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March 24, 2014

VIA HAND DELIVERY

RECEIVED

MAR 24 2014

S.C. Supreme Court

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

RE: Susan Tappeiner, 338050 v. State of South Carolina; 2010-CP-07-2396
Appellate Case No. 2013-001885

Dear Mr. Shearouse:

Enclosed for filing please find the Appendix for the above captioned Post-Conviction Relief Appeal. The Petition for Writ of Certiorari will be filed separately. All of the documents and Exhibits necessary for this PCR appeal are contained in the two volume Appendix with the exception of Applicant's Exhibit #6 which is a video of the Petitioner's home, which was the alleged crime scene. I would respectfully request this Court's Order, pursuant to Rule 210(f) of the SCACR, for the transportation of this Exhibit to the Supreme Court. I enclose two sets of copies of the cover pages for both volumes of this Appendix. I would appreciate having those copies clocked and returned for my records. Thank you for your assistance in this matter. I remain,

Sincerely yours,

A handwritten signature in cursive script that reads "Tara D. Shurling".

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sm
Enclosures

cc: Ashleigh Wilson, Assistant Attorney General (w/enclosures via hand-delivery)
Susan Tappeiner (w/enclosures via U.S. Mail)
David and Diane Sanders (w/out enclosures via U.S. Mail)

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Perry M. Buckner, Circuit Court Judge

Case No. 2010-CP-07-2396
Appellate Case No. 2013-001885

RECEIVED

MAR 24 2014

S.C. Supreme Court

SUSAN TAPPEINER, 338050,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER.

ATTORNEYS FOR RESPONDENT.

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* Petitioner has requested that this Exhibit be transported to the Supreme Court of South Carolina for the Court's convenience in reviewing this Exhibit.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF GENERAL SESSIONS
09-GS-07-703

STATE OF SOUTH CAROLINA

-vs-

SUSAN TAPPEINER

:
:
: TRANSCRIPT OF RECORD
:
:

OCTOBER 26, 27, AND 28, 2009
BEAUFORT, SOUTH CAROLINA

B E F O R E:

HONORABLE CARMEN MULLEN, JUDGE, AND A JURY..

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

DAWN BURKE, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

MIKE MACLOSKIE, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DIANNE A. RUTLEDGE
CIRCUIT COURT REPORTER

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1 (MONDAY, OCTOBER 26, 2009.)

2 THE COURT: LADIES AND GENTLEMEN OF THE JURY PANEL, IF
3 YOU WOULD GIVE ME YOUR ATTENTION AT THIS TIME. WE ARE
4 ABOUT TO BEGIN THE CASE ENTITLED THE STATE OF SOUTH
5 CAROLINA VERSUS SUSAN TAPPEINER, WHO IS CHARGED IN A BILL
6 OF INDICTMENT BY THE GRAND JURY OF BEAUFORT COUNTY WITH THE
7 OFFENSE OF CRIMINAL SEXUAL CONDUCT WITH A MINOR SECOND
8 DEGREE.

9 LADIES AND GENTLEMEN, MS. TAPPEINER IN THIS CASE IS
10 BEING REPRESENTED BY MR. MIKE MACLOSKIE. MR. MACLOSKIE,
11 WOULD YOU STAND UP AND INTRODUCE YOUR CLIENT AS WELL, SIR.

12 MR. MACLOSKIE: I'M MIKE MACLOSKIE. I PRACTICE LAW IN
13 BEAUFORT, AND THIS IS MRS. TAPPEINER.

14 THE COURT: THANK YOU. LADIES AND GENTLEMEN, THE
15 STATE IN THIS CASE IS BEING REPRESENTED BY MS. DAWN BURKE.
16 MS. BURKE, IF YOU WOULD STAND UP.

17 MS. BURKE: YES, YOUR HONOR. GOOD MORNING, LADIES AND
18 GENTLEMEN. MY NAME IS DAWN BURKE. I WILL BE THE
19 PROSECUTOR IN THIS CASE. WITH ME TODAY IS ALSO SERGEANT
20 INVESTIGATOR GONZALES WITH BLUFFTON POLICE DEPARTMENT.
21 THANK YOU.

22 THE COURT: THANK YOU. LADIES AND GENTLEMEN, I HAVE
23 CERTAIN QUESTIONS I NEED TO ASK YOU JUST AS WE DID DURING
24 THE QUALIFICATION PROCESS. AGAIN, IF YOU NEED TO RESPOND
25 TO THESE QUESTIONS, I SIMPLY ASK THAT YOU STAND. AGAIN,

1 GIVE ME YOUR NAME AND JUROR NUMBER FOR THE RECORD. AND
2 THEN WHEN I CALL ON YOU, IF YOU WILL RESPOND TO THE
3 QUESTION.

4 AGAIN, LADIES AND GENTLEMEN, IT IS VITALLY IMPORTANT
5 THAT YOU RESPOND TRUTHFULLY, ACCURATELY, AND FULLY TO THESE
6 QUESTIONS. IF THERE IS A QUESTION THAT YOU DO NOT WISH TO
7 DISCLOSE IN FRONT OF YOUR FELLOW JURORS, AGAIN, YOU MAY ASK
8 ME TO APPROACH AND I WILL SPEAK TO YOU UP HERE.

9 ALL RIGHT. WITH THAT SAID, LADIES AND GENTLEMEN, IS
10 THERE ANY MEMBER OF THE JURY PANEL THAT IS RELATED BY BLOOD
11 OR CONNECTED BY MARRIAGE WITH THE DEFENDANT IN THIS CASE,
12 SUSAN TAPPEINER? IF SO, PLEASE STAND.

13 (NO RESPONSE.)

14 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL WHO
15 IS A CLOSE PERSONAL FRIEND OR SHARE A SPECIAL RELATIONSHIP
16 WITH SUSAN TAPPEINER? IF SO, PLEASE STAND.

17 (NO RESPONSE.)

18 THE COURT: LADIES AND GENTLEMEN, YOU HAVE BEEN
19 INTRODUCED TO THE ATTORNEYS THAT ARE TRYING THIS CASE.
20 AGAIN, MY QUESTION IS THE SAME. IS THERE ANY MEMBER OF THE
21 JURY PANEL RELATED BY BLOOD OR CONNECTED BY MARRIAGE OR A
22 CLOSE PERSONAL FRIEND OR SHARE A SPECIAL RELATIONSHIP WITH
23 THE ATTORNEYS TRYING THIS CASE, EITHER MR. MACLOSKIE OR MS.
24 BURKE? IF SO, PLEASE STAND.

25 (NO RESPONSE.)

1 THE COURT: ADDITIONALLY, LADIES AND GENTLEMEN, IS
2 THERE ANY MEMBER OF THE JURY PANEL WHO IS CURRENTLY OR IN
3 THE PAST BEEN REPRESENTED BY EITHER OF THE ATTORNEYS THAT
4 ARE TRYING THIS CASE? IF SO, PLEASE STAND.

5 (NO RESPONSE.)

6 THE COURT: LADIES AND GENTLEMEN OF THE JURY, I'M
7 GOING TO READ TO YOU A LIST OF POTENTIAL WITNESSES IN THIS
8 CASE, AND MY QUESTION WILL BE THE SAME FOR YOU AGAIN: IS
9 THERE ANY MEMBER OF THE JURY PANEL RELATED BY BLOOD OR
10 CONNECTED BY MARRIAGE OR HAVE A CLOSE PERSONAL FRIENDSHIP
11 OR SHARE A SPECIAL RELATIONSHIP WITH ANY OF THESE POTENTIAL
12 WITNESSES? AND I WOULD ASK IF ANY OF THE WITNESSES ARE IN
13 THE COURTROOM, THAT YOU WOULD PLEASE STAND AND FACE THE
14 PANEL.

15 DEPUTY CREASON, LIEUTENANT TUBBS, SERGEANT CHRIS
16 GONZALES. WOULD YOU LIKE TO STAND AGAIN. DETECTIVE
17 CLAUDIA HEBDA, DETECTIVE JOSEPH BABKIEWICZ, DETECTIVE
18 JACKSON, *Victim*, JULIE BELLMAN, MARY BETH HEFNER,
19 MIKE TAPPEINER, GLENN BRODIE, DR. YOLA NOLAN, DAVID
20 SANDERS, AND DIANE SANDERS. THANK YOU, MR. SANDERS. THANK
21 YOU, MS. SANDERS.

22 LADIES AND GENTLEMEN, AGAIN THE QUESTION IS -- AND
23 THANK YOU FOR STANDING. AGAIN, IS THERE ANY MEMBER OF THE
24 JURY PANEL RELATED BY BLOOD OR CONNECTED BY MARRIAGE OR A
25 CLOSE PERSONAL FRIEND OR SHARE A SPECIAL RELATIONSHIP WITH

1 ANY OF THESE POTENTIAL WITNESSES? IF SO, PLEASE STAND.
2 SIR, YOUR NAME AND JUROR NUMBER?
3 JUROR: DANNY OLIVARRI.
4 THE COURT: OLIVARRI.
5 JUROR: 201.
6 THE COURT: SIR, WHO DO YOU KNOW?
7 JUROR: THE SERGEANT.
8 THE COURT: HOW WELL DO YOU KNOW HIM?
9 JUROR: I LIVE ABOUT RIGHT AROUND THE CORNER FROM HIM.
10 THE COURT: HAVE YOU DISCUSSED THIS CASE AT ALL WITH
11 HIM?
12 JUROR: NO, MA'AM.
13 THE COURT: DO YOU ALL ON A REGULAR BASIS SOCIALIZE?
14 I DON'T KNOW ANY OTHER WAY TO SAY THAT.
15 JUROR: NO, MA'AM.
16 THE COURT: YOU DON'T EAT DINNER TOGETHER?
17 JUROR: NO, MA'AM.
18 THE COURT: NO. SIR, I WANT TO MAKE SURE. I
19 UNDERSTAND THAT SERGEANT GONZALES IS LIKELY TO BE A WITNESS
20 IN THIS CASE. WOULD THAT AFFECT YOUR ABILITY TO BE FAIR
21 AND IMPARTIAL IN THE TRIAL OF THIS MATTER?
22 JUROR: IT WILL NOT.
23 THE COURT: ARE YOU SURE OF THAT?
24 JUROR: YES, MA'AM.
25 THE COURT: ALL RIGHT. THANK YOU, SIR. YOU MAY BE

1 SEATED.

2 YES, MA'AM, YOUR NAME AND JUROR NUMBER?

3 JUROR: MY NAME IS CHRISTINE TROVANO. MY NUMBER IS
4 263.

5 THE COURT: MS. TRAVANO.

6 JUROR: I TEACH AT MCCrackEN MIDDLE SCHOOL, AND I AM A
7 CLOSE FRIEND OF DEPUTY CREASON. HE IS THE S.R. OFFICER IN
8 OUR BUILDING.

9 THE COURT: OKAY. MS. TRAVANO, THE FACT THAT DEPUTY
10 CREASON MAY BE A WITNESS IN THIS CASE, WOULD THAT AFFECT
11 YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THE TRIAL OF THIS
12 MATTER?

13 JUROR: I DO NOT BELIEVE SO.

14 THE COURT: OKAY. I NEED YOU TO BE ABSOLUTELY SURE.

15 JUROR: I'M ABSOLUTELY SURE.

16 THE COURT: ARE YOU POSITIVE?

17 JUROR: I AM POSITIVE.

18 THE COURT: OKAY. THANK YOU, MA'AM. I APPRECIATE
19 THAT.

20 ANYBODY ELSE?

21 (NO RESPONSE.)

22 THE COURT: LADIES AND GENTLEMEN, I KNOW YOU KNOW VERY
23 LITTLE ABOUT THIS CASE, PROBABLY ONLY WHAT I'VE TOLD YOU.
24 BUT MY QUESTION TO YOU IS: IS THERE ANY MEMBER OF THE JURY
25 PANEL WHO HAS SEEN, HEARD, OR READ ANYTHING ABOUT THIS CASE

1 OR KNOW ANYTHING ABOUT THIS CASE WHATSOEVER? IF SO, PLEASE
2 STAND.

3 (NO RESPONSE.)

4 THE COURT: LADIES AND GENTLEMEN OF THE JURY, IS
5 THERE ANY MEMBER OF THE JURY PANEL THAT HAS A CHILD OR
6 CHILDREN ---

7 BAILIFF: SOMEONE STANDING, YOUR HONOR.

8 THE COURT: YES, MA'AM.

9 JUROR: MAY I APPROACH?

10 THE COURT: YOU CERTAINLY MAY. IF YOU WOULD JUST GIVE
11 ME YOUR NAME AND JUROR NUMBER FOR THE RECORD BEFORE YOU
12 APPROACH?

13 JUROR: MARGARET GRAY, NO. 99.

14 THE COURT: MS. GRAY, COME FORWARD. THE ATTORNEYS ARE
15 WELCOME TO COME UP TOO.

16 (THE FOLLOWING WAS HELD IN THE PRESENCE OF THE JURY
17 PANEL BUT OUT OF THE HEARING OF THE JURY PANEL.)

18 THE COURT: HOW ARE YOU?

19 JUROR: FINE.

20 THE COURT: MS. GRAY.

21 JUROR: I THINK SHE USED TO WORK AT A PLACE WHERE I
22 USED TO WORK. AND EVERYONE IN THE WHOLE PLACE WAS TALKING
23 ABOUT IT.

24 THE COURT: OKAY. SO YOU KNOW SOME OF THE BACKGROUND
25 OF THIS CASE?

1 JUROR: I CAN'T REMEMBER THE DETAILS, BUT I KNOW HER
2 DESCRIPTION. AND I KNOW THINGS ABOUT HER. I DON'T
3 REMEMBER WHAT THEY SAID, BUT I KNOW THAT SHE WAS PUT IN A
4 NEGATIVE LIGHT, BECAUSE PEOPLE WERE TALKING ABOUT IT. YOU
5 KNOW, IT WAS LIKE WATER COOLER CONVERSATION.

6 THE COURT: OKAY. OKAY. I'M GOING TO GO AHEAD OUT OF
7 AN ABUNDANCE OF CAUTION I'M GOING TO EXCUSE YOU FROM THE
8 TRIAL OF THIS CASE JUST BECAUSE YOU'VE HEARD THINGS ABOUT
9 IT.

10 JUROR: YEAH.

11 THE COURT: WHAT I'M GOING TO ASK YOU TO DO IS STAY
12 WITH US, BECAUSE THE NEXT CASE WE'RE GOING TO PULL IS
13 ANOTHER CASE.

14 JUROR: OKAY.

15 THE COURT: I WILL TAKE YOUR NAME OUT OF THIS POOL.
16 FROM HERE ON OUT YOU DON'T NEED TO RESPOND TO ANY MORE OF
17 MY QUESTIONS. OKAY. WHEN JUDGE KINARD COMES BACK OUT,
18 HE'S GOING TO PULL THE NEXT JURY. YOU NEED TO RESPOND TO
19 THOSE. OKAY?

20 JUROR: OKAY. THANK YOU.

21 (THE FOLLOWING TAKES PLACE IN OPEN COURT.)

22 THE COURT: MIKE.

23 CLERK: YES, MA'AM.

24 THE COURT: MS. GRAY IS EXCUSED FROM THE TRIAL OF JUST
25 THIS CASE.

1 CLERK: YES, MA'AM.

2 THE COURT: LADIES AND GENTLEMEN, IS THERE ANY MEMBER
3 OF THE JURY PANEL THAT HAS A CHILD OR CHILDREN UNDER THE
4 AGE OF 14 YEARS? IF SO, PLEASE STAND.

5 OKAY. LADIES AND GENTLEMEN, WHAT I'M GOING TO ASK YOU
6 TO DO IS THIS: WHEN I CALL ON YOU, YOU'RE GOING TO GIVE ME
7 YOUR NAME AND JUROR NUMBER AND YOU ARE JUST GOING TO SAY
8 THE AGE OF YOUR CHILD OR CHILDREN UNDER THE AGE OF 14 AND
9 WHETHER OR NOT THEY ARE A BOY OF GIRL. OKAY.

10 MR. NELSON, YOU'RE GOING TO START, SIR. AGAIN, GIVE
11 US YOUR NAME AND JUROR NUMBER FOR THE RECORD.

12 JUROR: CHARLES NELSON, 195. I HAVE A SON ABOUT 13
13 1/2.

14 THE COURT: OKAY. THANK YOU, SIR. YOU MAY BE SEATED.
15 YES, SIR.

16 JUROR: 262. ALEX TOIRKENS. 4 YEAR OLD SON, 2 YEAR
17 OLD DAUGHTER.

18 THE COURT: THANK YOU, MR. TOIRKENS.

19 YES, SIR.

20 JUROR: I'M TYRONE DELMONICO, NO. 65. I HAVE A 2 WEEK
21 OLD DAUGHTER.

22 THE COURT: CONGRATULATIONS.

23 JUROR: THANK YOU.

24 THE COURT: YOU MUST BE TIRED. YOUR WIFE MUST BE
25 REALLY TIRED. YOU'RE HERE FOR A BREAK. I UNDERSTAND.

1 OKAY. YES, SIR. YOUR NAME AND JUROR NUMBER.
2 JUROR: BRIAN O'DONNELL, 199. I HAVE A DAUGHTER
3 THAT'S 9.
4 THE COURT: THANK YOU, SIR.
5 YES, MA'AM, YOUR NAME AND JUROR NUMBER.
6 JUROR: EDITH HICKEY, 116. SON 13.
7 THE COURT: THANK YOU, MS. HICKEY.
8 YES, SIR.
9 JUROR: DANNY OLIVARRI, 201. I HAVE A SON THAT'S 9
10 AND A DAUGHTER THAT'S 6.
11 THE COURT: THANK YOU, SIR.
12 JUROR: CARL GAILES, JUROR NO. 87. DAUGHTER 7 AND A
13 DAUGHTER 3.
14 THE COURT: THANK YOU, SIR.
15 YES, SIR.
16 JUROR: PHILANDER MCDOMICK, 168. I HAVE TWO SONS, 10
17 AND 13.
18 THE COURT: THANK YOU, SIR.
19 JUROR: HOLLY WALLACE, 269. I HAVE THREE GIRLS UNDER
20 THE AGE OF 14 YEARS.
21 THE COURT: THANK YOU.
22 JUROR: ROB ANDERSON, JUROR NO. 2. I HAVE A DAUGHTER
23 THAT'S 3.
24 THE COURT: THANK YOU, SIR.
25 JUROR: RAYMOND BRAGG, JUROR 30. DAUGHTER THAT'S 11.

1 THE COURT: THANK YOU, SIR.
2 YES, MA'AM.
3 JUROR: JEAN EGGERT, 76. A 6 YEAR OLD SON.
4 THE COURT: THANK YOU.
5 YES, MA'AM.
6 JUROR: ANN SOMMERVILLE, 244. TWO DAUGHTERS 10 AND
7 13.
8 THE COURT: THANK YOU, MA'AM.
9 YES.
10 JUROR: SONIA SONTORO, 234. A DAUGHTER 13 AND A SON
11 7.
12 THE COURT: THANK YOU.
13 YES, MA'AM.
14 JUROR: CAROL REDMON, 218. I HAVE A SON WHO'S 13.
15 THE COURT: THANK YOU.
16 YES, MA'AM.
17 JUROR: JANELLE DILL, NO. 68. I HAVE A SON 13.
18 THE COURT: THANK YOU, MA'AM.
19 JUROR: CHRISTINE TROVANO, 263. A DAUGHTER 14, SON 9.
20 THE COURT: THANK YOU.
21 YES, SIR.
22 JUROR: MYRON HARRIS, 106. TWO 2 YEAR OLD BOYS AND A
23 11 YEAR OLD GIRL.
24 THE COURT: THANK YOU. ANYBODY ELSE?
25 (NO RESPONSE.)

1 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL WHO
2 HAS A MORAL OR A RELIGIOUS OBJECTION TO THE USE OF
3 PRESCRIPTION DRUGS? IF SO, PLEASE STAND.

4 (NO RESPONSE.)

5 THE COURT: AGAIN, IS THERE ANY MEMBER OF THE JURY
6 PANEL WHO HAS A MORAL OR RELIGIOUS OBJECTION TO THE USE OF
7 PRESCRIPTION DRUGS?

8 (NO RESPONSE.)

9 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL OR A
10 MEMBER OF YOUR IMMEDIATE FAMILY EVER BEEN A VICTIM OF A
11 SEXUAL ASSAULT? IF SO, PLEASE STAND.

12 OKAY. MA'AM, YOUR NAME AND JUROR NUMBER?

13 JUROR: RYAN BARNETT, 12.

14 THE COURT: WOULD YOU LIKE TO APPROACH AND SPEAK TO ME
15 IN PRIVATE, OR ARE YOU COMFORTABLE SPEAKING THERE? COME ON
16 UP.

17 (THE FOLLOWING WAS HELD IN THE PRESENCE OF THE JURY
18 PANEL BUT OUT OF THE HEARING OF THE JURY PANEL.)

19 THE COURT: HOW ARE YOU?

20 JUROR: I WAS ALMOST RAPED WHEN I WAS 16. MY MOTHER
21 AND HER SISTER WERE BOTH PHYSICALLY ABUSED BY THEIR FATHER.

22 THE COURT: OKAY. BECAUSE THIS IS A CASE THAT
23 INVOLVES A POTENTIAL ALLEGATION OF A SEXUAL ASSAULT, DO YOU
24 BELIEVE YOU CAN BE FAIR AND IMPARTIAL IN THE TRIAL OF THIS
25 CASE JUST BASED ON THE SUBJECT MATTER SINCE YOU SAY YOU.

1 WERE ALMOST RAPED AT THE AGE OF 16?

2 JUROR: YES, I CAN.

3 THE COURT: YOU SURE? IN PARTICULAR, YOU SAID YOUR
4 MOTHER AND YOUR GRANDMOTHER?

5 JUROR: NO. MY MOTHER AND HER SISTER.

6 THE COURT: MOTHER AND HER SISTER. ARE YOU ABSOLUTELY
7 SURE?

8 JUROR: YES.

9 THE COURT: YOU'RE COMFORTABLE WITH THAT?

10 JUROR: I DID ALSO HAVE SOMETHING THAT I SHOULD HAVE
11 SAID BEFORE, BUT I WASN'T SURE. MR. MACLOSKIE KNOWS MY
12 MOTHER.

13 THE COURT: OKAY.

14 JUROR: AND ALSO HELPED MY BROTHER ON ONE OF HIS
15 CASES.

16 THE COURT: OKAY. AND YOU'RE COMFORTABLE SITTING?

17 JUROR: YES.

18 THE COURT: ARE YOU CURRENTLY REPRESENTING THEM?

19 MR. MACLOSKIE: NO. IT HAS BEEN MORE THAN 10 YEARS.

20 JUROR: ABOUT THAT.

21 THE COURT: WELL, YOU'RE NOT DISQUALIFIED. AS LONG AS
22 HE'S NOT CURRENTLY REPRESENTING YOU, AND YOU'RE TELLING ME
23 THAT YOU'RE ABSOLUTELY COMFORTABLE. YOU ARE?

24 JUROR: YES.

25 THE COURT: OKAY.

1 (PAUSE.)
2 THE COURT: OKAY. I'M GOING TO KEEP YOU HERE. OKAY?
3 JUROR: OKAY.
4 (THE FOLLOWING TAKES PLACE IN OPEN COURT.)
5 THE COURT: YES, MA'AM. YOUR NAME AND JUROR NUMBER?
6 YES.
7 JUROR: EDITH HICKEY, 116.
8 THE COURT: MS. HICKEY.
9 JUROR: APPROACH?
10 THE COURT: COME ON.
11 MR. MACLOSKIE, WHY DON'T YOU COME ON UP.
12 (THE FOLLOWING WAS HELD IN THE PRESENCE OF THE JURY
13 PANEL BUT OUT OF THE HEARING OF THE JURY PANEL.)
14 THE COURT: HEY.
15 JUROR: I WAS 11 AND I GOT AWAY.
16 THE COURT: OKAY. SOMEONE TRIED BUT YOU GOT AWAY?
17 JUROR: YEAH.
18 THE COURT: MR. MACLOSKIE, WHEN SHE WAS 11 SOMEONE
19 ATTEMPTED TO ASSAULT HER, BUT SHE GOT AWAY.
20 JUROR: MY BROTHER AND I.
21 THE COURT: YOUR BROTHER AND YOU.
22 JUROR: HE WAS 2.
23 THE COURT: OKAY. YOU NEED TO UNDERSTAND THAT THERE
24 IS AN ALLEGATION OF A SEXUAL ASSAULT IN THIS CASE. I WANT
25 TO MAKE SURE THAT YOU CAN BE FAIR AND IMPARTIAL IN THE

1 TRIAL OF THIS CASE BASED ON YOUR PAST EXPERIENCE.

2 JUROR: I THINK I CAN. I KNOW I CAN.

3 THE COURT: I NEED YOU TO BE ABSOLUTELY SURE. YOU'RE
4 COMFORTABLE?

5 JUROR: I'M COMFORTABLE.

6 THE COURT: BECAUSE I DON'T WANT ANYTHING TO BRING
7 BACK MEMORIES OR UPSET YOU IN ANY WAY. YOU THINK YOU'RE
8 OKAY?

9 JUROR: YES.

10 THE COURT: OKAY. ALL RIGHT. I'M GOING TO KEEP YOU,
11 MS. HICKEY. THANK YOU. I APPRECIATE YOU LETTING ME KNOW.

12 (THE FOLLOWING TAKES PLACE IN OPEN COURT.)

13 THE COURT: YES, SIR. YOUR NAME AND JUROR NUMBER?

14 JUROR: CHARLES A. BRYANT.

15 THE COURT: YES, SIR.

16 JUROR: JUROR 36.

17 THE COURT: YES, SIR.

18 JUROR: MAY I APPROACH?

19 THE COURT: COME ON.

20 (THE FOLLOWING WAS HELD IN THE PRESENCE OF THE JURY
21 PANEL BUT OUT OF THE HEARING OF THE JURY PANEL.)

22 THE COURT: HEY, MR. BRYANT.

23 JUROR: I HAVE A STEP-DAUGHTER THAT WAS RAPED AT THE
24 AGE OF 13. IT'S BEEN 7 YEARS AGO, BUT I DON'T THINK IT'S
25 GOING TO AFFECT MY JUDGMENT.

1 THE COURT: YOU'RE COMFORTABLE?

2 JUROR: YES.

3 THE COURT: OKAY. I JUST WANT TO MAKE SURE, YOU DON'T
4 THINK IT WILL AFFECT YOU?

5 JUROR: I DON'T THINK SO.

6 THE COURT: OKAY. I'M GOING TO KEEP YOU. THANK YOU,
7 MR. BRYANT.

8 (THE FOLLOWING TAKES PLACE IN OPEN COURT.)

9 THE COURT: YES, SIR, YOUR NAME AND JUROR NUMBER?

10 JUROR: ZACHARY RICHARDSON, 224. CAN I APPROACH?

11 THE COURT: MR. RICHARDSON, PLEASE.

12 (THE FOLLOWING WAS HELD IN THE PRESENCE OF THE JURY
13 PANEL BUT OUT OF THE HEARING OF THE JURY PANEL.)

14 THE COURT: HOW ARE YOU?

15 JUROR: GOOD. MY COUSIN WAS MOLESTED BY AN UNCLE WHEN
16 SHE WAS ABOUT 12.

17 THE COURT: ABOUT 12 YEARS OLD.

18 JUROR: YES.

19 THE COURT: WOULD THAT AFFECT YOUR ABILITY TO BE FAIR
20 AND IMPARTIAL IN THE TRIAL OF THIS CASE?

21 JUROR: IT MIGHT.

22 THE COURT: IT MIGHT?

23 JUROR: YES.

24 THE COURT: ALL RIGHT. WHAT I'M GOING TO DO IS THIS:
25 I'M GOING TO EXCUSE YOU FROM THE TRIAL OF THIS CASE, BUT I

1 WANT YOU TO STAY HERE BECAUSE THE NEXT CASE WE'RE GOING TO
2 PULL IS A MURDER TRIAL. SO YOU NEED TO RESPOND FOR THAT.
3 OKAY. YOU DO NOT NEED TO RESPOND TO MY FURTHER QUESTIONS
4 ABOUT THIS CASE. OKAY.

5 JUROR: OKAY.

6 THE COURT: BUT WHEN JUDGE KINARD COMES IN AND HE ASKS
7 YOU A WHOLE SEPARATE SET OF QUESTIONS, YOU NEED TO RESPOND.
8 OKAY?

9 JUROR: OKAY.

10 THE COURT: OKAY. THANKS, MR. RICHARDSON.

11 (THE FOLLOWING TAKES PLACE IN OPEN COURT.)

12 THE COURT: MR. RICHARDSON IS EXCUSED FROM THE TRIAL
13 OF THIS CASE.

14 CLERK: YES, MA'AM.

15 THE COURT: ALL RIGHT. YES, MA'AM. YOUR NAME AND
16 JUROR NUMBER?

17 JUROR: CHRISTINE TROVANO, 263. MAY I APPROACH?

18 THE COURT: PLEASE.

19 (THE FOLLOWING WAS HELD IN THE PRESENCE OF THE JURY
20 PANEL BUT OUT OF THE HEARING OF THE JURY PANEL.)

21 JUROR: MY MOTHER AND MY SISTER WERE SEXUALLY ABUSED
22 BY MY GRANDFATHER.

23 THE COURT: OKAY. WHAT DO YOU TEACH AT MCCracken?

24 JUROR: I TEACH SOCIAL STUDIES.

25 THE COURT: OKAY. VERY GOOD. I NEED TO KNOW IF YOU

1 CAN BE FAIR AND IMPARTIAL IN THE TRIAL OF THIS CASE?

2 JUROR: I DON'T THINK SO.

3 THE COURT: YOU DON'T THINK YOU CAN?

4 JUROR: I DON'T THINK I CAN.

5 THE COURT: OKAY. THAT'S OKAY. I'M GOING TO GO AHEAD

6 AND EXCUSE YOU FROM THE TRIAL OF THIS CASE. WE'RE GOING TO

7 PULL ANOTHER ONE RIGHT AFTER THIS. FOR NOW ON YOU DO NOT

8 NEED TO RESPOND TO ANY MORE OF MY QUESTIONS. WHEN JUDGE

9 KINARD COMES ON, YOU DO HAVE TO. OKAY?

10 JUROR: OKAY.

11 THE COURT: OKAY.

12 (THE FOLLOWING TAKES PLACE IN OPEN COURT.)

13 THE COURT: MS. TROVANO IS EXCUSED FROM THE TRIAL OF

14 THIS CASE, MIKE.

15 CLERK: YES, MA'AM.

16 THE COURT: THANK YOU.

17 SIR, YOUR NAME AND JUROR -- I'M SORRY. I MISSED YOU

18 BACK THERE. I APOLOGIZE. YOUR NAME AND JUROR NUMBER?

19 JUROR: JILL SABA, 233.

20 THE COURT: MS. SABA, DO YOU WANT TO COME TALK TO ME?

21 JUROR: YES.

22 THE COURT: COME ON.

23 (THE FOLLOWING WAS HELD IN THE PRESENCE OF THE JURY

24 PANEL BUT OUT OF THE HEARING OF THE JURY PANEL.)

25 THE COURT: HI. HOW YOU?

1 JUROR: I WAS THE VICTIM OF MOLESTATION AS A CHILD.
2 THE COURT: OKAY.
3 JUROR: IT WAS A FAMILY MEMBER.
4 THE COURT: OKAY. CAN YOU TELL ME ROUGHLY HOW LONG IT
5 WENT ON?
6 JUROR: A VERY LONG TIME.
7 THE COURT: HAVE YOU HAD COUNSELING?
8 JUROR: YES.
9 THE COURT: OKAY. I'M GOING TO GO AHEAD AND EXCUSE
10 YOU FROM THE TRIAL OF THIS CASE JUST BASED ON THE NATURE OF
11 IT AND I DON'T WANT YOU UPSET. THE NEXT CASE WILL BE TRIED
12 IS A MURDER CASE, OKAY. TO MY QUESTIONS IN THIS CASE YOU
13 DO NOT NEED TO RESPOND. WHEN JUDGE KINARD COMES OUT, HE IS
14 GOING TO GO AHEAD AND ASK YOU QUESTIONS. YOU NEED TO
15 RESPOND AT THAT POINT. OKAY?
16 JUROR: ALL RIGHT.
17 (THE FOLLOWING TAKES PLACE IN OPEN COURT.)
18 THE COURT: MS. SABA IS EXCUSED FROM THE TRIAL OF THIS
19 CASE, MIKE.
20 CLERK: YES, MA'AM.
21 THE COURT: SIR, YOUR NAME AND JUROR NUMBER?
22 JUROR: 134, AUBREY JUDY.
23 THE COURT: YES, SIR, COME ON.
24 AND, SIR, IF YOU WOULD LIKE TO, IF YOU'RE GOING TO
25 WANT TO APPROACH ME, YOU CAN TAKE THE WALK AROUND. WE'LL

1 GO AHEAD AND CUT TO THE CHASE.

2 (THE FOLLOWING WAS HELD IN THE PRESENCE OF THE JURY
3 PANEL BUT OUT OF THE HEARING OF THE JURY PANEL.)

4 THE COURT: HI. HOW ARE YOU?

5 JUROR: FINE. MY MOTHER AND AUNT WERE ASSAULTED BY MY
6 GRANDFATHER. I DON'T KNOW WHETHER -- I DON'T KNOW.

7 THE COURT: OKAY. YOU JUST DON'T KNOW?

8 JUROR: OTHER THINGS HAPPENED.

9 THE COURT: OKAY. WHAT I'M GOING TO DO IS I'M GOING
10 TO EXCUSE YOU FROM THE TRIAL OF THIS CASE JUST BASED ON THE
11 NATURE OF THIS. I DON'T WANT YOU UPSET OVER ANYTHING. THE
12 NEXT CASE WE'LL PULL IS A MURDER TRIAL. AND SO FROM HERE
13 ON OUT YOU DON'T NEED TO RESPOND TO ANY MORE OF MY
14 QUESTIONS.

15 JUROR: OKAY.

16 THE COURT: BUT WHEN JUDGE KINARD COMES UP AND ASKS A
17 WHOLE NEW SET OF QUESTIONS, YOU NEED TO RESPOND.

18 JUROR: I GOT YOU.

19 THE COURT: OKAY. THANKS, MR. JUDY.

20 (THE FOLLOWING TAKES PLACE IN OPEN COURT.)

21 THE COURT: MR. JUDY IS EXCUSED FROM THE TRIAL OF THIS
22 CASE, MIKE.

23 CLERK: YES, MA'AM.

24 BAILIFF: JUROR NO. 58, MR. CROWDER.

25 (THE FOLLOWING WAS HELD IN THE PRESENCE OF THE JURY

1 PANEL BUT OUT OF THE HEARING OF THE JURY PANEL.)

2 THE COURT: HOW ARE YOU?

3 JUROR: JUST FINE. MY WIFE WAS ABUSED AS A KID BY AN
4 UNCLE. I CAN'T ---

5 THE COURT: YOU'RE WORRIED ABOUT IT?

6 JUROR: YEAH, I'D BE VERY ONE SIDED.

7 THE COURT: OKAY. I APPRECIATE THE CANDOR. I'M GOING
8 TO GO AHEAD AND EXCUSE YOU FROM THE TRIAL OF THIS CASE.
9 HOWEVER, THE NEXT CASE WE'RE GOING TO PULL IS A MURDER
10 TRIAL. I'M GOING TO KEEP YOU HERE FOR THAT.

11 JUROR: YES.

12 THE COURT: YOU DON'T NEED TO RESPOND TO ANY OF MY
13 FURTHER QUESTIONS RIGHT NOW. BUT WHEN JUDGE KINARD COMES
14 OUT, YOU DO NEED TO RESPOND TO HIS QUESTIONS. OKAY. THANK
15 YOU.

16 (THE FOLLOWING TAKES PLACE IN OPEN COURT.)

17 THE COURT: MR. CROWDER IS EXCUSED FROM THE TRIAL OF
18 THIS CASE. OKAY.

19 ANYBODY ELSE?

20 (NO RESPONSE.)

21 THE COURT: ALL RIGHT. THANK YOU.

22 LADIES AND GENTLEMEN, IS THERE ANY MEMBER OF THE JURY
23 PANEL WHO HAS A FAMILY MEMBER OR A CLOSE PERSONAL FRIEND
24 WHO IS IN LAW ENFORCEMENT OR WHO HAS BEEN IN LAW
25 ENFORCEMENT IN THE PAST? IF SO, PLEASE STAND.

1 AGAIN, LADIES AND GENTLEMEN, THE QUESTION IS: IS
2 THERE ANY MEMBER OF THE JURY PANEL WHO HAS A FAMILY MEMBER
3 OR A CLOSE PERSONAL FRIEND WHO IS IN LAW ENFORCEMENT OR WHO
4 HAS BEEN IN LAW ENFORCEMENT IN THE PAST?

5 WHAT I'M GOING TO DO IS I'M GOING TO CALL YOUR NAME
6 AND YOU'RE GOING TO GIVE ME YOUR NAME AND YOUR JUROR
7 NUMBER, AND YOU'RE GOING TO SAY WHO IT IS IN RELATION TO
8 YOU, IN OTHER WORDS, MY BROTHER, MY BEST FRIEND, MY UNCLE,
9 AND HE WAS WITH THE SHERIFF'S OFFICE IN ALBANY, NEW YORK.
10 OKAY? AND I NEED TO KNOW IF THEY ARE CURRENTLY AN OFFICER
11 OR IN THE PAST. OKAY.

12 MR. NELSON, WE'RE GOING TO START WITH YOU.

13 JUROR: 195.

14 THE COURT: ALL RIGHT.

15 JUROR: I'VE GOT AN UNCLE AND AN AUNT BOTH IN THE
16 INDIANAPOLIS POLICE DEPARTMENT AND IN MARIN COUNTY
17 SHERIFF'S DEPARTMENT I HAVE ABOUT 10, 15 COUSINS THAT ARE
18 SHERIFFS AND DEPUTIES ALL IN INDIANAPOLIS.

19 THE COURT: LADIES AND GENTLEMEN, I'M ALSO GOING TO
20 OPEN THIS QUESTION UP A LITTLE BIT. TYPICALLY ON YOUR
21 RETURN FORM YOU WILL GIVE US WHAT YOUR OCCUPATION IS. I
22 ALSO WANT ANYONE WHO IS SITTING IN THIS PANEL THEMSELF WAS
23 IN LAW ENFORCEMENT IN THE PAST. MAYBE YOU DON'T DO IT ANY
24 MORE. ALL RIGHT?

25 MR. NELSON, I APPRECIATE IT. YOU CAN GO AHEAD AND SIT

1 DOWN.

2 ALL RIGHT. SIR, YOUR NAME AND JUROR NUMBER?

3 JUROR: MR. BESKOW, JUROR NO. 17.

4 THE COURT: BESKOW?

5 JUROR: BESKOW.

6 THE COURT: YES, SIR.

7 JUROR: MY PARENTS WERE IN LAW ENFORCEMENT IN ILLINOIS

8 ABOUT 30 YEARS AGO. THEY'RE BOTH HAVE LONG SINCE RETIRED.

9 THE COURT: OKAY. ALL RIGHT. THANK YOU, MR. BESKOW.

10 YES, MA'AM, YOUR NAME AND JUROR NUMBER?

11 JUROR: JOYCE BLAINE, 21. MY SON-IN-LAW IS IN LAW

12 ENFORCEMENT IN MASSACHUSETTS.

13 THE COURT: THANK YOU. AND I APPRECIATE IT.

14 YES, MA'AM.

15 JUROR: JOAN MUSTARD, JUROR NO. 191. MY SISTER AND

16 BROTHER-IN-LAW ARE BOTH EMPLOYED AT THE DEPARTMENT OF

17 CORRECTIONAL INSTITUTION IN FLORIDA. AND MY COUSIN IS A

18 LOCAL POLICEMAN IN MANCHESTER, CONNECTICUT. AND MY LATE

19 UNCLE WAS A STATE TROOPER IN THE STATE OF CONNECTICUT AND

20 THEN A SHERIFF'S DEPUTY IN PALM BEACH COUNTY, FLORIDA. I

21 THINK THAT'S IT.

22 THE COURT: THANK YOU, MS. MUSTARD. I APPRECIATE

23 THAT.

24 YES.

25 JUROR: KAREN MYERS, NO. 175. MY BROTHER-IN-LAW WAS A

1 POLICEMAN IN PENNSYLVANIA. HE'S NOW DECEASED.
2 THE COURT: THANK YOU, I APPRECIATE IT.
3 YES, SIR.
4 JUROR: CHARLES BRYANT, JUROR NO. 36., MY COUSIN IS A
5 -- I THINK STILL ACTIVE IN LAW ENFORCEMENT.
6 THE COURT: OKAY. DO YOU KNOW WHERE, SIR?
7 JUROR: I THINK EDGEFIELD, SOMEWHERE.
8 THE COURT: OKAY. THANK YOU. IN SOUTH CAROLINA. I
9 APPRECIATE THAT, SIR.
10 YES, SIR, YOUR NAME AND JUROR NUMBER?
11 JUROR: PHILANDER MCDOMICK, JUROR 168. MYSELF AND MY
12 FATHER HAVE BEEN A COUNTY MAGISTRATE IN BEAUFORT.
13 THE COURT: THANK YOU, SIR.
14 JUROR: TERRILL NAVIS, 193. MY FATHER WAS A WARDEN
15 FOR 37 YEARS IN WISCONSIN.
16 THE COURT: THANK YOU, MR. NAVIS.
17 JUROR: JEAN EGGERT, 76. TWO UNCLES IN CHARLESTON
18 COUNTY, AND A BROTHER THAT'S A MAGISTRATE JUDGE.
19 MR. MACLOSKIE: COULD I HAVE THAT NUMBER PLEASE.
20 THE COURT: THANK YOU. MA'AM, CAN I HAVE YOUR NUMBER
21 AGAIN PLEASE?
22 JUROR: 76.
23 THE COURT: THANK YOU.
24 JUROR: 110, ANNA MARIE HAUSER. MY BROTHER-IN-LAW
25 WORKED IN THE G.B.I., A G.B.I. AGENT FOR 10 YEARS.

1 THE COURT: OKAY. THANK YOU. DO YOU HAVE THAT, MR.

2 MACLOSKIE?

3 MR. MACLOSKIE: YES, MA'AM.

4 THE COURT: THANK YOU.

5 YES, MA'AM.

6 JUROR: 70, STACY DIXON. MY SISTER-IN-LAW IS IN LAW
7 ENFORCEMENT IN ALBANY.

8 THE COURT: IN ALBANY. OKAY. THANK YOU, MA'AM. THAT
9 WAS NO. 70. WHAT WAS YOUR LAST NAME AGAIN, I'M SORRY?

10 JUROR: DIXON.

11 THE COURT: THANK YOU, MS. DIXON.

12 YES, MA'AM.

13 JUROR: CAROL REDMON, NO. 218. MY EX-HUSBAND IS A
14 BEAUFORT COUNTY SHERIFF'S DEPUTY.

15 THE COURT: THANK YOU, MS. REDMON.

16 SIR.

17 JUROR: STEVE CLARK, NO. 49. MY FATHER-IN-LAW AND
18 BROTHER-IN-LAW AND NIECE ARE OFFICERS OR PAST OFFICERS IN
19 MASSACHUSETTS.

20 THE COURT: THANK YOU, MR. CLARK.

21 YES, SIR.

22 JUROR: RAYMOND BATES, JUROR NO. 14. COUSINS, PRISON
23 GUARD IN INDIANA.

24 THE COURT: THANK YOU, SIR.

25 YES, MA'AM.

1 JUROR: BETTY COTTERMAN, 54. MY NEPHEW WAS A CITY COP
2 FOR WALTERBORO, ORANGEBURG, AND CHIEF OF POLICE FOR
3 EHERHART, BUT HE IS NOW IN THE MILITARY. AND ALSO MY EX-
4 HUSBAND WORKED AT DNR.

5 THE COURT: THANK YOU, MA'AM.

6 ANYBODY ELSE?

7 (NO RESPONSE.)

8 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL WHO
9 IS A MEMBER OF OR A CONTRIBUTOR TO ANY GROUP WHICH HAS AS
10 ITS PRIMARY PURPOSE THE PROMOTION OF LAW ENFORCEMENT OR
11 VICTIM'S RIGHTS? THESE WOULD INCLUDE SUCH GROUPS AS
12 CITIZENS AGAINST VIOLENT CRIME, ALSO KNOWN AS CAVE, OR
13 MADD, MOTHERS AGAINST DRUNK DRIVING, OR SADD, STUDENTS
14 AGAINST DRUNK DRIVING. AGAIN, MY QUESTION IS: IS THERE
15 ANY MEMBER OF THE JURY PANEL WHO IS A MEMBER OF OR A
16 CONTRIBUTOR TO ANY OF THESE TYPES OF ORGANIZATIONS? AND
17 THAT WOULD INCLUDE IF THEY CALL YOU OVER THE PHONE AND THEY
18 ASK YOU FOR A DONATION AND YOU SEND THEM MONEY.

19 ALL RIGHT. IS THERE ANYONE WHO NEEDS TO RESPOND TO
20 THIS QUESTION AT THIS TIME?

21 YES, SIR, YOUR NAME AND JUROR NUMBER?

22 JUROR: GREG SPRECHER, 248. CONTRIBUTIONS TO MADD AND
23 CODA.

24 THE COURT: THANK YOU, MR. SPRECHER.

25 YES, MA'AM.

1 JUROR: SONIA FRIEDMAN, 85, CONTRIBUTOR TO MADD.
2 THE COURT: THANK YOU.
3 YES, MA'AM.
4 JUROR: JOAN MUSTARD, 191, CONTRIBUTOR TO MADD.
5 THE COURT: THANK YOU, MS. MUSTARD.
6 ANYBODY ELSE? YES.
7 JUROR: MARK GOODMAN, 96, CONTRIBUTOR TO CODA.
8 THE COURT: I'M SORRY?
9 JUROR: CODA.
10 THE COURT: CODA. OKAY. I APOLOGIZE. I THOUGHT I
11 CUT YOU OFF. I APOLOGIZE.
12 ANYBODY ELSE?
13 (NO RESPONSE.)
14 THE COURT: LADIES AND GENTLEMEN, AGAIN, I KNOW YOU
15 KNOW VERY LITTLE ABOUT THIS CASE, BUT I WANT TO MAKE SURE
16 THAT THERE IS NO MEMBER OF THE PANEL WHO IS CONSCIOUS OF
17 ANY INTEREST OR ANY BIAS OR ANY PREJUDICE FOR OR AGAINST
18 THE DEFENDANT, MRS. TAPPEINER, IN THIS CASE, OR THE STATE?
19 IF SO, PLEASE STAND. I'M GOING TO ASK THAT YOU PLEASE
20 APPROACH.
21 (NO RESPONSE.)
22 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL WHO
23 HAS FORMED OR EXPRESSED AN OPINION AS TO THE GUILT OR
24 INNOCENCE OF THE DEFENDANT, MRS. TAPPEINER, IN THIS CASE?
25 IF SO, PLEASE STAND.

1 (NO RESPONSE.)

2 THE COURT: LADIES AND GENTLEMEN, IF THERE ANY MEMBER
3 OF THE JURY PANEL THAT KNOWS OF ANY REASON WHATSOEVER THAT
4 YOU CANNOT GIVE BOTH THE STATE AND MRS. TAPPEINER A FAIR
5 AND IMPARTIAL TRIAL IN THE MATTER OF THIS CASE? IF SO,
6 PLEASE STAND NOW.

7 (NO RESPONSE.)

8 THE COURT: IS THERE ANY FURTHER INQUIRY REQUIRED OF
9 THE PANEL FROM THE STATE?

10 MS. BURKE: YES, YOUR HONOR.

11 THE COURT: PLEASE APPROACH.

12 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE
13 PRESENCE OF THE JURY PANEL, BUT OUT OF THE HEARING OF THE
14 JURY PANEL.)

15 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL WHO
16 HAS BEEN ACCUSED OF A SERIOUS CRIME? IF SO, PLEASE STAND.
17 NOT NECESSARILY CONVICTED OF BUT ACCUSED OF A SERIOUS
18 CRIME. IF SO, PLEASE STAND.

19 YES, MA'AM, YOUR NAME AND JUROR NUMBER.

20 JUROR: JUROR 269, HOLLY WALLACE. I WAS ACCUSED OF
21 CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE.
22 I WENT TO ROLL CALL FOR 4 MONTHS, AND THEN MY EX-HUSBAND
23 CALLED AND DROPPED THE CHARGES.

24 THE COURT: OKAY. THANK YOU, MA'AM.

25 YES, MA'AM, YOUR NAME AND JUROR NUMBER?

1 JUROR: 76, ASSAULT.
2 THE COURT: ANYONE ELSE?
3 (NO RESPONSE.)
4 THE COURT: ANYTHING FURTHER REQUESTED OF THIS PANEL
5 FROM THE STATE?
6 MS. BURKE: NO, YOUR HONOR.
7 THE COURT: FROM DEFENSE?
8 MR. MACLOSKIE: NOT FROM THE DEFENSE, YOUR HONOR.
9 THE COURT: ALL RIGHT. MIKE, HOW LONG DO YOU NEED?
10 CLERK: JUST 5 MINUTES.
11 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WHAT'S
12 GOING TO HAPPEN NOW IS THOSE PEOPLE THAT I HAVE NOT EXCUSED
13 FROM THE TRIAL OF THIS CASE, YOUR NAMES ARE BEING PLACED
14 INTO A COMPUTER. THEY'RE GOING TO BE CHOSEN AT RANDOM.
15 WHAT HAPPENS IS WHEN YOUR NAME IS CALLED, I'M GOING TO
16 ASK THAT YOU COME FORWARD. YOU'RE GOING TO COME OVER ON
17 THIS SIDE AND YOU'RE GOING TO TURN AROUND AND YOU'RE GOING
18 TO STAND AND FACE THE ATTORNEYS AND THE PANEL.
19 AND AT THAT POINT WE'RE GOING TO GO AHEAD AND STRIKE
20 THE JURY. YOU'RE EITHER GOING TO BE INVITED TO GO BACK TO
21 THE PANEL OR YOU'RE GOING TO BE INVITED TO TAKE A SEAT ON
22 OUR JURY.
23 WITH THAT SAID, LADIES AND GENTLEMEN, AFTER THAT WE'RE
24 GOING TO TAKE A VERY SHORT BREAK. THOSE OF YOU THAT ARE
25 NOT ON MY JURY, JUDGE KINARD IS GOING TO COME IN AND HE'S

1 GOING TO PULL THAT JURY, TRYING REAL HARD TO GET YOU ALL
2 OUT OF HERE BY 1:00 O'CLOCK. IT'S HARD ON MONDAYS AND
3 WE'RE ALWAYS PUSHING FOR TIME.

4 BUT, AGAIN, THAT'S WHAT YOU CAN EXPECT.

5 LADIES AND GENTLEMEN, YOU ARE WELCOME FOR ABOUT THE
6 NEXT 5 MINUTES OR SO TO REFRESH YOURSELVES. GO OUTSIDE,
7 JUST COME BACK AS QUICKLY AS YOU CAN IN ABOUT 5 MINUTES OR
8 SO SO I CAN GO AHEAD AND PULL THIS PANEL AND WE'LL GET YOU
9 GOING. OKAY? THANK YOU.

10 (A RECESS WAS TAKEN.)

11 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, AS YOUR
12 NAME IS CALLED, AGAIN, BRING ALL YOUR BELONGINGS. COME
13 WALK AROUND HERE. TURN AROUND. FACE THE JURY PANEL, FACE
14 THE ATTORNEYS. AND, AGAIN, YOU WILL EITHER BE INVITED TO
15 GO BACK TO YOUR SEAT OR TO TAKE A SEAT IN THE JURY BOX.

16 WITH THAT SAID, MIKE.

17 (THE JURY WAS SELECTED AND EMPANELED AT 12:40 P.M.)

18 THE COURT: ARE THERE ANY MATTERS OF LAW WE NEED TO
19 TAKE UP REGARDING THE JURY SELECTION PROCESS, FROM THE
20 STATE?

21 MS. BURKE: NOTHING FROM THE STATE, YOUR HONOR.

22 THE COURT: FROM THE DEFENSE?

23 MR. MACLOSKIE: NOTHING FROM THE DEFENSE, YOUR HONOR.

24 THANK YOU.

25 THE COURT: THANK YOU.

1 (THE JURY PANEL WAS EXCUSED FROM THE TRIAL OF THIS
2 CASE.)

3 THE COURT: LADIES AND GENTLEMEN, I AM SURE YOU
4 UNDERSTAND AT THIS TIME YOU ARE MY FIRST TRIAL. I WILL
5 TELL YOU, THE ATTORNEYS EXPECT THIS CASE TO TAKE POSSIBLY
6 ALL DAY TOMORROW, COULD GO INTO WEDNESDAY, ALTHOUGH WE
7 NEVER KNOW. IT JUST DEPENDS ON HOW THE WITNESSES COME AND
8 IF THERE'S ANY OTHER ISSUES THAT WE NEED TO TAKE UP.

9 WHAT WE'RE GOING TO DO NOW THOUGH IS I'M GOING TO GO
10 AHEAD AND SEND YOU ALL HOME FOR THE DAY. THERE'S A NUMBER
11 OF MATTERS OF LAW THAT I NEED TO TAKE UP WITH THE ATTORNEYS
12 SO THAT WHEN WE COME BACK TOMORROW MORNING, WE WILL BEGIN
13 THIS CASE FRESH.

14 I DO NEED TO GIVE YOU A FEW INSTRUCTIONS BEFORE YOU
15 LEAVE. WHEN I DISMISS YOU, YOU'RE GOING TO GO BACK TO YOUR
16 JURY ROOM WITH BOB. HE'S GOING TO TELL YOU WHERE TO REPORT
17 IN THE MORNING. YOU'RE NOT GOING TO COME STRAIGHT TO THE
18 COURTROOM. YOU'RE GOING TO COME IN A SIDE DOOR AND YOU'RE
19 GOING TO COME STRAIGHT TO YOUR JURY ROOM.

20 JUST A FEW THINGS THAT I NEED TO TELL YOU AS FAR AS
21 THE RULES NOW THAT YOU ARE SITTING ON JURY DUTY.

22 LADIES AND GENTLEMEN, I KNOW YOU KNOW VERY LITTLE
23 ABOUT THIS CASE. I KNOW YOU KNOW JUST THE TINY BIT THAT
24 I'VE TOLD YOU. BUT PLEASE UNDERSTAND THAT YOU ARE NOT
25 ALLOWED TO DISCUSS ANYTHING IN REGARDS TO THIS CASE WITH

1 ANYONE. WHAT THAT MEANS IS EVEN WITH EACH OTHER AS YOU'RE
2 WALKING OUT TO THE PARKING LOT YOU CANNOT TALK ABOUT IT.

3 ADDITIONALLY, WHEN YOU GO HOME, YOU CAN TELL YOUR
4 HUSBAND, WIFE, FAMILY, FRIENDS, LOVED ONES THAT YOU HAVE
5 BEEN CHOSEN ON A CRIMINAL JURY; THAT IS THE ENTIRE EXTENT
6 THAT YOU CAN SAY. YOU CANNOT SAY WHO THE PARTIES INVOLVED
7 ARE, YOU CANNOT SAY WHAT THE CHARGES ARE. AGAIN, IT
8 WOULDN'T BE APPROPRIATE TO DO SO. AND THE REASON WHY IS
9 THIS: INEVITABLY, SOMEONE WILL GIVE YOU THEIR 2 CENTS
10 WORTH. ANY TIME THAT THEY THINK THEY KNOW ANYTHING ABOUT
11 ANYTHING, THEY'RE GOING TO TRY TO TELL YOU.

12 LADIES AND GENTLEMEN, I WANT YOU TO UNDERSTAND
13 SOMETHING. YOU ARE GOING TO HAVE EVERYTHING YOU NEED TO
14 DECIDE THIS CASE RIGHT HERE IN THIS COURTROOM, AND IT WOULD
15 BE HIGHLY IMPROPER FOR YOU TO BE INFLUENCED OUTSIDE OF THIS
16 COURTROOM.

17 AGAIN, YOU'RE GOING TO BE HERE. YOU'RE GOING TO HEAR
18 THE EVIDENCE FROM THE WITNESS STAND. YOU'RE GOING TO HEAR
19 THE ARGUMENTS OF THE LAWYERS. YOU'RE GOING TO HEAR MY
20 CHARGE ON THE LAW, AND THEN YOU'RE GOING TO MAKE YOUR
21 DECISION. SO, AGAIN, YOU'RE NOT TO DO ANY OF YOUR OWN
22 INDEPENDENT RESEARCH OR DISCUSS THIS WITH ANYONE IN ANY
23 WAY.

24 LADIES AND GENTLEMEN, ALSO, OUT OF AN ABUNDANCE OF
25 CAUTION -- I HAVE NOT GOTTEN A REQUEST FOR ANY NEWS

1 COVERAGE IN THIS CASE. HOWEVER, OUT OF AN ABUNDANCE OF
2 CAUTION, IF YOU FOR SOME REASON TURN ON THE NEWS TONIGHT OR
3 TOMORROW MORNING OR PARTICULARLY IF YOU OPEN THE NEWSPAPER
4 TOMORROW, IF THERE IS ANYTHING IN THAT NEWSPAPER ABOUT
5 WHAT'S GOING ON AT THIS COURTHOUSE, I'M ORDERING YOU RIGHT
6 NOW NOT TO READ IT. ALL RIGHT? AGAIN, IT WOULD BE
7 INAPPROPRIATE TO DO SO. AND INEVITABLY, THE FACTS ARE
8 ALWAYS WRONG THAT THEY TRY TO PRESUME. THEY DON'T KNOW
9 ANYTHING.

10 SO, AGAIN, IT WOULD BE INAPPROPRIATE FOR THEM TO
11 INFLUENCE YOU IN ANY WAY.

12 SO, AGAIN, IF THERE IS ANYTHING EITHER BY THE RADIO,
13 NEWSPAPER, TELEVISION, ANYTHING ALONG THOSE LINES IN
14 REGARDS TO THIS CASE, AGAIN, YOU ARE TO DISREGARD IT.

15 ADDITIONALLY, YOU SHOULDN'T HAVE BEEN ABLE TO GET IN
16 WITH YOUR CELL PHONES TODAY, EVEN MORE IMPORTANT WHEN YOU
17 BECOME A JUROR. AND THE REASON WHY, THE BLACKBERRIES AND
18 THESE TOUCH PHONES NOWADAYS YOU CAN GET SO MUCH INFORMATION
19 ON YOUR PERSONAL PHONE.

20 SO I WANT TO MAKE SURE YOU ALL UNDERSTAND AND
21 APPRECIATE, DO NOT EVEN BRING IT IN WITH YOU TOMORROW.
22 YOU'RE TO SEND THEM BACK OUT WITH YOU. JUST LEAVE THEM IN
23 YOUR CAR. IF SOMEBODY NEEDS TO GET A HOLD OF YOU WHILE
24 YOU'RE UP HERE FOR JURY SERVICE, YOU TELL THEM TO CALL THE
25 CLERK OF COURT'S OFFICE. THEY'LL COME TO ME, AND I WILL

1 GET YOU. SO YOU DON'T NEED TO WORRY ABOUT IT. YOU'LL BE
2 THE FIRST TO KNOW IF THERE'S ANY PROBLEMS OR ANY CONCERNS.

3 WITH THAT SAID, LADIES AND GENTLEMEN, OFTENTIMES IN
4 TRIAL THERE'S A LITTLE BIT OF DOWN TIME. IT'S OFTEN WHEN I
5 HAVE TO TAKE UP A MATTER OF LAW MAYBE WITH THE ATTORNEYS,
6 SO YOU MAY BE BACK IN YOUR JURY ROOM.

7 I CANNOT ALLOW YOU TO BRING LAP TOP COMPUTERS IN
8 BECAUSE, OF COURSE, THE SAME THING. YOU CAN ACCESS TOO
9 MUCH INFORMATION.

10 OFTENTIMES, I HAVE JURORS THAT BRING EVERYTHING FROM
11 KNITTING TO BOOKS, YOU NAME IT. AND THE REASON WHY, AGAIN,
12 OF COURSE, IS BEFORE THE CASE IS OVER YOU'RE NOT EVEN
13 ALLOWED TO DISCUSS THE CASE BACK THERE OTHER THAN TALKING
14 TO EACH OTHER ABOUT PLEASANTRIES AND ANYTHING ELSE BUT THIS
15 CASE.

16 SO AGAIN, FEEL FREE IF YOU WANT TO BRING A BOOK OR
17 WORK OR WHATEVER YOU WOULD LIKE TO, IT'S FINE.

18 ADDITIONALLY, LADIES AND GENTLEMEN, I KNOW I DON'T
19 HAVE TO SAY A WHOLE LOT TO THIS GROUP. BUT, AGAIN, I WANT
20 YOU ALL TO UNDERSTAND SOMETHING. THIS IS IMPORTANT
21 BUSINESS. PLEASE RESPECT THAT AND UNDERSTAND THAT.

22 I TELL PEOPLE, DRESS ACCORDINGLY. TYPICALLY IT'S
23 GETTING COOLER NOW. SO I'M GOING TO TELL YOU NOW NOT TO
24 WEAR SHORTS BACK THERE, SIR. IT'S ALL RIGHT. THIS IS THE
25 LOW LOW COUNTRY, PEOPLE TEND TO DO THAT. BUT, AGAIN,

1 PLEASE UNDERSTAND THIS IS IMPORTANT BUSINESS AND TAKE IT
2 SERIOUSLY. OKAY?

3 WITH THAT SAID, LADIES AND GENTLEMEN, ANYONE ELSE HAVE
4 ANY OTHER CONCERNS?

5 I'M GOING TO TELL YOU THAT TOMORROW I EXPECT TO RUN IN
6 THE COURTROOM TYPICALLY -- I'LL HAVE YOU BE HERE AT 10:00,
7 AND AT THAT TIME WE WILL BEGIN THE CASE. I EXPECT TO RUN
8 UNTIL 5:00, 5:30, 6:00.

9 IF THE CASE DOES GO TO YOU TOMORROW FOR YOUR
10 DELIBERATION, IF THAT'S A POSSIBILITY, YOU MAY BE HERE
11 LONGER THAN THAT.

12 WHAT I NEED TO KNOW FROM ANY OF YOU, IS IF THERE
13 SOMEWHERE WHERE YOU ABSOLUTELY HAVE TO BE TOMORROW NIGHT IF
14 FOR SOME REASON WE RAN LATE? I KNOW A LOT OF TIMES PEOPLE
15 HAVE TO DRIVE BACK TO THE ISLAND -- I MEAN, TYPICALLY LIKE
16 SOCCER GAMES AND THINGS FOR KIDS, OR A MEETING YOU
17 ABSOLUTELY HAVE TO BE AT. DOES ANYONE HAVE A CONCERN OR A
18 PROBLEM?

19 (NO RESPONSE.)

20 THE COURT: GOOD. ALL RIGHT. THEN WE'RE NOT GOING TO
21 WORRY ABOUT IT. ALL RIGHT. YOU ALL, I'M GOING TO GO AHEAD
22 AND EXCUSE YOU BACK TO YOUR JURY ROOM. IF YOU ALL ARE HERE
23 AT 10:00, I'LL START AT 10:00 TOMORROW. WE LOOK FORWARD TO
24 SEEING YOU THEN. THANK YOU.

25 (THE JURY EXITS THE COURTROOM AT 12:49 P.M.)

1 BAILIFF: THE JURY IS CLEAR, YOUR HONOR.

2 THE COURT: THANK YOU.

3 MR. MACLOSKIE: MAY I APPROACH WITH ONE HOUSEKEEPING
4 MATTER?

5 THE COURT: ABSOLUTELY. AND I WAS GOING TO ASK YOU,
6 WHAT TIME DO YOU WANT TO START BACK UP THIS AFTERNOON AFTER
7 WE TAKE A LITTLE BREAK?

8 MR. MACLOSKIE: LET'S START AT 2:00..

9 THE COURT: THAT GIVES YOU ENOUGH TIME?

10 MR. MACLOSKIE: YES, YOUR HONOR.

11 (A BENCH CONFERENCE WAS HELD OFF THE RECORD.)

12 THE COURT: ALL RIGHT. THIS CASE WILL BE AT EASE
13 UNTIL 2:00 O'CLOCK. I'LL SEE YOU ALL BACK THEN.

14 (COURT IS IN RECESS FOR LUNCH.)

15 THE COURT: WHAT MOTIONS DO WE HAVE?

16 MS. BURKE: FOR THE DENNO MOTION ON STATE VERSUS SUSAN
17 TAPPEINER THE STATE IS READY TO PROCEED.

18 THE COURT: WHAT MOTIONS DO YOU HAVE?

19 MS. BURKE: YOUR HONOR, I THINK THE FIRST ONE THAT WE
20 NEED TO TALK ABOUT IS THE DEFENDANT'S CONFESSION.

21 THE COURT: OKAY. MR. MACLOSKIE, DO YOU HAVE ANY
22 OTHER MOTIONS BESIDES THE JACKSON V. DENNO?

23 MR. MACLOSKIE: THAT'S THE ONLY ONE.

24 THE COURT: ALL RIGHT.

25 MS. BURKE: THE STATE HAS PREVIOUSLY -- I WANT TO PUT

1 ON THE RECORD THE STATE HAS PREVIOUSLY REQUESTED THAT ANY
2 MENTION OF THE VICTIM'S PRIOR SEXUAL HISTORY TO BE EXCLUDED
3 UNDER THE RAPE SHIELD LAW, BUT I THINK IT IS COMMON PLACE
4 TO REQUEST THAT.

5 THE COURT: MR. MACLOSKIE WILL CONSENT TO THAT.

6 MR. MACLOSKIE: I'M NOT GOING TO RAISE THAT.

7 THE COURT: HE UNDERSTANDS THE RAPE SHIELD.

8 MS. BURKE: RIGHT. IT'S IN THE POLICE REPORT. I JUST
9 WANTED TO MAKE.

10 THE COURT: ALL RIGHT.

11 MR. MACLOSKIE: EVEN IF IT WASN'T SUBJECT TO THE RAPE
12 SHIELD LAW, WE WOULDN'T MENTION IT.

13 MS. BURKE: GOT YOU.

14 THE COURT: THANK YOU, MR. MACLOSKIE.

15 MS. BURKE: ALL RIGHT. THE STATE WILL CALL SERGEANT
16 GONZALES TO THE STAND.

17 SERGEANT CHRISTIAN GONZALES,
18 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19 CLERK: PLEASE BE SEATED AND STATE YOUR NAME FOR THE
20 RECORD AND SPELL YOUR LAST NAME PLEASE.

21 WITNESS: CHRISTIAN GONZALES. THE LAST NAME IS
22 G-O-N-Z-A-L-E-S.

23 DIRECT EXAMINATION BY MS. BURKE:

24 Q OKAY. INVESTIGATOR GONZALES, DID YOU -- SERGEANT
25 GONZALES, IS THAT YOUR CURRENT TITLE, SERGEANT?

1 A YES, IT IS.

2 Q OKAY.

3 THE COURT: MS. BURKE, ARE YOU GOING TO STAND UP?

4 MS. BURKE: I AM, YOUR HONOR. I WAS TRYING TO GET
5 NOTES OUT OF MY FOLDER.

6 THE COURT: IT'S TIME. IT'S TIME.

7 Q SERGEANT GONZALES, DID YOU HAVE THE OPPORTUNITY TO
8 QUESTION THE DEFENDANT, SUSAN TAPPEINER?

9 A YES, I DID.

10 Q AND WHEN -- WHEN DID THAT OCCUR?

11 A THAT OCCURRED ON FEBRUARY 27.

12 Q AND WHO WAS PRESENT FOR THAT QUESTIONING?

13 A MYSELF AND SUSAN TAPPEINER.

14 Q OKAY. HOW IS IT THAT SHE CAME TO TALK TO YOU?

15 A SHE HAD HER MOTHER DROVE HER TO THE POLICE DEPARTMENT
16 AFTER I CONTACTED HER BY THE PHONE AND ASKED HER TO COME
17 DOWN TO SPEAK TO ME.

18 Q AND WHEN YOU CONTACTED HER, WHERE WAS SHE?

19 A LEAVING WORK.

20 Q AT WHERE?

21 A SHE WAS LEAVING WORK.

22 Q OKAY. DO YOU RECALL WHAT TIME OF THE DAY THAT WAS?

23 A IT WAS AT -- IT WAS APPROXIMATELY 2:00 O'CLOCK. I
24 CALLED ISLAND DIGITAL PHOTOGRAPHY, AND HER HUSBAND GAVE ME
25 HER CELL PHONE NUMBER.

1 Q WHEN THE DEFENDANT CAME TO MEET WITH YOU, HOW DID SHE
2 APPEAR?

3 A SURPRISED. SHE -- SHE APPEARED TO BE SURPRISED. IN A
4 GOOD -- GOOD MOOD.

5 Q WHAT WAS HER -- DID SHE SEEM ALERT?

6 A YES.

7 Q OKAY. AND DID YOU HAVE A CHANCE TO OBSERVE HER FACE
8 TO FACE?

9 A I DID.

10 Q DID SHE SMELL OF ALCOHOL?

11 A SHE DID NOT.

12 Q DID SHE HAVE ANY SLURRED SPEECH OR ANYTHING LIKE THAT?

13 A SHE DID NOT.

14 Q WAS SHE ABLE TO WALK IN TO WHERE YOU ALL WERE MEETING
15 ON HER OWN OR DID SHE HAVE TO BE ACCOMPANIED OR ESCORTED?

16 A SHE WALKED IN ON HER OWN.

17 Q DESCRIBE THE ROOM WHERE THE QUESTIONING TOOK PLACE FOR
18 THE COURT?

19 A IT'S AN INTERVIEW ROOM WHERE WE DO ALL OUR STANDARD
20 INTERVIEWING. THERE'S A TABLE IN THE CORNER, ONE CHAIR ON
21 THE SIDE OF IT, AND THEN ANOTHER CHAIR FACING ME, AND THEN
22 THERE IS A TWO-WAY MIRROR BEHIND WHERE THE PERSON
23 INTERVIEWED SITS.

24 Q IS IT A SMALL, CRAMPED QUARTERS, OR IS IT ROOMY FOR
25 TWO PEOPLE?

1 A IT'S -- IT'S ROOMY FOR TWO PEOPLE. IT'S LIKE A LARGE
2 OFFICE.

3 Q WAS -- HOW LONG DID YOU -- DO YOU RECALL TALKING TO
4 THE DEFENDANT?

5 A A COUPLE -- THE TOTAL INTERVIEW I WOULD SAY ABOUT 2
6 HOURS MAYBE.

7 Q OKAY. AND JUST TO GO BACK, I MEAN, I THINK IT'S CLEAR
8 WHY WE'RE HERE. BUT WHAT IS THE REASON YOU CALLED HER DOWN
9 TO SPEAK TO YOU?

10 A I CALLED HER DOWN TO SPEAK TO HER ABOUT AN ALLEGATION,
11 HAVING SEXUAL INTERCOURSE WITH A 13 YEAR OLD.

12 Q OKAY. DID YOU HAVE THE OPPORTUNITY TO GO OVER THE
13 CONSTITUTIONAL RIGHTS, THE MIRANDA WARNINGS WITH THE
14 DEFENDANT?

15 A YES, I DID.

16 Q DID YOU ADVISE HER -- DID YOU WRITE IT OR WAS IT A
17 PRINTED CARD?

18 A I ADVISED HER WITH A MIRANDA FORM, WHICH I READ OUT TO
19 THEM, AND GO THROUGH AND HAVE THEM INITIAL THAT THEY
20 UNDERSTAND EACH MIRANDA RIGHT, AND THEN THEIR COLLEGE
21 LEVEL, THEIR EDUCATION. AND THEN I HAVE HER SAY IF SHE
22 WANTS TO TALK TO ME OR NOT, WHICH SHE AGREED TO.

23 MS. BURKE: MAY I APPROACH, YOUR HONOR?

24 THE COURT: YOU MAY.

25 Q I HAND YOU -- FOR PURPOSES OF THIS HEARING, COURT'S

1 EXHIBIT OR STATE'S EXHIBIT 1 ---

2 (STATEMENT OF MIRANDA RIGHTS MARKED AS STATE'S EXHIBIT
3 NO. 1 WAS MARKED FOR IDENTIFICATION FOR PRETRIAL HEARING
4 PURPOSES.)

5 Q DO YOU RECOGNIZE THIS?

6 A YES, I DO.

7 Q AND WHAT IS IT?

8 A THIS IS THE BLUFFTON POLICE DEPARTMENT STATEMENT OF
9 MIRANDA RIGHTS FORM.

10 Q IS THAT THE FORM YOU'RE TALKING ABOUT THAT YOU SAID
11 YOU READ TO -- YOU WENT OVER WITH THE DEFENDANT?

12 A YES, IT IS.

13 Q AND HOW IS IT THAT YOU WENT OVER THE FORM? DID YOU
14 JUST HAVE HER SIGN IT OR TELL THE COURT WHAT YOU DID WITH
15 IT?

16 A WHAT I DO IS I BRING HER IN. SHE HAS A SEAT. AND
17 THEN I GO THROUGH QUESTION 1 THROUGH 5, READING EACH
18 MIRANDA RIGHT TO HER, AND ASKING HER IF SHE UNDERSTANDS IT.
19 AND THEN AT THE BOTTOM I GO TO THE WAIVER OF RIGHTS AND
20 CHECK EITHER SHE READ THE STATEMENT OF HER RIGHTS AND
21 UNDERSTANDS WHAT HER RIGHTS ARE OR SHE CAN -- OR WE CAN
22 CHECK, I CANNOT READ THE STATEMENT, HAS BEEN READ TO
23 SUFFICIENTLY SO THAT I CAN UNDERSTAND MY RIGHTS. AND THEN
24 CHECK IF SHE'S WILLING TO SPEAK WITH ME.

25 Q AND DID SHE CHECK SAYING SHE WANTED TO SPEAK WITH YOU?

- 1 A YES.
- 2 Q AND WHOSE INITIALS ARE OFF TO THE LEFT-HAND SIDE OF
- 3 THE FORM?
- 4 A SUSAN TAPPEINER.
- 5 Q AND WHERE IT SAYS, I HAVE COMPLETED COLLEGE GRAD, WHO
- 6 PROVIDED YOU WITH THAT INFORMATION?
- 7 A MRS. TAPPEINER.
- 8 Q AND IS THAT HER SAYING THAT SHE'S COMPLETED COLLEGE?
- 9 A YES.
- 10 Q FOUR YEARS OF COLLEGE?
- 11 A I ASKED HER THE HIGHEST LEVEL SCHOOL SHE COMPLETED,
- 12 SHE SAID SHE'S A COLLEGE GRAD.
- 13 Q NOW, IN REVIEWING THIS FORM AT ANY TIME DID THE
- 14 DEFENDANT ASK TO TALK TO AN ATTORNEY?
- 15 A NO.
- 16 Q DID SHE AGREE TO COMMENCE THE DISCUSSION WITH YOU
- 17 AFTER SHE SIGNED THIS FORM?
- 18 A YES, SHE DID.
- 19 Q AND WHO IS THE SIGNATURE UNDER THE WITNESS CATEGORY?
- 20 A THAT WOULD BE MYSELF.
- 21 Q OKAY. DURING THE DISCUSSION WITH HER ABOUT THIS FORM,
- 22 DID SHE APPEAR TO UNDERSTAND WHAT YOU WERE SAYING?
- 23 A YES.
- 24 Q HOW CLOSE WERE YOU TO HER?
- 25 A FROM HERE TO PROBABLY THE END OF THIS TABLE.

- 1 Q OKAY. WERE YOU ALL AT A ROUND TABLE?
- 2 A YES, ON THE SIDE.
- 3 Q DID YOU LOOK AT HER EYE-TO-EYE?
- 4 A) YES.
- 5 Q AND AT THE LEVEL -- OKAY. YOU WERE SITTING DOWN WITH
- 6 HER?
- 7 A YES.
- 8 Q OKAY. DID SHE SEEM SLEEPY?
- 9 A NO, SHE DID NOT.
- 10 Q DID SHE SEEM TO DRIFT IN AND OUT OF DISCUSSION?
- 11 A NO, SHE DID NOT.
- 12 Q DID YOU -- YOU'VE HAD A CHANCE TO INTERVIEW SEVERAL
- 13 SUSPECTS OVER THE PAST; IS THAT CORRECT?
- 14 A YES.
- 15 Q HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?
- 16 A SINCE 1997.
- 17 Q OKAY. AND DURING THAT TIME HAVE YOU SEEN INDIVIDUALS
- 18 WHO FOR WHATEVER REASON COULD NOT COMPLETE AN INTERROGATION
- 19 OR INTERVIEW BECAUSE OF THEIR CURRENT STATE?
- 20 A YES.
- 21 Q WHAT KIND OF THINGS HAVE YOU SEEN IN THE PAST THAT
- 22 ALLOWED YOU -- OR -- OR REQUIRED YOU TO STOP A DISCUSSION
- 23 OR NOT EVEN START ONE?
- 24 A BEING UNDER THE INFLUENCE OF ALCOHOL. IF I COULD TELL
- 25 SOMEBODY'S UNDER THE INFLUENCE OF ALCOHOL, WE'RE NOT GOING

1 TO GO THROUGH THE MIRANDA RIGHTS AND INTERVIEW. WE'RE NOT
2 GOING TO PROCEED WITH THAT. WE'LL WAIT UNTIL THEY SOBER UP
3 AND THEN COME BACK IN AND DO IT LATER.

4 Q IN FACT, AT ONE POINT IN THE DISCUSSION -- IN THE
5 BEGINNING OF THE DISCUSSION WITH THE DEFENDANT, YOU ALL
6 TALK ABOUT MIRANDA AND THE CASE, AND SHE TOLD YOU SHE KNOWS
7 ALL ABOUT MIRANDA?

8 A YES, SHE TOLD ME SHE WATCHES LAW AND ORDER ALL THE
9 TIME. SHE UNDERSTANDS HER MIRANDA RIGHTS.

10 Q OKAY. DURING THE INITIAL DISCUSSION, BEFORE YOU ALL
11 STARTING TALKING ABOUT DISCUSSING WHY YOU ALL WERE THERE,
12 WAS THERE A CASE THAT SHE ALSO WAS JOKING WITH YOU ABOUT
13 OTHER THINGS AND GOING ON?

14 A COULD YOU REPEAT THAT QUESTION AGAIN?

15 Q WAS SHE JOKING WITH YOU ABOUT NASCAR AND ---

16 A YES. WE WERE TALKING ABOUT NASCAR, CERTAIN THINGS,
17 HER MODELING THAT SHE DOES, AND RACING, AND CERTAIN THINGS
18 THEY DO AT THEIR DIGITAL PHOTOGRAPHY, ENHANCING CRIME
19 SCENES, AND STUFF LIKE THAT.

20 Q NOW, DURING THE DISCUSSION BEFORE YOU STARTED TALKING
21 ABOUT THE INCIDENT, DID SHE BRING TO YOUR ATTENTION ANY
22 MEDICATION THAT SHE WAS ON THAT PREVENTED HER FROM ENGAGING
23 IN THE DISCUSSION WITH YOU?

24 A SHE DID NOT.

25 Q DID YOU PROMISE HER ANYTHING IN EXCHANGE FOR HER

1 STATEMENT?

2 A NO, I DIDN'T.

3 Q DID YOU COERCE HER IN ANY WAY?

4 A NO, I DIDN'T.

5 Q TO THE BEST OF YOUR KNOWLEDGE, WAS HER STATEMENT
6 FREELY AND VOLUNTARILY GIVEN?

7 A YES, MA'AM.

8 Q WAS SHE DENIED THE CHANCE TO GO TO THE REST ROOM OR
9 ANY OTHER OPPORTUNITIES?

10 A NO, SHE WASN'T.

11 Q WAS THERE A TIME DURING THE DISCUSSION WHEN YOU LEFT
12 THE ROOM AND THERE WAS A BREAK IN THE HOUR AND A HALF OR SO
13 YOU WERE SPEAKING WITH HER?

14 A YES, THERE WAS.

15 Q DO YOU REMEMBER HOW MANY TIMES YOU LEFT THE ROOM?

16 A ONE TIME.

17 Q OKAY. WAS THE ENTIRE CONVERSATION WITH THE DEFENDANT
18 ALSO ON VIDEO TAPE?

19 A YES.

20 Q I HAND TO YOU STATE'S EXHIBIT 2 ---

21 (DVD OF CONFESSION MARKED AS STATE'S EXHIBIT NO. 2 FOR
22 IDENTIFICATION FOR PRETRIAL HEARING PURPOSES.)

23 Q AND TELL THE COURT WHAT THAT IS?

24 A THIS IS THE DVD COPY OF THE INTERVIEW OF SUSAN
25 TAPPEINER THAT WE PULLED OFF OF OUR DIGITAL CAMERA.

1 Q AND HAVE YOU HAD A CHANCE TO REVIEW THIS VIDEO?

2 A I HAVE.

3 Q DOES IT FAIRLY AND ACCURATELY REFLECT ALL OF THE
4 STATEMENTS THAT WERE MADE BY THE DEFENDANT AND CAPTURED THE
5 FULL CONVERSATION BETWEEN YOU AND MRS. TAPPEINER ON THAT
6 DAY?

7 A YES, MA'AM.

8 Q DID MRS. TAPPEINER EVENTUALLY MAKE A STATEMENT ABOUT
9 HER INVOLVEMENT WITH ~~victim~~?

10 A YES, SHE DID.

11 Q ~~Victim~~ AND WHAT DID SHE TELL YOU?

12 A SHE -- SHE TOLD ME THAT SHE DID HAVE SEXUAL
13 INTERCOURSE WITH ~~Victim~~, AND THAT SHE WAS KIND OF
14 FLATTERED BY A KID, AND THAT ~~Victim~~ PERFORMED ORAL SEX ON HER
15 AND THAT ~~Victim~~ DID NOT EJACULATE INSIDE HER, AND THAT --
16 THAT SHE -- SHE MADE A MISTAKE, THAT SHE SHOULD KNOW BETTER
17 THAN TO HAVE SEX WITH A 13 YEAR OLD.

18 Q NOW, DID THIS DISCUSSION OCCUR -- YOU SAID YOU TALKED
19 WITH HER FOR ABOUT AN HOUR AND 20 MINUTES, AND THE FULL
20 DISCUSSION WAS ABOUT 2 HOURS. HER EVENTUAL STATEMENT ABOUT
21 WHAT HAPPENED, DID THAT HAPPEN IN THE BEGINNING OF YOUR
22 DISCUSSION OR THE VERY END?

23 A NO. THAT HAPPENED IN THE INTERROGATION PHASE OF THE
24 INTERVIEW. THERE'S TWO PARTS OF IT. THERE'S AN INTERVIEW
25 PHASE, WHICH IS A NON-ACCUSATORY PHASE. AND THEN THERE'S

1 AN INTERROGATION PHASE WHEN YOU ARE ACCUSATORY. AND THAT
2 HAPPENED IN THE ACCUSATORY PHASE OF THE PROCESS.

3 Q AND WAS THAT, WOULD YOU RECALL, IN THE LAST PART OF
4 THE DISCUSSION?

5 A YES, IT'S THE SECOND PART.

6 Q OKAY. WAS THAT CLOSER TO THE ONE-HOUR TIME FRAME?

7 A YES.

8 Q AND SO WHEN YOU TALK ABOUT THE TWO PHASES OF YOUR
9 INTERROGATION WITH HER -- YOU HAVE A VIDEO. BUT SET THE
10 STAGE FOR THE COURT AS TO WHAT ---

11 A WHAT IT IS ---

12 Q --- YOUR THEORY WAS WITH HER?

13 A WHAT IT IS, IT'S THE -- IT'S -- IT'S CALLED THE JOHNNY
14 REED INTERVIEW INTERROGATION, WHICH IT'S BROKEN DOWN TO TWO
15 PHASES. THERE'S AN INTERVIEW PHASE, AND THEN THERE'S AN
16 INTERROGATION PHASE.

17 IN THE INTERVIEW PHASE -- IN THE INTERVIEW PHASE, IT'S
18 A NON-ACCUSATORY PHASE. IT'S A SERIES OF QUESTIONS THAT I
19 GO THROUGH THAT ASK BASICALLY SOME QUESTIONS OF, YOU KNOW,
20 WHY WOULD WE HAVE EVIDENCE FOR THIS OR THE -- THE ENTIRE
21 TIME IT'S NON-ACCUSATORY, JUST TRYING TO BUILD A THEME FOR
22 WHY THIS WOULD HAVE HAPPENED.

23 THEN THE SECOND PHASE IS AN INTERROGATION PHASE, WHICH
24 IT'S AN ACCUSATORY PHASE, WHERE I GATHER THE INFORMATION
25 THAT I OBTAINED THROUGH THE INTERVIEW AND DEVELOP A THEME

1 TO GIVE MRS. TAPPEINER A WAY OUT TO DISCUSS WHAT SHE DID TO
2 Victim; AND THAT'S THE SECOND PART. AND THAT'S WHEN WE GO IN
3 AND SHE COME OUT WITH WHAT HAPPENED.

4 Q WHAT WAS THE THEME IN THIS CASE?

5 A THAT SHE WAS THE VICTIM -- THAT SHE WAS THE VICTIM IN
6 THIS INCIDENT, THAT Victim IS AN ADVANCED YOUNG MAN THAT
7 MANIPULATED HER, AND THAT IT'S NOT HER FAULT, IT WAS HIS
8 FAULT.

9 Q IS THERE A REASON THAT YOU THOUGHT THAT THIS THEME --
10 THIS THEME WOULD WORK IN PARTICULAR ON THIS DEFENDANT?

11 A YES, BECAUSE IN THE INTERVIEW PHASE SHE PRACTICALLY
12 GAVE ME THE THEME BY TELLING ME THAT MAYBE HE CAME ON TO ME
13 AND DID THIS TO ME. AND SO SHE -- SHE LET ME KNOW THAT IN
14 THAT INTERVIEW THAT PRETTY MUCH THE ONLY WAY SHE'S GOING TO
15 TALK ABOUT IT, IS IF SHE'S THE VICTIM IN IT. SO IN THE
16 INTERROGATION, THAT'S WHAT I WENT WITH.

17 Q AND IF I UNDERSTAND IT CORRECTLY, SHE BEFORE BEING
18 PROMPTED STARTED TALKING ABOUT THE FACT THAT SHE MIGHT BE
19 THE VICTIM; IS THAT WHAT YOU'RE SAYING?

20 A YES.

21 Q OKAY. DID YOU ALSO TALK ABOUT DNA AND OTHER EVIDENCE?

22 A YES, I DID.

23 Q AND DID YOU LIE TO HER ABOUT THAT?

24 A YES, I DID.

25 Q AND WHY IS THAT?

1 A A LOT OF TIMES IN THE INTERVIEW YOU BRING UP EVIDENCE
2 THAT DOES NOT EXIST. IF -- IF MOST OF THE TIME AN INNOCENT
3 PERSON WILL SAY, NO, THERE'S NO WAY THAT YOU HAVE THIS TYPE
4 OF EVIDENCE. AND SO WE WENT IN AND TALKED ABOUT DNA
5 EVIDENCE TO LET HER KNOW THAT WE HAD.

6 Q BUT YOU HAD WHAT?

7 A WE -- WE -- WE TOLD HER THAT -- I TOLD HER THAT I HAD
8 DNA EVIDENCE, THAT WE SWABBED HIS MOUTH, THAT CAN LINK HER
9 FOR ORAL SEX, AND THAT WE ALSO HAD HIS UNDERWEAR THAT HE
10 SAVED THEM.

11 Q YOU ALSO TALKED ABOUT EVIDENCE THAT SHE HAD; IS THAT
12 CORRECT, OR THAT YOU WOULD COLLECT FROM HER?

13 A YES.

14 Q AND WAS THAT HER PANTIES AND HER DRESS?

15 A YES, IT WAS.

16 Q DID SHE GIVE A DESCRIPTION TO YOU OF THE PANTIES AND
17 DRESS SHE WORE THAT NIGHT?

18 A I GAVE -- I ASKED HER WHAT IT WAS, AND I GAVE A
19 DESCRIPTION, AND SHE SAID, YES.

20 Q WHO DID YOU FIRST GET THAT DESCRIPTION FROM?

21 A I GOT THAT DESCRIPTION FROM ~~WITNESS~~ AT HOPE HAVEN.

22 Q OKAY. AND THIS IS BEFORE YOU EVEN MET THE DEFENDANT?

23 A YES.

24 Q OKAY. NOW, ALL OF THIS INFORMATION, THIS WAS ALL
25 ELICITED BEFORE SHE EVEN CONFESSED TO ANYTHING; IS THAT

1 CORRECT?

2 A YES.

3 MS. BURKE: YOUR HONOR, AT THIS TIME I WOULD LIKE TO
4 PUBLISH THE VIDEO. CAN WE APPROACH?

5 THE COURT: SURE.

6 (A BENCH CONFERENCE WAS HELD OFF THE RECORD.)

7 THE COURT: WE'RE GOING TO BE AT EASE ABOUT 2 OR 3
8 MINUTES WHILE WE GET SET UP.

9 (A RECESS WAS TAKEN.)

10 MS. BURKE: CAN YOU SEE FROM HERE?

11 THE COURT: NO.

12 (PAUSE.)

13 MS. BURKE: OKAY. CAN YOU SEE FROM HERE?

14 THE COURT: I CAN.

15 MR. MACLOSKIE: JUDGE, THIS IS JUST A SUGGESTION. I
16 THINK EVERYBODY THAT NEEDS TO HAS SEEN THIS. IT'S
17 PERFECTLY ALL RIGHT WITH ME TO ---

18 THE COURT: WELL, THERE ARE TWO WAYS. YOU SUBMITTED
19 IT TO ME LAST WEEK, SO I DID IN FACT SEE IT LAST WEEK.
20 WHAT I INTEND TO DO IS HEAR THE TESTIMONY AND I MAY NEED TO
21 SEE IT AGAIN IN REFERENCE TO ANY TESTIMONY I HEAR. SO I'M
22 CERTAINLY ABLE TO DO THAT. IF YOU JUST WANT TO ENTER IT AS
23 AN EXHIBIT IN THE CASE AND JUST ATTACH IT TO THIS HEARING,
24 WE CAN CERTAINLY DO THAT.

25 MR. MACLOSKIE: I DON'T KNOW HOW MS. BURKE WANTS TO

1 HANDLE THIS THING, BUT THAT IS PERFECTLY ALL RIGHT WITH ME.

2 MS. BURKE: AND THAT'S WHY WHEN I APPROACHED INITIALLY
3 I SAID, YOU KNOW, WE OUGHT TO HAVE A SIDE BAR. IT WAS MY
4 IMPRESSION THAT MR. MACLOSKIE WANTED TO MAKE SURE IT WAS
5 VIEWED FULLY. WE CAN CERTAINLY DO THAT.

6 MR. MACLOSKIE: I HAVE NO REASON TO DOUBT THE JUDGE'S
7 ASSERTION THAT SHE'S LOOKED AT IT AND IF SHE NEEDS TO,
8 SHE'LL LOOK AT IT AGAIN, YOU'VE GOT THE DISK.

9 THE COURT: JUST MAKE IT AN EXHIBIT. I THINK FOR
10 APPEAL PURPOSES EVERYONE NEEDS TO MAKE IT A PART OF THE
11 RECORD.

12 MR. MACLOSKIE: ALL RIGHT.

13 THE COURT: SO LET'S JUST MAKE IT A PART OF THE
14 RECORD. AND, AGAIN, LIKE I SAID, I SAW IT LAST FRIDAY BACK
15 IN CHAMBERS. AND I MAY OR MAY NOT BASED ON THE TESTIMONY I
16 HEAR WANT TO SEE IT AGAIN.

17 SO I THINK YOU ALL CAN JUST SUBMIT IT TO ME, AND I CAN
18 CERTAINLY DO THAT. I DON'T EVEN HAVE TO DO IT IN THE
19 COURTROOM. I CAN DO IT BACK IN MY CHAMBERS WHERE IT'S
20 COMFORTABLE AS LONG AS EVERYONE HAS SEEN IT THAT NEEDS TO
21 SEE IT. SO THAT'S FINE.

22 MR. MACLOSKIE: BY THE WAY, I HAVE NO OBJECTION TO
23 ADMISSION TO STATE'S 1.

24 MS. BURKE: I WAS GOING TO MOVE THAT IN AT THE END OF
25 MY PRESENTATION, BUT THANK YOU FOR TELLING US.

1 ALL RIGHT. I THINK PERHAPS IF THE DOCTOR TESTIFIES,
2 THERE MIGHT BE A NEED TO PUT THAT ON AGAIN, AND PERHAPS WE
3 CAN USE THAT LAP TOP THEN.

4 BUT THE STATE MOVES TO ENTER INTO EVIDENCE STATE'S
5 EXHIBIT 1 AND 2 FOR PURPOSES OF THIS HEARING.

6 THE COURT: WHAT IS NO. 1, THE MIRANDA WARNING?

7 MS. BURKE: THAT IS CORRECT, YOUR HONOR.

8 THE COURT: AND NO. 2 IS THE DISK?

9 MS. BURKE: YES, YOUR HONOR.

10 THE COURT: ANY OBJECTION, MR. MACLOSKIE?

11 MR. MACLOSKIE: WITHOUT OBJECTION.

12 THE COURT: ALL RIGHT. THANK YOU. IF YOU WOULD PASS
13 THOSE UP TO ME, I'D APPRECIATE IT.

14 (STATE'S EXHIBIT NOS. 1 AND 2 RECEIVED IN EVIDENCE FOR
15 PURPOSES OF THIS HEARING.)

16 MS. BURKE: YOUR HONOR, MAY WE APPROACH?

17 THE COURT: YOU MAY.

18 (A BENCH CONFERENCE WAS HELD OFF THE RECORD.)

19 DIRECT EXAMINATION CONTINUED BY MS. BURKE:

20 Q ALL RIGHT. SERGEANT GONZALES, AT THE TIME THAT THE
21 DEFENDANT -- YOUR HONOR HAS ALREADY SAID SHE'S SEEN THE
22 TAPE AND YOU HAVE AS WELL AS PART OF YOUR INVESTIGATION.
23 AT THE VERY END OF THE TAPE IS WHERE MRS. TAPPEINER MAKES
24 THE STATEMENTS REGARDING HER INVOLVEMENT WITH THE
25 DEFENDANT; IS THAT CORRECT?

1 A YES.

2 Q AT THE TIME THAT SHE MADE THAT STATEMENT, DID SHE
3 APPEAR TO BE UNDER ANY COERCION OR DURESS OR ANYTHING THAT
4 WOULD INHIBIT HER FROM SPEAKING FREELY?

5 A NO.

6 Q OKAY. WERE ANY THREATS MADE TO HER AT THAT POINT
7 REGARDING PENALTY OR ANYTHING THAT WOULD HAVE CLOUDED HER
8 DECISION IN MAKING THAT STATEMENT?

9 A NO.

10 Q AT SOME POINT THAT AFTERNOON DID YOU DECIDE TO ARREST
11 THE DEFENDANT?

12 A YES, I DID.

13 Q AND WHAT DID YOU ARREST HER FOR?

14 A CRIMINAL SEXUAL CONDUCT.

15 Q AND WAS SHE BOOKED AT THE BLUFFTON STATION?

16 A SHE WAS TEMPORARILY HELD THERE TO BE TRANSPORTED OVER
17 TO BEAUFORT COUNTY DETENTION CENTER. WE PLACED HER IN A
18 HOLDING CELL AWAITING TRANSPORT TO BEAUFORT COUNTY
19 DETENTION CENTER.

20 Q AND WHILE SHE WAS IN THAT HOLDING CELL, DID A
21 CONVERSATION OR HER COMMENTS IN THAT HOLDING CELL, WERE
22 THEY RECORDED?

23 A YES, THEY WERE.

24 Q I HAND YOU THIS DISK, STATE'S EXHIBIT 3 ---

25 (CD OF HOLDING CELL MARKED FOR IDENTIFICATION AS

- 1 STATE'S EXHIBIT NO. 3 FOR PURPOSE OF THIS HEARING.)
- 2 Q TO YOUR KNOWLEDGE IS THAT THE HOLDING CELL TAPE OR A
- 3 COPY THAT WAS MADE WITH THE DEFENDANT?
- 4 A YES.
- 5 Q AND IT IS YOUR UNDERSTANDING, IS IT NOT CORRECT, THAT
- 6 THE BACKGROUND NOISE ON THAT TAPE IS SOMEWHAT FUZZY?
- 7 A YES.
- 8 Q WERE YOU THE PERSON WHO PUT THE RECORDING DEVICE IN
- 9 THAT AREA WHERE SHE WAS BEING HELD?
- 10 A YES.
- 11 Q AND IT WAS NOT IN THE ACTUAL HOLDING CELL, IT WAS JUST
- 12 IN AN AREA WHERE SHE WAS BEING KEPT?
- 13 A IT WAS ON THE TABLE IN THE -- IN THE ROOM WHERE THE
- 14 HOLDING CELL IS.
- 15 Q TO YOUR KNOWLEDGE HAS THE STATE SUBMITTED THIS TAPE,
- 16 THE CD, TO BROADY (PHONETIC) MEDIA, TIME LINE PRODUCTIONS
- 17 FOR IT TO BE CLEANED ---
- 18 A YES.
- 19 Q --- UPON YOUR RECOMMENDATION?
- 20 A YES.
- 21 Q AND TO YOUR KNOWLEDGE, YOU DON'T KNOW IF IT'S BEEN
- 22 COMPLETELY CLEANED OF ALL OF THE BACKGROUND NOISE; IS THAT
- 23 CORRECT?
- 24 A THAT'S CORRECT.
- 25 Q OKAY. WHO ELSE WAS PRESENT WHEN THIS RECORDING WAS

1 MADE?

2 A LIEUTENANT ANGEL TUBBS.

3 Q AND WAS THE DEFENDANT'S MOTHER PRESENT AS WELL?

4 A I BELIEVE SO.

5 Q OKAY.

6 MS. BURKE: YOUR HONOR, I WOULD SUBMIT STATE'S EXHIBIT
7 3 AS PREVIOUSLY DISCUSSED, WE -- MR. MACLOSKIE, MYSELF, AND
8 YOU WILL LISTEN TO THAT TO GAUGE THE LEVEL OF -- TO SEE HOW
9 AUDIBLE IT IS.

10 NO FURTHER QUESTIONS AT THIS TIME, YOUR HONOR.

11 THE COURT: MR. MACLOSKIE.

12 MR. MACLOSKIE: BY THE WAY, I HAVE NO OBJECTION TO
13 THAT IF WHAT I HEAR MR. GONZALES SAY THAT'S AN ACCURATE
14 TRANSCRIPTION OF WHAT OCCURRED OFF OF THE VIDEO PORTION, ON
15 THE AUDIO.

16 THE COURT: OFFICER, HAVE YOU HEARD THE CLEANED COPY
17 YET?

18 SERGEANT GONZALES: I'VE HEARD THE OLD VERSION.

19 THE COURT: YOU HAVEN'T HEARD THE ONE THAT BRODY DID?

20 SERGEANT GONZALES: NO, MA'AM.

21 THE COURT: YOU HAVE?

22 SERGEANT GONZALES: NO, MA'AM.

23 THE COURT: OKAY. I THINK HE NEEDS TO HEAR IT TOO, TO
24 BE ABLE TO AUTHENTICATE IT.

25 MR. MACLOSKIE: WELL, TO PRESERVE AS MUCH TIME AS WE

1 CAN, CHRIS WILL YOU DO THAT THIS EVENING?

2 SERGEANT GONZALES: YES, SIR.

3 MR. MACLOSKIE: AND JUST REPORT BACK TO THE JUDGE AS
4 TO WHETHER OR NOT ---

5 SERGEANT GONZALES: YES, SIR.

6 MR. MACLOSKIE: --- YOU RECALL THAT TO BE AN ACCURATE
7 COPY OF WHAT HAPPENED.

8 SERGEANT GONZALES: YES, SIR.

9 MR. MACLOSKIE: WITH THAT DONE, MAY I CROSS EXAMINE?

10 THE COURT: YES, SIR.

11 MR. MACLOSKIE: ALL RIGHT.

12 CROSS EXAMINATION BY MR. MACLOSKIE:

13 Q MR. GONZALES, YOU WERE APPROACHED BY *victim* AND
14 HIS MOTHER; IS THAT CORRECT, INITIALLY?

15 A NO.

16 Q WHO?

17 A LIEUTENANT TUBBS.

18 Q OKAY. AND WHAT DID LIEUTENANT TUBBS TELL YOU?

19 A THAT AN ALLEGATION WAS MADE AT THE MIDDLE SCHOOL OF A
20 13 YEAR OLD AND A 42 YEAR OLD HAVING INTERCOURSE.

21 Q AND AS A RESULT OF THAT DID YOU TALK WITH *victim* ?

22 A I DID.

23 Q AND DID YOU DETERMINE FROM TALKING WITH HIM A DATE
24 THAT THIS ALLEGED INCIDENT OCCURRED?

25 A NO. AFTER SPEAKING WITH HIS MOTHER IS WHEN WE CAME UP

1 WITH THE ACTUAL DATE. HE HAD A BALLPARK, BUT NOT DEFINITE.

2 Q WHAT WAS HIS BALLPARK?

3 A IT WAS A COUPLE WEEKS BEFORE SCHOOL WAS GOING TO
4 START.

5 Q THE INCIDENT REPORT INDICATES FROM JULY THE 26TH TO
6 AUGUST THE 8TH OF THE YEAR 2008; IS THAT ACCURATE?

7 A GIVE ME A MINUTE HERE, LET ME LOOK AT IT REAL FAST.

8 (PAUSE.) CAN I ASK WHAT NUMBER IT'S ON, CHECK REFERENCE
9 POINT?

10 Q DO YOU HAVE A COPY OF THE INCIDENT REPORT, MR.
11 GONZALES?

12 A I DO. WHICH PORTION ARE YOU LOOKING AT?

13 Q I'M LOOKING AT THE FRONT SHEET OF IT WHERE IT SAYS
14 INCIDENT DATE.

15 A OKAY. YES.

16 Q IS THAT THE WAY YOU RECALL IT NOW?

17 A THIS IS THE DATE THAT OFFICER CREASON WHEN HE TOOK THE
18 INITIAL REPORT BETWEEN 7/28/08 AND AUGUST 4, '08.

19 Q RIGHT. AND IT INDICATES ON THAT SAME SHEET WHEN THIS
20 INCIDENT WAS FIRST REPORTED. AND WHAT IS THAT DATE?

21 A ON FEBRUARY -- YOU TALKING ABOUT THE SYNOPSIS?

22 Q YES.

23 A FEBRUARY 23, '09.

24 Q OKAY. NOW, LET'S GO OVER TO WHEN YOU FIRST TALKED

25 WITH VICTIM. WHEN WAS THAT? GO OVER TO PAGE 1 OF YOUR

1 INCIDENT REPORT SUPPLEMENTAL.

2 A OKAY.

3 Q DO YOU SEE IT?

4 A I DO.

5 Q INTERVIEW OF VICTIM, *victim* ?

6 A YES.

7 Q WHAT DATE DID YOU CONDUCT THAT INTERVIEW?

8 A FEBRUARY 27, '09.

9 Q FEBRUARY THE 27TH.

10 A AT 9:00 O'CLOCK.

11 Q AND THE DATE YOU CONDUCTED THE INTERVIEW WITH SUSAN
12 TAPPEINER WAS THE SAME DATE?

13 A YES.

14 Q AND YOU TALKED WITH *victim* BEFORE YOU TALKED WITH
15 MRS. TAPPEINER, DID YOU?

16 A YES.

17 Q NOW, AT THE TIME YOU INTERVIEWED MRS. TAPPEINER, DID
18 YOU HAVE ANY EVIDENCE OTHER THAN THAT WHICH CAME TO YOU BY
19 WAY OF YOUR INTERVIEW WITH *victim* ?

20 A NO.

21 Q ALL RIGHT. NOT AT ALL?

22 A NO.

23 Q WHAT EVIDENCE HAVE YOU PROCURED SINCE THAT DATE?

24 A MRS. TAPPEINER'S STATEMENT, AND THE CLOTHING -- THE
25 MATERIALS THAT *victim* DESCRIBED THAT SHE HAD ON THAT WE

- 1 RECOVERED IN A SEARCH WARRANT.
- 2 Q AND THAT'S ALL?
- 3 A YES.
- 4 Q NOW, LET'S GET TO THE INTERVIEW OF MRS. TAPPEINER.
- 5 WHAT YOU TOLD HER WAS THAT THERE WAS SOME ALLEGATIONS THAT
- 6 WERE MADE; IS THAT CORRECT?
- 7 A YES.
- 8 Q AND YOU ALSO ADVISED HER THAT SHE WASN'T ACCUSED OF
- 9 ANYTHING, DID YOU?
- 10 A I DON'T RECALL THAT.
- 11 Q THE VIDEO WOULD SHOW THAT, WOULDN'T IT?
- 12 A YES.
- 13 Q AND YOU TESTIFIED THAT SHE WAS SURPRISED BUT IN A GOOD
- 14 MOOD. WAS SHE NERVOUS?
- 15 A YES.
- 16 Q AND THAT'S THE REASON YOU TOLD HER JUST RELAX; IS THAT
- 17 RIGHT?
- 18 A YES.
- 19 Q WAS SHE EVER TOLD THAT THIS INTERVIEW WAS BEING VIDEO
- 20 TAPED?
- 21 A NO.
- 22 Q THEN SHE WAS GIVEN HER MIRANDA RIGHTS. DID YOU ASK
- 23 HER ANYTHING ABOUT EITHER ALCOHOL OR MEDICATION?
- 24 A I DID NOT.
- 25 Q BUT LATER ON IN THE INTERVIEW SHE TOLD YOU THAT SHE

1 TOOK SLEEPING PILLS, DIDN'T SHE?

2 A IN THE -- IN THE INCIDENT THAT I WAS QUESTIONING HER
3 ABOUT, SHE SAID THAT DAY SHE TOOK SLEEPING PILLS.

4 Q AND LATER ON SHE SAID THAT AGAIN, DIDN'T SHE, IN THE
5 HOLDING CELL INTERVIEW?

6 A YES.

7 Q AND BY THE WAY, YOU SAID THAT MRS. TAPPEINER'S MOTHER
8 WAS WITH HER?

9 A YES.

10 Q AND CAN YOU IDENTIFY THIS LADY RIGHT HERE AS SUSAN'S
11 MOTHER?

12 A I BELIEVE SO. NOT A HUNDRED PERCENT SURE.

13 Q AND WAS SHE CLOSE ENOUGH TO HEAR WHAT WAS GOING ON,
14 WHAT WAS BEING SAID?

15 A SHE WAS IN THE HOLDING CELL ---

16 Q ALL RIGHT.

17 A --- TALKING TO HER.

18 Q AND DID YOU HAVE A CONVERSATION WITH HER?

19 A NO.

20 Q YOU HAD NO CONVERSATION WITH HER AT ALL?

21 A NO.

22 Q THEN YOU TOLD SUSAN THAT THE ALLEGATION WAS THAT SHE
23 HAD SEX WITH *Victim* IS THAT CORRECT?

24 A THAT'S CORRECT.

25 Q AND THEN YOU ASKED HER, DID SHE HAVE SEX? AND ALL

- 1 THIS IS ON THE VIDEO, RIGHT?
- 2 A THAT'S RIGHT.
- 3 Q AND HER RESPONSE TO THAT WAS ONE NIGHT THAT
- 4 ~~Victim~~ TRIED TO HIT ON HER; AND THAT WAS THE EXTENT OF
- 5 WHAT SHE SAID, RIGHT?
- 6 A COULD YOU REPEAT THAT QUESTION FOR ME, MR. MACLOSKIE?
- 7 Q HER RESPONSE TO THAT QUESTION, DID YOU HAVE SEX WITH
- 8 ~~Victim~~ -- MEANING *Victim* ---
- 9 A UH-HUH.
- 10 Q --- HER RESPONSE WAS, ONE NIGHT HE TRIED TO HIT ON ME?
- 11 A NOT -- NOT -- NOT TO THE -- NOT TO THE QUESTION THAT I
- 12 ASKED, DID SHE HAVE SEX. SHE DIDN'T SAY THAT AT THAT
- 13 POINT.
- 14 Q BUT IF WHAT YOU'RE RECALLING NOW DIFFERS FROM WHAT'S
- 15 ON THAT TAPE, OF COURSE, THE TAPE IS ACCURATE, RIGHT?
- 16 A THE TAPE IS ACCURATE.
- 17 Q ALL RIGHT. NOW, YOU SAY YOU BROKE THIS THING DOWN
- 18 INTO TWO PHASES. ONE WAS THE INTERVIEW PHASE AND THE OTHER
- 19 WAS INTERROGATION?
- 20 A THAT'S RIGHT.
- 21 Q AND TELL THE JUDGE AGAIN WHAT THE PURPOSE OF THIS
- 22 INTERVIEW PHASE IS?
- 23 A THE INTERVIEW PHASE IS A PERIOD -- SERIES OF QUESTIONS
- 24 THAT I ASK THAT -- FOR THE INTERROGATION, THAT I DEVELOP A
- 25 THEME THAT WILL ALLOW MRS. TAPPEINER TO SPEAK OF THE

- 1 ALLEGATION, WHAT OCCURRED WITH HER AND ~~Victim~~ IT HELPS ME
2 DEVELOP A THEME. IT ALSO LETS ME KNOW IF SHE'S BEING
3 DECEPTIVE IN HER QUESTIONS AND STUFF LIKE THAT.
- 4 Q YOU MEAN IN HER ANSWERS?
- 5 A THAT'S CORRECT.
- 6 Q THE QUESTIONS YOU'VE ALREADY ADMITTED SOME OF THE
7 STATEMENTS YOU'VE MADE WERE DECEPTIVE?
- 8 A YES.
- 9 Q AND THE PURPOSES OF THAT WAS TO LOOSEN HER UP?
- 10 A NO. THAT IS TO DEVELOP A THEME TO GO IN TO THE
11 INTERROGATION PHASE.
- 12 Q WELL, WOULD YOU EXPLAIN TO THE JUDGE HOW TELLING
13 SOMEONE THAT IN THIS CASE ~~Victim~~ PASSED THE POLYGRAPH.
14 WE NEED SOME HELP. ~~Victim~~ OBVIOUSLY CAME ON TO YOU. ~~Victim~~
15 CAME ON TO ANOTHER WOMAN IN THE NEIGHBORHOOD. YOU HAVE
16 DNA. HOW DOES THAT ESTABLISH A THEME?
- 17 A IT ALLOWS HER TO -- IT MAKES HER BELIEVE THAT WE HAVE
18 EVIDENCE THAT WOULD IMPLICATE HER IN THAT CASE.
- 19 Q TO LOOSEN HER UP. IT HAS NOTHING TO DO WITH
20 ESTABLISHING A THEME, DOES IT?
- 21 A IT DEVELOPS A THEME WHEN SHE'LL -- IN THAT INTERVIEW
22 PHASE, SHE WILL COME THROUGH AND SHE GAVE ME THE THEME THAT
23 SHE WAS THE VICTIM. MAYBE SHE WAS THE VICTIM IN THE CASE.
- 24 Q WELL, HOW ABOUT TELLING HER THAT SHE'S THE VICTIM
25 HERE? WHAT DOES THAT HAVE TO DO WITH THE THEME?

- 1 A SHE -- SHE GAVE ME THE THEME THAT SHE MIGHT BE A
2 VICTIM. SO IN THE INTERROGATION, THAT'S THE THEME I USED.
3 Q WELL, WHERE IN THE INTERVIEW WAS THAT?
4 A DURING THE BEGINNING PORTION SHE SAYS THAT MAYBE SHE
5 WAS TAKEN ADVANTAGE OF AND SHE COULD REVERSE IT ON TO *victim*
6 SO SHE GAVE ME THE THEME BASED ON THE SERIES OF QUESTIONS
7 THAT I ASKED HER. THE ONLY WAY THAT SUSAN WAS GOING TO
8 TALK ABOUT THIS DISCUSSION WAS IF SHE WAS GOING TO BE THE
9 VICTIM. AND SO ---
10 Q LET'S STOP RIGHT THERE. YOU CAN CONTINUE, BUT I NEED
11 TO KNOW SOMETHING..
12 A OKAY.
13 Q PRIOR TO THE 27TH OF FEBRUARY OF THIS YEAR AT 2:40
14 THAT AFTERNOON HAD YOU EVER SEEN SUSAN TAPPEINER BEFORE?
15 A NO..
16 Q HAD YOU EVER TALKED TO HER ON THE TELEPHONE?
17 A NO.
18 Q DID YOU KNOW ANYTHING ABOUT HER?
19 A ACTUALLY, I DID TALK TO HER ON THE -- YOU TALKING
20 ABOUT PRIOR TO THE 27TH OR ON THE 27TH?
21 Q WELL, YOU TALKED TO HER ON THE TELEPHONE ON THE 27TH?
22 A RIGHT. PRIOR TO THAT, NO, I'VE NEVER SEEN HER.
23 Q YOU DIDN'T KNOW ANYTHING ABOUT HER?
24 A I DID NOT.
25 Q AND PRIOR TO MEETING WITH *victim* YOU DIDN'T KNOW

1 ANYTHING ABOUT HIM EITHER, DID YOU?

2 A THAT'S RIGHT.

3 Q AND AT THE TIME YOU INTERVIEWED MRS. TAPPEINER, THE
4 ONLY THING YOU HAD WAS WHAT *Victim* TOLD YOU; IS THAT
5 RIGHT?

6 A WHAT THE SCHOOL RESOURCE OFFICER TOLD THE LIEUTENANT
7 AND THE LIEUTENANT TOLD ME.

8 Q WELL, TELL ME THIS. YOU MENTIONED TO HER -- TO SUSAN
9 THAT *Victim* PASSED A POLYGRAPH. WAS THAT A LIE TOO?

10 A YES.

11 Q WOULDN'T THAT HAVE BEEN A GOOD WAY TO SUBSTANTIATE
12 THINGS BEFORE YOU EVER TALKED TO HIM -- TO SUSAN TAPPEINER?

13 A PERHAPS IT COULD HAVE BEEN.

14 Q WELL, TELL THE JUDGE WHAT YOU DID IF ANYTHING TO
15 VERIFY WHAT *Victim* TOLD YOU?

16 A REPEAT THE QUESTION.

17 Q WHAT DID YOU DO PRIOR TO INTERVIEWING SUSAN TAPPEINER
18 TO VERIFY THAT WHAT *Victim* TOLD YOU WAS THE TRUTH?

19 A I SPOKE WITH *Victim* TO COINCIDE WHAT STORIES HE GAVE
20 OFFICER CREASON AND OFFICER TUBBS. HE WAS A VICTIM IN THE
21 CASE, AND THROUGH VICTIMS YOU DON'T TEND TO PUT VICTIMS ON
22 POLYGRAPHS.

23 Q WELL, TELL ME THIS. DID *Victim* TELL YOU THAT
24 THERE WERE OTHER PEOPLE IN THIS HOUSE?

25 A YES.

- 1 Q AND DID YOU INTERVIEW ANY OF THEM?
- 2 A I DID NOT. THEY WERE ASLEEP.
- 3 Q DID YOU INTERVIEW MIKE TAPPEINER?
- 4 A NO.
- 5 Q EVEN IN SPITE OF ~~Victim~~ CLAIM THAT HE YELLED FOR
- 6 MIKE SOME TIME DURING THIS AND THAT THE ROOM THAT MIKE WAS
- 7 IN WAS RIGHT ACROSS THE HALL FROM THE ROOM HE CLAIMS HE WAS
- 8 IN?
- 9 A YES.
- 10 Q YOU NEVER?
- 11 A I DID NOT, BASED ON THEIR STATEMENTS, BOTH --
- 12 EVERYBODY WAS ASLEEP IN THE HOUSE.
- 13 Q AND WHAT YOU DID THROUGHOUT THIS INTERVIEW WAS SIMPLY
- 14 TELL SUSAN WHAT ~~Victim~~ HAD TOLD YOU; ISN'T THAT TRUE?
- 15 A DID I TELL ---
- 16 Q YOU SUGGESTED THE ANSWERS TO HER, DIDN'T YOU?
- 17 A NO. I TRIED TO GET HER TO REMEMBER WHAT OCCURRED IN
- 18 THE INCIDENT AND WHAT THE ALLEGATION WAS.
- 19 Q OKAY. NOW, YOU SAID IN YOUR DIRECT TESTIMONY THAT YOU
- 20 COULDN'T SMELL ALCOHOL AND SHE WASN'T SLURRING HER SPEECH.
- 21 SHE DIDN'T SEEM SLEEPY OR DRIFTY. ALL THAT, I ASSUME, WENT
- 22 TO THE USE OF ALCOHOL, DID IT?
- 23 A I -- I -- I DON'T UNDERSTAND THE QUESTION.
- 24 Q THE QUESTIONS THAT YOU WERE ASKING AND YOUR ANSWERS
- 25 ABOUT SMELLING ALCOHOL AND YOUR STATEMENT THAT SHE DIDN'T

1 APPEAR TO BE SLEEPY OR THAT KIND OF THING. ALL THAT HAS TO
2 DO WITH WHAT YOU PERCEIVED HER NOT BEING INTOXICATED BY THE
3 USE OF ALCOHOL?

4 A YES.

5 Q HOW ABOUT DRUGS?

6 A I DON'T KNOW ABOUT THE DRUGS.

7 Q WELL, DO YOU KNOW ANYTHING ABOUT THE EFFECT OF DRUGS?

8 A YEAH.

9 Q AND WHAT TRAINING DO YOU HAVE INsofar AS INTERROGATING
10 PEOPLE WHO MIGHT BE UNDER THE INFLUENCE OF SOME TYPE OF
11 DRUG?

12 A IF -- IF -- IF IT APPEARS THAT THE INDIVIDUAL THAT
13 WE'RE INTERVIEWING IS UNDER THE INFLUENCE OF ANYTHING,
14 EITHER DRUGS, ALCOHOL, AND IT'S OBVIOUS TO ME, THEN WE
15 WOULDN'T CONDUCT THE INTERVIEW.

16 Q WELL, TELL ME THIS, SHE MENTIONED ON TWO SEPARATE
17 OCCASIONS THAT SHE TOOK SLEEPING PILLS. THAT DIDN'T CAUSE
18 YOU TO ASK SOME QUESTIONS ABOUT WHETHER OR NOT SHE WAS
19 UNDER THE INFLUENCE OF DRUGS NOW? I MEAN, THEY DO THIS
20 COMMONLY IN THIS COURTROOM, A JUDGE WILL ASK SOMEBODY IF
21 YOU ARE UNDER THE INFLUENCE OF ANY MEDICATION THAT MIGHT
22 AFFECT YOUR ABILITY TO UNDERSTAND WHAT'S GOING ON. YOU
23 DIDN'T DO THAT?

24 A NO, I DID NOT.

25 Q YOU WENT SO FAR AS TO TELL HER THAT SHE WAS THE

1 VICTIM, THAT ~~Victim~~ WAS MANIPULATIVE, THAT HE'D DONE
2 THIS BEFORE, THAT SHE WAS A GOOD LOOKING WOMAN AND IF YOU
3 WEREN'T MARRIED, YOU MIGHT BE INTERESTED, THAT YOU WERE
4 TRYING TO HELP HER, NOBODY WAS GOING TO KNOW. WE'RE GOING
5 TO HELP YOU. HE'S THE ONE WHO NEEDS HELP, MEANING

6 Victim

7 A I DID.

8 Q WHAT YOU'RE TELLING THE JUDGE UNDER OATH IS ALL THAT
9 WAS MEANT TO SET A THEME?

10 A YES.

11 Q DIDN'T HAVE A THING IN THE WORLD TO DO WITH LOOSENING
12 SOMEBODY UP TO THE POINT WHERE THEY FELT COMFORTABLE
13 ENOUGH. BY THE WAY, THIS TOOK PLACE IN THE BLUFFTON POLICE
14 DEPARTMENT?

15 A YES.

16 Q SHE WASN'T TOLD THAT SHE WAS BEING VIDEO TAPED. TELL
17 ME THIS, DO YOU THINK SHE FELT LIKE SHE WAS FREE TO LEAVE?

18 A YES.

19 Q DO YOU THINK SHE DID?

20 A YES.

21 Q AND WHERE WAS HER MOTHER DURING ALL THIS TIME?

22 A IN THE PARKING LOT.

23 MR. MACLOSKIE: SERGEANT GONZALES, THANK YOU VERY
24 MUCH.

25 THE COURT: ANYTHING FURTHER?

1 MS. BURKE: JUST TWO, YOUR HONOR.

2 REDIRECT EXAMINATION BY MS. BURKE:

3 Q SERGEANT GONZALES, TO YOUR KNOWLEDGE, HOW OLD WAS THE
4 DEFENDANT?

5 A 13 YEARS OLD.

6 Q THE DEFENDANT?

7 A 42.

8 Q 42. AND YOUR INTERVIEW TACTICS, WAS THAT CAMERA MADE
9 FOR HER IN PARTICULAR, WHICH IS TO SAY, IS THIS THE SAME
10 TACTIC THAT YOU MAY HAVE USED WITH OTHER PEOPLE REGARDING
11 EMBELLISHMENT OF EVIDENCE OR NO EVIDENCE AND SO FORTH?

12 A YES.

13 Q IS THIS SOMETHING THAT YOU WERE TRAINED TO DO IN YOUR
14 EXPERIENCE IN LAW ENFORCEMENT?

15 A YES, I'VE BEEN TO THE REED INTERVIEW INTERROGATION,
16 THE BASIC COURSE AND THE ADVANCED COURSE.

17 MS. BURKE: THANK YOU, YOUR HONOR.

18 THE COURT: MR. MACLOSKIE, ANYTHING FURTHER?

19 MR. MACLOSKIE: NO RECROSS. THANK YOU, YOUR HONOR.

20 THE COURT: YOU MAY STEP DOWN, SIR.

21 (THE WITNESS LEAVES THE WITNESS STAND.)

22 THE COURT: MS. BURKE, ANY FURTHER WITNESSES FOR THE
23 STATE?

24 MS. BURKE: NO, YOUR HONOR. THANK YOU.

25 THE COURT: MR. MACLOSKIE?

1 MR. MACLOSKIE: YES, WE CALL DR. YOLA NOLAN TO THE
2 STAND PLEASE.

3 THE COURT: DR. NOLAN, PLEASE COME FORWARD TO BE
4 SWORN.

5 DR. YOLA NOLAN, BEING FIRST
6 DULY SWORN, TESTIFIED AS FOLLOWS:

7 CLERK: PLEASE BE SEATED AND STATE YOUR NAME FOR THE
8 RECORD.

9 WITNESS: MY NAME IS YOLA NOLAN. DR. YOLA NOLAN. AND
10 MY LAST NAME IS SPELLED N-O-L-A-N.

11 DIRECT EXAMINATION BY MR. MACLOSKIE:

12 Q DR. NOLAN, WOULD YOU TELL THE COURT SOMETHING ABOUT
13 YOUR EDUCATION AND YOUR PROFESSIONAL EXPERIENCE AND
14 BACKGROUND PLEASE?

15 A I HAVE A PH.D. IN CLINICAL PSYCHOLOGY, ALTHOUGH I AM
16 LICENSED AS A PROFESSIONAL COUNSELOR. I HAVE AN
17 INTERNATIONAL CERTIFICATION FOR DRUG AND ALCOHOL ADDICTION.
18 I HAVE -- I'M ALSO A SAP, A SUBSTANCE ABUSE PROFESSIONAL,
19 WHICH MEANS THAT I'M CERTIFIED TO EVALUATE ANYBODY THAT
20 WORKS FOR SOUTH CAROLINA WHO ARE ACCUSED OF TAKING DRUGS OR
21 USING ALCOHOL.

22 I'VE BEEN DOING THIS FOR 29 YEARS. THE LAST 15 YEARS
23 I HAVE BEEN DOING SEX OFFENDER COUNSELING IN PENNSYLVANIA
24 AND HERE IN BEAUFORT COUNTY UP UNTIL LAST YEAR.

25 I ALSO HAVE PRESENTED AT TWO INTERNATIONAL CONFERENCES

1 ON SEXUAL ABUSE OF MINORS. THAT'S ABOUT IT.

2 Q DO YOU HAVE ANY AREAS THAT YOU WOULD CALL

3 SPECIALIZATION AREAS?

4 A ADDICTIONS, YES.

5 Q ADDICTIONS. AND HOW LONG HAVE YOU BEEN PRACTICING IN

6 THE ADDICTION FIELD?

7 A 29 YEARS.

8 Q HAVE YOU EVER TESTIFIED IN COURT BEFORE?

9 A YES, I HAVE.

10 Q AND HAVE YOU BEEN ADMITTED AS AN EXPERT WITNESS?

11 A YES.

12 Q ON HOW MANY OCCASIONS?

13 A FOUR..

14 Q ALL RIGHT. HAVE YOU EVER BEEN OBJECTED TO OR REFUSED

15 ADMISSION TO TESTIFY AS AN EXPERT?

16 A NO, SIR.

17 MR. MACLOSKIE: NOW, AT THIS TIME I WOULD MOVE TO HAVE

18 HER ADMITTED AS AN EXPERT WITNESS.

19 MS. BURKE: EXPERT IN WHAT, YOUR HONOR?

20 MR. MACLOSKIE: SHE TESTIFIED ADDICTION.

21 THE COURT: DO YOU WANT CLINICAL PSYCHOLOGY AS A

22 SPECIALTY IN ADDICTION OR ---

23 MR. MACLOSKIE: ADDICTION, SEX OFFENSE, SEX OFFENDERS,

24 AND CLINICAL PSYCHOLOGY.

25 THE COURT: WOULD YOU LIKE TO DO ANY CROSS, MS. BURKE?

1 MS. BURKE: I'D LIKE TO KNOW WHAT THE FOUR OTHER TIMES
2 THAT YOU HAVE BEEN QUALIFIED AS AN EXPERT, WHAT WAS THAT
3 FOR, MA'AM?

4 DR. NOLAN: I WAS THE COUNTY DRIVING UNDER THE
5 INFLUENCE COORDINATOR FOR OUR COUNTY, CLEARFIELD COUNTY, IN
6 PENNSYLVANIA. AND I OFTEN WAS CALLED TO COURT TO TESTIFY
7 AGAINST OFFENDERS BECAUSE I SAW ALL OF THEM GOING THROUGH
8 THE SYSTEM.

9 MS. BURKE: FOR D.U.I.; IS THAT WHAT YOU'RE SAYING?

10 DR. NOLAN: FOR DRIVING UNDER THE INFLUENCE OF DRUGS
11 OR ALCOHOL.

12 MS. BURKE: OKAY. AND WHAT WERE THE OTHER TIMES?

13 DR. NOLAN: THOSE WERE THE FOUR TIMES I WAS -- THAT
14 WAS ALL ---

15 MS. BURKE: IT WAS ALL D.U.I. RELATED?

16 DR. NOLAN: YES.

17 MS. BURKE: HAVE YOU EVER BEEN QUALIFIED AS AN EXPERT
18 FOR SEX OFFENDER ANY TIME?

19 DR. NOLAN: NO. I'VE BEEN CERTIFIED AS A SEX OFFENDER
20 COUNSELOR.

21 MS. BURKE: CERTIFIED?

22 DR. NOLAN: I'VE NEVER TESTIFIED IN A SEX OFFENDER
23 CASE.

24 MS. BURKE: WHERE WERE YOU CERTIFIED, MA'AM?

25 DR. NOLAN: I WENT TO SCHOOL AT PETER'S UNIVERSITY IN

1 PHILADELPHIA, AND I WAS CERTIFIED THERE.

2 MS. BURKE: WHAT YEAR WAS THAT?

3 DR. NOLAN: 1997, I BELIEVE. I CAN'T SWEAR TO THAT.

4 MS. BURKE: DO YOU HAVE TO BE RE-CERTIFIED EVERY YEAR?

5 DR. NOLAN: YOU -- NO, YOU DON'T HAVE TO. YOU HAVE TO
6 TAKE CONTINUING EDUCATION.

7 MS. BURKE: HAVE YOU TAKEN THOSE?

8 DR. NOLAN: YES.

9 MS. BURKE: AND WHAT ABOUT -- YOU SAID YOU'RE A
10 CLINICAL PSYCHOLOGIST?

11 DR. NOLAN: NO. I'M LICENSED AS A PROFESSIONAL
12 COUNSELOR. MY DEGREE WAS IN CLINICAL PSYCHOLOGY.

13 MS. BURKE: DO YOU HAVE THE AUTHORITY TO PRESCRIBE
14 MEDICATION?

15 DR. NOLAN: NO.

16 MS. BURKE: OKAY. AND WHAT WAS YOUR BACKGROUND ON
17 DRUGS, MAKE UP AND DRUGS, SIDE-EFFECTS? I DIDN'T QUITE
18 HEAR THAT PART.

19 DR. NOLAN: WELL, I HAVE TO KNOW THAT IN ORDER TO BE
20 LICENSED AS A DRUG AND ALCOHOL COUNSELOR IN THE STATE OF
21 PENNSYLVANIA. AND YOU HAVE TO KNOW THAT IN ORDER TO BE A
22 SAP, A SEXUAL ABUSE PROFESSIONAL. SO YOU HAVE TO DO
23 STUDIES IN -- IN DRUGS AND THEIR EFFECTS.

24 MS. BURKE: DO YOU HAVE A LICENSE IN SOUTH CAROLINA
25 FOR DRUG AND ALCOHOL COUNSELING?

1 DR. NOLAN: I HAVE A LICENSE AS A PROFESSIONAL
2 COUNSELOR HERE.

3 MS. BURKE: SO NOT IN DRUG AND ALCOHOL COUNSELING?

4 DR. NOLAN: I'M INTERNATIONALLY CERTIFIED IN THAT.

5 MS. BURKE: YOU'RE INTERNATIONALLY CERTIFIED IN THAT?

6 DR. NOLAN: YES.

7 MS. BURKE: AND HOW IS THE INTERNATIONAL CERTIFICATION
8 BROUGHT ABOUT?

9 DR. NOLAN: FIRST OF ALL, YOU HAVE TO GO THROUGH
10 RIGOROUS TRAINING IN ADDICTIONS, THEN YOU HAVE TO GO IN
11 FRONT OF A BOARD TO HAVE ORALS DONE. IF YOU PASS ALL THAT,
12 THEN YOU ARE CERTIFIED BY THAT STATE, WHICH WAS
13 PENNSYLVANIA. EACH YEAR I HAVE TO GET 40 CREDITS,
14 CONTINUING EDUCATION CREDITS IN ORDER TO MAINTAIN THAT.

15 AND ONCE I'M RE-LICENSED IN PENNSYLVANIA IN THE
16 ADDICTIONS PROGRAM, THEN THE INTERNATIONAL ASSOCIATION WILL
17 CERTIFY ME. THEY HAVE TO HAVE A RECOMMENDATION BY THE
18 STATE.

19 MS. BURKE: AND IS THAT CERTIFICATION CURRENT AS WELL?

20 DR. NOLAN: YES, MA'AM.

21 MS. BURKE: OKAY. THAT'S DRUG AND ALCOHOL. AND YOUR
22 EXPERIENCE WITH SEX OFFENDER GOES BACK TO THE 1997
23 CERTIFICATION?

24 DR. NOLAN: YES.

25 MS. BURKE: OKAY. AND DO YOU CURRENTLY SEE SEX

1 OFFENDERS IN YOUR PRACTICE?

2 DR. NOLAN: I DID UP UNTIL A YEAR AGO WHEN THE LAW WAS
3 CHANGED AND THEY DEMANDED GROUP COUNSELING, WHICH I DO NOT
4 HAVE THE TIME TO DO, SO I'M NOT DOING IT FOR BEAUFORT
5 COUNTY AT THIS TIME.

6 MS. BURKE: OKAY. THANK YOU, YOUR HONOR.

7 THE COURT: ALL RIGHT. AT THIS TIME I'LL GO AHEAD AND
8 RECOGNIZE HER AS AN EXPERT IN DRUG AND ALCOHOL ADDICTION AS
9 WELL AS SEX OFFENDER.

10 MR. MACLOSKIE: THANK YOU, YOUR HONOR.

11 DIRECT EXAMINATION CONTINUED BY MR. MACLOSKIE:

12 Q DR. NOLAN, WHEN DID YOU FIRST MEET SUSAN TAPPEINER?

13 A COULD I REFER TO MY NOTES PLEASE TO MAKE SURE?

14 Q SURE.

15 A (PAUSE.) I INTERVIEWED SUSAN ON JUNE 30TH OF '09.

16 Q AND WHAT DID THAT CONSIST OF?

17 A IT WAS AN HOUR AND HALF INTERVIEW OF GOING OVER HER
18 BACKGROUND, HER USE OF ANY KINDS OF DRUGS OR ALCOHOL, AND
19 ALSO OF WHAT SHE WAS BEING CHARGED FOR. I PRESENTED AN
20 OVERVIEW OF THAT EVALUATION TO YOU, MR. MACLOSKIE.

21 Q AND WHAT DID THAT HISTORY REVEAL TO YOU?

22 A SUSAN TOLD ME THAT SINCE AGE 14 WHEN SHE WAS RAPED BY
23 A FRIEND OF HER OLDER BROTHER SHE HAD BEEN PLACED ON
24 MEDICATION TO HELP HER WITH HER ANXIETY. SHE ALSO TOLD ME
25 THAT SHE HAD BEEN PSYCHIATRICALY HOSPITALIZED AT ONE TIME

1 FOR DEPRESSION AND ANXIETY. AND SHE TOLD ME SHE WAS USING
2 OVER THE PAST YEARS CLONIPIN, WHICH IS A TRANQUILLIZER AND
3 VERY HIGHLY SEDATIVE.

4 Q DID SHE GIVE YOU ANY HISTORY WITH REGARD TO WHATEVER
5 SUBSTANCES SHE MIGHT HAVE BEEN USING ON OR ABOUT THE 27TH
6 DAY OF FEBRUARY, 2009, THAT WAS THE DAY OF THE INTERVIEW
7 WITH SERGEANT GONZALES?

8 A YES, SHE SAID SHE WAS ON 1.5 MILLIGRAMS OF CLONIPIN 3
9 TIMES A DAY, AND THAT SHE DRANK REGULARLY EVERY EVENING.

10 Q NOW, WHAT IS CLONIPIN, WHAT IS THE EFFECT OF THAT ON A
11 HUMAN?

12 A WELL, IT'S A TRANQUILLIZER AND IT -- SEVERAL EFFECTS.
13 SEVERE EFFECTS OF CLONIPIN WOULD BE DIZZINESS, NAUSEA,
14 BLURRED VISION, POOR JUDGMENT, LACK OF BALANCE AND
15 COORDINATION, SLEEP PROBLEMS SOMETIMES GO ALONG WITH THAT.
16 SOME PARTS OF HER LIFE WOULD HAVE BEEN -- WOULD HAVE BEEN
17 -- SHE WOULD HAVE PROBABLY HAD SOME AMNESIA OR
18 FORGETFULNESS. SHE HAD TROUBLE CONCENTRATING. SOMETIMES
19 PEOPLE THAT ARE TAKING THESE KINDS OF THINGS FAINT. THEY
20 COULD HAVE SEIZURES.

21 Q WHAT DO YOU UNDERSTAND TO BE THE DOSAGE THAT SUSAN WAS
22 TAKING ON OR ABOUT THE 27TH OF FEBRUARY OF THIS YEAR, THAT
23 IS THE DATE OF THE INTERVIEW WITH SERGEANT GONZALES IN
24 RELATIONSHIP TO WHAT A NORMAL PERSON TAKING THAT
25 MEDICATION?

1 A WELL, IT DEPENDS ON WEIGHT. AND MRS. TAPPEINER --
2 MRS. TAPPEINER WEIGHS 109 POUNDS, AND SHE WAS ON 1.5
3 MILLIGRAMS OF CLONIPIN, WHICH WOULD BE ALMOST 3 TIMES THE
4 NORMAL THAT I WOULD RECOMMEND FOR SOMEBODY OF HER WEIGHT.

5 Q WAS SHE ON ANY OTHER MEDICATION THAT YOU WERE ABLE TO
6 DETERMINE?

7 A SHE ALSO TOOK EXCEDRIN P.M. AND THAT IN COMBINATION
8 WITH CLONIPIN CAN CAUSE EVEN MORE AMNESIAC QUALITIES AND
9 LACK OF CONCENTRATION.

10 Q DOES IT AFFECT A PERSON'S ABILITY TO ORIENT, TO
11 UNDERSTAND WHAT'S GOING ON?

12 A OH, YES, IT WOULD.

13 Q NOW, YOU IN ADDITION TO -- DID YOU MEET WITH SUSAN
14 AGAIN AFTER THIS MEETING?

15 A YES, I DID. AND I ALSO INTERVIEWED HER CHILDREN AT
16 THAT TIME AND MET HER HUSBAND.

17 Q WHAT CAME OF THAT? WHAT WERE YOUR FINDINGS ON THAT
18 ISSUE?

19 A SHE TOLD ME ABOUT PROBLEMS THAT SHE'D HAD WITH THE
20 NEIGHBORS, AND THAT SHE HAD HIRED ONE OF THE NEIGHBORS TO
21 BABYSIT HER CHILDREN AFTER SCHOOL, AND THEN FOUND OUT THAT
22 THE NEIGHBORHOOD BOY -- THE BROTHER OF THE YOUNG GIRL THAT
23 SHE HAD HIRED WAS COMING IN AND OUT OF HER HOUSE AND SHE
24 WAS VERY UPSET AND ANXIOUS ABOUT THAT.

25 AT THAT POINT SHE FIRED THE YOUNG GIRL WHO WAS

1 BABYSITTING HER CHILDREN AND HIRED SOMEONE ELSE. AND IT
2 WAS -- DO YOU WANT ME TO CONTINUE WITH THAT?

3 Q CONTINUE, YES, MA'AM.

4 A ALL RIGHT. SHE TOLD ME THAT AT THAT POINT THERE WAS A
5 NEIGHBORHOOD CONFRONTATION WITH THE MOTHER OF THE CHILD.
6 AND, AS SHE SAID IT, OBSCENITIES WERE THROWN AT HER AND SHE
7 STOPPED SPEAKING TO THESE PEOPLE ALL TOGETHER.

8 AND THIS IS THE PARENTS OF THE YOUNG BOY SHE'S ACCUSED
9 OF HAVING SEX WITH.

10 Q NOW, WHAT IN ADDITION TO THE HISTORY YOU GOT FROM MRS.
11 TAPPEINER AND MEMBERS OF HER FAMILY DID YOU USE TO FORM ANY
12 OPINION? WHAT MATERIALS DID YOU USE IN ADDITION TO THESE
13 INTERVIEWS?

14 A I DID SEE THE VIDEO AS WELL.

15 IN SPEAKING WITH THE CHILDREN, I FOUND THAT THEY WERE
16 ALL IN THE HOUSE THAT EVENING THAT THIS WAS SUPPOSED TO
17 HAVE HAPPENED AND HER HUSBAND WAS THERE.

18 THERE WERE -- THE TWO YOUNG GIRLS THAT SHE HAD HIRED
19 WERE BABYSITTING AND THE ALLEGED VICTIM, AND THAT EVERYONE
20 WAS HAVING A GOOD TIME THAT NIGHT AND WATCHING MOVIES; AND
21 THAT SHE WAS DRINKING QUITE HEAVILY.

22 Q ALL RIGHT. DID YOU ASK HER ANY QUESTIONS RELATIVE TO
23 THE EVENTS ON THE DAY OF THE 27TH OF FEBRUARY OF 2009, THE
24 DATE SHE WAS INTERVIEWED BY SERGEANT GONZALES?

25 A I ASKED HER WHAT HAPPENED AT THE INTERVIEW?

1 SHE TOLD ME THAT SHE WAS -- SHE HAD NO IDEA WHAT SHE
2 WAS BROUGHT THERE FOR AND THAT SHE WAS VERY CONFUSED AND
3 THAT SHE HAD BEEN DRINKING HEAVILY THE NIGHT BEFORE BECAUSE
4 SHE WAS ANXIOUS, AND SHE HAD ALSO TAKEN HER CLONIPIN.

5 Q ALL RIGHT. NOW, YOU VIEWED THE VIDEO; IS THAT
6 CORRECT?

7 A YES, SIR.

8 Q AND YOU HAD THE BENEFIT OF INTERVIEWING SUSAN AND
9 DETERMINING WHAT MEDICATIONS SHE WAS ON AND WHAT SHE WAS
10 TAKING THE NIGHT BEFORE AND THE DAY OF THE INTERVIEW ON THE
11 27TH OF FEBRUARY 2009?

12 A YES, SIR.

13 Q ALL RIGHT. BASED ON ALL OF THAT, DO YOU HAVE AN
14 OPINION AS TO WHETHER OR NOT SUSAN WAS CAPABLE OF
15 COMPLETELY UNDERSTANDING THE PROCESS AND THE EFFECT OF
16 WAIVING HER PRIVILEGE TO SELF-INCRIMINATION AND GOING AHEAD
17 WITH THE INTERVIEW?

18 A YES, I HAD AN OPPORTUNITY TO COME UP WITH AN OPINION
19 ON THAT. I HAVE STUDIED A GREAT DEAL ABOUT NON-VERBAL
20 COMMUNICATION. AND IN WATCHING THE VIDEO I FELT THAT SUSAN
21 HAD NO IDEA WHY SHE WAS THERE AND THE SERIOUSNESS OF THE
22 ALLEGATION AGAINST HER AND THAT SHE WAS TRYING TO BE
23 COOPERATIVE AND SOME-WHAT OF A PEOPLE PLEASER AND WOULD
24 HAVE SAID MOST ANYTHING THAT WAS SUGGESTED TO HER.

25 Q DID YOU DETERMINE WHETHER OR NOT IN YOUR OPINION BASED

1 ON EVERYTHING YOU KNOW ABOUT THIS THAT SUSAN HAD SOME
2 FEELINGS ABOUT WHETHER OR NOT THIS WAS A PLEASANT OR AN
3 UNPLEASANT EXPERIENCE IN HER LIFE?

4 A THE INTERVIEW?

5 Q YES.

6 A SHE -- SHE WAS THOROUGHLY DEVASTATED BY IT.

7 Q YOU COULD TELL THAT BY WATCHING THE VIDEO?

8 A BY WATCHING THE VIDEO, YES, THAT SHE HAD NO IDEA WHAT
9 SHE WAS THERE FOR. ONCE SHE FOUND OUT, SHE WAS TOTALLY
10 DEVASTATED.. SHE COULD NOT REALLY REMEMBER WHAT WENT ON
11 THAT EVENING. SHE SAID THAT SEVERAL TIMES.

12 Q AND DO YOU HAVE AN OPINION AS TO THE RELIABILITY OF
13 THE INFORMATION ---

14 A I'M SORRY. WOULD YOU REPEAT?

15 Q AND DO YOU HAVE AN OPINION AS TO THE RELIABILITY OF
16 THE INFORMATION SUSAN MIGHT HAVE FURNISHED ON THAT DAY?

17 A THE RELIABILITY?

18 Q YES, MA'AM.

19 A I DON'T THINK IT WAS VERY RELIABLE BECAUSE SHE STILL
20 WOULD HAVE BEEN UNDER THE INFLUENCE OF THE CLONIPIN AND THE
21 ALCOHOL SHE HAD DRANK THE NIGHT BEFORE. ALCOHOL STAYS IN
22 YOUR SYSTEM A LONG TIME, AS DOES CLONIPIN.

23 MR. MACLOSKIE: THANK YOU, DR. NOLAN. WOULD YOU
24 ANSWER ANY QUESTIONS MS. BURKE MIGHT ASK YOU.

25 DR. NOLAN: YES, SIR.

1 THE COURT: MAY I ASK THE DOCTOR ONE QUESTION.

2 WHEN DID SHE TELL YOU THAT SHE'D TAKEN A CLONIPIN? I
3 KNOW YOU SAID THE ALCOHOL WAS DRANK THE NIGHT BEFORE. BUT
4 WHEN WAS THE CLONIPIN TAKEN?

5 DR. NOLAN: SHE TOLD ME THE DAY I INTERVIEWED HER, THE
6 VERY FIRST DAY.

7 THE COURT: OKAY. DID SHE TAKE IT IN THE MORNING OR
8 DID SHE TAKE IT IN THE EVENING? ONCE A DAY?

9 DR. NOLAN: NO. SHE TOOK IT THREE TIMES A DAY.

10 THE COURT: OKAY. SO IF IT'S A 1.5 MILLIGRAM DOSAGE,
11 I BELIEVE IS WHAT YOU STATED, THEN SHE WAS TAKE .5 THREE
12 TIMES A DAY?

13 DR. NOLAN: NO. SHE TOOK 1.5 THREE TIMES A DAY.

14 THE COURT: 1.5 THREE TIMES A DAY. THANK YOU. OKAY.

15 DR. NOLAN: SORRY.

16 THE COURT: I APPRECIATE THAT. OKAY. AND JUST SO I'M
17 CLEAR, WOULD THAT MEAN THAT IF SHE GAVE A STATEMENT AT 2:41
18 IN THE AFTERNOON, THAT SHE TOOK IT ONCE IN THE MORNING WHEN
19 SHE WOKE UP, ONCE AROUND LUNCH TIME BEFORE SHE GAVE THE
20 INTERVIEW, AND THEN IN THE EVENING?

21 DR. NOLAN: SHE TOLD ME THAT SHE TOOK THE CLONIPIN
22 JUST BEFORE THE INTERVIEW BECAUSE SHE WAS NERVOUS.

23 THE COURT: OKAY. MS. BURKE.

24 CROSS EXAMINATION BY MS. BURKE:

25 Q COULD YOU SPELL THAT PLEASE, THE DRUG?

- 1 A C-L-O-N-I-P-I-N.
- 2 Q C-L-O-N-I-P-I-N?
- 3 A UH-HUH.
- 4 Q DR. NOLAN, WHAT IS THE DEFENDANT CHARGED WITH?
- 5 A WHAT'S SHE CHARGED WITH?
- 6 Q YES.
- 7 A HAVING SEX WITH A MINOR.
- 8 Q IS THERE ANY REASON YOUR REPORT CALLS IT CONTRIBUTING
- 9 TO THE DELINQUENCY OF A MINOR?
- 10 A I'M SORRY?
- 11 Q IS THERE A REASON YOU LISTED IN YOUR REPORT THAT SHE'S
- 12 CHARGED WITH CONTRIBUTING TO THE DELINQUENCY OF A MINOR?
- 13 A NO, THERE'S NO REASON.
- 14 Q OKAY. DO YOU KNOW THE DIFFERENCE BETWEEN THOSE TWO
- 15 CHARGES?
- 16 A NOT REALLY, MA'AM, NO.
- 17 Q DID YOU ACTUALLY DRAFT THIS REPORT OR WAS THIS ---
- 18 A YES.
- 19 Q --- YOUR DOCUMENT?
- 20 A I DRAFTED IT. I WENT ON TO SAY SHE WAS ACCUSED OF
- 21 HAVING SEX WITH A MINOR.
- 22 Q RIGHT. YOU -- IT WAS JUST A TYPOGRAPHICAL ERROR FOR
- 23 HER NAME SPELLED TOPPEINER?
- 24 A YES, MA'AM.
- 25 Q OKAY. AND YOU MENTIONED THAT THE SESSION WITH HER

1 HAPPENED ON JUNE 30TH?

2 A YES.

3 Q WAS IT ALSO A TYPO THAT YOUR REPORT SAYS JUNE 26TH?

4 A NO. IT HAPPENED JUNE 30.

5 Q ALL RIGHT. SO IT'S A TYPO IN YOUR REPORT?

6 A I DIDN'T TYPE THIS.

7 Q YOU DID REVIEW IT BEFORE YOU SIGNED IT?

8 A YES, MA'AM.

9 Q OKAY. IS IT ALSO A TYPO THAT IT SAID SHE WAS RAPED
10 WHEN SHE WAS 13 OR WAS SHE RAPED WHEN SHE WAS 14?

11 A SHE SAID BETWEEN 13 AND 14.

12 Q OKAY. CAN YOU TELL ME WHY IS IT YOUR REPORT CAME OUT
13 3 MONTHS AFTER YOU MET WITH HER?

14 A WOULD YOU REPEAT THAT PLEASE.

15 Q IT'S DATED SEPTEMBER THE 6TH, 2009 AND YOU MEET WITH
16 HER JUNE 30. I'M JUST CURIOUS AS TO WHAT DELAYED YOUR
17 FINAL ANALYSIS?

18 A I TRIED TO GET IN TOUCH WITH MR. MACLOSKIE TO ASK HIM
19 WHAT HE EXPECTED OF ME, AND HE DID NOT RETURN MY CALL UNTIL
20 LATER.

21 Q AND WHEN HE RETURNED YOUR CALL, WHAT DID HE SAY WAS
22 THE EXPECTATION OF YOU?

23 A HE WANTED ME TO WRITE UP A REPORT ON WHAT I HAD
24 GLEANED FROM THE INTERVIEW.

25 Q AND WAS THERE A PARAMETER OF THAT EXPECTATION SET,

1 WHAT TO INCLUDE, WHAT NOT TO INCLUDE, HOW LONG IT SHOULD
2 BE, HOW SHORT IT SHOULD BE, THAT KIND OF THING?

3 A NO.

4 Q YOU SAID THAT THE DRUGS SHE WAS ON THAT DAY WAS
5 C-L-O-N-O-P-I-N?

6 A YES.

7 Q I CAN'T PRONOUNCE IT. LET ME MAKE SURE I HAVE IT
8 RIGHT, CLONIPIN?

9 A CLONIPIN.

10 Q AND THAT'S THE DRUG THAT SHE TOLD YOU ON JUNE 30TH
11 THAT SHE'D TAKEN ON FEBRUARY 27TH WHEN SHE MET WITH MR.
12 GONZALES -- SERGEANT GONZALES?

13 A CORRECT.

14 Q IS THERE A REASON IT WAS NOT IN YOUR REPORT THAT SHE
15 WAS ON THAT DRUG?

16 A SHE WASN'T ON THAT DRUG WHEN SHE CAME TO SEE ME.

17 Q RIGHT. YOU SAID -- IS THERE A REASON YOU DON'T HAVE
18 IN YOUR REPORT THAT SHE WAS ON THAT DRUG WHEN SHE WAS
19 INTERVIEWED?

20 A NO, THERE'S NO REASON WHY I DON'T HAVE IT IN THERE. I
21 JUST DIDN'T PUT IT IN THERE.

22 Q WOULDN'T THAT BE SOMETHING IMPORTANT TO -- ISN'T THAT
23 PART OF THE BASIS OF YOUR -- YOUR -- YOUR CONCLUSION, YOUR
24 ANALYSIS?

25 A YES, IT PROBABLY WOULD HAVE BEEN. IT'S AN OVERSIGHT.

1 I SHOULD HAVE DONE IT.

2 Q AN OVERSIGHT. OKAY. AND WHAT ABOUT ALPRAZOLAN? IF

3 YOU DON'T MIND, PLEASE PRONOUNCE THAT.

4 A ALPRAZOLAN.

5 Q WHAT IS THAT?

6 A THAT'S XANAX, AND THAT'S WHAT SHE WAS ON AFTER SHE
7 CAME OFF OF THE CLONIPIN IN ORDER TO HELP HER COME OFF THE
8 CLONIPIN. IT'S SOMETHING THAT YOU TAPER OFF ALCOHOL OR
9 DRUGS. YOU GET THEM TO XANAX SO THAT THEY DON'T GO INTO
10 ANY KIND OF D.T.'S.

11 Q SO WHEN SHE MET YOU ON THE 30TH OF JUNE, SHE HAD
12 SWITCHED MEDICATION AND WAS NOW ON THE ALPRAZOLAN?

13 A ALPRAZOLAN. YES.

14 Q OKAY. YOU MENTIONED IN YOUR REPORT THAT SHE WAS
15 DRESSED PROVOCATIVELY. HOW WAS SHE DRESSED?

16 A SUSAN, I BELIEVE, HAS A LINE OF CLOTHING THAT --
17 CALLED SEXY DRESSES OR SOMETHING LIKE THAT. AND SHE -- SHE
18 DRESSES -- SHE DRESSES IN THEM IN ORDER TO PROMOTE THAT
19 LINE.

20 Q OKAY. AND, AGAIN, YOU THOUGHT THAT WAS IMPORTANT TO
21 PUT IN THE REPORT BUT NOT ANYTHING ABOUT THE CLONIPIN; IS
22 THAT CORRECT?

23 A AS I SAID, I DIDN'T FEEL THAT WAS THAT IMPORTANT, NO.

24 Q OKAY.

25 A I SAID SHE WAS SELF-MEDICATING WITH DRUGS.

- 1 Q OKAY. SO WE KNOW THAT THE CLONIPIN IS NOT THAT
2 IMPORTANT?
- 3 A NO, THAT'S NOT TRUE. I DIDN'T PUT IT IN MY REPORT,
4 BUT IT IS IMPORTANT.
- 5 Q OKAY. WHEN YOU MET WITH HER, WHO ELSE WAS PRESENT IN
6 THE ROOM WITH HER?
- 7 A HERSELF AT FIRST, AND THEN I INTERVIEWED HER CHILDREN.
8 AND THEN THEY ALL THREE WERE PRESENT FOR A WHILE.
- 9 Q THIS WAS DURING THE, YOU SAID, HOUR AND A HALF YOU MET
10 WITH HER?
- 11 A YES.
- 12 Q DOES THAT -- DOES THAT INCLUDE THE ENTIRE MEETING WITH
13 THE FAMILY OR DID YOU MEET WITH HER FOR AN HOUR AND A HALF
14 AND THEN WITH OTHERS?
- 15 A I MET WITH HER A LITTLE OVER AN HOUR, AND THEN BROUGHT
16 THE CHILDREN IN BRIEFLY.
- 17 Q OKAY. DID YOU READ THE INCIDENT REPORT WHEN YOU MET
18 WITH HER -- PRIOR TO MEETING WITH HER?
- 19 A PRIOR TO MEETING WITH HER, NO.
- 20 Q DID YOU READ THE REPORT WHILE YOU WERE MEETING WITH
21 HER?
- 22 A NO. I READ IT AFTERWARDS.
- 23 Q OKAY. WHEN DID YOU READ THE INCIDENT REPORT?
- 24 A THAT WASN'T PROVIDED TO ME UNTIL LAST WEEK.
- 25 Q OKAY. WHEN DID YOU REVIEW THE CONFESSION?

1 A THE VIDEO TAPE?

2 Q YES.

3 A THREE DAYS AGO.

4 Q OKAY. YOU STILL STAND BY YOUR ANALYSIS HAVING WATCHED
5 THE VIDEO AND READ THE REPORT?

6 A YES, MA'AM.

7 Q OKAY. SO AT THE TIME THAT YOU MET WITH HER -- JUST TO
8 BE CLEAR. AT THE TIME YOU MET WITH THE DEFENDANT ON JUNE
9 30TH, YOUR SOURCE OF INFORMATION CAME FROM HER ATTORNEY AS
10 TO WHY THE REPORT WAS TO BE DRAFTED AND MEETING WITH THE
11 DEFENDANT AND HER FAMILY; IS THAT CORRECT?

12 A YES, MA'AM.

13 Q ALL RIGHT. YOU HAD NOT READ THE INCIDENT REPORT NOR
14 SEEN THE CONFESSION; IS THAT CORRECT?

15 A NO, I HAD NOT.

16 Q IS THERE ANY ITEM OF EVIDENCE THAT YOU HAVE REVIEWED
17 BEFORE OR DURING THE INTERVIEW THAT HELPED AID YOUR
18 EVALUATION OUTSIDE OF THE ORAL DISCUSSION WITH THE FAMILY?

19 A NO.

20 Q OKAY. WHAT MAKES SOMEONE A SEX OFFENDER?

21 A WHAT MAKES SOMEONE A SEX OFFENDER?

22 Q (NODS HEAD.)

23 A I THINK IF WE KNEW THAT, WE COULD STOP IT.

24 Q IT'S A DISEASE, IS IT NOT?

25 A WELL, IT'S NOT CLASSIFIED AS A DISEASE, NO.

1 Q WHAT IS IT CLASSIFIED AS?

2 A IT'S CLASSIFIED MORE AS A DEVIANT BEHAVIOR.

3 Q OKAY. SO ALL DEVIANT BEHAVIORS CANNOT BE STOPPED; IS
4 THAT CORRECT?

5 A WELL, SOME CAN.

6 Q OKAY. BUT YOU SAID IF WE KNEW WHAT IT WAS, WE COULD
7 STOP IT. DO YOU THINK WE COULD STOP PEOPLE FROM BEING SEX
8 OFFENDERS?

9 A I THINK IF WE KNEW WHAT CAUSED THEM TO BE, YES.

10 Q OKAY. IS IT TRUE THAT SOMEONE WHO HAS BEEN SEXUALLY
11 ABUSED IN THE PAST HAVE A HIGHER CHANCE OF BECOMING AN
12 ABUSER IN THE FUTURE?

13 A YES, MA'AM.

14 Q WHAT PREVENTS THE VICTIM FROM THEN BECOMING THE
15 VICTIMIZER IN THE FUTURE?

16 A I CAN'T REALLY ANSWER THAT, AND I DON'T THINK ANYBODY
17 ELSE CAN EITHER.

18 Q WHAT ---

19 A SOME DO AND SOME DON'T.

20 THE COURT: LET HER FINISH.

21 A SOME DO BECOME OFFENDERS, SOME DON'T.

22 Q RIGHT. BUT AS AN EXPERT IN SEX OFFENDER AND HAVING
23 HAD 15 YEARS OF TREATMENT OF SEX OFFENDERS, OF ATTENDING
24 CLASSES OF TRAINING AND SO FORTH, WHAT'S THE INDUSTRY
25 ANALYSIS -- THE INDUSTRY THEORIES AND THESIS ABOUT THAT --

1 THAT QUESTION?

2 MR. MACLOSKIE: YOUR HONOR, PLEASE. DOES THIS HAVE
3 ANY RELEVANCE AT ALL TO THE PURPOSE OF THIS HEARING? I
4 DON'T SEE IT DOES, AND I OBJECT.

5 MS. BURKE: YOUR HONOR, MS. (SIC) NOLAN WAS QUALIFIED
6 AS AN EXPERT ON ---

7 MR. MACLOSKIE: WE'RE NOT TALKING ABOUT SUSAN AS A SEX
8 OFFENDER. WE'RE TALKING ABOUT SUSAN AS SOMEBODY WHO WAS
9 ADDICTED TO DRUGS WHEN SHE WAS INTERVIEWED.

10 MS. BURKE: MS. (SIC) NOLAN WAS QUALIFIED AS AN EXPERT
11 ON SEX OFFENDER ---

12 MR. MACLOSKIE: AND SHE ALSO PROBABLY KNOWS A LOT
13 ABOUT SAILING, BUT THIS ISN'T A CASE THAT INVOLVES SAIL
14 BOATS.

15 MS. BURKE: BUT IF SHE WAS QUALIFIED AS AN EXPERT,
16 THEN IT WOULD BE AN APPROPRIATE QUESTION.

17 MR. MACLOSKIE: I OBJECT.

18 THE COURT: MS. BURKE, LET'S GET BACK TO THE AT HAND
19 AND WHETHER OR NOT SHE GAVE A VOLUNTARY STATEMENT.

20 MS. BURKE: AND, YOUR HONOR, I APPRECIATE THAT, THESE
21 LINE OF QUESTIONS THAT LEAD UP TO THAT BECAUSE OF THE
22 MENTALITY OF SOMEONE WHO IS SEX OFFENDING, WHO ARE WILLING
23 TO MAKE THESE STATEMENTS VOLUNTARY OR NOT.

24 THE COURT: WELL, YOU'VE GOT ABOUT 2 MINUTES TO BRING
25 IT AROUND THEN QUICKLY.

1 MS. BURKE: OKAY.

2 Q WOULD YOU SAY THAT DRUG AND ALCOHOL WOULD HINDER THE
3 RECOVERY OF A SEX OFFENDER?

4 A YES.

5 Q OKAY. WHAT DID MRS. TAPPEINER TELL YOU SHE DID THAT
6 EVENING TO THE DEFENDANT (SIC) -- TO THE VICTIM, I'M SORRY,
7 *victim*

8 A WHAT DID SHE TELL ME SHE DID?

9 Q YES.

10 A SHE SAID SHE DID NOT REMEMBER THE EVENING AT ALL.

11 Q OKAY.

12 A SHE SAID SHE PASSED OUT ON THE COUCH.

13 Q SHE PASSED OUT ON THE COUCH?

14 A YES.

15 Q AND GOING BACK -- GOING TO THE INTERVIEW WITH LAW
16 ENFORCEMENT, DO YOU REMEMBER WHAT TIME OF DAY THAT WAS?

17 A I'M SORRY?

18 Q WHAT TIME OF DAY SHE HAD THE DISCUSSION WITH SERGEANT
19 GONZALES?

20 A I DON'T REMEMBER WHAT TIME OF DAY IT WAS. I THINK --
21 I THINK SHE SAID -- I THINK THE VIDEO SAID SOMETHING AROUND
22 2:00 O'CLOCK.

23 Q 2:41 IS THAT ABOUT YOUR RECOLLECTION OF WHAT YOU SAW?

24 A RIGHT.

25 Q AND WHAT DID THE DEFENDANT SAY SHE HAD TO DRINK THAT

1 DAY?

2 A SHE DIDN'T HAVE ANYTHING TO DRINK THAT DAY. SHE HAD
3 DRANK WINE PROFUSELY THE NIGHT BEFORE SHE TOLD ME.

4 Q AND WHAT DOES PROFUSELY MEAN?

5 A SHE TOLD ME SHE GENERALLY DRANK UNTIL SHE PASSED OUT,
6 BECAUSE IT HELPED HER TO SLEEP.

7 Q DID YOU INQUIRE WITH HER AS TO WHAT THAT MEANT, HOW
8 MANY DRINKS, HOW MANY BOTTLES?

9 A SHE SAID 3, 4. BUT MOSTLY ALCOHOLICS -- WHICH I THINK
10 THAT SUSAN HAS BEEN ADDICTED TO ALCOHOL -- DON'T USUALLY
11 TELL YOU THE RIGHT AMOUNT THAT THEY DRINK. SHE SAID 3 OR 4
12 GLASSES. I DON'T KNOW WHETHER IT WAS A LARGE GLASS OR WINE
13 GLASS OR ---

14 Q AND THE ONLY DRUGS SHE'D TAKEN THAT DAY WAS THE
15 CLONIPIN AND EXCEDRIN P.M.?

16 A RIGHT.

17 Q IS EXCEDRIN P.M. TAKEN AT NIGHT OR IN THE DAYTIME?

18 A IN THE EVENING.

19 Q IN THE EVENING. SO SHE WOULD HAVE TAKEN EXCEDRIN.
20 WHAT TIME WAS SHE TAKING IT?

21 A WHENEVER SHE WENT TO BED. SHE DIDN'T TELL ME WHAT
22 TIME SHE WENT TO BED THAT NIGHT.

23 Q SO YOU JUST SAID SHE TOOK IT THAT DAY, DID SHE TAKE
24 EXCEDRIN P.M. THAT DAY ON THE 27TH OF FEBRUARY?

25 A WHEN SHE WAS INTERVIEWED?

- 1 Q YES, MA'AM.
- 2 A NO.
- 3 Q OKAY. SO SHE TOOK IT THE NIGHT BEFORE?
- 4 A CORRECT.
- 5 Q OKAY. DO YOU KNOW WHAT THE DOSAGE WAS WITH THAT?
- 6 A NO, I DON'T.
- 7 Q THIS IS AN ---
- 8 A YES ---
- 9 Q --- OVER-THE-COUNTER ---
- 10 A --- IT'S OVER-THE-COUNTER.
- 11 Q --- DRUG, ISN'T IT?
- 12 A I DON'T KNOW. IT'S PROBABLY 500 MILLIGRAMS.
- 13 Q WHAT IS THE PRESCRIPTION FOR EXCEDRIN FOR AN OVER-THE-
- 14 COUNTER ---
- 15 500 MILLIGRAMS.
- 16 Q 1 PILL EVERY 2 TO 4 HOURS.
- 17 A YES.
- 18 Q SOMETHING LIKE THAT?
- 19 A UH-HUH.
- 20 Q AND WHAT WOULD HAVE BEEN THE SIDE EFFECTS OF THE
- 21 EXCEDRIN THAT WOULD HAVE SHOWN UP AT 2:40 IN THE AFTERNOON?
- 22 A WELL, SHE PROBABLY WOULD STILL BE DROWSY FROM THAT.
- 23 Q DO PEOPLE WHO DRINK A LOT DEVELOP A HIGH TOLERANCE?
- 24 A YES, MA'AM.
- 25 Q DO PEOPLE WHO TAKE DRUGS DEVELOP A HIGH TOLERANCE?

1 A YES.

2 Q ARE THOSE WHO WE CALL LIKE FUNCTIONING ALCOHOLICS OR
3 FUNCTIONING DRUG ADDICTS, THEY JUST -- THEY TAKE IT AND
4 THEY CAN FUNCTION; IS THAT CORRECT?

5 A THEY -- THEY THINK THEY CAN FUNCTION. THEY DON'T
6 FUNCTION WELL.

7 Q WHEN YOU SAW SUSAN ON THE 30TH OF JUNE, HOW WAS SHE
8 FUNCTIONING?

9 A SHE WAS EXTREMELY NERVOUS, HYPERACTIVE. SHE COULDN'T
10 SIT STILL. SHE TOLD ME SHE WAS COMING DOWN OFF THE
11 CLONIPIN AND THE ALCOHOL. AND I IMAGINE THAT THOSE
12 SYMPTOMS WERE PART OF THAT.

13 Q AND WAS SHE NERVOUS YOU SAY BECAUSE OF THE DRUGS OR
14 BECAUSE OF MEETING WITH YOU?

15 A SHE DIDN'T SEEM NERVOUS ABOUT MEETING WITH ME. SHE
16 WAS JUST VERY HYPER AND AGITATED.

17 Q IF YOU HAD NOT KNOWN OF HER SITUATION IN TERMS OF HER
18 DRUG HISTORY AND EVERYTHING ELSE THAT MAKES UP HER AS A
19 PERSON, WOULD YOU THINK SHE WAS A FUNCTIONING PERSON WHEN
20 YOU MET HER THAT DAY?

21 A NO. NO.

22 Q WHAT QUALITY DID SHE EXHIBIT THAT SHOWED SHE WAS NOT
23 FUNCTIONAL?

24 A SHE WAS NOT VERY COHERENT WHEN I WAS ASKING HER
25 QUESTIONS.

- 1 Q HOW DID SHE SOUND?
- 2 A AGITATED, UPSET, FUZZY ABOUT WHAT -- WHAT SHE WAS
- 3 THERE FOR, NOT REALLY SURE.
- 4 Q ARE THOSE QUALITIES -- IS THAT A PSYCHIATRIC OR A --
- 5 OR A -- OR A MEDICAL EXPLANATION OF HOW SHE APPEARED TO YOU
- 6 OR IS THIS NO DIFFERENT FROM ANYONE WHO IS CHARGED WITH A
- 7 CRIME WHO MIGHT BE NERVOUS OR THE NORMAL HUMAN
- 8 CHARACTERISTIC OF SOMEONE WHO MIGHT BE UNDER STRESS?
- 9 A NO. AT FIRST I ACTUALLY THOUGHT SHE MIGHT HAVE BEEN
- 10 USING COCAINE.
- 11 Q OKAY.
- 12 A THAT'S HOW AGITATED SHE WAS.
- 13 Q DID YOU REQUEST SHE GET TESTED?
- 14 A NO.
- 15 Q OKAY. WHEN YOU SAW THE VIDEO, WAS SHE MORE OR LESS ON
- 16 THE CONFESSION AGITATED THAN SHE WAS THE DAY YOU MET HER?
- 17 A I THINK SHE WAS A LITTLE LESS.
- 18 Q SO ON THE VIDEO SHE'S LESS AGITATED?
- 19 A SHE SEEMED A LITTLE CALMER, WHICH I ASSUME CAME FROM
- 20 THE CLONIPIN SHE HAD TAKEN.
- 21 Q ISN'T IT A TRANQUILLIZER FOR HER BACK -- FOR HER BACK?
- 22 A YES.
- 23 Q OKAY. IF SHE WAS CALM, WHAT WOULD BE THE SIDE EFFECTS
- 24 THAT WOULD BALANCE THAT?
- 25 A I'M SORRY, I DON'T UNDERSTAND.

1 Q THAT WAS MY MISTAKE. IT KIND OF CAME OUT WRONG. I'M
2 TRYING TO MAKE SURE BECAUSE THERE ARE DRUGS THAT MAKE YOU
3 FUNCTIONAL WOULD BE A BETTER -- YOU KNOW, A NORMAL, IF YOU
4 WILL, PERSON, BUT THEY HAVE SIDE EFFECTS.

5 A RIGHT.

6 Q SO I JUST WANT TO MAKE SURE IF THE DRUG WAS WORKING
7 FOR HER OR IF THE SIDE EFFECTS WERE THE ONES THAT WERE
8 SHOWING THROUGH. SO WHEN YOU SAW THE VIDEO, WHICH DO YOU
9 THINK WAS OBVIOUS, THAT THE DRUG WAS ALLOWING HER TO BE
10 FUNCTIONAL OR THAT THE SIDE EFFECTS -- BALANCE,
11 COORDINATION, SLEEP PROBLEMS, FAINT, AND SEIZURE, WERE
12 THOSE THE PREDOMINATE FEATURES THAT SHE EXHIBITED ON THE
13 VIDEO?

14 A THE ONLY WAY I CAN DESCRIBE HER IS SHE LOOKS SPACY TO
15 ME ON THE VIDEO.

16 Q OKAY. YOU MENTIONED THAT SHE SAID SHE WAS NERVOUS THE
17 NIGHT BEFORE?

18 A I'M SORRY.

19 Q THE NIGHT BEFORE SHE HAD TO MEET WITH GONZALES --
20 SERGEANT GONZALES YOU SAID IN YOUR DIRECT WITH ---

21 A NO. SHE SAID I -- I SAID THAT DAY WHEN SHE HAD TO GO
22 IN TO MEET HIM, SHE WAS VERY NERVOUS AND TOOK HER CLONIPIN.

23 Q OKAY. SO YOUR STATEMENT WAS NOT THAT SHE WAS ALSO
24 NERVOUS THE NIGHT BEFORE?

25 A NO. I IMAGINE SHE WAS DRUNK THE NIGHT BEFORE.

1 Q OKAY. AND DO YOU RECALL HER TELLING YOU THAT SHE
2 TAKES IRON PILLS?

3 A YES.

4 Q DESCRIBE THE DEMEANOR OF A PERSON WHO IS SEDATED?

5 A WELL, I WOULD NOT CALL HER SEDATED. WHAT I WOULD CALL
6 HER IS OBLIVIOUS TO WHAT WAS GOING ON. SHE WAS NOT SLEEPY.
7 SHE WAS JUST NOT AWARE, I THINK, OF THE SITUATION, WHAT SHE
8 WAS BEING CHARGED WITH, BECAUSE MOST PEOPLE WOULD HAVE BEEN
9 VERY NERVOUS.

10 Q ON THE LAST PAGE OF YOUR REPORT, THE LAST PARAGRAPH,
11 THE SECOND LINE, DIDN'T YOU RECALL SHE WAS SEDATED; ISN'T
12 THAT WHAT YOU WOULD CHARACTERIZE HER AS?

13 A I'M SORRY. WHERE? WHAT PAGE? THE LAST PAGE?

14 Q THE PAGE THAT CONTAINS YOUR SIGNATURE, THE LAST
15 PARAGRAPH, THE SECOND SENTENCE.

16 A WELL, SHE WAS SEDATED FROM THE CLONIPIN, BUT THAT
17 DOESN'T ---

18 Q THE MEDICAL -- I'M SORRY. GO AHEAD.

19 A BUT IT DOESN'T MEAN THAT I SAW HER AS SLEEPY ON THE
20 VIDEO. SHE WOULD HAVE BEEN SEDATED, WHICH MEANS SHE WOULD
21 HAVE BEEN CALM, RELAXED, NOT REALLY AFRAID OF WHAT WAS
22 GOING ON BECAUSE SHE WAS SO CALM. IT'S A TRANQUILLIZER.
23 IT TRANQUILIZES YOU IN ANY SITUATION.

24 Q I JUST WANT TO MAKE SURE I UNDERSTAND. WHEN YOU SAID
25 BEFORE -- A FEW SECONDS BEFORE THAT YOU WOULDN'T DESCRIBE

1 HER AS SEDATED, WHAT WERE YOU REFERRING TO WHEN YOU MADE
2 THAT STATEMENT?

3 A IF YOU'RE DEFINING SEDATED AS SLEEPY, SHE WAS NOT
4 SLEEPY. BUT I DON'T THINK SHE WAS FULLY AWARE OF WHAT WAS
5 GOING ON; THAT'S HOW I DEFINE SEDATED. TRANQUILLIZED TO
6 THE POINT WHERE YOU DON'T KNOW WHAT'S REALLY GOING ON.
7 YOU'RE NOT AWARE OF THE REALITIES OF THE SITUATION.

8 Q OKAY. FOR THE UNTRAINED EYE, THE COMMON LAY PERSON,
9 DESCRIBE TO THE COURT WHAT DOES THAT TRANSLATE TO? YOU
10 KNOW, WHAT CAN I LOOK FOR IN SOMEONE WHO'S SEDATED?

11 A WELL, IT WOULD DEPEND ON WHAT SHE'S SEDATED WITH.

12 Q IN THIS CASE CLONIPIN.

13 A WITH CLONIPIN, YOU WOULD BE VERY ULTRA-CALM IN ANY
14 SITUATION. YOU COULD HAVE A CRISIS SITUATION COME UP AND
15 YOU WOULD STILL REMAIN CALM. IT WOULD BE AKIN TO BEING IN
16 AN AIRPLANE CRASH, AND IF YOU TOOK ENOUGH CLONIPIN, YOU
17 WOULDN'T BE WORRIED ABOUT IT.

18 Q SO SHE WOULD BE -- I'M NOT TRYING TO PUT WORDS IN YOUR
19 MOUTH. I JUST WANT TO MAKE SURE THAT I UNDERSTAND. WOULD
20 SHE BE MORE IN A COMATOSE STATE OR -- YOU KNOW, JUST ...

21 A SHE WOULD NOT BE IN THE SITUATION AS IT REALLY WAS.

22 Q OKAY. COULD SHE ANSWER QUESTIONS?

23 A YES.

24 Q COULD SHE MAKE JOKES?

25 A YES.

1 Q OKAY. DO YOU KNOW HOW LONG SHE HAD BEEN ON CLONIPIN?

2 A SHE -- I BELIEVE SHE STATED SHE'D BEEN ON CLONIPIN OFF
3 AND ON SINCE THE RAPE AT AGE -- BETWEEN 13 AND 14.

4 Q AND SHE'S, WHAT, 42 NOW?

5 A YES.

6 Q ABOUT 30 YEARS? 29 YEARS?

7 A YES.

8 Q AFTER 30 YEARS OF CLONIPIN, DO YOU THINK SHE'S ABLE TO
9 WORK? WOULD IT STRIKE YOU AS ODD THAT SHE WERE TO HAVE
10 EMPLOYMENT?

11 A NO.

12 Q WOULD IT STRIKE YOU AS ODD FOR HER TO BE ABLE TO
13 ENHANCE PHOTOS FOR THE SHERIFF'S DEPARTMENT AND DO VARY
14 SPECIFIC TASKS?

15 A NO.

16 Q AFTER 30 YEARS SHE'S GOTTEN USED TO THE MEDICATION;
17 ISN'T THAT CORRECT?

18 A WELL, I CAN'T ANSWER FOR HER. BUT I WOULD IMAGINE SHE
19 HAD BECOME MORE AND MORE ADDICTED TO IT, SO SHE WOULD NEED
20 STRONGER MEDICATION.

21 Q OKAY. I'M GOING TO SHOW YOU WHAT HAS BEEN ENTERED
22 INTO EVIDENCE AS STATE'S EXHIBIT 2. AND I WANT YOU TO STOP
23 US AT THE POINT WHERE YOU RECOGNIZE SYMPTOMS OF SEDATION,
24 OF ALL THE OTHER ATTRIBUTES THAT YOU SAID PREVENTED THE
25 DEFENDANT FROM BEING IN HER RIGHT MIND OR HER RIGHT

1 FUNCTION FOR THAT DAY? AND REFRESH THE COURT. YOU
2 MENTIONED ---

3 MS. BURKE: IF IT PLEASE THE COURT, I HAVE AN EXTRA
4 COPY OF IT THAT I'LL PUT IN IF THAT'S OKAY?

5 THE COURT: THIS IS THE FIRST VIDEO?

6 MS. BURKE: YES, MA'AM.

7 THE COURT: OKAY.

8 Q YOU MENTIONED TO THE COURT THAT YOU SAW THIS VIDEO 2
9 DAYS AGO; IS THAT CORRECT?

10 A YES.

11 Q OKAY. HOW IS IT YOU SAW -- YOU THOUGHT TO LOOK AT THE
12 VIDEO?

13 A PARDON?

14 Q HOW IS IT THAT YOU -- THAT THAT CAME ABOUT?

15 A I DID NOT HAVE THE VIDEO UNTIL THEN.

16 Q WERE YOU ASKING FOR IT ALL THIS TIME?

17 A I DIDN'T KNOW IT EXISTED.

18 Q OKAY. AND SO WHEN YOU DID YOUR ANALYSIS, IT WAS BASED
19 ON WHAT THE DEFENDANT WAS TELLING YOU; IS THAT CORRECT?

20 A AND MY OBSERVATION.

21 Q OKAY. IN YOUR PRACTICE PEOPLE WHO -- PEOPLE DON'T
22 ALWAYS TELL YOU THE TRUTH; IS THAT CORRECT? I MEAN, AS A
23 PSYCHIATRIST, PSYCHOLOGIST, YOU GET A LOT OF VARIATIONS IN
24 PERSONALITIES; ISN'T THAT TRUE?

25 A YES.

1 Q IN FACT, THE DEFENDANT, ISN'T SHE ALSO ON A MOOD
2 DISORDER OR PERSONALITY DISORDER TRACT?

3 A NOT THAT I KNOW OF.

4 Q OKAY.

5 A SHE DID NOT TELL ME OF IT.

6 Q SHE DID NOT TELL YOU THAT -- OKAY. IT'S ALPRAZOLAN,
7 THAT'S THE ANXIETY DISORDER; THAT'S WHAT THAT IS, THE ONE
8 IN YOUR REPORT. THE ONE YOU LISTED -- THE ONLY ONE YOU
9 LISTED IN YOUR REPORT A-L-P-R-A-Z-O-L-A-N ---

10 A YES.

11 Q --- THAT'S JUST FOR ---

12 A XANAX.

13 Q --- ANXIETY DISORDER?

14 A IT'S XANAX.

15 Q OKAY. I SEE. ALL RIGHT. DR. NOLAN, PLEASE INFORM
16 THE COURT AT THE TIMES THAT YOU SEE THE DEFENDANT APPEARS
17 -- AGAIN, I'M GOING TO USE YOUR TERM BECAUSE IT'S IN YOUR
18 REPORT -- SEDATED?

19 THE COURT: RE-START THAT FROM THE BEGINNING, MS.
20 BURKE.

21 MS. BURKE: YES, MA'AM.

22 THE COURT: DO YOU HAVE ANY IDEA HOW LONG, YOU WANT TO
23 RUN THE WHOLE THING AND HAVE HER LOOK AT IT.

24 MS. BURKE: YES, MA'AM.

25 THE COURT: THAT'S FINE.

1 MS. BURKE: TO THE EXTENT THAT THE WITNESS DECIDES TO
2 STOP ME AND SHOW ME THE EVIDENCE OF WHAT SHE'S TALKING
3 ABOUT.

4 THE COURT: OKAY. WE'RE GOING TO GO AHEAD AND JUST
5 TAKE A VERY BRIEF RECESS. IT IS ABOUT 5 MINUTES TO 5:00.
6 SO I'M GOING TO STEP DOWN FOR ABOUT 5 MINUTES. WHEN WE
7 COME BACK, DR. NOLAN, YOU CAN BRING IT UP CLOSER UP TO HER
8 SO SHE CAN SEE IT. OKAY. WE'RE GOING TO TAKE A 5-MINUTE
9 RECESS AND WE'LL BE BACK.

10 (A RECESS WAS TAKEN.)

11 THE COURT: DR. NOLAN, I'M GOING TO COME STAND AROUND
12 THE SIDE OF YOU TOO. OKAY?

13 DR. NOLAN: OKAY.

14 (PAUSE.)

15 THE COURT: WHAT I'M ASSUMING -- AND I DON'T KNOW THIS
16 FOR A FACT, BUT I'M ASSUMING, DR. NOLAN IS GOING TO PICK
17 OUT AND SHOW US IN GENERAL JUST SOME -- I'M ASSUMING
18 SOMETHING, CHARACTERISTICS OR SOMETHING IN REGARDS TO ---

19 MR. MACLOSKIE: WOULDN'T IT BE APPROPRIATE TO SEE IF
20 SHE COULD DO THAT FIRST?

21 THE COURT: CERTAINLY YOU CAN ASK HER.

22 MR. MACLOSKIE: DOES SHE HAVE TO LOOK AT THE WHOLE
23 THING?

24 MS. BURKE: I PREFER TO PROCEED UNDER THE STRATEGY I
25 HAVE, WHICH I BELIEVE, WHICH I ASK A SERIES OF QUESTIONS AS

1 TO WHAT SHE ANTICIPATES SEEING OR WHAT SHE THOUGHT SHE SAW.

2 (PAUSE.)

3 Q CAN YOU SEE IT, MA'AM?

4 A THERE'S A GLARE ON IT.

5 Q DO YOU WANT ME TO PUT IT HERE?

6 A NO. THAT'S FINE.

7 (VIDEO WAS PLAYED IN OPEN COURT.)

8 REPORTER: I CAN'T GET YOUR TALKING AT THE SAME TIME
9 THE VIDEO IS PLAYED. IT'S LIKE 2 PEOPLE TALKING AT THE
10 SAME TIME.

11 THE COURT: WE NEED TO JUST STOP IT SO SHE CAN HEAR.

12 Q ALL RIGHT. MS. (SIC) NOLAN, YOU WERE SPEAKING ABOUT
13 SOMETHING YOU SAW ON THE VIDEO?

14 A I WAS SAYING, FIRST OF ALL WHEN SHE COMES IN, SHE'S
15 LOOKING ALL OVER. WHEN HE'S TALKING TO HER, IT'S LIKE
16 SHE'S NOT EVEN REALIZING WHAT SHE'S THERE FOR.

17 THEN SHE -- SHE NEVER MEETS HIS EYES. SHE'S ALWAYS
18 LOOKING AROUND LIKE SHE'S NOT REALLY IN THE SITUATION. SHE
19 JUMPS FROM ONE SUBJECT TO ANOTHER -- FLIGHTS OF IDEAS WE
20 CALL THAT, WHICH IS NOT NORMAL.

21 Q OKAY. SO WHEN HE ASKS HER A QUESTION AND WHEN HE
22 JUMPS FROM ONE SUBJECT TO ANOTHER, YOU ATTRIBUTE THAT TO
23 HER DOING THAT OR HIM LEADING HER FROM ONE SUBJECT TO
24 ANOTHER?

25 A NO. SHE OFTEN TAKES OFF ON WHAT HE SAYS ---

1 Q OKAY.

2 A --- AND GOES ON -- DO YOU WANT TO START IT AGAIN?

3 Q YES.

4 (VIDEO WAS PLAYED IN OPEN COURT.)

5 A I WISH WE COULD SEE HER FACE BETTER, BECAUSE THAT'S
6 WHAT REALLY CLUES YOU IN.

7 (VIDEO WAS PLAYED IN OPEN COURT.)

8 A I DON'T THINK SHE HAD ANY IDEA WHAT SHE WAS SAYING
9 THERE.

10 (VIDEO WAS PLAYED IN OPEN COURT.)

11 A WHY DID SHE ASK FOR THE DATE AND TIME? MOST PEOPLE
12 WOULD KNOW THAT.

13 (VIDEO WAS PLAYED IN OPEN COURT.)

14 A THE GIDDINESS IS ALSO PART OF THE EFFECTS OF THE DRUG.

15 (VIDEO WAS PLAYED IN OPEN COURT.)

16 A IF YOU'RE BROUGHT TO A POLICE STATION FOR AN
17 INTERROGATION AND YOU ACT LIKE THIS, YOU'RE NOT REALLY
18 AWARE OF WHAT YOU'RE BEING BROUGHT THERE FOR. SHE'S NOT
19 BEING SERIOUS ABOUT THE WHOLE SITUATION, BECAUSE SHE'S
20 UNDER THE EFFECTS OF THAT CLONIPIN AND THE DRINKING.

21 (VIDEO WAS PLAYED IN OPEN COURT.)

22 A AGAIN, SHE GOES OFF ---

23 (VIDEO WAS PLAYED IN OPEN COURT.)

24 A DO YOU SEE HOW SHE LOOKS AROUND LIKE THIS, LIKE SHE'S
25 NOT REALLY THERE.

1 (VIDEO WAS PLAYED IN OPEN COURT.)

2 A SHE CONSTANTLY HAS THIS SEMI-SMILE ON HER FACE AS
3 WELL.

4 (VIDEO WAS PLAYED IN OPEN COURT.)

5 A IT'S MORE TOWARD THE END WHEN HE GETS HER TO ADMIT
6 THAT YOU CAN REALLY SEE THAT SHE'S NOT AWARE OF WHAT'S
7 GOING ON. I DON'T KNOW IF YOU WANT TO PLAY THE WHOLE
8 THING.

9 THE COURT: LET'S GO AHEAD. I'M GUESSING IT'S THE LAST
10 10 MINUTES OR SO, DR. NOLAN; IS THAT CORRECT? OKAY.

11 (VIDEO WAS PLAYED IN OPEN COURT.)

12 A SHE HAS NO IDEA WHAT HAPPENED THAT NIGHT. SHE'S JUST
13 TRYING TO AGREE WITH HIM.

14 (VIDEO WAS PLAYED IN OPEN COURT.)

15 A SHE HAS NO IDEA WHAT'S GOING ON HERE.

16 Q AND YOU SAY SHE HAS NO IDEA BECAUSE -- WHAT DO YOU SEE
17 IN THIS MS. (SIC) NOLAN -- DR. NOLAN?

18 A IN HER -- HER FACIAL EXPRESSION WHEN HE TELLS HER TO
19 SAY SOMETHING, SHE GOES, YES, THAT'S IT. IF SHE REALIZED
20 WHAT SHE WAS SAYING, SHE WOULD NEVER HAVE ADMITTED TO
21 SOMETHING LIKE THAT. I THINK SHE WAS TRYING TO PLEASE HIM
22 AND AGREE WITH HIM.

23 Q AND THAT'S A SIDE EFFECT OF THE DRUG TO PLEASING
24 SOMEONE?

25 A WELL, SHE'S -- THAT'S A SIDE EFFECT OF HER

1 PERSONALITY. SHE'S A PEOPLE PLEASER. SHE'S GOT VERY LOW
2 SELF-ESTEEM, AND SHE WILL AGREE WITH ANYTHING. SHE WANTS
3 PEOPLE TO LIKE HER.

4 Q SO NOW IT'S NOT THE DRUG, IS ---

5 A NO.

6 Q --- WHAT YOU'RE SAYING?

7 A I JUST DON'T THINK SHE REMEMBERS ANY OF THIS BECAUSE
8 SHE'S NOT FOCUSED. SHE'S NOT IN FULL -- SHE DOESN'T HAVE
9 HER FULL FACULTIES THERE. YOU CAN SEE IT IN HER ACTIONS.

10 Q AGAIN, WHAT IS THE ACTION THAT YOU'RE SAYING?

11 A IN -- IN -- IN THE WAY HER BODY LANGUAGE IS ALL
12 THE WAY THROUGH THIS. SHE HAS NO IDEA SHE'S BEEN BROUGHT
13 THERE ---

14 Q WHAT'S BODY ---

15 A THE ---

16 Q --- LANGUAGE?

17 A THE -- WELL, FOR ONE THING, THE SWITCHING BACK AND
18 FORTH, LIKE SHE'S A LITTLE GIRL, LIKE SHE'S NOT REALLY
19 PAYING ATTENTION TO WHAT HE'S SAYING UNTIL HE ACTUALLY
20 ACCUSES HER OF THIS IN THE LAST PART OF IT.

21 Q OKAY.

22 A AND THEN SHE GETS TERRIBLY -- THEN SHE STARTS TO
23 FOCUS.

24 Q OKAY. IS THERE ANY OTHER ASPECT OF THIS? YOU SAID
25 YOU SAW THIS 2 DAYS AGO?

1 A YES.

2 Q IS THIS FRESH IN YOUR MIND?

3 A WELL, I ONLY SAW IT ONCE.

4 THE COURT: LET'S SEE THE REST OF IT, BECAUSE THIS IS
5 TOWARD THE END. I MEAN, THIS IS PRETTY MUCH WHERE SHE
6 GIVES HER STATEMENT. SO WHY DON'T WE GO AHEAD AND LET THE
7 DOCTOR CONTINUE.

8 (VIDEO WAS PLAYED IN OPEN COURT.)

9 A SHE'S SAYING I PROBABLY. SHE'S MAKING THIS UP AS SHE
10 GOES ALONG.

11 (VIDEO WAS PLAYED IN OPEN COURT.)

12 A I DON'T THINK SHE REMEMBERS ANYTHING. I THINK SHE'S
13 DOING THIS BECAUSE HE'S PUSHING THE ISSUE. SHE'S GOING TO
14 TELL HIM WHATEVER HE WANTS TO HEAR, AND THAT'S WHAT YOU
15 WOULD DO IF YOU WEREN'T QUITE FOCUSED OR UNABLE TO
16 CONCENTRATE.

17 (VIDEO WAS PLAYED IN OPEN COURT.)

18 A IF YOU WATCH HER BODY LANGUAGE, THE MORE HE TALKS, THE
19 MORE HE'S CONVINCED HER THAT THIS HAS HAPPENED. SHE'S
20 ALREADY SAID SHE CAN'T REMEMBER WHAT HAPPENED THAT NIGHT,
21 THAT SHE'D HAD A LOT TO DRINK AND SHE COULDN'T REMEMBER A
22 THING. AND NOW HE'S TELLING HER, WELL, THIS IS WHAT
23 HAPPENED AND SHE'S SAYING, YEAH, IT COULD HAVE HAPPENED.
24 BUT I DON'T BELIEVE SHE EVEN KNEW WHAT SHE WAS SAYING AT
25 THE TIME. SHE JUST WANTED TO PLEASE HIM.

1 Q YOU HAVE NO EVIDENCE THAT SHE WAS JUST LYING, RIGHT?

2 A NO.

3 Q OKAY.

4 (VIDEO WAS PLAYED IN OPEN COURT.)

5 A DO YOU KNOW WHAT A BLACK OUT IS?

6 Q GO AHEAD AND TELL THE COURT IF YOU WANT TO SAY
7 SOMETHING.

8 A I'M SORRY. A BLACK OUT IS WHEN YOU ENGAGE IN SOME
9 BEHAVIOR AND YOU POSITIVELY CANNOT REMEMBER IT THE NEXT DAY
10 WHEN YOU'RE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS. AND I
11 DON'T THINK SHE REMEMBERED ANYTHING EXCEPT WHAT HE TOLD HER
12 HAS HAPPENED. AND SO SHE -- AS HE PUSHES MORE, SHE STARTS
13 TO SAY ANYTHING SHE CAN THINK OF. IT MUST HAVE HAPPENED
14 BECAUSE YOU SAID HE DID IT BEFORE TO SOMEBODY ELSE. IT
15 MUST HAVE HAPPENED; THAT'S WHAT'S GOING THROUGH HER MIND.
16 BUT I DON'T THINK SHE WAS COGNIZANT OF WHAT SHE WAS SAYING.

17 Q YOU DIDN'T MENTION ANYTHING ABOUT A BLACKOUT IN YOUR
18 REPORT; IS THAT CORRECT?

19 A NO. BUT I WOULD ASSUME THAT IF SHE WAS DRINKING
20 HEAVILY -- AND SHE HAD BEEN OVER A NUMBER OF YEARS -- THAT
21 SHE'S PROBABLY EXPERIENCED BLACKOUTS MANY TIMES.

22 Q DID YOU ASK HER ABOUT THAT DURING YOUR EVALUATION?

23 A NO.

24 Q OKAY.

25 (VIDEO WAS PLAYED IN OPEN COURT.)

1 THE COURT: IS THIS WHERE IT GOES ONTO THE NEXT PART?

2 MS. BURKE: YES.

3 THE COURT: LET'S GO AHEAD. THAT'S JUST 10 MORE
4 MINUTES.

5 (VIDEO WAS PLAYED IN OPEN COURT.)

6 A SHE'S NOT AWARE OF WHAT SHE'S SAYING RIGHT NOW. SHE'S
7 STILL UNDER THE INFLUENCE OF WHAT SHE HAD THE NIGHT BEFORE.

8 Q THE ALCOHOL, MA'AM?

9 A ALCOHOL AND THE DRUGS, THE COMBINATION. CLONIPIN IS
10 INTENSIFIED BY ALCOHOL.

11 (VIDEO WAS PLAYED IN OPEN COURT.)

12 Q AT THIS POINT THE DEFENDANT IS SAYING STATEMENTS THAT
13 THE OFFICER DID NOT MAKE UP. HOW DO YOU RECONCILE THAT
14 WITH HER BLACKOUT?

15 A WITH HER BLACKOUT?

16 Q YES, MA'AM.

17 A AS I SAID, SHE'S TRYING TO PLEASE HIM, TRYING TO
18 REMEMBER ANY FRAGMENT THAT SHE CAN FROM THAT EVENING.

19 Q RIGHT.

20 A BUT I DON'T THINK SHE TRULY REMEMBERS ANYTHING THAT
21 HAPPENED THAT EVENING EXCEPT BITS AND PIECES.

22 Q RIGHT. HER TESTIMONY TO YOU IN YOUR EVALUATION WAS
23 THAT SHE DOES NOT REMEMBER ANYTHING AFTER THE ALCOHOL; IS
24 THAT CORRECT, ANYTHING AT ALL FROM THAT NIGHT BESIDES ---

25 A SHE SAID SHE CAN'T REMEMBER. SHE COULDN'T REMEMBER

1 MOST OF THE NIGHT.

2 Q OKAY. AND SO IF SHE'S MAKING STATEMENTS THAT THE
3 OFFICER HAS NOT BROUGHT UP AND THOSE STATEMENTS ARE
4 CONSISTENT WITH OTHER WITNESSES, HOW DO YOU RECONCILE THAT
5 WITH HER BLACKOUT?

6 A YOU CAN REMEMBER BITS AND PIECES WHEN YOU HAVE
7 BLACKOUTS. YOU CAN REMEMBER MAYBE YOU STOOD ON THE TABLE,
8 BUT YOU DON'T REMEMBER THAT YOU FELL OFF.

9 Q OKAY.

10 (VIDEO WAS PLAYED IN OPEN COURT.)

11 A RIGHT THERE.

12 Q GO AHEAD, DOCTOR.

13 A WHEN HE ASKED HER A QUESTION AND -- COULD WE BACK IT
14 UP? CAN YOU BACK IT UP?

15 Q SURE. IF YOU WANT TO SAY WHAT YOU'RE ---

16 THE COURT: WHAT ARE WE LOOKING FOR?

17 A RIGHT HERE WHERE HE'S -- JUST ABOUT 5 MINUTES OR SO.

18 THE COURT: OKAY.

19 A NOT 5.

20 Q BEFORE OR AFTER SHE SAID SHE REMEMBER HIM EJACULATING?

21 A AFTER.

22 Q OKAY.

23 A RIGHT HERE. SHE ASKED HIM TO REPEAT IT BECAUSE SHE
24 DIDN'T UNDERSTAND WHAT HE SAID.

25 (VIDEO WAS PLAYED IN OPEN COURT.)

1 A WHEN SOMEONE IS USING CLONIPIN -- AS I SAID, WHEN
2 SOMEONE IS USING CLONIPIN, THEY'RE VERY CALM. AND SHE'S
3 CONFESSING TO A TERRIBLE CRIME VERY CALMLY LIKE IT'S
4 NOTHING; AND THAT'S WHY I FEEL SHE'S STILL UNDER THE
5 INFLUENCE OF THAT DRUG. SHE -- SHE DOESN'T ACT AS IF SHE
6 KNOWS WHAT SHE'S EVEN BEING CHARGED WITH OR SHE WOULDN'T
7 HAVE -- I WOULD THINK THAT ANYBODY IF SHE'S GUILTY, ANYBODY
8 IN THAT POSITION WOULD HAVE ASKED FOR AN ATTORNEY A LONG
9 TIME AGO IF THEY WERE COGNIZANT OF WHAT WAS GOING ON, BUT
10 SHE WASN'T.

11 Q IF SHE DID NOT KNOW WHAT WAS GOING ON, DO YOU THINK
12 SHE WOULD HAVE ALSO STOPPED AND WALKED OUT?

13 A I'M SORRY. SAY THAT AGAIN?

14 Q IF SHE WAS NOT COGNIZANT OF WHAT WAS GOING ON,
15 CONFUSED, DAZED, OR NOT UNDERSTANDING WHAT WAS HAPPENING,
16 WOULD YOU HAVE EXPECTED FOR HER TO JUST STOP EVERYTHING AND
17 WALK OUT?

18 A NOT -- NOT MRS. TAPPEINER, NO.

19 Q OKAY.

20 A SHE IS -- SHE WANTS TO PLEASE EVERYBODY. IF YOU ASK
21 HER TO STAND ON HER HEAD, SHE WOULD. SHE'S JUST A PEOPLE
22 PLEASER. ANYBODY THAT ASKS HER TO DO ANYTHING, SHE WOULD
23 AGREE WITH THEM IN ORDER TO PLEASE THEM.

24 Q OKAY. I ASKED YOU A SECOND AGO JUST BEFORE WE --
25 BEFORE WE PUT THE AUDIO BACK ON THAT IN YOUR REPORT IT SAYS

1 THAT SHE STATED THAT SHE FELL ASLEEP AND DOES NOT REMEMBER
2 ANYTHING AFTER THAT. AND THAT IS ON PAGE -- PAGE 3 OF YOUR
3 REPORT. YOU CAN CLARIFY WHAT YOUR UNDERSTANDING IS OF WHAT
4 THE DEFENDANT TOLD YOU IN TERMS OF HER NOT REMEMBERING
5 ANYTHING AFTER THAT? WHAT WAS THE THAT?

6 A SHE SAID SHE FELL ASLEEP AND DIDN'T REMEMBER ANYTHING
7 AFTER SHE FELL ASLEEP.

8 Q RIGHT. AFTER THE MOVIE? AFTER DINNER? AFTER ---

9 A AFTER SHE FELL ASLEEP.

10 Q OKAY. WHAT TIME DID SHE FALL ASLEEP, DID SHE TELL
11 YOU?

12 A NO.

13 Q OKAY.

14 (VIDEO WAS PLAYED IN OPEN COURT.)

15 A SHE'S TRYING TO RECALL HERE. SHE'S NOT SURE, BUT
16 SHE'S TRYING TO RECALL.

17 (VIDEO WAS PLAYED IN OPEN COURT.)

18 A SHE'S NOT -- SHE'S NOT THERE. SHE'S NOT TOTALLY
19 THERE.

20 (VIDEO WAS PLAYED IN OPEN COURT.)

21 A BECAUSE SHE CAN'T REMEMBER, REALLY.

22 (VIDEO WAS PLAYED IN OPEN COURT.)

23 A I THINK I WOULD HAVE CONFESSED TO SOMETHING RIGHT
24 THERE. HE'S LEADING HER INTO SAYING WHAT HE WANTS HER TO
25 SAY, AND SHE'S NOT REALLY FOCUSED ON WHAT SHE'S DOING. AND

1 THIS COMES FROM 29 YEARS OF INTERVIEWING OFFENDERS. I
2 CAN'T TELL SPECIFICALLY HOW I KNOW, BUT I KNOW THAT SHE'S
3 NOT COGNIZANT OF WHAT SHE'S SAYING THERE.

4 Q IS THAT A MEDICAL STANDARD, MA'AM? I CAN'T TELL YOU
5 HOW I KNOW?

6 A IF YOU HAVE 29 YEARS OF EXPERIENCE INTERVIEWING SEX
7 OFFENDERS AND DUI OFFENDERS AND MURDERERS, YES, IT IS.

8 Q AND YOU SAID BEFORE YOU HAVE NO WAY OF KNOWING IF
9 SHE'S LYING; IS THAT CORRECT?

10 A NOT WITHOUT A POLYGRAPH, NO. I'M NOT SAYING SHE'S
11 LYING. I'M SAYING SHE'S NOT AWARE OF WHAT SHE'S SAYING
12 BECAUSE SHE'S STILL UNDER THE INFLUENCE.

13 (VIDEO WAS PLAYED IN OPEN COURT.)

14 A THERE'S NOT MUCH LEFT.

15 THE COURT: OKAY.

16 (PAUSE.)

17 Q ALL RIGHT. THANK YOU VERY MUCH, DR. NOLAN. DID YOU
18 EVER SEE A PRESCRIPTION FOR THE DRUG THAT MRS. TAPPEINER
19 SAID SHE WAS TAKING THAT NIGHT?

20 A NO.

21 Q DID YOU EVER SEE A PRESCRIPTION FOR THE DRUG SHE
22 CLAIMED SHE TOOK THE DAY OF THE INTERVIEW?

23 A NO, SHE WOULD NOT HAVE BROUGHT THAT WITH HER.

24 Q DID YOU ASK FOR IT TO VERIFY THAT SHE WAS INDEED
25 PRESCRIBED THAT?

1 A NO. BUT I'M SURE THAT CONTACTING HER DOCTOR WE COULD
2 FIND OUT.

3 MS. BURKE: OKAY. NO FURTHER QUESTIONS, YOUR HONOR.
4 THANK YOU.

5 THE COURT: ANY REDIRECT?

6 MR. MACLOSKIE: REDIRECT BRIEFLY.

7 THE COURT: YES, SIR.

8 REDIRECT EXAMINATION BY MR. MACLOSKIE:

9 Q DR. NOLAN, IN YOUR REPORT YOU STATE AS FOLLOWS: IN
10 THIS EVALUATOR'S OPINION, MRS. TAPPEINER WAS NOT CONSCIOUS
11 OF WHAT SHE WAS SAYING AT THE TIME OF HER INTERROGATION.
12 YOU ALSO SAY IN YOUR REPORT, I HAVE NO DOUBT THAT SHE WAS
13 IN A MEDICATED STATE WHEN SHE WAS CALLED IN AND QUESTIONED
14 BY THE POLICE ABOUT THE ALLEGED INCIDENT.

15 ARE THOSE OPINIONS IN YOUR REPORT AND THE OPINIONS
16 YOU'VE GIVEN HERE TODAY UNDER OATH WITHIN A REASONABLE
17 DEGREE OF PROFESSIONAL CERTAINTY?

18 A YES, SIR.

19 MR. MACLOSKIE: THANK YOU, MA'AM.

20 MS. BURKE: NO REDIRECT (SIC), YOUR HONOR.

21 THE COURT: DR. NOLAN, I WANT TO ASK YOU A QUESTION.
22 IT IS THROUGHOUT THE INTERVIEW WHEN SHE WOULD SAY SOMETHING
23 ABOUT THE INCIDENT, SHE WOULD ALWAYS USE A QUALIFIER LIKE
24 PROBABLY OR I THINK OR SOMETHING ALONG THOSE LINES. DO YOU
25 ATTACH ANY SIGNIFICANCE TO THAT?

1 DR. NOLAN: YES, BECAUSE IF I ACTUALLY DID SOMETHING,
2 I WOULD SAY, YES, I DID THIS. SHE WAS SAYING, I PROBABLY
3 DID THAT. I GUESS I MUST HAVE. IT IS ALMOST LIKE IF YOU
4 SAY I DID, THEN I'M GOING TO AGREE WITH YOU. AND THAT'S
5 NOT SOMETHING THAT A PERSON WHO IS IN TOTAL CONTROL OF
6 THEIR FACULTIES WOULD DO.

7 THE COURT: DR. NOLAN, ALSO, HOW DO YOU RECONCILE --
8 AND I BELIEVE MS. BURKE ASKED YOU THIS. HOW DO YOU
9 RECONCILE SOME OF THE FACTS OR SOME OF THE THINGS THAT SHE
10 SUGGESTED THAT THE OFFICER HADN'T SUGGESTED? FOR INSTANCE,
11 THE QUESTION OF, DID HE EJACULATE IN YOU?

12 AND SHE SAID, NO.

13 AND THEN, WERE YOU ON TOP OR ON BOTTOM?

14 AND SHE SAID, NO. NO. HE WAS ON TOP.

15 HOW DO YOU -- HOW DO YOU PARCEL OUT THAT WHERE IT
16 SEEMS LIKE THOSE FACTS ARE COMING FROM HER AND NOT FROM THE
17 PERSON INTERVIEWING HER?

18 DR. NOLAN: I BELIEVE HE ASKED HER WERE YOU ON TOP AND
19 SHE SAID, NO. WOULD YOU -- WOULD YOU ---

20 THE COURT: SPECIFICALLY WE JUST SAW, ONE OF THE
21 THINGS HE ASKED WAS, WERE YOU ON TOP?

22 AND SHE SAID, NO. NO. NO. HE WAS ON TOP -- IS HOW
23 IT WAS COUCHED, AT LEAST IN THE VIDEO, THAT'S WHAT IT SAID.

24 DR. NOLAN: I THINK BECAUSE SHE'S NOT A VERY
25 AGGRESSIVE PERSON. SHE'S VERY PASSIVE. AND I THINK SHE

1 PROBABLY FELT, WELL, THAT'S THE WAY IT HAD TO BE.

2 THE COURT: OKAY.

3 DR. NOLAN: BECAUSE I WOULDN'T HAVE DONE THAT.

4 THE COURT: YOU DON'T THINK SHE WAS TRYING TO DIMINISH
5 HER ROLE IN IT? I GUESS JUST WITH THE ASSUMPTION THAT THE
6 PERSON THAT WAS ON TOP WOULD BE THE AGGRESSOR. I MEAN, YOU
7 DON'T THINK IT HAS ANY TENDENCIES TOWARDS THAT?

8 DR. NOLAN: NO, I DON'T.

9 THE COURT: OKAY. ANYTHING FURTHER?

10 MS. BURKE: NOTHING FURTHER, YOUR HONOR.

11 THE COURT: ALL RIGHT. DOCTOR, YOU MAY STEP DOWN.

12 (THE WITNESS LEAVES THE WITNESS STAND.)

13 MR. MACLOSKIE: MAY WE EXCUSE DR. NOLAN?

14 THE COURT: ANY OBJECTION?

15 MS. BURKE: NO, YOUR HONOR.

16 THE COURT: ALL RIGHT. DR. NOLAN, YOU ARE EXCUSED,
17 MA'AM.

18 DR. NOLAN: THANK YOU.

19 THE COURT: THANK YOU.

20 MR. MACLOSKIE: YOUR HONOR, PLEASE. THAT'S ALL THE
21 EVIDENCE WE HAVE TO PRESENT AT THIS HEARING.

22 THE COURT: OKAY.

23 MR. MACLOSKIE: AND WE WOULD NOW MOVE THAT THE
24 STATEMENTS OF MRS. TAPPEINER AND ANY PHYSICAL EVIDENCE BE
25 EXCLUDED FROM THE TRIAL OF THIS CASE. I THINK WE'VE MET

1 OUR BURDEN. THAT BURDEN IS THE PREPONDERANCE OF THE
2 EVIDENCE AND THE STATE HAS NOT.

3 THE COURT: MS. BURKE?

4 MS. BURKE: YOUR HONOR, I PRESUME MR. MACLOSKIE IS
5 TALKING ABOUT THE PANTIES AND THE DRESS. I WASN'T SURE
6 WHEN HE SAID PHYSICAL EVIDENCE WHAT HE ---

7 THE COURT: HE MEANT THE VIDEO STATEMENT.

8 MR. MACLOSKIE: YES.

9 MS. BURKE: OH, OKAY. WHEN HE SAID PHYSICAL EVIDENCE,
10 I WASN'T SURE.

11 MR. MACLOSKIE: UNLESS THERE'S SOME SIGNED STATEMENT
12 INSIDE THE PANTIES OR THE DRESS.

13 MS. BURKE: I JUST WANTED TO MAKE SURE WHAT YOU'RE
14 ASKING.

15 OBVIOUSLY, YOUR HONOR, WE HAVE TO DECIDE WHETHER OR
16 NOT MRS. TAPPEINER, THE DEFENDANT'S WILL WAS OVERBORNE BY
17 THE SITUATION AT THE HOUSE, THE SITUATION THAT WE SAW IN
18 THE VIDEO.

19 THE STANDARD, YES, IS PREPONDERANCE OF THE EVIDENCE.
20 AND ANY APPELLATE REVIEW WOULD BE BASED ON -- THE COURT
21 WOULD BE LOOKING AT WHETHER OR NOT THERE WAS ANY EVIDENCE
22 TO SUBSTANTIATE YOUR RULING UNDER STATE V. MILLER.

23 AND IN DECIDING WHETHER OR NOT SHE DID NOT HAVE FREE
24 WILL OR HER WILL, THE COURT WILL LOOK AT THE TOTALITY OF
25 THE CIRCUMSTANCES.

1 AND HERE, YOU KNOW, THE PROOF IS IN THE PUDDING. THIS
2 VIDEO IS -- IS PRETTY EXPLICIT AS TO THE CONTROL THAT MRS.
3 TAPPEINER HAD OF HER FACULTIES, OF HER EMOTION, OF THE
4 WORDS THAT SHE CHOSE TO SPEAK. THIS INTERVIEW OCCURRED AT
5 2:40 IN THE AFTERNOON. SHE WAS AT WORK AT THE TIME THAT
6 LAW ENFORCEMENT CALLED HER. SHE CERTAINLY HAS THE ABILITY
7 TO HAVE A JOB AND, YOU KNOW, PRESUMABLY SHE WAS ON DRUGS.
8 SHE WAS ON DRUGS AND WAS AT WORK AND WAS FUNCTIONING FINE.

9 SHE IS A 42 YEAR OLD WOMAN, 117 POUNDS. THERE'S NO
10 INDICATION FROM THE VIDEO THAT SHE STUMBLED, THAT SHE
11 SLURRED IN TERMS OF HER SPEECH PATTERN.

12 SERGEANT GONZALES AS YOU SAW IN THE VIDEO WAS PRETTY
13 MUCH CLOSE UP TO HER. HE DID NOT SMELL ANY ALCOHOL ON HER
14 PERSON.

15 DR. NOLAN'S TESTIMONY IS THAT THE ALCOHOL WOULD HAVE
16 INFLUENCED HER TO A GREAT DEAL THE DAY AFTER AT 2:40 IN THE
17 AFTERNOON. CERTAINLY, THERE MIGHT BE PSYCHOLOGICAL IMPACTS
18 OF ALCOHOL, BUT CERTAINLY SMELLING IT IF YOU HAD THAT MANY.
19 I THINK DR. NOLAN'S TESTIMONY IS THAT SHE DRINKS HERSELF TO
20 SLEEP.

21 I PRESUME SINCE DR. NOLAN SAYS THAT SHE THINKS SHE'S
22 AN ALCOHOLIC, THAT THAT WOULD INCLUDE MORE THAN ONE DRINK
23 OF WINE.

24 THERE WAS NO EVIDENCE OF ALCOHOL IN TERMS OF THE --
25 THE ROOM, AGAIN, IS THE STANDARD ROOM THAT SHE WAS

1 COMFORTABLE IN.

2 THE OFFICER LEFT A FEW TIMES, WHICH ALLOWED HER TO
3 TAKE A BREATHER IF SHE NEEDED THAT.

4 YOU KNOW, WE TALKED ABOUT THE SIDE EFFECTS OF THESE
5 DRUGS. AND, QUITE FRANKLY, YOU KNOW, I WAS SHOCKED TO HEAR
6 THE EXTENT OF DR. NOLAN'S TESTIMONY. THE FIRST TIME I'M
7 HEARING ABOUT THIS -- I STILL CAN'T PRONOUNCE IT.
8 CLONIPIN. I GUESS I'LL PRONOUNCE IT BETTER BY TOMORROW.
9 BUT IT'S NOWHERE IN HER REPORT, THIS 5-PAGE, 4-PAGE REPORT
10 THAT SHE DID 3 MONTHS BEFORE -- BEFORE -- THAT SHE OFFERED
11 HER REPORT 3 MONTHS AFTER MEETING WITH HER.

12 THERE'S NOWHERE IN THIS REPORT THAT THIS MOST
13 SIGNIFICANT DRUG THAT THE DEFENDANT WAS ALLEGEDLY ON WHEN
14 SHE WAS SO OVERBORNE AND SHE WAS SO SEDATED, QUOTE,
15 UNQUOTE.

16 AND LOOKING AT THAT DRUG, THE SIDE EFFECTS, BALANCE
17 AND COORDINATION, SLEEP PROBLEMS, AMNESIA, FORGETFULNESS,
18 FAINT, SEIZURES -- I DON'T SEE ANY OF THAT, YOUR HONOR.

19 QUITE FRANKLY, DR. NOLAN DID NOT POINT OUT ANY OF THAT
20 DURING HER REVIEW OF THE TESTIMONY. AND, YOU KNOW, I KNOW
21 THAT THE DEFENSE MAY NOT HAVE WANTED TO GO THROUGH THE TIME
22 TODAY TO LISTEN TO THAT, BUT I THINK WE -- WE -- IT WAS A
23 GOOD EXERCISE CONSIDERING THE FACT THAT WAS THE FIRST TIME
24 THAT SHE SEEN IT IN A MATTER OF 2 DAYS.

25 SO I'M NOT SURE FOR A PERSON WHO'S BEEN ON A DRUG FOR

1 30 YEARS -- 30 YEARS, WHO HAS A PLACE OF EMPLOYMENT, WHO IS
2 SELF-EMPLOYED WITH -- I PRESUME WITH A THRIVING BUSINESS,
3 AT LEAST THRIVING ENOUGH THAT IT CAN MOVE INTO THE SHOPS AT
4 -- CLOSE BY TO BONEFISH GRILL, WHICH IS A RATHER LUCRATIVE
5 SHOPPING CENTER. SO 20 YEARS IN A SUCCESSFUL -- 30 YEARS
6 IN A SUCCESSFUL LIFE AND TAKING THIS DRUG AND ALL OF A
7 SUDDEN -- ALL OF A SUDDEN SHE CAN'T FUNCTION.

8 WHAT HAPPENED? THERE'S NO TESTIMONY THAT HER
9 MEDICATION WAS SPIKED IN THE LAST COUPLE OF YEARS OR MONTHS
10 OR DAYS, NOTHING OF THAT NATURE. BY ALL ACCOUNTS FROM DR.
11 NOLAN, SHE'D BEEN DOING THE SAME THING FOR SEVERAL MONTHS
12 OR YEARS, DRINKING AND TAKING DRUGS. DRINKING AND TAKING
13 DRUGS -- WHATEVER THOSE DRUGS WERE.

14 AND SO SHE WOULD BE CLASSIFIED PRESUMABLY AS A
15 FUNCTIONING DRUG OR ALCOHOL USER. AND THAT IS EXACTLY WHAT
16 WE SAW. WE SAW NO EVIDENCE -- NO EVIDENCE, YOUR HONOR, OF
17 WHAT A LAY WITNESS WOULD SEE AS SOMEONE WHO IS OUTSIDE OF
18 THEIR FACULTY.

19 YOU KNOW, WITH ALL DUE RESPECT TO THE DOCTOR, YOU
20 KNOW, THE ADAGE OF I KNOW IT WHEN I SEE IT, YOU KNOW, IT'S
21 NOT GOING TO FLY I THINK IN TERMS OF THE STANDARD THAT YOU
22 HAVE BEFORE YOU, YOUR HONOR, WHICH IS TO SAY, TO EVALUATE
23 MRS. TAPPEINER AND SEE IF THIS STATEMENT WAS VOLUNTARY.

24 SHE SIGNED THE MIRANDA FORM. SHE JOKED ABOUT, YOU
25 KNOW, GOING TO NASCAR. GOING TO MODELING. YOU KNOW, SHE

1 -- SHE WENT ON A LOT ABOUT HER PROFESSIONAL STATUS, ABOUT
2 THE GOOD THINGS ABOUT HERSELF.

3 DR. NOLAN'S STATEMENT REGARDING THE BLACKOUTS -- AND,
4 AGAIN, NOWHERE IN THIS 4, 5 PAGE REPORT DO WE SEE THE WORD
5 BLACKOUT.

6 WHEN THE OFFICER SAID, DID HE EJACULATE?

7 NO. NO. I MEAN, IT MADE ME JUMP SHE SAID IT SO LOUD;
8 THAT IS AN INDEPENDENT THOUGHT, INDEPENDENT MEMORY ASIDE
9 FROM THE ALLEGATION DR. NOLAN MIGHT BE SAYING THAT THE
10 OFFICER FED HER THIS INFORMATION.

11 THROUGHOUT THE VIDEO YOU SAW INDEPENDENT STATEMENTS BY
12 THE DEFENDANT THAT WAS -- THAT CAME BACK FROM HER OWN FREE
13 WILL; THAT SHE WAS NOT SPOON FED ANY LINES.

14 YOU KNOW, DR. NOLAN'S CRAFT AND HER FORTE IS OBVIOUSLY
15 IN THE PSYCHIATRIC FIELD, AND THAT'S FINE. BUT IN TERMS OF
16 INVESTIGATION AND LAW ENFORCEMENT, THERE -- THERE ARE A LOT
17 OF THINGS THAT DEFENDANTS DO AND DON'T DO WHEN THEY'RE
18 GUILTY, A LOT OF THINGS THAT PEOPLE SAY AND DON'T SAY WHEN
19 -- WHEN THEY'RE BEING ACCUSED OF A CRIME.

20 AND FOR ABOUT AN HOUR AND 10 MINUTES MRS. TAPPEINER
21 NEVER ONCE DENIED WHAT SHE WAS ACCUSED OF.

22 GOING BACK TO THE VOLUNTARINESS, YOUR HONOR, YOU KNOW,
23 STATE V. SAXON (PHONETIC) TELLS US THE FACT THAT SOMEONE
24 MIGHT BE INTOXICATED DOES NOT MEAN THAT THE STATEMENT IS
25 INADMISSIBLE. IT GOES TO THE WEIGHT AND CREDIBILITY IF

1 INDEED THEY'RE INTOXICATED. IT IS NOT BY ITSELF A REASON
2 TO THROW OUT A STATEMENT OR A CONFESSION.

3 AS TO MISREPRESENTATION, YOUR HONOR, IS AWARE THAT
4 THERE IS NOTHING ILLEGAL ABOUT MISREPRESENTING THE
5 CIRCUMSTANCES OF THE ALLEGATION TO A DEFENDANT. WHAT THE
6 STATE CANNOT DO IS MAKE PROMISES OF LENIENCY. WHAT THE
7 STATE CANNOT DO IS COERCE THEM OR THREATEN THEM IN ANY
8 MANNER.

9 AND EVEN THE CASE MR. MACLOSKIE PROVIDED TO THE COURT
10 IN CHAMBERS OR AT LEAST TALKED TO THE COURT ABOUT IN
11 CHAMBERS LAST WEEK, STATE V. DOUGLAS, A 2009 CASE -- JUNE
12 2009, THERE THE DEFENDANT, YOU KNOW, IN MY OPINION WAS -- I
13 MEAN, IT WASN'T THE COURT'S OPINION BUT IN READING THE --
14 THE -- THE CASE LAW, THE DEFENDANT WAS LIED TO ABOUT DNA.
15 HE WAS TOLD THAT HIS FAMILY MIGHT COME UNDER SOME KIND OF
16 THREAT OR -- OR -- OR INTIMIDATION IF HE DOES NOT MAKE
17 CERTAIN STATEMENTS.

18 HE WAS -- HE WAS TALKED ABOUT ALTHOUGH THE COURT
19 DIDN'T THINK THE OFFICER CROSSED THE LINE, BUT HE WAS --
20 THE DEFENDANT WAS TALKED ABOUT PERHAPS RECEIVING A DEATH
21 PENALTY. AND PERHAPS IF HE WAS COOPERATIVE, MAYBE HE'D GET
22 A LIFE SENTENCE.

23 THESE ARE THE KINDS OF THINGS THAT THE COURTS HAVE
24 LOOKED AT TO DECIDE WHETHER OR NOT THE STATEMENT WAS
25 VOLUNTARY, EVEN IN -- I SAID DOUGLAS, I MEANT GOODWIN.

1 STATE V. GOODWIN.

2 BUT EVEN IN GOODWIN, THE COURT STILL FOUND THAT THE
3 CONFESSION WAS VOLUNTARY.

4 AND SO WITH ALL THAT, YOUR HONOR, I THINK THAT -- I
5 THINK THE STATE HAS MET ITS BURDEN IN SHOWING THAT MRS.
6 TAPPEINER WAS INDEED AWARE OF WHAT SHE WAS SAYING, THAT SHE
7 KNOWINGLY AND VOLUNTARILY AND INTELLIGENTLY MADE THE
8 CONFESSION IN THIS CASE, AND THAT SHE WAS NOT DRUGGED OR
9 ANY -- OR UNDER ANY CONDITION THAT PREVENTED HER FROM
10 ARTICULATING WHAT SHE DID THAT NIGHT, WHICH IS TO SAY,
11 TAKING ADVANTAGE OF A 13 YEAR OLD BOY.

12 AND I WILL JUST POINT TO THE COURT THE ONE THING THAT
13 SHE SAID -- SHE SAID A LOT OF THINGS, BUT THE ONE THING
14 THAT RANG TRUE. I DON'T HAVE THE EXACT TIME. BUT SHE
15 SAID, HE'S AN INNOCENT BOY. THOSE WERE HER WORDS. HE'S AN
16 INNOCENT BOY.

17 THANK YOU.

18 THE COURT: ANYTHING FURTHER?

19 MR. MACLOSKIE: JUST BRIEFLY, YOUR HONOR. WE'RE NOT
20 HERE TO DETERMINE ANYTHING OTHER THAN WHETHER OR NOT THE
21 STATEMENTS MADE BY MRS. TAPPEINER IN THAT INTERVIEW MET THE
22 CONSTITUTIONAL STANDARD. AND IT HAS TO BE KNOWINGLY MADE,
23 IT HAS TO BE VOLUNTARILY MADE, AND IT HAS TO BE
24 UNDERSTANDABLY MADE.

25 DR. NOLAN'S TESTIMONY GOES TO ALL THREE OF THOSE

1 THINGS AND IT'S UNEQUIVOCAL. AND ON CROSS EXAMINATION SHE
2 DIDN'T BUDGE ONE INCH. AS A MATTER OF FACT, I THINK THEY
3 PROBABLY FORTIFIED HER POSITION. SHE DID NOT RETREAT FROM
4 THAT POSITION.

5 MY POINTING OUT THE GOODWIN CASE TO YOU IS I'M NOT
6 SURE -- WELL, I'LL PUT IT THIS WAY. I COULD NOT FIND A
7 CASE THAT COMBINED BOTH OF THESE, WHERE YOU HAVE THE
8 INFLUENCE OF SOMEONE UNDER THE INFLUENCE OF DRUGS AND AT
9 THE SAME TIME YOU HAVE THIS CONDUCT WHICH THE SUPREME COURT
10 AND THE COURT OF APPEALS WAS BOLD TO POINT OUT, THEY DO NOT
11 CONDONE. THIS IS THE ONLY CASE -- THIS IS THE FIRST TIME
12 I'VE SEEN A CASE LIKE THIS THAT COMBINES BOTH OF THEM.

13 THIS IS RATHER AN OBNOXIOUS WAY OF INTERVIEWING
14 SUSPECTS. AND BY THE WAY, SHE WAS NEVER TOLD SHE WAS A
15 SUSPECT. AND THE INFLUENCE THAT A FOREIGN SUBSTANCE LIKE
16 CLONIPIN OR SOME OTHER SUBSTANCE MIGHT HAVE HAD ON THE
17 INTERVIEW.

18 I THINK IT'S CLEAR THAT THE STATE HAS NOT ESTABLISHED
19 THEIR BURDEN OF PROOF SHOWING THIS COURT BY A PREPONDERANCE
20 OF THE EVIDENCE THAT THE STATEMENT WAS KNOWINGLY,
21 VOLUNTARILY, AND UNDERSTANDINGLY MADE. AND FOR THAT
22 REASON, I AGAIN MOVE THAT THE STATEMENTS BE SUPPRESSED.

23 AND I THANK YOU VERY MUCH FOR YOUR KINDNESS AND
24 PATIENCE.

25 THE COURT: OKAY. YOU ALL, I'M GOING TO SLEEP ON IT.

1 I'LL LET YOU ALL KNOW IN THE MORNING.

2 I THINK IN ADDITION TO YOU STATING THAT WE HAVE THE
3 DRUGS AND ALLEGEDLY THE ALCOHOL FROM THE NIGHT BEFORE STILL
4 HAVING AN EFFECT, AND THEN THE MANNER OF THE INTERVIEW, I
5 THINK YOU THROW ON TOP OF THAT THAT DR. NOLAN ALSO
6 TESTIFIED AS TO HER PERSONALITY, WHICH PRESUMABLY AS A
7 CLINICAL PSYCHOLOGIST SHE SAYS THAT MRS. TAPPEINER IS A
8 PLEASER. I THINK HER PERSONALITY ALSO LENDS INTO IT. AND
9 CERTAINLY DR. NOLAN TESTIFIED TO THAT.

10 AS YOU ALL KNOW, MOST OF THE PRECEDENTS IN THE CASE
11 LAW FINDS IN FAVOR OF VOLUNTARINESS.

12 AND I WOULD AGREE WITH YOU, MR. MACLOSKIE, THAT THERE
13 REALLY ISN'T ANY CASE LAW THAT IS SPECIFIC AS TO CERTAIN
14 FACTORS. WE ALWAYS LOOK AT THE TOTALITY OF THE
15 CIRCUMSTANCES, BUT THEY ARE SO FACT DRIVEN BY EACH CASE,
16 WHICH LEADS TO A DECISION.

17 SO WITH THAT SAID, YOU ALL, I THINK I AM GOING TO
18 SLEEP ON IT. I'LL PROBABLY WATCH THE VIDEO AGAIN TONIGHT
19 AND LOOK AT IT.

20 ADDITIONALLY, SOLICITOR, I NEED TO REVIEW THE SECOND
21 VIDEO TAPE IN THE HOLDING CELL; IS THAT CORRECT?

22 MS. BURKE: YES, YOUR HONOR.

23 THE COURT: OKAY. I'LL LOOK AT THAT AS WELL. MR.
24 MACLOSKIE, YOU'RE GOING TO LOOK AT THAT TONIGHT AS WELL.

25 MR. MACLOSKIE: YES, I AM.

1 THE COURT: OBVIOUSLY, YOU'RE GOING TO LOOK AT IT TO
2 MAKE SURE IT'S A FAIR AND ACCURATE REPRESENTATION SO YOU
3 CAN CERTAINLY LAY A FOUNDATION TO GET IT IN IF I DO FIND
4 IT'S VOLUNTARY..

5 JUST SO I'M CLEAR, THIS IS WHEN SHE WAS IN THE HOLDING
6 CELL. IS IT IN BLUFFTON OR IS IT AT BEAUFORT COUNTY?

7 SERGEANT GONZALES: IT'S IN BLUFFTON, MA'AM.

8 THE COURT: IT'S AT BLUFFTON. SO IT WAS RIGHT AFTER
9 SHE WAS ARRESTED; IS THAT CORRECT?

10 SERGEANT GONZALES: YES, MA'AM.

11 THE COURT: SO IS THAT JUST SIMULTANEOUS WITH --
12 OBVIOUSLY, WE DIDN'T SEE ON HERE YOU ARRESTING HER. SO I
13 WOULD PRESUME YOU LEFT THE ROOM. DID YOU COME BACK IN AND
14 THEN YOU PUT HER UNDER ARREST; IS THAT CORRECT?

15 SERGEANT GONZALES: YES, MA'AM.

16 THE COURT: AND THEN WITHIN HOW MANY MINUTES DID YOU
17 GO AHEAD AND PUT HER IN A HOLDING ---

18 SERGEANT GONZALES: A MINUTE.

19 THE COURT: OKAY. OKAY. ALL RIGHT. ANYTHING
20 FURTHER?

21 MS. BURKE: NO, YOUR HONOR, FROM THE STATE.

22 MR. MACLOSKIE: DO YOU WANT US BACK AT 10:00, I
23 BELIEVE? OR DO YOU WANT US BACK EARLIER?

24 THE COURT: I WOULD LIKE YOU ALL BACK AT 9:30. THE
25 JURY IS COMING BACK AT 10:00, AND SO WE'LL START AT 9:30.

1 AND THAT WAY I CAN TELL YOU WHAT I HAVE DETERMINED. AND
2 WE'LL START AT 10:00 O'CLOCK. OKAY. THANK YOU, YOU ALL.

3 (COURT IS IN RECESS.)

4 (TUESDAY, OCTOBER 27, 2009.)

5 THE COURT: GOOD MORNING.

6 MR. MACLOSKIE: GOOD MORNING. HOW ARE YOU?

7 THE COURT: I'M WELL, THANK YOU. HOPE YOU ALL ARE AS
8 WELL.

9 I WAS JUST BACK THERE LISTENING TO THE SECOND
10 INTERVIEW WHEN SHE WAS IN THE JAIL CELL.

11 MR. MACLOSKIE, YOU WERE GOING TO LISTEN TO IT OVER
12 NIGHT. MY OFFICER WAS GOING TO LISTEN TO IT OVER NIGHT.
13 I'M ASSUMING YOU CAN AUTHENTICATE IT?

14 SERGEANT GONZALES: YES, MA'AM.

15 THE COURT: OKAY. MR. MACLOSKIE, HAVE YOU HAD AN
16 OPPORTUNITY TO LISTEN TO IT?

17 MR. MACLOSKIE: YES, MA'AM, I HAVE. I LISTENED TO IT
18 LAST NIGHT AND AGAIN THIS MORNING. I FIND NOTHING OF ANY
19 EVIDENTIARY VALUE ON IT, EVEN THOUGH THERE ARE PORTIONS
20 THAT YOU CAN HEAR CLEARLY. AND WITHOUT THE ENTIRE CONTEXT
21 BEING AUDIBLE -- THAT IS UNDERSTANDABLY AUDIBLE, I WOULD
22 MOVE FOR ITS EXCLUSION ENTIRELY. IT HAS NO EVIDENTIARY
23 VALUE AT ALL OF WHAT YOU CAN HEAR. A LOT OF TALK ABOUT --
24 IT SEEMS LIKE LIEUTENANT TUBBS WAS THERE, CLEARLY, TO
25 PROVIDE SOME SENSE OF COMFORT TO MRS. TAPPEINER. THERE'S A

1 LOT OF TALK ABOUT BOND HEARINGS AND WHAT EVENTUALLY WILL
2 HAPPEN. AND ---

3 THE COURT: DISCUSSION OF REHAB.

4 MR. MACLOSKIE: EXACTLY. AND EVEN SO FAR AS TO ASK
5 MRS. TAPPEINER'S MOTHER, MRS. SANDERS, IF SHE WAS OKAY TO
6 DRIVE. AND MRS. SANDERS -- THERE WAS SOME DIALOGUE BETWEEN
7 MRS. SANDERS AND LIEUTENANT TUBBS. AND SOME OF IT IS
8 AUDIBLE AND SOME OF IT IS NOT.

9 BUT, AGAIN, THAT AUDIO IS 25 MINUTES AND 27 SECONDS
10 LONG -- 26 SECONDS LONG. AND WITHOUT HAVING THE BENEFIT OF
11 THE WHOLE THING, I DON'T SEE ANY USE THAT IT SERVES. I
12 DON'T THINK IT'S GOING TO HELP THE FINDER OF FACT REACH A
13 CONCLUSION IN THIS CASE AT ALL.

14 THE COURT: I THINK I ALSO HEARD HER SAY THAT SHE
15 NEEDED HER MEDICATION. AND THEN I HEARD THE WORD IRON WAS
16 WHAT WAS TALKED ABOUT, IT WASN'T NECESSARILY CLONIPIN OR
17 ANYTHING ELSE. IT WAS: I NEED MY MEDICATION AND THEN I
18 UNDERSTOOD IRON -- THE WORD.

19 MR. MACLOSKIE: THERE WERE SOME WORDS BEFORE THAT AND
20 AFTER THAT THAT WERE INAUDIBLE.

21 THE COURT: ALL RIGHT. MS. BURKE, I CAN TELL YOU THAT
22 I, LIKE MR. MACLOSKIE, HAD A HARD TIME FOLLOWING THE ENTIRE
23 THREAD. CERTAINLY, THERE ARE PORTIONS THAT I THINK ARE
24 CLEARLY AUDIBLE, YOU COULD CLEARLY HEAR. AND THEN THERE
25 ARE PORTIONS OF IT THAT, YOU KNOW, EVEN WITH HEADPHONES AND

1 STRAINING I COULDN'T HEAR IT.

2 IS THAT WHAT YOU GET AS WELL?

3 MS. BURKE: YEAH, ABSOLUTELY. YOUR HONOR, THE STATE
4 WANTED TO MAKE SURE -- WE TALKED ABOUT IT FRIDAY THAT THIS
5 PIECE OF INFORMATION WAS AVAILABLE, THAT ALL THREE OF US
6 HAD A CHANCE TO LISTEN TO IT. THE STATE WENT THROUGH THE
7 EFFORT TO TRY TO GET IT CLEANED, SCRUBBED AS THEY SAY.

8 IN TERMS OF YESTERDAY'S HEARING, I THINK THE PORT THAT
9 WAS -- THE PART THAT WAS APPLICABLE WAS HER SAYING WHEN --
10 WHEN -- WHEN -- WHEN THE DISCUSSION OF MEDICATION CAME UP,
11 THE ONLY THING SHE ASKED FOR WAS HER IRON PILLS.

12 AND TO THE EXTENT THAT SHE HAD CLONIPIN OR ANYTHING
13 ELSE ON HER THAT HAD BEEN TAKEN, THERE'S NO DISCUSSION OF
14 THAT, THAT I -- THAT I HEARD. AND THE SECTION OF THAT
15 VIDEO THAT TALKS ABOUT MEDICATION WAS ACTUALLY PRETTY
16 AUDIBLE.

17 AND SO ALL I HEARD WAS THE IRON PILLS, AND THAT,
18 AGAIN, JUST GOES TO THE STATE'S THEORY THAT WAS SHE REALLY
19 ON ANY CLONIPIN OR ANY ALTERING MEDICATION AT THE TIME SHE
20 MADE THIS STATEMENT, BECAUSE WHEN PUSH CAME TO SHOVE ALL
21 SHE WANTED WAS HER IRON PILLS.

22 THE COURT: OKAY.

23 MR. MACLOSKIE: YOUR HONOR, I HOPE THAT ISN'T AN
24 HONEST DIFFERENCE OF NOT OPINION BUT OBSERVATION. BUT I
25 DON'T THINK THAT'S THE EXTENT OF IT. AND THE REASON I

1 DON'T THINK THAT IT'S THE EXTENT OF IT IF FOR NO OTHER
2 REASON IS IN THE BACKGROUND I THINK WE HEAR THE VOICE OF
3 SERGEANT GONZALES. AND HE SAYS SOMETHING TO THE EFFECT
4 THAT YOU CAN'T GIVE THOSE MEDICATIONS TO HER -- SOMETHING
5 LIKE THAT. THAT TOO IS INAUDIBLE.

6 SO WE DON'T KNOW WHAT PRECEDED OR FOLLOWED THE WORD
7 THAT WE COULD HEAR -- OR THE PHRASE WE COULD HEAR THAT
8 INDICATES SHE WAS INTERESTED IN HER IRON PILLS.

9 AGAIN, IF YOU TAKE THAT PART OUT OF CONTEXT, YOU MIGHT
10 COME AWAY WITH A FALSE IMPRESSION. AND, AGAIN, I DON'T
11 THINK IT'S OF ANY EVIDENTIARY VALUE AT ALL FOR ANY PURPOSE.

12 THE COURT: OKAY. ANYTHING FURTHER, YOU ALL?

13 MS. BURKE: NO, YOUR HONOR.

14 THE COURT: OKAY. WELL, I WILL TELL YOU THIS. I WENT
15 HOME LAST NIGHT AND RE-READ THE CASE LAW AGAIN. I THINK WE
16 ALL KNOW PRETTY MUCH WHAT THE SETTLED CASE LAW IS AS TO THE
17 VOLUNTARINESS OF CONFESSIONS.

18 I WILL TELL YOU THAT JUST -- I WENT BACK AND LOOKED AT
19 STATE V. SAXON AGAIN, STATE V. GOODWIN. AND, AGAIN, MY LAW
20 CLERK PULLED FOR ME THIS MORNING STATE V. CRAWLY
21 (PHONETIC), JUST SO WE COULD GO BACK AND LOOK AT EVERYTHING
22 IN ITS COMPLETENESS.

23 I WILL TELL YOU THAT I'VE BEEN ON THE BENCH NOW 3
24 YEARS AND 3 MONTHS, AND I HAVE NEVER NOT ADMITTED A
25 STATEMENT FINDING THAT IT WAS INVOLUNTARY.

1 HOWEVER, IN THIS CASE I BELIEVE THAT DIFFERENT
2 CIRCUMSTANCES PLACED ALL TOGETHER THE TAKING OF THE
3 CLONIPIN, THE APPEARANCE OF MRS. TAPPEINER ON THE VIDEO AS
4 DESCRIBED BY DR. NOLAN, THE TACTICS USED BY THE OFFICER IN
5 INTERROGATING HER, IN INTERVIEWING HER, HER SIMPLE
6 PERSONALITY IN HOW SHE RESPONDED -- I THINK LOOKING AT
7 EVERYTHING IN ITS TOTALITY, ANY ONE OF THOSE THINGS
8 SEPARATELY WOULDN'T CAUSE ME CONCERN. QUITE FRANKLY, IT
9 WOULDN'T. BUT OVERALL I DO THINK HER WILL WAS OVERBORNE.
10 I THINK SHE WOULD HAVE AGREED TO JUST ABOUT ANYTHING BY THE
11 END.

12 AND I CAN TELL YOU THAT PROBABLY THE MOST CONVINCING
13 OF THE TESTIMONY CERTAINLY WAS DR. NOLAN WHEN SHE WENT BACK
14 THROUGH THE VIDEO AND WENT THROUGH AND POINTED OUT CERTAIN
15 ASPECTS OF THE VIDEO AND WHAT SHE SAW AND WHAT SHE KNEW.

16 I WISH -- AND I WILL TELL THIS. YOU KNOW, THE
17 OFFICERS PROBABLY ALWAYS GO AFTER THE FACT, WHAT COULD I
18 HAVE DONE DIFFERENTLY? YOU KNOW, CERTAINLY YOU ARE DOING
19 YOUR JOB IN THE TECHNIQUES YOU WERE LEARNING TO DO.

20 THE THINGS THAT I LOOKED AT, FOR INSTANCE, HAD SHE
21 DRIVEN HERSELF TO THE STATION? IF SHE HAD THE WHEREWITHAL
22 TO DO THAT -- WELL, I KNEW FOR A FACT HER MOTHER DROVE HER.
23 SO WE KNOW SHE DIDN'T DRIVE. SO WE DON'T KNOW ANYTHING
24 ABOUT HER DRIVING FACULTIES.

25 I WISH THE OFFICER HAD SAID, IS THERE ANYTHING THAT'S

1 PROHIBITING YOU FROM BEING ABLE TO GIVE A FULL AND
2 TRUTHFUL, ACCURATE STATEMENT TODAY?

3 IN CIVIL CASES AND IN DEPOSITIONS WE DO IT AS A MATTER
4 OF HAND. I MEAN, WE DON'T EVEN THINK ABOUT IT AS LAWYERS,
5 WE ASK IT JUST TO MAKE SURE.

6 BASED ON ALL OF THAT, BASED ON LOOKING AT THE CASE LAW
7 -- AND, AGAIN, EACH OF THE CASES THAT I READ HAVE ONE
8 ISSUE, EVEN TWO POSSIBLY. I BELIEVE THE CRAWLEY CASE HAD
9 AN OFFICER WHO NOT ONLY WAS -- THE INTERVIEW TECHNIQUES
10 WERE CERTAINLY SUGGESTIVE. BUT ON TOP OF THAT, THERE WAS
11 AN ALLEGATION THAT CRAWLEY WAS COMING DOWN FROM ALCOHOL AND
12 DRUGS.

13 IN THIS CASE WE'VE GOT SOMEONE WHO ACCORDING TO HER
14 TESTIMONY AND THROUGH DR. NOLAN SHE HAD JUST TAKEN A
15 CLONIPIN.

16 BASED ON THE TOTALITY OF THE CIRCUMSTANCES, I CAN TELL
17 YOU THAT -- AND I'M GOING TO BE PERFECTLY CANDID. I HAVE
18 STRUGGLED WITH THIS, CERTAINLY. AND LIKE A FEW THINGS I'VE
19 STRUGGLED WITH WHEN I'VE BEEN ON THE BENCH. BUT IN THIS
20 CASE I TRULY THINK THAT HER WILL WAS OVERBORNE. I DON'T
21 THINK SHE HAD A CLUE WHAT SHE WAS DOING.

22 ONE OF THE THINGS THAT DR. NOLAN HAD STATED THAT I
23 THINK RANG VERY TRUE WAS THAT HAD SHE UNDERSTOOD THE
24 SEVERITY OF IT, SHE WOULD HAVE NEVER ADMITTED TO IT BASED
25 ON HAVING ANY KIND OF EDUCATION WHATSOEVER. SHE JUST

1 WOULDN'T HAVE.

2 I BELIEVE THAT SHE WAS PUT IN A POSTURE THAT SHE WAS A
3 VICTIM AND SHE GOT IN TO IT.

4 SO WITH THAT SAID, I'M NOT GOING TO ALLOW THE
5 STATEMENT, THAT INTERVIEW.

6 WITH THAT SAID, THEN WE NEED TO TALK ABOUT THE SECOND
7 ONE. I AM CONCERNED ABOUT THE RULE OF COMPLETENESS IN
8 BEING ABLE TO HAVE THE SECOND STATEMENT IN CONTEXT.

9 CLEARLY, SHE ASKED FOR MEDICATION. I HEARD JUST HER
10 ASKING FOR IRON. I DON'T KNOW IN THE REST OF THAT
11 STATEMENT WHETHER OR NOT SHE WAS ASKING FOR SOMETHING ELSE.
12 I HAVE NO WAY OF KNOWING.

13 BUT BECAUSE I CAN'T VIEW THE ENTIRE THING, I DON'T
14 THINK IT'S APPROPRIATE TO PUT IT IN UNLESS YOU CAN SCRUB IT
15 BETTER AND TELL ME THAT WE CAN GET EVERYTHING AND CAN HEAR
16 EVERYTHING.

17 EVEN BASED ON THAT THOUGH, I'M NOT SO SURE THAT
18 THERE'S ANYTHING AT LEAST THAT I HEAR ON IT THAT -- I DON'T
19 THINK THERE'S ANYTHING THAT I HEAR ON IT THAT NECESSARILY
20 WOULD LEAD AS EVIDENCE OF AN ADMISSION.

21 I GUESS YOU COULD LOOK AT IT AND SAY AT THAT POINT SHE
22 DIDN'T SAY SHE DIDN'T DO IT. BUT I THINK THAT TIES IN TO
23 THE EARLIER BELIEF THAT SHE WAS TOLD THAT SHE IN FACT DID
24 HAVE SEX WITH THIS BOY. NO QUESTION. SO SHE BELIEVED
25 CERTAINLY AT THE TIME I GUESS AT THE INTERVIEW AND AS WELL

1 AS FOLLOWING THAT SHE DID IN FACT KNOW.

2 YOU KNOW, THEN IT ALL GOES BACK TO THAT NIGHT OF
3 HAVING BEEN ON ALCOHOL AND CLONIPIN AND I BELIEVE SHE SAID
4 SOME TYPE OF EXCEDRIN P.M. OR SLEEPING PILL. AND CERTAINLY
5 AMBIEN AND CLONIPIN -- AS WE HEARD DR. NOLAN TESTIFY CAUSES
6 AMNESIA. IT'S THE NUMBER ONE SIDE EFFECT OF EITHER ONE OF
7 THOSE.

8 SO, AGAIN, BASED ON THE TOTALITY OF THE CIRCUMSTANCES,
9 JUST EVERYTHING, I DO BELIEVE HER WILL WAS OVERBORNE. AND
10 I DO NOT BELIEVE HER STATEMENT WAS VOLUNTARY. IT CERTAINLY
11 WASN'T INTELLIGENT. AND I DON'T THINK IT WAS KNOWINGLY
12 MADE.

13 TO THAT END, OUR JURY IS HERE, YOU ALL. ARE WE READY
14 TO BEGIN, MS. BURKE?

15 MS. BURKE: YES, YOUR HONOR.

16 THE COURT: MR. MACLOSKIE?

17 MR. MACLOSKIE: WE ARE READY TO GO FORWARD.

18 THE COURT: ALL RIGHT. I'M GOING TO STEP DOWN FOR
19 JUST A MOMENT, JUST TO DOUBLE-CHECK ON OUR JURY. IS THERE
20 ANYTHING ELSE WE NEED TO TAKE UP? AND IS THERE ANY
21 QUESTION ABOUT ANY SEQUESTRATION OF WITNESSES? IS THAT AN
22 ISSUE IN THIS CASE AT ALL, MS. BURKE?

23 MS. BURKE: I WOULD LIKE THE WITNESSES TO BE
24 SEQUESTERED.

25 THE COURT: OKAY.

1 MR. MACLOSKIE: I WOULD JOIN IN THAT.

2 THE COURT: OKAY. I'M GOING TO LEAVE IT UP TO THE TWO
3 OF YOU. I'VE SEEN YOUR WITNESS LIST, BUT AT THIS TIME I
4 NEED YOU TO SPEAK TO THE WITNESSES THAT YOU INTEND ON
5 POSSIBLY CALLING IN THIS CASE AND ASK THEM TO EXCUSE
6 THEMSELVES.

7 AGAIN, IF ANY OF YOU ARE IN THIS COURTROOM, I WILL
8 CAUTION YOU THAT YOU ARE NOT TO DISCUSS THE CASE AFTER YOU
9 TESTIFY. IN OTHER WORDS, IF YOU ARE CALLED TO THE STAND
10 AND YOU TESTIFY AND THEN YOU LEAVE, YOU ARE NOT ALLOWED TO
11 TALK TO ANY OTHER WITNESS THAT MAY BE FOLLOWING YOU. I
12 WILL TELL YOU THAT THAT IS INCREDIBLY SERIOUS. FOR ANYONE
13 THAT DOESN'T UNDERSTAND THAT, YOU WILL BE FOUND IN CONTEMPT
14 OF COURT AND YOU WILL BE PUT IN JAIL. SO I JUST WANT TO
15 MAKE SURE EVERYONE UNDERSTANDS THE SERIOUSNESS OF THAT.
16 OKAY?

17 MR. MACLOSKIE: YOUR HONOR.

18 THE COURT: YES.

19 MR. MACLOSKIE: WHERE WOULD YOU LIKE THE WITNESSES
20 SEQUESTERED?

21 THE COURT: WHERE CAN WE PUT THEM, AL? AL IS GOING TO
22 PUT THEM ACROSS THE HALL OR SOMEWHERE WHERE WE CAN FIND
23 SOME SPACE FOR THEM. OKAY?

24 MS. BURKE: JUST A POINT OF CLARITY, YOUR HONOR. HAVE
25 YOU LEFT THE ISSUE OPEN FOR THE STATE TO FURTHER SCRUB THIS

1 TAPE OR ARE YOU SAYING THAT YOU ARE RULING THAT THE SECOND
2 TAPE IS INADMISSIBLE? I WAS JUST UNCLEAR ABOUT IT.

3 THE COURT: IF YOU CAN SCRUB IT THAT I CAN HEAR THE
4 WHOLE THING, I WILL LISTEN TO IT ALL OVER AGAIN. I STILL
5 DON'T KNOW WHAT I'M GOING TO DO WITH IT AT THAT POINT.

6 MS. BURKE: OKAY.

7 THE COURT: I DO HAVE CONCERNS, THOUGH. I MEAN, THERE
8 ARE PORTIONS -- AND I CAN TELL YOU, I HAVE LISTENED TO IT
9 ON MY HOME COMPUTER AND THEN I'VE LISTENED TO IT JUST NOW
10 AGAIN, AND MY PROBLEM IS I AM LEANING INTO THE SCREEN ON
11 TOP OF IT TRYING TO HEAR. AND THERE WERE PORTIONS THAT I
12 MISSED, THAT I COULD NOT HEAR. I'M NOT GOING TO SAY I HAVE
13 PERFECT HEARING. I HAVE PRETTY DECENT HEARING, SO I CAN
14 HEAR THINGS. SO I THINK THAT -- WHAT I'M WORRIED ABOUT, I
15 DON'T THINK THIS JURY IS GOING TO COMPREHEND IT OR
16 UNDERSTAND IT.

17 AND, CERTAINLY, IF YOU CAN GO BACK AND TRY SCRUBBING
18 IT FURTHER, THEN WE'LL ALL LISTEN TO IT AGAIN. AND, MS.
19 BURKE, IF YOU CAN TELL ME THAT YOU CAN HEAR EVERY PART OF
20 IT IN GOOD CONSCIOUS, THEN I'LL CERTAINLY ENTERTAIN IT AT
21 THAT POINT.

22 MS. BURKE: OKAY. I HEARD THE PART WHERE SHE ALSO
23 SAID -- YOU KNOW, I'VE NEVER DONE SOMETHING LIKE THIS
24 BEFORE. I'M SO SORRY. I HEARD ALL OF THAT CLEARLY. I
25 PRESUME THAT YOU'RE SAYING THAT THAT LENDS TO YOUR SAYING

1 SHE WAS STILL UNDER THE OVERBORNE ASPECT OF HER WILL. I
2 WASN'T SURE.

3 THE COURT: LET ME TELL YOU WHAT THE QUESTION BECOMES,
4 BECAUSE I'VE CERTAINLY CONSIDERED THAT. SHE WOULD STILL BE
5 ON THE CLONIPIN, BECAUSE FROM WHAT YOU HAVE TOLD ME, THIS
6 IS FROM HER GOING FROM THE INTERVIEW ROOM WITH THE OFFICER
7 GONZALES TO THE HOLDING CELL. AND SHE'S CERTAINLY AT THAT
8 POINT, I BELIEVE -- MAYBE UNDERSTANDS FINALLY THE GRAVITY
9 OF THIS, BECAUSE SHE'S BEEN ARRESTED. SHE'S STILL UNDER
10 THE INFLUENCE OF HER CLONIPIN.

11 ADDITIONALLY, SHE'S STILL IN THE MIND SET -- SHE HAS
12 BEEN TOLD BY THIS OFFICER THAT SHE DID IN FACT HAVE SEX
13 WITH THIS BOY. AND IF SHE DOESN'T REMEMBER, IS WORKING ON
14 THE SAME CONTINUED BELIEF THAT HE HAD DNA EVIDENCE. WHAT
15 I'M NOT SO SURE ABOUT -- AND I CAN TELL YOU, AGAIN. IT'S
16 EITHER LOOK AT IT AND SAY THE TAPE'S NOT SCRUBBED -- I
17 DON'T KNOW. BUT IF YOU CAN GET IT SCRUBBED FURTHER, IF YOU
18 CAN GIVE ME A GREATER CONTEXT, IF YOU CAN GIVE ME MORE ---

19 MS. BURKE: SURE.

20 THE COURT: --- I'LL CERTAINLY CONSIDER IT.

21 MS. BURKE: OKAY.

22 THE COURT: AGAIN, IT'S AN AUDIO TAPE VERSUS A VIDEO
23 TAPE ---

24 MS. BURKE: RIGHT.

25 THE COURT: --- WHICH MAKES IT A LITTLE HARDER.

1 CERTAINLY, FROM LOOKING AT THE VIDEO TAPE, WE TOOK INTO
2 ACCOUNT, YOU KNOW, CERTAINLY HER MANNERISMS. DR. NOLAN
3 REFERRED TO HER FACE. YOU KNOW, WE LOOKED AT SOME OF THE
4 INAPPROPRIATENESS AND SOME OF THE COMMENTS JUST FOR NOT
5 ONLY THE BODY GESTURES BUT IN FACT, YOU KNOW, SOME OF THE
6 COMMENTS WERE JUST TOTALLY INAPPROPRIATE, WHICH ALL LEADS
7 ME TO BELIEVE THAT THE STATEMENT WASN'T VOLUNTARY. I DON'T
8 HAVE NECESSARILY HAVE THAT ON JUST AN AUDIO TAPE.

9 SO I WILL RESERVE CERTAINLY LOOKING AT IT AGAIN. IF
10 YOU CAN SCRUB IT WHERE IT'S COMPLETELY AUDIBLE, MS. BURKE,
11 WE'RE ALL GOING TO LISTEN TO IT AGAIN.

12 MS. BURKE: OKAY.

13 THE COURT: OKAY.

14 MS. BURKE: I JUST WANTED TO MAKE SURE I WAS ON THE
15 SAME PAGE.

16 THE COURT: I APPRECIATE THAT. ANYTHING FURTHER?

17 MR. MACLOSKIE: NOTHING FURTHER.

18 THE COURT: OKAY. I'M GOING TO GO OUT JUST FOR ABOUT
19 ONE MINUTE. I'M GOING TO ASK THE ATTORNEYS TO SPEAK TO THE
20 WITNESSES IN THIS CASE, EXCUSE THEM FROM THE COURTROOM.
21 AND WE'LL GO FROM THERE. OKAY.

22 (A RECESS WAS TAKEN.)

23 THE COURT: ALL RIGHT.

24 MS. BURKE: 2 MORE MINUTES, YOUR HONOR. THANK YOU.

25 (PAUSE.)

1 THE COURT: THE STATE READY?
2 MS. BURKE: YES, YOUR HONOR.
3 THE COURT: DEFENSE READY?
4 MR. MACLOSKIE: WE'RE READY.
5 THE COURT: LET'S BRING THE JURY IN.
6 (PAUSE.)
7 MS. BURKE: YOUR HONOR, OF COURSE, I WOULD ASK YOU TO
8 RECONSIDER YOUR RULING.
9 THE COURT: THANK YOU. RESPECTFULLY, I'M DENYING YOUR
10 REQUEST BASED ON THE SAME GROUNDS AS I DID BEFORE.
11 MS. BURKE: YES, YOUR HONOR.
12 BAILIFF: THE JURORS ARE ENTERING, YOUR HONOR.
13 THE COURT: THANK YOU.
14 (THE JURY RETURNS TO THE COURTROOM AT 10:52 A.M.)
15 BAILIFF: YOUR HONOR, THE JURY IS SEATED.
16 THE COURT: THANK YOU. GOOD MORNING, LADIES AND
17 GENTLEMEN.
18 JURORS: GOOD MORNING.
19 THE COURT: LADIES AND GENTLEMEN, AT THIS TIME WE ARE
20 GOING TO BEGIN THE TRIAL OF THIS CASE. BEFORE WE DO SO,
21 I'M GOING TO GO AHEAD AND HAVE THE CLERK SWEAR YOU IN AS
22 THE JURY IN THIS CASE. SO IF YOU WOULD ALL PLEASE STAND
23 AND RAISE YOUR RIGHT HAND.
24 (THE JURY WAS FIRST DULY SWORN AT 10:54 A.M.)
25 THE COURT: THANK YOU, LADIES AND GENTLEMEN.

1 WHAT I AM GOING TO NOW SAY TO YOU IS INTENDED TO SERVE
2 AS AN INTRODUCTION TO THE TRIAL OF THIS CASE. THESE
3 REMARKS ARE NOT A CHARGE ON THE LAW, LADIES AND GENTLEMEN.
4 I'M GOING TO INSTRUCT YOU ON THE LAW THAT'S APPLICABLE TO
5 THIS CASE AT THE END OF THE TRIAL BEFORE YOU BEGIN YOUR
6 DELIBERATIONS. THIS IS JUST MERELY AN EXPLANATION OF WHAT
7 WE'RE GOING TO DO AND HOW THE CASE IS GOING TO PROCEED SO,
8 AGAIN, YOU WILL BETTER UNDERSTAND WHAT'S HAPPENING DURING
9 THE TRIAL OF THIS CASE.

10 LADIES AND GENTLEMEN, THE DEFENDANT IN THIS CASE,
11 SUSAN TAPPEINER, IS CHARGED BY AN INDICTMENT THAT IS FILED
12 IN THIS COURT WITH THE CRIME OF CRIMINAL SEXUAL CONDUCT
13 WITH A MINOR, THE VICTIM AGE 11 TO 14 YEARS OF AGE. THE
14 ELEMENTS OF WHICH I'M GOING TO EXPLAIN TO YOU LATER.

15 LADIES AND GENTLEMEN, THE INDICTMENT IS SIMPLY THE
16 CHARGE BY WHICH THIS CASE IS BROUGHT INTO COURTROOM, AND IT
17 IS NOT IN ANY SENSE EVIDENCE OF ANY OF THE ALLEGATIONS IT
18 CONTAINS.

19 THE DEFENDANT HAS PLED NOT GUILTY TO THE INDICTMENT.

20 THE STATE, THEREFORE, HAS THE BURDEN OF PROVING EACH
21 OF THE ELEMENTS OF THE INDICTMENT BEYOND A REASONABLE
22 DOUBT.

23 AND IT'S YOUR DUTY, LADIES AND GENTLEMEN OF THE JURY,
24 TO DETERMINE AND TO DECIDE WHERE THE STATE HAS MET THAT
25 BURDEN.

1 YOUR PURPOSE AS JURORS IS TO FIND AND DETERMINE THE
2 FACTS. YOU ARE THE SOLE JUDGE OF THE FACTS. IF AT ANY
3 TIME I MAKE ANY COMMENT REGARDING THE FACTS OF THIS CASE,
4 YOU MUST DISREGARD IT. YOU ARE ONLY TO DETERMINE THE FACTS
5 FROM THE TESTIMONY THAT YOU'RE GOING TO HEAR FROM THE
6 WITNESSES RIGHT HERE FROM THE WITNESS STAND, AS WELL AS ANY
7 OTHER EVIDENCE THAT'S INTRODUCED INTO THIS CASE.

8 NOW, IT IS UP TO YOU TO DETERMINE THE INFERENCES WHICH
9 YOU MAY FEEL MAY BE PROPERLY DRAWN FROM THE EVIDENCE.

10 LADIES AND GENTLEMEN OF THE JURY, PLEASE UNDERSTAND IT
11 IS ESPECIALLY IMPORTANT THAT YOU PERFORM YOUR DUTY OF
12 DETERMINING THE FACTS DILIGENTLY AND CONSCIOUSLY, BECAUSE
13 ORDINARILY THERE IS NO WAY TO CORRECT AN ERROR IN
14 DETERMINATION OF FACTS BY A JURY.

15 ON THE OTHER HAND AND WITH EQUAL EMPHASIS, THE SAME
16 LAW THAT MAKES YOU THE JUDGES OF THE FACTS MAKES ME THE
17 JUDGE OF THE LAW. THE LAW AS GIVEN BY THE COURT IS THE
18 ONLY LAW THAT YOU MAY CONSIDER. YOU MUST ACCEPT AND FOLLOW
19 IT EVEN THOUGH YOU MAY DISAGREE WITH IT.

20 I CANNOT TELL YOU WHAT THE FACTS ARE, AND YOU CANNOT
21 DISAGREE WITH ME ABOUT WHAT THE LAW IS OR WHAT YOU THINK
22 THE LAW SHOULD BE.

23 YOUR JOB, LADIES AND GENTLEMEN, IS TO DETERMINE THE
24 FACTS AS YOU FIND THEM AND APPLY THE FACTS TO THE LAW AS I
25 GIVE IT TO YOU.

1 AFTER DOING THAT, YOU'RE GOING TO RENDER A VERDICT, A
2 TRUE AND JUST VERDICT, UNDER THE OATH THAT YOU JUST TOOK.

3 NOW, UNTIL I ADVISE YOU TO BEGIN YOUR DELIBERATIONS,
4 YOU MUST NOT DISCUSS THIS CASE WITH ANYONE. AND THAT
5 INCLUDES YOUR FELLOW JURORS, FRIENDS, FAMILY MEMBERS, OR
6 ANYONE THAT'S INVOLVED IN THIS CASE.

7 AND AFTER THE CASE GOES TO YOU AND IS SUBMITTED TO
8 YOU, YOU MAY ONLY DISCUSS IT IN THE JURY ROOM WITH YOUR
9 FELLOW JURORS.

10 NOW, THE ATTORNEYS AND THE PARTIES IN THIS CASE HAVE
11 BEEN ADVISED THAT THEY ARE NOT TO TALK TO YOU AT ALL. SO,
12 AGAIN, LADIES AND GENTLEMEN, IF YOU SEE SOMEONE INVOLVED IN
13 THIS CASE COMING AND GOING FROM THE COURTHOUSE AND THEY
14 DON'T EVEN SAY HELLO, DON'T BE OFFENDED. THEY'RE NOT BEING
15 UNFRIENDLY. THEY'RE JUST SIMPLY FOLLOWING MY ORDERS. AN
16 INNOCENT CONVERSATION CAN BE MISCONSTRUED AND I WOULDN'T
17 WANT THAT TO HAPPEN.

18 LADIES AND GENTLEMEN, DURING THE TRIAL OF THIS CASE
19 YOU ARE NOT TO READ, LISTEN TO, OR WATCH ANY NEWS REPORTS
20 ABOUT THIS CASE, AND THAT INCLUDES ANYTHING THAT MAY BE ON
21 THE NEWSPAPER, INTERNET, RADIO, OR TELEVISION. AND YOU
22 MUST NOT CONSIDER ANYTHING YOU MAY HAVE READ OR HEARD ABOUT
23 THIS CASE OUTSIDE THIS COURTROOM, WHETHER BEFORE OR DURING
24 THE TRIAL.

25 PLEASE UNDERSTAND THAT IT IS ESPECIALLY IMPORTANT THAT

1 YOU KEEP AN OPEN MIND AND NOT DECIDE ANY ISSUE IN THE CASE
2 UNTIL ALL THE EVIDENCE HAS BEEN PRESENTED, THE PARTIES HAVE
3 MADE THEIR CLOSING ARGUMENTS, AND I'VE INSTRUCTED YOU ON
4 THE LAW THAT'S APPLICABLE IN THIS CASE.

5 IT IS YOUR SOLEMN RESPONSIBILITY TO DETERMINE THE
6 GUILT OR INNOCENCE OF THE DEFENDANT. AND YOUR VERDICT MUST
7 BE BASED SOLELY ON THE EVIDENCE AS IT'S PRESENTED TO YOU IN
8 THIS TRIAL AND ON THE LAW THAT I INSTRUCT YOU AT THE END OF
9 THE CASE.

10 NOW, IN JUST A MOMENT, LADIES AND GENTLEMEN, THE
11 SOLICITOR, MS. BURKE, IS GOING TO MAKE WHAT'S CALLED AN
12 OPENING STATEMENT IN WHICH SHE'S GOING TO EXPLAIN TO YOU
13 WHAT THE ISSUES ARE IN THIS CASE OR WHAT SHE BELIEVES THE
14 ISSUES ARE IN THIS CASE.

15 NOW, THE ATTORNEY FOR THE DEFENDANT, MR. MACLOSKIE,
16 MAY ALSO MAKE AN OPENING STATEMENT, ALTHOUGH HE'S NOT
17 REQUIRED TO DO SO.

18 WHAT THESE ATTORNEYS TELL YOU IN THEIR OPENING
19 STATEMENTS IS NOT EVIDENCE IN THIS CASE. IT IS ONLY THEIR
20 CONTENTION AS TO WHAT THEY BELIEVE THE ISSUES ARE.

21 LADIES AND GENTLEMEN, AGAIN, THE EVIDENCE IN THIS CASE
22 IS GOING TO BE PRESENTED TO YOU BY SWORN TESTIMONY RIGHT
23 HERE ON THE WITNESS STAND AND, AGAIN, ANY OTHER EXHIBITS
24 THAT ARE INTRODUCED DURING THE TRIAL.

25 NOW, FROM TIME TO TIME DURING THE TRIAL OF THIS CASE

1 YOU MAY HEAR THE LAWYERS SAY SOMETHING TO ME LIKE, YOUR
2 HONOR, I BELIEVE WE HAVE A MATTER OF LAW WE NEED TO TAKE UP
3 OUTSIDE OF THE PRESENCE OF THE JURY OR MAY WE APPROACH THE
4 BENCH TO DISCUSS SOMETHING WITH YOU? AND SOME TIMES I
5 MYSELF MIGHT FIND IT NECESSARY TO EXCUSE YOU BACK TO YOUR
6 JURY ROOM.

7 I WANT YOU TO UNDERSTAND SOMETHING. WE ARE NOT TRYING
8 TO HIDE ANYTHING FROM YOU. OFTENTIMES WHEN I HAVE TO RULE
9 AS A MATTER OF LAW AS TO WHETHER OR NOT SOMETHING IS
10 ADMISSIBLE, I MAY MAKE A COMMENT ON THE FACTS OF THE CASE.
11 AND, AGAIN, I WOULD NEVER WANT ANYTHING I SAY AS TO THE
12 FACTS OF THE CASE TO INFLUENCE YOU IN YOUR DETERMINATION OF
13 THE FACTS BECAUSE, AGAIN, A DETERMINATION OF FACT IS SOLELY
14 FOR THE JURY. AND, AGAIN, I HAVE ABSOLUTELY NO OPINION AS
15 TO THE FACTS. SO OUT OF AN ABUNDANCE OF CAUTION, I EITHER
16 SEND YOU BACK OR WE HAVE A PRIVATE CONVERSATION TO MAKE
17 SURE THAT THAT DOESN'T HAPPEN.

18 LADIES AND GENTLEMEN, IN DETERMINING WHAT THE TRUE
19 FACTS ARE IN THIS CASE, YOU MUST DECIDE WHETHER OR NOT THE
20 TESTIMONY OF THE WITNESSES IN THIS CASE IS BELIEVABLE.
21 IT'S MY RESPONSIBILITY TO RULE AS A MATTER OF LAW WHETHER
22 OR NOT CERTAIN TESTIMONY IS ADMISSIBLE AT ALL.

23 BUT ONCE THE TESTIMONY IS ADMITTED, WHETHER OR NOT YOU
24 BELIEVE IT IS SOLELY FOR YOU TO DETERMINE.

25 IN DECIDING WHETHER TO BELIEVE A WITNESS, YOU HAVE A

1 RIGHT TO CONSIDER THE INTEREST OF ANY WITNESS, THE BIAS OF
2 ANY WITNESS, THE PREJUDICE OF ANY WITNESS, AND THE
3 OPPORTUNITY FOR WHICH THE WITNESS HAS SEEN THE MATTERS
4 ABOUT WHICH THEY'RE TESTIFYING, AND YOU CAN LOOK AT THE WAY
5 THE WITNESS ACTS ON THE WITNESS STAND.

6 LADIES AND GENTLEMEN, YOU HAVE THE RIGHT TO CONSIDER
7 ANYTHING THAT'S IN THE RECORD THAT WILL HELP YOU EVALUATE
8 THE TESTIMONY OF THE WITNESS. THAT MEANS IT'S YOUR SOLEMN
9 DUTY TO PAY CLOSE ATTENTION DURING THE TRIAL OF THIS CASE,
10 TO OBSERVE THE WITNESSES, TO LISTEN TO THEM SO AT THE CLOSE
11 OF THE CASE WHEN YOU GO BACK TO YOUR JURY ROOM, YOU CAN
12 ACCURATELY RECALL THE TESTIMONY THAT YOU'VE HEARD HERE.

13 LADIES AND GENTLEMEN, BECAUSE THIS CASE IS GOING TO BE
14 NOT TOO LENGTHY, I AM NOT GOING TO PERMIT YOU TO TAKE
15 NOTES. IF FOR SOME REASON IT REACHES TO THE LEVEL WHERE I
16 THINK IT MIGHT ASSIST YOU, AT THAT TIME I WILL PROVIDE YOU
17 PADS AND PENCILS. BUT TO THAT END, I JUST RESPECTFULLY ASK
18 THAT YOU SIT BACK AND LISTEN AND PAY CLOSE ATTENTION, GIVE
19 THE ATTORNEYS YOUR FULL ATTENTION.

20 AND, AGAIN, LADIES AND GENTLEMEN, WE WANT TO THANK YOU
21 ALL FOR BEING HERE AND WE WANT TO THANK YOU FOR SERVING AS
22 JURORS IN THE TRIAL OF THIS CASE.

23 NOW, IN ORDER TO PRESERVE EVERYONE'S RIGHTS YOU'RE
24 GOING TO HEAR ME SAY THIS AFTER EVERY TIME I SPEAK TO YOU
25 AS A JURY -- I'M GOING TO ASK THE ATTORNEYS IF THERE'S

1 ANYTHING THEY WOULD LIKE ME TO ADD OR THAT THEY OBJECT TO
2 AS FAR AS MY ORIGINAL OR FIRST STATEMENT TO YOU.

3 SO IN THIS CASE, MS. BURKE, IS THERE ANYTHING FURTHER
4 YOU WOULD LIKE FOR ME TO SAY TO THE JURY?

5 MS. BURKE: NOTHING FROM THE STATE, YOUR HONOR.

6 THE COURT: ANYTHING FROM THE DEFENSE?

7 MR. MACLOSKIE: NO OBJECTION OR REQUEST FOR ADDITIONS.
8 THANK YOU, MA'AM.

9 THE COURT: THANK YOU, SIR.

10 LADIES AND GENTLEMEN, AT THIS TIME YOU ARE NOW GOING
11 TO HEAR THE OPENING STATEMENTS OF THE ATTORNEYS. MS.
12 BURKE.

13 MS. BURKE: THANK YOU, YOUR HONOR.

14 OPENING STATEMENTS BY MS. BURKE ON BEHALF OF THE STATE:

15 LADIES AND GENTLEMEN, THERE ARE CERTAIN MEMBERS OF OUR
16 SOCIETY THAT GET EXTRA PROTECTION, SPECIAL PROTECTION UNDER
17 OUR LAW, PROTECTION NOT FROM THEMSELVES BUT FROM THOSE WHO
18 SEEK TO TAKE ADVANTAGE OF THEM, WHO SEEK TO TAKE ADVANTAGE
19 OF THEIR VULNERABILITY, AND THE FACT THAT THEY YIELD EASILY
20 TO SUBMISSION, THAT THEY'RE EASILY PERSUADED. THEY'RE
21 DELICATE. THESE VULNERABLE PEOPLE, THESE PROTECTED PEOPLE
22 IN OUR SOCIETY INCLUDE WOMEN -- RATHER, INCLUDE THE
23 ELDERLY, SOMETIMES WOMEN, BUT INCLUDE THE ELDERLY,
24 CHILDREN, THE DISABLED.

25 WE ARE HERE TODAY BECAUSE ONE OF THOSE PROTECTED

1 PEOPLE, THOSE VULNERABLE PEOPLE WAS TAKEN ADVANTAGE OF.
2 THE EVIDENCE WILL SHOW THAT ON OR ABOUT AUGUST 15, 2008 THE
3 DEFENDANT -- THE DEFENDANT HAD SEX WITH victim SHE WAS A
4 42 YEAR OLD GROWN WOMAN, MARRIED WITH CHILDREN. IN FACT,
5 THE KIDS AND HER HUSBAND WERE IN THE HOUSE.

6 victim WAS A MERE 13 YEAR OLD BOY. SHE WAS
7 BABYSITTING. IT'S KIND OF IRONIC BECAUSE WHEN YOU THINK
8 ABOUT HER AGE, HE'S A BABY TO HER, ALMOST 30 YEARS OLDER
9 THAN SHE (SIC) IS -- HE IS, RATHER. SHE'S ALMOST 30 YEARS
10 OLDER. THAT IS CRIMINAL SEXUAL CONDUCT WITH A MINOR. IT
11 IS ILLEGAL. THAT'S CRIMINAL SEXUAL CONDUCT WITH A MINOR.
12 SECOND DEGREE, AND IT IS ILLEGAL. ADULTS CANNOT, SHALL
13 NOT, ARE FORBIDDEN FROM TOUCHING CHILDREN IN A SEXUAL
14 MANNER.

15 OFTENTIMES IN SOCIETY SOME TIMES YOU HEAR ABOUT THESE
16 INCIDENTS AND IT INVOLVES YOUNG GIRLS. BOYS GET MOLESTED
17 TOO. THEY SHOULD BE TREATED NO DIFFERENTLY THAN WE TREAT
18 OUR GIRLS. THEY FEEL THE SAME PAIN. THEY HAVE THE SAME
19 STRUGGLES. AND THEY GROW UP HAVING TO CONFRONT THE SAME
20 ISSUES.

21 ADULTS DO NOT HAVE THE AUTHORITY, THE EVIDENCE WILL
22 SHOW. THE DEFENDANT CERTAINLY DIDN'T HAVE THE AUTHORITY --
23 BECAUSE THE LAW DOESN'T GIVE IT TO HER -- TO OVERBORNE THE
24 WILL OF victim SO SHE CAN DO WHAT SHE WANTED THAT NIGHT;
25 AND THAT'S WHY I'M GOING TO ASK YOU ALL WHEN THIS TRIAL IS

1 OVER TO FIND HER GUILTY, BECAUSE THE EVIDENCE WILL SHOW
2 THAT SHE IS.

3 YOU ALL WATCH TV. YOU ALL READ THE PAPER AND SO
4 FORTH. YOU'VE GOT YOUR LIFE-LONG EXPERIENCE. YOU KNOW
5 THESE THINGS DON'T HAPPEN IN BROAD DAYLIGHT. PEOPLE WHO
6 GET TAKEN ADVANTAGE OF, IT HAPPENS IN THE QUIET -- QUIET OF
7 NIGHT SOMETIMES WHERE NO ONE IS AROUND, WHERE THEY'RE MOST
8 VULNERABLE.

9 CASES LIKE THESE ARE ALWAYS -- THEY'RE HARD TO DIGEST
10 BECAUSE IT'S A SICKNESS IN OUR SOCIETY WHEN IT HAPPENS.
11 BUT I ASK YOU TO LISTEN TO THE TESTIMONY OF *victim* AND THE
12 OTHER PEOPLE THAT ARE HERE TODAY TO TALK TO YOU, TO EXPLAIN
13 TO YOU HOW THIS INCIDENT HAPPENED.

14 AND I ASK YOU TO FIND -- I WILL ASK YOU AT THE END OF
15 THE TRIAL TO FIND THE DEFENDANT GUILTY OF CRIMINAL SEXUAL
16 CONDUCT IN THE SECOND DEGREE.

17 THANK YOU.

18 THE COURT: THANK YOU, MS. BURKE.

19 MR. MACLOSKIE: MAY IT PLEASE THE COURT, MS. BURKE.

20 THE COURT: YES, SIR.

21 OPENING STATEMENTS BY MR. MACLOSKIE ON BEHALF OF THE
22 DEFENDANT:

23 GOOD MORNING. FIRST OF ALL, I'VE GOT TO THANK YOU FOR
24 YOUR WILLINGNESS TO HELP US SOLVE THIS PROBLEM. AND PLEASE
25 DON'T LOSE SIGHT OF THE FACT THAT THAT'S WHAT THIS IS.

1 THIS IS NOT A PLATFORM TO SEE WHO THE BEST LAWYER IS OR
2 THAT KIND OF THING. IT'S A PROBLEM-SOLVING PROCESS.

3 UNLIKE THE PROBLEM-SOLVING PROCESS THAT YOU'RE USED
4 TO, THAT YOU USE IN YOUR EVERY DAY BUSINESS, THIS PROCESS
5 HAS RULES THAT MUST BE FOLLOWED.

6 ALL I HAVE THE RIGHT AND THE RESPONSIBILITY TO DO AT
7 THIS MOMENT IS ASK YOU TO PLEASE FOLLOW THESE RULES. ARE
8 RULES STRANGE TO US? ABSOLUTELY NOT. WE INSIST ON RULES
9 IN THE SIMPLEST OF GAMES. CHECKERS, FOR EXAMPLE, THERE'S
10 RULES. BASEBALL THERE'S RULES. WHY, EVEN KNITTING HAS ITS
11 RULES. THIS IS LIKE THAT.

12 WHAT I'M GOING TO ASK YOU TO DO THEN IS PAY CLOSE
13 ATTENTION TO ONE OF THE LEAST EXCITING PORTIONS OF THIS
14 TRIAL -- OF ANY TRIAL, AND THAT IS HOW THE JUDGE INSTRUCTS
15 YOU AS TO THE LAW YOU'RE TO APPLY TO THE FACTS AT THE END
16 OF THE CASE.

17 MEANWHILE, I'M GOING TO ASK YOU TO PAY CLOSE ATTENTION
18 TO THE EVIDENCE THAT APPEARS IN THIS TRIAL. AND WHAT
19 YOU'RE GOING TO FIND IS THAT WHAT YOU'VE JUST HEARD ARE
20 ALLEGATIONS. AND I'M NOT GOING TO TALK TO YOU ABOUT
21 ALLEGATIONS. I'M GOING TO TALK TO YOU ABOUT FACTS, THINGS
22 THAT I KNOW WILL COME OUT IN THE TRIAL OF THIS CASE.

23 WHAT I KNOW WILL COME OUT IN THE TRIAL OF THIS CASE IS
24 THAT THIS SAME YOUNG MAN, victim IS HIS NAME -- I
25 WILL REFER TO HIM AS MR. victim -- WAS NOT ALONE AS MS.

1 BURKE IMPLIED WHEN SHE TOLD YOU THESE THINGS HAPPEN AT
2 NIGHT WHEN PEOPLE ARE ALONE.

3 AS A MATTER OF FACT, HE WAS IN A SMALL HOUSE. THIS
4 HOUSE YOU WILL HEAR IS SOMEWHERE BETWEEN 1900, 2,000 SQUARE
5 FEET. HE WAS NOT ALONE, FOR HE WAS ACCOMPANIED BY TWO OF
6 HIS SISTERS, ONE OF THEIR FRIENDS, MR. AND MRS. TAPPEINER'S
7 CHILDREN, AND MR. TAPPEINER.

8 AND YOU WILL HEAR THAT WHEN THIS ALLEGED EVENT
9 HAPPENED, IT HAPPENED IN A ROOM STRAIGHT ACROSS THE HALL
10 FROM WHERE MR. TAPPEINER WAS SLEEPING.

11 YOU'LL ALSO HEAR TESTIMONY ABOUT THE PRESENCE OF A
12 DOG. THAT DOG'S NAME IS COOLA (PHONETIC). COOLA WAS
13 RESCUED WHEN THE TAPPEINERS WERE IN HAWAII AND IS SENSITIVE
14 TO PEOPLE SCREAMING FOR HELP.

15 YOU WILL HEAR TESTIMONY THAT MIKE TAPPEINER THROUGHOUT
16 THIS WHOLE THING -- NONE OF THE CHILDREN THROUGHOUT THIS
17 WHOLE ALLEGED EVENT EVER HEARD A WORD, NOT ONE WORD.
18 THAT'S JUST THE BEGINNING OF THE WHOLE THING.

19 NOW, IT MAY BE SO THE FIRST PHASE I WOULD SUGGEST TO
20 YOU WOULD BE WHEN YOU START DELIBERATION -- THE FIRST PHASE
21 WOULD INVOLVE ANSWERING THE QUESTION: DID THIS EVER
22 HAPPEN? AND, OF COURSE, IF THE ANSWER TO THAT IS, NO, YOU
23 DON'T HAVE TO GO ANY FURTHER. YOU BRING BACK A VERDICT OF
24 NOT GUILTY.

25 ON THE OTHER HAND, IF YOU FIND THAT IT DID HAPPEN,

1 THEN YOU MIGHT LISTEN TO MORE TESTIMONY DURING THE TRIAL
2 ABOUT WHO ACTUALLY INITIATED THIS, AND WHAT SUSAN'S
3 CONDITION WAS, AND WHETHER SHE WAS IN A VULNERABLE
4 POSITION.

5 SO THERE'S TWO PHASES TO IT, I WOULD SUGGEST TO YOU.
6 ONE OF THEM: DID IT HAPPEN AT ALL? AND IF YOU ANSWER
7 THAT, AGAIN, NEGATIVELY, THAT IS, NO, IT DIDN'T HAPPEN,
8 THAT'S THE END OF IT. YOU COME BACK AND YOU FIND SUSAN
9 TAPPEINER NOT GUILTY.

10 ON THE OTHER HAND, IF YOU SAY, YES, IT DID HAPPEN,
11 THEN YOU HAVE TO GO TO PHASE TWO. AND THAT IS, WHO IS
12 TRULY THE VULNERABLE THING HERE? AND YOU MIGHT WIND UP
13 WITH A CONCLUSION THAT WE'RE IN THE WRONG COURT TRYING THE
14 WRONG PERSON FOR THE WRONG THING.

15 HERE AGAIN, AT THE END OF IT ALL, I CAN'T EXPRESS IN
16 COMPETENT TERMS THAT MS. BURKE HAD, BECAUSE I DO NOT
17 PRESUME TO KNOW WHAT 12 PEOPLE ARE GOING TO DO ABOUT A
18 GIVEN PROBLEM. BUT I AM CONVINCED THAT IF YOU FOLLOW THE
19 RULES, FOLLOW THE LAW, PAY ATTENTION TO THIS SHORT TRIAL,
20 AND PLEASE DON'T THINK THAT BECAUSE IT'S GOING TO BE BRIEF
21 IT'S NOT IMPORTANT. THIS IS VERY IMPORTANT. I WOULD
22 SUGGEST TO YOU THAT THIS IS PROBABLY THE MOST IMPORTANT DAY
23 IN SUSAN TAPPEINER'S LIFE.

24 AT THE END OF IT ALL, I'M CONVINCED YOU WILL BRING
25 BACK A VERDICT OF NOT GUILTY.

- 1 THE COURT: THANK YOU, MR. MACLOSKIE.
2 MS. BURKE, IF YOU WILL CALL YOUR FIRST WITNESS.
3 MS. BURKE: THE STATE CALLS DEPUTY MIKE CREASON.
4 MICHAEL D. CREASON, BEING
5 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:
6 CLERK: PLEASE BE SEATED AND STATE YOUR NAME AND SPELL
7 YOUR LAST NAME PLEASE.
8 WITNESS: MICHAEL DAVID CREASON, C-R-E-A-S-O-N.
9 DIRECT EXAMINATION BY MS. BURKE:
10 Q GOOD MORNING, DEPUTY CREASON. OBVIOUSLY, YOU'RE IN
11 UNIFORM. WHAT AGENCY DO YOU WORK FOR?
12 A BLUFFTON POLICE DEPARTMENT, MA'AM.
13 Q AND HOW LONG HAVE YOU WORKED THERE?
14 A 5 AND ½ YEARS THIS TIME AROUND.
15 Q WHERE ELSE HAVE YOU WORKED?
16 A BEAUFORT COUNTY SHERIFF'S DEPARTMENT.
17 Q HOW LONG THERE?
18 A ABOUT 7 AND ½ YEARS.
19 Q OKAY. AND WHAT'S YOUR CURRENT POSITION?
20 A I'M AN OFFICER IN S.R.O. ASSIGNED TO H.E. MCCracken
21 MIDDLE SCHOOL.
22 Q WHAT IS S.R.O.?
23 A SCHOOL RESOURCE OFFICER.
24 Q TELL THE JURY A LITTLE BIT ABOUT WHAT THAT ENTAILS?
25 A THE SCHOOL RESOURCE OFFICER IS A CERTIFIED LAW

1 ENFORCEMENT OFFICER ASSIGNED TO THE SCHOOL. AND WE'RE
2 THERE TO ASSIST THE ADMINISTRATION WITH DIFFERENT THINGS,
3 ASSISTING SECURITY OF THE SCHOOL. AND WE ALSO ACT AS --
4 BESIDES A LAW ENFORCEMENT OFFICER, WE'RE LIKE A COUNSELOR
5 AND A TEACHER.

6 Q AT TIMES DO YOU ADDRESS THE STUDENT BODY?

7 A YES, MA'AM.

8 Q IS THIS SOMETHING YOU DO EVERY YEAR?

9 A YES, MA'AM.

10 Q WHAT'S THE BASIC POINTS OF YOUR DISCUSSION WHEN YOU
11 TALK TO THE STUDENT BODY?

12 A USUALLY SHORTLY AFTER SCHOOL STARTS THEY HAVE GRADE
13 LEVEL ASSEMBLIES. MIDDLE SCHOOL IS SIXTH GRADE THROUGH
14 EIGHTH GRADE. AND THEY'LL HAVE THE DIFFERENT GRADE LEVELS.
15 COME IN AT DIFFERENT TIMES, AND THE PRINCIPAL WILL TALK TO
16 THE STUDENTS. THE GRADE LEVEL ASSISTANT PRINCIPAL WILL
17 TALK TO THE STUDENTS, THE COUNSELOR.

18 AND I ALSO WILL COME IN AND SPEAK TO THE STUDENTS.
19 AND I TALK TO THE KIDS ABOUT DIFFERENT LAWS THAT THEY COULD
20 BE CHARGED WITH IN SCHOOL. AND I TELL THEM A LITTLE BIT
21 ABOUT WHAT I'M THERE FOR. AND I ALSO TELL THEM THAT THEY
22 CAN COME TO ME, THAT I HAVE AN OPEN-DOOR POLICY. IF THEY
23 HAVE ANY ISSUES OR PROBLEMS, YOU KNOW, I ALWAYS AM OPEN FOR
24 THEM TO COME AND TALK TO ME. AND IF I CAN HELP THEM, I
25 WILL. AND IF I CAN'T, I'LL POINT THEM IN THE RIGHT

- 1 DIRECTION, TO SOMEONE WHO MIGHT BE ABLE TO HELP THEM.
- 2 Q DO YOU DRESS IN THE SAME UNIFORM YOU HAVE NOW WHEN
- 3 YOU'RE IN SCHOOL ---
- 4 A YES, MA'AM.
- 5 Q --- AT WORK?
- 6 A YES, MA'AM, I DO.
- 7 Q OKAY. WERE YOU APPROACHED BY Victim ON OR ABOUT
- 8 FEBRUARY 23RD OF THIS YEAR?
- 9 A YES, MA'AM.
- 10 Q WHERE DID HE APPROACH YOU?
- 11 A I WAS IN THE HALLWAY WALKING BACK TO MY OFFICE AT H.E.
- 12 MCCracken MIDDLE SCHOOL AND I NOTICED JOSH STANDING OUTSIDE
- 13 MY DOOR. AND I WALKED UP TO Victim GREETED HIM, ASKED HIM
- 14 IF THERE WAS ANYTHING I COULD HELP HIM WITH.
- 15 AND Victim STATED THAT HE HAD SOMETHING THAT HE WANTED
- 16 TO TALK TO ME THAT WAS PRIVATE.
- 17 Q YOU SAID IT WAS PRIVATE?
- 18 A IT WAS PRIVATE, YES, MA'AM.
- 19 Q WHAT DID YOU DO AFTER THAT?
- 20 A WE WALKED INTO MY OFFICE AND SHUT THE DOOR, ASKED Victim
- 21 TO HAVE A SEAT AT MY CONFERENCE TABLE, AND ASKED HIM HOW I
- 22 COULD HELP HIM.
- 23 Q WITHOUT TELLING EXACTLY WHAT Victim TOLD YOU BECAUSE HE
- 24 WILL TELL THE JURY IN HIS OWN WORDS, WHAT WAS THE BASIC --
- 25 THE NATURE OF THE DISCUSSION?

- 1 A Victim HAD TOLD ME THAT 2 OR 3 WEEKS PRIOR TO SCHOOL
2 STARTING THAT HE HAD BEEN SEXUALLY ASSAULTED BY A NEIGHBOR.
3 Q DID HE GIVE A DESCRIPTION OR A NAME OF THE NEIGHBOR?
4 A SAID THE NEIGHBOR'S NAME WAS SUSAN.
5 Q DID HE GIVE YOU A DESCRIPTION?
6 A TALL, THIN, DIFFERENT COLORED HAIR.
7 Q DID HE GIVE YOU THE NEIGHBOR'S NAME?
8 A THE NEIGHBOR'S NAME? HE DIDN'T KNOW WHAT HER LAST
9 NAME WAS FOR SURE. HE SAID HER NAME WAS SUSAN.
10 Q WHAT GRADE WAS Victim IN AT THE TIME OF THE INCIDENT?
11 A HE WOULD HAVE BEEN TRANSITIONING FROM SEVENTH GRADE
12 INTO EIGHTH GRADE.
13 Q AND DO YOU KNOW HOW OLD HE WAS?
14 A WHEN Victim CAME TO ME, I BELIEVE HE WAS 14 YEARS OLD.
15 Q AND AT THE TIME OF THE INCIDENT?
16 A HE WAS 13 YEARS OLD.
17 Q WHAT ACTION DID YOU TAKE REGARDING FOLLOW-UP
18 INVESTIGATION AFTER TALKING TO Victim?
19 A AFTER Victim, YOU KNOW, VERBALLY DESCRIBED THE INCIDENT
20 TO ME, I THEN ASKED Victim TO GIVE ME A WRITTEN STATEMENT,
21 DETAILED STATEMENT, OF WHAT HE JUST TOLD ME. AND AT THIS
22 TIME I CONTACTED LIEUTENANT TUBBS, WHO IS MY SUPERVISOR,
23 WHO'S IN CHARGE OF INVESTIGATIONS AND TOLD HER, YOU KNOW,
24 WHAT I HAD GOING ON AND REQUESTED THAT AN INVESTIGATOR COME
25 OUT TO THE MIDDLE SCHOOL AND MEET WITH ME.

1 Q WHEN Victim RELATED HIS STORY TO YOU, WAS HE VERY
2 DETAILED?

3 A YES, MA'AM.

4 Q AND DID HE HESITATE IN BEING ABLE TO TELL YOU THE
5 STORY?

6 A NO, MA'AM.

7 Q WERE YOU ABLE TO GAUGE HIS RECOLLECTION OF EVENTS AND
8 HIS COMPOSURE AND HIS ABILITY TO TELL THE STORY FREELY?

9 A YES, MA'AM. Victim WAS QUIET. HIS VOICE WAS KIND OF
10 SUBDUED. BUT HE GAVE VERBALLY AND ON PAPER GAVE A FAIRLY
11 DETAILED STATEMENT OF THE INCIDENT.

12 Q HOW WAS HIS DEMEANOR AS HE WAS TALKING TO YOU?
13 EXPLAIN THAT SOME MORE.

14 A QUIET. ALMOST TIMID.

15 Q DID YOU ALSO CONTACT Victim MOTHER?

16 A NO, MA'AM, I DID NOT.

17 MS. BURKE: NO FURTHER QUESTIONS AT THIS TIME.

18 MR. MACLOSKIE: MAY I CROSS EXAMINE?

19 THE COURT: YES, SIR.

20 CROSS EXAMINATION BY MR. MACLOSKIE:

21 Q GOOD MORNING, MR. CREASON, HOW ARE YOU?

22 A FINE, SIR.

23 Q I AM GOING TO ASK YOU TO GIVE THE JURY THE BENEFIT OF
24 WHAT MR. Victim TOLD YOU. DO YOU HAVE YOUR REPORT IN FRONT
25 OF YOU?

1 A NOT IN FRONT OF ME, NO, SIR.

2 MS. BURKE: YOUR HONOR, I'M NOT SURE THAT THIS IS
3 APPROPRIATE. VICTIM CAN TESTIFY ---

4 THE COURT: HE CAN ASK HIM TO REFRESH HIS RECOLLECTION
5 IF HE WANTS TO. I ASSUME HE'S GETTING READY TO ASK HIM
6 ABOUT THE REPORT. IS THAT CORRECT, MR. MACLOSKIE?

7 MR. MACLOSKIE: I AM.

8 MS. BURKE: ANY STATEMENT HE MADE TO HIM WOULD BE
9 HEARSAY.

10 (PAUSE.)

11 Q YOU'VE ALREADY ESTABLISHED, HAVE WE NOT, MR. CREASON,
12 THAT VICTIM CAME TO YOU AND TALKED TO YOU?

13 A YES, SIR.

14 Q AND REPORTED THAT HE WAS SEXUALLY ASSAULTED?

15 A YES, SIR.

16 Q AND HE REPORTED IN SOME DETAIL ABOUT HIS SEXUAL
17 ASSAULT, DIDN'T HE?

18 A YES, SIR.

19 Q AND AS A MATTER OF FACT, YOU HAD HIM PRODUCE HIS
20 REPORT TO WRITING IN HIS OWN HAND, DID YOU NOT?

21 A I DID.

22 Q AND DO YOU HAVE THAT? DO YOU HAVE THAT STATEMENT WITH
23 YOU?

24 A I DO.

25 Q ALL RIGHT. AND THAT WAS A STATEMENT GIVEN IN YOUR

1 PRESENCE, WASN'T IT?

2 A YES, SIR.

3 Q YOU SIGNED IT?

4 A YES, SIR.

5 Q OKAY. AND THE INTERVIEW YOU CONDUCTED AND Victim

6 Victim STATEMENT IS REALLY ALL YOU KNOW ABOUT THIS CASE?

7 A YES, SIR.

8 Q LET'S TALK ABOUT WHAT HAPPENED WHEN YOU INTERVIEWED

9 HIM ON THE 27TH OF FEBRUARY; IS THAT CORRECT, IS THAT THE

10 CORRECT DATE?

11 A THE 23RD OF FEBRUARY.

12 Q THE 23RD. AMONG OTHER THINGS HE TOLD YOU -- AS YOU'VE

13 TESTIFIED TO ALREADY -- THAT THIS EVENT OCCURRED 2 OR 3

14 WEEKS BEFORE THE BEGINNING OF SCHOOL; IS THAT CORRECT?

15 A THAT'S WHAT Victim SAID, YES, SIR.

16 Q AND HE TOLD YOU THAT IT HAPPENED IN THE TAPPEINERS'

17 HOME; IS THAT CORRECT?

18 A YES, SIR.

19 Q AND HE TOLD YOU HE WAS SEXUAL ASSAULTED BY MRS.

20 TAPPEINER?

21 A YES, SIR.

22 Q AND HE TOLD YOU THAT HE WAS IN THE LIVING ROOM LYING

23 DOWN ON THE FLOOR WATCHING TELEVISION; ISN'T THAT WHAT HE

24 TOLD YOU?

25 A YES, SIR.

1 Q AND HE TOLD YOU WHERE HIS TWO SISTERS WERE, DIDN'T HE?

2 A YES, SIR.

3 MS. BURKE: YOUR HONOR, ANY TESTIMONY BY THIS OFFICER
4 WOULD BE LIMITED BY TIME AND PLACE ONLY. I JUST WANT TO
5 EMPHASIZE THAT IN TERMS OF WHAT THE VICTIM REPORTED ABOUT
6 THE INCIDENT.

7 MR. MACLOSKIE: WHOSE RULE IS THAT?

8 THE COURT: YOU NEED TO POINT TO A RULE OF LAW, MS.
9 BURKE. LET ME SEE BOTH OF THE ATTORNEYS FOR A MOMENT.

10 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE
11 PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

12 Q GOING BACK, HE TOLD HE WAS WATCHING TELEVISION LAYING
13 ON THE FLOOR, HIS TWO SISTERS WERE ASLEEP ON THE COUCH; IS
14 THAT WHAT HE TOLD YOU?

15 A YES, SIR.

16 Q OKAY. HAVE YOU BEEN IN THIS HOUSE?

17 A I'M SORRY, SIR?

18 Q HAVE YOU BEEN IN THE HOUSE?

19 A NO, SIR.

20 Q SO YOU DON'T KNOW WHAT IT LOOKS LIKE, YOU DIDN'T TAKE
21 PART IN AN INVESTIGATION?

22 A NO, SIR, I DID NOT.

23 Q BY THE WAY, DID YOU TALK TO ANY WITNESSES OTHER THAN

24 *Victim?*

25 A NO, SIR.

1 Q OKAY. AND ONE OF THE THINGS HE TOLD YOU THAT SUSAN
2 GRABBED HIM BY THE ARM?

3 A YES, SIR.

4 Q AND TOOK HIM UPSTAIRS TO A BEDROOM UPSTAIRS?

5 A YES, SIR.

6 Q AND HIT HIM IN THE HEAD?

7 A YES, SIR.

8 Q AND HE WAS SCARED?

9 A YES, SIR.

10 Q AND HE RAN OUT OF THE HOUSE AFTER THIS WAS OVER AND
11 WENT HOME AND HAD TO CLIMB THROUGH A WINDOW BECAUSE HIS
12 PARENTS WEREN'T THERE; IS THAT WHAT HE TOLD YOU?

13 A YES, SIR.

14 Q AND OF COURSE, HE DESCRIBED THIS SEXUAL ASSAULT TO
15 YOU?

16 A YES, SIR.

17 Q GRAPHICALLY? WHAT DID HE DESCRIBE TO YOU?

18 A HE DESCRIBED THAT MRS. TAPPEINER HAD HIM BY THE ARM
19 AND PULLED HIM UPSTAIRS AND BROUGHT HIM INTO ONE OF THE
20 DAUGHTER'S BEDROOMS. SHE SHUT AND LOCKED THE DOOR. AND
21 THAT SHE TOOK HIS PANTS OFF AND SHE THEN TOOK HER DRESS AND
22 PANTIES OFF AND SHE LAID ON THE BED, AND THAT -- TOLD HIM
23 TO PERFORM ORAL SEX ON HIM (SIC). AND VICTIM SAID HE DIDN'T
24 WANT TO DO IT, BUT SHE HIT HIM IN THE HEAD AND TOLD HIM TO
25 DO IT. HE TRIED TO GET AWAY AT ONE POINT BUT SHE GRABBED A

1 HOLD OF HIM AND FORCED -- SHE LAID BACK ON THE BED. FORCED
2 -- GRABBED HIM BY THE HEAD AND FORCED HIS HEAD BETWEEN HER
3 LEGS AND TOLD HIM TO PERFORM ORAL SEX ON HER. AND AFTER HE
4 FINISHED THAT, THEN SHE HAD ~~Victim~~ LIE ON THE BED AND SHE GOT
5 ON TOP OF ~~Victim~~ AND SHE TOOK HIS PENIS, INSERTED IT INTO HER
6 VAGINA.

7 Q AND BY THAT WE ALL -- USING SOME DEGREE OF COMMON
8 SENSE -- EXCUSE ME, LADIES AND GENTLEMEN, CAN ASSUME AT
9 THIS POINT ~~Victim~~ HAD AN ERECTION?

10 A I CAN ASSUME THAT, YES.

11 Q OTHERWISE, IT WOULD BE LIKE TRYING TO PUT AN OYSTER IN
12 A PARKING METER, WOULDN'T IT?

13 A YES, SIR.

14 Q WELL, THAT'S NOT ALL ~~Victim~~ TOLD YOU. HE TOLD YOU ABOUT
15 SOME THINGS THAT HAPPENED DOWNSTAIRS WHILE HE WAS ON THE
16 FLOOR WITH HIS TWO SISTERS. CLOSE BY, DIDN'T HE?

17 A YES, SIR.

18 Q WHAT DID HE TELL YOU ABOUT THAT?

19 A ~~Victim~~ HAD SAID THAT HIS SISTERS WERE ASLEEP ON THE
20 COUCHES. THERE WAS TWO OTHER CHILDREN IN THE HOUSE WHO
21 WERE MRS. TAPPEINER'S CHILDREN, WERE ALSO ASLEEP ON THE
22 COUCH. HE WAS LAYING ON THE FLOOR IN FRONT OF THE TV. AND
23 THAT SHE CAME UP TO ~~Victim~~ LAID DOWN NEXT TO HIM, PLACED HER
24 HANDS INSIDE HIS PANTS AND PLAYED WITH HIS PENIS.

25 HE TOLD HER TO STOP.

1 SHE DID AT FIRST. AND SHE EVENTUALLY GOT UP, WENT TO
2 THE KITCHEN, CAME BACK A FEW MINUTES LATER, AND GRABBED
3 Victim BY THE ARM AND TOOK HIM UPSTAIRS.

4 Q THAT SHE STOPPED AND WENT INTO THE KITCHEN; IS THAT
5 WHAT HE TOLD YOU?

6 A YES, SIR.

7 Q AND HE DIDN'T LEAVE?

8 A NO, SIR.

9 Q HE STAYED?

10 A (NO RESPONSE.)

11 Q YOU'VE GOT A COPY OF HIS STATEMENT THERE?

12 A I DO.

13 Q WOULD YOU LOOK AT THAT PLEASE. ON THE STATEMENT, AS I
14 LOOK AT IT, BASICALLY RECITES THE SAME THING THAT HE TOLD
15 YOU, BUT THERE IS AN ADDITION. AND THE ADDITION HAS TO DO
16 IF YOU WOULD LOOK AT THE LAST LINE AND READ TO THE JURY
17 WHAT YOU HAVE IN FRONT OF YOU, AND THAT'S A COPY IN Victim
18 HANDWRITING, IS IT NOT?

19 A YES, SIR, IT IS.

20 Q LOOK AT THE LAST LINE AND READ THAT A LOUD FOR ME. IT
21 STARTS WITH, I HOLLERED?

22 A I HOLLERED FOR HER HUSBAND, BUT HE DID NOT WAKE UP.

23 MR. MACLOSKIE: THAT'S ALL I HAVE. THANK YOU.

24 THE COURT: REDIRECT?

25 MS. BURKE: THANKS, YOUR HONOR.

1 REDIRECT EXAMINATION BY MS. BURKE:

2 Q DEPUTY, *victim* TOLD HE DIDN'T ENJOY WHAT HAPPENED; ISN'T
3 THAT CORRECT?

4 A YES, MA'AM.

5 Q IN FACT, YOU ALL CANDIDLY ASKED HIM IF HE BECAME
6 AROUSED, DIDN'T YOU. WERE YOU PRESENT WHEN HE WAS SPEAKING
7 TO DEPUTY TUBBS?

8 A I WAS.

9 Q AND THE QUESTION WAS ASKED OF HIM REGARDING WHETHER HE
10 WAS AROUSED; IS THAT CORRECT?

11 A I AM NOT SURE I REMEMBER.

12 Q BUT DID YOU REMEMBER *victim* SAYING TO YOU ALL DURING
13 YOUR DISCUSSION THAT HE DID NOT ENJOY WHAT HAPPENED; IS
14 THAT CORRECT?

15 A I DO.

16 Q *Victim* ALSO TOLD YOU THAT THE DEFENDANT'S HUSBAND HAD
17 BEEN DRINKING HEAVILY; IS THAT CORRECT?

18 A I BELIEVE *victim* SAID THAT HE HAD ALSO -- HE'D BEEN
19 DRINKING.

20 Q GO AHEAD AND SPEAK UP FOR ME AS WELL. I'M SORRY.

21 A YES, MA'AM. I BELIEVE *victim* DID TELL ME THAT MR.
22 TAPPEINER HAD BEEN DRINKING THAT NIGHT.

23 Q OKAY. AND WHEN YOU WAS LISTENING TO *victim* STATEMENT,
24 WAS THERE ANYTHING THAT INDICATED TO YOU THAT INTERCOURSE
25 DID NOT OCCUR?

1 A I'M SORRY?

2 MR. MACLOSKIE: I OBJECT TO THAT. THAT'S A CONCLUSION
3 FOR THE JURY TO REACH.

4 MS. BURKE: YOUR HONOR, HE IS TAKING A REPORT ---

5 THE COURT: OKAY. I THINK YOU NEED TO REPHRASE YOUR
6 QUESTION, BECAUSE HE EVEN ASKED YOU. HE DIDN'T UNDERSTAND
7 YOUR QUESTION. SO WHY DON'T YOU GO AHEAD AND REPHRASE IT.

8 Q BASED ON THE STATEMENTS THAT Victim GAVE TO YOU AS A LAW
9 ENFORCEMENT OFFICER, DID YOU COME TO THE CONCLUSION THAT
10 FURTHER INVESTIGATION WAS NEEDED BECAUSE THERE WAS
11 TRUTHFULNESS TO THE ALLEGATION?

12 MR. MACLOSKIE: I OBJECT TO THAT. THAT'S BOLSTERING.

13 THE COURT: OKAY. OVERRULED. YOU CAN ANSWER HER
14 QUESTION, DEPUTY CREASON.

15 A YES, MA'AM.

16 MS. BURKE: THANK YOU. NO FURTHER QUESTIONS.

17 THE COURT: ANY RECROSS?

18 RECROSS EXAMINATION BY MR. MACLOSKIE:

19 Q DID Victim TELL YOU HOW MUCH MR. TAPPEINER HAD TO
20 DRINK?

21 A NO, SIR.

22 MR. MACLOSKIE: THANK YOU VERY MUCH.

23 THE COURT: NOTHING ELSE FROM THE STATE.

24 THE COURT: OKAY. ANY OBJECTION TO DEPUTY CREASON
25 BEING EXCUSED?

1 MR. MACLOSKIE: NOT FROM THE DEFENSE.

2 MS. BURKE: NO, YOUR HONOR.

3 THE COURT: YOU MAY BE EXCUSED, DEPUTY CREASON. THANK
4 YOU, SIR.

5 (THE WITNESS LEAVES THE WITNESS STAND.)

6 THE COURT: SOLICITOR, CALL YOUR NEXT WITNESS.

7 MS. BURKE: THE STATE CALLS *Victim*.

8 *Victim*, BEING FIRST
9 DULY SWORN, TESTIFIED AS FOLLOWS:

10 CLERK: PLEASE BE SEATED.

11 THE COURT: *Victim*, IF YOU WILL TAKE A SEAT, SIR.
12 AND I'M JUST GOING TO ASK THAT YOU SPEAK UP. AND WOULD YOU
13 SPELL YOUR LAST NAME FOR THE COURT REPORTER RIGHT HERE.

14 WITNESS: *Victim*

15 THE COURT: THANK YOU.

16 MS. BURKE: YOUR HONOR, MAY WE BRIEFLY APPROACH?

17 THE COURT: YOU MAY.

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

20 THE COURT: LADIES AND GENTLEMEN, BEFORE WE TAKE THE
21 NEXT WITNESS, I'M GOING TO GO AHEAD AND TAKE A SHORT BREAK.
22 I'M GOING TO SEND YOU BACK TO YOUR JURY ROOM. GET A CUP OF
23 COFFEE AND A COKE, AND YOU ARE FREE TO BRING IT BACK WITH
24 YOU IF YOU'D LIKE.

25 AGAIN, DO NOT BEGIN DISCUSSING THIS CASE. IT WOULDN'T

1 BE APPROPRIATE TO DO SO AT THIS TIME. WE'LL BE BACK WITH
2 YOU SHORTLY. THANK YOU.

3 (THE JURY RETIRES TO THE JURY ROOM AT 11:33 A.M.)

4 BAILIFF: THE JURY IS CLEAR, YOUR HONOR.

5 THE COURT: THANK YOU.

6 WE HAD A BENCH CONFERENCE VERY BRIEFLY. MS. BURKE
7 ASKED ME TO INQUIRE OF Victim BASED ON HIS AGE IF HE
8 UNDERSTOOD THE TRUTH, AND I JUST WANTED TO MAKE SURE WE DID
9 THAT FOR THE RECORD.

10 I ASKED MR. MACLOSKIE WHETHER OR NOT HE COULD
11 STIPULATE TO IT, AND, OF COURSE, HE SAID THAT HE DIDN'T
12 FEEL COMFORTABLE DOING THAT. SO I WOULD FEEL MORE
13 COMFORTABLE MYSELF JUST SPEAKING WITH HIM SHORTLY.

14 THE COURT: Victim, HOW OLD ARE YOU?

15 MR. Victim 15.

16 THE COURT: WHERE ARE YOU IN SCHOOL RIGHT NOW?

17 MR. Victim: I AM IN WEST VIRGINIA AT STONEWALL
18 JACKSON.

19 THE COURT: OKAY. IN MIDDLE SCHOOL OR HIGH SCHOOL?

20 MR. Victim: MIDDLE SCHOOL.

21 THE COURT: WHAT GRADE ARE YOU IN?

22 MR. Victim: EIGHTH GRADE.

23 THE COURT: EIGHTH GRADE NOW. OKAY. I JUST WANT TO
24 MAKE SURE. YOU UNDERSTAND RIGHT FROM WRONG, DON'T YOU?

25 MR. Victim: YES, MA'AM.

1 THE COURT: OKAY. SO YOU UNDERSTAND IT'S WRONG TO
2 TELL A LIE, RIGHT?
3 MR. Victim: YES, MA'AM.
4 THE COURT: AND YOU UNDERSTAND THAT WHEN YOU TOOK YOUR
5 OATH HERE THAT YOUR JOB IS TO TELL THE TRUTH, WHATEVER THAT
6 IS; YOU UNDERSTAND THAT?
7 MR. Victim: YES, MA'AM.
8 THE COURT: ALL RIGHT. SIR, HOW ARE YOU DOING IN
9 SCHOOL?
10 MR. Victim: DOING PRETTY GOOD.
11 THE COURT: DO YOU GET GOOD GRADES?
12 MR. Victim: YEAH.
13 THE COURT: WHAT KIND OF GRADES?
14 MR. Victim: MY LOWEST GRADE IS A 92.
15 THE COURT: VERY GOOD. WHAT CLASS IS THAT IN?
16 MR. Victim: SCIENCE.
17 THE COURT: SCIENCE. OKAY. WHAT'S YOUR FAVORITE
18 SUBJECT?
19 MR. Victim: MATH.
20 THE COURT: MATH. OKAY. ANY FURTHER INQUIRY YOU
21 WOULD LIKE REQUESTED, MS. BURKE, OF MR. Victim?
22 MS. BURKE: NO, YOUR HONOR.
23 THE COURT: MR. MACLOSKIE?
24 MR. MACLOSKIE: NO, THANK YOU.
25 THE COURT: OKAY. I'M CONFIDENT THAT MR. Victim IS

1 OLD ENOUGH AND UNDERSTANDS WHAT HE'S DOING HERE. HE
2 UNDERSTANDS IT'S A COURT OF LAW. HE UNDERSTANDS THAT HE'S
3 JUST BEEN SWORN TO TELL THE TRUTH, AND THAT IS THE ONLY
4 THING YOU HAVE TO DO HERE TODAY. OKAY, MR. Victim?

5 MR. Victim: YES.

6 THE COURT: ALL RIGHT.

7 MS. BURKE: HE LIKES Victim TOO.

8 THE COURT: PARDON ME?

9 MS. BURKE: HE LIKES TO BE CALLED Victim TOO.

10 THE COURT: OKAY. ALL RIGHT. WELL, EITHER ONE. IT'S
11 A LITTLE BIT MORE OF A FORMAL PROCEEDING, SO THAT'S WHY I
12 REFER TO YOU AS MR. Victim OKAY?

13 MR. Victim OKAY.

14 THE COURT: ALL RIGHT. WITH THAT SAID, WE'RE GOING TO
15 GO AHEAD, YOU ALL. ARE YOU COMFORTABLE JUST TAKING A VERY
16 QUICK BREAK OR DO YOU WANT TO JUST GO AHEAD AND GO?

17 MS. BURKE: WE CAN TAKE A QUICK BREAK, YOUR HONOR.

18 MR. MACLOSIE: WHATEVER SUITS YOU.

19 THE COURT: OKAY. WE'RE GOING TO GO AHEAD AND TAKE A
20 QUICK BREAK.

21 MR. Victim YOU ARE FREE TO STEP DOWN. YOU CAN USE
22 THE REST ROOM, WHATEVER YOU NEED TO DO, GET A DRINK OF
23 WATER. YOU'RE FINE TO DO THAT. WHEN WE COME BACK IN THE
24 COURTROOM, I'M JUST GOING TO HAVE YOU COME BACK AND TAKE A
25 SEAT RIGHT HERE AGAIN. OKAY. ALL RIGHT. THANK YOU.

1 (THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)
2 (A RECESS WAS TAKEN.)
3 (THE WITNESS RETURNS TO THE WITNESS STAND.)
4 THE COURT: IS THE STATE READY?
5 MS. BURKE: YES, YOUR HONOR.
6 THE COURT: DEFENSE READY?
7 MR. MACLOSKIE: WE'RE READY.
8 THE COURT: ALL RIGHT. LET'S GO AHEAD AND BRING THE
9 JURY IN.
10 Victim ONCE THE JURY COMES IN, MS. BURKE IS GOING TO
11 START ASKING YOU QUESTIONS. ALL RIGHT?
12 MR. Victim: OKAY.
13 THE COURT: AND THEN AFTER THAT, MR. MACLOSKIE IS
14 GOING TO ASK YOU SOME QUESTIONS. OKAY, SIR?
15 MR. Victim: YES.
16 BAILIFF: THE JURORS ARE ENTERING, YOUR HONOR.
17 THE COURT: THANK YOU.
18 (THE JURY RETURNS TO THE COURTROOM AT 11:44 A.M.)
19 BAILIFF: YOUR HONOR, THE JURY IS SEATED.
20 THE COURT: THANK YOU. WELCOME BACK, LADIES AND
21 GENTLEMEN OF THE JURY.
22 MS. BURKE.
23 DIRECT EXAMINATION BY MS. BURKE:
24 Q HI, Victim GOOD MORNING. HOW ARE YOU?
25 A GOOD. HOW ARE YOU?

Victim

- DIRECT BY MS. BURKE

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- 1 Q HOW OLD ARE YOU RIGHT NOW, JOSH?
- 2 A 15.
- 3 Q YOU JUST HAD A BIRTHDAY A COUPLE WEEKS AGO?
- 4 A YES, THE 15TH.
- 5 Q THE 15TH OF THIS MONTH?
- 6 A YES.
- 7 Q ABOUT HOW MUCH DO YOU WEIGH?
- 8 A 115 POUNDS.
- 9 Q OKAY. YOU WEIGHED LESS THAN THAT LAST YEAR,
- 10 OBVIOUSLY?
- 11 A YES.
- 12 Q ABOUT HOW MUCH?
- 13 A MAYBE A HUNDRED.
- 14 Q A HUNDRED POUNDS. YOU WERE SHORTER -- WERE YOU A
- 15 LITTLE SHORTER LAST YEAR TOO?
- 16 A YES.
- 17 Q YOU'VE HAD A GROWTH SPURT?
- 18 A YES, MA'AM.
- 19 Q A COUPLE INCHES?
- 20 A YES, MA'AM.
- 21 Q WHAT GRADE ARE YOU IN NOW?
- 22 A EIGHTH.
- 23 Q AND WHAT SCHOOL DO YOU ATTEND?
- 24 A STONEWALL JACKSON IN CHARLESTON, WEST VIRGINIA.
- 25 Q IN WEST VIRGINIA?

1 A YES.

2 Q AS YOU KNOW, WE ARE HERE TO TALK ABOUT THE INCIDENT
3 THAT HAPPENED WITH THE DEFENDANT. WAS THAT ON OR ABOUT
4 AUGUST 15TH OF LAST YEAR?

5 A YES, MA'AM.

6 Q GO AHEAD AND TELL THE JURY, victim TELL THEM WHAT
7 HAPPENED?

8 A MY MOM WAS GOING TO AN EVENT FOR MY STEP-DAD'S JOB IN
9 -- I BELIEVE IT WAS BLUFFTON. AND I WENT OVER TO MRS.
10 TAPPEINER'S HOUSE TO STAY WHILE MY MOM WAS GONE. WE
11 WATCHED 2 OR 3 MOVIES. SHE ORDERED PIZZA. WHEN SHE WENT
12 INTO THE KITCHEN AND PUT EVERYBODY'S PIZZA ON A PLATE, AND
13 WE WERE IN THE LIVING ROOM. SHE BROUGHT IT BACK. WE ATE.
14 AND WE FINISHED THE LAST MOVIE, SHE -- EVERYBODY HAD LAID
15 DOWN. MY SISTER WAS ALREADY ASLEEP BEFORE THE END OF THE
16 LAST MOVIE. AND THE NEIGHBOR, OUR FRIEND THAT WAS OVER AT
17 MRS. TAPPEINER'S HOUSE, WAS ASLEEP. I THINK SHE FELL
18 ASLEEP RIGHT AFTER THE MOVIE ENDED.

19 AND I LAID DOWN. MRS. TAPPEINER WENT INTO THE
20 KITCHEN. AND I LAID DOWN ON THE FLOOR AND SHE CAME BACK
21 IN. AND SHE LAID DOWN BESIDE ME AND STARTED TOUCHING ME.
22 AND I PUSHED HER HAND. SHE WAS TRYING TO PUT HER HAND DOWN
23 MY PANTS, AND I PUSHED HER AWAY. AND I TOLD HER TO STOP.

24 AND THEN SHE DID IT AGAIN. AND I GOT UP AND TRIED TO
25 LEAVE. AND SHE RAN AFTER ME AND GRABBED ME AND THEN

1 STARTED -- SHE GRABBED MY ARM AND STARTED PULLING ME BEHIND
2 HER UP THE STEPS.

3 I WAS RESISTING. SHE STARTED HITTING ME IN THE HEAD.
4 AND I YELLED FOR MY SISTER AND SHE DIDN'T WAKE UP. AND
5 WHEN WE GOT TO THE TOP OF THE STEPS, I YELLED FOR MRS.
6 TAPPEINER'S HUSBAND. AND NOBODY WOKE UP OR ANSWERED.

7 SHE TOOK ME INTO HER DAUGHTER'S ROOM. SHE LOCKED THE
8 DOOR AND TOOK OFF MY PANTS AND THEN SHE TOOK OFF HER DRESS
9 AND HER UNDERWEAR AND SHE LAID DOWN ON THE BED AND TRIED TO
10 FORCE ME TO PERFORM ORAL SEX. AND I REFUSED. I TRIED TO
11 GO OUT THE DOOR. SHE CAUGHT ME BEFORE I COULD GET OUT AND
12 SHE PULLED ME BACK AND STARTED TO HITTING ME IN THE HEAD
13 AND PUSHED ME DOWN -- PUSHED MY HEAD IN BETWEEN HER LEGS
14 AND FORCED ME TO PERFORM ORAL SEX. AND THEN WHEN THAT WAS
15 OVER, SHE PUT ME ON THE BED AND LAID ON TOP OF ME AND MADE
16 ME PERFORM SEX.

17 AND WHEN SHE WAS FINISHED, SHE SAID, DON'T WORRY ABOUT
18 TELLING ANYBODY, BECAUSE I KNOW PEOPLE, AND I COULDN'T GET
19 AWAY. AND WAITED FOR A MINUTE. I WAS KIND OF IN SHOCK.

20 FINALLY, AFTER SHE WAS ALREADY OUT OF THE ROOM, I RAN
21 DOWNSTAIRS AND RAN OUT THE FRONT DOOR. AND MY MOM WASN'T
22 HOME YET, SO I HAD TO CLIMB IN THROUGH THE BACK WINDOW
23 WHERE OUR COMPUTER WAS. AND I WAS SITTING -- I WENT
24 UPSTAIRS AND TOOK A SHOWER. I WAS IN THE SHOWER FOR LIKE
25 AN HOUR.

1 AND THEN I WENT DOWNSTAIRS. I WAS TRYING TO WATCH TV
2 AND MY MOM GOT HOME. I ASKED HER IF SHE HAD ANY EXCEDRIN
3 OR ANYTHING FOR A HEADACHE BECAUSE MY HEAD WAS HURTING.
4 AND THEN SHE TOLD ME TO GO TO BED AFTER SHE GAVE ME SOME
5 EXCEDRIN. SO I WENT UPSTAIRS AND I LAID DOWN. I COULDN'T
6 FALL ASLEEP. AND THEN FINALLY I FELL ASLEEP AROUND 5:00
7 O'CLOCK IN THE MORNING IS THE LAST TIME I LOOKED AT THE
8 CLOCK.

9 I -- THAT'S ALL I REMEMBER FROM THAT NIGHT.

10 Q OKAY. GOOD, Victim IS YOUR NEIGHBOR IN THE COURTROOM
11 TODAY?

12 A YES, MA'AM.

13 Q POINT HER OUT TO THE JURY?

14 A (COMPLIED.)

15 Q WHAT IS SHE WEARING?

16 A SHE IS WEARING A BLACK JACKET WITH A GREEN SHIRT.

17 MS. BURKE: LET THE COURT REFLECT THAT Victim HAS
18 POINTED OUT THE DEFENDANT.

19 Q WHICH ROOM DID YOU SAY SHE TOOK YOU TO?

20 A HER DAUGHTER'S ROOM.

21 Q DESCRIBE THE ROOM?

22 A THERE IS A WINDOW. IT'S ON THE SECOND FLOOR. THERE'S
23 A WINDOW FACING THE ROAD. IF YOU'RE FACING THE WINDOW WHEN
24 YOU WALK INTO THE ROOM, THE DOOR IS ON THE OPPOSITE --
25 OPPOSITE WALL. THE BED IS TO THE RIGHT OF THE WINDOW.

1 THEIR COMPUTER IS ON THE WALL THAT'S TO THE LEFT OF THE
2 WINDOW. AND THEIR DRESSERS ARE ON THE LEFT SIDE ON THE
3 WALL AT THE WINDOW.

4 Q IS THAT THE ROOM AS YOU REMEMBER IT FROM THAT NIGHT?

5 A YES, MA'AM.

6 Q DO YOU REMEMBER THE LINEN OR ANYTHING LIKE THAT?

7 A THERE WAS A YELLOW BLANKET ON THE BED.

8 Q AND YOU SAID HER DAUGHTER'S ROOM, DO YOU KNOW WHICH
9 DAUGHTER?

10 A NO, MA'AM.

11 Q OKAY. WHERE WAS THE DEFENDANT WHEN SHE WAS TAKING HER
12 CLOTHES OFF?

13 A IN FRONT OF THE DOOR.

14 Q THIS IS THE BEDROOM DOOR?

15 A YES, MA'AM.

16 Q AND WHAT WERE YOU DOING DURING THIS TIME?

17 A I WAS TRYING TO GET OUT.

18 Q HOW WERE YOU TRYING TO GET OUT?

19 A I WAS TRYING TO GO PAST HER AND OPEN UP THE DOOR.

20 Q HOW WERE YOU TRYING TO GET PAST HER?

21 A I WAS PUSHING MY WAY IN BETWEEN HER AND THE DOOR.

22 Q OKAY. IS SHE PRETTY TALLER THAN YOU?

23 A YES, MA'AM.

24 Q WERE YOU -- OBVIOUSLY, YOU WEREN'T SUCCESSFUL IN
25 TRYING TO PUSH HER OUT OF THE WAY ---

1 MR. MACLOSKIE: YOUR HONOR, PLEASE.

2 Q --- WHAT DID SHE DO ---

3 MR. MACLOSKIE: I WOULD OBJECT TO ANY MORE LEADING.

4 THE COURT: OKAY.

5 MS. BURKE: YOUR HONOR, I THINK HE TESTIFIED ---

6 THE COURT: THAT WAS A COMMENT THOUGH, IT WASN'T EVEN

7 A QUESTION.

8 MS. BURKE: YES.

9 THE COURT: SO LET'S JUST GO AHEAD AND ASK HIM

10 QUESTIONS.

11 Q THE -- WERE YOU SUCCESSFUL IN TRYING TO GET HER OUT OF

12 THE WAY?

13 A NO, MA'AM.

14 Q IS SHE DOING ANYTHING TO PREVENT YOU FROM GETTING OUT

15 OF THE WAY?

16 A SHE WOULD PUSH ME BACK OUT OF THE WAY.

17 Q HOW -- HOW MUCH POUNDS DID YOU SAY YOU WEIGHED BACK

18 THEN?

19 A PROBABLY ABOUT A HUNDRED POUNDS. I DON'T WEIGH MYSELF

20 REGULARLY.

21 Q YOU TALKED ABOUT THE FACT THAT YOU SAW HER TAKE OFF

22 HER DRESS AND HER PANTIES. DID SHE HAVE ON A BRA?

23 A NO, MA'AM.

24 Q WHAT WERE YOU FEELING AND THINKING DURING THIS TIME

25 WHEN YOU WERE UP THERE IN THAT ROOM?

1 A I WAS WONDERING WHY THAT WOULD HAPPEN TO ME. I DIDN'T
2 KNOW WHAT I HAD DONE. I DIDN'T -- I FELT LIKE I WAS DOING
3 SOMETHING WRONG.

4 Q AND WHAT WERE YOU FEELING AND THINKING WHEN YOU SAID
5 SHE WAS SMACKING YOU ON THE HEAD? HOW DID THAT MAKE YOU
6 FEEL?

7 A IT HURT. IT SCARED ME.

8 Q WAS THERE A DOG IN THE HOUSE?

9 A YES, MA'AM.

10 Q DO YOU REMEMBER HEARING THE DOG OUTSIDE?

11 A I DON'T KNOW WHETHER IT WAS INSIDE OR OUTSIDE.

12 Q I'M SORRY. I DIDN'T MEAN INSIDE THE ROOM WHERE YOU
13 WERE, BUT IN THE HOUSE?

14 A I DON'T REMEMBER WHETHER IT WAS INSIDE THE HOUSE OR
15 NOT. I DIDN'T HEAR IT.

16 Q OKAY. YOU SAID YOU WENT HOME AND CLIMBED THROUGH THE
17 WINDOW. WHY WAS THAT?

18 A THE FRONT AND BACK DOOR WERE LOCKED.

19 Q HOW LONG AFTER YOU WERE IN THE HOUSE DID YOUR MOM COME
20 HOME?

21 A PROBABLY ANYWHERE FROM AN HOUR AND A HALF TO TWO
22 HOURS.

23 Q WHAT DID YOU TELL HER AS TO WHY YOU WERE AT THE HOUSE?

24 A I JUST TOLD HER THAT I WASN'T FEELING GOOD.

25 Q AND THEN YOU SAID YOU ASKED FOR AN EXCEDRIN; IS THAT

1 CORRECT?

2 A YES, MA'AM.

3 Q GOING BACK TO EARLIER THAT NIGHT, YOU TALKED ABOUT
4 FOOD BEING PREPARED. WHAT FOOD DID YOU ALL EAT?

5 A PIZZA.

6 Q AND WHO PREPARED THE FOOD?

7 A SUSAN.

8 Q WERE YOU AROUND WHEN IT WAS PREPARED?

9 A NO, MA'AM.

10 Q WERE THE OTHER KIDS AROUND?

11 A NO, MA'AM. WE WERE IN THE LIVING ROOM.

12 Q PARDON?

13 A WE WERE IN THE LIVING ROOM.

14 Q ALL RIGHT. YOU MENTIONED THAT THERE WERE OTHER
15 PLAYMATES IN THE HOUSE. HOW OLD WERE THEY?

16 A WHAT DO YOU MEAN BY PLAYMATES?

17 Q THE OTHER KIDS IN THE HOUSE?

18 A OH, MY SISTER AT THE TIME WAS 12. OR NEIGHBOR THAT

19 WAS WITH US WAS 12 YEARS OLD. I DON'T KNOW HOW OLD HER

20 KIDS ARE.

21 Q DID THEY LOOK OLDER OR YOUNGER THAN YOUR SISTER?

22 A THEY'RE YOUNGER.

23 Q AND HER TWO KIDS -- ARE THEY THE SAME AGE OR ARE THEY

24 ALSO SEPARATE?

25 A THEY'RE SEPARATE.

1 Q OKAY. WHAT TIME WAS IT THAT YOU NOTICED THEY WERE
2 FALLING ASLEEP?

3 A I DON'T KNOW WHAT TIME IT WAS. THE SECOND MOVIE
4 HADN'T -- OR THE LAST MOVIE HADN'T ENDED YET.

5 Q OKAY. SO THEY DIDN'T MAKE IT THROUGH THE SECOND
6 MOVIE?

7 A THEY DIDN'T.

8 Q THEY HAD TROUBLE STAYING AWAKE?

9 A THEY DIDN'T MAKE IT THROUGH THE SECOND MOVIE.

10 Q OKAY. AND AROUND WHAT TIME DID SHE START TAKING YOU
11 UP THE STAIRS?

12 A I DON'T KNOW WHAT TIME IT WAS.

13 Q WAS -- DO YOU KNOW HOW LONG THE MOVIE WAS? WAS IT AN
14 HOUR? TWO HOURS?

15 A I DON'T REMEMBER.

16 Q OKAY. DO YOU KNOW IF IT WAS LONG AFTER THE KIDS HAD
17 FALLEN ASLEEP OR SHORTLY THEREAFTER?

18 A IT WAS SHORTLY AFTER.

19 Q OKAY. DID SHE OBSERVE THE KIDS SLEEPING AS WELL?

20 A I WOULD ASSUME SO. I DON'T KNOW.

21 Q WHERE WERE THEY SLEEPING?

22 A ON THE COUCH.

23 Q OKAY. WHERE WAS SHE?

24 A SHE WAS ON THE -- SHE WAS IN THE LIVING ROOM BEFORE
25 WITH THE KIDS AND EVERYBODY WATCHING THE MOVIE.

- 1 Q OKAY. DO YOU KNOW WHAT MOVIE YOU WERE WATCHING?
- 2 A WE WATCHED DEATH AT A FUNERAL AND SHUTTER.
- 3 Q AND SHUTTER. WERE YOU SCARED WHILE YOU WERE WATCHING
- 4 THIS MOVIE?
- 5 A YES, MA'AM.
- 6 Q YOU JUST DON'T LIKE SCARY MOVIES?
- 7 A NO.
- 8 Q I DON'T EITHER. AT SOME POINT DID THE DEFENDANT TRY
- 9 TO COMFORT YOU?
- 10 A YES, MA'AM.
- 11 Q TELL THE JURY WHAT SHE DID?
- 12 A SHE TOLD ME THAT -- OR SHE ASKED ME IF I WANTED TO
- 13 COME AND SIT IN THE CHAIR BESIDE HER IF I WAS SCARED.
- 14 Q AND YOU SAID YOU WERE SCARED, HOW WERE YOU ACTING?
- 15 A I HAD A BLANKET IN FRONT OF MY FACE SO IF SOMETHING
- 16 JUMPED OUT OR SOMETHING, I COULD COVER UP MY FACE. I WAS
- 17 JUMPING A LOT.
- 18 Q DID YOU -- WERE YOU SCREAMING OR ANYTHING LIKE THAT?
- 19 A I WASN'T SCREAMING. I WAS JUST JUMPING.
- 20 Q JUST BEHIND THE BLANKET?
- 21 A YES.
- 22 Q OKAY. AND WHAT KIND OF CHAIR WAS THIS THAT SHE WAS
- 23 SITTING ON? WAS IT A -- GO AHEAD AND EXPLAIN.
- 24 A IT WAS A CHAIR SEATS LIKE ONE PERSON. IT'S GOT TWO
- 25 ARMS -- IT'S GOT A ARM ON EACH SIDE.

1 Q AND IT'S A ONE-PERSON CHAIR, IS THAT WHAT YOU SAID?

2 A YES, MA'AM.

3 Q OKAY. WHERE WERE YOU SEATED WITH HER?

4 A BESIDE HER.

5 Q OKAY. AND SHE ASKED HER KIDS TO COME AND SIT WITH
6 HER?

7 A NO, MA'AM.

8 Q JUST YOU?

9 A YES, MA'AM.

10 Q AND WAS HER HUSBAND PRESENT AT THIS TIME AS WELL?

11 A YES, MA'AM.

12 Q AND WHAT WAS HE DOING?

13 A HE WAS SITTING ON THE COUCH WATCHING THE MOVIE BESIDE
14 US.

15 Q OKAY. SO HE WAS ALSO WATCHING THE MOVIE?

16 A YES, MA'AM.

17 Q DID YOU SEE THE GROWNUPS IN THE HOUSE DRINKING THAT
18 NIGHT?

19 A YES, MA'AM.

20 Q TELL THE JURY WHAT YOU SAW?

21 A THEY WERE -- THEY WERE DRINKING WINE AND BEER. THEY
22 DIDN'T SEEM TOO DRUNK, LIKE THEY DIDN'T -- THEY DIDN'T SEEM
23 DRUNK. THEY HAD BEEN DRINKING, BUT IT WASN'T -- THEY
24 DIDN'T HAVE ANY SLURRED SPEECH OR THEY WEREN'T STUMBLING
25 OVER ANYTHING OR ANYTHING LIKE THAT.

- 1 Q OKAY. DID YOU SEE THEM DRINKING THE SAME AMOUNT
2 EQUALLY? IN TERMS OF ONE PERSON DRINKING -- THE DEFENDANT
3 DRINKING BEER AND HER HUSBAND DRINKING BEER OR WAS SHE JUST
4 DRINKING WINE OR DID YOU OBSERVE ANY DIFFERENCE IN WHAT
5 THEY WERE DRINKING?
- 6 A MRS. TAPPEINER WAS DRINKING WINE AND BEER.
- 7 Q OKAY. DID SHE SEEM IN CONTROL OF HER ACTIONS THAT
8 NIGHT?
- 9 A SHE -- I DON'T UNDERSTAND THE QUESTION.
- 10 Q YOU MENTIONED BEFORE THAT SHE WAS -- SHE WAS NOT --
11 WELL, LET ME ASK YOU THIS. DID SHE SPEAK CLEARLY?
- 12 A YES, MA'AM.
- 13 Q WAS SHE STUMBLING AROUND THE HOUSE OR ANYTHING LIKE
14 THAT?
- 15 A NO, MA'AM.
- 16 Q OKAY. HOW FAR FROM THE DEFENDANT'S HOUSE DID YOU
17 LIVE?
- 18 A TWO DOORS DOWN.
- 19 Q AND HOW WOULD YOU DESCRIBE YOUR INTERACTION WITH HER?
- 20 A WE WOULD -- I MOWED HER YARD -- I MOWED HER YARD A
21 COUPLE TIMES. WE -- JUST LIKE NORMAL NEIGHBORS. I DIDN'T
22 SPEND AN EXCESSIVE TIME AT HER HOUSE OR ANYTHING.
- 23 Q HOW ABOUT THE DAYS AFTER THE INCIDENT, DID SHE SAY
24 ANYTHING TO YOU?
- 25 A SHE WOULD ASK ME IF I HAD TOLD ANYBODY.

1 Q WHAT WOULD YOU TELL HER?

2 A I JUST -- I WOULD WALK AWAY.

3 Q DID SHE MAKE ANY OTHER COMMENTS?

4 A NO.

5 Q HOW MANY TIMES DO YOU THINK -- WOULD SHE APPROACH YOU

6 AND ASK YOU THIS QUESTION OR WERE YOU OUTSIDE AT YOUR

7 HOUSE? YOU SAID YOU WERE 2 DOORS DOWN. WHERE WERE YOU IN

8 COMPARISON WHEN SHE MADE THIS STATEMENT?

9 A WE WOULD BE OUTSIDE JUST RIDING OUR BIKES OR SOMETHING
10 WHEN SHE WOULD SAY IT.

11 Q WAS ANYONE ELSE AROUND WHEN SHE WOULD SAY THAT?

12 A NO. SHE WOULD SAY IT WHILE I WAS BY MYSELF.

13 Q OKAY. WHEN SHE SAID THAT TO YOU, HOW DID SHE SAY IT?

14 HOW DID YOU INTERPRET HER SAYING IT?

15 A SHE WOULD JUST BE LIKE -- SHE WOULD JUST BE LIKE, YOU
16 DIDN'T TELL ANYBODY, DID YOU?

17 Q DID SHE SOUND MEAN WHEN SHE WAS SAYING THAT OR HOW

18 WOULD YOU DESCRIBE HER DEMEANOR?

19 A SHE WASN'T -- SHE WASN'T MEAN. BUT SHE -- JUST -- I
20 DON'T KNOW HOW TO DESCRIBE IT REALLY.

21 Q WHO WAS THE FIRST PERSON YOU TOLD THIS TO?

22 A OFFICER CREASON.

23 Q DID YOU HAVE A CHANCE TO TALK TO SEVERAL OFFICERS

24 ABOUT WHAT HAPPENED?

25 A YES, MA'AM.

- 1 Q DID YOU ALSO TELL THEM ALL THE SAME THING?
- 2 A EACH TIME I GOT A LITTLE MORE DETAILED. I WOULD
- 3 REMEMBER MORE AND BE MORE COMFORTABLE TO TELL.
- 4 Q SO AT THE BEGINNING YOU WEREN'T ALWAYS COMFORTABLE
- 5 TALKING ABOUT IT?
- 6 A YES.
- 7 Q OKAY.
- 8 A I WAS EMBARRASSED AND SCARED TO TELL.
- 9 Q DID ONE OF THE OFFICERS ASK YOU IF YOU ENJOYED WHAT
- 10 HAPPENED?
- 11 A LIEUTENANT TUBBS.
- 12 Q WHAT DID YOU TELL HER?
- 13 A I TOLD HER THAT I DIDN'T ENJOY IT.
- 14 Q DID SHE ALSO ASK YOU, Victim, IF YOU -- IF YOUR BODY
- 15 AUTOMATICALLY HAD A REACTION -- ERECTION, RATHER?
- 16 A YES, MA'AM.
- 17 Q OKAY. THAT YOUR PENIS WAS ERECTED?
- 18 A YES, MA'AM.
- 19 Q AND WHAT DID YOU SAY IN RESPONSE TO THAT?
- 20 A YES.
- 21 Q OKAY. TELL THE JURY WHAT HAPPENED AT THE TIME WHEN
- 22 YOU -- DID THE DEFENDANT -- TELL THE JURY WHAT HAPPENED AT
- 23 THE TIME WHEN YOU WAS ABOUT TO HAVE AN ERECTION THAT NIGHT?
- 24 A I DON'T UNDERSTAND YOUR QUESTION.
- 25 Q WHAT IF ANYTHING DID THE DEFENDANT DO BEFORE YOU

1 EJACULATED?

2 A I DON'T ---

3 Q DID YOU EJACULATE INSIDE HER?

4 A NO, MA'AM.

5 Q HOW IS IT YOU DID NOT?

6 A I PUSHED HER OFF OF ME.

7 Q OKAY. DID YOU TALK TO SERGEANT GONZALES ONE DAY WHEN
8 YOU WERE AT HOPE HAVEN?

9 A YES, MA'AM.

10 Q DID YOU ALSO TALK TO THE FOLKS AT HOPE HAVEN ABOUT
11 WHAT HAPPENED TO YOU?

12 A YES, MA'AM.

13 Q IN TALKING TO SERGEANT GONZALES, DID YOU ALL DISCUSS
14 THE ATTIRE THAT THE DEFENDANT WAS WEARING THAT NIGHT?

15 A YES, MA'AM.

16 Q WHAT DID YOU -- AND YOU ALSO TALKED TO DEPUTY CREASON
17 AND SERGEANT TUBBS AND OTHERS, WHAT DID YOU TELL THEM SHE
18 WAS WEARING?

19 A A RED DRESS WITH WHITE -- EITHER LIKE POLKA DOTS OR
20 FLOWER SHAPES OR SOMETHING LIKE THAT. AND BLACK PANTIES
21 WITH WHITE LETTERS.

22 MS. BURKE: MAY I APPROACH, YOUR HONOR?

23 THE COURT: YOU MAY.

24 (PLASTIC BAG CONTAINING RED DRESS MARKED FOR
25 IDENTIFICATION AS STATE'S EXHIBIT NO. 1.)

1 Q I HAND YOU WHAT'S BEEN MARKED FOR IDENTIFICATION AS
2 STATE'S EXHIBIT 1. DO YOU RECOGNIZE THIS?

3 A YES, MA'AM.

4 Q WHAT IS IT?

5 A IT'S THE DRESS THAT SHE WAS WEARING.

6 Q OKAY. IS THIS -- SHE HAD ON THE SAME DRESS ALL NIGHT?

7 A YES, MA'AM, AS FAR AS I KNOW.

8 Q I'M SORRY TO REPEAT. THIS IS THE DRESS YOU SAID SHE
9 WAS WEARING THAT NIGHT?

10 A YES, MA'AM.

11 Q OKAY.

12 MS. BURKE: YOUR HONOR, I ENTER STATE'S EXHIBIT 1 INTO
13 EVIDENCE.

14 MR. MACLOSKIE: AND I HAVE NO OBJECTION AND I HAVE NO
15 OBJECTION TO -- IT CAN BE VIEWED. THE PATTERN IS THE MOST
16 IMPORTANT THING. IT CAN STAY IN THE BAG THAT IT'S IN.

17 MS. BURKE: I APPRECIATE THE DEFENSE'S STATEMENT, BUT
18 I'LL GO AHEAD AND OPEN IT.

19 THE COURT: OKAY. YOU MAY.

20 (STATE'S EXHIBIT NO. 1 RECEIVED IN EVIDENCE.)

21 MS. BURKE: MAY I PUBLISH TO THE JURY, YOUR HONOR?

22 THE COURT: YOU MAY.

23 (PAUSE.)

24 Q THIS IS THE DRESS, RIGHT?

25 A YES, MA'AM.

1 Q DID SHE HAVE ON PANTS UNDERNEATH THIS?

2 A NO, MA'AM.

3 Q KIND OF SHORT. I'LL JUST STEP BACK. AND YOU SAID SHE
4 HAD ON NO BRA THAT NIGHT?

5 A YES, MA'AM.

6 Q THAT'S YES, SHE HAD A BRA?

7 A NO, SHE DID NOT.

8 Q SHE DID NOT HAVE A BRA. Victim YOU ALSO TALKED TO LAW
9 ENFORCEMENT, TO SERGEANT GONZALES ABOUT THE PANTIES YOU
10 SAW; ISN'T THAT CORRECT?

11 A YES, MA'AM.

12 MR. MACLOSIE: I OBJECT. HE JUST TESTIFIED SHE
13 DIDN'T HAVE ANY PANTIES ON.

14 MS. BURKE: I THINK HE SAID BRA.

15 MR. MACLOSIE: YOU ASKED HIM IF ---

16 THE COURT: YOU ALL APPROACH.

17 MR. MACLOSIE: THE COURT REPORTER ---

18 THE COURT: YOU ALL APPROACH.

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

21 THE COURT: LADIES AND GENTLEMEN OF THE JURY, THERE IS
22 A MATTER I NEED TO TAKE UP WITH THE ATTORNEYS OUTSIDE YOU
23 ALL'S PRESENCE. I'M GOING TO SEND YOU BACK TO THE JURY
24 ROOM. AGAIN, GET ANOTHER CUP OF COFFEE AND A COKE, AND
25 I'LL BE BACK WITH YOU ALL SHORTLY. THANK YOU.

1 (THE JURY RETIRES TO THE JURY ROOM AT 12:10 P.M.)
2 THE COURT: I AM HAVING THE COURT REPORTER REWIND.
3 WHAT MY RECOLLECTION WAS AS FAR AS THE TESTIMONY IS
4 CONCERNED IS THAT HE STATED THAT WHEN HE WAS TAKEN UP TO
5 THE BEDROOM SHE REMOVED HER DRESS AND REMOVED HER PANTIES.
6 I NEVER HEARD TESTIMONY THAT SAID SHE DID NOT HAVE ANY
7 PANTIES ON. BUT I UNDERSTAND YOU BELIEVE THAT THERE WAS
8 SOME TESTIMONY. SO MY COURT REPORTER -- SHE'S GOING TO GO
9 BACK ABOUT 3 MINUTES. IS IT FURTHER BACK THAN THAT OR
10 WHERE IS IT?

11 MR. MACLOSKIE: NO. IT'S VERY RECENT WHEN HE WAS
12 ASKED ---

13 MS. BURKE: I SAID PANTS NOT PANTIES. I SAID PANTS.

14 THE COURT: AT ONE POINT SHE ASKED HIM WHETHER OR NOT
15 SHE HAD PANTS ON WITH THE DRESS; IS THAT WHAT YOU'RE
16 TALKING ABOUT?

17 MR. MACLOSKIE: THAT'S WHAT I INTERPRET TO BE PANTIES,
18 UNDERWEAR.

19 MS. BURKE: I THINK WE CAN TAKE JUDICIAL NOTICE OF
20 PANTS AND PANTIES ARE TWO SEPARATE ARTICLES OF CLOTHING.

21 THE COURT: I'M NOT GOING TO TAKE JUDICIAL NOTICE OF
22 ANYTHING, NOT ALONG THOSE LINES.

23 LET'S BACK IT UP, DIANNE, AND LET'S JUST HEAR WHAT THE
24 QUESTION WAS. AND IT MAY BE MR. MACLOSKIE JUST MIS-HEARD
25 OR MISINTERPRETED PANTS TO BE PANTIES.

1 MR. MACLOSKIE: I MAY HAVE, YOUR HONOR.

2 THE COURT: I HEARD HER ASK IF THERE WAS PANTS.

3 MR. MACLOSKIE: I HEARD THAT SAME QUESTION. I HEARD
4 THE RESPONSE TO BE NO.

5 THE COURT: I HEARD THE WORD PANTS.

6 MR. MACLOSKIE: I HEARD THAT SAME WORD.

7 MS. BURKE: LET'S HEAR THE TAPE.

8 THE COURT: YOU ALL ARE JUST CONFUSING PANTS AND
9 PANTIES. SHE WAS ASKING PANTS, BASED ON -- I'M GOING TO
10 GUESS BASED ON THE DRESS AND ITS LENGTH; IS THAT CORRECT?

11 MS. BURKE: THAT'S CORRECT, YOUR HONOR.

12 THE COURT: WHICH I BELIEVE YOU MADE AN INAPPROPRIATE
13 COMMENT ON. BUT BEYOND THAT -- AND NOT A QUESTION.

14 WITH THAT SAID, I BELIEVE SHE WAS REFERRING TO PANTS
15 AND NOT PANTIES. I UNDERSTAND HOW YOU TOOK IT, BUT I DON'T
16 THINK THAT'S EXACTLY WHAT WAS SAID. I THINK SHE ASKED, WAS
17 THERE PANTS.

18 MR. MACLOSKIE: OKAY.

19 THE COURT: DO YOU UNDERSTAND?

20 MR. MACLOSKIE: I UNDERSTAND.

21 THE COURT: OKAY.

22 MR. MACLOSKIE: AND I ACCEPT THAT.

23 THE COURT: OKAY. DO YOU STILL WANT TO REWIND IT?

24 MR. MACLOSKIE: I DON'T THINK IT'S NECESSARY.

25 THE COURT: I DON'T THINK IT IS EITHER. I'M PRETTY

1 CLEAR ABOUT WHAT I HEARD. AND I CONFIRMED IT WITH MY LAW
2 CLERK. SHE HEARD THE SAME THING I DID.

3 MR. MACLOSKIE: SO I'M MAKING AN ISSUE OUT OF
4 SOMETHING THAT'S NOT AN ISSUE; IS THAT RIGHT?

5 CLERK: IT'S A FASHION THING. YOU CAN WEAR DRESSES
6 OVER PANTS. I'M ASSUMING THAT'S WHAT SHE WAS ASKING.

7 THE COURT: KIND OF LIKE LEGGINGS, MR. MACLOSKIE, OR
8 -- WOMEN DO THAT.

9 MR. MACLOSKIE: WHEN I WAS A KID AND WE USED TO TALK
10 ABOUT GETTING IN A GIRL'S PANTS, WE WEREN'T TALKING ABOUT
11 LEVIS. ALL RIGHT.

12 THE COURT: OKAY. ALL RIGHT. YOU ALL, LET'S GO AHEAD
13 AND DO THIS. SINCE WE'VE ALREADY SENT THE JURY OUT, LET'S
14 TAKE ABOUT A 5-MINUTE BREAK.

15 Victim, YOU ARE FREE TO STEP DOWN, SIR. YOU CAN
16 GET A DRINK OF WATER, GO TO THE BATH ROOM, WHATEVER. YOU
17 JUST CAN'T DISCUSS YOUR TESTIMONY WITH ANYBODY. OKAY?

18 Victim: OKAY.

19 THE COURT: SO YOU JUST GO DO WHAT YOU NEED. GO TAKE
20 A QUICK WALK TO THE REST ROOM, WHATEVER YOU NEED TO DO.
21 AND WHEN YOU COME BACK, JUST COME ON BACK UP HERE. OKAY?
22 THANK YOU, SIR.

23 (THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)

24 (A RECESS WAS TAKEN.)

25 (THE WITNESS RETURNS TO THE WITNESS STAND.)

- 1 THE COURT: THE STATE READY?
- 2 MS. BURKE: YES, YOUR HONOR.
- 3 THE COURT: DEFENSE READY?
- 4 MR. MACLOSKIE: WE ARE.
- 5 THE COURT: Victim ARE YOU READY, SIR?
- 6 MR. LANTER: YES, MA'AM.
- 7 THE COURT: ALL RIGHT. LET'S BRING THE JURY IN.
- 8 (THE JURY RETURNS TO THE COURTROOM AT 12:22 P.M.)
- 9 BAILIFF: YOUR HONOR, THE JURY IS SEATED.
- 10 THE COURT: THANK YOU. WELCOME BACK, LADIES AND
- 11 GENTLEMEN.
- 12 MS. BURKE.
- 13 MS. BURKE: THANK YOU, YOUR HONOR.
- 14 DIRECT EXAMINATION CONTINUED BY MS. BURKE:
- 15 Q Victim WAS THE DEFENDANT WEARING PANTIES THAT NIGHT?
- 16 A YES, MA'AM.
- 17 Q WAS SHE WEARING PANTS UNDERNEATH HER DRESS?
- 18 A NO, MA'AM.
- 19 Q WAS SHE WEARING LEGGIN OR LEGGINGS OR ANY KIND OF
- 20 COVERING UNDERNEATH HER DRESS BESIDES HER PANTIES?
- 21 A NO, MA'AM.
- 22 MS. BURKE: MAY I APPROACH, YOUR HONOR?
- 23 THE COURT: YOU MAY.
- 24 (PLASTIC BAG CONTAINING BLACK PANTIES MARKED FOR
- 25 IDENTIFICATION AS STATE'S EXHIBIT NO. 2.)

1 MS. BURKE: I HAND YOU WHAT'S BEEN MARKED AS STATE'S
2 EXHIBIT 2 FOR PURPOSES OF IDENTIFICATION.

3 Q I'M ABOUT TO HAND IT TO YOU. DO YOU RECOGNIZE THAT
4 ITEM?

5 A YES, MA'AM.

6 Q WHAT IS IT?

7 A IT'S THE PANTIES THAT MRS. TAPPEINER WAS WEARING THAT
8 NIGHT.

9 Q DID YOU GIVE A DESCRIPTION TO LAW ENFORCEMENT?

10 A YES, MA'AM.

11 MS. BURKE: YOUR HONOR, I MOVE THAT STATE'S EXHIBIT 2
12 BE ENTERED INTO EVIDENCE.

13 MR. MACLOSKIE: WITHOUT OBJECTION.

14 THE COURT: IT'S IN EVIDENCE WITHOUT OBJECTION.

15 (STATE'S EXHIBIT NO. 2 RECEIVED IN EVIDENCE.)

16 MS. BURKE: MAY WE PUBLISH, YOUR HONOR?

17 THE COURT: YOU MAY.

18 (PAUSE.)

19 MS. BURKE: THAT'S ALL THE QUESTIONS I HAVE RIGHT NOW,
20 YOUR HONOR.

21 MR. MACLOSKIE: MAY I CROSS EXAMINE?

22 THE COURT: YES, SIR.

23 CROSS EXAMINATION BY MR. MACLOSKIE:

24 Q *Victim*, WHEN YOU INITIALLY TALKED TO THE POLICE,
25 YOU TOLD THEM THAT THIS INCIDENT HAPPENED SOME TIME 2 TO 3

1 WEEKS PRIOR TO YOUR GOING BACK TO SCHOOL; IS THAT CORRECT?

2 A YES, SIR.

3 Q ALL RIGHT. AND WHEN DID YOU GO BACK TO SCHOOL?

4 A MIDWAY THROUGH AUGUST. I DON'T REMEMBER THE DATE.

5 Q MIDWAY THROUGH AUGUST YOU WENT BACK TO SCHOOL?

6 A I WOULD SAY MID TO LAST PART.

7 Q OKAY. AND THAT WOULD HAVE BEEN IN 2008, LAST YEAR; IS
8 THAT RIGHT?

9 A I BELIEVE SO, YES.

10 Q AND WHEN DID YOU REPORT THIS?

11 A ABOUT 6 MONTHS AFTER IT HAPPENED.

12 Q THE LAW ENFORCEMENT OFFICER SAID ON FEBRUARY THE 24TH
13 OF THIS YEAR -- 23RD OF THIS YEAR; IS THAT ACCURATE?

14 A YES, SIR.

15 Q NOW, TELL ME PRIOR TO THIS EVENT THAT YOU'VE DESCRIBED
16 HAPPENED, HOW LONG HAD YOU KNOWN THE TAPPEINERS?

17 A ALMOST A YEAR.

18 Q AND DID YOU FREQUENTLY VISIT IN THEIR HOME?

19 A NO.

20 Q YOU DID NOT?

21 A NO.

22 Q YOU DIDN'T COME IN THERE IN THEIR HOME -- YOU DIDN'T
23 FEEL FREE TO COME IN THEIR HOME EVEN WHEN THEY WEREN'T
24 THERE?

25 A NO, SIR.

1 Q YOU NEVER DID THAT?

2 A NO, SIR.

3 Q WELL, TELL ME THIS: DO YOU RECALL AN INCIDENT WHERE
4 YOU CAME TO THE TAPPEINER RESIDENCE AND ASKED SUSAN
5 TAPPEINER TO ASK HER HUSBAND IF SHE HAD A CAMERA -- A
6 BATTERY FOR A CAMERA THAT YOU HAD; DO YOU RECALL THAT?

7 A YES, SIR.

8 Q AND THAT HAPPENED AFTER YOU REPORTED THIS EVENT TO THE
9 POLICE, DIDN'T IT?

10 A NO, SIR.

11 Q WHEN DID THAT HAPPEN?

12 A I DON'T REMEMBER.

13 Q WELL, DID IT HAPPEN AFTER YOU SAY ALL THIS STUFF
14 HAPPENED TO YOU?

15 A NO, SIR.

16 Q IT DIDN'T?

17 A NO, SIR.

18 Q AND YOU'RE POSITIVE OF THAT?

19 A YES, SIR.

20 Q AND YOU'RE ALSO POSITIVE THAT YOU WEREN'T A FREQUENT
21 VISITOR IN THEIR HOUSE?

22 A YES, SIR. I WAS -- WHEN MY SISTERS GO OVER THERE
23 BABYSITTING, I WOULD NEED SOMETHING, MY MOM WOULD ASK ME TO
24 GO GET THEM FOR SOMETHING.

25 Q WELL, HOW OFTEN DID THAT OCCUR?

1 A NOT VERY OFTEN.

2 Q AND YOUR SISTERS BABYSAT FOR SUSAN'S CHILDREN; ISN'T
3 THAT CORRECT?

4 A YES, SIR.

5 Q WHEN THIS THING HAPPENED, YOU SAY HAPPENED, SHE WASN'T
6 BABYSITTING YOU, WAS SHE?

7 A YES, SIR.

8 Q SHE WAS?

9 A YES, SIR.

10 Q AND YOU WERE 13 WHEN THIS THING HAPPENED?

11 A YES, SIR.

12 Q AND HOW OFTEN DOES YOUR MOTHER THINK YOU REQUIRE A
13 BABYSITTER?

14 A SHE DID NOT WANT ME HOME THAT NIGHT WHEN SHE WAS GOING
15 TO BE GONE FOR THAT LONG, AND I DIDN'T WANT TO BE HOME BY
16 MYSELF. I THOUGHT I WOULD BE SAFE AT SOMEBODY ELSE'S
17 HOUSE.

18 Q YOU DIDN'T FEEL SAFE IN YOUR OWN HOUSE, YOU FELT SAFE
19 IN SUSAN TAPPEINER'S HOUSE?

20 A I FELT SAFE WITH ---

21 Q AND AFTER THIS HAPPENED, YOU SAY YOU WENT BACK INTO
22 THE HOUSE YOU FELT UNSAFE IN?

23 A AT THE TIME AFTER IT HAPPENED, YES, I FELT MORE SAFE
24 AT MY HOUSE.

25 Q TELL ME SOMETHING. HOW OFTEN WERE YOUR SISTERS IN

- 1 MRS. TAPPEINER'S HOUSE?
- 2 A EVERY DAY AFTER SCHOOL.
- 3 Q EVERY DAY AFTER SCHOOL?
- 4 A FROM THE TIME THEY STARTED BABYSITTING.
- 5 Q OKAY. AND SHORTLY BEFORE THIS INCIDENT THAT YOU'VE
- 6 DESCRIBED, MRS. TAPPEINER TOLD YOUR SISTERS THAT SHE DIDN'T
- 7 WANT THEM BABYSITTING ANY MORE; ISN'T THAT TRUE?
- 8 A YES, SIR.
- 9 Q AND THAT UPSET YOUR MOTHER, DIDN'T IT?
- 10 MS. BURKE: OBJECTION, YOUR HONOR. I DON'T THINK HE
- 11 CAN TESTIFY AS TO ---
- 12 MR. MACLOSKIE: I'LL WITHDRAW THE QUESTION.
- 13 MS. BURKE: --- HIS MOTHER.
- 14 THE COURT: THANK YOU.
- 15 MR. MACLOSKIE: I'LL WITHDRAW THE QUESTION.
- 16 Q NOW, YOU SAID SOMETHING ABOUT YOUR WEIGHT ON THE DAY
- 17 YOU SAY THIS ALL HAPPENED TO YOU. AND YOU PUT THAT AT A
- 18 HUNDRED POUNDS. IS THAT WHAT I HEARD YOU SAY?
- 19 A YES, SIR.
- 20 Q DO YOU RECALL THE LAW ENFORCEMENT OFFICER ASKING YOU
- 21 QUESTIONS ABOUT YOUR HEIGHT AND WEIGHT?
- 22 A YES, SIR.
- 23 Q AND WAS HE WRITING THINGS DOWN AS YOU ANSWERED THESE
- 24 QUESTIONS?
- 25 A I BELIEVE SO.

1 Q AND I ASSUME THAT YOU TOLD HIM AT LEAST THAT
2 ACCURATELY, DID YOU NOT, HOW MUCH YOU WEIGHED?

3 A I PROBABLY -- I DON'T REMEMBER WHAT I SAID, BUT IT
4 WAS ---

5 Q WELL, HIS INCIDENT REPORT -- AND I'LL BE GLAD TO SHOW
6 IT TO YOU IF YOU'D LIKE -- INDICATES AT THE TIME YOU
7 REPORTED THIS THAT YOU WEIGHED 125 POUNDS.

8 A I DON'T WEIGH THAT NOW.

9 Q YOU DON'T WEIGH THAT NOW?

10 A NO.

11 Q ALL RIGHT. TELL ME THIS. DO YOU ENGAGE IN ANY KIND
12 OF SPORTS ACTIVITIES OR OUTDOOR ACTIVITIES?

13 A I'M VERY ACTIVE OUTSIDE, BUT I DON'T PARTICIPATE IN
14 SPORTS.

15 Q WHAT KIND OF ACTIVITIES DO YOU PARTICIPATE IN OUTSIDE?

16 A I WORK A LOT OUTSIDE. ANYTHING THAT'S OUTSIDE,
17 HIKING, ANYTHING LIKE THAT.

18 Q YOU HIKE. AND WHAT ELSE DO YOU DO?

19 A I FISH. I DO ANY OUTDOOR ACTIVITY.

20 Q DO YOU CONSIDER YOURSELF NOW IN GOOD HEALTH?

21 A YES.

22 Q AND DID YOU CONSIDER YOURSELF BACK ON THE DAY YOU SAY
23 THIS HAPPENED TO BE IN GOOD HEALTH?

24 A YES.

25 Q AND YOU HADN'T BEEN DRINKING ON THE DAY YOU SAY THIS

1 HAPPENED?

2 A NO, SIR.

3 Q AND YOU HADN'T BEEN TAKING ANY DRUGS, HAD YOU?

4 A NO, SIR.

5 Q AND WHAT YOU SAY IS THAT IN SPITE OF ALL THE PHYSICAL
6 ABUSE YOU'VE TESTIFIED TO UNDER OATH TODAY, YOU WERE ABLE
7 TO ACHIEVE AN ERECTION TO THE POINT OF EJACULATION; IS THAT
8 WHAT YOU SAY?

9 A YES, SIR.

10 Q AND YOU SAY YOU TRIED TO GET AWAY, SCREAMING FOR YOUR
11 SISTERS, SCREAMING FOR MIKE, AND NOBODY HEARD YOU?

12 A YES, SIR.

13 Q NOW, HOW BIG IS THIS HOUSE?

14 A IT'S A DECENT SIZE.

15 Q WHAT DO YOU MEAN DECENT SIZE?

16 A I'M NOT SURE.

17 Q YOU DESCRIBE WITH SOME DEGREE OF PARTICULARITY THE
18 ROOM THAT YOU SAY ALL THIS HAPPENED IN. HOW ABOUT THE
19 LIVING ROOM YOU WERE IN?

20 A DO YOU WANT ME TO DESCRIBE THE LIVING ROOM?

21 Q I SURE DO.

22 A THERE'S A WRAP-AROUND COUCH WHEN YOU WALK IN THE HOUSE
23 TO THE LEFT. THE CHAIR IS AT THE END OF THE COUCH. AND
24 THE TV IS STRAIGHT AHEAD FROM THE DOOR.

25 Q AND HOW ABOUT THE KITCHEN. YOU MENTIONED ABOUT THE

1 KITCHEN. DESCRIBE THE KITCHEN?

2 A THERE'S A BAR IN THE MIDDLE OF THE KITCHEN, AND THE
3 SINK. THE REFRIGERATOR IS NEXT TO THE SINK. AND THE STOVE
4 IS ON THE RIGHT SIDE OF THE SINK.

5 Q ALL RIGHT. HOW ABOUT THE LAUNDRY ROOM, DESCRIBE THAT?

6 A I HAVEN'T BEEN IN THEIR LAUNDRY ROOM.

7 Q ALL RIGHT. HAVE YOU BEEN IN MRS. TAPPEINER'S BEDROOM?

8 A NO, SIR.

9 Q ANY OTHER ROOMS OTHER THAN THE ONES YOU'VE DESCRIBED
10 HERE HAVE YOU BEEN IN?

11 A NO, SIR.

12 Q AND YOU REMEMBER ALL THIS WITH THAT DEGREE OF
13 PRECISION BY NOT BEING IN THIS HOUSE VERY OFTEN?

14 A YES, SIR.

15 Q NOW, THE FACT OF THE MATTER IS YOU'VE BEEN IN THIS
16 HOUSE MORE THAN YOU'VE TOLD THIS JURY ABOUT AND THAT'S THE
17 REASON YOU CAN DESCRIBE THIS DRESS AND THESE PANTIES,
18 BECAUSE YOU'VE SEEN THEM IN THIS LADY'S LAUNDRY ROOM,
19 HAVEN'T YOU?

20 A NO, SIR.

21 Q YOU DENY THAT?

22 A YES, SIR.

23 Q YOU'RE SWEARING UNDER OATH THAT THESE TWO ITEMS SHE
24 WAS WEARING THE NIGHT YOU SAID THIS HAPPENED?

25 A YES, SIR.

1 Q AND YOU'RE SWEARING UNDER OATH THAT HER HUSBAND NEVER
2 HEARD YOU AND YOUR SISTERS NEVER HEARD YOU?

3 A YES, SIR.

4 Q AND THAT YOU SCREAMED AND HOLLERED?

5 A YES, SIR.

6 Q BECAUSE YOU WERE FRIGHTENED?

7 A YES, SIR.

8 Q YOU WERE SCARED?

9 A YES, SIR.

10 Q YOU HAD BEEN WATCHING SCARY MOVIES?

11 A YES, SIR.

12 Q AND YOU WERE BEING SEXUALLY ASSAULTED?

13 A YES, SIR.

14 Q YOU DIDN'T LIKE IT?

15 A YES, SIR.

16 Q AND THAT'S WHAT YOU EXPECT THIS JURY TO BELIEVE?

17 A YES, SIR.

18 MR. MACLOSKIE: THAT'S ALL I HAVE. THANK YOU.

19 THE COURT: REDIRECT?

20 MS. BURKE: NO, YOUR HONOR.

21 THE COURT: ALL RIGHT. YOU MAY STEP DOWN, Victim.

22 (THE WITNESS LEAVES THE WITNESS STAND.)

23 THE COURT: SOLICITOR, YOU CAN CALL YOUR NEXT WITNESS.

24 MS. BURKE: THE STATE CALLS MARY BETH HEFNER.

25 MARY BETH HEFNER, BEING FIRST

1 DULY SWORN, TESTIFIED AS FOLLOWS:

2 CLERK: PLEASE BE SEATED.

3 THE COURT: MS. HEFNER, IF YOU WILL JUST SPELL YOUR
4 LAST NAME FOR THE COURT REPORTER ONCE YOU GET ON THE STAND.
5 I APPRECIATE IT.

6 WITNESS: MY LAST NAME IS SPELLED H-E-F-N-E-R.

7 THE COURT: THANK YOU. SOLICITOR.

8 MS. BURKE: THANK YOU, YOUR HONOR.

9 DIRECT EXAMINATION BY MS. BURKE:

10 Q GOOD MORNING, MS. HEFNER.

11 A GOOD MORNING.

12 Q I'M SORRY. AFTERNOON. WHERE ARE YOU EMPLOYED?

13 A I'M EMPLOYED AT HOPE HAVEN OF THE LOW COUNTRY.

14 Q WHAT IS THAT?

15 A THAT IS A RAPE CRISIS CHILD ADVOCACY CENTER.

16 Q HOW LONG HAVE YOU BEEN EMPLOYED THERE?

17 A I HAVE BEEN EMPLOYED THERE SINCE JULY OF 2007.

18 Q WHAT IS YOUR EDUCATIONAL BACKGROUND AND TRAINING?

19 A I HAVE A UNDER GRADUATE DEGREE IN SPECIAL EDUCATION
20 AND A MASTER'S DEGREE IN PROFESSIONAL COUNSELING.

21 Q WHAT COURSES OR SEMINARS HAVE YOU TAKEN IN THE FIELD
22 OF FORENSIC INTERVIEWS OF CHILD -- ASSESSMENT -- CHILD
23 ABUSE ASSESSMENT?

24 A I HAVE ATTENDED A 40-HOUR TRAINING IN COLUMBIA
25 TARGETED FOR FORENSIC INTERVIEWERS. IT IS SPONSORED BY THE

1 AMERICAN PROSECUTORS INSTITUTE, AND IT IS ALSO PRESENTED BY
2 THE CHILDREN'S LAW CENTER IN COLUMBIA; AND THAT IS A 40-
3 HOUR TRAINING TO PREPARE CHILDREN FOR COURT AND TO LEARN
4 HOW TO CONDUCT FORENSIC INTERVIEWS.

5 Q HOW MANY FORENSIC INTERVIEWS DO YOU THINK YOU'VE DONE
6 IN YOUR CAREER?

7 A APPROXIMATELY 200.

8 Q ANY PROFESSIONAL ORGANIZATIONS OR AFFILIATIONS THAT
9 YOU HAVE REGARDING CHILDREN ISSUES?

10 A NONE.

11 Q AND ONE MORE TIME. HOW MANY YEARS HAVE YOU CURRENTLY
12 BEEN WORKING IN THE FIELD OF YOUR CURRENT POSITION?

13 A I HAVE BEEN AT HOPE HAVEN FOR 2 YEARS.

14 Q OKAY. WHERE WERE YOU BEFORE THAT?

15 A PRIOR TO THAT I WORKED AT LIFE CARE CENTER OF AMERICA.

16 Q AND WHAT DID YOU DO THERE?

17 A I WAS DIRECTOR OF SOCIAL SERVICES.

18 Q THAT INVOLVED -- DID THAT INVOLVE TALKING TO CHILDREN

19 OR ---

20 A NOT TYPICALLY. NOT TYPICALLY.

21 Q WHAT DID THAT INVOLVE?

22 A THAT INVOLVED ATTENDING TO THE SOCIAL SERVICES OF THE
23 RESIDENTS THAT RESIDED IN THE NURSING HOME.

24 Q WHAT IS FINDING WORDS?

25 A FINDING WORDS IS THE TRAINING THAT I WAS REFERRING TO

1 EARLIER IN COLUMBIA THAT TRAINS FORENSIC INTERVIEWS AND
2 PREPARES CHILDREN FOR COURT. IT IS THE 40-HOUR TRAINING
3 THAT WAS SPONSORED BY THE CHILDREN'S LAW CENTER AND THE
4 AMERICAN PROSECUTORS INSTITUTE -- RESEARCH INSTITUTE.

5 Q AND WHAT IS TRAUMA ON COGNITIVE THERAPY AND
6 COOPERATIVE -- COLLABORATIVE, EXCUSE ME?

7 A COGNITIVE BEHAVIORAL COLLABORATIVE IS A STATEWIDE
8 EFFORT TO BRING EVIDENCE-BASED TREATMENT TO CHILDREN THAT
9 HAVE EXPERIENCED TRAUMA FROM SEXUAL ABUSE AND/OR PHYSICAL
10 ABUSE.

11 Q AND WHAT IS CLINICAL ISSUE WITH WHO HAVE BEEN SEXUALLY
12 ABUSED? I'M SORRY, WHO'S SEXUALLY ABUSED?

13 A PARDON? WOULD YOU REPEAT THAT PLEASE?

14 Q CLINICAL ISSUES, IS THERE A 2007 TRAINING THAT YOU
15 ATTENDED REGARDING ---

16 A YES, I ATTENDED THAT AT THE UNIVERSITY OF SOUTH
17 CAROLINA LOCATED IN BEAUFORT, AND THAT WAS ISSUES
18 PERTAINING TO CHILDREN, SYMPTOMS THAT HAVE BEEN SEXUALLY
19 ABUSED.

20 MS. BURKE: YOUR HONOR, I'D LIKE TO OFFER MARY BETH
21 HEFNER AS AN EXPERT WITNESS IN FORENSIC INTERVIEWING AND
22 CHILD ABUSE ASSESSMENT -- CHILD SEXUAL ABUSE ASSESSMENT.

23 THE COURT: MR. MACLOSKIE?

24 MR. MACLOSKIE: IF YOUR HONOR, PLEASE. I HAVE NO
25 OBJECTION TO THAT AS LONG AS WE'RE CONFINING HER TESTIMONY

1 TO THE INTERVIEW SHE DID -- THE FORENSIC INTERVIEW SHE DID
2 WITH victim NOW, IF SHE'S PREPARED TO GIVE OPINIONS,
3 THEN I HAVE A MATTER OF LAW TO TAKE UP WITH THE COURT.

4 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN OF THE
5 JURY, I NEED TO TAKE UP A MATTER OF LAW WITH THE ATTORNEYS.
6 AND I THINK NOW MIGHT BE A VERY GOOD TIME FOR US TO GO TO
7 OUR LUNCH BREAK.

8 IT IS ABOUT -- LET'S MAKE SURE THAT CLOCK IS CORRECT.
9 BY MY WATCH, WE'RE ALMOST 20 MINUTES TO 1:00. AM I CORRECT
10 ON THAT?

11 BAILIFF: YES, MA'AM.

12 THE COURT: OKAY. LADIES AND GENTLEMEN, I AM GOING TO
13 ASK THAT YOU ALL RETURN -- HOPEFULLY, THIS WILL GIVE YOU
14 ENOUGH TIME. I'M GOING TO HAVE YOU ALL RETURN BY 2:00
15 O'CLOCK. GO HAVE A NICE LUNCH.

16 YOU ARE FREE TO GO ABOUT YOUR BUSINESS AS YOU WOULD
17 ANY OTHER DAY. BUT I CAUTION YOU AGAIN, DO NOT DISCUSS
18 THIS CASE NOT ONLY WITH EACH OTHER, BUT WITH ANYONE YOU MAY
19 MEET DURING YOUR LUNCH HOUR.

20 JUST COME ON BACK AFTER THAT. AS SOON AS YOU ALL GET
21 BACK HERE, WE'LL CONTINUE THE TRIAL OF THIS CASE. HAVE A
22 NICE LUNCH. WE'LL SEE YOU THEN. THANK YOU.

23 (THE JURY EXITS THE COURTROOM AT 12:42 P.M.)

24 BAILIFF: THE JURY IS CLEAR, YOUR HONOR.

25 THE COURT: THANKS, BOB.

1 OKAY. ALL RIGHT. WHAT EXACTLY ARE YOU OFFERING HER
2 AS AN EXPERT IN?

3 MS. BURKE: DELAYED REPORTING.

4 THE COURT: IN DELAYED REPORTING. OF CHILD SEXUAL
5 ASSAULTS?

6 MS. BURKE: YES, MA'AM.

7 THE COURT: DELAYED REPORTING IN CHILD SEXUAL
8 ASSAULTS. I'VE NEVER KNOWN THAT TO BE AN EXPERTISE. ONE
9 OF THE THINGS I ALSO HAVE NOT HEARD -- AND I CAN'T ASSUME
10 ANYTHING. BUT YOU'VE NOT ASKED HER IF SHE HOLDS ANY
11 CERTIFICATION. I UNDERSTAND SHE HAS A MASTER'S IN
12 COUNSELING. I'M GOING TO PRESUME THIS WOMAN HAS A P.C. OR
13 SOMETHING. YOU HAVEN'T ASKED HER THAT, MS. BURKE.

14 MS. BURKE: OKAY.

15 THE COURT: I MEAN, I'M ASSUMING SHE HAS SOME
16 CERTIFICATION IN THE STATE OF SOUTH CAROLINA. I'M SURE SHE
17 DOES TO BE ABLE TO DO WHAT SHE DOES. SO YOU HAVEN'T ASKED
18 THAT.

19 MS. BURKE: OKAY.

20 THE COURT: SO LET'S GO AHEAD AND ASK HER WHERE HER
21 CERTIFICATIONS ARE TO START WITH.

22 MS. BURKE: OKAY.

23 Q MS. HEFNER, PLEASE STATE FOR THE COURT YOUR
24 CERTIFICATIONS, RESTATE YOUR SEMINARS AND YOUR TRAINING AND
25 YOUR EXPERTISE ---

1 THE COURT: I DON'T NEED TO KNOW HER SEMINARS AND
2 TRAINING. I NEED TO KNOW HER CERTIFICATION, AND SHE KNOWS
3 EXACTLY WHAT I'M TALKING ABOUT.

4 A I AM CURRENTLY IN THE PROCESS OF OBTAINING MY
5 LICENSURE -- STATE LICENSURE. I AM WHAT THEY CALL A
6 LICENSED PROFESSIONAL COUNSELOR SLASH INTERN. IT IS A TWO-
7 YEAR PROCESS. I HAVE TO ACQUIRE 1500 DIRECT CLIENT HOURS
8 AND 150 HOURS OF SUPERVISION; THAT WILL BE COMPLETED IN
9 JUNE OF '09.

10 THE COURT: MS. HEFNER, HAVE YOU EVER BEEN QUALIFIED
11 IN A COURT OF LAW AS A LICENSED COUNSELOR IN ANOTHER STATE?

12 MS. HEFNER: NO.

13 THE COURT: OR ANYTHING ALONG THOSE LINES? NO?

14 MS. HEFNER: NO.

15 THE COURT: OKAY. I HEARD YOU STATE EARLIER THAT YOU
16 PREVIOUSLY WORKED FOR LIFE CARE CENTERS OF AMERICA. WERE
17 YOU A LIFE CARE PLANNER; IS THAT WHAT YOU DID FOR THEM OR
18 WAS THAT SOMETHING DIFFERENT?

19 MS. HEFNER: WELL, IT WAS MOSTLY DEALING WITH
20 DISCHARGE, WHEN THE RESIDENTS LEFT THE NURSING HOME,
21 PROVIDING FOR FOLLOW-UP CARE AND EQUIPMENT.

22 THE COURT: YOU'RE NOT A CERTIFIED LIFE CARE PLANNER,
23 AND YOU UNDERSTAND WHAT THAT IS?

24 MS. HEFNER: YES. NO, I'M NOT A CERTIFIED LIFE CARE
25 PLANNER.

1 THE COURT: OKAY. I UNDERSTAND THAT AS WELL. SO YOU
2 CURRENTLY HOLD NO CERTIFICATION; IS THAT CORRECT?

3 MS. HEFNER: IT'S WHAT THEY CALL A LICENSED
4 PROFESSIONAL COUNSELOR INTERN.

5 THE COURT: OKAY.

6 MS. HEFNER: SO WORKING ON LICENSURE.

7 THE COURT: TELL ME ABOUT THE PROCESS OF -- WHAT ARE
8 THE VARIOUS THINGS? I HEARD YOU SAY YOU HAD TO DO 1500
9 HOURS OF INTERVIEWS. I UNDERSTAND THAT YOU'RE GOING TO GET
10 YOUR LICENSURE I BELIEVE IN JUNE. IS THERE A TEST THAT YOU
11 TAKE WHEN YOU FIRST START THE PROCESS?

12 MS. HEFNER: WHEN YOU FIRST INITIALLY START THE
13 PROCESS, YOU TAKE AN EXAM THAT'S HELD IN COLUMBIA, AND
14 THAT'S THE STATE LICENSING EXAM.

15 THE COURT: OKAY. SO YOU PASSED THAT?

16 MS. HEFNER: YES.

17 THE COURT: SO NOW ---

18 MS. HEFNER: YOU THEN GO TO PURSUING YOUR LICENSURE
19 WHEN YOU HAVE NOW PASSED THE EXAM, THE STATE EXAM.

20 THE COURT: AND YOU SAID YOU'RE WORKING AS AN
21 APPRENTICE. WHO DO YOU WORK UNDER, ANOTHER L.P. OR ---

22 MS. HEFNER: I WORK UNDER ANOTHER L.P.C. SUPERVISOR.

23 THE COURT: WHO WOULD THAT BE?

24 MS. HEFNER: HER NAME IS MIKA DUTTON (PHONETIC).

25 THE COURT: OKAY. AND IS SHE WITH HOPE HAVEN?

1 MS. HEFNER: NO, MA'AM.

2 THE COURT: HOW DO THEY FIND YOU AN L.P.C. TO WORK
3 UNDER AS AN APPRENTICE? IS THAT SOMETHING YOU CHOSE OR
4 THEY ASSIGN YOU OR HOW DOES THAT WORK?

5 MS. HEFNER: YOU MEAN, THE SUPERVISOR?

6 THE COURT: RIGHT.

7 MS. HEFNER: IT'S UP TO THE INTERN TO SEEK A LICENSED
8 PROFESSIONAL COUNSELOR SUPERVISOR.

9 THE COURT: DOES THIS PERSON OVERSEE ANY OF THE WORK
10 THAT YOU CURRENTLY DO, ANY OF THIS 1500 HOURS? WHEN
11 SOMEONE IS AN APPRENTICE, YOU THINK OF THAT SOMEONE
12 OVERSEES TO MAKE SURE THAT YOU'RE DOING WHATEVER YOU SHOULD
13 BE DOING PROPERLY; IS THAT ---

14 MS. HEFNER: THIS IS FOR COUNSELING. THIS ISN'T
15 TYPICALLY FOR THE FORENSIC INTERVIEW.

16 THE COURT: OKAY.

17 MS. HEFNER: SO SHE GENERALLY OVERSEES FOR MY
18 COUNSELING CLIENTS, WHICH I HAVE A SMALL CASE LOAD.

19 THE COURT: OKAY. IS YOUR CASE LOAD SPECIFICALLY
20 THROUGH HOPE HAVEN?

21 MS. HEFNER: YES, MA'AM.

22 THE COURT: OKAY. AND DOES THAT MEAN YOU'RE AN
23 EMPLOYEE OF HOPE HAVEN?

24 MS. HEFNER: YES.

25 THE COURT: YOU ARE?

1 MS. HEFNER: I'M AN EMPLOYEE.

2 THE COURT: MR. MACLOSKIE, YOU CAN GO AHEAD AND ASK
3 HER QUESTIONS.

4 JUST SO I'M CLEAR, YOU'VE NEVER BEEN QUALIFIED
5 THOUGH ---

6 MS. HEFNER: NO.

7 THE COURT: --- IN A COURT OF LAW AS A FORENSIC
8 EXAMINER; IS THAT CORRECT?

9 MS. HEFNER: NO.

10 THE COURT: OR AS AN L.C.P., CORRECT?

11 MS. HEFNER: CORRECT.

12 THE COURT: OKAY. MR. MACLOSKIE, WHY DON'T YOU GO
13 AHEAD AND ASK HER QUESTIONS AS WELL.

14 MR. MACLOSKIE: I HAVE NO QUESTIONS OTHER THAN THE
15 ONES YOU'VE ASKED HER, THEY ARE SUFFICIENT. I MOVE THAT
16 SHE NOT BE ALLOWED TO TESTIFY AS AN EXPERT AND GIVE
17 OPINIONS.

18 THE COURT: JUST SO I'M CLEAR IN WHAT YOUR JOB IS AND
19 WHAT YOU DID, DID YOU INTERVIEW VICTIM IS THAT WHAT
20 YOU DID?

21 MS. HEFNER: YES, I DID.

22 THE COURT: OKAY. MR. MACLOSKIE, YOU ORIGINALLY
23 STATED THAT YOU HAD NO PROBLEM WITH HER TESTIFYING AS TO
24 THE INTERVIEW BUT YOU DID NOT WANT HER TO GIVE OPINIONS.

25 MR. MACLOSKIE: THAT'S CORRECT.

1 THE COURT: IS THAT CORRECT, SIR?

2 MR. MACLOSKIE: THAT IS.

3 THE COURT: BECAUSE WE ALL KNOW YOU CAN ONLY GIVE
4 OPINION TESTIMONY IF YOU ARE DEEMED AN EXPERT IN SOME
5 SPECIFIC FIELD.

6 MR. MACLOSKIE: I DON'T KNOW OF A PIECE OF LAW OR RULE
7 THAT WOULD ALLOW ME TO OBJECT TO HER TESTIFYING AS TO WHAT
8 Victim TOLD HER.

9 THE COURT: TOLD HER.

10 MS. BURKE: YOUR HONOR ---

11 MR. MACLOSKIE: SO I HAVE NO OBJECTION TO THAT.

12 THE COURT: YES.

13 MS. BURKE: THE STATE IS AWARE THAT MS. HEFNER CAN
14 TESTIFY AS TO WHAT Victim TOLD HER. UNDER STATE V. HENRY, A
15 1997 CASE, THE STATE DID ALLOW AN EXPERT TO TESTIFY ABOUT
16 DOING DISCLOSURE. UNDER STATE V. WEAVERLING -- IN THAT
17 CASE THE INTERVIEWER HAD NOT EVEN SPOKEN TO THE VICTIM --
18 INTERVIEWED THE VICTIM, AND THE COURT THERE ALLOWED THAT
19 PERSON TO BE QUALIFIED AS AN EXPERT AND BE ASKED
20 HYPOTHETICAL QUESTIONS.

21 THE COURT: YOUR PROBLEM THOUGH IS IT'S NOT HER
22 TESTIFYING AS TO DELAYED DISCLOSURE, IT'S QUALIFYING HER AS
23 AN EXPERT TO START WITH. WE CAN GET TO THE DELAYED
24 DISCLOSURE IF ---

25 MS. BURKE: ABSOLUTELY.

1 THE COURT: --- SHE IS QUALIFIED AS AN EXPERT, AND
2 THAT'S WHERE YOUR PROBLEM IS.

3 MS. BURKE: RIGHT. AND, OF COURSE, YOUR HONOR IS
4 AWARE THAT THE STANDARD FOR QUALIFYING SOMEONE AS AN EXPERT
5 OBVIOUSLY IS IN THE COURT'S DISCRETION. BUT THE STANDARD
6 HISTORICALLY IN SOUTH CAROLINA AND THROUGHOUT OTHER
7 JURISDICTIONS HAS BEEN PRETTY LOW. IN STATE V.
8 S-C-H-U-M-P-T-E-R, THE COURT MADE CLEAR -- AND THAT IS
9 STILL CONTROLLING LAW, THAT DEFECTS IN THE QUALITY OR LACK
10 OF EXPERIENCE GOES TO THE WEIGHT AND NOT ADMISSIBILITY.

11 THE COURT: I NEED TO DETERMINE WHETHER OR NOT HER
12 TESTIMONY WILL HELP THIS JURY WEIGH ---

13 MS. BURKE: ABSOLUTELY, YOUR HONOR.

14 THE COURT: --- ANY EVIDENCE. AND I CAN TELL YOU
15 RIGHT NOW THAT WHAT I SUGGEST WE ALL DO, I CAN CERTAINLY DO
16 AN IN CAMERA PROFFER OF WHAT SHE WOULD TESTIFY TO.

17 MS. BURKE: OKAY. IF I CAN JUST FINISH THE CASE LAW
18 SO YOUR HONOR CAN ---

19 THE COURT: MA'AM, YOU STATED -- I THINK WE ALL KNOW
20 WHAT THE STANDARD IS FOR ALLOWING EXPERTS.

21 MS. BURKE: RIGHT. I WANT TO GIVE AN EXAMPLE UNDER
22 STATE V. DOUGLAS THERE THE EXPERT HAD LESS THAN 40 HOURS OF
23 FORENSIC INTERVIEW EXPERIENCE, AND THIS IS A 2009 CASE, I
24 BELIEVE BY THE SUPREME COURT. AND IN THAT SITUATION THE
25 COURT THOUGHT THAT WHAT THE INTERVIEWER TESTIFIED ABOUT WAS

1 THAT EXPERT MATERIAL BECAUSE ALL SHE SAID WAS SHE REFERRED
2 HER TO BE MEDICALLY EXAMINED. HOWEVER, THE STANDARD BY
3 WHICH SHE WAS JUDGED TO BE QUALIFIED AS AN EXPERT WAS STILL
4 APPROPRIATE, AND THAT PERSON HAD HAD LESS THAN 40 HOURS
5 INTERVIEW -- FORENSIC INTERVIEW EXPERIENCE, AND SHE DID
6 TALK ABOUT -- AS I SAID -- REPORTING BY THE -- BY THE
7 VICTIM.

8 IN THIS CASE MS. HEFNER HAD, I THINK, SHE SAID OVER
9 200 OF FORENSIC INTERVIEW EXPERIENCE. SO, OBVIOUSLY, SHE'S
10 ALREADY MET WITH victim WHICH IS IN COMPARISON TO THE OTHER
11 CASES WHERE THE INTERVIEWER IN STATE V. WEAVERLING, FOR
12 EXAMPLE -- DID NOT EVEN MEET WITH THE VICTIM.

13 THE COURT: ALL RIGHT. THIS IS WHAT WE'RE GOING TO
14 DO. YOU ALL, WE'RE GOING TO TAKE ABOUT 5 MINUTES. WE'RE
15 GOING TO COME BACK AND I WANT YOU TO PROFFER HER TESTIMONY.

16 MS. BURKE: SURE.

17 THE COURT: OKAY. AND AT THAT POINT I CAN MAKE A
18 DECISION. CERTAINLY, I DON'T KNOW HER.

19 LET ME ASK YOU ONE OTHER QUESTION. YOU HAVE A
20 MASTER'S IN COUNSELING?

21 MS. HEFNER: RIGHT.

22 THE COURT: WHERE IS THAT FROM AND WHEN DID YOU
23 RECEIVE IT?

24 MS. HEFNER: THAT IS FROM ARGUS UNIVERSITY IN ATLANTA,
25 GEORGIA. AND ---

1 THE COURT: I'M NOT FAMILIAR WITH THAT. WHERE IS
2 THAT?

3 MS. HEFNER: IT'S IN ATLANTA.

4 THE COURT: IS IT DOWNTOWN?

5 MS. HEFNER: DOWNTOWN.

6 THE COURT: OKAY.

7 MS. HEFNER: THEY HAVE SEVERAL OTHER LOCATIONS. IN
8 MIAMI, CHICAGO, SOMEWHERE IN FLORIDA, I'M NOT SURE OF THE
9 NAME OF THE TOWN. AND THAT WAS OBTAINED IN 2005.

10 THE COURT: OKAY. TYPICALLY, HOPE HAVEN RECORDS THEIR
11 INTERVIEWS WITH CHILDREN. DO WE HAVE A RECORDING OF THIS
12 INTERVIEW?

13 MS. BURKE: YES, YOUR HONOR.

14 THE COURT: AND DO YOU INTEND ON PLAYING IT?

15 MS. BURKE: YOUR HONOR, I CERTAINLY CAN IF YOU NEED
16 IT.

17 THE COURT: I DON'T NEED IT. I'M ASKING YOU IF YOU
18 INTEND ON IT IS MY QUESTION.

19 MS. BURKE: WELL, YOUR HONOR, I MEAN, CLEARLY IF YOU
20 -- THERE HASN'T BEEN -- I NEED TO REFRESH MY NOTES AS TO
21 STATEMENTS MADE BY MR. MACLOSKIE IMPEACHING ANY STATEMENTS
22 THAT Victim MAY HAVE MADE, SO THAT WE CAN HAVE A CONSISTENT
23 STATEMENT PRESENTED.

24 AND SO AT THE BREAK I WAS GOING TO REVIEW MY NOTES TO
25 MAKE SURE OF THAT.

1 THE COURT: YOU HAVEN'T MADE THAT DECISION YET IS WHAT
2 YOU'RE TRYING TO TELL ME. OKAY. ALL RIGHT. HOW LONG IS
3 YOUR INTERVIEW ROUGHLY WITH Victim?

4 MS. HEFNER: IT LASTS 57 MINUTES.

5 THE COURT: OKAY. ALL RIGHT. LET'S GO AHEAD AND TAKE
6 5 MINUTES. WE'RE GOING TO COME BACK AND WE'RE JUST GOING
7 TO PROFFER YOUR TESTIMONY. OKAY. AND WE'LL GO FROM THERE.

8 LET'S TAKE ABOUT 5 MINUTES.

9 FOR THE LAWYERS, I MAY WANT TO SUGGEST TO YOU ALL --
10 I'M GOING TO GIVE YOU A CHANCE, OBVIOUSLY, TO GRAB SOME
11 LUNCH. BUT YOU MAY WANT TO GET SOME PEOPLE IN YOUR OFFICE
12 OR SOMEONE TO BRING YOU IN SOME FOOD TO MAKE SURE YOU'RE
13 WELL FED AND FORTIFIED. OKAY?

14 MR. MACLOSKIE: THANK YOU.

15 MS. BURKE: THANK YOU.

16 (THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)

17 (A RECESS WAS TAKEN.)

18 (THE WITNESS RETURNS TO THE WITNESS STAND.)

19 THE COURT: IS THE STATE READY TO GO BACK ON THE
20 RECORD?

21 MS. BURKE: YES, YOUR HONOR.

22 THE COURT: DEFENSE READY?

23 MR. MACLOSKIE: YES, MA'AM, WE ARE.

24 THE COURT: ALL RIGHT. AND MS. HEFNER IS TAKING THE
25 STAND. I'M JUST GOING TO REMIND HER SHE IS STILL UNDER

1 OATH. AND THE SOLICITOR IS GOING TO GO AHEAD AND DO A
2 PROFFER. THE JURY IS AT LUNCH.

3 SO WITH THAT SAID, SOLICITOR.

4 DIRECT EXAMINATION CONTINUED BY MS. BURKE:

5 Q MS. HEFNER, WHAT IS A FORENSIC INTERVIEW?

6 A A FORENSIC INTERVIEW IS A SEMI-STRUCTURED FORMAT THAT
7 WE USE AT HOPE HAVEN TO OBTAIN INFORMATION FROM CHILDREN
8 WHENEVER THERE'S AN ALLEGATION OF SEXUAL OR PHYSICAL ABUSE.

9 Q HOW ARE FORENSIC INTERVIEWS CONDUCTED TO ASSESS CHILD
10 ABUSE?

11 A AT HOPE HAVEN THEY ARE CONDUCTED THROUGH AUDIO TAPING
12 AND VIDEO TAPING OF THE INTERVIEW. THE REFERRING AGENCY
13 WHO WAS EITHER LAW ENFORCEMENT OR DEPARTMENT OF SOCIAL
14 SERVICE WILL SIT IN ANOTHER ROOM AND OBSERVE THE INTERVIEW
15 WHILE IT IS BEING CONDUCTED.

16 Q WHAT IF ANY RULES OR GUIDELINES ARE ESTABLISHED FOR
17 THE INTERVIEW?

18 A RULES OR GUIDELINES ARE PROVIDED TO THE CHILD OR THE
19 ADOLESCENT. IN THE BEGINNING OF THE INTERVIEW WE TALK
20 ABOUT RULES REGARDING SPEAKING THE TRUTH, SPEAKING
21 HONESTLY.

22 WE ALSO TALK ABOUT IF THEY DON'T -- IF THE CHILD DOES
23 NOT UNDERSTAND A QUESTION, TO ALWAYS MAKE SURE TO ASK IT
24 AGAIN, MAKE SURE NOT TO ANSWER I DON'T KNOW TO A QUESTION
25 IF THEY DON'T -- TO ANSWER THE QUESTION. IF THEY DON'T

1 KNOW THE ANSWER, NOT TO ANSWER, JUST TO STATE, I DON'T
2 KNOW.

3 Q ARE THE PARENTS OF THE KIDS ALLOWED TO BE PRESENT IN
4 THE INTERVIEW?

5 A WE ASK THAT THE PARENTS OR CARE GIVERS NOT WATCH THE
6 INTERVIEW. WE EXPLAIN THE REASON FOR THAT IS THAT CHILDREN
7 COULD HOLD BACK A DISCLOSURE FROM CHILDREN BECAUSE CHILDREN
8 ARE VERY PROTECTIVE OF CARE GIVERS AND PARENTS' EMOTIONAL
9 STATE IN RESPONSES.

10 Q AND WHERE IS THE INTERVIEW CONDUCTED?

11 A THE INTERVIEW IS CONDUCTED AT HOPE HAVEN OF THE LOW
12 COUNTRY.

13 Q WHO ALL IS ALLOWED TO OBSERVE THE INTERVIEW?

14 A THE INTERVIEW IS OBSERVED BY THE REFERRING AGENCY,
15 WHETHER IT BE LAW ENFORCEMENT OR DEPARTMENT OF SOCIAL
16 SERVICE. WE HAVE A FAMILY ADVOCATE PRESENT THAT TAKES NOTE
17 TAKING. AND TYPICALLY, THAT'S IT.

18 Q AND WHAT IF ANY MEASURE IS USED TO ACCESS THE CHILD'S
19 LEVEL OF COMPETENCY?

20 A THAT IS DETERMINED AT THE TIME OF THE INITIAL STAGE OF
21 THE INTERVIEW, WHICH WE CALL RAPPORT BUILDING. AT THAT
22 TIME THE INTERVIEWER ASKS THE CHILD OPEN ENDED QUESTIONS
23 PERTAINING TO TOPICS OF -- INSENSITIVE TOPICS, YOU KNOW,
24 THINGS THAT THEY LIKE TO DO, WHAT THEY LIKE ABOUT SCHOOL.
25 AND IT IS AT THAT TIME THAT THE INTERVIEWER CAN GET A

1 SENSE OF THE CHILD'S VERBAL ABILITIES AND EXPRESS IN A
2 COHERENT FASHION.

3 Q WHY IS THAT IMPORTANT?

4 A THAT'S IMPORTANT BECAUSE DURING THE FORENSIC INTERVIEW
5 IT'S IMPORTANT THAT A CHILD SPEAK COHERENTLY AND NOT USE A
6 LOT OF FANTASTICAL ELEMENTS OR IS ABLE TO FOLLOW A LINE OF
7 QUESTIONING.

8 Q IS THE CHILD'S SOCIAL OR FAMILY HISTORY OBTAINED?

9 A YES, WE DO. WE DO A BRIEF PSYCHO-SOCIAL HISTORY. WE
10 TALK TO THE -- WE TALK TO THE PARENTS OF THE CHILDREN, TO
11 OBTAIN THE INFORMATION. AND THAT IS WHEN -- THAT IS
12 CONDUCTED PRIOR TO THE FORENSIC INTERVIEW.

13 Q WHAT ABOUT MEDICAL HISTORY, THAT AS WELL?

14 A MEDICAL HISTORY, RIGHT. THAT WOULD BE THE INFORMATION
15 THAT IS -- THAT THE CARE GIVER OR PARENT WOULD PROVIDE TO
16 THE FORENSIC INTERVIEWER.

17 Q WHAT TYPE OF QUESTIONING FORMAT IS USED FOR THE
18 FORENSIC INTERVIEW?

19 A IT IS BASED ON A FUNNEL APPROACH. WE START WITH THE
20 MOST OPEN ENDED QUESTIONS, THE LESS DIRECT, AND ASK VERY
21 NON-SUGGESTIBLE, DEFENSIBLE QUESTIONS, IN AN OPEN-ENDED
22 APPROACH.

23 AND THE CHILD STARTS WITH SPEAKING FREE RECALL, AND
24 THEN IF THE CHILD IS NOT ABLE TO RELATE HIS ABUSE OR HER
25 ABUSE IN THAT WAY, THEN WE KIND OF USE THE FUNNEL APPROACH

1 AND ASK QUESTIONS BASED ON WHAT THE CHILD HAS STATED.

2 WE DO NOT INTRODUCE ANY INFORMATION THAT HAS NOT
3 PREVIOUSLY BEEN INTRODUCED.

4 Q IN ASSESSING A CHILD'S PHYSICAL -- SEXUAL ABUSE,
5 EXCUSE ME, HOW DO YOU DETERMINE THE CHILD'S KNOWLEDGE OF
6 HIS OR HER ANATOMY?

7 A WHAT WE DO DURING THE INTERVIEW IS WHAT WE CALL
8 ANATOMY IDENTIFICATION. AND THE INTERVIEWER USES DIAGRAMS
9 OF THE ANATOMY, FEMALE AND MALE. AND THE CHILD IS ASKED TO
10 NAME THE SPECIFIC BODY PARTS. AND WE USE THE CHILD'S
11 LANGUAGE, HOW HE OR SHE IDENTIFIES THE BODY PARTS; AND
12 THAT'S WHAT WE USE TO SPEAK SPECIFIC BODY PARTS DURING THE
13 INTERVIEW.

14 Q THE QUESTIONS YOU JUST ANSWERED, THE BACKGROUND
15 INFORMATION THAT YOU'VE GATHERED -- THAT YOU'VE SAID YOU'VE
16 GATHERED, WAS ALL OF THOSE THINGS -- WERE ALL OF THOSE
17 THINGS DONE REGARDING victim?

18 A THE PSYCHO-SOCIAL, YES.

19 Q YES. YOU IN FACT CONDUCTED INTERVIEW -- A FORENSIC
20 INTERVIEW WITH victim IS THAT CORRECT?

21 A I DID.

22 Q OKAY. WHAT IS MEANT BY THE TERM DELAYED REPORTING?

23 A DELAYED REPORTING SIMPLY STATES THAT CHILDREN DO NOT
24 INFORM ADULTS OR OTHER PEOPLE OF AUTHORITY IMMEDIATELY
25 AFTER AN ALLEGED SEXUAL ASSAULT. CHILDREN TYPICALLY DELAY

1 THEIR REPORTING. WE SEE THAT MORE OFTEN THAN NOT. IT'S
2 VERY COMMON FOR CHILDREN TO DELAY INFORMATION AS TO WHAT
3 HAS HAPPENED TO THEM.

4 Q BASED ON YOUR TRAINING AND YOUR EXPERIENCE, HOW COMMON
5 IS DELAYED REPORTING?

6 A IT IS VERY COMMON. WE SEE THAT -- LIKE I SAID
7 EARLIER, THAT HAPPENS MORE OFTEN THAN NOT. 75 PERCENT OF
8 CHILDREN DO NOT DISCLOSE WITHIN THE FIRST YEAR. AND 18
9 PERCENT DO NOT DISCLOSE WITHIN 5 YEARS.

10 Q WHAT FACTORS COMMONLY PLAY A ROLE IN A CHILD'S DELAYED
11 REPORTING?

12 A THERE ARE SEVERAL FACTORS. BASICALLY, CHILDREN ARE
13 VERY FEARFUL. AND THE THINGS THAT THEY'RE AFRAID OF IS THE
14 FEAR OF UNKNOWN CONSEQUENCES IF THEY DO REPORT. FEAR OF
15 FAMILY RESPONSE, CARE GIVER'S RESPONSE. FEAR OF REJECTION
16 OR PUNISHMENT BY CARE GIVERS. MANY TIMES CHILDREN FEEL --
17 AGAIN, THE CONSEQUENCES BECAUSE THEY'RE UNKNOWN.

18 AND THEY DELAY REPORTING IF THERE'S BEEN OVERT OR
19 COVERT THREATS FROM THE ALLEGED PERPETRATOR DUE TO THE
20 SECRECY ELEMENT.

21 AND ALSO CHILDREN DO NOT REPORT OR DELAY THEIR
22 REPORTING IF THEY HAVE FEELINGS OF SHAME, HELPLESSNESS,
23 GUILT, OR ANXIETY, OR DEPRESSION.

24 Q OKAY. HAS THE LITERATURE REVEALED A DIFFERENCE IN THE
25 DELAYED REPORTING BETWEEN BOYS AND GIRLS?

1 A THERE IS NOT MUCH INFORMATION IN REGARD TO THE
2 LITERATURE REGARDING BOYS AND GIRLS DELAYED REPORTING.

3 ALTHOUGH, THERE HAS -- SOME EVIDENCE THAT BOYS DELAY MORE
4 SO THAN GIRLS.

5 Q AND WHAT ABOUT SOCIETAL PRESSURE AND STEREOTYPES ABOUT
6 MOLESTATION?

7 A IN REGARDS TO?

8 Q DOES THAT GO TO DELAYED REPORTING?

9 A YES, MA'AM. YES, IT DOES.

10 Q PLEASE EXPLAIN?

11 A SOCIETAL PRESSURES, YOU KNOW, BECAUSE OF THE
12 STIGMATIZATION THAT IT HAS IN CHILDREN, CHILDREN OFTEN FEEL
13 LIKE SPOILED GOODS OR DAMAGED PROPERTY AND THAT CONTRIBUTES
14 TO THE DELAYED REPORTING.

15 Q WHO REFERRED Uctim TO YOUR AGENCY FOR THE FORENSIC
16 INTERVIEW?

17 A THAT WAS OFFICER GONZALES.

18 Q AND IN YOUR OPINION DID Uctim APPEAR TO BE COMPETENT?

19 A YES, HE DID.

20 Q DO YOU REMEMBER WHAT DATE YOU INTERVIEWED HIM?

21 A THAT WAS FEBRUARY 27, 2009.

22 Q DO YOU KNOW WHEN HE REPORTED THE INCIDENT?

23 A I'M NOT SURE OF THE DATE.

24 Q WHAT IF ANY SAFEGUARDS WERE USED TO PREVENT Uctim
25 FROM BEING INFLUENCED BY YOUR PRESENCE OR YOUR QUESTIONS?

1 A AGAIN, I USED VERY OPEN ENDED, VERY NON-LEADING, NON-
2 SUGGESTIBLE QUESTIONS. I BASICALLY ASKED HIM WHAT
3 HAPPENED, TELL ME WHAT HAPPENED. WE USED THE -- I USED THE
4 FUNNEL APPROACH. IF HE STATED INFORMATION, THEN I BUILT MY
5 QUESTIONS ON THINGS THAT HE HAD TOLD ME.

6 Q WAS THERE ANYTHING ABOUT THE VICTIM'S DISCLOSURE THAT
7 CAUSED YOU TO BELIEVE IT WAS THE RESULT OF THIRD-PARTY
8 INFLUENCE?

9 A NO.

10 Q IN YOUR OPINION WAS HIS DISCLOSURE AFFECTED ANY WAY BY
11 SUGGESTIBILITY OR COACHING?

12 A NOT THAT I WAS AWARE OF.

13 Q WHAT IF ANY RECOMMENDATION DID YOU MAKE FOLLOWING THE
14 CONVERSATION WITH Victim?

15 A RECOMMENDATIONS WERE TO MAKE A REFERRAL FOR COUNSELING
16 PROVIDED BY HOPE HAVEN.

17 Q WAS YOUR INTERVIEW WITH Victim RECORDED ON AUDIO AND
18 VIDEO?

19 A IT WAS. IT WAS RECORDED ON AUDIO AND VIDEO.

20 Q DID Victim EXPLAIN TO YOU IN DETAIL THE EVENTS THAT
21 HAPPENED TO HIM AND THE DEFENDANT?

22 A YES, HE DID.

23 Q DO YOU REMEMBER HOW LONG YOUR INTERVIEW WAS?

24 A 57 MINUTES.

25 Q DO YOU REMEMBER Victim'S DEemeanor DURING THIS

1 DISCUSSION WITH YOU?

2 A Victim WAS VERY COOPERATIVE. HE WAS VERY VERBAL. HE
3 SEEMED VERY ENGAGED IN THE PROCESS OF THE FORENSIC
4 INTERVIEW. THERE WERE TIMES THOUGH THAT HE BECAME
5 DISTRESSED AND STARTED CRYING.

6 Q DID YOU TALK TO HIM ABOUT THE REASONS WHY HE MAY NOT
7 HAVE REPORTED OR DID NOT REPORT THE INCIDENT?

8 A I DON'T BELIEVE I DID.

9 Q DID HE GIVE YOU A REASON?

10 A OH, HE DID GIVE ME A REASON, RIGHT.

11 Q BASED ON YOUR EXPERIENCE AND TRAINING, DO YOU BELIEVE
12 THAT THE VARIOUS FACTORS THAT YOU'VE SEEN IN YOUR WORK WITH
13 DELAYED REPORTING ALSO WAS PRESENT WITH Victim

14 A I DID.

15 MS. BURKE: YOUR HONOR, OUTSIDE OF TALKING IN MORE
16 DETAIL ABOUT WHAT HE TOLD HER, THAT'S -- NO FURTHER
17 QUESTIONS. THAT WOULD BE THE BASIS OF THE STATE'S
18 QUESTIONS.

19 THE COURT: MR. MACLOSKIE?

20 CROSS EXAMINATION BY MR. MACLOSKIE:

21 Q MS. HEFNER, THANK YOU. WHAT WERE YOUR FINDINGS AS THE
22 REASON Victim LATE REPORTED THIS?

23 A WHAT WERE MY FINDINGS?

24 Q YES, WHY?

25 A Victim INDICATED TO ME IN THE FORENSIC INTERVIEW THAT

1 HE DIDN'T TELL ANYBODY WHEN IT FIRST HAPPENED BECAUSE HE
2 STATED THIS HAD PREVIOUSLY OCCURRED BEFORE.

3 Q AND NOTHING WAS DONE THEN?

4 A RIGHT.

5 Q BUT THAT DIDN'T HAVE ANYTHING TO DO WITH FEAR OF WHAT
6 THE CARE GIVER WOULD SAY OR A COMPANION WOULD SAY IF HE
7 REPORTED IT TIMELY, DID IT?

8 A NO, NOT PER SE. BUT HE DID TELL ME THAT HE FELT
9 EMBARRASSED AND HE FELT ANGRY AND THAT COULD ALL BE
10 CONTRIBUTING TO DELAY IN REPORTING.

11 MR. MACLOSKIE: THANK YOU, MA'AM, THAT'S ALL I HAVE.

12 THE COURT: WAIT A MINUTE, JUST SO I'M CLEAR. HE TOLD
13 YOU IN HIS INTERVIEW THAT THIS HAS OCCURRED TO HIM BEFORE?

14 MS. HEFNER: UH-HUH.

15 THE COURT: AND DID HE SAY IT WAS BY MRS. TAPPEINER?

16 MS. HEFNER: NO.

17 THE COURT: BY SOMEONE ELSE?

18 MS. HEFNER: BY SOMEONE ELSE.

19 MS. BURKE: THAT IS THE MATTER THAT I HAD WHEN I SAID
20 TO NOT TALK ABOUT HIS PRIOR HISTORY, HE WAS MOLESTED WHEN
21 HE WAS 6 YEARS OLD BY A BABYSITTER.

22 THE COURT: ALL RIGHT.

23 MR. MACLOSKIE: IN KENTUCKY.

24 THE COURT: IN KENTUCKY. OF COURSE, I KNEW NOTHING
25 ABOUT THAT. OKAY.

1 AND JUST SO I'M CLEAR, YOU SAID ARGUS UNIVERSITY. AND
2 I APOLOGIZE. I'M JUST NOT FAMILIAR WITH IT. YOU SAY IT'S
3 IN ATLANTA, DOWNTOWN ATLANTA?
4 MS. HEFNER: CORRECT.
5 THE COURT: IT'S AN ON-SITE SCHOOL OR AN ON-LINE
6 SCHOOL?
7 MS. HEFNER: NO. IT'S AN ON-SITE SCHOOL. THERE'S
8 SEVERAL LOCATIONS NATION WIDE.
9 THE COURT: YOU SAID MIAMI?
10 MS. HEFNER: MIAMI, MEMPHIS, CHICAGO. I THINK THERE'S
11 ONE IN HONOLULU.
12 THE COURT: AND IT'S A 2-YEAR MASTER'S DEGREE?
13 MS. HEFNER: UH-HUH.
14 THE COURT: AND SO ALL OF THE COURSES WERE TAKEN ON
15 SITE?
16 MS. HEFNER: RIGHT. CORRECT.
17 THE COURT: AND WHAT IS YOUR MA IN EXACTLY?
18 MS. HEFNER: IT IS PROFESSIONAL COUNSELING.
19 THE COURT: PROFESSIONAL COUNSELING. THAT'S ACTUALLY
20 WHAT YOUR MA SAYS IS PROFESSIONAL COUNSELING?
21 MS. HEFNER: UH-HUH.
22 THE COURT: IT'S NOT COMMUNITY COUNSELING?
23 MS. HEFNER: NO.
24 THE COURT: IT'S PROFESSIONAL COUNSELING?
25 MS. HEFNER: PROFESSIONAL COUNSELING.

1 THE COURT: IS IT AN ACCREDITED SCHOOL?

2 MS. HEFNER: YES, MA'AM.

3 THE COURT: OKAY. WITH THE AMERICAN COLLEGES AND
4 SOCIETY?

5 MS. HEFNER: RIGHT.

6 THE COURT: ALL RIGHT.

7 MR. MACLOSKIE: IF IT PLEASE, YOUR HONOR. AND,
8 BELIEVE ME, MS. HEFNER, I HAVE THE GREATEST ADMIRATION AND
9 RESPECT FOR YOUR DOING WHAT YOU DO. AND, OBVIOUSLY, YOU
10 HAVE ACHIEVED THIS ACADEMIC AWARDS WHILE YOU WERE WORKING I
11 SUPPOSE.

12 IN SPITE OF THAT, I MUST RENEW MY MOTION TO EXCLUDE
13 HER AS AN EXPERT.

14 THE COURT: LET ME ASK YOU A QUESTION, SOLICITOR. YOU
15 WANT HER TO TESTIFY AS TO DELAYED REPORTING. AND, OF
16 COURSE, WE NEED TO TAILOR THIS A LITTLE MORE TOWARDS victim
17 AND victim SITUATION WHICH YOU DID AT THE VERY END OF
18 YOUR PROFFER.

19 HOW DO WE HAVE HER GIVE AN OPINION AS TO WHY HE
20 DELAYED REPORTED, BUT WE DON'T SAY THAT HE HAD BEEN
21 PREVIOUSLY MOLESTED, BECAUSE THAT'S ONE OF THE BASIS FOR
22 HER OPINION. SO HOW DOES SHE GIVE THAT OPINION WITHOUT
23 TELLING YOU WHAT THE BASIS FOR HER OPINION IS?

24 I MEAN, SHE JUST STATED ON THE STAND THAT ONE OF THE
25 THINGS SHE RELIED ON IS THAT THIS BOY HAD BEEN ABUSED

1 BEFORE BY A BABYSITTER; AND THAT WAS ONE OF HER REASONINGS
2 FOR THE DELAYED REPORTING?

3 MS. BURKE: RIGHT. I THINK IT WAS ONE OF THE REASONS
4 -- MY UNDERSTANDING OF THE STATEMENT. AND THAT HE ALSO
5 TOLD HER THAT HE WAS SCARED AND EMBARRASSED IS WHAT I HEARD
6 HER SAY, WHICH IS CONSISTENT WITH WHAT HE TOLD CREASON,
7 TUBBS, AND GONZALES AS WELL.

8 THE COURT: SHE JUST TOLD ME THE BASIS FOR HER OPINION
9 THOUGH WAS BOTH THOSE THINGS. AS WE ALL KNOW AND
10 UNDERSTAND, IT ISN'T NECESSARILY ONE THING. AND, QUITE
11 FRANKLY, THAT BOLSTERS IN MY OPINION HER OPINION.

12 MS. BURKE: RIGHT.

13 THE COURT: IT MAKES CERTAINLY WHAT SHE'S SAYING
14 CREDIBLE.

15 MS. BURKE: RIGHT. I UNDERSTAND, YOUR HONOR. AND I
16 THINK HERE, YOU KNOW, WE'RE -- WE'RE -- WE'RE CERTAINLY
17 BUMPING UP AGAINST AN EVIDENTIARY ISSUE AND THAT THE RAPE
18 SHIELD LAW CERTAINLY IS HERE TO PROTECT SOMEONE LIKE victim
19 FROM HAVING THAT TAIN'T -- THAT HORRIBLE EXPERIENCE BE
20 RELIVED.

21 I THINK CERTAINLY THAT MS. HEFNER CAN TALK ABOUT
22 CERTAIN DISCLOSURES THAT HE MADE WITHOUT SAYING EXACTLY
23 WHAT THAT PRIOR ABUSE WAS, THAT, WE CAN, YOU KNOW, PROBABLY
24 QUALIFY THAT SO THE JURY WOULD NOT KNOW THE FULL DETAIL OF
25 THAT. I DON'T THINK THAT ---

1 THE COURT: I MEAN, SHE WOULD JUST SAY THAT PRIOR
2 ABUSE, YOU KNOW -- OBVIOUSLY, YOU HAVE TO CHOOSE HOW TO TRY
3 YOUR CASE.

4 MR. MACLOSKIE: JUDGE, I RESPECT THE RAPE SHIELD LAW.
5 I THINK IT SERVES A VERY VALID ---

6 THE COURT: ABSOLUTELY, MR. MACLOSKIE. YOU AND I CAN
7 AGREE ON THAT.

8 MR. MACLOSKIE: THERE'S NO QUESTION ABOUT IT.

9 THE COURT: THE SOLICITOR IS THE ONE THAT WANTED TO
10 OPEN THAT DOOR. I MEAN, SHE'S THE ONE THAT'S WANTING TO
11 OPEN THAT DOOR.

12 MS. BURKE: I DON'T, YOUR HONOR. I MEAN, I -- I -- I
13 SAID FOR US TO KEEP IT OUT ON YESTERDAY BECAUSE I WAS
14 CONCERNED ABOUT THAT. AND LIKE I SAID, HER STATEMENT --
15 AND WE CAN, YOU KNOW, CERTAINLY REVIEW THE STATEMENT THAT
16 Victim HAD MADE TO HER, SO WE CAN HEAR ALL OF THE THINGS
17 AND SHE CAN REFRESH HER NOTES, THAT YOU CAN HEAR ALL OF THE
18 THINGS THAT HE TOLD HER AS TO WHY HE DELAYED.

19 THE COURT: WELL, WHY DO I NEED HER THEN? WHAT DO I
20 NEED HER TO QUALIFY HER AS AN EXPERT? I THINK SHE CAN
21 CLEARLY SAY, I INTERVIEWED THIS BOY. AND HERE'S MY
22 INTERVIEW.

23 MS. BURKE: RIGHT.

24 THE COURT: QUITE FRANKLY, THE BEST EVIDENCE OF THAT
25 INTERVIEW IS THE ACTUAL TAPE. I MEAN ---

1 MS. BURKE: RIGHT.

2 THE COURT: --- THAT TELLS US WHAT HAPPENED.

3 MS. BURKE: RIGHT. WHAT I -- THE REASON I BROUGHT
4 THAT UP WAS TO ADD FURTHER SUPPORT TO THE FACT THAT MY
5 UNDERSTANDING FROM HER IS THAT THE DISCLOSURE WAS ONE OF
6 SEVERAL FACTORS THAT CONTRIBUTED. THE OTHERS BEING HIM
7 BEING SCARED AND AFRAID. AND AS TO WHETHER OR NOT SHE CAN
8 TESTIFY AS AN EXPERT AS TO DELAYED DISCLOSURE IS SEPARATE
9 FROM HOW FAR HER TESTIMONY WILL BE AS IT BUMPS UP AGAINST
10 THE RAPE SHIELD LAW.

11 THE COURT: YOU'RE THE ONE THAT'S OPENING THAT DOOR,
12 THOUGH. IF YOU ASK THAT AND HE ASKS WHAT IS THE BASES FOR
13 YOUR OPINION THAT THIS BOY WAITED 6 MONTHS TO REPORT?

14 SHE'S GOING TO SAY, I DON'T THINK IT'S UNUSUAL AT ALL
15 AND LET ME TELL YOU WHY. AND SHE'S GOING TO TELL YOU
16 EXACTLY WHAT SHE TOLD US, WHICH WAS BECAUSE -- OBVIOUSLY,
17 BECAUSE OF SOCIETAL PRESSURES, BECAUSE CERTAINLY HE'S A
18 BOY, BECAUSE HE WAS AFRAID, AND ADDITIONALLY BECAUSE HE HAD
19 PRIOR BEEN MOLESTED AND WASN'T BELIEVED.

20 MS. BURKE: RIGHT.

21 THE COURT: THAT'S A SAD FACT, BUT THAT'S THE FACTS.

22 MS. BURKE: IT IS. AND I THINK, AGAIN, JUST BASED ON
23 YOUR HONOR'S RECITING WHAT SHE MIGHT SAY, THAT IS ONE OF
24 THE FACTORS. AND I THINK THAT TO -- TO BE ALLOWED WITH THE
25 RAPE SHIELD LAW THERE SHOULD BE A STATEMENT ASKED -- FOR

1 THERE TO BE A STATEMENT BY THE COURT THAT THAT ASPECT OF
2 HER TESTIMONY NOT BE VIEWED OR NOT BE TOLD TO THE JURY
3 UNLESS IT IS REWORDED SO THAT IT IS NOT IMPLICITLY SAYING
4 HE WAS MOLESTED PREVIOUSLY. IT COULD SAY THAT HE HAD
5 PERHAPS A PRIOR -- AND, AGAIN, I'M NOT REALLY ARTICULATING
6 EXACTLY HOW IT SHOULD BE SAID. I THINK WE CAN KIND OF WORD
7 IT COLLECTIVELY SO WE DON'T VIOLATE THE RAPE SHIELD LAW.
8 BUT I DON'T THINK THAT'S A HINDRANCE TO HER BEING ABLE TO
9 TESTIFY AS TO HER OPINION AS TO THE VARIOUS REASONS WHY
10 Victim DID NOT DISCLOSE.

11 I THINK IT'S TWO SEPARATE ISSUES. I THINK THE STATE
12 IS ASKING FOR US FIRST MAKE A DETERMINATION THAT, ONE, SHE
13 CAN QUALIFY -- SHE'S QUALIFIED AS AN EXPERT, AND THAT, TWO,
14 THAT HER STATEMENTS WOULD ADD TO THE JURY'S KNOWLEDGE BASE
15 AND TO WIDEN THEIR UNDERSTANDING OF THE CASE.

16 AND THEN, THREE, THE ULTIMATE ISSUE THAT SHE CAN
17 TESTIFY ABOUT HER ULTIMATE OPINION BECAUSE WE HAVE THE
18 PROBLEM WITH RAPE SHIELD LAW, I THINK THAT CAN BE CURTAILED
19 JUST LIKE ANY INSTRUCTION WE GIVE TO THE JURY. WE CAN GIVE
20 INSTRUCTION TO THE WITNESS TO LIMIT HER TESTIMONY TO THE
21 ASPECTS OF THE -- OF THIS DELAYED DISCLOSURE THAT DID NOT
22 INCLUDE HIS PRIOR SEXUAL ASSAULT.

23 THE COURT: SHE JUST TESTIFIED THAT ONE OF THE REASONS
24 WHY HE DELAYED REPORTING WAS BECAUSE THE POOR CHILD HAD
25 BEEN MOLESTED PRIOR TO THIS WHEN HE WAS 6 YEARS OLD AND HE

1 WAS NOT BELIEVED.

2 MR. MACLOSKIE: HER WORDS.

3 THE COURT: THAT'S THE BEST TESTIMONY I KNOW WHY A
4 CHILD WOULDN'T A SECOND TIME REPORT IT. I MEAN, IT'S WHAT
5 SHE SAID, IT'S ONE OF THE REASONS THAT IS A BASIS FOR IT.
6 AND SHE'S SHAKING HER HEAD IN AGREEMENT WITH ME.

7 WHAT WE CAN DO IS WE CAN TAILOR THIS TO SAY THAT SHE
8 SAID THAT HE REPORTED THAT THERE WAS A PRIOR INCIDENT AND
9 IT WAS -- YOU KNOW, OF MOLESTATION, AND IT WAS NOT BELIEVED
10 AND WE CAN LEAVE IT AT THAT.

11 MS. BURKE: IT'S -- IT'S -- HIS STATEMENT IS NOT THAT
12 IT WAS NOT BELIEVED. HIS STATEMENT IS THAT NOTHING BECAME
13 OF IT.

14 THE COURT: THAT'S WHAT SHE JUST SAID.

15 MS. BURKE: RIGHT.

16 THE COURT: THAT HE REPORTED IT AND NOTHING HAPPENED.

17 MS. BURKE: WELL, I -- I -- I'M NOT SURE I'M
18 COMFORTABLE WITH THAT, YOUR HONOR, BECAUSE THAT GOES TO ---

19 THE COURT: I CAN'T IMAGINE BECAUSE I THINK THAT HELPS
20 YOUR SIDE SO MUCH. AGAIN, I'M NOT GOING TO TELL YOU HOW TO
21 TRY YOUR CASE. BUT IT'S CERTAINLY TO ME A GOOD REASON.

22 MS. BURKE: YEAH, I APPRECIATE THAT SUGGESTION, YOUR
23 HONOR. BUT I WANT TO BE SURE THAT I'M COMFORTABLE WITH HOW
24 THAT WAS GOING TO BE PLAYED OUT BECAUSE, AGAIN, I DON'T
25 WANT MR. MACLOSKIE OBVIOUSLY -- THE COMMON REASON THAT

1 PEOPLE -- THAT -- THAT DEFENDANTS BRING UP THE RAPE SHIELD
2 IS TO TRY TO MAKE IT SEEM AS IF THEY'VE MADE FALSE
3 ALLEGATIONS IN THE PAST OR WHETHER OR NOT THIS VICTIM
4 PERHAPS, YOU KNOW, GOES AROUND AND HAS PROMISCUOUS BEHAVIOR
5 OR WHATEVER. AND SO I WANT TO MAKE SURE THAT BY -- I'M NOT
6 SURE I'M COMFORTABLE AS YET WITH HER SAYING THAT NOTHING
7 CAME OUT OF IT.

8 I WANT TO JUST THINK ABOUT EXACTLY HOW I WILL BE
9 COMFORTABLE FOR HER TO WORD THAT.

10 THE COURT: SO YOU DON'T KNOW WHAT TO DO YET. YOU
11 DON'T KNOW WHETHER OR NOT -- ALL I'M TELLING YOU IS IF YOU
12 ELICIT OPINION TESTIMONY FROM THIS WITNESS AS TO WHY HE
13 DELAYED REPORTED, I'M GOING TO ALLOW MR. MACLOSKIE TO WALK
14 STRAIGHT THROUGH THAT DOOR TO ASK THE QUESTION OF WHAT IS
15 HER BASIS.

16 MS. BURKE: RIGHT. I THINK WE'VE AGREED, YOUR HONOR,
17 RESPECTFULLY, AND I APPRECIATE YOUR SUGGESTION THAT WE CAN
18 CURTAIL AND PACKAGE HER STATEMENT ABOUT THE PRIOR INCIDENT
19 SO AS TO NOT VIOLATE THE RAPE SHIELD LAW.

20 ALL THAT I'M SAYING IS I WANT TO MAKE SURE THAT I'M
21 COMFORTABLE WITH YOUR SUGGESTION AND WITH MY THINKING AS TO
22 MAYBE HOW THAT SHOULD BE STATED.

23 AND ON FIRST INSTINCTS, WHAT I HEARD OF THE STATEMENT
24 OF NOTHING HAPPENED TO THE PERSON, I WANT TO MAKE SURE THAT
25 THAT DOES NOT OPEN THE DOOR FOR ANY ALLEGATION THAT IT WAS

1 A FALSE REPORT, WHICH IS -- WHICH IF MR. MACLOSKIE WANTS TO
2 SAY ON THE RECORD IT'S DISSIMILAR, HE'S NOT GOING TO GO
3 DOWN THAT ROAD AND ACCUSE Victim OF MAKING A FALSE REPORT,
4 THAT'S FINE.

5 MR. MACLOSKIE: WELL, I AM OBVIOUSLY NOT GOING TO DO
6 THAT.

7 MS. BURKE: EXACTLY. EXACTLY. THAT'S WHY I WAS
8 SAYING THAT I'M NOT -- YOU KNOW, I WANT TO MAKE SURE THIS
9 WHATEVER IT IS -- I THINK WE'VE AGREED THAT WE CAN CURTAIL
10 MARY BETH HEFNER'S TESTIMONY, SO I THINK THAT'S IN THE
11 ARGUMENT THAT WE'RE HAVING OR DISCUSSION THAT WE'RE HAVING.

12 I THINK THE POINT OF CONTENTION -- THE POINT OF
13 MEETING, YOU KNOW, AT BOTH SIDES IS THAT WHAT EXACTLY CAN
14 SHE SAY THAT WOULD NOT BE IN VIOLATION OF THE RAPE SHIELD
15 LAW?

16 AND, AGAIN, MY -- YOU KNOW, MY FEELING IN THE MATTER
17 IS IF -- IF -- IF SHE HAD SAID, THIS IS THE ONLY REASON
18 THAT HE GAVE ME, THEN THAT WOULD BE WHAT HER TESTIMONY
19 WOULD STAND AND FALL ON, BUT SHE HAS SAID IT WAS ONE OF
20 OTHER REASONS THAT SHE GAVE -- THAT Victim GAVE TO HER THAT
21 FORMED THE BASIS OF HER OPINION.

22 THE COURT: ALL RIGHT. MS. BURKE, YOU ARE OPENING UP
23 THE DOOR. AND IF YOU DO THAT, I'M GOING TO LET MR.
24 MACLOSKIE GO THROUGH.

25 I AM GOING TO QUALIFY YOU AS AN EXPERT IN FORENSIC

1 A THERE'S NOT MUCH, BUT IT DOES SUGGEST THAT SOCIETY
2 STATES THAT BOYS NEED TO TAKE CHARGE, BE POWERFUL, BE
3 DOMINEERING, AND THIS SUGGESTS MORE THE POWERLESSNESS THAT
4 A BOY WOULD FEEL DURING AN ALLEGED SEXUAL ASSAULT.

5 MS. BURKE: THANK YOU. NO FURTHER QUESTIONS.

6 THE COURT: COULD I SEE THE ATTORNEYS JUST FOR A BRIEF
7 MOMENT.

8 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE
9 PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

10 CROSS EXAMINATION BY MR. MACLOSKIE:

11 Q MS. HEFNER, DO YOU HAVE A COPY OF YOUR REPORT WITH
12 YOU?

13 A I DO NOT.

14 MS. BURKE: YOUR HONOR, I DON'T BELIEVE I TALKED
15 ANYTHING ABOUT A REPORT. I'M NOT SURE -- COULD WE
16 APPROACH?

17 THE COURT: THIS IS CROSS EXAMINATION. HE CAN ASK
18 ANYTHING HE WANTS.

19 MS. BURKE: LIMITED TO MY DIRECT.

20 THE COURT: NO, MA'AM. THAT IS ON RECROSS, NOT ON HIS
21 ORIGINAL CROSS EXAMINATION.

22 Q WOULD YOU LOOK AT PAGE 8 OF YOUR REPORT PLEASE, MA'AM?

23 A YES, SIR.

24 Q AND ABOUT HALFWAY DOWN THAT PAGE, STARTING WITH THE
25 LINE, Victim ALSO INDICATED HE, QUOTE -- AND WHAT DOES THAT

1 QUOTE SAY?

2 MS. BURKE: YOUR HONOR, CAN WE APPROACH?

3 THE COURT: YOU MAY. WOULD SOMEONE BRING ME A COPY OF
4 THAT.

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

7 Q WHAT DID HE SAY? WHAT DID HE SAY?

8 A HE SAID THAT I FELT EMBARRASSED BECAUSE ---

9 Q NO. NO. NO. THE LINE TOWARD THE MIDDLE OF THE PAGE
10 THAT STARTS OFF, victim ALSO INDICATED HE WAS -- NEW LINE
11 -- QUOTE -- SEE WHERE?

12 MR. MACLOSKIE: MAY I APPROACH?

13 THE COURT: YOU MAY.

14 A I'M NOT SEEING IT.

15 Q RIGHT HERE. JUST READ THAT. IT STARTS RIGHT HERE.

16 A RIGHT HERE. OKAY.

17 Q victim ALSO INDICATED HE WAS -- THAT LINE RIGHT THERE.
18 AND THAT'S ALL.

19 A OKAY. victim ALSO INDICATED HE WAS YELLING OUT TO HIS
20 SISTERS AND SUSAN'S HUSBAND, MIKE, BUT NOBODY WOKE UP.

21 Q OKAY. AND IS THAT RECORDED -- DO YOU RECALL THAT?

22 A YES.

23 Q ACCURATELY AS WHAT HE SAID?

24 A YES.

25 MR. MACLOSKIE: THANK YOU, MA'AM. I HAVE NOTHING

1 FURTHER.

2 THE COURT: ANY REDIRECT?

3 MS. BURKE: NO, YOUR HONOR. THANK YOU.

4 THE COURT: YOU MAY STEP DOWN, MS. HEFNER. ANY

5 OBJECTION TO MS. HEFNER BEING EXCUSED FROM THE STATE?

6 MS. BURKE: NO OBJECTION, YOUR HONOR.

7 THE COURT: FROM THE DEFENSE?

8 MR. MACLOSKIE: NONE.

9 THE COURT: THANK YOU, MS. HEFNER.

10 (THE WITNESS LEAVES THE WITNESS STAND.)

11 THE COURT: MS. BURKE, CALL YOUR NEXT WITNESS.

12 MS. BURKE: THE STATE CALLS SERGEANT (SIC) ANGEL

13 TUBBS.

14 ANGEL TUBBS, BEING FIRST DULY

15 SWORN, TESTIFIED AS FOLLOWS:

16 CLERK: PLEASE BE SEATED.

17 THE COURT: SERGEANT TUBBS, WOULD YOU JUST SPELL YOUR

18 LAST NAME FOR MY COURT REPORTER.

19 WITNESS: TUBBS, T-U-B-B-S.

20 THE COURT: THANK YOU.

21 DIRECT EXAMINATION BY MS. BURKE:

22 Q I MISTAKENLY CALLED YOU SERGEANT TUBBS. IT'S ACTUALLY

23 LIEUTENANT; IS THAT CORRECT?

24 A THAT'S CORRECT, MA'AM.

25 Q I APOLOGIZE FOR THAT. I APOLOGIZE TO THE COURT FOR

- 1 THAT ERROR. WHERE DO YOU CURRENTLY WORK?
- 2 A I CURRENTLY WORK FOR THE BLUFFTON POLICE DEPARTMENT.
- 3 Q AND WHAT IS THE SCOPE OF YOUR POSITION?
- 4 A I AM CURRENTLY IN CHARGE OF INVESTIGATIONS AND PATROL.
- 5 Q HOW LONG HAVE YOU WORKED IN LAW ENFORCEMENT?
- 6 A I'M IN MY 23RD YEAR.
- 7 Q HOW DID YOU GET INVOLVED IN THIS CASE?
- 8 A I RECEIVED A CALL FROM MY S.R.O., OFFICER CREASON,
- 9 THAT IS ASSIGNED TO THE MIDDLE SCHOOL IN BLUFFTON, AND HE
- 10 ADVISED THAT HE HAD A YOUNG MAN IN HIS OFFICE THAT HAD
- 11 DISCLOSED CRIMINAL SEXUAL CONDUCT.
- 12 Q WHAT ACTION DID YOU TAKE WHEN YOU HEARD -- WHEN YOU
- 13 GOT THE CALL?
- 14 A I ADVISED OFFICER CREASON THAT I WOULD BE IN ROUTE. I
- 15 ARRIVED AT THE MIDDLE SCHOOL, AND OFFICER CREASON MET ME AT
- 16 THE FRONT, WALKED ME TO HIS OFFICE WHERE A YOUNG MAN WAS,
- 17 AND WE SAT DOWN. AND I ASKED HIM IF IT ALL RIGHT THAT HE
- 18 SPEAK WITH ME. AND HE AGREED TO TALK TO ME.
- 19 Q WHO WAS PRESENT WHEN HE SPOKE TO YOU?
- 20 A MYSELF, OFFICER CREASON, AND THE YOUNG MAN.
- 21 Q AND Victim, DO YOU RECALL THAT BEING HIS NAME?
- 22 A UH-HUH.
- 23 Q DID Victim TALK TO YOU ABOUT THE INCIDENT?
- 24 A HE DID.
- 25 Q AND WHO DID HE SAY -- WHAT DID HE SAY ABOUT THE

1 INCIDENT?

2 A HE JUST STATED THAT HE HAD SPENT THE NIGHT OVER WITH
3 HIS TWO SISTERS AT A NEIGHBOR'S HOUSE, AND THAT WHILE THERE
4 HE WAS SEXUALLY ASSAULTED BY A OLDER FEMALE BY THE NAME OF
5 SUSAN, BUT HE DID NOT KNOW HER LAST NAME.

6 Q OKAY. DID YOU TALK TO Victim MOTHER?

7 A I DID.

8 Q AND WAS Victim PRESENT?

9 A HE WAS.

10 Q WERE YOU ALSO INVOLVED IN THE -- DID THE DEFENDANT
11 COME TO THE BLUFFTON POLICE STATION AT ANY POINT?

12 A SHE DID.

13 Q WERE YOU PRESENT WHEN SHE WAS THERE?

14 A YES, MA'AM.

15 Q OKAY.

16 MS. BURKE: YOUR HONOR, MAY WE APPROACH?

17 THE COURT: YOU MAY.

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

20 Q LIEUTENANT TUBBS, WHEN YOU TALKED TO Victim ABOUT WHAT
21 HAPPENED TO HIM, DID YOU ALSO ASK HIM IF HE WAS AROUSED?
22 DO YOU RECALL?

23 A I DO NOT RECALL, MA'AM.

24 Q DO YOU RECALL HIM TELLING YOU WHETHER OR NOT HE
25 ENJOYED WHAT HAPPENED?

1 A I DO NOT RECALL THAT, MA'AM.
2 Q AFTER THE DEFENDANT ---
3 MS. BURKE: NO FURTHER QUESTIONS, YOUR HONOR, SUBJECT
4 TO RECROSS -- SUBJECT TO RECALL.

5 THE COURT: OKAY. MR. MACLOSKIE.

6 CROSS EXAMINE BY MR. MACLOSKIE:

7 Q LIEUTENANT TUBBS, THIS INTERVIEW WAS THE SAME
8 INTERVIEW THAT MIKE CREASON CONDUCTED OF Victim?
9 A FROM MY UNDERSTANDING, SIR, Victim JUST CAME IN AND
10 TOLD OFFICER CREASON. HE STOPPED IT AT THAT TIME AND THEN
11 CALLED FOR ME. HE WAS PRESENT WHEN I WAS TALKING WITH
12 Victim.

13 Q WOULD YOU BE KIND ENOUGH JUST TO REVIEW THIS STATEMENT
14 HERE, THIS PART OF -- NOT STATEMENT, BUT THIS PART OF
15 OFFICER CREASON'S REPORT. HAVE YOU GOT IT THERE?

16 A I DO, SIR.

17 Q MAY I SEE WHAT -- THIS PART RIGHT HERE. YOU'VE
18 REVIEWED THAT PART, HAVE YOU?

19 A YES, SIR.

20 Q AND THAT'S SUBSTANTIALLY WHAT YOU RECALL OF IT?

21 A ABSOLUTELY, SIR.

22 Q OKAY. AND THIS IS THE ONLY INTERVIEW THAT YOU KNOW OF
23 THAT MR. CREASON WAS PRESENT AT OF Victim; IS THAT
24 CORRECT?

25 A HE WAS PRESENT IN HIS OFFICE AT THE HIGH SCHOOL --

1 MIDDLE SCHOOL, YES, SIR.

2 Q SO WHAT MR. CREASON WOULD HAVE TO SAY ABOUT THIS
3 INTERVIEW IS THE SAME THING YOU'D HAVE TO SAY ABOUT IT?

4 A YES, SIR.

5 Q WE'RE ALL READING OFF THE SAME PAGE, RIGHT?

6 A YES, SIR.

7 MR. MACLOSKIE: THANK YOU, MA'AM, THAT'S ALL I HAVE.

8 THE COURT: MS. BURKE?

9 MS. BURKE: THAT'S ALL, YOUR HONOR.

10 THE COURT: YOU MAY STEP DOWN, LIEUTENANT.

11 (THE WITNESS LEAVES THE WITNESS STAND.)

12 MS. BURKE: AS STATED, YOUR HONOR, THIS WITNESS IS
13 SUBJECT TO RECALL AT THE APPROPRIATE TIME TO TAKE UP THAT
14 MATTER.

15 THE COURT: OKAY. LADIES AND GENTLEMEN OF THE JURY,
16 I'M GOING TO SEND YOU BACK TO YOUR JURY ROOM. AGAIN, I'M
17 GOING TO CAUTION YOU NOT TO BEGIN DISCUSSING THIS CASE. IT
18 WOULD BE INAPPROPRIATE TO DO SO. YOU HAVEN'T HEARD ALL THE
19 EVIDENCE. YOU HAVEN'T HEARD THE ARGUMENTS OF THE LAWYERS
20 NOR MY CHARGE ON THE LAW.

21 WITH THAT SAID, GO BACK AND HAVE A CUP OF COFFEE OR A
22 COKE. BRING IT BACK WITH YOU.

23 (THE JURY RETIRES TO THE JURY ROOM AT 2:52 P.M.)

24 BAILIFF: THE JURY IS CLEAR, YOUR HONOR.

25 THE COURT: THANK YOU. ALL RIGHT. DURING LIEUTENANT

1 TUBBS'S TESTIMONY, WE HAD A BENCH CONFERENCE. LET'S GO
2 AHEAD AND PUT IT ON THE RECORD, MS. BURKE.

3 MS. BURKE: YOUR HONOR, I WANTED TO GO BACK TO YOUR
4 HONOR'S MOTION THIS MORNING REGARDING THE HOLDING CELL TAPE
5 THAT ACTUALLY ALSO INVOLVES LIEUTENANT TUBBS.

6 THE COURT: THAT STATE'S NO 3, CORRECT?

7 MS. BURKE: STATE'S EXHIBIT NO. 3; THAT'S CORRECT,
8 YOUR HONOR. MADAM REPORTER, HAVE I GIVEN THAT BACK TO YOU?

9 REPORTER: YES.

10 MS. BURKE: ALL RIGHT. AND, YOU KNOW, THE STATE
11 SOUGHT OUT DILIGENTLY TO FURTHER SCRUB THE TAPE, AND WE
12 HAVE NOT BEEN ABLE TO MAKE IT ANY MORE CLEAR.

13 HOWEVER, I WANTED TO ADD TO THE RECORD WITH ADDITIONAL
14 RESEARCH, I THINK THAT THE TAPE IS STILL ADMISSIBLE BECAUSE
15 THE LEVEL OF WHETHER OR NOT YOU CAN HEAR THE DEFENDANT
16 MAKING THE STATEMENTS AND HEAR THE INVESTIGATORS TALKING TO
17 HER, I THINK GOES TO JUST THE WEIGHT OF THE EVIDENCE, NOT
18 THE ADMISSIBILITY OF THE EVIDENCE.

19 IT IS IN THE JURY'S DETERMINATION WHETHER THEY CAN
20 DISCARD OR PAY ATTENTION TO ANY WITNESS TESTIMONY, TO ANY
21 PIECE OF EVIDENCE.

22 AND IN THIS CASE WHETHER OR NOT THEY CAN STRAIN THEIR
23 EARS TO HEAR WHAT'S BEING SAID -- WELL, THEY'LL DECIDE THAT
24 ON THEIR OWN. AND I THINK AND I APPRECIATE THE FACT THAT
25 ALL THREE OF US HAD A CHANCE TO LISTEN TO THE TAPE. I DO

1 THINK THAT WE HAVE THREE SEPARATE VIEWS ON -- ON -- ON HOW
2 CLEAR IT IS. CERTAINLY, WE HAVE THINGS IN COMMON WHERE YOU
3 AND I, FOR EXAMPLE, HEARD HER TALKING ABOUT PILLS. IRON
4 PILLS ONLY.

5 THE COURT: MS. BURKE, CAN YOU HEAR EVERY WORD THAT'S
6 STATED ON THAT TAPE?

7 MS. BURKE: NO.

8 THE COURT: COULD YOU TRANSCRIBE IT FOR ME IS MY
9 QUESTION?

10 MS. BURKE: NO.

11 THE COURT: ARE THERE PORTIONS OF IT WHERE YOU KNOW
12 SOMEONE IS SPEAKING -- WHETHER IT BE LIEUTENANT TUBBS,
13 INVESTIGATOR GONZALES, OR THE DEFENDANT, BUT WE DON'T KNOW
14 EXACTLY WHAT THEY'RE SAYING OR WHAT THEY'RE SAYING AT ALL?

15 MS. BURKE: I THINK, YOUR HONOR, THAT THE PARTS OF THE
16 TAPE THAT I CANNOT HEAR IS BECAUSE THE DEFENDANT IS CRYING
17 AND SOMEONE ELSE IS SPEAKING. AND I DON'T THINK THAT'S ANY
18 DIFFERENT FROM ANY TRANSCRIPT OR ANY MATERIAL THAT'S PUT IN
19 FRONT OF THE COURT WHERE YOU MIGHT HAVE A LINE THAT SAYS,
20 INAUDIBLE, INAUDIBLE, INAUDIBLE. I DON'T THINK THAT'S
21 DIFFERENT FROM THAT SITUATION.

22 AND ON THIS TAPE YOU CAN HEAR NUMEROUS PEOPLE
23 SPEAKING. AT DIFFERENT TIMES YOU CAN HEAR WHAT THEY'RE
24 SAYING. BUT MOST PARTICULARLY WHEN THE DEFENDANT IS
25 CRYING, YOU KNOW, AT THE PITCH THAT SHE WAS, IT'S HARD TO

1 HEAR SOMEONE ELSE SPEAKING. BUT, AGAIN, THAT'S NO
2 DIFFERENT FROM -- IN MY OPINION FROM ANY TRANSCRIPT THAT'S
3 REVIEWED WHERE SOMETHING IS INAUDIBLE. FOR IF SOMEONE WERE
4 TO ASK FOR A TRANSCRIPT FROM THIS PROCEEDING, AND I MIGHT
5 FUMBLE THROUGH A WORD AND THE TRANSCRIPT SAYS INAUDIBLE IF
6 IT WERE TO BE REVIEWED BY, YOU KNOW, WHOEVER.

7 THE COURT: IF THAT HAPPENED, I'D MAKE YOU REPHRASE IT
8 BECAUSE WE HAVE TO HAVE A VERBATIM TRANSCRIPTION OF THIS
9 RECORDING. SO THAT WOULDN'T HAPPEN IN A COURTROOM.

10 MS. BURKE: RIGHT. WELL, RESPECTFULLY, YOUR HONOR,
11 YOU KNOW, I'VE SEEN IT HAPPEN IN TERMS OF SEEING
12 TRANSCRIPTS FOR WHATEVER REASON, IT DID NOT COME ACROSS.
13 PERHAPS IN THE COURTROOM WHERE YOU ARE, YOU MIGHT HAVE
14 HEARD SOMETHING, BUT WHEN IT'S REVIEWED AFTER BEING
15 TRANSCRIBED, IT DID NOT COME ACROSS AS ARTICULATE OR AS
16 CLEAR OR WHATEVER, AS THE PERSON SAID IT. IT MAY HAVE BEEN
17 BECAUSE HOW CLOSE THEY WERE TO THE COURT REPORTER OR FROM
18 WHEREVER THE RECORDER DEVICE IS.

19 SO I DON'T THINK THIS SITUATION HERE IS ANY DIFFERENT
20 FROM THAT. AND, AGAIN, THE ULTIMATE ISSUE THAT I'M TALKING
21 ABOUT IS THAT IT'S UP TO THE JURY TO GIVE -- TO ASSESS THE
22 -- THE -- THE WEIGHT THAT THEY SHOULD GIVE TO THAT
23 EVIDENCE. I DON'T KNOW IF THEY SHOULD DISCARD IT, JUST
24 LIKE THE JURY GOT THE INSTRUCTION ABOUT THE EXPERT
25 TESTIMONY. THEY DO NOT HAVE TO LOOK AT HER AS AN EXPERT.

1 THEY CAN CERTAINLY, YOU KNOW, COMPLETELY DISCARD HER
2 TESTIMONY.

3 AND I THINK THE SAME IS TRUE FOR THIS HOLDING CELL
4 TAPE IF THEY THINK IT'S NOT -- IF IT'S NOT SOMETHING THAT
5 THEY CAN UNDERSTAND.

6 THE COURT: MR. MACLOSKIE.

7 MR. MACLOSKIE: THANK YOU. FIRST OF ALL, I'VE
8 LISTENED TO THAT DISK TWICE. AND THE AUDIBLE PORTION OF IT
9 IS PRIMARILY LIEUTENANT TUBBS.

10 AND, AGAIN, IF YOU TAKE ANYTHING OUT OF CONTEXT, IT
11 CAN BE SERIOUSLY MISCONSTRUED.

12 THIS TAPE WAS 25 MINUTES 26 SECONDS LONG. AND IT
13 BEGINS WITH NOT BEING ABLE TO HEAR ANYTHING EXCEPT CRYING.
14 THEN YOU CAN HEAR SOME WORDS BUT YOU CAN'T HEAR ENOUGH
15 WORDS CONNECTED TO GET A FEELING FOR WHAT'S BEING SAID.
16 AND THEN THE NEXT THING YOU HEAR IS LIEUTENANT TUBBS SAYING
17 SOMETHING ABOUT A CELL PHONE, SOMETHING MY GIRLS. AND YOU
18 CLEARLY HEAR LIEUTENANT TUBBS SAYING, QUOTE, KEEP YOURSELF
19 TOGETHER, END QUOTE.

20 IT JUST GOES ON LIKE THAT AND DOESN'T HAVE ANY
21 RELEVANCY THAT IS CLEAR TO THE TRIAL OF THIS CASE. THAT
22 ALONE IS ENOUGH TO MOVE FOR ITS EXCLUSION, HOWEVER.

23 LET'S GO BACK A LITTLE BIT, NOT MUCH. AUGUST -- I
24 MEAN, FEBRUARY THE 27TH SUSAN TAPPEINER WAS CALLED BY THE
25 BLUFFTON POLICE DEPARTMENT I THINK AROUND 2:00 O'CLOCK. WE

1 KNOW BECAUSE OF SERGEANT GONZALES' TESTIMONY THAT AT 2:40
2 SHE WAS READ HER MIRANDA RIGHTS. SHE WAS TAKEN IMMEDIATELY
3 FROM THAT SETTING AND PLACED IN A HOLDING CELL IN THE SAME
4 BUILDING. AND THAT IS WHERE THIS OTHER RECORDING WAS MADE.

5 AND I WOULD RESPECTFULLY SUBMIT THAT IF THE PROCESS
6 THAT INVOLVED THE INTERVIEW WAS INADMISSIBLE AND IS
7 INADMISSIBLE, THEN THIS WOULD FOLLOW SUIT ALSO BECAUSE THE
8 SAME CONDITIONS APPLY. WE'RE TALKING ABOUT A MATTER OF
9 MINUTES -- MAYBE A MINUTE. AND THEN YOU HAVE THIS 25
10 MINUTE 26 SECOND RECORDING THAT'S INAUDIBLE. YOU CAN HEAR
11 SOME THINGS BEING SAID, BUT NOTHING THAT'S PERTINENT.

12 AND, AGAIN, YOU DON'T KNOW THE CONTEXT. THE FINDER OF
13 FACT IS AS CONFUSED AS YOU AND I ARE ABOUT THE CONTENTS.
14 THE ONLY THING WE CAN DO IS MAKE THINGS UP AND FILL IN THE
15 GAPS. AND THE LAW DOESN'T PROVIDE FOR THAT.

16 SO I, AGAIN, RENEW MY MOTION TO HAVE IT EXCLUDED. I
17 DON'T SEE ANY WAY IT CAN BE CURED.

18 THE COURT: OKAY.

19 MS. BURKE: JUST TO CLARIFY THE FACTS AND BALANCE THE
20 SITUATION THAT WE'RE TALKING ABOUT, SERGEANT GONZALES
21 TESTIFIED IN HIS INTERVIEW -- HIS DISCUSSION/INTERVIEW WITH
22 THE DEFENDANT WAS ABOUT 2 HOURS LONG. CERTAINLY, THE TAPE
23 IS ABOUT AN HOUR AND 51 MINUTES; THAT'S PRETTY ACCURATE.

24 AND SO THIS DIDN'T HAPPEN IN A MATTER OF MINUTES AFTER
25 SHE WAS READ HER MIRANDA AND SIGNED THE FORM AT 2:41 P.M.

1 ESSENTIALLY, THIS IS HAPPENING CLOSE TO 6:30, 7:00 O'CLOCK
2 IN THE AFTERNOON. AND SO THE -- THE -- I THINK THAT'S
3 IMPORTANT TO FLUSH OUT AS AN INITIAL MATTER.

4 FROM THIS MORNING TO NOW, MR. MACLOSKIE HAS BROUGHT UP
5 THINGS HE HEARD IN THE TAPE THAT ARE DIFFERENT -- THAT ARE
6 DIFFERENT FROM WHAT I'VE HEARD -- NOT A MISREPRESENTATION
7 FOR WHAT I'VE HEARD, BUT ADDED TO WHAT I'VE HEARD.

8 YOUR HONOR HAS MADE STATEMENTS THIS MORNING ABOUT WHAT
9 YOU HEARD AS WELL. AND SO COLLECTIVELY JUST FROM THE THREE
10 OF US WE HEARD NOT DIFFERENT THINGS BUT ADDITIONAL THINGS.
11 SO THE QUESTION BECOMES WHETHER OR NOT THE JURY ARE GOING
12 TO SAY THAT I DIDN'T HEAR WHAT DAWN HEARD, WHAT MACLOSKIE
13 HEARD, WHAT YOUR HONOR HEARD OR WILL THEY ALSO HEAR
14 COLLECTIVELY THE SAME THING DURING THAT -- WE'RE ONLY 25
15 MINUTES.

16 BUT, AGAIN, IF THEY DECIDE THIS IS -- I DON'T HEAR
17 ANYTHING, IT'S UP TO THEM TO DECIDE IN PROCESSING AND
18 DELIBERATING WHAT TO DO WITH THE EVIDENCE, WHAT WEIGHT TO
19 GIVE TO IT, IN -- IN VALUING IT IN THE CONTEXT OF THE
20 ENTIRE TRIAL.

21 AND I THINK THIS IS AN EVIDENTIARY MATTER. IT'S NOT
22 FOR MR. MACLOSKIE TO SAY, I CAN'T HEAR IT SO THE JURY CAN'T
23 EITHER. IT'S A FACTUAL ISSUE AS TO WHAT THEY CAN GLEAN
24 FROM THE STATEMENT ON THE TAPE.

25 THE COURT: MS. BURKE, THE QUESTION IS CONTEXT. AND

1 CAN THIS JURY PUT IT IN CONTEXT WHEN WE ARE MISSING, WE ARE
2 MISSING QUESTIONS, AND RESPONSES TO QUESTIONS, WHICH IS WHY
3 I ASKED YOU TO ATTEMPT TO SCRUB IT AGAIN.

4 MY UNDERSTANDING WAS YOU'VE HAD THIS TAPE FOR A LONG
5 TIME. YOU'VE REQUESTED THAT AND IT JUST BECAME SCRUBBED TO
6 THE EXTENT YOU HAVE IT NOW THIS MORNING WHEN YOU TURNED IT
7 OVER TO MR. MACLOSKIE. AND YOU FOR THE FIRST TIME GOT TO
8 HEAR IT SCRUBBED AS WELL. SO I PRESUME YOU HAD NO IDEA
9 WHAT WAS ON IT.

10 MY PROBLEM IS THOUGH IS THAT WE DON'T HAVE A CONTEXT
11 FOR IT. AND THE ONLY THING I SEE CHANGED BETWEEN THE
12 ORIGINAL INTERVIEW THAT INVESTIGATOR GONZALES DID AND HER
13 BEING IN THE HOLDING CELL WAS AT THAT POINT SHE PROBABLY
14 REALIZED THAT SHE WAS BEING ACCUSED OF THIS CRIME; THAT
15 WOULD BE THE DIFFERENCE. SHE WOULD STILL HAVE THE SAME
16 DRUGS IN HER SYSTEM. SHE WOULD CERTAINLY STILL HAVE HER
17 SAME PERSONALITY.

18 I'M JUST AFRAID BECAUSE IT'S NOT IN CONTEXT.

19 MS. BURKE: ABSOLUTELY, YOUR HONOR. I THINK IT'S GOOD
20 -- IT'S IMPORTANT TO POINT OUT THOUGH THAT THE CONTEXT
21 WE'RE TALKING ABOUT THIS MORNING HAD TO DO WITH THE
22 VOLUNTARINESS OF THE STATEMENT. WAS HER WILL OVERBORNE,
23 WHICH THE COURT SAID IT WAS. AND THE COURT ATTRIBUTED
24 SERGEANT GONZALES -- ALL DUE RESPECT TO HIM, CERTAINLY HE'S
25 MY WITNESS. THE COURT ALSO ATTRIBUTED THAT PERHAPS HIS

1 TECHNIQUE ACTUALLY -- YOU SAID -- PLAYED A BIG PART IN THAT
2 PROCESS.

3 WELL, THIS TAPE IT HAS NOTHING TO DO WITH HER BEING
4 INTERROGATED. THIS TAPE IS HER VOLUNTEERING HER FEELINGS.
5 THIS TAPE IS HER SAYING, YOU KNOW, WHATEVER -- ALL -- I
6 DON'T WANT TO MISQUOTE HER. WE CAN PLAY IT AGAIN,
7 OBVIOUSLY. BUT THIS TAPE IS LITERALLY HER VOLUNTARY --
8 WHATEVER SHE WANTS TO SAY.

9 THE COURT: THE PROBLEM IS ---

10 MS. BURKE: WITHOUT BEING PROMPTED.

11 THE COURT: BUT IT'S NOT COMPLETE.

12 MS. BURKE: WELL, YOUR HONOR.

13 THE COURT: WHEN YOU SAY NOT PROMPTED, THERE WAS SOME
14 DISCUSSION BECAUSE I HEARD LIEUTENANT TUBBS THROUGHOUT THE
15 TAPE. THERE'S NO QUESTION IT WAS LIEUTENANT TUBBS.

16 MS. BURKE: WELL ---

17 THE COURT: I THINK I EVEN HEARD INVESTIGATOR GONZALES
18 SOMEWHERE IN THE BACKGROUND -- NOT A LOT, BUT I THINK I
19 HEARD HIM SAY SOMETHING.

20 MS. BURKE: YES.

21 THE COURT: SO THERE WAS SOME GIVE AND TAKE OF A
22 CONVERSATION. AGAIN, MY CONCERN IS, WHICH IS WHY I ASKED
23 YOU TO GO TRY AGAIN TO GO SCRUB IT AND SEE IF WE COULDN'T
24 GET A BETTER RECORDING.

25 MS. BURKE: RIGHT. I -- I -- I -- I UNDERSTAND THAT,

1 YOUR HONOR. AND THE STATE DID -- TRUST ME DILIGENTLY ---

2 THE COURT: I'M SURE.

3 MS. BURKE: --- TRY TO DO THAT. I JUST -- I JUST
4 WANT TO, YOU KNOW, REALLY BEAT THIS TO DEATH AS MUCH AS I
5 CAN TO SAY THAT THE CONTEXT OF THE DISCUSSION IN THE
6 HOLDING CELL WAS NOT AN INTERROGATION. CERTAINLY, THERE
7 WOULD BE QUESTIONS ASKED ABOUT, WHO'S GOING TO PICK YOU UP
8 OR, YOU KNOW, WHATEVER THE MOM MAY HAVE SAID. AND SO
9 GONZALES OR TUBBS MAY HAVE RESPONDED TO THAT. BUT THAT IS
10 NOT IN CONTEXT OF THE DISCUSSION WE HAD YESTERDAY AND THIS
11 MORNING REGARDING VOLUNTARY STATEMENTS. THESE ARE
12 STATEMENTS SHE MADE UNPROMPTED -- EVEN IN THE FIRST 5
13 MINUTES OF THE TAPE NO ONE EVEN ASKED HER A QUESTION.
14 SHE'S TALKING TO THEM.

15 THE COURT: MY CONCERN IS THE COMPLETENESS OF IT;
16 THAT'S MY CONCERN THAT IT'S NOT COMPLETE. YOU HAVE
17 RESPONSES TO QUESTIONS YOU DON'T HAVE. YOU HAVE QUESTIONS
18 WITH NO RESPONSES. YOU HAVE NOT HEARD CERTAIN WORDS ASKED.

19 MS. BURKE: RIGHT.

20 THE COURT: IT'S JUST NOT COMPLETE, AND FOR THAT THE
21 JURY CAN'T PUT IT INTO A CONTEXT. AND THEY'RE NOT TO GUESS
22 AS TO THE FACTS.

23 MS. BURKE: I UNDERSTAND THAT, YOUR HONOR. AND MY
24 FINAL PUSH I WOULD SAY -- I WOULD SAY THAT CERTAINLY IF WE
25 WERE IN A POSITION WHERE A CASE WAS RE-TRIED, A -- A -- A

1 MOTION FOR A NEW TRIAL IS GRANTED AND TRANSCRIPT WAS GIVEN
2 OR READ INTO THE RECORD FROM THE PREVIOUS TESTIMONY OR
3 WHATEVER. THE JURY -- WHETHER IT HAPPENS -- I'VE SEEN IT
4 MYSELF AS A LAW CLERK REVIEWING TRANSCRIPTS FROM OTHER
5 MATTERS, WHERE SOMETHING WAS NOT AUDIBLE, AND THAT DID NOT
6 MEAN THAT THE ENTIRE TRANSCRIPT OR RECORDING OR WHATEVER IT
7 WAS BARRED FROM COURT'S CONSIDERATION. IT WAS JUST ONE
8 ASPECT. IT'S LIKE THE WITNESS TESTIFYING ON THE STAND AND
9 THE JURY DOESN'T UNDERSTAND WHAT THEY'RE TALKING ABOUT. I
10 MEAN, IT'S JUST ONE ASPECT AS TO HOW THE JURY WOULD ASSESS
11 THAT -- THAT PIECE OF EVIDENCE.

12 AND SO I DON'T SEE -- I SUBMIT TO YOU, YOUR HONOR,
13 THIS IS NO DIFFERENT FROM A JURY HAVING TO RE-LOOK OR AN
14 APPELLATE COURT OR WHOMEVER HAVING TO RE-LOOK AT EVIDENCE
15 THAT IS ORAL OR WRITTEN -- AND THAT HAPPENS ALL THE TIME
16 WHERE SOMETHING IS INAUDIBLE OR SOMETHING IS REDACTED
17 BECAUSE OF -- YOU KNOW, BECAUSE THE JURY CAN'T KNOW ABOUT
18 IT. THEY WON'T KNOW THE CONTEXT, YOU KNOW, FOR WHICH THAT
19 WAS REDACTED, BUT IT HAPPENS ALL THE TIME WHEN THINGS ARE
20 REDACTED OR NOT AUDIBLE OR WHATEVER.

21 THE POINT IS IS THAT THE JURY STILL HAS THE CHANCE TO
22 ASSESS FOR THEMSELVES WHAT WEIGHT -- WEIGHT, NOT
23 ADMISSIBILITY BUT WEIGHT THEY SHOULD GIVE TO THAT EVIDENCE.
24 AND THAT IS THE STATE'S POSITION THAT IT'S A JURY ISSUE AS
25 TO WEIGHT AND NOT ADMISSIBILITY.

1 THE COURT: OKAY.

2 MS. BURKE: RESPECTFULLY, THANK YOU, YOUR HONOR.

3 THE COURT: I APPRECIATE IT. BECAUSE WE DON'T HAVE
4 THE COMPLETE TAPE AND IT'S NOT IN CONTEXT, I'M NOT GOING TO
5 ALLOW THE SECOND INTERVIEW IN FROM THE HOLDING CELL.

6 WITH THAT SAID, YOU'RE GOING TO GO AHEAD AND CALL YOUR
7 NEXT WITNESS?

8 MS. BURKE: YES.

9 THE COURT: OKAY. HOW MANY MORE WITNESSES DO YOU
10 HAVE, MS. BURKE?

11 MS. BURKE: THAT'S IT, JUST ONE MORE.

12 THE COURT: JUST ONE MORE. OKAY.

13 MR. MACLOSKIE, HOW MANY WITNESSES IF ANY DO YOU PLAN
14 ON CALLING OR DO YOU EVEN KNOW AT THIS POINT?

15 MR. MACLOSKIE: THE MAXIMUM, TWO. SO THAT MEANS WE'VE
16 GOT A REAL GOOD CHANCE OF FINISHING THIS CASE TODAY. WHAT
17 I'M GOING TO ASK YOU TO DO IS ALLOW ME THE PRIVILEGE TO
18 SWITCH GEARS, MAYBE 15 OR 20 MINUTES, TALK TO SUSAN, TALK
19 TO THE ONE WITNESSES I'M GOING TO PUT UP, AND GO.

20 THE COURT: OKAY.

21 MS. BURKE: CAN I HEAR WHAT THAT WITNESS' NAME IS?

22 MR. MACLOSKIE: SURE. MIKE TAPPEINER. YOU SUBPOENAED
23 HIM.

24 MS. BURKE: I JUST WANTED TO MAKE SURE BECAUSE YOU HAD
25 OTHER PEOPLE ON YOUR WITNESS LIST THAT WASN'T IN THE

1 REPORT. I WANTED TO MAKE SURE I HAVE FULL PRIVY TO WHAT
2 THEY HAVE SAID.

3 THE COURT: YOU ALL, IT IS 3:10 RIGHT NOW. I HAVE NO
4 IDEA HOW LONG INVESTIGATOR GONZALES IS GOING TO BE.

5 MS. BURKE: HE'S PROBABLY SHORT, YOUR HONOR,
6 CONSIDERING THE FACT WE'RE NOT GOING TO BE PLAYING ANYTHING
7 THAT THE JURY WOULD HAVE TO HEAR, RESPECTFULLY.

8 THE COURT: GIVEN WE'RE GOING TO TAKE THE TIME --
9 UNLESS SOMEONE HAS A REASON, IT'S LOOKING LIKE WE'RE GOING
10 TO ARGUE AND CHARGE TOMORROW. SO I JUST WANT TO MAKE SURE
11 YOU ALL UNDERSTAND THAT, JUST BASED ON MY TYPICAL RULE OF
12 THUMB, WE DON'T LIKE TO SEND THINGS TO A JURY AFTER 3:30.
13 AND IT'S GOING TO BE AFTER 3:30 CERTAINLY BY THE TIME WE
14 WOULD EVEN ARGUE AND CHARGE, LET ALONE IT BEING SENT TO
15 THEM.

16 SO DOES ANYONE HAVE A SPECIFIC PROBLEM? I CAN'T
17 IMAGINE IT BEING -- YOU ALL RIGHT WITH THAT, MR. MACLOSKIE?

18 MR. MACLOSKIE: I'M FINE WITH THAT.

19 THE COURT: MS. BURKE?

20 MS. BURKE: THAT'S FINE WITH ME, YOUR HONOR. I WAS
21 JUST TRYING TO COMB THROUGH MY MEMORY OF THE JURY
22 QUALIFICATION IF ANY OF MY FOLKS HERE WERE PROTECTED FOR
23 WEDNESDAY. I DON'T THINK SO. I THINK ALL THE ONES HERE
24 ARE CLEAR.

25 THE COURT: OKAY.

1 MS. BURKE: OKAY.

2 THE COURT: YOU ALL CERTAINLY DOUBLE CHECK.

3 (PAUSE.)

4 THE COURT: ALL RIGHT. SO YOU ALL WE'RE JUST GOING TO
5 TAKE A FEW MINUTES, JUST ABOUT 5 MINUTES. THEN YOU CAN GO
6 AHEAD AND YOU CAN CALL YOUR LAST WITNESS. ALL RIGHT?
7 THANK YOU.

8 MS. BURKE: OF COURSE, I RENEW MY MOTION FOR HAVING
9 THE TAPE -- REQUEST FOR YOU TO RECONSIDER YOUR RESPONSE TO
10 HAVING THE TAPE I'VE SUBMITTED.

11 THE COURT: RESPECTFULLY IT'S DENIED FOR THE REASONS
12 I'VE STATED BEFORE.

13 MS. BURKE: THANK YOU.

14 (A RECESS WAS TAKEN.)

15 THE COURT: IS THE STATE READY?

16 MS. BURKE: YES, YOUR HONOR.

17 THE COURT: DEFENSE READY?

18 MR. MACLOSKIE: YES, MA'AM.

19 THE COURT: ALL RIGHT. BRING THE JURY IN.

20 BAILIFF: THE JURORS ARE ENTERING, YOUR HONOR.

21 THE COURT: THANK YOU.

22 (THE JURY RETURNS TO THE COURTROOM AT 3:21 P.M.)

23 BAILIFF: YOUR HONOR, THE JURY IS SEATED.

24 THE COURT: WELCOME BACK, LADIES AND GENTLEMEN OF THE
25 JURY. AT THIS TIME, SOLICITOR, IF YOU WILL CALL YOUR NEXT

1 WITNESS.

2 MS. BURKE: THANK YOU, YOUR HONOR. THE STATE CALLS
3 SERGEANT GONZALES.

4 CHRISTIAN GONZALES, BEING
5 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 CLERK: PLEASE BE SEATED. WOULD YOU SPELL YOUR LAST
7 NAME FOR US PLEASE.

8 WITNESS: LAST NAME IS G-O-N-Z-A-L-E-S.

9 DIRECT EXAMINATION BY MS. BURKE:

10 Q SERGEANT GONZALES, IS IT FAIR TO SAY YOU ALSO WORK AT
11 BLUFFTON POLICE DEPARTMENT ALONG WITH THE OTHERS WHO HAVE
12 TESTIFIED TODAY?

13 A YES, MA'AM.

14 Q OKAY. AND HOW LONG HAVE YOU WORKED IN LAW
15 ENFORCEMENT?

16 A SINCE 1997.

17 Q OKAY. HOW DID YOU GET INVOLVED IN THIS CASE, SIR?

18 A I WAS NOTIFIED BY THE CRIMINAL INVESTIGATION
19 LIEUTENANT, LIEUTENANT TUBBS, IN REFERENCE TO A CRIMINAL
20 SEXUAL CONDUCT CASE WITH A 13 YEAR OLD.

21 Q AND BASED ON YOUR INVESTIGATION WHERE DID THE INCIDENT
22 OCCUR?

23 A THE INCIDENT OCCURRED AT [REDACTED] DRIVE IN HIDDEN
24 LAKES IN BLUFFTON, SOUTH CAROLINA.

25 Q AND BASED ON YOUR INVESTIGATION, WHEN DID THE INCIDENT

1 OCCUR?

2 A THE INCIDENT OCCURRED ON AUGUST THE -- EXCUSE ME.

3 AUGUST THE 15TH.

4 Q WHAT YEAR?

5 A 2008.

6 Q OKAY. DID YOU HAVE A CHANCE TO TALK TO Victim ABOUT

7 WHAT HAPPENED?

8 A I DID. SPOKE WITH Victim AT HOPE HAVEN THE NEXT DAY

9 AFTER THE INCIDENT WAS REPORTED. I SAT DOWN WITH Victim IN

10 THE LOBBY PRIOR TO HIM GOING IN FOR HIS FORENSIC INTERVIEW.

11 AND I ASKED Victim A COUPLE QUESTIONS ABOUT THE INCIDENT,

12 JUST TO TOUCH UP ON WHAT WAS REPORTED TO ME.

13 AND Victim TOLD ME THAT HE WAS -- HAD SEX WITH SUSAN,

14 AND THAT'S WHEN HE WAS SPENDING THE NIGHT OVER THERE, AND

15 THAT HE ACTUALLY SAID HE WAS RAPED. HE SAID THAT HE MADE

16 -- SHE MADE HIM PERFORM ORAL SEX AND THAT THEN -- THEN GOT

17 ON TOP OF HIM ON THE BED AND HAD SEXUAL INTERCOURSE WITH

18 HIM.

19 I THEN ASKED Victim IN THE INVESTIGATION WHAT TYPE OF

20 CLOTHES SHE WAS WEARING ON THE NIGHT THAT THIS INCIDENT

21 OCCURRED.

22 AND HE TOLD ME THAT SHE WAS WEARING A RED SUN DRESS

23 WITH WHITE LOOKING POLKA DOTS, AND BLACK UNDERWEAR WITH A

24 WHITE WRITING IN THE VAGINAL AREA.

25 Q WHEN YOU WERE TALKING TO Victim DESCRIBE FOR THE JURORS

1 WHAT HIS DEMEANOR WAS LIKE?

2 A HE WAS JUST REALLY QUIET AND KIND OF SHY, KIND OF
3 TIMID, YOU KNOW, AND SOFT SPOKEN.

4 Q DID HE CRY OR GET ANGRY OR ANYTHING LIKE THAT?

5 A WHEN -- WHEN HE AND I WERE SPEAKING, NO, HE WAS JUST
6 ANSWERING THE QUESTIONS THAT I ASKED HIM.

7 Q AND DID YOU OBSERVE HIM BEING -- DURING THE HOPE HAVEN
8 INTERVIEW?

9 A I DID. I SAT IN THE BACK -- BACK INTERVIEW ROOM WHILE
10 THEY WERE INTERVIEWING HIM. AND AT VARIOUS DIFFERENT TIMES
11 OF HIM TELLING HIS STORY, HE GOT VERY EMOTIONAL AND STARTED
12 CRYING. HE TOLD THE SAME -- I HEARD HIM SAY THE SAME THING
13 THAT HE'S BEEN TELLING ME, THAT HE TOLD THE OTHER POLICE
14 OFFICERS. AND THEN AT DIFFERENT TIMES HE WAS REAL QUIET.

15 Q OKAY. THIS DISCUSSION AT HOPE HAVEN WAS ABOUT AN HOUR
16 OR SO?

17 A YES, MA'AM.

18 Q OKAY. SO HE WAS SUBJECTED TO ABOUT AN HOUR OF
19 QUESTIONING FROM THEM ABOUT WHAT HAPPENED?

20 A YES, MA'AM.

21 Q ULTIMATELY? OKAY. YOU SAID YOU OBTAINED A SEARCH
22 WARRANT, CORRECT, FOR THOSE ITEMS BASED ON victim
23 STATEMENTS TO YOU?

24 A I DID. AFTER THE INFORMATION, I TYPED UP A SEARCH
25 WARRANT AND HAD A JUDGE SIGN IT, AND THEN WENT TO SERVE IT.

1 Q AND YOU WERE PRESENT WHEN THE SEARCH WARRANT WAS
2 EXECUTED?

3 A YES, I WAS. MYSELF, DETECTIVE BABKIEWICZ, SERGEANT
4 JACKSON, AND DETECTIVE HEBDA WERE PRESENT. I INSTRUCTED
5 DETECTIVE HEBDA TO VIDEO RECORD THE HOUSE PRIOR TO THE
6 SEARCH WARRANT. SHE RUN THROUGH IT WITH A VIDEO CAMERA AND
7 RECORD THE WHOLE HOUSE. AND THEN WE WOULD DO THE SEARCH.

8 UPON THAT SEARCH, WE -- MIKE TAPPEINER MET US THERE TO
9 LET US IN THE HOUSE SO WE DIDN'T HAVE TO USE ANY FORCE.

10 SO SHE VIDEOED AND THEN WE CONDUCTED THE SEARCH.

11 MS. BURKE: MAY I APPROACH, YOUR HONOR?

12 THE COURT: YOU MAY.

13 Q I SHOW YOU WHAT'S BEEN PREVIOUSLY MARKED AS STATE'S
14 EXHIBIT -- AND PREVIOUSLY ENTERED INTO EVIDENCE AS STATE'S
15 EXHIBIT 1. IS THIS YOUR SIGNATURE -- WHAT IS THIS?

16 A THIS IS THE SUMMER DRESS THAT WAS OBTAINED IN THE
17 CLOSET OF THE MASTER BEDROOM AT [REDACTED] -- AT MRS.
18 TAPPEINER'S HOUSE, [REDACTED] DRIVE.

19 Q AND IS THAT YOUR SIGNATURE ON THERE?

20 A [REDACTED] DRIVE.

21 Q 47. IS THAT YOUR SIGNATURE ON THAT LABEL?

22 A YES, IT IS.

23 Q WHAT DOES THAT MEAN?

24 A THAT MEANS THAT I BAGGED IT. I -- ONCE IT WAS LOCATED
25 IN THE CLOSET, SERGEANT JACKSON CONTACTED ME AND SHOWED ME

1 WHERE IT WAS. I THEN INSTRUCTED DETECTIVE HEBDA TO BRING
2 THE VIDEO CAMERA TO VIDEO WHERE WE FOUND THIS IN THE
3 CLOSET. AND THEN I TOOK IT AND PACKAGED IT AND PUT IT INTO
4 EVIDENCE.

5 Q BEFORE YOU ACTUALLY PLACED IT INTO EVIDENCE, DID YOU
6 HAVE AN OPPORTUNITY TO SHOW IT TO Victim?

7 A I DID.

8 Q AND DID HE CONFIRM WITH YOU THAT THAT INDEED WAS WHAT
9 HE SAW?

10 A YES, IT WAS.

11 Q THAT IS WHAT SHE WAS WEARING, EXCUSE ME?

12 A YES, IT WAS. AFTER WE LOCATED THE DRESS AND THE
13 UNDERWEAR, WE WENT TO Victim HOUSE, MYSELF AND DETECTIVE
14 BABKIEWICZ, AND APPROACHED HIM AND SHOWED HIM THE ITEMS.
15 AND HE SAID THOSE WERE THE ITEMS -- THAT WAS THE CLOTHES
16 SHE WAS WEARING THAT DAY.

17 Q AND FOR CLARITY, HE'D PREVIOUSLY GIVEN YOU INFORMATION
18 WHERE YOU WERE ABLE TO GET THE SEARCH WARRANT TO GO INTO
19 THE HOUSE; IS THAT CORRECT?

20 A YES. AT HOPE HAVEN WHEN I ASKED HIM -- PRIOR TO THE
21 SEARCH WARRANT I ASKED HIM WHAT SHE WAS WEARING. AND HE
22 SAID SHE WAS WEARING THE RED DRESS WITH THE WHITE POLKA
23 DOTS AND THE BLACK UNDERWEAR WITH THE WHITE WRITING IN THE
24 VAGINAL AREA.

25 MS. BURKE: MAY I APPROACH, YOUR HONOR?

1 THE COURT: YOU MAY.

2 Q AGAIN, WHAT HAS BEEN PREVIOUSLY ENTERED INTO EVIDENCE

3 AS STATE'S 2, IS THIS ALSO THE ITEM YOU ENTERED, THE

4 PANTIES IN QUESTION?

5 A YES, IT IS.

6 Q IS THAT YOUR SIGNATURE ON THERE?

7 A IT IS.

8 Q OKAY. THE SAME DISCUSSION OCCURRED WITH Victim

9 REGARDING THE DRESS -- THE DRESS, AS TO HIM SEEING THOSE?

10 A YES.

11 Q OKAY. WHAT WAS YOUR -- HAVE YOU HAD AN OPPORTUNITY TO

12 INVESTIGATE SEX ASSAULT CASES IN THE PAST?

13 A YES, MA'AM, I HAVE.

14 Q IS IT -- IS IT -- WHEN Victim WAS ABLE TO GIVE YOU A

15 DESCRIPTION OF THE DRESS AND THE PANTIES, HOW OPTIMISTIC OR

16 NOT DID YOU FEEL ABOUT THE CASE AT THAT POINT?

17 MR. MACLOSKIE: YOUR HONOR, PLEASE. THAT IS IMPROPER.

18 THAT HAS NOTHING TO DO WITH THE FACTS.

19 THE COURT: SUSTAINED.

20 Q WHEN YOU WERE ABLE TO GET THE SEARCH WARRANT, DID THAT

21 PROVIDE YOU WITH FURTHER REASON TO -- WELL, RATHER, WHEN

22 Victim PROVIDED YOU WITH THE DESCRIPTION OF THE DRESS AND

23 THE PANTIES, DID THAT FURTHER YOUR INVESTIGATION?

24 A YEAH, ONCE -- ONCE I GOT THE SEARCH WARRANT, HE GAVE

25 ME THE DESCRIPTION OF THE CLOTHES SHE WAS WEARING AND I

1 OBTAINED THE SEARCH WARRANT. AND THEN WHEN WE LOCATED THE
2 STUFF, IT JUST CORROBORATED HIS ALLEGATION -- WHAT HE WAS
3 TELLING US THAT HAPPENED.

4 MS. BURKE: BEG THE COURT'S INDULGENCE.

5 (PAUSE.)

6 Q AT SOME POINT YOU MET WITH THE DEFENDANT; IS THAT
7 CORRECT?

8 A I DID.

9 Q AND HOW IS IT THAT YOU WERE ABLE TO MEET WITH HER?

10 A SHE DROVE HERSELF TO THE BLUFFTON POLICE DEPARTMENT.

11 Q WHEN IS IT THAT YOU MET WITH HER?

12 A I'M SORRY. HER MOTHER DROVE HER TO THE BLUFFTON
13 POLICE DEPARTMENT.

14 Q WHEN IS IT YOU MET WITH HER?

15 A ON FEBRUARY 27.

16 Q OKAY. THAT'S THE SAME DATE YOU MET WITH victim

17 A YES.

18 Q OKAY. WHO -- DID YOU MEET WITH HER FIRST OR SECOND?

19 A I MET WITH victim AT HOPE HAVEN FIRST TO SPEAK WITH HIM.

20 AND THEN I MET WITH MRS. TAPPEINER.

21 Q OKAY. AND HOW LONG OF A DISCUSSION DID YOU HAVE WITH
22 THE DEFENDANT?

23 A APPROXIMATELY 2 HOURS.

24 Q OKAY. AT THE END OF YOUR DISCUSSION WITH THE
25 DEFENDANT, WHAT ACTION DID YOU TAKE?

1 A I PLACED HER UNDER ARREST FOR CRIMINAL SEXUAL CONDUCT
2 WITH A MINOR.

3 Q HOW IS THAT YOU WERE ABLE TO CHARGE HER WITH THAT IN
4 PARTICULAR?

5 A BASED ON THE STATEMENTS FROM Victim AND WITNESSING THE
6 HOPE HAVEN INTERVIEW, I PLACED HER UNDER ARREST FOR
7 CRIMINAL SEXUAL CONDUCT DUE TO THE FACT THAT SHE IS 42
8 YEARS OLD AND HE IS A 13 YEAR OLD BOY.

9 MS. BURKE: THANK YOU. NO FURTHER QUESTIONS.

10 MR. MACLOSKIE: MAY I CROSS EXAMINE?

11 THE COURT: YES, SIR.

12 CROSS EXAMINATION BY MR. MACLOSKIE:

13 Q SERGEANT GONZALES, WHERE WERE THESE BLACK PANTIES
14 FOUND?

15 A THEY'RE IN THE DRESSER DRAWER.

16 Q AND THERE WERE A BUNCH OF OTHER PANTIES OF SIMILAR
17 VARIETY IN THERE?

18 A THERE WERE.

19 Q THAT'S NOT SURPRISING BECAUSE ONE OF SUSAN'S
20 OCCUPATIONS IS TO SELL THOSE ITEMS, ISN'T IT?

21 A YES.

22 Q AND TELL ME THIS. I UNDERSTAND YOU INTERVIEWED
23 Victim. YOU INTERVIEWED MRS. TAPPEINER. DID YOU INTERVIEW
24 ANYBODY ELSE?

25 A BASED ON MY INVESTIGATION, PEOPLE WERE -- IT WAS

1 REPORTED TO ME EVERYBODY WAS ASLEEP IN THE HOUSE. SO DUE
2 TO WHAT WAS TOLD TO ME BY THE VICTIM, I DID NOT INTERVIEW
3 ANY OF THE CHILDREN NOR MR. TAPPEINER.

4 Q YOU JUST TOOK Victim WORD FOR IT THAT EVERYBODY WAS
5 ASLEEP?

6 A YES.

7 Q EVEN THOUGH Victim HAD TOLD YOU THAT HE WAS SCARED AND
8 YELLED FOR HIS SISTER, YELLED FOR MR. TAPPEINER, YOU STILL
9 DIDN'T ASK ANYBODY ANY QUESTIONS?

10 A I DID NOT.

11 Q AND, OF COURSE, SHE WAS ARRESTED THE SAME DAY YOU
12 TALKED TO Victim OR HEARD HIS INTERVIEW AT HOPE HAVEN AND
13 CALLED SUSAN, AND SHE CAME DOWN AND YOU ARRESTED HER?

14 A YES.

15 THE COURT: MS. BURKE?

16 REDIRECT EXAMINATION BY MS. BURKE:

17 Q JUST TO CLARIFY. YOU CALLED SUSAN -- MR. MACLOSKIE
18 JUST ASKED YOU. YOU CALLED SUSAN, SHE CAME DOWN, AND YOU
19 ARRESTED HER. WHAT REALLY -- DID YOU CALL SUSAN AND --
20 YOUR PREVIOUS TESTIMONY IS YOU SPOKE TO HER 2 HOURS; IS
21 THAT CORRECT?

22 A YES, SHE CAME TO THE -- I CALLED HER HUSBAND -- I
23 CALLED HER PLACE OF EMPLOYMENT AND HER HUSBAND SAID THAT
24 SHE HAD JUST LEFT. GAVE ME HER CELL PHONE. I CALLED HER
25 CELL PHONE, TOLD HER I NEEDED TO SPEAK TO HER. AND SHE

1 SAID SHE'D BE DOWN THERE IN ABOUT 30 MINUTES, I BELIEVE.

2 SHE CAME DOWN. AND THEN I SPOKE WITH HER, AND THEN

3 PLACED HER UNDER ARREST.

4 Q OKAY. AND SO AT THE TIME THAT THE DEFENDANT CAME TO

5 SPEAK TO YOU, WAS SHE UNDER -- DID YOU PLACE HER UNDER

6 ARREST WHEN SHE WALKED IN THE DOOR OR IS IT THAT AFTER

7 SPEAKING TO HER FOR THAT TIME, THEN THE DECISION WAS MADE

8 TO PLACE HER UNDER ARREST?

9 A YES. SHE CAME DOWN. WE SPOKE FOR ABOUT 2 HOURS. AND

10 THEN BASED ON MY INVESTIGATION, I PLACED HER UNDER ARREST.

11 Q OKAY. AND A POINT OF CLARITY ABOUT THE PANTIES. SHE

12 HAD A DRAWER FULL OF BLACK PANTIES WITH WHITE WRITING?

13 A THOSE WERE THE ONLY PAIR OF BLACK PANTIES WITH THE

14 WHITE WRITING THAT WAS IN THAT ENTIRE HOUSE THAT WE

15 SEARCHED.

16 MS. BURKE: THANK YOU. NO FURTHER QUESTIONS.

17 MR. MACLOSKIE: ONE OTHER THING, MAY I.

18 RECROSS EXAMINATION BY MR. MACLOSKIE:

19 Q YOU MENTIONED THE DAY OF THIS ALLEGED INCIDENT WAS

20 AUGUST THE 15TH OF LAST YEAR? IF YOU'D LOOK AT THE FIRST

21 PAGE OF THE SUPPLEMENTAL REPORT.

22 A YES.

23 Q IT STARTS OFF ---

24 A YES, SIR.

25 Q LOOK AT ITEM NO. 2.

1 A YES, SIR.

2 Q WHAT DOES IT SAY?

3 A IT SAYS ON FEBRUARY 23RD AT APPROXIMATELY -- DO YOU
4 WANT ME TO READ THE WHOLE THING?

5 Q NO. JUST WHAT DID SHE TELL YOU ABOUT WHEN THE THING
6 HAPPENED?

7 A SHE SAID IT HAPPENED ON AUGUST 15TH, '08.

8 MR. MACLOSKIE: THAT'S ALL I HAVE. THANK YOU.

9 THE COURT: ANYTHING FURTHER, MS. BURKE?

10 MS. BURKE: NO, YOUR HONOR. THANK YOU.

11 THE COURT: ALL RIGHT. SERGEANT GONZALES, YOU MAY
12 STEP DOWN. THANK YOU, SIR.

13 (THE WITNESS LEAVES THE WITNESS STAND.)

14 THE COURT: MS. BURKE.

15 MS. BURKE: SUBJECT TO MY MOTIONS AND PRIOR
16 DISCUSSIONS, THE STATE RESTS, YOUR HONOR.

17 THE COURT: THANK YOU. LADIES AND GENTLEMEN OF THE
18 JURY, AT THIS TIME THE STATE HAS RESTED THEIR CASE. I AM
19 GOING TO SEND YOU BACK TO THE JURY ROOM TO TAKE UP A MATTER
20 OF LAW WITH THE ATTORNEYS.

21 AGAIN, DO NOT BEGIN DISCUSSING THIS CASE. IT WOULDN'T
22 BE APPROPRIATE TO DO SO AT THIS TIME. WE'LL BE BACK WITH
23 YOU ALL SHORTLY. THANK YOU.

24 (THE JURY RETIRES TO THE JURY ROOM AT 3:38 P.M.)

25 BAILIFF: THE JURY IS CLEAR, YOUR HONOR.

1 THE COURT: THANK YOU.

2 ANY MOTIONS?

3 MR. MACLOSKIE: YOUR HONOR, PLEASE, IF YOU WOULD MARK
4 MOTIONS HEARD FROM ME, AND JUST PRESERVE THE RECORD FOR
5 THAT, JUST SIMPLY SO I CAN RENEW THEM IF I HAVE TO AT THE
6 END OF OUR CASE.

7 THE COURT: YES, SIR. SO NOTED.

8 MR. MACLOSKIE: OKAY. THANK YOU. AND I BELIEVE
9 THAT'S ALL I HAVE WITH ONE EXCEPTION -- POSSIBLE EXCEPTION.

10 (PAUSE.)

11 MR. MACLOSKIE: YOUR HONOR, PLEASE. THIS IS UNUSUAL,
12 BUT I WOULD MOVE TO AMEND THE INDICTMENT TO REFLECT
13 VICTIM AGE ACCURATELY. HE TESTIFIED THAT HIS BIRTH DAY
14 IS AUGUST THE 14TH -- AUGUST THE 15TH. AND THIS EVENT
15 HAPPENED ON AUGUST THE 15TH AT NIGHT, CLOSE TO MIDNIGHT OR
16 MAYBE SOMEWHERE AFTER AUGUST THE 16TH, CLOSE TO IT. SO THE
17 ONLY ASSUMPTION I CAN MAKE IS THAT HE'D ALREADY TURNED 14.
18 HE WASN'T 13.

19 MS. BURKE: IT'S OCTOBER 15. I ASKED HIM IF HE JUST
20 HAD A BIRTHDAY.

21 MR. MACLOSKIE: I THOUGHT HE TESTIFIED IT WAS AUGUST.

22 MS. BURKE: HE SAID THE INCIDENT HAPPENED ON AUGUST
23 15.

24 MR. MACLOSKIE: THEN I WITHDRAW THE MOTION.

25 MS. BURKE: I WAS JUST TELLING HIM, YOU JUST HAD A

1 BIRTHDAY. IT WOULD BE OCTOBER 15.

2 MR. MACLOSKIE: ALL RIGHT. I HAVE TALKED TO MRS.

3 TAPPEINER. SHE IS NOT GOING TO TAKE THE STAND. WE HAVE

4 ONE WITNESS.

5 THE COURT: OKAY. SIR, AS YOU KNOW, I NEED TO GO

6 THROUGH HER RIGHTS WITH HER. ARE YOU COMFORTABLE DOING

7 THAT AT THIS TIME?

8 MS. TAPPEINER: YES, MA'AM.

9 THE COURT: OKAY. ALL RIGHT. MRS. TAPPEINER, IF YOU
10 WILL RAISE YOUR RIGHT HAND.

11 (COMPLIED.)

12 THE COURT: DO YOU SWEAR OR AFFIRM THE TESTIMONY YOU

13 GIVE WILL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT

14 THE TRUTH SO HELP YOU GOD?

15 MS. TAPPEINER: SO HELP ME GOD.

16 THE COURT: MA'AM, AT THIS TIME I'M GOING TO EXPLAIN

17 TO YOU CERTAIN RIGHTS THAT YOU HAVE. IS THERE'S ANYTHING

18 YOU DON'T UNDERSTAND, I'M GOING TO ASK YOU TO LET ME KNOW

19 AND I WILL EXPLAIN IT OR REPHRASE IT TO MAKE SURE YOU DO

20 UNDERSTAND.

21 MRS. TAPPEINER, WE'VE REACHED THAT STAGE IN THE TRIAL

22 WHERE YOU MAY PRESENT YOUR DEFENSE. YOU HAVE THE RIGHT TO

23 CLAIM THE PROTECTIONS THAT ARE PROVIDED TO YOU UNDER THE

24 FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

25 THIS AMENDMENT STATES IN PART THAT NO PERSON CAN BE

1 COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST
2 THEMSELF.

3 NOW, THIS MEANS YOU CANNOT BE REQUIRED TO TESTIFY IN
4 THIS CASE. HOWEVER, MA'AM, YOU NEED TO UNDERSTAND AND
5 APPRECIATE THAT YOU DO HAVE THE RIGHT TO TESTIFY ON YOUR
6 OWN BEHALF IF YOU SO CHOOSE. PLEASE UNDERSTAND THAT THIS
7 IS A PERSONAL RIGHT. IT'S ONE THAT ONLY YOU CAN WAIVE.

8 MA'AM, I NEED YOU TO UNDERSTAND AND APPRECIATE THAT IF
9 YOU DO DECIDE TO TESTIFY, YOU'LL BE SUBJECT TO THE SAME
10 RULES THAT GOVERN OTHER WITNESSES, AND THAT YOU MAY BE
11 EXAMINED AND CROSS EXAMINED ON ANY RELEVANT ISSUE IN THIS
12 CASE.

13 IN ADDITION, IF YOU HAVE ANY OTHER CONVICTIONS FOR
14 DISHONESTY OR FALSE STATEMENT OR FOR CRIMES THAT WOULD BE
15 PUNISHABLE BY IMPRISONMENT FOR MORE THAN 1 YEAR AND THE
16 COURT DETERMINES THAT THE PROBATIVE VALUE OF THOSE
17 CONVICTIONS OR INCIDENTS OUTWEIGHS ANY PREJUDICIAL EFFECT,
18 THE SOLICITOR WOULD BE ABLE TO INTRODUCE THOSE IN FRONT OF
19 THE JURY TO ATTACK YOUR CREDIBILITY.

20 MA'AM, IF YOU DECIDE TO TESTIFY, PLEASE UNDERSTAND
21 THAT THIS DECISION MUST BE MADE ON YOUR PART AND IT MUST BE
22 FREELY, VOLUNTARILY, AND INTELLIGENTLY MADE WITH THE
23 KNOWLEDGE OF THE PROTECTIONS GIVEN TO YOU BY THE FIFTH
24 AMENDMENT AND THE CONSEQUENCES OF YOUR DECISION TO TESTIFY.

25 NOW, IF YOU DECIDE NOT TO TESTIFY, I WILL INSTRUCT THE

1 JURORS THAT THEY CANNOT GIVE THE FACT THAT YOU DID NOT
2 TESTIFY ANY OPINION OR CONSIDERATION WHATSOEVER IN THEIR
3 DELIBERATIONS.

4 AGAIN, MA'AM, I WANT YOU TO UNDERSTAND THAT WHILE YOU
5 NEED TO CONSULT WITH YOUR ATTORNEY AS TO WHETHER OR NOT YOU
6 TESTIFY, THE DECISION TO TESTIFY OR NOT TESTIFY IS SOLELY
7 UP TO YOU. DO YOU UNDERSTAND THAT?

8 MS. TAPPEINER: YES, I DO.

9 THE COURT: ALL RIGHT. AND HAVE YOU UNDERSTOOD WHAT
10 I'VE EXPLAINED TO YOU HERE TODAY?

11 MS. TAPPEINER: YES, I HAVE.

12 THE COURT: AND DO YOU HAVE ANY QUESTIONS OF ME ABOUT
13 YOUR FIFTH AMENDMENT RIGHTS?

14 MS. TAPPEINER: NO, I DO NOT.

15 THE COURT: AND HAVE YOU DISCUSSED WITH MR. MACLOSKIE
16 WHETHER OR NOT YOU SHOULD TESTIFY IN THIS CASE?

17 MS. TAPPEINER: YES.

18 THE COURT: AND DO YOU WISH TO TALK TO HIM ANY FURTHER
19 BEFORE YOU MAKE THAT DECISION?

20 MS. TAPPEINER: NO, I DO NOT.

21 THE COURT: ALL RIGHT. MA'AM, DO YOU WISH TO TESTIFY?

22 MS. TAPPEINER: NO, I DO NOT.

23 THE COURT: ALL RIGHT. THANK YOU, MA'AM, YOU MAY BE
24 SEATED.

25 MR. MACLOSKIE: THANK YOU. AT THIS TIME IF I MAY HAVE

1 JUST A FEW MINUTES TO KIND OF SWITCH GEARS, GET OUT OF THE
2 CROSS EXAMINATION MODE AND GET IN THE DIRECT EXAMINATION
3 MODE AND TELL THE OTHER TWO WITNESSES THAT I HAVE STANDING
4 BY I WILL NOT NEED THEM. AND I'LL BE READY TO GO IN 10
5 MINUTES.

6 THE COURT: 10, 15 MINUTES. WE'LL COME BACK, IF YOU
7 ALL WOULD, AT ABOUT 5 MINUTES UNTIL 4:00. IS THAT FINE FOR
8 YOU?

9 MS. BURKE: THAT'S FINE.

10 THE COURT: OKAY. WE'LL SEE YOU ALL BACK AT 5 MINUTES
11 TO 4:00.

12 (A RECESS WAS TAKEN.)

13 THE COURT: THE STATE READY?

14 MS. BURKE: YES, YOUR HONOR.

15 THE COURT: DEFENSE READY?

16 MR. MACLOSKIE: WE ARE.

17 THE COURT: ALL RIGHT. GO AHEAD AND BRING THE JURY
18 IN, AL.

19 MR. MACLOSKIE: DO YOU WANT MR. TAPPEINER TO ASSUME
20 THE STAND?

21 THE COURT: NOT UNTIL HE'S CALLED.

22 (THE JURY RETURNS TO THE COURTROOM AT 4:03 P.M.)

23 BAILIFF: YOUR HONOR, THE JURY IS SEATED.

24 THE COURT: THANK YOU. WELCOME BACK, LADIES AND
25 GENTLEMEN.

- 1 MR. MACLOSKIE.
- 2 MR. MACLOSKIE: WE CALL MIKE TAPPEINER PLEASE.
- 3 MICHAEL TAPPEINER, BEING
- 4 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:
- 5 CLERK: PLEASE BE SEATED.
- 6 DIRECT EXAMINATION BY MR. MACLOSKIE:
- 7 Q STATE YOUR FULL NAME PLEASE?
- 8 A MICHAEL GLEN TAPPEINER.
- 9 Q WHERE DO YOU LIVE?
- 10 A [REDACTED], BLUFFTON, SOUTH CAROLINA.
- 11 Q WHAT DO YOU DO FOR A LIVING?
- 12 A I MANAGE A PHOTO LAB ON HILTON HEAD ISLAND.
- 13 Q AND ARE YOU MARRIED TO SUSAN TAPPEINER?
- 14 A YES, I AM.
- 15 Q SHE'S, OF COURSE, THE DEFENDANT IN THIS CASE?
- 16 A YES, SHE IS.
- 17 Q DO YOU KNOW AND REMEMBER ANYTHING ABOUT [Victim]?
- 18 A YES, HE IS ONE OF OUR NEIGHBORS A COUPLE DOORS DOWN.
- 19 Q WAS HE A FREQUENT VISITOR IN YOUR HOME?
- 20 A YES, HIM AND HIS SISTERS AND ANOTHER NEIGHBORHOOD
- 21 CHILD WERE COMING OVER FAIRLY REGULARLY. HIS SISTER AND
- 22 ANOTHER NEIGHBOR WERE HIRED AS BABYSITTERS FOR OUR
- 23 DAUGHTERS.
- 24 Q AND HOW LONG DID THEY BABYSIT FOR YOUR DAUGHTERS?
- 25 A THEY WERE SUPPOSED TO BABYSIT FOR ABOUT AN HOUR

1 BETWEEN WHEN OUR GIRLS GOT HOME FROM SCHOOL TO WHEN MY WIFE
2 COULD GET THERE.

3 Q AND WHEN DID THAT START AND WHEN DID IT END?

4 A THAT I'M NOT EXACTLY SURE. IT WAS PROBABLY
5 APPROXIMATELY A 2-MONTH PERIOD -- 3-MONTH PERIOD.

6 Q IN PROXIMITY TO THE 15TH OF AUGUST OF 2008 WHEN DID IT
7 END?

8 A IN PROXIMITY OF ---

9 Q IN RELATIONSHIP TO AUGUST THE 15TH, 2008? THE DATE
10 THIS INCIDENT WAS SUPPOSED TO HAVE OCCURRED.

11 A OKAY. I -- I'M -- I'M NOT EXACTLY SURE. I KNOW THAT
12 THERE HAD BEEN A PROBLEM OF THE CHILDREN GOING IN AND OUT
13 OF THE HOUSE. AND SUSAN ACTUALLY CAME -- OR WAS HOME I
14 GUESS ONE TIME AND victim WAS IN THE HOUSE. THEY HAD KEYS TO
15 THE HOUSE. AND ONE OF OUR NEIGHBORS FROM ACROSS THE STREET
16 HAD TOLD US THAT THEY WERE GOING IN AND OUT OF OUR HOUSE,
17 SO ONCE WE FOUND THAT OUT SHE PUT A STOP TO IT -- WE PUT A
18 STOP TO IT.

19 Q NOW, YOUR FAMILY CONSIST OF YOURSELF, SUSAN, AND TWO
20 DAUGHTERS; IS THAT CORRECT?

21 A TWO DAUGHTERS, YES, AND WE HAVE TWO DOGS.

22 Q TWO DOGS. WHAT KIND OF DOGS ARE THEY?

23 A A BASSET HOUND AND A RESCUE DOG FROM HAWAII.

24 Q NOW, DO YOU RECALL THE DAY AND WHAT YOU WERE DOING
25 THAT THIS THING WAS SUPPOSED TO HAVE TAKEN PLACE, THIS

- 1 CLAIM THAT SUSAN SEXUALLY ABUSED Victim? DO YOU
- 2 RECALL THAT DAY?
- 3 A I DO RECALL THAT DAY BECAUSE I HAD STAYED LATE AT
- 4 WORK, BUT SUSAN HAD CALLED AND SHE SAID THAT SHE WAS TAKING
- 5 THE GIRLS TO A -- TO BLUFFTON ART FESTIVAL IN DOWNTOWN
- 6 BLUFFTON. SO I WAS NOT IN A HURRY TO GET HOME. SO I GOT
- 7 HOME APPROXIMATELY 8:30, 8:40. AND SHE SHOWED UP SHORTLY
- 8 AFTER THAT.
- 9 Q ALL RIGHT. WITH THE GIRLS?
- 10 A WITH THE GIRLS AND CHELSEA -- CHELSEA WAS BABYSITTING
- 11 THE GIRLS.
- 12 Q WHO IS CHELSEA? IS THERE A RELATIONSHIP ---
- 13 A CHELSEA IS Victim -- Victim SISTER.
- 14 Q ALL RIGHT. AND DID Victim COME OVER THAT NIGHT?
- 15 A WHEN I GOT HOME, Victim WAS NOT THERE. NOBODY -- SUSAN
- 16 AND THE GIRLS SHOWED SHORTLY THEREAFTER.
- 17 Q OKAY.
- 18 A BUT WITHIN 15 MINUTES OR SO EVERYBODY SHOWED UP. I
- 19 MEAN, THE KIDS CAME OVER FAIRLY REGULARLY. SUSAN -- I
- 20 DON'T KNOW, TAKES PEOPLE AND HELPS PEOPLE. AND THEY WERE
- 21 FRIENDS WITH OUR DAUGHTERS, SO THEY WERE OVER THERE A LOT.
- 22 AND, I DON'T KNOW, IT WAS -- IT WAS TOO MUCH SOME TIMES FOR
- 23 ME. I DIDN'T WANT AS MANY KIDS RUNNING AROUND THE HOUSE.
- 24 Q HOW OLD ARE YOUR DAUGHTERS?
- 25 A THEY'RE 9 AND 7 -- 6 AND 9.

1 Q ALL RIGHT. LET'S GET BACK TO THIS NIGHT WHEN THIS
2 THING WAS SUPPOSED TO HAVE TAKEN PLACE ACCORDING TO MR.
3 UIGHM. THESE CHILDREN CAME OVER AND WHAT OCCURRED IN YOUR
4 HOUSE AFTER THAT?

5 A I REMEMBER FAIRLY CLEARLY BECAUSE WE -- I DECIDED TO
6 HANG OUT AND RELAX WITH THEM, WATCH MOVIES THAT NIGHT. A
7 LOT OF TIMES WHEN SHE ASKS KIDS -- CHILDREN OVER, I DO MY
8 OWN THING AND LET THE GIRLS AND SUSAN, YOU KNOW -- LET
9 SUSAN ENTERTAIN. AND SO THIS NIGHT I DECIDED TO RELAX WITH
10 EVERYBODY IN THE LIVING ROOM AND WATCH MOVIES.

11 Q AND THAT'S WHAT YOU DID?

12 A YEAH.

13 Q AND HOW LATE DID YOU WATCH MOVIES, MIKE?

14 A UNTIL APPROXIMATELY 10:30 IN THE MORNING.

15 Q 10:30 IN THE MORNING?

16 A 2:30 IN THE MORNING. SORRY, YEAH.

17 Q OKAY. AND THEN WHAT DID YOU DO THEREAFTER?

18 A I WENT -- WELL, I HAD DRANKEN SOME BEERS THROUGHOUT
19 THE EVENING -- 4 BEERS, 5 BEERS THROUGHOUT, YOU KNOW, A 5-
20 HOUR PERIOD. AND SO I WAS TIRED. I COULD SEE THAT SUSAN
21 HAD -- SHE HAD BEEN DRINKING TOO. AND, YOU KNOW, IT WAS
22 JUST TIME TO GO TO BED. SO -- AND WE WERE ALL KIND OF WORN
23 OUT.

24 Q NOW, FROM THE TIME THAT YOU GOT HOME UNTIL THE TIME
25 YOU WENT TO BED, WERE YOU CONSTANTLY IN SUSAN'S COMPANY?

1 A FROM THE TIME THAT I GOT HOME TO THE TIME WE WENT TO
2 BED?

3 Q YES.

4 A YES. I MEAN, I WAS IN THE LIVING ROOM WITH EVERYBODY.
5 AND SHE WAS RELAXING WITH US WATCHING MOVIES.

6 Q ALL RIGHT. AND WHEN YOU GOT READY TO GO TO BED, WHAT
7 DID YOU DO?

8 A I CALLED SUSAN AND TOLD HER THAT IT'S TIME TO GO TO
9 BED. I MEAN, I SAID, LET'S GO, IT'S TIME.

10 Q AND WHAT WAS YOUR CONDITION AT THAT TIME?

11 A SHE WAS DRUNK, A LITTLE -- YOU KNOW, JUST A LITTLE
12 LOOPY I WOULD SAY.

13 Q WAS SHE IN ANY CONDITION TO REMEMBER ANYTHING THAT
14 HAPPENED THAT NIGHT?

15 A I DON'T THINK SHE WAS IN THE BEST OF CONDITIONS, NO.
16 NO.

17 Q WHEN YOU TOLD SUSAN IT WAS TIME TO GO TO BED, WHAT WAS
18 HER RESPONSE?

19 A SHE WAS READY. SHE WAS READY TO GO.

20 Q ALL RIGHT. AND WHAT DID YOU DO?

21 A SO WE WENT UPSTAIRS AND GOT READY FOR BED AND WERE
22 PROBABLY IN BED WITHIN 15 MINUTES. AND THEN IN THE MORNING
23 WHEN I WOKE UP, SHE WAS IN BED. AND I WENT DOWNSTAIRS AND
24 Victim AND ERICA AND AUDRA WERE SLEEPING IN THE LIVING ROOM.

25 Q ALL RIGHT. AND TELL ME THIS. HOW WOULD YOU DESCRIBE

- 1 YOUR SLEEPING IN TERMS OF BEING HEAVY, MODERATE, LIGHT?
- 2 A I'M A LIGHT SLEEPER. I DON'T HAVE PROBLEMS SLEEPING,
- 3 BUT I'M A LIGHT SLEEPER.
- 4 Q IF SOMEONE WERE TO SHOUT IN YOUR HOUSE, ANYWHERE IN
- 5 YOUR HOUSE, WOULD THAT WAKE YOU UP?
- 6 A YES. OUR HOUSE IS NOT THAT BIG.
- 7 Q HOW BIG IS YOUR HOUSE?
- 8 A IT'S A 4-BEDROOM HOUSE. THERE'S 3 BEDROOMS UPSTAIRS.
- 9 AND A LIVING ROOM, A KITCHEN, AND 1 BEDROOM DOWNSTAIRS.
- 10 BUT IT'S ALL FAIRLY COMPACT. AND ---
- 11 Q HOW MANY SQUARE FEET?
- 12 A I DON'T HAVE AN IDEA.
- 13 Q OKAY. DID YOU HEAR ANYTHING ON THIS NIGHT THAT YOU'RE
- 14 DESCRIBING?
- 15 A I -- I HEARD NOTHING. AND IF -- IF THERE WAS ANY
- 16 YELLING OR -- OR SHOUTING OR ANYTHING, OUR DOGS WOULD HAVE
- 17 HEARD IT TOO. ONE OF OUR DOGS IS VERY PROTECTIVE AND WOULD
- 18 HAVE BARKED.
- 19 Q OKAY. NOW, WHEN YOU WENT DOWNSTAIRS THE NEXT MORNING
- 20 -- AND THAT WOULD HAVE BEEN ON AUGUST THE 16TH?
- 21 A YES.
- 22 Q THE NIGHT AFTER VICTIM SAYS ALL THIS HAPPENED, YOU FOUND
- 23 VICTIM AND HIS SISTERS AND ANOTHER GIRL SLEEPING DOWNSTAIRS?
- 24 A YES.
- 25 Q AND WHERE WAS HE SLEEPING?

- 1 A I BELIEVE HE WAS ON THE FLOOR.
- 2 Q ALL RIGHT. AND WHAT HAPPENED AFTER THAT?
- 3 A I PROCEEDED TO HAVE SOME CEREAL FOR BREAKFAST AND THEY
- 4 HEARD ME AND WOKE UP AND HAD SOME CEREAL WITH ME.
- 5 Q WHAT WAS VICTIM MOOD OR COMPOSURE AT THAT TIME?
- 6 A I NOTICED NOTHING ABNORMAL. EVERYTHING SEEMED
- 7 PERFECTLY FINE.
- 8 Q JUST THE WAY HE NORMALLY IS?
- 9 A NORMAL, YEAH.
- 10 Q DID ANY OF THE GIRLS SAY ANYTHING ABOUT VICTIM WAKING
- 11 THEM UP?
- 12 A NO.
- 13 Q NOW, THERE'S BEEN INTRODUCED INTO EVIDENCE TWO PIECES
- 14 OF CLOTHING.
- 15 MR. MACLOSKIE: MAY I APPROACH BRIEFLY?
- 16 THE COURT: YOU MAY.
- 17 Q A PAIR OF BLACK PANTIES WITH SOMETHING WRITTEN ON THEM
- 18 AND THIS DRESS. DO YOU RECOGNIZE EITHER ONE OF THOSE?
- 19 A YES.
- 20 Q OKAY. AND I CAN'T RECALL WHAT THE BLACK PANTIES HAVE
- 21 WRITTEN ON THEM, BUT IT'S SOMETHING KIND OF PROVOCATIVE?
- 22 A RIGHT.
- 23 Q NOW, DO YOU RECOGNIZE BOTH OF THOSE?
- 24 A YES. I'VE SEEN -- SHE HAS A FEW PAIRS OF UNDERWEAR.
- 25 Q WHY IS THAT? DOES SHE EVER WEAR THOSE UNDERWEAR?

1 A SHE DOESN'T WEAR THEM AROUND THE HOUSE. SHE DOES SOME
2 MODELING AND PROMOTING FOR A CLOTHING LINE THAT IS, YOU
3 KNOW, A LITTLE MORE RISQUE. AND IT'S NOT SOMETHING THAT
4 SHE WOULD WEAR AROUND THE HOUSE OR ESPECIALLY AROUND
5 CHILDREN.

6 BUT, YOU KNOW, THEY ARE AROUND THE HOUSE AND -- AND I
7 DON'T KNOW HOW THEY WOULD HAVE SEEN THEM, BUT THESE
8 CHILDREN DID HAVE ACCESS TO OUR HOUSE. THEY HAD A KEY.
9 THEY KNEW HOW TO GET INTO THE LOCKED DOORS. THEY EVEN
10 SHOWED MY CHILDREN HOW TO UNLOCK THE DOORS.

11 Q AND THE DRESS, DID SHE WEAR THAT DRESS?

12 A I THINK THAT PARTICULAR DRESS IS VERY -- IT'S BACK
13 FROM WHEN WE LIVED IN HAWAII. I THINK IT'S A MATERNITY
14 DRESS, SO SHE DOESN'T WEAR THAT DRESS VERY MUCH, NO.

15 Q WOULD SHE ---

16 A IT'S NOT -- IT'S NOT FLATTERING.

17 Q TO YOUR KNOWLEDGE WAS SHE WEARING EITHER ONE OF THOSE
18 ITEMS THE NIGHT THAT victim SAID HE WAS RAPED?

19 A NO. NO.

20 Q NOW, AFTER THIS EVENT THERE WAS SOMETHING ABOUT
21 WANTING A BATTERY FOR HIS CAMERA. DO YOU RECALL THAT?

22 A YES. I THINK IT WAS AFTER -- THIS IS A WAY AFTER.
23 BUT SUSAN CALLED ME AT WORK AND SAID victim HAD COME TO THE
24 DOOR ASKING FOR A BATTERY TO A DIGITAL CAMERA.

25 Q WOULD THAT REQUEST HAVE BEEN AFTER HE REPORTED THIS

1 EVENT ON FEBRUARY THE 23RD OF THIS YEAR?

2 A I BELIEVE SO.

3 Q AND IN RESPONSE TO THAT REQUEST, WHAT IF ANYTHING DID
4 YOU DO?

5 A I -- I BROUGHT A BATTERY HOME.

6 Q DID HE EVER COME BACK AND PICK IT UP?

7 A NO.

8 Q ALL RIGHT. NOW, SOMEWHERE IN THIS TIME FRAME, THE
9 RELATIONSHIP BETWEEN YOUR FAMILY AND Victim's FAMILY
10 WENT DOWN THE TUBES, DIDN'T IT?

11 A YES. SUSAN TRIED TO HELP THEM OUT AS BEST SHE COULD.

12 BUT, I MEAN, IT DID CAUSE SOME HARD FEELINGS I THINK.

13 THERE WAS ANOTHER INCIDENT OF ONE OF THE NEIGHBORS -- ONE
14 OF THE GIRLS THAT SUSAN HAD HIRED CAME OVER AND HAD SOME
15 WORDS WITH SUSAN, YOU KNOW, KIND OF GOT IN HER FACE. SO,
16 YEAH, THINGS WEREN'T ON THE BEST OF TERMS. AND AFTER THAT
17 POINT WE PRETTY MUCH JUST TRIED TO STAY SEPARATE AS MUCH AS
18 WE COULD.

19 Q AND IT WAS PRIMARILY BECAUSE OF THE ABUSE THAT THESE
20 CHILDREN, INCLUDING victim, WERE USING YOUR HOME WHEN
21 YOU WEREN'T EVEN THERE?

22 A THAT'S -- THAT'S WHY IT ALL CAME TO AN END BECAUSE
23 THEY WERE ABUSING ACCESS TO THE HOUSE. I MEAN, YOU KNOW,
24 ONE OF THE RULES WAS THAT victim WAS NOT ALLOWED IN THE HOUSE
25 AT ANY TIME IF WE WEREN'T THERE. AND HE WAS GOING IN THE

1 HOUSE AND ALSO THE GIRLS WHEN THEY SHOULDN'T HAVE BEEN. SO
2 WE CHANGED -- WE ENDED THIS AGREEMENT WITH THEM BABYSITTING
3 AND CHANGED THE LOCKS.

4 MR. MACLOSKIE: ANSWER ANY QUESTIONS MS. BURKE MIGHT
5 HAVE PLEASE.

6 CROSS EXAMINATION BY MS. BURKE:

7 Q LET ME GET THIS STRAIGHT. Victim ACCUSES YOUR WIFE --
8 OF HOW MANY YEARS?

9 A 11 YEARS.

10 Q 11 YEARS. OF RAPING HIM; IS THAT TRUE? SHE GETS
11 ARRESTED. TWO WEEKS LATER YOU GET A CALL ABOUT HIM WANTING
12 A BATTERY?

13 A YES.

14 Q AT YOUR JOB?

15 A YES.

16 Q AND YOU LEAVE WORK?

17 A NO. SHE CALLED ME SAYING THAT Victim HAD COME TO THE
18 DOOR ASKING FOR A BATTERY FOR HIS CAMERA.

19 Q OKAY. SHE CALLED. AND WHERE WERE YOU?

20 A SHE CALLED ME AT WORK.

21 Q OKAY.

22 A AND WHEN I CAME HOME FROM WORK, I BROUGHT THAT
23 BATTERY.

24 Q GOT YOU. SO SHE CALLS YOU AT WORK IN THE MIDDLE OF
25 THE DAY. AND DID SHE SAY, THIS BOY WHO JUST ACCUSED ME OF

- 1 RAPE, THE SAME ONE WHO I GOT ARRESTED FOR, THAT HIS FAMILY
- 2 IS GOING THROUGH TURMOIL OVER, IS AT MY DOORSTEP ASKING FOR
- 3 A BATTERY, CALL THE POLICE. DID SHE SAY ANY OF THAT?
- 4 A NO, SHE SAID NONE OF THAT. AND TO BE HONEST, I'M NOT
- 5 EXACTLY SURE ON THE DAY. IF IT WAS BEFORE SHE GOT ARRESTED
- 6 OR IT WAS AFTER. BUT ALL I KNOW IS SHE DID CALL.
- 7 Q RIGHT.
- 8 A AND I BROUGHT A BATTERY HOME.
- 9 Q AND YOU JUST TOLD MR. MACLOSKIE IT WAS AFTER?
- 10 A WELL, MAYBE IT WAS AFTER.
- 11 Q RIGHT. SO IT WAS AFTER?
- 12 A YEAH.
- 13 Q AND YOU -- YOU DIDN'T LEAVE WORK RIGHT AWAY?
- 14 A NO.
- 15 Q BUT WHEN YOU GOT HOME THAT NIGHT, YOU THOUGHT ENOUGH
- 16 AFTER YOUR LONG DAY'S WORK TO GO TO THE STORE AND GET
- 17 victim HIS BATTERY?
- 18 A WELL, NO, THAT'S WHAT WE DO. WE SELL BATTERIES AND
- 19 CHARGERS.
- 20 Q OH.
- 21 A THAT'S WHY -- THAT'S WHY HE'D COME TO THE HOUSE
- 22 BECAUSE WE CARRY THOSE.
- 23 Q GOT YOU. SO YOU TOOK ONE OF THE INVENTORY FROM YOUR
- 24 SHOP ---
- 25 A RIGHT.

- 1 Q --- BROUGHT IT TO YOUR WIFE. DID YOU CHARGE victim
2 FOR THIS?
- 3 A WELL, I JUST BROUGHT IT HOME TO SEE IF HE WAS GOING TO
4 BUY IT OR WHATEVER. HE NEVER CAME BACK.
- 5 Q GOT YOU. GOT YOU. YOU WERE AT WORK WHEN SERGEANT
6 GONZALES CALLED LOOKING FOR YOUR WIFE TO TALK TO HER ON
7 FEBRUARY 27TH; IS THAT CORRECT?
- 8 A YES.
- 9 Q AS A MATTER OF FACT, YOU ANSWERED THE PHONE; IS THAT
10 CORRECT?
- 11 A YES.
- 12 Q SERGEANT GONZALES ASKED YOU TO SPEAK TO YOUR WIFE; IS
13 THAT CORRECT?
- 14 A YES.
- 15 Q AND HE SAID WHO HE WAS?
- 16 A YES, HE DID.
- 17 Q AND AS FAR AS YOU KNOW YOUR WIFE THEN -- THE DEFENDANT
18 THEN LEFT HER -- HER -- YOU ALL'S JOINT BUSINESS AND WENT
19 TO THE POLICE AND TALKED TO GONZALES; IS THAT CORRECT?
- 20 A WELL, SHE WASN'T EXACTLY THERE AT THE TIME.
- 21 Q YOU CALLED HER. WHAT DID YOU TELL HER?
- 22 A I CALLED HER AND GAVE SERGEANT GONZALES' NUMBER.
- 23 Q WHAT DID YOU TELL HER?
- 24 A I JUST TOLD HER THAT HE CALLED AND WANTED HER TO CALL
25 HIM. I HAD NO IDEA.

- 1 Q AND WHAT DID SHE SAY?
- 2 A SHE SAID, FINE, SHE'D CALL HIM.
- 3 Q SO THE COPS CALLS TO TALK TO YOUR WIFE AND YOU ALL
- 4 JUST SAY, OKAY, I'LL RETURN THE CALL?
- 5 A I JUST PASSED THE MESSAGE ON.
- 6 Q YOU PASSED THE MESSAGE ON NONCHALANTLY?
- 7 A YEAH.
- 8 Q YOU WENT BACK TO WORK?
- 9 A RIGHT.
- 10 Q OKAY. AND WHEN WAS THE NEXT TIME YOU SAW YOUR WIFE
- 11 AFTER THAT DAY ON FEBRUARY 27TH?
- 12 A TWO DAYS LATER.
- 13 Q OKAY. TWO DAYS LATER SOMEWHERE BETWEEN YOU FOUND OUT
- 14 THAT SHE WAS ARRESTED; IS THAT CORRECT?
- 15 A YES.
- 16 Q WHAT WERE YOU TOLD SHE WAS CHARGED WITH?
- 17 A SEX WITH A MINOR.
- 18 Q OKAY. YOU WERE TOLD WHO THE MINOR WAS?
- 19 A YES.
- 20 Q OKAY. WHAT DID YOU DO AFTER THAT WHEN YOU FOUND OUT?
- 21 A I WAS IN SHOCK.
- 22 Q WHAT ELSE?
- 23 A DISBELIEF.
- 24 Q OKAY. WHAT ELSE?
- 25 A WELL, I MEAN, WENT ON WITH LIFE AS -- AS -- AS NORMAL

- 1 AS I COULD.
- 2 Q GOT YOU.
- 3 A I MEAN, CONSIDERING THIS SITUATION.
- 4 Q GOT YOU. DID YOU CALL BLUFFTON POLICE DEPARTMENT AND
- 5 MAKE A STATEMENT?
- 6 A NO.
- 7 Q DID YOU GO DOWN TO BLUFFTON POLICE DEPARTMENT AND
- 8 SOUGHT OUT THIS SERGEANT GONZALES PERSON?
- 9 A NO.
- 10 Q DID YOU -- WHAT DID YOU DO TO INFORM LAW ENFORCEMENT
- 11 OF WHAT YOU'RE TELLING THIS COURT TODAY?
- 12 A NOTHING. I MEAN, IT WASN'T MY -- I DIDN'T KNOW THAT
- 13 WOULD BE EXPECTED OF ME. I WOULDN'T EXPECT THAT OF ME. I
- 14 MEAN, I WOULD, YOU KNOW, CONSULT WITH HER PARENTS, MY IN-
- 15 LAWS. AND WE WOULD GO FROM THERE.
- 16 Q GOT YOU. WHEN YOU SAY YOUR WIFE OF 11 YEARS, SHE'S
- 17 YOUR WIFE, RIGHT?
- 18 A YES.
- 19 Q THE MOTHER OF YOUR CHILDREN 9 YEARS OLD AND 5?
- 20 A UH-HUH.
- 21 Q OKAY. NOW SHE'S ARRESTED; IS THAT CORRECT?
- 22 A RIGHT.
- 23 Q OKAY. AND ON OR ABOUT MARCH THE 2ND GONZALES CALLED
- 24 YOU AGAIN TO TELL YOU THAT HE WAS COMING TO YOUR HOUSE TO
- 25 SERVE A SEARCH WARRANT?

1 A RIGHT.

2 Q AND YOU ANSWERED THE PHONE. HE CALLED YOU AT YOUR
3 WORK AGAIN?

4 A UH-HUH.

5 Q OKAY. AND WHAT DID YOU DO?

6 A I WENT HOME TO MEET HIM. HE SAID HE DIDN'T WANT TO
7 BREAK THE DOORS DOWN, SO I CAME AND LET HIM IN.

8 Q OKAY. THAT'S NICE OF YOU.

9 A THAT'S WHAT HE SAID.

10 Q AND SO YOU WENT HOME TO MEET HIM. AND DID HE TELL YOU
11 THE NATURE OF THE SEARCH WARRANT?

12 A YES, HE SAID SOMETHING TO THE EFFECT OF LOOKING FOR
13 SOME ITEMS.

14 Q OKAY. BUT BEFORE YOU LET HIM IN THE DOOR, YOU ARE NOW
15 FACE TO FACE WITH THIS PERSON WHO CALLED YOU ON FEBRUARY
16 22ND (SIC), NOT TELLING YOU WHY HE WANTED TO TALK TO YOUR
17 WIFE, BUT NOW HE'S AT YOUR DOOR, SHE'S BEEN ARRESTED AND HE
18 WANTS MORE INFORMATION. CORRECT?

19 A RIGHT.

20 Q AT THAT POINT DID YOU TELL GONZALES WHAT YOU'RE
21 TELLING THESE PEOPLE HERE TODAY?

22 A NO.

23 Q OKAY. IN FACT, YOU OPENED THE DOOR AND WHEN GONZALES
24 TOLD YOU WHAT HE WAS LOOKING FOR, YOU TOLD HIM IT WOULD BE
25 IN THE MASTER BEDROOM; ISN'T THAT CORRECT?

1 A I REALLY DIDN'T FEEL LIKE I HAD ANYTHING TO HIDE. IN
2 ADDITION, HE HAD A SEARCH WARRANT.

3 Q OKAY.

4 A THERE WAS NOTHING I COULD DO.

5 Q YOU TOLD HIM WHERE TO GO AND LOOK FOR IT, THE DRESS
6 AND THE PANTIES?

7 A NOT THE -- NOT SPECIFICALLY. I JUST SAID THE CLOTHES
8 WOULD BE EITHER IN THE LAUNDRY ROOM OR UPSTAIRS IN OUR
9 BEDROOM. I DIDN'T KNOW EXACTLY WHAT SPECIFIC ITEMS THEY'RE
10 LOOKING FOR.

11 Q AFTER THE BLUFFTON POLICE DEPARTMENT SECURED WHAT THEY
12 WERE LOOKING FOR, DID YOU HAVE A CHANCE TO TALK TO THEM
13 BEFORE THEY LEFT?

14 A JUST IDLE CHIT-CHAT. BUT REALLY I WAS NOT -- I REALLY
15 DID NOT FEEL LIKE YOU GUYS WERE MY FRIENDS AT THAT POINT,
16 SO I REALLY HAD NOTHING TO SAY.

17 Q THEY WEREN'T YOUR FRIENDS, RIGHT?

18 A WELL, CONSIDERING THE SITUATION, YOU GUYS ARE IN MY
19 HOUSE, NO. I HAVE NO REASON TO TALK TO THEM.

20 Q I'M SORRY. GO AHEAD.

21 A I DID NOT FEEL THE NEED TO TALK TO THE POLICE AT THAT
22 POINT, NO.

23 Q OKAY. SO IT'S SAFE TO SAY THAT YOU DIDN'T TELL THEM
24 ANYTHING ABOUT WHAT YOU JUST TOLD THE JURY?

25 A NO.

1 Q IT'S SAFE TO SAY THAT YOU DIDN'T TELL THEM ANYTHING
2 ABOUT WCHM KID, I DON'T KNOW. HE'S BEEN CALLING ABOUT
3 STUFF -- OR WHATEVER IT IS YOU JUST TALKED ABOUT?

4 A I SAID NOTHING REGARDING THIS CASE, NO. I JUST GAVE
5 THEM WHAT THEY WANTED. AND WHEN THEY WERE GONE, I LOCKED
6 UP AND -- AND WENT BACK TO WORK.

7 Q AND YOU WENT ABOUT YOUR BUSINESS?

8 A YES.

9 Q ISN'T IT TRUE YOU WERE DRINKING HEAVILY THAT NIGHT?

10 A I WAS NOT DRINKING HEAVILY. I CAME HOME ABOUT 8:30
11 AND I PROCEEDED TO DRINK 4, MAYBE 5 BEERS THROUGHOUT THE
12 EVENING. LET'S SAY OVER A 6-HOUR PERIOD 4 OR 5 BEERS, I
13 DON'T CONSIDER THAT HEAVY DRINKING.

14 Q OKAY. YOU'RE COMFORTABLE WITH DRINKING; IS THAT WHAT
15 YOU'RE SAYING?

16 A I DO DRINK SOME BEER, SOME RUM AND COKE. I REALLY
17 DON'T DRINK THAT MUCH THOUGH, NO. I'M NOT -- I'M NOT A
18 HEAVY DRINKER.

19 Q ISN'T IT THE CASE YOU'VE HAD PROBLEMS WITH DUI'S IN
20 THE PAST?

21 MR. MACLOSKIE: YOUR HONOR, PLEASE.

22 A NO.

23 MR. MACLOSKIE: I OBJECT TO THAT. I MOVE THAT IT BE
24 STRICKEN.

25 THE COURT: OKAY. YOU ALL APPROACH.

- 1 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE
- 2 PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)
- 3 Q SO YOU'VE HAD DUI PROBLEMS IN THE PAST; IS THAT
- 4 CORRECT?
- 5 A NO. I BELIEVE I'VE HAD ONE DUI 15 YEARS AGO.
- 6 Q SO IT'S A YES, THEN?
- 7 A YES.
- 8 Q OKAY. AND YOU WERE DRINKING THAT NIGHT SO MUCH SO
- 9 THAT Victim OBSERVED YOU AND YOUR WIFE DRINKING HEAVILY;
- 10 ISN'T THAT CORRECT?
- 11 A LIKE I SAID, I WAS NOT DRINKING HEAVILY.
- 12 Q OKAY. AND YOU FELL ASLEEP FIRST, DIDN'T YOU, AND WENT
- 13 UPSTAIRS?
- 14 A NO.
- 15 Q OKAY. WHAT DID THE DEFENDANT TELL YOU HAPPENED THAT
- 16 NIGHT?
- 17 A THE DEFENDANT?
- 18 Q YOUR WIFE, MS. SUSAN?
- 19 A SHE DIDN'T -- SHE TOLD ME SHE DIDN'T REMEMBER AND SHE
- 20 WAS NOT IN A VERY GOOD FRAME OF MIND FROM DRINKING AND
- 21 PROBABLY TAKING HER, YOU KNOW, SLEEPING PILLS OR CLONIPIN
- 22 OR WHATEVER; THAT'S WHY -- AND AT THE END OF A LONG NIGHT
- 23 WATCHING MOVIES, IT WAS TIME TO GO TO BED. AND I TOOK HER
- 24 TO BED.
- 25 Q WHAT DID SHE TELL YOU SHE DID NOT REMEMBER?

1 A SHE JUST DIDN'T REMEMBER ANYTHING, I MEAN, BESIDES,
2 YOU KNOW, ENTERTAINING AND WATCHING MOVIES. WE WERE ALL IN
3 THE LIVING ROOM TOGETHER.

4 Q SO SHE DIDN'T REMEMBER ANYTHING AFTER THE MOVIE ENDED?

5 A RIGHT. RIGHT. WE WENT -- TOOK HER UPSTAIRS TO GO TO
6 BED, AND WE WENT TO BED. WHEN I WOKE UP THE NEXT MORNING,
7 SHE WAS IN BED NEXT TO ME.

8 Q OKAY. MR. TAPPEINER, EXPLAIN TO THE JURY WHY HAS IT
9 TAKEN YOU 8 AND ½ MONTHS TO SAY THAT?

10 A TO SAY WHAT?

11 Q WHAT YOU JUST SAID ABOUT NOTHING HAPPENING, WHAT YOU
12 TOLD MIKE MACLOSKIE ABOUT YOUR ACCOUNT FOR WHAT HAPPENED
13 THAT NIGHT? WHY HAS IT TAKEN YOU 8 AND ½ MONTHS ---

14 A THIS IS ---

15 Q --- TO COME TO YOUR WIFE'S HONOR?

16 A THIS IS THE FIRST TIME THAT -- THIS IS THE FIRST TIME
17 THAT I'VE HAD A CHANCE TO REALLY EXPLAIN IT IN FRONT OF
18 PEOPLE. I MEAN, I'VE EXPLAINED WHAT I KNOW. BUT YOU --
19 THE POLICE HAVE NEVER ASKED ME FOR A STATEMENT. IF THEY
20 WOULD HAVE ASKED ME FOR A STATEMENT, I WOULD HAVE GIVEN A
21 STATEMENT.

22 Q OKAY. AND I'M GOING TO WRAP THIS UP. BUT WHAT YOU
23 WANT THE JURORS TO TAKE AWAY FROM YOUR TESTIMONY IS IF YOUR
24 WIFE IS ARRESTED FOR MOLESTING A 13 YEAR OLD BOY, ALMOST 30
25 YEARS HER JUNIOR AND YOU SPEAK TO LAW ENFORCEMENT AND

1 THEY'RE IN YOUR HOUSE, IN YOUR DOMAIN, IS IT DON'T ASK,
2 DON'T TELL? IF THEY DON'T ASK YOU, YOU WON'T TELL; IS THAT
3 IT?

4 A I -- I -- I JUST -- I DIDN'T BELIEVE -- I DIDN'T
5 BELIEVE THAT HAPPENED, AND I WASN'T GOING TO, YOU KNOW,
6 COMMENT ON THE SITUATION UNTIL I KNEW MORE ABOUT IT.

7 Q GOT YOU.

8 MS. BURKE: NO FURTHER QUESTIONS.

9 THE COURT: MR. MACLOSKIE?

10 MR. MACLOSKIE: MAY I RECROSS (SIC)?

11 THE COURT: YOU MAY.

12 MR. MACLOSKIE: REDIRECT BRIEFLY.

13 REDIRECT EXAMINATION BY MR. MACLOSKIE:

14 Q MR. TAPPEINER, IF ANYTHING HAD HAPPENED IN THE HOUSE
15 THAT NIGHT, WOULD YOU HAVE HEARD ANYONE SCREAMING?

16 A YES.

17 Q WOULD YOU HAVE HEARD SOMEONE SCREAMING FOR YOU FROM
18 YOUR DAUGHTER'S BEDROOM?

19 A YES, I BELIEVE SO.

20 Q WHERE IN PROXIMITY IS THAT BEDROOM TO YOUR BEDROOM?

21 A IT'S RIGHT ACROSS THE HALL AS YOU EXIT OUR BEDROOM
22 DOOR.

23 Q IS IT AS FAR AWAY AS ME TO YOU WHERE WE'RE STANDING
24 NOW? IS IT THAT FAR?

25 A YES.

1 Q AND IF SUSAN HAD GOTTEN OUT OF THAT BED THAT NIGHT,
2 WOULD THAT HAVE WOKE YOU?

3 A I BELIEVE SO, YES, I WOULD HAVE NOTICED.

4 Q ALL RIGHT. AND THE REASON YOU HAVEN'T TOLD SERGEANT
5 GONZALES ALL THESE THINGS -- IS IT SAFE TO SAY -- IS THAT
6 YOU WERE NEVER ASKED?

7 A YES. NOTHING LIKE THIS HAS EVER HAPPENED. I DON'T
8 KNOW WHAT YOU'RE SUPPOSED TO DO.

9 Q NOW, THIS BUSINESS ABOUT THE BATTERY, WE'RE NOT GOING
10 TO MAKE TOO MUCH ABOUT THAT. BUT WHEN I ASKED YOU ABOUT
11 THAT, DID YOU HAVE ANY CLEAR RECOLLECTION OF THAT -- THE
12 DATE OF THAT?

13 A I -- I DIDN'T. I DON'T, NO. I DO REMEMBER BEING
14 CALLED AND BRINGING HIM A BATTERY. BUT THE DATE I'M NOT
15 EXACTLY SURE IF IT WAS -- IT WAS -- OBVIOUSLY, IT WAS AFTER
16 THIS INCIDENT, BUT LET ME SEE. I DON'T KNOW. IT'S BEEN
17 SUCH A LONG TIME. BUT I THINK IT WAS JUST IN THE -- IN THE
18 BETWEEN PERIOD OF WHEN THIS HAPPENED UNTIL NOW. AND I
19 THINK HE JUST CALLED UP ASKING FOR A BATTERY -- CAME TO THE
20 FRONT DOOR ASKED FOR A BATTERY LIKE NOTHING HAD HAPPENED.
21 IT WAS KIND OF SHOCKING.

22 Q THAT'S THE QUESTION, HE ACTED LIKE NOTHING HAPPENED?

23 A YEAH.

24 Q NOW, ONE OF THE REASONS FOR YOUR REACTION TO SUSAN'S
25 ARREST INCLUDING DISBELIEF IS BECAUSE OF WHAT YOU KNOW

1 ABOUT HER AND WHERE SHE WAS ON THE NIGHT THIS HAPPENED;

2 ISN'T THAT TRUE?

3 A YES. I MEAN, I -- I -- SHE'S MY WIFE AND I LOVE HER

4 AND, YOU KNOW, I TRUST HER.

5 Q BUT THAT DOESN'T MEAN YOU'D COME HERE AND TELL A LIE

6 JUST TO PROTECT HER, DOES IT?

7 A NO.

8 MS. BURKE: YOUR HONOR, AS MUCH AS MR. MACLOSKIE WANTS

9 TO HAVE THE DEFENDANT -- MR. TAPPEINER SAY WHATEVER, I

10 WOULD ASK HIM REFRAIN FROM LEADING HIM INTO SAYING WHATEVER

11 THAT IS.

12 MR. MACLOSKIE: I'LL WITHDRAW THE QUESTION. YOU CAN

13 ASK THE JURY TO STRIKE THE ANSWER. I HAVE NOTHING FURTHER.

14 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU ARE

15 TO DISREGARD THE LAST QUESTION AS WELL AS ANY ANSWER.

16 MS. BURKE: I'M DONE WITH THIS WITNESS, YOUR HONOR.

17 THANK YOU.

18 THE COURT: ALL RIGHT. YOU MAY STEP DOWN, MR.

19 TAPPEINER.

20 MR. MACLOSKIE: THE DEFENSE RESTS.

21 THE COURT: OKAY. LADIES AND GENTLEMEN, AT THIS TIME

22 THE DEFENDANT HAS ALSO RESTED THEIR CASE. BASED ON THE

23 LATE HOUR AND WHAT WE HAVE LEFT IN THIS TRIAL IS TO HEAR

24 THE CLOSING ARGUMENTS FROM THE LAWYERS AS WELL AS MY CHARGE

25 ON THE LAW. THERE'S ALSO SOME OTHER MATTERS OF LAW THAT I

1 NEED TO TAKE UP WITH THE ATTORNEYS. I'M GOING TO GO AHEAD
2 AND SEND YOU ALL HOME FOR THE EVENING AND ASK THAT YOU
3 RETURN TOMORROW MORNING AT 10:00 A.M. WHEN WE WILL CONCLUDE
4 THIS CASE.

5 AGAIN, I CAUTION YOU, LADIES AND GENTLEMEN, THAT YOU
6 ARE NOT TO DISCUSS THIS CASE WITH ANYBODY WHEN YOU GO HOME.
7 ADDITIONALLY, LADIES AND GENTLEMEN, I'M ALSO INSTRUCTING
8 YOU THAT YOU ARE NOT TO READ ANY NEWS REPORTS OR ANY
9 NEWSPAPER ARTICLES OR LISTEN TO ANYTHING ON THE RADIO OR
10 THAT MAY BE ON THE TV IN REGARDS TO THIS CASE. AGAIN, IT
11 WOULD BE INAPPROPRIATE TO DO SO.

12 ALL RIGHT. WITH THAT SAID, YOU ALL GO HOME AND HAVE A
13 NICE DINNER AND JUST BE BACK IN THE JURY ROOM AT 10:00 A.M.
14 TOMORROW MORNING. THANK YOU.

15 (THE JURY EXITS THE COURTROOM AT 4:46 P.M.)

16 BAILIFF: THE JURY IS CLEAR, YOUR HONOR.

17 THE COURT: THANK YOU. ARE THERE ANY MOTIONS AT THIS
18 TIME?

19 MS. BURKE: YOUR HONOR, JUST TO RENEW MY PRIOR STATE
20 MOTIONS, OBJECTIONS, AND LITANY OF OTHER THINGS THAT I
21 BROUGHT BEFORE THE COURT'S ATTENTION.

22 THE COURT: THANK YOU. MR. MACLOSKIE?

23 MR. MACLOSKIE: NO, I HAVE NO MOTIONS. THERE IS
24 ENOUGH EVIDENCE TO GO TO THE JURY.

25 THE COURT: THANK YOU, SIR. I WOULD LIKE TO TALK WITH

1 YOU ALL BRIEFLY ABOUT THE REQUEST TO CHARGE -- NOT BRIEFLY,
2 BUT AS LONG AS YOU NEED.

3 DO EITHER ONE OF YOU HAVE ANY PROPOSED REQUEST TO
4 CHARGE? FROM THE STATE?

5 MS. BURKE: YOUR HONOR, I THINK -- EXCUSE ME. I HAVE
6 HEARD YOUR CHARGES BEFORE AND THEY'RE PRETTY ON POINT.

7 THE COURT: I KNOW THEY'RE PRETTY ON POINT BECAUSE
8 THEY'RE THE LAW.

9 MS. BURKE: NO DISRESPECT BY THAT STATEMENT. I WAS
10 JUST MEANING TO SAY THAT I THINK THEY ENCOMPASS ALL THE
11 THINGS THAT I JOT DOWN AS REMINDERS FOR MYSELF; ONE BEING
12 NO CORROBORATION. EXCUSE ME. SORRY.

13 THE COURT: TAKE YOUR TIME.

14 MS. BURKE: FIRST BEING THAT THE VICTIM'S STATEMENT
15 DOES NOT HAVE TO BE CORROBORATED BY ANYONE ELSE, WHICH IS
16 UNDER 16-3-652.

17 AND THAT THE SECOND WOULD BE THAT CONSENT IS NOT A
18 DEFENSE.

19 AND THAT VOLUNTARY INTOXICATION AS WELL, THAT CHARGE.

20 THE COURT: ANYTHING FURTHER?

21 MS. BURKE: NO, THAT'S IT. THANK YOU.

22 THE COURT: MR. MACLOSKIE, ANY OBJECTION?

23 MR. MACLOSKIE: YOUR HONOR, PLEASE, I DON'T HAVE ANY
24 OBJECTIONS TO THOSE REQUESTS. AND IF YOU'D ALLOW ME JUST
25 TO LOOK AT THE CHARGES IN LIGHT OF THE EVIDENCE TONIGHT. I

1 DON'T BELIEVE I'M GOING TO HAVE ANYTHING BUT IF YOU WOULD
2 JUST GIVE ME THAT LIBERTY, I WOULD APPRECIATE IT. I JUST
3 DON'T BELIEVE I HAVE ANYTHING THAT'S GOING TO VARY FROM
4 YOUR STANDARD CHARGES IN A CASE OF THIS NATURE.

5 THE COURT: I'M JUST GOING TO GO THROUGH FOR YOU ALL
6 WHAT I TYPICALLY CHARGE, JUST SO YOU ALL CAN ANTICIPATE IT.

7 I, OBVIOUSLY, TELL THEM THAT THE INDICTMENT IS NOT
8 EVIDENCE. AND THERE IS A PRESUMPTION OF INNOCENCE.

9 I EXPLAIN TO THEM THAT THE STANDARD IS REASONABLE
10 DOUBT.

11 I EXPLAIN TO THE JURY THE DUTIES OF THE JURY AND THEIR
12 DUTY IS TO FIND THE FACTS AND I'M THE JUDGE OF THE LAW.

13 I EXPLAIN TO THEM DIRECT AND CIRCUMSTANTIAL EVIDENCE
14 AND THE DIFFERENCE.

15 I EXPLAIN TO THEM WHAT EXPERT WITNESSES OR EXPERT
16 TESTIMONY IS.

17 I TALK ABOUT THE CREDIBILITY OF WITNESSES AND HOW IT'S
18 TO BE WEIGHED.

19 I ALSO WILL INSTRUCT THEM THE FACT THAT THE DEFENDANT
20 DID NOT TESTIFY CANNOT BE CONSIDERED BY THEM IN THEIR
21 DELIBERATION.

22 I WILL CHARGE THEM THE ELEMENTS, OBVIOUSLY, OF SECOND
23 DEGREE CSC WITH A MINOR.

24 AND AS OF RIGHT NOW, UNLESS I FIND SOMETHING IS A
25 PROBLEM, WHICH I DON'T THINK I DO, I'M GOING TO CHARGE

1 16-3-372.

2 I ALSO CHARGE THAT CONSENT IS NOT A DEFENSE BECAUSE AS
3 WE ALL KNOW A 13 YEAR OLD CHILD CANNOT CONSENT.

4 AND ALSO THAT VOLUNTARY INTOXICATION IS ALSO NOT A
5 DEFENSE.

6 ANYTHING FURTHER THAT YOU ALL CAN THINK OF?

7 MS. BURKE: I JUST WANT TO MAKE SURE. I'M SORRY.

8 16-3-372, THAT IS ---

9 THE COURT: I'M NOT SURE. THAT'S THE NUMBER YOU
10 QUOTED. I'M NOT SURE THAT IS THE EXACT NUMBER THAT IS
11 CORRECT, BUT THAT'S WHAT YOU STATED.

12 MS. BURKE: OKAY. IF THAT WAS ---

13 THE COURT: I PULLED TITLE 16 LOOKING AT IT.

14 MS. BURKE: OKAY. IT WAS CORROBORATION. I SHOULD
15 HAVE SAID 16-3-652.

16 THE COURT: OKAY. WHATEVER IT IS, I'VE GOT YOU,
17 CORROBORATION IS NOT REQUIRED.

18 MS. BURKE: NOTHING ELSE FROM THE STATE. THANK YOU.

19 MR. MACLOSKIE: AND YOU'RE GOING TO DEFINE BATTERY,
20 SEXUAL BATTERY FOR THEM. IT'S NOT DEFINED IN THE STATUTE.

21 THE COURT: MY STANDARD CHARGE STATES THAT A SEXUAL
22 BATTERY IS SEXUAL INTERCOURSE, CUNNILINGUS, FELLATIO, ANAL
23 INTERCOURSE, OR ANY INTRUSION HOWEVER SLIGHT OF ANY PART OF
24 A PERSON'S BODY OR OF ANY OBJECT INTO THE GENITAL OR ANAL
25 OPENINGS OF ANOTHER PERSON'S BODY. IS THAT SUFFICIENT?

1 MR. MACLOSKIE: THAT'S SUFFICIENT.

2 MS. BURKE: THAT'S WHAT I SEE UNDER 16-3-651,

3 ABSOLUTELY.

4 THE COURT: OKAY. ANYTHING FURTHER FROM ANYONE?

5 MS. BURKE: NO, MA'AM. THANK YOU VERY MUCH.

6 THE COURT: ALL RIGHT. I TOLD THE JURY TO COME BACK

7 AT 10:00. IF WE COULD HAVE THE ATTORNEYS HERE BY ABOUT

8 9:30 OR 9:45 TOMORROW, I APPRECIATE IT.

9 GOOD NIGHT TO YOU ALL.

10 (COURT IS IN RECESS.)

11 (WEDNESDAY, OCTOBER 28, 2009.)

12 THE COURT: ALL RIGHT. MR. MACLOSKIE, OVER THE NIGHT

13 I THINK I GAVE YOU TIME TO LOOK AND SEE IF THERE WERE ANY

14 ADDITIONAL REQUEST TO CHARGE YOU HAD. IS THERE ANYTHING

15 FURTHER?

16 MR. MACLOSKIE: NOTHING FURTHER.

17 THE COURT: ALL RIGHT. SO THANK YOU.

18 I JUST WANTED TO GO OVER VERY BRIEFLY -- I TOLD YOU

19 WHAT MY TYPICAL CHARGE INCLUDES. WE TALKED ABOUT YOUR

20 REQUEST TO CHARGE, MS. BURKE. AND I JUST WANTED TO GO

21 THROUGH THEM AND JUST READ THEM. THEY ARE BRIEF. I THINK

22 WE HAVE CERTAINLY PLENTY OF TIME.

23 AS TO YOUR CORROBORATION REQUEST, I CHARGE YOU IT IS

24 THE LAW OF THIS STATE UNDER SECTION 16-3-657 THAT THE

25 TESTIMONY OF THE VICTIM IN CRIMINAL SEXUAL CONDUCT

1 PROSECUTIONS NEED NOT BE CORROBORATED BY OTHER TESTIMONY OR
2 EVIDENCE.

3 AS FAR AS CONSENT TO CRIMINAL SEXUAL CONDUCT, OF
4 COURSE, I DON'T SEE THE TITLE. THE DEFENDANT HAS RAISED AS
5 A POSSIBLE DEFENSE THAT THE VICTIM VOLUNTARILY CONSENTED TO
6 SEXUAL INTERCOURSE. THE DEFENSE OF CONSENT DOES NOT APPLY
7 TO A CHARGE OF CRIMINAL SEXUAL CONDUCT WITH A MINOR. A
8 MINOR CANNOT CONSENT TO A SEXUAL ACT.

9 MR. MACLOSKIE: YOUR HONOR, PLEASE. I WOULD JUST
10 RESPECTFULLY MOVE THAT YOU REMOVE THE FIRST SENTENCE.

11 THE COURT: OKAY.

12 MR. MACLOSKIE: WE HAVE NOT RAISED THAT DEFENSE.

13 THE COURT: THAT'S ABSOLUTELY. AND THAT'S WHY I PUT
14 THE WORD POSSIBLE, BECAUSE I AGREE WITH YOU. I THINK THAT
15 WAS SOMETHING THAT WAS PUT OUT THERE SOMEWHAT, BUT I DIDN'T
16 QUITE KNOW HOW TO -- THAT'S FINE. I WILL REMOVE IT.

17 SO IT'S JUST GOING TO SAY THE DEFENSE OF CONSENT DOES
18 NOT APPLY TO A CHARGE.

19 MR. MACLOSKIE: YES.

20 THE COURT: I'LL DO THAT, MR. MACLOSKIE. THANK YOU.

21 THEN, LASTLY, VOLUNTARY INTOXICATION IS NOT A DEFENSE
22 TO A CRIME. A PERSON WHO VOLUNTARILY BECOMES INTOXICATED
23 IS JUST AS RESPONSIBLE FOR THE ACTS COMMITTED WHILE
24 INTOXICATED AS WHEN THE PERSON IS NOT INTOXICATED. OKAY.

25 MR. MACLOSKIE: I DON'T OBJECT TO THAT.

1 THE COURT: OKAY. THANK YOU. ALL RIGHT.

2 MS. BURKE: NO OBJECTION, YOUR HONOR.

3 THE COURT: OTHER THAN THAT, I AM DOING JUST AS WE
4 SPOKE OF YESTERDAY WHEN I WENT OVER MY CHARGE WITH YOU ALL.
5 AND YOU BOTH HAVE HAD AN OPPORTUNITY TO SEE THE VERDICT
6 FORM. ERIN TELLS ME THAT SHE HAD THE INDICTMENT NUMBER NOT
7 CHANGED FROM THE LAST CASE, BUT SHE HAS CORRECTED THAT AS
8 WELL.

9 ANY OBJECTIONS TO THE VERDICT FORM? MR. MACLOSKIE?

10 MR. MACLOSKIE: NOT FROM THE DEFENSE.

11 THE COURT: FROM THE STATE?

12 MS. BURKE: NO, YOUR HONOR.

13 THE COURT: OKAY.

14 MS. BURKE: AS I WAS LOOKING OVER THE STATUTE LAST
15 NIGHT -- AND I DON'T THINK YOU HAVE -- I JUST WANT TO
16 CLARIFY PERHAPS MY MISUNDERSTANDING. WE ARE CHARGING UNDER
17 16-3-655, CRIMINAL SEXUAL CONDUCT WITH A MINOR SECOND
18 DEGREE (B) (1); IS THAT CORRECT?

19 THE COURT: YES.

20 MS. BURKE: OKAY. BECAUSE IT HAS A (B) (2) PART TALKS
21 ABOUT FAMILIAL RELATIONSHIP AND BEING AT LEAST 14 AND
22 UNDER, BUT UNDER 16. I JUST WANTED TO MAKE SURE IT WAS
23 LIMITED TO (B) (1). WHERE THE ACTOR ENGAGES IN SEXUAL
24 BATTERY WITH THE VICTIM WHO'S 14 YEARS OF AGE BUT AT LEAST
25 11.

1 THE COURT: RIGHT. LET ME LOOK VERY QUICKLY.

2 (PAUSE.)

3 THE COURT: SIMPLY THAT PORTION OF IT. I'VE GOT, THE
4 DEFENDANT IS CHARGED WITH SECOND DEGREE CRIMINAL SEXUAL
5 CONDUCT WITH A MINOR. THE STATE MUST PROVE BEYOND A
6 REASONABLE DOUBT THAT THE DEFENDANT ENGAGED IN SEXUAL
7 BATTERY WITH THE VICTIM. THE SEXUAL BATTERY IS SEXUAL
8 INTERCOURSE, CUNNILINGUS, FELLATIO, ANAL INTERCOURSE, OR
9 ANY INTRUSION HOWEVER SLIGHT OF ANY PART OF A PERSON'S BODY
10 OR OF ANY OBJECT INTO THE GENITAL OR ANAL OPENINGS OF
11 ANOTHER PERSON'S BODY EXCEPT WHERE THE INTRUSION IS
12 ACCOMPLISHED FOR MEDICALLY RECOGNIZED TREATMENT OR
13 DIAGNOSTIC PURPOSES.

14 THE STATE MUST THEN PROVE BEYOND A REASONABLE DOUBT
15 THAT THE VICTIM WAS AT LEAST 11 YEARS OLD BUT NOT MORE THAN
16 14 YEARS OLD AT THE TIME OF THE SEXUAL BATTERY.

17 MS. BURKE: THAT'S WHAT I UNDERSTAND.

18 THE COURT: THAT'S THE TOTAL OF IT. OKAY?

19 MS. BURKE: YES.

20 MR. MACLOSKIE: WITHOUT OBJECTION.

21 THE COURT: OKAY. ANYTHING FURTHER FROM ANYONE?

22 MS. BURKE: YOUR HONOR, IF I COULD HAVE 5 MINUTES. MY
23 VICTIM IS RUNNING A LITTLE BIT LATE.

24 THE COURT: SURE.

25 MS. BURKE: THEY'RE HERE.

1 MR. MACLOSKIE: IN THE MEAN WHILE, I JUST NEED TO
2 BRING SOMETHING TO THE COURT'S ATTENTION.

3 IN THIS MORNING'S GAZETTE THERE IS A FRONT PAGE
4 ARTICLE ABOUT THIS TRIAL. I HAVE READ THAT ARTICLE. AND
5 WITH FEW EXCEPTIONS, THE ARTICLE IS ACCURATE; THAT IS IT
6 ACCURATELY REFLECTS WHAT HAPPENED YESTERDAY AT TRIAL.

7 BUT IN LIGHT OF YOUR ADMONISHMENT TO THE JURY, I BRING
8 THIS TO YOUR ATTENTION BECAUSE I DON'T KNOW IF QUESTIONING
9 THE JURORS ABOUT READING SOMETHING OF THIS. I DON'T THINK
10 IT WOULD HAVE ANY EFFECT, BUT THAT'S NOT FOR ME TO JUDGE,
11 THAT'S FOR YOU.

12 THE COURT: MR. MACLOSKIE, I WILL TELL YOU THAT THAT
13 SAME ARTICLE RAN IN THE ISLAND PACKET. I READ IT THIS
14 MORNING JUST AS YOU DID. THE ONLY THING THAT I SAW IN
15 THERE THAT WAS IN ADDITION OTHER THAN WHAT HAS COME OUT AS
16 EVIDENCE IN THIS CASE THAT I SAW WAS AN ALLEGED INTERVIEW
17 WITH THE MOTHER.

18 MR. MACLOSKIE: EXACTLY.

19 THE COURT: AND IN THAT WHAT I SAW WAS THAT THE MOTHER
20 HAD STATED THAT SHE'S THE ONE THAT HAD TOLD THE SON --
21 BECAUSE HIS GRADES WERE GOING BAD AND HE WASN'T DOING WELL
22 IN SCHOOL TO GO SPEAK WITH A COUNSELOR -- THE GUIDANCE
23 COUNSELOR AT SCHOOL OR -- I DON'T KNOW IF IT WAS AN
24 ACADEMIC COUNSELOR, GUIDANCE COUNSELOR, BUT IT WAS
25 SOMETHING TO THAT EFFECT. THAT WAS THE ONLY THING THAT I

1 SAW IN THAT ARTICLE OTHER THAN SAYING THAT THE POSSIBLE
2 SENTENCE IS UP TO 25 YEARS. THOSE TWO THINGS IS WHAT I
3 KNOW THAT THE JURY DIDN'T HEAR IN THE TRIAL OF THIS CASE.

4 MR. MACLOSKIE, I WILL LEAVE IT UP TO YOU. IF YOU
5 WOULD LIKE ME TO QUESTION THEM, I CERTAINLY WILL IF ANY OF
6 THEM HAVE READ THE ARTICLE. AND THEN AT THAT POINT I CAN
7 CERTAINLY OUTSIDE OF -- I WON'T DO THEM ALL TOGETHER. BUT
8 IF ANYONE SAYS THEY IN FACT DID READ THE ARTICLE AGAINST MY
9 ORDER NOT TO, I CAN CERTAINLY BRING THEM IN AND
10 INDIVIDUALLY QUESTION THEM. WE CERTAINLY -- WE HAVE TWO
11 ALTERNATES, SO, YOU KNOW, IF NECESSARY WE COULD SEAT THE
12 ALTERNATES.

13 MR. MACLOSKIE: OUT OF AN ABUNDANCE OF CAUTION, I
14 WOULD REQUEST YOU DO THAT.

15 THE COURT: OKAY. ALL RIGHT, SIR. I WILL DO THAT AND
16 I APPRECIATE IT.

17 BAILIFF: THE JURY IS ALL HERE.

18 THE COURT: THE JURY IS ALL HERE. I SEE THAT YOU ARE
19 WAITING FOR YOUR CLIENT. MS. BURKE, ARE WE READY TO GO?

20 MS. BURKE: WE ARE. I'M GOING TO HAVE Victim SIT WITH
21 ME AT THE TABLE WITH ME NOW.

22 THE COURT: OKAY.

23 MR. MACLOSKIE: JUST SO THERE'S NO -- I'M GOING TO
24 REQUIRE THE STATE TO OPEN.

25 THE COURT: IN FULL?

1 MR. MACLOSKIE: IN FULL.
2 THE COURT: ALL RIGHT. MS. BURKE, YOU ALL HAVE TALKED
3 ABOUT THAT?
4 MS. BURKE: WE HAVE NOT TALKED ABOUT IT, YOUR HONOR.
5 THE COURT: YOU NEED TO OPEN IN FULL. OKAY?
6 MS. BURKE: EVERY TRIAL I HAVE DONE WITH MIKE, WE
7 HAVE.
8 THE COURT: VERY GOOD.
9 MS. BURKE: I EXPECTED IT.
10 THE COURT: OKAY. ALL RIGHT. WITH THAT SAID, MR.
11 MACLOSKIE, ARE YOU READY?
12 MR. MACLOSKIE: READY, THANK YOU.
13 THE COURT: ALL RIGHT. MS. BURKE, ARE YOU READY?
14 MS. BURKE: YES.
15 THE COURT: BRING THE JURY.
16 (THE JURY RETURNS TO THE COURTROOM AT 10:12 A.M.)
17 BAILIFF: YOUR HONOR, THE JURY IS SEATED.
18 THE COURT: THANK YOU.
19 GOOD MORNING, LADIES AND GENTLEMEN OF THE JURY.
20 JURORS: GOOD MORNING.
21 THE COURT: LADIES AND GENTLEMEN, BEFORE WE BEGIN THIS
22 MORNING, IT'S MY UNDERSTANDING THAT THERE WAS A NEWSPAPER
23 ARTICLE WHICH, OF COURSE, I'VE READ IN BOTH THE ISLAND
24 PACKET AND THE BEAUFORT GAZETTE THIS MORNING CONCERNING THE
25 TRIAL OF THIS CASE. I NEED TO INQUIRE IF ANY JUROR IN FACT

1 READ THAT ARTICLE? DID ANYONE?

2 MS. MUSTARD: I SAW IT, BUT I DID NOT READ IT.

3 THE COURT: OKAY. MA'AM, WOULD YOU GIVE ME AGAIN YOUR

4 NAME AND JUROR NUMBER?

5 MS. MUSTARD: JOAN MUSTARD, 191.

6 THE COURT: OKAY. MA'AM, SO WHAT DID YOU IN FACT SEE?

7 JUST THE HEADLINE OR ---

8 MS. MUSTARD: THE HEADLINE AND THE PHOTOGRAPH.

9 THE COURT: OKAY. AND YOU DID NOT READ THE ARTICLE?

10 MS. MUSTARD: NO, MA'AM.

11 THE COURT: CORRECT? ALL RIGHT. THANK YOU.

12 MR. CLARK: I SAW THE ARTICLE AS WELL. I SAW THE

13 PICTURE AND JUST THE NAME UNDERNEATH THE PICTURE AND THAT

14 WAS IT.

15 THE COURT: OKAY. AND YOU'RE MR. CLARK; IS THAT

16 CORRECT?

17 MR. CLARK: THAT'S CORRECT.

18 THE COURT: THANK YOU, SIR.

19 I WANT TO MAKE SURE, OBVIOUSLY, NOT SEEING -- OR

20 HAVING SEEN EVEN JUST THE HEADLINE OR THE PICTURE, THAT

21 DOES NOT AFFECT YOUR ABILITY, DOES IT, TO BE FAIR AND

22 IMPARTIAL AS JURORS IN THIS CASE? MS. MUSTARD?

23 MS. MUSTARD: NO, MA'AM.

24 THE COURT: MR. CLARK?

25 MR. CLARK: NO, MA'AM.

1 THE COURT: OKAY. AGAIN, I HAVE TOLD YOU ALL ALONG,
2 YOU HAVE EVERYTHING YOU NEED TO DETERMINE THIS CASE RIGHT
3 HERE IN THIS COURTROOM, AND YOU ARE ONLY TO ALLOW WHAT YOU
4 LEARNED IN THIS COURTROOM TO MAKE YOUR DECISION. DO YOU
5 UNDERSTAND THAT, MS. MUSTARD?

6 MS. MUSTARD: YES, MA'AM.

7 THE COURT: MR. CLARK, AS WELL?

8 MR. CLARK: YES, MA'AM.

9 THE COURT: ALL RIGHT. WOULD YOU LIKE ANY FURTHER
10 INQUIRY FROM THE JURY PANEL, MS. BURKE?

11 MS. BURKE: NO, YOUR HONOR. THE STATE IS VERY
12 SATISFIED.

13 THE COURT: MR. MACLOSKIE?

14 MR. MACLOSKIE: LIKEWISE, THE DEFENSE IS SATISFIED.

15 THE COURT: THANK YOU. ALL RIGHT.

16 AT THIS TIME, LADIES AND GENTLEMEN, WHAT WE ARE GOING
17 TO DO IS HEAR THE CLOSING ARGUMENTS FROM THE ATTORNEYS,
18 THEN I'M GOING TO GIVE MY CHARGE ON THE LAW. AND THEN
19 WE'RE GOING TO SEND THE CASE TO YOU.

20 I WILL TELL YOU THAT BECAUSE THE STATE CARRIES THE
21 BURDEN OF PROOF, MS. BURKE WILL OPEN. MR. MACLOSKIE WILL
22 RESPOND. AND THEN MS. BURKE WILL BE ALLOWED A BRIEF
23 RESPONSE AS WELL. ALL RIGHT? SO WITH THAT SAID, IF YOU
24 WILL GIVE MS. BURKE YOUR ATTENTION.

25 MS. BURKE: THANK YOU, YOUR HONOR.

1 I ALSO WANTED TO JUST KIND OF TALK ABOUT PERHAPS WHAT
2 YOU SAW AND MAYBE SOME STRANGE PAUSES DURING THE TRIAL.
3 THAT WASN'T TO KEEP ANYTHING FROM YOU ALL OR ANYTHING LIKE
4 THAT.

5 AGAIN, THERE ARE RULES AND REGULATIONS THAT WE HAVE TO
6 FOLLOW. AND SOME TIMES WE HAVE TO ASK THAT YOU STEP OUT SO
7 THAT WE CAN MAKE SURE WHAT WE'RE DOING IS IN LINE WITH
8 THAT, OR WE HAVE TO GO TO THE SIDE AND SPEAK.

9 YOU MAY HAVE NOTICED THAT BEFORE victim WAS ABLE TO
10 SPEAK, THAT YOU HAD TO LEAVE THE ROOM. AND THAT WAS JUST
11 SO THAT THE JUDGE COULD ASK HIM SOME QUESTIONS TO MAKE SURE
12 THAT HE AS A CHILD WAS COMPETENT TO TALK TO YOU.

13 THE SAME FOR THE EXPERT WITNESS. YOU ALL WERE EXCUSED
14 BEFORE SHE GOT TO SPEAK. AND, AGAIN, THAT WAS TO QUALIFY
15 HER TO MAKE SURE THAT HER TESTIMONY WAS RIGHT OR WAS PRIME
16 TO BE HEARD BY YOU.

17 SO THINGS LIKE THAT ARE NATURAL PAUSES, BUT IT -- IT
18 -- IT SERVED A PURPOSE.

19 BEFORE I ALSO TALK ABOUT THE LAW, I WANTED TO ALSO
20 MENTION THAT -- AND THE JUDGE WILL TELL YOU, TOO. YOU
21 KNOW, SHE SAID WHEN WE TALKED ABOUT OPENING ARGUMENTS,
22 THESE ARE MY OPINIONS -- THE OPINION OF MYSELF AND MR.
23 MACLOSKIE. NOTHING THAT WE SAY TO YOU IS EVIDENCE.
24 EVIDENCE IS WHAT WAS ENTERED -- AND YOU HAVE THAT TO SEE
25 AND TO REVIEW.

1 I ALSO WANTED TO JUST KIND OF TALK ABOUT PERHAPS WHAT
2 YOU SAW AND MAYBE SOME STRANGE PAUSES DURING THE TRIAL.
3 THAT WASN'T TO KEEP ANYTHING FROM YOU ALL OR ANYTHING LIKE
4 THAT.

5 AGAIN, THERE ARE RULES AND REGULATIONS THAT WE HAVE TO
6 FOLLOW. AND SOME TIMES WE HAVE TO ASK THAT YOU STEP OUT SO
7 THAT WE CAN MAKE SURE WHAT WE'RE DOING IS IN LINE WITH
8 THAT, OR WE HAVE TO GO TO THE SIDE AND SPEAK.

9 YOU MAY HAVE NOTICED THAT BEFORE Victim WAS ABLE TO
10 SPEAK, THAT YOU HAD TO LEAVE THE ROOM. AND THAT WAS JUST
11 SO THAT THE JUDGE COULD ASK HIM SOME QUESTIONS TO MAKE SURE
12 THAT HE AS A CHILD WAS COMPETENT TO TALK TO YOU.

13 THE SAME FOR THE EXPERT WITNESS. YOU ALL WERE EXCUSED
14 BEFORE SHE GOT TO SPEAK. AND, AGAIN, THAT WAS TO QUALIFY
15 HER TO MAKE SURE THAT HER TESTIMONY WAS RIGHT OR WAS PRIME
16 TO BE HEARD BY YOU.

17 SO THINGS LIKE THAT ARE NATURAL PAUSES, BUT IT -- IT
18 -- IT SERVED A PURPOSE.

19 BEFORE I ALSO TALK ABOUT THE LAW, I WANTED TO ALSO
20 MENTION THAT -- AND THE JUDGE WILL TELL YOU, TOO. YOU
21 KNOW, SHE SAID WHEN WE TALKED ABOUT OPENING ARGUMENTS,
22 THESE ARE MY OPINIONS -- THE OPINION OF MYSELF AND MR.
23 MACLOSKIE. NOTHING THAT WE SAY TO YOU IS EVIDENCE.
24 EVIDENCE IS WHAT WAS ENTERED -- AND YOU HAVE THAT TO SEE
25 AND TO REVIEW.

1 ANY STATEMENT THAT I MAKE TO YOU THAT DOES NOT JIBE
2 WITH WHAT YOU RECALL, I ASK YOU TO RELY ON YOUR
3 RECOLLECTION OF THE FACTS. CERTAINLY, THE COURT REPORTER
4 IS HERE. I THINK MIKE AND I BOTH AGREE ON THAT, THAT WE
5 CERTAINLY DON'T REMEMBER EVERYTHING WORD FOR WORD. SO RELY
6 ON YOUR RECOLLECTION OF FACTS. AND ANYTHING I SAY THAT MAY
7 HAVE BEEN MISPLACED, I MEAN -- I DON'T MEAN TO -- TO -- TO
8 SAY THE WRONG THING.

9 SO THE DEFENDANT IS CHARGED WITH CRIMINAL SEXUAL
10 CONDUCT WITH A MINOR SECOND DEGREE. THE REASON IT'S SECOND
11 DEGREE IS BECAUSE OF THE AGE. IF Victim WAS A DIFFERENT
12 AGE, OLDER THAN A CERTAIN AGE OR YOUNGER THAN 11 YEARS OLD
13 FOR EXAMPLE, THAT WOULD BE A DIFFERENT DEGREE.

14 SO BECAUSE OF HIS AGE, BECAUSE HE IS 14 BUT AT LEAST
15 11, THAT'S WHY IT'S SECOND DEGREE. OKAY. THAT'S ALL THAT
16 REALLY MEANS.

17 BUT WHAT IS CRIMINAL SEXUAL CONDUCT WITH A MINOR
18 SECOND DEGREE? THE LAW SAYS THAT IT IS ILLEGAL AND IS
19 AGAINST THE LAW FOR ANYONE, AN ADULT, TO ENGAGE IN A SEXUAL
20 BATTERY WITH A CHILD. AND I'LL TELL YOU THAT LAWS
21 SOMETIMES ARE RATHER COMPLEX IN HOW THEY'RE WRITTEN. IT
22 TAKES A LOT OF TIME TO COMB THROUGH IT, TO FIGURE OUT
23 WHAT'S REALLY GOING ON.

24 BUT THE PROVISIONS DEALING WITH SEX ASSAULT CASES WITH
25 KIDS, THEY SEEM PRETTY STRAIGHT FORWARD. WHAT I'VE JUST

1 READ TO YOU IS THE MEAT AND POTATO OF IT. AND I THINK THAT
2 GOES BACK TO WHAT I WAS TALKING ABOUT IN THE MORNING IN
3 OPENING ARGUMENTS ON -- ON -- ON MONDAY (SIC), THAT
4 CHILDREN HAVE EXTRA PROTECTION UNDER THE LAW. AND SO
5 THAT'S WHY I THINK ONE REASON WHY WE HAVE THIS PRETTY
6 STRAIGHT FORWARD DEFINITION.

7 NOW, THE LAW ALSO DEFINES WHAT A SEXUAL BATTERY IS.
8 AND IT SAYS THAT IT INCLUDES ANAL, VAGINAL, OR ORAL
9 INTERCOURSE WITH THE VICTIM.

10 IT ALSO TALKS ABOUT INTRUSION EVER SO SLIGHTLY INTO
11 THE GENITAL OR VAGINAL OPENING OF THE VICTIM.

12 BUT IN THIS CASE THE FACTS WE ARE TALKING ABOUT, THE
13 ORAL AND THE SEXUAL INTERCOURSE.

14 THAT IN A NUTSHELL IS WHAT CRIMINAL SEXUAL CONDUCT
15 WITH A MINOR IS ALL ABOUT. AGAIN, VERY STRAIGHT FORWARD.

16 AS THE STATE, I HAVE THE BURDEN OF PROOF. I HAVE TO
17 PROVE TO YOU BEYOND A REASONABLE DOUBT THAT MRS. TAPPEINER
18 IS GUILTY AS CHARGED. I WANT YOU TO HOLD ON TO THE WORD
19 REASONABLE. DON'T TAKE IT FOR GRANTED.

20 THE MAKERS OF OUR LAWS, I THINK THAT THEY'RE HUMAN.
21 THEY TOO REALIZE THAT IT'S VERY HARD FOR US AS THINKING
22 HUMAN BEINGS TO ERASE OURSELVES OF ALL DOUBT. I DON'T KNOW
23 OF ANYTHING IN LIFE THAT I'VE EVER SAID -- I MAY HAVE SAID
24 IT, BUT THEN YOU ALWAYS HAVE THAT, WELL, MAYBE.

25 SO THE LAW DOES NOT SAY BEYOND ALL DOUBT. I WANT YOU

1 ALL TO REMEMBER THAT WHEN YOU GO IN YOUR DELIBERATION ROOM
2 AND LOOK OVER THE EVIDENCE AND THINK ABOUT THE TESTIMONY.
3 WE TALK ABOUT REASONABLE -- REASONABLE DOUBT.
4 NEVERTHELESS, THAT'S THE BURDEN THAT I HAVE, TO PROVE TO
5 YOU.

6 THE DEFENDANT HAS NO RESPONSIBILITY HERE TODAY. SHE
7 DOES NOT HAVE TO PUT FORTH OR HER ATTORNEY ON HER BEHALF --
8 ANY EVIDENCE. TO THE EXTENT THAT THEY DO SO, IT DOES NOT
9 MEAN THAT THE BURDEN SHIFTS TO THEM. IT'S STILL MY
10 RESPONSIBILITY. BUT, CERTAINLY, ANY EVIDENCE THAT THEY PUT
11 FORWARD WILL BE FOR YOUR CONSIDERATION.

12 THAT'S ALL I'M GOING TO SAY FOR NOW ABOUT THE LAW.
13 I'M GOING TO ALLOW MR. MACLOSKIE TO TALK TO YOU. AND THEN
14 I'LL COME BACK AGAIN, AND WE'LL HAVE A STRAIGHT TALK ABOUT
15 THE FACTS OF THE CASE, AND THE FACE TO FACE, AND THE EYE TO
16 EYE DISCUSSIONS THAT YOU HEARD DURING THE TRIAL.

17 THANK YOU.

18 MR. MACLOSKIE: MAY IT PLEASE THE COURT, MS. BURKE.

19 THE COURT: YES, SIR.

20 CLOSING ARGUMENTS BY MR. MACLOSKIE ON BEHALF OF THE
21 DEFENDANT:

22 GOOD MORNING, JURORS. NORMALLY I DON'T DO THIS FROM
23 NOTES. BUT IF YOU WILL PERMIT ME -- AND IT'S GOING TO BE A
24 LITTLE AWKWARD FOR ME, ANYWAY, TO DO IT FROM NOTES. I
25 THINK IT WILL GO FASTER AND MAYBE MAKE A LITTLE MORE SENSE.

1 FIRST OF ALL, I'VE GOT TO TELL YOU THIS. AND I DON'T
2 MEAN FOR YOU TO ANSWER THIS. I JUST NEED YOU TO THINK
3 ABOUT IT.

4 DO YOU REMEMBER SOME TIME IN YOUR YOUNG LIFE ASKING
5 YOUR MOTHER AND FATHER TO SPEND THE NIGHT OR DO SOMETHING
6 WITH SOMEONE AND THEY TOLD YOU NO AND YOU ASKED THEM WHY
7 NOT? DO YOU REMEMBER THE RESPONSE YOU GOT?

8 BECAUSE I SAID SO.

9 IT'S MY EXPERIENCE THAT THAT ANSWER TO THAT QUESTION
10 THAT BEGINS WITH THE WORD, WHY, IS A PRETTY GOOD EXAMPLE OF
11 THE ANSWER WE GET WHEN WE ASK ANY QUESTION THAT BEGINS WITH
12 THE WORD WHY.

13 SO, EVEN THOUGH MOTIVE CAN BE VERY IMPORTANT IN
14 CERTAIN CASES, I WOULD URGE YOU NOT TO SPEND TOO MUCH TIME
15 ON THE WHYS OF THIS AND CONCENTRATE MORE ON THE WHAT OF IT.
16 WHAT HAPPENED? THAT WAY YOU GET TO THE SOLUTION, I THINK,
17 A LOT QUICKER.

18 AND IN ORDER TO AID YOU -- AND, I LIKE MS. BURKE WOULD
19 TELL YOU, THAT MY RECOLLECTION OF THE FACTS IS REALLY NOT
20 IMPORTANT. YOUR RECOLLECTION IS. THIS IS AN EXERCISE THAT
21 DEMANDS UNDER YOUR OATH ALL OF YOU TO TAKE PLACE IN IT.

22 WHAT I WOULD LIKE TO DO IS SPEND A FEW MOMENTS JUST
23 GOING OVER WHAT I RECALL -- NO OPINIONS, A RECOLLECTION OF
24 WHAT I RECALL HAPPENED YESTERDAY IN THIS TRIAL.

25 FIRST OF ALL, LET'S CONCENTRATE ON THE SETTING OF

1 THIS. WE'RE IN A MODEST -- MODESTLY SIZED TWO-STORY HOME
2 IN BLUFFTON. THERE ARE 5 CHILDREN PRESENT. 2 OF THEM ARE
3 Victim's SISTERS. 1 OF THEM IS A FRIEND OF ONE OF JOSH'S
4 SISTER. AND 2 OF THEM ARE THE TAPPEINER CHILDREN. SUSAN
5 IS THERE. HER HUSBAND, MIKE, IS THERE. IN ADDITION TO
6 THAT, THERE ARE 2 DOGS IN THIS HOUSE.

7 IN THAT SETTING Victim DESCRIBED AN EVENT THAT IS
8 CHARACTERIZED I BELIEVE ACCURATELY AS FOLLOWS: HE WAS
9 SCARED. HE WAS BEATEN ON THE HEAD. HE WAS PULLED UPSTAIRS
10 BY HIS ARM. HE YELLED FOR HIS SISTER. HE YELLED FOR MIKE.
11 HE HAS AN ERECTION TO THE POINT OF EJACULATION.

12 BY THE WAY, I DON'T HAVE TO REMIND YOU, BUT I AM.
13 THERE'S NO SCIENTIFIC EVIDENCE HERE. THERE'S NO SEMEN.
14 THERE'S NO DNA.

15 WE HAVE THE TWO PIECES OF CLOTHING HE SAYS SUSAN WAS
16 WEARING WHEN THIS THING WAS SUPPOSED TO HAVE HAPPENED.

17 YOU'VE HEARD TESTIMONY FROM HER HUSBAND THAT SHE NEVER
18 WEARS THE PANTIES, THEY'RE FOR SHOW ONLY. SHE NEVER WEARS
19 THEM IN FRONT OF THE CHILDREN. THE DRESS SHE WEARS IS AN
20 OLD DRESS, A MATERNITY DRESS.

21 THEN THE QUESTION BECOMES: HOW IN THE WORLD COULD
22 Victim BECOME AWARE OF THOSE ITEMS?

23 AND PLEASE REMEMBER MIKE'S TESTIMONY ABOUT THE ACCESS
24 THAT Victim AND HIS SISTERS HAD TO THIS HOME. THEY WERE
25 COMING IN THIS HOME ACCORDING TO MIKE FREELY, WANDERING

1 ABOUT, TO THE POINT WHERE IT WAS STOPPED AND ONE OF
2 victim's SISTERS WHO WAS HIRED TO BABYSIT THE CHILDREN FROM
3 THE TIME THEY GOT HOME FROM SCHOOL UNTIL THE TIME SUSAN GOT
4 HOME FROM WORK WAS FIRED.

5 THAT EVENT DOESN'T HAVE A TIME FRAME, BUT WE CAN PUT
6 IT CERTAINLY SOMEWHERE BETWEEN WHEN HE CLAIMS THIS THING
7 HAPPENED AND WHEN HE REPORTED IT.

8 AND LET'S TALK ABOUT THAT REPORTING THING. YOU KNOW,
9 IT WAS REPORTED -- THIS EVENT WAS SUPPOSED TO HAVE TAKEN
10 PLACE ACCORDING TO WHAT MR. GONZALES WAS TOLD BY CHRIS' --
11 Victim's MOTHER ON THE 15TH OF AUGUST. IT WASN'T REPORTED
12 UNTIL THE 23RD.

13 NOW, ONE OF THE THINGS THAT THE STATE DID WAS THEY
14 BROUGHT IN MS. HEFNER FROM HOPE HAVEN. DO YOU REMEMBER
15 HER? AND SHE WENT ON AT SOME DEGREE OF LENGTH TO EXPLAIN
16 THIS LATE REPORTING.

17 WHAT WAS KIND OF UNUSUAL TO ME IS THE GENERAL TERMS OF
18 HER TESTIMONY, BASED ON STUDIES, STUDIES THAT MAYBE SHE
19 DIDN'T EVEN TAKE PART IN. I DON'T KNOW.

20 BUT WHAT WAS STRIKING TO ME WAS THERE WAS NO TALK
21 ABOUT ANY OF THESE SYMPTOMS IN victim AT ALL, NONE. NOT A
22 ONE. ALL OF IT WAS GENERAL. THAT IS, I GUESS,
23 HYPOTHETICALS, THOSE WERE THE QUESTIONS SHE WAS ASKED. AND
24 TO THOSE HYPOTHETICAL QUESTIONS, SHE GAVE NO INFORMATION
25 THAT WAS REALLY SPECIFICALLY RELATED TO victim AS I RECALL.

1 REMEMBER WHAT MIKE SAID ABOUT THAT EVENING TOO, THAT
2 HE WAS THERE, THE CHILDREN WERE THERE, AND THEY WATCHED
3 MOVIES UNTIL LATE. SUSAN HAD ENOUGH TO DRINK TO WHERE SHE
4 DIDN'T REMEMBER WHAT WAS GOING ON. HE TOOK HER UPSTAIRS.
5 THEY WENT TO BED.

6 THE BEDROOM IN WHICH THIS THING WAS SUPPOSED TO HAVE
7 OCCURRED ACCORDING TO Victim IS RIGHT ACROSS THE HALL FROM
8 HIS BEDROOM. HE TESTIFIED THAT HE WOULD HAVE WAKED UP IF
9 SOMEBODY WAS YELLING. THE DOGS WOULD HAVE BARKED.

10 AND HE ALSO TESTIFIED THE NEXT MORNING SUSAN WAS STILL
11 IN THE BED WITH HIM. WENT DOWNSTAIRS. ALL THE CHILDREN
12 WERE STILL IN THE LIVING ROOM. THEY WOKE UP WHEN HE WENT
13 DOWNSTAIRS WHEN THEY HEARD HIM IN THE KITCHEN. CAME IN AND
14 ATE BREAKFAST, AND THAT INCLUDED Victim.

15 HOW DO YOU -- HOW DO YOU COMPUTE ALL THAT? IF WHAT HE
16 SAID REALLY HAPPENED, HOW DO YOU DO THAT?

17 Victim SAID ALSO THAT HE TRIED TO GET AWAY. AND I'M
18 CURIOUS AS TO WHY THAT COULDN'T OCCUR. I DON'T KNOW ABOUT
19 YOU, BUT I CAN'T BE CONVINCED THAT SOMEONE THE SIZE OF
20 Victim A BOY, AN ACTIVE BOY WITH NO HEALTH PROBLEMS, A
21 HIKER, COULDN'T FIND SOME WAY TO GET OUT OF -- PARTICULARLY
22 WHEN SUSAN DISAPPEARS AFTER THIS EVENT STARTS AS HE SAYS
23 AND GOES IN THE KITCHEN FOR 5 MINUTES. I CAN'T -- I CAN'T
24 PUT THOSE THINGS TOGETHER. AND I DON'T BELIEVE YOU CAN
25 EITHER.

1 NO ONE HEARD -- NO ONE HEARD ANYTHING, NOT EVEN THE
2 DOGS. SO AGAIN, THE QUESTION IS: WHAT IF ANYTHING
3 HAPPENED?

4 NOW, I HOPE THAT WHAT I'VE TOLD YOU I RECALL ABOUT THE
5 FACTS IS ACCURATE.

6 NOW I NEED TO TALK TO YOU BRIEFLY ABOUT THE LAW. THE
7 LAW IS THAT SOMEONE ACCUSED OF CRIMINAL ACTIVITY IN THIS
8 STATE DOES NOT HAVE TO PROVE ANYTHING.

9 THE BURDEN OF PROOF IS ALWAYS ON THE PROSECUTION,
10 ALWAYS ON THE STATE OF SOUTH CAROLINA. AND THAT BURDEN
11 CONTINUES THROUGH OUR TRIAL.

12 THROUGHOUT THAT TRIAL SUSAN LIKE ANYONE ACCUSED OF
13 CRIMINAL ACTIVITY IN THIS STATE IS PRESUMED TO BE INNOCENT.
14 AND THE ONLY WAY SHE CAN BE DEPRIVED OF THAT PRESUMPTION IS
15 AT YOUR HANDS BY A FINDING OF NOT GUILTY -- OR A FINDING OF
16 GUILTY.

17 IF YOU FIND HER NOT GUILTY, OF COURSE, THE PRESUMPTION
18 CONTINUES.

19 WHAT IS A REASONABLE DOUBT, BECAUSE THAT'S THE BURDEN
20 OF PROOF. I BELIEVE THE JUDGE IS GOING TO INSTRUCT YOU
21 THAT REASONABLE DOUBT IS SIMPLY A REASON WHICH CAUSES ONE
22 TO HESITATE TO ACT.

23 ANOTHER DEFINITION SOME TIMES USED IS A DOUBT FOR
24 WHICH YOU CAN GIVE A REASON. I WOULD ASK YOU TO LOOK FOR
25 THAT. MY EXPERIENCE IS THAT PEOPLE GENERALLY FIND WHAT

1 THEY LOOK FOR. AND I WOULD SAY YOUR OATH REQUIRES YOU TO
2 LOOK FOR REASONABLE DOUBT.

3 AND IN THIS CASE IF YOU DO THAT, I THINK YOU WILL FIND
4 AN ABUNDANCE OF REASONABLE DOUBT.

5 ONE LAST THING, IF I LAID MY GLASSES -- AND I HOPE I
6 CAN STILL SEE TO PICK THEM UP -- ON THAT TABLE AND WALKED
7 AWAY FROM HERE, BECAUSE THOSE GLASSES ARE MY PROPERTY, EACH
8 ONE OF YOU I'M SURE WOULD RETURN MY GLASSES TO ME AT AN
9 APPROPRIATE TIME FRAME.

10 REASONABLE DOUBT IS SOMETHING THAT NOW IS THE PROPERTY
11 OF ONLY ONE PERSON IN THIS ENTIRE SETTING; AND THAT BELONGS
12 TO SUSAN TAPPEINER.

13 WHAT I'M ASKING YOU TO DO IS SERIOUSLY CONSIDER THE
14 FACTS, THE LAW THAT THE JUDGE IS GOING TO INSTRUCT YOU ON,
15 AND RETURN HER PROPERTY TO HER IN THE FORM OF A FINDING OF
16 NOT GUILTY.

17 THANK YOU VERY MUCH.

18 THE COURT: MS. BURKE.

19 MS. BURKE: THANK YOU, YOUR HONOR.

20 CLOSING ARGUMENTS BY MS. BURKE ON BEHALF OF THE STATE:

21 LADIES AND GENTLEMEN, THIS CASE COMES DOWN TO THE
22 BOTTOM LINE: DO YOU BELIEVE Victim? I'LL BE HONEST WITH
23 YOU, I CAN BRING A HUNDRED PEOPLE IN HERE. MR. MACLOSKIE,
24 ALTHOUGH HE HAS NO BURDEN, CAN BRING A HUNDRED PEOPLE IN
25 HERE. DO YOU BELIEVE Victim?

1 Victim LOOKED YOU IN THE EYE. EYE TO EYE. FACE TO
2 FACE. TOLD YOU WHAT HAPPENED. HE TOLD YOU HE WAS SCARED.
3 HE TOLD YOU AS HE WAS TRYING TO GET OUT HE DIDN'T
4 UNDERSTAND WHY IT WAS HAPPENING TO HIM. HE DESCRIBED THE
5 HOUSE, THE ROOM THAT HE WAS IN, THE GIRL'S BEDROOM THAT YOU
6 RECALL, THE TWO ROOMS THAT HE WAS IN.

7 HE TOLD YOU ABOUT THE ORAL SEX, THE VAGINAL SEX. DID
8 HE EJACULATE? WAS HE ERECTED? WAS HE ERECT? HE TOLD YOU
9 HE DIDN'T LIKE IT.

10 AT THE BEGINNING OF THE TRIAL YOU MIGHT REMEMBER ON
11 TUESDAY THAT MIKE MACLOSKIE -- AND, AGAIN, THAT WASN'T
12 EVIDENCE, THAT'S JUST HIM INTRODUCING HIMSELF TO YOU AND
13 TALKING TO YOU. BUT HE MENTIONED ABOUT YOU EITHER -- YOU
14 HAVE TWO CHOICES HE SAID -- AND I DON'T AGREE WITH HIM WITH
15 HOW HE WORDED THAT -- THAT STATEMENT. BUT HE SAID YOU HAD
16 TWO CHOICES. YOU BELIEVE IT HAPPENED. AND IF IT HAPPENED,
17 THEN WHO WAS THE AGGRESSOR; THAT'S WHAT I SPECIFICALLY
18 REMEMBERED.

19 NOW, HE CERTAINLY ISN'T BOUND BY EVERY SINGLE THING HE
20 SAID. OF COURSE, THE EVIDENCE IS WHAT YOU ARE BASING YOUR
21 DECISION ON.

22 IF IT HAPPENED, THEN WHO WAS THE AGGRESSOR? THAT'S
23 WRONG, BECAUSE IF IT HAPPENED AND IT DID, IT'S ILLEGAL.

24 THE POSITION I HEARD WAS THAT Victim WAS THE AGGRESSOR,
25 THAT IF YOU'RE YELLING, YOU MUST HAVE CONSENTED, RIGHT? OR

1 RATHER IF YOU'RE -- IF YOU DID AND NO ONE HEARD YOU
2 YELLING, THEN THAT MUST MEAN YOU CONSENTED. IF YOU
3 EJACULATED, THEN YOU MUST HAVE LIKED IT AND YOU WERE
4 INVOLVED IN IT. IF YOU HAD AN ERECTION, THEN YOU MUST HAVE
5 CONSENTED SOMEHOW. HOW DID YOUR BODY ALLOW YOU TO DO THIS?

6 WELL, OBVIOUSLY, WE KNOW THAT THE MIND THINKS ONE
7 THING AND THE BODY CAN DO SOMETHING ELSE. HE'S 13 YEARS
8 OLD.

9 I THINK -- I THINK THE DEFENDANT HAD SOME LEVEL OF
10 WILL OVER HIM IN HER EXPERIENCE AS A 42 YEAR OLD WOMAN.

11 BUT victim LOOKED YOU IN THE EYE. HE LOOKED A LOT OF
12 PEOPLE IN THE EYE. LET'S GO BACK. WHAT DID YOU HEAR TODAY
13 (SIC)?

14 THE FIRST PERSON YOU HEARD FROM WAS DEPUTY -- WAS
15 OFFICER CREASON AT BLUFFTON, THE SCHOOL RESOURCE OFFICER.
16 AND I INITIALLY OBJECT WHEN MIKE MACLOSIE WAS ASKING HIM
17 TO RECOUNT WHAT victim TOLD HIM. IT WASN'T BECAUSE I WAS
18 TRYING TO HIDE ANYTHING, I JUST WANTED YOU TO HEAR FROM
19 victim FIRST. I WANTED victim TO TELL YOU THE FULL STORY.
20 BUT IT DIDN'T MATTER, AND I PROBABLY SHOULDN'T HAVE
21 OBJECTED ANY WAY.

22 THE POINT IS, DEPUTY CREASON TOLD YOU WHAT victim TOLD
23 HIM. BUT WHAT'S IMPORTANT ABOUT DEPUTY CREASON'S
24 TESTIMONY, WHAT I WANT YOU TO HANG ON TO WHEN YOU GO BACK
25 TO DELIBERATE, IS HE WAS THE FIRST PERSON victim SPOKE TO.

1 AND WE -- WE -- WE HEARD FROM OUR EXPERT WHO TOLD US
2 ABOUT WHY KIDS DELAY REPORTING. 75 PERCENT, THAT'S A BIG
3 NUMBER. 75 PERCENT. AND THEN ABOUT 18 PERCENT REPORT
4 AFTER 5 YEARS OR MORE. THAT MAKES ME THINK BACK TO ALL OF
5 THOSE CASES I HEAR IN THE CHURCH AND OTHER PLACES WHERE
6 ADULTS REMEMBER THINGS WHEN THEY WERE KIDS. AND 20 YEARS
7 MIGHT GO BY AND THEY WANT VINDICATION STILL. THEY FINALLY
8 ARE ABLE TO EMPOWER THEMSELVES AND THEY STAND UP FOR
9 THEMSELVES.

10 Victim STOOD UP FOR HIMSELF. AND HE FINALLY BATTLED
11 HIS FEELINGS OF PERHAPS EMBARRASSMENT, SHAME, AFRAID -- WHO
12 KNOWS WHAT A 13 YEAR OLD BOY GOES THROUGH WHEN HIS FIRST
13 SEXUAL EXPERIENCE IS FORCED UPON HIM?

14 BUT WHAT DID HE DO? HE DIDN'T GO TO HIS BUDDIES AND
15 JOKED. HE WENT TO THE POLICE, DEPUTY CREASON WAS THE
16 SCHOOL RESOURCE OFFICER WHO TALKS TO THE KIDS ALL THE TIME
17 AND TELL THE KIDS, IF YOU GOT A PROBLEM, YOU CAN COME TO
18 ME. I'M THE LAW.

19 Victim WAS STANDING OUTSIDE OF HIS DOOR WAITING FOR
20 HIM, AND HE TOLD HIS STORY. FACE TO FACE. EYE TO EYE. HE
21 SAT DOWN WITH AN OFFICER AND HE TOLD HIM WHAT HAPPENED.

22 WHAT HAPPENED AFTER THAT? WELL, I KNOW IN YOUR COMMON
23 EXPERIENCE AND EVERYDAY LIVING YOU KNOW THAT LAW
24 ENFORCEMENT DON'T ALWAYS INVESTIGATE EVERY SINGLE COMPLAINT
25 THAT THEY GET. CAT'S IN A TREE OR SOMEONE STOLE MY PURSE.

1 SOMEONE STOLE MY GLASSES. I LEFT THEM BEHIND. THEY DON'T
2 -- THEY DON'T ALWAYS FIND THAT THERE IS ENOUGH THERE --
3 THERE TO INVESTIGATE.

4 DEPUTY CREASON -- I ASKED HIM POINT BLANK, YOU
5 REMEMBER. I SAID, DID YOU BELIEVE HIM? DID YOU BELIEVE
6 HIM?

7 HE SAID, YEAH. YES.

8 CALLED LIEUTENANT TUBBS. AND LIEUTENANT TUBBS
9 TESTIFIED LATER ON. AND THE REASON I BROUGHT HER IN -- AND
10 I'LL EXPLAIN IT LATER IN MORE DETAIL AS TO WHY I BROUGHT
11 THESE PARTICULAR PEOPLE IN. BUT I DIDN'T TALK A LOT ABOUT
12 HER TITLE, BUT LIEUTENANT IS A PRETTY HIGH RANKING OFFICIAL
13 IN A POLICE DEPARTMENT. I'M SURE YOUR EVERYDAY EXPERIENCE
14 WOULD LEAD YOU TO KNOW THAT.

15 AND SHE SAID SHE HAD OVER 25 YEARS -- MAYBE SHE SAID
16 29 YEARS. AND I'LL DEFER TO YOUR RECOLLECTION -- OF
17 EXPERIENCE. THIS IS NOT HER FIRST RODEO INTERVIEWING
18 SOMEBODY. SHE SAT DOWN WITH Victim FACE TO FACE, EYE TO
19 EYE. AS A MATTER OF FACT, CREASON SAID HE WAS IN THE ROOM
20 TOO -- DEPUTY CREASON. THEY'RE BOTH WITH HIM. FACE TO
21 FACE. EYE TO EYE. AGAIN, Victim TOLD THEM WHAT HAPPENED.
22 THIS IS THE SAME DAY.

23 LIEUTENANT TUBBS TOLD YOU THAT FROM THERE THE NEXT
24 ACTION WAS TO ASSIGN THE CASE TO AN INVESTIGATOR, ALSO TO
25 ARRANGE FOR J Victim TO BE INTERVIEWED BY SOME EXPERTS WHO DO

1 THESE THINGS ON A REGULAR BASIS WITH KIDS AT HOPE HAVEN.
2 THAT HAPPENED ON ABOUT MARCH (SIC) 27TH, 3 DAYS OR SO AFTER
3 Victim SPOKE TO DEPUTY CREASON.

4 SERGEANT GONZALES TELLS YOU THAT BEFORE Victim WENT IN
5 TO TALK TO THE FOLKS, THE EXPERTS AT THE RAPE CRISIS CENTER
6 AT HOPE HAVEN, HE TOO HAD A FACE TO FACE, EYE TO EYE WITH
7 HIM. THIS IS THE INVESTIGATOR, SERGEANT GONZALES.

8 AND THROUGH FURTHER QUESTIONING -- BECAUSE NOW THEY'RE
9 IN THE INVESTIGATIVE STAGE -- Victim IS ABLE TO TELL HIM
10 WHAT SHE WAS WEARING.

11 PEOPLE DO THE DARNDDEST THINGS. PEOPLE SAVE THE
12 DARNDDEST THINGS. THEY SAVE INTERESTING THINGS.

13 IS THERE DNA ON HERE? NO. I MEAN, I USE THE GLOVES,
14 BUT THERE'S NO DNA ON HERE. SIX MONTHS.

15 Victim TOLD THE INVESTIGATOR WHAT SHE HAD ON, ON HER
16 TOP AND ON HER BOTTOM.

17 NOW, THE DEFENSE WILL HAVE YOU BELIEVE -- I'M NOT SURE
18 WHAT THEIR THEORY IS. AND, OF COURSE, AGAIN, THEY DON'T
19 HAVE TO -- THEY DON'T HAVE TO, PERIOD, PUT FORTH AN
20 EXPLANATION. BUT THEY WOULD HAVE YOU BELIEVE THAT -- I
21 DON'T KNOW THAT Victim HAS BEEN DOING A CLOAK AND -- I -- I
22 -- I DON'T KNOW. COMING IN THE HOUSE AND GOING THROUGH HER
23 DRAWER AND HER CLOSET AND PICKING OUT CLOTHES TO SIX MONTHS
24 LATER COME BACK AND SAY -- I'M NOT SURE HOW YOU EXPLAIN --
25 HOW DO YOU EXPLAIN THIS? HOW DO YOU EXPLAIN HIM BEING ABLE

1 TO -- THEY CAN'T GET AROUND THAT. HOW DO YOU EXPLAIN THIS?

2 THIS ISN'T A MATERNITY DRESS. THIS ISN'T A MATERNITY
3 DRESS.

4 BUT SERGEANT GONZALES WAS ABLE TO FIND -- THROUGH
5 TALKING TO VICTIM -- CORROBORATING TESTIMONY AS TO WHAT
6 HAPPENED THAT NIGHT. AND VICTIM WENT ON TO MEET WITH THE
7 FOLKS AT HOPE HAVEN -- I THINK THE TESTIMONY WAS FOR AN
8 HOUR.

9 THIS IS A ONE ON ONE, ANOTHER FACE TO FACE, EYE TO
10 EYE. NO PARENT IN THE ROOM, NOTHING LIKE THAT.

11 THE INVESTIGATOR HAD TO OBSERVE FROM OUTSIDE FROM A
12 TWO-WAY MIRROR.

13 SERGEANT GONZALES TOLD YOU THAT HE SAW VICTIM IN AN
14 EMOTIONAL STATE; THAT HE WAS CRYING. YOU CAN PROBABLY
15 IMAGINE THAT SITUATION. AFTER 6 MONTHS HE FINALLY IS
16 TELLING HIS STORY AND EVERYTHING IS COMING OUT, EVERYTHING
17 IS COMING OUT.

18 IT WAS -- IT WAS RAW -- IT WAS RAW EMOTION. AND THIS
19 IS TO PEOPLE -- I THINK THE EXPERT TOLD YOU THAT SHE HAS
20 DONE OVER 200 FORENSIC INTERVIEWS. FOLKS, THESE ARE PEOPLE
21 WHO CAN DETECT WHEN SOMEONE IS MAKING SOMETHING UP OR IF
22 THERE IS NOTHING THERE, OKAY.

23 AS A RESULT OF THAT DISCUSSION AND GETTING THE
24 INFORMATION, SERGEANT GONZALES GOES ABOUT TO GET A SEARCH
25 WARRANT. BEFORE THE SEARCH WARRANT IS SERVED, HE CALLS IN

1 THE DEFENDANT TO TALK TO HER. RIGHT? YOU DON'T JUST GO
2 ARRESTING PEOPLE. AND THE DEFENDANT -- YOU RECALL MR.
3 TAPPEINER'S TESTIMONY ABOUT HE ACTUALLY GOT THE PHONE CALL
4 AND HE JUST, OH, THE COPS WANT TO TALK TO YOU AND ON BACK
5 TO WORK.

6 SHE CAME DOWN THE TESTIMONY I THINK SAID AROUND 2:00
7 O'CLOCK IN THE AFTERNOON AND TALKED TO THE POLICE. THAT
8 WAS HER FACE TO FACE, EYE TO EYE.

9 Victim HAD HIS TURN.

10 SHE HAD HER TURN. SHE WAS NOT UNDER ARREST. SHE
11 WAS NOT UNDER ARREST. SHE VOLUNTARILY CAME IN TO SPEAK.
12 I WANT TO MAKE THAT CLEAR. THIS WAS STILL AN
13 INVESTIGATION.

14 AFTER THE FACE TO FACE, EYE TO EYE A DETERMINATION
15 WAS MADE. SHE WAS CHARGED THAT DAY WITH CRIMINAL SEXUAL
16 CONDUCT SECOND DEGREE. THE INVESTIGATION DIDN'T STOP
17 THERE.

18 THEY SERVED THE SEARCH WARRANT. THEY WENT TO THE
19 HOUSE. IS THERE A DRESS AND PANTIES THAT FIT THE
20 DESCRIPTION? WHO WAS THERE? IT WAS MR. TAPPEINER. WE'LL
21 TALK AGAIN ABOUT HIM LATER. HE LET THEM IN.

22 SERGEANT GONZALES TOLD YOU THIS WAS THE ONLY BLACK
23 PANTIES WITH WHITE WRITING IN THE HOUSE. HE SAID, WE
24 SEARCHED THE ENTIRE HOUSE. I'M SURE THEY WOULD HAVE, THEY
25 HAVE TO. MR. TAPPEINER WAS THERE. HE SAW THEM DO IT. IT

1 WAS THE ONLY ONE IN HER DRAWER -- IN HER PANTY DRAWER.

2 SO THAT'S -- THAT'S WHAT -- THAT'S THE WEIGHT THAT THE
3 STATE HAS PRESENTED TO YOU.

4 AND THE JUDGE WILL INSTRUCT YOU THAT THE LAW SAYS THAT
5 victim's TESTIMONY OR -- OR MY PRESENTATION OF THE EVIDENCE
6 DOES NOT HAVE TO BE CORROBORATED, WHICH IS TO SAY THAT I
7 COULD HAVE PUT victim ON THE STAND AND RESTED. THAT'S WHAT
8 THE LAW SAYS, BUT WE DIDN'T DO THAT.

9 AND LET ME TALK TO YOU ABOUT -- BRIEFLY, AND I'M
10 ALMOST DONE -- THE PEOPLE I DECIDED TO CALL. I DECIDED TO
11 CALL TODAY -- OR -- OR THE PAST DAY AND A HALF NEUTRAL NON-
12 CONNECTED PEOPLE. I WANTED YOU TO HEAR FROM PEOPLE WHO
13 DIDN'T HAVE A DOG IN THIS FIGHT. OKAY? I WANTED YOU TO
14 HEAR FROM LAW ENFORCEMENT. I WANTED YOU TO HEAR FROM THE
15 EXPERT, PEOPLE WHO HAVE NO CONNECTION TO THE DEFENDANT --
16 TO THE DEFENDANT OR TO victim THEY'RE INDEPENDENT NEUTRAL
17 PARTIES WHO victim LOOKED IN THE EYE AND HAD A STRAIGHT TO
18 STRAIGHT DISCUSSION WITH.

19 THE DEFENSE DID NOT HAVE TO CALL ANY WITNESSES. IT'S
20 NOT THEIR JOB TO. BUT MIKE TAPPEINER WAS CHOSEN -- I GUESS
21 WE CAN CALL HIM -- AS THE REPRESENTATIVE OF THE FAMILY, AT
22 LEAST FOR THIS CASE. I DON'T KNOW WHAT TO MAKE OF HIS
23 TESTIMONY, LADIES AND GENTLEMEN. I DON'T KNOW. I CAN
24 SUGGEST SOME THINGS TO YOU THOUGH. HE WAS DOING HIS BEST.
25 HE WAS TRYING. BUT WHATEVER THERE IS -- WHATEVER THE PLAN

1 WAS THAT HE WAS SUPPOSED TO EXECUTE, IT FELL APART. IT
2 DIDN'T MAKE SENSE. BETWEEN THE BATTERY CONVERSATION ABOUT
3 GOING TO GETTING A BATTERY FOR victim WHAT -- WHAT -- WHAT
4 IS THAT ALL ABOUT? IT DOESN'T MAKE ANY SENSE.

5 THE JUDGE WILL INSTRUCT YOU THAT YOU CAN -- YOU HAVE
6 TO WEIGH THE BELIEVABILITY AND THE CREDIBILITY OF
7 WITNESSES. IT'S UP TO YOU. DO YOU BELIEVE THEM OR YOU
8 DON'T. THAT'S WHY I SAID, YOU HAVE TO BELIEVE victim OR
9 YOU DON'T.

10 MIKE TAPPEINER DID NOT PASS THAT FACE TO FACE, EYE TO
11 EYE. I DON'T THINK HE DID. AS A MATTER OF FACT, I DON'T
12 THINK HE EVEN LOOKED YOU IN THE EYE.

13 I THINK WHAT HAPPENED IS WHAT victim SAID. HE WAS
14 DRUNK AND HE WAS ASLEEP ACROSS THE HALL, PERIOD. HE WAS
15 DRUNK AND HE WAS ASLEEP ACROSS THE HALL.

16 IF MY HUSBAND, FAMILY MEMBER IS ACCUSED OF SOMETHING
17 LIKE THIS, DO YOU THINK IN MY RIGHT MIND -- ANYONE'S RIGHT
18 MIND YOU WOULD WAIT FEBRUARY, MARCH, APRIL, MAY, JUNE,
19 JULY, AUGUST -- 8 TO 9 MONTHS WHEN YOU GOT THE CALL FROM
20 LAW ENFORCEMENT THAT THEY WANT TO TALK TO YOUR WIFE, YOU
21 DIDN'T SAY ANYTHING? AND THEY CAME TO YOUR HOUSE TO
22 EXECUTE A SEARCH WARRANT AND YOU DON'T SAY, OH, I'VE GOT
23 SOMETHING TO ADD ABOUT THIS. I WAS THERE THAT NIGHT AND
24 THIS IS WHAT HAPPENED OR DIDN'T HAPPEN.

25 THE MONTHS THAT ENSUED, THE FAMILY DISCUSSIONS YOU

1 MUST HAVE HAD AROUND THE DINNER TABLE ABOUT THIS. NO ONE
2 SAID, WELL, LET'S GO DOWN TO THE POLICE AND -- GET THE KIDS
3 IN THE CAR AND GO AND TELL THEM OUR STORY.

4 HE WAS JUST TRYING -- I THINK IT WAS HIS ATTEMPT TO
5 SELL A LINE THAT FELL SHORT. I THINK WHEN YOU THINK ABOUT
6 THE CONSISTENT STATEMENTS THAT VICTIM HAS MADE, THE EYE TO
7 EYE, THE FACE TO FACE DISCUSSIONS THAT HE'S HAD WITH
8 PEOPLE, THAT HIS STORY IS CONSISTENT; AND THAT IS MR.
9 TAPPEINER'S OWN ADMISSION OF HIS DRINKING THAT NIGHT, HIS
10 PREVIOUS PROBLEMS WITH ALCOHOL, THAT IT MAKES SENSE AT WHAT
11 VICTIM SAID, THAT HE WAS ASLEEP THAT NIGHT. HE WENT TO BED
12 EARLY.

13 VICTIM TOLD YOU THEY WERE WATCHING A SCARY MOVIE, THAT
14 THE KIDS FELL ASLEEP. THE TV IS PROBABLY STILL ON. MIKE
15 DIDN'T TELL YOU HOW BIG -- MR. TAPPEINER COULDN'T TELL YOU
16 HOW BIG HIS OWN HOUSE WAS. I DON'T KNOW HOW BIG HIS HOUSE
17 IS. BUT FOR WHATEVER REASON, THE KIDS ARE DOWNSTAIRS
18 SLEEPING. TV IS ON PERHAPS. I DON'T REMEMBER, BUT WE KNOW
19 THEY WERE WATCHING A SCARY MOVIE. THOSE THINGS AREN'T
20 QUIET.

21 MIKE'S UPSTAIRS SLEEPING AFTER, I THINK HE SAID 5 OR 6
22 BEERS OR SOMETHING LIKE THAT. GIVE OR TAKE -- OR GIVE, I
23 DON'T KNOW.

24 AND SHE TOOK HIM INTO THAT ROOM. AND SHE TOOK HIM
25 INTO THAT ROOM AND SHE CHOSE BETWEEN HAVING SEX WITH HER

1 HUSBAND AND A 13 YEAR OLD BOY. SHE TOOK HIM IN THE ROOM
2 AND SHE DID IT. WHETHER HE HAD AN ERECTION, WHETHER HE HAD
3 EJACULATION, WHETHER HE YELLED OR DIDN'T YELL DOES NOT HAVE
4 ANYTHING TO DO WITH CONSENT.

5 I DON'T MEAN TO MAKE LIGHT OF WHAT'S HAPPENED HERE
6 TODAY. BUT YOU CAN'T SELL A CAR TO A 13 YEAR OLD, YOU
7 CAN'T HAVE SEX WITH A 13 YEAR OLD, YOU CAN'T SELL THEM
8 ALCOHOL, BECAUSE KIDS HAVE EXTRA PROTECTION UNDER OUR LAWS.
9 PROTECTION NOT FROM THEMSELVES, BUT FROM THOSE WHO SEEK TO
10 TAKE ADVANTAGE OF THEIR VULNERABLE, TIMID, SHY NATURE.

11 THERE IS A REASON WHY THAT STATUTE IS PLAIN AS APPLE
12 PIE. IT'S -- IT'S A BASIC PRINCIPLE.

13 IN CLOSING, WHEN YOU GO BACK TO DELIBERATION -- TO THE
14 JURY ROOM TO DELIBERATE, AND YOU THINK ABOUT REASONABLE
15 DOUBT, YOU THINK ABOUT THE TESTIMONY YOU HEARD TODAY (SIC)
16 FROM -- YESTERDAY, EXCUSE ME, FROM THE EXPERIENCED
17 INVESTIGATORS. YOU THINK ABOUT THE EYE TO EYE, FACE TO
18 FACE INTERVIEWS THAT VICTIM HAS HAD WITH LAW ENFORCEMENT
19 AND THE EXPERTS. YOU THINK ABOUT THE EVIDENCE.

20 I WANT YOU TO ALSO THINK IN -- IN -- IN MAKING THAT
21 DECISION, WOULD YOU LET HER BABYSIT YOUR KIDS? YOUR GRAND
22 KIDS? NIECES AND NEPHEWS?

23 I THINK THE ANSWER TO THAT IS WHY YOU SHOULD FIND HER
24 GUILTY. THANK YOU.

25 THE COURT: THANK YOU, MS. BURKE.

1 CHARGE OF THE COURT:

2 LADIES AND GENTLEMEN OF THE JURY, YOU FOLLOWED VERY
3 PATIENTLY AND LISTEN VERY ATTENTIVELY TO THE PRESENTATION
4 OF THE EVIDENCE IN THIS CASE AND I WANT TO THANK YOU FOR
5 THAT, AND ALSO THE ABLE ARGUMENTS MADE BY ASSISTANT
6 SOLICITOR DAWN BURKE ON BEHALF OF THE STATE AND MR. MIKE
7 MACLOSKIE ON BEHALF OF THE DEFENDANT.

8 IT NOW BECOMES THE DUTY OF THE TRIAL JUDGE UNDER THE
9 CONSTITUTION OF THIS STATE TO CHARGE AND INSTRUCT YOU ON
10 THE LAW THAT'S APPLICABLE TO THIS CASE. AND IT'S YOUR DUTY
11 AS JURORS TO ACCEPT AND APPLY THE LAW AS THE COURT WILL NOW
12 STATE IT TO YOU.

13 AS JURORS, IT IS YOUR EXCLUSIVE DUTY TO DECIDE ALL
14 ISSUES OF FACT IN THIS CASE. YOU MUST DETERMINE THE
15 EFFECT, THE VALUE, THE WEIGHT, AND THE TRUTH OF THE
16 EVIDENCE.

17 BOTH THE STATE AND THE DEFENDANT HAVE A RIGHT TO
18 EXPECT THAT YOU WILL CAREFULLY CONSIDER AND EVALUATE THE
19 EVIDENCE AND APPLY THE LAW OF THE CASE TO THE EVIDENCE. BY
20 DOING SO, BOTH THE STATE OF SOUTH CAROLINA AND THE
21 DEFENDANT WILL RECEIVE AND OBTAIN A FAIR AND IMPARTIAL
22 TRIAL IN THIS CASE.

23 NOW, THE STATE OF SOUTH CAROLINA BY THE BILL OF
24 INDICTMENT IN THIS CASE CHARGES THE DEFENDANT, SUSAN
25 TAPPEINER, WITH SECOND DEGREE CRIMINAL SEXUAL CONDUCT WITH

1 A MINOR, THE VICTIM 11 TO 14 YEARS OF AGE. THIS INDICTMENT
2 READS THAT IN BEAUFORT COUNTY, SOUTH CAROLINA AUGUST 15,
3 2008 THE DEFENDANT, SUSAN TAPPEINER, DID COMMIT A SEXUAL
4 BATTERY UPON A MINOR, WHO WAS 14 YEARS OF AGE OR LESS, BUT
5 WHO WAS AT LEAST 11 YEARS OF AGE, AND THAT SHE HAD SEXUAL
6 INTERCOURSE WITH victim AGE 13.

7 LADIES AND GENTLEMEN, I REMIND YOU THAT THE FACT THAT
8 THE DEFENDANT WAS ARRESTED, CHARGED AND INDICTED IN THIS
9 CASE IS NOT EVIDENCE IN THIS CASE AND CANNOT BE CONSIDERED
10 AS EVIDENCE OF GUILT IN THIS CASE, NOR DOES IT CREATE ANY
11 PRESUMPTION OR INFERENCE OF GUILT. THIS DOCUMENT, THIS
12 INDICTMENT, IS SIMPLY THE FORMAL WRITTEN INSTRUMENT WHICH
13 CONTAINS THE CHARGES THAT ARE MADE AGAINST THE DEFENDANT.
14 IT'S THE FORMAL DOCUMENT BY WHICH THIS CASE IS BROUGHT INTO
15 THIS COURTROOM.

16 NOW, THE DEFENDANT HAS PLED NOT GUILTY TO THIS
17 INDICTMENT, AND THAT PLEA PUTS THE BURDEN ON THE STATE TO
18 PROVE THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT.

19 A PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE IN
20 SOUTH CAROLINA IS NEVER REQUIRED TO PROVE THEMSELF
21 INNOCENT. I CHARGE YOU THAT IT'S AN IMPORTANT RULE OF LAW
22 THAT THE DEFENDANT IN A CRIMINAL TRIAL NO MATTER WHAT THE
23 SERIOUSNESS OF THE CHARGES MAY BE WILL ALWAYS BE PRESUMED
24 INNOCENT OF THE CRIME FOR WHICH THE INDICTMENT WAS ISSUED
25 UNLESS GUILT HAS BEEN PROVEN BY EVIDENCE SATISFYING YOU,

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1 THE JURY, OF THAT GUILT BEYOND A REASONABLE DOUBT.

2 NOW, THIS PRESUMPTION OF INNOCENCE DOES NOT END WHEN
3 YOU BEGIN YOUR DELIBERATIONS. IT ACCOMPANIES THE DEFENDANT
4 THROUGHOUT THE TRIAL UNTIL YOU, THE JURY, REACH A VERDICT
5 OF GUILT BASED ON EVIDENCE SATISFYING YOU OF THAT GUILT
6 BEYOND A REASONABLE DOUBT.

7 NOW, THIS PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF
8 RIGHTEOUSNESS THAT'S PLACED ABOUT THE SHOULDERS OF THE
9 DEFENDANT AND IT REMAINS WITH THE DEFENDANT UNTIL IT HAS
10 BEEN STRIPPED FROM THE DEFENDANT BY EVIDENCE SATISFYING YOU
11 OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

12 THE PRESUMPTION OF INNOCENCE IS NOT A MERE LEGAL
13 THEORY. IT'S NOT JUST A LEGAL PHRASE WE USE. IT IS A
14 SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED
15 UNLESS YOU, THE JURY, ARE SATISFIED FROM THE EVIDENCE OF
16 THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

17 THE STATE HAS THE BURDEN OF PROVING THE DEFENDANT
18 GUILTY BEYOND A REASONABLE DOUBT. THE TERM REASONABLE
19 DOUBT MUST BE GIVEN ITS PLAIN AND ORDINARY MEANING. TO THE
20 EXTENT THAT I CAN DEFINE IT FOR YOU, A REASONABLE DOUBT IS
21 THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO
22 HESITATE TO ACT IN THE MOST IMPORTANT OF THEIR PERSONAL
23 DECISIONS.

24 THE DEFENDANT IS ENTITLED TO EVERY REASONABLE DOUBT
25 ARISING IN THE WHOLE CASE. IF UPON ANY ISSUE OF FACT

1 THAT'S ESSENTIAL TO CONVICTION YOU HAVE A REASONABLE DOUBT
2 AS TO HOW THAT ISSUE SHOULD BE RESOLVED, YOU MUST RESOLVE
3 THAT REASONABLE DOUBT IN FAVOR OF THE DEFENDANT.

4 NOW, SOME OF YOU MAY HAVE SERVED AS JURORS IN CIVIL
5 CASES WHERE YOU WERE TOLD THAT IT WAS ONLY NECESSARY TO
6 PROVE THAT A FACT IS MORE LIKELY TRUE THAN NOT TRUE, SUCH
7 AS BY THE GREATER WEIGHT OF THE EVIDENCE OR WHAT WE CALL
8 THE PREPONDERANCE OF THE EVIDENCE.

9 IN CRIMINAL CASES THE STATE'S PROOF MUST BE MORE
10 POWERFUL THAN THAT. IT MUST BE BEYOND A REASONABLE DOUBT.

11 NOW PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT
12 LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT.

13 NOW, LADIES AND GENTLEMEN, THERE ARE VERY FEW THINGS
14 IN THIS WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY. AND IN
15 CRIMINAL CASES THE LAW DOES NOT REQUIRE PROOF THAT
16 OVERCOMES EVERY POSSIBLE DOUBT.

17 IF BASED ON YOUR CONSIDERATION OF THE EVIDENCE YOU ARE
18 FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE CRIME
19 CHARGED, YOU MUST FIND THE DEFENDANT GUILTY. IF ON THE
20 OTHER HAND YOU THINK THERE IS A REAL POSSIBILITY THE
21 DEFENDANT IS NOT GUILTY, YOU MUST GIVE THE DEFENDANT THE
22 BENEFIT OF THAT DOUBT AND FIND HER NOT GUILTY.

23 NOW, I REMIND YOU, LADIES AND GENTLEMEN OF THE JURY,
24 THAT YOU AND I HAVE CERTAIN DUTIES TO PERFORM. AS THE
25 TRIAL JUDGE, IT'S MY RESPONSIBILITY TO PRESIDE OVER THE

1 TRIAL OF THE CASE. AND I ALSO HAVE THE DUTY TO RULE ON THE
2 ADMISSIBILITY OF THE EVIDENCE THAT'S OFFERED DURING THE
3 TRIAL.

4 YOU ARE TO CONSIDER ONLY THE COMPETENT EVIDENCE THAT'S
5 BEFORE YOU. YOU ARE TO CONSIDER ONLY THE TESTIMONY WHICH
6 HAS BEEN PRESENTED FROM THE WITNESS STAND RIGHT HERE AS
7 WELL AS ANY OTHER EXHIBITS THAT HAVE BEEN MADE A PART OF
8 THE RECORD OF THIS CASE.

9 I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE LAW
10 THAT'S APPLICABLE TO THIS CASE. AS PRESIDING JUDGE, I AM
11 THE SOLE JUDGE OF THE LAW. AND IT'S YOUR DUTY AS JURORS TO
12 ACCEPT AND APPLY THE LAW AS I WILL NOW STATE IT TO YOU.

13 IF YOU HAVE ANY IDEA AS TO WHAT THE LAW IS OR WHAT THE
14 LAW OUGHT TO BE AND IT DOES NOT AGREE WITH WHAT I NOW AM
15 GOING TO TELL YOU THE LAW IS, YOU MUST ABANDON THIS IDEA
16 BECAUSE YOU'RE SWORN TO ACCEPT AND APPLY THE LAW EXACTLY AS
17 I STATE IT TO YOU.

18 NOW, IN EVERY CASE THAT'S TRIED IN THIS COURT BEFORE A
19 JURY, THE JURY BECOMES THE SOLE AND EXCLUSIVE JUDGE OF THE
20 FACTS. THE TRIAL JUDGE CAN'T STATE, INTIMATE, COMMENT ON,
21 OR MAKE ANY STATEMENT TO A TRIAL JURY ABOUT THE FACTS IN
22 THE CASE.

23 SINCE YOU, THE JURY, ARE THE SOLE JUDGE OF THE FACTS
24 IN THIS CASE, YOU AREN'T TO INFER FROM WHAT I'VE SAID
25 DURING THE PROGRESS OF THIS TRIAL IN RULING ON THE

1 ADMISSIBILITY OF EVIDENCE OR OTHERWISE OR ANYTHING THAT I
2 NOW SAY TO YOU DURING THE COURSE OF THIS INSTRUCTION THAT I
3 HAVE AN OPINION ABOUT THE FACTS OF THIS CASE. THE LAW DOES
4 NOT ALLOW ME TO HAVE AN OPINION ABOUT THE FACTS OF THIS
5 CASE. THAT MATTER IS SOLELY FOR YOU, THE JURY, TO
6 DETERMINE.

7 LADIES AND GENTLEMEN, AS JURORS, IT'S YOUR DUTY TO
8 DETERMINE THE EFFECT, THE VALUE, THE WEIGHT, AND THE TRUTH
9 OF THE EVIDENCE THAT'S PRESENTED DURING THIS TRIAL.

10 NOW, THERE ARE TWO TYPES OF EVIDENCE WHICH ARE
11 GENERALLY PRESENTED DURING A TRIAL. THOSE ARE DIRECT
12 EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

13 DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO
14 CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN
15 EYEWITNESS. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES
16 THE MAIN FACT TO BE PROVED.

17 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS
18 AND CIRCUMSTANCES INDICATING THE EXISTENCE OF ANOTHER FACT.
19 IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES COLLATERAL
20 FACTS FROM WHICH THE MAIN FACT MAY BE INFERRED.

21 CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE AND NOT
22 ON PERSONAL KNOWLEDGE OR OBSERVATION.

23 THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE
24 WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR
25 CIRCUMSTANTIAL EVIDENCE NOR IS A GREATER DEGREE OF

1 CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF
2 DIRECT EVIDENCE.

3 YOU SHOULD WEIGH ALL THE EVIDENCE IN THIS CASE. AND
4 AFTER WEIGHING ALL THE EVIDENCE IF YOU ARE NOT CONVINCED OF
5 THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT, YOU
6 MUST FIND THE DEFENDANT NOT GUILTY.

7 NOW, THE RULES OF EVIDENCE ORDINARILY DO NOT PERMIT
8 WITNESSES TO TESTIFY TO OPINIONS OR CONCLUSIONS. AN
9 EXCEPTION TO THIS RULE EXISTS FOR WITNESSES WE CALL EXPERT
10 WITNESSES. A WITNESS WHO BY EDUCATION AND EXPERIENCE HAS
11 BECOME AN EXPERT IN SOME ART, SCIENCE, OR PROFESSION MAY
12 GIVE AN OPINION AS TO THE SUBJECT THE WITNESS CLAIMS TO BE
13 AN EXPERT IN AND MAY ALSO GIVE THEIR REASONS FOR THE
14 OPINION.

15 YOU SHOULD CONSIDER AN EXPERT OPINION GIVEN BY A
16 WITNESS AND LIKE ANY OTHER EVIDENCE, GIVE IT THE WEIGHT YOU
17 THINK IT DESERVES.

18 IF YOU DECIDE THAT AN EXPERT WITNESS' OPINION IS NOT
19 BASED ON SUFFICIENT EDUCATION AND EXPERIENCE, OR IF YOU
20 DECIDE THAT THE REASONS GIVEN IN SUPPORT OF THE OPINION ARE
21 NOT SOUND OR THAT THE OPINION IS OUTWEIGHED BY OTHER
22 EVIDENCE, YOU MAY DISREGARD THE EVIDENCE ENTIRELY.

23 AN EXPERT WITNESS' TESTIMONY IS TO BE GIVEN NO GREATER
24 WEIGHT THAN THAT OF OTHER WITNESSES SIMPLY BECAUSE THE
25 WITNESS IS AN EXPERT. AND YOU DO NOT HAVE TO ACCEPT AN

1 EXPERT'S OPINION EVEN THOUGH IT IS UNCONTRADICTED.

2 NOW, LADIES AND GENTLEMEN, YOU ARE TO DETERMINE THE
3 CREDIBILITY OF WITNESSES WHO HAVE TESTIFIED IN THIS CASE.
4 THE CREDIBILITY SIMPLY MEANS THE BELIEVABILITY. IT BECOMES
5 YOUR DUTY AS JURORS TO ANALYZE AND TO EVALUATE THE EVIDENCE
6 AND DETERMINE WHICH EVIDENCE CONVINCES YOU OF ITS TRUTH.

7 IN DETERMINING THE BELIEVABILITY OF WITNESSES WHO HAVE
8 TESTIFIED IN THIS CASE, YOU MAY BELIEVE ONE WITNESS OVER
9 SEVERAL WITNESSES OR SEVERAL WITNESSES OVER ONE WITNESS.

10 YOU MAY BELIEVE A PART OF THE TESTIMONY OF A WITNESS
11 AND REJECT THE REMAINING PART OF THE TESTIMONY OF THAT SAME
12 WITNESS.

13 YOU MAY BELIEVE THE TESTIMONY OF A WITNESS IN ITS
14 ENTIRETY OR REJECT THE TESTIMONY OF A WITNESS IN ITS
15 ENTIRETY.

16 YOU MAY CONSIDER WHETHER ANY WITNESS HAS EXHIBITED TO
17 YOU ANY INTEREST, ANY BIAS, ANY PREJUDICE, OR OTHER MOTIVE
18 IN THIS CASE.

19 YOU MAY ALSO CONSIDER THE APPEARANCE AND MANNER OF A
20 WITNESS WHILE ON THE WITNESS STAND.

21 LADIES AND GENTLEMEN, I INSTRUCT YOU AND EMPHASIZE
22 THAT THE FACT THAT THE DEFENDANT DID NOT TESTIFY IS NOT A
23 FACTOR TO BE CONSIDERED BY YOU IN ANY WAY IN YOUR
24 DELIBERATION AND IN YOUR CONSIDERATION ON THE QUESTION OF
25 THE GUILT OR INNOCENCE OF THE DEFENDANT. IT MUST NOT BE

1 CONSIDERED BY YOU IN ANY MANNER WHATSOEVER.

2 A DEFENDANT HAS THE CONSTITUTIONAL RIGHT TO REMAIN
3 SILENT. AND THE ASSERTION OF THIS RIGHT MUST NOT BE
4 CONSIDERED BY YOU IN YOUR DELIBERATIONS.

5 I REPEAT. UNDER YOUR OATH YOU ARE TO DRAW NO
6 CONCLUSION WHATSOEVER FROM THE FACT THE DEFENDANT IN THIS
7 CASE DID NOT TESTIFY.

8 THE FACT THAT THE DEFENDANT DID NOT TESTIFY SHOULD NOT
9 EVEN BE DISCUSSED IN THE JURY ROOM.

10 THE BURDEN OF PROOF AS I'VE STATED TO YOU IS ON THE
11 STATE. THE DEFENDANT IS NOT REQUIRED TO PROVE HER
12 INNOCENCE. THE BURDEN OF PROOF REMAINS ON THE STATE TO
13 PROVE GUILT BEYOND A REASONABLE DOUBT.

14 NOW, LADIES AND GENTLEMEN, THE DEFENDANT IS CHARGED
15 WITH SECOND DEGREE CRIMINAL SEXUAL CONDUCT WITH A MINOR
16 BETWEEN THE AGES OF 11 AND 14.

17 THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT
18 THE DEFENDANT ENGAGED IN SEXUAL BATTERY WITH THE VICTIM.

19 A SEXUAL BATTERY IS SEXUAL INTERCOURSE, CUNNILINGUS,
20 FELLATIO, ANAL INTERCOURSE, OR ANY INTRUSION HOWEVER SLIGHT
21 OF ANY PART OF A PERSON'S BODY OR ANY OBJECT INTO THE
22 GENITAL OR ANAL OPENINGS OF ANOTHER PERSON'S BODY EXCEPT
23 WHEN THE INTRUSION IS ACCOMPLISHED FOR MEDICALLY RECOGNIZED
24 TREATMENT OR DIAGNOSTIC PURPOSES.

25 THE STATE MUST THEN PROVE BEYOND A REASONABLE DOUBT

1 THAT THE VICTIM WAS AT LEAST 11 YEARS OLD BUT NOT MORE THAN
2 14 YEARS OLD AT THE TIME OF THE SEXUAL BATTERY.

3 NOW, I CHARGE YOU THAT IT IS THE LAW OF THIS STATE
4 UNDER SECTION 16-3-657 THAT THE TESTIMONY OF A VICTIM IN
5 CRIMINAL SEXUAL CONDUCT PROSECUTIONS NEED NOT BE
6 CORROBORATED BY OTHER TESTIMONY OR EVIDENCE.

7 IT IS ALSO THE LAW OF THIS STATE THAT THE DEFENDANT'S
8 CONSENT DOES NOT APPLY TO A CHARGE OF CRIMINAL SEXUAL
9 CONDUCT WITH A MINOR. A MINOR CANNOT CONSENT TO A SEXUAL
10 ACT.

11 I ALSO CHARGE YOU THAT AS A LAW OF THIS STATE THAT
12 VOLUNTARY INTOXICATION IS NOT A DEFENSE TO A CRIME. A
13 PERSON WHO VOLUNTARILY BECOMES INTOXICATED IS JUST AS
14 RESPONSIBLE FOR THE ACTS COMMITTED WHILE INTOXICATED AS
15 WHEN THE PERSON IS NOT INTOXICATED.

16 LADIES AND GENTLEMEN OF THE JURY, AS YOU RETIRE TO
17 BEGIN YOUR DELIBERATION, I WISH TO EXPRESS THE HOPE THAT
18 EACH OF YOU WILL BE MINDFUL OF THE IMPORTANCE OF YOUR
19 RESPONSIBILITY HERE TODAY.

20 YOU'RE NOT CALLED UPON VERY OFTEN TO SERVE AS JURORS.
21 AND THE PROPER PERFORMANCE OF THIS JURY REQUIRES EACH OF
22 YOU TO REACH THE HEIGHT OF FREEING YOUR MIND OF ALL
23 IMPROPER INFLUENCES. YOU AND I ARE ACTING FOR THE
24 COMMUNITY AND THAT'S WHY WE MUST SEE TO IT THAT THIS TRIAL
25 IS FAIR AND THIS VERDICT IS JUST.

1 YOU OBSERVED THE PRESIDING OFFICER OF THIS COURT IS
2 ALWAYS ADDRESSED AS YOUR HONOR. THE REASON IS THAT THE
3 COURT IS ENTRUSTED WITH THE HONOR OF THIS COMMUNITY, THE
4 HONOR OF THIS STATE, AND THE HONOR OF THIS COUNTRY IN
5 SEEKING THAT EVERY CASE TRIED HERE RECEIVED FAIR AND
6 IMPARTIAL JUSTICE.

7 NOW YOU, THE JURY, TAKE INTO YOUR CARE AND KEEPING THE
8 HONOR OF THIS COMMUNITY, THE HONOR OF THIS STATE, AND THE
9 HONOR OF THIS COUNTRY.

10 NOW, PLEASE DON'T GET THE IDEA THAT I'M TRYING TO
11 INTIMATE HOW I THINK YOU SHOULD DECIDE THIS CASE. AS I'VE
12 ALREADY TOLD YOU UNDER THE LAWS OF OUR STATE, YOU, THE
13 JURY, ARE THE SOLE JUDGE OF ALL QUESTIONS OF FACT. IT
14 WOULD BE HIGHLY IMPROPER FOR ME TO INFLUENCE YOU IN YOUR
15 PERFORMANCE OF THAT DUTY.

16 SO, AGAIN, I'M NOT TRYING TO TELL YOU WHAT YOUR
17 VERDICT SHOULD BE. BUT AS THE PRESIDING OFFICER OF THIS
18 COURT, I AM VITALLY CONCERNED THAT WHATEVER VERDICT YOU
19 REACH WILL BE THE RESULT OF YOU GOING BACK INTO YOUR JURY
20 ROOM AND CONFINING YOUR CONSIDERATION TO THE EVIDENCE AND
21 TO THE LAW THAT YOU'VE HEARD HERE IN THIS COURTROOM,
22 WEIGHING IT FAIRLY AND IMPARTIALLY, AS I HAVE EVERY
23 CONFIDENCE YOU WILL DO.

24 LADIES AND GENTLEMEN, EVERYONE IS ENTITLED TO JUSTICE
25 IN THIS CASE, BOTH THE STATE AND THE DEFENDANT. YOU OWE NO

1 SUPPORT OR SYMPATHY TO ANYONE.

2 THE COURT IS OF THE CONFIRMED OPINION THAT WHATEVER
3 VERDICT YOU REACH WILL REPRESENT TRUTH AND JUSTICE FOR ALL
4 PARTIES INVOLVED.

5 NOW, LADIES AND GENTLEMEN OF THE JURY, REMEMBER YOUR
6 VERDICT MUST BE UNANIMOUS. IT MUST BE THE VERDICT OF ALL
7 12 JURORS. AND TO THAT END, I HAVE PREPARED A VERDICT
8 FORM.

9 IT READS: THE STATE OF SOUTH CAROLINA VERSUS SUSAN
10 TAPPEINER. IT HAS THE INDICTMENT NUMBER. IT SAYS AS TO
11 INDICTMENT NO. 2009-GS-07-703, THE CHARGE OF SECOND DEGREE
12 CRIMINAL SEXUAL CONDUCT WITH A MINOR, VICTIM 11 TO 14 YEARS
13 OF AGE, WE, THE JURY, UNANIMOUSLY FIND THE DEFENDANT, SUSAN
14 TAPPEINER, AND IT EITHER SAYS GUILTY OR NOT GUILTY.

15 PLEASE DON'T GET THE ORDER THAT I PUT THEM IN AS
16 HAVING ANY INFERENCE WHATSOEVER. EACH TRIAL I JUST REVERSE
17 THEM.

18 THEN THERE'S A PLACE FOR THE FOREPERSON TO SIGN AND
19 DATE IT.

20 LADIES AND GENTLEMEN OF THE JURY, TO THAT END, MR.
21 CLARK, I'M GOING TO GO AHEAD AND APPOINT YOU AS THE
22 FOREPERSON IN THE TRIAL OF THIS CASE. THE FOREPERSON
23 DOESN'T HAVE ANY MORE SAY THAN ANYONE ELSE. IT'S SIMPLY
24 THE PERSON THAT WHEN YOU GO BACK TO THE JURY ROOM
25 FACILITATES THE CONVERSATION AND ALSO IS THE PERSON WHO

1 WILL SIGN THE VERDICT FORM.

2 LADIES AND GENTLEMEN, WHEN YOU HAVE REACHED A
3 UNANIMOUS VERDICT, I'M GOING TO ASK, MR. CLARK, THAT YOU
4 KNOCK ON THE DOOR AND WE WILL ACCEPT YOU BACK INTO THE
5 COURTROOM TO RECEIVE THE VERDICT.

6 WITH THAT SAID, LADIES AND GENTLEMEN, FOR THE VERY
7 LAST TIME I'M GOING TO SEND YOU BACK TO YOUR JURY ROOM AND
8 I'M GOING TO TELL YOU NOT TO BEGIN DELIBERATING THIS CASE;
9 AND THAT'S BECAUSE I'M GOING TO ASK THE ATTORNEYS IF
10 THERE'S ANYTHING ADDITIONAL THEY WOULD LIKE ME TO CHARGE
11 YOU ON THE LAW. IF THERE IS, I'M GOING TO BRING YOU BACK
12 OUT HERE AND I'M GOING TO CHARGE YOU FURTHER.

13 IF NOT, WE'RE GOING TO SEND THIS VERDICT FORM, MR.
14 CLARK, AS WELL AS THE EVIDENCE THAT'S BEEN INTRODUCED IN
15 THIS CASE TO YOU, AND THAT WILL BE YOUR SIGNAL TO BEGIN
16 YOUR DELIBERATIONS.

17 ALL RIGHT. SO WITH THAT SAID, I APPRECIATE YOUR
18 ATTENTION AND YOU ARE EXCUSED BACK TO YOUR JURY ROOM.

19 (THE JURY RETIRES TO THE JURY ROOM AT 11:12 A.M.)

20 BAILIFF: THE JURY IS CLEAR, YOUR HONOR.

21 THE COURT: THANK YOU, BOB.

22 ANY EXCEPTIONS OR ADDITIONS TO MY CHARGE? FROM THE
23 STATE?

24 MS. BURKE: NO, YOUR HONOR.

25 THE COURT: FROM THE DEFENSE?

1 MR. MACLOSKIE: NO, YOUR HONOR.

2 THE COURT: ALL RIGHT. I WOULD ASK THE ATTORNEYS JUST
3 TO TAKE A QUICK LOOK. I BELIEVE THERE IS JUST A LITTLE BIT
4 OF EVIDENCE IN THE CASE -- TO MAKE SURE.

5 MR. MACLOSKIE: THERE'S JUST 2, YOUR HONOR.

6 THE COURT: THAT'S WHAT I BELIEVE. AND YOU GO AHEAD
7 AND YOU ALL TAKE ANOTHER LOOK AT THE VERDICT FORM. THE
8 INDICTMENT NUMBER WAS CORRECTED BY ERIN.

9 AND I WANT TO THANK BOTH OF YOU VERY MUCH. IT'S NOT
10 EASY AS WE ALL KNOW TO TRY CRIMINAL CASES, AND YOU BOTH
11 WORKED VERY HARD AND CERTAINLY PUT ON VERY ELOQUENT
12 ARGUMENTS FOR THE JURY. AND I WANT TO THANK YOU FOR THAT.

13 I ALSO WANT TO WISH EVERYONE THE BEST OF LUCK. LADIES
14 AND GENTLEMEN, YOU NEVER KNOW WHAT A JURY IS GOING TO DO.
15 12 CITIZENS OF THE COMMUNITY. AND PLEASE UNDERSTAND THAT
16 WE UNDERSTAND HOW IMPORTANT THIS IS TO EVERYONE INVOLVED.
17 BUT, AGAIN, I WANT TO THANK YOU ALL FOR BEING HERE. AND
18 AGAIN, I WANT TO WISH EVERYBODY THE BEST OF LUCK.

19 MR. MACLOSKIE: YOUR HONOR, PLEASE. WE'VE GOT 2
20 ALTERNATES.

21 THE COURT: WE'RE GOING TO BRING THEM OUT. GO AHEAD
22 AND BRING THAT.

23 (THE EXHIBITS AND VERDICT FORM WENT TO THE JURY TO
24 BEGIN DELIBERATIONS AT 11:14 A.M.)

25 THE COURT: BRING ME THE ALTERNATES OUT.

1 (THE ALTERNATES RETURN TO THE COURT AND ARE EXCUSED.)

2 THE COURT: WE'RE GOING TO BE AT EASE.

3 (THE COURT IS AT EASE AWAITING A VERDICT OF THE JURY.)

4 THE COURT: IT'S MY UNDERSTANDING WE HAVE A VERDICT.

5 FOR THOSE OF YOU WHO ARE HERE IN THE COURTROOM, I WANT
6 TO MAKE SURE THAT REGARDLESS OF WHAT THE VERDICT IS THAT
7 EVERYONE CAN MAINTAIN THEIR COMPOSURE. IF FOR SOME REASON
8 YOU DO NOT BELIEVE YOU CAN MAINTAIN YOUR COMPOSURE WHEN
9 THIS VERDICT IS READ, I NEED YOU TO REMOVE YOURSELF RIGHT
10 NOW. BECAUSE IF ANYONE MAKES A SOUND OR A BREATH OR ANY
11 TYPE OF OUTBURST OR COMMENT WHATSOEVER IN FRONT OF THIS
12 JURY, I'M GOING TO HAVE TO TAKE YOU INTO CUSTODY. ALL
13 RIGHT? SO I JUST SAY THAT FOR FAIR WARNING ON ALL SIDES.
14 ALL RIGHT. I WOULD HATE TO HAVE TO DO THAT. BUT, OF
15 COURSE, I WILL IF NECESSARY. OKAY.

16 SO WITH THAT SAID, LET'S GO AHEAD. IS THE STATE READY
17 TO BRING THE JURY IN?

18 MS. BURKE: YES, YOUR HONOR.

19 THE COURT: DEFENSE READY?

20 MR. MACLOSIE: READY, YOUR HONOR.

21 THE COURT: THANK YOU.

22 (THE JURY RETURNS TO THE COURTROOM AT 1:21 P.M.)

23 BAILIFF: YOUR HONOR, THE JURY IS SEATED.

24 THE COURT: THANK YOU. MR. FOREPERSON, I UNDERSTAND
25 YOU HAVE REACHED A VERDICT.

1 FOREMAN: WE HAVE, YOUR HONOR.

2 THE COURT: WILL YOU PLEASE HAND IT TO THE BAILIFF.

3 (COMPLIED.)

4 VERDICT OF THE JURY:

5 THE COURT: WILL THE DEFENDANT RISE, MR. MACLOSKIE.

6 STATE OF SOUTH CAROLINA VERSUS SUSAN TAPPEINER,

7 INDICTMENT NO. 2009-703, THIS IS THE CHARGE OF SECOND

8 DEGREE CRIMINAL SEXUAL CONDUCT WITH A MINOR, VICTIM 11 TO

9 14 YEARS OF AGE. WE, THE JURY, UNANIMOUSLY FIND THE

10 DEFENDANT, SUSAN TAPPEINER, GUILTY.

11 YOU MAY BE SEATED.

12 MR. MACLOSKIE, WOULD YOU LIKE THE JURY INDIVIDUALLY

13 POLLED?

14 MR. MACLOSKIE: YES, MA'AM, I WOULD.

15 THE COURT: ALL RIGHT. DO WE HAVE MIKE HERE? OKAY.

16 DO YOU HAVE MY JURY LIST?

17 LADIES AND GENTLEMEN, AS I CALL YOUR NAME, IF YOU WILL

18 JUST STAND FOR ME AND I'M JUST GOING TO ASK YOU IF THIS IS

19 YOUR VERDICT AND IF IT IS STILL YOUR VERDICT. AND YOU NEED

20 TO RESPOND TO YES OR NO AND THEN YOU MAY BE SEATED. ALL

21 RIGHT.

22 MELVIN PEARSON.

23 JUROR: YES.

24 THE COURT: MR. PEARSON, IS THIS YOUR VERDICT AND IS

25 IT STILL YOUR VERDICT?

1 JUROR: YES.
2 THE COURT: THANK YOU, SIR. NEVA EDRINGTON, MA'AM, IS
3 THIS YOUR VERDICT?
4 JUROR: YES.
5 THE COURT: IS IT STILL YOUR VERDICT?
6 JUROR: YES.
7 THE COURT: MYRON HARRIS. SIR, IS THIS YOUR VERDICT?
8 JUROR: YES, YOUR HONOR.
9 THE COURT: IS IT STILL YOUR VERDICT?
10 JUROR: YES, YOUR HONOR.
11 THE COURT: KAREN HYSKA. MA'AM, IS THIS YOUR VERDICT?
12 JUROR: YES.
13 THE COURT: IS IT STILL YOUR VERDICT?
14 JUROR: YES.
15 THE COURT: SONYA BROWN. MA'AM, IS THIS YOUR VERDICT?
16 JUROR: YES.
17 THE COURT: IS IT STILL YOUR VERDICT?
18 JUROR: YES.
19 THE COURT: STEPHEN CLARK. SIR, IS THIS YOUR VERDICT?
20 JUROR: YES.
21 THE COURT: IS IT STILL YOUR VERDICT?
22 JUROR: YES, MA'AM.
23 THE COURT: JOAN MUSTARD. IS THIS YOUR VERDICT?
24 JUROR: YES.
25 THE COURT: IS IT STILL YOUR VERDICT?

1 JUROR: YES.

2 THE COURT: CANDACE HARVEY. IS THIS YOUR VERDICT?

3 JUROR: YES, YOUR HONOR.

4 THE COURT: IS IT STILL YOUR VERDICT?

5 JUROR: YES, YOUR HONOR.

6 THE COURT: NATHA PIZARRO. IS THIS YOUR VERDICT?

7 JUROR: YES.

8 THE COURT: IS IT STILL YOUR VERDICT?

9 JUROR: YES.

10 THE COURT: BYRL MCCARTNEY. IS THIS YOUR VERDICT?

11 JUROR: YES, MA'AM.

12 THE COURT: IS IT STILL YOUR VERDICT?

13 JUROR: YES, MA'AM.

14 THE COURT: STACEY DIXON. IS THIS YOUR VERDICT?

15 JUROR: YES.

16 THE COURT: IS IT STILL YOUR VERDICT?

17 JUROR: YES.

18 THE COURT: CAROL REDMON. IS THIS YOUR VERDICT?

19 JUROR: YES.

20 THE COURT: IS IT STILL YOUR VERDICT?

21 JUROR: YES, MA'AM.

22 THE COURT: ALL RIGHT. MR. MACLOSKIE, IS THERE

23 ANYTHING ELSE THAT YOU REQUIRE OF THIS JURY?

24 MR. MACLOSKIE: NOTHING, YOUR HONOR. THANK YOU.

25 THE COURT: ANYTHING FURTHER FROM THE STATE?

1 MS. BURKE: NO, YOUR HONOR. THANK YOU.

2 (THE JURY WAS EXCUSED.)

3 THE COURT: ALL RIGHT.

4 MS. BURKE: YOUR HONOR, COULD WE APPROACH THE BENCH?

5 THE COURT: YES. MR. MACLOSKIE, DO YOU WANT TO COME
6 UP.

7 (A BENCH CONFERENCE WAS HELD OFF THE RECORD.)

8 THE COURT: ALL RIGHT. MR. MACLOSKIE, BEFORE I GO
9 AHEAD AND HEAR FROM YOU, MS. BURKE, IS THERE ANYTHING THAT
10 NEEDS TO BE SAID ON BEHALF OF THE STATE?

11 MS. BURKE: YOUR HONOR, MRS. Victim's Mom WOULD LIKE TO
12 ADDRESS THE COURT.

13 THE COURT: MRS. Victim's man(SIC), IF YOU WOULD JUST
14 STAND AND GIVE ME YOUR FULL NAME FOR THE RECORD.

15 MOTHER: Victim's Mom

16 THE COURT: YES, MA'AM. Victim's man I APOLOGIZE.

17 MOTHER: I JUST WANT TO SAY MY SON IS VERY BRAVE. AND
18 HE FACED ENORMOUS OBSTACLES BECAUSE HE IS A LITTLE BOY IN
19 BRINGING THIS AS FAR AS HE DID. GIVEN THE VIOLENT NATURE
20 OF THE CRIME THAT WAS COMMITTED AGAINST MY SON, I'M VERY
21 THANKFUL THAT THIS WOMAN IS GOING TO BE PLACED ON THE SEX
22 OFFENDER REGISTRY LIST. I BELIEVE THAT SHE NEEDS TO SERVE
23 TIME FOR WHAT SHE HAS PUT MY SON AND OUR FAMILY THROUGH;
24 THAT'S ALL I HAVE.

25 THE COURT: THANK YOU, MA'AM.

1 MS. BURKE: NOTHING FROM THE STATE. MRS. TAPPEINER
2 DOES NOT HAVE A PRIOR RECORD.

3 THE COURT: MR. MACLOSKIE.

4 MR. MACLOSKIE: IF YOUR HONOR PLEASE, SUSAN IS 42
5 YEARS OLD. SHE'LL BE 43 IN DECEMBER. SHE WAS BORN IN
6 WILMINGTON, DELAWARE. SHE HAS A BACHELOR'S IN ENGLISH FROM
7 THE UNIVERSITY OF DELAWARE ACHIEVED IN 1991. SHE'S WORKED
8 FOR DUPONT FOR 4 YEARS. SHE WORKED IN ART GALLERIES IN
9 MAUI, HAWAII. AND SHE CURRENTLY IS IN A FAMILY-RUN
10 BUSINESS ON HILTON HEAD THAT DEALS WITH CAMERAS.

11 SHE'S SUPPORTED BY HER HUSBAND. SHE'S SUPPORTED BY
12 HER MOTHER. AND SHE'S SUPPORTED BY HER FATHER, ALL THREE
13 OF WHOM ARE HERE. AND I INVITE THEM TO SPEAK IF THEY WISH.

14 SHE MARRIED MIKE IN 1998 IN HAWAII. THEY HAVE 2
15 CHILDREN, AGES 5 AND 9.

16 I WILL TELL YOU THAT AS A RESULT OF THIS CHARGE, HER
17 HOME UNDERWENT AN EXTENSIVE INVESTIGATION BY THE DEPARTMENT
18 OF SOCIAL SERVICES, AND NOTHING WAS FOUND AMISS WITH REGARD
19 TO HER RELATIONSHIP WITH HER CHILDREN OR ANY OTHER
20 CHILDREN.

21 SHE'S LIVED IN BEAUFORT SINCE 2002. AND AS I'VE TOLD
22 YOU, SHE WORKS FOR A FAMILY BUSINESS OWNED BY HER FATHER.

23 PRIOR TO THAT SHE WORKED FOR THE MARRIOTT ORGANIZATION
24 FOR A PERIOD OF 2 YEARS.

25 THE ONLY HEALTH PROBLEMS THAT I AM AWARE OF THAT SUSAN

1 HAS COME FROM AN INJURY SHE RECEIVED ABOUT 4 YEARS AGO.
2 SHE WAS PLACED IMPROPERLY ON PAIN MEDICATION; THAT BECAME A
3 REAL PROBLEM. IN ORDER TO DEAL WITH THAT ADDICTION, SHE
4 WAS PLACED ON OTHER MEDICATIONS. THOSE BECAME A PROBLEM.

5 IF YOU RECALL THE TESTIMONY OF DR. NOLAN, AT THE TIME
6 SUSAN SAW HER AFTER SHE WAS ARRESTED, DR. NOLAN DETERMINED
7 THAT THE AMOUNT OF MEDICATION SHE WAS PRESCRIBED WAS 3
8 TIMES THE AMOUNT SHE SHOULD HAVE BEEN TAKING. ALSO ALCOHOL
9 HAD SOME MINOR EFFECT ON HER LIFE.

10 OTHER THAN THAT, SHE IS A KIND, CARING, GENTLE, AND
11 LOVING PERSON. SHE HAS SUFFERED, I BELIEVE IN HER LIFETIME
12 FROM A RATHER LOW SENSE OF SELF-ESTEEM. THOSE KINDS OF
13 PROBLEMS IN MY EXPERIENCE ARE VERY HARD TO OVERCOME.

14 OF COURSE, THIS VERDICT HAS TO BE ACCEPTED AT THIS
15 TIME AS HARD AS IT MAY BE. WE OFTEN FACE THINGS WE DON'T
16 WANT TO FACE AND ONLY ASK THAT GOD GIVES US THE STRENGTH TO
17 NOT ONLY ENDURE THOSE THINGS, BUT GROW BETTER AND STRONGER
18 NOT IN SPITE OF THEM, BECAUSE OF THEM. AND SUSAN HAS THAT
19 CAPABILITY.

20 ONE OF THE ALTERNATIVES THAT YOU CAN TAKE INTO
21 CONSIDERATION IS HOUSE ARREST. YOU CAN DO THAT. IF THE
22 INDIVIDUAL DEFENDANT CHARACTERISTICS ARE SUCH THAT REALLY
23 NO USEFUL SOCIETAL PURPOSE IS GOING TO COME FROM
24 INCARCERATION, FROM CONFINEMENT, THEN THAT'S WITHIN YOUR
25 PREROGATIVE TO DO.

1 AND IF BEFORE THAT YOU DETERMINE THAT SOME KIND OF
2 PRE-SENTENCE REPORT OR PRE-SENTENCE INVESTIGATION NEEDS TO
3 BE DONE, OF COURSE, YOU CAN ALSO ORDER THAT PRIOR TO FINAL
4 SENTENCING.

5 AND I WOULD URGE YOU TO DO BOTH.

6 IF YOU'RE NOT INCLINED TO DO EITHER ONE OF THOSE, I
7 WOULD URGE YOU TOWARD A POSITION OF A MINIMAL CONFINEMENT
8 SENTENCE, BECAUSE QUITE FRANKLY, SUSAN DOESN'T NEED
9 EXTENSIVE CONFINEMENT.

10 THE COURT: MRS. TAPPEINER, WOULD YOU LIKE TO SAY
11 ANYTHING?

12 MRS. TAPPEINER: I WOULD PROBABLY HAVE A HARD TIME
13 BEING ABLE TO SAY ANYTHING. I'M IN A LITTLE BIT OF SHOCK
14 RIGHT NOW. ALL I CAN THINK ABOUT IS MY CHILDREN; THAT'S
15 ALL I EVER LIVE FOR AND DO EVERYTHING FOR. THEY ARE
16 EXCEPTIONAL. ALL I'VE BEEN IS AN EXCEPTIONAL MOM TO THEM.
17 AND I HOPE YOU CAN PLACE THAT INTO YOUR CONSIDERATION WITH
18 ME AND MY FAMILY.

19 MR. MACLOSKIE: BY THE WAY, SINCE THIS THING HAS COME
20 INTO HER LIFE, SHE HAS NOT NEGLECTED NOT ONLY HER FAMILY
21 OBLIGATIONS AND RESPONSIBILITIES, BUT ALSO WHAT SHE FEELS
22 ARE HER OBLIGATIONS TO THE COMMUNITY. IT WAS ONLY THIS
23 LAST WEEKEND THAT SHE PARTICIPATED IN A VERY SUCCESSFUL
24 EVENT FOR THE HUMANE SOCIETY ON HILTON HEAD. SHE'S VERY
25 WELL AWARE OF HER OBLIGATIONS TO THE COMMUNITY AND DOES

1 SOMETHING ABOUT THEM.

2 THE COURT: WOULD HER PARENTS LIKE TO SPEAK, MR.
3 MACLOSKIE?

4 MR. MACLOSKIE: I DON'T KNOW. DO YOU?

5 FATHER: I'D JUST LIKE TO SAY SUSAN IS A WONDERFUL
6 PERSON, A WONDERFUL WOMAN, SHE'S A WONDERFUL MOTHER. IF
7 HER CHILDREN WERE HERE, THEY WOULD SEE THEY ARE WELL
8 ADJUSTED, BRIGHT, AND HAPPY LITTLE CHILDREN. I WOULD ALSO
9 ASK YOUR LENIENCY IN CONSIDERATION. IF ANYONE KNEW SUSAN
10 LIKE WE DO, YOU WOULD HAVE NO ISSUE FOR SUSAN BABYSITTING
11 YOUR KIDS; THAT'S WHAT SHE'S BEEN DOING ALL HER LIFE.
12 SHE'S TAKEN IN STRAYS. SHE'S A PEOPLE PLEASER. SHE LOVES
13 EVERYONE. SHE'S ALWAYS TAKEN CARE OF PEOPLE. SOMETIMES AS
14 A RESULT WITH WRONG THINGS HAPPENING. AND I JUST CAN'T
15 TELL YOU, JUDGE, JUST WHAT A WONDERFUL, YOUNG LADY SHE IS.
16 AND SHE IS NO THREAT TO SOCIETY.

17 THE COURT: THANK YOU.

18 MR. MACLOSKIE: YOUR HONOR, BY THE WAY, I'VE MET BOTH
19 OF SUSAN AND MIKE'S DAUGHTERS. AND TALKING TO THESE YOUNG
20 GIRLS WHO ARE 5 AND 9, I BELIEVE, IS LIKE TALKING TO AN
21 ADULT. THEY ARE JUST A DELIGHT TO BE AROUND.

22 THE COURT: WOULD ANYONE ELSE LIKE TO SPEAK? MR.
23 TAPPEINER?

24 MR. TAPPEINER: I WOULD.

25 THE COURT: YES, SIR.

1 MR. TAPPEINER: I'VE KNOWN SUSAN FOR 14 YEARS. WE'VE
2 BEEN MARRIED FOR 11 YEARS. AND SHE IS KIND AND CARING.
3 THERE'S NO VIOLENCE OR AGGRESSIVE NATURE TO HER. I JUST
4 WANT TO MAKE THAT VERY CLEAR.

5 THE COURT: THANK YOU, SIR.

6 MR. MACLOSKIE, I THINK I AM GOING TO GO AHEAD AND HAVE
7 A PRE-SENTENCE INVESTIGATION DONE ON HER IN REGARDS TO HER
8 BACKGROUND. I KNOW THERE WERE CERTAIN THINGS THAT WERE
9 TALKED ABOUT, ABOUT HER HISTORY AND HER BACKGROUND, THAT
10 SHE HAD BEEN ABUSED. AND I THINK I WOULD RATHER SOMEONE
11 LOOK AT IT IN DEPTH.

12 ADDITIONALLY, FROM WHAT I UNDERSTAND THROUGH THE
13 COURSE OF THIS TRIAL, SHE HAS HAD SOME MENTAL HEALTH
14 ISSUES. AND IT MIGHT BE HELPFUL OR INSTRUCTIVE TO KNOW
15 SPECIFICALLY WHAT THOSE ARE AND HOW WE GOT TO THIS POINT AS
16 YOU KNOW.

17 SO WHAT I AM GOING TO ASK IS PROBATION TO ISSUE A
18 REPORT, IF YOU WOULD, INTERVIEWING THE NECESSARY PARTIES.
19 AND I AM GOING TO ASK THAT YOU SPEAK WITH SPECIFICALLY
20 SOMEONE WHO HAS EITHER TREATED HER, TREATING HER, OR
21 SOMETHING INVOLVING THE MENTAL HEALTH ISSUES.

22 MR. MACLOSKIE: WE'LL COOPERATE BY GIVING PROBATION A
23 LIST OF THOSE PHYSICIANS WHO HAVE DONE SO.

24 THE COURT: OKAY. DESPITE THAT, MR. MACLOSKIE, I AM
25 GOING TO TELL YOU THAT I AM GOING TO PUT MRS. TAPPEINER IN

1 CUSTODY. I THINK IT'S APPROPRIATE IN THIS CASE. I KNOW
2 THAT DOESN'T NECESSARILY FACILITATE AND HELP DOING A PRE-
3 SENTENCE INVESTIGATION. THE SIMPLE FACT THAT SHE'S LOOKING
4 AT 20 YEARS. SHE HAS BEEN CONVICTED OF THIS CHARGE. I
5 JUST FIND IT NECESSARY.

6 SO BEFORE YOU EVEN ASK TO LET HER REMAIN OUT, I AM
7 GOING TO TELL YOU THAT I AM GOING TO GO AHEAD AND TAKE HER
8 INTO CUSTODY.

9 AND HOW LONG DO YOU THINK IT WILL TAKE TO DO A REPORT,
10 DO YOU THINK?

11 PROBATION OFFICER: WHEN IS THE NEXT TERM OF COURT?

12 MS. BURKE: NOVEMBER 6.

13 PROBATION OFFICER: THAT'S NOT ENOUGH TIME.

14 THE COURT: THE LAST ONE I'VE DONE TOOK 3 WEEKS. IS
15 THAT NOT ENOUGH TIME?

16 PROBATION OFFICER: WITH THE CONSULTATIONS -- WE COULD
17 TRY TO HAVE IT DONE IN 3 WEEKS. NORMALLY ---

18 THE COURT: WHY DON'T YOU JUST MAKE YOUR BEST ATTEMPT
19 FOR THE NEXT NOVEMBER TERM OF COURT. AND IF FOR SOME
20 REASON THAT DOESN'T WORK, WE CERTAINLY CAN HOLD A SPECIAL
21 HEARING. YOU CAN LET ME KNOW AND EVEN IF I'M HOLDING SOME
22 OTHER TYPE OF COURT, IT DOESN'T MATTER. WE CAN CERTAINLY
23 GO AHEAD AND JUST HAVE A SPECIAL HEARING JUST FOR THIS
24 SPECIFICALLY.

25 PROBATION OFFICER: OKAY.

1 THE COURT: I APPRECIATE YOU DOING YOUR BEST. I KNOW
2 HOW BUSY YOU ARE. SO PLEASE KNOW I APPRECIATE IT. OKAY?

3 PROBATION OFFICER: OKAY.

4 THE COURT: ALL RIGHT. WITH THAT SAID, MR. MACLOSKIE,
5 ANYTHING FURTHER?

6 MR. MACLOSKIE: NOTHING FURTHER, YOUR HONOR. THANK
7 YOU, YOU ALL.

8 THE COURT: THANK YOU, YOU ALL.

9 --- END OF TRANSCRIPT OF RECORD ---

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1 I, THE UNDERSIGNED DIANNE A. RUTLEDGE, OFFICIAL COURT
2 REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF
3 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
4 TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THE RECORD OF THE
5 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE
6 CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT
7 FOR BEAUFORT COUNTY, SOUTH CAROLINA ON THE 26TH, 27TH, AND
8 28TH DAYS OF OCTOBER 2009.

9 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
10 COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

11

12 FEBRUARY 20, 2010

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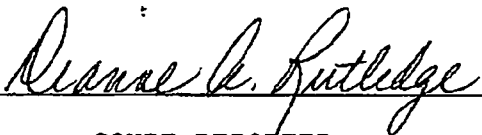
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COURT REPORTER

Office of the Clerk of Court
RANDOM STRIKE SHEET

374

JUDGE NAME: Mullen, Carmen T
1. CASE TYPE: Criminal
PANEL ID: 2009GS0700703
COURTROOM CTR

DESCRIPTION: STATE V TAPPEINER

Sorted by: Random Nbr
Trial

NAME	JUROR NBR	RACE	SEX	STATE/ PLAINTIFF	DEFENDANT	Court	REMARKS
				Chal	Strk		
1 Pearson, Melvin C	204	W	M	()	()	()	(1)
2 Edrington, Neva L	75	W	F	()	()	()	(2)
3 Harris, Myron S	106	B	M	()	()	()	(3)
4 Cole, Charles S III	52	W	M	(✓)	()	()	
5 Meyers, Karen K	175	W	F	()	(✓)	()	
6 Mcdomick, Philander K	168	B	M	()	(✓)	()	
7 Strohl, Mary M	253	W	F	2(✓)	()	()	
8 Hyska, Karen L	126	W	F	()	()	()	(4)
9 Brown, Sonya K	219	B	F	()	()	()	(5)
10 Nelson, Charles R	195	W	M	3(✓)	()	()	
11 Clark, Stephen R	49	W	M	()	()	()	(6) foreman
12 Olivarri, Daniel B	201	W	M	()	(✓)	()	
13 Peluso, Warren F	206	W	M	4(✓)	()	()	
14 Hickey, Edith L	116	W	F	()	(✓)	()	
15 O'donnell, Brian F	199	W	M	()	(✓)	()	
16 Mustard, Joan C	191	W	F	()	()	()	(7)
17 Harvey, Candace O	108	W	F	()	()	()	(8)
18 Sprecher, Gregory A	248	W	M	()	(✓)	()	
19 Pizarro, Natha L	212	B	F	()	()	()	(9)
20 McGowan, Samuel III	170	W	M	5(✓)	()	()	
21 Beavers, Donna G	15	W	F	()	(✓)	()	
22 McCartney, Byrl R	163	W	M	()	()	()	(10)
23 Dixon, Stacey S	70	W	F	()	()	()	(11)
24 Redmon, Carol A	218	W	F	()	()	()	(12)

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1 CASE TYPE: Criminal

PANEL ID: 2009GS0700703

DESCRIPTION: STATE V TAPPEINER

Trial

COURTROOM CTR

NAME	JUROR NBR	RACE	SEX	STATE/ PLAINTIFF			DEFENDANT			REMARKS
				Chal	Strk	Court	Chal	Strk	Court	
25 Delmonico, Tyrone R	65	W	M	()	()	()	()	()	()	A-1
26 Santoro, Sonia N	234	W	F	()	()	()	()	()	()	A-2
27 Heyward, Lenora N	115	B	F	()	()	()	()	()	()	
28 Bates, Raymond E	14	W	M	()	()	()	()	()	()	
29 Friedman, Sonja N	85	W	F	()	()	()	()	()	()	
30 Rudicil, Rhonda M	230	W	F	()	()	()	()	()	()	
31 Nelson, Madeline S	196	W	F	()	()	()	()	()	()	
32 Moon, Hazel L	185	W	F	()	()	()	()	()	()	
33 Sommerville, Ann C	244	W	F	()	()	()	()	()	()	
34 Leffel, James G	148	W	M	()	()	()	()	()	()	
35 Brown, Jacqueline S	35	W	F	()	()	()	()	()	()	

Total Number of Jurors:

35

** END OF REPORT **

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS
2009-GS-07-00703

COUNTY OF BEAUFORT

STATE OF SOUTH CAROLINA,

-vs-

SUSAN TAPPEINER,

Defendant.

November 16, 2009

B E F O R E:

HONORABLE CARMEN T. MULLEN

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

DAWN S. BURKE, Esquire
Attorney for the State

CHARLES B. MACLOSKIE, Esquire
DESA BALLARD, Esquire
Attorneys for the Defendant

Henry P. Young
Court Reporter

1 P-R-O-C-E-E-D-I-N-G-S

2 (Convened at 9:58 a.m.).

3 MR. MACLOSKIE: If Your Honor please, before
4 we start may Miss Burke and I approach you briefly?

5 THE COURT: Yes.

6 (Unrecorded bench conference).

7 THE COURT: We're here in the matter of Susan
8 Tappeiner, for her sentencing. She was convicted
9 on October 28, 2009, with criminal sexual conduct
10 second degree with a minor. At that time I
11 deferred my sentence to allow a pre-sentence
12 investigation to be performed by Patrick Rowell
13 from probation and I appreciate that, sir, very
14 much. Additionally I understand you were going to
15 do some research as well on some psychological
16 counseling issues.

17 At this time I'm going to go ahead and hear
18 from Miss Burke. Is there anything further needs
19 to be put on the record as far as sentencing is
20 concerned or anything else on behalf of the victim
21 or on behalf of the State?

22 MS. BURKE: Briefly, Your Honor.

23 Your Honor, you have the PSI report and I
24 thank Probation for doing such an extensive report
25 in the period of time that was given. I'm not

1 completely surprised, although some things caught
2 me off guard by the items in the report, but not
3 completely surprised by the revelations regarding
4 Mrs. Tappeiner's history of drugs and sexual abuse
5 in her past. Certainly some of those things were
6 made known during the pretrial hearing.

7 Indeed most of the defendants that come into
8 our criminal justice system have a checkered past
9 that in some cases might have played a role in
10 their criminal activity in the future. For
11 example, it's a common belief that some people who
12 were victims of sexual abuse at a young age might
13 grow up to be abusers, sexual abusers in the
14 future. Nevertheless, as it relates to sentencing,
15 I think that the judiciary in this circuit has been
16 consistent as it relates to criminal sexual conduct
17 with a minor cases. I recall a case not too long
18 ago where a 27 year old man was found guilty of CSC
19 second degree involving I think a thirteen year old
20 girl and I believe the sentence was somewhere
21 around twenty years. I think that facts are
22 different on each case, each case stands on its
23 own. However I do think in reviewing the landscape
24 of cases that there has been a certain level of
25 consistencies, if you will, as relates to these

1 type cases, and as a result the State would ask for
2 a twenty year sentence.

3 Thank you.

4 THE COURT: Thank you, Miss Burke.

5 MR. MACLOSKIE: If Your Honor please, first
6 of all with regard to the excellent work of the
7 Probation office, we have had copies of their work
8 for days now and have examined it thoroughly and
9 there are only two items that I would take
10 exception to. One of them is found, and it quotes
11 from the incident report, and that is where that
12 information comes from, any acts of violence on
13 Susan's part, slapping or hitting Josh, we still
14 deny that. And also I must point out to you that
15 the recommendation of the probation office to
16 include a term of incarceration within what they
17 state as the guidelines provided by law, that there
18 are no guidelines.

19 This morning I asked Mr. Rowell particularly
20 about that kind of recommendation. I think it
21 needs to be pointed out that that recommendation is
22 based upon Probation Department policy. Their
23 policy is to recommend incarceration for any
24 offense involving a sentence of fifteen years or
25 more. I point that out as a matter of

1 housekeeping.

2 I must respond briefly to Miss Burke's
3 remarks about sentencing. It is extremely
4 difficult for any of us to do the right thing.
5 You're going to be criticized, regardless of what
6 you do. However there are moments that we must
7 adhere to right, and there is something called
8 right, and that right is not necessarily achieved
9 by a strict adherence to any policy or pattern, and
10 I call your attention to the use of and what has
11 happened to the structure of the federal guidelines
12 with regard to sentencing, and the harshness has
13 been taken out of even those to where federal
14 judges now pay attention to the guidelines because
15 they're directed to but depart from them fairly
16 substantially under what is referred to as 35-53
17 where you as a judge are entitled and required to
18 take into consideration what that section calls
19 individual defendant characteristics.

20 Now, that doesn't apply here but the fact of
21 the matter is it does set a tone, a tone I think is
22 important. Justice is achieved in any case not by
23 just strict adherence to the law and what the
24 sentencing guidelines may require but the
25 capability of an individual standing before you at

1 any given moment to rehabilitate.

2 And what I with your permission would like to
3 do now is call to the stand Dr. Tom Martin who will
4 address that issue along with others, and in
5 connection with that and prior to it I would like
6 to pass up his curriculum vitae for your
7 examination. I have already given a copy to Miss
8 Burke.

9 THE COURT: You can go ahead and call Dr.
10 Martin.

11 MR. MACLOSKIE: Call Dr. Tom Martin, please.

12 DR. THOMAS VICTOR MARTIN,
13 after being first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. MACLOSKIE:

16 Q Would you state your full name, please?

17 A Thomas Victor Martin, M-a-r-t-i-n.

18 Q And what profession are you in, Dr. Martin?

19 A I'm a forensic psychiatrist and general
20 psychiatrist from Columbia, South Carolina.

21 Q Would you give the Judge the benefit of your
22 educational background, please?

23 A Certainly. I graduated from the University
24 of Maryland with a Bachelor of Science in clinical
25 psychology in 1979. I graduated from Cook College

1 in Maryland with a Master's of Science Degree in
2 biomedicine in 1984. I graduated from the
3 Uniformed Services University School of Medicine in
4 Bathesda, Maryland in 1988 with a degree as medical
5 doctor. I then completed a psychiatric residency
6 in 1992. I practiced for a number of years and
7 came down to South Carolina and attended USC for a
8 forensic fellowship for one year and graduated from
9 that in 2000. I am Board Certified in general and
10 forensic psychiatry and I at this time have a
11 practice in South Carolina, in the Columbia area.

12 Q All right. What specialties within that
13 practice do you engage in, if any?

14 A Well, half of my practice is forensic
15 psychiatry, mental health behavior and so forth,
16 how they interface with the legal system. The
17 other half is pretty much general psychiatry,
18 medication management, psychotherapy.

19 Q And in that practice have you treated sex
20 offenders?

21 A Yes. About a third of my practice has been
22 the assessment and treatment of people who have
23 committed inappropriate sexual behaviors. For a
24 period of several years I was the senior
25 psychiatrist at the sexual violent predator program

1 in Columbia.

2 Q Have you testified in court as an expert?

3 A Yes, sir, I have.

4 Q Approximately how many times?

5 A Probably over 150, 175 times.

6 Q And have you testified both for the defense
7 and prosecution?

8 A Yes, both in state and federal court.

9 Q And has your opinion as an expert ever been
10 denied?

11 A No, sir.

12 MR. MACLOSKIE: At this time I would offer
13 him as an expert in his field.

14 MS. BURKE: No objection.

15 MR. MACLOSKIE: Do you want to ask him?

16 MS. BURKE: No. I was saying no objection
17 from the State.

18 BY MR. MACLOSKIE:

19 Q Dr. Martin, at my request did you see Susan
20 Tappeiner?

21 A Yes, I did.

22 Q When was that?

23 A That was November 10th, last Tuesday.

24 Q What did that consist of?

25 A I reviewed a number of documents, interviews

1 that were recorded of Mrs. Tappeiner, and I met
2 with Miss Tappeiner in the jail from about 9:00 to
3 2:30 last Tuesday and also administered
4 psychological testing.

5 Q Did you take a history from her?

6 A Absolutely.

7 Q Based upon the testing and the history did
8 you reach any conclusion with regard to findings or
9 diagnosis, if you will?

10 A Yes, sir, I did.

11 Q And what was that?

12 A I find that Miss Tappeiner suffers from a
13 long term anxiety disorder and alcohol abuse.

14 Q All right. And did you and Susan discuss a
15 course of treatment for that?

16 A Yes, I did.

17 Q And did you find any other things or factors
18 that were important to that diagnosis?

19 A Well, she had been treated with an
20 anti-anxiety medication Clonazepam, which is
21 Klonopin, which actually was perpetuated by her use
22 of alcohol at the time.

23 Q And did you discuss the event for which she
24 was convicted?

25 A Yes, sir, we did.

1 Q And how did you find her approaching that?

2 A I found that Mrs. Tappeiner was a rather
3 insightful individual. She essentially is someone
4 who has had no history of aberrant behavior or
5 criminal behavior problems. She has no evidence of
6 any type of sociopathy or psychopathy. I did
7 notice that with her anxiety disorder that
8 sometimes she would drink alcohol as part of her
9 way of sedating panic attacks but she was also
10 taking Klonopin at the same time.

11 She described the night of August 15th, 2008,
12 which is the night in question, and that she had
13 taken her Klonopin and her several drinks of
14 alcohol at least and the combination of those two
15 created a remarkable disinhibition in her judgment
16 as well as her behavior.

17 I have in my past been the medical and
18 psychiatric director of a clinic, both inpatient
19 and outpatient, and those combinations are familiar
20 to me, and her behavior that night which over time
21 in the session with her last Tuesday she was able
22 to put some pieces together where she acknowledged
23 responsibility for inappropriate sexual behavior
24 that is quite out of character for Mrs. Tappeiner
25 in her past.

1 Q Did you and Susan discuss any course of
2 treatment or what might happen in the future?

3 A Yes, we did.

4 Q And did you have any recommendations, do you
5 have any recommendations based upon that?

6 A Yes, I do. First of all Mrs. Tappeiner has
7 abstained totally from alcohol and all mind
8 altering or addictive substances. She has already
9 done that even prior to incarceration. She also
10 needs to be weaned off Klonopin. Though that is a
11 viable treatment for anxiety, it is not a good fit
12 in her situation. That's already been done as
13 well. I would have also started her on an
14 anti-depressant that would also have an
15 anti-anxiety component, and fortunately she's
16 actually already started on a low dose of that and
17 has responded very well. This is a non-addictive
18 medication which can be used long term.

19 I would also recommend that she have regular
20 outpatient therapy to address not only her behavior
21 while drinking but also her anxiety problems, any
22 type of unsorted past issues that I really don't
23 believe played a part on the night in question but
24 definitely contributed to her anxiety problems.
25 And also to include family therapy and consultation

1 with her husband and parents and so forth, some of
2 which has already been done. I found that when I
3 was approaching her about this type of
4 recommendation, which is pretty standard, that she
5 seemed very amenable to that and we actually
6 started doing some introspective work while I was
7 here last Tuesday. I find that she's a very viable
8 candidate and will very likely do very well in
9 treatment.

10 Q How important is it to start this treatment
11 regimen immediately?

12 A Well, it's very important. Actually she has
13 essentially been able to come to grips with some of
14 the horror that she has essentially been trying to
15 suppress. Alcohol and medications like Klonopin
16 put people in a mind state that often is very
17 uncharacteristic of the individuals. I have
18 several patients I treat today of all walks of life
19 where they commit horrible acts while under the
20 influence of those two substances. Mrs. Tappeiner
21 takes responsibility for that but, however, she has
22 already gone off those medications and has done
23 perhaps even better than while she was on them. I
24 have found the sooner you start somebody in
25 treatment like this the better the rehab prognosis

1 is going to be and I would expect hers to be very
2 favorable.

3 I find that Mrs. Tappeiner's behavior on
4 August 15th was one of opportunity, not predatory.
5 She is not a sexually violent predator and she's
6 very remorseful and very empathetic to the
7 individual and family, including her own, and the
8 victim's family which she has horribly hurt. I
9 think those are all factors that make her a very
10 low risk to re-offend. In fact, if she were in
11 therapy with me I would essentially have no worry
12 about her going back to this kind of behavior.

13 Q And what would your course of treatment
14 consist of, then, in terms of them?

15 A I would need to see her and I would also like
16 to see her supportive family and others that
17 actually have come today in support of her at least
18 every two weeks. I would closely manage her
19 medications. If she came to see me, which is a
20 little bit of a drive, although a very nice drive,
21 but it would probably be a lot longer than the
22 usual hour session. We would probably meet longer
23 than that each time and I typically do that with
24 other patients I have in the low country.

25 Q Tell me this. Are any facilities available,

1 any services available to one convicted of this
2 kind of offense within the confines of any
3 institution within the South Carolina Department of
4 Corrections?

5 A Not for Mrs. Tappeiner.

6 Q At all?

7 A No.

8 Q So if she's sentenced to incarceration she
9 will remain untreated for that period of time?

10 A She may at best receive a counselor who will
11 try to see her at least on maybe a monthly basis
12 and they may continue her medication that she's
13 taking but she won't receive any sex offender or
14 sex behavior specific treatment. There is nothing
15 available for that for women in SCDC.

16 Q What, then, would be the effect not only on
17 Miss Susan but the community to which she returns
18 if she is incarcerated without treatment?

19 A I'm sorry, I didn't hear all the question.

20 Q What would then be the effect not only on
21 Susan but to the community in which she returned if
22 she is incarcerated without treatment?

23 A If she's returned to the community without
24 treatment?

25 Q Right, after incarceration. What is society

1 getting back, what is that going to do to Susan?

2 A Well, I typically don't speak to the effect
3 of incarceration but in terms of Mrs. Tappeiner's
4 character I would fear in her particular
5 circumstance that she would probably adopt some
6 adaptive behaviors in order to survive in SCDC, as
7 all people must do, which is definitely out of her
8 character and would probably make her more of a
9 harsh and less emotionally expressive individual.
10 She will have had no treatment, so we have to start
11 at square one. I would be concerned that a lot of
12 denial will kick in by that time, bitterness and so
13 forth. I have not discussed those type things with
14 her so I don't want to say that with a whole lot of
15 certainty but the time to start treating
16 individuals for behavior like this is immediately
17 and the longer it's delayed the more defensive
18 mechanisms are put into place and then you actually
19 never do get to the core of why something like this
20 may have happened.

21 Q So, is it fair to say there is absolutely no
22 benefit to either Susan or society by
23 incarceration?

24 A That's a fair statement, yes.

25 Q How about the deterrent effect, if any, of

1 incarceration, is that a factor?

2 A The best deterrent now is to treat her now.
3 Right now I have already seen Susan for five plus
4 hours and she is ready for interactive therapy,
5 medication management, family work. She's got a
6 very supportive family system and community system
7 that will help her, you know, with her recovery
8 from this. This is what I would describe it as, as
9 a recovery, and that this is the time to do it.
10 She wouldn't have any of that type event if she's
11 incarcerated.

12 Q One of the recommendations of the Probation
13 office is that Susan be made responsible for the
14 expense of any treatment that victim has to go
15 through. Is that an important factor in her own
16 rehabilitation, for her to participate in that?

17 A Well, I haven't discussed that with Mrs.
18 Tappeiner but I would not go on record saying that
19 I would imagine the victim wouldn't need some sort
20 of after care therapeutic counseling. She is
21 concerned, Mrs. Tappeiner is concerned about his
22 psychological welfare and the kind of damage or
23 scarring that she may have inflicted by her
24 behavior last year. Although she didn't say she
25 was offering any therapy for this young man, her

1 interests do lie in him doing well and I would
2 imagine it would include something like that.

3 MR. MACLOSKIE: Dr. Martin, excuse me just a
4 moment.

5 Q Tell me this. The opinions you have given
6 here, are they within a reasonable degree of
7 medical certainty?

8 A Yes.

9 Q And to speak to Susan's willingness to go
10 into treatment, would you do that?

11 A She actually asked me if I would conduct
12 therapy for her. I told her what the
13 recommendations were and I also told her where my
14 office is and that apparently is no problem for her
15 or her family and I said, "I would be more than
16 willing if the opportunity is allowed to follow you
17 up in therapy." I've got 45 other people right now
18 that I see under the same circumstances, who
19 continue to do well and in their cases they are on
20 probation and I have regular contact with the
21 Probation office and they have regular contact with
22 me and I have contact with everybody's family, so
23 it is quite the supportive network and I must say
24 probably that seems to work out very well.

25 Q And it's important that start immediately,

1 did you say?

2 A It should have started already.

3 Q And what is your prognosis if that started?

4 A Favorable, very good.

5 MR. MACLOSKIE: Thank you very much. Would
6 you answer any questions Miss Burke or the Court
7 might address with you.

8 THE WITNESS: Certainly.

9 THE COURT: Miss Burke, anything for Dr.
10 Martin?

11 MS. BURKE: Briefly, Your Honor, thank you.

12 CROSS EXAMINATION

13 BY MS. BURKE:

14 Q Good morning, Dr. Martin.

15 A Good morning.

16 Q Just to get it clear, are you saying that
17 there is no facility in the South Carolina prison
18 system that is currently offering treatment for
19 females convicted of a sex crime?

20 A Not that I know of, no, ma'am.

21 Q Okay. And what is your affiliation with
22 Broad River? I'm not as knowledgeable about the
23 system as you are in terms of who is housed there.
24 What does Broad River provide? Is that just a male
25 facility?

1 A I'm sorry, where I used to be employed?

2 Q Yes.

3 A Actually at Broad River Correctional
4 Institution in Columbia there are two sex offender
5 programs. There is one that is provided by the
6 Department of Corrections and is headed by a
7 colleague of mine and he is the only one at this
8 time who conducts a sex offender treatment program
9 in-house for SCDC, all men.

10 Q I see.

11 A The other one is a sexually violent predator
12 program for which I have been employed by the
13 Department of Mental Health for a number of years
14 and where I was a senior psychiatrist and there is
15 about 109 people there and they are all men.

16 Q Okay. And you have expressed to the Court
17 Mrs. Tappeiner's and her family's eagerness to have
18 you as her counselor, is that correct?

19 A That's what they have asked me, yes.

20 Q And based on your current case load you are
21 able to accommodate that?

22 A Absolutely.

23 Q I presume you are also able to accommodate
24 her in terms of going where she is at any facility
25 she's assigned to?

1 A Not necessarily. I actually have tried to do
2 that, including at Broad River. That is
3 discouraged, outside psychiatrists consulting in
4 SCDC programs have been discouraged and so my
5 ability to do that has really been thwarted.

6 Q It's discouraged but has it been banned,
7 prohibited?

8 A I would say the warden at Broad River has
9 essentially banned it unless somebody can be
10 transported, which is quite, if you know what a
11 transport is for SCDC inmates, it is quite a
12 difficult task and so it has not worked out well at
13 all and I definitely can tell you I've tried.

14 Q Got you. When you said that you know of no
15 facility that treats women is it because you're
16 relying on information you have been given or are
17 you just assuming that to be the case?

18 A Well, it's not assuming. It is all the
19 others, though.

20 Q I just want to make sure I verify what your
21 level of knowledge is.

22 A I have been affiliated with the system for
23 quite a while and I do not know of any regular sex
24 offender treatment program. I know of educational
25 programs that essentially do not address anything

1 in particular, meaning any individual can go to
2 those educational sex offender classes, and they
3 can go there in denial and there is no issue with
4 that. It is just essentially education. As far as
5 I know those are only men as well.

6 Q Now, you mentioned that Mrs. Tappeiner is not
7 a sexually violent predator, is that correct?

8 A That's correct.

9 Q What would she be getting treatment for?

10 A Let me identify what a sexually violent
11 predator is. A sexually violent predator is
12 actually a legal term that is --

13 Q I know.

14 A Okay. But a sexually violent predator is
15 somebody who suffers from a major mental illness,
16 who is such a high risk they are very likely to
17 re-offend if not incarcerated in a long term care
18 facility. Mrs. Tappeiner doesn't fit that
19 criteria.

20 Q Okay. You don't think she's going to
21 re-offend?

22 A I don't think so. She is very low risk.

23 Q You also mentioned that you think the events
24 that happened on August 15th, 2008, were outside of
25 her character?

1 A I think that was very unusual, yes, ma'am.

2 Q Okay. And so exactly what is the treatment
3 that Mrs. Tappeiner is in need of at such emergency
4 level that it has to be done now as opposed to
5 after a period of confinement?

6 A I think most anyone would agree anyone that
7 has suffered or inflicted a trauma, that that
8 should be addressed immediately versus postponed.
9 She has an anxiety disorder that still needs to be
10 treated, she has an alcohol issue that needs to be
11 treated and it doesn't need to be treated by
12 incarceration. I think she would be very fine in
13 an outpatient rehab program that are available all
14 over the state of South Carolina and then any
15 issues that may have contributed to her anxiety
16 problems that are not even addressed by medication
17 can be treated in psychotherapy.

18 Q You have reviewed the pre-sentence
19 investigation report?

20 A Yes, ma'am.

21 Q And is it your understanding that Mrs.
22 Tappeiner's anxiety disorder stems from a bad
23 experience from having an MRI done?

24 A No. Actually that is not true. I think it
25 manifested in the MRI and she actually did describe

1 that to me as well and that is not unusual. An MRI
2 can be, especially for anxious people, can be a
3 very horrifying experience and I believe she had
4 some sort of a panic attack which sounded pretty
5 classic. It didn't come from the MRI.

6 Q What did it come from?

7 A Well, actually it probably has come from her
8 self esteem issues and any issues from her past for
9 the most part until last August she had under
10 control. What I'm saying is that the combination
11 of those issues which are under control normally
12 manifested when she drank too much alcohol and
13 ingested Klonopin on August 15th, 2008.

14 Q I'm sorry, I guess I misunderstood your
15 previous statement to Mr. Macloskie. I thought you
16 said that you did not think a previous history
17 contributed to what happened that night.

18 A No. She doesn't have any previous
19 inappropriate sexual behavior. In other words,
20 this is not the kind of behavior like you would see
21 with a sexually violent predator but this was,
22 foregive me, but a comedy of errors or
23 circumstances that were all in the wrong place at
24 the wrong time and it ended in tragedy. That is
25 not something that has happened in the past and if

1 any of those, if we were allowed to offer
2 intervention as soon as possible the likelihood of
3 it happening in the future goes way down.

4 Q Okay. So, Mrs. Tappeiner needs treatment, in
5 your opinion, in your experienced opinion, for
6 anxiety and alcohol abuse. Am I misstating your
7 view?

8 A That's part of what she needs treatment for,
9 yes, ma'am.

10 Q Is there any other part that you didn't bring
11 out during your direct questioning by Mr.
12 Macloskie?

13 A Actually no but just to review, when she
14 hasn't been treated in the past and drinking
15 alcohol it has manifested in inappropriate sexual
16 grandeur. It has been stopped now and we have to
17 make sure it stays stopped, that she is now in some
18 form of recovery and rehab.

19 Q Okay. So, anxiety and alcohol is the problem
20 that she needs to be treated for?

21 A Versus having a sexual perversion disorder?

22 Q No, I'm just asking you, sir.

23 A Okay. Those are two very important
24 conditions that she needs to be treated for and as
25 you had stated in your opening statement that she

1 did have some previous past early life experiences,
2 I do think those may have contributed, yes, they
3 may have. They haven't been a recognizable problem
4 except as an anxiety problem and perhaps an alcohol
5 problem but those issues must be treated as well.
6 I'm not a psychiatrist that just tranquilizes
7 people's symptoms. I do like to go into the issues
8 that may have helped manifest them and in the
9 treatment of those conditions. While ingesting
10 alcohol she demonstrated inappropriate behavior.
11 All of that needs to be examined closely and
12 intensely.

13 Q You would agree, wouldn't you, that there are
14 a lot of individuals, in particular women,
15 currently incarcerated who might have anxiety and
16 alcohol problems?

17 A Yes, there are.

18 Q Okay. And you would agree also that the
19 facilities that they are at has not made them
20 any -- well, let me ask you, has being intoxicated,
21 with anxiety and alcohol problems, in your
22 experience caused these women or these other
23 inmates to become any worse or different or have
24 they not been able to get those treatments at their
25 facilities they are at?

1 A I would rather not testify that the
2 Department of Corrections is not taking care of
3 their psychiatric patients. I assure you that
4 though they do not get as much attention as they
5 probably need they are doing the best they can.

6 Q Okay. So, based on that should we assume
7 Mrs. Tappeiner will also get the attention she
8 needs and that the Department of Corrections will
9 do the best they can with her as well for her
10 anxiety and alcohol disorder?

11 A I doubt if that would be good enough.

12 Q Okay. And you also recognize in your
13 experience and, you know, this government run
14 prison system that we have that not every person
15 who is incarcerated can have the Cadillac treatment
16 because of the volume of defendants and the
17 resources available to the State. Is that correct?

18 A That is correct.

19 Q But that perhaps the most violent, which in
20 your opinion Mrs. Tappeiner is not, offenders are
21 the most, the most dangerous perhaps need to get
22 more targeted attention, is that correct?

23 A Well, that is kind of a global state, they
24 get targeted attention by being in lockdown. They
25 don't always get the mental health attention they

1 need but that actually doesn't apply to Mrs.
2 Tappeiner's case.

3 Q But because she is not a sexually violent
4 predator, in your opinions she is no different than
5 the other women or perhaps men who have had anxiety
6 attacks or alcohol problems in the past and who are
7 currently incarcerated in SCDC?

8 A Oh, I think she is quite different. I
9 believe that SCDC, if I may be so bold, is for
10 people who can't control their behavior and need to
11 be severely punished, that they have no interest in
12 getting better or turning their life around. I
13 would say there are a great number of people, men
14 and women, of that caliber. Mrs. Tappeiner
15 receiving that kind of treatment I believe
16 personally would be an over kill. She doesn't need
17 that kind of confinement. If we're worried about
18 her risk to the safety of the community she does
19 not need that, she does not need to be exposed to
20 other individuals where she probably would not be
21 able to flourish in terms of rebuilding a more
22 healthy character and she also wouldn't get the
23 intense treatment that she required.

24 Q Just to be clear, you say that kind of
25 confinement. Are you talking about a number of

1 years or just being in a monitored facility?

2 A Just being locked up.

3 Q Okay. What medication is she currently on or
4 have you prescribed for her?

5 A I'm not allowed to prescribe her anything
6 because I don't have privileges at the detention
7 center but I happen to know she's on a low dose of
8 Zoloft.

9 Q Zoloft?

10 A Zoloft.

11 Q If you were to have her under your control
12 would that be the medication you would have her on?

13 A Yes.

14 Q Is that medication something that people at
15 SCDC have access to in terms of being able to take
16 while they're in prison?

17 A Yes.

18 Q And you mentioned before that people are seen
19 once a month at some of the facilities?

20 A I gathered that from people I have been able
21 to consult with, they are seen anywhere between
22 once a month to every three months.

23 Q Okay. And tell me how long would you
24 anticipate you would see Mrs. Tappeiner?

25 A If we can start therapy as I prescribed I

1 would need to see her every two weeks with her
2 family, probably an hour and a half to two hours
3 each session for the next year.

4 Q Okay. So, just for a year?

5 A I'm not going to say just for a year any more
6 than I would say you need medication for only so
7 many days but I would definitely be evaluating her
8 on a regular basis.

9 Q But would you look for change within a year?

10 A Oh, absolutely, I would expect change very
11 quickly.

12 Q Okay. So, you would expect change very
13 quickly and that is because her anxiety and
14 alcoholism isn't that bad from any other American
15 with alcoholism, is that correct?

16 A I wouldn't make that kind of comparison. I
17 would say she is a very good candidate for
18 psychotherapy. And the medication, by the way, is
19 not going to be a cure all. I don't think
20 medication cures very many people at all but it
21 puts her in a state of mind where she has actually
22 been able to show early signs of a therapeutic
23 viability and that is why I have made the
24 recommendation I have made. Her just getting
25 medication is not going to fix this problem.

1 MS. BURKE: Thank you, Your Honor.

2 THE COURT: Anything further, Mr. Macloskie?

3 REDIRECT EXAMINATION

4 BY MR. MACLOSKIE:

5 Q Some mention has been made about the Cadillac
6 treatment. What you're talking about here, Dr.
7 Martin, would you describe that for us in terms of
8 exotic Cadillac treatment or lack of it?

9 A Actually I kind of presumed that was a high
10 priced treatment.

11 Q Well, that is what I presumed.

12 A Being as hallow as I can, I drive a Toyota.
13 What I'm thinking is she needs, Mrs. Tappeiner
14 needs regular attention, therapeutic attention by
15 someone, me or someone else. I can recommend her
16 to somebody else, if she preferred, who has
17 experience in this area of inappropriate sexual
18 behaviors and has some knowledge about substance
19 use, even prescription substance abuse, she needs
20 all of that on a regular basis. When I used to run
21 some classes and therapy programs for inpatients
22 who were addicted with alcohol and other substances
23 we had to meet with them every day. I don't think
24 her problem is as serious as Miss Burke was trying
25 to suggest, I believe, that she needs to be

1 hospitalized. I think she would be a very good
2 candidate for outpatient work. She's responded
3 very well to a low dose of Zoloft. I would follow
4 that and then we would go into the issues that
5 pertain to her substance use, her medication use
6 and her anxiety issues and I would gather other
7 information from her family who are very good
8 collaborators in terms of her development and be
9 able to give her what I would consider a
10 comprehensive sort of a Cadillac treatment, by
11 comprehensive understanding of how we got to where
12 we are today, and that takes some time and it takes
13 a lot of patience. I think she's got it and I
14 think her family does, too.

15 MR. MACLOSKIE: Thank you, sir.

16 THE WITNESS: You're welcome.

17 MS. BURKE: Nothing further, Your Honor.

18 THE COURT: You may step down, Dr. Martin.

19 THE WITNESS: Yes, ma'am.

20 (Witness excuse).

21 MR. MACLOSKIE: If Your Honor please, there
22 are several people seated behind me that came here
23 for the expressed purpose of supporting Susan. Her
24 mother and father Dave and Diane Sanders are here,
25 her husband Mike Tappeiner is here, her uncle John

1 Hamilton from Memphis, Tennessee is here, her aunt
2 Gail Carter from Lexington, Kentucky is here.
3 There are any number of individuals that may want
4 to address the Court with your permission and at
5 this time I would ask you to invite those who wish
6 to do that.

7 THE COURT: Whoever would like to speak on
8 behalf of Mrs. Tappeiner, I just ask you give me
9 your name for the record. We are a court of record
10 and we're taking down everything everyone says, so
11 whoever would like to begin.

12 You can stand there.

13 DIANE SANDERS: I'm her mother.

14 THE COURT: Yes.

15 DIANE SANDERS: I would like to speak.

16 THE COURT: Yes, ma'am.

17 DIANE SANDERS: Do you want me to speak now?

18 THE COURT: Now is fine.

19 DIANE SANDERS: Should I come up front?

20 THE COURT: Where you are is fine.

21 DIANE SANDERS: Your Honor, my brother and
22 sister have flown in from other parts of the
23 country to be with us and show their love and
24 support of Susan. We are a very close knit family,
25 we talk to my brother and sister on a regular basis

1 and my sister and her family always come and join
2 us for Christmas.

3 We have all noticed a change in Susan's
4 behavior in the last two or three years where she
5 easily became anxious and stressful and was not
6 sleeping well. My husband and I employ Susan and
7 her husband in our small imaging business on Hilton
8 Head. She was missing a lot of work partially
9 because of not sleeping well, combined with
10 sometimes extreme anxiety. When on the job she had
11 trouble staying on task when assigned projects and
12 was easily distracted. We knew she was on
13 prescribed medication for anxiety, we now know her
14 prescription medication was extremely addictive but
15 her doctor kept increasing the dosage. We have
16 since been told that the extremely high dosed
17 medication that she was on when combined with
18 alcohol could have killed her.

19 She has recently been seeing a doctor who has
20 helped her so much. He has taken her off strong
21 medications with the goal of eventually not using
22 medication for her anxiety. We have seen such a
23 change in Susan. She is now so much calmer and
24 focused at work and completes all her projects on
25 time. Just last month she totally planned and ran

1 a successful charity fundraising event, which she
2 couldn't have done before when she was on so much
3 medication.

4 It is also important for me to tell you that
5 even in this state of being totally medicated she
6 was always a loving mother, daughter and wife. Her
7 children have always been the most important things
8 in her life. Her little girls are extremely well
9 adjusted, bright and happy.

10 Susan very much wants to be a productive
11 member of society again. Her father and I plead
12 with you to let her return to her family to begin
13 this process. We would be there to fully support
14 her in working with Dr. Martin to accomplish any
15 goals that you and he set for her.

16 And that was going to be all I was going to
17 say to you but if I could I would just like to
18 tell you about our visit with her last night. Your
19 Honor, in visiting with Susan last night she talked
20 of what she wanted to say to you this morning but
21 she also expressed grave concern about so many of
22 the young women whom she has gotten to know in the
23 last few weeks. She said so many are so frightened
24 and too poor to even make bail. She said there is
25 a mental health counselor but not what she called a

1 moral counselor to help them with their fears
2 because many of them don't have the support system
3 that she has. She also spoke of a very nice young
4 woman who was pregnant and I think she was her
5 roommate, I believe that she is the person who put
6 the cornsilk braids in Susan's hair. Susan said
7 that the young woman left jail Friday to give
8 delivery to her baby and sadly was back in jail
9 yesterday. She has seen so many women wanting and
10 needing help. She is deeply concerned for them and
11 would like to explore ways that they can receive
12 therapy and moral counseling while in jail.

13 Thank you, Your Honor.

14 THE COURT: Thank you.

15 Who else would like to speak?

16 MIACHEL TAPPEINER: Your Honor, Michael
17 Tappeiner. Susan and I have been together for
18 fourteen years, married for eleven and what really
19 attracted me to Susan is her internal beauty,
20 kindness. There is a gift for connecting to people
21 makes her so special. She genuinely cares, gives
22 of herself and helps people almost to a fault. She
23 has been taken advantage of many times but
24 continues to keep giving and caring.

25 She does have some deep insecurity and low

1 self esteem issues that resulted in her running
2 from her problems with alcohol. Those need to be
3 dealt with and I don't think prison is the best way
4 or the best place. I have witnessed much agonized
5 soul searching in the past ten months and Susan is
6 determined to face life's challenges head on
7 without alcohol or prescription drugs. She has
8 already made great progress and has found the inner
9 strength she didn't know she had.

10 She has always been a great mother to our
11 girls. They are the most important thing in her
12 life. She wants and needs to be there for them.
13 They miss her greatly. She has found a new
14 appreciation for life, her freedom that she took
15 for granted and responsibility that goes along with
16 freedom. I humbly ask for leniency in your
17 judgment. Please allow Susan to go forward in a
18 positive way and she will not disappoint you if you
19 will just give her a chance and opportunity to
20 prove herself to you.

21 That's all.

22 THE COURT: Thank you, Mr. Tappeiner.

23 DAVID SANDERS: I'm her father, David
24 Sanders. They don't make it easy for me.

25 I would like to speak out for Susan and ask

1 for leniency as you consider an appropriate
2 sentence. My daughter has always been a loving
3 daughter and mother. Her children, I wish we could
4 bring them into court, are two of the brightest,
5 happiest, most well adjusted children you could
6 imagine. Susan is a very giving person but
7 unfortunately her care for the underprivileged and
8 neglected and poor and strays, she has two rescued
9 dogs in her own family, has often resulted in
10 heartache. She is a law abiding person who deeply
11 regrets the poor judgments that she's made in the
12 past. She has always been a caring, loving
13 individual as evidenced by the number of friends
14 here and out in the community that flock to her
15 support.

16 This incident has impacted Susan deeply. She
17 now realizes that the impact of her prescription
18 drugs and alcohol resulted in an incident of which
19 she has faint recall, maybe a blackout. Her arrest
20 and time served have made an indelible mark on her.
21 She's ready to relaunch her life as a contributing
22 citizen and rededicate herself to making a
23 difference in the community. Her improved attitude
24 and behavior after going off Klonopin and
25 prescription medicine that was not appropriate for

1 Susan has been a miracle. We now understand that
2 eratic behavior over the past two years and have
3 since learned the deadly effect the combination of
4 that drug and alcohol can have. We know we now
5 have our old Susan back. She's been off this
6 medication for several months now but I know that
7 the past eight months since her arrest and the
8 three weeks that she has spent in the detention
9 center have had a tremendous impact on her. It has
10 been a punishment that she will never forget but
11 one that has had a tremendous impact on her outlook
12 for life. She has participated in every
13 extracurricular program at the detention center,
14 she has attended all the Bible study classes, has
15 started attending AA there. She is ready to
16 re-enter society as a changed person but she still
17 is a very fragile individual.

18 Dr. Martin has said that incarceration serves
19 no purpose for Susan. He feels that with therapy
20 Susan can and will respond positively. She is no
21 threat to her community. In fact, as Diane said,
22 last month just before the trial she completely
23 organized a fundraising event for the Hilton Head
24 Humane Society and she raised almost \$700 during
25 that and she had immense support from all the local

1 merchants that contributed to that. She's not
2 perfect but she has demonstrated great maturity
3 throughout this ordeal. She has a very strong
4 support system. Her family and her friends all
5 believe in her.

6 I would be most appreciative if you could
7 show leniency for our daughter. I ask you from the
8 bottom of my heart to see the truth and understand
9 that Susan is not the person that the prosecution
10 tried to portray her during the trial. She is a
11 human being, flaws included, that has demonstrated
12 so much kindness to others. I ask that you grant
13 her probations and allow her to return to her home
14 knowing she will adhere to whatever restrictions
15 and guidelines you place on her. Her family needs
16 her income and the parenting to continue to provide
17 for the welfare of those terrific little girls.

18 I'm very worried about Susan and the effect
19 that further incarceration could have on her
20 wellbeing. She is fragile, she needs the help of
21 Dr. Martin. We're asking, no, really begging you,
22 Judge, to have mercy as you consider an appropriate
23 sentence. Her family, her supporters all ask for
24 leniency. She has held her head high and she
25 showed remorse for her actions. Only God knows

1 what really happened that night. She is a good
2 soul and she has much to offer and she can't do
3 that if she's in prison, Your Honor.

4 Thank you for letting me speak.

5 THE COURT: Thank you, Mr. Sanders.

6 THE COURT: Anyone else?

7 Mr. Macloskie?

8 MR. MACLOSIE: No, ma'am, not unless if
9 anyone else wants to speak they're welcome to. I
10 neglected to introduce Susan's sister and Claude.
11 The remarkable thing about Claude, Claude is no
12 longer a member of this family. Claude is Susan's
13 ex-brother-in-law and I think it speaks volumes
14 that there are people here who worked with her,
15 friends, all have come to support her.

16 If Your Honor please, Susan has something she
17 wants to say.

18 THE DEFENDANT: Judge Mullen, I would like to
19 read something I wrote last night. "Your Honor,
20 with regret and humility I stand before you with
21 the utmost respect for your position and judgment.
22 The suffering I have caused my family as well as
23 victim and his family, these last few weeks as
24 difficult as they were, provided a platform for
25 self analization. I discovered that denial and

1 minimizing my alcohol abuse was another form of
2 false hope and loss of control. I found myself
3 searching desperately for help. I came to realize
4 that my life as I had known it was out of control
5 and I was powerless over my alcohol abuse and
6 medication. I was somewhere between lost faith and
7 insanity. I surrendered before God and asked for
8 forgiveness and guidance and with the help also of
9 Dr. Tom Martin I was able to start to understand
10 the behavior that resulted in this misguided
11 dependency and lack of control. With his help I
12 seek further analysis and treatment. Again I am so
13 terribly remorseful that victim suffered as a result
14 of my ongoing denial and lack of professional
15 counseling for my emotional and alcoholic abuse
16 problems. I can't imagine what he is going
17 through. I'm so sorry. With your help, Judge, and
18 God's help I ask, kindly I ask for strict probation
19 and counseling and therapy with Dr. Martin. I am
20 responsible for helping Josh and incarceration
21 would make that so difficult. It would also be
22 very detrimental to my children's stability as well
23 as mine. I would like to redeem myself in the
24 community. Judge Mullen, whatever you deem is my
25 responsibility, I will not fail you nor will I fail

1 God."

2 Thank you for the time.

3 THE COURT: Thank you.

4 MR. MACLOSKIE: If Your Honor please, I think
5 Susan's statement says a lot. I want you to direct
6 your attention, if you would, please, to that
7 portion of the recommendations that have to do with
8 helping victim the only way she really can, and that
9 is by being financially responsible for his
10 counseling. That's on the last page, under the
11 recommendations, the last recommendation, third
12 recommendation, the second full paragraph there.
13 She wants to do that, she wants to be part of that.
14 That really is all she can do to help victim and his
15 family. That can't be accomplished if she's
16 incarcerated. She can't do that from a prison
17 cell.

18 There are all kinds of reasons for me to
19 request alternative sentencing, probation, and if
20 straight probation is not within what you feel is
21 right and proper in this case I would ask you to
22 consider some other alternative, house arrest,
23 monitoring. There are any number of alternatives
24 that serve the same useful purpose.

25 I think also I need to point out to you that

1 on that same page there are some recommendations
2 that start, mitigating circumstances, they start on
3 page nine and continue on page three, and the
4 pertinent part, I mean on page ten, item three, in
5 pertinent part they include the wishes of the
6 victim's mother. Even she agrees that a lengthy
7 term of incarceration would be detrimental both
8 physically and mentally to Susan. Based on what
9 Dr. Martin has testified to, the detrimental effect
10 I don't think can't be exaggerated. Again, nothing
11 occurs in a vacuum. This incident didn't occur in
12 a vacuum. We're finding out all kind of reasons,
13 not excuses, not justifications, not defenses, but
14 valid reasons for these kinds of things. Susan
15 wants to fulfill her responsibility, she has
16 admitted her conduct and she wants to fulfill that
17 responsibility. What I'm asking you to do is to
18 consider several things that are obvious. She's
19 not a criminal. There are some references in the
20 pre-sentence report about not appreciating the
21 criminality of her conduct. She is not a criminal.
22 The fact she committed an offense which society
23 rightly so brands as criminal does not make her a
24 criminal. As a matter of fact, in 42 years I have
25 met very few criminals. I have seen a lot of good

1 people that have done some extremely bad things.

2 There is no question she would do well, she
3 would do well on probation. And the community
4 would also do well in light of that. The loss to
5 Susan of status in the community, the shame she
6 feels, the remorse that she feels is a type of
7 punishment that I have found that courts can't
8 inflict. They do it to themselves. That is the
9 ones that, like Susan, have a deep and abiding
10 goodness to them, a faith lost and refound, the
11 things that make Susan fulfill the description that
12 has been given to you by the people who know her
13 best. She is a kind, caring, loving, sharing
14 individual who does not take from the community but
15 she gives to the community. Her whole life has
16 been about giving. Those characteristics, along
17 with Dr. Martin's assistance and this great support
18 system she has in place give assurance to you or
19 any other judge that Susan's responsibility would
20 be fulfilled and the words she has spoken to you
21 today will come to pass, she will not fail you and
22 I ask you for a probationary sentence or something
23 in an alternative that would keep her out of a
24 situation where she cannot progress.

25 THE COURT: All right. I'm going to go ahead

1 and take about a ten minute break. If you all
2 would, let Mrs. Tappeiner have an opportunity to
3 speak with her family. Obviously you all need to
4 stay in the courtroom and not go anywhere but I
5 would like her to have the ability to speak to her
6 parents and sister and her family members, okay?
7 If there is any problem with that come find me.

8 SPECTATOR: Can I say something?

9 THE COURT: No. Actually you either need to
10 address the Solicitor or Mr. Macloskie but I
11 appreciate it. Miss Burke, I don't know, you may
12 want to speak with this man.

13 All right, thank you. We'll be at ease for
14 about fifteen minutes or so.

15 MR. MACLOSIE: Thank you, Your Honor.

16 (Recessed at 10:53 a.m.).

17 (Reconvened at 11:22 a.m.).

18 THE COURT: Sentencing is by far the hardest
19 part I think of a judge's job. To render a just
20 decision I have to find answers to questions I
21 think sometimes are absolutely unanswerable. Why a
22 wife and mother of two children would commit such a
23 crime, I don't think there is an answer to it.
24 Unfortunately little can be done for me to correct
25 the damage that's been caused.

1 I recognize, Mrs. Tappeiner, that you
2 suffered your own sexual abuse as a child and that
3 you continue to have alcohol and mental problems
4 and please understand that I am painfully aware of
5 what this is going to do to your little daughters.
6 They will lose their mother, and as a mother I
7 appreciate and understand that and I think that's
8 going to be the hardest part of any sentence for
9 you.

10 But the fact remains that you sexually
11 assaulted a thirteen year old child, you are a
12 forty year old woman and he's a child, and that we
13 cannot forget. As a society we protect our
14 children, that's what we're supposed to do.

15 To that end the sentence of this Court under
16 indictment 2009-GS-7-703 for criminal sexual
17 conduct with a minor eleven to fourteen years of
18 age is that you be committed to the Department of
19 Corrections for a period of ten years. That's
20 suspended upon the service of five years and three
21 years probation following your sentence of five
22 years. You will be put on the sexual offender
23 registry for life. You understand you will have to
24 do 85 percent of your sentence, this being a
25 violent crime. I'm also ordering that while you

1 are on probation that you undergo mental health
2 counseling as well as sexual abuse counseling.
3 Additionally I'm ordering that SCDC if possible
4 will allow you private counseling paid for by your
5 family.

6 Mrs. Tappeiner, I wish the very best for you
7 and your family. Thank you.

8 We'll be at ease.

9 (Recessed at 11:29 a.m.).

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I, the undersigned Henry P. Young, 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 all the proceedings had and evidence introduced in the trial of the captioned case in the Circuit Court for Beaufort County, South Carolina, on the 16th day of November, 2009.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 26, 2010

Henry P. Young
Court Reporter

IN THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
CARMEN T. MULLEN, CIRCUIT COURT JUDGE
Indictment Number: 2009-GS- 01-00703

RECEIVED

NOV 19 2009

SC Court of Appeals

STATE OF SOUTH CAROLINA,

Respondent,

Vs.

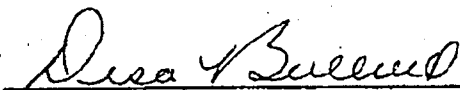
SUSAN SANDERS TAPPEINER,

Appellant.

NOTICE OF APPEAL

2009 NOV 16 AM 11:24
JERRI A. BOWEN
BEAUFORT COUNTY, S.C.
CLERK OF COURT

The Defendant, Susan Sanders Tappeiner, appeals from the verdict of the jury in this matter dated October 28, 2009, the orders and judgments of the Honorable Carmen T. Mullen imposed on November 16, 2009, and such other orders and rulings in this proceeding for which appeal is permitted by law. Sentence was imposed on the defendant by the Honorable Carmen T. Mullen on or about November 16, 2009.



Desa Ballard
Law Offices of Desa Ballard
226 State Street
West Columbia, South Carolina 29169
Telephone 803.796.9299
Facsimile 803.796.1066
E-mail: desab@desaballard.com

APPELLATE COUNSEL FOR APPELLANT

November 16, 2009

Notice of Appeal
State v. Tappeiner

Other counsel of record:

Charles B. Macloskie, Esquire
Post Office Box 280
Beaufort, South Carolina 29902
Telephone 843.524.0909
Facsimile 843.521.1379
Co-counsel for Appellant

Isaac McDuffie Stone III, Esquire
Dawn Burke, Esquire
Post Office Box 1880
Bluffton, South Carolina 29910
Counsel for the State of South Carolina

Honorable Henry McMaster
Post Office Box 11549
Columbia, South Carolina 29211
Counsel for the State of South Carolina

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NOV 19 2009

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALSAPPEAL FROM BEAUFORT COUNTY
COURT OF GENERAL SESSIONS

THE HONORABLE CARMEN T. MULLEN, CIRCUIT COURT JUDGE

CASE NO. 2009-GS-07-00703

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

SUSAN SANDERS TAPPEINER,

APPELLANT.

CERTIFICATE OF SERVICE

The undersigned certifies that she has, this date, caused to be served a copy of the Notice of Appeal on opposing counsel in this matter and on the Beaufort County Clerk of Court by hand delivery, as indicated below:

Dawn Burke, Esquire
Courtroom Two - Beaufort County Courthouse
Counsel for the State of South Carolina

Beaufort County Clerk of Court
102 Ribaut Road, Room 208
Beaufort South Carolina 29901


Desa Ballard

November 16, 2009



TARA DAWN SHURLING, PA

Attorneys and Counselors at Law
3614 Landmark Drive
Suite D
Columbia, South Carolina 29204

Jeremy A. Thompson
Associate Attorney
Of Counsel

(803) 738-8622
Fax (803) 738-1600

E-Mail: tdslaw@shurlinglaw.com

May 3, 2010

RECEIVED

MAY 05 2010

SC Court of Appeals

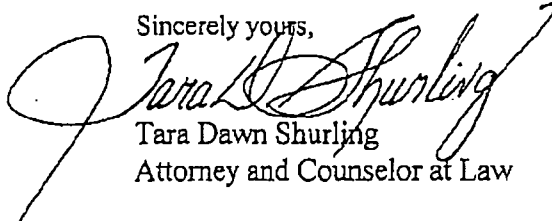
The Honorable Tanya Gee
Clerk of Court of Court of Appeals
P.O. Box 11629
Columbia, SC 29211-0000

RE: State of South Carolina v. Susan Tappeiner; 2009-GS-07-00703.

Dear Ms. Gee:

The Initial Brief of Appellant is due in the above-captioned matter on May 6, 2010. I have met with this client twice. On March 22, 2010 and April 27, 2010, I had the opportunity to have lengthy conferences with my client at Camille Graham Griffin Correctional Institution. In our most recent meeting, I reviewed my findings concerning the trial transcript with Ms. Tappeiner and advised that, in my best professional judgment, there are no meritorious issues preserved for appellate review on appeal present in her case. My advice mirrored an earlier opinion given to her by Desa Ballard, her previous attorney. For that reason, Ms. Tappeiner has decided that she wishes to withdraw her direct appeal and to pursue collateral review through Post-Conviction Relief. I have enclosed an affidavit documenting this client's desire to withdraw her direct appeal. As you can see from the affidavit, I have gone to great lengths to insure that the client understands all the consequences of this decision. Opposing counsel has indicated their consent to this request by their signature below. At this time, I am requesting this Court's Order permitting Ms. Tappeiner to withdraw her direct appeal. She is an intelligent woman and I am confident she is making an informed and voluntary decision concerning her direct appeal rights. With my thanks for the Court's consideration of this request, I remain,

Sincerely yours,


Tara Dawn Shurling
Attorney and Counselor at Law

I consent:


Salley W. Elliott, Assistant Deputy Attorney General

TDS /sm

Cc: Susan Tappeiner, 338050
David Sanders

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

MAY 05 2010

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

The Honorable Carmen T. Mullen, Circuit Court Judge

Case No. 2009-GS-07-00703

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

SUSAN TAPPEINER,

APPELLANT.

AFFIDAVIT IN SUPPORT OF MOTION TO
WITHDRAW DIRECT APPEAL

PERSONALLY appeared before me, Susan Tappeiner, who being duly sworn, deposes
and says:

1. I am aware that a direct appeal from my convictions and sentences for criminal sexual conduct with a minor and lewd act on a minor has been filed with this Honorable Court.
2. I have retained Tara Dawn Shurling to represent me on appeal. Attorney Shurling was substituted as counsel for my previous attorney Desa Ballard, Esquire. Both Attorney Ballard and Attorney Shurling have given me their professional opinions concerning my chances of prevailing on a direct appeal. With the benefit of their advice, I have decided to withdraw my direct appeal in order to proceed directly with collateral review through an Application for Post-Conviction Relief.
3. I have been advised that the issues which would be properly presented for review on direct appeal *may not* be raised in a PCR Application. I have also been advised of the contemporaneous objection rule and its effect on what issues may be successfully pursued on direct appeal under South Carolina law.

4. I am aware that if I withdraw my direct appeal, I will not be able to pursue the issues that could have been raised on direct appeal at a later time. It has been fully explained to me that once an order is issued permitting me to withdraw my direct appeal, I will not be able to request a direct appeal at some later date.
5. Nothing has been said or done to coerce my decision in any way. I have made the decision to withdraw my direct appeal freely and voluntarily with the benefit of counsel with whom I am well pleased.
6. I wish to withdraw my direct appeal and respectfully request that I be permitted to do so.

Susan Tappeiner
Susan Tappeiner, #338050

SWORN TO BEFORE me this 4 day
of May, 2010.

Andie S. Will (L.S.)
Notary Public for South Carolina

My Commission Expires: August 25, 2015

The South Carolina Court of Appeals

The State,

Respondent

v.

Susan Sanders Tappeiner,

Appellant.

Honorable Cammen T. Mullen
Beaufort County
Trial Court Case No. 2009-GS-07-00703

ORDER of DISMISSAL AND REMITTITUR

The above entitled case is pending on appeal in this Court. It appears that Appellant, with full understanding of all possible consequences of this action and with agreement of counsel, wishes to withdraw the appeal and moves the Court for an Order dismissing the appeal.

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. This case is REMITTED to the Clerk of Court for Beaufort County.

JOHN CANNON FEW, CHIEF JUDGE

BY V. Claire Allen, Deputy
Clerk

Columbia, South Carolina

5/11/2010

Original to: The Honorable Jerri Ann Roseneau

cc: Tara Shurling, Esquire

Assistant Deputy Attorney General Salley W. Elliott

FILED

5/11/10

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

SUSAN TAPPEINER, #338050

IN THE COURT OF COMMON PLEAS 431

CIVIL ACTION COVERSHEET

2010-CP-07-2396

2010 Plaintiff(s) 3 20

vs.

STATE OF SOUTH CAROLINA,

Defendant(s)

(Please Print)

Submitted By: Law Office of Tara Dawn Shurling,

Attorney for Plaintiff

Address: 3614 Landmark Drive, Suite D
Columbia, SC 29204

SC Bar #: 5099

Telephone #: (803) 738-8622

Fax #: (803) 738-1600

Other:

E-mail:

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts	Torts - Professional Malpractice	Torts - Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	Previous Notice of Intent Case #	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)	20 -CP- -	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)	☐ Notice/ File Med Mal (230)	☐ Personal Injury (350)	☐ Possession (450)
	☐ Other (299)	☐ Wrongful Death (360)	☐ Building Code Violation (460)
		☐ Other (399)	☐ Other (499)
Inmate Petitions	Judgments/Settlements	Administrative Law/Relief	Appeals
☒ PCR (500)	☐ Death Settlement (700)	☐ Reinstatement Driver's License (800)	☐ Arbitration (900)
☐ Mandamus (520)	☐ Foreign Judgment (710)	☐ Judicial Review (810)	☐ Magistrate-Civil (910)
☐ Habeas Corpus (530)	☐ Magistrate's Judgment (720)	☐ Relief (820)	☐ Magistrate-Criminal (920)
☐ Other (599)	☐ Minor Settlement (730)	☐ Permanent Injunction (830)	☐ Municipal (930)
	☐ Transcript Judgment (740)	☐ Forfeiture-Petition (840)	☐ Probate Court (940)
	☐ Lis Pendens (750)	☐ Forfeiture-Consent Order (850)	☐ SCDOT (950)
	☐ Transfer of Structured Settlement Payment Rights Application (760)	☐ Other (899)	☐ Worker's Comp (960)
	☐ Other (799)		☐ Zoning Board (970)
Special/Complex/Other			☐ Administrative Law Judge (980)
☐ Environmental (600)	☐ Pharmaceuticals (630)		☐ Public Service Commission (990)
☐ Automobile Arb. (610)	☐ Unfair Trade Practices (640)		☐ Employment Security Comm (991)
☐ Medical (620)	☐ Out-of-State Depositions (650)		☐ Other (999)
☐ Other (699)	☐ Motion to Quash Subpoena in an Out-of-County Action (660)		
	☐ Sexual Predator (510)		

Submitting Party Signature:

Date: May 13, 2010

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

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

432

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

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

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

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

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

2010 MAY 17 PM 3:20

2010-CP-07-2346

SUSAN TAPPEINER, 338050,)
Applicant,)

v.)

THE STATE OF SOUTH CAROLINA,)
Respondent.)

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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant 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 applicant was convicted.

1. Place of detention: Camille Griffin Graham Correctional Institution, 4450 Broad River Road, Columbia, South Carolina 29210.

2. Name and location of Court which imposed sentence Beaufort County General Sessions Court.

3. Name(s) of co-defendant(s) (if any) : N/A

4. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) 2009-GS-07-703- Criminal Sexual Conduct with a Minor 2nd Degree

5. The date upon which sentence was imposed and the terms of the sentence:

(a) November 16, 2009; Ten (10) years suspended upon service of five (5) years incarceration, with three (3) years probation.

6. Check whether a finding of guilty was made
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty Yes
 - (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. N/A
 - iii. N/A
 - (b) the result in each such Court to which you appealed:
 - i. Withdrew appeal.
 - ii. N/A
 - iii. N/A
 - (c) the date of each such result:
 - i. Order of Dismissal filed May 11, 2010.
 - ii. N/A
 - iii. N/A
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. N/A
 - iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) N/A

(b) N/A

(c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) The Applicant received Ineffective Assistance of Counsel prior and during her jury trial in violation of her rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution.

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Trial counsel was ineffective in hiring a psychiatrist to evaluate the Applicant and to participate in the Applicant's sentencing proceeding without fully advising the Applicant of all of the consequences of that decision.

(b) Counsel failed was ineffective for failing to advise the Applicant that statements she made to a retained psychiatrist could and would be disclosed in court at her sentencing proceeding.

(c) Trial Counsel was ineffective for failing to adequately inform the psychiatrist hired by him of the status of the case and the intended use of his testimony prior to Court.

12. Prior to this application, have you filed with respect to this conviction:

(a) any petitions in a State Court under South Carolina law? n/a

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief? n/a

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? n/a

(d) any other petitions, motions or applications in this or any other Court? n/a

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. n/a

ii. n/a

iii. n/a

iv. n/a

(b) the name and location of the Court in which each was filed:

i. n/a

ii. n/a

iii. n/a

iv. n/a

(c) the disposition thereof:

i. n/a

ii. n/a

iii. n/a

iv. n/a

(d) the date of each such disposition:

i. n/a

ii. n/a

iii. n/a

iv. n/a

(e) if know, citations of any written opinions or orders entered pursuant to each such disposition:

i. n/a

ii. n/a

iii. n/a

iv. n/a

14. Has any ground set forth in (10) been previously presented to this or any other Court, State of 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. n/a

iii. n/a

(b) the proceedings in which each ground was raised:

i. n/a

ii. n/a

iii. n/a

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) Collateral review through PCR represents the first appropriate opportunity the Applicant has had to raise these issues.

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes

(e) preparation, presentation or consideration of any petitions, motions, or applications with respect to this conviction, which you filed? yes

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. Charles Macloskie, Esquire, P. O. Box 280, Beaufort, SC 29902

ii. Desa Ballard, 226 State Street, West Columbia, SC 29169

iii. Tara Dawn Shurling, 3614 Landmark Dr, Ste D, Columbia, SC 29204

(b) the proceedings at which each such attorney represented you:

- i. Plea and sentencing.
- ii. Sentencing, Appeal to Court of Appeals.
- iii. Appeal to Court of Appeals and withdrawal of said appeal.

19. State clearly the relief you seek in filing this application. Vacation of judgments and sentences. Applicant seeks a new trial.

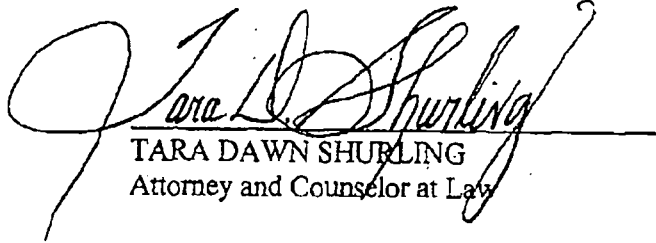
20. Are you now under sentence from any other court that you have not challenged? no

STATE OF SOUTH CAROLINA

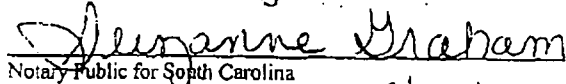
VERIFICATION

COUNTY OF BEAUFORT

I, Tara Dawn Shurling, retained counsel for the Applicant, 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.


TARA DAWN SHURLING
Attorney and Counselor at Law

SWORN to and subscribed before me this 3rd
day of May, 2010.


Notary Public for South Carolina

My Commission Expires: 3/12/2013

2010 MAY 13 PM 3:20

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Susan Tappeiner, #338050.

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

2010-CP-07-2396

RETURN

In response to the post-conviction relief application filed on May 17, 2010, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Beaufort County Clerk of Court's orders of commitment. The Applicant was indicted at the March 2009 term of the Beaufort County Grand Jury for criminal sexual conduct (CSC) with minor (victim age 11-14) (2009-GS-07-703). Charles B. Macloskie, Esquire, and Desa Ballard, Esquire, represented the Applicant. On October 26-28, 2009, the Applicant proceeded to trial, after which a jury found her guilty of 2nd degree CSC with a minor (victim age 11-14). On November 16, 2009, the Honorable Jackson V. Gregory sentenced the Applicant to confinement for ten (10) years, suspended upon the service of five (5) years plus three (3) years of probation.

A timely Notice of Appeal was filed on Applicant's behalf. Desa Ballard, Esquire, and Tara Shurling, Esquire, represented Applicant on appeal. The Applicant submitted an Affidavit in Support of Motion to Withdraw Direct Appeal. The South Carolina Court of Appeals

dismissed Applicant's appeal by Order of Dismissal and Remittitur dated May 11, 2010.

Attached and incorporated herein by reference are the records of the Beaufort County Clerk of Court, the records of the South Carolina Department of Corrections, the trial transcript, the sentencing transcript, the Affidavit in Support of Motion to Withdraw Direct Appeal, and the Court of Appeals' Order of Dismissal and Remittitur.

II.

In her application for post conviction relief the Applicant alleges that she is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel in that counsel
 - a. Hired a psychiatrist to evaluate Applicant and to participate in Applicant's sentencing proceeding without fully advising Applicant of all the consequences of that decision.
 - b. Failed to advise Applicant that statements she made to a retained psychiatrist could and would be disclosed in court at her sentencing proceeding.
 - c. Failed to adequately inform the psychiatrist hired by him of the status of the case and the intended use of his testimony prior to Court.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the 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, 279 S.C. 264, 305 S.E.2d 247.

V.

Respondent denies each allegation that is not expressly admitted, qualified, or explained.

VI.

WHEREFORE, the Respondent requests an evidentiary hearing on the foregoing issues.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

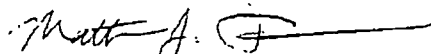
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondents

8/18, 2010.

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

SUSAN TAPPEINER, 338050.)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

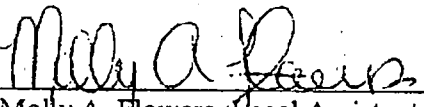
2010-CP-07-2396

AFFIDAVIT OF SERVICE BY MAIL

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 of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tara Dawn Shurling, Esquire
3614 Landmark Dr., Ste. D
Columbia, SC 29204

DATED this 18th day of August, 2010.


 Molly A. Flowers, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
Susan Tappeiner, #338050,	)	2010-CP-07-2396
	)	
Applicant.	)	
	)	AMENDED RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

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 - a. Hired a psychiatrist to evaluate Applicant and to participate in Applicant's sentencing proceeding without fully advising Applicant of all the consequences of that decision.
 - b. Failed to advise Applicant that statements she made to a retained psychiatrist could and would be disclosed in court at her sentencing proceeding.
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Respondent denies each allegation that is not expressly admitted, qualified, or explained.

VI.

WHEREFORE, the Respondent requests an evidentiary hearing on the foregoing issues.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

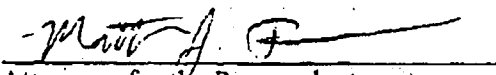
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondents

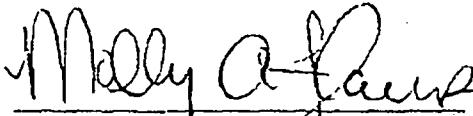
8/25, 2010.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
	)	2010-CP-07-2396
	)	
SUSAN TAPPEINER, 338050.	)	
	)	
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 **Amended** Return of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tara Dawn Shurling, Esquire
 3614 Landmark Dr., Ste. D
 Columbia, SC 29204

DATED this 25th day of August, 2010.


 Molly A. Flowers, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

450

SUSAN TAPPEINER, 338050,)
Applicant,)

2010-CP-07-2396

v.)

THE STATE OF SOUTH CAROLINA,)
Respondent.)

AMENDED APPLICATION FOR
POST-CONVICTION RELIEF

2013 APR -4 AM 10:56
JERRI E. ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

The Post-Conviction Relief Application previously filed on May 17, 2010 under docket number 2010-CP-07-2396 is hereby amended to include the following additional allegations:

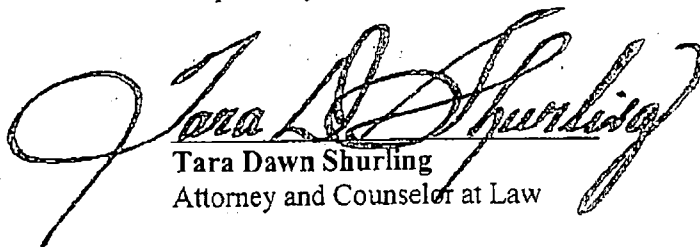
1. Trial Counsel was ineffective in failing to develop and employ a clear theory of defense.
2. Trial Counsel was ineffective for failure to present evidence concerning what prescription medications the Applicant was taking during time of incident.
3. Trial Counsel was ineffective for failing to introduce testimony from Dr. Nolan in case for defense.
4. Trial Counsel was ineffective for failure to hire Dr. Martin, or an expert of equal credentials, to testify during the case in chief.
5. Trial Counsel was ineffective for failing to adequately prepare Dr. Tom Martin for his role in the sentencing phase of the Applicant's trial.
6. Trial Counsel was ineffective for failing to introduce evidence concerning the medications the Applicant was taking during the operative time period, and the effect of those medications when combined with alcohol.
7. Trial Counsel was ineffective for failing to object to repeated references throughout trial to the fact that the decision to arrest the Applicant was not made until after her two-hour police interview where the statements made by the Applicant had been ruled inadmissible.
8. Trial Counsel was ineffective for failing to seek introduction of evidence that the victim had previously reported being raped at age 8 where that evidence was material to the defense.
9. Trial Counsel was ineffective for failing to discuss use of character witnesses with the Applicant and failed to produce such witnesses at trial.
10. Trial Counsel was ineffective for failing to fully discuss potential risks and benefits

11. Trial Counsel was ineffective for failing to request a jury view of the scene, or in the alternative, to introduce evidence demonstrating the size and layout of the Applicant's home.
12. Trial Counsel was ineffective for failing to object to repeated references to hearsay statements from the victim which went beyond a report of the time and place of the alleged assault.
13. Trial Counsel failed to object to repeated references to the victim as 13 years old at the time of the alleged assault where the victim was two months away from his 14th birthday at the time of the alleged assault.
14. Trial Counsel failed to establish his client's height and weight at trial.
15. Trial Counsel failed to provide the Applicant effective assistance of counsel when he called the Applicant's husband as a witness, and questioned him concerning an incident when the victim had asked the Applicant to help him get a camera battery, without ascertaining whether the husband had an accurate recollection of the timing of that request.
16. Trial Counsel failed to provide the Applicant effective assistance of counsel when he failed to question the Applicant's husband, when he testified at trial, concerning the victim's pattern of visitation in their home during the time period prior to the accusations by the victim.
17. Trial Counsel was ineffective when he failed to adequately question the Applicant's husband on the witness stand concerning his observations concerning the Applicant's coordination and general physical condition when she mixed alcohol with her prescription medications.
18. Trial counsel was ineffective for failing to fully discuss with the Applicant the fact that she would retain the right for him to make the final argument to the jury if the defense presented no evidence at trial.
19. Trial Counsel failed to object to a jury charge concerning expert opinion testimony where the sole expert witness proffered by the State was not asked to provide an expert opinion at trial.
- ~~20. Trial Counsel failed to request a jury charge relating to consent and competence as those concepts applied to the Applicant as opposed to the victim.~~
21. Trial Counsel failed to object to numerous highly improper and inflammatory statements made by the State in closing arguments where said remarks;
 - a. personally vouched for credibility of Victim's testimony;
 - b. personally staked the jury in the outcome of this trial;
 - c. were calculated to imply the Applicant had confessed where her statements had been ruled inadmissible.

22. Trial Counsel failed to adequately cross-examine the Victim concerning inconsistencies between his statements pre-trial and his testimony at trial.
23. Trial Counsel failed to produce testimony relevant to the Victim's frequent presence in the Applicant's home when neither she nor her husband were home.
24. Trial Counsel failed to introduce from neutral witnesses evidence concerning the reaction of the Applicant's dogs to any activity in her home.
25. Trial Counsel failed to argue in closing that it would not be Criminal Sexual Conduct by the Applicant if the complaining witness in fact assaulted her while she was incompetent to consent.
26. Trial Counsel failed to request jury charge on the fact that South Carolina law allows minors under the age of 14 to be charged with Criminal Sexual Conduct.
27. Trial Counsel failed to adequately cross-examine the State's expert witness concerning the known reasons for delayed reporting of sexual assaults.

The Applicant has no further amendments at this time. For the reasons set forth herein, as well as those set forth in his original application, the Applicant asserts that his right to effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14, of the South Carolina Constitution, was violated in the trial court. Copies of these amendments have been served on opposing counsel, Ashleigh Wilson, Assistant Attorney General, and Trial Counsel for the Applicant, Charles Macloskie, Esquire.

Respectfully submitted,



Tara Dawn Shurling
Attorney and Counselor at Law

3614 Landmark Dr., Ste. A
Columbia, SC 29204
803-738-8622
803-738-1600 (Fax)

ATTORNEY FOR APPLICANT.

This 29th day of March, 2013..

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

SUSAN TAPPEINER, 338050,)
 Applicant,)

2010-CP-07-2396

v.)

SECOND AMENDED APPLICATION FOR
 POST-CONVICTION RELIEF

THE STATE OF SOUTH CAROLINA,)
 Respondent.)

2013 APR -4 AM 10:55
 JEROME H. ROSENBAU
 BEAUFORT COUNTY, S.C.
 CLERK OF COURT

The Post-Conviction Relief Application previously filed on May 17, 2010 under docket number 2010-CP-07-2396 is hereby amended to include the following additional allegations:

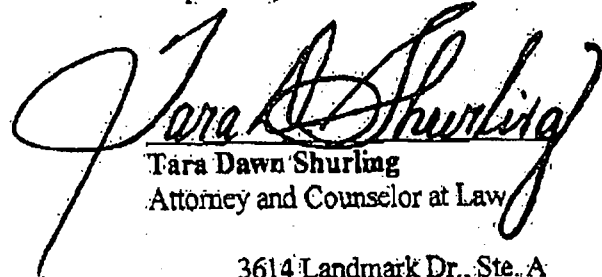
1. Trial Counsel was ineffective for not objecting to the introduction of the panties allegedly worn by the Applicant the night of the incident where the writing on the panties was sexually provocative and likely to prejudice the Applicant in the eyes of the jury.
2. Trial Counsel was ineffective for failing to make a Motion in Limine to prohibit the State from introducing physical evidence and or testimony pertaining to what was written on the panties where the State could have alliteratively proven that panties with a unique design matching those allegedly worn by the Applicant were subsequently found at her home without disclosing the specific content of the quote on the panties; penis enlargement device.
3. Trial Counsel provided the Applicant less than reasonable professional assistance of counsel, and thereby prejudice the Applicant when he made an inflammatory argument in which he joked about the victim's claims.

The Applicant has no further amendments at this time. For the reasons set forth herein, as well as those set forth in his original application, the Applicant asserts that her right to effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14, of the South Carolina Constitution, was violated in the trial court. Copies of these amendments have been served on opposing counsel, Ashleigh Wilson, Assistant Attorney General, and Trial Counsel for the Applicant, Charles Macloskie, Esquire.

MA . EN

454

Respectfully submitted,



Tara Dawn Shurling
Attorney and Counselor at Law

3614 Landmark Dr., Ste. A
Columbia, SC 29204
803-738-8622
803-738-1600 (Fax)

ATTORNEY FOR APPLICANT.

This 4th day of April, 2013.

ARREST WARRANT

J-350739

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of

Bluffton

THE STATE

20090000653

against

Susan Sanders Tappeiner

Address: DR.

BLUFFTON, SC 29910

Phone:

SSN:

Sex: F

Race: W

Height: 5

8

Weight: 117

DL State: SC

DL #:

011679322

DOB: 766

Agency ORI #:

SC0070200

Prosecuting Agency:

Bluffton Police Department

Prosecuting Officer:

Christian Gonzales - G1928

Offense: Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive - Second deg.

Offense Code:

0396

Code/Ordinance Sec:

16-03-0655(B)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant

on

Susan Tappeiner

02-27-09

Signature of Constable or Enforcement Officer

RETURN WARRANT TO:

Beaufort County General Sessions

PO Box 1128

102 Ribaut Road, Rm. 208

Beaufort, SC 299011128

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of

Bluffton

Personally appeared before me the affiant Christian Gonzales

being duly sworn deposes and says that defendant Susan Sanders Tappeiner

did within this county and state on or about 08/15/2008

violate the criminal laws of the

State of South Carolina (or ordinance of

☐ County/☒ Municipality of

Bluffton

In the following particulars:

DESCRIPTION OF OFFENSE Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive - Second deg.

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on August 15, 2008 during the time of 1800-0800 one Susan Sanders Tappeiner did in the Town of Bluffton; County of Beaufort did violate the crime law of South Carolina 16-3-655 Criminal Sexual Conduct with a Minor 2nd degrees to wit: That Susan Tappeiner did while babysitting a 13 year old juvenile victim did engage in sexual battery. Susan Tappeiner did have sexual intercourse both vaginal and orally with the juvenile victim that was under the age of fourteen (14). The defendant was in a position of familial and custodial authority to coerce the juvenile victim to submit. This incident did occur at Bluffton, SC 29910. The affiant and others will prove the same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of

Bluffton

Affiant's Address P O Box 386

Bluffton, SC 29910-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 8/15/2008

defendant Susan Sanders Tappeiner

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/☒ Municipality of

Bluffton

) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive - Second deg.

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me on 02/27/2009

Signature of Issuing Judge

Clifford Bush III

Judge Code: 6669

(L.S.)

Judge's Address Post Office Box 386

Bluffton, SC 29910

Judge's Telephone (843)706-4530

Issuing Court

☐ Magistrate☒ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

455

WITNESSES

C. Gonzales / Bluffton PD

ARREST WARRANT NUMBER

J350739

ACTION OF GRAND JURY FEB 26 2009

True Bill

Angela Courfrey
Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

INDICT

DOCKET NO. 2009GS0700703

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

March Term 2009

THE STATE

vs.

Susan Tappeiner

Indictment for

Criminal sexual conduct with minor - victim 11
to 14 years of age

SC Code: 16-03-0655(2)
CDR Code:0396

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

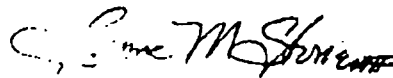
INDICTMENT
2009GS0700703

At a Court of General Sessions, convened on March 26, 2009, the Grand Jurors of Beaufort County present upon their oath:

Criminal sexual conduct with minor - Victim 11 to 14 years of age

That in Beaufort County, South Carolina, August 15, 2008, the Defendant, Susan Tappeiner, did commit a sexual battery upon a minor who was fourteen (14) years of age or less but who was at least eleven (11) years of age, to wit: sexual intercourse upon Victim, [REDACTED] age 13, in violation of Section 16-3-655(2), S.C. Code of Laws, 1976, as amended.

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



Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort
 STATE VS.
Susan Tappeiner
 AKA: _____
 Race: W. Sex: F Age: 42
 DOB: 1966 SS#: _____
 Address: _____
 DL#: _____ SID#: _____

INDICTMENT/CASE#: 2009GS0700703
 A/W#: J350739
 Date of Offense: 8/15/2008
 S.C. Code §: 16-03-0655(2)
 CDR Code #: 0396

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS
 TO: Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive

in violation of § 16-03-0655(2) of the S.C. Code of Laws, bearing CDR Code # 0396
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
 ATTEST:

Burke, Dawn

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of 5 days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*: the balance is suspended with probation for 3

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____
 § 14-1-206 (Assessments 107.5 %) \$ _____
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
 § 56-5-2995 (DUI Assessment) \$12 \$ _____
 § 56-1-286 (DUI Breath Test) \$25 \$ _____
 § 47-12 (Public Def/Prob) \$500 \$ _____
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25
 § 14-1-213 (Drug Court Surcharge) \$100 \$ _____
 § 50-21-114 (BUI Breath Test Fee) \$50 \$ _____
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
 § 90.7 (SCCA Surcharge) \$5 \$ 5
 3% to County (if paid in installments) \$ 3.90
 TOTAL \$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2009)

PRESIDING JUDGE

Judge Code: 2111912Sentence Date: 11-16-09

_____ days/hours Public Service Employment
 Obtain GED _____
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling ☒
 Random Drug/Alcohol testing ☒
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: Mental Health Counseling, SDC
is to report 1015 ordered to allow her
visitation with a private psychiatrist at
her own expense.
☐ Appointed PD or appointed other counsel, §47.12
 requires \$500 be paid to Clerk during probation.

WITNESSES

C. Gonzales / Bluffton PD

ARREST WARRANT NUMBER

J350739

ACTION OF GRAND JURY FEB 26 2009

True Bill

Angela Couryney
Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2009GS0700703

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

March Term 2009

THE STATE

vs.

Susan Tappeiner

Indictment for

Criminal sexual conduct with minor - victim 11
to 14 years of age

SC Code: 16-03-0655(2)
CDR Code:0396

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2009GS0700703

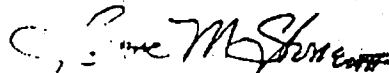
Line
Bill

At a Court of General Sessions, convened on March 26, 2009, the Grand Jurors of Beaufort County present upon their oath:

Criminal sexual conduct with minor - Victim 11 to 14 years of age

That in Beaufort County, South Carolina, August 15, 2008, the Defendant, Susan Tappeiner, did commit a sexual battery upon a minor who was fourteen (14) years of age or less but who was at least eleven (11) years of age, to wit: sexual intercourse upon Victim, [redacted] age 13, in violation of Section 16-3-655(2), S.C. Code of Laws, 1976, as amended.

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



Solicitor

VERDICT FORM

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF BEAUFORT	)	
	)	Indictment No.: 2009-GS-07-00703
	)	
The State of South Carolina,	)	
	)	
v.	)	
	)	
Susan Tappeiner,	)	
	)	
Defendant.	)	

VERDICT

As to Indictment Number 2009-GS-07-00703, the charge of **2nd Degree Criminal Sexual Conduct with a Minor – victim 11 to 14 years of age**, we, the jury, unanimously find the Defendant, Susan Tappeiner: (Check One)

 X Guilty.

 Not Guilty.

I certify that this is the unanimous decision of the jury.

Stephen Clark

Foreperson

October 28, 2009
Beaufort, South Carolina

IN THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
 CARMEN T. MULLEN, CIRCUIT COURT JUDGE
 Indictment Number: ~~2008-GS-07-00702~~
 2009

STATE OF SOUTH CAROLINA,

Respondent,

Vs.

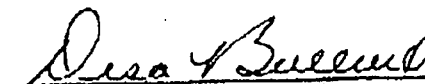
SUSAN SANDERS TAPPEINER,

Appellant.

2009 NOV 16 AM 11:28
 JERRI A. NOBLE
 BEAUFORT COUNTY, S.C.
 CLERK OF COURT

NOTICE OF APPEAL

The Defendant, Susan Sanders Tappeiner, appeals from the verdict of the jury in this matter dated October 28, 2009, the orders and judgments of the Honorable Carmen T. Mullen imposed on November 16, 2009, and such other orders and rulings in this proceeding for which appeal is permitted by law. Sentence was imposed on the defendant by the Honorable Carmen T. Mullen on or about November 16, 2009.



Desa Ballard
 Law Offices of Desa Ballard
 226 State Street
 West Columbia, South Carolina 29169
 Telephone 803.796.9299
 Facsimile 803.796.1066
 E-mail: desab@desaballard.com

APPELLATE COUNSEL FOR APPELLANT

November 16, 2009

Notice of Appeal
State v. Tappeiner

Other counsel of record:

Charles B. Macloskie, Esquire
Post Office Box 280
Beaufort, South Carolina 29902
Telephone 843.524.0909
Facsimile 843.521.1379
Co-counsel for Appellant

Isaac McDuffie Stone III, Esquire
Dawn Burke, Esquire
Post Office Box 1880
Bluffton, South Carolina 29910
Counsel for the State of South Carolina

Honorable Henry McMaster
Post Office Box 11549
Columbia, South Carolina 29211
Counsel for the State of South Carolina

clb
2

CMTI330J
OMCOMITASCDC OFFENDER MANAGEMENT SYSTEM
RELEASE DATE SCREEN07/29/1
C048593

SCDC# > 9338050

LOC: GRAHAM CORR

TAPPEINER, SUSAN -

SCDC CLASSIFICATION... VIOLENT

OFFENDER TYPE... ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY... Y

SEXUAL PREDATOR... PENDING

DNA STATUS... COMPLETED

GPS REQUIREMENT... N

PREA DECISION... :

CURRENT SENTENCE: 005-00-000

CONSECUTIVE SENTENCE ... N

005-00-000

CURRENT SENT START DATE: 11/15/2009

PROJECTED COMPLETION DATES

MAXOUT DATE ... : 02/12/2014

CURRENT EWC ... : 2 F 5

YOA SIX YEAR DATE: / /

CURRENT EEC ... : NOT CURRENTLY EARNING EEC

INITIAL PAROLE DATE: 02/15/2014

NEXT PAROLE HEARING DATE: 02/15/2014

TOTAL GT DAYS EARNED ... : 000000

LABOR CREW/WORK PROG DATE: 99/99/9999

TOTAL EARNED WORK CREDITS ... : 000091

LABOR CREW DISQ REASON:

TOTAL EDUCATION CREDITS ... : 000000

CURRENT OR PRIOR SEX CONDUCT CONVICT

TOTAL EXTRA EARNED CREDITS ... : 000

TOTAL SERVICE TIME EARNED ... : 000254

PFKEYS: 5: HISTORY OF DATE CHANGES

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 07/29/10

C0485

TAPPEINER, SUSAN - FBI # 149218DD2 SID# SC01869642 SCDC # 338050

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ... GRAHAM CORR INST

SECURITY/CUST.: 2 MINIMUM IN

CURR INCARC SENT...: 5 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: YES

SOCIAL SECURITY #...: [REDACTED]

DORM.....: ZNH0029A

RACE.....W SEX...F

PROJ MAXOUT DATE: 02/12/2014

PROJ PAROLE DATE: 02/15/2014

EWC JOB...: LANDSCAPE LABORER

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 2F5 EEC LEVEL:

ASSIGNMENT...: YARD DETAIL

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 43 DATE OF BIRTH...: [REDACTED] 766

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES

CRIM SEX COND. U/MINOR(2N

SENTENCE			
YRS	MOS	DYS	COUNTY
5	0	0	BEAUFORT

SENTENCE		
START	U/NU	CATEGORY
11/15/20	9 U	4

PRIOR COMMITMENTS OVER 90 DAYS:

MISSING PRIORS DATA

DETAINEES (HOLD, WANTED, NOTIFY):

NO DETAINEES

NO DETAINEES

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES WHILE IN CUSTODY

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

NO NON-ASSAULTIVE DISCIPLINARY HISTORY

HISTORY OF MOVEMENTS:

12/22/ 9 GRAHAM CORR INS INCARCERATED

11/20/ 9 GRAHAM R&E INCARCERATED

ADMINISTRATIVE
NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
LANDSCAPE LABORER	12/31/09	0/ 0/ 0		YF5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON

NO SCHOOL ASSIGNMENTS

***** END OF REPORT *****

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort
STATE VS.
Susan Tappeiner
AKA:
Race: W Sex: F Age: 42
DOB: 1966 SS#:
Address:
DL#: SID#:

INDICTMENT CASE#: 2009GS0700703
A/W#: J350739
Date of Offense: 8/15/2008
S.C. Code § : 16-03-0655(2)
CDR Code #: 0396

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was
TO: Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive

☐ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0655(2) of the S.C. Code of Laws, bearing CDR Code # 0396
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Burke, Dawn

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of 5 days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 3

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 47.12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ Certified - True Copy

3% to County (if paid in installments)

TOTAL

Clerk of Court

Clerk of Court

Court Reporter:

SCCA/217 (06/2009)

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

Mental Health Counseling, SCDC
is to extend 9015 order to allow her
visitation with a private psychiatrist at
her own expense.

☐ Appointed PD or appointed other counsel, §47.12
requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

211412

11-16-09

467

CMT13300

SCDC OFFENDER MANAGEMENT SYSTEM

07/29/1

DMCOMITA

RELEASE DATE SCREEN

C048592

SCDC# > 2338050

LOC: GRAHAM CORR

TAPPEINER, SUSAN -

SCDC CLASSIFICATION: VIOLENT

OFFENDER TYPE: ADULT-STRAIGHT SENTENCE

SEXUAL REGISTRY: Y

SEXUAL PREDATOR: PENDING

DNA STATUS: COMPLETED

GPS REQUIREMENT: N

PREA DECISION:

CURRENT SENTENCE: 005-00-000

CONSECUTIVE SENTENCE: N

005-00-000

CURRENT SENT START DATE: 11/15/2009

PROJECTED COMPLETION DATES

MAXOUT DATE: 02/12/2014

CURRENT EUC: 2 F 5

YOA SIX YEAR DATE: / /

CURRENT EEC: NOT CURRENTLY EARNING EEC

INITIAL PAROLE DATE: 02/15/2014

NEXT PAROLE HEARING DATE: 02/15/2014

TOTAL GT DAYS EARNED: 000000

LABOR CREW/WORK PROG DATE: 99/99/9999

TOTAL EARNED WORK CREDITS: 000091

LABOR CREW DISQ REASON:

TOTAL EDUCATION CREDITS: 000000

CURRENT OR PRIOR SEX CONDUCT CONVICT

TOTAL EXTRA EARNED CREDITS: 000

TOTAL SERVICE TIME EARNED: 000254

PEKEYS:

5: HISTORY OF DATE CHANGES