

ORIGINAL

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
The Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Trial Court Case No: 2011-CP-32-0402
Appellate Case No: 2013-002473

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S.C. Supreme Court

TIMOTHY J. WILSON

RESPONDENT/PETITIONER,

v.

STATE OF SOUTH CAROLINA

PETITIONER/RESPONDENT.

Appendix Vol. 3 of 3

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STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON ___) COURT OF COMMON PLEAS
 2011-CP-32-00402

TIMOTHY WILSON)
)
) APPLICANT
)
) vs. TRANSCRIPT OF RECORD
)
STATE OF SOUTH CAROLINA)
)
) RESPONDENT

)

January 29, 2013
Lexington, South Carolina

B E F O R E:

THE HONORABLE R. LAWTON MCINTOSH, Judge.

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

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1 THE COURT: Let me place this one on the record.

2 I was at the Bar convention this weekend, ran
3 into Ms. Blanchette, and we didn't discuss the case
4 specifically. She did say she was going to have a long
5 one. I told you about that yesterday. I just want to
6 make sure I disclosed that communication with
7 Ms. Blanchette. No attempt to discuss the case whatsoever
8 was done. Okay?

9 MR. APLIN: Thank you, Your Honor. I appreciate
10 that.

11 THE COURT: All right.

12 MR. APLIN: This case is, as we were just
13 discussing, Timothy Wilson versus the State. It is
14 Lexington County Case 2011-CP-32-402. Mr. Wilson is
15 present here represented by Tricia Blanchette, and I am
16 Ben Aplin on behalf of the State Attorney General's
17 Office.

18 One preliminary matter. The State has a witness
19 that we were going to call in response to the very last
20 allegation in the amended application which goes to
21 ineffective assistance of appellate counsel. I talked to
22 Ms. Blanchette about it. She had no objections to me
23 going ahead and calling this witness. It will take about
24 five minutes, and then we can get her out of here, if
25 that's okay.

1 THE COURT: Sure. Absolutely.

2 Is that correct, Ms. Blanchette?

3 MS. BLANCHETTE: That is perfectly fine, Your
4 Honor.

5 MR. APLIN: Thank you, Your Honor. The State
6 would call Jennifer Roberts.

7 JENNIFER ROBERTS, after being duly sworn,
8 testified as follows:

9 THE COURT: Be seated, please.

10 DIRECT EXAMINATION

11 BY MR. APLIN:

12 Q Ms. Roberts, can you just state your full name for
13 the record.

14 A Jennifer Roberts.

15 Q And where do you currently work?

16 A I work at the Attorney General's Office.

17 Q In what capacity?

18 A I'm in Criminal Appeals. I'm an Assistant Attorney
19 General.

20 Q So you have been there about how long?

21 A I have been there since August 2.

22 Q Of this year?

23 A Of this past year.

24 Q All right. And prior to working at the Attorney
25 General's Office, where did you work?

1 A I worked at the South Carolina Court of Appeals.

2 Q And in what capacity did you work there?

3 A I was a staff attorney.

4 Q As a staff attorney, just very briefly, what were
5 your duties at the Court of Appeals?

6 A My duties included reading briefs and records that
7 came into our office, preparing a bench memo for the
8 judges and a proposed opinion.

9 Q Okay. And you did that on criminal cases and civil
10 cases?

11 A I did, any case that came through our doors.

12 Q Included in those criminal cases, did you ever have
13 an opportunity or were required to review what is known as
14 an Anders appeal?

15 A Yes, I did.

16 Q Okay. Could you just tell the Court what goes into
17 that review, briefly?

18 A Yes. With an Anders, it's a little different because
19 we have the entire transcript as a record, and we are
20 required to read through the entire transcript, take notes
21 on any objections made throughout the transcript, and see
22 if there are any merits-based issues within that that were
23 not picked up by the attorney.

24 Q Now, when you say "picked up by the attorney," the
25 attorney actually does file a brief in an Anders case?

1 A Right. In an Anders case, the appellate attorney
2 files a brief with an issue and then also files a motion
3 to be dismissed saying that that attorney feels that the
4 issue is not of merit, and then we look through just to
5 make sure that there aren't any other issues that may be
6 of merit.

7 Q And the defendant has an opportunity to file
8 something as well or not?

9 A Yes, the applicant can also -- or the appellant can
10 also file a pro se brief and bring up his own issues.

11 Q Okay. And if I understand what you testified to a
12 minute ago is regardless of what issues are raised in that
13 brief, either of those briefs, part of your job was to
14 review the entire case to look for meritorious issues?

15 A Right. Any of the attorneys would have to go through
16 the entire case.

17 We actually had a form that we used where we
18 would note any objections, what it was based on, and then
19 if there were any issues that we found, we would then
20 report that to our supervisors and eventually they would
21 be sent back to the attorney to rebrief. And it could
22 actually become a different type of appeal after that
23 happened instead of being an Anders.

24 Q And was that just based on one person's review, you
25 made that decision or made that call?

1 A No, that would go back to the judges.

2 Q Okay. And did they have staff people who also looked
3 at these cases?

4 A If it got -- if it turned into a chambers case after
5 starting out as an Anders case, then that would go to a
6 judge's staff member, to the law clerk.

7 Q And you didn't review Mr. Wilson's appeal?

8 A I did not. In fact, I looked at that one and the
9 date was prior to my working there.

10 MR. APLIN: Okay. No further questions.

11 THE COURT: Ms. Blanchette.

12 CROSS-EXAMINATION

13 BY MS. BLANCHETTE:

14 Q Do you know exactly how long the procedure that you
15 explained regarding the checklist and form had been used
16 at the Court of Appeals prior to you working there?

17 A I do not.

18 Q Okay. And you said you didn't specifically handle
19 Mr. Wilson's appeal; is that correct?

20 A No, I didn't.

21 Q Okay. Are you familiar, though, with the opinion or
22 with the issues in an Anders case when the appeal is
23 dismissed?

24 A Yes, I am.

25 Q Okay. If I can show you this --

1 MS. BLANCHETTE: Your Honor, do you mind if I
2 approach?

3 THE COURT: No, ma'am.

4 MS. BLANCHETTE: Would you like me to ask all
5 day or am I free to approach?

6 THE COURT: Please, both of you make yourself at
7 home.

8 BY MS. BLANCHETTE:

9 Q If you could just look at the second page of the
10 decision there. Do you see where it lists or does it
11 indicate if the pro se brief in this case was reviewed?

12 A It does not indicate in this opinion.

13 Q Okay. Does it typically indicate if a pro se brief
14 was reviewed?

15 A When I worked there, we did typically include that in
16 the language. It might have said, "after a thorough
17 review of the record, Counsel's brief and pro se brief,"
18 or something along those lines.

19 Q Okay. So typically it would be included in that line
20 there in an opinion or in the decision?

21 A To the best of my memory when I worked there.

22 MS. BLANCHETTE: Okay. Your Honor, I have no
23 further questions.

24 THE COURT: Redirect.

25 MR. APLIN: That's all, Your Honor.

1 THE COURT: Thank you, ma'am.

2 May she be excused?

3 MR. APLIN: She may.

4 THE COURT: Was there any motion for
5 reconsideration of the Anders brief, the order?

6 MS. BLANCHETTE: A petition for rehearing?

7 THE COURT: Uh-huh. Yes, thank you. I don't
8 know the right terminology.

9 MS. BLANCHETTE: I do not have one in the file
10 that was provided to me, Your Honor.

11 THE COURT: Okay.

12 MS. BLANCHETTE: Does the State have any further
13 information on that?

14 MR. APLIN: The records we obtained from the
15 appeal, we didn't have any indication there was a petition
16 for rehearing.

17 THE COURT: Okay. Very good.

18 All right. Ms. Blanchette, you ready to
19 proceed?

20 MS. BLANCHETTE: I am, Your Honor.

21 THE COURT: All right. Would you call your
22 first witness.

23 MS. BLANCHETTE: I would call Dr. Donna
24 Schwartz-Watts to the stand.

25 DR. DONNA SCHWARTZ-WATTS, after being duly

1 sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. BLANCHETTE:

4 Q Could you please state your name for the record.

5 A Sure. Donna Marie Schwartz-Watts, S-C-H-W-A-R-T-Z
6 hyphen W-A-T-T-S.

7 Q And is your proper title doctor; is that correct?

8 A Yes, it is.

9 Q Okay. Dr. Schwartz-Watts, I'm going to hand you
10 this. If you could identify what it is or appears to be
11 for the record.

12 A Yes, this is a copy of my CV.

13 MS. BLANCHETTE: Your Honor, at this time I
14 would move this in as Applicant's Number 1.

15 MR. APLIN: No objection.

16 THE COURT: Admitted without objection.

17 (WHEREUPON, Applicant's Exhibit Number 1 was
18 marked for identification and received into
19 evidence.)

20 MS. BLANCHETTE: Would the Court like a copy?

21 BY MS. BLANCHETTE:

22 Q Dr. Schwartz-Watts, have you testified in the state
23 of South Carolina as an expert before?

24 A I have.

25 Q And what is the typical qualification that you

1 receive, what is the expert title?

2 A In forensic psychiatry.

3 Q Okay. And what is your present position? What do
4 you currently do for employment?

5 A I have two jobs. I work for the State at Bryan
6 Psychiatric Hospital, I'm a senior psychiatrist there and
7 I take care of patients, and then I have a private
8 practice in forensic psychiatry.

9 Q Okay. And how long have you been practicing in
10 forensic psychiatry?

11 A Twenty years.

12 Q Okay. Do you hold any professional licenses?

13 A I do.

14 Q Okay. And what are those or what is that?

15 A I'm licensed to practice medicine in the South
16 Carolina and I'm board certified in psychiatry and I have
17 added qualifications in forensic psychiatry.

18 Q Okay. And unless the State would like me to do so,
19 I'm going to kind of briefly go over your CV here.

20 Have you had a number of employment positions
21 beside your current employment in the area of psychiatry?

22 A Not really. I worked -- when I finished my residency
23 in 1993, I went on to work at the Department of Mental
24 Health for a few years, and at that point USC and the
25 Department of Mental Health, they commonly routinely

1 employed -- you had a dual employment, and so then I went
2 on to USC for 17 years, and I just -- I left there a few
3 years ago, and so I'm back at Mental Health. So I really
4 only -- in the 23 years I've worked for either Mental
5 Health or the University of South Carolina.

6 Q Okay. And have you received any honors and awards in
7 this area during your career?

8 A Sure.

9 Q Okay. Have you had the opportunity to publish
10 anything, and if so, approximately how many publications
11 have you had?

12 A I have. It's just enough to make clinical professor.

13 When I worked at the University, of course it's
14 an academic institution so you have to publish and do
15 research and presentations. I still -- I have a different
16 title there now. I still teach there, but I'm not fully
17 employed anymore, so I've published in the area of
18 stalkers, capital murderers, a few other areas, and then
19 I've done numerous presentations.

20 Q As far as your work on cases, or your consulting
21 work, approximately how many cases have you consulted or
22 worked as an expert on, do you know?

23 A Tens of thousands.

24 Q Okay. Do you know how many times you have been
25 qualified as an expert in this area in the state of South

1 Carolina?

2 A Probably around 800 times now.

3 MS. BLANCHETTE: Your Honor, at this time I
4 would move to have Dr. Schwartz-Watts qualified as an
5 expert in the area of forensic psychiatry.

6 THE COURT: Any voir dire?

7 MR. APLIN: No voir dire, and no objection, Your
8 Honor.

9 THE COURT: So you stipulate to her expertise in
10 the field of forensic psychiatry?

11 MR. APLIN: That's correct, Your Honor.

12 THE COURT: Very good.

13 BY MS. BLANCHETTE:

14 Q Now, Dr. Schwartz-Watts, let me ask you about this
15 specific case.

16 Did you have an opportunity to review the case
17 file of Timothy Wilson and meet with him?

18 A I did.

19 Q Okay. And specifically what did you do in that
20 regard?

21 A I had the evaluation of the victim in this case, the
22 ARC evaluation that was done, and then I read the entire
23 trial transcript. And then I went out to the Department
24 of Corrections and I evaluated Mr. Wilson.

25 Q And as part of that evaluation, I'm going to ask you

1 some specific questions.

2 First, focusing on his psychiatric history, what
3 were you able to ascertain from evaluating him in that
4 area?

5 A I think there are two things that were important. He
6 thinks -- he never had formal treatment, but he probably
7 had attention deficit disorder as a child, and I think
8 that was important because I think it had a lot to do with
9 his relationship with his daughter, some of the same
10 behaviors, he had that history, but more importantly, he
11 has what is called a social phobia. He has a fear of --

12 THE COURT: Dyssocial?

13 THE WITNESS: A social phobia. I'm sorry, I
14 have a cold, Your Honor.

15 A social phobia, and that is where he has a fear
16 of speaking in public, things such as testifying, speaking
17 in front of groups.

18 Very interestingly, he's kind of -- at the
19 Department of Corrections now he's in a program called
20 Jump Start where he's tackling that behavior head on. He
21 has to speak publicly in his groups and he's learning how
22 to tolerate his anxiety.

23 BY MS. BLANCHETTE:

24 Q And if you had been consulted with by defense
25 counsel, is that information you could have shared with

1 him and assisted him in preparing Mr. Wilson to testify in
2 light of this social phobia?

3 A Yes.

4 Q Okay. And as far as substance abuse history, was
5 there anything remarkable there?

6 A No. And that's important. Because of the nature of
7 the evaluation you asked me to do, that's a factor we have
8 to consider. When you're doing a risk assessment, that is
9 one of the things we look at. So there was nothing he
10 could add to it.

11 Q And let's put this on the record. You did a risk
12 assessment in this case. Could you explain what that is
13 and what that's typically used for?

14 A Sure.

15 Ms. Blanchette asked me -- you know, Your Honor,
16 we can't tell whether somebody's done a crime or not.
17 We're no better at finding the truth than a jury or a
18 judge.

19 But what we did in this case, he had an
20 allegation that he had had a sexual relationship with his
21 late teenage daughter, so Ms. Blanchette asked me to do an
22 evaluation similar to the sexually violent predator
23 statute to look at his risk for reoffending and anything
24 that may have been helpful for her. And so what we do --
25 we do risk assessments in medicine all the time. You

1 know, we have actuarial skills from insurance companies,
2 we know who's at risk for a heart attack, et cetera. That
3 doesn't mean you're going to have one, but we look at that
4 risk. And so what I did in Mr. Wilson's case is I went
5 through all the risk factors for him.

6 Q Okay. And I will just go through those that we
7 haven't talked about yet as far as developmental history.
8 Did you have any findings there that were remarkable?

9 A Well, other than his parents divorced when he was
10 young. He's got a very good relationship with his
11 stepfather. His mother remarried when he was eight, and
12 he's had contact with both parents. He lived with his
13 father for a period of time, and he has a good
14 relationship with both of his parents. And there was
15 maybe one episode of an isolated physically abusive event,
16 but he certainly doesn't have any criteria for
17 post-traumatic stress disorder or anything like that.

18 Q As far as school history, was there any remarkable
19 findings there?

20 A Yes. He skipped kindergarten but then he had to
21 repeat 11th grade, so he ended up graduating at the
22 appropriate age.

23 He did go to technical school.

24 What happened when he was in high school, he'd
25 always wanted to be a Marine and when he went to -- he

1 went to the recruiter and they recognized probably that he
2 was a little immature and wanted him to go on to get maybe
3 some technical credits and to maybe come back and apply at
4 a later time, so he did go to technical school for a
5 period of time as well.

6 Q As far as his employment history, any findings there?

7 A Yes, he worked in the flooring business with his
8 father for a pretty stable job for many years. The
9 father, I believe it was the father came to South
10 Carolina -- his stepfather came to South Carolina and he
11 came here and followed as well. And he did become a
12 Marine finally. His younger brother was a Marine and he
13 had always wanted to become one, so finally a little bit
14 later in age he joined the Marine Corps. He'd already
15 been promoted to lance corporal and he had done his desert
16 training and was ready to go to Iraq at the time of these
17 charges.

18 Q And we already spoke about his psychiatric and
19 substance abuse history. What about his family history?

20 A He's got a maternal history of his grandfather died
21 from prostate cancer. His father, his biological father
22 did abuse alcohol intermittently, so there is some family
23 history there. And he thinks his son also may now have
24 attention deficit disorder.

25 MR. APLIN: Your Honor, I'm sorry, I don't mean

1 to interrupt, but essentially if she's just going to
2 recite what is in the written report, the State has no
3 objection to having that introduced and it might save a
4 little time instead of going through all the details.

5 THE COURT: Well, I will leave it to
6 Ms. Blanchette to present her case as she'd like.

7 MR. APLIN: That's fine.

8 MS. BLANCHETTE: Your Honor, I would be happy to
9 introduce the report, but just to make sure we have a
10 complete record --

11 THE COURT: Sure.

12 MS. BLANCHETTE: -- since all PCR actions do
13 tend to get appealed, I want to get this in the record if
14 possible.

15 THE COURT: Absolutely. Go right ahead.

16 BY MS. BLANCHETTE:

17 Q Was there anything else regarding his family history?

18 A No, ma'am.

19 Q Okay. And finally, you did a mental status
20 examination in this case, and what were your findings
21 there?

22 A Yes, and also did a sexual history that you -- at
23 some point we may want to talk about.

24 Q Okay.

25 A On his mental status examination, he, Your Honor,

1 basically was a normal mental status. He has intact
2 cognitive function. He's intelligent.

3 The only thing that was significant, he's very
4 remorseful about his relationship with his daughter. He
5 blames himself in a lot of ways, reported to me he was
6 very punitive with her at times, and that's the only time
7 during the interview he became tearful, when he discussed
8 that he probably had a short temper with her and needed to
9 be a better parent and feels very remorseful about that.

10 Q And when you say his relationship with his daughter,
11 you in no way mean the allegations of sexual abuse of his
12 daughter; is that correct?

13 A That's correct. He denied and he continues to deny,
14 he denied at the time of his trial and he continues to
15 deny that he's had any sort of sexual relationship with
16 his daughter at all.

17 Q And what did you find as far as his sexual history?

18 A There was -- Your Honor, he had typical development.
19 He started sexual activity at age 16. He's had 11
20 partners. He was monogamous. He reports he was
21 monogamous to his wife their entire marriage. He states
22 the only time that he considered himself perhaps
23 unfaithful, they were separated after these charges, he
24 did go to a strip club, but she knew about that and he --
25 I think he had a lap dance, but there was nothing

1 significant there.

2 He wasn't using the Internet. He denies that at
3 all, either chatting or viewing pornography on the
4 Internet during the period of development.

5 The only probably factor that I think is germane
6 to this proceeding is that he did admit he would watch
7 pornography on television, and he felt guilty about that.
8 He states that in a way he felt that he was being
9 dishonest to his wife.

10 He denied all -- he denied sexual disorder, he
11 denied paraphernalias, and he denied all criteria for all
12 of those.

13 Q Were you able to make a diagnosis in this case or
14 specific findings?

15 A Yes. What I did in this case, Ms. Blanchette, I
16 diagnosed him with a social phobia because it has caused
17 him some problems in the past, and he's working on that.

18 Your Honor, technically I could have diagnosed
19 him with pedophilia limited to incest, and I would only
20 base that on the conviction. The way DMS is written, if
21 you have behaviors and if a court adjudicates him guilty,
22 you can base that diagnosis. But since this is a matter
23 being litigated, I did not diagnose him. But technically
24 because of just the nature of his convictions alone he
25 could have met that diagnostic criteria. But since he

1 denies them and since this is one of the matters being
2 litigated, I deferred that diagnosis.

3 Q Now, if defense counsel had contacted you in this
4 case, in what ways could you have assisted him in
5 preparing for trial?

6 A In a few ways.

7 I think the social phobia is important here
8 because I think there was some issues pretrial with some
9 of the matters that needed to be conducted and his anxiety
10 level.

11 Secondly, I would have had him have a
12 physiologic assessment. I'd have had him gone down to Dr.
13 Burke or somewhere in the state where they do physiologic
14 assessments to further work up whether he indeed had a
15 sexual disorder or not.

16 We weren't able to do that for these proceedings
17 because it's very difficult to get the PPG machine into
18 the Department of Corrections, but I certainly could have
19 done more work in terms of determining whether he has a
20 sexual disorder or not.

21 And then finally, I think I could have testified
22 in the trial in terms of that he's a very low risk. Even
23 if all these things were true, if you look at him and you
24 compare him to any other offender who had similar
25 characteristics, his risk of reoffending would have been

1 the lowest.

2 Q When you met with Mr. Wilson, did you have any
3 take-aways regarding his adjustment to prison life, or
4 being incarcerated?

5 A He's adjusted very well. He's thriving. He gets
6 along with others. He's involved in a lot of Bible
7 studies and things like that, and he's made a good
8 adjustment.

9 Q Is that typical of cases that you've handle, where
10 someone denies allegations such as these?

11 A It's not atypical. I mean, it just depends on the
12 individual.

13 What is important is that he's not antisocial at
14 all. He has no antisocial features. He had no prior
15 legal history. He hasn't made a lifelong pattern of
16 disobeying the law. He follows the law generally and
17 follows directions well. Certainly in the military he
18 wouldn't have been promoted had that been an issue.

19 Q Dr. Schwartz-Watts, is there any other information
20 that I've failed to ask you about that you could have
21 either provided to defense counsel or provided to the
22 Court during the course of this trial?

23 A Not that I know.

24 MS. BLANCHETTE: Your Honor, I have no further
25 questions.

1 THE COURT: Cross-examination.

2 MR. APLIN: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. APLIN:

5 Q Dr. Schwartz-Watts, you testified earlier on about
6 you said that you think he has a social phobia, speaking
7 in public?

8 A Yes.

9 Q But then you said he doesn't seem to have that
10 problem now?

11 A No, he still has it, but he's working on it.

12 There's different therapies. When somebody has
13 a social phobia, you can give them medicines to calm their
14 anxiety.

15 The other thing you do is behavioral treatment,
16 which you make them go speak in public. They have to kind
17 of tackle their fears and so they get desensitized over
18 time, and I think he's kind of doing that himself right
19 now on his own.

20 He's not getting any psychiatric treatment or
21 mental health treatment in the Department of Corrections
22 for that.

23 Q But I understand you've testified you said, I think,
24 possibly thousands of times in South Carolina?

25 A Not that many, but probably about 800, yes.

1 Q So obviously you're very comfortable getting up and
2 testifying in court.

3 Isn't it very, very common that people have a
4 phobia and are scared and are uncomfortable testifying in
5 court?

6 A It's not common that they have a phobia, but it's
7 really common to be nervous on the stand, absolutely. And
8 there are times I am, too. It depends on the case and the
9 facts and the preparation, lots of things go into that.
10 But certainly, I think most people that don't do this
11 regularly would be quite frightened.

12 Q And as far as a jury, a lay person, seeing somebody's
13 reaction on the stand, whether it's a common fear versus
14 what's diagnosed as a phobia, it's going to come across as
15 looking nervous and fearful, right?

16 A Sure.

17 Q Okay. I think you testified that part of your, I
18 guess, expertise and ability to give an opinion has to do
19 with actuarial studies and things like that?

20 A Yes, doing a risk assessment. They use some
21 actuarial studies and then there's also other factors.
22 They've done a lot more research now because of the
23 sexually violent predator legislation, so it's a little
24 bit more complicated than that, yeah, but that's certainly
25 some of the basis for it.

1 Q So that -- that sort of, I guess, expertise that
2 you're talking about is considered scientific and allowed
3 as testimony throughout the courts in South Carolina?

4 A Yes, sir.

5 Q And people who conduct what's called typically
6 forensic interviews, people who, you know, for a living
7 they use certain methods and styles and patterns for
8 trying to interview a particular victim of a child sexual
9 assault, are there also actuarial studies and things like
10 that that would support that sort of expertise, or are you
11 aware of that? If you don't know, that's fine.

12 MS. BLANCHETTE: Your Honor, I'd object. This
13 is outside her area of expertise, asking her what other
14 experts knew and what skills they use in reaching their
15 opinions.

16 THE COURT: I'll overrule it. I'll allow the
17 question.. Go ahead, please.

18 MR. APLIN: Thank you, Your Honor.

19 BY MR. APLIN:

20 Q And I guess I'm not asking what they specifically do.
21 What I'm asking is, are actuarial studies commonly
22 accepted as a basis for having someone qualified as an
23 expert as far as you understand?

24 A Not necessarily.

25 Q Okay.

1 A I will tell you what I do know. And Ms. Blanchette's
2 right, that's outside of my area, but there are certainly
3 methodologies that any expert's going to use and that you
4 follow.

5 I'm not sure how much actuarial skills that are
6 used in the child protocols. I certainly know about the
7 RATAC. You know, they have protocols and things that they
8 follow, and they certainly have a methodology. But in
9 terms of how much they allow in risk assessment, I can't
10 answer that.

11 Q Okay. You testified that -- I think the way you
12 phrased it was that Mr. Wilson wasn't using the Internet
13 to look at porn, he wasn't doing various things. And when
14 you say that, this is based on his reports to you?

15 A Absolutely. That's correct.

16 Q All right. But you're just repeating what he told
17 you as far as he didn't do these things, but he did admit
18 to watching it on TV sometimes?

19 A Yes.

20 Q I wanted to make sure that was clear.

21 You testified that you would conclude that he's
22 very low risk to reoffend?

23 A Yes.

24 Q People who are extremely low risk, that doesn't mean
25 that they can't commit a crime, correct?

1 A That's exactly right.

2 Q And it doesn't mean that they haven't committed a
3 crime?

4 A That's correct. It just gives you the risk level.
5 You could be a high risk to have a heart attack and never
6 have one. And somebody could be a low risk to have a
7 heart attack and be the unlucky person that does.

8 Q And so that's typically why it's used in an SVP
9 setting, because the whole point is to determine, trying
10 to determine what risk that person's going to pose?

11 A That's correct.

12 Q You talked about, I think, that he was going through
13 classes at SCDC to work on the public speaking or
14 something like that?

15 A Well, he's involved in a program called Jump Start,
16 which is a real -- I believe it's a religious based
17 program, so he has to speak in front of the other inmates.
18 They have a group meeting and so he's publicly speaking.

19 Q Okay. And I guess your opinion was that someone in
20 your profession would be able to help, I guess, prepare
21 him for trial, get through his anxiety issues, and maybe
22 better be able to testify?

23 A Sure. What I probably would have done, I didn't know
24 him at the time, but if his anxiety had been an issue, I
25 probably would have recommended they have the psychiatrist

1 at the jail prescribe what's called a selective serotonin
2 reuptake inhibitor. That's a medication like Prozac, and
3 that's very good for social anxiety.

4 There's lots of -- there's actually lots of
5 meds. There's lots of medications we use for people.
6 There's some called beta blockers. So there's medications
7 that probably would have kept him a little bit calmer.

8 The problem for him when he gets very anxious he
9 states that sometimes he can blank out and lose a little
10 bit of concentration. It didn't affect -- it wasn't a
11 level of confidence as being a problem at all for him, but
12 I think since he took the stand in this case, that was
13 important.

14 Q Okay. So you're talking pretty much about using
15 medicines to try to make him more comfortable testifying?

16 A Yes, probably keep his heart rate under 120 and that
17 sort of thing, yes.

18 Q So you're not including actually kind of sitting with
19 him and working with him through those issues, that's more
20 of a counseling --

21 A Oh, absolutely not, no.

22 Q Purely from a medical standpoint?

23 A Yes.

24 Q You talked about, I think, in your report itself that
25 he does continue to deny the allegations. And I believe

1 you say, "Since the facts of his conviction are being
2 litigated."

3 He had been convicted at this point, right?

4 A Absolutely.

5 Q So the facts of the conviction are the facts of
6 conviction at this point?

7 A That's correct. But I think the whole issue -- I'm
8 going to leave that to Ms. Blanchette. I think she has
9 some things she's going to present to the Court.

10 So because it's in question at this time, that's
11 why I deferred diagnosis. That would be very unfair, to
12 me, to diagnose him with pedophilia based on the behaviors
13 and then something happens that he gets a new trial and
14 he's not found guilty. So that's why, just out of an
15 abundance of caution.

16 Q Okay. I understand. But -- so you're not saying in
17 your report that he -- there's not a conviction in place,
18 that those facts have been established in a court of law?

19 A That's correct. I read the entire transcript and
20 read Judge Keesley's remarks. I'm very familiar with it.

21 MR. APLIN: That's all I have. Thank you.

22 THE COURT: Any redirect?

23 MS. BLANCHETTE: No, Your Honor.

24 THE COURT: May she be excused?

25 MS. BLANCHETTE: That would be fine by me.

1 THE COURT: Okay?

2 MR. APLIN: No objection.

3 THE COURT: Thank you, Doctor. Good to see you
4 again.

5 THE WITNESS: Thank you.

6 MS. BLANCHETTE: Your Honor, I would call Gay
7 Allen Cook to the stand.

8 MR. APLIN: Your Honor, I do have a quick motion
9 in regard to Ms. Cook after she's sworn or before.

10 THE COURT: After she's sworn or before, okay.
11 Let me go ahead.

12 GAY ALLEN COOK, after being duly sworn,
13 testified as follows:

14 MR. APLIN: And this is based -- Your Honor,
15 Ms. Blanchette's been very open and let me know what her
16 witnesses are going to be and all that, and I appreciate
17 that very much.

18 There are several things I think she was going
19 to talk to Ms. Allen Cook about, and one being testimony
20 about delayed disclosure, another about the anxiety issues
21 that have been alleged already. And then there was a
22 third thing that she was going to have her testify about
23 the two experts who did -- I guess I call them experts
24 kind of with a grain of salt now -- they testified at the
25 trial and was going to ask about their trial testimony and

1 their work in the case in regards to being forensic
2 interviewers.

3 And if my understanding is correct, the
4 Applicant's position or one of the primary arguments in
5 this case, this PCR case, is that that testimony is
6 inadmissible testimony about the forensic interview and
7 what the child's responses were and what that meant as far
8 as whether it was a compelling or a problematic statement.

9 But if their position is that's testimony
10 inadmissible, I think it would be inadmissible here as
11 well. It's inconsistent to allow them to put someone on
12 the stand who is going to testify about something they say
13 shouldn't be admitted.

14 So I would move to limit her testimony on just
15 those first two issues.

16 THE COURT: And Ms. Blanchette?

17 MS. BLANCHETTE: Yes, Your Honor. Even though I
18 wasn't aware of the State's motion, I anticipated this
19 issue myself because I found this to be rather
20 inconsistent, that I would be arguing under Jolly and
21 Jennings and McCurley, and most recently Chroma, our
22 extensive line of cases now that limit what forensic
23 interviewers and forensic therapists can testify to, that
24 I would have her go into information that would now be
25 inadmissible under those cases.

1 The problem, this is post-conviction relief.
2 And in this trial there was no objections to that
3 testimony. And one of our main allegations, our first
4 allegation is that defense counsel was ineffective for not
5 using his own expert. So in this case, all this
6 information that is objectionable under that line of cases
7 did come in.

8 I don't plan to go into their specific testimony
9 with her, she's just merely reviewed it, but I do believe
10 I need to put her up in the capacity she could have been
11 used at in this trial. Since their testimony did come in,
12 and it came in without objection, I think I do have the
13 ability to ask her about that without being inconsistent
14 as far as our other allegation is concerned because that
15 testimony did come in in this case because defense counsel
16 failed to object. No judge ruled that that was
17 inadmissible in this case.

18 So I think I have the ability today, or I'm
19 asking the Court for the ability today to go into
20 everything that is in the record because it was admitted
21 in this case. Even if we are arguing that under the case
22 law it should have been objected to and left out, we still
23 have to -- I'm making an allegation he should have used an
24 expert, too, so I have to put up the expert and have her
25 testify in the capacity that she could have at the time of

1 this trial.

2 So I would ask that even though I understand the
3 State's position, I understand the inconsistency myself,
4 that the Court doesn't limit my questioning. I'm going to
5 be very careful to tailor my questioning, and I just ask
6 that the Court maybe allow the State to make
7 contemporaneous objections if needed but not at the outset
8 to limit my questioning of this witness.

9 THE COURT: I'm going to allow this lady's
10 testimony. I overrule the objection.

11 But I agree, if you do have a specific objection
12 beyond the general one that you just lodged, just make it
13 at the time, please, sir.

14 MR. APLIN: Thank you, Your Honor.

15 THE COURT: Okay, sir.

16 DIRECT EXAMINATION

17 BY MS. BLANCHETTE:

18 Q Could you please state your name for the record.

19 A Gay Allen Cook.

20 Q Okay. And could you identify this, please?

21 A Yes, it's my CV.

22 MS. BLANCHETTE: Your Honor, at this time I
23 would move this in as Applicant's number 2.

24 THE COURT: Any objection?

25 MR. APLIN: No, Your Honor.

1 THE COURT: It's admitted without objection.

2 (WHEREUPON, Applicant's Exhibit Number 2 was
3 marked for identification and received into
4 evidence.)

5 BY MS. BLANCHETTE:

6 Q And, Ms. Allen Cook, how are you currently employed?

7 A I'm in private practice in Florence called Therapy
8 Works, Incorporated.

9 Q Okay. And what is your education background?

10 A I have a bachelor's degree in early childhood
11 education, a master's degree in clinical counseling,
12 postgraduate studies in child trauma. I'm currently a
13 licensed professional counselor in the state of South
14 Carolina, previously licensed in the state of North
15 Carolina.

16 Q And before going into private practice, if that's the
17 proper term, did you work at any agencies or where were
18 you previously employed?

19 A I have. When I finished school, my career started in
20 a Baptist church in the counseling center there. From
21 this I went to the Mental Health Center of Charlotte,
22 North Carolina, spent there -- I'm sorry, I'm going to
23 look at my dates so I don't say them wrong -- stayed at
24 the Mental Health Center for about two years, and then I
25 went into private practice in Charlotte and stayed there

1 for about a year and a half, and then came back home to
2 Florence and worked at the Durant Children's Center, was
3 there for two years, and then in November of 2007, I
4 started my own practice in Florence which is where I've
5 continued to be.

6 Q In this case we're dealing with the Children's
7 Advocacy Center out of Richland County. Did you -- any of
8 these employments, were those at a similar type of agency?

9 A When I was at the Durant Children's Center, that
10 would be considered the equivalent of the resource center
11 that you're speaking of in Columbia.

12 Q Okay. Do you have any licenses or certifications?

13 A I do. Like I said, I'm a licensed professional
14 counselor in South Carolina. I also just finished my
15 Family Court Mediation certification, and I just finished
16 my course work for child custody evaluations and I'm
17 waiting to complete some of those and then get recognition
18 to be able to act upon those on my own.

19 Q Okay. And are you a member of any professional
20 organizations?

21 A I am. Currently I sit on the Association for Dispute
22 Relief, which I was appointed by Chief Justice Toal
23 recently for that. I'm also a member of the American
24 Counseling Association and am currently working towards my
25 certification in trying to get recognized as a child

1 custody evaluator.

2 Q Okay. And have you testified in court in South
3 Carolina before?

4 A I have.

5 Q Okay. Do you know approximately how many times?

6 A Are you speaking family, criminal, or civil?

7 Q In all state courts in South Carolina.?

8 A I'd probably say at least 400 times.

9 Q Okay. How many times do you know at the Circuit
10 Court level, the non-Family Court here?

11 A I would probably say around a hundred.

12 Q Okay. And in those cases what do you typically do?
13 What -- does it vary from case to case or do you always
14 provide the same function?

15 A It does vary. There are times that I'm called upon
16 by the prosecution, there are times that I'm called upon
17 by the defense. I would say it's probably rather equal
18 these days.

19 I'm also called upon quite often to do
20 consultation, like I've done in this case, where you just
21 review what is going on, make some opinions about that.

22 I also testify often regarding the treatment
23 that I do with children who have been abused or
24 traumatized regarding their family reunification plan,
25 have done lots of Department of Social Services cases,

1 lots of different types of custody cases. It really just
2 varies.

3 Q Okay. And in this case, Alicia Benedetto was
4 qualified as an expert and testified about her forensic
5 interview of the child. Have you ever conducted a
6 forensic interview and approximately how many?

7 A I have done them. I have not done them in a while.
8 I would say I've probably conducted 200, 250.

9 Q Okay. And Heather Smith was qualified as an expert
10 in this case and testified about her therapy sessions with
11 the child and she did a narrative with the child. Have
12 you done that in cases yourself?

13 A I would assume you're talking about trauma focused
14 cognitive based therapy which we call TFCBT?

15 Q That would be correct.

16 A Yes, ma'am. I actually act as a supervisor in the
17 state for that model and have currently joined the staff
18 that teaches that and travel across the state in helping
19 them teach that model.

20 Q Have you been qualified as an expert in the cases
21 that you testified in in South Carolina?

22 A I have.

23 Q Okay. Do you know approximately how many times you
24 have been qualified as an expert?

25 A I would probably say around a hundred in circuit

1 court.

2 Q Okay.

3 A And probably 300 maybe in family court, and that's a
4 rough estimate.

5 Q Okay. And what is your area of expertise?

6 A Typically I'm qualified as a child and family
7 therapist. I'm usually qualified in my work in trauma and
8 abuse, and sometimes qualified, depending on what my role
9 has been, as far as family reunification, what we call
10 protection clarification in trying to reunify a family.

11 Q And you have worked in cases that involve not only
12 the child but also the family; is that correct?

13 A That's correct.

14 MS. BLANCHETTE: Your Honor, at this time I
15 would ask the Court to qualify Gay Allen Cook as an expert
16 in the area of clinical therapy specializing in trauma and
17 abuse as far as families and children are concerned.

18 THE COURT: Say that again, clinical therapy
19 involving family and abuse?

20 MS. BLANCHETTE: Family and children,
21 specializing in sexual and physical abuse.

22 THE COURT: All right. Counsel, what is your
23 position on that, please?

24 MR. APLIN: Your Honor, I don't have any
25 objection to that qualification. It doesn't appear that

1 it goes to any expertise in forensic interviewing or
2 evaluating people who do forensic interviews. I have no
3 problem.

4 THE COURT: All right. And, for the record,
5 would you slowly place that -- I have clinical therapy
6 involving family and children interviews, specializing in
7 sexual -- and that's where I stop.

8 MS. BLANCHETTE: Physical abuse.

9 THE COURT: Physical abuse?

10 MS. BLANCHETTE: Uh-huh.

11 THE COURT: She will be qualified in that area.

12 BY MS. BLANCHETTE:

13 Q Ms. Allen Cook, did you have the opportunity to
14 review the case file of Mr. Timothy Wilson?

15 A I did.

16 Q Okay. And what did you review?

17 A I reviewed the court transcripts. I reviewed the
18 forensic interview DVD of the child. I reviewed the
19 written transcript of the forensic interview, and also
20 looked over a couple of notes that the child had written.

21 Q Okay. And did you also have the opportunity to meet
22 with Mr. Wilson himself?

23 A I did.

24 Q Okay. And did that meeting take place at SCDC, at
25 the Broad River complex?

1 A It did.

2 Q Okay. Now, as far as what you reviewed, I'm going to
3 try to go through it piece by piece here.

4 But in reviewing all this documentation, did you
5 find that in any way you could have assisted defense
6 counsel prior to trial in preparing for this case?

7 A Yes.

8 Q Okay. And how is it you think that you could have
9 assisted him?

10 A Well, oftentimes when cases are presented, I will get
11 called on, like I say, by one side or the other, defense
12 or prosecution, to take a look at the work that's been
13 done, to render some opinions, to testify, you know,
14 regarding those opinions, and I think that would have been
15 important in this case, to be able to look at it from an
16 objective set of eyes as someone who didn't do the
17 interviews or didn't do the therapeutic work and maybe
18 offer some opinion on what could have been looked at
19 differently.

20 Q Okay.

21 MR. APLIN: Your Honor, and I would renew my
22 objection to any opinion as to what was looked at
23 differently.

24 THE COURT: I note your objection for the
25 record.

1 BY MS. BLANCHETTE:

2 Q Now, as far as what you reviewed, you specifically
3 looked at the procedures in this case that took place.
4 Did you have any issue with the disclosure and how that
5 took place in this case?

6 A I think what was tough in this case was from what I
7 could tell, the child had been talked to by several
8 different people and oftentimes that can be difficult for
9 children when they have been spoken to about allegations
10 by various, various people.

11 Q And when you say "various people," is that before the
12 forensic interview took place?

13 A Yes.

14 Q And what would be the problem with that?

15 A Well, I mean, oftentimes you have to be very careful
16 when you're going to speak with young children about
17 disclosures of abuse. If they have had other people that
18 they have spoken to or shared information with, you don't
19 always know what was said, what was shared, what the
20 person they were sharing it with may have -- how they may
21 have responded.

22 Q Okay. And in your own practice, if someone contacts
23 you and says a child has disclosed to three different
24 individuals, can you do a forensic interview, what would
25 be your position?

1 A Well, at this stage in my practice I don't do
2 forensic interviews. But typically what will happen is I
3 will get a phone call from a parent who's usually somewhat
4 frantic saying that their child has made allegations of
5 some type of abuse, and what I do is before I ever meet
6 that child, I send that child for a forensic interview
7 because that is a taped interview and we do have a record
8 of what was asked, how the questions were asked, you know,
9 what the responses were. It's just difficult sometimes
10 when various people have spoken to children because
11 stories can change, very well-meaning people can ask
12 questions that are leading, which is what forensic
13 interviewers are trained not to do.

14 Q Okay. And you've had the opportunity to review the
15 forensic interview in this case. And I'm not going to get
16 into the specifics of what was said and done, but this
17 forensic interview is approximately two hours. Is that a
18 typical length for a forensic interview?

19 A I would say that in my practice I've never done one
20 that lasted that long, but I know they can go on for quite
21 some time depending on what the child may be saying, how
22 the child's demeanor is, various issues like that.

23 Q Okay. Is there any information regarding your review
24 of the forensic interview that you could have provided to
25 defense counsel to assist in his preparation of this case?

1 A I don't think so.

2 Q Okay. Now, an issue that came up, and you reviewed
3 the entire trial transcript, is an issue of delayed
4 disclosure. Could you explain what that is, what delayed
5 disclosure means?

6 A Delayed disclosure is when some allegations happen to
7 a child and some time goes by before that child discloses,
8 tells about what happened.

9 Like I said a few moments ago, what is tough
10 about that is, during that time if people have spoken to
11 that child about the allegations or about things that have
12 been said, those disclosures can often be tainted because
13 children often rely very much on the emotion of the person
14 that they're telling a story to in regards to maybe what
15 else they may share or how much further they may go with
16 their allegation.

17 Q Okay. And in this case, did you have any specific
18 take-aways or any red flags regarding the disclosure?

19 A I wouldn't say I had red flags regarding the
20 disclosure. My red flags came from the number of people
21 that spoke to this child.

22 Q Okay. Did you find the disclosure in this case to be
23 consistent or inconsistent?

24 A Consistent.

25 Q Okay. Now, as far as the disclosure at trial, and

1 you have testified and been called to testify in a number
2 of cases like this, did you find the child's disclosure at
3 trial to be clear and consistent?

4 A I didn't find it to be clear. I can't say it was
5 inconsistent, but from what I read, she didn't say very
6 much. There was not a whole lot that she shared, in my
7 opinion.

8 Q Okay. Now, you also had an opportunity to meet with
9 Mr. Wilson. What, if any, information did you glean from
10 that meeting that you could have provided to defense
11 counsel in preparation for trial or to testify at trial?

12 A Well, in meeting with him, I did note the anxiety
13 that he has. He had great difficulty communicating at
14 times. He was tearful whenever he spoke about the family
15 dynamics.

16 One of the things that I walked away from that
17 was pretty significant to me in this case, oftentimes when
18 we do what we call parent/child reunification where there
19 have been allegations, you know, of some type of abuse and
20 we're going to work to put the family back together again,
21 what you often find is in parents who have been accused of
22 doing something, especially who are incarcerated, they're
23 often very angry with that child, they're often not
24 wanting anything to do with that child, blaming that
25 child. I didn't find that with Mr. Wilson.

1 What I found with him was he was very remorseful
2 for what has occurred in his family. He did not admit to
3 doing anything, he vehemently denied all the allegations,
4 but he seemed to very much wish that he could have a
5 relationship with his children again, and he harbored no
6 anger towards the child who has made the allegations,
7 which is often atypical.

8 Q Now, based upon your review of the case file and your
9 meeting with Mr. Wilson, did you have an assessment
10 regarding his truthfulness with you? Did you have any
11 concerns as to whether or not he was being forthcoming or
12 truthful with you?

13 A Well, I mean, I certainly can't make a judgment call
14 if somebody's telling the truth or not obviously, but I
15 will tell you in sitting with him and meeting with him, he
16 gave me no indication that he was telling any type of lies
17 to me. He appeared very believable. He was appropriately
18 remorseful. And I don't mean remorseful in that he's in
19 prison or remorseful that he's done something. I mean
20 he's remorseful that his family has been disrupted, you
21 know, and that he can't be a part of his children --
22 children's lives.

23 Q Did he exhibit a character for truthfulness with you
24 that you could have conveyed to trial counsel and
25 testified to at the trial?

1 A I would say yes.

2 Q Okay. If asked, would you have been willing to
3 consult with defense counsel on this case?

4 A Yes.

5 Q And would you have offered to testify at trial in
6 this case?

7 A Yes.

8 Q Why would you have been willing to testify at trial
9 in this case?

10 A Because, like I said, after what I reviewed, after
11 meeting with him, I think there would have been some
12 information that could have been shared that could have
13 possibly helped him have a fairer -- fairer shake at
14 proper sentencing or maybe even being found not guilty.

15 Q Okay. And have you been called in the capacity at
16 trial as a defense witness in response to the State's
17 witnesses, such as forensic interviewers or therapists,
18 such as was done in this case?

19 A I have.

20 Q Okay. And you would have been willing and available
21 to do that in this case?

22 A I would have, yes.

23 Q Is there anything else I failed to ask you that you
24 could have either shared with defense counsel or testified
25 to at trial, depending on whether or not it was

1 admissible, anything else that I failed to ask you about
2 today that you discovered as part of your review and
3 consultation with Mr. Wilson?

4 A I don't think so.

5 MS. BLANCHETTE: Your Honor, I don't have any
6 further questions at this time.

7 THE COURT: Cross-examination.

8 MR. APLIN: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. APLIN:

11 Q Just really quickly, Ms. Allen Cook, at the very
12 beginning I think Ms. Blanchette asked you about -- she
13 referred to it as the Children's Advocacy Center, and I
14 think you corrected her and said it was the Assessment and
15 Resource Center, right?

16 A I think that's what the one in Columbia is called,
17 yes, sir.

18 Q So it's not referred to as the Children's Advocacy
19 Center in Columbia?

20 A What I know about it as is the ARC, the Assessment
21 and Recovery or Resource Center, ARC is what I know it as.

22 Q I just wanted to make sure advocacy for the child
23 wasn't in the title of that.

24 A Not to my knowledge.

25 Q You testified that very often, I think what you said

1 was, you were concerned in the case about the number of
2 people that received the disclosure during the course of
3 this before it got to the forensic interviewer?

4 A Yes, sir.

5 Q Okay. And I think your statement was that you
6 typically would get a phone call from a parent or somebody
7 saying that they believed there may have been this abuse,
8 and so one of the very first things you would do would be
9 refer it for a interview?

10 A Correct.

11 Q Okay. So the proper step for people who receive
12 these types of disclosures is to refer it to the next step
13 in the process to try to get a forensic interview done?

14 A Well, typically the proper protocol is when a child
15 makes allegations of abuse or neglect, we want that
16 forensic interview done promptly. We want it done, you
17 know, in a clean manner so the child hasn't been, for lack
18 of a better word, tainted by other people. Because the
19 wonderful part of a forensic interview is it is DVD
20 recorded and so you can see what has been asked, how the
21 responses, you know, were from the child, and also the
22 person that's doing the interview is trained in not asking
23 leading questions, and well meaning people who talk with
24 children who are not trained in that can ask very leading
25 questions which can be difficult for a child later on.

1 Q And so the video you watched, the people who
2 conducted the interview here, you're not saying that that
3 was going on there, but your concerns were the prior
4 disclosures?

5 A Correct.

6 Q Okay. And you read the transcript, right?

7 A I did.

8 Q And I believe there was a guidance counselor at the
9 elementary school who was the initial disclosure?

10 A Yes, sir.

11 Q According to the testimony. Okay.

12 Now, she's a mandatory reporter; in other words,
13 she would have to report that to DSS, law enforcement, one
14 of those two?

15 A That would be the proper protocol, yes, sir.

16 Q Okay. And she wouldn't necessarily know, oh, I need
17 to send this child to ARC?

18 A I would say that, you know, in the area where I live
19 in, which is Florence, we work very hard to educate
20 guidance counselors, school teachers. I actually usually
21 go in and do tons of in-services the first few weeks of
22 school in helping them understand what the proper protocol
23 is, you know, where do you go, how do you make referrals
24 who do you get involved if you suspect allegations of
25 abuse because it's obviously not their job to, you know,

1 investigate it or try and figure it out. They're just
2 supposed to refer it to someone who could try and get the
3 information.

4 Q Right. And so I think one of your concerns about
5 disclosure is people might then question or ask leading
6 questions and things like that, and in this case,
7 Ms. Barons, who was the school counselor, wasn't it her
8 testimony she didn't ask questions, she basically heard
9 the disclosure and referred it immediately to DSS?

10 A That's what I read, yes.

11 Q And that was an appropriate referral as far as you're
12 concerned?

13 A I would say so, yes, sir.

14 Q And then the DSS worker has certain duties and job
15 duties they're supposed to do when they receive a referral
16 like that, correct?

17 A I'm sorry, I didn't hear you.

18 Q The DSS worker has certain duties, job duties that
19 they should do when they get a referral like that, that
20 there's been sexual abuse, as far as you know?

21 A Yes, sir.

22 Q Okay. And so then that person referred the victim to
23 the ARC for an assessment?

24 A That's my understanding, yes, sir.

25 Q And, again, that would have been an appropriate

1 referral?

2 A Yes, sir. But I think what is difficult sometimes is
3 when you get involved with DSS or guidance counselors or
4 even parents, you know, when children are making
5 disclosures, you have to be very careful that these people
6 have not asked leading questions or said anything to the
7 child, especially when you're dealing with family members
8 because children oftentimes will disclose or not disclose
9 based on the way someone responds emotionally, what that
10 person may say, that kind of thing.

11 Q And Dr. Benedetto became aware of the prior
12 disclosures during her interview with the child, correct?

13 A I would assume so, yes, sir.

14 Q You watched the video?

15 A I did.

16 Q And wasn't she careful about trying to cover those
17 issues to see if there was anything like that that came
18 from these other disclosures?

19 A Well, I mean, as I said, I don't have any issues with
20 the forensic interview.

21 Q You testified, I think, that in regards to the
22 delayed disclosure, that the disclosures in this case were
23 consistent throughout?

24 A Yes, sir.

25 Q In regard to anxiety, you said you met with

1 Mr. Wilson, and he didn't display, I guess, anger towards
2 the child or anger he was imprisoned for this, those kinds
3 of things, and that that was atypical?

4 A Yes, sir.

5 Q Okay. Didn't he express those same emotions at the
6 trial when he testified?

7 A I mean, I would say through reading the transcript,
8 my opinion is I don't think he did a very good job of
9 verbalizing a whole lot. I heard Dr. Schwartz-Watts, you
10 know, talk about her evaluation of him. I could say that
11 I did see great anxiety when he was trying to explain
12 information to me, and so I would see where that could
13 probably be exasperated in a court system.

14 Q I understand. But in regard to the anger issues,
15 didn't he get up on the stand and say, I can't believe she
16 said this about me, I'm so mad at her, anything to
17 indicate he was angry at the child during the trial?

18 A I didn't read that in the transcript, no, sir.

19 Q And, in fact, didn't he testify he still loved his
20 daughter during the trial?

21 A That's what I read, yes, sir.

22 Q Now, as far as, I guess, you testified that there was
23 nothing in your interviews with Mr. Wilson that would lead
24 you to believe he wasn't being truthful, but that you
25 can't say that he was telling the truth?

1 A Oh, no, sir, I can't say that.

2 Q Did you as part of your evaluation polygraph him at
3 all?

4 A No, sir.

5 Q Have you ever polygraphed anybody or sought
6 assistance from a polygrapher?

7 A I'm not trained in polygraphing.

8 Q Okay.

9 A I have had lots of cases where people have had
10 polygraphs or, you know, once I've gotten involved a
11 polygraph has occurred.

12 Q Okay. But that wasn't -- you didn't do anything
13 or --

14 A No, sir. No, sir.

15 MR. APLIN: Thank you.

16 THE COURT: Redirect.

17 MS. BLANCHETTE: Yes, very briefly, Your Honor.

18 REDIRECT EXAMINATION

19 BY MS. BLANCHETTE:

20 Q You said that you reviewed the documentation from the
21 ARC as part of your work in this case; is that correct?

22 A I did.

23 Q If I could show you this. Is this some of the
24 documents that you reviewed?

25 And I apologize. That is three copies of the

1 same document.

2 A Okay. I didn't know if it was -- I was looking for
3 the forensic -- yeah, that's the medical exam.

4 I reviewed this. I'm not a medical doctor.

5 Q Okay. If I could just ask you to read what it says
6 under the words ARC there as far as the title that is
7 given?

8 A Assessment and Resource Center, The Children's
9 Advocacy Center of Richland County serving the Midlands.

10 Q Okay. So there on their documentation they refer to
11 themselves as the Children's Advocacy Center; is that
12 correct?

13 A Yes. And what happens is like when I worked at
14 Durant Children's Center, it's a child advocacy center,
15 and so that may not be the title, like this is the ARC,
16 but they are considered a children's advocacy center based
17 on what they do.

18 Q Okay. Thank you.

19 And just briefly, the State asked you about the
20 disclosure in this case.

21 Now, as reflected in the transcript, Rosemary
22 Barons was the school counselor, and she actually
23 testified to the specific details that were disclosed to
24 her in the conversation that she had with the child; is
25 that correct?

1 A That's what I read, yes, ma'am.

2 Q She didn't just hear that there was a problem and
3 immediately report it to DSS. She did conduct an
4 interview of this child and find out the specific
5 allegations; is that correct?

6 A From what I read, it was very detailed what she
7 discussed in her courtroom testimony, yes.

8 Q Okay. And then Chrissalyn Howard, who is the DSS
9 worker, also testified and she gave a very detailed report
10 of her interview with the child regarding the specific
11 allegations. Is that what you read in the transcript?

12 A Yes.

13 Q So this wasn't a case where the child was merely
14 handed from the school to DSS and then the first time
15 there's the allegations with ARC, they were actually fully
16 discussed with the counselor and with DSS as they
17 testified to at trial; is that correct?

18 A Per the transcript, yes, ma'am.

19 Q Okay. And now, the disclosure was not just limited
20 to those two individuals; is that correct? Were there
21 also family members that the disclosure was given to prior
22 to the child getting to ARC?

23 A I think the mother was involved, and I want to say,
24 if I recall, there was a grandmother involved.

25 Q Okay. So there are up to two family members that

1 also discussed these allegations with the child before she
2 went to a forensic interview; is that correct?

3 MR. APLIN: Your Honor, I would object. It's my
4 recollection of the trial testimony that both the mother
5 and the grandmother testified that the girl did not
6 disclose to them prior to going to these other
7 individuals.

8 THE COURT: In all fairness, I have not read the
9 trial transcript, so I really can't make a determination.
10 I will be glad to let you all look at it, or I can tell
11 you that the transcript will speak for itself.

12 MR. APLIN: That's fine. Thank you, Your Honor.

13 MS. BLANCHETTE: Your Honor, I was going to say,
14 I will I defer to the transcript on that.

15 THE COURT: All right.

16 MS. BLANCHETTE: And I probably can provide you
17 specific cites later on.

18 THE COURT: Okay.

19 BY MS. BLANCHETTE:

20 Q But also Fred Robinson testified at the trial; is
21 that correct?

22 A That's correct.

23 Q And he was a family therapist?

24 A That was what I understood, yes, ma'am.

25 Q And is it your understanding from his testimony that

1 the child spoke with him before doing the forensic
2 interview?

3 A I would have to go back to the transcript. I know
4 that she did speak with him, but as far as the time line,
5 I'm not a hundred percent sure.

6 Q Okay. Now, is it typical for -- when you have cases,
7 for a school counselor and DSS worker to get into the
8 specifics of the allegation and be able to testify in
9 court or is it usually something where they just
10 immediately report and that is handled by someone more
11 qualified such as Dr. Benedetto in this case?

12 A I can tell you that in Florence where I practice,
13 when we do have a chance to train and try and teach and
14 help people understand proper protocol, it's best if that
15 is referred and the information is asked by a forensic
16 interview. Like I said, those people have specific
17 qualifications, specific training in how to ask questions,
18 how to make sure they're non-leading questions. And, you
19 know, the whole reason for a forensic interview is to get
20 information, details, you know, regarding any type of
21 allegation that could be going on and it's also DVD
22 recorded so you have, you know, somewhat of a transcript
23 of how things were asked, how the child responded, and we
24 don't get that when you have, you know, a therapy session
25 that is not taped or a guidance counselor interview or

1 something like that.

2 Q Okay. If I could just show you briefly pages 326 and
3 327 of the transcript to refresh your memory. Dr.
4 Robinson is testifying here, and it starts at the bottom
5 of the page.

6 Does he indicate there that after meeting with
7 the child, he made the referral to ARC, but found out she
8 already had an appointment scheduled?

9 A Yes, it does say that.

10 Q Okay. So it appears from his testimony that he spoke
11 with her before she had her appointment at ARC?

12 A He's saying that he made that referral, so I would
13 have to assume he did speak with her prior to her going to
14 the ARC.

15 Q Okay. And does that cause you concern, that she
16 spoke with a private therapist before doing her forensic
17 interview?

18 A Well, like I said a couple of times, the proper best
19 protocol would be for a child to go to a forensic
20 interview before disclosing to a therapist, before
21 disclosing to a school guidance counselor, because that
22 forensic interview can then be clean and it can be where
23 the child has not been questioned by other people who may
24 or may not know how to ask a child proper questions
25 regarding abuse allegations.

1 Q Just one more question from the video. And it's my
2 understanding that copies of the forensic interview has
3 been included in the Court's packet.

4 THE COURT: It is.

5 BY MS. BLANCHETTE:

6 Q You have reviewed that interview, and would you have
7 been able to sit down and go through that with defense
8 counsel and assist him in finding, you know, either
9 arguments he could raise or things that he needed to
10 clarify that were contained in that interview?

11 A Yes, I can tell you that I have done that in previous
12 cases where I have been called upon to, you know, observe,
13 look at the interview, review the transcript and provide
14 some insight to defense counsel as to things they might
15 could do in trial.

16 Q Okay. And if counsel's strategy in this case was to
17 introduce and utilize -- which he did, he agreed for the
18 whole video to come in -- you could have assisted him in
19 how he utilized that video at trial; is that correct?

20 A Yes.

21 MS. BLANCHETTE: Your Honor, I have no further
22 questions.

23 THE COURT: Any recross?

24 MR. APLIN: Very briefly.

25 RECROSS-EXAMINATION

1 BY MR. APLIN:

2 Q And I might just be remembering incorrectly, but I
3 thought when you initially testified, that you said that
4 there wasn't really anything you could have offered
5 defense counsel in regard to attacking the video.

6 A I said I didn't see any issues with the video. But
7 what I thought she was asking me is, have I sat down with
8 defense counsel before and helped them kind of know how to
9 ask questions, how to challenge experts, and the answer to
10 that would be yes, you know, oftentimes I do sit with
11 defense counsel and go through line by line and assist
12 them in asking questions. If that's successful, it's
13 successful. If it's not successful, it's not successful.
14 But I was trying to answer the question as could I have
15 done that, and yes, I could have.

16 Q Okay, I understand. I just wanted to make is that
17 distinction.

18 A Okay.

19 Q And in any of these cases you talked about getting
20 the referral to ARC, I mean, the child discloses to
21 somebody, there has to be a disclosure before there's a
22 referral, right?

23 A Yes.

24 Q Okay. So your concern has to be or seems to be with
25 questions that are asked following that disclosure but

1 prior to the forensic interview?

2 A Well, I mean there would be two concerns. That would
3 definitely be one, and then the second one would have --
4 it's hard for children when they have talked to various
5 different people before they get to a forensic interview.
6 It's most appropriate to have that forensic interview done
7 initially versus a child being spoken to by several
8 different people.

9 Q Okay. In an ideal world that wouldn't happen?

10 A I'm sorry?

11 Q In an ideal world that wouldn't happen where there
12 are multiple disclosures before?

13 A Definitely.

14 Q But it does happen?

15 A I mean, I'm sure it does happen.

16 I can tell you, like I say earlier, in my
17 practice when I get a phone call from a parent, from an
18 aunt, from an uncle, from a DSS worker, from anybody
19 regarding allegations of a child and they're wanting me to
20 treat this child, I will not treat this child or speak to
21 this child until the forensic interview is done because I
22 know that that person is going to have a DVD, I know that
23 oftentimes these get taken into court and it's much easier
24 to have that DVD to play versus me having to come in and
25 say, this is what I did, this is what we talked about in

1 therapy, because a forensic interview is a very different
2 thing than therapy or a child sitting down and talking
3 with a DSS worker or anybody else for that matter.

4 Q And you -- in reviewing the transcript, I guess you
5 saw the places where the defense attorney, for instance,
6 cross-examined Dr. Benedetto?

7 A I did.

8 Q You read that part and saw that he attacked some of
9 the findings she made, talked about some of these issues
10 with the disclosure and whether there was really a valid
11 delayed disclosure or not; do you remember some of that
12 from the transcript?

13 A Briefly, I do remember reading that.

14 Q Okay. Do you recall the fact that this child had
15 prior sexual abuse before these allegations involving her
16 father?

17 A What I remember reading is some child-on-child --

18 Q Correct.

19 A -- information that the child disclosed.

20 Q And testimony was elicited that she disclosed that
21 child-on-child sexual abuse fairly early right after it
22 happened essentially?

23 A I believe -- I believe that's correct.

24 Q Okay. And the defense attorney made a point of that
25 at trial, including his closing argument, to attack this

1 delayed disclosure theory at the trial, right?

2 MS. BLANCHETTE: Your Honor, I don't think that
3 she can answer a question regarding defense counsel's
4 strategy in his closing argument. I think that falls way
5 outside her area of expertise.

6 THE COURT: Well, if she doesn't know, she can
7 say, I don't know.

8 THE WITNESS: And that's what I was going to
9 say, sir, I don't know.

10 BY MR. APLIN:

11 Q I'm not asking having to do with strategy, but you
12 could read the questions he asked -- or not the questions,
13 but you read his closing argument as part of your review
14 of the transcript?

15 A I read the full transcript, yes, sir.

16 MR. APLIN: Okay. And so the comments he made
17 will speak for themselves.

18 I have nothing further, Your Honor.

19 THE COURT: All right. May this witness be
20 excused?

21 MS. BLANCHETTE: Yes, please.

22 THE COURT: Thank you, ma'am.

23 Let's take about a ten-minute break.

24 (A break was taken.)

25 THE COURT: Are you ready to go with your next

1 witness?

2 MS. BLANCHETTE: I am, Your Honor, just two
3 brief matters very quickly.

4 THE COURT: Sure.

5 MS. BLANCHETTE: You have a copy of the forensic
6 interview and additional DVDs.

7 THE COURT: Okay.

8 MS. BLANCHETTE: Your Honor has been provided a
9 copy, and I'd like to mark those as Applicant's No. 3.

10 THE COURT: Any objection?

11 MR. APLIN: No objection at all.

12 THE COURT: Very good. Admitted without
13 objection. Thank you.

14 (WHEREUPON, Applicant's Exhibit No. 3 was marked
15 for identification and received into evidence.)

16 MR. APLIN: The other matter, Your Honor -- I
17 talked to Ms. Blanchette about it -- I'm going to recall
18 Ms. Allen Cook just for a moment to ask a couple more
19 questions and then I'll be finished with her.

20 THE COURT: You have no objection to him doing
21 that?

22 MS. BLANCHETTE: I have no objection, Your
23 Honor.

24 THE COURT: All right. Dr. Cook, would you come
25 around, please. You're still under oath. Please be

1 careful.

2 CONTINUED RECROSS-EXAMINATION

3 BY MR. APLIN:

4 Q Thank you. I appreciate you coming back up here.

5 Very quickly, going back to this whole referral
6 process of cases going to the ARC Center or some other
7 center like that, as far as you understand, isn't there
8 some sort of formal requirement or some sort of threshold
9 requirement that's mandatory before a case can end up at
10 ARC?

11 A I don't know that -- I don't know that I understand
12 your question. I'm sorry.

13 Q In other words, who can refer a case to ARC? Who
14 does it have to come from?

15 A Typically with any child advocacy center, I know in
16 the one that I worked at, we took referrals from schools,
17 we took referrals from Department of Social Services, we
18 took referrals from Solicitor's Office, we took referrals
19 from law enforcement entities.

20 Q So you don't know about their specific referral
21 process, if they only take cases from DSS or law
22 enforcement?

23 A I don't know about that, I'm sorry. You'd have to
24 ask them.

25 Q And are you familiar or -- at all with the DSS

1 process, whether they'd to make some sort of minimal
2 finding that something happened before they'll make the
3 referral?

4 A The only thing I can tell you is that -- what I know
5 about DSS is they obviously get a call from some entity
6 saying that something allegedly has happened to a child,
7 and it's my understanding they typically refer that to a
8 place, a child advocacy center where details can be
9 gained.

10 As far as how much talking they do to a child,
11 you would probably have to ask somebody who -- or in that
12 capacity versus me.

13 Q Okay. And in Florence where you say you are more
14 familiar with that process, do they take a referral from
15 anybody regardless of whether there's been some sort of
16 determination that maybe they could verify or some
17 believability to what's being told or do they just refer
18 every case at one mention of abuse?

19 A Who are you speaking of when you say "they"?

20 Q I thought you had worked at the advocacy center
21 there.

22 A I worked at the Durant Children's Center several
23 years ago.

24 Q So would you take a referral from anybody just based
25 on a bare allegation?

1 A I don't know what they do now. I can tell you when I
2 worked there, which would have been -- I left five years
3 ago -- typically what would happen is we would get a phone
4 call from someone that may have worked at the Department
5 of Social Services, a school law enforcement entity, and
6 they would say, you know, that there has been allegations
7 made. And they didn't typically give a lot of
8 information, they would just say that a child had made an
9 allegation and they were referring it to us so we could
10 inquire and do somewhat of a fact finding interview, which
11 is what a forensic is.

12 Q And that would set up -- you would then do the
13 videotaping and all the rest of it?

14 A Exactly.

15 MR. APLIN: Okay. I have no further questions.

16 Thank you, Your Honor.

17 THE COURT: Any questions as a result of those?

18 MS. BLANCHETTE: Yes, Your Honor.

19 FURTHER REDIRECT EXAMINATION

20 BY MS. BLANCHETTE:

21 Q Now the State has asked you about kind of the
22 protocol in getting to the forensic interview stage. Are
23 you or have you been trained in the RATAC, R-A-T-A-C,
24 style of interviewing children?

25 A I have.

1 Q Okay. And what is your understanding of the purpose
2 of doing a forensic interview? Is it so that you can come
3 to court and say this child is truthful or is it to assist
4 law enforcement in their investigation?

5 MR. APLIN: Your Honor, I think that goes
6 beyond the scope of what I just asked on recross.

7 THE COURT: Since we're deviating a little bit,
8 I'm going to let her deviate.

9 Go ahead.

10 MR. APLIN: Okay. Thank you.

11 THE WITNESS: I'm sorry, what did you --

12 BY MS. BLANCHETTE:

13 Q What is your understanding -- because you conducted
14 forensic interviews under this R-A-T-A-C style of
15 interviewing, what is your understanding your role should
16 be? Is it to be able to ascertain whether or not this
17 individual is telling the truth and then come to court and
18 say they're a truth-teller or is it to aid law enforcement
19 in their investigation of the case?

20 A My understanding is there would be a couple of roles.
21 The first one would be that you're somewhat of a fact
22 finder, you're trying to ask non-leading questions to
23 elicit information if something did occur or if something
24 didn't occur.

25 I mean, when I did forensic interviews, there

1 were lots of times when children would come in and not
2 make any disclosure at all.

3 Typically, part of the RATAC protocol is finding
4 out truth/lie, you know, inquiry, finding out if a child
5 does understand the difference between truth and lie. Of
6 course, it's hard for any individual to determine if
7 somebody is telling the truth or if they aren't, but I
8 know when I did interviews, that was part of it, where we
9 would use the truth/lie book, if necessary, and we would
10 ask the child different questions to see if they
11 understood what the consequences of telling the truth
12 were, what the consequences of telling a lie were.

13 MS. BLANCHETTE: Okay. Your Honor, I think
14 that's all the questions I have.

15 MR. APLIN: Nothing further.

16 THE COURT: Thank you, ma'am. Now you're
17 excused.

18 THE WITNESS: Thank you, sir.

19 MS. BLANCHETTE: Your Honor, I would call Greg
20 Robinson to the stand.

21 GREGORY ROBINSON, after being duly sworn,
22 testified as follows:

23 THE COURT: Please be seated.

24

25

DIRECT EXAMINATION

1 BY MS. BLANCHETTE:

2 Q Could you please state your name for the record?

3 A Gregory H. Robinson.

4 Q And, Mr. Robinson, what is your current profession?

5 A I'm sorry?

6 Q What is your current profession?

7 A I'm a licensed professional counselor in the state of
8 South Carolina.

9 Q Okay. Do you own your own business or do you work
10 with some type of agency?

11 A I own my own business.

12 Q Okay. If I could take you back to July of 2008, do
13 you recall testifying for the State as a witness in the
14 case of the State versus Timothy Wilson?

15 A I do.

16 Q Okay. And have you had an opportunity to briefly
17 review your testimony in this case?

18 A Yes, I have.

19 Q Okay. Mr. Robinson, if you could just identify what
20 this appears to be for the record -- it's several pages --
21 if you don't mind flipping through it.

22 A This is a faxed copy of some notes of mine.

23 Q Okay. And who was the subject of these notes? Who
24 is the person that you were -- your client?

25 A Breann Wilson.

1 Q Okay. And who was this faxed to?

2 A Heather Smith.

3 MS. BLANCHETTE: Your Honor, at this time I
4 would move this in as Applicant's No. 4.

5 MR. APLIN: No objection.

6 THE COURT: All right. Admitted without
7 objection.

8 (WHEREUPON, Applicant's Exhibit No. 4 was marked
9 for identification and received into evidence.)

10 BY MS. BLANCHETTE:

11 Q Now, Mr. Robinson, we've already established that you
12 turned over notes to Heather Smith and you testified at
13 trial. How is it that you became involved in this case?

14 A Her mother called and presented to me and made an
15 appointment for therapy to talk with Breann.

16 Q Okay. And did you have the opportunity to talk with
17 Breann?

18 A I did.

19 Q Okay. And you testified about that at trial; is that
20 correct?

21 A I did.

22 Q Now, when you get a call regarding an allegation of
23 any type of abuse, do you have a certain theory or a
24 certain system that you use in deciding if you're going to
25 talk to the child or the family, is there some procedure

1 that you have in place?

2 A Well, yes, I have several theoretical approaches, but
3 one of my specialities and choices that I've received a
4 lot of training in is family systems, it's known as a
5 family systems approach.

6 Q And what does that entail, this family systems
7 approach?

8 A The theory behind that goes something along the lines
9 that if there is some type of behavior in a family
10 member -- in my case, I specialize with children and
11 adolescents -- that sometimes that behavior can be
12 explained in the context of family and so, therefore, the
13 training that I've received entails getting family members
14 involved in trying to, a, problem solve why this behavior
15 exists, why it continues, and looking at how we can use
16 the family as a whole to try to isolate the symptom or the
17 behavior, and if it's a symptom that's undesirable, to
18 make it go away.

19 Q Okay. During cross-examination at the trial,
20 Mr. Cornwell was asking you questions, and here on page
21 324, lines 12 through 16, he asks you if the victim was
22 the only person that you were seeing in the family, and
23 you actually kind of alluded to this family systems
24 theory; is that correct?

25 A Yes, uh-huh.

1 Q Did he ever specifically ask you who else you spoke
2 to in the family?

3 A I don't believe that he did.

4 Q Okay. Who else do you recall meeting with in the
5 family?

6 A I met with Breann's mother, I met with Breann, and
7 then I met with her father, TJ.

8 Q Okay. And did defense counsel ever ask you about
9 your meetings with Mr. Wilson when you were there as a
10 State's witness?

11 A They did not.

12 Q Okay. And have I asked you to review your notes of
13 those meetings with Mr. Wilson?

14 A Yes.

15 Q Okay. Do you recall how many meetings you had with
16 him?

17 A I had two.

18 Q Okay. And during those meetings what took place?

19 A Well, in keeping with the family systems approach, I
20 wanted to, you know, formally gain some assessment
21 material, meet with him, get to know him a little, let him
22 get to know me and get more familiar with, say, his role
23 in the family and his motivations for being here, and to
24 talk about goals that we might work on together ultimately
25 to, you know, help the family functioning and -- because

1 he showed concern for Breann as well, her behaviors.

2 Q Okay. And did you find that he was motivated and
3 wanted to be involved? Was he willing to come to these
4 sessions with you?

5 A I felt that he was.

6 Q Okay. And would you have been willing to testify to
7 that in court if asked?

8 A Yes.

9 Q Okay. Did he make any disclosures to you about
10 things that he felt he could improve on?

11 A He talked about how he realizes that he was sometimes
12 quick to anger at home, that -- but he wasn't sure why,
13 but he wanted to explore that and to see, you know, how to
14 improve that; that he ultimately wanted, you know, to help
15 Breann, he wanted, you know, family functioning to help.
16 And, you know, after talking about my approach to things,
17 it seemed that he liked that and wanted, you know, to work
18 together as a family to -- ultimately to help Breann in
19 her frustration and her anger and acting out, that sort of
20 thing.

21 Q Okay. And at one point during the trial, the
22 Solicitor questioned Mr. Wilson about not contacting law
23 enforcement, and it essentially goes to the fact that he
24 wasn't actively involved. What would be your opinion on
25 that? Did he appear to be actively involved as far as you

1 had seen?

2 A Well, all I know is that, you know, based on our two
3 meetings together, I don't know really what was going on
4 outside of that, but to me, as I said, I felt he was
5 motivated, you know, to meet with me and that, you know,
6 whatever we would organize as far as family members, that
7 he was enthusiastic about that.

8 Q Did you all discuss this allegation at all and did he
9 provide you any explanation as to how this could have
10 happened?

11 A Not really. That wasn't really our focus. That's
12 something that was sort of going on outside of our
13 meetings. My focus was, okay, at that point there was no,
14 you know, certainty, of course. We were aware that she
15 had talked about this, these behaviors, and talked about
16 these incidents, but we were focused on, okay, is this --
17 if this turns out to be something that didn't happen, what
18 might explain this type of behavior and what's going on in
19 the family power-strugglewise between parent/child,
20 parent/parent that we might do to adjust things so that if
21 this is something that is not happening or has not
22 happened, then, you know, it won't be necessary anymore to
23 use certain clinical language.

24 Q Okay. And we have the dates on your notes from when
25 you met with Breann. But if you could look at the

1 transcript on pages 326 and 327 -- it should be in that
2 packet that was provided to you -- specifically beginning
3 on line 23 on page 326.

4 A Uh-huh.

5 Q It indicates there that you were going to make a
6 referral to ARC and understood they already had an
7 appointment for ARC?

8 A Uh-huh.

9 Q So is it your understanding you spoke with the victim
10 before she went to ARC?

11 A Yes. Uh-huh.

12 Q Okay. So you had your sessions with her before she
13 went to ARC?

14 A Uh-huh.

15 MS. BLANCHETTE: Your Honor, if I could just beg
16 the Court's indulgence one moment.

17 THE COURT: Yes, ma'am.

18 (Pause.)

19 MS. BLANCHETTE: I have no further questions.

20 THE COURT: Cross-examination.

21 MR. APLIN: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. APLIN:

24 Q Mr. Robinson?

25 A Uh-huh.

1 Q I think just a moment ago you testified that in
2 working on this family therapies, that you were kind of
3 focused on if it turned out that this act of sexual abuse
4 didn't happen how could you work with the family to kind
5 of get them back together?

6 A Uh-huh.

7 Q Okay. And did you ever or were you able to reach a
8 conclusion whether it did or didn't happen?

9 A I don't feel like that's my role.

10 Q Okay.

11 A Yeah.

12 Q So you never -- you don't feel that's your role so
13 you never reached a conclusion in that regard?

14 A Right.

15 Q Now, you talked about -- I think it was pointed out
16 in the trial transcript that the Solicitor made a point of
17 saying Mr. Wilson had not gone to law enforcement to try
18 to paint a picture that perhaps he was not cooperative or
19 not participating or somehow helping with the situation.
20 Your testimony was that he was cooperating and
21 participating and helpful with you during those sessions;
22 is that right?

23 A Uh-huh. Uh-huh.

24 Q And, of course, you're using this family method in
25 order to identify a problem in one of the family members,

1 and then if you determine it is a problem, to help the
2 family fix that problem. So in the context of this family
3 therapy, what was the problem?

4 A Well, the presenting problem from Jessica, her
5 mother, is is this some sort of acting out behavior, is
6 she making this up because she's angry with her dad or
7 she's angry with me or, you know, is this something that
8 is basically her way of trying to tell us the best way she
9 knows how, hey, I'm angry with you, I'm upset,
10 disappointed, that sort of thing.

11 Q So, in other words, it was presented to you as if
12 this allegation had been made and that perhaps it was not
13 true?

14 A Well, with I think the family and the mother at first
15 when I talked with her, of course, was hopeful that it was
16 not true.

17 Q But, again, that was the problem that presented to
18 you?

19 A Uh-huh.

20 Q And, again, in the very beginning of your testimony,
21 part of your method that you use or the theory behind your
22 method is to identify the problem and then look for ways
23 for the family to fix that problem by talking and dealing
24 with all the family members either individually or
25 together?

1 A Uh-huh.

2 Q And the problem was presented to you by the mother
3 and father or was it mother was the first person you
4 talked to?

5 A She was the first person to bring Breann to the
6 appointment.

7 Q And it's fair to say that she did not believe these
8 allegations were true?

9 A I'm not sure what she believed.

10 Q Did she say anything to you about whether she thought
11 they were true?

12 A She did imply that she didn't think that they were
13 true.

14 Q Okay. In the trial testimony, she testified she
15 thought that Breann was making -- fibbing, I guess,
16 essentially or telling a story about these things?

17 A Uh-huh.

18 Q And Mr. Wilson also testified to that effect?

19 A Uh-huh.

20 Q Okay. And so these are the two people in the family,
21 or I guess maybe the one person in the family, the mother,
22 who brought the problem to you and was paying you for the
23 therapy, I assume?

24 A Uh-huh.

25 MR. APLIN: Okay. No further questions.

1 MS. BLANCHETTE: If I could just beg the Court's
2 indulgence one moment.

3 THE COURT: Yes, ma'am.

4 (Pause.)

5 MS. BLANCHETTE: Your Honor, I have no further
6 questions.

7 THE COURT: May he be excused?

8 MS. BLANCHETTE: I have no objection.

9 MR. APLIN: No objection.

10 THE COURT: Thank you, sir. You may be excused.

11 THE WITNESS: Thank you.

12 THE COURT: Call your next witness, please,
13 ma'am.

14 MS. BLANCHETTE: Your Honor, at this time I'd
15 call my client. Small warning: It will probably be an
16 hour to two hours. I assume you want to get him started.

17 THE COURT: Yes, I'd like to go ahead and get
18 started.

19 MS. BLANCHETTE: Your Honor, I'd call Timothy
20 Wilson.

21 TIMOTHY WILSON, after being duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MS. BLANCHETTE:

25 Q Could you please state your name for the record?

1 A Timothy Jacob Wilson.

2 Q Mr. Wilson, are you currently incarcerated?

3 A Yes.

4 Q And where are you incarcerated?

5 A Broad River Correctional Institute.

6 Q Mr. Wilson, we've already had testimony today about a
7 social phobia that you've been diagnosed with. Could you
8 just briefly explain that, what it means to you, what do
9 you experience?

10 A Well, it's -- it's almost a reaction to being in a
11 position like you're afraid of heights, being in that
12 situation where you're next to the edge and, you know,
13 you're looking -- maybe even they got some glass, they
14 have glass bridges now. So if you're on one of those, and
15 you were looking down and all you could see is air, it's
16 kind of that feeling, just up here in front of the
17 microphone. It's almost like magnifying my fear just to
18 talk in front of people, but, you know, you get a
19 microphone, it's even louder.

20 Q And Dr. Schwartz-Watts talked about the fact that
21 you're in a Jump Start program where you're attempting to
22 get over that fear. What do you do in that program or
23 what are you attempting to do?

24 A I'm a leader for a table.

25 The program's designed to help inmates who are

1 transitioning back into the world who are within two years
2 of maxing out or paroling out. And I'm -- I prepare
3 lessons for each class. I'll get up, and I'll deliver a
4 message similar to a sermon, but it's usually -- it's
5 usually written down. I have to write it down because
6 it's hard to do. Just getting up here is an act of will,
7 you know.

8 Q And when you're looking at your notes, what typically
9 happens to you when you're trying to give your public --
10 speak publicly to those inmates?

11 A Well, I have to concentrate on just the notes because
12 if I try to speak the way that most people speak, then I
13 will lose my train of thought and I won't be able to talk,
14 I'll stumble over my words. I just don't ever get the
15 point across.

16 Q You had limited meetings with Mr. Cornwell before
17 your trial, and we'll get into that more. But were you
18 able to discuss this with him and prepare with this phobia
19 in mind for your trial testimony?

20 A No. I wasn't -- I wasn't really truly aware of that.
21 I mean, I haven't had any experience getting up here in
22 front of a microphone in front of people and talking to
23 people, and, I guess, especially trying to defend
24 yourself. You know, that puts you in a situation where
25 you -- it's not something I had to do before.

1 Q Okay. Mr. Wilson, you have one day in court to
2 present your PCR and your allegation. You get one bite at
3 the apple. So if there's anytime that you need a break or
4 there's anything that I can do, or anyone in this
5 courtroom can do regarding this phobia, please let me
6 know. Okay?

7 A Yes.

8 MS. BLANCHETTE: Your Honor, at this time I'm
9 going to hand him a copy of the transcript that doesn't
10 have any notes or anything, it's just for his reference.

11 THE COURT: Okay.

12 BY MS. BLANCHETTE:

13 Q Now, Mr. Wilson, do you recall going to trial in July
14 of 2008 here in Lexington County?

15 A Yes.

16 Q Do you recall who represented you?

17 A Yes.

18 Q Okay. Who was that?

19 A Mr. Casey Cornwell.

20 Q Okay. And did he have a second chair, Mr. Bennett
21 Casto?

22 A Yes, ma'am.

23 Q And you went on trial for allegations relating to
24 your daughter; is that correct?

25 A Yes.

1 Q Okay. And what was your -- what is your daughter's
2 name?

3 A Breann Lynette Wilson.

4 Q And you were indicted and went to trial for CSC with
5 a minor, lewd acts -- I'm sorry, you went to trial and
6 were convicted for criminal sexual conduct with a minor,
7 lewd act. And what sentence did you have receive?

8 A I received 45 years.

9 Q Okay. And after your trial, did you have an appeal?

10 A Yes, ma'am.

11 Q Okay. Who represented you on your appeal?

12 A Wanda Carter.

13 Q Okay. And was that from the Office of Appellate
14 Defense?

15 A Yes, ma'am.

16 Q Okay. And are you alleging today that not only was
17 your trial counsel ineffective, but also that your
18 appellate counsel was ineffective?

19 A Yes, ma'am.

20 Q Okay. And your appeal was ultimately dismissed in
21 October of 2010; is that correct?

22 A I'm not sure of the date, but that sounds like the
23 same year.

24 Q You weren't successful in your appeal?

25 A No, ma'am.

1 Q Okay. Now, let's go back to the very beginning of
2 this case.

3 Once you received these allegations, did you
4 retain or were you originally appointed an attorney?

5 A Originally, I -- my family paid for an attorney. I
6 was arrested and charged with four counts of CSC, and
7 while in the county jail, my family hired a lawyer from
8 California, and they hired local -- local counsel through
9 Jack Duncan, and that was my representation up until they
10 went bankrupt, and I lost counsel because of non -- I
11 couldn't pay Jack Duncan, and Jack Duncan released himself
12 from my case.

13 And after that, they appointed Sally -- or a
14 court-appointed lawyer, which I wasn't able to retain, and
15 they appointed me a public defender, Mr. Casey Cornwell.

16 Q Okay. Let's go back a little bit.

17 You said "they went bankrupt." Who went
18 bankrupt?

19 A The law firm out of California. I don't recall the
20 name right now. I can't remember.

21 Q But you had already paid them, but because they went
22 bankrupt, you lost representation in this case?

23 A Yes, ma'am.

24 Q Okay. But Jack Duncan did represent you until you
25 were appointed an attorney in April of 2008?

1 A Yes, ma'am.

2 MS. BLANCHETTE: Your Honor, if I may approach.

3 And I will stop asking if I may approach.

4 BY MS. BLANCHETTE:

5 Q Could you identify what this document appears to be
6 for the record?

7 A It's a note to Samuel Long, which was my -- that was
8 the guy's name. He worked in this law firm, and he was my
9 representation, and he hired Jack Duncan. That's from
10 Jack Duncan.

11 MS. BLANCHETTE: Your Honor, at this time I
12 would move this note from Samuel Long to Jack Duncan in as
13 Applicant's No. 5.

14 THE COURT: Any objection?

15 MR. APLIN: No, Your Honor.

16 THE COURT: Admitted without objection.

17 (WHEREUPON, Applicant's Exhibit No. 5 was marked
18 for identification and received into evidence.)

19 BY MS. BLANCHETTE:

20 Q Mr. Wilson, you received this, what appears to be an
21 email in your copy of your case file; is that correct?

22 A Yes, ma'am.

23 Q And what jumped out at you in the first paragraph
24 there?

25 A It talks about having me evaluated as a sexual

1 predator.

2 Q Okay.

3 A And, to me, that was -- that stood out because I
4 didn't -- I didn't have that before my trial.

5 Q Okay. And as early as December 22, 2006, this was
6 being discussed by your private attorneys; is that
7 correct?

8 A Yes. Yes, ma'am.

9 Q But that was never done by them or by your defense
10 attorney in preparation for your case; is that correct?

11 A Yes, ma'am.

12 Q Okay. And is that why you personally retained Dr.
13 Schwartz-Watts and had her evaluate you?

14 A Yes, ma'am.

15 Q Okay. And what is your allegation regarding what
16 your defense attorney should have done as far as an
17 evaluation or utilizing someone like Dr. Schwartz-Watts?

18 A I'm not a lawyer, but seeing a note about getting me
19 evaluated leads me to believe that it was necessary and
20 I -- you know, if I was representing someone, and this was
21 part of their investigation, I would definitely look into
22 getting that done because it obviously was something that
23 Jack Duncan thought was needed. And, you know, I'm not a
24 lawyer, so I don't -- you know, I don't know, but I would
25 have -- I would have went with that. I would have said,

1 this is probably something I need to do.

2 Q Was that ever conveyed to you, and as kind of a
3 second question, did you reject that idea at any point in
4 your representation? Did you say, no, I don't want to be
5 evaluated?

6 A No.

7 Q Okay. Mr. Wilson, could you identify this, please,
8 for the record?

9 A This is a -- it's a -- looks like a memo or an order.

10 Q Does it appear to be a letter?

11 A A letter, yes, ma'am.

12 Q Who's it written to?

13 A It's written to Mr. Jack Bradley Baker, Esquire.

14 Q And who wrote the letter, who signed the letter at
15 the bottom?

16 A Mr. Stumbo.

17 Q Okay. And what's the date on this letter?

18 A April 23rd, 2008.

19 MS. BLANCHETTE: Your Honor, at this time I
20 would move this letter in as Applicant's No. 6.

21 THE COURT: Any objection?

22 MR. APLIN: No, Your Honor.

23 THE COURT: Admitted without objection.

24 (WHEREUPON, Applicant's Exhibit No. 6 was marked
25 for identification and received into evidence.)

1 BY MS. BLANCHETTE:

2 Q David Stumbo is the solicitor that handled your case;
3 is that correct?

4 A Yes, ma'am.

5 Q And by way of this letter on April 23rd, 2008, it
6 appears that he's providing your appointed attorney some
7 discovery materials?

8 A Yes, ma'am.

9 Q Okay. And that was your first appointed attorney
10 from the Sally Law Firm; is that correct?

11 A Yes, ma'am.

12 Q I'm going to hand you this. If you can identify it
13 for the record, please.

14 A It looks like a similar note like the last one.

15 Q What's the date on this?

16 A April 23rd, 2008.

17 Q Okay. And who is it written to?

18 A Mr. John Bradley Baker, Esquire.

19 Q All right. And who is it from?

20 A From Mr. Stumbo.

21 MS. BLANCHETTE: Your Honor, at this time I
22 would move this letter, also dated April 23rd, 2008, in as
23 Applicant's No. 7.

24 THE COURT: Any objection?

25 MR. APLIN: No, Your Honor.

1 THE COURT: Admitted without objection.

2 (WHEREUPON, Applicant's Exhibit No. 7 was marked
3 for identification and received into evidence.)

4 BY MS. BLANCHETTE:

5 Q Now, if you could look at the contents of this
6 letter, does it discuss the fact that you are facing
7 deployment with the Marine Corps?

8 A Yes, ma'am.

9 Q And it's discussing possible trial dates; is that
10 correct?

11 A Yes, ma'am.

12 Q Also it indicates that he is providing a copy of the
13 forensic interview to your defense counsel?

14 A Yes, ma'am.

15 Q Okay. Let's talk a little bit about this.

16 You were actively in the Marine Corps at the
17 time these allegations came forward?

18 A Yes, ma'am.

19 Q Okay. And were you deployed or what was going on?
20 Kind of give us the lay of the land as far as your
21 involvement with the Marines.

22 A At the time, I had just finished my training, and I
23 was, I believe, two months into my reserve unit or working
24 at being at my reserve unit, which is in Augusta, Georgia.
25 I was a reservist and under a motor TE. I worked as a

1 diesel mechanic for them. And I also was part-time
2 working for -- not part-time, but I was working for Time
3 Warner Cable.

4 Q Okay. And when were you in Georgia, what time period
5 would that be?

6 A Georgia? I went there after -- after they had
7 arrested me over these -- they arrested me for four
8 charges of CSC. When I bonded out, I immediately needed
9 work, so I went to my reserve unit and they were asking
10 for volunteers for active duty. And at the time, I needed
11 the money and I enjoyed the work, so I volunteered and
12 went to Georgia, I believe, in 2007.

13 Q Were you always in Georgia or did you travel to
14 another state?

15 A I lived in Georgia, but I traveled to California in,
16 I believe, April of 2008.

17 Q Okay. And so in that letter, they're discussing
18 having a trial in May of 2008. Were you in the state of
19 South Carolina at that time?

20 A No, ma'am.

21 Q Okay. If I may hand you this, and can you identify
22 it for the record, please?

23 A It's a motion for continuance.

24 Q Okay. And who was the attorney submitting that,
25 whose signature is on that?

1 A Mr. Cornwell.

2 Q Okay. And what's the date at the bottom?

3 A April 29th, 2008.

4 MS. BLANCHETTE: Your Honor, at this time I
5 would move the motion for continuance in as Applicant's
6 No. 8.

7 THE COURT: Any objection?

8 MR. APLIN: No, Your Honor.

9 THE COURT: It will be admitted.

10 (WHEREUPON, Applicant's Exhibit No. 8 was marked
11 for identification and received into evidence.)

12 BY MS. BLANCHETTE:

13 Q Mr. Wilson, did your case go forward in May of 2008?

14 Did you go to trial in May of 2008?

15 A No, ma'am.

16 Q Okay. So your case was continued; is that correct?

17 A Yes, ma'am.

18 Q Do you remember when you returned to the state of
19 South Carolina, approximately when you came back?

20 A July, July of 2008.

21 Q Okay. So the month that you went to trial; is that
22 correct?

23 A Yes, ma'am.

24 Q Okay. Once you returned, did you have an opportunity
25 to meet with your newly appointed public defender, Casey

1 Cornwell?

2 A Yes.

3 Q Do you know approximately how many times you all met?

4 A Roughly three, maybe.

5 Q Do you remember what you went over with him?

6 A I remember one time we sat down and started going
7 over the DVD. We started in on it, I think we sat down
8 together for maybe 30 minutes of it, if that. And then I
9 continued to watch it for another 15 minutes while he -- I
10 don't know where he went, but I watched it for another
11 15 minutes, and that was that session.

12 The other two sessions were just real basic,
13 going over what the charges were.

14 And I remember the last one was -- had to do
15 with -- he spoke to me about a plea and new charges that
16 were being brought up, I believe, two new charges.

17 Q Okay. Well, let's jump forward, then, and talk about
18 that plea real quickly.

19 What did he tell you about the plea?

20 A I sat down with Mr. Cornwell, and Mr. Casto I believe
21 was there also, and we went over a plea that he said the
22 State was offering, and he said it was a 22-year cap,
23 22 -year -- I don't -- I don't even remember what the
24 charge was, but I remember hearing he said it was a
25 22-year cap on whatever the charge was.

1 And we later -- he mentioned something about an
2 eight-year plea, or something. I don't know if that was
3 just something that he wanted to offer or what that was.

4 Q On pages 684 and 685 in his closing comments to the
5 Court, Mr. Cornwell very eloquently goes through about how
6 he met you, and he saw just a normal guy, and it was
7 shocking to him that you were so normal, and how you're
8 coming home from being on military deployment to face
9 these charges.

10 Did he give you any type of reaction that you
11 remember when you guys first sat down and started working
12 on your case as to his reaction to you and these charges?

13 A Yeah. For me, it was -- when I first sat down and
14 started speaking with Mr. Cornwell, it was a sense of
15 shock that I saw. It was almost like he -- he didn't -- I
16 don't know -- it -- I just -- I seen a look of shock on
17 his face, almost like he didn't know what to do, you know
18 what I mean, because it was apparent to me that he hadn't
19 seen my face, and then once I sat down across from him, he
20 automatically changed his demeanor. So I don't know what
21 really what he's thinking, but I could tell there's
22 definitely a difference.

23 Q Okay. And he explained that thoroughly in his
24 comments on pages 684 through 685, but it is something you
25 also noticed; is that correct?

1 A Yes, of course.

2 Q Now, as far as a plea, why didn't you take a plea?

3 A I wasn't -- I wasn't guilty. I wasn't about to
4 accept guilt for something I didn't do. I don't think
5 anybody in their right mind would do that.

6 Q Do you know if Mr. Cornwell or the Public Defender's
7 Office conducted any type of independent investigation in
8 your case, used a private investigator?

9 A No, no, ma'am. Not that I know.

10 Q Now, you have obtained a complete copy of
11 Mr. Cornwell's file; is that correct?

12 A Yes, ma'am.

13 Q Okay. Could you identify what this says it is, for
14 the record, please.

15 A This is the -- I know it's a handout. It says
16 Attorney/Client Handout, and it says in preparation for
17 trial.

18 Q And this was contained in the file you received after
19 trial; is that correct?

20 A Yes, ma'am.

21 MS. BLANCHETTE: Your Honor, at this time, I'd
22 move this in as Applicant's No. 9.

23 THE COURT: Any objection?

24 MR. APLIN: No, Your Honor.

25 THE COURT: It will be admitted.

1 (WHEREUPON, Applicant's Exhibit No. 9 was marked
2 for identification and received into evidence.)

3 BY MS. BLANCHETTE:

4 Q Mr. Wilson, have you had a chance to read this
5 handout?

6 A Yes, ma'am.

7 Q Do you recall reading through it before trial?

8 A No, ma'am. I've not seen this before trial, but I
9 saw it when I got the discovery with you.

10 Q Okay. And in reading through this, is there
11 information there that would have helped you in preparing
12 for trial?

13 A Yeah. It's -- it's really helpful for anyone that's
14 going to be sitting where I'm sitting now.

15 Just a few things. It says, number one, tell
16 the truth. Do not exaggerate the facts to help your case.

17 I think that's very important because you almost
18 feel like you're up here defending yourself. And for me,
19 when I get nervous, I mean, I don't believe that I have a
20 clear wording of anything. So if I could have seen that
21 beforehand, I think -- I think it would have helped a lot.

22 And then number three I saw, it says, review all
23 documents and papers given to you in the case.

24 Within the discovery, there's many documents
25 that I've seen and -- for the first time that I wasn't

1 aware that they even existed. And I do believe that that
2 would have helped me to maybe better help my attorney. I
3 think I could have maybe shed some light on it, maybe even
4 helped the defense, you know. I mean, this is my life. I
5 think I should know about the things that are being said
6 or written about me.

7 Q And in going through the documents in your full file,
8 you didn't have any trouble understanding or comprehending
9 what was in the paperwork? Did you have any trouble
10 understanding or comprehending what was in the discovery
11 materials?

12 A No, I mean, I understand it. I think I understood
13 most of it.

14 Q So you could have assisted Mr. Cornwell in putting
15 together your defense if you had properly reviewed those
16 materials?

17 A Yes, ma'am.

18 Q Okay. And he admits, actually, at the beginning of
19 your trial on page 33 that he didn't even have the
20 discovery until June 27th to begin reviewing with you; is
21 that correct? You all didn't have a chance --

22 A No, I didn't have -- I didn't sit down with him and
23 go over any paperwork or discovery.

24 Q Okay. Mr. Wilson, can you identify this document for
25 the record, please?

1 A It's a note.

2 Q What's the date on it?

3 A May 23rd, 2008.

4 Q Who's it written to?

5 A It's written to Mr. Cornwell.

6 Q And who wrote it, who signed it?

7 A Mr. Stumbo.

8 MS. BLANCHETTE: Your Honor, at this time I'd
9 moved this in as Applicant's No. 10.

10 THE COURT: Any objection?

11 MR. APLIN: No objection.

12 THE COURT: Admitted without objection.

13 (WHEREUPON, Applicant's Exhibit No. 10 was
14 marked for identification and received into
15 evidence.)

16 BY MS. BLANCHETTE:

17 Q Mr. Wilson, I'm going to have you identify two more
18 documents, and then I'll ask you about them.

19 What does that appear to be, the date and who
20 it's written to?

21 A This is another letter, and it's -- it's to
22 Mr. Cornwell and it's from Mr. Stumbo.

23 Q And what was the date on it, did you say?

24 A And the date was July 2nd, 2008.

25 MS. BLANCHETTE: Your Honor, at this time I'd

1 move this letter in as Applicant's No. 11.

2 THE COURT: Any objection?

3 MR. APLIN: No, Your Honor.

4 THE COURT: Admitted without objection.

5 (WHEREUPON, Applicant's Exhibit No. 11 was
6 marked for identification and received into
7 evidence.)

8 BY MS. BLANCHETTE:

9 Q Mr. Wilson, can you identify what the title is on
10 this document?

11 A Order of Protection.

12 Q And what's the date on the bottom?

13 A July 14th, 2008.

14 MS. BLANCHETTE: Your Honor, at this time I'd
15 move this in as Applicant's No. 12.

16 MR. APLIN: No objection.

17 THE COURT: Admitted without objection.

18 (WHEREUPON, Applicant's Exhibit No. 12 was
19 marked for identification and received into
20 evidence.)

21 BY MS. BLANCHETTE:

22 Q Mr. Wilson, in that first letter, is your attorney
23 giving notice of a possible trial date, the one dated
24 May 23?

25 A Yes, ma'am.

1 Q Okay. And what is the trial date he's being put on
2 notice for?

3 A July 14, 2008.

4 Q Okay. And what's the date on that letter again?

5 A It's May 23rd, 2008.

6 Q Okay. On the next letter, is there anything that
7 jumps out to you on that letter dated July 2nd, 2008?

8 A Oh, it says "hand delivered" at the top there, and he
9 lists all the indictments for the week of July 14th.

10 Q So your attorney is being put on notice for a court
11 date for July 14th; is that correct?

12 A Yes, ma'am.

13 Q Okay. And does Mr. Stumbo go through and give some
14 specific information on how he plans to handle the case
15 and the witnesses he plans to call?

16 A Yes.

17 Q So on July 2nd, 2008, it appears your attorney was
18 hand delivered a two-page letter putting him on notice of
19 a possible trial date and information regarding the
20 State's case; is that correct?

21 A Yes, ma'am.

22 Q Okay. And then the final document is an Order of
23 Protection, and that is an Order of Protection that was
24 obtained by your attorney, Casey Cornwell. And what does
25 it say in there? Why is he getting that Order of

1 Protection?

2 A It says, so as to prepare for this hearing before the
3 Court on Monday, July 28, 2008.

4 Q So July 14th, 2008, he received an Order of
5 Protection in order to prepare for your case; is that
6 correct?

7 A Yes, ma'am.

8 Q Okay. I will take those documents back from you so
9 we don't get in a mess up here.

10 Now, let's talk a little bit more about
11 discovery that was reviewed or wasn't reviewed.

12 You said you've had a chance to review your
13 complete file now; is that correct?

14 A Yes, ma'am.

15 Q Okay. And in that file, did you have a chance to go
16 through a handwritten narrative that was produced by your
17 daughter?

18 A Yes, ma'am.

19 Q Okay. And could you identify that document for the
20 record?

21 A It says -- it's a -- looks like a note, a two-page
22 note, and has at the top her name, and it says, "Trauma
23 Narrative." The date is February 7th, 2008, and she wrote
24 "Thursday" under it.

25 MS. BLANCHETTE: Your Honor, at this time, I

1 would move this in as Applicant's No. 13.

2 THE COURT: Any objection?

3 MR. APLIN: No, Your Honor.

4 THE COURT: Admitted without objection.

5 (WHEREUPON, Applicant's Exhibit No. 13 was
6 marked for identification and received into
7 evidence.)

8 BY MS. BLANCHETTE:

9 Q Mr. Wilson, did you have the opportunity to go over
10 this narrative that was contained in the materials
11 provided by ARC with Mr. Cornwell prior to trial?

12 A No, ma'am.

13 Q Have you had a chance to review it now?

14 A Yes.

15 Q Would it have been helpful to review with
16 Mr. Cornwell prior to trial, and if so, why?

17 A Yes. I was charged with four counts of CSC. And
18 after looking through it -- looking through it, this is --
19 I mean, it was all based on what they said, delayed
20 disclosure. And this is February of 2008, and she didn't
21 mention anything about the four charges that I was being
22 charged with. I think that would have been able to help
23 my defense.

24 Q And both your daughter and the individual from ARC
25 that assisted her in putting together this narrative

1 testified at your trial; is that correct?

2 A Yes, ma'am.

3 Q Okay. So this is information that Mr. Cornwell could
4 have potentially used in cross-examination?

5 A Yes, ma'am.

6 Q Okay. Is there anything else regarding that
7 narrative that you'd like to bring to the Court's
8 attention?

9 A I don't believe so.

10 Q Okay. Mr. Wilson, to the best of your ability, can
11 you identify what that appears to be, for the record?

12 A This is an ARC assessment and forensic evaluation
13 form.

14 Q What's the date on that?

15 A The date of admission is 11-1-2006.

16 MS. BLANCHETTE: Your Honor, at this time I
17 would admit this as Applicant's No. 14.

18 THE COURT: Any objection?

19 MR. APLIN: No, Your Honor.

20 THE COURT: Admitted without objection.

21 (WHEREUPON, Applicant's Exhibit No. 14 was
22 marked for identification and received into
23 evidence.)

24 BY MS. BLANCHETTE:

25 Q Mr. Wilson, do you remember reviewing this document

1 with your attorney prior to trial?

2 A No, ma'am.

3 Q Okay. And each of the pages is signed by Alicia
4 Benedetto, Ph.D.; is that correct?

5 A At the end it's signed Alicia Benedetto and on the
6 narrative.

7 Q I'm sorry, not on each page, but the signature of the
8 person preparing this?

9 A Yes, ma'am.

10 Q Okay. Now, you've had a chance to go through this;
11 is that correct, in preparation for your PCR?

12 A Yes, ma'am.

13 Q Is there some specific information contained in this
14 report that you would like to point out to the Court that
15 you're alleging that your attorney should have reviewed or
16 discussed with you prior to your trial? And please take
17 your time in going through it, but let us know what page
18 you're on, please.

19 A Okay. Yes. On page 2, number 3, it says,
20 "Developmental and Mental Health History." Third sentence
21 it says: "However, after her disclosure, TJ and Jessica
22 decided together to take Breann to a counselor for
23 therapy."

24 That's one thing I think would have helped
25 because they're accusing me of not, I guess, not caring

1 about Bree enough to find out what's -- what's -- why
2 she's making these claims. And, you know, me and Jessica
3 decided to take her and get her -- an evaluation done.
4 And at the same time, I wanted to make sure I could do
5 everything I could to help.

6 Q Okay. What else in this report? Obviously, all the
7 information would have been helpful to review --

8 A Yes.

9 Q -- but the specific things that you would have
10 pointed out to him and wanted to discuss with him and
11 potentially utilize as part of your defense.

12 A On page 5, there's a recommendation at the bottom.
13 And number 14, and it's numbered what's in the
14 recommendation number 2, it talks about how Jessica, my
15 wife, was unwilling to believe that these allegations
16 happened. And she was told not to discuss the case
17 with -- around Breann or to avoid questioning her even.
18 And they actually threatened her by saying that they would
19 remove the children if she did so. And for this case,
20 they had said that, you know, she was never told that, and
21 they actually brought in Chrissalyn Thompson to -- to
22 refute that because she didn't realize who had told her
23 that she's not supposed to talk to Breann about the
24 charges or anything concerning the case, but she knew that
25 it had happened. And they -- they have clear proof right

1 here in black and white that they made those requirements,
2 they told her not to, and I think that kind of counters
3 what they were trying to say about her.

4 Q So on direct examination, your wife testified that
5 someone told her this exact information here. Well, she
6 testified to that regard, and she thought it may be DSS.
7 So the State re-called Chrissalyn Thompson, the DSS worker
8 to say, I never told her that.

9 If you and Mr. Cornwell had gone over this,
10 would you have wanted him to go into this information,
11 that here it's contained right here in this report, this
12 is what she was told?

13 A Yes. I mean, if I would have read this and been
14 familiar with this, that would have been where I'd direct
15 him for my defense.

16 There's also further down where number six,
17 if -- they -- they threatened her again by saying if
18 however she, which is Jessica, is unable to do so or
19 returns to her former position that Breann is lying, it
20 may be necessary to consider out-of-home placement. So it
21 just -- it repeats itself about how that, you know,
22 they're threatening Jess if she doesn't believe, that
23 they're going to take, you know, Breann out.

24 Q And just to clarify, here it says "recommendations,"
25 but you are referring to those yourself as threats; is

1 that correct?

2 A Yeah, I believe they are.

3 Q Okay.

4 A I mean, at this point, I wasn't in the home. I
5 was -- you know, if they were worried about any type of
6 abuse, that it wasn't present, so they had no reason to
7 threaten her, in my point of view, with taking the kids
8 away because I was no longer even present. I mean, I had
9 nothing to do with that.

10 Q Is there anything else specifically in this report
11 that you would like to point out to the Court's attention?

12 A No.

13 Q Okay. Let me ask you to turn back to page three.
14 There they talk about a prior incident involving her
15 aunts, and that was testified to in court, and an incident
16 where she spent the night at a friend's home, and that was
17 also brought up in court. But I would just ask if you
18 could clarify exactly what your understanding was of the
19 prior incident with her aunts and to clarify if that was a
20 prior incident, that that happened before the allegations
21 regarding yourself?

22 A Yes. There's actually two separate incidents that
23 they're talking about. And there's -- the first one that
24 they're -- in number four on page three, it talks, the
25 last paragraph says: "In another incident when Breann was

1 about four years old, she spent the night at a friend's
2 home, and returned saying that another peer-age female
3 guest in the home had touched her." And we didn't --
4 "This was handled by not allowing her contact with the
5 child anymore."

6 And it went way beyond that. That was -- I
7 mean, it never really -- we never really got into detail
8 within the trial, and I feel that that definitely was a
9 big point that we should have expounded upon that was in
10 the trial.

11 There was -- the situation went -- she was in
12 kindergarten and she had been asking her mom, Jessica, if
13 she could spend the night over at her friend's house. And
14 I was very protective of Bree, and for me to allow her at
15 that age to go to just -- I don't know the parents. For
16 me to allow her to go over there would be ridiculous, to
17 me.

18 But she was -- she really wanted to go, and I
19 didn't want to be, you know, the hard-nose dad that
20 doesn't care, so I said with conditions. I'm going to go
21 out there and make sure -- I'm going to meet the parents,
22 make sure everything's all right because the area that
23 they lived was not -- I thought it was a low end of the
24 area neighborhood. It was out where there's lots of
25 trailers, and I just didn't feel that that was a safe

1 place for her to be. So I tried to prevent anything from
2 happening. So I went out there to make sure that the
3 place was all right. I wanted to meet the dad. I wanted
4 to meet the family there, and, you know, just observe.

5 It was a birthday party for their daughter.
6 They had like a little bouncing blow-up air thing, and the
7 kids looked like they were happy and they were going good,
8 and, you know, I thought that everything would be okay, so
9 I allowed her to stay the night over there.

10 And come to find out, that was a mistake because
11 the guy's niece was staying the night and she's 13, and
12 she had been abusing their daughter, her cousin and...

13 MR. APLIN: Your Honor, all this is pretty
14 extensive hearsay.

15 THE COURT: I'm going to sustain that objection.
16 I think we are heading down the road a little bit far.

17 MS. BLANCHETTE: That's perfectly fine, your
18 Honor.

19 THE COURT: Yes, ma'am.

20 BY MS. BLANCHETTE:

21 Q Mr. Wilson, just to kind of sum all that up, this
22 issue of what happened at this birthday party was touched
23 on at your trial, but are you alleging that it should have
24 been further explored, and most importantly, discussed
25 with your attorney in preparation of your defense?

1 A Yes.

2 Q Okay.

3 A And also there was -- I mean, just by going over
4 this, you could tell there's some things lacking also.
5 Prior incidents to the -- when she was four or when she
6 stayed over at the friend's house -- she wasn't four, she
7 was, like, five, but it was prior to that, and that never
8 got touched on, either.

9 Q All right. Mr. Wilson, could you identify this
10 document for the record, please?

11 A It's a -- it looks as if it's a...

12 Q What does it say on the second page as far as the
13 title?

14 A It says, "Child Maltreatment Protocol."

15 Q Okay. And is the document that you received in the
16 copy of the discovery from your defense attorney's file?

17 A Yes.

18 MS. BLANCHETTE: Your Honor, at this time I'd
19 move this as Applicant's No. 15.

20 THE COURT: Any objection?

21 MR. APLIN: No, Your Honor.

22 THE COURT: Admitted.

23 (WHEREUPON, Applicant's Exhibit No. 15 was
24 marked for identification and received into
25 evidence.)

1 BY MS. BLANCHETTE:

2 Q Mr. Wilson, this is the last document I'm going to
3 ask you to go through and review, but did you have a
4 chance to review those with Mr. Cornwell prior to your
5 trial?

6 A No, ma'am.

7 Q Okay. And have you had a chance to review them prior
8 to your PCR?

9 A Yes.

10 Q Now, I understand that you would have liked to review
11 the entire document with Mr. Cornwell and discuss it, but
12 are there some specific points in that document that you
13 would like to present to the Court?

14 A Yeah, one in particular.

15 When I read it, I ran across something that I
16 thought was stood -- it stood out. It has a history.
17 Let's see, page 7 -- or no, 4, page 4. It says, "History
18 of Injury," and it says, "Has your child ever had" and it
19 says "broken bone," and it's checked no. And she had
20 claimed here, it says: "The child reports breaking her
21 leg when she fell over her dog but did not go to doctor or
22 wear a cast." I think when you look back at the defense
23 that was brought forth, that Mr. Cornwell used, saying
24 that, you know, she makes things up, I think this would
25 have -- I think that statement would have helped kind of

1 show the consistency of that also because she never broke
2 her leg. I mean, if she did, she would have worn a cast,
3 obviously.

4 MS. BLANCHETTE: Your Honor, before I ask this
5 next question, I have a number of page cites from the
6 transcript with lines.

7 THE COURT: Okay.

8 MS. BLANCHETTE: If the Court doesn't mind, I
9 could just give those page cites and lines, and then
10 briefly summarize, instead of having us all --

11 THE COURT: Sure.

12 MS. BLANCHETTE: -- read and refer, if that's
13 okay with the Court and the State?

14 THE COURT: Sure.

15 MR. APLIN: That's fine.

16 BY MS. BLANCHETTE:

17 Q Okay. Now, in opening arguments, page 231, lines 15
18 through 17, and 232, lines 17 through 18, do you recall
19 where both parties argued that this case all boils down to
20 credibility?

21 A What was the page number?

22 Q On page 231, lines 15 to 17, and 232, line 17 through
23 18. Do you remember where both sides argued this case
24 boils down to issues of credibility?

25 A Yes, ma'am.

1 Q And is that why -- what you pointed out about the
2 information of a broken leg being inaccurate, was that why
3 it would have mattered in your case?

4 A Yes.

5 Q Okay. Is there any other information in that ARC
6 report that you'd like to point out to the Court, the ARC
7 report?

8 A No.

9 Q Okay. Now, did your attorney ever discuss with you
10 getting experts or the need for experts in your case?

11 A He had mentioned it. He had mentioned an expert was
12 needed to, I guess, to balance out the -- their experts,
13 is kind of how I took it.

14 Q Okay. Did he ever talk with you about contacting
15 experts or potential experts or any information he had
16 gleaned from experts?

17 A No. He did mention that he had read a book, or
18 something, and he also said that there was a case law or
19 case that where it was needed, or something, he needed an
20 expert.

21 Q Okay. Can you identify what this is title as?

22 A This is a motion for continuance.

23 MS. BLANCHETTE: Your Honor, at this time I'd
24 move this motion --

25 BY MS. BLANCHETTE:

1 Q I'm sorry, what's it dated at the bottom?

2 A It's 7-29-08.

3 MS. BLANCHETTE: I would move this in as
4 Applicant's No. 16.

5 THE COURT: Any objection?

6 MR. APLIN: No, your Honor.

7 THE COURT: It is admitted.

8 (WHEREUPON, Applicant's Exhibit No. 16 was
9 marked for identification and received into
10 evidence.)

11 BY MS. BLANCHETTE:

12 Q And this motion for continuance was submitted on what
13 date?

14 A It was 7-29-08.

15 Q Okay. And is that the date you were going to court?

16 A Yes.

17 Q Okay. And if I could have you identify this?

18 A This is a letter that says pretrial stuff for Timothy
19 Wilson.

20 Q Okay. And did you receive this from a copy of your
21 defense attorney's file?

22 A Yes.

23 MS. BLANCHETTE: Your Honor, at this time I
24 would move this in as Applicant's No. 17. Thank you.

25 THE COURT: Any objection?

1 MR. APLIN: No, Your Honor.

2 THE COURT: Admitted without objection.

3 (WHEREUPON, Applicant's Exhibit No. 17 was
4 marked for identification and received into
5 evidence.)

6 BY MS. BLANCHETTE:

7 Q Mr. Wilson, on that list of pretrial stuff, what does
8 it list as the number one thing to do?

9 A Motion for continuance, and it gives a case and
10 little explanation if -- it says: "Failure to obtain
11 expert witness was ineffective assistance of counsel."

12 Q What was your understanding, talking to Mr. Cornwell,
13 what was your first plan of attack as far as going to
14 trial that day?

15 A He was going to ask for a continuance and try to get
16 it continued.

17 Q And in meeting with him, was that kind of the basis
18 of your strategy was to get the case continued?

19 A Yes.

20 Q Okay. And did that happen?

21 A No.

22 Q Okay. I will take those back from you.

23 Let's look at the transcript here. If you could
24 turn to page 33. There's a pretrial motion your attorney
25 makes. And he explains on pages 33 through 34 that he

1 needs a continuance in order to get experts. He had
2 talked to about four or five but due to time constraints
3 and scheduling conflicts, he couldn't get one there.

4 Do you need help with those pages?

5 A No, ma'am.

6 THE COURT: What's that page number, again?

7 MS. BLANCHETTE: Pages 33 through 34.

8 BY MS. BLANCHETTE:

9 Q Had he discussed with you his attempts to get four or
10 five different experts?

11 A No.

12 Q Okay.

13 A But, yes, it says he was planning on producing two
14 expert witnesses.

15 Q If you could --

16 A Or the State -- I'm sorry, excuse me. The State was
17 planning on producing two expert witnesses. And he said
18 he needed, from his understanding of the case, he said he
19 needed one.

20 Q Okay. If you could turn to page 35 and look at
21 line 10, please. Could you read lines 10 through 17?

22 A Basically, just to kind of sum it up, Your Honor,
23 this case, since I got it is, it's kind of like -- I mean,
24 it's kind of like the babies that the private bar didn't
25 want the Public Defender's Office ended up with, and we

1 have got to take care of it. It's not even like that.
2 It's not even that. It's worse than that. It's kind of
3 like the baby with serious health defects that we have
4 been asked to take care of with no insurance.

5 Q When you heard that come out of your attorney's mouth
6 at the start of your trial, what were your thoughts?

7 A I mean, it kind of puts you into a mindset of there's
8 no hope.

9 Q If you could turn over to page 41, please. And look
10 at lines 12 through 18. If you could, again, just in this
11 last time, I'll have you read a segment of it. If you
12 could read lines 12 through 18 that starts with "but."

13 A "But if you want to talk about prejudice, it's just
14 that the fact that my client's rights will be prejudiced
15 through no really fault of anybody serious, just the fact
16 that he's kind of been -- this case has kind of been
17 tossed around, and now you're in a position to where
18 you're rushing."

19 Q Okay. So there he indicates that he believes you
20 will be prejudiced if he's required to go forward; is that
21 correct?

22 A Yes.

23 Q Okay. And, then, finally if you could go back to
24 page 35 where Mr. Cornwell is speaking and look at lines 1
25 through 9. Does he argue there that if this continuance

1 is not granted and he does not have experts, this case
2 will come back on PCR and it will be granted?

3 A Yes. And he says: "We'd have to bring everybody
4 back here and do this whole dance again."

5 Q And is that what you're asking the Court to do today
6 is to grant your PCR application?

7 A Yes, ma'am.

8 Q And do you understand in asking that, there is no
9 guarantee of less time. You're asking the Court to put
10 you back in the position that you were after you were
11 indicted?

12 A Yes, ma'am.

13 Q And for asking for a new trial, there is risk
14 associated with that?

15 A Yes, ma'am.

16 Q Knowing that, you're asking the Court today to grant
17 you a new trial; is that correct?

18 A Yes, ma'am.

19 Q And not just on this ground, the failure to utilize
20 an expert and get a continuance, but on all the grounds in
21 your amendment; is that correct?

22 A Yes.

23 Q Now, the State responded on page 36 that it was not a
24 highly technical case, similar to the McKnight case that
25 he used and argued, and that the request was untimely.

1 In response on page 47, lines 1 through 8, Judge
2 Keesley there goes through a list of items that your
3 attorney should have done when he received the case, and
4 essentially tells your attorney, these are all the steps
5 you should have taken when you got this case. Do you
6 recall Judge Keesley going through those?

7 A Yes.

8 Q And you reviewed those. Are those things that you
9 and your attorney did in preparation for this case, as far
10 as you know?

11 A No.

12 Q Okay. And ultimately on page 49, lines 1 through 13,
13 what was Judge Keesley's response? Did he grant or deny
14 the continuance?

15 A He said the motion to continuance was denied.

16 Q Okay. Now, we've already talked about the fact that
17 you had an appeal and that was handled by Wanda Carter of
18 Appellate Defense. Did she submit an Anders or a Merits
19 brief on your behalf?

20 A Uh-huh.

21 Q And did she raise Judge Keesley's denial of a
22 continuance in her brief?

23 I can rephrase that question.

24 Did Ms. Carter submit an argument to the Court
25 about this motion for continuance in her brief?

1 A No.

2 Q Did you submit a pro se brief?

3 A Yes, ma'am.

4 Q It's my understanding the Court has a copy of that.

5 What issue did you raise in your pro se brief?

6 A Failure to ask for continue -- or failure to -- I
7 can't really remember, but it had to do with the
8 continuance, and the fact that the Judge did not grant
9 that at that time.

10 Q So Ms. Carter didn't raise this issue, but you
11 attempted to raise it to the Court; is that correct?

12 A Yes, ma'am.

13 Q Do you have some question in your mind whether or not
14 the Court received your pro se brief?

15 A Yeah, when I got a decision back.

16 Q And I can provide a copy of that for your reference.

17 A On this decision, it's called an opinion. But
18 there's no -- when I read through it, there was no
19 indication that they even got it, like they acted like I
20 didn't even do it. I mean, I don't see it, you know what
21 I mean? I don't -- I don't -- they didn't even
22 acknowledge that I did it.

23 Q And what is your allegation regarding your appellate
24 attorney, what are you saying she should have done on your
25 behalf?

1 A She should have presented that.

2 Q Okay. I will take that back from you.

3 And you're not an attorney, so you don't
4 understand an Anders process and review of the Court of
5 Appeals, or anything like that; is that correct?

6 A No.

7 Q Okay. If you turn in the transcript back to page 9,
8 if you don't mind, there they indicate there's some jurors
9 missing and they're going to call the jurors. Do you
10 remember that happening?

11 A Yes, ma'am.

12 Q Okay. And then if you can flip easily to page 50,
13 there they indicate that they're still missing, but
14 they're going to go ahead and do the jury strike.

15 What are you alleging that Mr. Cornwell should
16 have done regarding the missing jurors?

17 A I think -- I think that it would be reasonable to try
18 to use this as an opportunity to argue for a continuance
19 of some kind or an error of some kind, especially if I'm
20 not prepared for the trial that day. I think it would be
21 a -- it would be something I'd try to argue, I mean, at
22 least argue it.

23 Q As the record reflects, he didn't raise any issue
24 regarding there not being a full jury panel?

25 A No.

1 Q Okay. Now, if you turn to page 209 and 210, please.
2 And if you could look at the bottom of page 209 where the
3 Court starts making some comments. There the judge
4 comments about a prior case he had with a defendant that
5 reminded him a lot of you. And he indicates on lines 10
6 and 11, on page 210 that the guy got convicted, and he
7 sent him away for a long, long time.

8 What was your reaction to the Court's comments,
9 and what are you alleging that your attorney should have
10 done?

11 A At the time when he first started talking about this
12 person that I was -- that I reminded him of, I remember
13 wondering why he's comparing me to a police officer
14 because it was a police officer that he had compared me
15 to. And, you know, I was a Marine, and I guess that was
16 his comparison, but in my eyes, you know, a Marine and
17 police officer aren't the same, you know what I mean? It
18 was kind of like an arrogant way of looking at it, but I
19 kind of didn't see how that had anything to do with me.

20 And then he continued on, and he said that he
21 had allowed this -- this testimony to come out. And then
22 he says he put him away for a long, long time. And to me,
23 he's comparing me to somebody that is convicted. I mean,
24 I thought he was judging me right there, I mean,
25 personally. I mean, he's comparing me to somebody -- why

1 couldn't he have compared me to someone that's not
2 convicted? Why couldn't he compare me to somebody that
3 wasn't in jail for a long, long time? Why compare me to
4 that?

5 And I'm sitting back there now with 45 years, I
6 think that's a -- I think that's a, you know, almost like
7 a foreshadow of things to come, like he was, you know,
8 he's already judging me. And I think my lawyer should
9 have objected.

10 Q And objected is the word you're using because you
11 think he needed to bring this matter to the Court's
12 attention, there was some type of bias or --

13 A Yes.

14 Q -- these comments might have affected the way that
15 you were sentenced on this case?

16 A Yes.

17 Q Okay. Did your attorney file any type of motion
18 after you were sentenced saying, hey, I think there's a
19 problem here?

20 A No.

21 Q What sentence did you receive?

22 A I received 45 years.

23 Q Now, if you could turn over to page 207 of your
24 transcript. There, your defense attorney agrees, doesn't
25 make any objection to the video of the forensic interview

1 being admitted at trial. You have already discussed the
2 fact that you all did review it in its entirety, but did
3 you discuss him agreeing to it being admitted in its
4 entirety?

5 A Yes. He did say that he was going to use the video.
6 He said that he could use -- could use it to an advantage
7 somehow. I don't know. I don't understand.

8 Q It's not something you all sat down and discussed and
9 you understood how that was going to aid your defense?

10 A No, not really.

11 Q Now, your daughter, the victim, testified in this
12 case; is that correct?

13 A Yes.

14 Q And the State had previously filed a motion that they
15 referenced under Maryland versus Craig to have her testify
16 in a separate location. And there was a long-fought
17 motion where the sides went back and forth, and it's in
18 the transcript. I won't go through all the details of
19 that with you. But if you could turn to page 198, and
20 just for reference, 198 to 202, are you familiar where the
21 judge goes through and says he understands Maryland versus
22 Craig, and he explained to all the parties, and says that
23 he must protect your rights. Do you recall him making
24 those remarks?

25 A Yes. He said he wanted to make sure that my

1 Constitutional right of confrontation wasn't -- wasn't
2 hindered.

3 Q Okay. And they go back and forth trying to determine
4 if they need to question her ahead of time, if there's
5 issues with her veracity, but, ultimately, if you could
6 turn to page 214 through 215, and specifically lines 5
7 through 7 on page 215, it's ultimately agreed upon that
8 the child is going to come in and testify just like any
9 other witness, just like any other trial; is that correct?

10 A Yes.

11 Q Okay.

12 A He actually -- he actually said somewhere, I think
13 it's page 207, where he explains how she's going to come
14 into the courtroom.

15 Q And he had originally said he was going to bring her
16 in, question her, test her veracity, and then they would
17 decide how to proceed. But, ultimately, here, everyone
18 agrees that the child is just going to come in like any
19 other witness, and the initial part of the questioning
20 does not need to be done; is that correct?

21 A Say it again.

22 Q This was some going back and forth about bringing her
23 in, specifically pages 204 and 209, to see if it's
24 traumatic for her and to question her to see if she's able
25 to handle it.

1 A Yes.

2 Q But, ultimately, both parties agree along with the
3 Court, and the Court states here on page 215, lines 5
4 through 7, they were going to bring her in at 9 o'clock,
5 bring the child in and have the child testify just as you
6 would in any other trial?

7 A Yes.

8 Q Okay. So they're going to forego any special
9 procedure?

10 A Yes.

11 Q Okay. Then on page 215, the Court comments that
12 unless there's a challenge to her competency, but your
13 attorney did not challenge her competency, did he?

14 A No, ma'am.

15 Q Okay. And that is in the record, also.

16 Now, if you turn to 257, please. There, your
17 daughter, the victim, makes an in-court identification of
18 you.

19 A Uh-huh.

20 Q Now, just read down the page, and there does not seem
21 to be any issue, but is there an issue that you would like
22 to address with the Court?

23 A Yes. She -- the way they brought her in, it was
24 different than this courtroom's setup, but, for instance,
25 if I was sitting over on that table, see --

1 Q And when you say "that table," since we're making a
2 record of this, could you describe if you're pointing to
3 my table or the State's table?

4 A Oh, the State's table, the table furthest from me.

5 I was sitting over there, and the way that she
6 came in was behind the witness stand. And the way all
7 this furniture is set up, it's blocking the view of her.
8 She's small. I mean, you couldn't barely even see her
9 when she came in, and they were surrounding her as she
10 came in.

11 And when they walked her up and he -- and the
12 judge came down and spoke to her and they allowed her to
13 get up on the witness stand. And when she sat down, they
14 made sure that -- I mean, she's short. I mean, you
15 couldn't even hardly see her. Well, I couldn't see any of
16 her. So the way she was sitting was back further, and
17 when she did this identification of me, you could see that
18 it wasn't like she was just sitting like I am in plain
19 view of everyone. You know, from where I was sitting, you
20 couldn't even see her. And she had to lean forward, and
21 they had to actually draw her over to me for her to even
22 see.

23 It says, you know, you can obviously see it from
24 the transcript, they ask if "he's in the courtroom," and
25 she said, "yes." And "where is he sitting," and she said,

1 "over there." I mean, she's not pointing at me, she can't
2 even see me, you know, so she's talking directly to him,
3 which is -- he's standing directly in front of her, and
4 she said, "over there." And he says, "At which table?"
5 "This table over here," and he walks over to it because
6 she is watching him, and she can't see me, so it's not
7 like, you know, she can just look and point.

8 You know, she would have been able to -- he
9 wouldn't have to say, "over here," you know, because he
10 actually walked over there. And she said, "yes." And
11 "What color shirt is he wearing," and he -- why would he
12 say, "Can you see?" I mean, it's not but like maybe
13 20 feet over there, you know. I can almost tell peoples'
14 eye color from here. But, you know, she couldn't see me,
15 so she had to lean forward, and she said, "Orange." Then
16 they went on.

17 The judge actually within the transcripts
18 described how she would come into the room. He said
19 because of the way that the courtroom was set up, that he
20 describes it better than I can say. I'd like to find it.

21 Q Now, Mr. Wilson, are you referring to the fact that
22 he describes how when the State was asking for special
23 precautionary measures, and specifically to have her in
24 another room, he describes how he could bring her into the
25 courtroom and she wouldn't have to have contact with you?

1 A Yes. It was -- it was the way that she entered the
2 room, she would not have any eye contact, she wouldn't
3 have to be sitting -- and he actually says wouldn't be
4 sitting face-to-face with me.

5 Q Okay. 202.

6 A Two hundred, what?

7 Q 202.

8 A And it's 202, lines 15 through 20. And he said:
9 "And the way -- this is the judge talking -- "And the way
10 this courtroom is laid out, if he comes in that back door
11 over there and she walks to that witness stand, she'll
12 never see her daddy. And she may know her daddy is in
13 there, and she can look around the corner and see him, but
14 she definitely won't be sitting there where she's
15 face-to-face with him."

16 Q Now, that was at the beginning of this motion; is
17 that correct, the State's motion under Maryland versus
18 Craig, making special conditions for her testimony?

19 A Yes, ma'am.

20 Q But ultimately, the State didn't say that they see
21 any trauma in having her testify, and then the Court makes
22 the comment on page 215 that she's going to testify like
23 any other witness; is that correct?

24 A Yes, ma'am.

25 Q Okay. But she didn't, and you all did not have eye

1 contact during her testimony; is that correct?

2 A Yes.

3 Q And did Mr. Cornwell, as he had argued very well on
4 your behalf about your confrontational rights, did he
5 raise any issue with that when it occurred in the
6 courtroom and she came in and testified in that manner?

7 A No.

8 Q Okay. And are you alleging today that he should have
9 made a motion on your behalf?

10 A Yes.

11 Q Or renewed his motion on your behalf?

12 A Yes.

13 MS. BLANCHETTE: Your Honor, I'm getting ready
14 to go to a lengthy section, the section where I go through
15 the allegations and the trial testimony regarding it.
16 Would you like me to keep going at this point? Or I
17 didn't know if you --

18 THE COURT: Yeah, let's go a little bit.

19 Let me ask you this: How many more witnesses do
20 you have?

21 MS. BLANCHETTE: I plan to call defense counsel,
22 Casey Cornwell, and that will conclude my case.

23 THE COURT: Do you have any witnesses yourself?

24 MR. APLIN: No. Just Mr. Cornwell.

25 Mr. Casto is available. I don't think I will

1 need him for any reason, but if I do, then he would be
2 another witness.

3 THE COURT: Okay. So you would prefer to go
4 ahead and take a break now?

5 MS. BLANCHETTE: I was just going to ask the
6 Court because I am getting ready to go through kind of a
7 long segment, so I didn't want to start plunging through
8 that if --

9 THE COURT: Well, I mean, this is non-jury, and
10 I'm taking notes. I can do whatever, what the attorneys
11 want to do. I mean, it's fine with me either way.

12 MS. BLANCHETTE: I don't have a preference. I
13 can keep talking or stop talking.

14 THE COURT: Let's go to one o'clock, and then
15 I'm only going to take an hour break since this is going
16 to take a long time today apparently.

17 MS. BLANCHETTE: Okay.

18 MR. APLIN: That's fine.

19 THE COURT: Let's just do that.

20 MS. BLANCHETTE: Okay.

21 BY MS. BLANCHETTE:

22 Q All right. If you could turn to page 247, let's look
23 at the testimony of your daughter.

24 And before I do that, Mr. Wilson, we're talking
25 here about your daughter, and when we were talking about

1 her trial testimony, are you making this allegation in any
2 way that you wanted it to be traumatic for her, for her to
3 have to walk in front of everyone and for her to suffer
4 any kind of trauma?

5 A No.

6 Q All right. You were just alleging that your attorney
7 didn't do everything he needed to do to protect your
8 confrontation rights; is that correct?

9 A Correct. I believe, you know, when -- when you're
10 sitting in front of somebody and you're confronted with a
11 lie, I believe that it holds you to be true.

12 Q So why would it have mattered if she had to see you?

13 A I think it has a lot to do with the fact that I am
14 the disciplinarian in the house, and she knows that she
15 got corrected for lying. And when she has to sit there
16 and see me, she knows that she is going to get in trouble
17 for lying. I don't know, I think it would hold her to it.

18 Q Okay. If you could look her testimony on page 247
19 and page 248, and I will just summarize. There, she
20 testifies about having to touch her dad's privates in the
21 bedroom, living room and bathroom. And she says it
22 occurred more than one time when she was seven or eight
23 years old.

24 But then on page 248, she explains that she may
25 have been six years old when it happened.

1 Regarding her allegations as it relates to your
2 indictment, is there an issue that you would like to bring
3 to the Court's attention?

4 A Yeah. The indictments were based upon her birthdays,
5 and, you know, she -- she turned six, and her birthday is
6 March 19th, and if she's saying seven and eight, obviously
7 2005's out of the question. So the allegation date is
8 2006. And she testified to the fact that she was seven or
9 eight.

10 So if the allegation occurred when she was
11 seven, which is all that's left in that indictments, then
12 if she testified, which she did testify, that nothing
13 happened to her when she was seven, later on she says
14 that, you know, she couldn't say one way or the other
15 that -- and she testified that after I got -- after I
16 graduated from the Marine Corps, nothing happened. That's
17 what she said. She said nothing happened after -- that I
18 graduated. And she eliminated, pretty much, the
19 indictment right there by saying, all four of them. I
20 don't know what the other two indictments, what the ranges
21 were on that, but I mean, that right there in itself just
22 kind of killed it. Out of her own mouth, she did that.

23 Q Now, you don't have to flip there, but on pages 483
24 through 488, your attorney makes a directed verdict
25 motion. Then he argues that he's concerned with the

1 obscene material charge, but he thinks there is sufficient
2 evidence on the other four indictments. As the result of
3 his argument on the obscene materials charge, it's
4 dismissed.

5 Are you alleging today that he also should have
6 made an argument for directed verdict on the indictments
7 regarding this age-range issue?

8 A Yes, ma'am.

9 Q But yet he says he believes there is sufficient
10 evidence. Did you agree with that?

11 A No.

12 MS. BLANCHETTE: Beg the Court's indulgence one
13 moment.

14 (Pause.)

15 MS. BLANCHETTE: Your Honor, I stand corrected.
16 The transcript on page 483 through 484, the judge says
17 there's sufficient evidence on the four indictments, and
18 then there's a detailed argument regarding the obscene
19 materials, but that did not come out of Mr. Cornwell's
20 mouth.

21 THE COURT: Okay.

22 BY MS. BLANCHETTE:

23 Q Regardless, Mr. Wilson, are you alleging that your
24 defense attorney specifically should have made an argument
25 regarding this inconsistency in your daughter's testimony?

1 A Yes.

2 Q Okay. Now, on page 256, if you look at lines 3
3 through 5, she's asked there, what happened when you
4 touched him on his private spot, and she said that pee
5 came out. Beyond that, did she ever describe any other of
6 the interaction or what happened, besides her testimony on
7 page 247 and here on page 256?

8 A Within her testimony on the stand during the trial,
9 that was all she alleged.

10 Q Okay. And you reviewed some of the forensic
11 interview, and there she goes into great detail, and
12 including some doll play. If you look at her testimony
13 versus the forensic interview, do you think that the
14 forensic interview was more damaging than her testimony?

15 A Yes.

16 Q Can you explain why?

17 A Well, the four charges that were -- I was originally
18 arrested upon were all CSC charges, and she's never spoken
19 those -- I mean, she's never said those charges ever -- I
20 mean, throughout. I've never seen anything that says that
21 other than within that video, she's never spoken that.
22 She didn't speak it in the trial, I know that. And I've
23 never seen a piece of paper, other than the interview,
24 that said that.

25 Q Okay. If you could look at page 254, lines 18

1 through 19. There they ask her about the video, and she's
2 asked were they the truth, and what was her response, the
3 allegations in the video?

4 A She said, yes.

5 Q Okay. So there, the State is relying upon the
6 allegations as put forth in the video; is that correct?

7 A Yes.

8 Q And, previously, you had talked about the fact that
9 she had some kind of sexual experience with her aunts, and
10 if you could look at pages 256 and 257, she testified that
11 she showed her aunts what her dad had taught her. But,
12 then, if you could turn over to page 262, line 7 through
13 9, she admits that the stuff with her aunts actually
14 happened before the stuff allegedly happened with you. Is
15 that what she admits to?

16 Please let me know if I lost you there.

17 A Say it again.

18 Q On direct on pages 256 through 257, she says that the
19 stuff occurred with her aunts, and she showed them what
20 her dad had taught her. But, then, on cross-examination
21 on page 262, she admits that the incident with her aunts
22 was before anything allegedly occurred with you?

23 A Yes.

24 Q Okay. Now, this point is brought out by
25 Mr. Cornwell, but are you alleging there's more he should

1 have done regarding that possible defense?

2 A Yes. He's -- I mean, obviously, that was a
3 contradiction. I think that should have been brought up,
4 and I guess that's it.

5 Q Okay. If could you turn to page 266 and look at
6 lines 9 through 14, there, she's asked what would happen
7 by Mr. Cornwell if she changed her story. And she
8 indicates she would get in trouble, and then she indicates
9 that Mr. Cornwell was the one who told her that she would
10 get in trouble. What would have happened if your daughter
11 was caught in a lie?

12 A Well, I usually just spanked her for that.

13 Q Okay. So she knew she would get in trouble if she
14 wasn't telling the truth and her story would have changed?

15 A Yeah. That's how I was -- that's how I thought it
16 would stop her from lying, I guess. I thought that at the
17 time.

18 Q And when you look at page 266 and the way this came
19 across to the jury that she'd get in trouble, Mr. Cornwell
20 told her she'd get in trouble if she changed her story,
21 what were you actually hoping he would expose or in
22 cross-examination get through to the jury on this point?

23 A The fact that she knows that she would get punished
24 if she did lie. And I just see over and over the fact
25 that she keeps saying that she's afraid that Daddy will be

1 mad, or something like that. I mean, she said that a few
2 times. And that, to me, because I am her father, that
3 represents her saying to everybody else she knows that
4 what she's saying, she will get in trouble because she's
5 lying.

6 And, you know, it's something she has
7 experienced. And I've punished her for lying a bunch of
8 times about her homework, about just lying to her mom, me,
9 anyone in general. But she's experienced that, and she
10 knew that that was something that would happen.

11 I think that if he would have pursued that, it
12 would have shown at least my side of the story because it
13 really never got shown. I mean, it was mentioned, but I
14 don't think it was explored enough to where everybody
15 could get an understanding of -- that she had experienced
16 that, and that's what was she doing, was saying that I am
17 scared that he's going to be mad at me because I am
18 telling a lie, I am doing things, like even when she
19 mentioned playing with the dolls when she was younger.

20 I had punished her based on what she was doing
21 with -- she had some little Polly Pockets. She was using
22 them. I mean, this was, like, she was about four. And so
23 it could have expounded upon that experience that she had.

24 I had punished her because she was using these
25 dolls, and during this interview she was playing with

1 dolls inappropriately. I mean, she knew that, and I know
2 they encouraged it so they could find out some things that
3 might have happened. But she knew that playing with those
4 dolls inappropriately, she would get in trouble because
5 she's been punished before on that, based on that reason.
6 I had cleaned out her room from all her toys, she didn't
7 have any toys, any of those little Polly Pockets, for
8 sure. I stuck them all in my closet.

9 I mean, we could have shown how through her
10 experience in the past and what she knows of me, these
11 things that she's saying are reality. She knows she's
12 going to get in trouble for lying, not their story, my
13 side of the story.

14 Q Now, did something happen immediately before this
15 where you had to discipline your daughter immediately
16 before these allegations came out?

17 A Yes.

18 Q Did you testify about that, was that fully explored
19 at trial?

20 A That was never explored at trial. And the instant
21 case was the day before her going and talking to
22 Mrs. Barons, it was the very next day. But that night,
23 she -- we had a fish tank that we just got from grandma,
24 from my mom. We were setting it up, I took the kids out,
25 we spent all day, bought fish, you know, everybody picked

1 out their own fish. Brought them back, the kids were
2 excited, they wanted to put the fish in the fish tank. We
3 had to set it up first.

4 So I tried to explain to the kids that I'm busy,
5 don't get in the way, stay out of the way, please. And
6 they kept getting in front of the fish tank and looking at
7 the fish tank and all the rocks and just being in the way.
8 And I told them, and for the last time I told Bree, I
9 said, stay out of the way. She got in the way again. I
10 sent her to her room, she threw a fit, and she continued
11 to scream at the top of her lungs, and I told her to stop
12 screaming, and she wouldn't stop. So I went back there, I
13 turned off the lights, told her go to bed, it was late at
14 night, and she continued to scream and yell and holler.
15 And I went in there and decided to take her nightlight.

16 I knew she was fearful of the dark. I knew she
17 was afraid of the dark. I grew up afraid of the dark.
18 When I got scared, I ran in mom's room and hid on her bed.
19 Well, I knew that would hurt her, and I decided to go
20 ahead and close the door, too. So she was in there
21 without lights screaming and crying, and she did that for
22 probably an hour and cried herself to sleep that night.

23 Q And then the very next day, these allegations are
24 explained to the guidance counselor; is that correct?

25 A Yes.

1 Q And she talked about that -- if you could turn to
2 page 249 and 250.

3 THE COURT: 242?

4 MS. BLANCHETTE: 249.

5 BY MS. BLANCHETTE:

6 Q She's asked at the top of the page on page 249, who
7 did you tell about these things that happened first, and
8 who does she say?

9 A My mommy.

10 Q And then she's asked, who did you talk to after that,
11 and what does she say?

12 A My grandma.

13 Q And then she indicates that she told Ms. Barons; is
14 that correct?

15 A Yes.

16 Q So your daughter admitted to telling your wife and
17 your mother?

18 A Yes.

19 Q Along with the guidance counselor; is that correct?

20 A And before her, yeah.

21 Q Okay.

22 A Well, I guess all three of them.

23 Q Okay. And why was it that she had to go see the
24 counselor? She explains that on the next couple of pages.
25 But what was your understanding of why she had to go see

1 the counselor?

2 A She had been passing notes or involved in notes. I
3 don't even know if it was her fault. But -- or she was a
4 source of it.

5 She was involved in these notes, inappropriate
6 notes for kids at that age to be writing. They say they
7 had sex on it, you know the word "sex," so she was called
8 into the office as, I guess, part of an investigation, or
9 something. I don't know what they were doing, but she was
10 in trouble. And while in there, she said that I had
11 touched her or done something. I don't remember the exact
12 thing she said.

13 Q Okay. Now, she does give some more specifics in
14 cross-examination about when this occurred. If you could
15 look at page 273, line 17 through 23, where does she
16 indicate your wife was when this occurred?

17 A Shopping.

18 Q Okay. And if you turn to page 324 to 325. There,
19 Dr. Robinson is asked -- or Greg Robinson is asked about
20 the disclosure she made to him. And does he indicate at
21 the top of page 325 where she told him that her mom was
22 out when this occurred?

23 A Yes. She said at work.

24 Q Okay. And as far as that inconsistency of mom
25 shopping and at work, do you feel Mr. Cornwell capitalized

1 that in preparing -- I'm sorry, in your defense at trial?

2 A No. I don't think there is any focus on
3 inconsistencies at all.

4 Q Okay. Now, what --

5 THE COURT: I'm going to stop you right here.
6 It's about one o'clock. Let's go ahead and take a break.
7 Let's come back at two o'clock. We'll continue.

8 Mr. Wilson, you can't speak with anybody about
9 your testimony during the break. Okay, sir?

10 THE WITNESS: Yes, sir.

11 THE COURT: All right. We'll be in break until
12 the two o'clock recess.

13 (A lunch break was taken.)

14 THE COURT: Let's go ahead and proceed.

15 BY MS. BLANCHETTE:

16 Q Mr. Wilson, if you could turn your transcript,
17 please, to page 276. And there beginning on lines 14
18 through page 277, your daughter during her testimony
19 describes seeing sex on TV in your bedroom, and, then,
20 that you asked her to fix the TV.

21 Regarding that allegation, what is your response
22 to that about her saying that you all watched sex on TV
23 and that you needed her to fix the TV?

24 A Yeah. When I first heard it, I thought it was crazy
25 because the story is bizarre. I mean, I'm a cable

1 technician at this time. And for me to ask my daughter to
2 fix something that I'm -- it just doesn't make sense. So
3 this line -- what she's talking about right here should
4 have been further -- it should have been looked into for a
5 defense because, honestly, I mean, there is no reason I
6 would ask my daughter who was, I think, six at the time
7 to -- or seven -- to do anything with the cable that I'm
8 perfectly capable of handling. It didn't make sense.

9 Q And that actually came out during redirect, and
10 Mr. Cornwell didn't recross-examine her on that, did he?

11 A No, he didn't.

12 Q If you could turn to the testimony of Rosemary
13 Barons, she was the school counselor that your daughter
14 originally made the allegations to, and specifically
15 looking at page 284, there she recounts the allegations as
16 they were told to her, and she talks about the fact that
17 you watched videos with your daughter, and you'd asked her
18 to rewind the video.

19 Now, in reading that, is that different from
20 what your daughter testified to?

21 A Yes. I mean she's contradicting herself right there.
22 Or she's -- this lady's testimony is contradicting what
23 Bree said.

24 Q Okay. And then she indicates that she was a mandated
25 reporter, so she turned the case over to DSS. And at

1 trial, Chrissalyn Howard, a DSS worker testified; is that
2 correct?

3 A What page?

4 Q Do you remember that Chrissalyn Howard --

5 A Yes.

6 Q -- a DSS worker testified?

7 A Right. Correct.

8 Q And if you could turn to page 296 through 297 in her
9 testimony, please.

10 Specifically on page 296 about line 13, there
11 she explained that your daughter said that you would put a
12 movie in the DVD player and you had watched the movie with
13 people doing sex?

14 A Right.

15 Q And that is also different than what your daughter
16 had testified to; is that correct?

17 A Yes.

18 Q If you could turn to page 303 and look at lines 11
19 through 13. There she testified about the fact that your
20 wife was asked to look for any pornographic DVDs in your
21 home, and she couldn't find any.

22 Were you aware that your wife had been asked to
23 conduct that search?

24 A No.

25 Q Once you heard that or in reading that today, what is

1 your reaction to the fact that your wife was asked to do a
2 search? Was there ever a search warrant? Did law
3 enforcement ever come and do a search or was it just your
4 wife that was asked to do the search?

5 A It was just my wife. I don't remember ever having a
6 warrant, or anything along that lines, or even knowing
7 about this. I mean, I own the house.

8 Q Is that anything that Mr. Cornwell argued either to
9 the jury or to the Court, that they utilized your wife to
10 conduct the search?

11 A No.

12 Q And do you feel that he properly brought out these
13 inconsistencies in how this pornographic material is
14 supposedly watched with your daughter?

15 A No.

16 Q Now, if you could look, please, at page 299,
17 specifically line 6. There, Mr. Cornwell is asking
18 Ms. Thompson about her report and about the fact that your
19 daughter had indicated that your son was present when this
20 happened. Do you recall that testimony at trial?

21 A Yes. I believe he was trying to question Chrissalyn
22 Thompson about something that she didn't even -- I mean,
23 it wasn't even her report, it wasn't her document to be
24 questioned on, but it had to do with something that was
25 inconsistent, I believe, in the story line.

1 Q Okay. And page 300, he offered to refresh her
2 memory, and she says, that's not my report, and she
3 explains that it's some type of intake report, but it's
4 not something that she generates?

5 A Correct.

6 Q Could you identify this document, please, for the
7 record, just what it says -- it is at the top there --
8 please?

9 A This is a law enforcement report, it says, "Intake."

10 Q Okay. And what department does it say it's from
11 there on the top?

12 A South Carolina Department of Social Services.

13 Q And this is a six-page report; is that correct?

14 A Yes.

15 MS. BLANCHETTE: Your Honor, at this time I move
16 this DSS report in as Applicant's No. 18.

17 THE COURT: Any objection?

18 MR. APLIN: No, Your Honor.

19 THE COURT: Admitted without objection.

20 (WHEREUPON, Applicant's Exhibit No. 18 was
21 marked for identification and received into
22 evidence.)

23 BY MS. BLANCHETTE:

24 Q Now, if you flip through the report here, does it
25 indicate information about your son being present when

1 this alleged conduct took place?

2 A Yes. It says that allegedly Timothy Wilson makes
3 Breann and her brother lie in bed while he masturbates.

4 Q And that is on page 2 of this report; is that
5 correct?

6 A Yes.

7 Q And here in the transcript on page 300, Mr. Cornwell
8 is attempting to ask Ms. Thompson about this intake report
9 and the fact that it makes allegations about your son; is
10 that correct?

11 A Yes.

12 Q Was he able to fully explore that issue with her?

13 A No. They stopped him from questioning because
14 this -- this isn't her report, so he's not allowed to ask,
15 you know, questions about somebody's else's stuff.

16 Q She wouldn't acknowledge it was her report or answer
17 questions about it; is that correct?

18 A Right.

19 Q Would the fact that this report indicates that your
20 son was also present, how does that factor into your
21 defense?

22 A My son was never even -- he wasn't brought into this
23 story because they never investigated, they never asked
24 him questions, they never looked into the fact that she
25 mentioned that he was in the same room or doing the same

1 things that -- that she was saying that I made her do.

2 Q So was a key to your defense, this issue about your
3 son being in the original allegation, but that had never
4 been investigated nor charges being brought, was that a
5 key part of your defense?

6 A Yes, I thought so. I thought that, you know, if
7 she's saying this, why wouldn't you find out why she's
8 saying that? Why is she including him, and he's not even
9 being part of this scenario? I mean, they didn't look
10 into it at all.

11 Q On the front page of that report, does it say who the
12 intake worker was?

13 A Yes. It says the intake worker, and then it has the
14 name beside it, Trina Elphering. I'm sorry, I don't know
15 if that's correct.

16 Q Okay. And Mr. Cornwell did not call Trina Elphering
17 from DSS at your trial and ask her about that report, did
18 he?

19 A No.

20 Q Now, you heard Dr. Robinson testify earlier today and
21 you agree you had the opportunity to meet with him?

22 A Who?

23 Q I'm sorry. Greg Robinson, you met with him?

24 A Yes, ma'am.

25 Q And do you agree with his position that you were

1 there and motivated and wanting to be involved?

2 A Yes.

3 Q When?

4 A When I first found out, I tried to investigate this
5 the best way I knew how, which was trying to look into why
6 she's making these statements. And I tried to participate
7 in this as well because she's making these statements
8 about me. I would like to, you know, have someone else's
9 opinion on the matter and somebody that has an objective
10 point of view, so I also participated in talking with
11 Mr. Robinson.

12 Q And in his testimony on page 317, specifically, he
13 says that her mother brought her in, and he never
14 references speaking with you. Is that something you
15 wanted Mr. Cornwell to explore when Mr. Robinson was on
16 the stand?

17 A Yes. You know, at the time, I wasn't supposed to be
18 around her, but that doesn't mean I didn't have any say or
19 any kind of say-so on, you know, where we took her. I
20 mean, that was my suggestion. I still had the right to
21 suggest, you know, we should take her and get, you know,
22 somebody to look into the allegations. And I think that
23 that should have been explored with Mr. Robinson.

24 And on top of that, my participation in it, you
25 know, I thought that was a major factor. They tried to

1 make me look like I didn't care.

2 Q Is there anything else regarding your meetings and
3 your daughter's meetings with Greg Robinson, and the
4 testimony of the DSS worker and the school counselor that
5 you would like to point out to the Court that I failed to
6 ask you about?

7 A Say it again.

8 Q Is there any other information regarding the school
9 counselor, Rosemary Barons, the DSS worker, Chrissalyn
10 Howard or Greg Robinson's testimony that you would like to
11 point out to the Court that I failed to ask you about?

12 A No.

13 MS. BLANCHETTE: Your Honor, at this time, this
14 is a matter that I've already discussed with the State,
15 specifically in our amendment under allegation number 8,
16 we're alleging that counsel is ineffective for failing to
17 object to hearsay and bolstering/vouching testimony of the
18 State's expert pursuant to a long list of cases. I have a
19 copy of those cases for the Court along with the Croma
20 decision that was recently decided.

21 THE COURT: I have Croma and Jennings. Do you
22 have others you want me look at besides that?

23 MS. BLANCHETTE: No, just the ones that I have
24 listed here.

25 What I was going to ask the Court is, obviously,

1 I would like for you to review the complete testimony of
2 the State's two experts as far as this allegation is
3 related. But for the record, I have a listing of specific
4 references. I could go through each one with Mr. Wilson
5 or if the Court prefers, and I've already talked to the
6 State about it, just have him read those into the record.

7 THE COURT: It's not beneficial to have him do
8 it.

9 What I prefer you do is point out the testimony
10 and any objections, or lack thereof, as to the specific
11 testimony.

12 MS. BLANCHETTE: Okay.

13 THE COURT: Okay.

14 MS. BLANCHETTE: I will be more than happy to go
15 through that myself. I just didn't want to go through it
16 with him if I could do it for him.

17 THE COURT: That's fine.

18 MS. BLANCHETTE: Okay. First turning to Alicia
19 Benedetto's testimony, specifically on page 332, lines 12
20 through 14 where she goes into how she discovered what
21 happened; page 346, lines 1 through 11, testimony
22 regarding the correction of a name spelling and how that
23 showed veracity; page 348, lines 7 through 10 where she
24 discusses how it was accurate and clear.

25 THE COURT: What was those lines again, please?

1 MS. BLANCHETTE: Lines 7 through 10.

2 THE COURT: Okay.

3 MS. BLANCHETTE: Page 349, lines 4 through 16
4 where she discusses the disclosure; page 350, lines 19
5 through 20 where she discusses how they elicit details;
6 page 352, lines 6 through 25 where she discusses
7 consistency in details.

8 And please tell me if I need to go slower.

9 THE COURT: No, you're okay.

10 MS. BLANCHETTE: Page 353, lines 10 through 25
11 where she testifies about the compelling nature; page 354,
12 lines 1 through 25 where she testifies about the accuracy;
13 page 355 where she discusses how another explanation would
14 be implausible.

15 Page 356 discusses the compelling nature of the
16 interview and gives a percentage; and page 357, lines 7
17 through 13 where she goes into the specifics of abuse.

18 We're also alleging that defense counsel was
19 ineffective in eliciting this information, so on cross on
20 page 379, lines 6 through 22 where she testifies about the
21 compelling nature. And page 388 -- sorry, 381, lines 10
22 through 25 where she testifies about the compelling
23 nature.

24 On redirect, page 387, lines 16 through 25 where
25 she discusses the elimination of everyone else; page 388,

1 lines 11 through 12, and page 389, lines 6 through 25
2 where she talks about consistency.

3 Page 390 through 391 where she discusses the
4 compelling nature and the unlikeliness of any other cause;
5 page 392, lines 24 through page 393 where she talks about
6 the compelling nature and the details.

7 On page 394, lines 5 through 11 where she
8 testified that she thinks it happened; on page 396,
9 lines 10 through 16 where she testifies, in essence, that
10 it was something that she had heard before; on page 399,
11 lines 8 through 13 where she gives a percentage, and on
12 page 399, lines 21 through 22 where she indicates that the
13 victim is a brave little girl.

14 Finally, on recross on page 402, lines 10
15 through 11 where she discusses that her training is
16 designed to elicit accurate information.

17 THE COURT: Any of your grounds have to do with
18 the qualifications of Dr. Benedetto as an expert?

19 MS. BLANCHETTE: Your Honor, if we're getting
20 into the recent case law about the qualifications of a
21 forensics interviewer, I do, possibly, if it's okay after
22 I call defense counsel, have a brief argument at the end
23 regarding that, if I can reserve it until that time.

24 THE COURT: All right. Anything further for the
25 witness up here on the stand?

1 MS. BLANCHETTE: I do have a section still to
2 get through with him. I was just trying to do this in
3 chronological order if that's okay. I do have some more
4 cites as it relates to Heather Smith, the other State's
5 expert.

6 THE COURT: Okay. Is this a doctor, Heather
7 Smith?

8 MS. BLANCHETTE: No, she is not, but she is with
9 ARC.

10 THE COURT: She is a what, please?

11 MS. BLANCHETTE: She is with ARC.

12 Page 455, lines 24 through 25, and 456, lines 1
13 through 7 where she talks about her familiarity with
14 personality and mannerisms; on page 461 through 62 where
15 she talks about how she had to be forensically sensitive
16 to the victim; page 464, lines 4 through 17 where she
17 indicates that the narrative took longer than if the
18 mother had been supportive; page 466 where she talks about
19 the compelling nature of the disclosure; page 467 through
20 468 where she talks about the consistent nature in the
21 sensory detail; page 469, lines 8 through 11 where she
22 testifies that it was consistent with the child who had
23 suffered sexual trauma, and page 471 where she testified
24 about consistency.

25 On cross-examination, page 471 through 472 where

1 she goes into consistency; and page 476 where she talks
2 about how there is no imaginative or fantastic language.

3 And on redirect, page 479, lines 11 through 14
4 where she talks about how it is compelling and consistent.

5 And I will be happy to provide a list of those
6 to the Court or to the State if they would like.

7 THE COURT: That would be helpful. I've got
8 them down, but that still would be good for me to keep
9 with my records.

10 MS. BLANCHETTE: I will be happy to do that.

11 THE COURT: Okay.

12 MS. BLANCHETTE: And, now, if I could resume
13 with Mr. Wilson.

14 THE COURT: Yes, ma'am.

15 BY MS. BLANCHETTE:

16 Q Mr. Wilson, at the very beginning, both sides said
17 this case was about credibility. Did your defense
18 essentially boil down to attacking the credibility of your
19 daughter, the victim, in this case?

20 A Yes. All the defense witnesses were -- all my
21 witnesses were asked at some point or another if she was a
22 liar. So, yeah, I mean it was all -- it all seemed like
23 it was we were trying to attack her credibility.

24 Q Was your intent to personally attack your daughter or
25 was it your hope that your defense attorney was going to

1 attack the inconsistency as the story had developed?

2 A Personally, I would rather, you know, if that was our
3 defense, not attack her because, I mean, she's still --
4 I'm still protective, so that's not something I want. I
5 don't want her feeling like she's being attacked up on --
6 up on the witness stand.

7 Q Now, if you could turn to page 579, lines 8 through
8 17, the Court makes some comments there. There Judge
9 Keesley indicates that there has been a lot of pitting by
10 both sides, but no one has objected.

11 A Yes.

12 Q Okay. And do you understand now what he means by
13 "pitting"?

14 A Yes. It's like putting one person up against another
15 or giving somebody more credit than the other.

16 Q Now, Judge Keesley indicates here that both sides
17 have been doing it, but today are you alleging that your
18 attorney was ineffective when he didn't object to the
19 State doing it, when he should have objected to the State
20 pitting witnesses?

21 A Yes.

22 Q Okay.

23 A Because I don't believe any of -- any of my witnesses
24 wanted to do that. And when they're specifically asked, I
25 don't think any of us wanted to call her a liar, by no

1 means.

2 Q Okay. Let's look at some examples. If you could
3 turn to page 511, please, and if you could look at lines 1
4 through 5. There you are asked on cross-examination
5 whether or not your daughter is a liar.

6 A Yes.

7 Q And did Mr. Cornwell object?

8 A No.

9 Q Okay. If you could look at page 532, lines 5 through
10 25, there your father is on the stand and he's essentially
11 questioned about who is a bigger liar, the victim or
12 yourself. And did Mr. Cornwell object to the State's line
13 of questioning there?

14 A No.

15 Q If you could turn to page 549 and look at lines 9
16 through 21. There on cross-examination, your mother, who
17 is one of your witnesses, is asked about who is the
18 biggest liar in the family in a series of questions along
19 that line. Did Mr. Cornwell object there?

20 A No.

21 Q And then finally on page 573 when your wife, Jessica,
22 is on the stand, she's asked by the State about the victim
23 being believable and if she thinks she is lying now. Does
24 your attorney object when Jessica Wilson was asked about
25 your daughter's lying?

1 A No.

2 Q Now, Mr. Wilson, let's talk a little bit about your
3 testimony.

4 In preparation for today, we have met a number
5 of times; is that correct?

6 A Yes.

7 Q And upon discovering that you had this phobia
8 testifying in court, I met with you extra time to make
9 sure you were as comfortable as you could be with me and
10 with coming to court today; is that correct?

11 A Yes.

12 Q Is your experience in court today different than it
13 was at the time of your trial?

14 A I believe so. I know that today, you know, after,
15 you know, our preparation that I can slow down and process
16 what I'm trying to say. And, you know, sometimes I get
17 going and I start talking, and it's not -- it's not
18 understandable sometimes. I can get going and it doesn't
19 make sense. So I'm trying to -- I'm slowly learning how
20 to slow down enough to where I can figure out what I'm
21 trying to say and that way I can get my point across.

22 Q Okay. And with the assistance Dr. Schwartz-Watts
23 shedding light on this phobia, we've been able to work
24 together to make this as good of an environment for you as
25 possible; is that correct?

1 A Yes.

2 Q Okay. Now, what's your opinion -- or looking back,
3 what were your thoughts about your trial testimony, how
4 did you do?

5 A I thought I sounded crazy at times. I feel like I
6 didn't get my point across a lot. I feel like it was shut
7 down at some point because I just didn't know how to get
8 what I was trying to say across, my point across.

9 You know, there is a lot of things I wanted to
10 say and I didn't, things I said that I shouldn't, and I
11 didn't realize I actually said that. In looking back, you
12 see it, and you're, like, okay, well, obviously, that
13 didn't make sense.

14 Q Now, for example, if you could look at page 505,
15 lines 4 through 6. There you're asked if you're ever
16 alone with your children, and you say you can't recall one
17 time where you were alone with your children. But then on
18 page 517, lines 14 through 16, you said there were times
19 when you had been alone with the victim. Can you explain
20 what was going on there? You give two completely
21 different answers.

22 A Yeah, the -- see, it was almost like I was trying to
23 say one thing, but I said something totally different.

24 Now, I can't recall a time. I mean, obviously,
25 I don't have the best memory, but I do -- I can recall a

1 time. You know, I do know where there's times when we've
2 been alone. That's just insane to even say that because
3 it's a fact. And I don't understand why I said what I
4 said right there. I don't really understand it. But then
5 after that, it's almost as if it was already said, you
6 know, and the questions were all based on that and what I
7 had said. And I tried to -- I tried to correct it, but it
8 was almost as if it was pointless at that moment.

9 Q Okay. With how things had gone in your trial, did
10 you feel like your testimony was make or break, that
11 everything was on you at that point?

12 A Yeah, I felt a lot of pressure there.

13 Q On page 513 through 514, you're asked about failing
14 to contact law enforcement. And the State specifically
15 questioned you on line 19 about after you had learned
16 about an allegation about raping your daughter, that you
17 didn't even contact law enforcement?

18 A Yes.

19 Q When you received that line of questioning, did you
20 really know how to answer?

21 A No. You know, if he would have come out and asked
22 have I -- did I do anything, I would have answered it,
23 yeah, I tried to take her to, you know, Mr. Robinson, and
24 I went myself. That was one thing that I tried to do, and
25 I don't think I was asked if I did that, you know. All

1 they specifically asked was did I go to law enforcement.
2 And it wasn't even based on -- I don't even know if that
3 question was based on what Bree was saying.

4 I think it was based on the earlier incident
5 where she was over at a sleepover at Destiny's house,
6 which was the little girl's name that she was staying at.
7 And, you know, we -- we tried to handle it, you know, as
8 best we could, and if I would have known that that was
9 something that I should have done is went right to the
10 police and said, hey, this guy's 13-year-old niece was
11 doing something to this guy's daughter, I mean, I would
12 have done that. But, I mean, we tried to handle it, and I
13 never got to explain that in this trial.

14 I think that would have helped. It would have
15 given a clearer understanding of at least my side of the
16 story, you know. I did try to do my best to handle the
17 situation.

18 Q On page 514 starting on line 15, you get asked a
19 series of questions whether or not you wanted your
20 daughter to even be born and about whether or not you told
21 your mother-in-law that you wanted a boy?

22 A What page?

23 Q I'm sorry, 514 beginning at line 15.

24 A Yeah, I remember that.

25 Q Were you blindsided by that question?

1 A Yeah. I don't know why somebody would ask a father
2 that, personally. I would never ask somebody, did you
3 want your daughter to be born?

4 You know, we knew we had a daughter, you know,
5 we knew Bree was Bree. We had her named. We went out and
6 bought, you know, a baby crib and, you know, the little
7 bumpers and clothes and, you know, it's a girl, and, you
8 know, her first outfit she was going to wear when she came
9 home. We bought her all that stuff. It's not like I
10 didn't know that she was going to be a girl, like all of
11 sudden, you know, the baby is born, oh, it's a girl, all
12 of sudden just, boom. I mean, we knew in advance, we
13 knew. I don't know when exactly, but it was way before
14 she was born. So that wouldn't have been something I
15 would have said at any time. I never said that.

16 Q And then later they actually called your
17 mother-in-law, Arlene Callahan, and on page 595, she
18 recounts after the baby was born in the hospital, she said
19 you told her that statement.

20 Did you know prior to trial that they intended
21 to call her to say that you made that statement?

22 A No.

23 Q On page 517, line 17 through 21, you get asked about
24 meeting your wife when she was 14 and you were 18.

25 Looking back and having reviewed the transcript, do you

1 think that is relevant to the allegations?

2 A I think it affected me.

3 Q And how is that?

4 A The disparity between the ages, I mean, that would
5 put a judgment in somebody's mind, especially on a jury.

6 And at the time, I didn't think nothing about
7 it, but, you know, I can see how it would be because they
8 would do the same thing I would do is judge somebody, you
9 know, well, he's 18 and she's 14, that is a big
10 difference. So, automatically, I would be judged because
11 they're trying to charge me as a pedophile. So somebody
12 on that jury even -- I wouldn't even put it past -- I
13 mean, I would just think that somebody would judge me like
14 that.

15 Q And you didn't have somebody like Dr. Schwartz-Watts
16 come that day and say that you had a normal sexual
17 history?

18 A No.

19 Q Finally, look at page 521 in your testimony, lines 8
20 through 11, there after a series of questions you say, the
21 only day open for porn, will you agree, would be a Sunday?

22 A Yeah, that's...

23 Q Explain to me what happened there.

24 A I was following his line of -- I mean, what he was
25 talking about. I mean, they said earlier, I think

1 Mr. Cornwell questioned me and said, your only day off is
2 Sunday, and that kind of put it in everybody mind that's
3 the only day I had off, and I had Saturdays off. I
4 mean -- but that doesn't mean that's the only day I could
5 view porn. The TV was always there in my house. I mean,
6 I had cable, always had cable, it's not going anywhere.
7 So to say it like that would be the only day available, I
8 mean, it's crazy, and I don't understand why I said that.
9 I really don't. But I don't know if I was just trying to
10 follow what the line of questioning was or just trying to
11 defend myself, or what. I felt like I was being under
12 attack.

13 Q Do you think a more thorough review of the discovery,
14 more preparation time with your attorney, would have
15 assisted you in your trial testimony?

16 A Yeah, I believe so.

17 Q Let's talk a little bit about the trial testimony of
18 your wife, Jessica Wilson.

19 On pages 561 through 563, she talked about how
20 your daughter had always had a problem with lying, and if
21 she could talk to her, maybe the truth would come out.

22 She goes on to explain then, on pages 587 and
23 590, that DSS told her not to contact the detective and
24 not to talk to your daughter about this incident -- and I
25 apologize, this is a long question -- the State then

1 recalls Chrissalyn Thompson to say she never told your
2 wife that she couldn't talk to your daughter. We've
3 already introduced the ARC report that has a
4 recommendation to that nature.

5 What are you alleging that Mr. Cornwell should
6 have done when your wife was questioned about this, says
7 that she was told that, and then they re-called Chrissalyn
8 Thompson to refute her? What should he have done on your
9 behalf?

10 A If we would have prepared for trial, we would have
11 known that it wasn't Chrissalyn -- first off, we would
12 have known it wasn't Chrissalyn that said that. She
13 didn't -- Chrissalyn Thompson did not say that, and it
14 wasn't in her report. So we first off know that that
15 wasn't the right person to bring out to ask about that.
16 And secondly, we would have had the statement and knowing
17 exactly where to go to get that.

18 Q And, Mr. Wilson, can you identify what this appears
19 to be for the record, just what it says there at the top?

20 A "Safety Plan."

21 Q Okay. And what department does it say it's from?

22 A South Carolina Department of Social Services.

23 MS. BLANCHETTE: Your Honor, at this time I
24 would move to introduce the Safety Plan as Applicant's
25 No. 19.

1 THE COURT: Any objection?

2 MR. APLIN: No, Your Honor.

3 THE COURT: Admitted without objection.

4 (WHEREUPON, Applicant's Exhibit No. 19 was
5 marked for identification and received into
6 evidence.)

7 BY MS. BLANCHETTE:

8 Q Mr. Wilson, if you could look at the middle section
9 there, if you could read what it says for preventative
10 service?

11 A "Jessica Wilson agrees not to discuss the abuse or
12 the evidence in this case to or with Breann or Timothy
13 Wilson."

14 Q So this is a DSS Safety Plan, and it's indicating
15 that your wife is not to speak with your daughter about
16 this case; is that correct?

17 A Correct.

18 Q And she testifies that "I've been told by DSS," and
19 she says clearly, "I believe it was DSS told me not to
20 contact the detectives or talk with my daughter," and then
21 they called Chrissalyn Thompson to say, we never told her
22 that.

23 Did your attorney use this document to say, hey,
24 wait a second, someone from DSS did tell her that?

25 A No.

1 Q And are you alleging today that he should have
2 utilized that, specifically when Chrissalyn Thompson was
3 recalled to the stand?

4 A Yes.

5 Q Now, also in your wife's testimony, on direct on
6 page 558, lines 20 through 24, she starts talking about
7 how she went with her gut and her heart, and it's what
8 told her that you didn't do this. Thereafter, during
9 cross-examination on page 575, the jury gets sent out
10 because the State questions her about an incident where
11 her sister had alleged that her father had done sexual
12 abuse. The jury is sent out, and there is argument back
13 and forth, but ultimately that is allowed to be questioned
14 about; is that correct?

15 A Yes.

16 Q And the State is allowed to question her about this
17 incident in which she believed and supported her father
18 when her sister made allegations against him about sexual
19 abuse?

20 A That was their story, what they're claiming.

21 Q Okay. But the State was allowed to question her
22 about that and go into that?

23 A Yes.

24 Q Now, if you look at page 582 before the Court ruled
25 that he's going to allow that to come in, in his reasoning

1 on page 582, right in the middle of the page there about
2 line 12, he starts talking about prejudice. And he makes
3 some indications that he's concerned about prejudice, but
4 he's going to let this in because essentially your
5 attorney opened the door. Do you recall that being his
6 ruling?

7 A Yes.

8 Q And your wife attempts to explain on pages 584
9 through 585 why she believed her father and why she
10 believes you now, but is it your position today that that
11 testimony was damaging to your case?

12 A Yes.

13 Q How were you prejudiced by it?

14 A It brought in something that was irrelevant because
15 Jessica, she didn't have a relationship with her father
16 through the entire time that I've known her. And I was,
17 you know, with her for 14-plus years. And so for them to
18 say that there were some connection between her and her
19 father, I mean, the only reason, as she said, was because
20 her sister told her that, you know, their father didn't do
21 it. He wasn't a part of our lives, so it wasn't a
22 relationship that she had with her father at all. So for
23 them to even bring in something that was so un-relevant,
24 it really hurt her credibility and my credibility at the
25 same time because if they hurt her credibility, it's all

1 about credibility, so it's, in turn, hurting the case.

2 Q And then her mother, Arlene Callahan, was called in
3 and allowed to testify about the specifics of that case,
4 also; is that correct?

5 A Yes.

6 Q Okay. Turning to the close of your trial, the judge
7 indicated that he was going to charge under the new
8 Jessica's Law, and he asked about sentencing under the new
9 or old law. Had you discussed with Mr. Cornwell Jessica's
10 Law or the change in sentencing?

11 A No.

12 THE COURT: Wouldn't that be a question of law
13 for direct appeal?

14 MS. BLANCHETTE: If he would have objected, I
15 would think it would be properly preserved for appellate
16 review.

17 THE COURT: All right.

18 BY MS. BLANCHETTE:

19 Q And, then, finally, we talked about your appeal
20 already, and that you're alleging that your attorney was
21 ineffective for not raising the denied motion to continue;
22 is that correct?

23 A Say that again.

24 Q We have already talked about your allegation
25 regarding your appellate attorney and that you're alleging

1 that she was ineffective for not briefing the issue of
2 ineffective -- or I'm sorry, the issue of the judge
3 denying the motion to continue.

4 A Yes.

5 Q Okay. Mr. Wilson, we have prepared for about a year
6 for today. I have attempted to ask you questions about
7 all the pertinent portions of the transcript that go
8 towards your allegations. Is there anything else that you
9 would like to tell the Court or that I've failed to ask
10 you about that you would like to testify to in support of
11 your PCR application?

12 A No, I think that's it.

13 MS. BLANCHETTE: Your Honor, I have no further
14 questions.

15 THE COURT: Cross-examination.

16 MR. APLIN: Thank you, Your Honor. If you'll
17 bear in mind, I've prepared for about a week. We'll see
18 how we do.

19 CROSS-EXAMINATION

20 BY MR. APLIN:

21 Q Mr. Wilson, you seem to be doing pretty well up there
22 today.

23 A Yes, sir.

24 Q You aren't suffering from terrible anxiety about this
25 hearing today.

1 A You know, I do have nerves, but, I mean, that's
2 definitely happening.

3 Q So what meds are you on today to help you with the
4 nerves?

5 A The only difference between now and then is I have
6 had experience, and I have been able to understand that I
7 have this issue.

8 You can't deal with something if you don't know
9 about it. And now that I know about it, it is something I
10 still deal with, and, yes, I'm doing better.

11 I'm glad that you say that because I'm really,
12 really, really trying to stay focused and do my best to
13 stay at a good pace. That way, I can say what I'm trying
14 to say.

15 Q But you didn't have to take any medication to reach
16 that state today?

17 A No, sir, I didn't take any medication whatsoever.

18 Q Okay. So you have been doing some things at the
19 prison, going to these classes and -- not classes, but, I
20 guess, working with these groups about your anxiety and
21 being able to speak in front of people, that's right?

22 A Yes. I have been getting up in front of people and
23 giving presentations, speaking to many people and trying
24 to do that more often. I knew I was going to be up here,
25 so I know that each time I do that, I can better deal with

1 it later, each time I do this.

2 Q And I think your testimony was that as you worked
3 through these things with the prison and the groups, that
4 you focus on your notes, and that when you have your notes
5 in front of you is when you can say what you want to say,
6 right?

7 A In that case, I had prepared a sermon, so that wasn't
8 something that I had experienced. It was something, a
9 teaching that I was trying to portray.

10 Just like this -- this note here, if I wanted --
11 if I had written this all out, I would have to look at it
12 to portray what is off of it because I wouldn't be able to
13 just recall stuff that's on it.

14 Q Okay.

15 A I'd have to look -- I'd have to see it in front of me
16 to actually get it across to you.

17 Q So for you, it's all about how you portray things
18 from the stand, not necessarily what's the truth?

19 A No. It's about being able to say exactly what's on
20 this sheet of paper. That's what I was talking about, a
21 sermon.

22 Q Okay.

23 A So if I'm trying to give a sermon, I'm not able to
24 just bring it up without actually having it in front of me
25 because of being up in front of people.

1 It's very distracting because I can almost read
2 peoples', you know, their body language or their
3 expressions or if something's going on in the back, I can
4 pick up on that, and it's totally distracting. That's
5 another reason. But after doing that a few times, I have
6 a lot better focus.

7 THE COURT: Let's move forward.

8 MR. APLIN: Okay. Sorry, Your Honor.

9 THE COURT: All right.

10 BY MR. APLIN:

11 Q Just on this issue, though, you were out on bond
12 after your arrest, correct?

13 A Yes.

14 Q You were out on bond.

15 And I know you testified that you didn't seek
16 help from your -- or your attorney didn't help you with
17 this anxiety issue. Did you get any self help? Did you
18 go to anybody to work on your anxiety issue while you were
19 out on bond?

20 A Well, I had no idea that I had anxiety, and I was
21 never run through a scenario where that would be the case.

22 Q You said it was like a fear of heights, though?

23 A Yes.

24 Q You would know if you have a fear of heights?

25 A Certainly.

1 Q So you seem like you'd know if you have an anxiety
2 issue?

3 A If I was ever put in that position, of course.

4 Q But you said you didn't realize you had then anxiety
5 issue?

6 A I was never in front of people speaking or put in a
7 situation that would prepare me for that.

8 Q The issues with hiring this lawyer from California,
9 and then I guess you said the law firm went bankrupt at
10 some point?

11 A Yes.

12 Q And you had Mr. Duncan, who is local here, private
13 counsel and, eventually, you ended up with the Public
14 Defender's Office, right?

15 A Yeah, eventually, that's who represented me in court.

16 Q And all of that information came out at the trial
17 when Mr. Cornwell asked for a continuance, didn't it?

18 A I can't recall. I mean, I...

19 Q Okay. You don't recall them talking about that
20 between he and Mr. Stumbo, about when Mr. Cornwell got the
21 case?

22 A You're talking about when he's describing, I guess,
23 the rush, push, push, it's like a baby being left in his
24 lap, or something. And then --

25 Q So he mentions there were private counsel on the case

1 and, eventually, the Public Defender's Office got it late
2 in the game, right?

3 A Yeah, he -- I guess that's his way of explaining it.

4 Q Okay. Now, as far as all of the information that was
5 in the discovery that you reference, and I think all those
6 documents were put into evidence at this hearing today,
7 those documents came from Mr. Cornwell's file?

8 A Yes.

9 Q That is how you got them now?

10 A Yes, part of discovery.

11 Q For this case, the PCR case, I mean?

12 A For the PCR case that was...

13 Q I guess what I'm getting at is, when did you finally
14 get to see them? Because I think your testimony was that
15 he didn't sit and go over all the documents with you
16 before the trial?

17 A We didn't sit down and go over any paperwork.

18 Q Okay. But they were in his files, as far as you
19 know?

20 A As far as I know.

21 Q So it's likely that he went over the documents that
22 were in his file?

23 A I'd hope so, yes, sir.

24 Q All right. Your complaint is that he didn't sit down
25 with you and go through them word for word and look at all

1 these details?

2 A Well, the complaint is that if there's something
3 going on with a client, I think the best way to understand
4 what's going on is to ask him. I mean, I was his client.
5 I think we should have gone over stuff.

6 Q There were some questions asked about Mr. Cornwell
7 seeming like he was in shock the first time he met you?

8 A Yes, sir.

9 Q Okay. And so part of that had to do -- he believed
10 in you throughout this process, correct?

11 A I think that the shock that I was referring to was
12 the fact that it was almost like he made a judgment based
13 on the charges and not on who I was.

14 Q And he continued to hold those beliefs throughout the
15 trial, as far as you know?

16 A I would hope so. He was defending me.

17 Q Okay. Now, you talked about him not doing
18 independent investigation or not having an investigator
19 from outside look at the case on your behalf. Wasn't the
20 entire issue, like you testified to, credibility?

21 A That was definitely what both sides had spoken on --
22 the prosecutor said it was about credibility.
23 Mr. Cornwell said it was about credibility. And all
24 the -- all the questioning went on credibility, all the,
25 you know, the defense witnesses, myself included, Breann

1 also.

2 Q So you don't have anything in particular you think a
3 private investigator could have found that would have been
4 useful for you?

5 A I think that investigation -- an investigator has a
6 purpose, and I don't know what an investigator could have
7 found, but I surely would want the most thorough
8 investigation whatsoever that I could have. This is, you
9 know, I'm facing some serious charges here. And a
10 professional would definitely be better than me or anybody
11 else. I mean, that's their -- that's their profession.

12 Q Okay. And, again, the issues with Mr. Cornwell
13 saying he needed to have -- he wanted to have an expert
14 witness, and he didn't feel like he had time to get one,
15 issues that he didn't feel like he thoroughly reviewed
16 discovery with you, all of that was explained to Judge
17 Keesley when he asked to continue the case, right?

18 A As far as I know, he explained his need of an expert,
19 and -- but other than that, I think that's all that was
20 portrayed and he gave case law concerning.

21 Q And case law to back it up, and, ultimately, the
22 judge denied the motion?

23 A Yes, the judge denied that motion.

24 Q And you had an appeal on the case?

25 A Yes, sir.

1 Q Now, all of the things you have picked out and named
2 in the documents that were handed up by Ms. Blanchette,
3 are you saying that you think you know more about how to
4 review those documents to prepare for trial than your
5 attorney does?

6 A I never said that.

7 Q Okay. But you would agree that he had these
8 documents in his file, that is how you got them?

9 A Yeah, that they were, as far as I know, in his -- I
10 mean, that's how I received them. I believe that's how
11 discovery works. Like I said, I don't -- I'm not an
12 expert on that. But I believe the discovery, all this
13 paperwork that we went through was in his possession at
14 some point.

15 Q You say you met with him three times?

16 A Yeah, roughly three times. I don't even know if
17 that's accurate.

18 Q And did you talk to him about, are there any other
19 documents I may want to look at, anything like that?

20 A I don't remember talking to him about any documents
21 that he had or that he should have or -- I don't remember
22 talking to him about anything along those lines.

23 Q You testified a little bit about starting to get into
24 this sleepover incident, the prior incident that didn't
25 come out, some of the details of it came out at trial.

1 Just correct me if I'm wrong, I think what your testimony
2 was, that you thought it wasn't a safe place for your
3 daughter to go overnight just because the neighborhood
4 happened to be people living in trailers and they were
5 poor, or something like that?

6 A Well, it was -- pretty much. I mean, I judged the
7 guy based on where he lived and -- I mean, I just didn't
8 know -- I didn't know him.

9 Q Okay.

10 A But like I said, after I got there, I thought that he
11 seemed like a decent guy.

12 Q And the fact that you're clean cut or in the military
13 somehow would mean that you couldn't possibly do something
14 like this to a child?

15 A I never said that.

16 Q There was some testimony about this child
17 maltreatment protocol, I think it's Applicant's No. 15,
18 about the broken leg?

19 A Uh-huh.

20 Q And if I understand correctly, you thought
21 Mr. Cornwell should have used that document to help show
22 that your daughter wasn't a truthful person?

23 A Well, I think it shows, if he's trying to do what he
24 was doing, which was, you know, pit everybody against her,
25 I think that would be something that she said out of her

1 own mouth, that you don't really have to pit somebody
2 against her. I mean, you could just use her own words to
3 prove that she's not telling the truth.

4 Q And when supposedly she claimed her leg was broken,
5 she would have been fairly young, four or five, somewhere
6 in that range?

7 A She was seven, I think, or six at the time that she
8 did the interview.

9 Q The interview, right, but there was a reference to
10 when she was younger, she broke her leg?

11 A I think she was talking about then. I mean, we had a
12 dog so that's got to be a specific time.

13 Q So with a child that age, if their leg hurt, do you
14 think they even know whether it was broken or not? It
15 just would hurt, right?

16 A I think if I even hurt myself, personally, I would
17 scream about it, and I believe that my parents would take
18 me into the hospital to get it looked at if it hurt, I
19 believe. That's what I would have done.

20 Q Okay. And your point was that you thought your
21 attorney should have taken that little piece of
22 information and used it at trial to go after your
23 daughter?

24 A I think the whole point was the fact that he was
25 trying to show that she was inconsistent and that she told

1 lies and that would have been something that came directly
2 from her mouth. So, yes, I think that should have been
3 used.

4 Q Now, another of your allegations and complaints had
5 to do with not having expert witnesses to come to kind of,
6 you said, to balance out what the State's experts were
7 testifying to. Didn't Mr. Cornwell use your family
8 members to do that, to attack her credibility?

9 A I thought you said something about experts.

10 Q I did. But my question is: Instead of having
11 experts, Mr. Cornwell had you, your wife, grandmother and
12 a grandfather all get on the stand and testify about the
13 victim being a liar, correct?

14 A I believe there's two different things you're talking
15 about there, but I had for a defense witness, yes, my
16 mother was a defense witness, my father was a defense
17 witness. But I don't -- I would never call my mother to
18 come over and, you know, install electrical boxes in my
19 house. I mean, that's for a professional in that field.
20 So I wouldn't say that they're equal to a professional. I
21 know I wouldn't, personally. I think a professional in
22 their field would be the best and most adequate to do
23 their job, so I would hope so.

24 Q Didn't Mr. Cornwell, one of his trial strategies was
25 to say to the experts, do you think you know this little

1 girl better than her own mother? Do you remember him
2 asking those questions?

3 A Yeah, he asked that question.

4 Q So, clearly, there was a reason that he thought those
5 family members were more useful than the experts to try to
6 show that point because he was attacking the State's
7 experts in that regard, right?

8 A Could you repeat that or rephrase it?

9 Q I'll ask another question. That's fine.

10 A Okay.

11 Q You testified about how you felt like you had lost
12 hope at some point when Mr. Cornwell was arguing for a
13 continuance because he said this is going to be a PCR
14 case, it's going to come back on appeal, and he handed up
15 the case law. He talked about how he hadn't reviewed
16 discovery and he hadn't had a chance to get these expert
17 witnesses. You felt you lost hope at that point?

18 A I was referring -- that wasn't what I was referring
19 to. I was referring to the statement that -- well, I
20 believe that's what I said -- I was referring to the
21 statement that the judge made, I believe, is what you're
22 referring to, when the judge -- when I testified earlier
23 about the judge making a comment about me being --
24 comparing me to somebody that is convicted of a crime, I
25 kind of --

1 Q It might be a different place, two different
2 things --

3 A I might --

4 Q But my question was: Mr. Cornwell was -- did it
5 appear he was trying to make it look as bad as he could so
6 the judge would give him a continuance?

7 A I don't know.

8 Q And at that point, you wanted a continuance, right?

9 A That was -- that was what I thought we were going to
10 have that day. I mean, I really thought that we were
11 going to go in there and get a continuance, and that
12 way -- yeah, it was something that he said he needed. So
13 I would have -- I would have expected the judge to grant
14 that.

15 Q Mr. Wilson, this is -- can you just identify this
16 document? I think it's something you wrote or prepared?

17 A Okay. Yes, this is a pro se --

18 Q Pro se appellate brief that you filed in the appeal?

19 A This is a pro se Anders brief reply.

20 Q Okay. And is it file stamped? Do you see a stamp up
21 in the top corner there?

22 A Yes.

23 Q What does it say?

24 A It says, "Received."

25 Q Received by who?

1 A The South Carolina Court of Appeals.

2 Q Thank you.

3 A All right.

4 Q There was an allegation about the missing jurors or
5 that there weren't enough jurors there at the start of the
6 trial to hopefully draw a jury pool?

7 A Uh-huh.

8 Q You ended up with 12 jurors at your trial, right?

9 A Yes. Well, it's 13. You know, you have the --

10 Q With the alternate.

11 And do you recall that your attorney was able to
12 use all 10 of his strikes --

13 A Oh, I wouldn't know that.

14 Q -- in jury selection? But if that was reflected in
15 the transcript, you would --

16 A It would be in the transcript, yes, sir.

17 Q Okay. And you have no complaints about any specific
18 jurors or any idea that one of them may have been biased
19 against you, or something?

20 A If they were, I don't know how I'd know that. I
21 mean, I could see their face, but that was about it.

22 Q There also was testimony, I think this was -- you got
23 the transcript still with you up there, right?

24 A Yes.

25 Q And page 209 and 210, and I think this is where we

1 were just talking a minute ago where the judge makes a
2 comment -- again, this is page 209, bottom of the page,
3 starting on line 17 where the judge is comparing -- are
4 you there now? Sorry.

5 A Yes, sir.

6 Q Comparing your days to a prior case.

7 Now, isn't Judge Keesley, the comparison he is
8 making is to the fact that he's making the victim face you
9 or confront you or testify in a courtroom, and he says I
10 did that -- it reminds me of a guy through a whole trial I
11 had where I had the victim and made them confront the
12 defendant. And in that case, he ended up getting
13 convicted and did a lot of time.

14 So my question is: Isn't this comparison about
15 the ruling that he made in your favor and how he had made
16 a ruling in favor of another defendant in a similar trial
17 in his mind?

18 A That's not how I took it.

19 Q Okay.

20 THE COURT: I can read the transcript on that.
21 Thank you.

22 MR. APLIN: Thank you.

23 BY MR. APLIN:

24 Q You testified at one point with that incident, you
25 said that you were upset, you felt offended that he

1 compared you to a police officer? Did I understand that
2 right?

3 A Yes. That's what I said.

4 Q Now, in regard to the videotape coming in, you did
5 talk about that video forensic interview with
6 Mr. Cornwell?

7 A No. We -- he sat down with me and we watched about
8 30 minutes of it. And like I said, he went off and I
9 continued to watch it for another 15 minutes. That was it
10 for that session.

11 Q But you are aware the video was out there, and I
12 think you testified he told you he wasn't going to object
13 to the video coming in?

14 A That's what he said.

15 Q Do you remember why he, did he tell you why it would
16 have come in, anyway?

17 A Yeah, I think he did say that.

18 Q Okay. In regard to confronting your daughter -- and
19 I think Ms. Blanchette went over a lot of this already, so
20 I won't hash it out -- but the judge ruled in your favor,
21 he didn't allow her to testify in a separate room or video
22 tape or audio connection, or anything like that, made her
23 come in the courtroom and testify with you in the
24 courtroom, too?

25 A Yeah, we were both in the courtroom when she

1 testified.

2 Q And as far as her being in the courtroom and
3 identifying you, you said she maybe had to lean forward or
4 didn't get a direct shot of you, but wasn't the testimony
5 that she picked you out as being the person in the orange
6 shirt?

7 A Yes. She could not see me throughout the whole
8 interview. And what she had to do is get up out of her
9 chair and lean forward to be able to point me out. I
10 mean, she recognized me as her father, so, obviously, she
11 knew who I was.

12 Q And I know you testified at one point that you didn't
13 want this whole thing to be traumatic for your daughter,
14 but aren't a lot of the things that you're saying
15 Mr. Cornwell should have done, wouldn't those things have
16 been traumatic for her?

17 A You have to give me an example.

18 Q Questioning her about, did she lie about the broken
19 leg?

20 A No, I don't see how that would be traumatic to her,
21 asking her if she lied about breaking her leg.

22 Q So it wouldn't be traumatic for her to be
23 cross- examined by a defense attorney vigorously, but it's
24 traumatic for you because you have anxiety to be on the
25 witness stand? Is that what you're saying?

1 A I never said that.

2 Q Now, I'll just ask you a quick question about the
3 victim's testimony.

4 Would you agree that one of your attorney's
5 goals at this trial was to attack a trait of character in
6 the victim to try to show that she was a liar, basically
7 untruthful?

8 A No, I think she was -- there -- I think what was
9 being attacked was -- I mean, I don't really know,
10 actually. I don't know what his -- his game plan was, but
11 what happened was, each defense witness that got on the
12 stand was being asked if she was a liar. So, I mean, I
13 don't know -- I don't know his strategy. I don't
14 understand what the question really is.

15 Q But there were four witnesses, and each one of them
16 testified that she had a tendency to fib or not tell the
17 truth?

18 A Right.

19 Q And that she was stubborn, that she did not ever want
20 to back off the statements once she had told the lie?

21 A Okay.

22 Q Do you remember the four witnesses testifying,
23 including yourself, to that?

24 A I don't think everybody testified to that, directly.

25 Q And I will let the Judge find that in the transcript.

1 But knowing that there was at least several of
2 the witnesses who testified to that, wasn't that putting
3 the victim's character traits in evidence? Was it saying
4 that is a character trait of the victim saying that she's
5 not truthful?

6 A It's a character trait of hers?

7 Q Right.

8 A I think, yeah, he was trying to point that out.

9 Q And these were all individuals who knew her
10 personally, they were not just members of the public, not
11 members of the community. These are people who are family
12 members of hers and knew her from personal experience?

13 A Yes.

14 Q Another part of her testimony, and I will try to
15 point you directly to this part.

16 MR. APLIN: Sorry, Your Honor, I have so many
17 papers up here, I can't find the one I need.

18 (Pause.)

19 BY MR. APLIN:

20 Q If you turn to page, I think it's 264, lines 15
21 through the bottom of the page, do you see Mr. Cornwell's
22 crossing the victim in this case, and there is --

23 A What was it?

24 Q Page 264, lines 15 through 22. And he's asking her
25 how many times she watched the video in preparation for

1 the trial. Do you see that?

2 A Uh-huh.

3 Q Where he's talking about the counseling he had with
4 Heather and how many times they may have watched the
5 video?

6 A Uh-huh.

7 Q And so does it appear your attorney's trying to show
8 that maybe her trial testimony was influenced by somebody
9 else, they maybe helped her along, trying to get her to
10 testify a certain way?

11 MS. BLANCHETTE: Your Honor, I object. These
12 questions about trial strategy of defense counsel, I think
13 they're best asked of defense counsel.

14 THE COURT: You think what now, please?

15 MS. BLANCHETTE: I think he's asking about trial
16 strategy of defense counsel. These might be best asked of
17 defense counsel. He is asking Mr. Wilson to interpret.

18 THE COURT: I overrule that. Go ahead, please,
19 sir.

20 Let's step it up. We've been spending a lot of
21 time on this case. I've been inherently patient on this
22 case, but I tell you both that my patience is coming to an
23 end, okay? Not because this is not important, but because
24 we seem to be going over things that don't have to really
25 do with PCR applications. Okay? So let's move.

1 BY MR. APLIN:

2 Q Just very briefly, I'll draw your attention to
3 page 274 of the transcript. The bottom of 274 to top of
4 275, you see Mr. Cornwell questioned your daughter about
5 an incident with the nightlight and how she got in trouble
6 with you the day before she talked to Ms. Barons.

7 A Who's -- who is this referring to? I mean, who's
8 being --

9 Q This is the victim.

10 A Huh?

11 Q The victim is testifying.

12 A Okay.

13 Q The bottom of page 274, "You don't remember getting
14 in trouble about a nightlight," and she admits yes, she
15 did, and it was the day before she talked to Ms. Barons.

16 A Yes.

17 Q Okay. So that testimony was brought out by counsel
18 at trial.

19 Now, your attorney did cross-examine each of the
20 witnesses at trial, right?

21 A Yes.

22 Q As far as you remember.

23 A Uh-huh.

24 MR. APLIN: Your Honor, that's all I have.

25 THE COURT: Thank you.

1 Redirect?

2 MS. BLANCHETTE: I have nothing on redirect,
3 Your Honor.

4 THE COURT: Thank you, sir. You may step down.

5 Let's take about a ten-minute break, then we'll
6 go forward with the next witness.

7 (A break was taken.)

8 THE COURT: Call your next witness, please.

9 MS. BLANCHETTE: I'd be happy to, Your Honor.
10 I'd call Casey Cornwell to the stand.

11 FULTON CASEY DALE CORNWELL, after being duly
12 sworn, testified as follows:

13 THE COURT: Thank you, sir. Please be seated.

14 DIRECT EXAMINATION

15 BY MS. BLANCHETTE:

16 Q Could you please state name your name for the record?

17 A My name is Fulton Casey Dale Cornwell.

18 Q And where are you currently employed?

19 A Harrison & Radeker PA. It's in Columbia.

20 Q Okay. And at the time of this trial, were you
21 working with the Lexington Public Defender's Office?

22 A That's correct.

23 Q Okay. And did you also spend some time with another
24 public defender's office?

25 A Before that, I worked in Aiken, and after that, I

1 worked briefly at York before going into private practice.

2 Q Okay. Now, please let me know if you need a page
3 reference, or anything, but I'm going to summarize a lot
4 of what I went over with my client.

5 The record shows that you got this case about
6 April of 2008. Once you obtained this case, what did you
7 do to prepare for trial?

8 A It's kind of hard to remember, but I do remember,
9 generally -- I can speak generally to do what I do in
10 these type cases.

11 The first thing we usually do is kind of -- if
12 we don't already have discovery, we file for discovery,
13 look through all the testimony that we have, definitely
14 look at the video from the ARC to see how that plays out.

15 Ideally, we try to get some kind of experts in
16 line to basically assess whether or not the defendant is a
17 sex offender, in their expert opinion or, you know, the
18 proclivity to -- I forgot the technical terms they used to
19 do that, but also an expert to review the video from the
20 ARC to see if everything was done properly.

21 Q Okay. Do you have a copy of the transcript in front
22 of you?

23 A Yes.

24 Q If you could look at page 32 and 33, there you
25 explain that you got the discovery about -- or you had the

1 opportunity to review the full discovery with Mr. Wilson
2 around June 27th, you had approximately four weeks to
3 prepare?

4 A Yes. That's -- I think that's the first time he and
5 I actually got to sit down and go over the stuff that I
6 had. So that was the -- it was only four weeks before
7 trial that I actually talked to Mr. Wilson, I think, for
8 the first time in person.

9 Q Okay. At the end in your closing statements, you
10 made some comments about you being shocked when you sat
11 down with him for the first time. Could you explain what
12 happened?

13 A You know, it's kind of, I guess, a side effect of
14 being a PD. You know, you get accustomed to, you know,
15 seeing a particular type of individual associated with a
16 particular type of crime, you know. And you definitely
17 don't -- Mr. Wilson is not, you know, the typical public
18 defender client. You know, I hate to be stereotypical
19 like that, but he's a clean-cut guy, he's a nice guy,
20 family guy, did everything he's supposed to do, and he's
21 in this situation. You know, it's not something we see,
22 you know, on a regular basis.

23 Q Okay. And in your review of the case in preparation
24 for trial, did you come to a point where you had an
25 opinion about the believability of Mr. Wilson?

1 A I believe him. I still believe him. I don't think
2 he did it. I mean, that's just me. I'm -- I'd like to
3 think that I'm not saying it because I'm a defense
4 attorney because there's plenty of clients where I'm like,
5 you're guilty, you know. But I just -- I was looking at
6 the facts that I had and everything that I saw just, it
7 didn't add up, but I thought it did kind of boil it down
8 to who the jury was going to believe.

9 Q Okay. And you said here you had four weeks to
10 prepare, and you were asking the judge for a continuance,
11 obviously for more time and to get experts. Could you
12 just explain why you were asking for that continuance,
13 what it was that you needed to do still at that point?

14 A At that point, the main thing I really wanted to get
15 was the experts. And also, I would have loved to have
16 more time, just one-on-one time with Mr. Wilson so we
17 could, you know, prepare him more fully for being on the
18 stand because there's nothing really that prepares you,
19 you know, being on the witness stand. And, you know, I
20 would have really liked more time to do that, but, you
21 know, kind of pressed at that point, so...

22 Q And as far as experts, why were you asking
23 specifically for more time to get experts?

24 A Well, I tried to get some before, and there was some
25 scheduling constraints with the ones that I had been in

1 contact with. And I really needed this thing, you know,
2 the first available date from one of the people, at least,
3 was, like, in October of that year. And that was one of
4 the main things, you know, that I needed that continuance
5 for.

6 Q And did you have the opportunity to hear the
7 testimony of Dr. Schwartz-Watts and Gay Allen Cook today?

8 A Yes.

9 Q In your opinion, would that information have been
10 helpful to your case, and if so, how?

11 A I would have -- especially things about Ms. Wilson's
12 anxiety. I think they diagnosed him with anxiety
13 disorder. It explained so much, you know. Like it just,
14 I can totally see that. Like, I mean, you know, and I
15 would have liked to have done -- I mean, I wish I would
16 have had, you know, more time to do that. And that, you
17 know, I should have -- and maybe if I would have had more
18 time to meet with Mr. Wilson, I would have picked on
19 something -- picked up on it myself, you know, so...

20 Q And beyond the social anxiety or the phobia, was
21 there any information specifically regarding his sexual
22 history that Dr. Schwartz-Watts testified to or her
23 diagnosis, and the testimony of Dr. Cook regarding her
24 area of expertise that would have assisted you in either
25 the preparation or presentation of your case?

1 A I think she said something about him having a phobia,
2 or something like that. There's no way I would have known
3 that, you know, without him being diagnosed with that.
4 So, yes, I do think, you know, their testimony could have
5 helped me put up a stronger case, especially as to why,
6 you know -- or maybe even head off some issues with why he
7 may have presented flatly, you know, at the trial, or
8 anything like that, head off any kind of arguments in that
9 direction.

10 Q And you said it explains a lot to you. None of us
11 were present in the courtroom. What does it explain to
12 you, what finally makes sense to you?

13 A Well, one on one, you know, talking to Timothy about
14 it, you know, he was very, you know, emphatic that, you
15 know, I didn't do this. You know, he wasn't jumping up
16 and down screaming, or anything, but, you know, it was
17 clear to me that he didn't do it. And he had no qualms
18 about it, and straight out of his mouth, I didn't do it.

19 But, you know, he's on the witness stand, and
20 it's kind of like he said the words, but it was very kind
21 of, you know, I did not do this. It was flat, I think is
22 the best word I could use to describe it. He came off
23 like somebody who had an anxiety issue, you know.

24 Q Did you find him to be believable at trial, as
25 believable as you thought he was in your personal

1 meetings?

2 A That is a better way to phrase, not as believable as
3 my personal meetings.

4 Q Okay. Dr. Gay Allen Cook testified about her
5 expertise in the area of forensic interviews and child and
6 family therapy. Were you interested in obtaining an
7 expert like that to get into the disclosure in this case
8 and the procedures that were used?

9 A That's one thing that I did not look into. It didn't
10 enter my calculus as far as my getting an expert to look
11 into the family dynamic of it and the counseling aspect of
12 it. That would possibly be an oversight on my part. But
13 no, I did not look into that, specifically.

14 Q Do you think that would have assisted the defense in
15 that case?

16 A I think it could have given a more full picture, you
17 know, of what was going on and the dynamic and everything,
18 and maybe helped us present our case a little better.

19 Q Okay. And Dr. Robinson testified for the State at
20 trial. And on cross-examination, you asked him a question
21 about, you know, treating more than just the victim, and
22 he said that he did. But you didn't ask him any specific
23 questions about him treating Mr. Wilson. Do you know why
24 you didn't ask him about that?

25 A No. That was -- that was, I can admit, that's

1 probably oversight on my part. I can't recall at the
2 moment, you know, if I had reason for not asking him. I
3 was probably just more focused on, you know, the impact
4 that it had on the victim, that it affected anything she
5 may have said. But, no, I didn't ask that question, and I
6 can't think of at the moment if there was a reason why I
7 didn't.

8 Q And he testified today about Mr. Wilson coming and
9 being motivated and wanting to speak with him, wanting to
10 improve. Do you think that information could have
11 affected the outcome of the trial in this case?

12 A I think it would have shown to the jury that he was
13 interested in getting to the bottom of it instead of
14 trying to cover up something, you know, I think that would
15 have helped.

16 Q Okay. Now, the State and yourself both argued this
17 case was all about credibility. And we talked a little
18 bit today about Judge Keesley's comments about pitting of
19 witnesses. And I made specific references to times when
20 the State attempted to have your witnesses do some
21 pitting. Is there any reason you didn't object?

22 A I -- you know, I don't mean to offend Your Honor, or
23 anything, but, you know, a lot of times when you're in
24 trial, it's kind of your strategy to let some things
25 slide, you know, especially if you're doing it yourself.

1 And, you know, I was doing it, and it was working for me.
2 And I think I did object at one point because Stumbo put a
3 witness on the stand that actually said something that I
4 thought was kind of harmful, and I objected, and I think
5 Keesley even said, like, well, you've been doing it the
6 whole trial. You know, but I couldn't exactly see at that
7 point, well, it wasn't hurting me then. But, you know,
8 that was kind of the reason why I didn't object.

9 There were -- there were times -- there were
10 definitely times I could have objected. I could have
11 objected a lot more at that trial, especially in pitting
12 the witnesses, in that issue, but I did not, a lot of it
13 because I was pitting witnesses, also.

14 Q Go ahead. I'm sorry.

15 A That's it.

16 Q Do you agree, though, that if you don't make a
17 contemporaneous objection, it won't be reviewed by the
18 Appellate Court?

19 A That's correct.

20 Q As far as the video in this case, you stipulated to
21 the introduction of that video. What was your reasoning
22 for that?

23 A It was my understanding that the video comes in,
24 regardless. The statute -- there's a statute that speaks
25 to that. I've seen other attorneys object to the

1 introduction of video before. I think I may have even
2 done it before, and, you know, getting smacked down
3 before, and so I just didn't think it would be a fruitful
4 venture to, you know, kind of object to the introduction
5 of the video.

6 Q Do you agree that under the statute, it is required
7 that the judge make specific findings before that is
8 admitted, it is not automatically admissible?

9 A I do know there have to be certain findings, yes.

10 Q Okay. Let's talk a little bit about the State's
11 motion they filed.

12 They filed a motion to essentially have the
13 victim testify in another room, and you were successful in
14 arguing your client's confrontation rights, and she
15 actually testified in court.

16 You heard Mr. Wilson's testimony today about how
17 he felt that she couldn't see him, and that is something
18 you should have objected to.

19 Do you recall that, and do you agree with his
20 assertion that you should have objected?

21 A I remember specifically. I think he mentioned it in
22 his testimony that she did have to stand up to see him.
23 And I didn't object to it at the time because I didn't --
24 I didn't know how -- what's the word I'm looking for -- if
25 it would have made much difference at that point. She was

1 in the courtroom, and he could see her, you know, at least
2 I could see her, you know, and it really didn't cross my
3 mind to object when she stood up and demonstrated that she
4 couldn't really she him and there may be some issue there.
5 So that, you know, just hearing that now, you know, I
6 didn't object to that, no.

7 Q Through the transcript and on Mr. Wilson's direct
8 testimony today, we went through some issues regarding
9 what age she was versus the age alleged in the indictment
10 and the inconsistencies in the specifics she gave at
11 trial.

12 You did make a directed verdict argument, but
13 didn't get into a lot of detail. Have you had a chance to
14 review that directed verdict argument?

15 A I have looked at it. You know, that is -- that is
16 showing I could have brought up in my directed verdict
17 argument. But I -- you know, at the same time, you know,
18 a directed verdict is kind of an -- if they present
19 evidence that supports their, you know, that has to go to
20 the jury, you know, it kind of -- it's -- you're gonna get
21 denied on that. But I could have brought that up, you
22 know, I really could have fleshed that out, and it might
23 have -- it's probably an oversight on my part.

24 Q And I can ask you specifically about when Chrissalyn
25 Howard, the DSS worker was on the stand -- and if you need

1 to look at the transcript, it's pages 299 through 300 --
2 and you attempted to ask her about a report, and I will
3 show you here what's been marked as Applicant's No. 18.
4 Do you recall if this was the intake report you're
5 referring to?

6 A It's been a while, but I think this may be -- I think
7 this may be the report I'm talking about, yeah.

8 Q And she denies it being her report, so you couldn't
9 go into your line of questioning about the allegations
10 regarding the brother. Was that hurtful to your defense
11 strategy at that point?

12 A I think it could have helped us out if we got this in
13 because it talks about the another incident, I think, a
14 brother, or something like that. It mentions -- she
15 mentions her brother, and nowhere else does she say this
16 anywhere else, and, you know, they -- I don't even know if
17 she talks to -- if they even talked to the brother about
18 this. I can't remember right off top of my head. But,
19 you know, if we could have got this in, I think it could
20 have went to our argument about her credibility. And, you
21 know, I think it was my mistake because this ended up
22 being there -- somebody else's report, I think.

23 Q That's correct. She tells you it's someone else's
24 report.

25 A Yeah. And I couldn't get it in through her, so, you

1 know, that was --

2 Q Do you think that went to the lack of time you had to
3 prepare in this case?

4 A That could have played into it. 'It could have easily
5 been just an oversight on my part, thinking, oh, I got
6 this, I can get it in through DSS. You know, neither one
7 of them helped.

8 Q The Court allowed me to give a listing of specific
9 instances during the testimony of Alicia Benedetto and
10 Heather Smith where we're alleging you failed to object
11 under a line of cases beginning with Jolly versus State
12 from 1994 all the way through the Croma case that was
13 decided about a week ago.

14 A Uh-huh.

15 Q Is there any reason that you didn't enter objections
16 to that testimony?

17 A There was -- we made objections -- when I say "we,"
18 I'm usually talking about PDs in general. But, you
19 know -- defense attorneys in general -- we made objections
20 like that in the past, like whether it's bolstering or,
21 you know, you can't -- you're vouching for them, or
22 whatever. And, you know, it's a -- it was a mixed bag,
23 but mostly against us. And, you know, by the time I got
24 to try this case, I had kind of learned that I was going
25 to get overruled if I objected, you know. But at the same

1 time, you know, I should have probably objected just to
2 preserve the record, if anything. So that was my thinking
3 when I did not object.

4 Q And would you agree that there was case law in place
5 that actually said prior to this case that testimony
6 similar to what I pointed out amounted to vouching and
7 bolstering the credibility and was not admissible?

8 A Yes, I mean, the Jolly case, and things of that
9 nature, yes.

10 Q Okay. As a result of your failure to object to the
11 extensive testimony, especially the language regarding it
12 being a compelling disclosure, do you feel that the
13 outcome of the trial was affected as a result of your
14 failure to object to this testimony from these experts?

15 A I think --

16 MR. APLIN: Your Honor, I would object. That's
17 for the Court to decide in this case, whether there was
18 prejudice from this. I don't know that there's any point
19 in having him testify.

20 THE COURT: I have to agree. I'll sustain that
21 objection. I understand your point.

22 MS. BLANCHETTE: Thank you, Your Honor. I will
23 move on.

24 THE COURT: Yes, ma'am.

25 BY MS. BLANCHETTE:

1 Q Let me ask you about the testimony of Jessica Wilson.

2 On direct, you asked her a question on page 558
3 that led to her saying that she went with her gut and she
4 believes her husband. She makes comments about her heart
5 and her gut there on page 558, lines 20 through 24.

6 A Okay.

7 Q And as a result of those questions, the State's
8 allowed to question her about a prior incident involving
9 her sister and her father. Do you agree with the Court
10 that you opened the door there with your line of
11 questions?

12 A I do agree with the Court, but, you know, I also
13 agree -- I think that we really needed just to put her on
14 the stand, you know. But we did open the door by going
15 down that road, that line of questioning so...

16 How she answered the question was kind of not
17 like I would have, but, you know, that's kind of the risk
18 you take when you ask those kinds of questions, so, you
19 know, we opened the door, probably.

20 Q Was it detrimental to your case when one of your few
21 defense witnesses was then asked in detail about the prior
22 allegation involving her father and her sister?

23 A You know, I think it was detrimental to the case,
24 but, you know, more on how the jury started perceiving
25 things, you know, rather than the actual, you know, what

1 happened.

2 THE COURT: What do you mean by that?

3 THE WITNESS: It almost -- you know, I'm not
4 trying to disrespect anybody that was in the courtroom
5 that day, but it became almost like a little mini circus,
6 you know, because they -- they started going into this
7 detail about Dad and, you know, this prior -- the stuff
8 that happened when she was younger, and then there was
9 some back and forth between, you know, the prosecutor and
10 the witness at the time about what actually happened and
11 whose side she was on. It really just kind of got away
12 from what we were here for, you know.

13 THE COURT: Thank you. Excuse me for
14 interrupting.

15 MS. BLANCHETTE: Oh, no. I was going to ask
16 that question myself.

17 BY MS. BLANCHETTE:

18 Q Since you didn't have any experts, you were relying
19 solely on these family witnesses; is that correct?

20 A They basically kind of -- they were the experts I
21 had. They were the experts on Bree, you know, so I had to
22 rely heavily on them, yes.

23 Q Okay. And this opening the door, that was
24 detrimental, in your opinion, to the testimony of
25 Ms. Wilson?

1 A It was. I think it was.

2 Q Okay. Did you know that they were going to have her
3 mother there to testify about Mr. Wilson saying he wanted
4 a boy and to testify about this other incident?

5 A That was -- the whole line of questioning they went
6 down about whether he wanted a boy or a girl, you know,
7 that would -- that kind of -- I wasn't prepared for that.

8 Q Okay. Mr. Cornwell, is there anything else in
9 reviewing the transcript, which I know you had before
10 today, that specifically you feel that you could have
11 provided. I know he's not entitled to a perfect trial,
12 but is there anything where you actually feel that you
13 were deficient or somewhere where you should have
14 performed better on his behalf? And I don't know if I'm
15 using the proper words there.

16 A I know what you mean.

17 There were some opportunities to object in this
18 trial that I think I could have taken, like you spoke
19 about with the experts and the vouching, and things --
20 stuff like that. And I wish I would have better crafted
21 my questioning on direct to avoid kind of opening the door
22 to some of that stuff, you know.

23 But it's -- I wish I would have had more time.
24 I wish I could have gotten an expert. I really think the
25 outcome of this case hinged on us having an expert, more

1 than anything else. I really think that it could have
2 turned it for him.

3 I think if I would had more insight into
4 Mr. Wilson and how he would behave on the stand, you know,
5 a lot of this has to do with just the amount of time I
6 actually had to work on this thing, and contact,
7 one-on-one contact with Mr. Wilson.

8 It just kind of -- all of that kind of affected,
9 you know, the things that I -- the decisions I made and,
10 you know, things I had to do to get this thing ready for
11 trial.

12 Q Have you had a chance review the Croma case that came
13 out on January 23rd, 2013 --

14 A Yes.

15 Q -- where our Supreme Court indicates despite
16 affirming the conviction, that it may not be proper to
17 qualify forensic interviewers as experts any longer in our
18 state courts?

19 A Yes, I read that case.

20 Q Is there any reason you didn't object to the
21 qualifications of the forensic interviewer as an expert in
22 this case?

23 A Well, yes, because it's kind of been par for the
24 course, you know, they're always qualified as experts.
25 You know, I've never seen a case -- I've never observed a

1 trial, I should say, where they weren't, you know, where a
2 judge didn't qualify them as an expert. I've seen
3 excellent voir dire, actually, of a forensic interviewer
4 where I thought really was damaging, and they still got
5 qualified as an expert, you know, but -- you know, so you
6 see it and you go through it and you kind of just, you
7 know what, it's going to happen, I'm just going to
8 stipulate to that.

9 Q Okay. But there's no specific reason why you
10 couldn't have made the objection to preserve the issue
11 from Mr. Croma's case?

12 A There is no reason, no.

13 Q Mr. Cornwell, I'm not asking you to conduct a post
14 hoc rationalization and look back and what you could have
15 done differently, but a number of these issues that we
16 talked about, did you instantaneously realize there was a
17 problem during the trial or are these all things that you
18 determined after the fact? What was your initial reaction
19 to this trial?

20 A I guess maybe, specifically --

21 Q I can reword the question.

22 I guess what I'm asking is, you've had a chance
23 to review the transcripts now, and I'm not asking for post
24 hoc evaluation of your performance, but in the moment when
25 this case was going on and after it immediately concluded,

1 did you feel that you had done everything you could for
2 Mr. Wilson to provide him effective assistance or did you
3 feel there were some issues with how the trial had gone?

4 A To be honest, no. I mean, I felt like I did a decent
5 job with what I had, but I also felt like I could have
6 done more, even then, you know, I just -- you kind of kick
7 yourself in the -- you know, you start thinking about all
8 the things you could have done. Even before I read this
9 transcript, you know, even while I was doing, you know,
10 like should I object. I can object to this expert witness
11 or I can object to what he's saying, but, you know, you
12 try to figure out if that's the right thing to do now,
13 should I wait for it to be, you know, more egregious, you
14 know, instead of trying to kind of wear out your
15 credibility with the judge and objecting to everything.

16 You know, it's -- and I wish I would have been
17 more, maybe aggressive with the objections, you know, and
18 preserved a lot more of my issues on appeal. I really
19 thought that our strongest issue was the piece -- the
20 continuance issue, and I was -- and I was really looking
21 with that at an appeal, with an appeal in mind when I made
22 those arguments. You know, I was like -- and that's why,
23 you know, we made those arguments and had all the, you
24 know, the stuff to back us up with that.

25 I really wish I had more time to talk with

1 Timothy, talk to TJ and his family. There are a lot of
2 things I wish could have went differently with this, you
3 know, and I don't think I did, you know, the best job I
4 could have done, you know, so...

5 Q Were you surprised that the issue of your motion to
6 continue was not raised as a meritorious issue on appeal?

7 A I thought -- you know, I thought that was the number
8 one reason he would be granted it because I didn't think,
9 you know, I was very confident that that issue was going
10 to get us a continuance because there was a PCR case so
11 on-point with it. And so I was very surprised. I think
12 you're the -- you informed me that it wasn't raised on the
13 appeal. I was wondering. I didn't understand why, you
14 know, you know, I don't -- I'm not an appellate lawyer,
15 so...

16 MS. BLANCHETTE: Your Honor, I have no further
17 questions. Thank you.

18 THE COURT: Cross-examination.

19 MR. APLIN: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. APLIN:

22 Q Mr. Cornwell, I think you just testified that you
23 felt like you did a decent job on this trial with what you
24 had?

25 A That's correct.

1 Q And even after all the evidence was presented and you
2 were waiting for the jury to come back, did you think
3 there was a possibility of acquittal?

4 A You know, I'm not trying to be disrespectful to
5 anybody. You know, I thought we were -- how can I say
6 this -- I'm not being flippant when I say it like this,
7 just kind of, I thought we were in the game, you know,
8 before -- for a little while in their trial, I thought us
9 and the Solicitor's Office were about right here. And,
10 you know, TJ got on the stand, you know, it's kind of
11 flat, you know, I think we may have slipped a little bit,
12 you know. And not because he's not truthful, and I didn't
13 think he was being truthful, but because I thought the
14 jury might look at it and say, well, he should be
15 outraged, you know, he should be jumping up and down and,
16 you know, screaming, and, you know, that didn't happen.
17 And I wouldn't expect that of him, but, you know, but the
18 jurors on the other hand are expecting a different
19 reaction.

20 When it went back to the jury, I just -- I
21 didn't know. Like, I was hoping that they would see what
22 I saw and take from it what I took from it. But I'm an
23 attorney, you know, they're not.

24 So, you know, to answer the question, I don't
25 know. Like, I was doubtful.

1 Q Okay. Now, in regard to whether you could have
2 objected to the forensic interviewer being admitted as an
3 expert, kind of the Croma case and the lines leading up to
4 that --

5 A Uh-huh.

6 Q -- is it safe to say -- you testified you'd never
7 seen that done before, they'd always been admitted as an
8 expert, so the state of law at the time was, that it
9 seemed to be they were going to be admitted?

10 A From my experience it had -- I'd never seen a
11 forensic interviewer not qualified as an expert. You
12 know, I had done a few of them by then and seen a lot of
13 them, and I just -- I'd never seen -- even when it was
14 objected to, like a lot -- sometimes people stipulated to
15 them as experts, but even when they objected to it, you
16 know, it was usually overruled.

17 Q And you've seen people admitted as quote, unquote
18 expert witnesses in all kinds of fields, right?

19 A All kinds of fields, all kind of context, yes.

20 Q So as far as what was your reason for not objecting
21 to them being admitted as an expert, is it safe to say
22 that you're not clairvoyant, and you couldn't guess
23 that --

24 A I just assumed they were going to be, you know,
25 admitted as an expert anyway, that my understanding was

1 that, you know, they we are experts, and Ms. -- I think it
2 was with Heather Smith and Ms. -- not --

3 Q Dr Benedetto?

4 A Dr. Benedetto, I actually seen Dr. Benedetto be, you
5 know, qualified as an expert before, so, you know, it's
6 kind of why would I...

7 Q Your testimony was that you felt like the outcome of
8 this hinged on having an expert, and I just wanted a
9 little better explanation for that.

10 We heard the two experts testify today. What
11 did they say today that you think would have made the
12 outcome of the trial hinge on something you did with them?

13 A Even though -- I mean, jurors get instructions.
14 Jurors are people, they automatically assign credibility
15 to anything called an expert. You could have put a tin
16 cup up here and say it was an expert, and the jury is
17 going to believe everything it says or doesn't say.

18 Q Well, let me -- excuse me for interrupting -- didn't
19 the judge charge the jury on what their role was as far as
20 credibility of witnesses?

21 A Yes, he did.

22 Q And the judge charged the jury that I'm giving you
23 the oath and that you have an oath to follow the law as I
24 give it to you?

25 A Yes, he did.

1 Q And are you aware of the case law that says that you
2 have to presume the jury is following the instructions
3 from the judge?

4 A That's correct.

5 Q Okay. Now, knowing all that, I'll let you go ahead
6 and finish with that answer.

7 A Now -- and the other reason, the main reason, you
8 know, there's that psychological factor that I was kind of
9 alluding to, maybe in-artfully worded, but the experts I
10 was thinking, one, like I said earlier, I think would kind
11 of squash this notion that he was a sexual predator if I
12 could have gotten an expert in here and maybe do like the,
13 I think, the Abrams test, and things of that nature,
14 where they actually make a person watch these, you know,
15 see these pictures, and they do these tests to see if this
16 guy is really -- has the proclivity to be a predator or go
17 after young people. The other was to review the ARC
18 interview. Those are the two things, you know, that were
19 most damaging to the case.

20 THE COURT: What was the second thing you said,
21 please?

22 THE WITNESS: To review the ARC interview. They
23 have these experts that will review the ARC interview and
24 make sure everything was done properly, you know, and
25 those are the two kinds of experts that I wanted to get

1 because they would have directly answered, you know, the
2 State's, you know, witnesses.

3 BY MR. APLIN:

4 Q Okay. And you heard Ms. Allen Cook testify earlier
5 that she didn't see anything wrong with the video?

6 A Yes. And she said she didn't see anything wrong with
7 the ARC interview, yes.

8 Q Okay. And as far as whether he's a sexual predator
9 or anyone had done an Able assessment or any of those
10 other tools, nobody still has done any of that, correct?

11 A No. No, sir. I don't think anybody has done this as
12 far as my knowledge.

13 And I just want to speak on the other lady,
14 Allen, Dr. Allen. I think she's -- now, what she did say,
15 she mentioned something in her testimony, which, you know,
16 I feel like that if I had an expert, I would have known
17 that at the time, and that it is that, you know, it's a
18 red flag when the children are talking to other people
19 before they actually do this. I mean, just that alone is
20 something I could have brought up at trial, you know, and
21 just having access to an expert like that maybe would have
22 helped us in some way.

23 Q Okay. As far as we know, an Able assessment may come
24 back and say he is a predator, correct?

25 A Yeah. We're not -- you know, we don't have a crystal

1 ball, you know, but it would have been nice to have at
2 trial, you know, those kind of things.

3 Q As far as Jessica Wilson testifying, I think what you
4 said was, yes, you opened the door to that
5 cross-examination coming in, but you really needed her as
6 a witness?

7 A I felt like I really needed her, especially, like I
8 said, the family, they were my experts, you know. I
9 really needed her up there because that's her mom, and,
10 you know, she can testify as to whether or not, you know,
11 Miss Breann was being truthful.

12 Q And I don't recall this, I think like Ms. Blanchette
13 said, it's looking at hindsight is tough, but knowing,
14 looking back at it now, would you still needed her
15 testimony to the extent that --

16 A Everything being --

17 Q -- you knew that cross would come in, you still --

18 A -- being as it was then?

19 Q Right.

20 A I think I -- you know, maybe I wouldn't call her, you
21 know, just to avoid having all of that other stuff come
22 out and having, you know, the distraction that it caused,
23 I think it was a distraction.

24 Q With regard to the pitting witnesses' allegation, I
25 think what your testimony was that you did some pitting

1 yourself and --

2 A Yes. That was more of a strategic decision not to
3 object, I will say that. I mean, I had the opportunity to
4 object, and I think I did object, you know, eventually
5 when it was not good for me, you know. But, yeah, that
6 was more of a strategic decision.

7 Q Okay. With Dr. Robinson, the testimony was that
8 there wasn't a lot of detail asked about what counseling
9 might have been provided to Mr. Wilson or any details of
10 the family planning, and all that. Would there have been
11 any danger in going into more details with Dr. Robinson,
12 considering he had been hired by the mom and dad of the
13 victim who didn't believe her story?

14 A You know, if -- Dr. Robinson could have been a
15 two-edge sword, I guess. I mean, if he would have went
16 into more detail, he would have been glowing and talked
17 about, oh, they were awesome, you know, then, of course,
18 the State would come back and say, weren't you hired by
19 them and didn't they pay you, you know. But, you know,
20 like I said earlier, you never know, and maybe I should
21 have went into more detail with that.

22 Q And you heard his testimony earlier about his family
23 plan, the way he -- his theory of providing treatment, and
24 he tries to identify a problem, and once he has found the
25 problem family member, he works at a way to correct that

1 problem. Do you remember that testimony?

2 A I think I recall it.

3 Q And given that Mr. and Mrs. Wilson brought her, the
4 victim to this family therapy, who do you suppose the
5 problem was in this scenario?

6 A I understand, yeah. It can easily be kind of
7 presented as, you know, biasing him, you know, from the
8 get-go.

9 Q And you -- I think what you said was when you talked
10 and met with Mr. Wilson, he seemed very adamant with you,
11 or pretty articulate and said he didn't commit the crimes.
12 But then when he got on the stand, he seemed flat, I think
13 was the word you used?

14 A Yes. He didn't present as well as he did one on one.

15 Q And I guess when he was meeting with you or telling
16 you his version of the story, or whatever, he wasn't under
17 oath. It wasn't until he was on the stand that he finally
18 was under oath in answering questions?

19 A Well, yes, of course. I mean, there was a Bible and
20 he was under oath, yes.

21 Q And you said to this day, you still don't think he
22 did it, that you believe in him?

23 A I do. Like I just -- you know, and it's more than
24 just, you know, like, gut feelings or whatever. I mean,
25 it's -- I think how it played out at trial, even with the

1 video, I mean, I just -- she talks about all this physical
2 abuse, there's no signs of it and it just -- I mean, to
3 me, his story is more believable that she made this up,
4 you know.

5 Q And from that mindset or that concept, did you fight
6 hard for him at trial?

7 A I think I could have done more, but at the same time,
8 you know, I think I did as -- probably as I could -- I
9 could have done better, but I think I did a decent job,
10 you know. And that's in retrospect.

11 Q Okay. Quickly, if I could have you look at
12 transcript page 264, starting about line 11. This is your
13 cross-examination of the victim.

14 A Okay.

15 Q And if you just read down to the bottom of the page,
16 and tell me sort of what you were doing there, what were
17 you trying to accomplish? And I guess over to the next
18 page as well.

19 A I think I wanted to -- one of the things I wanted to
20 get at is whether or not there had been any kind of undue
21 influence on what she was going to testify to. You know,
22 I wanted to make sure that people weren't putting these
23 ideas in her head and something had happened, and that she
24 got to the point where it was reinforced so often that she
25 actually convinced herself, you know, of its, you know, of

1 its truthfulness.

2 Q And so whether you elicited that direct testimony or
3 not, you certainly implied that there was some sort of
4 improper influence over this victim's testimony?

5 A Yes, I did do that.

6 Q And also looking at page 266 and 7, starting up on
7 page -- or line 9 on 266 -- and I think there was some
8 testimony about this earlier -- do you recall a discussion
9 about whether the victim would get in trouble if she
10 changed her story now that she was on the stand, and at
11 first, she thought that she would get in trouble with you?

12 A I think she thought -- she said that I told her that.

13 Q Right. And you said, I don't remember saying that.
14 So you moved on, and then you implied, didn't you, that
15 maybe Mr. Stumbo or the prosecutor would be mad at her?

16 A Yeah. I think I was trying to ask her, and maybe
17 not. I can't remember if I asked her directly if maybe
18 they had kind of -- and I think one of the experts alluded
19 to it, that children often tell stories based on our
20 reactions.

21 Q Uh-huh.

22 A You know. And I had done some little research of my
23 own, you know, in regards to that. And I was wanting to
24 make sure that she wasn't giving a response to make the
25 people who were talking to her happy. Do you understand

1 what I'm saying?

2 Q Sure. So you were showing that there may have been a
3 motive for her to not testify truthfully?

4 A Yes.

5 Q Okay. In regard to the four witnesses that you did
6 put up, do you -- I mean, I'm not going to pull
7 specifically from the transcript, do you recall basically
8 trying to get them to testify that she was not a truthful
9 person?

10 A No. The general feeling I got about Bree was that
11 she was a sweet but troubled girl. You know, you hear
12 that said about people before, but she kind of exemplified
13 that saying, you know, she was a sweet but troubled girl.
14 I mean she was sweet. She seemed like a nice girl, but
15 she fibbed a lot, and she'd had some stuff done to her
16 that, you know, it was not good. So, you know, I felt
17 like a -- you know, I was trying to get that across.

18 Q And so getting that across, you were basically trying
19 to say her character trait was that she was not a truthful
20 person? Would that be a fair analysis?

21 A Yeah. I was trying to, you know, not -- I don't know
22 if character trait is the right word, but she's been prone
23 to fibbing, you know, when she gets in trouble.

24 Q And it also went to the extent that not only was she
25 prone to fibbing, but she does not want to back off her

1 position, right?

2 A Yes.

3 Q She's stubborn, she sticks with a lie?

4 A Yeah. I don't know if I was trying to make that
5 point about her or just people in general. I can't -- I
6 can't...

7 Q Okay. Now, that I guess strategy, whatever you want
8 to call it, for having the witnesses testify to that,
9 that, of course, came after the State had presented their
10 case. This was in your case-in-chief on defense, right?

11 A That's correct.

12 Q Okay. Did you see any reason to object to
13 Judge Keesley or move that he was biased somehow in the
14 case based on the comments he made?

15 A No, I didn't necessarily think they were too --
16 showed any bias on his part. I just thought maybe it
17 wasn't a good thing to say in front of the client, you
18 know. But I thought that he was basically just kind of
19 matter of factly saying that, you know, I've had this come
20 up before, this is what I did. I didn't know if he was
21 implying -- or I didn't get the feeling he was implying
22 that he was going to, you know, do the same thing,
23 necessarily.

24 Q And do you remember the upwards level of the
25 sentencing range that was possible in the case, the crimes

1 he was convicted of?

2 A Ninety, I think it was, 90 years.

3 Q Were there four, I think, four CSC 1st charges?

4 A Four? Okay.

5 Q And a lewd act charge, I believe?

6 A Okay. Well, that was, what, 140.

7 Q A hundred, thirty-five.

8 A A hundred, thirty-five.

9 Q Somewhere in that range.

10 And what did the judge end up giving him?

11 A Forty-five.

12 Q So that's a third of the possible maximum sentence?

13 A Yes.

14 Q Okay. Now, as far as the -- what was called the
15 jurors shortage, did you see any basis for objecting to or
16 challenging the jury selection once it was set?

17 A Well, as long as we -- I felt like we had enough to
18 pick a jury out of, you know -- I didn't object to it. I
19 probably should have, you know, strategy-wise, because
20 maybe that would have gotten me the continuance I really
21 needed, you know, so, you know, if I didn't work out that
22 we had enough jurors.

23 THE COURT: How many jurors were summoned?

24 MR. APLIN: I have that, Your Honor.

25 THE WITNESS: It's like 36.

1 MR. APLIN: They had 34.

2 THE COURT: Is there evidence that an improper
3 number of jurors were summoned?

4 MR. APLIN: There was a glitch, or something,
5 with the computer, so the notification didn't go out
6 properly to the right number of people, so the number who
7 showed up wasn't as many as they intended to bring. Is
8 that what you're asking?

9 THE COURT: I understand that. But isn't there
10 a statutory amount of jurors who need to be summoned?

11 MR. APLIN: I have not even looked into that,
12 Your Honor.

13 THE COURT: I know there is a magistrate
14 court -- the reason I'm asking, I know there is a
15 magistrate court case that said failure of the number of
16 jurors to show up as long as the proper number were
17 summoned under the statute is sufficient. So failure to
18 show up is not a problem.

19 So I'm just asking, is that where you're going?

20 MR. APLIN: Just was going to that they got a
21 jury. They had 12 people, everyone got to exercise their
22 preemptory strikes, and so --

23 THE COURT: Excuse me. I'm sorry.

24 MR. APLIN: Thank you, Your Honor.

25 BY MR. APLIN:

1 Q Now, the question about changes in the sentencing
2 range, it's, I think, because of Jessica's law. To your
3 recollection, you did discuss those things with Mr. Wilson
4 or not?

5 A It's hard to remember. I think I remember talking
6 about Jessica's Law, but I'm not sure, you know, in what
7 context. I mean, I can't remember if we spoke about
8 sentencing, and things of that nature.

9 I think I remember at one point telling him what
10 the maximum amount of time he could get was. We discussed
11 that. That's usually the case with every criminal client,
12 you talk about the minimum and max.

13 I'm not sure if I spoke about whether that was
14 the new maximum or he could have gotten, you know, less
15 under the old law, or whatever. I can't recall.

16 Q Okay. You didn't see any basis for challenging the
17 application of that sentencing statute to your client, or
18 anything like that?

19 A Not at the time, no, I didn't. I mean, I can't think
20 of any reason why I would have necessarily did that at the
21 time. Maybe I could argue, should we sentence under the
22 old law, but I didn't -- I didn't do that.

23 Q Now, without pointing to all the specific instances
24 in your transcript, you did cross-examine Dr. Robinson,
25 Dr. Benedetto, Chrissalyn Thompson and Heather Smith at

1 the trial?

2 A Yes.

3 Q And you feel like you pretty vigorously
4 cross-examined them?

5 A I think I -- I don't -- you know, my
6 cross-examination, I think, I did fine on it, you know.
7 You know, I think -- I can't recall if I left something
8 out. I can't recall.

9 MR. APLIN: Okay. And, Your Honor, with
10 permission, and I didn't mention this to Ms. Blanchette
11 yet, but in regard to giving a list of transcript
12 citations, I'd like to submit one after the hearing of the
13 cross-examination in places where he made valid points in
14 his cross-examining these four witnesses, and I will
15 provide that list to both of you.

16 THE COURT: Any objection to that?

17 MS. BLANCHETTE: No. But if I do, once I
18 receive it, can I have an opportunity to respond?

19 THE COURT: No. I'm telling both of you that.
20 I'm going to let him do that.

21 MS. BLANCHETTE: That is perfectly fine. I
22 assume it will just be a list of citations.

23 THE WITNESS: At the time, I mean, at the time
24 it was going on, I thought I asked all the questions I
25 could, you know, with all the information I had there

1 available, I think I asked some pretty -- pretty good
2 questions.

3 BY MR. APLIN:

4 Q I think I've -- I think I'm right toward the end
5 here.

6 With the discovery file, all the documents that
7 were introduced at this hearing here today, did you have
8 all those documents in your file?

9 A Yes, I had all the discovery at the trial.

10 Q And didn't you even say in the transcript at some
11 point that Mr. Stumbo had been more than forthcoming in
12 providing you with discovery?

13 A Stumbo was fine, like he didn't try to be funny with
14 the discovery and everything. He was -- he's a good
15 solicitor, so...

16 Q And do you feel like you had enough time to review
17 the discovery to prepare for the trial, not necessary with
18 the client but you personally?

19 A Yes, I felt like I knew the discovery pretty well,
20 you know, as well as to be expected.

21 MR. APLIN: I think that's all I have, Your
22 Honor.

23 THE COURT: Redirect?

24 MS. BLANCHETTE: Two questions.

25 REDIRECT EXAMINATION

1 BY MS. BLANCHETTE:

2 Q Mr. Cornwell, is this the type of case, though, in
3 reviewing the discovery that you needed the input of
4 Mr. Wilson because you didn't know what happened to his
5 family, you didn't know in detail?

6 A Definitely. I would say definitely. I would loved
7 to have more, you know, time with the family and witnesses
8 because these are people I ended up putting on the stand,
9 and if you do, you know, as much prep as I would like for
10 a case like this as far as, like, witness prep. We didn't
11 get to do, like, a mock, you know, direct, mock cross and
12 things of that nature so they would be prepared for the
13 feeling of being on the witness stand. You know what I'm
14 saying? And that probably impacted, you know, how -- the
15 way it came off from the stand.

16 Q Were you present in the courtroom today for Greg
17 Robinson's testimony?

18 A Yes.

19 Q Did you hear the State asking any questions that
20 would have exhibited a bias or been hurtful towards your
21 defense?

22 A I can't -- right off top of my head, no, except for
23 the fact that, you know, they mentioned that, you know,
24 they'd hired him, you know. I think that's about -- the
25 State could have done whatever they were going to do with

1 that, you know, but I think that was probably like the
2 main, I guess, bias type of thing.

3 MS. BLANCHETTE: Okay. Your Honor, I have
4 nothing further on redirect.

5 THE COURT: Thank you. May I now follow up?

6 Mr. Cornwell, you mentioned earlier that this
7 case, you felt like it hinged on experts?

8 THE WITNESS: I did. I really do feel like --

9 THE COURT: Let me --

10 THE WITNESS: Oh, sorry. I'm sorry.

11 THE COURT: It's all right. But I was curious
12 because I thought you said the Abrams' test and then I
13 thought counsel said Ables.

14 THE WITNESS: Ables is the right -- is the
15 right, Able test, I think it's called.

16 THE COURT: And I'm not familiar with the
17 different terms, and that's why I'm asking. Is that one
18 of these arousal-type tests?

19 THE WITNESS: That's exactly what it is.

20 THE COURT: Haven't those tests been criticized
21 as being unreliable and been stricken down?

22 THE WITNESS: Well, I know there's some
23 criticism out there for them, but I also know that people
24 still use them, you know. And my position was, you know,
25 if I could just get an expert who could testify that --

1 whether they used the Ables test or not, whatever means
2 they use, you know, I would have to look to research
3 whether or not South Carolina courts accepted them or
4 not -- but if I could have just gotten somebody in here,
5 you know, as a qualified expert to testify to that fact
6 that he's not aroused by that, I think it would have been
7 helpful so much because the State had the experts.

8 THE COURT: And the other aspect of it was, you
9 wanted, you felt like, Dr. Cook or somebody of her vein
10 could have helped you in preparation of cross-examination
11 of forensic examiners?

12 THE WITNESS: Exactly. I think they could have
13 looked at that ARC interview and told me whether or not it
14 was -- you know, I looked at it, and I didn't see any
15 problem that it, you know, that's not my line of work, so
16 I wanted a set of trained eyes to look at it, to kind of
17 see if I was missing something or if there was something I
18 could do to -- you know, some questions I needed to ask in
19 regards to that, and maybe even come testify if they found
20 anything troubling about it. You know, I really think
21 that that would have put the case over the edge, so to
22 speak.

23 THE COURT: All right. Thank you.

24 Any questions from either side as a result of
25 mine?

1 MR. APLIN: No, Your Honor.

2 THE WITNESS: And, I also might say I was --
3 frankly, another reason -- I mean, just because I think it
4 was the proper thing to do, that Knight case, kind of, you
5 know, when I was reading up on it, it kind of scared me
6 because I need to do this so, you know, but...

7 THE COURT: Okay. May Mr. Cornwell be excused?

8 MS. BLANCHETTE: I have no objection.

9 MR. APLIN: Yes, Your Honor.

10 THE COURT: Thank you, sir.

11 THE WITNESS: Thank you.

12 THE COURT: I'm going to listen to you and I'm
13 going to put something on the record that I think protects
14 everybody. And it's just my practice, and that is, I
15 called the attorneys back in chambers and was urging both
16 sides as to what I -- it looks like this case to me is a
17 claim of ineffective assistance of counsel. And so
18 regardless of all the grounds that have been reviewed on
19 the record, I was urging people to stay under the factors,
20 that is, deviation from the standard expected, incompetent
21 attorneys, and then showing the resulting prejudice.
22 Okay?

23 With that being said, especially from the
24 applicant's side, there was mention that they wanted to go
25 back through the record, the record being gone over. I

1 said, we're not going back through that entire record,
2 okay, because we have spent hours upon hours on it.

3 That being said, I always give counsel, when I
4 have a meeting in my chambers, to clarify or to add to
5 anything that was said in my chambers which you can put on
6 the record that you feel like you need to, and the same
7 with the State.

8 So from the applicant's standpoint,
9 Ms. Blanchette, do you have anything you'd like to add to
10 the record?

11 MS. BLANCHETTE: Not if we can't change the PCR
12 statute, Your Honor.

13 THE COURT: There you go.
14 Counsel?

15 MR. APLIN: Nothing to add from the State.

16 THE COURT: Thank you. I appreciate it.

17 And let me just say, there is amended
18 applications been filed. Obviously those grounds have
19 been asserted, and they have been reviewed very well by
20 both sides in this matter.

21 Quite frankly, though, and I'm not making this
22 ruling, but where I am focusing my analysis on this case
23 is based on the hearsay and the vouching concerns. And
24 the reason I say that is, one, that you have to show
25 resulting prejudice. And we start going back to the

1 experts we had here earlier, no question about that I
2 heard about their competency as experts in the stipulated
3 fields they're in. And what I didn't hear on the other
4 side was the resulting testimony, or the lack thereof, or
5 something that would have happened as a result of, for
6 example, Dr. Schwartz-Watts. I have myself as a court
7 witness hired Dr Schwartz because I think that she's
8 excellent at what she does. But what she said earlier was
9 she didn't diagnose the applicant with the associated
10 charge that's resulting in the underlying claim in this
11 case, and I understand that. But she found him being
12 asocial, have an asocial phobia, what -- and she said he
13 could have --- he could have been given medications or,
14 you know, beta-blockers, or such not, so he didn't have
15 that.

16 But, you know, two things: One, I don't see any
17 prejudice about that. I know that he was flat
18 necessarily, but, again, number one, Mr. Cornwall --
19 Cornwell, excuse me -- but I've seen him multiple,
20 multiple times, and he's a fine lawyer, but he's not a
21 psychologist, psychiatrist. There's no testimony that
22 there's any -- the reason he should have been on the
23 lookout for that, instead of just hiring experts in
24 general, but even if they had, what difference that would
25 make.

1 Also, Dr. Cook, I saw counsel was trying to push
2 her there during her testimony and here in the courtroom
3 today, but she got -- she sidestepped a lot of stuff, you
4 know, what would you have shown them, what have you done?
5 So, there's been really no showing in that regard of the
6 prejudice that resulted from that failure to have that.

7 The Ables, I believe that is, I'm about
8 positive -- and I may be dead wrong, because it won't be
9 the first time for me, but I'm pretty such that that
10 arousal-type of testing that has been discredited. I can
11 tell you what, if it were me, you wouldn't never have
12 gotten it into the courtroom with me. Okay? That being
13 said, this case is not about me.

14 The reason I'm going through this, I'm not
15 making rulings, I'm just trying to point out certain
16 things in this case where I was thinking because the
17 attorneys know this, and I'm sure at this point Mr. Wilson
18 does. But you have a right to counsel, you have a right
19 to effective counsel, but you don't have a right to a
20 perfect trial. And I don't that there's ever been a
21 perfect trial tried here, or anywhere. But you've got to
22 show the deviation from the standard of care, so to speak,
23 then you got to show the resulting prejudice. Okay?

24 That being said, looking at the amended
25 application for post-conviction relief, as well as other

1 testimony presented, I have not heard -- I've heard
2 different alleged failings, but I haven't seen the
3 resulting prejudice.

4 Now, I am extremely concerned about the cases
5 that pre-date. Now, I will point out that this Croma case
6 says that you don't ever -- they can't -- they cannot --
7 in the footnote they say that, We state today that we can
8 envision no circumstance where their qualification, being
9 forensic examiners, as an expert in trial would be
10 appropriate. But that being said, up until that point,
11 that all these people might fault the methodology behind
12 the madness, so to speak, but the qualifications to
13 testify in regards to what they're qualified to is really
14 not an issue. So I don't see any problems for counsel not
15 objecting to her -- or stipulating to her expertise.

16 That being said and done, I want to hear from
17 you, and I know you're about to stand up and give me your
18 well-planned out finals. So do you. But what I really
19 want to hear about this hearsay, and the term I was trying
20 to -- vouch, I mean, was there any physical evidence
21 presented by any medical doctor at trial that's in the
22 transcript, which I have not read. It's over 500 pages,
23 and I have not read it. Was there any at all?

24 MS. BLANCHETTE: Is it my opportunity to
25 respond?

1 THE COURT: Yes, ma'am.

2 MS. BLANCHETTE: In the ARC report, one of the
3 ones that I introduced, there were no physical findings of
4 any type of abuse. And I believe this case is greatly
5 similar to the McCurley case as well as the recent case,
6 Croma that we've been discussing because it actually
7 involves -- both cases involved Ms. Heather Smith. And in
8 McCurley, they actually -- the Court goes through and
9 gives specific examples of statements that were made that
10 are no longer permissible, and those exact statements are
11 made in this case.

12 THE COURT: Right.

13 MS. BLANCHETTE: So it's very similar.

14 Rarely as an attorney do I have a case that is
15 so on point that I believe as the McCurley case is.

16 I would like to, and I've talked with the State
17 about this, in our amendment at the time I filed it, Croma
18 had not been decided. I understand there's a change in
19 law, but I would like to amend or the Court to reflect
20 that we're also alleging that he could have made an
21 objection to the qualifications of the forensic
22 interviewer as an expert in this case.

23 THE COURT: As to the qualifications?

24 MS. BLANCHETTE: Yes.

25 THE COURT: Do you have any problem with that

1 being in?

2 MR. APLIN: Not to the amendment, I don't, Your
3 Honor.

4 THE COURT: I'm going to overrule you on those
5 grounds just because of practice, but that is part of the
6 record, Ms. Miner (sic), for review.

7 And, again, do you agree on behalf of the State
8 that this is a credibility case, that there is no physical
9 findings of any abuse by any qualified medical doctor?

10 MR. APLIN: I do, Your Honor. In fact, I think
11 the testimony at trial, there was a medical doctor who
12 testified about no physical findings, but that doesn't
13 necessarily mean there was no abuse. But, yeah, there was
14 nothing positive as far as showing physical abuse from a
15 medical standpoint, I agree with that.

16 THE COURT: Okay. Going back, going back -- and
17 I'm still going to let you argue. I'm just trying to wrap
18 my arms around this case. I mean, I have had this today
19 and then yesterday, a total of two people have 75 years in
20 jail. You know, I have to sleep at night, and I want to
21 make sure I've reviewed everything that's appropriate in
22 this case, or these cases.

23 But is there -- I mean, is there anything you
24 can point to that says that the appropriate remedy from a
25 post-conviction relief matter would be -- if granted,

1 would be anything but -- if those are violations, are
2 there -- is there any way?

3 I guess I'm asking you, the State, to address,
4 could they ever be harmless, not harmless beyond a
5 reasonable doubt? In that standard, you've got to show if
6 it was harmless error to allow these questionings to occur
7 and the citations that were cited by counsel on the
8 record, could that ever be harmless error beyond a
9 reasonable doubt, which as I understand -- I think is the
10 standard I have to look for; is that correct?

11 MS. BLANCHETTE: Your Honor, once again, I'll
12 refer to the McCurley case. In there, they do an
13 excellent harmless and error analysis, which I think is on
14 point to this case.

15 THE COURT: Okay.

16 MS. BLANCHETTE: And they find, in fact, that
17 the State's argument in that regard was error because we
18 take this testimony of these experts against no physical
19 evidence, and McCurley was a credibility case. They said,
20 and how can that not have affected the outcome. There is
21 no way that that could be conceivable to be a harmless
22 error.

23 So that would be my argument in this case, is
24 that there is no way that it could be conceivable that
25 that is a harmless error, that that did not affect the

1 outcome.

2 I've never been proposed this question before.

3 I know the State typically argues overwhelming evidence of
4 guilt, and I'm used to responding to that. I don't know
5 if in a PCR our burden is to show it's not harmless error.
6 I think we have to show that there's resulting prejudice
7 that affected the outcome of the trial. And if we look
8 back at the Strickland analysis, I don't know that we have
9 to prove the harmless error analysis taken in the direct
10 appeal cases.

11 THE COURT: Now, I guess the way I was looking
12 at it, if you go back and you look at the Jennings case,
13 which seemed to say we're not going to agree that the
14 Jolly case prior to that, the bright letter rule that you
15 have a per se prejudice occurs, and you look at it from
16 whether or not it's harmless beyond a reasonable doubt.

17 MS. BLANCHETTE: Which is the exact language
18 they used in McCurley.

19 THE COURT: Okay. So if we have a prejudice --
20 if we decide -- if we determine, let's say -- and I say,
21 not "we," but if there is a determination that there is a
22 mistake, then we have to look at the next prong, and that
23 being prejudice. And the cases say, the way I think they
24 say, and I may be wrong, but unless somehow it's almost
25 inherently prejudice, prejudicial that somebody vouches a

1 child who is only -- which is the only testimony in the
2 case, unless there's something to show it was harmless
3 beyond a reasonable doubt, and so why would that not be
4 upon the State to show harmless error beyond a reasonable
5 doubt at this stage, if you meet the threshold of showing
6 that it's an error and there is resulting prejudice?

7 MR. APLIN: Your Honor, I think I'm following
8 your logic, and I think that I also -- I think what
9 Ms. Blanchette has said is correct, that, you know, you're
10 talking about prejudice, but in order to show prejudice --
11 of course, McCurley was a direct appeal case, and that's
12 where the harmless error analysis comes in. If, in fact,
13 the error was harmless, then you can't show prejudice
14 because there is no reasonable likelihood the trial would
15 have been different if it was harmless error. So I think
16 they're tied together, and that's why I think you're
17 correct, that is sort of the route you have to go down to
18 respond to it.

19 I do think there are reasons that this case, the
20 circumstances of this case, are distinguishable from the
21 cases that have been cited, even Croma, even McCurley has
22 that some of the evidence was actually admissible where it
23 might not have been in those cases. But beyond that
24 point, I think that the State's position is that there --
25 this is harmless error, that there is substantial,

1 significant, whatever the burden is, evidence to show
2 beyond a reasonable doubt, and that comes from the video.
3 And you have a copy of the video, the video's in evidence.
4 I think it came into evidence.

5 THE COURT: The video of the child, though,
6 right?

7 MR. APLIN: Yes, the interview with the child.

8 The interview of the child is overwhelming when
9 you watch it.

10 THE COURT: Well, how is that different than
11 these other cases that say when the child is the main
12 witness, and all the other testimony hinges on that, there
13 is no physical evidence beyond the child's testimony, then
14 when you have -- there's nothing that you can hang your
15 hat on, so to speak.

16 MR. APLIN: My understanding is these other
17 cases, there was no video. McCurley, the video was kept
18 out. So all they had was the child, this young child with
19 a little bit of testimony at trial.

20 Here, you have very detailed, very specific,
21 very good testimony from this child, which is presented
22 through the video that you didn't have in those cases. So
23 I think you have to --

24 THE COURT: But still. I mean, whether it's a
25 child at trial on the stand being sworn or whether it's a

1 child being videoed -- and I don't even know if they even
2 swear them on those videos. Why would that distinguish it
3 one way or the other?

4 MR. APLIN: I think it's a level of evidence
5 that's coming in. It's how good is the evidence that's
6 coming --

7 THE COURT: I don't think I agree with you on
8 that, I hate to tell you. I am glad to hear you on it,
9 but I don't know if I agree with you on that.

10 MR. APLIN: And I understand your position, Your
11 Honor. And that's why I think it is very important to see
12 why this evidence was not improper vouching and was not
13 improper hearsay in the first place, that it was
14 appropriate for it to come in, in the circumstances that
15 Mr. Cornwell testified to, as to what was going on in this
16 case.

17 THE COURT: Hold on. So you take the position
18 that the number of citations I received in there, where
19 the word that we have been hearing and it seems to be used
20 as a catch word by the other forensic examiners that I've
21 heard not only here in Lexington but in other places.

22 MR. APLIN: Correct.

23 THE COURT: Was compelling. They were
24 compelling. Because that standard, according to what I
25 heard and what I read yesterday in another unrelated

1 matter, was that was their standard, was it non-compelling
2 or compelling. And it seemed to be the standard they
3 used. But the language in this case uses that exact
4 terminology, so how is that not prejudicial?

5 MR. APLIN: Well, I tell you, none of these
6 cases analyzed Rule 404 in the Rules of Evidence. And I
7 don't know whether anyone argued 404 previously, but
8 Rule 404 deals with --

9 THE COURT: Just one second.

10 MR. APLIN: Sure.

11 THE COURT: 404, there's a Williams rule, or
12 something, that has to do with criminal sexual conduct
13 cases; is that right?

14 MR. APLIN: That is where, I think, Lyle and all
15 that comes in, but that is not the part I'm going into.

16 THE COURT: All right. I understand you.

17 MR. APLIN: It's a different part.

18 THE COURT: All right.

19 MR. APLIN: While he's getting that, I'll find
20 that for you.

21 THE COURT: Please, please, please.

22 MR. APLIN: Those cases talk about Rule 608,
23 which is witnesses in general and when you can attack the
24 veracity or truthfulness of a witness.

25 Rule 404, on the other hand, is about --

1 specifically talks about the character of the accused or
2 the character of the victim in a criminal case. And it
3 talks about evidence of a person's character or trait of
4 character is not admissible for purposes of proving action
5 and conformity therewith on a particular occasion, except,
6 and A2 says, the character of the victim, that evidence of
7 a pertinent trait of character of the victim of the crime
8 offered by an accused -- which is what happened here -- or
9 by the prosecution to rebut the same.

10 In other words, when the defense chose to put
11 the victim's character trait of being untruthful into
12 evidence, then that opened the door, that made it possible
13 for the prosecution then to attack that by consistent
14 statements.

15 THE COURT: Just one second. I'm reading --

16 MR. APLIN: I'm sorry. No. I jumped to the
17 other argument. That goes to the -- they can then attack
18 that, they can rebut it with their own witnesses to
19 testify about that person's trait, character trait for
20 truthfulness, which is what these experts -- I know
21 they're not experts now -- but that's what these -- all of
22 these individuals did.

23 THE COURT: But doesn't the rule also state
24 evidence of a pertinent trait of the character of the
25 victim of the crime offered by the accused? In other

1 words, that this guy is somebody who is known to go out
2 and beat people up, and I was the accused, to say this was
3 self-defense. In other words, they have to have the same
4 type of character trait that the crime -- of the accused,
5 especially when you have a rule of evidence that's
6 directly on point as opposed to one's that not ever in the
7 record in this matter, first of all.

8 Okay. Go ahead.

9 MR. APLIN: And I think when you said trait of
10 character of the victim of the crime, they're just talking
11 about it's the victim of a crime.

12 THE COURT: Of the crime offered by an accused.
13 In other words, I think that what that says is you have
14 to -- if it's something along the lines of somebody who's
15 charged with assault and battery, and he says, look, it's
16 self defense, and the accused is known for being an
17 aggressor, I think is along those same lines. I'm not
18 saying it is, but that's my understanding.

19 MR. APLIN: And I may very -- I mean, I'm
20 certainly no evidence expert. I may be interpreting the
21 rule incorrectly, but that was the point of the questions,
22 many of the questions I asked of Mr. Cornwell and of the
23 defendant about the fact that they were putting the
24 victim's trait of character into evidence, and by doing
25 that, the prosecution could have called all of these

1 people in rebuttal.

2 THE COURT: The fallacy of that is that came
3 into the State's case-in-chief.

4 MR. APLIN: And I asked him about that, but it
5 was going to come in rebuttal, isn't it better to get it
6 out in the State's case-in-chief before it comes in
7 defense?

8 THE COURT: I disregard that. That's not --
9 that doesn't get anywhere. You can't say, I was going to
10 be -- it came out in my case-in-chief because it would
11 have come out in rebuttal. That's -- rebuttal is exactly
12 what it is, rebuttal.

13 MR. APLIN: Okay.

14 THE COURT: It is. Okay?

15 MR. APLIN: And that goes to the vouching
16 comments only, that -- there's also, I think, objections
17 to the hearsay comments as well. And I can go into that
18 if you'd like.

19 THE COURT: Let me just do this: I've kind of
20 caught both of you flatfooted. Go ahead and let
21 Ms. Blanchette do her final, then you do yours that way.

22 I'm just throwing it out to you because I'm
23 going to have more information y'all feeding me later on
24 in this case. I'm not going to make a decision lightly,
25 and I'm not going to make it without reading all this

1 information. Okay? So it may take me a while.

2 Go ahead, please.

3 MS. BLANCHETTE: Your Honor, just briefly, I'll
4 respond to comments made by the State. I have a couple
5 cases for you. And then I will be available as much as
6 needed after this hearing to flesh out any of these
7 issues.

8 The State, I believe, argued that the video was
9 submitted, and they're glad it was submitted because it
10 shows overwhelming evidence in this case. I, also, am
11 glad that the video is submitted because I think if you
12 take the video by itself without the vouching that
13 followed up, the video is not strong evidence.

14 I wanted this Court to see what that video looks
15 like by itself, if we could take away all of this
16 testimony that wasn't objected to by counsel and show how
17 harmful it was when counsel didn't object and these
18 State's experts are allowed to come in and talk about how
19 truthful and compelling and all of this, this disclosures
20 in this video. The video standing alone without those
21 experts, I would argue is absolutely not overwhelming
22 evidence. It goes to show the burden that we have, how
23 prejudiced he was when those objections were not made.

24 The other thing regarding this 404(b) argument,
25 you did -- I was caught flatfooted with that one, but I

1 think it all goes to speculation. That was not the basis
2 on which the State introduced this evidence at this trial.
3 And if counsel would have properly objected, the State
4 would have had to make their argument. That would have
5 all been preserved for appellate review, and we'd have
6 known the basis. But right now, we're just wandering into
7 the world of speculation, and mostly the reason why is
8 because Mr. Cornwell did not make the necessary
9 objections.

10 So I don't really have anything in response to
11 the 404(b) argument beside what the State -- or what the
12 Court already brought up.

13 I do have a copy of Engle versus State, Ard
14 versus Kato, McKnight versus State, and Bennett versus
15 State for the Court, and I've already provided these
16 citations to the State.

17 THE COURT: Do you have that McCurley case as
18 well that you keep referring to?

19 MS. BLANCHETTE: I do. I have a copy of that
20 here, if you need that.

21 THE COURT: I would like to get a copy of that.

22 MS. BLANCHETTE: All right.

23 THE COURT: You have all the cases?

24 MR. APLIN: I do.

25 MS. BLANCHETTE: And I have a copy of all the

1 cases cited in the amendment if you needed any of those.

2 And the reason one -- the only thing I wanted to
3 point out, just one thing on each of these cases.

4 The Engle case goes to reasonable trial
5 strategy. And if the State is alleging that it was part
6 of trial strategy to not object to these comments made by
7 the State's experts, I would argue that's absolutely
8 unreasonable trial strategy in this case. And reasonable
9 trial strategy is discussed in the Engle case and the Ard
10 case that I'll be handing up.

11 The McKnight case was referenced by counsel in
12 his request for continuance.

13 And the Bennett case I'm handing up because it
14 actually explores the issue of ineffective assistance of
15 counsel on an Anders brief case.

16 THE COURT: Okay.

17 MS. BLANCHETTE: But I'm handing those up with
18 along with a copy of the McCurley case.

19 THE COURT: Okay. Thank you, ma'am.

20 MS. BLANCHETTE: Uh-huh.

21 MR. APLIN: Your Honor, just to clarify, it was
22 404(a), not 404(b) in the rules.

23 MS. BLANCHETTE: I apologize. I thought I heard
24 404(b).

25 MR. APLIN: Yeah. And I may have said that

1 improperly at some point. Thank you.

2 THE COURT: That's what I was looking at, (a)2.

3 MR. APLIN: Correct, (a)2.

4 THE COURT: All right. Go ahead. Do you have
5 anything further that you would like to add?

6 MR. APLIN: No, Your Honor. Just to say that in
7 regard to the 404(b) argument, the standard of PCR you've
8 cited a couple of times already is not just to show that
9 counsel's performance was ineffective, but it was
10 prejudicial. And the idea that it could have come in
11 rebuttal goes to the prejudice prong of the analysis. And
12 I understand what you're saying, it certainly -- it
13 couldn't be strategy for counsel to say, well, it would
14 have come in rebuttal, anyway, so I'm not going to object
15 to it on the State's case-in-chief. But it certainly
16 could go to the prejudice prong as to -- let's say he had
17 objected to all those things, the State made the argument
18 it's admissible under 404(b) and it all comes in, and it
19 could have come in rebuttal where it's more damaging to
20 the client. So I just wanted to throw that out there. It
21 goes to the prejudice prong.

22 THE COURT: Okay.

23 MR. APLIN: But beyond that, I'm -- thank you.

24 THE COURT: Let me tell you, thank you for both
25 attorneys. You-all have done an excellent presentation.

1 It was well prepared.

2 As you well know that more often than not, these
3 are just almost not pro forma, but they don't have much.
4 They don't get a lot of foot-speed, or whatever I'm trying
5 to say, but I'm going to look at this case.

6 I am going to say for the record, though, that
7 all grounds that you argued thus far, except for the ones
8 as to hearsay, vouching are denied, including those
9 contained in your amended petition for post-conviction
10 relief, okay? I just, for the reason I stated earlier
11 without repeating myself, I am denying those, so we're
12 clear on that. Okay? All right.

13 I will call if I need you, and I'm sure I will.

14 If you'll e-mail, just my e-mail is
15 lmcintoshj@sccourts.org. If you'd send that to me and to
16 my law clerk, which would be lc instead of j, we'll review
17 this information.

18 Thank you. Thank you, sir.

19 MS. BLANCHETTE: Thank you, Your Honor.

20 (The proceedings were concluded.)

21 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

I, CAROL M. THUEME, RPR, Official Court Reporter for the 11th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Lexington County, South Carolina, on the 29th day of January, 2013.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

February 4, 2014

A handwritten signature in cursive script, reading "Carol M. Thueme", written over a horizontal line.

CAROL M. THUEME, RPR
Circuit Court Reporter