

ORIGINAL

Volume I of II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Thomas W. Cooper, Jr., Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ZACOATA LOPEY,

APPELLANT.

APPELLATE CASE NO. 2013-000554

RECORD ON APPEAL

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INDEX

INDEX	i
TRANSFER HEARING TRANSCRIPT DATED FEBRUARY 21-22, 2012	1
MOTION TO SEQUESTER WITNESSES	7
RULING BY THE COURT	7
MOTION FOR CONTINUANCE	10
RULING BY THE COURT	11
MOTION TO QUASH SUBPOENA	16
TESTIMONY (IN CAMERA)	
ELIZABETH HILL	17
KATINA MARTIN	25
JEFFERY VAUGHN	31
RULING BY THE COURT	39
<u>JACKSON V. DENNO HEARING</u>	
TESTIMONY	
JOE CLARKE (IN CAMERA)	41
RULING BY THE COURT	62
TESTIMONY	
KEVIN ISENHOWARD	67
TEMPLE HART	94
STAN RICHARDS	107
SCOTT MCDONALD	113

JOE CLARKE	127
KIMBERLY BLACK	158
RACHEL GRANT	164
BEN FIELDS.....	168
JOSH MAULDIN	182
TRANSFER HEARING TRANSCRIPT DATED MARCH 27-29, 2012.....	194
TESTIMONY	
WILLIAM BRIAN REDMOND	200
KEVIN BROWN.....	217
AALECE O. PUGH-LILLY	236
NATHANIEL GRIFFIN	308
LUTHER WELLS.....	320
LOUISE WELLS.....	326
ZACOATA LOPEY.....	331
STANLEY BOYD YOUNG	333
JOANNA DELANY	356
MOTION AGAINST TRANSFER BASED ON EQUAL PROTECTION	366
RULING BY THE COURT	373
CLOSING ARGUMENT BY MS. DELANEY	379
RULING BY THE COURT TO TRANSFER JURISDICTION.....	383
GUILTY PLEA TRANSCRIPT DATED MARCH 12, 2013	394
COURT'S EXHIBIT # 1 (NOTEBOOK OF INFORMATION GATHERED BY THE SOLICITORS OFFICE) FROM MARCH 12, 2013 TRANSCRIPT.....	479

STATE'S EXHIBIT # 13 (SOCIAL HISTORY)	530
STATE'S EXHIBIT # 14 (WAIVER EVALUATION).....	534
JUVENILE PETITIONS	553
INDICTMENTS AND SENTENCE SHEETS	557
CERTIFICATE OF COUNSEL.....	570

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

FAMILY COURT

2010-JU-40-1520

2010-JU-40-1521

2010-JU-40-1522

2010-JU-40-1523

THE STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

VS.)

ZACOATA LOPEY,)

A MINOR UNDER THE AGE OF)
SEVENTEEN)

TRANSCRIPT OF RECORD

JUVENILE WAIVER HEARING

VOLUME 1 – PAGE 4-92

FEBRUARY 21ST AND 22ND 2012
RICHLAND COUNTY, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JAMES F. FRALEY, JR., FAMILY COURT JUDGE

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

THE STATE OF SOUTH CAROLINA, PLAINTIFF

KATHRYN LUCK CAMPBELL, ASSISTANT SOLICITOR

JOANNA MCDUFFIE, ASSISTANT SOLICITOR

MEGHAN WALKER, ASSISTANT SOLICITOR

ZACOATA LOPEY, MINOR UNDER THE AGE OF SEVENTEEN, DEFENDANT

JOANNA K. DELANY, ASSISTANT PUBLIC DEFENDER

JAMES H. MAY, ATTORNEY FOR DEFENDANT

STANLEY BOYD-YOUNG, GUARDIAN AD LITEM

Rose Walker

Official Court Reporter, Family Court

South Carolina Judicial Department

INDEX

STATE OF SOUTH CAROLINAVS.ZACOATA LOPEYMINOR UNDER THE AGE OF SEVENTEEWAIVER HEARINGDATE OF HEARINGS: FEBRUARY 21ST AND 22ND, 2012

WITNESSES: DIRECT CROSS REDIRECT RECROSSMOTION TO QUASHElizabeth Hill

The Court 15

Mr. May 17

Ms. Campbell 22

Katina Martin

Ms. Delany 24

Jeffery Vaughn

Ms. Delany 29

TRIALJoe Clarke

Ms. McDuffie 40-51

Ms. Delany 51- 60

Kevin Isenhoward

Ms. Campbell 65-86

	<u>WITNESSES:</u>	DIRECT	CROSS	REDIRECT	RECROSS	2(b)
1	<u>Kevin Isenhoward</u>					
2						
3	Mr. May		86-92			
4	<u>Temple Hart</u>					
5	Ms. McDuffie	93-104				
6	Ms. Delany		104			
7	<u>Stan Richards</u>					
8	Ms. Walker	105-110				
9	<u>Scott McDonald</u>					
10	Ms. Walker	111-116 (Conference in Chambers)				
11		122-124 (Direct Continues)				
12	Mr. May		124-125			
13	<u>Joe Clarke</u>					
14	Ms. McDuffie	126-144				
15	Ms. Delany		144-154			
16		<u>FEBRUARY 22, 2012</u>				
17	<u>Kimberly Black</u>					
18	Ms. Walker	156-160				
19	Mr. May		161-162			
20	<u>Rachel Grant</u>					
21	Ms. Walker	163				
22	Mr. May		163-164			
23	Ms. Walker			164-165		
24	Mr. May				165-166	
25	<u>Ben Fields</u> (see next page)					

	<u>WITNESSES:</u>	DIRECT	CROSS	REDIRECT	RECROSS	2©
1						
2	<u>Ben Fields</u>					
3	Ms. McDuffie	166-175				
4	Mr. May		175-179			
5	<u>Josh Mauldin</u>					
6	Ms. McDuffie	180-188				
7	Mr. May		188			
8	Court recesses.					
9	Certificate of Court Reporter.....					Page 191
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
21						
22						
23						
24						
25						

EXHIBITS

STATE OF SOUTH CAROLINA VS. ZACOATA LOPEY

DATE OF HEARINGS: FEBRUARY 21ST AND 22ND, 2012

PLAINTIFF:

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
#1	Advice of Rights Form	75
#2	Statement of Larry Prophet	77
#3	Advice of Rights –Zacoata Lohey	44 & 132
#4	Statement of Zacoata Lohey	45
#5	Second Written Statement of Zacoata Lohey	47
#6	Photo of Elaine Henrick’s Injuries of Vaginal Area	99
#7	Photo of Elaine Henrick’s Injuries of Vaginal Area	99
#8	Photo of Elaine Henrick’s Injuries of Vaginal Area	99
#9	Photos (60) of Crime Scene	106
#10	Consent to Search for DNA Form	131
#11	DNA Test	163

DEFENDANT:

#1	Statement of Elaine Henrick	89

1 COURT PROCEEDINGS

2 THE COURT: Ms. Campbell?

3 MS. CAMPBELL: May it please the Court, Your Honor.

4 MS. DELANY: Your Honor, my client isn't in here yet.

5 THE COURT: Oh, I'm sorry.

6 MS. MCDUFFIE: Your Honor, while we're waiting for their client, I spoke with
7 the court reporter earlier. We do have a number of exhibits, photographs that we would
8 like to introduce into evidence, and if we could pre-mark those with Your Honor's
9 permission.

10 THE COURT: Any objections?

11 MS. DELANY: No, Your Honor.

12 THE COURT: Can I designate one of you two as lead counsel, Ms. Delany?
13 (Exhibits being marked.)

14 THE COURT: Ms. Delany, is your client here now?

15 MS. DELANY: He is, Your Honor.

16 THE COURT: All right, Ms. Campbell.

17 MS. DELANY: Your Honor, can we get his handcuffs removed?

18 THE COURT: I'll leave that up to the security. If you are comfortable with it, I
19 am.

20 (Defendant is released of handcuffs.)

21 THE COURT: Deputy Roberts?

22 DEPUTY ROBERTS: Sir?

23 THE COURT: I leave this totally in your discretion on how you want to handle
24 that.

25 DEPUTY ROBERTS: Okay, thank you, sir.

1 THE COURT: All right, we'll try this again. Ms. Campbell?

2 MS. CAMPBELL: May it please the Court, Your Honor, we are here today in the
3 interest of Zacoata Lopey. We are here today on four petitions, petitions number 2010-
4 JU-40-1520, 1521, 1522 and 1523, charges are of armed robbery, burglary in the first
5 degree, criminal sexual conduct in the first degree and kidnapping. We are prepared to
6 go forward with testimony at the appropriate time. I believe there's a motion that needs to
7 be heard first.

8 THE COURT: All right, Ms. Delany.

9 MS. DELANY: Thank you, Your Honor, please the Court. Just a couple of
10 preliminary things. Rule 5, Brady Motion, we would ask that you sequester all witnesses
11 in this case that aren't, except those allowed to be here under Article 1, Section 26 of the
12 Constitution. We would ask for that at this time, Your Honor.

13 THE COURT: Any objections to the motion to sequester?

14 MS. CAMPBELL: Your Honor, usually in general sessions, we sequester any lay
15 witnesses that may testify, we have no problem with that. Generally, because law
16 enforcement generated a report and/or - - We would object to law enforcement being
17 sequestered.

18 MS. DELANY: And Your Honor, it's my understanding that they are allowed to
19 have their lead investigator and victim in the courtroom.

20 THE COURT: All right, that motion is granted. You may choose one lead
21 investigator. Any other persons you want to stay?

22 MS. CAMPBELL: In addition, Your Honor, we would make that a reciprocal
23 motion to sequester. I noticed that there are several people in here that are on their
24 witness list who we would ask to be sequestered as well.

25 THE COURT: All right, all witnesses are sequestered except for the juvenile, one

1 lead investigator and the victim, the alleged victim.

2 MS. CAMPBELL: Your Honor, Mr. Brown from DJJ, I believe he is allowed to
3 stay in the court as well.

4 THE COURT: And what is your name, sir, just for the record?

5 MR. BROWN: Kevin Brown.

6 THE COURT: No objection to Kevin Brown staying in the courtroom? You
7 may stay without objection. Okay, just a couple of preliminaries. Ms. Delany, I may call
8 on you, Mr. May you may respond when I call on Ms. Delany if you wish. If there are
9 motions, I want only one person to argue for a motion. You may whisper and so forth,
10 but I don't want to hear from two people. The acoustics in here are sometimes not very
11 good especially if there are a lot of people in the courtroom, whispers that we can hear. It
12 is very important that I hear everything that is said as well as the court reporter as well as
13 these lawyers, so be as quiet as you can and the attorneys and witnesses and the attorneys
14 just speak loudly so to be sure we can hear.

15 MS. CAMPBELL: Your Honor, I believe, she did renew her Brady Motion and
16 at this point we have met with them and gone over and tried to make sure they have
17 everything that we have. We're not aware of any outstanding discovery, if there is
18 anything that she has a concern about. Your Honor, in that same vein, we did file
19 Reciprocal Rule 5 in this case this morning. She did hand over an affidavit, which we've
20 not seen before, from, I believe, the aunt of the Defendant and also a video of the
21 Defendant that they took in the last two weeks was handed over this morning as well.
22 We would respectfully ask if there are any additional materials that will be forthcoming
23 as far as evidence pursuant to Rule 5, we ask that it be turned over.

24 THE COURT: You turned over everything to Ms. Delany?

25 MS. CAMPBELL: Yes, sir.

1 THE COURT: Ms. Delany, have you now done the same?

2 MS. DELANY: Yes, sir. We got the video we made available to them last week,
3 but couldn't copy it until this weekend and the affidavit we got from the aunt this
4 morning. The only other thing we don't - - The only other thing we would have is
5 subject to what we talked about in chambers and when we come back in March any
6 additional data that we may get. At this point, we've turned over everything that we
7 have.

8 MS. CAMPBELL: Thank you, Your Honor.

9 MS. DELANY: Thank you, Your Honor.

10 THE COURT: Any other motions?

11 MR. MAY: Yes, sir.

12 THE COURT: Mr. May?

13 MR. MAY: May it please the Court, Your Honor. Under Riddle * Your Honor,
14 make a motion under Riddle stating that we're entitled to any knowledge or any kind of
15 information that's within the knowledge of the Solicitor's Office not necessarily in
16 reports, but if they're talking to somebody and there's potential - - Any kind of
17 impeachment material that they have, I mean, Riddle v. *, it was that the solicitor took
18 them out to the scene and the victims told them something. It was never memorialized
19 and we just want to make sure that everything has been provided including anything that
20 may have not been memorialized on . . .

21 THE COURT: Are you aware of anything?

22 MR. MAY: We are not. We are just trying to cover all bases to make sure they
23 have turned over everything.

24 THE COURT: Has everything in that nature been turned over to the Public
25 Defenders Office?

1 MS. CAMPBELL: Yes, sir, as far as I know we have.

2 THE COURT: Anything else?

3 MR. MAY: Yes, sir. Your Honor, not really knowing how to proceed as the
4 Rules of Family Court do not give any guidance, we have prepared affidavits requesting a
5 continuance under Rule 7 of South Carolina Rules of Criminal Procedure. This is a
6 quasi-criminal proceeding and there are no similar provisions in the family rules. Your
7 Honor, what I'm going to pass up are affidavits that are made, I believe, that they are - - I
8 don't believe it's privileged information until we decide to put up the information.

9 THE COURT: Have you seen this, Ms. Campbell?

10 MS. CAMPBELL: No, sir.

11 MR. MAY: I believe it's privileged until - - I ask you to review it. If you deem
12 it to be . . .

13 THE COURT: You think I should see it without the solicitor seeing it?

14 MR. MAY: Your Honor, it talks about what our witness, who is not available,
15 would say, which I don't believe is discoverable by them until he says it. Medical records
16 - - One of our witnesses had a stroke last night.

17 THE COURT: I'm not looking at any of these documents yet. I'll hear from you,
18 go ahead.

19 MR. MAY: Judge, yes, sir, we addressed this in chambers. This is the issue that
20 one of our mitigation witnesses, the only mitigation witness that we have that is not
21 known in a government context. He was a football coach. He had a stroke last night and
22 we were made aware of this. Our mitigation investigator has spoken with him. He does
23 appear that he will recover, but he is not able to come in and testify today or tomorrow.
24 As a result, Your Honor, we would move for a continuance under Rule 7, Criminal Rules
25 of Criminal Procedure.

1 THE COURT: Do some of these documents address his medical condition that
2 you just passed up?

3 MR. MAY: Yes, sir. I've passed up an affidavit which was required by Rule 7
4 (b) stating that this motion is not made in bad faith. Do not feel safe to go forward
5 without this witness and what we believe the witness would testify to and the witness
6 would testify to several Kent Factors. I do not believe that this is something that we
7 should turn over to the State until we put him up. We don't believe that the State is
8 entitled to know a preview of what he is going to say. We can discuss this in chambers,
9 Your Honor. We would ask that if you're not going to grant the continuance, which you
10 indicated in chambers that you weren't, that you would allow us to put him up when his
11 health is better in the week of May 26th, March 26th, I'm sorry.

12 THE COURT: I think what I said was, in chambers, correct me if I'm wrong, that
13 we would do it the week of March 26th. I'm not sure I said when his health was better.
14 Hopefully he will be improved by that time, but we don't know. I don't want to say
15 we're waiting for his health to improve because we don't know his health situation.

16 MR. MAY: I apologize. I misstated that, but wait until March 26th to put up his
17 testimony.

18 THE COURT: Any objection to allowing the defense to come back on March,
19 sometime during the week of March 26th and put up that testimony?

20 MS. CAMPBELL: No, Your Honor. We have no objections. We said we would
21 be glad to stipulate to the testimony. However, if they wish to - - We have no objection
22 to that happening the week of March 23rd.

23 THE COURT: Mr. May, your Motion for Continuance based on those grounds is
24 denied, however, the case will remain open to a day chosen the week of March 26th when
25 you can present that testimony. If he's not available at that time, we'll have to address it

1 at that time.

2 MR. MAY: Yes, sir. Thank you very much, Your Honor.

3 THE COURT: And while we're on that topic, I have talked with the Chief
4 Administrative Judge, Judge Smalls. She said we will find a day during that week. I
5 have talked with her secretary and she's looking at the docket now, so sometime today
6 I'm sure we will be able to choose a date, and I will let you know at that time. Anything
7 else?

8 MS. CAMPBELL: Your Honor, just as far as the documents that he has now
9 handed up to the Court, I believe under Reciprocal Rule 5, we are entitled to any
10 documents that may be material to this case that they may be presenting, and, at this
11 point, I don't know that we are entitled to those documents that he's actually handed up
12 to the Court.

13 MR. MAY: Your Honor, this is not being presented as case-in-chief. As
14 Reciprocal Rule 5 says, this is just documentation for the Court to show that our witness
15 is in the hospital. I believe that is actually protected under HIPAA as well as, as well as -
16 - The affidavit is not admissible. It's just what we believe he would testify to so that we
17 can give the Court a good faith basis under Rule 7 to ask for a continuance.

18 THE COURT: Well, I've ruled on the motion.

19 MR. MAY: Yes, sir.

20 THE COURT: I haven't reviewed the documents. I don't think there is any
21 prejudice to you by keeping the case open. Are you entitled to documents if I don't look
22 at them?

23 MS. CAMPBELL: I think at this point, he's presented them to the Court his
24 document he's relying on. Number one, subpoena, number two, that document contains
25 the information which he intends to offer. I don't mean to misquote him. In this case at

1 this point, we feel like under Reciprocal Rule 5 we are entitled to that. Any HIPAA
2 violation - - They're in violation at this point. I would assume they got permission from
3 the person in the hospital in order to present those documents to the Court which they
4 have chosen to do.

5 THE COURT: I'm not sure it's protected by HIPAA any longer. Let me review
6 Rule 5

7 MR. MAY: And, Your Honor, just for the record, it is Ms. Delany's affidavit. It
8 is not the witness' affidavit. It is Ms. Delany's affidavit as mandated by Criminal Rules
9 of Procedure 7.

10 THE COURT: Why are you arguing it's protected by HIPAA?

11 MR. MAY: No, I thought that - - My argument being that being hospital records,
12 but the actual affidavit - - I don't believe her affidavit to the Court is not a discoverable
13 document and that's what Ms. Campbell is trying - - She's trying to backdoor, the rules
14 of discovery by arguing . .

15 THE COURT: What's the issue, then if it's Ms. Delany's?

16 MR. MAY: Because it's what she believes he would testify to in the case. It's
17 privileged until presented in open court.

18 THE COURT: It's been presented, hasn't it?

19 MR. MAY: No, sir it's been presented in-camera to you, Your Honor. It has not
20 been presented in open court. It's been presented to you.

21 THE COURT: Maybe I should have reviewed it before I ruled. Is there any
22 dispute this person is in the hospital with a stroke?

23 MS. CAMPBELL: I mean I'm assuming he's in the hospital. I have no reason . .
24 .

25 THE COURT: Nobody was arguing he wasn't.

1 MS. CAMPBELL: Now that they've been presented . . .

2 THE COURT: All right, I'm going to look at them. I'm going to make these
3 documents available for review by the solicitor.

4 MR. MAY: Your Honor, just for the record, we object.

5 THE COURT: I know your objection.

6 MS. CAMPBELL: Your Honor, one housekeeping matter, and I don't mean to
7 impute anything, but I know that the law clerks of the Public Defenders Office are
8 directly behind us and this is a small courtroom and we do have discussions back and
9 forth. I would just ask that they move over to that side.

10 THE COURT: All right, if you are an employee of the Public Defender's Office,
11 move behind the Public Defender's table, please.

12 MS. CAMPBELL: Thank you, Your Honor.

13 THE COURT: And if you are an employee of the Solicitor's Office, move behind
14 the Solicitor's table.

15 MS. CAMPBELL: Thank you, Your Honor.

16 THE COURT: Anything else?

17 MR. MAY: Yes, Your Honor. The motion for continuance, which I believe
18 required the most discussion in chambers, we would like to address.

19 THE COURT: Yes, sir.

20 MR. MAY: Please the Court. May I approach? These are affidavits prepared by
21 Ms. Delany and myself.

22 THE COURT: Any reason why you can't provide that to Ms. Campbell? I'm not
23 going to let you make a motion unless you provide to her the information that you are
24 giving to me as well.

25 MR. MAY: Yes, sir. Again, in compliance with Criminal Rules Procedure 7, we

1 have done affidavits stating that we are asking for a continuance. This continuance
2 motion is not in bad faith. It is not intended for delay. It is made because we cannot safely
3 go forward without the evidence and without being effective advocates for our client.
4 Your Honor, on Wednesday of last week as I was preparing motions, it came to our
5 attention that it appears that the Solicitor's Office in Richland County has not waived a
6 juvenile who is white in at least since 1992. We have attempted to do as much research
7 as we can in the short amount of time. Your Honor, we ask for a continuance because we
8 don't believe that we can be effective counsels of this juvenile without this needed
9 information. Your Honor, if that is true, it would appear that between 50 and 100 black
10 children have been subject to waiver hearings and no white children. I believe that would
11 be a prima facie showing of an equal protection clause claim and then we would be in a
12 whole different realm of issues. As a result, Your Honor, we have not been able to obtain
13 all the data. We have institutional memory. We will be happy to present those witnesses
14 to Your Honor in form of testimony to establish this. We have people under subpoena
15 here to testify to the institutional memory regarding this issue. I do not know how Your
16 Honor would like to proceed; if you want to take testimony now or if you want to take
17 testimony March 26th when we reconvene.

18 THE COURT: Ms. Campbell?

19 MS. CAMPBELL: May it please the Court, Your Honor. It's my understanding
20 that you were going to address this matter.

21 THE COURT: We talked about this in some detail in chambers and we discussed
22 it pretty much. Mr. May, I'm going to deny your Motion for Continuance; however, I
23 will allow you to address these issues with your evidence during the week of March 26th
24 when we reconvene. Everybody has been aware that this was going to be waiver hearing
25 for about a year so it's a little late to be getting involved in such an issue, but I'm going

1 to let you be heard on it.

2 MR. MAY: Yes, sir, thank you very much. On this issue, we have subpoenaed
3 both the solicitor of Richland County as well as Elizabeth Hill, General Counsel of DJJ,
4 to provide records. The reason we have delayed is so we can obtain this needed data.
5 We would ask Your Honor to allow us to call them and see if they have provided the
6 data, and if not, why not, and we would ask the Court to issue an order having them
7 disclose whatever data they have or make it available to our office.

8 THE COURT: Any reason why you shouldn't do that in your case-in-chief?

9 MR. MAY: Your Honor, they're here this morning. One of them asked you to
10 release her from the subpoena.

11 THE COURT I think that someone from DJJ has a Motion to Quash. I will hear
12 the Motion to Quash. If it's denied, then I'll let you call her during your case.

13 MR. MAY: Okay.

14 THE COURT: What is your name again?

15 MS. MCDUFFIE: Joanna McDuffie.

16 THE COURT: Ms. McDuffie, yes, ma'am.

17 MS. MCDUFFIE: Your Honor, Nicole Simpson is here on behalf of the solicitor
18 and also has a Motion to Quash.

19 THE COURT: Any reason why we should not hear these Motions to Quash at
20 this time?

21 MS. MCDUFFIE: Not from the State, Your Honor.

22 THE COURT: What's the solicitor's name?

23 MS. MCDUFFIE: The current solicitor is Dan Johnson and Nicole Simpson is
24 here on his behalf, Your Honor.

25 THE COURT: And what's the lady's name from DJJ, Mr. May?

1 ELIZABETH HILL – DIRECT EXAMINATION BY THE COURT

2 MR. MAY: Elizabeth Hill, Your Honor.

3 THE COURT: Ms. Hill, would you stand, please?

4 MS. HILL: Yes, sir.

5 THE COURT: Why don't you come around and I'm going to place you under
6 oath also.

7 ELIZABETH HILL being duly sworn, testified as follows:

8 THE COURT: Place your left hand on the Bible, raise your right hand and face
9 me, please. Do you swear or affirm to tell the truth, the whole truth and nothing but the
10 truth so help you God?

11 MS. HILL: Yes, sir.

12 THE COURT: All right, you may have a seat.

13 MS. HILL: Thank you, Your Honor.

14 THE COURT: And I'm just going to ask you a couple of preliminary questions.

15 DIRECT EXAMINATION BY THE COURT:

16 Q. What is your name?

17 A. Elizabeth Hill.

18 Q. And are you under subpoena today, Ms. Hill?

19 A. I am.

20 Q. And you're subpoenaed by whom?

21 A. The Public Defender's Office.

22 Q. And you were subpoenaed in what capacity that you may be aware of?

23 A. The only information that I have received is that my subpoena subpoenas myself
24 personally as well as documents and the documents indicate: Please provide a copy of all
25 demographic data, specifically race and gender of all children upon whom waiver

1 hearings have been conducted in Richland County, South Carolina since 1992.

2 Q. Where are you employed?

3 A. At the South Carolina Department of Juvenile Justice.

4 Q. In what capacity?

5 A. I'm General Counsel.

6 Q. So you're obviously a member of the South Carolina Bar?

7 A. Yes, sir.

8 THE COURT: Okay, you may make your motion.

9 MS. HILL: Thank you, Your Honor. At this time, I would move to quash the
10 subpoena for myself personally as well as an identical subpoena to the language I just
11 shared with the Court was served on Katina Martin who is the County Director for the
12 Richland County Department of Juvenile Justice Office. Our subpoenas, again, are
13 identical and ask for us individually to provide the demographic data, race and gender of
14 children upon whom waiver hearings have been conducted in Richland County since
15 1992. The basis for my Motion to Quash those two subpoenas is that the Department
16 does not keep data specific to waiver hearings. We have a Juvenile Justice Management
17 System or JJMS system that maintains information, essentially rap sheets or arrests,
18 adjudication and dispositional information on juveniles across the state, but there is no
19 check box or indication in any way of which case may be a waiver case or not so this data
20 in this manner does not exist. This is not data that the Department keeps in the normal
21 scope of business, Your Honor. Certainly, if gender and race on every child is collected
22 as a matter of confirming identification of the particular child who has pending charges
23 and so that information is available, so if they were asking for every child in Richland
24 County denoted by race and gender, that we could provide, but the Department is unable
25 to indicate which of those the State made a motion to waive or whether that child was

1 ELIZABETH HILL – CROSS EXAMINATION BY MR. MAY

2 ultimately waived by the Court or not.

3 THE COURT: Anything else?

4 MS. Hill: Nothing, Your Honor.

5 THE COURT: Any questions, Ms. Campbell?

6 MS. CAMPBELL: No.

7 THE COURT: Ms. Delany or Mr. May?

8 MR. MAY: Yes, Your Honor. May it please the Court, Your Honor?

9 THE COURT: Yes.

10 CROSS EXAMINATION BY MR. MAY:

11 Q. Now, you made the representation to the Court that when a juvenile is brought
12 into intake, basic information is taken, correct?

13 A. That's correct, yes, sir.

14 Q. Name, race, date of birth, social security, charges?

15 A. Yes, sir, that's some of the information.

16 Q. And also there's an ultimate outcome, an ultimate disposition in the case, correct?

17 A. Correct.

18 Q. So this information could be sorted. It just hasn't been and you don't have the
19 means to do it at this point?

20 A. I'm not sure I understand your question. Certainly, we could go into our JJMS
21 system and sort of get this - - Again, this is a system with children across the state so we
22 certainly could pull out Richland County children or children whose charges arose from a
23 Richland County jurisdiction. We could pull all, for example, burglary first cases in
24 Richland County or armed robbery or a particular offence. We could pull, with some
25 work, sorting all children in Richland County who received a determinate sentence for

1 instance, but there is no sorting mechanism concerning waiver. For example, a child who
2 is waived and then retained in Family Court, it would just indicate the ultimate
3 disposition whether that's a determinate sentence, a dismissal, a probation or
4 indeterminate sentence, but there's no way to indicate that that ultimate sentence, that
5 there was a waiver in the process of that.

6 Q. So you could provide all - - But you could provide the juveniles who's been
7 charged with waivable offences in Richland County?

8 A. Well, there are any number of offenses that are waivable, so certainly if you
9 provided a list of offenses you were interested in . . .

10 Q. Like burglary first, murder, CSC first, you provide that information and then we
11 could cross check that with solicitor's records.

12 A. I don't have any knowledge as to what you could cross check with, but certainly if
13 you gave us a list of particular offences, we could provide children in Richland County
14 over a period of time who have been charged with those offenses, certainly.

15 Q. Now, we also subpoenaed you here in regards to your contact with Richland
16 County Solicitor's Office. I don't know if Your Honor would like to go forward on that
17 issue right now. One of our Motions . . .

18 THE COURT: Unless this is a Motion to Quash the entire subpoena, I guess we
19 have to.

20 Q. Okay, now, so you - - Let's finish this one thing and then we'll go to the next. So
21 you could provide information on juveniles who's been charged with certain offences.
22 That could be provided over a span of time and then we could sort it out how we see fit.

23 A. We could provide it. I'm not sure what the earliest time we could provide it. I
24 would have to check with our staff on that.

25 THE COURT: Let's back up just a minute. She was subpoenaed for what other

1 reason? I couldn't understand you.

2 MR. MAY: Yes, Your Honor, we also have a Motion to Disqualify the
3 Solicitor's Office from this proceeding. We believe that there may have been improper
4 contact between the lead counsel for DJJ and Ms. Campbell regarding this case and we
5 move to disqualify on those grounds.

6 THE COURT: And this is a witness as to that?

7 MR. MAY: Yes, sir.

8 THE COURT: Obviously, she's your witness as to that issue. I can't quash the
9 subpoena yet.

10 MR. MAY: Yes, sir.

11 THE COURT: Do you want to address that issue at this time?

12 MR. MAY: I would love to, Your Honor.

13 THE COURT: She can remain where she is?

14 MR. MAY: Yes, she's already under oath.

15 THE COURT: Let me just hear your Motion.

16 MR. MAY: Your Honor, when I was doing a little research on The Department
17 of Juvenile Justice on the children's code, it appears that The Department of Juvenile
18 Justice is to be an independent agency, not affiliated with the Solicitor's Office. Ms. Hill
19 contacted Ms. Delany on Friday and told her that she had been in contact with Luck
20 Campbell regarding information that the defense sought at the time. Your Honor, there is
21 a provision that says that there should be some sort of separation between DJJ and the
22 Solicitor's office particularly 63-19-1010*.

23 THE COURT: All right, let me find it. Okay.

24 MR. MAY: Yes, sir, in there, there are provisions in there under Subsection A
25 that states that juveniles - - Furnished to the solicitor's office. The solicitor may not be

1 | privy to the statements. Your Honor, to me, reading that is clear that the legislature
2 | intends to have two separate departments. The fact that lead counsel for The Department
3 | of Juvenile Justice, once she heard that we were looking at some demographics that were
4 | unfavorable to her former employer, she immediately called Ms. Campbell. It says that
5 | there's an independently agency as well as other issues contained where there's a
6 | separation where there should not be co-mingling of information.

7 | THE COURT: It doesn't say that. It just says the Solicitor's Office is not privy
8 | to any statements.

9 | MR. MAY: Yes, sir, and there's also independently assessed section of that.
10 | Your Honor, that appears there's legislature intent that The Department of Juvenile
11 | Justice not be involved with the prosecution directly of a juvenile. Your Honor . . .

12 | THE COURT: These recommendation of the Department as to DJJ as to the
13 | intake must be reviewed by the office of the solicitor and determination as to whether or
14 | not juveniles to be prosecuted in Family Court but must be made by the solicitor, the
15 | solicitor to authorize. What does that mean?

16 | MR. MAY: Well, it means that there's . . .

17 | THE COURT: There's got to be some sharing of information.

18 | MR. MAY: Yes, sir, and I believe that there is a recommendation to be
19 | independent evaluation as well as an independent - - They're two separate agencies.

20 | THE COURT: And you are alleging - - What are you alleging?

21 | MR. MAY: Your Honor, when Ms. Hill called Ms. Delany, Ms. Delany asked the
22 | question: Well, have you talked to anybody from the Solicitor's Office? And her
23 | response: Of course, I called Luck Campbell.

24 | Your Honor, there is an appearance of impropriety. We ask that Ms. Hill, as a
25 | former employee of Luck Campbell, we ask that there be inquiries into the extent of

1 information of exchange by the two of them be it by cross examination or in-camera,
2 Your Honor, with a court reporter so that way the record is protected for this juvenile.

3 MS. CAMPBELL: May it please the Court, Your Honor. We did receive a call
4 from Ms. Hill and she indicated she had received a subpoena. At that point, we had a
5 brief conversation about the type of data they were looking for which was data that was
6 subpoenaed. At that point, I believe she said she would get back to me or we would see
7 each other on Monday morning. You can inquire of her. I don't know of any violation of
8 anything especially in the statute, but typically when people are subpoenaed by either
9 side, they will contact the other. She even provided this information to Ms. Delany. No
10 violation of any statute in the family code or in any rule in regard of people talking to
11 each other privy about information. Nothing privileged about the information. I don't
12 know of any violation. You can inquire further of Ms. Hill, of course. This is simply
13 absurd.

14 THE COURT: I'll allow both of you to examine the witness. I'll start with you,
15 Mr. May. Obviously, I'm not quashing the subpoena in this regard.

16 MR. MAY: I beg the Court's indulgence for one second, Your Honor.

17 MR. MAY: May it please the Court, Your Honor?

18 THE COURT: Yes, sir.

19 Q. Ms. Hill, at any point did you contact the employees at The Department of
20 Juvenile Justice in Richland County?

21 A. Did I call employees at The Department of Juvenile Justice in Richland County?

22 Q. Yes.

23 A. I know that last week I talked with the county director. I believe she called me.

24 Q. Did you instruct them not to participate in our attempt to discover information and
25 told them not to testify because there was no data? Did you instruct them not to testify?

1 ELIZABETH HILL – CROSS EXAMINATION BY MS. CAMPBELL

2 A. No, sir.

3 Q. Okay, was Ms. Campbell's representation of the conversation that y'all two had
4 completely accurate and contain all the information that was discussed in the
5 conversation?

6 A. It was. I contacted Ms. Campbell to let her know I had been subpoenaed in this
7 case and shared with her the information that was subpoenaed not only myself but the
8 demographic data and read to her exactly what was in the subpoena as I read it this
9 morning.

10 Q. So you only contacted her one time?

11 A. Correct.

12 Q. All right, what day was that?

13 A. Friday. I received my subpoena on Friday afternoon about three o'clock.

14 MR. MAY: Your Honor, no further questions at this time.

15 THE COURT: Ms. Campbell?

16 MS. CAMPBELL: May it please the Court.

17 CROSS EXAMINATION BY MS. CAMPBELL:

18 Q. Did you in any way violate any code law as to any rule or anything else in
19 contacting me and giving me that limited information?

20 A. No, ma'am, not to my knowledge.

21 Q. And that was the extent of our discussion briefly on Friday?

22 A. It was.

23 MS. CAMPBELL: Your Honor, I don't have anything else.

24 THE COURT: So your motion in this regards, Mr. May, is for what relief?

25 MR. MAY: Your Honor, we do believe that we'd actually ask Your Honor at this

1 time to allow us to call two witnesses, that it is the defense belief that would contradict at
2 least part of that statement.

3 THE COURT: So what are you asking the Court to do?

4 MR. MAY: Your Honor . . .

5 THE COURT: What relief are you seeking?

6 MR. MAY: Your Honor, I would ask - - The relief that we are seeking is to
7 disqualify the Solicitor's Office from this prosecution for improper contact. That was the
8 intention of our Motion.

9 THE COURT: Some sort of violation as applies to 63-19-1010?

10 MR. MAY: For co-mingling information, for working together and from denying
11 Mr. Lopey the full protection under the law and full protection for a fair hearing and there
12 is the appearance of impropriety, Your Honor, that we seek to have another solicitor's
13 office take advantage of this, therefore, there is no . . .

14 THE COURT: All right, Ms. Hill, you may step down. I'm not quashing your
15 subpoena at this time. I'm asking you to stay until we get through with this motion.

16 MS. HILL: Thank you, Your Honor.

17 THE COURT: You have another witness?

18 MS. DELANY: We do have another witness, Your Honor. We call Katina
19 Martin next.

20 KATINA MARTIN, being duly sworn, testified as follows:

21 THE COURT: Are you Ms. Martin?

22 MS. MARTIN: Yes.

23 THE COURT: Would you place your left hand on the Bible there and raise your
24 right. Do you swear or affirm to tell the truth, the whole truth and nothing but the truth
25 so help you God?

1 KATINA MARTIN – DIRECT EXAMINATION BY MS. DELANY

2 MS. MARTIN: Yes, Your Honor

3 THE COURT. Thank you and you can have a seat and watch your step, Ms.
4 Delany?

5 DIRECT EXAMINATION BY MS. DELANY

6 Q. Ms. Martin, can you please state where you are employed and what capacity.

7 A. South Carolina Department of Juvenile Justice as the County Director.

8 Q. And that's for Richland County?

9 A. Yes.

10 Q. How long have you been in that position?

11 A. The position as County Director for a year and two months.

12 Q. And how long have you been employed at the Richland County DJJ?

13 A. For five and a half years.

14 Q. Did you learn last week that we were looking for some information about race and
15 waiver of children?

16 A. Yes.

17 Q. How did you learn that?

18 A. We had community specialist, Jeffery Vaughn, said he had received a call from
19 you and you actually inquired about that information and at that time he said that he told
20 you that he had to run it by the County Director.

21 Q. What did you do upon hearing that?

22 A. I told him that I had to contact our legal person because I didn't know if we had
23 that type of information and at that time I made a call and left a message because she was
24 not in the office at the time.

25 Q. Okay, did you wind up speaking with her?

1 A. Yes, I did.

2 Q. And what was the substance of that conversation?

3 MS. CAMPBELL: Objection, Your Honor, relevance of this unless it's linked
4 directly to us. I don't know the relevance. It may be privileged, but she's getting legal
5 advice from her counsel.

6 MS. DELANY: Your Honor, this - - Ms. Hill just testified that she didn't instruct
7 anyone not to testify about the matter so I would like to ask Ms. Martin whether she was
8 instructed or whether she instructed any of her employees not testify about this matter.

9 MS. CAMPBELL: Objection, again, Your Honor, on the same basis.

10 THE COURT: You are not asking her about her conversation with her counsel or
11 are you?

12 MS. DELANY: I'm asking if she instructed her employee not to testify about this
13 matter or if she was instructed by anyone not to testify about this matter.

14 MS. CAMPBELL: And then she is asking specifically about what Ms. Hill told
15 her which would be her legal counsel. It's not relevant as to whether or not the
16 Solicitor's Office, through some allegation of some misconduct between Ms. Hill and I,
17 how this is relevant to that anyway.

18 MS. DELANY: Your Honor, the Department's legal counsel is not Ms.
19 Martin's legal counsel. And additionally, Mr. Vaughn already said that he's been told
20 that he shouldn't testify about it so any privilege has already been waived.

21 THE COURT: Who testified to that?

22 MS. DELANY: Nobody has testified to that yet. Someone said that to me.

23 THE COURT: Well, I don't know - - If Ms. Hill is General Counsel, I don't
24 know if that's subject to attorney/client privilege or not, quite frankly, might be. She is
25 an employee of the Department.

1 MS. DELANY: Your Honor, they can't - -Any legal counsel can't instruct their
2 client to violate the law.

3 THE COURT: That very well may be. I'm going to allow you to ask it outside - -
4 Is Ms. Hill still in here? She's certainly this person's counsel since she is an employee of
5 The Department of Juvenile Justice, isn't she?

6 MS. DELANY: Your Honor, she's the Department of Juvenile Justice's counsel.

7 THE COURT: So who is that?

8 MS. DELANY: Corporate person, Your Honor.

9 THE COURT: She's the County Director. What's your position on that, Ms.
10 Hill? Since you're General Counsel, I'm going to allow you to respond, too.

11 MS. HILL: Thank you, Your Honor, I would say that anytime that the legal
12 office provides advice to the employees of the Department, that that is privileged legal
13 advice.

14 THE COURT: You're objecting. Since this is your employee, and you've both
15 been subpoenaed, I'm going to let you be heard on that.

16 MS. DELANY: Your Honor, she can't object to us being allowed to impeach her
17 testimony.

18 THE COURT: She can't?

19 MS. DELANY: No.

20 THE COURT: Well, she can give her advice as to whether or not she can answer
21 the question, but the subject to the attorney/client privileges, can't she? And I suppose
22 it's her privilege.

23 MS. DELANY: Your Honor, I think the privilege has been waived. And at this
24 point, I would ask that DJJ bring another attorney in to help. I mean, she's already made
25 her statement. This is the only two questions I'm going to ask her. I want to ask her was

1 she instructed not to testify.

2 THE COURT: Who waived it? Isn't she the person who has to waive it?

3 MS. DELANY: I think any agency can waive it. I think any other agency . . .

4 MS. HILL: Your Honor, if I may?

5 THE COURT: Yes, ma'am.

6 MS. HILL: I do not object to Ms. Martin waiving the privilege for the specific
7 purpose of this one question. We're not afraid of the answer.

8 THE COURT: Ma'am, do you object to answering the question?

9 MS. MARTIN: No.

10 THE COURT: You may ask it.

11 MS. DELANY: Thank you, Your Honor.

12 THE COURT: I don't think it sustains the, but you may ask it.

13 Q. Were you instructed not to testify about this matter?

14 A. No.

15 Q. Did you advise any of your employees not to testify about this matter?

16 A. No, ma'am.

17 MS. DELANY: Nothing further.

18 THE COURT: Cross examination?

19 MS. CAMPBELL: No, sir.

20 THE COURT: All right, you may step down, Ms. Martin. Thank you.

21 MS. DELANY: Your Honor, we call Jeffery Vaughn now.

22 MS. MCDUFFIE: Your Honor, we object to them calling any more witnesses
23 unless they can lay a foundation as to how it's relevant to disqualifying solicitors in this
24 matter.

25 MS. DELANY: As an officer of the Court, here's what I can tell you and maybe

1 be able to explain if I misunderstood. I called DJJ. I called Felicia Harris and I called
2 Jeffery Vaughn who are both intake workers at DJJ. I work with them every week in
3 court. They come in and give their sentencing recommendations. Jeff has been there
4 twenty years. Felicia has been there six years in the Richland County office. So when
5 Jim and I started talking about the race issue Thursday, I called them, and, I said, hey - - I
6 called them individually, and, I said, hey, you guys remember the solicitor's office ever
7 trying to waive a white child. I spoke to Ms. Gibbs* Harris first and she said, no. I then
8 called Mr. Vaughn, they're the two that's been there the longest. I called Mr. Vaughn,
9 and I said, hey, do you remember the solicitor's office ever trying to waive a white child.
10 And he said, never. But he did say that I was gone for four years serving over seas so I
11 don't know about that time period. And I said, and I said to both of them, are y'all going
12 to be around next week not knowing that I was going to subpoena them at that point, and
13 they both said, yes. Mr. Vaughn said, let me check with our director and make sure that
14 I'm right about that, let us check our records. So, the next day we went - - Their office is
15 in this building too, so the next day we went down there, and I saw Mr. Vaughn and I
16 said, did y'all find anything out and he said, well, we actually don't keep that kind of
17 information, so I've been told I shouldn't testify about it. And at that point, we walked
18 away, and I went to subpoena him, Ms. Martin and Ms. Hill on that matter. Okay, okay,
19 DJJ is suppose to be an independent agency. They are not supposed to be actively
20 working with the prosecution in prosecuting a child. They are supposed make
21 independent investigation.

22 THE COURT: Is this your last witness on this issue?

23 MS. DELANY: It is, Your Honor.

24 THE COURT: I'll permit you to call him.

25 MS. DELANY: Thank you.

1 JEFFERY VAUGHN – DIRECT EXAMINATION BY MS. DELANY

2 JEFFERY VAUGHN, being duly sworn, testified as follows:

3 THE COURT: Place your left hand on the Bible, Mr. Vaughn, and raise your
4 right, please. Do you swear or affirm that the testimony that you are about to give will be
5 the truth, the whole truth and nothing but the truth so help you God?

6 MR. VAUGHN: I do.

7 THE COURT: Thank you. Have a seat, sir.

8 MS. DELANY: Thank you, Your Honor.

9 DIRECT EXAMINATION BY MS. DELANY:

10 Q. Mr. Vaughn, where are you employed?

11 A. Department of Juvenile Justice, Richland County.

12 Q. In what capacity are you employed?

13 A. Community Specialist.

14 Q. Okay. Did I contact you last week and start asking you about racial demographics
15 in Richland County?

16 A. That's correct.

17 Q. And we had a conversation on the phone when I called you? We had a
18 conversation on the phone, right?

19 A. That's correct.

20 Q. And I asked you how long you had been working in the DJJ Richland County
21 office, right?

22 A. That's correct.

23 Q. And how long is that?

24 A. I started with the Department of Juvenile Justice in 1987. I was moved down
25 Richland County office in 1992. Around 1995, I left to run a program still under

1 Richland County DJJ umbrella called the St. Luke Center so I was with them in another
2 location from 1995 to 2000, then I came back to the Richland County office in 2000 and
3 right around 2003 I was called up to active duty, and so I left on active duty orders in
4 2003 and I returned in 2007 where I'm back in my capacity now.

5 Q. Okay, did I ask you if you could remember any white children ever having waiver
6 hearings in Richland County?

7 A. You did ask me that question.

8 Q. What was your answer to that question? What is your answer to that question?

9 A. Well, DJJ does not keep that statistical data. On that question that you proposed,
10 from my caseload as far as I was working in Richland County office, I only worked with
11 one Caucasian male that was started off going through the pre-waiver process, but in the
12 end he didn't actually have a hearing. His charge was reduced and they kept it in Family
13 Court.

14 Q. Okay, so, when I called you, did you tell me, no, you could not remember any
15 white children being waived?

16 A. Well, at the time, I had to just think back from 1992, which is a fairly long time,
17 so, again, only on my caseload, I only worked with one Caucasian male. He started, this
18 process started, but it did not end with him going through the complete pre-waiver
19 process. They kept it in Family Court.

20 Q. That boy never had a waiver hearing?

21 A. No. No.

22 Q. Did you tell me that you couldn't think of any but you wanted to check records
23 and talk to your boss about it?

24 A. Right. Right. I needed, again, conferring with my chain of command all the way
25 up to our legal department, but to give you, you know, the exact answer, correct

1 information.

2 Q. Did anybody tell you not to testify in this case?

3 A. Well, our legal department said that the Department of Juvenile Justice does not
4 keep that type of statistical data, so, I mean, we did not want to give incorrect information
5 to the question that you were giving. Not just for us to refuse to testify, but we did not
6 have incorrect answers {sic}. We did not want to give the Court incorrect information.

7 MS. DELANY: Nothing further, Your Honor.

8 THE COURT: Cross examination?

9 MS. MCDUFFIE: Nothing from us, Your Honor.

10 THE COURT: You may step down. Thank you very much. Anything else?

11 MS. DELANY: No, Your Honor.

12 THE COURT: All right, the Motion to Disqualify the Solicitor's Office is denied.

13 Any other motions? You want to address Ms. Hill's motion? I'm not quashing her
14 subpoena? Do you need her anymore today?

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

16 MS. DELANY: Judge, we don't need to keep her here. The only thing I would
17 ask is that if you would instruct her to give us a date that is practical as far as with her
18 cooperating with us on what we asked for.

19 THE COURT: What is it that you want? She just asked specifically what you
20 have.

21 MS. DELANY: We can prepare an order for that, Your Honor. She says they
22 have information on all waivable offenses and they do have demographic information, so
23 we can take it and put it together ourselves.

24 THE COURT: So you want a list of the waivable offenses?

25 MS. DELANY: Yes, for the last - - Really, I'd like - - We can put it together,

1 but really I'd like the waiver process from 1981.

2 THE COURT: You want to be heard, Ms. Campbell?

3 MS. CAMPBELL: Your Honor, I don't know that that is practical. You can
4 inquire of Ms. Hill as to exactly what she could provide as well as we would just request
5 that whatever is provided to them is provided to us.

6 THE COURT: Ms. Hill?

7 MS. HILL: Thank you, Your Honor. As Your Honor is aware, every offense is
8 waivable under particular circumstances, sixteen year olds who are charged with
9 misdemeanors are waivable, so it may be more practical if the Public Defender's office
10 is looking for a particular offenses that they're interested in. A list of five or six, maybe,
11 something that is a little more narrow scope. We're glad to provide all of it which would
12 be every child in Richland County who has a charge pending since the beginning of time.
13 We would be glad to do that.

14 THE COURT: Tell them what you want, Ms. Delany and I'll make a ruling right
15 now.

16 MS. DELANY: Okay, I would like all statutory violent crimes. I would like a list
17 of all children charged with statutorily violent crimes, and I would like that for all
18 fourteen and fifteen year olds, children charged with those crimes and then I would also
19 like all children charged with murder and CSC and I would like the race and
20 demographic information of those children and then I'd like the disposition and if they
21 can't get a disposition, I'd like a petition number.

22 THE COURT: Only for Richland County?

23 MS. DELANY: For Richland County, yes, sir, and I would like either a
24 disposition of whether or not they were put through a waiver hearing and if they weren't,
25 if they can't do that, then I'll take a petition number and we'll figure it out ourselves and

1 that way they wouldn't have to identify the child or the name.

2 THE COURT: Ms. Hill?

3 MS. HILL: Thank you, Your Honor. We are able to provide final disposition
4 information in every case. Again, as I testified earlier, that would not indicate whether
5 that child's final disposition happened after any type of waiver process or not, but we
6 certainly can provide the final disposition for every one of these children. The petition
7 numbers are not in our system. That is a court file process and it's not part of the DJJ
8 system. The children aren't identified by petition numbers.

9 MS. DELANY: If I could just inquire as to how are they identified, then, Your
10 Honor.

11 MS. HILL: Name, date of birth, race, gender.

12 MS. DELANY: Name, can we get names?

13 THE COURT: Is there a problem with names, Ms. Hill?

14 MS. HILL: Well, juvenile information is confidential by law, Your Honor. It
15 certainly can be released with a court order, but the Department is not able to release
16 information to a lawyer, a defense lawyer about any child that they do not represent
17 without a court order.

18 THE COURT: I'm not inclined to release names.

19 MS. DELANY: I'd like to have some way of -- She said she can give me the
20 disposition, she can't tell if they were put up for waiver or not. I'd like the disposition
21 and then I've got to have some way that I can find that information and to find out if they
22 were subjected to a waiver hearing, something that I do through the Clerk of Court, but I
23 need some kind of identifying, the inmate number or a petition number, child's first
24 name.

25 THE COURT: I mean, this is going to be a lot of people.

1 MS. CAMPBELL: Your Honor, if I may. I may be wrong and I don't do Family
2 Court all the time, but the information about juveniles are kept strictly confidential, I
3 thought, and she's now asking to explore into areas where, I believe, by law, it's kept
4 confidential.

5 THE COURT: That's why I'm concerned.

6 MS. CAMPBELL: Yes, sir.

7 THE COURT: How am I going to get around that?

8 MS. DELANY: Your Honor, Alaska v. Davis is directly on point. I don't have a
9 copy of it . . .

10 THE COURT: I'm not familiar with Alaska versus Davis.

11 MS. DELANY: I think, I think . . .

12 THE COURT: This is not the State of Alaska case.

13 (Laughter in courtroom.)

14 MS. DELANY: No, Your Honor. The United States Supreme Court it says that
15 juveniles State of Alaska, it says that juveniles, regulations and laws does not trump
16 criminal procedures in prosecutorial issues and so I need some way of identifying those
17 kids. I don't need their names. I just need some way of identifying them or some way of
18 finding out . . .

19 THE COURT: And you need to identify them for what purpose?

20 MS. DELANY: I need to find out whether or not they were subject to waiver.
21 They're not going to have - - She said they do not have which children have - - Final
22 disposition is going to be - - Let's say for instance, a child who gets indeterminate
23 sentence not to exceed his twenty-first birthday. She says she can tell whether that child
24 was put through a waiver hearing or whether that child pled guilty.

25 THE COURT. I would say it's not a waiver hearing.

1 MS. DELANY: It could have been a waiver hearing and he was not waived.

2 THE COURT: Oh, a waiver hearing and not waived.

3 MS. DELANY: Yeah and so what we're really concerned with is what children
4 were put through a waiver hearing. I would ask if maybe we could get a first name and a
5 last initial, how everything was filed in Appellate Court with children and we can take
6 that and we can ask the Solicitor's office what the dispositions on those children were.
7 When we file a notice of appeal and everything, it would, for example, in the interest of
8 Zacoata L.

9 THE COURT: You think you can find it with that information?

10 MS. DELANY: I think we could.

11 THE COURT: I don't know if that is any protection anymore, just giving the
12 name out really.

13 MS. DELANY: And Your Honor, before you rule on this, you could look at
14 Alaska v. Davis.

15 THE COURT: Why don't you get a copy for me.

16 MS CAMPBELL: If we could get a copy, too.

17 THE COURT: Any other concerns, Ms. Hill?

18 MS. HILL: Nothing, Your Honor. We're glad to provide the data, but we just
19 can't provide if it doesn't exist.

20 THE COURT: If it's on the computer, pretty easy to come up with?

21 MS. HILL: It will take our IT folks a bit of time because it's not a report that we
22 keep in the normal course of business. They're going to have go into the data base itself
23 and look for particular identifiers so it will take us a little bit of time but we're able to
24 produce it.

25 THE COURT: Okay, so what you want is all . . .

1 MS. DELANY: Statutory violent crimes.

2 THE COURT: How far back are you talking?

3 MS. DELANY: I'd like from 1991 or perhaps 1992 if that's not practical

4 THE COURT: Is that practical, Ms. Hill?

5 MS. HILL: I'll have to check with our staff. Our JJMS, our current system only
6 goes back to about 2004 or 2005. We do have an archives data base staffing that's MIS
7 that records are merged because of the age of the children and they're not kept forever so
8 I'll have to check with our IT department and be glad to provide as far back as we can.

9 THE COURT: Okay, fourteen and fifteen year olds plus all children charged with
10 murder and criminal sexual conduct first degree?

11 MS. DELANY: Regardless of age, Your Honor, or criminal sexual conduct first
12 degree with a minor.

13 THE COURT: And final disposition.

14 MS. DELANY: The final disposition, the race and either the child, petition
15 number or name, Your Honor. And she said that she could provide the name pursuant to
16 a court order.

17 THE COURT: All right, I'm going to rule. I'm going to go ahead and grant that
18 except I'm not ruling on the identification of the person yet, so there will be an order
19 coming. You can go ahead and start getting to work, I guess. You give me the case and I
20 will address that issue.

21 MS. DELANY: Thank you, Your Honor.

22 THE COURT: Now, can Ms. Hill go?

23 MS. DELANY: Yes, sir.

24 THE COURT: Do you need - - Is she now released from her subpoena? She
25 doesn't have to come back in March, does she?

1 MS. DELANY: Well, she may if she's providing with us with the data, then she
2 will need to come back in March, but we can issue another subpoena.

3 THE COURT: And you can move to quash it.

4 MS. HILL: Yes, sir.

5 THE COURT: All right, you are free to go Ms. Hill.

6 MS. HILL: Is Ms. Martin excused as well?

7 THE COURT: Is Ms. Martin excused?

8 MS. DELANY: Your Honor, our understanding is that we will be addressing the
9 race issue March 26th, so, yes, sir.

10 THE COURT: You're free to go as well, Ms. Martin, or you may stay if you
11 wish. All right, thank you, Ms. Hill.

12 MS. HILL: Thank you, Your Honor.

13 MS. DELANY: And Your Honor, we actually go ahead and release multiple
14 witnesses since we're not doing the race motion. We can release Mitsy Campbell
15 Williams, Sarah Smith, Elizabeth Hill, Jeffery Vaughn, Felicia Harris, Katina Martin,
16 James Cooper, Shealy, Steven *.

17 MR. MAY: And Your Honor, Kendall just said that we're schedule for March
18 26th so that way the people who are being released just go ahead and put it on their
19 calendars.

20 THE COURT: After we stop today, we reconvene on March 26th, all day.

21 THE COURT: Any other motions?

22 MS. MCDUFFIE: Your Honor, there's still the Motion to Quash the subpoena on
23 Mr. Johnson.

24 MR. MAY: Your Honor, we will reissue a subpoena, he is free to go, but we will
25 reissue a subpoena for March 26th.

1 MS. MCDUFFIE: Your Honor, we would ask for Ms. Simpson still be heard
2 because the records they seek are not kept in our office.

3 THE COURT: I'm sorry, I think I got lost. I thought we were talking about this
4 other witness that's been subpoenaed on the Motion to Quash.

5 MR. MAY: Yes, Your Honor and we asked for the same records as Your Honor
6 just ordered DJJ to give and the Solicitor's office made representation they don't carry
7 that information and if we get it from DJJ then we're happy to say that's fine. If we need
8 the solicitor to check a few names if we are not able to determine the outcome from the
9 Clerk of Court files.

10 THE COURT: Do we have a stipulation?

11 MS. MCDUFFIE: Your Honor, I think it was information that was provided to us
12 whether we could pull that information or not.

13 MR. MAY: I'm just saying, we just don't have a complete . . .

14 MS. DELANY: That's why we're asking for kid's name or the petition number
15 so when we get that information from her, we can call the solicitor's office, and, say,
16 what happened with these kids, did y'all waive them

17 THE COURT: So you're in agreement or not?

18 MS. MCDUFFIE: Your Honor in our current data base, we cannot tell as well if
19 we waived the child. That information is not kept in our data base.

20 MS. DELANY: We can deal with that on March 26th if that's an issue, Your
21 Honor.

22 THE COURT: Is that satisfactory?

23 MS. MCDUFFIE: Yes, Your Honor.

24 THE COURT: Okay, so we don't have to deal with that. What's your name,
25 ma'am?

1 MS. SIMPSON: I'm Nicole Simpson, Your Honor.

2 THE COURT: Is she free to go?

3 MS. SIMPSON: For the record to make sure that we're present on Tuesday,
4 February 21st, as well as February 22nd and to release my subpoena, so I just want to
5 make sure that we're released for good.

6 MR. MAY: We'll release you until March 26th and we'll reissue subpoenas at
7 that time.

8 THE COURT: You are released from this Court.

9 MS. SIMPSON: Thank you, Your Honor.

10 THE COURT: Any other motions?

11 MS. DELANY: We would request if the State, if they're going to intend to
12 introduce any portion of my client's statements, Your Honor.

13 THE COURT: Do you intend to do that?

14 MS. MCDUFFIE: Your Honor, can we just do it when the witness is called to
15 testify at the beginning and go through it or would you like us to be more . . .

16 THE COURT: I prefer to do it separately, quite frankly. Let's do it that way and
17 then you will just have to recall. This is just for the purposes of determining
18 admissibility

19 MS. MCDUFFIE: The State would call Joe Clarke.

20 JOE CLARKE, being duly sworn, testified as follows:

21 THE COURT: Officer Clarke, if you would please place your left hand on the
22 Bible, there, and raise your right and face me. Do you swear or affirm that the testimony
23 that you are about to give will be the truth, the whole truth and nothing but the truth so
24 help you God?

25 MR. CLARKE: Yes, sir.

1 JOE CLARKE – DIRECT EXAMINATION BY MS. MCDUFFIE

2 THE COURT: Thank you and please have a seat.

3 DIRECT EXAMINATION BY MS. MCDUFFIE:

4 Q. Deputy Clarke, where are you currently employed?

5 A. Richland County Sheriff's Department.

6 Q. And for the purposes of this hearing, please tell the Court when was the first time
7 you made contact with Zacoata Lopey?

8 A. The first time I made contact with him was Spring Valley High School.

9 Q. Approximately, what time was that?

10 A. I'd say right at noon on the 15th of December of last year.

11 Q. In 2010?

12 A. That's correct.

13 Q. And where did you encounter Mr. Lopey?

14 A. In the office of the School Resource Officer, Ben Fields.

15 Q. And how did Mr. Lopey get into Mr. Fields' office?

16 A. He was asked to come to the office.

17 Q. And when you encountered Mr. Lopey, please describe that for the Court.

18 A. Mr. Lopey was brought, was in the room. I made contact with him as he was
19 sitting at a table. I along with Deputy Ben Fields and Investigator, John Miller, were
20 present in the room.

21 THE COURT: Let me stop you just a minute. I should have inquired about this
22 earlier. Does Mr. Lopey have a Guardian ad Litem or a parent with him?

23 MR. MAY: Yes, Your Honor, Mr. Boyd-Young is the Guardian ad Litem.

24 THE COURT: Okay, that's all I need. Thank you, sir. I'm sorry to interrupt.

25 Q. Present in the room was yourself and Investigator Miller and SRO, Ben Fields?

1 A. That's correct.

2 Q. And Mr. Lopey?

3 A. Correct.

4 Q. And please describe to the Court what happened after that.

5 A. We briefly explained who we were, introduced ourselves. Made small talk about
6 things and then we informed him that we were there to discuss maybe some issues that
7 happened in the last day or two.

8 Q. And did you advise him of his Miranda warnings at that time?

9 A. No, not initially, just had small talk, but before we actually started any kind of
10 questioning about what had happened, we did advise him of his Miranda warnings.

11 Q. And how did you advise him of his rights?

12 A. We use a standard form, the Advice of Rights form that we have here. I read it to
13 him, explained it to him. One of the things I do is I also ask what's the highest level of
14 education he's received at that time, if English is his first language, can he read and write
15 and does he understand what's happening.

16 Q. And please tell the Court how Mr. Lopey responded to these questions.

17 A. The affirmative that he understood all of those things. He took time - - He
18 actually sat and read the Advice of Rights form first before he signed it.

19 Q. Did he tell you that he could read and write?

20 A. Yes, he did.

21 Q. And what was the highest grade that he told you that he had completed?

22 A. Ninth grade and I also made a notation at the bottom corner of the page that he
23 can read and write and I wrote ninth grade.

24 Q. And please read for us the rights as you read them to Mr. Lopey on December 15th
25 of 2010.

1 (Witness, Joe Clarke, reads from Advice of Rights form.)

2 A. Before we ask you any questions, you must understand your rights. You have the
3 right to remain silent. Anything you say can be used against you in court. You have the
4 right to talk to a lawyer for advice before we ask you any questions and to have a lawyer
5 with you during any questioning. If you cannot afford a lawyer, one will be appointed for
6 you before any questioning, if you wish. If you decide to answer questions now, without
7 a lawyer present, you still have the right to stop answering at any time. You also have the
8 right to stop answering at any time until you talk to a lawyer.

9 (End of Advice of Rights form.)

10 And then below that, you can sign that and that's witnessed by me and then below
11 that we have the Waiver of Rights and in the Waiver of Rights, it says:

12 (Witness, Joe Clarke reads the Waiver of Rights.)

13 I have read this statement of my rights and understand what my rights are. I am
14 willing to talk and answer questions. I understand and know what I am doing. No
15 promises have been made to me, no pressure or coercion of any kind has been used
16 against me

17 (End of waiver of rights.)

18 That was signed and witnessed.

19 Q. And who signed and witnessed that?

20 A. In this particular case, I signed it and SRO Fields signed it.

21 Q. And did Mr. Lopey also sign acknowledging that he understood his rights and
22 also signed again waiving his rights?

23 A. Yes, he did.

24 Q. And do you see Zacoata Lopey in the courtroom today?

25 A. I do.

1 Q. Can you please point him out for the Court?

2 A. That young man, there.

3 (Witness nods toward Defendant.)

4 Q. And at any time did he ever request an attorney?

5 A. No.

6 Q. Did he ever tell you that he did not want to speak with you?

7 A. No.

8 Q. Did he appear to you to understand what he was doing?

9 A. Absolutely.

10 Q. Did you threaten him in any way?

11 A. No.

12 Q. Coerce him?

13 A. No.

14 Q. Withhold any comforts from him?

15 A. Not at all. In fact, I always offer if they would like a drink of water.

16 Q. At any point and time did he say that he wished to speak with anyone other than
17 you?

18 A. No.

19 Q. Did he ask to speak with his mother?

20 A. No.

21 Q. Did you have any contact with his mother on that day?

22 A. Yes.

23 Q. Please describe that for the Court.

24 A. I was informed that his mother was present. As we kind of concluded speaking
25 with him, Investigator Fields or SRO Fields had gone out to speak with him, spoke with

1 his mother. She apparently had expressed an interest in speaking with me. I said, that's
2 fine. And so when we finished there, I went out and had a brief conversation with her.

3 Q. And that was after you took the written statement from Mr. Lopey?

4 A. Yes, ma'am.

5 Q. And please tell the Court how you memorialized that statement.

6 A. The statement is read back to Mr. Lopey as is my custom. I asked if he feels
7 comfortable with that; he said, yes. At that point he signs it and I have it witnessed.

8 Q. And is that a three-page statement taken from the Defendant on December 15th?

9 A. Yes, ma'am, that is correct.

10 MS. MCDUFFIE: Your Honor, if we could get this marked as a Court's exhibit.

11 (Advice of Rights form marked as State's Exhibit Number Three.)

12 Q. Deputy Clarke, showing you what's been marked as State's Exhibit Three for
13 identification. Is that Advice of Rights that Mr. Lopey signed?

14 A. Yes, ma'am.

15 Q. And that you witnessed?

16 A. Yes.

17 Q. And at no point and time did he ask for a lawyer?

18 A. No.

19 Q. He agreed to talk to you?

20 A. Yes.

21 Q. And did he talk to you freely?

22 A. Yes.

23 Q. If he had asked for an attorney or not speak with you, what would you have done?

24 A. Stop the interview immediately.

25 Q. And was that interview memorialized in a three-page written statement?

1 A. Absolutely.

2 Q. And that's State's Exhibit Number Four?

3 A. Yes, ma'am.

4 Q. And he signed the bottom of each page?

5 A. Correct.

6 Q. He also told you where there were errors and corrections made on the statement?

7 A. That is correct.

8 Q. And at any point and time did you threaten him or coerce him?

9 A. No, ma'am.

10 Q. Did you tell him what to say?

11 A. No.

12 Q. Whose words are these on these pieces of papers?

13 A. Zacoata Lopey.

14 MS. MCDUFFIE: Your Honor, may I approach and hand up State's Three and
15 Four?

16 THE COURT: Any objections?

17 MS. DELANY: No, Your Honor.

18 THE COURT: Exhibits Three and Four entered into evidence

19 MS. DELANY: Your Honor, we're here to determine the voluntariness of that
20 that statement.

21 THE COURT: Any objections? So there's no objection to Exhibits Three and
22 Four?

23 MS. DELANY: No, Your Honor.

24 Q. And you said after that when the statement was taken, you spoke with his mother?

25 A. Yes, ma'am.

1 Q. Did she ever tell you that she didn't want you to speak with her son?

2 A. Never told me that, no.

3 Q. And did you then take Mr. Lopey to headquarters?

4 A. Yes.

5 Q. And please tell the Court about that.

6 A Mr. Lopey - - Immediately when we had his statement completed, I contacted, at
7 the time, Major Stan Smith with the Sheriff's Department and I informed him of what we
8 had done at this point. I said that Mr. Lopey had expressed, had told us that he knew
9 where some of the stolen property was or the alleged stolen property was and that he
10 could show it to us. I explained to Major Smith our intention was to bring him back to
11 headquarters, and in route, due to the location of where these alleged stolen items would
12 be, they would be nearby the Sheriff's Department and so we came back to headquarters
13 via a route very near the Sheriff's Department in essence looking for these stolen items.
14 Fairly, quickly realized we were kind of being led, for lack of a better word, on a goose
15 chase, and at that point, I said, let's go back to headquarters.

16 Q. And at any point in that car ride, did he ever tell you that he did not want to speak
17 with you?

18 A. No.

19 Q. That he wanted a lawyer present?

20 A. No.

21 Q. Did he appear to understand what he was doing?

22 A. Absolutely.

23 Q And when you got back to headquarters on December 15th at 2010, 15:19 hours
24 did you again advise Mr. Lopey of his rights?

25 A. I did.

1 Q. And did you take a second written statement from Mr. Lopey?

2 A. I did.

3 Q. And why did you take a second written statement from him after advising him of
4 his rights at 15:19 hours on December 15th?

5 A. For lack of a better word, I wanted to make it concise and make sure he could
6 understand and read what I had written down.

7 Q. Did you also get new information that developed while you were in route with
8 Mr. Lopey?

9 A. Just things that we were hearing, yeah, and I just wanted to clarify a few items.

10 Q. And so a second statement was taken from Mr. Lopey?

11 A. That is correct.

12 MS. MCDUFFIE: If we could get this marked as State's Exhibit Number
13 Five, please.

14 (Second written statement of Zacoata Lopey marked as State's Exhibit Number
15 Five.)

16 Q. In State's Exhibit Number Five, does it again advise Mr. Lopey of his rights?

17 A. It does.

18 Q. And did he appear to understand those rights when you advised him at
19 approximately 3:19 p.m.?

20 A. He did.

21 Q. And that was three hours after you had first advised him?

22 A. That is correct.

23 Q. And why did you re-advise him?

24 A. Just as a matter of the pattern of how we do things, a precautionary manner. I tell
25 them, verbally, you know, you do understand you are under oath, you know, and then I

1 just read it again and read it off this. This is a template that we have on our computer and
2 I use this. It makes it so it's easier for people to read.

3 Q. And you then took a second statement from Mr. Lopey on December 15th, 2010,
4 at 15:19?

5 A. Yes, ma'am.

6 Q. And please describe for the judge the substance of what Mr. Lopey told you at
7 that time.

8 A. Do you want me to . . .

9 Q. You don't need to read the statement verbatim, just give the judge a general
10 overall.

11 A. Generally, this was more of a narrative. This was him basically talking. I am
12 reducing it into writing by typing it as he's talking. Several times, I would stop and him
13 and say, just to make sure I was clear on something, and would, you know, is this what
14 you mean, and he would say, yes. And then once that was completed, I would then take
15 the statement again. Before I would print it, I would read it back to him off the computer
16 as I scrolled up and then I would print it, again, have him review it and look it and if he
17 agreed to it, he would affix a signature.

18 Q. And at any point during this process did he tell you that he did not want to speak
19 with you?

20 A. No.

21 Q. Did he ask to speak with a lawyer?

22 A. Never.

23 Q. Did he ask to speak with his mother?

24 A. No.

25 Q. Did he, in fact, have a chance to speak with his mother at some point?

1 A. He, at a point, when we were at Spring Valley High School, his mother had
2 expressed an interest in wanting to speak to him. I saw no problem with that, so I, you
3 know, let her speak to her son while we were in the lobby at Spring Valley High School.
4 That is the only time that I know that he spoke to his mother in my presence.

5 Q. And after that, he never said that he wanted to continue to speak with his mother,
6 wanted an attorney or did not want an attorney or did not want to speak with you?

7 A. Never.

8 Q. And this second statement was reduced to writing and he acknowledged it by
9 signing it?

10 A. Yes, ma'am.

11 Q. Statements from each of the four pages?

12 A. Uh huh.

13 MS. MCDUFFIE: Your Honor, if I may hand up State's Exhibit Five.

14 THE COURT: Any objection for purposes of this hearing?

15 MS. DELANY: No, Your Honor.

16 Q. And during both statements he admitted to going into Elaine Henrick's home?

17 A. Yes.

18 Q. And he admitted to doing this at gunpoint or he admitted to bringing a gun into
19 her home?

20 A. Yes.

21 Q. Holding her at gunpoint?

22 A. Yes.

23 Q. Did he admit to sexually assaulting her?

24 A. Yes.

25 Q. Did he admit to removing items from her home?

1 A. Yes.

2 Q. Holding her against her will?

3 A. Yes.

4 Q. And after that, please tell the judge what happened. After these statements were
5 obtained from Mr. Lopey, what happened?

6 A. The statements were finished and completed and we signed them. We finished up
7 the preliminary things that we have to do to place somebody in custody and then they
8 were transported to the appropriate facility.

9 Q. And you say they, he had a co-defendant in this matter, Mr. Larry Prophet?

10 A. That is correct.

11 Q. Did you also encounter Larry Prophet on that day?

12 A. Yes.

13 Q. Please tell the Court about that.

14 A. When I took the initial statement from Zacoata Lopey, it was quite clear in his
15 statements to what he was saying to us that Prophet was an additional witness if not
16 suspect. I made that clear to the folks back at headquarters that they may need to do that.
17 I was informed they were in the process of finding him at that time. There was - -
18 Prophet was brought to headquarters and I saw him, you know, the way the building is set
19 up, you know, we have cubicles. I could see him at a distance being led by the
20 investigators and they were talking to him while I was talking to Lopey

21 Q. At some point and time were you present when Zacoata Lopey encountered Larry
22 Prophet at the Sheriff's Department?

23 A. Yes.

24 Q. And did you overhear a verbal exchange between them?

25 A. Yes.

1 JOE CLARKE – CROSS EXAMINATION BY MS. DELANY

2 Q. And please tell the Court about the statements Mr. Lopey made at that time.

3 A. Prophet was standing, Lopey was sitting. Prophet walked up to Lopey and said
4 something to the effect of: It's going to be good man. Something like that and they gave
5 each other a dap, reached in and hit each other's shoulder, you know.

6 Q. Did you witness any other statements between the two of them?

7 A. Not that I can recall.

8 Q. Did Mr. Lopey make any other statements to you prior to him being transported to
9 Alvin S. Glenn Detention Center.

10 A. Not that I recall.

11 MS. MCDUFFIE: I have no further question of this witness, Your Honor.

12 THE COURT: Ms. Delany?

13 MS. DELANY: Thank you, Your Honor.

14 CROSS EXAMINATION BY MS. DELANY:

15 Q. My name is Joann Delany from the Public Defender's Office. How old was
16 Zacoata when you talked to him?

17 A. I believe he was fifteen.

18 Q. Can you check that for me?

19 A. Sure. May have been fourteen, I'm not sure. Fourteen.

20 Q. And what grade was he in?

21 A. I believe at the time I was informed he was in the ninth grade.

22 Q. Were you aware that he was a special-needs student?

23 A. No.

24 Q. Were you aware that he was in a self-contained class?

25 A. A what, I'm sorry?

- 1 Q A self-contained class?
- 2 A. No, I don't know what that is.
- 3 Q. Did he appear intoxicated to you?
- 4 A. No.
- 5 Q. Did he appear to know where he was and what was going on?
- 6 A. Yes.
- 7 Q. And where was he located when you arrived?
- 8 A. He was in the school resource office.
- 9 Q. Has he been handcuffed at that point?
- 10 A. No.
- 11 Q. And I believe your statements reflect that he was being questioned about 11:15, is
- 12 that right?
- 13 A. His statement or my statement?
- 14 Q. You have the time written on the top of the statement on his Advice of Rights?
- 15 A. I have twelve-noon written on there.
- 16 Q. Did you write an investigative follow-up as part of your work on this case?
- 17 A. I did.
- 18 Q. If I could have you turn to that. I'm specifically looking at page 2 of 3. You have
- 19 times listed on your notes, right? The way you organize them?
- 20 A. In my notes or in my follow-up?
- 21 Q. In your follow-up.
- 22 A. Okay. What page are we on?
- 23 Q. I'm on page 2 of 3 near the top.
- 24 A. In my follow-up or in the statement?
- 25 MS. DELANY: May I approach, Your Honor.

1 THE COURT: Yes.

2 Q. I'm looking at this.

3 A. Okay. I understand. I understand what you've got.

4 Q. You put the date - - When you do a follow-up report, you put the date of when
5 you're working on something, right?

6 A. That's correct.

7 Q. Okay and you put a time sometimes to break it down even further?

8 A. It depends on the case, yes, but usually.

9 Q. Did you do that in this case? Did you put the times down?

10 A. I did.

11 Q. And so and I'm just looking at this. It says 11:15. That looks like when y'all got
12 there and started questioning. Is that accurate?

13 A. Correct. Can I see where you are?

14 Q. Eleven-fifteen, Lopey had already been discovered by Fields, the SRO officer?

15 A. That would probably be the time we arrived at Spring Valley and the process
16 started.

17 Q. Okay and then the first statement that you got from him, that's in your
18 handwriting, right?

19 A. That is correct.

20 Q. And that had the time of twelve o'clock?

21 A. That's correct.

22 Q. And then the second statement has a time listed, the typed one has a time listed as
23 15:19, is that correct?

24 A. That is correct.

25 Q. Is that three o'clock in the afternoon?

- 1 A. Yes, that's military time for 3:19.
- 2 Q. And, let's see, there's not a time listed on the Consent to Search for D.N.A.,
- 3 correct?
- 4 A. I have a copy, counselor, if you want to show me yours. I've just got to dig it out.
- 5 I have it now.
- 6 Q. There's not a time reflected on that one, is that right?
- 7 A. Yeah, there's no place to put a time.
- 8 Q. Just the date?
- 9 A. Just the date, correct.
- 10 Q. Let's see, now, you questioned at the school resource office, right? You're
- 11 questioning him at the school resource office?
- 12 A. That's correct.
- 13 Q. And you also questioned at the Sheriff's Department?
- 14 A. Correct.
- 15 Q. Okay. Did you question him in the car on the way between the two places?
- 16 A. As in a formal interview type question?
- 17 Q. Well, just as far as asking him questions and him answering.
- 18 A. Probably safe to say we asked some questions or talked about some things.
- 19 Mostly, at that point, what our purpose was to find alleged stolen property and things he
- 20 told us and he volunteered that he could tell us where that was.
- 21 Q. Okay. As far as the car ride, was it kind of a continuous conversation back and
- 22 forth or was it y'all talking for a few minutes and then, you know, a few minutes of
- 23 silence? What was that conversation like?
- 24 A. I think the way you just described it was probably the way it was.
- 25 Q. Off and on?

- 1 A. Kind of off and on.
- 2 Q. Okay. Now, was he read his Miranda or did he read it himself?
- 3 A. When, ma'am?
- 4 Q. Let's start at the school.
- 5 A. He was advised of his rights and read off the form.
- 6 Q. But you read them to him?
- 7 A. That is correct.
- 8 Q. And when was that during this process?
- 9 A. It certainly would have been before any questioning about this incident.
- 10 Q. Now prior to you reading him the Miranda rights, what did you say to him about
- 11 why you wanted to talk to him? What did you say to him about why he was there?
- 12 A. Again, I introduced ourselves. I explained to him that we were there investigating
- 13 a very serious matter. I believe, I said something to the effect of something had happened
- 14 in his neighborhood.
- 15 Q. Can you describe the room that y'all were in for me like size, furniture, windows,
- 16 layout?
- 17 A. School resource officer room?
- 18 Q. Yes, please.
- 19 A. It's a medium size office room. It has a conference table at the front, four chairs,
- 20 rectangular in shape, window at the door, pretty non-descript, a desk and the computer
- 21 where Deputy Fields works, his office.
- 22 Q. It's kind of the size of like the Administrator's office?
- 23 A. Yeah, it would be - - I would not describe it as a small office, but I wouldn't call
- 24 it an extraordinarily large office.
- 25 Q. Not as large as classroom, but more than . . .

- 1 A. Say, ten by twelve, ten by fourteen.
- 2 Q. Can you tell me or can you describe who all was in the room?
- 3 A. Who was in the room?
- 4 Q. Yes.
- 5 A. Along with myself and the Defendant, the School Resource Officer, Ben Fields
- 6 and Investigator John Miller.
- 7 Q. Okay. Were any of y'all armed at the time?
- 8 A. Yes
- 9 Q. Who all was armed at the time?
- 10 A. I was armed wearing my identification badge, credentials. Investigator Miller
- 11 was armed wearing the same thing and School Resource Officer, Ben Fields, was in his
- 12 daily uniform which is a hard uniform for the Richland County Sheriff's Department.
- 13 Q. When y'all were talking to him was the door to the room open or was it closed?
- 14 A. It was closed.
- 15 Q. Did anybody else come in or out of the room during that time?
- 16 A. I don't remember anybody coming in.
- 17 Q. Did he take a restroom break?
- 18 A. He didn't ask for one; it was offered.
- 19 Q. Did he have anything to eat or drink?
- 20 A. No, he was offered water if he wanted it. He didn't want water.
- 21 Q. And again we're just talking about the school resource office. We will get to the
- 22 Sheriff's Department in a minute.
- 23 A. Sure, okay.
- 24 Q. Was he left alone in that room at any time?
- 25 A. No.

1 Q. Okay. Can you describe - - You said there was a conference table in there. Can
2 you describe the seating arrangement for me?

3 A. It's a circular table, probably six feet in diameter, four chairs.

4 Q. Y'all were all seated around it?

5 A. That's correct. Only people seated at the table was me, Investigator Miller and
6 Zacoata Lopey. He was sitting to my left. He was sitting to Miller's right and
7 Investigator or School Resource Officer, Ben Fields, was sometimes at a desk behind us.

8 Q. How close or how far apart or how close were you to Zacoata when y'all were
9 sitting there?

10 A. Arm's reach.

11 Q. Did you touch him at any time?

12 A. Not that I remember, no.

13 Q. Not on the arm or shoulder, anything like that?

14 A. No.

15 Q. Did either of the other officers?

16 A. Investigator Miller put a reassuring hand on his shoulder when Mr. Lopey started
17 to reveal details of what had happened.

18 Q. Can you describe the volume of the conversation? Was it loud, soft?

19 A. Speaking in a normal tone of voice kind of like I am now.

20 Q. Did he make any other statements to you that aren't included in any of these two
21 statements, the hand-written one that you wrote and the typed one?

22 A. You mean statements or did he just say things that perhaps weren't recorded?

23 Q. Well, both.

24 A. I'm sure there were things that were said that weren't written down.

25 Q. Did you not think they were relevant to this case?

1 A. No.

2 Q. Can you tell me a little bit more about your conversation with him in the car and
3 what was discussed in the car?

4 A. The car incident was primarily - - He had made it clear to us that he knew
5 specifically where items were, Items of clothing he may have worn. He initially told us
6 that they had burned the clothing. He also told us that he had secreted away, in particular
7 a television and I think another electronic device; I'm not certain on that. The point was,
8 he was going to show us where those items were and so the purpose of that ride back to
9 headquarters was to find that location, find those items so they could be recovered and
10 then taken to headquarters.

11 Q So that was the discussion in the car was all about recovering items?

12 A. I would think almost only was what we were talking about at that point.

13 Q. Did you - - As far as the Sheriff's Department - - When you got to the Sheriff's
14 Department, where did you go to get his second statement?

15 A. To my workstation, my cubicle.

16 Q. Who all was present during that statement?

17 A. Primarily, just me and Zacoata Lopey.

18 Q. Did any other officers or Sheriff's Department employee come in and out during
19 that period?

20 A. Investigator Isenhoward did sit in, but he sat in the hallway area. To describe the
21 hallway, it's just an open walking breeze area and he sat in a chair opposite of a cubicle.
22 I don't know what he could hear or what he couldn't hear.

23 Q. Okay. Now, you said that he did talk to his mother at the school, right?

24 A. Correct.

25 Q. Was that after you had already taken statements from him or before?

1 A. After.

2 Q. Okay. Did you record any of these interviews like any kind audio tape or video
3 tape?

4 A. No.

5 Q. Do you guys have the ability to do that at the Sheriff's Department?

6 A. No.

7 Q. Do you have video cameras at the Sheriff's Department?

8 A. There's probably a video camera there somewhere. I don't have one.

9 Q. Do you have a video camera on your cell phone, your smart phone?

10 A. No.

11 MS. DELANY: Beg the Court's indulgence, Your Honor Just a few more
12 questions, Your Honor.

13 Q. You said Investigator Miller was present, right?

14 A. Where, ma'am?

15 Q. In the school resource office during his initial statement?

16 A. That's correct.

17 Q. And the School Resource Officer was also present?

18 A. Yes.

19 Q. During that?

20 A. Yes.

21 Q. And he is an employee of the Sheriff's Department, too?

22 A. That is correct.

23 Q. He's just stationed at the school? Is that the deal?

24 A. As I understand it, he's assigned to that location and that's his work area.

25 Q. But he's a deputy?

1 A. Yes, School Resource Officer Deputy.

2 Q. Did you take any handwritten notes on this case? Do you have any handwritten
3 notes?

4 A. No, I don't believe so. I didn't take any notes

5 MS. DELANY. Nothing further, Your Honor.

6 THE COURT: Redirect?

7 MS. MCDUFFIE: No further questions for this witness, Your Honor.

8 THE COURT: You may step down, Investigator Clarke. Any other witnesses?

9 MS. MCDUFFIE: Not on this issue, Your Honor.

10 MS. DELANY: Not from the defense, Your Honor. Your Honor, I would ask
11 that the statements are not voluntary. He is fourteen years old at the time of the
12 statement. He is being questioned without a parent, without an attorney. He is a special-
13 needs student and is in a self-contained classroom. He's being questioned by three
14 officers who are armed, and, Your Honor, I don't think that that was a knowingly and
15 intelligent waiver, and I would ask that you find the statement was not voluntarily given.

16 MS. MCDUFFIE: Your Honor, based on the evidence presented before your
17 Court on this, Your Honor, there's no evidence to the contrary given the totality of the
18 circumstances that this statement was not taken knowingly, voluntarily and willingly
19 given by the Defendant and there is no evidence that reflects the State's contention that
20 this is knowingly and voluntary based on the totality of the circumstances.

21 THE COURT: Ms. Delany, I tend to agree with the Solicitor's position. I'm
22 going to deny your motion.

23 MR. MAY: If I may approach, Your Honor?

24 THE COURT: Yes.

25 MR. MAY: Your Honor, our next motion if I may approach, Your Honor?

1 THE COURT: Yes.

2 MR. MAY: Your Honor, what the Defense is asking is that Your Honor void this
3 contract. Your Honor, case law is plain and clear that South Carolina applies contract
4 law, contract formation to criminal cases. We can see that with * v. State. You can see it
5 in other cases, specifically State v. Miller, Reed v. Becka. We apply contract law when
6 contracts are made, and, Your Honor, contract can be either bilateral or unilateral. A
7 unilateral contract consists of when somebody forbears their rights, and Your Honor, here
8 clearly the juvenile forbore his rights to the Fourth Amendment as well as the Fifth and
9 Sixth Amendments of the Constitution, Your Honor. The question, then, if the
10 Defendant, I'm sorry, the juvenile entered into a contractual relationship with the State of
11 South Carolina, then this becomes a contract. As such, a contract is voidable by an
12 infant. In South Carolina, a fourteen year old is considered an infant for contract law. So
13 when a unilateral contract is formed, the fourteen year old, special-needs child, we have a
14 contract. Your Honor, I would direct the Court's attention to unilateral contract
15 definition under McMahon v. McMahon, South Carolina, also Toth v. Square D. of
16 District Court of South Carolina stating that the forbearance of a right is considered
17 something of a contract and that therefore a contract is formed. We look at that and
18 specifically the State of South Carolina - - Since the application that contract law is clear
19 because * v. State allows a one to forbear their rights therefore contract principles are
20 applied, therefore, Your Honor, it becomes voidable at his election. If there is a contract,
21 it becomes voidable by the juvenile, Park v. Lyons, South Carolina case 219 S.C. 40. It's
22 also found in South Carolina Code of Law 63-1-40. Your Honor, again, at the time he
23 was an infant; therefore, we move to void this contract as well as the contract for DNA
24 evidence and all their fruits thereof. All fruits thereof would be all evidence. Your
25 Honor, the State entered into a contract with somebody who they knew was a special

1 needs child. School Resource Officer, Ben Fields, stationed at Spring Valley High
2 School, he was a part of this contract formation. He knew that this child was a special-
3 needs, self-contained and low-functioning. As a result, Your Honor, the State of South
4 Carolina afforded him no legal representation. They entered into a unilateral contract,
5 which we seek to void and void all its fruits thereof.

6 THE COURT: Let me read your papers here.

7 MS. MCDUFFIE: Your Honor, please the Court, the defense is asking you to
8 find that no child based on the motion that no child under eighteen could ever waive their
9 rights and give a statement to law enforcement in the manner based upon the principles
10 and terms of contract law which is not the law in South Carolina, which is not the law of
11 the United States. The Supreme Court, both the United States and South Carolina has
12 said on numerous occasions that the attorney of a juvenile is admissible in the totality of
13 the circumstances. The court has weighed all the factors based on the totality of
14 circumstances, knowingly and voluntarily and intelligently made which this Court has
15 already done. Under the jurisprudence and principles to say - - and Your Honor would
16 rule no child under the age of eighteen can waive away their rights and give a statement
17 to law enforcement. Further, Your Honor, a contract doesn't work - - This does not meet
18 the traditional terms of contract law. Contract principles do apply in some cases, those
19 are in the arena of things that actually are contract which can be construed as contract like
20 plea agreements not as in Miranda waivers, Your Honor. Even if you were to take at that,
21 at any point and time had this defendant chosen to revoke his rights or say he did not
22 want to speak with law enforcement or request an attorney, those rights would have been
23 scrupulously honored and no further questioning would have taken place. That did not
24 occur in this case. We would ask Your Honor to not suppress this evidence.

25 MR. MAY: Your Honor, just to be clear, we're not saying that his rights were

1 violated as far as the Sixth Amendment or the Fourth Amendment. What we're saying is
2 that he entered into a contract which he's allowed to do under South Carolina law, but it's
3 voidable. Not that he can never give a statement, but if no parental person is there then
4 he has to be advised. He has to be given advice. He is a special-needs child. His mother
5 was sitting in the lobby. If this was a unilateral contract for his appearance to be used by
6 a company, this Court would strike it down. This Court would strike it down because he
7 was not advised of his rights by the parents or by counsel. They knew he was a special-
8 needs, they knew that he was low-functioning, and, Your Honor, we are saying that
9 contracts do apply. Nobody I've ever seen has raised this argument. I've searched far
10 and wide. I cannot find this argument ever being presented. As a result, I think one
11 looks at this as a unilateral contract. When a unilateral contract is entered into by a minor,
12 it becomes voidable. At this time, the juvenile, through his attorney, moves to void this
13 contract and all fruits thereof.

14 THE COURT: Thank you, motion is denied.

15 MS. DELANY: Your Honor, we did give a copy of the last cites stated, and I can
16 give one to the Solicitor's office.

17 THE COURT: Any other motions?

18 MR. MAY: Beg the Court's indulgence.

19 MS. DELANY: Your Honor, we talked in chambers and we talked somewhat on
20 the record about our motion regarding race.

21 THE COURT: Motion regarding what?

22 MS. DELANY: Race, Your Honor.

23 THE COURT: Right.

24 MS. DELANY: We really have two motions in that regard. Do you want us to
25 go ahead and argue them or do you want to wait until we come back on March 26th?

1 THE COURT: It was my understanding you do not . . .

2 MS. DELANY: We don't have the date at this time.

3 THE COURT: Ms. Campbell, do you want to be heard or until they complete
4 their research? Does that suit you?

5 MS. CAMPBELL: Yes, sir.

6 THE COURT: Okay, we will do that on the 26th.

7 MS. CAMPBELL: Your Honor, the only other motion is on their pre-trial motion
8 list, 63-19-1210 is unconstitutional.

9 THE COURT: So you're going to possibly argue that at the March hearing?

10 MS. DELANY: Yes, sir.

11 THE COURT: Does that suit you, Ms. Campbell?

12 MS. CAMPBELL: Yes, sir, suits me, Your Honor.

13 THE COURT: Okay, those issues are reserved. Anything else?

14 MS. CAMPBELL: Your Honor, the only thing I would note is that Mitsy
15 Campbell Williams was listed on their witness list and I believe sequestered.

16 MS. DELANY: We released on the race base witnesses from the subpoenas.

17 MS. CAMPBELL: It's my understanding she's coming back.

18 THE COURT: Are you making some sort of motion, Ms. Campbell?

19 MS. CAMPBELL: Yes, Your Honor, I just ask that she be sequestered pursuant
20 to your order.

21 THE COURT: Who is it?

22 MS. MCDUFFIE: Number six on the witness list, Your Honor.

23 THE COURT: What's her name?

24 MS. MCDUFFIE: Mitsy Campbell Williams

25 THE COURT: Are you saying that she should not be sequestered?

1 KEVIN ISENHOWARD – DIRECT EXAMINATION BY MS. CAMPBELL

2 MS. DELANY: She's our other family court attorney for Richland County and
3 we were going to call her on the race issue, but since we decided to put that off until
4 March 26th . . .

5 THE COURT: Do you object to her being here?

6 MS. CAMPBELL: Your Honor, she's a potential witness, yes, I do.

7 THE COURT: She needs to be sequestered.

8 MS. CAMPBELL: Thank you, Your Honor.

9 MR. MAY: Your Honor, can we take a three or four minute recess?

10 THE COURT: I think that is a good idea.

11 (Court is in recess.)

12 (Court reconvenes.)

13 THE COURT: Is everyone present?

14 MR. MAY: Except the Guardian.

15 THE COURT: Okay, we'll wait.

16 MS. CAMPBELL: Your Honor, the state calls Kevin Isenhoward.

17 KEVIN ISENHOWARD, being duly sworn, testified as
18 follows:

19 THE COURT: Mr. Isenhoward, please place your left hand on the Bible and raise
20 your right, please. Do you swear or affirm that the testimony that you are about to give
21 will be the truth, the whole truth and nothing but the truth so help you God?

22 MR. ISENHOWARD: I swear.

23 THE COURT: Thank you, have a seat.

24 DIRECT EXAMINATION BY MS. CAMPBELL:

25 Q. Sergeant Isenhoward, where are you employed

1 A. I work for the Richland County Sheriff's Department.

2 Q. What do you do there?

3 A. I'm a Sergeant in the Criminal Investigative Division.

4 Q. You're also supervisor in the area of violent crimes?

5 A. Yes.

6 Q. I want to turn your attention back to December 14th of 2010. You were contacted
7 by the Richland County Sheriff's Department that night?

8 A. Yes. Investigator Mauldin and I were working the night shift. We're responsible
9 for any major crime that may have happened during that week. That particular night he'd
10 been called by the desk sergeant to respond to a rape and robbery and he was advising me
11 of what he was dealing with.

12 Q. And where was Investigator Mauldin when he made contact with you?

13 A. He was at the crime scene. He called me on my phone. I was at home at that
14 point and he gave me a brief overview of the facts and circumstances and what he was
15 dealing with.

16 Q. And what information were you able to get from Investigator Mauldin that night?

17 A. He told me that the victim in this case - - This was a particular violent crime; that
18 the victim was an elderly female that lived alone and that two males suspects had entered
19 her home, robbed her and sexually assaulted her . . .

20 MR. MAY: Objection, Your Honor. This would be hearsay within hearsay. He's
21 telling what information that Investigator Mauldin got from the victim of this case.

22 THE COURT: Well, hearsay is admissible in this proceeding.

23 MR. MAY: That's correct but hearsay within hearsay is not.

24 THE COURT: Do you have any law that says that?

25 MS. CAMPBELL: Your Honor, we're just trying to establish factual background

1 in the proceeding, Your Honor. My understanding hearsay is admissible

2 THE COURT: Hearsay is admissible.

3 MS. DELANY: Hearsay within hearsay is not.

4 MS. CAMPBELL: I don't know of a rule where hearsay is not admissible plus
5 it's part of this investigation.

6 MR. MAY: That is exactly what you said in Ms. McDuffie's office last week is
7 that your understanding was our hearsay within hearsay is not admissible. I just want to
8 make sure everybody is playing by the same rules. If that's not correct, then I will be
9 happy to change my objections throughout the entire hearing. I just need to know what
10 the rules are and what we're proceeding on.

11 THE COURT: I think it goes to the credibility of the State and I'm going to allow
12 it to come in.

13 MR. MAY: Okay, as to all or just this one specifically?

14 MS. CAMPBELL: Thank you, Your Honor.

15 THE COURT: I don't be consistent on that issue.

16 MR. MAY: All right, so hearsay within hearsay is not admissible - - I just need a
17 ruling, judge, and I will follow it. I just need to know.

18 THE COURT: I'm ruling to this question. I'm not going to rule on something
19 that hasn't come up yet.

20 Q. That evening, did you also make contact with the crime scene investigators of the
21 Richland County Sheriff's Department?

22 A. Yes, I spoke with Investigator Yvonne Woods initially. Obviously, the crime was
23 so violent and upsetting that we were - - We wanted to make sure we did the best possible
24 job we could. It was dark at that point. Spoke with her about the crime scene and
25 learned that there, you know, might also be some evidence outside. Typically, the crime

1 scene investigator would respond to the crime, process it and then leave. It was my
2 opinion that she should do some processing initially but then wait, hold the scene
3 overnight and then wait for the daylight so that it would be a lot easier to process in the
4 daytime obviously and we would be able to look in the yard more thoroughly for any
5 evidence that might be outside the home and obviously she works for the crime scene
6 unit so I discussed my opinion with Sergeant Richards and he concurred my opinion.

7 Q. Was the crime scene actually secured that night until the process the next day?

8 A. Yes.

9 Q. And that night did you also get information about certain items that had been
10 taken from the victim, specifically a cell phone?

11 A. Yes. I was at my home, but Investigator Mauldin was there by himself and I was
12 trying to help him out as best I could. He told me that they were unable to locate a cell
13 phone, believe the cell phone had been stolen. I have some familiarity with tracking cell
14 phones so I contacted Verizon Wireless who was the cell phone provider and filled out
15 what is called an exigent circumstances request, requesting that they give me any records
16 that might be pertinent and also attempted to track the phone. I was advised that the
17 phone at that point had either been turned off or damaged, broken, but that the last reports
18 before it was turned off, it was what they considered its home tower, which is the tower
19 closest to her home where it would typically get the signal from.

20 Q. Out of the victim's home?

21 A. Yes.

22 Q. And the tower closest to the victim's home?

23 A. Right and obviously another way to look at it would be in that immediate area.

24 Q. Did you do anything as far as the phone is concerned in order to try to activate it
25 and see if it was working?

1 A. I did. After discussing it with the person at their, I believe his name was Ivan *
2 Patel, at Verizon, I decided to send a text message. I think I just sent something like:
3 Can you give me a call grandma, or something like that. I didn't want it to be too
4 suspicious if they were monitoring the phone, but sending the text, even if the phone was
5 off, once the text was sent, when they powered it up, it would bang off that tower,
6 whatever tower would be local and send it to the phone and that would give us an
7 opportunity to track the phone so I was basically trying to get as much information as I
8 could.

9 Q. The next day, did you go to headquarters and was there a meeting basically about
10 the investigation of this case?

11 A. It was. It was a pretty extensive meeting with the majority of our available
12 detectives wherein we discussed the facts that we knew at that point and discussed what
13 approach we would take. I spoke with my major, Stanley Smith and several of the other
14 supervisors and we decided that a canvas of the neighborhood would be a necessary. We
15 sent out fifteen to twenty detectives including uniform patrol officers throughout the
16 neighborhood and knock on every door in the neighborhood in an attempt to locate any
17 witnesses or any information that might help us in the case.

18 Q. Why did y'all think it was important to canvas the neighborhood based on the
19 information that you had?

20 A. Well, a couple of things. You know, one, it's good investigative technique.
21 Anytime you have a crime of this magnitude, you hope that there may be witnesses in the
22 area to provide more information than maybe your victim can provide. We also knew
23 that there had been some property crimes in the area. We wanted to speak with people
24 about those to see if there was any kind of relationship. Basically, we wanted to get as
25 much information as we could.

1 Q. And the crime and the things that were centered in the crime itself, did that
2 indicate to y'all that you needed to canvas the neighborhood, information from the victim
3 herself?

4 A. I don't recall.

5 Q. I want to turn your attention to later that morning. Where there were some phone
6 calls between Investigator Clarke and Investigator Miller that they had made contact with
7 a young man, Zacoata Lopey?

8 A. Yes, ma'am.

9 Q. Later that day, based on the information, Mr. Lopey was able to give those
10 investigators, after being advised of his rights, did y'all develop a second suspect in this
11 case?

12 A. Yes, we did.

13 Q. Who was that?

14 A. That was Larry Prophet.

15 Q. And were you familiar with Larry Prophet?

16 A. I was not. The property crimes investigators kind of gave me a run-down about
17 him. They were familiar with him and they knew that he was a suspect in several of the
18 thefts and house break-ins in that immediate area which is known as Trenholm Acres.
19 They were able to provide me with information about him riding a moped in the area;
20 that's how he got around.

21 Q. In this Trenholm Acres area?

22 A. Yes.

23 Q. And where's Trenholm Acres in relation to where this crime occurred?

24 A. It occurred in Trenholm Acres. Trenholm Acres is located near the intersection of
25 Parklane and Two Notch Road.

1 Q. So the victim's residence as well as the information about Trenholm Acres, that's
2 Trenholm acres?

3 A. Yes.

4 Q. And you were able to develop information about co-defendant, Larry Prophet,
5 putting him in the area with Zacoata Lopecy?

6 A. Yes.

7 Q. And did you also develop any information in the afternoon about where Mr.
8 Prophet attended school at the time?

9 A. Once we implicated him in the crime, based on the statement provided to us, we
10 decided to go out and locate him. Initially, it was thought he was at an alternative school
11 known as Blythewood Academy. We were in route there while trying to get in touch
12 with the School Resource Officer at the school. Once we got in contact with the School
13 Resource Officer, he told us basically that Larry wasn't there, didn't come that day. So,
14 we decided to go to his home which was also located in Trenholm Acres and try and
15 locate him. Josh Mauldin and I were driving through Trenholm Acres when I passed two
16 young men on a moped. Recalling that I had been told that he had been riding a moped, I
17 doubled back. He was cutting streets, kind of trying to avoid us I thought, but I was able
18 to cut back around and basically stop him in my police vehicle and we asked whether or
19 not either one of the men were Larry Prophet. He said that he was Larry Prophet. He
20 was driving the moped and he had a passenger on the back.

21 Q. And what was the passenger's name?

22 A. Give me one second. Fisher. I apologize. His last name was Fisher. I don't have
23 his first name in my notes.

24 Q. Would it have been Minor 1

25 A. Yes, that's correct.

1 Q. And he was the one that was actually the passenger on the moped?

2 A. Yes.

3 Q. And who was the actual driver of the moped?

4 A. Larry Prophet.

5 Q. And again, this was in Trenholm Acres where you saw him riding and stopped
6 him?

7 A. Right.

8 Q. And at that point was Mr. Prophet taken into custody?

9 A. Yes, he was.

10 Q. Was Mr. Fisher also taken in for questioning?

11 A. Yes.

12 Q. Transferred to headquarters for questioning?

13 A. Yes.

14 Q. Once you got back to headquarters, how did Mr. Prophet get transported back to
15 headquarters?

16 A. We placed him in my police vehicle and took him back to the Sheriff's
17 Department. I asked for Lieutenant McDonald to come out and help us with Mr. Fisher
18 and the moped.

19 Q. You transported him back to headquarters?

20 A. Yes.

21 Q. And once you got him back to headquarters, did you then initiate contact or
22 attempt to question Larry Prophet?

23 A. Yes, we did.

24 Q. And prior to questioning him about the events that you all were talking about, did
25 you advise him of his rights?

1 A. Yes, I did.

2 Q. I'm going to show you what's been marked as State's Exhibit Number One for ID
3 purposes at this point. Do you recognize that?

4 A. Yes, ma'am, I do.

5 Q. And what is that of?

6 A. This is our Richland County Sheriff's Department Advice of Rights form, written
7 form. I read this and explain it to anybody that I'm going to take a statement from that's
8 suspected of a crime.

9 Q. And can you tell the judge exactly how you advised Mr. Prophet of his rights?

10 A. Yes, this form has the name of the person we're questioning, Larry Prophet in this
11 case, the location where it occurred which is 5623 Two Notch Road here in Columbia,
12 which is the Richland County Sheriff's Department. The officers present and myself,
13 Sergeant Kevin Isenhoward and Investigator Mauldin. The date, December 15th, 2010
14 and the time was 14:15 hours. It says your rights. Each one of these sentences has a box
15 next to it which I check indicating that I did read it to the person and he acknowledged
16 that he understood it.

17 This one says: Before we ask any questions, you must understand your rights.
18 You have the right to remain silent. Anything you say can be used against you in court.
19 You have the right to talk to a lawyer for advice before we ask you any questions and to
20 have a lawyer present with you during any questioning. If you cannot afford a lawyer,
21 one will be appointed before any questioning if you wish. If you decide to answer
22 questions now without a lawyer present, you still have the right to stop answering at any
23 time. You also have the right to stop answering at any time until you talk to a lawyer.

24 Below this, all these blocks are checked indicating that he acknowledged that he
25 understood them. Mr. Prophet signed this acknowledging the rights portion and Josh

1 Mauldin and myself signed witnessing his signature. The second portion of this form is
2 called the Waiver of Rights. It says: I have read this statement of my rights and
3 understand what my rights are. I'm willing to talk and answer questions. I understand
4 and know what I'm doing. No promises have been made to me and no pressure or
5 coercion of any kind has been used against me.

6 I'll note that it is my procedure to ask someone if they know what the word
7 coercion means. If they don't, I underline it and indicating that I had to explain it to
8 them. In this situation, he acknowledged that he understood what the word coercion
9 means. He also signed - - Mr. Prophet signed there and it was witnessed by myself and
10 Josh Mauldin acknowledging the waiver of rights.

11 Q. He was advised of his rights, acknowledging advisement and then he waived his
12 rights, is that correct?

13 A. That's correct.

14 Q. Did he appear to understand what was going on that day?

15 A. Yes.

16 Q. Did he appear coherent and answer you questions intelligently?

17 A. Yes.

18 Q. Did you promise him anything?

19 A. No.

20 Q. Did you threaten him in anyway?

21 A. No.

22 Q. Did you attempt to use any force to make him talk?

23 A. No.

24 Q. During the time period once he's been advised of his rights and once you started
25 asking him questions about this case, did at any point did he ask for a lawyer?

1 A. No.

2 Q. Did he ever tell you that he didn't want to talk anymore?

3 A. No.

4 Q. Did he ever evoke any of his rights?

5 A. No.

6 Q. In your opinion, investigator, how long have you been in investigations?

7 A. Fourteen years.

8 Q. Did he voluntarily waive his rights to talk to you?

9 A. Yes.

10 MS. CAMPBELL: At this time, Your Honor, I'd offer State's Exhibit
11 Number One as evidence.

12 THE COURT: Any objections?

13 MR. MAY: Just our prior objection, Your Honor, under the contract argument,
14 we voided all fruits thereof so I'd ask to sustain the objection for any evidence.

15 THE COURT: That's fine.

16 Q. Once he had been advised of his rights, did y'all question him about the events of
17 December 14th?

18 A. Yes, ma'am.

19 Q. And specifically, what information did he initially give you?

20 A. I think initially it was a denial of any involvement which led into an admission of
21 being involved in armed robbery of the victim, however not sexually assault.

22 Q. And he initially denied it?

23 A. Yes.

24 Q. And did y'all then confront him with information you got from the co-defendant?

25 A. Yes.

1 Q. Did you also confront him with information about specifically a TV from another
2 witness?

3 A. Yes, we learned from another witness that a TV had been taken from the victim
4 and he had been seen with it and I believe a friend of his mother's, a Daquisha (phonetic)
5 Martin who had provided us with that information along with Mr. Fisher and we also
6 found the victim's cell phone on Mr. Fisher's person.

7 Q Okay, I'll get back to that in a minute. The victim's cell phone was actually
8 found on Mr. Fisher's person?

9 A. Yes.

10 Q. And did Mr. Fisher indicate where he got the cell phone?

11 A. Yes.

12 Q. And who did he indicate he got the cell phone from?

13 MR. MAY: Objection, Your Honor. I believe Mr. Fisher made a statement to
14 Sergeant McDonald, not to Investigator Isenhoward and again this would be hearsay
15 within hearsay. I believe he can only testify to only one type of hearsay.

16 MS. CAMPBELL: I can rephrase, Your Honor.

17 Q. During the course of the investigation, was a cell phone that belonged to the
18 victim recovered?

19 A. Yes.

20 Q. Who was that recovered from?

21 A. Mr. Fisher.

22 Q. And who was Mr. Fisher with when that phone was recovered?

23 A. Larry Prophet.

24 Q. At some point that afternoon when y'all were talking to Mr. Prophet did his
25 mother come?

1 A. Yes.

2 Q. To headquarters?

3 A. Yes.

4 Q. Did she get an opportunity or did she request to speak to her son?

5 A. Yes.

6 Q. And was she able to speak to him?

7 A. Yes.

8 Q. Subsequent to that, did he give you a statement?

9 A. Yes, he did.

10 Q. I'll show you what's been marked as State's Number Two. Do you recognize
11 this?

12 A. Yes, I do.

13 Q. And is that the statement that you actually took from Larry Prophet, the co-
14 defendant in this case?

15 A. It is.

16 MS. CAMPBELL: Your Honor, this time, I'd like to offer State's Exhibit
17 Number Two into evidence.

18 THE COURT: Any objection?

19 MS. CAMPBELL: Permission for the witness to publish the statement. You can
20 read it.

21 A It's a statement that Larry Prophet had given to me at the Richland County
22 Sheriff's Department on the fifteenth day of December, 2010, at 16:58 hours which is
23 4:58 in the afternoon.

24 (Witness reads from Larry Prophet's statement.)

25 I, Larry Prophet, understand I have the right to remain silent.

1 (Witness stops reading from Larry Prophet's statement.)

2 I'll add there's a second Advice of Rights in this portion.

3 MR. MAY: Your Honor, I'm sorry, objection. Just for the record, I object to the
4 reading as well as the proffer. I don't know how this plays in Family Court, but this is a
5 Sixth Amendment right to confront all accusers. My understanding is that he is going to
6 accuse my client of being a co-defendant in this crime. He is not present. He can only - -
7 The State can only use his statement against him and not against my guy because of the
8 Constitutional Sixth Amendment guarantees. As I said, Your Honor, I made it abundantly
9 clear, this is not my arena, but I do know constitutional law. This is in violation of his
10 constitutional rights.

11 THE COURT: This isn't a trial on the merits.

12 MR. MAY: But it's quasi-criminal and criminal procedures and constitutional
13 protection applies when applicable.

14 THE COURT: This is more like a preliminary hearing.

15 MR. MAY: Yes, sir, I understand that. I'm just trying to preserve the record in the
16 event that you decide to waive this up.

17 THE COURT: What's your position on that?

18 MS. CAMPBELL: My position is just what you said, Your Honor. This is more
19 like a preliminary hearing. I believe all evidence, including hearsay evidence - - If you
20 had a group motion, you should have made it at the pretrial, number one. And number
21 two, this isn't a trial. He's not guaranteed anything. Hearsay is admissible and you have
22 the right to consider all the factors including the co-defendant in making your
23 determination of the Kent Factors.

24 THE COURT: I think your motion would have merit if this were a trial on the
25 merits. I'm going to overrule the objection.

1 MR. MAY: Thank you, Your Honor. I just ask for . . .

2 THE COURT: Noted, yes, sir. You can proceed.

3 MS. CAMPBELL: Thank you, Your Honor.

4 MS. CAMPBELL: You may proceed.

5 A. There's a second Advice of Rights. It says: I, Larry. There's a misspelling,
6 Propher instead of Prophet.

7 (Witness continues to read from statement.)

8 I understand that I have the right to remain silent. Anything I say can be used
9 against me in court. I have the right to talk to a lawyer for advice before you ask me any
10 questions and have a lawyer present with me during any questioning. If I cannot afford a
11 lawyer, one will be appointed for me before any questioning, if I wish. If I decide to
12 answer questions now, without a lawyer present, I still have the right to stop answering at
13 any time. I also have the right to stop answering at any time until I talk to a lawyer.

14 It says: Do make the following statement: I take question and response
15 statements and that is denoted by Q beside me asking the questions and all of the
16 questions I asked R as Mr. Prophet's response.

17 Question: Larry, did we let you speak with your mother before giving this
18 statement?

19 His response was: Yes, sir.

20 Question: Did you and Zacoata Lopey rob an Asian woman last night?

21 His response: Yes.

22 Tell me what happened:

23 His response was: We was at my house, me, Coatey - - -

24 (What he calls Zacoata)

25 - - - and Minor 1 walked to Exxon on Shakespeare Road. We went there

1 around eight p.m. We came back to my house and hung out. I asked Coatey if I could
2 borrow his Polo boots to wear to school tomorrow. Andre stayed at my house. Me and
3 Coatey went to his house on the moped to get the boots. We came back to my house with
4 the boots and we were hanging out. Coatey told me he knew someone we could rob. He
5 said she was an old Chinese woman who had some money. He said that if the car ain't
6 there, she probably ain't there. He went outside then came back in. I think he smoked.
7 He asked me if I was ready. I told him that I was. We rode my moped over to his house.
8 He went inside and came back out, then went in the backyard and got with a shotgun. It
9 was broke and flopping. He came out and asked me if I was ready. He ran over to the
10 woman's house and went inside through the back porch thing. I followed him and went
11 to the carport. I was looking inside. He pointed the gun at her and asked her where the
12 money was at. I went inside behind him. She told him that she didn't have any money.
13 He said, you got a dollar and she said, yes. He made her get out of her chair and told her
14 to show him where the money was. He told her not to walk fast. She went over to the
15 front door. I heard him say, jackpot. He got some cash from her. I went into another
16 room and got a little fake ring and chain; a little girl necklace. I started going through the
17 dressers and stuff. I called for him and went out the back door. I went out and ran to my
18 moped. I drove off and looked back but never seen him again, seen him leave the house.
19 I just went home and I ain't even talked to him since. I got home around nine something,
20 watched TV, smoked a cigarette and went to school this morning. The girl said that the
21 gun don't work and Coatey said, you want me to show you.

22 The question was: When you went back to your house after the robbery, did
23 Coatey and Andre go home with you?

24 Response: Andre never left. He was there when I came back, when I come back.
25 He didn't know what we're gonna do.

1 Question: Did you tell him what happened?

2 Response: I told him we went ham. That means we went and did something. He
3 was halfway sleep, though.

4 Question: Did you ever have a gun during the robbery?

5 Response: I touched the gun in the yard; that's how I know it don't work.

6 Question: Did you ever force the woman to have sex with you?

7 Response: No

8 Question: Did Coatey?

9 Response: I don't know.

10 Question: Did you that night or have you ever ejaculated - - -

11 (I had to explain to him that that was cum. He didn't know what ejaculated
12 meant.)

13 - - - in that woman's house?

14 Response: No.

15 Question: Did you ever let - - Did that woman ever let you have sex with her,
16 consensual sex?

17 Response: No. I ain't never did it to her.

18 Question: Did you take that woman's television?

19 Response: No.

20 Question: Did you take that woman's cell phone?

21 Response: No, sir. I think she had it in her lap when he came in. I think she was
22 talking on the home phone with a blanket on her legs and the phone on top of the blanket.
23 He grabbed it and took it apart.

24 Question: What all did you take from that woman?

25 His response was: That ring, chain, a little Chinese pocket book that had a little

1 Bible in it. It also had a little change thing in it; that's it. I threw that stuff in the road
2 Coatey's house is on.

3 Question: Why did you do this?

4 Response: I wanted to do it for a couple dollars. I ain't got no job We didn't
5 know she was there. We were just going to break in.

6 Question: Did you see Coatey rape that woman?

7 His response: No, sir.

8 Question: Is there any way possible that your semen - - -

9 (Again, explained his cum.)

10 - - - is in that house?

11 His response: No.

12 Question: What did y'all buy at the Exxon when you went there?

13 His response: Cigarettes, Newports, singles. Some dude in there sold me some.
14 He was playing the little game and stuff.

15 Question: Can you take me to that woman's belongings that you stole?

16 His response: Yes, sir.

17 Question: Did you give Andre the woman's phone?

18 Response: No.

19 Question: Do you know where that shotgun is now?

20 His response: No.

21 Question: Can you describe the gun again?

22 His response: It was old, rusty, beat up. The handle flopped. It is rusted brown.
23 It's long and still has the back on it.

24 Question: What were you wearing when you did this?

25 Response: All black, my black jacket, blue jeans, my white j and a green t-shirt

1 over my face. He had that same shirt covering his face. The jacket and shoes are the
2 same ones you took from me today.

3 Question: Were you wearing gloves?

4 Response: No, sir.

5 Question: Do you remember what else Coatey had on?

6 Response: I know he had them Polo boots on.

7 Question: Do you have anything else to say?

8 Response: I ain't wanna do that junk. I just need money. If I knew my mom
9 give some, I wouldn't. We were gonna break in some houses tonight, though.

10 (End of statement.)

11 Indicating the day after this incident that he was going to break into more houses.

12 It's the end of statement, 12/15/10 at 17:52 hours. This statement is signed by Larry
13 Prophet indicating that he is giving freely, voluntarily without fear, threat, promise or
14 reward or hope of any kind and also that he was provided a copy of this statement. It was
15 notarized by myself, Kevin Isenhoward and witnessed by Josh Mauldin.

16 Q. The last question that you went through there is when he said that - we were going
17 to break into some more houses?

18 A. Yes.

19 Q. And who did "we" refer to?

20 A. Him and Zacoata Lopey.

21 Q. And that would have been that night had y'all not caught them?

22 A. Yes.

23 MS. CAMPBELL: Your Honor, may I approach?

24 MR. MAY: Standing motion, Your Honor.

25 THE COURT: Yes.

- 1 Q. Also during the course of that statement, asked specifically about whether or not
2 he engaged in sexual activity or ejaculated any where in the house, why was that?
- 3 A. We believed we had two separate samples of semen in the home.
- 4 Q. And the crime scene was processed and that was collected?
- 5 A. Yes.
- 6 Q. You can't say what the results were, but that was tested later, is that correct?
- 7 A. Yes
- 8 Q. And in addition to that, were you aware during the course of your investigation
9 how many people of the two that broke in had sexually assaulted the victim in this case?
- 10 A. Yes.
- 11 Q. And how many people sexually assaulted her that night?
- 12 A. Two.
- 13 Q. The two that broke in?
- 14 A. Yes.
- 15 Q. And who are those two people identified to be?
- 16 A. Larry Prophet and Zacoata Lopey.
- 17 Q. And you mentioned this was a sexual assault, what kind of sexual assault was it?
- 18 A. Anal.
- 19 Q. As well as?
- 20 A. Vaginal.
- 21 Q. That day, after the victim's phone was recovered from **Minor 1** did you
22 actually examine the phone itself?
- 23 A. Yes, I did.
- 24 Q. Were you able to identify it through the text messages that was on it?
- 25 A. Yes, once I powered the phone up, the text message that I had sent the night

1 before was on the phone.

2 Q. After taking the statement from Zacoata and Larry Prophet, did you also take Mr.
3 Prophet with you and did he point out things to you?

4 A. Yes, we went to try and locate some of the items stolen and some of the other
5 evidence of the crime.

6 Q. And were you able to recover anything where Mr. Prophet indicated that he
7 dumped it?

8 A. No.

9 Q. That day, did you also arrange for Mr. Prophet and Mr. Lohey to be
10 fingerprinted?

11 A. I took both men personally over to our Richland County Sheriff's Department Lab
12 area where we fingerprint. Obviously, indicating that they weren't wearing gloves and
13 knowing that the crime scene had been processed, we knew there was a good chance for
14 fingerprints. So obviously they have to be done one at a time. I took them over to one of
15 our lab investigators to fingerprint them and during that time that we were standing there
16 waiting, I observed the two men to be laughing, specifically laughing about what they
17 had done, laughing about having committed a rape to an elderly woman. Not to mention,
18 singing some sort of rap song and indicating they thought it was funny they were going to
19 go to prison for a long time. I've been doing this, like I said, for fourteen years and I've
20 never been more upset by anything a defendant's done to the point where I had to get
21 another investigator to enter the room to watch them because I didn't feel like I could
22 compose myself any longer so I left the room.

23 Q. And the two people that were laughing about it, talking about the prison time,
24 raping an elderly woman, who are those two people?

25 A. Zacoata Lohey and Larry Prophet.

1 KEVIN ISENHOWARD – CROSS EXAMINATION BY MR. MAY

2 Q. And is Zacoata Lopey here in the courtroom?

3 A. Yes.

4 Q. Can you point him out for the judge?

5 A. He's sitting right across from me in a green sweater and tan pants, black male.

6 Q. Seated at the table?

7 A. Yes.

8 MS. CAMPBELL: Your Honor, let the record reflect he's identified the
9 Defendant.

10 THE COURT: So reflected.

11 MS. CAMPBELL: That's all I have.

12 MR. MAY: May it please the Court, Your Honor.

13 CROSS EXAMINATION BY MR. MAY:

14 Q. Mr. Lopey is a fairly small individual and he was small this time, correct?

15 A. I guess he's a little bit shorter now.

16 Q. Larry's bigger.

17 A. Yes, he's a little bit bigger.

18 Q. Now, you know the statement that the State just entered is incorrect, don't you?

19 A. No.

20 Q. You don't believe it's incorrect. Have you had a chance to look at Ms. Henrick's
21 statement?

22 MS. CAMPBELL: Judge, this is information - -They're trying to lessen hearsay
23 over hearsay. We've gone into it fully.

24 MR. MAY: Your Honor, I'm impeaching what the State has just put in. He said
25 did not know and that was a false statement. It is clearly contradictive by Ms. Henrick's

1 statement, the victim of this crime. It is clearly contradictive by Ms. Henricks. The State
2 has put that statement up as if it is the truth. I'm going forward on the charge of major
3 crimes to go through with them that that is not what Ms. Henrick said.

4 MS. CAMPBELL: No, sir. I'll point out the fact that Ms. Henrick said she was
5 assaulted by those people and clearly they denied that. We brought that up. This is not
6 additional impeachment.

7 MR. MAY: If I may, Your Honor. The big guy told me to take off my clothes.
8 That's not what that statement says. He was pointing a gun at me. That's not what that
9 statement says. I told him that I wanted to go to the bathroom. I thought they would let
10 me undress.

11 THE COURT: So you're trying to impeach this statement, a written statement
12 with another written statement of the victims or of someone else?

13 MR. MAY: The victim, yes, sir. That one appears to be unreliable as it possibly
14 can be. That is a self-serving statement. The State has admitted over our objection that
15 we're not allowed to cross examine him. In Ms. Henrick's statement, she clearly says
16 that the big guy, i.e., Larry Prophet, held the gun, pulled the gun, said, you want to see
17 how it works as he puts the shotgun shells, rapes her and then the smaller guy who the
18 State is going to argue is Mr. Lopey, then sodomizes her.

19 THE COURT: All right, repeat your question.

20 Q. Have you - - Now, you have information that that statement is incorrect, don't
21 you?

22 A. That's the statement provided to me by Larry Prophet.

23 Q. You have information through this investigation that that statement is incorrect,
24 yes or no.

25 A. We have statements that dispute some of the elements of some of that statement.

1 Q. So, if there are elements that are disputed, you have information that that
2 statement is not correct, yes or no.

3 A. That's for anybody looking at it to determine.

4 Q. Have you looked at Ms. Henrick's statement?

5 A. Initially, I did, early on.

6 Q. I'm going to hand it up to you. It's been provided in discovery. The State has
7 introduced that evidence as if it is the truth. Let's got through Ms. Henrick's statement. I
8 turn you to . . .

9 MS. CAMPBELL: Objection, Your Honor, mischaracterization, reading the
10 statement - - Co-defendant's testimony or statement.

11 THE COURT: I think you're mischaracterizing a little bit.

12 Q. Okay. Do you believe that statement?

13 A. Portions of it.

14 Q. Do you believe the fact that Zacoata Lopey was the one with the gun and who
15 initiated all this sexual conduct?

16 A. I believe they both were.

17 Q. That's not the question. Do you believe . . .

18 MS. CAMPBELL: Objection, Your Honor. He's answered his question.

19 MR. MAY: No, he did not.

20 THE COURT: Repeat your question.

21 Q. Do you believe that Zacoata Lopey initiated the sexual, criminal sexual conduct?

22 A. I don't know who initiated it.

23 Q. Looking at Ms. Henrick's statement, what does Ms. Henrick's statement say?

24 Third page.

25 A. The third page?

1 Q. Third page, third line. Read along with me.

2 (Witness reads from statement.)

3 A. The big guy told me to take my clothes off.

4 Q. Okay, the big guy.

5 (Witness reads from statement.)

6 A. He was pointing the gun at me. I told him I wanted to go to the bathroom. I
7 thought that they wanted me to undress so that I couldn't go outside. They followed me
8 to the bathroom. They the followed me to the bathroom, but wouldn't let me close the
9 door. I took off everything except my underwear. They told me to take it off and pointed
10 the gun at me. I told the big guy that the gun probably wouldn't work. He pulled some
11 shells out of his pocket to put them in the gun. He asked me if I wanted to find out if it
12 worked. I took off my underwear and they told me to go in the bedroom and lay down. I
13 laid down on the bed. The big guy pulled my knees apart and penetrated me with his
14 penis. They had covered, they had covered my face because I was screaming. I think
15 that the big guy ejaculated inside of me. Then the young guy tried to have sex with me. I
16 asked him if he would rape his grandmother. He tried to cover my mouth. He had
17 trouble so he turned me over and penetrated my rectum. I think he also ejaculated inside
18 of me. They left my home through the front door.

19 MR. MAY: I ask that this be made a part of the record.

20 THE COURT: Any objection?

21 MS. CAMPBELL: No objection, Your Honor.

22 (Statement of Elaine Henrick marked as Defendant's Exhibit Number One.)

23 Q. So after looking at what Ms. Henrick says, it is not consistent with Larry
24 Prophet's statement of Zacoata Lopey initiated and did all the sexual conduct, is it?

25 A. That statement indicates that they both . . .

1 Q. That was not my question. His statement says that only Zacoata Lopey . . .

2 MS. CAMPBELL: Objection, Your Honor, he has a right to answer the question.

3 THE COURT. Make sure you put it in the form of a question, also. Don't get
4 argumentative.

5 Q. Larry Prophet's statement states that Zacoata Lopey had the gun. Correct or not
6 correct?

7 A. Yes.

8 Q. All right, that's not what Ms. Henrick's statement says, is it?

9 A. She said, they had.

10 Q. Did she not say that the big guy had the gun?

11 A. Yes, at one point, but that doesn't mean that that's the way it was throughout the
12 entire - - Obviously, if somebody is raping you, they're probably not holding a shotgun.
13 The other person might be holding a shotgun.

14 Q. Did, sir, I'm asking you . . .

15 MS. CAMPBELL: Objection, Your Honor, he has the right to answer.

16 MR. MAY: I'm asking very basic questions and he's circumventing any kind of
17 question, any kind of answer.

18 THE COURT: All right, try to respond to his question. I know you're trying, but
19 go ahead and restate your question.

20 MR. MAY: Thank you, sir.

21 Q. Larry's statement says that Zacoata Lopey is the one who had the gun and says,
22 paraphrase, you want to see if it works when Ms. Henrick says: That gun won't even
23 work. Correct or not correct?

24 A. Yes.

25 Q. All right, that's not what Ms. Henrick's statement says, is it?

1 A. No.

2 Q. Okay, now, Larry Prophet's statement says that Zacoata Lopey denies any
3 knowledge of what he did, but he said that he did nothing, correct?

4 A. Correct, other than the robbery.

5 Q. Other than the home invasion and the robbery.

6 A. I don't want to characterize that.

7 Q. I apologize. Now, that is not what Ms. Henrick's statement says, is it?

8 A. Rephrase that, I'm sorry.

9 Q. That's not consistent with Ms. Henrick's statement, is it?

10 A. Parts are different.

11 Q. For instance, the part that Larry Prophet raped her in her bedroom, yes? That's
12 different, correct?

13 A. Yes.

14 MR. MAY: Beg the Court's indulgence.

15 Q. The actions at headquarters were disturbing to you, correct?

16 A. Absolutely.

17 Q. They were not normal They were out of balance.

18 A. They were over the top, but not something I haven't seen before from, from
19 criminals. This particular case bothered me a lot.

20 Q. Now, they were over-the-top, right?

21 A. They were - - They were insensitive.

22 Q. They were not - - They were not normal actions of most criminal defendants you
23 have, correct.

24 A. I don't know. It's hard to characterize what is normal when people are raping
25 elderly women.

1 Q. Did you know that he had a 71 I.Q. and is in a special-needs, low-functioning
2 classroom?

3 A. I can't say what his I.Q. is. I can tell you that when I spoke and interacted with
4 them, they indicated and seemed to understand what was going on and what was
5 happening and obviously knew what they had done because they knew they were going
6 to go to prison for a long time, in their own words.

7 Q. But you're not a mental health person.

8 A. No. But you asked me.

9 Q. So, one last question: Did you know that they were in a special-needs, self-
10 contained, low-functioning classroom?

11 A. No.

12 THE COURT: You may step down. Thank you, sir, Mr. Isenhoward.

13 MR. ISENHOWARD: Thank you. -----

14 THE COURT: Why don't we break for lunch at this time.

15 (Court is in recess.)

16 (Court reconvenes.)

17 THE COURT: All right, Ms. McDuffie.

18 MS. MCDUFFIE: The State calls Temple Hart.

19 TEMPLE HART, being duly sworn, testified as follows:

20 THE COURT: Okay, if you would place your left hand on the Bible, there, raise
21 your right and face me. Do you swear or affirm that the testimony that you are about to
22 give will be the truth, the whole truth and nothing but the truth so help you God?

23 MS. HART: Yes.

24 THE COURT: Thank you. Have a seat, Ms. Hart

25 MS. MCDUFFIE: Please the Court.

1 TEMPLE HART – DIRECT EXAMINATION BY MS. MCDUFFIE

2 DIRECT EXAMINATION BY MS. MCDUFFIE:

3 Q. Ms. Hart, where are you currently employed?

4 A. Palmetto Health Richland.

5 Q. And what are your duties at Palmetto Health Richland?

6 A. I am a forensic nurse examiner.

7 Q. And please tell the Court what a forensic nurse examiner does.

8 A. The forensic nurse examiner program at the regional office at Palmetto Health
9 Richland, we do domestic violence and sexual assault examinations.

10 Q. And please tell the Court a little bit about your background and training and
11 experience in the field of forensic nurse examination.

12 A. I was an obstetric in-patient nurse for seven years and then in January, 2010, I
13 completed the sexual assault nurse examination training, and I have been a forensic nurse
14 for two years.

15 Q. And you've been previously qualified as an expert in this state as a sexual assault
16 nurse examiner?

17 A. Yes, ma'am.

18 MS. MCDUFFIE: Your Honor, at this time I've offer Ms. Hart as an expert in the
19 sexual assault forensic nurse examination.

20 THE COURT: Any objection?

21 MS. DELANY: Without objection, Your Honor.

22 THE COURT: Okay, I so find.

23 Q. Ms. Hart, would you please tell the Court how you came into contact with Elaine
24 Henrick.

25 A. Yes, ma'am. December 14th, 2010, I was on call for a twelve-hour shift, eight

1 p.m. to eight a.m. and I received a call from the command center from Palmetto Health
2 Richland ER stating that the patient was in the ER and requesting that I come to see her.

3 Q. And who requested you come see the patient?

4 A. When a patient presents to the ER complaining of sexual assault, a triage nurse
5 makes a call to the command center and the command center contacts the nurse on call.

6 Q. And so that's something that the hospital does, the patient does?

7 A. The hospital does that.

8 Q. And when you first encounter a patient as you did with Ms. Henrick in this case,
9 please tell the Court what is the first thing you do or tell the Court your protocol for that,
10 what happens.

11 A. I introduce myself to the patient. Explain to them my role and let them know
12 about the examination, the history that will be provided and as long as they consent that
13 they would like for my services and for me to see them, then we begin the assault history,
14 medical history and examination.

15 Q. And on December 14th of 2010, did you come into contact with Elaine Henrick?

16 A. Yes, ma'am.

17 Q. And do you see her in the courtroom today?

18 A. Yes, ma'am.

19 Q. And can you identify her?

20 A. Sitting with the grey sweater around her.

21 Q. And the first time you came into contact with her was December 14th of 2010?

22 A. Yes, ma'am.

23 Q. And did you obtain a medical history asking numerous questions regarding what
24 happened in this particular?

25 A. Yes, I did.

1 Q. Please tell the Court Ms. Henrick's date of birth.

2 A. December 21, 1930.

3 Q. And would it help you to use your notes to help you refresh your memory? Please
4 refer to them if you have them in front of you.

5 A. Yes.

6 Q. Her date of birth 12/21, 1930?

7 A. Yes.

8 Q. And please tell the judge what you noticed when you first saw Ms. Henrick.

9 A. Ms. Henrick was still in where we call POD Nine in a private room, room 3. She
10 was not in the triage area any longer. Ms. Henrick was being assessed by the ER
11 physician, being medically cleared in order for her to come to the interview room which
12 is about a five minute walk across the other side of the ER and she was on the stretcher.
13 There were law enforcement officers in the room with her and nursing staff.

14 Q. Please describe for the Court what she was wearing at that time.

15 A. She was wearing a light green bathrobe and she had a disposable sheet on her that
16 was provided from EMS.

17 Q. Was there anything else on her person?

18 A. There was no other clothing; however, Ms. Henrick had - - She was bleeding
19 vaginally from some injuries and she had placed some tissue between her legs because of
20 the bleeding. She reported that when she called for EMS and called for 911, she had no
21 clothes on and she just grabbed a bathrobe and placed that tissue in her underwear.

22 Q. And did you collect that tissue at the time that you performed the exam?

23 A. Yes, ma'am.

24 Q. And you collected that tissue from where?

25 A. From her vagina.

1 Q. And you also asked her numerous questions?

2 A. Yes, ma'am.

3 Q. Can you please describe to the Court her demeanor when you were questioning
4 her?

5 A. She was very stoic. She was able to provide very detailed information regarding
6 the home invasion, the assailants. She described one as being young, one as being the big
7 guy. She was able to recall the items that she knew had been taken from her and she was
8 able to - - Very cooperative, however, when we talked about the sexual assault, she
9 became very tearful. She covered her eyes. She cried and we had to take our time and
10 give her a few minutes to get herself together when she described the actual assault.

11 Q. And did you document this in your notes what Ms. Henrick told you on that
12 night?

13 A. Yes, ma'am.

14 Q. If you could please read the Court your notes as to what she told you on that
15 evening.

16 A. The assault history?

17 Q. Yes, please.

18 A. The entire paragraph?

19 Q. Yes, please.

20 A. In the patient's own words and I quote.

21 (Witness reads assault history of Elaine Henrick.)

22 I was watching Minute to Win It Show and it was about halfway through. I was
23 talking on the phone to my friend. I had just hung up and they came in through the
24 sunroom door. I usually shut it and lock it, but I don't know why I didn't do that today.
25 They came in saying, where's your money, where's your money? I said, I don't have

1 any. I am on a fixed income. They asked, do you have a dollar? I said, yeah. And they
2 said, go get it. I went to the bedroom and the other man was already in there filling his
3 pockets with jewelry and stuff. The big guy asked, where is my handbag? and I said, in
4 the bedroom. He went and got it and brought it out upside down and everything was
5 falling out. He asked for my money so I got it out my billfold and gave him my money.
6 The big guy was pulling out the TV, and he was pulling the wrong cords. He didn't
7 know what he was doing. I asked the young guy, would you do this to your
8 grandmother? He said he had three kids and I asked him if he had a job. He said, yes,
9 but it didn't pay much money. They went to my other rooms and they made me go with
10 them. They wanted to keep an eye on me. They asked me if I had a gun. I said, no.
11 Then they held up shotgun shell I had in the jar. I said, no, I don't have one. I did but
12 they didn't find it so I didn't tell them. I was going to call 911 with my cell phone but
13 they must have already taken it. They took my camera and my iPod off the counter. I
14 had a digital photo frame, too, but he didn't know what it was. They told me to go to the
15 bedroom and take off my clothes. They said they was going to make me a hostage. I
16 said, I can't go outside in the cold with no clothes. They had a gun. I told them that it
17 was old and probably not working. He put a bullet in it and said, do you want to see? So,
18 I shut up. I went to the bathroom and started to take off my clothes. I asked to leave on
19 my underpants and he said, no, take them off. They made me take off my underpants.
20 They told me to get down on my back I asked him, are you going to rape me and he
21 didn't say anything. He threw down my socks over my face and opened my legs hard,
22 pushing them open and he started raping me. He made me cover my face. I hollered,
23 "Oh my God." (In parenthesis, I wrote that she was crying at the time.) He covered my
24 mouth and so I couldn't breath and so I stopped hollering. He got through and the young
25 boy came over and I said, you're not going to do this to your grandmother and he

1 couldn't do it. So he turned around and raped me. He couldn't get it in, so he used
2 saliva.

3 Q. Meaning that he raped her anally?

4 A. (Witness nodded in the affirmative.)

5 Q. You also asked very detailed questions about what each individual did during the
6 assault. She described them in two different ways?

7 A. Yes. She, of course, didn't know their names. She described them as the young
8 one and the big guy.

9 Q. Please tell the Court what she said the big guy did, how he assaulted her. Do you
10 have certain boxes that you check off as to what was done during the assault?

11 A. We do and I've listed them.

12 Q. Please tell the Court what she said the big guy did.

13 A. Under penetration vagina, she said the big guy penetrated her with his penis, her
14 vagina.

15 Q. And the other assailant, how did she describe him?

16 A. The young one penetrated her anus with his penis.

17 Q. And she said that she asked him, would you do this to your grandmother and at
18 that point is when he flipped her over and raped her anally?

19 A. Yes.

20 Q. And he couldn't what? I'm sorry.

21 A. He wasn't able to insert his penis into her so he used saliva.

22 Q. And please tell the judge the exam that you performed on Ms. Henrick.

23 A. The entire exam or details of the specific . . .

24 Q. Details of the physical exam.

25 A. The genitalia was examined externally and she also had speculum exam and the

1 speculum exam was very difficult for her. There was a great deal of vaginal bleeding. It
2 was difficult to assess the injuries. At that time I needed to have the ER doctor come to
3 assess those injuries. He performed a second speculum exam. He was unable to assess
4 whether the lacerations that were internal needed repair and he consulted with the
5 gynecology doctor on call and they came down and did a third speculum exam.

6 Q. Please describe for the Court the injuries that you observed on Ms. Henrick.

7 A. Ms. Henrick had a bruise on her left hand. She reported that she was grabbed and
8 pulled. She also had a bruise on the inside of her right knee from her legs being pushed
9 open and then she had some genital injuries. She had a lot of bruising. She had a lot of
10 swelling. She had bilateral labia majora bruising, that's the outside fold. She had
11 bilateral labia minora swelling and bruising, the inside fold, and she also had a deep
12 laceration at ten o'clock. We use the clock to help us describe in a way that findings or
13 mean the same to everybody and the vaginal wall laceration at 1400 was noted by the
14 physicians to be a four centimeter laceration. And she also had some positive dye uptake
15 at 1800 at the posterior fourchette and that dye is used to help us better visualize injuries.

16 Q. Now, I'm going to hand you three photographs. Have you had the opportunity to
17 review these?

18 A. Yes, ma'am.

19 Q. And are these photographs that you took during your exam of Ms. Henrick?

20 A. Yes, ma'am.

21 MS. MCDUFFIE: Your Honor, we ask that these be marked as State's exhibits.

22 (Photographs marked as State's Exhibit Number Six, Seven and Eight.)

23 Q. State's Exhibits Six, Seven and Eight help you to explain the injuries that you just
24 described verbally for the Court?

25 A. Yes.

1 Q. Please describe for the judge what's depicted in State's Exhibit Eight.

2 A. That is external of her pubis with bleeding.

3 MS. MCDUFFIE: Your Honor, at this time we would offer State's Exhibit Eight
4 into evidence.

5 THE COURT: Any objection?

6 MS. DELANY: Your Honor, I would object to that. There was a case that came
7 out last week, actually, basically, it says photographs of what the witness has just testified
8 to don't add anything, you know, she's testified to them and Ms. McDuffie showed them
9 to her and that was it and I believe that case was reversed. I would object.

10 THE COURT: Do you have a copy of the case?

11 MS. MCDUFFIE: Your Honor, that case - - Ms. Delany is not properly quoting
12 that case. That case was a dog bite case and they said those photographs were not
13 probative as to the issues and facts for that case and it was prejudicial to the jury. There
14 is no jury here, Your Honor. We would ask that the witness be allowed to explain the
15 photographs and Your Honor give them as much weight as Your Honor deems
16 appropriate. They do help describe the injuries.

17 MS. DELANY: And, Your Honor, you are our jury, you're our and finder of
18 facts in this case.

19 THE COURT: Can you get the case for me? I need the case before I rule.

20 Q. State's Six and Seven also help you to explain to the judge the injuries that you
21 observed on the victim?

22 A. Yes.

23 MS. MCDUFFIE: Your Honor, we would also seek to introduce State's Six and
24 Seven.

25 MR. MAY: Can I just give you my computer?

1 THE COURT: Yes.

2 MR. MAY: It's actually - - State v. Collins*, it came out last week in the Court
3 of Appeals.

4 (Mr. May approaches bench with computer.)

5 THE COURT: What's the purpose of the pictures?

6 MS. MCDUFFIE: Your Honor, the purpose of introducing the pictures is so Your
7 Honor may see the injuries that nurse Hart is describing, and also Your Honor she's
8 describing specific injuries in very specific locations and we believe it would be
9 beneficial for the Court to be able to see the exact locations of these injuries as she's
10 described them and also the extent of the injuries.

11 MS. DELANY: And, Your Honor, I would also note that the allegations that my
12 client anally penetrated her is the allegation that the co-defendant vaginally penetrated
13 her so additionally I think they are prejudicial . . .

14 THE COURT: And the hand of one is the hand of all.

15 MS. DELANY: Your Honor, I think, I think it's a picture of a very, very
16 traumatized vagina. No one is denying that she was raped and she's testified to
17 everything. I think they're unfairly prejudicial.

18 THE COURT: Well, there's two issues here. One is, I guess, is where this
19 probable cause crime was committed and then there's the Kent factors that are going to
20 be determined as well. One of those factors are whether the alleged offence was
21 committed in an aggressive, premeditated and willful manner. Wouldn't that also be
22 evidence of that factor?

23 MS. DELANY: She testified, Your Honor.

24 THE COURT: Who testified?

25 MS. DELANY: Ms. Hart testified to all of that. I think at this point it's just

1 cumulative really to the point of being prejudicial.

2 THE COURT: And I disagree with you. I know what you're saying. You're
3 saying I am your jury. I'm not really your jury. I am your fact finder, but I don't think
4 I'm in the same role as a juror. I'm going to allow the evidence to come in

5 MS. DELANY: Thank you, Your Honor.

6 THE COURT: Objection is overruled. Mr. May, you want your computer?

7 MR. MAY: I'd love to get it.

8 (Mr. May removes computer from bench)

9 Q. Again, please describe for the Court what's depicted in State's Exhibit Eight.

10 A. That was a photograph that they took showing the bleeding to the external
11 genitalia.

12 Q. And this is also where you removed the tissue that was collected by you and
13 turned into law enforcement?

14 A. That is correct.

15 THE COURT: Okay, Plaintiff's Eight. I know your objection of the juvenile's
16 attorneys.

17 Q. State's Seven, please describe for the Court what's depicted in this photograph.

18 A. That is a photograph with labia retractions showing the positive dye uptake. It is
19 enhancing the posterior fourchette laceration.

20 Q. And State's Exhibit Six, please describe what's contained in this photo.

21 A. That is a photograph showing the vaginal pooling of blood and tissue as well as
22 swelling and bruising.

23 MS. MCDUFFIE: Your Honor, State's Exhibit Six and Seven we offer.

24 THE COURT: Six and Seven are entered and I know the objection of defense.

25 Q. State's Exhibit Seven, is this when you do an exam on a normal, healthy woman,

1 is this what you would observe?

2 A. No, ma'am.

3 Q. - Please describe for the judge what differs in this photograph.

4 A. Well, this picture depicts a female with a loss of estrogen showing it diminished
5 to no pubic hair. Typically, the labia is flattened, very pale related to the estrogen loss
6 and fatty tissue. That particular genitalia in that age group is typically very pale, very
7 dry, shrunken and very frail.

8 Q. Is there quite a bit of swelling as evidenced in this photograph?

9 A. Yes, ma'am.

10 Q. Please describe that for the judge.

11 A. The labia majora is swollen, bruised, shiny. Shiny because of the fluid filled
12 bruised tissue.

13 Q. You also performed what's commonly known as a rape kit exam? You collected a
14 rape kit, a sexual assault kit?

15 A. Yes, I did.

16 Q. And please describe to the judge how you do that.

17 A. It's a very lengthy exam. For Ms. Henrick, after speaking with her and her
18 describing in detail the assault history, the evidence was collected particularly to what she
19 stated had happened to her so there were vaginal swabs collected, rectal swabs collected,
20 speculum exams, photographs, documentation of all injuries using body maps and they're
21 all included in there. Each swab is collected, dried and then packaged and sealed and
22 placed in the evidence collection kit box, sealed again and then turned over to law
23 enforcement.

24 Q. And is that exactly what you did in this case?

25 A. Yes, it is.

1 TEMPLE HART – CROSS EXAMINATION BY MS. DELANY

2 Q. You collected vaginal swabs?

3 A. Yes.

4 Q. Rectal swabs?

5 A. Yes.

6 Q. The tissue that we talked about earlier, bloody tissue?

7 A. Yes.

8 Q. And you turned all of that over to investigator Josh Mauldin?

9 A. Yes, I did.

10 Q. And all of that evidence was properly packaged and sealed?

11 A. Yes, it was.

12 Q. It was not contaminated in any way when it was in your custody?

13 A. No, ma'am.

14 MS. MCDUFFIE: Beg the Court's indulgence. No further questions from the
15 State, Your Honor.

16 THE COURT: Ms. Delany.

17 MS. DELANY: Your Honor, may it please the Court.

18 CROSS EXAMINATION BY MS. DELANY:

19 Q. Ms. Henrick described her assailants as big one and the young one, correct?

20 A. That is correct. She did not have names.

21 MS. DELANY: Thank you, that's it, Your Honor.

22 THE COURT: You may step down, watch your step. Can Ms. Hart be excused?

23 MS. DELANY: No objection.

24 THE COURT: You are free to go.

25 MS. WALKER: Your Honor, the State calls Stan Richards.

1 STAN RICHARDS – DIRECT EXAMINATION BY MS. WALKER

2 STAN RICHARDS, being duly sworn, testified as follows:

3 THE COURT: Do you swear or affirm that the testimony that you are about to
4 give will be the truth, the whole truth and nothing but the truth so help you God?

5 MR. RICHARDS: I do.

6 THE COURT: Thank you. Please have a seat there and watch your step.

7 DIRECT EXAMINATION BY MS. WALKER:

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. Sir, where are you currently employed?

11 A. Richland County Sheriff's Department, Crime Scene Unit.

12 Q. Please state your name.

13 A. Stan Richards, R-I-C-H-A-R-D-S.

14 Q. And what do you do at the crime scene?

15 A. I'm presently the operations sergeant for the crime scene unit, which involves the
16 supervision of thirteen, twelve individuals. Three of those are analyst, the rest are field
17 CSI.

18 Q. And at some point, did you have the occasion to become involved in the
19 investigation of a CSC, burglary, armed robbery that occurred at [REDACTED]

20 A. I did.

21 Q. And what was your involvement with that investigation?

22 A. I was the supervisor on call during that time period. One of my CSIs responded
23 to [REDACTED] on the evening of the 14th, December 14, 2010, for a home
24 invasion/sexual assault. That was investigator Woods. She processed the scene the best
25 she could her being the only one there and then she called me and briefed me on what she

1 had done and I give her some added things she needed to do, plus I had her to hold the
2 scene overnight until I arrived the following morning.

3 Q. And the purpose of securing the scene was what?

4 A. Secure the scene that nobody enters the scene until we get back to continue
5 processing.

6 Q. And the following morning did you yourself go to that scene?

7 A. Yes.

8 Q. And what did you observe, sir, when you got to the scene?

9 A. I observed basically what Investigator Woods had told me that the house appeared
10 to be rummaged through and she had already processed some areas of the home on the
11 interior which involved processing chest-of-drawer handles, nightstand drawer handles
12 located in the right rear bedroom, telephone in the living room chair and some what she
13 called liquids that she found in the right, rear bedroom at the end of the hallway one
14 which was on the foot area of the comforter and one on the foot end on the floor of the
15 bedroom floor at the foot of the bed.

16 Q. I'd like to show you a series of pictures at this time, sir. There's sixty pictures
17 here and they've collectively been marked as State's Exhibit Number Nine. See if you
18 recognize those.

19 A. Yes, these are series of photographs that were taken either by Investigator Woods,
20 myself, or Investigator Boughknight* who accompanied me to the scene the following
21 day.

22 Q. The crime scene that you responded to, that was in Richland County?

23 A. Yes, it was.

24 MS. WALKER: Your Honor, at this point we'd introduce these into evidence.

25 THE COURT: Any objections?

1 MR. MAY: No objections, Your Honor.

2 (Photographs marked as State's Exhibit Number Nine.)

3 Q. Sir, I'd like to go through a portion of these photos with you. First, this one, it's
4 part of State's Exhibit Nine and it has not been individually ID'ed. Can you tell me what
5 that depicts?

6 A. This was a phone that was observed first by Investigator Woods on the living
7 room chair. She, I believe, she processed this that night for possible prints and swabbed
8 it also for possible DNA, but it was in the living room on a living room chair.

9 Q. And it was taken apart?

10 A. Yes.

11 Q. And this one, sir?

12 A. This is the comforter that I eluded to, the comforter in the right bedroom at the
13 end of the hallway. This is marked as number two which Investigator Woods marked at
14 the comforter what she called a liquid that she did swab and the swab was turned into
15 evidence for DNA analysis.

16 Q. The third one that I'm showing you?

17 A. Right, the DVD player that was on a chair, also, I believe, in the living room and
18 it was in a white plastic bag at one time. It was taken out of the plastic bag and
19 Investigator Woods took the plastic bag back to headquarters for processing and the DVD
20 player was left in the chair at that time.

21 Q. And, finally, sir, these four pictures.

22 A. First picture is a photograph of that right, rear bedroom again. It shows a marker
23 as number one on the floor at the foot of the bed where Investigator Woods processed for
24 possible DNA on what she called a liquid on the floor.

25 Q. And marker number two?

1 A. And number two is, again, the foot of the comforter that she had marked,
2 photographed, swabbed and what she called a liquid in that area.

3 THE COURT: Ms. Walker, why don't you hand those photographs to me after he
4 describes. Just give me each photograph after he describes it.

5 MS. WALKER: Yes, sir.

6 A. The following three photographs are photographs taken by Investigator
7 Boughknight* in the same right rear bedroom at the end of the hallway the following day,
8 the following morning when he and I responded to the location. These photographs are
9 taken using an alternate light source as well as camera with a blue lens for the alternate
10 light source and an orange filter for the camera and for himself when he was searching
11 the bedroom for possibly bodily fluids. As you can tell, this is what it looks like, Your
12 Honor, when you're using the alternate light source with the orange filter. That's
13 aluminous reaction that you would have with any type of bodily fluid and that's what we
14 were looking for. So, that's the reaction we had. That's what we found. That's what
15 Investigator Boughknight* photographed. He photographed number one and this one is
16 hard to see because it's at the bottom. It's on the floor at the bottom of the bed and
17 number two was on the floor at the left side of the bed. Now, these, he swabbed these for
18 possible DNA plus cut these, cut a portion of this carpet out and brought them back to
19 headquarters and entered then into evidence for DNA analysis.

20 Q. After going to the crime scene and supervising as well as taking these
21 photographs, what did you do, sir?

22 A. Well, first I began while Investigator Boughknight* the next morning went into
23 the residence and began searching using the alternate light sources predominately in the
24 bedrooms and the bathroom. I started on the outside, photographed the outside since it
25 was daylight and it was hard to do the night before. I photographed two partial shoe

1 impressions that were in the front of the residence beside the walkway, down in the
2 flower beds, but those, like I said, they were photographed with scale and marked as
3 number one and number two; however, those shoe wear impressions were very, very
4 faint. They had no detail whatsoever, but when we see them, we take them anyway. I
5 entered the house and Investigator Boughknight* and I continued to process in the back
6 bedrooms. I went first to the bathroom on the left side of the hallway. I processed the
7 flooring in the bathroom with magnetic powder trying to enhance any type of shoe wear
8 impressions. I was working with shoe wear impressions at the time, mainly. So I tried to
9 enhance any type of shoe wear impressions that might have been on the floor in that
10 bathroom. I did photograph and mark number one, number three and I used a gel lifter
11 which is means of raising the shoe wear impression after it's been enhanced off the floor.
12 I used that in the bathroom. I continued throughout the house. Went into the sunroom or
13 right before the sunroom into the family room at the doorway going into the sunroom
14 where I enhanced that with magnetic powder also, marked that as number four and then I
15 went into the kitchen area on the floor and did the same thing enhancing some partial
16 footwear marked as number six and number seven, and, like I said, the one marked
17 number three was lifted with gel lifter. The one in the kitchen marked number seven was
18 also lifted with a gel lifter.

19 Q. And those are all depicted in what's collectively been marked as State's Number
20 Nine?

21 A. Yes, should be. Should be, yes.

22 Q. Would that be the extent of what you did, sir?

23 A. No. I also collected a napkin that was in a plastic bag in the kitchen that was
24 turned into evidence also for DNA analysis and also a napkin that was found on the living
25 room floor that was turned into evidence for DNA analysis. Now, when Investigator

1 Boughknight* finished with the bedroom and the alternate light sources, then he
2 continued to process inside the home, like I said, cutting a piece of the carpet and
3 marking as number one in the bedroom a piece of carpet marked as number two also in
4 that right bedroom. Then he swabbed for possible DNA, a display cabinet handle in the
5 den, dresser drawer handles in the den, TV cabinet handles in the den, dresser drawer
6 handles in the left bedroom, chest-of-drawer handles in the left bedroom because all these
7 had been pulled out, nightstand drawer handles in the left bedroom, a desk drawer handle
8 in the left bedroom, kitchen drawer handles. He also collected napkins from a master
9 bathroom trash can, placed those into evidence for DNA analysis. He also collected a
10 telephone from the trash can in the sunroom that had been put in there by someone and he
11 brought that back to headquarters to our lab for processing as well as the telephone face
12 and the telephone cord that was also found in the trash can in the sunroom and he
13 collected the DVD player in the chair in the living room and brought it back to
14 headquarters for processing also.

15 Q. Okay, all that was properly packaged and given to the evidence room at the
16 Richland County Sheriff's Department?

17 A. Yes.

18 Q. After that processing, all that processing, that was your involvement with the
19 case? That was your extent of the involvement?

20 A. It was. I mentioned that Investigator Woods also brought the plastic bag that she
21 collected back to headquarters and processed that and was turned into evidence also and
22 swabbed into evidence for analysis. We had consent to search the house that was
23 obtained by deputies on the scene before Investigator Woods and that was the extent of
24 the processing.

25 MS. WALKER: Thank you, sir. I have no further questions.

1 SCOTT MCDONALD – DIRECT EXAMINATION BY MS. WALKER

2 THE COURT: Ms. Delany?

3 MS. DELANY: No questions, Your Honor.

4 THE COURT: You may step down, sir.

5 MS. WALKER: At this time the State would call Scott McDonald.

6 SCOTT MCDONALD, being duly sworn, testified as follows:

7 THE COURT: Sir, if you will step up here, please. Place your left hand on that
8 Bible, raise your right and face me. Do you swear or affirm that the testimony that you
9 are about to give will be the truth, the whole truth and nothing but the truth so help you
10 God?

11 MR. MCDONALD: I do.

12 THE COURT: Thank you, sir. Have a seat and watch your step. Sir, your name
13 is?

14 MR. MCDONALD: Scott McDonald.

15 DIRECT EXAMINATION BY MS. WALKER:

16 Q. Sir, where are you currently employed?

17 A. Richland County Sheriff's Department.

18 Q. And what do you do over at the Sheriff's Department?

19 A. I'm a Lieutenant of the major crime unit supervising and working on homicides,
20 robberies and assaults; that type thing.

21 Q. In December of 2010, did you become involved in an investigation of a home
22 invasion and rape that occurred here in Richland County?

23 A. Yes, I did.

24 Q. And how did you first become involved in that investigation?

25 A. Late evening hours of December 14th, I was advised that we had an aggravated

1 burglary, robbery, sexual assault. Investigator Mauldin was en route to the scene along
2 with Sgt. Isenhoward. Later, earlier that morning, around one in the morning, Sgt.
3 Isenhoward called me back once they realized the victim's cell phone was missing,
4 getting advice on what to do about that, wanted to get in touch with the cell phone
5 company to try to track the phone.

6 Q. That was early . . .

7 A. Early morning, yeah, about one in the morning on the 15th.

8 Q. After telling him to get in touch with the cell phone provider, did you become
9 further involved later that day?

10 A. Later that next morning we had a briefing on the case to that point, first thing
11 around eight-thirty. We assigned different investigators different duties that day. The
12 major thing that we were going to be doing was a canvas of the neighborhood. There was
13 also another robbery that happened that night with a shotgun and two black males which
14 we thought possibly could be related at the time. I took that case and began to follow up
15 on that.

16 Q. And investigating, what happened were you able to develop - - To answer that
17 question, were they related?

18 A. No. The answer to that, they were not related.

19 Q. At some point, did your investigation narrow to Larry Prophet and Zacoata
20 Lopey?

21 A. Yes, it did.

22 Q. And how did that come about, sir?

23 A. Roughly, probably around mid-day or so, I returned to the Sheriff's Department
24 from interviewing the victim, doing some follow-up on the other robbery. I learned from
25 Major Smith that a significant development had come about through the efforts of

1 Investigator Clarke and Miller at Spring Valley High School.

2 Q. And what was that development?

3 A. They were talking to Mr. Coatey about the incident and he had attest his
4 involvement and implicated Mr. Prophet at that point.

5 Q. Did you aid other investigators in trying to find Mr. Prophet at that point?

6 A. Yes. Sergeant Isenhoward and Investigator Mauldin were assigned to speak with
7 Mr. Prophet. They had learned that he was attending Blythewood Academy. Further
8 information revealed he had already left for the day so they were in route to his residence.
9 I left headquarters and met them over in the neighborhood over near the residence
10 awaiting their arrival there.

11 Q. What did you observe when you got to the residence?

12 A. I gave a description to Major Smith who was developing search warrants at the
13 time, gave him description for search warrants. Shortly thereafter, Isenhoward and
14 Mauldin were in the area and they radioed me over the radio or over the Nextel that they
15 just passed a subject on a moped who they believed might have been Prophet.

16 Q. And did you respond to that location?

17 A. Yes, I did.

18 Q. What did you do when you got there?

19 A. When I got there, they had Mr. Prophet who had been on a moped along with
20 another subject which ended up being an **Minor 1** As they were speaking with Mr.
21 Prophet, I began speaking with Mr. Fisher.

22 Q. What were you asking Mr. Fisher?

23 A. I asked Mr. Fisher, you know, who he was, some biographical information on
24 him, where he lived and kind of a red flag went up when he couldn't tell me where he
25 lived initially and . . .

1 Q. So he was not initially forthcoming?

2 A. He was not initially cooperative with us, no. I then asked him, you know, how
3 long he had been with Mr. Prophet that day and he indicated that he'd been with him
4 since the previous night. At that point, I realized, I thought, you know, he might have
5 more information on this incident and asked him if he wouldn't mind coming to
6 headquarters to talk to me a little bit more about, which he agreed to.

7 Q. And how did you transport him to headquarters?

8 A. In my vehicle.

9 Q. And once he got there, did he give a statement?

10 A. Yes, he did.

11 Q. And before he gave a statement, did you advise him of his rights?

12 A. He was a witness in this case. He was not advised of his rights.

13 Q. So, you were not looking at him at this point as one of the suspects in the case?

14 A. No.

15 Q. Could you please read the statement that Mr. Fisher gave you?

16 A. Certainly.

17 MR. MAY: Again, Your Honor, I would object. I think the Sixth Amendment
18 rights to confront this guy. I understand - - Even though this is quasi-criminal
19 proceeding, our constitutional rights still apply and that the minimum due process rights
20 must be afforded to the child and Your Honor respectfully with a police officer reading a
21 statement, it's not much different than what happened in England when Sir Walter
22 Raleigh was taken prisoner.

23 THE COURT: This is not the trial. Go ahead.

24 A. This statement was taken on December 15th at approximately 2:52 in the
25 afternoon. Question and answer format. It begins with me talking to Mr. Fisher, saying:

1 (Witness begins to read statement of Minor 1

2 What can you tell me about your whereabouts last night?

3 His answer: Larry Prophet came and picked me up at my house on his moped
4 around six-thirty or seven o'clock p.m. We rode back over to Larry's house and chilled
5 there for a while. Later on, me and Larry were walking the neighborhood and walked up
6 the Exxon station on Shakespeare Road. We went inside and got something to drink and
7 hung out there for a little while before walking back to Larry's house. When I got back
8 to Larry's house, Coatey was there. Coatey and Larry then left right after we got back.
9 About twenty-five minutes later, Larry came back to the house first. Larry walked in the
10 house and went to his bedroom. Larry came back in the living room a few minutes later
11 and was talking on his cell phone to Coatey's sister. Larry told her he didn't know where
12 Coatey was. Larry then sat down in the living room and told me he had to tell me
13 something, told me he had to tell me something. Larry told me that they had hit a lick. I
14 was mad at him for not taking me with them on the lick. Larry told me it was too cold to
15 come back and get me. Larry was asking where Coatey was at. Larry called his house
16 and they told him that Coatey wasn't there. About ten minutes after Larry got there,
17 Coatey came into the house. Coatey was hyped up when he came in. Coatey and Larry
18 dapped up and Coatey said, quote, we ratched as hell in TA, unquote. Larry, Coatey and I
19 then went to Larrys' bedroom and we started smoking weed. Larry and Coatey then start
20 talking about the lick. Larry was counting out some money. Larry got some singles,
21 come five dollar bills and twenty dollar bills, about forty to seventy dollars in cash. Larry
22 also took some quarters out of his pocket and dropped them on the floor along with a
23 bracelet. Larry said they had done the lick at an old lady's house. Coatey was saying he
24 got some money out of the lady's purse. Coatey was showing me how he opened the
25 lady's purse and she said, that's all I have. She told him she had some Chinese money as

1 well. Coatey went on to say that he was holding the shotgun down while the lady was on
2 the bed. The lady then grabbed the shotgun and told him she didn't think it was real.
3 Coatey then pulled the gun away from her and told her it was real. Coatey was mad that
4 Larry had gotten some money and hadn't split it with him. That is all they told me.

5 Question: When did you see a shotgun . . .

6 MR. MAY: I'm sorry, one more time. This is also hearsay within hearsay. It is
7 what **Minor 1** told Scott McDonald, which was what was told to him previous.
8 There's two lines of hearsay. From what I understand, hearsay is double hearsay is not
9 admissible. We would object to any double hearsay. That's what is coming into the
10 record at this point.

11 THE COURT: I think - - What's your position?

12 MS. WALKER: Your Honor, due to the witness' statement of what the co-
13 defendant said to him, what he heard them say, this is something they told somebody who
14 they in turn told him. This is what Zacoata Lopey and Larry Prophet told Mr. Fisher.

15 THE COURT: Which is hearsay within hearsay. Does anyone disagree that
16 hearsay is not admissible? This is hearsay. It's admissible at the preliminary hearing,
17 isn't that correct?

18 MS. WALKER: Yes, Your Honor.

19 THE COURT: So the question is, can you take it one step further, hearsay within
20 hearsay. Does anyone have any law on that? Certainly not - - I don't know how credible
21 hearsay is. It certainly may be less credible.

22 MS. DELANY: The Rules of Evidence and the Rules of Criminal Procedure both
23 have a provision that say these apply in Family Court except for otherwise provided. Our
24 position is rules of evidence still apply.

25 THE COURT: It's clearly - - In preliminary hearings as to hearsay . . .

1 MS. DELANY: At a waiver hearing, judge?

2 THE COURT: Well, this is the nature of - - I'm acting as a Magistrate, am I not?

3 MS. DELANY: You're acting as a fact finder.

4 THE COURT: Correct, but it's a probable cause hearing on the issue of whether
5 or not it's admitted and then there's separate Kent factors. You can't factor . . .

6 MS. DELANY: Well, the probable cause is one of the Kent factors.

7 THE COURT: Right.

8 MS. DELANY: It's been my understanding that hearsay is admissible, hearsay
9 within hearsay is not.

10 MS. WALKER: Your Honor, I just thought that - - Mr May vigorously cross
11 examined Mr. Isenhoward. He's used the victim's statement of what the Defendant said
12 to her during the act was the same hearsay within hearsay

13 THE COURT: If you can cite me some authority, I will consider it.

14 MR. MAY: On what part?

15 THE COURT: On the hearsay on hearsay.

16 MR. MAY: Your Honor, rule - - Give me one second. Rule 37 of Rules of
17 Criminal Procedure, Your Honor - - This is my witness. I'm just trying to make sure that
18 we all play by the same rules. We were told and Ms. Campbell agreed last week . . .

19 MS. CAMPBELL: Objection, Your Honor, mischaracterizing what I said.

20 (Attorneys all talking at once.)

21 THE COURT: Hold on, hold on let's be civil in here.

22 MR. MAY: When we were discussing this, we were both under the assumption -
23 - It was my understanding we were both under the assumption that hearsay is admissible
24 and hearsay within hearsay is not; that was my - - That was the conversation that me and
25 Ms. Delany had with Ms. McDuffie and Ms. Campbell in Ms. McDuffie's office on

1 Thursday.

2 THE COURT: Well, now it's been presented to me so I must make the
3 determination.

4 MR. MAY: I agree. I'm just trying to make - - I'm not trying to halt this. I'm
5 just trying to understand when the proper time to object and when it's not.

6 MS. WALKER: If Mr. May wishes that we all play by the same rules, he started
7 introducing his Defendant's statements through an investigator reading the statement of
8 the witness. He did that with . . .

9 MS. WALKER: Your Honor, the admission by a party is not hearsay, one level
10 and second level . . .

11 MR. MAY: Your Honor, Rule 11, 1101, South Carolina Rules of Evidence say
12 that except otherwise provided by rule or statute these rules will apply to the courts of
13 South Carolina. Your Honor, respectfully, this is a court in South Carolina and I would
14 ask that the State to provide any evidence that any level of hearsay is admissible.

15 THE COURT: Well, I do have - - This is the Quick Reference Guide to South
16 Carolina Juvenile Justice which I have and nothing is quoted and I read what it says on
17 waiver hearing. The solicitor has the burden of proving that the child should be waived.
18 The solicitor will present witnesses and enter waiver evaluation. Hearsay is admissible.
19 This is not a trial on the merits and that's about the extent of what it says. It doesn't cite
20 a rule, it doesn't cite a code section. Customary - - I know probable cause hearings - - I
21 normally deal with DSS cases and the statute allows hearsay in those cases. I know that
22 hearsay is normally admissible in court before a magistrate in a criminal procedure and
23 preliminary hearing and I've got this. I don't think anything is different. I don't know
24 about hearsay on hearsay. Hearsay on hearsay is hearsay. I mean, this is serious and I
25 want to do the right thing, but I don't . . .

1 MR. MAY: I mean, Your Honor, the State has already shown that they're going
2 to call a lot of witnesses:

3 THE COURT: Let me see the attorneys in chambers You can keep your seats.

4 THE COURT: We're going to take a fifteen minute recess to do some legal
5 research.

6 (Conference in chambers.)

7 (Court is in recess.)

8 (Attorneys return from chambers.)

9 (Court reconvenes.)

10 THE COURT: All right, we took a recess to do some legal research. I think
11 everybody is here, right?

12 MR. MAY: The child's not.

13 THE COURT: One issue that is coming up over and over and that's the
14 admissibility of hearsay within hearsay on hearsay, whether it's admissible in this
15 proceeding. Rule 1101, Rules of Evidence addresses some of this. It applies to the rules
16 of evidence and under that Rule 1101 (d), rules of evidence inapplicable, it says, rules
17 other than with respect to privileges do not apply to the following situations and one of
18 those is miscellaneous proceedings, under (b) (3) and it doesn't specifically address
19 waiver hearings. But it does address - - It says proceedings for extradition, preliminary
20 hearings in criminal cases and the question is, of course, is this a preliminary hearing in a
21 criminal case. It certainly qualifies criminal. I normally don't refer to juvenile cases as
22 criminal cases, but it's in the same fashion when we refer to juvenile delinquency. Code
23 Section 63- 9-12-10, Section 5 says that this Court acting as a committee magistrate
24 may bind a child for proper criminal proceedings which the Court would have
25 jurisdiction of the offences committed by an adult, but basically, this is a preliminary

1 hearing and part of what we're doing, so my ruling today is as I ruled earlier is that
2 hearsay is admissible in this proceeding. As to hearsay on hearsay, as I ruled earlier. If
3 you have an objection on hearsay within hearsay issue, you'll just have to object at that
4 time and I'll deal with it when we get to it. I can see how that can get absurd, but I'm just
5 going to deal with that when we get to it. Who was examining the witness?

6 MR. MAY: Well, Your Honor, if I can just for the record.

7 THE COURT: Yes, sir.

8 MR. MAY: Your Honor, we object to that ruling. Typically under Rule 1101(a),
9 it says that otherwise provided by rule of statute. These rules apply for courts of South
10 Carolina and, Your Honor, this is a court of South Carolina. Rule 1101, rules
11 inapplicable three. There are parts in there where it says - - They are very specific. It
12 says that juvenile in a dispositional hearing, Your Honor, it also says preliminary hearing.
13 With all due respect to the Court, I think to minimize this hearing as a preliminary
14 hearing is inaccurate and doesn't take into the gravity of the situation. It is my
15 understanding, again, it is my first waiver hearing, that if the juvenile is waived up, there
16 is no mechanism to bring it back down. That means that this is for all practical purposes,
17 a criminal proceeding because he's facing to fifteen to life on a slate.

18 THE COURT: No doubt this is a stage in criminal process

19 MR. MAY: So to allow investigators to get up there and summarize a statement
20 of, and in this case specifically, children who we know are retarded, then he cannot stand
21 - - Your Honor needs to be able to examine them for credibility. Your Honor needs to be
22 able to examine sua sponte if necessary. Furthermore, Your Honor, in doing the research
23 in the brief time allowed, I pulled up the following cases searching for hearsay in Family
24 Court. An Ex Parte Morris, 367 S.C. 56, hearsay applies and S.C, South Carolina
25 Department of Social Services versus Doe, 292 S.C.211, they reversed on hearsay

1 grounds. Kershaw County DSS versus McKaskell* is a case I'd like to hand up. I think
2 it probably allows and gives us more understanding of what occurs. A case from back in
3 1981, I know it's a long time ago before the rules were standardized, but back in 1981 or
4 pre 1989 there appears to be a rule of hearsay for Family Courts. Often times attorneys
5 learn from older attorneys and just get in the habit of saying, well, that's the rules. Often
6 the Solicitor's office use res gestae. Res gestae, rules of evidence, it is an antiquated rule.
7 Had the Supreme Court when they made these rules, wanted to adopt that thought, had
8 they wanted to adopt the rules of hearsay or the lack of standard of hearsay - -
9 Respectfully, Your Honor, the rules of evidence adopted in South Carolina in 1996, I
10 could be wrong on that, are pretty complete and had they wanted to, they would have put
11 in the hearing of a juvenile waiver hearing. It is not there. As a result, Your Honor, I
12 believe that your ruling is, with all due respect, is inaccurate. We object to any hearsay.
13 At this time, we move for a mistrial or a mishearing. I don't know what the proper
14 terminology would be so that we can go forward on fair basis. As I said, in a probation
15 hearing the courts say that minimum due process is afforded to a defendant in a probation
16 hearing. A probation hearing is a case where a person has already been found guilty. In
17 the rules that Ms. Campbell and the State would go forward on, they say that this is the
18 same, don't worry about it, the rules are inapplicable. Actually, when you look at it the
19 antiquated parts of the rules of evidence - - It says that probation revocation, the rules
20 may constitute a change of law, hearsay rules applies to rules of probation revocation. I
21 believe that a full probation revocation hearing, you are entitled to challenge over
22 hearsay. The court affords the minimum amount of due process. I believe that the due
23 process afforded to a child in a waiver hearing is something that can't go back. This is
24 something that can't go back. The die is cast. If you decide to waive him up, we can't go
25 back from this. Due process dictates that he must have all the rights afforded to him

1 under Constitution if it was otherwise aggravated by law or rule. I cannot see a specific
2 law or rule that the rule says it has to be. In all due respect, Your Honor, we would
3 object and move for a mistrial and we have a standing objection to any hearsay that is
4 given. We move to strike all testimony and let's start again and give this child the
5 hearing that the Constitution dictates.

6 THE COURT: All right, I'm noting your objection to my ruling and your
7 motions are denied.

8 MR. MAY: Thank you, sir.

9 DIRECT EXAMINATION BY MS. WALKER CONTINUES:

10 MS. WALKER: May I continue, judge?

11 Q. We were discussing statements that you took from Minor 1 and I think, sir,
12 that you were somewhere in the area of Coatey went on to say that he was holding the
13 shotgun down while the lady was on the bed?

14 A. You want me to pick up there?

15 Q. Continue.

16 (Witness continues to read statement of Minor 1

17 Coatey went on to say that he was holding the shotgun down while the lady was
18 on the bed. The lady then grabbed the shotgun and told him she didn't think it was real.
19 Coatey then pulled the gun away from her and told her it was real. Coatey was mad that
20 Larry had gotten some money and hadn't split it with him. That is all they told me.

21 I then asked the question: When did you see a shotgun that Larry or Coatey may
22 have had?

23 Answer: I had seen it earlier that evening before they did the lick. Coatey said
24 that he and Larry had got it from a lick. Larry had showed me the shotgun when he got it
25 out of a field near his house.

1 Question: Can you describe the shotgun you saw?

2 His answer was: It was raggedy, old and it had a flashlight attached to the end of
3 the barrel.

4 Question: Did either Coatey or Larry tell you how they got in the house?

5 Answer: No, sir.

6 Question: Did Coatey or Larry tell you about sexually assaulting the lady?

7 Answer: No, sir.

8 Question: Did you participate in any way of the planning, commission or disposal
9 of any items from this burglary, robbery, sexual assault?

10 Answer: No, sir.

11 Question: Have you done any licks with Coatey or Larry?

12 Answer: No, I haven't been over there in a long time.

13 Q. There's an additional question?

14 (Witness continues to read from statement.)

15 A. Question: In reference to the two cell phones you have, where did you get them
16 from?

17 Answer: Blue LG Alltell phone was given to me by Larry when he picked me up
18 last night at his house. Verizon phone, I found it at Larry's house in between the
19 cushions on the chair in the living room when I was straightening up after the
20 investigators came to the door around ten o'clock this morning. Me and Coatey had been
21 sitting in the chair when they came back last night.

22 Q. After taking the statement from Mr. Fisher, what did you do?

23 A. I read it back to him, made sure it was accurate and complete. He agreed it was;
24 then had him sign it, his statement. I read the bottom part of it where it states that this is
25 his statement of his own free will and accord without reward or intimidation, all of the

1 SCOTT MCDONALD - CROSS EXAMINATION BY MR. MAY

2 above is the truth, the whole truth and nothing but the truth. He would sign both pages. I
3 would witness it, and, I believe, on your copy I had it notarized.

4 Q. After your interview with Mr. Fisher, did you continue to aide in this
5 investigation?

6 A. In small parts, yes, here and there, yes.

7 Q. But this would be the magnitude of it?

8 A. Right.

9 MS. WALKER: No further questions.

10 THE COURT: Cross examination?

11 CROSS EXAMINATION BY MR. MAY:

12 Q. Now, originally, y'all were looking for twenty-five to thirty-year old black males.
13 Is that the description that was given?

14 A. I don't have that information in front of me.

15 Q. The robbery at the residence is the place you initially started looking at?

16 A. Yes.

17 Q. That was the description of eighteen to twenty - - Beg the Court's indulgence.

18 That was the description of two black males, one was tall, six/two, six/three, one was
19 shorter, five/eleven, eighteen to twenty-four years old and that's what you initially started
20 looking into, correct?

21 A. I started looking into an additional armed robbery that occurred that night
22 involving a shotgun, correct.

23 Q. And it was initially thought that they could be connected?

24 A. Initially, we thought so due to the close proximity, probably three or four miles
25 apart, two black males involved and a shotgun involved.

1 Q. Now, fast forward a little bit when you run into Prophet and Fisher.

2 A. Right.

3 Q. All right, Fisher is on the back of Prophet's moped, correct?

4 A. That is correct.

5 Q. And yet you note in your notes that you had difficulty communicating with Mr.
6 Fisher because he couldn't even tell you his home address, correct?

7 A. When I say difficulty as in him not wanting to cooperate initially. I asked him,
8 you know, your name, your date of birth, where do you live at.

9 Q. Was he ever able to give you his home address or was he so?

10 A. He was able to give me his home address.

11 Q. He was. Where is that listed in your records?

12 A. It's on the statement I took from him.

13 Q. Is it ever in here? The statement was taken at the Sheriff's Department, correct?

14 A. Right.

15 Q. Is it ever in your notes?

16 A. No.

17 Q. Also noted in his statement according to your notes that Lopey was upset because
18 Prophet had all the money?

19 A. Right.

20 MR. MAY: Beg the Court's indulgence. No further questions at this time.

21 THE COURT: You can step down, sir. Watch your step.

22 MS. MCDUFFIE: The State would call Joe Clarke.

23 THE COURT: Place your left on the Bible and raise your right, please.

24 JOE CLARKE, being duly sworn, testified as follows:

25 THE COURT: Do you swear or affirm to tell the truth, the whole truth and

1 JOE CLARKE – DIRECT EXAMINATION BY MS. MCDUFFIE

2 nothing but the truth so help you God?

3 MR. CLARKE: I do.

4 THE COURT: Thank you, have a seat.

5 DIRECT EXAMINATION BY MS. MCDUFFIE:

6 Q. Deputy Clarke, where are you currently employed?

7 A. Richland County Sheriff's Department.

8 Q. And what are your duties at the Sheriff's Department?

9 A. I am an investigator.

10 Q. And how long have you been in investigations at the Sheriff's Department?

11 A. Six years.

12 Q. During your time in investigations at the Sheriff's Department, did you ever hear
13 the name Zacoata Lopey?

14 A. Yes.

15 Q. Please tell the Court the circumstances under which you became familiar with Mr.
16 Lopey or heard of Mr. Lopey.

17 A. I had been - - The first time I heard the name I was called at the beginning of the
18 school year of 2010. I was notified by School Resource Officer, Ben Fields, of a person
19 of interest and he passed along information to the effect: Have you had any burglaries in
20 the area of Trenholm Acres, TA is what we call it. And I said, no, not a real trend right
21 now. And he said, well just be advised, this young man has a reputation of getting this
22 from - - Getting this from Ben Fields, this young man has a reputation of being
23 disrespectful . . .

24 MS. DELANY: Objection, Your Honor, improper character reference.

25 MS. MCDUFFIE: Your Honor, we believe that it goes to the Kent Factors. We

1 believe also, based on your prior ruling, that the rules of evidence do not apply in this
2 matter and would ask Your Honor to . . .

3 THE COURT: Rules of evidence, I didn't rule that rules of evidence don't apply.
4 I ruled that hearsay is admissible.

5 MS. MCDUFFIE: Correct, Your Honor. Under . . .

6 THE COURT: She's not making the hearsay objection. Your objection was . . .

7 MS. DELANY: Improper character reference.

8 MS. MCDUFFIE: Your Honor, we're not going into the information that was
9 told to Investigator Clarke. I believe he was talking specifically about reputation and I
10 believe that is admissible under the rules and I think it also goes to the Kent factors Your
11 Honor must use to determine.

12 THE COURT: Which Kent factor are you referring to?

13 MS. MCDUFFIE: Specifically, Your Honor, number one whether waiver
14 required protection, whether protection of the community requires waiver. I believe it's
15 relevant to that. Also, the sophistication and maturity of the child, the Defendant's prior
16 record involvement with juvenile justice and adequate protection of public, specifically
17 factors one, six and seven and eight.

18 MS. DELANY: Your Honor, I think we're still subject to the rules of evidence
19 and I would ask that rules of evidence and I would ask that the rules of evidence . . .

20 THE COURT: You're the one that's objecting.

21 MS. DELANY: Your Honor, well, it's inadmissible under 404 (b), Your Honor.

22 THE COURT: Well, they are considered as to the Kent factor, isn't it?

23 MS. DELANY: 404 (a) evidence of person's character or trait is not admissible
24 for purpose of proving action and (b) is crimes, wrong or acts.

25 THE COURT: The crimes are considered as to Kent Factors, isn't it?

1 MS. DELANY: Well, they can be admitted to show like the motive, opportunity,
2 crime, that kind of thing.

3 THE COURT: Kent factor, the child's prior record involvement with the juvenile
4 justice system.

5 MS. DELANY: I don't think he's talking about his prior record. He doesn't have
6 a prior record. He's got one incorrigible charge. And Your Honor they also have to show
7 by clear and convincing evidence and again we're in hearsay within hearsay and I would
8 object on that basis as well. He's talking about what Fields told him that someone else, I
9 believe, told him.

10 MS. MCDUFFIE: Your Honor, what Ben Fields told him based on his
11 observations of Zacoata Lopey. Mr. Fields will also be here to testify. I'm merely laying
12 the foundation on how Mr. Clarke became affiliated with Mr. Lopey in the first place.

13 THE COURT: I'll sustain the objection.

14 Q. Mr. Clarke, you did become familiar with Mr. Lopey from Ben Fields?

15 A. That's correct.

16 Q. And based on that, what did you do with that information?

17 A. Basically, just took note of what he had to tell me. He had given me information
18 before about cases and things that were coming up, trends. I work very closely with him
19 and therefore I just made a mental note of the name and potentially keep an eye out.

20 Q. Taking you to December the 15th of 2010, please describe for the Court how you
21 became involved at the home invasion and sexual assault at [REDACTED]

22 A. I had reported for work normal time. Major Stan Smith who heads up CID, the
23 investigators, called us into the conference room and said we had a particularly sensitive
24 issue that had just taken place and we needed to kind of put everything on it that we could
25 and the two groups were divied up, one to collect evidence for potential stolen items that

1 had been perhaps pawned or sold in the area and the other group of detectives or
2 investigators were tasked for kind of canvassing the area around the victim's home to ask
3 questions and maybe collect evidence.

4 Q And later that day you again speak with Investigator Fields?

5 A I did.

6 Q And based on your conversations with him, what if anything did you do?

7 A Putting it in context, I had acquired the names of Zacoata Lopey that day through
8 what we were doing on our side. Then I spoke with SRO Fields and he said, hey, are you
9 working this case where a woman had been assaulted? I said, yes, in fact, I'm associated
10 with it. And he said, you remember the kid, Zacoata Lopey? And I said, yeah, I
11 remember you telling me about him. He said, look, for what it's worth, you might want
12 to talk to him. And I said, why? And he said, in his experience and in his dealings with
13 Zacoata before, he said, he's acting differently. And I said, in what way? He said, he's
14 being nice today. And it was about that same time through leg work and police work that
15 ...

16 MS. DELANY: Your Honor, I would object again. They're trying to backdoor
17 character in by saying, he's being nice today. It's still improper character evidence.

18 THE COURT: Overruled.

19 A And what happened at that point was, it was simultaneous collection of evidence
20 that when the name came up, I remembered my earlier conversation months earlier with
21 Deputy Fields about this individual and about that same time, I had discovered that
22 Zacoata Lopey lived literally across the street from the victim.

23 Q And because of that information, what did you then do?

24 A With that information, I immediately called Major Smith and said, I trust Ben,
25 I've dealt with him before on cases, there's something here, we need to talk about it. And

1 he said, what do you think and we just had a quick conversation over the phone and I
2 said, me and Investigator Miller are in the car and we can be at Spring Valley in ten
3 minutes. And he said, hang on a second. And he called the Sheriff, spoke to the Sheriff
4 and got clearance on that and we went to Spring Valley to make contact with Zacoata
5 Lopey.

6 Q. And at that time you needed permission to interview a witness at the school due to
7 Sheriff's Department protocol?

8 A. Right. It was kind of a memorandum that had come out that we needed to kind of
9 clear some things before because of some discrepancies with school districts policies on
10 who allows police to come in and how we enter and that kind of thing.

11 Q. And you went to Spring Valley High School on December 15th of 2010?

12 A. That's correct.

13 Q. And when you made contact with Mr. Lopey, where was he located?

14 A. He was at the school.

15 Q. And specifically where in the school was he?

16 A. At school resource office.

17 Q. And was he in custody at the time?

18 A. No.

19 Q. Was he handcuffed?

20 A. No.

21 Q. Please describe to the Court when you encountered Mr. Lopey, how that
22 encounter to place.

23 A. Mr. Lopey was sitting down at the little conference table that's inside Deputy
24 Fields' office. I introduced myself. Investigator Miller introduced himself. We spoke
25 briefly. Made it clear that we were there to talk to him about the serious matter that had

1 occurred the night before and within moments we went ahead and Mirandized him and
2 started taking a formal statement from him.

3 Q. Prior to that, did you ask for consent for DNA evidence?

4 A. Yes, I did.

5 Q. And did you memorialize that on Richland County Sheriff's Department on
6 Consent to Search for DNA Evidence form?

7 A. I did.

8 MS. MCDUFFIE: We'd have this marked as State's Exhibit, please.

9 (Consent to Search for DNA Evidence marked as State's Exhibit Number 10.)

10 Q. Investigator Clarke, is State's Number Ten the Consent for DNA Evidence that
11 Mr. Lopey signed?

12 A. Yes, ma'am.

13 Q. And please tell the judge the process in which you presented this to him and what
14 if anything was said or explained.

15 A. What I explained was we had gathered knowledge through our forensics that
16 potentially DNA had been recovered at the scene and other forensics may have been
17 collected. I then explained to Zacoata what we wanted to do. I explained this is a
18 painless process, takes just a second of his time, we would like to get a buccal oral swab
19 of his mouth. I then date it, sign this in the location and then read this to him and
20 explained to him what he was signing and why he was signing it. He agreed to sign the
21 form and then we took a buccal swab from his mouth.

22 Q. And he did consent to giving you a sample of his DNA?

23 A. That's correct.

24 Q. And he signed it acknowledging and that's State's Exhibit Ten?

25 A. Yes.

1 MS. MCDUFFIE: Your Honor, at this time we offer State's Exhibit Ten into
2 evidence.

3 THE COURT: Any objections?

4 MS. DELANY: Previous objections, Your Honor.

5 THE COURT: All right.

6 Q. You also said that you Marandized Mr. Lopey?

7 A. That's correct.

8 Q. Showing you State's Exhibit Three, please tell the Court what that document
9 contains.

10 A. It's our standard Advice of Rights form; been using it ever since I've been an
11 investigator. It enumerates your rights in writing. We read that to them, we explain that
12 to them. We have them sign that, then we explain what a waiver of those rights are and
13 usually we explain what the word coercion means if they have difficulty understanding
14 that and then it's my policy, I write the highest level of education someone's achieved
15 and can they read and write and is English their first language.

16 Q. Did Mr. Lopey have any trouble understanding you?

17 A. He appeared not to have any.

18 Q. Did he agree to waive his rights?

19 A. He did.

20 Q. And did he sign the form acknowledging that he agreed to talk to you and waive
21 his rights?

22 A. He did.

23 MS. MCDUFFIE: Your Honor, at this time we offer State's Exhibit Three into
24 evidence.

25 THE COURT: Any objections?

1 MS. DELANY: Just previous objection, Your Honor.

2 THE COURT: I'll allow it into evidence.

3 Q. After he consented to speak with you and waived his rights, did you begin to
4 question him and take a written statement from him?

5 A. I did.

6 Q. And is that what is contained in State's Exhibit Four?

7 A. Yes.

8 MS. MCDUFFIE: Your Honor, at this time we would offer State's Exhibit Four
9 into evidence.

10 THE COURT: Any objections?

11 MS. DELANY: Subject to our previous objection, Your Honor.

12 THE COURT: All right.

13 Q. Investigator Clarke, can you please read Exhibit Four for the Court?

14 A. The entire statement?

15 Q. Yes, please.

16 A. Okay.

17 (Witness begins to read from State's Exhibit Four.)

18 Question: Did you enter the home at [REDACTED]

19 He said: No.

20 Question: Did you ever go inside the home at [REDACTED]

21 His answer was: Yes, me and Larry Prophet went inside.

22 Question: Did you touch the Asian lady who lives at the home?

23 He said: No.

24 He later said: Yes.

25 Question: Have you ever taken something in the neighborhood that did not

1 belong to you?

2 Yes, at the woman's home, he answered.

3 Correction: I said, at the woman's home?

4 And his answer was: I took an iPod and a flat screen TV.

5 Question: Did you hold the shotgun on the woman?

6 Answer: I had it in my hand but did not point it at her.

7 Question: What were you wearing?

8 Answer: I had brown boots, polo. (He was specific about that.) Black pants, a
9 brown sweater with hood and a green scarf.

10 Question: What did you do with the clothes?

11 His answer was: I burned the scarf in the street near Dog's Towing Service.

12 Question: What was Larry Prophet wearing?

13 Answer: He had a green scarf on.

14 Question: Did he bring the shotgun.

15 Answer: I did. I came inside first.

16 Question: Did Larry Prophet have sex with the woman?

17 Answer: Yes, he told her to get naked. He told her to go into the room. He told
18 her to get on her back. He got on top of her. She started to get up. He said, turn around.
19 And he got onto her again.

20 Question: What was the woman doing?

21 Answer: She said, please, don't.

22 Question: Did you put your penis inside her?

23 Answer: Yes, in her vagina.

24 Question: Was she on her back or front?

25 His answer: Back.

1 Question: What were you looking for when you went inside the woman's home?

2 Answer: Money.

3 Question: Where is the shotgun?

4 Answer: Larry got the shotgun.

5 Question: What did you take from the home?

6 Answer: iPod and a television.

7 Question: What did you do with them?

8 Answer: We threw them in the woods near the side of the road near Dog's

9 Towing. I burnt the shirt there, too.

10 That was the end of that.

11 Q. During your conversation with him at Spring Valley High School, did he at first
12 deny raping the victim in this case?

13 A. Yes.

14 Q. Did you then say we have a sample of your DNA that testing could be done to
15 prove one way or the other?

16 A. I said, if there's DNA that belongs to you inside that woman's house, we need to
17 know about it.

18 Q. And, then, please tell the Court what Mr. Lopey said to you at that point.

19 A. You want me to refer to my statement? Is that okay? My follow-ups?

20 Q. Please.

21 A. I explained to Lopey that due to his cooperation, we had a sample of his DNA. I
22 explained if he had been in the home and touched anything, we may find evidence of his
23 presence. Lopey denied ever being in the victim's home. I told him that if he had
24 touched the victim in any way, his DNA could be present. He denied ever touching the
25 victim. I asked why his sister would suspect him doing something at the victim's home

1 at the mere presence of police cars. He could provide no answer to the question. I again
2 stated that several neighbors had mentioned his name as a person of interest. I explained
3 that the Richland County Sheriff's Department was curious as to the numerous mentions
4 of his name. He claimed to have not understand why they would say this. I mentioned
5 the well-known reputation of his words, his homeboy, unquote, Larry Prophet as a
6 trouble maker. I stressed these were indicators in our investigation and wanted to place
7 then in the proper context.

8 Do you want me to continue?

9 Q. Did that direct you as well in your follow-up - - You again began to talk about
10 finding DNA in the home and please tell the Court what he responded when you further
11 talked to him about the DNA.

12 A. I explained that we had a sample of his DNA. I stressed that if he ejaculated at all
13 in that home, he needed to explain when or if we found his semen in the home. He
14 paused and told me he did not use his vernacular, quote, unquote, nut ejaculate in the
15 home. However, Lopey was specific that he ejaculated into a napkin. When I asked
16 Lopey why he would ejaculate in a napkin instead of inside the victim, he said, quote,
17 because I know y'all can find it, unquote. He claimed it was Larry Prophet who
18 sodomized the victim and he could not watch Larry do this.

19 Q. And he told you in his written statement that he is the one that penetrated her
20 vaginally?

21 A. Correct.

22 Q. After the questioning occurred at Spring Valley High School, did you then take
23 him to the Richland County Sheriff's Department?

24 A. I did.

25 Q. Prior to that, did he encounter - - Did you speak with his mother?

1 A. I did.

2 Q. Please tell the Court about that conversation.

3 A. Deputy Fields told me that she was outside and would like to speak to me. I
4 agreed and we met in a separate office area, sat down, closed the door and briefly spoke
5 with her. She asked had he admitted to this. I said, yes. And when I explained who the
6 victim was, she became quite emotional and was upset and she said, can I see my son?

7 Q. And did you allow her to see Mr. Lopey?

8 A. I did.

9 Q. And please describe for the jury what if anything you overheard during their
10 conversation? I'm sorry, for the Court.

11 A. Refer to my notes. I made contact with Ms. Lopey in an adjoining conference
12 room. I explained the nature of the offence and the role her son allegedly played in it.
13 She asked if he, her son, had admitted to raping the woman. I told her he had implicated
14 himself and Larry Prophet in the rape. She began to cry and asked if she could see her
15 son before he left. I allowed her request. She sat down in front of her son and asked him,
16 quote, why would you do something like this, unquote. Lopey just shrugged and stated,
17 quote, we were looking for money, unquote.

18 Q. Did Mr. Lopey show any remorse that you saw?

19 A. No.

20 Q. At any point and time did he show any remorse?

21 A. No.

22 Q. Did you then go back to the Sheriff's or - - Did you then take Mr. Lopey into your
23 custody?

24 A. I did.

25 Q. And did you then drive around with him and try to find some of the property that

1 he said that he could lead you to.

2 A. We did.

3 Q. Did he lead you to any of the stolen property or burned property?

4 A. No, he did not.

5 Q. Did he tell you incorrect locations for those items?

6 A. He did.

7 Q. You then went back to the Sheriff's Department?

8 A. That's correct.

9 Q. And did you then - - What did you then do?

10 A. At that point I took him to my cubicle and sat him down and then we were trying
11 to do an information collection at that point. We had a lot of things happening at once.
12 Larry Prophet had been located by other investigators, specifically, Investigator Mauldin
13 and Isenhoward. They were dealing with that situation. I was talking to mine. I made
14 contact with Major Stan Smith who suggested I take a formal type statement to deal with
15 more specifics of what had happened.

16 Q. Hand you State's Exhibit Five. Is this the second statement that you took from
17 Zacoata Lopey?

18 A. Yes.

19 Q. And was he given Miranda warnings again at this point and time?

20 A. Yes, he was.

21 Q. Did he then waive those Miranda warnings?

22 A. He did.

23 Q. At any point and time did you threaten him?

24 A. No.

25 Q. Did you make him any promises?

1 A. No.

2 Q. Coerce him?

3 A. No.

4 Q. Did he ask for an attorney?

5 A. He did not.

6 Q. Did he tell you that he did not want to speak with you?

7 A. No.

8 Q. Did he ask for his mother or anyone else?

9 A. No.

10 Q. Did he appear to understand you?

11 A. Yes.

12 Q. At any point and time did you ever have any doubt, any cause of any doubt of
13 could he understand you or mental functioning?

14 A. None.

15 Q. And he gave you this statement that is State's Exhibit Number Five?

16 A. That's correct.

17 MS. MCDUFFIE: Your Honor, at this time we would offer State's Exhibit Five
18 into evidence.

19 MS. DELANY: Subject to our previous objection, Your Honor.

20 THE COURT: Noted.

21 Q. Please publish State's Exhibit Number Five for the Court. Please read the
22 statement for the Court.

23 (Witness begins to read from statement of Zacoata Lopey.)

24 A. The questioner in this is me. My name is Joseph Clarke. The answerer in this is
25 Zacoata Lopey. This is a standard Q and A that we do.

1 Question: How old are you?

2 Answer: 14.

3 Question: Where do you live at this time?

4 He said: [REDACTED]

5 Question: Is English your first language?

6 He said: Yes.

7 Question: What is the highest level of education you have achieved?

8 Ninth Grade.

9 Question: Are you able to read and write?

10 He responded: Yes.

11 Question: Do you understand the Miranda warning I read to you?

12 He said: Yes.

13 Question: Tell me about the night you and Larry Prophet went inside the old
14 lady's home across the street from your house.

15 Answer: Larry and me rode his moped down to my house from Larry's house.

16 Larry had the shotgun with him. We decided to go over to the old lady's house. (That's
17 how he's referring to her the whole time.) We were looking for money. We went to the
18 back door and opened it. We then walked across the street to her house. We went to the
19 back door and opened it. We then opened the sliding glass door and entered the home. I
20 had the shotgun and we walked in on the woman as she was watching television. She
21 started to yell and go - - (And he described it because I asked him to describe what she
22 said.) She went, uhhhh. (Witness makes a gesture.) I told her we were not going to hurt
23 her. I asked where the money was and she told me she did not have any money. I
24 handed the shotgun to Larry and went to look for stuff. I came back into the room with
25 the lady and Larry. He handed me back the shotgun. He, Larry, then went to look for

1 stuff. Larry came back into the room and we took the lady to the bathroom. Larry told
2 her to get naked. The woman said, no. We then took her to a bedroom and she took off
3 her clothes. Larry laid the woman on the bed and on her back.

4 (I apologize.)

5 He was hard and he pulled his dick out. After unzipping his pants, I watched as he
6 started to have sex with the woman. She said, no. She then tried to get up and Larry told
7 her to turn over. I stood there but did not watch. He made the woman moan as he started
8 to do something in her butt. When he was done, I was hard and I unzipped my pants and
9 pulled my dick out. I then started to have sex with the woman in her vagina. I then
10 finished and I came in a napkin which I placed in my pocket. I later found the napkin in
11 my clothes this morning and I flushed the napkin at my house. I took a flat screen TV
12 and an iPod from her house. Larry had already left the home. I took the TV and the iPod
13 to Roof Street and laid them on the ground near some woods. I then walked up Nancy
14 Avenue. I took off the green shirt which had hid my face. I threw the shirt under some
15 bushes. I then took off my brown, hooded shirt and threw it in the median on Nancy. I
16 then walked to Larry's home on Humphrey Drive. I met with Larry and he did not have
17 any stuff from the lady's house which I could see. I then slept in the chair at Larry's,
18 then walked home before catching the school bus at my home.

19 (And then I followed up with a Q and A.)

20 Question: What was your purpose to go in the woman's home?

21 Answer: For money.

22 Question: What made you decide to have sex with the woman?

23 Answer: I don't know. I just did.

24 Question: Why did you ejaculate in a napkin?

25 His answer: Because I did not want to bust in her.

- 1 Question: Why would you care if you ejaculated inside of her?
- 2 Answer: Because I know y'all can find it like that.
- 3 Question: So you know breaking in and raping the woman was a crime?
- 4 Answer: I did not break in the door. It was unlocked.
- 5 Question: Did you have permission to enter her home?
- 6 Answer: No.
- 7 Question: Did you know that raping an eighty year old woman was wrong?
- 8 Answer: Yes, sir.
- 9 Question: Why did you take the shotgun with you?
- 10 We just took it, he said.
- 11 The shotgun was loaded, correct?
- 12 Yes, sir.
- 13 Describe the shotgun to me.
- 14 Had a long barrel with a little bit of rust on it. It has a button on the top that
- 15 makes the barrel open and it holds one shell.
- 16 Did the shotgun have a flashlight taped to the barrel?
- 17 Yes, sir.
- 18 What did you take from the home?
- 19 A flat screen TV and iPod.
- 20 Question: Did you burglarize any other home?
- 21 Answer: No
- 22 End of statement
- 23 Q. And that was the statement given to you by who?
- 24 A. Zacoata Lopey.
- 25 Q. And you see him in the courtroom today?

1 A. Yes.

2 Q. Could you please identify him for the Court?

3 A. That man right there. (Witness gestures.)

4 Q. What color shirt is he wearing?

5 A. Looks like green.

6 MS. MCDUFFIE: Your Honor, reflect that that identified the Defendant.

7 THE COURT: So reflected.

8 Q. After you took this statement from Mr. Lopey, did you have any further contact
9 with him?

10 A. Just what it took, you know, to process him for being incarcerated.

11 Q. And did you see Larry Prophet that evening?

12 A. I did.

13 Q. With Mr. Lopey?

14 A. He walked by.

15 Q. And please describe that encounter for the Court.

16 A. It was a meeting of friends. Larry said something to the effect of, you know, bro,
17 we're going to be okay or something like that and then gave him a dap.

18 Q. Please describe what a dap is for the Court.

19 A. Dap is just where you reach down, you know, and kind of like a bro hug, kind of
20 hit him in the shoulder, you know, popped him one time.

21 Q. At any point and time did Mr. Lopey ever show any remorse?

22 A. No.

23 Q. Ever apologize for his actions?

24 A. No.

25 Q. Did he appear to understand law enforcement in the way law enforcement works?

1 JOE CLARKE – CROSS EXAMINATION BY MS. DELANY

2 A. I assume he does, yes.

3 Q. Did he tell you about how he tried to destroy evidence or hide evidence so that
4 y'all would not be able to obtain that evidence?

5 A. Absolutely.

6 Q. And what evidence was that he hid or destroyed?

7 A. Well, he described it as his ejaculate being collected in something and he would
8 do that so that he -- He knew -- He told us this at Spring Valley that he knew we could
9 find things like that. He also -- He volunteered that he had burned his clothing.

10 Q. And did he also try and get rid of the property that was taken from the house that
11 night?

12 A. Yes, he did.

13 Q. And was that property ever recovered?

14 A. Never found it. Me and Investigator Miller spent four hours on a hillside looking
15 for a shotgun.

16 Q. And that property was never found?

17 A. We never found the shotgun, the woman's television, iPod, anything.

18 MS. MCDUFFIE: Beg the Court's indulgence. No further questions for this
19 witness.

20 THE COURT: Cross examination.

21 CROSS EXAMINATION BY MS. DELANY:

22 Q. Did you say you spent fours looking for it on the hillside?

23 A. That's correct.

24 Q. Was that with him in the car or?

25 A. No, that was the next day.

1 Q. I know we've covered some of this. You were present during his interview at
2 both the Sheriff's Department and Spring Valley High School, is that right?

3 A. Yes, ma'am.

4 Q. And you documented that in your investigative follow-up report, is that right?

5 A. That is correct.

6 Q. Now, Zocoata's name may come up in your investigation, you knew that he was
7 at school, right?

8 A. I did not know he was at school when his name came to my . . .

9 Q. But you learned later that he was at school?

10 A. Yes, I learned later he was at school, yes.

11 Q. And so you and Miller headed down there and told Fields to get him, is that right?

12 A. In a manner of words, yes.

13 Q. So y'all went out to Spring Valley High School and when you met with Zacoata,
14 you were in the school resource office?

15 A. That is correct.

16 Q. And you and Investigator Miller interviewed him at that time?

17 A. Correct.

18 Q. And School Resource Officer, Fields, was also there, is that right?

19 A. Correct.

20 Q. And you introduced yourself and told him you were investigating some burglaries
21 near his home, is that right?

22 A. That's correct.

23 Q. Did you know that he was a special-needs student?

24 A. No.

25 Q. Did you know he was in a self-contained classroom?

- 1 A. No.
- 2 Q. Did you ever allow his mother to come in?
- 3 A. Ever allow her to come in?
- 4 Q. Did you ever ask him if he wanted . . .
- 5 A. She never expressed to me and she never expressed to me that she wanted to
- 6 come in.
- 7 Q. She was never present during the questioning?
- 8 A. That's correct.
- 9 Q. And he never had an attorney present?
- 10 A. Correct.
- 11 Q. At no time was there a principle or administrator there during the questioning?
- 12 A. That's correct.
- 13 Q. You had a final DNA waiver, right?
- 14 A. Yes.
- 15 Q. And you told him you were investigating a serious crime from the night before
- 16 involving an eighty year old woman, is that right?
- 17 A. Something to that effect, yes.
- 18 Q. You had him sign a waiver of Miranda rights, right?
- 19 A. Correct.
- 20 Q. You asked him about his activities the day before?
- 21 A. I did.
- 22 Q. He said he had ridden a bus to and from school? Does that sound right?
- 23 A. From the day before?
- 24 Q. Yes.
- 25 A. Yes.

- 1 Q. He said he went to the convenient store to buy cigarettes?
- 2 A. Correct.
- 3 Q. Said he went to his friend, Larry Prophet's home?
- 4 A. Correct.
- 5 Q. And at this point when you first talked to him, you said he stayed there all night,
- 6 right?
- 7 A. Stayed where?
- 8 Q. At Larry Prophet's house.
- 9 A. Yes.
- 10 Q. He said his friend, Andre, stopped by but that was it?
- 11 A. Correct.
- 12 Q. This was when you were initially talking to him?
- 13 A. Correct.
- 14 Q. Then he said he went home in the morning and took a bus the school?
- 15 A. Correct.
- 16 Q. And you mentioned that he was very soft-spoken in his answers?
- 17 A. Yes.
- 18 Q. You said he looked down most of the time?
- 19 A. Downcast, yeah.
- 20 Q. And by that, you mean physically looking downward or do you mean?
- 21 A. Sitting like this. (Witness demonstrates.)
- 22 Q. Okay. Did you have to ask him several times to speak up?
- 23 A. Yes.
- 24 Q. Just reading through your notes, they're really detailed. Was that because you
- 25 were making them contemporaneously or how were they so detailed?

1 A. It's my nature, just what I do and I just keep track. I had another investigator
2 there and we pace each other when we're doing the statements and that's why I take
3 copious, mental notes that I then reduce to writing.

4 Q. Do you take a laptop with you?

5 A. No.

6 Q. Y'all kind of made some small talk. At that point, y'all hadn't gotten any kind of
7 confession out of him?

8 A. We made small talk.

9 Q. You -- I'm looking -- If I could have you look at your investigative follow-up
10 report. Maybe you can explain -- Go to line three, three paragraphs down where we
11 continue with the small talk for a little bit more. Who was talking to who?

12 A. I apologize, I want to make sure I'm seeing where you're saying.

13 Q. And I know -- Can I approach, Your Honor?

14 THE COURT: Yes, ma'am.

15 Q. I know we have slightly different copies.

16 A. Yes, the way it's impressed on yours.

17 Q. Next page.

18 A. Next page, continue with the small talk, okay, I see. Your question, ma'am?

19 Q. Who was talking about what at that stage?

20 A. That's just a reference that we were, you know, friendly manner.

21 Q. And then after that you and Investigator Miller went out in the hall along with the
22 resource officer?

23 A. That's correct.

24 Q. At this time, was he a suspect?

25 A. Yes.

1 Q. And you were curious about his demeanor, right?

2 A. I was.

3 Q. And that's because Fields lead you to believe that he would be antagonistic.

4 A. Correct.

5 Q. So you just decided to just go ahead and confront him about the incident from the
6 night before?

7 A. Yes, I figured, let's take a direct approach at this point and see where this was
8 going to go.

9 Q. And, let's see, you reminded him that you just took a DNA sample?

10 A. I did.

11 Q. And if he had been in the home and touched anything, you could find evidence of
12 that?

13 A. Said it was possible.

14 Q. You mentioned the reputation of his friend, Larry Prophet, as a trouble maker?

15 A. Yes, I had many dealings with Larry Prophet in the past for burglaries.

16 Q. And, again, at this point, you did not know that you were questioning a special-
17 needs child?

18 A. No.

19 Q. But his mother was not present?

20 A. I knew his mother wasn't present, yes.

21 Q. And there was no lawyer present.

22 A. Correct.

23 Q. And no school administrator present.

24 A. Correct.

25 Q. And you're trained how to interrogate people, right?

- 1 A. Trained?
- 2 Q. You've had training in all that?
- 3 A. I have.
- 4 Q. How many trainings do you think you've been to on that? How long have you
- 5 been with the Sheriff's Department?
- 6 A. I've been a police officer for twelve years. I've been with the Sheriff's
- 7 Department since 03. I've been an investigator since late, early 07.
- 8 Q. Do you think you have been to more than one?
- 9 A. Yes.
- 10 Q. Have you been to more than five?
- 11 A. Maybe.
- 12 Q. Maybe? More than ten?
- 13 A. No.
- 14 Q. How long has Investigator Miller been with law enforcement?
- 15 A. Twenty-five years.
- 16 Q. Do you guys go to similar training or any kind of . . .
- 17 A. Me and Miller or just in general?
- 18 Q. Yeah, you and Miller.
- 19 A. Not particularly, we just . . . He's been trained in what I've been trained in. We've
- 20 been to a seminar, but it had nothing to do with interrogation.
- 21 Q. Now, Miller told him that he got his alibi, is that correct?
- 22 A. That's correct.
- 23 Q. And y'all started talking again about what if somebody had hurt his grandmother,
- 24 is that right?
- 25 A. That is correct.

1 Q. And at that point, he said, I didn't rape no woman.

2 A. That is correct.

3 Q. Now, at that point, he admitted to entering into the home through an unsecured
4 backdoor, is that aright?

5 A. That is right.

6 Q. He and Larry Prophet went in there?

7 A. That's true.

8 Q. Did he carry the shotgun?

9 A. Yes.

10 THE COURT: Excuse me, I'm not sure who y'all meant who "he" was. I'm
11 sorry.

12 MS. DELANY: We're talking about Zacoata's statement to law enforcement,
13 Your Honor.

14 Q. He said they were looking for things to steal, is that right? And I'm going off
15 your follow-up pretty much, taking a lot of things off your follow-up.

16 A. Well, I mean, just ask the question, in my opinion so I can . . .

17 Q. Did he say they went in there to look for things to steal?

18 A. In a manner of words, yes

19 Q. Did he say that Larry told the woman to get naked?

20 A. Yes.

21 Q. Did he deny raping her in that statement?

22 A. Yes.

23 Q. But he said he ejaculated into a napkin?

24 A. That is correct.

25 Q. And he said Larry sodomized the victim?

- 1 A. That is correct.
- 2 Q. And he said that when he left he took some stolen items and placed them by a
3 road? Is that right?
- 4 A. Yes.
- 5 Q. And then he went back to Larry's house for the rest of the night?
- 6 A. Correct.
- 7 Q. Okay, and at that point you called Major Smith and told him you had gotten a
8 confession?
- 9 A. That's correct.
- 10 Q. Okay and that Larry Prophet was, Larry Prophet was the co-defendant?
- 11 A. Correct.
- 12 Q. And he told you to bring Zacoata to the Sheriff's Department?
- 13 A. Correct.
- 14 Q. And then Fields told you that his mother was in the lobby?
- 15 A. Correct.
- 16 Q. And y'all talked to her and told her what was going on?
- 17 A. Yes, ma'am.
- 18 Q. And then you took him to the Sheriff's Department?
- 19 A. Yes.
- 20 Q. And on the way you asked him to show you where he put the items and where he
21 burned the clothes?
- 22 A. Yes.
- 23 Q. And you described, basically, you said, y'all rode around for the next hour on a
24 search?
- 25 A. That is correct.

1 Q. When you got to the Sheriff's Department, Larry Prophet was being questioned,
2 is that right?

3 A. I knew Larry Prophet was in the building. I didn't know exactly what was
4 happening at that time.

5 Q Okay. But you got back to the Sheriff's Department and at that point conducted a
6 formal question and answer with Mr. Lopey.

7 A. That is correct.

8 Q. Did you video tape any of the questioning of Mr. Lopey?

9 A. No.

10 Q. Now, you typed up his statement, right? Were you the one that typed it?

11 A. Yeah, I typed while I am taking it from him in his presence.

12 Q. And you were the one - - I believe there's two statements. One handwritten and
13 one typed. You handwrote the handwritten one?

14 A. Correct.

15 Q. Did you type up word for word everything that he said to you or did you type up
16 what you felt was relevant?

17 A. The way I do that, is I ask: This is your story? And if he gets ahead of me where
18 I can't type exactly what he's saying, I'll tell him to stop, so in the manner of the second
19 statement that is word for word what he told me.

20 Q. Some of this isn't just more like your interpretation of what he said or more
21 generalized?

22 A. What in particular?

23 Q. I'm thinking like page 2 of his typed statement: I then walked up Nancy Avenue.
24 Did he actually say: I then walked up Nancy Avenue?

25 A. Is the cadence of the words or what is it?

1 Q. I'm just asking - - I mean, is that the way he said it?

2 A. That's the way he explained it to me. That's why I have quotations and things
3 like the sounds the victim made.

4 MS. DELANY: Beg the Court's indulgence, Your Honor. No further questions,
5 Your Honor.

6 THE COURT: Redirect?

7 MS. MCDUFFIE: No, Your Honor.

8 THE COURT: You may step down.

9 MR. MAY: May we approach?

10 THE COURT: Yes.

11 (Bench conference.)

12 THE COURT: Mr. May is having some difficulty seeing because he has broken
13 his glasses. It is late in the day anyway. I think this is the proper time to recess until
14 tomorrow. We will begin tomorrow at 9:30

15 MR. MAY: Thank you, Your Honor.

16 MS. CAMPBELL: Thank you, Your Honor.

17 (Court is in recess.)

18 (Court reconvenes on February 22, 2012.)

19 THE COURT: Let's come to order, please. I have been meeting with the
20 attorneys this morning in chambers and Ms. Delany, lead counsel for the juvenile, is ill
21 and too sick to be here. So we discussed whether we should continue the case. Mr. May,
22 and Mr. May, you please stand and correct me if I say anything that is incorrect, and, you
23 too, Ms. Campbell. Mr. May asked me to consider a continuance because she is the lead
24 counsel. There are several witnesses that are going to be called today by the Solicitor's
25 Office and some of those witnesses, I think, it had been worked out with Ms. Delany was

1 prepared to cross examine certain witnesses and Mr. May had prepared to cross examine
2 certain other witnesses and I asked Mr. May to consider going forward with calling
3 just the witnesses that he was prepared to cross examine and he kindly agreed to look into
4 that and I guess that's what you were doing, Mr. May?

5 MR. MAY: Yes, Your Honor. I've discussed this case with Ms. Delany. But
6 hesitant to go forward, but to try to assist the Court, I will go forward and Ms. Campbell
7 gave me five names of people, the last five people they intended to call and she gave five
8 names; I can do four of them. Again, I'm hesitant to do it because it's not my arena.

9 THE COURT: Are you objecting to do it?

10 MR. MAY: I'm not objecting. I'll be happy to assist the Court, but my hesitation
11 is out there.

12 THE COURT: Thank you. There are a lot of people here. I believe some of the
13 victim's family is here anyway, and I just hate to run everybody back and forth if we can
14 get around it. You have any objections to this procedure, Ms. Campbell?

15 MS. CAMPBELL: No, sir.

16 THE COURT: I appreciate your cooperation, Mr. May, and we will go forward
17 and the case will go forward.

18 MS. CAMPBELL: Your Honor, there are a couple more witnesses, but they are
19 ones from my understanding that Ms. Delany would most likely handle, but that would be
20 helpful.

21 THE COURT: Mr. May, if there are some witnesses that you feel like you are not
22 prepared to cross examine, we can do that on some other day.

23 MR. MAY: Okay, she just gave me five names. I'll do four of them. I can do
24 three of them. I can take the four . . .

25 MS. CAMPBELL: It doesn't matter.

1 KIMBERLY BLACK – DIRECT EXAMINATION BY MS. WALKER

2 THE COURT: Apparently, y'all know who these witnesses are.

3 MS. CAMPBELL: We gave them the names. Call those witnesses that you are
4 prepared to cross examine.

5 MS. WALKER: The State calls Kimberly Black.

6 THE COURT: Kimberly Black.

7 THE COURT: Ms. Campbell, have you had an opportunity to review the order
8 on what we discussed in chambers?

9 MS. CAMPBELL: Yes, sir, I was looking at it right now. We do object to . . .

10 THE COURT: All right, we'll deal with . . .

11 MS. CAMPBELL: It's number 5, I think that was the reason you were turning
12 this over. It was pursuant to the Code.

13 MR. MAY: I'll be happy to take that out.

14 THE COURT: Any other objections, Ms. Campbell?

15 MS. CAMPBELL: No, Your Honor, just haven't had a chance to read it.

16 THE COURT: We'll give you time to read it, and we'll address it later.

17 KIMBERLY BLACK, being duly sworn, testified as
18 follows:

19 THE COURT: Left hand on the Bible, raise your right and face me, please. Do
20 you swear or affirm that the testimony that you are about to give will be the truth, the
21 whole truth and nothing but the truth so help you God?

22 MS. BLACK: I do.

23 THE COURT: Thank you, Ms. Black, please have a seat and watch the step.

24 KIMBERLY BLACK – DIRECT EXAMINATION BY MS. WALKER:

25 Q. Good morning.

1 A. Good morning.

2 Q. You were employed up until recently at Alvin S. Glenn?

3 A. Yes, ma'am.

4 THE COURT: I'm sorry, employed where?

5 MS. BLACK: Alvin S. Glenn Detention Center.

6 Q. And specifically you began working in the juvenile unit?

7 A. Some time in April.

8 Q. In April?

9 A. Uh huh.

10 Q. While you were there, did you have interactions with Zacoata Lopey?

11 A. Yes.

12 Q. I would like to speak with you about a few of those interactions. Can you tell the

13 judge - - Were you present for a meeting between Mr. Lopey and his mother?

14 A. On a visit I was present on the visit with him and his mom and his mom didn't

15 stay no more than five minutes because the only thing he was talking about was getting

16 high, smoking . . .

17 MR.MAY: Objection, Your Honor. I would object to 404 (b). This is prior bad

18 acts. I don't understand how any of this testimony is going to go to the probable cause of

19 the charge and again Your Honor, this . . .

20 THE COURT: Ms. Walker?

21 MS. WALKER: Your Honor, I think, first of all it goes to prior acts admission by

22 Mr. Lopey. Second of all, this is the story that she can tell you is going to address a

23 number of the Kent Factors specifically. I think that's the purpose of the hearing. I think

24 it would be appropriate for you to understand exactly . . .

25 THE COURT: You're objecting the relevancy of it?

1 MR. MAY: Your Honor, relevance is an issue, also, I object under 404 (b). I
2 think that State v. Smith says that criminal case, which this is criminal case or other
3 crimes or bad acts must be proved by clear and convincing evidence and must go to either
4 motive, identity, the existence of a common scheme or plan, the absence of mistake or
5 accident or intention. Your Honor, again without some kind of guidance of, no guidance
6 on how to proceed in this hearing, I believe that that is violative of 404(b) and it is
7 inadmissible as improper character assassination by the State when we have not
8 positioned . . .

9 MS. WALKER: Your Honor, this is not his prior bad act. One of the Kent
10 Factors is the - - If custody - - He's talking about wanting to get out so he can go smoke
11 marijuana, I think that is appropriate for that factor and I think State versus Beck says
12 that statement is not a prior bad act.

13 THE COURT: Mr. May, the eighth Kent Factor says I'm supposed to consider
14 prospects of adequate protection of the public and likelihood of reasonable rehabilitation
15 of the child by the use and procedures, services and facilities currently available to the
16 Family Court. Why would it not be relevant to that issue?

17 MR. MAY: The fact of a person wanting to smoke marijuana does not go to
18 protection of the community. Unfortunately, I know there's a lot . . .

19 THE COURT: How about likelihood of rehabilitation.

20 MR. MAY: I know a lot of attorneys who smoke marijuana regularly. That
21 doesn't mean that they can't practice law. The fact that marijuana is not a vindictive*
22 criminal activity besides the very fact that it is because the legislature says it's illegal. It
23 is a bad act if he says, hey, I'm going to get high, I'm going to go do X, Y, or Z, those are
24 - - They're trying to backdoor character evidence. Once his character comes into issue,
25 once we put it in, they can then come back and try to assassinate his character, but until

1 that point, it's improper.

2 MS. WALKER: And I would agree with Mr. May as for as criminal trial that we
3 can't go into character until they put it in issue, but if one of the factors is whether or not
4 this young man can be rehabilitated - - DJJ for this burglary and rape to getting high,
5 then I think that speaks directly on that eighth Kent factor.

6 THE COURT: I'm going to allow it.

7 MR. MAY: Okay.

8 THE COURT: All right, thank you.

9 Q. Ms. Black, would you continue with what you were saying when you said you
10 were present for a meeting, contact with his mother, go ahead.

11 A. She didn't see him no more than five minutes because of the conversation of him
12 talking about smoking weed and getting high, so she didn't stay no more than five
13 minutes.

14 Q. Did you have an occasion to write Mr. Lopey up for a sexual comment that he
15 made to you?

16 A. I did.

17 Q. Could you tell the judge . . .

18 MR. MAY: Judge, this a prior bad act. It's a write-up . . .

19 THE COURT: Ms. Walker?

20 MS. WALKER: It's the same argument, judge. We're talking about whether or
21 not this young man can be rehabilitated. This comment was sexual in nature. He was
22 written up for it and it goes to his behavior in jail and whether or not he's on the path to
23 being rehabilitated or can be rehabilitated.

24 THE COURT: Overruled.

25 Q. Go ahead.

1 A. Okay, the incident took place on July 19th of 2011. I was the dorm officer that
2 day that he was assigned to. He was on lockdown and on the above date at approximate
3 time while conducting a security check in Bravo dorm, juvenile Lopey told me: Open
4 your door so he can come out and eat my pussy.

5 Q. And he was written up for that?

6 A. Yes.

7 Q. And did he apologize for that at some point?

8 A. He did eventually apologize and then he did ask me why did I write him up
9 because that was on going to have something to do with his charge.

10 Q. So he didn't want to get written up because . . .

11 A. It would hinder his charge.

12 Q. Hinder his charge. Did he request medical attention at some time or at some point
13 from you?

14 A. Yeah, he did and this was in that same week. This took place of July 14th 2011.

15 Q. And what did he initially tell you that his medical . . .

16 A. He was complaining about chest pains and on the above date and approximate
17 time while working in Bravo dorm, I received a medical request form juvenile Lopey. I
18 *Black did read the request and the complaint or illness stated: I got a big dick, a/k/a, a
19 great big dick. The request form was - - The medical request form was given to Lt.
20 Malloy (phonetic) and she told me to do an incident report on it.

21 Q. And that was done?

22 A. Uh huh.

23 MS. WALKER: No further questions

24 THE COURT: Cross examination.

25 MR. MAY: Please the Court, Your Honor.

1 KIMBERLY BLACK – CROSS EXAMINATION BY MR. MAY

2 CROSS EXAMINATION BY MR. MAY:

3 Q. Now, for the incident on July 14th, ma'am, was that - - You're saying you're
4 doing a security check?

5 A. The one on the 19th was when I was doing a security check.

6 Q. So you're doing a security check and the security check is when you're going
7 down the hall where the detainees are housed and ensure that they are there?

8 A. Yes.

9 Q. So you're going down there - - So there's doors on either side, right?

10 A. Yes, it's basically like this size. It's shaped like this kind of way, I mean, you
11 walk - - It's like a square room. (Witness gestures.)

12 Q. Okay, but are there detainee's rooms?

13 A. Yes.

14 Q. So there's children's room all around, correct?

15 A. Yeah.

16 Q. And one of those rooms was this child's?

17 A. He was assigned to B, number 8.

18 Q. Okay, so I assume there's B-7 on one side and B-6 on the other, B-7 and B-9,
19 right?

20 A. It was 1 through 8.

21 Q. One through eight. So there's B-7 next to him, right?

22 A. Uh huh.

23 COURT REPORTER: Answer yes or no, please.

24 A. Yes.

25 Q. So when you have B-7 next to him and he says, come here and let me eat your

1 pussy, did you ask him why he said that?

2 A. No

3 Q. Now, regarding the medical attention request form, now, it's actually a medical
4 request form that he filled out, correct?

5 A. Yes.

6 Q. Did you ask him why he wrote that on there?

7 A. No.

8 MR. MAY: I have no further questions.

9 THE COURT: I have a question, Ms. Black. What is your first name?

10 MS. BLACK: Kimberly.

11 THE COURT: Thank you, Ms. Black. You may step down and watch your step.

12 MS. WALKER: The State calls Rachel Grant.

13 THE COURT: Rachel Grant.

14 MR. MAY: Your Honor, it's my understanding that she's DNA and we're not
15 going to contest the DNA at this hearing.

16 THE COURT: Is there a stipulation of any kind?

17 MS. WALKER: That's she an expert?

18 MR. MAY: For this hearing, yes. I mean, we're not challenging it at this
19 hearing. We just want to ask one question and be done with this issue.

20 RACHEL GRANT, being duly sworn, testified as follows:

21 THE COURT: Ma'am, before you sit down, place your left hand on the Bible,
22 please, and raise your right. Do you swear or affirm to tell the truth, the whole truth and
23 nothing but the truth so help you God?

24 MS. GRANT: I do.

25 THE COURT: Thank you. Please have a seat and watch your step. Would you

1 RACHEL GRANT – DIRECT EXAMINATION BY MS. WALKER

2 RACHEL GRANT – CROSS EXAMINATION BY MR. MAY

3 state your name, ma'am?

4 MS. GRANT: Rachel Grant.

5 THE COURT: Ms. Walker.

6 MS. WALKER: Thank you, judge.

7 DIRECT EXAMINATION BY MS. WALKER:

8 Q. I'm going to hand you some charts, please. Do they accurately reflect your
9 findings in this case?

10 A. Yes

11 MS. WALKER: Your Honor, at this point move State's Exhibit Number Eleven
12 into evidence.

13 THE COURT: Any objection?

14 MR. MAY: Your Honor, one objection. I would note - - -

15 CROSS EXAMINATION BY MR. MAY:

16 Q. - - -Is it correct all these specifics are based on unrelated people, correct?

17 A. Correct.

18 Q. So when it doesn't say unrelated on some of those?

19 A. I'm sorry, repeat that question.

20 Q. On some of these, it doesn't say - - I'm sorry, may I approach?

21 THE COURT: Any objection to this, Ms. Walker?

22 MS. WALKER: No, Your Honor.

23 Q. There's nothing that says unrelated here that needs to be in there.

24 A. Well, there's two different types of statistics that are done. There are a deploy
25 hypothesis* which are basically called a random match probability and the Y-(inaudible)

1 RACHEL GRANT – REDIRECT EXAMINATION BY MS. WALKER

2 that case is anybody who is paternally related to a male individual so in some stats you
3 will see Mr. Lopey or paternally related male individual and others you won't see related
4 so I believe in that one, the one you just showed me is unrelated.

5 Q. They're unrelated?

6 A. Yes. They're two types, some related, some are not.

7 Q. That's fine, just want to make sure.

8 REDIRECT BY MS. WALKER:

9 Q. The cutting from the tissue in Elaine Henrick's criminal sexual conduct kit, that
10 was a DNA match for Zacoata Lopey?

11 A. Yes, there were actual several cuttings that were made. The best statistical match
12 or the best cutting that I got was item 1.2 and it did match Mr. Lopey, yes.

13 MS. WALKER: No further questions.

14 THE COURT: State's Eleven is entered without objection.

15 MS. WALKER: I'm sorry, Your Honor.

16 Q. The DNA from the rectal swab of Elaine Henrick, did you test that?

17 A. Yes, the DNA results of semen on the rectal swab also matched Mr. Lopey.

18 Q. And as you said it was item 1.1 was from cutting of the tissue, you tested that?

19 A. Yes, there is 1.1 to 1.6.

20 Q. And those were cuttings and those matched Zacoata Lopey?

21 A. Correct.

22 Q. And then you went and did a more detailed test?

23 A. Our laboratory has the capability of using a kit that basically will - - Any DNA
24 that is present - - It specifically concentrates on male DNA. We use it specifically for
25 sexual assault cases and in this case rape was developed a halfway profile basically

1 RACHEL GRANT – RECROSS EXAMINATION BY MR. MAY

2 meaning that a male individual, any paternally related male individual was going to have
3 that profile and that particular analysis on the cutting and we're able to get a conclusions
4 from that.

5 Q. And in doing that test, on items 1.1 and 1.2, what were your results and that was
6 cutting from tissue and Elaine Henrick's criminal sexual conduct kit?

7 A. Correct. From cuttings 1.1 and 1.2, those were mixtures and major contributor
8 was Mr. Lopey and anybody who's paternally related to him cannot be excluded as well.

9 Q. And on item 1.3 and 1.4 as well, more cutting from criminal sexual conduct kit?

10 A. Correct.

11 Q. And those were matches for?

12 A. Mr. Lopey. Item 1.3 was a match to Mr. Lopey. Item 1.4 was a mixture and Mr.
13 Lopey was the major contributor and once again with any paternally related male
14 individual.

15 Q. And item 1.5, an additional cutting from the tissue.

16 A. Yes, it belonged to him as well.

17 Q. And finally, item 1.6?

18 A. Yes, correct.

19 MS. WALKER: No further questions.

20 RECROSS BY MR. MAY:

21 Q. Now, when you say it matches, just want to make sure we're clear. When you
22 look at the different locations and what you're looking for is random repeats of material,
23 correct?

24 A. Uh huh.

25 Q. And what you're looking at these random repeats - - When you say a match, is

1 BEN FIELDS – DIRECT EXAMINATION BY MS. MCDUFFIE

2 that what when you take a buccal swab from him, that they appeared to have the same
3 number of random repeats at those locations?

4 A. Correct.

5 Q. And again, these statistics are against the unrelated population and doesn't take
6 into account sexual simulated males.

7 A. That is for the population statistics for random match probability.

8 MR. MAY: Thank you very much,

9 THE COURT: You may step down.

10 MS. MCDUFFIE: May it please the Court, Your Honor. The State would call
11 Ben Fields.

12 THE COURT: Ben Fields.

13 BEN FIELDS, being duly sworn, testified as follows:

14 THE COURT: Mr. Fields, please place your left hand on the Bible up here, sir,
15 and raise your right and face me. Do you swear or affirm that the testimony that you are
16 about to give will be the truth, the whole truth and nothing but the truth so help you God?

17 MR. FIELDS: Yes, sir, I do.

18 THE COURT: Thank you, sir. Have a seat and watch your step.

19 DIRECT EXAMINATION BY MS. MCDUFFIE:

20 Q Investigator Fields, where are you currently employed?

21 A. Richland County Sheriff's Department.

22 Q. And what are your duties with the Sheriff's Department?

23 A. I'm a Senior Deputy, SRO at Spring Valley High School.

24 Q. And please tell the judge what you do at Spring Valley High School.

25 A. One of the things I do at Spring Valley, obviously there for security reasons, keep

1 the school safe, things like that. I teach classes at the school. I'm in the classrooms a lot.
2 Meet with kids on a regular basis if they have any issues and deal with any other law
3 enforcement issues that are there. Also, I'm the head JV basketball coach and assistant
4 varsity basketball coach at the school as well.

5 Q. And during your time at Spring Valley High School, did you have the occasion to
6 meet the Lopey family?

7 A. I did.

8 Q. Please tell the Court who in the family you were acquainted with.

9 A. I was acquainted with the older sister. I don't recall her name off the top of my
10 head; that was the first year that I was there. I believe she was a junior that year and just
11 in passing I talked with her sometimes. She was often a helper for the principal or
12 administration there. I think I may have met mom once or twice but never really had to
13 deal with mom a whole lot.

14 Q. Let me stop you right there. So, your dealings with the sister were not because of
15 discipline nature or discipline problems?

16 A. No, no, she was well-behaved and did a good job when she was there.

17 Q. And so that's how you got to know her and you met the mother through her?

18 A. Yeah, I think I maybe met the mom one time, but nothing that jumps out at me. I
19 didn't really get to meet the mom until I met Mr. Lopey, her son.

20 Q. And please tell the Court when you first met Zacoata Lopey.

21 A. It would have been last year, I believe, in September or October.

22 Q. Of 2010?

23 A. Yeah, 2010. My first encounter with him, I was called by administration in
24 reference to a student who was being uncooperative with teachers at lunch time. When I
25 made contact with Mr. Lopey, I brought him to the office with the principal and the

1 school psychologist. We sat down, asked him what was going on. He just had a
2 tremendously bad attitude, didn't want to listen to teachers, made that pretty clear. He
3 didn't want to be at school. At that point and time he actually admitted to being in a
4 gang, a Blood . . .

5 MR. MAY: Objection, Your Honor, 404(b).

6 THE COURT: Overruled.

7 Q. He admitted to you that he was in a Blood gang?

8 A. Yeah, he did, and, he admitted that and he admitted he wanted to run the streets.

9 Q. What does that mean?

10 A. Well, my experience of running the streets, I mean, I can spec . . .

11 MR. MAY: Speculation

12 THE COURT: Sustained.

13 A. Yeah, I can speculate on that, but . . .

14 Q. He just told you he wanted to run the streets?

15 A. Wanted to run the streets. He wanted to do time in prison, things of that nature
16 and that was that first encounter with him; that was my first encounter with him.

17 Q. And you said that was in September or October of 2010?

18 A. Yeah, whenever he first got to school there. I don't believe he started the school
19 year with us.

20 Q. So he started school somewhere else and came towards the beginning of the fall
21 semester that year?

22 A. I believe so.

23 Q. And please describe for the Court any interactions you had with Mr. Lopey.

24 A. Let me start - - First of all, I got a phone call about Mr. Lopey from the SRO at
25 Summitville School at first to tell me about this kid. Often SROs will communicate with

1 each other about kids coming to their school or from their school that could be behavior
2 problems or criminal problems within the school and so Deputy Reupke who is the SRO
3 at Summit Middle School filled me on this kid and some of his behavior problems and at
4 the time he let me know that he was a gang member. The fact that - - I think he got into
5 the fact that he was very disrespectful. He had actually put him in detention several times
6 which mean he'd placed him in handcuffs because Mr. Lopey was so uncooperative at
7 times at Summit, so he filled me in on everything this kid was about. Future interactions
8 with Mr. Lopey, after that first interaction, I was called multiple times whether it was to
9 the classroom, whether the teacher would bring the kid to my office for him to calm
10 down and every interaction I had with him led back to the fact that he was a gang
11 member, wanted to continue to be a gang member. He wanted to sell dope and what that
12 means, basically, sell marijuana, sell drugs of any kind. He wanted to do time in prison
13 and these were his goals in life, basically, is what we talked about on a regular basis.

14 Q. And is part of your job to try and counsel students and try to lead them down the
15 right path or purely just, you know, as a disciplinarian?

16 A. On a regular basis, we actually do more counseling than anything, I mean, we sit
17 there and talk to people on a regular basis, students about problems they may be having,
18 things we can do to help them. If they need a guidance counselor, we can direct them
19 that way. We talk to kids on a regular basis.

20 MR. MAY: Your Honor, I object, I preserve my client's privilege if he's acting
21 as a counselor. He admitted that he was acting as a counselor for this troubled young
22 man and now the State is trying to use it against him.

23 THE COURT: Are you a licensed counselor?

24 MR. FIELDS: No, sir.

25 THE COURT: Overruled.

1 Q. Did you try . . .

2 THE COURT: I think he can counsel somebody without being a counselor. I
3 don't think that's privileged.

4 Q. Did you try and lead Mr. Lopey down the right path or advise him in any matter?

5 A. Absolutely, all the time. Talked to him about the way he was acting and living
6 was just destructive. He was very clear on a regular basis, on numerous occasions that he
7 did not care; this is the life he wanted to live. He didn't want to be at school. On one
8 occasion, he would not sit with his class in the cafeteria at lunch time, which he was
9 supposed to do, and I asked why and he said because he was embarrassed, he didn't want
10 to sit with a bunch of retards, he's not like them. And this took place on a regular basis
11 with this young man.

12 Q. Was Mr. Lopey, to your knowledge, in a certain class, a special class?

13 A. He was in what we call self-contained class. He had an IEP which is a school - -
14 IEPs are simply for school, so, yeah, he was in a self-contained class that he was never in
15 because they would call me all the time.

16 Q. And to your knowledge or through your interactions, which were numerous with
17 Mr. Lopey, did you ever believe him to have some kind of cognitive impairment or him
18 not be able to understand you or appreciate the consequences of his actions?

19 A. No, he was very clear. I was very clear, he was very clear. He understood the
20 consequences of his actions. He understood that certain things would lead to jail and he
21 was okay with that. He made that clear again on a regular basis.

22 Q. And please tell the Court about other interactions you had with Mr. Lopey.

23 A. The worse interaction I probably had with him prior to this incident was a
24 situation with a teacher's aide where he actually assaulted a teacher's aide at the school.
25 At that point and time he threatened the teacher as well. He was brought to my office and

1 he was so uncooperative that I did put him in handcuffs to detain him. He was not under
2 arrest at that time or in my custody at that time until we made a decision. Once we talked
3 with all parties involved, the school felt like they wanted to handle it in-house. The
4 victim did not want to prosecute or go forward with charges at that point and time, which
5 was fine and it was turned over to the school and he was actually put up for expulsion at
6 that time and then they came back and had a hearing and things of that nature. Every
7 single encounter I had with this young man was negative. Never came to my office
8 because he wanted to talk about his day was going, every single counter because I was
9 called or they brought him to my office because he just simply would not cooperate with
10 administration, teachers, teachers' aides, or whatever the case may be.

11 Q. We're talking about a period of time from September, October of 2010 until he
12 was arrested on these charges in December of 2011?

13 A. That would be correct, yes.

14 Q. And on December 14th, I'm sorry, December 15th of 2010, did you call
15 Investigator Joe Clarke?

16 A. I did.

17 Q. And what was that in reference to?

18 A. It was in reference to the incident that had taken place the night before in
19 reference to a sexual assault that had taken place.

20 Q. And did you bring Mr. Lopey to your office that morning?

21 A. Yeah, what happened that morning, I received a phone call from a Lieutenant in
22 investigations, I believe, at the time - - I know he was a Lieutenant, I don't know if he
23 was in investigations at the time. He called me in reference to Mr. Lopey and asked if he
24 attended Spring Valley High School. I said, yes, he does. And he said, okay, see if he's
25 there, get as much information on him as you can. We had a situation last night that

1 we're investigating. He really didn't tell me a whole lot about the situation, but I'm
2 sending two investigators to you. I said, yes, sir. So, what I did was first thing to check
3 and see if he was in school that day and in fact he was. The second thing I did was go
4 ahead and collect as much information as I could whether it was addresses or whatever
5 the case may be. When investigators came to the school and made contact with me, it
6 was investigator Gonzales and Investigator Way*. They made contact with me and we
7 talked about Mr. Lopey and we talked about some of the interactions I'd had with him
8 and some of the things I dealt with. We also brought the teacher's aide down who dealt
9 with him on a regular basis as well and one of the things the teacher's aide said when he
10 came down and asked him a couple of questions, filled him in on what was going on at
11 that point. At that point and time, I had looked at the police reports so I knew what was
12 going on. We didn't get into any detail with the teacher's aide. One of things that the
13 teacher's aid said that stuck out was that Mr. Lopey, this particular day, was being nice.
14 The reason that's important is because Mr. Lopey was never nice. He never had a good
15 day. He was never not disrespectful. And so that was really a red flag at that point and
16 time that he was acting differently that particular day. So that point and time the
17 teacher's aide left. The investigators left the location as well.

18 Q. Let me stop you right there. At that point and time there was policy that because
19 of some issues at school, different school districts and different policies, that the sheriff
20 had to be contacted before any juvenile was interviewed?

21 A. Yeah, any student was interview, that's correct.

22 Q. By investigations?

23 A. My understanding that was the policy at that time.

24 Q. And at some point and time that was done and investigator Clarke and Miller
25 came to Spring Valley High to talk with Mr. Lopey

1 A. Yeah, at that point and time, the investigators left. I called Investigator Clarke on
2 the phone and told him what I had. At that point and time he called who he needed to
3 call and he responded with Investigator Miller. The teacher brought him, Mr. Lopey, to
4 my office. When Mr. Lopey got to my office - - Again, we would always have
5 conversations. Mr. Lopey was very quiet. He sat at my table in my office. I sat at my
6 desk and worked on some paperwork. We talked about nothing. I just let him sit there
7 and that was very unusual as well. Investigator Clarke and Investigator Miller showed up
8 on the scene.

9 Q. And at some point and time was Mr. Lopey's mother called?

10 A. Yeah, she was because she showed up at the school, yes, ma'am.

11 Q. And are you aware of who contacted her?

12 A. I believe the sister did.

13 Q. Okay, are you aware of how she found out about any of this?

14 A. I don't know.

15 Q. So at some point and time, Mr. Lopey's mother showed up at the school?

16 A. She did.

17 Q. And did you make contact with her?

18 A. I did.

19 Q. Please tell the Court about that.

20 A. The conversation I had with Ms. Lopey is I went out and talked to her, told her
21 what was going on. She was aware of the incident that had taken place the night before.
22 I told her that her son was being talked to by investigators about the situation and she said
23 that's fine and said she would wait while the investigators talked to her and after that she
24 would talk to her son.

25 Q. And at some point and time did she, in fact, speak with her son?

- 1 A. She did after the investigators were done talking with him.
- 2 Q And were you present when Investigator Clarke read Mr. Lopey his rights?
- 3 A. I was.
- 4 Q. And you're familiar with the Miranda warnings?
- 5 A. I am.
- 6 Q. Are those the warning that Investigator Clarke read to Mr. Lopey on that day?
- 7 A. Yes.
- 8 Q. Did he coerce him in any way?
- 9 A. No, ma'am.
- 10 Q. Threaten him?
- 11 A. No, ma'am.
- 12 Q. Did he tell him what to say, put words in his mouth or anything of that nature?
- 13 A. No, ma'am.
- 14 Q. At any point and time did you believe that Mr. Lopey couldn't understand or
- 15 couldn't process what was going on?
- 16 A. No, ma'am.
- 17 Q. Was he very forthcoming with the information?
- 18 A. Mr. Lopey? Yeah, I mean, he was - - The interviewed lasted - - I don't know the
- 19 exact times or anything like that, but he was - - Once he admitted to, you know, raping
- 20 the victim, he went into detail about what took place.
- 21 Q. Did you ever see him show any remorse?
- 22 A. No.
- 23 Q. Ever hear him apologize?
- 24 A. No.
- 25 Q. Ever hear him show remorse when he was with his mother?

1 BEN FIELDS – CROSS EXAMINATION BY MR. MAY

2 A. No.

3 Q. Ever hear him ask for an attorney?

4 A. No.

5 Q. Ever ask to speak with his mother?

6 A. No, ma'am.

7 Q. Ever tell Investigator Clarke that he did not want to talk to him anymore?

8 A. No, ma'am.

9 Q. And that day that was your last interaction with Mr. Lopey?

10 A. That was.

11 MS. MCDUFFIE: No further questions for this witness.

12 THE COURT: Mr. May.

13 MR. MAY: May it please the Court.

14 CROSS EXAMINATION BY MR. MAY:

15 Q. All right, you are a deputy with Richland Sheriff's Department, correct?

16 A. Correct, yes, sir.

17 Q. And so you're actually employed by them. You're just stationed at Spring Valley
18 High School?

19 A. Yeah, that's where - - I'm an SRO there, School Resource Officer there.

20 Q. And you already said you knew the child. We met last week, correct?

21 A. Correct.

22 Q. And you said at that time that he was a loner.

23 A. He was always by himself in the hallway.

24 Q. Always by himself. At lunch, he would stand by himself as opposed to sitting
25 with anybody when you thought that was very odd?

- 1 A. Right. He wouldn't listen to teachers, yeah.
- 2 Q. Well, you also said that he stood by himself away from everybody.
- 3 A. He did, yeah.
- 4 Q. You said that he couldn't interact with females.
- 5 A. I said I never saw him interacting with females.
- 6 Q. Never saw him, one word, female.
- 7 A. Never saw him interacting with males either.
- 8 Q. So he was just a complete loner. Did he act out in class? You knew that he was in
- 9 a special needs, self-contained classroom?
- 10 A. Self-contained class, yes.
- 11 Q. And I.E.P.s are only given to children who have special needs, correct?
- 12 A. I.E.P.s are given to kids with behavior problems, things like that.
- 13 Q. Now . . .
- 14 A. I.E.P.s cover a wide range of things.
- 15 Q. Now, at his manifestation hearing - - The manifestation hearing is the expulsion
- 16 hearing, right?
- 17 A. No, the manifestation hearing is something that takes place before expulsion
- 18 hearing to see if what took place was related to his disability that he has.
- 19 Q. Okay.
- 20 A. So, it's not an expulsion hearing.
- 21 Q. Okay, I'm sorry. So it's a process that you go through before the expulsion
- 22 hearing?
- 23 A. Correct.
- 24 Q. Did he get to the expulsion hearing?
- 25 A. No, sir.

1 Q. The reason why he didn't get to the expulsion hearing was because the person
2 who conducted the manifestation hearing found that his behavior was a direct result of his
3 special needs identified by his I.E.P.

4 A., You'll have to ask the person who does that. I did not.

5 Q. Is that what you told me last week?

6 A. I don't know.

7 Q. You don't know if you said that - - I'm not making up the word manifestation
8 hearing. The manifestation hearing found that his actions were directly related to his
9 special . . .

10 A. Sir, I wasn't in the manifestation hearing so I don't know. It could be a situation
11 where a teacher didn't do what she was supposed to do or could be in relation that what
12 he did was in relation to his disability. It could be a number of different things, not just
13 one thing.

14 Q. Do you know what the finding of the manifestation hearing was?

15 A. I do not.

16 Q. Who is this Lieutenant?

17 A. Lieutenant Dave McRoberts.

18 Q. David Roberts.

19 A. Dave McRoberts.

20 Q. And then Investigator Ganzales came to Spring Valley High School?

21 A. Uh huh.

22 Q. What teacher brought the child to your office?

23 A. The teacher's aide, Perry Dozier.

24 Q. Perry Dozier. Now, just for the record, you're what, about 6'3" 6'4", 260
25 pounds?

- 1 A. Yeah, somewhere around there?
- 2 Q. Is that fair?
- 3 A. Yes.
- 4 Q. Clarke's a big guy?
- 5 A. Yeah, I guess, kinda. He lost a lot of weight, though.
- 6 Q. He's about 5'2".
- 7 A. Okay.
- 8 Q. Is that fair?
- 9 A. I guess. I didn't measure him. I mean, you're asking me questions, sir, that I
- 10 don't know the answer to.
- 11 Q. If Joe Clarke 5'2", you know the answer.
- 12 A. I don't know how tall Joe Clarke is.
- 13 Q. At the time that the incident occurred, the child was on a half-day program,
- 14 correct?
- 15 A. That is correct.
- 16 Q. So at the time of - - You got in contact with Clarke, he was going to the school or
- 17 he was about to leaving school for the day?
- 18 A. Correct.
- 19 MR. MAY: I beg the Court's indulgence for one second.
- 20 Q. Now, you made a comment that attributed to Mr. Lopey that said that he didn't
- 21 want to sit with the rest of his class mates because they were all . . .
- 22 A. His words, they were all retards.
- 23 Q. Retarded.
- 24 A. He said they were retards.
- 25 Q. All right, because this is a special-needs class, correct?

1 A. Self-contained class, that's what they call it, the self-contained class. That's what
2 they call it.

3 Q. People who have special needs, do they -- A lot of times they are in self-
4 contained classes, correct? Special-needs children a lot are in self-contained classrooms,
5 correct?

6 A. I know this particular class is referred to, on a regular basis, by administrators, by
7 school staff psychologists as a self-contained class. That's what I know. I've never
8 heard this class called special-needs, if that's what you're asking.

9 Q. Okay, now, you have all your facilities about you and you know what this class is
10 about. Would you say the people in this class -- That there are definitely people in this
11 class who are lower functioning people?

12 A. I think it's a classroom full -- If you're asking what I think, I think it's a
13 classroom full of kids with behavior problems who don't want to listen in this particular
14 class. There's other classes there that have tremendously lower functioning, absolute, but
15 if you're asking me what I think, I think this is a classroom full of kids who have
16 tremendous behavior problems, don't want to listen to people. Are very capable of doing
17 things, they just don't want to. They're disrespectful on a regular basis and I deal with
18 particular class, not just Mr. Lopecy, but on a regular basis, I'm called to this class on a
19 regular basis that have charged kids with crimes in this class on a regular basis because of
20 crimes that have been committed in the school. With special-needs or lower functioning
21 kids, we deal with them totally differently, totally differently.

22 Q. So it would surprise you if his I.Q. scored a 71?

23 A. It would.

24 MR. MAY: I have no further questions.

25 THE COURT: Redirect?

1 JOSH MAULDIN – DIRECT EXAMINATIN BY MS. MCDUFFIE

2 MS. MCDUFFIE: No, Your Honor.

3 THE COURT: You may step down. Watch your step.

4 MS. MCDUFFIE: The State would call Investigator Josh Mauldin.

5 THE COURT: Investigator Mauldin.

6 MR. MAY: Your Honor, I would just note that School Resource Officer Fields is
7 on our list as well and I ask that he not remain in here.

8 THE COURT: You're not going to call him today, are you?

9 MR.MAY: No, sir, I'm not.

10 THE COURT: Would you tell him if he's still out there, not to come back in.

11 JOSH MAULDIN, being duly sworn, testified as follows:

12 THE COURT: Do you swear or affirm to tell the truth, the whole truth and
13 nothing but the truth so help you God?

14 MR. MAUDLIN: I do.

15 THE COURT: Okay, have a seat, Investigator Mauldin.

16 DIRECT EXAMINATION BY MS. MCDUFFIE:

17 Q. Investigator Mauldin, where are you currently employed?

18 A. The Richland County Sheriff's Department.

19 Q. And you're investigator with the Sheriff's Department?

20 A. That is correct.

21 Q. And on December 14th of 2010, did you respond to [REDACTED]

22 A. I did respond that evening.

23 Q. And what was that in reference to?

24 A. It was in reference to an alleged sexual assault and robbery that had taken place in
25 a residence there.

1 Q. And is [REDACTED] in Richland County?

2 A. It is.

3 Q. And when you got there, was the victim, Ms. Henrick, present at the time?

4 A. She was not. She was transported to Palmetto Richland Emergency room a short
5 time before I arrived.

6 Q. And did you go - - Did you then respond to Palmetto Richland to speak with the
7 victim?

8 A. I did.

9 Q. Were you able to speak with the victim?

10 A. I was.

11 Q. Please describe her demeanor for the Court.

12 A. When I initially met Ms. Henrick, she was, I think, the same said it best earlier,
13 stoic, stone-faced, dazed, even.

14 Q. Did she appear to know what was going on?

15 A. She did. She did appear to have all her mental faculties about her.

16 Q. Did she have any trouble relaying to you the facts of that evening?

17 A. Not at all. She provided a very detailed account of what occurred.

18 Q. In fact, did she give a seven page statement?

19 A. Yes, I believe so.

20 Q. Of the events that occurred that evening?

21 A. Yes.

22 Q. I'm showing you what's already in evidence, Defendant's Exhibit One. Is that the
23 statement that Ms. Henrick gave you on December 14th, 2010?

24 A. This appears to be the statement, yes.

25 Q. And that was taken in the hospital emergency room?

1 A. It was.

2 Q. Shortly after this incident occurred?

3 A. Correct.

4 Q. And you actually wrote this statement?

5 A. I did.

6 Q. And why is that?

7 A. I find that it's easier. If I write the statement, it covers a wide range of
8 intellectual, in cognitive abilities. Everybody doesn't read and write on the same level so
9 it's fair to all. I take the statement as she dictates it to me.

10 Q. And these are her words, just your handwriting?

11 A. Yes.

12 MS. MCDUFFIE: Your Honor, at this time, we'd ask Investigator Mauldin to
13 please publish Defendant's Exhibit One.

14 MR. MAY: Your Honor, it's in evidence. Your Honor can read it. There is no
15 jury to - - I mean, Your Honor, I just ask you to read it. We don't need Investigator
16 Mauldin to read a seven-page statement that is already into evidence through the defense.

17 THE COURT: I'll let him read it. You may read it, sir.

18 (Witness reads statement of Elaine Henrick.)

19 A. First question was: Where do you currently live?

20 Her response: I live at [REDACTED]

21 Question: Can you tell me what happened to you at your home earlier this
22 evening?

23 Ms. Henrick's response: I was watching TV in my family room. I had just
24 finished talking to one of my friends on the phone. I heard a noise in my sunroom. Two
25 men walked into the family room from the sunroom. I don't know how they got in there

1 I usually lock the door, but I don't know if I did tonight. One of them pointed a gun at
2 me and told me to take them to the money. I told them that I didn't have any money. He
3 told me to go into a bedroom, into the back bedroom. The other guy was already back
4 there opening drawers and putting some jewelry into his pockets. The guy with the gun
5 asked me where my handbag was and I told him and he went and got it. He dumped it
6 out onto the floor. I remember talking to the young one. I asked him if he would do this
7 to his grandmother. He said something about having three kids. He also said that his job
8 didn't pay him enough when I asked him why he didn't just work. The guy who poured
9 out my purse asked me where the money was. I picked up a case that I keep in my purse
10 and took out about \$500.00 that I had for Christmas gifts. I told him that it was all the
11 money I had. Then they took me to other rooms in the house. They ransacked those
12 rooms. They took me back into the family room where the big guy tried to disconnect the
13 TV. He was pulling on the cable instead of unscrewing it from the TV. The younger guy
14 told him that he had to unscrew it. I don't think he was very educated. He also took my
15 DVD player and put it into a plastic garbage bag. They ended up taking the TV, but not
16 the DVD player and bag. I think that they may have brought the bag with them. They
17 were talking about taking me with them. The big guy told to me take my clothes off. He
18 was pointing the gun at me. I told him that I wanted to go to the bathroom. I thought that
19 they wanted me to undress so that I couldn't go outside. They followed me to the
20 bathroom but wouldn't let me close the door. I took off everything except my underwear.
21 They told me to take it off and pointed the gun at me. I told the big guy that the gun
22 probably wouldn't work. He pulled some shells out of his pocket and put them in the
23 gun. He asked me if I wanted to find out if it worked. I took off my underwear and they
24 told me to go to the bedroom and lay down. I laid down on the bed. The big guy pulled
25 my knees apart and penetrated me with his penis. They had covered my face because I

1 was screaming. I think that the big guy ejaculated inside of me. Then the young guy
2 tried to have se with me. I asked him if he would rape his grandmother. He tried to
3 cover my mouth. He had trouble so he turned me over and penetrated my rectum. I think
4 he also ejaculated inside of me. They left my home through the front door.

5 My question: Did you tell the responding officers that the substance on the floor
6 in front of the bed and on the bedspread was semen?

7 Her response was: Yes.

8 I asked: Do you know which man's semen this may have been?

9 The response was: I think, maybe, the young one.

10 Question: Can you describe the men who robbed and assaulted you this evening?

11 Her response was: The young one was about 5/6 and was thin. He was wearing a
12 grey shirt with brown stripes. It looked like he had on a black vest over that. His pants
13 were baggy. He was also wearing a black stocking cap and had what looked like a bright
14 green scarf around his neck and face. He seemed like he was in his early twenties. The
15 big guy was about six feet tall and weighed at least two-hundred pounds. He was
16 wearing dark clothes and also had on a black vest and baggy jeans. He also had a bright
17 green scarf around his face and neck as well as a black stocking cap. He seemed to be in
18 his twenties as well.

19 Question: Which of the two men had the gun?

20 Her response: They passed it back and forth.

21 Question: Can you describe the gun?

22 Her response: It looked like an old shotgun. It was all scuffed up. There was a
23 flashlight taped onto the barrel. I remember that the light from it was blue looking.

24 Question: Can you tell me what items were taken from your home by the two
25 men?

1 Her response: They took my TV. I can't remember exactly what kind of TV or
2 how big it was. It is a flat screen with a black frame. They took about four or five
3 watches. One was a gold Seiko. Two had bands that you could push onto your arm. One
4 was an animal print and one was gold. Then there was the watch with a white plastic
5 band. Then there was a silver colored Anne Klein watch. I haven't worn that one yet.
6 They took some eighteen carat gold jewelry that I bought in Japan. They took my opal
7 ring. I think they took my cell phone. They took a bunch of cheap jewelry. I'll have to
8 look for anything else. They took my camera and my iPod and my iTouch as well.

9 Question: Do you know if the men who assaulted you were in a car?

10 Her response: I didn't hear a car when they left. I remember that they asked me
11 about the keys to my car. I told them that my car was in the shop.

12 Question: Did the men ever use names?

13 Response: The big one called the younger one by a name, but I don't remember.

14 Question: Is there anything else that you can tell me that may aid my
15 investigation?

16 Her Response was: I can't think of anything.

17 Do you promise that the statement that you have just given me has been true and
18 correct?

19 Ms. Henrick's response was: Yes.

20 (End of statement.)

21 Q. And that was the statement you took from the victim on December 14th of 2010,
22 at the hospital?

23 A. Yes, it is.

24 Q. And you are the investigator over this entire case?

25 A. Yes.

- 1 Q. And aware of the contents of the case file?
- 2 A. Yes.
- 3 Q. You aware that Mr. Lopey's semen was found in the victim's anus?
- 4 A. Yes.
- 5 Q. It was also found on the napkin that was between her legs?
- 6 A. Yes.
- 7 Q. And that Mr. Prophet's semen was found in the home on the cuttings of the
- 8 carpet?
- 9 A. Yes.
- 10 Q. Mr. Lopey's semen was actually found inside the victim?
- 11 A. Yes.
- 12 Q. And you had a chance to encounter Mr. Lopey?
- 13 A. Briefly, yes.
- 14 Q. And prior to working at the Sheriff's Department, please tell the Court what your
- 15 profession was.
- 16 A. I was a high school teacher for three years.
- 17 Q. And what subject did you teach?
- 18 A. I taught - - My primary responsibility was teaching college preparatory chemistry,
- 19 and I also taught science and physical science on a lower level class.
- 20 Q. And approximately what age of students?
- 21 A. Anywhere from freshman in high school, fourteen years old up to seniors so
- 22 fourteen, eighteen, nineteen.
- 23 Q. And you did this for three years?
- 24 A. Yes.
- 25 Q. And then you began working at the Sheriff's Department?

1 A. That's correct.

2 Q. And when you encountered Mr. Lopey, approximately how long was your
3 encounter?

4 A. A few minutes as he was being fingerprinted.

5 Q. And please describe that encounter for the Court.

6 A. I was asked by Investigator Isenhoward to take them both young men back to
7 have case prints completed to relieve him of that duty. I think - - He expressed to me he
8 was having some difficulty staying back there dealing with their behavior. I relieved him
9 and watched as Mr. Lopey and Mr. Prophet were fingerprinted. They were a bit
10 insensitive to say the least, kind of laughing about the circumstances that they were in,
11 and, you know, dapping up, high-fiving and joking about going to prison.

12 Q. Did they also say that they were going to go out and do this again that night but
13 y'all caught them too soon?

14 A. That was - - Mr. Prophet made that admission, yes.

15 Q. And the behavior that you witnessed from them, was it not what a normal suspect
16 would do?

17 A. I'm not going to say that - - I've seen plenty of suspects show a lack of remorse,
18 but given the seriousness of that offense, it was outside the norm, yes.

19 Q. And that's why it bothered yourself and Lieutenant Isenhoward because of the
20 nature of these allegations as opposed to other crimes?

21 A. That's correct.

22 Q. Nothing to do with their behavior was out of the norm?

23 A. I would say that is out of the norm to be that callous or insensitive when it comes
24 to something that serious and being caught and charged for something that serious.

25 MS. MCDUFFIE: Beg the Court's indulgence. No further questions for this

1 JOSH MAULDIN – CROSS EXAMINATION BY MR. MAY

2 witness.

3 THE COURT: Mr. May.

4 MR. MAY: Beg the Court's indulgence. Give me a second to collect my
5 thoughts.

6 CROSS EXAMINATION BY MR. MAY:

7 Q. So while you were the lead investigator, you were pretty much in the field
8 generally from afar? The other investigators were the ones that had a lot more contact
9 with at least this child?

10 A. With Mr. Lopey, yes I dealt more with Mr. Prophet.

11 Q. With Mr. Prophet.

12 A. That's right.

13 Q. You dealt with Mr. Prophet and of course, Ms. Henrick?

14 A. Yes.

15 Q. That was just where you, of course, understandably, focusing your attention first
16 on her and then once you got information from Clarke, then you and Isenhoward went to
17 find Mr. Prophet?

18 A. That's correct.

19 Q. You weren't at Spring Valley High School with Clarke, Fields and Miller?

20 A. I was not.

21 Q. And the actions of the child and co-defendant, you were say were pretty
22 disturbing, out of the norm?

23 A. I like to try to keep my distance, but, yes, they were.

24 MR. MAY: Beg the Court's indulgence for one second. Your Honor, I have no
25 further questions.

1 THE COURT: You may step down, Investigator Mauldin. Watch your step.

2 MS. CAMPBELL: Those are the witnesses that we agreed to today.

3 MR. MAY: You gave me one other name.

4 (Conversation between Ms. Campbell and Mr. May.)

5 THE COURT: How many more witnesses do you have?

6 MS. CAMPBELL: Probably three or four, Your Honor.

7 THE COURT: And that's on the list that you provided to Mr. May?

8 MS. CAMPBELL: Our witnesses, yes.

9 MR. MAY: I mean, any of those witnesses I can do, I mean Okay, school
10 psychologist, Redmond, DJJ.

11 (Attorneys speaking at once.)

12 MS. CAMPBELL: That's it.

13 MR. MAY: Just those three?

14 MS. CAMPBELL: They're on the list that we gave to you.

15 MR. MAY: This one? I'll be happy to draw up for the Court and the Solicitor's
16 Office for those other witnesses.

17 THE COURT: Are there other witnesses that you're going to be cross
18 examining?

19 MR. MAY: Possibly, I mean, other people from the Sheriff's Department I can
20 do. If they just tell me who else they're planning to call, I'll be happy to work with you,
21 Your Honor.

22 MS. CAMPBELL: Your Honor, we've canceled all of our witnesses

23 THE COURT: Why did you do that?

24 MS. CAMPBELL: Just the ones that he . . .

25 MR. MAY: Anyone else from the Sheriff's Department?

1 MS. CAMPBELL: I don't know of anyone.

2 MR. MAY: So y'all are done with the Sheriff's Department? The rest are
3 psychologist and counselors and that type thing? I just want to make sure if additional
4 people from the Sheriff's Department on this list.

5 THE COURT: All right today was one of those days we had all day scheduled,
6 but unfortunately we have a sick lawyer. I can't require a lawyer to come in sick and try
7 a case. Mr. May says he's not prepared to examine the other witnesses; they're the sick
8 lawyer's witnesses, so I guess we're going to have to stop at this time. Let's just be
9 prepared to finish this up on March 23rd, 26th and I'll reserve the 27th as well.

10 MR. MAY: I believe Mr. Young informed me last night that he's scheduled to be
11 out of town and trying to get another Guardian ad Litem appointed or we can talk to
12 Court Administration and see if there's another week we can do this.

13 THE COURT: Let me talk to Mr. Young and I don't know if this person - - Let's
14 go back in chambers and find out what's going on and we'll come back on the record if
15 we need to. Other than that one issue, court is in recess until that day.

16 END OF COURT PROCEEDINGS

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CERTIFICATE OF COURT REPORTER

IN THE MATTER OF:

THE STATE OF SOUTH CAROLINA

VS.

ZACOATA LOPEY

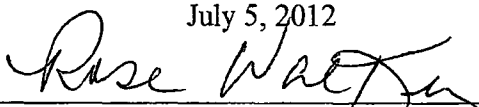
A MINOR UNDER THE AGE OF SEVENTEEN

CASE NUMBERS: 2010-DR-40-1520, 1521, 1522 & 1523

I, the undersigned Rose Walker, Official Court Reporter for the Sixth 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 Family Court for Richland County, South Carolina, on the 21st and 22nd of February, 2012

I do further certify that I am neither kin, counsel, nor interest to any party hereto.

July 5, 2012

A handwritten signature in cursive script, reading "Rose Walker", is written over a horizontal line.

Rose Walker

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE FAMILY COURT OF THE
FIFTH JUDICIAL CIRCUIT

The State of South Carolina,)
)
 PLAINTIFF,)

In The Interest of:
Zacoata L. Lopey,

TRANSCRIPT OF RECORD
2010-JU-40-1502
2010-JU-40-1519 - 1523

RESPONDENT.)

MARCH 27 - 29, 2012
COLUMBIA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JAMES F. FRALEY, JR., Presiding Judge

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
William Redmond				
Ms. Campbell	7			
Mr. May		22		
Kevin Brown				
Ms. Campbell	24		38	
Ms. Delany		35		41
The Court	39			
Aalece Pugh-Lilly				
Ms. Campbell	43		109	
Ms. Delany		85		

Nathanial Griffin				
Ms. Delany	115			
Ms. Campbell		124		
Laura McMichael				
Ms. Delany	125			
Luther Wells				
Ms. Delany	127			
Ms. Campbell		132		
Louise Wells				
Ms. Delany	133			
Zacoata Lopey	138			
Stanley B. Young	140			
Ms. Campbell		149		

<u>WITNESS</u>	<u>DIRECT</u>	<u>REDIRECT</u>	<u>CROSS</u>	<u>RECROSS</u>
Joanna Delany				
Mr. May	163			
Ms. McDuffie		167		

E X H I B I T S

<u>ID</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
S-12	Alvin S. Glenn Records		20
S-13	Pre-adjudicatory Transfer Evaluation		25
S-14	Pre-adjudicatory Transfer Evaluation		44

D-2	Documents (Alvin S. Glenn)		23
D-3	Summary of Findings (Race)		177
D-4	Motion		180
D-5	Motion		180

GAL-1	Affidavit of Betty Jean Smith		157

1 MR. MAY: We'd ask that the Mr. Lopey's shackles be
2 removed. If they want to leave the shackles on, that's
3 fine, but I believe under Federal Supreme Court Missouri
4 v. Deck, a person is not brought to the bar in shackles.

5 THE COURT: I don't know if that applies in here or
6 not. I know it does with a jury.

7 Do you have any objection, Deputy Roberts?

8 DEPUTY ROBERTS: I'd rather not, your Honor.

9 THE COURT: Do you have the case with you?

10 MR. MAY: I can pull it.

11 THE COURT: I can take a look at it.

12 **(WHEREUPON, THE COURT READS ARTICLE.)**

13 THE COURT: This apparently was a post-conviction
14 relief motion and would not have been a jury I assume.

15 I'm going to grant the motion. He's consenting on
16 the ankle shackles.

17 If you could free his arms.

18 **(WHEREUPON, DEPUTY REMOVES HANDCUFFS FROM MR.**
19 **LOPEY.)**

20 THE COURT: Are you ready to proceed?

21 MS. McDuffie: Yes, sir.

22 THE COURT: Is the defense ready?

23 MS. DELANY: Yes, sir.

24 THE COURT: Just some paperwork here we need to
25 clear up, right after we went into recess on February 22,

1 the court reporter at that time was making an inventory
2 of the exhibits before the file was turned back to the
3 clerk's office, and it appeared that State's Exhibit
4 Number 5 was missing. We thought that it was likely that
5 one of the attorneys or one of the witnesses accidentally
6 took it with him or her after the recess. We tried to
7 track it down and could not find it. I have up here what
8 was the State's Exhibit 5. It's my understanding that
9 both sides stipulate this is a copy of State's Exhibit 5,
10 Ms. Delany?

11 MS. DELANY: Yes, sir.

12 THE COURT: Ms. McDuffie?

13 MS. McDuffie: Yes, your Honor.

14 THE COURT: Any objection to me having this marked
15 as State's Exhibit 5?

16 MS. DELANY: No, sir.

17 MS. McDuffie: No, your Honor.

18 THE COURT: Ms. Campbell.

19 MS. CAMPBELL: May it please the Court.

20 THE COURT: Yes, ma'am.

21 MS. CAMPBELL: The state calls Captain Redmond.

22 MS. DELANY: Your Honor, just briefly, before we
23 begin, I'd renew our previous motion to sequester the
24 witnesses.

25 MS. CAMPBELL: I apologize. I wasn't aware ---

1 THE COURT: The original Order of sequestering the
2 witnesses is still in effect of course.

3 Please come up, sir.

4 WILLIAM BRIAN REDMOND, BEING
5 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION BY MS. CAMPBELL

7 Q Captain Redmond, you've retired since this hearing
8 first commenced; is that correct?

9 A That's correct.

10 THE COURT: Can I get his first and last name.

11 A William Brian Redmond.

12 Q Captain Redmond, you've retired since this hearing
13 commenced about two months ago?

14 A My last official day was March 16.

15 Q Where did you retire from, sir?

16 A Alvin S. Glenn Detention Center.

17 Q What were your duties at Alvin S. Glenn Detention
18 Center?

19 A I was the captain in charge of the operation
20 division which includes the juvenile division.

21 Q How long were you actually employed at Alvin S.
22 Glenn Detention Center?

23 A Thirty-three (33) years and 8 months.

24 Q At some point while you were still employed there
25 did our office and I believe the public defender's office

1 request certain records from you?

2 A Oh, yes, ma'am.

3 Q Are those records in reference to Zacoata Lopey?

4 A Yes, ma'am.

5 Q Was he actually housed in the juvenile division of
6 Alvin S. Glenn?

7 A Yes, he was.

8 Q Can you describe for the judge how the juvenile
9 division is kept separate from the adult population that
10 you house?

11 A Yes, ma'am. We have a totally separate building
12 that sits inside our perimeter fence that separates it by
13 sound and sight from the adult facility. It has its own
14 staff. It has four sergeant supervisors, one lieutenant.
15 Then, it comes to me as the captain and then to the
16 assistant director and the director. It can house up to
17 24 inmates, juveniles, and it gets all the same services
18 that the adults get like medical and food, but all of
19 that is brought to them and to their building rather than
20 them actually going into the medical department. If
21 necessary, we can take them over.

22 Q In fact, while the juveniles are housed at the Alvin
23 S. Glenn Detention Center, their education is provided to
24 them?

25 A Yes. Richland School District 1 has two teachers,

1 and we run usually two classrooms every day.

2 Q And every person regardless of whether they're
3 charged as an adult or a juvenile is kept in that
4 facility away from the adults until their 17th birthday?

5 A Until their 17th birthday, yes.

6 Q Are you familiar with a young man named Zacoata
7 Lopey?

8 A Yes, ma'am, I am.

9 Q Was he housed in your unit while waiting for this
10 hearing?

11 A Yes, ma'am. He was still there when I left.

12 Q At our request, you provided us with certain records
13 as far as Mr. Lopey's behavior and stay at Alvin S.
14 Glenn?

15 A Yes, ma'am.

16 Q I'm going to show you a copy of a chart that I had
17 you review. Does that fairly and accurately depict or
18 reflect some of the disciplinary actions taken on Zacoata
19 Lopey during his stay at Alvin S. Glenn?

20 A Yes, ma'am.

21 Q Have you had an opportunity to review that?

22 A Yes, ma'am, I did.

23 Q Does the summary fairly and accurately reflect those
24 records?

25 A Yes, ma'am, it does.

1 MS. CAMPBELL: Your Honor, at this time, we'd offer
2 it as an exhibit. I'm not sure what the number would be.

3 COURT REPORTER: Number 12.

4 MR. MAY: Your Honor, we'd object. We believe that
5 the Sixth Amendment still applies. We believe that this
6 is multiple levels of hearsay. This is more than hearsay
7 within hearsay. Confrontation applies and therefore he
8 has a right to face his accusers. Even in here just
9 making a list of these, without having CO's that would be
10 cross-examined and asked questions, why did you say this,
11 did you investigate this at all, your Honor, we do not
12 believe this is proper under the Sixth Amendment nor
13 under the rules of evidence.

14 THE COURT: Ms. Campbell.

15 MS. CAMPBELL: Your Honor, I believe it's admissible
16 under Rule 1006 under Summaries.

17 THE COURT: Are you familiar with the rule she's
18 referring to?

19 MR. MAY: I'm completely familiar with the rule
20 she's referring to. It's inapplicable in this proceeding
21 because what I'm arguing is there's a right to
22 confrontation. And what's she's doing is she's
23 distilling the worst parts of what they alleged he did
24 without giving us the opportunity to cross-examine the
25 people who say he did this.

1 THE COURT: I'm going to have to look at it.

2 MS. CAMPBELL: These are the reports, your Honor,
3 and this is the summary.

4 (WHEREUPON, MS. CAMPBELL HANDS DOCUMENTS TO THE
5 COURT.)

6 THE COURT: Which one are you trying to put in?

7 MS. CAMPBELL: I'm trying to put in the summary at
8 this time.

9 THE COURT: All right.

10 (WHEREUPON, THE COURT VIEWS DOCUMENT.)

11 THE COURT: It obviously would not be admissible in
12 a trial. Of course, the evidence standards aren't quite
13 the same here, but this is pretty far-fetched in my
14 opinion. I'm going to sustain your objection.

15 MR. MAY: Thank you, sir.

16 MS. CAMPBELL: Thank you, your Honor.

17 Q (MS. CAMPBELL) I'm going to hand you a copy of the
18 incident reports that you've provided my office. Are
19 these records that you actually keep in the normal course
20 of business?

21 A Yes, ma'am.

22 Q Are those incident reports related to Zacoata Lopey
23 during his stay at Alvin S. Glenn Detention Center?

24 A Yes, ma'am, they are.

25 Q Do those all fairly, accurately represent the

1 reports that were made in your institution?

2 A Yes. These are copies of the reports. You typed
3 some so you could read them better.

4 Q Those have not been altered or tampered with in any,
5 and they accurately reflect your records that are kept in
6 the normal course of business?

7 A Correct.

8 MS. CAMPBELL: Your Honor, at this time, we'd offer
9 those records into evidence.

10 THE COURT: Any objection?

11 MR. MAY: Yes, sir. Twofold, Number 1, I know
12 Captain Redmond -- He's helped us out a lot. -- but
13 currently he's not the custodian of records at Alvin S.
14 Glenn Detention Center, so that would be my first
15 objection.

16 Second objection, again, your Honor, this is an end
17 run without allowing us to confront the people who allege
18 that he did something wrong. Your Honor, they're trying
19 to put up that he's a bad person without us being able to
20 say, well, why did he say this to the person who made the
21 record. Your Honor, this is a confrontation clause. It
22 is a clear attack on his character. If they want to call
23 the CO's and we can ask the CO's, well, did you ask him
24 why he said X, Y, or Z, we can ask them and they may say,
25 yes, he told he people this because he was scared,

1 because he was in a hostile situation and he was scared,
2 he was trying to be a big man. We don't know what
3 they're going to say. It's a distilled report without
4 them calling the people who made the reports.

5 Your Honor, Crawford v. Washington says that we do
6 not allow state rules of evidence to circumvent
7 constitutional rights. I know that this is a quasi-
8 criminal proceeding, but to allow the state to
9 assassinate somebody's character through somebody who
10 truly has no direct knowledge of what occurred on each
11 incident report is fundamentally wrong, and as a result,
12 your Honor, I believe it's violative of his Sixth
13 Amendment.

14 They have called one CO. They called her. They got
15 some of this information in already. They can call other
16 CO's, but unfortunately Captain Redmond is not the
17 custodian of records currently at Alvin S. Glenn
18 Detention Center, nor does this comply with any
19 constitutional rights.

20 THE COURT: Ms. Campbell.

21 MS. CAMPBELL: May it please the Court, your Honor,
22 my understanding of this hearing today, is this is an
23 investigatory hearing for your benefit in order to make a
24 decision. In that vein, we have to address the Kent
25 factors, which is the whole reason we're here. Amongst

1 the Kent factors are his ability to be rehabilitated,
2 things of that nature. Anything relevant to that should
3 be admissible. We've gone back and forth on the hearsay
4 exception; we've talked to different judges. The general
5 consensus is hearsay is admissible. This is not even
6 hearsay because Captain Redmond was in charge of that
7 wing, and these are records that are kept in the normal
8 course of business which he had access and to which he
9 has control over, and he actually provided these to our
10 office, so to say he's not custodian is somewhat of a
11 misnomer. He's the one who actually provided them, and
12 he can authenticate them. Therefore as long as these are
13 the actual records kept in the normal course of business,
14 they should be admissible and are imperative for you to
15 be able to make a decision as to whether or not this
16 young man should be waived based on the Kent factors
17 which the supreme court has outlined.

18 THE COURT: Well, even if all of that is correct, I
19 think the issue now comes down to whether he's the
20 custodian of the records; does it not?

21 MS. CAMPBELL: May I follow up with two questions?

22 THE COURT: Yes, ma'am.

23 Q (MS. CAMPBELL) Captain Redmond, did you in fact and
24 have you before provided these records to our office and
25 the public defender's office?

1 A I provided those, and I have done many in the past
2 years, sure.

3 Q Have you testified before as custodian of records as
4 far as records-keeping and things of that nature?

5 A Yes, I have.

6 Q And you have been qualified and those records have
7 been admitted?

8 A Yes, I have.

9 Q Are you actually one of the custodians, not the only
10 one, but one of the custodians that had access and
11 control over the records when you were employed at Alvin
12 S. Glenn?

13 A When these were done, I was the custodian of
14 records.

15 THE COURT: When did you provide her with copies of
16 those records, sir?

17 A These were done several months before I retired.

18 THE COURT: Did you provide those same records to
19 her before you retired?

20 A Yes.

21 THE COURT: Do you want to respond before I rule?

22 MR. MAY: Yes, sir. Just to make sure the record is
23 clear, your Honor, he's not currently the custodian of
24 records, so therefore -- I'm not saying that he wasn't,
25 but as of March 3, he was not.

1 THE COURT: If he were the custodian of records when
2 he obtained the documents, he was custodian of the
3 records when he gave these same documents to Ms.
4 Campbell ---

5 MR. MAY: Your Honor, I'm a lawyer.

6 THE COURT: It's an interesting issue. I know you
7 are. I'm trying to determine if there's a difference.

8 MR. MAY: At this time, the state is attempting to
9 admit hearsay evidence. It is a hearsay exception. That
10 means it is inherently hearsay, so the question is, is he
11 the custodian of records at the time evidence is coming
12 into the record, and that would be today. Your Honor,
13 respectfully I understand Captain Redmond was there for
14 33 years, and he helped out my office a lot. At the
15 current time, he is not custodian of records. I must
16 make an objection.

17 And furthermore, your Honor, I still believe this is
18 violative of the constitutional rights of this child.

19 THE COURT: Does anybody know the rule right off
20 hand in dealing with the custodian of records?

21 MR. MAY: 803.

22 MS. CAMPBELL: Your Honor, I believe he also
23 provided these records as custodian to the public
24 defender's office as well.

25 THE COURT: The objection is overruled.

1 MR. MAY: Your Honor, I'm sorry. Just one more
2 thing.

3 THE COURT: YES.

4 MR. MAY: It says that information that has ---

5 THE COURT: Are you at 803?

6 MR. MAY: I'm at 803 (6).

7 THE COURT: Okay. I'm going to reserve my ruling
8 until I hear from you. I'll reserve my ruling.

9 MR. MAY: It says subjective opinions, your Honor,
10 are not admissible. Subjective opinions, I believe would
11 be threat. It's subjective whether or not this person
12 believes it's a threat. Disobeyed, subjective. Yelling
13 and beating on the door, was he yelling and beating on
14 the door? That's a subjective opinion of that CO. Bad
15 behavior is definitely subjective. Disruptive in class,
16 subjective opinion. Disobeying a direct order,
17 subjective. A lot of this is subjective opinions by the
18 person who made the report. As a result, your Honor, I
19 believe these have to be addressed individually if they
20 are subjective opinions, and that's still not addressing
21 whether or not it's constitutionally admissible. But the
22 subjective opinions cannot come in. Bad behavior, how is
23 there more subjective? That depends on the person who
24 wrote the opinion.

25 THE COURT: What about that, Ms. Campbell?

1 MS. CAMPBELL: Your Honor, as far as this, they are
2 observations of what he's charged with. He's referring
3 to the charge, which he just objected to being
4 inadmissible, but I'm referring to the actual reports
5 themselves. They don't have subjective opinions; they
6 chronicle their observations of the behavior and what
7 he's charged with. Those are observations. And again
8 they didn't object at all when the CO came up here and
9 testified to part of this. So these are records kept in
10 the normal course of business. These are records that
11 document observations by the COs and what he was charged
12 with while in the Alvin S. Glenn Detention Center. It's
13 not subjective.

14 MR. MAY: Your Honor, what she's doing is she's
15 mixing and matching. She's playing a shell game. The
16 fact is that she says, you're right, we did not have an
17 objection to constitutional standard when they put the
18 person who made the report. What they're trying to do is
19 they're trying to circumvent rights. They're trying to
20 get stuff in through exceptions in hearsay, and it's not
21 the same thing. If they want to call each person who
22 made a report and subject them to cross-examination, that
23 is a different issue than trying to get a voluminous
24 amount of records in where we cannot cross-examine. The
25 idea of hearsay is whether or not it's inherently

1 reliable.

2 THE COURT: Okay. I'm not going to consider any
3 subjective opinion or judgment that's set out in that
4 document. I'm going to take a short recess. And I hope
5 that y'all can agree what's subjective, and we will redact
6 that. If you can't agree on some issue, then I will
7 determine whether it should be redacted. So let's take a
8 short recess.

9 (RECESS)

10 THE COURT: Ms. Campbell, Mr. May, I believe you are
11 able to agree as to the subjective opinions and have
12 redacted those; is that correct?

13 MS. CAMPBELL: Yes, your Honor. We've met and
14 agreed to remove the parts that he requested as far as
15 all of the reports.

16 THE COURT: Okay.

17 MR. MAY: That is correct. Regarding 803 (6), the
18 subjective part of 803 (6), we've both come to an
19 agreement of what we consider to be subjective and not
20 subjective. There is no objection on that ground at this
21 time. Though our previous objections to this testimony
22 are still ---

23 THE COURT: Your previous objections are noted for
24 the record.

25 MR. MAY: Noted and overruled, correct?

1 THE COURT: Correct. State's 12 entered into
2 evidence.

3 (RECEIVED IN EVIDENCE AND
4 MARKED STATE'S EXHIBIT NUMBER 12.)

5 Q (MS. CAMPBELL) I show you a copy of State's 12, the
6 redacted version. Does this fairly and accurately
7 reflect his disciplinary action while at the Alvin S.
8 Glenn Detention Center?

9 A Yes, ma'am.

10 Q Did you actually have personal knowledge of Zacoata
11 Lopey yourself?

12 A (NO RESPONSE)

13 Q Did you have personal knowledge of him yourself?

14 A Yes, ma'am.

15 Q In your role at the detention center ---

16 A Yes, ma'am, I knew him.

17 Q --- you had interactions with him and you were aware
18 of his behavior?

19 A Yes, ma'am. We'd come and check on him.

20 Q And you were employed with the detention center for
21 how long?

22 A Thirty-three (33) years.

23 Q He was written up on multiple occasions as reflected
24 in those records?

25 A Yes, ma'am, over 20 times.

1 Q In your personal observations of the defendant as
2 well as reviewing the records, how was his behavior while
3 he was at Alvin S. Glenn?

4 MR. MAY: Objection, your Honor. She's asking for
5 an opinion that would need to be qualified as an expert,
6 and that has not happened yet.

7 THE COURT: Overruled.

8 A Certainly he's had more write-ups than any other
9 juvenile we've ever had. A lot of these incidents
10 started out as small things, maybe like talking in the
11 class, and the teacher or an officer would instruct him
12 to hold the noise down and to be quiet, and then they
13 would seem to always escalate into something much larger.
14 Several of these reports would have probably never been
15 even written if the first underlying thing, like be quiet
16 in class, would have been done.

17 Q He's had more write-ups than anybody else in your
18 experience at Alvin S. Glenn?

19 A That's correct.

20 Q Those are reflected in the records we've provided
21 the Court?

22 A Yes, ma'am.

23 Q And these are records you also provided the public
24 defender's office?

25 A I think we did to both.

1 MS. CAMPBELL: Thank you, sir. I have no further
2 questions.

3 THE COURT: Mr. May.

4 MR. MAY: Beg the Court's indulgence.

5 May it please the Court.

6 THE COURT: Yes, sir.

7 **CROSS-EXAMINATION BY MR. MAY:**

8 Q Captain Redmond, I show you something and ask if you
9 recognize those?

10 A Yes. These are -- Each shift when a person is in
11 what we call our special housing unit for juveniles, each
12 shift would kind of grade or tell the behavior of the
13 individual there during that shift period.

14 Q And these are shift periods where he was behaving?

15 A I haven't really looked at all these, but probably,
16 yes. That's the way they look.

17 Q Can you review them?

18 A **(READS DOCUMENT.)** It seems that all of these, there
19 were no problems, good behavior during the shifts.

20 MR. MAY: Your Honor, at this time we'd move these
21 into the record.

22 THE COURT: Any objection?

23 MS. CAMPBELL: We have no objection.

24 THE COURT: Defendant's 2 is entered into evidence
25 without objection.

1 (RECEIVED IN EVIDENCE AND
2 MARKED DEFENDANT'S NUMBER 2.)

3 Q On days when you're in general population, good
4 reports aren't generated for days when detainees are
5 behaving, correct?

6 A In general, no, somebody would have to do something
7 really spectacular to get a ---

8 Q It's noted when people mess up, not necessarily when
9 they've done something wrong?

10 A Correct. Incident reports are for anything that
11 happens. It could be someone slip and fell, and then you
12 would write it as a report or power may have gone out or
13 something.

14 Q Do you know how long Mr. Lopey's been at Alvin S.
15 Glenn?

16 A No.

17 Q For some time?

18 A Yes, quite a while.

19 MR. MAY: No further questions at this time.

20 THE COURT: Mr. Young, do you want to ask questions?

21 MR. YOUNG: No, your Honor.

22 THE COURT: You may step down, sir.

23 MS. CAMPBELL: May he be excused?

24 THE COURT: Any objection?

25 MR. MAY: No, sir.

1 THE COURT: You are free to go.

2 Ms. Campbell.

3 MS. CAMPBELL: The state would call Kevin Brown.

4 KEVIN BROWN, BEING FIRST DULY

5 SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION BY MS. CAMPBELL:

7 Q Mr. Brown, where are you employed?

8 A Department of Juvenile Justice.

9 Q What are your duties there, sir?

10 A I'm a probation officer.

11 Q As a probation officer, typically what do you do
12 when interacting with juveniles?

13 A Basically I supervise the juveniles, making sure
14 they are in compliance with the court Order, making sure
15 they're doing exactly what the court Order states as far
16 as going to school, whatever other stipulations that's in
17 the court Order.

18 Q Do you know Zacoata Lopey?

19 A Yes, he was on my caseload.

20 Q Does that mean that at some point he was on
21 probation?

22 A Yes.

23 Q That was prior to him being charged in this case?

24 A Yes.

25 Q In fact, at the time he was charged in this case,

1 was he on probation or a probation violation I believe?

2 A That's correct.

3 Q And you got to know him during that period of time?

4 A That's correct.

5 Q After he was charged in this case, were you
6 requested to do a social history as part of the waiver
7 evaluation?

8 A Yes.

9 Q I show you a copy of this report and, first, just
10 ask is this a copy of your report?

11 A That's a copy.

12 Q Is that included in the waiver evaluation that is
13 ultimately submitted to the Court for their
14 consideration?

15 A Yes, ma'am.

16 Q This isn't signed; however, it is an accurate copy;
17 is that correct?

18 A Yes.

19 MS. CAMPBELL: Your Honor, at this time, we'd offer
20 the social history into evidence.

21 THE COURT: Any objection?

22 MS. DELANY: No objection.

23 THE COURT: That would be State's 13 without
24 objection.

25 (RECEIVED IN EVIDENCE AND MARKED

1 **STATE'S EXHIBIT NUMBER 13.)**

2 Q Tell the judge as part of the social history in this
3 case, what did you do?

4 A I basically met with Zacoata and his mother, and
5 there was a series of questions that I asked and I got
6 the results of him and his mother basically concerning
7 his family, his court history, his background history and
8 development and school information.

9 Q Primarily do you get his history with the Department
10 of Juvenile Justice?

11 A Yes.

12 Q And that's a part of your report; is that right?

13 A That's correct.

14 Q Then, you also met in this case with his mother to
15 get information?

16 A Yes, ma'am.

17 Q As well as Mr. Lopey himself?

18 A Yes, ma'am.

19 Q Prior to talking to any of them do you explain
20 exactly what the purpose is and what kind of information
21 you're trying to get?

22 A Yes, ma'am.

23 Q Were they cooperative?

24 A Yes, ma'am.

25 Q I want to turn your attention first to the prior

1 court history or criminal record. You mentioned before
2 that Mr. Lopey was actually on probation when this
3 occurred?

4 A Yes.

5 Q Or when he was arrested for this?

6 A Yes.

7 Q Had the system itself made any attempts to help Mr.
8 Lopey with his behavior issues?

9 A Yes, ma'am. He was placed at one of our alternative
10 placements which is Camp White Pines. He also was placed
11 in a therapeutic foster home. He was also in our Family
12 Solutions Program and also he was getting the services
13 through LRADAC for drug and alcohol.

14 Q And I believe his first time, he was actually placed
15 in alternative placement at White Pines Camp?

16 A Yes.

17 Q That was in September of 2009?

18 A That's correct.

19 Q So that would have been approximately a little over
20 two years before all this happened?

21 A Yes, ma'am.

22 Q What's the purpose of that camp? Could you explain
23 that to the judge.

24 A The purpose of that camp is to help them out with
25 social skills, help them out with behavior issues,

1 anything that he needs. That was the purpose of that
2 camp, your Honor.

3 Q Subsequent to being in that camp and receiving that
4 kind of therapy or training or however you want to
5 characterize it, he then, I believe, violated his
6 probation; is that correct?

7 A Yes. He was in court on May 18 for a probation
8 violation.

9 Q Then, in the summer of 2010, he actually went into
10 what's called therapeutic foster care?

11 A Yes, that's correct.

12 Q What was the purpose for that placement?

13 A The purpose of that because he came from a single
14 parent home. We felt like we would place him with a two
15 parent home, have a father figure, maybe that would help
16 him to have a positive male inside his life. We thought
17 maybe that would help him to become a better person.

18 Q Did he actually get placed in that foster home for a
19 number of months?

20 A He was there for three months.

21 Q So the system did try to help him and get him some
22 type of therapy or help for his behavior issues at that
23 point?

24 A Yes.

25 Q Then, I believe in September 2010 some three months

1 before this happened, he was returned to his home?

2 A Yes.

3 Q You also mentioned there were other programs that
4 were made available to him?

5 A That's correct.

6 Q Again those involved services to try to help him
7 with his behavior issues?

8 A Yes.

9 Q So there were repeated attempts by the juvenile
10 system once y'all became involved to try to help him with
11 his behavior issues?

12 A Yes, ma'am.

13 Q When you interviewed his mother, did she indicate
14 whether or not she had a good relationship with her son?

15 A Yeah. She said her and her son, they do have a good
16 relationship. She said that they were very close for the
17 most part. I'm sorry. She said that the relationship
18 with Zacoata is good and bad. She stated that she takes
19 care of Zacoata, gives him whatever he needs, but she
20 acknowledged that she has been too lenient and protective
21 of Zacoata.

22 Q Did she indicate about any problems in that
23 household that were caused by Zacoata?

24 A Yes. She states that him and his sisters, they get
25 in a lot of fights. Usually he starts the fights.

1 Normally he doesn't comply with curfew, house arrests,
2 stuff like that so he is the person who was causing all
3 the issues between him and his sisters and stuff.

4 Q Did she indicate whether or not he would act out
5 within the home as far as ---

6 MS. DELANY: Objection. Leading, your Honor.

7 Q How would he act out in the home?

8 A Physically he would hit his sisters, fighting with
9 family members, stated that he's been getting in trouble
10 since he was three years old, and the problems have
11 continued since then.

12 Q Did she also mention that your agency had tried to
13 get him help and that he had been in counseling and she
14 tried to get him help?

15 A Yes. She was receiving counseling from ASY
16 Counseling Agency and also Columbia Area Mental Health.

17 Q Were you aware that he had been committed to Baptist
18 Hospital on three prior occasions for mental health
19 issues?

20 A I wasn't aware of that.

21 Q You also did as a part of your assessment, a
22 community and home adjustment and you interviewed both
23 the defendant and his mother; is that correct?

24 A That's correct.

25 Q Were you able to get information about the

1 defendant's dependency on alcohol and drugs?

2 A Yes. Zacoata stated that him and his friends smoke
3 at least five to ten marijuana blunts a day. He stated
4 that they start smoking at 9:00 A.M. and doesn't stop
5 until all the marijuana has been finished. He also
6 stated that he had been smoking and drinking alcohol
7 since age nine.

8 Q Did both Mr. Lopey and his mother agree that he gets
9 upset easily?

10 A Yes.

11 Q How does that usually end up?

12 A Usually ends up with a fight with his siblings.

13 Q You mentioned this earlier; did she also mention he
14 did not comply with the rules?

15 A That's correct.

16 Q Did she also -- As part of that section down at the
17 bottom, did she indicate about what kind of damage he
18 would do to the home?

19 A She stated that he destroys property by punching the
20 walls when he's angry, also sets fires in the yard and
21 also in his room for no particular reason.

22 Q As a part of your report, do you also give general
23 information about school information?

24 A Yes.

25 Q What was the information you were able to get there?

1 A He had a history of threatening his teachers, being
2 disrespectful and truancy.

3 Q As far as employment history, do you also get
4 information about that?

5 A Yes.

6 Q How did he say he made his money?

7 A Zacoata reported that he steals TVs, laptops or
8 anything that he can sell to make money. He stated that
9 he usually sells those things to strangers.

10 THE COURT: He sells things to strangers?

11 A Strangers. I'm sorry.

12 Q That's how he indicated that he made money by
13 stealing?

14 A Yes.

15 Q And that's what he reported to you?

16 A Yes.

17 Q Were you aware of whether or not Mrs. Lopey had made
18 multiple attempts to try to get him some help?

19 A Yes, ma'am. Mrs. Lopey, I believe, she was very
20 supportive of Zacoata. She supported him in every
21 program we put him in. She made appointments, made
22 meetings. Overall I think she's a very good person.

23 Q As part of your background check too, you also look
24 at how the other siblings in the home are doing?

25 A Yes.

1 Q I believe he has two older sisters?

2 A Yes.

3 Q They've actually graduated from high school and have
4 good jobs?

5 A Yes.

6 Q And the other siblings in the household, were they
7 able to comply with the rules and are generally doing
8 well?

9 A Yes.

10 Q So Mr. Lopey is the problem as indicated by both he
11 and his mother?

12 A Yes.

13 Q Were you aware that she attended every parent
14 conference, meeting, and she's been very supportive?

15 A Yes, she has.

16 Q Both he and his mother indicated they have a good
17 relationship?

18 A Yes.

19 Q As far as your investigation went, Mrs. Lopey was
20 very supportive of her son?

21 A Yes.

22 Q And she took additional measures to try to get him
23 some help?

24 A Yes.

25 Q The offense that occurred here, were you aware it

1 occurred on Tuesday night, a school night, around
2 midnight?

3 A I don't know.

4 Q Let me move on. As far as the treatment or where he
5 would be placed whether he's kept in family court or
6 waive and tried as an adult ---

7 A Yes.

8 Q --- as far as his housing and how he would be kept
9 at Alvin S. Glenn Detention Center, would there be any
10 difference in where he would be kept?

11 A No.

12 Q Or the services afforded him?

13 A He would still receive the services.

14 Q And those services up to the age of 17 would be the
15 same whether he's tried as an adult or remains in
16 juvenile court?

17 A That's correct.

18 Q And those services include education?

19 A Yes.

20 Q Medical?

21 A Yes.

22 Q Any kind of counseling they need?

23 A Yes. I think it's listed: Individual, group, sex
24 offender treatment, social skills, anger control, drug
25 counseling, he would receive all that.

1 Q As far as what you're telling the judge here today,
2 you were his probation agent first and then you basically
3 got the social history together for the Court's
4 information?

5 A That's correct.

6 Q That's the extent of your involvement?

7 A Yes.

8 Q Thank you, sir.

9 THE COURT: Ms. Delany.

10 MS. DELANY: May it please the Court.

11 **CROSS-EXAMINATION BY MS. DELANY:**

12 Q So his only prior charge is incorrigible; is that
13 right?

14 A Yes. Incorrigible.

15 Q Did you interview the foster family? Did you ever
16 talk to the foster family in Sumter that he stayed with?

17 A Yes, I did.

18 Q How did he do there?

19 A He did pretty good while he was at Sumter. It
20 wasn't many issues.

21 Q That was in a two-parent home?

22 A Yes.

23 Q That was out in the country?

24 A Yes.

25 Q And they were pretty strict?

1 A Yes.

2 Q You testified that he had a good relationship with
3 his mother, and if I'm correct, you interviewed his
4 mother; is that right?

5 A Yes.

6 Q Did you review any DSS records?

7 A No, I haven't.

8 Q Are you aware that she was investigated three times
9 for physical abuse and neglect against him?

10 A I learned the information from reading the report,
11 but prior to this I wasn't aware of it.

12 Q Are you aware that she had been choking him to the
13 point of him passing out?

14 A No.

15 Q Are you aware that she admitted hitting him with
16 cords and belts ---

17 MS. CAMPBELL: Objection. I don't believe he's
18 aware of any of this, I believe is his testimony.

19 MS. DELANY: Your Honor, he was assigned to get the
20 social history. I think it's completely relevant how
21 much of an investigation he did. Did he just ask them
22 and get a very glossed over version or did he actually
23 look at any records and do any investigation.

24 THE COURT: Well, I think your question is improper:
25 "Are you aware of". That's not in evidence. You can ask

1 him if he knows of anything, ask it in that way. I don't
2 think it's in evidence. You're going to have to rephrase
3 your question.

4 Q Do you know if his mother hit him with objects? Has
5 she ever admitted to hitting him with objects?

6 A Not that I know of.

7 Q Do you know whether he was exposed to pornography at
8 a young age?

9 A No, ma'am.

10 Q Do you know whether his father was abusive towards
11 him?

12 A Yes. I think I got that in my report. **(VIEWS**
13 **REPORT.)**

14 Q Well, let me ask you this: Did you do anything
15 independently to verify anything that he or his mother
16 told you? Did you review any psychological records, any
17 DSS records, any medical records?

18 A I went off the report from what him and his mom
19 reported to me.

20 Q So that's a "no"?

21 A Yes.

22 Q Do you know how many people were living in that home
23 at a general time?

24 A I think he had maybe five sisters. His grandmother
25 was living there, a cousin. I would say maybe six or

1 seven.

2 Q Would you state again what are the -- I'm not sure
3 the solicitor asked you this. What are services that
4 would be available for Zacoata at the Department of
5 Juvenile Justice?

6 A Education, individual and group and family therapy,
7 sex offender treatment, social skills training, anger
8 control training, drug education, addiction treatment,
9 substance abuse, self-help group, vocational
10 rehabilitation program, independent living skills.

11 Q You said that you based your part of his evaluation
12 on what he and his mother said; is that right?

13 A Yes.

14 Q Did you ever talk to his grandmother?

15 A I talked with the grandmother when I did home visits
16 prior to doing a report. Yeah.

17 Q Can you describe her health?

18 A She is elderly.

19 Q Is she blind?

20 A I can't remember whether or not she was blind.

21 MS. DELANY: No further questions.

22 THE COURT: Mr. Young, any questions from you?

23 MR. YOUNG: No, your Honor.

24 THE COURT: Redirect.

25 **REDIRECT EXAMINATION BY MS. CAMPBELL:**

1 Q The services you described that would be available
2 to him at DJJ, those are available to him whether he's
3 tried as an adult or as a juvenile?

4 A That's correct.

5 Q As far as your report and who you interviewed, those
6 are typically who you interview to get them back
7 together?

8 A Yes, his mother and him.

9 Q And that's who you got all your information from?

10 A Yes.

11 Q As far as his relationship with his father, did Mrs.
12 Lopey state he did not have any meaningful participation
13 in Zacoata's life?

14 A That's correct.

15 MS. CAMPBELL: Thank you, your Honor.

16 **QUESTIONING OF MR. BROWN BY THE COURT:**

17 Q Just by way of clarification, Mr. Brown, on his
18 prior record ---

19 A Yes, sir.

20 Q --- his prior record consists of incorrigibility?

21 A Yes.

22 Q Was there a probation violation?

23 A Yes, sir. April 5 he was in court for two counts of
24 incorrigible and he went to Midlands Evaluation for an
25 evaluation. On May 20, he came back for disposition and

1 was ordered a 90-day determinative sentence suspended upon
2 alt placement with 12 months probation. September 10 he
3 completed alternative placement. On May 8, 2010, he was
4 present in court for a probation violation and he
5 received another 90-day determinative sentence suspended
6 upon alt placement with nine months probation.

7 Q He was placed on probation -- The probation that he
8 violated was a result of the incorrigible charge?

9 A Yes, sir.

10 THE COURT: Okay. Thank you, sir. You may step
11 down.

12 MS. DELANY: Just briefly, your Honor.

13 THE COURT: Are you following up on my question?

14 MS. DELANY: On hers.

15 THE COURT: I don't know if there's any provision
16 for re-cross.

17 MS. DELANY: I think she's done redirect.

18 THE COURT: She redirected, but I don't think you
19 automatically follow up on a redirect. If she entered
20 new matter, you have to object.

21 MS. DELANY: Your Honor, I was just going to ask him
22 one question.

23 THE COURT: I'm going to let you do it this time,
24 but just be aware of that in the future. I think I've
25 got discretion to allow you to do so, so I'll allow it.

1 But be aware of that next time.

2 MS. DELANY: Thank you, your Honor.

3 **RE-CROSS EXAMINATION BY MS. DELANY:**

4 Q Mr. Brown, if he sits in jail for another year and a
5 half awaiting general sessions court, he's not given any
6 services at DJJ?

7 A Alvin S. Glenn has their own services. When he goes
8 to DJJ, he will receive the services set out for DJJ.

9 Q Alvin S. Glenn doesn't have a lot of services ---

10 MS. CAMPBELL: Objection, your Honor.

11 Q --- like DJJ does?

12 THE COURT: What's your objection?

13 MS. CAMPBELL: I believe you allowed her to ask one
14 question, and now she's gone beyond the scope of what I
15 asked.

16 MS. DELANY: Your Honor, she is making it look like
17 he's going to get the same ---

18 MS. CAMPBELL: Objection.

19 THE COURT: I think we're arguing the objection.
20 What's your objection to her response?

21 MS. CAMPBELL: It's beyond the scope of what you
22 allowed on redirect, your Honor.

23 THE COURT: I'll hear from you.

24 MS. DELANY: Your Honor, I'm trying to get a single-
25 word answer from him to the question that I asked because

1 he didn't really give one. I want to get out -- What she
2 says is he's going to get the same services wherever he
3 goes, and what I want to get out is if you waive him to
4 general sessions, he's going to be sitting there for a
5 year and he's not going to get any services at Alvin S.
6 Glenn. That's what I'm trying to get an answer to.

7 THE COURT: Go ahead.

8 Q Are the same services that are available at DJJ
9 available at Alvin S. Glenn?

10 A I'm not sure. I'm pretty sure he will have
11 education services and some services there, but I'm not
12 sure whether or not it's the same services that DJJ is
13 going to offer is going to be at Alvin S. Glenn.

14 Q So all you can testify to is what's available at
15 DJJ?

16 A Yes.

17 MS. DELANY: No further questions.

18 THE COURT: All right. You may step down.

19 Just for future notice, I'm allowing direct
20 examination, cross examination, redirect examination. I
21 think that's in accordance with the rules. There is no
22 recross. If something comes up on redirect that wasn't
23 -- If some new matter comes up on redirect, you have to
24 objection.

25 You may call your next witness.

1 MS. CAMPBELL: The state would call Aalece Pugh-
2 Lilly.

3 THE COURT: The court reporter just asked me, and I
4 have the same issue. When you call a witness, Ms.
5 Campbell, make sure they put their name on the record.
6 We don't know who these people are, and the record needs
7 to be clear who it is.

8 AALECE O. PUGH-LILLY, BEING
9 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION BY MS. CAMPBELL:

11 Q State your name for the record please.

12 A Aalece Pugh-Lilly.

13 Q Where are you employed?

14 A Currently I'm employed with the Mecklenburg County
15 Local Management Entity in Charlotte, North Carolina.

16 Q Tell this judge a little bit about your education.

17 A I have a Ph.D. as well as a master's degree in
18 psychology. I'm a licensed psychologist in the states of
19 North Carolina and South Carolina.

20 Q In that capacity were you asked to do a Pre-
21 adjudicatory Transfer Waiver Evaluation in this case
22 involving Zacoata Lohey?

23 A Not related to my current position. The context
24 under which I was asked to do the evaluation is due to
25 the fact that I'm a contract evaluator for the South

1 Carolina Department of Juvenile Justice. I was employed
2 with the Department of Juvenile Justice for six years, so
3 I'm familiar with this population and familiar with the
4 process, and I used to do waiver evaluations as an
5 employee of South Carolina Department of Juvenile Justice
6 and stayed on as a contract evaluator after I left the
7 agency.

8 Q So you're a contract evaluator for the agency?

9 A Correct.

10 Q In this case involving Zacoata Lopey, did you do an
11 evaluation?

12 A Yes.

13 Q I show you this -- This is not a signed copy. -- to
14 make sure it's a copy of your actual report?

15 A This looks to be it. Yes.

16 MS. CAMPBELL: Your Honor, at this time, I'd offer
17 it into evidence.

18 THE COURT: Any objection?

19 MS. DELANY: As to the report?

20 THE COURT: Yes, ma'am.

21 MS. DELANY: No objection.

22 THE COURT: State's 14 entered into evidence without
23 objection.

24 (RECEIVED IN EVIDENCE AND
25 MARKED STATE'S EXHIBIT NUMBER 14.)

1 Q Prior to making a report in this case, can you tell
2 the judge what records you reviewed?

3 A I'm going to review my notes.

4 Q Review whatever you need to.

5 A I reviewed several records. I reviewed a previous
6 psychological evaluation that occurred when this
7 youngster was placed at the Midlands Evaluation Center in
8 2009. I also reviewed some mental health records, a
9 discharge summary from White Pines when he was placed
10 there, clinical service notes from South Carolina Mentor,
11 had some school records. I also reviewed law enforcement
12 records as pertained to the offenses, and also there was
13 a psycho-education evaluation from the school district
14 dated -- that was conducted in 2004.

15 Q I believe you testified the Columbia Mental Health
16 Center records as well?

17 A I have some of those records, but a lot of that
18 information I gleaned from the prior psychological
19 evaluation. That was done in 2009 from Midlands
20 Evaluation Center. They summarized a lot of those
21 records in that report.

22 Q Did you also consult with certain people in making
23 your evaluation?

24 A Yes.

25 Q That includes Kevin Brown?

1 A Correct. The DJJ caseworker.

2 Q And Joanna Delany?

3 A Yes.

4 Q And also staff from Alvin S. Glenn Detention Center?

5 A Correct.

6 Q And I believe your last communications with the
7 Alvin S. Glenn Detention Center staff was in June of
8 2011?

9 A Actually that's not accurate. I spoke with the
10 representative from the Alvin S. Glenn Detention Center
11 as recently as February of 2012 prior to the original
12 hearing date.

13 Q So that's just not included in your report?

14 A Correct. Because this report was generated last
15 year.

16 Q Also you actually interviewed the defendant
17 himself?

18 A Correct.

19 Q As well as his mother?

20 A Yes.

21 Q Did you interview any other siblings and/or
22 relatives?

23 A No.

24 Q As part of your evaluation, did you also conduct
25 certain tests in this case?

1 A Yes.

2 Q What tests did you conduct?

3 A I administered the Wechsler Intelligence Scale for
4 Children, which is a comprehensive assessment of/
5 intellectual functioning for children between the ages of
6 6 and 16 and 11 months. I administered some sub-tests of
7 achievement assessment to ascertain what level he was
8 functioning at on an academic level. I also administered
9 a personality assessment titled the Millon Adolescent
10 Clinical Inventory. Then, I also gave him some measures
11 of emotional functioning and potential behavioral
12 disturbances including Behavior Assessment System for
13 Children, the Multidimensional Anxiety Scale for
14 Children, the Reynolds Adolescent Depression Scale. Then
15 the last measure that's noted here wasn't a measure
16 that's actually administered. It is a measure that has
17 been standardized for use in waiver evaluations and that
18 is the Risk for Dangerousness, Sophistication-Maturity,
19 Treatment Amenability Inventory, so with that instrument
20 through the process of doing your clinical interview, you
21 answer questions on that inventory and come up with
22 scores based on the sub-tests.

23 Q As a part of your evaluation too, were you also made
24 aware of his prior interaction with the penal system,
25 juvenile justice? **(NO RESPONSE)** His prior court history

1 from DJJ?

2 A Yes, yes. I did have his DJJ records.

3 Q I believe his last adjudication at least was a
4 probation violation in May of 2010?

5 A Correct. According to the records I reviewed.

6 Q Then, there was a receiving stolen goods charge nol
7 prossed the summer of 2010?

8 A Correct.

9 Q How old was this defendant at the time this offense
10 was committed?

11 A He was 14 years and 10 months on the date associated
12 with the events.

13 Q So that would have been December of 2010?

14 A Correct.

15 Q As part of your review too, you also do a Mental
16 Status Examination?

17 A Correct. And that's again a clinical interview.

18 Q I just want to highlight a couple of things in that.

19 A Okay.

20 Q He seemed to -- And I believe in your report, you
21 actually stated he knew the reason for the evaluation.

22 A Uh huh.

23 Q He had no difficulty understanding his rights?

24 A Correct.

25 Q And, of course, prior to talking to him you

1 explained his rights to him and that's part of your
2 evaluation, right?

3 A That's correct. And also his attorney was present
4 as well, so she was available to answer any questions
5 that he potentially had.

6 Q So every time you talked to him, was his attorney
7 present?

8 A No. Just the first interview.

9 Q The first time?

10 A Correct.

11 Q But she was there to explain if he had questions?

12 A Yes.

13 Q Did he seem to comprehend and think logically in
14 that interview?

15 A He appeared to understand the seriousness of the
16 allegations against him. He understood the purpose of
17 the evaluation, and he had a sufficient grasp of what the
18 evaluation entailed.

19 Q I believe you mentioned that throughout the
20 interview and psychological tests, his thought process
21 appeared to be logical?

22 A Yes.

23 Q Sequential?

24 A Yes.

25 Q And reality based?

1 A Yes.

2 Q But during the testing, he seemed to tire quickly?

3 A The testing was done over the course of two days,
4 particularly during the last day of testing which was the
5 day that the intelligence instrument was implemented.
6 Due to the structure of the Alvin S. Glenn facility, we
7 were unable to use the same room that we had been using,
8 which was behind closed doors and wasn't in direct access
9 to other juveniles at the facility. The room that we
10 were in the last day, there were other juveniles that
11 could view inside the room and so -- They're juveniles.
12 They were looking in the door, waving their hands, things
13 of that nature. I do believe that adversely affected his
14 performance on the intelligence measure which again was
15 administered the last day.

16 Q And I'll get to that in a second, but in your
17 report, you did say throughout the psychological testing,
18 he tired easily and had to be redirected to remain on
19 task?

20 A Yes.

21 Q And that would be a correct statement that's in the
22 report?

23 A Yes.

24 Q Then, you mentioned distracting things and you
25 thought that actually affects his intellectual

1 assessment?

2 A Correct.

3 Q Is that the IQ?

4 A Correct.

5 Q In fact, when you did your test of his IQ, it was a
6 full 11 points lower than prior tests?

7 MS. DELANY: Your Honor, objection to leading.
8 She's testifying.

9 THE COURT: Sustained.

10 Q What happened when you did your IQ testing?

11 A For the Wechsler Intelligence Scale for children,
12 there are various sub-tests and various sub-scales. One
13 of the sub-scales was processing speed. As indicated in
14 the report, his score on it was markedly low, 56, but the
15 things like the distractions outside the door would
16 certainly adversely impact his performance on those
17 measures that were administered that day, so in my
18 professional opinion, that score artificially deflated
19 his full scale IQ score, so based on -- so that plus
20 after review of previous psychological evaluations
21 including an abbreviated intellectual assessment that was
22 administered in 2009 as well as a full intellectual
23 assessment that was administered in 2004, I'm estimating
24 his IQ to be in the low-average range. I did have some
25 questions and concerns related to reports of some sort of

1 head injury that occurred, and that was part of the
2 reason that I had the recommendation for a neural
3 psychological assessment just to rule out any kind of
4 neurological impairment that could have occurred after
5 those previous two administrations that could have
6 explained some of the differences in his sub-tests
7 scores.

8 Q So you were aware at that testing that possible head
9 injuries had been done?

10 A His attorney did report to me that something was
11 done?

12 Q But you aren't aware ---

13 A I can't testify to those findings.

14 Q So you aren't aware of any findings that would have
15 affected or changed his IQ?

16 A No, I'm not aware of any.

17 Q IQ doesn't change according to books I read.

18 A You're absolutely right. IQ is generally believed
19 to be a static variable, so you should not see a lot of
20 fluctuation in IQ over the course of time; however,
21 something like a head injury could negatively impact
22 someone's IQ. I will say there's one little caveat with
23 that, in that with children, you do see some more fluid
24 fluctuations in IQ over the course of time, but a lot of
25 that is dependent on a child's educational experience

1 because of performance on an IQ test is highly correlated
2 with a child's formal educational experience. And in the
3 case for this young man, obviously we know that there
4 were a lot of disruptions in his educational experience,
5 behavior issues, and that could have adversely affected
6 his IQ score as well.

7 Q But as far as your findings, they weren't consistent
8 with prior IQ testing?

9 A Again factoring out that process, correct.

10 Q And that's your expert opinion?

11 A Yes.

12 Q Did you also get information about his prior
13 interactions with mental health's attempt to help him?
14 Let me ask this: In your investigation, did he have a
15 history of behavioral issues?

16 A Yes.

17 Q A lengthy history?

18 A Yes.

19 Q Had he received any services where his mother tried
20 to get him help over time ---

21 A Yes.

22 Q --- to try to help him with those?

23 A Yes.

24 Q What types of help has she tried to get him?

25 A My understanding is that he had received psychiatric

1 treatment. He had been served through the Richland
2 County Department of Mental Health. He was treated both
3 with psychotherapy as well as psychopharmacology and by
4 that I mean through medication. He was treated for
5 disorders such as mood disorder. He had a diagnosis of
6 conduct disorder. However a lot of the treatment
7 interventions related to the use of pharmacology really
8 -- I'm not a medical professional. I'd like to emphasize
9 that. I'm not a nurse; I'm not a physician. But I have
10 participated in several psychopharmacological seminars
11 related to treatment of psychiatric disorders, and a lot
12 of the medications that he was prescribed are used or
13 have been FDA approved to be used for treatment of mood
14 disturbances as well as attention deficit hyperactivity
15 disorder.

16 Q So he had a chronicled history of being on
17 medication for mood disorders ---

18 A Correct.

19 Q --- as well as ---

20 A ADHD.

21 Q --- behavior that supported those?

22 A Correct. And specifically for attention deficit
23 hyperactivity disorder. Again the records indicate a
24 diagnosis of conduct disorder, but he was treated
25 pharmacologically for attention deficit hyperactivity

1 disorder.

2 Q And he was actually -- You're aware that he was
3 actually admitted to Baptist Hospital on three prior
4 occasions ---

5 A Yes.

6 Q --- for threatening his family members?

7 A Correct. Well, I have record of a hospitalization
8 in July of 2008, a second hospitalization, and I do
9 believe there was a third hospitalization as well. And
10 those appear to center around some interactions he had
11 with family members.

12 Q Which include threatening to blow up a school and
13 kill his teachers?

14 MS. DELANY: Leading, your Honor.

15 THE COURT: Don't lead. Sustained.

16 Q What did those include?

17 A I'm going with the information that I have, and the
18 admissions -- or at least one admission was related to a
19 history of bomb threats, threatening to shoot teachers,
20 and I'm quoting information that was recorded in some of
21 the records.

22 Q Did he have a history of problems with his family
23 members for violence?

24 A Yes.

25 Q What were those?

1 A There were indications that he had threatened an
2 older sibling with a knife. It's believe to be perhaps
3 not a knife that would have caused serious injuries like
4 a butter knife or something to that effect, but there was
5 documentation of that as well.

6 Q As far as threatening, were you aware of whether or
7 not he was successful?

8 A I cannot testify as to whether or not the older
9 sibling sustained an injury.

10 Q Do you know how many occasions that occurred as far
11 as your records indicate?

12 A I'm going to testify to what I can definitely recall
13 and what I recall is one hospitalization related to an
14 interaction with a sister that involved a knife.

15 Q Were you ever provided by the defense in this case
16 or by anybody the records from Baptist Hospital about two
17 other admissions?

18 A I looked through -- As related ---

19 Q I ask you answer that ---

20 A Yes. I don't have the Baptist records. What I have
21 are some Richland County records from the mental health
22 department and again I do have the psychological
23 evaluation from 2009 from the Midlands Evaluation Center,
24 and they do record some of that history as well.

25 Q Let me back up for one second. As far as your

1 assessment of his intelligence, you would put him in the
2 low-average range?

3 A Correct.

4 Q But he would be in the average range?

5 A Low-average. Low-average is different. It's a
6 different category than average. Average is from 90 ---

7 Q I'm sorry. It's low-average, average and high-
8 average?

9 A That's correct.

10 Q I don't mean to -- If I say something wrong, please
11 correct me.

12 A Yes.

13 Q But it's one of the averages?

14 A Yes. So a low-average IQ is believed to be between
15 80 and 89. Scores within that range are considered low-
16 average.

17 Q Did you also when you made contact with Alvin S.
18 Glenn as far as his behavior issues, did those come into
19 your investigation and part of your report?

20 A Again, prior to the scheduled hearing in February, I
21 contacted them again to obtain some updated information
22 because it had been a while obviously since I had any
23 interactions with the juvenile, and they indicated some
24 varied history in terms of his behavior. Some days he
25 was fine; other days he was in lock-up. Again from the

1 report of the individual that I spoke to who appeared to
2 be security staff, there didn't seem to necessarily be a
3 pattern to his behavior. It was somewhat erratic in
4 terms of ---

5 Q If I could refer you to your report -- The report
6 you gave this Court is accurate; is it not?

7 A Yes.

8 Q In your report, on the top of page 5, there's an
9 entire paragraph chronicling what your information was
10 about his behavior?

11 A Right. And again, I'm reporting the most recent
12 information that I obtained in February of this year.

13 Q I just want to get the full picture.

14 A Yes. I understand.

15 Q So this is all correct, what's in your report?

16 A Yes.

17 Q And it talks about being in lock-down, refusing to
18 take his medication?

19 A Yes. And that's consistent with what they told me
20 in February as well. They said that he had been in lock-
21 down ---

22 Q So nothing has really changed?

23 A Right.

24 Q Okay. Did you also review a 2004 a Psycho-
25 educational Assessment from the school district?

1 A Yes.

2 Q Did that reveal any learning deficits? Or what type
3 of issues were revealed in 2004?

4 A Behavioral.

5 Q What's the difference between learning deficit and a
6 behavioral issue?

7 A A learning disorder is diagnosed due to a
8 discrepancy between a person's aptitude or IQ and their
9 achievement, so if a person, for example, tests in the
10 average range of IQ, but there is a -- In the state of
11 South Carolina, it's usually defined as a 15-point
12 discrepancy between IQ and achievement, so for example,
13 I'm going to use 100 because that's the mean for most IQ
14 tests, so if a person scored 100 on their IQ tests in
15 terms of their full-scale score yet their achievement
16 scores were 85 or below, that would qualify as a learning
17 disorder in whatever that achievement area was. It could
18 be reading; it could be math; it could be writing, so on
19 and so forth. So based on their findings, they did not
20 note that discrepancy. And as you're probably aware,
21 through the school district, there are two different
22 pathways that a child can receive assistance through the
23 special education program. You can either qualify
24 through learning deficits, learning disorders, which I
25 just described, or behavioral issues that could impact

1 learning, which I also testified to just a few minutes
2 ago, so it was the behavioral issues and specifically a
3 diagnosis of attention deficit hyperactivity disorder
4 that was believed to adversely affect his performance in
5 school.

6 Q And behavioral issues, that doesn't have to do with
7 aptitude; it has to do behavior?

8 A Right.

9 Q At that point in 2004, was he then directed through
10 the school system to the appropriate programs to help him
11 with those problems?

12 A It appeared that he was, yes.

13 Q In fact, those services I believe continued the
14 entire time he remained in school?

15 A Yes.

16 Q As far as you know?

17 A As far as I understand, yes.

18 Q So there are programs in the school in addition to
19 what the mother did, which I'll get to in a minute ---

20 MS. DELANY: Objection, leading.

21 THE COURT: Sustained.

22 Q Are there programs in the school to help him?

23 A Yes.

24 Q Were those provided to him in this case?

25 A To the best of my knowledge, yes.

1 Q In your report, you mention his extensive history of
2 behavioral issues?

3 A Yes.

4 Q The next line you talk about what?

5 A Are you referring to the history of substance abuse?

6 Q Page 5, second paragraph.

7 A If I'm in the same place you are, that's referring
8 to the psycho-educational assessment that was done in
9 2004.

10 Q What did you note in your report Zacoata exhibited?

11 A Oh, yes. This is historical information. He did
12 have a propensity towards aggression and violence,
13 threatening ---

14 Q Repeat that.

15 A Aggression and violence.

16 Q Aggression and violence?

17 A Yes.

18 Q And that included what?

19 A Some of the things that we just discussed in terms
20 of threatening family members, threatening other
21 individuals within the community, things of that nature.

22 Q Did you get any information about his substance
23 abuse that may or may not have contributed to his
24 behavioral issues?

25 A Yes.

1 Q Were you able to get any information on that?

2 A Yes. There was sufficient evidence to suggest that
3 he did have a history of substance abuse.

4 Q What type of substance abuse?

5 A Marijuana as well as alcohol.

6 Q Marijuana and alcohol?

7 A Yes.

8 Q I'm just trying to hear in here. Was Zacoata during
9 your interviews with him, did you note that he was able
10 to converse with you freely?

11 A Yes.

12 Q And he was able to give you his take on the
13 information you were asking about?

14 A Yes.

15 Q And you didn't have any problems understanding him
16 or getting information from him?

17 A No.

18 Q As far as background information, were you able to
19 interview both Zacoata and his mother to get background
20 information?

21 A Yes.

22 Q What type of information generally did you get?

23 A His mother described what in my professional opinion
24 appeared to be an unstable home environment for this
25 youngster. He was in her custody at some times. He was

1 also in the custody at his grandmother at times. From
2 his report, there was some instability in the household
3 which led him to sort of fend for himself and the need to
4 kind of fend for himself in terms of securing the things
5 that he needed just for basic survival. He also reported
6 some history of mal-treatment, things that at a very
7 minimum would be considered harsh corporal punishment, so
8 obviously those things would affect him in terms of his
9 overall development as both a young child as well as an
10 adolescent.

11 Q You mentioned that it was an unstable environment.
12 Would you characterize Mrs. Lopey as supportive of her
13 son?

14 A During the interview, she expressed support for her
15 son. As to whether or not she has historically been
16 supportive of her son throughout his life, I believe it's
17 -- Let me rephrase. I believe from his perspective, he
18 felt at times that he was not supported by his mother
19 from the youngster's perspective.

20 Q In your review of the school records, was she
21 supportive of him or not; do you know ---

22 A In terms of?

23 Q Attending all the conferences, showing up for every
24 teacher/parent conference, following up on any advice
25 given by ---

1 MS. DELANY: Objection ---

2 Q --- the teacher ---

3 THE COURT: Just a minute. Let her state her
4 objection.

5 MS. DELANY: Leading and compound. I'd just ask
6 that she ask one question at a time.

7 THE COURT: Let her answer the question.

8 A Let me look at the school records to see what
9 signatures are noted on the information. **(VIEWS**
10 **DOCUMENT.)** Yes. The mother's signature is noted -- This
11 is a team meeting from 2009, so his mother was present.
12 Her signature is noted. This is another team meeting
13 from 2010. Again, mother's signature is noted. Let me
14 see if I have any other ones that confirm she was
15 present. **(VIEWS DOCUMENT.)** Those are the only two that
16 I have, but that is a span of over two years, 2009-2010,
17 that her signature is indicated in the school records as
18 having been present during those meetings.

19 Q So are you telling this Court you haven't reviewed
20 all the records?

21 A Oh, no.

22 Q The school records?

23 A You were specifically asking me about whether or not
24 the mother supported him through school, so I am looking
25 to see whether or not she was present at these team

1 meetings. I'm looking for her signature, so that's what
2 I'm testifying to.

3 Q Is there anything in the records to indicate that
4 she wasn't supportive throughout all his childhood as far
5 as going to school meetings and things that we just
6 discussed?

7 A What I'm willing to testify to is whether or not she
8 was present at these meetings, and again, there are
9 records to indicate that she was present.

10 Q Are you aware of whether or not this child was
11 reporting to therapy and/or counseling for therapeutic
12 services?

13 A Yes, he was.

14 Q Were those initiated at the behest of his mother?

15 A It would either have been his mother or his
16 guardian. His grandmother was also the key figure in his
17 life in terms of providing as a caregiver, so I cannot
18 state whether or not it was the mother or the grandmother
19 that initiated those services, but, yes, he did receive
20 those services.

21 Q Was she cooperative with you?

22 A Yes, she was cooperative.

23 Q As part of your evaluation, do you also try to
24 figure out how the other siblings are doing? Is that
25 significant to you?

1 A It is significant. We didn't have in-depth
2 discussions about the other siblings other than as they
3 related to their interactions with this youngster.

4 Q So you don't know if his sisters and other children
5 in the home are successful?

6 A No, I don't.

7 Q That wouldn't have been important information?

8 A I do believe that there's some indications that -- I
9 mean, I'd certainly get developmental history and psycho-
10 social history in regards to how the other children --
11 where the other children fit into the family dynamics,
12 and I believe that that's recorded in here as well with
13 the psycho-social history part as to where they currently
14 were, what they were doing, and I certainly do get a
15 geneogram, so I ask questions such as, do the other
16 children have any kind of history of involvement with the
17 Department of Juvenile Justice, have they been successful
18 in school, are they in college, those kinds of things,
19 basic information. I don't go into in-depth information
20 about ---

21 Q Did you have an opportunity to review Mr. Brown's
22 report?

23 A Mr. Brown's report was given to me at the tail-end
24 of this process, so I did not review it in depth prior to
25 submitting my report.

1 Q But you have no reason to dispute his information?

2 A No, I don't.

3 Q You also got information about his father?

4 A Yes. There was some information.

5 Q Zacoata actually provided you some information?

6 A Yes, he did.

7 Q What did he tell you about his father?

8 A He noted some criminal history with his father. I
9 believe his father had been charged with some sort of
10 homicide for which he was serving time.

11 Q Did you ever check to see if that was true?

12 A No, I did not.

13 Q You also mentioned earlier that you had requested
14 that some further testing be done in reference to Zacoata
15 reporting to you he possibly had a head injury?

16 A Correct.

17 Q When he was how old?

18 A The information I obtained from him versus his
19 mother was not consistent, so I really couldn't pinpoint
20 the time period for that incident. I looked back at the
21 record from 2009 from the Midlands Evaluation Center
22 because at the time that he reported that it happened, it
23 would have been prior to that 2009 report, but they
24 didn't mention it, so I couldn't say for sure exactly
25 when it occurred. And there were discrepancies between

1 their reports in terms of when it could have possibly
2 happened. No one was able to tell me it happened
3 specifically this month, this year, at this age.

4 Q You have a paragraph on it in your report.

5 A Right. Indicating that they both reported that it
6 occurred. I just couldn't pinpoint the time period.

7 Q It was when he was 10 or 11 is what's in your
8 report.

9 A Right. And that, I believe, was based on his
10 report.

11 Q And were you able to get any records ---

12 A Let me rephrase. I wasn't able to substantiate -- I
13 didn't have anything to substantiate that it occurred
14 around that time period because it wasn't reflected at
15 all in the 2009 report.

16 Q In that same vein, do you have anything to
17 substantiate it occurred at all?

18 A No, I don't.

19 Q You mentioned that there was DSS involvement in
20 response to a question according to your investigation?

21 A Yes.

22 Q Were you aware that those were unfounded?

23 A Yes, I am.

24 Q Zacoata has been the only one that reported to you
25 these beatings that you're referring to?

1 A Just one second. I'm going to review because I
2 believe his mother indicated it as well. Let me double
3 check on that. **(REVIEWS DOCUMENT.)** I believe there is a
4 section where I directly quote a comment directly from
5 Mrs. Lopey. It is on page 6, the second to the last
6 paragraph. By Mrs. Lopey's own description, she beat the
7 living blank out of him.

8 Q And she admitted openly to you that she's used
9 corporal punishment on him?

10 A Yes.

11 Q However that's in the same context as those being
12 unfounded allegations?

13 MS. DELANY: Objection, leading.

14 THE COURT: Sustained.

15 Q In what context were those in your report?

16 A The allegations were reported to the Department of
17 Social Services. The Department of Social Services
18 investigated, and they did not substantiate the claims.

19 Q On page 7 of your report, just to try to get through
20 this quickly, the first line of that page, you indicate
21 what about Zacoata?

22 A That he has exhibited an extensive history of
23 aggressive behaviors and violent acts since childhood.

24 Q In that same paragraph at the top, did you also
25 report that some of the history was reported by Zacoata

1 and/or his mother?

2 A Yes.

3 Q What do those include?

4 A His mother made a report of him attempting to,
5 quote, poison his father, but he was only three-and-a-
6 half years old at the time that that allegedly occurred.
7 Then, also I reiterate the point about the incident with
8 his sister.

9 Q Everything in that paragraph is information you got
10 from Zacoata and his mother?

11 A Actually the tail-end of that, that was the
12 information that I gleaned from the psychological
13 evaluation in regards to the manner by which he was
14 treated for mood disorders and behavioral disturbances in
15 terms of medication.

16 Q Basically you mention the behavior issues, and you
17 mention ---

18 A Yes.

19 Q --- other disturbances?

20 A Uh huh.

21 Q And those are documented where?

22 A They are documented for a variety of different
23 places: school records, previous evaluations and mental
24 health records.

25 Q You also mentioned records from Baptist Hospital

1 earlier?

2 A Correct.

3 Q In this next paragraph, you basically chronicle the
4 three admissions we've been talking about?

5 A Correct. And again I obtained that information
6 from, as I noted, as indicated in the 2009 MEC report.
7 That is the report from the Midlands Evaluation Center.
8 That's where I pulled that information from, so obviously
9 they have the records, and they reviewed it, so I'm
10 regurgitating the information from that previous report.

11 Q Turn to page 80. Did you question him about any
12 gang affiliation?

13 A I did.

14 Q What did he tell you?

15 A He denied gang affiliation, but he readily admitted
16 that a majority of the peers that he associated with were
17 affiliated with gangs in some way, form or fashion.

18 Q Are you aware that there's a co-defendant in this
19 case?

20 A Say again?

21 Q Are you aware that there's a co-defendant in this
22 case?

23 A Absolutely.

24 Q Did he indicate whether he's affiliated with a gang?

25 **(NO RESPONSE)** As shown on your report.

1 A Yes.

2 Q That he wasn't in a gang?

3 A Yes.

4 Q Did you also ask him about any other sexual
5 offenses?

6 A Yes.

7 Q Did you find any documentation?

8 A For Zacoata?

9 Q Yes.

10 A There's no indication that he had any prior history
11 of sexual offenses.

12 Q What about, subsequent?

13 A In the detention center, there were reports that he
14 was making inappropriate comments to females of family
15 members at the Alvin S. Glenn Detention Center. However,
16 prior to the incidents, there were no indications, no
17 reports, no documentation to support any history of
18 sexually acting out.

19 Q Page 8, second paragraph or the first full
20 paragraph, the last line says what?

21 A "According to detention center staff," that's the
22 detention center at the Alvin S. Glenn Detention
23 facility.

24 Q What does it say?

25 A "Has repeatedly made threats to act out sexually

1 against unknown females."

2 Q Then, the third paragraph, right before you get to
3 "Empathy, Remorse and Responsibility."

4 A Uh huh.

5 Q He has what?

6 A "Made threats toward the female family members of
7 other juvenile detainees."

8 Q Towards female family members of other juvenile
9 detainees?

10 A Correct.

11 Q Including what?

12 A Sexualized threats.

13 Q As part of your evaluation, do you do an assessment
14 as far empathy, remorse and responsibility?

15 A Yes.

16 Q Did he -- And I won't go through the whole thing,
17 but did he give you his version of what happened that
18 day?

19 A Yes.

20 Q Specifically did you question him about events that
21 occurred during the rape of the 81-year-old?

22 A Yes.

23 Q Tell the judge what he told you at that point about
24 -- Tell him what happened?

25 A According to the youngster, he admitted to those

1 acts. And I'm summarizing. Essentially what was relayed
2 to me is that his co-defendant prompted him to engage in
3 that act, and he agreed, reluctantly but he agreed.

4 Q Was that contradicted by the victim's statement that
5 you reviewed?

6 A In terms of the sexual act?

7 Q Yeah.

8 A My understanding, and I don't know if this
9 information has been misinterpreted but my understanding
10 of the victim's statement, it tended to corroborate what
11 this youngster said, that the co-defendant was the one
12 who initiated or prompted the act and this youngster
13 agreed.

14 Q Do you remember how he sexually assaulted her?

15 A He inserted his penis?

16 Q Where?

17 A In her anus.

18 Q Do you recall in the statement or in this thing that
19 he had trouble at first and had to go to certain things
20 to make it happen?

21 A Yes.

22 Q Did you also question him -- I'm just referring to
23 your report again.

24 A I understand.

25 Q -- about certain statements the victim made that

1 night while he was doing this?

2 A Yes.

3 Q What statements were they?

4 A She made references to the fact of trying to --
5 essentially trying to appease him in the fact that she
6 was the same age and same demographic variables as his
7 grandmother, so she was trying to appeal to him to think
8 of her in that context.

9 Q She tried to ---

10 A Dissuade him from engaging in those acts.

11 Q What did he state to you about when she said that to
12 him?

13 A He actually said that he -- Going back to your
14 question in regards to the empathy and remorse, this is
15 the one act that he actually felt remorseful about. He
16 didn't express any remorse in regards to the burglaries.
17 He said that it filled a certain purpose for him, but
18 this is the one act that he did express remorse in
19 regards to.

20 Q Before we get to the remorse part, talk about what
21 he told you when you questioned him as to whether this
22 statement affected him?

23 A He said it did affect him.

24 MS. DELANY: Could I get a question? Leading.

25 MS. CAMPBELL: Your Honor, Rule 607, I believe we're

1 allowed to lead. I'm just trying to get out pertinent
2 parts of the report in an expeditious manner. I'm not
3 trying to lead overly much, but I do believe I have the
4 right to impeach her. The reports are entered into
5 evidence.

6 MS. DELANY: Yes. The report is in evidence. I'm
7 not quite sure. Can you get one fact per question and
8 then a question is what I'm asking.

9 THE COURT: Yes. Sustained.

10 Q Did you ask him about the statement that was made by
11 the victim during the sexual assault?

12 A Yes.

13 Q Did you ask him whether ---

14 THE COURT: One question at a time. That's a
15 compound question. Ask one question at a time.

16 Q Did you answer that question? I'm sorry.

17 A Yes.

18 Q What did he tell you?

19 A He said that it did affect him.

20 Q In your report, specifically what did you write?

21 A I'm quoting. He said, "I'm going to jail either way
22 if I get caught."

23 Q Where in the report does it say it affected him?

24 A I'm referring to the -- What I'm referring to is the
25 subsequent feelings or emotions that he expressed.

1 Q I'll get to that in a minute. When you were
2 questioning him, what context was that and what did he
3 say?

4 A Just as I testified to. "I'm going to jail either
5 way if I get caught."

6 Q You also asked him about that he had no remorse for
7 the robberies?

8 A Correct. Let me rephrase. He didn't express
9 remorse for the robberies.

10 Q In your next paragraph by his report, how does he
11 feel?

12 A Yes. He noted that he feels good when he ---

13 Q Felt good when?

14 A When he robs?

15 Q Why?

16 A Because of the tangible rewards of gaining money and
17 other objects as a result of those actions.

18 Q Did he make any further statements about that?

19 A He did indicate that he does not feel remorse when
20 he engages in robberies because he feels that those
21 individuals are capable of regaining the possessions that
22 he took from them.

23 Q That's a summary of what you just put in the report?

24 A Correct.

25 Q Let's talk about psychological testing. The summary

1 of your tests is in the report?

2 A Yes.

3 Q And the Violence Risk Assessment, you testified
4 earlier that that's one of the assessments you made?

5 A That's a broad category, but in regards to the RSTI,
6 that's the measure that I was talking about that's an
7 inventory that's been standardized for use in waiver
8 transfer hearings and the results did indicate some
9 clusters that would reflect a young man with a propensity
10 towards aggression and violence.

11 Q Specifically in your report, you wrote what, the
12 first line?

13 A He has a history of maladaptive and antisocial acts.

14 Q Maladaptive?

15 A Correct.

16 Q And antisocial acts?

17 A Correct.

18 Q Did he actually admit to you any other acts of
19 violence?

20 A Yes, he did. Well, he admitted to engaging in other
21 robberies for which he had not been caught.

22 Q And you were aware during your investigation of acts
23 of violence on family members or were you not?

24 A Repeat your question please.

25 Q Were you aware of any other allegations of violence

1 that you just testified to?

2 A In regards to his sister and the father, yes.

3 MS. DELANY: Your Honor, objection. Asked and
4 answered. We've been over the thing with the sister.

5 THE COURT: Sustained.

6 Q You mentioned as far as the Risk Assessment that two
7 of the three categories, he tested high in those regards?

8 A Yes.

9 Q Finally is the psychological summary. What were
10 your findings about the prior therapy and results?

11 A I'm sorry. Did you say "prior therapy"?

12 Q Or hospitalizations.

13 A Correct. Again he has been hospitalized in
14 psychiatric hospitals previously at least two if not
15 three times. Those were subsequent to some of the
16 incidents related to acts of violence against family
17 members and using as an example the incident with his
18 sister was one of the trigger incidents for one of the
19 hospitalizations. He has been treated through
20 psychotherapy as well as with medication for various
21 disorders including attention deficit hyperactivity
22 disorder, mood disorder, and conduct disorder.

23 Q In your report, you made a conclusion as to whether
24 or not he's made any progress?

25 A Correct.

1 Q How would you characterize his progress?

2 A Minimal progress. And that was actually based on a
3 summary I reviewed from one of his treating professionals
4 that she noted that there was minimal progress made.

5 Q In "Conclusions: Level of Sophistication and
6 Maturity," as far as his moral development, what did you
7 find?

8 A He's truly not any more different than any other 14
9 and 15-year-old in regards to his moral development, so
10 obviously there is a lot of information related to 14 and
11 15-year-olds in terms of their moral development and
12 whether or not you can equate that to that of an adult or
13 someone older and ---

14 Q Just as far as written in your report, how did you
15 characterize it?

16 A In terms of his moral development -- Do you want me
17 to read this statement?

18 Q Yes.

19 A "Although he understands criminal acts are wrong, he
20 appears more motivated by the notion of punishment in
21 comparison of how his acts affect the alleged victims."

22 Q He appears motivated by what?

23 A "The notion of punishment in comparison of how his
24 acts affect the alleged victims."

25 Q Then, at the end of your report, you also list

1 categories, "Likelihood of Reasonable Rehabilitation," as
2 well as negative factors; is that correct?

3 A Yes.

4 Q I believe you list seven different things as far as
5 likelihood for rehabilitation?

6 A Correct.

7 Q One of those is he's accepted responsibility?

8 A Yes.

9 Q You note in Number 5, "expressions of remorse"?

10 A Yes.

11 Q But those are limited; would you agree?

12 A They are limited to -- Let me clarify. In Number 4,
13 he accepted responsibility in the fact that he did not
14 deny engaging in any of the acts including the robberies.
15 That's different from the phenomenon of whether or not
16 he's remorseful for those acts, which is reflected in the
17 one underneath that. In regards to remorse, yes, his
18 expressions of remorse were limited to the act of sexual
19 assault.

20 Q You would agree in a review of the records, as you
21 put in your report, that any attempt to rehabilitate him
22 or to get him help on prior occasions have ---

23 MS. DELANY: Objection. Leading.

24 THE COURT: Sustained. You're leading. Rephrase.

25 Q How would you characterize his success in prior

1 treatment?

2 A It has been limited.

3 Q You also list the negative factors?

4 A Uh huh.

5 Q Can you run through those?

6 A This is a summary of some of the factors that
7 specifically relate to the treatment prognosis, so
8 obviously he was charged with very serious offenses. His
9 current offenses are the first known serious offenses and
10 yet they were extremely violent and again very serious.
11 He has had a history of significant behavior issues. His
12 school attendance, performance and behavior have
13 historically been poor. He demonstrates borderline to
14 low-average cognitive abilities, probably again on the
15 more low-average range. Although he does understand there
16 are consequences for his actions, he does not appear to
17 consider said consequences prior to committing various
18 acts. He admits to regular abuse of marijuana and
19 alcohol, so there's a history of substance abuse. He has
20 been involved in long-term intensive rehabilitative
21 services. Specifically he was at Camp White Pines. He
22 appears to lack a supportive and adaptive support network
23 in the community, and again this was based on the time of
24 the report. And he appears to lack an adequate sense of
25 self-worth which was substantiated through the

1 personality assessment.

2 Q Finally you address adequate protection of the
3 public.

4 A Yes.

5 Q What did you feel about the public being protected,
6 the first paragraph?

7 A In regards to one specific category of offenses as
8 related again to robberies, burglaries, things of that
9 nature, he demonstrated a pattern of engaging in those
10 types of activities, so the likelihood was at the time
11 that he would continue to engage in said activities if
12 sufficient interventions weren't implemented.

13 Q Did you give an opinion in your report about
14 protection of the public?

15 A Right.

16 Q What was that opinion?

17 A That it would be compromised if he's not in a secure
18 facility.

19 Q If he's not in a secure facility?

20 A Right.

21 Q Then, you list some of the different treatment
22 available?

23 A Correct. Recommendations.

24 Q Are those treatments different from ones he's
25 received in the past?

1 A The first one is. Obviously that was his first sex
2 related offense, so he's never received any type of sex
3 offender related treatment previously, at least, not to
4 my knowledge.

5 Q Finally Number 7 on your negatives on page 17, would
6 you publish that for the Court?

7 A He's been involved in long-terms intensive
8 rehabilitative efforts in which he demonstrated minimal
9 progress.

10 THE COURT: You're a little soft-spoken, ma'am. If
11 you would just speak a little louder.

12 A Sure. Long-term intensive rehabilitative efforts in
13 which he demonstrated minimal progress.

14 Q What's the rest of that line?

15 A "There is reason to believe that such rehabilitation
16 might not be beneficial."

17 Q "Such rehabilitation might not be beneficial?"

18 A Correct.

19 MS. CAMPBELL: No further questions.

20 THE COURT: We've been going for a while, so let's
21 take a ten-minute recess.

22 Ms. Lilly, I'm going to ask you not to talk to
23 anyone about this case during the recess.

24 **(RECESS)**

25 THE COURT: You may cross examine, Ms. Delany?

1 **CROSS-EXAMINATION BY MS. DELANY:**

2 Q May it please the Court. Can I get you to tell the
3 Court a little bit about your education, where you went
4 to school, what your degrees are in.

5 A I have a bachelor's, a master's and a Ph.D. from the
6 University of Missouri, Columbia. As I mentioned
7 previously, I'm a licensed psychologist in North Carolina
8 as well as South Carolina.

9 THE COURT: Ma'am, I'm going to have to ask you to
10 try to speak louder.

11 A I'm sorry.

12 THE COURT: Is there any way we can adjust that to
13 make it a little louder.

14 A **(ADJUSTS MICROPHONE)** Is that better?

15 THE COURT: That's a little better.

16 Q So you have a Ph.D. in psychology?

17 A Correct.

18 Q When did you receive that?

19 A In 2000.

20 Q And you also have a master's?

21 A Correct.

22 Q When did you receive that?

23 A In 1997.

24 Q As well as a bachelor's degree.

25 A All three degrees are from the University of

1 Columbia in Columbia, Missouri.

2 Q How would you describe your field? What do you do?

3 A I was trained as a journalist; however, all of my
4 work historically has related to juvenile delinquency. I
5 started my career at the University of Nebraska, Lincoln,
6 at which I did research in juveniles, specifically female
7 juveniles, who were involved with the juvenile justice
8 system. After relocating to the Carolinas, I continued
9 my career with the South Carolina Department of Juvenile
10 Justice. I started out as a community psychologist
11 working in the community doing court ordered evaluations
12 for adjudicated youth. I was then promoted to the
13 supervising psychologist for the Piedmont region for the
14 South Carolina Department of Juvenile Justice, and I
15 ended my career with the South Carolina Department of
16 Juvenile Justice as the clinical director for the Upstate
17 Evaluation Center.

18 I subsequently changed to North Carolina Department
19 of Juvenile Justice, and I was the senior psychologist of
20 the Stonewall Jackson Youth Development Center which is a
21 long-term secure facility for adjudicated youth in North
22 Carolina. I served there for a year.

23 And currently I serve as a clinical supervisor for
24 care coordination for the Mecklenburg County LME. Within
25 that unit, one of the things that we do is, we oversee

1 behavioral health and substance abuse services delivered
2 to youth that are involved with the Department of
3 Juvenile Justice.

4 Q So how long have you been involved with juvenile and
5 psychology together?

6 A Including the work that I did as a graduate student,
7 I would say almost 20 years.

8 Q Have you attended -- As well as studying in school,
9 you attended seminars and training in that area?

10 A Yes.

11 Q Give me some of those seminars you've attended.

12 A I've attended several trainings on juvenile
13 forensics that were sponsored by the American Academy of
14 Forensic Psychology.

15 Q Have you been qualified as an expert to testify in
16 court before?

17 A Yes.

18 Q What field were you qualified in and how were you
19 qualified?

20 A I was qualified in Florence, South Carolina in a
21 waiver hearing. I've also been qualified in North
22 Carolina as an expert witness, and that was a waiver
23 hearing as well.

24 Q You were qualified as a psychologist or a forensic
25 psychologist?

1 A It was a psychologist. I do not use the title
2 forensic psychologist because I'm not board certified in
3 forensic psychology. I consider myself a psychologist, a
4 licensed psychologist who does forensic work.

5 MS. DELANY: Judge, at this time, we'd ask you to
6 qualify her as an expert in psychology. I don't think
7 that was done.

8 THE COURT: Any objection?

9 MS. CAMPBELL: No.

10 THE COURT: I find that Ms. Lilly is an expert in
11 the field of psychology.

12 MS. DELANY: Thank you.

13 Q Dr. Pugh-Lilly, are you familiar with some of the
14 more recent research on adolescent brain development?

15 A Yes.

16 Q Have you reviewed some articles on that? Have you
17 read articles on that?

18 A Yes.

19 Q Now, when we talk about adolescent brain
20 development, Zacoata would be in the group that they
21 define as adolescent?

22 A Absolutely.

23 Q He's 14?

24 A He was 14 at the time of the offense.

25 Q Are juveniles and adolescents generally less mature

1 in their ability to make sound judgments?

2 A Yes.

3 Q Are they less able to control their conduct?

4 A Yes.

5 Q Are they less able to recognize consequences than
6 adults?

7 A Yes.

8 Q Are they more impulsive?

9 A Yes.

10 Q It's my understanding recent developments in brain
11 imaging have allowed y'all to come to realize things that
12 you hadn't before; is that correct?

13 A Yes.

14 Q That specifically is called FMRI?

15 A Not familiar with that terminology, but I am
16 familiar with the brain development of adolescents in
17 comparison to adults. We do know that adolescent brains
18 are not fully developed until mid-adulthood -- or, excuse
19 me, mid-twenties.

20 Q People that -- Doctors and psychologists didn't
21 really realize that until the last ten years?

22 A Yes. Within the past ten years.

23 Q What was the old school of thinking of when the
24 brain finished growing? At what age?

25 A Probably late adolescents, 18, 19, somewhere around

1 there?

2 Q And now what is the current school of thinking?

3 A There's overwhelmingly compelling evidence in the
4 social science literature as well as in the neurological
5 literature that the brain is not fully developed until
6 the mid-twenties, so around the age of 25 or so, give or
7 take.

8 Q So when we're talking about the brain developing,
9 are we talking about frontal lobe or the prefrontal
10 cortex?

11 A Correct. Which is where executive functioning
12 occurs.

13 Q So those are structurally immature until they're in
14 their 20's?

15 A Correct.

16 Q Is it fair to say that the frontal lobes are kind of
17 like the CEO of the brains?

18 A Yes.

19 Q And that's actually the last region to mature?

20 A That's correct.

21 Q The prefrontal cortex, that's inhibition; is that
22 correct?

23 A That's correct.

24 Q It affects risk-taking behavior?

25 A That's correct.

1 Q So given that, adolescents are less able to suppress
2 impulsive behavior?

3 A That's correct.

4 Q So the prefrontal cortex until it's fully matured,
5 does it assume the leadership role or is it the limbic
6 system that's kind of driving the bus?

7 A Well, in adolescents in general -- I'm going to talk
8 more broadly. In adolescents in general, you're right,
9 the other areas of the brain are going to guide actions,
10 behaviors more so than this underdeveloped area of the
11 brain until that area gets developed. That's what you
12 were talking about as the CEO of the brain. The frontal
13 lobe is considered the hub for executive functioning,
14 which is the part of the brain that is responsible for
15 higher-order thinking. It's what distinguishes humans
16 from other species essentially is our frontal lobe.

17 Q So does that kind of leave the limbic system a
18 little bit more in front?

19 A In terms of -- What I'm assuming you're referring to
20 is in regards to impulsivity?

21 Q Yes.

22 A Yes.

23 Q Okay. And the limbic system is just kind of
24 primitive fight or flight; isn't it?

25 A That's correct.

1 Q It's a more primitive system than the frontal lobe?

2 A That's correct.

3 Q I want to ask you a few questions about sex
4 offenders and adolescent sex offenders as well. Would
5 you say that adolescent sex offenders are different from
6 adult sex offenders?

7 A Absolutely.

8 Q Are they different in terms of their amenity to
9 treatment?

10 A Yes.

11 Q Are they different in terms of re-offense
12 statistics?

13 A Yes.

14 Q When adolescent sex offenders act sexually, is it
15 primarily out of sexual attraction in children or deviant
16 arousal patterns or is it the same as you see in adults
17 or is it something different?

18 A It's usually different. Of course, there are
19 outliers where you do see some sexual offending patterns
20 that emerge that are related to sexual deviancy in
21 adolescents. I'm not saying that that does not happen,
22 but the overwhelming majority of juveniles who engage in
23 some type of sexual offense, the pathway to that behavior
24 is very different than what you would consider in terms
25 of an adult sex offender.

1 Q As far as the dynamics of adolescent sex offenses,
2 can that emerge from developmental issues, like family
3 dynamics, social skills deficits, those kinds of things?

4 A Yeah. There are different contributing factors for
5 any child who acts out in a sexual way. It could be
6 related to the fact that that child was sexually abused
7 him or herself. It could be due to the fact that that
8 child is socially inept and socially withdrawn and is
9 having all of these hormonal reactions within the body
10 and is not sure how to channel those appropriately
11 because they're not able to engage appropriately with
12 same-aged peers and some of the other environmental
13 factors that you alluded to as well.

14 Q Would you say that adolescents are more amenable to
15 treatment than adult sex offenders?

16 A Absolutely.

17 Q Is that because their behaviors haven't become
18 entrenched or why?

19 A It's because their motivation for engaging in those
20 behaviors is very different than what you would see in a
21 true adult sex offender, so it's almost like -- and this
22 is brand new research that has emerged over the course of
23 the past decade that truly is comparing apples and
24 oranges in terms of their motivation. Usually more
25 sexually deviant behaviors and pathology doesn't even

1 emerge in people until around the age of 18 or older, so
2 when you're talking about a juvenile or someone under the
3 age of 18 who is engaged in sexually acting out, more
4 than likely, the reason that they're doing that is very
5 different than why an adult would engage in similar
6 behaviors.

7 Q As far as recidivism rates go, are they lower for
8 adolescent sex offenders than adults?

9 A For those juveniles who successfully complete an
10 empirically supportive program for some type of sexually
11 acting out, the recidivism rate is very low.

12 Q Does zero to 13.5 percent sound about right?

13 A Yes. That sounds about right.

14 Q If you compare that to adult offenders, that's
15 significantly less?

16 A Correct.

17 Q Is that actually less than adolescents who re-offend
18 in non-sexual ways?

19 A That's true.

20 Q They have higher recidivism rates?

21 A Yes, they do. And that includes the whole spectrum
22 of what would be considered criminal activity for an
23 adolescent.

24 Q So a property offender would be more likely than a
25 sex offender as a juvenile to re-offend?

1 A That's correct.

2 Q Do you consider Zacoata to be a sex offender?

3 A No, I don't.

4 THE COURT: Your answer was what?

5 A The reason I don't consider Zacoata to be a sex
6 offender is because a sex offender usually has a certain
7 profile, and prior to the date of that offense, he did
8 not exhibit any of the characteristics that you would
9 consider in a sex offender. Now, granted, yes, he
10 committed a sex offense. There's no question about that,
11 but in terms of a person who was motivated by sexual
12 deviancy or pathology, there was no indication that he
13 exhibited that profile.

14 Q In your opinion, does that make him more amenable to
15 therapy?

16 A In regards to that particular incident, I do, and
17 I'm narrowly focusing on the sex offense.

18 Q In your opinion, would the sex offense have happened
19 if the co-defendant wasn't there?

20 A I do not believe it would have happened if the co-
21 defendant had not been there.

22 Q I want to talk just kind of about Zacoata and some
23 of the testing that you did, just some basics. He was
24 cooperative with you when you evaluated him?

25 A Yes. And as I testified earlier, there were

1 some ---

2 Q Distractions.

3 A Yes, exactly. And he did fatigue quite easily, but
4 he was cooperative.

5 Q He did have some deficits in short term recall; is
6 that fair to say?

7 A If you're alluding to those processing speeds sub-
8 tests, I really do not believe those are an accurate
9 reflection of his performance.

10 Q But you scored him with, like, a 71; is that
11 correct?

12 A Yes.

13 Q So you're referring to the working memory?

14 Q Yes.

15 A The working memory could have also been adversely
16 affected by -- You're looking at the full-scale score in
17 terms of the 71.

18 Q I may have jumped around some. I'm sorry.

19 A Yes. You did. Because his working memory actually
20 is consistent with the IQ range that I testified to which
21 is in the low-average range of 88. It was that
22 processing speed score that was in my opinion
23 artificially deflated at 56. The 71 is the full-scale IQ
24 score, but that processing speed score was so low. It
25 brought it down to the borderline range.

1 Q And that was the 0.2 percent?

2 A Correct.

3 Q What is processing speed?

4 A That's exactly what it sounds like in terms of a
5 person's ability to -- the manner by which and the speed
6 by which they process information.

7 Q The amount of time they make decisions in?

8 A Yes, yes. That's a fair assumption.

9 Q You think that was depressed because of things going
10 on around him?

11 A Correct.

12 Q But you didn't think he was malingering ---

13 A No, no, not at all.

14 Q As far as drugs and alcohol go, he admitted to you
15 that he was intoxicated on the date this happened?

16 A He admitted to some substance abuse, yes, on the day
17 this occurred.

18 Q He also admitted to substance abuse since about age
19 nine; is that right?

20 A That's correct.

21 Q As far as mental health when you saw him, he
22 experienced symptoms of depression; is that fair to say?

23 A Mood disturbances, so that's a little bit different
24 than depression. Mood disturbances really fall under the
25 umbrella category of a bipolar disorder, so you're

1 talking about the fluctuations in mood. You're talking
2 about manic or hypomanic episodes as well as depressive
3 episodes. In adolescents, mania, particularly in young
4 male adolescents, mania or hypomanic episodes often
5 manifest themselves in irritability, irrational behavior,
6 risk-taking behavior, sleeplessness. That's usually how
7 it's manifested.

8 Q He also reported hearing voices often; is that
9 correct?

10 A I believe there were some reports of that, but I do
11 not necessarily believe that that's an over-arching
12 diagnosis for him in terms of I wouldn't necessarily
13 diagnose him at the time of the assessment with a
14 psychotic disorder. And that's what you're talking about
15 with that class of symptoms.

16 Q But it has been reported?

17 A It has been reported, yes.

18 Q He is an IEP student, right, special education
19 student?

20 A Correct. He has a behavioral plan. Yes.

21 Q We talked about this a little bit about how
22 pharmacologically he was treated?

23 A Uh huh.

24 Q And I think that you said that you did not diagnose
25 him with this, but there's a history of him having a mood

1 disorder when you looked at his medication?

2 A That's correct.

3 Q Is that, like, the Depakote and the Clonidine?

4 A Right. Depakote is a seizure medication, but it's
5 often used to treat mood disturbances as well.

6 Clonidine, really it's a hypertension medication, but
7 it's often used in the psychiatric arena for mood
8 disturbances as well. Abilify is an anti-psychotic, but
9 it is used for other pharmacological reasons too in terms
10 of psychiatric presentation. And Vyvanse is a psycho-
11 stimulant. Vyvanse is a medication that is used in
12 treatment of attention deficit hyperactivity disorder.

13 Q As far as his -- And I believe he and his mother
14 both told you that he was not in a gang; is that correct?

15 A Yes. That's what he said, yes. Yes. And his
16 mother said that as well.

17 Q As far as his family goes, his father has not been
18 very involved in his life; is that correct?

19 A There was no indication of such.

20 Q He's been in and out of prison?

21 A The father? By their report.

22 Q Was he physically abusive when he was around?

23 A Again, that was reported. I don't have anything to
24 substantiate that in terms of DSS records or anything of
25 that nature.

1 Q The mother has been investigated for abuse by DSS?

2 A That's right.

3 Q I think you noted in your report that DSS records

4 weren't available.

5 A They weren't?

6 Q So you did not get to review those records?

7 A That's correct. That was by self-report.

8 Q But she said to you, yeah, I beat the living ---

9 A Yes, she did.

10 Q --- you know what, out of him?

11 A She did. That was a direct quote.

12 Q They also reported to you that often times they

13 didn't have basic utilities, like lights and water?

14 A That is accurate.

15 Q And he basically began fending for himself out on

16 the streets around age 13?

17 A Correct.

18 Q Did you review mental health records as a part of

19 this?

20 A I did, but again, I did not have access to the

21 Palmetto Health Baptist Medical Center records. What I

22 did was, I obtained that information from the Midlands

23 psychological evaluation report. I did have some mental

24 health records. I didn't have those in terms of the

25 documentation specifically related to his psychiatric

1 hospitalizations. But all of that information was
2 archived in that other psychological report.

3 Q Did you just have the little MEC report or did you
4 have multiple records from hospitals?

5 A I had other records, but I didn't specifically have
6 that record.

7 Q Okay.

8 A Yes.

9 Q The records that you did review, did they
10 characterize his home life as chaotic?

11 A Yes.

12 Q Do they characterize it as multiple people, like, 9
13 to 13 people in and out of the house?

14 A I don't specifically recall that. I'm not saying
15 it's not reflected in the records, but I don't
16 specifically recall that. But certainly both he and his
17 mother reported what I would consider to be a chaotic,
18 unstable home life.

19 Q He was in foster care for a few months; did you see
20 that in the ---

21 A The SC Mentor records, yes, reflected that he was in
22 therapeutic foster care for a period of time.

23 Q Could you tell how he did while he was there?

24 A As I recall -- Let me look at my records. This is a
25 record from 2010, and it looked as if he was still having

1 difficulty. They were putting together some behavioral
2 action plans to address some of the things that he was
3 continuing to exhibit in addition to use of marijuana,
4 things of that nature. I just might comment for a second
5 -- I know you didn't ask me this. -- but in regards to
6 the marijuana use, it is not atypical for a child that
7 has been diagnose with attention deficit hyperactivity
8 disorder to self medicate with marijuana, and I mention
9 that only because although he has been treated, I don't
10 know the consistency of the treatment, so that's not an
11 atypical profile for a child with ADHD if they aren't
12 being sufficiently medicated for that particular
13 condition.

14 Q Is it basically to slow themselves down?

15 A Exactly. Exactly.

16 Q In the mental records that you reviewed, did it
17 appear that the family was referred to DSS because mom
18 wasn't administering the medication at any time? I don't
19 know which ones you've reviewed so ---

20 A Yes. What I recall is that the reports at DSS were
21 related to the allegations of physical abuse.

22 Q Did you feel like after all you had done that there
23 was a lot of supervision in that home?

24 A No, there wasn't.

25 Q Did you describe Zacoata as troubled, lonely and

1 socially apprehensive?

2 A Yes.

3 Q Did you find the level of maturity and
4 sophistication to be lower than expected for his age?

5 A Yes.

6 Q As far as his sophistication and maturity, I believe
7 the solicitor was asking you if punishment was
8 motivating; do you remember that?

9 A Yes.

10 Q Would you describe him as child-like in that sense?

11 A What I will say is I don't think that's necessarily
12 atypical for adolescents particularly an adolescent with
13 low-average cognitive abilities to be motivated by
14 rewards and punishments.

15 Q Are small children motivated by rewards and
16 punishment?

17 A Yes, they are.

18 Q And adults are motivated particularly by morality?

19 A Exactly. And other intrinsic kinds of variables.

20 Q So does he being motivated by punishment make him
21 more mature or less mature?

22 A Yes. He certainly is less mature particularly in
23 terms of the fact that we're talking about a timeframe
24 which is almost a year-and-a-half ago in terms of when he
25 was around about the age of 14, so we're talking about a

1 14-year-old. But in addition to that, IQ, as you know,
2 is on a bell curve, so average range -- Eight-five (85)
3 percent of the population is going to fall in the average
4 range, so even in the low-average range, he's still on
5 this side of the curve, so in comparison to average
6 peers, he is going to exhibit a lower level of maturity.
7 Now, is it anything related to MR or anything of that
8 nature? No. But in comparison to your average 14-year-
9 old? Yes. I would say that he exhibits less maturity
10 than those individuals. Also there's a huge variation
11 among just individual children, so going back to the
12 comment in regards to when the frontal lobe is completely
13 developed, some people it's going to be developed
14 earlier, and some people it's going to be developed
15 later. The mid-twenties is an average. So for him, it
16 may be late 20's before his frontal lobe is fully
17 developed.

18 Q And it tends to be older for boys, right?

19 A The whole puberty process is delayed for boys in
20 comparison to girls.

21 Q You listed some factors for likelihood of
22 rehabilitation. Well, actually before we get to that, as
23 far as mental health, and then I'll move on, in your
24 review of the records, did you review his IEP's as well,
25 his Individual Education Plan?

1 A Yes, I do have that.

2 Q That combined with the mental health records, did
3 you ever see anything about the mom not showing up for
4 some appointments?

5 A I don't recall that specifically. I don't want to
6 testify to something I can't recall. It could very well
7 be in there. I just don't recall it off the top of my
8 head.

9 Q I'd like you to look at his factors for likelihood
10 of rehabilitation. You found several of them; is that
11 right?

12 A There were seven factors that I listed.

13 Q As far as those seven go, are there any that are
14 more important than the others?

15 A As I've already mentioned, he was open with me. I
16 did not feel as if he was withholding information. I
17 felt he was being honest and truthful with me. He did
18 not appear to -- And I asked him not to, and he followed
19 this directive of trying to portray himself as better or
20 worse when he described the events leading up to and
21 including the event itself, so I felt like that was an
22 accurate depiction. He was engaged with me; he seemed to
23 develop some level of rapport even though we only had
24 interaction on three different occasions, so those are
25 all positive and bode well for him.

1 I can't emphasize enough truthfully that I do
2 believe the sex offense was motivated by his admiration
3 for his co-defendant, which is something that he was very
4 clear about. And it wasn't in a way of trying to explain
5 or excuse his behavior; it was just factual information.
6 My wish would be that that is something that's
7 highlighted in the court in regards to that particular
8 offense.

9 Q When you look at some of the recommendations that
10 you made specifically as far as what should happen with
11 Zacoata's case regardless of whether he stays in family
12 court or goes to general sessions, you've stated he's had
13 individual psycho-therapy?

14 A Right.

15 Q That's to work on mood disturbances and maladaptive
16 personality traits, behavioral issues and sex offender
17 treatment, and life skills?

18 A Right.

19 Q You've also said that he needs psycho-
20 pharmacological. He needs medication basically?

21 A That's right.

22 Q You encourage a Gang-out Program?

23 A That's right.

24 Q You encourage a substance abuse program?

25 A Uh huh.

1 Q And you encourage other activities to allow him to
2 atone for his actions given his young age?

3 A Right.

4 Q As well as job training, right?

5 A Uh huh.

6 Q Do you know if any of those things are available at
7 the Department of Juvenile Justice?

8 A All of these are -- Aside from Number 2, the
9 neuropsychological evaluation. That's something that
10 would have to be done by an outside evaluator because to
11 my knowledge they don't have a neuropsychologist employed
12 by Department of Juvenile Justice. But other than that,
13 all of the other recommendations are available through
14 the Department of Juvenile Justice.

15 Q Is it your understanding that DJJ is going to start
16 keeping them until age 19 instead of 17?

17 A That is correct. Yes.

18 Q I know that's not your decision or something that's
19 been finalized, but is that your understanding of the
20 process right now?

21 A That they are ---

22 Q They're negotiating that.

23 A That's right. That there is a memorandum of
24 agreement between the Department of Corrections and the
25 Department of Juvenile Justice, and they're in the

1 process of amending that agreement such that instead of
2 children being referred to the Youthful Offenders'
3 Program at the age of 17, that they will now be referred
4 at the age of 19.

5 Q Will they keep them at 19 if they're in family court
6 or GS court? Will it matter if they're in family court
7 of general sessions?

8 A No. All children will be housed in the Department
9 of Juvenile Justice until the age of 19. Now, if their
10 offenses were in general sessions, then at the age of 19,
11 they will be transferred to the Youthful Offenders'
12 Program through the Department of Corrections.

13 Q Briefly getting back to the kind of chaotic home
14 environment, it is your understanding there were a lot of
15 people moving in and out of the house?

16 A Again, that's probably in the records. I don't
17 recall reading that, but I'm sure it's somewhere in the
18 records.

19 Q Do you recall anything about them hoarding food and
20 hiding food from each other?

21 A Well, he mentioned that he felt the need to engage
22 in those activities to ensure that his nutritional needs
23 were met.

24 Q As far as remorse goes, do you feel like he's
25 generally expressed remorse for the rape?

1 A Yes. Based on his level of sophistication and
2 maturity, yes.

3 Q And that's the one thing you thought wouldn't have
4 happened but for his co-defendant?

5 A That's accurate.

6 MS. DELANY: No further questions.

7 **REDIRECT EXAMINATION BY MS. CAMPBELL:**

8 Q May it please the Court, your Honor. You mentioned
9 that the home life was chaotic?

10 A Yes.

11 Q In your assessment of the information you gathered,
12 who was the person that was violent or aggressive in
13 there?

14 A There were incidents during which Zacoata was
15 violent and aggressive, but I will also say that if a
16 mother tells me that she beats the h-e-double-hockey-
17 sticks out of her children, I'm going to categorize her
18 as aggressive as well.

19 Q Who was the only person that stabbed anybody that
20 you know of?

21 A The child.

22 Q You also mentioned that it's your opinion, you just
23 told this judge, that he's not a sex offender?

24 A In my professional opinion.

25 Q That's what you said?

1 A Yes.

2 Q In doing that, you have reviewed all the records
3 from the jail?

4 A No, I have not.

5 Q So if I asked you to review these incidents
6 reports ---

7 MS. DELANY: Objection. Outside the scope of cross,
8 your Honor.

9 MS. CAMPBELL: I'm not offering it in evidence..

10 THE COURT: I believe she stated on cross-
11 examination that she did not see this child as a sex
12 offender. I think she's addressing that issue.

13 MS. CAMPBELL: And I'll limit it to that, Judge.

14 THE COURT: Your objection is overruled.

15 **(WHEREUPON, WITNESS REVIEWS RECORDS.)**

16 Q You've reviewed those?

17 A I've reviewed them.

18 Q So the fact that he threatened to rape the mother
19 and a grandmother of a juvenile in the detention center
20 doesn't affect your opinion that he's not a sex offender?

21 A I will answer it this way: If you need
22 clarification, please feel free to ask me. As I'm sure
23 that you're aware in a locked facility ---

24 Q You have to answer yes or no.

25 MS. DELANY: Your Honor, she needs to be allowed to

1 answer.

2 THE COURT: Yes, ma'am. Let her answer, and then
3 you can follow up.

4 A In a locked facility, oftentimes -- You know, again
5 we're talking about children. I can't de-emphasize that
6 point. A lot of times children will say or do things
7 that are not something that they would normally or
8 customarily do in the general environment, so my opinion
9 about whether or not -- and I'm talking about a profile
10 of a sex offender. These are threats. I agree with you:
11 These are threats. They're not actions. They're not
12 anything that fits the profile of what I would consider
13 sexual deviancy or sexual pathology. And I do believe --
14 The detention staff also mentioned, it was also reported
15 in my report, some of the comments that he made. I
16 believe in my professional opinion that he's making these
17 comments as a result of the fact that he has to earn some
18 sort of credit, some sort of status while he's in this
19 facility being with other juveniles, with other peers and
20 the fact that he was accused of this crime, the mere fact
21 that he has been labeled, if you will, from the mere fact
22 that he was charged with a sex offense, given his
23 maturity level, given his level of sophistication is
24 going to contribute, so what I'm saying to you is this
25 doesn't surprise me, but it doesn't change my opinion.

1 Q Were you also aware of the fact that the night he
2 was arrested that he was laughing and talking about doing
3 it again, raping?

4 A I wasn't aware of that.

5 Q Does that affect your opinion?

6 A I stand by what I said.

7 Q So characterizing his penis in a certain manner
8 doesn't affect your opinion?

9 A No.

10 Q And the threats to the COs, the people in charge,
11 doesn't affect your opinion of a sexual nature?

12 A What I said was, I'm not surprised that he would
13 make these comments in that type of setting given the
14 fact that he was charged with a sex offense.

15 Q Were you surprised that he would make a comment
16 about doing it when he was arrested?

17 A Well, that was the first I heard of that.

18 Q You also said that you didn't have any information
19 about him being in a gang, being affiliated with gang
20 members?

21 A Correct.

22 Q Were you also aware that he told law enforcement on
23 at least two prior occasions that he was in a gang?

24 MS. DELANY: Objection.

25 THE COURT: Sustained.

1 Q Did you have information from law enforcement about
2 his gang status?

3 A I don't recall reading that.

4 Q Finally as far as rehabilitation, Number 7 on your
5 negatives, based on his prior interaction, he has
6 extensive history of having rehabilitative efforts made;
7 is that correct?

8 A He was at the Midlands Evaluation Center. He was at
9 Camp White Pines. He has been hospitalized for acute
10 psychiatric episodes, so those are the out-of-home
11 residential kinds of treatment opportunities that he's
12 had.

13 Q How did you characterize it in your report, his
14 likelihood of being receptive to rehabilitation?

15 A Minimal.

16 Q Minimal?

17 A Yes.

18 MS. CAMPBELL: Thank you. Nothing further, your
19 Honor.

20 THE COURT: You may step down, ma'am.

21 I assume there's no objection to this lady leaving?

22 MS. DELANY: No, your Honor.

23 THE COURT: Do you have any other witness? Is that
24 your case?

25 MS. CAMPBELL: No, sir. We've eliminated any other

1 witnesses.

2 THE COURT: Why don't we break at this time for
3 lunch. Let's stand in recess until 2:00 o'clock.

4 **(WHEREUPON, COURT WAS RECESSED UNTIL 2:00 P.M.)**

5 THE COURT: Ms. Delany.

6 MR. MAY: Your Honor, just again seeing as we really
7 don't know the correct procedure, I think I've got to do
8 this. At least I would do this in general sessions
9 trials to preserve all our motions and objections. Your
10 Honor, at this time, at the close of the state's case, we
11 would renew all of our objections and prior motions to
12 include specifically our objections under Rule 1101 (D)
13 that the rules of evidence should apply as they are not
14 explicitly stated in 1101(D). Both parties as well as the
15 Court, nobody could come up with the correct procedure,
16 and when the Court ruled that in 1101 (D) that the Court
17 was sitting as a magistrate would in a preliminary
18 hearing, your Honor, we believe it's an abuse of
19 discretion. We'd renew that objection. We at this time
20 would move for, lack of a better term, a mistrial or mis-
21 hearing as we believe that the rules have not been
22 properly conformed to. We'd also renew all objections
23 regarding to the right of confrontation.

24 THE COURT: All right. All of those motions have
25 been made and ruled on. They are still denied.

1 MS. DELANY: We call Mr. Nathaniel Griffin.

2 **NATHANIEL GRIFFIN, BEING FIRST**

3 **DULY SWORN, TESTIFIED AS FOLLOWS:**

4 THE COURT: Will you state your name on the record
5 first, sir?

6 A My name is Nathaniel Griffin, Jr.

7 **DIRECT EXAMINATION BY MS. DELANY:**

8 Q Can you talk a little bit about how you've come to
9 know Zacoata?

10 A Yes, ma'am. I coached Pop Warner football,
11 basketball, track, high school ball. And I remember when
12 I first met Zacoata, I was coaching at Polo Park at that
13 time, and a couple of coaches had called me up and said
14 they had a kid that wanted to play ball and seems like
15 most of the teams are full. So I said, "I'll take him;
16 that's what we're out here for. We're out here to mentor
17 kids." And he came over.

18 At that time Zacoata was much bigger than most of
19 the kids on the team for the age that we were, and he was
20 a little cocky. He came out and he felt like he could
21 just do his football thing. I told him, I said, "Well,
22 these kids been playing football for a long time, so it's
23 more skill than size." So as we got into practices, he
24 started to realize that some of these kids could play
25 ball, and he conformed to the team. We won the league

1 championship that year. He made the All-Star team.

2 Zacoata and I along with my son, who was also
3 playing, we became really good friends. I met his
4 mother. His sister and my daughter went to Spring Valley
5 High School together, and we started spending a lot of
6 time together. Zacoata had my phone number. Whenever he
7 wanted to call and come over and stay at my home, he
8 would call me, and I'd come by and his mom would always
9 be there. She knew me well and his sister. I could come
10 over and pick him up any time, take him home with me,
11 spend the weekend with me and my son. We'd play video
12 games and sit up half the night, go hang out around the
13 city, go to different parks and stuff. I treated him
14 like my son.

15 Q You said "Pop Warner", how old was that? What age?

16 A Pop Warner is from age 5 to 15. It's older but
17 lighter when you get around the 14, 15-year-old age. If
18 you're at a certain weight, you can play older but
19 lighter, but it will go up to 15.

20 Q How old was Zacoata when he was on your team?

21 A This has been, what, three, four years ago.

22 Q So is that the eight to ten? What age?

23 A He was around ten, nine, ten, when we first met. He
24 was about that age, about ten years old I believe.

25 Q What kind of player was he?

1 A Zacoata was strong. He had good size, and I made
2 him an offensive lineman, and he made the All-Star team
3 playing offensive lineman. Blocked hard, you know, had a
4 lot of passing for the game. I'm from a family of sports
5 nuts, and that's all me and my son do. I've had custody
6 of my son since he was four, and he started playing
7 tackle football at five. That's all we do. We go from
8 one sport to the other to the other. In the course of
9 doing that, I've met a lot of young men around Columbia,
10 South Carolina. I'm not from here; I moved here from
11 Maryland. I met a lot of young men around the city that
12 find my house home. They come over, stay the week-end,
13 hang out, play ball with me and my kid. We go to the
14 movies together. We play video games together. It's
15 just the two of us, just me and my son.

16 Q Did you act as a mentor for Zacoata?

17 A I treated Zacoata like my son. Anything he had
18 needs of or wanted, I tried to do it.

19 Q Did he have a male role model?

20 A I didn't know of anybody. I met his mom and his
21 sister and his grandmother. I never met his father. I
22 believe his father may have been incarcerated at the
23 time, but outside of myself -- I mean, he may have known
24 some other people in the neighborhood, but I didn't know
25 of anybody.

1 Q Did you meet his mother and grandmother?

2 A Yes.

3 Q And the female members of his family?

4 A Yeah, his sister. Those were the only people in his
5 life that I knew of at the time.

6 Q Were you aware at all of what his home life was
7 like? Did he talk to you about that?

8 A We talked some times, and I stayed on him a lot
9 because I questioned him about his life because I wanted
10 to know what's going on in his life. And I know at the
11 time we met, he was going to Dent Middle School, and I
12 was trying to get him to a point where he could play at
13 the middle school level because that's what this whole
14 thing is about is getting your grades to the point --
15 You've got to have a C average to where you can play at
16 the school level. If your grades aren't on point, if
17 you're not acting the way you should in school, you can't
18 play in middle school and high school, so that's my goal.

19 That was my primary goal with all of the kids, to get
20 them to where they could play in front of their peers.

21 Q Why did Zacoata stop playing football with y'all?

22 A Well, football cost money for one. It's not free.
23 Equipment and all of that has to be purchased. There was
24 no really definite reason. Probably if it were more of
25 anything, it was financially.

1 Q Did he age out at all?

2 A Well, he aged out too. He got a little bigger.
3 It's weight, age, and at that time, Zacoata was much
4 bigger than most of the other kids, so the age, weight
5 thing came into play as well.

6 Q Would he stay with you on the weekends sometimes?

7 A Yeah. He'd spend many weekends at my house.

8 Q How did he do when he was at home with you?

9 A He was fine. He was home. It was him, myself -- At
10 that time, my mother was living with me as well. I have
11 a three-bedroom place, so my mom had her room. I had my
12 room, and my son and Zacoata shared his room. They sit
13 up half the night like kids do playing video games, play
14 station, X-Box, whatever. We'd get up in the morning,
15 and we'd run around to the malls to the basketball
16 courts, whatever we did.

17 Q Do you consider your home to be structured; you have
18 your rules?

19 A Oh, very much so.

20 Q Did he respond well to that?

21 A I never had an issue out of Zacoata in my home. I
22 mean, I never had an issue out of him in my home ever.
23 He was at home when he was at my home. He didn't have to
24 ask could he go to the refrigerator or anything like
25 that. He was home.

1 Q No problems?

2 A I never had a problem out of Zacoata. I would talk
3 to him about school a lot, and I would talk to him about
4 his future a lot. I would talk to him about staying on
5 point, staying out of trouble. I would talk to him like
6 I'd talk to my child. My son is a freshman at Spring
7 Valley, and I still have these same talks with him.

8 Q Do you remember any examples -- When he was on the
9 football team, do you remember any examples of him
10 showing compassion for other kids, less fortunate kids?

11 A Zacoata was always giving. If he had anything, he
12 shared it with anybody. He was always a giving kid.
13 Like I said, when he first came out there not knowing
14 football like he thought he might have known football, he
15 thought he could just come out there and be the man, be
16 the bully or be the tough guy or whatever, but as he
17 learned to realize, some of these kids had honed skills
18 over the years and he started practicing his skills. He
19 became a great offensive lineman, he really did.

20 Q Did he ever help another child pay for their costs?

21 A He's helped kids pay for snacks and different
22 things. I'm a single parent. It's been times he would
23 come over to my house, and me and my son, we didn't have
24 money to do a lot of things, and Zacoata may have money
25 and we'd go out and eat and whatever. He was always

1 giving. He's a free-hearted young man.

2 Q Did he do yard work to make that money?

3 A Zacoata raked yards, cut grass. He did things that
4 I know of to get money. There were times that I talked
5 to Zacoata about where he's at and what he's doing and
6 who he's affiliated with because I was concerned about
7 him. I care about the young man; I really do. And I was
8 concerned about him. I know he didn't have a lot of
9 positive role models male-wise in his area knowing the
10 community he grew up in. I mean, not that mine is great
11 either, but it makes a big difference to have a role
12 model in your life, and I tried to be that for him. I
13 tried to encourage him as far as grades. I tried to
14 encourage him as far as attitude, personality, and I just
15 opened up my home and my heart to him.

16 Q Do you remember his mother ever calling you and
17 saying, "Come get him. I'm going to kill him"?

18 A No, I don't ever remember her saying to come get
19 him; she's going to kill him. Most of the time when I
20 came to get him, he called me. When I came to Zacoata's
21 house -- "Coata" is what I called him. Coatay (Phonetic)
22 is actually called him, but whenever I came to his house,
23 he called me. He had my phone number, and he had my
24 son's phone number. He would call, "Hey, Coach, can I
25 come stay the weekend?" "What y'all doing today?" If we

1 ain't doing nothing, we'd jump in the car and ride over
2 and get him. He lived over by the mall, and I live in
3 the Woodfield area, so it wasn't far.

4 Q When did you sort of lose touch with him and stop
5 seeing him as much?

6 A Well, after that football season, I stopped coaching
7 at Polo Park, and I went to Blythewood football. When I
8 got to coaching out there, it was a different age
9 bracket, and then the price was much higher. We kind of
10 gradually lost -- It was right after that. It was a
11 couple of years because even after we weren't doing
12 football together anymore, he was still coming over. It
13 wasn't about the football with us. He was my friend, and
14 I was his friend. He and my son were friends, so it
15 wasn't just about the football.

16 But we did gradually lose touch with one another
17 over the years as we got more involved with other things,
18 state championships and trying to do the nationals. It
19 was a lot of fundraising involved and then with my son's
20 studies, my mom got sick, so I was really busy myself. I
21 had a stroke shortly after that time, so a lot of things
22 were happening in my life real fast, so a lot of things I
23 wasn't able to do that I was able to do. I lost my car;
24 phones were off at points in my life. It was a lot going
25 on, so I lost track with him just doing life.

1 Q Would you describe him as respectful or
2 disrespectful?

3 A He was always respectable. Whenever I talked, he
4 listened. I remember a time that he was in the hospital,
5 and I came up and met with him and talked. Anytime I
6 talked to him, he listened to me. He was never
7 argumentative with me, not once, not since I met him, not
8 one time. We've never had an argument; we've never had a
9 disagreement. It was a father son relationship with him.
10 When I said something to him, he listened. He would
11 stand there and he would look me in my eye, and he would
12 be responsive to whatever questions or whatever I had to
13 tell him. If I was reprimanding him about anything, he
14 would just listen to me. It was never argumentative back
15 and forth, never once.

16 Q Were you shocked when you learned about this case?

17 A I couldn't believe it. I had heard about the case,
18 but I didn't associate it with my son. I didn't
19 associate it with him, but my assistant coach called me
20 and said, "Man, it's Zacoata." I said, "No, it's not."
21 I didn't believe it. I could not believe it because that
22 wasn't his character. I never had a problem with him
23 with any violence, you know. I talked to him about drugs
24 like I talked to my son about drugs. I never had any
25 problems with him. If he was involved in drugs, he

1 didn't bring it to my house. I didn't see him with
2 drugs. The same with my son, if he's doing any of that
3 and he better not be, but if he is, he wouldn't bring
4 that to my house and I didn't want to see him with it.
5 He respected me; he really did. He respected me. And I
6 didn't demand the respect. I guess I just walked
7 upright before him as a man, and he gave me his respect.
8 That's all it was. I wasn't trying to force my way into
9 his life, "Look, son, you got to" -- It wasn't like that.
10 We just had a rapport. That's all it was. Out of that,
11 I grew to love him. I would come by his house. Me and
12 my son would be out riding around. We'd stop by and just
13 grab him up and we'd go. His mom didn't have a problem
14 with it because she felt that he was safe with me.
15 That's my household. To this day, on weekends, half the
16 teenage kids that my son knows, they are at my house
17 playing video games or playing ball in the backyard or
18 they're going up to the school playing football or
19 whatever and transporting them from this gym to that gym,
20 and that's the relationship that we had.

21 MS. DELANY: Thank you for coming. Please answer
22 any questions the solicitor has.

23 THE COURT: Ms. Campbell.

24 MS. CAMPBELL: Just briefly, your Honor.

25 **CROSS-EXAMINATION BY MS. CAMPBELL:**

1 Q Sir, he looked up to you as a father figure or a
2 mentor at least?

3 A As a mentor, yes, ma'am.

4 Q If he had called you in December of 2010 to come get
5 him; would you have gotten him?

6 A Yes, ma'am.

7 MS. CAMPBELL: Thank you, sir. I have no further
8 questions.

9 THE COURT: You may step down.

10 MS. DELANY: Your Honor, we'd call corrections
11 Officer McMichael.

12 **LAURA McMICHAEL, BEING FIRST**

13 **DULY SWORN, TESTIFIED AS FOLLOWS:**

14 THE COURT: Will you state your name please?

15 A Laura McMichael.

16 **DIRECT EXAMINATION BY MS. DELANY:**

17 Q I wanted to ask you a few questions. Where are you
18 employed?

19 A At Alvin S. Glenn Detention Center.

20 Q What do you do there?

21 A I'm a corrections officer.

22 Q Which wing do you work in?

23 A I work with the juveniles.

24 Q How long have you been doing that?

25 A I've been working at Alvin S. Glenn for four and a

- 1 half years, and I've been working with the juveniles for
2 a year-and-a-half.
- 3 Q Do you know Zacoata?
- 4 A Yes.
- 5 Q Do you get to see him on a regular basis?
- 6 A Yes.
- 7 Q Could you describe his personality a little bit?
- 8 A He's really playful. He jokes around a lot.
- 9 Q Would you call him the class clown?
- 10 A Yes.
- 11 Q Does he act like he's seeking attention a lot?
- 12 A Sometimes.
- 13 Q Have you ever seen a softer side to him or have you
14 seen him sad?
- 15 A Yes.
- 16 Q Do you know how he feels about being a special ed
17 student and how he feels about being in slow classes?
- 18 A No. He jokes about it.
- 19 Q Do you know his co-defendant Larry Proffit?
- 20 A Yes.
- 21 Q Is Larry housed there too?
- 22 A He's also housed there.
- 23 Q Do you notice if Zacoata behaves differently when
24 Larry's around?
- 25 A Yes.

1 Q How is Zacoata by himself generally?

2 A When he's by himself, we usually can get through to
3 him. He, you know, does what he's supposed to do, but
4 when he has an audience, that's when he tends to pretty
5 much clown a lot and gets into stuff.

6 Q How does he do when Larry is right around him?

7 A He clowns a lot.

8 Q Do you think Zacoata has any influence over Larry?

9 A No. He doesn't have influence over Larry. It's
10 probably the other way around.

11 Q Do you think Larry has influence over him?

12 A Yes.

13 Q Has he been respectful towards you, Zacoata?

14 A Sometimes.

15 Q Does he usually follow your directions and your
16 orders?

17 A Sometimes.

18 MS. DELANY: Nothing further. Please answer any
19 questions the solicitor has.

20 THE COURT: Ms. Campbell.

21 MS. CAMPBELL: No questions, your Honor.

22 THE COURT: You may step down, ma'am. Please watch
23 your step.

24 LUTHER WELLS, BEING FIRST

25 DULY SWORN, TESTIFIED AS FOLLOWS:

1 DIRECT EXAMINATION BY MS. DELANY:

2 Q Mr. Wells, would you state your full name for the
3 record please?

4 A Luther Wells.

5 Q Thank you for being here. I wanted to ask you some
6 questions about Zacoata.

7 A Okay.

8 Q How do you know Zacoata?

9 A He's one of my foster child, sons.

10 Q You're married, right?

11 A Right.

12 Q What's your wife's name?

13 A Louise Wells.

14 Q Are both of you therapeutic foster parents?

15 A Yes.

16 Q Is that through the South Carolina Mentor Program?

17 A Yes, ma'am.

18 Q How many children do you guys think you've been
19 foster parents to?

20 A Repeat your question.

21 Q How many children do you think you guys have been
22 foster parents to?

23 A About six or seven.

24 Q Have those kids -- How do they come to you----
25 through DSS or DJJ or how do they come to ---

1 A Through DSS and the mentor program.

2 Q Y'all don't live here in Columbia, right?

3 A No. We live in Sumter.

4 Q What is your home like? Is it out in the country,
5 there in town?

6 A We're out in the suburbs area right on the outside
7 of town.

8 Q When Zacoata was living with you, was it just you
9 and your wife or were there other kids there?

10 A Me and my wife and my daughter.

11 Q How long was he with y'all?

12 A He's been with us, I think, about three months.

13 Q And that was -- Does 2010 sound right?

14 A Yeah.

15 Q How did he act when he first arrived?

16 A When he first arrived, he was kind of hard-headed,
17 didn't want to take orders, didn't want to do what you
18 tell him to do, but after a while and he realized that I
19 didn't play, then he calmed down and he became a much
20 better person in a short while.

21 Q Did y'all give him a strict set of rules?

22 A Yes.

23 Q Did you give him bed times?

24 A Yes.

25 Q Did you have him go to church regularly?

- 1 A Yes, he did.
- 2 Q Did you have him mind his mouth?
- 3 A Yes.
- 4 Q Did you have him do chores?
- 5 A Yes.
- 6 Q Did he get suspended from school when he first came
7 and stayed with y'all?
- 8 A No, I don't think so.
- 9 Q Do you remember a time when he had to dig up a bunch
10 of stumps?
- 11 A Oh, yes.
- 12 Q Tell me about that.
- 13 A Anytime he get disobedient and didn't want to do
14 what I tell him to do, I put a shovel in his hands and
15 put him to work. When he finished that chore, then he's
16 a much better person to deal with. But I had several
17 stumps in the yard I needed dug up, so I'd put him to
18 work.
- 19 Q So ---
- 20 A Right. That did remind me. There was a time when
21 he got put out of school for a day or so, and that's when
22 I put him to work. You don't come in there and sit down
23 and watch television when you did something wrong or I'll
24 put you to work.
- 25 Q So did he seem to learn from the consequences?

1 A Yes, he did. He certainly did.

2 Q Did he act a lot better after you enacted
3 consequences on him?

4 A Yes.

5 Q Did you see a good change in his behavior?

6 A See a great change.

7 Q So how would you describe him -- Talking about how
8 he was when he got there, how would you describe him
9 after he had been there for a few weeks? How was he
10 doing?

11 A After a few weeks, he was a much better person, a
12 much better young man to deal with.

13 Q Do you think living with you was good for his
14 behavior?

15 A Yes. Especially when you get away from that city
16 lifestyle that he had under good rulership, under good,
17 you know, structure, I think it was a lot of help to him
18 and someone that plays a father figure to him. I don't
19 think he had much of a father figure in his life.

20 Q Did he keep in touch with y'all a good bit after he
21 got sent back home?

22 A Yes, he did. He called practically about every week
23 until he got incarcerated again. He was calling every
24 weekend.

25 Q Do you care about Zacoata, or do you care about what

1 happens to him?

2 A Oh, yes, I do because he's just like a son to me.

3 MS. DELANY: Thank you for coming here today.

4 Please answer any questions the solicitor has.

5 **CROSS-EXAMINATION BY MS. CAMPBELL:**

6 Q Just a couple of questions, sir. While he was with
7 you, you taught him manners and he learned how to behave
8 better; is that right?

9 A Oh, yes.

10 Q When he left your home -- and I believe that was
11 September 7, 2010; does that sound about right?

12 A About right.

13 Q -- you were still available for him to talk to and
14 things of that nature?

15 A Yes.

16 Q In fact, you kept in touch with him?

17 A Yes. He would call me practically every weekend.

18 Q He knew if he needed you, he'd call you and you
19 would help him out and do whatever you could to help him?

20 A I certainly would.

21 Q Do you know what he was doing on December 14, 2010?

22 A No.

23 Q He didn't call you that day?

24 A Not -- I don't remember what dates they were.

25 Q I understand. But he was able to learn and follow

1 instruction, and he understood right from wrong?

2 A Yes, he did.

3 Q Those were the kind of things that y'all would still
4 be doing if he were there now?

5 A Yes.

6 MS. CAMPBELL: Thank you. I have no further
7 questions.

8 MS. DELANY: And, your Honor, we'd call his wife as
9 well.

10 **LOUISE WELLS, BEING FIRST**

11 **DULY SWORN, TESTIFIED AS FOLLOWS:**

12 THE COURT: State your name, ma'am.

13 A Louise Wells.

14 **DIRECT EXAMINATION BY MS. DELANY:**

15 Q Mrs. Wells, thank you for being here today.

16 A Yes, ma'am.

17 Q I wanted to talk to you a little bit about Zacoata
18 and just ask you what was he like when he first came to
19 stay with y'all? How would you describe him when he
20 first got there?

21 A Oh, when he first came with us, he was off the
22 chain. He was bad.

23 Q Did you respond to that? Did you put some rules on
24 him?

25 A Yes. We had the household rules and stuff, but as

1 he was in the home, he got along good after that. But
2 when he first came in, he was bad, but as the weeks went
3 on by, he got good.

4 Q Did y'all make him rake the yard? Do y'all have a
5 big yard?

6 A Yeah. When he'd go to school and he got put out of
7 school, he didn't go home and watch television. He was
8 on the outside working.

9 Q How did he do after that once y'all started
10 enforcing the rules?

11 A You could tell he was coming up out of those stages
12 that he was in. He came up out of it, and he really did
13 good.

14 Q Did he seem to like going to church?

15 A Yeah.

16 Q Y'all went to church a lot?

17 A Every Sunday. Every Sunday, Tuesday night and
18 Thursday night prayer service.

19 Q And he went to all those with you?

20 A Yes.

21 Q How did he do -- Did y'all set a bedtime when he had
22 to go to bed on certain nights?

23 A School nights 9 o'clock and weekends about 10:00 or
24 10:30.

25 Q How did he do with that?

1 A He did good.

2 Q Did that seem to be a good experience for him having
3 to go to bed at a certain time?

4 A Yeah.

5 Q How was he around the house? Did he help you out
6 with chores? Did he do chores?

7 A Yeah, he did chores. We had certain things for him
8 to do, and he did it.

9 Q Would you say he became more respectful the longer
10 he was with you?

11 A Yes.

12 Q Did he seem to appreciate the things that y'all did
13 for him?

14 A Yes, he did. In the end, he certainly did, and even
15 after he left us, every weekend, he would call back.
16 Every weekend, he would call. When he stopped calling,
17 we was wondering what happened to him.

18 Q That was when he got the charge here?

19 A Yes.

20 Q Now, did he stay with another family member when he
21 got off from school? Did he stay somewhere else when he
22 got out of school?

23 A When he got ---

24 Q Did he ever stay with your sister?

25 A My daughter.

1 Q Because you work, right?

2 A Yes.

3 Q What time do you get off work?

4 A At 4 o'clock.

5 Q So would he stay with your daughter a little bit

6 after school?

7 A Yes. He would stay with my daughter for a while.

8 Q How did he do with her in her home?

9 A Good. He got along good.

10 Q Did you teach him how to cook?

11 A Well, some things he could do in the kitchen good.

12 And he could clean a kitchen now. You put him in the

13 kitchen cleaning, he can do that.

14 Q Did he make friends easily?

15 A Yeah.

16 Q He did?

17 A Uh huh.

18 Q Do you care about him? Do you care for him?

19 A Yes, I do. I certainly do.

20 MS. DELANY: Thank you for coming here today. I'd

21 ask you to answer any questions the solicitor may have.

22 THE COURT: Ms. Campbell.

23 MS. CAMPBELL: No questions, your Honor.

24 THE COURT: You may step down, Mrs. Wells. Be

25 careful.

1 MS. DELANY: Judge, we're not calling any more
2 witnesses in our case. We still have some motions from
3 last time that we need to address. I think you had said
4 that he could allocute, make a statement, and I think the
5 guardian would like to make a statement as well, so I
6 don't know how you want to handle that. But as far as
7 witnesses under subpoena, we ---

8 THE COURT: Let's make sure, I believe the solicitor
9 agreed as well, that Mr. Lopey could make a statement
10 that was not under oath. I believe that's what we agreed
11 to.

12 MS. McDuffie: Your Honor, we'd ask that it be under
13 oath but would leave that up to your Honor.

14 THE COURT: Did you not agree earlier that it would
15 be ---

16 MS. McDuffie: I thought last time we agreed that it
17 would be under oath but not subject to cross-examination.

18 THE COURT: Is that what it was?

19 MS. DELANY: We're fine with him being under oath.
20 I wasn't here that day, judge.

21 MR. MAY: I think we agreed it would be like a
22 capital sentencing phase allocution, but if you want to
23 put him under oath, we've got no problem with that.

24 THE COURT: Well, apparently there's no objection.
25 Do you plan to cross-examine?

1 MS. McDuffie: Your Honor, we agreed last time not
2 to cross-examine if the guardian ---

3 THE COURT: So that's stipulated that he could make
4 a statement under oath not subject to cross-examination.

5 If you want to proceed with that at this time, you
6 may.

7 MS. McDuffie: Your Honor, if the guardian is going
8 to make a statement, we would ask to be able to cross-
9 examine him.

10 THE COURT: All right. I think that's reasonable.
11 Come on up, Mr. Lopey.

12 **ZACOATA LOPEY, BEING FIRST**
13 **DULY SWORN, TESTIFIED AS FOLLOWS:**

14 MS. DELANY: Go ahead and read your statement.

15 MR. LOPEY: I made some mistakes in my life that I'm
16 not proud of, and I'd like a chance to do things better
17 to show my grandmother that she didn't fail to do the job
18 she set out to do in my life and prove to people that I'm
19 not a bad person. I know there's a lot of things I need
20 to work on, and I want to take advantage of all the
21 counseling and training that DJJ has to offer me to help
22 me better prepare for my future. I'm thinking about
23 moving to California to have a fresh start, so that I can
24 surround myself with people who are going somewhere in
25 life instead of staying here where I most likely could

1 get in trouble, so I ask you to give me a chance to do
2 something good with my life.

3 THE COURT: Is that all?

4 MR. MAY: That's it.

5 THE COURT: You may step down, Mr. Lopey.

6 Mr. Young, do you want to make your statement now?

7 MR. YOUNG: Your Honor, I've been going through a
8 lot of stuff and incorporating parts of the testimony.
9 I'd like a couple of minutes just to kind of organize.

10 THE COURT: That's fine. Let's take a 15-minute
11 recess. I've got a lot of notes I need to organize as
12 well, and I'll be working on that while you do that.

13 Let's take a recess until 3 o'clock.

14 **(WHEREUPON, THE COURT WAS RECESSED UNTIL 3:00**
15 **P.M.)**

16 THE COURT: Mr. Young.

17 MR. MAY: Your Honor, just for the record ---

18 THE COURT: Yes, sir.

19 MR. MAY: --- we would object to the solicitor's
20 cross-examining Mr. Young, not that he can't handle
21 himself. Just out of procedure, I would object. It's my
22 understanding from Ms. Delany that the guardian or
23 guardians ad litem are always allowed to make a statement
24 in court. The solicitor's office consented to Mr. Young
25 being appointed on this case as the guardian ad litem. I

1 believe the motion is in your packet, and, your Honor,
2 he's doing this pro bono. I'd just ask that you consider
3 that and just allow him to make a statement as any
4 guardian would.

5 THE COURT: Well, guardians in family court are
6 normally subject to cross-examination. If he's merely
7 summarizing the evidence that's already in, then I don't
8 think he needs to testify and be sworn, but if he's going
9 to make recommendations and so forth, then I think it
10 would be appropriate to let Ms. Campbell ask him some
11 questions.

12 **STANLEY BOYD YOUNG, BEING**
13 **FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

14 MR. YOUNG: Your Honor, for the record, my name is
15 Stanley Boyd Young. I guess I'll tell your Honor a
16 little bit about myself. I've been practicing as a
17 public defender since 2000. I clerked for a judge for a
18 year. In 2005, I went to Georgia and was deputy capital
19 trial attorney in Georgia. In 2008 I returned to South
20 Carolina where I became the deputy director of the South
21 Carolina Commission on Indigent Defense, Capital Trial
22 Division.

23 I guess my involvement in this case began when I was
24 asked by Mr. May if I would consider becoming a guardian
25 ad litem for Mr. Lopey, and I've got to tell you, I was

1 very hesitant to do so. I've never been a guardian ad
2 litem. It was not something that I do on a regular basis.
3 I was going to have to take vacation time to appear in
4 courts because I couldn't appear here as guardian while
5 working as a state employee, but through my work and my
6 experience has been associated with people who I view as
7 at one point in time were very much like Mr. Lopey and
8 very much in a position where he finds himself here. And
9 what happened to a large number of those people is they
10 didn't get -- In my experience, they didn't get an
11 intervention that could have been available for them that
12 could have changed their life and prevented outcomes and
13 consequences that they suffered and suffered on society
14 in the future. So that's how I became involved in what I
15 view my role as. I sort of began like I would in any
16 criminal case looking up, what does the statute say?
17 What are the Kent factors? What has the constitution,
18 what has the supreme court said on these issues? And I
19 found some things I thought were pretty interesting or at
20 least wanted to say in order to put my recommendations in
21 context.

22 And I start with the South Carolina statute, Section
23 63-19-1210 ---

24 MS. CAMPBELL: Objection, your Honor. I thought he
25 was going to make a statement. I didn't know he was

1 going to argue the law.

2 MS. YOUNG: I'm not arguing it. I don't intend to
3 argue what the law is. I guess I'm trying to lay a
4 foundation for what my recommendation would be based on
5 the law and ---

6 THE COURT: What's your objection, Ms. Campbell?

7 MS. CAMPBELL: Objection to him as a witness arguing
8 the law in the case.

9 THE COURT: Overruled.

10 MR. YOUNG: Your Honor, and I think based on looking
11 at the statute, it starts off with the premise that there
12 is a premise in the law for juvenile court justice
13 systems to maintain jurisdiction over children except and
14 unless certain other things apply. And one of the things
15 that it talks about in the statute is the Court may
16 determine it contrary to the best interest of the child
17 or of the public to retain jurisdiction. And I think
18 that that goes directly to what the Kent factors are, and
19 the Kent factors to me are all kind of summed up in what
20 they determine to be Number 8, which I write out as being
21 the prospect for adequate protection of the public and
22 the likelihood of reasonable rehabilitation of the
23 juvenile. So I think that directly tracks what South
24 Carolina's statute is and what the supreme court and what
25 the South Carolina legislature have asked your Honor to

1 look at in making this determination today.

2 So reasonable rehabilitation of the juvenile: I
3 think we've heard -- I in sitting here have listened to a
4 lot of evidence concerning whether or not Mr. Lopey was
5 provided with other opportunities to be rehabilitated.
6 What other services have been provided to him through the
7 juvenile justice system, through his probation agent and
8 how has he reacted to those services, and obviously I
9 think the testimony is pretty clear, he's had some mixed
10 results. In certain situations with certain male role
11 models, it's been clear that he's been able to conform
12 his behavior to the requirements of the law and do as he
13 was supposed to do and not be a problem to anybody. And
14 when he's out running the streets with friends and
15 hanging out out there, he's not. He is clearly
16 susceptible to other people's influences, and I would
17 attribute a lot of that to his low IQ.

18 When you talk about rehabilitation, some people
19 define that as the result of a planned intervention that
20 reduces the offender's future criminal activity by
21 modifying thought processes, ideals and values of young
22 offenders. To me, thought processes, ideals and values,
23 this is not a born bad situation where we have the nature
24 versus nurture argument. Thought processes, ideals and
25 values, those are learned behaviors. Those are behaviors

1 that we as a society whether as a parent or as a
2 community organizer or whatever, at the church, yeah, we
3 have a responsibility to make sure that young people
4 around us and are influenced by us are picking up
5 appropriate thought processes, ideals and values, and we
6 have failed in that endeavor in Mr. Lopey for him to be
7 where he is today. And I'm not saying that I think
8 that's a large function of society. It's a function of
9 poverty. There are so many variables that go into that
10 equation that there's no way we could ever fix them all,
11 but we do need to understand that his failure to be able
12 to conform his conduct and his failure on what he has
13 perpetrated on society, which we want to take corrective
14 action on and understand that the victims of this crime
15 deserve justice and appropriate punishment, is partly our
16 failure too. I mean, I'm a member of this community, and
17 when things like this happen, you know, I understand that
18 maybe I'm not giving back enough, and I do try, but
19 sometimes you can't reach everybody.

20 One of the things I also came across was a study
21 that determined what predictors of juvenile offending
22 might be. As we're sitting going through the testimony,
23 I noticed that there's not a one of them that didn't
24 apply to Zacoata. "Early troublesome, dishonest,
25 aggressive, anti-social behaviors, poor parental guidance

1 and stability, criminal parents and siblings, broken
2 homes and early separations, social depravation stemming
3 from low economic level, social failures resulting from
4 low intelligence." He has every one of them. And in
5 schools -- I don't know, if we had more of an idea of
6 what might be possible or what might happen whether or
7 not we would have taken other additional steps when he
8 was on probation. I don't know why he was sent back from
9 living with the family in Sumter after three months where
10 he was doing well. I assume that it was probably because
11 he was doing well, so let's put him back into an
12 environment where we know and it's proven that he does
13 terrible. We're going to put him back there.

14 We have school resource officers who say he is
15 running around saying that he is a Blood. In my line of
16 work, being a Blood has a pretty specific connotation,
17 and I'm sure that that's what the school resource officer
18 meant when he said that. So we're going to remove him
19 from that environment and when we do that, he does well.
20 He does so well that we're going to reward him by putting
21 him back there. It doesn't make any sense, and it was
22 avoidable. I think this whole thing was avoidable. I
23 think that this does come out of poverty and out of
24 physical and emotional abuse, neglect and family
25 dysfunction and educational deficiencies, and we can't

1 correct them all. But what do we do about them. Do we
2 say, "Well, you did an adult crime; you're going to do
3 adult time," where South Carolina has a constitutional
4 requirement to provide rehabilitative services to
5 prisoners.

6 I was working for the judge who heard that lawsuit
7 by South Carolina prisoners saying we don't have any
8 rehabilitative services, and the ruling is, you're right;
9 South Carolina Department of Corrections does not provide
10 rehabilitative services, but you don't have a remedy.
11 The remedy is not that we let you go, and I can't make
12 South Carolina do what it doesn't have the money to do.
13 And it's unfortunate.

14 But we know that children are not just miniature
15 adults, that they can change, that it is not too late,
16 that the opportunity to prevent whatever happens down the
17 road is not fixed in stone. You have the opportunity to
18 change that course, and allow a child to change his life
19 through those rehabilitative services that we've talked
20 about and heard about.

21 I think the United States Supreme Court in the
22 Graham versus Florida case probably said it best when
23 they said, "From a moral standpoint, it would be
24 misguided to equate the failings of a minor with those of
25 an adult. For a greater possibility exists that a

1 minor's character deficiencies will be reformed." He's
2 not beyond change, and he's not beyond redemption.

3 The atrocities that he inflicted on Ms. Henrick are
4 inexcusable. As his guardian ad litem, I feel it
5 appropriate that I extend my apologies and condolences to
6 you and your family because what y'all have been through
7 is inexcusable and I apologize, but I don't think that
8 that means that we send Mr. Lopey or treat him as a
9 responsible adult. I think that he will re-enter
10 society, and we know that youthful offenders are going to
11 one day re-enter society, and that by providing
12 educational, vocational counseling and support services
13 necessary for children's rehabilitation is in society's
14 best interest.

15 The other half of the equation that your Honor is
16 asked to balance is protect society. Well, what protects
17 society? Am I safer, is my wife safer, is my family
18 safer if I meet Mr. Lopey on the street ten years from
19 now with no rehabilitation or minimal rehabilitation or,
20 in my opinion even worse, some rehabilitation followed by
21 adult incarceration that works very hard to undo any
22 positive gains that he made or am I better off with him
23 going through the juvenile justice system who it's not
24 like we just cut people loose. We have programs; we
25 monitor people's progress; we track them. He's in the

1 system. It's a system that he's never really going to be
2 out of, and that system is going to be watching him. And
3 I think that we are better off as a society if he goes
4 through those programs without having the opportunity to
5 undo any gains that he makes in an adult prison.

6 Therefore my recommendation to the Court: I've met
7 with Mr. Lopey on several occasions. We've talked about
8 his plans for the future. I know that if he were -- if
9 your Honor did decide to allow him to stay in family
10 court and go through the family court justice system and
11 be incarcerated appropriately as a juvenile, he wants to
12 learn a trade. He wants to build houses. We talked
13 about how he can build houses and give back to the
14 community that he owes a substantial debt to already, and
15 that debt is never going to be repaid in time, which is
16 the only thing that we have that we take from
17 impoverished people when we send them to prison. We take
18 time.

19 Time is not going to repay his debt, but he wants
20 and desires when he gets out to build houses, to work for
21 Habitat for Humanity to build a trade. When I talked to
22 him about his time in Sumter, the one thing that he had
23 kept going back to, "When was the best time in your
24 life?", and that was when he was in Sumter. He was only
25 there for three months, and that was the best time of his

1 life because he got to work with his hands and learned
2 how to build stuff and he thought that was important.

3 He has an aunt in California. We do have and have
4 gotten an Affidavit from them -- And I don't know the
5 best way to introduce it at this time. It's an Affidavit
6 from his aunt, and it basically just says that if and
7 when he needed a place to go, they would be willing to
8 take him. They're in California, and they have a
9 structured family life. They are aware of what he's
10 facing and what his situation is, and they would like to
11 help him if they can. And they were sorry that they
12 couldn't be here.

13 Your Honor, I think that's all I have to say.

14 THE COURT: Ms. Delany, do you want to ask him any
15 questions?

16 MS. DELANY: No, your Honor.

17 THE COURT: Ms. Campbell?

18 MS. CAMPBELL: Just a few.

19 **CROSS-EXAMINATION BY MS. CAMPBELL:**

20 Q You talked about the law and what it is in South
21 Carolina, and you're familiar with State versus Cory D.?

22 A I'm sorry?

23 Q State versus Cory D.

24 A I'm not familiar with that case.

25 Q Which talks about when waiver is appropriate.

1 A I don't know what it talks about. I'm not familiar
2 with it.

3 Q When you testified earlier, you said waiver is
4 appropriate in the best interest of the child or in the
5 public's best interest; is that correct?

6 A I believe I said that the South Carolina statute
7 read that the Court may determine if it's contrary to the
8 best interest of the child or the public to retain
9 jurisdiction.

10 Q So it's the child's interest or the public's
11 interest?

12 A Yes.

13 Q You are familiar with the South Carolina law?

14 THE COURT: He just said he wasn't familiar with
15 State versus Cory D.

16 Q Are you familiar with the South Carolina law about
17 waivers?

18 A I'm familiar with the statute.

19 Q Are you familiar with the fact that they put the
20 serious nature of the offense as a major factor in the
21 transfer decision, the factor they emphasize?

22 A Yes.

23 Q But when you were deciding the Kent factors, the
24 factor you picked was Number 8, which is a different
25 factor from what the case law says?

1 A I believe what I said was that in my opinion Number
2 8 kind of summed up all of the others.

3 Q But you would agree that all eight factors should be
4 considered, and according to South Carolina law, the
5 first factor, the seriousness of the alleged offense and
6 whether the protection of the community requires waiver
7 is the one that they emphasize? Do you not agree with
8 that?

9 A I'm sorry. I'm just waiting ---

10 Q That they put more emphasis on that?

11 A No. I don't agree that they put more emphasis on
12 any one particular factor.

13 Q Your testimony is that the system has failed him,
14 and this is our chance to do an intervention?

15 A There is opportunity here for an intervention. Yes.

16 Q And you're familiar with the fact that he's been
17 involved in our system for the last -- for most of his
18 life?

19 A Yes, ma'am.

20 Q And that the system did try to come to his aid, the
21 school system?

22 A I know that they identified problems. Whether or
23 not they tried to come to his aid, I ---

24 Q They put him in the correct track, put him in a
25 class with specialized needs for him with his behavior

1 issues?

2 A I think the testimony was that they put him in
3 behavioral impaired class and left him there, not
4 addressing his low functioning in any way.

5 Q His low functioning?

6 A Yes.

7 Q So you think that the school system failed him even
8 though they tried over and over and over to help him?

9 **(NO RESPONSE)** School counselors?

10 A I think in a way, yes, ma'am.

11 Q That's your testimony. And you're also aware that
12 his mother did make repeated attempts to try to get him
13 help?

14 A I don't agree that choking a child to
15 unconsciousness is making repeated attempts to get him
16 help.

17 Q Would you agree that when he acted out aggressively
18 toward family members in 2007 and she took him to Baptist
19 to try to get him help, would that be getting him help,
20 psychiatric treatment?

21 A Yes, ma'am.

22 Q And in 2008 she took him back to the hospital to try
23 to get him psychiatric help when he stabbed somebody,
24 would that be getting him help?

25 A Yes, ma'am.

1 Q Then, in 2008, later that summer, when she took him
2 back for the same issues?

3 A Yes.

4 Q And one of those times he threatened to, I think,
5 bomb a school. And she took him back for a third time in
6 2008 to try to get him help. Wasn't that her trying to
7 seek and try to get her child the help he needed?

8 A In probably the best way she knew how, yes, ma'am.

9 Q And in addition to that, when DJJ became involved
10 because of the incorrigible charges, they actually sent
11 him to Camp White Pines to a camp there; is that correct?

12 A That's my understanding, yes, ma'am.

13 Q And during this whole time, in addition he was also
14 in counseling as Mr. Brown testified with two other
15 organizations?

16 A Yes, ma'am.

17 Q The mentoring organization took an interest in him
18 and tried to help him?

19 A That was his testimony, yes, ma'am.

20 Q In addition to that, not on a formal status but Mr.
21 Griffin the football coach, a man who actually reaches
22 out and does help people in the community.

23 A Yes, ma'am.

24 Q He reached out to this young man and did everything
25 he could to help him, and he testified here today.

1 Nobody has disputed that.

2 A No.

3 Q He was there for him. He was a mentor to him.

4 A Mr. Griffin had his own struggles and his own
5 priorities, and he did what he could. Yes, ma'am.

6 Q But he reached out to him, and as he testified he
7 was available for him for someone he could look up to.

8 A Yes.

9 Q And in addition to that, when he got a probation
10 violation -- Things weren't working again. -- the
11 juvenile justice system again or the mentor system,
12 whoever it was, sent him to Sumter so that he could learn
13 rules and values like you just talked about; is that
14 correct?

15 A Yes, ma'am.

16 Q And during that three-month period, he did better?

17 A I'd say substantially better.

18 Q Then, after he left that home, every week
19 afterwards, the foster parents reached out to him or he
20 reached out to them. They were there for him or would
21 have been there as they testified.

22 A My understanding is that he was calling them.

23 Q So that mentor was there for him as well?

24 A To the extent -- Yes, ma'am. -- that they could be.

25 Q And even after this horrific -- And you would agree

1 that this is a horrific offense?

2 A Absolutely.

3 Q After he was arrested for this and he's housed at
4 Alvin S. Glenn for the last 15 months or so that he's
5 been written up more than any other person in the
6 juvenile justice wing there for violations in that
7 structured environment?

8 A Yes, ma'am. I think that was explained by the
9 expert.

10 Q And that much of his behavior while in that
11 structured environment was of a sexual orientation.

12 A I disagree that much of his behavior was of a sexual
13 orientation.

14 Q Some of it, the treats to mothers or grandmothers of
15 the other juveniles.

16 A Yes, ma'am.

17 Q And Dr. Pugh-Lilly -- You heard her testimony. -
18 said rehabilitation of this young man is unlikely?

19 A That is not what I took from her testimony. No.

20 Q Did you read her report?

21 A No, ma'am, I have not read her report.

22 Q Would you like to?

23 (WHEREUPON, MS. CAMPBELL HANDS DOCUMENT TO THE
24 WITNESS.)

25 A If you would like me to, I'd be happy to. Do you

1 want me to read the whole thing?

2 Q Number 7 on that page.

3 A **(READS DOCUMENT)** I'd like to review more than just
4 number 7.

5 Q I assumed you read -- Since we were here for this
6 hearing, that you read the report.

7 A **(READS DOCUMENT)**

8 Q Just so you know, we've given the judge the entire
9 report. He has it.

10 A Yes, ma'am.

11 Q Even Dr. Pugh-Lilly indicates that he's been in
12 long-term intensive rehabilitative efforts in which he's
13 made minimal progress. That there's no reason to believe
14 that such rehabilitation might be beneficial.

15 A That's what Number 7 said, yes, ma'am.

16 Q So she acknowledged that he's been in long-term
17 intensive rehabilitation?

18 A That is not what I took that to mean. I took that
19 to mean that there's been a long period of time where
20 people have made rehabilitative efforts towards Mr.
21 Lopey.

22 MS. CAMPBELL: Thank you. No further questions.

23 THE COURT: You may step down. Watch your step.

24 Thank you.

25 Anything else from the defense?

1 MR. MAY: Your Honor, we have the two motions that
2 we held off on that I'd address whenever your Honor would
3 like me to.

4 THE COURT: I think now is the appropriate time.

5 MS. CAMPBELL: Your Honor, if they want to introduce
6 the Affidavit, we have no problem with it.

7 THE COURT: Any objection from the defense?

8 MS. DELANY: No, sir.

9 THE COURT: Let's put this in as Guardian's 1.

10 **(RECEIVED IN EVIDENCE AND MARKED**
11 **GUARDIAN'S EXHIBIT NUMBER 1.)**

12 THE COURT: Before you make the motions, Mr. May,
13 let me review this Affidavit.

14 **(WHEREUPON, THE COURT READS DOCUMENT.)**

15 THE COURT: Mr. May.

16 MR. MAY: May it please the Court, your Honor. Your
17 Honor, in our first motion, we'd move to strike the South
18 Carolina Code Section 63-19-1210 as unconstitutional and
19 violative of the due process rights of the United States
20 Constitution.

21 THE COURT: Hold on. Let me get that up here.

22 All right. Go ahead.

23 MR. MAY: Yes, sir. Specifically I'll be quoting
24 -- the argument comes from Bush v. Gore, the supreme
25 court decision that decided the 2000 election, your

1 Honor. In Bush v. Gore, the supreme court said that --
2 What they did is they discontinued the recount, and the
3 reason why they discontinued the recount is because
4 there's not a uniform or specific standard set out as to
5 what constituted a vote in the State of Florida.

6 Depending on whether or not there was a hanging
7 chad, depended on whether or not the vote was counted and
8 might be treated one way in West Palm County and one way
9 in Duvall County and one way in Volusia County and that
10 therefore there's a violation of the Equal Protection
11 Clause because depending on where you casts the vote and
12 how the voting was determined in each county depended on
13 whether or not your vote counted. Your Honor, there is
14 no specific standard set out in Florida to determine how
15 to count a vote.

16 Your Honor, in contrast, in analogous terms, in
17 South Carolina, there is no determination or guidance in
18 each solicitor's office. The Attorney General of South
19 Carolina has not set out a uniform standard to determine
20 who to waive and who not to waive. The only standard in
21 Richland County that we know -- And I'll address this in
22 another motion. -- the only standard that it appears that
23 one must have to determine whether or not one is
24 subjected to a waiver process is if one is a black
25 individual. That is it. Your Honor, anything else is at

1 the whim and discretion of the prosecuting attorneys to
2 determine whether or not somebody is subjected to the
3 waiver hearing.

4 Your Honor, the right to liberty is fundamental. As
5 such, it is imperative that there be some kind of
6 guidance and that all ---

7 THE COURT: Where did you get that information, Mr.
8 May, the determinative factor is whether or not the
9 defendant is black? Where are you getting that from?

10 MR. MAY: Yes, sir. We're going to address that in
11 the next motion. Your Honor, in Richland County, it
12 appears that since 1992 applying Endo evidence -- I'm
13 sorry minority. That since 1992 applying Endo evidence
14 as well as the evidence that we have received from DJJ
15 through your Court Order, we could not find a single
16 white child who's a resident of Richland County that has
17 been subjected to a waiver hearing.

18 THE COURT: How many whites have been charged with
19 offenses as in this case?

20 MR. MAY: Your Honor, that is a question, I believe,
21 for the next motion.

22 THE COURT: Okay.

23 MR. MAY: ' This motion, what I'm saying is, it
24 doesn't matter if one is subjected to a charge that could
25 be waived because there's no standard because there's a

1 lack of standards, then it is fundamentally analogous to
2 the hanging chad. It just depends on what county you're
3 in, depends on who your solicitor is, and in Richland
4 County, it depends on somewhat what you look like,
5 depends on whether or not you're subjected to a waiver
6 hearing.

7 Your Honor, I will address the information that
8 we've been able to obtain thus far. We've had four weeks
9 and done an attempt to get an exhaustive list that's not
10 an exhaustive list. But, your Honor, applying the equal
11 protection argument in Bush v. Gore, the issue here is
12 that there is a lack of a standard, so there has to be
13 more than a minimum arbitrary -- It has to be something
14 more than just the discretion of what Ms. Campbell
15 decides to do. It has to be more than what Mr. Myers
16 across the river desires to do on each individual case.
17 Because what's happening is that each person is not being
18 looked at in comparison to -- It just depends on where
19 you make a crime depends on how you get treated.

20 Your Honor, I would encourage you to please read my
21 motion. It's exhaustive, and it's a look at this issue.
22 Your Honor, I believe that because there's a standard --
23 and I would challenge the solicitor, what is y'all's
24 express standard and please put on it on the record, and
25 then I'd ask what are the other standards for the other

1 15 circuit solicitors as well as the attorney general. At
2 this point, there is none that we can determine.

3 THE COURT: Ms. Campbell, do you want to respond to
4 that?

5 MS. McDuffie: I'll respond, your Honor. First, on
6 his Bush v. Gore motion, your Honor, we would argue that
7 it is inapplicable in criminal cases and that Bush v.
8 Gore is not controlling law.

9 The defense in this case asked the Court to broadly
10 apply equal protection that is used in Bush to South
11 Carolina law governing prosecutorial authority in
12 criminal cases. We do not believe that this analogy is
13 appropriate because developing a standard for counting
14 votes is a relatively simple procedure whereas the
15 decision differs from the complexity and subjective
16 nature of criminal trials.

17 The United States Supreme Court in Bush said that a
18 decision about whether or not to believe a witness would
19 not be analogous to the interpretation of marks or holes
20 or scratches on an inanimate object. Your Honor, they're
21 saying that credibility is not something that is even
22 analogous to that let alone prosecutorial discretion in
23 this case.

24 In Bush the United State Supreme Court held that
25 there should be strict standards for how marks on an

1 inanimate object should be interpreted, and Mr. May is
2 trying to correlate that to how prosecutorial discretion
3 should be applied in handling criminal matters, and the
4 two are not analogous. If it is not analogous on whether
5 or not to believe a witness, you surely cannot
6 extrapolate that to whether or not a prosecutor seeks to
7 exercise discretion in how they prosecute a case.

8 The decision to prosecute any case requires a
9 prosecutor to weigh numerous subjective elements
10 regarding which witnesses to believe, reliability of
11 material evidence and nature of the crime, the victim's
12 suffering and any mitigating circumstances that they know
13 of.

14 Your Honor, because of the many differences in the
15 complexity between criminal prosecution versus an
16 election recount, different equal protection principles
17 apply which the court noted, and, your Honor, therefore
18 the standards in Bush are not applicable.

19 And, your Honor, if Mr. May has argued the second
20 motion, I'll respond to that one.

21 MR. MAY: I've not addressed the second motion.

22 THE COURT: Are you ready to address the second
23 motion?

24 MR. MAY: I'll be happy to. Then, I can dovetail
25 everything real succinctly. That way ---

1 THE COURT: I'm going to reserve ruling on your
2 motion until I review the brief.

3 MR. MAY: I'd briefly call Ms. Delany, so we can get
4 sworn testimony of what we've done in an attempt to try
5 to prove what it appears ---

6 THE COURT: This testimony is relevant to your
7 second motion?

8 MR. MAY: Yes, sir.

9 THE COURT: All right. Ms. Delany.

10 JOANNA DELANY, BEING FIRST
11 DULY SWORN, TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION BY MR. MAY:

13 Q State your name.

14 A Joanna Delany.

15 Q Would you please tell the Court what we have done or
16 what you have done in an attempt to determine the racial
17 make-up of people who have been subjected to waiver
18 hearings in Richland County?

19 A Judge, we got -- If you remember the last court
20 hearing, we got the Court Order from your Honor saying
21 that DJJ was to turn over demographic data including
22 race, age, gender and crimes. We asked specifically for
23 14 and 15-year-olds charged with violent crimes, crimes
24 that are statutorily violent, and we also asked for the
25 data on, I think, any age children charged with Murder

1 and Criminal Sexual Conduct, 1st Degree, and Criminal
2 Sexual Conduct with a Minor, and we were provided that by
3 Elizabeth Hill as well as the solicitor's office was
4 provided that data.

5 They were only able to go back until -- The majority
6 of the cases are in 2001. There's also one case in 1997
7 and one in 1998. When I spoke with Ms. Hill, she said
8 that's as far back as records are electronic, and that
9 was as far back as they were able to get, so we can go
10 back basically to 2001 and two other cases in the '90's.

11 What we did from that was had a clerk go to the
12 clerk of court's office, the family court clerk of court
13 office's downstairs. We had the clerk of court, a lady
14 by the name of Laura down there, showed my paralegal how
15 to look up everything in their filing system.

16 Basically all things that are filed in court are put
17 into that file, the file that you guys get, and they also
18 get entered into their computer. So they looked through
19 the computer to see when was any sort of thing related to
20 a waiver filed in any of these cases that we got from
21 Elizabeth Hill. So they checked the clerk of court's
22 files on all of these children because what Elizabeth
23 Hill gave us was all children who could conceivably be
24 eligible, somebody that's charged with a violent crime
25 and somebody that's charged with a murder and the CSC's.

1 So we checked the clerk of court's office and then from
2 that pulled some of the clerk's files and pull the actual
3 documentation, the actual waiver motions and waiver
4 Orders or Orders denying waiver, and it still didn't seem
5 quite right. And there were some that we had questions
6 about, so I went through our public defender database
7 which goes back to about 2000 or 2003, somewhere in the
8 early 2000'S, and checked all of these same names that we
9 got from Elizabeth Hill against our database, and we wind
10 up representing about two-thirds of all these children.
11 I'd say about a third of them come out to be conflicts
12 where we represent a co-defendant, so checking all those,
13 and so from that, I put together lists of what our
14 database says and what the clerk's said. Then, I also
15 pulled out the ones that involved waiver and made a short
16 summary, and we were able to find 18. I know there have
17 been more. Specifically I can think of the Five Points
18 kids that one of their names came up on Ms. Hill's data,
19 and one of them didn't, so there may be others that we
20 haven't found.

21 But from that, we got a summary of 18 names, their
22 races and their disposition, and these are all children
23 where waiver was moved for by the solicitor's office, and
24 then, the disposition, I wrote down whether they pled
25 after the state withdrew waiver, whether they went

1 through the waiver hearing and were waived or whether
2 they went through a waiver hearing and were kept in
3 family court, so we have that information as well,
4 judge.

5 Q In the evidence that you were able to establish was
6 what?

7 A I talked to -- I've been representing juveniles in
8 the public defender's office here since January of 2009.
9 I talked to Mitzi Campbell Williams, who's the other
10 attorney in our office that does juveniles. She's been
11 doing it, I think, roughly for about seven years. I
12 called Sara Smith who had my job before me and
13 represented juveniles in the public defender's office for
14 -- She was also here for about four years and left when I
15 started. I also called Blanche Richey who had Sara's job
16 before Sara, and basically asked them all, do you ever
17 remember a white child being waived. Blanche, who's the
18 one from the farthest back, couldn't remember race. She
19 just said, "I don't know." Sara and Mitzi both said, no,
20 we do not remember a white child ever going through a
21 waiver hearing. I also talked to Jeff Vaughn at DJJ and
22 Felicia Harris at DJJ. Jeff, you heard from last time,
23 has been here for about 20 years except for a four-year
24 tour overseas and Felicia, who's been here, I want to
25 say, about six years, and neither of them remembers a

1 white child being waived.

2 That's the data we got. There were two white
3 children that were served with notice of waiver, and then
4 that waiver of notice was withdrawn and they were allowed
5 to plead in family court. That was a female named
6 Minor 2 and a male named Minor 3 All of
7 the children that have been through waiver hearings in
8 Richland County as far back we can go were either black
9 or Hispanic.

10 THE COURT: All right. Ms. McDuffie.

11 **CROSS-EXAMINATION BY MS. McDUFFIE:**

12 Q Do you have a copy of the data that was provided to
13 Elizabeth from you?

14 A Yes.

15 Q Based on this data, how many white children are
16 charged with armed robbery?

17 A Let me look at it, and I'll count them. **(VIEWS**
18 **DOCUMENT)** One.

19 Q How many total have been charged with armed robbery?

20 A About three-and-a-half pages worth.

21 Q Would you argue if I told you it was 48?

22 A No.

23 Q So one Caucasian child and 47 other children have
24 been charged with armed robbery?

25 A Yes.

1 Q How many Caucasian children have been charged with
2 kidnapping?

3 A None.

4 Q None? Zero?

5 A None.

6 Q How many Caucasian children have been charged
7 with, as the defendant is, CSC in the First Degree,
8 Burglary in the First Degree, Kidnapping and Armed
9 Robbery?

10 A It's going to take me a while to look through and
11 try to figure out every name. I pulled them ---

12 Q But there have been no Caucasian children charged
13 with kidnapping?

14 A Right.

15 Q So there has been no one who is similarly situated
16 to this defendant that is of a different race than this
17 defendant?

18 A There's no Caucasian child charged with kidnapping?

19 Q And there's 1 out of 48 charged with armed
20 robbery?

21 A Yes.

22 Q Based on your review, are you aware of any other
23 defendant charged with the same four offenses that this
24 defendant is that our office has not moved to waive?

25 A I'm not aware of another defendant charged with

1 those same offenses besides his co-defendant.

2 Q And our office has moved to waive that individual?

3 A Yes.

4 Q And that hearing is scheduled for May?

5 A I know it's scheduled in the future.

6 Q Are you aware of any other information about these
7 cases other than the race of the individuals?

8 A I got the same list you did, so it's got race, age,
9 gender, charge, name and then I'm aware of the
10 disposition.

11 Q So you didn't look at the Kent factors when you were
12 making the determination that whether a waiver would be
13 appropriate or not?

14 A I looked at -- No, I didn't sit and think about the
15 Kent factors in every case. I looked at some of the
16 files from the clerk of court had the warrants in them,
17 and you could see what the facts were on the warrants or
18 the Petitions.

19 Q Did you consider the seriousness of the crimes?

20 A I just went through and checked the data, and I
21 didn't attempt to make any decision on whether those
22 children should have been waived as far as factually.

23 Q So you didn't take into account aggravating or
24 mitigating circumstances?

25 A I didn't have that information.

1 Q Your information was only based upon race?

2 A We also had gender, but I don't think that's an
3 issue here. So, yeah, I was just looking at race.

4 Q Based on your information -- And you are the
5 attorney on record for Mr. Lopey in this case?

6 A Yes.

7 Q Do you have any information that my decision and Ms.
8 Campbell's decision to prosecute this defendant was based
9 on his race in any way?

10 A I don't know what y'all are thinking when you do
11 that. I can't get inside your head and say what you're
12 thinking. As far as this goes, we wanted to look at
13 historically, has a white child ever been waived, and
14 they haven't as far back as we go. I don't have any
15 personal knowledge of why you make that decision. I
16 don't know what goes on in your head.

17 Q You have no evidence that we acted based on this
18 defendant's race?

19 A You can extrapolate what you want from the data.
20 All I've got is the data.

21 Q But you personally have no evidence that our
22 decision -- Because we're the decision-makers in this
23 case, you have no evidence that we acted in a racially
24 motivated manner in any way?

25 A You never told me, I moved to waive him because he's

1 black. No, you never told me that.

2 Q You're not aware of any other white children that
3 are similarly charged as he is? There are none according
4 to the data that was provided.

5 A There aren't white children with his exact charges.
6 There have been white children with murders and various
7 serious charges.

8 Q You said one was Minor 3 He was a white child
9 charged with murder.

10 A Yes.

11 Q And we moved to waive him?

12 A Yes.

13 Q Then, after that waiver process, we did not actually
14 go forward on a hearing?

15 A He pled prior to the waiver is my understanding.

16 Q So you have no knowledge about the mitigating or
17 aggravating circumstances in that case or what a waiver
18 evaluation would have revealed?

19 A No, I didn't see the waiver evaluation.

20 Q Are you aware that our office also prosecuted
21 Christopher Pitman?

22 A Yes.

23 Q And he was a 12-year-old that was waived up and
24 prosecuted for murder by my office?

25 A I think he didn't come in because he wasn't from

1 Richland County. I think they had some kind of conflict
2 and y'all prosecuted him. That's my understanding.

3 Q Correct. The crime didn't occur in Richland County,
4 but my office is the one that prosecuted him. Is that
5 your understanding?

6 A Yes. I understand y'all were the ones that
7 prosecuted him.

8 Q He's also Caucasian?

9 A Yes.

10 Q And he was waived up from family court and tried as
11 an adult and convicted?

12 A I think he pled. I'm not sure. I think he pled as
13 an adult.

14 Q He was tried as an adult, not as a juvenile?

15 A He got waived.

16 Q He did. He was Caucasian?

17 A I've seen him on TV. I don't have his data, but he
18 looks Caucasian.

19 Q And there are no similarly situated defendants as
20 this defendant in Richland County?

21 A Who's charged with the exact crime as he is? Only
22 his co-defendant.

23 Q Who also was waived?

24 A Yes.

25 MS. McDuffie: Thank you, your Honor. No further

1 questions.

2 THE COURT: You may step down.

3 MR. MAY: This is the second motion.

4 THE COURT: This is the second motion?

5 MR. MAY: Yes, sir.

6 THE COURT: Okay.

7 MR. MAY: Your Honor, the problem is the insidious
8 nature of institutional racism. The problem is that when
9 you have such an ingrained policy, be it that no white
10 child has ever been subject to a waiver hearing of any
11 evidence that we can find, it is problematic that we have
12 white children that have been charged with murder and
13 they're not subjected to waiver hearings. And you have
14 white children who are charged with Criminal Sexual
15 Conduct, First Degree, against minors, and they have not
16 been subject to waiver hearings. The only people that we
17 have any evidence to show who had been subjected to
18 waiver hearings have been black children. When you
19 compound that with the last 18 years in this county, no
20 white defendant has ever been served death notice, you
21 start seeing there's an insidious nature that permeates.

22 Now, what the solicitor's going to want you to think
23 is that there has to be evidence that Luck Campbell and
24 Joanna McDuffie got in front of Jojo Delany and said,
25 "We're going to do it because he's black." That's not

1 what the insidious nature of this is. Insidious means
2 that it just becomes second nature. And talking to Ms.
3 Delany as, "This is my first time I've ever done this,"
4 sitting down trying to figure out what motions we need to
5 have, I just said, "Hey, has a white child ever been
6 subjected to a waiver hearing?" And she said, "Do you
7 know what, I never even thought of that." The problem is
8 that it's become such an ingrained problem that, your
9 Honor, unfortunately it is a problem. I would ask the
10 solicitor's office to disprove this with any of their
11 records, that any white child has been subjected to a
12 waiver hearing, and they haven't. They can't do it or
13 they'd be standing up jumping up and down. No white
14 child from Richland County has ever been subjected to a
15 waiver hearing of any data that we can find. Your Honor,
16 that is wrong when multiple black children and a few
17 Hispanic children have.

18 Your Honor, there's a prima facie case that this is
19 violative of the due process of the 14th Amendment.
20 Anybody can remove themselves and take a step back and
21 say, "Is this right or wrong?" Your Honor, this is
22 wrong.

23 When you sit back and take a look at it, I'd ask
24 your Honor to think of that testimony in conjunction with
25 the Bush v. Gore motion. There are no standards. The

1 only standard that we can see is that the child has to be
2 a minority. It may be insidious, but it's still there.

3 Your Honor, I'd ask that the data that was provided
4 be made a part of the record. And I'm not going to
5 belabor the point. It's just wrong.

6 THE COURT: Any objection to the data coming in?

7 MS. McDuffie: No, your Honor.

8 THE COURT: Where is the data?

9 MS. McDuffie: Your Honor, just for the data, not ---

10 MR. MAY: We'd ask that what we could find from the
11 clerk of court be admitted.

12 MS. McDuffie: Your Honor, I haven't had the
13 opportunity to review it. We would have no objection to
14 the raw data.

15 MR. MAY: The raw data doesn't tell us anything.

16 MS. DELANY: The raw data doesn't say what happened
17 to them. I finished it last night and e-mailed it to
18 them about 9:00 this morning. The raw data doesn't say
19 whether they were waivers or suggested waivers. It's just
20 race, age, gender and offense.

21 THE COURT: Are you objecting?

22 MS. McDuffie: That's correct. She emailed this as
23 court was beginning this morning, so I can't tell you if
24 this is accurate or not. I have no objection to the raw
25 data. We're not contesting the raw data, but her

1 summary, I do object to, your Honor, because we have not
2 had the chance to review those.

3 THE COURT: What's your objection?

4 MS. McDuffie: Your Honor, I would object that
5 there's not been sufficient foundation to show that this
6 is accurate. It's not based on the custodian of records
7 testifying. It's not based on someone with knowledge of
8 these cases testifying. Your Honor, had we been given
9 this information earlier or their information earlier, we
10 could have checked to see if it was accurate. Your
11 Honor, at this point, we have no basis to show that it's
12 accurate.

13 MR. MAY: Your Honor, I could make it real easy.
14 We'd stipulate to leave the record open, and if the
15 solicitor could find a single white child ---

16 THE COURT: I don't want to leave this record open.
17 We're going to finish this case today.

18 MR. MAY: I'd say if they can show a single white
19 child has ever been subjected to a waiver hearing who has
20 been a citizen of Richland County, this is a moot
21 argument, but they can't. I think their silence speaks
22 volumes.

23 THE COURT: I'm going to let it all in.

24 MR. MAY: Thank you, sir.

25 MS. McDuffie: May I respond to his motion, your

1 Honor?

2 THE COURT: Yes, ma'am.

3 Let's get the data marked.

4 (RECEIVED IN EVIDENCE AND
5 MARKED DEFENDANT'S EXHIBIT NUMBER 3.)

6 THE COURT: Received as Defendant's Exhibit Number
7 3, and I'll note your objection, Ms. McDuffie.

8 MS. McDuffie: Your Honor, Mr. May's argument is
9 based on the Equal Protection Clause, but under the
10 Separation of Powers Doctrine which is the basis of our
11 form of government, the executive branch is vested with
12 the powers to decide when and how to prosecute a case,
13 and that power is vested through the South Carolina
14 Constitution and South Carolina case law, which gives
15 prosecutors unfettered discretion in determining how to
16 prosecute a case. The judicial branch is not empowered
17 to infringe on that discretion unless that discretion is
18 used for instance based on unjustifiable standards such
19 as race, religion, things of that nature.

20 Your Honor, the United States Supreme Court heard
21 the same arguments that Mr. May is making in McCleskey
22 versus Kemp. In that case, the Court held, "The United
23 States Supreme Court, held that a Defendant who alleges
24 an Equal Protection violation has the burden of proving
25 the existence of purposeful discrimination, and thus to

1 prevail under Equal Protection, a defendant must prove
2 that the decision-makers in his particular case acted
3 with a discriminatory purpose." And defense has failed
4 to do that in any manner whatsoever. They are trying to
5 argue exactly what the supreme court in McCleskey
6 rejected. They are trying to rely on historical data to
7 support an inference of racial consideration that may or
8 may not have played a part in a case. They are claiming
9 that statistics are proof of discrimination without
10 regards to underlying facts, your Honor. And that's
11 exactly what the court in McCleskey said was not okay.
12 These statistics do not take into account the Kent
13 factors, aggravation, mitigation, seriousness of the
14 crime, the amount of evidence that was collected, the
15 credibility of witnesses and all those things were taken
16 into account when a prosecutor makes the decision whether
17 or not to waive a defendant. The standard that we rely
18 on is the standard set forth by South Carolina case law
19 and statutory provision, which, your Honor, is the
20 statute that's been cited numerous times, and also, the
21 Kent factors. Your Honor, we have moved to waive white
22 children in this county and only upon receiving that
23 information from those evaluations have those waivers
24 been withdrawn. Your Honor, in a South Carolina case,
25 State v. Patterson, it tried to be done in the context of

1 capital punishment. The South Carolina Supreme Court in
2 Patterson said that the defendant has the burden of
3 proving through exceptionally clear evidence that the
4 decision to prosecute was for improper reasons. The
5 supreme court concurred in Patterson saying that general
6 statistics which failed to take into account all
7 aggravating or mitigating factors in a particular case do
8 not constitute exceptionally clear evidence of
9 discrimination.

10 Further, your Honor, the defense in this case has no
11 evidence that any of these individuals who have been
12 subject to waiver race was a factor in any of those
13 decisions. All they have provided to you, your Honor, is
14 that only African-American children have gone -- or
15 minorities have gone through the waiver process; however,
16 your Honor, Fifth Circuit Solicitor's Office in Richland
17 County has moved to waive white children, and only upon
18 receiving those evaluations, have we withdrawn it. There
19 is no evidence the defense has that would support that
20 race played any part in this decision, which is the
21 decision to waive, which was made by myself personally,
22 your Honor.

23 Further, when we were in chambers last week, Ms.
24 Delany said that she wasn't alleging that we had done
25 anything racially motivated, that they wanted to look up

1 statistics. There is no evidence that any decision that
2 this office has ever made has been racially motivated.
3 We would ask you to deny their motion. And I have a copy
4 of the case law in McCleskey and Patterson.

5 MR. MAY: Your Honor, two seconds. The only thing I
6 would ask is the Court note that Richland County is
7 majority white, 47.3 versus 45.9 percent, as of the last
8 census data. I'd be happy to show that to you. It's
9 from the census page.

10 THE COURT: I'll take your word for it.

11 MR. MAY: As an officer of the court, your Honor,
12 it's just wrong. It's the insidious nature of this and
13 the fact that in 18 years, they've done the same thing
14 with capital defendants.

15 THE COURT: All right. I've got a lot I need to
16 read before I rule on the motions. Let's take a 15
17 minute recess.

18 (RECESS)

19 (RECEIVED IN EVIDENCE AND MARKED
20 DEFENDANT'S EXHIBITS NUMBERS 4 AND 5.)

21 THE COURT: After deliberating on the motions made
22 by the defense, both motions, I'm going to deny them
23 both.

24 Ms. Campbell, do you wish to make a summation?

25 MS. CAMPBELL: Very briefly, your Honor. I think

1 you've been very patient in allowing us to present
2 evidence in this case, your Honor, and I'd just talk a
3 little bit about the law in this case in South Carolina.
4 South Carolina does put emphasis on the serious nature of
5 a crime. I just think, your Honor, the facts in this
6 case speak for themselves. I don't think it gets much
7 more serious than this other than perhaps murder, but I
8 would hope in our state, that we'd think that an 81-year-
9 old woman should be allowed to live in her home free of
10 any worries of a 14 or 15-year-old breaking into her
11 house and raping her. The serious nature of the offense
12 is a major factor in the decision of State v. Corey D.
13 and other South Carolina cases.

14 The waiver application, your Honor -- And I don't
15 mean to go on about this. -- is appropriate because of
16 the child's or the public's best interest. In this case
17 with these facts, the history of this child, I would
18 submit, that in this case both those factors meet both of
19 them -- One or the other is enough. -- and have been met.

20 Your Honor, in the Kent factors, and I don't want to
21 go over and over on those, but the seriousness of the
22 alleged offense to the community and whether the
23 protection of the community requires waiver.

24 This young man regardless of whether we stay in
25 juvenile court or is waived up will receive the services

1 necessary. He'll be housed in the same institution for
2 the same amount regardless, your Honor.

3 Then, it gets into the protection of the community.
4 With his history -- And admittedly, your Honor, his only
5 prior adjudications are for incorrigible. By his own
6 admission, he was involved in multiple stealings,
7 stabbings, robberies, all serious-natured crimes over a
8 period of time, and according to his own mother started
9 when he was about three years old.

10 The defense alleges that the system has failed him,
11 your Honor. I would submit the system has tried to do
12 everything they can within their powers. And there are
13 some limits to what you can force a person to do to get
14 them the help he needs. It started with the school
15 system to try to get him in the right programs to put him
16 through. Even when he became incorrigible, the solicitor
17 over and over suspended him allowing him to come back,
18 try to get him in placements, try to get the benefits he
19 needed. The school counselor is available to him. In
20 addition to that, your Honor, you've heard all the
21 testimony in this case about how many people reached out
22 to him, hospitalizations, the different programs afforded
23 to him, different places through DJJ to try to get him
24 the help. The time period when he seemed to do the best
25 was the summer just three months before this.

1 And this is a young man -- Your Honor, even though
2 he does come from a single-family home, by the defense's
3 own evidence, he did have people he could turn to and
4 people that cared about him generally as a person, male
5 role models as well as a mother who -- It's somewhat
6 disputed. I mean there's no dispute that she used
7 corporal punishment with this child, but based on his
8 behaviors and behavior specifically exhibited at home may
9 or may not have been appropriate, however, he did have
10 other avenues afforded to him. The defense states that
11 this could come as an intervention with this child. Just
12 remember the testimony from one guard, Kimberly Black, CO
13 at the Alvin S. Glenn. Remember she testified about how
14 his mother came to see him and that she had to leave -- I
15 believe she was upset. -- because all the defendant could
16 talk about was when he got out how he wanted to go -- and
17 I may be paraphrasing, your Honor. You heard the
18 testimony. He wanted to go smoke pot or something to
19 that effect. That's where he thinks in his mind.

20 And the other thing I would point out, your Honor,
21 is they chose to put him on the stand and to listen to
22 him about how he said he makes mistakes and he just
23 needed a second chance. Not once, even in preparing this
24 case, not once did he get up there and say he was sorry.
25 Those words did not come out of his mouth, but those are

1 the words that ---

2 MS. DELANY: Objection, your Honor.

3 THE COURT: What's your objection?

4 MS. DELANY: I think under the Doyle case, he
5 doesn't have to do that. I mean, he can remain silent on
6 the facts, your Honor. I don't think that should be held
7 against him.

8 MS. CAMPBELL: The rule applies to a violation of
9 Miranda rights if he invokes his right and remains
10 silent. That is not what has happened in this case.
11 There are no Doyle issues in this case. Doyle only
12 applies if he invoked his right to silence and not
13 commented on that.

14 THE COURT: This isn't an adjudication of guilt.
15 Let's just move on from the issue.

16 MS. CAMPBELL: I'll move on. Your Honor, the only
17 thing I would point out is the facts, I believe, in this
18 case -- One of the factors in the Kent factors is whether
19 or not it's done in an aggressive, violent, premeditated,
20 willful manner. This is a case where by their own
21 admission, he went over to Larry's house that day -- and
22 I'm paraphrasing again, your Honor. At that point, they
23 went and before going to this person's house, who they
24 say they thought no one was there because there wasn't a
25 car in the driveway, which is the truth, however, they

1 went and got a gun first. There's evidence in the record
2 that they went and got the gun before they decided to do
3 this. Once inside, your Honor, I would note -- You have
4 the victim's statement actually in evidence as well as
5 testimony about that. They got the money. They got the
6 \$500 out of her purse on the front end and had the gun.
7 Testimony from the victim would have also been that the
8 gun was passed back and forth. It wasn't like one that's
9 scared of the other. It's being passed back and forth.
10 And there is no dispute that Larry Profitt was the first
11 one to rape her, but when the opportunity presented
12 itself and as this woman laid on the floor having just
13 been raped by the co-defendant in this case, she looked
14 at him and said, "You know, I'm like your grandmother."
15 By his own admission, he said he sat there and thought
16 about it, but he might as well go ahead and do it because
17 if he got caught, he was going to jail anyway. I submit,
18 your Honor, that shows absolutely no remorse, no feelings
19 for this person, a woman in her 80's, who's in her own
20 home. They've already gotten the guns. They've already
21 moved the TV -- Got the money. They're going to remove
22 the TV, and they still got the gun and able to control
23 her.

24 Your Honor, if this case does not warrant waiver,
25 your Honor, based on these factors, he's 14 years 10

1 months old when this occurred, your Honor, I don't know
2 of any that would. So respectfully, your Honor, we would
3 ask that you waive him pursuant to the waiver statute in
4 determining the factors of Kent.

5 THE COURT: Ms. Delany.

6 MS. DELANY: May it please the Court, your Honor.
7 Zacoata was 14 years old when this happened. He did come
8 from an abusive home. You heard his father was an
9 abusive alcoholic that was in and out of prison. You've
10 heard that his mother admitted to beating him senseless.

11 He has done well at certain points in his life. He
12 did well with Mr. Griffin. He did well with the Wellses.
13 He responds very well to structure and rules and being
14 given a bedtime, being told, you have to go to school.
15 He does well with those things.

16 You've heard from CO McMichael that she doesn't
17 think he has any influence over Larry, that Larry has
18 influence over him. He seems to get in trouble with
19 Larry.

20 You've heard from the state psychologist who said
21 she wouldn't classify him as a sex offender because he
22 doesn't fit the profile. You heard that that part of the
23 events was what he did express remorse for.

24 Judge, there are so many more things that are
25 available to keep this kind of thing from happening in

1 the future if you keep him in family court. If you keep
2 him in family court, he does five years at DJJ. He gets
3 treatment, he gets services, he gets job training. He'll
4 actually be prepared for life hopefully when he gets out.
5 If you send him to general sessions court -- And Mr.
6 Young mentioned this briefly, there is a US Supreme Court
7 case Graham v. Florida that says juveniles charged with
8 non-murder offenses that are in adult court have to have
9 a meaningful opportunity at parole. That means if you
10 send him to adult court, he's going to get out at some
11 point in the future and the question is, do you want him
12 to get out after five years of treatment of DJJ or do you
13 want him to get out after 20 years in adult prison with
14 violent offenders. I would like to see him have the
15 opportunity to do five years at DJJ and get those
16 services before he gets out.

17 He is immature. As far as being punishment
18 oriented, that's what small children do. They don't do
19 things they're not supposed to because they are afraid of
20 being punished, not because they know something is wrong.
21 I don't think that weighs against him in terms of
22 sophistication and maturity. I think it actually shows
23 you that he is not very sophisticated and that he is not
24 very mature. Dr. Pugh-Lilly said, less mature than you
25 would expect for child his age.

1 The things he said at the jail, were they things he
2 should have said? No. However, he's incarcerated with a
3 bunch of other juveniles who are there with serious
4 charges. They probably know what this charge is, and
5 he's trying to talk big. He's trying to keep people away
6 from him.

7 To the Kent factors, I did a little chart. **(HANDS**
8 **DOCUMENT TO THE COURT.)** This is obviously what our
9 interpretation of how the Kent factors applies to this
10 case. The seriousness of the offense and the protection
11 of the community, Number 1, and Number 8, adequate
12 protection of the public and likelihood of rehabilitation
13 by either use of procedures, services and facilities
14 available to the family court, I think they're basically
15 the same thing. I mean, they are slightly different, but
16 to keep him in family court, he gets all those services,
17 he gets job training, he gets counseling, he gets sex
18 offender treatment. He gets all of those things. To
19 send him to general sessions, you're going to have him
20 spending the next 20 years in prison with violent
21 offenders before he gets out.

22 Aggressive, violent, willful or premeditated,
23 obviously the facts are terrible; however, he didn't
24 think anyone was home when they went in. He probably does
25 have deficits, and he's not good at making decisions.

1 Again, offenses against persons or property, it was
2 against a person. I think when they went in there, it
3 was intended to be against property. Probable cause, we
4 haven't disputed that. Disposition in one court, he does
5 have some remaining charges. He has a larceny that's got
6 to stay in family court and also his co-defendant hasn't
7 been through the waiver process yet.

8 Sophistication and maturity, he's got a history of a
9 bad home life. He's got a history of special education
10 student. Again, you heard Dr. Pugh-Lilly say he has 0.2%
11 processing speed. Now, she did say that was an
12 underestimate, but she didn't think it was enough of an
13 underestimate to give him any kind of a malingering test.

14 His prior record, he's got incorrigible and
15 violation of probation for that. It's a status offense.
16 It's not a particularly serious charge. He does well in
17 structure. He does well when he has male role model to
18 give him rules.

19 Your Honor, I would respectfully ask you keep him in
20 family court so that he can get out after five years of
21 treatment as opposed to decades with violent offenders.

22 THE COURT: Mr. Young, any reply?

23 MR. YOUNG: No, sir.

24 THE COURT: Ms. Campbell, any reply?

25 MS. CAMPBELL: No, your Honor.

1 THE COURT: Of course, this case was tried for two
2 days last month and all day today basically, and there's
3 been nearly three days of testimony taken. Numerous
4 exhibits were introduced into evidence by both sides,
5 plus I also have, what I'll call, the waiver evaluation.
6 I think the official title is Pre-adjudicatory Transfer
7 Waiver Evaluation.

8 Among the state's exhibits are the statement of
9 Larry Proffit dated December 15, 2010. -- He was also
10 charged in this incident. -- the statements of Zacoata
11 Lopey also dated December 15, 2010 and numerous
12 photographs and other documents. Included in the
13 defense's exhibits is a statement by Elaine Henrick the
14 alleged victim.

15 I have reviewed all these exhibits, and I've
16 considered the testimony of all the witnesses. I have
17 given particular attention to the waiver evaluation.
18 I've also reviewed the pertinent case law including the
19 cases of Kent versus United States, State versus Corey D.
20 and State versus Pittman. I have reviewed the Transfer
21 of Jurisdiction statute, Section 63-19-1210 of the Code
22 of Laws. I've given particular attention to the
23 testimony and exhibits as they pertain to the eight
24 determinative factors for transfer. Those factors are
25 set out in the Kent case.

1 The evidence reveals that this juvenile, Zacoata
2 Lopey, was approximately 14 years and 10 months of age at
3 the time of the commission of the alleged offenses. The
4 charges against this juvenile currently before me
5 relevant to this waiver hearing include Burglary in the
6 First Degree, Kidnapping in the First Degree, Criminal
7 Sexual Conduct in the First Degree and Armed Robbery. It
8 is alleged that these offenses occurred on December 14,
9 2010.

10 The testimony and exhibits show that this juvenile's
11 mother was his primary custodian with a father who has
12 spent time in prison. It appears that the juvenile has
13 had a poor relationship with his father and a difficult
14 relationship with his mother which possibly included some
15 physical conflict.

16 The juvenile has been given various psychological
17 tests. The results of the test are, of course, too
18 complex for me to set out now, but the Court is aware of
19 the juvenile's IQ score, and some of these tests have
20 shown that his relative strengths were illuminated for
21 working memory but his sub-tests show that his verbal,
22 reasoning abilities, non-verbal reasoning and his ability
23 to process information fell within the borderline range
24 or below. The record reflects that he has had numerous
25 behavioral problems at school and at other places

1 including the detention center.

2 Ben Fields, the school resource officer, has
3 testified that the child had continuous behavior problems
4 at school with a bad attitude toward his teachers.
5 Zacoata has been called in numerous times to consult with
6 the school resource officer for misbehavior and
7 discipline issues. Officer Fields stated that Zacoata
8 has assaulted and threatened a teacher. He testified
9 that every single encounter he had with the child was
10 negative. Officer Fields said that Zacoata had a
11 constant problem with non-cooperation. There were also
12 inappropriate sexual comments made to a female jailer and
13 possibly to others.

14 The waiver evaluation shows a prior court history of
15 a commitment to Midlands Evaluation Center on an
16 adjudication and incorrigibility and a subsequent
17 adjudication on a probation violation.

18 The enormity of these crimes involved here cannot be
19 discounted. This young man along with another man who
20 was just a little older without consent entered into the
21 home of an 80-year-old woman in the nighttime armed with
22 a shotgun. This woman was minding her own business
23 apparently by watching television. These young men
24 demanded money from the woman. The young men forced the
25 woman to disrobe. She was then raped by each of them.

1 She was raped both in the vagina and in the anus. When
2 the young men left, they took money, a cellular telephone
3 and television and a few other items. Zacoata has
4 offered very little by way of explanation as to why this
5 was done other than young men wanting some money.

6 When the two young men were taken to headquarters
7 for fingerprinting, Investigator Mauldin testified that
8 both these young men including Zacoata were insensitive,
9 high fiving each other and joking around about going to
10 prison. Officer Mauldin testified that their behavior
11 was so disgusting and unremorseful that he had to request
12 that another officer supervise the fingerprinting as he
13 could not bear to witness their behavior.

14 Investigator Joe Clark also testified that Zacoata
15 showed no remorse for his behavior although Zacoata did
16 tell Officer Clark that he knew it was wrong to rape a
17 woman.

18 With regard to the eight factors set out in Kent
19 versus United States, I find the following:

20 As to factor number one, which is the seriousness of
21 the alleged offense to the community and whether the
22 protection of the community requires waiver, this
23 juvenile is charged with kidnapping, armed robbery,
24 Criminal Sexual Conduct in the First Degree and Burglary
25 in the First Degree. These are serious charges, and the

1 protection of the community would be enhanced by
2 transferring jurisdiction of this juvenile to the court
3 of general sessions.

4 Factor number two, which is whether the alleged
5 offense was committed in an aggressive, violent, pre-
6 meditated or willful manner, this offense was committed
7 in an aggressive and violent manner. The juvenile along
8 with another teenager entered without consent into the
9 dwelling of an 80-year-old woman who lived alone. The
10 juveniles were armed with a shotgun. They required the
11 woman to remove her clothes and each of the young men
12 raped the woman. The woman was injured and had to go to
13 the hospital for treatment. The juveniles took some of
14 the woman's personal property.

15 Factor number three, whether the alleged offense was
16 against persons or against property, greater weight being
17 given to offenses against person especially if injury
18 resulted, these offenses, again, were against an 80-year-
19 old woman and the offenses resulted in rape and injury to
20 the woman's body and shows complete disregard for the
21 safety of a fellow citizen and lack of respect for life
22 itself.

23 Factor number four, which is the merit of
24 prosecuting the complaint, i.e., whether there's evidence
25 to find which a grand jury may be expected to return an

1 indictment, there is sufficient evidence upon which a
2 grand jury may be expected to return an indictment
3 against this juvenile.

4 Factor number five, the desirability of trial and
5 disposition of the entire offense in one court when the
6 child's co-defendants are adults, this juvenile has one
7 co-defendant, a juvenile. Both cases can be disposed of
8 in either family court or in the court of general
9 sessions. It is the Court's understanding that there will
10 be a waiver hearing for both of these juveniles or the
11 other juvenile. This case represents the first waiver
12 hearing for either juvenile. The Court is, of course,
13 aware of the larceny charges that are still pending which
14 is not waiveable.

15 Factor number six, which is the sophistication and
16 maturity of the child as determined by consideration of
17 his home environmental situation, emotional attitude and
18 living pattern, according to the waiver evaluation, the
19 juvenile's mother was his primary custodian. He has
20 lived with her, his maternal grandmother and some
21 siblings most of his life. It appears his father has
22 spent time in prison, and Zacoata's contact with him is
23 limited. Zacoata's relationship with his mother appears
24 to be confrontational. Zacoata may have lived for short
25 periods of time with friends and others. It appears this

1 juvenile has been diagnosed with various behavioral and
2 emotional disorders. The juvenile has admitted regular
3 abuse of marijuana and alcohol. There's a history of
4 behavioral issues, suspensions and other disturbances at
5 school and other places.

6 As to factor number seven, which is the child's
7 prior record and involvement with the juvenile justice
8 system, in April, 2009, Zacoata was committed to MEC for
9 evaluation after adjudication for incorrigibility. At
10 disposition, Zacoata was placed at Camp White Pines in
11 January of 2009 as a condition of probation. There it
12 appears Zacoata received mental health services and
13 medication management. He was released home in September
14 of 2009. About June, 2010, the Court ordered alternative
15 placement. Zacoata was placed in therapeutic foster care
16 in Sumter where he apparently made minimal progress
17 toward his treatment goals. He was released from
18 therapeutic foster care placement in September, 2010.
19 Then in December, 2010, while still on probation, Zacoata
20 was charged with these current offenses.

21 As to factor number eight, which is the prospects
22 for adequate protection of the public and the likelihood
23 of reasonable rehabilitation of the child by either use
24 of procedures, services and facilities currently
25 available to the family court, although Zacoata has

1 reasonably cooperated with the police and his waiver
2 evaluation, has a below average IQ, has relatively minor
3 offenses with DJJ prior to these alleged offenses and
4 being only 14 years and 10 months of age at the time of
5 the offenses, there are numerous negative factors which
6 suggests that treatment for Zacoata's issues are poor.
7 Some of these would be that alleged offenses are serious
8 and violent with the alleged surrounding acts
9 demonstrating a propensity for criminal behavior.
10 Zacoata has a history of behavioral problems both at
11 school, while confined, and elsewhere. Although Zacoata
12 understands that there are consequences to his actions,
13 he apparently does not consider these consequences prior
14 to doing bad things. Zacoata admits to regular abuse of
15 marijuana and alcohol. Zacoata's prior involvement and
16 rehabilitative efforts have demonstrated little progress
17 resulting in this Court having reason to believe that
18 rehabilitation may not be beneficial.

19 Zacoata has a poor relationship with his mother and
20 father which deprives him of a strong support network.
21 This along with his low self-esteem and inadequate sense
22 of self-worth would make rehabilitation difficult. These
23 are serious offenses. The protection of the public would
24 likely be compromised if it is determined that Zacoata
25 committed the offenses and he could not remain in a

1 highly secure setting for an appropriate time longer than
2 this court can provide.

3 Based on the evidence in this case, I find that the
4 State has shown probable cause that Zacoata has committed
5 all offenses before me: Burglary, First Degree, Criminal
6 Sexual Conduct, First Degree, armed robbery and
7 kidnapping. As to whether the case should be waived to
8 the court of general sessions, I considered all issues
9 previously addressed.

10 The issue is difficult for many reasons, among those
11 are the minor's non-extensive record with DJJ and his
12 below average IQ. I've also considered his home
13 environment and his special needs. -- It's significant
14 that the resource officer at his school, Ben Fields,
15 testified that the juvenile has constant discipline
16 problems with bad attitude with teachers. -- Zacoata's
17 statement that he wanted to do time in prison, his
18 statement that he wants to be a gang member, his
19 statement that he wants to sell dope and get high, his
20 statement that these were his goals in life. Officer
21 Fields stated that these statements were made on a
22 regular basis and that he made these statements even
23 though he understood the consequences of his actions,
24 particularly telling was Zacoata showing at times a lack
25 of remorse to the actions perpetrated on the elderly

1 woman. The enormity of these crimes and the rape and
2 injury of this woman causes this Court to have great
3 concern for the safety of the community.

4 I find that the need for adequate protection of the
5 public is great. Even though there may be some chance of
6 rehabilitation of this child, the facts of this case
7 require that the case before me be transferred to the
8 court of general sessions.

9 I'm asking Solicitor Campbell to prepare an Order
10 that incorporates all of these facts and law. This Order
11 shall be submitted to Ms. Delany for review prior to
12 submission to this Court for signature.

13 That's the decision of the Court.

14 **(WHEREUPON, THE HEARING WAS ADJOURNED.)**

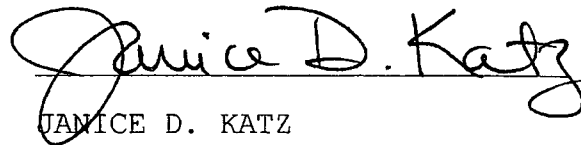
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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND C E R T I F I C A T E

I, THE UNDERSIGNED, JANICE D. KATZ, COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF THE HEARING OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE FAMILY COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 27th, 28th, and 29TH DAYS OF MARCH, 2012.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

A handwritten signature in cursive script that reads "Janice D. Katz". The signature is written in dark ink and is positioned above the printed name.

JANICE D. KATZ

COURT REPORTER

State of South Carolina

Court of General Sessions

County of Richland

2012-GS-40-01922

2012-GS-40-01923

2012-GS-40-01924

2012-GS-40-01925

The State of South Carolina : .

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-VS-

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TRANSCRIPT OF RECORD

:

Zacoata Lopecy a/k/a

:

Zacoate Lopecy

:

March 12, 2013

Columbia, South Carolina

B E F O R E:

The Honorable Thomas W. Cooper, Jr., Judge.

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

Joanna McDuffie, Esquire

Kathryn "Luck" Campbell, Esquire

Meghan Walker, Esquire

Attorneys for the State

Jennifer Davis, Esquire

Joanna Delaney, Esquire

Attorneys for the Defendant

Daphne D. Helms

Circuit Court Reporter

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>ID.</u>	<u>EV.</u>
C-1	notebook of information gathered by the solicitor's office	3	

1 **Ms. McDuffie:** The State calls Zacoata Lopey.

2 (Court's Exhibit 1 was marked for identification.)

3 **Ms. Davis:** Your Honor, may we approach briefly?

4 **The Court:** Yes, ma'am.

5 (Whereupon, a bench conference was held.)

6 Zacoata Lopey, after being duly sworn, testified as
7 follows:

8 **The Court:** Ms. McDuffie, what do we have?

9 **Ms. McDuffie:** Thank you, Your Honor. May it please the
10 Court? Standing before you is Zacoata Lopey with his
11 attorney, Jennifer Davis and Joanna Delaney, both of the
12 public defender's office. He is here to plead guilty to one
13 count of C.S.C. in the first degree, one count of kidnapping,
14 one count of burglary in the first degree, and one count of
15 armed robbery. Your Honor, the State offered 50 years in
16 this matter. I do not believe the defendant has accepted the
17 State's offer, and he will be pleading as charged.

18 Your Honor, standing with me is First Assistant
19 Solicitor Kathryn Luck Campbell, Assistant Solicitor Meghan
20 Walker, Sergeant Kevin Isenhoward, Major Stan Smith,
21 Investigator Josh Mauldin, and school resource officer, Ben
22 Fields, who would all like to address the Court at the
23 appropriate time. Also present in the courtroom is the
24 victim and her family, Ms. Elaine Henrick, and also the
25 sexual assault nurse, Ms. Temple Hart. Your Honor, they also

1 would have statements at the appropriate time.

2 **The Court:** Okay.

3 **Ms. Davis:** And, Your Honor, if I just might address a
4 preliminary matter before we get too far into the plea.

5 **The Court:** All right.

6 **Ms. Davis:** Your Honor, Mr. Lopey was 14 at the time of
7 this incident. He was waived up through a family court
8 hearing. That was done by Judge Fraley, Jr., April 11th of
9 last year. Ms. Delaney and another attorney in our office,
10 Mr. May, handled that waiver hearing and represented Mr.
11 Lopey. At that time Judge Fraley did waive him up and
12 submitted an order of his findings addressing the Kent
13 factors.

14 Your Honor, I would just make as a part of the record
15 that they obviously objected at the time of him being waived
16 up. I just want to make clear on the record that we again
17 object to him being sentenced in adult court. I do believe,
18 Your Honor, that under 63-19-1210, Section 3, that Your Honor
19 does have the ability to remand a case back to family court.
20 And that section says, Your Honor, that when an action is
21 brought in circuit court which, in the opinion of the judge,
22 falls within the discretion of family court, he may transfer
23 that action upon his own motion or by any motion of any
24 party.

25 And I understand, Your Honor, that you do not know the

1 ends and outs of the details of this case as the prosecution
2 and we do, but I'd just put that on the record at this time,
3 Your Honor, and we'll subsequently address it after we've
4 gone through a little bit more of the details.

5 **The Court:** All right. You're right, Ms. Davis. What I
6 know about this case is what you all are about to tell me.

7 **Ms. Davis:** Yes, sir.

8 **The Court:** And so I -- I have not read the order that's
9 granted waiver or the transcript of the waiver hearing or
10 seen any reports that were generated before I'm sure that --
11 that motion was granted. And so for our purposes right now,
12 I'm going to have to assume that in the absence of somebody
13 showing me some reason that the family court below made some
14 error that that was the correct motion -- the correct -- the
15 correct ruling by the family court.

16 **Ms. Davis, Ms. Delaney,** have you all both represented
17 Mr. Lopey throughout this process?

18 **Ms. Davis:** Yes, Your Honor.

19 **Ms. Delaney:** Yes, Your Honor.

20 **The Court:** You said he was 14 at the time these events
21 occurred back in December of 2010. Has he seemed to have
22 understood your communications with him?

23 **Ms. Davis:** He has, Your Honor.

24 **The Court:** Has he ever been evaluated to determine his
25 competency to stand trial or his ability to distinguish right

1 from wrong?

2 **Ms. Delaney:** He has, Your Honor.

3 **The Court:** He has?

4 **Ms. Delaney:** Yes, sir.

5 **The Court:** Okay. Has a Blair hearing been conducted in
6 connection with those -- with those findings?

7 **Ms. Delaney:** No, Your Honor.

8 **The Court:** Do we have the reports of the -- is it the
9 Department of Mental Health or D.M.R.? Who did it?

10 **Ms. Delaney:** No, Your Honor. He was evaluated by Dr.
11 Thomas Martin and found to be competent.

12 **The Court:** Okay. Is there any question in your mind
13 today, in the minds of either of you, about his competence to
14 stand trial or to enter the plea?

15 **Ms. Davis:** No, Your Honor.

16 **The Court:** Is there any question in the minds of either
17 of you about his ability to distinguish right from wrong or
18 to conform his conduct to the requirements of the law?

19 **Ms. Davis:** No, Your Honor.

20 **Ms. Delaney:** No, Your Honor.

21 **The Court:** Thank you. In view of that then, I don't
22 think there's any need to go into the Blair issues any
23 further. Does Mr. Lopey understand the nature of these
24 charges, the significance of his guilty pleas to most serious
25 offenses and violent offenses and sexually violent offenses

1 in the case of the C.S.C.? Does he understand the possible
2 sentence he can receive and his constitutional rights,
3 including that of a trial, insofar as you ladies know?

4 **Ms. Davis:** He does, Your Honor.

5 **Ms. Delaney:** Yes, sir.

6 **The Court:** And he's indicated to you that he wishes to
7 plead guilty to these charges.

8 **Ms. Delaney:** Yes, sir.

9 **Ms. Davis:** Yes, Your Honor.

10 Examination by the Court

11 Q. Mr. Lopey, how old are you today?

12 A. Seventeen, sir.

13 Q. What grade were you in -- or were you in school when
14 these events occurred?

15 A. Yes, sir. I was in the ninth grade.

16 Q. Were you on track in that regard? Had you failed any
17 grades? How were you doing in school?

18 A. I was doing all right when I went. I mean, like I got
19 in -- I got in stuff -- a little bit of stuff, but it wasn't
20 nothing serious.

21 Q. Have you ever been treated for drug abuse or alcohol
22 abuse?

23 A. Yes, sir.

24 Q. When were you treated and what kind of treatments did
25 you get?

1 A. I had to go to -- there's a little program that the
2 Court had sentenced me to go to.

3 Q. How long ago was that?

4 A. When I was home -- I was going to it when I was home.

5 Q. It was obviously before these charges arose?

6 A. Yes, sir.

7 Q. All right. Did you complete the program?

8 A. No, sir, because I came here.

9 Q. Okay. You were in the program when you got locked up?

10 A. Yes, sir.

11 Q. Have you ever been diagnosed or treated for any mental
12 illness?

13 A. Yes, sir.

14 Q. What sort of mental illness?

15 A. I mean, they told me I had A.D.H.D. and stuff like that.

16 Q. That's it?

17 A. Yes, sir.

18 Q. Okay. Are you on any medication today?

19 A. No, sir.

20 Q. Can you understand these proceedings then, what I'm
21 telling you and what your lawyers have told you?

22 A. Yes, sir.

23 Q. Mr. Lopey, when you plead guilty to criminal sexual
24 conduct in the first degree, you can get up to 30 years
25 imprisonment. Do you understand that?

1 A. Yes, sir.

2 Q. When you plead guilty to kidnapping, you can also get
3 30 years imprisonment. Do you understand that?

4 A. Yes, sir.

5 Q. When you plead guilty to armed robbery, you can get up
6 to 30 years imprisonment and you must receive a sentence of
7 at least 10 years imprisonment. Do you understand that?

8 A. Yes, sir.

9 Q. Burglary in the first degree carries from 15 years
10 imprisonment to life imprisonment. Do you understand that?

11 A. Yes, sir.

12 Q. All of these offenses are categorized under the law as
13 most serious offenses. That means that if you -- if you get
14 out of jail and commit another most serious offense, you
15 would go to jail for life. You would die in jail. You'd
16 never get out of jail because you would use up today one of
17 the two strikes that you get for most serious offenses. The
18 second strike for a most serious offense sends you to jail
19 for life. Do you understand that?

20 A. Yes, sir.

21 Q. Whatever sentence you receive today on these charges,
22 Mr. Lopey, you have to serve at least 85 percent of it before
23 you will be considered to be released into the community. Do
24 you understand that?

25 A. Yes, sir.

1 Q. When you plead guilty to these charges, Mr. Lopey, you
2 have to give up certain important constitutional rights.
3 Under our law, nobody can make you testify against yourself,
4 and no one can force you to admit that you're guilty of the
5 charge, but if you plead guilty you have to tell me that
6 you're guilty of the charge, and so you give up your right to
7 remain silent. Do you understand that?

8 A. Yes, sir.

9 Q. You have a right to a jury trial on any or all of these
10 charges. If you ask for a jury trial, the State would have
11 the burden of convincing all 12 members of the jury that
12 you're guilty of these charges beyond a reasonable doubt.
13 You would not have to convince a jury that you're not guilty.
14 The State would have to convince a jury that you are guilty,
15 but if you plead guilty you don't get a trial. You give up
16 that right. Do you understand that?

17 A. Yes, sir.

18 Q. If you had a trial, Ms. Davis and Ms. Delaney would have
19 the right to question the State's witnesses who would testify
20 against you. You would have the right to call your own
21 witnesses to tell your side of the story, but if you plead
22 guilty, they don't get to question or call witnesses. They
23 give up that right -- you give up that right. Do you
24 understand that?

25 A. Yes, sir.

1 Q. By pleading guilty, Mr. Lopey, you essentially admit the
2 allegations that are contained in these indictments. Do you
3 understand that?

4 A. Yes, sir.

5 Q. Have you understood your rights, Mr. Lopey, as I have
6 explained them to you?

7 A. Yes, sir.

8 Q. Do you want me to go over any of them with you again?

9 A. No, sir.

10 Q. Mr. Lopey, in indictment number 1922 you're charged with
11 burglary in the first degree. That indictment says that you
12 did here in Richland County on or about December the 14th of
13 2010 enter the dwelling of Elaine Henrick located at [REDACTED]
14 [REDACTED] without her consent and with the intent to
15 commit a crime therein, and you went in there in the
16 nighttime or you caused physical injury to her or you used a
17 dangerous instrument or threatened her with the use of a
18 dangerous instrument in the commission of the crime of
19 burglary in the first degree. Do you understand that charge?

20 A. Yes, sir.

21 Q. How do you plead to the charge?

22 A. Guilty, sir.

23 Q. Sir?

24 A. Guilty.

25 Q. Indictment number 1923 charges you with armed robbery,

1 and it says that you did in Richland County at the same time
2 and place wrongfully take from the person or presence of
3 Elaine Henrick, by means of force or intimidation, goods or
4 monies that belonged to her, specifically a television and/or
5 some currency or cell phone with the intent to steal those
6 things and you did that while you were armed with some deadly
7 weapon or using a representation of something that appeared
8 to be a deadly weapon and that she reasonably believed to be
9 a deadly weapon. You're, therefore, charged with armed
10 robbery, that is, robbery while armed with a deadly weapon.
11 Do you understand that charge?

12 A. Yes, sir.

13 Q. How do you plead to it?

14 A. Guilty.

15 Q. Indictment 1924 charges you with kidnapping. That
16 indictment says that you did at the same time and place
17 unlawfully seize or confine or kidnapped Elaine Henrick
18 without the authority of law and in violation of the law. Do
19 you understand the charge of kidnapping?

20 A. Yes, sir.

21 Q. How do you plead to it?

22 A. Guilty.

23 Q. Indictment 1925 charges you with criminal sexual conduct
24 in the first degree. It says that you did in Richland County
25 at the same time and place engage in sexual battery with the

1 victim, while she was also the victim of kidnapping or a
2 burglary or a robbery, and that you used aggravated force to
3 accomplish that in violation of the law. Do you understand
4 the charge of criminal sexual conduct in the first degree in
5 connection with that?

6 A. Yes, sir.

7 Q. How do you plead to it?

8 A. Guilty.

9 Q. Once again, Mr. Lopey, by pleading guilty do you
10 understand that you are essentially admitting the allegations
11 that I've just read to you in those indictments?

12 A. Yes, sir.

13 Q. Is that what you want to do?

14 A. Yes, sir.

15 Q. Has anybody promised you anything or held out any hope
16 of reward to get you to plead guilty to these charges?

17 A. No, sir.

18 Q. Has anyone threatened you in any way or forced you to
19 make you plead guilty to these charges?

20 A. No, sir.

21 Q. Are you pleading guilty freely and voluntarily?

22 A. Yes, sir.

23 Q. Have you understood what you've been doing?

24 A. Yes, sir.

25 Q. Are you satisfied with what Ms. Davis and Ms. Delaney

1 have done for you as your lawyers?

2 A. Yes, sir.

3 Q. Have they done everything that you have asked them to do
4 in this case?

5 A. Yes, sir.

6 Q. Have you had enough time to talk with them about these
7 things?

8 A. Yes, sir.

9 Q. Have you understood the talks that you've had with them?

10 A. Yes, sir.

11 Q. Do you need any more time right now to talk with them
12 any further?

13 A. No, sir.

14 Q. You will have ten days from today's date to appeal your
15 guilty pleas and your sentences to a higher court if you wish
16 to appeal them, but you have to file a notice to appeal with
17 this court within ten days if you wish to appeal. Do you
18 understand that?

19 A. Yes, sir.

20 **The Court:** Thank you. Ms. McDuffie.

21 **Ms. McDuffie:** Thank you, Your Honor. May it please the
22 Court? Before we begin with the facts of this case, Your
23 Honor, if I could hand up what we've marked as Court's
24 Exhibit Number 1. Your Honor, contained in this is the
25 statement of the victim, Ms. Elaine Henrick, the medical

1 findings from the SANE nurse, the testimony of the SANE
2 nurse, the two statements that this defendant gave to law
3 enforcement, the statement of his co-defendant, Larry
4 Prophet, the testimony of Captain Redmond who was in charge
5 of the Alvin S. Glenn Detention Center, this defendant's
6 behavioral records while at the Alvin S. Glenn Detention
7 Center, this defendant addressing Judge Fraley, his juvenile
8 criminal record, the transcript of Judge Fraley's ruling and
9 also Judge Fraley's order, and I've shared a copy of this
10 with defense counsel.

11 **The Court:** All right. If you'll hand it up, please.
12 All right.

13 **Ms. McDuffie:** Your Honor, Investigator Josh Mauldin
14 formerly with the Richland County Sheriff's Department, now
15 with the South Carolina Criminal Justice Academy, will give
16 Your Honor a factual background in this case.

17 **The Court:** Is it Mauldin?

18 **Mr. Mauldin:** Yes, sir.

19 **The Court:** Mr. Mauldin.

20 **Mr. Mauldin:** Yes, sir. On December the 14th, 2010, I
21 distinctly remember being on call at the time and wrapping up
22 my shift. I was sitting with some of my colleagues and
23 co-workers when a call came out that a home invasion and
24 purported sexual assault had occurred on Smithfield Road.

25 Being in the Robbery Unit myself at the time and having

1 formerly worked in Special Victims for a long period of time,
2 I decided that I could best serve by going to Smithfield Road
3 and trying to address this issue. Upon my arrival, I met
4 with our crime scene individuals, our deputies that had
5 responded, and I observed the interior of Ms. Elaine
6 Henrick's home.

7 The home was in disarray. Drawers had been pulled out,
8 cabinets opened. Contents had been strewn about the floor.
9 They took me in the bedroom and showed me some staining on
10 the floor and I believe on the sheets which they indicated
11 that the victim had told them that it was semen or
12 potentially semen.

13 I recall immediately heading to Palmetto Richland
14 Emergency Room where I made contact with Ms. Henrick in a
15 room there, and I can still remember her in a gown clutching
16 a wad of bloody tissue paper that she had used to clean
17 herself and to stem the blood flow. And I spoke to her about
18 what had occurred that evening, and she related a story to me
19 about how she had been sitting at her home about 8:45. She
20 knew what time it was because *Minute To Win It* was on and she
21 was watching that and talking to a friend of hers.

22 And as she hung up the phone, she heard a noise in her
23 sunroom, and when she got up to see what -- what was going on
24 or what caused the noise, two men entered through that
25 sunroom, one of them armed with a shotgun. And the two men

1 would then tell Ms. Henrick not to move, start asking her
2 where her valuables were. They would ransack her home
3 searching for money, jewelry, anything of value, swapping the
4 gun off between themselves while each would look for valuable
5 items.

6 At some point she told me how when they had acquired
7 some money and disconnected her T.V. they took her back to a
8 bathroom. They told her to go in the bathroom and they asked
9 her to disrobe. She said she wasn't terribly concerned about
10 being harmed at that time because she thought that they were
11 asking her to disrobe so that she couldn't run out of the
12 house, but that wasn't the case at all.

13 They took Ms. Elaine Henrick, 80 years old, naked from
14 the bathroom into her bedroom where they told her to lie on
15 her bed. Mr. Prophet would apparently pass the gun off to
16 Mr. Lopey at which time he would climb on top of Ms. Henrick
17 and sexually assault her. When he finished, Mr. Lopey would
18 pass the gun back to Mr. Prophet, and he would attempt the
19 same.

20 Ms. Henrick at that time would tell me how she pled with
21 Mr. Lopey who she called the young one. She asked for mercy.
22 She asked him to -- or if he would do the same thing to his
23 own grandmother. And Mr. Lopey, in showing Ms. Henrick some
24 mercy, turned her over and anally sexually assaulted her. At
25 that time those two men would then leave the house at which

1 time she would call law enforcement and apprise us of what
2 had just transpired.

3 I recall speaking with Ms. Temple Hart, the forensic
4 nurse examiner, shortly thereafter who would relate to me the
5 injuries sustained by Ms. Henrick. She related to me how
6 substantial they were, how the fact that Ms. Henrick's age
7 and the fact that she was postmenopausal actually diminished
8 the injuries to some degree and that had she been younger she
9 would have required extensive surgery to repair the damage
10 done.

11 I remember Ms. Henrick sobbing in the -- in the
12 examination room as she related the story to me. I remember
13 speaking with her family, especially her nephew-in-law, Mr.
14 Smith, as I took him home from the hospital so that he could
15 get a car and come back and pick up his wife, Ms. Henrick's
16 niece, and doing my best to stay composed and to let him know
17 that we would do everything in our power to make sure that
18 this incident was addressed.

19 After a lengthy night out, I went home and got some
20 sleep, and when I came back in the next day, what I
21 discovered was that almost every investigator at the Richland
22 County Sheriff's Department had mobilized and was canvassing
23 the neighborhood in an attempt to do everything they could.
24 I have never seen anything like that. Even our sorriest
25 individuals were out making their best effort to bring this

1 case to a conclusion because, as law enforcement officers, I
2 think we have a specific duty and we all feel this way
3 towards two demographic groups in our community: Small
4 children and our seniors, those that cannot protect
5 themselves.

6 As that was going on, Investigator Clarke after
7 speaking -- Joe Clarke, who I don't believe is in the
8 courtroom -- after speaking to a school resource officer, Ben
9 Fields, who is in the courtroom, Deputy Fields was able to
10 apprise him of some information regarding Mr. Lopey at which
11 time Investigator Clarke and Investigator John Miller,
12 formerly of the Richland County Sheriff's Department, would
13 proceed to Spring Valley High School and speak to Mr. Lopey.

14 Mr. Lopey would rather quickly apprise them that he, in
15 fact, had been responsible for the sexual assault and robbery
16 and kidnapping and burglary first committed against Ms.
17 Elaine Henrick. They would return him to headquarters where
18 he would further tell them that the individual who
19 participated in this acts -- these acts with him was Larry
20 Prophet. Myself and Kevin Isenhoward, Sergeant Isenhoward
21 who stands here today, would then locate Mr. Prophet.

22 After all was said and done in terms of talking to these
23 two young men and obtaining their statements, I distinctly
24 remember how we took them to be fingerprinted, and Sergeant
25 Isenhoward accompanied them to be fingerprinted. After ten

1 minutes in a room, he would step outside and say to me, "You
2 need to go in there. I cannot take this anymore," at which
3 time I would step back into the room where I would see Mr.
4 Lopey and Mr. Prophet laughing, rapping, dapping each other
5 up and joking about what they had done and the fact that they
6 were going to prison.

7 My concerns here today -- and I can definitely say none
8 of us here in law enforcement that have -- none of us are
9 strangers to violence and to human tragedy. This case
10 without a doubt is one of the most -- no, it is the -- it is
11 the most awful case even compared to any murders, any other
12 sexual assaults, which I've worked many, that I've ever seen
13 in my life, and it's made worse by the fact that I have never
14 - not a time comes to me - dealt with a suspect in a crime
15 where there was an absolute and complete lack of remorse or
16 regard for the victim or for what they had done.

17 I don't think I'm out of line by saying it is almost
18 like dealing with a predatory animal, a shark, a tiger, a
19 grizzly bear, just doing what it does. I have -- I stand
20 before you today not because I'm angry about what transpired.
21 I'm concerned; I'm gravely concerned. I firmly believe that
22 these two young men, if at any point they walk freely and
23 have the physical means to do so, will cause someone else
24 grievous harm or death. I'm deeply concerned. I've never
25 seen behavior like this in the time that I've been in law

1 enforcement and the lack of regard for human life. I have
2 nothing further, Your Honor.

3 **The Court:** Thank you, Mr. Mauldin.

4 **Ms. McDuffie:** Your Honor, forensics were conducted at
5 the scene. This defendant's semen was found in the rectum of
6 the victim, Ms. Elaine Henrick. His semen was also found on
7 the tissue that she used to gather the blood between her legs
8 and was taken to the hospital with that tissue between her
9 legs. That was turned over to law enforcement. The semen of
10 Larry Prophet was also found in the home on the carpet where
11 he ejaculated.

12 Your Honor, this victim was raped vaginally and anally.
13 The medical findings are detailed in the exhibit we handed up
14 for the Court along with the statement of this defendant in
15 which he spoke to Judge Fraley and showed no remorse
16 whatsoever for his actions.

17 Your Honor, Investigator Ben Fields is standing with me.
18 He can give Your Honor a little bit of background on his
19 interaction with this defendant. He had numerous
20 interactions with him while he was in school and ultimately
21 is the one who alerted law enforcement that this defendant
22 could potentially be involved in this case.

23 **The Court:** Last name again, please, sir.

24 **Mr. Fields:** Deputy Fields, Ben Fields.

25 **The Court:** Deputy Fields. Yes, sir.

1 **Mr. Fields:** Yes, sir. Thank you, Your Honor. I am the
2 school resource officer at Spring Valley High School. This
3 is my fourth year working at Spring Valley, my sixth year in
4 S.R.O. altogether. My first encounter with Mr. Lopey, the
5 defendant, was his first day at school. They called me
6 because he was so uncooperative. He was causing a disruption
7 in the class. I made contact with Mr. Lopey. He came in my
8 office willingly. We had a conversation there.

9 The conversation was one of -- he was very clear at the
10 time. He claimed to be a Blood gang member which is a
11 criminal street gang. He claimed that he liked the criminal
12 life. He claimed that he wanted to go to prison - it wasn't
13 anything to him - and that he wasn't scared in any way,
14 shape, or form of jail. That was not my only encounter with
15 Mr. Lopey.

16 On a regular basis they would call me and I would have
17 conversations with him in reference to his behavior and where
18 it could lead to, what could happen if he continued to have
19 behavior like this, and he just continued to disregard really
20 anything I had to say, not take it seriously. In my six
21 years as an S.R.O. - let me be very clear - this is the worst
22 kid, the most disrespectful kid that I've ever encountered in
23 my life. He had no fear of anything. He made that clear on
24 a regular basis.

25 He was a threat on a regular basis to teachers in the

1 classroom; there was more than one. At one point in time he
2 assaulted one of the teachers who did not press charges at
3 the time who was literally seven foot tall who used to play
4 basketball for U.S.C. He had no fear of size, of anything,
5 of authority, and he just continued to be a menace around the
6 school.

7 He was never nice, and let me repeat that, Your Honor.
8 He was never nice. He never had a good day. This particular
9 night that the crime happened, that next day I remember
10 getting a phone call from the teachers saying he's acting
11 nice today. That never happened. That was something that
12 never -- never took place, never occurred or anything like
13 that.

14 Some other things took place at that point. Of course,
15 I contacted investigators. They came to the school and they
16 conducted an interview. I was in on the interview, and he
17 went over the horrific details of what he had done that night
18 to the victim. Thank you, Your Honor.

19 **The Court:** Thank you, Investigator Fields.

20 **Ms. McDuffie:** Your Honor, Sergeant Kevin Isenhoward
21 would like to address the Court.

22 **The Court:** I'm sorry?

23 **Ms. McDuffie:** Sergeant Kevin Isenhoward.

24 **The Court:** Thank you. Sergeant Isenhoward.

25 **Sergeant Isenhoward:** Sir -- and I don't want to repeat

1 things. I certainly agree 100 percent with what these
2 officers have already said. I have been in law enforcement
3 15 years, all of those with the Richland County Sheriff's
4 Office. The majority of the time has been investigating
5 violent crime.

6 On a few occasions I felt like I was in the presence of
7 pure evil. I'm not easily -- I don't get emotional. I don't
8 get angry. I'm pretty level-headed. The only time in my
9 career where I had to remove myself from a situation so that
10 I didn't lose my career was with these two young men and when
11 I asked Investigator Mauldin to come in. My mother -- my
12 father passed away. My mother lived alone just like the
13 victim, and she had no protection, and the fact that we
14 weren't there to protect her that night, it still eats at me
15 today. There's not much I can do about it but stand in front
16 of and explain it to you, but I am deeply disturbed by these
17 two young men and I'll leave it at that.

18 **The Court:** Thank you.

19 **Ms. McDuffie:** Your Honor, Major Stan Smith.

20 **Major Smith:** May it please the Court, Your Honor? I
21 know Your Honor. In your lengthy career you've seen a lot of
22 things. I've had about 29 years in this business myself.

23 **The Court:** Right.

24 **Major Smith:** And primarily I'm up here talking about
25 homicides and murders generally when I address the Court.

1 **The Court:** Right.

2 **Major Smith:** This is by far the most brutal,
3 animalistic crime that I have ever seen, bar none. It's
4 worse in a lot of ways than murders. What this poor lady
5 endured in her twilight years in the safety of her home, what
6 she had to endure that night, it's just unspeakable, and
7 animalistic is the only word I can use to describe it. And I
8 would -- I would plead with Your Honor to give this defendant
9 life in prison because I don't think there's any possibility
10 of rehabilitation or social goodness that's going to come out
11 of him.

12 **The Court:** Thank you, Major Smith.

13 **Major Smith:** Yes, sir.

14 **Ms. McDuffie:** Your Honor, we would ask that you review
15 all the records we provided before handing down a sentence in
16 this case. In addition, I would like to point out that while
17 this defendant was incarcerated at the Alvin S. Glenn
18 Detention Center, there are numerous instances where he got
19 into conflict with other inmates. During those conflicts, he
20 would threaten the other inmates that if he got out he would
21 rape their grandmothers.

22 Your Honor, Captain Redmond told myself and Ms. Campbell
23 that in the 30 some-odd years he ran the jail, this was the
24 worst inmate that they've had. He also testified that this
25 inmate had more write-ups and incidents than any other inmate

1 at the jail in his career.

2 Your Honor, Temple Hart, the SANE nurse, is present in
3 the courtroom. I don't believe she wishes to address Your
4 Honor. If Your Honor reviews those documents and has any
5 questions, she is available---

6 **The Court:** I will.

7 **Ms. McDuffie:** ---for Your Honor to ask questions. Your
8 Honor, the victim, Ms. Elaine Henrick, is seated in the
9 courtroom next to our victim advocate, Ms. Juana Wexler.
10 With her is her niece, Ellen Smith. They have prepared a
11 statement for the Court, and I believe Ms. Wexler would like
12 to read that to Your Honor.

13 **The Court:** I'll be glad to hear from Ms. Wexler.

14 **Ms. McDuffie:** Thank you, Your Honor.

15 **Ms. Wexler:** "Your Honor, two years ago my life was
16 changed forever in one terrifying night. I am an 82-year-old
17 widow and live alone. I was relaxing in my home where I have
18 lived for almost 50 years when two men who I now know to be
19 Zacoata Lopey and Larry Prophet came in through my back door
20 and pointed a rifle at me. They demanded my purse and money,
21 and I gave them what I had. I had more than usual because I
22 had just withdrawn cash to give my grandnieces for Christmas,
23 but that wasn't enough for them.

24 "They began ransacking my home, taking what they could.
25 Some items were valuable, but some were simply treasured for

1 memories and irreplaceable, but that wasn't enough for them.
2 They then forced me to undress in front of them. They kept
3 the rifle pointed at me at all times. I thought they would
4 leave then since I would be unlikely to follow them naked,
5 but that wasn't enough for them.

6 Instead, they covered my face and they forcibly and
7 painfully raped me vaginally and in my anus. It is
8 humiliating to say this out loud and even more difficult to
9 think about, but I think about it all the time. I can't go
10 back in time, so I have to move forward, but the rest of my
11 life is scarred by that terrible night.

12 "At first I wanted to move away. There wasn't a room in
13 the house they hadn't defiled, and it was hard to be in my
14 own home. It is still hard more than two years later. It
15 distresses me that I was the one forced to think about
16 disrupting my entire life, and at my age the cost and
17 challenges of moving are overwhelming. So I've had a
18 security system installed and have become more watchful, but
19 that doesn't stop the nightmares or the feelings of
20 hopelessness and sadness that come over me.

21 I still have flashbacks about it two or three times a
22 week and can't sleep. I lay awake reliving the whole thing
23 over and over. I cry. I think: Why me? I am a faithful
24 Christian. I have been a good person, a law-abiding citizen,
25 and worked hard all my adult life until retirement. I hoped

1 and believed I would live peacefully during what remained of
2 my life.

3 "I think about Zacoata Lopey living just a couple of
4 houses from me, must have watched me as I went about my daily
5 life while he made his plans to steal from me. I have lived
6 frugally, but to him I was a rich old Chinese lady who could
7 be robbed for personal gain. That's what he told Larry
8 Prophet as they plotted this terrible crime.

9 "I wish I had known before that night who they were and
10 what they were capable of doing. Maybe I could have been
11 more on my guard. I wonder those awful sleepless nights what
12 I could have done differently when they broke into my home,
13 but I was so surprised and terrified I didn't know what to
14 do. So many maybes and what ifs. I pray to God every day to
15 erase those horrible memories.

16 "Recently someone broke into my storage room and stole
17 everything out of my freezer. A few years ago this would
18 have been mostly upsetting and offensive, but because of the
19 heinous crimes committed against me by these two men, this
20 latest theft made me feel even more vulnerable and unsafe in
21 my own home.

22 "These men had no sympathy or compassion for me that
23 night. I begged them to think about their own grandmothers
24 going through what they were doing, but they did not stop. I
25 cried out loud to God, but they did not stop. Words are not

1 sufficient to convey what I endured, what I am going through
2 almost every day, even now, because of their coldhearted
3 brutality and lack of human decency.

4 "I believe they each deserve the maximum penalty allowed
5 by law. I will suffer the rest of my life, and they should
6 suffer the rest of theirs for what they did. They made a
7 choice; I had no choices. They planned ahead to victimize
8 me. I was not a person to them. They were clearly aware
9 that what they were doing was wrong. They knew enough to
10 cover their faces. They knew enough to rip the batteries out
11 of my phone so that I couldn't call for help.

12 "I heard in court that they celebrated when they were
13 caught as if this were some sort of victory. If they hadn't
14 have been caught, I truly believe I would not have been the
15 last victim of their violence. I believe they would still be
16 a danger to society if ever released from prison. There
17 should be no possibility of these individuals committing this
18 kind of horrific atrocity against anyone else ever.

19 "I would like to thank the Richland County Sheriff's
20 Department for their professional and immediate actions to
21 find the criminals who did this and the solicitor's office
22 for its pursuit of justice and sincere concern for victims.
23 Ms. Elaine Henrick."

24 **The Court:** Thank you.

25 **Ms. McDuffie:** Your Honor, Investigator Joe Clarke with

1 the Richland County Sheriff's Department is now present in
2 the courtroom. He had a doctor's appointment this morning.
3 We apologize for him not being here, but he would also like
4 to address the Court.

5 **The Court:** Mr. Clarke.

6 **Mr. Clarke:** Thank you, Your Honor. I just want to add
7 that more than anything I'm more impressed by the strength of
8 the victim and her ability to not only endure this but to go
9 through the process at her age. And, secondly, in my
10 12 years of experience as a law enforcement official and now
11 as an investigator, this is truly one of the worst I have
12 ever seen, and that's how I would leave it for the Court.

13 **The Court:** Thank you, Investigator Clarke.

14 **Ms. McDuffie:** Your Honor, I'm sure you're well aware of
15 Graham v. Florida which is a case dealing with life sentences
16 for juvenile offenders. If I may approach and hand up a copy
17 of that case.

18 **The Court:** All right.

19 **Ms. McDuffie:** Your Honor, I'd like to direct the
20 Court's attention on Page 18, the first paragraph. The
21 United States Supreme Court states, "A state is not required,
22 is not required, to guarantee eventual freedom to a juvenile
23 offender convicted of a non-homicide crime. What the State
24 must do, however, is give defendants some meaningful
25 opportunity to obtain release based on demonstrated maturity

1 and rehabilitation. It is for the State, in the first
2 instance, to explore the means and mechanisms for compliance.
3 It bears emphasis, however, that while the Eighth Amendment
4 forbids a state from imposing a life-without-parole sentence
5 on a juvenile non-homicide offender, it does not require the
6 state to release that offender during his natural life.

7 "Those who commit truly horrifying crimes as juveniles
8 may turn out to be irredeemable and, thus, deserving of
9 incarceration for the duration of their lives. The Eighth
10 Amendment does not foreclose the possibility that persons
11 convicted of non-homicide crimes committed before adulthood
12 will remain behind bars for life."

13 Your Honor, we ask that you give this defendant the
14 maximum sentence in accordance with the law.

15 **The Court:** Thank you. Ms. McDuffie, in view of Graham
16 versus Florida and the paragraph that you just read to me,
17 how does that comport with the burglary sentence that carries
18 the possibility of life without the possibility of parole?

19 **Ms. McDuffie:** Your Honor, I don't believe under Graham
20 v. Florida a sentence of life without the possibility of
21 parole would be suitable to the confines laid down by the
22 Supreme Court. I do think a lengthy determinate period of
23 years would fit in those requirements, Your Honor.

24 **The Court:** I see. Thank you. All right. Anything
25 further from the State?

1 **Ms. McDuffie:** Not at this time, Your Honor.

2 **The Court:** This is your time.

3 **Ms. McDuffie:** No, sir, Your Honor.

4 **The Court:** Okay. Thank you. I'll accept the pleas.

5 There's obviously more than a substantial factual basis to

6 support them. Mr. Lopey has had the benefit of more than

7 competent counsel who advised him during this process.

8 There's a -- not only a substantial factual basis for the

9 crimes, the pleas have been freely and voluntarily made and

10 with the advice of counsel, and I will accept them and now

11 I'll be glad to hear from Mr. Lopey and from anyone on his

12 behalf.

13 **Ms. Davis:** Thank you, Your Honor. May it please the
14 Court?

15 **The Court:** Yes, ma'am.

16 **Ms. Davis:** First and foremost, it's difficult to know
17 what to say in this situation or, more importantly, maybe how
18 to say it when I'm standing before Your Honor addressing the
19 allegations and what Mr. Lopey -- what Zacoata is pleading
20 guilty to. No one in the courtroom can stand and say that
21 they are not truly heinous crimes. They are. Knowing that
22 Ms. Henrick suffered these crimes not only by Zacoata but
23 also Larry Prophet is not anything that I can or would ever
24 want to diminish, but, Your Honor, I think it's also
25 important to know that he is a juvenile.

1 He was 14 years old at the time of this offense. I
2 think he was specifically 14 years and 10 months old. So if
3 this had occurred ten months older -- earlier, Your Honor, he
4 wouldn't even be eligible to be in general sessions, let
5 alone sentenced as an adult. That's not where we find
6 ourselves, and he is obviously now facing Your Honor's
7 discretion and at a minimum 15 years incarcerated as an adult
8 in an adult facility, adult prison.

9 Your Honor, luckily I don't have to come up with the
10 words on my own to explain why as a juvenile it's so
11 important to take certain things into consideration when
12 sentencing him. The Supreme Court of the United States has
13 done that for me. The first case, Your Honor -- and I think
14 it's clear that there is a trend very clearly in the United
15 States Supreme Court that juveniles are unequivocally to be
16 treated differently.

17 **The Court:** Uh-huh.

18 **Ms. Davis:** Your Honor is not to look at Mr. Lopey --
19 look at Zacoata as if he's a 24-year-old man, a 20-year-old
20 man, a 30 or a 40-year-old man. He was, in fact, 14 when
21 this occurred. Roper v. Simmons, Your Honor, is a monumental
22 case in which the Supreme Court found juveniles are not
23 subjected to the death penalty, and they went on to find that
24 that's because juveniles are different and they cannot
25 reliably be classified among the worst offenders. They went

1 on to say there are three differences between adults and
2 juveniles. They state that, "As any parent knows and as
3 scientific and sociological studies tend to confirm, a lack
4 of maturity and underdeveloped sense of responsibility are
5 found in youth more often than adults and are more
6 understandable among the youth. Two, juveniles are more
7 vulnerable and susceptible to negative influence and outside
8 pressure, explained in part that juveniles have less control
9 and less experience with control over their own environment."
10 And, third, Your Honor, "That the character of a juvenile is
11 not well-formed and is not formed as such as an adult."

12 They go on to say that, "The susceptibility of juveniles
13 of being so immature and irresponsible in their behavior
14 means that their irresponsible conduct is not as morally
15 reprehensible as an adult." In that particular case
16 obviously, Your Honor, they were dealing with a death penalty
17 case and a murder, but the Court is very clear in indicating
18 that, regardless, juveniles are to be addressed in sentencing
19 very differently than adults should be.

20 Your Honor, Ms. McDuffie did point out Graham v. Florida
21 which we're all aware also says that in a non-homicide case a
22 juvenile is not subjected to life without parole, and she
23 pulled out a couple of phrases from that case I guess in
24 suggesting that he can get something really close to it.
25 Your Honor, I disagree with that. I think Graham follows

1 suit with Roper again in making it very clear that juveniles
2 are different. They are not to be sentenced like adults.

3 It goes on -- the Court goes on, Your Honor, in 2012 in
4 Miller v. Alabama to say even in homicide cases juveniles are
5 not to be subjected to life without parole in a mandatory
6 sentencing structure. In both of those cases, Your Honor,
7 they don't address at some point whether life without parole
8 will ever be appropriate to juveniles. My personal opinion
9 is they're trending in the way that would suggest, no, they
10 are not, and I would even suggest at some point, although
11 social science is generally ahead of the court system, but at
12 some point juveniles, especially at the age of 14, should
13 probably never be sentenced in adult court. Now, when we
14 ever get there, I don't know, but I think that's where it's
15 headed.

16 Your Honor, Graham v. Florida does say that the State is
17 not required to guarantee eventual freedom, but it also goes
18 on to say that it is -- must impose a sentence that provides
19 some meaningful opportunity for release based on demonstrated
20 maturity and rehabilitation. As I said, he was 14 at the
21 time. He stands before you today, Your Honor, at 17.

22 We have an expert here today, Your Honor, on prison
23 adaptability in a prison environment who in just a moment
24 will come and address Your Honor: James Aiken. He has
25 33 years of experience in law enforcement as a warden. He

1 can tell you a little bit more about his background, and he
2 can explain better than I what Zacoata will face as a
3 juvenile in an adult system, and I'll go into that a little
4 bit more, Your Honor.

5 But Graham v. Florida also is very clear that in that
6 particular case, the sentencer, the judge, said to the
7 defendant who was 16 at the time, "I cannot do anything to
8 help you, that I must focus on protecting the community and
9 trying to protect that community from your actions," and at
10 that point they delivered a life sentence. The Court is very
11 clear in saying that nobody, not even experts in the field of
12 psychology and social studies, has been able to make any
13 diagnosis, Your Honor, in someone of this age to say: Are
14 they of irreparable harm? Are they, as what law enforcement
15 is calling him -- I can't even repeat what they referred to
16 him as, Your Honor. He's clearly a 14 -- he's 17 now, but he
17 was clearly a 14-year-old human being. He's not an animal.
18 He's not any of the other things used to describe him.

19 Your Honor, it goes on to say the Eight Amendment
20 prohibits barbaric punishments, punishments of torture, and
21 under the Eighth Amendment the State must respect the human
22 attributes, even of those who have committed serious
23 offenses. No one is arguing that these are not serious
24 offenses, but Mr. Lopey is still before you as a juvenile,
25 Your Honor.

1 It also goes on to say, "From a moral standpoint, it
2 would be misguided to equate the failing of a minor with
3 those of an adult, that the greater responsibility exists on
4 a minor's character deficiencies to be reformed. Retribution
5 is a goal, noted goal, but cannot justify the sentence at
6 issue." In this particular case it was life without parole
7 of a 16-year-old. "And that a case for retribution is not as
8 strong for a minor."

9 So perhaps if Your Honor was addressing a 30-year-old
10 seasoned criminal who had multiple encounters with the law
11 before of any nature - he actually only had an incorrigible
12 on his record as a juvenile, Your Honor, and a probation
13 violation - that would be appropriate to ask for, but we're
14 not dealing with that. We're dealing with someone who was 14
15 at the time, Your Honor.

16 It also goes on to say, Your Honor, that, "By denying an
17 opportunity to re-enter society, the State is making an
18 irrevocable judgment about a person's value and place in
19 society. This judgment is not appropriate in light of a
20 juvenile non-homicide offender's capacity for change and
21 limited moral culpability."

22 Your Honor, it goes on to state in Miller v. Alabama --
23 and I'm aware, you know, Your Honor is probably very aware of
24 these cases, but I think it's very important that the Court
25 is telling us that these things have to be taken into

1 consideration and that asking for life or anything near life
2 or the previous offer of 50 years for a 14-year-old, Your
3 Honor, is -- in my opinion is not appropriate and I think the
4 Court is telling us there are many reasons as to why it's not
5 important or why it's not appropriate. Your Honor, as I
6 said, Miller v. Alabama addressed mandatory L-WOP statutes in
7 which in that particular case a 14-year-old -- two
8 14-year-olds were charged with murders and were given
9 automatic life sentences.

10 The Supreme Court went on to say that the judge, the
11 sentencer, in dealing with a juvenile must have the ability
12 to consider relevant factors dealing with a juvenile and went
13 on to state, "Age in and of itself is a relevant mitigating
14 factor of great weight, so must the background and mental and
15 emotional development be duly considered." And, Your Honor,
16 we'll address more of those issues -- Ms. Delaney is going to
17 go into more of how all of those things are applicable to
18 Zacoata.

19 Your Honor, in our state I guess to some degree it's
20 fortunate we do have a waiver proceeding. In that particular
21 state, those states, it was automatic on certain types of
22 offenses. Mr. Lopey did have the benefit of a waiver
23 hearing. They took testimony. He was waived up by the judge
24 after that. However, the Court actually on its own addressed
25 the fact that even in situations where a state has a waiver

1 process that even in that situation where the transfer stage
2 is -- the discretion is given to the judge, it still has
3 limited utility. The judge on one prong -- they said may
4 only have partial information.

5 In his particular waiver there was extensive testimony I
6 think over four or five days, but it goes on to say that,
7 number two, and even more importantly the question at the
8 transfer hearing may be different -- I'm sorry. The question
9 at the transfer hearing may differ dramatically from the
10 issue at a point of sentencing post-trial or during a guilty
11 plea.

12 Because many juvenile systems require the release of a
13 certain age, the transfer decision often presents the choice
14 between extremes: Either light punishment for the child who
15 remains in juvenile custody, frequently having to be released
16 by the age of 21, or the extreme in which they are facing
17 adult sentences such as we find ourselves here today in adult
18 prisons and adult court. It says it's easy to imagine how a
19 judge, believing that a minor deserves a harsher punishment
20 than allowed in juvenile court, may believe the transfer is
21 appropriate, while not at all considering that life without
22 parole is the appropriate alternative. And my argument would
23 take it a step further, Your Honor, that I don't think
24 anywhere near that is appropriate when dealing with a
25 14-year-old.

1 Your Honor, that also went on to say that mandatory
2 sentences by nature preclude sentencers from considering
3 things like a juvenile who is 17 versus a juvenile who is 14.
4 To me, I think that's very important because the state -- or
5 the United States Supreme Court is telling us there is a
6 significant difference then between a 14-year-old and even a
7 17-year-old because they're pulling it out of the case and
8 making a note of it.

9 To me 14 and 17 most people might think, oh, that's kind
10 of close, but the Court is telling us no. Fourteen-
11 year-olds, that should be considered even different than a
12 17-year-old. So I think today standing before Your Honor
13 it's also important to note that he shouldn't be treated like
14 a 17-year-old, 18-year-old, 20-year-old, anything other than
15 what he was at the time which was 14.

16 Your Honor, we also have separately and a little less
17 directly on point State v. Pittman in which a 12-year-old was
18 waived up - we heard about that particular case - and was
19 tried in adult court. He received a 30-year concurrent
20 sentence for the murder of his grandparents, and I just
21 thought that was an important case in general because it
22 says: When a person is 7 to 14 years old, they're presumed
23 to not have the mental capacity of committing a crime.

24 Now, granted, that's nothing that we're arguing here
25 today. He's here before Your Honor doing the only thing he

1 can do to accept responsibility at this point which is to
2 plead guilty to all of these charges, even in light of
3 knowing what the State is requesting. But I think that's
4 important, Your Honor, again to highlight to his age and to
5 highlight why he should be treated differently than an adult
6 standing before you in general sessions..

7 At this time, Your Honor, I would have James Aiken, if
8 Your Honor would please have him address the Court.

9 **The Court:** All right.

10 **Ms. Davis:** As I said, he has 33 years of experience.
11 He's been qualified in multiple states including South
12 Carolina in terms of prison adaptability, endangerment to
13 staff by inmates, future adjustment, things of that nature,
14 and I'd like him to address Your Honor at this time.

15 **The Court:** Mr. Aiken has testified in court before.
16 I'm familiar with Mr. Aiken.

17 **Mr. Aiken:** Good morning, Your Honor.

18 **The Court:** How are you?

19 **Mr. Aiken:** One minor correction. I started in
20 corrections in 1971, so it's over 40 years' experience in
21 corrections. And I'll be as brief as possible and, of
22 course, answer what questions you ask, will respond to the
23 best of my knowledge. Obviously you see this gentleman right
24 here. I see him from a prison perspective.

25 **The Court:** Uh-huh.

1 **Mr. Aiken:** This individual committed some heinous
2 crimes in the community; law enforcement adequately
3 represented that this morning. When a person comes to prison
4 with this type of offense, believe it or not convicts feel
5 the same way. There is a formal organization and an informal
6 organization. The informal organizations hate sexual
7 predators or people convicted of sexual crimes, and they're
8 in a high level of vulnerability.

9 What further complicates this situation is that you have
10 a juvenile, and I say that not from a legal perspective but a
11 chronological perspective. This is a young person committing
12 a criminal act that's involved with sexual deviancy, and then
13 you can look at this individual and look at the stature of
14 this individual.

15 One thing you have to learn -- and I'll just talk about
16 my experience. I'm an old prison warden. I've managed
17 maximum, super-maximum security prisons. I was the warden of
18 C.C.I. I was the director of the Indiana Department of
19 Corrections which was involved with adult corrections and
20 juvenile corrections. I was the director of corrections for
21 the United States Virgin Islands, and the reason why I went
22 down there is because I knew that international terrorism was
23 coming in, the drug cartels and those kind of people.

24 I have done security audits on international terrorists
25 for the government where I've got very high-level secret

1 information. I've also executed two inmates personally. I
2 have managed hostage situations. I have ordered a sniper to
3 kill an inmate, and the sniper killed the inmate.

4 Now, also Congress appointed me, along with a federal
5 judge and several other people, to come up with national
6 standards -- believe it or not, Congress unanimously voted
7 for this and George Bush signed it -- the Prison Rape
8 Elimination Commission, and we came with national standards.
9 We were given subpoena powers. I have studied every
10 correctional system in the United States.

11 Looking at this thing called prison rape -- and we're
12 not talking about sexual gratification. I'm talking about
13 people like him are now -- while he's in prison, there's a
14 high level of vulnerability to be raped. Why? Number one,
15 he's been found guilty or pleaded guilty to sexual deviancy.
16 Whether you're a member of the Ku Klux Klan, the Aryan
17 Brotherhood, Black Gangster Disciples, every gang, one thing
18 they have in common: They hate sex offenders. So he's got
19 no backing. He's by himself.

20 You look at his behavior while at the county jail over
21 at the Glenn. Very simple. Those are immature behavior
22 patterns. Those are not predator behavior patterns. When
23 you start talking about what you're going to do to some
24 family member sexually, when you're talking to staff in that
25 way and when you're joking around in the classrooms and

1 you're being dysfunctional, those things are immature
2 behaviors. They're not taking hostages. They're not calling
3 hits on other inmates. They're not doing those types of
4 things.

5 Also, this is extremely important. Age is a very
6 important factor, and I use myself as an example. I'm not
7 the person I was when I was 17 years of age. In prison the
8 aging process is very intense. I've classified thousands and
9 thousands of inmates. I've used force on hundreds of
10 inmates. I studied their behavior patterns, and one thing
11 that I have found is that there is a point of diminishing
12 returns. Sure, they have to pay debts to society, but I have
13 found that what we call the drop-off age is early thirties.

14 They begin to get the benefit of incarceration. After
15 that, there is a diminishing return and they become what we
16 call 'institutionalized. And I've seen people come into the
17 prisons very disruptive, and then when they get 30, 35 years
18 of age, they're trustees. At least back in the old days they
19 called them trustees. They don't have that basically
20 anymore, but they get accustomed. They begin to get matured
21 and seasoned.

22 The inmate that I had that I had to use force on three
23 or four times week, 15 years later they're looking at me and
24 say, "Warden, can you please ask these young guys to cool the
25 noise down? The noise is getting next to me." So I've seen

1 that process.

2 So this individual right here -- I don't have a crystal
3 ball. I can't tell you the future, but I can tell you one
4 thing. He's at a high level of vulnerability, and he's going
5 to stay that way because of his stature, the type of crime,
6 and, of course, his current age and that there will be a time
7 where he's going to realize what the world is all about, and
8 the things that he's been demonstrating while incarcerated -
9 talking back, you know, sexual connotations against staff or
10 inmates or other families, rather - are to me, looking at it
11 as a warden, I consider that to be suicide. Convicts don't
12 like that.

13 I remember a case listening -- and this is it. I mean,
14 an inmate killed another inmate. He took his foot and put
15 his head to the toilet and took his foot and stomped him and
16 kept flushing the toilet over and over and over again until
17 he was dead. He drowned. And reading the material of why,
18 he was a sex offender. He hadn't done anything to him, just
19 that I had an opportunity to kill a sex offender.

20 Now, sure, prisons are well managed and those things
21 don't always happen, but the possibility and the threat of
22 that remains constant, and I'll answer whatever questions you
23 deem appropriate, Your Honor.

24 **The Court:** I understand what you're saying, Mr. Aiken.
25 Thank you.

1 **Mr. Aiken:** Thank you, sir.

2 **The Court:** All right. Ms. Davis?

3 **Ms. Davis:** Your Honor, just -- I think he's said it
4 better than I can do. It's just reiterating to the Court
5 that because of his -- all the things Mr. Aiken just
6 mentioned, any time that he's sentenced to and serves in
7 adult prison, although clearly has to be punished for what he
8 did, he's going to face an additional punishment, if you
9 will, and/or obstacles that he will have to overcome because
10 of his age. I just want Your Honor to take that into
11 consideration in determining what sentence to give him.

12 In addition, I think one of the things Mr. Aiken told me
13 when we spoke was that he would be at the highest level of
14 being victimized, but based on what he reviewed he would also
15 be in the lowest category of being any sort of predator while
16 in the department of corrections. So I think that does
17 counteract what I firmly believe and understand the State's
18 position to be, but I think in terms of the expert's review
19 of it, Your Honor, he had a different opinion of that.

20 **Mr. Aiken:** And I certainly concur with that, sir. I
21 should have covered that a little more. You'll find that he
22 has no -- as they call it in a prison perspective, he has no
23 juice. He's a sex offender. He's small. He doesn't have a
24 gang. He doesn't have a posse. Nobody likes him.

25 **The Court:** All right. Thank you.

1 **Ms. Davis:** Your Honor, the next -- kind of the next
2 point that I'd like to address is -- and I want Your Honor to
3 be clear: I'm not in any way saying that anywhere near what
4 I'm about to address is what I think is appropriate for Mr.
5 Zacoata, but I think it's important to put into context
6 considering what the State is asking for and what multiple
7 law enforcement members have asked for in terms of a prison
8 sentence for Zacoata.

9 Your Honor, recently in South Carolina the capital
10 defense subpoenaed or, I'm sorry, FOIA'd information from the
11 South Carolina Department of Corrections in terms of life
12 expectancy of inmates. Your Honor, I would hand up a copy of
13 the information they received, if I could approach Your
14 Honor.

15 **The Court:** Yes, ma'am.

16 **Ms. Davis:** And, Your Honor, essentially what it is is
17 it's a list of numbers of inmates that died of natural causes
18 only, and the average life expectancy was 52.6 years. I'm
19 not an expert in any way and certainly don't know much about
20 statistics, but I would add to my opinion that most of those
21 people that enter are not 17 years old and they are not
22 having that length of time served in prison. Most people are
23 not sentenced -- or basically they're older when they get
24 sentenced, Your Honor, but the average life expectancy from
25 that information is 52.6 years.

1 I think that's important for Your Honor to take into
2 consideration as well as the other things we've mentioned in
3 crafting a sentence in the situation to note that I think
4 Graham, although they note, says they don't have secure a
5 release. I think it's very clear that it's supposed to be a
6 -- that Graham made it very clear that there is supposed to
7 be a functional release date.

8 **The Court:** Right.

9 **Ms. Davis:** And, again, I'm not saying that that's
10 anywhere what we're asking for. We're asking Your Honor to
11 consider way on the other end of what is allowed and that
12 burglary first carries a minimum of 15 years, and based on
13 his age, 15 years would be twice as long as he's been alive
14 already at this point, Your Honor, and based on what Mr.
15 Aiken has addressed of what his life is going to be like in
16 prison, I don't think that's inappropriate to request.

17 Your Honor, I'll have Ms. Delaney address some of the
18 other mitigation at this point, and we have one other expert,
19 Your Honor, standing next to me. And then his family is also
20 here, Your Honor.

21 **The Court:** All right. Thank you. Folks, you all have
22 been standing in place for a long time, and it probably would
23 be a good time for us to take a break. I'm going to have to
24 take a break anyway to read the materials that have been
25 given up. And before I continue just to keep you all in

1 place, not knowing how much longer this will go on and test
2 your ability to stand without fainting, I think the best
3 thing to do is just let me take a break right at this minute
4 and it will serve two things. It will allow me to read some
5 of the materials that you all have handed up to me, and it
6 will allow you all to get off your feet.

7 We'll -- I'll take a recess for 30 minutes. We'll start
8 back at 12 noon. Thank you.

9 (Whereupon, a break was taken.)

10 **The Court:** Thank you, folks. Please be seated. Folks,
11 I'm aware that it took me beyond the hour. I apologize for
12 further delay. It took me a little longer to wade back
13 through Graham than I thought it was going to take, but
14 nevertheless I have had a chance to read now in entirety all
15 of the information that you all have handed up which is
16 important for my consideration. I realize that I've still
17 got more to hear, but at least I'm caught up with you now
18 and... Okay. Who is next?

19 **Ms. Delaney:** Your Honor, may it please the Court?

20 **The Court:** Ms. Delaney.

21 **Ms. Delaney:** I do have one more legal issue to address,
22 and then I'd like you to hear from some family members and
23 then from another expert that we have here.

24 **The Court:** Okay.

25 **Ms. Delaney:** The legal issue would be: I would object

1 at this point. I understand that the application of the
2 statute is mandatory, but I would object on Zacoata's behalf
3 to 23-3-430 which is the sex offender registry being
4 automatically applied to him. I think that's violative of
5 his due process rights, his rights against cruel and unusual
6 punishment both under the State and Federal Constitutions,
7 and I also think that that statute -- the way that it -- a
8 C.S.C. first automatically puts him on the registry for life,
9 Your Honor. He was only 14 years old at the time. There's
10 no discretion presented to the Court in regards to that.

11 The Supreme Court recently addressed a similar issue in
12 the Dykes case when they lifted electronic monitoring and
13 said that for C.S.C. with a minor, electric monitoring is
14 mandatory, and they said without a hearing on that about
15 whether the person's likely to re-offend that that is
16 unconstitutional.

17 **The Court:** Right.

18 **Ms. Delaney:** They haven't really addressed how we're
19 supposed to fix that yet.

20 **The Court:** Right.

21 **Ms. Delaney:** But I think the same reasoning applies
22 here. I also think, you know, we've got a specific privacy
23 right in our Constitution, the State Constitution. It's
24 Article 1, Section 10, which gives us more protection of our
25 privacy rights than the Federal Constitution does. I think

1 that the fact that he's going to be placed on the registry
2 without a hearing makes the application of that statute
3 arbitrary and unconstitutional. If you read the sex offender
4 registry statutes, the stated purpose in the statute is to
5 protect the public. And so without a hearing on whether the
6 person is likely to re-offend, you're not serving a purpose
7 and, therefore, that is arbitrary.

8 In particular, Your Honor, I think at some point Ms.
9 Davis has a copy of part of the transcript from his waiver
10 hearing which was the testimony of Dr. Pugh-Lilly. She was
11 the State's psychologist that actually interviewed Mr. Lopey,
12 reviewed all the records, and gave her opinion and did a
13 pre-adjudicatory transfer evaluation, the waiver evaluation.
14 She testified at his waiver hearing some things that I
15 thought were very important as far as the registry issue
16 goes.

17 One of the things she testified was that statistics
18 about re-offending are very different between adult and
19 juvenile offenders, that juveniles are more amenable to
20 treatment. She actually testified that she did not believe
21 Zacoata to be a sex offender, that she did not believe that
22 this crime was motivated by sexual deviancy. She does not --
23 she testified that she did not believe that the sex offense
24 would have happened but for the actions of his co-defendant.
25 She believed that to be his motivation, and she also thought

1 that he would be amenable to therapy. So I think given that,
2 we would object to the application of the sex offender
3 registry. However, I understand that that is mandatory, Your
4 Honor, and Zacoata knows that also.

5 Judge, just as far as, you know, what I know of Zacoata,
6 I represented him maybe six months before he got these
7 charges on a probation violation. So I've known him for
8 probably three years at this point. I have a very clear
9 memory of him being about -- really about this tall when I
10 first met him and very -- as a child. I think he was
11 probably 11 -- no, I guess 13 at that point, Your Honor.

12 You know, when I got this case, I was horrified by what
13 happened to Ms. Henrick. You know, I was horrified that
14 Zacoata was charged with that. And it's been very troubling,
15 and Ms. Davis and I have both been very troubled by this case
16 and by what -- you know, I knew about him beforehand and how
17 I knew him beforehand.

18 We did have a few witnesses come to his waiver hearing
19 that testified on his behalf. One of them was a Pop Warner
20 football coach that he had, a guy named Mr. Griffin, and he
21 talked about how many of the other coaches wanted Zacoata on
22 their teams because he did have sort of a little bit of a
23 reputation as a troublemaker and he said, "Well, I'm going to
24 give him a chance," and he said that he worked with Zacoata
25 and that he eventually made the all-star teams, became

1 friends with his son and came over to his house all the time.
2 He said he specifically remembered -- one of the things he
3 remembered about Zacoata was how unselfish he is and how he
4 would always share things with other children even though
5 he's not from a financially stable family, that when he did
6 have something that he was willing to share it with other
7 children.

8 And I'm telling you these things because you've heard
9 from law enforcement calling him these names, saying that
10 he's pure evil, that he's an animal and, Judge, I don't
11 think -- I don't think anyone is that simple. I don't think
12 anyone is pure anything. I think that people have redeeming
13 qualities. I think Zacoata has redeeming qualities.

14 I've talked to his family. We've talked to experts.
15 You know, this is a boy that, you know, he was -- he was in
16 foster care briefly for about three months, and we had his
17 foster parents come testify at his waiver. It was a couple
18 named the Wells. They were an older couple that lived out in
19 the country, and they testified that when he first arrived at
20 their house that he was incorrigible, that he was defiant,
21 had a bad attitude, got in trouble at school. And Mr. Wells
22 said, "The first time that happened, I put him out in the
23 yard. When he was suspended from school, I put him out in
24 the yard all day and made him rake the yard. I made him dig
25 up stumps all day. The next time it happened, I did the

1 exact same thing. He dug up stumps all day," and he said,
2 "And after that, we had a different child. He had a
3 completely different attitude. We saw a great change in
4 him." He actually stayed in contact -- like the Wells,
5 actually stayed in contact with him, called him weekly until
6 he got this charge.

7 Again, Ms. Davis is going to hand you Dr. Pugh-Lilly's
8 transcript, the transcript of her testimony. One of the
9 things, you know, that she notes was, you know, his
10 childhood. He did not have the best childhood, that it was
11 characterized by an incarcerated father, by hoarding food, by
12 instability. His only contact -- my only contact with his
13 father in regards to this case: He kept coming by my office
14 trying to get me to help him stop paying child support. That
15 was his only interest in what happened to Zacoata.

16 You know, he was abused physically as a child. Despite
17 all of that, you know, he's got a mother that loves him.
18 He's got a family that cares about him. He is -- you know,
19 in talking to them about his personality, one of the things,
20 you know, just what did he do as a child? He -- he has
21 always liked animals. His mom says he's always brought any
22 kind of creature he finds into the house, tries to take care
23 of it. He's got a stray dog that he adopted that he took
24 care of for several years.

25 You know, he took balloons to his sister when she was in

1 the hospital. I mean, this isn't an animal. This is a human
2 being, Judge. I understand that he did something terrible,
3 but I do think that he's redeemable and that he has some
4 redeemable qualities. He's a good brother. He has helped
5 take care of young kids in the house.

6 You know, you heard from Mr. Aiken about what he thinks
7 Zacoata's life is going to be like in prison. Ms. Davis gave
8 you the statistics on life expectancy in the department of
9 corrections. You know, he's going in there labeled as a sex
10 offender. It's not going to be -- it's going to be a very
11 bleak situation for him, Judge, regardless of how much time
12 you give him.

13 One of the things Mr. Aiken also mentioned I think was
14 that there's a drop-off point, and when we talked to him,
15 what he said was you have to give them some hope that they'll
16 get out in the future or else they just have no reason to try
17 to be redeemed, Judge. And, you know, he's -- he's standing
18 here in front of you today in a terrible position which is
19 he's standing here in front of you being judged based on the
20 worst thing that he's ever done in his life. That's
21 certainly not a position that I would ever want to be in, and
22 I just want to remind the Court that he has done other things
23 in his life that aren't like this. He -- and he's being
24 judged for it, you know, something that happened when he was
25 14 years old, Judge.

1 I would ask you to consider giving him a sentence at the
2 lower end of the range, possibly something around the range
3 of 25 years suspended to 15 so that, you know, he's got super
4 -- you know, he's got something hanging over his head but
5 that so that he's also got a period of time where he would
6 get out maybe around when he's 30 and still have some hope,
7 still have thoughts of the future and not just be a
8 completely hardened inmate by that -- by that point.

9 His family is here. He's got his mother here, a friend
10 of the family, as well as several sisters and cousins, Your
11 Honor. I think one of them may want to address the Court at
12 this time.

13 **The Court:** I'll be glad to hear from them.

14 **Ms. Davis:** And, Your Honor, if I can just approach
15 briefly with the transcript of Dr. Pugh-Lilly.

16 **The Court:** That would be good. Thank you.

17 **Ms. Housey:** I'd like to---

18 **The Court:** I'm sorry. Your name again, please?

19 **Ms. Housey:** My name is Sunshine Housey, and I'm
20 Zacoata's cousin.

21 **The Court:** All right.

22 **Ms. Housey:** I'd like to speak on behalf of his
23 character. Coata, he always been a good boy. He mows yard,
24 rake leaves to get money to buy us candy, to buy his little
25 sister something, and I have three children he always watch.

1 He is good with kids. He's just an outgoing boy, and it's a
2 tragedy what happened. And our family is truly sorry for
3 what happened, but with the letters, phone calls that we do
4 receive from him that shows the remorse that he do feel...
5 That's all.

6 **The Court:** Thank you, ma'am.

7 **Ms. Delaney:** Your Honor, I would just -- I think his
8 mother might like to address you as well.

9 **The Court:** All right. Yes, ma'am.

10 **Mrs. Lopey:** Hi. My name is Hilda Lopey. I just want
11 to say I love my son, and I'm sorry for what happened and I
12 know he has to pay for it and everything. And I just want to
13 say to him: I'm glad to see that you're standing up for your
14 responsibility, and I'm going to stand by you through thick
15 and thin, no matter what. That's all I want to say.

16 **The Court:** Thank you, ma'am.

17 **Ms. Delaney:** Your Honor, I would also just state that,
18 you know, he was waived. I think the family court judge
19 didn't think -- if he'd stayed in family court, he would have
20 been eligible for parole in three to five years and had no
21 criminal record. I don't think the judge thought that was
22 appropriate given the facts. However, I don't think that
23 that means that he thought a life sentence was appropriate,
24 Your Honor.

25 I would ask that you hear from Dr. Cooper-Luder

1 (phonetic) at this time. Dr. Cooper-Luder is a psychologist
2 with a Ph.D in psychology. He's also got a Master's in
3 social work, and he's a licensed social worker. He teaches
4 at the University of South Carolina graduate and
5 undergraduate classes specifically about psychopathology.

6 We hired him for mitigation purposes to talk to Zacoata
7 to get some background from him. In doing that, I think
8 Zacoata formed a real bond with him, and that's one of --
9 something that whenever we've seen Zacoata at the jail, you
10 know, the most excited or most happy that I have ever seen
11 him... Normally, you know, he realizes how serious this is,
12 you know, that the only thing that sort of brings a spark to
13 his eyes at this point is the doc came to see me, and so I
14 think that I'd like for you to hear from Dr. Cooper-Luder,
15 Your Honor.

16 **The Court:** Doctor?

17 **Dr. Cooper-Luder:** Yes, Your Honor. First of all, I
18 need to say to the Court that I've been on both sides of this
19 issue, close family members who have experienced the kinds of
20 things that have been talked about today. And so I did not
21 come to this case easy because, like I said, I've been -- I
22 have family members who have gone through some things. The
23 other thing is the majority of the time I have worked in
24 capital trials and spent much time talking to people that
25 have been called monsters, King Kong, whatever the case may

1 be, but I go in with the idea that they're someone's child.

2 When I met Zacoata, I met a child in the sense that at
3 first he couldn't even believe that I was doctor because he
4 didn't know any black doctors intimately or personally. He
5 didn't even believe I was real, and it took a number of
6 sessions of me coming back before he said, "You really are."
7 And I said, "Yes." I even had to bring him a book I wrote
8 because he didn't believe black men write books. So I was
9 dealing with a child who had had some limited experiences.

10 My job was to find out more about him because he really
11 wasn't talking to anyone, and so the idea that he might not
12 talk to me was there, but within short order he responded to
13 our sessions together, our talks together, and actually
14 looked forward to them. My concern was is that at 14 years
15 of age what was going on with him, particularly because I
16 have yet to meet a person who comes out of their mother's
17 womb evil, an animal, and any of those things. I just have
18 never met anyone like that.

19 We believe in social work, in psychology, that people
20 reflect their experiences. They reflect what has happened to
21 them in their lives and that particularly young African
22 American males need certain kind of role models that really
23 aren't always available. And so I challenged him on that and
24 I asked, "Who were your role models?" He said his father was
25 not a role model, although his father had taught him: A man

1 fights; a man does certain things. But he didn't want to be
2 like his father. I thought that was profound.

3 He told me about situations where he couldn't sleep at
4 night and so -- because he would get a choking feeling that
5 someone was choking him when he would try to fall asleep.
6 His grandmother, who he loved dearly, said that kind of in a
7 kind of religious way, you know, "That's the devil trying to
8 get on you," and so they would pray. And so, again, I'm
9 addressing a child.

10 I'm looking -- I realize because I teach psychopathology
11 that neuroscience tells us the prefrontal lobe isn't fully
12 developed until you're 25 or 30, and that's the part where
13 you control impulses and all those kinds of things. The
14 other issue is is, yes, it starts to develop earlier - seven,
15 eight, like that - but that's if there's been no trauma, no
16 one hitting you in the head, no alcohol, no drugs, secondhand
17 drugs or whatever the case may be. And so the brain is very
18 sensitive developmentally to the kind of things that it has
19 in the environment including eating, not eating, and what
20 have you. And so, again, what I was trying to do was
21 understand this child who was in front of me.

22 And so as -- I spent over 30-some hours with him. That
23 has to be more hours than his own father has spent with him.
24 What I got from him was he wanted to read books, so I sent
25 him books. He wrote me letters and said, "Would you come

1 visit me?" He was concerned that I had abandoned him.

2 Abandonment issues were very important to him.

3 I would like to suggest that his willingness has always
4 been there to engage me, but he was very afraid at first.
5 His capacity grew over time, but part of that was because of
6 the way I relationshipped (verbatim) with him. As far as
7 regret and remorse, every time, Your Honor, I went,
8 especially in those early days, I would say to him, "How do
9 you feel about all this?" He says, "I wish it never
10 happened."

11 Now, being a child, children think differently than
12 adults, and so in my 40-some years of being in this field,
13 children often relate punishment to whatever has happened and
14 they do that first. Well, am I going to get spanked? Am I
15 going to get time out? Am I going to get... So what's the
16 punishment? But over time when we would talk -- and I would
17 ask him things like, "Are you a leader?" He said, "I'm not a
18 leader."

19 I was shocked to know that he did not know how his own
20 body develops in terms of adolescence. He didn't know when
21 body hair would start to grow. He did know that penises
22 grow. He didn't know any of that kind of thing. In fact, he
23 didn't even know actually how women were built. He didn't
24 know all this. He was learning that as he was incarcerated,
25 and he was learning that in some ways through his interaction

1 with his best friend. Who was his best friend? His best
2 friend happened to be Larry Prophet.

3 This was a gentleman of some size, some reputation, and
4 here's a young man who doesn't have friends, and suddenly
5 he's being befriended by this young man's mother who is
6 cooking for him. And when he walks next to this young man,
7 he walks safely through the community because of this man's
8 reputation: Larry Prophet.

9 So the question became, you know, who did you have to
10 provide and protect for you which is what a father should do,
11 and at that point the only person he could come up with was
12 Larry Prophet. To me that means that there was a
13 relationship there. He was looking for something and he
14 found that protection and provision, if you will, in that
15 relationship.

16 The other thing that I asked him was, "Are you a member
17 of a gang?" He said, "No." I thought that was profound. He
18 said: But in order to live in the community I live in, you
19 have to be able to walk the gauntlet, if you will, of the
20 gangs. In other words, you have to be able to deal with
21 everyone, and he says there are family, friends, associates,
22 whatever you want, on all sides. He said in order to walk
23 that, you've got to be able to figure out a way to get along
24 with people.

25 So the fact that he might be seen with someone or act

1 like something has more to do with the fact that at one point
2 he was out there trying to survive, survive on the street.
3 What's important on the street? Macho. That means I act one
4 way even though I may feel another way. One thing you never
5 tell anybody on the street is that you're afraid. That makes
6 you a wimp and that invites people to pick on you and do
7 things to you.

8 He obviously had been through a lot of things, according
9 to the records, and he just -- he just didn't want anyone to
10 know he's afraid. I asked him how often he would cry. He
11 said, "I don't let people see me cry, but I do cry." I
12 thought that was profound, again very childlike. I didn't
13 feel that I was talking to a 30-year-old, 40-year-old
14 seasoned veteran of any particular type, certainly not with
15 40 years experience like I have, and I have children that
16 range in their forties all the way to five. So I didn't feel
17 that I was talking to someone that was very mature.

18 One of the things that struck me when I was called back
19 to see him again after he had written to me and the attorneys
20 said that I could come back and see him was when I walked in
21 and they brought him in and he looked at me and he said, "I
22 still want to build you that house. I still want to build
23 you that house." And he said, "If I get out, I'm going to
24 build you a house." And I said, "Well, if you get out, I
25 want you to build me that house."

1 And so his first words to me was really about a future.
2 So I asked him -- I said if it's -- "If it happens that you
3 get out and have some time to give back to society," I said,
4 "What are you going to do?" He said, "I want that chance."
5 And, Your Honor, I actually believe that he really truly
6 wants that chance.

7 The other thing that I would like to say is is that at
8 no time was he ever disrespectful or hostile. One of the
9 things he explained to me was that when you're in prison or
10 detention centers or whatever, you get picked on, and if you
11 get picked on and you want to survive, you better fight back.
12 And he has experienced being targeted, as a lot of young
13 people are, in our prison system, and the guards aren't
14 always there.

15 The other thing I would like to raise is is that if you
16 don't have people around you who are embracing you,
17 particularly males, in a loving and caring way and you're
18 kind of on the street, respect is really important. And when
19 respect is really important, it takes, like it took me, a
20 number of sessions of interacting with him without trying to
21 throw around my weight, my power, my strength. I'm a doctor;
22 I'm all that. But after a certain time, he relaxed and then
23 he said something that really touched me deeply. He said,
24 "If you were my dad, I wouldn't be here."

25 He then told me that he stopped Larry Prophet from

1 dragging this victim, this lovely lady, out of the house and
2 using her in some kind of other way. He also told me that he
3 at that point felt this was so -- got so out of hand that he
4 actually not only basically said, "Do not hurt this woman
5 anymore. Don't kill her." Now, I thought that was pretty
6 profound.

7 Now, my question to him very simply has always been:
8 "How do you feel about it?" And he said, "I regret it. I
9 feel bad." He said, "But I'm so afraid. I'm so afraid that
10 no one is going to listen to me. No one is going to hear me,
11 that I did the best I knew how and I ended up in a situation
12 I didn't know how to handle and I'm really sorry."

13 **The Court:** Thank you, Mr. Cooper. Yes, ma'am.

14 **Ms. Delaney:** Judge, just a couple more things I did
15 want to bring to the Court's attention, and I think that this
16 may be contained in some of the records that you've got, that
17 he was intoxicated the day that this happened. I know that
18 that doesn't excuse it, but I do think that it goes to his
19 mental state at the time.

20 Another thing that -- you know, the family that's here
21 includes his mother and sisters and cousins. He
22 specifically -- he had a very close relationship with his
23 grandmother.

24 **The Court:** I was going to ask about his grandmother.
25 I've been reading his record. She was of some influence in

1 his life.

2 **Ms. Delaney:** She was a very stable figure in his life.
3 She still is. She's -- I have met her. She's a very elderly
4 lady that cares very much for Zacoata. He is so ashamed of
5 this that he did not want her here, that he specifically told
6 his mother, "Please do not bring her here. I don't want her
7 to hear all this."

8 You know, some of the things Dr. Cooper-Luder is saying,
9 I want you to take those in mind as you're looking at -- if
10 you've looked at his jail records because there are a lot of
11 sort of startling things in there, like you would think: Why
12 would you say that? And what we've gotten from the experts
13 on that, from Dr. Pugh-Lilly and from Dr. Cooper-Luder, is
14 he's immature; he's a child. He's being -- he's not
15 thinking. Does he mean that he would do those things? No.
16 Your Honor, I think -- I think Ms. Davis might have a few
17 more things to say to you as well.

18 **The Court:** Ms. Davis?

19 **Ms. Davis:** Your Honor, I think she covered most of it.
20 I was just kind of going to wrap up anything that I thought
21 we might have failed to mention and bring to Your Honor's
22 attention. I do think it's worth highlighting and I know
23 that the acts in and of themselves are enough to make this a
24 horrific crime. I can -- in reading the evidence in the case
25 and the officers that are here today, clearly the behavior

1 after the fact and the high-five, the joking, things like
2 that also made this a much worse situation.

3 I just think it's clear for the Court to understand that
4 I understand that that's the opinion of law enforcement and
5 prosecutors, and I think anyone coming and seeing that
6 objectively would be like, you know, what is going on with
7 these kids? But we have three different experts, Your Honor,
8 who have looked at the records of his D.J.J. incidents, have
9 looked at the comments that were made while in prison or
10 while at the juvenile system, juvenile wing, and as well as
11 looked at the high-fiving, that type of thing, and all three
12 of the experts, Your Honor, came to the same conclusion that
13 this is immaturity at its highest, that this wasn't something
14 that they found to be indicative of sexual aggression or
15 sexual deviance, but it's sheer what comes of it when you
16 live on the street and you're trying to keep your, you know,
17 macho attitude, "I'm not afraid of nothing."

18 And coming from Zacoata, in terms of how he interacted
19 with Larry Prophet, he felt -- you know, he's acting this
20 way. You know, that's what we do to be cool when you're 14
21 and you've observed things after the fact. Nothing, Your
22 Honor, takes away from what happened understandably to Ms.
23 Henrick, and I don't want anything to come across as that's
24 what we're trying to do other than trying to explain the
25 context and the fact that this is a 14-year-old or at the

1 time was a 14-year-old, Your Honor, and I think it's
2 important to understand those actions in light of him being
3 that particular age.

4 I think the only other thing, Your Honor, is in terms of
5 what Mr. Aiken addressed to the Court and the life that is
6 going to be before Mr. Zacoata in prison, I would just again
7 object to an adult sentence. I know at this point that's
8 where he is and he was waived up from family court. I do
9 think that the fact that we have testimony from Mr. Aiken
10 indicating what, you know, likely will be before Zacoata
11 while serving his sentence can be defined as cruel and
12 unusual punishment. I understand he's facing a serious
13 offense and there's -- he'll be housed with adults, but I
14 think it's different than me just coming up and pondering
15 what might happen, what could happen to him when we have
16 someone that's been in the experience of a warden and those
17 things and he knows for a fact and can tell Your Honor these
18 things are a high risk of happening to him and, again, just
19 ask Your Honor to take all these things into consideration in
20 forming your sentence. And, of course, if you have any
21 questions for any of us or for Dr. Cooper-Luder or Mr. Aiken,
22 we're happy to cover anything additional.

23 **The Court:** Thank you, Ms. Davis. Mr. Lopey, what do
24 you want to tell me?

25 **Mr. Lopey:** I'm sorry for what I did. You know, I can't

1 take it back, but I still want to have a future. I want to
2 get out and be able to do stuff. I want to have a life.

3 **Ms. Davis:** And -- I'm sorry.

4 **Ms. Delaney:** Your Honor, one of the things in talking
5 to Dr. Cooper-Luder and also Mr. Aiken -- Mr. Aiken's
6 testimony about the drop-off point, Dr. Cooper-Luder said
7 look -- we met with him -- I think the last time was last
8 week. He said, "Look. At this point this kid has two things
9 that he wants. He wants to get out, but he also wants to get
10 out and do something." And if you give him an enormous
11 amount of time, he's not going to have that at all. He is
12 going to get out and he will be dangerous.

13 If you give him a chance to where he's got a reasonable
14 opportunity to say, okay, you know, I've got 15 more years -
15 this is something that I can at least envision - you know, I
16 still want to build a house. He likes doing construction.
17 He did that in the foster home that he was at.

18 You know, at this point I think he is still redeemable.
19 I think if you give him 50 years, he'll make parole and he
20 will not be redeemed, Your Honor. I think if you give him a
21 shorter sentence, he may be. I do think that he regrets what
22 happened, and I do think at this point we've still got
23 someone that can be redeemed, Your Honor. But he's not going
24 to be like that forever.

25 **The Court:** Thank you. Ms. McDuffie, they've raised a

1 good many issues. I'll allow you a brief response, but
2 they've got the last word in this. And so, ladies, I'll come
3 back to you all after Ms. McDuffie or Ms. Campbell...

4 **Ms. McDuffie:** Ms. Campbell will be doing the reply on
5 behalf of the State, Your Honor.

6 **Ms. Campbell:** Your Honor, one thing I would like to
7 point out just in response to some of what they brought out:
8 It did come back, actually Ms. Delaney's cross-examination,
9 that under our laws apparently now he will be in D.J.J.
10 custody until he is 19 years of age.

11 **The Court:** Right.

12 **Ms. Campbell:** So that he will be protected at that
13 point. And, of course, at 19 he will be well past the age
14 that many young men are currently being housed from 17 on on
15 offenses such as this. He also -- she -- one of the doctors
16 pointed out that, you know, the frontal lobe may have been
17 damaged in some way. There was a neurology examination done
18 to make sure that there wasn't any other contributing factor
19 other than his own personal choices in causing this behavior,
20 and there was nothing that showed up on the neurological
21 examination and that was done.

22 As far as -- and they've kind of argued it both ways in
23 front of you, Judge. First they talked about -- and at the
24 waiver hearing there were several people that came on his
25 behalf. It was admirable. He did have male role models in

1 his life. The people they referred to as a foster parent I
2 believe was actually an alternative placement from D.J.J.
3 Those were people that actually took an interest in him.
4 They kept up with him and tried to help him out beyond the
5 time because he stayed with them up until September before
6 this happened, so they were there for him.

7 In addition to that, the football coach they referred to
8 was a male role model. In fact, as they mentioned - even
9 though they said he didn't have any friends other than Larry
10 Prophet - actually he had become friends with his son. He
11 had kind of taken him in under his wing and tried to give him
12 guidance, and his testimony at the waiver hearing was he was
13 there, he was available, and he was trying to help with
14 Zacoata to get him on the right track.

15 So to say on one hand he didn't have any male role
16 models or any family or people he could do -- in this case
17 actually, Your Honor, which is not always the case, this
18 young man did have people he could reach out to and look up
19 to as well as his family members, his mother specifically,
20 and his grandmother, as you pointed out, who are very
21 supportive of him.

22 As far as his behavior, this isn't like a one-time thing
23 that he ever became this. He was an ongoing problem with
24 assaults in prior -- problems prior to this. And they said
25 that, oh, he just speaks out. You know, he speaks out of

1 turn when he's in jail when he threatens to rape other
2 peoples' relatives, the guards' relatives or other inmates'
3 relatives, but, in fact, that's something he's done before.
4 And most specifically, Judge, that day when he is sat in
5 there - Ms. Henrick has already been raped by the
6 co-defendant in this case - and he walks up to her and says
7 something to the effect of he knew the rape was wrong but he
8 decided to do it anyway because he was going to jail anyway,
9 I think that speaks volumes about his what real state of mind
10 was.

11 And even here today before you, his whole ambition is to
12 get out, which is understandable. The only remorse he has
13 shown, Your Honor, today and even before you is that he is
14 sorry for himself and he is sorry because he can't take it
15 back.

16 As far as Mr. Aiken and -- the defense has gotten up
17 here and just addressed - and I'll be brief, Your Honor -
18 this 30 drop-off date, that you become institutionalized and
19 suddenly at 30 you're no longer a threat. And maybe I'm a
20 good bit older than 30 now, but I understand instead of
21 considering that to be the prime of someone's life, they
22 figure that they are over it. They've brought before you
23 testimony about how you're only going to live to be 52.6.

24 Your Honor, I would note, as Mr. Aiken is aware, there
25 was a case in the early nineties which I happened to

1 prosecute which was State versus Joseph Pooler (phonetic).
2 He was a man who was a trustee as he talked -- pointed out at
3 that time who was given rights and given a car by the
4 department of corrections because he was over the age of 30.
5 He was in his thirties or early forties; I'm not sure which.
6 And he was also the man that went around Columbia and was
7 raping young men and, in fact, had three separate sets of
8 charges where he would kidnap young boys between the ages of
9 11 and 14. So to say that suddenly at 30 there is no longer
10 any urge, I would submit, Your Honor, that that is actually
11 the prime of life when people may follow up with urges they
12 may have.

13 As far as anything else, Your Honor, as far as the
14 amount of time, we understand what the courts have held.
15 We're not asking you to go outside the parameters the courts
16 have set down. There are a number of reasons. In this case,
17 Your Honor, with this set of facts, his actions, his lack of
18 remorse and everything else -- they talked about how the
19 frontal lobe isn't developed until you're 25. So does this
20 extend to people up to that point?

21 Your Honor, at some point -- his big thing is he's in
22 here taking responsibilities for his actions. He is before
23 you pleading guilty. All we're asking you to do is sentence
24 him in this case appropriately under the law and within the
25 guidelines that the courts have held.

1 **The Court:** Thank you, Ms. Campbell. Ladies, I told you
2 you'd have the last word. Ms. Davis? Ms. Delaney?

3 **Ms. Davis:** Thank you, Your Honor. Very briefly and I
4 was trying to not respond because I think Your Honor has
5 probably gotten the picture pretty well from everything we've
6 presented already, fairly lengthy---

7 **The Court:** I said you have the last word. You don't
8 have to take it, but you've got it.

9 **Ms. Davis:** I understand, Your Honor. I can't help
10 myself. In terms of addressing the role models issue, I know
11 that came up in the waiver hearing. I just want to briefly
12 touch on the fact that, yes, he had people that reached out
13 to him, and when he did, he did well. He did change. He did
14 become able to follow rules and particularly at the Sumter
15 house. The point is: He was put back into a chaotic living
16 environment at home, and then I don't think it's a surprise
17 that his behavior then reverted.

18 **The Court:** Right.

19 **Ms. Davis:** So I don't think that that was the situation
20 -- that's certainly not what we were trying to imply is that
21 no one ever reached out to him. I think it's clear that they
22 did. And when that happened, he rose to the occasion and was
23 better and tried to improve himself.

24 Your Honor, in terms of again the threats that were made
25 while in D.J.J. and his incident reports, I think again -

1 I've said this already - but the experts made it very clear
2 what their opinions are about why those things were occurring
3 and that it went to the level of immaturity, not to him being
4 a sexual deviant or being sexually aggressive. I think
5 that's important to know in terms of -- we already know he'll
6 be on the sex offender registry for the rest of his life even
7 though the expert who evaluated him at his waiver hearing
8 says, "Objectively looking and speaking and reviewing
9 everything, I don't believe him to be a sex offender." So
10 that's already going to be a punishment to him, Your Honor,
11 regardless of the sentence imposed.

12 And lastly, Your Honor, I just wanted to note: Ms.
13 Campbell was saying that all she, you know, felt like he was
14 saying is he just wants to get out. He's just sorry because
15 he wants to get out. First of all, I don't think that's what
16 was presented. I think he's explained that - and through Dr.
17 Cooper-Luder as well - that he did feel regret about what
18 happened, that he wished he had not done that.

19 The fact that when he is 14 and expressed the fact of
20 punishment, that's how children think, and I think the only
21 thing that does is bring it back to me in a full circle that
22 we are, in fact, dealing with a child, a juvenile, and we're
23 asking Your Honor to sentence him as such. He should not be
24 treated as any adult would be treated, and I think the
25 courts, as I laid out earlier, has explained why that is not

1 -- why that's not appropriate. And so, again, I would just
2 ask Your Honor to take all those things into consideration in
3 the sentencing of Zacoata. Thank you.

4 **The Court:** Thank you. Folks, thank you for your
5 patience as you have waited on me while I reviewed the
6 volumes of materials that you have given me today, all of
7 which is helpful because, as I told Ms. Davis, what I know
8 about this case is what you tell me today and what you've
9 shown me and you all have shown me a good bit. You've shown
10 me all that any sentencing judge has a right to expect in
11 order to make the difficult decisions that we have to make in
12 cases like this.

13 We have a conflict that's been created factually in this
14 particular case, of course, by the actions of Mr. Lopey, but
15 we have one of the most brutal types of crimes that these
16 seasoned officers have seen under these circumstances
17 committed by a 14-year-old, and that's the reason everybody
18 is in this room today and that's the reason we've taken the
19 hours that we've taken to devote to this particular case. If
20 Mr. Lopey were 30 years old or 25 years old, we would have
21 gotten through this thing in about 30 or 45 minutes because
22 unfortunately those situations are not all that unusual.

23 Perhaps the brutality in this particular case is unusual
24 and certainly it is, and I would imagine that some of that
25 brutality arose out of the fact that these were young men who

1 were creating these crimes without any thought to the
2 consequences of their actions on the victim in this
3 particular case, and that's not unusual unfortunately. The
4 younger people are, the less aware they are of the
5 consequences of their actions on others and even on
6 themselves. Many of us who have tried to raise children are
7 aware of that.

8 Juveniles are different. We know that they're
9 different. All of us know that they're different, but what's
10 important today is that the law says they are different. And
11 so we have to deal with that difference as we try to fashion
12 some way to address the terrible, the brutal, the senseless
13 crimes inflicted on an innocent victim by these people who
14 were 14 years of age at the time.

15 How do we address the crime and the impact on the victim
16 with the age of this defendant? Is the age of the defendant
17 entitled to any consideration at all other than the fact that
18 I should not give him life imprisonment as the Graham -- as
19 the Graham case indicates? Is there any -- is there any
20 other distinguishing character -- is there any other
21 limitation imposed upon a Court other than to say that this
22 is a non-homicide case and, therefore, I cannot sentence him
23 to life imprisonment? Of course, that's what Graham was
24 talking about obviously because it was talking about a
25 mandatory life imprisonment by someone who had been convicted

1 of several burglaries, but what we learned from Graham is
2 that the thought of the Court somewhat goes beyond that.

3 Why do we sentence at all and what is a sentence
4 supposed to accomplish? We know the reasons why. We studied
5 it in sociology. We studied it as lawyers and as police
6 officers and as people who are involved in our system at
7 every aspect of it. And the Graham case points it out, as
8 I've said, in great detail and it's a wonderful litany of the
9 things that we take into account and that we as trial judges
10 take into account every time we sentence. Whether we say it
11 or not, whether we're even conscious of it or not, it's a
12 part of what we do and it's a part of how we decide in a case
13 like this whether Mr. Lopey gets 10 years or 15 years in jail
14 which is the minimum he must receive or whether he gets
15 30 years or whether he gets life imprisonment. How do we
16 make that decision?

17 One of the things that the Graham case said is that
18 retribution is a legitimate reason to punish, and frankly if
19 retribution were the only purpose to be accomplished by this,
20 my decision would be so easy. It would be life imprisonment
21 because the crimes in these particular cases cry out for that
22 severity of punishment, the nature of them, and I need not
23 belabor them anymore. Mr. Mauldin has gone into them in
24 great detail and others have elaborated, and I've read the
25 book and I've read the reports and I know how severe they

1 were, and I know at least the physical injuries that were
2 inflicted upon this innocent victim, although no one other
3 than herself can appreciate the psychological and the mental
4 harm that was done to her that she continues to experience
5 today...

6 But if retribution were why we were here, we could have
7 finished this a long time ago. The Graham case says that
8 society is entitled to impose severe sanctions on a juvenile
9 non-homicide offender to express its condemnation of the
10 crime and to seek restoration of the moral imbalance created
11 by the offense. But the heart of the retribution rationale
12 is the criminal sentence must be directly related to the
13 personal culpability, and what the Graham case is all about
14 is that the case for retribution is not as strong with a
15 minor as it is with an adult because culpability is measured
16 differently between an adult.

17 We look -- we look at his actions and you look at his
18 attitude the day that he was arrested. We look at what he
19 did as he was in prison and how he's reacted and how he has
20 responded in every instance, and it would appear -- it would
21 appear that here is somebody beyond redemption until we look
22 at what science tells us and what really common sense tells
23 us as well about 14-year-old people. We know that they don't
24 have the judgment of adults. That's the reason they don't
25 get driver's licenses, they don't get other privileges,

1 because they don't have the judgment and they don't have the
2 ability to make decisions as reasonable adults do.

3 Another aspect of sentencing that we take into account
4 is deterrence, and we all know -- those of us who work in the
5 system realize that's probably the most overrated of all
6 reasons for giving a sentence, and it's even more overrated
7 when we're dealing with juveniles. That's what the Graham
8 case says. It says that deterrence does not suffice to
9 justify a sentence either. It's cites the Roper case which
10 is one of the cases that all these things cite back to.

11 It noted that the same characteristics that render
12 juveniles less culpable than adults, as I've just said a
13 minute ago, suggest that they will be less susceptible to
14 deterrence. Nowhere would you see that any clearer in this
15 case -- neither one of these individuals, I take it -- the
16 other fellow is not before me. I don't know who he is other
17 than by name, but it's obvious that Mr. Lopey -- they weren't
18 giving a moment's thought to the fact that what they were
19 going to do was going to put them in jail for a substantial
20 period of their lives, not a thought to it.

21 They are less likely to take possible punishment into
22 consideration when making decisions because they have a lack
23 of maturity and undeveloped sense of responsibility.
24 Incapacitation, which is another way of saying warehousing
25 which is shutting them off from society, it is a legitimate

1 reason for imprisonment because sometimes the people are so
2 bad that they just have to be separated from society, and I
3 think that's in large measure what some of you all were
4 saying because here's a fellow who is just so bad he has to
5 be separated from society, and certainly he does. The
6 question is for how long.

7 How long is it going to take for him to be separated
8 from society before his threat to society has passed? The
9 Graham case cites that. It says, "The characteristics of
10 juveniles make that judgment of separation questionable
11 because it is difficult even for expert psychologists to
12 differentiate between the juvenile offender whose crime
13 reflects an unfortunate yet transient immaturity, and the
14 rare juvenile offender whose crime reflects irreparable
15 corruption."

16 And, finally, there is rehabilitation which is the real
17 purpose behind the criminal justice system to begin with. I
18 read an opinion from a judge in Georgia back in the early
19 part of the last century. I think it's called Georgia versus
20 Baxley. It said, "If society could maintain order and safety
21 for its citizens without any punishment at all, it would have
22 no right to punish at all." That's an overstatement, I
23 think, but it indicates at least that rehabilitation is the
24 ideal goal behind incarceration.

25 In this particular case, how do we do something that

1 tries to address all of those concerns? And obviously
2 there's no way to do it, to address all the concerns equally.
3 I cannot do it. But I can take those things into account and
4 indeed I have, and I've gone on at this length quite simply
5 to let you know that my decision in this case is not
6 arbitrary. It is not done by throwing a dart at a board to
7 see which number it lands on. It's simply done to try to
8 address what I recognize to be those -- those goals that a
9 sentence is designed to address which within them frankly
10 addresses both sides of this room today. It is an imperfect
11 science. It's not even science at all.

12 Mr. Lopey, on indictments number 1923 charging you with
13 armed robbery, 1924 charging you with kidnapping, 1925
14 charging you with criminal sexual conduct in the first degree
15 - excuse me just for a minute - the sentence of the Court is
16 that you be committed to the State department of corrections
17 for a period of 30 years. Those sentences all run concurrent
18 to each other with credit for time served.

19 On indictment number 1922 charging you with burglary in
20 the first degree, you're to be committed to the State
21 department of corrections for a period of 15 years. That
22 sentence is consecutive to the sentences that I have
23 previously imposed, but it is suspended and you're placed on
24 probation for five years. The probation in that particular
25 case will begin when the community service has been completed

1 in the other sentences. Thank you, folks. We'll stand in
2 recess until 2:30.

3 **Ms. Davis:** Thank you, Your Honor.

4 (Pause in proceedings.)

5 **The Court:** All right. Madam Reporter, we're back on
6 the record. Folks, return to order, please. It's been
7 brought to my attention that the sentences that I just
8 imposed on Mr. Lopey -- the sentence as to the burglary would
9 not be a proper -- would, in fact, be an illegal sentence
10 because of a statute that does not allow me to suspend the
11 penalty for a crime that carries up to life imprisonment. I
12 believe that's what it says.

13 So as to -- as to indictments 1923 and 1925 charging you
14 with armed robbery and criminal sexual conduct, the sentences
15 in those two cases remains the same: 30 years in the
16 department of corrections. The indictment as to 1922
17 charging burglary in the first degree, the sentence is
18 modified, and that sentence is now that the defendant will be
19 committed to the State department of corrections for a period
20 of 30 years. All of those sentences that I've just imposed
21 run concurrent to each other with credit for time served.

22 As to the indictment charging kidnapping, indictment
23 1924, that sentence has been modified to reflect that the
24 sentence will be that Mr. Lopey will be committed to the
25 State department of corrections for a period of 15 years.

1 That sentence is consecutive to the other sentences imposed
2 this day, but it is suspended and he is placed on probation
3 for five years. The probation will begin after the community
4 service has been completed. Does that erase the error so far
5 as you all think?

6 **Ms. Delaney:** You mean community supervision, Your
7 Honor?

8 **The Court:** Ma'am?

9 **Ms. Delaney:** You said community service. You mean
10 community supervision?

11 **The Court:** Community supervision.

12 **Ms. Delaney:** Yes, sir.

13 **The Court:** Yeah. Thank you.

14 **Ms. McDuffie:** Your Honor, for the record, the case that
15 I was referring to is State versus April Jacobs. I have the
16 order that was done in it. I don't have a copy of the case,
17 but I'll be happy to get it.

18 **The Court:** That's okay. I'll take your word for it,
19 dear. Thank you.

20 **Ms. Davis:** Thank you, Your Honor.

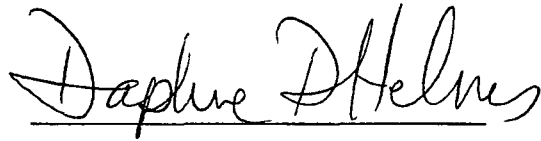
21 **The Court:** Thank you all.

22 (Whereupon, the proceedings were concluded.)
23
24
25

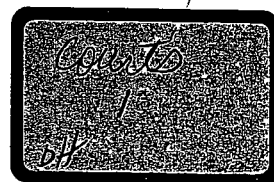
I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 12th of March, 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 27, 2013

A handwritten signature in cursive script that reads "Daphne D. Helms". The signature is written in dark ink and is positioned above a horizontal line.

Daphne D. Helms, court reporter



STATEMENT

STATE OF SOUTH CAROLINA

DATE: 12/14/2010

COUNTY OF RICHLAND

WS

TIME: 23:30

Personally appeared before me, this date, an officer duly and legally authorized to administer oaths in the above-named county and state aforesaid, comes one: ELAINE HENRICK

DOB: [REDACTED] Address: [REDACTED]

Phone (H) #: (803) 754-8919 Phone (W) #: (208) 215-5481

Who makes the following statement under oath to wit:

Q: BY J.C. MAULDIN A: ELAINE HENRICK

Q: WHERE DO YOU CURRENTLY LIVE?

A: I LIVE AT 7256 SMITHFIELD RD.

Q: CAN YOU TELL ME WHAT HAPPENED TO YOU AT YOUR HOME EARLIER THIS EVENING

A: I WAS WATCHING TV IN MY FAMILY ROOM. I HAD JUST FINISHED TALKING TO ONE OF MY FRIENDS ON THE PHONE. I HEARD A NOISE IN MY SUNROOM. TWO MEN WALKED INTO THE FAMILY ROOM FROM THE SUN ROOM. I DON'T KNOW HOW THEY GOT IN THERE. I USUALLY LOCK THE DOOR BUT I DON'T KNOW IF I DID TONIGHT ONE OF THEM POINTED A GUN AT ME AND TOLD ME TO TAKE THEM TO THE MONEY. I TOLD THEM THAT I DIDN'T HAVE ANY MONEY. HE TOLD ME TO GO INTO A BACK BEDROOM. THE OTHER

This statement was made in the presence of J.C. MAULDIN, of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth, and nothing but the truth.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 14 DAY OF DEC, 2010.

Notary Public for South Carolina

My commission expires 01/17/2012

SIGNED.

Elaine Henrick

WITNESS:

SA Smith

WITNESS.

STATEMENT OF

ELAINE HENRICK

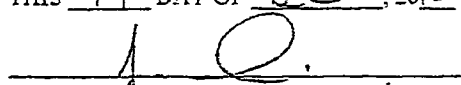
(CONTINUED)

DATE: 12/14/2010 TIME: 23:30

Guy was ALREADY BACK THERE OPENING DRAWERS AND PUTTING SOME JEWELRY INTO HIS POCKETS. THE GUY WITH THE GUN ASKED ME WHERE MY HANDBAG WAS I TOLD HIM AND HE WENT AND GOT IT. HE DUMPED IT OUT ON THE FLOOR. I REMEMBER TALKING TO THE YOUNGER ONE. I ASKED HIM IF HE WOULD DO THIS TO HIS GRANDMOTHER. HE SAID SOMETHING ABOUT HAVING THREE KIDS. HE ALSO SAID THAT HIS JOB DIDN'T PAY HIM ENOUGH WHEN I ASKED HIM WHY HE DIDN'T JUST WORK. THE GUY WHO POURED OUT MY PURSE ASKED ME WHERE THE MONEY WAS. I PICKED UP A CASE THAT I KEEP IN MY PURSE AND TOOK OUT ABOUT \$500.00 THAT I HAD FOR CHRISTMAS GIFTS. I TOLD HIM THAT IT WAS ALL OF THE MONEY THAT I HAD. THEN THEY TOOK ME TO OTHER ROOMS IN THE HOUSE. THEY RANSACKED THOSE ROOMS. THEY TOOK ME BACK INTO THE FAMILY ROOM WHERE THE BIG GUY TRIED TO DISCONNECT THE T.V. HE WAS PULLING ON THE CABLE INSTEAD OF UNSCREWING IT FROM THE T.V. THE YOUNGER GUY TOLD HIM THAT HE HAD TO UNSCREW IT. I DON'T THINK HE WAS VERY EDUCATED. HE ALSO TOOK MY DVD PLAYER AND PUT IT INTO A PLASTIC GARBAGE BAG. THEY ENDED UP TAKING THE

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth, and nothing but the truth.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 14 DAY OF DEC, 2010

 Notary Public for South Carolina
My commission expires: 01/17/2012

SIGNED:

Elaine Henrick

WITNESS:

CS Smith

WITNESS

STATEMENT OF

ELAINE HENRICK

(CONTINUED)

DATE: 12/14/2010 TIME: 23:30

T.V. BUT NOT THE DVD PLAYER AND BAG. I THINK THAT THEY MAY HAVE ^{BROUGHT IN} ~~THE~~ THE BAG WITH THEM. THEY WERE TALKING ABOUT TAKING ME WITH THEM. THE BIG GUY TOLD ME TAKE MY CLOTHES OFF. HE WAS POINTING THE GUN AT ME. I TOLD HIM THAT I WANTED TO GO TO THE BATHROOM. I THOUGHT THAT THEY WANTED ME TO UNDRESS SO THAT I COULDN'T GO OUTSIDE. THEY FOLLOWED ME TO THE BATHROOM BUT WOULDN'T LET ME CLOSE THE DOOR. I TOOK OFF EVERYTHING EXCEPT MY UNDERWEAR. THEY TOLD ME TO TAKE IT OFF AND POINTED THE GUN AT ME. I TOLD THE BIG GUY THAT THE GUN PROBABLY WOULDN'T WORK. HE PULLED SOME SHELLS OUT OF HIS POCKET & PUT THEM IN THE GUN. HE ASKED ME IF I WANTED TO FIND OUT IF IT WORKED. I TOOK OFF MY UNDERWEAR AND THEY TOLD ME TO GO IN THE BEDROOM AND LAY DOWN. I LAYED DOWN ON THE BED. THE BIG GUY PULLED MY KNEES APART AND PENETRATED ME WITH HIS PENIS. THEY HAD COVERED MY FACE BECAUSE I WAS SCREAMING. I THINK THAT THE BIG GUY EJACULATED INSIDE OF ME. THEN THE YOUNG GUY TRIED TO HAVE SEX WITH ME. I ASKED HIM IF HE WOULD RAPE HIS GRANDMOTHER. HE TRIED TO COVER MY MOUTH. HE HAD TROUBLE

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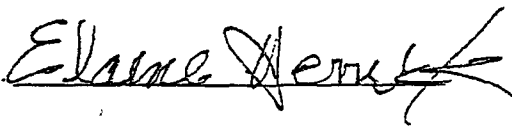
SWORN TO AND SUBSCRIBED BEFORE ME

THIS 14 DAY OF DEC, 2010.

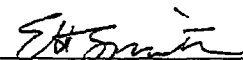

Notary Public for South Carolina

My commission expires 01/14/2010

SIGNED



WITNESS:



WITNESS:

STATEMENT OF

ELAINE HENRICK
(CONTINUED)

DATE: 12/14/2010 TIME: 23:30

SO HE TURNED ME OVER AND PENETRATED MY RECTUM. I THINK HE ALSO EJACULATED INSIDE OF ME. THEY LEFT MY HOME THROUGH THE FRONT DOOR.

Q: DID YOU TELL THE RESPONDING OFFICERS THAT THE SUBSTANCE ON THE FLOOR IN FRONT OF THE BED AND ON THE BED SPREAD WAS SEMEN?

A: YES

Q: DO YOU KNOW WHICH MAN'S SEMEN THIS MAY HAVE BEEN?

A: I THINK MAYBE THE YOUNG ONE.

Q: CAN YOU DESCRIBE THE MEN WHO ROBBED AND ASSAULTED YOU THIS EVENING?

A: THE YOUNG ONE WAS ABOUT 5'6" AND WAS THIN. HE WAS WEARING A GREY SHIRT WITH BROWN STRIPES. IT LOOKED LIKE HE HAD ON A BLACK VEST OVER THAT. HIS PANTS WERE BAGGY. HE WAS ALSO WEARING A BLACK STOCKING CAP AND HAD WHAT LOOKED LIKE A BRIGHT GREEN SCARF AROUND HIS NECK AND FACE. HE SEEMED

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth, and nothing but the truth

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 14 DAY OF DEC, 2010

J. O.
Notary Public for South Carolina

My commission expires: 01/17/2017

SIGNED: Elaine Henrick

WITNESS: EW Smith

WITNESS: _____

STATEMENT OF

ELAINE HENRICK
(CONTINUED)

DATE: 12/14/2010 TIME: 23:30

LIKE HE WAS IN HIS EARLY TWENTIES. THE BIG GUY WAS ABOUT 600 TALL AND WEIGHED AT LEAST 200 LBS. HE WAS WEARING DARK CLOTHES AND ALSO HAD ON A BLACK VEST AND BAGGY JEANS. HE ALSO HAD A BRIGHT GREEN SCARF AROUND HIS FACE AND NECK AS WELL AS A BLACK STOCKING CAP. HE SEEMED TO BE IN HIS TWENTIES AS WELL.

Q: WHICH ONE OF THE TWO MEN HAD THE GUN?

A: THEY PASSED IT BACK AND FORTH

Q: CAN YOU DESCRIBE THE GUN?

A: IT LOOKED LIKE AN OLD SHOTGUN. IT WAS ALL SCUFFED UP. THERE WAS A FLASHLIGHT TAPED ON TO THE BARREL. I REMEMBER THAT THE LIGHT FROM IT WAS BLUE LOOKING.

Q: CAN YOU TELL WHAT ITEMS WERE TAKEN FROM YOUR HOME BY THE TWO ME?

A: THEY TOOK MY TV. I CAN'T REMEMBER EXACTLY WHAT KIND OF TV OR HOW BIG IT WAS. IT IS A FLAT SCREEN WITH A BLACK FRAME.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth, and nothing but the truth.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 12 DAY OF DEC, 2010.

Notary Public for South Carolina

My commission expires. 01/17/2013

SIGNED: Elaine Henrick

WITNESS: Elson

WITNESS: _____

STATEMENT OF

ELAINE HENRICK

(CONTINUED)

DATE: 12/14/2010 TIME: 23:30

THEY TOOK ABOUT FOUR OR FIVE WATCHES. ONE WAS A GOLD SEIKO. TWO HAD BANDS ~~WITH~~ THAT YOU COULD PUSH ONTO YOUR ARM. ONE WAS AN ANIMAL PRINT AND ONE WAS GOLD. THEN THERE WAS THE WATCH WITH A WHITE PLASTIC BAND. THEN THERE WAS A SILVER COLORED ANNE KEVIN WATCH. I HAVEN'T WORN THAT ONE YET. THEY TOOK SOME 18K GOLD JEWELRY THAT I BOUGHT IN JAPAN. THEY TOOK MY OPAL RING. I THINK THEY TOOK MY CELL PHONE. THEY TOOK A BUNCH OF CHEAP JEWELRY. I'LL HAVE TO LOOK FOR ANYTHING ELSE. THEY TOOK MY CAMERA AND MY I TOUCH AS WELL.

Q: DO YOU KNOW IF THE MEN WHO ASSAULTED YOU WERE IN A CAR?

A: I DIDN'T HEAR A CAR WHEN THEY LEFT. I REMEMBER THAT THEY ASKED ME ABOUT THE KEYS TO MY CAR. I TOLD THEM THAT MY CAR WAS IN THE SHOP.

Q: DID THE MEN EVER USE NAMES?

A: THE BIG ONE CALLED THE YOUNGER ONE BY A NAME BUT I DON'T REMEMBER.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth, and nothing but the truth.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 14 DAY OF Dec, 2010.

Notary Public for South Carolina

My commission expires 01/17/2017SIGNED: Elaine HenrickWITNESS: Esther

WITNESS: _____

STATEMENT OF

(CONTINUED)

DATE: _____ TIME: _____

Q: IS THERE ANYTHING ELSE THAT YOU CAN TELL ME THAT MAY AID
IN MY INVESTIGATION?

A: I CAN'T THINK OF ANYTHING ELSE.

Q: DO YOU PROMISE THAT THE STATEMENT THAT YOU HAVE GIVEN
ME HAS BEEN TRUE AND CORRECT

A: YES.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth,
the whole truth, and nothing but the truth.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 14 DAY OF DEC, 2010

J. O.
Notary Public for South Carolina

My commission expires 01/17/2017

SIGNED: Elaine HenryWITNESS: Ed Smith

WITNESS: _____

Palmetto Health Alliance FNE Program

Adult/Adolescent Forensic Record

Elaine T Henrick

Unit Record:

007037458

Intake Information**Patient Information:**

- Name Elaine T Henrick Soc Security 248865905
- Age 79 Years DOB 12/21/1930 Gender Female Ethnicity Asian
- Date of Arrival 12/14/2010 Time of Arrival 22:21 Entry Date 12/14/2010 11:24:09 PM
- Arrived with/by EMS and family (Niece Ellen Smith)
- Home address [REDACTED] Columbia, SC
- Contact information H# (803) 754-8919 C# (208) 215-5481

Law Enforcement:

- Agency: Richland County SD
- Forensic Exam Req.: ☒ Yes ☐ No If no, describe: _____
- SANE Kit Used: ☒ Yes ☐ No If no, describe: _____
- Anonymous Report: ☐ Yes ☒ No Comments: _____
- Consent obtained by: SANE
Written
- Reporting Officer: Deputy S. Soto ☐ PTA Time: 22:30
- Investigator: Mauldin ☐ PTA Time: 22:30
- Second Law Enforcement Agency: _____
Case Number 1012045514

Advocacy: * if indicated

- Advocacy Agency: Sexual Trauma Services of Midlands Notified: _____ Arrival: 23:49
- Domestic Violence Agency: _____ Notified: _____ Arrival: _____
- Social Services:* _____ Notified: _____ Arrival: _____

Medical Clearance by Busken, MD Time: 23:00 ☐ NAInterpreter: _____ ☐ NA

Persons present during collection of history:

- ☒ Advocate ☒ Family ☒ Law Enforcement ☐ Only SANE ☐ Other

Persons present during medical exam:

- ☒ Advocate ☐ Family ☐ Only SANE ☐ Other

Palmetto Health Alliance FNE Program**Adult/Adolescent Forensic Record**

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Pertinent Medical HistoryLMP: 15 yrs ago Normal: ☒ Yes ☒ No G: 0 P: 0Tampon use: ☒ No ☒ Yes last usage? _____

- Any recent (60 days) anal-genital injuries, surgeries, diagnostic procedures or medical treatment that may affect the interpretation of current physical finding ☒ Yes ☐ No

If yes, describe: "I take medicine because I go to the bathroom so much and my gynecologist gave me hormone cream because I am so dry. I did it last night. Today I went to the swimming pool and did not use it since last night".

- Any other pertinent medical conditions or injuries that may affect the interpretation of current physical findings ☒ Yes ☐ No

If yes, describe: "my heart, had bypass surgery and back surgery"

Current medications: ☐ None "bladder medicine, heart medicine, high blood pressure, and nexium for reflux, baby aspirin 81mg".

Allergies: ☐ NKA "z-pack, make me sick"

Pertinent pre and post assault related history:**No Yes**

- Consensual intercourse within 7 days? ☒ ☐
 - Oral ☒ ☐
 - Vaginal ☒ ☐
 - Anal ☒ ☐
- If yes, was a condom used? ☒ ☐
- Comments: _____
- Any voluntary use of alcohol 12 hours prior to assault? ☒ ☐
- Any voluntary use of drugs 96 hours prior to assault? ☒ ☐
- Any voluntary use of alcohol or drugs between time of assault and forensic exam? ☒ ☐

Post assault hygiene/activity:**No****Yes Describe:**

- Urinated ☐ ☒ first void during interview, called to the bathroom to note blood in the toilet.
- Defecated ☒ ☐
- Genital or body wipes ☐ ☒ "just tissue because I feel it run down"
- Douched ☒ ☐
- Removed tampon/diaphragm ☒ ☐
- Brushed teeth ☒ ☐
- Mouthwash ☒ ☐
- Bath/shower/wash ☒ ☐
- Ate or drank ☐ ☒ "sipping some water" (given to patient by triage Ed RN).
- Changed clothing ☐ ☒ "they told me to take my clothes off and then I put my robe on after"

Palmetto Health Alliance FNE Program

Elaine T Henrick

Adult/Adolescent Forensic Record

Unit Record:

007037458

Pertinent Medical History

- Smoked



Palmetto Health Alliance FNE Program**Adult/Adolescent Forensic Record**

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Unit Record:

007037458

Assault History

Date of Assault: 12/14/2010

~Time of Assault: 2045

Location: [REDACTED]

City: Columbia

State: SC

History of assault per patient:

In the patients own words;

"I was watching 'Minute to Win It Show' and it was about half way through. I was talking on the phone to my friend. I had just hung up and they came in through the sunroom door. I usually shut it and lock it but I don't know why I didn't do that today. They came in saying "where's your money, where's your money", I said I don't have any, I am on a fixed income. They asked do you have a dollar?. I said yeah and they said go get it. I went to the bedroom and the other man was already in there filling his pockets with jewelry and stuff. The big guy asked where is my handbag and I said in the bedroom, he went and got it and brought it out upside down and everything was falling out. He asked for my money, so I got out my bill fold and gave him my money. The big guy was pulling out the TV, and he was pulling the wrong cords. He didn't know what he was doing. I asked the young guy, "would you do this to your grandmother?" He said he had three kids and I asked if he had a job, he said yes but it didn't pay much money. They went to my other rooms and they made me go with them. They wanted to keep an eye on me. They asked me if I had a gun, I said no. Then they held up the shot gun shell I had in the jar. I said I don't have one. I did but they didn't find it so I didn't tell them. I was going to call 911 with my cell phone but they must have already taken it. They took my camera and my iPod off the counter, I had a digital photo frame too, but he didn't know what it was. Then they told me to go to the bedroom and take off my clothes. They said they was going to make me a hostage. I said I cant go outside in the cold with no clothes. They had a gun, I told them that it was old and probably not working, he put a bullet in it and said, "do you want to see?". So I shut up. I went to the bathroom and started to take off my clothes, I asked to leave on my underpants, and he said no, take them off. They made me take off my underpants. They told me to get down on my back. I asked him are you going to rape me and he didn't say anything. He threw down my socks over my face and opened my legs hard, pushing them open, and he started raping me. He made me cover my face. I hollered, "oh my god" (crying). He covered my mouth and so I couldn't breathe and so I stopped hollering. He got through and the young boy came over and I said your not going to do this to your grandmother and he couldn't do it. So he turned around and raped me. He couldn't get it in, so he used saliva.

Palmetto Health Alliance FNE Program**Adult/Adolescent Forensic Record**

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Assault History Continued:

Nbr	Assailant's Name	~Age	Ethnicity	Gender	Relationship
0	Unknown skinny, about 5'6"	21-23	African American	M	Stranger

Methods employed	No	Yes	If yes, describe:
☐ No history provided			
Weapons			
Threatened	☐	☒	
Injuries Inflicted	☒	☐	
Types of weapons	☐	☒	"a gun, it looks so old. I told them that gun don't work and they said you want me to try, and they put a bullet in it and so I shut up"
Physical Blows	☒	☐	
Grabbing/holding/pinching	☐	☒	"pulled my hand to take me to the other rooms"
Physical restraints	☐	☒	"the big man covered my mouth when he was raping me and told me to stop screaming"
Strangulation	☒	☐	
Burns(chemical/thermal)	☒	☐	
Verbal threats of harm	☐	☒	"they kept saying where is the money and the remote for the tv and that they was going to shoot me"
Other methods	☒	☐	

Ingestion of alcohol/drugs by patient:

☒ No ☐ Yes ☐ Unsure

• If yes, ☐ Alcohol ☐ Drug Amount: _____ Time: _____ Date: _____

Describe: _____

• If yes, ☒ Voluntary ☒ Forced ☒ Coerced ☐ Suspected

☐ No history providedAlcohol/drug use by assailant: ☒ No ☐ Yes ☐ Unsure

• If yes, ☐ Alcohol ☐ Drugs Describe: _____

Time: _____ Date: _____

Were any injuries inflicted upon the assailant during the assault? ☒ No ☐ Yes

• If yes, describe: _____

Is assailant known:

• To have an STD: ☐ Yes ☒ No Describe: _____

• Had a vasectomy: ☐ Yes ☒ No

• Was sterile: ☐ Yes ☒ No

Palmetto Health Alliance FNE Program**Adult/Adolescent Forensic Record**

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Assault History Continued:Any Witnesses see the assault? ☐ Yes ☐ No If yes, identify: _____

Palmetto Health Alliance FNE Program

Adult/Adolescent Forensic Record

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Assault History Continued:**Contacts Described By Patient:** **Assailant number** 0**Penetration of vagina by:** ☐ No history provided **Describe:**

	No	Yes	Attempted	Unsure
Penis	☐	☒	☐	☐
Finger	☐	☒	☐	☐
Object	☒	☐	☐	☐

"The big guy"

Penetration of anus by:

Penis	☐	☒	☐	☐
Finger	☒	☐	☐	☐
Object	☒	☐	☐	☐

"The young one"

Oral Copulation of genitals:

Of patient	☒	☐	☐	☐
Of assailant	☒	☐	☐	☐

Non-genital acts:☐ No history provided

Licking	☒	☐	☐	☐
Kissing	☒	☐	☐	☐
Suction injury	☒	☐	☐	☐
Biting	☒	☐	☐	☐
Fondle	☒	☐	☐	☐

Other acts:

Other	☒	☐	☐	☐
Masturbation	☒	☐	☐	☐

Did ejaculation occur: ☐ No history provided

Mouth	☒	☐	☐
Vagina	☐	☒	☐
Anus	☐	☒	☐
Body	☒	☐	☐
Clothing	☐	☐	☒
Bedding	☐	☐	☒
Other	☒	☐	☐

Contraceptive or lubricant used:

Foam used	☒	☐	☐
Jelly used	☒	☐	☐
Lubricant	☒	☐	☐
Condom used	☒	☐	☐

Describe type/brand if known:

"they couldn't get in so they used saliva"

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Adult/Adolescent Forensic Record

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Assault History Continued:

Nbr	Assailant's Name	Age	Ethnicity	Gender	Relationship
1	Unknown	30	African American	M	Stranger

Methods employed **No** **Yes** **If yes, describe:**☐ No history provided**Weapons**Threatened ☐ No ☐ YesInjuries Inflicted ☐ No ☐ YesTypes of weapons ☐ No ☐ YesPhysical Blows ☐ No ☐ YesGrabbing/holding/pinching ☐ No ☐ YesPhysical restraints ☐ No ☐ YesStrangulation ☐ No ☐ YesBurns(chemical/thermal) ☐ No ☐ YesVerbal threats of harm ☐ No ☐ YesOther methods ☐ No ☐ Yes**Ingestion of alcohol/drugs by patient:**☒ No ☐ Yes ☐ Unsure• If yes, ☐ Alcohol ☐ Drug Amount: _____ Time: _____ Date: _____

Describe: _____

• If yes, ☐ Voluntary ☐ Forced ☐ Coerced ☐ Suspected☐ No history provided**Alcohol/drug use by assailant:** ☐ No ☐ Yes ☐ Unsure• If yes, ☐ Alcohol ☐ Drugs Describe: _____

Time: _____ Date: _____

Were any injuries inflicted upon the assailant during the assault?☐ No ☐ Yes

• If yes, describe: _____

Is assailant known:• To have an STD: ☐ Yes ☐ No Describe: _____• Had a vasectomy: ☐ Yes ☐ No• Was sterile: ☐ Yes ☐ No**Any Witnesses see the assault?** ☐ Yes ☐ No If yes, identify: _____

Palmetto Health Alliance FNE Program

Adult/Adolescent Forensic Record

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Unit Record:

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Assault History Continued:**Contacts Described By Patient: Assailant number 1****Penetration of vagina by:** ☐ No history provided **Describe:**

	No	Yes	Attempted	Unsure
Penis	☐	☐	☐	☐
Finger	☐	☐	☐	☐
Object	☐	☐	☐	☐

Penetration of anus by:

	No	Yes	Attempted	Unsure
Penis	☐	☐	☐	☐
Finger	☐	☐	☐	☐
Object	☐	☐	☐	☐

Oral Copulation of genitals:

	No	Yes	Attempted	Unsure
Of patient	☐	☐	☐	☐
Of assailant	☐	☐	☐	☐

Non-genital acts: ☐ No history provided

	No	Yes	Attempted	Unsure
Licking	☐	☐	☐	☐
Kissing	☐	☐	☐	☐
Suction injury	☐	☐	☐	☐
Biting	☐	☐	☐	☐
Fondle	☐	☐	☐	☐

Other acts:

	No	Yes	Attempted	Unsure
Other	☐	☐	☐	☐
Masturbation	☐	☐	☐	☐

Did ejaculation occur: ☐ No history provided

	No	Yes	Attempted	Unsure
Mouth	☐	☐	☐	☐
Vagina	☐	☐	☐	☐
Anus	☐	☐	☐	☐
Body	☐	☐	☐	☐
Clothing	☐	☐	☐	☐
Bedding	☐	☐	☐	☐
Other	☐	☐	☐	☐

Contraceptive or lubricant used:**Describe type/brand if known:**

	No	Yes	Attempted	Unsure
Foam used	☐	☐	☐	☐
Jelly used	☐	☐	☐	☐
Lubricant	☐	☐	☐	☐
Condom used	☐	☐	☐	☐

Palmetto Health Alliance FNE Program**Adult/Adolescent Forensic Record**

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General Physical Examination

Exam Start Time: 23:30 Exam Completed: _____

- Vitals signs: BP: 153/64 Pulse: 69 Resp: 18 Temp: 97.9
- Tanner Stage: ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☒ 5
- Describe general physical appearance: laying on the stretcher, wearing her bathrobe, niece at bedside for support

Describe general demeanor: ☐ Quiet ☒ Tearful ☒ Trembling ☐ Anxious☒ Controlled ☐ Angry ☐ Sobbing ☐ Tense

- Response to questions: ☐ Briefly ☐ Reluctantly ☒ Readily
- Eye contact: ☒ Good ☐ Poor
- Describe: tearful about the sexual assault, easily describes the details of the home invasion and the assailants

Assessment	Findings	Comment
HEENT	☒ Normocephalic, No exudate/redness	
Neck	☒ Nontender, supple	
Chest	☒ Clear, equal bilaterally	
Abdomen	☒ Soft, nontender, bowel sounds present	
Musc./Skel	☒ MAE, No deformities	
Neuro	☒ Alert and oriented x3, PERRL	
Skin	☒ Intact	

Strangulation Assessment*:☒ NA

* Note patient history

- Object used on neck ☐ one hand ☐ two hands ☐ forearm ☐ other _____
- How long was the patient strangled? _____ How many times? _____
- Any loss of consciousness? ☐ Yes ☒ No
- Throat hoarseness? ☐ Yes ☒ No
- Voice at time of exam: _____
- Any incontinence during? ☐ Yes ☒ No

Drug Facilitated Sexual Assault Assessment*:☐ NA

* Note patient history

- Orientation: ☐ Oriented x 3 ☒ Disoriented; describe _____
- Ability to recall events: ☐ Well ☐ No memory ☐ Lapses of memory loss
- Patient's speech: ☐ Clear ☐ Garbled
- Patient's gait: ☐ Steady ☐ Unsteady, describe _____
- History of nausea: ☐ Yes ☒ No Vomiting: ☐ Yes ☒ No How many times? _____
- Other concerning symptoms or assessment: _____

Palmetto Health Alliance FNE Program
Adult/Adolescent Forensic Record

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007037458

General Physical ExaminationPhysical Examination: ☒ Findings (see below) ☐ No findings

Diagram A

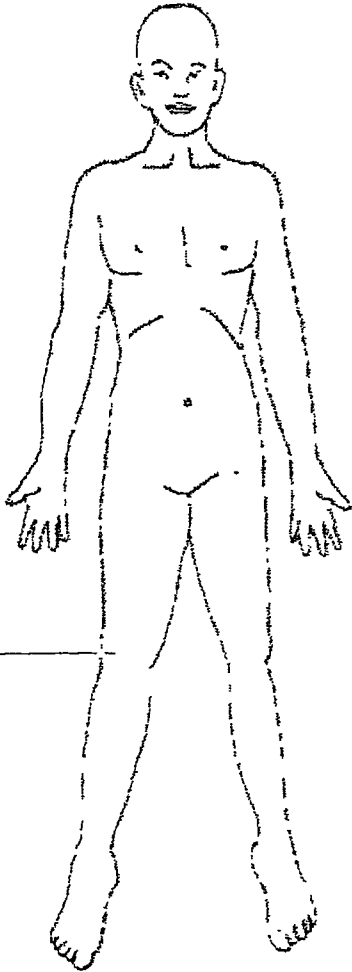
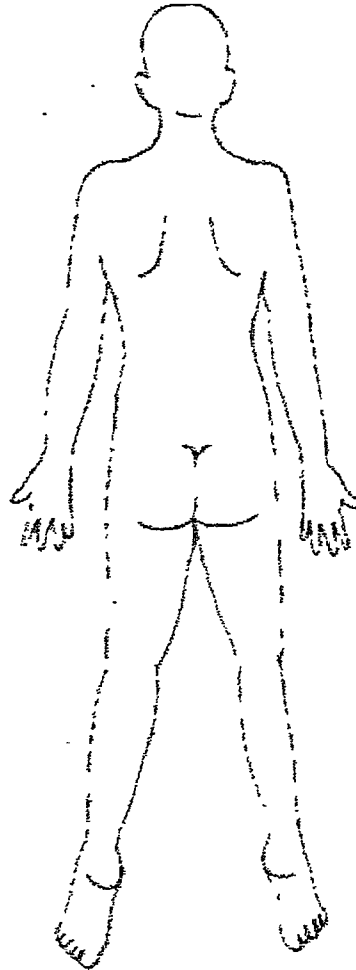


Diagram B



Locator	Body Part	Type	Description
1	Knee, Anterior - Right	Bruise	circular, blue colored bruise on the inside of her knee, 2cmX3cm

Palmetto Health Alliance FNE Program

Adult/Adolescent Forensic Record

Elaine T Henrick

Unit Record:

007037458

Hand Examination☒ Findings (see below) ☐ No findings

Diagram G

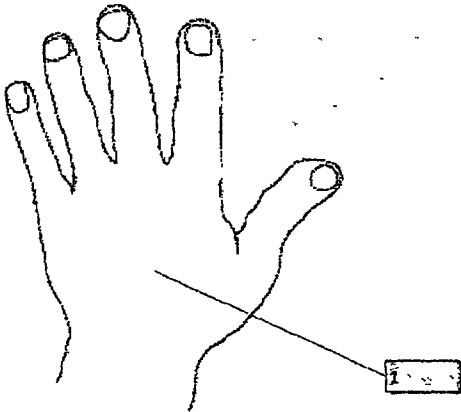


Diagram H

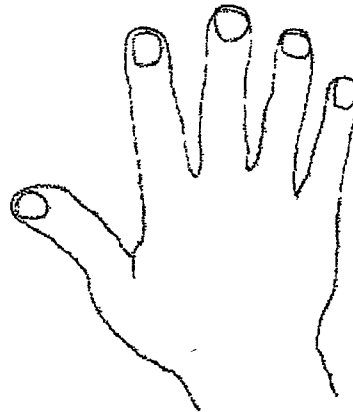


Diagram I

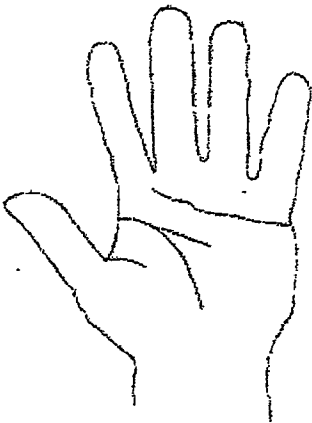
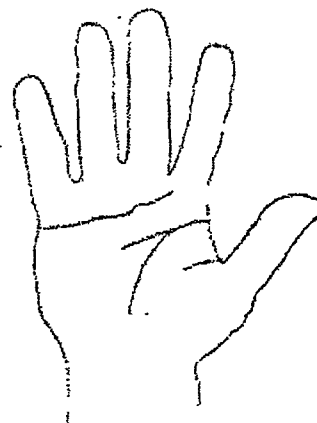


Diagram J



Locator	Body Part	Type	Description
1	Dorsum, Left	Bruise	circular shaped, blue/purple in color, 3cmX3cm

Palmetto Health Alliance FNE Program

Adult/Adolescent Forensic Record

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Genital Examination - Females**Location of findings. See details next page.**

- ☐ No findings
☐ Inner thigh ☐ Perihymenal tissue
☐ Perineum ☐ Hymen
☒ Labia majora ☐ Fossa navicularis
☒ Labia minora ☒ Posterior fourchette
☐ Clitoris ☐ Anus
☒ Vaginal Wall ☐ Cervix
☐ Periurethral tissue / urethral meatus

Exam position used:

- ☐ Supine ☒ Lithotomy ☐ Lateral ☐ Other
 If other: _____

Exam methods:

- ☒ Water lubricated speculum ☐ Foley catheter
☒ Toluidine blue dye ☒ Colposcope ☒ UV light

Previous pelvic exams:

- ☒ Yes ☐ No ☒ Exam explained

Presence of sperm - vaginal wet prep:

- ☐ Motile ☐ Non-motile ☒ None visualized ☐ NA

Diagram K

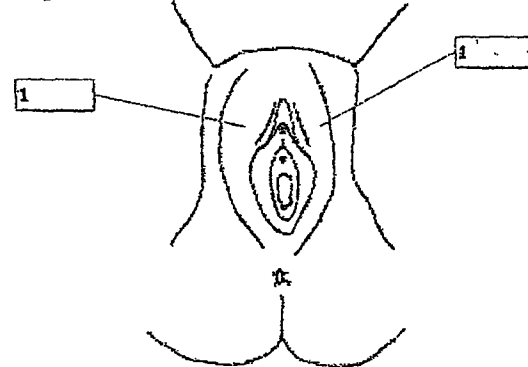


Diagram L

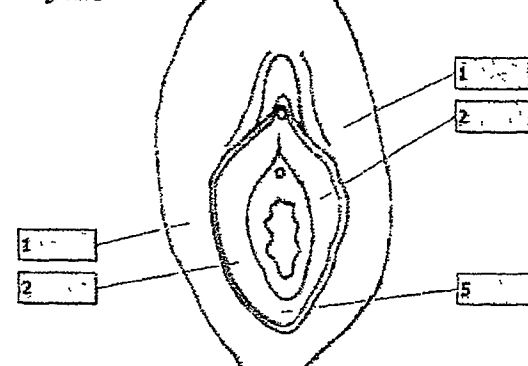


Diagram M

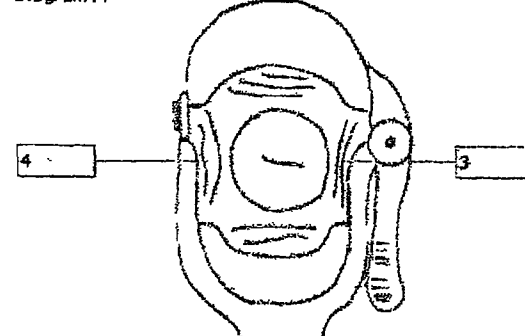
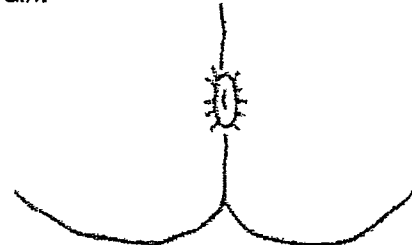


Diagram N



Palmetto Health Alliance FNE Program

Adult/Adolescent Forensic Record

Elaine T Henrick

Unit Record:

007037458

Genital Examination - Females

Locator	Body Part	Type	Description
1	Labia Majora, Bilateral	Bruise	bruising noted, swollen, tender, shiny related to edema
2	Labia Minora, Bilateral	Swelling	bruising noted
3	Vaginal wall, Left	Laceration	deep open laceration @ 1000, 2cm, irregular margins, bleeding noted
4	Vaginal wall, Right	Laceration	laceration @ 1400, irregular margins, bleeding noted
5	Posterior fourchette	Toluidine Blue +	+ dye uptake, tender, laceration noted @ 1800

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

Appeal from Richland County

Thomas W. Cooper, Jr., Circuit Court Judge

RECEIVED

MAY 05 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

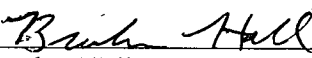
ZACOATA LOPEY,

APPELLANT

APPELLATE CASE NO. 2013-000554

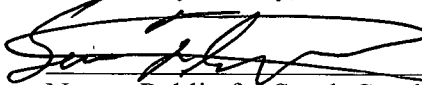
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 5th day of May, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 5th day of May, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.