

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Allendale County

Alexander S. Macaulay, Circuit Court Judge

RECEIVED

MAY 29 2014

S.C. Supreme Court

RODERICK BRADLEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000675

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

ASHLEIGH R WILSON
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
OPINION 2014-UP-013 (S.C.Ct.App. – Filed January 8, 2014)	1
PETITION FOR REHEARING	3
ORDER DENYING REHEARING (Filed February 27, 2014)	12

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Roderick Bradley, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2009-145087

Appeal From Allendale County
Alexander S. Macaulay, Circuit Court Judge

Unpublished Opinion No. 2014-UP-013
Heard November 12, 2013 – Filed January 8, 2014

AFFIRMED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia, for Petitioner.

Attorney General Alan Wilson and Assistant Attorney
General Ashleigh Rayanna Wilson, both of Columbia, for
Respondent.

PER CURIAM: Following his conviction for criminal sexual conduct with a minor in the second degree and subsequent direct appeal, Roderick Bradley filed a petition for post-conviction relief (PCR) alleging ineffective assistance of counsel. After a PCR hearing, the PCR court found that Bradley's allegation was

procedurally barred by South Carolina Code subsection 17-27-20(b) (2003). Bradley petitions for a writ of certiorari from the denial of his application for PCR. We affirm.

1. We find the PCR court erred in finding Bradley's PCR allegation of ineffective assistance of counsel was procedurally barred by subsection 17-27-20(b), which provides that errors that could have been reviewed on appeal may not be asserted for the first time or reasserted in PCR proceedings. Bradley properly alleged ineffective assistance of counsel for the first time in his PCR application. See *State v. Carpenter*, 277 S.C. 309, 309-10, 286 S.E.2d 384, 384 (1982) ("Appellant's sole ground for appeal is ineffective assistance of counsel at trial. This Court usually will not consider that issue on appeal from a conviction. We follow that principle particularly when, as here, the issue was not argued to the trial judge. . . . [A]ppellant must assert his claim under the Post-Conviction Procedure Act." (internal citations omitted)).

2. We find Bradley's PCR allegation of ineffective assistance of counsel fails on the merits. At the PCR hearing, Bradley chose to rely on the record and presented no evidence of prejudice. See *Dawkins v. State*, 346 S.C. 151, 155-56, 551 S.E.2d 260, 262 (2001) ("For petitioner to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective assistance."); *id.* at 156, 551 S.E.2d at 262 ("To show prejudice, the applicant must show, but for counsel's errors, there is a reasonable probability the result of the trial would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." (internal citations omitted)); *State v. Grovenstein*, 335 S.C. 347, 351, 517 S.E.2d 216, 218 (1999) ("We have consistently required defendants to demonstrate prejudice due to improper jury influences.").

AFFIRMED.

FEW, C.J., WILLIAMS and THOMAS, JJ., concur.



COPY

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RODERICK BRADLEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

RECEIVED

JAN 22 2014

CLERK OF
APPELLATE COURT

Appeal from Allendale County

Alexander S. Macaulay, Circuit Court Judge

Unpublished Opinion No. 2014-UP-013

Appellate Case No. 2009-145087

PETITION FOR REHEARING

RECEIVED

JAN 22 2014

SC Court of Appeals

Pursuant to Rule 221(a), SCACR, counsel for Roderick Bradley petitions the Court for rehearing. Counsel submits that the Court overlooked the fact that the PCR judge failed to rule on the merits of the PCR allegation because the judge erroneously found that the PCR allegation was procedurally barred by S.C. Code §17-27-20(b). This Court correctly found the PCR judge erred in finding the PCR allegation of ineffective assistance of counsel was procedurally barred. This Court, however, after deciding that the PCR allegation was not barred, decided the merits of the ineffective assistance of counsel claim. Counsel respectfully submits that the proper remedy, as

requested in petitioner's brief, is a remand to the PCR judge to make findings on the merits of the ineffective assistance of counsel claim.

Alternatively, counsel respectfully submits that in addressing the merits of the ineffective assistance of counsel claim this Court overlooked the fact that if counsel had provided reasonably effective assistance of counsel by ascertaining if prospective jurors had been the victim of rape or sexual battery, counsel would have learned that Juror #117 was a rape victim and would have struck her from the jury. Counsel's failure to ascertain if any member of the jury was a victim of rape resulted in a rape victim sitting as a juror in a criminal sexual conduct with a minor case. The prejudice is demonstrated by the fact that but for counsel's deficient performance, he would have moved to strike Juror #117 for cause or used the fact that she was a rape victim as a material factor in exercising a peremptory strike. Additionally, under the narrow facts of this case, prejudice should be presumed where a rape victim sits as a juror in a rape case.

During voir dire the judge asked the following question:

Have any of you had close friends or yourself or had a close relative,
immediate family member, that's been a victim of a violent crime?

(App. p. 36, lines 17-19). None of the potential jurors responded. Juror 43, Juror 117 and Juror 54, were seated on the petit jury. (App. p. 349). Trial counsel did not object to the ambiguous nature of the question and did not request that the judge ask if any member of the jury pool was a victim of rape or criminal sexual conduct.

On September 4, 2004, less than two weeks after petitioner's conviction, Juror 54 made a sworn affidavit stating that during jury deliberations in petitioner's case, Juror 43 and Juror 117 disclosed that they had been victims of rape. Juror 54's affidavit stated that "every member of the jury heard these statements." (App. pp 292-293).

The alleged victim in petitioner's case delayed two weeks in reporting the incident. The delay became an issue at trial. (App. p. 84, lines 8 – p. 54, 55, lines 1-6; p. 90, lines 8-16). Juror 54's post-trial affidavit stated that "[o]ne of these jurors explained that her personal experience as a victim of rape explained the delay in the report of sexual battery allegations which was an issue in the case at bar. Every member of the jury was present when this statement was made." (App. pp 292-293).

Petitioner moved for a new trial on the basis that Juror 43 and Juror 117 intentionally concealed their history as rape victims in *voir dire*. (App. pp. 236-238). On August 18, 2005, a hearing was held on the motion for new trial. Juror 54 testified that Juror 43 admitted to being a rape victim during deliberations at appellant's trial. She testified that she saw Juror 43 in the courthouse on the morning of the post-trial hearing, and that Juror 43 denied her previous statement. (App. p. 5, lines. 5-25). Juror 43 did not testify at the post trial hearing¹. When asked about the timeframe of the alleged disclosures, Juror 54 testified as follows:

We went around, everybody went around, everybody stated their opinion as to why he was guilty, and if you didn't find him guilty, why. You had to say that. [Juror 43] said she's -- said why the little girl waited so long to tell her parents, because she was raped when she was younger and she waited a long time. Both of them [Jurors 43 and 117] stated that. (App. p. 6, line 24 – p. 7, lines 1-5).

Juror 54 testified that she was acquainted with some of petitioner's family members and went to their home after his trial. She said that "everyone was emotional, crying," and that they asked her "what when on" in the jury room. She testified that she relayed the information in her affidavit, and that she was contacted later to execute the affidavit. (App. p. 10, lines 4 - p. 11, lines

¹ In the order denying a new trial the judge noted that Juror 43's testimony was not necessary because the defense had no remaining peremptory strikes available at the time Juror 43 was chosen. (App. p. 299). According to the notes by the court reporter, however, defense counsel only used five of the ten allotted strikes. (App. p. 31).

1-24; p. 14, lines 16-20; p. 17, lines. 4-13). Juror 54 testified that she did not disclose her social acquaintance with petitioner's family because she believed, according to the court's questions, that she could give both sides a fair trial. (App. p. 11, lines 16 - p. 12 - 14, lines 1- 11).

Juror 117 was the only other witness to testify during the hearing on the motion for new trial. She denied that anyone disclosed being a rape victim during deliberations. The State objected to additional questions about the affidavit's underlying allegations. The trial judge ruled, "I'm going to end it here. Based on that testimony of the family and everything that went on after that, based on that response this hearing is over." (App. p. 288, lines 15 - 18).

Defense counsel requested the opportunity to proffer all pertinent testimony about the allegations. (App. p. 25, lines 18 - p. 26, lines 1- 7). The court did not allow additional witnesses but questioned Juror 117 as follows:

Q: This is highly unusual, but I'm going to do this on my own. Based on my prior *voir dire* a year ago, I'm going to pose this question. Have you ever been the victim of a crime that you consider to be a violent crime?

A: No, it wasn't a violent crime, but I have been raped.

(App. p. 290, lines 10-15).

In the order of dismissal the trial judge wrote, "This Court has made a finding of fact that neither the affidavit nor the testimony of Juror [54] is credible. Because Juror [54's] affidavit is not credible, no evidentiary hearing on the alleged concealment was required. Assuming *arguendo* that an evidentiary hearing was required, I conclude as a matter of law, that Juror [117] did not intentionally conceal information during *voir dire*." (App. p. 297).

On direct appeal the South Carolina Court of Appeals affirmed the holding of the trial judge writing, "Given the court's limited scope of review, the trial court's credibility findings, Juror

[117's] testimony, and the interest in protecting the integrity of jury deliberations this court is constrained to affirm the trial court's holding the jurors did not intentionally conceal information."

State v. Bradley, Op. No. 2007-UP-532 (S.C.Ct.App. filed November 19, 2007).

On November 12, 2008, petitioner filed an application for post conviction relief. On June 1, 2009, petitioner filed an amended application. In ground C of the amended application for post conviction relief petitioner specifically alleges, "Applicant was denied the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 14 of the South Carolina Constitution by trial counsel's failure to question jurors, through the trial judge, to determine a challenge for cause and to elicit facts enabling the intelligent use of preemptory strikes. State v. Woods, 345 S.C. 583 at 587, 550 S.E.2d 282 (2001)." (App. p. 321). During the PCR hearing, counsel proceeded solely on ground C alleged in the amended indictment. (App. p. 324, lines 14 – p. 325, lines 1-2). PCR counsel argued that trial counsel was ineffective in failing to ascertain if prospective jurors had been the victim of rape or sexual battery. (App. p. 326). At the close of the PCR hearing the PCR judge stated, "All right, I find that there is a preclusion by the direct appeal in this particular case. The issue now raised on post-conviction relief is a matter that should have been, could have been raised, if at all, in the direct appeal and, in fact, was addressed by the opinion of the Court of Appeals. Application denied." (App. p. 339, lines 4-9). In the order of dismissal the PCR judge wrote:

This Court need not address the merits of Applicant's allegations. This Court finds that these allegations raise direct appeal issues that are procedurally barred by S.C. Code Ann. §17-27-20(b)(2003). Post conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The applicant raised these issues in a post-trial motion and on direct appeal. The trial court denied the post-trial motion and the Court of Appeals affirmed the conviction

and sentence. Accordingly, this court summarily dismisses these allegations. (App. p. 344) (emphasis added).

This Court properly found that the PCR judge erred in finding that petitioner's allegation of ineffective assistance of counsel was procedurally barred. Based on the fact that the PCR judge did not rule on the merits of the ineffective assistance of counsel claim, this Court should have remanded the case and given the PCR judge an opportunity to rule on the merits of the claim. Instead, this Court wrote, "We find Bradley's PCR allegation of ineffective assistance of counsel fails on the merits. At the PCR hearing, Bradley chose to rely on the record and presented no evidence of prejudice" Counsel submits that this Court erred in failing to remand the case. Alternatively, counsel respectfully submits that this court erred in refusing to find prejudice where a rape victim sat as a juror in a rape case.

First, prejudice is demonstrated by the fact that if counsel had provided reasonably effective assistance of counsel by ascertaining if prospective jurors had been the victim of rape or sexual battery, counsel would have learned that Juror #117 was a rape victim and would have struck her from the jury.

In State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2001), an intentional juror concealment case, the Court wrote, "When a juror conceals information inquired into during *voir dire*, a new trial is required only when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges. Thompson v. O'Rourke, 288 S.C. 13, 15, 339 S.E.2d 505, 506 (1986)." 345 S.C. at 587-588, 550 S.E.2d at 284.

In Jones v. Cooper, 311 F.3d 306, 310 (4th Cir. 2002) the United States Court of Appeals for the Fourth Circuit wrote:

In McDonough Power Equip., Inc. v. Greenwood, 464 U.S. 548, 104 S.Ct. 845, 78 L.Ed.2d 663 (1984), the Supreme Court set forth a particularized test for determining whether a new trial is required in the context of juror deceit during voir dire or on jury questionnaires. That two-part test states that in order to obtain a new trial, the defendant “must first demonstrate that a juror failed to answer honestly a material question ... and then further show that a correct response would have provided a valid basis for a challenge for cause.” *Id.* at 556, 104 S.Ct. 845. The Court noted that a “trial represents an important investment of private and social resources, and it ill serves the important end of finality to wipe the slate clean simply to recreate the peremptory challenge process because counsel lacked an item of information **which objectively he should have obtained from a juror on voir dire examination.**” *Id.* at 555, 104 S.Ct. 845. Although in McDonough the juror's incorrect response in voir dire was an honest mistake, the test applies equally to deliberate concealment and to innocent non-disclosure, as our sister circuits have held. See, e.g., Zerka v. Green, 49 F.3d 1181, 1185 (6th Cir.1995); United States v. Langford, 990 F.2d 65, 68 (2d Cir.1993); Artis v. Hitachi Zosen Clearing, Inc., 967 F.2d 1132, 1141–42 (7th Cir.1992); Burton v. Johnson, 948 F.2d 1150, 1158 (10th Cir.1991); United States v. St. Clair, 855 F.2d 518, 522–23 (8th Cir.1988); United States v. Scott, 854 F.2d 697, 698 (5th Cir.1988). Although McDonough was a federal civil case on direct appeal, rather than a state criminal case on federal habeas review, we have expressly recognized its applicability also to federal habeas review. See Fitzgerald v. Greene, 150 F.3d 357, 362–63 (4th Cir.1998) (emphasis added).

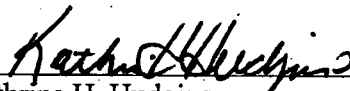
On direct appeal in the present case the South Carolina Court of Appeals held that the jurors did not intentionally conceal information. In footnote #2 the Court makes note of the ambiguous nature of the voir dire question. Based on the finding by the Court that the juror's failure to disclose that she was a rape victim was not intentional, the court did not address prejudice. State v. Bradley, Op. No. 2007-UP-532 (S.C.Ct.App. filed November 19, 2007). The two prong test of McDonough, however, applies to deliberate as well as innocent non-disclosures. The non-disclosure by Juror #117 was deemed innocent because trial counsel failed to specifically ask during voir dire if any member of the panel was the victim of rape or criminal sexual conduct. If counsel had properly conducted voir dire and specifically asked if any member of the panel was the victim of rape or criminal sexual conduct, Juror #117's answer would have provided a valid basis for a challenge for cause. This showing constitutes prejudice for purposes of post conviction relief and warrants the granting of a new trial.

Second, under the specific facts of this case, prejudice should be presumed when a victim of rape sits as a juror in a rape case. In State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001), the Court wrote:

All criminal defendants have the right to a trial by an impartial jury. U.S. CONST. amends. VI and XIV; S.C. CONST. art. I, § 14. To protect both parties' right to an impartial jury, the trial judge must ask potential jurors whether they are aware of any bias or prejudice against a party. State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998). "Through the judge, parties have a right to question jurors on their *voir dire* examination not only for the purpose of showing grounds for a challenge for cause, but also, within reasonable limits, to elicit such facts as will enable them intelligently to exercise their right of peremptory challenge." Gulledge, 277 S.C. at 370, 287 S.E.2d at 490.

Petitioner was denied the right to an impartial jury when a victim of rape sat as juror in petitioner's trial for criminal sexual conduct with a minor. No further showing of prejudice should be necessary. Petitioner seeks rehearing on these grounds.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender
E-Mail: khudgins@sccid.sc.gov
1330 Lady Street, Suite 401
Columbia, South Carolina 29201
(803) 734-1343

This 22nd day of January, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Allendale County
Alexander S. Macaulay, Circuit Court Judge

RODERICK BRADLEY,

PETITIONER,

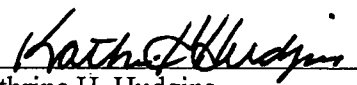
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

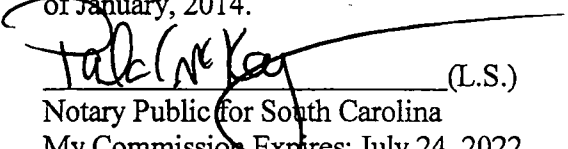
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Ashleigh R Wilson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 21st day of January, 2014.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 22nd day
of January, 2014.


(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

The South Carolina Court of Appeals

Roderick Bradley, Petitioner,

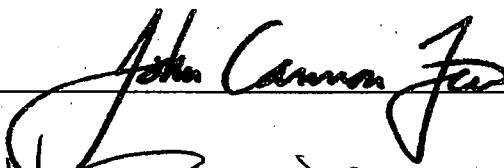
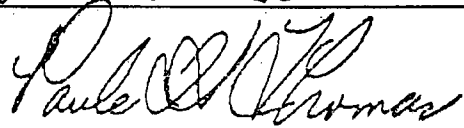
v.

State of South Carolina, Respondent.

Appellate Case No. 2009-145087

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

	J.
	J.
	J.

Columbia, South Carolina

cc:

Kathrine Haggard Hudgins, Esquire
Ashleigh Rayanna Wilson, Esquire
Alan McCrory Wilson, Esquire

RECEIVED

FEB 27 2014

CLERK OF
SOUTH CAROLINA

FILED

Feb. 27, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Allendale County

Alexander S. Macaulay, Circuit Court Judge

RECEIVED

MAY 29 2014

S.C. Supreme Court

RODERICK BRADLEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

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

ATTORNEY FOR PETITIONER

HENRY DARGAN MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

P. O. Box 11549
Columbia, S. C. 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....	i
TRIAL TRANSCRIPT AUGUST 18, 2004.....	1
TRIAL TRANSCRIPT AUGUST 25, 2004.....	29
INDICTMENT AND SENTENCING SHEET	233
DEFENDANT'S MOTION FOR A NEW TRIAL DATED SEPTEMBER 9, 2004	236
MOTION TO SUSPEND APPEAL AND GRANT LEAVE TO FILE A RULE 29(b) MOTION FOR A NEW TRIAL DATED SEPTEMBER 20, 2004	240
STATE'S RETURN TO MOTION TO SUSPEND APPEAL DATED SEPTEMBER 30, 2004.....	244
REPLY TO STATE'S RETURN DATED OCTOBER 5, 2004	249
ORDER DENYING MOTION TO SUSPEND APPEAL DATED OCTOBER 18, 2004	252
AMENDED MOTION TO SUSPEND APPEAL DATED DECEMBER 22, 2004	253
ORDER SUSPENDING APPEAL DATED APRIL 25, 2005	259
RULE 29(b) MOTION FOR NEW TRIAL FOLLOWING REMAND DATED MAY 2, 2005 ...	261
TRANSCRIPT OF MOTION FOR NEW TRIAL.....	265
JUROR AFFIDAVIT	292
ORDER DENYING MOTION FOR NEW TRIAL	294
MOTION TO RECONSIDER.....	300
APPLICATION FOR POST-CONVICTION RELIEF.....	304
RETURN AND MOTION TO DISMISS	315
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	319

POST-CONVICTION RELIEF HEARING TRANSCRIPT.....	322
ORDER OF DISMISSAL	342
<u>STATE V. RODERICK BRADLEY</u> , OP. NO. 2007-UP-532 (S.C. Ct. App.)	
FILED NOVEMBER 19, 2007	346

STATE OF SOUTH CAROLINA)
COUNTY OF ALLENDALE)

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
PLAINTIFF,)
V.)
RODRICK BRADLEY,)
DEFENDANT.)

DOCKET NO. 03-GS-03-209

TRANSCRIPT OF RECORD
(HEARING)

AUGUST 18, 2005
ALLENDALE, SOUTH CAROLINA

BEFORE:

HONORABLE PAUL M. BURCH

APPEARANCES:

FOR THE PLAINTIFF:

SUSAN ROWELL, DEPUTY
SOLICITOR

FOR THE DEFENDANT:

JIM BROWN, ESQUIRE

NANCY M. MONTEITH, CERTIFIED VERBATIM REPORTER
RESIDENT COURT REPORTER, SIXTH JUDICIAL CIRCUIT

1 THE COURT: THIS IS THE MATTER OF STATE OF SOUTH
2 CAROLINA V. RODRICK BRADLEY, A GENERAL SESSIONS
3 MATTER. THERE WAS A TRIAL IN THIS ABOUT A YEAR AGO
4 DOWN HERE IN ALLENDALE COUNTY. MR. BRADLEY WAS
5 CONVICTED AND SENTENCED, AND AT THIS POINT WE HAVE A
6 MOTION AND A REMAND BY THE COURT OF APPEALS.

7 MR. BROWN, THAT IS YOUR MOTION, SO IF YOU WOULD,
8 STATE THE ISSUES FOR THE RECORD SO WE'LL BE CLEAR.

9 MR. BROWN: MAY IT PLEASE THE COURT, YOUR HONOR.
10 THIS MOTION HAS BEEN FILED, AND I HANDED YOURSELF,
11 YOUR HONOR, AND THE SOLICITOR A COPY HERE THIS
12 MORNING. BRIEFLY, THERE'S AN ALLEGATION THAT TWO
13 JURORS INTENTIONALLY CONCEALED SOME INFORMATION THAT
14 SHOULD HAVE BEEN REVEALED DURING THE COURT'S VOIR
15 DIRE OF THE JURY PANEL, AND FURTHER WE WOULD ARGUE
16 THAT THE CONCEALMENT REQUIRES THE GRANTING OF A NEW
17 TRIAL BECAUSE THAT INFORMATION, IF IT WOULD NOT HAVE
18 BEEN CONCEALED, WOULD HAVE SUPPORTED THE CHALLENGE
19 FOR CAUSE AND PEREMPTORY STRIKE, AND WE'D ASK THE
20 COURT TO ALLOW US TO PRESENT SOME TESTIMONY.

21 WE HAVE ATTACHED AN AFFIDAVIT THAT WOULD SERVE,
22 WE BELIEVE, AS THE BACKBONE OR BASIS FOR ONE OF THE
23 WITNESSES WE WISH TO CALL TODAY. ALL THREE WITNESSES
24 WE WISH TO HAVE CALLED AT SOME POINT IN TIME THIS
25 MORNING ARE HERE, AND I WOULD ASK THE COURT IF YOU

1 WOULD CONSIDER SEQUESTERING THE JURORS AS WITNESSES.
2 THE ONLY REASON I DO THAT IS I WOULD HATE FOR THEM TO
3 HEAR WHAT EACH OTHER SAYS, AND, OF COURSE, THAT'S UP
4 TO YOUR HONOR.

5 THE COURT: WHAT'S THE POSITION OF THE STATE?

6 MS. ROWELL: I REALLY DON'T SEE ANY NEED TO
7 SEQUESTER THEM, BUT I DON'T HAVE ANY OBJECTION TO IT
8 IF WE'VE GOT ROOMS TO SEQUESTER THEM.

9 THE COURT: OKAY. WE HAVE PRESENT, THEN,
10 POTENTIAL WITNESSES FOR BOTH SIDES OF THIS ISSUE THAT
11 WERE JURORS IN THAT CASE.

12 MS. ROWELL: YOUR HONOR, WE HAVE SEVEN JURORS
13 HERE. WE SUBPOENAED THE JURY PANEL; OF THAT WE HAVE
14 SEVEN JURORS HERE. ONE OF THEM IS IN A SIDE ROOM
15 WITH HER CHILDREN. I THINK THE OTHER ONES ARE HERE,
16 AND I DON'T KNOW THAT THEY WOULD BE FOR BOTH SIDES OR
17 EITHER SIDE, BUT WE DO HAVE SEVEN PEOPLE WHO COULD
18 POSSIBLY TESTIFY.

19 THE COURT: ALL RIGHT.

20 (TO MR. BROWN) I'M GOING TO GRANT YOUR MOTION.

21 MR. BROWN: THANK YOU, YOUR HONOR.

22 THE COURT: IF YOU'LL TAKE CARE OF -- WHICH ONE
23 IS THE FIRST WITNESS THAT YOU'RE GOING TO CALL?

24 MR. BROWN: THE FIRST WITNESS I'LL CALL WOULD BE
25 UTIA GRANT.

1 THE COURT: OTHER THAN MS. GRANT, IF ALL THE
2 POTENTIAL WITNESSES WILL STEP OUT WITH THE SHERIFF,
3 WE'LL FIND SOME ROOM.

4 MR. BROWN: AND, YOUR HONOR, AT THIS TIME I'D
5 CALL UTIA GRANT TO THE STAND.

6 (WHEREUPON, UTIA GRANT, HAVING FIRST BEEN DULY
7 SWORN, TESTIFIES AS FOLLOWS).

8 MS. ROWELL: YOUR HONOR, I WOULD INQUIRE AS TO
9 WHAT THE WITNESS HAS IN HER HAND.

10 A THE AFFIDAVIT.

11 THE COURT: IT'S THE AFFIDAVIT THAT SHE HAS
12 SIGNED.

13 MS. ROWELL: DOES SHE NEED THE AFFIDAVIT OR CAN
14 SHE TESTIFY FROM HER OWN MEMORY?

15 A THAT'S FINE. I DON'T NEED IT. (HANDING AFFIDAVIT TO THE
16 COURT).

17 MR. BROWN: MAY IT PLEASE THE COURT, YOUR HONOR.

18 DIRECT EXAMINATION

19 BY MR. BROWN:

20 Q MS. GRANT, MY NAME IS JIM BROWN, AND YOU MAY RECALL YOU AND
21 I SPOKE ABOUT THIS TIME LAST YEAR. HAVE WE EVER MET BEFORE
22 TODAY?

23 A NO, SIR.

24 Q DID YOU FILL OUT AN AFFIDAVIT?

25 A YES, SIR.

1 Q REGARDING YOUR JURY SERVICE IN THE CASE?

2 A YES, SIR.

3 Q IN STATE V. RODRICK BRADLEY?

4 A YES, SIR.

5 Q AND BASICALLY I'M GOING TO ASK YOU THIS QUESTION. DID YOU
6 TRUTHFULLY FILL OUT THIS AFFIDAVIT?

7 A YES, SIR.

8 Q AND THE QUESTIONS I WANT TO ASK YOU ABOUT -- YOU'VE
9 INDICATED THAT THE JUROR NAMED MS. FIELDS AND A JUROR NAMED
10 MS. WHITNEY BOTH INDICATED AT SOME POINT DURING THE TRIAL
11 THAT THEY HAD BEEN VICTIMS OF RAPE?

12 A YES, SIR, BUT A MINUTE AGO SHE LOOKED AT MY PAPER,
13 CHRISTINA FIELDS. SHE SAID THAT SHE DIDN'T SAY THAT, SHE
14 WAS NOT RAPED. SHE SAID SHE WROTE HER GRANDMOTHER AND HER
15 MOTHER AND SAID SHE WAS NOT RAPED, BUT LAST YEAR WHEN WE
16 WENT IN THE ROOM SHE SAID SHE WAS RAPED AND SHE SEEN WHY
17 THE LITTLE GIRL PROBABLY WAITED SO LONG TO TELL HER MOTHER.
18 BUT JUST NOW SHE'S JUST STATED THAT SHE WAS NEVER RAPED
19 BEFORE.

20 Q SHE TOLD YOU THAT LAST YEAR?

21 A NO, JUST A MINUTE AGO. SHE WAS, LIKE, SHE WAS NOT RAPED.

22 Q SHE TOLD YOU SHE WAS A VICTIM OF RAPE LAST YEAR?

23 A LAST YEAR.

24 Q AND DID MS. WHITNEY MAKE A SIMILAR ALLEGATION?

25 A YES, SIR.

1 Q AND --

2 MR. BROWN: YOUR HONOR, I DON'T HAVE ANY OTHER
3 QUESTIONS OF THIS WITNESS.

4 THE COURT: SOLICITOR?

5 CROSS-EXAMINATION

6 BY MS. ROWELL:

7 Q MS. GRANT, YOUR AFFIDAVIT SAYS THAT DURING JURY
8 DELIBERATIONS, THAT MS. FIELDS AND MS. WHITNEY SAID THAT
9 THEY HAD BEEN RAPED. IS THAT CORRECT?

10 A YES, MA'AM.

11 Q AT WHAT POINT IN DELIBERATIONS DID THIS OCCUR?

12 A WHEN WE WERE IN THE LAST TIME.

13 Q COULD YOU SPEAK IN THE MICROPHONE, PLEASE?

14 A WHEN WE WERE IN THE ROOM THE LAST TIME, THAT'S WHEN THEY
15 STATED THAT, WHEN WE HAD COME TO THE CONCLUSION. THAT WAS
16 THE LAST TIME WE WAS THERE.

17 Q WHEN YOU HAD COME TO A CONCLUSION? CAN YOU LOWER THE
18 MICROPHONE AND SPEAK INTO IT, PLEASE?

19 A THE LAST TIME WE WENT INTO THE ROOM FOR THE CONCLUSION AS
20 TO GUILTY OR NOT GUILTY, THAT'S WHEN THEY SAID THAT.
21 EVERYBODY VOICED THEIR OPINION, AND THAT WAS ONE OF THEIR
22 OPINIONS, SO -- THAT'S IT.

23 Q YOU SAID AFTER THEY VOTED GUILTY?

24 A NO. WE WENT AROUND, EVERYBODY WENT AROUND, EVERYBODY
25 STATED THEIR OPINION AS TO WHY HE WAS GUILTY, AND IF YOU

1 DIDN'T FIND HIM GUILTY, WHY. YOU HAD TO SAY THAT.
2 CHRISTINE FIELDS SAID SHE'S -- SAID WHY THE LITTLE GIRL
3 WAITED SO LONG TO TELL HER PARENTS, BECAUSE SHE WAS RAPED
4 WHEN SHE WAS YOUNGER AND SHE WAITED A LONG TIME. BOTH OF
5 THEM STATED THAT -- WELL, WHITNEY AND CHRISTINE FIELDS DID.

6 Q NOW, HOW WAS IT THAT YOU HAPPENED TO CALL MR. BROWN'S
7 OFFICE?

8 A I DID NOT CALL HIM, HE CALLED ME.

9 Q HE CALLED YOU?

10 A UH-HUH.

11 Q WELL, MR. BROWN JUST SAID THAT YOU CALLED HIS OFFICE.

12 A NO. WE TALKED, WE TALKED BEFORE.

13 Q WHAT DO YOU MEAN, YOU "TALKED BEFORE"?

14 A WE TALKED, LIKE -- WHEN I HAD TO SIGN THE AFFIDAVIT, WE
15 TALKED THEN.

16 Q YOU TALKED WITH MR. BROWN?

17 A UH-HUH, SO THAT HE COULD TELL ME WHERE TO MEET UP WITH THE
18 WOMAN WHO HAD THE AFFIDAVIT FOR ME TO SIGN.

19 Q YOU TALKED TO HIM ON THE TELEPHONE?

20 A I TALKED TO HIM, YES, SIR -- YES, MA'AM.

21 Q WHEN YOU HAD YOUR FIRST CONVERSATION WITH MR. BROWN'S
22 OFFICE, HOW DID THAT HAPPEN?

23 A OVER THE TELEPHONE.

24 Q OVER THE TELEPHONE?

25 A FOR HIM TO TELL HIS, I GUESS, WHATEVER, SECRETARY, WHERE TO

1 MEET ME AT SO I COULD SIGN THE AFFIDAVIT, BUT WE DISCUSSED
2 THIS OVER THE PHONE, EVERYTHING THAT'S ON THE AFFIDAVIT.

3 Q AND DID YOU CALL HIM TO DISCUSS IT?

4 A NO, MA'AM, HE CALLED ME.

5 Q HE CALLED YOU?

6 A UH-HUH.

7 Q DID YOU CALL HIS OFFICE BEFORE HE CALLED YOU?

8 A NO, MA'AM.

9 Q DID YOU LEAVE A MESSAGE AT HIS OFFICE FOR HIM TO CALL YOU?

10 A NO, MA'AM.

11 Q HE CALLED YOU?

12 A UH-HUH.

13 Q AND HAD YOU SPOKEN TO ANY MEMBER OF RODRICK BRADLEY'S
14 FAMILY BEFORE HE CALLED YOU?

15 A I COULD HAVE, YES.

16 Q OKAY. DID YOU SPEAK TO ANYBODY NAMED RODELLE?

17 A I'M NOT SURE.

18 Q DID YOU SPEAK TO ANYBODY NAMED YVETTE?

19 A I'M NOT SURE ABOUT THAT EITHER.

20 Q DO YOU KNOW ANY MEMBERS OF HIS FAMILY?

21 A I KNOW THEM, BUT I DON'T KNOW THEM BY NAME. I KNOW MOST OF
22 THEM BY NAME, BUT THE ONES YOU JUST CALLED, I COULD HAVE
23 SPOKE TO THEM, BUT I'M NOT SURE BECAUSE I DON'T REMEMBER
24 THEIR NAMES.

25 Q DID ANY OF THEM EVER CONTACT YOU ABOUT THIS?

1 A YES, MA'AM, BUT I DIDN'T SPEAK WITH THEM.

2 Q WELL, TELL ME THE CIRCUMSTANCES UNDER WHICH THEY CONTACTED
3 YOU.

4 A TELEPHONE CALLS.

5 Q WHO CALLED YOU?

6 A I DON'T KNOW. IT'S THEIR NUMBER, BUT I DID NOT TALK TO
7 THEM, BUT I GUESS THEY WAS TRYING TO CONTACT ME. BUT I DID
8 NOT RETURN THE CALL, SO I'M NOT SURE WHO CALLED ME.

9 Q SO YOUR TESTIMONY IS, RIGHT NOW, THAT YOU WENT HOME FROM
10 JURY DELIBERATIONS AFTER THIS VERDICT, CORRECT?

11 A UH-HUH.

12 Q AND YOU DIDN'T DISCUSS THIS CASE WITH ANYBODY, WITH ANY
13 LAWYERS OR ANY MEMBERS --

14 A NOT THAT DAY. I DON'T REMEMBER --

15 Q -- OR ANY MEMBERS OF THE DEFENDANT'S FAMILY THAT DAY?

16 A YES, I TALKED WITH SOME OF THEIR FAMILY MEMBERS, BUT IT
17 WASN'T ABOUT THE CASE. IT WAS -- WELL, IT WAS ABOUT THE
18 CASE, WHAT WENT ON AND STUFF LIKE THAT, SO, YES.

19 Q SO YOU TALKED WITH THEM AT THE COURTHOUSE?

20 A IT WAS LATER ON THAT DAY, BUT I DIDN'T TALK TO HIS LAWYER
21 THAT DAY.

22 Q DID YOU TALK TO THEM AT THE COURTHOUSE?

23 A NO.

24 Q WHERE DID YOU TALK TO THEM?

25 A AT THEIR HOUSE. IT WAS AFTER COURT WAS OVER, AT THEIR

1 HOUSE.

2 Q AT THEIR HOUSE?

3 A UH-HUH.

4 Q SO YOU WENT OVER TO THEIR HOUSE AFTER COURT?

5 A WELL, AFTER THE AFFIDAVIT WAS SIGNED -- IT WASN'T THAT DAY.
6 I'M NOT SURE IF IT WAS THAT SAME, EXACT DAY.

7 Q SO I'M SAYING BEFORE YOU SIGNED THAT AFFIDAVIT?

8 A I SPOKE WITH SOME OF THEIR FAMILY MEMBERS AFTER COURT WAS
9 OVER THAT DAY, YES.

10 Q AND WHERE WERE YOU WHEN YOU SPOKE WITH SOME OF THE FAMILY
11 MEMBERS THAT DAY?

12 A AT THEIR HOUSE.

13 Q AT THEIR HOUSE? NOW, WHAT WERE YOU DOING AT THEIR HOUSE
14 WHEN YOU SAY YOU DON'T EVEN KNOW WHO THE FAMILY MEMBERS
15 ARE?

16 A IT WAS AFTER COURT WAS OVER, SO EVERYTHING WAS EMOTIONAL
17 AND I WAS EMOTIONAL ABOUT WHAT HAPPENED. SO EVERYBODY WAS
18 OVER AT THEIR HOUSE, SO THAT'S WHY I WENT, TOO.

19 Q SO YOU HAD JUST BEEN PART OF THE JURY --

20 A THE CASE WAS OVER.

21 Q -- THAT FOUND MR. BRADLEY GUILTY, AND YOU WENT OVER TO
22 HIS -- WAS IT HIS MOTHER'S HOUSE OR HIS SISTER'S HOUSE?

23 A HIS MOTHER'S HOUSE, I GUESS.

24 Q WHAT HAPPENED AFTER YOU GOT THERE?

25 A NOTHING, REALLY. BASICALLY EVERYBODY WAS EMOTIONAL,

1 CRYING.

2 Q AND WHAT DID HIS RELATIVES ASK YOU?

3 A WHAT WENT ON, THINGS LIKE THAT.

4 Q AND WHAT DID YOU SAY?

5 A I EXPLAINED TO THEM WHAT TWO OF THE MEMBERS SAID ON THE
6 AFFIDAVIT BASICALLY, SO THAT'S IT. WHATEVER IS IN THE
7 AFFIDAVIT IS WHAT WE TALKED ABOUT.

8 Q THE DAY OF THE TRIAL?

9 A AFTER HE WAS FOUND GUILTY.

10 Q AFTER HE WAS FOUND GUILTY, THE DAY OF THE TRIAL?

11 A UH-HUH.

12 Q AND THEN DID YOU SPEAK TO ANY FAMILY MEMBERS?

13 A NO.

14 Q AFTER THAT DAY, BEFORE YOU WROTE THE AFFIDAVIT?

15 A MOST OF THEM I'M FRIENDS WITH.

16 Q DID YOU DISCLOSE THAT YOU WERE FRIENDS WITH THE FAMILY
17 MEMBERS DURING THE VOIR DIRE?

18 A NO, BECAUSE THE JUDGE ASKED COULD I BE FAIR. SO I WAS
19 FAIR.

20 Q DID YOU DISCLOSE THAT YOU WERE A FRIEND OF THE FAMILY?

21 A NO, YOU DIDN'T HAVE TO.

22 Q I BEG YOUR PARDON?

23 A I DID NOT HAVE TO. HE ASKED COULD I BE FAIR TO BOTH SIDES,
24 SO I DID NOT.

25 MS. ROWELL: I BEG THE COURT'S INDULGENCE, PLEASE.

1 Q I'M GOING TO READ SOMETHING FROM THE COURT RECORD. DURING
2 THE VOIR DIRE -- THE VOIR DIRE IS THE QUESTIONING THAT
3 TAKES PLACE IN FRONT OF THE ENTIRE JURY PANEL. DO YOU
4 REMEMBER THAT?

5 A YES, MA'AM.

6 Q PARDON?

7 A YES.

8 Q OKAY. DO YOU REMEMBER THE JUDGE ASKING, JUDGE BURCH, RIGHT
9 HERE, "ARE ANY OF YOU -- I'VE ALREADY ASKED THIS -- RELATED
10 TO OR DO YOU HAVE ANY CLOSE PERSONAL BUSINESS, SOCIAL,
11 FRATERNAL, RELIGIOUS RELATIONSHIP WITH THE DEFENDANT
12 RODRICK BRADLEY? IF SO, YOU NEED TO STAND AT THIS TIME"?

13 A NO, I DON'T REMEMBER THAT.

14 Q PARDON?

15 A NO, I DON'T REMEMBER THAT BEING SAID, LIKE HOW YOU JUST
16 READ IT.

17 Q YOU DON'T REMEMBER THAT, OKAY. DID YOU RESPOND TO THAT AND
18 STAND UP? BECAUSE A LOT OF PEOPLE STOOD UP AND SAID THINGS
19 LIKE, "A CLOSE FRIEND OF THE FAMILY". THAT WAS SHERRY
20 WHITTER. AMANDA GRAVES SAID, "ME AND HIS SISTER USED TO BE
21 TOGETHER. ME AND HER WENT TO SCHOOL TOGETHER." LORENZO
22 BADGER, "ME AND THE DEFENDANT IS CLOSE FRIENDS." DERRICK
23 YOUNG ANSWERED, "CLOSE FRIEND". MARION COATES, "I'M CLOSE
24 FRIENDS WITH HIS SISTER."

25 "ONCE AGAIN, NOW, ARE ANY OF YOU RELATED TO OR HAVE

1 ANY CLOSE, PERSONAL, RELIGIOUS, SOCIAL OR FRATERNAL
2 RELATIONSHIP WITH LEXIE BROWN?" SO WHEN THAT WAS ASKED,
3 WHY DIDN'T YOU STAND UP?

4 A BECAUSE HE ALSO SAID IF YOU THOUGHT YOU COULD BE FAIR, YOU
5 COULD STAY ON THE TRIAL. SO I THOUGHT I COULD BE FAIR.

6 Q HE DIDN'T AT THAT TIME SAY THAT, DID HE?

7 A I'M NOT SURE. I CAN'T REMEMBER.

8 Q TO THAT ONE QUESTION YOU DIDN'T ANSWER, DID YOU?

9 A NO.

10 Q BUT YOU KNEW THE FAMILY WELL, DIDN'T YOU?

11 A YES, I KNEW THEM PRETTY WELL, MOST OF THEM.

12 Q YOU KNEW THEM WELL ENOUGH TO GO OVER TO THEIR HOUSE BECAUSE
13 EVERYBODY WAS UPSET AFTERWARDS, DIDN'T YOU?

14 A YES, BECAUSE I'M FRIENDS WITH MOST OF THEM, YES.

15 Q YOU'RE FRIENDS WITH MOST OF THEM, BUT WHEN THEY ASKED DID
16 YOU HAVE ANY SOCIAL RELATIONSHIP WITH ANY MEMBER OF HIS
17 IMMEDIATE FAMILY, YOU DIDN'T STAND UP, DID YOU?

18 A NO, BECAUSE I ALSO REMEMBER HIM SAYING IF YOU COULD BE FAIR
19 TO BOTH SIDES, SO THAT'S WHY I DID NOT STAND.

20 Q WELL, DID YOU REMEMBER THAT HE ASKED ALL THE OTHER JURORS
21 WHO STOOD UP WHETHER OR NOT THEY COULD BE FAIR?

22 A YES.

23 Q BUT YOU DIDN'T STAND UP TO GIVE HIM A CHANCE TO ASK YOU
24 THAT, DID YOU?

25 A WELL --

1 Q SO YOU DIDN'T LET HIM KNOW --

2 A HE ASKED THE QUESTION --

3 Q YOU DIDN'T LET THE COURT KNOW THAT YOU WERE FRIENDS, DID
4 YOU?

5 A WHAT DO YOU MEAN? CAN YOU ASK YOUR QUESTION AGAIN?

6 Q CERTAINLY, MA'AM. I'M SORRY. YOU DIDN'T LET THE COURT
7 KNOW, IN OPEN COURT, THAT YOU WERE FRIENDS WITH THE FAMILY,
8 DID YOU?

9 A I DID NOT. DID I HAVE TO?

10 Q YES, THAT'S THE QUESTION.

11 A BUT I THOUGHT I COULD BE FAIR, SO WHY?

12 Q THAT WASN'T THE QUESTION, THANK YOU. SO YOU WENT OVER TO
13 THE HOUSE THAT DAY, AND THEN WHAT'S THE NEXT THING THAT
14 HAPPENED THAT DREW YOUR ATTENTION BACK TO THIS CASE?

15 A WHAT DO YOU MEAN?

16 Q WHAT WAS THE NEXT THING THAT HAPPENED? YOU SAID MR. BROWN
17 CALLED YOU.

18 A YES, THAT WAS A COUPLE OF DAYS AGO.

19 Q A COUPLE OF DAYS LATER?

20 A AFTER I RECEIVED THE PHONE CALL, YES, BUT HE WAS JUST
21 CALLING TO LET ME KNOW THAT I WAS SUBPOENAED AND I HAD TO
22 BE IN COURT AND IF NOT, THEY WOULD PUT OUT A BENCH WARRANT
23 FOR ME.

24 Q THIS WAS A COUPLE OF DAYS AGO?

25 A UH-HUH, BECAUSE I NO LONGER LIVE IN ALLENDALE. I LIVE IN

1 AIKEN NOW, SO I DID NOT KNOW I WAS SUBPOENAED.

2 Q SO DID YOU SAY WHAT MR. BROWN SAID?

3 A HE WAS JUST CALLING TO LET ME KNOW I WAS SUBPOENAED AND I
4 HAD TO SHOW UP IN COURT. IF NOT, A BENCH WARRANT WOULD BE
5 PUT OUT FOR ME.

6 Q OKAY.

7 A BECAUSE I DON'T LIVE IN ALLENDALE ANYMORE. I LIVE IN
8 AIKEN.

9 Q OKAY. BUT GOING BACK TO THE PERIOD RIGHT AFTER THE TRIAL,
10 YOU LEFT THEIR HOUSE THAT DAY, RIGHT?

11 A UH-HUH.

12 Q DID YOU HAVE ANY MORE CONVERSATIONS WITH THEM BEFORE YOU
13 WROTE THE AFFIDAVIT?

14 A NO, MA'AM.

15 Q AND THEM BEING THE MEMBERS OF HIS FAMILY, NONE --

16 A DID I HAVE ANY QUESTIONS, WHAT?

17 Q ANY MORE CONVERSATIONS?

18 A CAN YOU FINISH?

19 Q WITH THE FAMILY OF MR. BRADLEY BEFORE YOU WROTE THE
20 AFFIDAVIT.

21 A I'M NOT SURE WHAT YOU MEAN. I'M NOT SURE HOW TO ANSWER
22 THAT.

23 Q BETWEEN THE DAY OF THE VERDICT AND THE TIME YOU TALKED TO
24 MR. BROWN, DID YOU TALK TO ANY OF MR. BRADLEY'S FAMILY
25 MEMBERS?

1 A YOU SAY BETWEEN THE DAY OF THE VERDICT?

2 Q THE VERDICT. YOU WENT TO THE HOUSE, RIGHT?

3 A IMMEDIATELY AFTER THE CASE WAS OVER.

4 Q AFTER THE CASE WAS OVER.

5 A DID I HAVE ANY CONVERSATIONS?

6 Q WITH --

7 A WHAT DO YOU MEAN, "CONVERSATIONS"?

8 Q DID YOU TALK TO --

9 A YES, I TALKED TO THE FAMILY MEMBERS. LIKE I SAID, I WENT
10 OVER BECAUSE EVERYBODY WAS EMOTIONAL.

11 Q I ASKED YOU AFTER THAT DAY.

12 A NO.

13 Q SO THE NEXT TIME --

14 A I'M FRIENDS WITH THEM, SO WE SPEAK, WE TALK, YOU KNOW, BUT
15 NOT ABOUT THE CASE, NO.

16 Q DO YOU REMEMBER TALKING TO THE SOLICITOR'S INVESTIGATOR,
17 BRUCE DAVIS?

18 A UH-HUH. THAT WAS A COUPLE OF DAYS AGO, THE SAME DAY I
19 TALKED TO HIM, JIM BROWN.

20 Q TWO DAYS AGO?

21 A UH-HUH.

22 Q AND DO YOU REMEMBER TELLING HIM THAT THE FAMILY KEPT
23 TALKING TO YOU ABOUT THIS CASE?

24 A NO, I DID NOT.

25 Q YOU DIDN'T TELL HIM THAT?

1 A I SAID THAT HE WAS CALLING ME ABOUT THE CASE, I GUESS. I
2 DID NOT SAY "TALKED TO ME" BECAUSE I HAVEN'T TALKED TO THEM
3 ABOUT THE CASE.

4 Q OKAY. AND IT'S YOUR TESTIMONY THAT YOU DID NOT INITIATE
5 ANY CONTACT WITH JIM BROWN, THAT HE CALLED YOU?

6 A ON THE PHONE, WHEN HE CALLED THAT DAY ABOUT -- THE SAME DAY
7 I TALKED TO HIM (INDICATING INVESTIGATOR), THE SAME DAY I
8 TALKED TO HIM (INDICATING MR. BROWN).

9 Q NO, I'M TALKING ABOUT WHEN YOU WROTE THE AFFIDAVIT.

10 A I TALKED TO HIM ON THE PHONE SO HE COULD TELL ME WHERE TO
11 MEET, I GUESS, HIS SECRETARY ABOUT THE AFFIDAVIT.

12 Q AND DID YOU CALL HIS OFFICE?

13 A NO, MA'AM.

14 MS. ROWELL: ONE MOMENT, PLEASE, YOUR HONOR.

15 Q THAT'S ALL THE QUESTIONS I HAVE FOR YOU RIGHT NOW.

16 MR. BROWN: BRIEFLY?

17 THE COURT: ALL RIGHT.

18 MR. BROWN: THANK YOU, YOUR HONOR.

19 REDIRECT EXAMINATION

20 BY MR. BROWN:

21 Q MS. GRANT, DID YOU EVER ASK ME NOT TO SPEAK WITH YOU?

22 A NO, SIR.

23 Q AND WAS I DOING ANYTHING TO TRY TO SPEAK TO YOU AGAINST
24 YOUR WILL?

25 A NO, SIR.

1 Q AND ONE OTHER THING. ONE OF THE ISSUES, SINCE WE'VE GONE
2 INTO SOME DELIBERATIONS -- ONE OF THE ISSUES IN THE
3 DELIBERATIONS WAS REGARDING THE DELAY IN THE VICTIM'S
4 REPORTING OF THE CRIME?

5 A SIR?

6 Q ONE OF THE ISSUES YOU ALL DELIBERATED IN THE JURY ROOM WAS
7 ABOUT THE ALLEGED VICTIM NOT REPORTING THIS CRIME?

8 A CAN YOU SAY THAT --

9 Q IN OTHER WORDS, I'M SORRY, IN YOUR AFFIDAVIT YOU MENTIONED
10 THAT THERE WAS SOME DISCUSSION REGARDING WHAT I CALL THE
11 DELAY IN REPORTING. IN OTHER WORDS, THE ALLEGED VICTIM
12 DIDN'T TELL ANYBODY THAT SHE HAD BEEN RAPED?

13 A UH-HUH.

14 Q AND IS THAT WHAT THESE TWO JURORS ALLEGEDLY SAID, "THAT
15 DOESN'T MEAN ANYTHING BECAUSE WE WERE RAPE VICTIMS, AND WE
16 DIDN'T REPORT IT"?

17 A NO, IT WAS JUST BASICALLY EVERYBODY STATED THEIR OWN
18 OPINION, AND WE WAS JUST TALKING ABOUT IT AND EVERYTHING,
19 SO --

20 Q BUT THEY SAID THAT THEY WERE VICTIMS OF RAPE. WHY DID THAT
21 COME OUT? WHAT DID THAT HAVE TO DO WITH IN THE
22 DELIBERATIONS?

23 A BECAUSE SHE, I GUESS DURING THE CASE, DURING THE TRIAL, SHE
24 WAITED AROUND BEFORE SHE TOLD HER MOTHER.

25 Q WHO IS "SHE"?

1 A THE ALLEGED PERSON WHO WAS SUPPOSED TO BE RAPED.

2 Q THE ALLEGED VICTIM?

3 A YES.

4 Q WAITED A WHILE BEFORE SHE CALLED THE POLICE?

5 A YES, AND THAT'S WHY THEY WAS, LIKE, THEY COULD SEE WHY SHE
6 WAITED A WHILE BECAUSE ONE OF THEM STATED THAT THEY WAITED
7 A WHILE BEFORE THEY TOLD THEIR MOTHER. SO THAT'S HOW THAT
8 CAME ABOUT.

9 Q ONE OF THE JURORS SAID THEY DID THE SAME THING?

10 A UH-HUH.

11 Q WHEN THEY WERE RAPED?

12 A YES, SIR.

13 MR. BROWN: NO FURTHER QUESTIONS, YOUR HONOR.

14 IN FACT, THIS WITNESS CAN BE EXCUSED AS FAR AS I'M
15 CONCERNED.

16 MS. ROWELL: I HAVE NO FURTHER QUESTIONS. I'D
17 ASK THAT SHE NOT BE EXCUSED.

18 THE COURT: ALL RIGHT.

19 (TO WITNESS) YOU MAY STEP DOWN, BUT YOU'RE NOT
20 EXCUSED.

21 MR. BROWN: NEXT, YOUR HONOR, I'D CALL SHANDRIA
22 WHITNEY.

23 MS. ROWELL: YOUR HONOR, MAY WE APPROACH?

24 (BENCH CONFERENCE OUTSIDE HEARING OF COURT
25 REPORTER).

1 (WHEREUPON, SHANDRIA WHITNEY, HAVING FIRST BEEN
2 DULY SWORN, TESTIFIES AS FOLLOWS).

3 MS. ROWELL: YOUR HONOR, A POINT OF LAW, PLEASE.
4 YOUR HONOR, MS. GRANT WROTE AN AFFIDAVIT, AND YOU'VE
5 GOT TO DETERMINE THAT THIS AFFIDAVIT IS CREDIBLE
6 BEFORE YOU CAN GO FORWARD WITH AN EVIDENTIARY HEARING
7 AS TO WHETHER OR NOT THERE WAS JURY MISCONDUCT.

8 THUS FAR SHE HAS INDICATED A LACK OF CREDIBILITY
9 BECAUSE SHE INDICATES THAT SHE FAILED TO DISCLOSE THAT
10 SHE WAS FRIENDS WITH THE DEFENDANT AND HIS FAMILY
11 DURING VOIR DIRE, THAT SHE DIDN'T THINK SHE HAD ANY
12 OBLIGATION TO LET THE COURT KNOW THAT. AND SHE ALSO
13 HAS DIRECTLY REFUTED WHAT MR. BROWN TOLD ME AND TOLD
14 YOU BACK IN CHAMBERS AND WHAT MR. BROWN HAS TOLD ME
15 TIME AND TIME AGAIN, THAT SHE WAS THE ONE WHO
16 INITIATED THE PHONE CALL AND CONTACT WITH HIS OFFICE.
17 HE HAS ASSURED ME THAT HE KNEW NOTHING ABOUT THIS
18 WITNESS UNTIL SHE CALLED HIS OFFICE, AND TODAY SHE'S
19 JUST STOOD HERE AND TESTIFIED THAT MR. BROWN
20 INITIATED THE CONTACT.

21 AS TO CREDIBILITY, I FIND MR. BROWN FAR MORE
22 CREDIBLE THAN I FIND THIS WITNESS, MS. GRANT, AND I'D
23 SAY THAT SHE'S ALREADY BEGUN TO SHOW THAT SHE'S NOT
24 A CREDIBLE WITNESS, AND I'D ASK THAT YOU CONSIDER NOT
25 GOING ANY FURTHER AT THIS TIME.

1 THE COURT: I'VE GOT CONCERNS, BUT I'M NOT QUITE
2 TO THAT STEP YET. I WANT TO DEVELOP THE RECORD A
3 LITTLE FURTHER ON THIS.

4 MS. ROWELL: THANK YOU, YOUR HONOR. ONE OTHER
5 POINT OF LAW IS, I BELIEVE AT THIS TIME WE ALSO
6 SHOULD LIMIT THE TESTIMONY OF ANY JURORS TO WHAT
7 HAPPENED IN THE JURY ROOM BECAUSE THE BASIS OF THIS
8 IS WHAT HAPPENED IN THE JURY ROOM. THAT'S HOW SHE
9 GOT THIS INFORMATION, AND WE NEED TO FIND OUT FIRST,
10 AS A MATTER OF FACT, FROM ALL OF THESE JURORS
11 WHETHER OR NOT WHAT SHE SAYS HAPPENED IN THE JURY
12 ROOM HAPPENED BECAUSE IF IT DIDN'T HAPPEN, AGAIN HER
13 AFFIDAVIT IS NOT GOING TO BE CREDIBLE AND YOU SHOULD
14 NOT GO FURTHER INTO JURY MISCONDUCT.

15 SO I'D ASK THAT HE LIMIT HIS QUESTIONS AT THIS
16 POINT TO WHAT HAPPENED IN THE JURY ROOM.

17 THE COURT: I DON'T HAVE ANY PROBLEM WITH THAT,
18 BUT YOU'VE GOT THE CREDIBILITY OF INFLUENCES THAT
19 MAY HAVE HAPPENED AFTER THE TRIAL, LIKE YOU
20 DEVELOPED WHAT WENT ON WITH THE FAMILY AFTER THE
21 TRIAL.

22 MS. ROWELL: YES.

23 THE COURT: WE MAY NEED TO OPEN UP IN CASE
24 SOMETHING LIKE THAT COMES UP WITH AN INDIVIDUAL
25 WITNESS.

1 MS. ROWELL: THANK YOU, YOUR HONOR.

2 THE COURT: (TO MR. BROWN) LET'S TRY TO KEEP IT
3 WITHIN THOSE CONFINES.

4 MR. BROWN: MAY IT PLEASE THE COURT, YOUR HONOR.

5 DIRECT EXAMINATION

6 BY MR. BROWN:

7 DIRECT EXAMINATION

8 BY MR. BROWN:

9 Q MS. WHITNEY, MY NAME IS JIM BROWN. YOU AND I HAVE MET
10 BEFORE?

11 A NO.

12 Q WE SPOKE ON THE PHONE ONE TIME?

13 A YES.

14 Q I WILL REFER TO IT AS A THREE-WAY CALL. IT WAS PROBABLY
15 MORE THAN THREE WAYS. IT WAS SEVERAL PEOPLE YOU HAD
16 CALLED?

17 A I HAD SOMEBODY TO CALL FOR ME.

18 Q AND THEN THEY CALLED A MEMBER OF MR. BRADLEY'S FAMILY?

19 A YES, SIR.

20 Q AND THEN THEY CALLED ME?

21 A YES, SIR.

22 Q AND ACTUALLY I PUT YOU ON HOLD BECAUSE THE JUDGE'S LAW
23 CLERK WAS CALLING ME ON THE OTHER LINE?

24 A YES, SIR.

25 Q OKAY. AT SOME POINT YOU TOLD ME YOU WERE IN SAVANNAH,

1 GEORGIA?

2 A YES, SIR.

3 Q BUT YOU LIVE IN AUGUSTA?

4 A NO, I WAS IN SAVANNAH, BUT I LIVE IN AUGUSTA.

5 Q OKAY. THAT ANSWERS SOME OF THE CONFUSION ON THAT.

6 A UH-HUH.

7 Q AND YOU SERVED ON A JURY SOMETIME LAST YEAR?

8 A YES, SIR.

9 Q DO YOU KNOW UTIA GRANT?

10 A YES, SIR.

11 Q SHE SERVED ON THE JURY AS WELL?

12 A YES, SIR.

13 Q WHAT I WANT TO ASK YOU ABOUT IS A LITTLE SENSITIVE, AND I
14 APOLOGIZE. I'M NOT TRYING, IN ANY WAY, TO EMBARRASS YOU,
15 BUT ONE THING I NEED TO FIND OUT IS WERE YOU EVER THE
16 VICTIM OF SEXUAL ASSAULT?

17 MS. ROWELL: YOUR HONOR, I SPECIFICALLY ASKED
18 THAT THIS BE LEFT TO THE CREDIBILITY OF THE
19 AFFIDAVITS. AT THIS TIME I'M GOING TO OBJECT TO THAT.
20 I'M GOING TO CITE THREE CASES, STATE V. ZEIGLER,
21 STATE V. COVINGTON, AND STATE V. ALDRIDGE, THAT --

22 MR. BROWN: I'LL WITHDRAW THE QUESTION AT THIS
23 TIME.

24 MS. ROWELL: -- TO UPHOLD AN AFFIDAVIT OF JURY
25 MISCONDUCT AS CREDIBLE, THE COURT MUST CONDUCT A

1 HEARING TO DETERMINE IF JURY MISCONDUCT OCCURRED, AND
2 I BELIEVE WE'RE AT THE STAGE TO DETERMINE THAT.

3 THE COURT: THE QUESTION IS WITHDRAWN.

4 Q I'M GOING TO ASK YOU SOME QUESTIONS REGARDING SOME
5 DELIBERATIONS THAT WERE MENTIONED IN AN AFFIDAVIT. DID
6 ANYBODY IN THE JURY ROOM -- DID ANYBODY IN THE JURY ROOM
7 EVER INDICATE THAT THEY HAD BEEN A VICTIM OF RAPE, DURING
8 THE DELIBERATIONS?

9 A NO, SIR.

10 Q MR. BROWN: I WOULD LIKE TO ASK MY OTHER
11 QUESTION.

12 MS. ROWELL: YOUR HONOR, I WOULD OBJECT. I THINK
13 THAT THAT NEEDS TO BE GONE INTO IF YOU DETERMINE THAT
14 THIS ORIGINAL AFFIDAVIT WAS CREDIBLE.

15 THE COURT: I'M GOING TO END IT HERE. BASED ON
16 THAT TESTIMONY OF THE FAMILY AND EVERYTHING THAT WENT
17 ON AFTER THAT, BASED ON THAT RESPONSE THIS HEARING IS
18 OVER.

19 MS. ROWELL: THANK YOU, YOUR HONOR.

20 MR. BROWN: YOUR HONOR, I WOULD ASK TO BE ABLE TO
21 PROFFER THE TESTIMONY OF MS. FIELDS FOR THE APPELLATE
22 RECORD.

23 MS. ROWELL: YOUR HONOR, I HAVE NO OBJECTION.

24 THE COURT: I'M GOING TO STAND BY THE CASE LAW AS
25 I UNDERSTAND IT. IF I'M WRONG, I'LL BE STRAIGHTENED

1 OUT ON IT AND WE'LL HAVE TO COME BACK LATER ON, BUT
2 I THINK THE STATE HAS OUTLINED THE CASE LAW, AS I
3 UNDERSTAND IT, TOO, AND FROM WHAT HAS DEVELOPED HERE
4 I BELIEVE IT'S OVER.

5 MS. ROWELL: THANK YOU, YOUR HONOR.

6 MR. BROWN: IF YOUR HONOR WOULD NOTE OUR PROFFER
7 OR ATTEMPT TO PROFFER THE TESTIMONY OF MS. FIELDS,
8 AS WELL AS THE OTHER QUESTIONS I WOULD DESIRE TO ASK
9 OF THIS WITNESS. YOUR HONOR, JUST SO IT'S CLEAR,
10 I UNDERSTAND YOUR RULING. I'M NOT TRYING TO ARGUE
11 WITH YOU. I JUST WANT IT CLEAR THAT I WOULD ASK THAT
12 I BE ALLOWED TO QUESTION BOTH MS. WHITNEY AND MS.
13 FIELDS REGARDING THE ALLEGATION THAT THEY CONCEALED
14 INFORMATION OF RAPE IN THE VOIR DIRE.

15 THE COURT: (TO WITNESS) DON'T ANSWER.

16 (TO COUNSEL) LET'S LET THAT BE IT. I CAN'T
17 HAVE HERE --

18 MR. BROWN: I'M SORRY. I HAVE THE SAME PROBLEM.
19 I WOULD JUST LIKE THE RECORD TO REFLECT THAT I WOULD
20 DESIRE TO ASK THEM WHETHER OR NOT THEY HAVE BEEN
21 VICTIMS OF RAPE, WHICH WOULD HAVE INDICATED THAT
22 THEY HAVE CONCEALED INFORMATION IN THEIR VOIR DIRE.
23 I UNDERSTAND YOUR RULING. I UNDERSTAND EXACTLY, THE
24 AFFIDAVIT IS NOT CREDIBLE ENOUGH, YOU'VE RULED, TO
25 GET US THE HEARING. I UNDERSTAND THAT, BUT I JUST

1 WANT TO PROFFER THE FACT THAT BOTH OF THESE PEOPLE,
2 INCLUDING MS. WHITNEY WHO DOES NOT LIVE IN THE STATE
3 OF SOUTH CAROLINA, ARE HERE AND THAT WE DESIRE TO
4 QUESTION THEM ABOUT WHETHER OR NOT THEY WERE THE
5 VICTIMS OF A VIOLENT CRIME, SPECIFICALLY RAPE OR
6 SOME TYPE OF CRIMINAL SEXUAL CONDUCT THAT WOULD BE A
7 RAPE OR CLOSE ENOUGH TO RAPE IN A COLLOQUIAL SENSE.

8 THE COURT: I'VE RULED, HOWEVER, I HAVE A LITTLE
9 BIT OF CONCERN ABOUT SOMETHING. I'M GOING TO STEP IN
10 HERE NOW -- THIS IS HIGHLY UNUSUAL, BUT I'M GOING TO
11 DO THIS ON MY OWN. BASED ON MY PRIOR VOIR DIRE A
12 YEAR AGO, I'M GOING TO POSE THIS QUESTION.

13 (TO WITNESS) HAVE YOU EVER BEEN THE VICTIM OF A
14 CRIME THAT YOU CONSIDER TO BE A VIOLENT CRIME?

15 A NO, IT WASN'T A VIOLENT CRIME, BUT I HAVE BEEN RAPED.

16 MS. ROWELL: I'M SORRY, I COULD NOT HEAR THE
17 WITNESS.

18 THE COURT: I THINK THAT ANSWERS THE ULTIMATE
19 QUESTION. (TO MR. BROWN) YOU HEARD WHAT SHE SAID.

20 MR. BROWN: SHE DIDN'T CONSIDER IT VIOLENT, BUT
21 SHE HAD BEEN RAPED.

22 THE COURT: AND THE KEY ISSUE HERE IS WAS THERE
23 ANY INTENTIONAL CONCEALMENT ON THE VOIR DIRE.

24 MR. BROWN: ALTHOUGH THAT'S NOT A SUBJECTIVE
25 QUESTION. IT'S WHETHER AN AVERAGE JUROR --

THE COURT: I STAND BY MY RULING, THANK YOU.

(WHEREUPON, THE HEARING WAS CONCLUDED AT 11:23

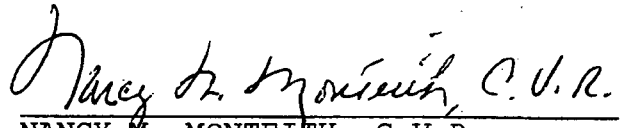
A.M.).

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

CERTIFICATE

I, NANCY M. MONTEITH, CERTIFIED VERBATIM REPORTER AND
RESIDENT COURT REPORTER FOR THE SIXTH JUDICIAL CIRCUIT, STATE OF
SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE,
ACCURATE AND CORRECT TRANSCRIPT OF RECORD OF ALL THE TESTIMONY
HAD AND EVIDENCE PRESENTED IN THE HEARING OF THE ABOVE-CAPTIONED
ACTION ON AUGUST 18, 2005 IN ALLENDALE, SOUTH CAROLINA.

I DO FURTHER CERTIFY THAT I AM NEITHER KIN, COUNSEL, NOR
INTEREST TO ANY PARTY HERETO.



NANCY M. MONTEITH, C.V.R.
RESIDENT COURT REPORTER
SIXTH JUDICIAL CIRCUIT

OCTOBER 28, 2005

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF ALLENDALE) IN THE COURT OF GENERAL SESSIONS
3

4 THE STATE OF SOUTH CAROLINA,)
5)

6 -vs-)

03-GS-03-209

7 RODERICK BRADLEY,)

8 DEFENDANT.)

August 25, 2004
Allendale, S.C.

9
10 B E F O R E:

11 HONORABLE PAUL M. BURCH, JUDGE, AND A JURY.

12
13 A P P E A R A N C E S:

14 SUSAN ROWELL, ESQUIRE
Assistant Solicitor
Attorney for the State

15
16 JOHN D. BRYAN, ESQUIRE
Assistant Public Defender
Attorney for the Defendant
17
18
19
20

21 ANNETTE T. MOLE
Court Reporter
22
23
24
25

State of South Carolina,)
 County of Allendale.)

In the Court of General Sessions.

Indictment Number
 03-GS-03-209

The State of South Carolina)
)
 versus)
)
 Rodrick Bradley.)
 _____)

Defendant's Request to Charge No. 1.

1. The State must prove to you that the Defendant, in fact, committed each and every element of each offence beyond a reasonable doubt. A reasonable doubt is a doubt that would cause a reasonable person to hesitate to act.

Authority: State v. Manning, 305 S.C. 413, 409 S.E.2d 372 (1991).

BY: _____

J.D. Bryan
 J.D. Bryan,
 Office of the Public Defender
 P.O. Box 506
 Hampton, S.C. 29924
 (803) 943-7525
 Attorney for the Defendant.

State - - - Bradley (B-M)

03-03-03-238

- #31 Izabari Hunter (B-M) D-1
 * #58 Quanna Harding (B-F)
 #89 Mary Kiddle (B-F)
 #20 Robie Calhoun (B-M)
 #89 Harry M. Putter (B-F) D-2
 #60 Samuel Hawkins (B-M)
 #53 Suzanne Gordon (W-F) D-3
 #109 Lerwood Thomas (W-M)
 #88 Phillip Price (B-M)
 #55 Amanda Brannon (B-F) C-1
 #118 Henry Whittier (W-F) S-1
 #83 Webb Owens (B-F) S-2
 #41 Bradford Jarvis (B-M)
 #54 Zia Daya Grant (B-F)
 #117 Phendra Whetney (B-F)
 #85 Carolyn Jensen (W-F) D-4
 #127 Derrick Ogden (B-M) S-3
 #29 Josephine Coker (B-F)
 #75 Leif Wilson (W-F) D-5
 #26 Marion Cook (B-M) C-2
 #4 Longado Budger (B-M) S-4
 #12 Ardie Brant (B-F)
 #43 Christine Fields (B-F)

Alternati:

- #116 William Washington (B-M) S-1
 #84 Mrs. Patch (F-F) D-1
 #114

<u>I N D E X</u>				
<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RE-D</u>	<u>RE-C</u>
PAYNE, LATAY Solicitor Mr. Bryan	36	58		
FLOWERS, SABRINA Solicitor Mr. Bryan	63	74	78	79
JAMISON, MARSHA Solicitor Mr. Bryan	94	99		
JAMISON, EDMUND ALVIN Solicitor Mr. Bryan	100	106	106, 107	108
BRADLEY YVONDA Mr. Bryan Solicitor	110	114	123	
BROWN, LEXIE Mr. Bryan Solicitor	123	125	126	
WILLIAMS, WILSON Mr. Bryan Solicitor	147	149	150	
BRADLEY, RODERICK Mr. Bryan Solicitor	150	155		

1	<u>EXHIBITS:</u>	<u>EV.</u>
2	S-1 Photograph	87
3		
4		
5	Opening Statements	26
6	Closing Arguments	162
7	Charge by the Court	180
8	Verdict	194
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 SOLICITOR: Your Honor, the State calls State
2 versus Roderick Bradley, indictment #03-GS-03-209,
3 criminal sexual conduct with a minor. Your Honor,
4 the State is ready to proceed in this case.

5 THE COURT: Thank you, Solicitor. Ladies
6 and gentlemen of the petit jury panel if I could have
7 your attention. We're about to commence the trial of
8 the case entitled the State of South Carolina versus
9 Roderick Bradley charged in the bill of indictment
10 with the offense of criminal sexual conduct with a
11 minor, second degree.

12 The defendant, Roderick Bradley, is present
13 in court represented by Mr. Bryan. Mr. Bradley, I've
14 got to ask the jury some question about possible blood
15 or marital relationship, so I need you to stand at
16 this time and face the jury. Thank you, sir, you may
17 be seated.

18 Any members of the petit jury panel related
19 by blood or connected by marriage with the defendant,
20 Roderick Bradley, if so, I need you to stand at this
21 time.

22 (NO RESPONSE.)

23 THE COURT: Any members of the petit jury
24 panel related by blood or connected by marriage with
25 Latay Payne, if so, please stand.

1 JUROR: I'm her cousin.

2 THE COURT: All right, and your name, please?

3 JUROR: Shirley Banks.

4 THE COURT: And what degree of cousin is
5 that?

6 JUROR: Well, her mother and my father, I
7 know we are kin and we are close kin.

8 THE COURT: All right. Yes, sir.

9 JUROR: I'm a neighbor. And your name?

10 JUROR: Bernard Brown.

11 THE COURT: Thank you, Mr. Brown. Also Wilson
12 Williams --- these are potential witnesses, Wilson
13 Williams, Vonda Bradley, Steven Coy, Lexie Brown, Cedric
14 DeVore, LaShawn DeVore, Gregory Hoover, Sabrina Flowers,
15 Dr. Sarah Schue, Marsha Jamison, Michael Payne, Bridgett
16 Smoak, Sgt. Edward Jamison. If you are related by blood
17 or connected by marriage to these people, please stand.

18 JUROR: Did you say Credric DeVore?

19 THE COURT: Yes, ma'am.

20 JUROR: He's my second cousin.

21 THE COURT: Your second cousin, and your
22 name, please?

23 JUROR: Natarsha Thomas.

24 THE COURT: Thank you, Ms. Thompson, you
25 may be seated. Ladies and gentlemen you heard the

1 alleged charge, allegedly occurred in Allendale County
2 on or about July 12, 2003. Has any members of the
3 Petit jury panel formed or expressed an opinion as
4 to the guilt of innocence of the defendant, Roderick
5 Bradley, if so, I need you to stand at this time but
6 don't say anything.

7 (NO RESPONSE.)

8 THE COURT: Any member of the petit jury
9 panel conscious of any interest, any bias or any prejudice
10 for or against the defendant, if so, please stand.

11 (NO RESPONSE.)

12 THE COURT: Can each member of the petit
13 jury panel give the State and the defendant, Roderick
14 Bradley, a fair and impartial trial, if not, please
15 stand at this time.

16 (NO RESPONSE.)

17 THE COURT: Have any of you had close friends
18 or yourself or had a close relative, immediate family
19 member, that's been a victim of a violent crime. Are
20 any of you a member of any organization that promotes
21 law enforcement or modification of the criminal laws,
22 such as CAVE, MADD, SADD or groups like that?

23 (NO RESPONSE.)

24 THE COURT: Are any of you, I've already
25 asked this, related to or do you have any close personal

1 business , social, fraternal, religious relationship
2 with the defendant, Roderick Bradley, if so, you need
3 to stand at this time. All right, I'll start in this
4 corner, your name, please?

5 JUROR: Sheree L. Whittier (#118.)

6 THE COURT: And how does that question apply?

7 JUROR: I'm a close friend of the family.

8 THE COURT: All right.

9 JUROR: Amanda Graves (#55). Me and his sister
10 used to be together and me and her went to school together.

11 SOLICITOR: Your Honor, I can't hear her.

12 THE COURT: I couldn't hear you, ma'am.

13 JUROR: Me and Roderick went to school together.

14 THE COURT: You and the defendant went to
15 school together?

16 JUROR: Yes.

17 THE COURT: And who else?

18 JUROR: I used to be with his sister.

19 THE COURT: Okay, thank you, ma'am. Yes,
20 sir.

21 JUROR: Lonzado Badger (#4). Me and the
22 defendant is close friend.

23 THE COURT: Okay.

24 JUROR: Derrick Youmans (#127).

25 THE COURT: Mr. Youmans, would you say your

1 response again, please, sir.

2 JUROR: Close friend.

3 THE COURT: Thank you. Your name?

4 JUROR: Marion Coath (#26.) I'm close friends
5 with his sister.

6 THE COURT: Okay. Once again now, are
7 any of you related to, have any close personal, religious,
8 social, fraternal or business relationship with Lexie
9 Brown, if so, please stand.

10 JUROR: Shirley Banks (#5). My boys, they
11 always be together but I didn't stand up when you asked
12 about him because I didn't was sure because there's
13 more than one look alike. I don't know they name but
14 my boys be with the defendant, Lexie.

15 THE COURT: Okay, and you were a cousin to
16 Lexie Brown?

17 JUROR: No, I'm a cousin to Cedric DeVore.

18 THE COURT: Okay, thank you. Your name,
19 please?

20 JUROR: My name is Bernard Brown (#16). And
21 I'm Lexie Brown's father.

22 THE COURT: Thank you, Mr. Brown. Yes, sir.

23 JUROR: Here again, close friends. (This
24 was Mr. Youmans, #137).

25 JUROR: Lonzado Badger (#4) close friend.

1 JUROR: Willie Washtington (#116) close friend.

2 THE COURT: Does any one believe that a woman
3 cannot have sexual relations unless she wants to, in
4 other words, that a woman cannot be raped?

5 (NO RESPONSE.)

6 THE COURT: Does anyone believe that a woman
7 or a girl who is in the wrong place at the wrong time
8 is asking to be raped?

9 (NO RESPONSE.)

10 THE COURT: Does anyone believe that it's
11 okay for girls under 16 to have sexual relations with
12 older boys or men?

13 (NO RESPONSE.)

14 THE COURT: Have any of you or any of your
15 close family members been represented by Mr. Bryan,
16 of the Public Defender's Office, or by the Solicitor's
17 Office, if so, please stand.

18 (NO RESPONSE.)

19 THE COURT: Any further inquiry from the
20 State or the defense?

21 SOLICITOR: None from the State, Your Honor.

22 MR. BRYAN: None from the defense, Your Honor.

23 THE COURT: Okay, this is a little unusual,
24 I'm going to open it back up. I've got some relationships
25 here, both blood relationship and I realize this is

1 a small county like mine and everybody knows each other.
2 Now all those that have responded to some of those
3 questions, I'm going to pose this question once again.
4 Can each of you give the State and the defendant a
5 fair and impartial trial, if not, I need you to stand
6 but please don't say anything unless I elicit it from
7 you or ask it from you?

8 Can each member of this jury panel give both
9 the State and the defendant a fair and impartial trial,
10 if not, you need to stand at this time.

11 (NO RESPONSE.)

12 THE COURT: All right. I'm not going to
13 take any further action until we go through the individual
14 process unless I hear an appropriate motion.

15 SOLICITOR: Your Honor, I make a motion that
16 juror #16 be stricken for cause, he is the father of
17 Lexie Brown who is listed as a defense witness, as
18 possibly a State's witness, and Mr. Brown is alleged
19 to have been in close proximity when the incident occurred
20 and I would submit that a father could not be asked
21 to fairly sit in judgment regarding the testimony.

22 THE COURT: Any response?

23 MR. BRYAN: There's no indication from him
24 that he would be unfair, the State can use a peremptory
25 challenge if they would like.

1 THE COURT: Okay, I had two on the jury that
2 had blood relationship with two individuals possibly
3 involved in the case, is that correct, Madam Court
4 Reporter? One was Mr. Brown and the other one was
5 Ms. Banks. I'm going to take the cautious approach
6 on that and try to keep the record as clean as possible.
7 The Court will step in on those two, they will be excused
8 in this case because of blood relationship to the potential
9 party and witnesses.

10 And I'm not going to take any further action,
11 counsel, unless I need to as the names are called.
12 Now on this one, the strikes are five and ten, counsel?
13 Let me double check the statute right quick, I'm trying
14 to find it. You are correct, I have it. Let's seat
15 one alternate, too. Give us a jury, please.

16 (WHEREUPON, Exception was taken to the following
17 jurors as they were called up and a Bench Conference
18 was held out of the hearing of the entire jury panel.)

19 Juror #55 Amanda Graves.

20 THE COURT: Ms. Graves, I believe you said
21 you went to school with the defendant. Can you give
22 both the State and the defendant a fair and impartial
23 trial?

24 JUROR: I don't know huh-uh.

25 THE COURT: You cannot?

1 JUROR: I don't feel comfortable being a
2 jury.

3 THE COURT: All right, motion granted, she
4 will be excused for cause.

5 Juror #118, Sheree Whittier.

6 SOLICITOR: Your Honor, juror #118 indicated
7 that she was good friends with the defendant's family
8 and I ask that she be stricken or at least question
9 her as to whether or not she can be fair.

10 THE COURT: I'll use the same procedure,
11 would the juror please step down to the Court Reporter's
12 spot.

13 If you were to be seated on this jury, could
14 you give both the State and the defendant a fair and
15 impartial trial?

16 JUROR: Yes, sir.

17 THE COURT: Okay, you may return to your
18 seat. Your motion is denied.

19 SOLICITOR: Your Honor, the State moves that
20 juror #127 be excused for cause. He stated in voir
21 dire that he was good friends with both the defendant
22 and with Lexie Brown and that he was a co-worker to
23 one of them.

24 THE COURT: Come forward.

25 Juror #137, Derrick Youmans.

1 THE COURT: If you were to be seated on this
2 jury, could you be both fair and impartial to both
3 the State and the defendant?

4 JUROR: Yes, sir.

5 THE COURT: You may return to your seat.
6 Motion is denied.

7 SOLICITOR: The next one we would object
8 to is #29, Josephine Cohen.

9 THE COURT: Come up, please.

10 Juror #29, Josephine Cohen.

11 THE COURT: Let me ask you this, if you were
12 selected on this jury, could you give both the State
13 and the defendant a fair and impartial trial?

14 JUROR: Well, I would be between a rock and
15 a hard place because I know both side, her and him.

16 THE COURT: Okay, I need you to answer my
17 question.

18 JUROR: I had rather not, it would be hard.

19 THE COURT: I need either a yes or no answer.

20 JUROR: Yes, I could be honest.

21 THE COURT: All right, let me make sure I
22 have not confused you or me either. If you were to
23 be seated on this jury, could you be fair and impartial
24 to both the State and the defendant?

25 JUROR: Yes, sir, I could.

1 THE COURT: That's all we are asking. You
2 may return to your seat.

3 Juror #26, Marion Coath.

4 SOLICITOR: Your Honor, juror #26 indicated
5 that he was close friends with the defendant's sister
6 and I ask that he be struck for cause or either that
7 he be further inquired about to see if he can be fair
8 and impartial.

9 THE COURT: Come forward. If you were to
10 be seated on this jury, could you give the State and
11 the defendant a fair and impartial trial?

12 JUROR: I think I could.

13 THE COURT: Well, to be fair to you I need
14 a yes or a no.

15 JUROR: No.

16 THE COURT: Thank you, motion granted.

17 SOLICITOR: Your Honor, juror #4, Lonzado
18 Badger, the State moves to strike for cause. He indicated
19 on voir dire that he was close friends with the witness,
20 Lexie Brown, and that he is also a close friend of
21 the defendant.

22 THE COURT: Come on down.

23 Juror #4, Londzado Badger.

24 THE COURT: If you were to be seated on this
25 jury, could you give the State and the defendant a

1 fair and impartial trial?

2 JUROR: Yes, sir.

3 THE COURT: Okay, thank you. Motion is denied.

4 SOLICITOR: Your Honor, juror #116 indicated
5 that he was close friends with Mr. Brown, I believe,
6 and I ask that he be struck for cause or that you further
7 inquire.

8 THE COURT: Come forward.

9 JUROR #116, Willie Washington.

10 THE COURT: If you were to be seated on this
11 jury, could you give the State and the defendant a
12 fair and impartial trial?

13 JUROR: I had rather not.

14 THE COURT: Thank about it. If you were
15 to be seated on this jury, can you give both the State
16 and the defendant a fair and impartial trial?

17 JUROR: Yeah.

18 THE COURT: Thank you. Motion is denied.

19 (WHEREUPON, Twelve jurors and one alternate
20 was duly impaneled.)

21 THE COURT: All right, any motions concerning
22 jury selection?

23 SOLICITOR: Your Honor, the State has a
24 motion.

25 THE COURT: All right, I need for the jury

1 panel in the back to please step outside. And I need
2 this jury panel that was chosen to step to their jury
3 room for just a moment.

4 (WHEREUPON, The following proceedings were
5 held out of the presence of any jurors.)

6 THE COURT: All right, all jurors are out
7 of the courtroom. I'll hear you, Solicitor.

8 SOLICITOR: Thank you, Your Honor. Your
9 Honor, the State has a McCullough motion, Your Honor,
10 the defense struck juror #53, Suzanne Goodson, who
11 is a white female; #85, Carolyn Jensen, who is a white
12 female; and #75, Leigh Wilson and for the alternate,
13 they struck Ms. Patel, juror #84, these are all white
14 females, four white females, all the white females
15 that were presented were struck by the defendant and
16 they are certainly a cognizable racial group and gender,
17 all white females were struck.

18 THE COURT: Mr. Bryan?

19 MR. BRYAN: If I remember right, Ms. Patel's
20 race is listed as B, which is black. Mr. Plexico reported
21 that when the Court asked the questions that the State
22 requested about like his location and can someone be
23 raped and all those unusual questions, she had a very
24 shocked look as though maybe she had, in the past,
25 been a victim of something like that and that's why

1 I struck her.

2 THE COURT: All right.

3 SOLICITOR: If I reply. Ms. Patel appears
4 to be Indian and Indians are Caucasians, therefore
5 white, and I believe that she would be part of a
6 recognizable class.

7 MR. BRYAN: If it weren't for Mr. Plexico,
8 Your Honor, I was going to seat her.

9 THE COURT: Go ahead.

10 MR. BRYAN: Juror #85, she was on our last
11 jury, I thought she would be a pretty good defense
12 juror. I was divided at the first trial but I figured
13 I would give her the benefit of the doubt and it didn't
14 seem to work out for me on that trial, Your Honor.
15 She has a technical job and normally I don't like to
16 have teachers, bankers, bank tellers, accountants,
17 engineers, people with a very black and white type
18 of way of looking at things on a jury. And she works
19 for Sprint in some kind of technical capacity is what
20 I have. And at the first trial I thought, well, she
21 would be okay, but they convicted so I kinda had some
22 reservations about having her again.

23 SOLICITOR: Your Honor, he allowed blacks
24 who had been on the last jury to serve. He said he
25 usually didn't seat teachers, she's not a teacher,

1 she has a technical job and that kind of thing.

2 MR. BRYAN: Well, a technical job, especially
3 with wiring and things like that, there's a right way
4 and there's a wrong way and there might be a right
5 way and hundred wrong ways. It's a very cut and dried,
6 no shades of gray type occupation.

7 SOLICITOR: Your Honor, that sounds like
8 a pretense, there's going to be a guilty or not guilty,
9 it's going to right or wrong and that's why I believe
10 it's a pretense, Your Honor, he struck four white females.

11 THE COURT: All right. Next.

12 MR. BRYAN: #85, she's in accounting for
13 Collum's Lumber. You don't get a lot of accountants
14 in Allendale County, Your Honor, but there was one
15 and I struck her. I would also point out, Your Honor,
16 in the initial jury, I only used 5 out of 10 strikes.
17 And there's 7 women on that jury.

18 THE COURT: Anything else?

19 SOLICITOR: Your Honor, all his strikes,
20 he used all the strikes to strike all white females,
21 used 4 of them to strike white females and he's offered
22 no explanation that does not seem ---

23 MR. BRYAN: And I also struck Jabar Dunbar,
24 who is a black male, I struck him, he works for the
25 Department of Juvenile Justice, he cooperates with

1 the police and law enforcement.

2 SOLICITOR: Your Honor, that's an understandable
3 strike, of course, he sits with the State on juvenile
4 cases, we understand that strike. We don't understand
5 these other strikes.

6 THE COURT: What have we got, one more? Or
7 have we covered all of them?

8 SOLICITOR: Suzanne Goodson, #53.

9 MR. BRYAN: She works at USC Salkehatchie.
10 And that's a University, Your Honor, and I just figured
11 that she may be unduly influenced by the expert witness
12 who has a doctorate in ---is a medical doctor and that's
13 why I struck her, Your Honor. Also, it's my habit to
14 strike teachers, whether they are male or female, white
15 or black or whatever color.

16 THE COURT: All right, anything else?

17 SOLICITOR: Your Honor, I don't think he
18 has given no reason on ---- Your Honor, beg the Court's
19 indulgence, Your Honor.

20 Your Honor, the Court brings to the attention
21 that the defendant struck Phillip Price --- I mean,
22 he took Phillip Price, who is a black male and he is
23 a teacher. He says he would generally strike teachers,
24 that's obviously a pretense, he sat a teacher on this
25 jury and on the last jury.

1 MR. BRYAN: Your Honor, I had it written
2 down that he was a carpenter and his wife was a teacher.
3 I may be wrong but that's what the note I have says,
4 Your Honor.

5 SOLICITOR: We apologize however he is married
6 to a teacher and we contend that the strike is a pretense,
7 Your Honor.

8 THE COURT: That it? There's not enough
9 here for me to step in, I've seen it over 13 years,
10 quite often attorneys will --- and I hate to use this
11 terminology --- but attorneys for the defense side
12 tend to try to work more blue collar type workers in
13 than the white collar type workers, it's quite common,
14 and I don't know of anything that's wrong with that.
15 So I'm not going to step in. I'll deny any McCullough,
16 Batson, whatever type motion.

17 Was there anything from the defense?

18 MR. BRYAN: No, Your Honor.

19 THE COURT: All right, bring the jury back
20 into the courtroom and excuse the other jurors that
21 are out there in the hall and tell them to call back
22 tonight after 6.

23 (WHEREUPON, Jury returned to the courtroom
24 and the following proceedings were heard in their presence
25 and hearing.)

1 THE COURT: Okay, anything before the jury
2 is sworn?

3 MR. BRYAN: Yes, sir, I have one matter.
4 Could we approach the Bench?

5 THE COURT: Yes, sir.

6 (WHEREUPON, A bench conference was held
7 out of the hearing of the jury and the court reporter.)

8 THE COURT: Juror #58, would you come up
9 to the Bench, please.

10 Ms. Harding, can you give the State and the
11 defendant a fair and impartial trial?

12 JUROR: Yes.

13 THE COURT: Are you related or have any family
14 member or close personal friends that are related to
15 either the victim or the defendant?

16 JUROR: No, not related.

17 THE COURT: Okay, thank you, you may return
18 to your seat. All right, Madam Clerk, swear the jury,
19 please.

20 (WHEREUPON, Jury was duly sworn.)

21 THE COURT: This is going to be repetitious
22 to some of you, to some of you it's new information.

23 I'm going to basically tell you how we are
24 going to proceed with this case. This is a criminal
25 case, the burden of proof in a criminal case is proof

1 beyond a reasonable doubt. We will proceed as follows:
2 both sides will make brief opening statements to you
3 to basically outline their positions in the case and
4 what they will be presenting to you.

5 Next will come the evidentiary portion of
6 the trial where you will receive the evidence. Evidence
7 may take several different forms. It may be testimony
8 from the witness stand, it may be photographs, it may
9 be documents, it may be other physical type of items.
10 Whatever the evidence is, it is important that you
11 listen and observe the evidence because you are the
12 sole finders of the facts in this case. The Court,
13 the Judge, is the judge of the law of the case. Under
14 our system in South Carolina, I do not get involved
15 with the facts. I have to be a neutral trial referee
16 in effect, and I do not comment on the facts or get
17 into the facts in any form or fashion because that
18 is your sole duty as jurors. No one else in this court-
19 room finds the facts except the jury.

20 Now, after the evidentiary portion of the
21 trial is over will come the closing arguments where
22 both sides will make closing arguments to you to try
23 to persuade to see the case as they see the evidence.

24 Aft that will come the Judge's charge of
25 the law where you will receive the law of the case.

1 The end result of any court case, ladies and gentlemen,
2 is to reach a verdict. Verdict is a Latin derivative
3 word which means a true saying so it can be said that
4 a jury sits to find the truth. In order to reach a
5 verdict it can be simply stated that you find the facts
6 from the evidence presented, apply the law of the case
7 to those facts that I will provide to you in my charge,
8 and thus reach a verdict.

9 Once again, this is not a civil case, it
10 is a criminal case and the proof --- the State is under
11 a burden of proving to you the guilt of the defendant
12 beyond a reasonable doubt. If the State fails to meet
13 that burden, then it would be your duty to find the
14 defendant not guilty. If the State meets that burden
15 of proof, it would equally be your duty to find the
16 defendant guilty.

17 All right, only after all those phases, in
18 other words, only after I give you the charge of the
19 law which is the last phase of the case, will you be
20 asked to deliberate. So in saying that, I'm instructing
21 you at this time, do not discuss this case amongst
22 yourselves until you are asked to deliberate. During
23 any recesses, breaks, do not allow anybody to approach
24 you and discuss this case with you. As a matter of
25

1 fact, my suggestion to you is during any breaks that
2 you are at home, let someone else in the family answer
3 any telephone calls that come in until this case is
4 over. We normally don't have anything like that to
5 happen, but it's highly improper for anybody to try
6 to contact you and should it occur, don't discuss the
7 case with them and notify the Sheriff's Department
8 of any such contact. If it happens during court hours,
9 while we are around the courthouse here, you let me
10 know, okay. I don't care if you take notes. There's
11 one rule about taking notes, though, you've got to
12 keep them to yourself, you can't share them with other
13 jurors. Also, when you are asked to deliberate this
14 case, your verdict, whatever it is, will have to be
15 a unanimous verdict, all twelve deliberating jurors
16 will have to be in agreement.

17 I think I've covered all the basics with
18 you. We will move on with opening remarks at this time
19 and I can tell you that we will try to keep a normal
20 schedule, we don't intend to be here late in the evening.
21 So if everybody will just relax and listen and observe,
22 and remember, if you have any problems, let us know.
23 The bailiff staff is here to serve you and to assist
24 you any way. And if you do start feeling sleepy, as
25 I said, let me know and we will take a break.

1 Okay, I'll turn it over to the Solicitor
2 for opening statement.

3 SOLICITOR: Your Honor, the State has a motion
4 for sequestration of the witnesses.

5 MR. BRYAN: Well, I don't have all my witnesses
6 here today, Your Honor.

7 SOLICITOR: Your Honor, I'm not worried about
8 the ones that aren't here.

9 THE COURT: I'll work with you, just as soon
10 as you can, if some of them walked in just let me know
11 or whatever and we will help you out with that. I
12 don't have any problem with it. That's good for every-
13 body now except your --- of course, the defendant stays
14 and then your lead investigator and the victim's immediate
15 family member can stay.

16 MR. BRYAN: I would just ask that all my
17 witnesses just to wait outside. And don't discuss
18 the case amongst yourselves or with other witnesses.

19 THE COURT: All right, once you testify don't
20 go back talking to anybody about the case. I need
21 all witnesses, both the State and defense witnesses
22 to step outside in some of the anterooms and just
23 relax until you are called.

24 (WHEREUPON, Witnesses left the courtroom.)

25 THE COURT: All right, what's next?

1 SOLICITOR: Your Honor, when the victim testifies,
2 because she is a minor, I would ask that --- I know
3 that we can't close the courtroom but that all non-
4 essential people be excused from the courtroom.

5 THE COURT: If you will remind me of that
6 I will take care of that.

7 SOLICITOR: The State is ready to go now,
8 Your Honor.

9 THE COURT: All right, you may proceed, Madam
10 Solicitor.

11 SOLICITOR: This is a criminal sexual conduct
12 case, criminal sexual conduct with a minor. It is
13 about this man sitting right here, Roderick Bradley,
14 having sex with the victim, Latay Payne, when she was
15 13 years old. We are here today that in July, 2003,
16 this man sitting right here from this community, Roderick
17 Bradley, took advantage of Latay Payne and forced himself
18 on her. He told her ---

19 MR. BRYAN: Your Honor, counsel is not supposed
20 to testify during opening statement. I don't think
21 it's appropriate, it's a violation of due process,
22 Your Honor.

23 SOLICITOR: Your Honor, I'm laying out the
24 facts as they are going to be presented.

25 MR. BRYAN: Well, then say the witnesses

1 are going to say.

2 THE COURT: All right, go ahead but keep
3 in mind now this is opening statement.

4 SOLICITOR: Your Honor, thank you. Ladies
5 and gentlemen, Roderick Bradley, the witnesses will
6 testify, forced himself on her in a car on Barton Road.
7 Latay and her cousin, Sabraina Flowers, lives in Barnwell.
8 They were originally form Allendale but they live in
9 Barnwell. They were cousins. They came here to Allendale
10 and were visiting with a cousin of Latay Pane, Bridgette
11 Smoaks. Bridgette, as I said, is a cousin and Bridgette
12 lives on Nix Lane and she keeps kinda of an open house
13 where neighborhood kids and other kids can come and
14 visit and have a safe place.

15 They came in the afternoon, Latay came in
16 the afternoon, Sabrina was already there, she wanted
17 her cousin with her. The girls played, did things that
18 teenagers do at Bridgette's house, maybe went for a
19 walk in the afternoon and came back. And then after
20 Bridgette went to bed they did something that was not
21 very smart, it was stupid, as a matter of fact. It
22 was late at night, maybe 11 o'clock at night, and they
23 walked out of the house and they walked down the street.

24 They left Nix Lane, went across highway 278,
25 across the Piggly Wiggly parking lot, across Flat

1 Street to Barton Road. They walked down the road
2 to Pinewood Apartments where they visited with one
3 of Sabrina's friends, she will testify to that. She
4 testified that it was late, she knew she shouldn't
5 be out, so they started walking back down the road,
6 walking down Barton. They had walked maybe a half
7 mile, maybe a little more, and they were walking back.

8 They hadn't gone very far and you will hear
9 testimony that they ran into a man named Lexie Brown.
10 And Sabrina knew Lexie and the two girls started talking
11 with Lexie and they got into this car which was parked
12 on the side of Barton Road.

13 There was another young man in there, a friend
14 of Lexie's, and he was Roderick Bradley. At some point,
15 Lexie and Sabrina, who knew each other, walked away
16 from the car to talk, didn't walk away very far, maybe
17 a block, maybe a block and a half, and you're going
18 to hear testimony from the victim that Roderick climbed
19 from the back seat to the front seat where Latay was
20 sitting.

21 After a few questions, and you are going
22 to hear Latay say this, he said I'm going to make you
23 a woman tonight. She said no, but he persisted and
24 he forced himself on her.

25 Ladies and gentlemen, the defense may have

1 witnesses, I don't know what their defense is going
2 to be, they may have witnesses to say that this is
3 a case of mistaken identity, that it just wasn't this
4 man. But listen closely to Latay.

5 MR. BRYAN: Your Honor, we're supposed to
6 argue during the arguments, Your Honor, not during
7 the openings.

8 THE COURT: Okay.

9 SOLICITOR: Your Honor, I have a right to
10 forecast the defendant's evidence as he has made it
11 available to me.

12 THE COURT: Go ahead.

13 SOLICITOR: But listen closely to Latay.
14 Listen to how she can tell you what her rapist looked
15 like. Listen to Sabrina. Listen carefully to how
16 she tells you what happened and how she knew who the
17 perpetrator was. Listen to the doctor who is here
18 to testify. Listen closely to what she says she found
19 and remember one very important thing. The Judge is
20 going to charge you and that you need to know going
21 into this that it is against the law to have sex with
22 a 13 year old. A 13 year old does not have to resist,
23 a 13 year old does not have to fight, a 13 year old
24 does not have to try to get away. Latay said no, but
25 a 13 year old doesn't even have to say no. The law

1 says that it's still against the law. Even if a 13
2 year old says yes, it is against the law and you must
3 remember that as you listen to this. Our laws recognize
4 that a 13 year old may not know how to say no; that
5 a 13 year old may not know how to resist; that a 13
6 year old may not know how to get out of the situation
7 she has gotten into. The law knows that a 13 year
8 old can't protect herself like a grown woman can. The
9 law does not allow a 24 year old man to have sex with
10 a 13 year old girl.

11 At the close of all the evidence in this
12 case, we are going to ask you to come back, to come
13 back with a verdict of guilty, guilty of having criminal
14 sexual conduct with a minor. But before we start presenting
15 evidence, I'm going to ask you to do something every
16 Solicitor should ask a jury to do. I'm going to ask
17 you one more time to listen closely to everything that
18 is said and how it is said, who is saying it, look
19 at who is saying it, look at how the person acts and
20 how they look when they are testifying.

21 The defense has no more interest than the
22 State in asking you to listen closely. So please,
23 listen closely and at the end of all the evidence,
24 I'm going to ask you to find a verdict of guilty, guilty
25 as charged. Thank you.

1 MR. BRYAN: May it please the Court.

2 THE COURT: Yes, sir.

3 MR. BRYAN: Solicitor and members of the
4 jury, so ya'll may know I'm J. D. Bryan, and I represent
5 Mr. Bradley and I'm going to ask you to do something
6 that may sound strange coming from a defense lawyer,
7 I know you've watched lawyers on TV, but it's the same
8 thing the State is asking you to do, and that's pay
9 very close attention to all of the evidence and testimony
10 and witnesses in this case. Because the State has
11 to prove this case, the State has to prove this case
12 beyond a reasonable doubt. This isn't a civil case
13 where you believe one side more than the other side,
14 that's a civil case, that's one person against another
15 person or a corporation against a corporation.

16 This is the manpower and the resources and
17 tax money of the State of South Carolina against one
18 young man. And I'm going to ask ya'll to pay very close
19 attention to the testimony and the evidence in this
20 case because you're going to see some problems with
21 this case. The more attention that you pay to the
22 facts and details of this case, the more questions
23 you're going to have about what really went on. I
24 thank you for your time.

25 SOLICITOR: Your Honor, the State is going

1 call Latay Payne, who is the 13 year old, and may I
2 approach for a minute, Your Honor.

3 THE COURT: Yes.

4 (WHEREUPON, A bench conference was held
5 out of the hearing of the jury and the court reporter.)

6 THE COURT: All right, ladies and gentlemen,
7 retire to your jury room for about five minutes, I'll
8 be right back with you.

9 (WHEREUPON, Jury retired to the jury room
10 and the following proceedings were held in the absence
11 of the jury.)

12 THE COURT: All right, if you are in the
13 courtroom and would like to listen to the rest of the
14 trial, would you please step out for us to hear the
15 victim's testimony. My policy is that I don't bar
16 anybody from the courtroom. Of course, the press certainly
17 has a right to hear but if you want to stay and listen,
18 just step outside and get a chair and short of be out
19 of sight. These attorneys are doing their jobs.

20 MR. BRYAN: Your Honor, I've asked the Solicitor
21 if there are any prior convictions on the next witness
22 and she's told me that she can't get them because she's
23 a juvenile and I would mention that they didn't have
24 any trouble getting juvenile records this morning for
25 my client.

1 SOLICITOR: I wasn't involved in that case
2 this morning. I know that there is a statute that
3 says that someone must apply to a juvenile court judge
4 if they want juvenile's records. And they certainly
5 are admissible had Mr. Bryan applied for them.

6 THE COURT: Thirteen years old juvenile,
7 I've never had that to even come up.

8 MR. BRYAN: Well, it's Brady material, Your
9 Honor, and they had them this morning, they didn't
10 apply the ---

11 SOLICITOR: That's not Brady material.

12 MR. BRYAN: Impeach evidence if she's got
13 a prior conviction that would be impeachment evidence.

14 SOLICITOR: I --- juveniles don't have convictions,
15 first of all, and I never --- I can't speak to what
16 Ms. Legette may do or anybody in the Solicitor's office,
17 but I never bring juvenile records up at sentencing
18 and I would not unless I applied to a juvenile court
19 judge for a review of those records as is required
20 by law.

21 MR. BRYAN: Well, somehow the Solicitor's
22 office managed to get juvenile records this morning
23 for sentencing on Mr. Marshall's case and they didn't
24 have to apply to the family court. Because I wasn't
25 notified of any family court hearing to release those

1 records.

2 SOLICITOR: You wouldn't be because that
3 wouldn't be between you and the family court.

4 THE COURT: I thought that was a YOA this
5 morning.

6 MR. BRYAN: The YOA, I think, was for entering
7 the motor vehicle and they mentioned a juvenile conviction
8 for armed robbery and burglary. And she had a printout,
9 it was something printed that she was reading off of,
10 Your Honor, so they can get that. Obviously the Solicitor's
11 office can get that information without going through
12 family court for a hearing.

13 SOLICITOR: Yes, we can get it but it's always
14 been my stance that I would never bring that up. I
15 never bring it up because it's quite clear, the law
16 requires you to go before a family court judge. I
17 can't speak to what any other attorney in our office
18 may do.

19 THE COURT: Well, I think the simplest thing
20 for both of ya'll to do --- where is the witness now?

21 SOLICITOR: She is in the officer's room.

22 THE COURT: Ya'll just step back there and
23 ask her if she's had any juvenile court appearances
24 and don't put her on the spot, just say has she ever
25 been in juvenile court and if she says no, I think

1 that should end it. And if she says yes, then come
2 back to me.

3 SOLICITOR: Can we ask her mother? Her mother
4 would know. Has she ever had any juvenile court appearances?

5 MOTHER: Yes.

6 SOLICITOR: When was that?

7 MOTHER: April.

8 SOLICITOR: April of ---

9 MOTHER: This year.

10 THE COURT: This year? After this alleged
11 offense?

12 MOTHER: Yes.

13 SOLICITOR: And what were they for?

14 MOTHER: Fighting.

15 SOLICITOR: Where?

16 MOTHER: In school.

17 THE COURT: There's your answer. I don't
18 think it would be of any use even if you had it printed
19 out.

20 MR. BRYAN: Well, fighting can be disturbing
21 schools or assault and battery or assault and battery
22 of a high and aggravated nature.

23 SOLICITOR: I would object that it would
24 be more prejudicial than informative. I don't see
25 how it could possibly be relevant. And I don't know

1 if I were the defense if I would want to go there if
2 she was accused of fighting after having been raped.
3 I --- , you know, he may open up a can of worms he
4 doesn't want to know about. I mean, he ---

5 THE COURT: Well, let me go ---

6 SOLICITOR: I mean, he may ---

7 THE COURT: Let me go into it a little bit.
8 Quit interrupting me.

9 SOLICITOR: I apologize, Your Honor.

10 THE COURT: Was she charged with assault
11 and battery of a high and aggravated nature?

12 MOTHER: No, assault and battery.

13 THE COURT: Not of a high and aggravated
14 nature?

15 MOTHER: I don't think so, I don't have the
16 papers with me so I'm not sure.

17 THE COURT: That was the sole charge?

18 MOTHER: Assault and battery.

19 SOLICITOR: Where was she charged?

20 MOTHER: It was the county office that did
21 it.

22 THE COURT: It still wouldn't be of any use
23 if you had it.

24 MR. BRYAN: Yes, sir.

25 THE COURT: Right?

Ms. Payne-Direct by Solicitor

36

1 MR. BRYAN: That's correct, Your Honor.

2 THE COURT: Okay.

3 MR. BRYAN: No further requests, Your Honor.

4 THE COURT: All right, let's get this show
5 on the road.

6 (WHEREUPON, Court was cleared for the victim's
7 testimony.)

8 THE COURT: All right, bring in the jury.

9 (WHEREUPON, Jury returned to the courtroom
10 and the following proceedings were heard in their presence
11 and hearing.)

12 SOLICITOR: Your Honor, our first witness
13 is Latay Payne.

14

15 LATAY PAYNE, AFTER

16 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION BY SOLICITOR:

18 Q. Latay, I'm going to try and stand right here
19 so that the jury can see you, okay?

20 A. Okay.

21 Q. Latay, what is your full name? And I want
22 you to speak into this microphone.

23 A. Latay Denise Payne.

24 Q. Latay, how old are you?

25 A. Fourteen.

- 1 Q. How old?
- 2 A. Fourteen.
- 3 Q. And when did you turn fourteen?
- 4 A. May 2nd.
- 5 Q. Okay, how old were you in July of 2003?
- 6 A. Thirteen..
- 7 Q. Thirteen. And what grade are you in, Latay?
- 8 A. The eighth.
- 9 Q. Okay, I need you to speak into that microphone
- 10 a little bit more. What grade are you in?
- 11 A. The eighth.
- 12 Q. And where do you live, Latay?
- 13 A. Jacksonville, Florida.
- 14 Q. And how long have you lived in Jacksonville?
- 15 A. Going on two weeks.
- 16 Q. Two weeks?
- 17 A. Yes, ma'am.
- 18 Q. Where did you live before that?
- 19 A. Barnwell.
- 20 Q. How long did you live in Barnwell?
- 21 A. For six years.
- 22 Q. For six years. And did you go to school
- 23 there?
- 24 A. Yes, ma'am.
- 25 Q. Where did you go to school?

Ms. Payne-Direct by Solicitor

38

1 A. J. A. Butler in primary.

2 Q. In primary? And where did you live before
3 you moved to Barnwell?

4 A. Allendale.

5 Q. Okay, you lived in Barnwell until two weeks
6 ago. Did you come and visit Allendale sometimes?

7 A. Yes, ma'am.

8 Q. Do you have relatives here?

9 A. Yes, ma'am.

10 Q. Do you have friends here?

11 A. I have more relatives.

12 Q. More relatives?

13 A. Yes, ma'am.

14 Q. Okay. Now, did you come to Allendale last
15 summer in July of 2003?

16 A. Yes, ma'am.

17 Q. And do you remember what date it was that
18 you came to Allendale?

19 A. The 12th.

20 Q. The 12th?

21 A. Of July.

22 Q. Of July. And do you remember what day of
23 the week that was?

24 A. A Saturday.

25 Q. Okay, and how did you happen to come to

1 Allendale?

2 A. My cousin, Jackie, came and picked me up.

3 Q. Okay. And Jackie Doe is your cousin?

4 A. Yes, ma'am.

5 Q. Okay, and does she have a daughter?

6 A. Yes, ma'am.

7 Q. Okay, and who is that?

8 A. Sabrina Flowers.

9 Q. Sabrina Flowers?

10 A. Yes, ma'am.

11 Q. Okay. And are you and Sabrina cousins?

12 A. Yes, ma'am.

13 Q. Okay. Where did you visit in Allendale?

14 A. My cousin, Bridgette Smoaks house.

15 Q. Okay, and where does Bridgette live?

16 A. In the lane.

17 Q. In the lane? Do you know what the name of
18 that street is?

19 A. No, ma'am.

20 Q. You just know that it's called the lane?

21 A. Yes, ma'am.

22 Q. All right, and what did you do once you got
23 here?

24 A. Me and Sabrina we was --- well, first we
25 was in the house and we was just talking and watching

1 TV but then later on that night she got mad at Marilyn
2 and so she got up and me and her went walking.

3 Q. Okay, who did she get mad at?

4 A. Her friend named Marilyn.

5 Q. Did you know Marilyn?

6 A. No, ma'am.

7 Q. Okay, so you said you got out and went walking,
8 was Bridgette up?

9 A. No, ma'am.

10 Q. Where was Bridgette?

11 A. She was in her room.

12 Q. She was in her room. Do you know about what
13 time it was that you went walking?

14 A. I think it was late.

15 Q. Okay, was it after dark?

16 A. Yes, ma'am.

17 Q. Had it been dark for long?

18 A. Yes, ma'am.

19 Q. Do you have any idea what time it was?

20 A. A little after 11, 12, something.

21 Q. Between 11 and 12 maybe?

22 A. (Nods head affirmatively.)

23 Q. Okay. Now, when ya'll went walking, I want
24 you to tell this jury what you did when you went walking.
25 Tell them where you walked.

1 A. We walked out of her lane and across the
2 highway and went past Piggly Wiggly and down the hill
3 and we went walking through apartments.

4 Q. Okay, do you know what the name of that road
5 was that you went walking on?

6 A. I forgot.

7 Q. You forgot the name of the road?

8 A. Yes, ma'am.

9 Q. The apartments, do you remember the name
10 of the apartments?

11 A. No, ma'am.

12 Q. Okay. Well, when you said d--- you said you
13 crossed the highway and you went across the Piggly
14 Wiggly parking lot and you went down the hill. When
15 you said you went down the hill, how far is that, that
16 little hill?

17 A. Not far.

18 Q. Not far. And which way did you turn?

19 A. We didn't turn.

20 Q. You didn't turn?

21 A. No, ma'am.

22 Q. Okay. And then you got on another road?

23 A. Uh-huh.

24 Q. Okay. And that road, was it still -- how
25 far was it maybe that you walked along from Bridgette's

- 1 house in the lane?
- 2 A. I don't know.
- 3 Q. About how long did you walk?
- 4 A. I don't know.
- 5 Q. Okay, you said you went to some apartments,
- 6 what did you do there? Did you go in?
- 7 A. No, ma'am.
- 8 Q. What did you do?
- 9 A. Stayed out.
- 10 Q. You stayed outdoors?
- 11 A. Uh-huh.
- 12 Q. Did you visit?
- 13 A. No, ma'am. We went to go to --- this lady
- 14 knew Sabrina, I didn't go in, just stayed at the door.
- 15 Q. Okay, and then what happened?
- 16 A. Then we was on our way back down the road
- 17 and that's when we seen Lexie's Chevy.
- 18 Q. Okay, you said LExie's Chevy, who is Lexie?
- 19 A. Used to be a friend of Sabraina.
- 20 Q. Used to be a friend of Savrina? Do you know
- 21 his last name?
- 22 A. Brown.
- 23 Q. So you saw somebody named Lexie Brown and
- 24 where was he?
- 25 A. Standing up by the car.

- 1 Q. Where was the car?
- 2 A. On the road that we walked through.
- 3 Q. Okay, was it moving or was it parked?
- 4 A. Parked.
- 5 Q. It was parked? And could you tell what this
- 6 car looked like?
- 7 A. It was a dark blue or black.
- 8 Q. Dark blue or black, you're not sure of the
- 9 color?
- 10 A. No, ma'am.
- 11 Q. Okay, and what kind of car was it?
- 12 A. A Chevy.
- 13 Q. You think it was a Chevy? Okay, and was
- 14 it a new car or an old car?
- 15 A. Old one.
- 16 Q. And old model?
- 17 A. Yes, ma'am.
- 18 Q. Okay, did it have two doors or did it have
- 19 four doors?
- 20 A. Four.
- 21 Q. Okay. And when you saw --- it was you and
- 22 Sabrina, right?
- 23 A. Yes, ma'am.
- 24 Q. And was Lexie by himself in the car or was
- 25 there anybody with him?

Ms. Payne-Direct by Solicitor

44

- 1 A. He had a friend with him.
- 2 Q. And did you know the person who was with
- 3 him?
- 4 A. No, ma'am.
- 5 Q. Okay. Now, what happened then?
- 6 A. Me and Sabrina, we got in the car and we
- 7 sat down, but then Lexie said something to Sabrina
- 8 and so she got out the car and she went walking and
- 9 he got out behind her and they went walking.
- 10 Q. And what did you do?
- 11 A. I got out behind her and then she ---
- 12 Q. Talk a little slower and louder so that the
- 13 jury can hear you. So she went walking and what did
- 14 you do?
- 15 A. Got out behind her but she was like she would
- 16 be back.
- 17 Q. Right, and so you got out of the car you
- 18 said?
- 19 A. Yes, ma'am.
- 20 Q. And then what did you do?
- 21 A. I got in the front.
- 22 Q. You got in the front?
- 23 A. Yes, ma'am.
- 24 Q. Where had you been?
- 25 A. In the back.

- 1 Q. Okay. And what happened once you got in the
2 front?
- 3 A. That's when the man crossed the seat.
- 4 Q. Tell the jury what he did.
- 5 A. He crossed the seat.
- 6 Q. Tell me what it means when you say the man
7 crossed the seat.
- 8 A. Got over the seat.
- 9 Q. Got over the seat?
- 10 A. Yes, ma'am.
- 11 Q. Was he in the front seat or the back seat?
- 12 A. Back.
- 13 Q. And where did he end up?
- 14 A. In the front.
- 15 Q. Did you ask him to come in the front seat?
- 16 A. No, ma'am.
- 17 Q. Had the two of you been talking?
- 18 A. He had asked me who I was related to.
- 19 Q. And what did you tell him?
- 20 A. The Paynes and I say my uncle Mikie and my
21 uncle Robbie.
- 22 Q. And what happened then?
- 23 A. He act like he didn't know them.
- 24 Q. Okay. And did you ask him anything?
- 25 A. No, ma'am.

- 1 Q. Okay. Did he tell you what his name was?
- 2 A. Flip.
- 3 Q. He said his name was Flip?
- 4 A. (Nods affirmatively).
- 5 Q. Okay. And once he crossed over to the front
- 6 seat, what happened then?
- 7 A. Then he put his tongue in my ear and I put
- 8 my head to the other side.
- 9 Q. Now, say that so the jury can hear it.
- 10 A. He had put his tongue in my ear and I scoot
- 11 my head to the other side.
- 12 Q. Did you want him to put his tongue in your
- 13 ear?
- 14 A. No, ma'am.
- 15 Q. Okay. And when you put your head to the
- 16 other side, what happened?
- 17 A. And then he hold my arm.
- 18 Q. He hold your arm?
- 19 A. Uh-huh.
- 20 Q. What did he do once he hold your arm?
- 21 A. Pulled my shorts to the side.
- 22 Q. What did he do with your shorts?
- 23 A. Pulled my shorts to the side.
- 24 Q. Okay, tell the jury what kind of clothes
- 25 you had on as far as your short.

- 1 A. Big legged baggy shorts.
- 2 Q. Big legged baggy shorts?
- 3 A. Uh-huh.
- 4 Q. Did he pull your shorts down?
- 5 A. No, ma'am.
- 6 Q. What did he do with them?
- 7 A. Pulled them to the side.
- 8 Q. Pulled them to the side, at the waist?
- 9 A. No, it was like big legged shorts and you
- 10 can just pull the ---
- 11 Q. Tell the jury, say just what you said big
- 12 legged shorts ---
- 13 A. They was big legged shorts and he just pulled
- 14 them to the side.
- 15 Q. And then what did he do?
- 16 A. He stuck his thing in me.
- 17 Q. He stuck his thing in you.
- 18 A. Uh-huh.
- 19 Q. What did you say?
- 20 A. Stop, and then after ---
- 21 Q. Tell the jury what you said.
- 22 A. Stop and then after I said stop, my cousin
- 23 was like, you had better leave my cousin alone which
- 24 is Sabrina.
- 25 Q. Okay. Did you tell him it was okay to do

Ms. Payne-Direct by Solicitor

48

- 1 that?
- 2 A. No, ma'am.
- 3 Q. You told him to stop?
- 4 A. Yes, ma'am.
- 5 Q. Okay. Did he say anything to you before
- 6 he did it?
- 7 A. He said tonight I'm going to make you into
- 8 a woman.
- 9 Q. And what did you do when you said tonight
- 10 I'm going to make you into a woman? What did you say?
- 11 A. No.
- 12 Q. No? And what did he do?
- 13 A. He just stuck his thing in it.
- 14 Q. Okay, what did it feel like when he stuck
- 15 his thing in it?
- 16 A. It hurt.
- 17 Q. How long did he leave his thing in you?
- 18 A. I don't know.
- 19 Q. When you said he put it in you, do you mean
- 20 your private part?
- 21 A. Yes, ma'am.
- 22 Q. And what part of you was it that hurt?
- 23 A. Under my clothes.
- 24 Q. Under your clothes?
- 25 A. Yes, ma'am.

- 1 Q. Did it hurt inside or outside?
- 2 A. Inside.
- 3 Q. Okay, do you know how long he left it in
- 4 there?
- 5 A. No, ma'am.
- 6 Q. No? And what finally happened?
- 7 A. I was bleeding.
- 8 Q. Say that again.
- 9 A. I didn't know it until after I opened the
- 10 door and me and Sabrina got out and I walked to my
- 11 cousin house and that's when I went to the bathroom
- 12 and I was bleeding and I didn't tell Sabrina then 'cause
- 13 I ain't felt like talking about it.
- 14 Q. Okay. And when he stopped, how long were
- 15 you in the car with him after that?
- 16 A. I got out after that 'cause Sabrina came
- 17 back to the car.
- 18 Q. Okay, and what happened when they came back
- 19 to the car?
- 20 A. We got out or I got out.
- 21 Q. Okay, and who opened the door for you?
- 22 A. Lexie.
- 23 Q. Lexie?
- 24 A. Uh-huh.
- 25 Q. Lexie let you out of the car?

- 1 A. Yes, ma'am.
- 2 Q. And then the two of you walked back you said.
- 3 A. Yes, ma'am.
- 4 Q. Now, had you ever seen this man before?
- 5 A. No, ma'am.
- 6 Q. You said that it was around 11 o'clock or
- 7 12 o'clock at night, was it dark outside?
- 8 A. Yes, ma'am.
- 9 Q. How did you --- could you see what this man
- 10 looked like?
- 11 A. Yes, ma'am.
- 12 Q. And how was it if it was dark that you could
- 13 see what he looked like?
- 14 A. Because of the street light.
- 15 Q. The street light, okay. And how far away
- 16 was the street light?
- 17 A. Right beside the car.
- 18 Q. Right beside the car?
- 19 A. Yes, ma'am.
- 20 Q. Okay. How long do you think that you were
- 21 in the car with the defendant? First of all, how long
- 22 were you in there with Sabrina?
- 23 A. uhm --- about six, seven, ten minutes.
- 24 Q. Six to ten minutes? And then when she left,
- 25 how long you were alone in the car? How long were

1 you alone in the car with him?

2 A. It was ten or less, ten minutes or less.

3 Q. Ten minutes or less? Okay. Now, when all
4 this happened, how close was his face to your face?

5 A. Close enough for me to smell alcohol.

6 Q. Okay. Didn't you also say that he kissed
7 your ear or put his tongue in your ear?

8 A. Yes, ma'am.

9 Q. So was his face real close to your face?

10 A. Yes, ma'am.

11 Q. Okay. And how long were you in the front
12 seat with him do you think?

13 A. For about ten minutes.

14 Q. Okay. And when you saw him that night, what
15 did you see that he looked like?

16 A. Sort of tall and he had big eyes ---

17 Q. Now, I want you to hold this up and tell
18 the jury what the man that you saw looked like.

19 A. He was tall and skinny and he had big eyes.

20 Q. Anything else you remember about him?

21 A. Huh-uh.

22 Q. Tall and skinny and had big eyes. And can
23 you still picture him in your mind now?

24 A. Yes, ma'am.

25 Q. And was he standing up?

Ms. Payne-Direct by Solicitor

52

- 1 A. Huh-uh.
- 2 Q. How do you know that he was tall and skinny?
- 3 A. 'Cause he had long legs.
- 4 Q. Long legs?
- 5 A. Yes, ma'am.
- 6 Q. And do you remember anything else about his
- 7 face?
- 8 A. Huh-uh.
- 9 Q. Do you remember anything else about the way
- 10 he looked?
- 11 A. No, ma'am.
- 12 Q. All right. And what did his hair look like?
- 13 A. I don't know, he had a dew rag on.
- 14 Q. He had a dew rag on. Okay. So it was light
- 15 enough that you could see that he had a dew rag on,
- 16 right?
- 17 A. Yes, ma'am.
- 18 Q. Okay. Did you notice what his neck or his
- 19 chin looked like?
- 20 A. He had a long neck.
- 21 Q. He had what?
- 22 A. A long neck.
- 23 Q. Okay. When this happened to you, did you
- 24 feel happy?
- 25 A. No, ma'am.

- 1 Q. Was it something that you wanted to happen?
- 2 A. No, ma'am.
- 3 Q. The place that this happened on the side
- 4 of the road, was this in the City of Allendale?
- 5 A. Yes, ma'am.
- 6 Q. Is that in the County of Allendale?
- 7 A. Yes, ma'am.
- 8 Q. Now, you said you didn't tell Sabrina.
- 9 A. Not right away.
- 10 Q. No. Did you go home the next day?
- 11 A. Uh-huh. I went home the next day.
- 12 Q. Did you tell your momma what happened the
- 13 next day?
- 14 A. Huh-uh.
- 15 Q. Did you eventually tell her what happened?
- 16 A. Yes, ma'am.
- 17 Q. About how much later was it that you told
- 18 her?
- 19 A. Two weeks.
- 20 Q. Maybe two weeks? What made you finally tell
- 21 her? Why didn't you tell her in the beginning?
- 22 A. Because it would make her feel bad because
- 23 the same thing happened to her.
- 24 Q. The same thing happened to her?
- 25 A. Yea, ma'am.

Ms. Payne-Direct by Solicitor

54

1 Q. What happened to her?

2 A. She was raped when she was little.

3 Q. She was raped when she was little?

4 A. Yes, ma'am.

5 Q. And why didn't you tell your momma? How
6 did you feel about it?

7 A. Same way she tell me --- she used to tell
8 me she would feel sad and disappointed.

9 Q. Were you afraid to tell her?

10 A. Yes, ma'am.

11 Q. Did you get the courage up to tell her?

12 A. Yes, ma'am.

13 Q. And what did you tell her?

14 A. That me and Sabrina was together and somebody
15 had touch me and then she jumped up and she was like,
16 who. And then she just called my Uncle Michael house
17 and we walked to my Uncle Michael house. And I tell --
18 I told my uncle what had happened and he told me, he
19 say, if it was something that you wanted to try, then
20 it's okay, you're not going to get in trouble, because
21 you want the experience but he was like --- so ---
22 he was like did he rape you or did you --- because
23 if he did rape you, he's going to get in trouble and
24 if he didn't, then you just need to let us know.

25 Q. And what did you say?

1 A. Then I told my uncle that he did had raped
2 me and then my uncle got mad because I told ---

3 Q. Okay, you're doing real good, I see, it's
4 okay. Did, after that happened, did you and your momma
5 go to the police?

6 A. Yes, ma'am.

7 Q. And what happened when you went to the police?

8 A. We told the police what happened.

9 Q. And what did the police have you do?

10 A. Go to the doctor.

11 Q. Okay. Did you go to a doctor in Allendale?

12 A. Yes, ma'am.

13 Q. Did you go to the doctor somewhere else?

14 A. Uhm --- Charleston, I think.

15 Q. Okay. Did your momma go with you to Charleston?

16 A. Yes, ma'am.

17 Q. Did any police officers go?

18 A. Yes, m'am, Officer Smalls.

19 Q. Officer Smalls went with you, okay. And
20 when you went to Charleston, did you have to wait a
21 little bit to go? Did you have to get an appointment
22 to go?

23 A. I don't remember.

24 Q. You don't remember but you remember you went.

25 A. Yes, ma'am.

1 Q. Okay. Now, I'm going to go back to that
2 night when you said that he put his thing in you. I'm
3 going to ask you, do you know what the word "ejaculation"
4 means?

5 A. Uhm --- some one letting something come out
6 of his thing.

7 Q. Okay, And do you know whether or not he
8 ejaculated?

9 A. No, ma'am.

10 Q. You don't? Did you feel anything?

11 A. Yes, ma'am.

12 Q. Come out of him into you?

13 A. Uhm ---

14 Q. Did you feel anything on you?

15 A. Yes, ma'am.

16 Q. What did you feel?

17 A. Sticky feeling.

18 Q. Sticky feeling. Hold on just a minute,
19 Sweetie. Now I want to go back to that night when
20 you said that he was real close to you, that he tried
21 to kiss you and that you could smell alcohol on his
22 breath, right?

23 A. He didn't try to kiss me, he just stuck his
24 tongue in my ear.

25 Q. Okay, now you've got to speak into that

1 microphone. Now, do you see the man that forced himself
2 on you in this courtroom today? Look around at everybody
3 in the courtroom. Look around, Ms. Cross is right
4 next to you, nobody is going to hurt you. Look all
5 the way around. Can you look?

6 A. (Witness has her head down.)

7 SOLICITOR: Officers, would you come stand
8 by her, please.

9 (WHEREUPON, Two officers stood on either
10 side of the witness.)

11 Q. Now, you've got a police officer all around
12 you. Now look around this room and see if you see
13 the man with the big eyes and the long neck and that
14 was tall and skinny.

15 A. Over there.

16 Q. Where is he sitting over there?

17 A. Next to the man with the glasses.

18 Q. Next to the man with the glasses? There's
19 two men with glasses, is he sitting inbetween them?

20 A. The one on that side by the door.

21 Q. On this side by the door, okay, he's sitting
22 next to that man. Are you sure? I want you to look
23 at him and be sure that that was the man you saw in
24 the car.

25 A. Yes, ma'am.

Ms. Payne-Direct by Solicitor

58

1 Q. Look at him.

2 A. Yes, ma'am.

3 Q. Do you remember that face?

4 A. Yes, ma'am.

5 Q. Are you absolutely sure that you remember
6 that face?

7 A. Yes, ma'am.

8 Q. Are you absolutely sure that's the person
9 who forced himself on you?

10 A. Yes, ma'am.

11 Q. Is there any doubt in your mind at all?

12 A. No, ma'am.

13 SOLICITOR: Thank you, I don't have any more
14 questions of this witness. Now, you've got to stay
15 here, Mr. Bryan has some questions for you.

16 THE COURT: Cross-examination.

17

18 CROSS-EXAMINATION

19 BY MR. BRYAN:

20 Q. The officers can sit down, I'm not going
21 to hurt her. Ms. Payne, this happened at nighttime?

22 A. Yes, ma'am, I meant, yes, sir.

23 Q. Which street did it happen on?

24 A. I don't know the name.

25 Q. Can you describe the car again?

- 1 A. A dark blue or black Chevy.
- 2 Q. Was it like a full size or a little Chevy?
- 3 A. It was just a dark Chevy.
- 4 Q. A dark Chevy. Were the windows tinted?
- 5 A. Sir?
- 6 Q. Were the windows tinted?
- 7 A. Yes, sir.
- 8 Q. And how far away was Sabrina while all of
- 9 this was going on? Do you remember?
- 10 A. She wasn't too far away but she went walking
- 11 off from the car.
- 12 Q. And you didn't tell Sabrina what happened?
- 13 A. No, sir.
- 14 Q. And you didn't tell your mother for a couple
- 15 of weeks?
- 16 A. No, sir.
- 17 Q. Did you try to get out of the car?
- 18 A. After it.
- 19 Q. When you first got to the car, who all was
- 20 in it?
- 21 A. Lexie was standing to it and then he had
- 22 a friend.
- 23 Q. And where was the friend, was he in the car
- 24 or was he outside of the car?
- 25 A. In.

Ms. Payne-Cross by Mr. Bryan

60

- 1 Q. On what seat?
- 2 A. Sir?
- 3 Q. Where was he in the car?
- 4 A. In the back.
- 5 Q. He was in the back seat?
- 6 A. Yes, sir.
- 7 Q. Was there anyone else around?
- 8 A. No, sir.
- 9 Q. Just the guy standing by the car and another
- 10 guy in the back seat?
- 11 A. Yes, sir.
- 12 Q. How long had you lived in Allendale?
- 13 A. I don't know, from the second grade on down.
- 14 Q. And did you live in that area or in that
- 15 general part of town?
- 16 A. No, sir.
- 17 Q. Where did you live in Allendale?
- 18 A. I ---
- 19 SOLICITOR: Your Honor, I believe she testified
- 20 that she lived in Barnwell at the time.
- 21 MR. BRYAN: I think she knows where she lived,
- 22 Your Honor.
- 23 THE COURT: Pose the question again, I didn't
- 24 hear what she said.
- 25

1 Q. What part of town did you live in when you
2 lived in Allendale?

3 A. In Oakland Apartments.

4 Q. And you didn't know the name of the street
5 where this happened?

6 A. No, sir.

7 Q. Do you know the near-by street's name?

8 A. Sir?

9 Q. Do you know the name of like a near-by street,
10 like a block off, one way or the other?

11 A. No, sir.

12 Q. Is that the one they call The Lane?

13 A. No, sir.

14 Q. Okay, where did your cousin live?

15 SOLICITOR: Would you specify which cousin,
16 she has a lot of cousins.

17 Q. The one she was visiting that night before
18 this happened.

19 A. Well, she been stayed in Allendale for like
20 overnight.

21 Q. Didn't you just testify that your cousin
22 lived on The Lane?

23 A. Oh, you're talking about Bridgette. Yeah,
24 she do lives there, I don't know how long she's been
25 living there, but she did stay there.

Ms. Payne-Cross by Mr. Bryan

62

1 Q. Then you know where The Lane is, right?

2 A. Yes, sir.

3 Q. Isn't that a dangerous place to be for drugs
4 and robbers?

5 SOLICITOR: Your Honor, ---

6 A. I don't know.

7 SOLICITOR: --- that's beyond this witness'
8 knowledge. She's from Barnwell.

9 MR. BRYAN: She lived in town for six years,
10 Your Honor.

11 SOLICITOR: And it's not based on any factual
12 knowledge that she would have.

13 THE COURT: I'm going to give him some leeway,
14 though. Repeat your question.

15 Q. Is that down --- isn't The Lane known for
16 robbers and drugs, and it's a dangerous place to be?

17 A. I don't know.

18 Q. Did you have to cross Flat Street to get
19 to that road?

20 A. No.

21 MR. BRYAN: No further questions.

22 SOLICITOR: No further questions.

23 THE COURT: The witness may step down. Call
24 your next witness, Solicitor.

25 SOLICITOR: Call Sabrina Flowers.

SABRINA FLOWERS,

AFTER FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY SOLICITOR:

Q. Sabrina, I want you to be sure to speak into this microphone and if you need to, we will let you pick it up and speak into it, I think that might be easier. Tell the jury your full name.

A. Sabrina Flowers.

Q. All right, Sabrina, how old are you?

A. Sixteen.

Q. And when did you turn sixteen?

A. March 27th.

Q. Okay, and how old were you in July 2003?

A. Fifteen.

Q. And where do you live?

A. Barnwell.

Q. How long have you lived in Barnwell?

A. About nine years.

Q. About nine years? Did you live anywhere else before you lived in Barnwell?

A. Allendale.

Q. Okay. Now, do you have a cousin named Latay Payne?

A. Yes, ma'am.

Q. Okay. Now, do you have relatives in Allendale?

- 1 A. Yes, ma'am.
- 2 Q. Do you come to Allendale to visit sometimes?
- 3 A. Yes, ma'am.
- 4 Q. Do you remember being in Allendale with Latay
- 5 last summer?
- 6 A. Yes, ma'am.
- 7 Q. Okay. Tell me how you came to be in Allendale
- 8 with Latay last summer.
- 9 A. I had went to stay a weekend with my grandma
- 10 in Beaufort and she had to bring me to Allendale so
- 11 my momma can pick me up from my Aunt Bridgett house
- 12 and when I got to Allendale I had call my momma and
- 13 told her to go Latay and to bring her over there with
- 14 me.
- 15 Q. And why did you want Latay with you?
- 16 A. Because I wanted to see her.
- 17 Q. And did you want her to visit with you at
- 18 your Aunt Bridgette's house?
- 19 A. Yes, ma'am.
- 20 Q. Okay. And do you remember about when this
- 21 was?
- 22 A. You say when?
- 23 Q. Yeah, about when it was.
- 24 A. (No response.)
- 25 Q. It was last summer, do you remember any more

1 than that?

2 A. I can't remember when but I think it was
3 some time in July.

4 Q. Some time in July, okay. Now, when did ---
5 so your mom went to Barnwell and picked up Latay to
6 come and visit with you. About what time did she get
7 there, do you remember?

8 A. Around 4.

9 Q. Okay. And what did you girls do?

10 A. We sit in the house talking and we left
11 and went walking for a little while and then came back
12 to the house.

13 Q. Did --- were ya'll enjoying seeing each other?

14 A. Yes, ma'am.

15 Q. Okay. You came back to the house. Did you
16 stay at the house all night?

17 A. Huh-uh. We left again.

18 Q. You left again. Do you remember, was it dark
19 or light when you left again?

20 A. Dark.

21 Q. Had it been dark for a while?

22 A. Yes, ma'am.

23 Q. Okay, so was it late at night when you left?

24 A. Yes, ma'am.

25 Q. Do you remember what time?

Ms. Flowers-Direct by Solicitor

66

- 1 A. Round about 11, 10 or 11.
- 2 Q. 10 or 11, you're not sure of the time?
- 3 A. No, sir.
- 4 Q. But you know it was late at night?
- 5 A. Uh-huh.
- 6 Q. Okay, now, when you left the house, where
- 7 did you go, tell this jury when you left the house
- 8 where you went.
- 9 A. We went walking in Pinewood.
- 10 Q. Pinewood, tell the jury what Pinewood is.
- 11 A. Apartments.
- 12 Q. And where are Pinewood Apartments?
- 13 A. In Allendale.
- 14 Q. In Allendale? Do you know what road they're
- 15 on?
- 16 A. On Barton Road.
- 17 Q. On Barton Road. Now, tell the jury how you
- 18 walked, what your route was.
- 19 A. (No response.)
- 20 Q. You were on The Lane with Bridgette and where
- 21 did you go?
- 22 A. We walked cross the highway down by Piggly
- 23 Wiggly and went down a little hill by the club.
- 24 Q. Down the hill by the club?
- 25 A. Yes, ma'am.

- 1 Q. Is that Flat Street?
- 2 A. Huh-uh. Past the road to Flat Street.
- 3 Q. And then ---
- 4 A. We went down Barton Road.
- 5 Q. Went down on Barton Road. And you went to
- 6 Pinewood?
- 7 A. Yes, ma'am.
- 8 Q. How long did you stay at Pinewood?
- 9 A. Not long, about 15 minutes.
- 10 Q. Okay, and what did you do after that?
- 11 A. We just went walking back toward Bridgett
- 12 house.
- 13 Q. Okay, did you get very far?
- 14 A. We got in front of the trash dumpster.
- 15 Q. The trash dumpster, uh-huh, and what happened
- 16 then?
- 17 A. And we seen Lexie and that other boy Roderick.
- 18 Q. Okay. Did you know Lexie?
- 19 A. Yes, ma'am.
- 20 Q. And how did you know Lexie?
- 21 A. 'Cause we had met and we conversate.
- 22 Q. Okay, and how long had you known Lexie?
- 23 A. About two years now.
- 24 Q. About two years now? Okay. And he was on
- 25 the side of Barton Road?

Ms. Flowers-Direct by Solicitor

68

- 1 A. Yes, ma'am.
- 2 Q. And was his car moving or was it parked?
- 3 A. He was riding in it and he seen us and he
- 4 stopped.
- 5 Q. Okay. You saw Lexie and did you see anybody
- 6 with him that you knew?
- 7 A. It was just him and Roderick.
- 8 Q. Okay, Roderick. And did you know Roderick?
- 9 A. I had seen him a couple of times.
- 10 Q. Okay, how did you know him?
- 11 A. Because my friend, Shavanna, he used to go
- 12 with her aunt.
- 13 Q. He used to go with her aunt. And what's
- 14 your aunt?
- 15 A. Charlotte.
- 16 Q. Do you know Charlotte's last name?
- 17 A. No, ma'am.
- 18 Q. How many times would you say that you had ---
- 19 well, how long had you known Roderick?
- 20 A. I know him about a couple of years.
- 21 Q. Couple of years? How many times would you
- 22 say that you have seen Roderick before?
- 23 A. About five, no more than ten times.
- 24 Q. Five or ten times. Okay, when you saw Lexie
- 25 that night and you saw the man with him, did you have

1 any doubt that it was Roderick?

2 A. No, ma'am.

3 Q. And you were sure it was him?

4 A. Yes, ma'am.

5 Q. And tell me once again how you knew him,
6 about the woman named Charlotte.

7 A. My friend, Shavanna, that's her aunt and
8 we used to be together and one day we was at her house
9 and they were there.

10 Q. Okay. Now, when you stopped and talked to
11 Lexie, was that still in the city limits of Allendale?

12 A. Yes, ma'am.

13 Q. And is that in Allendale County where you
14 were?

15 A. Yes, ma'am.

16 Q. All right, what happened once you stopped?

17 A. We stopped at about the same time and Lexie
18 and me got out of the car and we walked further down.

19 Q. You and Lexie got out of the car?

20 A. Yes, ma'am.

21 Q. Now, first, did the two of you girls get
22 in the car?

23 A. Yes, ma'am.

24 Q. Okay. And then you got out of the car. And
25 it was who got out of the car?

Ms. Flowers-Direct by Solicitor

70

- 1 A. Me and Lexie.
- 2 Q. And what did you and Lexie do?
- 3 A. We went walking further down and was just
- 4 talking.
- 5 Q. Okay, and how far away did you walk?
- 6 A. Not that far.
- 7 Q. Not that far? Okay. Did you notice anything ---
- 8 well, how long did you stay away from the car talking?
- 9 A. About ten or fifteen minutes.
- 10 Q. And while you were away from the car, did
- 11 you notice anything in the car, any noise or any activity?
- 12 A. My cousin --- all I could make out the words
- 13 she was saying was no and after everything she was
- 14 saying was boy.
- 15 Q. Okay, how many times did you hear her say
- 16 no?
- 17 A. About --- it was many times.
- 18 Q. Many times?
- 19 A. Yes, ma'am.
- 20 Q. And what did you do?
- 21 A. I yell out, I was like, you had better leave
- 22 my cousin alone because he's too young for you but
- 23 I didn't think, you know, that nothing of it, I just
- 24 decided, you know ---
- 25 Q. What do you mean you didn't think nothing ---

1 nothing of it?

2 A. I didn't think --- I was like anything of
3 it, I thought they were just playing something or talking.

4 Q. Okay, so you didn't come back to the car
5 right away?

6 A. No, ma'am.

7 Q. Okay. What eventually happened with you and
8 Lexie? Did ya'll walk back to the car or walked away
9 or what?

10 A. He walked back to the car, I didn't, I stayed
11 right there, he walked back to the car and he opened
12 the door and she got out.

13 Q. Okay, and then what happened?

14 A. And we just walked back.

15 Q. Okay. Now, it was dark, it was 11 o'clock,
16 maybe 12 o'clock, maybe 10 o'clock at night, how dark
17 was it?

18 A. It was dark.

19 Q. It was dark. How could you see that it was
20 Lexie and Roderick?

21 A. By the street light.

22 Q. Okay, where was the street light in relation
23 to where the car was?

24 A. It was on like in front of the car on the
25 other side of the road.

Ms. Flowers-Direct by Solicitor

72

- 1 Q. Other side of the road? Okay, how well could
2 you see their faces?
- 3 A. I can notice who they was.
- 4 Q. You could see well enough to know who they
5 were?
- 6 A. Yes, ma'am.
- 7 Q. How close were you to Roderick?
- 8 A. We wasn't close, I mean ---
- 9 Q. No, I mean, how close that night, were you
10 this close to him or this close to him or how close?
- 11 A. Like not face to face but a little further.
- 12 Q. This close?
- 13 A. A little more.
- 14 Q. This close?
- 15 A. Yes, ma'am.
- 16 Q. About like that. Did you have any doubt
17 that it was Roderick?
- 18 A. No, ma'am.
- 19 Q. When the two of you walked back, did she
20 say anything to you about what happened?
- 21 A. No, ma'am.
- 22 Q. What did she act like on the walk back?
- 23 A. She wasn't -- she was talking but not like
24 we usually talk.
- 25 Q. Okay, what was she like?

- 1 A. She was like --- you know, if I asked her
2 a question she would answer it and talking and acting
3 hyper like she do, she wasn't acting like that.
- 4 Q. Okay, she was more quiet than usual?
- 5 A. Yes, ma'am.
- 6 Q. Did you go back to Bridgette's house?
- 7 A. Yes, ma'am.
- 8 Q. And how long did ya'll stay there?
- 9 A. We stayed there for a good while, like until
10 3.
- 11 Q. Okay, and then what happened?
- 12 A. My momma came and got us and we went to my
13 house in Barnwell.
- 14 Q. Okay, and did she spend the rest of the night
15 with you in Barnwell?
- 16 A. Yes, ma'am.
- 17 Q. Okay. Now, I want you to look all around
18 this courtroom and I want you to tell me if you see
19 Roderick in this courtroom? Look all the way around.
- 20 A. (Witness nods her head affirmatively.)
- 21 Q. Where is he? Say into the microphone so
22 the court reporter can hear you.
- 23 A. In the white shirt right over there.
- 24 Q. Do you see anybody over there with him that
25 you know?

Ms. Flowers-Direct by Solicitor

74

- 1 A. Miss Charlotte right here.
- 2 Q. Miss Charlotte sitting with him?
- 3 A. Yes, ma'am.
- 4 Q. And did you say that Charlotte's niece is
- 5 how you knew him?
- 6 A. Uh-huh.
- 7 Q. And what is her niece's name?
- 8 A. Shaqunna.
- 9 Q. Okay. When you were on the outside of the
- 10 car, could you see inside the car?
- 11 A. I wasn't close to the car.
- 12 Q. You wasn't close to the car?
- 13 A. No, ma'am.
- 14 Q. So you could hear but you couldn't see?
- 15 A. Uh-huh.
- 16 SOLICITOR: All right, thank you, I have
- 17 no further questions. Now, Mr. Bryan is going to have
- 18 some questions for you, okay.
- 19 A. Okay.
- 20 THE COURT: Cross-examination.
- 21
- 22 CROSS-EXAMINATION
- 23 BY MR. BRYAN:
- 24 Q. Mr. Flowers, what kind of car was it?
- 25 A. It was a Chevy.

- 1 Q. What kind of Chevy?
- 2 A. Uhm --- I think a Caprice.
- 3 Q. What color was it?
- 4 A. It was a dark color, I really can't tell.
- 5 Q. Who was in the car?
- 6 A. There was just Roderick and Lexie.
- 7 Q. Okay, where were they in the car?
- 8 A. Lexie was driving and Roderick was on the
- 9 passenger side.
- 10 Q. So Roderick was on the passenger side?
- 11 A. Uh-huh.
- 12 Q. Was he in the front seat or the back seat?
- 13 A. The front.
- 14 Q. He was in the front seat?
- 15 A. Uh-huh.
- 16 Q. And Lexie was driving the car?
- 17 A. Uh-huh.
- 18 Q. Did you and Ms. Payne ever get in the car?
- 19 A. Yes, sir.
- 20 Q. And then you got out of the car ---
- 21 A. Yes, sir.
- 22 Q. --- and you walked but you didn't walk far,
- 23 right?
- 24 A. Yes, sir.,
- 25 Q. And the only thing you noticed unusual

Ms. Flowers-Cross by Mr. Bryan

76

1 was she kept saying no many times?

2 A. Yes, sir.

3 Q. And you walked back with her that night?

4 A. Yes, sir.

5 Q. When you got out the car, where was he sitting,
6 where was Roderick sitting?

7 A. He had to get out, when I had got out the
8 car to go walking and he had got in the front on the
9 driver's side.

10 Q. He got in the front under the driver's side
11 when you went walking?

12 A. Uh-huh.

13 Q. How did he do that?

14 A. He got out the car and got into the driver
15 door.

16 Q. Okay, so he opened the door and got out and
17 opened the other door and got in?

18 A. Uh-huh.

19 Q. Okay. What was the name of the street where
20 this happened?

21 A. Barton Road.

22 Q. So you walked back to your aunt's house and
23 stayed there until 3 in the morning?

24 A. Yes, sir.

25 Q. And then your mother came and got you at

1 3?

2 A. Yes, sir.

3 Q. Now, how long did it take for all of this
4 to happen?

5 A. Uhm --- I think it was --- about a hour and
6 a couple of minutes.

7 Q. How long?

8 A. About a hour and a couple of minutes.

9 Q. The time in the car and talking to Lexie
10 and coming back?

11 A. Uh-huh.

12 Q. When you walk down Barton Road, is there
13 a nightclub?

14 A. Yes, sir, there's like on the side, like
15 if you're walking it's on your right.

16 Q. And I believe you said it was beside a dumpster?

17 A. Yes, sir.

18 Q. And how long is it open?

19 SOLICITOR: Your Honor, he needs to ask her
20 if she has any knowledge of that, she was a 14 year
21 old girl.

22 MR. BRYAN: Well, if she doesn't know she
23 can say so, Your Honor.

24 THE COURT: Go ahead and answer it if you
25 can.

Ms. Flowers-Cross by Mr. Bryan

78

1 A. I don't know.

2 Q. Was it open that night?

3 A. No, sir, because I didn't see any cars.

4 Q. About what time did this incident happen
5 in Lexie's car?

6 A. I'll say about 12.

7 Q. You think it was about 12 when it started
8 or 12 when it ended?

9 A. It was about 12 when it started.

10 Q. Okay. Was it a Friday or a Saturday?

11 A. A Saturday.

12 MR. BRYAN: No further questions.

13

14 RE-DIRECT EXAMINATION BY SOLICITOR:

15 Q. I'm going to ask you two more questions,
16 okay?

17 A. Yes, ma'am.

18 Q. When you walked with Lexie down the road,
19 about how far did you walk, was it a block or more
20 than a block? More or less than a block.

21 A. Less.

22 Q. Less than a block?

23 A. Yes, ma'am.

24 Q. Okay, when you walked down the road, did
25 you have your back to the car some of the time?

1 A. Yes, ma'am.

2 Q. Okay. When you walked down the road could
3 you see where your cousin was in the car the whole
4 time?

5 A. I couldn't see her in the car.

6 Q. Okay. When you walked down the road could
7 you see where Roderick was in the car that whole time?

8 A. No, ma'am.

9 Q. And you said that this took about an hour
10 and some minutes, are you talking about the whole walk
11 outside took about an hour and some minutes?

12 A. Yes, ma'am.

13 SOLICITOR: Okay, I have no further questions.
14 Mr. Bryan, do you have any more questions?

15 MR. BRYAN: Yes.

16

17 RE-CROSS-EXAMINATION

18 BY MR. BRYAN:

19 Q. Now, you said that Mr. Bradley was in the
20 back seat of the car and he opened the door and got
21 out and walked up front, opened that door and got in,
22 right?

23 A. Uh-huh.

24 Q. Okay.

25 MR. BRYAN: No further questions.

Dr. Schuh-Direct by Solicitor

80

1 THE COURT: You may step down. Call your
2 next witness.

3 SOLICITOR: Call Dr. Sarah Schuh.

4 THE COURT: Anybody can come back in the
5 courtroom now. DR. SARAH ELIZABETH
6 SCHUH, AFTER FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:
7 DIRECT EXAMINATION BY SOLICITOR:

8 Q. Dr. Schuh, would you please state your full
9 name for the record.

10 A. Sarah Elizabeth Schuh, S-c-h-u-h.

11 Q. Dr. Schuh, what is your profession?

12 A. I am a medical doctor.

13 Q. Are you licensed to practice in South Carolina?

14 A. Yes, I am.

15 Q. Okay, where did you attend medical school?

16 A. At Columbia University, College of Physicians
17 and Surgeons in New York City.

18 Q. Tell the Court about your educational back-
19 ground, such as your internship, residency and special
20 training that you have.

21 A. After I completed medical school, I did a
22 residency in Pediatrics at St. Luke's Hospital which
23 is now St. Luke's Roosevelt Hospital Medical Center
24 and subsequent to that, I worked in public health for
25 two years in Georgia, returned to New York City and

1 acquired a degree, a master's degree, in Public Health
2 from Columbia University School of Public Health, and
3 worked for a year in New York. Finally I came down
4 to South Carolina and became a member of the faculty
5 and a physician at the Medical University of South
6 Carolina in Charleston.

7 I worked there for a number of years and
8 beginning in 1979 and 1980, began to evaluate and become
9 educated in the problems of sexual abuse and physical
10 abuse of children and adolescents and I have, since
11 that time, have spent a lot of my professional time
12 and have attended medical meetings, have written in
13 that area and have lectured in the area of child sexual
14 abuse and sexual assault since about 1980.

15 Q. Dr. Schuh, I understand that you are board
16 certified in Pediatrics?

17 A. Yes, I was board certified in Pediatrics
18 in 1967.

19 Q. Dr. Schuh, as a Pediatrician and as someone
20 who specializes in child abuse, sexual abuse, have
21 you performed gynological exams on children?

22 A. Yes, gynological and forensic evaluations
23 of children for physical and sexual abuse.

24 Q. How many such gynological and forensic evaluations
25 have you done?

1 A. Somewhere probably between 5 and 7,000.

2 MR. BRYAN: Your Honor, I hate to interrupt
3 but we may be able to stipulate and save some time.
4 We stipulate she's an expert.

5 SOLICITOR: I'm a few questions away.

6 THE COURT: Okay.

7 Q. So you've performed between 5 and 7,000
8 gynecological exams on children.

9 A. Gynological and forensic exams. But I've
10 examined a lot more children than that that were not
11 involved in forensic evaluations in which I had also
12 examined the genital.

13 Q. All right, can you tell the jury what a forensic
14 exam is?

15 A. A forensic examination is an examination
16 in which you try to determine whether there is anything
17 which you would call evidence which would assist in
18 the evaluation by the legal system of an allegation
19 or someone saying that a child might have been abused
20 or neglected, sexually or otherwise.

21 Q. And have you performed these kind of exams
22 on children of their teenage years?

23 A. Yes, I have.

24 Q. Have you performed a number of them on children
25 of teenage years?

1 A. Yes, I have.

2 Q. Do you have any way to quantify that?

3 A. Not really. Probably 500 but that's a very
4 rough estimate.

5 Q. Okay, roughly 500. Have you been qualified
6 as an expert witness in court before?

7 A. Yes, I have.

8 Q. Do you know about how many times you've been
9 qualified as an expert witness?

10 A. Many times.

11 Q. Many times.

12 SOLICITOR: Your Honor, I move that the Court
13 qualify Dr. Schuh as an expert witness in the field
14 of Pediatric Sexual Abuse.

15 THE COURT: What sayth the defense?

16 MR. BRYAN: No objection, Your Honor.

17 THE COURT: Thank you, so qualified.

18 Q. Dr. Schuh, did you examine a young girl named
19 Latay Payne at your office in Charleston?

20 A. Yes, I did.

21 Q. Do you remember when you examined her?

22 A. On July 30, 2003.

23 Q. What history did she provide and exclude
24 any names that she might have told you.

25 A. She indicated to me that on July 12, 2003

1 she had been sexually assaulted by an adult male.

2 Q. All right, describe what you saw when you
3 examined her.

4 A. When I examined her, the inspection of the
5 genitalia is done to try to determine whether there's
6 any evidence of current or prior injury, and when we
7 examined the patient we look at all the different parts
8 of the genitalia. The area which surrounds the opening
9 to the vagina is call the hymen and the hymen is that
10 part of the female genital system which sometimes bleeds,
11 especially with first intercourse.

12 And she had evidence of a previous tear in
13 the hymen. I saw her 18 days after the alleged assault
14 and the tear at that time was no longer bleeding and
15 there was no evidence of any current injury, but there
16 was evidence of a healed injury.

17 Q. And what is the medical term for the area
18 that you saw on the hymen that was injured?

19 A. It was in the right what we would call post
20 lateral area of the hymen and the medical term for
21 the injury would be a laceration or transection of
22 the hymen.

23 Q. Was the hymen transection or injury that
24 you saw consistent with her history of having been
25 assaulted 18 days before?

1 A. Yes, it was. As part of her history she
2 indicated that she had had blood in her panties after
3 the injury and ---

4 MR. BRYAN: I think I need to bring up a
5 point of law for this corroborative type evidence.
6 I've got a case on point, it's just limited to the
7 time and place of an accusation and not details.

8 SOLICITOR: Your Honor, I don't believe that
9 she has testified to anything other than time which
10 was 18 days prior and she certainly is allowed to testify
11 as an expert witness as to her findings.

12 THE COURT: Ya'll step up here a minute.

13 (WHEREUPON, A bench conference was held
14 out of the hearing of the jury and the court reporter.)

15 Q. Dr. Schuh, once you examined her did you
16 make a diagnosis?

17 A. Yes, I made a diagnosis that the findings
18 were consistent with the history given by the child
19 and diagnostic of an injury caused by blunt force trauma.

20 Q. Dr. Schuh, I'm going to show you part of
21 a medical report and I'm going to show it to the defense
22 counsel first.

23 SOLICITOR: Your Honor, I think we have a
24 matter of law to take up.

25 THE COURT: Redaction is, I think, what ya'll

Dr. Schuh-Direct by Solicitor

86

1 are looking for. Take a look at it and see if we can
2 redact and make everyone happy.

3 Q. Dr. Schuh, because we had a little interruption
4 there I'm going to ask you again what your diagnosis
5 was. And I would ask you not to refer to the history
6 that she gave.

7 A. That there was an injury to the hymen which
8 was healed and which was diagnostic of prior blunt
9 force trauma which caused a tear in the hymen.

10 Q. Thank you. Dr. Schuh, do you have any photo-
11 graphs that you may have taken with magnification?

12 A. Yes, I do.

13 Q. In your possession.

14 A. Yes, I do.

15 Q. Could you show me such a photograph?

16 A. Yes.

17 MR. BRYAN: Your Honor, may we approach?

18 THE COURT: Yes.

19 (WHEREUPON, A bench conference was held
20 out of the hearing of the jury and the court reporter.)

21 THE COURT: Mr. Bryan, had an objection of
22 this photograph and I'm going to overrule it and allow
23 it in.

24 MR. BRYAN: On the grounds that it's prejudicial
25 effect outweighs its probative value and this is the

1 first we've heard about this photograph. We got a
2 copy of the report from the Solicitor, we have an open
3 file policy and we've been relying on it and this is
4 the first I've seen or heard about this photograph.

5 SOLICITOR: And for the record, Dr. Schuh
6 brought this photograph with her and we did not have
7 a copy of this photograph until approximately --- I
8 first saw the photograph thirty, forty-five minutes
9 ago.

10 THE COURT: All right, proceed.

11 (WHEREUPON, Photograph was entered and marked
12 as State's exhibit #1.)

13 Q. Dr. Schuh, I'm going to show you what has
14 been marked as State's exhibit #1 and I want you to
15 tell me if you recognize it?

16 A. Yes, I do.

17 Q. Can you tell me what it is?

18 A. It's a copy of a corposcopic, that is a magnified
19 photo taken with a corposcope which is a piece of medical
20 equipment of the genital examination performed on Latay
21 Payne on July 30th of 2003.

22 Q. Okay. Was that photograph taken as a part
23 of the normal course of business that you are in which
24 is Pediatric Sexual Abuse forensic examinations?

25 A. Yes, it was.

Dr. Schuh-Direct by Solicitor

88

1 Q. And is that a record that it ordinarily kept
2 in the ordinary course of business?

3 A. It is in my business, yes.

4 Q. In your business. And how was this photograph,
5 how was it kept?

6 A. It is kept in a computer file in the examining
7 unit.

8 Q. All right, and when did you print this photograph
9 out?

10 A. This photograph was printed out yesterday
11 afternoon.

12 Q. All right, and until that time, you're saying
13 that it had been kept on a computer?

14 A. Yes.

15 Q. All right. I'm going to ask you to --- I'm
16 going to ask you to step down from where you are because
17 we have such an unusual situation and come and stand
18 in front of the jury and explain what the photograph
19 shows.

20 A. All right. How about you hold the microphone
21 so that I can hold the picture. This is a photograph
22 of the female genitalia and I'm going to do it a couple
23 of times so that you can all see.

24 This is the opening to the vagina, this is
25 the opening of the vagina here, this area here would

1 normally be a circle, surrounding the vagina. And
2 if you look at it carefully you can see that this circle
3 is broken right here and that break is a deeper red
4 in the center than it is on the edges. And that is
5 the evidence of a healing injury to the hymen.

6 Okay, again, this is the opening to the vagina,
7 this is the hymen which is normally a tissue which
8 would form a circle around the hymen, around the vagina,
9 and this area here shows a break in the circle and
10 it's red, a deeper red, the deepest portion, and that
11 is evidence of a healing injury to the hymen. This
12 represents a tear in the hymen which is healing where
13 the deeper portion of the tear is redder or a different
14 color. Can ya'll see from the second row?

15 JURORS: Yes.

16 Q. Explain it to the defense table, please.

17 A. This is the circle that goes around the vagina,
18 which is the hymen, and this is the break in the circle
19 which represents the injury to the hymen.

20 Q. And Dr. Schuh, I'm going to ask you one more
21 time, whose body is that a picture of?

22 A. That is a picture of Latay Payne.

23 Q. And when did you take that picture?

24 A. On July 30th of 2003.

25 Q. Thank you.

Dr. Schuh-Cross by Mr. Bryan

90

1 SOLICITOR: Your Honor, I don't have any
2 further questions for this witness.

3 THE COURT: Your witness, Mr. Bryan.
4

5 CROSS-EXAMINATION

6 BY MR. BRYAN:

7 Q. So, Dr. Schuh, you examined her hymen and
8 it was ruptured and healed back?

9 A. Yes.

10 Q. And that's consistent with sexual experience,
11 right?

12 A. Yes, it is.

13 Q. But it doesn't indicate who with?

14 A. That's correct.

15 Q. And a ruptured hymen doesn't really say whether
16 it was voluntary or against her will or anything like
17 that, right?

18 A. No, sir.

19 Q. And sometimes it can happen from non-sexual
20 causes, can't it, like sometimes athletes ---

21 A. No, it would be very uncommon in athletes,
22 it's a result of direct blunt force trauma and it's
23 very uncommon to get that as a result of athletics.

24 Q. But it basically --- well, it's consistent
25 with consensual contact, too, right?

1 A. It could be consensual.

2 Q. And certain types of self abuse, say, the
3 old saying is, I mean, not uncommon.

4 A. It would require a lot of force and it would
5 incur a lot of pain and it's not likely that someone
6 would do that to themselves voluntarily.

7 MR. BRYAN: No further questions.

8 THE COURT: You may step down. All right,
9 hearing nothing further this evening, we will fire
10 back up at 9:30 in the morning. Remember my instructions,
11 do not let anybody contact you in any way to discuss
12 this case. Ya'll have a good night and we will see
13 you in the morning.

14 (WHEREUPON, Court was adjourned for the
15 evening and then the trial resumed the next morning
16 and the following proceedings were held outside of
17 the hearing and presence of the jury.)

18 THE COURT: All the jury has reported, are
19 we ready?

20 SOLICITOR: Yes, Your Honor, I do have one
21 motion. I would like to make a request for a motion
22 that the jury be allowed to view the scene of this
23 happening. It's just a short ride away and they will
24 be able to go and see where it happened and see where
25 the street lights were and I think that would be very

1 important to the case. I believe that the defense
2 is contending darkness and this would be an indication,
3 and I think it's important for them to see what lighting
4 was there. I understand the detention van would be
5 available to transport them to the scene without any
6 problem.

7 THE COURT: Anything from the defense?

8 MR. BRYAN: We concur in the motion, Your
9 Honor, we think the more light the jury has on this
10 case the better.

11 THE COURT: Okay. Can the Sheriff's Department
12 arrange for that? We don't have to have it right now
13 but just be standing by.

14 SOLICITOR: And, Your Honor, I would request
15 that our two eyewitnesses to the crime be allowed to
16 go and show where it happened. Or else we can stipulate.
17 Or either a police officer can go, there's got to be
18 some way to know where to go.

19 THE COURT: I would prefer, if you would,
20 if defense counsel and you would agree to where it
21 is, pinpoint that down, and stipulate that to the Sheriff's
22 Department and let them take them there.

23 MR. BRYAN: Well, we don't know exactly where
24 it is but we would assume it's where they say it is.
25 I wouldn't have an objection to that, Your Honor.

1 And as long as we're able to see, you know, what the
2 jury is looking at, the location. It's like three
3 blocks from here.

4 THE COURT: I don't mind if you could arrange
5 for the victim or either the other child to ride in
6 the car with you and just make sure that it's pointed
7 out that I don't want anything said.

8 SOLICITOR: All right.

9 THE COURT: To the jury.

10 SOLICITOR: The police officer knows where
11 it is.

12 THE COURT: Why don't you let them to ahead
13 and do that. If the child is available, to go ahead
14 with one of the police officers and maybe a Madam Deputy
15 and that way that would take care of that. We will
16 let the Sheriff's Department be in charge of getting
17 the transportation set up and when that's set up, we
18 will let the jury go to the scene.

19 SOLICITOR: Yes, sir.

20 THE COURT: Let's go on with the trial. Bring
21 us the jury.

22 (WHEREUPON, Jury returned to the courtroom
23 and the following proceedings were heard in their presence
24 and hearing.)

25 THE COURT: Good morning, ladies and gentlemen.

Ms. Jamison-Direct by Solicitor

94

1 We are ready to go. Solicitor.

2 SOLICITOR: State calls Marsha Jamison.

3
4 MARSHA JAMISON, AFTER FIRST

5 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION BY SOLICITOR:

7 Q. Ms. Jamison, would you state your full name
8 for the record.

9 A. Marsha Payne Jamison.

10 Q. I'm going to ask if you can speak up a little
11 louder so the jury can hear you. And, Ms. Jamison,
12 where do you live?

13 A. In Barnwell County at the time, but I live
14 in Jacksonville now.

15 Q. How long have you lived in Jacksonville?

16 A. Oh, about a week and a half.

17 Q. Okay, and you say you lived in Barnwell County
18 at the time, you're talking about the incident that
19 we're here for trial today?

20 A. Yes.

21 Q. And how long had you lived in Barnwell?

22 A. Uhm --- oh, I was living there for a long
23 time. I moved when Latay was like three or four years
24 old.

25 Q. So Latay Payne is your daughter?

1 A. Yes.

2 Q. And Latay's young years were in Allendale,
3 is that correct?

4 A. Yes.

5 Q. And then at some point when she was young
6 you moved to Barnwell?

7 A. Yes.

8 Q. Do you have relatives in Allendale?

9 A. Yes.

10 Q. How old was your daughter, Latay, last July?

11 A. She was thirteen.

12 Q. Thirteen. Now, last July, did your daughter
13 have an occasion to visit Allendale?

14 A. Yes.

15 Q. Tell the jury how it came about that she
16 was visiting in Allendale.

17 A. Well, I wasn't home at the time, I went to
18 the hospital because I had a bad migraine headache
19 and while I was at the hospital, my cousin, Jackie,
20 came by and pick her up and took her to Allendale to
21 Bridgette Smoak house.

22 Q. And what is Jackie's last name?

23 A. Jackie Doe.

24 Q. Does she go by another name?

25 A. Flowers.

Ms. Jamison-Direct by Solicitor

96

- 1 Q. Flowers. And does Jackie have a young daughter?
- 2 A. Sabrina Flowers.
- 3 Q. And was she and your daughter friends?
- 4 A. Yes.
- 5 Q. Were they cousins?
- 6 A. Cousins also.
- 7 Q. Okay. So did you know that she was going
- 8 to come by and pick up your daughter?
- 9 A. Not at that time.
- 10 Q. And you were at the hospital with a migraine
- 11 headache?
- 12 A. Yes.
- 13 Q. All right, when you got home from the hospital,
- 14 did you find out that Latay had gone?
- 15 A. Yes.
- 16 Q. With Mrs. Flowers. Did you know where Mrs.
- 17 Flowers had taken her?
- 18 A. All I knew at that time was Allendale to
- 19 Bridgette's house.
- 20 Q. All right. Do you remember the date that
- 21 you had that migraine and that she had picked her up
- 22 and taken her to Brigette's house?
- 23 A. That was ---
- 24 Q. I've got a calendar here if you want to come
- 25 and look at it. Step down.

1 A. Okay. This day.

2 Q. Okay, it was on a Saturday?

3 A. Yes.

4 Q. Okay. And after Latay, when did Latay come
5 back to Barnwell?

6 A. She came back that next --- well, that night
7 but she stayed to Jackie house.

8 Q. Okay, did she come back home later on Sunday?

9 A. Yes.

10 Q. Okay. When she came back from Barnwell, did
11 you tell you at that point that anything unusual had
12 happened to her?

13 A. No.

14 Q. Did she at some later time tell you that
15 something had happened to her while she was in Allendale?

16 A. Yes.

17 Q. When did she tell you that something had
18 happened to her when she was in Allendale?

19 A. She told me --- it was July the 23rd.

20 Q. July the 23rd. That was a Wednesday?

21 A. It was that night.

22 Q. So, that was one, two, three, four, five,
23 six, seven, eight, nine, ten, eleven days later. And
24 as a result of what she told you, what did you do?

25 A. Well, when she told me, I jumped up out of

Ms. Jamison-Direct by Solicitor

98

1 the bed, I went and got my brother and started talking
2 and he started asking her some questions and then I
3 said, I'm calling the police. And I called Barnwell
4 County Sheriff's Department and they said I had to
5 call the county that the incident happened in. So
6 I called the police department here in Allendale and
7 I talked to an officer Wesley and he advised me to
8 come in the next morning.

9 Q. All right, so did you then come in the next
10 morning?

11 A. Yes.

12 Q. And did you let the police interview Latay?

13 A. Yes, I did.

14 Q. Was there anyone else with you?

15 A. Yes.

16 Q. Who else was with you?

17 A. It was me and the police officer and Sabrina's
18 mother ---

19 Q. Her cousin?

20 A. --- yes, because they had to come to give
21 a statement to the police.

22 Q. And did the police interview them?

23 A. Yes.

24 Q. What did you do when you left the police
25 station?

1 A. We went to the hospital, Allendale County
2 Hospital to get her examined.

3 Q. And did they examine her at the Allendale
4 County Hospital?

5 A. No, they sent us to Charleston, made an appoint-
6 ment and sent us to Charleston.

7 Q. So they didn't examine her there and they
8 sent you to Charleston. And how long was it until
9 you went to Charleston?

10 A. I'm thinking it was on the 30th when we went.

11 Q. Okay, so they made an appointment for you
12 to go on the 30th. And did you, indeed, go to Charleston?

13 A. Yes.

14 Q. And did she have an examination there?

15 A. Yes, she did.

16 Q. Okay.

17 SOLICITOR: I don't have any further questions
18 for this witness.

19 THE COURT: The witness is yours.
20

21 CROSS-EXAMINATION

22 BY MR. BRYAN:

23 Q. Just a few questions. Your daughter is good
24 friends with Sabrina Flowers?

25 A. They're cousins.

Ms. Jamison-Cross by Mr. Bryan

100

1 Q. Okay. Do they visit often or did they visit
2 each other much?

3 A. They visit but not much.

4 Q. Like once a month, once a year ---

5 A. I don't keep track of when they visit, I
6 just know they visit each other.

7 Q. Okay. And when you were in the hospital,
8 Sabrina's mother picked up Latay and brought her to
9 Allendale?

10 A. Yes, she did.

11 Q. Without telling you?

12 A. Yes, she did. Well, they called and told
13 me after I left the hospital.

14 Q. And Latay didn't tell you anything for eleven
15 days?

16 A. Would you repeat the question, please?

17 Q. Latay didn't tell you for eleven days?

18 A. I guess it was eleven days.

19 MR. BRYAN: No further questions, thank you.

20 THE COURT: You may step down, thank you.

21 SOLICITOR: State calls Edmund Jamison.

22

23 EDMUND ALVIN JAMISON,

24 AFTER FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION BY SOLICITOR:

1 Q. Good morning, officer.

2 A. Good morning, ma'am.

3 Q. Would you state your full name for the record,
4 please?

5 A. Edmund Alvin Jamison.

6 Q. And what is your occupation?

7 A. Sergeant with Allendale Police Department.

8 Q. Now how long have you been with the Allendale
9 Police Department?

10 A. Two and a half years now.

11 Q. Were you on duty on July 24, 2004?

12 A. Yes, ma'am.

13 Q. Did Latay Payne and her mother come in that
14 day?

15 A. Yes, ma'am.

16 Q. Did anyone else come in with them?

17 A. They had another family member and also Sabrina
18 Flowers.

19 Q. All right. Did they report a crime that
20 day?

21 A. Yes, ma'am.

22 Q. And as a result of their report, did you
23 send the victim to the hospital?

24 A. Yes, ma'am.

25 Q. And what hospital did you first send them
to?

Mr. Jamison-Direct by Solicitor

102

1 A. Allendale County Hospital.

2 Q. And do you know whether or not they were
3 seen there?

4 A. They were --- well, they were seen but they
5 weren't treated. They were rescheduled with an appoint-
6 ment to Charleston.

7 Q. All right. Now, are you familiar with the
8 place at which this crime was reported to have happened?

9 A. Yes, ma'am.

10 Q. The scene of the crime. And where would
11 you describe that it took place?

12 A. It's about three-quarters of a mile from
13 Barton Road and Walnut Street.

14 Q. And Walnut Street, all right. Are you familiar
15 with the section of the road where it happened at?

16 A. Yes, ma'am.

17 Q. And tell me what the lighting is like there
18 at night time.

19 A. It's a well lit area.

20 Q. And how is it a well lit area?

21 A. It has a overhead light, that's supplied
22 by SCE&G right across the street from the incident
23 location.

24 Q. All right, now there was some testimony elicited
25 on cross-examination that there was some kind of

1 a club in the vicinity or right there. Can you tell
2 me where that club is in relation to the crime scene?

3 A. Okay, the club is ---

4 Q. Well, first of all is it on Barton Road?

5 A. It's not exactly on Barton Road, it's on
6 Walnut Street. There is old sanitation department with
7 a fenced in area that really secures the view from
8 Barton Road where the incident location took place.

9 Q. What do you mean by secures the view from
10 Barton Road?

11 A. The fenced area, I mean, you could barely
12 see the club from Barton Road.

13 Q. All right.

14 SOLICITOR: Thank you, I don't have any further
15 questions for you. Please answer any that Mr. Bryan
16 may have.

17 THE COURT: Your witness.

18

19 CROSS-EXAMINATION

20 BY MR. BRYAN:

21 Q. Sgt. Jamison, can you describe the type of
22 fence that goes around this sanitation building?

23 A. Actually it is a somewhat like mesh fence
24 and ---

25 Q. What kind --- finish your answer.

1 A. --- and it goes from Walnut --- partly on
2 Walnut Street, all the way back to Gum Street, which
3 encloses the better part of the old sanitation building.

4 Q. So the old sanitation building is surrounded
5 by a chain link fence?

6 A. Yes, sir.

7 Q. And how far is the club from the sanitation
8 building?

9 A. It's right adjacent to the old sanitation
10 building.

11 Q. And this --- let me show you a picture. It's
12 pretty much on the corner, isn't it?

13 A. Well, I really wouldn't say on the corner
14 because in order to get to the corner, there is the
15 sanitation building, the old sanitation building is
16 the very last building on that street.

17 Q. Okay, well, is this a picture of the club?

18 A. Yes, sir, it is.

19 Q. And there is a hexagonal or octagonal sign
20 right in front of the club there in this picture?

21 A. Actually it's not right in front of the club,
22 it's more or less in front of the sanitation department,
23 the old sanitation department.

24 Q. Wouldn't you agree that's a picture of the
25 stop sign?

1 A. Yes, sir.

2 Q. And where would you say that this picture
3 was taken from?

4 A. Within the vicinity of Walnut Street and
5 Barton Road.

6 Q. Now, if you're coming at the club from Pinewood
7 Apartments it would be harder to see the club, wouldn't
8 it?

9 A. Yes, sir.

10 Q. But if you were coming from the direction
11 of the Piggly Wiggly, would it be hard to see it?

12 A. No, sir.

13 Q. It would be pretty easy to see the club,
14 wouldn't it?

15 A. Yes, sir.

16 Q. And you would agree that a chain link fence
17 normally doesn't stop light from traveling, you can
18 see through a chain link fence?

19 A. More or less, and at night it makes it a
20 little harder because sometimes they have like trash
21 dumpsters placed in the area beside the chain link
22 fence, cannisters if placed right there on the side
23 of the chain link fence as well.

24 Q. But a chain link fence in itself won't stop
25 the view?

Mr. Jamison-Cross by Mr. Bryan

106

1 A. No, sir.

2 MR. BRYAN: No further questions.

3

4 RE-DIRECT EXAMINATION BY SOLICITOR:

5 Q. Officer Jamison, you said that this is on
6 Walnut Street, it's not far from Barton Street, If you had
7 to measure the distance from the percentage of a block,
8 how far from Barton Road would you say that this club
9 is located on Walnut Street?

10 A. About three-quarters of a block.

11 SOLICITOR: Thank you, I have no further
12 questions.

13

14 RE-CROSS-EXAMINATION

15 BY MR. BRYAN:

16 Q. Three-quarters of a block from the Hole In
17 the Wall Club to Barton Street?

18 A. The Hole In the Wall Club to Barton Road?

19 Q. Yeah.

20 A. From the incident location?

21 Q. No, the club to Barton Road. The road between
22 Pinewood Apartments and the Piggly Wiggly.

23 A. The road from the club to Barton Road itself,
24 you're probably looking at about 15 to 20 yards or
25 from the incident location, about three and a quarters

1 of a block.

2 Q. But anyone walking up and down that road
3 could see the club pretty well at night?

4 A. It all depends on which direction you come
5 from, like you said earlier, if they come from the
6 Piggly Wiggly side, then yes. But if you come from
7 the Pinewood Apartments side, then no.

8 Q. And if someone traveled both ways, if they
9 went through the Piggly Wiggly to the apartments and
10 came back, they would know that the club was there,
11 wouldn't they?

12 A. Yes, sir.

13 MR. BRYAN: No further questions.

14 Q. Where do people park when they are at that
15 club?

16 A. They park --- some people right in front
17 of the old sanitation building and some park at the
18 incident location.

19 Q. And some park on Barton Road, right?

20 A. Barton Road is the incident location.

21 Q. Okay.

22 MR. BRYAN: No further questions.

23

24 RE-RE-DIRECT EXAMINATION BY SOLICITOR:

25 Q. Officer Jamison, what time do clubs in

Mr. Jamison-Re-Re-Direct by Solicitor

108

1 Allendale County, South Carolina close on Saturday
2 nights?

3 A. On Saturday nights they close at 12 o'clock.

4 SOLICITOR: Thank you.

5 A. You're welcome.

6
7 RE-RE-RE-CROSS-EXAMINATION

8 BY MR. BRYAN:

9 Q. Every club in Allendale always closes at
10 midnight on Saturday in Allendale?

11 A. Yes, sir.

12 MR. BRYAN: No further questions.

13 THE COURT: You may step down.

14 SOLICITOR: Your Honor, the State rests its
15 case.

16 THE COURT: All right. Anything from the
17 defense?

18 MR. BRYAN: Just one, Your Honor.

19 THE COURT: Ladies and gentlemen of the jury,
20 if ya'll will step back just a minute or two, this
21 portion of the trial I have to take up matters of law
22 outside of your presence. If ya'll will step back
23 just a few minutes and we will have you back in here
24 and continue with the case.
25

1 (WHEREUPON, Jury retired to the jury room
2 and the following proceedings were held in the absence
3 of the jury.)

4 MR. BRYAN: Your Honor, I would move for
5 a directed verdict motion on the grounds that the State
6 has failed to prove each and every element of the charge
7 that my client is accused of. I think the testimony
8 of the supposed victim in this case is hard to believe,
9 the testimony of the alleged victim contradicts the
10 testimony of the other witness, her friend, who was
11 supposed to have been there. One said she was there ---
12 the alleged victim said she was there in the car for
13 like ten minutes; her friend says an hour and ten minutes.

14 SOLICITOR: Objection, Your Honor, that's
15 not what she said.

16 MR. BRYAN: Well, I mean, if there's any
17 doubt we have a transcript, you can look into it, Your
18 Honor and on other matters such as this it would be
19 speculative to convict my client based upon this evidence
20 that he would actually be guilty and we dont' convict
21 people in South Carolina on speculation, Your Honor.

22 THE COURT: All right, thank you. Madam
23 Court Reporter, could I speak with you back in Chambers.

24 (WHEREUPON, A short break was taken and
25 then the proceedings resumed out of the presence of

Ms. Bradley-Direct by Mr. Bryan

110

1 the jury.)

2 THE COURT: All right, we are back on the
3 record. After considering the evidence as a whole,
4 I will deny the motion at this time.

5 All right, bring us the jury.

6 (WHEREUPON, Jury returned to the courtroom
7 and the following proceedings were heard in their presence
8 and hearing.)

9 THE COURT: Mr. Bryan.

10 MR. BRYAN: We would call Yvonda Bradley.

11
12 YVONDA BRADLEY, AFTER
13 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION BY MR. BRYAN:

15 Q. Ms. Bradley, could you spell your name for
16 the record.

17 A. Which one, first of last?

18 Q. All of them.

19 A. Oh, Y-v-o-n-d-a, B-r-a-d-l-e-y.

20 Q. Do you know Mr. Bradley here?

21 A. Yes, sir.

22 Q. How do you know him?

23 A. That's my brother.

24 Q. This event that's on trial today was supposed
25 to have happened on Saturday, the 12th of July, 2003.

1 A. Yes, sir.

2 Q. Is there any particular reason that it sticks
3 in your mind?

4 A. Yes, sir.

5 Q. And what would that be?

6 A. That's the weekend my mom was in Atlanta
7 and my stepfather was in North Carolina.

8 Q. Okay, what happened that weekend, I mean,
9 that night, that day?

10 A. My sister and I we were all at the house
11 and Roderick and his friends was in the kitchen playing
12 cards, we was playing Monopoly in the dinning room
13 and took Roderick to get something to eat about 9 or
14 9:30, something like that, we came right back to the
15 house, his friends were still there and they proceeded
16 playing cards. Everybody was like, let's go to club
17 Something Different, they had a party that night, Club
18 Something Different is located in Kline. We all left
19 to go to Club Something Different, say between like
20 10:30 or 11, we got there around 11 or 11:15 something
21 like that, around that time frame and none of us went
22 in the club because it was too packed. We all sat down
23 on top of the cars and stayed outside, we was on the
24 outside of the club. Came back to my house and we watched
25 the boys continue to play cards.

Ms. Bradley-Direct by Mr. Bryan

112

1 Q. About what time did ya'll go to Something
2 Different?

3 A. It had to be between --- got something to
4 eat between 9 and 9:30 --- had to be like anywhere
5 between 10:30 to 11, somewhere around in there.

6 Q. And then ---

7 A. How I know it was that time? My step-father
8 had just back back from North Carolina 'cause he had
9 went there that morning.

10 Q. And was he with you when he went to the club?

11 A. Yes, he was with us.

12 Q. And before you went to the club, did you
13 see him?

14 A. We were together all that morning, we live
15 together. Well, we live together.

16 Q. And you were in which room?

17 A. I was in the dining room and him and his
18 friends were in the --- I was in the bedroom, his friends
19 were in the dining room at the table playing cards.

20 Q. And the only time he left was with you?

21 A. He left --- I took him to get something to
22 eat from Fleetwood's and we came right back to the
23 house and then him and his friends proceeded to play
24 cards.

25 Q. And about what time was that?

1 A. I took him to get something to eat?

2 Q. Yeah.

3 A. Between 9 and 9:30..

4 Q. Have you heard of the Hole in the Wall Club?

5 A. Yes, sir.

6 Q. How late is that club usually open?

7 A. Oh, on Friday and Saturday nights it close
8 around 2 o'clock, most of the time on Friday nights,
9 the guy, Manuel, that run it, he let it stay open to
10 like 3 o'clock.

11 Q. And how far away from that club do ya'll
12 live?

13 A. I would say about 20 to 25 feet going from
14 my house.

15 Q. So there's no reason for him to be driving
16 to the club, is there?

17 A. No, that's redundant.

18 Q. It's walking distance, right?

19 A. It's probably from where I'm sitting to at
20 least outside that door, it's real close to my house
21 and there's a little path you can take to get there,
22 in front of my house.

23 MR. BRYAN: I have no further questions,
24 the State may have some.

25 THE COURT: Your witness.

Ms. Bradley-Cross by Solicitor

114

1 CROSS-EXAMINATION

2 BY SOLICITOR:

3 Q. Good morning, Yvonda. Ms. Bradley, you stated
4 that your house was about 20 to 25 feet from the Club
5 Something Different, is that correct?

6 A. That is not correct.

7 Q. Didn't you say it was 20 to 25 feet from ---

8 A. What you got is your clubs mixed up. He
9 asked me about the Hole in the Wall. Something Different
10 is in Kline, South Carolina, not Allendale.

11 Q. I'm sorry, I apologize, you're right, I apologize.

12 A. Okay.

13 Q. And the Hole in the Wall Club is on Walnut
14 Street, is it not?

15 A. I wouldn't know, I live on Gum Street.

16 Q. You live on Gum Street and Gum Street is
17 one block away from Walnut Street, is it not?

18 A. I don't know where Walnut Street is, I don't
19 know the name of the street. I know the Hole in the
20 Wall is one street in front of my house.

21 Q. You don't know what one street over from
22 your house is?

23 A. No, I don;t. I know where the corner of
24 Gum and Mill is.

25 Q. I beg your pardon?

1 A. I know where the corner of Gum and Mill is,
2 that's where I reside.

3 Q. And you don't know what the street is one
4 block away. How long have you resided there?

5 A. Uhm --- maybe twenty-five years.

6 Q. Twenty-five years. And you don't know where
7 Walnut Street is?

8 A. That's for my mailman and mail lady to know,
9 I don't know the name of the streets in the town.

10 Q. Okay. Can you recall that you came in about
11 July 25, 2003 to the Allendale Police Department to
12 give a statement?

13 A. I sure did.

14 Q. And do you recall to whom you gave that statement?

15 A. Yeah.

16 Q. Who did you give that statement to?

17 A. Smalls.

18 Q. Officer Smalls. And do you recall that in
19 that statement you stated that --- well, you wrote:

20 " On 6/12/03 " -- and then you struck that
21 out and changed it to 7/12/03 --- do you recall that?

22 A. I can show you my statement, I could read
23 it to you if you want me to.

24 Q. Okay.

25 A. I know my statement.

Ms. Bradley-Cross by Solicitor

116

- 1 Q. I hand it to you so that you can read it.
- 2 A. My statement, back there, I just got it.
- 3 Q. Here's your statement.
- 4 A. Okay.
- 5 Q. Do you want to look at it and see if that's
- 6 your statement?
- 7 A. Yeah, this is mine.
- 8 Q. All right, do you see where you changed that
- 9 from 6 to 7?
- 10 A. Yeah.
- 11 Q. All right. And do you recall that you said
- 12 that at 11 p.m. Roderick, Yvonda, Raymond, Wilson,
- 13 Adrien, Daphne and several other people were playing
- 14 cards at 522 Gum Street. Is that what you told the
- 15 officer?
- 16 A. We were playing cards ---- and I'm trying
- 17 to remember my statement. Well, anyway, the time around
- 18 11 to 11:15, I did say that, around that time.
- 19 Q. And then you said that Roderick and the guys ---
- 20 A. Yeah.
- 21 Q. --- went out at 11:15 to 11:30 to go to Club
- 22 Something Different.
- 23 A. Yeah, that's what I said.
- 24 Q. Okay, so in your statement you said Roderick
- 25 and the guys left out.

1 A. Uh-huh.

2 Q. But here today you say that you went.

3 A. The whole time everybody went. All us, all
4 the girls and I went.

5 Q. But you said ---

6 A. Yes, that's what I said in my statement.

7 Q. Okay.

8 A. But I think you misunderstand what I said
9 in my statement. But all of us went together.

10 Q. Okay, all of you went together.

11 A. We sure did.

12 Q. And you admit that you live very close to
13 Barton Road, do you not?

14 A. Barton Road is adjacent to the Hole in the
15 Wall, from my trailer to the stop sign, that's Barton
16 Road.

17 Q. All right, so you live close to Barton Road,
18 do you not?

19 A. I just stated that.

20 Q. And how long would it take to walk to Barton
21 Road from the house?

22 A. Uhm --- if you walking fast, two minutes,
23 if that long.

24 Q. So if Roderick had left your house for a
25 few minutes, he could have been on Barton Road within

Ms. Bradley-Cross by Solicitor

118

1 two minutes, right?

2 A. If he walked, yeah.

3 Q. Right. And do you remember, did he go to
4 the bathroom any that night? He was in one room and
5 you were in the other room, did you see him all night
6 long?

7 A. Well, we stay in a mobile home and my dining
8 room as right here and my kitchen is right here, I
9 see everything going on in my dining room if I'm standing
10 up at the kitchen by the stove, at the counter playing
11 Monopoly.

12 Q. And any of you guys went outside that night?

13 A. At my house?

14 Q. At your house.

15 A. No, we were inside the whole time.

16 Q. The whole time.

17 A. Yeah, and no, Roderick didn't go to the bathroom,
18 he don't like to urinate when he's drinking alcohol.

19 Q. All right. So he had been drinking alcohol
20 that night?

21 A. Yes, he did have a Budweiser, Bud Lite, whichever
22 one.

23 Q. Now do you recall that you talked to me on
24 the telephone week before last?

25 A. I remember talking to you.

1 Q. And do you remember that you told me that ---

2 A. I don't remember what I told you, I have
3 selective memory.

4 Q. You have selective memory.

5 A. And if it's not on the statement, I don't
6 remember it. So ---

7 Q. Okay. Do you remember you told me that you
8 had gone out to Fleetwood's with him to get him something
9 to eat?

10 A. We already went over that.

11 Q. Do you remember that you told me that?

12 A. We went over that already.

13 Q. Do you remember that you also said that after
14 you went to Fleetwood's you went with your brother,
15 Roderick ---

16 A. Actually I took him, he doesn't own a vehicle.

17 Q. But you went with him, you took him to another
18 friend's house, Latola Mole, who lives in Allendale?

19 A. Is Latola here?

20 THE COURT: Ladies and gentlemen of the jury,
21 step back to your room, please.

22 (WHEREUPON, Jury retired to the jury room
23 and the following proceedings were held in the absence
24 of the jury.)

25 THE COURT: Madam Witness, I'm going to

Ms. Bradley-Cross by Solicitor

120

1 explain this to you one time and one time only. The
2 Solicitor poses the questions and you will give a direct
3 answer. The next time she poses a question and you
4 go off on a tangent like you've been doing for the
5 last ten minutes, the consequences are not going to
6 be too pleasant for you. So, that's your warning. She
7 will pose the question and after she's through, counsel
8 for the defense will pose a question. I want to hear
9 a direct answer. Do you understand me?

10 A. Yes.

11 THE COURT: Bring the jury back in.

12 (WHEREUPON, Jury returned to the courtroom
13 and the following proceedings were heard in their presence
14 and hearing.)

15 THE COURT: You may proceed.

16 Q. Ms. Bradley, let's pick back up. Do you remember
17 that you talked to me a few weeks ago on the telephone?

18 A. Yes.

19 Q. All right, and when you talked to me do you
20 remember telling me that you had taken Lexie to Fleetwood's
21 to get something to eat?

22 A. No, I didn't tell you that.

23 Q. Do you remember that you told me that you
24 went with Lexie again to take food to a friend named
25 Latola Mole ---

- 1 A. I didn't.
- 2 Q. --- that lives in Allendale?
- 3 A. I didn't tell you that.
- 4 Q. You didn't tell me that?
- 5 A. No.
- 6 Q. What did you tell me then?
- 7 A. I told you that me and my brother went to
- 8 Fleetwood's and we went to Latola's house to take her
- 9 something and we came back to the trailer and him and
- 10 his friends proceeded to playing cards and I proceeded
- 11 playing Monopoly. Lexie don't ride with me.
- 12 Q. I apologize. You told me that your brother,
- 13 Roderick, went to Fleetwood's with you, is that correct?
- 14 A. I took Roderick to Fleetwood's.
- 15 Q. You took Roderick to Fleetwood's and then
- 16 you told me that you took him to your friend, Latola's
- 17 house, did you not?
- 18 A. No, she's not my friend.
- 19 Q. You took him to his friend Latola's house.
- 20 A. It's one of his friends, yes.
- 21 Q. And that she lives in Allendale in the Palms?
- 22 A. Yes.
- 23 Q. And today you didn't say that, did you, you
- 24 said you took him to Fleetwood's and you went straight
- 25 home, didn't you?

Ms. Bradley-Cross by Solicitor

122

1 A. I took him to Fleetwood's and we went back
2 home, yes.

3 Q. But in reality you took him somewhere else,
4 didn't you?

5 A. Yeah.

6 Q. All right. And who is Lexie Brown, is he
7 related to you?

8 A. Yes, he's a cousin of ours.

9 Q. Cousin. Do you know whether or not Lexie
10 is friends with Sabrina?

11 A. As I stated earlier to you, uhm --- I don't
12 know who Lexie know really. I know Lexie.

13 Q. Did you tell me previously that Sabrina liked
14 Lexie?

15 A. No, I told you that I heard some things about
16 Sabrina through another witness that didn't come to
17 court. That's what I told you, after you asked me.

18 Q. So if my notes say, Lexie is our cousin who
19 likes Sabrina, that wouldn't be your testimony that
20 you told me?

21 A. No, definitely not. Because I don't know
22 Sabrina like that, I know her brothers and sisters,
23 I don't know her and I don't see her.

24 SOLICITOR: Thank you, that's all the questions
25 I have.

1 THE COURT: Mr. Bryan.

2
3 RE-DIRECT EXAMINATION BY MR. BRYAN:

4 Q. Do you and Roderick have any brothers?

5 A. Yes, sir.

6 Q. How many?

7 A. There's six girls and three boys.

8 Q. And what do the boys look like?

9 A. Well, Raymond looks sort of like Roderick
10 in height, he's a little thicker than Roderick and
11 David is Roderick's height and skinny and dark skinned.

12 MR. BRYAN: No more questions, thank you.

13 THE COURT: Solicitor, anything further?

14 SOLICITOR: No, Your Honor.

15 THE COURT: The witness may step down. Call
16 your next witness.

17 MR. BRYAN: Call Lexie Brown.

18
19 LEXIE BROWN, AFTER
20 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION BY MR. BRYAN:

22 Q. Mr. Brown, would you spell your name for
23 the court reporter.

24 A. L-e-x-i-e, B-r-o-w-n.

25 Q. And how are you related to Mr. Bradley?

Mr. Brown-Direct by Mr. Bryan

124

- 1 A. Friends.
- 2 Q. So ya'll aren't cousins or anything?
- 3 A. No, sir.
- 4 Q. Okay. Do you remember the night of July the
- 5 12th of last year, 2003, do you remember seeing him
- 6 that night?
- 7 A. Yes, sir.
- 8 Q. How did you see him?
- 9 A. We went to the club, we played cards and
- 10 we went to the club.
- 11 Q. When did ya'll start playing cards?
- 12 A. Like --- whew --- like 10 that morning, early,
- 13 it was real early.
- 14 Q. And how long did ya'll play cards?
- 15 A. Whew --- 'til we went to the club.
- 16 Q. About what time did ya'll go to the club?
- 17 A. 'Bout 11, 'bout 10:30 or 11 o'clock.
- 18 Q. And which club did ya'll go to?
- 19 A. Something Different.
- 20 Q. And where is that?
- 21 A. In Kline.
- 22 Q. Was there ever any extended period when he
- 23 was out of your vision that day?
- 24 A. He went with his sister to the store and
- 25 left us to the house and came back.

1 Q. And about what time was that?

2 A. That was like --- whew --- that was early
3 that day.

4 Q. And then how long were ya'll at the club
5 in Kline?

6 A. 'Til it closed.

7 Q. And about what time was that?

8 A. 2:30, 3 o'clock.

9 Q. And when ya'll played cards, where did ya'll
10 play cards at?

11 A. At Roderick Bradley mother house.

12 MR. BRYAN: No further questions. The State
13 may have some for you.

14 THE COURT: Your witness.

15

16 CROSS-EXAMINATION

17 BY SOLICITOR:

18 Q. Good morning, Mr. Brown.

19 A. Good morning.

20 Q. You state that on July 12, 2003 that you
21 were with Roderick Bradley, is that what you stated
22 before?

23 A. Yes, sir.

24 Q. And how do you know that you were with him
25 on July 12th, how do you know what date you were with

Mr. Brown-Cross by Solicitor

126

1 him, that was over a year ago.

2 A. Well, the police told us the date.

3 Q. The police told you the date?

4 A. Yeah.

5 Q. So you don't know from your own independent
6 memory what date you were with him?

7 A. Yes, sir, yes, ma'am, I mean.

8 Q. Do you know from your own memory or did the
9 police tell you?

10 A. No, ma'am, he just told us that on July the
11 12th we went to --- matter of fact he said Hole in
12 the Wall, he say the wrong club but it was Something
13 Different.

14 Q. So the police gave you the date of July 12th,
15 didn't they?

16 A. Yes, sir.

17 SOLICITOR: I have no further questions.

18

19 RE-DIRECT EXAMINATION BY MR. BRYAN:

20 Q. When did the police tell you they were
21 investigating July the 12th?

22 A. Uhm --- he told me the day they locked Roderick
23 Bradley up.

24 Q. Okay, so that was, when, last year or when?

25 A. Last year.

1 Q. About what time?

2 A. That was --- I got home from work about 5
3 o'clock, that was when I went by Alltel and they told
4 me.

5 Q. Okay, about what date was it?

6 A. That was a Friday.

7 Q. Do you remember the month?

8 A. That was July.

9 MR. BRYAN: No further questions.

10 SOLICITOR: No further questions for this
11 witness.

12 THE COURT: You may step down, thank you.

13 SOLICITOR: Your Honor, I would remind the
14 witnesses that they are still sequestered and I would
15 ask that the Sheriff's deputies insure that the witnesses
16 not have contact with each other.

17 THE COURT: I meant to tell that witness
18 that stepped out. If you don't mind tell them if they
19 haven't been excused, they are still sequestered and
20 not to be talking with anybody.

21 DEPUTY: Yes, sir.

22 THE COURT: All right, ladies and gentlemen
23 of the jury, both sides have agreed to have the Sheriff's
24 Department escort ya'll by vehicle over to the alleged
25 scene. To simplify things I've asked the Sheriff to

1 park a vehicle approximately where the State's witnesses
2 allege that the incident occurred. There won't be
3 any testimony out there, just ride with the Sheriff,
4 he will take you to that place, let you look a few
5 minutes and come back. Now, counsel, do I need to
6 put the Sheriffs and the bailiffs under oath or do
7 ya'll waive oath?

8 MR. BRYAN: It might be better, Your Honor,
9 just to be sure.

10 THE COURT: Okay, I need all the Sheriff's
11 Department bailiffs that are going to be transporting
12 the jury to come around to Madam Clerk's station. Madam
13 Clerk, if you will put them under oath that they will
14 not converse with the jurors about the case.

15 (WHEREUPON, Bailiffs and deputies were duly
16 sworn.)

17 (WHEREUPON, The jury went to view the scene.)

18 (WHEREUPON, The following proceedings were
19 held in the absence and out of the hearing of the jury.)

20 THE COURT: All right, Madam Sheriff, where
21 is the individual that had a lot to say up here. Take
22 your hat off and come on up. If you will come around,
23 please. What's your name, please?

24 MR. BRELAND: Marcus Breland.

25 THE COURT: Which deputies heard the comments

1 made in front of the jury?

2 OFFICER: This Deputy and I'm going to get
3 the other deputy.

4 OFFICER HARTER: Your Honor, I didn't hear
5 it in front of the jury but I heard it after they brought
6 him up in here, he continually said the same thing.

7 THE COURT: Okay, if you will come up, please.
8 Madam Clerk, put Mr. Bailiff under oath.

9 (WHEREUPON, Bailiff was duly sworn.)

10 THE COURT: If you will state your full name
11 for the record, please, Mr. Bailiff.

12 MR. GRAHAM: Freddy Graham.

13 THE COURT: Mr. Graham, if you would, just
14 basically tell me what happened, what was said and
15 who was present.

16 MR. GRAHAM: Officer Harter, deputy and several
17 of the jury heard it. As we started out the door,
18 he was at the door, trying to get inbetween them and
19 I told him he would have to wait until we get out.
20 So he backed up but as we started to get on to the
21 bus, he said, I was stupid, the jurors were stupid,
22 you was stupid. And I said if you say that one more
23 time, buddy, we will have you taken in. He said,
24 take me in, and I said well, come on back and he came
25 back and that's when Deputy Williams brought him in.

1 MR. BRELAND: No, Your Honor, I didn't ---

2 THE COURT: Just be quiet. I'll hear from
3 you in a minute. Thank you.

4 OFFICER: Deputy Harter has gone back to
5 the jail, he should be back in a minute.

6 THE COURT: All right, if you will put the
7 Sheriff under oath and let me hear what he's got to
8 say.

9 (WHEREUPON, Sheriff's deputy was duly sworn.)

10 THE COURT: Sheriff, if you will tell me
11 what happened.

12 DEPUTY BLACK: Your Honor, after they brought
13 him back in, Deputy Williams turned him over to me
14 here in the courtroom and he started talking about
15 the whole thing was stupid, the whole case was stupid
16 and he wanted to go to the bathroom, I took him to
17 the bathroom and all the way down the hallway and in
18 the bathroom he was talking about how stupid everything
19 was. So I finally just told him --- carried him in
20 the back and locked him up in there so people couldn't
21 hear him.

22 THE COURT: Okay. Just have a seat over
23 there, we will just have to wait until the other Sheriff
24 gets back. Anything else while we wait on the other
25 deputy to get back?

1 MR. GRAHAM: Mr. Davis, the other bailiff,
2 he was there but I'm not sure whether he could hear
3 it all.

4 OFFICER: He's here now.

5 THE COURT: Sheriff, if you will come around,
6 we need to put you under oath.

7 (WHEREUPON, Deputy Harter was duly sworn.)

8 THE COURT: Need your full name.

9 MR. HARTER: Ryan Harter.

10 THE COURT: Deputy Harter, I have Mr. Marcus
11 Breland in the court and I've already got sworn testimony
12 as to some things that were said in the presence of
13 the jury. Would you please tell me what you observed
14 and heard?

15 MR. HARTER: As soon as we walked out the
16 front door, Your Honor, with the jurors to escort them
17 to the scene, the individual was outside. He was acting
18 somewhat in an irate manner screaming --- well, not
19 really screaming but in a very loud tone of voice he
20 was screaming expletives about the case including the
21 jurors. And when I say expletives, he was using foul
22 language and whatnot, saying that the case was nonsense
23 and things of that like.

24 THE COURT: Okay. Thank you. Mr. Breland.
25 Swear him.

1 (WHEREUPON, Mr. Breland was duly sworn.)

2 THE COURT: What have you got to tell me,
3 Mr. Breland?

4 MR. BRELAND: Okay, when they was walking
5 out I was about to go out and he told me I had to wait.
6 I waited. And then I walked out and she asked me where
7 I was about to go and I said I'm about to go home because
8 this is a stupid case and that's all I say, I ain't
9 never say he was stupid, you was stupid and all that,
10 but I did say that it was a stupid case. And he was
11 like, Mr. Griffin is going to get you when you come
12 back and I was like well, I ain't going nowhere because
13 I didn't want you to think I'm running from you. So
14 I came back to see what he wanted and he said I'm going
15 to bring you in here to see the Judge.

16 THE COURT: How old are you?

17 MR. BRELAND: I'm twenty-one.

18 THE COURT: Where do you work?

19 MR. BRELAND: I don't work nowhere.

20 THE COURT: Are you from Allendale?

21 MR. BRELAND: Yes, sir.

22 THE COURT: Well, from the overwhelming testimony
23 I'm going to have to find in direct contempt of court.
24 You knew better than to make anything like that and
25 I'm going to tell you ahead of time, you go ahead

1 and telling me what you said to a certain degree just
2 saved you substantial time in jail.

3 MR. BRELAND: No, sir, I ---

4 THE COURT: Now, before I pass sentence anything
5 else you would like to tell me?

6 MR. BRELAND: If I had knew it would have
7 been wrong for me saying that, I wouldn't have never
8 said it. I was just like this is a stupid case, I ain't
9 never --- ain't none of ya'll do nothing to me for
10 me to call ya'll stupid, so why should I, you know
11 what I'm saying, do that? He probably thought he heard
12 me say that but, you know, I ain't.

13 THE COURT: Mr. Plexico.

14 MR. PLEXICO: Your Honor, just in the interest
15 of justice and as a friend of the Court, he was a victim
16 in an assault case where the defendant was a Brandon
17 Harvey and I believe he had some kind of head injury.
18 I don't know if that would have any bearing on it but
19 just as a friend of the Court, I think the Court needs
20 to know that.

21 THE COURT: Are you on any disability?

22 MR. BRELAND: Yes, sir.

23 THE COURT: You drawn social security disability?

24 MR. BRELAND: No, I'm going to court for
25 that now.

1 THE COURT: Okay. All right, I just turned
2 my back on it. Sentence of the Court is ten days,
3 you just saved yourself 90 days. Go ahead and
4 incarcerate him, get him away from this jury, maybe
5 he's already done some irreparable damage. Take him
6 away.

7 Okay, counsel with that said, I've got to
8 get the jury in here and poll them now.

9 MR. BRYAN: Your Honor, I've got a motion,
10 Your Honor.

11 THE COURT: Okay.

12 MR. BRYAN: He's not a witness of mine, he's
13 not a client of mine, I don't know why he said this
14 but his comments could be construed by the jury as
15 an attempt to influence the jury improperly --- in
16 an improper manner which resonate against my client,
17 in his best interest. And I hate to do this so late
18 in the trial but I don't see any choice. I would
19 respectfully request a mistrial of this court. I think
20 that's the only remedy available to us that would fix
21 this problem, Your Honor.

22 THE COURT: What sayth the State?

23 SOLICITOR: Your Honor, the State objects.
24 I believe that first of all the jury should be polled
25 to see if it had any influence on them. If it did

1 have any influence, saying that it was a stupid case,
2 probably help the defense, not hurt them. The State
3 would therefore object to a mistrial.

4 THE COURT: Mistrial is a drastic measure.
5 I'm going to poll the jury but I'm reserving ruling
6 at this time.

7 MR. BRYAN: Thank you, Your Honor.

8 THE COURT: Let's bring the jury back in.

9 (WHEREUPON, Jury returned to the courtroom
10 and the following proceedings were heard in their presence
11 and hearing.)

12 THE COURT: Madam Forelady, I need to talk
13 with you just a minute. It's the understanding of the
14 Court that when the jury went out to the vehicle to
15 go to the alleged scene, a young man had some things
16 to say and some specific things about this case. Did
17 you hear it?

18 JUROR: No.

19 THE COURT: Okay, has anything happened that
20 has influenced you in any way concerning the trial
21 of this case?

22 JUROR: No.

23 THE COURT: If you were to continue to sit
24 on this jury, can you continue to be a fair and impartial
25 juror and give both the State and the defendant a

1 fair trial?

2 JUROR: Yes.

3 THE COURT: Is there another room that we
4 could send the individuals back to?

5 BAILIFF: Yes, sir.

6 THE COURT: Okay, go with the bailiff, please.
7 And the next juror is Mary Riddle.

8 Ms. Riddle, if you will come around to the
9 desk, please. I need to speak with you just a minute.
10 It's the Court's understanding that when the jury went
11 out to the van or to the vehicle to go to the alleged
12 scene that a young man made some comments. Was anything
13 said that you heard that influenced you in any way
14 concerning this case?

15 JUROR: No.

16 THE COURT: Okay, did you hear the young
17 man?

18 JUROR: No, I sure didn't.

19 THE COURT: Okay. Once last question, if
20 you continue to serve on this jury, can you give both
21 the State and the defendant a fair and impartial trial?

22 JUROR: Fair and impartial, yes.

23 THE COURT: Okay, if you will step back here
24 with Madam Forelady, please. Whose next?

25 CLERK: Ronnie Calhoun.

1 THE COURT: Mr. Calhoun, I need to talk with
2 you just a minute. It's the Court's understanding
3 that a young man was out front when the jury left to
4 go to the scene a few minutes ago, the alleged scene,
5 and made some comments. Was anything said that you
6 heard that influenced you concerning this case?

7 JUROR: No, sir.

8 THE COURT: Okay, did you hear the young
9 man?

10 JUROR: Not really, I wasn't paying no attention
11 to no one when I walked out.

12 THE COURT: Okay. Once last question, if
13 you were continue to sit on this case, can you give
14 both the State and the defendant a fair and impartial
15 trial?

16 JUROR: Yes, sir.

17 THE COURT: Thank you, if you will join the
18 other jurors back here. Whose's next?

19 CLERK: Samuel Hawkins.

20 THE COURT: I need to speak with you just
21 a minute, please, sir. It's the Court's understanding
22 that when the jury left to go to the vehicles a few
23 minutes ago to go to the alleged scene, a young man
24 was out front and he had some things to say. I needed
25 to talk with you to see if anything was said or heard

1 by you that influenced you in any way concerning this
2 case?

3 JUROR: Sir, I did hear him talking.

4 THE COURT: Okay, and one last question.
5 If you continue to sit on this jury, can you both the
6 State and the defendant a fair and impartial trial?

7 JUROR: Oh, yes, sir, I can.

8 THE COURT: Thank you, if you will rejoin
9 the jury back here.

10 CLERK: Len Thomas.

11 THE COURT: Mr. Thomas, if you will come
12 right here, I need to speak with you for just a minute.
13 It's the Court's understanding that a few minutes ago
14 when the jurors went out to the vehicle to go to the
15 alleged scene, a young man was out there saying certain
16 things. Was anything said or heard by you that has
17 influenced you in any way concerning this case?

18 JUROR: No, sir.

19 THE COURT: Okay.

20 JUROR: I heard somebody call him down and
21 I was already around the other side of the van.

22 THE COURT: Okay, you did hear him say something?

23 JUROR: I didn't hear him say anything, I
24 just heard somebody tell him that he needed to quit
25 talking.

1 THE COURT: To quit talking. Okay, one last
2 question, if you were to continue to serve on this
3 case, can you give both the State and the defendant
4 a fair and impartial trial?

5 JUROR: Yes, sir.

6 THE COURT: Thank you, sir, if you will rejoin
7 the jury back here.

8 CLERK: Phillip Price.

9 THE COURT: Mr. Price, I need to talk with
10 you just a second. The Court is under the understanding
11 that when the jury went to the vehicles a few minutes
12 ago to the alleged scene that a young man was out front
13 having some things to say. Did you hear anything being
14 said?

15 JUROR: No, sir, I did not.

16 THE COURT: Okay. You were in no way influenced
17 by anyone?

18 JUROR: No, sir.

19 THE COURT: One last question, if you were
20 to continue to serve on this jury, could you be both
21 fair and impartial to the State and to the defendant?

22 JUROR: Yes, sir.

23 THE COURT: Thank you, sir, if you will rejoin
24 the jury back here.

25 CLERK: Braford Farris.

1 THE COURT: Mr. Farris, I need to talk to
2 you just a second or two. It's the Court's understanding
3 that a few minutes ago when the jury went to the vehicles
4 to go to the alleged scene that an individual was out
5 front having some things to say. Did you hear that
6 individual?

7 JUROR: No, I did not.

8 THE COURT: Okay. Did anybody do anything
9 or say anything that influenced you in any way concerning
10 this case?

11 JUROR: No.

12 THE COURT: If you were to continue to serve
13 on this case, can you be both fair and impartial to
14 the State as well as the defendant?

15 JUROR: Yes, sir.

16 THE COURT: Thank you, sir, if you will rejoin
17 the jury back here.

18 CLERK: Yataya Grant.

19 THE COURT: Ms. Grant, if you will come up
20 here, please. I need to speak with you for just a
21 second. It's the Court's understanding that when you
22 went to or the jury went to the vehicles to go to the
23 alleged scene a few minutes ago, that a young man was
24 out front having some things to say. I just need to
25 talk with you about that. Was anything said that

1 influenced you in any way?

2 JUROR: I didn't hear him.

3 THE COURT: Okay. If you were to continue
4 to serve on this jury can you be both fair and impartial
5 to the State as well as the defendant?

6 JUROR: Yes, sir.

7 THE COURT: Thank you, if you will rejoin
8 the jury back here.

9 CLERK: Shandra Whitney.

10 THE COURT: Ms. Whitney, I need to talk with
11 you just a second or two. It's the Court's understanding
12 that a few minutes ago when the jury went to the vehicles
13 to go to the alleged scene, that an individual was out
14 front and had some things to say. Were you influenced
15 in any way by anybody that said anything?

16 JUROR: No, sir.

17 THE COURT: Okay, did you hear the young
18 man say something?

19 JUROR: Yes, sir.

20 THE COURT: Can you tell me what he said?

21 JUROR: I don't remember exact. I know he
22 was saying about the jury is stupid and something else,
23 I wasn't really paying no attention.

24 THE COURT: Okay. Once last question. If
25 you were to continue to serve on this jury, could you

1 be both fair and impartial to both the State and the
2 defendant?

3 JUROR: Yes, sir.

4 THE COURT: Thank you.

5 CLERK: Josephine Cohen.

6 THE COURT: Thank you. I need to talk with
7 you just a second. The Court is under the understanding
8 that when the jury went to the vehicles a few minutes
9 ago to go to the scene, the alleged scene, that an
10 individual was out front having some things to say.
11 Was anything said in front of you that has influenced
12 you in any way?

13 JUROR: No, sir.

14 THE COURT: Did you hear anyone saying anything?

15 JUROR: At that time I heard something but
16 I couldn't understand it.

17 THE COURT: You couldn't tell what they were
18 saying?

19 JUROR: No, sir.

20 THE COURT: One last question, if you were
21 to continue to serve on this case, could you give both
22 the State and the defendant a fair and impartial trial?

23 JUROR: Yes, sir.

24 THE COURT: Thank you, if you will rejoin
25 the jury back here.

1 CLERK: Annie Brant.

2 THE COURT: Ms. Brant, I need to talk with
3 you just a second. The Court is under the understanding
4 that a few minutes ago when the jury was to go to the
5 alleged scene that out front that an individual had
6 some things to say. Was anything said in front of you
7 that has influenced you in any way concerning this
8 case?

9 JUROR: No, sir.

10 THE COURT: Okay, did you hear the young
11 man?

12 JUROR: No, sir.

13 THE COURT: Okay, if you were to continue
14 to serve on this case, could you be both fair and impartial
15 to the State and to the defendant?

16 JUROR: Yes, sir.

17 THE COURT: Thank you, if you will rejoin
18 the jury back here.

19 CLERK: Christine Fields.

20 THE COURT: Ms. Fields, I need to ask you
21 just a few questions. The Court is under the under-
22 standing that a few minutes ago when the jury went
23 to go to the vehicles in route to the alleged scene,
24 that an individual had some things to say. Did anybody
25 say anything in front of you that influenced you in

1 any way concerning this case?

2 JUROR: No, sir.

3 THE COURT: Did you hear a young man saying
4 anything?

5 JUROR: No, I didn't hear it for myself but
6 i heard somebody say he said something, but I didn't
7 hear it.

8 THE COURT: Okay. One last question. If
9 you were to continue to serve on this jury, could you
10 still be both fair and impartial to both the State
11 and the defendant?

12 JUROR: Yes, sir.

13 THE COURT: Thank you very much, if you will
14 rejoin the jury back here.

15 CLERK: Willi M. Bryant.

16 THE COURT: Ms. Bryant, I need to speak with
17 you just a second. The Court is under the understanding
18 that when the jury went to go to the vehicles a few
19 minutes ago, a young man was out front and had some
20 things to say. Was anything said that influenced you
21 in any way concerning this case?

22 JUROR: No, sir.

23 THE COURT: Did you hear the young man?

24 JUROR: No, I didn't.

25 THE COURT: Okay. Once last question. If

1 you were to continue to serve on this case, could you
2 be both fair and impartial to both the State and the
3 defendant?

4 JUROR: Yes.

5 THE COURT: Thank you, ma'am, if you will
6 rejoin the jury back here. Is that it?

7 CLERK: Yes, sir.

8 THE COURT: Do you still want to maintain
9 your motion or withdraw or what? Do you want to discuss
10 it with your client a minute?

11 MR. BRYAN: Yes, sir.

12 (WHEREUPON, Mr. Bryan confers with his client.)

13 MR. BRYAN: Your Honor, out of an abundance
14 of caution I would --- really my client says that he
15 wants to get this over with and out of deference to
16 him and in anticipation that my request would be denied
17 any way, let's keep going.

18 THE COURT: Okay. Well, I certainly don't ---
19 now that you've discussed it with him, I will accept
20 the withdrawal of the motion but I'm relieved somewhat
21 that most of them didn't hear anything and then the
22 ones that did were pretty straight forward in the way
23 they answered.

24 All right, anything before we get back to
25 work?

1 SOLICITOR: Nothing from the State, Your
2 Honor.

3 MR. BRYAN: Nothing more from the defense,
4 Your Honor.

5 THE COURT: All right, bring the jury in.

6 (WHEREUPON, Jury returned to the courtroom
7 and the following proceedings were heard in their presence
8 and hearing.)

9 THE COURT: Call your next witness, Mr. Bryan.

10 MR. BRYAN: Call Wilson Williams. I don't
11 think he's here.

12 THE COURT: Well, call another one then.

13 MR. BRYAN: I would call Cedric DeVore.

14 BAILIFF: He's not here.

15 THE COURT: It could be that it's so close
16 to lunch time that they slipped out.

17 MR. BRYAN: Might be, Your Honor, perhaps
18 this would be a good time to break for lunch.

19 THE COURT: Okay, unless you've got somebody
20 else at this time, we will.

21 MR. BRYAN: Maybe they will be back by the
22 time lunch is over.

23 THE COURT: All right, ladies and gentlemen,
24 we are going to keep you intact for lunch, lunch will
25 be on the county and the Court today. We are going

1 to arrange for ya'll to step over next door and that
2 way we can move right along time-wise, too. So with
3 what's already occurred this morning, I'm going to
4 take that action and keep ya'll together for lunch.

5 The same staff that escort you to the alleged
6 crime scene, I remind you that you're still under oath.
7 If ya'll will tend to the jury for lunch.

8 (WHEREUPON, The Court recessed for the luncheon
9 break and then the proceedings resumed in the presence
10 and hearing of the jury after lunch,)

11 THE COURT: Mr. Bryan, call your next witness.

12 MR. BRYAN: Call Wilson Williams.

13
14 WILSON WILLIAMS, AFTER
15 FIRST BEING DULY SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION BY MR. BRYAN:

17 Q. Mr. Williams, you remember the incident,
18 what happened on the night of July 12, 2003?

19 A. Yes, sir.

20 Q. Did you see Mr. Bradley that night?

21 A. Yeah, I was with him all that day.

22 Q. What happened that day?

23 A. Well, earlier that day we was playing cards
24 and then around about --- about 9:30 or 10:00 we left
25 and went to the club.

Mr. Williams-Direct by Mr. Bryan

148

- 1 Q. Which club?
- 2 A. Something Different.
- 3 Q. Do you remember what happened on the night
- 4 of Saturday the 12th of July, 2003?
- 5 A. Yes.
- 6 Q. Did you see Mr. Bradley that night?
- 7 A. Yeah, and I saw him early that day.
- 8 Q. Okay. Where did you see him?
- 9 A. He was at his house playing cards.
- 10 Q. How long were you with him that day and that
- 11 night?
- 12 A. All day until we got ready and left to go
- 13 to the club.
- 14 Q. Which club did ya'll go to?
- 15 A. Something Different.
- 16 Q. About what time did ya'll go?
- 17 A. About 9:30.
- 18 Q. How long were ya'll there?
- 19 A. We was there until it ended.
- 20 Q. About what time would that be?
- 21 A. 'Bout --- I think it ended 'bout 3 o'clock.
- 22 Q. So during any of that time, were you with
- 23 him or were you around him?
- 24 A. Of course I was around him.
- 25 Q. Was he ever gone?

1 A. Huh-uh.

2 Q. Okay.

3 MR. BRYAN: No further questions. The State
4 may have some.

5 THE COURT: Your witness.
6

7 CROSS-EXAMINATION

8 BY SOLICITOR:

9 Q. Good afternoon, Mr. Williams, how are you?

10 A. Doing alright.

11 Q. Mr. Williams, you have testified that you
12 remember that you went to club Something Different
13 with the defendant, have you not?

14 A. Yes.

15 Q. And you say that you were with him until
16 about 3 o'clock?

17 A. Well, earlier that day, we was together until
18 about 9:30 and then we left to go to the club.

19 Q. You left to go to the club?

20 A. Yes.

21 Q. And how do you know what the date was that
22 you went to the club Something Different?

23 A. It was a Saturday. I can't remember what
24 the date was.

25 SOLICITOR: Thank you, I have no further
questions.

Mr. Williams-Re-Direct by Mr. Bryan

150

1 RE-DIRECT EXAMINATION BY MR. BRYAN:

2 Q. Do you remember Mr. Bradley being arrested?

3 A. No.

4 Q. Did you hear that he had been arrested?

5 A. I ain't never heard of him being arrested.

6 Q. Did you hear about him being accused of this?

7 A. Yes. Early there was a guy that came ---
8 jumping out the car saying something about ---

9 Q. Well, don't go into what the other guy said
10 but you just heard that he had been accused?

11 A. Yes.

12 Q. About how long after this had you heard?

13 A. Uhm --- about six months.

14 MR. BRYAN: Okay, no further questions.

15 SOLICITOR: Nothing else, Your Honor.

16 THE COURT: You may step down. Call your
17 next witness.

18 MR. BRYAN: Defense calls Roderick Bradley
19 to the stand.

20
21 Roderick Bradley, after
22 first being duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MR. BRYAN:

24 Q. Mr. Bradley, could you state your name for
25 the record?

- 1 A. My name is Roderick Z. Y. Bradley.
- 2 Q. And how old are you, Mr. Bradley?
- 3 A. Turned twenty-five March the 12th.
- 4 Q. Where did you go to high school?
- 5 A. Allendale/Fairfax High.
- 6 Q. And when did you graduate?
- 7 A. 1998.
- 8 Q. Are you engaged?
- 9 A. Yes.
- 10 Q. To who?
- 11 A. Charlotte Simpkins.
- 12 Q. Is she here?
- 13 A. Yes, she's right over there on your right.
- 14 Q. Do you have any children?
- 15 A. I have one daughter, she's five months.
- 16 Q. How long have you lived in Allendale?
- 17 A. I've resided in Allendale nearly all my life.
- 18 Q. And how about your family?
- 19 A. All my life.
- 20 Q. Are you employed right now?
- 21 A. I have been working for Nevermar for the
- 22 last five, six months.
- 23 Q. And before you worked for Nevermar, where
- 24 did you work?
- 25 A. I worked for Cellular Depot which is a agent

Mr. Bradley-Direct by Mr. Bryan

152

1 for Alltel for a year and a half.

2 Q. Moving to the events of July the 12th of
3 last year, can you tell us where you were on that night?

4 A. On that particular night, my mother --- on
5 the date in question when the police came to my job
6 which is I think was on a Thursday, Officer Wesly Jamison
7 came and stated that I was charged with criminal sexual
8 with a minor in the second degree. And he didn't arrest
9 me that day, he said I was under questioning to give
10 a voluntary statement. He took me --- he told me to
11 come to the station the next morning and that I could
12 meet the witness, well, the victim up there ---

13 Q. No, I'm talking about the night they allege
14 this incident happened.

15 A. Oh, that night. I thought you were --- I
16 mean, that's how I find out about it that particular
17 day.

18 Q. Okay. What happened that night?

19 A. On that night, or on that day, that particular
20 day, we had started playing cards about 10:30 or 11
21 o'clock that evening, I mean, that morning.

22 Q. You started about 10:30 or 11:00?

23 A. 10:30 or 11:00.

24 Q. Who else was with you?

25 A. It was most of my entire family because my

1 mother went to Atlanta and my step-dad went to North
2 Carolina. And me and all the guys, I mean, that's what
3 we do every day, play cars, we play poker every day.

4 Q. Did you ever leave the house that day?

5 A. I left the house one time that day.

6 Q. And what did you do then?

7 A. Me and my sister went to Fleetwood's.

8 Q. Why did ya'll go to Fleetwood's?

9 A. Went to order something to eat.

10 Q. And then what happened?

11 A. And we came back to the house and started
12 playing cards again.

13 Q. And then did ya'll go anywhere else?

14 A. Yeah, we went to the club.

15 Q. Which club?

16 A. Something Different.

17 Q. Where is that?

18 A. That's in Kline, South Carolina.

19 Q. Did anyone go with you to the club?

20 A. Me, my sister, I and all the guys that was
21 there with us.

22 Q. And how long did ya'll stay in Kline?

23 A. Stayed there until a fight broke out which
24 ended about 2:30 or 3 o'clock.

25 Q. And where did ya'll go after that?

Mr. Bradley-Direct by Mr. Bryan

154

1 A. Came back to the house and continued playing
2 cards up until 4:30 or 5 o'clock and everybody got
3 tired.

4 Q. Are you familiar with a club called Hole
5 in the Wall Club?

6 A. Yes, it's right around the corner from my
7 house.

8 Q. How late does it usually stay open?

9 A. Friday night they stay open to 2:30, 3:00;
10 Saturdays they stay open 'til 12, however, the owner
11 keep it open from 1 to 1:30.

12 Q. Did you rape this girl?

13 A. No, I didn't. I was a legend.

14 Q. Did you have sex with this girl?

15 A. Never met the girl until the day at the police
16 station when they read me my Memorando Rights and she
17 was there.

18 Q. One more thing, would you stand up.

19 A. Yes.

20 Q. Could you come around to the front row. Ms.
21 Rowell, you might want to come up, too. I notice that
22 you have some marks on your face.

23 A. I got these marks in 1996. I was in a car
24 accident and I broke both of my jaws with lacerations
25 across my nose and my eyes.

1 Q. Would you stand a little closer so that the
2 jury can see them.

3 A. Okay.

4 MR. BRYAN: Okay, you can sit back down.
5 The State may have some questions.

6 THE COURT: Your witness.
7

8 CROSS-EXAMINATION

9 BY SOLICITOR:

10 Q. Good afternoon, Mr. Bradley.

11 A. Good afternoon.

12 Q. Mr. Bradley, do you know Sabrina Flowers?

13 A. I don't actually know Sabrina Flowers, I
14 know of her. I went to school with one of her brothers,
15 Santaonio Flowers, and my sister went to school with
16 the other girls.

17 Q. All right, would it surprise you to know
18 that your sister, Yvonda, said that she knows us real
19 well?

20 A. She might have known my sister, I didn't
21 graduate --- I'm 25 years old and I don't want to argue
22 with you or anything, but I don't actually hang with
23 younger kids. I have a niece that is 13 and I don't
24 even hang with her.

25 Q. But your family knows her family, is that

Mr. Bradley-Cross by Solicitor

156

1 correct?

2 A. Exactly.

3 Q. And you have a fiancée named Charlotte, is
4 that correct?

5 A. That's correct.

6 Q. Okay.

7 A. We've been dating for the last six years.

8 Q. And she's here with you today, correct?

9 A. That's correct.

10 Q. And how many times have you seen Sabrina?

11 A. I saw Sabrina --- you mean in my life?

12 Q. Yes, sir.

13 A. I saw Sabrina, she came into my job, I worked
14 to Alltel and I do a lot of customers. She came to
15 my job one time, I activated her phone for her. I
16 saw her at the Spring Festival, I mean, I probably
17 saw a numerous amount of time, I can't accurately tell
18 you exactly how many times.

19 Q. But you've seen her a number of times?

20 A. Exactly.

21 Q. And you deny ever having met Latay Payne?

22 A. I didn't met Latay Payne until the day in
23 question when the police had me come to the station
24 at 10 o'clock or ---

25 Q. You didn't actually meet her that day, did

1 you?

2 A. I didn't actually meet her. I was told to
3 be here and I saw her and her mother, Sabrina and
4 some other people in here and they sat there in Chief
5 Rouse office while I sat in, I guess, the dispatch
6 office, well, in this room right over here.

7 Q. Okay. So when you say you saw her here do
8 you mean that --- well, how did you know it was her?

9 A. I didn't know her.

10 Q. So you saw somebody here?

11 A. That's correct. The only way I know that
12 was her is that when I saw her --- let me see --- I
13 forget where I seen her but that's actually first time
14 actually seeing Latay Payne.

15 Q. Now you say that it was on July 12th that
16 you went to the club Something Different.

17 A. That's correct.

18 Q. Who did you go to the club Something Different
19 with?

20 A. I went to the club with my sister, my brother
21 and the rest of the guys that was to the house. If
22 you want me to ---

23 Q. How many cars did you take?

24 A. We took my sister car, because she had a
25 Tahoe, we took I-Chevrolet, which is Burton's ---

- 1 Q. I'm sorry, you took whose Chevrolet?
- 2 A. Well, I call him I, but his name is Wilson
- 3 Williams. We took Grady Hoover car, which is a 1988
- 4 Delta Oldsmobile, we took Lexie's Chevrolet, we took
- 5 Tony Hoover's Chevrolet and we also took Cedie DeVore
- 6 white Chevrolet.
- 7 Q. Whose car did you ride in?
- 8 A. I rode with my sister.
- 9 Q. And you stated that you were with your sister
- 10 and your friends all day long, is that correct?
- 11 A. That's correct.
- 12 Q. And you stated that you only went to Fleetwood's
- 13 with your sister, is that correct?
- 14 A. That's correct.
- 15 Q. Before you went to the club. Didn't you
- 16 go somewhere else after you left Fleetwoods?
- 17 A. I did go somewhere else but I wouldn't want
- 18 to bring it up because that's my fiancée, I went to
- 19 one of my friend's house, which is Latola Mole.
- 20 Q. And what did you do at Latola Mole's house?
- 21 A. I took her a club plate.
- 22 Q. All right, so you did go some place besides
- 23 Fleetwood's, didn't you?
- 24 A. Yeah, I did.
- 25 Q. Were you drinking that night?

1 A. I had two double deuce Bud Lites.

2 Q. Just two?

3 A. That's correct.

4 Q. Did you have any when you went out to the
5 club Something Different?

6 A. We didn't enter the club.

7 Q. So you played cards all evening and you had
8 two --- what's a double deuce?

9 A. A double deuce is a bottle that stands about
10 ya height, 22 ounce, I mean, everybody know what double
11 deuce beer is.

12 Q. I don't know what a double deuce beer is.

13 A. I'm sorry, it's a Bud Lite. A bottle Bud
14 Lite.

15 Q. And you say it's 22 ounces?

16 A. That's correct.

17 Q. Do you know who rode with Lexie Brown to
18 the club?

19 A. No, I didn't. Well, most likely it was Tommy
20 Capers but he's not on trial.

21 Q. Who is Tommy Capers?

22 A. Tommy Capers, it's the guy right here.

23 Q. And what is your answer to the fact that
24 Sabrina Flowers says that you were there in Lexie Brown's
25 car that night?

Mr. Bradley-Cross by Solicitor

160

1 A. Well, to be honest with you, I don't know.

2 MR. BRYAN: Your Honor, that's pitting witnesses,
3 Your Honor.

4 THE COURT: Sustained.

5 SOLICITOR: I apologize to the Court, Your
6 Honor.

7 Q. But you deny having been there?

8 A. Never been there.

9 Q. Let me ask you this. How far away you were
10 at your house, at your sister's house, and that's on
11 Gum Street, right?

12 A. That's correct.

13 Q. And how far away is Gum Street from Barton
14 Avenue?

15 A. From Barton Road?

16 Q. Barton Road, I'm sorry.

17 A. Okay, you've got one, two, three, four, five,
18 six, you've got eight houses from my house --- you've
19 got eight houses, starting from my house, to Barton
20 Road, so I guess a acre of land, or a half acre of
21 land, so ---

22 Q. About how many minutes does it take?

23 A. How many minutes?

24 Q. Minutes to Barton Road if you walked.

25 A. If I walked, probably no more than two or

1 three minutes.

2 Q. And do you know where Walnut Street is?

3 A. Yes, I have.

4 Q. And where is that?

5 A. It's the street where the Hole in the Wall
6 is, the club.

7 Q. The Hole in the Wall is on Walnut Street?

8 A. That's correct.

9 Q. Is that close to your house?

10 A. It's a block in front of my house.

11 SOLICITOR: Your Honor, I have no further
12 questions.

13 THE COURT: Mr. Bryan?

14 MR. BRYAN: No further questions, Your Honor.

15 THE COURT: Witness may step down.

16 MR. BRYAN: Defense rests, Your Honor.

17 THE COURT: Anything further from the State?

18 SOLICITOR: Your Honor, the State may or
19 may not have a reply, may I have about two minutes?

20 THE COURT: Sure.

21 (WHEREUPON, Solicitor took a few minutes
22 and then the proceedings resumed in the prsence and
23 hearing of the jury.)

24 SOLICITOR: No reply, Your Honor.

25 THE COURT: All right, we're ready for closing

1 arguments.

2 MR. BRYAN: May it please the Court, Solicitor,
3 members of the jury. We're through now with all of
4 the testimony and ya'll are going to be in the jury
5 room in a few minutes, and I just want to make just
6 a few comments to you. If I mistate the facts, the
7 twelve of ya'll, I noticed that you played close attention
8 in this trial, if my memory fails me and I say something
9 different than the way ya'll remember it, pay attention
10 to the way ya'll remember it, not what I say and the
11 same for the other lawyer. Sometimes we get excited
12 during a trial and sometimes our memories aren't as
13 good as they could be.

14 Another thing to keep in mind is when you
15 go in the jury room, you've got twelve jurors, and
16 you're entitled to use your common everyday experience
17 and common sense in the jury room. That doesn't go
18 out the window. Keep that in mind.

19 Now, this is an unusual case here and I noticed
20 that you all paid attention and you probably noticed
21 a few unusual factors here. We've had a girl that claims
22 to be a victim but she didn't tell her friends, she
23 didn't tell her cousin, she didn't tell Sabrina, she
24 didn't tell her aunt when she got back to her aunt's
25 house. She didn't tell her mother for almost two

1 weeks. Her friend Sabrina was standing near the car.
2 She said she heard noise, thought they were playing
3 or talking. Apparently it's unusual for a rape to
4 happen with someone that's within listening distance
5 and doesn't notice it.

6 Now, there's no mention, and I think that's
7 crucial, there's no mention of blood on her clothes
8 or on her underwear. She said she was bleeding so
9 apparently when she got home, there's no bloody underwear,
10 there's no talk about that, there's no talk about having
11 them on or anything or changing clothes. If that had
12 happened, don't you think they would remember that?
13 Don't you think they would say it?

14 And they said they were going to Pinewood
15 Apartments and talk with a relative but they didn't
16 bring the relative and the State, they could find out
17 who that is, and bring them in here and say yeah, they
18 came and they saw me. That didn't happen. Why? The
19 State has the burden of proof, the State has to put
20 up their witnesses, the State, you can infer from the
21 fact that they didn't put up that witness that that
22 witness wouldn't have helped them.

23 And both these girls said they were at the
24 club, walking by, Saturday night, it's 11 or 12, some-
25 where in there, ya'll probably paid better attention

1 to the exact time these girls said. Now, so they noticed
2 that there was a club there but they said it was closed.
3 So obviously they knew there was a club there. And
4 they said it was closed at 11 or 12.

5 Now, most of ya'll live in Allendale and
6 ya'll know what times clubs shut down and close in
7 Allendale. But Latay, the girl, she said she never
8 saw Mr. Bradley before. She said she saw him that
9 night, there was a street light, they were in a car,
10 the car had tinted windows, she said he was tall, said
11 he had big eyes. She didn't mention the scars. She
12 had a good view, this is Allendale and Allendale County,
13 there are a lot of tall black men with big eyes.

14 So she said she was close enough to smell
15 his breath, she said she was close enough for him to
16 have his tongue in her ear. She never mentioned a scar.
17 Don't you think she would have noticed a scar and told
18 the police, he had scars on his head. None of that.

19 She said when they got to the car that Lexie
20 was in the front seat and Mr. Bradley was in the back
21 seat. Now, ya'll drive cars and you see people in
22 cars and how often is it that you see two people in
23 a car, Chevrolet, and there's one in the front and
24 one in the back? Isn't it more common and almost
25 universal experience that two people ride together

1 in the front seat of a car if there's only two people
2 in the car? And if they are parked, they just keep
3 sitting where they've been sitting.

4 And then Latay said that Mr. Bradley, with
5 his long legs, crossed the seat to the front. Just
6 think of the gymnastics involved in climbing over a
7 seat in a Chevrolet from the back to the front, and
8 why would she --- and especially with somebody else
9 in the front seat of the car. That's going to be another
10 problem, you've got to move your legs around the seat
11 and around the other person. And it contradicts the
12 statement of Ms. Flowers which is that he opened the
13 door, got out, walked around, opened the other door,
14 got in.

15 Latay said this whole incident in the car
16 took about 10 or 15 minutes. But ya'll remember what
17 she said. And Sabrina had a much longer period of
18 time, an hour, an hour and 10 minutes.

19 SOLICITOR: Objection, Your Honor, that was
20 not the testimony.

21 MR. BRYAN: Well, the jury will remember
22 the testimony better than I will, I've already admitted
23 that.

24 THE COURT: Okay.

25 MR. BRYAN: And if your memory is different

1 from mine, go with what your memory says.

2 And then they say that Latay got out when
3 Sabrina and Lexie returned. Apparently she was able
4 to use the door handle.

5 Her mother testified that when she was here,
6 she was in the hospital. She didn't even know her daughter
7 was out of town. They lived in Barnwell, they didn't
8 even know her little girl was out of town, that's without
9 her permission.

10 Now the testimony of Sabrina, said it was
11 dark but there was a light by the road, she thought
12 they may have been talking about 10 or 11 minutes,
13 got out the back door, walked around, got in the front
14 door, got in. That contradicts the testimony of Latay.

15 Dr. Schuh testified, she's an expert witness,
16 she's a doctor, she specializes in this and she said
17 basically that the hymen was ruptured and then it was
18 healing and that indicated that this girl had had sexual
19 contact. It didn't say with whom and it didn't say
20 whether it was forcible or what, just said she's had
21 prior sexual contact, made --- it was a slight possibility
22 it was something else, but probably she did.

23 No mention of blood on her clothes, she said
24 she was bleeding. Now, if she was bleeding, wouldn't
25 there be blood stains, wouldn't they have the blood

1 stains analyzed or blood stains to show --- well, because
2 if you think about it, if you cut yourself shaving
3 in the morning, how hard is it to get the blood stain
4 out of your shirt? And if it sits around, if that
5 stain sits around for a few minutes or an hour or two,
6 isn't it a lot harder or impossible to get that blood
7 stain out? Now, don't rely on what I say, just rely
8 on your common everyday experience, is a blood stain
9 easy to get rid of?

10 Was there any DNA testing on this? No. There's
11 no physical evidence connecting Mr. Bradley to what
12 happened that night.

13 Well, we had several witnesses, where was
14 Mr. Bradley? He was home, he was playing cards with
15 his friends and his family and then they went out to
16 a club in Kline with his friends and family. And I
17 notice that they will probably make a lot out of the
18 fact that this witnesses are friend and family but
19 who else are you going to be with on a Saturday night,
20 your friends and your family. Are you going to be
21 hanging around strangers collecting affidavits, this
22 is where I was Saturday night? No, you're going to
23 be with your friends and your family. That is who
24 you would expect him to be with. So don't be too surprised
25 at that.

1 Now, I'm not saying that this girl is just
2 mean spirited and vicious but look at her story, look
3 at all the details, look at what she says, what she
4 doesn't say and who she says it to and when she said
5 it, and maybe this is just an example of a young girl
6 just going out, trying to play grown up, having some
7 fun while the parents don't know about it and something
8 happened. And maybe she panicked and made up a story.
9 You know, sometimes teenagers will start something,
10 they will start a ball rolling, and they don't know
11 how big it is until it's too late.

12 And I'm not saying that she's a mean and
13 malicious person, but she possibly got herself in a
14 jam and just had to say something. But ya'll think
15 about it, do these stories add up to proof beyond a
16 reasonable doubt?

17 You've heard the testimony, you've seen the
18 evidence, is this enough? Isn't that a reason to doubt
19 that the State has proved their case on this? And
20 I thank you for your time.

21 THE COURT: Solicitor.

22 SOLICITOR: Ladies and gentlemen, I thank
23 you for your time, this is a very serious case with
24 serious consequences. And I thank you so much for
25 doing your duty and for being here today and yesterday.

1 We're going to start by going over the law
2 regarding criminal sexual conduct with a minor because
3 that is what the defendant is charged with. The Judge
4 is going to give you the final charge on the law telling
5 you exactly what he wants you to consider when you
6 go to the jury room, about what criminal sexual conduct
7 with a minor is. So let me outline it for you.

8 I've written here, criminal sexual conduct
9 with a minor in the second degree. That's what this
10 man is charged with. And criminal sexual conduct with
11 a minor in the second degree has two definitions and
12 there's one definition that applies to this case. It
13 applies in this case because the victim was 13 years
14 old. The definition of criminal sexual conduct with
15 a minor in the second degree is a person who engages
16 in sexual battery with a victim who is 14 years of
17 age or less but who is at least 11 years of age.

18 And the State has shown you that this was
19 a 13 year old girl, so she was between 11 and 14.

20 Then this person has to engage in sexual
21 battery. Well, what is sexual battery. The law defines
22 sexual battery for us. Sexual battery means intercourse
23 or any intrusion, however slight, however slight, of
24 any part of a person's body or of any object into the
25 opening of another person's body.

1 And the State has proved to you that Latay
2 Payne, this victim sitting right here, was sexually
3 battered meaning that this man had intercourse with
4 her and she was between 14 and 11 years old. That's
5 what you have to decide, you have to decide did the
6 State prove this case. And we have to prove it beyond
7 a reasonable doubt.

8 Now, let me repeat some of what happened
9 here. First of all, you have the evidence of Latay
10 Payne, she's a 14 year old girl. She sat before you
11 shaking, trembling and she testified that one year
12 ago, when she was 13, that the defendant, this man,
13 this man, Roderick Bradley, forced himself on her.

14 Now, Latay is not perfect, she was 13, she's
15 14 now. She was out on the street, she's not perfect
16 because she was a 13, she's now a 14 year old girl.
17 Should she have been out on the street at night? No,
18 of course, she shouldn't. But we have laws to protect
19 people like her and and we don't let, under the law,
20 something bad like what happened to her to happen.

21 I want you to remember how she sat her
22 trembling but had the courage to get up to tell you
23 what happened to her. She told you that she went out
24 with her cousin, with the trust of a 13 year old little
25 girl, she followed her older 15 year old cousin out

1 late at night, not that unusual, not that unusual at
2 all. We wish it didn't happen, our parents tell us
3 that they don't want it to happen, but it happens.

4 And with that trust, she got into the car
5 with her cousin's friend, Lexie Brown. She got in there
6 with Sabrina's friend, Lexie Brown. And then her cousin
7 and Lexie made the mistake of leaving her there alone
8 with the defendant. And what did he tell her? He told
9 her, I'm going to make you into a woman tonight, I'm
10 going to make you into a woman tonight.

11 Well, he certainly made her lose her childhood
12 that night.

13 MR. BRYAN: Your Honor, that's an appeal
14 to emotion and I would object to it. I mean, the Solicitor
15 is supposed to stick to the facts and the evidence
16 in the case and not to educe the jury to basically
17 appeal on an emotional factor.

18 SOLICITOR: It's argument, Your Honor.

19 THE COURT: I don't think it's to the point
20 that I need to step in but on the other hand, be careful
21 where you go with it. Go ahead.

22 SOLICITOR: She's in court, she has to testify
23 about very private things and she didn't even want
24 to tell her mother, and she waited 10 or 11 days to
25 tell her mother, she so didn't want to. But she did

1 so, her most private matters. He did force her into
2 adulthood, a lot earlier than she should have been.
3 You had to look at pictures, pictures of her private
4 parts and he force her into adulthoio.

5 MR. BRYAN: Your Honor, I need to bring up
6 a point of law probably just a conference at the bench.

7 THE COURT: All right, step back here, please.

8 MR. BRYAN: I do need it on the record, though,
9 Your Honor.

10 (WHEREUPON, The following was held up at
11 the Bench out of the hearing of the jury.)

12 MR. BRYAN: The Solicitor is not supposed
13 to state an opinion and she said that he forced himself
14 on her, that's her opinion and that's highly improper,
15 that's not due process and he's got a due process right
16 to a fair trial.

17 SOLICITOR: That's the testimony, Your Honor.

18 THE COURT: You're not supposed to give your
19 opinion, Solicitor.

20 SOLICITOR: Can I say I believe.

21 THE COURT: Be careful about what you say
22 and don't interject yourself into the argument.

23 SOLICITOR: I didn't, Your Honor.

24 THE COURT: Just be careful.

25 (WHEREUPON, The argument of the Solicitor

1 continued in the presence and hearing of the jury.)

2 SOLICITOR: Roderick Bradley had his way
3 with her. Your cousin, Sabrina, heard her crying out
4 no, no, boy, no, boy. She said she heard it many times.
5 But with the ignorance of a 15 year old, she didn't
6 realize the consequence of what was happening. She
7 didn't exactly realize what was going on. But she very
8 clearly told you that she heard her saying boy and
9 no, no, boy, no, boy, several times.

10 The defense has pointed out that there was
11 a difference in testimony between Latay and Sabrina.
12 Sabrina thought that he was in the front seat and Latay
13 said he was in the back seat and that he crossed over
14 to the front. Now, remember, witnesses rarely remember
15 everything about an event the same way. That may happen
16 on TV but in real life that doesn't happen. People
17 have some differences in memory.

18 And, also, remember that night that Lexie
19 was talking with Sabrina. Sabrina was gone off from
20 the car and was talking with Lexie, she was so far away
21 from the car, she had walked away from the car with
22 him, she was not really paying attention to her cousin,
23 so interested in her conversation with Lexie she didn't
24 even think that much about hearing her cousin crying
25 out no, no boy, no boy, no boy.

1 Think about the credibility of the State's
2 witnesses. A 14 year old girl, too afraid to tell
3 her mom what happened for 10 to 14 days, until she
4 got her courage up to go tell her mom and to tell you
5 what her attacker looked like.

6 She said that he had big eyes, he was tall,
7 that he was skinny, that he had long legs and that
8 he had a long neck. And look at the defendant and
9 see if that is not a perfectly accurate description
10 of Mr. Bradley. Big eyes, tall, skinny, long legs,
11 long neck. She says she can still remember it. She
12 was afraid to look at him, she put her hand like this
13 the whole time. When she walked in the door, she walked
14 down with her eyes cast. She wasn't staring at him,
15 she was sitting here like this, talking into the
16 microphone, sitting like this, afraid to look over
17 there. It took her many minutes to look over there.

18 But she knew what he looked like. She was
19 able to sit here with her hand here and tell you exactly,
20 exactly what he looked like. She knew that the man
21 who was with Lexie that night was this man sitting
22 here.

23 I want you to also think very hard about
24 how Sabrina knew Roderick. She said she had known him
25 for at least a year before. He admitted he knew her.

1 They knew of each other. She said she had seen him
2 maybe ten times in the previous year. She knew his
3 family. She knew that the man who was with Lexie and
4 who was with Sabrina was Roderick Bradley. She knew
5 that the man who was with Lexie was the boyfriend of
6 her girlfriend, Aunt Charlotte, and who is sitting
7 next to the defendant, Charlotte. This is no case of
8 mistaken identity, ladies and gentlemen, this is no
9 case of mistaken identity.

10 The very person through whom Sabrina knew
11 Roderick has been sitting right next to him in the
12 courtroom.

13 There's more testimony for you to consider.
14 Dr. Schuh testified that Latay had an injury to her
15 hymen. She showed you a picture of the physical injury.
16 She testified on cross-examination, when Mr. Bryan
17 was examining her, that the tear to the hymen would
18 have been very painful. And what did Latay say, it
19 hurt, it hurt.

20 Now, it's true, she didn't tell her mother
21 for 10 days but remember teenagers, teenagers have
22 a hard time talking with adults and talking about things
23 like this. But there's no doubt, because you heard
24 testimony from Schuh, that her hymen had an injury
25 due to penetration with blunt force trauma, penetration

1 with blunt force trauma.

2 This girl, this little girl sitting here,
3 told you that it hurt, that it hurt.

4 Now, let's look at the defense witnesses.
5 The sister, Yvonda Bradley. She says he was with her
6 on direct examination, said they were home all night
7 except for one trip to Fleetwood's, playing cards until
8 they went to club Something Different. But she didn't
9 tell you everything that happened that night. She admitted
10 on my cross-examination that they also went to another
11 girl's house, to Latoya's house. She wasn't telling
12 you the full story. She admitted that she made a state-
13 ment to the police, the statement on which she changed
14 the date from June to July, she changed the 6 to a
15 7. She admitted that on that statement she said that
16 Roderick and the guys went to the club Something
17 Different. But today, she says she went with Roderick
18 to the club Something Different. Which one is it?
19 That's for you to judge.

20 She says that she doesn't know that Walnut
21 Street is one street away from where she lives. She
22 also said that Roderick had been drinking and remember,
23 Latay said that she could smell alcohol on Roderick's
24 breath. And he testified that he had two 22 ounces
25 of beer, that's 44 ounces of beer. That corroborates,

1 that corroborates the victim's testimony, that she
2 could smell alcohol on his breath.

3 Now, I want you to remember one other thing
4 about Yvonda's testimony. Yvonda says that she has
5 a selective memory, a selective memory. A selective
6 memory means that a person chooses what to remember
7 and what not to remember. Selective memory means that
8 she picks and chooses her memory. She has chosen to
9 remember what she wants to remember and to forget what
10 she wants to forget. She forget that Walnut was one
11 street away from where she lives.

12 I told you before this trial started that
13 I wanted you to judge the credibility of these witnesses.
14 How credible was Yvonda, that's for you to judge. You
15 saw her on the stand, you saw the way she acted and
16 you heard her say that she has a selective memory.

17 Contrast her with Sabrina, contrast her with
18 Latay sitting there bravely trembling, contrast her
19 with Dr. Schuh, cool, professional, clinical.

20 And Lexie, Lexie Brown, the person's whose
21 car this took place in. Remember Latay didn't know
22 him but she described the car as a box Chevy. He says
23 he doesn't know Latay, but he didn't dispute the fact
24 that he had a box Chevy.

25 And as to his alibi, his alibi for this defendant,

1 when I questioned him, he admitted that he didn't know
2 what date he went to the club Something Different.
3 He had no recollection of the night that he went with
4 the defendant to the club Something Different. He
5 said that he got that date from the police. He said
6 that he got that date from the police. He said that
7 he got that date from the police.

8 MR. BRYAN: Your Honor, I believe that that
9 is a misstatement of fact. I don't think it's the
10 way she's saying it, Your Honor, but I think if the
11 jury just uses their memory it will take care of it.

12 THE COURT: Okay.

13 SOLICITOR: But he knows that he went to
14 the club Something Different with this defendant but
15 he doesn't know which night, but then he says it was
16 the night that this girl was raped, then he must have
17 known what night she was raped, and he must have been
18 there in close proximity of the rape. You think about
19 that, you think about that.

20 Think about the other witness called by the
21 defense to establish an alibi, Wilson Williams. When
22 I cross-examined him he shrugged his shoulders, he
23 looked puzzled and he said, you know what, I don't
24 know what date I went to the club Something Different
25 with him, I don't know what date it was.

1 Now, Mr. Bryan has pointed out that the defendant
2 has scars on his face. Why didn't she describe the
3 scars? Look at his scars, you can barely see them in
4 this courtroom. Is that what she would have noticed
5 in the car under the street light? No. She noticed
6 his eyes and his long neck, his tall, skinny legs.
7 Sabrina knew who he was.

8 The defendant says maybe she panicked, maybe
9 her parents got suspicious and she made this story
10 up. Recall the testimony of her mother. Her mother
11 was sitting at home, Latay got the courage up to tell
12 her what happened. She had no idea there was anything
13 wrong, she jumped up, she jumped up and ran over to
14 her brother's house. This isn't a case where a parent
15 got suspicious, where she had gotten in trouble and
16 had to get out of trouble. That's not what happened.

17 Ladies and gentlemen, this is a serious,
18 serious case. This little girl sits here, she was
19 brave enough to tell her story, brave enough to tell
20 that she went out late ---

21 MR. BRYAN: Your Honor, this is an appeal
22 to emotion.

23 SOLICITOR: You judge --- you judge.

24 THE COURT: Overruled.

25 SOLICITOR: You judge her demeanor as she

1 testified. You judge her demeanor as she sat there.
2 You judge what motive she would have to blame this
3 on a person she didn't even know. You judge Sabrina's
4 motive. You remember Sabrina's testimony. You remember
5 how clear she was, you remember how she knew who Roderick
6 was, you remember how she knew him.

7 Sexual battery, it means intercourse for
8 any intrusion, however slight, of any part of the victim's
9 body or any object into the openings of another person's
10 body. And when that happens to a 13 year old it's against
11 the law. It doesn't have to be her saying no, although
12 she cried out, she said, no, no boy, no boy, no. He
13 put his tongue in her ear, she testified, and she turned
14 her head. This wasn't something that she wanted. She
15 was 13 years old, she shouldn't have been out on that
16 street, but she was there. Too young to get herself
17 out of what she had gotten herself into but the law
18 protects her, the law protects her.

19 And I ask you to go back into that jury room,
20 look at all of the evidence, judge all the witnesses,
21 all the credibility and I ask you to go back there
22 and do justice, justice as you see fit, please, do
23 justice in this case. Thank you, ladies and gentlemen.

24 THE COURT: Thank you, counsel. Madam Forelady
25 and ladies and gentlemen of the jury, if I could have

1 your attention. It now becomes my duty to charge you
2 the law in this case. It is your duty as jurors to
3 accept and apply the law as I state it to you at this
4 time.

5 As jurors, it's your exclusive duty to decide
6 all the issues of fact in this case to determine the
7 effect, the value, the weight and the truth of the
8 evidence. Both the State and the defendant have a
9 right to expect that you will conscientiously consider
10 and evaluate the evidence and apply the law of the
11 case thereto to the end that both the State of South
12 Carolina and the defendant will receive and obtain
13 a fair and impartial trial in this case.

14 When I use the word "defendant" I refer to
15 Mr. Roderick Bradley. The State of South Carolina,
16 by the bill of indictment in this case, charges the
17 defendant, Roderick Bradley, with the offense of criminal
18 sexual conduct with a minor second degree.

19 To this charge and to the indictment, the
20 defendant has entered a plea of not guilty. A plea
21 of not guilty by a defendant places the burden of proof
22 on the State to prove by evidence the guilt of the
23 defendant beyond a reasonable doubt before you, the
24 jury, can find the defendant guilty.

25 The defendant is presumed in law innocent

1 of the charges contained in the indictment. It is
2 a cardinal and fundamental rule of the law of evidence
3 that a defendant, irrespective of the enormity of the
4 charges against him, will always be presumed innocent
5 of the crime of which he is indicted unless and until
6 the guilt of the defendant has been proved by evidence
7 that satisfies you, the jury, of his guilt beyond a
8 reasonable doubt.

9 The presumption of innocence, ladies and
10 gentlemen, is not a mere legal theory, it is not just
11 a legal phrase. The presumption of innocence is a substantial
12 right to which every accused is entitled. Our Supreme
13 Court has declared that the presumption of innocence
14 is like a robe of righteousness placed about the shoulders
15 of a defendant and it remains with him and assigns
16 him to that class known as the innocent until that
17 presumptive robe of righteousness has been stripped
18 from his person by evidence satisfying you, the jury,
19 of the guilt of the defendant beyond a reasonable doubt.

20 The presumption of innocence accompanies
21 a defendant from the time of his arraignment and appearance
22 in court and continues with the defendant throughout
23 every stage of the trial and continues with the defendant
24 after you retire to the jury room to deliberate your
25 verdict.

1 The presumption of innocence continues in
2 existence to the benefit of the defendant until you,
3 the jury, reach the conclusion that the State has proved
4 the guilt of the defendant beyond a reasonable doubt.

5 The State is not required to prove the guilt
6 of a defendant beyond all doubt or beyond every doubt,
7 but beyond a reasonable doubt. The law does not require
8 any defendant to prove his or her innocence of a crime.
9 On the contrary, the law requires the State to establish
10 the defendant's guilt by legal evidence beyond a
11 reasonable doubt. The law presumes a defendant to
12 be innocent of the charge made against him in the indict-
13 ment until his guilt has been proved beyond a reasonable
14 doubt. The burden of overcoming this presumption of
15 innocence is placed upon the State and rests upon the
16 State throughout the trial and until the State has
17 satisfied you, the jury, by evidence of the defendant's
18 guilt beyond a reasonable doubt.

19 Some of you may have served as jurors in
20 civil cases where you were told that it is only necessary
21 to prove that a fact was more likely true than not
22 true. In criminal cases, the Government's proof must
23 be more powerful than that, it must be beyond a reason-
24 able doubt. Proof beyond a reasonable doubt is proof
25 that leaves you firmly convinced of the defendant's

1 guilt. There are very few things in this world that
2 we know with absolute certainty and in criminal cases
3 the law does not require proof that overcomes very
4 possible doubt. If, based on your consideration of
5 the evidence, you are firmly convinced that the defendant
6 is guilty of the crime charged, you must find him guilty.

7 If, on the other hand, you think there's
8 a real possibility that he is not guilty, you must
9 give him the benefit of the doubt and find him not
10 guilty.

11 A defendant is entitled to every reasonable
12 doubt arising in the case. If, upon any issue of fact,
13 essential to conviction of a verdict of guilty, you
14 have a reasonable doubt as to how that issue should
15 be resolved, it would be your duty to resolve that
16 reasonable doubt in favor of the defendant.

17 As I said, ladies and gentlemen, a defendant
18 is not required to prove his innocence, but the State
19 is required in law to prove every essential element
20 of the offense charged against the defendant by evidence
21 which satisfies you, the jury, of the guilt of the
22 defendant beyond a reasonable doubt before you can
23 convict the defendant and find him guilty.

24 If, then, upon the whole case you have a
25 reasonable doubt as to the guilt or innocence of

1 the defendant, he is entitled to that reasonable doubt
2 and would be entitled to an acquittal and a verdict
3 of not guilty. But, on the other hand, if, upon the
4 whole case, you find that the State has proved by evidence
5 that satisfies you, the jury, of the guilty of the
6 defendant beyond a reasonable doubt, then in such circum-
7 stance it would equally be your duty to convict the
8 defendant and find him guilty.

9 I instruct you that the indictment in this
10 case which you will have in a few minutes, is not evidence,
11 it cannot be considered by the jury as evidence in
12 the case. And indictment is simply the formal written
13 document which contains the charges against the defendant
14 and it serves as a formal document by which the case
15 is processed into our court.

16 Now, during the trial, each of us, you and
17 I have certain duties to perform. As the Trial Judge
18 it's my responsibility to preside over the trial of
19 the case and I also have the duty to rule upon and
20 pass upon the admissibility of the evidence offered
21 during during the progress of the trial.

22 You are to consider only the competent evidence
23 before you and disregard and disabuse from your mind
24 any testimony ordered stricken from the record during
25 the progress of the trial if there be any. And you

1 are to consider only the testimony which has been presented
2 from the witness stand, together with any exhibits
3 admitted into the record of the case. And any stipulations
4 of counsel made into the record.

5 I have the additional duty to charge you
6 the applicable law of the case. As the Judge, I am
7 the sole judge of the law of the case and it is your
8 duty to accept and apply the law as I now state it
9 to you. If you have a preconceived idea of what the
10 law is or what the law ought to be in this case, and
11 it should not agree with what I tell you the law is,
12 you are obligated under your oath to abandon this pre-
13 conception on your part because you are sworn to accept
14 the law precisely as I state it to you.

15 In every case tried in this court before
16 a jury, the jury becomes the sole and exclusive judge
17 of the facts in the case. You, the jury, are the judge
18 of the facts in the case and the Court is the judge
19 of the law in the case. The Constitution of this state
20 has declared that a trial judge shall not intimate,
21 state, comment upon or make any statement to a trial
22 jury about the facts in a case. Since you are the
23 sole judge of the facts, you are not to infer from
24 anything that I've said during the progress of this
25 trial in ruling upon the admissibility of evidence

1 or otherwise or anything that I say during the course
2 of this charge to you that I have an opinion about
3 the facts in this case. The law doesn't permit me
4 to have an opinion about the facts in this case. It
5 is a matter solely for you, the jury, to determine.

6 As jurors it is your duty to determine as
7 I have stated to you, the effect, the value, the weight
8 and the truth of the evidence presented during the
9 course of this trial.

10 Necessarily then you must assess the credibility
11 of the witnesses who have testified. Credibility is
12 simply a legalistic term which means believability.
13 It becomes your duty then to analyze and evaluate the
14 evidence and determine the evidence which convinces
15 you of its truth. I charge you that in determining
16 the question of the credibility or believability of
17 witnesses you may believe one witness as against several
18 witnesses or several witnesses as against one witness.
19 You believe a part of the testimony of a witness and
20 reject the remaining part of the testimony of that
21 same witness. You may believe the testimony of a witness
22 in its entirety or reject the testimony of a witness
23 in its entirety.

24 You may consider whether any witness has
25 exhibited any interest, any bias or any prejudice in

1 the case. You may consider the demeanor of a witness,
2 the appearance of the witness from the witness stand.
3 You may consider the opportunity for knowledge concerning
4 those things about which a witness testified.

5 In doing so, in exercising your mental processes
6 in determining what you consider to be true, the law
7 simply requires that you exercise your good judgment,
8 your common sense, your sense of logic and reason,
9 and your experiences in life. You then apply these
10 attributes of ability to the evidence and determine
11 what you consider to be the truthful evidence and to
12 the true state of facts as determined by you the jury,
13 you take an apply the law as I state it to you and
14 thus arrive at a true verdict in the case.

15 Ladies and gentlemen of the jury, you will
16 try this case, deliberate this case only on the evidence
17 which has been presented here in court. In other words,
18 it would be improper for you to determine this case
19 from anything that may have been said to you by anyone
20 outside this case or to determine this case based on
21 something that you may have seen on TV or the movies
22 or a theatre or any other outside sources. In other
23 words, this case should be determined on the proper
24 evidence that has been presented here in court.

25 Now, let me just talk with you about an

1 inference or fact that a witness not called by the
2 State. If it is particularly within the power of the
3 State to produce a witness who could give relevant
4 testimony on any issue in the case, failure to call
5 that witness may give rise to an inference that this
6 testimony would have been unfavorable to the State.
7 No such conclusion should be drawn by you however,
8 with regard to a witness who is equally available to
9 both parties or where the testimony of that witness
10 would be merely repetitive or cumulative.

11 I will charge you the specific law of this
12 case concerning the charge within the indictment. Second
13 degree criminal sexual conduct with a minor under 14
14 years of age. Under section 16-3-655(2) of the South
15 Carolina Code is entitled Criminal Sexual Conduct with
16 a Minors and it provides that:

17 " A person is guilty of criminal sexual conduct
18 in the second degree if the actor engages
19 in sexual battery with a victim who is 14
20 years of age or less, but who is at least
21 11 years of age. The above terms have the
22 following meanings and definitions in
23 section 16-3-651 of the South Carolina Code
24 of Laws.

25 Actor means a person accused of criminal
sexual conduct.

Victim means a person alleging to have
been subjected to criminal sexual conduct.

Sexual battery means sexual intercourse,
cunnilingus, fellatio, anal intercourse,

1 or any intrusion, however slight, of any
2 part of the person's body or of any object
3 into the genital or anal openings of
4 another person's body, except when such
intrusion is accomplished for medically
recognized treatment or diagnostic purposes."

5 The first element that the State must prove
6 beyond a reasonable doubt is that the defendant, who
7 has been charged as an actor, engaged in sexual battery
8 with the victim on the date and time alleged in the
9 indictment. Sexual battery has been defined for you,
10 I did that a few seconds ago.

11 The second element that the State must prove
12 beyond a reasonable doubt is that the victim was at
13 the time of the alleged incident 14 years of age or
14 less, but who is at least 11 years of age.

15 All these elements must be proved to your
16 satisfaction as jurors beyond a reasonable doubt. I
17 charge you under South Carolina law a minor under the
18 age of 14 years cannot give consent to criminal sexual
19 conduct.

20 I charge you that where the defendant claims
21 that he was elsewhere and not at the scene of the crime,
22 this is sometimes called the defense of alibi. However,
23 an alibi claim is not really a defense because the
24 claim does not impose any burden upon the defendant
25 to prove his alibi. The State has the burden of proving

1 the identity of the person who committed the actual
2 crime. Thus the burden is upon the State to prove that
3 the defendant was actually present at the scene of
4 the crime, that he actually participated in it and
5 that he was not elsewhere. Thus the State must prove
6 presence and participation by evidence beyond a
7 reasonable doubt. If you have a reasonable doubt as
8 to whether the defendant was present, you must resolve
9 that doubt in favor of the defendant and find him not
10 guilty.

11 Ladies and gentlemen, you're not partisans
12 or advocates for the State of South Carolina or the
13 defendant. You do not serve as jurors to reward friends
14 or punish enemies. Obviously such a perverted system
15 of justice in our society would be intolerable. You
16 have been selected by both the State and the defendant
17 as fair and impartial jurors. It is your duty then,
18 by your joint deliberations, to determine the truth
19 of this case, giving to the defendant the benefit of
20 every reasonable doubt on each and every issue. Then
21 to the facts, which you determine to be true, you then
22 take and apply the law which has been given to you
23 by the Court, and thus arrive at a verdict which does
24 speak the truth of this case for the word "verdict"
25 which has a Latin derivative means a true saying

1 and when you have accomplished these responsibilities
2 you will have satisfied your oath as jurors and you
3 will have discharged your duty to this court.

4 I will now instruct you in the forms of the
5 verdict in this case. If the State has failed to prove
6 the guilt of this defendant beyond a reasonable doubt,
7 your verdict will be two words, not guilty.

8 If the State has proved the guilt of this
9 defendant beyond a reasonable doubt, your verdict will
10 be one word, guilty. The verdict that you render in
11 this case must be the verdict of each and every juror,
12 it must be your unanimous verdict, all twelve jurors
13 must agree on the verdict which you authorize Madam
14 Forelady to write for the jury.

15 Madam Forelady, on the back of the indictment,
16 in the lower section, you will see the word VERDICT.
17 It will be your duty to write in the verdict reached
18 by the jury, sign your name and date it, knock on the
19 door and we will receive the verdict.

20 I'm going to send you back to the jury room,
21 the twelve of you, the first twelve jurors. I need
22 the alternate to stay with us. Do not begin your
23 deliberations until I send this indictment, along
24 with the exhibits back to you. OKay. The jury may
25 step back to the room, just relax and I'll be back

1 with you in just a minute.

2 (WHEREUPON, Jury retired to the jury room
3 and the following proceedings were held in the absence
4 of the jury.)

5 THE COURT: Mrs. Bryant, thank you for serving
6 on this case. You sat as an alternate in case somebody
7 became incapacitated and fortunately nobody became
8 sick or incapacitated, so your duties are now ended.
9 We do appreciate you helping with the case. I'll excuse
10 you from court for the week, you may leave if you wish.

11 All right, anything for the record before
12 we put them to work?

13 MR. BRYAN: Well, Your Honor, I would just
14 renew our request to charge #1. And I would like to
15 make it a part of the record.

16 THE COURT: All right, Madam Court Repoter,
17 I charged Victor -v- Nebraska, I don't go with that
18 particular one but we will make that an exhibit to
19 preserve the defense's request.

20 MR. BRYAN: And it is my understanding that
21 the Court is not going to charge request #1, is that
22 right?

23 THE COURT: That's right. Are ya'll happy
24 with the evidence as lined up? If you will check off
25 on them we will put them to work.

1 SOLICITOR: If the exhibit is taken back
2 to the room, which if the defendant objects I don't
3 have any problem with that, but if it does go back
4 I would ask that it be put in a folder due to the nature
5 of it.

6 THE COURT: Okay, have we got a folder?

7 CLERK: Here's one.

8 THE COURT: You may tell them to go to work.

9 (WHEREUPON, The jury began their deliberations
10 at 2:30 P.M.)

11 (WHEREUPON, The jury returned with their
12 verdict at 3:45 P.M.)

13 CLERK: Madam Forelady, have you agreed upon
14 a verdict?

15 FORELADY: Yes, we have.

16 CLERK: Indictment #03-GS-03-209, the State
17 versus Roderick Bradley, indictment for criminal sexual
18 conduct with a minor, second degree, verdict: GUILTY,
19 signed by the forelady.

20 THE COURT: Anything further of the jury?

21 MR. BRYAN: We request to poll the jury,
22 Your Honor.

23 THE COURT: Madam Clerk, if you will poll
24 the jury.

25 (WHEREUPON, The jury was polled individually

1 and all jurors answered in the affirmative.)

2 THE COURT: Any further inquiry or anything
3 further of the jury?

4 MR. BRYAN: No, Your Honor.

5 THE COURT: Anything from the State?

6 SOLICITOR: No, Your Honor, nothing from
7 the State.

8 (WHEREUPON, Jurors were dismissed.)

9 THE COURT: Everybody is welcome to be in
10 the courtroom now but if you can't control yourself,
11 you need to step out because everybody has got to be
12 able to hear, it's very important that we be able to
13 hear what anybody has got to say.

14 SOLICITOR: Perhaps it will be an appropriate
15 time for her to leave the courtroom since she's distraught.

16 THE COURT: I just spoke about that. If
17 she wants to stay and control herself, that's fine,
18 but if not, that's exactly what is going to happen,
19 Madam Solicitor. I need you to secure the defendant
20 before you bring him around, please.

21 (WHEREUPON, The defendant was shackled.)

22 THE COURT: All right, Madam Solicitor, I
23 need to hear from the State on this, specifically I
24 would like to hear about any prior record.

25 SOLICITOR: Just one moment, Your Honor.

1 Your Honor, the defendant has a record, in 1997 he
2 was convicted of disorderly conduct in Allendale, his
3 court date was actually 1/12/98. And out of state,
4 there is a charge, but no conviction which I will not
5 bring up.

6 MR. BRYAN: Your Honor, it's a dismissed
7 charge.

8 THE COURT: She said she wasn't bringing
9 it up.

10 SOLICITOR: And he had with the Conyers Police
11 Department in Quinette, driving with a license that
12 had been revoked in 2003.

13 MR. BRADLEY: That was uhm --- what happened
14 my license got suspended due to the fact that the computer
15 system in Allendale County stated that my license was
16 suspended and I had already paid the money for that.

17 THE COURT: All right, anything else?

18 SOLICITOR: I do have more to tell you when
19 you get ready for it.

20 THE COURT: All right, go ahead.

21 SOLICITOR: Your Honor, this was a difficult
22 emotional case for everyone. This carries a maximum
23 of 20 years in prison. I do not believe this defendant
24 should receive the maximum. I feel that this was a
25 forcible rape, it was not consensual, I believe that

1 he should receive prison time, I think that is
2 appropriate. I think it has taken a lot for this victim
3 and her mother to come to court and prosecute this
4 case in Allendale County, it has been a very, very
5 difficult thing for them. And they are to be commended
6 for having seen this case through to the end.

7 I think that as a deterrent to that kind
8 of activity that is taking place in Allendale, which
9 I believe happens on a frequent basis, we have to send
10 some kind of message to the community that this is
11 the kind of behavior that will not be tolerated, that
12 one does not have sex with 13 year olds and 14 years
13 olds, does not have sex with 12 year olds, it's a common
14 occurrence in Allendale and we must send a message
15 that these are not women and people are not allowed
16 to make them into women.

17 He did not physically assault her otherwise,
18 I think that is a mitigating circumstance. I believe
19 that under the circumstances a sentence of 7 to 10
20 years would be appropriate.

21 THE COURT: Okay. I'll come back to the
22 family members, I always let them have the last say.
23 Mr. Bryan.

24 MR. BRYAN: Your Honor, he's 25 years old
25 and unlike most of my clients, probably 95 percent

1 of them, he's a high school graduate. He had the perseverance
2 and diligence to complete his high school education
3 in 1998. He's got a job, he's got a job at Nevermar
4 and that's a good place to work, that's in Hampton,
5 they make laminates like this courtroom has for the
6 counter tops. And before that he was employed at Cellular
7 Depot. His family is close to him, he's engaged, he's
8 got a 5 month old baby girl. He and his family are
9 from Allendale.

10 This was a very serious offense, Your Honor,
11 and I don't --- I'm trying to find my notes now ---
12 but I'm pretty sure that's a no parole ---

13 SOLICITOR: Yes, Your Honor.

14 THE COURT: It is.

15 MR. BRYAN: And he's got a lot of potential.
16 He's got his whole life ahead of him and if the Court
17 sees fit in its mercy to give him a chance to get back
18 into his life, Your Honor. His only prior conviction
19 basically is a disorderly conduct, he was 18 or 19
20 years old, Your Honor.

21 We would just ask the Court to show him some
22 mercy.

23 THE COURT: Mr. Bradley, anything you would
24 like to say?

25 MR. BRADLEY: I know the verdict has already

1 been done but I truly didn't rape, well, criminal sexual
2 conduct with Latay and I do hope that they do find
3 the particular person or however it happened. I had
4 my chance to pick 12 and they convicted me. There's
5 nothing I really can do.

6 THE COURT: all right, anything else from
7 anybody? Anything else from the State?

8 SOLICITOR: This is the victim's brother,
9 Michael Payne, I believe he would like to address the
10 Court.

11 THE COURT: Mr. Payne.

12 MR. PAYNE: I would just like to thank the
13 Court, thank the justice system, that it works. To
14 day has been a proven fact that it does. It's been
15 a burden on our family for the past year, dealing with
16 her with school after this incident occurred, having
17 to move away to Florida just to get from around the
18 environment that she was in. It's been a tragedy for
19 this family. And people like this do not deserve to
20 be on the streets.

21 THE COURT: Thank you for coming.

22 MS. JAMISON: As a mother, I have had to
23 take my daughter to the doctor and they diagnosed her
24 with post-traumatic stress disorder, she has flash-
25 backs and it's been hard on me as a single parent

1 raising her and wondering, you know, if she will be
2 alright after all of this. I have to constantly keep
3 my eyes on my daughter, she's always seems like into
4 space, you know, it's been hard on her and I would
5 just like to thank the Court.

6 THE COURT: Thank you.

7 SOLICITOR: Your Honor, if I may, it has
8 been hard on the victim, I think she suffers severe
9 consequences from this and the defendant has shown
10 no remorse and I would ask that you take that into
11 consideration.

12 THE COURT: Sentence of the Court that Roderick
13 Bradley be confined in the State Department of Corrections
14 for a period of eleven (11) years.

15 Mr. Bryan, Mr. Bradley, I'm sure, Mr. Bryan,
16 you've already advised him of this, but I thought while
17 we had the time here, after we got things calmed down,
18 I would go ahead and put on the record in case you
19 hadn't done it, but I assume you had, about appellate
20 rights, run 10 days.

21 MR. BRYAN: Yes, Your Honor.

22 THE COURT: Okay, that's all I needed.

23

24 END OF TRANSCRIPT.

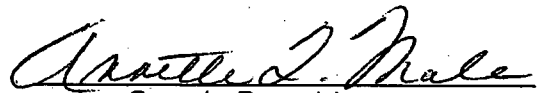
25

CERTIFICATE

I, the undersigned, Annette T. Mole, Official Court Reporter for the Fourteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the above captioned case, relative to appeal, in the Court of General Sessions for Allendale County, South Carolina on the 25th day of August, 2004.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

NOVEMBER 20, 2004


Court Reporter

WITNESSES

Latay Payne ✓

Marsha Jamison ✓

ARREST WARRANT #:

H364181

Arrested on July 25, 2003

ACTION OF GRAND JURY

*True Bill**11-21-03*Foreman: *R. L. Petty Jr.*

Grand Jury

VERDICT

*guilty*Foreman: *Juanita Harding*

Petit Jury

Date: *8/26/04*

DOCKET #: 03GS03-0209

THE STATE OF SOUTH CAROLINA
County of Allendale

COURT OF GENERAL SESSIONS

Term: December, 2003

THE STATE

VS.

Rodrick Bradley

INDICTMENT FOR

0159

CRIMINAL SEXUAL CONDUCT WITH MINOR

SECOND DEGREE (16-3-655)

STATE OF SOUTH CAROLINA)
County of Allendale)

INDICTMENT #03GS03-0209

At a Court of General Sessions, convened on December 01, 2003,
the Grand Jurors of Allendale County present upon their oath:

**COUNT: CRIMINAL SEXUAL CONDUCT WITH MINOR
SECOND DEGREE (16-3-655)**

That Rodrick Bradley did in Allendale County on or about July 12, 2003,
wilfully and unlawfully engage in criminal sexual conduct with a minor in the
second degree in that Rodrick Bradley engaged in a sexual battery, with Latay
Payne and that the said Latay Payne was of the age of thirteen (13) years old.

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

SOLICITOR

Randolph M. Munday

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Allendale
STATEAKA: Rodrick BradleyRace: B Sex: M Age: _____

DOB: _____

Address: _____

City, State, Zip _____

DL# _____

INDICTMENT/CASE#:

03 -GS- 03 - 0209AW#: H 364181Date of Offense: 07/12/03S.C. Code §: 16-3-655(2)CDR Code #: 0 1 3 1 9 1 6☐ CASE RESTORED

SENTENCE

☐ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: CSC w/minor - 2nd degreein violation of 16-3-655 of the S.C. Code of Laws, bearing CDR Code # 0 1 3 1 9 1 6☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 11 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____

§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____

§33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§50-21-114(BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: _____

Sentence Date: 8/26/04

Clerk of Court/Deputy Clerk

Court Reporter: Annette Mole

¹Accompanying this Motion is a Motion to Substitute Counsel requesting that Mr. Bryan be relieved of his duties related to the representation of Mr. Bradley and that the undersigned

- 5). The petit jury returned a verdict of guilty on or about August 26th, 2004.
- 6). The Trial Judge sentenced Mr. Bradley to eleven (11) years in the South Carolina Department of Corrections.
- 7). The undersigned counsel was contacted by the family of the Defendant and provided information related to post-trial comments made to the family by one of the jurors, Ms. Yateaya Grant.
- 8). Following telephone contact with Ms. Grant, Ms. Grant provided the office of the undersigned counsel a sworn, notarized affidavit. (See attached Affidavit of Juror).
- 9). In this affidavit, Ms. Grant provided information regarding statements made by two fellow jurors during deliberations.
- 10). Based upon the face of this affidavit, it appears that these two jurors may have intentionally concealed information related to their qualification for service during Mr. Bradley's trial.

Summary of Law

- 1). Pursuant to Rule 29, S.C.R.Crim.P., a party in a criminal proceeding may file a post-trial motion within ten days following the imposition of sentence.
- 2). Generally, the deadline for filing a matter extends to the following business day if the final day for performance of the filing and service falls on a Saturday, Sunday, or a recognized holiday. See SCACR, Rule 234(a).
- 3). In a criminal proceeding, a defendant is entitled to a jury which is impartial to the cause of either side and undisturbed by bias. *U.S. Constitution, Amendments VI and XIV; and S. C. Constitution, Article I, § 14.*
- 4). Further, the trial judge is required to question jurors regarding any bias or prejudice. *State v. Woods*, 345 S.C. 583, 550 S.E.2d 282, at 284 (2001), citing *State v. Kelly*, 331 S.C. 132, 502 S.E.2d 99 (1998).
- 5). Also, the parties have the right to question jurors, through the trial judge, to determine any challenges for cause and to elicit facts enabling the intelligent use of peremptory strikes. *Woods*, at 284, quoting *State v. Gullledge*, 277 S.C. 368, 287 S.E.2d 488, at 490 (1982).
- 6). When a juror intentionally conceals information which would have supported a

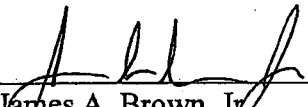
counsel be substituted as counsel for Mr. Bradley.

challenge for cause or a party's use of a peremptory challenge and no justification exists for this concealment, then an inference of bias arises. *Woods*, at 285.

- 7). Even if the trial court determines that the concealment is unintentional or involves an immaterial issue, then the "trial court should inquire into prejudice." *Woods*, at 285, quoting *Doyle v. Kennedy Heating and Service, Inc.*, 33 S.W.3d 199, at 201 (MO Ct. App. 2000).

Therefore, based upon the facts and law presented above, the Defendant requests that the trial court convene the petit jurors involved in the case at bar and conduct an evidentiary hearing to determine issues related to this Motion for a New Trial.

AND I SO MOVE.


James A. Brown, Jr.
On Behalf of the Defendant

September 7, 2004
Beaufort, South Carolina

Law Offices of Jim Brown, P.A.
1111 Bay Street, P.O. Box 592
Beaufort, SC 29901-0592
(843) 470-0003-Phone
(843) 470-0004-Fax

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ALLENDALE)
)
)

IN THE COURT OF GENERAL SESSIONS
 FOR THE FOURTEENTH JUDICIAL CIRCUIT

Indictment No.: 2003-GS-03-0209

THE STATE OF SOUTH CAROLINA)
)
)
 VS.)
)
)
 RODRICK BRADLEY,)
 Defendant)
)
)
)
)
)
)

CERTIFICATE OF SERVICE

FILED FOR REC
 2004 SEP -9 AM 10:43
 CLERK OF COURT
 ALLENDALE COUNTY, S.C.

I, Shauvone J. Wells., served a Defendant's Motion for a New Trial, Pursuant to Rule 29, S.C.R.CRIMP on the Assistant Solicitor, Ms. Susan Rowell, postage prepaid, addressed to P.O. Box 546, Hampton, SC 29924, this 7th, day of September, 2004.

Shauvone J. Wells
 Shauvone J. Wells
 Paralegal

September 7, 2004
 Beaufort, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ALLENDALE COUNTY
General Sessions Court

The Honorable Paul M. Birch, Circuit Court Judge.

Indictment Number 2003-GS-03-0209

The State, ... Respondent
v.
Roderick¹ Bradley, ... Appellant.

**Motion to Suspend Appeal and Grant Leave to
File a Rule 29(b) Motion for a New Trial**

¹On the Notice of Appeal, appellant's name is spelled "Roderick"; however, the Indictment and Sentencing sheet used in the circuit court lists the spelling as "Rodrick."

COMES NOW THE APPELLANT, by and through the undersigned counsel, moving this Court for an Order suspending the appeal in the above-referenced matter and granting leave to file a Motion for a New Trial based upon Newly Discovered Evidence, pursuant to SCRCrimP Rule 29 (b). This Motion is based upon the below listed Statement of Facts and Summary of Law.

Statement of Facts

- 1). On or about July 25, 2003, Rodrick Bradley was arrested and charged with Criminal Sexual Conduct with a Minor-in the Second Degree.
- 2). This allegation was presented to the Allendale County Grand Jury on or about December 1, 2003, at which time a "True-Billed" indictment containing the same allegation was returned.
- 3). This matter was tried before the Honorable Paul M. Burch and a jury on or about August 25th and 26th, 2004 in Allendale County.
- 4). Mr. Bradley was represented at trial by John Bryan of the Hampton, Jasper, Allendale counties Public Defender's Office.²
- 5). The petit jury returned a verdict of guilty on or about August 26th, 2004.
- 6). On August 26th, 2004, the trial judge sentenced Mr. Bradley to eleven (11) years in the South Carolina Department of Corrections.
- 7). On September 2nd, 2004, the undersigned counsel was retained by the family of the Defendant and provided information related to post-trial comments made to the family by one of the jurors, Ms. Yateaya Grant.
- 8). Following telephone contact with Ms. Grant on September 3rd, 2004, Ms. Grant provided the office of the undersigned counsel a sworn, notarized affidavit. (See attached Affidavit of Juror).
- 9). In her affidavit, Ms. Grant provided information regarding statements made by two fellow jurors during deliberations.
- 10). Based upon the face of this affidavit, it appears that these two jurors may have intentionally concealed information related to their qualification for service during Mr. Bradley's trial.

²Accompanying this Motion is a Motion to Substitute Counsel.

- 11) On September 7th, 2004, the undersigned counsel drafted and filed by mail with the Clerk of the Allendale County Circuit Court a Motion for a New Trial and a Motion to be substituted as counsel. A copy of this was served upon the Fourteenth Circuit Solicitor's Office and provided to the trial judge.
- 12) Following the deposit of the items, listed in paragraph 11 above, in the U.S. mail on September 7th, 2004, the undersigned counsel was informed that a Notice of Appeal was previously filed by Mr. Bradley's public defender on September 2, 2004. (See attached Notice of Appeal clocked on September 7, 2004 in the Allendale County Clerk's Office).

Summary of Law

- 1) A defendant in a criminal proceeding may file a Motion for a New Trial within ten days of sentencing. SCRCrimP Rule 29(a).
- 2) A Motion for New Trial may also be filed within a "reasonable period of time after the discovery" of the new evidence. SCRCrimP Rule 29(b).
- 3) However, the filing of a Notice of Appeal ends the circuit court's jurisdiction over a matter. *Gattis v. Murrells Inlet VFW #£10420*, 353 S.C. 100, 576 S.E.2d 191 at 197 (Ct. App. 2003).
- 4) Thereafter, a Motion for New Trial based upon newly discovered evidence may only be filed if the Court of Appeals suspends the appeal and grants leave for this filing. SCRCrimP Rule 29(b).
- 5) Information regarding jury misconduct, in the form of withheld or incorrect responses during voir dire, necessarily requires some hearing to determine whether this information was withheld intentionally or otherwise. See generally, *State v. Woods*, 345 S.C. 583, 550 S.E.2d 282 (2001).
- 6) This hearing is only proper in the circuit court, as the appellate court may not receive new information on which to base its decision regarding the issue raised in the Motion for a New Trial. SCACR Rule 210 (c) ("The Record shall not, however, include matter which was not presented to the lower court or tribunal.").

Therefore, Appellant Bradley respectfully requests that this Court suspend the appeal filed on September 2nd, 2004 and grant leave for the Appellant to file and argue his Motion for a New Trial in the circuit court.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ALLENDALE COUNTY
General Sessions Court

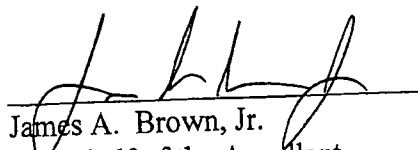
The Honorable Paul M. Birch, Circuit Court Judge

Indictment Number 2003-GS-03-0209

The State, ... Respondent
v.
Roderick Bradley, ... Appellant.

Certificate of Service

I certify that I have served a copy of this Motion to Suspend Appeal and Grant Leave to File Rule 29(b) Motion for a New Trial on the State of South Carolina, by depositing a copy of this Motion in the United States Mail, postage prepaid, on September 20, 2004, addressed to its attorney of record, Salley W. Elliott, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211.


James A. Brown, Jr.
On Behalf of the Appellant

September 20, 2004

Law Offices of Jim Brown, P.A.
1111 Bay Street, P.O. Box 592
Beaufort, SC 29901-0592
(843) 470-0003

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Allendale County
Paul M. Burch, Circuit Court Judge

THE STATE,

Respondent,

v.

RODERICK BRADLEY,

Appellant.

**RETURN TO MOTION TO SUSPEND APPEAL AND
GRANT LEAVE TO FILE RULE 29(b) MOTION FOR A NEW TRIAL**

Respondent, through its undersigned counsel, would respectfully show unto this Court as follows:

I.

Bradley was tried and convicted of second degree criminal sexual conduct with a minor, on August 26, 2004, before the Honorable Paul M. Burch, and a jury.

II.

On September 2, 2004, Bradley filed and served his Notice of Appeal.

III.

On September 20, 2004, Bradley's appellate counsel filed and served his above-styled Motion to Suspend Appeal and Grant Leave to File Rule 29(b) Motion for a New Trial. Therein, appellate counsel asserts this Court should suspend the appeal and allow him to move for a new trial based on newly-discovered evidence showing juror misconduct.

[Handwritten signature]
10/14

Attached to the Motion is an affidavit from Juror Yateaya Grant, who states that two other jurors allegedly made statements in the presence of all of the jurors that they had been victims of rape in the past. Grant further alleges that one of the jurors then proceeded to explain the delay in reporting raised at the present trial with her own personal experience as a rape victim.

IV.

Pursuant to Rule 29(b), SCRCrimP, Bradley must justify his Motion by making such a prima facie showing as will satisfy the appellate court that the issue is a proper one for the granting of the relief requested. State v. Jennings, 40 S.C. 553, 18 S.E. 932 (1893).

V.

A defendant is entitled to a fair trial by a impartial jury. U.S. CONST. amends. VI and XIV; S.C. CONST. art I, §14. Generally, juror testimony is inadmissible to impeach a jury verdict. State v. Hunter, 320 S.C. 85, 463 S.E.2d 314 (1995)[juror testimony may normally be used when an extraneous influence is alleged]; Rule 606(b), SCRE [testimony or affidavit of juror is admissible to demonstrate that outside prejudicial information was brought to jury's attention or that outside influence was placed on any juror].

In Hunter, the Supreme Court established an exception to the rule against impeachment of jury verdicts, holding that juror testimony was competent in cases involving internal misconduct where necessary to ensure fundamental fairness. In that case, the allegations concerned the influence of racial prejudice on a verdict. The Court held, "[i]f a juror claims prejudice played a role in determining the guilt or innocence of a defendant, investigation into the matter is necessary. To hold otherwise would violate 'the plainest principles of justice.'" Id., 463 S.E.2d at 316.

2
mg
#2014

Unlike the allegations in Hunter, this case does not involve an allegation of racial prejudice. Neither is there an allegation of premature jury deliberations. See State v. Aldret, 333 S.C. 307, 509 S.E.2d 811 (1999). In other words, there is no showing that fundamental fairness is involved. The affidavit only alleges that two of the jurors were past victims of rape; yet, there is no allegation that these or any other jurors were unable to render a fair and impartial verdict. There is further no allegation from the affidavit that these jurors were prejudiced, or whether they concealed any prejudice during voir dire.¹ Past rape victims are not precluded from serving on a jury. Neither must a jury abandon all knowledge, life experiences, or common sense when seated on a jury. Thus, Bradley's allegation does not warrant the impeachment of the jury's verdict in this instance, nor does the allegation necessitate the suspension of the appeal.

WHEREFORE, Respondent requests that the Motion to Suspend Appeal and Grant Leave to File Rule 29(b) Motion for a New Trial be denied.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

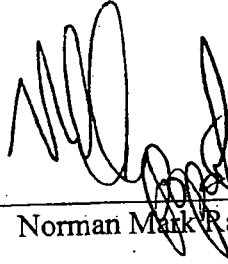
SALLEY W. ELLIOTT
Assistant Deputy Attorney General

NORMAN MARK RAPOPORT
Senior Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

¹At this stage of the appeal, the State does not have a copy of a trial transcript.

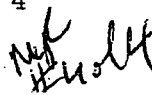
3
mm
3d4



BY: _____
Norman Mark Rapoport

ATTORNEYS FOR RESPONDENT

September 30, 2004



STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Allendale County
Paul M. Burch, Circuit Court Judge

THE STATE,

Respondent,

v.

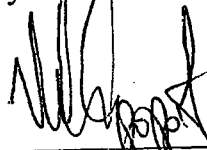
RODERICK BRADLEY,

Appellant.

PROOF OF SERVICE

I, Norman Mark Rapoport, Counsel for the Respondent, certify that I have served the within Return to Motion to Suspend Appeal and Grant Leave to File Rule 29(b) Motion for a New Trial on Appellant by depositing a copy of same in the United States mail, postage prepaid, addressed to his attorney of record, James A. Brown, Esquire, P.O. Box 592, Beaufort, SC 29901.

I further certify that all parties required by Rule to be served have been served this 30th day of September, 2004.



Norman Mark Rapoport
Office of Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

ATTORNEY FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ALLENDALE COUNTY
General Sessions Court

The Honorable Paul M. Birch, Circuit Court Judge

Indictment Number 2003-GS-03-0209

The State, ...Respondent
v.
Roderick Bradley, ...Appellant.

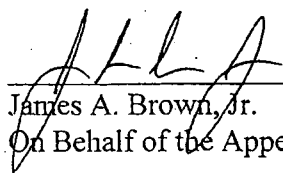
**Reply to State's Return Regarding Appellant's
Motion to Suspend Appeal and Grant Leave
to File a Rule 29(b) Motion for a New Trial**

Roderick Bradley, by and through the undersigned counsel, hereby replies to arguments made by the State in its Return to Appellant's Motion. First, Mr. Bradley's Motion is based upon the premise that jurors intentionally concealed information during voir dire. The information at issue involves the fact that two jurors were victims of crimes similar to the charge at issue in the trial below. While the development of facts at the hearing on the new trial motion requested by Mr. Bradley may show some improper influence on the jury, either intrinsically or extrinsically asserted, this is not the main thrust of Bradley's motion. Instead the main thrust of Bradley's argument is that two jurors intentionally withheld material information requested in voir dire. See *State v. Woods*, 345 S.C. 583, 550 S.E.2d 282 (2001). The affidavit provided by juror Grant merely provides some factual support for Bradley's Motion to return to the circuit court for hearing on this matter.

Secondly, whether the trial court requested information about the jurors' prior victimization is not within the knowledge of Mr. Bradley's undersigned counsel. The undersigned counsel has requested to be substituted as Mr. Bradley's attorney in a separate motion, but did not serve as Mr. Bradley's counsel below. Further, the granting of Bradley's motion under SCRCrimP Rule 29(b) to allow a hearing in the circuit court would be the quickest way to resolve this issue. The circuit court reporter could merely replay the voir dire portion of the trial and the court could determine whether a request was made concerning the concealed information and in what form this request was made. The other option would be to request a transcript of the trial to determine this issue. Obviously, this latter option would require the greatest effort, time and expense. Finally, the transcript has not yet been requested by Appellant because the Motion to Substitute Counsel stays the time for Appellant to request this information under S.C. Appellate Court Rules Rule 224(b).

Therefore, based upon the information in Appellant Bradley's Motion and this Reply, it is respectfully requested that this Court suspend the appeal filed on September 2nd, 2004 and grant leave for the Appellant to file and argue his Motion for a New Trial in the circuit court.

AND I SO MOVE


James A. Brown, Jr.
On Behalf of the Appellant

October 5, 2004

Law Offices of Jim Brown, P.A.
1111 Bay Street, P.O. Box 592
Beaufort, SC 29901-0592
(843) 470-0003

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ALLENDALE COUNTY
General Sessions Court

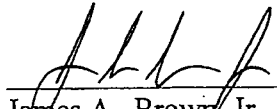
The Honorable Paul M. Birch, Circuit Court Judge

Indictment Number 2003-GS-03-0209

The State, ...Respondent
v.
Roderick Bradley, ...Appellant.

Certificate of Service

I certify that I have served a copy of this Reply to State's Return to Appellant's Motion to Suspend Appeal and Grant Leave to File Rule 29(b) Motion for a New Trial on the State of South Carolina, by depositing a copy of this Motion in the United States Mail, postage prepaid, on October 5, 2004, addressed to its attorney of record, Norman Mark Rapoport, Senior Assistant Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211.



James A. Brown, Jr.
On Behalf of the Appellant

October 5, 2004

Law Offices of Jim Brown, P.A.
1111 Bay Street, P.O. Box 592
Beaufort, SC 29901-0592
(843) 470-0003

RECEIVED OCT 19 2004



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 18, 2004

James Arthur Brown, Jr., Esquire
P.O. Box 592
Beaufort, SC 29901

Re: The State v. Bradley, Roderick

Dear Mr. Brown:

The following Order has been endorsed on your Motion to Suspend Appeal and Grant Leave to File a Rule 29(b) Motion for a New Trial in the above entitled case on appeal.

"Denied at this time, with leave to refile.

s/ Jasper M. Cureton, A.J.

October 18, 2004."

Please be advised upon receipt of the transcript, please notify this office in writing so that the time limits for perfecting this appeal may be set accordingly. The appellant's initial brief and designation of matter is due to be served and filed within thirty (30) days of receipt of the transcript.

Very truly yours,

Norma Bigbee
Norma Bigbee
Docketing Specialist

dlb
/nb

cc: Assistant Deputy Attorney General Salley W. Elliott

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ALLENDALE COUNTY
General Sessions Court

The Honorable Paul M. Birch, Circuit Court Judge

Indictment Number 2003-GS-03-0209

The State, ...Respondent

v.

Roderick¹ Bradley, ...Appellant.

**Amended Motion to Suspend Appeal and Grant
Leave to File a Rule 29(b) Motion for a New Trial**

¹On the Notice of Appeal, appellant's name is spelled "Roderick"; however, the Indictment and Sentencing sheet used in the circuit court lists the spelling as "Rodrick."

COMES NOW THE APPELLANT, by and through the undersigned counsel, moving this Court for an Order suspending the appeal in the above-referenced matter and granting leave to file a Motion for a New Trial based upon newly discovered evidence, pursuant to SCRCrimP Rule 29 (b). The appellant filed a similar motion with this court on September 20, 2004. Judge Cureton denied this previous motion by Order, dated October 18, 2004, but allowed leave to refile, presumably upon receipt of the transcript.

With the benefit of this transcript and because two jurors intentional concealed information that they were the victims of violent crimes, this Court should suspend the appeal in this matter and grant leave for appellant to file a Motion for a New Trial, pursuant to Rule 29(b), based upon the newly discovered information contained in an affidavit provided to the undersigned counsel.

As an introduction, Roderick Bradley was arrested and charged with Criminal Sexual Conduct with a Minor-in the Second Degree, on or about July 25, 2003. This allegation was presented to the Allendale County Grand Jury on or about December 1, 2003, at which time a "True-Billed" indictment containing the same allegation was returned. This matter was tried before the Honorable Paul M. Burch and a jury on or about August 25th and 26th, 2004 in Allendale County.

Mr. Bradley was represented at trial by John Bryan of the Hampton, Jasper, Allendale Public Defender's Office.² The petit jury returned a verdict of guilty on or about August 26th, 2004. On August 26th, 2004, the trial judge sentenced Mr. Bradley to eleven (11) years in the South Carolina Department of Corrections. Attorney Bryan filed a Notice of Appeal on

²Undersigned counsel was substituted by Order of the Court of Appeals, dated October 5, 2004.

September 2, 2004.

During voir dire of the petit jury panel, the trial judge questioned whether any potential jurors had "been a victim of a violent crime." Tr. p. 7, lines 17-19. No member of the jury panel responded to this question. However, Juror Yateaya Grant provided undersigned counsel with an affidavit which indicates this lack of response was incorrect. In her affidavit, Juror Grant indicated that Jurors Fields and Whitney revealed to other jurors during deliberations that they had been victims of rape. See attached affidavit of Juror Grant.

When a juror intentionally conceals information and the concealed information would have supported a challenge for cause or would have been a material factor in the use of a peremptory challenge, a new trial is warranted. State v. Guillebeaux, Shearouse Advance Sheet No. 49, Opinion No. 3910 (SC Ct App. 12/20/2004) (Internal citations omitted). Further, impartiality of a juror may be inferred from the failure to disclose information without justification. The South Carolina courts have established a test to determine whether information was intentionally concealed.

First, intentional concealment occurs when a question presented to the jury on voir dire is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the failure to respond is unreasonable. Further, the inquiry into the intentional nature of the failure to disclose is a fact intensive determination which must be made on a case by case basis.

Here, the trial court asked a question which was comprehensible to the average juror, "Have any of you.....yourself been a victim of a violent crime." Tr. p. 7, lines 17-19. Any average juror would understand that rape is a violent crime. See State v. Tucker, 464 S.E.2d 105 (SC 1995)("Pursuant to the Act, rape was considered a violent crime in 1986.") Further, the

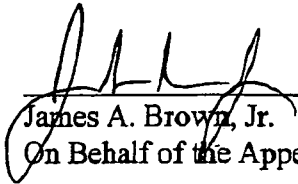
courts have determined that the terms "rape" and "criminal sexual conduct are interchangeable." See State v. Middleton, 368 S.E.2d 457, at 460 (SC 1988). Also, criminal sexual conduct is listed in S.C. Code Section 16-1-60 as a violent crime. S.C. Code Section 16-1-60. Finally, the U.S. Department of Justice statistics indicating rates of commission of violent crimes include rape within the definition of violent crime. See <http://www.ojp.usdoj.gov/bjs/glance/viort.htm>. Aside from murder or the most aggravated non-sexual battery, it is hard to imagine a more violent act against a woman than rape.

Next, the failure to reveal this information was unreasonable given the significance of this fact to the trial below. The allegations involved not just sexual battery with a minor but that such battery occurred through the use of force and without the desire of the minor victim. Tr. p. 170, lines 9-13. Further, the jury was informed that the victim's mother was also a victim of rape in an effort to explain the delay in reporting by the minor child. Tr. p. 53, line 12- p. 54, line 4. Also, the delay in reporting was an issue argued in closing by the attorneys. Tr. p. 162, line 21- p. 163, line 1 & p. 175, lines 20-23.

However, because the information concealed was not revealed until after the Notice of Appeal was filed, the trial court does not have jurisdiction to make its required factual analysis absent a suspension of this appeal and a grant of leave to file a new trial motion with the circuit court. Gattis v. Murrells Inlet VFW #£10420, 576 S.E.2d 191 at 197 (SC Ct. App. 2003). The South Carolina Rules of Criminal Procedure provide for such procedure in Rule 29(b). Rule 29(b) specifically applies to situations where the basis for the new trial motion is newly discovered evidence. Here, the juror concealment was not revealed to the appellant until after the filing of the Notice of Appeal. Thereafter, appellant exercised due diligence in his attempt to have the trial court review the allegations of juror misconduct.

Therefore, Appellant Bradley respectfully requests that this Court suspend the appeal filed on September 2nd, 2004 and grant leave for the Appellant to file and argue his Rule 29(b) Motion for a New Trial in the circuit court.

AND I SO MOVE


James A. Brown, Jr.
On Behalf of the Appellant

December 22, 2004

Law Offices of Jim Brown, P.A.
1111 Bay Street, P.O. Box 592
Beaufort, SC 29901-0592
(843) 470-0003

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ALLENDALE COUNTY
General Sessions Court

The Honorable Paul M. Birch, Circuit Court Judge

Indictment Number 2003-GS-03-0209

The State, ...Respondent
v.
Roderick Bradley, ...Appellant.

Certificate of Service

I certify that I have served a copy of this Amended Motion to Suspend Appeal and Grant Leave to File Rule 29(b) Motion for a New Trial on the State of South Carolina, by depositing a copy of this Motion in the United States Mail, postage prepaid, on December 22, 2004, addressed to its attorney of record, Salley W. Elliott, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211.


James A. Brown Jr.
On Behalf of the Appellant

December 22, 2004

Law Offices of Jim Brown, P.A.
1111 Bay Street, P.O. Box 592
Beaufort, SC 29901-0592
(843) 470-0003

RECEIVED APR 26 2005 159



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

April 25, 2005

James Arthur Brown, Jr., Esquire
P.O. Box 592
Beaufort, SC 29901

Re: The State v. Bradley, Roderick

Dear Mr. Brown:

The following Order has been endorsed on your Motion to Hold Briefing Schedule in Abeyance Pending Resolution of Amended Rule 29(b) Motion for a New Trial in the above entitled case on appeal.

"Granted.

s/ Kaye G. Hearn, C.J.

April 22, 2005."

The following Order has been endorsed on your Amended Motion to Suspend Appeal and Grant Leave to File a Rule 29(b) Motion for a New Trial.

"Appeal held in abeyance and case remanded to the trial court to file a Rule 29(b) motion for a new trial.

s/Kaye G. Hearn, C.J.

s/H. Bruce Williams, J.

s/Jasper M. Cureton, A.J.

April 22, 2005."

Please be advised Appellant's counsel is advised to notify this Court in writing every sixty (60) days of the status of this matter.

Very truly yours,

Norma Bigbee

Norma Bigbee
Docketing Specialist

LNB
/nb

cc: Assistant Attorney General David Spencer
The Honorable Paul M. Burch
The Honorable Mary Jean Carlson

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
) FOR THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF ALLENDALE)
)
) Indictment No.: 2003-GS-03-0209
)

THE STATE OF SOUTH CAROLINA

VS.

RODERICK¹ BRADLEY,
Defendant

**RULE 29(b) MOTION FOR A
NEW TRIAL, FOLLOWING
REMAND BY COURT OF APPEALS**

To: Ms. Susan Rowell, Assistant Solicitor for the Fourteenth Judicial Circuit

COMES NOW THE DEFENDANT, by and through the undersigned counsel, moving this Court for an Order granting the Defendant a new trial in the above-caption matter. This Motion follows an April 25, 2005 Order from the Court of Appeals granting a Motion to hold a previously filed appeal in abeyance and remanding the case to the trial court to file a Rule 29(b) Motion for a New Trial. While the Defendant desires and requests that the trial judge convene a hearing to receive evidence related to this Motion, a factual basis for this Motion and a summary of law related to this request are provided below.

With the benefit of this transcript and because two jurors intentionally concealed information, the trial court should grant a new trial, pursuant to Rule 29(b), based upon the newly discovered information contained in an affidavit provided to the undersigned counsel.

As a matter of review, Roderick Bradley was arrested and charged with Criminal Sexual Conduct with a Minor-in the Second Degree, on or about July 25, 2003. This allegation was

'On the Notice of Appeal and other appellate documents, Mr. Bradley's name is spelled "Roderick"; however, the Indictment and Sentencing sheet used in the circuit court lists the spelling as "Rodrick."

concealed.

First, intentional concealment occurs when a question presented to the jury on voir dire is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the failure to respond is unreasonable. Further, the inquiry into the intentional nature of the failure to disclose is a fact intensive determination which must be made on a case by case basis.

Here, the trial court asked a question which was comprehensible to the average juror, "Have any of you.....yourself been a victim of a violent crime." Tr. p. 7, lines 17-19. Any average juror would understand that rape is a violent crime. See State v. Tucker, 464 S.E.2d 105 (SC 1995)("Pursuant to the Act, rape was considered a violent crime in 1986.") Further, the courts have determined that the terms "rape" and "criminal sexual conduct are interchangeable." See State v. Middleton, 368 S.E.2d 457, at 460 (SC 1988). Also, criminal sexual conduct is listed in S.C. Code Section 16-1-60 as a violent crime. S.C. Code Section 16-1-60. Finally, the U.S. Department of Justice statistics indicating rates of commission of violent crimes include rape within the definition of violent crime. See www.ojp.usdoj.gov/bjs/glance/viort.htm. Aside from murder or the most aggravated non-sexual battery, it is hard to imagine a more violent act against a woman than rape.

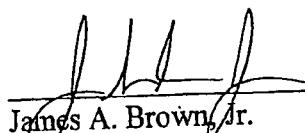
Next, the failure to reveal this information was unreasonable given the significance of this fact to the trial below. The allegations involved not just sexual battery with a minor but that such battery occurred through the use of force and without the desire of the minor victim. Tr. p. 170, lines 9-13. Further, the jury was informed that the victim's mother was also a victim of rape in an effort to explain the delay in reporting by the minor child. Tr. p. 53, line 12- p. 54, line 4. Also, the delay in reporting was an issue argued in closing by the attorneys. Tr. p. 162, line 21-

p. 163, line 1 & p. 175, lines 20-23.

However, because the information concealed was not revealed until after the Notice of Appeal was filed, the trial court did not originally have jurisdiction to conduct the required factual analysis absent a suspension of this appeal and a grant of leave to file a new trial motion with the circuit court. Gattis v. Murrells Inlet VFW #£10420, 576 S.E.2d 191 at 197 (SC Ct. App. 2003). The South Carolina Rules of Criminal Procedure provided for such procedure in Rule 29(b). Finally, the Court of Appeals found that Rule 29(b) specifically applied to the scenario in the case at bar. situations where the basis for the new trial motion is newly discovered evidence.

Therefore, Roderick Bradley respectfully requests that this Court convene a hearing regarding the concealment of information by members of the petit jury panel, re-panel such petit jury and grant Mr. Bradley a new trial.

AND I SO MOVE


James A. Brown, Jr.
On Behalf of the Defendant

May 2, 2005

Law Offices of Jim Brown, P.A.
1111 Bay Street, P.O. Box 592
Beaufort, SC 29901-0592
(843) 470-0003

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

COUNTY OF ALLENDALE)

Indictment No.: 2003-GS-03-0209

THE STATE OF SOUTH CAROLINA)

VS.)

CERTIFICATE OF SERVICE

RODERICK BRADLEY,
Defendant)

I, Shauvone J. Middleton, served a Rule 29(b) Motion for a New Trial, Following Remand By Court of Appeals on the Assistant Solicitor, Ms. Susan Rowell, postage prepaid, addressed to P.O. Box 546, Hampton, SC 29924, and on the Assistant Attorney General, Mr. David Spencer, postage prepaid, addressed to P.O. Box 11549, Columbia, SC 29211, this 2nd day of May, 2005.

Shauvone J. Middleton
Shauvone J. Middleton
Paralegal

May 2, 2005
Beaufort, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ALLENDALE)

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)

DOCKET NO. 03-GS-03-209

PLAINTIFF,)

V.)

TRANSCRIPT OF RECORD
 (HEARING)

RODRICK BRADLEY,)

DEFENDANT.)

AUGUST 18, 2005
 ALLENDALE, SOUTH CAROLINA

BEFORE:

HONORABLE PAUL M. BURCH

APPEARANCES:

FOR THE PLAINTIFF:

SUSAN ROWELL, DEPUTY
SOLICITOR

FOR THE DEFENDANT:

JIM BROWN, ESQUIRE

NANCY M. MONTEITH, CERTIFIED VERBATIM REPORTER
 RESIDENT COURT REPORTER, SIXTH JUDICIAL CIRCUIT

1 THE COURT: THIS IS THE MATTER OF STATE OF SOUTH
2 CAROLINA V. RODRICK BRADLEY, A GENERAL SESSIONS
3 MATTER. THERE WAS A TRIAL IN THIS ABOUT A YEAR AGO
4 DOWN HERE IN ALLENDALE COUNTY. MR. BRADLEY WAS
5 CONVICTED AND SENTENCED, AND AT THIS POINT WE HAVE A
6 MOTION AND A REMAND BY THE COURT OF APPEALS.

7 MR. BROWN, THAT IS YOUR MOTION, SO IF YOU WOULD,
8 STATE THE ISSUES FOR THE RECORD SO WE'LL BE CLEAR.

9 MR. BROWN: MAY IT PLEASE THE COURT, YOUR HONOR.
10 THIS MOTION HAS BEEN FILED, AND I HANDED YOURSELF,
11 YOUR HONOR, AND THE SOLICITOR A COPY HERE THIS
12 MORNING. BRIEFLY, THERE'S AN ALLEGATION THAT TWO
13 JURORS INTENTIONALLY CONCEALED SOME INFORMATION THAT
14 SHOULD HAVE BEEN REVEALED DURING THE COURT'S VOIR
15 DIRE OF THE JURY PANEL, AND FURTHER WE WOULD ARGUE
16 THAT THE CONCEALMENT REQUIRES THE GRANTING OF A NEW
17 TRIAL BECAUSE THAT INFORMATION, IF IT WOULD NOT HAVE
18 BEEN CONCEALED, WOULD HAVE SUPPORTED THE CHALLENGE
19 FOR CAUSE AND PEREMPTORY STRIKE, AND WE'D ASK THE
20 COURT TO ALLOW US TO PRESENT SOME TESTIMONY.

21 WE HAVE ATTACHED AN AFFIDAVIT THAT WOULD SERVE,
22 WE BELIEVE, AS THE BACKBONE OR BASIS FOR ONE OF THE
23 WITNESSES WE WISH TO CALL TODAY. ALL THREE WITNESSES
24 WE WISH TO HAVE CALLED AT SOME POINT IN TIME THIS
25 MORNING ARE HERE, AND I WOULD ASK THE COURT IF YOU

1 WOULD CONSIDER SEQUESTERING THE JURORS AS WITNESSES.
2 THE ONLY REASON I DO THAT IS I WOULD HATE FOR THEM TO
3 HEAR WHAT EACH OTHER SAYS, AND, OF COURSE, THAT'S UP
4 TO YOUR HONOR.

5 THE COURT: WHAT'S THE POSITION OF THE STATE?

6 MS. ROWELL: I REALLY DON'T SEE ANY NEED TO
7 SEQUESTER THEM, BUT I DON'T HAVE ANY OBJECTION TO IT
8 IF WE'VE GOT ROOMS TO SEQUESTER THEM.

9 THE COURT: OKAY. WE HAVE PRESENT, THEN,
10 POTENTIAL WITNESSES FOR BOTH SIDES OF THIS ISSUE THAT
11 WERE JURORS IN THAT CASE.

12 MS. ROWELL: YOUR HONOR, WE HAVE SEVEN JURORS
13 HERE. WE SUBPOENAED THE JURY PANEL; OF THAT WE HAVE
14 SEVEN JURORS HERE. ONE OF THEM IS IN A SIDE ROOM
15 WITH HER CHILDREN. I THINK THE OTHER ONES ARE HERE,
16 AND I DON'T KNOW THAT THEY WOULD BE FOR BOTH SIDES OR
17 EITHER SIDE, BUT WE DO HAVE SEVEN PEOPLE WHO COULD
18 POSSIBLY TESTIFY.

19 THE COURT: ALL RIGHT.

20 (TO MR. BROWN) I'M GOING TO GRANT YOUR MOTION.

21 MR. BROWN: THANK YOU, YOUR HONOR.

22 THE COURT: IF YOU'LL TAKE CARE OF -- WHICH ONE
23 IS THE FIRST WITNESS THAT YOU'RE GOING TO CALL?

24 MR. BROWN: THE FIRST WITNESS I'LL CALL WOULD BE
25 UTIA GRANT.

1 THE COURT: OTHER THAN MS. GRANT, IF ALL THE
2 POTENTIAL WITNESSES WILL STEP OUT WITH THE SHERIFF,
3 WE'LL FIND SOME ROOM.

4 MR. BROWN: AND, YOUR HONOR, AT THIS TIME I'D
5 CALL UTIA GRANT TO THE STAND.

6 (WHEREUPON, UTIA GRANT, HAVING FIRST BEEN DULY
7 SWORN, TESTIFIES AS FOLLOWS).

8 MS. ROWELL: YOUR HONOR, I WOULD INQUIRE AS TO
9 WHAT THE WITNESS HAS IN HER HAND.

10 A THE AFFIDAVIT.

11 THE COURT: IT'S THE AFFIDAVIT THAT SHE HAS
12 SIGNED.

13 MS. ROWELL: DOES SHE NEED THE AFFIDAVIT OR CAN
14 SHE TESTIFY FROM HER OWN MEMORY?

15 A THAT'S FINE. I DON'T NEED IT. (HANDING AFFIDAVIT TO THE
16 COURT).

17 MR. BROWN: MAY IT PLEASE THE COURT, YOUR HONOR.

18 DIRECT EXAMINATION

19 BY MR. BROWN:

20 Q MS. GRANT, MY NAME IS JIM BROWN, AND YOU MAY RECALL YOU AND
21 I SPOKE ABOUT THIS TIME LAST YEAR. HAVE WE EVER MET BEFORE
22 TODAY?

23 A NO, SIR.

24 Q DID YOU FILL OUT AN AFFIDAVIT?

25 A YES, SIR.

1 Q REGARDING YOUR JURY SERVICE IN THE CASE?

2 A YES, SIR.

3 Q IN STATE V. RODRICK BRADLEY?

4 A YES, SIR.

5 Q AND BASICALLY I'M GOING TO ASK YOU THIS QUESTION. DID YOU
6 TRUTHFULLY FILL OUT THIS AFFIDAVIT?

7 A YES, SIR.

8 Q AND THE QUESTIONS I WANT TO ASK YOU ABOUT -- YOU'VE
9 INDICATED THAT THE JUROR NAMED MS. FIELDS AND A JUROR NAMED
10 MS. WHITNEY BOTH INDICATED AT SOME POINT DURING THE TRIAL
11 THAT THEY HAD BEEN VICTIMS OF RAPE?

12 A YES, SIR, BUT A MINUTE AGO SHE LOOKED AT MY PAPER,
13 CHRISTINA FIELDS. SHE SAID THAT SHE DIDN'T SAY THAT, SHE
14 WAS NOT RAPED. SHE SAID SHE WROTE HER GRANDMOTHER AND HER
15 MOTHER AND SAID SHE WAS NOT RAPED, BUT LAST YEAR WHEN WE
16 WENT IN THE ROOM SHE SAID SHE WAS RAPED AND SHE SEEN WHY
17 THE LITTLE GIRL PROBABLY WAITED SO LONG TO TELL HER MOTHER.
18 BUT JUST NOW SHE'S JUST STATED THAT SHE WAS NEVER RAPED
19 BEFORE.

20 Q SHE TOLD YOU THAT LAST YEAR?

21 A NO, JUST A MINUTE AGO. SHE WAS, LIKE, SHE WAS NOT RAPED.

22 Q SHE TOLD YOU SHE WAS A VICTIM OF RAPE LAST YEAR?

23 A LAST YEAR.

24 Q AND DID MS. WHITNEY MAKE A SIMILAR ALLEGATION?

25 A YES, SIR.

1 Q AND --

2 MR. BROWN: YOUR HONOR, I DON'T HAVE ANY OTHER
3 QUESTIONS OF THIS WITNESS.

4 THE COURT: SOLICITOR?

5 CROSS-EXAMINATION

6 BY MS. ROWELL:

7 Q MS. GRANT, YOUR AFFIDAVIT SAYS THAT DURING JURY
8 DELIBERATIONS, THAT MS. FIELDS AND MS. WHITNEY SAID THAT
9 THEY HAD BEEN RAPED. IS THAT CORRECT?

10 A YES, MA'AM.

11 Q AT WHAT POINT IN DELIBERATIONS DID THIS OCCUR?

12 A WHEN WE WERE IN THE LAST TIME.

13 Q COULD YOU SPEAK IN THE MICROPHONE, PLEASE?

14 A WHEN WE WERE IN THE ROOM THE LAST TIME, THAT'S WHEN THEY
15 STATED THAT, WHEN WE HAD COME TO THE CONCLUSION. THAT WAS
16 THE LAST TIME WE WAS THERE.

17 Q WHEN YOU HAD COME TO A CONCLUSION? CAN YOU LOWER THE
18 MICROPHONE AND SPEAK INTO IT, PLEASE?

19 A THE LAST TIME WE WENT INTO THE ROOM FOR THE CONCLUSION AS
20 TO GUILTY OR NOT GUILTY, THAT'S WHEN THEY SAID THAT.
21 EVERYBODY VOICED THEIR OPINION, AND THAT WAS ONE OF THEIR
22 OPINIONS, SO -- THAT'S IT.

23 Q YOU SAID AFTER THEY VOTED GUILTY?

24 A NO. WE WENT AROUND, EVERYBODY WENT AROUND, EVERYBODY
25 STATED THEIR OPINION AS TO WHY HE WAS GUILTY, AND IF YOU

1 DIDN'T FIND HIM GUILTY, WHY. YOU HAD TO SAY THAT.
2 CHRISTINE FIELDS SAID SHE'S -- SAID WHY THE LITTLE GIRL
3 WAITED SO LONG TO TELL HER PARENTS, BECAUSE SHE WAS RAPED
4 WHEN SHE WAS YOUNGER AND SHE WAITED A LONG TIME. BOTH OF
5 THEM STATED THAT -- WELL, WHITNEY AND CHRISTINE FIELDS DID.

6 Q NOW, HOW WAS IT THAT YOU HAPPENED TO CALL MR. BROWN'S
7 OFFICE?

8 A I DID NOT CALL HIM, HE CALLED ME.

9 Q HE CALLED YOU?

10 A UH-HUH.

11 Q WELL, MR. BROWN JUST SAID THAT YOU CALLED HIS OFFICE.

12 A NO. WE TALKED, WE TALKED BEFORE.

13 Q WHAT DO YOU MEAN, YOU "TALKED BEFORE"?

14 A WE TALKED, LIKE -- WHEN I HAD TO SIGN THE AFFIDAVIT, WE
15 TALKED THEN.

16 Q YOU TALKED WITH MR. BROWN?

17 A UH-HUH, SO THAT HE COULD TELL ME WHERE TO MEET UP WITH THE
18 WOMAN WHO HAD THE AFFIDAVIT FOR ME TO SIGN.

19 Q YOU TALKED TO HIM ON THE TELEPHONE?

20 A I TALKED TO HIM, YES, SIR -- YES, MA'AM.

21 Q WHEN YOU HAD YOUR FIRST CONVERSATION WITH MR. BROWN'S
22 OFFICE, HOW DID THAT HAPPEN?

23 A OVER THE TELEPHONE.

24 Q OVER THE TELEPHONE?

25 A FOR HIM TO TELL HIS, I GUESS, WHATEVER, SECRETARY, WHERE TO

1 MEET ME AT SO I COULD SIGN THE AFFIDAVIT, BUT WE DISCUSSED
2 THIS OVER THE PHONE, EVERYTHING THAT'S ON THE AFFIDAVIT.

3 Q AND DID YOU CALL HIM TO DISCUSS IT?

4 A NO, MA'AM, HE CALLED ME.

5 Q HE CALLED YOU?

6 A UH-HUH.

7 Q DID YOU CALL HIS OFFICE BEFORE HE CALLED YOU?

8 A NO, MA'AM.

9 Q DID YOU LEAVE A MESSAGE AT HIS OFFICE FOR HIM TO CALL YOU?

10 A NO, MA'AM.

11 Q HE CALLED YOU?

12 A UH-HUH.

13 Q AND HAD YOU SPOKEN TO ANY MEMBER OF RODRICK BRADLEY'S
14 FAMILY BEFORE HE CALLED YOU?

15 A I COULD HAVE, YES.

16 Q OKAY. DID YOU SPEAK TO ANYBODY NAMED RODELLE?

17 A I'M NOT SURE.

18 Q DID YOU SPEAK TO ANYBODY NAMED YVETTE?

19 A I'M NOT SURE ABOUT THAT EITHER.

20 Q DO YOU KNOW ANY MEMBERS OF HIS FAMILY?

21 A I KNOW THEM, BUT I DON'T KNOW THEM BY NAME. I KNOW MOST OF
22 THEM BY NAME, BUT THE ONES YOU JUST CALLED, I COULD HAVE
23 SPOKE TO THEM, BUT I'M NOT SURE BECAUSE I DON'T REMEMBER
24 THEIR NAMES.

25 Q DID ANY OF THEM EVER CONTACT YOU ABOUT THIS?

1 A YES, MA'AM, BUT I DIDN'T SPEAK WITH THEM.

2 Q WELL, TELL ME THE CIRCUMSTANCES UNDER WHICH THEY CONTACTED
3 YOU.

4 A TELEPHONE CALLS.

5 Q WHO CALLED YOU?

6 A I DON'T KNOW. IT'S THEIR NUMBER, BUT I DID NOT TALK TO
7 THEM, BUT I GUESS THEY WAS TRYING TO CONTACT ME. BUT I DID
8 NOT RETURN THE CALL, SO I'M NOT SURE WHO CALLED ME.

9 Q SO YOUR TESTIMONY IS, RIGHT NOW, THAT YOU WENT HOME FROM
10 JURY DELIBERATIONS AFTER THIS VERDICT, CORRECT?

11 A UH-HUH.

12 Q AND YOU DIDN'T DISCUSS THIS CASE WITH ANYBODY, WITH ANY
13 LAWYERS OR ANY MEMBERS --

14 A NOT THAT DAY. I DON'T REMEMBER --

15 Q -- OR ANY MEMBERS OF THE DEFENDANT'S FAMILY THAT DAY?

16 A YES, I TALKED WITH SOME OF THEIR FAMILY MEMBERS, BUT IT
17 WASN'T ABOUT THE CASE. IT WAS -- WELL, IT WAS ABOUT THE
18 CASE, WHAT WENT ON AND STUFF LIKE THAT, SO, YES.

19 Q SO YOU TALKED WITH THEM AT THE COURTHOUSE?

20 A IT WAS LATER ON THAT DAY, BUT I DIDN'T TALK TO HIS LAWYER
21 THAT DAY.

22 Q DID YOU TALK TO THEM AT THE COURTHOUSE?

23 A NO.

24 Q WHERE DID YOU TALK TO THEM?

25 A AT THEIR HOUSE. IT WAS AFTER COURT WAS OVER, AT THEIR

1 HOUSE.

2 Q AT THEIR HOUSE?

3 A UH-HUH.

4 Q SO YOU WENT OVER TO THEIR HOUSE AFTER COURT?

5 A WELL, AFTER THE AFFIDAVIT WAS SIGNED -- IT WASN'T THAT DAY.
6 I'M NOT SURE IF IT WAS THAT SAME, EXACT DAY.

7 Q SO I'M SAYING BEFORE YOU SIGNED THAT AFFIDAVIT?

8 A I SPOKE WITH SOME OF THEIR FAMILY MEMBERS AFTER COURT WAS
9 OVER THAT DAY, YES.

10 Q AND WHERE WERE YOU WHEN YOU SPOKE WITH SOME OF THE FAMILY
11 MEMBERS THAT DAY?

12 A AT THEIR HOUSE.

13 Q AT THEIR HOUSE? NOW, WHAT WERE YOU DOING AT THEIR HOUSE
14 WHEN YOU SAY YOU DON'T EVEN KNOW WHO THE FAMILY MEMBERS
15 ARE?

16 A IT WAS AFTER COURT WAS OVER, SO EVERYTHING WAS EMOTIONAL
17 AND I WAS EMOTIONAL ABOUT WHAT HAPPENED. SO EVERYBODY WAS
18 OVER AT THEIR HOUSE, SO THAT'S WHY I WENT, TOO.

19 Q SO YOU HAD JUST BEEN PART OF THE JURY --

20 A THE CASE WAS OVER.

21 Q -- THAT FOUND MR. BRADLEY GUILTY, AND YOU WENT OVER TO
22 HIS -- WAS IT HIS MOTHER'S HOUSE OR HIS SISTER'S HOUSE?

23 A HIS MOTHER'S HOUSE, I GUESS.

24 Q WHAT HAPPENED AFTER YOU GOT THERE?

25 A NOTHING, REALLY. BASICALLY EVERYBODY WAS EMOTIONAL,

1 CRYING.

2 Q AND WHAT DID HIS RELATIVES ASK YOU?

3 A WHAT WENT ON, THINGS LIKE THAT.

4 Q AND WHAT DID YOU SAY?

5 A I EXPLAINED TO THEM WHAT TWO OF THE MEMBERS SAID ON THE
6 AFFIDAVIT BASICALLY, SO THAT'S IT. WHATEVER IS IN THE
7 AFFIDAVIT IS WHAT WE TALKED ABOUT.

8 Q THE DAY OF THE TRIAL?

9 A AFTER HE WAS FOUND GUILTY.

10 Q AFTER HE WAS FOUND GUILTY, THE DAY OF THE TRIAL?

11 A UH-HUH.

12 Q AND THEN DID YOU SPEAK TO ANY FAMILY MEMBERS?

13 A NO.

14 Q AFTER THAT DAY, BEFORE YOU WROTE THE AFFIDAVIT?

15 A MOST OF THEM I'M FRIENDS WITH.

16 Q DID YOU DISCLOSE THAT YOU WERE FRIENDS WITH THE FAMILY
17 MEMBERS DURING THE VOIR DIRE?

18 A NO, BECAUSE THE JUDGE ASKED COULD I BE FAIR. SO I WAS
19 FAIR.

20 Q DID YOU DISCLOSE THAT YOU WERE A FRIEND OF THE FAMILY?

21 A NO, YOU DIDN'T HAVE TO.

22 Q I BEG YOUR PARDON?

23 A I DID NOT HAVE TO. HE ASKED COULD I BE FAIR TO BOTH SIDES,
24 SO I DID NOT.

25 MS. ROWELL: I BEG THE COURT'S INDULGENCE, PLEASE.

1 Q I'M GOING TO READ SOMETHING FROM THE COURT RECORD. DURING
2 THE VOIR DIRE -- THE VOIR DIRE IS THE QUESTIONING THAT
3 TAKES PLACE IN FRONT OF THE ENTIRE JURY PANEL. DO YOU
4 REMEMBER THAT?

5 A YES, MA'AM.

6 Q PARDON?

7 A YES.

8 Q OKAY. DO YOU REMEMBER THE JUDGE ASKING, JUDGE BURCH, RIGHT
9 HERE, "ARE ANY OF YOU -- I'VE ALREADY ASKED THIS -- RELATED
10 TO OR DO YOU HAVE ANY CLOSE PERSONAL BUSINESS, SOCIAL,
11 FRATERNAL, RELIGIOUS RELATIONSHIP WITH THE DEFENDANT
12 RODRICK BRADLEY? IF SO, YOU NEED TO STAND AT THIS TIME"?

13 A NO, I DON'T REMEMBER THAT.

14 Q PARDON?

15 A NO, I DON'T REMEMBER THAT BEING SAID, LIKE HOW YOU JUST
16 READ IT.

17 Q YOU DON'T REMEMBER THAT, OKAY. DID YOU RESPOND TO THAT AND
18 STAND UP? BECAUSE A LOT OF PEOPLE STOOD UP AND SAID THINGS
19 LIKE, "A CLOSE FRIEND OF THE FAMILY". THAT WAS SHERRY
20 WHITTER. AMANDA GRAVES SAID, "ME AND HIS SISTER USED TO BE
21 TOGETHER. ME AND HER WENT TO SCHOOL TOGETHER." LORENZO
22 BADGER, "ME AND THE DEFENDANT IS CLOSE FRIENDS." DERRICK
23 YOUNG ANSWERED, "CLOSE FRIEND". MARION COATES, "I'M CLOSE
24 FRIENDS WITH HIS SISTER."

25 "ONCE AGAIN, NOW, ARE ANY OF YOU RELATED TO OR HAVE

1 ANY CLOSE, PERSONAL, RELIGIOUS, SOCIAL OR FRATERNAL
2 RELATIONSHIP WITH LEXIE BROWN?" SO WHEN THAT WAS ASKED,
3 WHY DIDN'T YOU STAND UP?

4 A BECAUSE HE ALSO SAID IF YOU THOUGHT YOU COULD BE FAIR, YOU
5 COULD STAY ON THE TRIAL. SO I THOUGHT I COULD BE FAIR.

6 Q HE DIDN'T AT THAT TIME SAY THAT, DID HE?

7 A I'M NOT SURE. I CAN'T REMEMBER.

8 Q TO THAT ONE QUESTION YOU DIDN'T ANSWER, DID YOU?

9 A NO.

10 Q BUT YOU KNEW THE FAMILY WELL, DIDN'T YOU?

11 A YES, I KNEW THEM PRETTY WELL, MOST OF THEM.

12 Q YOU KNEW THEM WELL ENOUGH TO GO OVER TO THEIR HOUSE BECAUSE
13 EVERYBODY WAS UPSET AFTERWARDS, DIDN'T YOU?

14 A YES, BECAUSE I'M FRIENDS WITH MOST OF THEM, YES.

15 Q YOU'RE FRIENDS WITH MOST OF THEM, BUT WHEN THEY ASKED DID
16 YOU HAVE ANY SOCIAL RELATIONSHIP WITH ANY MEMBER OF HIS
17 IMMEDIATE FAMILY, YOU DIDN'T STAND UP, DID YOU?

18 A NO, BECAUSE I ALSO REMEMBER HIM SAYING IF YOU COULD BE FAIR
19 TO BOTH SIDES, SO THAT'S WHY I DID NOT STAND.

20 Q WELL, DID YOU REMEMBER THAT HE ASKED ALL THE OTHER JURORS
21 WHO STOOD UP WHETHER OR NOT THEY COULD BE FAIR?

22 A YES.

23 Q BUT YOU DIDN'T STAND UP TO GIVE HIM A CHANCE TO ASK YOU
24 THAT, DID YOU?

25 A WELL --

1 Q SO YOU DIDN'T LET HIM KNOW --

2 A HE ASKED THE QUESTION --

3 Q YOU DIDN'T LET THE COURT KNOW THAT YOU WERE FRIENDS, DID
4 YOU?

5 A WHAT DO YOU MEAN? CAN YOU ASK YOUR QUESTION AGAIN?

6 Q CERTAINLY, MA'AM. I'M SORRY. YOU DIDN'T LET THE COURT
7 KNOW, IN OPEN COURT, THAT YOU WERE FRIENDS WITH THE FAMILY,
8 DID YOU?

9 A I DID NOT. DID I HAVE TO?

10 Q YES, THAT'S THE QUESTION.

11 A BUT I THOUGHT I COULD BE FAIR, SO WHY?

12 Q THAT WASN'T THE QUESTION, THANK YOU. SO YOU WENT OVER TO
13 THE HOUSE THAT DAY, AND THEN WHAT'S THE NEXT THING THAT
14 HAPPENED THAT DREW YOUR ATTENTION BACK TO THIS CASE?

15 A WHAT DO YOU MEAN?

16 Q WHAT WAS THE NEXT THING THAT HAPPENED? YOU SAID MR. BROWN
17 CALLED YOU.

18 A YES, THAT WAS A COUPLE OF DAYS AGO.

19 Q A COUPLE OF DAYS LATER?

20 A AFTER I RECEIVED THE PHONE CALL, YES, BUT HE WAS JUST
21 CALLING TO LET ME KNOW THAT I WAS SUBPOENAED AND I HAD TO
22 BE IN COURT AND IF NOT, THEY WOULD PUT OUT A BENCH WARRANT
23 FOR ME.

24 Q THIS WAS A COUPLE OF DAYS AGO?

25 A UH-HUH, BECAUSE I NO LONGER LIVE IN ALLENDALE. I LIVE IN

1 AIKEN NOW, SO I DID NOT KNOW I WAS SUBPOENAED.

2 Q SO DID YOU SAY WHAT MR. BROWN SAID?

3 A HE WAS JUST CALLING TO LET ME KNOW I WAS SUBPOENAED AND I
4 HAD TO SHOW UP IN COURT. IF NOT, A BENCH WARRANT WOULD BE
5 PUT OUT FOR ME.

6 Q OKAY.

7 A BECAUSE I DON'T LIVE IN ALLENDALE ANYMORE. I LIVE IN
8 AIKEN.

9 Q OKAY. BUT GOING BACK TO THE PERIOD RIGHT AFTER THE TRIAL,
10 YOU LEFT THEIR HOUSE THAT DAY, RIGHT?

11 A UH-HUH.

12 Q DID YOU HAVE ANY MORE CONVERSATIONS WITH THEM BEFORE YOU
13 WROTE THE AFFIDAVIT?

14 A NO, MA'AM.

15 Q AND THEM BEING THE MEMBERS OF HIS FAMILY, NONE --

16 A DID I HAVE ANY QUESTIONS, WHAT?

17 Q ANY MORE CONVERSATIONS?

18 A CAN YOU FINISH?

19 Q WITH THE FAMILY OF MR. BRADLEY BEFORE YOU WROTE THE
20 AFFIDAVIT.

21 A I'M NOT SURE WHAT YOU MEAN. I'M NOT SURE HOW TO ANSWER
22 THAT.

23 Q BETWEEN THE DAY OF THE VERDICT AND THE TIME YOU TALKED TO
24 MR. BROWN, DID YOU TALK TO ANY OF MR. BRADLEY'S FAMILY
25 MEMBERS?

1 A YOU SAY BETWEEN THE DAY OF THE VERDICT?

2 Q THE VERDICT. YOU WENT TO THE HOUSE, RIGHT?

3 A IMMEDIATELY AFTER THE CASE WAS OVER.

4 Q AFTER THE CASE WAS OVER.

5 A DID I HAVE ANY CONVERSATIONS?

6 Q WITH --

7 A WHAT DO YOU MEAN, "CONVERSATIONS"?

8 Q DID YOU TALK TO --

9 A YES, I TALKED TO THE FAMILY MEMBERS. LIKE I SAID, I WENT
10 OVER BECAUSE EVERYBODY WAS EMOTIONAL.

11 Q I ASKED YOU AFTER THAT DAY.

12 A NO.

13 Q SO THE NEXT TIME --

14 A I'M FRIENDS WITH THEM, SO WE SPEAK, WE TALK, YOU KNOW, BUT
15 NOT ABOUT THE CASE, NO.

16 Q DO YOU REMEMBER TALKING TO THE SOLICITOR'S INVESTIGATOR,
17 BRUCE DAVIS?

18 A UH-HUH. THAT WAS A COUPLE OF DAYS AGO, THE SAME DAY I
19 TALKED TO HIM, JIM BROWN.

20 Q TWO DAYS AGO?

21 A UH-HUH.

22 Q AND DO YOU REMEMBER TELLING HIM THAT THE FAMILY KEPT
23 TALKING TO YOU ABOUT THIS CASE?

24 A NO, I DID NOT.

25 Q YOU DIDN'T TELL HIM THAT?

1 A I SAID THAT HE WAS CALLING ME ABOUT THE CASE, I GUESS. I
2 DID NOT SAY "TALKED TO ME" BECAUSE I HAVEN'T TALKED TO THEM
3 ABOUT THE CASE.

4 Q OKAY. AND IT'S YOUR TESTIMONY THAT YOU DID NOT INITIATE
5 ANY CONTACT WITH JIM BROWN, THAT HE CALLED YOU?

6 A ON THE PHONE, WHEN HE CALLED THAT DAY ABOUT -- THE SAME DAY
7 I TALKED TO HIM (INDICATING INVESTIGATOR), THE SAME DAY I
8 TALKED TO HIM (INDICATING MR. BROWN).

9 Q NO, I'M TALKING ABOUT WHEN YOU WROTE THE AFFIDAVIT.

10 A I TALKED TO HIM ON THE PHONE SO HE COULD TELL ME WHERE TO
11 MEET, I GUESS, HIS SECRETARY ABOUT THE AFFIDAVIT.

12 Q AND DID YOU CALL HIS OFFICE?

13 A NO, MA'AM.

14 MS. ROWELL: ONE MOMENT, PLEASE, YOUR HONOR.

15 Q THAT'S ALL THE QUESTIONS I HAVE FOR YOU RIGHT NOW.

16 MR. BROWN: BRIEFLY?

17 THE COURT: ALL RIGHT.

18 MR. BROWN: THANK YOU, YOUR HONOR.

19 REDIRECT EXAMINATION

20 BY MR. BROWN:

21 Q MS. GRANT, DID YOU EVER ASK ME NOT TO SPEAK WITH YOU?

22 A NO, SIR.

23 Q AND WAS I DOING ANYTHING TO TRY TO SPEAK TO YOU AGAINST
24 YOUR WILL?

25 A NO, SIR.

1 Q AND ONE OTHER THING. ONE OF THE ISSUES, SINCE WE'VE GONE
2 INTO SOME DELIBERATIONS -- ONE OF THE ISSUES IN THE
3 DELIBERATIONS WAS REGARDING THE DELAY IN THE VICTIM'S
4 REPORTING OF THE CRIME?

5 A SIR?

6 Q ONE OF THE ISSUES YOU ALL DELIBERATED IN THE JURY ROOM WAS
7 ABOUT THE ALLEGED VICTIM NOT REPORTING THIS CRIME?

8 A CAN YOU SAY THAT --

9 Q IN OTHER WORDS, I'M SORRY, IN YOUR AFFIDAVIT YOU MENTIONED
10 THAT THERE WAS SOME DISCUSSION REGARDING WHAT I CALL THE
11 DELAY IN REPORTING. IN OTHER WORDS, THE ALLEGED VICTIM
12 DIDN'T TELL ANYBODY THAT SHE HAD BEEN RAPED?

13 A UH-HUH.

14 Q AND IS THAT WHAT THESE TWO JURORS ALLEGEDLY SAID, "THAT
15 DOESN'T MEAN ANYTHING BECAUSE WE WERE RAPE VICTIMS, AND WE
16 DIDN'T REPORT IT"?

17 A NO, IT WAS JUST BASICALLY EVERYBODY STATED THEIR OWN
18 OPINION, AND WE WAS JUST TALKING ABOUT IT AND EVERYTHING,
19 SO --

20 Q BUT THEY SAID THAT THEY WERE VICTIMS OF RAPE. WHY DID THAT
21 COME OUT? WHAT DID THAT HAVE TO DO WITH IN THE
22 DELIBERATIONS?

23 A BECAUSE SHE, I GUESS DURING THE CASE, DURING THE TRIAL, SHE
24 WAITED AROUND BEFORE SHE TOLD HER MOTHER.

25 Q WHO IS "SHE"?

1 A THE ALLEGED PERSON WHO WAS SUPPOSED TO BE RAPED.

2 Q THE ALLEGED VICTIM?

3 A YES.

4 Q WAITED A WHILE BEFORE SHE CALLED THE POLICE?

5 A YES, AND THAT'S WHY THEY WAS, LIKE, THEY COULD SEE WHY SHE
6 WAITED A WHILE BECAUSE ONE OF THEM STATED THAT THEY WAITED
7 A WHILE BEFORE THEY TOLD THEIR MOTHER. SO THAT'S HOW THAT
8 CAME ABOUT.

9 Q ONE OF THE JURORS SAID THEY DID THE SAME THING?

10 A UH-HUH.

11 Q WHEN THEY WERE RAPED?

12 A YES, SIR.

13 MR. BROWN: NO FURTHER QUESTIONS, YOUR HONOR.

14 IN FACT, THIS WITNESS CAN BE EXCUSED AS FAR AS I'M
15 CONCERNED.

16 MS. ROWELL: I HAVE NO FURTHER QUESTIONS. I'D
17 ASK THAT SHE NOT BE EXCUSED.

18 THE COURT: ALL RIGHT.

19 (TO WITNESS) YOU MAY STEP DOWN, BUT YOU'RE NOT
20 EXCUSED.

21 MR. BROWN: NEXT, YOUR HONOR, I'D CALL SHANDRIA
22 WHITNEY.

23 MS. ROWELL: YOUR HONOR, MAY WE APPROACH?

24 (BENCH CONFERENCE OUTSIDE HEARING OF COURT
25 REPORTER) .

1 (WHEREUPON, SHANDRIA WHITNEY, HAVING FIRST BEEN
2 DULY SWORN, TESTIFIES AS FOLLOWS).

3 MS. ROWELL: YOUR HONOR, A POINT OF LAW, PLEASE.
4 YOUR HONOR, MS. GRANT WROTE AN AFFIDAVIT, AND YOU'VE
5 GOT TO DETERMINE THAT THIS AFFIDAVIT IS CREDIBLE
6 BEFORE YOU CAN GO FORWARD WITH AN EVIDENTIARY HEARING
7 AS TO WHETHER OR NOT THERE WAS JURY MISCONDUCT.

8 THUS FAR SHE HAS INDICATED A LACK OF CREDIBILITY
9 BECAUSE SHE INDICATES THAT SHE FAILED TO DISCLOSE THAT
10 SHE WAS FRIENDS WITH THE DEFENDANT AND HIS FAMILY
11 DURING VOIR DIRE, THAT SHE DIDN'T THINK SHE HAD ANY
12 OBLIGATION TO LET THE COURT KNOW THAT. AND SHE ALSO
13 HAS DIRECTLY REFUTED WHAT MR. BROWN TOLD ME AND TOLD
14 YOU BACK IN CHAMBERS AND WHAT MR. BROWN HAS TOLD ME
15 TIME AND TIME AGAIN, THAT SHE WAS THE ONE WHO
16 INITIATED THE PHONE CALL AND CONTACT WITH HIS OFFICE.
17 HE HAS ASSURED ME THAT HE KNEW NOTHING ABOUT THIS
18 WITNESS UNTIL SHE CALLED HIS OFFICE, AND TODAY SHE'S
19 JUST STOOD HERE AND TESTIFIED THAT MR. BROWN
20 INITIATED THE CONTACT.

21 AS TO CREDIBILITY, I FIND MR. BROWN FAR MORE
22 CREDIBLE THAN I FIND THIS WITNESS, MS. GRANT, AND I'D
23 SAY THAT SHE'S ALREADY BEGUN TO SHOW THAT SHE'S NOT
24 A CREDIBLE WITNESS, AND I'D ASK THAT YOU CONSIDER NOT
25 GOING ANY FURTHER AT THIS TIME.

1 THE COURT: I'VE GOT CONCERNS, BUT I'M NOT QUITE
2 TO THAT STEP YET. I WANT TO DEVELOP THE RECORD A
3 LITTLE FURTHER ON THIS.

4 MS. ROWELL: THANK YOU, YOUR HONOR. ONE OTHER
5 POINT OF LAW IS, I BELIEVE AT THIS TIME WE ALSO
6 SHOULD LIMIT THE TESTIMONY OF ANY JURORS TO WHAT
7 HAPPENED IN THE JURY ROOM BECAUSE THE BASIS OF THIS
8 IS WHAT HAPPENED IN THE JURY ROOM. THAT'S HOW SHE
9 GOT THIS INFORMATION, AND WE NEED TO FIND OUT FIRST,
10 AS A MATTER OF FACT, FROM ALL OF THESE JURORS
11 WHETHER OR NOT WHAT SHE SAYS HAPPENED IN THE JURY
12 ROOM HAPPENED BECAUSE IF IT DIDN'T HAPPEN, AGAIN HER
13 AFFIDAVIT IS NOT GOING TO BE CREDIBLE AND YOU SHOULD
14 NOT GO FURTHER INTO JURY MISCONDUCT.

15 SO I'D ASK THAT HE LIMIT HIS QUESTIONS AT THIS
16 POINT TO WHAT HAPPENED IN THE JURY ROOM.

17 THE COURT: I DON'T HAVE ANY PROBLEM WITH THAT,
18 BUT YOU'VE GOT THE CREDIBILITY OF INFLUENCES THAT
19 MAY HAVE HAPPENED AFTER THE TRIAL, LIKE YOU
20 DEVELOPED WHAT WENT ON WITH THE FAMILY AFTER THE
21 TRIAL.

22 MS. ROWELL: YES.

23 THE COURT: WE MAY NEED TO OPEN UP IN CASE
24 SOMETHING LIKE THAT COMES UP WITH AN INDIVIDUAL
25 WITNESS.

1 MS. ROWELL: THANK YOU, YOUR HONOR.

2 THE COURT: (TO MR. BROWN) LET'S TRY TO KEEP IT
3 WITHIN THOSE CONFINES.

4 MR. BROWN: MAY IT PLEASE THE COURT, YOUR HONOR.

5 DIRECT EXAMINATION

6 BY MR. BROWN:

7 DIRECT EXAMINATION

8 BY MR. BROWN:

9 Q MS. WHITNEY, MY NAME IS JIM BROWN. YOU AND I HAVE MET
10 BEFORE?

11 A NO.

12 Q WE SPOKE ON THE PHONE ONE TIME?

13 A YES.

14 Q I WILL REFER TO IT AS A THREE-WAY CALL. IT WAS PROBABLY
15 MORE THAN THREE WAYS. IT WAS SEVERAL PEOPLE YOU HAD
16 CALLED?

17 A I HAD SOMEBODY TO CALL FOR ME.

18 Q AND THEN THEY CALLED A MEMBER OF MR. BRADLEY'S FAMILY?

19 A YES, SIR.

20 Q AND THEN THEY CALLED ME?

21 A YES, SIR.

22 Q AND ACTUALLY I PUT YOU ON HOLD BECAUSE THE JUDGE'S LAW
23 CLERK WAS CALLING ME ON THE OTHER LINE?

24 A YES, SIR.

25 Q OKAY. AT SOME POINT YOU TOLD ME YOU WERE IN SAVANNAH,

1 GEORGIA?

2 A YES, SIR.

3 Q BUT YOU LIVE IN AUGUSTA?

4 A NO, I WAS IN SAVANNAH, BUT I LIVE IN AUGUSTA.

5 Q OKAY. THAT ANSWERS SOME OF THE CONFUSION ON THAT.

6 A UH-HUH.

7 Q AND YOU SERVED ON A JURY SOMETIME LAST YEAR?

8 A YES, SIR.

9 Q DO YOU KNOW UTIA GRANT?

10 A YES, SIR.

11 Q SHE SERVED ON THE JURY AS WELL?

12 A YES, SIR.

13 Q WHAT I WANT TO ASK YOU ABOUT IS A LITTLE SENSITIVE, AND I
14 APOLOGIZE. I'M NOT TRYING, IN ANY WAY, TO EMBARRASS YOU,
15 BUT ONE THING I NEED TO FIND OUT IS WERE YOU EVER THE
16 VICTIM OF SEXUAL ASSAULT?

17 MS. ROWELL: YOUR HONOR, I SPECIFICALLY ASKED
18 THAT THIS BE LEFT TO THE CREDIBILITY OF THE
19 AFFIDAVITS. AT THIS TIME I'M GOING TO OBJECT TO THAT.
20 I'M GOING TO CITE THREE CASES, STATE V. ZEIGLER,
21 STATE V. COVINGTON, AND STATE V. ALDRIDGE, THAT --

22 MR. BROWN: I'LL WITHDRAW THE QUESTION AT THIS
23 TIME.

24 MS. ROWELL: -- TO UPHOLD AN AFFIDAVIT OF JURY
25 MISCONDUCT AS CREDIBLE, THE COURT MUST CONDUCT A

1 HEARING TO DETERMINE IF JURY MISCONDUCT OCCURRED, AND
2 I BELIEVE WE'RE AT THE STAGE TO DETERMINE THAT.

3 THE COURT: THE QUESTION IS WITHDRAWN.

4 Q I'M GOING TO ASK YOU SOME QUESTIONS REGARDING SOME
5 DELIBERATIONS THAT WERE MENTIONED IN AN AFFIDAVIT. DID
6 ANYBODY IN THE JURY ROOM -- DID ANYBODY IN THE JURY ROOM
7 EVER INDICATE THAT THEY HAD BEEN A VICTIM OF RAPE, DURING
8 THE DELIBERATIONS?

9 A NO, SIR.

10 Q MR. BROWN: I WOULD LIKE TO ASK MY OTHER
11 QUESTION.

12 MS. ROWELL: YOUR HONOR, I WOULD OBJECT. I THINK
13 THAT THAT NEEDS TO BE GONE INTO IF YOU DETERMINE THAT
14 THIS ORIGINAL AFFIDAVIT WAS CREDIBLE.

15 THE COURT: I'M GOING TO END IT HERE. BASED ON
16 THAT TESTIMONY OF THE FAMILY AND EVERYTHING THAT WENT
17 ON AFTER THAT, BASED ON THAT RESPONSE THIS HEARING IS
18 OVER.

19 MS. ROWELL: THANK YOU, YOUR HONOR.

20 MR. BROWN: YOUR HONOR, I WOULD ASK TO BE ABLE TO
21 PROFFER THE TESTIMONY OF MS. FIELDS FOR THE APPELLATE
22 RECORD.

23 MS. ROWELL: YOUR HONOR, I HAVE NO OBJECTION.

24 THE COURT: I'M GOING TO STAND BY THE CASE LAW AS
25 I UNDERSTAND IT. IF I'M WRONG, I'LL BE STRAIGHTENED

1 OUT ON IT AND WE'LL HAVE TO COME BACK LATER ON, BUT
2 I THINK THE STATE HAS OUTLINED THE CASE LAW, AS I
3 UNDERSTAND IT, TOO, AND FROM WHAT HAS DEVELOPED HERE
4 I BELIEVE IT'S OVER.

5 MS. ROWELL: THANK YOU, YOUR HONOR.

6 MR. BROWN: IF YOUR HONOR WOULD NOTE OUR PROFFER
7 OR ATTEMPT TO PROFFER THE TESTIMONY OF MS. FIELDS,
8 AS WELL AS THE OTHER QUESTIONS I WOULD DESIRE TO ASK
9 OF THIS WITNESS. YOUR HONOR, JUST SO IT'S CLEAR,
10 I UNDERSTAND YOUR RULING. I'M NOT TRYING TO ARGUE
11 WITH YOU. I JUST WANT IT CLEAR THAT I WOULD ASK THAT
12 I BE ALLOWED TO QUESTION BOTH MS. WHITNEY AND MS.
13 FIELDS REGARDING THE ALLEGATION THAT THEY CONCEALED
14 INFORMATION OF RAPE IN THE VOIR DIRE.

15 THE COURT: (TO WITNESS) DON'T ANSWER.

16 (TO COUNSEL) LET'S LET THAT BE IT. I CAN'T
17 HAVE HERE --

18 MR. BROWN: I'M SORRY. I HAVE THE SAME PROBLEM.
19 I WOULD JUST LIKE THE RECORD TO REFLECT THAT I WOULD
20 DESIRE TO ASK THEM WHETHER OR NOT THEY HAVE BEEN
21 VICTIMS OF RAPE, WHICH WOULD HAVE INDICATED THAT
22 THEY HAVE CONCEALED INFORMATION IN THEIR VOIR DIRE.
23 I UNDERSTAND YOUR RULING. I UNDERSTAND EXACTLY, THE
24 AFFIDAVIT IS NOT CREDIBLE ENOUGH, YOU'VE RULED, TO
25 GET US THE HEARING. I UNDERSTAND THAT, BUT I JUST

1 WANT TO PROFFER THE FACT THAT BOTH OF THESE PEOPLE,
2 INCLUDING MS. WHITNEY WHO DOES NOT LIVE IN THE STATE
3 OF SOUTH CAROLINA, ARE HERE AND THAT WE DESIRE TO
4 QUESTION THEM ABOUT WHETHER OR NOT THEY WERE THE
5 VICTIMS OF A VIOLENT CRIME, SPECIFICALLY RAPE OR
6 SOME TYPE OF CRIMINAL SEXUAL CONDUCT THAT WOULD BE A
7 RAPE OR CLOSE ENOUGH TO RAPE IN A COLLOQUIAL SENSE.

8 THE COURT: I'VE RULED, HOWEVER, I HAVE A LITTLE
9 BIT OF CONCERN ABOUT SOMETHING. I'M GOING TO STEP IN
10 HERE NOW -- THIS IS HIGHLY UNUSUAL, BUT I'M GOING TO
11 DO THIS ON MY OWN. BASED ON MY PRIOR VOIR DIRE A
12 YEAR AGO, I'M GOING TO POSE THIS QUESTION.

13 (TO WITNESS) HAVE YOU EVER BEEN THE VICTIM OF A
14 CRIME THAT YOU CONSIDER TO BE A VIOLENT CRIME?

15 A NO, IT WASN'T A VIOLENT CRIME, BUT I HAVE BEEN RAPED.

16 MS. ROWELL: I'M SORRY, I COULD NOT HEAR THE
17 WITNESS.

18 THE COURT: I THINK THAT ANSWERS THE ULTIMATE
19 QUESTION. (TO MR. BROWN) YOU HEARD WHAT SHE SAID.

20 MR. BROWN: SHE DIDN'T CONSIDER IT VIOLENT, BUT
21 SHE HAD BEEN RAPED.

22 THE COURT: AND THE KEY ISSUE HERE IS WAS THERE
23 ANY INTENTIONAL CONCEALMENT ON THE VOIR DIRE.

24 MR. BROWN: ALTHOUGH THAT'S NOT A SUBJECTIVE
25 QUESTION. IT'S WHETHER AN AVERAGE JUROR --

1 THE COURT: I STAND BY MY RULING, THANK YOU.

2 (WHEREUPON, THE HEARING WAS CONCLUDED AT 11:23

3 A.M.).

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) FOURTEENTH JUDICIAL CIRCUIT
 COUNTY OF ALLENDALE)
) Indictment Number: 03-GS-03-0209

STATE OF SOUTH CAROLINA)

versus)

RODRICK BRADLEY)

Defendant)

AFFIDAVIT OF JUROR

I, Yateaya Grant, being duly sworn, do state:

1. I am a resident of Allendale, South Carolina. My date of birth is November 29, 1984.
2. During the week of August 23, 2004, I served as a member of the jury venire for a term of General Sessions Court in the circuit court of Allendale, South Carolina. I was chosen to sit on the petit jury during the trial of a case entitled State v. Rodrick Bradley. This case was tried on August 25th and 26th, 2004.
3. During jury selection, the trial judge enquired as to whether all jurors could be fair and impartial to both sides; the State and the Defendant. Following this voir dire of the jury venire, a petit jury was selected to decide the verdict in this matter.
4. Also serving on the petit jury in this trial were two jurors named Christine Fields and Shanita Whitney.
5. Following the submission of the case to the jury for deliberations, Ms. Fields and Ms. Whitney disclosed that they had both been victims of rape in the past. Every member of the jury panel heard these statements.

(YG) (sfw)

FILED FOR REC'D
 2004 SEP 13 AM 9:58
 CLERK OF COURT
 ALLENDALE COUNTY, S.C.

6. One of these jurors explained that her personal experience as a victim of rape explained the delay in the report of the sexual battery allegation which was an issue in the case at bar. Every member of the jury was present when this statement was made.
7. I made this statement of my own free will, absent any coercion or duress.

Yateaya Grant
Yateaya Grant

SWORN to and subscribed before me

this 3rd day of Sept, 2004.

Shamone J. Webb
Notary Public for South Carolina

My Commission Expires: 7/24/12

RECEIVED OCT 27 2005

10/26/05

TKC Carlson

STATE OF SOUTH CAROLINA)

COURT OF GENERAL SESSIONS
CLERK OF COURT
FOURTEENTH JUDICIAL CIRCUIT
ALLENDALE COUNTY, S.C.

COUNTY OF ALLENDALE)

03-GS-03-0209

STATE OF SOUTH CAROLINA)

ORDER DENYING
MOTION FOR NEW TRIAL

VS.)

RODERICK BRADLEY,
Defendant)FILED FOR
2005 OCT 26 PM 10:57
ALLENDALE COUNTY, S.C.

Defendant Roderick Bradley was convicted of Criminal Sexual Conduct with a Minor in the Second Degree on August 26, 2004. Defendant timely filed a motion for a new trial. The basis of the Defendant's motion was alleged intentional concealment of information during *voir dire*. The *voir dire* question at issue was whether any member of the petit jury panel "had close friends, or yourself or had a close relative, immediate family member, that's been a victim of a violent crime?"¹

Attached to Defendant's motion was the affidavit of Juror YaTeaya Grant alleging that Jurors Christine Fields and Shandria Whitney disclosed during jury deliberations that they had been the victims of rape in the past.

HEARING

This Court held a hearing on August 18, 2005 to consider Defendant's Rule 29(b) motion for a new trial. Defendant's attorney James A. Brown, Jr. called Juror Grant to the stand and questioned her. She repeated the allegations of her affidavit. Unsolicited, she added that just prior to the hearing she had spoken with Juror Fields in the gallery, and that Juror Fields denied making the statements alleged in the affidavit. She went on to say, also unsolicited, that Juror Fields did indeed make the statement that she had been raped during deliberations. Deputy Solicitor Susan E. Rowell cross-examined Juror Grant. Upon cross-examination Ms. Grant

¹ Trial Transcript, p.7, lines 17-19.

revealed that she was good friends with the Defendant and his family. She further revealed that on the day of the trial, after the guilty verdict, she went to the Defendant's family home to be with his family because they were very emotional. Deputy Solicitor Rowell questioned Juror Grant as to why she had not revealed this friendship during the *voir dire* question regarding whether any Defendants were friends with the Defendant. Juror Grant responded that she did not need to respond because she thought she could be fair.

The Defense next called Juror Whitney. The State moved to initially limit testimony to the credibility of the affidavit, citing *State v. Zeigler*, 364 S.C. 94, 610 S.E.2d 859 (Ct. App. 2005); *State v. Covington*, 343 S.C. 157, 539 S.E.2d 67 (Ct. App. 2000); *State v. Aldret*, 333 S.C. 307, 509 S.E.2d 811 (1999). Attorney Brown asked Juror Whitney if she had stated during jury deliberations that she had been raped. Juror Whitney responded "No". Attorney Brown then asked Juror Whitney if she had ever been raped. The State objected, citing *Zeigler*, *Covington*, and *Aldret*, *supra*. Based upon the State's prior motion, the Court terminated attorney questioning of Juror Whitney based on the evidence presented and the credibility of the witnesses. However, out of an abundance of caution, this Court, *sua sponte*, asked Juror Whitney the *voir dire* question at the heart of the instant motion: "Have you ever been the victim of a violent crime?" Juror Whitney answered, "No. I was raped, but I did not consider it to be violent." At this point, the Court denied the motion for a new trial.

FINDINGS OF FACT

Based upon the testimony of Juror Grant and Juror Whitney, this Court finds neither Juror Grant's affidavit nor her testimony to be credible. She herself withheld information during *voir dire* regarding her close friendship with the Defendant and his family. This Court finds it telling that a Juror who withheld such information during *voir dire* actually knew the Defendant

and his family so well that she went over to his home to console family members on the day of the verdict. Spontaneously, she attempted to bring Juror Fields into her testimony and to pit her own testimony against Juror Fields. Her demeanor was not credible, and her answers to the State's questions were evasive, circuitous, and combative.

In contrast, this Court finds Juror Whitney's testimony to be credible. Moreover, the Court's *sua sponte* questioning of Juror Whitney further satisfied the Court that she did not intentionally conceal information during jury voir dire, nor did she bring her past rape into jury deliberations. She presented herself as truthful, impartial, and credible. She did not hesitate when answering questions, and her answers were direct and to the point. I find as a matter of fact that Juror Whitney did not intentionally conceal information during *voir dire*.

CONCLUSIONS OF LAW

A court must hold an evidentiary hearing regarding allegations of juror misconduct, if the court finds the affidavit(s) alleging misconduct to be credible. *State v. Zeigler*, 364 S.C. 94, 610 S.E.2d 859 (Ct. App. 2005); *State v. Covington*, 343 S.C. 157, 539 S.E.2d 67 (Ct. App. 2000); *State v. Aldret*, 333 S.C. 307, 509 S.E.2d 811 (1999).

The jury misconduct in *Aldret* involved a question of premature deliberations. The Supreme Court set forth the following procedure for trial courts in cases in which an allegation of premature deliberations arises. (1) If an allegation arises during trial, the trial court should conduct a hearing to ascertain if such premature deliberations took place, and if the deliberations were prejudicial. (2) If an allegation of premature deliberations does not become apparent until **after** the jury's verdict, the court may consider affidavits from jurors. If the court finds the affidavits credible, an evidentiary hearing should be held to assess whether such deliberations occurred and whether they should affect the verdict. *Aldret*, 333 S.C. at 315, 509 S.E. 2d at 815.

Since *Aldret* was decided, the Court of Appeals has reiterated the above procedure in both *Covington* and *Zeigler*. In both cases, the Court of Appeals has cited *Aldret* as applying not just to premature deliberations, but as standing for the general proposition that “where affidavits supporting juror misconduct are credible, the trial court must conduct an evidentiary hearing to determine if misconduct occurred.” *Zeigler*, 364 S.C. at ____, 610 S.E.2d at 867; *Covington*, 343 S.C. at 163, 539 S.E.2d at 70 (both citing *Aldret* 333 S.C. at 315, 509 S.E. 2d at 815). The allegations of misconduct in *Zeigler* involved whether the jury had considered the Defendants’ failure to take the stand. The allegations of misconduct in *Covington* involved whether certain jurors knew the Defendant and had discussed prior bad acts during deliberations. *Aldret*, *Covington*, and *Zeigler*, as read together, appear to require a trial court to first determine if an affidavit of juror misconduct is credible. If the trial court finds the affidavit credible, the trial court should then hold an evidentiary hearing on the alleged misconduct.

This Court has made a finding of fact that neither the affidavit nor the testimony of Juror Grant is credible. Because Juror Grant’s affidavit is not credible, no evidentiary hearing on the alleged concealment was required.

Assuming *arguendo* that an evidentiary hearing was required, I conclude as a matter of law, that Juror Whitney did not intentionally conceal information during *voir dire*. “Determining whether a juror’s failure to respond to a *voir dire* question amounts to intentional concealment is a factual determination that must be made on a case by case basis.” *State v. Guillebeaux*, 362 S.C. 270, 607 S.E.2d 99 (Ct. App. 2004). The Supreme Court states the issue as follows:

[I]ntentional concealment occurs when the question presented to the jury on *voir dire* is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror’s failure to respond is unreasonable. Unintentional concealment, on the other hand, occurs where the question posed is ambiguous or incomprehensible to the average juror . . . [so] that

the juror's failure to respond is reasonable under the circumstances.

State v. Sparkman, 358 S.C. 491, 496, 596 S.E. 2d 375, 377 (citing *State v. Woods*, 345 S.C. 583, 588, 550 S.E.2d 282, 284).

The *voir dire* question at issue was whether any member of the petit jury panel had been a victim of a violent crime. I conclude that Section 16-1-60 of the South Carolina Code which defines first and second degree criminal sexual conduct as violent crimes is not applicable to, and certainly not dispositive of, the issue as to whether the average juror would interpret a "rape" to be violent. The term "violent crime" is as ambiguous as the term "serious crime" was to the Supreme Court in *Sparkman*. ("We understand that the term 'serious crime' is ambiguous and recognize that it was reasonable that [the juror] was unable to distinguish between 'serious crimes' and other, 'non-serious' crimes.'") *Id.* at 497, 596 S.E.2d at 377.

I conclude as a matter of law that the average juror would not necessarily interpret the term "violent crime" to mean rape. Some rapes may be particularly violent, with bloodshed, torture, or aggravated assault and battery, while some rapes may not include such aggravating circumstances. Unaggravated rape is defined in the South Carolina Code as criminal sexual conduct in the third degree. Even Section 16-1-60 of the S.C. Code does not define "criminal sexual conduct in the third degree"² as a violent crime. The South Carolina Code actually classifies Third Degree Criminal Sexual Conduct, which is accomplished by unaggravated force or by coercion, as a non-violent crime.³ I conclude as a matter of law that it would have been reasonable for the average juror in the position of Ms. Whitney to fail to

² A person is guilty of criminal sexual conduct in the third degree if the actor engages in sexual battery with the victim and, *inter alia*, the actor uses force or coercion to accomplish the sexual battery in the absence of aggravating circumstances. S.C. Code Ann. § 16-3-654 (2003).

³ "For purposes of definition under South Carolina law a non-violent crime is all offenses not specifically enumerated in § 16-1-60." S.C. Code Ann. § 16-1-70 (2003).

respond to the voir dire question regarding violent crime. As stated above, I also find as a matter of fact that Juror Whitney did not intentionally conceal information during voir dire. I further conclude that Juror Fields testimony was not required because of the ambiguous nature of the voir dire, and because the Defense had no remaining peremptory strikes available at the time Juror Fields was chosen.

THEREFORE, I hereby DENY DEFENDANT'S motion for a new trial.

IT IS SO ORDERED.

This Order also takes into consideration all post-hearing motions were hereby respectfully denied.

Paul M. Burch
Presiding Judge
Fourteenth Judicial Circuit

October 10, 2005

Pageland, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF ALLENDALE)

IN THE COURT OF GENERAL SESSIONS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

Indictment No.: 2003-GS-03-0209

THE STATE OF SOUTH CAROLINA)

VS.)

RODERICK¹ BRADLEY,
Defendant)

MOTION TO RECONSIDER
RULE 29(b) MOTION FOR
NEW TRIAL AND RECONVENE
CERTAIN JURORS

FILED FOR RECORD
2005 AUG 22 AM 10:06
CLERK OF COURT
ALLENDALE COUNTY, S.C.

NOW APPEARS THE DEFENDANT, respectfully requesting that this Honorable Court reconsider its decision to deny relief based upon the grounds that two jurors intentionally concealed information during voir dire. Further, Mr. Bradley requests that this Court reconvene the hearing, commenced on August 18, 2005 and allow the undersigned counsel to question two jurors-Shandria Whitney and Christine Fields regarding the allegations contained in the Rule 29(b) Motion for a New Trial. The factual basis for this Motion and a summary of law related to this request are provided below.

As a legal basis for this Motion, a defendant in a criminal case is entitled to a new trial if a juror intentionally concealed information during voir dire. The test for intentional concealment is whether a juror failed to respond accurately to a question propounded during voir dire and that question was "reasonably comprehensible to the average juror." Further, to be reversible, the information concealed must either have supported a challenge for cause or have been a material factor in a parties decision to use a peremptory challenge. See State v. Woods, 550 S.E.2d 282

¹On the Notice of Appeal and other appellate documents, Mr. Bradley's name is spelled "Roderick"; however, the Indictment and Sentencing sheet used in the circuit court lists the spelling as "Rodrick."

(SC 2001).

As an factual matter, defense counsel submitted an affidavit of YaTeaya Grant, see attached, as well as Juror Grant's testimony in support of a Motion for a New Trial based upon juror misconduct of intentional concealment during voir dire. On August 18, 2005, Juror Grant testified that Jurors Fields and Whitney were both victims of rape. Following Juror Grant's testimony, Juror Whitney testified.

The trial court severely limited the undersigned counsel's opportunity to question Juror Whitney at the August 18 hearing.² Further, undersigned counsel was denied the opportunity to question Juror Fields at all even though she was present in court under subpoena during the August 18, 2005 hearing. However, in response to a question propounded by the court, Juror Whitney indicated that she had "been raped." This information was not revealed during voir dire.

During voir dire, on August 25, 2004, the court inquired as to whether any juror had "been a victim of a violent crime." Neither Juror Whitney nor any other juror responded. The question of whether a person has been the victim of a violent crime is one of reasonable comprehension to the average juror. To find otherwise would insult all rape victims by holding that rape is not a violent crime.

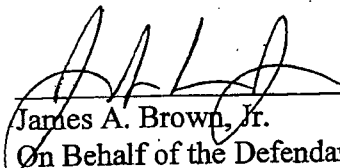
Also, the information that Juror Whitney was a rape victim would have supported a challenge for cause. It strains credibility to believe that a rape victim would be an impartial juror during a trial regarding an allegation of rape. See State v. Middleton, 368 S.E.2d 457, at 460 (SC

²This limitation appears to relate to the prosecution's assertion that juror testimony or affidavits are not admissible to impeach a jury verdict. However, this rule has been partially abrogated by SCRE Rule 606(b). Further, this rule applies to challenges to the jury verdict but no case applies this rule to issues of intentional concealment by a juror during voir dire. See State v. Ziegler, 610 S.E.2d 859 (Ct. App. 2005).

1988) (Rape and Criminal Sexual Conduct are interchangeable terms.). Along the same lines, this information would have been a material factor which would have supported the use of a peremptory challenge during the trial below. In fact, at the time Juror Whitney was selected from the venire, the defense held one un-used peremptory strike. See State v. Woods, 550 S.E.2d 282 (SC 2001).

Therefore, Mr. Bradley respectfully requests that this Court reconsider its denial of Mr. Bradley's Motion for a New Trial, grant such Motion or alternately to reconvene the hearing on this Motion to allow further examination of Juror Whitney and examination of Juror Fields.

AND I SO MOVE


James A. Brown, Jr.
On Behalf of the Defendant

August 19, 2005

Law Offices of Jim Brown, P.A.
1111 Bay Street, P.O. Box 592
Beaufort, SC 29901-0592
(843) 470-0003

STATE OF SOUTH CAROLINA)
)
COUNTY OF ALLENDALE)
)

IN THE COURT OF GENERAL SESSIONS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

Indictment No.: 2003-GS-03-0209

THE STATE OF SOUTH CAROLINA

VS.

RODRICK BRADLEY,
Defendant

CERTIFICATE OF SERVICE

FILED FOR RECORD
2005 AUG 22 AM 10:06
CLERK OF COURT
ALLEDALE COUNTY, S.C.
VICTIM

I, Shauvone J. Middleton, served a Motion to Reconsider Rule 29(b) Motion for a New Trial and Reconvene Certain Jurors on the Assistant Solicitor, Ms. Susan Rowell, postage prepaid, addressed to P.O. Box 546, Hampton, SC 29924, this 19th, day of August, 2005.


Shaivone J. Middleton
Paralegal

August 19, 2005
Beaufort, South Carolina

304

7314113

10:29:26 a.m. 11-18-2008

1/1

14 MF

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Allendale)

08-CP-03-285

Ridgeland Corr. Inst. 304566

Full name and prison number, if any, of applicant)

v.)

APPLICATION FOR

POST-CONVICTION RELIEF

Roderick Bradley)

Name of Respondent)

CLERK OF COURT
ALLENDALE COUNTY, S.C.

2008/05/12 PM 9:50

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Ridgeland Correction Institution

2. Name and location of Court which imposed sentence Allendale Court House
Allendale S.C.

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) 2003-CES-03-0209

(b) _____

(c) _____

4. The date upon which sentence was imposed and the terms of the sentence:

(a) August 25, 2004 11 years

(b) _____

(c) _____

5. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty yes _____
 - (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? yes _____
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals Sept. 20, 2005
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. To return to Department of Corrections to finish sentence
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. August 18, 2005
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) _____
 - (b) _____
 - (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Two jurors stated while deliberating the verdict, that they were victims of rape
 - (b) A bias juror and judge.
 - (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

- (a) One witness stated under oath what was said in the deliberating room, and later testified to the mentioned.
- (b) One juror stated on August 18, 2005, that she had been a victim of rape, but it wasn't considered violent to her.
- (c) _____

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law ?

- (b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) _____
- (d) any other petitions, motions or applications in this or any other Court?

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
- i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
- i. _____
 - ii. _____
 - iii. _____
 - iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? _____

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
yes
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? yes

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you:

- i. Jim Brown, P.A. 1111 Bay Street, P.O. Box 592
Beaufort, SC 29901-0592
- ii. John D. Bryan, ESQUIRE Office of the Public Defender
P.O. Box 506 Hampton, SC 29924
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Guilty
- ii. Guilty
- iii. _____

18. State clearly the relief you seek in filing this application.

To be released from the prison system and return
to my family.

19. Are you now under sentence from any other court that you have not challenged?

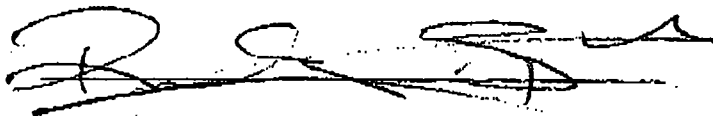
No

STATE OF SOUTH CAROLINA)

COUNTY OF Allendale)

VERIFICATION

I, Roderick Bradley, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



Sworn to and subscribed before me

This 6 day of November 2008Blonia H. Fields L.S.

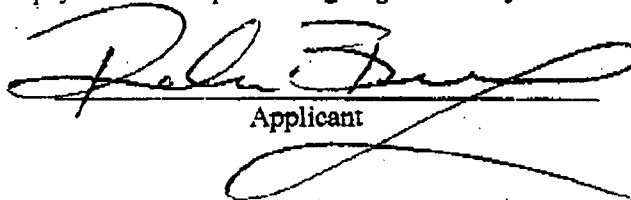
Notary Public for South Carolina

My Commission Expires March 7, 2010

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Roderick Bradley, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.


Applicant

Sworn to and subscribed before me

This 6 day of November 2008Blonia H. Fields L.S.

Notary Public for South Carolina

My Commission Expires: March 7, 2010

14 MF

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Allendale)08-CP-03-205Ridgeland Corr. Inst. 304569

Full name and prison number, if any, of applicant.)

v.)

APPLICATION FOR

Roderick Bradley

POST-CONVICTION RELIEF

Name of Respondent)

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Ridgeland Correction Institution
2. Name and location of Court which imposed sentence Allendale Court House
Allendale S.C.
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
(a) 2003-GS-03-0209
(b) _____
(c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
(a) August 25, 2004 11 years
(b) _____
(c) _____

7344113

10:29:26 11-18-2008

1/1

311

14 MF

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Allendale)08-CP-03-285Ridgeland Corr. Inst. 304566

Full name and prison number, if any, of applicant.)

v.)

APPLICATION FOR

POST-CONVICTION RELIEF

Roderick Bradley)

Name of Respondent)

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Ridgeland Correction Institution
2. Name and location of Court which imposed sentence Allendale Court House
Allendale, S.C.
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
(a) 2003-CES-03-0209
(b) _____
(c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
(a) August 25, 2004 11 years
(b) _____
(c) _____

312

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____,

Notary Public

My Commission Expires: _____

STATE OF SOUTH CAROLINA)

County of Anderson)

VERIFICATION

I, ^{Suzanne} ~~Bradley~~ being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Suzanne Bradley

SWORN to and subscribed before me this 10th
day of November, 2008

[Signature] (L.S.)
Notary Public

My Commission Expires: 3/15/09

STATE OF SOUTH CAROLINA
COUNTY OF ALLENDALE

IN THE COURT OF COMMON PLEAS

2008-CP-03-285

RODERICK BRADLEY, #304569
Applicant,

vs

STATE OF SOUTH CAROLINA,
Respondent.

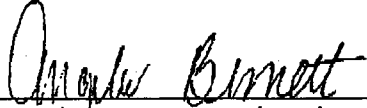
AFFIDAVIT OF SERVICE BY MAIL

2009 MAY 13 AM 10:38
CLERK OF COURT
ALLENDALE COUNTY, S.C.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Curtis L. Coltrane, Esquire
One Town Center Court
Hilton Head Island, SC 29928

DATED this 12th day of May, 2009


Angela Bennett, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)

COUNTY OF ALLENDALE)

Roderick Bradley, #304569,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2008-CP-03-285

RETURN AND MOTION TO DISMISS

CLERK OF COURT
ALLENDALE COUNTY, S.C.

2009 MAR 13 AM 10:38

The Respondent, making its Return to the application for post-conviction relief (PCR) filed November 12, 2008, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Allendale County Clerk of Court. Applicant was indicted at the December 2003 term of the Allendale County Grand Jury for criminal sexual conduct (CSC) with minor – 2nd degree (2003-GS-03-209). J.D. Bryan, Esquire, represented him. On August 25-26, 2004, Applicant proceeded to trial, after which he was found guilty as indicted. The Honorable Paul M. Burch sentenced him to confinement for eleven (11) years.

Applicant filed a timely Notice of Appeal and a Motion for a New Trial pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure on September 7, 2004. James A. Brown, Jr., Esquire, represented Applicant on his post-trial motion. By Order dated April 22, 2005, the South Carolina Court of Appeals held the appeal in abeyance and remanded the case to the trial court to address the Rule 29(b) motion for a new trial. A post-trial hearing was convened before

Judge Burch on August 18, 2005. By Order dated October 10, 2005, Judge Burch denied Applicant's motion for a new trial and all other post-hearing motions.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. After full briefing by both sides, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Bradley, Op. No. 2007-UP-532 (S.C. Ct. App. filed November 19, 2007). The Remittitur was issued on December 5, 2007.

Attached herewith and incorporated herein are the records of the Allendale County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, Final Brief of Appellant, Final Brief of Respondent, the Court of Appeals' opinion affirming the conviction and sentence, the Remittitur dated December 5, 2007, and the Record on Appeal containing the trial transcript, the post-trial hearing transcript, the motion for a new trial, and the Order denying the motion for a new trial.

II.

In his current application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Two jurors stated while deliberating the verdict that they were victims of rape."
2. "A bias juror and judge."

III.

The trial court has broad discretion in assessing allegations of juror misconduct. State v. Kelly, 331 S.C. 132, 142, 502 S.E.2d 99, 104 (1998). If the juror misconduct does not affect the impartiality of the jury, it is not the type of misconduct that will affect the verdict. Id. The decision to grant or deny a motion based on juror misconduct is within the discretion of the trial

judge. Id. Accordingly, the trial court's decision will not be disturbed absent an abuse of that discretion which amounts to an error of law. Id.

Here, the trial court addressed this allegation during a post-trial motion hearing. The trial court found that Applicant failed to demonstrate juror misconduct or prejudice as a result thereof. The trial court found that the juror did not intentionally conceal information during voir dire, and the court denied the motion for a new trial. The Court of Appeals affirmed the decision. Respondent submits that the trial judge did not abuse his discretion in denying the motion. Accordingly, Respondent submits that this allegation should be summarily denied and dismissed.

IV.

Applicant's allegations raise direct appeal issues that are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant raised these issues in a post-trial motion and on appeal. Therefore, the Court should summarily dismiss the application.

V.

The Court should summarily dismiss the application for failure to state a claim cognizable under the Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160 (2003). An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.

Even if the facts alleged by Applicant are true, the facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Respondent therefore moves for summary dismissal of this allegation pursuant to S.C. Code Ann. § 17-27-70(c).

VI.

Respondent denies each allegation that is not expressly admitted, qualified, or explained.

VII.

WHEREFORE, having made its Return and Motion to Dismiss, the State requests that the application be summarily dismissed for failing to state a cognizable claim.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

By: Matthew J. Friedman
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

May 12, 2009.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ALLENDALE) 2008-CP-03-285

RODERICK BRADLEY,

Applicant,

v.

STATE OF
SOUTH CAROLINA,

Respondent.

**FIRST AMENDED APPLICATION
FOR POST CONVICTION RELIEF**

ALLENDALE COUNTY, S.C.

2008-10-16-19

[Note: This application follows SCRCP Appendix of Forms, Form 5, as required by Rule 71.1(b), SCRCP.]

1. Applicant is detained at the Ridgeland Correctional Institution Route 2, Box 7, East Frontage Road Ridgeland, SC 29936, Mailing Address: P. O. Box 2039, Ridgeland, SC 29936.
2. The sentence was imposed by the Allendale County Court of General Sessions.
3. None.
4. The indictment number or numbers upon which and the offense or offenses for which sentence was imposed:
 - (a) 2003 - GS-03-0209 - Criminal sexual conduct (CSC) with minor - 2nd Degree
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Sentenced on August 26, 2004 to eleven years in the South Carolina Department of Corrections for criminal sexual conduct with a minor - 2nd Degree.
6. A finding of guilty was made on August 26, 2004 after a plea of not guilty.
7. The applicant did appeal from judgment of conviction and sentence.

8. (a) The Courts to which applicant appealed:
 - (i) The South Carolina Court of Appeals.
 - (b) The result in each Court to which applicant appealed:
 - (i) Conviction and sentence was affirmed.
 - (c) The date on which each Court affirmed the sentence or denied certiorari:
 - (i) Convictions and sentence were affirmed November 19, 2007.
 - (d) Citations of any written opinion or orders entered pursuant to such results:
 - (i) State v. Bradley, Op. No. 2007-UP-532.
9. Not applicable.

10 & 11 Grounds for Relief and Concise Statement of Supporting Facts.¹

Ground A

Applicant was denied his right to a jury which is impartial to the cause of either side and undisturbed by bias. *U.S. Constitution, Amendments VI and XIV; and S.C. Constitution, Article I, §14.*

Supporting Facts for Ground A

- (1) Applicant was arrested and charged with Criminal Sexual Conduct with a Minor in the Second Degree.
- (2) Perspective jurors were never asked during voir dire by the trial court if they or anyone close to them were a victim of sexual misconduct or rape.
- (3) Ms. Grant, Ms. Fields, and Ms. Whitney were empanelled on the jury.
- (4) Following the trial and return of a verdict of guilty, Juror Grant stated in a sworn, notarized affidavit that during jury deliberations Juror Fields and Juror Whitney stated they were both victims of rape. *Affidavit of Juror Yateaya Grant* sworn to on September 3, 2004.
- (5) During applicant's post trial motion hearing for a new trial Juror Whitney testified that she had been raped.

¹Applicant reserves his right to amend this application after discovery and thereafter.

- (6) But for the bias of Juror Whitney who admitted to being the victim of the same crime that applicant was tried for the outcome of the trial proceedings would have been different.
- (7) But for the bias of Juror Fields, whom Juror Grant heard say she was raped, the outcome of the trial proceedings would have been different.

Ground B

Applicant was denied his right to a fair trial due to bias of the trial court. *U.S. Constitution, Amendments VI and XIV; and S.C. Constitution, Article I, §14.*

Ground C

Applicant was denied the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 14 of the South Carolina Constitution by trial counsel's failure to question jurors, through the trial judge, to determine a challenge for cause and to elicit facts enabling the intelligent use of preemptory strikes. *State v. Woods*, 345 S.C. 583 at 587, 550 S.E.2d 282 (2001).

Supporting Facts for Ground C

- (1) Applicant was arrested and charged with Criminal Sexual Conduct with a Minor in the Second Degree.
- (2) Perspective jurors were never asked during voir dire by the trial court if they or anyone close to them were a victim of sexual misconduct or rape.
- (3) Trial counsel never requested that perspective jurors be questioned to ascertain if they or anyone close to them were a victim of sexual misconduct or rape, to ascertain if any perspective juror held a bias, partiality, or prejudice toward someone accused of a crime of sexual misconduct or rape, or if their opinion or comments offered in jury deliberations would unduly influence the other jurors.
- (4) Following the trial and return of a verdict of guilty, Juror Grant stated in a sworn, notarized affidavit that during jury deliberations Juror Fields and Juror Whitney stated they were both victims of rape. The affidavit states, "6. One of the jurors stated that her personal experience as a victim of rape explained the delay in the report of the sexual battery allegation which was an issue in the case at bar. Every member of the jury was present when this statement was made." *Affidavit of Juror Yateaya Grant* sworn to on September 3, 2004.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ALLENDALE)

IN THE COURT OF COMMON PLEAS
 FOURTEEN JUDICIAL CIRCUIT
 2008-CP-03-285

RODERICK BRADLEY,)
)
 APPLICANT,)
)
 VS.)
)
 STATE OF SOUTH CAROLINA,)
)
 RESPONDENT.)
)
)
)
)
)
)

TRANSCRIPT OF RECORD

AUGUST 31, 2009
 BEAUFORT, 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:

MICHELE MANGIARACINA, ESQUIRE
 ATTORNEY FOR THE APPLICANT

MATTHEW J. FRIEDMAN, ESQUIRE, ASSISTANT ATTORNEY GENERAL
 ATTORNEY FOR THE RESPONDENT

ELIZABETH B. HARRIS, CVR
 CIRCUIT COURT REPORTER

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>
MOTION BY MS. MANGIARACINA	3
RULING OF THE COURT	18
CERTIFICATE PAGE	19

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>

NO EXHIBITS INTRODUCED.

1 THE COURT: *Bradley vs. the State of South Carolina*,
2 2008-CP-03-0285. Ms. Mangiarcina is on behalf of the
3 applicant; Mr. Friedman is on behalf of the state.

4 Is there anything from the state before we proceed?

5 MR. FRIEDMAN: No, Your Honor.

6 THE COURT: All right, Ms. Mangiarcina, what is --
7 what are, excuse me, the grounds for the application?

8 MS. MANGIARACINA: First, Your Honor, I'd just like to
9 make sure that you have the amended application that I
10 filed on June 1st.

11 THE COURT: I have the first amended application.

12 MS. MANGIARACINA: And that's correct.

13 THE COURT: All right. Very well.

14 MS. MANGIARACINA: All right, we filed, the applicant
15 has raised four grounds. I think the only one that we need
16 to take up is ground C, that applicant was denied the
17 effective assistance of counsel by trial counsel's failure
18 to question the jurors though the trial judge to determine
19 a challenge for cause and to elicit facts, namely the
20 intelligent use of peremptory strikes. May I proceed?

21 THE COURT: All right, so the grounds are ineffective
22 assistance of counsel for ---

23 MS. MANGIARACINA: Yes.

24 THE COURT: --- failure to properly exercise the *voir*
25 *dire* and peremptory challenges?

1 MS. MANGIARACINA: That's correct.

2 THE COURT: All right, very good. You may proceed.

3 MS. MANGIARACINA: Thank you. In December of 2003,
4 applicant was indicted for criminal sexual conduct with a
5 minor. It was a second degree. Now, section 16-3-655
6 defines when a person is guilty of the crime. Now:

7 A person is guilty of criminal sexual
8 conduct with a minor in the second degree if
9 the actor engages in sexual battery with a
10 victim who is fourteen years of age or less
11 but who is at least eleven years of age.

12 Title XVI goes on to, to define the elements of sexual
13 battery. Nowhere in either statute is the word violence
14 used. Okay, I'll define -- sexual battery reads as
15 follows:

16 Sexual battery means sexual intercourse,
17 cunnilingus, fellatio, and anal intercourse;
18 or any intrusion, however slight, of any
19 part of a person's body; or of any object
20 into the genital or anal opening of another
21 person's body, except when such intrusion
22 accomplished is medically recognized
23 treatment for medically diagnosed purposes.

24 Again, like I said, the word violent is never
25 mentioned. Now, that's important because during the voir

1 dire of prospective jurors, Judge Burch only brought up one
2 question that dealt with whether any of the prospective
3 jurors or their family had ever been the victims of a
4 crime. And it reads as follows, and I quote the trial
5 transcript:

6 THE COURT: Have any of you had close
7 friends or yourself or had a close relative,
8 immediate family member that's been a victim
9 of a violent crime?

10 Then he goes on to ask the same question about anybody
11 involved in law enforcement.

12 Now, again no question was ever asked to ascertain if
13 a prospective juror had been the victim of rape or sexual
14 battery.

15 And following the trial when, my client, the
16 applicant, was convicted, a juror came forward and stated
17 that two of the jurors had been victims of rape. And in
18 jury deliberations, they made a point of saying that's why
19 they could understand why the victim waited as long as she
20 did to come forward and tell her mother.

21 The affidavit -- the juror was used -- an affidavit
22 was used at a motion for a new trial brought by attorney
23 Jim Brown. The motion was heard before Judge Burch. When
24 Judge Burch had a hearing, he took evidence from the
25 affiant. During the motion, she did state that yes, she

1 was the victim of rape, but she did not -- I'm sorry, not
2 the affiant. When the first witness was called, one of the
3 jurors, juror ---

4 THE COURT: If you're referring to the transcript, it
5 would help if you'd give us the ---

6 MS. MANGIARACINA: Page? Certainly, Your Honor. If
7 we get to the transcript of the motion for the new trial,
8 I've got page 227 of the whole packet, specifically page 26
9 of the hearing, the motion for the new trial, and the court
10 is questioning Juror Whitney, and at line 16 it says:

11 Have you ever been the victim of a crime
12 that you would consider to be a violent
13 crime?

14 No, it wasn't a violent crime, but I have
15 been raped.

16 Now, all during *voir dire*, nowhere in the record does
17 it show that counsel, trial counsel asked the question has
18 any juror, any potential juror been the victim of a rape,
19 okay, as defined by the statute. Nowhere does anybody
20 refer to the statute to ascertain whether there is
21 potentially a juror that is subject to bias. Nowhere in
22 the record does prior trial counsel object to the fact that
23 no question regarding a victim of sexual conduct possibly
24 is on the jury. So, nowhere do we know if these twelve
25 jurors --- well, we know one because she said it in the

1 motion, appeal for the new trial, that she was a victim of
2 rape. But how many others could be on the jury?

3 Now, I would say, you know, if a juror, potential
4 juror said she was the victim of the same exact crime that
5 somebody's about to be charged for, they would be excused
6 for cause. But I would like to mention that at the time,
7 Mr. Bryan had did have one peremptory challenge left when
8 Ms. Whitney was *voir dired*.

9 And just give me a moment, Your Honor.

10 (A PAUSE.)

11 MS. MANGIARACINA: And I would like to mention that,
12 you know, we are not seeking an acquittal but a new trial,
13 a trial by people that we are sure have not been the victim
14 of the same crime that an applicant is being tried for.
15 Thank you.

16 THE COURT: All right, you may call your first
17 witness.

18 MS. MANGIARACINA: At this time I'm not, I'm not
19 calling anyone, Your Honor.

20 THE COURT: All right, so you are relying on the
21 record?

22 MS. MANGIARACINA: I am relying on the record, and we
23 believe the state closes.

24 THE COURT: Well, you can, you can call the attorney
25 if you want to.

1 MS. MANGIARACINA: No. I mean, I'll wait. I will
2 wait.

3 THE COURT: Very Good. All right.

4 MR. FRIEDMAN: Your Honor, the state would submit that
5 the applicant had an opportunity to raise this issue at a
6 hearing at his motion for his new trial, as well as he had
7 a direct appeal on this issue. And the state would submit
8 that it's a direct appeal issue. It's not proper for PCR.

9 And to the extent that he's claiming ineffective
10 assistance of counsel based on Mr. Bryan's performance, we
11 would submit that there was no prejudice based on the
12 outcome of the motion for a new trial and the direct
13 appeal. Thank you.

14 THE COURT: So, you're both relying on the record?

15 MR. FRIEDMAN: Yes, Your Honor.

16 THE COURT: Very well. Arguments? Any further
17 argument?

18 MS. MANGIARACINA: Yes. I would like to say that
19 again how -- we can never know, since the jurors were never
20 asked, if they were a victim of a sexual battery since no
21 one ever referred to the statute to ascertain and have a
22 proper starting point to get any biases or any prejudices
23 against my client. That he's entitled to a jury that we
24 can ascertain is fair, not the victim of the same exact
25 crime that he is on trial for. Again I would submit that

1 any juror who came forward and said they had been a victim
2 of a sexual battery would have been excused for cause, but
3 counsel did have a peremptory challenge.

4 And as far, as far as -- I agree, I agree with the
5 state that this issue was not raised before, so I don't
6 believe I'm precluded from raising it on a PCR motion
7 application today.

8 THE COURT: Of course, section 16-1-60 provides that
9 for the purposes of definition under South Carolina law, a
10 violent crime includes the offenses of criminal sexual
11 conduct in the first and second degree, as well as criminal
12 sexual conduct with minors, first and second degree. Now,
13 I don't understand. The law, for the purposes of
14 definition under South Carolina law, expressly provides
15 that what the applicant was charged with was a violent
16 crime.

17 MS. MANGIARACINA: Your Honor, I respectfully
18 disagree. In fact ---

19 THE COURT: Okay. Well, please, if there's something
20 I'm missing, let me ---

21 MS. MANGIARACINA: I'd like to ---

22 THE COURT: Because you've lived with this case much
23 longer than I have.

24 (A PAUSE.)

25 MS. MANGIARACINA: Judge Burch said: I conclude as a

1 matter of law that the average juror would not necessarily
2 interpret the term violent crime to mean rape. I believe
3 that's clearly part of the problem. We know Juror Whiteny
4 said yes, I was raped, but I didn't know -- yeah, I didn't
5 consider it violent. So, it's a very strong -- we have one
6 juror already admitting it, that she, she didn't understand
7 the question because it's an improper question.

8 THE COURT: Well, again, if you'll forgive me, that's
9 not unusual, but that's why we have such offenses as
10 criminal sexual conduct with a minor. Under the old law,
11 it was statutory rape. It was the same as physical or
12 forcible rape except that it -- by reason of the age, it
13 was treated the same. And I think if anything, it was
14 perhaps to the applicant's benefit that they put it in the
15 most serious terms. That it was violent rather than
16 consensual because it could not have been consensual under
17 the circumstances.

18 MS. MANGIARACINA: Your Honor, but here, because the
19 jurors did not realize they were being asked if they had
20 been victims of rape, until they went in, you know, until
21 they then heard -- from their -- they were just being asked
22 have you ever been a victim of a violent crime. So, no one
23 came forward and, you know, said I was a victim, I was a
24 victim of rape.

25 The problem I have with counsel not asking the

1 questions, we didn't -- never got to the heart of the
2 matter. And these jurors slipped in and ended up being
3 empaneled, and they were former rape victims. And if the
4 question had just been specific, and if it -- you know,
5 it's almost easier ---

6 THE COURT: Well, let me ask you. Just, just for the
7 sake of the record, since you're requiring the court to
8 rely solely on the record, what would be the question that
9 you would find acceptable or at least satisfactory to you?

10 MS. MANGIARACINA: I, I would have started off and
11 said had you been the victim of sexual, criminal sexual
12 conduct, have you been the victim of sexual battery, and
13 gone through the elements. And then this way, there could
14 have been no misunderstanding of what, you know, the type
15 of juror ---

16 THE COURT: So, you're saying that what used to be
17 statutory rape was not rape?

18 MS. MANGIARACINA: No, not ---

19 THE COURT: I mean, it had, it had all of the physical
20 definitions of forcible rape: the battery, the touching,
21 the assault, the penetration, everything. But by reason of
22 age, it could not have been consensual.

23 MS. MANGIARACINA: What I understand, Your Honor, is
24 that the average juror, and certainly Juror Whitney did not
25 understand that violence equated to rape. And it would

1 have been much more effectual and effective to ask ---

2 THE COURT: Well, again I'm asking. What -- that
3 would not be a proper definition of criminal sexual conduct
4 in the second degree with a -- criminal sexual conduct with
5 a minor in the second degree. That would not be an
6 accurate description of what the offense is.

7 MS. MANGIARACINA: But isn't the best question to ask,
8 you know, is to actually go through the actual section
9 itself, maybe not read behind?

10 THE COURT: No, because if you're asking that, then
11 you're actually charging on the facts rather than the law.

12 MS. MANGIARACINA: No, I ---

13 THE COURT: Well, I'm saying that's what you're
14 saying, that why is it you're charging the indictment
15 rather than what is the law?

16 MS. MANGIARACINA: No, Your Honor, I wasn't charging
17 anything. I would say effective counsel wants to get to
18 the heart of the matter and wants to impanel only jurors
19 that have not been victims of the same crime that the
20 accused is charged with. And the most effective ---

21 THE COURT: Well, would you, would you understand, and
22 I don't know how I can do this. But some victims of
23 criminal sexual conduct with a minor in the second degree
24 do not realize that they have been violated. They think
25 it's consensual, and that is -- they think that is a

1 defense.

2 MS. MANGIARACINA: And that's my point. The jurors
3 may not have realized what the question was and because of
4 that, then they ended up on the jury. Now, you have to
5 remember ---

6 THE COURT: Well, then that sounds like why is it you
7 held out? Why is it? Because he didn't demonstrate
8 violence.

9 MS. MANGIARACINA: No. There's no way to know what
10 bias is in her head, and there's no way to know about the
11 eleven.

12 THE COURT: Well.

13 MS. MANGIARACINA: But we do know if the question had
14 been asked specifically, then, you know, and follow-up
15 questions of the jurors, would not have been seating the
16 prospective jurors.

17 THE COURT: Well, again, and mine -- that was the
18 basis of your appeal, was it not?

19 MS. MANGIARACINA: Well, I, I -- no. The new motion
20 in the appeal, Your Honor, really went to whether the
21 jurors had intentionally concealed that they were rape
22 victims in order to get on the jury, and that's not what
23 I'm bringing up at all today. What I'm saying is the
24 question ---

25 THE COURT: Well, could you have brought it up?

1 MS. MANGIARACINA: Could I have brought it up today on
2 appeal?

3 THE COURT: No, ma'am. On the appeal, could you have
4 brought it up?

5 MS. MANGIARACINA: I was not the attorney.

6 THE COURT: I didn't ask you if you were the attorney.
7 I'm asking could it have been brought up on the direct
8 appeal.

9 MS. MANGIARACINA: My argument ---

10 THE COURT: Could your issue have been ones that were
11 stated in a different way?

12 MS. MANGIARACINA: I'm sure it could have, but it
13 wasn't, but there's no reason why it couldn't be a PCR
14 appeal.

15 THE COURT: Well, you can't -- I mean, how many times,
16 how many times are you going to have the same issue
17 develop?

18 MS. MANGIARACINA: But this issue is -- but I -- my
19 argument with this issue is ---

20 THE COURT: No. No, excuse me. I think if it can be
21 brought up on direct appeal and you don't, that doesn't
22 give you the opportunity to come back on post-conviction
23 relief and go on and on.

24 MS. MANGIARACINA: Well, I respect -- I respectfully
25 argue that and must say I don't believe I am precluded,

1 through the research I have done, that I am not ---

2 THE COURT: Well, give me authority for it because as
3 I say, I haven't researched this until I sat down here this
4 morning. A few minutes ago in fact. Give me your, give me
5 your authority.

6 MS. MANGIARACINA: I don't have any authority with me
7 now.

8 THE COURT: Well, let ask you. Does the state have
9 any?

10 MR. FRIEDMAN: No, Your Honor.

11 THE COURT: In other words, you can bring up the same
12 matter that could be brought up on a direct appeal in a
13 PCR?

14 MR. FRIEDMAN: Your Honor, it's my understanding ---

15 THE COURT: You're not precluded from bringing up
16 matters that could been addressed in direct appeal on a
17 PCR?

18 MR. FRIEDMAN: Yes, Your Honor, they are precluded
19 from bringing it up. The only thing ---

20 THE COURT: Well, that's what I was asking for.

21 MR. FRIEDMAN: Yes, Your Honor, and that's based on
22 *Stoney vs. State*.

23 THE COURT: Pardon?

24 MR. FRIEDMAN: Based on *Stoney vs. State*.

25 THE COURT: All right, that's what I was asking. Give

1 me a cite.

2 MR. FRIEDMAN: Your Honor, it's 264 S.C. 417.

3 THE COURT: 264 S.C. 17?

4 MR. FRIEDMAN: 417, Your Honor.

5 THE COURT: 417.

6 (A PAUSE.)

7 THE COURT: All right.

8 MS. MANGIARACINA: Your Honor, I would also, I want to
9 point that we are -- part of our argument is based on the
10 United States Constitution. The state would -- should not
11 preempt from making his argument, federal argument under
12 the United States Constitution. The case I cited is *State*
13 *vs. Woods*, which is 345 S.C. 583.

14 THE COURT: Okay.

15 MS. MANGIARACINA: That'd be 2001, Your Honor.

16 THE COURT: 345 South Carolina?

17 MS. MANGIARACINA: 583, and the -- also advise -- oh,
18 I'm sorry, Supreme, Supreme Court.

19 THE COURT: Is it Supreme -- S.C. is Supreme Court.

20 MS. MANGIARACINA: Yes.

21 THE COURT: So, it should be S.C.T., not S.C., United
22 States Supreme Court. So, it's a United States Court --
23 United States Supreme Court decision, not a South Carolina
24 Supreme Court decision.

25 MR. FRIEDMAN: Your Honor, I believe it is a South

1 Carolina Supreme Court.

2 THE COURT: Well, which is it?

3 MS. MANGIARACINA: Your Honor, I'm sorry. It's a
4 South Carolina case. I, I just ---

5 MR. FRIEDMAN: It's also cited in the direct appeal
6 opinion.

7 THE COURT: Pardon?

8 MR. FRIEDMAN: It's also cited in the direct appeal
9 opinion.

10 THE COURT: It couldn't be because the one that you
11 just gave me was a 1975 opinion from Judge Hagley, who died
12 about that time, 1976.

13 MR. FRIEDMAN: And, Your Honor, it's *State v. Woods*.

14 THE COURT: Pardon?

15 MR. FRIEDMAN: The case that she cited is, is cited in
16 the direct appeal opinion, *State vs. Woods*, a 2001 case.

17 THE COURT: Oh, you mean the direct appeal case here
18 in this, this matter?

19 MR. FRIEDMAN: Yes.

20 THE COURT: Okay.

21 (A PAUSE.)

22 THE COURT: Well, it does look like the Court of
23 Appeals did address the question. All right, anything
24 else?

25 MS. MANGIARACINA: No, Your Honor.

1 THE COURT: All right, anything from the state?

2 MR. FRIEDMAN: Nothing, Your Honor.

3 RULING OF THE COURT:

4 THE COURT: All right, I find that there is a
5 preclusion by the direct appeal in this particular case.
6 The issue now raised on post-conviction relief is a matter
7 that should have been, could have been raised, if at all,
8 in the direct appeal and, in fact, was addressed by the
9 opinion of the Court of Appeals. Application denied.

10 MS. MANGIARACINA: Thank you, Your Honor.

11 THE COURT: Thank you, ma'am. Please understand that
12 it's difficult enough to try to hear and decide cases that
13 have issues that are beyond the transcript. And if you
14 have authority, it helps the court to provide the court the
15 authority rather than the court trying to find it for you.

16 In this case, you did find it, and I thank you. But
17 it would have been a whole lot more helpful if I'd have had
18 it when we started. That's both for the state and the
19 applicant.

20 If you have something that was dispositive,
21 particularly if you think that case is going to be decided
22 on the record, please provide the court with that. Having
23 had my say, I do thank you for your patience with the
24 court.

25 --- END OF TRANSCRIPT OF RECORD ---

1 THE COURT: All right, anything from the state?

2 MR. FRIERSON: Nothing, Your Honor.

3 RULING OF THE COURT:

4 THE COURT: All right, I find that there is a
5 preclusion by the direct appeal in this particular case.
6 The issue now raised on post-conviction relief is a matter
7 that should have been, could have been raised, if at all,
8 in the direct appeal and, in fact, was addressed by the
9 opinion of the Court of Appeals. Application denied.

10 MS. MANGIARACINA: Thank you, Your Honor.

11 THE COURT: Thank you, ma'am. Please understand that
12 it's difficult enough to try to hear and decide cases that
13 have issues that are beyond the transcript. And if you
14 have authority, it helps the court to provide the court the
15 authority rather than the court trying to find it for you.

16 In this case, you did find it, and I thank you. But
17 it would have been a whole lot more helpful if I'd have had
18 it when we started. That's both for the state and the
19 applicant.

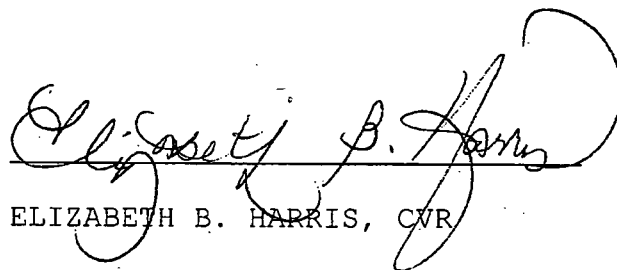
20 If you have something that was dispositive,
21 particularly if you think that case is going to be decided
22 on the record, please provide the court with that. Having
23 had my say, I do thank you for your patience with the
24 court.

25 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR HAMPTON COUNTY, SOUTH CAROLINA, ON
THE 31ST DAY OF AUGUST, 2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



ELIZABETH B. HARRIS, CVR

COLUMBIA, SOUTH CAROLINA

JANUARY 16TH, 2010

STATE OF SOUTH CAROLINA)

COUNTY OF ALLENDALE)

Roderick Bradley, #304569,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2008-CP-03-0285

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed November 12, 2008 and amended June 1, 2009. The Respondent made its Return on May 12, 2009. An evidentiary hearing into the matter was convened on August 31, 2009 at the Beaufort County Courthouse. The Applicant was present at the hearing and was represented by Michele Mangiaracina, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

This Court had before it the records of the Allendale County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, Final Brief of Appellant, Final Brief of Respondent, the Court of Appeals' opinion affirming the conviction and sentence, the Remittitur dated December 5, 2007, the Record on Appeal containing the trial transcript, the post-trial hearing transcript, the PCR application, and Respondent's Return thereto.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Allendale County Clerk of Court. Applicant was

1.64
2

indicted at the December 2003 term of the Allendale County Grand Jury for criminal sexual conduct (CSC) with minor – 2nd degree (2003-GS-03-209). J.D. Bryan, Esquire, represented him. On August 25-26, 2004, Applicant proceeded to trial, after which he was found guilty as indicted. The Honorable Paul M. Burch sentenced him to confinement for eleven (11) years.

Applicant filed a timely Notice of Appeal and a Motion for a New Trial pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure on September 7, 2004. James A. Brown, Jr., Esquire, represented Applicant on his post-trial motion. By Order dated April 22, 2005, the South Carolina Court of Appeals held the appeal in abeyance and remanded the case to the trial court to address the Rule 29(b) motion for a new trial. A post-trial hearing was convened before Judge Burch on August 18, 2005. By Order dated October 10, 2005, Judge Burch denied Applicant's motion for a new trial and all other post-hearing motions.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. After full briefing by both sides, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Bradley, Op. No. 2007-UP-532 (S.C. Ct. App. filed November 19, 2007). The Remittitur was issued on December 5, 2007.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Applicant was denied his right to an impartial jury in that prospective jurors were never asked during voir dire by trial court if they or anyone close to them were a victim of sexual misconduct or rape.
2. Applicant was denied his right to a fair trial due to bias of trial court.
3. Applicant was denied the effective assistance of counsel by trial counsel's
 - a. Failure to question jurors, through the trial judge, to determine a challenge for cause and to elicit facts enabling the intelligent use of preemptory strikes.
 - b. Failure to object to improper testimony regarding the mother of the complaining witness being a victim of rape.

2.04


At the hearing, PCR counsel asserted that the trial judge only raised one question during voir dire about whether jurors or close friends or relatives had been victims of a violent crime. PCR counsel asserted that the trial judge should have specifically asked whether jurors or friends or relatives had been victims of sexual battery or criminal sexual conduct and gone through the elements.

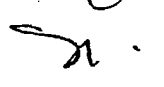
The State argued that Applicant had the opportunity to raise these issues during a post-trial motion hearing and on direct appeal. Moreover, the State argued that, to the extent that Applicant is raising ineffective assistance of counsel based on failure to request more extensive voir dire, the Applicant has failed to show prejudice.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Direct Appeal Issues

This Court need not address the merits of Applicant's allegations. This Court finds that these allegations raise direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant raised these issues in a post-trial motion and on direct appeal. The trial court denied the post-trial motion and the Court of Appeals affirmed the conviction and sentence. Accordingly, this Court summarily dismisses these allegations.

3.64


CONCLUSION

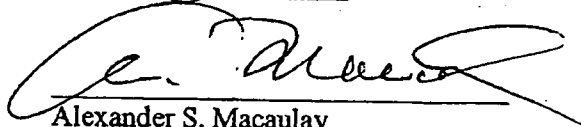
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. The Applicant has raised direct appeal issues that are procedurally barred from this PCR proceeding.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 227 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 1st day of June, 2009.



Alexander S. Macaulay
Presiding Judge
14th Judicial Circuit

W. H. de., South Carolina.

Skip Navigation

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Roderick Bradley, Appellant.

Appeal From Allendale County
Paul M. Burch, Circuit Court Judge

Unpublished Opinion No. 2007-UP-532
Heard November 6, 2007 – Filed November 19, 2007

AFFIRMED

Appellate Defender Aileen P. Clare, South
Carolina Commission, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W.
Elliott, Office of the Attorney General, of
Columbia; and Solicitor I. McDuffie Stone, III, of
Beaufort, for Respondent.

PER CURIAM: Roderick Bradley appeals the trial court's denial of a new trial following allegations of juror misconduct. We affirm.

FACTS

A jury convicted Bradley of second-degree criminal sexual conduct with a minor. During voir dire, no potential jurors responded when asked if they were victims of a violent crime. Following the verdict, Juror G[1] claimed two other jurors, Juror F and Juror W, stated they were rape victims during jury deliberations. Further, Juror G alleged one of the jurors used her

personal experience to explain why Bradley's alleged victim delayed making the sexual misconduct allegation. The trial court denied Bradley's motion for a new trial after finding Juror G was not credible and finding Juror W did not intentionally conceal information. This appeal follows.

LAW/ANALYSIS

1. Bradley argues the trial court erred in denying his motion for a new trial following allegations jurors disclosed they were rape victims during deliberations. We disagree.

A trial court's denial of a new trial motion due to allegations a juror gave misleading or incomplete information on voir dire will be affirmed absent a prejudicial abuse of discretion. State v. Guillebeaux, 362 S.C. 270, 274, 607 S.E.2d 99, 101 (Ct. App. 2004).

When determining if a new trial is warranted, this court must first determine if the juror's failure to respond was an intentional concealment. State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001). This is a fact intensive determination made on a case-by-case basis. Guillebeaux, 362 S.C. at 274, 607 at 101-02. In Woods, the South Carolina Supreme Court explained:

[I]ntentional concealment occurs when the question presented to the jury on voir dire is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable. Unintentional concealment, on the other hand, occurs where the question posed is ambiguous or incomprehensible to the average juror, or where the subject of the inquiry is insignificant or so far removed in time that the juror's failure to respond is reasonable under the circumstances.

345 S.C. at 588, 550 S.E.2d at 284.

In the case at hand, the trial court conducted a hearing following Juror G's accusations. During this subsequent hearing, the trial court asked Juror W, "[h]ave you even been the victim of a crime that you consider to be a violent crime?" Juror W responded, "[n]o, it wasn't a violent crime, but I have been raped." Further, Juror W denied anyone in the juror room indicated being a rape victim.[2]

The trial court found Juror G lacked credibility due to her demeanor and failure to disclose her relationship with Bradley's family during voir dire. Further, the trial court found Juror W to be a credible witness, who did not interject her personal experiences into jury deliberations and did not intentionally conceal information during voir dire.

Similarly, in State v. Sparkman, 358 S.C. 491, 496-97, 596 S.E.2d 375, 377 (2004), the South Carolina Supreme Court found a juror's failure to reveal he was a victim of an attack was unintentional because the attack occurred forty years prior to his jury service and the juror was unsure if his attack constituted a "serious crime."

Further, this court is mindful of the sanctity of jury deliberations. "[C]ourts should not intrude into the privacy of the jury room to scrutinize how jurors reached their verdict. . . . Normally, juror testimony involving internal misconduct is competent only when necessary to ensure due process, i.e. fundamental fairness." State v. Hunter, 320 S.C. 85, 88, 463 S.E.2d 314,

316 (1995). The court in Hunter found allegations of racial prejudice to involve principles of fundamental fairness. *Id.* See also, *State v. Franklin*, 341 S.C. 555, 560-62, 534 S.E.2d 716, 719-20 (Ct. App. 2000) (holding calling another juror derogatory names and yelling did not rise to the level of affecting the fundamental fairness of the trial).

Given the court's limited scope of review, the trial court's credibility findings, Juror W's testimony, and the interest in protecting the integrity of jury deliberations this court is constrained to affirm the trial court's holding the jurors did not intentionally conceal information. As this ruling is dispositive, this court need not address Bradley's remaining argument regarding prejudice. *Hagood v. Sommerville*, 362 S.C. 191, 199, 607 S.E.2d 707, 711 (2005) (appellate court need not reach remaining issues when an issue is dispositive).

CONCLUSION

For the reasons stated herein, the trial court's decision is

AFFIRMED.

HEARN, C.J., and KITTREDGE and THOMAS, JJ., concur.

[1] This court abbreviates the jurors' names, given the sensitivity of the discussed issues.

[2] The trial court determined Juror F's testimony was unnecessary because of the ambiguous nature of the voir dire question and because Bradley used all of his preemptory strikes prior to the seating of Juror F.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Allendale County

Alexander S. Macaulay, Circuit Court Judge

RODERICK BRADLEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

BRIEF OF PETITIONER

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER.

INDEX

INDEX.....	1
TABLE OF AUTHORITIES	2
ISSUE PRESENTED	3
STATEMENT	4
ARGUMENT	6
CONCLUSION	13

TABLE OF AUTHORITIES

Cases

<u>Ashley v. State</u> , 260 S.C. 436, 196 S.E.2d 501 (1973).....	6
<u>Caprood v. State</u> , 338 S.C. 103, 525 S.E.2d 514 (2000).....	10
<u>Cherry v. State</u> , 300 S.C. 115, 386 S.E.2d 624 (1989)	10
<u>Magazine v. State</u> , 361 S.C. 610, 606 S.E.2d 761 (2004)	11
<u>Palacio v. State</u> , 333 S.C. 506, 511 S.E.2d 62 (1999).....	11
<u>Pierce v. State</u> , 338 S.C. 139, 526 S.E.2d 222, (2000)	11
<u>Simmons v. State</u> , 264 S.C. 417, 215 S.E.2d 883 (1974).....	6
<u>State v. Beachum</u> , 288 S.C. 325, 342 S.E.2d 597 (1986)	10
<u>State v. Bradley</u> , Op. No. 2007-UP-532 (S.C.Ct.App. filed November 19, 2007).....	4, 9
<u>State v. Carpenter</u> , 277 S.C. 309, 286 S.E.2d 384 (1982).....	10
<u>State v. Newton</u> , 274 S.C. 287, 262 S.E.2d 906 (1980).....	10
<u>State v. Williams</u> , 266 S.C. 325, 223 S.E.2d 38 (1976).....	10
<u>State v. Woods</u> , 345 S.C. 583 , 550 S.E.2d 282 (2001).....	6

Statutes

S.C. Code §17-27-20(b).....	3, 6

Rules

Rule 29(b), SCRCrimP	4

Constitutional Provisions

S.C. Const. art. I, § 14.....	6
U.S. CONST. amend. XIV.....	6

ISSUE PRESENTED

Did the PCR judge err in finding that petitioner's PCR allegation was procedurally barred by S.C. Code §17-27-20(b) when petitioner alleged that trial counsel was ineffective for failing to object when the trial judge, during voir dire, failed to ask if any member of the jury pool was a rape victim and later, during a post trial motion for new trial, one of the jurors who found petitioner guilty of criminal sexual conduct with a minor second degree admitted that she was a rape victim?

STATEMENT

In December 2003, the Allendale Grand Jury indicted Bradley for criminal sexual conduct with a minor second degree, indictment #2003-GS-03-209. On August 25, 2004, Bradley proceeded to jury trial before the Honorable Paul M. Burch. The jury returned a verdict of guilty and Judge Burch sentenced Bradley to eleven years. A timely notice of intent to appeal was filed on petitioner's behalf.

On September 7, 2004, petitioner filed a motion for new trial pursuant to Rule 29(b) SCRCrimP. alleging that two jurors intentionally concealed information during voir dire and jury selection. James A. Brown, Jr. Esquire represented petitioner for the post trial motion. On April 22, 2005, the South Carolina Court of Appeals held the appeal in abeyance and remanded the case to the trial court to address the rule 29(b) motion for new trial. On August 18, 2005, Judge Burch held a hearing on petitioner's motion for a new trial. During the hearing the State argued that the affidavit alleging that jurors intentionally concealed information during voir dire was not credible and objected to further questioning. Judge Burch did not allow further questioning but asked one of the jurors, "Have you ever been the victim of a crime that you consider to be a violent crime?" (App. p. 290, lines 13-14). The juror answered, "No it wasn't a violent crime, but I have been raped." (App. p. 290, line 15). On August 22, 2005, petitioner filed a motion to reconsider the Rule 29(b) motion for new trial and reconvene certain jurors. In a written order signed October 10, 2005, Judge Burch denied the motion for new trial and all other post hearing motions.

A timely notice of intent to appeal was filed and the direct appeal perfected. The South Carolina Court of Appeals affirmed the sentence and conviction. State v. Bradley, Op. No. 2007-UP-532 (S.C.Ct.App. filed November 19, 2007). On November 12, 2008, petitioner filed an application for post conviction relief. The State filed a return on June 1, 2009. Petitioner filed an

amended application on June 1, 2009. On August 31, 2009, an evidentiary hearing was held before the Honorable Alexander S. Macaulay. In a written order signed October 1, 2009, Judge Macaulay denied relief and dismissed the application. A timely notice of intent to appeal was filed on October 27, 2009. On June 21, 2010, a petition for writ of certiorari was filed in the South Carolina Supreme Court. On September 4, 2012, the South Carolina Court of Appeals granted the petition for writ of certiorari and ordered further briefing. This brief of petitioner follows.

ARGUMENT

The PCR judge erred in finding that petitioner's PCR allegation was procedurally barred by S.C. Code §17-27-20(b) when petitioner alleged that trial counsel was ineffective for failing to object when the trial judge, during voir dire, failed to ask if any member of the jury pool was a rape victim and later, during a post trial motion for new trial, one of the jurors who found petitioner guilty of criminal sexual conduct with a minor second degree admitted that she was a rape victim

In ground C of the amended application for post conviction relief petitioner specifically alleges, "Applicant was denied the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 14 of the South Carolina Constitution by trial counsel's failure to question jurors, through the trial judge, to determine a challenge for cause and to elicit facts enabling the intelligent use of preemptory strikes. State v. Woods, 345 S.C. 583 at 587, 550 S.E.2d 282 (2001)." (App. p. 321). During the PCR hearing, counsel proceeded solely on ground C alleged in the amended indictment. (App. p. 324, lines 14 – p. 325, lines 1-2). PCR counsel argued that trial counsel was ineffective in failing to ascertain if prospective jurors had been the victim of rape or sexual battery. (App. p. 326). At the close of the PCR hearing Judge Macaulay stated, "All right, I find that there is a preclusion by the direct appeal in this particular case. The issue now raised on post-conviction relief is a matter that should have been, could have been raised, if at all, in the direct appeal and, in fact, was addressed by the opinion of the Court of Appeals. Application denied." (App. p. 339, lines 4-9). In the order of dismissal Judge Macaulay wrote:

This Court need not address the merits of Applicant's allegations. This Court finds that these allegations raise direct appeal issues that are procedurally barred by S.C. Code Ann. §17-27-20(b)(2003). Post conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The applicant raised these issues in a post-trial motion

and on direct appeal. The trial court denied the post-trial motion and the Court of Appeals affirmed the conviction and sentence. Accordingly, this court summarily dismisses these allegations. (App. p. 344).

The PCR judge erred. The issue of whether trial counsel was ineffective in failing to object when the trial judge, during voir dire, failed to ask if any member of the jury pool was a rape victim, the issue raised in post conviction relief, was not raised in a post trial motion and could not have been raised on direct appeal.

The issue raised on direct appeal was whether the jurors intentionally concealed the fact that they were rape victims. During voir dire the judge asked the following question:

Have any of you had close friends or yourself or had a close relative, immediate family member, that's been a victim of a violent crime?

(App. p. 36, lines 17-19). None of the potential jurors responded. Juror 43, Juror 117 and Juror 54, were seated on the petit jury. (App. p. 349). Trial counsel did not object to the ambiguous nature of the question and did not request that the judge ask if any member of the jury pool was a victim of rape or criminal sexual conduct.

On September 4, 2004, less than two weeks after petitioner's conviction, Juror 54 made a sworn affidavit stating that during jury deliberations in petitioner's case, Juror 43 and Juror 117 disclosed that they had been victims of rape. Juror 54's affidavit stated that "every member of the jury heard these statements." (App. pp 292-293).

The alleged victim delayed two weeks in reporting the incident. The delay became an issue at trial. (App. p. 84, lines 8 – p. 54, 55, lines 1-6; p. 90, lines 8-16). Juror 54's post-trial affidavit stated that "[o]ne of these jurors explained that her personal experience as a victim of rape explained the delay in the report of sexual battery allegations which was an issue in the case at bar. Every member of the jury was present when this statement was made." (App. pp 292-293).

Petitioner moved for a new trial on the basis that Juror 43 and Juror 117 intentionally concealed their history as rape victims in *voir dire*. (App. pp. 236-238). On August 18, 2005, a hearing was held on the motion for new trial. Juror 54 testified that Juror 43 admitted to being a rape victim during deliberations at appellant's trial. She testified that she saw Juror 43 in the courthouse on the morning of the post-trial hearing, and that Juror 43 denied her previous statement. (App. p. 5, lines. 5-25). Juror 43 did not testify at the post trial hearing¹. When asked about the timeframe of the alleged disclosures, Juror 54 testified as follows:

We went around, everybody went around, everybody stated their opinion as to why he was guilty, and if you didn't find him guilty, why. You had to say that. [Juror 43] said she's -- said why the little girl waited so long to tell her parents, because she was raped when she was younger and she waited a long time. Both of them [Jurors 43 and 117] stated that. (App. p. 6, line 24 – p. 7, lines 1-5).

Juror 54 testified that she was acquainted with some of petitioner's family members and went to their home after his trial. She said that "everyone was emotional, crying," and that they asked her "what when on" in the jury room. She testified that she relayed the information in her affidavit, and that she was contacted later to execute the affidavit. (App. p. 10, lines 4 - p. 11, lines 1-24; p. 14, lines 16-20; p. 17, lines. 4-13). Juror 54 testified that she did not disclose her social acquaintance with petitioner's family because she believed, according to the court's questions, that she could give both sides a fair trial. (App. p. 11, lines 16 - p. 12 - 14, lines 1- 11).

Juror 117 was the only other witness to testify during the hearing on the motion for new trial. She denied that anyone disclosed being a rape victim during deliberations. The State objected to additional questions about the affidavit's underlying allegations. The trial judge ruled, "I'm going

¹ In the order denying a new trial the judge noted that Juror 43's testimony was not necessary because the defense had no remaining peremptory strikes available at the time Juror 43 was chosen. (App. p. 299). According to the notes by the court reporter, however, defense counsel only used five of the ten allotted strikes. (App. p. 31).

to end it here. Based on that testimony of the family and everything that went on after that, based on that response this hearing is over.” (App. p. 288, lines 15 – 18).

Defense counsel requested the opportunity to proffer all pertinent testimony about the allegations. (App. p. 25, lines 18 - p. 26, lines 1- 7). The court did not allow additional witnesses but questioned Juror 117 as follows:

Q: This is highly unusual, but I'm going to do this on my own. Based on my prior *voir dire* a year ago, I'm going to pose this question. Have you ever been the victim of a crime that you consider to be a violent crime?

A: No, it wasn't a violent crime, but I have been raped.

(App. p. 290, lines 10-15).

In the order of dismissal the trial judge wrote, “This Court has made a finding of fact that neither the affidavit nor the testimony of Juror [54] is credible. Because Juror [54's] affidavit is not credible, no evidentiary hearing on the alleged concealment was required. Assuming *arguendo* that an evidentiary hearing was required, I conclude as a matter of law, that Juror [117] did not intentionally conceal information during *voir dire*.” (App. p. 297).

The South Carolina Court of Appeals affirmed the holding of the trial judge writing, “Given the court’s limited scope of review, the trial court’s credibility findings, Juror [117’s] testimony, and the interest in protecting the integrity of jury deliberations this court is constrained to affirm the trial court’s holding the jurors did not intentionally conceal information.” State v. Bradley, Op. No. 2007-UP-532 (S.C.Ct.App. filed November 19, 2007).

The issue raised by the direct appeal was whether or not the jurors intentionally concealed information. The issue raised by the PCR application is whether trial counsel was ineffective for failing to object when the trial judge, during voir dire, failed to ask if any member of the jury pool was a rape victim. The PCR judge erred in finding that the PCR allegation that counsel was ineffective for failing to object when the trial judge, during voir dire, failed to ask if any member of the jury pool was a rape victim was raised on direct appeal. The issue could not have been raised on direct appeal as there was no objection to the voir dire as given and no request for more specific questioning.

It is a well established rule of appellate practice that, except in death penalty cases, questions neither presented to nor passed upon by the trial court cannot be raised for the first time on appeal. State v. Beachum, 288 S.C. 325, 342 S.E.2d 597 (1986); State v. Newton, 274 S.C. 287, 262 S.E.2d 906 (1980). The Court usually will not consider an ineffective assistance of counsel issue on appeal from a conviction. *See, e.g.,* State v. Carpenter, 277 S.C. 309, 286 S.E.2d 384 (1982). This is especially true where, as here, the issue below was not presented to the trial court and, therefore, there is nothing in the record for us to review. "The effect of efforts to raise this point [ineffective assistance of counsel claim] is to request this Court to hear the matter in our original jurisdiction. This is an appellate court for the correction of errors of law committed at the trial level. This question was not pursued at the trial level, and we decline to try it now." State v. Williams, 266 S.C. 325, 337, 223 S.E.2d 38, 44 (1976).

The appellate courts give great deference to the PCR court's findings of fact and conclusions of law. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). On review, a PCR judge's findings will be upheld if there is any evidence of probative value to support them. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). If no probative evidence exists

to support the findings, this Court will reverse. Pierce v. State, 338 S.C. 139, 144, 526 S.E.2d 222, 225 (2000). There is no probative evidence to support the PCR judge's finding that the allegation raised at PCR was raised on direct appeal. As the PCR judge failed to make a finding as to ineffective assistance of counsel, petitioner is entitled to a remand for a determination of whether trial counsel was ineffective for failing to object when the trial judge, during voir dire, failed to ask if any member of the jury pool was a rape victim.

Petitioner submits that trial counsel was ineffective in failing to ascertain if prospective jurors were victims of rape or sexual battery. Petitioner was prejudiced by the deficient performance because a rape victim, Juror 117, was seated on the jury that convicted petitioner of criminal sexual conduct with a minor second degree. At the time Juror 117 was seated on the jury, trial counsel had only used three strikes. (App. p. 31). The present case is distinguished from Palacio v. State, 333 S.C. 506, 511 S.E.2d 62 (1999) and Magazine v. State, 361 S.C. 610, 606 S.E.2d 761 (2004). In Palacio the South Carolina Supreme Court reviewed a finding by the PCR court that counsel was ineffective for failing to use a peremptory strike as her client instructed. In reversing the PCR court, the South Carolina Supreme Court found that jury selection is not a defendant's right but rather a matter of trial strategy. The Palacio Court wrote, "a criminal defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury." Id. at 516, 511 S.E.2d at 68. The challenge in the present case was not to counsel's exercise of strikes but to counsel's failure to ascertain information about prospective jurors and use a peremptory strike or a possible strike for cause in order to prevent the victim of rape to sit as a juror in a trial for criminal sexual conduct with a minor second degree.

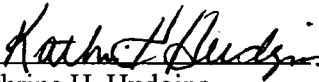
In Magazine v. State, 361 S.C. 610, 606 S.E.2d 761 (2004), the South Carolina Supreme Court agreed that counsel failed to properly evaluate and select jury members but found that

respondent failed to present evidence that counsel's error resulted in a violation of respondent's right to a trial by a competent and impartial jury. In the present case, counsel's failure to ascertain information about whether prospective jurors were victims of rape or sexual battery resulted in a rape victim sitting on the jury. Petitioner was denied the right to a trial by a competent and impartial jury.

CONCLUSION

Based on the above argument, the case should be remanded for a new PCR hearing.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER.

This 7th day of February, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Allendale County

Alexander S. Macaulay, Circuit Court Judge

RODERICK BRADLEY,

PETITIONER,

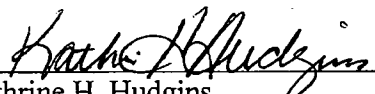
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

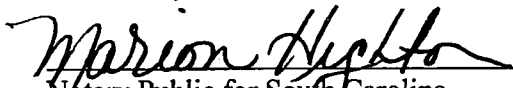
I certify that a true copy of the brief of petitioner, in this case has been served on Ashleigh R
Wilson, Esquire, this 7th day of February, 2013.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 7th day
of February, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Allendale County
Honorable Alexander S. Macaulay, Circuit Court Judge

Appellate Case No. 2009-145087
Lower Court Case No. 2008-CP-03-0285

RODERICK BRADLEY, #304569

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General
#100269

Post Office Box 11549
Columbia, SC 29211
(803) 734-6305

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
QUESTION PRESENTED	1
STATEMENT OF THE CASE	2
ARGUMENT	4
CONCLUSION	10

TABLE OF AUTHORITIES

Cases:

<u>Butler v. State</u> , 286 S.C. 441, 334 S.E.2d 813 (1985).	4
<u>Cherry v. State</u> , 300 S.C. 115, 386 S.E.2d 624 (1989).	4, 5, 6
<u>Cummings v. State</u> , 274 S.C. 26, 260 S.E.2d 187 (1979).	5
<u>Dempsey v. State</u> , 363 S.C. 365, 610 S.E.2d 812 (2005).	6
<u>Palacio v. State</u> , 333 S.C. 506, 511 S.E.2d 62 (1999).	8
<u>State v. Patterson</u> , 324 S.C. 5, 482 S.E.2d 760 (1997).	8
<u>Strickland v. Washington</u> , 466 U.S. 668, 104 S.Ct. 2052 (1984).	4, 5, 7
<u>Thornes v. State</u> , 310 S.C. 306, 426 S.E.2d 764 (1993).	6
<u>United States v. Fulks</u> , 454 F.3d 410 (4th Cir. 2006).	9
<u>Wolfe v. State</u> , 326 S.C. 158, 485 S.E.2d 369 (1997).	5

Other Authorities:

S.C. Code Ann. § 17-27-20(b) (1976).	4, 5

QUESTION PRESENTED

Did the PCR court err in finding the Petitioner's PCR allegation was procedurally barred by S.C. Code Ann. §17-27-20(b) when the issue presented at the PCR hearing was similar to that presented on direct appeal and the Petitioner failed to carry his burden of proving ineffective assistance of counsel?

STATEMENT OF THE CASE

The Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Allendale County Clerk of Court. The Petitioner was indicted at the December 2003 term of the Allendale County Grand Jury for criminal sexual conduct (CSC) with a minor- 2nd degree (2003-GS-03-0209). He was represented by J.D. Bryan, Esquire. On August 25-26, 2004, the Petitioner proceeded to trial, after which he was found guilty. The Honorable Paul M. Burch sentenced the Petitioner to confinement for 11 years.

The Petitioner filed a timely Notice of Appeal and a Motion for New Trial pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure on September 7, 2004. James A. Brown, Jr., Esquire, represented the Petitioner on his post-trial motion. By Order dated April 22, 2005, the South Carolina Court of Appeals held the appeal in abeyance and remanded the case to the trial court to address the Rule 29(b) motion for a new trial. A post-trial hearing was convened before Judge Burch on August 18, 2005. By Order dated October 10, 2005 Judge Burch denied the Petitioner's motion for a new trial and all other post-trial motions.

After full briefing from both sides, the South Carolina Court of Appeals affirmed the Petitioner's conviction and sentence. State v. Bradley, Op. No. 2007-UP-532 (S.C. Ct. App. Filed November 19, 2007). The Remittitur was issued on December 5, 2007.

The Petitioner filed an application for post-conviction relief on November 12, 2008. The Respondent made its Return on May 12, 2009. The Petitioner amended his application on June 1, 2009. An evidentiary hearing was convened on August 31, 2009 at the Beaufort County Courthouse. The Petitioner was present at the hearing and represented by Michele Mangiaracina, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Office of the Attorney General represented the Respondent. By Order dated October 1, 2009, the Honorable Alexander S.

Macaulay denied and dismissed with prejudice the Petitioner's application for post-conviction relief.

The Petitioner filed a timely Notice of Appeal. The Petitioner's Petition for Writ of Certiorari was granted by Order dated September 4, 2012 and the Petitioner submitted his brief on February 7, 2013. This Brief of Respondent follows.

ARGUMENT

There is probative evidence to support the lower court's dismissal of the Petitioner's application for post-conviction relief.

Petitioner asserts that the post-conviction relief court erred by finding the Petitioner's allegations raised direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b). (App. 344). Respondent submits probative evidence exists to support the post-conviction relief court's findings. This Court should affirm the lower court's findings.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have

been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test.

On appeal, this Court must affirm the circuit court's denial of post-conviction relief when there is probative evidence to support the findings of the circuit court. Wolfe v. State, 326 S.C. 158, 485 S.E.2d 369 (1997); Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The Respondent submits there is probative evidence to support the lower court's finding that the issue raised on direct appeal was similar to the issue presented by the Petitioner during the evidentiary hearing. An application for post-conviction relief is not a substitute for an appeal and errors which could have been reviewed on appeal may not be asserted for the first time, or reasserted in Post-Conviction proceedings. Cummings v. State, 274 S.C. 26, 27-28, 260 S.E.2d 187, 188 (1979) (citing S.C. Code Ann. § 17-27-20(b) (1976)). On both direct appeal and during the post-conviction relief evidentiary hearing, the Court was presented argument about whether the failure of jurors to disclose during *voir dire* that they were victims of rape warranted the reversal of the Petitioner's conviction and a new trial.

Moreover, if this Court finds the direct appeal and post-conviction relief allegations were dissimilar, the Respondent submits remand and reversal are both improper in this case since the allegation pursued on PCR was fully litigated and the Petitioner failed to carry his burden of proving trial counsel did not provide ineffective assistance of counsel. The Respondent submits trial counsel was not deficient for failing to question jurors through the trial judge, to determine a challenge for cause and to elicit facts enabling the intelligent use of peremptory strikes. The record reflects the Petitioner was given the opportunity to fully present his case with regard to his allegation of ineffective assistance of counsel during the evidentiary hearing and he failed to

carry his burden of proof. After lengthy argument to the Court about the allegation the following exchange took place between PCR counsel and the Court:

Counsel: And I would like to mention that you know, we are not seeking an acquittal but a new trial by people that we are sure have not been the victim of the same crime that an application is being tried for. Thank you.

Court: All right, you may call your first witness.

Counsel: At this time, I'm not, I'm not calling anyone your Honor.

Court: All right, so you are relying on the record?

Counsel: I am relying on the record, and we believe the state closes. (App. 328:11-23).

After this exchange, additional argument was presented to the Court by both the Petitioner and the State. The Respondent submits the Petitioner was given the opportunity to present this allegation and did present this allegation to the Court during an evidentiary hearing, therefore, remand of the matter would be improper.

The Respondent submits further reversal of the Petitioner's conviction will also be improper since the Petitioner failed to carry his burden of proving counsel's performance was deficient. An attorney's performance is not deficient if it is reasonable under professional norms. Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) (citing Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989)). Counsel's performance was reasonable under professional norms. The record reflects that during *voir dire*, the potential jurors were asked "Have any of you had close friends, or yourself, or had close relatives, immediate family members, that's been the victim of a violent crime". (App. 36:17-19). No juror responded affirmatively. Trial counsel could not have been expected to request that the Court inquire into whether any of the jurors had been the victim of rape or sexual battery when none of the potential jurors indicated they were the victims of a violent crime. An attorney is never required to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial. Thornes v. State, 310 S.C. 306, 309-10, 426 S.E.2d 764, 765 (1993). Since we cannot expect trial

counsel to be clairvoyant as to facts about the background of jurors that was discovered post-trial, we must evaluate his conduct at the time the alleged ineffectiveness occurred. During *voir dire*, the potential juror's response to the Court's question prevented counsel from needing to ask whether any jurors had been the victim of rape or sexual battery. The Respondent submits further, the Petitioner has presented no evidence or made any assertion that counsel would have exercised a peremptory strike during *voir dire* had he known of the information.

The Respondent also submits that any alleged deficiency by counsel for failing to request further *voir dire* on the issue was cured by counsel's "Motion for a New Trial" pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure. When counsel learned of that two jury members may have been the victim of rape or sexual battery and they had not disclosed that information to the Court during *voir dire*, he requested that the Court grant the Petitioner a new trial. Ultimately, the issue was resolved after a hearing. The Petitioner has failed to show how trial counsel's performance was deficient.

The Respondent submits the Petitioner also failed to carry his burden of proving that prejudice resulted from counsel's performance. An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment. Strickland v. Washington, 466 U.S. 668, 693, 104 S. Ct. 2052, 2067 (1984). It is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding. Id. Virtually every act or omission of counsel would meet that test, and not every error that conceivably could have influenced the outcome undermines the reliability of the result of the proceeding. Id. When a defendant challenges a conviction, the question is whether there is a reasonable probability that, absent the errors, the fact finder would have had a reasonable doubt respecting guilt. Id. at 695, 104 S. Ct. at 2068-69.

Counsel's failure to request questioning about whether the jurors had been the victim of rape or sexual battery would not have caused the fact finder to have a reasonable doubt respecting the Petitioner's guilt. Whether the Petitioner was entitled to a new trial on the basis of a statement from one juror who claimed two other jurors disclosed they were victims of rape during deliberation was fully litigated when counsel filed a "Motion for a New Trial". The trial judge denied the Petitioner's motion and concluded "This Court has made a finding that neither the affidavit nor the testimony of Juror Grant is credible. Because Juror Grant's affidavit is not credible, no evidentiary hearing on the alleged concealment was required. Assuming *arguendo* that an evidentiary hearing was required, I conclude as a matter of law, that Juror Whitney did not intentionally conceal information during *voir dire*." (App. 297). The issue was also reviewed on direct appeal and this Court concluded "Given the court's limited scope of review, the trial court's credibility findings, Juror W's testimony, and the interest in protecting the integrity of the jury deliberations this court is constrained to affirm the trial court's holding". (App. 348). Since this issue was reviewed by both the trial judge and this Court on direct appeal and neither Court held the juror's statement warranted a new trial, it is unlikely trial counsel's failure to request further questioning during *voir dire* would have warranted the granting of post-conviction relief and a new trial.

Also, the presence of a rape victim on the jury for a trial in which the defendant is charged with criminal sexual conduct with a minor does not automatically preclude the defendant from getting a fair trial or impartial jury. A criminal defendant has no right to a trial by any particular jury, by only a right to a trial by a competent and impartial jury. Palacio v. State, 333 S.C. 506, 517, 511 S.E.2d 62, 68 (1999) (citing State v. Patterson, 324 S.C. 5, 482 S.E.2d 760 (1997)). Also, there is no *per se* rule requires the exclusion of jurors who have been victims

(or whose close relatives have been victims) of a crime similar to that with which the defendant is charged. United States v. Fulks, 454 F.3d 410, 433-34 (4th Cir. 2006).

The Petitioner has presented no evidence to indicate that the jurors alleged to have withheld their prior experience as rape victims were unable to be fair and impartial jurors. Despite at least one of the jury members at the Petitioner's trial being the victim of rape, all jurors on the panels agreed they could be fair and impartial during *voir dire*. After announcing the Petitioner was charged with criminal sexual conduct with a minor- second degree, the Court asked the potential jurors "Any member of the petit jury panel conscious of any interest, any bias, or any prejudice for or against the defendant, if so, please stand" The Court also asked the potential jurors "Can each member of the petit jury panel give the State and the defendant, Roderick Bradley, a fair and impartial trial, if not please stand at this time." (App. 36: 8-16). Neither question received a response from the potential jurors. The Respondent submits the Petitioner has failed to carry his burden of proving that but for counsel's performance the result of his trial would have been different.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that this Court should affirm the lower court's ruling denying post-conviction relief.

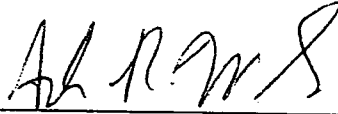
[Signature on the following page.]

Respectfully submitted,

ALAN WILSON
Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

BY:



Ashleigh R. Wilson
#100269

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

May 13, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ALLENDALE COUNTY
In The Court of Common Pleas

The Honorable Alexander S. Macaulay, Circuit Court Judge

Case No. 2008-CP-03-0285

Appellate Case No. 2009-145087

RODERICK BRADLEY,

Appellant,

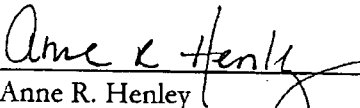
v.

STATE OF SOUTH CAROLINA,

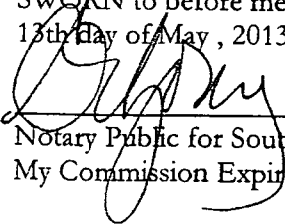
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Brief of Respondent has been served upon opposing counsel, Kathrine Hudgins, by mailing two (2) copies in an envelope properly addressed with postage prepaid this 9th day of May, 2013


Anne R. Henley
Legal Assistant for Respondent

SWORN to before me this
13th day of May, 2013.


Notary Public for South Carolina.

(L.S.)

My Commission Expires: 11/28/2014