IT WAS SOMETIME IN APRIL?

4 A NO, I CAME IN APRIL 6TH WHEN HE REDUCED IT. I DIDN'T  
5 GET OUT THEN.

6 Q HE REDUCED IT SOMETIME IN APRIL?

7 A YES, MA'AM.

8 Q AND IT WAS, YOU WERE IN FRONT OF JUDGE WESTBROOK?

9 A THAT IS CORRECT.

10 Q AND AT THAT TIME YOU WERE REPRESENTED BY MR. WICKER?

11 A YES, MA'AM.

12 Q MR. ELKINS, I AM HANDING YOU WHAT IS A CLOCKED COPY  
13 OF THE BOND REDUCTION, CAN YOU LOOK AT THAT. CAN YOU TELL  
14 ME WHAT JUDGE SIGNED THAT?

15 A THAT WAS NOT THE JUDGE, I HAVE GOT A PAPER OVER THERE  
16 WITH JUDGE WESTBROOK'S NAME ON IT.

17 MS. BOLEN: YOUR HONOR, AT THIS TIME THE STATE WOULD  
18 MOVE TO ADMIT WHAT HAS BEEN MARKED AS STATE'S EXHIBIT  
19 NUMBER 1 WHICH IS A COPY OF THE ORDER OF BOND SIGNED ON  
20 APRIL 12TH BY JUDGE MARK HAYES.

21 MR. WICKER: I WILL BE WILLING TO STIPULATE IT WAS  
22 JUDGE MARK HAYES AND NOT JUDGE MARC WESTBROOK.

23 THE COURT: WILL YOU OBJECT TO THIS DOCUMENT?

24 MR. WICKER: NO.

25 THE COURT: OKAY, IT IS IN.

1 (WHEREUPON, STATE'S EXHIBIT NO. 1 WAS ADMITTED INTO  
2 EVIDENCE.)

3 Q MR. ELKINS, YOU ALSO TESTIFIED THAT YOU DID NOT PLEAD  
4 TO ANY COCAINE OR CRACK COCAINE, IS THAT TRUE?

5 A NOT TO THIS MOMENT.

6 Q MR. ELKINS, I AM HANDING YOU WHAT HAS BEEN MARKED AS  
7 STATE'S EXHIBIT NUMBER 2, IT IS CALLED A SENTENCING SHEET,  
8 WILL YOU TAKE A LOOK AT THAT PLEASE?

9 A WHAT IS THE DAY'S DATE ON IT?

10 Q THE DATE IS OCTOBER 28TH OF 2002.

11 A I WAS OUT AT THE NATIONAL GUARD ARMORY THEN.

12 Q IS THAT YOUR SIGNATURE, MR. ELKINS?

13 A YES, MA'AM.

14 Q IT IS?

15 A YES, MA'AM.

16 Q THAT IS YOUR SIGNATURE?

17 A YES, MA'AM.

18 Q YOU SEE THAT THIS IS A PLEA TO POSSESSION WITH INTENT  
19 TO DISTRIBUTE COCAINE AND YOU SIGNED THIS PLEA AND YOU  
20 WERE SENTENCED FIVE YEARS. DO YOU SEE ALL OF THAT?

21 A I WAS SENTENCED TO THREE YEARS OF PROBATION.

22 Q YOU ADMIT THAT YOU PLEAD GUILTY TO POSSESSION AND TO  
23 DISTRIBUTE COCAINE, YOU PLEAD GUILTY TO IT?

24 A WELL, THEY SAID THEY FOUND IT, THEY FOUND IT TWO DAYS  
25 LATER BESIDE THE ROAD, THEY DIDN'T STATE ALL OF THAT.

1 Q YOU TESTIFIED ON DIRECT THAT YOU HADN'T PLEAD GUILTY  
2 OR BEEN CONVICTED OF THIS?

3 A I SAID MARCH THE 3RD, '07.

4 MS. BOLEN: YOUR HONOR, THE STATE WOULD MOVE TO HAVE  
5 THIS SENTENCING SHEET WHICH HAS BEEN MARKED AS STATE'S  
6 EXHIBIT NUMBER 2 ENTERED INTO EVIDENCE.

7 MR. WICKER: WE HAVE NO OBJECTION.

8 THE COURT: WITHOUT OBJECTION.

9 (WHEREUPON, STATE'S EXHIBIT NO. 2 WAS ADMITTED INTO  
10 EVIDENCE.)

11 Q MR. ELKINS, HAVE YOU BEEN CONVICTED IN THE PAST TEN  
12 YEARS OF ANY OTHER CRIMES WHICH CARRIES A PUNISHMENT OF  
13 MORE THAN ONE YEAR EVEN IF YOU HAVE NOT RECEIVED MORE THAN  
14 ONE YEAR?

15 A I HAD A DUI.

16 Q ANYTHING ELSE?

17 A NOTHING ELSE WITH NO TIME INVOLVED.

18 Q DO YOU REMEMBER PLEADING GUILTY IN 2003 TO ANYTHING  
19 CARRYING MORE THAN ONE YEAR?

20 A DUI.

21 Q WHAT ABOUT BREAKING INTO A MOTOR VEHICLE?

22 A I JUST EXPLAINED ABOUT THE MOTOR VEHICLE IN POMARIA,  
23 SOUTH CAROLINA, I DON'T KNOW THE MAN'S REAL NAME, ALL I  
24 KNOW IS HE IS BLACK. BUT HE HAD GOT OUT OF THE CAR--

25 Q JUST ANSWER MY QUESTION. MR. ELKINS, I AM HANDING

1 YOU WHAT HAS BEEN MARKED AS STATE'S EXHIBIT 3, VERY  
2 SIMILAR TO THE DOCUMENT THAT I JUST SHOWED YOU, A  
3 SENTENCING SHEET DATED 28TH OF JULY OF 2003. AGAIN, YOU  
4 HAVE PLEAD GUILTY TO BREAKING INTO A MOTOR VEHICLE?

5 A THAT IS MY SIGNATURE BUT IT WASN'T NO BREAKING INTO  
6 NO VEHICLE.

7 Q ANSWER THE QUESTION, IS THAT YOUR SIGNATURE OF YOU  
8 PLEADING GUILTY OF BREAKING INTO A MOTOR VEHICLE?

9 A YES.

10 Q AT THIS TIME THE STATE WOULD MOVE STATE'S EXHIBIT  
11 NUMBER 3 INTO EVIDENCE.

12 MR. WICKER: I HAVE NO OBJECTION.

13 THE COURT: NO OBJECTION.

14 (WHEREUPON, STATE'S EXHIBIT NO. 3 WAS ADMITTED INTO  
15 EVIDENCE.)

16 Q MR. ELKINS, YOU TESTIFIED ON DIRECT EXAMINATION THAT  
17 YOU WENT TO JAIL FOR ABOUT 45 DAYS SOME TIME IN THE SPRING  
18 OF 2005?

19 A MARCH THE 3RD OF '07.

20 Q MARCH THE 3RD OF '07. WHAT ABOUT JUNE OF 2005?

21 A JUNE OF 2005, THAT IS WHAT I HAD FOR THIS RAPE CASE.

22 Q MR. ELKINS, YOU TESTIFIED ALSO ON DIRECT THAT YOU  
23 WERE INFORMED BY SOMEONE THAT THERE WAS A WARRANT OUT FOR  
24 YOU FOR THESE RAPE CHARGES?

25 A EXPLAIN YOURSELF AGAIN.

1 Q YOU TESTIFIED THAT SOMEONE TOLD YOU, HEY, THERE IS A  
2 WARRANT OUT FOR YOU ON A RAPE CHARGE?

3 A THAT'S RIGHT.

4 Q YOU SAID YOU CALLED THE SHERIFFS OFFICE?

5 A I CALLED THE COMPLEX.

6 Q OUT ON 219, AT THAT TIME IT WAS DOWN THERE. WHEN  
7 WERE THESE WARRANTS, HOW DID YOU GET THESE WARRANTS?

8 A I DIDN'T GET THEM, I CALLED AND ASKED IF THEY HAD ONE  
9 FOR ME AND I WAS TOLD THAT THEY HAD ONE FOR ME. I TOLD  
10 THEM I WOULD BE HOME, THAT IS WHERE I WAS WHEN THEY COME  
11 AND GOT ME.

12 Q AND YOU TESTIFIED THEY CAME AROUND MIDNIGHT?

13 A CLOSE TO MIDNIGHT.

14 Q AND YOU TESTIFIED THAT YOU OPENED THE DOOR.

15 A OPENED THE DOOR.

16 Q OPENED THE DOOR FOR THE SHERIFF?

17 A I OPENED THE DOOR.

18 Q YOU OPENED THE DOOR?

19 A YES, MA'AM. THERE WAS NOBODY ELSE THERE.

20 MS. BOLEN: YOUR HONOR, THE STATE HAS NO FURTHER  
21 QUESTIONS.

22 MR. WICKER: WE HAVE NO FURTHER QUESTIONS, YOUR  
23 HONOR. YOU MAY STEP DOWN AND THE DEFENSE REST.

24 THE COURT: ALL RIGHT.

25 MS. BOLEN: YOUR HONOR, AT THIS TIME THE STATE WOULD

1       LIKE TO CALL A REBUTTAL WITNESS.

2               THE COURT:   LET ME SEE THE LAWYERS UP HERE FOR A  
3       SECOND.

4               (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE  
5       PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE  
6       JURY.)

7               MS. BOLEN:   YOUR HONOR, THE STATE CALLS A REBUTTAL  
8       WITNESS, ODELL SCHUMPERT.

9               ODELL SCHUMPERT, AFTER BEING DULY SWORN,  
10      TESTIFIED AS FOLLOWS:

11                               DIRECT EXAMINATION

12      BY MS. BOLEN:

13      Q       GOOD AFTERNOON.   LIEUTENANT SCHUMPERT, WHERE DO YOU  
14      WORK?

15      A       I WORK AT THE NEWBERRY COUNTY SHERIFFS OFFICE.

16      Q       HOW LONG HAVE YOU BEEN WITH THE SHERIFFS OFFICE?

17      A       A LITTLE OVER 12 YEARS.

18      Q       WERE YOU WORKING IN YOUR CAPACITY WITH THE SHERIFFS  
19      OFFICE ON JUNE THE 10TH OF 2005?

20      A       YES, MA'AM.

21      Q       AND WHAT ARE YOUR DUTIES AT THE SHERIFFS OFFICE, WHAT  
22      DO YOU DO FOR THEM?

23      A       I AM A SHIFT LIEUTENANT.

24      Q       ARE PART OF YOUR DUTIES AS A LIEUTENANT AT THE  
25      SHERIFFS OFFICE SERVING WARRANTS?

1 A YES, MA'AM.

2 Q DO YOU RECALL SERVING A WARRANT ON JUNE THE 10TH OF  
3 2005?

4 A YES, I DO.

5 Q AND WHAT WERE THOSE WARRANTS FOR?

6 A THE WARRANTS WERE FOR MR. ELKINS, BETTER KNOWN FOR  
7 HOTPATCH FOR CRIMINAL SEXUAL CONDUCT.

8 Q DID YOU GO TO MR. ELKINS' HOUSE TO SERVE THESE  
9 WARRANTS?

10 A YES, MA'AM.

11 Q AND CAN YOU DESCRIBE FOR THE JURY WHAT HAPPENED WHEN  
12 YOU WENT TO HIS HOUSE TO SERVE THE WARRANTS?

13 A I WENT WITH ANOTHER DEPUTY, DEPUTY TED GRAHAM, WE  
14 WENT TO . . . ROAD, IT WAS ABOUT 11:30 THAT  
15 NIGHT. WE KNOCKED ON THE DOOR AND DIDN'T GET AN ANSWER,  
16 THE KITCHEN LIGHT WAS ON, THE SCREEN DOOR TO THE TRAILER  
17 WAS LOCKED ON THE INSIDE. AND HE USUALLY KEEPS A LOCK ON  
18 THE OUTSIDE OF THE DOOR, WE KNEW HE WAS IN THE RESIDENCE  
19 BECAUSE THE LOCK WAS REMOVED FROM THE OUTSIDE OF THE DOOR.  
20 WE LOOKED IN THROUGH A WINDOW AND SAW MR. ELKINS SITTING  
21 ON A PULLOUT.

22 Q WHAT HAPPENED AFTER YOU KNOCKED ON THE DOOR AND  
23 RECEIVED NO ANSWER?

24 A HE REFUSED TO COME TO THE DOOR AND AFTER SEVERAL  
25 TIMES OF KNOCKING AND HE WOULDN'T OPEN THE DOOR, WE WERE

1 TELLING HIM WE WANTED TO COME IN AND SERVE A WARRANT BUT  
2 HE NEVER OPENED THE DOOR. SHORTLY AFTER THAT I CALLED  
3 SERGEANT MATT BOWERS WHO ALSO CAME DOWN AND AT THAT TIME  
4 WE HAD TO TAKE OUR WAY INTO THAT DOOR. IT IS KIND OF  
5 HARD, BEHIND THE DOOR HE HAD, HE HAD A FOUR BY FOUR ACROSS  
6 THE DOOR.

7 Q IS IT YOUR TESTIMONY THAT YOU HAD TO ACTUALLY KICK  
8 DOWN THE DOOR TO GAIN ENTRY INTO MR. ELKINS' RESIDENCE TO  
9 SERVE THESE WARRANTS?

10 A YES MA'AM, THAT IS CORRECT.

11 Q WHEN YOU KNOCKED ON THE DOOR HOW DID YOU KNOW MR.  
12 ELKINS HEARD YOU?

13 A OH, I HAVE NO DOUBT.

14 Q DID YOU CALL OUT OR ANNOUNCE ANYTHING?

15 A YES MA'AM, WE SAID, HOTPATCH, OPEN THE DOOR, THIS IS  
16 THE SHERIFFS OFFICE. AND WE HEARD HIM MOVING AROUND AND  
17 HE NEVER COME TO THE DOOR, WE KNOCKED AND WE KNOCKED AND  
18 WE KNOCKED. I SAW HIM PEEPING OUT, THERE IS A LITTLE  
19 WINDOW IN THE TRAILER WHICH IS ABOVE THE KITCHEN SINK, WE  
20 SAW HIM PEER OUT.

21 Q WHEN YOU SAW HIM PEEK OUT THE WINDOW YOU KNEW THAT HE  
22 SAW YOU STANDING OUT THERE?

23 A YES, MA'AM.

24 Q AFTER SERVING THE WARRANTS ON MR. ELKINS, DID YOU  
25 HAVE ANY TROUBLE WITH HIM?

1 A AFTER WE GOT INSIDE THE RESIDENCE HE DID NOT WANT TO  
2 GO. SO, WHAT WE DID BASICALLY, IS THAT WE ASKED HIM TO  
3 GET DRESSED AND HE REFUSED TO GET DRESSED AND WE TOOK HIM  
4 OUT IN HIS UNDERCLOTHES.

5 Q WAS HE COOPERATIVE WITH YOU?

6 A NO MA'AM, NOT AT ALL.

7 Q I HAVE NO FURTHER QUESTIONS.

8 CROSS-EXAMINATION

9 BY MR. WICKER:

10 Q ONE QUESTION, DID YOU CHARGE HIM WITH RESISTING  
11 ARREST?

12 A YES SIR, I DID.

13 Q WHAT HAPPENED TO THAT CHARGE?

14 A IT WAS UP THERE AT MAGISTRATES COURT.

15 Q DID YOU GO AND TESTIFY ON IT?

16 A YES, IT WAS BACK IN 2005.

17 Q I HAVE NO FURTHER QUESTIONS. THANK YOU.

18 THE COURT: THANK YOU, SIR, YOU CAN STEP DOWN.

19 ANYTHING FURTHER?

20 MS. BOLEN: NOTHING FROM THE STATE, YOUR HONOR.

21 THE COURT: MADAM FORELADY AND LADIES AND GENTLEMEN  
22 OF THE JURY, THIS IS ONE OF THOSE TIMES I NEED TO TALK TO  
23 THE ATTORNEYS ABOUT LEGAL STUFF OUTSIDE OF YOUR PRESENCE.  
24 SO, PLEASE RETIRE TO YOUR JURY ROOM, WE WILL BE RIGHT BACK  
25 WITH YOU AND DON'T DISCUSS THE CASE. THANK YOU, VERY

1 MUCH.

2 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT.)

3 THE COURT: ALL RIGHT, ANY MOTIONS.

4 MR. WICKER: I HAVE ONE MOTION, YOUR HONOR.

5 THE COURT: YES, SIR.

6 MR. WICKER: I WOULD LIKE TO MAKE A MOTION OF A  
7 FINDING OF NOT GUILTY BECAUSE THEY HAVE NOT, THE OTHER  
8 SIDE HAS NOT HAD A PRIMA FACIE CASE TO SHOW.

9 THE COURT: ALL RIGHT, DENIED.

10 MS. BOLEN: THANK YOU, JUDGE.

11 THE COURT: ANYTHING FROM THE STATE?

12 MS. BOLEN: NOTHING FROM THE STATE, YOUR HONOR.

13 MR. WICKER: NOTHING FROM THE DEFENSE, YOUR HONOR.

14 THE COURT: ALL RIGHT, WHAT YA'LL WANT ME TO TELL THE  
15 JURY. DO YOU HAVE ANY REQUEST TO CHARGE?

16 MS. BOLEN: YOUR HONOR, THE STATE WOULD WAIVE OPENING  
17 AND JUST CLOSE.

18 THE COURT: OKAY. DO YOU HAVE ANY SPECIAL REQUEST  
19 FOR CHARGE?

20 MR. WICKER: I DO NOT.

21 MS. BOLEN: I DO NOT EITHER, YOUR HONOR.

22 THE COURT: I WILL JUST TELL YOU, YOU WANT TO CHARGE  
23 ON EXPERT WITNESSES. HERE IS WHAT I AM GOING TO CHARGE,  
24 DUTIES OF THE JUDGE AND THE JURY, THE INDICTMENT AND THE  
25 ARREST ARE NOT EVIDENCE, SOMETHING ON MULTIPLE CHARGES.

1 SOMETHING SHORT ON EXPERT WITNESSES, CREDIBILITY OF THE  
2 WITNESSES, PRIOR RECORD OF THE DEFENDANT IS LIMITED FOR  
3 IMPEACHMENT, PRESUMPTION OF INNOCENCE, REASONABLE DOUBT,  
4 CSC WITH A MINOR, FIRST AND LEWD ACT. DOES THAT SOUND  
5 ABOUT RIGHT?

6 MS. BOLEN: YES, JUDGE.

7 THE COURT: ANYTHING ELSE THAT YA'LL THINK NEEDS TO  
8 BE CHARGED?

9 MR. WICKER: NOT FROM THE DEFENSE, YOUR HONOR.

10 MS. BOLEN: NOT FROM THE STATE, YOUR HONOR.

11 THE COURT: WE HAVE PREPARED SOME VERDICT FORMS,  
12 WOULD YA'LL LIKE TO EXAMINE THOSE, WE HAVE ONE FOR EACH  
13 INDICTMENT, WE THOUGHT THAT WOULD BE LESS CONFUSING.

14 MR. WICKER: YES, I WANT TO GLANCE AT IT.

15 THE COURT: ALL RIGHT.

16 MR. WICKER: THEY LOOK GOOD TO ME, YOUR HONOR.

17 THE COURT: WE WILL PUT THE SAME DATES AS ON THE  
18 INDICTMENTS TO TRY TO MAKE THEM LESS CONFUSING. WHY DON'T  
19 WE TAKE ABOUT TEN MINUTES, LET THE JURY GET COMPOSED AND  
20 WE WILL CRANK IT BACK UP.

21 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

22 THE COURT: BRING THE JURY IN, PLEASE.

23 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT  
24 APPROXIMATELY 3:25 P.M.)

25 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN OF THE

1 JURY, WELCOME BACK. IF YOU REMEMBER, MY ROADMAP THAT I  
2 GAVE YOU YESTERDAY AFTERNOON, I HAD FIVE PARTS OF THE  
3 TRIAL. THE FIRST PART WAS THE OPENING STATEMENTS OF THE  
4 ATTORNEYS, THE SECOND PART IS THE PRESENTATION OF THE  
5 TESTIMONY AND THE EVIDENCE AND WE HAVE CONCLUDED THAT.  
6 SO, WE ARE NOW GOING TO MOVE INTO THE THIRD PART OF THE  
7 TRIAL WHICH ARE THE CLOSING ARGUMENTS FROM THE ATTORNEYS.  
8 AND IF YOU WILL REMEMBER, AFTER THAT I WILL GIVE YOU MY  
9 CHARGE TO YOU ON WHAT THE LAW IS IN THIS CASE AND THEN  
10 SEND YOU BACK AND IT WILL BE YOUR CASE TO DECIDE. WE ARE  
11 CLOSING IN ON IT AND YOU WILL HAVE THE CASE VERY SHORTLY.  
12 YOU HAVE PAID CLOSE ATTENTION, I ASK YOU TO CONTINUE TO DO  
13 THAT DURING THE COURSE OF THE ARGUMENTS FOR THESE FINE  
14 ATTORNEYS. THANK YOU. MR. WICKER.

15 MR. WICKER: MAY IT PLEASE THE COURT, MS. BOLEN,  
16 MADAM FORELADY, LADIES AND GENTLEMEN OF THE JURY, WE HAVE  
17 NOT WASTED ANY TIME IN THIS CASE. THIS CASE HAS BEEN  
18 GOING ON FOR THE PAST DAY, I DIDN'T OBJECT AT ALL. YOU  
19 KNOW WHY I DIDN'T OBJECT, I WANTED YOU TO HEAR EVERYTHING,  
20 I REALLY DIDN'T CARE WHAT YOU HEARD, I DIDN'T WANT TO  
21 OBJECT BECAUSE I DIDN'T WANT YOU TO THINK I WAS KEEPING  
22 YOU FROM HEARING ANYTHING. AND THE OTHER SIDE OBJECTED TO  
23 MY ASKING LEADING QUESTION. NOW, ANOTHER THING TO KEEP  
24 STRAIGHT, HE IS CHARGED WITH FOUR INDICTMENTS, HE IS NOT  
25 CHARGED WITH ALL OF THESE THINGS WHERE HE HAD COCAINE, HE

1 HAS NOT BEEN A MODEL CITIZEN. HE IS 70 YEARS OLD NOW, HE  
2 WAS 67 THEN AND WE ARE NOT SAYING THAT HE HAS BEEN A GOOD  
3 CITIZEN, WE ARE NOT SAYING THAT HE DIDN'T GO TO JAIL A  
4 WHOLE BUNCH OF TIMES, WE ARE NOT SAYING ALL OF THAT.  
5 THERE ARE NO PRIOR CONVICTIONS TO MY KNOWLEDGE THAT HE HAS  
6 EVER BEEN INVOLVED IN SEXUAL MISCONDUCT WITH ANYBODY. AND  
7 IN THIS CASE I AM RELYING ON YOU FOLKS TO DISCUSS  
8 REASONABLE DOUBT AND I WILL TELL YOU WHY. WE HAVE A CASE  
9 HERE WHERE THERE IS ABSOLUTELY NOBODY PRESENT EXCEPT THIS  
10 LITTLE GIRL AND MY CLIENT, TWO PEOPLE AND THEY WERE IN TWO  
11 PLACES, ONE ON . . . AND ONE WHERE HE LIVED. NOBODY  
12 ELSE WAS THERE. SHE SAID SHE WAS AFRAID TO TELL ANYBODY  
13 WHICH IS PERFECTLY NORMAL IN A CASE LIKE THIS BECAUSE THEY  
14 ARE AFRAID TO TELL PEOPLE. NOT ONLY THAT BUT THE PROBLEM  
15 YOU HAVE HERE IS A BIG PROBLEM, IS MY CLIENT A BALLED  
16 FACED LIAR, HE ALWAYS SAID I DIDN'T DO IT, HE HAS ALWAYS  
17 COOPERATED. HE SAID HE DIDN'T KNOW THAT THEY WERE TESTING  
18 HIM BUT HE WAS TESTED FOR THESE VARIOUS THINGS, ONE  
19 PARTICULAR, A DISEASE IN PARTICULAR WHICH THEY SAID IT WAS  
20 SEXUALLY TRANSMITTED. AND HE GOT A NEGATIVE REPORT ON  
21 THAT, HE DIDN'T HAVE THAT DISEASE. AS FAR AS I KNOW HE  
22 DIDN'T HAVE ANY DISEASE AND HE IS SAYING HE HAD NO SEXUAL  
23 MISCONDUCT WITH THAT CHILD AT ALL. THEY LOVED HER, HE  
24 TOOK HER MOTHER AND HER IN WHEN THEY DIDN'T HAVE A HOME  
25 AND THEY LIVED WITH HIM FOR SEVERAL YEARS. THE LITTLE

1 GIRL SAID THAT SHE LOVED HIM AND HE TREATED HER OKAY UNTIL  
2 ALL OF THIS HAPPENED. HE SAYS HE WAS IN JAIL AND HE CAME  
3 HOME AND HIS HOUSE HAD BEEN RAM SHACKED AND EVERYTHING WAS  
4 GONE AND THEY HAD MOVED OUT. I DON'T THINK ANYBODY  
5 DISPUTED THAT, HE LIVES IN A CERTAIN NEIGHBORHOOD THAT IS  
6 NOT THE BEST. IT IS A DIFFERENT KIND OF NEIGHBORHOOD, WE  
7 HAD A CULTURE GAP, WE HAD GENERATION GAPS, THERE IS AT  
8 LEAST ONE GENERATION GAP INCLUDING ME AND YOU. AND THERE  
9 ARE TWENTY DIFFERENT AGE GROUPS AND PEOPLE THINK A LITTLE  
10 DIFFERENT. MY GROUP CAME UP IN WORLD WAR II IN THE  
11 DEPRESSION AND WE ARE PENNY PINCHERS, WE DON'T THROW  
12 THINGS AWAY AND WE HAVE TO WORK AT IT. WE DON'T KNOW  
13 ANYTHING ABOUT DRUGS BECAUSE WE DIDN'T HAVE DRUGS, I NEVER  
14 EVEN HAD A CIGARETTE. YOU WENT TO SCHOOL, EVERYBODY DID  
15 WHAT THE TEACHER SAID, AND I MEAN IT, I AM NOT PLAYING  
16 AROUND, WE DID WHAT THE TEACHER SAID. EVERYBODY WAS IN  
17 THE SAME CLASS, THAT IS HOW I STAYED ON THE HONOR ROLL,  
18 NOT BECAUSE I WAS SMART BUT I WAS SMART ENOUGH TO PASS.  
19 ELKINS GREW UP IN A DIFFERENT ENVIRONMENT THAN ME, AND HE  
20 IS ONLY SEVEN YEARS YOUNGER THAN I AM AND SO HE IS PRETTY  
21 CLOSE TO MY AGE. HE IS OLD ENOUGH THAT MOST OF YOU FROM  
22 YOUR PERSONAL EXPERIENCE KNOW A MAN THAT AGE, CERTAINLY IF  
23 HE IS DRINKING, HE PROBABLY COULDN'T EVEN DO WHAT THEY  
24 SAID HE DID ESPECIALLY ON THE CRIMINAL SIDE--

25 MS. BOLEN: YOUR HONOR, OBJECTION.

1 THE COURT: HANG ON.

2 MS. BOLEN: YOUR HONOR, I HATE TO OBJECT DURING  
3 CLOSING BUT HE IS BRINGING THINGS IN THAT HAVE NOT BEEN  
4 INTRODUCED INTO EVIDENCE.

5 MR. WICKER: I KNOW THAT, YOUR HONOR, I AM SAYING  
6 WHAT PEOPLE GENERALLY KNOW.

7 THE COURT: I AM GOING, KEEP IT, DON'T GO TOO FAR,  
8 YOU ARE CLOSE TO IT.

9 MR. WICKER: YOU CAN USE YOUR PERSONAL KNOWLEDGE,  
10 YOUR COMMON SENSE, ALL OF YOU HAVE COMMON SENSE, THERE  
11 WILL BE TWELVE OF YOU AND ALL TWELVE OF YOU CAN USE YOUR  
12 COMMON SENSE. WHAT HAPPENS WHEN YOU ARE ACCUSED FOR  
13 SOMETHING, YOU ARE THROWN IN JAIL AND YOU COOPERATE WITH  
14 EVERYBODY. AND YOU DENY YOUR CHARGES AND WE ARE NOT  
15 TALKING ABOUT BREAKING DOWN DOORS OR WHATEVER, NO CRACK  
16 CONVICTION, WE ADMIT HE HAS BEEN IN TROUBLE FROM, I GUESS,  
17 MOST OF HIS LIFE, THE LAST 24 YEARS. I DON'T KNOW ANY  
18 MAJOR THINGS, MAYBE JUST ANYTHING WOULD BE MAJOR TO YOU  
19 AND MAJOR TO ME. SEE, ONE OF YOUR PROBLEMS OF BEING TRIED  
20 BY YOUR NEIGHBORS IS NONE OF YOU PEOPLE HAVE EVER BEEN  
21 CONVICTED OF A FELONY OR YOU WOULDN'T BE ON THE JURY.  
22 NONE OF YOU HAVE EVER BEEN IN JAIL, I HAVE NEVER BEEN IN  
23 JAIL BUT I HAVE BEEN IN JAIL TO TALK TO CLIENTS. BUT IT  
24 IS AN EXPERIENCE TO BE IN JAIL, MY CLIENT HAS BEEN TO JAIL  
25 A LOT, HE HAS BEEN LOCKED UP. YOU HAVE TO ADMIT THAT EVEN

1 THE DOCTOR SAID THAT THAT TEST THAT THEY GAVE HIM DOES NOT  
2 CLEAR HIM BUT, AND HE CHANGED IT, WE WILL ALL AGREE. HE  
3 SAID FORTY PERCENT OF THE TIME IT WOULD PROBABLY CLEAR,  
4 THAT MEANS FORTY SIX. IF HE COOPERATED WITH THAT NEGATIVE  
5 TEST, THERE ARE TWO PEOPLE THERE, ONE OF THEM SAID HE DID  
6 IT AND THE OTHER ONE SAID HE DIDN'T. ALL OF THE WITNESSES  
7 THAT CAME IN HERE, NONE OF THEM WERE THERE, NONE OF YOU  
8 WERE THERE, I WASN'T THERE, THE PROSECUTION WASN'T THERE.  
9 THE LITTLE GIRL AND MY CLIENT WAS THERE, THAT IS WHAT THE  
10 STORY SCENARIO IS. WHEN YOU HAVE JUST TWO PEOPLE THERE  
11 AND THEY DON'T HAVE ANY FRESH COMPLAINT, THEY DON'T HAVE  
12 ANY DNA THAT TIES ANYTHING UP, THEY DON'T HAVE ANY OF THE  
13 TEST THAT SHOWS THAT THIS DISEASE CAME FROM MY CLIENT AT  
14 ALL. THE DOCTOR COULDN'T TELL WHETHER SHE HAD SEX WITH  
15 OTHER PEOPLE, HE SAID THAT. HE SAID HE COULDN'T TELL IF  
16 SHE HAD SEX WITH A NUMBER OF PEOPLE BECAUSE HE SAID HER  
17 HYMEN WAS WORN OUT, THAT IS WHAT HE TESTIFIED TO, IT WAS  
18 WORN OUT. BUT ANYWAY, THESE ARE THINGS THAT DID NOT PROVE  
19 THAT CASE. MY CLIENT IS TRYING TO PROVE HIS INNOCENCE.  
20 EACH ONE OF YOU CONSIDER THE IMPORTANCE OF YOUR JOB,  
21 REASONABLE DOUBT IS A VERY IMPORTANT THING. AND IF WE  
22 THINK JUST BECAUSE SOMEBODY'S INDICTMENT THAT YOU ARE  
23 GUILTY THAT IS A TERRIBLE TRAGEDY. YOU NEED TO TAKE THE  
24 CASE, DISCUSS THE CASE AND DECIDE FOR YOURSELF NOT WHETHER  
25 THEY BROKE THE DOOR OUT TO ARREST HIM, BECAUSE OF PRIOR

1     CONVICTIONS. WE HAVE GOT FOUR INDICTMENTS HERE AND THAT  
2     IS WHAT WE ARE LOOKING AT. AND I KNOW HE TESTIFIED, I  
3     KNOW HE DID THE BEST HE COULD. I KNOW HE HAS TOLD  
4     EVERYBODY ALL THIS TIME, I DIDN'T DO IT AND THAT IS HIS  
5     STORY AND HE IS STICKING TO IT. BUT I HOPE YOU FOLKS  
6     REALIZE, ALL TOGETHER, THAT THERE IS REASONABLE DOUBT  
7     HERE. WHAT IF MY CLIENT IS TELLING THE TRUTH, WHAT IF HE  
8     IS TELLING THE TRUTH. I CAN TELL YOU THIS, HE LEFT THE  
9     HOUSE, ABANDONED IT AND HE CAME HOME AND THEN FOUND OUT  
10    THEY HAD A WARRANT ON HIM. WE LEAVE IT IN YOUR HANDS, A  
11    VERY DEVASTATING CASE, A CASE THAT IS GOING TO HAVE GREAT  
12    REPERCUSSIONS ON THE LITTLE GIRL AND ON MY CLIENT AND ON  
13    ANY OTHER PEOPLE. MY CLIENT HAD BLOOD KIN, NONE OF THEM  
14    ARE HERE TODAY I DON'T THINK. THE LITTLE GIRL HAD BLOOD  
15    KIN, HER MOTHER DIED AND IT IS A SAD CASE. BUT LIFE IS  
16    SAD AT MANY TIMES. THE QUESTION HERE IS, DID THE STATE  
17    PROVE THE CASE BEYOND A REASONABLE DOUBT TO ALL OF YOU.  
18    THANK YOU.

19         MS. BOLEN: MAY IT PLEASE THE COURT.

20         THE COURT: YES, MA'AM.

21         MS. BOLEN: THANK YOU, JUDGE. LADIES AND GENTLEMEN  
22    OF THE JURY, OUR EVIDENCE IN THIS CASE IS TESTIMONY,  
23    TESTIMONY FROM THE VICTIM AND TESTIMONY FROM WITNESSES.  
24    AND I ASK YOU TO PAY ATTENTION TO NOT ONLY WHAT WAS SAID  
25    BUT HOW IT WAS SAID.     victim ;     TOOK THE WITNESS

1 STAND, YOU WERE RIGHT HERE, SHE WAS RIGHT HERE. YOU SAW  
2 THE FEAR IN HER EYES, YOU SAW THE TEARS THAT SHE HAD, YOU  
3 OBSERVED HER DEMEANOR. THIS LITTLE GIRL WAS TERRIFIED,  
4 SHE WENT THROUGH A HORRIBLE ORDEAL TWICE. I ALSO SAID TO  
5 YOU IN THE OPENING STATEMENT THAT THIS CASE IS REALLY  
6 ABOUT A VIOLATION OF TRUST, VIOLATION OF TRUST BETWEEN A  
7 CHILD AND SOMEONE SHE CONSIDERED TO BE THE FATHER. SHE  
8 TESTIFIED SHE NEVER HAD A FATHER BEFORE AND SHE CALLED THE  
9 DEFENDANT DADDY. SHE LOVED HIM, SHE TRUSTED HIM. HE  
10 TESTIFIED TODAY TO THE EXACT SAME THING, HE LOVED HER LIKE  
11 A DAUGHTER AND HE GOES AND VIOLATES THAT TRUST. YOU HAVE  
12 HEARD Minor AS SHE EXPLAINED IN EXCRUCIATING DETAIL, SHE  
13 SAID HOW HE TOOK HER TO THE HOUSE, TOLD HER MOTHER TO  
14 LEAVE TO GO TO THE STORE, WENT IN HER BEDROOM AND SAID  
15 COME INTO THE LIVING ROOM AND TAKE OFF ALL OF YOUR  
16 CLOTHES. YOU REMEMBER HOW SHE SAID, I THOUGHT HE WAS  
17 JOKING, AND SHE DID. THIS IS THE MAN WHO SHE CALLED  
18 DADDY, HOW COULD HE BE DOING THIS TO HER. AND THEN YOU  
19 HEARD, HER ACCOUNT OF HOW SHE HAD TO RELIVE THIS  
20 EXPERIENCE AGAIN. YOU HEARD HER ACCOUNT IN DETAIL. HOW  
21 AFTER SHE TOOK OFF HER CLOTHES HE MADE HER LIE DOWN ON THE  
22 BED AND HE TOOK HIS PRIVATE PART OUT AND TOOK HIS PRIVATE  
23 PART AND PUT IT IN HER PRIVATE PART. ANOTHER THING YOU  
24 HAVE TO CONSIDER WHEN YOU GO BACK INTO THE JURY ROOM IS  
25 THE CREDIBILITY OF WITNESSES AND THEIR MOTIVATION.

1       victim<sup>1</sup>, IS A CREDIBLE WITNESS, SHE HAS NO REASON TO LIE  
2       ABOUT THIS. IN FACT, SHE HAS THE OPPOSITE OF A REASON TO  
3       LIE. SHE LOVED THIS MAN, SHE CONSIDERED HIM TO BE LIKE A  
4       FATHER, WHY WOULD SHE LIE TO RUIN THAT. THIS TORE APART  
5       HER FAMILY, TORE APART HER LIFE, WHY WOULD SHE LIE ABOUT  
6       THAT. YOU CAN SEE EVEN TODAY HOW UPSET SHE STILL IS ABOUT  
7       THIS, THIS RIPPED HER LIFE APART, WHY WOULD SHE MAKE THIS  
8       UP, WHY WOULD SHE LIE, WHAT WOULD SHE GAIN FROM THAT. HAS  
9       THIS TWO AND A HALF YEARS BEEN FUN FOR HER, TO HAVE TO GO  
10      TO THE DOCTOR, TO HAVE TO BE EXAMINED, BEING INTERVIEWED,  
11      IS THAT FUN FOR A NINE YEAR OLD GIRL. THE THING IS TO  
12      CONSIDER IS CREDIBILITY, DEMEANOR AND MOTIVATION. ANOTHER  
13      THING TO LOOK AT, OF COURSE, IS THE CREDIBILITY AND  
14      DEMEANOR OF THE DEFENDANT. HE TOOK THE STAND TO TESTIFY  
15      AND HIS DEMEANOR WAS DIFFERENT FROM victim<sup>1</sup> . . . AND I  
16      SUBMIT TO YOU THAT HE LIED TO YOU AND HE LIED TO THE COURT  
17      SEVERAL TIMES WHILE HE WAS ON THE STAND. REMEMBER, HE  
18      INSISTED THAT IT WAS JUDGE MARC WESTBROOK WHO SIGNED THAT  
19      ORDER, HE SAID THAT SEVERAL TIMES WITH MR. WICKER AND THEN  
20      I WENT AND ASKED HIM ABOUT IT TO GIVE HIM A CHANCE TO  
21      CLEAR IT UP. IT DOESN'T MATTER WHAT JUDGE SIGNED FOR IT,  
22      THAT IS NOT AN ISSUE, IT DOESN'T REALLY MATTER IF IT WAS  
23      JUDGE NICHOLS, JUDGE WESTBROOK, JUDGE HAYES, THAT IS  
24      IMMATERIAL. WHAT MATTERS AND WHAT IS MATERIAL, THAT HE  
25      WAS UNDER OATH AND HE LIED. HE LIED AGAIN WHEN HE SAID

1 THAT HE DIDN'T HAVE ANY CONVICTIONS FOR COCAINE OR CRACK  
2 COCAINE. BUT AGAIN, I DON'T CARE WHAT KIND OF CONVICTIONS  
3 HE HAS, I DON'T CARE IF HE HAS A CONVICTION FOR CRACK OR  
4 COCAINE. WHAT I CARE ABOUT IS ABOUT THAT HE LIED, I WENT  
5 UP THERE AND I SHOWED HIM THE CONVICTION, IT WAS ADMITTED  
6 INTO EVIDENCE, YOU WILL HAVE IT BACK IN THE JURY ROOM WITH  
7 YOU. HE LIED ABOUT THAT. THEN I ASKED HIM IF HE HAD BEEN  
8 CONVICTED OF ANY OTHER CRIMES THAT CARRIED MORE THAN A  
9 YEAR. I ASKED SPECIFICALLY ABOUT BREAKING INTO A MOTOR  
10 VEHICLE AND HE STARTED SAYING SOMETHING ABOUT SOMEONE ELSE  
11 DID IT, IT WASN'T HIM. SO, AGAIN, I SHOWED HIM THE  
12 SENTENCING SHEET WHERE HE SIGNED AND PLEAD GUILTY TO THAT  
13 FELONY. AND AGAIN, I DON'T CARE ABOUT HIM BREAKING INTO  
14 MOTOR VEHICLES, WHAT I CARE ABOUT IS THE FACT THAT HE  
15 LIED. STOOD UP THERE, SAT UP THERE AND HE LIED. AGAIN,  
16 YOU WILL HAVE THAT BACK IN THE JURY ROOM WITH YOU AS WELL.  
17 ANOTHER THING TO CONSIDER WHEN YOU ARE GOING OVER THE  
18 TESTIMONY, IS THAT MR. WICKER DIDN'T ACTUALLY ASK MR.  
19 ELKINS, HOTPATCH, IF HE DID THIS TO victim! , HE DIDN'T  
20 DENY IT BECAUSE HE WAS NEVER ASKED THAT, DIDN'T SAY  
21 ANYTHING ABOUT IT. ANOTHER THING IF THE FACT THAT HE LIED  
22 ABOUT OPENING THE DOOR FOR THE SHERIFFS AND BEING  
23 COOPERATIVE, HE STRESSED, BEING COOPERATIVE WITH LAW  
24 ENFORCEMENT EVERY STEP OF THE WAY. I DON'T CARE IF HE  
25 COOPERATED IN THIS CASE, I DON'T CARE IF HIS DOOR WAS

1     BROKEN DOWN, WHAT I CARE ABOUT IS THE FACT THAT HE LIED.  
2     I CALLED A REBUTTAL WITNESS AND THE REASON I DID WAS TO  
3     SHOW THAT NOT CONTRARY TO HOW HOTPATCH TESTIFIED, YOU  
4     REMEMBER HE SAID, I KNEW THEY HAD A WARRANT, I CALLED AND  
5     I SAID, COME AND SERVE ME AND I OPENED THE DOOR TO THEM.  
6     HE SAID THAT TO MR. WICKER ON DIRECT, I ASKED HIM ABOUT IT  
7     AGAIN ON REDIRECT TO GIVE HIM A CHANCE, OH, YOU KNOW I WAS  
8     MISTAKEN, I DIDN'T DO THAT. HE SAID, YEAP, I CALLED THEM,  
9     I SAID COME OUT AND SERVE IT AND I OPENED THE DOOR. WE  
10    HEARD FROM MR. SCHUMPERT THAT THAT WAS NOT AT ALL THE  
11    CASE. HE HAD TO CALL TWO OTHER OFFICERS OUT THERE, THEY  
12    HAD TO BREAK DOWN THE DOOR, HOTPATCH SAW THEM, THEY HAD TO  
13    BREAK IN AND THEN HE WAS NOT COOPERATIVE ONCE THEY GOT IN  
14    THERE. HE TOLD YOU ALL NUMEROUS TIME THAT HE WAS  
15    COOPERATIVE WITH LAW ENFORCEMENT, HE WAS NOT. AND IN  
16    FACT, AS LIEUTENANT SCHUMPERT TESTIFIED, HE WAS CITED FOR  
17    RESISTING ARREST THAT NIGHT AND AGAIN, I DON'T CARE THAT  
18    HE RESISTED ARREST. WHAT I CARE ABOUT IS HIS CREDIBILITY,  
19    HE LIED. MR. WICKER POINTED OUT THAT HOTPATCH HAS DENIED  
20    THIS TIME AND TIME AGAIN. I SUBMIT TO YOU, THINK ABOUT  
21    HOW MR. ELKINS HANDLED HIMSELF ON THE STAND TODAY. WHEN  
22    MR. WICKER QUESTIONED HIM ABOUT THE COCAINE, HE POINTED  
23    HIS FINGER AT SOMEONE ELSE, THEY BLAMED IT ON ME WITH  
24    SOMETHING ELSE, THE SAME WITH BREAKING INTO MOTOR  
25    VEHICLES, THAT WAS SOMEONE ELSE, NOT ME. MR. ELKINS IS

1 GOOD AT POINTING THE FINGER, HE IS GOOD AT SAYING SOMEONE  
2 ELSE DID THIS AND THAT IS EXACTLY WHAT HE IS DOING IN THIS  
3 CASE. HE IS SAYING THAT SOMEONE ELSE DID THIS TO THIS  
4 LITTLE GIRL WHO IS NOT HERE. BUT THERE IS NO EVIDENCE TO  
5 SHOW IT WAS ANYONE ELSE BUT HOTPATCH. AT LEAST WE HAVE  
6 victim' , SHE CAME UP HERE AND VERY BRAVELY, VERY  
7 BRAVELY TOLD YOU ALL WHAT HAPPENED TO HER. MR. WICKER  
8 POINTED OUT THAT JUST victim' . AND THE DEFENDANT WERE  
9 PRESENT. WELL, WE ASK YOU TO USE YOUR COMMON SENSE, MOST  
10 CRIMES DON'T HAVE WITNESSES, WE DON'T HAVE EYE WITNESSES  
11 ON A LOT OF CRIMES, IF WE DID IT WOULD BE DIFFERENT. IF  
12 SOMEONE WAS WATCHING AND SOMEONE TO SAY, YES, I SAW HIM DO  
13 IT, WE WOULDN'T BE HERE. SO, WE HAVE EVIDENCE FROM  
14 Minor SHE WAS THERE, SHE EXPLAINED TO YOU IN DETAIL  
15 WHAT HAPPENED. THEN WE HAVE HER AUNT AND THREE POLICE  
16 OFFICERS THAT SAID, YES, SHE TOLD US WHERE IT HAPPENED AND  
17 WHEN IT HAPPENED. I HOPE YOU NOTICED THAT WHEN THOSE  
18 PEOPLE TESTIFIED, EVERY PERSON THAT victim' TOLD, SHE SAID  
19 THE EXACT SAME THING AS THE TIME AND PLACE OF THE  
20 ASSAULTS. SHE SAID IT HAPPENED AT HOTPATCH'S HOUSE THE  
21 FIRST TIME, TOOK HER TO A FRIEND'S HOUSE THE SECOND TIME.  
22 CONSISTENT EVERY SINGLE TIME. THEN WE HAVE THE TESTIMONY  
23 OF SUSAN BENTLEY, THE FORENSIC INTERVIEWERS. REMEMBER SHE  
24 TESTIFIED THAT IN HER INTERVIEW OF victim' , IN HER EXPERT  
25 OPINION victim' HAD BEEN THE VICTIM OF SEXUAL ABUSE AND

1 HAD NOT BEEN COACHED AND NOT BEEN TRAINED AND HAD NOT BEEN  
2 TOLD WHAT TO SAY. THEN WE HAVE THE EVIDENCE PRESENTED BY  
3 DR. GRATIN SMITH. NOW, I AM NOT A MEDICAL DOCTOR SO I  
4 DON'T UNDERSTAND HOW ALL OF THESE DISEASES WORK. BUT WHAT  
5 I DID GET FROM DR. SMITH'S TESTIMONY IS THAT victim'  
6 WAS EXAMINED BY HIM, HE MARKS IN HER HYMEN THAT IS  
7 CONSISTENT WITH A PENETRATING INJURY THAT WERE NOT NORMAL  
8 FOR A NINE YEAR OLD. A NORMAL NINE YEAR OLD WOULD NOT  
9 HAVE A HYMEN LIKE THAT, CONSISTENT WITH A PENETRATING  
10 INJURY AND CONSISTENT WITH SEXUAL ABUSE. SHE ALSO HAD THE  
11 STD, TRICHOMONAS. DR. SMITH TALKED ABOUT HOW IN MEN, A  
12 LOT OF TIMES MEN MIGHT HAVE IT BUT THEY MAY NOT TEST  
13 POSITIVE. AND THEN, EVEN MORE, THERE ARE TIMES WHEN A MAN  
14 CAN HAVE TRICHOMONAS AND IT SPONTANEOUSLY CLEARS UP. SO,  
15 HE SAID THE FACT THAT A MAN DID OR DID NOT HAVE  
16 TRICHOMONAS IS NOT CONCLUSIVE. NOW, HOTPATCH SAID OR THAT  
17 HE WAS TRYING TO SAY THAT HE HAD BEEN TESTED FOR  
18 TRICHOMONAS BUT IT CAME BACK NEGATIVE. BUT WE DIDN'T HAVE  
19 A DOCTOR HERE, WE DIDN'T HAVE ANYONE HERE TO SAY THAT THEY  
20 TESTED HIM AND IT WAS NEGATIVE, WE HAVE HIS WORD THAT IT  
21 WAS NEGATIVE. WE DON'T KNOW WHEN THIS TEST WAS CONDUCTED,  
22 WE DO KNOW FROM HIS TESTIMONY AND FROM LIEUTENANT  
23 SCHUMPERT'S TESTIMONY THAT HE WAS ARRESTED ON JUNE 10TH OF  
24 2005. NOW, ANOTHER THING THAT DR. SMITH SAID, THAT EVEN  
25 IF SOMEONE DOES HAVE TRICHOMONAS IT IS CLEARED UP WITH A

1   PILL WITHIN A HAND FULL OF DAYS. WE DON'T KNOW WHEN  
2   HOTPATCH WAS TESTED BUT WE SURE DO KNOW IT WAS AFTER HE  
3   WAS ARRESTED. SO, THE FACT THAT HE DIDN'T HAVE IT, IT  
4   COULD OF SPONTANEOUSLY CLEARED UP, HE COULD OF BEEN ONE OF  
5   THE PEOPLE WHO JUST DIDN'T TEST POSITIVE FOR IT OR HE  
6   COULD OF CLEARED IT UP HIMSELF. ONE THING THAT I DO WANT  
7   TO GO OVER WITH YOU JUST BRIEFLY AND I TOUCHED ON THIS IN  
8   OPENING IS JUST THE ELEMENT OF THE LAW. HOTPATCH HAS BEEN  
9   CHARGED WITH CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST  
10   DEGREE. THIS REQUIRES A SEXUAL BATTERY, AND I WILL GET TO  
11   SEXUAL BATTERY IN A MINUTE WITH A VICTIM WHO IS LESS THAN  
12   ELEVEN YEARS OLD.       *victim* TESTIFIED THAT SHE WAS NINE THE

13   TIME OF THIS OFFENSE, SHE WAS BORN ON  
14         SEXUAL BATTERY DOES NOT REQUIRE ANY FORCE. THE  
15   DEFINITION IS SEXUAL INTERCOURSE OR ANY INTRUSION, HOWEVER  
16   SLIGHT FROM A PART OF A PERSON'S BODY WITH ANY OBJECT INTO  
17   THE GENITAL OPENINGS OF ANOTHER PERSON'S BODY. IT DOESN'T  
18   REQUIRE FORCE, ALL OF THESE THINGS HAPPENED.       *victim*  
19   TESTIFIED, SHE SAID, HOTPATCH, NO, NO. AND SHE CRIED, HE  
20   KEPT GOING. THE OTHER CRIME IN WHICH HE HAS BEEN CHARGED  
21   IS LEWD ACT UPON A MINOR. LEWD ACT HAS A FEW MORE  
22   ELEMENTS THAN CRIMINAL SEXUAL CONDUCT. A PERSON OVER THE  
23   AGE OF 14, HOTPATCH TESTED THAT HE WAS 70 YEARS OLD. THAT  
24   ELEMENT MATCHED. WILLFULLY AND LEWDLY COMMITS OR ATTEMPTS  
25   TO COMMIT A LEWD LASCIVIOUS ACT. HE LEWDLY DID WITH FULL

1 INTENT PUT HIS PRIVATE PARTS IN HER PRIVATE PART AND HE  
2 TOUCHED HER BREAST AS SHE TESTIFIED UPON OR WITH THE BODY  
3 OR ITS PARTS, HE DID THIS TO HER, GRABBED HER BREAST OF A  
4 CHILD UNDER THE AGE OF 16. AGAIN, victim's IS NINE WHEN  
5 THIS HAPPENED, WITH THE INTENT TO AROUSING, APPEALING TO  
6 OR GRATIFYING THE LUST OR PASSIONS OR SEXUAL DESIRES OF A  
7 PERSON. SOMETHING ELSE I JUST WANT TO TOUCH ON BRIEFLY,  
8 MR. WICKER AND HOTPATCH TALKED ABOUT THE FACT THAT THERE  
9 WAS NO DNA EVIDENCE IN THIS CASE. I TOLD YOU IN THE  
10 OPENING REAL COURT IS NOT LIKE CSI, LAW AND ORDER. BUT  
11 MORE THAN THAT YOU HAVE HEARD FROM DR. SMITH THAT A RAPE  
12 KIT WHICH IS WHERE YOU GET DNA EVIDENCE CAN ONLY BE  
13 COLLECTED IF THE INCIDENT HAPPENED WITHIN 72 HOURS, THERE  
14 IS NO MORE DNA AFTER THAT, THERE IS NOTHING TO COLLECT.  
15 SO, THAT IS WHY THERE IS NO DNA IN THIS CASE. victim WAS  
16 TERRIFIED OF THIS MAN, SHE DID NOT TELL ANYONE UNTIL HE  
17 WAS IN JAIL AND THEN SHE TOLD. AND SUSAN BENTLEY, SHE  
18 POINTED OUT THAT THAT IS NORMAL BEHAVIOR IN CHILDREN, TO  
19 DELAY. SO IN CLOSING WHAT WE HAVE IN THIS CASE IS A VERY  
20 SERIOUS CASE, WHAT WE HAVE IN THIS CASE IS A VERY SCARED  
21 LITTLE GIRL WHO HAS BEEN VIOLATED IN ONE OF THE MOST  
22 HORRIFIC WAYS IMAGINABLE BY SOMEONE SHE TRUSTED, BY  
23 SOMEONE SHE LOVED AND BY SOMEONE WHO SAID HE LOVED HER.  
24 AND THIS PERSON CHOSE TO TAKE THE STAND AND HE LIED TO YOU  
25 WHEN HE TOOK THE STAND. HE LIED ABOUT THE POLICE, HE LIED

1 ABOUT OPENING THE DOOR, HE LIED ABOUT HIS CRIMINAL  
2 HISTORY, HE LIED AND LIED AND LIED AND HE POINTED THE  
3 FINGER AT OTHER PEOPLE. victim | HAS NOT LIED AT ALL, SHE  
4 HAS NO REASON TO LIE, SHE LOST THE MAN THAT SHE SAID WAS  
5 HER FATHER. I ASK YOU TO GO BACK IN THE JURY ROOM TO FIND  
6 JAMES WILLIE ELKINS GUILTY OF CRIMINAL SEXUAL CONDUCT WITH  
7 A MINOR, FIRST DEGREE AND LEWD ACT UPON A CHILD UNDER THE  
8 AGE OF 16. THANK YOU.

9 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN OF THE  
10 JURY, DURING THIS TRIAL YOU AND I HAVE CERTAIN DUTIES TO  
11 PERFORM. AND AS A TRIAL JUDGE IT IS MY RESPONSIBILITY TO  
12 PRESIDE OVER THE TRIAL OF THE CASE AND TO RULE OVER THE  
13 ADMISSIBILITY OF THE EVIDENCE THAT IS OFFERED DURING THE  
14 TRIAL. IT IS ALSO MY DUTY TO CHARGE YOU THE LAW  
15 APPLICABLE TO THE CASE AND AS I TOLD YOU IN MY OPENING  
16 COMMENTS IT IS YOUR DUTY AS JURORS TO ACCEPT AND APPLY THE  
17 LAW AS I NOW STATE IT TO YOU. IF YOU THINK YOU HAVE ANY  
18 IDEA AS TO WHAT THE LAW IS OR WHAT THE LAW OUGHT TO BE AND  
19 IT DISAGREES WITH WHAT I TELL YOU THE LAW IS NOW YOU HAVE  
20 SWORN AN OATH TO SET ASIDE YOUR OWN IDEA AND APPLY THE LAW  
21 PRECISELY AS I GIVE IT TO YOU. AND I WOULD REMIND YOU IN  
22 EVERY CASE TRIED IN THIS COURT BEFORE A JURY YOU, THE  
23 JURY, ARE THE SOLE AND EXCLUSIVE JUDGES OF THE FACTS AND A  
24 TRIAL JUDGE CANNOT COMMENT ON OR MAKE ANY STATEMENT ABOUT  
25 THE FACTS IN A CASE. SO, PLEASE DO NOT THINK FROM

1 ANYTHING THAT I HAVE SAID OR DONE THROUGHOUT THE COURSE OF  
2 THIS TRIAL THAT I HAVE AN OPINION ABOUT THE FACTS BECAUSE  
3 THE LAW DOES NOT ALLOW ME TO HAVE SUCH AN OPINION. I  
4 AGAIN TELL YOU AND INSTRUCT YOU THAT THE FACT THAT THE  
5 DEFENDANT HAS BEEN ARRESTED, CHARGED AND INDICTED IN THIS  
6 CASE IS NOT EVIDENCE OF GUILT NOR DOES IT CREATE ANY  
7 PRESUMPTION OR INFERENCE OF GUILT. AND THESE DOCUMENTS  
8 ARE SIMPLY THE FORMAL WRITTEN INSTRUMENTS WHICH CONTAIN  
9 THE CHARGES MADE AGAINST A DEFENDANT. THEY SERVE AS THE  
10 FORMAL DOCUMENTS BY WHICH THE CASE IS PROCESSED AND  
11 BROUGHT INTO COURT FOR RESOLUTION BY YOU, THE JURY.

12 NOW, THERE ARE FOUR INDICTMENTS IN THIS CASE AND THE  
13 INDICTMENTS ALLEGE SEVERAL DIFFERENT CHARGES. THERE ARE  
14 TWO INDICTMENTS FOR CRIMINAL SEXUAL CONDUCT WITH A MINOR  
15 AND THERE ARE TWO INDICTMENTS FOR LEWD ACT ON A MINOR.  
16 NOW, I WANT TO TELL YOU THAT EACH INDICTMENT CHARGES A  
17 SEPARATE AND DISTINCT OFFENSE AND YOU MUST DECIDE EACH  
18 INDICTMENT SEPARATELY ON THE EVIDENCE AND THE LAW  
19 APPLICABLE TO IT UNINFLUENCED BY YOUR DECISION ON ANY  
20 OTHER INDICTMENT. SO, THAT THE DEFENDANT MAY BE CONVICTED  
21 OR ACQUITTED ON ANY OR ALL OF THE OFFENSES CHARGED AND YOU  
22 WILL BE ASKED TO WRITE A SEPARATE VERDICT OF GUILTY OR NOT  
23 GUILTY FOR EACH INDICTMENT.

24 NOW, NECESSARILY YOUR JOB AS JUDGES OF THE FACTS, YOU  
25 MUST DETERMINE THE CREDIBILITY OR BELIEVABILITY OF THE

1 WITNESSES WHO HAVE TESTIFIED IN THIS CASE. IT BECOMES  
2 YOUR DUTY AS JURORS TO EVALUATE THE EVIDENCE AND DETERMINE  
3 WHICH EVIDENCE CONVINCES YOU THAT IT IS TRUE. AND IN  
4 DETERMINING THE BELIEVABILITY OF WITNESSES YOU MAY BELIEVE  
5 ONE WITNESS OVER SEVERAL OR SEVERAL OVER ONE. YOU MAY  
6 BELIEVE A PART OF THE TESTIMONY OF A WITNESS AND REJECT  
7 THE REMAINING PART. YOU MAY BELIEVE THE TESTIMONY OF A  
8 WITNESS IN ITS ENTIRETY OR YOU MAY REJECT THAT SAME  
9 TESTIMONY IN ITS ENTIRETY. YOU MAY CONSIDER WHETHER THE  
10 WITNESS HAS AN INTEREST IN THE RESULT OF THE TRIAL,  
11 WHETHER THE WITNESS IS PREJUDICE TOWARDS EITHER THE STATE  
12 OR THE DEFENSE, THE OPPORTUNITY OF THE WITNESS TO HAVE  
13 SEEN THE MATTERS AND THINGS ABOUT WHICH THAT WITNESS HAS  
14 TESTIFIED AND THE WAY A WITNESS ACTS ON THE WITNESS STAND  
15 OR WHAT WE CALL A WITNESS'S DEMEANOR. YOU HAVE ALSO HEARD  
16 EVIDENCE THAT THE DEFENDANT WAS CONVICTED OF A CRIME OTHER  
17 THAN THE ONE FOR WHICH HE IS NOW ON TRIAL. NOW, THIS  
18 EVIDENCE OF CONVICTIONS OF OTHER CRIMES MAY BE CONSIDERED  
19 BY YOU IF YOU CONCLUDE IT IS TRUE ONLY IN DECIDING WHETHER  
20 THE DEFENDANT'S TESTIMONY TODAY IS BELIEVABLE AND FOR NO  
21 OTHER PURPOSE. YOU MUST NOT CONSIDER THE DEFENDANT'S  
22 PRIOR RECORD AS ANY EVIDENCE OF HIS GUILT OF THE CHARGES  
23 THAT WE ARE TRYING TODAY.

24 NOW, THE RULES OF EVIDENCE DO NOT PERMIT WITNESSES TO  
25 TESTIFY TO OPINIONS AND CONCLUSIONS. AN EXCEPTION TO THIS

1 RULE EXISTS FOR WITNESSES WE CALL AN EXPERT WITNESS. A  
2 WITNESS WHO BY EDUCATION AND EXPERIENCE HAS BECOME EXPERT  
3 IN SOME ART, SCIENCE OR PROFESSION MAY GIVE AN OPINION AS  
4 TO THE SUBJECT THE WITNESS HAS BEEN QUALIFIED AS AN EXPERT  
5 IN AND MAY ALSO GIVE THE REASONS FOR THAT OPINION. AND  
6 YOU SHOULD CONSIDER ANY EXPERT OPINION GIVEN BY A WITNESS,  
7 AND LIKE ANY AND ALL OF THE OTHER EVIDENCE GIVE IT THE  
8 WEIGHT THAT YOU THINK IT DESERVES.

9 NOW, THE DEFENDANT HAS PLEAD NOT GUILTY TO THESE  
10 INDICTMENTS AND THAT PLEA PUTS THE BURDEN ON THE STATE TO  
11 PROVE THE DEFENDANT GUILTY. A PERSON CHARGED WITH  
12 COMMITTING A CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER  
13 REQUIRED TO PROVE THEMSELVES INNOCENT. I CHARGE YOU THAT  
14 IT IS A CARDINAL AND IMPORTANT RULE OF THE LAW THAT THE  
15 DEFENDANT IN A CRIMINAL TRIAL WILL ALWAYS BE PRESUMED TO  
16 BE INNOCENT OF THE CRIME FOR WHICH AN INDICTMENT HAS BEEN  
17 ISSUED UNLESS GUILT HAS BEEN PROVEN BY EVIDENCE SATISFYING  
18 YOU OF GUILT BEYOND A REASONABLE DOUBT. NOW, WHAT IS A  
19 REASONABLE DOUBT.

20 A REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD  
21 CAUSE A REASONABLE PERSON TO HESITATE TO ACT. A  
22 REASONABLE DOUBT MAY ARISE FROM THE EVIDENCE PRESENTED IN  
23 THE CASE OR THE LACK OR ABSENCE OF EVIDENCE IN THE CASE.  
24 AND YOU, THE JURY, MUST DETERMINE WHETHER OR NOT  
25 REASONABLE DOUBT EXIST AS TO THE GUILT OF THIS DEFENDANT.

1 AND THE STATE HAS THE BURDEN OF PROVING EACH AND EVERY  
2 ELEMENT OF A CRIME BEYOND A REASONABLE DOUBT. AND THE LAW  
3 REQUIRES THAT ANY REASONABLE DOUBT THAT YOU MAY HAVE IN  
4 YOUR DELIBERATIONS SHOULD BE RESOLVED IN FAVOR OF THE  
5 DEFENDANT.

6 NOW, THE DEFENDANT IS CHARGED WITH FIRST DEGREE  
7 CRIMINAL SEXUAL CONDUCT WITH A MINOR. AND THE STATE MUST  
8 PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT ENGAGED  
9 IN A SEXUAL BATTERY WITH THE VICTIM. A SEXUAL BATTERY IS  
10 SEXUAL INTERCOURSE, CUNNILINGUS, FELLATIO, ANAL  
11 INTERCOURSE OR ANY INTRUSION, HOWEVER SLIGHT, OF ANY PART  
12 OF A PERSON'S BODY OR ANY OBJECT INTO THE GENITAL OR ANAL  
13 OPENINGS OF ANOTHER PERSON'S BODY EXCEPT WHEN THE  
14 INTRUSION IS ACCOMPLISHED FOR MEDICALLY RECOGNIZED  
15 TREATMENT OR DIAGNOSTIC PURPOSES. NOW, THE STATE MUST  
16 THEN PROVE BEYOND A REASONABLE DOUBT THAT THE VICTIM WAS  
17 LESS THAN 11 YEARS OF AGE AT THE TIME THAT THE SEXUAL  
18 BATTERY OCCURRED. AND I TELL YOU THAT CONSENT,  
19 WILLINGNESS, INDIFFERENCE OR IGNORANCE ON THE PART OF A  
20 MINOR, IF ANY, AS TO WHAT WAS TAKING PLACE DOES NOT IN ANY  
21 WAY EFFECT THE CHARGE OF CRIMINAL SEXUAL CONDUCT OF A  
22 MINOR BECAUSE AN UNMARRIED WOMAN UNDER THE AGE OF 14  
23 CANNOT LEGALLY CONSENT TO SEXUAL INTERCOURSE. THE  
24 DEFENDANT IS ALSO CHARGED WITH COMMITTING A LEWD ACT ON A  
25 MINOR AND A MINOR IS A PERSON IN THE EYES OF THE LAW UNDER

1 THE AGE OF 18. THE STATE MUST PROVE BEYOND A REASONABLE  
2 DOUBT THAT THE DEFENDANT WAS OVER THE AGE OF 14. NEXT THE  
3 STATE MUST PROVE THAT THE DEFENDANT WILLFULLY AND LEWDLY  
4 COMMITTED OR ATTEMPTED A LEWD OR LASCIVIOUS ACT ON OR WITH  
5 THE BODY OR ITS PART OF A CHILD UNDER THE AGE OF 16 YEARS  
6 WITH THE INTENT TO AROUSE, APPEAL TO OR GRATIFY THE LUST,  
7 PASSIONS OR SEXUAL DESIRES OF THE DEFENDANT OR OF THE  
8 CHILD. WILLFULLY MEANS VOLUNTARILY AND INTENTIONALLY WITH  
9 THE SPECIFIC INTENT TO DO SOMETHING THE LAW FORBIDS. LEWD  
10 MEANS OBSCENE, LUSTFUL, INDECENT OR LECHEROUS. LASCIVIOUS  
11 MEANS TENDING TO EXCITE LUST, LEWD, INDECENT, OBSCENE OR  
12 TENDING TO DEPRAVE THE MORALS IN RELATIONS OR RESPECT TO  
13 SEXUAL RELATIONS.

14 NOW, MADAM FORELADY, LADIES AND GENTLEMEN OF THE  
15 JURY, THERE ARE FOUR INDICTMENTS. AND ON EACH INDICTMENT  
16 THERE ARE TWO POSSIBLE VERDICTS WHICH YOU MAY REACH, NO  
17 SIGNIFICANCE WHATSOEVER IN THE ORDER IN WHICH I STATE  
18 THEM, ONE HAS GOT TO BE STATED FIRST. AND THOSE ARE  
19 GUILTY OR NOT GUILTY. NOW, MADAM FORELADY, WE HAVE  
20 PREPARED OR SENT BACK TO THE JURY ROOM FOUR SEPARATE  
21 VERDICT FORMS. THERE IS ONE FOR EACH INDICTMENT AND I  
22 WANT TO TELL YOU THAT WE HAVE, TWO OF THEM ARE FOR  
23 CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE FIRST DEGREE  
24 AND THOSE ARE DISTINGUISHED BY THE DATES THAT ARE ALLEGED  
25 IN THE INDICTMENT. THE SAME IS TRUE OF THE TWO VERDICT

1 FORMS FOR LEWD ACT ON A MINOR AND THEY ARE DISTINGUISHED  
2 BY THE DATES THAT ARE ALLEGED IN THE SEPARATE INDICTMENTS.  
3 NOW, I WANT TO TELL YOU ALL THAT ALL TWELVE OF YOU MUST  
4 AGREE ON YOUR VERDICT, YOUR VERDICT MUST BE UNANIMOUS AS  
5 TO EACH SEPARATE INDICTMENT. AND I TELL YOU THAT YOUR  
6 VERDICT CANNOT BE BASED ON SYMPATHY, PASSION, PREJUDICE,  
7 EMOTION OR ANYTHING ELSE OR ANY OTHER CONSIDERATION THAT  
8 IS NOT IN EVIDENCE IN THIS CASE. AND I TELL YOU RIGHT NOW  
9 YOU HAVE NO ENEMIES TO PUNISH AND YOU HAVE NO FRIENDS TO  
10 REWARD IN THIS COURTROOM. MADAM FORELADY, I AM GOING TO  
11 EXCUSE YOU ALL BACK TO YOUR JURY ROOM IN JUST A SECOND. I  
12 WANT YOU TO, TO ASK YOU NOT TO BEGIN YOUR DELIBERATIONS  
13 JUST YET. I HAVE GOT TO GO OVER MY CHARGE ON THE LAW WITH  
14 THE ATTORNEYS TO MAKE SURE I DID NOT MISSTATE SOMETHING OR  
15 OMIT SOMETHING THAT YOU ALL NEED TO HEAR BEFORE YOU BEGIN  
16 YOUR DELIBERATIONS. SO, WHEN YOU RECEIVE THE EVIDENCE IN  
17 THIS CASE AND THESE VERDICT FORMS THEN YOU MAY BEGIN YOUR  
18 DELIBERATIONS. SO, AT THIS TIME IF I COULD GET EVERYONE  
19 TO LEAVE THE COURTROOM WITH THE EXCEPTION OF MS. CRASE.  
20 AT THIS TIME YA'LL ARE EXCUSED.

21 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT.)

22 THE COURT: MS. CRASE, I HAVE SINGLED YOU OUT, AND  
23 WHAT I HAVE TO TELL YOU IS THAT I CANNOT ALLOW YOU TO GO  
24 BACK IN THE JURY ROOM. YOU ARE JUST AS QUALIFIED AS EACH  
25 OF THOSE TWELVE PERSONS, YOU HAVE PAID JUST AS CLOSE

1 ATTENTION AS THOSE TWELVE PERSONS. AND REALLY I WISH, YOU  
2 DESERVE TO BE BACK THERE TO MAKE THIS DECISION BUT THE LAW  
3 DOES NOT ALLOW BUT TWELVE FOLKS TO GO BACK AND BUT I WANT  
4 TO THANK YOU FOR YOUR SERVICE. I HAVE TO ASK YOU TO COME  
5 BACK IN THE MORNING AT 9:30 BUT YOU ARE EXCUSED NOW. AND  
6 I WILL TELL YOU THAT YOU ARE FREE TO TALK ABOUT THE CASE  
7 ONCE, IF YOU WANT TO. IF YOU DON'T WANT TO AND SOMEBODY  
8 BOTHERS YOU YOU LET THE CLERK KNOW AND WE WILL TAKE CARE  
9 OF THAT BECAUSE WE DON'T WANT YOU TO SUFFER ANY BOTHER OR  
10 HUMILIATION. OKAY.

11 (WHEREUPON, THE ALTERNATE JUROR WAS EXCUSED FROM THE  
12 TRIAL OF THE CASE.)

13 THE COURT: ANY EXCEPTIONS OR OBJECTIONS TO THE  
14 CHARGE?

15 MR. WICKER: NONE BY THE DEFENSE, YOUR HONOR.

16 MS. BOLEN: NONE BY THE STATE, YOUR HONOR.

17 THE COURT: ALL RIGHT, THEN I AM GOING TO ASK THAT  
18 THE ATTORNEYS, MAKE SURE THAT ALL OF THE EXHIBITS ARE  
19 TOGETHER AND WE WILL SEND THEM BACK WITH THE JURY FORM.  
20 AND I WOULD COMPLIMENT BOTH ATTORNEYS ON AN EXCELLENT JOB  
21 ADVOCATING THEIR POSITIONS.

22 (WHEREUPON, THE JURY STARTED DELIBERATIONS AT  
23 APPROXIMATELY 4:05 P.M.)

24 THE COURT: ALL RIGHT, COME TO ORDER. I HAVE A  
25 QUESTION FROM THE JURY WHICH READS, WHY DOES ONE VERDICT

1 ON THE CHARGE OF CSC WITH A MINOR AT MAY 10TH, AND THAT IS  
2 INDICTMENT 05-402, AND BOTH VERDICTS OF COMMITTING OR  
3 ATTEMPTING A LEWD ACT UPON A CHILD, BOTH HAVE THE DATES  
4 BETWEEN MAY 10TH AND MAY 29TH, '05. THE QUESTION  
5 CONTINUES, SHOULD NOT ONE COMMITTING OR ATTEMPTING A LEWD  
6 ACT UPON A CHILD HAVE THE SAME DATE, MAY 10TH SO THAT IT  
7 MATCHES THE CRIMINAL SEXUAL CONDUCT. WE FEEL THAT THESE  
8 TWO DATES SHOULD MATCH. SO, ANYTHING FROM THE, I WILL BE  
9 HAPPY TO HEAR FROM YOU ON THAT ISSUE.

10 MR. GRIFFITH: YOUR HONOR, IF IT PLEASE THE COURT, ON  
11 BEHALF OF THE STATE. IT WOULD BE PROPER TO ANSWER THE  
12 QUESTION AS FOLLOWS, THE STATE PRESENTED FACTUAL EVIDENCE  
13 OF THE FIRST DATE AND THE SECOND DATE SOMETIME AFTER THAT  
14 AND THAT THESE DATES WERE INCLUSIVE FROM THE TIME AND  
15 PERIOD OF THE FACTUAL EVIDENCE THAT HAD BEEN GIVEN BY THE  
16 STATE'S WITNESSES IN THE TESTIMONY. AND THE FACT THAT  
17 THEY ARE INCONSISTENT WHICH COULD BE EITHER CONFORMED AND  
18 AMENDED, CONFORMED BETWEEN MAY 10TH AND THE 29TH OR THE  
19 19TH, OR REDUCE THE LEWD ACT TO THE MAY 10TH DATE ONLY TO  
20 CONFORM WITH THE FIRST CRIMINAL SEXUAL CONDUCT IN THE  
21 FIRST DEGREE, EITHER WAY MAKES THEM CONSISTENT BUT NOT  
22 CHANGE THE CHARGE. I THINK THE DEFENDANT HAS BEEN  
23 APPRIZED OF WHAT HE HAS BEEN CHARGED, TWO COUNTS OF  
24 CRIMINAL SEXUAL CONDUCT BETWEEN THOSE TWO DATES, NO  
25 EVIDENCE HAS BEEN INTRODUCED OUTSIDE OF THOSE TWO DATES,

1     THROUGHOUT THE DISCOVERY AND SINCE THE DAY OF ARREST. THE  
2     SIMPLEST WAY IS TO CONFORM THE INDICTMENTS TO WHAT HAS  
3     BEEN PRESENTED, THE STATE WOULD SO MOVE.

4           MR. WICKER: BASICALLY, OF COURSE, WHAT THE PROBLEM  
5     IS, THEY DON'T KNOW THE DATES, THEY KNOW IT WAS TWICE, MAY  
6     10TH AND THE 29TH AND SO THE DATES ARE NOT SPECIFIC, IT  
7     JUST IS TWO DATES THAT COME IN SOMEWHERE BETWEEN THAT. OF  
8     COURSE, THE ACTS, I AM NOT SURE, THEY MIGHT WELL BE THAT  
9     TWO ACTS WOULD COME UNDER ONE CERTAIN TIME.

10          THE COURT: ALL RIGHT. WELL, FROM THE JURYS POINT OF  
11     VIEW, THEY COULD BELIEVE THAT THE DEFENDANT WAS GUILTY OF  
12     EACH CSC WITH A MINOR AND GUILTY OF ONE LEWD ACT AND NOT  
13     BE ABLE TO DISTINGUISH FROM THE INDICTMENTS WHICH LEWD ACT  
14     THEY BELIEVE HE WAS NOT GUILTY OF OR VICE VERSA. AND THE  
15     WAY THESE INDICTMENTS ARE, THERE IS NO OTHER  
16     DISTINGUISHING LANGUAGE, THEY ARE PRETTY MUCH BOILERPLATE  
17     INDICTMENTS. NO OTHER DISTINGUISHING INFORMATION TO  
18     DISTINGUISH ONE FROM THE OTHER. I AM CONCERNED ABOUT THE  
19     CONFUSION FOR THE JURY AND I WILL BE PERFECTLY HONEST, I  
20     HAVE NOT BEEN FACED WITH THIS ISSUE. AND I AM  
21     CONSIDERING, I DON'T THINK AT THIS POINT WHEN THE JURY HAS  
22     BEEN CHARGED AND THEY HAVE RECEIVED THE INDICTMENTS AND  
23     THERE HASN'T BEEN A MOTION MADE PRIOR TO THE JURY HAVING  
24     THESE INDICTMENTS, I DON'T THINK I CAN CHANGE THESE  
25     INDICTMENTS. I AM CONCERNED ABOUT PREJUDICE TO THE

1 DEFENDANT, NOT BEING ABLE TO ADDRESS THAT IN ARGUMENT OR  
2 IN CROSS-EXAMINATION. AND I HEAR, FOR THE RECORD, I JUST  
3 HEARD A KNOCK ON THE JURY, FROM THE JURY, ON THEIR DOOR.  
4 SO, I AM CONSIDERING DISMISSING THE LEWD ACT INDICTMENTS  
5 BECAUSE IT WOULD LEAD TO CONFUSION ON THE PART OF THE  
6 JURY. I WILL BE GLAD TO HEAR YOU.

7 MR. WICKER: TO DISMISS BOTH OR A LEWD ACT.

8 THE COURT: BOTH, THERE IS NO WAY A JURY CAN  
9 DISTINGUISH GUILTY OR NOT GUILTY BUT THEY DON'T KNOW,  
10 ALTHOUGH FROM THE EVIDENCE PRESENTED THERE ARE TWO  
11 DISTINCT OCCURRENCES, THERE IS NO WAY FROM THE INDICTMENTS  
12 AND THE WAY THEY ARE WORDED THAT THE JURY CAN DISTINGUISH  
13 WHICH ONE APPLIES, AM I RIGHT ABOUT THAT. THAT IS RIGHT.  
14 THERE IS NO WAY TO DISTINGUISH BETWEEN THE INDICTMENTS.

15 MR. WICKER: I WOULD AGREE WITH THAT.

16 THE COURT: I THOUGHT YOU MIGHT.

17 MR. WICKER: I DIDN'T THINK IT SHOULD BE THAT WAY IN  
18 THE FIRST PLACE.

19 THE COURT: WELL, I DIDN'T HEAR A MOTION FROM YOU,  
20 NOW.

21 MR. GRIFFITH: WOULD IT BE PROPER FOR THE STATE TO  
22 ASK THAT ONE INDICTMENT FOR A LEWD ACT CONFORM WITH THE  
23 MAY 10TH DATE THAT WAS TESTIFIED TO BY THE YOUNG LADY AND  
24 THE WITNESSES WHICH IS CONSISTENT WITH THE FIRST  
25 INDICTMENT, EARLIER INDICTMENT ON THE CRIMINAL SEXUAL

1 CONDUCT AND ELIMINATE THE RANGE FROM THE BACKSIDE SO THERE  
2 WOULD BE JUST ONE CHARGE OF A LEWD ACT EVEN THOUGH THAT  
3 SHOULD CONFORM TO OUR RULES PRESENTED.

4 THE COURT: TELL THEM WE WILL BE WITH THEM IN JUST  
5 ONE SECOND, PLEASE. WHAT IS THAT, 15 WHAT, THE AMENDMENT  
6 OF AN INDICTMENT.

7 MR. GRIFFITH: 17.

8 THE COURT: YES, 17. YOU KNOW, I THINK THAT  
9 CONTEMPLATES, BEFORE THE CASE HAS BEEN PRESENTED TO A  
10 JURY.

11 MR. GRIFFITH: YOUR HONOR, I AGREE WITH YOU AND I  
12 POINT TO THE COURT THE OBJECTIONS THAT WOULD BE MADE PRIOR  
13 TO THAT ALSO WHICH IS THE SECTION ABOVE. AND, YOUR HONOR,  
14 I AM VERY COGNIZANCE OF THE PROTECTION OF RECORD AND POST  
15 CONVICTION ACTION AND I WANT TO PROTECT THAT AS MUCH AS  
16 POSSIBLE. SO, I THINK, I DO NOT WANT TO ASK FOR A  
17 CONTINUANCE, THERE IS A CONFLICT THERE FOR HAVING DOUBLE  
18 JEOPARDY ISSUE ATTACHED.

19 THE COURT: I AM GOING TO DISMISS THE TWO LEWD ACT  
20 INDICTMENTS.

21 MR. WICKER: THAT IS WHAT I WOULD LIKE.

22 THE COURT: I AM GOING TO JUST DISMISS THEM. LET'S  
23 BRING THEM OUT.

24 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT  
25 APPROXIMATELY 4:35 P.M.)

1 THE COURT: MADAM FORELADY, LADIES AND GENTLEMEN OF  
2 THE JURY, I THINK I TOLD YOU IN MY OPENING COMMENTS TO YOU  
3 THAT IT WAS YOUR JOB TO RESOLVE THE DISPUTES THAT ARISE IN  
4 A TRIAL AND YOU HAVE HELPED ME DO MY JOB BY RAISING THE  
5 QUESTION THAT YOU RAISED AND I APPRECIATE THAT VERY MUCH.  
6 AFTER CLOSE EXAMINATION OF THE LANGUAGE OF THE  
7 INDICTMENTS, IN DUE REGARD FOR THE RIGHTS OF EVERYONE  
8 INVOLVED IN THIS MATTER I AM GOING TO TAKE, IT IS A VERY  
9 UNUSUAL STEP BUT I AM GOING TO TAKE THE STEP OF  
10 WITHDRAWING FROM YOUR CONSIDERATION, THE TWO, BOTH  
11 INDICTMENTS FOR LEWD ACT ON A MINOR AND I WILL HANDLE THE  
12 DISPOSITION OF THOSE TWO INDICTMENTS. I WILL REMOVE THOSE  
13 FROM YOUR CONSIDERATION. MY REASON FOR DOING THAT, LADIES  
14 AND GENTLEMEN, I AM CONCERNED THAT YOU ALL COULD GET  
15 CONFUSED BETWEEN THE TWO INDICTMENTS AND NOT KNOW WHICH  
16 ONE APPLIED TO EACH OF THE TESTIFIED ALLEGED EVENTS. SO,  
17 I AM GOING TO REMOVE THAT FROM YOUR CONSIDERATION AND  
18 LEAVE YOU TO ONLY CONSIDER THE TWO CRIMINAL SEXUAL CONDUCT  
19 WITH A MINOR IN THE FIRST DEGREE. NOW, HAVING DONE THAT,  
20 I AM GOING TO ASK YOU ALL TO RETIRE TO YOUR JURY ROOM, SEE  
21 IF I NEED TO GIVE YOU ANY FURTHER EXPLANATION OR IF THAT  
22 WILL SATISFY YOUR CONCERNS. I DO NOT WANT THE JURY, YOU  
23 THE JURY, TO BE CONFUSED BECAUSE OF THE WAY AN INDICTMENT  
24 HAS BEEN DRAFTED. SO, I WILL HANDLE THE RESOLUTION OF  
25 THOSE TWO INDICTMENTS, I WOULD ASK THAT WE WITHDRAW FROM

1 THE JURY ROOM THE TWO JURY VERDICT FORMS FOR LEWD ACT AND  
2 LET YA'LL PROCEED WITH YOUR DELIBERATIONS ON THE CRIMINAL  
3 SEXUAL CONDUCT OF A MINOR, BOTH COUNTS OF THAT. OKAY.  
4 SO, WHEN YOU RETURN, MADAM FORELADY, IF YOU WILL GIVE  
5 THOSE TWO VERDICT FORMS TO OUR BAILIFF, I WILL MAKE THOSE  
6 A PART OF THE RECORD SO THEY WON'T DISAPPEAR, THEY WILL BE  
7 A PART OF THE RECORD IN THIS CASE. THANK YOU, VERY MUCH.

8 (WHEREUPON, THE JURY WAS EXCUSED TO THE JURY ROOM TO  
9 CONTINUE DELIBERATIONS AT APPROXIMATELY 4:41 P.M.)

10 THE COURT: ALL RIGHT, I WILL BE HAPPY TO HEAR  
11 ANYTHING, ANYTHING FURTHER FROM ANY OF THE ATTORNEYS.

12 MR. GRIFFITH: IF IT PLEASE THE COURT.

13 THE COURT: YES, SIR.

14 MR. GRIFFITH: I WANT TO BE CERTAIN I UNDERSTOOD YOUR  
15 HONOR'S RULING, IS THAT THIS RULING WAS MADE SUA SPONTE BY  
16 THE COURT?

17 THE COURT: CORRECT.

18 MR. GRIFFITH: REGARDING THE DISPOSITION THESE TWO  
19 CHARGES WOULD BE, TO THE ALTERNATIVE BY THE STATE TO NOLLE  
20 PROSE THOSE TWO INDICTMENTS.

21 THE COURT: AT THIS TIME, SINCE I HAVE NOT RULED,  
22 ANYTHING, DO YOU CARE?

23 MR. WICKER: YOUR HONOR, I WILL LEAVE IT UP TO YOUR  
24 GOOD JUDGMENT.

25 THE COURT: I WILL ALLOW THE STATE TO NOLLE PROSE

1 THOSE INDICTMENTS, I JUST SAID I WAS WITHDRAWING THEM FOR  
2 THEIR CONSIDERATION AND THAT IS WHAT I HAVE DONE. AND I  
3 WILL TELL YOU TO BE SAFE, I AM GOING TO MARK AS COURT  
4 EXHIBITS, COPIES OF THE TWO INDICTMENTS, OF THE TWO LEWD  
5 ACT INDICTMENTS.

6 (WHEREUPON, COURT'S EXHIBIT NOS. 1, 2 AND 3 WERE  
7 MARKED FOR IDENTIFICATION ONLY.)

8 THE COURT: WE WILL BE AT EASE..

9 (WHEREUPON, COURT AT EASE UNTIL THE JURY HAS REACHED  
10 THEIR VERDICT.)

11 THE COURT: WE HAVE A VERDICT. LET ME JUST SAY THIS,  
12 I WANT NO EMOTIONAL OUTBURST FROM ANYONE IN THE COURTROOM  
13 WHEN WE GET THE VERDICT. ALL RIGHT.

14 (WHEREUPON, THE JURY CAME INTO OPEN COURT WITH THE  
15 VERDICT AT APPROXIMATELY 4:45 P.M.)

16 THE COURT: ALL RIGHT, MADAM FORELADY, I UNDERSTAND  
17 THE JURY HAS REACHED A VERDICT.

18 MADAM FORELADY: YES, SIR.

19 THE COURT: WOULD YOU PLEASE HAND IT TO THE BAILIFF.  
20 WOULD YOU PUBLISH THOSE FOR ME, MADAM CLERK.

21 CLERK OF COURT: INDICTMENT NUMBER 2005-GS-36-400,  
22 THE STATE OF SOUTH CAROLINA VERSUS JAMES WILLIE ELKINS.  
23 AS TO THE CHARGE OF CRIMINAL SEXUAL CONDUCT WITH A MINOR  
24 ALLEGED TO HAVE OCCURRED BETWEEN THE 10TH DAY OF MAY, 2005  
25 AND THE 29TH DAY OF MAY 2005. WE, THE JURY, FIND THE

1 DEFENDANT GUILTY. THAT IS SIGNED, BECKY L. MAYS,  
2 FOREPERSON.

3 INDICTMENT 2005-GS-36-402, THE STATE OF SOUTH  
4 CAROLINA VERSUS JAMES WILLIE ELKINS. AS TO THE CHARGE OF  
5 CRIMINAL SEXUAL CONDUCT WITH A MINOR ALLEGED TO HAVE  
6 OCCURRED ON OR ABOUT THE 10TH DAY OF MAY, 2005. WE, THE  
7 JURY, FIND THE DEFENDANT GUILTY. AND THAT IS SIGNED BECKY  
8 L. MAYS, FOREPERSON.

9 MADAM FORELADY, LADIES AND GENTLEMEN, IF THESE ARE  
10 YOUR VERDICTS PLEASE INDICATE BY RAISING YOUR RIGHT HAND.

11 (WHEREUPON, THE JURORS RAISED THEIR HAND.)

12 THE COURT: ALL RIGHT, THANK YOU VERY MUCH. MADAM  
13 FORELADY, LADIES AND GENTLEMEN OF THE JURY, I WANT TO  
14 THANK YOU VERY MUCH FOR YOUR HARD AND DILIGENT WORK IN  
15 THIS CASE AND FOR YOUR SERVICE AS JURORS THIS WEEK. IT  
16 IS, I HOPE I DIDN'T MAKE A LIAR OUT OF MYSELF THAT I TOLD  
17 YOU THAT YOU WOULD HAVE A DEEP, I DIDN'T SAY IT WAS GOING  
18 TO BE EASY, BUT A DEEP FEELING OF SATISFACTION THAT YOU  
19 HAVE DONE A HARD JOB FOR YOUR COMMUNITY AND I HOPE YOU  
20 FEEL THAT WAY. AND AS YOU, AS TIME PASSES AS THAT FEELING  
21 OF SATISFACTION AND PRIDE WILL, IN FACT, GROW FOR YOU  
22 BECAUSE WE THANK YOU IMMENSELY. I WANT TO TELL YOU THE  
23 REST OF THE PANEL IS COMING BACK IN THE MORNING AT 9:30.  
24 ARE YA'LL EXCITED ABOUT THAT. NORMALLY I WOULD ASK YOU TO  
25 COME BACK AS WELL BUT YOU HAVE DONE YOUR DUTY, WE HAVE A

1 LARGE PANEL THAT IS COMING BACK AND I AM GOING TO EXCUSE  
2 YA'LL FOR THE REMAINDER OF THE WEEK. THANK YOU FOR YOUR  
3 SERVICE, YOU ARE FREE TO TALK ABOUT THIS CASE NOW WITH  
4 WHOEVER YOU WOULD LIKE TO TALK ABOUT IT WITH. AND IF  
5 SOMEONE TALKS TO YOU AND YOU DON'T WANT TO TALK ABOUT IT  
6 AND THEY PERSIST IN TALKING TO YOU JUST MAKE A NOTE WHO IT  
7 IS, CALL THE CLERKS OFFICE AND WE WILL FIX THAT PROBLEM  
8 BECAUSE WE DON'T WANT ANY OF YA'LL TO FEEL ANY PRESSURE,  
9 EMBARRASSMENT, HARASSMENT OR ANYTHING OF THAT NATURE FROM  
10 YOUR SERVICE. THANK YOU VERY MUCH FOR YOUR SERVICE AND  
11 YOU ARE NOW FREE TO GO. YOU CAN STAY OR YOU ARE FREE TO  
12 GO.

13 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT.)

14 THE COURT: MR. WICKER, BRING MR. ELKINS ON AROUND.  
15 FIRST, BEFORE WE GO ANY FARTHER, ANY MOTIONS THAT YOU  
16 WOULD LIKE TO MAKE, SIR.

17 MR. WICKER: NO, YOUR HONOR.

18 THE COURT: ALL RIGHT. LET ME TALK TO THE ATTORNEYS  
19 UP HERE FOR ONE SECOND.

20 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

21 THE COURT: ANYTHING BEFORE WE GO ON?

22 MR. WICKER: YES, YOUR HONOR, I WOULD LIKE TO MAKE A  
23 MOTION FOR A NEW TRIAL BECAUSE WE FEEL THAT THE EVIDENCE  
24 DOES NOT SUPPORT THE VERDICT.

25 THE COURT: THANK YOU, VERY MUCH. I RARELY, EVER

1 DISTURB A JURY'S WORK AND I AM NOT GOING TO DO IT IN THIS  
2 CASE. THANK YOU FOR THE MOTIONS. ANYTHING FROM THE  
3 STATE?

4 MS. BOLEN: YOUR HONOR, BEFORE YOU DECIDE SENTENCING,  
5 THE STATE WOULD LIKE TO--, I AM SORRY, NOTHING FROM THE  
6 STATE, YOUR HONOR.

7 THE COURT: MR. WICKER, WHAT DO YOU WANT TO TELL ME.

8 MR. WICKER: YES, YOUR HONOR, I PROBABLY KNOW  
9 HOTPATCH AS WELL AS MOST ANYBODY HERE. I HAVE ONLY KNOWN  
10 HIM IN MY OFFICE, I HAVE KNOWN HIM IN JAIL, I HAVE KNOWN  
11 HIM WHEN HE IS SERVING TIME, I HAVE TALKED TO THE HEAD  
12 JAILER OUT THERE, TWO DIFFERENT ONES. HE IS A MODEL  
13 PRISONER, THEY LIKE FOR HIM TO BE WITH THEM IN POST-TRIAL,  
14 IN PRE-TRIAL THEY ARE PRETTY MUCH LOCKED UP. BUT IN  
15 POST-TRIAL HE COOKS, HE SERVICES THE PUBLIC, HE RUNS THE  
16 LAUNDRY, HE IS JUST LIKE HE IS AN EMPLOYEE TYPE OUT THERE.  
17 AND ACTUALLY THE OTHER PRISONERS GET ALONG WITH HIM  
18 BECAUSE HE IS ONE OF THEM AND HE IS A PEACE MAKER WHILE HE  
19 IS IN JAIL, HE IS NOT A TROUBLE MAKER. AND I AM SURE OVER  
20 THE YEARS, ABOUT TWO DIFFERENT JAILERS, ONE OF THEM DIED  
21 AND THEN WE BROUGHT A MAN IN FROM LEXINGTON WHO IS RETIRED  
22 AND MADE HIM THE HEAD JAILER. AND HE CALLED ME IN THE  
23 OFFICE ONE DAY AND SAID, YOU KNOW THAT CLIENT OF YOURS, HE  
24 IS VERY RELIABLE AND WORKS HARD AND WILL DO ANYTHING YOU  
25 ASK HIM TO DO. AND I SAID, WELL, I AM GLAD TO HEAR IT.

1 AND SO I DO THINK THAT HE HASN'T BEEN A GOOD CITIZEN WHILE  
2 HE WAS OUT, HE HAS HAD A HARD LIFE, HE IS LIKED BY MANY  
3 PEOPLE, HE IS DISLIKED BY A LOT OF PEOPLE, THAT ARE  
4 OUTSIDE THE PRISON, I DON'T MIND SAYING THAT, THEY DON'T  
5 LIKE HIM. AND HE DOESN'T PARTICULARLY LIKE LAW  
6 ENFORCEMENT PEOPLE HERE. I WOULD HOPE THE SENTENCE WOULD  
7 RUN CONCURRENT AND NOT CONSECUTIVE, I WOULD HOPE YOU HAVE  
8 MERCY ON HIM. HE HAS NEVER ADMITTED IT, I DON'T THINK HE  
9 WOULD ADMIT IT TODAY, HE IS GOING TO SAY HE IS INNOCENT  
10 UNTIL THE DAY HE DIES IS MY BELIEF.

11 THE COURT: TELL ME WHAT YOU WANT TO SAY, MR. ELKINS,  
12 ANYTHING?

13 MR. ELKINS: SOMETHING I DIDN'T DO BUT I AM NOT GOING  
14 TO PROVE IT.

15 THE COURT: ANY OTHER VICTIM INPUT.

16 MR. GRIFFITH: NO, YOUR HONOR.

17 THE COURT: ALL RIGHT. I WANT TO TELL YOU THAT YOU  
18 HAVE A RIGHT TO APPEAL THIS CONVICTION, OKAY.

19 MR. ELKINS: YES, SIR.

20 THE COURT: AND YOU NEED TO LET YOUR ATTORNEY KNOW  
21 THAT YOU HAVE GOT TO FILE THAT NOTICE WITH INTENT TO  
22 APPEAL WITHIN TEN DAYS. SO, YOU NEED TO LET HIM KNOW  
23 RIGHT AWAY IF YOU INTEND TO APPEAL THE CONVICTION. OKAY.

24 MR. ELKINS: YES, SIR.

25 THE COURT: I CAN'T THINK OF ANYTHING THAT IS MORE

1 VIOLATIVE OF OR HUMAN PRESENCE THAN FOR SOMEONE IN THE  
2 POSITION OF TRUST TO ABUSE A CHILD WHO LOOKS TO AN ADULT  
3 AS A SOURCE OF SECURITY. AND TO ABUSE THAT, I JUST DON'T  
4 THINK IT GETS ANY LOWER THAN THAT. TAKING INTO  
5 CONSIDERATION EVERYTHING THAT I KNOW ABOUT YOU, I AM GOING  
6 TO GIVE YOU 30 YEARS ON EACH OF THEM. GOOD LUCK.

7 MS. BOLEN: THANK YOU, YOUR HONOR.

8 MR. WICKER: THANK YOU, YOUR HONOR.

9 \*\*\* END OF REQUESTED TRANSCRIPT OF RECORD \*\*\*

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF NEWBERRY )

I, JOY E. HOLSTON, OFFICIAL COURT REPORTER FOR THE  
EIGHTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO  
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND  
COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND  
EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE,  
RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR  
NEWBERRY COUNTY, SOUTH CAROLINA, ON THE 3RD DAY OF  
DECEMBER, 2007.

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

APRIL 30, 2008

Jay E. Hilton

JOY E. HOLSTON, COURT REPORTER

MY COMMISSION EXPIRES: MARCH 13, 2016

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Newberry County

Edward W. Miller, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

JAMES WILLIE ELKINS, JR.,

APPELLANT

---

FINAL ANDERS BRIEF OF APPELLANT

---

WANDA H. CARTER  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

|                                          |   |
|------------------------------------------|---|
| TABLE OF CONTENTS.....                   | 1 |
| TABLE OF AUTHORITIES.....                | 2 |
| STATEMENT OF ISSUE ON APPEAL .....       | 3 |
| STATEMENT OF THE CASE .....              | 4 |
| ARGUMENT .....                           | 5 |
| CONCLUSION.....                          | 7 |
| PETITION TO BE RELIEVED AS COUNSEL ..... | 8 |

## TABLE OF AUTHORITIES

### **Cases**

|                                                                  |   |
|------------------------------------------------------------------|---|
| <u>In Re Robert M.</u> , 294 S.C. 69, 362 S.E.2d 639 (1987)..... | 6 |
| <u>State v. Hudnall</u> , 293 S.C. 97, 359 S.E.2d 59 (1997)..... | 6 |
| <u>State v. Pitts</u> , 256 S.C. 240, 182 S.E.2d 738 (1971)..... | 6 |

### **Rules**

|                     |   |
|---------------------|---|
| SCRE Rule 601 ..... | 6 |
|---------------------|---|

### **Constitutional Provisions**

|                               |   |
|-------------------------------|---|
| S.C. Const. art. 1 § 14 ..... | 6 |
| S.C. Const. art. 1 § 3 .....  | 6 |
| U.S. Const. Amend VI .....    | 6 |
| U.S. Const. Amend XIV .....   | 6 |

STATEMENT OF ISSUE ON APPEAL

The trial judge erred in failing to determine whether the child witness was competent to testify in the case after it became clear that said witness was apparently under considerable stress from the events which led to the trial and the trial itself.

STATEMENT OF THE CASE

Appellant James Willie Elkins was convicted of two counts of first degree criminal sexual conduct with a minor during the December 2007 term of the Newberry County General Sessions Court before the Honorable Edward W. Miller, Judge. Appellant received an aggregate thirty-year sentence in the case.

Appellant appealed. This brief follows.

### ARGUMENT

The trial judge erred in failing to determine whether the child witness was competent to testify in the case after it became clear that said witness was apparently under considerable stress from the events which led to the trial and the trial itself.

The minor female victim in the case testified that on two separate occasions between May 10 – 29, 2005, (once at her home and once at appellant's friend's home), appellant had her take off her clothes and then placed his private part in her private part. The victim stated she was nine years old at the time the alleged assaults occurred. Moreover, the victim testified that she told her mother that appellant sexually assaulted her. Also, note that at the time the assaults allegedly occurred, appellant and her mother lived in appellant's trailer. R. p. 36, line 18 – p 46, line 16; R. p. 73, lines 5 – 10; R. p. 78, lines 23 – 25.

Dr. Graton Smith testified that parts of the victim's hymen membrane were missing, worn away, and had narrowing edges, which was abnormal for a child her age and consistent with sexual assault. Furthermore, the victim was diagnosed with trichomonas (sexually transmitted disease). R. p. 85, line 2 – p. 89, line 21. Finally, the victim's aunt testified that the victim's mother told her that the assaults occurred. R. p. 51, line 24 – p. 53, line 23. The victim also relayed the events to forensic sex counselor and interviewer Susan Bentley. R. p. 57, line 25 – p. 67, line 8.

After the jury was selected and sworn in the case, the state moved to begin the trial at 4:45 p.m. on the first day of the trial in order to get the female victim on and off the stand so that she could conclude her testimony then rather than have her return to court on a consecutive day to testify. The defense objected. R. p. 20, line 3 – p. 21, line 1; R. p. 21, lines 17 – 20. The solicitor stated that "this has been a very stressful ordeal for her for a

very long time. . . she has just gone under a lot of stress through all of this . . . she is ready to testify . . . just the fear another night of going home and having to worry about it will be detrimental to her.” R. p. 21, lines 11 – 15.

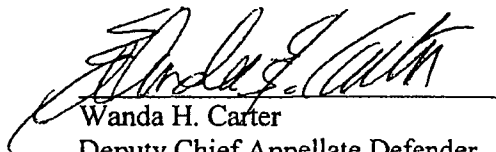
Thereafter, the court questioned the victim and asked if she would be able to return to court the next day and testify. She answered in the affirmative. R. p. 21, line 21 – p. 25, line 14. The trial commenced on the next day. However, prior to questioning the child regarding the matter of returning to court on the following day, the trial judge questioned the attorneys as to whether the victim was competent to testify (R. p. 21, lines 2 – 9), but never followed upon the issue of competency. In other words, the issue of the child victim’s competency to testify was never addressed prior to trial.

As a rule, a witness’ qualification is within a trial judge’s discretion. State v. Hudnall, 293 S.C. 97, 359 S.E.2d 59 (1997). Also, it is the duty of the trial judge to satisfy herself of the witness’ competency. State v. Pitts, 256 S.C. 240, 182 S.E.2d 738 (1971). See also, SCRE Rule 601. Compare In Re Robert M., 294 S.C. 69, 362 S.E.2d 639 (1987), where the trial judge erred in failing to determine a four-year old child witness’ competency to testify as a witness. Here, the trial judge was unsure of the victim’s competency, and so was the solicitor, who seemed to be overly concerned about the victim’s ability to withstand a trial due to the stress and trauma she has endured due to the alleged sexual assaults. In the case at bar, the trial judge erred in failing to determine whether the child witness was competent to testify in the case in violation of the Sixth and Fourteenth Amendments to the United States Constitution and Article 1 §14 and §3 of the South Carolina State Constitution.

CONCLUSION

Based on the foregoing argument, appellant's convictions should be reversed and his case remanded to the Newberry County General Sessions Court for a new trial.

Respectfully submitted,



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

January 9, 2009

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Newberry County  
Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES WILLIE ELKINS, JR.,

APPELLANT

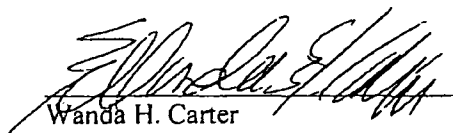
PETITION TO BE RELIEVED AS COUNSEL

Counsel for James Willie Elkins Jr. states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Edward W. Miller, which was held on 12-4-07, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed the arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for James Willie Elkins Jr.

Respectfully submitted,

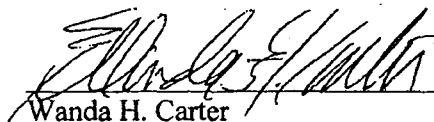
  
Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

## CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 9, 2009

  
Wanda H. Carter  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1343

Attorney for Appellant

## STATE OF SOUTH CAROLINA

## IN THE COURT OF APPEALS

Appeal from Newberry County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

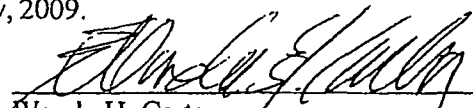
V.

JAMES WILLIE ELKINS, JR.,

APPELLANT

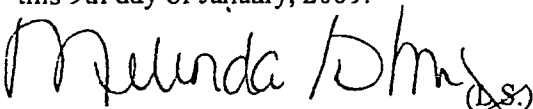
## CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, Assistant Deputy Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201; and the Final Anders Brief of Appellant and Record on Appeal have been served upon James Willie Elkins, Jr., #241002 at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 9th day of January, 2009.

  
Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 9th day of January, 2009.

  
Melinda B. Smith (D.S.)  
Notary Public for South Carolina

My Commission Expires: October 30, 2018

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

The State,

Respondent,

v.

James Willie Elkins,

Appellant.

---

Appeal from Newberry County  
Edward W. Miller, Circuit Court Judge

---

Unpublished Opinion No. 2010-UP-161  
Submitted January 4, 2010 – Filed February 24, 2010

---

**APPEAL DISMISSED**

---

Deputy Chief Appellate Defender Wanda H. Carter,  
of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief  
Deputy Attorney General John W. McIntosh,  
Assistant Deputy Attorney General Salley W. Elliott,

of Columbia, and Solicitor, Eighth Judicial Circuit,  
Jerry W. Peace, of Greenwood, for Respondent.

**PER CURIAM:** James Willie Elkins appeals his conviction for two counts of criminal sexual conduct with a minor in the first degree. Elkins argues the trial court erred in "failing to determine whether the child witness was competent to testify in the case after it became clear that said witness was apparently under considerable stress from the events which led to the trial and the trial itself." Elkins's counsel attached to the brief a petition to be relieved as counsel, stating that she had reviewed the record and concluded that the appeal is without legal merit sufficient to warrant a new trial. Elkins filed a pro se brief.

After a thorough review of the record, the pro se brief, and counsel's brief pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.<sup>1</sup>

**APPEAL DISMISSED.**

**HUFF, J., GEATHERS, J., and CURETON, A.J., concur.**

---

<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

## FORM 5

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

County of Newberry )James Willie Elkins, Jr. #241002 )

Full name and prison number (if any) of Applicant )

v. )

State of South Carolina )

2010CP30 - 263

## APPLICATION FOR

## POST-CONVICTION RELIEF

**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correctional Institution, 386 Redemption Way, McCormick, South Carolina 29899
2. Name and location of Court which imposed sentence Newberry County Courthouse, Newberry, S.C. 29108
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 05-GS-36-400 - Criminal Sexual Conduct w/minor
  - (b) 05-GS-36-402 - Criminal Sexual

Jackie S. Bowers, Clerk of Court, Newberry, South Carolina, do hereby certify that this is a true copy of the original on file in this office.  
JUN 09 2010  
Jackie S. Bowers  
Clerk of Court

FILED  
NEWBERRY COUNTY  
JUN 9  
JACKIE S. BOWERS  
CLERK OF COURT

- (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 12/04/07 - Thirty (30) years - concurrent  
\_\_\_\_\_
- (b) 12/04/07 - Thirty (30) years - concurrent  
\_\_\_\_\_
- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty XXXXXXXX  
\_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
Yes  
\_\_\_\_\_
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals  
\_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. Appeal "Dismissed"  
\_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. February 24, 2010  
\_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2010-UP-161  
\_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A  
\_\_\_\_\_
- (b) \_\_\_\_\_

- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel.
- (b) Subjected the Applicant to false/bogus charges.
- (c) Denial of Due Process of Law.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See page 8: Ineffective Assistance of Counsel.
- (b) See page 9: Subjected the Applicant to false/bogus charges.
- (c) See page 10: Denial of Due Process of Law.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Direct Appeal
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Direct appeal
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
- i. S.C. Court of Appeals, P.O. Box 11629, Columbia, SC 29211
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(c) the disposition thereof:

- i. Dismissed
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. February 24, 2010
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. Unpublished Opinion No. 2010-UP-161
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?  
No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) This is the first opportunity that I have had to present these  
 (b) grounds.  
 (c) \_\_\_\_\_
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes  
 Yes  
 (b) your trial, if any? Yes  
 Yes  
 (c) your sentencing? Yes  
 Yes  
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes  
 Yes  
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?  
 No
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Ray Wicker, Esquire - 1309 Hunt Street, Newberry, SC 29108  
 \_\_\_\_\_  
 \_\_\_\_\_
- ii. Wanda H. Carter, Deputy Chief Appellate Defender, 1330 Lady  
Street, Suite 401, Columbia, SC 29201  
 \_\_\_\_\_
- iii. \_\_\_\_\_  
 \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
- i. 18(a) i - represented me at 17(a)(b) & (c)  
 \_\_\_\_\_  
 \_\_\_\_\_
- ii. 18(a) ii - represented me at 17(d)  
 \_\_\_\_\_  
 \_\_\_\_\_
- iii. \_\_\_\_\_  
 \_\_\_\_\_

19. State clearly the relief you seek in filing this application:  
Reverse and remand this case for a new trial, and any other relief  
this Court deems just and proper.
20. Are you now under sentence from any other court that you have not challenged?  
No

STATE OF SOUTH CAROLINA )  
 )  
 County of McCormick )

## VERIFICATION

I, James Willie Elkins #241002, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

James W. Elkins

SWORN to and subscribed before me this 6<sup>th</sup>  
 day of June, 2010

William H. Brown (L.S.)  
 Notary Public

My Commission Expires: May 23<sup>rd</sup> 2010

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

I, James Willie Elkins #241002, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

James W Elkins  
Applicant

SWORN or affirmed to and subscribed before me this

6th day of June, 2010.

William H. Crouse  
Notary Public

My Commission Expires: May 23<sup>rd</sup>, 2010

Ineffective Assistance of Counsel

11.(a) Applicant was denied his right to the effective assistance of counsel and due process of law in violation of the Sixth and Fourteenth Amendments of the United States Constitution and in violation of the South Carolina Constitution Article I, §14 and §3.

(1) Counsel was ineffective when counsel failed to adequately consult with the Applicant on numerous issues that relates to the charges involved in this matter, or investigate the facts and law concerning the Applicant's case. To the best of Applicant's knowledge, no conversation ever took place between counsel and the Applicant concerning a defense to the charge(s), other than entering a guilty plea.

(2) The Applicant's trial counsel failed to engage in pretrial discovery, failed to apply for a preliminary hearing, and counsel failed to question or present any witnesses for the Applicant during his trial. Counsel failed to prepare a defense for the Applicant. Counsel did not care for the Applicant's case, and to the best of the Applicant's knowledge, no conversation ever took place between counsel and the Applicant concerning a defense.

FILED  
SOUTH CAROLINA  
JUN -9 A 11:33  
CLERK OF COURT

Subjected the Applicant to false/bogus charges

11.(b) The Applicant was prejudiced with two other charges during his entire trial on December 3, 2007. The Applicant was subjected to (05-GS-36-401) "committing or attempting a lewd act upon a child", and (05-GS-36-403) "committing or attempting a lewd act upon a child". The Applicant's counsel failed to have a preliminary hearing in reference to the above charges. These charges had prejudiced the Applicant throughout the trial and were considered nolle processed, by Edward W. Miller, Judge, and Patricia A. Bolen, Assistant Solicitor, during the presence of the jury prior to returning back to deliberations.

Denial of Due Process of Law

11.(c) The Applicant was denied his Sixth and Fourteenth Amendments right of the United States Constitution and Article I, §14 & §3 of the South Carolina Constitution because his trial counsel failed to spend a sufficient amount of time on his case before he wrongly advised the Applicant to take the witness stand, without preparing the Applicant for a fair chance at trial, thus, denying the Applicant due process of law.

Law Analysis

The South Carolina Supreme Court's Rules 50(5) and 71.1 (d), makes it mandatory that post-conviction relief attorneys make sure that all available grounds are raised in post-conviction relief proceedings. After filing a pro-se PCR application and being given court appointed counsel, a pro-se litigant cannot thereafter file any further pleadings, and any amendments to the applicant's PCR application must be made by his counsel. State v. Sanders, 269 S.C. 306, 379 S.E.2d 907 (1989). Thus, if a PCR counsel does not amend the pro-se application, then the applicant has no way to have all supporting grounds heard properly.

In a situation where post-conviction applicant is not assisted by his PCR counsel in properly amending his first application to include all supporting grounds underlying a claim of ineffective assistance of trial counsel and does not know of such grounds or does not know how to raise such grounds, and is barred from presenting pro-se pleading in light of State v. Sanders, supra; Foster v. State, supra, he or she must be seen to be "without counsel" and in the same position as that of the Applicant in Case v. State, supra.

Clearly, trial counsel's performance was so deficient that the outcome of the case is brought into question. As stated in Frett v. State, 298 S.C. 54, 378 S.E.2d 249, "while a defendant must ordinarily show that counsel's ineffective assistance

resulted in actual prejudice, such a showing may be exempted where counsel's ineffectiveness is so pervasive as to render a particularized prejudice inquiry unnecessary". See House v. Balkcom, 725 F.2d 608 (11th Cir. 1984).

Prejudice is not required where the ineffectiveness of counsel is "so pervasive that a particularized inquiry into prejudice would be unguided speculation." Washington v. Strickland, 693 F.2d at 1259, n. 26.

#### CONCLUSION

The facts submitted in this application pertaining to counsel's ineffectiveness is so prejudicial as to require this Court's consideration. Therefore, the Applicant request that an evidentiary hearing be convened. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

The Applicant also request this Court appoint counsel to represent him in this matter.. See Rule 71.1 (d), SCRPC.

Date: June 6-2010

Respectfully submitted,

James Willie Elkins #241002

James W. Elkins  
MCC1 F-4 B-side  
386 Redemption Way  
McCormick, SC 29899  
Applicant

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

James Willie Elkins, Jr., #241002,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE EIGHTH JUDICIAL CIRCUIT  
Case No.: 2010-CP-36-263

RETURN

Respondent, making its Return to the application for post-conviction relief (PCR) filed June 9, 2010, would respectfully show this Court:

## I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Newberry County Clerk of Court. Applicant was indicted at the August 2005 term of the Newberry County Grand Jury for charges of Criminal Sexual Conduct With a Minor, 1<sup>st</sup> degree (2005-GS-36-400, 403) and two charges for Committing or Attempting to Commit a Lewd Act Upon a Child (2005-GS-36-401, 403). Raymond K. Wicker, Esquire, represented him. On December 3-4, 2007, the Applicant proceeded to trial pursuant to which he was found guilty as indicted for the two criminal sexual conduct charges; the two lewd act charges were *nolle prossed*. The Honorable Edward W. Miller sentenced him to confinement for thirty (30) years for both convictions, sentences running concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected pursuant to Anders v. California, 386 U.S. 738 (1967). The Applicant also filed a pro se Anders response brief. The South Carolina Court of Appeals dismissed the Applicant's appeal. State v. Elkins, Op. No. 2010-UP-161 (S.C. Ct. App. filed February 24, 2010). The Remittitur was sent on March 12, 2010.

Attached herewith and incorporated herein by reference are the records of the Newberry County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the appellate court records including the trial transcript.

## II.

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

1. Ineffective Assistance of Counsel,
2. "Subjected the Applicant to false/bogus charges," and
3. Denial of Due Process.

## III.

The Respondent interprets the Applicant's allegations to be claims of ineffective assistance of counsel, where the claims the Applicant asserts in the application in support of these allegations are claims regarding trial counsel's alleged deficient performance. In a PCR proceeding, the applicant bears the burden of establishing that he is entitled to relief. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). First, a PCR applicant must show that his counsel's performance was deficient such that it falls below an objective standard of reasonableness. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 693 (1984); Alexander v. State, 303 S.C. 539, 541, 402 S.E.2d 484, 485 (1991). Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry v. State, 300 S.C. 115 at 117, 386 S.E.2d 624 at 625 (1989), *citing Strickland*.

Second, an applicant must show there is a reasonable probability, but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland, 466 U.S. at 687, 104 S.Ct. at 2064, 80 L.Ed.2d at 693; Alexander, 303 S.C. at 541-42, 402 S.E.2d at 485. The Courts

presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, Id. Applicant must overcome this presumption in order to receive relief. Cherry, Id.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel and appellate counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. §17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

#### V.

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

#### VI.

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

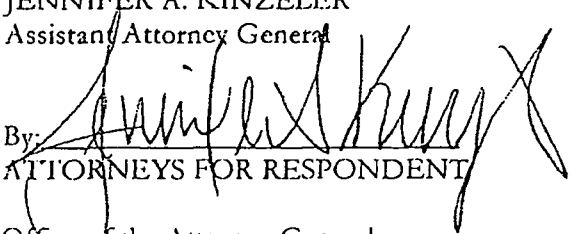
Respectfully submitted,

HENRY D. McMASTER  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

JENNIFER A. KINZELER  
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

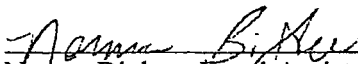
12/7, 2010.

|                                   |   |                              |
|-----------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA           | ) |                              |
|                                   | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF NEWBERRY                | ) |                              |
|                                   | ) |                              |
|                                   | ) | 2010-CP-36-263               |
|                                   | ) |                              |
| JAMES WILLIE ELKINS, JR., #241002 | ) |                              |
|                                   | ) |                              |
| Applicant,                        | ) |                              |
|                                   | ) |                              |
| vs                                | ) | AFFIDAVIT OF SERVICE BY MAIL |
|                                   | ) |                              |
| STATE OF SOUTH CAROLINA,          | ) |                              |
|                                   | ) |                              |
| Respondent.                       | ) |                              |
|                                   | ) |                              |

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

M. Rita Metts, Esquire  
 3531 River Dr.  
 Columbia, SC 29201

DATED this 7<sup>th</sup> day of December, 2010.

  
 Norma Bigbee, Legal Assistant

STATE OF SOUTH CAROLINA )

COUNTY OF NEWBERRY )

JAMES W. ELKINS, 241002 )

Applicant )

STATE OF SOUTH CAROLINA )

Respondent, )

IN THE COMMON PLEAS COURT

DOCKET NO.: 2010-CP-36-263

AMENDED APPLICATION FOR POST  
CONVICTION RELIEF

FILED  
NEWBERRY COUNTY  
2011 JUL 22 A 10:40  
JACQUE S. POWERS  
CLERK OF COURT

The Applicant through undersigned Counsel wishes to amend his Application for Post Conviction Relief that was filed on June 9, 2010, as follows:

#### INEFFECTIVE ASSISTANCE OF COUNSEL

Ray Wicker was ineffective when he did not object and ask the trial Judge for a ruling on the victim's competency to testify when the Solicitor stated that this had been a very stressful ordeal for the victim for a very long time. Although the trial Judge questioned the Solicitor and Counsel as to whether the victim was competent to testify, the Judge never followed up on the issue of competency nor ruled on it. See page 21 line 2 and page 25, line 17. Counsel prejudiced applicant's case by not objecting or getting a ruling on this issue from the Judge. Further, the issue of competency was not brought up again after the Jury was sworn, see page 26, line 8 and 9, only mentioned in a pretrial matter.

Counsel failed to object to the Solicitor's improper and prejudicial opening comment when the Solicitor stated that the victim was terrified, so she didn't tell anyone, see page 30, line 11-12, and she couldn't believe it happened. She was terrified, page 30, line 18. There was no evidence or testimony showing this victim was terrified, also in closing see page 125, line 3-4, page 132, line 15-17.

Counsel further prejudiced applicant when he did not ask the victim what Mr. Davis' home looked like inside, see page 43 line 1-21.

Counsel never asked the victim what she did with her bloody underwear or why she did not notice the blood on herself or the bed, page 410, line 2-3, page 41, line 12-25, and page 42, line 12-13.

Further, counsel prejudiced applicant when he failed to ask Dr. Smith if a child victim bled during a sexual assault if her hymen was normal. Counsel failed to ask Dr. Smith if the victim's worn away hymen necessarily meant a sexual assault. Counsel further failed to ask Dr. Smith if the victim's medical records were looked at prior to this alleged sexual assault for normal or abnormal findings. Looking at Counsel Wicker's whole line of cross-examination, it undermined any defense or argument on behalf of the applicant, which clearly prejudiced applicant, page 89, line 25.

Moreover counsel failed to ask Pete Johnson if he or anyone from the Sheriff's office investigated Mr. Davis, the person's home, the victim said she was taken on the second time, see page 75 lines 21-25 (Detective Robert Dennis, page 73, line 15-22).

Counsel prejudiced applicant when he failed to subpoena the Dr. who did the test showing applicant did not have any disease including 2 DNA tests. Nor did he subpoena the solicitor's files that showed applicant was negative of any disease, page 103, line 7, line 12, page 105, line 8.

Moreover, counsel never helped applicant state the right Judge's name (thinking it was Judge Westbrook who the test were shown).

Counsel never provided applicant with any hospital or Doctor's reports. Applicant was never shown any of his Rule (5) evidence.

Counsel failed to object to cumulative testimony (same thing) were it prejudicial for three (3) police officers to testify to the same thing and what the victim has told them, as well as the aunt also testifying to what the victim told her.

Counsel failed to inform applicant that he had a right to his own Doctor and Forensic interview counselor to review the State's Doctor and forensic counselor's findings. Counsel failed to inform applicant if he could not pay for one, (counsel failed to remove himself from

my case) asking the court to appoint counsel so appointed counsel could request expenses for applicant's own Doctor and Forensic counsel for his defense.

In opening, counsel made an improper prejudicial comment, stating that if put in evidence (as in the O. J. Simpson case there was no evidence put in) so he got a chance to argue last, page 34 line 25, page 35, line 1.

According to the Applicant when we hear the word resurrection most of us instantly think about Jesus rising from the dead and in the O. J. Simpson case most of us instantly think he got away with murder and in applicant's case a rape charge against a child was prejudicial.

#### CLOSING ARGUMENT

Counsel's reason for not objecting during trial is not a strategy lesson at all quote ***"You know why I didn't object? I wanted you to hear everything. I really didn't care what you heard. I didn't want to object because I didn't want you to think I was keeping you from hearing everything"***

Further committed prejudicial and improper comment when he stated ***"she was afraid to tell anybody which is perfectly normal in a case like this because they are afraid to tell people"*** See page 120, line 12-14, here the victim never testified that she was afraid to tell anybody.

Counsel committed prejudicial and improper comment when he stated ***"not only that, but the problem you have here is a big problem. Is my client a bold faced liar? He has always cooperated."*** See page 120, line 14-17. Here counsel never put up any evidence or person to help applicant's testimony.

Counsel's closing argument was improper and prejudicial which went beyond the issue of applicant's case. See page 121, line 5, page 122, line 8.

Counsel's further comment was improper and prejudicial when he stated that he was trying to prove applicant's innocence until proven guilty, page 123 line 19. Here Applicant was innocent until proven guilty not that applicant was trying to prove his innocence.

Moreover, counsel's comment was improper and prejudicial when counsel stated that

**"what if my client is telling the truth"** see page 124, line 7-8.

As a whole counsel's performance undermined applicant's defense which prejudiced applicant's whole trial.

Counsel failed to subpoena the Solicitor's documents showing that applicant's tests were negative for trichomonas or the Doctor who did the test.

Counsel just put applicant on stand without a defense. The Solicitor even argued that in closing argument. Applicant's counsel did not even ask him if he did the crime or not, see page 127, line 17-21. The Judge even has to tell applicant's counsel we don't give just narrative comments, see page 107, line 12-20.

When Mr. Wicker asked applicant: I have no further questions, do you have anything that you really think should be told that is legal to tell?

Applicant's defense was based on rebuttal witnesses which counsel failed to subpoena.

1. Applicant's own Doctor and forensic counsel.
2. The Solicitor's files/documents that showed I was negative for trichomonas or
3. The Doctor who did the test, as well as the DNA test, Dr. Earl Davis.

Further counsel told applicant with this kind of case, applicant must take the stand and testify on his own behalf to tell the jury that he did not do it, see page 33, line 4-7 and that he would protect him when he was on the stand, but as you can see that did not happen.

Counsel failed to object and ask for curative instruction or mistrial when the victim stated that after he took her to the emergency room she said to get Hot patch out of jail, see page 44, line 18-25.

Applicant was not in jail on this incident charge. This was prejudice. Counsel further prejudiced applicant when he elicited more damaging testimony about him being in jail on

another charge before he took the stand. See page 47, line 15, page 18, line 10, page 49, line 4-14.

Counsel also elicited sympathy and passion from the jury with line of questions, asking the victim about her Mother passing away, see page 47, line 8-9.

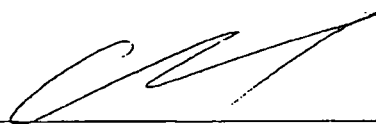
Counsel further elicited damaging and prejudicial testimony when he asked the victim **"In other words, they started fussing and she moved"**, see page 49, line 21-24.

Counsel further drew sympathy and passion from the jury when he told the victim **"I think you are very brave and I want you to do good in school"**, see page 51, line 16-17. This statement was prejudicial in a rape case.

Counsel elicited more prejudicial and damaging testimony. Lt. Schumpert, did he charge applicant with resisting arrest when they came to arrest him on the rape charge. When the state failed to ask this question counsel could have used this argument in his closing to the Jury, see page 94, page 117, line 3-9 and page 149, line 21, page 150, line 3.

Counsel failed to object to the Solicitor's improper closing comment **"the Solicitor vouching for the credibility of the State's star witness, the child victim"**, which was prejudicial.

RESPECTFULLY SUBMITTED ON BEHALF OF  
APPLICANT, James W. Elkins



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

July 19, 2011

|                              |   |                              |
|------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA      | ) |                              |
|                              | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF NEWBERRY           | ) | 2009-CP-36-00263             |
|                              | ) |                              |
|                              | ) |                              |
| JAMES W. ELKINS,             | ) |                              |
|                              | ) |                              |
| PLAINTIFF,                   | ) |                              |
|                              | ) |                              |
| VERSUS                       | ) |                              |
|                              | ) |                              |
| THE STATE OF SOUTH CAROLINA, | ) |                              |
|                              | ) | DATE: NOVEMBER 17, 2011      |
| DEFENDANT.                   | ) | NEWBERRY, SOUTH CAROLINA     |

# POST-CONVICTION RELIEF HEARING

## B E F O R E:

THE HONORABLE FRANK R. ADDY, JR.

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

CHARLES T. BROOKS, III  
ATTORNEY AT LAW  
ATTORNEY FOR THE APPLICANT

SUZANNE WHITE  
ATTORNEY AT LAW  
ATTORNEY FOR THE STATE

PROVIDED FOR: SCCID

FOR COPIES CONTACT: Jo Rice  
jrice@sccourts.org  
Official Court Reporter  
South Carolina Judicial Department

## INDEX

| <u>WITNESS</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RE-CROSS</u> |
|----------------|---------------|--------------|-----------------|-----------------|
|----------------|---------------|--------------|-----------------|-----------------|

JAMES ELKINS

|            |      |       |  |  |
|------------|------|-------|--|--|
| MR. BROOKS | 4-10 |       |  |  |
| MS. WHITE  |      | 10-19 |  |  |

RAYMOND WICKER

|            |       |       |  |  |
|------------|-------|-------|--|--|
| MR. BROOKS | 20-28 |       |  |  |
| MS. WHITE  |       | 28-32 |  |  |

|             |           |    |
|-------------|-----------|----|
| CERTIFICATE | . . . . . | 31 |
|-------------|-----------|----|

\*(NO EXHIBITS WERE ENTERED INTO EVIDENCE)

P R O C E E D I N G S

THE COURT: Ms. White.

MS. WHITE: Thank you, Judge Addy. This is the case of James Willie Elkins, Jr., Case Number: 2010-CP-36-263. He is represented today by Mr. Charles Brooks. Mr. Elkins was indicted in August of '05 on two charges of CSC with a Minor, first degree, and two charges of lewd act on a minor. He was represented at the time by Mr. Raymond Wicker. The charges proceeded to trial on December 3 and 4, 2007. Mr. Elkins was before Judge Miller, at which point, he was convicted by a jury of both charges of CSC with a minor, first degree. The lewd act on a minor charges were ultimately *nolle prossed* at the same time. An appeal was filed and the appeal confirmed his conviction and sentence at the time. He filed his application June 9, 2010 following remittitur and he's alleged various claims of ineffective assistance of counsel, that he was subjected to false and bogus charges, and denial of his due process rights. I believe Mr. Brooks is proceeding solely on ineffective assistance of counsel claims and I can read the, there are about nine or ten specific ones he alleges in his application, if you'd like. I'm not sure if they are detailed. Unfortunately, I did not do the return and so they are not detailed, but I'd be happy to read those out for you.

*DIRECT EXAMINATION OF JAMES ELKINS BY MR. BROOKS*

4

1 THE COURT: Okay. I did review the application for  
2 PCR. That's what you are referring to?

3 MS. WHITE: Yes, Your Honor.

4 THE COURT: All right. I feel like I'm up to speed on  
5 what is being alleged here.

6 MS. WHITE: Okay, Your Honor. If you'd like, I'll  
7 turn it over to Mr. Brooks, then.

8 THE COURT: Mr. Brooks, happy to hear from you, sir.

9 MR. BROOKS: How are you doing, Judge?

10 THE COURT: I'm doing well.

11 MR. BROOKS: We're ready to proceed.

12 THE COURT: Very good. Call your first witness.

13 MR. BROOKS: We call Mr. Elkins to the stand.

14 THE COURT: Mr. Elkins, if you could, just come on up,  
15 sir. Raise your right hand as best you can, Mr. Elkins.

16 (After being duly sworn by the Judge, James Elkins  
17 testified as follows:)

18 THE COURT: Have a seat, sir. Mr. Brooks.

19 DIRECT EXAMINATION OF JAMES ELKINS BY MR. BROOKS

20 Q Mr. Elkins, how are you today?

21 A So far I've been suffering nothing but the gout and  
22 high blood pressure.

23 Q How old are you, Mr. Elkins?

24 A I'll be 73 in a few more days, the 15th of December.

25 Q All right. You went to trial on this case. Is that

1 right?

2 A Yes, sir.

3 Q And you had Mr. Wicker representing you?

4 A Yes, sir.

5 Q And he represented you on quite a few things over the  
6 years. Is that right?

7 A Yes, sir. He's like family.

8 Q Okay. Now, you want a new trial on this case. Right?

9 A I want something, whatever the procedure is to help  
10 me.

11 Q But, you know, we were talking about it. You got my  
12 letters and you understand that the only thing the  
13 Judge could give you is a new trial and that's what  
14 you want. Right?

15 A Yeah.

16 Q All right. Now, we talked about, what we're going on  
17 is called ineffective assistance of counsel, which  
18 means, that we are talking about the mistakes that Mr.  
19 Wicker made at trial. Do you remember I sent you a  
20 letter and we were talking about that?

21 A Yes.

22 Q Now, what did he do wrong on your case?

23 A Well, for one, I've been knowing Mr. Wicker, Mr. Ray  
24 Wicker. First off, I didn't know too much of the law,  
25 about, I mean, I never been charged with rape in my

*DIRECT EXAMINATION OF JAMES ELKINS BY MR. BROOKS*

6

1 life and I got this one through a bogus charge, but  
2 first, he never explained to me that I could have my  
3 own doctor, another doctor. The doctor that gave me  
4 the DNA twice, the last one in '06, in February, and I  
5 didn't get the results back until we come before the  
6 Court and it was negative. By me not knowing, he  
7 should have let me know what I was going up against,  
8 but by not knowing, I didn't know whether he could  
9 pursue it or take an interest in the case or not, but  
10 by him being a lawyer, he should have told me that he  
11 wasn't going to no longer pursue the case and I could  
12 have gotten another lawyer that could have asked for  
13 his own doctor to go against the other forensic  
14 doctor, the one that the State had. I never did get  
15 none of that. But he should have told me what I was  
16 going against and what my chances were with going by  
17 my previous history record. I don't have the best  
18 record in the world, but they was all minor things  
19 against me, but he never did tell me to take the  
20 stand. He said he'd back me up, but I never did get  
21 backed up there on the stand.

22 Q Now, let me ask you this: Were you out on bond or  
23 were you locked up prior to going to trial?

24 A I was in jail for 14 months and then Judge Hayes,  
25 which I thought at the time he was Judge Westbrook,

*DIRECT EXAMINATION OF JAMES ELKINS BY MR. BROOKS* 7

1 but I made a mistake. Judge Westbrook is the one that  
2 got killed on I-20 in a car accident. He cut my bond  
3 to \$30,000.00. After he cut it to \$30,000.00, I  
4 proceeded to get out, so I got out after that.

5 Q So, did you think you talked with Mr. Wicker enough in  
6 preparing your case for trial?

7 A Not like I'm saying, because I didn't have enough  
8 understanding about this rape case and all the things  
9 that went along with it, because, for me, I didn't  
10 think it would go nowhere, because this didn't fit me,  
11 but it evidently fitted me because here I'm sitting  
12 here with this sentence today.

13 Q You always said you didn't do this. Right?

14 A What's that?

15 Q You said you didn't do this.

16 A I don't know how close I am to going to the graveyard,  
17 but I don't want to be going there with that,  
18 whatsoever.

19 Q Now, is there anything else you want to tell the Judge  
20 here today about Mr. Wicker's performance in your  
21 case?

22 A Well, the first thing, I went over and sat down and  
23 went over my case and I got my transcript and went  
24 over my case and went to the library and looked  
25 through the law books and I see where Mr. Wicker, he

## DIRECT EXAMINATION OF JAMES ELKINS BY MR. BROOKS

8

1 made quite a few errors in the case. Most of all, the  
2 way he told the little girl that he wished her well,  
3 which I imagine he did, but that was no place to tell  
4 the jury that he wished her well in her school.

5 Q So, you felt he shouldn't have said something pleasant  
6 to her?

7 A Not to invite her further along the road of proceeding  
8 with what they had, according to her. I believe till  
9 today that she was highly coerced on it, but that's  
10 not what I'm saying. But when he got to the closing,  
11 everybody knows about O.J. Simpson's case, and when he  
12 brought into the case that he got away with murder,  
13 the first thing the jury said was, "Well, if O.J. got  
14 away with murder and if we don't do something with  
15 this case, he's gonna get away with it," so that  
16 didn't hit me too well.

17 Q So, he shouldn't have said that.

18 A That never should have been brought in.

19 Q Okay. What else?

20 A Well, in the closing, when the solicitor asked him did  
21 I ever confess to this, he never brought that up to  
22 me. What he did do, he brought up about what I was in  
23 jail for. The State never brought it up. They said  
24 what I was charged with, but he brought up another  
25 charge, but all this was just leading the jury further

1 and further away from me.

2 Q Anything else you want to tell Judge Addy about this  
3 and why you should get a new trial that you haven't  
4 said already?

5 A What I want to say, I don't know how many more days  
6 I've got left, Judge, but after you look through  
7 everything and look at my record, I had two or three  
8 things. I was raised in the country, but what was I  
9 going to do at almost 70 years old, what could I  
10 possibly do? It just doesn't fit or add up, but I  
11 know it was a botched deal. What really brought it up  
12 was drugs. Crack brought this whole thing about. Her  
13 mother was a user. I guess she's gone on now, but they  
14 robbed me when I was in jail on a DUI charge. They  
15 found my money in my house to buy crack and so they  
16 know when I get out on the DUI charge they was going  
17 to have to tell me what happened. I didn't  
18 investigate. I think she knew where the money was and  
19 then she got it out, but when I did get out on the DUI  
20 charge I was facing, I didn't stay but five days, a  
21 friend of mine say to me, "You better go check your  
22 record. I hear they got a warrant out on you for  
23 rape." So, I called the Sheriff's Department and they  
24 said they had a warrant out on me and so I said I'd  
25 just be at home waiting on them, but they put it a

CROSS EXAMINATION OF JAMES ELKINS BY MS. WHITE 10

1 different way saying I didn't open the door or I  
2 resisted, but I was there and from there on in, I went  
3 back to jail and they had a field day. When I did get  
4 out on bond about fourteen months later or so, I  
5 didn't have nothing at the house, everything was gone.

6 Q All right, Mr. Elkins. You answer any questions this  
7 lady has here for you. Okay?

8 A Yes, sir.

9 THE COURT: Ms. White.

10 MS. WHITE: Thank you.

11 CROSS EXAMINATION OF MR. ELKINS BY MS. WHITE

12 Q Mr. Elkins, now, you testified that Mr. Wicker had  
13 represented you before on numerous charges. Isn't  
14 that right?

15 A Yeah.

16 Q On several charges? And so you had a pretty good  
17 relationship with him, didn't you?

18 A He's a fine gentleman. You know, he's an elderly man  
19 just like I am.

20 Q You can say he's a young man.

21 A Yeah, well, that's what he is.

22 Q You hired him to represent you on these charges. Is  
23 that right?

24 A At the county jail.

25 Q And you've testified here today and you testified at

## CROSS EXAMINATION OF JAMES ELKINS BY MS. WHITE

11

1 trial that you are innocent. Is that right?

2 A What?

3 Q You've testified that you are innocent?

4 A Yes, ma'am.

5 Q Okay. Did you talk with Mr. Wicker about whether or  
6 not you wanted to testify at trial?

7 A We never did come through there until we got to court.  
8 You see, I never knew nothing about it until December  
9 3rd when I come to court and they said, "You on the  
10 docket for trial," and it was about, almost, two-and-  
11 a-half years from the day it started so when I got in  
12 here, they went forward with it. So, that's the way it  
13 went. No, we never talked about testifying before.  
14 After I got in here he said, "Well, do you want to say  
15 anything?" And I didn't have nothing to hide, so why  
16 wouldn't I take the stand? But it didn't work out too  
17 much like the way it should have been.

18 Q So, your testimony is, before you got here on the day  
19 of trial, Mr. Wicker had never talked about whether or  
20 not you wanted to testify on your defense?

21 A Not about going on the stand, because I didn't have no  
22 reason not to go on the stand.

23 Q Okay. And you've testified that you didn't feel like  
24 you had any back-up and that he should have talked  
25 with you about your chances based on your previous

## CROSS EXAMINATION OF JAMES ELKINS BY MS. WHITE

12

1 record. Is that right?

2 A Yes. Well, what made me say that like that, was when  
3 the State doctor testified that the little girl's  
4 vagina was worn out or mis-used. If I'd been in shape  
5 I'd been all right, but she testified about that two  
6 times. I don't know how it would have got used that  
7 bad, but what I was saying was, I was going to ask him  
8 if she was raped and the blood, she said she was  
9 bleeding. I just can't believe a little kid would be  
10 at the house at the same time her mother was coming in  
11 and she wouldn't have said nothing. It just didn't  
12 add up to me.

13 Q The State didn't produce any -- there wasn't a rape  
14 kit or any DNA used against you. Was there?

15 A They didn't say nothing. I never seen nothing. I  
16 never seen anything.

17 Q So, the evidence the State had was her word and the  
18 people that she told against your word.

19 A The officer that she told and the doctor or whoever.  
20 Yeah, that's all they had.

21 Q So, it was the victim and the folks, the policeman and  
22 the counselor and the doctor and then there was you.  
23 Is that right?

24 A Yeah.

25 Q So, they didn't have any physical evidence.

1 A Yeah.

2 Q Now, knowing that you were the only person in your  
3 defense, when you got on the stand you didn't tell the  
4 truth about some of your previous convictions. Did  
5 you?

6 A What I did was, she asked me about -- Well, now, I  
7 never had too good a relationship with the law  
8 enforcement. I never tried to hurt anybody, but I  
9 said, I told them about the crack charges and that I  
10 had went to a birthday party, didn't like it there,  
11 and I was leaving, but I had left my coat on the  
12 lady's bed where she told me to put it, but when I was  
13 leaving, I said, "Call me a cab," and she said, "Why  
14 are you leaving?" And I said I had no reason to  
15 leave, I just didn't want to be there. When I got in  
16 the car, she called the police. It was some relation  
17 to the family. And so, when I got in the car, I'm  
18 thinking I'm getting in a cab, but it was the police  
19 car, and he was taking me to jail.

20 Q But the question was, the State ended up -- you  
21 weren't honest on the stand with them about what you  
22 were convicted of. Were you?

23 A No. That's what she said, but what I was trying to  
24 put to her on the breaking and entering and over at  
25 the gas station the truck was already open and the

## CROSS EXAMINATION OF JAMES ELKINS BY MS. WHITE 14

1 man, the driver, fell out and I called and told a  
2 friend of his to tell him to come by and pick the  
3 driver up, which he did, but she said I still was in  
4 it.

5 Q So, your testimony was that it was more of a confusion  
6 and you weren't lying on the stand. You were just  
7 confused?

8 A Well, I ain't going to lie. There was no reason for  
9 me to lie. I was telling the truth, but they took it  
10 in a different direction.

11 Q Okay. And you said something about the doctor didn't  
12 get the DNA test or you didn't get the DNA test until  
13 the day of trial, was that in regards to the test for  
14 sexually transmitted disease?

15 A That they took on me.

16 Q Okay. And that's the test that they found negatively  
17 on you, but that the victim had a positive test for.  
18 Is that right?

19 A As far as I know, I never seen nothing, but that's  
20 what they tell me, that I come back negative. I had  
21 two.

22 Q You said you didn't know until the day of trial that  
23 your second test had come back negative?

24 A I didn't know nothing about it until we came back here  
25 and that's when I got the bond reduction and that's

## CROSS EXAMINATION OF JAMES ELKINS BY MS. WHITE 15

1           when they told me the State was prepared to put the  
2           evidence on the table and that's when they said the  
3           two DNAs were reported.

4           Q     So, you knew that at the bond reduction?

5           A     At the bond reduction.

6           Q     Okay. And you said something about not knowing much  
7           about the law, that you had never been charged with  
8           rape, but you have had a pretty lengthy past and run-  
9           ins with the law. Is that right?

10          A     Yes, ma'am. But what I'm saying is everything I did  
11          was all to myself, with the liquor bottle. All these  
12          DUIs, driving under the influence, but I had a charge  
13          back in '83 with marijuana in the back seat of my car  
14          on a Sunday evening, so I don't know if it was grass  
15          or not, it doesn't matter, but I know I wouldn't be  
16          riding down Main Street with a package of marijuana in  
17          the back of my car and not try to hide it.

18          Q     So, your testimony is that you know about the  
19          convictions, but just not understanding about rape.  
20          Is that right?

21          A     Yes, ma'am.

22          Q     You also testified that you didn't like the fact that  
23          your attorney told the victim that he wished her well  
24          in school.

25          A     Well, I didn't think that was a part of the -- the way

## CROSS EXAMINATION OF JAMES ELKINS BY MS. WHITE 16

1 I seen it, I didn't think that went along well for me  
2 towards the jury. What I'm saying is it looked like  
3 he took sympathy with the victim.

4 Q The victim was twelve years old when she was  
5 testifying. Is that right?

6 A Twelve or thirteen. She said she was thirteen. I don't  
7 know what her actual age was. I know she was young.

8 Q The O.J. Simpson comment, that was made during his  
9 opening remarks. Wasn't it?

10 A No. That was almost at his closing, just about.

11 Q If I said he started off and made a comment in his  
12 opening about the fact that when you don't present  
13 evidence in defense, on page 35 of the transcript,  
14 like in the O.J. Simpson case, you get to make the  
15 final closing argument, but y'all were going to  
16 present a defense, because you were going to get on  
17 the stand, and so that would mean that you wouldn't be  
18 able to give the final closing. Do you think that's  
19 what he was saying?

20 A I don't -- I can't quite understand that, but what I  
21 was saying if I had been in his position or would have  
22 been in his position, I would rather for the ballfield  
23 to be more equal. You know, if the law enforcement is  
24 going to take care of their part, and you're the  
25 opposing team, you've got nine players as well, you

1 know if the law enforcement has the umpires calling  
2 the game, then who you imagine they are going to call  
3 more strikes on if there is any way possible. They  
4 aren't going to call any for me, so what I'm saying is  
5 that, it just didn't add up altogether.

6 Q Now, Mr. Wicker did tell the jury that he  
7 acknowledged, once you had testified on the stand,  
8 that you had had some trouble with the law, but he  
9 pointed out that you had never had any charges where  
10 you attacked or assaulted anyone. Didn't he?

11 A No.

12 Q Okay. And so he -- Do you think that he was trying to  
13 show the Court that just because you had been arrested  
14 for DUI or some drugs, doesn't mean that you're guilty  
15 of the rape?

16 A I don't know what he was trying to show, but what I'm  
17 saying is, the sympathy part of it, when it came down  
18 to the real thing, Mr. Wicker had to put a little more  
19 interest on me, he had to subpoena some of the  
20 witnesses that would have been on my favor.

21 Q You thought he should have called some witnesses on  
22 your behalf?

23 A Yes, ma'am.

24 Q And did you tell him some names of some people you  
25 wanted him to call?

## CROSS EXAMINATION OF JAMES ELKINS BY MS. WHITE 18

1 A No, I didn't tell him nothing, because I didn't think  
2 it was my purpose for him being an attorney, for me to  
3 be giving him advice. I thought he would give me the  
4 advice.

5 Q All right.

6 MS. WHITE: Your Honor, I think that's all. Oh, one  
7 question. I'm sorry, Your Honor.

8 Q In regards to the warrant after you got out on the  
9 DUI, you said there was a question about it and they  
10 actually asked you questions and you testified at  
11 trial that you called the police and told them to come  
12 get you, that you were at the house.

13 A That I would be at the house.

14 Q That you would be at the house. Now, the testimony,  
15 they presented a policeman who testified that you  
16 refused to open the door, that they had to kick in the  
17 door to take you out without you getting dressed  
18 because you refused to go. Do you think that didn't  
19 hurt your credibility some with the jury?

20 A I believe it did.

21 Q Okay. Did you not feel that maybe you should have  
22 been honest with them about that?

23 A I was honest with them like I'm being honest with you  
24 right now. What I'm saying is, Lieutenant Shelton, he  
25 had been there before, once before on a breaking and

## CROSS EXAMINATION OF JAMES ELKINS BY MS. WHITE

19

1 entering on my house and guess what he did. The same  
2 officer, instead of he going inside after the peoples  
3 that broke in, kicked in the door, you know, he  
4 carried me to jail. He said he found a roach in an  
5 ashtray and there was no nothing about somebody  
6 kicking in the door and me getting robbed, but he seen  
7 it another way. He said, "Well, this is your house.  
8 You're in charge of it. Who's is this roach." I had  
9 never seen the roach to this day, but I was charged  
10 with it.

11 Q But in this case, you disagree with the fact that they  
12 had to bust in the door to come get you and take you  
13 in on the warrant?

14 A I was laying there, right there on the front room  
15 couch and I had a few drinks of Crown Royal and he  
16 could have waited for me to get up and answer the  
17 door. But when I did answer the door, I got up and  
18 answered the door, I had a lock that had been bented  
19 and so I had to knock it back with a hammer and when I  
20 knocked it back, I was in my shorts. That's the way I  
21 went to jail, in my shorts.

22 Q Okay. Thank you.

23 MS. WHITE: That's all I have at this time, Your  
24 Honor.

25 MR. BROOKS: No further questions, Judge.

*DIRECT EXAMINATION OF RAY WICKER BY MR. BROOKS*

20

1 THE COURT: Thank you, sir. You may step down.

2 MR. BROOKS: We would call Mr. Wicker to the stand.

3 THE COURT: Mr. Wicker, come on up, please, sir.

4 (After being duly sworn by the Judge, Mr. Wicker  
5 testified as follows:)

6 DIRECT EXAMINATION OF RAYMOND WICKER BY MR. BROOKS

7 Q Mr. Wicker, how are you today?

8 A Do what?

9 Q How are you?

10 A Fine.

11 Q You represented Mr. Elkins?

12 A At trial.

13 Q Can you, briefly, summarize what the State's case was  
14 against him?

15 A Well, basically, the State's case against him was the  
16 testimony from the alleged victim and she made a very  
17 good witness. In addition to that, they had medical  
18 records. She had been examined by a doctor that I had  
19 had in other cases, and the solicitor, who I knew was  
20 very competent and the main thing that I thought he  
21 brought out was that her vagina had been worn to the  
22 point that I would think that the jury might have  
23 thought that she had sex with other men because two  
24 times would not have warranted it or she could have  
25 been playing with herself. I don't know. But the

1 point is, it had nothing to do with whether or not he  
2 had sex with her and so that was not relevant in a  
3 way, but as far as James was concerned, his position  
4 was, from the first day I talked to him on this case,  
5 was that he was innocent, that he did not do anything  
6 like that and that nobody ever said anything to him  
7 about that, or alleged that, for several years and  
8 then they brought it up and he thought they brought it  
9 up because they were upset with him over other matters  
10 and then I did say, well, there's no fresh complaint  
11 there, but that's not unusual for a little girl who  
12 doesn't want to tell their classmates or their parents  
13 that they've been involved in a sex case and so they  
14 very often don't tell anybody for a period of time and  
15 in this case, she basically didn't tell anybody,  
16 apparently, until she went to the hospital to be  
17 examined because she had a stomachache and the doctor  
18 examined her, or maybe it was a nurse and a doctor.  
19 They decided she had a sexual problem and had  
20 developed a disease that was contagious. Now, it's a  
21 long name, it's in the file, and if a man would have  
22 had sex with her, they could have caught it. It was a  
23 disease that you could catch. Now, it was a disease  
24 that could be cleared up for a man for some reason or  
25 it could even go away on its own if they didn't do

*DIRECT EXAMINATION OF RAY WICKER BY MR. BROOKS* 22

1 anything, but with a girl or a woman, they normally  
2 had to treat that person for a time to clear up the  
3 disease. So, based on that, apparently, the law  
4 enforcement people and the medical people and all,  
5 they got DNA and, apparently, they didn't tell my  
6 client what they were doing, but they could have  
7 forced him to give his DNA anyway, and I explained  
8 that to him. I'd had many cases like that and if they  
9 ask him for his DNA and he doesn't give it, they would  
10 just go and get a court order for the DNA, so  
11 apparently they got a DNA sample or something saying  
12 they were trying to check on this disease. Well, they  
13 eventually checked him for that disease. By the time  
14 they checked him, he had talked around the jail house  
15 and I don't know how the word got out, but jailors and  
16 dealers talked to him and they said if you don't have  
17 that disease, that should clear you and he really  
18 believed that. And so I went down, frankly, and  
19 talked to the jail, the head jailor, and said, "What  
20 kind of test are y'all giving my client?" He said,  
21 "Well, he's being given this test to see if he has the  
22 disease the girl had and the test was still out. And  
23 I said, "Well, when it comes back, can you let me know  
24 how it comes out, because, apparently, the rumors  
25 around the jailhouse is if it comes back negative,

1 he's off. The jailor said, "Yeah, I'll let you know,  
2 but I don't know if I can give you any paperwork on  
3 it, but I'll let you know when it comes back and if it  
4 comes back positive or negative."

5 Q Yes, sir.

6 A And it wasn't more than two weeks after that that he  
7 called and said it was negative and so I went out and  
8 told my client it was negative and he was very happy  
9 about that because he really believed that should  
10 clear him and I told him, "Well, at least it's not  
11 going to hurt you, because she had that disease and  
12 you don't and it is transmittable from you, would have  
13 been transmittable from the girl to you, and so they  
14 don't have anything, basically, that I know of, except  
15 your word against her word."

16 Q Okay.

17 A "Now, you've never been convicted, that I know of, or  
18 been accused of, that I know of, of having any sort of  
19 sex with anybody and this would be an isolated thing,  
20 this charge, and therefore, the fact that you never  
21 had that charge, that will serve to help, but you've  
22 got to get on the stand, though. If you get on the  
23 stand -- because he told me from the first day that he  
24 was getting on the stand and telling them he didn't do  
25 it -- You've got to get on the stand and what I think

DIRECT EXAMINATION OF RAY WICKER BY MR. BROOKS 24

1 you should do, since you've got all these convictions,  
2 let me ask you if you've been convicted of this and  
3 were you convicted of that, we've got the records  
4 right here and you pled guilty to that, guilty to  
5 this, and most of these are misdemeanors, but a couple  
6 of them aren't and I told him which ones were  
7 admissible, and if you'll bring all that out when you  
8 first get up there and tell them, 'I've done all kinds  
9 of bad things in my life but I certainly never messed  
10 with any little girls,' and I think that's the way you  
11 should get on the stand and, basically, that way,  
12 instead of getting on the stand and not saying  
13 anything about the prior convictions, because the  
14 prosecution is going to cross examine you and bring  
15 all that out." Of course, he, in turn, did not  
16 believe they would do that and I told him over and  
17 over again that not only can they do that, they will  
18 do that and he said, "Well, I don't think they will  
19 have all those papers with them," and I said, "I can  
20 assure you, that if they're right here in my file, I  
21 know good and well they are in their file and that you  
22 should go ahead and testify about all these other  
23 things; no insurance on my car, driving drunk, driving  
24 without a license and all this sort of stuff." He had  
25 different charges like, larceny and breaking into a

JAMES W. ELKINS VERSUS THE STATE OF SOUTH CAROLINA

1 car somewhere, which I don't know if he was ever tried  
2 for it, but they said he did and they made a case on  
3 it and that to this day, I don't know if he was tried  
4 on that charge ---

5 Q Okay.

6 A --- but anyway, the position was, I've been bad all my  
7 life, but I certainly didn't have any oddball charges  
8 against me, I wasn't trafficking young kids and I  
9 certainly wasn't having sex with this young girl. I  
10 took this young girl in off the street, her mother  
11 died while he was in jail, and she had no place to  
12 live and he took her in, the little girl came with her  
13 mother and the little girl called him Daddy and they  
14 had a good, friendly relationship and he had nothing  
15 against the little girl and the little girl,  
16 apparently, liked him and he was shocked that, or he  
17 said he was shocked, that all this came out and if she  
18 hadn't gone to the doctor and they called in the law,  
19 nobody probably would have ever brought it out, but  
20 once they started interrogating her, she comes up with  
21 some kind of a reason and of course everybody knew she  
22 had been living in the house where he was.

23 Q And they put it on him.

24 A And they put it on him and they didn't look at or  
25 check anybody else. I know that a lot of times the

DIRECT EXAMINATION OF RAY WICKER BY MR. BROOKS 26

1 law enforcement people will, and I have great respect  
2 for them. I've worked against them for more than 50  
3 years. I've tried many cases and my first case was a  
4 murder case in Korea, which was over 50 years ago and  
5 I tried it and I prosecuted it. I've tried many, many  
6 cases in Korea and many, many cases in Germany,  
7 particularly, I was a trial for General Westmoreland  
8 in Vietnam for the first fifteen months after he set  
9 it up and I tried many cases in Europe even after that  
10 and then I got out of the army 30 years ago, but I had  
11 served 31 years in the army and I immediately opened  
12 my office in Johnston and I started trying cases. Of  
13 course, I became the county attorney for Edgefield  
14 County and then the city attorney for Newberry, but I  
15 tried cases, criminal law was my field, and I found  
16 that the Rules of Evidence changed very little from  
17 the time I got out of law school until this very day  
18 and if they did, you heard about it in the press or  
19 the advanced sheets and I think that all they had was,  
20 "she said, he said," and I told him the biggest  
21 problem we're going to have is, that you are not  
22 excited about this. I could not get him to understand  
23 the fact that he had to get up there and look at that  
24 jury and swear before God that you didn't do that and  
25 I said, "You've got to be emotional about it. You

JAMES W. ELKINS VERSUS THE STATE OF SOUTH CAROLINA

1 can't just sit there and say, 'I didn't do it.'  
2 That's probably what you're going to do if you don't  
3 straighten up. You've got to convince them that you  
4 are adamant about it, that you don't know how you got  
5 accused of this, that you certainly wouldn't do  
6 anything like that to this little girl and, of course,  
7 you can practice with me. Go ahead and show me how  
8 you will do it." And he tried, but he never seemed to  
9 be able to be emphatic that he didn't do it and so we  
10 went to court like that just figuring that's what he  
11 wants to do and I'm his defense counsel and I can't  
12 talk him out of it and in a way I thought that if he  
13 didn't get on the stand at all that we might could go  
14 with, "they haven't proven the case." Because he  
15 didn't give them any evidence in court and all they  
16 gave had to go with was the girl and her examination  
17 and the fact that we could argue there was no fresh  
18 complaint, no DNA, no this, no that, and I thought  
19 that maybe they could come up with a reasonable doubt  
20 and he said, "That's not the way it's going to be.  
21 I'm going to get on the stand. I'll never in my life  
22 feel right about it unless I can get on the stand and  
23 tell them I didn't do it," and so I couldn't talk him  
24 out of it and at that point, I figured he has a right  
25 to get on the stand. He's never admitted, to this

*CROSS EXAMINATION OF RAY WICKER BY MS. WHITE*

28

1 day, that he did it. Never. Never told anybody in  
2 law enforcement that he did it. He never told me that  
3 he did it which I'm not supposed to represent people  
4 for a bald-faced lie and I wouldn't have, but he told  
5 me he did not do it and he told everybody that he  
6 talked to, "I did not do it." That's all he had.

7 Q All right. Answer any questions Ms. White may have  
8 for you.

9 THE COURT: Ms. White.

10 MS. WHITE: Thank you.

11 CROSS EXAMINATION OF RAYMOND WICKER BY MS. WHITE

12 Q Just briefly, Mr. Wicker, and I'll try to stand over  
13 here so you can see me. Just a couple of quick  
14 questions. In regards to the strategy that you had for  
15 Mr. Elkins' defense, I know you said it was a case of,  
16 "he said, she said." Did you talk with him about what  
17 kind of strategy you had when you went into trial?

18 A Well, I told him that as a trial lawyer, I believe  
19 that a case should move fast, that I thought juries  
20 got tired of hearing stuff that was not important and  
21 I also told him, you see, throughout the trial, that I  
22 hadn't objected to anything and I don't believe in  
23 objecting to things, because the jury may decide if  
24 you object to something it may keep them from finding  
25 something out and I'm a winner. You can check my

1 record. I win my cases. I go to court to win and the  
2 way I win a case, I don't mess around objecting and I  
3 try not to object to anything that's frivolous and I  
4 didn't object at all during this trial. Therefore, I  
5 argued to the jury that I didn't object to anything,  
6 because I wanted you to know everything that I had or  
7 they had and so, you've heard everything and I told  
8 him that was a strategy that I had and that I didn't  
9 want to belabor things and I didn't want to bring up  
10 stuff that was irrelevant, but by the same token, when  
11 he was asked a question, he should listen and he  
12 should answer and he should tell the truth and he  
13 should be emphatic about it, that he should get  
14 excited or he's never going to win this case.

15 Q Were there ever any discussions? You've obviously  
16 said he wanted to testify and he claimed innocence, so  
17 were there ever any plea offers discussed in this  
18 case?

19 A Were there what?

20 Q Were there ever any discussions with the State about a  
21 plea offer?

22 A No. He told me he was not going to make an offer.  
23 There are two things they *nolle prossed*, the lewd  
24 acts. We talked about that and I said, "Well, they  
25 are lesser included offenses to the real charge and it

## CROSS EXAMINATION OF RAY WICKER BY MS. WHITE

30

1 might be that the jury would decide, "We won't find  
2 him guilty of rape, we'll find him guilty of the lewd  
3 acts." That gives them an out. They could acquit him  
4 on the two rapes and find him guilty on the two lewd  
5 acts, so we discussed that. I didn't know that they  
6 were going to *nolle pros* those two things before we  
7 got, you know, right before we went to the jury. The  
8 prosecutor, with the consent of the judge, they *nolle*  
9 *prossed* those two charges, but then the jury only had  
10 the two rape charges.

11 Q And he has testified that he wanted you to call some  
12 witnesses, but he never gave you any names of anybody  
13 to call. Did you ever talk about calling any kind of  
14 character witnesses or anything on his behalf?

15 A He didn't have any and he told me he didn't.

16 Q And overall, in regards to the testimony, how, and I  
17 guess it's hard to say this, but how bad or how good  
18 was the testimony that he provided in regards to  
19 helping or hurting your case?

20 A Well, as far as what he said, he told his side of the  
21 story, but it was not told in an exciting way and I  
22 know that a jury looks at the reactions of the  
23 accused. They look at him and say, "Do I believe that  
24 guy? Does he sound like he really didn't do it?" And  
25 you know he just didn't get excited so all the jury

1 really had to go on was the girl ---

2 Q And was ---

3 A --- and she made a good witness and I was not going to  
4 cross examine, I'll tell you that, because she made a  
5 good witness and I knew that if I cross examined her  
6 she was going to say the same thing over again and so  
7 the jury would hear it, but he insisted that I cross  
8 examine that girl and when a client is sitting next to  
9 you and he wants that person cross examined, I told  
10 him the best that I could, "She's just going to say  
11 the same thing again and she's already had a practice  
12 run and they are going to hear the same story twice.  
13 She's not going to change anything." He said, "I want  
14 you to cross examine her. I want to hear her answer  
15 your questions the way she did the other side." And  
16 so, I cross examined her and she said the same thing  
17 over again as I knew she would.

18 Q And in your opinion, was the defendant a very credible  
19 witness?

20 A I think that he did the best he could. It's just his  
21 personality. He just could not get excited about  
22 something like this. I think it's basically the way  
23 he's always been. Some people get excited about things  
24 and some people don't. I always told him, "You know,  
25 if somebody shot at you, I believe you would wait five

## CROSS EXAMINATION OF RAY WICKER BY MS. WHITE

32

1           minutes and look around to see who it was." That's  
2           just the kind of attitude he seemed to have and I'm  
3           not like that. If a gun goes off, I'm not going to  
4           turn to see who did it.

5           Q     All right. Thank you, Mr. Wicker.

6           MS. WHITE: That's all I have, Your Honor.

7           THE COURT: Any redirect for Mr. Wicker?

8           MR. BROOKS: No, Your Honor.

9           THE COURT: All right. Thank you very much, Mr.  
10          Wicker. You may step down.

11          MR. BROOKS: Your Honor, that's our case.

12          MS. WHITE: Your Honor, the State has no witnesses.

13          THE COURT: All right. I feel I have a good feel for  
14          this case, but I haven't had a full opportunity to review  
15          the full transcript. If there is no objection, I'd like to  
16          be able to do that before issuing a ruling, if that's  
17          acceptable.

18          MR. BROOKS: Yes, Your Honor.

19          MS. WHITE: Yes, sir.

20          THE COURT: All right. I will look at this tonight  
21          and, hopefully, have something for you tomorrow. Thank you  
22          very much.

23          MS. WHITE: Thank you, Your Honor.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF ANDERSON )

CERTIFICATE

Be it known that I, the undersigned Jo Rice, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing transcript represents a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, before the Circuit Court for Newberry County, South Carolina, so given on November 17, 2011 to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

IN WITNESS WHEREOF I have here unto set my hand and seal this 1st day of February, 2012.



\_\_\_\_\_  
 Jo Rice  
 Official Court Reporter

JAMES W. ELKINS VERSUS THE STATE OF SOUTH CAROLINA

|                           |   |                           |
|---------------------------|---|---------------------------|
| STATE OF SOUTH CAROLINA   | ) | THE COURT OF COMMON PLEAS |
|                           | ) |                           |
| COUNTY OF NEWBERRY        | ) | CASE NO. 10-CP-36-263     |
|                           | ) |                           |
| JAMES WILLIE ELKINS, JR., | ) |                           |
| Plaintiff,                | ) |                           |
|                           | ) |                           |
| vs.                       | ) |                           |
|                           | ) | ORDER DENYING POST        |
| STATE OF SOUTH CAROLINA,  | ) | CONVICTION RELIEF         |
| Defendant.                | ) |                           |
|                           | ) |                           |
|                           | ) |                           |
|                           | ) |                           |

**THIS MATTER CAME BEFORE THE COURT** on November 17, 2011 for a hearing on Plaintiff's action for Post-Conviction Relief.<sup>1</sup> Present were Charles T. Brooks, III, Esq. representing Plaintiff; Suzanne White, Esq. and Rutledge Johnson, Esq. appeared on behalf of Defendant. The court received the testimony of Plaintiff and trial counsel, Ray Wicker, Esq. of the Newberry Bar. I make the following findings of fact and conclusions of law.

1. Plaintiff bears the burden of proving entitlement to relief. Caprood v. State, 338 S.C. 103, 525 S.E.2d 514 (2000). Plaintiff must first prove that counsel's performance was deficient in that it fell below the reasonable standards pursuant to standing professional norms. Chery v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Plaintiff must also demonstrate resulting prejudice from counsel's deficient performance; prejudice is demonstrated by proving that, but for counsel's errors, the result of the proceedings likely would have been different. Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991). After a full review of the transcript and for the following reasons, I find that counsel's performance was not deficient, and even if it was, no prejudice to Plaintiff resulted.

2. Plaintiff first alleges that trial counsel was deficient for failing to "get a doctor to challenge the forensics." Simply put, in this case, there was no forensic evidence tying Plaintiff to the crime. Evidence was introduced that the minor victim was diagnosed with a venereal

<sup>1</sup> On December 4, 2007, Plaintiff was convicted at trial of two counts of Criminal Sexual Conduct with a Minor, first degree. An appeal was taken and dismissed. State v. Elkins, Op. No. 2010-UP-161 (S.C. Ct. App. February 24, 2010). Subsequently, this action was timely filed.

disease, Trichomonas, shortly after the assault. (Trial Transcript, Dr. Gratin Smith, p. 86, lines 13-15) Subsequent testimony revealed that Plaintiff tested negative for this disease. Dr. Smith testified that even males who carried this disease would frequently test negative for Trichomonas, and in males the disease often clears up without treatment. (Trial Transcript, p. 88, lines 10-25; p. 89, lines 1-7) Therefore, the fact that Plaintiff tested negative for the disease requires no additional corroboration, and counsel was not deficient for failing to obtain an expert witness to testify to an uncontroverted fact.

3. Plaintiff further complains that he lacked understanding about the nature of the charges and asserts that he did not commit this crime. Based upon Plaintiff's prior contact with the criminal justice system, I do not believe Plaintiff's assertion is credible, and I find Plaintiff's testimony that he was unfamiliar with the nature of this case to be unsupported by the record. Plaintiff took the stand and denied sexually assaulting the minor victim. The jury was in a superior position to judge the credibility of the witnesses, and by their conviction they obviously considered the minor victim's testimony more credible.

4. Plaintiff also asserts that trial counsel was deficient in "wishing the little girl well" when trial counsel concluded his cross of the minor victim. (Trial Transcript, p. 51, lines 16-17) I find that trial counsel's remarks are so innocuous that, even if they could be considered prejudicial, they did not affect the verdict. The court is very familiar of the inherent dangers of cross examining a minor child, and juries will often hold an excessively aggressive cross examination of a child against defense counsel and the accused. Counsel's brief statement to the minor victim was little more than an effort to demonstrate appropriate courtesy to a minor witness who, per the transcript, had obviously experienced emotional difficulty in testifying. (Trial Transcript, p. 21, lines 11-15; ,p. 25, lines 2-4 "Here is a Kleenex."; p. 39, line 13-19; p. 41, lines 6-9)

5. Similarly, Plaintiff's assertion that counsel's reference to the O.J. Simpson case was deficient and prejudicial is unsupported. First, the reference was fleeting. (Trial Transcript, p. 34, line 25) Second, trial counsel was using the reference to explain why the defense would not get final argument since they intended to present a defense. (Trial Transcript, p. 34, lines 25-25; p. 35, lines 1-10) Accordingly, when read in context with the point trial counsel was making in his opening statement, trial counsel's reference was both appropriate and certainly non-prejudicial.

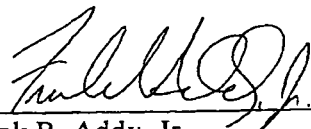
6. Finally, Plaintiff argues that trial counsel was deficient in bringing out the fact that Plaintiff was in jail serving a forty-five (45) day sentence for minor charges when the minor victim made the accusations. Taken as a whole, the reference to Plaintiff being in jail was necessary to explain the sequence of events leading up to his arrest and also relates to Plaintiff's implied assertion that the minor victim's mother had fabricated the accusation out of mercenary desires. (Trial Transcript, p. 105, lines 24-25; p. 106, lines 1-4)

7. As to Plaintiff's final assertions concerning his taking the witness stand and the dismissal of the lewd act charges, I do not find counsel deficient in these regards. First, the court finds trial counsel's testimony credible with regard to the issue of Defendant taking the stand. Taking the stand was absolutely necessary in order for Plaintiff to present his defense; additionally, based on the long-standing relationship between Plaintiff and his trial counsel, trial counsel's belief that Plaintiff would be a good witness is amply supported in the record. Second, concerning the lewd act charges, those indictments were dismissed at the insistence and encouragement of the trial judge due to apparent confusion on the part of the jury. (Trial Transcript, p. 140, lines 24-25; p. 141, lines 1-9; p. 145, lines 1-25, p. 146, lines 1-7) Because Plaintiff's defense was that he never engaged in any improper activities with the minor victim, no prejudice could result in the court's removal of the lewd act allegations from the jury's consideration.

8. I have reviewed the trial transcript in full, and I find there are no reasonable grounds to support Plaintiff's general requests for relief. During the trial there may have been some instances where a relevancy objection could have been interpose; however, the court finds that no prejudice resulted which would have reasonably altered the outcome of the trial.

9. Accordingly, Plaintiff's application for post-conviction relief is denied.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
Frank R. Addy, Jr.  
Circuit Court Judge  
Eighth Judicial Circuit

November 21, 2011  
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM NEWBERRY COUNTY  
Court of Common Pleas  
Honorable Frank R. Addy, Jr., Circuit Court Judge

Case No: 2010-CP-36-263

James Willie Elkins.....Appellant  
S.C.D.C. No.: 241002

v.

The State.....Respondent

PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 23<sup>rd</sup> day of November, 2011, I served the foregoing Notice of Appeal, Order of Dismissal, as well as Proof of Service in this matter by depositing a true copy of it in the United States Mail, postage prepaid, on November 23, 2011 addressed to the following as indicated below:

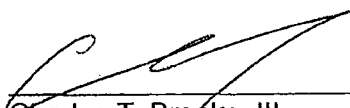
South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

South Carolina Office of Appellate Defense  
1330 Lady Street, Suite 401  
PO Box 11589  
Columbia, SC 29211-1589

Office of Attorney's General  
Attn: Suzanne White, Esquire  
Rutledge Johnson, Esquire  
Post Office Box 11549  
Columbia, South Carolina 29211-1549

James Willie Elkins, 241002  
McCormick Correctional Institution  
386 Redemption Way  
McCormick, South Carolina, 29899

Dated: November 23, 2011

  
Charles T. Brooks, III  
Attorney for the Appellant  
309 Broad Street  
Sumter, South Carolina 29150  
(803) 418-5708

## WITNESSES

Todd Johnson

## WARRANT NUMBERS

I-318137

Foreman of the Grand Jury

Date: 8/12/05

## VERDICT

Guilty

Foreman

## THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

## COURT OF GENERAL SESSIONS

August Term, 2005

Indictment # 05GS36- 400

THE STATE

vs.

JAMES WILLIE ELKINS

## INDICTMENT FOR

CRIMINAL SEXUAL CONDUCT WITH A MINOR

I, JAMES WILLIE ELKINS, THE DEFENDANT, IN MY OWN  
 THE BAR OF THIS COURT, WAIVE GRAND JURY ACTION.  
 VOLUNTARILY PLEAD \_\_\_\_\_ GUILTY TO THE

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_

ATTEST:

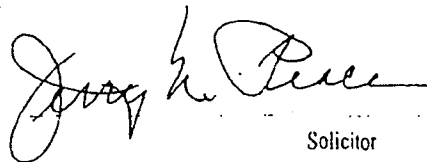
DEFENDANT'S SIGNATURE

CLERK OF COURT

## COUNT ONE

That JAMES WILLIE EL KINS, did in Newberry County, state aforesaid, between the 10th day of May, 2005, and the 29th day of May, 2005, being older than the victim, wilfully and unlawfully commit criminal sexual conduct with a minor in the first degree, to wit: that the said defendant did engage in sexual battery upon a person under the age of eleven (11) years, to wit: one Minor in violation of Section 16-3-655 of the South Carolina Code of Laws, 1976, as amended

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

  
Solicitor

---

**WITNESSES**

Todd Johnson

---

**WARRANT NUMBERS**

1-318138

---

**THE STATE OF SOUTH CAROLINA**

COUNTY OF NEWBERRY

---

**COURT OF GENERAL SESSIONS**

August Term, 2005

Indictment # 05GS36- **402**

---

**THE STATE**

vs.

JAMES WILLIE ELKINS

*James Browne*  
Foreman of the Grand Jury

Date: **8/12/05**

---

**VERDICT**

*Guilty*

*Debra L. May*  
Foreman

---

**INDICTMENT FOR**

CRIMINAL SEXUAL CONDUCT WITH A MINOR

---

Solicitor

*John H. Bruce*

**THE STATE OF SOUTH CAROLINA  
COUNTY OF NEWBERRY**

**INDICTMENT FOR**

**CRIMINAL SEXUAL CONDUCT WITH A MINOR**

At a Court of General Sessions, convened on the 12th day of August, 2005, the Grand Jurors of Newberry County present upon their oath:

**COUNT ONE**

That JAMES WILLIE ELKINS, did in Newberry County, state aforesaid, on or about the 10th day of May, 2005, being older than the victim, wilfully and unlawfully commit criminal sexual conduct with a minor in the first degree, towit: that the said defendant did engage in sexual battery upon a person under the age of eleven (11) years, to wit: one Minor in violation of Section 16-3-655 of the South Carolina Code of Laws, 1976, as amended

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