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THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. Supreme Court

APPEAL FROM OCONEE COUNTY
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

Appellate No.: 2012-206186

The State.....Respondent,

v.

Anthony Clark Odom.....Appellant,

SECOND SUPPLEMENTAL RECORD ON APPEAL

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State Counsel- Stumbo speaking

13

1 404(B) EXCEPTIONS THAT WE THINK APPLY HERE. FIRST AND
2 FOREMOST, IT'S OUR BURDEN AT TRIAL ON THE SPARTANBURG CHARGE
3 TO PROVE INTENT TO SET TO INDUCE AND INTENT AS FAR AS THE
4 KNOWLEDGE OR HIS REASONABLE BELIEF THAT HE'S CHATTING WITH A
5 CHILD.

6 YOUR HONOR, IF YOU READ THESE CHATS AND YOU READ THE
7 SPARTANBURG CHATS, WE THINK IT GOES TO BOTH HIS INTENT, HIS
8 IDENTITY AS THE SCREEN NAME, IS THE SCREEN NAME THE SAME,
9 THE CHATS ARE VERY SIMILAR FASHION. IT GOES TO LACK OF
10 MISTAKE, YOUR HONOR, BECAUSE ---

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

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

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

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

25 THE COURT: ALL RIGHT.

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

ANTHONY C. ODOM,) C/A No. 2:10-873
)
)
Plaintiff,)
)
)
VERSUS) Columbia, SC
) April 9, 2010
)
HENRY D. MCMASTER, etc.,)
et al.,)
)
Defendants.)
-----)

TELEPHONE CONFERENCE CALL
MOTION HEARING
BEFORE THE HONORABLE MARGARET B. SEYMOUR
UNITED STATES DISTRICT JUDGE

Appearances:

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Stenotype/Computer-Aided Transcription

1 THE COURT: Good afternoon, this is Judge Seymour.
2 We are here in the matter of Anthony C. Odom versus Henry
3 McMaster, et al., and we are here on the plaintiff's motion for
4 a temporary restraining order. I would like to find out at
5 this time who is on the line for the plaintiffs.

6 MR. MCDANIEL: Your Honor, Brian McDaniel.

7 THE COURT: All right. Anyone else?

8 MR. MCDANIEL: No, Your Honor.

9 THE COURT: And for the defendant?

10 MS. SHUPE: Deborah Shupe for Henry McMaster.

11 THE COURT: Anyone else on the line?

12 MS. SHUPE: Not that -- we have got some people
13 present, but they are not participating as such in the
14 argument.

15 THE COURT: All right. Who else is present?

16 MS. SHUPE: Assistant Attorney General Megan Wines
17 and Assistant Attorney General Curtis Pauling?

18 THE COURT: Pauling, how do you spell that?

19 MS. SHUPE: P-a-u-l-i-n-g.

20 THE COURT: All right. Anyone --

21 MS. SHUPE: Your Honor, I can barely hear you.

22 THE COURT: Anyone else on the line?

23 MS. SHUPE: No, that's it here.

24 THE COURT: I'm going to ask if you speak, would you
25 please state your name so that the court reporter can take down

1 the name of the person who is speaking.

2 The plaintiff has filed a motion for a temporary
3 restraining order. And in the Fourth Circuit, the standard in
4 the Fourth Circuit, the Fourth Circuit has adopted the Winter
5 test in the case The Real Truth About Obama. And the plaintiff
6 has to make or the movant has to make a clear showing of four
7 requirements:

8 That the movant is likely to succeed on the merits,
9 that the movant is likely to suffer irreparable harm in the
10 absence of injunctive relief, that the balance of equities tip
11 in the movant's favor, and that an injunction is in the
12 public's interest. And the standard is a clear showing.

13 And so I'm going to ask Mr. McDaniel, I will hear
14 from you at this time with regard to your motion for temporary
15 restraining order.

16 MR. MCDANIEL: Thank you, Your Honor. We are making
17 this motion for a temporary restraining order based on
18 communications with the Attorney General's Office that they
19 intend to indict Mr. Odom on Monday, coming Monday, on two
20 charges for what we have alleged in the complaint as the Oconee
21 chat or the Oconee communications. And what we are --

22 THE COURT: They intend to ask the grand jury to
23 indict, right?

24 MR. MCDANIEL: That's correct.

25 THE COURT: And it's up to the grand jury whether or

1 not to indict, correct?

2 MR. MCDANIEL: It is.

3 THE COURT: Okay.

4 MR. MCDANIEL: And I guess alternately they could
5 attempt to arrest Mr. Odom, as an alternate to taking him to
6 the grand jury.

7 It is our belief if that is done, one, it would
8 initiate those proceedings causing damage to Mr. Odom's
9 reputation and putting him into what they -- what we have
10 projected as being a hearing set for June of 2010, which is --
11 meaning, of course, expense and preparation for any criminal
12 trial would begin on his part immediately for that.

13 In addition, that this matter and the federal
14 charges -- the federal action that we brought would possibly be
15 superseded by the state action, so it's our intent to initiate
16 this action first --

17 THE COURT: Well, I'm not sure I'm following you.
18 This federal action would be superseded by the indictment, the
19 criminal action?

20 MR. MCDANIEL: As I expect the state, the Attorney
21 General's Office would make a Younger type of argument that the
22 proceedings had already begun in state court, and we wanted to
23 avoid that situation.

24 As for the evidence of vindictive prosecution, the
25 "likely to proceed on the merits" standard or elements, we

1 believe in the -- I believe in the complaint -- in the motion
2 that has been filed, the evidence is, that we have, is limited
3 without discovery at this point.

4 But these are charges that are four years old, or
5 happened in May of 2006, almost four years ago, that there was
6 reference to them and they were known by the Attorney General's
7 Office at that time.

8 It was Attorney General Stumbo at that point who
9 initially mentioned those records that -- or those
10 communications, that subsequent attempts during 2006 to obtain
11 that by Mr. Odom's criminal counsel, that there was -- for some
12 reason it was indicated that they didn't have additional
13 communications.

14 They were found, or they were acknowledged in May of
15 2007, at which time the trial of other communications in
16 Spartanburg County had been scheduled for trial about that
17 time.

18 That trial was delayed until July of 2007 because
19 these Oconee communications were intended, or told to
20 Mr. Odom's counsel, they would be used as evidence of other bad
21 acts and to identify Mr. Odom.

22 And if I could just say, the Spartanburg charges for
23 which he has now gone to trial really two times have -- were --
24 took place for a period of March -- the beginning of March I
25 believe all the way to late April, early May 2006.

1 The second Oconee communications are alleged in --
2 for two dates, May 4th and May 6th, and are only two days'
3 worth of chats, where the Spartanburg chats were in the teens.
4 I can't remember the exact number, but 15 or 16 different
5 chats.

6 In 2007 there was a pre-hearing matter on a number of
7 motions, but one of which was the use of the Oconee
8 communications in the Spartanburg charges that had been
9 brought. And at that time -- and I presented that as Exhibit B
10 in my complaint.

11 Attorney General Stumbo indicated that they did not
12 intend to bring these charges on the Oconee communications,
13 that there hadn't been -- the normal paperwork hadn't been done
14 as far as the incident report and some other things, and they
15 did not intend to bring those.

16 In July of 2007 Mr. Odom was -- they selected a jury
17 for trial, and then an order was made in that case by the judge
18 to suppress certain evidence. That order was appealed by the
19 Attorney General's Office, the Supreme Court ruled in their
20 favor, and a rehearing was denied in March of 2009 or May of
21 2009.

22 The officer that conducted the investigation in the
23 Oconee communications was a Mr. --

24 THE COURT: Let me just stop you on those facts. You
25 said a rehearing was denied? I thought there was a mistrial.

1 MR. MCDANIEL: Well, there was a mistrial when they
2 brought the -- I'm talking about the rehearing by the court, or
3 reconsideration by the court. I'm sorry, maybe I misstated
4 that. The Supreme Court denied rehearing from --

5 THE COURT: Then it went to trial and there was a
6 mistrial?

7 MR. MCDANIEL: Correct. In February, this February
8 of 2010 they went to trial, a seven-day trial, it was a
9 mistrial, a hung jury.

10 THE COURT: All right.

11 MR. MCDANIEL: In August of 2009, it is my
12 understanding that Officer Patterson, who investigated the
13 Oconee communication, was arrested, something to do with a
14 marital dispute or marital disturbance, and he was fired from
15 his position with the -- at that time, the Aiken -- I believe
16 the Aiken -- fired from his position, I'm not sure exactly
17 where it was.

18 Mr. Odom's counsel attempted to get the information
19 and evidence surrounding why Mr. Patterson was fired, and
20 evidently issued subpoenas, had several communications over the
21 course with the Attorney General's Office, and he will testify
22 that those -- that seeking that information got somewhat
23 contentious.

24 THE COURT: Who is "he"?

25 MR. MCDANIEL: I'm sorry, Mr. Odom's criminal

1 counsel, criminal trial attorney, Mr. Huff.

2 And just before the trial was set to go forward in
3 February of 2010, Assistant Attorney General Ms. Wines, Megan
4 Wines, evidently had a communication with Mr. Huff, Odom's
5 attorney, and indicated to him at that time that they -- that
6 Mr. Patterson, the officer, was very frustrated by the attempts
7 to gather this information on him and that they were therefore
8 just going to indict Mr. Odom on these charges.

9 Prior to that, there had been no -- the indication
10 and the belief had been that these were only going to be used
11 as evidence of other -- possibly a 404(b), evidence of other
12 bad acts or to identify Mr. Odom.

13 THE COURT: I guess I -- initially I guess I'm
14 failing to understand why a change in prosecution strategy, how
15 that -- why that's relevant but --

16 MR. MCDANIEL: Well, Your Honor, we believe the
17 change, the only substantial facts that happened with -- by the
18 time they changed their strategy was based on the claimant's
19 proper request for evidence they had a right to get.

20 And under the standard, if the decision to penalize
21 them or to pursue them in some more vigorous way is based on
22 the defendant simply asking for evidence they have the right to
23 get under the Brady law, then that is vindictive prosecution.

24 THE COURT: So that is your evidence of vindictive
25 prosecution, the fact they decided to move forward with an

1 indictment regardless of what Patterson was doing, or what
2 Patterson was able to produce?

3 MR. MCDANIEL: That's partly it. That Officer
4 Patterson, that the only thing that had changed was that
5 Officer Patterson had been arrested and the defendant had been
6 requesting that information.

7 And the second part of it is, after the hung jury
8 where there had been only one indictment on the Spartanburg
9 communications, which are multiple communications, there are
10 now two indictments on the Oconee communications, which make up
11 only -- there are actually only two days' worth of chat
12 communications -- and that adding additional charges, when --
13 in that kind of situation is also evidence of an animus and a
14 prosecutorial vindictiveness against Mr. Odom.

15 This is being done where Mr. Odom hasn't been able to
16 practice law, has been suspended from the practice of law since
17 May of 2006 when he was arrested. It is going on four years,
18 and at this point the Attorney General's Office is intending to
19 indict two additional counts that they have known about since
20 May of 2006.

21 We believe they are doing it because of the hung jury
22 and -- essentially, and because of the frustration with the
23 criminal -- with Mr. Odom's counsel's attempts to get
24 information they had that they were entitled to get.

25 THE COURT: All right. Anything else?

1 MR. MCDANIEL: That is the essential part of it. The
2 rest I would rely on our motion and the complaint. We believe
3 there would be additional communications and additional facts
4 that might more directly prove the plaintiff's case, but we
5 would need discovery to get those --

6 THE COURT: Just tell me, what is your irreparable
7 harm?

8 MR. MCDANIEL: Irreparable harm is one of the
9 violations of his constitutional rights by the vindictive
10 prosecution. Also the threatening of his liberty, the cost
11 of --

12 THE COURT: The irreparable harm, specifically you
13 said that his license, he's not practicing law, that's not
14 something new, right?

15 MR. MCDANIEL: No, that's been going on since --

16 THE COURT: All right. So what is the irreparable
17 harm if this goes forward on Monday? What is the change on
18 Monday?

19 MR. MCDANIEL: Well, one would be, he would be
20 subject to -- if they intend to do this, he would be -- the
21 legal expense he would incur in fighting it. He would need to
22 pay that and begin that defense immediately. His reputation
23 would be injured. Even now they have made -- the Attorney
24 General's Office, whether they have done it directly or not, it
25 has been highly televised --

1 THE COURT: Well, he's been indicted before, correct?

2 MR. MCDANIEL: He has been indicted --

3 THE COURT: On the same charges, right? So, what
4 would be the difference?

5 MR. MCDANIEL: These are not the same charges.

6 THE COURT: But they are similar charges, right?

7 MR. MCDANIEL: Yes, it is under the same statute but
8 it's under different -- it's a different county, and it's two
9 additional charges that he has not had before.

10 THE COURT: All right. And what else?

11 MR. MCDANIEL: I believe that's all, Your Honor.

12 THE COURT: Let me hear from the state.

13 MS. SHUPE: Proceed?

14 THE COURT: Yes.

15 MS. SHUPE: Oh, okay. Like I said, I'm trying to
16 make sure I don't speak over you, Your Honor.

17 This is Deborah Shupe, I'm representing Mr. McMaster
18 in this. First of all, I just -- I guess I just want to put on
19 the record our concern that what is being sought is a TRO
20 against not only Mr. McMaster, but against all 16 solicitors,
21 and we don't know that anyone has been served with this.

22 We notice that this was filed on Wednesday, and we
23 did not know anything about it until Mr. McDaniel called me to
24 see about setting up this conference call.

25 THE COURT: Okay.

1 MS. SHUPE: So, we just want to put on the record our
2 concerns that the parties that he is seeking to enjoin are not
3 necessarily represented here. This office hasn't -- hasn't
4 been authorized to represent them in this matter.

5 That said, before we even get to the elements of the
6 TRO, we are -- we do assert that the court should abstain from
7 hearing this because of the Younger doctrine.

8 And as you know, since we haven't had much time I
9 apologize if my arguments appear to be disjointed, but the
10 Younger argument is there to prevent federal court intervention
11 in what should be a state court issue, and Mr. Odom clearly has
12 the right to move to quash any indictment.

13 And the issue of his constitutional rights, the issue
14 of any vindictive prosecution would certainly be -- he could
15 move to quash the indictment at that time, and we would be
16 heard by the state court and the state court can certainly
17 decide those issues. And so under the Younger doctrine, we
18 would ask the court to abstain from making a decision in this
19 case.

20 First of all, let me just say there has only been one
21 trial in this case. The first trial did not get past jury
22 selection, the jury was not even sworn. And it was -- and
23 Mr. Odom's motion to dismiss -- or motion to suppress evidence
24 that led to the appeal, we tried our best to expedite the
25 appeal, but it was not until March of 2009 that the appeal was

1 finally decided.

2 Immediately after -- and let me just say that we
3 appealed that not just because it affected this case -- it
4 essentially gutted our case against Mr. Odom because we
5 couldn't have the identifying evidence -- but it would have
6 dramatically impacted every other Internet crime case that we
7 had pending or might be pending. So, we felt that was one we
8 needed to take up, and it had nothing to do with an animus
9 toward Mr. Odom.

10 After that was successful, this office was prepared
11 immediately to go to trial. It was originally going to be
12 scheduled for August 2009, a mere five months after the opinion
13 came down, and that was only because Mr. Odom's counsel at that
14 time, Jack Swerling, his schedule would not allow it until
15 August. As we approached August, we learned that Mr. Swerling
16 was no longer involved and Mr. Huff was going to be taking over
17 as counsel.

18 Mr. Huff first told us he could do the August date,
19 then told us he couldn't. Then we tried to set it for October,
20 and they refused to stipulate to the document from Yahoo, the
21 authenticity of those documents, so it had to be put off until
22 we could get the Yahoo witness here.

23 And so that brings us to February. Now, it is true
24 that there were no charges brought on the Oconee chats. But at
25 no point, and even the transcript pages that Mr. McDaniel has

1 cited and attached to his motion, there is no point in there
2 where the Attorney General's Office, or any prosecutor, agreed
3 to completely give up our right and authority to decide to
4 indict him in Oconee.

5 And I don't mean to be flippant, but it just seems to
6 me that this is a case of no good deed going unpunished. We
7 were trying to move the case forward. Once the appeal was
8 pending we knew -- we weren't going to indict him then because
9 we were still relying on the same D order.

10 We were trying to present, you know -- we weren't
11 trying to pile on, I guess is what I'm saying. And we -- but
12 we never, ever represented to Mr. Odom or any of his attorneys
13 that we were never going to indict. In fact, the words "at
14 that time" are in what Mr. Stumbo said at the hearing.

15 It was a strategic decision, Your Honor. We were
16 going to use those as other bad acts, and intended to do that.
17 But, again, we still maintain the right at all times to indict
18 him, even if we used it as a prior bad act.

19 We then, in the week leading up to trial -- and he is
20 correct in what he says about it being contentious, as far as
21 what Mr. Patterson's attorney filed. But the problem was --
22 first of all, he tried to get those records without going
23 through the AG's office. We were not even aware that he was
24 trying to get them until Mr. Patterson and his lawyer informed
25 us they had been served with a subpoena and there were

1 attorney-client privilege issues.

2 And so when it became clear that we weren't going to
3 be able to resolve those issues, again, a strategic decision
4 was made to -- in fact, I think what was told to Mr. Odom's
5 attorney is, "We don't need to be worrying about that in this
6 case, we will just -- we will direct indict him in Oconee, this
7 is a collateral issue."

8 Your Honor, it became very clear this was going to be
9 an issue that was going to cause even more confusion for a
10 jury. So, we decided not to do that. Again -- but he was told
11 before this case was called for trial, he was told, "We intend
12 to direct indict him in Oconee."

13 And we went to trial -- and, Your Honor, that was
14 regardless of what happened in Spartanburg. I will go so far
15 as to say, even if he had been acquitted in Spartanburg, we
16 were going to indict him in Oconee.

17 We told him -- after the trial, we sent him a letter
18 in an effort to be civil and ethical and be up front, we sent
19 Mr. Huff a letter telling him, "This is when we are going to
20 indict him."

21 Now, the issue of multiple indictments, Your Honor,
22 is a direct result of some issues that came up during the
23 Spartanburg trial that we believe was because we had done one
24 indictment covering multiple chats.

25 And we felt that became a distraction and an issue

1 that confused the jury. So that is the direct reason that we
2 have filed -- we intend to do two indictments in Oconee. It
3 again has nothing to do with an animus against Mr. Odom, it is
4 simply a strategic decision on the best way for us to present
5 our case.

6 And I would also note that he, you know, he talks
7 about the irreparable harm. Well, the federal courts have
8 already ruled, if all you are looking at is the possibility of
9 having to defend yourself against criminal charges, that is no
10 different than any other citizen who faces that.

11 And Mr. Odom already has these criminal charges
12 pending. The Spartanburg charges are still there, it is our
13 intent to retry that case. So -- but we have already said and
14 tried to get this on the docket in Oconee in June.

15 They have had these chats since 2007. We will work
16 with them however we can to help them get whatever they need
17 regarding Mr. Patterson, but we can only do so much. This is
18 an attorney-client privilege issue that Mr. Patterson is
19 entitled to assert, and we are perfectly willing to let the
20 trial court decide that issue. It's really not us that is
21 complaining about it, it was Mr. Harrison and Mr. Patterson and
22 his attorney. But we could get this case tried in June of 2010
23 and -- so there is really no additional delay because the
24 Spartanburg case is still out there.

25 THE COURT: Okay.

1 MS. SHUPE: So I don't believe he has shown a
2 likelihood to succeed on the merits. I don't believe he can
3 show irreparable harm. I think the balance of equities do not
4 favor Mr. Odom, because none of the delays in this matter have
5 been caused by the state. And we have been forthcoming and
6 provided everything we could to satisfy their need for evidence
7 and the like.

8 But I will point out that the stuff he's trying to
9 get from Mr. Patterson's attorney is -- does not relate to a
10 conviction. Those charges were dismissed and are being
11 expunged, so it could not even be used for impeachment.

12 And so we were -- we were taking the position it was
13 irrelevant, but again we were perfectly willing to let the
14 court decide that. We are also perfectly willing to let -- we
15 anticipated a motion to quash the indictment, and we are
16 perfectly willing to argue that in the state court.

17 But the state court is qualified to make the ruling,
18 and we believe Mr. Odom is simply trying to do an end run
19 around the state court system and -- by filing this federal
20 action. And we do not believe the court should exercise
21 jurisdiction or issue any type of injunction.

22 THE COURT: Let me ask you this question, in Younger
23 the Supreme Court set forth a national policy that forbids
24 federal courts to stay or enjoin pending state court
25 proceedings, and a Younger abstention is appropriate when there

1 is an ongoing state judicial proceeding.

2 So, is this an ongoing state judicial proceeding?

3 MS. SHUPE: Yes, Your Honor. And I would call your
4 attention to the Hicks v. Miranda case. That case is a United
5 States Supreme Court case 422 U.S. 332.

6 And it says, "The requirements of Younger v. Harris
7 could not be avoided on the ground that no criminal prosecution
8 was pending against appellee on the date the federal complaint
9 was filed."

10 He knows these things, we intend to present them at
11 the grand jury next week. We have told him that -- we told him
12 that a month ago. He knows that there is an ongoing criminal
13 case involving Mr. Odom, and this is simply one more part of
14 that ongoing criminal case.

15 THE COURT: All right. And so -- and there is an
16 adequate opportunity for him to present the federal claims in
17 the state proceeding?

18 MS. SHUPE: Absolutely, yes, Your Honor. He can move
19 to quash the indictment on the ground of vindictive
20 prosecution, we are fully prepared to respond to that. He can
21 raise his due process claims in the state court. Yes, ma'am.
22 And the court is perfectly capable of ruling on them.

23 THE COURT: All right. Anything else from the
24 plaintiff's attorney?

25 MR. MCDANIEL: Yes, Your Honor, I would just like to

1 respond to two things. One is, the Younger argument is, you
2 know -- according to the Younger case, and perhaps when the
3 complaint was filed -- I don't know, I'm not familiar with the
4 Hicks case that was cited -- but in this case the action has
5 not begun.

6 In that case I don't know if they tried to relate it
7 back to when the complaint was filed, but in this case we are
8 having the hearing before the indictment. So there are not
9 ongoing -- there is not as if the state is in a judicial
10 proceeding, an ongoing state judicial proceeding. They may
11 plan to do something but that is not -- we do believe that the
12 federal court is the proper place: One, there is a
13 constitutional, federal constitutional issue.

14 Two, there is really no state jurisprudence on this
15 claim that I can find anywhere. This is almost entirely
16 litigated in federal court. I do not know the familiarity that
17 the state judges are going to have with the issue, nor -- in
18 this particular case, against the state's attorney general who
19 is probably running for governor, is going to be a particularly
20 unbiased forum to have this case heard. So, we do believe that
21 the federal court is the proper place.

22 And as to what's being characterized as strategic
23 decisions, certainly the Attorney General's Office can
24 characterize those things as strategic and they can come up
25 with an explanation for those, but we believe that the facts as

1 they occurred create a presumption, this presumption that can
2 be created under the case law -- under the -- under the Wilson
3 case, the presumption of vindictiveness, based on how the --
4 the evidence as a whole. In particular, as Ms. Shupe has
5 indicated, the contentiousness around the evidence from
6 Mr. Patterson is irrelevant of whether or not that is going to
7 be used or what it is for, that is really not the issue.

8 They haven't turned it over, which again isn't the
9 issue, but it only goes to the point of -- when that came up,
10 that -- the plaintiff seeking that or Mr. Odom seeking that was
11 the basis for them to decide to indict him. That is not a
12 strategic decision, it's based on frustration.

13 I understand now they are saying, "Well, that was
14 because we were afraid of jury bias," but they had known that
15 since August, it didn't become -- the decision wasn't
16 apparently made until it kept being pressed by Mr. Odom's
17 attorney.

18 And as to multiple counts being brought in March, I
19 would say the same thing. Surely they can say that they
20 believe that the jury -- at this point say the jury might have
21 been confused by the single count in the Spartanburg case, I
22 don't know objectively how that has any basis -- have any basis
23 to know -- to know that. But certainly that's almost an
24 undefendable, unattackable position.

25 But based on what actually happened, I believe that

1 the presumption is there that we should be able to move forward
2 with the case, with a presumption of vindictiveness, and then
3 allow discovery to flesh that out. And give Mr. Odom an
4 opportunity to discover the truth, the actual charge criteria
5 and how the decision was made.

6 Because it certainly, based on the facts that are
7 known, it doesn't appear that way. It appears as if this is a
8 response to what happened. That the closeness in time to the
9 hung jury and to the frustration with the attempts to get this
10 information indicate at least a circumstantial case supporting
11 a presumption of vindictiveness. And that's all, Your Honor.

12 THE COURT: All right.

13 MS. SHUPE: Your Honor, may I just respond to a
14 couple of points? I don't want to belabor this.

15 THE COURT: All right.

16 MS. SHUPE: First of all, we don't have the evidence
17 that he's looking for in our possession, and there are
18 attorney-client privileges. And we have said we will do
19 everything we can to assist, but we don't -- we can't waive the
20 privilege on behalf of Mr. Patterson.

21 As far as the Attorney General running for governor,
22 let me just note that I have found that to be a hindrance more
23 often than a help, when we are in court. So I don't think
24 that's an appropriate basis to make this motion.

25 And frankly, Your Honor, as prosecutors, we can make

1 a strategic decision on how to present our case based on our
 2 view of what is going to come across better to the jury, what
 3 is going to confuse them, and what's not. And that's what this
 4 was.

5 And you can look at the timing, but one thing they
 6 overlook is, we told them before the case was tried that we
 7 were going to do this. It didn't have anything to do with the
 8 Spartanburg trial. It just didn't. And that's pretty clear.

9 THE COURT: All right. I think that what I'm going
 10 to do is issue a text order within the next 30 minutes. I'm
 11 going to end the hearing at this point and make my decision and
 12 I will be issuing a text order.

13 MS. SHUPE: Okay. Thank you, Your Honor.

14 MR. MCDANIEL: Thank you, Your Honor.

15 THE COURT: Thank you.

16 (Thereupon, the proceedings were adjourned.)

17 * * * * *

18 CERTIFICATE OF REPORTER

19 I certify that the foregoing is a correct transcript
 20 from my stenographic notes in the above-entitled matter.

21

22 s/ Gary N. Smith

June 8, 2011

23

24 Gary N. Smith, CM
 25 Official Court Reporter
 United States District Court
 District of South Carolina

STATE V ANTHONY ODOM -- MOTIONS HEARING -- APRIL 12, 2011 24

1 HAD MENTIONED BEFORE THAT THE INVESTIGATING OFFICER IN
2 THIS CASE IS BY THE NAME OF MARK PATTERSON. JUDGE,
3 MR. PATTERSON WAS ARRESTED IN AIKEN COUNTY, SOUTH
4 CAROLINA, AND WE HAD REQUESTED A COPY OF THAT
5 INVESTIGATION FILE TO FURTHER OUR SEARCH FOR DISCOVERABLE
6 EVIDENCE, DETERMINE WHAT QUESTIONS WE MIGHT HAVE TO ASK
7 MR. PATTERSON DURING THE TRIAL.

8 WHAT I HAD PROVIDED, IN MY REQUEST TO HAVE A COPY OF
9 THE AGENCY'S FILE, ALTHOUGH MY REQUEST WAS MADE PRIOR
10 TO -- THE CASE ULTIMATELY WAS *NOLLE PROS'D* BY THAT LAW
11 ENFORCEMENT AGENCY WHICH IS THE BURNETTOWN POLICE
12 DEPARTMENT. MY REQUEST FOR THE INFORMATION WAS MADE
13 PRIOR TO THAT DISMISSAL.

14 HOWEVER, THE CASE WAS THEN DISMISSED. AND PRIOR TO
15 DESTRUCTION OF THE FILE I BECAME AWARE THAT IT HAD BEEN
16 DISMISSED, HAD A MOTION HEARING IN FRONT OF THE LOCAL
17 CHIEF MAGISTRATE AND ASKED THAT THE FILE BE PRESERVED SO
18 THAT WE COULD LOOK AT IT IN OUR EFFORTS IN DISCOVERY IN
19 THIS CASE.

20 WHAT I PROVIDE TO YOU IS A LETTER FROM THE CHIEF OF
21 POLICE TO OUR CHIEF MAGISTRATE, Rodger Edmonds, STATING
22 THAT THE FILE HAS BEEN SECURED AND HAS BEEN KEPT AND WHAT
23 IS IN IT AS FAR AS THE ITEMS.

24 JUDGE, WE ARE ASKING THAT THE COURT ORDER THAT
25 COPIES AS LISTED HERE ON THIS DOCUMENT BE PROVIDED TO THE

STATE V ANTHONY ODOM -- MOTIONS HEARING -- APRIL 12, 2011 25

1 STATE AND THE DEFENSE IN ORDER TO PREPARE FOR THIS CASE.

2 NOW, YOUR HONOR, DISCOVERY IS VERY MUCH LIKE FISHING
3 AT LAKE OCONEE. YOU PUT YOUR HOOK OVER THE WATER, OVER
4 THE SIDE OF THE BOAT, AND YOU SEE IF YOU CAN FIND A FISH.
5 WHEN YOU PULL IT UP, IT MAY BE TOO SMALL. IT MAY NOT BE
6 FOR YOU TO KEEP. THE ANALOGY IS THAT IT MIGHT BE
7 SOMETHING THAT IS NOT ADMISSIBLE AT TRIAL, THAT THE RULES
8 OF EVIDENCE WOULD EXCLUDE.

9 BUT IT, IT MIGHT BE ADMISSIBLE IN THE DEFENSE OF
10 MR. ODOM. IT ALSO MIGHT BE SOMETHING THAT, ALTHOUGH NOT
11 ADMISSIBLE, WOULD LEAD ME TO SOME OTHER ADMISSIBLE
12 EVIDENCE, AND THAT'S WHY OUR SUPREME COURT HAS SAID THAT
13 WHETHER OR NOT AN ITEM SOUGHT TO BE DISCOVERED IS
14 ADMISSIBLE AT COURT IS NOT THE STANDARD OR THE TEST; IT'S
15 WHETHER IT MIGHT EVEN LEAD TO SOME OTHER EVIDENCE THAT
16 MIGHT LEAD TO EVEN OTHER EVIDENCE THAT MIGHT BE
17 ADMISSIBLE AND BENEFICIAL TO THE PREPARATION OF THE CASE.

18 SO WE ARE ASKING, JUDGE, NOT KNOWING WHAT IS THERE,
19 WE CAN'T MAKE ANY CLAIM WHETHER OR NOT, ONE, THE EVIDENCE
20 IS SOMETHING THAT COULD BE ADMISSIBLE EITHER, OR USABLE
21 FOR IMPEACHMENT OR ADMISSIBLE IN OUR CASE-IN-CHIEF, OR
22 MIGHT LEAD TO SOME OTHER EVIDENCE.

23 I BELIEVE IT IS APPROPRIATE TO HAVE THE COURT ORDER
24 THIS INFORMATION BE DISCLOSED TO BOTH SIDES, WITH AN
25 ACCOMPANYING RESTRICTION THAT NEITHER SIDE CAN RELEASE

STATE V ANTHONY ODOM --- MOTIONS HEARING -- APRIL 12, 2011 26

1 THIS INFORMATION TO ANYONE ELSE, AND THAT AT THE
2 CONCLUSION OF THE TRIAL OF THIS CASE, BOTH MS. WINES AND
3 MYSELF EITHER RETURN THESE DOCUMENTS OR EVIDENCE TO THIS
4 COURT OR TO THE TOWN OF BURNETTOWN FOR THEIR SUBSEQUENT
5 DISPOSITION.

6 AND I CERTAINLY WOULD BE AMENABLE TO THE COURT
7 ISSUING THAT TYPE OF ORDER. THAT PREJUDICES NO ONE AND
8 ALLOWS OUR DISCOVERY EFFORTS TO CONTINUE. BUT I DON'T
9 THINK IT IS, I DON'T THINK I NEED TO ARGUE THAT THE
10 DISCOVERY MAY LEAD TO DISCOVERABLE OR UNDISCOVERABLE
11 EVIDENCE. THANK YOU.

12 THE COURT: WELL, IT DOES, REASONABLY CALCULATED TO
13 LEAD TO DISCOVERY OF ADMISSIBLE EVIDENCE.

14 MR. HUFF: AND, JUDGE, WE DON'T KNOW WHETHER IT WILL
15 OR NOT.

16 THE COURT: I THINK THAT'S WHY OUR COURTS SAID THAT
17 YOU DON'T GO ON FISHING EXPEDITIONS. I MEAN, OTHERWISE
18 WE COULD GET INTO THOSE AREAS THAT HAVE NO ANSWER BUT
19 THEY CERTAINLY ARE INTRIGUING. "INQUIRING MINDS WANT TO
20 KNOW." I THINK THEY SELL A LOT OF NEWSPAPERS WITH THAT
21 BEING SAID.

22 ALL RIGHT.

23 MS. WINES: THANK YOU, YOUR HONOR. FIRST AND
24 FOREMOST, I WOULD JUST REITERATE THESE MATERIALS ARE
25 SUPPOSED TO BE EXPUNGED AND DESTROYED. I HAVE A QUESTION

STATE V ANTHONY ODOM -- MOTIONS HEARING -- APRIL 12, 2011 27

1 that A HEARING WAS HELD TO HOLD THEM. BUT NEVERTHELESS
2 APPARENTLY THE RECORDS STILL EXIST. AND AT THIS POINT
3 THE STATE'S ARGUMENT IS THERE IS NO AUTHORITY FOR THE
4 DEFENSE TO HAVE THEM. THEY ARE NOT ENTITLED TO HAVE
5 THEM. BEYOND THAT, THERE IS NO NEED FOR THEM TO HAVE
6 THEM. I WOULD SUGGEST TO THE COURT IT IS A FISHING
7 EXPEDITION. THE LIST PROVIDES US, DOES NOT PROVIDE
8 ANYTHING THAT THE STATE BELIEVES WOULD LEAD TO ANYTHING
9 ADMISSIBLE IN COURT RELATIVE TO MR. ODOM.

10 ADDITIONALLY -- WELL, I'M JUST GONNA LEAVE IT AT THE
11 FACT THAT I JUST DON'T BELIEVE ANY OF IT IS RELEVANT, AND
12 THE DEFENSE IS SAYING THEY DON'T KNOW WHAT'S THERE, BUT
13 WE CLEARLY HAVE A LIST, AND IT JUST DOES NOT APPEAR TO ME
14 THAT IT WOULD LEAD TO ANYTHING DISCOVERABLE AS TO
15 MR. ODOM. BUT AGAIN, THE FOREMOST POSITION, IT'S
16 SUPPOSED TO BE EXPUNGED, THEY ARE NOT ENTITLED TO IT.

17 MR. HUFF: WELL, JUDGE, IN BRIEF RESPONSE?

18 THE COURT: PLEASE.

19 MR. HUFF: I'M A LITTLE CONCERNED AT THE TENOR OF
20 MS. WINES STATING THAT I QUESTION THE HEARING WAS HELD
21 WHEN I'VE JUST STATED AS AN OFFICER OF THE COURT THAT ONE
22 WAS.

23 THE COURT: SO NOTED.

24 MR. HUFF: THANK YOU, JUDGE.

25 THE COURT: All right.

1 MR. HUFF: AGAIN, WHAT THE STATE BELIEVES MAY LEAD
2 TO ADMISSIBLE EVIDENCE OR WHAT MAY BE IMPORTANT TO THE
3 DEFENSE IS NOT THE ISSUE. IT IS OUR OBLIGATION TO
4 INVESTIGATE THE CASE ON MR. ODOM'S BEHALF, TO SEE IF
5 THERE IS EVIDENCE THAT MAY BE BENEFICIAL TO EITHER THE
6 GUILT OF MR. ODOM OR HIS INNOCENCE OR TO SENTENCING.

7 THE STATE, IT APPEARS, WOULD LIKE TO STAND IN THE
8 WAY OF OUR EFFORTS TO DISCOVER ISSUES CONCERNING THE
9 STATE'S PRIMARY WITNESS. THAT IS PREJUDICIAL TO
10 MR. ODOM. I BELIEVE THE COURT HAS THE CLEAR AUTHORITY TO
11 PROTECT EVERYONE'S INTEREST HERE BY PUTTING A RESTRICTION
12 ON ANY DISSEMINATION OF THIS EVIDENCE ONCE THE COURT
13 ALLOWS BOTH MS. WINES AND I TO LOOK AT SOMETHING AND TO
14 LOOK AT THIS EVIDENCE.

15 IT MAY BE THAT WHAT IS THERE AND LOOKED AT IS
16 TOTALLY ADMISSIBLE ON CROSS-EXAMINATION OF MR. PATTERSON.
17 IT MAY BE THAT IT MAY NOT. BUT AS I'VE STATED, IT MAY
18 LEAD ME TO OTHER WITNESSES AND OTHER ITEMS THAT WE MIGHT
19 FIND TO BE BENEFICIAL TO MR. ODOM.

20 SO THE ISSUE IS THERE IS NO PREJUDICE TO EITHER
21 SIDE. IT SEEKS TO FULFILL THE GOAL OF JUSTICE IN THIS
22 CASE BY ALLOWING MR. ODOM TO PREPARE A CONSTITUTIONALLY
23 GUARANTEED FULL AND ADEQUATE DEFENSE, WITH PREJUDICE TO
24 NO ONE.

25 THE COURT: ALL RIGHT. MS. WINES, ANYTHING ELSE?

STATE V ANTHONY ODOM -- MOTIONS HEARING -- APRIL 12, 2011 29

1 MS. WINES: BRIEFLY, YOUR HONOR. JUST TO CLARIFY.
2 I DID NOT MEAN TO SUGGEST THAT MR. HUFF WAS MISLEADING
3 THE COURT --

4 THE COURT: I DIDN'T THINK YOU DID.

5 MS. WINES: -- AS TO WHETHER A HEARING WAS HELD. MY
6 QUESTION WOULD BE WHO WAS PRESENT, YOUR HONOR.

7 BEYOND THAT, IN RESPONSE DIRECTED TO THE ARGUMENTS,
8 THERE IS NO CRIME HERE BECAUSE IT'S EXPUNGED, AND
9 THEREFORE WE NEED A PRIOR BAD ACT BY CLEAR AND
10 CONVINCING. BEYOND THAT, AS A BARE MINIMUM, IT WOULD
11 NEED TO LEAD TO IMPEACHMENT EVIDENCE, MR. PATTERSON'S
12 ABILITY TO TELL THE TRUTH, TRUTHFULNESS AND VERACITY,
13 THAT NATURE, AND THIS CHARGE WAS FOR UNLAWFUL
14 COMMUNICATION.

15 I JUST DO NOT BELIEVE THE DEFENSE HAS EXPLAINED WHY
16 THIS PARTICULAR INCIDENT IS GONNA LEAD TO ANY INFORMATION
17 OF THAT NATURE, AND IN PARTICULAR IN REGARD TO DISCOVERY
18 ON MR. ODOM. I JUST REITERATE WHAT I'VE ALREADY SAID.
19 YOUR HONOR, DOESN'T NEED TO HEAR IT AGAIN. BUT
20 ULTIMATELY THAT IS THE STATE'S POSITION. AND EVEN IF
21 IT'S ORDERED, I ANTICIPATE THAT WE WOULD OPPOSE IT DOWN
22 THE LINE AS WELL, YOUR HONOR.

23 THE COURT: I'M LOOKING AT RULE 5(D)(1), REGULATION
24 OF DISCOVERY IN CRIMINAL MATTERS. AND THEY DEAL WITH
25 PROTECTIVE AND MODIFYING ORDERS. (READING):

1 UPON MOTION BY A PARTY THE COURT MAY PERMIT THE
2 PARTY TO MAKE SUCH SHOWING IN WHOLE OR IN PART IN THE
3 FORM OF A WRITTEN STATEMENT TO BE INSPECTED BY THE JUDGE
4 ALONE. IF THE COURT ENTERS AN ORDER GRANTING RELIEF
5 FOLLOWING SUCH AN *EX PARTE* SHOWING, THE ENTIRE TEXT OF
6 THE PARTIES' STATEMENT SHALL BE SEALED AND RESERVED AND
7 THE RECORDS OF THE COURT TO BE MADE AVAILABLE TO THE
8 APPELLATE COURT FOR REVIEW.

9 AND THE SHOWING, OF COURSE, IS THE DISCOVERY AND
10 INSPECTION, THEY DENIED RESTRICTED OR DEFERRED AND MAKE
11 SUCH OTHER ORDER APPROPRIATE.

12 AS I MENTIONED, PERHAPS THE BETTER THING, NOW SEEING
13 A LIST OF WHAT WE WERE DEALING WITH -- IT LOOKS LIKE IT'S
14 NOT THAT EXTENSIVE -- SIX PHOTOGRAPHS; IT LOOKS LIKE
15 ONE -- I DON'T KNOW WHAT THAT IS -- IS IT A C.D.?

16 MR. HUFF: YES, YOUR HONOR, A C.D.

17 THE COURT: CONTAINING VOICE MAILS LEFT, A
18 THREE-PAGE WRITTEN STATEMENT, A ONE-PAGE WRITTEN
19 STATEMENT, AND A LETTER FROM DR. DEWITT, THE CRIME VICTIM
20 INTAKE FORMS. IT DOESN'T SEEM LIKE IT'S THAT MUCH. BUT
21 THE COURT, I THINK, IN ORDER TO PROTECT THE RECORD WOULD
22 PERHAPS EXERCISE ITS AUTHORITY UNDER THE RULE 5(D) TO
23 LOOK AT IT AND SEE.

24 SO I'M GOING TO DO THIS, MR. HUFF. I'LL PREPARE A
25 PROPOSED ORDER DIRECTING THE AUTHORITIES THERE IN

STATE V ANTHONY ODOM -- MOTIONS HEARING -- APRIL 12, 2011 31

1 BURNETTOWN -- I NOTICE THAT THEIR POST OFFICE IS IN BATH,
2 SO -- TO FURNISH IT TO THE COURT. SO I'LL GIVE YOU A
3 TIME TO -- I'LL TREAT IT JUST LIKE ANY OTHER PROPOSED
4 ORDER, THAT OBVIOUSLY YOU SEND A COPY TO THE ATTORNEY
5 GENERAL AND THEN I WAIT FIVE DAYS BEFORE I DO ANYTHING
6 WITH ANY PROPOSED ORDER.

7 ALL RIGHT. NEXT?

8 MR. HUFF: JUDGE, WE HAVE A MOTION FOR, THAT I'LL
9 LET MR. JOHNSTON ADDRESS, AS TO THE FIRST AMENDMENT.

10 THE COURT: All right, MR. JOHNSTON.

11 MR. JOHNSTON: Your Honor, OUR PURPOSE IS MORE AS A
12 MATTER OF HOUSEKEEPING TODAY, I DO WANT TO INFORM THE
13 COURT THAT WE HAVE FILED A RULE 5, *BRADY*, AND *KYLES V.*
14 *WHITLEY* MOTION ASKING FOR THE ENUMERATED ITEMS IN RULE 5
15 TO BE PROVIDED TO US, THAT THE EXCULPATORY MATERIAL
16 REQUIRED BY *BRADY* BE PROVIDED TO US; AND FURTHER, THAT
17 ANY IMPEACHMENT MATERIALS, WHETHER THAT'S AS TO A STATE'S
18 WITNESS OR AS TO A POSITION THE STATE MIGHT TAKE IN
19 COURT, BE PROVIDED TO US UNDER THE U.S. SUPREME COURT
20 DECISION OF *KYLES V. WHITLEY*. I DON'T THINK THAT
21 PROBABLY THEY'VE RECEIVED EVERYTHING, AND WE JUST WANT
22 THAT ON THE RECORD THAT WE ARE REQUESTING THOSE
23 MATERIALS.

24 THE COURT: ALL RIGHT. IS THERE ANY PROBLEM WITH
25 THE REQUEST?

COUNTY OF OCONEE

COURT OF GENERAL SESSIONS

V.

ANTHONY C. ODOM

DEFENDANT.)

TRANSCRIPT OF RECORD

10-GS-37-363

10-GS-37-364

JUNE 1, 2011

EDGEFIELD, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ALEXANDER S. MACAULAY, JUDGE.

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

MEGAN B. WINES, ASSIST. ATTORNEY GENERAL
RANDAL KYLE SENN, ASSIST. ATTORNEY GENERAL
JASON S. ANDERS, ASSIST. ATTORNEY GENERAL
ATTORNEYS FOR THE STATE

JAMES B. HUFF, ESQUIRE
ANDREW J. JOHNSTON, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

STACY L. SHEPPARD
CIRCUIT COURT REPORTER

I N D E X

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2	<u>WITNESSES</u>
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5	(There were no witnesses.)
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E X H I B I T S

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	6	(There were no exhibits.)		
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1 (The following proceedings were held on June
2 1, 2011.)

3 **THE COURT:** This is the case of State of South
4 Carolina versus Anthony C. Odom, indictments number
5 2010-GS-37-363 and 2010-GS-37-364. The State is
6 represented by Ms. Wines and Mr. Anders and Mr. Senn
7 and the defendant is represented by Mr. Huff and
8 Mr. Johnson.

9 If you could help the Court, what are the
10 motions pending before -- at this hearing?

11 **MS. WINES:** Your Honor, as I understand it,
12 what I anticipated to address today would be the
13 equal protection issue which was raised and argued
14 last time and my understanding was Your Honor may
15 rule on that today. I did pass up a memorandum, the
16 State's response, and provided that to the defense
17 as well.

18 There's been talk of a First Amendment issue.
19 I don't know if that's still the defendant's
20 intention to raise it. However, we have prepared a
21 memo and are prepared to argue that as well.

22 I believe we probably need to address the jury
23 questionnaire. The State would like to address any
24 stipulations that we can go ahead and take care of,
25 specifically with regard to stipulating to

1 authenticity of records received from Yahoo and Bell
2 South and chain of custody, that type of issue, Your
3 Honor. And the matter of Officer Patterson's arrest
4 records is still at issue, Your Honor. And I
5 believe that's all that we would really need to
6 address today as far as the State is aware, Your
7 Honor.

8 **THE COURT:** All right. Mr. Huff.

9 **MR. HUFF:** Your Honor, we would have a few
10 things further to address today. One would be, as
11 the Court may be aware, Mr. Odom, at the time of
12 these alleged acts, was a practicing attorney in the
13 State of South Carolina. In the trial we had in
14 Spartanburg, that was not allowed to be mentioned
15 during the trial of the case.

16 **THE COURT:** So there's a motion in limine?

17 **MR. HUFF:** It is a motion in limine to preclude
18 the State from mentioning in any manner the
19 occupation of Mr. Odom at the time of these alleged
20 acts. It has no bearing whatsoever as to whether or
21 not a crime has occurred or not. We believe it
22 would be overly prejudicial. The occupation of a
23 victim, the occupation of an accused has no bearing
24 on whether or not a statutory finding has been
25 violated.

1 And we would ask -- I don't know if the State
2 intends to try to place that before the jury in its
3 case. I have not spoken with Ms. Wines regarding
4 this prior to being here today. We have discussed
5 it, I think, previously in Spartanburg, but I will
6 go ahead and place it on the record now and she may
7 be able to illuminate me on what her intent would be
8 at this time.

9 **THE COURT:** Do you want to do that now, Ms.
10 Wines? Is that going to be an issue?

11 **MS. WINES:** Yes, Your Honor, that will be an
12 issue. I would state first we did anticipate that
13 coming up and I'm in the process of preparing a
14 memorandum, so anything I would say today I would
15 ask that the Court give time to submit an additional
16 memorandum on that issue.

17 The brief response, Your Honor, is we believe
18 that the defendant's occupation, specifically his
19 former occupation as a prosecutor, but also just his
20 occupation as an attorney, is relevant and would
21 assist the trier of facts in determining a fact at
22 issue, primarily, number one, whether Mr. Odom
23 actually intended to talk to a minor and, secondly,
24 if he intended to persuade --

25 **THE COURT:** Well, do lawyers talk to minors or

1 what?

2 **MS. WINES:** Yes, Your Honor. The State's
3 position would be it shows a level of intelligence
4 so when looking at the facts presented to the jury,
5 the jury would use that information to make their
6 own determination of what Mr. Odom knew to be true
7 at the time, which is an element the State needs to
8 prove.

9 **THE COURT:** Well, I'll let you brief it, but it
10 -- and, of course, it's a motion in limine, which is
11 subject to revisiting at the time of trial based on
12 the record at the time.

13 Mine really is a 403 concern. If it has any
14 probative value, is it outweighed by the prejudice?

15 **MS. WINES:** Yes, Your Honor.

16 **THE COURT:** So I think that's probably going to
17 be my decision at this point. I'm not sure if I
18 find that being an attorney makes you either smarter
19 or dumber. I've been one for 40 years now and plus
20 and I don't think I have any particular expertise on
21 anything. In fact, the older I get it appears the
22 less certainty I have of what I know.

23 **MS. WINES:** Yes, sir. That's the argument in a
24 nutshell. And prior to presenting you with a
25 memorandum, if I could just add briefly that there's

1 a little more to it factually.

2 Mr. Odom, as I understand it, he actually
3 prosecuted sex crimes against children and was on a
4 panel discussing teen sex and the law. And,
5 additionally, it's going to become an issue with
6 regard to his statement, his oral statement, to
7 Investigator McKeller.

8 **THE COURT:** Well, again, now that -- there's
9 always -- and that's where we have a motion in
10 limine is based on if the door is opened.

11 **MS. WINES:** Yes, sir.

12 **THE COURT:** In other words, if somebody goes to
13 the point of suggesting that this person is
14 diminished capacity or without knowledge of this
15 particular area, then, of course, I think that
16 impeachment would be appropriate, but now just to
17 throw out the fact that one is that -- his
18 occupation, then I might say that you could go back,
19 I think, it's Henry VI and the observation made by
20 Jack Cade as to whether lawyers should survive or
21 not, there's two views.

22 Actually, the text is that, one is that the
23 lawyers were what protect the public. And Jack Cade
24 said that, no, you had to do that to get forward.
25 So even what we are or what lawyers are is subject

1 to debate. So I'm not -- at this point, I would
2 think we would almost have to find it would --
3 balance it with a 403.

4 MS. WINES: Yes, Your Honor. I understand
5 that --

6 THE COURT: But I will accept any, what is it,
7 memorandum to help me because at the time, if it is
8 necessary to renew the motion or to consider the
9 issue, anything would be of great help.

10 All right. So that'll take care of that as far
11 as the question of occupation.

12 MS. WINES: Yes, sir.

13 THE COURT: Next? Anything else from the
14 defense? The jury questionnaire, of course, is the
15 primary thing that the defense has.

16 MR. HUFF: Yes, sir. I think that's pretty
17 significant especially with the time that it's being
18 brought in before the Court if it's --

19 THE COURT: All right. Well, let's look at the
20 questionnaire or at least the issue of this
21 questionnaire. I understand it was used in
22 Spartanburg?

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

24 THE COURT: Is this the same questionnaire?

25 MR. HUFF: It is verbatim. The only thing that

1 was changed is the word Spartanburg has been changed
2 to Oconee.

3 If I could address it with the Court, Ms. Wines
4 and I in Spartanburg discussed issuing a
5 questionnaire. I think it's pretty much common
6 sense that strangers coming into a very unusual
7 environment like a courtroom setting they find
8 foreboding and they're less inclined to reveal
9 personal feelings or embarrassing thoughts in a
10 public domain. I think that's just basic psychology
11 101.

12 **THE COURT:** Well, again, but we're not in a
13 psychology classroom, we're in a courtroom. And the
14 one thing the Court has to be concerned about is
15 anything that will taint the forum, if you would.

16 In other words, you don't want -- and this is
17 one of the concerns we always have, the only time
18 I've ever used a questionnaire is, of course, in
19 capital cases, but you have to be careful about
20 staking out potential jurors thereby suggesting
21 something to them that gets their mind on a
22 particular thing. That's why we're very careful
23 about how we instruct jurors not to discuss
24 anything, talk about the weather, not even
25 personalities of the parties or their

1 representatives.

2 So, I mean, that's the thing that the Court's
3 more concerned about than anything else is that we
4 all come into a courtroom based on what we are, but
5 my experience has been and is that the citizens who
6 are summoned for jury duty usually rise above their
7 experiences in most instances. In other words, they
8 realize the importance of what they do. And
9 regardless of their verdict, which I don't always
10 agree that I would have reached the same verdict,
11 but I've always, except for one instance, have felt
12 that they were properly considered.

13 So I'm not sure if I can sanitize or in some
14 fashion create the perfect juror. I think that's
15 really what the jury's about.

16 Now, of course, there is something, they have
17 preconceived notions that they bring into it. I
18 think that might be something, but not to suggest
19 something to them. In other words, if you ask them
20 about how many organizations and things like that, I
21 really need -- I'm not that familiar, I trust that
22 the questionnaires that you have are the
23 questionnaires that are the type that we use in
24 capital cases -- would not necessarily be
25 beneficial.

1 Moreover, I'm not -- and you say that you used
2 it in Spartanburg. Was that by agreement of the
3 parties?

4 **MR. HUFF:** That's correct, Your Honor.

5 **THE COURT:** Well, that does make a bit of a
6 difference. You know, I once served in a body that
7 could do anything with unanimous consent, so I know
8 what agreement of the parties, you know, can do.
9 But, yes, sir.

10 **MR. HUFF:** I think the purpose of the
11 questionnaire is to supplement and to assure the
12 purpose of voir dire and that's all it is. It's a
13 voir dire that the jurors can --

14 **THE COURT:** Well, let me ask you something, and
15 again I don't want to belabor the thing, but one of
16 the things I'm going to be careful about, have you
17 heard anything about this case and publicity or
18 outside sources and all of that. And if I send them
19 a questionnaire, I'm going to have to question them
20 individually as to every question on there. And to
21 me, I think it's different from what someone brings
22 into a courtroom and what we, as officers of the
23 court, send out and say, I want you to think about
24 these things.

25 And, you know, and I understand it that

1 questionnaires are a fact of life in capital cases,
2 but it also is impressed that that's where so far
3 the limited use is. I'm a little bit reluctant of
4 that doing particularly since it's not by agreement.

5 **MR. HUFF:** Judge, if I could, the purpose is to
6 make sure that we're able to select -- the Court,
7 first off, is able to assure itself that the jurors
8 do not have any of those known or, as the U.S.
9 Supreme Court says, Unknown biases or prejudices.
10 Those cases are cited in the motion that --

11 **THE COURT:** I'll look at it, but right now I
12 wouldn't count on it. I mean, it's not that I've
13 got a bias against an unknown or known, it's just
14 that, one, is that my purpose is not to, what is it,
15 to provide a perfect, you know, panel of angels or
16 anymore than, what is it -- and I'm not sure I want
17 to be judged by a panel of angels.

18 **MR. HUFF:** I don't think there is a perfect
19 jury, Judge.

20 **THE COURT:** Well, that's what I'm saying. And
21 I have all -- with all due deference to the United
22 States Supreme Court, I'm sure that -- well, the
23 thing is I will look at it and see. I'm just not --
24 I'm not sure that the benefit outweighs the
25 interference.

1 **MR. HUFF:** And, Your Honor, if I could just
2 reply. I think the benefit is twofold. One is that
3 the Court allows the jurors -- the issues here, this
4 isn't a DUI case, it's not a fraudulent check case.
5 It's something that has to do with sex with the
6 Internet and with an allegation of children, that I
7 would submit is something that is a hot button type
8 of issue that I don't think there is a juror that
9 doesn't have some feelings about that, pro or con.

10 **THE COURT:** You think somebody's in favor of
11 it?

12 **MR. HUFF:** I think somebody is not in favor of
13 sex with minors, but this has to do with the
14 Internet and use of Internet with no physical
15 contact whatsoever between living human beings. I
16 think some jurors, as we found in Spartanburg, feel
17 that there is the right under the First Amendment to
18 talk about anything as long as you don't act upon
19 it. There were other jurors on the other extreme
20 that felt to even fantasize in your own mind --

21 **THE COURT:** Let me ask you, is that -- and I
22 know the First Amendment is going to be one of the
23 issues we deal with. Do you think that is a factual
24 issue or a legal issue?

25 **MR. HUFF:** Judge --

1 **THE COURT:** The reason I ask, because as we all
2 know, trials are constructed in a certain fashion
3 where attorneys through witnesses and exhibits in
4 the like develop facts. And the court, right or
5 wrong or better for worse, is the final authority on
6 the law.

7 **MR. HUFF:** That's correct.

8 **THE COURT:** So I'm not sure if I want to have
9 them deciding issues before they get into a
10 courtroom where the presentation is limited to those
11 things that are relevant.

12 **MR. HUFF:** And, Judge --

13 **THE COURT:** And not what they're saying in the
14 cafe, on the street corners or anywhere else or even
15 in the churches, if you'll forgive me.

16 **MR. HUFF:** Yes, sir. The questionnaire that we
17 have provided to the Court does not require them to
18 decide facts --

19 **THE COURT:** Sir, you don't understand. Maybe
20 I've missed something. I'm trying to suggest to
21 you, it's not when you ask a juror, Have you heard
22 anything about this case, that's not the issue. The
23 issue is, Have you decided anything about this case.

24 And what you're suggesting is we throw out all
25 sorts of things and then we decide whether or not

1 they would be qualified as a juror. But go ahead.

2 Again, I'm listening to you.

3 MR. HUFF: Judge, if I could --

4 THE COURT: Well, let me ask you. In other
5 words, you want it, you object to it?

6 MR. HUFF: Yes, sir. And we believe that it --
7 being able to answer the questionnaire in the
8 privacy of their own home allows a juror to more
9 properly --

10 THE COURT: How do they understand the
11 question?

12 MR. HUFF: I'm sorry, Judge?

13 THE COURT: In their own home, who's going to
14 explain the question to them?

15 MR. HUFF: Nobody. And when we get to court,
16 nobody's going to explain it to them.

17 THE COURT: I beg your pardon. My questions on
18 all of my voir dire has to do with do you
19 understand.

20 MR. HUFF: Judge, our understanding of the
21 proposal of the questionnaire was when a juror
22 writes their answer, we are not going to go behind
23 it, ask them to explain it, contradict it, add to
24 it. We have their written answer. And if they
25 don't give any answer at all, we accept that and we

1 will draw the jury based upon what we get in
2 response.

3 But it's -- the question such that, do you
4 think that -- do you believe that thinking about
5 sexual activity or having sexual fantasies should be
6 a crime, just thinking about sexual fantasies, it
7 doesn't say with males, females, adult, young,
8 anybody, and jurors in Spartanburg responded that,
9 yes, that should be a crime.

10 Now, I'm not saying --

11 **THE COURT:** Let me ask you something. Now,
12 again, I'm going to use the analogy of the capital
13 qualification of a jury. Is it disqualifying if
14 they say they don't believe that somebody should be
15 executed?

16 **MR. HUFF:** Judge, I don't know if I can answer
17 that. This isn't a death penalty case.

18 **THE COURT:** Well, I'm just asking. But that's
19 what you're saying, these people are going to be
20 bound by what they are faced with in their homes
21 rather than in a court of law. In other words,
22 obviously, if you're not concerned about it, no,
23 you're not automatically excluded if you don't
24 believe -- if you believe everybody should be
25 executed, but you are excluded if you don't believe

1 a person should be executed.

2 MR. HUFF: That's correct.

3 THE COURT: All right. So, I mean, but those
4 are things, as I say, are examined in a court of law
5 not when it's in somebody's kitchen or, as I said
6 earlier, in the post office or cafe.

7 Again, I've heard and I'll read and I'll
8 consider, but I'm just trying to give you something
9 to act on and that is that at this point since we
10 have an objection to it, I'm reluctant to impose
11 upon the citizens as to what they are going to be
12 exposed to not in the courtroom where they respond
13 to their subpoena, but in their own homes where they
14 -- as they should have some privacy.

15 MR. HUFF: Judge, if that becomes your final
16 ruling, it would be our intent that these questions
17 be asked by the Court in open court on voir dire or
18 upon arrival at the courthouse where we would still
19 ask that they be allowed time to write their answers
20 prior to selection, we would ask that. And if
21 not --

22 THE COURT: Well, of course, when I qualify the
23 jury panel in this particular case, they will be
24 asked their voir dire. As to what the extent and
25 what the questions will be, of course it will be

1 something I must reserve my discretion.

2 MR. HUFF: Judge, are you intending to make any
3 ruling on these specific questions? I mean, I
4 understand --

5 THE COURT: No. At this point, I'm making a
6 ruling that I don't find that it would be
7 appropriate in this particular type of case, not
8 this type of case, in other words, a noncapital
9 case. I don't find that they're compelling.

10 Now, I'll consider them as I will everything,
11 but right now I've waited to decide whether or not
12 you could convince me or the State -- well, the
13 State has convinced me they object, that didn't take
14 too much to know where they stand. And I'm still
15 trying to figure out, and I'll be open about that,
16 as to whether or not it is a compelling thing that
17 we go into people's homes and we ask them, you know,
18 whether or not they think something should be a
19 crime or not.

20 MR. HUFF: And, Judge, and I understand your
21 ruling, I'm not trying to argue beyond what you've
22 just stated. I would simply state the clerk is
23 sending a somewhat of an abbreviated questionnaire
24 to the jury panel in the privacy of their home that
25 they've got to respond where they work and things of

1 that sort, I believe, their agent. So they're
2 getting something from the clerk that they've got to
3 respond to. But as far as the State's position
4 they're opposed to it, they give no basis --

5 **THE COURT:** Well, you know, again, I don't want
6 to be facetious, but you're getting me to that point
7 because unfortunately, as I'm limited in amount of
8 intelligence and wisdom, but you're getting awfully
9 close suggesting that we're going to be Lamont
10 Princeton. Do you know who Lamont Princeton was?

11 **MR. HUFF:** Yes, I do.

12 **THE COURT:** That we are to determine what evil
13 lurks in the hearts of people.

14 Now, to ask a person where he works and how far
15 did they go in school is altogether different and if
16 you want me to be Lamont Princeton, forget it. I'm
17 sorry. I think the public has a certain privacy or
18 privilege. So, therefore, let's move on. I
19 understand your -- at this point, just for the
20 purposes of scheduling and planning, I do not intend
21 to send a questionnaire in this particular case.

22 **MR. HUFF:** Judge, the other issue that we would
23 raise before the Court today would be a motion to
24 quash the indictments against Mr. Odom returned by
25 the Oconee County Grand Jury in that Oconee has no

1 jurisdiction or venue in this case.

2 **THE COURT:** Well, let me ask you, first of all,
3 the jurisdiction of the grand jury is based on the
4 jurisdiction of the Court of General Sessions. And
5 the last time I looked, the charges in the
6 indictments were within the jurisdiction of the
7 Court of General Sessions.

8 **MR. HUFF:** It's certainly within the
9 jurisdiction of General Sessions Court, but not the
10 Oconee General Sessions Court. The State --

11 **THE COURT:** Also understand that this is a
12 47 -- I mean, if it was a State Grand Jury case, it
13 would be a 47 number rather than a 1 through 46.
14 Now, that doesn't mean that there is exclusive
15 jurisdiction, it just means that there's
16 jurisdiction that can apply.

17 **MR. HUFF:** Judge, as to venue, we challenge --

18 **THE COURT:** Well, wait a minute. So in
19 jurisdiction, that's your issue, I overrule you on
20 your jurisdiction question.

21 **MR. HUFF:** I understand your ruling.

22 As to venue, no crime under this statute has
23 occurred in Oconee County. It is our position that
24 if this statute has been violated, it would have
25 solely been in the county of Aiken where the State

1 alleges Mr. Odom acted by using his computer. There
2 is no testimony or evidence that Mr. Odom ever set
3 foot in Oconee County, that the testimony that we
4 understand the State would present would be solely
5 that Mr. Odom acted in Aiken County.

6 **THE COURT:** So this is a venue question rather
7 than jurisdiction?

8 **MR. HUFF:** This is a venue question, yes, sir.
9 Under the statute --

10 **THE COURT:** What do you say about that --

11 **MR. HUFF:** Judge, if I could, under the
12 statute, it does not let venue float to some other
13 county like the homicide statute, the unlawful use
14 of telephone statute, the Computer Crimes Act
15 Statute, the fraud statute, which allows it to be at
16 either end whether something is sent or received.
17 We don't have that in this statute. The Legislature
18 specifically did not include that like they did in
19 other statutes. So it is our position that venue in
20 this case could only be held in Aiken County.

21 **THE COURT:** Very good.

22 All right. Madame Attorney General.

23 **MS. WINES:** Yes, Your Honor. I did not
24 anticipate this. However, I would say back in my
25 office, I have a case that we usually refer to when

1 this issue comes up.

2 The State's position is, first, as Mr. Huff
3 points out, the statute does not specify where venue
4 is proper, so the State's position is we can elect
5 which county. In this instance, we do have
6 communications in Oconee and Aiken County and we
7 believe we could have elected either county similar
8 to what happens in cases where you have an unlawful
9 use of telephone or unlawful communication.

10 **THE COURT:** Well, he says that that's limited,
11 that's exclusive venue as far as use of telephone.
12 And the statute limits it to just cases of unlawful
13 use of telephone.

14 **MS. WINES:** That's not my understanding.

15 **THE COURT:** Oh, I'm just curious.

16 **MS. WINES:** And, again, I'm sorry I cannot
17 think of the name of the case, but there's something
18 we usually refer to that's specifically in reference
19 to unlawful communication, we use that analysis.

20 **THE COURT:** Again, y'all have to forgive me, I
21 don't know that much about this case as you can well
22 tell, but was there any contact with Oconee County?

23 **MS. WINES:** Was there any contact with Oconee
24 County?

25 **THE COURT:** Right.

1 **MS. WINES:** Yes, Your Honor. The State's
2 position is the contact with Oconee County is that
3 the recipient of the communications, or at least one
4 of the recipients, was the undercover investigator,
5 Mark Patterson, with the Westminster Police
6 Department who was sitting in Oconee County at the
7 Westminster Police Department while conducting the
8 undercover chats with Mr. Odom. And, therefore,
9 were he actually the child that we believe Mr. Odom
10 believed him to be, the child would have been harmed
11 in Oconee County by the receipt of communication.

12 **THE COURT:** Well, let me -- and, again, y'all
13 unfortunately caught me in an afternoon where I
14 don't want to wax too much, but it's almost like a
15 noise in a forest. Is there a noise in a forest if
16 there's no one to hear it?

17 **MS. WINES:** I'm sure I can't answer that,
18 but --

19 **THE COURT:** If you can't hear it, there's no
20 noise.

21 **MS. WINES:** Right. I understand what you're
22 saying.

23 **THE COURT:** So, in other words, apparently for
24 a noise to exist, there has to be someone to receive
25 it, to hear it.

1 All right. I'll look -- again, this is also
2 somewhat of a surprise to me. I would have been
3 prepared on the jurisdiction because I don't think
4 there's any question that the Court of General
5 Sessions regardless of where it is, if it has
6 jurisdiction over the offense, it has jurisdiction
7 over the trial.

8 MR. HUFF: Judge, if I could provide up, I just
9 was trying to look through my box and I did find
10 unlawful use of telephone and would cite to you
11 16 -- that statute for the crime is 16-17-430,
12 unlawful communication.

13 The very next statute 440 cites, Venue for
14 prosecution, being that it would be in either county
15 where the telephonic communications originated or
16 the county where it was received. That is just one
17 statute where the Legislature has specifically acted
18 to give the prosecution the authority to go into
19 either county.

20 They did not do this in the criminal
21 solicitation of a minor statute. Similar to a
22 criminal statute must be strictly construed in cases
23 where in the old lottery days just selling drugs
24 within a half mile of school, I remember one fellow
25 being prosecuted because he sold within a half mile

1 of a day care. The Supreme Court said, We didn't
2 include day care as a definition of a school. If
3 it's not in the statute, you can't do it.

4 In this case, the Legislature did not give the
5 prosecution the authority to, as Ms. Wines says,
6 elect on where we want to bring the prosecution.
7 The State has never had that authority. A crime is
8 always prosecuted in the venue where it has happened
9 and unless the Legislature has specifically stated
10 that the prosecution may elect, they cannot.

11 **THE COURT:** Well, do you think when they
12 adopted the statute that the State is proceeding
13 under, they were aware that there were other
14 statutes out there? That particularly, apparently,
15 this was a 1961 act, and perhaps I might be the
16 oldest one in this courtroom, but in 1961, I don't
17 remember the Internet and so I can't say that the
18 Legislature in 1961 when they put in this provision
19 for landline communication that they anticipated we
20 were going to have Internet.

21 So again, I'll listen -- I mean, I'll consider
22 whatever you have, but I don't think that the old
23 adage about, what is it, *expressio exclusio alterius*
24 means that just because one statute has a provision,
25 it doesn't mean every law that's ever passed

1 thereafter is abound by that statute. I think it
2 would be different if they went and had said they
3 don't want to have this unlike, you know, the
4 telephone prosecutions, but anyway.

5 **MR. HUFF:** Judge, and that saying came out of
6 the -- it was recited recently by the South Carolina
7 Supreme Court with the case of minors in possession
8 of alcohol and, prior to that, dealing with
9 possession of a weapon by a minor. And it basically
10 does state that if the Legislature has not included
11 it, they have intentionally excluded it.

12 When this statute was passed a couple of years
13 ago, the Internet certainly had been in existence
14 for many years and if the Legislature had intended
15 to allow --

16 **THE COURT:** How old is Bill Geddings?

17 **MR. HUFF:** Probably in his 60s I would say,
18 Judge.

19 **THE COURT:** All right. In '61, then that means
20 he was in his 20s, so I'm not sure -- again, you're
21 making good arguments and they'll be noted for the
22 record. Thank you. But, again, I don't find that
23 section 16-17-440 excludes prosecutions under the
24 statute here.

25 **MR. HUFF:** Judge, if I could cite for the

1 record and for your consideration, the Computer
2 Crimes Act in Title 16 does have a specific venue
3 provision in 16-16-30. And it says, For the
4 purposes of venue under this chapter, a violation of
5 this chapter is considered to have been committed in
6 the county in which the violation took place;
7 however, upon proper motion and the proper showing
8 before the judge, venue may be transferred if
9 justice would be better served by transferring it to
10 one of the other counties.

11 It has a specific venue statute. This is not a
12 Computer Crimes Act violation. It's its own
13 standalone statute. So this -- I cite this for the
14 Court's edification that when the Legislature
15 adopted the CSM statute I believe in 2002, it was
16 aware of the Internet, it was aware of Computer
17 Crime Acts crimes --

18 **THE COURT:** Well, I was referring to the one
19 that you were relying on at first.

20 **MR. HUFF:** Yes, sir. Yes, sir. And I was
21 trying to bring it more up-to-date showing you that
22 there are several statutes --

23 **THE COURT:** In other words, that's almost the
24 general, what is it, venue statute that applies to
25 all causes of action, civil and criminal, that the

1 ends of justice are to be served.

2 MR. HUFF: This occurs -- this venue statute
3 only applies to computer crime.

4 THE COURT: Well, again, but the same -- there
5 are venue statutes in every area of law. I'm sorry.
6 That's why we have venue statutes.

7 MR. HUFF: And, Judge, our statement and motion
8 is that there is not proper venue in Oconee as no
9 act under the statute has occurred outside of Aiken
10 County. My purpose in citing these other venue
11 statutes was --

12 THE COURT: So there was no contact with Oconee
13 County?

14 MR. HUFF: No, sir.

15 THE COURT: In other words, how did they get
16 your client's name?

17 MR. HUFF: Judge, I believe the way the
18 Internet works is somebody can type on a computer,
19 they send it to a --

20 THE COURT: I mean, so there was contact, but
21 it was computer contact.

22 MR. HUFF: That's correct.

23 THE COURT: I mean, in other words, if they --
24 it's not like a -- across the clouds or whatever.
25 There was some direct tangible lines of connection.

1 **MR. HUFF:** You type something --

2 **THE COURT:** I didn't ask -- just answer the
3 question, then you can explain it. Was there a
4 tangible connection?

5 **MR. HUFF:** I believe it goes through a wire.
6 There's no face-to-face tangible connection in this
7 case.

8 **THE COURT:** Tangible just means thing, actual
9 thing, not, what is it, specious.

10 **MR. HUFF:** It would be similar to a telephone
11 call I guess I would say, Judge, okay. That the
12 call goes through --

13 **THE COURT:** Got one end and the other end and
14 then there's a connection. In fact, if there's a
15 disconnect, then there is no connection. Very good.
16 But apparently there was a connection in this case.

17 **MR. HUFF:** And --

18 **THE COURT:** Well, the record speaks for itself.

19 **MR. HUFF:** It does, Judge, and that's why I say
20 even on the telephone statute, that's why they gave
21 specific venue statute. So that is our motion as to
22 venue, Your Honor.

23 **THE COURT:** All right. What's next? And I
24 deny the change of venue.

25 **MR. HUFF:** I'm sorry, Your Honor?

1 **THE COURT:** I say I deny your change of venue.

2 I find jurisdiction, deny your change of venue.

3 **MR. HUFF:** Judge, we have nothing else.

4 **THE COURT:** Anything else from the State?

5 **MS. WINES:** Just what I mentioned to Your Honor
6 at the beginning of the proceedings. If we want to
7 take it at your direction or I can throw something
8 out, whatever you prefer.

9 **THE COURT:** No, I'm asking you.

10 **MS. WINES:** Okay. Well, we would be
11 particularly interested in addressing if we could
12 get some stipulations on the record today, Your
13 Honor. We have some witnesses that we're going to
14 need to bring in from California and Georgia related
15 to authenticity of records received from Yahoo and
16 Bell South. In the Spartanburg trial, the defendant
17 did stipulate to authenticity of those records.
18 We're asking if he's able to do so --

19 **THE COURT:** Well, I would suggest, I hope it
20 won't be that way, but perhaps with your objection
21 to the questionnaire, they might want to do
22 something about --

23 **MS. WINES:** Yes, sir. And we're prepared to
24 bring them in, but we would like to know now if we
25 could before we start purchasing plane tickets.

1 **THE COURT:** All right. Well, that's a fair
2 enough question.

3 Have you had an opportunity to consider whether
4 or not you will stipulate as to the chain of custody
5 and authenticity?

6 **MR. HUFF:** Your Honor, we would not be able to
7 do that. I think the State would have to prove its
8 case.

9 **THE COURT:** Very good. It's noted.

10 **MS. WINES:** And, Your Honor, that was
11 specifically with regard to Yahoo and Bell South.
12 We would also ask if there's going to be any
13 stipulation as to chain of custody of the computer
14 equipment.

15 **THE COURT:** Mr. Huff.

16 **MR. HUFF:** I'm sorry, Judge. I was speaking
17 with co-counsel.

18 **MS. WINES:** The chain of custody for the
19 computer equipment.

20 **MR. HUFF:** Judge, we would allow the State to
21 present its evidence it feels is necessary to prove
22 its case.

23 **THE COURT:** Very well.

24 **MS. WINES:** And we would also ask if we're
25 going to need to have a Jackson-Denno hearing on the

1 voluntariness of the defendant's statement.

2 **THE COURT:** Is there a statement?

3 **MS. WINES:** There is an oral statement to
4 Special Agent McKeller, Your Honor.

5 **MR. HUFF:** Judge, I don't believe in this case
6 regarding the investigation by Mr. Patterson, any
7 statement has been made to Mr. Patterson at all, so
8 we would have to think about that.

9 **MS. WINES:** Based on that, we'll prepare to
10 have him there.

11 **THE COURT:** Well, that's fine because that's
12 exactly what you're going to do.

13 By the way, also remember all of these rulings
14 at this stage are subject to not only renewal, but
15 also revisiting.

16 **MS. WINES:** Yes, sir. And I believe that was
17 all that we wanted to inquire on in terms of
18 stipulations, Your Honor.

19 And as I'm looking at my notes, what that
20 leaves is the constitutional issues, certainly the
21 equal protection to get a ruling on that whenever
22 you're prepared. If we have any First Amendment
23 issues, I don't believe they've been raised, so
24 perhaps we don't. And I believe that leaves Mark
25 Patterson's records, Your Honor.

1 **THE COURT:** All right. I have been provided
2 with a memorandum in support of the State's
3 opposition, it's the equal protection and the First
4 Amendment. But do I have anything from the
5 defendant? I was a little surprised because I
6 looked at it and, you know, thought that maybe I had
7 missed something, not that I haven't --

8 **MR. HUFF:** Judge, I do. I do, I believe, need
9 to make one change to it. I may not have it
10 available for you today, but I could have it
11 available by ten o'clock in the morning.

12 **THE COURT:** No, that's all right, let's not
13 hurt yourself because this was as I saw noted, it's
14 dated today. When is this case scheduled?

15 **MS. WINES:** June 27th, Your Honor, so we have
16 some time.

17 **THE COURT:** So we're talking about three weeks.

18 **MS. WINES:** Yes, sir.

19 **THE COURT:** As I say, all of the Court's
20 rulings at this point are subject to review and
21 revisiting. I would like -- has there been any
22 discussion about First Amendment or equal protection
23 before?

24 **MS. WINES:** The equal protection, Your Honor,
25 we did have some oral argument presented at the last

1 hearing on, what, April 12th. The First Amendment,
2 defense counsel had provided us something and I
3 believe it may have been mentioned on the record,
4 but there has not been any argument presented.

5 **THE COURT:** Well, what I'm thinking of, how
6 about seeing if you can't -- you said tomorrow
7 morning, I'm not going to impose upon you.

8 All right, next week I'll be at home in Oconee.
9 Would it be possible to get to me those things that
10 you need on equal protection, First Amendment and
11 I'll need to -- if you have anything else to
12 consider on the jury questionnaire, by, I hate to
13 ruin your weekend, but if you could have it to me on
14 Monday, by Monday 5:00? And it doesn't have to be
15 that complete. I do better with authority than I do
16 argument as you can tell, I'm sorry.

17 All right. What's next? And -- well, the
18 stipulations are pretty, I think, clear unless y'all
19 can't agree to something.

20 **MS. WINES:** Your Honor, I believe that just
21 leaves the matter of Mark Patterson's records, the
22 arrest records, what we're going to do about that.

23 **THE COURT:** All right. Is that the arrest
24 records from somewhere in Nevada?

25 **MR. HUFF:** That's correct, Your Honor, from

1 Nevada.

2 THE COURT: All right, a beautiful place. And
3 you want them maintained, preserved and produced.

4 MR. HUFF: That's correct, Judge.

5 THE COURT: And the State, Madame Attorney
6 General?

7 MS. WINES: Your Honor, we, at the last
8 hearing, the State had an understanding of the
9 situation, but it had not been produced with any
10 sort of documents supporting what I thought to be
11 true about Mark Patterson's expungement. So once we
12 got back to the office, we looked into the matter
13 and I did submit a letter, of course cc'ing defense
14 counsel, with our further findings and supporting
15 documents. And the State's position is the records
16 of Mark Patterson's arrest should not exist. They
17 should have been destroyed over a year ago.

18 THE COURT: Well, the thing is they are still
19 apparently extant -- I mean, they are in existence.
20 So what's the objection?

21 MS. WINES: Well, the objection is we don't
22 even believe they relate to this case, but beyond
23 that --

24 THE COURT: That's called relevance.

25 MS. WINES: The first objections is -- yes,

1 sir. The first objection would be no one should
2 have them.

3 **THE COURT:** All right. Well, let me ask you
4 this. How would the records be relevant?

5 **MR. HUFF:** Judge, it's almost an impossibility
6 to answer, but I'll try. The chief investigating
7 officer of the State's case was arrested in
8 Burnettown accused of a crime. I know on written
9 paper what is held in that file. What the content
10 is, I don't know.

11 It's how can I tell you whether it's important
12 to Mr. Odom if I haven't been able to look. And I'm
13 trying to be as forthwith with the Court as I can.
14 As a defense attorney preparing a defense for
15 Mr. Odom, I've got to investigate and look at a lot
16 of things. And in many cases, I look at witnesses,
17 I look at facts, I look at documents and say that's
18 not important, that won't help the accused, that
19 won't help at sentencing.

20 **THE COURT:** Well, let me ask you something.
21 Very simply, if -- when you have your witness --
22 when the State provides you with your witness list,
23 you're entitled to certain records on the witnesses,
24 in other words, their convictions, but not every bad
25 act.

1 **MR. HUFF:** That's true.

2 **THE COURT:** Is that not what you're seeking
3 here? I mean, if there were convictions and
4 particularly convictions that would lend themselves
5 to impeachment under the rules, I could understand
6 it. I just, you know, if you had it, what would be
7 the relevance of it?

8 **MR. HUFF:** Judge, one issue that would be
9 relevant would be impeachment of the State's
10 witness.

11 **THE COURT:** On what grounds?

12 **MR. HUFF:** Well, I don't know what he said in
13 this case.

14 **THE COURT:** Let's say you think of the worst
15 thing an individual could say.

16 **MR. HUFF:** Let's say that --

17 **THE COURT:** Oh, you're talking about in the
18 case at hand.

19 **MR. HUFF:** In the case at hand where
20 Mr. Patterson was arrested.

21 **THE COURT:** Oh, you're talking about the case
22 in Nevada.

23 **MR. HUFF:** Yes, sir.

24 **THE COURT:** Not the one at hand in Oconee.

25 **MR. HUFF:** Yes, Your Honor.

1 **THE COURT:** Because obviously if this -- if the
2 allegations are correct, then, of course, the
3 defendant would know what Mr. Patterson said.

4 **MR. HUFF:** If Mr. Patterson --

5 **THE COURT:** Or transmitted.

6 **MR. HUFF:** If Mr. Patterson lied to the
7 investigating officer, I think that might be
8 relevant to his credibility or believability when he
9 takes the stand in this case. I don't know if he
10 did or he didn't. What his story was very well may
11 be in these documents. I just don't know --

12 **THE COURT:** Well, again, if it was in the
13 documents that he was a -- he actually did
14 misrepresent something, how would you use it in
15 court?

16 **MR. HUFF:** Judge, it's like trying to look in
17 the future and I don't know if I can give the
18 Court --

19 **THE COURT:** Well, no, we have rules of
20 evidence.

21 **MR. HUFF:** We certainly have rules of evidence.

22 **THE COURT:** And rules of evidence they limit
23 what you can do. You know, just as I said that, you
24 know, I'm concerned about other things that would
25 have more -- even if they are relevant, they are

1 material, I still worry about being prejudicial.
2 Now -- but I'm just curious, what would be the worst
3 case scenario that you think that would be in these
4 documents that you seek to...

5 MR. HUFF: Judge, I'm just having to speculate.
6 I just don't know.

7 THE COURT: Well, I'm sorry. I was just
8 thinking can you give me a rule of evidence that
9 would say that this is, you know, admissible?

10 MR. HUFF: Judge, without -- in candor, without
11 seeing --

12 THE COURT: You know the rules of evidence.
13 What rule of evidence would you use to use whatever
14 is in those records to impeach?

15 MR. HUFF: If it would go to the credibility of
16 the witness as to what was done or said by him as a
17 bad act as to whether --

18 THE COURT: Then, in other words, he has a
19 history of bad acts?

20 MR. HUFF: Judge, I don't know.

21 THE COURT: I mean, is it something that goes
22 to motive or -- I mean, I'm just curious. Otherwise
23 -- let me ask you, is all of this material
24 available?

25 MS. WINES: I've never seen it, Your Honor,

1 because it's been expunged.

2 MR. HUFF: Judge, my understanding is it is
3 available.

4 THE COURT: All right. What I'm going to do is
5 ask the State to prepare an order to have the
6 materials submitted to me in my capacity as
7 presiding judge for an in camera examination.

8 And I'll be honest with you, if there's nothing
9 in there, I'm not, you know, I'm a little bit not
10 impressed with the idea that the law has not been
11 followed, you know, by expunging the --

12 MS. WINES: I would just have one question with
13 regard to that order, Your Honor. I'm not sure who
14 actually is in possession. The last I heard, the
15 chief of police had them, but through the grapevine,
16 I've heard the chief magistrate has asked that the
17 documents be sent to him.

18 THE COURT: If you want them, who has them?

19 MR. HUFF: Judge, my understanding, according
20 to Ms. Wines, is our chief magistrate, who was the
21 magistrate that signed the order of expungement,
22 withheld that because of my motion. According to
23 her, he has them, which is Judge Edmonds.

24 THE COURT: When you say, Judge Edmonds --

25 MS. WINES: My letter said the chief had

1 possession of them. I've heard through the
2 grapevine that the judge has ordered them to come
3 back to the magistrate.

4 THE COURT: Well, let's do this. You do an
5 order instructing the chief and the magistrate --

6 MS. WINES: Okay.

7 THE COURT: -- whoever has possession of those
8 items that Mr. Huff's motion has been aimed at or
9 directed to is to produce them.

10 MS. WINES: Yes, sir.

11 THE COURT: Under seal.

12 But do be prepared that, what is it, if you
13 want to use them, to give the Court the benefit of
14 what you intended. You know, that's why we have
15 rules of evidence is to limit the wonderful
16 opportunity to say what we'd like regardless of its
17 effect.

18 MS. WINES: And how quickly would you like
19 those prepared, Your Honor?

20 THE COURT: As soon as possible.

21 MS. WINES: Okay.

22 THE COURT: I mean, it should be a fairly
23 simple order. In fact, you might even let them know
24 it's coming if they want to find out where it is.

25 MS. WINES: Yes, sir.

1 **THE COURT:** Anything else?

2 **MS. WINES:** The only other matter I would
3 raise, Your Honor, is just to remind the Court that
4 there were numerous motions raised in the
5 Spartanburg trial. And while we all recognize this
6 is not the same trial, we would ask that maybe we
7 have an actual scheduling order or another day if
8 the defense believes that they're going to have any
9 other motions that are of a pretrial nature, that we
10 do them before the jury is sworn. And I could
11 provide the Court with some examples that were
12 raised last time that have not been raised as yet.

13 Additionally, I've been --

14 **THE COURT:** Well, what are you anticipating?

15 **MS. WINES:** For example, Your Honor, we had a
16 Franks v. Delaware motion, a Russell motion, the
17 First Amendment motion, which I believe we're
18 covering. I'm also anticipating some sort of motion
19 to dismiss for prosecutorial vindictiveness. So if
20 we're going to raise that, maybe we need to raise
21 it.

22 **THE COURT:** Prosecutorial vindictiveness.

23 **MS. WINES:** Yes, sir. Of course, I'm happy if
24 it's not raised, but in light of some other things
25 that have occurred in the past and presently, we are

1 anticipating that.

2 And we also had a log rolling issue. There
3 were at least three or four issues that were raised
4 last time. You know, we're not saying they need to
5 be raised. We just want to put it out there.

6 **THE COURT:** Well, if you'll forgive me, Madame
7 Attorney General, I'm somewhat reluctant to take on
8 more than before me. If you'll forgive me the
9 agrarian analogy, I'm like a mule. I can only focus
10 on what's in front of me and if I tried to
11 anticipate everything that's out there, I'm afraid
12 I'd kind of bulk up and not be able to make any
13 progress, but I will take as they come up.

14 Now, of course, I would suggest to all of those
15 involved, now it's best to let the Court or anybody
16 else that you want to make a determination a little
17 advanced notice rather than blind siding them.
18 There's so many of the things, as I say, still will
19 be addressed at trial as the record is developed.

20 **MS. WINES:** Yes, sir. That's all we have at
21 this time.

22 **THE COURT:** All right. Anything else from the
23 defendant?

24 **MR. HUFF:** Not from the defense, Your Honor.

25 **THE COURT:** All right. Does Monday still look

1 all right for you for the First Amendment and the
2 equal protection and anything else that you might
3 have?

4 MR. HUFF: I'll have it ready for you.

5 THE COURT: All right. And you can e-mail it.
6 Forgive me, I don't require snail mail.

7 Let's see, as far as scheduling, you know, it's
8 a long way to Oconee. And if you don't have to make
9 it, you know, it would probably be better. Of
10 course, you can't have a record, I was going to
11 suggest a conference call or something like that,
12 but there would be no way to do a record.

13 Let's see what we have and either schedule
14 another hearing, in other words, a pretrial hearing,
15 or just rule and then that will give us a record.

16 MS. WINES: Yes, Your Honor.

17 THE COURT: All right.

18 MR. HUFF: Judge, I don't need it necessarily
19 on the record, but just looking, since it appears
20 the case will be tried on June 27th, that falls into
21 the weekend of July 4th being that following Monday.
22 Just for my edification --

23 THE COURT: How long was the case in
24 Spartanburg?

25 MR. HUFF: A week and a half. And my

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

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

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

15 THE COURT: VERY GOOD.

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

20 THE COURT: ALL RIGHT. ANY OBJECTION?

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

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

23 ///

24 ///

25 ///

1 WHEREUPON,

2 JAMES HUFF,

3 after first having been duly sworn, testified as follows:

4 Direct Examination by MR. MCDANIEL:

5 Q. MR. HUFF, WOULD YOU PLEASE STATE FOR THE COURT THE
6 NATURE OF YOUR REPRESENTATION OF MR. ODOM, WHEN THAT
7 BEGAN IN THE INDICTMENTS IN WHICH YOU REPRESENTED HIM?

8 A. I BELIEVE I WAS RETAINED BY MR. ODOM -- I'D HAVE
9 TO LOOK BACK AT MY FILE -- I BELIEVE IN 2009, I BELIEVE.

10 Q. OKAY. AND WERE YOU ALSO REPRESENTING HIM WITH
11 REGARD TO A CRIMINAL MATTER ON SIMILAR CHARGES IN
12 SPARTANBURG COUNTY?

13 A. YES, SIR, I WAS.

14 Q. AND THOSE WERE ALSO WITH THE ATTORNEY GENERAL'S
15 OFFICE?

16 A. YES, SIR, WITH MS. WINES REPRESENTING THE ATTORNEY
17 GENERAL'S OFFICE.

18 Q. OKAY. LET ME -- IF I MAY APPROACH THE WITNESS AND
19 HAVE HIM IDENTIFY A DOCUMENT.

20 CAN YOU IDENTIFY WHAT THAT DOCUMENT IS?

21 A. YES, SIR. THIS IS A COPY OF MY OFFICE CELL PHONE
22 BILL REFLECTING CALLS THAT WERE MADE DURING THE MONTH OF
23 MARCH, 2010.

24 Q. DOES IT BEGIN IN FEBRUARY?

25 A. IT MAY. I ONLY HAVE PAGES 10 AND 11 BEFORE ME.

1 Q. OKAY. AND CAN YOU IDENTIFY THERE AT THE BOTTOM OF
2 THAT FIRST PAGE ANY CALLS THAT YOU CAN RECOGNIZE AS BEING
3 WITH ATTORNEY WINES?

4 A. YES. ON FEBRUARY 18 I WAS ON MY WAY TO MT.
5 PLEASANT, SOUTH CAROLINA, I HAD A WORKER'S COMPENSATION
6 DEPOSITION SCHEDULED WITH DR. RANDY WAID THAT DAY; AND ON
7 THE WAY THERE I RECEIVED A CELL PHONE CALL FROM
8 MS. WINES.

9 Q. OKAY. WE'LL COME BACK TO THAT CALL. BUT CAN YOU
10 IDENTIFY THE NEXT CALL AFTER THAT AND WHO THE CALL WAS TO
11 AND THEN THE CALL FOLLOWING THAT?

12 A. AS SOON AS -- WHEN THAT CALL ENDED, I CALLED MY
13 OFFICE AND SPOKE TO THEM FOR ONE MINUTE. THE NEXT ENTRY,
14 I BELIEVE, IS GOING TO BE THE OFFICE OF, OR CELL PHONE
15 NUMBER OF MR. JOHNSTON, MY CO-COUNSEL, WE SPOKE FOR 28
16 MINUTES. SPOKE BACK TO MY OFFICE. AND THEN I THINK THE
17 OTHER CALLS ON THAT PAGE WERE NOT RELEVANT, I BELIEVE, TO
18 THIS CASE.

19 Q. OKAY. AND THE CALL WITH MS. WINES, WHAT TIME DID
20 THAT CALL BEGIN?

21 A. IT CAME IN AT 11:32 A.M.

22 Q. OKAY. LET ME ASK YOU ABOUT THAT CALL AND IF YOU
23 CAN DESCRIBE THE NATURE OF THAT CALL AND SORT OF THE
24 CONVERSATIONS THAT YOU HAD THAT MIGHT HAVE LED UP TO THAT
25 TELEPHONE CALL.

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

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

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

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

18 THE COURT REPORTER: SEVEN.

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

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

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

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

1 SPOKE WITH MR. ODOM ON THAT BILL.

2 BY MR. MCDANIEL:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 MR. MCDANIEL: YES, PLEASE.

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

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

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

14 THE COURT REPORTER: YES, SIR.

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

17 BY MR. MCDANIEL:

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

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

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

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

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

13 A. YES.

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

16 A. YES.

17 Q. AND WHAT WAS THE RESPONSE TO THAT?

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

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

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

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

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

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

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

22 A. ABSOLUTELY DID.

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

1 A. NO, SIR. THE, AS FAR AS MY EFFORTS ON MR. ODOM'S
2 BEHALF, I'VE GOT AN ETHICAL OBLIGATION TO OBTAIN AS MUCH
3 EVIDENCE AS I POSSIBLY CAN ABOUT THE FACTS OF THE CASE,
4 ABOUT THE HISTORY OF WITNESSES THAT THE STATE INTENDS TO
5 CALL. AS A CHIEF JUSTICE ON THE U.S. SUPREME COURT SAID,
6 "EVEN IF I WERE TO KNOW THE TRUTH OF THE MATTER, MY JOB
7 AS A DEFENSE ATTORNEY IS TO THROW DOUBT UPON THEIR
8 TESTIMONY." I BELIEVE THAT WAS JUSTICE WHITE THAT STATED
9 THAT. SO I FELT I'M ENTITLED TO THOSE RECORDS TO FIND
10 OUT AND ASSESS THE CREDIBILITY OR BELIEVABILITY OF
11 MR. PATTERSON, I'D ISSUED A PROPER SUBPOENA, AND I WAS
12 ENTITLED TO THOSE RECORDS.

13 Q. THANK YOU.

14 IF I CAN PRESENT THE WITNESS WITH ONE ADDITIONAL
15 EXHIBIT ON THIS POINT.

16 CAN YOU IDENTIFY THAT DOCUMENT?

17 A. YES, SIR. THIS IS A PHONE CALL NOTE THAT MY
18 SECRETARY MADE, M.A. IS MELISSA ALTMAN. WHEN I RETURNED
19 FROM MT. PLEASANT THAT AFTERNOON, THERE WAS A MESSAGE
20 THAT A MARK ZWELLINGER (PHONETIC) OF YAHOO! HAD CALLED MY
21 OFFICE AT FIVE P.M. AND ASKED THAT I GIVE HIM A CALL THAT
22 EVENING BETWEEN EIGHT AND TEN O'CLOCK THAT NIGHT, AND IT
23 WOULD BE REGARDING WHETHER OR NOT WE WOULD ON BEHALF OF
24 MR. ODOM STIPULATE TO THE ADMISSIBILITY OF RECORDS
25 REGARDING YAHOO!.

1 Q. AND DOES THAT FOLLOW FROM THE CONVERSATION THAT
2 YOU HAD EARLIER IN THE DAY WITH MS. WINES?

3 A. IT APPEARED TO ME TO BE. I'D NEVER HEARD OF WHO
4 MARK ZWELLINGER WAS. AND THE PERSON MS. WINES HAD
5 MENTIONED TO ME TO DURING THE FEBRUARY 16TH CALL WAS A
6 JEFF STANFORD (PHONETIC). SO I CERTAINLY COULD BE WRONG.
7 BUT IT WOULD BE MY ASSUMPTION THAT SOMEBODY CONTACTED
8 MR. ZWELLINGER AND ASKED HIM TO GIVE ME A CALL. THAT'S
9 MY ASSUMPTION.

10 Q. AND THAT WAS THE -- THE YAHOO! CHATS WAS ONE OF
11 THE POINTS OF CONTENTION THAT YOU HAD MENTIONED FROM
12 EARLIER THAT SAME DAY; IS THAT CORRECT?

13 A. YES, SIR. Yes, sir. EARLIER ON THE 18TH, THAT'S
14 CORRECT.

15 MR. MCDANIEL: I'D LIKE TO SUBMIT THAT AS THE NEXT
16 COURT'S EXHIBIT.

17 THE COURT: VERY WELL.

18 ANY OBJECTION?

19 MS. WINES: NO, SIR.

20 MR. MCDANIEL: YOUR HONOR, I'D ALSO AT THIS TIME
21 LIKE TO --

22 THE COURT REPORTER: EXCUSE ME.

23 MR. MCDANIEL: I'M SORRY.

24 THE COURT: JUST A MINUTE.

25 (MARKED FOR IDENTIFICATION WAS COURT'S

1 EXHIBIT 9, PHONE CALL MESSAGE.)
2 THE COURT: YOU MAY PROCEED.
3 MR. HUFF: I'D LIKE TO SUBMIT AS A COURT EXHIBIT THE
4 COMPLAINT THAT'S BEEN FILED. I REPRESENT MR. ODOM IN A
5 CLAIM THAT'S BEEN FILED IN SPARTANBURG COUNTY. THERE'S
6 AN INDICATION THAT THE PROSECUTOR IS PLANNING TO PURSUE
7 HIM THERE AS WELL, AND I WOULD JUST LIKE TO SUBMIT INTO
8 THE RECORD THE ARGUMENTS MADE WHICH ARE essentially GONNA
9 BE THE SAME, SO THAT WITHOUT THE NEED TO DUPLICATE THAT,
10 JUST PUT IN THE COMPLAINT. IT'S A FILED COMPLAINT FROM
11 THE SPARTANBURG CASE, IF I MAY.
12 THE COURT: IT'S A COMPLAINT FILED BY WHOM AGAINST
13 WHOM?
14 MR. MCDANIEL: IT'S A COMPLAINT FILED BY MR. ODOM
15 AGAINST THE ATTORNEY GENERAL'S OFFICE FOR INCLUDING AN
16 ACTION FOR VINDICTIVE PROSECUTION.
17 THE COURT: IS IT A CRIMINAL ACTION OR A CIVIL
18 ACTION OR...
19 MR. MCDANIEL: IT'S A CIVIL ACTION.
20 THE COURT: CP-NUMBER?
21 MR. MCDANIEL: 24-2032- --
22 THE COURT: NOT SO FAST.
23 MR. MCDANIEL: I'M SORRY. IT'S A 2011-CP-24-2032.
24 THE COURT: VERY GOOD. IS IT JUST ONE?
25 MR. MCDANIEL: JUST ONE ACTION, Your Honor.

1 THE COURT: All right. VERY GOOD. HAVE IT MARKED.

2 (MARKED FOR IDENTIFICATION WAS COURT'S

3 EXHIBIT 10, CIVIL ACTION COMPLAINT IN CASE

4 NUMBER 2011-CP-24-2032.)

5 THE COURT: ALL RIGHT. YOU MAY PROCEED.

6 MR. HUFF: THANK YOU, YOUR HONOR. I'D LIKE TO

7 PRESENT MR. HUFF WITH ANOTHER DOCUMENT, IF I MAY.

8 THE COURT: OKAY. YOUR WITNESS.

9 BY MR. MCDANIEL:

10 Q. CAN YOU IDENTIFY THIS DOCUMENT?

11 A. IT'S A LETTER DATED FEBRUARY 24TH, 2011, A LETTER
12 FROM MS. WINES, IT'S A TWO-PAGE DOCUMENT, REGARDING STATE
13 VERSUS ANTHONY ODOM, THE, REGARDING THESE TWO INDICTMENTS
14 HERE IN OCONEE COUNTY. IT ADVISES ME THAT THE STATE
15 INTENDS TO CALL THE MATTER FOR TRIAL ON MONDAY, APRIL
16 11TH, AND THAT IF MR. ODOM DOES NOT APPEAR, THE TRIAL
17 WOULD PROCEED IN HIS ABSENCE AND A BENCH WARRANT WOULD BE
18 ISSUED FOR HIS ARREST.

19 IT INFORMS ME THAT THE STATE GRAND JURY CLERK HAD,
20 SPEAKS ABOUT THAT AND SAYS THAT THE STATE INTENDED TO
21 CALL MR. ODOM'S INDICTMENTS IN OCONEE FOR TRIAL ON APRIL
22 11TH. I THINK IT THEN WENT INTO ISSUES OF VOIR DIRE AND
23 THE QUESTIONNAIRE, STATING THAT THE STATE WOULD NOW
24 OBJECT TO THAT AND THAT ADDITIONALLY THE STATE
25 ANTICIPATES NUMEROUS PRETRIAL MOTIONS, WILL REQUEST THE

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1 JUDGE HEAR ALL PRETRIAL MATTERS PRIOR TO THE DATE OF
2 TRIAL AND ISSUING A SCHEDULING ORDER TO THAT EFFECT.

3 THEY AGAIN ASKED WHETHER OR NOT WE WOULD STIPULATE
4 TO AUTHENTICITY OF YAHOO! AND BELLSOUTH RECORDS.. AND
5 THAT (READING): ACCORDINGLY, PLEASE PLAN FOR TRIAL OF
6 THIS CASE THE WEEK OF APRIL 11TH.

7 SO BASICALLY THREE TIMES THEY TELL ME IT'S GOING
8 TO TRIAL APRIL 11TH, 2011, HERE IN OCONEE COUNTY.

9 MR. MCDANIEL: AND IF I CAN MARK THAT AS AN EXHIBIT,
10 AS WELL.

11 (MARKED FOR IDENTIFICATION WAS COURT'S
12 EXHIBIT 11, LETTER DATED FEBRUARY 24, 2011.)

13 THE COURT: ALL RIGHT. YOU MAY PROCEED.

14 MR. MCDANIEL: THANK YOU.

15 BY MR. MCDANIEL:

16 Q. AND ARE YOU AWARE WHETHER THERE WAS A TERM OF
17 COURT SCHEDULED PURSUANT TO THAT LETTER?

18 A. MY UNDERSTANDING WAS THERE WAS NOT A TERM OF
19 GENERAL SESSIONS COURT SCHEDULED FOR APRIL 11TH OF 2011.
20 WHEN I LOOKED AT THE COURT ADMINISTRATION OR SUPREME
21 COURT'S WEBSITE, IT SHOWED NO TERM OF GENERAL SESSIONS
22 COURT IN OCONEE COUNTY.

23 I THEN CHECKED WITH COURT ADMINISTRATION JUST TO
24 MAKE SURE WHAT WAS GOING ON. I SPOKE WITH MOTTE TALLY
25 THERE WITH COURT ADMINISTRATION. MY UNDERSTANDING WAS

1 ALWAYS THAT IS IF THERE WAS A TERM OF COURT SET, THE
2 SUPREME COURT HAS TO ISSUE AN ORDER OR ITS DESIGNEE,
3 BEING COURT ADMINISTRATION, WOULD ISSUE AN ORDER SETTING
4 SOME SPECIAL TERM OF COURT, THINGS OF THAT SORT. SO
5 THAT'S WHEN I TALKED WITH MR. TALLY AND WAS INFORMED THAT
6 HE LOOKED THROUGH ALL THE ORDERS AND THAT THERE WAS NO
7 ORDER SETTING A TERM OF OCONEE GENERAL SESSIONS COURT FOR
8 APRIL 11, 2011.

9 Q. DO YOU HAVE A BELIEF AS TO WHY MS. WINES WAS
10 INDICATING TO YOU THAT THERE WAS A TERM?

11 A. WELL, I BELIEVE THAT WHAT SHE INDICATED IN COURT'S
12 EXHIBIT 11 WAS THAT THERE WAS A TERM IN ANDERSON GENERAL
13 SESSIONS, BUT SINCE THE JUDGE THERE WAS NOT NEEDED, THAT
14 THAT TERM HAD BEEN CANCELLED, THAT THEY WERE GONNA TRY TO
15 MOVE THAT TO OCONEE COUNTY.

16 BUT THAT'S WHY I CHECKED WITH COURT ADMINISTRATION
17 AND FOUND THAT THERE WAS NO TERM SET.

18 BUT TOWARD THE END OF HER LETTER SHE SAYS
19 (READING): I BELIEVE THERE WILL BE SIGNIFICANT OR
20 NUMEROUS PRETRIAL MOTIONS AND WOULD LIKE THE JUDGE TO
21 HEAR THOSE PRETRIAL PRIOR TO THE DATE OF TRIAL AND ISSUE
22 A SCHEDULING ORDER.

23 WHEN I SPOKE WITH MS. WINES, WE HAD BEEN
24 REQUESTING TRANSCRIPTS FROM THE SPARTANBURG TRIAL BECAUSE
25 THERE COULD BE SIMILAR WITNESSES IN THIS CASE, AND I

1 CERTAINLY NEEDED THOSE. THE COURT REPORTER HAD BEEN
2 GIVEN ORDERS OF PROTECTION, IF YOU WILL, FROM THE COURT
3 ADMINISTRATION. I HAVE THOSE. AND SHE HAD, IF I RECALL
4 CORRECTLY, SOME, I THINK THE FAMILY COURT CLERK I BELIEVE
5 HAD RETIRED OR LEFT, AND SO SHE WAS HAVING TO DO DOUBLE
6 DUTY WHICH WAS PUTTING HER BEHIND, SIGNIFICANTLY BEHIND,
7 IN DOING TRANSCRIPTS. AND SO I WAS GOING TO BE
8 REQUESTING A CONTINUANCE OF ANY TERM OF COURT OR TRIAL
9 APRIL 11TH PURSUANT TO MS. WINES' LETTER.

10 AND THE CONVERSATION THEN WENT FORWARD AS TO,
11 WELL, THE ONLY WAY WE WILL AGREE TO A CONTINUANCE WOULD
12 BE IF WE TAKE UP PRETRIAL MATTERS DURING THAT WEEK AND
13 SET IT FOR APRIL 12TH, 2011.

14 Q. SO AT THAT TIME, THE TIME OF THE CONVERSATION, YOU
15 WEREN'T AWARE THAT THERE, AS YOU UNDERSTOOD LATER, THERE
16 WASN'T A TERM OF COURT, THOUGH; IS THAT CORRECT?

17 A. THAT'S CORRECT. THAT'S WHY I WENT BACK AND
18 CHECKED AND FOUND THAT THERE WAS NO TERM OF COURT SET BY
19 COURT ADMINISTRATION.

20 Q. AND SO IS IT YOUR UNDERSTANDING THERE WAS A
21 PURPOSE BEHIND, I GUESS JUST TO BE DIRECT, BUT THE
22 PURPOSE OF THAT INDICATION, WAS THAT MADE CLEAR TO YOU OR
23 DID YOU FORM A BELIEF AS TO THAT?

24 A. YOU KNOW, I DON'T KNOW WHAT INTENT IS. IT SEEMS
25 TO BE A MOVABLE TARGET. BUT I HAD THE SENSE THAT WE WERE

1 GOING TO HAVE TO BE IN TRIAL. WE CERTAINLY COULD FILE A
2 MOTION FOR CONTINUANCE, WHICH I BELIEVE I DRAFTED AND PUT
3 IN SOME INFORMATION REGARDING, AND I BELIEVE, I BELIEVE I
4 MAY HAVE SENT THAT TO MS. WINES. I'M NOT SURE. I'D HAVE
5 TO LOOK BACK AT MY RECORDS.

6 BUT IN A PHONE CONVERSATION WITH MS. WINES SHE
7 SEEMED TO BE IMMEDIATELY AGREEABLE THAT WE COULD CONTINUE
8 IT, BUT ONLY IF WE TOOK CARE OF PRETRIAL MOTIONS. SO I
9 WAS, I FEEL CONFIDENT THAT A JUDGE WOULD HAVE PROBABLY
10 GRANTED THE CONTINUANCE BECAUSE I DIDN'T HAVE THE
11 TRANSCRIPTS, BUT I WAS PUT IN AN EITHER/OR SITUATION: GO
12 TO TRIAL OR WE CONTINUE IT BY AGREEMENT AS LONG AS WE DO
13 PRETRIAL MOTIONS. THAT WAS THE WAY, THAT WAS THE
14 IMPRESSION I HAD.

15 Q. I WANT TO -- INSTEAD OF GOING THROUGH EACH OF
16 THESE DOCUMENTS INDEPENDENTLY, I'M JUST GOING TO HAND YOU
17 A SET OF DOCUMENTS THAT I WOULD LIKE FOR YOU TO IDENTIFY,
18 IF YOU WOULD, AND WE CAN MARK THEM SEPARATELY, WITH THE
19 COURT'S PERMISSION.

20 THIS MIGHT SPEED THINGS ALONG, TO ALLOW YOU IF YOU
21 WOULD IDENTIFY EACH OF THOSE AND WITH THE COURT'S
22 PERMISSION TO PRESENT THEM AS A COURT'S EXHIBIT. I
23 BELIEVE THE EARLIEST DATE IS MARCH 22ND.

24 A. THIS, THE DOCUMENT IS A LETTER THAT I RECEIVED
25 REGARDING MR. ODOM'S CASE, AND THE LETTER REFLECTS THAT

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1 MS. WINES WOULD BE IN TOUCH WITH ME ABOUT THE TRIAL
2 SCHEDULE FOR APRIL 11 IN OCONEE.

3 Q. AND WHICH LETTER WAS THAT THAT YOU ARE REFERRING
4 TO?

5 A. A LETTER DATED MARCH 22ND.

6 Q. OKAY. AND IS THAT LETTER, IT APPEARS TO BE SIGNED
7 BY?

8 A. SOMEONE WITH THE ATTORNEY GENERAL'S OFFICE.

9 Q. OKAY. AND IT ALSO INDICATES THERE, MARCH 22ND,
10 THAT THE TRIAL DATE IS STILL BEING TOLD TO YOU AS APRIL
11 11TH, CORRECT?

12 A. THAT'S CORRECT.

13 Q. OKAY. COULD YOU IDENTIFY THE NEXT LETTER WHICH I
14 BELIEVE IS MARCH 25TH?

15 A. YES, SIR, I CAN. THIS IS A LETTER DATED MARCH
16 25TH TO ME FROM MS. WINES. IT STATES THAT MR. ODOM'S
17 CASE IS SET FOR TRIAL ON MONDAY, APRIL 11TH, AT THE
18 OCONEE COURTHOUSE, AND WANTED TO KNOW IF WE WERE GONNA BE
19 REQUESTING ANY CONTINUANCE FOR THAT.

20 IT STATES (READING): THE STATE WOULD APPRECIATE
21 BEING ADVISED IMMEDIATELY IF YOU INTEND TO REQUEST A
22 CONTINUANCE OF THE TRIAL FOR ANY REASON. SHOULD THE
23 REQUEST BE MADE AND GRANTED, THE STATE WILL RECOMMEND
24 PRETRIAL MATTERS BE HEARD BY A JUDGE THE WEEK OF APRIL
25 11, 2011, AND THEN SETTING A DATE CERTAIN FOR THIS TRIAL

1 BEING TODAY'S DATE, AND THE STATE WILL ASK THE COURT TO
2 ORDER ALL PRETRIAL MATTERS OCCUR PRIOR TO SWEARING THE
3 JURY.

4 AGAIN THEY ASKED AS TO WHETHER OR NOT WE WOULD
5 STIPULATE TO YAHOO! AND BELLSOUTH RECORDS. AND MS. WINES
6 DISCUSSED OBTAINING THE PICTURE INVESTIGATOR PATTERSON
7 USED AND SENT TO MR. ODOM ACCORDING TO THE STATE'S
8 VERSION OF THE EVIDENCE. AND THAT WAS THE SUBSTANCE OF
9 THE LETTER.

10 Q. AND AT THAT POINT YOU'RE ONLY MAYBE 17 DAYS, TWO
11 WEEKS OR SO FROM A TRIAL IF IT WENT FORWARD ON APRIL
12 11TH?

13 A. I THINK THAT WOULD BE CORRECT, YES, SIR.

14 Q. AND IS THAT YOUR UNDERSTANDING OF THE POSITION
15 THAT WAS BEING PUT FORTH TO YOU AT THAT POINT IN TIME,
16 MARCH 25TH?

17 A. YES, SIR. IT, THE THRUST CONTINUES TO BE THAT
18 WE'RE GOING TO TRIAL ON APRIL 11TH. AND THE WAY I TOOK
19 IT IN REPRESENTING MR. ODOM IS AS SHE STATES (READING):

20 PLEASE BE REMINDED PURSUANT TO CORRESPONDENCE
21 DATED FEBRUARY 24TH THAT WE INTEND TO CALL -- THE STATE
22 INTENDS TO CALL THE CASE APRIL 11TH. IF YOU ARE GONNA
23 ASK FOR A CONTINUANCE, AND IT'S GRANTED, THEN WE WANT TO
24 HAVE PRETRIAL MOTIONS BEFORE THE JURY IS SWORN.

25 AND IT SEEMED TO BE THAT THE THRUST OF THE STATE

1 WAS, WE WANT TO HAVE ALL MOTIONS HEARD BEFORE JEOPARDY
2 ATTACHES. ANYONE THAT DOES CRIMINAL PRACTICE UNDERSTANDS
3 THAT ONCE JEOPARDY ATTACHES, A RULING OF A JUDGE ARE
4 [SIC] BASICALLY IN STONE AT THAT POINT. IF RULINGS ARE
5 MADE BY A CIRCUIT JUDGE TO SUPPRESS EVIDENCE, THAT
6 PURSUANT TO *STATE V. MCKNIGHT*, THE PROSECUTION, ACCORDING
7 TO THE STATUTE, IF IT GUTS THE STATE'S CASE, IT ENDS THE
8 MATTER AND THEY HAVE NOTHING TO GO FORWARD WITH; SIMILAR
9 TO A POSSESSION OF DRUGS CASE AND THE DRUGS ARE
10 SUPPRESSED AND THROWN OUT BECAUSE OF AN ILLEGAL SEARCH,
11 THEN THERE IS NO CASE FOR THE PROSECUTION TO GO FORWARD
12 WITH.

13 ACCORDING TO SOUTH CAROLINA LAW THEY HAVE THE
14 RIGHT TO NOT ALLOW THE JURY TO BE SWORN AND APPEAL THAT
15 MATTER TO A HIGHER COURT, APPELLATE COURT. WHICH IS WHAT
16 OCCURRED WHEN MR. ODOM WAS REPRESENTED BY MR. JACK
17 SWERLING. THE (D) ORDERS IN THIS CASE WERE SUPPRESSED BY
18 THE TRIAL JUDGE IN SPARTANBURG. THE STATE'S POSITION WAS
19 THAT GUTTED THEIR CASE, THEY HAD NO EVIDENCE IN THAT CASE
20 ANYMORE, BECAUSE THE (D) ORDERS WERE TO GET THE
21 YAHOO!-BELLSOUTH RECORDS. WITH THOSE BEING SUPPRESSED
22 THERE WAS NOTHING TO PROSECUTE AND SO THE STATE APPEALED
23 IT.

24 WHAT HAPPENS, HOWEVER, IS THE STATE, WITH
25 UNLIMITED RESOURCES, AS OPPOSED TO A CRIMINALLY CHARGED

1 DEFENDANT WHO HAS FINITE RESOURCES; AND IT TOOK
2 BASICALLY -- AND I DON'T KNOW THE DATES, I WOULD SAY AT
3 LEAST WELL OVER A YEAR -- FOR THAT MATTER TO BE HEARD AND
4 DECIDED, AND I THINK AT SIGNIFICANT EXPENSE FINANCIALLY
5 AND EMOTIONALLY TO MR. ODOM, PARTICULARLY FINANCIALLY.

6 THE SUPREME COURT SAID THAT THE (D) ORDERS, IT WAS
7 LAWFUL FOR THE CIRCUIT COURT JUDGE IN SOUTH CAROLINA TO
8 SIGN THAT (D) ORDER UNDER THE FEDERAL STATUTE 18-27-03, I
9 BELIEVE (D), AND SAID THAT THE TRIAL COURT IN SPARTANBURG
10 COULD USE THOSE RECORDS PURSUANT TO A (D) ORDER AUTHORITY
11 KIND OF LIKE A SEARCH WARRANT.

12 THEY BASICALLY SAID, THE SEARCH WARRANT WE FIND
13 WAS PROPERLY ISSUED. THE STATE WOULD STILL HAVE TO CARRY
14 ITS BURDEN OF ADMISSIBILITY, BELIEVABILITY, THINGS OF
15 THAT SORT.

16 FROM A DEFENSE PERSPECTIVE, WE DON'T LIKE HAVING
17 PRETRIAL MOTIONS BECAUSE OF EXACTLY WHAT HAPPENED TO
18 MR. ODOM. HE GETS RUN OUT OF FINANCES EVENTUALLY AND THE
19 STATE CAN KEEP GOING BACK AND FORTH ALL THE TIME. I
20 THINK THAT WHEN A CIRCUIT JUDGE MAKES A RULING, IT'S A
21 RULING HE'S GONNA MAKE. I DON'T KNOW IF I'VE SEEN THEM
22 CHANGE VERY MUCH PRETRIAL VERSUS POST-TRIAL UNLESS
23 SOMETHING REALLY UNIQUE COMES OUT DURING THE TRIAL OR
24 DOESN'T COME OUT.

25 AND I KNOW UNDER OUR RULES OF PRACTICE PRETRIAL

1 MOTIONS ARE NOT REQUIRED BY THE RULE, BUT AS LONG AS THEY
2 ARE MADE IN OPEN COURT ON THE RECORD, WE DON'T EVEN HAVE
3 TO FILE WRITTEN MOTIONS. SO IT SEEMED TO ME THAT
4 MS. WINES WANTED TO HEAR PRETRIAL MOTIONS SO THAT IF THE
5 STATE DIDN'T LIKE THE RULING OF THE TRIAL JUDGE, THEY
6 WOULD STOP THE TRIAL AND APPEAL THAT UP.

7 AND PART OF MY PROTECTION OF MR. ODOM IS, IF HE
8 DOESN'T HAVE THE MONEY, IT DOES AN INJUSTICE TO HIM TO
9 HAVE TO KEEP GOING BACK TO AN APPELLATE COURT.

10 Q. MR. HUFF, REGARDLESS OF THE REASON OR THE MOTIVES
11 OF THE STATE AND THE DEFENSE, THE FACT WAS IN THAT CASE
12 IT WAS YOUR BELIEF THAT THE STATE WAS GIVING YOU
13 INACCURATE INFORMATION ABOUT THE REASONS WHY YOU SHOULD
14 DO YOUR PRETRIAL MOTIONS; IS THAT CORRECT?

15 A. WITH MY INVESTIGATION OF THE MATTER THERE WAS NO
16 TERM OF COURT SET IN OCONEE GENERAL SESSIONS COURT FOR
17 APRIL 11TH, I FELT THE INFORMATION I WAS GIVEN WAS NOT
18 CORRECT, AND THAT IF I WAS GOING TO NOT HAVE TO GO TO
19 TRIAL, THE STATE BASICALLY WAS, WE'RE GOING TO TRIAL, BUT
20 IF YOU'LL -- WE DON'T MIND CONTINUING IT SO LONG AS WE DO
21 PRETRIAL MOTIONS. SO I FELT LIKE MR. ODOM WAS BEING
22 PLACED IN A POSITION THAT WE HAD TO MAKE PRETRIAL
23 MOTIONS. OTHERWISE, WE WERE GOING TO TRIAL APRIL 11TH.
24 SUBSEQUENTLY I DETERMINED THAT WAS NOT CORRECT.

25 Q. LET ME ASK YOU TO IDENTIFY, IF I CAN, WHAT APPEARS

1 TO BE AN EMAIL, IF THAT'S CORRECT, IF YOU CAN IDENTIFY
2 THAT, DATED MARCH 30TH.

3 A. THIS WAS AN EMAIL BETWEEN THE COUNSEL AND THE
4 COURT REFLECTING THAT I HAD MULTIPLE REASONS TO REQUEST A
5 CONTINUANCE OF THE CASE AND THAT THE STATE HAD AGREED TO
6 CONTINUE CALLING THE CASE FOR TRIAL WITH CERTAIN
7 CONDITIONS, AND THOSE WOULD BE THAT THEY WOULD LIKE TO
8 TAKE ADVANTAGE OF THE COURT TIME OF APRIL 11TH TO HEAR
9 PRETRIAL MATTERS.

10 AND THAT SHE STATES (READING): MY ONLY REQUEST AS
11 FOR THOSE ISSUES IS ANY MATTERS OF SUPPRESSION BE HEARD
12 BEFORE THE JURY IS SWORN.

13 AGAIN, IF THERE ARE ANY SUPPRESSION MOTIONS THE
14 STATE WOULD LIKE TO HAVE THOSE HEARD PRE-JEOPARDY SO THAT
15 THEY COULD STOP THE CASE AND APPEAL IT IF THEY DIDN'T
16 LIKE THE DECISION. AND SO I THINK IT DISCUSSED WHEN
17 THAT, THOSE MOTIONS MIGHT BE HEARD. WE DISCUSSED THE
18 QUESTIONNAIRE AGAIN. AND THAT SHE WOULD LIKE TO SUBMIT A
19 PROPOSED ORDER ONCE I'D REVIEWED IT.

20 Q. IF YOU WILL IDENTIFY THE FINAL SET OF DOCUMENTS I
21 HANDED YOU THAT APPEAR TO BE DRAFTS OF AN ORDER FOR
22 CONTINUANCE.

23 A. I'VE GOT I BELIEVE FIVE PAGES IN ONE DOCUMENT. IT
24 LEADS OFF DESIGNATED AS AN ORDER FOR CONTINUANCE. IT
25 CITES IN THE SECOND SENTENCE, FIRST SAYING THAT

1 (READING):

2 BY CONSENT OF THE PARTIES AND UPON INFORMATION.
3 FROM COUNSEL, THAT THE CASE IS SCHEDULED FOR TRIAL THE
4 WEEK OF APRIL 11, 2011, AND THAT THE DEFENDANT SEEKS A
5 CONTINUANCE. THE STATE DOESN'T OPPOSE IT, AND WITH THE
6 CONDITION AND REQUEST OF THE COURT THAT PRETRIAL MATTERS
7 BE HEARD APRIL 12, 2011, AND A TRIAL DATE CERTAIN FOR
8 JUNE 27TH.

9 IT THEN GOES ON AS TO POTENTIAL TRIAL ISSUES, THE
10 QUESTIONNAIRE, BRINGING IN WITNESSES AND, QUOTE, FURTHER,
11 (READING): THE STATE BELIEVES THIS CASE INVOLVES MATTERS
12 NECESSARY OR PRUDENT TO BE HEARD PRETRIAL ON APRIL 12TH,
13 AND THE DEFENDANT AGREES CERTAIN OF THESE MATTERS MAY BE
14 ADDRESSED ON SAID DATE.

15 THEY THEN ASK FOR A DATE CERTAIN FOR TRIAL AND A
16 PRETRIAL HEARING DATE HELD ON APRIL THE 12TH.

17 IT CITES THAT, AS I MENTIONED EARLIER, THE
18 SPARTANBURG TRANSCRIPT IS NOT AVAILABLE UNTIL AFTER APRIL
19 14, AND THAT AGAIN, QUOTE, THE STATE REQUESTS ANY
20 PRETRIAL MATTERS NOT HEARD APRIL 12TH BE HEARD PRIOR TO
21 SWEARING OF THE JURY.

22 IT LISTED ON THE SECOND PAGE CONSENT LINES FOR
23 MS. WINES AND I TO SIGN.

24 THE NEXT TWO PAGES OF THE EXHIBIT IS A MODIFIED
25 ORDER. IT IS SIGNIFICANT THAT IT DOES NOT STATE THAT

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1 THERE IS A CONSENT -- I'M SORRY -- IT DOES, HAS A CONSENT
2 LINE ON THE SECOND PAGE. IT DOES, HOWEVER, TAKE OUT THAT
3 THERE WAS A TERM OF COURT SCHEDULED FOR APRIL 11, 2011.
4 I FIND THAT TO BE SIGNIFICANT.

5 BUT IT CONTINUES (READING): THE REMAINING
6 LANGUAGE THAT IT MAY BE NECESSARY TO HEAR, TO BRING IN
7 WITNESSES FROM AROUND THE STATE. THERE IS A WRITTEN
8 QUESTIONNAIRE THAT'S AT ISSUE, AND IT MIGHT BE PRUDENT TO
9 HEAR PRETRIAL MATTERS ON APRIL 12TH AND THAT WE, THE
10 DEFENDANT AGREES CERTAIN OF THESE MATTERS MAY BE
11 ADDRESSED ON THAT DATE, AND THAT THERE BE A PRETRIAL
12 HEARING SET FOR APRIL 12TH.

13 THAT WAS ALSO PROPOSED AND SUBMITTED AS A PROPOSED
14 CONSENT ORDER WHICH ALSO I DECLINED TO SIGN.

15 AND THEN THE LAST PAGE -- AND MS. WINES AND I HAD
16 DISCUSSED THIS ON THE PHONE THROUGHOUT AS WE TRIED TO GET
17 DOWN TO AN AGREED-TO ORDER. THE FINAL PAGE IS A ONE-PAGE
18 ORDER WHICH I BELIEVE I SUBSTANTIALLY TOLD MS. WINES WE
19 COULD AGREE TO THIS AS LONG AS THOSE OTHER THINGS WERE
20 TAKEN OUT AS FAR AS CONSENT AS FAR AS A DATE OF TRIAL
21 DURING APRIL 11. IT SIMPLY STATES THAT, THAT (READING):

22 WE WOULD AGREE THAT IT'S BENEFICIAL TO -- IT LOOKS
23 LIKE THE, THE FIRST SENTENCE REALLY IS NOT A COMPLETE
24 SENTENCE.

25 THE SECOND SENTENCE WOULD STATE THAT (READING):

1 THE STATE BELIEVES THAT THE CASE INVOLVES MATTERS THAT
2 OUGHT TO BE HEARD PRETRIAL, AND THE DEFENDANT AGREES
3 CERTAIN OF THESE MATTERS MAY BE ADDRESSED ON THAT DATE.
4 IT THEN ASKS FOR A PRETRIAL HEARING DATE OF APRIL 12.

5 Q. AGAIN, THESE ARE ALL DONE ON YOUR REPRESENTATION
6 FROM THE STATE THROUGHOUT THAT PROCESS THAT THERE WAS AN
7 OCONEE COUNTY JURY TERM FOR APRIL 11TH?

8 A. THAT'S CORRECT. AND ALL OF THESE DRAFTS WERE SENT
9 TO ME BY THE STATE.

10 MR. MCDANIEL: OKAY. AND IF I CAN MARK THOSE FOUR
11 DOCUMENTS IN ORDER AS COURT'S EXHIBITS?

12 THE COURT: ANY OBJECTION?

13 MS. WINES: NO OBJECTION.

14 THE COURT: WHAT NUMBERS WILL THEY BE?

15 THE COURT REPORTER: THEY WILL BE 12, 13, 14 AND 15.

16 MR. HUFF: YOUR HONOR, COULD I ASK THE COURT? I AM
17 HERE AS A WITNESS. WOULD IT BE IMPROPER OR OBJECTIONABLE
18 TO MS. WINES IF I HAVE A MOMENTARY COMMENT WITH
19 MR. MCDANIEL? I KNOW IT WOULD BE UNUSUAL, BUT IT'S UP TO
20 YOUR HONOR.

21 THE COURT: ANY OBJECTION?

22 MS. WINES: YES, I OBJECT.

23 THE COURT: VERY WELL. IN FACT, ONCE A WITNESS IS
24 SWORN, THEN THAT WITNESS IS THE COURT'S WITNESS AND NOT
25 SUBJECT TO COACHING OR PREPARATION.

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

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

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

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

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

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

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

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

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

16 THE COURT: ALL RIGHT. YOU MAY PROCEED.

17 MR. MCDANIEL: THANK YOU.

18 BY MR. MCDANIEL:

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

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

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

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

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

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

16 A. YES, SIR.

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

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

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

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

1 IMPLICATED BY THESE TYPE OF PUBLIC STATEMENTS?

2 THE COURT: WHICH STATEMENTS ARE WE REFERRING TO?

3 MR. MCDANIEL: THE STATEMENTS THAT WERE RUN FROM
4 MR. MCMASTER.

5 THE COURT: NO. JUST READ THE STATEMENT AND THEN
6 THE RECORD THAT YOU ARE RELYING ON.

7 MR. MCDANIEL: OKAY. (READING): WE BELIEVE HE DID
8 IT IN OCONEE AND WILL TRY HIM IN OCONEE. WE DON'T CHARGE
9 SOMEBODY UNLESS WE KNOW THEY ARE GUILTY AND WE KNOW WE
10 HAVE THE EVIDENCE TO PROVE THEIR GUILT. THIS CASE IS ONE
11 THAT NEEDS TO BE CHARGED AND TRIED.

12 AND THEN HE SAID (READING): THESE KIND OF CASES,
13 THESE PREDATORS ON THE INTERNET ARE DANGEROUS.

14 AND THE HEADLINE, "FORMER PROSECUTOR IS GUILTY."
15 BY MR. MCDANIEL:

16 Q. OF COURSE, HE DIDN'T WRITE THE HEADLINE, BUT AS TO
17 THE STATEMENTS, ARE YOU AWARE OF ANY RULES WITH REGARD TO
18 THE PROSECUTION publicizing A CASE THAT MIGHT BE
19 VIOLATIVE OR IMPLICATED IN THAT?

20 A. YES, SIR. THE BEGINNING OF THE ARTICLE WHICH
21 STATES, AND THEY PUT IN QUOTES, MCMASTER SAYS HE KNOWS
22 THAT THE FORMER AIKEN COUNTY -- MR. ODOM IS GUILTY.

23 MY UNDERSTANDING AND RECOLLECTION IS RULE 3.6 AND
24 3.8 delve INTO THE PROPRIETY OF ATTORNEYS INVOLVED IN A
25 TRIAL OF A CASE. 3.6 HAS TO DO WITH PRETRIAL PUBLICITY

1 AND IS BASICALLY GONNA STATE THAT YOU DON'T PUT YOUR
2 PERSONAL OPINION -- I'D HAVE TO LOOK BACK AT THE RULE.
3 MY RECOLLECTION IS YOU DON'T GO TO THE MEDIA WITH A
4 PENDING, WHEN A CASE IS PENDING AND MAKE COMMENTS AS A
5 PROSECUTOR OR A DEFENSE ATTORNEY THAT YOU REASONABLY
6 BELIEVE COULD BE DISSEMINATED TO THE PUBLIC TO THROW
7 PREJUDICE INTO THE WIND, SO TO SPEAK, TO TAINT THE
8 PERSON'S RIGHT TO A FAIR AND IMPARTIAL JURY, OR MAKE
9 COMMENTS SUCH AS "WE KNOW THAT HE'S GUILTY."

10 BOTH SIDES SHOULD NOT MAKE SUCH COMMENTS TO THE
11 PUBLIC MEDIA IF THEY REASONABLY BELIEVE IT WOULD BE
12 PUBLISHED. WELL, IT CERTAINLY IS REASONABLE TO ME TO
13 BELIEVE THAT MR. MCMASTER, HE WAS TALKING TO THE
14 NEWSPAPER ABOUT A CASE THAT HIS OFFICE WAS PROSECUTING
15 AND HE WAS RESPONSIBLE FOR WHAT WAS BEING SAID IN THIS
16 CASE.

17 AND I CERTAINLY DON'T BELIEVE THAT PEOPLE IN
18 OCONEE OR SPARTANBURG COUNTY DON'T COME THROUGH AIKEN
19 COUNTY, DON'T SEARCH THE INTERNET REGARDING CASES OR
20 DON'T POSSIBLY HAVE FAMILY MEMBERS IN AIKEN COUNTY OR
21 FRIENDS WITH FOLKS IN OCONEE COUNTY. I QUITE FRANKLY
22 FELT IT WAS -- I WAS SPEECHLESS WHEN I HEARD WHAT
23 MR. MCMASTER HAD SAID.

24 I BELIEVE 3.8 HAS TO DEAL WITH SPECIAL DUTIES OF A
25 PROSECUTOR, WHICH I ALSO FELT WERE NOT BEING COMPLIED

1 WITH IN THIS CASE.

2 Q. WAS THIS ALONG THE SAME TIME OR SHORTLY AFTER
3 THINGS HAD GOTTEN CONTENTIOUS BETWEEN YOU AND THE
4 ATTORNEY GENERAL'S OFFICE, MS. WINES?

5 A. YES, SIR. I THINK IT HEATED UP.

6 Q. AND IT WAS AFTER THE PHONE CALL INDICATING, WHERE
7 SHE HAD INDICATED THAT I BELIEVE IN FEBRUARY OF 2010, I
8 BELIEVE YOUR TESTIMONY EARLIER WAS THAT THEY WERE GONNA,
9 FINE, THEY WERE JUST GONNA GO AHEAD AND INDICT HIM IN
10 OCONEE? WOULD THAT HAVE BEEN SHORTLY THEREAFTER?

11 A. YES, SIR, IT WOULD HAVE BEEN. AND IF -- YES, SIR,
12 IT WOULD HAVE BEEN.

13 MR. MCDANIEL: I'D LIKE TO SUBMIT THAT AS A COURT'S
14 EXHIBIT.

15 (MARKED FOR IDENTIFICATION WAS COURT'S
16 EXHIBIT 15, NEWSPAPER ARTICLE FROM THE AIKEN
17 STANDARD NEWSPAPER DATED MAY 11, 2010.)

18 MR. MCDANIEL: I'D LIKE TO ALSO SUBMIT A PARTIAL
19 TRANSCRIPT FROM THE APRIL 12TH, 2011, MOTION HEARING IN
20 FRONT OF YOUR HONOR, IF I COULD. IT'S JUST THE FIRST FEW
21 PAGES, PAGES 1 THROUGH 5 OF THAT TRANSCRIPT, AS A COURT'S
22 EXHIBIT.

23 (MARKED FOR IDENTIFICATION WAS COURT'S
24 EXHIBIT 16, PARTIAL TRANSCRIPT FROM APRIL
25 12TH, 2011, HEARING.)

1 MR. MCDANIEL: AND I'D LIKE TO PLACE INTO THE RECORD
2 AS WELL THE APRIL 9TH, 2010, THERE WAS A FEDERAL ACTION
3 THAT WAS INITIALLY FILED, IT WAS MOVED BACK AND DISMISSED
4 BECAUSE OF THE ABSTENTION DOCTRINE AND MOVED BACK TO
5 CIVIL COURT. BUT THERE WAS A HEARING ON THAT MOTION AND
6 I WOULD LIKE TO PUT THE TRANSCRIPT INTO THE RECORD AS
7 WELL AS A COURT'S EXHIBIT.

8 (Court's Ex. # 17, APRIL 9, 2010, FEDERAL
9 ACTION CIVIL MOTION, was marked for
10 identification.)

11 MR. MCDANIEL: I'D LIKE TO SUBMIT THIS DECEMBER 5,
12 2006, LETTER FOR MR. HUFF TO IDENTIFY.

13 BY MR. MCDANIEL:

14 Q. MR. HUFF, IS THAT PART OF THE RECORD THAT YOU
15 RECEIVED WHEN YOU TOOK OVER MR. ODOM'S DEFENSE IN THIS
16 CASE?

17 A. YES, SIR. THIS IS A LETTER DATED DECEMBER 5,
18 2006. IT'S A LETTER FROM DAVID STUMBO, ASSISTANT
19 ATTORNEY GENERAL, WRITTEN TO MR. JACK SWERLING. HE
20 REPRESENTED MR. ODOM FROM THE BEGINNING OF THE
21 SPARTANBURG CASE, AND HE SUBSEQUENTLY WITHDREW AND I
22 MOVED TO BE ALLOWED TO REPRESENT MR. ODOM. PART OF THE
23 DOCUMENTS THAT I RECEIVED FROM MR. SWERLING'S OFFICE,
24 ONCE I TOOK OVER THE CASE, WAS THIS DOCUMENT.

25 Q. AND YOUR UNDERSTANDING OF THAT DOCUMENT -- IT

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

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

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

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

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

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1 MR. ODOM WAS ARRESTED SOMETIME AT THE END OR MIDDLE OF
2 MAY OF 2006. SO IT PROBABLY WOULD BE ABOUT THAT, MAYBE
3 ABOUT SEVEN MONTHS.

4 Q. ARE YOU AWARE OF ANY FORENSIC EXAMS OR ANY EXAMS
5 OF MR. ODOM'S COMPUTER AFTER THIS DATE, DECEMBER 5TH,
6 THROUGH -- WELL, WHEN'S THE NEXT EXAM THAT YOU ARE AWARE
7 OF OF THIS COMPUTER?

8 A. MY UNDERSTANDING WAS -- I'D HAVE TO LOOK BACK AT
9 MY RECORDS. I BELIEVE THAT THERE WAS ANOTHER EXAMINATION
10 CONDUCTED PRIOR TO THE SPARTANBURG TRIAL, AND THEN I
11 RECEIVED A NOTICE THAT A SEARCH, A SEARCH WARRANT HAD
12 BEEN ISSUED AND A SEARCH CONDUCTED ON MR. ODOM'S COMPUTER
13 I BELIEVE WITHIN THE LAST 30 DAYS AS RELATED TO THIS
14 CASE, WHICH WAS A SURPRISE TO ME.

15 Q. OKAY. SO AS FAR AS YOU'RE AWARE, HAS THERE BEEN A
16 SPECIFIC EVALUATION OR EXAM OF THAT COMPUTER FOR, RELATED
17 TO THE OCONEE MATTER PRIOR TO THE RECENT EXAM THAT YOU'RE
18 TALKING ABOUT?

19 A. NO, SIR. MY UNDERSTANDING IT WAS NOTHING BECAUSE
20 MY UNDERSTANDING WAS FROM MATTERS THAT OCCURRED PRIOR TO
21 MY REPRESENTATION OF MR. ODOM WAS THAT THE ATTORNEY
22 GENERAL'S OFFICE NEVER INTENDED TO PROSECUTE MR. ODOM
23 HERE IN OCONEE. I'M NOT SURE I HAVE THE EXACT QUOTE, BUT
24 IT'S SOMETHING TO THE EFFECT THAT WE NEVER INTENDED TO
25 PROSECUTE HIM AT THIS TIME IN OCONEE. THAT WAS MADE

1 BACK, I THINK BACK IN 2006 BY MR. STUMBO.

2 MR. MCDANIEL: AND I WOULD REPRESENT TO THE COURT
3 THAT THE NEW WARRANT REFERRED TO IS IN THE CIVIL
4 COMPLAINT WHICH IS ATTACHED AS A COURT EXHIBIT.
5 BY MR. MCDANIEL:

6 Q. JUST FOR CLEAN-UP PURPOSES, ARE THERE PHONE
7 NUMBERS, OTHER PHONE NUMBERS ON THE EXHIBIT WE MARKED, I
8 BELIEVE THE FIRST ONE OF YOUR PHONE RECORDS THAT MIGHT
9 INCLUDE PERSONAL CALLS THAT YOU WOULD LIKE TO HAVE
10 REMOVED FROM THE OFFICIAL RECORD?

11 A. I DON'T THINK THERE ARE ANY THAT MY WIFE WOULD
12 OBJECT TO. BUT I WOULD, WITH THE COURT'S PERMISSION,
13 WOULDN'T MIND REDACTING PHONE CALLS THAT WOULD HAVE
14 OCCURRED PRIOR TO THE 18TH. THERE IS ONE OFFICE NUMBER
15 THAT'S PRIVATE THAT'S NOT GIVEN OUT TO THE PUBLIC, WHICH
16 I'D LIKE TO KEEP IT THAT WAY. BUT I WOULD APPRECIATE THE
17 ABILITY TO REDACT THE, ANY CALLS OCCURRING OUTSIDE OF
18 FEBRUARY 18TH, 2010, THAT HAS NOT BEEN TESTIFIED TO,
19 SHOULD THE STATE HAVE NO OBJECTION.

20 THE COURT: MS. WINES?

21 MS. WINES: NO OBJECTION.

22 THE COURT: WITHOUT OBJECTION, ALL PHONE CALLS AFTER
23 FEBRUARY 18TH, 2010, WILL BE REDACTED.

24 BY MR. MCDANIEL:

25 Q. MR. HUFF, PRIOR TO THE PHONE CALL, I JUST WANT TO

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

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

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

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

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

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

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

25 THE COURT: DOES THE STATE HAVE ANYTHING?

1 MS. WINES: YOUR HONOR, I BELIEVE AT THE APPROPRIATE
2 TIME I WOULD JUST PREFER TO RESPOND WITH ARGUMENT.

3 THE COURT: WELL, I'M JUST CURIOUS. THIS IS
4 SOMETHING APPARENTLY THAT'S BEEN SUBMITTED TODAY.

5 MS. WINES: YES, SIR.

6 THE COURT: DID YOU GIVE THEM NOTICE THAT YOU WERE
7 GONNA BE FACED WITH A MOTION TO DISMISS DUE TO
8 PROSECUTORIAL VINDICTIVENESS?

9 MS. WINES: I CERTAINLY ANTICIPATED IT, YOUR HONOR.
10 WAS I GIVEN FORMAL NOTICE? NO. HOWEVER ---

11 THE COURT: LET ME EXPLAIN SOMETHING TO YOU.
12 THERE'S A REASON FOR THE NOTICE AND IT'S NOT ONLY JUST TO
13 ENTERTAIN ATTORNEYS, BUT THE COURT DOESN'T LIKE TO BE
14 BLIND-SIDED, EITHER.

15 MS. WINES: YES, SIR.

16 THE COURT: NOW I'M A LITTLE BIT -- WE'VE SPENT A
17 GOOD PART OF THE DAY SELECTING, QUALIFYING A JURY PANEL,
18 SELECTING A JURY FOR THE TRIAL OF THIS CASE, AND NOW I'M
19 HEARING SOMETHING THAT -- I'M NOT GONNA WASTE THE JURY'S
20 TIME TO TRY A CASE THAT ULTIMATELY IS GONNA BE DISMISSED
21 BECAUSE OF A MOTION FILED IN THE AFTERNOON AFTER THEY'VE
22 ALREADY BEEN DRAWN.

23 MS. WINES: YES, SIR. I COMPLETELY AGREE.

24 THE COURT: I MEAN, LISTEN. APPARENTLY YOU'VE KNOWN
25 SINCE FEBRUARY THE 10TH -- EXCUSE ME -- FEBRUARY THE

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

3 MS. WINES: I'M SORRY?

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

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

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

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

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

16 MS. WINES: YES, SIR.

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

20 WHAT DOES THE STATE INTEND TO DO?

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

1 THE COURT: WELL, DO YOU THINK I LEFT MY CRYSTAL
2 BALL SOMEWHERE OUTSIDE OF EDGEFIELD? BECAUSE I DIDN'T
3 KNOW THAT WE WERE GONNA GET A VINDICTIVE PROSECUTION.

4 MS. WINES: I CERTAINLY WOULD NOT HAVE KNOWN WITH
5 ANY CERTAINTY, YOUR HONOR. I KNEW IT WAS RAISED
6 FEDERALLY AND CIVILLY.

7 THE COURT: IN OTHER WORDS, YOU, THE STATE, ALSO
8 WANT TO GO FORWARD WITH THE TRIAL OF THE CASE?

9 MS. WINES: YES, SIR, WE'RE PREPARED TO GO FORWARD
10 WITH THE TRIAL. AND I DO HAVE A MEMORANDUM OF LAW I
11 PREPARED IN ANTICIPATION OF THIS MOTION, AND I'LL BE
12 HAPPY TO ADDRESS ANY OF THE COURT'S CONCERNS AND RESPOND
13 IN KIND TO ARGUMENT. AND WAS PREPARED APRIL -- IT'S
14 DATED APRIL 11TH. I HAD IT PREPARED TO SUBMIT WHEN WE
15 WERE IN EDGEFIELD, YOUR HONOR.

16 THE COURT: WELL, THE MOTION HASN'T EVEN BEEN FILED.

17 MS. WINES: NO, SIR, WHICH IS WHY I DIDN'T WASTE THE
18 COURT'S TIME BY SUBMITTING IT. I DID NOT KNOW FOR SURE
19 WHETHER IT WOULD BE.

20 MR. MCDANIEL: YOUR HONOR?

21 THE COURT: YES.

22 MR. MCDANIEL: IF I COULD, THIS WAS FILED FIRST IN
23 FEDERAL COURT, WHICH WE THOUGHT WAS APPROPRIATE.

24 THE COURT: THIS ISN'T IN FEDERAL COURT. PLEASE
25 FORGIVE ME. THIS IS THE COURT OF GENERAL SESSIONS IN THE

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1 10TH JUDICIAL CIRCUIT FOR OCONEE COUNTY, AND I HAVE NO
2 ACCESS TO FEDERAL FILES AT ALL. I HAVE NO IDEA.
3 APPARENTLY THIS MATTER HAS BEEN FLOATING AROUND WITH YOU.
4 BUT WHAT YOU DO NOT UNDERSTAND, APPARENTLY, IS IT'S
5 NOT YOU, NOT YOU, NOT EVEN THE DEFENDANT OR MR. HUFF THAT
6 HAS BEEN PUT OR IS GOING TO BE, OR COULD BE, PUT TO THE
7 INCONVENIENCE OF HAVING TO BE DRAWN ON A TRIAL FOR A CASE
8 AND WITH ALL GOOD INTENTIONS OF MEETING THEIR
9 RESPONSIBILITIES AND SOMEONE ELSE IS GOING TO DECIDE WHEN
10 AND WHERE IT'S GOING TO BE DONE.

11 AGAIN, AM I SUPPOSED TO BRING THE JURY BACK OR ARE
12 WE SUPPOSED TO STAY HERE ALL NIGHT LISTENING TO ARGUMENT
13 ON THIS?

14 MS. WINES: YOUR HONOR, MY SUGGESTION WOULD BE I
15 COULD HAND UP THE STATE'S MEMORANDUM.

16 THE COURT: VERY GOOD. VERY WELL. I'LL ACCEPT YOUR
17 SUGGESTION UNLESS SOMEBODY WANTS TO MOVE FOR A
18 CONTINUANCE. EVERYONE IS WAIVING THEIR RIGHTS FOR A
19 CONTINUANCE AT THIS POINT.

20 DO YOU UNDERSTAND THAT, MR. MCDANIEL?

21 MR. MCDANIEL: YES, SIR.

22 THE COURT: DO YOU UNDERSTAND THAT, MS. WINES?

23 MS. WINES: YES, SIR.

24 THE COURT: All right, VERY GOOD.

25 MS. WINES: YOUR HONOR, THAT'S THE ORIGINAL, AND

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1 I'LL PROVIDE IT TO COUNSEL.

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

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

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

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

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

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

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

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

16 (MR. HUFF LEAVES THE WITNESS STAND.)

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

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

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

1 SUCH A MOTION.

2 THE COURT: WELL, WAS IT DISMISSED OR REMANDED?

3 MR. MCDANIEL: IT WAS DISMISSED DUE TO ABSTENTION,
4 YOUR HONOR. THEY JUST, SHE DIDN'T RULE ON ANYTHING. IT
5 WAS WITHOUT PREJUDICE FOR THE, THE SAME AS FOR THE STATE
6 COURT. AND I WOULD POINT OUT THAT THE STATE HAS ARGUED
7 ALL ALONG THAT THE PROPER PLACE TO ARGUE THIS IS IN FRONT
8 OF YOU.

9 THE COURT: WELL, WHY DIDN'T Y'ALL BRING IT HERE?

10 MR. MCDANIEL: THAT'S WHAT THE CURRENT MOTION IS
11 FOR.

12 THE COURT: YOU DIDN'T BRING IT HERE UNTIL THIS
13 AFTERNOON. I THINK THE FIRST APPEARANCE FORMALLY IN THE
14 COURTROOM WAS AT APPROXIMATELY 2:30 THIS AFTERNOON, AND
15 AT THAT POINT NOTHING HAD BEEN FILED IN THIS COURT.

16 ALL RIGHT. YOU MAY PROCEED, MS. WINES.

17 MS. WINES: THANK YOU, YOUR HONOR.

18 MR. MCDANIEL: YOUR HONOR, IF I MIGHT, IF WE'RE
19 STARTING ARGUMENTS?

20 THE COURT: YES, SIR.

21 MR. MCDANIEL: I'D LIKE TO OFFER -- I DON'T HAVE TO
22 PUT THEM UP AS WITNESSES, BUT I WOULD LIKE TO HAVE
23 ADDITIONAL, MR. JOHNSTON, WHO JUST RAN OUT, TO
24 CORROBORATE THE TELEPHONE CALL THAT MR. HUFF SAYS HE GOT
25 AND THEN REPORTED TO MR. JOHNSTON, THAT HE WILL TESTIFY

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1 TO ESSENTIALLY THE SAME THING.

2 THE COURT: WELL, THAT'S HEARSAY, IS IT NOT? OR
3 HAVE WE RELAXED THE RULES OF EVIDENCE, AS WELL? IN FACT,
4 IT'S SELF-SUPPORTING HEARSAY, BOLSTERING HEARSAY, I
5 THINK, WHICH IS ABOUT AS contemptable I THINK AS ANY.
6 YOU ARE SAYING YOU DON'T BELIEVE YOUR CLIENT OR YOUR
7 WITNESS, OR IN THIS CASE I'M NOT SURE WHAT THE
8 CHARACTERIZATION IS.

9 MR. MCDANIEL: THE ONLY OTHER THING THAT WE WOULD
10 LIKE TO STIPULATE TO IS THAT THERE WAS NOT A TERM OF
11 OCONEE COUNTY COURT SCHEDULED FOR APRIL 11TH, 2011.

12 THE COURT: NOW, THIS IS ONE THING I DO REMEMBER.
13 THERE WAS SOME CONFUSION. WE AT FIRST THOUGHT THIS WAS A
14 STATE GRAND JURY CASE, AND SO I WAS REALLY NOT CONCERNED
15 ABOUT IT. AND I DO REMEMBER BEING -- I THINK I WAS THE
16 ONE IN ANDERSON FOR THE TERM OF GENERAL SESSIONS AND
17 APPARENTLY THEY DIDN'T NEED IT AND SOMETHING WAS SAID,
18 WELL, LET'S MOVE IT UP TO OCONEE. AND THEN I FOUND OUT
19 IT ACTUALLY WAS NOT A STATE GRAND JURY CASE, IT WAS AN
20 OCONEE INDICTMENT, SO THAT ONLY MADE SENSE. BUT YOU
21 DON'T HAVE TO STIPULATE. THE RECORD REFLECTS THAT THERE
22 WAS A SPECIAL TERM OF COURT, OR AT LEAST THE GENERAL
23 SESSIONS IN ANDERSON WAS MOVED TO OCONEE, WHICH IS IN THE
24 10TH JUDICIAL CIRCUIT. IT IS DONE ALL THE TIME. IN
25 FACT, I THINK IT WAS DONE IN TIME TO HAVE A JURY PANEL

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1 SUMMONED BECAUSE I'M LOOKING AT THE CLERK. WE WENT
2 THROUGH SOME DISCUSSIONS, DID WE HAVE ENOUGH TIME TO GET
3 ONE? AND THEN IT WAS LATER DECIDED WE DIDN'T NEED A
4 PANEL. NOW, WHAT OTHER STIPULATION DO YOU WANT?

5 MR. MCDANIEL: THAT'S ALL, YOUR HONOR.

6 THE COURT: DO YOU WANT TO PUT ME UNDER OATH?

7 MR. MCDANIEL: NO, YOUR HONOR.

8 THE COURT: I JUST TESTIFIED. ALL RIGHT. NOW,
9 MAYBE I'VE BEEN IN THE MOUNTAINS TOO LONG, I NEED TO GET
10 DOWN TO SOME OF THAT HEAVY AIR WE ALL BREATHE IN THE
11 MIDLANDS. ALL RIGHT. ANYTHING ELSE YOU WANT TO PUT ON
12 THE RECORD?

13 MR. MCDANIEL: NO, YOUR HONOR.

14 THE COURT: ALL RIGHT.

15 MS. WINES?

16 MS. WINES: YES, SIR. I'M NOT SURE IF I'M EXACTLY
17 RESPONDING TO WHAT MR. HUFF HAD TO SAY ON THE STAND OR
18 THE MEMORANDUM PUT UP. BUT FIRST LET ME SAY I DID
19 POTENTIALLY ANTICIPATE THIS MOTION, THAT'S WHY I PREPARED
20 THE MEMORANDUM A COUPLE OF MONTHS AGO. I WAS NOT SURE IT
21 WOULD BE RAISED.

22 THE BOTTOM LINE OF THE STATE'S POSITION AND MY
23 POSITION IN PARTICULAR IS, FIRST OF ALL, YOU WILL NOT
24 FIND IN THE RECORD OR NOTES OR ANYTHING OF ANY KIND
25 ANYWHERE THAT I EVER SAID WE WOULD NOT BRING A CASE HERE

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1 IN OCONEE COUNTY.

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

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

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

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

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

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

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

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

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

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

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

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

1 BEYOND THAT, I THINK WHAT I'D LIKE TO DO AT THIS
2 POINT IS JUST STRESS THE LAW, THAT THERE IS A TWO-PRONG
3 TEST FOR VINDICTIVENESS, YOUR HONOR, AND I DON'T BELIEVE
4 THAT THAT HAS BEEN MET BY THE DEFENDANT. AND WITHIN THE
5 MEMO I'LL, OF COURSE, LEAVE THAT TO YOUR HONOR TO READ AT
6 YOUR LEISURE AND DISCRETION.

7 BUT THERE HAVE BEEN 4TH CIRCUIT CASES AND SOUTH
8 CAROLINA CASES, AND ESSENTIALLY YOU HAVE A TWO-PRONG
9 TEST. THE PROSECUTOR ACTED WITH GENUINE ANIMUS TOWARD
10 THE DEFENDANT, AND BUT FOR THAT ANIMUS, THE DEFENDANT
11 WOULD NOT HAVE BEEN prosecuted. I DON'T BELIEVE THEY CAN
12 POINT TO ANYTHING WITH REGARD TO THAT.

13 And PRIMARILY, YOUR HONOR, IT IS A CHANGE in
14 STRATEGY. BRINGING UP LETTERS THAT I'VE SENT, I DON'T
15 REALLY UNDERSTAND HOW THAT'S RELEVANT OR WHAT THAT HAS TO
16 DO WITH ANYTHING IN TERMS OF SCHEDULING COURT. I BELIEVE
17 WE'VE ADDRESSED THE APRIL TERM OF COURT. I CAN GO INTO
18 THAT FURTHER IF WE NEED TO.

19 WITH REGARD TO THE NEWSPAPER ARTICLES --

20 THE COURT: IT WOULD HELP THE COURT BECAUSE I HAD TO
21 DO THAT OFF THE TOP OF MY HEAD OR FROM MY OWN
22 RECOLLECTION.

23 MS. WINES: YES, SIR. LET ME ELABORATE ON THAT
24 FURTHER.

25 THE COURT: THAT'S WHAT HAPPENS WHEN YOU PUT A JUDGE

1 IN A FACTUAL SITUATION RATHER THAN LOOKING AT THE LAW.

2 ALL RIGHT.

3 MS. WINES: YES, SIR. MY RECOLLECTION AND MY
4 UNDERSTANDING OF THE SITUATION IS THIS. I HAD INTENDED
5 TO CALL THE CASE FOR TRIAL SOMETIME AROUND FEBRUARY. I
6 DON'T REMEMBER IF I HAD GIVEN NOTICE OR WHAT. I CAN LOOK
7 THROUGH MY FILE FOR THAT. BUT IN THE BACK OF MY MIND I
8 WAS GETTING READY TO TRY THE CASE, AND INTERNALLY WITHIN
9 THE OFFICE, TALKING WITH MY IMMEDIATE SUPERVISORS, WE
10 WERE TRYING TO FIGURE OUT A TIME TO CALL THE CASE FOR
11 TRIAL, KNOWING THAT MR. HUFF HAD REQUESTED A MEETING WITH
12 ATTORNEY GENERAL WILSON.

13 SOMEWHERE ALONG THE SAME LINE OR SAME TIME FRAME I
14 WAS INFORMED BY, THROUGH STEPHANIE MCINTOSH THAT THE
15 STATE GRAND JURY HAD A TERM OF COURT IN ANDERSON FOR
16 APRIL 11TH AND THAT THAT WOULD NO LONGER BE NEEDED AND
17 THAT I SHOULD WORK WITH THE STATE GRAND JURY CLERK, JIM
18 PARKS, TO SEE IF WE COULD GET THAT TIME RESCHEDULED,
19 RATHER NOT WORK WITH HIM BUT JUST CHECK WITH HIM, THAT HE
20 WOULD WORK WITH THAT. AND, IN FACT, I DID TALK WITH --

21 THE COURT: WAS THERE TO BE A STATE GRAND JURY TERM
22 IN ANDERSON?

23 MS. WINES: IT WAS, YES, SIR.

24 THE COURT: AND THEY DIDN'T NEED IT AND THAT'S WHY
25 IT BECAME AVAILABLE FOR OCONEE?

1 MS. WINES: THAT'S CORRECT, YES, SIR. JIM PARKS, I
2 AM TOLD -- I CAN'T SPEAK TO WHAT WAS ACTUALLY DONE -- BUT
3 I WAS TOLD BY JIM PARKS THAT HE HAD WORKED WITH COURT
4 ADMINISTRATION TO GET THAT TERM OF COURT TRANSFERRED AS A
5 REGULAR GENERAL SESSIONS TERM IN OCONEE COUNTY WITH YOUR
6 HONOR AS THE PRESIDING JUDGE, AND I WAS TOLD IT WAS IN
7 TIME TO SWEAR OR TO HAVE A JURY PANEL.

8 THE ISSUE AT THAT POINT THEN BECAME CONSTRUCTION IN
9 THE COURTHOUSE. AND SO WE STARTED BUMPING UP CLOSER TO
10 THE TIME OF THE COURT DATE, AND IN LIGHT OF MY KNOWLEDGE
11 OF REQUESTS FOR TRANSCRIPTS, IT MADE SENSE TO ME TO GO
12 AHEAD AND HAVE A CONTINUANCE, BUT TO USE THE COURT'S TIME
13 THAT WAS MADE AVAILABLE TO CONDUCT PRETRIAL HEARINGS.

14 THE COURT: THAT ALSO BRINGS TO MIND THAT THAT WAS A
15 TIME THAT THE COURTHOUSE HERE WAS IN, BEING RENOVATED.

16 MS. WINES: YES, SIR.

17 THE COURT: AND AGAIN, MADAM CLERK, DO YOU REMEMBER
18 WHEN WE FINALLY GOT IN? WASN'T IT ABOUT THAT TIME?
19 ABOUT A WEEK BEFORE, MAYBE.

20 THE CLERK: WE GOT IN THAT WEEK BECAUSE WE HAD THREE
21 COURTS GOING THE SAME DAY, APRIL 11TH.

22 THE COURT: APRIL 11TH?

23 THE CLERK: APRIL 11TH. WE HAD NON JURY, COMMON
24 PLEAS, AND THEN STATE GRAND JURY.

25 THE COURT: OKAY. ALL RIGHT. NOW, AGAIN I'M GONNA

1 WAIT TILL MS. WINES FINISHES HER PRESENTATION, BUT I'M
2 GONNA TELL YOU WHAT I'M GONNA DO. I'M GONNA ASK, AND YOU
3 NEED TO CONSULT WITH YOUR CLIENT -- WELL, I GUESS
4 MR. MCDANIEL NEEDS TO CONSULT WITH HIS CLIENT AS TO
5 WHETHER YOU WANT ME TO RECUSE MYSELF BECAUSE OBVIOUSLY I
6 KNOW THINGS OUTSIDE THE PARTICULAR, THAT ADDRESS THE
7 FACTS OF THIS, OF YOUR MOTION. I KNOW A LITTLE BIT ABOUT
8 WHY CASES WERE DELAYED AND MOVED FROM ANDERSON TO OCONEE.

9 AND, YOU SEE, YOU HAVE PUT THE COURT, AND I'M NOT
10 SPEAKING OF MYSELF INDIVIDUALLY, BUT AS A REPRESENTATIVE
11 OF AN INSTITUTION, BEING THE COURT, IN A RATHER
12 INCONVENIENT POSITION. AND IF YOU FEEL THAT THAT IN ANY
13 WAY WILL PREJUDICE YOUR INTERESTS OR YOUR CLIENT'S
14 INTERESTS, AND THAT GOES WITH THE STATE, TOO, THEN I WANT
15 YOU TO EXERCISE THAT.

16 NOW, I'LL HEAR MS. WINES OUT AND THEN I'LL LET YOU
17 DECIDE. BUT WHEN YOU COMPLETE YOUR ARGUMENT, MS. WINES,
18 I'M GONNA ASK IF ANYONE WANTS ME TO RECUSE MYSELF AND
19 I'LL GIVE YOU TIME TO CONSULT WITH YOUR CLIENT.

20 MS. WINES: THANK YOU, YOUR HONOR. I WOULD ONLY
21 HAVE A LITTLE BIT FURTHER TO PUT ON THE RECORD. THE
22 MATTER OF YAHOO!, MARK ZWELLINGER. MY KNOWLEDGE OF THAT
23 BACK IN THE SPARTANBURG TRIAL WAS YAHOO! WAS UPSET THAT
24 THEY WERE GONNA HAVE TO COME TO SOUTH CAROLINA TO TESTIFY
25 BECAUSE APPARENTLY THEY WERE SHORT-STAFFED AND DIDN'T

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1 HAVE ENOUGH PEOPLE TO BE FLYING ALL OVER THE COUNTRY.
2 AND SO CURTIS PAULING WAS TRYING THE SPARTANBURG CASE
3 WITH ME. CURTIS WAS IN CHARGE OF THE YAHOO! WITNESS.
4 JEFF STANFORD WITH YAHOO! WAS OUR CONTACT.

5 I DON'T KNOW WHO WAS DESIGNATED TO ACTUALLY COME
6 TESTIFY. BUT WE WERE ASKED -- I BELIEVE WE WERE ASKED
7 FOR MR. HUFF'S CONTACT INFORMATION. I DON'T RECALL IF WE
8 PROVIDED THAT OR WHAT, BUT WHAT I DO REMEMBER IS GETTING
9 A PHONE CALL FROM YAHOO! EXPLAINING THAT THERE HAD BEEN A
10 CONVERSATION WITH MR. HUFF ABOUT THE NATURE OF THE
11 TESTIMONY AND THAT AT THAT POINT IT WAS BELIEVED BY
12 YAHOO! THAT THE DEFENDANT WOULD STIPULATE TO AUTHENTICITY
13 OF THE RECORDS.

14 THAT WAS IN NO WAY ON THE STATE'S REQUEST. WE WERE
15 PREPARED TO BRING IN THE WITNESS. WE WERE IN PROCESS OF
16 BOOKING FLIGHTS, YOUR HONOR. SO FOR WHATEVER IT'S WORTH,
17 JUST TO CLARIFY ANYTHING ON THAT MATTER, LET ME JUST GO
18 AHEAD AND PUT THAT OUT THERE.

19 BUT THE BOTTOM LINE IS PROSECUTORS CAN CHANGE
20 STRATEGIES. I INHERITED THAT TRIAL. I WAS FOLLOWING THE
21 STRATEGY OF MY PREDECESSOR. IT DID NOT SEEM TO MAKE
22 SENSE OR BENEFIT THE STATE TO ME WHEN WE STARTED DEALING
23 WITH SUCH COLLATERAL MATTERS THAT WE NEEDED TO HAVE A
24 HEARING ON ATTORNEY-CLIENT PRIVILEGE. AND AT THAT POINT
25 IT SEEMED TO ME TO BE PRUDENT TO JUST GO AHEAD AND SUBMIT

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1 THE INDICTMENTS TO OCONEE COUNTY, WHICH IS WHAT WE DID.

2 AND I'LL BE HAPPY TO ANSWER ANY QUESTIONS THAT YOUR
3 HONOR MAY HAVE, BUT I WILL JUST STAND ON THE MEMORANDUM
4 AT THIS POINT.

5 THE COURT: ALL RIGHT. RATHER THAN HEAR FURTHER
6 ARGUMENT AT THIS TIME, SINCE I'VE HEARD AT LEAST
7 PRESENTATIONS, BUT NOT FULL ARGUMENT, BY THE DEFENDANT,
8 I'M GOING TO TAKE A SHORT RECESS OF ABOUT TEN MINUTES, IT
9 WILL BE ABOUT 20 AFTER FIVE, FOR YOU TO DECIDE IF YOU
10 WANT ME TO HEAR THIS MATTER AND DECIDE IT. THE JURY HAS
11 NOT BEEN SWORN, DOUBLE JEOPARDY DOES NOT ATTACH.

12 BUT I WOULD ALMOST THINK THAT YOU -- WELL, I THINK
13 THERE WAS A CASE THAT'S CITED -- OH, GRACIOUS -- STATE
14 VERSUS OWENS, WHERE THEY SAID THAT JUDGES ARE NOT
15 SUPPOSED TO HAVE OPINIONS AND DEFINITELY THEY DON'T SHARE
16 THOSE OPINIONS IF THEY HAVE IT. SO RATHER THAN PREJUDICE
17 THIS CASE IN ANY WAY BY REASON OF HAVING KNOWLEDGE
18 OUTSIDE OF THE RECORD, I'M GOING TO GIVE YOU THAT TIME.

19 SO WE'LL TAKE ABOUT TEN MINUTES AND WE'LL COME BACK
20 AT 20 AFTER -- OR LET'S SAY 25 AFTER. THAT WILL GIVE US
21 15.

22 MR. MCDANIEL: THANK YOU, YOUR HONOR.

23 MS. WINES: THANK YOU, JUDGE.

24 (A RECESS WAS TAKEN.)

25 THE COURT: I GUESS I SHOULD RECOGNIZE THE DEFENDANT

1 State of South Carolina) In the Court of General Sessions
 2 County of Oconee) Case No: 2011-GS-37-00363, '364
 3 State of South)
 4 Carolina,)
 5 Plaintiff,)
 6 -vs-) Partial Transcript of
 7 Anthony Clark Odom,) Record
 8 Defendant.) Pre-Trial Matters
) Pages 1 through 27
)
)

9 November 1, 2011
 10 Anderson, South Carolina
 11
 12

13 B e f o r e:

14 The Honorable R. Lawton McIntosh, Judge.
 15
 16

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

18 Megan Wines
 19 Jason Anders
 20 Assistant Attorneys General
 Attorneys for the State

21 James B. Huff, Esq.,
 Attorney for the Defendant
 22

23 Robin Sue Hild, FCRR, RPR
 24 Circuit Court Reporter
 25

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25	Aiken County Sheriff's Office, Detention Division	

1 ** Start of Requested Certified Transcript of Record **

2 (Marked for identification was Pretrial State's

3 Exhibit 1, Spartanburg chats.)

4 (Marked for identification was Pretrial State's

5 Exhibit 2, search summary dated 9-8-10.)

6 (Marked for identification was Pretrial State's

7 Exhibit 3, search summary dated 8-31-07.)

8 THE COURT: This is the State versus Odom ranked

9 first for trial next week in Oconee County.

10 MS. WINES: Yes, Your Honor.

11 THE COURT: My law clerk tells me that we have a

12 Lyles issue as well as what else?

13 THE LAW CLERK: As well as the issue of

14 admissibility of the records which were expunged.

15 THE COURT: Which involve the Police Officer,

16 correct?

17 MR. HUFF: Yes, Your Honor.

18 THE COURT: Okay. Also, I'm advised -- and I'll

19 take this up first -- that there was some question as to

20 my ruling that the Interrogatories would go out to the

21 jury pool and that it had to do with, I believe the

22 State has some problems with the Order as drafted by

23 Mr. Huff; is that correct?

24 MS. WINES: Your Honor, I thought we were past that

25 issue.

1 THE COURT: That's what I thought, too.

2 MS. WINES: Yes, sir. No. The only issue I had at
3 this point was at this time was just wondering how we
4 were gonna have the information distributed.

5 THE COURT: Take it up with the Courthouse.

6 MS. WINES: Yes, sir.

7 THE COURT: Anything further as far as the
8 Interrogatories?

9 MS. WINES: Not at this time, Your Honor.

10 THE COURT: Mr. Huff?

11 MR. HUFF: No, Your Honor.

12 THE COURT: All right. I didn't know if you agreed
13 but, maybe it best.

14 The next would deal with the admissibility of or
15 discoverability of Lyle evidence. Whichever order you
16 would like to go in is fine with me.

17 MR. HUFF: We would be glad to go ahead and be
18 heard on the records on Mr. Patterson.

19 THE COURT: Okay.

20 MR. HUFF: Your Honor, we would call
21 Mr. Mark Patterson to the stand.

22 (Whereupon, Officer Mark Patterson was sworn by the
23 Court).

24 ///

25 ///

1 Whereupon,

2 Mark Patterson,

3 after first having been duly sworn, testified as
4 follows:

5 Direct Examination by Mr. Huff:

6 THE COURT: State your name for the record and
7 spell your last name.

8 THE WITNESS: Mark Patterson, sir.

9 THE COURT: Spell your last name, please.

10 THE WITNESS: P-a-t-t-e-r-s-o-n.

11 THE COURT: Thank you.

12 Mr. Huff?

13 MR. HUFF: May it please the Court, Ms. Wines.

14 By Mr. Huff:

15 Q. Now, Mr. Patterson, back in 2006 you were employed
16 by the Westminster City Police Department?

17 A. Yes.

18 Q. And when were you originally employed there?

19 A. I believe it was 2004. I don't remember the exact
20 dates, it's so long ago.

21 Q. And when did you leave Westminster?

22 A. 2006. August of 2006, I believe.

23 Q. All right. And I believe the accusations involved
24 in this case arise in, I believe, May of 2006?

25 A. Yes, sir, I believe.

- 1 Q. Okay. Now, you left Westminster in August of 2006.
2 Where did you go as far as employment after that?
3 A. Aiken County Sheriff's Office.
4 Q. All right. And do you know approximately what
5 month or year you became employed there?
6 A. August 2006.
7 Q. All right. So there was possibly a week or two
8 delay between leaving Westminster and starting --
9 A. One week.
10 Q. One week, okay.
11 Now, you were married at the time; is that right?
12 A. No, sir.
13 Q. When you went to Aiken County you were not married?
14 A. No, sir.
15 Q. Okay. Did you later become married while you were
16 living in Aiken County?
17 A. Yes, I did.
18 Q. When did you become married?
19 A. That would have been in September of 2007.
20 THE COURT: September '07?
21 THE WITNESS: Yes, sir.
22 THE COURT: All right.
23 By Mr. Huff:
24 Q. And who is Ellen Patterson?
25 A. That's my ex-wife.

- 1 Q. Your ex-wife?
- 2 A. Yes, sir.
- 3 Q. Is this the lady that you married in September of
- 4 '07?
- 5 A. Yes, sir.
- 6 Q. Okay. How did you know Ms. Patterson in 2006?
- 7 A. I did, I met her in December 2006, I believe. We
- 8 were friends.
- 9 Q. You met her in December 2006?
- 10 A. I believe so. It may have been in 2007, early '07.
- 11 Q. Okay. Well, let me ask you, were you arrested June
- 12 5th of 2009 in Aiken County?
- 13 A. (Pause) Yes.
- 14 Q. Did you understand the question?
- 15 A. Yes, sir. But I didn't think that valid.
- 16 Q. All right. So you were arrested in 2009. And were
- 17 you -- tell me, if you would, were you suspended from
- 18 the Aiken County Sheriff's Department at that time?
- 19 A. Yes.
- 20 Q. All right. And the -- what were your duties at the
- 21 Sheriff's Department at the time of your arrest?
- 22 A. I was an investigator.
- 23 Q. Okay. In what division?
- 24 A. I worked in the Juvenile Division.
- 25 Q. Okay. How long were you assigned to the Juvenile

1 Division at the Sheriff's Department?

2 A. I believe it was about a year and a half.

3 Q. When you started the Sheriff's Department, what
4 duties did you have?

5 A. I think I was on road patrol.

6 Q. Road patrol. How long were you on the road? Until
7 you became a juvenile investigator?

8 A. Yes, sir.

9 Q. Okay. Tell me, if you would, what transpired to
10 cause your arrest on June 5th of 2009 in Aiken County?

11 MS. WINES: Your Honor?

12 THE COURT: Rephrase that question, please,

13 Mr. Huff.

14 By Mr. Huff:

15 Q. You were accused of something in Aiken County,
16 accused of a crime, correct?

17 A. Yes.

18 Q. What crime were you accused of?

19 A. Unlawful communication.

20 Q. All right. And who arrested you on June 5th of
21 2009?

22 A. The Burnettown Police Department, sir.

23 Q. All right. What Officer --

24 THE COURT: Who?

25 THE WITNESS: The Burnettown Police Department,

1 sir.

2 THE COURT: I'm sorry. Which town? Burnetsown

3 [sic]?

4 THE WITNESS: Burnetttown.

5 MR. HUFF: Burnetttown.

6 THE COURT: Burnetttown. I'm sorry.

7 MR. HUFF: I could spell that for the reporter.

8 It's B-u-r-n-e-t-t-o-w-n, Burnetttown.

9 THE COURT: I'm sorry, go ahead.

10 MR. HUFF: Thank you, Your Honor.

11 By Mr. Huff:

12 Q. And that was Chief David Smith who made the arrest?

13 A. Yes, sir.

14 Q. All right. And what did -- how did your arrest

15 physically take place?

16 A. I don't understand your question.

17 Q. How did you physically get arrested? (Pause) Do

18 you not understand that?

19 A. I mean, did they take me to jail, put handcuffs on

20 me? Is that what you're asking?

21 Q. Yes, sir.

22 A. I don't completely understand.

23 Q. I guess that's what I was meaning by -- well, how

24 did you know that there was an arrest warrant for you?

25 A. There was never an arrest.

- 1 Q. All right, sir. What was there? Tell me what the
2 charging document was.
- 3 A. The charging document was a uniform traffic ticket,
4 yes.
- 5 Q. So we're gonna play semantics. Well, tell me about
6 this ticket. How did you learn that there was a ticket
7 for your arrest?
- 8 A. They read me the ticket after they wrote it.
- 9 Q. All right. Who is "they"?
- 10 A. Burnettown Police Department, Chief Smith.
- 11 Q. All right. Well, let's go back to, if you would
12 tell the Court how you were notified, who notified you,
13 where you were, what physically was going on when you
14 were arrested.
- 15 A. I was at my residence and they gave me a ticket.
- 16 Q. I'm sorry?
- 17 A. I was at my residence and they wrote me a ticket
18 for unlawful communication, told me that --
- 19 Q. Who wrote the ticket?
- 20 A. Chief David Smith.
- 21 Q. So he was at your house?
- 22 A. Yes, he was.
- 23 Q. All right. And did he take you into custody?
- 24 A. Yes, he did.
- 25 Q. And so what did he do to take you into custody?

1 A. He placed me in handcuffs and took me to the Aiken
2 County Detention Center.

3 Q. Okay. So you went straight from your house to the
4 Aiken County Detention Center?

5 A. Yes, I did.

6 Q. All right. And what happened when you got to the
7 Detention Center?

8 A. I went in front of a Judge, received a personal
9 recognizance bond and I was released..

10 Q. All right. So you went in to a Bond Court Judge?

11 A. Uh-huh.

12 Q. Do you recall who the Judge was?

13 A. Um, I don't remember.

14 Q. That's fine. That's fine. So did Chief Smith
15 place you in his patrol car and take you to the Aiken
16 County Detention Center?

17 A. Yes, he did.

18 Q. All right. And did he come in through the sally
19 port or come through the main doorway that the public
20 comes in to the Detention Center?

21 A. It was through the sally port.

22 Q. All right. And once you got to the Detention
23 Center, were you taken directly in, straight in to the
24 bond courtroom?

25 A. Yes, I was.

1 Q. Okay. You didn't stop anywhere?

2 A. No, sir.

3 Q. Okay. And at that point in time, I believe that
4 is, the Judge you say gave you a personal recognizance
5 bond?

6 A. Yes, sir.

7 Q. And so the Judge -- how long do you think you were
8 in Bond Court, approximately?

9 A. Five minutes.

10 Q. Okay. And what happened once the Judge set bond?

11 THE COURT: Do you have an objection, Ms. Wines?

12 MS. WINES: Your Honor, I do. I just don't see how
13 this case is relevant to the case at hand, and I
14 assume Mr. Huff is going somewhere with it, but the --

15 THE COURT: I've got your objection.

16 What's your relevancy, please?

17 MR. HUFF: Judge, I'm tracking the Statute that
18 will support my request for disclosure of the documents.

19 THE COURT: What Statute would that refer to, sir?

20 MR. HUFF: Your Honor, that's going to be 17-1-40.

21 THE COURT: Got it. Okay.

22 Overruled.

23 By Mr. Huff:

24 Q. You were in Bond Court for about five minutes. And
25 then what happens to you?

1 A. They released me on a personal recognizance bond.

2 Q. And did you walk back out through the front door or
3 did the --

4 A. I went back out through the sidewalk.

5 Q. And did Chief Smith drive you back to your house?

6 A. Yes, he did.

7 THE COURT: Let me stop you, Mr. Huff. I've got
8 17-1-40 in front of me. Show me where in the Statute
9 where we should be tracking.

10 MR. HUFF: Subsection C, Your Honor.

11 THE COURT: Hang on.

12 MR. HUFF: I'm sorry, Your Honor. I just have two
13 questions I'll be asking.

14 THE COURT: Let me just look at this first, please.

15 MR. HUFF: Yes, sir, Your Honor.

16 THE COURT: (Court reads Statute 17-1-40,
17 Subsection C.)

18 Okay. Go ahead.

19 MR. HUFF: Thank you, Your Honor.

20 By Mr. Huff:

21 Q. Okay. So, Mr. Patterson, during your arrest
22 process you never had a mugshot taken of you, did you?

23 A. No, sir.

24 Q. You never had any fingerprints taken of you, did
25 you?

- 1 A. No, sir.
- 2 Q. And who is Charles Barranco? You know him, don't
- 3 you?
- 4 A. Yes, sir.
- 5 Q. And is he not the Head of the Aiken County
- 6 Detention Center?
- 7 A. He is the Captain.
- 8 Q. Okay. And he is in charge of the Aiken County
- 9 Detention Center, correct?
- 10 A. Yes, sir.
- 11 Q. All right. And so, if he were to have researched
- 12 the records at the Aiken County Detention Center, he
- 13 would find exactly what you just said, that there are no
- 14 mugshots or fingerprints of your arrest regarding this
- 15 charge of unlawful use of telephone, wouldn't he?
- 16 A. I'm not familiar with their record keeping, sir.
- 17 Q. All right. Let me show you this document, if I
- 18 could. I know you may not be familiar with this
- 19 process, but I'll ask you to read that to yourself but
- 20 not make any comment about it yet.
- 21 A. (Complies and hands back to Counsel.)
- 22 Q. Okay, sir. Is this a letter that purports to be
- 23 from Captain Barranco from the Aiken County Sheriff's
- 24 Department?
- 25 A. Yes, sir.

1 Q. All right. Does it reflect what he found when he
2 made a search of his records regarding any fingerprints,
3 mugshot, or any records regarding your arrest that we
4 have been discussing in court today?

5 A. Yeah.

6 Q. All right. And does his letter reflect that he
7 found no indication that you were ever fingerprinted or
8 mugshot or had any documents regarding your entry into
9 the Aiken County Detention Center as a result of your
10 arrest in 2006?

11 A. That's true.

12 Q. All right. Would you dispute his assertion in his
13 letter? Would you deny that or disagree with it?

14 A. That they don't have any of that stuff?

15 Q. Yes, sir.

16 A. I don't know, sir.

17 Q. All right.

18 A. I don't know what records they have at the jail.

19 Q. But you would certainly know that the jail would
20 not have any records of you being fingerprinted there?

21 A. That is true.

22 Q. Or being mugshot?

23 A. That is true.

24 Q. And after your arrest, there were no fingerprints
25 taken of you whatsoever, were there?

1 A. No.

2 MR. HUFF: Your Honor, we would offer this in as a
3 Defendant's Exhibit.

4 THE COURT: Any objection?

5 MS. WINES: No objection.

6 THE COURT: It will be admitted without objection.
7 (Marked for identification and received in evidence
8 was Pretrial Defendant's Exhibit 1, letter dated
9 October 24, 2011, to James Huff, Esq., from Charles
10 D. Barranco, Captain, Aiken County Sheriff's
11 Office, Detention Division.)

12 MR. HUFF: As to the issue before the Court as to
13 this motion, I have no further questions of this
14 Witness.

15 THE COURT: Ms. Wines, Cross-Examination?

16 MS. WINES: No, Your Honor.

17 THE COURT: I assume by your comments that you are
18 asking Officer Patterson not be excused?

19 MR. HUFF: I'm asking that he not be excused at
20 this point, Judge.

21 THE COURT: You may step down.

22 THE WITNESS: Thank you, Your Honor.

23 (Witness leaves stand.)

24 THE COURT: Anything further?

25 MR. HUFF: Yes, Your Honor. Your Honor, we have

1 been attempting to obtain these records related to
2 Mr. Patterson's arrest, who you are aware is the Chief
3 Investigating Officer related to the charge pending
4 against my client and will be tried next week before
5 Your Honor. The State has consistently argued that the
6 records related to Mr. Odom's arrest -- excuse me,
7 Mr. Patterson's arrest should not be released to
8 Mr. Odom so that he might prepare a full and adequate
9 defense pursuant to his Constitutional rights.

10 And what you have before you is, testimony today is
11 that Mr. Patterson was never fingerprinted related to
12 his arrest in Aiken County.

13 Our Expungement Statute, 17-1-40, states that a
14 person may -- does not -- this Section does not apply to
15 a person who is charged with the violation of a state
16 criminal offense if the person is not fingerprinted for
17 the violation.

18 As such, the State's assertion that the records
19 related to Mr. Patterson's arrest should have been
20 expunged and should not -- that's one issue -- is not
21 correct and they should have never been expunged, and as
22 such, pursuant to our discovery request, pursuant to
23 *Brady* and Rule 5 and *Kyles v. Whitley*, they should have
24 been presented many, many, many months ago so that we
25 could prepare to defend the charge against Mr. Odom.

1 THE COURT: Ms. Wines?

2 MS. WINES: My response would be brief.

3 First, the State is allowed in Section 17-22-950,
4 which is actually controlling as to the expungement
5 itself -- in all candor to the Court, I'm not sure I
6 completely follow Mr. Huff's argument about the
7 fingerprints. I understand the language as written.
8 But I would need to take a further look at the authority
9 about that. I'm not sure that we would have the same
10 reading of that, and I would defer to Your Honor's
11 reading of the Statute.

12 THE COURT: What is your reading of that Statute,
13 17-1-40?

14 MS. WINES: 17-1-40, and as I understand it we're
15 looking at Subsection C discussing that a person is not
16 fingerprinted, as I understand it, this particular
17 Statute is talking about the destruction of the records,
18 not necessarily the expungement being ordered itself,
19 and that's where I see the difference, Your Honor.

20 But certainly I would have to perhaps do a little
21 more research. Not to say that's my final, but in
22 reading it just now, that would be my interpretation,
23 Your Honor.

24 And I believe as to whether the charge should and
25 could be expunged, and the method for expungement is

1 17-22-950, and as such, I'm pretty certain I have
2 previously handed up to Your Honor, and I've got extra
3 copies if we need the Expungement Order itself. If you
4 would just bear with me to get my hands on it again.
5 I'm sure Mr. Huff has a copy, but I'll...

6 MR. HUFF: I've got one.

7 MS. WINES: Okay. This is the actual Expungement
8 Order that was issued. And the State's position is that
9 once that expungement has occurred, regardless of
10 fingerprint or not, none of the records should be viewed
11 by anybody. And, you know, it's not that we are saying
12 the Defendant shouldn't have it in his defense --

13 THE COURT: Let me ask you this. Even if a case is
14 expunged, is there case law out there as to whether or
15 not you can bring up prior bad acts even in the face of
16 an expungement? It seems like I've read a case that
17 says that does not necessarily exonerate a person being
18 cross-examined about alleged prior bad acts. Is that
19 correct?

20 MS. WINES: I believe you are correct on that, Your
21 Honor. And then the State's position would be with
22 regard to these records the particular charge doesn't
23 meet the one-year felony and it doesn't meet the kind of
24 dishonesty that would be needed to bring in to impeach
25 the Witness, Your Honor.

1 THE COURT: Well, and let me see if I understand
2 what you are saying. I think I understand what you are
3 saying --

4 MS. WINES: Yes, sir.

5 THE COURT: -- and correct me, please, Ms. Wines.

6 But your argument is, Look, regardless of whatever
7 17-1-40 provides, the matter has been expunged, it's
8 over, it's done.

9 I believe what I'm hearing from Mr. Huff is,
10 regardless of the merit or lack of merit of whether or
11 not there should have been expungement under 17-1-40,
12 those records should not have been destroyed.

13 Isn't that correct?

14 MR. HUFF: Judge, and I know that Ms. Wines and I
15 have a long history in this case and I know that there
16 is a lot for you to catch up on. I know that what is in
17 the file --

18 THE COURT: That's a nice way of saying I'm not
19 catching the point, I believe.

20 MR. HUFF: What may assist the Court is the records
21 have never been expunged, and I could provide the
22 Court -- and I know Ms. Wines has a copy -- and I could
23 give the Court a little bit of history (handing).

24 THE COURT: Well, let me ask you this, Ms. Wines.
25 If the records had not been expunged --

1 MS. WINES: Yes, sir.

2 THE COURT: -- and case law allows for someone to
3 be cross-examined on prior bad acts --

4 MS. WINES: Yes, sir.

5 THE COURT: -- why should I not order that those
6 documents be provided to your motion *in limine* or your
7 objection to the Cross-Examination or use of those at
8 trial with the prohibition against Mr. Huff sharing
9 those documents with people or disseminating those
10 documents with anyone?

11 Mr. Huff, do you see the need to share these
12 documents with anyone whatsoever, including your expert
13 and your client?

14 MR. HUFF: No, Judge. As a matter of fact, one of
15 the letters, communications between Ms. Wines and I
16 probably last year was that it was our intent to obtain
17 these documents, and when the trial was over with to
18 return them to the Chief of Police in Burnetttown to
19 follow suit if their Statute allowed their destruction,
20 but that was denied and to --

21 THE COURT: I interrupted Ms. Wines, so if you
22 could hang on.

23 Go ahead.

24 MS. WINES: That's fine, Your Honor.

25 I believe with our having a different take on

1 expunge, my opinion is that the Order means that the
2 records should be expunged and the fact that they exist
3 is in error and they should not be able to rely on the
4 fact that they are in existence because they just
5 shouldn't be there.

6 THE COURT: Well, do you disagree that the evidence
7 presented unequivocally establishes that the destruction
8 of records under 17-1-40 doesn't apply to the factual
9 scenario in this case, i.e., that is this gentleman was
10 taken in, bonded out on a PR, wasn't fingerprinted or
11 mugshot?

12 MS. WINES: Yes, Your Honor.

13 THE COURT: So that Section is inapplicable to the
14 facts in this case, correct?

15 MS. WINES: As I read it, Your Honor, and I would
16 be happy to do some further research on it.

17 THE COURT: But you are saying it doesn't matter.
18 Expungement is expungement whether or not it should be
19 carried out?

20 MS. WINES: Yes, Your Honor.

21 MR. HUFF: Just so I can give the Court a full
22 record -- and I know Ms. Wines has got copies of these
23 documents -- I'll hand these up and ask that they be
24 made Defendant's Exhibits as well so I could give you a
25 history of how we got to where we are before Your Honor

1 today.

2 And I believe this would be a factual chronology
3 that would be undisputed, is that Mr. Patterson was
4 arrested June 5th of 2009. My office learned of the
5 arrest and made an oral request from the Chief of Police
6 that arrested Mr. Patterson, on August 28th, a little
7 over two months later. I was instructed by the Chief to
8 give him a written request for those documents, which I
9 did on September 2nd, 2009.

10 I faxed -- what you have is my fax cover sheet and
11 letter to Chief Smith requesting a certified copy of his
12 department's investigation file of Mr. Patterson.
13 That's the documents I just gave you.

14 Subsequently, I never got those documents. I made
15 a note, and I will tell you as an Officer of the Court I
16 made a call to Chief Smith on November 2nd and stated
17 that I still don't have the documents.

18 And he said, Well, I never got your request. What
19 are you talking about.

20 So I sent him another request on December 8th.

21 I then found out that he had dismissed the charge
22 on November 4th. He didn't have an Order of Dismissal,
23 but that is what Chief Smith stated to me.

24 I was told that an Expungement Order had been
25 signed December 8th, which is also what is reflected in

1 what I believe Mrs. Wines has just provided to Your
2 Honor. Lawrence Brown is an attorney in Aiken County
3 who is the County Attorney, and it was suggested to me
4 that I contact -- by Chief Smith to contact Mr. Lawrence
5 Brown, the Attorney for the County. So I did that. I
6 was informed that Mr. Brown returned the documents over
7 to me. Later I was told by him that he would not do
8 that, that I needed to take it up with Judge Edmonds,
9 the Judge that signed the Order of Expungement.

10 Which I did. I made a call to Judge Edmonds and
11 asked for a hearing on the matter, which he granted to
12 Chief Smith and myself on December 11th. And Chief
13 Smith and I went to Judge Edmonds' office, we had a
14 hearing on the matter, and he orally ordered that he was
15 staying his, the Expungement Order and stated, quote,
16 that he was gonna hold onto the records until a Circuit
17 Court Judge told him what to do.

18 THE COURT: All right. Let me stop you there, if I
19 may. What I'm hearing from what you are telling me,
20 your plan, or your planned use of the information
21 gleaned from these records would be for impeachment
22 purposes?

23 MR. HUFF: And/or discovery. Judge, what I have
24 found in my years of practice and discovery, something
25 that looks totally mundane or unattractive or --

1 THE COURT: I mean, hold on. The question in this
2 trial is guilt or innocence of your client based on
3 things that dated back to 2006; is that correct?

4 MR. HUFF: Yes, sir.

5 THE COURT: Then how could something that could
6 have occurred or did occur in 2009 be relevant to that
7 whatsoever?

8 MR. HUFF: I'm sorry, Your Honor?

9 THE COURT: Other than for --

10 MR. HUFF: For impeachment purposes, yes, sir, just
11 to find out what was there.

12 THE COURT: So, let me stop you there. If it is
13 for impeachment purposes, and I think we all agree
14 that's what it's about, do you have your Rules of
15 Evidence with you?

16 MR. HUFF: Judge, I do not.

17 THE COURT: All right. I'm gonna give you all a
18 minute and let you all both look at this. Mine is
19 haggard and worn because I'm not very smart without it.
20 It looks like to me like that this Officer would have to
21 be a Witness on behalf of the State, so you would have
22 to be controlled by Rule 608, Evidence of Character or
23 Bias -- regarding Conduct or Bias of a Witness. Or it
24 couldn't be 609 because that is conviction of a crime
25 which did not happen in this case. And I'm gonna ask

1 you to take a minute, look at that Rule. I'm gonna get
2 some more coffee and come back and argue some more.
3 Here is my book and you are more than welcome to look at
4 that.

5 MR. HUFF: We've got one, Judge.

6 THE COURT: All right.

7 (Whereupon, the Court leaves the courtroom and
8 returns.)

9 THE COURT: Have both Counsel had time to review
10 the Rule 608 or applicable --

11 MS. WINES: Yes, Your Honor. If we may approach
12 for a minute?

13 THE COURT: Sure.

14 (Discussion at sidebar.)

15 THE COURT: We'll be in recess for one moment.

16 (Court and Counsel leave courtroom and return.)

17 THE COURT: Please be seated.

18 All right. I'm gonna put this on the record.

19 Number one, I went back to argue the matter of
20 discovery of any documents of Officer Patterson.
21 Mr. Huff candidly admitted in oral argument that the
22 only use that he could make of these documents would be
23 for impeachment purposes of a witness, and since this
24 was not involving a conviction, it would be under 608 of
25 the Rules of Evidence. And I think everyone is in

1 agreement with that.

2 With that being said, Rule 608 says that you cannot
3 use extrinsic evidence to impeach a witness. Therefore,
4 the use at trial of these documents would be and is
5 going to be prohibited. However, under the general
6 scope of discovery that may lead to discoverable
7 information, I am going to order, and it seemed like the
8 parties were on their way towards agreeing to this, they
9 never did, I have told them that I was gonna rule that
10 those documents would be made available to Mr. Huff and
11 Mr. Huff only, and that excludes his client and any
12 witnesses, expert or otherwise, he may have; however, he
13 may utilize his staff. Do you have any Co-Counsel?

14 MR. HUFF: I do, Your Honor. The very astute Andy
15 Johnston from Spartanburg.

16 THE COURT: Okay. Well, obviously this prohibition
17 would not be against Co-Counsel or his staff. However,
18 they are under the same order, and if those documents
19 are somehow leaked out, there will be sanctions applied,
20 as you can imagine.

21 MR. HUFF: Yes, Your Honor.

22 THE COURT: All right. Now, I called the Counsel
23 to go back into the back room so I could attempt to call
24 the Clerk of Court in Oconee to find the most expedient
25 way for those documents to be made available to both

1 THE COURT: I understand that. What I'm saying so
2 we're not uncertain --

3 MS. WINES: Yes, sir.

4 THE COURT: -- is that if we have a case right
5 now -- let me say it this way. When it's necessary to
6 raise an issue, when it's specifically regarding a
7 particular witness's testimony, it needs to be raised
8 right then.

9 MS. WINES: Yes, sir.

10 THE COURT: The more Constitutional issues, the
11 germaneness issues, those things that don't go to a
12 specific witness's testimony can be argued after I've
13 excused the jury today. If I kick the case and grant
14 the motion, it's over, but I don't want to do that while
15 the jury is still out there waiting. Okay?

16 MS. WINES: Yes, sir. I understand.

17 THE COURT: Mr. Huff, are you ready to proceed from
18 the Defense?

19 MR. HUFF: Yes, Your Honor, we are.

20 THE COURT: Okay. Would you bring the jury in,
21 please.

22 (Whereupon, the Jury entered the courtroom at
23 approximately 3:20 p.m.)

24 THE COURT: Mr. Stanley [sic], ladies and gentlemen
25 of the jury, did you have a nice lunch?

1 important for you to watch as well.

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

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

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

1 **THE COURT:** Is the State ready to call their first
2 witness?

3 **MS. WINES:** Yes, Your Honor. The State calls Mark
4 Patterson.

5 **THE CLERK:** If you'll place your left hand on the
6 Bible and raise your right hand. (Complies.)

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

10 **THE WITNESS:** I do, ma'am.

11 **THE CLERK:** Please be seated.

12 **OFFICER MARK PATTERSON,**
13 having been duly sworn, testified as follows:

14 **DIRECT EXAMINATION**

15 By Ms. Wines:

16 **MS. WINES:** Good afternoon Officer.

17 **THE WITNESS:** Good afternoon.

18 **MS. WINES:** May it please the Court?

19 **THE COURT:** Yes, ma'am.

20 By Ms. Wines:

21 Q. If you would please tell the jury your name and
22 where you're presently employed.

23 A. My name is Mark Patterson. I'm presently employed
24 with the Richland County Sheriff's Department.

25 Q. And what's your title and duties with Richland

1 County Sheriff's Department?

2 A. I'm a Deputy Sheriff. I supervise crimes in
3 Richland.

4 Q. Okay. And how long have you been with the Richland
5 County Sheriff's Department?

6 A. About a year-and-a-half.

7 THE COURT: Wait just a second. Are you telling me
8 Mr. Bibb the microphone is not on?

9 MR. BIBB: Yes, sir.

10 MS. WINES: I thought it was just me having fluid
11 in my ears. Let's see if we can fix that.

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

13 MS. WINES: Let's try that.

14 THE COURT: Excuse me. Thank you, Mr. Bibb.

15 MS. WINES: Thank you, Judge.

16 By Ms. Wines:

17 Q. If you would just tell us again, about how long
18 have you been with Richland County?

19 A. About a year-and-a-half.

20 Q. All right. And give the jury a brief idea of your
21 background and training in law enforcement, if you
22 would.

23 A. I came in to law enforcement with the Westminster
24 Police Department in Oconee County. I started there on
25 road patrol and then I started doing investigations of

1 both narcotics investigations until I was assigned to
2 the Internet Crimes Against Children Task Force with the
3 Attorney General's Office.

4 I then left Westminster to take a position with the
5 Aiken County Sheriff's Office where I continued to be
6 active with the Internet Crimes Against Children Task
7 Force until such time I went to Richland County.

8 Q. Okay. And you said back when you were in
9 Westminster you were assigned to the Internet Crimes
10 Against Children Task Force. About when did you become
11 affiliated with the task force?

12 A. In, I believe, it was about 2005.

13 Q. Okay. And if you would tell the jury a little bit
14 about the task force, what its purpose is, what it does.

15 A. The Internet, the Internet Against Crimes Task
16 Force -- Internet -- I'm sorry. The Internet Crimes
17 Against Children Task Force, basically is a network of
18 law enforcement agencies not only throughout the country
19 but the world. We conduct both proactive and reactive
20 investigations to protect children throughout the world
21 from people wanting to harm them in various different
22 ways, and that we work together to accomplish that
23 mission.

24 Q. Okay. And did you or have you received any
25 specialized training with the task force?

1 A. Yes, I did.

2 Q. Okay. And, as of 2006, what training would you
3 have had?

4 A. In 2006 I received the initial training, the actual
5 basis or foundation of a proactive and reactive
6 investigation of Internet Crimes Against Children, and
7 then I went into an advanced class called undercover
8 training which went even further into conducting the
9 proactive aspect of the investigations.

10 Q. Okay. And you are using the term proactive
11 investigations. Could you tell us what that means?

12 A. Proactive investigations is where we, we put
13 ourself in a position to catch these people that are
14 doing these crimes proactively. Instead of waiting for
15 a crime to happen and then investigating it, we are
16 already starting investigating crimes and try to catch
17 them as they happen.

18 Q. Okay. And were you conducting proactive
19 investigations in 2006?

20 A. Yes, ma'am.

21 Q. And that's when you were with Westminster?

22 A. Yes, ma'am.

23 Q. Okay. So these investigations, are they on the
24 internet now?

25 A. Yes.

1 Q. Okay. And if you could give us a very basic
2 definition of the internet, how it works.

3 A. The internet is a network or networks of computers.
4 You can do a numerous bit of things on the internet:
5 communicate, shop, look up information.

6 Q. Okay. And are you familiar with the term internet
7 service provider?

8 A. Yes.

9 Q. Could you tell us what that is?

10 A. Internet service provider is going to be the
11 company or the entity that provides you with the ability
12 to connect to the internet.

13 Q. Okay. And are you familiar with Yahoo!?

14 A. Yes.

15 Q. Could you tell us about Yahoo!?

16 A. Yahoo! would be one of the internet service
17 providers that are available to people. Yahoo!, they
18 offer a variety of services through the internet such as
19 email, chat communications, information, search engines.

20 Q. Okay. You said chat communications. What does
21 that mean?

22 A. Chatting, where people communicate through the
23 internet with each other via their computer or the
24 internet.

25 Q. Okay. And so that can be conducted in Yahoo!; is

1 that correct?

2 A. Yes, ma'am.

3 Q. Okay. So, within Yahoo! how would you conduct a
4 chat, what would you do?

5 A. I basically would log in. I have to download their
6 software to be able to access their instant messenger
7 chat room, you can use that, or you can go log into
8 their actual internet website and you access chat rooms,
9 talk to other people in an open forum or with instant
10 messaging.

11 Q. Okay. Do you have to have an account with Yahoo!?

12 A. Yes, you have to sign up.

13 Q. And back in 2006, if you remember, how would, how
14 would you create an account with Yahoo!?

15 A. I'd log on to their website. It gives you the
16 option to either log on as an existing user or as a new
17 user. Log in as a new user, provide the information
18 that it asks for, and then it creates you an account.

19 Q. Does it matter how old you are?

20 A. Yes and no.

21 Q. Okay. Explain that to us.

22 A. Yahoo! requires through their guidelines that you
23 are eighteen to use their services. But anybody, even
24 people under the age of eighteen, can access ---

25 MR. HUFF: Objection to speculation, Your Honor.

1 **THE COURT:** Mr. Bibb, would you take the jury out
2 for a second, please, sir.

3 (Whereupon, the Jury left the courtroom at
4 approximately 4:05 p.m.)

5 **THE COURT:** All right. Mr. Huff, what's your
6 objection?

7 **MR. HUFF:** Your Honor, I believe the witness was
8 just saying that you have to be eighteen years of age to
9 have the account with Yahoo! but then said that anybody
10 can. And he doesn't know that. That's speculative on
11 where he was going with that response. I felt it was
12 appropriate to object at that time.

13 **THE COURT:** Okay, sir. I'm gonna overrule the
14 objection.

15 Bring the jury back out. Let them take a break if
16 they need to. If not, come back in.

17 **MS. WINES:** Your Honor, I'm sorry. We're getting
18 close to when I'll need the projector. It may be a good
19 time to address that. It may be a good time to make
20 sure that equipment works.

21 **THE COURT:** You want to do that? Okay. Let's take
22 about a ten-minute break.

23 **MS. WINES:** That sounds good, Your Honor.

24 **THE COURT:** Do you think that will give you
25 sufficient time?

1 MS. WINES: I hope so. We'll do our best.

2 THE COURT: Okay. Send word back if it's not,
3 okay?

4 MS. WINES: Absolutely.

5 THE COURT: Mr. Patterson, you are not to discuss
6 your testimony with anyone. Okay, sir?

7 THE WITNESS: Yes, sir.

8 (Whereupon, Witness leaves stand.)

9 (Whereupon, a recess was taken.)

10 THE COURT: Ms. Wines, are you all ready to go?

11 MS. WINES: We are. Thank you, Your Honor. I'm
12 sorry we had such difficulties with that.

13 THE COURT: Mr. Huff, is the Defense ready?

14 MR. HUFF: Your Honor, we are ready. I believe the
15 State just indicated they intend to show some of what's
16 called a Camtasia. I don't know how much they're going
17 to show. It may entail communications by somebody else,
18 but we'll let them play what they feel they need to
19 play. We do have, I believe, some motions may be
20 getting very close to be taken up regarding
21 Mr. Patterson. I don't know when the Court wants to do
22 that.

23 But, of course, you know, we've got the issue of an
24 audio CD that we're not gonna have till tomorrow. We
25 don't need to take that up right now, I believe, but we

1 may ask for some consideration as far as when I do
2 Cross-Examination in full on him.

3 THE COURT: Well, let me say one thing. It's not
4 my intent to go over that CD at this point. And, as I
5 told you both, all of you, this morning that that CD
6 comes in, I'm gonna not excuse Officer Patterson and he
7 will be subject to being re-called based on what that
8 evidence is. That's not the perfect way Mr. Huff, but
9 under the circumstances I don't really know how else to
10 do it.

11 My concern is both of you told me this case is
12 likely to get into about the fifth day. This is a date
13 certain. We have a state holiday coming up for Friday.
14 And I am concerned we move this along without
15 jeopardizing the State's case or the Defense's case
16 without delay as much as we can.

17 That being said, at the appropriate time, Mr. Huff,
18 if you'll just stand up, I will probably send the jury
19 home for the day and we can take up all the motions at
20 that point in time and get started. Okay?

21 MS. WINES: Yes, Your Honor. I was anticipating
22 making my motion *in limine* in between direct and cross.
23 That seemed like the most appropriate time. But, of
24 course, if it comes up somehow sooner...

25 THE COURT: Your motion is under advisement and it

1 is noted as having been made --

2 MS. WINES: Right.

3 THE COURT: -- so we'll do it at the appropriate
4 time.

5 MR. HUFF: I'm sorry, Judge, I apologize. I was
6 talking to my client and I did not hear that
7 conversation.

8 THE COURT: She said she also had her motion *in*
9 *limine* as to Officer Patterson's documents and anything
10 related to any of those documents. I said it's been
11 noted that motion has been made, and we'll take it up at
12 the appropriate time.

13 MR. HUFF: Yes, sir.

14 THE COURT: All right. Anything further from the
15 State at this stage?

16 MS. WINES: We're ready to proceed.

17 THE COURT: From the Defense?

18 MR. HUFF: No, Your Honor.

19 THE COURT: All right. Now, let me, before we go
20 any further, to the extent this will be ongoing
21 technical presentation, I'm gonna ask counsel or their
22 associates, whoever, to try to go ahead and review that
23 matter ahead of time, that motion *in limine*. I know you
24 are coming from out of town, but let's try to get the
25 technical snafus out of the way before we crank up court

1 tomorrow, please. Okay?

2 MS. WINES: Absolutely, Your Honor.

3 THE COURT: All right. Would you bring the jury
4 in, please.

5 (Whereupon, the Jury entered the courtroom at
6 approximately 4:25 p.m.)

7 THE COURT: All right. Officer Patterson, would
8 you come around, please, sir. I remind you that you are
9 still under oath.

10 THE WITNESS: Yes, Your Honor.

11 (Whereupon, witness resumes stand.)

12 MS. WINES: May it please the Court?

13 THE COURT: Yes, ma'am.

14 MS. WINES: Thank you, Your Honor.

15 By Ms. Wines:

16 Q. All right. Officer, let's pick back up. And could
17 you start back by telling the jury what instant
18 messaging is in your experience?

19 A. Instant messaging is where two people communicate
20 between each other like in a private setting, it's just
21 between them two people. Nobody else outside of that
22 conversation can see what's being said.

23 Q. Okay. And what is a screen name?

24 A. A screen name is an alias. It would be like for
25 what you would create for your persona or your user

1 name. You would create that yourself.

2 Q. Okay. So, what purpose does it serve?

3 A. It's to identify you to other users.

4 Q. On the Internet?

5 A. Yes, ma'am.

6 Q. Okay. What is a profile page on Yahoo!?

7 A. A profile page on Yahoo! is something that the
8 other users when you are inside a chat room they can
9 click on your name and select an option of either a
10 profile and give them whatever information that you put
11 on that profile for them to see.

12 Q. Okay. And is it different than what would be
13 called -- or are you familiar with the term account
14 information?

15 A. Yes, ma'am.

16 Q. Okay. Is it different from that?

17 A. Yes, it is.

18 Q. How so?

19 A. Your account information is the actual information
20 that you need or have to have to create your account, to
21 be able to log on. The profile information is that
22 information that you may want to provide to other users
23 such as your screen name, your location, and so forth.

24 Q. Okay. So who sees the profile page?

25 A. Anybody that tries to view it.

1 Q. And who sees the account information?

2 A. That would be just the user and Yahoo!

3 Q. Okay. Now, we talked a little bit about the
4 undercover proactive investigation, and you've mentioned
5 the term persona. Could you tell us what that means,
6 what persona is?

7 A. A persona in our use for the Internet Crimes
8 Against Children, a persona is something that we would
9 create as the person that we're gonna be on the
10 internet, such as, you know, Jennifer a_upstategurl93,
11 her persona is that of a thirteen-year-old female from
12 Oconee County.

13 Q. Okay. And so when you -- back in 2006 were you
14 conducting these types of investigations?

15 A. Yes, ma'am.

16 Q. Did you have a persona in 2006?

17 A. Yes, ma'am.

18 Q. Okay. And could you tell the jury about the
19 persona you were using in 2006?

20 A. The persona I was using was a_upstategurl93 which
21 is, like I said, a thirteen-year-old female living in
22 Oconee County.

23 Q. Okay. And did you, using this persona, did you
24 create an account with Yahoo!?

25 A. Yes, I did.

1 Q. Okay. And did you create a profile page?

2 A. Yes.

3 Q. Okay. And do you recall what was on your profile
4 page?

5 A. On that profile page I believe it was the user
6 name, her, her actual name and location.

7 Q. Okay.

8 MR. HUFF: Your Honor, we would object to that
9 answer as being speculative. If the officer does not
10 remember, then he can't guess at his testimony.

11 THE COURT: Would you repeat what you just -- let
12 me ask Counsel. Was he speculative with his answer? I
13 did not catch that he did or didn't.

14 MS. WINES: I don't believe he did, Your Honor. I
15 believe he was going from his memory.

16 THE COURT: All right. I'll tell you what,
17 Mr. Stanley [sic], if you would take your jury out. And
18 I think we are at a stage where I may be excusing you
19 for the rest of the afternoon, but if you would go back
20 to your jury room, I need to hear this a little bit
21 further, please.

22 (Whereupon, the Jury left the courtroom at
23 approximately 4:30 p.m.)

24 THE COURT: My notes reflect the following: was
25 that they created -- he created a profile and a persona.

1 In the profile he had the user name and her actual name
2 and location is my understanding. And then there was an
3 objection to speculation. Is that the nature of the
4 testimony?

5 MS. WINES: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. HUFF: Judge, and if I could, we certainly are
8 ready to respond to the basis for our objection. We
9 would simply ask in the future that if there is -- if
10 our objections to Mr. Patterson's testimony as to
11 memory, we would ask that he be excused so that by way
12 of our arguments we don't give him the answers that he
13 can come back and give if that were to occur.

14 THE COURT: All right. Well, let me tell you this.
15 I didn't hear anything about memory. That's the point
16 I'm trying to make. What I heard was I created a
17 profile for a_upstategurl93 thirteen-year-old female and
18 in using the persona I created a profile page that had a
19 user name or actual name and location.

20 That's my understanding of the testimony.

21 MR. HUFF: And, Judge, I believe the way he segued
22 into those three items of information was "I believe it
23 had so and so." The reason that I object to it is there
24 is no profile page that has been preserved, and that's
25 part of one of our motions that this Court is gonna hear

1 for delaying the prosecution. They didn't preserve this
2 stuff, and it prejudices Mr. Odom's in his inability to
3 effectively Cross-Examination and disprove this
4 testimony. An officer, if you're gonna do one of these
5 investigations, you ought to hold on to a profile page.

6 THE COURT: I understand.

7 MR. HUFF: But what we heard the phrase "I
8 believe."

9 THE COURT: And I'm not disagreeing with you. You
10 may very well have heard that. I overrule your
11 objection at this stage. And if that comes up again, if
12 you would bring the matter to my attention, Mr. Huff,
13 I'll ask the officer to step out of the courtroom if
14 it's appropriate at that stage so he's not tipped off as
15 to the answer in the testimony. All right.

16 What is your idea, Ms. Wines ---

17 MS. WINES: My --

18 THE COURT: -- this is sort of disjointed but I'll,
19 you know ---

20 MS. WINES: Yes, sir. My intention at this point
21 was just get a little bit more foundational background,
22 show him the chats and the disk, show a little bit of
23 the Camtasia, read out the chats ---

24 THE COURT: Camtasia. I'm not quite sure. What is
25 that again? Camtasia?

1 **MS. WINES:** He'll tell you. It's a software that
2 does a realtime capture of the video where the
3 undercover chatting occurs. So just to give the jury an
4 idea of how it works and they have an understanding of
5 how it's captured, and they can actually see the log-in,
6 the chat room, the format of the chatting. So like just
7 a very few minutes of that, Judge, and then the two
8 chats, get the two chats in. And that's about the
9 extent of his testimony.

10 **THE COURT:** Although I know you don't agree with
11 it, is there any reason why that's not a reasonable
12 approach at this stage?

13 **MR. HUFF:** I don't think it's unreasonable, Judge.
14 It's just in laymen's terms, the Camtasia is the actual
15 computer screen where the words come, that's what the
16 video shows.

17 **MS. WINES:** Right.

18 **MR. HUFF:** I was -- I will say nothing else. I've
19 had to learn a lot myself, Your Honor.

20 **THE COURT:** All right.

21 Would you bring the jury back in, please, sir?
22 Are you ready to proceed?

23 **MS. WINES:** I am, Your Honor, thank you.

24 (The Jury entered the courtroom at approximately
25 4:45 p.m.)

1 **THE COURT:** Ms. Wines, Mr. Huff, would y'all come
2 around, please?

3 **MS. WINES:** Yes, sir.

4 (Whereupon, a discussion at sidebar was held off
5 the record.)

6 **MS. WINES:** Beg the Court's indulgence just one
7 minute again.

8 May it please the Court?

9 **THE COURT:** Ms. Wines.

10 **MS. WINES:** Thank you.

11 By Ms. Wines:

12 Q. Okay. Officer, we were talking about your persona.
13 In 2006 with your persona, could you give us her screen
14 name again?

15 A. A_upstategurl93.

16 Q. Okay. And did you create a Yahoo! account for her?

17 A. Yes, I did.

18 Q. Okay. Prior to 2000 -- prior to May of 2006, had
19 you been conducting investigations?

20 A. Yes.

21 Q. Okay. And let me back up.

22 How old did you say Jennifer is?

23 A. Thirteen.

24 Q. Okay. And, to your recollection, was that viewable
25 on your profile page?

- 1 A. No.
- 2 Q. So how would you -- well, let me back up.
- 3 Were you working undercover May 4th, 2006?
- 4 A. Yes.
- 5 Q. Okay. And were you in Yahoo!?
- 6 A. Yes.
- 7 Q. Were you in a chat room?
- 8 A. Yes, I was.
- 9 Q. What chat room were you in?
- 10 A. A South Carolina chat room.
- 11 Q. Okay. Do you remember what South Carolina chat
- 12 room?
- 13 A. I don't remember exactly what number it was.
- 14 There's a number of South Carolina that have numbers
- 15 because there's so many users. I don't remember the
- 16 exact number it was, though.
- 17 Q. Okay. And did you have any contact with the screen
- 18 name danger6552000?
- 19 A. Yes.
- 20 Q. Okay. And by you, I'm talking about your persona,
- 21 your Jennifer persona.
- 22 A. Yes.
- 23 Q. Okay. And danger6552000, at any point did that
- 24 screen name become a suspect?
- 25 A. Yes.

1 Q. And at what point?

2 A. At the point after they had, after I had identified
3 myself as a thirteen-year-old, he identified himself as
4 a forty-year-old and he began asking questions of a
5 sexual nature.

6 Q. Okay. And in your experience do you ever have
7 people stop chatting after they learn they're thirteen
8 years old?

9 A. Yes.

10 Q. Did you ever identify danger6552000?

11 A. Yes, I did.

12 MR. HUFF: Objection, Your Honor.

13 THE COURT: Yes, sir.

14 MR. HUFF: We have a matter to take up, Your Honor.

15 THE COURT: Okay, sir. Mr. Stanley [sic], ladies
16 and gentlemen, as I told you in the beginning of this
17 case, sometimes you'll feel like cattle being herded in
18 and out. That's a necessary function we follow in trial
19 courts. The fact an attorney makes an objection and I
20 rule on it is not for your consideration at this point.
21 So, Mr. Stanley, I'll ask you to take your jury back out
22 at this point.

23 (Whereupon, the Jury left the courtroom at
24 approximately 4:40 p.m.)

25 THE COURT: State your objection, please, sir.

1 **MR. HUFF:** Judge, foundation. I think the State
2 knows very well they can't get this witness to identify
3 who was on the other side of the computer without other
4 witnesses laying a foundation. I think it's highly
5 improper to squeeze it in through this witness.

6 **THE COURT:** I sustain that objection unless you
7 convince me otherwise, Ms. Wines.

8 **MS. WINES:** Your Honor, twofold. Of course, we are
9 going to have other witnesses. And two, and I would
10 agree on some level with Mr. Huff. However, Officer
11 Patterson did identify him, identify danger6552000. And
12 I understand Your Honor's ruling about not mentioning
13 Mr. Odom's employment, we don't intend to do that.

14 However, Officer Patterson's testimony is going to
15 be in further pursuit of identifying him. He called the
16 Attorney General's Office and was told the screen name
17 was already identified as the Defendant. We wanted to
18 explain because we believe it's important for this jury
19 to understand why Officer Patterson didn't conduct
20 further steps on that himself.

21 **THE COURT:** Let me ask you this. Why would that
22 not be hearsay and why would that not run the risk of
23 making the Solicitor's -- I mean the AG's office a
24 witness in this case?

25 **MS. WINES:** I have that AG person on the witness

1 list, Your Honor. But we're not saying it is for its
2 truth. We are saying in this particular instance it's
3 the officer's state of mind and why he did not conduct
4 further steps in the investigation.

5 THE COURT: I sustain the objection.

6 MS. WINES: Yes, Your Honor.

7 THE COURT: Bring the jury back.

8 Is there anything further from you, Ms. Wines?

9 MS. WINES: On this issue, no, sir. Just continue
10 with my questioning.

11 THE COURT: Anything further Mr. Huff?

12 MR. HUFF: Judge, I don't think I need to. I've
13 heard your ruling.

14 THE COURT: Okay. Would you bring the jury back
15 in, please.

16 (The Jury entered the courtroom at approximately
17 4:42 p.m.)

18 THE COURT: Ms. Wines?

19 MS. WINES: Thank you, Your Honor.

20 By Ms. Wines:

21 Q. Okay. Officer, I believe you indicated that your
22 persona had contact with the screen name danger6552000;
23 is that correct?

24 A. Yes, ma'am.

25 Q. Okay. What, what types of communication occurred?

1 A. The communication was all sexual in nature.

2 Q. I'm sorry. I mean something more basic. Was it
3 email? Chat? How did they talk?

4 A. Through instant messaging.

5 Q. Okay. And how many times?

6 A. Twice.

7 Q. Okay. And I believe you have already stated, but
8 what was the nature of the communication?

9 A. A sexual nature.

10 Q. Okay. And in the course of those communications I
11 believe you -- well, was Jennifer's age specifically
12 mentioned?

13 MR. HUFF: Your honor ---

14 A. Yes.

15 MR. HUFF: --- this is the fourth time the AG has
16 asked that question. We would object.

17 THE COURT: Overruled.

18 Go ahead.

19 By Ms. Wines:

20 Q. Okay. Was age mentioned?

21 A. Yes, numerous times.

22 Q. Okay. Were you using -- did you have pictures of
23 Jennifer that you were using at the time?

24 A. Yes, I did.

25 Q. Okay. Do you recall showing those or sending those

1 pictures to danger6552000?

2 A. Yes.

3 Q. Do you recall when?

4 A. During the second chat.

5 Q. Okay. While you were conducting this chatting,
6 where were you physically located?

7 A. At the Westminster Police Department in my office.

8 Q. Is that in Oconee County?

9 A. Yes, it is.

10 Q. And what type of computer were you using?

11 A. I had a Dell laptop that was issued to me by the
12 Attorney General's Office Internet Crimes Against
13 Children Task Force.

14 Q. Okay. Were you on duty at the time ---

15 MR. HUFF: Objection, Your Honor. Withdrawn.
16 Withdraw the objection at this time.

17 THE COURT: Overruled. Okay, go ahead.

18 By Ms. Wines:

19 Q. Were you on duty while you were conducting the
20 chat?

21 A. Yes, ma'am, I was.

22 Q. Were you acting in your official capacity?

23 A. Yes, ma'am, I was.

24 Q. And what, what does that mean to you?

25 A. My official capacity I was on duty available to ---

1 MR. HUFF: Your Honor, objection. Evidently it
2 calls for a legal conclusion.

3 THE COURT: Overruled.

4 Go forward please.

5 By Ms. Wines:

6 Q. What does that mean to you?

7 A. I was on duty available to assist in the City of
8 Westminster as a police officer conducting
9 investigations as directed by my supervisor for the
10 Internet Crimes Against Children Task Force.

11 Q. Okay. And the communications that Jennifer had
12 with danger6552000, were those communications preserved?

13 A. Yes.

14 Q. How so?

15 A. They were preserved both in what we call
16 cut-and-paste style. It was cut and pasted into a Word
17 document for preservation. It was also preserved
18 through Camtasia recordings.

19 Q. Okay. And let's go back to the cut-and-paste.
20 When you did the cut-and-paste, does that capture the
21 entire communication?

22 A. Yes, it does.

23 Q. Okay. And tell us what Camtasia is.

24 A. Camtasia is software that we use from Tech Smith.
25 It records, captures the screen in realtime as we're

1 doing our investigation, and we're able to save that as
2 a recording. It's just as if you are looking at the
3 screen during the communications.

4 Q. Okay. And are both the Camtasia and the cut/paste
5 copies, are they both in existence at this time?

6 A. The cut-and-paste both are in existence and one
7 Camtasia is.

8 Q. Okay. Were both Camtasia ---

9 MR. HUFF: I'm sorry, Your Honor, I could not hear
10 his answer. I apologize.

11 THE COURT: Would you repeat your last answer,
12 please, sir.

13 THE WITNESS: Both of the cut-and-paste documents
14 are in existence and one Camtasia recording.

15 By Ms. Wines:

16 Q. Okay. Were there two Camtasia recordings
17 previously?

18 A. There were, yes.

19 Q. Okay. Do you know why we don't have one now?

20 A. I'm not really sure what happened to the other one
21 after I left Westminster.

22 Q. Okay. But you left -- is it your testimony you
23 left them with Westminster?

24 A. Yes, ma'am. It was their case and the cases stay
25 with the agency.

1 Q. Okay. And when did you leave Westminster?

2 A. I left Westminster in 2006.

3 Q. Okay.

4 A. August.

5 Q. All right.

6 MS. WINES: Beg the Court's indulgence. If I may
7 approach the witness, Your Honor?

8 THE COURT: Yes, ma'am.

9 By Ms. Wines:

10 Q. I'm gonna show you what's been marked State's
11 Exhibit Number 1 to you. Do you recognize that?

12 A. Yes, ma'am.

13 Q. And what is that?

14 A. That's the actual Camtasia disk.

15 Q. Okay. And have you actually reviewed this disk?

16 A. Yes, ma'am.

17 Q. Okay. And for the one Camtasia that it captures,
18 is it full, accurate, and complete?

19 A. Yes, ma'am.

20 MS. WINES: Your Honor, at this time I would admit
21 or move to admit State's 1 into evidence.

22 THE COURT: Any objection?

23 MR. HUFF: An objection, Your Honor.

24 THE COURT: Did you say an objection or no
25 objection?

1 MR. HUFF: "An objection."

2 THE COURT: Okay, sir.

3 Go back to your jury room please, Mr. Stanley [sic]
4 and your jury.

5 (Whereupon, the Jury left the courtroom at
6 approximately 4:48 p.m.)

7 THE COURT: State your objection for the record,
8 please.

9 MR. HUFF: Your Honor, it's my understanding that
10 this Camtasia does not include every bit of typing
11 conducted on that date regarding Mr. Odom's alleged
12 communication. I would just ask the State to confirm if
13 they are saying every bit of it is on that Camtasia
14 because they are asserting it's accurate and complete.

15 THE COURT: That was the testimony.

16 MS. WINES: That's my understanding, Your Honor.
17 Of course, I personally wasn't the investigator.

18 THE COURT: All right. Well, that doesn't answer
19 the question.

20 Mr. Huff, would you like to Voir Dire this witness
21 just as to that issue alone?

22 MR. HUFF: Your Honor, I would, just as to that
23 issue.

24 VOIR DIRE EXAMINATION

25 By Mr. Huff:

1 Q. Mr. Patterson, as to this State's Exhibit Number 1,
2 an exhibit called Camtasia, is it your sworn testimony
3 that every bit of any communication between yourself and
4 your alleged communication with Mr. Odom is captured on
5 that disk that you provided to the Attorney General's
6 Office?

7 A. Everything that was done on that computer on that
8 screen at that time was captured by Camtasia.

9 Q. All right. At what time are you talking about,
10 sir?

11 A. The Camtasias?

12 Q. Yes, sir.

13 A. That would have been from the first chats that we
14 had.

15 Q. All right. So, and would you define what the first
16 chat is?

17 A. That's when, the chat of May the 4th.

18 Q. So on May the 4th of 2006, that's what you're
19 talking about?

20 A. Yes, sir. The first chat that I had with Danger.

21 Q. All right. So it's your testimony under oath that
22 every bit of the communication you claim between
23 yourself and danger652000 [sic] is captured on that
24 Camtasia and nothing, sir, is missing?

25 A. Everything that is on the screen, sir, that is

1 being recorded by Camtasia is on that disk during that
2 communication with him.

3 Q. All right. I just want to make clear, sir. As to
4 this May 4, 2006, communication, every bit of it is on
5 that Camtasia?

6 A. Yes, sir. It records everything that's happening
7 on the screen at that time.

8 Q. I understand what it records.

9 A. Sir, I don't understand your question.

10 Q. My question is as clear as it can be.

11 THE COURT: Just one second. Let me interject
12 here. Does the proposed Exhibit Number 1 capture the
13 entire screen conversation that took place between you
14 and the alleged recipient of that communication on May
15 4th?

16 THE WITNESS: Yes.

17 THE COURT: Is there anything that's not included
18 on that Camtasia?

19 THE WITNESS: No, sir. And that's where I'm not
20 understanding -- I don't ---

21 THE COURT: I think he's answered your question two
22 or three times.

23 THE WITNESS: I'm not sure what he's trying to get
24 at, Your Honor.

25 MR. HUFF: Thank you, Your Honor.

1 **THE COURT:** All right. Anything further as to this
2 witness right now, Ms. Wines, as a result of Mr. Huff's
3 and my questions?

4 **MS. WINES:** No, Your Honor. I still seek to admit
5 it.

6 **THE COURT:** Okay. I'm gonna overrule the
7 objection.

8 Would you bring the jury back, please.

9 (The Jury entered the courtroom at approximately
10 4:50 p.m.)

11 **THE COURT:** Ms. Wines?

12 **MS. WINES:** Thank you, Your Honor. At this time
13 the State is moving Exhibit 1 into evidence.

14 **THE COURT:** Admitted into evidence.

15 (Whereupon, State's Exhibit Number 1, Camtasia
16 capture disk, Westminster, was received in
17 evidence.)

18 **MS. WINES:** Thank you, Your Honor. And if I could
19 have the Court's permission for the witness to come down
20 so that he can direct the mouse onto the, on the
21 computer?

22 **THE COURT:** Mr. Patterson, you may come around,
23 please, sir.

24 Just one second.

25 (Whereupon, a juror entered courtroom.)

1 **THE COURT:** We had a juror missing. It didn't
2 catch my attention.

3 **A JUROR:** I'm sorry, sir.

4 **THE COURT:** That's all right, sir.

5 (Whereupon, witness leaves stand.)

6 **MS. WINES:** Your Honor, if I may have permission to
7 have the officer publish the very beginning of this
8 Camtasia capture to the jury.

9 **THE COURT:** Yes, sir -- yes, ma'am.

10 **MS. WINES:** All right. Thank you. Let me get it
11 loaded up here. It'll take just a minute to fire up for
12 us. It is slow to initialize. If you will just bear
13 with me for one minute. All right.

14 Sorry, Judge. This is not the computer I'm used
15 to.

16 By Ms. Wines:

17 Q. Officer Patterson, as soon as that finishes loading
18 up, and I believe we're there now, if I could have you
19 get it to approximately 11:19 p.m. on the time. Oh.
20 All right, great. Is it ready? Are you sure?

21 A. Uh-huh. It's playing.

22 Q. All right. Okay. All right. If you would jump to
23 11:19 and tell us what we've got.

24 A. That's the actual where I start recording. I
25 always start recording my ---

1 THE COURT: Can the jury hear this witnesses'
2 testimony? Can they hear?

3 THE FOREMAN: Speak up a little bit.

4 THE COURT: You need to make sure they can hear
5 you.

6 THE WITNESS: This is the actual screen from my
7 computer. I, I start my Camtasia before I even log in
8 to the internet. I believe -- every investigation I do
9 I always start with this screen to let me know that this
10 is the beginning of my Camtasia recording for that
11 particular day that I'm doing my investigation.

12 MR. HUFF: Your Honor, I object.

13 THE COURT: I'll sustain that objection.

14 The jury is to disregard that exhibit as not being
15 part of this case, not relevant to this case whatsoever.
16 Move to the next screen.

17 MS. WINES: Yes, sir. We're moving to 11:19,
18 please.

19 THE WITNESS: I -- we're at 11:19.

20 MS. WINES: Your Honor, I'll get the screen off so
21 we can make sure we get to the right place.

22 Okay. We need to get to 11:19 p.m.

23 THE WITNESS: Yeah. It said 11:19. Right there.

24 By Ms. Wines:

25 Q. Here?

1 A. Yes. It just popped up.

2 Q. Okay. If you would tell the jury what we've got
3 going on.

4 A. This is the actual screen where I'm actually logged
5 into the Yahoo! chat room. The screen you see in front
6 of you where it says danger6552000 is the actual instant
7 messenger screen where my persona was contacted by this
8 danger6552000 for an instant message or a private
9 message between himself and myself.

10 The screen is showing that, just shown just now is
11 the profile screen for danger6552000, which just had his
12 screen name on it. When he first started chatting with
13 me, he asked: Hi, would you like to chat?

14 Q. Okay. So would this entire chat session be
15 captured like this?

16 A. Yes, ma'am.

17 Q. Okay. And the same format throughout?

18 A. Yes, ma'am.

19 Q. And was this the first or second communication?

20 A. This was the first communication.

21 Q. Okay.

22 MS. WINES: Beg the Court's indulgence. I believe
23 that will do. You can just shut this off and I ask you
24 to take your seat.

25 (Whereupon, witness resumed stand.)

1 By Ms. Wines:

2 Q. Okay. And let's see, I'm going to go ahead and get
3 this disk back out. Officer, I believe you said there
4 was also the copy/paste method of preserving?

5 A. Yes, ma'am.

6 Q. Okay. Were both chats preserved?

7 MR. HUFF: Your Honor, we would object at this
8 time.

9 THE COURT: All right. Mr. Stanley [sic], would
10 you and your jury go back to the jury room, please.

11 (Whereupon, the Jury left the courtroom at
12 approximately 5:00 p.m.)

13 THE COURT: State your objection, please, Mr. Huff.

14 MR. HUFF: Your Honor, it is my understanding that
15 I would have to Voir Dire this witness and possibly show
16 some of the Camtasia video for my objection, if I could
17 Voir Dire the witness?

18 THE COURT: No, sir. You need to state your
19 objection for the record, please, sir.

20 MR. HUFF: All right. Your Honor, my objection is
21 that the testimony is this is a copy-and-paste process
22 and that what is -- that it is my understanding that the
23 screen shown on this Camtasia will not show what is
24 being written or said between Mr. Patterson and whoever
25 else he's talking to and that there's no way to then

1 copy and paste that because it's not visually on the
2 screen. They are unreliable.

3 THE COURT: Educate me on that again, please, sir.
4 Go ahead. Now that you stated your objection, I have no
5 problem with you showing me the video part of it.

6 MR. HUFF: Thank you. Judge, we're gonna have to
7 put the CD rom back in.

8 THE COURT: Okay. But am I correct and my
9 understanding of your objection is that the actual
10 cut-and-paste version is not what you see on the
11 Camtasia version, which is marked as State's Exhibit
12 Number 1?

13 MR. HUFF: Yes, sir. It also violates the best
14 evidence rule. And I believe Mr. Johnston may be able
15 to help address that in a moment as well. I'm loading
16 it back up.

17 Judge, I've got nothing to show up.

18 THE COURT: It took a minute for it to come up a
19 minute ago, so...

20 MS. WINES: It did. Judge, normally on my own
21 computer it has a box come up and it's easier. We're
22 working off the Solicitor's Office computer so I'm a
23 little handicapped here.

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

25 MR. HUFF: Well, Judge, I can see it here, but I'm

1 not able to get it up on the screen.

2 THE COURT: Would you mind helping him, please?

3 MS. WINES: I think we're all learning this stuff
4 today, Judge. There it goes. (Appears on screen.)

5 MR. HUFF: Judge, I believe this is gonna be toward
6 the beginning of the conversations that Mr. Patterson
7 just spoke about.

8 Judge, this is, I believe, the beginning of the
9 chat that he had just testified about.

10 THE COURT: So what are we looking at?

11 MR. HUFF: Judge, what we're looking -- I believe
12 what we're looking at is two persons connected to
13 Mr. Patterson. I believe in just a minute we'll begin
14 where the process of covering up and blocking what
15 danger6552000 is talking about with Mr. Patterson. And
16 that will go on routinely and persistently, I believe,
17 throughout the Camtasia. And that would be three
18 people.

19 There at that moment, Judge, is some of the
20 blocking out, but it will continue.

21 At this point you've got no screen capture
22 whatsoever.

23 THE COURT: You've got what, please?

24 MR. HUFF: No screen capture of the communication
25 at that moment, but it will continue.

1 **THE COURT:** What do you mean by screen capture,
2 please, sir?

3 **MR. HUFF:** Mr. Patterson's testimony was that the
4 Camtasia is going to capture in realtime all of the
5 communication between danger6552000 and Mr. Patterson.
6 And my objection, part of the objection was that that is
7 not correct. And the cut-and-paste or copy and paste,
8 you can't cut-and-paste what you can't see. And that's
9 gonna become more visible as this Camtasia rolls on and
10 on and on. But there's just no way to speed it up,
11 Judge, I apologize.

12 **THE COURT:** I'm just trying to wrap my arms around
13 it, so go ahead.

14 (Continues playing Camtasia.)

15 **MR. HUFF:** I think you can see, I'm sorry, where
16 some is already being covered up. It consistently gets
17 covered up, uncovered, covered up and uncovered, and you
18 can't cut-and-paste what you can't see. I was going to
19 try to speed it up, if I could, to show you more.

20 **THE COURT:** Are you referring to the continuing
21 conversation coming up over the prior conversation? Is
22 that what you are saying?

23 **MR. HUFF:** Yes, sir. Yes, sir, that's what I'm
24 saying.

25 Judge, this is the one that we're talking about

1 that continues to get covered up by this, some comes
2 down here and covers it up. That's what we're talking
3 about. This is the danger6552000 Mr. Patterson was
4 talking about.

5 THE COURT: So, if I understand the basis of your
6 objection, number one, you said that Exhibit Number 2,
7 proposed Exhibit Number 2 by the State, the
8 cut-and-paste version of the chat is not the same as the
9 Camtasia?

10 MR. HUFF: That's correct.

11 THE COURT: Also barred by the best evidence rule.

12 MR. HUFF: Yes, sir.

13 THE COURT: What rules of evidence would you give
14 that requires it to be the same as the Camtasia, because
15 he testified that it was the same?

16 MR. HUFF: Well, he's testifying he cut and pasted,
17 but you can't cut-and-paste what you can't see. You
18 can't cut-and-paste from it. I believe Mr. Anderson --
19 excuse me -- Mr. Johnston has some case law on that
20 issue.

21 MR. JOHNSTON: With the Court's permission?

22 THE COURT: Yes, sir.

23 MR. JOHNSTON: Your Honor, I would like to hand up
24 to you a case which I think is on point. It's not a
25 South Carolina case, but it deals with the precise

1 issues that you're dealing with in this situation. It
2 is a Federal District Court case from the District of
3 Nebraska.

4 I apologize to the Court, but I apparently only
5 have two copies of it. After I finish arguing it, I'm
6 gonna hand my copy to the Court. I'll give a copy now
7 to the Attorney General so that she will have it. I'll
8 just briefly argue from this and then I'm going to hand
9 you my copy, if I may.

10 Your Honor, in this U.S. versus Jackson case,
11 again, it's a 2007 District Court case, the Court was
12 dealing with the admission of cut-and-paste evidence as
13 opposed to what would be on a Camtasia. Cut-and-paste,
14 if the Court does any word processing, I don't know if
15 you do or not, but essentially it involves taking it
16 from one source, copy, highlight, paste into another
17 document. And that's basically what the State's
18 proposed exhibits are, are taking purportedly copying
19 from one source and placing it into a word processing
20 program.

21 The Court in the Jackson case, Your Honor, found
22 that that specific type of activity is not sufficient.
23 The court said -- the court finds the cut-and-paste
24 document is not admissible at trial. This is the
25 reasons. First, the burden is on the government to show

1 that the document is authentic, citing some other
2 federal cases.

3 Second, the government must make a foundational
4 showing that the transcript is trustworthy. In this
5 situation they are basically attempting to offer their
6 own potentially editorialized version of what's in the
7 cut-and-paste document.

8 Your Honor, in this situation I'm gonna guess
9 probably 70 percent of the conversation between Officer
10 Patterson and danger6552000 isn't recorded on the
11 Camtasia. The Camtasia would be similar if someone took
12 a video camera and put it over the shoulder of the
13 officer while he was on the computer. It would provide
14 an exact representation of what's happening on the
15 screen. But in this particular case he's doing so many
16 other things that the actual communications are blocked
17 much of the time.

18 The other thing is the Camtasia from the second
19 chat, that's been completely lost to us. It doesn't
20 exist anymore.

21 **THE COURT:** Well, that's not before us right this
22 second. I want to hear about this Exhibit Number 2,
23 proposed Exhibit Number 2, cut-and-paste, please, sir.

24 **MR. JOHNSTON:** Yes, sir, Your Honor. The other
25 argument we would have is that the Camtasia is the best

1 evidence of the communication. The editorialized
2 cutting and pasting, cut-and-paste document that they
3 are purporting to rely on in this situation is not the
4 original copy. It is something that they have created.
5 We would argue that they should be restricted to this
6 and whatever it shows or doesn't show. So if I ---

7 THE COURT: I overrule your objection on that
8 basis.

9 MR. JOHNSTON: Yes, sir. Yes, sir.

10 THE COURT: Okay. So go on to the best evidence
11 rule basis, okay, sir?

12 MR. JOHNSTON: All right, sir. Your Honor, I'd
13 like to just hand up to you a copy of the Jackson case
14 if I may? (Handing document to the Court.)

15 THE COURT: Let me ask you this.

16 MR. JOHNSTON: Yes, sir.

17 THE COURT: At the time that this case was argued
18 before the District Court, what type of showing was made
19 by the Defense or proponent of the objection that the
20 Camtasia did not accurately transfer into a
21 cut-and-paste? And the reason I ask the question is
22 this.

23 MR. JOHNSTON: Yes, sir.

24 THE COURT: The officer testified that the Camtasia
25 was a full, complete, and accurate copy of what was done

1 on screen. The cut-and-paste was a true and accurate
2 copy, if I understand the testimony, of the Camtasia.
3 Now, that's my understanding.

4 MR. JOHNSTON: Yes, sir.

5 THE COURT: So, if that's the preliminary burden of
6 the State, then don't you have -- then doesn't that
7 shift the burden over to you to show that it's not a
8 true and accurate reflection of the Camtasia because it
9 didn't equate -- in other words, when you -- that what
10 was shown on the Camtasia did not equate into what
11 actually ended up being the cut-and-paste?

12 MR. JOHNSTON: Yes, sir. And that was an issue
13 that was dealt with in the Jackson case. And in the
14 Jackson case the defense called an expert, which we are
15 not prepared to do in this particular situation, at
16 least not at this time.

17 May I have just one moment?

18 THE COURT: Yes, sir.

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

21 MR. JOHNSTON: We don't have anything additional on
22 that point, Your Honor.

23 THE COURT: I'm gonna overrule your objection at
24 this time with the right to renew your objection. Okay?

25 Are you ready to continue?

1 MS. WINES: Yes, Your Honor.

2 THE COURT: Is the Defense ready to continue,
3 Mr. Huff?

4 MR. HUFF: Yes, Your Honor.

5 THE COURT: Would you bring the jury back, please.

6 MS. WINES: Should we get this off the screen
7 first, Judge?

8 THE COURT: Yeah.

9 Just one second. Thank you.

10 MS. WINES: I don't think we'll need it anymore.
11 Well, he may need it again so...

12 THE COURT: Okay. Are we ready to proceed now?

13 MS. WINES: Yes, sir.

14 THE COURT: Okay. Would you bring the jury in,
15 please, sir?

16 (The Jury entered the courtroom at approximately
17 5:21 p.m.)

18 THE COURT: Just one second, Counsel.

19 I've been calling you "Mr. Stanley" through this
20 case and I apologize.

21 THE FOREMAN: That's okay. You didn't hurt my
22 feelings.

23 THE COURT: Would you poll your jury? I anticipate
24 going a little further with you today, not much. I know
25 it's 5:20 now. The clock is accurate. If you would

1 check with your jury and see if there is anybody who
2 can't stay a little later today if that doesn't suit?
3 If it doesn't, we'll stop and let you all go home.
4 Would you check with your jury and just kind of poll
5 everybody about what they'd like. Or is there anybody
6 on the jury who right now has to leave?

7 (There was no response.)

8 THE COURT: You okay, everyone?

9 THE FOREMAN: We're good.

10 THE COURT: Thank you very much. Go ahead.

11 MS. WINES: Thank you, Your Honor. Beg the Court's
12 indulgence one minute.

13 By Ms. Wines:

14 Q. Okay. Officer, the two communications you've
15 mentioned between your persona and danger6552000, did
16 you preserve these by a copy/paste method?

17 A. Yeah, cut-and-paste, yes, ma'am.

18 Q. Cut-and-paste. How exactly did you do that?

19 A. At the end of my chats, I take the chat box and
20 highlight everything that's inside that instant message
21 box with that other person. I copy it, paste it into a
22 Word document and save it.

23 Q. Okay. Is there anything added or deleted?

24 A. No, ma'am.

25 MS. WINES: All right. Permission to approach,

1 Your Honor?

2 THE COURT: Yes, ma'am.

3 By Ms. Wines:

4 Q. I'm showing you what's been marked as State's
5 Number 2. Do you recognize that?

6 A. Yes, ma'am.

7 Q. And what is that?

8 A. That's the cut-and-paste.

9 Q. Okay. And from which communication is that one?

10 A. It's from May the 4th, the first communication.

11 Q. Okay. Have you had a chance to review it?

12 A. Yes, ma'am.

13 Q. And is it fair, accurate, and complete?

14 A. Yes, ma'am.

15 Q. With that communication on that date?

16 A. Yes, ma'am.

17 Q. And I'm gonna show you what's been marked State's
18 3. And do you recognize that?

19 A. Yes, ma'am.

20 Q. And what is it?

21 A. That's the chats from May 6th, the second chat with
22 Danger.

23 THE COURT: Just one second.

24 For the record, I assume the same objection to May
25 6th?

1 **MR. HUFF:** Yes, sir. Yes, sir.

2 **By Ms. Wines:**

3 **Q.** How was this printed?

4 **A.** It was also a cut-and-paste, ma'am.

5 **Q.** Okay. And is it also fair and accurate?

6 **A.** Yes, ma'am.

7 **MS. WINES:** Your Honor, at this time the State
8 would move numbers 2 and 3 into evidence.

9 **THE COURT:** Admitted subject to objection.

10 (Whereupon, State's Exhibit 2, printout of chat
11 dated 5-4-06, having been previously marked for
12 identification, was received in evidence subject to
13 objection.)

14 (Whereupon, States Exhibit 3, printout of chat
15 dated 5-6-06, having been previously marked for
16 identification, was admitted into the record
17 subject to objection.)

18 **MS. WINES:** And, if we could have permission to
19 publish, Your Honor?

20 **THE COURT:** Yes, ma'am.

21 **MS. WINES:** Thank you. Bear with me one second,
22 Judge. I want to make sure I don't bring that computer
23 screen back up. Okay. I just wanted to make sure we
24 didn't have any boo boos.

25

1 By Ms. Wines:

2 Q. Officer, can you see that from where you are
3 sitting?

4 A. Yes, ma'am.

5 Q. Okay. Could you explain to the jury what they are
6 seeing?

7 A. It's the actual chat between a_upstategurl93 and
8 danger6552000, the cut-and-paste from the actual chat.

9 Q. Okay. And if you would, just start at the
10 beginning so we can help the jury read because the
11 screen may be a little small back there. If you could
12 just read the chat out to the jury.

13 Or if it helps you to come down, I could ask the
14 Judge for permission for you to come down?

15 A. I can see from here.

16 Q. Okay.

17 A. It starts out with danger making a first
18 communication with: Hi would you like to chat?

19 a_upstategurl93: Hi.

20 Danger6552000: -- how do you want me to address?
21 Do you want me to keep saying the names over and over
22 again?

23 Q. I think that would be proper and accurate, yes.

24 A. Can I call them danger and a_upstate or do you want
25 me to go with the whole thing?

1 as in Odom as to the ICAC policies or the memorandum of
2 understanding. We're relying on the statute of official
3 capacity. And there's no way I believe that Your Honor
4 can assume that the Legislature would put such specific
5 language in this statute and just say that just because
6 you are an officer, you are, quote, always on duty
7 protecting the State. You punch a clock, you get paid
8 for your time, and that's when you are acting in your
9 official capacity. Thank you.

10 THE COURT: All right. Ladies and gentlemen, let
11 me -- I think one last thing before we go. And let me
12 say something to the Court staff, the court reporters,
13 and the officers here. I appreciate your patience. I'm
14 trying to run this a little bit longer, take the pain
15 the first part of the week so we don't have to go into
16 the weekend or into the holiday.

17 That being said, Ms. Wines you mentioned you had a
18 motion *in limine*. Would you tell me what that is,
19 please.

20 MS. WINES: Thank you, Your Honor, I'll be brief.
21 With regard to Mark Patterson ---

22 THE COURT: Go ahead.

23 MS. WINES: Yes, sir. With regard to Mark
24 Patterson, we've had an issue relating to his, he had an
25 arrest in Burnetttown and records of that arrest, and we,

1 it's my understanding both sides now have all those
2 records except for a CD.

3 THE COURT: Correct.

4 MS. WINES: And I would prefer not to get into
5 specifics unless we absolutely need to, but it's my
6 opinion that, and I would request of the Court, that
7 none of those records be addressed at all in any manner
8 whatsoever, including questioning on Cross-Examination.
9 I do not believe they are relevant, and I do not believe
10 they are proper impeachment evidence, Your Honor. And I
11 would ask the Court to exclude any reference at all to
12 the arrest of Mr. Patterson.

13 And in support of that, Your Honor, if you'll give
14 me just a minute to find my folder, I will pass up a
15 case that supports that proposition, and it is the case
16 of State v. Grace, Your Honor. And I'll give a copy to
17 defense counsel as well.

18 MR. HUFF: Thank you, ma'am.

19 MS. WINES: In short, I believe this case supports
20 my argument that a prior bad act, as we have already
21 been discussing in other matters related to this case,
22 the prior bad act needs to be relevant, first of all,
23 but we know that or it seems to me that in this case it
24 would be used as impeachment evidence, and impeachment
25 evidence in order for that to be developed or

1 questioned, it must actually relate to the character for
2 truthfulness or untruthfulness, Your Honor.

3 And that's what the rule itself states and that's
4 what this case states. And I don't believe there's
5 anything at all in these records that would go to
6 truthfulness or untruthfulness, Your Honor. And I would
7 just invite you to read this case.

8 THE COURT: All right. Mr. Huff, do you have
9 anything that would demonstrate that the documents would
10 go to the truthfulness or untruthfulness of this
11 officer? Let me rephrase that. Do you agree that -- we
12 brought this up at pretrial -- that your use of any
13 information gleaned from these documents at this point
14 would be to impeach the testimony of Officer Patterson?

15 MR. HUFF: Yes, Your Honor. That the purpose in
16 conducting a preparation of Mr. Odom's defense is to
17 look at all evidence and determine whether or not, and
18 in this case specifically, I believe it would be as to
19 an issue as to whether or not it would be proper
20 impeachment testimony growing out of this incident.

21 THE COURT: Okay.

22 MR. HUFF: And, of course, Your Honor, it could be
23 that the document itself is not something that could be
24 admitted for impeachment, but the answers to questions
25 might be something that might be impeachable. So we

1 just have to wait and see.

2 THE COURT: What was that last thing you said?

3 MR. HUFF: The document itself might not be such
4 that the Court would deem it to be the document being
5 admissible evidence.

6 THE COURT: Well, the rule specifically
7 provides ---

8 MR. HUFF: Right.

9 THE COURT: --- specific instances may not be
10 included, so that's not whether I have discretion. The
11 rule says it will not, correct?

12 MR. HUFF: Correct. And what, what Ms. Wines'
13 motion is that the Court exclude any statement that he
14 was arrested. And at this point I do not intend to ask
15 Mr. Patterson if he was arrested. I don't have that
16 intent.

17 THE COURT: Well, okay. Do you agree with me that
18 under Rule 608 of the South Carolina Rules of Evidence
19 it has to do with opinion or reputation, evidence or
20 character or specific instances of conduct of a witness
21 that that rule, especially Section (b) goes to the
22 truthfulness or untruthfulness of the witness?

23 MR. HUFF: Judge, I don't have the rule in front of
24 me, but I believe my last recollection of reading that,
25 that would be a correct statement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 this time ---

2 THE COURT: Okay, sir.

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

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

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

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

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

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

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

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

20 MR. McDANIEL: That's correct.

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

1 **MR. McDANIEL:** Yes, Your Honor, I would. Just to
2 point out briefly, Your Honor, there exists a violation
3 of equal protection when there are similarly situated
4 individuals that are treated disparately. There's a
5 disparate treatment under that law. And in this case
6 16-15-342 does that.

7 The underlying statute, as you are well aware, Your
8 Honor, is one that makes it a criminal offense to
9 criminal solicitation of a minor you knowingly contact
10 or communicate or attempt to contact or communicate with
11 a person under eighteen or believed to be under eighteen
12 for the purpose or intent of persuading, inducing,
13 enticing, or coercing the person to engage or
14 participate in sexual activity or violent crime or an
15 intent to perform a sexual activity in the presence of a
16 person. The ---

17 **THE COURT:** What are the disparate classes?

18 **MR. McDANIEL:** The disparate classes are created,
19 Your Honor, by the two subsections, (b) and (d). And
20 what those do, in Section (b) it says, if you happen to
21 be communicating with someone over the age of sixteen
22 and you are, say, twenty or over eighteen and you are
23 communicating with someone sixteen or older, even if you
24 fit within the statute by intent and you believe that
25 person is underage, you have a complete defense.

1 **THE COURT:** If there's consent.

2 **MR. McDANIEL:** If there's consent. Yes, Your
3 Honor. That there is a presumed consent if the person
4 is sixteen or over. That creates a class as to the
5 people communicating, that would be your first class,
6 that you have your age. You are say twenty years old,
7 you've communicated with someone who is over age,
8 sixteen or over, and you have a defense to this crime of
9 solicitation.

10 The second class would be created by Subsection (d)
11 in which that defense is then taken away if that person
12 happens to be a police officer acting in their official
13 capacity.

14 At that point you have two persons and as far as
15 they can tell, as far as their knowledge and their
16 intent, their application to this particular crime,
17 they're identical. Only ---

18 **THE COURT:** Hold on for a second. Is that, in
19 fact, the case under the statute wouldn't it more go to
20 the fact that the officer would, in fact, be older than
21 sixteen and, therefore, that's not a defense if he's
22 working in his official capacity as opposed to doing
23 this on his own or on the side or for their own personal
24 gratification?

25 **MR. McDANIEL:** It is. But the perspective of the

1 equal protection violation comes from the class of the
2 person created. To them there's no way they can know
3 whether this is a police -- it can either be a police
4 officer off duty or a police officer on duty or just
5 some other adult.

6 THE COURT: Take your, take your argument. Say
7 there's a police officer in Section (d) in his official
8 capacity ---

9 MR. McDANIEL: Yes, sir.

10 THE COURT: --- but he says I'm sixteen and I'm,
11 you know, consenting to this dialogue and then they get
12 into the same type of things what you saw and listened
13 to today. Wouldn't that be a defense under this code
14 section?

15 MR. McDANIEL: It would be a defense for the person
16 being accused of the crime?

17 THE COURT: Yes, sir.

18 MR. McDANIEL: That they are ---

19 THE COURT: That if the officer, although he may be
20 fifty --

21 MR. McDANIEL: Right.

22 THE COURT: -- but he says I'm sixteen and,
23 therefore, he's working in his official capacity and
24 consenting, wouldn't that fall in the same category of
25 somebody actually over age sixteen?

1 **MR. McDANIEL:** I don't believe so, Your Honor.
2 Because the statute says the person you attempt to
3 contact is eighteen or you believe that they are under
4 the age of eighteen. So the statute makes it a crime if
5 you are contacting anybody that you believe is under the
6 age of eighteen. Even -- unless it happens to turn out
7 that person is sixteen or seventeen or older and happens
8 to be not a police officer in their official capacity,
9 then no matter what you believe, you have a defense to
10 it.

11 Again, unless that person happens to be a police
12 officer acting in their official capacity. I mean, you
13 could have an unlimited number of persons making the
14 exact same communication, the exact same intent, the
15 exact same age in their belief, and if one of them
16 happens to be talking to a police officer, only that one
17 is committing a crime. If it's not considered a crime
18 to be a complete defense as to all the others, then
19 there's not a crime committed.

20 **THE COURT:** So under your evaluation of the
21 statute, if I talk to an officer posing as somebody who
22 is sixteen, and they are working in their official
23 capacity, I could be found guilty?

24 **MR. McDANIEL:** I believe that's what the statute
25 says, Your Honor.

1 **THE COURT:** Okay. Again, I was construing it
2 another way, quite frankly. What would be the standard
3 for creating the disparate classes under the
4 Constitution and due process clause?

5 **MR. McDANIEL:** I believe the burden would be on the
6 State to prove that they have a legitimate interest in
7 creating the different -- the situated person and a
8 rational basis for doing so.

9 **THE COURT:** Oh. So It's a rational basis analysis?

10 **MR. McDANIEL:** A rational basis. Your Honor, I
11 don't believe they can meet that standard. They may be
12 able to justify the underlying crime of criminal
13 solicitation, but when you take it as a whole with these
14 subparts, it becomes no real explanation of why one is
15 considered criminal and another is not, particularly
16 from the standpoint that has the equal protection has to
17 be viewed from the individual making the communication.

18 **THE COURT:** What is the age of consent in South
19 Carolina?

20 **MR. McDANIEL:** I'm not completely sure. I believe
21 it's ---

22 **THE COURT:** Isn't it sixteen?

23 **MR. McDANIEL:** Yes.

24 **THE COURT:** I mean, do you disagree with me? Or
25 does anybody in here disagree with me?

1 MR. HUFF: Judge, I can only represent there's
2 probably eight to fifteen different statutes, and it
3 runs the gamut from fourteen, sixteen, eighteen,
4 twenty-one depending on what the ---

5 THE COURT: Charges?

6 MR. HUFF: --- statute is.

7 THE COURT: Oh, all right. But for alleged sexual
8 activity?

9 MR. HUFF: Yes, sir. Like CSC with a minor I
10 believe is going to be ---

11 THE COURT: If you are sixteen years old, would
12 that constitute a CSC with a minor?

13 MR. HUFF: No, sir. I believe you've got to
14 have -- I believe sixteen and above is not, I believe.

15 THE COURT: Okay. All right. Thank you, sir.

16 MR. McDANIEL: Thank you, Your Honor.

17 THE COURT: Anything further on that? Did I cut
18 you off?

19 MR. McDANIEL: You did not, Your Honor.

20 THE COURT: Okay. Thank you, sir.

21 All right. Ms. Wines, did you want to add to that?

22 MS. WINES: Yes, Your Honor. First, if I could
23 just pass up the State's memos. First we have a
24 memorandum of law in support of the State's opposition
25 to the Defendant's motion to declare unconstitutional

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

5 THE COURT: Okay.

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

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

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

1 just taken away. And we acknowledge there may be a
2 defense.

3 Otherwise, but we believe the intent was when you
4 have an actual minor and the actual sixteen-year-old is
5 saying okay. Not when you have a situation, for
6 example, of a parent finding out that there's some
7 inappropriate chatting going on with their child and
8 they didn't take over the account. That parent has
9 the ---

10 THE COURT: Well, how about what counsel said a
11 second ago, you have an officer who is fifty years old
12 who represents themselves to be sixteen or seventeen ---

13 MS. WINES: Yes, sir.

14 THE COURT: --- would that constitute a defense
15 instead of participating in it and thereby consenting to
16 it? I mean, and that's what I'm trying to ferret out in
17 my mind.

18 MS. WINES: Right. You have an officer
19 representing themselves to be as ---

20 THE COURT: Sixteen or seventeen years old and
21 participating in the same type of conversation ---

22 MS. WINES: Right.

23 THE COURT: --- we saw today with somebody who's
24 over eighteen.

25 MS. WINES: I believe because they're an officer,

1 we then do have that official capacity question as to
2 whether ---

3 THE COURT: Because I was thinking, I'm not as
4 worried about the official capacity ---

5 MS. WINES: Okay.

6 THE COURT: --- so much as the, whether or not that
7 would be a defense to the charge because the person is
8 representing themselves to be sixteen, he's actually
9 fifty ---

10 MS. WINES: Right, okay.

11 THE COURT: --- in his official capacity and
12 therefore ---

13 MS. WINES: I understand. If they're not in
14 official capacity, I believe it is a defense, Your
15 Honor. That's what we had in Spartanburg. But, of
16 course, if they are in official capacity, it's not. And
17 my point being you can't just separate out based on
18 official capacity non official capacity or officer or
19 not an officer.

20 THE COURT: Well, let me go back and ask you this.

21 MS. WINES: Okay.

22 THE COURT: Do you agree or disagree? I know that
23 there's other -- I mean, you have contributing and
24 different things to somebody who I guess is eighteen
25 years old. But in this matter does the State agree or

1 do you agree that the sexual activity between someone
2 who's sixteen years or older would not lead to a
3 criminal sexual conduct case with a minor? I mean, in
4 other words, can a minor, can a person who's sixteen
5 years old consent?

6 MS. WINES: I would want to look at the CSC statute
7 in particular again, but I want to say, yes, if you're
8 sixteen you can consent to sexual acts.

9 THE COURT: And that's what I think, but I'm not
10 positive that's the case. I think that is the case.

11 MS. WINES: Yes, sir.

12 THE COURT: And the reason being, it would seem to
13 me that if they can consent to actual sexual activity
14 they should be able to consent to talking about it as
15 well.

16 MS. WINES: Yes, Your Honor. That's my impression
17 as well.

18 THE COURT: Okay.

19 MS. WINES: I believe that the Legislature was just
20 trying to assist and in so doing -- you know, assist in
21 undercover operations, and in so doing made the statute
22 somewhat convoluted. But that would be my argument with
23 respect to separate classes. Irrespective of that, we
24 believe we meet the burden, the rational basis standard,
25 and all of that is detailed in the memos, Your Honor.

1 **THE COURT:** All right. Thank you, Counsel. Thank
2 you everyone.

3 Yes, sir.

4 **MR. McDANIEL:** May I reply?

5 **THE COURT:** Yes, sir, you may. Thank you. Again,
6 Can you identify yourself for the record just so we can
7 keep it straight?

8 **MR. McDANIEL:** It's Brian McDaniel, Your Honor.

9 I just wanted to just reply to just a couple things
10 that were said there. If the statute -- the
11 Legislature's intent was to assist the officer, that
12 could have been done without inserting the consent, the
13 B statute. But it wasn't. They did that.

14 Now, as Counsel pointed out, it's convoluted, and
15 that creates, whether the Legislature intended to do it
16 or not, an equal protection violation. And we admit
17 it's poorly constructed. That's one of the arguments in
18 our brief, is that there's no other state that has this
19 and the only state that did had to change it because of
20 these same arguments in Louisiana. So I rest on that.
21 Thank you.

22 **THE COURT:** All right. Well, let me say this: As
23 we all know, statutory enactments are presumed to be
24 Constitutional. And my first blush looking at it, I'm
25 not ruling that there is disparate classes, that there's

1 a rational basis for Section (b) and (d), and that is
2 that sixteen year olds consent and, therefore, an
3 officer engaged in his actual duties, if he said he was
4 sixteen years old, that would provide a defense to the
5 Defendant. If he says he's thirteen, then he goes into
6 what the Defendant believes. That's my initial
7 impression. I'm not ruling that. I'll read these
8 briefs and I'll give you my ruling in the morning.

9 That being said, we are in recess until 9:00 in the
10 morning. Thank you everybody for participating. I know
11 it was a long day. Hopefully tomorrow we won't keep you
12 so long. We're dismissed.

13 MS. WINES: 9:00, Your Honor?

14 THE COURT: Yes, ma'am.

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

16 (Whereupon, court adjourned at 7:15 p.m.)

17 (Court's Exhibit # 3, Lyle evidence charge, was
18 marked for identification and received in Court's
19 evidence.)

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24

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1 November 8, 2011

2 9:02 a.m.

3 **THE COURT:** Before we get started let me go over
4 what I have marked down as the motions that were before
5 me. First is, I have essentially five defense motions.
6 One was a motion to dismiss based on First Amendment
7 grounds. Second, is a motion to dismiss on equal
8 protection grounds. Third, is a motion to dismiss for
9 failure to timely indict. Fourth, is a motion to
10 dismiss for prosecutorial vindictiveness. And the fifth
11 motion, which I characterize, Mr. Huff, is a motion to
12 dismiss based on Brady and Rule 5 violations and based
13 on the failure of the State to produce the May 6, 2006,
14 Camtasia chat. Also failure to produce the profile page
15 from Officer Patterson's online persona and the time
16 sheets for Officer Patterson; is that correct?

17 **MR. HUFF:** Your Honor, I believe that's correct.

18 **THE COURT:** Is there any other motions and matters
19 before me that you're aware of?

20 **MR. HUFF:** Judge, none other before you right now.
21 And I believe as to the vindictive prosecution,
22 Mr. McDaniel, I believe, has supplemental matters to
23 place on the record at some point before you have all of
24 the argument of Mr. Odom. But I believe those are the
25 only matters that are currently pending before the

1 Court.

2 THE COURT: All right. And then there's a motion
3 *in limine* from the State for me in reference to any
4 alleged prior bad acts on behalf of Officer Patterson;
5 is that correct?

6 MS. WINES: Yes, Your Honor, that's correct.

7 THE COURT: Any other motions from the State?

8 MS. WINES: No, Your Honor.

9 THE COURT: Okay. I want to take up first, let me
10 do this in reverse order based on probably the more
11 immediate need, and that is the motion *in limine*.
12 Mr. Huff, my inclination would be to grant that motion
13 subject to listening to the video or the audiotape that
14 hopefully comes in today.

15 And my basis for that is: One, unless you show me
16 something otherwise, those documents and the information
17 doesn't go to the trait of Officer Patterson being
18 truthful or untruthful, which I believe under Rule 608
19 is what you need to establish in the prior bad acts.
20 Therefore, I don't think it would be relevant to any
21 inquiry of this matter. But I'd be glad to hear from
22 you in that regard.

23 MR. HUFF: Judge, at this time you would like to
24 hear argument?

25 THE COURT: Well, I mean, I think, I assume, that

1 we're gonna continue with Officer Patterson at this
2 stage, and it might be a good time to go ahead and cross
3 that bridge instead of delaying later. But if you want
4 to think about it and before you do Cross-Examination,
5 that's fine with me, too.

6 MR. HUFF: Thank you, Your Honor, I appreciate
7 that.

8 THE COURT: Okay. I'm going to find also, I think
9 I ruled this last night, that there's no Brady violation
10 on the failure to produce the May 6th Camtasia and that
11 was not exculpatory.

12 What would be your position, Mr. Huff, as far as
13 Rule 5 goes? Don't you have to establish prejudice on
14 the part of the failure to produce that at this stage?

15 MR. HUFF: Your Honor, I believe the prejudice is
16 that by not complying with the rule and turning these
17 matters over, it removes a defense that Mr. Odom is
18 entitled to under the statute. And our position
19 would -- it's not more than a defense. If there's
20 consent to the conversation, then there is no violation
21 of the statute. So that's the prejudice to it. It's
22 very clear.

23 THE COURT: Expound on that a little bit further,
24 please. I'm not quite putting my arms around it.

25 MR. HUFF: Your Honor, the State has not turned --

1 contradict, expand upon, specify actual hours worked.
2 It's an empty well. And so we don't believe that any
3 delay would be productive in any manner.

4 THE COURT: Okay, sir. And just so I'm clear,
5 based on my notes the only documents that are not
6 available and have not been produced is the Camtasia
7 that are dated May 6, 2006, reflecting a chat between
8 Officer Patterson and the alleged Defendant or the
9 alleged chat. Also, the persona profile page. Is that
10 correct, Mr. Huff?

11 MR. HUFF: That's correct, Your Honor.

12 THE COURT: Okay.

13 MR. HUFF: Plus the time sheets. If there's
14 anything else that the State has not turned over in
15 response to our discovery request, I hope not to be
16 surprised by anything else.

17 THE COURT: Well, I certainly do too. Now, the
18 time sheets, as we stated, have been -- and what I'm
19 trying to do is give you an opportunity, and I will
20 continue to give you that opportunity if you think of
21 something that may assist you in going over those time
22 sheets. I'm not gonna dismiss the case based on the
23 failure to produce those, however.

24 That leaves us going back on the motion to dismiss
25 on the First Amendment grounds. I go with Judge

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

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

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

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

1 because of the failure on the part of the defense to
2 meet their burden of proof to establish actual malice or
3 implied malice, if I'm not mistaken, as to the
4 standards. But that being said, I'm gonna revisit that
5 issue to make a ruling on that.

6 So with that being done, is there anything else I
7 need to rule on at this stage for the State, or I should
8 say from the State or from the Defense?

9 MS. WINES: Not from the State, Your Honor.
10 However, I would remind the Court there's been mention
11 of a log-rolling issue and I don't know if the Court ---

12 THE COURT: There's what now?

13 MS. WINES: There is mention of a motion from the
14 defense concerning a log-rolling issue. I believe
15 that's what we're calling it. I don't know if you want
16 to entertain that now, but I just recall that is an
17 issue that's been put out there.

18 MR. HUFF: Your Honor, that's correct. That is one
19 of the motions that we intend to make, you know, I was
20 going to take up with the Court this morning. Whenever
21 the Court would like to entertain that motion. A
22 thought was that at the lunch break if the jury were
23 given a little bit more time and that we were able to
24 begin right as the jury leaves or right before they come
25 back, that it might be more fluid to do it that way and

1 Q. And based on your training and experience as of
2 2006 are minors in chat rooms?

3 A. Yes.

4 MS. WINES: Nothing further from this witness on
5 direct, Your Honor.

6 THE COURT: All right. Cross-Examination?

7 MR. HUFF: Judge, could we have about a
8 three-minute recess? I've got to get something set up.

9 THE COURT: Yes, sir.

10 MR. HUFF: Thank you, Your Honor.

11 THE COURT: Mr. Gibson, take the jury back. Ladies
12 and gentlemen, we'll take our early morning break. Be
13 back in about ten minutes.

14 (Whereupon, the Jury left the courtroom at
15 approximately 10:12 a.m.)

16 THE COURT: All right, Mr. Patterson, don't speak
17 to anybody about your testimony during the break. We'll
18 be in recess for ten minutes.

19 MS. WINES: Thank you.

20 (A recess was taken.)

21 THE COURT: Please be seated. Mr. Huff, are you
22 ready to proceed?

23 MR. HUFF: Your Honor, we are. We've got, I
24 believe my understanding is we've had a CD that has just
25 arrived and my co-counsel told me that you were gonna

1 review it in chambers and then ---

2 THE COURT: Yeah. Well, I tell you, let's do this.
3 Bring counsel back. I'm gonna let you listen to it.

4 MR. HUFF: Yes, sir.

5 THE COURT: Okay.

6 (Whereupon, the Court and counsel held a discussion
7 in chambers from approximately 10:38 a.m. to
8 approximately 10:57 a.m.)

9 THE COURT: All right. For the record, we had a in
10 camera conference back in my chambers to review a CD
11 that was sent to us -- that I ordered to be sent to us
12 by Officer Patterson's attorney. And with regard to
13 that CD or our meeting in chambers, does the State
14 desire to place anything on the record?

15 MS. WINES: Yes, Your Honor. Just in furtherance
16 of what was placed on the record last night, I would
17 renew that we do not believe there is anything proper
18 that could be used for impeachment purposes in the form
19 of extrinsic evidence certainly or by question, Your
20 Honor. We do not believe that there should be any
21 mention of this incident whatsoever. Not merely
22 dismissing the arrest, but anything stemming from the
23 incident at all.

24 THE COURT: All right. Mr. Huff, does the Defense
25 wish to place anything on the record in regard to what

1 we listened to or our conference in my chambers?

2 MR. HUFF: Your Honor, I don't think I've got to
3 place anything on the record. I think Your Honor has
4 made a ruling. We would simply state that this is
5 Cross-Examination. Many things are fair game, but I
6 understand your prior ruling and I believe I will be
7 able to comply with that.

8 THE COURT: Okay. And just to make sure the record
9 is clear, my ruling previously was that these documents
10 related to the incident of Officer Patterson are not
11 relevant and that they don't go to the issue of
12 truthfulness or non-truthfulness; therefore, they
13 can't -- under 608, they can't come in because they are
14 extrinsic evidence and the information contained in
15 those documents doesn't necessarily go to the issue of
16 truthfulness or non-truthfulness.

17 And to update my ruling on the CD, there's nothing
18 whatsoever on the CD that goes to any issue of
19 truthfulness or not on the part of Officer Patterson;
20 therefore, I rule it's not admissible. And I agree with
21 Mr. Huff, Cross-Examination is wide open. But that
22 being what it is, we'll cross that bridge when we get
23 there.

24 Now, finally, do I need, Mr. Huff, I think probably
25 from your perspective first, to make a Court exhibit out

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

3 A. Yes.

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

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

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

10 A. Not everybody, sir.

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

13 A. Yes, sir, sometimes.

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

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

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

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

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

23 A. Yes.

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

1 A. No. But minor children hang out there, sir.

2 That's why I go there.

3 Q. Okay. Do you have any evidence with you in court
4 today that minor children are on that website?

5 A. Not in court with me today.

6 Q. Okay. You can never really believe what somebody
7 writes in one of these sex chat rooms, can you?

8 A. It depends on the person, I imagine, sir.

9 Q. You can never truly believe that what the person
10 says about himself is true, can you?

11 A. I wouldn't say never, sir.

12 Q. Okay. Do people on these adult sex web sites or
13 chat rooms lie about their age?

14 A. Yes.

15 Q. Do they lie about who they are?

16 A. Yes.

17 Q. Do they lie about even what sex they are?

18 A. Yes.

19 Q. Men can say that "I'm a female"?

20 A. Yes, sir.

21 Q. Women can say that they are a male?

22 A. Yes, sir.

23 Q. White folks can say that they are from Mexico and
24 are Hispanics?

25 A. Yes, sir.

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

2 A. Some do.

3 Q. About their jobs or occupations?

4 A. Yes.

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

6 A. Yes.

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

9 A. To a point.

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

16 A. That's correct, yes.

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

19 A. If they wanted to.

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

22 A. Sometimes.

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

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

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

5 Q. Open the account, okay.

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

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

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

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

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

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

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

22 A. Yes, sir.

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

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

5 A. Yes.

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

9 A. Yes, sir.

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

12 A. Yes, sir.

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

16 A. No, sir.

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

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

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

24 A. I opened the romance folder.

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

1 thousands nationwide that are online chatting, right?

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

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

6 A. No, sir.

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

9 A. No, sir.

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

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

14 A. Sex chat rooms.

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

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

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

23 A. Yes, sir.

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

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

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

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

8 MS. WINES: Yes.

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

11 By Mr. Huff:

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

16 A. Not all crimes, sir.

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

20 A. Yes, sir.

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

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

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

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

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

3 MS. WINES: Thank you, Your Honor.

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

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

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

10 MR. HUFF: May it please the Court?

11 THE COURT: Yes, sir.

12 By Mr. Huff:

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

21 A. I don't believe so.

22 Q. I'm sorry?

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

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

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

4 A. Right.

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

6 A. No, sir.

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

9 A. I believe I was thirty-two.

10 Q. Okay. Definitely over sixteen.

11 A. Yes, sir.

12 Q. Definitely over eighteen.

13 A. Yes, sir.

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

18 A. Yes.

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

21 A. Yes.

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

23 A. Yes.

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

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

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

4 Q. Whoa, sir.

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

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

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

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

15 A. I would assume not.

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

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

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

22 A. Yes.

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

1 A. (No response.)

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

5 MS. WINES: Objection, legal conclusion.

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

9 By Mr. Huff:

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

12 A. Right.

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

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

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

21 MS. WINES: I --

22 THE COURT: I sustain the objection.

23 MS. WINES: Thank you, Your Honor.

24 MR. HUFF: Okay.

25

1 MR. SENN: All right. Nothing further.

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

3 MR. HUFF: Briefly, Your Honor.

4 CROSS-EXAMINATION

5 By Mr. Huff:

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

9 A. No, I cannot.

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

13 A. Yes.

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

16 A. Not specifically, no.

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

21 A. That's correct.

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

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

1 investigation, were you?

2 A. No, sir.

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

7 A. That's correct.

8 Q. Or did them properly?

9 A. Correct.

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

14 A. Yes.

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

16 A. I'm sure they do.

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

21 A. Correct.

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

24 THE COURT: Any Redirect?

25 MR. SENN: Very limited, Your Honor.

1 MS. WINES: Correct.

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

4 MS. WINES: Yes.

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

6 MS. WINES: Correct.

7 THE COURT: Okay.

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

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

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

13 THE COURT: I will.

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

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

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

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

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

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

1 **MS. WINES:** Thank you, Your Honor. The State calls
2 Detective Lindsey McGraw.

3 **THE CLERK:** Please place your left hand on the Bible
4 and raise your right hand. (Complies.)

5 Do you solemnly swear or affirm the testimony you
6 give the Court will be the truth, the whole truth, and
7 nothing but the truth?

8 **THE WITNESS:** I do.

9 **THE CLERK:** Thank you. Please be seated.

10 **MS. WINES:** May it please the Court?

11 **THE COURT:** Yes, ma'am.

12 DETECTIVE LINDSEY MCGRAW,
13 having been sworn in, testified as follows:

14 DIRECT EXAMINATION

15 By Ms. Wines:

16 Q. Good afternoon, almost evening, Detective. If you
17 would, please tell the jury your name.

18 A. Lindsey McGraw.

19 Q. And with whom are you currently employed?

20 A. Spartanburg County Sheriff's Office.

21 Q. How long have you been with Spartanburg?

22 A. I've been employed there since August of 2005.

23 Q. Okay. And back in 2006 what would your title have
24 been?

25 A. Computer Forensics Investigator and member of the

1 Internet Crimes Against Children Task Force.

2 Q. Okay. And in 2006 did you have a reason to create
3 an undercover persona?

4 A. I did.

5 Q. And were you using that persona in the spring of
6 2006?

7 A. Yes, ma'am.

8 Q. Okay. And during the spring of 2006 did you have
9 any communications or contact with a screen name
10 danger6552000?

11 A. I did.

12 Q. Okay. And what was the nature of those
13 communications with them?

14 A. You mean the format?

15 Q. However you would like to answer that.

16 A. They were instant message, chat room, chat
17 messages --

18 Q. Okay.

19 A. -- using the Yahoo! instant messaging program.

20 Q. All right. And in terms of the content or the --
21 well, the content, what would you describe the content
22 as?

23 A. I would describe the content of the communication
24 from the individual using the screen name danger6552000
25 as very sexually graphic.

1 Q. Okay. And the persona you were using, was it a boy
2 or a girl?

3 A. It was a girl. It was a thirteen-year-old girl.
4 Her name was Melanie Stafford, she lived in Boiling
5 Springs, which is near Spartanburg, South Carolina.

6 Q. Okay. And throughout the course of the
7 communications that your persona had with danger6552000
8 was there mention of Melanie's age?

9 A. Yes, ma'am.

10 Q. Could you give the jury an idea of how that was
11 done?

12 MR. HUFF: Your Honor, I -- no objection.

13 By Ms. Wines:

14 Q. Just in a summary format, could you tell us how age
15 was mentioned?

16 A. Typically we -- well, I would get the age as
17 thirteen. That was the age of the girl. I also used
18 references to her being in the seventh grade, references
19 to her living with her mother, that type of thing.

20 Q. Okay. And did danger6552000 ever indicate his or
21 her age?

22 A. Yes. Danger6552000 indicated he was a
23 forty-year-old male.

24 Q. Okay. And did he provide a name in the chat?

25 A. As far as -- his screen name changed from

1 danger6552000 to RogeWilson.

2 Q. Okay. And in terms of anything that would have
3 been typed in the communication, would there have been a
4 different name?

5 A. Carson.

6 Q. Okay. And the --

7 MS. WINES: Beg the Court's indulgence just one
8 moment.

9 By Ms. Wines:

10 Q. And the communications that your persona had with
11 danger6552000, were they preserved?

12 A. Yes, ma'am.

13 Q. How so?

14 A. There are three ways that we preserve the
15 communications in a chat. The first way is by
16 configuring the instant message chat program, the Yahoo!
17 Instant messenger program, to preserve the chats in
18 what's called a dat file, which is a compressed file
19 which is done automatically by the program. That is
20 stored on the computer.

21 The second method is the Camtasia recordings, which
22 is essentially a video recording of the activity on the
23 screen, monitor screen. And then the third method is
24 the cut-and-paste version when the content is cut from
25 the screen on to a word processing program and that is

1 saved as well.

2 Q. Okay. And if I may -- well, first let me show
3 defense counsel, Your Honor.

4 (Whereupon, counsel confer off the record.)

5 MS. WINES: If I may approach the witness, Your
6 Honor?

7 THE COURT: Yes, ma'am.

8 By Ms. Wines:

9 Q. Detective, I'm showing you what's been marked
10 State's 6. And take a minute to look at it and tell us
11 if you recognize what that is.

12 A. Is it all right if I take it apart?

13 Q. Sure. Just be sure we put it back together.

14 A. Yes, ma'am. Yes, ma'am, I do recognize it.

15 Q. And what is that you have in your hands?

16 A. These are printouts of basically the copy-and-paste
17 portion of the chats, the communication between myself
18 and the user, Yahoo! user using the screen name
19 danger6552000.

20 Q. Okay. And what is the date range that we have?

21 A. The first one here is from March 21st, 2006. The
22 last one is May 11th, 2006.

23 Q. Okay. And when would the -- let me back up.

24 These communications are -- let me rephrase that.

25 The exhibits you have in your hand, is that a fair,

1 accurate, and complete copy of what you said was
2 preserved?

3 A. Yes, ma'am.

4 Q. Okay.

5 MS. WINES: Your Honor, at this time the State
6 offers Number 6 into evidence.

7 THE COURT: All right. It's admitted.

8 (State's Exhibit Number 6 was received in
9 evidence.)

10 Let me say this to the jury, please, before we go
11 any further. Ladies and gentlemen of the jury, you
12 are about to hear testimony concerning other
13 alleged chats which is on the State's Exhibit
14 Number 6, which was conducted allegedly by the
15 Defendant in this matter. Under our law, the law
16 of this state, evidence of other crimes or wrongs
17 or other crimes or wrongs or acts is never, and I
18 emphasize never, admissible to prove that the
19 Defendant acted in accordance with those acts in
20 the present case.

21 In other words, evidence of prior propensity cannot
22 be used to establish the Defendant acted in the same way
23 on this occasion. Further, you cannot and you shall not
24 consider this evidence of prior chats to prove the
25 Defendant is guilty of prior charges. However, this

1 evidence is admissible and shall only be considered by
2 you as evidence of the Defendant's intent, his identity,
3 or whether the Defendant had a common scheme or plan.
4 If you find it is relevant to those issues and those
5 issues alone, you shall not consider this evidence for
6 any other purposes.

7 Thank you, ma'am.

8 MS. WINES: Thank you, Your Honor.

9 With that, Your Honor, I would ask for permission
10 to publish to the jury.

11 THE COURT: Yes, ma'am.

12 MS. WINES: However, if counsel and I could
13 approach the bench for just a moment.

14 THE COURT: Yes, ma'am.

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

17 MS. WINES: Thank you, Your Honor. And with
18 permission of the Court, I'll publish to the jury at
19 this time.

20 THE COURT: Yes, ma'am.

21 MS. WINES: Okay. And I also request permission
22 from the Court to hopefully present a more fluid
23 presentation here, Your Honor. I ask that I read the
24 portions of the chats that are typed from RogeWilson or
25 danger6552000 and that Detective McGraw be allowed to

1 to being re-called depending on what else.

2 THE COURT: All right. I'm gonna let you go, but
3 you are still under subpoena subject to being re-called.
4 Thank you.

5 THE WITNESS: Yes, sir.

6 THE COURT: All right. Thank you.

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

9 THE COURT: All right. Mr. Gibson, ladies and
10 gentlemen of the jury, thank you for your willingness to
11 be able to work a little bit later. We're making good
12 progress on this, but I know sometimes you wonder, but
13 we are. I'm going to go ahead and call the testimony
14 part of this trial and excuse you for the night. I will
15 remind each and every one of you you are not to hear,
16 read or see anything about this case nor speak about
17 this case with anyone else. You are excused.

18 THE FOREMAN: What time tomorrow?

19 THE COURT: Thank you. 9:00.

20 (Whereupon, the Jury was excused for the day at
21 approximately 6:42 p.m.)

22 Motion to Dismiss Based on Vindictive Prosecution:

23 THE COURT: All right. Counsel, I know you have
24 been waiting patiently all day. If you would identify
25 yourself for the record. This is additional argument on

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

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

5 THE COURT: Thank you, sir.

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

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

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

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

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

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

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

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

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

1 THE COURT: I will.

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

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

14 MR. MCDANIEL: That's right.

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

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

22 THE COURT: Okay.

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

1 failed to meet that burden. The decision is not the
2 only aspect, though, that we believe showed
3 vindictiveness.

4 As an idea, and I won't go into all the details of
5 what you already heard, but we did enter evidence from
6 back in December of 2006, a letter from the prosecutor
7 at that time saying they weren't gonna do any further
8 studies on Mr. Odom's computer, and as well as the fact
9 that they didn't intend to prosecute in Ocone County.

10 We entered into evidence and referenced to it the
11 notes from Mr. Huff in which he indicated that, the
12 phone call and his shock at this phone call in which he
13 had with the prosecution. And, in fact, his quote was,
14 "You know that's wrong," when he was talking to her, and
15 that's what he testified to.

16 In addition, we have two other things I think that
17 go towards this vindictiveness. We put into evidence
18 newspaper articles in which the Attorney General is
19 going around to newspapers saying he is guilty. That on
20 these chats, this former prosecutor is guilty and he's
21 publishing that in the paper telling that to the
22 interviewer. We argued and introduced how that was
23 violative of the Rules of Evidence and the rules of
24 professionalism, which we again believe tend to show
25 animus towards this particular Defendant.

1 In addition, there's the -- I just referenced the
2 letters from earlier in this year. They were put in
3 March 25th, 2011, February 24th, 2011, that were when
4 the State indicated and represented this case to Judge
5 Macaulay was a state wide grand jury case and
6 misrepresented that there was an Ocone term of court
7 April 11th here, and essentially used that as leverage
8 to push for motions to be heard at that time when the
9 Court has acknowledged the evidence is clear there
10 wasn't a term of court. And this is not a state
11 wide ---

12 **THE COURT:** Isn't that information equally
13 accessible to all who go on the South Carolina Judicial
14 Website and everybody can look at it and see what the
15 terms of court are? I do it all the time.

16 **MR. MCDANIEL:** And that's how it was discovered.
17 Eventually it was revealed. But that wasn't known. It
18 was misrepresented, is the point, that this was not a
19 state wide grand jury case and this was used to put
20 pressure on Mr. Odom and on his defense in a particular
21 case.

22 The other aspect of the decision that was made to
23 prosecute was also based upon the Patterson evidence
24 that you heard this great dispute about, the criminal
25 record, the arrest, those issues that that has been

1 since it's occurred has been something that Mr. Odom's
2 counsel has been fighting to obtain. And that was one
3 of the other big issues that Mr. Huff testified
4 regarding that was contentious between the two. And
5 Ms. Wines acknowledges that was the contentious part of
6 that phone conversation of February 2010 when ---

7 THE COURT: The existence or discoverability of
8 Mr. Patterson's records and the audio?

9 MR. McDANIEL: Yeah. Whether or not they were
10 gonna turn it over and whether or not Mr. -- the
11 conversation was Mr. Huff said he had a right to get it.
12 They said, Well, if you're gonna ask for it, then we're
13 just gonna indict in Ocone. That's clearly punishing
14 Mr. Odom for doing something he had a right to obtain.
15 Not to mention instructing people not to comply with
16 subpoenas for that information, which was also testified
17 to. They attempted to get that information through
18 subpoenas and were instructed by the Attorney General's
19 Office, those people getting those subpoenas not to
20 respond to them.

21 We believe that there has been a pattern. And,
22 again, I reference you to that transcript of this
23 animus, of this vindictiveness, at least as to the
24 Ocone prosecution, Your Honor. And I believe that, as
25 I said, the indictment must be dismissed if there's a

1 finding of actual vindictiveness or the presumption of
2 vindictiveness has not been rebutted. There's been no
3 evidence presented to rebut that vindictiveness, and we
4 would ask for you to dismiss on that grounds.

5 THE COURT: Thank you. I have ruled on this
6 matter. I'm going to delay ruling again. I know that
7 that was preliminary and I probably need to do it again.
8 I'm gonna consider this motion. Quite frankly, I think
9 the question is a lot closer on prosecutorial
10 vindictiveness.

11 But go ahead, Ms. Wines, and respond.

12 MS. WINES: Yes, Your Honor. I believe I do need
13 to respond. Previously I relied on memos and whatnot,
14 but I do feel at this point I do need to respond.

15 THE COURT: Sure. And I feel that you should.

16 MS. WINES: Okay. I'm gonna try to take it in the
17 order we've got it. But, first of all, there was
18 reference to -- I think there's some confusion about
19 what I was upset about with the Defendant requiring
20 procedures and requiring things be turned over.

21 And let's be clear. In this conversation and
22 throughout the course my frustration, which I did make
23 clear, was very specific to Mark Patterson's records and
24 that we were going to have to have on a Monday morning
25 that we were supposed to start the Spartanburg trial.

1 Judge Hayes told us over the phone, I believe it
2 was over the phone, that we were going to have to have a
3 hearing with Andy Anderson, Mark Patterson's attorney,
4 to have an attorney/client privilege hearing because at
5 that time it was represented by Mr. Huff that Andy
6 Anderson was the only person who had the documents that
7 he needed. The State never had them, so I could not
8 turn them over and I still stand by the fact that I
9 should not have had them.

10 That being said, we were going to have to have a
11 hearing on attorney/client privilege related to Mark
12 Patterson that was potential bad act evidence that
13 hadn't even been ruled whether it was gonna come in or
14 not. And so I decided that that was too collateral and
15 that we didn't need to be wasting everyone's time with
16 attorney/client privilege hearings and that it was
17 prudent for the State to just deal with that Mark
18 Patterson issue in Oconee County and just treat them as
19 a separate indictment or seek the indictment and treat
20 them separately for that.

21 **THE COURT:** I'm not following that train of
22 thought. Explain that again for me, please. In other
23 words, instead of having an attorney/client hearing ---

24 **MS. WINES:** Uh-huh.

25 **THE COURT:** --- in Spartanburg ---

1 MS. WINES: Yes, sir.

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

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

7 THE COURT: Right.

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

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

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

1 hearing in Spartanburg prior to trial?

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

12 THE COURT: Well, I understand ---

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

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

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

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

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

20 MS. WINES: Absolutely.

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

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

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

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

4 **THE COURT:** Please.

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

8 **THE COURT:** Okay.

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

10 **THE COURT:** Okay.

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

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

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

25 **THE COURT:** How long did the trial take in

1 Spartanburg?

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

6 **THE COURT:** The following Tuesday?

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

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

19 Does that make more sense?

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

25 **MS. WINES:** Uh-huh.

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

3 MS. WINES: Yes, sir.

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

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

9 THE COURT: Right.

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

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

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

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

18 MS. WINES: Yes, sir.

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

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

1 MS. WINES: Uh-huh.

2 THE COURT: Any reasons other than that?

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

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

12 MS. WINES: No, sir.

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

14 MS. WINES: Yes, sir.

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

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

19 THE COURT: Yes, ma'am.

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

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

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

1 **THE COURT:** Okay.

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

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

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

12 **THE COURT:** (Nodded head.)

13 **MS. WINES:** Henry McMaster.

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

16 **MS. WINES:** No, sir.

17 **THE COURT:** All right. Anything further?

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

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

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

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

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

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

21 MS. WINES: Okay.

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

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

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

7 THE COURT: Which is not very hard.

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

10 THE COURT: I've never seen one.

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

13 THE COURT: Okay.

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

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

23 THE COURT: Okay.

24 MS. WINES: -- to clarify.

25 THE COURT: Okay.

1 MS. WINES: There was reference to getting upset to
2 the Defendant asking for things and subpoenas and that
3 sort of stuff. So I wanted to clarify that the
4 attorney/client privilege hearing and all that becoming
5 so large and that becoming such a collateral issue, I
6 think I've clarified that. However, what I took
7 specific issue to was the inference that I was upset
8 about the Defendant not -- requiring authentication of
9 documents and evidentiary procedures and that sort of
10 thing.

11 That is in no way true at all. I believe that
12 relates to the State trying to admit records from Yahoo!
13 and it's again very similar to this case. I have been
14 inquiring as to whether we needed to bring in someone
15 from California, and Mr. Huff had been waiting to let me
16 know. And ultimately the attorney for Yahoo! called
17 Mr. Huff and talked about what the testimony was going
18 to be. We were prepared to fly someone in from Yahoo!.

19 It was after that that the defense stipulated and
20 we did not have to bring in the witness. And I was just
21 trying to be cautious for the State, much as I have done
22 here. It was never a problem, Your Honor. We just
23 needed an answer. So I took issue with giving the
24 appearance that I had a problem with that.

25 And I feel like I'm forgetting something.

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

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

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

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

22 THE COURT: Okay.

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

1 misrepresented the State Grand Jury term of court to the
2 Defendant or to Judge Macaulay. But be it clear, I
3 never represented it was a State Grand Jury term of
4 court to anyone.

5 THE COURT: I don't put any ohmage on that. That's
6 information that anybody can click on and look up and
7 find out for their own selves.

8 MS. WINES: Okay. Bear with me one second, Judge.
9 Your Honor, I believe that's all. Of course, I stand on
10 previous arguments and memorandum.

11 THE COURT: Sure.

12 MR. MCDANIEL: And just to respond as to the issue
13 that seems to be most important to the case, when this
14 decision was made, my understanding Ms. Wines came into
15 the case in 2007 and relieved counsel three years before
16 the Spartanburg trial occurred, and she was assistant
17 counsel from the very beginning, so she was familiar
18 with the case and the chats from the beginning.

19 As far as ---

20 THE COURT: She just represented to the Court she
21 became lead counsel when the Spartanburg case was up on
22 appeal.

23 MR. MCDANIEL: That's 2007, I believe, Your Honor.

24 THE COURT: Isn't that correct? Isn't that what
25 you just said?

1 MS. WINES: Your Honor, I became lead counsel once
2 the case went up on appeal, that's correct.

3 THE COURT: Okay.

4 MR. MCDANIEL: And, again, I think that's 2007. It
5 didn't come up for trial again until 2010.

6 THE COURT: Sit down, please.

7 MS. WINES: Yes, sir.

8 MR. MCDANIEL: If I'm wrong, I apologize.

9 Again, I think this just goes to when this decision
10 was made. The only evidence that we put up has been
11 what was made during this phone call that I would again
12 ask you to look at that record and look at the responses
13 that were given at that time by Ms. Wines as to her
14 explanation when she admitted that was a contentious
15 phone call. And I believe it will show up in the
16 previous transcript and the hearing. Thank you, sir.

17 THE COURT: All right, thank you, sir.

18 Ms. Wines.

19 MS. WINES: Just briefly. I think there's
20 confusion because I was involved in the Spartanburg case
21 being called initially, but an indictment had already
22 happened. I got called in at the last minute because
23 David Stumbo ---

24 THE COURT: Just, the question was whether that was
25 2007 when you became lead counsel, --

1 MS. WINES: That ---

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

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

8 THE COURT: I got you. Okay.

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

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

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

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

23 MS. WINES: Thank you, Your Honor.

24 THE COURT: All right.

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

1 November 9, 2011

2 9:00 a.m.

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

5 Motions:

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

10 THE COURT: Motion to dismiss?

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

13 THE COURT: All right.

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

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

18 MS. WINES: Yes, sir.

19 THE COURT: Anything else?

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

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

4 THE COURT: His date of birth?

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

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

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

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

17 THE COURT: Would not?

18 MR. HUFF: No, sir.

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

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

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

1 accused as it is for a witness?

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

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

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

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

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

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

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

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

25 When are you planning to have this?

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

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

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

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

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

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

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

14 (Whereupon, a short break was had.)

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

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

21 THE FOREMAN: No, sir.

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

23 THE FOREMAN: Yes.

24 THE COURT: Thank you very much.

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

1 A. That is May 4th, 2006.

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

3 THE COURT: Yes, sir.

4 By Mr. Senn:

5 Q. Okay. Let me direct your attention back to Exhibit

6 9. Can you state the IP address listed there?

7 A. That is 68.220.79.51.

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

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

13 MR. SENN: Nothing further, Your Honor.

14 THE COURT: Cross-Examination?

15 MR. HUFF: May it please the Court?

16 CROSS-EXAMINATION

17 By Mr. Huff:

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

20 A. Yes, sir.

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

24 A. We reside in Sunnyvale, California.

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

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

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

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

9 A. More or less.

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

16 A. That's what I would expect.

17 Q. Okay.

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

20 By Mr. Huff:

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

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

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

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

2 A. Yes, sir, it does.

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

5 A. That is correct.

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

9 8. Are you there?

10 A. Yes, sir.

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

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

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

1 being eighteen years of age or older, correct?

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

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

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

7 THE WITNESS: Okay, sir.

8 By Mr. Huff:

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

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

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

18 A. The State's attorney.

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

21 THE COURT: Any Redirect?

22 MR. SENN: Yes, Your Honor.

23 REDIRECT EXAMINATION

24 By Mr. Senn:

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

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

5 THE COURT: What exhibits will be ---

6 MS. WINES: Yes.

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

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

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

14 MS. WINES: Oh.

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

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

1 THE WITNESS: Yes, ma'am.

2 THE CLERK: Thank you. Please have a seat.

3 LUCINDA MCKELLAR,

4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 By Mr. Anders:

7 Q. State your name for the record, please.

8 A. Lucinda Hefner McKellar.

9 Q. Okay. Would you tell the jury about yourself, what
10 you do?

11 A. I'm currently employed with the South Carolina
12 Attorney General's Office. I'm a special investigator
13 assigned to the Internet Crimes Against Children Task
14 Force.

15 Q. And what are some of your duties in that position?

16 A. Some of my duties are to investigate, obviously,
17 internet crimes against children that relate to
18 solicitation, child pornography, child sex trade.

19 Q. Okay. And how long have you been there?

20 A. I've been with the Attorney General's Office for a
21 year and in law enforcement for 13.

22 Q. Okay. Let's go back to 2006-2007. Where were you
23 employed?

24 A. I was a Special Agent with the South Carolina
25 Attorney General's Office. I was assigned to the

1 computer crimes unit.

2 Q. And what were your duties at that time?

3 A. Investigating crimes related to Internet Crimes
4 Against Children and also any other cases that were
5 submitted to SLED for forensic examination. So as a
6 forensic examiner we were investigating numerous types
7 of crimes.

8 Q. So you performed forensic examinations?

9 A. Yes, sir, I did.

10 Q. Okay. What kind of training have you had in that
11 area?

12 A. I've had 36 hours of basic data recovery and
13 analysis in Columbia, South Carolina; 36 hours of
14 internet -- excuse me, intermediate data recovery and
15 analysis in Columbia, South Carolina; 32 hours, I
16 believe, of EnCase training, which is the forensic
17 software that we use. That training occurred in
18 Decatur, Georgia.

19 Q. Did you examine Mr. Odom's computer hard drive in
20 2010?

21 A. Yes, I did.

22 Q. Okay. If you would, just tell the jury the
23 process, how you performed that examination?

24 A. When the actual evidence, the computers are
25 submitted to the -- at this time I was with the South

1 Carolina Law Enforcement Division. When those computers
2 are submitted to our lab, they are stored in evidence
3 storage. Those items are removed by, at the time which
4 was our IRC, they removed that hard drive disk, CD,
5 whatever that item is, and image that drive, which is
6 making a bit-by-bit copy of that drive or that piece of
7 media.

8 That image of that piece of evidence is placed out
9 on the server that I would have access to, and I work
10 off of that imaged copy, because I never touch the
11 actual evidence.

12 Q. Why is that?

13 A. Just to maintain the safety of the evidence. When
14 we image, a write blocker is used to image that piece of
15 media so that nothing is written to or taken away from
16 that item. It's just another safety precaution.

17 Q. Are there any other safeguards towards that
18 original piece of evidence?

19 A. Yes, sir. When it's not being imaged in the lab,
20 it is returned to the evidence storage and stays there
21 until it's released back to the originating agency.

22 Q. All right. And with respect to the hard drive of
23 Mr. Odom's computer, did you look at the time settings?
24 Do you recall?

25 A. I -- it would have been on the forensic imaging

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

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

4 A. Yes, sir.

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

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

10 Q. And you said you use EnCase software?

11 A. Yes, sir.

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

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

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

19 THE COURT: Yes, sir.

20 By Mr. Anders:

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

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

1 Q. Did you generate that report?

2 A. Yes, sir, I did.

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

4 A. Yes, sir.

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

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

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

11 A. Yes, sir.

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

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

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

25 Q. Okay. Any items of interest found?

1 A. Yes, sir. I conducted a keyword search for the
2 screen names and I did find the screen names
3 danger6552000 and also the screen name a_upstategurl93.

4 MR. ANDERS: Your Honor, at this time I would ask
5 that this be entered into evidence.

6 THE COURT: Any objection?

7 MR. HUFF: No, sir.

8 THE COURT: All right. It's admitted without
9 objection.

10 (Whereupon, State's Exhibit Number 8, Forensic
11 Report 2010 (Item 1), having been previously marked
12 for identification, was admitted into evidence.)

13 By Mr. Anders:

14 Q. All right. Investigator McKellar, in your
15 experience as an investigator, a forensic examiner, what
16 do the findings tell you?

17 A. That the computer that I was conducting the
18 forensic examination on had -- there had been
19 communication between the screen name danger6552000 and
20 aupstategurl93 -- excuse me, a_upstategurl93.

21 Q. Okay. Thank you. Investigator McKellar, in May of
22 2006 did you go to 325 East Hedge Road in Aiken, South
23 Carolina?

24 A. Yes, sir, I did.

25 Q. Okay. What was there? What was at that address?

1 A. The computer that we conducted the forensic
2 examination on.

3 Q. Okay. Was it a home?

4 A. Yes, sir. It's the residence of Anthony Odom. At
5 the time Anthony Odom and Barbara Odom were at the
6 location.

7 Q. Okay. And did you have an opportunity to speak
8 with Mr. Odom?

9 A. Yes, sir, I did.

10 Q. Okay. Did he tell you anything concerning the
11 screen name danger6552000?

12 A. He said that that screen, we would find that screen
13 name associated with the search warrant.

14 Q. Okay. And do you recall what Mr. Odom may have
15 told you concerning profile pages?

16 A. That he never looks at profile pages unless
17 afterwards.

18 Q. Okay. Is the man who told you that he was
19 danger6552000 in the courtroom today?

20 A. Yes, sir, he is.

21 Q. Could you point him out for the Judge, please.

22 A. Yes, sir. He's sitting between Mr. Huff and
23 Mr. Anderson.

24 MR. ANDERS: I would just have the record reflect
25 that.

1 THE COURT: It so reflects.

2 MR. ANDERS: Thank you, Investigator. Please
3 answer any questions Mr. Huff may have.

4 THE WITNESS: Yes, sir.

5 THE COURT: Cross-examine?

6 MR. HUFF: Thank you very much, Your Honor.

7 CROSS-EXAMINATION

8 By Mr. Huff:

9 Q. Ms. McKellar, you say you went to the home of
10 Anthony and Barbara Odom?

11 A. Yes, sir, I did.

12 Q. And is this Barbara Odom seated right here?

13 You can stand up, ma'am.

14 Is this Barbara Odom?

15 A. Yes, sir, it is.

16 Q. All right. Thank you.

17 And is it your understanding she is the wife of
18 Anthony?

19 A. Yes, sir.

20 Q. Okay. Now, you had a conversation with Mr. Odom
21 that day, is that correct?

22 A. Yes, sir, I did.

23 Q. All right. And let me discuss with you a little
24 bit some of the things that occurred during your-all's
25 conversation. Didn't Mr. Odom tell you that, he stated

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

4 THE WITNESS: Yes, sir.

5 THE COURT: Thank you.

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

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

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

12 THE COURT: Yes, ma'am.

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

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

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

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

1 for the arrival of the witness?

2 MS. WINES: No objection, Your Honor.

3 THE COURT: Does the Defense?

4 MR. HUFF: No, Your Honor.

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

8 THE CLERK: Yes, Your Honor.

9 THE COURT: Okay. Thank you.

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

11 (Whereupon, a recess was taken.)

12 (Whereupon, the Court enters courtroom.)

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

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

19 THE COURT: Very good. Thank you.
20 Would you bring the jury in, please, sir.

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

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

25 MR. HUFF: Thank you, Your Honor.

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

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

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

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

10 THE WITNESS: I do.

11 THE CLERK: Thank you. Please be seated.

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

14 DIRECT EXAMINATION

15 By Mr. Johnston:

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

17 A. Jennifer Diane Adams.

18 Q. Where do you work?

19 A. City of Westminster.

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

22 A. Eight years.

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

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

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

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

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

6 A. Yes.

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

13 A. Yes, you did.

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

17 A. I would think so.

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

22 A. Not to my knowledge.

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

25 THE COURT: Yes, sir.

1 November 10, 2011

2 9:05 a.m.

3 The Court's Ruling on Prior Motions:

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

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

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

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

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

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

1 prosecution.

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

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

19 Anything further?

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

23 Further Motions:

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

1 like to just put our written motion on estoppel by
2 contract on the record.

3 THE COURT: Okay. And I'm going to render
4 counsel -- you know, there's been a flood of paperwork
5 in this case, so I want to make sure that everyone views
6 what we have in the record as far as Court's exhibits
7 and make sure that you have them complete for the record
8 in this matter.

9 MR. JOHNSTON: Your Honor, I'm now handing up our
10 motion to dismiss under a theory announced in United
11 States versus Russell. Also with that is just a
12 supplementary affidavit from one Luis Navaro (phonetic),
13 just basically describes some things he encountered when
14 trying to serve some documents on the Attorney General's
15 Office. I would like to make those a part of the
16 record.

17 THE COURT: Which motion does your affidavit go
18 towards?

19 MR. JOHNSTON: This is a motion to dismiss under
20 U.S. v. Russell. Basically I'll shorten it, it's a
21 shock the conscience motion.

22 THE COURT: Okay.

23 MR. JOHNSTON: Sort of a kitchen sink type of
24 argument that based on the entirety of the record what's
25 occurred in this case, that the actions of the State

1 have shocked or would shock the conscience of the
2 judicial system and that those, their actions have
3 violated Mr. Odom's right to due process and that was
4 the theory articulated in that federal case of U.S.
5 versus Russell.

6 THE COURT: Thank you, sir. I am denying that
7 motion.

8 Now, do we have anything further before we go to
9 the directed verdict motion?

10 MR. HUFF: Judge, there is. There is a motion. In
11 conducting our research last night, that the officer in
12 this case, Mr. Patterson, we would contend, is not a law
13 enforcement officer pursuant to the evidence presented
14 to the Court in the record.

15 THE COURT: Because he wasn't bonded?

16 MR. HUFF: He was not bonded. I would like to
17 present the Court the case State v. Boswell. And I'll
18 hand up some statutes as well throughout our code, if I
19 could provide those to the Court.

20 (Whereupon, Mr. Huff hands documents to counsel and
21 Court.)

22 MR. HUFF: Your Honor, if I could, the...

23 Your Honor, in the State of South Carolina a
24 municipal police officer must take an oath of office and
25 must be bonded in order to fulfill the office and uphold

1 the office of a law enforcement officer with the
2 authority to arrest and carry forth his duties.

3 Your Honor, in the -- I may have handed Your Honor
4 both copies of my case. If I did, apologies.

5 THE COURT: That's quite all right.

6 MR. HUFF: Judge, do you have a copy of State v.
7 Boswell in front of you?

8 THE COURT: Yes, sir.

9 MR. HUFF: That's all right. Then I gave you my
10 copy.

11 Your Honor, this was a case decided April 8, 2011,
12 of this year. It involves law enforcement activity of a
13 municipal police officer. The Court took up the issue
14 of a multi-jurisdictional agreement, and in that case
15 the Court even noted that a municipal police officer
16 must have a bond and that travels forth with him into
17 any adjoining county that he may go into in fulfillment
18 of that mutual aid agreement.

19 Your Honor, that's gonna be footnote 7, which cites
20 to Section 23-1-210. Your Honor, it's gonna state that,
21 I believe, in subsection ---

22 THE COURT: Hang on for a second, please.

23 MR. HUFF: Yes, Your Honor.

24 THE COURT: Okay, sir.

25 MR. HUFF: Your Honor, a municipal -- and I would

1 provide you with a copy of that statute as well.

2 (Whereupon, counsel hands document to counsel and
3 Court.)

4 That also requires that a municipal police officer
5 have a bond.

6 I have also provided the Court with a copy of
7 Section 22-9-30 dealing with oaths -- excuse me, with an
8 oath that's required of a police officer.

9 Your Honor, I would also provide you with a -- or
10 would cite to you Section 61-6-4510, 61-6-4510 that
11 states that (reading):

12 Municipal police officers have the power of
13 constables to enforce the provisions of this article in
14 cases arising within the municipal limits and, in
15 addition, have all the powers to enforce these
16 provisions as they have to enforce municipal ordinances.

17 And then it talks about fresh pursuit. That's
18 61-6-4510.

19 Under our codes of laws and statutory provisions,
20 Your Honor, municipal police officers basically are
21 governed by the statutory obligations imposed upon state
22 constables.

23 I would also present to the Court a copy of what I
24 believe is cited in the Boswell case I provided to the
25 Court, Section 5-7-110. It will address municipal

1 police officers. It will state, Your Honor, that
2 (reading):

3 Any municipality may appoint or elect as many
4 police officers as necessary for the proper law
5 enforcement in such municipality. Police officers shall
6 be vested with all the powers and duties conferred upon
7 constables, which require -- and constables are required
8 to have the bond, which we've also provided to the
9 Court.

10 Your Honor, even a Deputy Sheriff under 23-13-230
11 states that (reading):

12 Before entering upon the duties of his office, any
13 such duty shall take the oath prescribed by the
14 constitution and the statutes of this state. Any person
15 so appointed a Deputy Sheriff under the provisions of
16 this article shall execute the bond required of
17 constables. 22-9-20.

18 THE COURT: Let me ask you this, Mr. Huff. Is your
19 motion based on the failure of the employment file to
20 contain a copy or evidence of the bond?

21 MR. HUFF: No, sir. It's based on the fact that
22 the statute requires that in order to be a law
23 enforcement officer ---

24 THE COURT: I mean, I understand what you are
25 saying about the statute. Let me ask you this. I mean,

1 the only evidence that I recall during this trial that
2 concerns the bond is when you had the Clerk from
3 Westminster yesterday who brought Officer Patterson's
4 employment file, and the bond, proof of the bond was not
5 contained in that file.

6 MR. HUFF: Your Honor, we would cite you back to
7 Chief Bannister, Chief Scott Bannister, who testified.

8 THE COURT: Okay, sir.

9 MR. HUFF: And on Cross-Examination, besides
10 stating that there was no supervision of Mr. Patterson,
11 I specifically asked, and is a police officer with the
12 municipality required to have an oath and bond? He said
13 yes. So the ---

14 THE COURT: I guess my question goes to proof that
15 there is, in fact, no bond in existence or was no bond
16 in existence for Officer Patterson during the time frame
17 that's in question for this case.

18 MR. HUFF: Judge, that is, if you recall, the
19 statutory scheme of this statute. It says that
20 (reading):

21 A person over sixteen that engages in this type of
22 conduct, there is an absolute defense of consent.

23 Which as Officer Patterson admitted on Direct --
24 excuse me, on Cross would not be a crime. But for if
25 I'm a law enforcement officer, number one, and acting in

1 my official capacity, it would be a crime.

2 So that is an element of the offense in this case
3 that the State bears the burden of proving that he is a
4 proper law enforcement officer. Otherwise, he is
5 nothing more than an over-sixteen person consenting to
6 this conversation like me or you. That's the only thing
7 that would allow the State to go forward with this
8 prosecution. Because clearly he is over sixteen years
9 of age, as he admitted, and he consented to the
10 conversations.

11 So the only way the State can maintain this
12 prosecution is to prove as an element of this case that
13 Officer Patterson lawfully held the office of a law
14 enforcement officer.

15 What is in evidence and in the record is that the
16 statute requires that he have an oath and bond. The
17 Chief has said to be an officer with Westminster Police
18 Department he has to have an oath and bond. The Clerk
19 has said, I cannot find any bond in the file. We don't
20 have to prove that he didn't have it, the State has to
21 prove that he was a law enforcement officer.

22 And what is in the record is there is no such
23 proof, and proof, at least through the records clerk, is
24 there is no bond there. We don't bear the burden. The
25 State always bears the burden of proof on every issue of

1 the charge. And in this you do have the record.

2 There's no bond, even though it's required by law and
3 even the Chief knew that.

4 THE COURT: Yes, sir. I'll deny your motion.

5 Do you want to go ahead with your directed verdict
6 motion now? (No response.) Mr. Huff?

7 MR. HUFF: Yes, sir?

8 THE COURT: Are you ready to go with your directed
9 verdict?

10 MR. HUFF: Okay. I'm sorry, Your Honor. I
11 thought ---

12 THE COURT: That's okay.

13 MR. HUFF: Yes, Your Honor, I am.

14 Defendant's Motion for Directed Verdict:

15 MR. HUFF: Your Honor, in this case there are
16 several issues that must be proven in order for this
17 case to be submitted to the jury. It is readily
18 apparent that there are, in my opinion, four issues.
19 One, the intent of the person in the communication; two,
20 he has reason to believe; three, being a law enforcement
21 officer not, or acting in official capacity.

22 Your Honor, as to the reasonable belief in this
23 case that the person being spoken to was under eighteen,
24 the evidence you have in this case is a photograph that
25 was submitted to Danger. That is a photograph of a

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

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

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

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

1 there's more than one person that has access to that
2 cash register. The State has to prove who actually took
3 it. There is no evidence in this case that Mr. Anthony
4 Odom communicated with Officer Patterson in May of 2006.
5 The statements that Mr. Odom made to Ms. McKellar
6 involved another county, nothing charged with Ocone
7 County. So there is no evidence that proves that
8 Mr. Anthony Odom ever sat at a computer in his home and
9 communicated with Mr. Patterson. There is no such
10 evidence.

11 So for those reasons and for the bases of the
12 motions we have made in totality, we believe that the
13 proper result is for the Court to grant a motion for
14 directed verdict.

15 THE COURT: Thank you, sir.
16 Ms. Wines?

17 MS. WINES: Yes, Your Honor. Briefly in response,
18 as Your Honor is aware at this stage in the proceedings
19 the Court is concerned with the existence of evidence,
20 not its weight. And it is the State's position that
21 much of what Mr. Huff is pointing to does, in fact, go
22 to the weight, not the existence of evidence. And the
23 evidence must also be viewed in the light most favorable
24 to the State at this point.

25 With regard specifically to the picture, again that

1 argument goes to the weight, and in companion with all
2 the other evidence presented as to the undercover
3 persona age throughout the chat consisting of references
4 to mother, specifically the age, et cetera, Your Honor,
5 we believe there's more than sufficient evidence within
6 the chat that a jury could determine that the Defendant
7 could have thought he was talking to a thirteen-year-old
8 regardless of whether someone were to, or irrespective
9 of that picture, Your Honor.

10 We believe the picture is only an element of it.
11 Certainly we concede that the picture could have been
12 better, but it does go to the weight, not the existence
13 of evidence, Your Honor. The chats themselves are more
14 than sufficient to meet that element.

15 As to identity, just to clear that up we had Yahoo!
16 and BellSouth speak about the screen name leading to the
17 IP address, which leads to the home, which leads to the
18 statement of Mr. Odom. And taken in the entirety of the
19 statement, its contents would lead one to believe
20 reasonably that it was, in fact, Anthony Odom, not
21 Barbara Odom.

22 And, lastly, the forensic report coming from that
23 hard drive we believe taken in totality, that the jury
24 could or should believe that it was the Defendant and
25 not his wife, Your Honor.

1 I believe that was all the specifics that counsel
2 pointed out. I would just reiterate at this point it is
3 to be taken in the light most favorable to the State.

4 THE COURT: I understand, Ms. Wines.

5 Let me just say this. I agree with Mr. Huff that
6 it is extremely troubling to sit here and listen to this
7 case when law enforcement, who has a very tough job to
8 begin with, but they use a picture of a known
9 twenty-seven or twenty-eight-year-old person that they
10 would submit over to the, whoever the recipient of that
11 picture was, to try to catch somebody who is supposedly
12 a child sex abuser. And I think that's extremely
13 troubling.

14 However, with that being said, the evidence in this
15 case -- I agree with Ms. Wines -- is capable of more
16 than one inference. I'm not gonna weigh the evidence.
17 In viewed in the light most favorable to the State, it
18 is a question of fact for the jury to make a
19 determination of.

20 With that being said, are you ready to proceed with
21 your first witness, Mr. Huff?

22 MR. HUFF: We are, Your Honor.

23 THE COURT: Ms. Wines, is the State ready to
24 proceed?

25 MS. WINES: Yes, Your Honor. Thank you.

1 MR. HUFF: Yes, sir.

2 THE COURT: Bring the jury back in, please.

3 (Whereupon, the Jury entered the courtroom at 10:32
4 a.m.)

5 MR. HUFF: Judge, we would, if you would note for
6 the record something we need to bring up *nunc pro tunc*,
7 if we could. I know that we've got a witness who's
8 going to be called. If we'd be allowed to do that?

9 THE COURT: Do you need to do that now?

10 MR. HUFF: Uh...

11 THE COURT: How about you-all step up here, please.

12 MR. HUFF: Yes, sir.

13 (Whereupon, a sidebar conference was held off the
14 record.)

15 THE COURT: Does the State have a witness in reply?

16 MS. WINES: Yes, Your Honor. The State re-calls
17 Mark Patterson.

18 THE COURT: Yes, ma'am. Mark Patterson, you're
19 still under oath.

20 THE WITNESS: Yes, Your Honor.

21 MS. WINES: May it please the Court?

22 THE COURT: Yes, ma'am.

23 MS. WINES: Thank you.

24

25

1 A. No. I said that he made me believe that he
2 believed it was a thirteen-year-old from his chats.

3 Q. Your belief doesn't mean anything in this case,
4 does it? It's what the person you were talking to
5 believed.

6 MS. WINES: Objection. Argumentative, badgering.

7 THE COURT: Sustained.

8 By Mr. Huff:

9 Q. Mr. Patterson, do you have a bond on you as a
10 former, or as a Westminster police officer at the time,
11 do you have a bond on file with any Clerk of Court?

12 A. The bonds are held by the agencies themselves, sir.
13 Not personally.

14 Q. Do you have any -- did you have a bond at that
15 time?

16 MS. WINES: Asked and answered, Your Honor.

17 THE COURT: Overruled.

18 By Mr. Huff:

19 Q. Did you have any bond on you in May of 2006 at the
20 Westminster Police Department? Yes or no.

21 A. Sir, I can't answer that question because that's
22 something done by the agency, not personally by me, and
23 I would assume since it's a law enforcement agency, they
24 have bonds for their officers.

25 Q. But you know the thing that's interesting about

1 court, Mr. Patterson?

2 MS. WINES: Objection, Your Honor.

3 THE COURT: What is your objection?

4 MS. WINES: It's not a question, it's a statement.
5 It's argumentative.

6 THE COURT: Overruled.

7 By Mr. Huff:

8 Q. Assumptions -- here's my question: In a courtroom,
9 where somebody's freedom and reputation is on the line,
10 assumptions don't matter, do they?

11 A. No.

12 MR. HUFF: Thank you. No further questions.

13 THE COURT: Redirect?

14 MS. WINES: Very briefly, Your Honor.

15 FURTHER REDIRECT EXAMINATION

16 By Ms. Wines:

17 Q. Mr. Huff mentioned the Clerk. Isn't it true she
18 didn't say you weren't working?

19 A. That's true.

20 Q. Just that there's not any time listed on the sheet?

21 A. That's true.

22 Q. Is there a policy of recording shift work with the
23 department?

24 A. Yes, ma'am.

25 Q. And what is that?

1 need to bring up.

2 THE COURT: Okay. I'm gonna send this jury to
3 their jury room and I'll bring you back out here in a
4 few minutes, sir.

5 (Whereupon, the Jury left the courtroom at
6 approximately 10:52 a.m.)

7 THE COURT: All right. Mr. Huff?

8 MR. HUFF: Judge, we would have, I believe, one
9 witness as sur-reply and Mr. Johnston may be able to
10 address that to quicken this matter.

11 MR. JOHNSTON: May it please the Court? The
12 Defense would propose to call Ms. Beverly Whitfield, the
13 Clerk of Court for Oconee County. And she would
14 testify, according to my conversation with her earlier
15 today, that there is no bond and has been no bond on
16 file for Mr. Mark Patterson during the time that he was
17 a police officer. We can do it as one of two ways. We
18 could ---

19 THE COURT: Let me tell you how I want to do it.

20 MR. JOHNSTON: Yes, sir.

21 THE COURT: What I propose -- I'm not gonna let you
22 call any sur-reply to this jury. I'm gonna let you
23 proffer that evidence in the record, and I'll note your
24 objection to me not letting you put Ms. Whitfield on the
25 stand. I think that matter confuses the jury, quite

1 frankly. I don't necessarily believe -- now, I may be
2 wrong, but whether this officer has a bond or not would
3 invalidate the charges against the Defendant in this
4 matter.

5 That being said, that's a matter of law that can be
6 reviewed, but this officer testified that he thought the
7 agency had it. He also went through the academy, went
8 through the training and various things. I think that
9 under the circumstances that just confuses the issue.

10 That being said, would you tell us,

11 Mr. Johnston ---

12 MR. JOHNSTON: Yes, sir.

13 THE COURT: I keep wanting to call you Anderson.
14 I'm sorry.

15 MR. JOHNSTON: That's okay.

16 THE COURT: -- what you would propose the evidence
17 would show?

18 MR. JOHNSTON: Your Honor, we would propose the
19 evidence would show that there is no bond and has
20 never -- there never was a bond on file for Mark
21 Patterson as a police officer. Ms. Whitfield states to
22 me that she is familiar with the types of bonds that
23 police officers post, and she does have a number of
24 Deputy Sheriffs' bonds on file here in the courthouse.
25 She tells me that she's not familiar with the municipal

1 agency ever having posted bond, but she has specifically
2 checked for Mr. Patterson and there is none.

3 What I ask the Court to consider doing, is that
4 after you hear her proffered testimony, perhaps you
5 would consider taking judicial notice of that fact that
6 there is no bond.

7 THE COURT: I don't think I can take judicial
8 notice of that fact. Is there a state law that requires
9 that all bonds be posted in the courthouse?

10 MR. JOHNSTON: Yes, sir, we believe there is. Yes,
11 sir, we believe there is. Your Honor, there's Code
12 2-9-20.

13 THE COURT: First of all, let me just say this.

14 MR. JOHNSTON: Yes, sir.

15 THE COURT: I'm gonna let your proffer be, stand
16 instead of the testimony. I don't think we're gonna get
17 any more out of it than what you just told me. So I
18 think that is sufficient unless you think that is
19 deficient as a matter of law, that I have to let her
20 testify.

21 MR. HUFF: Judge ---

22 THE COURT: I think under the proffer that you tell
23 me what you would have anticipated bringing out, move it
24 again to be brought back into evidence, but I think you
25 are protected on the record.

1 MR. HUFF: Judge, but we do believe that one of the
2 issues in the statute is you must be a law enforcement
3 officer or there is no crime. And if the statutory
4 scheme, as we see it and read it in the statutes and in
5 the case I provided to the Court, requires that the
6 officer file a bond, which we believe it does.

7 And we believe 22-9-20 does states that he lodged
8 his bond in the form prescribed by law with the -- in
9 writing with the Clerk of Court, then -- and it does
10 state that no person not so qualified shall exercise the
11 powers of a constable, that that is an issue before the
12 Court and believe it would be a matter of evidence and
13 the Court can take judicial notice of it.

14 THE COURT: Thank you. I'm gonna refuse to do that
15 or decline to do that. I don't believe that actually is
16 a correct statement. But I believe under the
17 circumstances of this case that the Defense is protected
18 on the record in case I make a mistake, so you can have
19 it reviewed by a smarter and higher court than me at the
20 appropriate time as necessary.

21 And I'm gonna treat the statement by Mr. Johnston
22 as being the Defense's proffer and also take that as a
23 motion to have that evidence admitted into the trial and
24 I'm gonna deny that. And, also I'm gonna decline to
25 take judicial notice of the bond.

1 MR. HUFF: Yes, sir.

2 THE COURT: Now, Mr. Huff very rightfully brought
3 up to me that I did not give anyone the opportunity to
4 further their directed verdict motion before getting
5 into the State Reply case, so we will do that *nunc pro*
6 *tunc*, is what I'm trying to say. So I'm gonna let you
7 do that now.

8 Further Directed Verdict Motion by Defense:

9 MR. HUFF: Judge, we would renew the bases for our
10 motion for a directed verdict that we made at the
11 conclusion of the State's case. We believe even with
12 this additional testimony that you received this morning
13 as to the issue of intent, as to the issue of whether or
14 not the officer was on duty or not, and the issue of a
15 requirement of a bond and no proof entered by the State
16 that a bond was, in fact, filed and that the officer
17 would therefore lawfully be a law enforcement officer,
18 we are entitled to a motion for a directed verdict.

19 THE COURT: Thank you, sir.

20 MR. HUFF: For a directed verdict.

21 THE COURT: I'm gonna deny your motion.

22 Let me ask first. I like to do a charge
23 conference. One thing that I do in cases, I give
24 counsel a choice, as long as it's unanimously agreed
25 upon, to either argue their case after my charge on the

1 The first part will be on the rules that define and
2 control their duties as jurors. The second would be on
3 the substantive law in this case. And the third would
4 be some thoughts and the rules concerning their
5 deliberations.

6 In the general rules aspect, I tell them that they
7 have to make their findings from the evidence that's
8 presented here in the courtroom in this case and they
9 must apply the law as I give it to them. They shall not
10 be concerned with what they think the law should be.
11 They have to accept it as it is.

12 I tell them that they shall not be influenced by
13 any personal likes, dislikes, or opinions, prejudice or
14 any sympathy they may have from one side of the case to
15 the other. And that means they must decided this case
16 solely from the facts and evidence presented here in
17 this courtroom and no other, and that's what their oath
18 requires them to do.

19 I tell them they have to abide by all my
20 instructions, not just part of them. However, if I have
21 done anything during this trial to indicate how they're
22 supposed to be -- how they're supposed to find facts,
23 then they are to disregard that because under our state
24 Constitution I am not allowed to have an opinion as to
25 the facts in this case; that they alone are the judges.

1 of what those facts are and they determine what those
2 facts are by evaluating and weighing the evidence. And
3 that is a mental process. I can't give them a set of
4 scales to put the evidence on. But they weigh and
5 evaluate the evidence by using their good common sense
6 and sound judgment.

7 I go through what is and what is not evidence in
8 the case. I tell them the sworn testimony and exhibits,
9 any stipulations.

10 What stipulations have there been in this case?

11 MR. HUFF: I think to the chain of custody may have
12 been the only -- Well, no, I don't -- it wasn't
13 stipulation, we just didn't object. I don't think
14 there's been any ---

15 THE COURT: I was thinking about that because I
16 noticed you had a request on stipulations. I don't
17 believe there has been. Anyway, I don't think it would
18 be proper for me to charge them on chain of custody
19 anyway.

20 MR. HUFF: No. I would withdraw the stipulation. I
21 think we -- in Spartanburg we had a stipulation and so
22 that may have just been left in the packet. If you
23 would disregard that. We would not -- just ---

24 THE COURT: Okay. Now, I tell them what is not in
25 evidence and arguments, the lawyers' questions and I go

1 back again and tell them about the objections and things
2 of that nature. They need that in this case. We've had
3 some aggressive lawyering here, which is very proper.

4 Now, I also would tell them that what is not
5 evidence or what is limited evidence is evidence that is
6 received for a limited purpose. Okay? And I know that
7 the State has proposed a prior bad act charge. I would
8 give a modified version of that at this point, and I'm
9 gonna read it what I propose and see if anybody would
10 have an objection to this.

11 This is basically along the lines that I charged
12 the jury earlier. But there's been certain evidence
13 that's been received in this case for a limited purpose
14 only, and you may only consider the evidence of the
15 Spartanburg chat for purposes of considering the
16 Defendant's identity, his intent, or whether he had a
17 common scheme or plan. However, it would be improper
18 and you shall not consider this evidence as truth that
19 the Defendant acted in accordance on the occasions
20 giving rise in this case as he did there. In other
21 words, it shall not be used by you as proof of the
22 Defendant's guilt of the present charges.

23 Any problems with me reciting that charge? I know
24 you would rather not have any prior chat conversations
25 at all.

1 MR. HUFF: Judge, I think that was part of the
2 prior charge we handed up to you. It cannot be used to
3 prove an element of the crime in this case other than
4 what you've just said, intent. That's it. My fear is,
5 I would just simply ask the Court, it's more than
6 just -- because the fear that we have is it was
7 introduced, as you state, for identification, intent, or
8 common scheme. The fear is that if the State pounds on
9 the Spartanburg chats in this jury, as if it occurred
10 here in Oconee, that they consider that as evidence that
11 he did something wrong here in Oconee.

12 THE COURT: Well, let me just say this. I would
13 suspect that if the argument is made such that he did it
14 then, he did it now, there would be an objection. I
15 would instruct the jury that they can only -- they
16 cannot consider that evidence for that whatsoever. It
17 cannot be used for proof of his guilt, only for proof of
18 his intent, whether he was engaged in a common scheme or
19 plan. Okay?

20 And I'm not gonna try to hamstring the State in
21 their arguments, but I would let you know that I would
22 sustain that objection and give a curative charge then,
23 okay? We don't need that.

24 MR. HUFF: If that were to occur, we don't think a
25 curative, I'll tell you now, I don't think the curative

1 would meet the test here. But out of an abundance of
2 caution, that's what we would present to the Court.

3 THE COURT: Okay, sir. Thank you.

4 MR. HUFF: Thank you.

5 THE COURT: Then I'll tell them anything else they
6 may have heard or haven't heard in this case is not
7 evidence and outside of this courtroom is not evidence.
8 I go ahead and I describe to them what is direct
9 evidence and what is circumstantial evidence. The fact
10 that one degree of proof is higher than the other and
11 both of them are perfectly valid.

12 I get through the fact that they have to make a
13 determination of the credibility of the witnesses in
14 order to make findings of fact. And I go through the
15 list of several factors that they can consider, but I
16 also tell them you don't check your common sense at the
17 door, and that you don't add up one side or the number
18 of witnesses appearing from one side or the other. The
19 standard charge in that regard.

20 I give them the same charge I basically have given
21 throughout this trial on the expert testimony.
22 Basically they can give their opinion, but it's like any
23 other evidence, that they can do with it what they want.

24 I will, again, charge them and remind them that the
25 fact that the Defendant was arrested and charged and

1 indicted is not evidence of guilt. It does not raise an
2 inference nor a presumption of guilt. That also, there
3 are multiple indictments in this case ---

4 MR. HUFF: Judge, did you say his arrest and
5 indictment?

6 THE COURT: Yes, sir.

7 MR. HUFF: There was no arrest in this case.

8 THE COURT: No arrest?

9 MR. HUFF: I'm sorry. No, sir. There was no
10 arrest warrant for this case.

11 THE COURT: Okay. So we just say the fact that he
12 was indicted.

13 Do we have a sticky note to put over this.

14 THE CLERK: (Handing sticky note to Court.)

15 THE COURT: So I'm gonna just say charged and
16 indicted.

17 MR. HUFF: Just indicted.

18 THE COURT: If you want indicted, I think that's
19 fine.

20 MS. WINES: I believe we can agree on that, Your
21 Honor. Just say indicted.

22 THE COURT: Okay. That's fine.

23 Then I go into the fact that there are multiple
24 indictments, each one of them is separate and distinct
25 and they have to be decided separately and uninfluenced

1 by their decision on the other indictment. And I tell
2 them that the Defendant may be convicted or acquitted on
3 any and all of the offenses charged and they will be
4 required to have a separate verdict on each indictment.

5 I go on to describe the presumption of innocence.
6 I describe reasonable doubt. I charge them on the law
7 of intent. Also in this case the failure of the
8 Defendant to testify.

9 Now, I had some issue as to identification charge.
10 It doesn't seem to me that I need to do that charge, but
11 I'll be glad to hear from either side on that. Here.
12 This is my identification charge. It's generally out of
13 the charge book. It says, "an issue in the case is the
14 identification of the Defendant as the person who
15 committed the crime charged. The State has the burden
16 of proving identity beyond a reasonable doubt. You must
17 be satisfied beyond a reasonable doubt of the accuracy
18 of the identification of the Defendant before you may
19 convict the Defendant. Identification testimony is an
20 expression of belief or impression by a witness. You
21 must determine the accuracy of the identification of the
22 Defendant.

23 You must consider the believability of each
24 identification witness in the same weight as any other
25 witness. You may consider whether the witness had an

1 adequate opportunity to observe the offender at the time
2 of the offense. This will be affected by things like,
3 how long or short of a time was available or how far or
4 close the Defendant was, the lighting."

5 I mean, some of that goes to eyewitness. I think
6 what we could do here is just stop it.

7 MR. HUFF: I think we could stop it at Your Honor's
8 suggestion -- excuse me, your honor.

9 THE COURT: No, please.

10 MR. HUFF: -- respectfully, stopping where you get
11 into the area where it indicates that a physical
12 presence --

13 THE COURT: So if we go, if we go to that charge
14 and you may consider the believability of each
15 identification witness in the same way as any other
16 witness and stop. And I think that part I find, I think
17 would be appropriate. How do you feel about that?

18 MS. WINES: No objection to that, Your Honor.

19 THE COURT: Okay. I've made my cheat notes.

20 MR. HUFF: Judge, I know that you've already gone
21 by reasonable doubt and I certainly like to hear what
22 that is and look at it.

23 THE COURT: I'll be glad to give it to you.

24 MR. HUFF: I certainly don't want to get you out of
25 order.

1 THE COURT: No. No. Listen, I can turn the page
2 one way or the other.

3 This is reasonable doubt. "What is a reasonable
4 doubt in the law? A reasonable doubt is the kind of
5 doubt that would cause a reasonable, sincere, honest and
6 conscientious person to hesitate to act in an important
7 matter in their own affairs. Proof beyond a reasonable
8 doubt is proof that leaves you firmly convinced of the
9 Defendant's guilt.

10 There are very few things in this world that we
11 know with absolute certainty, and in criminal cases the
12 law does not require proof that overcomes every possible
13 doubt. If, based on your consideration of the evidence,
14 you are firmly convinced that the Defendant is guilty of
15 the crime charged, you must find the Defendant guilty.

16 On the other hand, if you think there is a real
17 possibility that the Defendant is not guilty, you must
18 give the Defendant the benefit of the doubt and find him
19 not guilty. A reasonable doubt may arise from the
20 evidence or it may arise from the lack of the evidence.
21 I further instruct you that a Defendant is entitled to
22 every reasonable doubt that may arise in the case.

23 And what that simply means is this. That if upon
24 any issue of fact essential to a conviction and a
25 verdict of guilty of an offense charged, if you have any

1 reasonable doubt as to how that issue should be
2 resolved, it is your duty to resolve that doubt in favor
3 of the Defendant."

4 That's my reasonable doubt charge.

5 MR. HUFF: Judge, for the record, the phrase that
6 they "must find the Defendant guilty" we would take
7 exception to. I don't think Constitutionally that is
8 correct. It is their decision to make. Absent that one
9 phrase, we would have no objection to the Court's
10 charge. I tried to write what you wrote ---

11 THE COURT: My phrase, if based on your
12 consideration of the evidence you are firmly convinced
13 that the Defendant is guilty of the crime charged, then
14 you must find the Defendant guilty?

15 MR. HUFF: Yes, sir. I think that ---

16 THE COURT: I should say "should"?

17 MR. HUFF: No, sir. It is our position that under
18 our Constitution the jury has the absolute choice to
19 return the verdict that they believe is appropriate in
20 deciding this case.

21 THE COURT: All right. I note your objection.
22 I've given that charge umpteen times and I think it is
23 appropriate under the law, but it is so noted. Okay?

24 Another one, since this is a big part of this case,
25 is intent. And the law of intent is this. "That in

1 order to establish criminal liability, criminal intent
2 is required. For example, the mental state required to
3 be proven by the State for a particular crime might be
4 purpose, intent, knowledge, recklessness or criminal
5 negligence. Criminal intent must be proven by the State
6 beyond a reasonable doubt. Criminal intent is always a
7 matter that must be determined by the jury from the
8 circumstances surrounding the situation.

9 There is no way to prove intent to a mathematical
10 certainty. There is no way medical science can dissect
11 a person's brain to determine what that person had in
12 mind. So the law says that criminal intent may be
13 inferred from the circumstances shown to have existed.
14 This is how you make a determination of whether or not
15 the necessary element requiring intent was present. It
16 is not necessary to establish intent by direct and
17 positive evidence, but intent may be established by
18 inference the same way as any other fact, by taking into
19 consideration the acts of the parties and the facts and
20 circumstances of the case.

21 Criminal intent is a mental state. It is a
22 conscious wrongdoing. It is up to you to determine what
23 the Defendant intended to do based on the circumstances
24 shown to have existed. Criminal intent may arise from
25 action or a failure to act. It may arise from

1 negligence, recklessness, or an indifference to duty or
2 to consequences that is considered by law to be the
3 equivalent of criminal intent."

4 MR. HUFF: Judge, I don't think there's any issue
5 as to a duty here. I don't know if that would apply.

6 THE COURT: Okay.

7 MR. HUFF: I neglected to write that part down.

8 THE COURT: Was that the last paragraph?

9 MR. HUFF: Could you express that again, Your
10 Honor?

11 THE COURT: The last paragraph, I believe is what
12 you're, criminal intent can arise from an action or a
13 failure to act. That's what you are talking about as
14 far as duty?

15 MR. HUFF: Yes, sir.

16 THE COURT: Okay. I agree with you and I'll take
17 that out. How about the rest of the charge?

18 MR. HUFF: Judge, I believe that the rest is
19 appropriate. Although, we would submit this is really
20 akin to a specific intent crime here and I do not ---

21 THE COURT: I don't know how I could do anything
22 much more specific than that without getting close to
23 commenting on the facts in this case. That's my
24 concern.

25 MR. HUFF: Yes, sir.

1 THE COURT: Okay?

2 MR. HUFF: Thank you.

3 THE COURT: Thank you. Now, we have the
4 identification. There's no character put into evidence
5 in this matter at all?

6 MR. HUFF: No, sir.

7 THE COURT: So have you-all had, the attorneys had
8 a chance to review my proposed charge on criminal
9 solicitation of a minor?

10 MS. WINES: Yes, Your Honor. The State has no
11 objection.

12 THE COURT: Do you have an objection?

13 MR. HUFF: Your Honor, we do.

14 THE COURT: That's a surprise. I say that in jest.
15 You're doing your job fine. I'm just giving you a hard
16 time.

17 MR. HUFF: Thank you. Judge, we believe that the
18 Court proposed charge takes out the defense that is in
19 the evidence of this case. I know that the State
20 proffered a proposed charge Number 1, which I believe
21 tracks the statute and would probably be a more
22 appropriate charge.

23 THE COURT: Okay.

24 MR. HUFF: In that ---

25 THE COURT: I will do -- if you want me to do the

1 State's charges, then I will definitely do it. That way
2 we don't have the problem. Okay?

3 Now, let me ask along these lines, Mr. Huff.

4 And I guess I ask this more to the State. The
5 proposed charge under 16-15-342(d), officer not acting
6 in official capacity, I'm inclined to charge ---

7 MR. HUFF: Judge, is that one of the charges we ---

8 THE COURT: Yes, sir.

9 MR. HUFF: Yes, sir.

10 THE COURT: I was really asking this to Ms. Wines
11 since she proposed it. This is the one that says,
12 "according to the statute it is a defense to a
13 prosecution in this case if any police officer age
14 sixteen or older consenting to the communication was
15 acting beyond his official capacity during any of the
16 communications. If you find the police officer was
17 acting outside of his official capacity during any of
18 the communication, Mr. Odom is entitled to this defense
19 and cannot be convicted as to that particular crime and
20 cannot be convicted based on that communication."

21 What is your position?

22 MS. WINES: I strongly object to that, Your Honor.
23 I believe that is a misinterpretation of the law. The
24 State's position is, first of all, that is not what the
25 statute says. The statute, as you read it in whole, B

1 says if the defense is you're sixteen; D says it's no
2 defense if you're an undercover officer in an official
3 capacity.

4 THE COURT: It also says official capacity is
5 placed there for a purpose.

6 MS. WINES: I completely agree, but ---

7 THE COURT: So let me ask you this: If the officer
8 was at his house not on duty ---

9 MS. WINES: Right.

10 THE COURT: --- engaged in this conversation, that
11 would raise a defense, correct?

12 MS. WINES: I believe it would raise a defense to
13 be weighed by the jury, but they still could find
14 guilty. It's a defense. Not an affirmative defense.
15 Something to be weighed in determining -- I don't know
16 how to say it any more clearly.

17 THE COURT: Well, I think ---

18 MS. WINES: And I also don't think ---

19 THE COURT: It's not a plea at bar is what you are
20 saying?

21 MS. WINES: Yes. And I also don't believe there is
22 evidence that he was not in his official capacity. All
23 the testimony has been that he was on duty.

24 THE COURT: You know, there is some inference you
25 can raise by the time cards and those things and the

1 dates and times on these chats that were late at night.
2 He testified clearly that he was at Westminster on his
3 computer when this occurred, but through the Clerk,
4 through the time sheets and the jury may infer that and
5 it may be a stretch.

6 MS. WINES: Okay. And, Your Honor, if I may just
7 add to my previous thought as it became more clear in my
8 head what I was trying to say. The point being it is
9 the State's position that it is always a matter of what
10 the Defendant believed. That is the beginning of the
11 elements of the crime.

12 And then you get into the defenses. It is the
13 belief that he was talking to a thirteen-year-old girl.
14 It's the State's position that if the Defendant does not
15 know he is talking to someone over thirteen, he's not
16 entitled to that defense. It doesn't matter that that
17 person is over sixteen. If the Defendant doesn't know
18 it, he's not entitled to that defense unless you have
19 some sort of inference.

20 My position, as I believe I've stated before, is
21 we've had cases, for example, where you have a minor
22 who, a live minor, who is chatting with a person over
23 eighteen, and a parent finds out, a parent, not an
24 officer, but a parent finds out, the parent can ---

25 THE COURT: Well, you are going away from my

1 question of official capacity. I just want to tell
2 you ---

3 MS. WINES: Well, let me be more clear, Your Honor.

4 THE COURT: Okay.

5 MS. WINES: The State, the State would still charge
6 if it was an adult in the role of a minor.

7 THE COURT: Whether you charge a minor is not the
8 law.

9 MS. WINES: Okay.

10 THE COURT: I mean, I understand that's what your
11 position is when I say "you."

12 MS. WINES: Yes.

13 THE COURT: But would you not as part of your
14 burden of proof ---

15 MS. WINES: Yes, sir.

16 THE COURT: --- in order to apply this statute ---

17 MS. WINES: Yes, sir.

18 THE COURT: --- have to establish, because that's
19 what you attempted to do ---

20 MS. WINES: Yes, sir.

21 THE COURT: --- to show that Officer Patterson was
22 acting in his official capacity during the times of
23 these chats?

24 MS. WINES: That is not what I believe, Your Honor.
25 I believe we have to show the Defendant believed he was

1 chatting with a thirteen-year-old girl, period. It
2 would be on the Defense to show he was not in his
3 official capacity.

4 THE COURT: So, what you're saying is what Mr. Huff
5 has been saying in the whole case and that is if this
6 Defendant says "I didn't believe anything else but
7 this," then he can't be found guilty?

8 MS. WINES: I agree with that. I believe it's a
9 matter of intent, but we don't need to be getting all
10 confused about official capacity or not.

11 MR. HUFF: Judge, the Legislature put this in for a
12 reason and that is it is when you have a
13 sixteen-year-old person, whether you catch them -- I
14 know they say the word it is a defense. It's an
15 absolute defense.

16 The way the statute reads, if the person is
17 actually sixteen but consents to the communications,
18 there is no crime under this. Because if the defense is
19 believed by the jury, then what are they to do with it?
20 They have to return a verdict of not guilty. It's an
21 absolute. That's why when it is a sixteen-year-old
22 who -- you're not gonna -- you can't have a law
23 enforcement officer who is less than eighteen years of
24 age. You can't do that.

25 So what the Legislature put in there was, well,

1 what are we going to do, since we are already saying
2 we're providing a defense to someone if they're already
3 eighteen or above that's doing the conversations, how do
4 we allow officers to continue to engage in this
5 investigation without the case being dismissed? We've
6 proved ---

7 THE COURT: Let me stop you. Stop, stop, stop. I
8 hear you. I'm not dismissing or disagreeing with you,
9 but that gets us nowhere towards getting this issue
10 resolved.

11 MR. HUFF: Right.

12 THE COURT: My concern is how do we deal with the
13 issue of official capacity? I have to say I don't
14 necessarily agree with you. You may very well be right.
15 I am wrong more often than I care to be.

16 But I think that when the Legislature puts terms in
17 the statutes there for that purpose -- I had my law
18 clerk look up the definition of official capacity the
19 other day because it's not defined in the statute and
20 that's where you go under statutory construction. In
21 looking at that, official is an adjective and it says,
22 "of or related to an office, position, or trust, holding
23 an office, authoritative, authorized, benefiting or
24 characteristic of a person in office." Capacity means
25 duty, position, role.

1 If you look at those in that ordinary sense, it
2 clearly means while he's working and not while he's out
3 there playing on his computer at his house in my
4 opinion.

5 MS. WINES: Your Honor, I don't disagree with that
6 in particular. A move to this disagreement would be the
7 defense is created when the person is sixteen and
8 consenting, and then the State's position is it's
9 withdrawn back again when it's an officer in an official
10 capacity, if that makes any sense.

11 THE COURT: Say that again, please.

12 MS. WINES: So let's say basically just tracking
13 the statute, we've got the elements and then the
14 Legislature provides for a defense by saying if it's
15 actually sixteen or older, we're gonna try to be
16 consistent with the other sex crimes laws, which we all
17 know they're really not all that consistent, but the age
18 of consent is sixteen, so I believe the defense was put
19 in to try to be consistent with other sex crimes laws to
20 say sixteen or older, you get that defense, but it is
21 then removed again if the officer is in official
22 capacity. Saying there is no defense if that sixteen
23 year or older ---

24 THE COURT: I agree with that. And I'm saying what
25 the difference is and you and I are at a diversion in

1 our opinion.

2 MS. WINES: Okay.

3 THE COURT: And I think that assuming ---

4 MS. WINES: Right.

5 THE COURT: --- that the Defendant thought he was
6 talking to a thirteen-year-old, which in fact in reality
7 he was talking to an officer who was off-duty at his
8 home playing on his computer acting like a
9 thirteen-year-old, I still think that is a defense under
10 the statute. I mean, that's what's been argued by the
11 Defense, and I agree with that.

12 MS. WINES: Okay. I think ---

13 THE COURT: I think the officer has to be clothed
14 in his official duties to get the defense.

15 MS. WINES: I don't disagree with that. I think
16 what I'm not being clear on to the Court is that not
17 only does the -- okay. Let me think how to say this. I
18 apologize, Judge.

19 THE COURT: I know. We've gone a little too far.

20 MS. WINES: And I don't mean to be playing
21 semantics. But the Defendant needs to believe that he
22 is talking to a sixteen-year-old consenting. Okay. I
23 just don't believe I can articulate it any better than I
24 already have.

25 THE COURT: I don't think you can, and it is a

1 little semantics. But let me ask you this. I'm
2 willing, whether I'm right or wrong, to give the charge
3 that the State has the burden of proving that the
4 officer was acting in his official capacity at the time
5 of the communications as a part of its burden of proof.
6 I think you do have that, okay? And I'll note your
7 objection to that.

8 MS. WINES: Yes, sir.

9 THE COURT: But I'm not going anywhere beyond that.
10 I think just a simple statement.

11 MR. HUFF: Judge, and I did not number my charges
12 but the header references is 342(D).

13 THE COURT: Yeah, I'm not gonna charge that.

14 MR. HUFF: You're not gonna charge it.

15 THE COURT: What I'm gonna do, since you have
16 agreed to State's proposed Jury Charge Number 1, what I
17 would propose to do is insert at the end of the first
18 paragraph, after under the age of eighteen, that the
19 State has the burden of proving beyond a reasonable
20 doubt that the officer was acting in his official
21 capacity at the time.

22 MR. HUFF: Well...

23 THE COURT: As I go through that and I start
24 articulating, Ms. Wines may be correct.

25 MS. WINES: Your Honor, I don't, I just don't

1 believe it's an element of the crime.

2 THE COURT: It's not an element of the crime, it
3 would be an element of intent.

4 MS. WINES: Right. Exactly, Your Honor.

5 THE COURT: Well, would it be improper then to say
6 that it would be a defense if you find that the officer
7 was not acting in his official capacity at the time of
8 these communications?

9 MS. WINES: That would certainly be better, Your
10 Honor, and I don't know that I would object to that.

11 THE COURT: I agree with you, Ms. Wines. I was
12 incorrect. You were right. What I'm saying is, like
13 you said, it's an absolute defense. So instead of
14 putting it as an element, which it's not, put it as a
15 defense, say it would be a defense if you find that the
16 officer was not acting in his official capacity at the
17 time of the communications.

18 MR. HUFF: Judge, it's an absolute defense. If
19 they find that, then it's an absolute defense which
20 means there can be no conviction.

21 THE COURT: I understand that.

22 MR. HUFF: Yes, sir.

23 THE COURT: I understand that. But just you want
24 me not to instruct the jury they must find the Defendant
25 guilty if they are firmly convinced of being guilty. I

1 can add in there, if you find that the officer was not
2 acting in his official capacity at the time of the
3 communications, you must find him not guilty?

4 MR. HUFF: Yes. I think, I think everything --
5 yes, sir.

6 THE COURT: I know you don't, but I just -- here's
7 what I'm gonna do. I'm gonna make a second decision.
8 If I'm wrong, it comes back to me. I'm just gonna put
9 that if you find that the officer was not acting in his
10 official capacity, it is a defense to the charges, or
11 something along those lines.

12 And I note the State's objection and the Defense's
13 objection for the record.

14 All right. Now, my final part of my charge, I'm
15 going to go over your requests, but we have to do fair
16 deliberations and that they're not partisans and they're
17 not advocates; that they, their verdict is to speak the
18 truth, and that deliberations means careful
19 consideration and it allows people from different
20 backgrounds and life experiences to come together and
21 ultimately and hopefully reach a verdict.

22 We call it deliberations for a reason. They are to
23 discuss all the evidence in a thorough, calm, and
24 courteous manner and that they are not partisans or
25 advocates for one side or the other, but they are judges

1 of the facts, and their sole interest is to find the
2 truth from the evidence they heard in the courtroom.
3 That they listen to each other and consider everybody's
4 opinions, they are not to be in a big hurry. But in
5 order to be valid, the verdict must be unanimous.

6 That being said, each of them must decide the case
7 on their own after they have impartially considered all
8 the evidence and listened to their fellow jurors and not
9 be afraid to change their opinion if the discussion
10 persuades you that you should, but do not come to a
11 decision simply because the other jurors think you
12 should come to a decision.

13 It's important to attempt to reach a unanimous
14 verdict, but only you do so after you have made your own
15 decision. Do not change your honest belief about the
16 weight with the effect of the evidence simply to reach a
17 verdict. In other words, do not change your opinion
18 solely for the sake of being, having a unanimous
19 verdict.

20 Then I go over filling out the verdict form, how to
21 have communications with the Court. Then I send them
22 back to the jury room to go over with you whether I've
23 omitted or misstated something or to clarify something.

24 Okay. Now, that being said, I've made a
25 modification of the Defense's request under 16-15-342,

1 as I said I would, and that's what I will charge. Just
2 for the record, here's the change I made. However, at
3 the end of the State's request to charge Number 1, I've
4 added this paragraph.

5 "However, if you find that the law enforcement
6 officer was not acting in his official capacity at the
7 time of the communications, it would be a defense to the
8 charge for those communications occurring during that
9 period. Okay?

10 If I bring up your charge, that means I'm
11 considering charging it. If I do not bring it up, that
12 means it's in my standard charge or I'm not going to
13 charge it. I think that would be the easier way to do
14 it.

15 One is the spoliation charge. I have considered
16 that and I would consider charging that "If you find the
17 Plaintiff or the State has lost, destroyed, or failed to
18 preserve evidence, and these contents or quality are
19 important to the issues in the case and you should weigh
20 the explanation, if any, given for the loss or
21 unavailability of the evidence. If you find that any
22 such explanation is inadequate, then you may infer that
23 the evidence is against the State's interests, which may
24 create reasonable doubt of the Defendant's guilt."

25 What is your position on that, besides "no"?

1 MS. WINES: You got that part right, of course,
2 Your Honor. Your Honor, first let me say I did
3 anticipate this. I had prepared case law to hand up to
4 Your Honor; however, I have lost it and I cannot
5 remember the name of the case.

6 But my understanding of the law is that in order
7 to receive -- and I understand why you would consider it
8 in this case, Your Honor -- but my understanding of the
9 law is that in order to properly charge on spoliation
10 there needs to be bad faith established as to the loss
11 of the evidence, Your Honor. And I apologize I can't
12 cite a case for you, but I do believe there has to be a
13 showing of bad faith.

14 And the testimony in this case is, I had it, I left
15 the department, I don't know where it went. There is no
16 allegation of intentional destruction or loss, Your
17 Honor.

18 MR. HUFF: Judge, and I would be glad to open the
19 computer back up. Spoliation does not require bad
20 faith. It is for the jury to consider whatever reason
21 has been presented by the State. It may be credible or
22 not credible. They don't have to accept or infer
23 anything. It is a proper charge and properly drafted.

24 THE COURT: I'm gonna, subject to your objection,
25 Ms. Wines, I am gonna read that charge. I think that

1 the evidence is such that it would be appropriate under
2 the circumstances of this case.

3 Now, the other charge that you had was an inference
4 from failure to record evidence. It's the same thing.
5 I'm not gonna be charging that.

6 MR. HUFF: Judge, that's different. I think the
7 evidence in this case that can be considered by the jury
8 is, one, the lost evidence could apply to the Camtasia
9 that Mr. Patterson said he made on the second chat that
10 he's testified is gone.

11 THE COURT: Okay.

12 MR. HUFF: He's also stated that he did not record
13 an incident report or record what he did, whether it be
14 an incident report or whatever. That's a totally
15 different issue.

16 THE COURT: Well, let me tell you this. I'm not
17 gonna give you that charge for two reasons. Number one,
18 it's so close to the first charge, it's redundant. I
19 know the nuances are in there that you are pointing out.
20 But at the same time I restricted the State by my
21 rulings of explaining what the officer would have
22 testified was a reason for not having his incident
23 report and that is there is another charge investigation
24 in Spartanburg. So I'm not gonna, based on my ruling,
25 not gonna let you get a charge that is more adverse than

1 that.

2 MR. HUFF: We understand your ruling, Your Honor.

3 THE COURT: Yes, sir. Thank you.

4 And what I would suggest to the State and the
5 Defense is to make your requests for charge part of the
6 Court's exhibits for the record and that way if I'm
7 mistaken, somebody can correct me.

8 All right. That would, as far as I'm concerned at
9 this point, Mr. Huff, that would be all of your charges
10 I would consider charging.

11 MR. HUFF: You're gonna charge all the others?

12 THE COURT: I'm not going to.

13 MR. HUFF: You're not going to charge.

14 THE COURT: I think they're included. That would
15 be criminal intent. I don't think intentional is really
16 a concept in this case. Intentional.

17 MR. HUFF: Well, Judge, the intent is the crux of
18 the whole ---

19 THE COURT: Intent -- it's two different charges.
20 You've got an intent charge, which I've gotten, and I've
21 changed it to take out the duty part. But your
22 intentional charge, I don't see that concept being
23 involved in this case unless I'm just overlooking
24 something.

25 MR. HUFF: Well, what's being -- I understand what

1 the intent is, but then you've got to have the
2 intentional act. That's one of the things of this
3 statute whether you intend to act on some sexual, in
4 some sexual way.

5 THE COURT: Intended -- no. I think the intent,
6 you know, it certainly doesn't require overt act. I
7 think we all agree on that. I think the intent charge
8 would be sufficient to cover both of those concepts.

9 Your charge on knowledge of a fact, I mean, I
10 wasn't inclined to charge that, but I'll hear from you
11 on it.

12 MR. HUFF: Judge, the charge states a Defendant who
13 is not conscious of a fact doesn't act with knowledge of
14 that fact, even though a reasonable person with the same
15 conduct -- what this statute brings in is two malleable
16 items that must be proven and determined by the jury,
17 intent and reasonable belief. Reasonable belief deals
18 with knowledge that the person has, and that's why I
19 believe this is an issue.

20 One of the things Ms. Wines just stated to the
21 Court is their position was you've got to know that it's
22 a person under thirteen. You gotta know that it's
23 somebody over sixteen. If you don't, you've already
24 committed a crime. That addresses the issue. And I
25 think knowledge goes to reasonable belief and I believe

1 it is an appropriate charge with this statute. It might
2 not be with others. But this statute really has that
3 mental intent and knowledge issue that would make this
4 an appropriate request.

5 THE COURT: Okay. I'm gonna deny that request.

6 Something I neglected earlier, and I was just
7 looking at it, when I charge the jury what the evidence
8 is, they have to conclude or make a finding that the
9 Defendant's date of birth is like 6-22 something. What
10 is his date of birth, Mr. Huff?

11 MR. HUFF: '73, Your Honor.

12 THE COURT: That's a conclusive fact. Okay? All
13 right.

14 What about the -- Ms. Wines, I'll be glad to hear
15 you about the knowing charge request. It says,

16 (Reading)

17 If an act is done knowingly, if the Defendant was
18 consciously aware of what he or she was doing. If the
19 act was a result of ignorance, mistake or an accident,
20 it's not done knowingly or by mistake or accident, it
21 was done reckless...

22 I'm inclined to read the first sentence of that. I
23 think the other part has the duty concept to it that's
24 not part of this case.

25 MR. HUFF: Judge, and I believe -- I know you had

1 read something similar --

2 May I be seated or do you want me to stand?

3 THE COURT: No, sir. We're informal here right
4 now.

5 MR. HUFF: Thank you. I believe you made some
6 comment earlier, some kind along the lines in the second
7 sentence, and I think you took that out of your charge
8 and I think that you would be correct. I believe that's
9 what you did, Your Honor, so we would be certainly
10 satisfied with that.

11 THE COURT: I'm inclined to read it, especially in
12 listening to your arguments in this case, I think it's
13 appropriate.

14 MS. WINES: Yes, Your Honor. The only thing I
15 would -- well, no, I really can't except to that, Your
16 Honor. I'm sorry to say no, it's not in the statute,
17 but it is.

18 THE COURT: Okay. I'm gonna take out the second
19 sentence, the first sentence will be charged.

20 MS. WINES: I have no objection to that, Your
21 Honor. Thank you.

22 THE COURT: Okay. I am not gonna charge the
23 construction. That is a matter for lawyers, it's not a
24 matter for juries.

25 I have a charge on the presumption of innocence, so

1 I think that the request on that is included.

2 I'm not gonna charge the consent request on
3 16-15-342(b).

4 What about expert fees? I typically do not charge
5 anything about their fees. I think that's a matter for
6 the jury to consider one way or the other. I normally
7 don't, but I'll be glad to hear before I decide about
8 whether I should or not in this case.

9 MR. HUFF: Judge, I normally don't either, but the
10 Attorney General's Office's impugned the integrity of
11 both of the expert witnesses and asked them about fees.

12 THE COURT: And as in every case they're in, they
13 always ask about fees.

14 MR. HUFF: And when they do, that raised the
15 spectre that results in a charge that the jury is not to
16 consider it. They go there.

17 THE COURT: Well, I don't think that I can tell
18 them not to consider it. I think they could. I mean,
19 if somebody is getting paid, then I think that's a
20 question to the totality of their testimony they can
21 consider.

22 MR. HUFF: Judge, I think the caution in the charge
23 offered is unless there is some evidence or
24 circumstances appearing from the evidence which would
25 fully and reasonably convince you that the testimony was

1 influenced. It's just not you got to disregard it, but
2 you got to disregard it unless there's evidence that has
3 been presented that you ought to consider it.

4 THE COURT: All right. I'll note your request.
5 I'm gonna deny that. I think it's getting too close to
6 these questions charging on the facts.

7 I have my standard charge on expert testimony so
8 that request is included.

9 I don't believe it would be proper, Mr. Huff, and I
10 want to hear from you why I would single out testimony
11 from the police officer. Why would I do that?

12 MR. HUFF: Judge, because I know that I've had many
13 cases where jurors consider that an officer's testimony
14 is more credible and believable than that of any other
15 witness.

16 THE COURT: Has that charge in any case been made
17 in any case that's been reported that you are aware of?

18 MR. HUFF: This charge that I have just proffered?
19 Judge, I wouldn't know because most cases, unless there
20 is a charge given and an objection made and then an
21 appeal, I mean, there's no way to answer that. I've had
22 this type of charge read in cases. And I believe it was
23 charged in Spartanburg with Mr. Odom. I believe we did
24 do that. It just says you consider everybody the same.

25 THE COURT: All right. Ms. Wines?

1 MS. WINES: Your Honor, I honestly do not remember
2 if that was done in Spartanburg. I actually believe if
3 it was, it was with my objection. I don't believe it's
4 necessary. I believe the weight of the evidence,
5 considering the evidence, your standard charge already
6 covers that, Your Honor.

7 THE COURT: I'm gonna decline to charge that. I
8 understand your argument. I'm not gonna charge that.

9 Circumstantial evidence, it is already in my
10 standard charge.

11 Reasonable doubt is in my standard charge.

12 Resolution in favor of the Defendant is in my
13 standard charge.

14 Now, getting to speculation. I would, Mr. Huff, be
15 inclined to charge that through the guilt of the
16 accused, of course, must be proven beyond a reasonable
17 doubt, and stopping right there.

18 MR. HUFF: Stop at the end of "beyond a reasonable
19 doubt"?

20 THE COURT: Yes, sir.

21 MR. HUFF: All right. The last sentence of that
22 first paragraph?

23 THE COURT: And the second paragraph would come
24 out.

25 First, presumptions, I have the presumed innocent

1 in my regular.

2 MR. HUFF: That's correct, Your Honor, and I
3 believe ---

4 THE COURT: And, as you can tell, I get real wary
5 of getting close to commenting on the facts, and I think
6 we're getting close to that on the second charge -- or
7 second paragraph. And I don't think that's a correct
8 statement of reasonable doubt, either.

9 So, Ms. Wines -- I don't know why I'm saying
10 "Wines" so badly.

11 MS. WINES: It's okay, Your Honor.

12 THE COURT: Ms. Wines, to the point where I say I
13 would be willing to charge that charge, what is your
14 position?

15 MS. WINES: My position, Your Honor, is it's not
16 needed, it's superfluous, it's misleading, it would be
17 improper pursuant to State v. Leonard. It's confusing.
18 Reasonable doubt is more than sufficient, and Your Honor
19 does a quite thorough charge as to what reasonable doubt
20 is and that's the standard.

21 THE COURT: I'm gonna make that charge, but I'm
22 gonna have the limitations that I've placed on it. I
23 think that's appropriate.

24 MS. WINES: Yes, Your Honor. Thank you.

25 THE COURT: And there's no stipulations.

1 Looking at the State's charges. We are already
2 doing State's Number 1?

3 MS. WINES: Yes, Your Honor.

4 MR. HUFF: And, Judge, the reason I had no
5 objection to that, I believe that charge is just a
6 cut-and-paste and convert that up-to-date with the
7 statute, and I believe Ms. Wines agrees with that.

8 THE COURT: Hey, if you guys are happy, then that
9 makes me happy. That's why I'm here.

10 MS. WINES: Yes. We can agree on the statute, Your
11 Honor.

12 THE COURT: Listen to what the Legislature states.
13 Ms. Wines, I'm concerned about your Request Number
14 2.

15 MS. WINES: Okay.

16 THE COURT: I think that if we read the statute --
17 I mean, there's cases, if I recall, and I can't put my
18 finger on them, that says it's not proper for me to
19 charge the negative ---

20 MS. WINES: Okay.

21 THE COURT: --- but the elements of the crime and
22 what they don't have to prove but what you do have to
23 prove.

24 MS. WINES: That's fine, Your Honor. I won't offer
25 any additional argument.

1 THE COURT: Okay. And separate indictment is
2 already a part of my charge.

3 MS. WINES: Yes, Your Honor, thank you. And I
4 believe we've covered Lyle as well, Your Honor.

5 THE COURT: Okay. Here's my question. It's 12:10.
6 I can let this jury go, bring them back say at 1:30, let
7 them go to lunch, or we can bring them in and do the
8 charge now. What would be your preference?

9 MR. HUFF: So the option, Your Honor, was to send
10 them to lunch and bring them back at 1?

11 THE COURT: Or 1:30. One or 1:30.

12 MR. HUFF: I won't speak for Ms. Wines, but ---

13 THE COURT: I don't think you can if you wanted to.

14 MR. HUFF: But knowing her the way I do through
15 these years, I have a feeling she is hungry and I would
16 be as well, and so I'll bite the bullet and request that
17 we adjourn for lunch.

18 THE COURT: That was going to be my preference,
19 too.

20 MS. WINES: I wholeheartedly agree.

21 THE COURT: All right. Would you-all bring the
22 jury in here?

23 MR. HUFF: Judge, if we keep ---

24 THE COURT: I know you're not gonna get to the
25 point where you all agree. I can tell you that right

1 sado-masochistic abuse, meaning flagellation or torture
2 by or upon a person who is nude or clad in undergarments
3 or in a costume which reveals the pubic hair, anus,
4 vulva, genitals, or female breast nipples, or the
5 condition of being fettered, bound, or otherwise
6 physically restrained on the part of the one so clothed.

7 Now, the last two we have here are excretory
8 functions and the insertion of any part of a person's
9 body, other than the male sex organ, or of an object
10 into another person's anus or vagina, except as a
11 medical procedure.

12 So the point is, it isn't just sexual intercourse,
13 okay? And you have masturbation, vaginal or anal
14 intercourse, touching; all of these are defined as
15 sexual activity.

16 Now, the State welcomes this burden of proving this
17 case beyond a reasonable doubt and I'm gonna speak to
18 you again after Mr. Huff puts up his closing argument
19 and I'll go into the fact we believe we have met that
20 burden.

21 But now let me explain very briefly what reasonable
22 doubt is. And the Judge will instruct you at the end;
23 and, of course, whatever the Judge instructs you is what
24 you are to follow. But in hearing arguments between
25 myself and counsel, understand that the general

1 she got the family history. And in her opinion she had
2 this to say: He is not a pedophile. He's not a
3 traveler or, he's a talker. The MS has affected him.
4 He role -- and I didn't ask her this, she said this --
5 that he role plays his cyber sex fantasies. He doesn't
6 act on them, he role plays them. And that he has
7 stopped his cyber sex. And that may be why he and his
8 wife are still together. It takes a lot to sit in court
9 and listen to this.

10 Ladies and gentlemen, I told you there are -- we
11 also, in our trying to research the statute, found that
12 there are several issues that you need to consider and
13 make a decision on in reaching your verdict. One was
14 whether or not Mr. Patterson was a lawful law
15 enforcement officer.

16 Secondly, was he on duty acting in an official
17 capacity. And that's why we called the municipal clerk,
18 that's why we called the Chief -- I'm sorry, I believe
19 the State called the Chief. That's why we asked the
20 Chief about a bond and oath. We submitted to you that
21 to be a proper law enforcement officer, the Chief of
22 Westminster, Chief Bannister, I asked him, Do you know
23 for sure what hours Mr. Patterson worked?

24 No, I don't. Nobody really supervised him. He
25 came in when, as he wanted.

1 I asked him, To be a lawful Westminster police
2 officer, do you have to have a bond and oath?

3 He said yes.

4 And so that's why we asked the city clerk, do you
5 have a bond on Mr. Patterson?

6 She said no.

7 If they didn't properly bond and oath
8 Mr. Patterson, then, ladies and gentlemen, he wasn't a
9 law enforcement officer. We've presented to you the
10 best evidence we could get our hands on. You can
11 consider that. You can decide that they didn't do it
12 right. He didn't have a lawful law enforcement
13 authority, or you could ---

14 MS. WINES: Your Honor, I object. Judge, I believe
15 he's misstating the facts.

16 THE COURT: Overruled.

17 MR. HUFF: --- or you may decide that they have
18 done that properly. We can only present evidence to you
19 and you make that consideration.

20 We also brought to your attention the issue of him
21 being off-duty, not acting in official capacity.
22 Because in this case, and I believe Judge McIntosh will
23 tell you, it works like this, and I'll discuss the
24 statute very briefly.

25 One, let's agree there is no real live

1 Danger6552000 was, in fact, danger.

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

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

17 This statute was enacted in 2004, okay?

18 This is for communicating with, reasonably believed
19 to be under eighteen, with the intent of persuading,
20 inducing, enticing or coercing the person, the person
21 being one you believe to be under eighteen, that person,
22 to engage or participate in a sexual activity.

23 And remember, we've looked at sexual activity. It
24 doesn't mean have sex. It also includes masturbation.
25 Look at the chats in Ocone and Westminster. That's

1 what we've got. We've got all kinds of talk,
2 communication about sex. We have masturbation, we have
3 all kinds of things. Let's look back at these.

4 And before we actually go through it, let's also be
5 clear. It is an act of communicating. It is not those
6 thoughts. When those fingers hit those keys and you
7 communicate to a minor, that particular act is a crime
8 that is an act that meets all the elements.

9 (Puts enlarged chats up on easel.)

10 Welcome back to the chats. You will recall we had
11 Officer Patterson read them out to you up there on the
12 screen.

13 This chat occurring on May 4th at 11:20 we start
14 with: Hi, would you like to chat.

15 Danger6552000 is initiating a contact.

16 Within approximately five minutes -- well, I'm
17 sorry, within one minute, age, sex, location, and we
18 have an age up here. A_upstategurl: Thirteen, F,
19 Ocone. You?

20 The response is, Wow.

21 Within five minutes, ass bra. Danger6552000 is
22 asking her her ass and her bra size.

23 Just to continue going through these chats, and I
24 promise you I'm not gonna put all of them up here.
25 We're just to gonna hit some of the highlights to

1 no picture in Spartanburg. Danger6552000 was danger.
2 The time for justice is here. We ask of you to do
3 justice. Convict Anthony Odom for criminal solicitation
4 of a minor because he did so.

5 I stand before you proud to represent the
6 government, the State of South Carolina, and with my
7 co-counsel we thank you for your time and your service.
8 Thank you.

9 THE COURT: Mr. Gibson, ladies and gentlemen of the
10 jury, you can stand up and stretch or you can take
11 another break. My charge I anticipate will be in the
12 neighborhood of about 25 minutes. Poll your jury and
13 see what you want to do.

14 (Whereupon, the jury conferred in the jury-box.)

15 THE FOREMAN: We're good to go.

16 THE COURT: Good to go? I tell you what. Let's do
17 this. Stand up and stretch for a minute to get your
18 blood running, and that way I don't put you to sleep.
19 Okay?

20 (Whereupon, the jury and the court reporter stood
21 up and stretched for a few minutes, after which the
22 following occurred.)

23 The Court's Charge to the Jury:

24 THE COURT: Ladies and gentlemen of the jury, now
25 that you have heard all the evidence in this case, you

1 have heard the arguments from these lawyers, it is my
2 duty to instruct you on the law which applies to this
3 case.

4 Now, my instructions to you will be in three parts.
5 The first part will be the rules that define and control
6 your job or your duties as jurors.

7 The next part -- and I'll let you know when we're
8 getting into each phase. The second part will be the
9 substantive law, in other words, the law that, what the
10 State must prove in order to make its case.

11 The third will be some considerations and
12 instructions about your deliberations themselves.

13 Now, the first part is the rules that control and
14 define your duties. As I told you at the beginning of
15 this case, that it is your job to find the facts from
16 the evidence that's presented here in this courtroom and
17 from no other place, from the witness stand, the sworn
18 testimony, and the exhibits that have been admitted into
19 evidence. To that you must apply the law as I give it
20 to you. You must follow the law and only the law that I
21 give to you and it is the only law that is applicable to
22 this case.

23 Further, you shall not be concerned about what you
24 feel like the law should be. You must accept it as I
25 give it to you, and this is not the place to try to

1 correct it.

2 You should not further be influenced by any
3 personal likes or dislikes, opinions, prejudice or undue
4 sympathy that you may have for one side or the other in
5 this case. Boiled down to is our most common form, what
6 that simply means is this, that you are to decide this
7 case solely from the evidence presented here in this
8 courtroom and in accordance to the law as I give it to
9 you right now. That is the oath that you took at the
10 beginning of this case.

11 Now, in following my instructions you are required
12 to follow all of it. You may not single out the ones
13 that you like and follow those and ignore the ones that
14 you don't like. I will tell you and charge you that
15 they are all equally important. And as I told you at
16 the beginning of this case, you should not and you shall
17 not read into anything I may have done, said, any
18 gestures I may have made throughout this case that
19 suggest to you one way or the other how you should find
20 the facts. And I tell you that I have no opinion on the
21 facts, our Constitution does not allow me to have an
22 opinion on the facts. I'm merely here as a referee to
23 make sure the process is followed and to instruct you on
24 the law as I'm doing now.

25 You and you alone are the judges of the facts in

1 this case and you decide what these facts are by
2 evaluating and weighing the evidence that you heard
3 during this case. There is no way for you to do that in
4 a literal sense. I can't give you a set of scales to go
5 stack things up on. It is entirely a mental process
6 where you weigh and you evaluate and discuss all of the
7 evidence and you use your good common sense and sound
8 judgment when you make your findings of fact.

9 Now, what is evidence and what is not evidence?
10 First, obviously the sworn testimony both on Direct,
11 Cross-Examination or Redirect, regardless of whoever
12 called them, is evidence in this case.

13 In addition, the exhibits that were received into
14 evidence in this case is also evidence. Normally that
15 is all that's before you. However, in this case, but
16 due to the facts in this case I took judicial notice of
17 the Defendant's date of birth, and you must accept as a
18 conclusive fact the date of birth that I took judicial
19 notice of and that date of birth is June 22nd, 1973.
20 And by accepting that as a conclusive fact you may not
21 debate it, you shall not debate it, that is his
22 birthday.

23 Now, what is not evidence? I think I told you at
24 the beginning of this case but I'll tell you again.
25 Arguments, statements by these fine lawyers is not

1 evidence. They are not witnesses. They have not been
2 sworn in this case. What they've said in their opening,
3 what they said in their closings or at any other time
4 during this trial is designed to help you interpret the
5 evidence, designed to help you understand what the
6 evidence is and what this case is about. It is not
7 evidence.

8 If in your deliberations you remember things
9 differently than you are told by any of these lawyers,
10 your memory of the facts will control. Again, questions
11 and objections of the lawyers again is not evidence. As
12 I told you at the beginning of this case, lawyers have a
13 sworn duty and an ethical duty to object when they feel
14 like anything is happening in the courtroom that is
15 improper. The fact that any of these lawyers may have
16 raised objections, or to the extent I allowed you to see
17 my rulings on those objections, shall not even be
18 discussed by you in your deliberations, that is not
19 proper. That is just part of the process that each and
20 every trial goes through.

21 Now, there has been some testimony that I ordered
22 stricken from the record. To the extent I ordered it
23 stricken, you shall not consider it and you shall not
24 even discuss it in your deliberations. Also there was a
25 bit of evidence that was received for a very limited

1 purpose. If you recall, the Spartanburg chat was
2 admitted for the limited purpose of establishing the
3 intent, the identity, or whether there was a common
4 scheme or plan on behalf of the Defendant.

5 So let me tell you this. You may only consider the
6 evidence of the Spartanburg County chat for the purposes
7 of considering the Defendant's identity, his intent, and
8 whether he had a common scheme or plan. However, it
9 would be improper and you shall not consider this
10 evidence as proof that the Defendant acted in accordance
11 on the occasions giving rise to these present charges
12 the same as he did in the Spartanburg chats. In other
13 words, it shall not be used by you as proof of the
14 Defendant's guilt on the present charges.

15 Also, ladies and gentlemen, I questioned you daily,
16 I don't think there's been a problem, but to the extent
17 you may have seen or heard anything while we were not in
18 court, you were back in your jury room, on lunch breaks
19 or overnight, that is not evidence and you shall not
20 consider it or even discuss it in your deliberations.

21 South Carolina follows and accepts two types of
22 evidence. We have direct evidence and we have
23 circumstantial evidence. Direct evidence is basically
24 what it sounds like. It's evidence of a person who
25 claims to have actual direct knowledge of a fact such as

1 an eyewitness.

2 Circumstantial is a little more tricky but it's put
3 this way. It is proof of a chain of facts and
4 circumstances from which you may infer or find that
5 another fact exists, although that fact has not been
6 proven directly.

7 To give you an example of circumstantial evidence,
8 if you went to bed and you had snow in your front yard
9 and you woke up in the morning and there were tracks in
10 your front yard, you may infer from the fact or the
11 existence of those tracks that someone or some thing
12 walked through your yard during the night even though
13 you did not actually see anyone or anything walk through
14 your yard during the night. That is circumstantial
15 evidence.

16 And I'll tell you that the law makes absolutely no
17 distinction between the weight nor the value to be given
18 either direct evidence or circumstantial evidence. You
19 as a jury are entitled to consider both kinds. And nor
20 is there a greater degree of certainty required for
21 circumstantial evidence to be admitted or considered by
22 you in this case.

23 But I'll tell you that you, after you have
24 considered all the evidence, direct or circumstantial,
25 that you think is appropriate, if you are not convinced

1 of the guilt of this Defendant beyond a reasonable
2 doubt, then you must find the Defendant not guilty.

3 Now, in performing your duties as finders of fact
4 it is imperative and necessary that you determine
5 credibility of the witnesses. In doing this you have to
6 consider all the evidence that's been placed into this
7 case. You can consider -- you may consider which
8 testimony which you are going to believe and which
9 testimony you are not going to believe. You may
10 disbelieve all or part of any witness's testimony. You
11 may believe all of a witness's testimony. But in making
12 this decision of credibility, you may but you are not
13 required to take into consideration a number of factors
14 and let me give these factors to you.

15 One, was the witness able to see or hear or know
16 the things about which that witness testified? How well
17 was the witness able to recall and to describe those
18 things? What was the witness's manner while testifying,
19 what we in our everyday lives call our demeanor? Is
20 there some reason that a witness would want to give
21 testimony that would help or would hurt one side or the
22 other? Did that witness have an interest in the outcome
23 of the case or any bias or prejudice concerning any
24 party or any matter or issue involved in the case? You
25 may consider how reasonable the witness's testimony was

1 considered in light of all the evidence that's presented
2 and whether the witness's testimony was contradicted by
3 what that witness had said or done at another time or by
4 the testimony of other witnesses or by other evidence
5 that has been introduced in this case.

6 Now, ladies and gentlemen, those are some, as I
7 told you, but not all of the factors that you may
8 consider when you perform your duties and make a
9 determination of credibility of the witnesses. Of
10 course, you did not or should not check your common
11 sense at the door when you are sworn in as jurors. So
12 in your deliberations when you seek this credibility of
13 witnesses, you should use your sound judgment and logic
14 and those things that make you believe, that are
15 indicators to you of truthfulness or lack of
16 truthfulness.

17 One last thing about credibility. In making this
18 determination on credibility or believability, you can
19 believe as much or as little of any witnesses as you
20 want to. You may believe all or part of one witness's
21 testimony, you may believe one witness over several or
22 several over one. However, what you do not do is add up
23 the number of witnesses that testified for one side or
24 the other in making this determination because your sole
25 objective is to find the truth, and it doesn't matter

1 whether it comes from a witness for the State, a witness
2 for the Defense or through a combination of both of
3 those.

4 Now, also, you have heard persons that have been
5 qualified as experts in this case. As I told you,
6 persons by their education or their experience have
7 become expert in their particular field are allowed to
8 give their opinions in that particular field. Now,
9 expert testimony, as I told you, should be judged just
10 as any other testimony in this case. You may accept it,
11 you may reject it, or you may give it as much weight as
12 you think it deserves considering the witnesses'
13 education, their experience, the reasons given for their
14 opinion, as well as all the other evidence that was
15 produced in this case.

16 Now, as I've told you, ladies and gentlemen, there
17 are two indictments in this case. The fact that the
18 Defendant was indicted shall not and may not be
19 considered by you as any evidence of his guilt. It does
20 not lie as a conclusion, inference, or any manner of the
21 Defendant's guilt. It is simply the mechanism by which
22 the State of South Carolina brings charges against
23 various Defendants and brings those before juries such
24 as yourselves for a determination whether they are
25 guilty or not.

1 Now, there are two indictments, as I've said. Each
2 indictment is a distinct offense. That means that you
3 must decide each indictment separately based on the
4 evidence and the law applicable to that indictment and
5 uninfluenced by your decision on the other indictment.
6 That means the Defendant may be convicted or acquitted
7 on any or all of the offenses charged, and Mr. Foreman,
8 Mr. Gibson, you will be asked to write a separate
9 verdict for each indictment and I'll go over that with
10 you in a minute.

11 Now, the Defendant in this case has pled not guilty
12 to both of these indictments and therefore that puts the
13 burden of proof on the State of South Carolina to prove
14 the Defendant's guilt beyond a reasonable doubt. A
15 person charged with committing a crime in this state is
16 never required to prove himself innocent, and I charge
17 you that it is an important rule of law that a Defendant
18 in a criminal trial, no matter what the seriousness of
19 the charge may be, will always be presumed to be
20 innocent of the crime for which he was indicted and his
21 guilt has been proven by evidence which satisfies you,
22 the jury, of guilt beyond a reasonable doubt. Now, that
23 presumption does not end when you begin your
24 deliberations in just a few minutes but it accompanies
25 this Defendant throughout the trial until you, the jury,

1 reach a verdict of guilt based on evidence satisfying
2 you of guilt beyond a reasonable doubt.

3 The presumption of innocence has been described as
4 a robe of righteousness that's placed about the
5 shoulders of the Defendant which remains with the
6 Defendant until it has been stripped from his shoulders
7 by evidence presented satisfying you of his guilt
8 satisfying you beyond a reasonable doubt. And the
9 presumption of innocence is not a mere legal theory, it
10 is not a mere legal phrase. It is a substantial right
11 to which every Defendant is entitled unless you, the
12 jury, are satisfied of his guilt beyond a reasonable
13 doubt.

14 So that leads us to the question what is guilt
15 beyond a reasonable doubt?

16 Ladies and gentlemen, I am close to the end of my
17 first aspect of my charge and then I'll give you another
18 quick break.

19 But this is the law on reasonable doubt. A
20 reasonable doubt is the kind of doubt that would cause a
21 reasonable, sincere, honest and conscientious person to
22 hesitate to act in an important matter in their own
23 affairs. It is the kind of doubt that would cause a
24 reasonable, sincere, honest and conscientious person to
25 hesitate to act in an important matter in their own

1 affairs. And proof beyond a reasonable doubt is proof
2 that leaves you firmly convinced of the Defendant's
3 guilt.

4 Now, there are very few things in this life, ladies
5 and gentlemen, that you know with absolute certainty,
6 and absolute certainty in criminal cases is not
7 required. In other words, the law does not require
8 proof that overcomes every possible doubt. If, based
9 on your consideration of the evidence, you are firmly
10 convinced that the Defendant is guilty of the charges,
11 you must find the Defendant guilty.

12 Now, on the other hand, if you think that there is
13 a real possibility that the Defendant is not guilty, you
14 must give the Defendant the benefit of the doubt and
15 find him not guilty. Now, a reasonable doubt may arise
16 from the evidence or from the lack of the evidence.

17 I further instruct you, ladies and gentlemen, that
18 the Defendant is entitled to every reasonable doubt that
19 may arise in the case. Now, what that simply means is
20 this. That if upon a fact essential to a conviction and
21 a verdict of guilty of the offenses charged, if you have
22 any reasonable doubt as to how that issue should be
23 resolved, it is your duty to resolve that doubt in favor
24 of this Defendant.

25 Also, in order to establish criminal liability,

1 criminal intent is required. For example, the mental
2 state required to be proven by the State for a
3 particular crime may be purpose, it may be intent,
4 knowledge, recklessness or criminal negligence.

5 Criminal intent must be proven by the State beyond
6 a reasonable doubt. Criminal intent is always a matter
7 that must be determined from the circumstances
8 surrounding the situation shown to have existed during
9 this trial. Because there is no way that we can prove
10 to a mathematical certainty what intent is or was at the
11 time, there is no way that medical science can dissect a
12 person's brain and determine what they had in mind or
13 what they wanted to do, so the law says that in criminal
14 cases intent may be inferred from the circumstances
15 shown to have existed, and that is how you make the
16 determination of whether or not the necessary element of
17 intent was present. It is not necessary to establish
18 intent by direct or positive evidence, but it may be
19 established by inference in the same way as any other
20 fact by taking into consideration the acts of the
21 parties and all the facts and circumstances of the case.

22 Criminal intent is a mental state, it is a
23 conscious wrongdoing. Now, it is up to you, ladies and
24 gentlemen, to determine what the Defendant intended to
25 do based on the circumstances shown to have existed in

1 this case.

2 Now, ladies and gentlemen, the Defendant in this
3 case, the fact that he did not testify shall not and may
4 not be considered by you in any form or fashion. Our
5 Constitution does not require the Defendant to prove
6 himself innocent ever. So it would be improper and you
7 shall not even discuss the Defendant's failure to
8 testify whatsoever in your deliberations. The burden
9 remains always on the State of South Carolina to prove
10 guilt beyond a reasonable doubt.

11 Now, an issue in this case is identification of the
12 Defendant as the person who committed the crime charged
13 or the charges. The Defendant [sic] also has the burden
14 of proving identity beyond a reasonable doubt. You must
15 be satisfied beyond a reasonable doubt of the accuracy
16 of the identification of the Defendant before you may
17 convict the Defendant.

18 Identification testimony is an expression of belief
19 or impression by a witness. You must determine the
20 accuracy of the identification of the Defendant. In
21 doing so you must consider the believability of each
22 identification witness in the same way as any other
23 witness in this matter.

24 I'm going to end up on the first phase. I'm gonna
25 give you a charge on knowing. An act is done knowingly.

1 if the Defendant was consciously aware of what he or she
2 was doing.

3 There is a charge on suspicion. Suspicion, however
4 strong, does not suffice to sustain a conviction.
5 Suspicion implies a belief or opinion as to guilt based
6 upon the facts or circumstances which do not amount to
7 proof. The guilt of the accused, of course, must be
8 proven beyond a reasonable doubt.

9 And lastly, ladies and gentlemen, this is on loss
10 or destruction of evidence. If you find that the State
11 has lost, destroyed or failed to preserve evidence whose
12 contents or quality are important to the issues in this
13 case, then you should weigh the explanation, if any,
14 given for the loss or the unavailability of that
15 evidence. If you find that any such explanation is
16 inadequate, then you may infer that the evidence is
17 against the State's interests which may create a
18 reasonable doubt about the Defendant's guilt.

19 All right. Ladies and gentlemen, that is the first
20 phase of my charge. That is the law aspect of that
21 charge. So you may stand up for a minute and we're on
22 the downhill side of this.

23 (Whereupon, the jury and court reporter stood up
24 and stretched for a minute.)

25 THE COURT: Does anybody need any water? Does

1 anybody need a break?

2 (Jury confer in jury-box.)

3 THE FOREMAN: No.

4 THE COURT: All right. Ladies and gentlemen, this
5 is the substantive law that you must apply in this case.
6 And this is the law of criminal solicitation of a minor
7 as set forth in our Code Section 16-15-342, and sexual
8 activity as defined by our Code Section 16-15-365. The
9 Defendant is charged with solicitation of a minor.

10 (Reading):

11 The State must prove beyond a reasonable doubt that
12 the Defendant contacted or communicated with or
13 attempted to contact or communicate with a person who
14 was under the age of eighteen or a person the Defendant
15 reasonably believed to be under the age of eighteen, for
16 the purpose of or with the intent of persuading,
17 inducing, enticing or coercing the person to engage or
18 to participate in a sexual activity or a violent crime
19 or with the intent to perform a sexual activity in the
20 presence of a person under the age of eighteen, or a
21 person that the Defendant reasonably believed to be
22 under the age of eighteen.

23 "Sexual activity" is defined in South Carolina Code
24 Annotated 16-15-375, Subsection 5, as any of the
25 following acts or simulations thereof;

1 masturbation, whether done alone or with a human or
2 animal;

3 vaginal, anal or oral intercourse, whether done
4 with another human or an animal;

5 touching, in an act of apparent sexual stimulation
6 or sexual abuse, of the clothed or unclothed genitals,
7 pubic area or buttocks of another person, or the clothed
8 or unclothed breasts of a human female;

9 an act or condition that depicts bestiality,
10 sado-masochistic abuse, meaning flagellation or torture
11 by or upon a person who is nude or clad in undergarments
12 or in a costume which reveals the pubic hair, anus,
13 vulva, genitals, or female breast nipples, or the
14 condition of being fettered, bound, or otherwise
15 physically restrained on the part of the one so clothed;

16 excretory functions;

17 the insertion of any part of a person's body, other
18 than the male sexual organ, or of any object into
19 another person's anus or vagina, except when done as
20 part of a recognized medical procedure.

21 Ladies and gentlemen, I further charge you that
22 consent is a defense to a prosecution pursuant to this
23 section if a person under the age of eighteen or a
24 person reasonably believed to be under the age of
25 eighteen is at least sixteen years old.

1 Consent is not a defense to a prosecution pursuant
2 to this section if the person under the age of eighteen
3 or the person reasonably believed to be under the age of
4 eighteen is under the age of sixteen.

5 It is further not a defense to a prosecution
6 pursuant to this section on the basis of consent or
7 otherwise that the person reasonably believed to be
8 under the age of eighteen is a law enforcement agent or
9 officer acting in official capacity. However, if you
10 find that the law enforcement officer was not acting in
11 his official capacity at the time of the communication,
12 it would be a defense to the communications occurring
13 during that period.

14 Now, that is the substantive law that you must
15 apply, ladies and gentlemen, during your deliberations.

16 I would like to end by going over a few aspects
17 about your deliberations. And again, do not begin your
18 deliberations until we send word back to you very
19 shortly that it is appropriate. But I want to say that
20 you don't serve as jurors because you are partisans or
21 you are advocates for one side or the other. You were
22 chosen by both the State and the Defense because
23 everyone believed that you could be fair and impartial
24 and decide this case solely on the evidence without bias
25 or prejudice to one side or the other. In doing so you

1 should bring your experiences of life to the jury room,
2 you should use your good common sense, and you should
3 bring your sense of logic and reason.

4 But deliberations are not made in a hurry.
5 Deliberation is defined as this. It is a careful
6 consideration weighed up with a view to a decision. And
7 I'll tell you it's one of the geniuses about our jury
8 system, regardless of what you may think about it. It
9 allows 12 men and women from different backgrounds, from
10 different life experiences and perspectives to consider
11 evidence, to talk about it, and to ultimately hopefully
12 reach a unanimous verdict.

13 We call them deliberations for a reason. You are
14 to discuss this case in a thorough manner, you are to
15 consider the evidence in a thorough manner, and you are
16 to debate the evidence amongst yourselves in a courteous
17 manner.

18 Remember again, you are not partisans, you are not
19 advocates, you are judges of the facts. Your sole
20 interest in this case is, based on your oath, is to find
21 the truth from the evidence that has been presented here
22 in this courtroom.

23 I would ask you and charge you that you listen to
24 the views of your fellow jurors, you consider everyone's
25 points of view, and talk through all the evidence. And

1 again, remember, if you are doing something
2 deliberately, you are not in a big hurry and you should
3 not be in a hurry in this case. This is both sides'
4 only day in court and this is a very important case for
5 both sides in this matter.

6 Now, when you return to your jury room and you
7 deliberate this case, in order to be valid your verdict
8 must be unanimous. Now, that being said, each of you
9 must decide this case by yourself, and you should only
10 do so after you have impartially considered all the
11 evidence, you have fully discussed it with your fellow
12 jurors, you've listened to your fellow jurors' views,
13 and you've come to your own conclusion. Don't be afraid
14 to change your opinion if discussion persuades you that
15 you should do so. But do not come to a decision simply
16 because your fellow jurors think it is the right thing
17 to do.

18 Now, again, it is important for you to attempt to
19 reach a unanimous verdict, but, of course, you can only
20 do so after you have made up your own mind. Do not
21 change an honest belief about the weight and the effect
22 of the evidence simply to reach a verdict in this
23 matter.

24 With that being said, Mr. Foreperson, Mr. Gibson,
25 if at any time it becomes necessary for you to

1 communicate with the Court, you do the same thing that I
2 told you to do earlier. You make a note, you sign it,
3 you knock on the door and you give it to Mr. Bibb, our
4 bailiff, and he will bring it to me and we'll receive it
5 here in open court and we will act accordingly.

6 One thing I do not want you to do is ever let me
7 know or anyone know numerically where the jury stands.
8 Okay, sir? That is solely within your province until
9 the verdict is reached in this matter, or not reached.

10 Also, I'm gonna send you back the verdict form.
11 But you will need to fill out two different verdict
12 forms. They are stapled together and they are right
13 straightforward. And let me just tell you, I have to
14 put them in some order. The order means nothing in this
15 case because they just have to come in some order or the
16 other. But this is the option you will have.

17 Under indictment 2010-GS-37-363 A, we, the jury,
18 unanimously find that the Defendant, Anthony C. Odom,
19 is, the first option is not guilty of criminal
20 solicitation of a minor, or, guilty of criminal
21 solicitation of a minor. You would check the
22 appropriate unanimous decision as to that indictment.
23 You would sign it and date it, today is the 10th, and
24 then you would go to the next verdict.

25 And the next verdict is exactly the same as that

1 one except there is a different indictment number on
2 that. If you have any questions as to how you would
3 fill it out, write your question out, give it to the
4 bailiff, and we will explain that to you. Okay, sir?

5 One last thing. You are bound by the record; ie,
6 the evidence that has been presented here in this
7 courtroom and your consideration should not reflect
8 anything outside of that other than your good common
9 sense and good judgment.

10 Mr. Gibson, I'm gonna ask that you take the jury
11 back to the jury room. I will check with these lawyers
12 to see if I have misstated the law or have forgotten to
13 give you an important provision of the law. If so, I
14 will bring you back out. If not, I will send that
15 evidence in there as well as the verdict form and you
16 will receive unequivocal word that you may begin your
17 deliberations. But until such time, please do not begin
18 to discuss this case.

19 THE BAILIFF: The alternates?

20 THE COURT: The alternates will not go yet. I'm
21 gonna let them go out and then I'll bring them back out
22 in just a second. Thank you, Mr. Bibb.

23 (Whereupon, the Jury left the courtroom at
24 approximately 4:23 p.m.)

25 THE COURT: Any additions or objections from the

1 State?

2 MS. WINES: No, Your Honor. The only thing I
3 noticed is nothing that needs to be corrected. I
4 believe at one point you said 365 instead of 375. But
5 it's nothing of substance.

6 THE COURT: I did?

7 MS. WINES: Yes, Your Honor.

8 THE COURT: That doesn't surprise me. I apologize.

9 MS. WINES: It is no problem, Your Honor.

10 THE COURT: Mr. Huff, is there an objection from
11 the Defense?

12 MR. HUFF: Your Honor, I would just state for the
13 record that in your charge on identification, you stated
14 that the Defendant has the burden of proving
15 identification.

16 THE COURT: I did?

17 MR. HUFF: You did.

18 THE COURT: Okay. Well, that is something that
19 needs to be corrected.

20 MR. HUFF: Very well, Your Honor.

21 THE COURT: Okay. The Defendant never has the
22 burden of proof. And I apologize. That is a silly
23 mistake on my part.

24 Would you ask the jury to come back.

25 Any other...

1 MR. HUFF: Judge, I did not find anything else. I
2 just needed to state that. If you feel that needs to be
3 corrected, that's fine.

4 THE COURT: Yes, I think that should be. And I
5 don't want to -- this is a critical case. I don't want
6 to do anything that would...

7 Bring the jury back in.

8 MR. HUFF: And, Judge, I don't know if you need to
9 give the whole charge.

10 THE COURT: I'm not. As I said, I'm not.

11 MR. HUFF: Yes, sir. I found that with no
12 disrespect. I'm not ---

13 THE COURT: It was not a mistake of substance at
14 all. I appreciate it. I try not to make a mistake and,
15 unfortunately, as my wife tells me daily, I do.

16 (The Jury entered the courtroom at approximately
17 4:24 p.m.)

18 THE COURT: Mr. Gibson, ladies and gentlemen, let
19 me correct one thing I said. I inadvertently, when I
20 was giving you the law on identification, I apparently
21 stated that the Defendant has the burden in that matter.
22 The Defendant never has the burden. The State has the
23 burden of proof and I give it to you beyond a reasonable
24 doubt.

25 Now, with that being said, I'm gonna ask you to go

1 back to your jury room, we'll have a quick conference,
2 and then we'll send in the evidence and the verdict
3 form. Thank you very much.

4 (Whereupon, the Jury left the courtroom at
5 approximately 4:25 p.m.)

6 THE COURT: Any additions or exceptions from the
7 State?

8 MS. WINES: No, Your Honor.

9 THE COURT: From the Defense?

10 MR. HUFF: No, sir.

11 THE COURT: Let me say this before we send the
12 evidence back. I want to say it to the witnesses in
13 this case. It's a hard-fought case, it's a very
14 emotional case. Everyone involved in this case by way
15 of witnesses were very civil, they followed the process.
16 I can't commend these lawyers any stronger than what
17 I've done. You've been very prepared, you've been very
18 professional, you've about worked me to death. But I'll
19 tell you that you have been a pleasure regardless of
20 what the outcome is, these are always tough cases, and
21 you have done yourselves and your respective sides and
22 your agencies, you've served them well by good service,
23 and I appreciate it.

24 Now, that being said we are at recess. If you
25 would go through the evidence, and here is the verdict

1 form.

2 MS. WINES: Thank you.

3 (Whereupon, there was a discussion off the record
4 among counsel and the court reporter.)

5 (The Jury started deliberations at approximately
6 4:28 p.m.)

7 (There was a question from the Jury at
8 approximately 4:56 p.m.)

9 (Court's Ex. # 10, jury note, was marked for
10 identification and received in Court's evidence.)

11 THE COURT: There is a question. This is the
12 question: If an officer is not bonded, are they
13 considered an official police officer? Signed the
14 Foreperson.

15 I was thinking about that on the way up. Now, what
16 I intend to charge the jury, or at least my proposed
17 charge to the jury is that I did not charge them on the
18 law of bonding. They are only to apply the law that was
19 charged to them in this matter and that's not an issue
20 for them to consider.

21 Ms. Wines, what would be your position?

22 MS. WINES: I believe that sounds good to the
23 State, Your Honor.

24 THE COURT: And I know your objection to me not
25 letting that be an issue to be considered, but as to the

1 proposed, what would be your...

2 MR. HUFF: Judge, if you would let me confer with
3 co-counsel for a second, please?

4 THE COURT: Yes, sir.

5 (Counsel confer.)

6 MR. HUFF: Your Honor, may it please the Court, we
7 believe that although we have raised that as an issue,
8 you have charged the jury. A suggestion only, Your
9 Honor, would be that you might instruct the jury that,
10 You have heard all the evidence. I have given you my
11 charge, and I would ask that you continue with your
12 deliberations.

13 THE COURT: Okay. I note that request. I believe
14 that it would be more directional for the Jury that I
15 charge them that they are only to consider the law that
16 I charge them. That was not a proposition of law that
17 was given them. They are not to consider that
18 proposition for their deliberations, okay, sir? And
19 that's why I'm throwing it back and forth to you before
20 we bring them out and do any damage. But, I mean, that
21 certainly wasn't a charge, for them to consider that is
22 to consider matters beyond the law that was charged in
23 my view.

24 MR. HUFF: Judge, if you would note our objection,
25 I know we have made our objection as to this is an

1 element, and we had asked for the charge, and we know
2 that and we know the record is preserved.

3 THE COURT: Right. And you may be right and I
4 certainly may be wrong. But I feel like that would be
5 the proper response. But I do note your objection and I
6 think you preserved that issue certainly for review.

7 All right. With that being said, would you bring
8 the jury in, please.

9 (The Jury entered the courtroom at approximately
10 5:00 p.m.)

11 THE COURT: All right. Mr. Gibson, I have what is
12 a question from the jury, I believe, and this is the
13 question: If an officer is not bonded, are they
14 considered an official police officer? Signed you, the
15 Foreperson.

16 Is that the jury's question?

17 THE FOREMAN: Yes, sir.

18 THE COURT: All right. Ladies and gentlemen of the
19 jury, to answer your question, if you recall at the
20 beginning of my charge I told you that the only law that
21 you may consider is the law that I charge you that is
22 applicable to this case. Now, I have not charged you on
23 any proposition of bonding of an official police
24 officer, so therefore that is not a proposition of law
25 that you may consider in your deliberations. Okay, sir?

1 THE FOREMAN: All right.

2 THE COURT: Now I'm gonna ask the jury to go back
3 to the jury room and resume their deliberations, okay?

4 THE FOREMAN: Okay, thank you.

5 THE COURT: And actually wait for a minute before
6 you begin. We are going to have a small conference.
7 You may go back, but don't begin until I send word back,
8 please.

9 THE FOREMAN: All right.

10 (Whereupon, the Jury left the courtroom at
11 approximately 5:02 p.m.)

12 THE COURT: Other than your stated objection,
13 Mr. Huff, do you have any additional objection?

14 MR. HUFF: Other than just to flesh out more
15 specifically, Your Honor. The Chief of Police, as you
16 recall, the testimony was that his officer to be an
17 officer would have to have an oath and bond, and that's
18 why we believe it was proper to charge the jury with
19 that and it was for their consideration as a matter of
20 fact. Thank you. Nothing further.

21 THE COURT: Thank you, sir.

22 Ms. Wines?

23 MS. WINES: Nothing from the State, Your Honor.

24 THE COURT: Thank you very much. We are in recess
25 again.

1 MS. WINES: Thank you, Judge.

2 (Whereupon, the Jury resumed their deliberations at
3 approximately 5:03 p.m.)

4 (Whereupon, there was another question from the
5 Jury at approximately 7:07 p.m.)

6 (Court's Ex. # 11, jury note, was marked for
7 identification and received in court's evidence.)

8 THE COURT: This is the newest question. It says
9 Can we review the Cross-Examination of Mr. Patterson on
10 11-8-11? Also the Cross-Examination of Chief Bannister
11 on 11-8.

12 Gentlemen, we don't have realtime here, as you very
13 well may know, so it's impossible to download it.

14 Another big consideration is the fact that we had a
15 significant number of objections throughout this case.

16 I'm not saying that's a problem, but that's just a fact.

17 And we have to be extremely careful about them hearing
18 it.

19 My suggestion -- and I'll be glad to hear from both
20 sides. Bring the jury in. I think you cross-examined
21 Mr. Patterson for hours. It was at least three.

22 MR. HUFF: Yes, sir.

23 THE COURT: And I want them to narrow down what
24 they're looking for ---

25 MR. HUFF: Yes, sir.

1 approximately 7:10 p.m.)

2 THE COURT: All right. Mr. Gibson, before we get
3 started, did everybody get their dinner okay?

4 THE FOREMAN: We got it ordered.

5 THE COURT: Okay. So it hasn't come in yet?

6 THE FOREMAN: No, sir.

7 THE COURT: Okay. Next is I received what appears
8 to be a jury question which asks: Can we review the
9 Cross-Examination of Mr. Patterson on 11-8-11, also the
10 Cross-Examination of Chief Bannister on 11-8?

11 Is that your question?

12 THE FOREMAN: Yes, sir.

13 THE COURT: Okay. Now let me do this. I've spoken
14 with these attorneys and I'm gonna ask you this. One
15 thing, we don't have the capability of, on our computers
16 to do realtime, meaning she just can't download all the
17 written testimony so that you will have it at your
18 fingertips.

19 What we do have available is the audio version of
20 the testimony, barring some technical difficulty, where
21 we can go back and play that. Now, Mr. Patterson's
22 testimony on Cross-Examination took several hours, I
23 believe, when it was being done. So I would ask you,
24 Mr. Gibson, if you could get in with your jury, find out
25 more specifically if you can pinpoint more of the

1 THE COURT: --- okay? And then get you back out
2 and let you do it. Okay? Is that fair enough?

3 THE FOREMAN: Yes, sir. Thank you.

4 THE COURT: Okay.

5 (Whereupon, the Jury left the courtroom at
6 approximately 7:14 p.m.)

7 THE COURT: Any additions or objections from the
8 State to the question and response to the jury?

9 MS. WINES: No, Your Honor.

10 THE COURT: From the Defense?

11 MR. HUFF: No.

12 THE COURT: Very good.

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

14 (Whereupon, there was another note from the Jury at
15 approximately 7:18 p.m.)

16 THE COURT: Okay. This is from Mr. Patterson's.
17 It says Mr. Patterson's Cross. Requirement of an
18 officer to be bonded. Was he bonded? Official
19 capacity:

20 Those are the three things. And obviously they've
21 not necessarily listened to what I told them.

22 MS. WINES: Yes, Your Honor.

23 THE COURT: But it is evidence in this trial and
24 they asked to listen to it and they are entitled to
25 listen to it from what I can see. I can't tell them

1 "no."

2 MS. WINES: I agree if they've asked, they need to
3 hear it; however, we would ask that you reinstruct that
4 they are not, it is a matter of law that you have not
5 told them to weigh. However you want to phrase it,
6 Judge, is clearly your province.

7 THE COURT: I'm inclined to do that. I think I'm
8 right. I think you're not. I've been looking for more
9 information on that bond. Let's mark this.

10 (Court's Exhibit # 12 was marked for identification
11 and received in Court's evidence.)

12 (Whereupon, there was a discussion off the record
13 between the Court and court reporter, after which
14 there was a recess while the court reporter located
15 the requested testimony and went over it with the
16 Court and Law Clerk.)

17 (The following occurred at approximately 8:12 p.m.)

18 THE COURT: We found requests for 11-8-11. Bonding
19 information on cross. There are no questions on bond on
20 cross at all.

21 Official capacity was found to be between lines --

22 THE LAW CLERK: It starts at page 125, line 21 ---

23 THE COURT: -- through 128 line 1. (Referring to
24 pages of realtime draft of Tuesday, November 8, 2011, on
25 court reporter's computer screen, not the certified

1 transcript of record.)

2 Then they just wanted the cross of Chief Bannister.

3 MR. HUFF: I'm sorry, Your Honor?

4 THE COURT: They just wanted the Cross of Chief
5 Bannister. What I'm gonna do, because there are so many
6 objections, I'm gonna have my law clerk go down there
7 and read it to the jury, editing out the objection,
8 editing out my response, and just going through like
9 that. It shouldn't be more than a few pages.

10 Any objection to that approach from the State?

11 MS. WINES: No objection to that, Your Honor.
12 However, I renew the request that they be instructed
13 again as to bond ---

14 THE COURT: I'm not doing that, I don't think
15 that's appropriate.

16 MS. WINES: Yes, sir.

17 THE COURT: I'll note your request a minute ago
18 about some type of judicial notice of bond. I'm not
19 gonna do anything of that sort, okay?

20 MS. WINES: Yes, sir, I understand. If I may just
21 add, can we somehow make your instruction to the jury
22 more specific such as ---

23 THE COURT: I'm gonna charge them like I charged
24 them a minute ago.

25 MS. WINES: Okay, thank you.

1 THE COURT: All right, Mr. Huff?

2 MR. HUFF: And, Judge, we would state for the
3 record that the jury has not asked for a charge on the
4 law, they've asked just to hear testimony.

5 THE COURT: They were instructed to follow the law.
6 If they're talking about bond, they're not following the
7 law. Okay, sir? I understand your, I'll note your
8 objection. But I feel like based on the questions it is
9 appropriate to remind them that that is not a proper
10 proposition of law that they have been charged on and
11 they are not to consider that during deliberations.

12 Other than I note your objection.

13 Would you bring the jury in, please.

14 (Whereupon, the jury entered the courtroom at
15 approximately 8:15 p.m.)

16 THE COURT: Okay. Mr. Gibson, first let me tell
17 you we did a word search, and in the Cross-Examination
18 of Mr. Patterson there was no, on 11-8-11 there was no
19 reference to bond.

20 We have all the references to official capacity.
21 My law clerk is gonna read that to you. Because there's
22 objections we're gonna edit any objections and my
23 response to that that y'all were sent out of the
24 courtroom to hear, okay?

25 Then we're gonna have the Cross-Examination of

1 Chief Bannister read to you as well. Okay?

2 THE FOREMAN: Okay.

3 THE COURT: Okay. Let me remind you again, based
4 on your question, that I want to remind you that I
5 instruct you on the law. That's my job. You are the
6 finders of the fact. I can't intervene when your
7 function is fact-finders, nor can you intervene on my
8 job to instruct you on the law.

9 And I remind you again that the legal proposition
10 of a bond requirement was not charged to you in my legal
11 charge on the law, and it is not proper for you to
12 discuss the legal requirement for a bond because that's
13 not the law I charged to you, okay?

14 That being said, Mr. Sams (phonetic), my law clerk
15 will read those passages to you now.

16 THE LAW CLERK: This is Mr. Huff's Cross of Officer
17 Patterson (reading):

18 Q. If, and let's bring it to this factual scenario, if
19 Danger intends to have sex with someone less than
20 eighteen but he is talking and reasonably believes that
21 he is talking to somebody who is less than eighteen,
22 but, in fact, he was talking to a
23 thirty-something-year-old police officer who is at home,
24 not acting in his official capacity, he has not violated
25 the statute, has he?

1 If you want me to do that, we'll send that back.

2 THE FOREMAN: That would be great.

3 THE COURT: Any objection from the State to me
4 sending my entire charge back?

5 MS. WINES: No, Your Honor, that will be fine.

6 THE COURT: From the Defense?

7 MR. HUFF: No, sir.

8 THE COURT: All right. I'm going to put that
9 together. I want you to go back and to begin your
10 deliberations. Somehow or another there was a mix-up in
11 the communications. I'm gonna double-check on my charge
12 to you guys. But be on standby and I'll send word with
13 Mr. Bibb for you to start, okay? But don't wait for my
14 charge to begin your deliberations.

15 THE FOREMAN: Okay.

16 THE COURT: Thank you very much.

17 (Whereupon, the Jury left the courtroom at
18 approximately 8:24 p.m.)

19 THE COURT: All right. Other than your previously
20 stated objection to my giving the charge again on the
21 bond, Mr. Huff, any objections to my directions or
22 questions to the jury?

23 MR. HUFF: No, sir.

24 THE COURT: Thank you very much.

25 Ms. Wines?

1 MS. WINES: No objection.

2 THE COURT: Very good. I'm going to put together
3 my charge and send a clean copy back to them and then
4 I'm gonna tell them to start deliberating right now,
5 okay?

6 MS. WINES: Yes, thank you, Judge.

7 THE COURT: Thank you very much.

8 MR. HUFF: Judge, that's going to be the entire
9 charge on every issue?

10 THE COURT: Everything I have in there.

11 MR. HUFF: Okay.

12 THE COURT: I think I read, and the reason I say
13 that it's improper just to focus on a statute is because
14 it takes them away from the rest, so I have to send back
15 my entire charge.

16 MR. HUFF: It's inappropriate, Judge. Thank you.

17 MS. WINES: Thank you, sir.

18 THE COURT: Thank you.

19 (Whereupon, the Jury continued their deliberations
20 at approximately 8:25 p.m.)

21 (Whereupon, there was another question from the
22 Jury at approximately 9:34 p.m.)

23 (Court's Exhibit # 13, jury note, was marked for
24 identification and received in Court's Evidence.)

25 THE COURT: Okay. I'll just go ahead and -- we

1 (Whereupon, the jury resumed their deliberations at
2 approximately 9:38 p.m.)

3 Verdict of the Jury:

4 (Whereupon, there was a verdict of the Jury at
5 approximately 9:53 p.m.)

6 (The Jury entered the courtroom at approximately
7 9:57 p.m.)

8 THE COURT: Mr. Gibson, I'm informed the Jury has
9 reached a verdict; is that correct?

10 THE FOREMAN: Yes, sir.

11 THE COURT: Is it unanimous?

12 THE FOREMAN: Yes, sir.

13 THE COURT: Would you pass the verdict form to the
14 bailiff, please, sir.

15 THE FOREMAN: (Complies.)

16 THE COURT: Would you like to publish this, please,
17 ma'am.

18 THE CLERK: State of South Carolina versus Anthony
19 C. Odom, Indictment Number 2010-GS-37-363 A. We, the
20 Jury, unanimously find that the Defendant, Anthony C.
21 Odom, is not guilty of criminal solicitation of a minor.

22 State of South Carolina versus Anthony Odom,
23 2010-GS-37-364 A, We, the Jury, unanimously find that
24 the Defendant, Anthony C. Odom, is guilty of criminal
25 sexual conduct [sic] with a minor.

1 Ladies and gentlemen of the Jury, if this was your
2 verdict and is still your verdict, please signify by
3 raising your right hand.

4 The record will show that all 12 raised their
5 right hand.

6 THE COURT: Mr. Gibson, ladies and gentlemen of the
7 jury, it's been a long week, a long day. I want to
8 thank you for your service to the County of Oconee, the
9 State of South Carolina. I was commenting to the
10 bailiff today that I don't think I've ever had a jury
11 that is as prompt as you have been on all occasions and
12 I appreciate it. I've watched you all during this long
13 trial and you stayed engaged.

14 From the Court's perspective we are never concerned
15 about the verdict, we are just concerned that the
16 process was followed. So we want to thank you for your
17 service. The good thing is you are done for the week.
18 The better thing is you can't do it for three years
19 unless you, if you don't want to.

20 I would like to speak with you for a quick minute
21 back in your jury room, and then we'll come back out and
22 we'll pass sentence. You are more than welcome to come
23 back in the courtroom and see me impose sentence, but
24 you are certainly not required in any fashion to do so.

25 If you would step back to your jury room, please.

1 chats. But we believe the sex offender registry is the
2 most important issue here, yes, sir.

3 THE COURT: All right. Thank you for your candor.
4 If you would bear with me one moment, please, sir.
5 (Whereupon, there was a pause in the proceedings.)

6 THE COURT: Was there ever a history of substance
7 abuse?

8 MR. HUFF: No, sir. I think Dr. Schwartz-Watts
9 said the same. No, sir.

10 Sentence of the Court:

11 THE COURT: All right. This will be the sentence
12 of the Court. I'm gonna sentence you to seven years.
13 I'm gonna suspend that on probation for five years. And
14 the reason I'm giving you probation is, number one, that
15 the State is seeking to have you put on the sex offender
16 registry so you can be checked and followed, and I
17 listened to that. I also gave credence to the fact that
18 you do have a significant medical condition. And
19 although you obviously didn't do the right thing in this
20 matter, you have given some service to the State from
21 your prior job. Otherwise, I'd put you in jail. But
22 I've given enough time over your head that if you do not
23 adhere strictly to what I tell you to, you will likely
24 be incarcerated.

25 Now, there will be conditions of that probation.