

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS
EDGAR W. DICKSON, Circuit Court Judge

Case No. 2011-CP-32-1293

Oscar Gramling, #341691,
Petitioner,

vs.

State of South Carolina,
Respondent,

APPENDIX

Redacted

RE-redacted
12/18/14 by SCSC
staff

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* Petitioner was not provided a copy of the State’s Return and did not have one in his possession at the time at the printing of the original Appendix. By consent, the parties have amended the Appendix to include a Supplement to Appendix. Please see page 375.

ORIGINAL

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STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
Oscar A. Gramling, III,)
S.C.D.C. No. 341691,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS

2011-CP-32-1293

FILED

CLERK OF COURT
LEXINGTON, SC

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 31, 2011. The Respondent made its return on December 16, 2011. An evidentiary hearing was convened on November 14, 2012 at the Lexington County Courthouse. The Applicant was present and represented by Arie D. Bax, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Victor Li, Esquire. The Court had before it the transcript of the partial trial and guilty plea hearing, the Lexington County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.¹

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. The Applicant was indicted at

¹ At the end of the hearing, this Court held the record open to allow counsel for the Applicant to speak with Alexandra M. Benevento, Esquire about whether she had any information to contribute on the issues raised in this case. Counsel subsequently informed the Court and opposing counsel that Benevento did not have anything of probative value to add in this case and that the record could be closed.

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the August 2009 term of the Lexington County Grand Jury for second-degree criminal sexual conduct (CSC) with a minor (2009-GS-32-2003) and contributing to the delinquency of a minor (2009-GS-32-2005). He was represented by Victor Li, Esquire.

The State brought the case to trial on July 12, 2010. After the State finished its direct examination of the victim, the Applicant chose to plead guilty. On July 13, 2010, the Honorable William P. Keesley sentenced the Applicant to concurrent terms of eight years for second-degree CSC with a minor and three years for contributing to the delinquency of a minor. The Applicant did not appeal.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Misrepresented the terms and conditions of the plea offer.
 - b. Misrepresented the potential maximum term of incarceration under this plea and misrepresented what could be expected in terms of sentence.
2. Involuntary guilty plea:
 - a. Involuntary guilty plea due to counsel being ineffective for failing to be prepared for trial and demonstrating such directly to the Applicant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

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Ineffective Assistance of Counsel/Involuntary Guilty Plea

The Applicant alleges his guilty plea was involuntary and that he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Applicant stated he had charges in both Lexington and Richland Counties for incidents with the same victim. The Applicant stated he had weekly meetings with plea counsel

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and they reviewed the Richland County discovery but not the Lexington County discovery. The Applicant stated plea counsel gave him a copy of the Lexington County discovery but that he learned about some of the Lexington evidence for the first time during the trial. The Applicant stated he and plea counsel discussed possible defenses and witnesses (Jamie Banks, a coworker, and the Richland County Detention Center psychologist) but that he did not know if these witnesses had been subpoenaed. The Applicant stated he told plea counsel his version of what happened and also gave him information about the victim and her potential credibility issues. The Applicant stated the victim told him that she would not testify against him and that the victim contacted plea counsel. The Applicant stated the victim testified at trial – at first – that nothing happened between them but then she changed her story. The Applicant stated there was a plea offer during the trial and that plea counsel said he would “walk out that day” if he pled guilty. The Applicant stated he believed that meant he would not be sentenced that day and would not receive a prison sentence. The Applicant stated he decided to plead guilty because he believed he would avoid prison time and because plea counsel seemed nervous. The Applicant stated they had discussed the maximum sentence that was possible if he went to trial but that plea counsel did not discuss the sentence ranges of the charges on the day he pled guilty.

Plea counsel testified he filed discovery motions for both the Richland County and Lexington County charges. Plea counsel testified he had several meetings with the Applicant. Plea counsel testified he received discovery materials from both counties and reviewed them with the Applicant. Plea counsel testified they discussed the Applicant’s version of events and that the Applicant was very upfront about the details behind the charges. Plea counsel testified he explained the sentence ranges on the charges and a prior offer for the Applicant to plead guilty to the lesser offense of assault and battery of a high and aggravated nature. Plea counsel

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testified the Applicant rejected the plea deal because he said the victim would not testify against him. Plea counsel testified the victim contacted him before the trial but they did not discuss her testimony. Plea counsel testified the victim took the stand at trial and initially denied any improper contact with the Applicant. Plea counsel testified, however, the victim then changed her story and offered detailed testimony about their relationship – including several details the Applicant had not provided him. Plea counsel testified the victim's testimony made him nervous because she appeared very truthful. Plea counsel testified that, during the break after the victim's direct examination, he spoke to the assistant solicitor. Plea counsel testified the State offered to not pros an enticement charge and not make a sentence recommendation. Plea counsel testified he discussed the offer with the Applicant and said the only chance he had to obtain a good sentence was to plead guilty to avoid a "trial tax." Plea counsel testified he thought the Applicant would have received a worse sentence if he pled guilty after the victim was cross-examined. Plea counsel testified he never told the Applicant he would go home if he pled guilty.

A.

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly prepare for the victim's testimony prior to trial and he was prejudiced as a result. This Court finds plea counsel's representation may have fallen below the reasonable professional standard. Plea counsel testified the victim did not testify in a manner that he had expected (and as the Applicant had assured him would occur). Consequently, plea counsel was left visibly perturbed by the victim's testimony at trial. This Court finds plea counsel could have been better prepared for the victim's testimony and avoided the reaction her testimony prompted.

Regardless, this Court finds the Applicant failed to satisfy his burden of proving he suffered any resulting prejudice. See Roscoe v. State, 345 S.C. at 20, 546 S.E.2d at 419. Plea

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counsel testified his reaction to the victim's testimony was due to the fact that she appeared very credible and he was left with the impression the Applicant would be found guilty. This Court finds the Applicant's decision to plead guilty was voluntary and not solely the result of plea counsel's reaction to the victim's testimony. Rather, it was the result of a sound and carefully – considered legal strategy and advice given the strength of the State's case. See Hill v. Lockhart, 474 U.S. at 58-59, 106 S. Ct. at 370; see also Huggler v. State, 360 S.C. 627, 633, 602 S.E.2d 753, 756 (2004) ("Counsel's strategy will be reviewed under an objective standard of reasonableness.") (internal citation omitted).

Accordingly, this Court finds the Applicant has failed to prove both prongs of the Strickland test – that plea counsel was deficient and he was prejudiced as a result.

B.

Regarding the Applicant's remaining claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Applicant admitted to the plea judge that he was guilty. (Transcript, p.215). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Transcript, pp.211-12; pp.215-16; pp.216-17). This Court finds the Applicant entered a knowing and voluntary guilty plea. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712.

This Court finds the Applicant failed to meet his burden of proving plea counsel did not adequately review the discovery materials and evidence related to his Lexington County charges.

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Plea counsel testified he filed discovery motions for both the Lexington County and Richland County charges and that he reviewed these materials with the Applicant. This Court finds plea counsel's testimony is more credible. This Court notes both the Applicant and plea counsel testified they had numerous meetings about the charges and finds it is improbable that plea counsel never reviewed the Lexington County discovery materials with the Applicant. Further, this Court notes the Applicant has failed to demonstrate how his case was prejudiced by any alleged deficiency in plea counsel's review of the discovery materials. See Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989) (holding that in order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.").

This Court finds the Applicant failed to meet his burden of proving plea counsel was ineffective in failing to subpoena several witnesses. As these alleged witnesses did not testify at the evidentiary hearing, any discussion regarding what they would have testified about at trial is purely speculative. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.") (emphasis in original); see also Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (finding that, as the applicant failed to have an expert testify at the evidentiary hearing, "any finding of prejudice is merely speculative").

This Court finds the Applicant failed to meet his burden of proving plea counsel did not explain the sentence ranges for the offenses. Plea counsel testified he told the Applicant the minimum and maximum sentences he was facing on the charges. Plea counsel specifically

7/10 *AS*

testified he told the Applicant of the sentencing ranges again when they were discussing the plea offer because it was made without a sentence recommendation. This Court finds plea counsel's testimony is credible. This Court further notes that, even assuming arguendo plea counsel did not review this information, any error was cured by the judge's explanation of the sentence ranges during the guilty plea hearing. (Transcript, p.217; p.221). See Holden v. State, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011); Burnett v. State, 352 S.C. 589, 593-94, 576 S.E.2d 144, 246 (2003).

This Court finds the Applicant failed to meet his burden of proving plea counsel misadvised that he would not receive a jail sentence if he pled guilty. Plea counsel testified that, after the victim's direct examination at trial, he spoke to the State about a plea offer and the State agreed to dismiss an enticement charge and not comment on sentencing. Plea counsel testified he explained this to the Applicant. Plea counsel testified he never told the Applicant he would not receive a jail sentence. This Court finds – especially in light of the Applicant's decision to plead guilty mid-trial – plea counsel's testimony is credible. This Court finds the allegation is refuted by the transcript. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007). Plea counsel told the plea judge the agreement was to “plea guilty based on the State's silence as to sentencing” and the State added “we have agreed to dismiss a companion enticing a child – an enrolled child from school charge.” (Transcript, p.216, lines 10-17). The plea judge asked the Applicant whether “other than what's on the record . . . has anyone promised you anything or offered any hope of reward to get you to plead guilty” and the Applicant replied “[n]o, sir.” (Transcript, p.216, lines 18-22).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under

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prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

C.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Furthermore, the Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty

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(30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 2nd day of July, 2013.



Edgar W. Dickson
Presiding Judge

Orangeburg, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF Lexington
STATE

VS.

Oscar Albert Gramling III

AKA: _____
Race: _____ Sex: M Age: 29
DOB: _____ SS#: _____
Address: 3308 Ragsdale Drive
City, State, Zip: Columbia, SC 29209
DL# 007953915 SID# _____
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS3202005

AW#: J848741

Date of Offense: 3/1/2009

S.C. Code §: 16-17-0490

CDR Code #: 0048

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was
TO: Minor / Contributing to the delinquency of a minor

☐ CONVICTED OF or ☒ PLEADS

In violation of § 16-17-0490

of the S.C. Code of Laws, bearing CDR Code # 0048

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

The charge is: ☒ As indicted, ☐ Lesser Included Offense,

The plea is: ☒ Without Negotiations or Recommendation,

☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

139169
SC Bar #

[Signature]
Defendant

[Signature]
Attorney for Defendant

75429
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 (16-25-20 Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

☒ RESTITUTION: ☒ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine: _____ \$ _____
\$14-1-206 (Assessments 107.5%) \$ _____
\$14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____
\$56-5-2995 (DUI Assessment) \$12 \$ _____
\$56-1-286 (DUI Breath Test) \$25 \$ _____
Proviso 47.9 (Public Def/Prob) \$500 \$ _____
\$14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
\$14-1-213 (Drug Court Surcharge) \$150 \$ _____
\$50-21-114 (BUI Breath Test Fee) \$50 \$ _____
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
\$44-53-450(C) (Conditional Discharge) \$350 \$ _____
3% to County (if paid in installments) \$ _____
TOTAL \$ 130.00

Clerk of Court/Deputy Clerk [Signature]

Court Reporter: T. Lippard

SCCA217 (08/2010)

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: pay court costs as provided
on 2009-GS-32-2003

☐ Conditional Discharge, §44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition

☐ Appointed PD or appointed other counsel,
\$47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge William P. Hurd

Judge Code: 2050

Sentence Date July 13, 2010

STATE OF SOUTH CAROLINA
COUNTY OF Lexington
STATE, VS.

Oscar Albert Gramling III

AKA: J
Race: Sex: M Age: 29
DOB: 52 SS#:

Address: 3308 Ragsdale Drive
City, State, Zip: Columbia, SC 29209
DL# 007953915 SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor - victim under 16 yrs of age - Second degree

In violation of § 16-03-0655(3) of the S.C. Code of Laws, bearing CDR Code # 0397

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45

(CSC w/minor 1st or Lewd Act)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

R. R. R.
Solidator

13969
SC Bar #

[Signature]
Defendant

[Signature]
Attorney for Defendant

75429
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center;
for a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §16-25-185.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:
☒ RESTITUTION: ☒ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:		\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5</u>
§44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$
TOTAL		\$ <u>130</u>

Clerk of Court/Deputy Clerk Beth Carrigan

Court Reporter: Therese R. [Signature] #
SCCA217 (08/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS3202003

AW#: J848739

Date of Offense: 3/1/2009

S.C. Code §: 16-03-0655(3)

CDR Code #: 0397

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.O.

 days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other: Def. offender registry; pay
court costs @ \$50/mo. beginning
180 days after release from arrest.

☐ Conditional Discharge, §44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition

☐ Appointed PD or appointed other counsel,
\$47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge William P. [Signature]

Judge Code: 2050

Sentence Date July 13, 2010

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

OSCAR GRAMLING, III

Inmate # 00341691

Full name and prison number (if any) of Applicant,

v.

State of South Carolina

FILED

2011 MAR 31 P 4:45

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

SCANNED

IN THE COURT OF COMMON PLEAS

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & EO.

APPLICATION FOR

POST-CONVICTION RELIEF

2011CP3201293
INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Evans Correctional Institution, 610 Highway 9 West Bennettsville, SC 29512
2. Name and location of Court which imposed sentence Lexington County General Sessions, 205 East Main St., Lexington SC 29702
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-GS-32-2003 Criminal Sexual Conduct with a Minor: Second Degree
 - (b) 2009-GS-32-2005 Contributing to the Delinquency of a Minor
 - (c) _____

RECEIVED 4/10/11

ADMINISTRATIVE INSTRUCTIONS

FILE ☒ OPEN ☐ EF 3
HAVE ☐ COPIES MADE
ROUTE TO ☐
ORDER: ☐ TRANSCRIPT
PEN RECORDS ☐ CLERK RECORDS
OTHER: ☐
☐
☐

KEM

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) July 13, 2010
- (b) 8 years concurrent: sex offender registry
- (c) 3 years concurrent

FILED

2011 MAR 31 P 4:45

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty yes
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

7. Did you appeal from the judgment of conviction or the imposition of sentence?
no

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

- i. _____
- ii. _____
- iii. _____

2011CP3201293

(b) the result in each such Court to which you appealed:

- i. _____
- ii. _____
- iii. _____

(c) the date of each such result:

- i. _____
- ii. _____
- iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. _____
- ii. _____
- iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) Did not believe there were any feasible direct appeal grounds.
- (b) Most grounds relate to ineffective assistance of counsel.
- (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

2011CP3201293

(a) My counsel was ineffective by misrepresenting the terms and conditions of my plea offer.

(b) My trial counsel was ineffective for misrepresenting the potential maximum term of incarceration that I was facing under this plea and misrepresenting what I could reasonably expect as sentence.

(c) Involuntary guilty plea due to my counsel being ineffective for failing to be prepared for trial and demonstrating such directly to me.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) My counsel specifically told me in recommending in taking this plea that I would not receive any active jail time.

(b) My counsel specifically failed to inform me that the Judge would have the discretion of this plea to sentence me to up to 23 years of incarceration.

(c) We went to trial on this case. my counsel after listening to the direct testimony of the alleged victim in my case which did not come out as he expected, was visibly shaking, sweating, and nervous and clearly unprepared to go forward: leaving me no choice but to plea at his recommendation.

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? no

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no

(d) any other petitions, motions or applications in this or any other Court? no

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

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2011 MAR 31 P 4:45
J. A. CARRIGG
CLERK OF COURT
LEXINGTON SC

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

2011CP3201293

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JETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2 011CP 3201293

- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) I was recently convicted and this is my first opportunity to have these issues heard.

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? no

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Victor Li

ii. The Law Office of Victor Li

iii. 2113 Park St. Columbia, SC 29201

(b) the proceedings at which each such attorney represented you:

i. Mr. Li represented me during my arraignment, trial, and plea.

ii. _____

iii. _____

19. State clearly the relief you seek in filing this application:

To vacate plea and sentence.

20. Are you now under sentence from any other court that you have not challenged?

No

BETH A. CARRIGG
CLERK OF COURT
COLUMBIA, SC

2011 MAR 31 PM 4:45

FILED

STATE OF SOUTH CAROLINA

County of Lexington

VERIFICATION

ORIGINAL

Oscar
I, Gramling III, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this 2
day of February, 2011

Janet A. Carrigg (L.S.)
Notary Public

My Commission Expires: 8-18-2018

2011CP320129

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2011 MAR 31 2 45
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

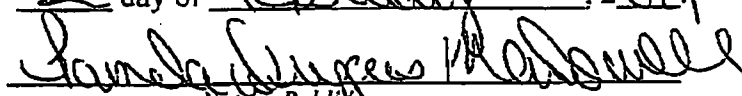
APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Osai-Granting, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this

2 day of February, 2011

Notary Public

My Commission Expires: 8-18-2018

FILED
2011 MAR 31 12 44 45
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2011CP3201293

1 STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

2 COUNTY OF LEXINGTON

3
4
5 STATE)

6 V.)

7 OSCAR GRAMLING, III)

8)
9 DEFENDANT.)

TRANSCRIPT OF RECORD

09-GS-32-2003

09-GS-32-2005

10 JULY 12 - 13, 2010

11 LEXINGTON, SOUTH CAROLINA

12
13 B E F O R E:

14 THE HONORABLE WILLIAM P. KEESLEY, JUDGE; AND A
15 JURY.

16
17 A P P E A R A N C E S:

18 RHONDA W. PATTERSON, ASSIST. SOLICITOR
19 JENNIFER COOPER, ASSIST. SOLICITOR
20 ATTORNEYS FOR THE STATE

21 VICTOR LI, ESQUIRE
22 ALEXANDRA M. BENEVENTO, ESQUIRE
23 ATTORNEYS FOR THE DEFENDANT

24 STACY L. SHEPPARD
25 CIRCUIT COURT REPORTER

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E X H I B I T S

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1 (The following proceedings were held on July
2 12, 2010.)

3 **THE COURT:** All right. Ladies and gentlemen,
4 those of you who are here for jury duty, I want to
5 welcome you to general sessions court. I was not
6 upstairs so I don't know what Judge McMahon may have
7 said to you or any of the Clerk's staff. So if I
8 repeat anything, I'm sorry, but I want to make sure
9 everything is covered.

10 My name's Billy Keesley. I live in Edgefield.
11 I'm a resident judge of our circuit. Our circuit
12 consists of Lexington, McCormick, Saluda and
13 Edgefield Counties. And the Chief Justice has
14 assigned me to preside over this term of general
15 sessions court, which is commonly called criminal
16 court. You've been brought in here into this room
17 to be qualified as potential jurors on a case.

18 Now, let me make sure, when you were upstairs,
19 did the judge or the clerk place you under oath?

20 **THE CLERK:** Yes, sir.

21 **THE COURT:** So everybody understands that
22 you're under an obligation to be completely truthful
23 and honest with me. Obviously, this is very serious
24 business that we're about here and it's really
25 important that you understand that you have to be

1 truthful and honest with me and that if you have any
2 doubt about whether any of the things that I ask you
3 apply to you, that you should discuss those things
4 with me and let me resolve the doubt.

5 If I ever ask you anything that you prefer to
6 discuss more privately, just let me know that you
7 want to come down front and we'll talk about those
8 things down here.

9 Now, this is a court of record. And what that
10 means is that Ms. Sheppard over here takes down
11 everything we say. So if you're going to speak, I
12 need to identify who is speaking. We do that both
13 by name and juror number. If you don't know your
14 juror number, we'll look it up, but try to remember
15 it, things will go quicker for you as this process
16 unfolds and you'll get out of here sooner.

17 What's going to happen is that I'm going to be
18 asking you a series of questions. If any of these
19 questions apply to you or you have doubt about
20 whether they apply to you, please stand. Listen
21 carefully to the question I ask of you and answer
22 that question.

23 There may be times when I put limitations on
24 you. I may say, for example, just to answer a
25 question yes or no. If you feel that you cannot

1 adequately answer the question within the limitation
2 that I place on you, just let me know you want to
3 come down front and give me the full answer down
4 front, don't just blurt out the whole answer because
5 you defeat the purpose of my limitation. But if you
6 need to give me more information to fully explain
7 your answer, please do that because we want you to
8 err on the side of giving us all of the information.

9 The purpose for these questions is for us to
10 have a jury that is fair and impartial. And if you
11 keep that goal in mind as we go through this, I
12 think the questions will make more sense to you.

13 So, for example, if you or someone close to you
14 has ever been in a similar situation, if you've ever
15 or someone close to you has ever been accused of a
16 certain type of crime or been the victim of a
17 certain type of crime or if you've got some
18 connection with the prosecution or the defense, I
19 often use the example, you know, if -- the reason we
20 asked you about your spouse's employment upstairs
21 is, you know, if somebody's married to an FBI agent
22 for 25 years and the FBI agent's retired and now
23 works at Sears, if you tell us they work at Sears,
24 that doesn't really give us the whole picture, see,
25 so that's why we intrude into your privacy some.

1 It's to give the attorneys information so that we
2 can have a jury serving that's fair and impartial.

3 All right. So this typically takes about an
4 hour. We'll go through it as quickly as we can.

5 Solicitor, I need you to call your first case,
6 please.

7 **MS. PATTERSON:** Thank you, Your Honor. May it
8 please the Court.

9 Indictment 2009-GS-32-2003, the State of South
10 Carolina versus Oscar Albert Gramling, III indicted
11 for criminal sexual conduct with a minor in the
12 second degree. 2009-GS-32-2005, the State of South
13 Carolina versus Oscar Albert Gramling, III indicted
14 for contributing to the delinquency of a minor.

15 **THE COURT:** All right. Ladies and gentlemen of
16 the jury panel, please give me your attention.
17 We're about to qualify a jury that's going to hear
18 two separate and distinct indictments. Each of
19 these indictments will be evaluated on its own merit
20 or lack of merit. Each will maintain its position
21 of being separate and distinct throughout the trial.
22 We're just trying these two cases together for the
23 purpose of convenience.

24 One indictment alleges criminal sexual conduct
25 with a minor in the second degree. It's captioned

1 the State versus Oscar Albert Gramling, III. And it
2 alleges that Mr. Gramling did in Lexington County,
3 South Carolina, on or between January 1, 2009 and
4 May 16, 2009, commit a sexual battery upon C
5 H whose date of birth is alleged to be ,
6 19 , she being a minor who was at least 14 years of
7 age, but was less than 16 years of age. It's
8 alleged that Mr. Gramling had sexual intercourse
9 with Ms. H and that he was older than Ms. H : or
10 was in a position of familial, custodial or official
11 authority to coerce Ms. H : to submit.

12 The other indictment charges contributing to
13 the delinquency of a minor. It also is captioned
14 the State versus Oscar Albert Gramling, III. And it
15 alleges that Mr. Gramling did in Lexington County,
16 South Carolina, on or about May 1, 2009, being over
17 the age of 18 years, knowingly and willfully
18 encouraged, aid or caused or did an act which caused
19 and influenced a minor child to, one, become and be
20 incorrigible or ungovernable or habitually
21 disobedient to and beyond the control of her parent,
22 guardian, custodian or other lawful authority,
23 and/or, two, repeatedly desert from her home or
24 place of abode without consent of his or her parent,
25 guardian, custodian or other lawful authority, to

1 wit: It's specifically alleged that Mr. Gramling
2 aided a minor to leave her parental home without her
3 parent's consent. And that's an indictment for
4 contributing to the delinquency of a minor.

5 Counsel, I assume your client's been arraigned
6 or waives arraignment; is that correct?

7 **MR. LI:** Yes, Your Honor.

8 **THE COURT:** Thank you.

9 Upon his arraignment on these charges, Mr.
10 Gramling has entered pleas of not guilty. He is
11 presumed to be innocent. It is incumbent upon the
12 State of South Carolina having brought these charges
13 against Mr. Gramling to prove every essential
14 element of each offense charged beyond a reasonable
15 doubt.

16 An indictment is not evidence of anything. An
17 indictment is nothing more than a charging paper.
18 It's the formal means by which someone is charged
19 and brought to trial. You may not give an
20 indictment any evidentiary value whatsoever.

21 Is Oscar Albert Gramling, III in the courtroom?

22 **MR. LI:** Yes, Your Honor.

23 **THE COURT:** Mr. Gramling, I need for you to
24 stand, please, turn and face so the jury can see
25 you.

1 Thank you very much, sir. You may be seated.

2 Is there any member of the jury panel who is
3 related by blood or marriage or connected by
4 employment with the defendant, Oscar Albert
5 Gramling, III; if so, please stand?

6 (There was no response.)

7 **THE COURT:** The defendant, Mr. Gramling, will
8 be represented by Mr. Victor Li and Ms. Alexandra
9 Benevento. Is that close?

10 **MS. BENEVENTO:** Yes, sir.

11 **THE COURT:** Thank you.

12 Do any of you know anything at all about this
13 matter? Do you have any knowledge whatsoever about
14 the underlying factual allegations? Has anybody
15 talked to you about anything related to this matter?
16 Have you heard, seen or read anything through the
17 news media about it? Any prior knowledge that you
18 might have at all about these allegations about this
19 matter if you've been exposed to anything like that,
20 please stand.

21 (There was no response.)

22 **THE COURT:** The following persons have been
23 listed as potential witnesses for the State. If any
24 of these people happen to be present at this time, I
25 need for that person to stand as his or her name is

1 called and face the jury panel.

2 Officer Terry Hall of the Lexington County
3 Sheriff's Department, thank you, sir; Officer Wade
4 Newberry of the Lexington County Sheriff's
5 Department; Officer Michael Phipps of the Lexington
6 County Sheriff's Department; Officer Worth Rogers,
7 Lexington County Sheriff's Department; Candy Kizer,
8 Lexington County Sheriff's Department; Beth Harmon
9 of the Lexington County Sheriff's Department;
10 Vanessa Hall who's a human resources director at the
11 Boys and Girls Club of the Midlands; Jennifer
12 Brailsford who formerly was a unit director of the
13 Boys and Girls Club of the Midlands; C H ;
14 Diane A who is Ms. H mother; Alan A
15 who is Ms. H stepfather.

16 Is that an E?

17 **MS. PATTERSON:** Yes, sir, Your Honor.

18 **THE COURT:** Elgio Maoli. Is that close?

19 **OFFICER HALL:** That's very close, Your Honor.

20 **THE COURT:** Deputy Elgio Maoli. It's E-l-g-i-o
21 and then last name, M-a-o-l-i, who is with the
22 Lexington County Sheriff's Department.

23 Are any of you, to the best of your knowledge,
24 related by blood or marriage or connected by
25 employment with any of the potential witnesses for

1 the State; if so, please stand?

2 (Juror stands.)

3 **THE COURT:** Your name, please?

4 **JUROR:** Rebecca Bass.

5 **THE COURT:** Do you know your juror number, Ms.
6 Bass?

7 **JUROR:** Number 8.

8 **THE COURT:** Ms. Bass is juror number 8. She's
9 10 on our list.

10 What's your situation, please?

11 **JUROR:** Yes, sir. Myself and my husband both
12 work for the Lexington County Sheriff's Department.

13 **THE COURT:** I'm going to have to excuse you
14 from this case, Ms. Bass. Did they tell you about
15 the call-in system upstairs?

16 **JUROR:** To check the number around six o'clock
17 tonight.

18 **THE COURT:** That's it. Call tonight after
19 6:00, all right.

20 **JUROR:** Yes, sir. Thank you.

21 **THE COURT:** Thank you.

22 Ms. Bass is juror number 8. She's excused from
23 this case.

24 Do any of you have any connection of any kind
25 with any of the entities involved in this case,

1 which would include the Lexington County Sheriff's
2 Department, the Boys and Girls Club of the Midlands,
3 the Solicitor's Office of the Eleventh Judicial
4 Circuit, any connection with any of those entities,
5 please stand?

6 (There was no response.)

7 **THE COURT:** The State will be represented by
8 members of the Solicitor's Office of the Eleventh
9 Judicial Circuit, Rhonda W. Patterson and Jennifer
10 Cooper.

11 Y'all stand for me, please. Thank you. Did I
12 leave anybody out on the witnesses?

13 **MS. PATTERSON:** No, sir.

14 **THE COURT:** Are any of you or any of your
15 immediate family members in any way employed
16 currently or formerly in any law enforcement field,
17 that would include any police, sheriff, SLED, FBI,
18 any federal, state or local law enforcement entity,
19 and I'm going to expand that beyond South Carolina,
20 anywhere, including the military?

21 (Jurors stand.)

22 **THE COURT:** Your name, please?

23 **JUROR:** Celeste Schnabel.

24 **THE COURT:** Do you know your number, ma'am?

25 **JUROR:** 152.

1 **THE COURT:** Ms. Schnabel is juror number 152.
2 She's 11 on our list.

3 What's your situation?

4 **JUROR:** My husband was formerly a park ranger
5 for the State of North Carolina where he also had to
6 go through basic law enforcement training.

7 **THE COURT:** Okay. Is there anything at all
8 about your relationship with him or his experiences
9 that affects your ability to be a fair and impartial
10 juror in the case?

11 **JUROR:** No, sir.

12 **THE COURT:** Have any doubt in your mind about
13 that?

14 **JUROR:** No doubts.

15 **THE COURT:** Thank you.

16 Ms. Schnabel, juror number 152, she's eligible
17 to serve.

18 Your name, sir?

19 **JUROR:** Robert Anderson.

20 **THE COURT:** Do you know your number,
21 Mr. Anderson?

22 **JUROR:** Number 1.

23 **THE COURT:** Mr. Anderson's juror number 1.
24 He's 16 on our list.

25 What's your situation, please?

1 **JUROR:** My son is a crime analyst with the
2 Athens-Clarke County Police Department in Athens,
3 Georgia.

4 **THE COURT:** Is there anything at all about your
5 relationship with him or the experiences with him or
6 that situation that would in any way affect your
7 ability to be a fair and impartial juror in the
8 case?

9 **JUROR:** No, sir.

10 **THE COURT:** Any doubt in your mind?

11 **JUROR:** No, sir.

12 **THE COURT:** Thanks very much.

13 Mr. Anderson is juror number 1. He's eligible
14 to serve.

15 Your name, please, ma'am?

16 **JUROR:** Amy Gillian.

17 **THE COURT:** Do you know your number, Ms.
18 Gillian?

19 **JUROR:** 72.

20 **THE CLERK:** Number 29, Your Honor.

21 **THE COURT:** Ms. Gillian is juror number 72.
22 She's 29 on our list.

23 Go ahead, please.

24 **JUROR:** My sister works for the South Carolina
25 Criminal Justice Academy.

1 **THE COURT:** Is she an instructor or what does
2 she do?

3 **JUROR:** She's an accountant.

4 **THE COURT:** Accountant?

5 **JUROR:** Uh-huh.

6 **THE COURT:** Is there anything at all about your
7 relationship with her or her with that entity that
8 would in any way affect your ability to be a fair
9 and impartial juror in this case?

10 **JUROR:** No, sir.

11 **THE COURT:** Any doubt in your mind?

12 **JUROR:** No, sir.

13 **THE COURT:** Thanks very much.

14 Ms. Gillian is juror number 72, eligible to
15 serve.

16 Yes, sir.

17 **JUROR:** James Charlton, number 32.

18 **THE CLERK:** Number 25, Your Honor.

19 **THE COURT:** Mr. Charlton is juror number 32.
20 He's 25 on our list.

21 What's your situation, sir?

22 **JUROR:** I'm a retired U.S. postal inspector.

23 **THE COURT:** Is there anything at all about your
24 experiences in that occupation that would affect
25 your ability to be a fair and impartial juror in the

1 case?

2 **JUROR:** No, sir.

3 **THE COURT:** Any doubt in your mind?

4 **JUROR:** No, sir.

5 **THE COURT:** Thank you.

6 Mr. Charlton is juror number 32, eligible to
7 serve.

8 Your name, please?

9 **JUROR:** Judy McDougald, 121.

10 **THE CLERK:** Number 27.

11 **THE COURT:** Ms. McDougald is juror number 121.
12 She's 27 on our list.

13 What's your situation?

14 **JUROR:** My father is -- was a retired fire and
15 police for the State of North Carolina. My son just
16 got out of the Marines.

17 **THE COURT:** Was he in the military police?

18 **JUROR:** Sir?

19 **THE COURT:** You said Marines?

20 **JUROR:** My son just got out of the Marines,
21 yes.

22 **THE COURT:** Was he in the military branch of
23 the Marines or -- I don't even know if they have
24 one.

25 **JUROR:** You said military branch of the

1 Marines?

2 THE COURT: That's what I said, but I don't
3 know if they have one.

4 JUROR: No, he was not.

5 THE COURT: I think the Navy does that for
6 them, doesn't it?

7 INVESTIGATOR WILSON: Yes.

8 THE COURT: Somebody's giving me an amen out
9 there, all right.

10 121, Ms. McDougald, is there anything at all
11 about your relationship or experiences with your
12 father or son that would affect your ability to be
13 fair and impartial as a juror in this case?

14 JUROR: No, sir.

15 THE COURT: Any doubt in your mind?

16 JUROR: No, sir.

17 THE COURT: Thank you.

18 121, Ms. McDougald, is eligible to serve.

19 Yes, ma'am.

20 JUROR: I'm juror 183. And I have a nephew
21 that is a police officer --

22 THE COURT: Hold on a second, Ms. Wilson. I've
23 got to find you on my list.

24 Ms. Wilson is juror number 183 and she's 33rd
25 on our list.

1 What's your situation?

2 **JUROR:** I have a nephew that's a police officer
3 in Richland County, but I also need to address the
4 Court.

5 **THE COURT:** Okay. You want to come down front?

6 **JUROR:** Yes.

7 **THE COURT:** The attorneys may join me on the
8 side. Mr. Gramling may join me as well if he likes.

9 (Whereupon, the following bench conference
10 was held on the record.)

11 **THE COURT:** She's 183, 33 on the list.

12 What's your situation?

13 **JUROR:** About two weeks ago, my granddaughter
14 was raped and we're going through that, so I'm not
15 sure if I can be partial, fair or anything.

16 **THE COURT:** Would you call back tonight after
17 6:00 and follow the instructions?

18 **JUROR:** Okay.

19 **THE COURT:** Ms. Wilson's juror number 33 on our
20 list, 183. She's set aside on the trial of this
21 case.

22 You're free to go, Ms. Wilson, if you've got
23 your stuff.

24 (The bench conference was concluded.)

25 (Juror stands.)

1 **THE COURT:** Yes, ma'am, what's your name?

2 **JUROR:** Carol Kay, 102.

3 **THE COURT:** Ms. Kay is 102, number 7 on our
4 list. What's your situation, please?

5 **JUROR:** My son was solicitor -- was prosecutor
6 with Solicitor General's Office in Athens -- I mean,
7 Atlanta, Georgia. He is not now, but he was.

8 **THE COURT:** Anything at all about your
9 relationship with him or experiences that would
10 affect your ability to be a fair and impartial juror
11 in the case?

12 **JUROR:** No, sir.

13 **THE COURT:** Any doubt in your mind?

14 **JUROR:** No, sir.

15 **THE COURT:** Thank you.

16 Ms. Kay is 102, number 7 on our list. She's
17 eligible to serve.

18 Are any of you members of or financial
19 contributors to any organization which has as one of
20 its primary purposes, the support of law enforcement
21 or victims' rights or victims' assistance, that
22 would include such organizations as Citizens Against
23 Violent Crime, Mothers Against Drunk Driving,
24 Students Against Drunk Driving, any sort of shelter
25 for abused or neglected persons, anything similar to

1 that? If you are a member of or financial
2 contributor to any such organizations, please stand.

3 (Jurors stand.)

4 **THE COURT:** On the aisle, your name, please,
5 ma'am?

6 **JUROR:** Peggy Meetze I was 125.

7 **THE COURT:** Ms. Meetze is 125, 19 on our list.
8 What's your situation?

9 **JUROR:** Well, I contribute to MADD.

10 **THE COURT:** Anything about that that affects
11 your ability to be a fair and impartial juror in the
12 case?

13 **JUROR:** No, sir.

14 **THE COURT:** Any doubt in your mind?

15 **JUROR:** No, sir.

16 **THE COURT:** Thank you.

17 Ms. Meetze is 125, eligible to serve.

18 Yes, sir, your name again?

19 **JUROR:** Robert Anderson, number 1. I'm a
20 contributor to the Women's Shelter of Columbia.

21 **THE COURT:** Anything at all about your
22 relationship with that organization that affects
23 your ability to be a fair and impartial juror in
24 this case?

25 **JUROR:** No, sir.

1 **THE COURT:** Any doubt in your mind?

2 **JUROR:** No, sir.

3 **THE COURT:** Thank you.

4 Mr. Anderson is number 1. He's 16 on our list.

5 He's eligible to serve.

6 Yes, ma'am.

7 **JUROR:** Juror 141, Patricia Reeder.

8 **THE COURT:** 141, Ms. Reeder, she's number 1 on
9 our list.

10 What's your situation, please?

11 **JUROR:** I was a faculty adviser for our MADD
12 chapter at our high school when I was teaching.

13 **THE COURT:** Anything at all about that
14 experience that affects your ability to be a fair
15 and impartial juror in the case?

16 **JUROR:** No, sir.

17 **THE COURT:** Any doubt in your mind?

18 **JUROR:** No, sir.

19 **THE COURT:** Thank you.

20 Ms. Reeder is 141, number 1 on our list. She's
21 eligible to serve.

22 Your name, please?

23 **JUROR:** Rebecca Day, number 50.

24 **THE COURT:** Ms. Day is juror number 50. She's
25 31 on our list.

1 What's your situation, please?

2 **JUROR:** I've contributed to MADD.

3 **THE COURT:** Anything about that that affects
4 your ability to be a fair and impartial juror in the
5 case?

6 **JUROR:** No, sir.

7 **THE COURT:** Any doubt in your mind?

8 **JUROR:** No, sir.

9 **THE COURT:** Thank you.

10 Ms. Day's 50, 31 on our list. She's eligible
11 to serve.

12 Ladies and gentlemen, to the best of my
13 knowledge, I've introduced you to the people
14 involved in the case. I've told you the entities
15 that are involved. The defense attorneys are with
16 the Law Office of Todd Rutherford. I told you the
17 Solicitor's Office of the Eleventh Judicial Circuit
18 is prosecuting the case. I told you about the law
19 enforcement units. What I -- I read to you the
20 names of the potential witnesses for the State.

21 And what I need for you to do now is this. If
22 you've got any connection of any kind with any of
23 the people involved in this matter, that would
24 include being a neighbor, a friend, a social
25 acquaintance, attended the same church or civic

1 clubs, you went to school with them, if you've got
2 any connection with the attorneys, if you've ever
3 been represented by one of these attorneys or anyone
4 with whom they're affiliated, if anybody close to
5 you has ever been represented by one of these
6 attorneys or anyone with whom they're affiliated, if
7 you've ever been on the opposite side of a case
8 represented by one of these attorneys or anyone with
9 whom they're affiliated -- what did I do wrong?

10 (Pause.)

11 **THE COURT:** All right. Folks, I've got some
12 other potential witnesses. If any of these persons
13 happen to be in the courtroom, I need the person to
14 stand as his or her name is called:

15 Claire Jones who is with Lexington County
16 Community Mental Health Center; Deputy K., that's
17 the initial K, Steele of the Lexington County
18 Sheriff's Department; Detective J., that's the
19 initial J, Chapell, Lexington County Sheriff's
20 Department; Detective T.L. Chandler of the Lexington
21 County Sheriff's Department; Jamie, J-a-m-i-e, Bank,
22 thank you.

23 Are any of you related by blood or marriage or
24 connected by employment with any of those potential
25 witnesses; if so, please stand?

1 (There was no response.)

2 **THE COURT:** Okay. Now, back to what I was
3 going over. If any of you got any connection of any
4 kind or anybody close to you has any connection of
5 any kind with any of the people or any of the
6 entities involved in the case, you need to disclose
7 that to me.

8 (Jurors stand.)

9 **THE COURT:** Yes, sir, your name?

10 **JUROR:** 122, Paul McEntire.

11 **THE COURT:** Mr. McEntire is juror number 122.
12 He's 12 on our list.

13 What's your situation?

14 **JUROR:** I'm somewhat of an acquaintance to one
15 of the attorneys or one of the places where she used
16 to work.

17 **THE COURT:** Which attorney?

18 **JUROR:** Alex.

19 **THE COURT:** Is there anything at all about your
20 relationship with her or experiences with her that
21 would affect your ability to be a fair and impartial
22 juror in the case?

23 **JUROR:** No, sir.

24 **THE COURT:** Can you decide the case without
25 regard to what she may think of your decision?

1 **JUROR:** Yes, sir.

2 **THE COURT:** And you describe your relationship
3 as being an acquaintance through work, former work?

4 **JUROR:** At a restaurant.

5 **THE COURT:** At a restaurant. Do you have any
6 doubt at all about your ability to be fair and
7 impartial in this case?

8 **JUROR:** Yes, sir.

9 **THE COURT:** You do?

10 **JUROR:** (Juror nodded head.)

11 **THE COURT:** All right. I'll set you aside.

12 Call that number tonight after 6:00, please.

13 Juror number 122, 12 on our list, Mr. McEntire,
14 he's excused from the trial of this case.

15 Yes, ma'am, your name?

16 **JUROR:** Elaine Keisler, 104.

17 **THE COURT:** Ms. Keisler's juror number 104, 26
18 on our list.

19 And what's your situation?

20 **JUROR:** You mentioned the name Candy Kizer at
21 the sheriff's department.

22 **THE COURT:** Yes, ma'am.

23 **JUROR:** And I'm not sure if it's the Candy
24 Kizer that is a friend of my husband, lives in the
25 Pond Branch area.

1 **THE COURT:** Can you all give me more
2 information?

3 **THE CLERK:** Candy does live in Pond Branch.

4 **THE COURT:** It sounds like the same person.
5 She's a friend of your husband's?

6 **JUROR:** Her husband is a friend of mine.

7 **THE COURT:** Oh, I'm sorry.

8 **JUROR:** I don't know her personally.

9 **THE COURT:** Okay. Do you know of anything
10 about that relationship that would affect your
11 ability to be a fair and impartial juror in the
12 case?

13 **JUROR:** No, sir.

14 **THE COURT:** Can you decide the case without
15 regard to what your friend or Ms. Kizer may think of
16 your decision.

17 **JUROR:** I think I can make a decision.

18 **THE COURT:** That's not the question. Can you
19 -- all I want you to do is be honest with me. Y'all
20 believe -- and I'm not just addressing this to you,
21 please don't be concerned with trying to tell me
22 what you think I may want to hear. I just want you
23 to be a hundred percent honest.

24 Is there anything about your relationship with
25 these individuals that would affect your ability in

1 any way to be fair and impartial in the case?

2 **JUROR:** No.

3 **THE COURT:** So when you're on that jury, if
4 you're picked, you won't be giving any thought at
5 all as to what your friend or his spouse may think
6 of your decision?

7 **JUROR:** No, I won't.

8 **THE COURT:** Now, I'm going to have to ask you
9 some questions that you have to answer yes or no.
10 If you need to go beyond that, come down front. And
11 it may be a little bit self-explanatory because -- I
12 mean, it may be a little unnecessary, I don't know,
13 because you say you really don't know Ms. Kizer
14 herself.

15 **JUROR:** I just know her name.

16 **THE COURT:** Okay. But I need to ask these
17 questions. If you need to go beyond yes or no, come
18 down front and give me the full explanation. Have
19 you ever formed -- let me back up. If you're a
20 juror on this case, you have to evaluate the
21 credibility, the believability of every witness who
22 testifies. You understand that?

23 **JUROR:** (Juror nodded head.)

24 **THE COURT:** You need to speak your answer. She
25 takes down what we say.

1 **JUROR:** Yes, sir.

2 **THE COURT:** Have you ever formed in your own
3 mind or have you ever expressed to anyone else an
4 opinion as to whether Ms. Kizer is a believable
5 person or not?

6 **JUROR:** No.

7 **THE COURT:** Now, can you tell me a little bit
8 more about your relationship with her husband.

9 **JUROR:** Her husband's a friend of my husband.

10 **THE COURT:** Are they childhood friends who grew
11 up together?

12 **JUROR:** Yes, sir.

13 **THE COURT:** Last question. Do you have any
14 doubt at all about your ability to be fair and
15 impartial as a juror in the case?

16 **JUROR:** No.

17 **THE COURT:** Thank you very much.

18 Ms. Keisler's juror number 104. She's eligible
19 to serve.

20 Is there anything at all about the nature of
21 the allegations in this case, the allegations being
22 criminal sexual conduct with a minor and
23 contributing to the delinquency of a minor, is there
24 anything at all about the nature of those
25 allegations that would affect your ability to be a

1 fair and impartial juror in the case because of your
2 situation; if so, please stand?

3 (Juror stands.)

4 **JUROR:** Elizabeth Gour.

5 **THE CLERK:** She's number 77.

6 **THE COURT:** Ms. Gour's juror number 77, number
7 2 on our list. You're free to go, ma'am. Call
8 tonight after 6:00.

9 All right. I'm going to pose a question to
10 you. It's a multiple part question. And we're
11 going to talk about these things down front. We're
12 not going to talk about them in the open like this,
13 so listen carefully to all the parts, please.

14 Have any of you, any of your immediate family
15 members, any of your close, personal friends ever
16 been accused of committing any act of sexual
17 misconduct, or have any of you, any of your
18 immediate family members, any of your close,
19 personal friends ever been the victim of any type of
20 sexual misconduct whether any criminal charges were
21 brought or not in either instance, okay, either as
22 being the accused or the victim? It doesn't matter
23 whether --

24 (Juror stands.)

25 **THE COURT:** I'm not through with the question

1 yet. It's got another part to it.

2 So if you've ever been on -- anybody close to
3 you, immediate family member, close, personal friend
4 or yourself has ever been on either side of an
5 allegation or a situation of sexual misconduct
6 whether any criminal charges were actually filed or
7 not, or have any of you, any of your close, personal
8 friends or any of your immediate family members ever
9 been the victim of or accused of committing a crime
10 of violence? If any of those things apply to you,
11 please stand.

12 (Jurors stand.)

13 **THE COURT:** All right. What we're going to do
14 is I'll get you to form a line. The bailiff will
15 come up here and get you to form a line and bring
16 you up one by one.

17 The attorneys may join me on the side. The
18 defendant, Mr. Gramling, may join us on the side if
19 he'd like.

20 (Whereupon, the following bench conferences
21 were held on the record.)

22 **BAILIFF:** Number 125, Judge.

23 **JUROR:** Peggy Meetze.

24 **THE CLERK:** She's number 19 on our strike list.

25 **THE COURT:** Okay. Ms. Meetze, what's your

1 situation?

2 JUROR: My father-in-law served time for child
3 molestation.

4 THE COURT: Was that in Lexington County?

5 JUROR: Yes, sir.

6 THE COURT: How long ago are we talking about?

7 JUROR: 1992.

8 THE COURT: Was he prosecuted by the sheriff's
9 department?

10 JUROR: Yes, sir.

11 THE COURT: And obviously, unless the attorney
12 general's office came in, the same Solicitor's
13 office prosecuted it?

14 JUROR: Yes, sir.

15 THE COURT: Were you involved in the case in
16 any way as a witness or anything?

17 JUROR: No, sir.

18 THE COURT: Is there anything at all about that
19 situation that affects your ability to be fair and
20 impartial as a juror in this case?

21 JUROR: No, sir.

22 THE COURT: Any doubt in your mind?

23 JUROR: No, sir.

24 THE COURT: Thanks very much.

25 Ms. Meetze, is juror number 125, 19 on our

1 list, she's eligible to serve.

2 **BAILIFF:** 140, Your Honor.

3 **THE COURT:** Ms. Ray is juror number 140, 23rd
4 on our list.

5 What's your situation?

6 **JUROR:** A friend's son was accused of, I guess,
7 contributing to the delinquency of a minor. He had
8 a relationship with a 14-year-old when he was 16.

9 **THE COURT:** And what happened to him?

10 **JUROR:** He was on probation and he's on the
11 sexual --

12 **THE COURT:** Sex offender list.

13 **MR. LI:** It was your grandson?

14 **JUROR:** No. It was a friend's son. I'm not
15 that old.

16 **MR. LI:** That's what I was thinking. I was in
17 shock.

18 **THE COURT:** Was that in Lexington County?

19 **JUROR:** Yes, sir.

20 **THE COURT:** And do you know if the sheriff's
21 department prosecuted it or city?

22 **JUROR:** I have no idea.

23 **THE COURT:** Well, you kind of answered my next
24 question --

25 **JUROR:** I mean, he was arrested, but I don't

1 know what happened.

2 **THE COURT:** It could have been one of the city
3 officials or --

4 **JUROR:** I have no idea.

5 **THE COURT:** Okay. Were you involved in the
6 case in any way as a witness? .

7 **JUROR:** No.

8 **THE COURT:** And you understand if it happened
9 here, the same prosecutor's office probably would
10 have prosecuted your friend?

11 **JUROR:** I have no idea. I mean, if you say so,
12 yes, sir.

13 **THE COURT:** Sometimes the attorney general will
14 come in and do it, but most of the time it's the
15 local folks.

16 **JUROR:** Uh-huh.

17 **THE COURT:** Is there anything at all about any
18 of that --

19 **JUROR:** No.

20 **THE COURT:** -- that affects your ability to be
21 a fair and impartial juror?

22 **JUROR:** No.

23 **THE COURT:** Nothing about your relationship
24 with your friend that affects your ability to be
25 fair and impartial?

1 **JUROR:** No.

2 **THE COURT:** All right. Thank you very much.

3 Ms. Ray is 140, 23rd on our list and eligible
4 to serve.

5 Yes, ma'am.

6 **BAILIFF:** Number 63, Your Honor.

7 **THE CLERK:** She's number 4 on our list.

8 **THE COURT:** You're Ms. Fields?

9 **JUROR:** Yes.

10 **THE COURT:** What's your situation?

11 **JUROR:** I was molested when I was a child, so I
12 don't feel comfortable.

13 **THE COURT:** You believe you would have a
14 problem being fair and impartial?

15 **JUROR:** Yeah.

16 **THE COURT:** Can you call that number for us
17 tonight after six o'clock?

18 **JUROR:** Yes.

19 **THE COURT:** Okay. Thank you, ma'am.

20 Ms. Hutto is juror number 94, 3rd on our list.
21 She's set aside --

22 **THE CLERK:** She was number 4, Gloria Fields,
23 Your Honor.

24 **THE COURT:** I'm sorry. Ms. Fields is juror
25 number 63, number 4 on our list. She's set aside.

1 **JUROR:** Number 64, Angela Fowler.

2 **THE COURT:** 17 on our list. What's your
3 situation, Ms. Fowler?

4 **JUROR:** My ex-husband is actually listed as a
5 sexual offender. It happened after we were divorced
6 about ten years. And, obviously, I have no details,
7 don't know anything about the case at all.

8 **THE COURT:** Would that have happened here?

9 **JUROR:** Yes. It happened in Lexington County I
10 believe.

11 **THE COURT:** Do you know anything about who
12 prosecuted it whether it was the sheriff's office --

13 **JUROR:** I was not involved at all.

14 **THE COURT:** Anything about your relationship
15 with him or experiences that would affect your
16 ability to be fair and impartial as a --

17 **JUROR:** I have no relationship with him at all.

18 **THE COURT:** Is there anything about that
19 situation that affects your ability to be fair and
20 impartial?

21 **JUROR:** No, sir.

22 **THE COURT:** Any doubt in your mind?

23 **JUROR:** No, sir.

24 **THE COURT:** Thanks very much.

25 Ms. Fowler is juror number 64. She's eligible

1 to serve.

2 **BAILIFF:** 128, Your Honor.

3 **THE CLERK:** She's number 32, Your Honor.

4 **THE COURT:** Ms. Morrison is juror number 128,
5 32nd on our list.

6 What's your situation?

7 **JUROR:** My stepson was convicted of a sexual
8 misconduct.

9 **THE COURT:** And what happened to him? Did he
10 go to jail?

11 **JUROR:** Yes.

12 **THE COURT:** How long ago was that?

13 **JUROR:** A year ago.

14 **THE COURT:** Is he still in jail?

15 **JUROR:** No, only three months.

16 **THE COURT:** Is he a juvenile or an adult?

17 **JUROR:** Adult.

18 **THE COURT:** Was that here in Lexington County?

19 **JUROR:** No, Texas.

20 **THE COURT:** Anything at all about that
21 experience or your relationship with him that
22 affects your ability to be fair and impartial as a
23 juror in the case?

24 **JUROR:** No.

25 **THE COURT:** Any doubt in your mind?

1 **JUROR:** Nope.

2 **THE COURT:** Thanks very much.

3 Ms. Morrison's 128, 32nd on our list. She's
4 eligible to serve.

5 **BAILIFF:** Number 26, Your Honor.

6 **THE CLERK:** She's the very last one, number 36.

7 **THE COURT:** Ms. Brunson is juror number 26, 36
8 on our list.

9 What's your situation, ma'am?

10 **JUROR:** I have an uncle that's incarcerated for
11 sexual assault on a minor.

12 **THE COURT:** Did that happen in Lexington
13 County?

14 **JUROR:** No. I want to say Aiken County, I want
15 to say.

16 **THE COURT:** Okay. Did you have any involvement
17 in the case? Were you a witness or anything?

18 **JUROR:** No, sir.

19 **THE COURT:** Is there anything at all about that
20 experience or your relationship with your uncle that
21 affects your ability to be fair and impartial as a
22 juror in the case?

23 **JUROR:** No, sir.

24 **THE COURT:** Any doubt in your mind?

25 **JUROR:** No, sir.

1 **THE COURT:** Thanks very much.

2 Ms. Brunson is juror number 26. She's eligible
3 to serve.

4 Yes, ma'am.

5 **BAILIFF:** Number 92, Your Honor.

6 **THE COURT:** Ms. Hulon.

7 **JUROR:** Yes.

8 **THE COURT:** She's number 92, 18 on our list.
9 What's your situation?

10 **JUROR:** One of my close friends was sexually
11 mistreated by her stepfather when she was younger.
12 And when I was young, my father was brought up on
13 charges of breaking his sister's arm, but he was
14 found innocent.

15 **THE COURT:** Was anybody prosecuted on the case
16 with your close friend?

17 **JUROR:** No.

18 **THE COURT:** And the situation with your father,
19 did that happen here in Lexington County, the case?

20 **JUROR:** Yes -- I don't know.

21 **THE COURT:** You don't know.

22 **JUROR:** Probably, yes.

23 **THE COURT:** Is there anything at all about
24 either one of those situations that affects your
25 ability to be fair and impartial as a juror?

1 **JUROR:** No, sir.

2 **THE COURT:** Do you have any doubt in your mind?

3 **JUROR:** No, sir.

4 **THE COURT:** Thanks very much.

5 Ms. Hulon is juror number 92, 18 on our list.

6 She's eligible to serve.

7 **BAILIFF:** Number 72, Your Honor.

8 **THE COURT:** Ms. Gillian.

9 **THE CLERK:** Number 29.

10 **THE COURT:** What's your situation?

11 **JUROR:** My nephew was convicted of murder.

12 **THE COURT:** Was that in Lexington County?

13 **JUROR:** It was.

14 **THE COURT:** What happened to him?

15 **JUROR:** He is serving a life sentence.

16 **THE COURT:** How long ago would that have been?

17 **JUROR:** It was 2001.

18 **THE COURT:** Were you involved in the case as a
19 witness or anything?

20 **JUROR:** No, sir.

21 **THE COURT:** Do you know who brought the charge?
22 Was it the Lexington County Sheriff's Department?

23 **JUROR:** I believe so.

24 **THE COURT:** As far as you know, would it have
25 been prosecuted by the Solicitor's office here?

1 **JUROR:** I believe so.

2 **THE COURT:** Is there anything about any of that
3 that affects your ability to be a fair and impartial
4 juror in the case?

5 **JUROR:** No, sir.

6 **THE COURT:** Any doubt in your mind?

7 **JUROR:** No, sir.

8 **THE COURT:** Thanks very much.

9 Ms. Gillian is juror number 72, 29 on our list.
10 She's eligible to serve.

11 Yes, sir.

12 **BAILIFF:** 47, Your Honor.

13 **THE CLERK:** Number 22.

14 **THE COURT:** Mr. Davis, what's your situation?

15 **JUROR:** My wife was when she was very young. I
16 don't know all the details.

17 **THE COURT:** Your wife was molested?

18 **JUROR:** Yes.

19 **THE COURT:** Was it by a family member or a
20 stranger?

21 **JUROR:** Someone that lives in the neighborhood.

22 **THE COURT:** Anything at all about that
23 situation or your relationship with your wife that
24 affects your ability to be fair and impartial?

25 **JUROR:** I don't believe so.

1 **THE COURT:** Any doubt in your mind?

2 **JUROR:** No, sir.

3 **THE COURT:** Thanks very much.

4 Mr. Davis is juror number 47, 22 on our list.

5 He's eligible to serve.

6 Yes, ma'am.

7 **BAILIFF:** 121, Your Honor.

8 **THE COURT:** Ms. McDougald.

9 **JUROR:** Yes.

10 **THE COURT:** She's 27 on our list, 121.

11 What's your situation?

12 **JUROR:** Well, I don't know how it applies, but
13 my next-door neighbor right now, I believe, is
14 awaiting trial or whatever the situation is for
15 child pornography, trafficking.

16 **THE COURT:** Do you know if it's state court or
17 federal court?

18 **JUROR:** I am not sure. I know SLED was
19 involved, but I don't know who else. I know that
20 that -- what I read on it, there was an undercover
21 officer and there were files sent across state
22 lines.

23 **THE COURT:** Is there anything at all about your
24 relationship with him or that experience that
25 affects your ability to be fair and impartial?

1 **JUROR:** No, sir.

2 **THE COURT:** Any doubt in your mind?

3 **JUROR:** No, sir.

4 **THE COURT:** Thanks very much.

5 Ms. McDougald is juror number 121, 27 on our
6 list. She's eligible to serve.

7 (The bench conferences were concluded.)

8 **THE COURT:** Have any of you formed or expressed
9 any opinions about these cases; if so, please stand?

10 (There was no response.)

11 **THE COURT:** Are any of you aware of any
12 interest, bias or prejudice that you might have for
13 or against the State, for or against Mr. Gramling,
14 for or against anyone or any entity involved in this
15 case; if so, please stand?

16 (There was no response.)

17 **THE COURT:** Can each of you give both the State
18 of South Carolina and the defendant, Oscar Albert
19 Gramling, III, a fair and impartial trial? If you
20 know of any reason why you cannot, please stand now.

21 (There was no response.)

22 **THE COURT:** Further questions from the State?

23 **MS. PATTERSON:** Nothing from the State, Your
24 Honor.

25 **THE COURT:** Further questions from the defense?

1 **MR. LI:** Nothing from the defense, Your Honor.

2 **THE COURT:** Thank you. The jury panel is
3 qualified.

4 How many jurors do I have left?

5 **THE CLERK:** Thirty-one.

6 **THE COURT:** Strikes are five for the State, ten
7 for the defense, correct?

8 **MS. PATTERSON:** Correct, Your Honor.

9 **MR. LI:** Correct, Your Honor.

10 **THE COURT:** All right. Ladies and gentlemen,
11 the way that we draw juries in general sessions
12 court is as follows: Your names have been -- in
13 those counties like Lexington which have the case
14 management system, your names are chosen randomly by
15 a computer. They're on a list that we have, that's
16 why I've been referring to our numbers as opposed to
17 the two sets of -- as opposed to the other set of
18 numbers.

19 We're going to use those original sets of
20 numbers throughout the rest of the trial. It's just
21 for this jury selection process, so don't get
22 confused when I've been saying different numbers.
23 You remember the one that you were originally given.

24 What's going to happen is the clerk's going to
25 start at the top of the list that the computer

1 chose. She's going to go down one by one. She'll
2 call the first name. If it's your name, I need you
3 to gather your personal belongings. I need you to
4 come down front.

5 One of y'all show them where to come.

6 **OFFICER:** Come through the door, stand right
7 here like this here and face back out and you'll
8 wait on a response from the clerk.

9 **THE COURT:** So just come down so I'll be
10 looking at your back and then the clerk's going to
11 ask questions of the State's attorney and the
12 defense attorney. And based on their responses,
13 you'll be told either to have a seat over here in
14 the jury box or return to your seat in the
15 courtroom, that's why you need to bring your
16 personal belongings because your next stop might be
17 over here.

18 Madame Clerk, give us a jury.

19 **THE CLERK:** Number 141, Patricia Reeder.

20 (Whereupon, Patricia A. Reeder, a white
21 female, was called forward.)

22 **THE CLERK:** What say you for the State?

23 **MS. PATTERSON:** Please present Ms. Reeder.

24 **THE CLERK:** What say you for the defense?

25 **MR. LI:** Please sit this juror.

1 **THE CLERK:** Have a seat in the jury box, ma'am.

2 Number 94, Andrea Hutto.

3 (Whereupon, Andrea E. Hutto, a white female,

4 was called forward.)

5 **THE CLERK:** What say you for the State?

6 **MS. PATTERSON:** Please present Ms. Hutto.

7 **THE CLERK:** What say you for the defense?

8 **MR. LI:** Please sit this juror.

9 **THE CLERK:** Have a seat in the jury box, ma'am.

10 Number 142, Sylvia Reid.

11 (Whereupon, Sylvia M. Reid, a black female,

12 was called forward.)

13 **THE CLERK:** What say you for the State?

14 **MS. PATTERSON:** Please present Ms. Reid.

15 **THE CLERK:** What say you for the defense?

16 **MR. LI:** Please strike this juror.

17 **THE CLERK:** Return to your seat, please, ma'am.

18 44, John Daspit.

19 (Whereupon, John W. Daspit, a white male,

20 was called forward.)

21 **THE CLERK:** What say you for the State?

22 **MS. PATTERSON:** Please present Mr. Daspit.

23 **THE CLERK:** What say you for the defense?

24 **MR. LI:** Please sit this juror.

25 **THE CLERK:** Have a seat in the jury box, sir.

1 Number 102, Carol Kay.

2 (Whereupon, Carol M. Kay, a white female,
3 was called forward.)

4 **THE CLERK:** What say you for the State?

5 **MS. PATTERSON:** Please present Ms. Kay.

6 **THE CLERK:** What say you for the defense?

7 **MR. LI:** Please strike this juror.

8 **THE CLERK:** Return to your seat, please, ma'am.
9 Number 118, Janna Martin.

10 (Whereupon, Janna G. Martin, a white female,
11 was called forward.)

12 **THE CLERK:** What say you for the State?

13 **MS. PATTERSON:** Please present Ms. Martin.

14 **THE CLERK:** What say you for the defense?

15 **MR. LI:** Please strike this juror.

16 **THE CLERK:** Return to your seat, please, ma'am.
17 Number 53, Raymond Doucett.

18 (Whereupon, Raymond M. Doucett, a white
19 male, was called forward.)

20 **THE CLERK:** What say you for the State?

21 **MS. PATTERSON:** Please present Mr. Doucett.

22 **THE CLERK:** What say you for the defense?

23 **MR. LI:** Please sit this juror.

24 **THE CLERK:** Have a seat in the jury box, sir.
25 Number 152, Celeste Schnabel.

1 (Whereupon, Celeste R. Schnabel, a white
2 female, was called forward.)

3 **THE CLERK:** What say you for the State?

4 **MS. PATTERSON:** Please present Ms. Schnabel.

5 **THE CLERK:** What say you for the defense?

6 **MR. LI:** Please sit this juror.

7 **THE CLERK:** Have a seat in the jury box, ma'am.
8 Number 45, Douglas Davis.

9 (Whereupon, Douglas P. Davis, a white male,
10 was called forward.)

11 **THE CLERK:** What say you for the State?

12 **MS. PATTERSON:** Please present Mr. Davis.

13 **THE CLERK:** What say you for the defense?

14 **MR. LI:** Please strike this juror.

15 **THE CLERK:** Return to your seat, please, sir.
16 Number 158, Benjamin Simons.

17 (Whereupon, Benjamin G. Simons, a white
18 male, was called forward.)

19 **THE CLERK:** What say you for the State?

20 **MS. PATTERSON:** Please present Mr. Simons.

21 **THE CLERK:** What say you for the defense?

22 **MR. LI:** Please sit this juror.

23 **THE CLERK:** Have a seat in the jury box, sir.
24 116, Robert Maes.

25 (Whereupon, Robert J. Maes, a white male,

1 was called forward.)

2 **THE CLERK:** What say you for the State?

3 **MS. PATTERSON:** Please present Mr. Maes.

4 **THE CLERK:** What say you for the defense?

5 **MR. LI:** Please strike this juror.

6 **THE CLERK:** Return to your seat, please, sir.

7 Number 1, Robert Anderson.

8 (Whereupon, Robert E. Anderson, a white
9 male, was called forward.)

10 **THE CLERK:** What say you for the State?

11 **MS. PATTERSON:** Please present Mr. Anderson.

12 **THE CLERK:** What say you for the defense?

13 **MR. LI:** Please strike this juror.

14 **THE CLERK:** Return to your seat, please, sir.

15 64, Angela Fowler.

16 (Whereupon, Angela M. Fowler, a white
17 female, was called forward.)

18 **THE CLERK:** What say you for the State?

19 **MS. PATTERSON:** Please present Ms. Fowler.

20 **THE CLERK:** What say you for the defense?

21 **MR. LI:** Please strike this juror.

22 **THE CLERK:** Return to your seat, please, ma'am.

23 Number 92, Savannah Hulon.

24 (Whereupon, Savannah R. Hulon, a white
25 female, was called forward.)

1 **THE CLERK:** What say you for the State?

2 **MS. PATTERSON:** Please present Ms. Hulon.

3 **THE CLERK:** What say you for the defense?

4 **MR. LI:** Please sit this juror.

5 **THE CLERK:** Have a seat in the jury box, ma'am.
6 Number 125, Peggy Meetze.

7 (Whereupon, Peggy H. Meetze, a white female,
8 was called forward.)

9 **THE CLERK:** What say you for the State?

10 **MS. PATTERSON:** Please present Ms. Meetze.

11 **THE CLERK:** What say you for the defense?

12 **MR. LI:** Please strike this juror.

13 **THE CLERK:** Return to your seat, ma'am.
14 Number 20, Shanta Brooks.

15 (Whereupon, Shanta L. Brooks, a black
16 female, was called forward.)

17 **THE CLERK:** What say you for the State?

18 **MS. PATTERSON:** Please strike Ms. Brooks.

19 **THE CLERK:** Return to your seat, please, ma'am.
20 Number 68, Jerry Gantt.

21 (Whereupon, Jerry A. Gantt, a white male,
22 was called forward.)

23 **THE CLERK:** What say you for the State?

24 **MS. PATTERSON:** Please present Mr. Gantt.

25 **THE CLERK:** What say you for the defense?

1 **MR. LI:** Please sit this juror.

2 **THE CLERK:** Have a seat in the jury box, sir.

3 Number 47, James Davis.

4 (Whereupon, James M. Davis, Sr., a white
5 male, was called forward.)

6 **THE CLERK:** What say you for the State?

7 **MS. PATTERSON:** Please present Mr. Davis.

8 **THE CLERK:** What say you for the defense?

9 **MR. LI:** Please strike this juror.

10 **THE CLERK:** Return to your seat, please, sir.

11 Number 140, Melissa Ray.

12 (Whereupon, Melissa J. Ray, a white female,
13 was called forward.)

14 **THE CLERK:** What say you for the State?

15 **MS. PATTERSON:** Please excuse Ms. Ray.

16 **THE CLERK:** Return to your seat, please, ma'am.

17 Number 179, Theresa Williams.

18 (Whereupon, Theresa M. Williams, a white
19 female, was called forward.)

20 **THE CLERK:** What say you for the State?

21 **MS. PATTERSON:** Please present Ms. Williams.

22 **THE CLERK:** What say you for the defense?

23 **MR. LI:** Please sit this juror.

24 **THE CLERK:** Have a seat in the jury box, ma'am.

25 Number 32, James Charlton.

1 (Whereupon, James A. Charlton, a white male,
2 was called forward.)

3 **THE CLERK:** What say you for the State?

4 **MS. PATTERSON:** Please present Mr. Charlton.

5 **THE CLERK:** What say you for the defense?

6 **MR. LI:** Please sit this juror.

7 **THE CLERK:** Have a seat in the jury box, sir.
8 Number 104, Elaine Keisler.

9 (Whereupon, Elaine C. Keisler, a white
10 female, was called forward.)

11 **THE CLERK:** What say you for the State?

12 **MS. PATTERSON:** Please present Ms. Keisler.

13 **THE CLERK:** What say you for the defense?

14 **MR. LI:** Please sit this juror.

15 **THE CLERK:** Have a seat in the jury box, ma'am.
16 121, Judy McDougald.

17 (Whereupon, Judy S. McDougald, a white
18 female, was called forward.)

19 **THE CLERK:** What say you for the State?

20 **MS. PATTERSON:** Please present Ms. McDougald.

21 **THE CLERK:** What say you for the defense?

22 **MR. LI:** Please strike this juror.

23 **THE CLERK:** Return to your seat, please, ma'am.
24 Number 39, Terence Cox.

25 (Whereupon, Terence L. Cox, a white male,

1 was called forward.)

2 **THE CLERK:** What say you for the State?

3 **MS. PATTERSON:** Please present Mr. Cox.

4 **THE CLERK:** What say you for the defense?

5 **MR. LI:** I think we're out of strikes, so
6 please sit this juror.

7 **THE CLERK:** Have a seat in the jury box, sir.
8 Alternates, Your Honor?

9 **THE COURT:** We'll draw one alternate. The
10 strikes are one for the State, two for the defense.

11 **THE CLERK:** 72, Amy Gillian.

12 (Whereupon, Amy S. Gillian, a white female,
13 was called forward.)

14 **THE CLERK:** What say you for the State?

15 **MS. PATTERSON:** Please excuse this juror.

16 **THE CLERK:** Return to your seat, please, ma'am.
17 Number 66, Susan Friedrich.

18 (Whereupon, Susan K. Friedrich, a white
19 female, was called forward.)

20 **THE CLERK:** What say you for the State?

21 **MS. PATTERSON:** Please present Ms. Friedrich.

22 **THE CLERK:** What say you for the defense?

23 **MR. LI:** Please sit this juror.

24 **THE CLERK:** Have a seat in the jury box.
25 That would be the alternate, Your Honor.

1 **THE COURT:** Draw another one. One for the
2 State, two for the defense.

3 **THE CLERK:** Number 50, Rebecca Day.

4 (Whereupon, Rebecca A. Day, a white female,
5 was called forward.)

6 **THE CLERK:** What say you for the State?

7 **MS. PATTERSON:** Please present Ms. Day.

8 **THE CLERK:** What say you for the defense?

9 **MR. LI:** Please seat this juror.

10 **THE CLERK:** Have a seat in the jury box, ma'am.
11 Alternate two.

12 **THE COURT:** Are there any matters to take up
13 including composition of the jury panel prior to the
14 jury being sworn, from the State?

15 **MS. PATTERSON:** Nothing from the State, Your
16 Honor.

17 **THE COURT:** From the defense?

18 **MR. LI:** Nothing from the defense, Your Honor.

19 **THE COURT:** Thank you very much.

20 Mr. Simons, you're going to be the Foreman of
21 the jury. When you come back in, just be the last
22 person in, please, take a seat on the front row on
23 this end. The two alternates will sit in either one
24 of those seats throughout the trial..

25 Now, folks, if you're like every other jury

1 I've ever had, I'm coming up on 19 years on the
2 bench, so if you're like every other jury I've ever
3 had, some of you are going to develop a favorite
4 chair. If you go to my church, you're going to know
5 where I sit. I'm not casting stones. I'm just
6 saying some people develop a favorite chair.

7 We did have an incident in the old building
8 where a lady broke her ankle. I don't want that
9 happening to any of you. And jury boxes are
10 typically built to be pretty tight. So what I'm
11 going to ask you to do is this, file all the way
12 down when you come in. If you have a favorite
13 chair, step to the side out here, space yourselves
14 accordingly and ask your fellow jurors if you can
15 slide in, all right.

16 I'm going to tell you a lot of things during
17 the course of the trial that may sound awfully
18 silly, but I learned a long time ago if I say these
19 silly little things, we don't have problems and
20 everything runs a whole lot smoother, so that's what
21 we're going to do.

22 Now, I need to send you back into the jury room
23 for a few moments. Again, I don't know what they
24 explained to you upstairs, but in criminal court,
25 the cases are called by the Solicitor's office. In

1 civil court, the judges call the cases, but in
2 criminal court, the Solicitor's office calls the
3 cases in South Carolina. And what that means is
4 that I know absolutely nothing about this case. I'm
5 not supposed to. I'm supposed to be just like you,
6 fair and impartial, neutral and detached, all right.

7 So they don't hide anything from me. I'm not
8 suggesting they try to hide things from me and there
9 are matters that we do discuss related to
10 administrative things, but in every case, there are
11 always pretrial issues that the judge has to address
12 before the jury can get started with its role in the
13 case. And I have no idea if they have one or two or
14 ten, so I've got to talk to them and find out what
15 pretrial issues we may have to address and that will
16 give me an idea as to what to tell you about when to
17 come back.

18 So I'm going to send you back in the jury room
19 in a few moments after I give you a couple
20 instructions and then as soon as I find out from
21 them, I'll bring you back in and either let you go
22 to lunch and bring you back this afternoon or let
23 you go for the day and bring you back in the
24 morning, all right.

25 Don't discuss this case in any way at all,

1 don't talk about the people involved in it, don't
2 talk about the type of case it's alleged to be,
3 don't discuss anything about this case during this
4 break.

5 Now, that's a very hard instruction to follow.
6 You're going to have to follow that same instruction
7 throughout the trial until the very end. I know
8 that you 14 folks may feel you have little in common
9 except you all got picked on this case and you all
10 live in Lexington County, so the logical thing
11 you're going to want to talk about when you go back
12 there is what just happened in here or what somebody
13 said or what somebody looked like or whatever. You
14 cannot discuss anything related to this case, the
15 type of case, anything at all.

16 I have to give you an instruction about cell
17 phones. Did they do that upstairs? They basically
18 told you don't be using your cell phones?

19 All right. I will read to you specifically
20 what the Chief Justice tells us we must tell you
21 when you come back before I let you go.

22 If you'll follow the bailiff -- Mr. Derrick, if
23 you'll take them back and show them the jury room --
24 I'll get to you as quickly as I can. Thank you.

25 (The jury retires to the jury room.)

1 **THE COURT:** Ladies and gentlemen of the jury,
2 if I do not see you again, I want to say thank you
3 very much for your service. Hopefully, somebody's
4 already done that, but I know you have other places
5 to be and other things to do and all I can promise
6 any jury is that I'll do everything in my power not
7 to waste your time.

8 I told you you'd be here an hour, I think we
9 almost hit it on the nail -- nail on the head. So
10 you're free to go for the day. Call tonight after
11 6:00 and follow the instructions. Thank you.

12 (The remaining jury panel was excused.)

13 **THE COURT:** What pretrial issues do we have?

14 **MS. PATTERSON:** Your Honor, we will need a
15 Jackson v. Denno hearing. The defendant did give a
16 statement to Investigator Hall.

17 **THE COURT:** Okay. Any other witnesses needed
18 other than Investigator Hall?

19 **MS. PATTERSON:** No, sir, Your Honor.

20 **THE COURT:** All right. What else?

21 **MS. PATTERSON:** I would like to bring to the
22 Court's attention that this case -- Mr. Gramling had
23 Lexington County charges. He also had Richland
24 County charges that followed our charges -- has,
25 they're still pending.

1 In preparing our witnesses, it's the same
2 victim, same occurrences that just kept continuing,
3 so he was ultimately arrested in Richland County as
4 well. There was also a bond violation hearing over
5 there. He just finished doing six months for that.

6 We have prepared our witnesses not to go in
7 details about the sex acts that happened in Richland
8 County. However, there were some other things that
9 followed up his actions. He kept contacting the
10 victim after the arrest in Lexington County that we
11 do think we should be allowed to bring up some of
12 those instances, Your Honor. We're just not
13 bringing up the sex acts, the fact that he went to
14 jail in Richland County for the bond revocation
15 violations, we're not going to bring that up.

16 But I would like to ask the Court for
17 permission to bring up the other actions of the
18 defendant following his arrest in Lexington County
19 that we think are very pertinent under res gestae
20 just to tell our complete story of his motive, the
21 relationship he had with the victim and things of
22 that nature.

23 We would also like to make an oral motion, Your
24 Honor, that evidence of false allegations from our
25 victim not be allowed by the defendant. In the

1 course of all this, our victim ultimately went to a
2 residential facility where she did obtain
3 counseling. In the course of that counseling, she
4 did bring up that she had dreams of being raped by a
5 group of males. This was never confirmed to be true
6 or false, Your Honor. It was a dream. She said she
7 -- she did later say that it did happen when she was
8 in the sixth grade.

9 It's just our position, Your Honor, that is
10 irrelevant to our case. It should not be brought
11 up. We're still under the impression that that was
12 just a dream, that was just something that she had
13 going on in her mind as a result of other things
14 that was going on in her life.

15 There were also, Your Honor, in the Richland
16 hearing, it was allegations that our victim stated
17 that her stepfather had molested her, had raped her,
18 that was brought up in Richland County. And we
19 would just ask that that be excluded as well, Your
20 Honor. That's all the State has, Your Honor.

21 **THE COURT:** All right. Mr. Li, what's your
22 position?

23 **MR. LI:** Your Honor, with respect to the
24 State's motion to be able to get into detail about
25 any proof of further contact after the alleged

1 incidents, the defense has no problem with that,
2 Your Honor. We have no objections to that. We
3 agree with the Solicitor that they should not be
4 able to talk about his six months incarceration nor
5 the alleged sex acts that happened in Richland
6 County.

7 In regards to her two requests, the State's two
8 requests to exclude the testimony or any testimony
9 as to the gang rape and the allegations against the
10 stepfather, we'd strongly object to that, Your
11 Honor. The crux of our case is based on her
12 credibility.

13 Any question that I ask her about the alleged
14 gang rape, we'll have documentations, Your Honor, of
15 her allegedly stating it.. I will be as discrete as
16 possible and I will not go into any detail of that
17 because she said it was a dream at first and then
18 she told counselors that it had happened. And
19 there's testimony as -- there's evidence of the
20 mother's -- there's documented evidence of the
21 mother's belief as to the fact that this never
22 happened as well, Your Honor. Her credibility is
23 the crux of our case.

24 The alleged allegation -- the allegations
25 against the stepfather of sexually molesting her,

1 not only was that just given in the Richland County
2 Court during a bond setting, that was given to
3 multiple officers, Your Honor, multiple Lexington
4 County Sheriff's Department Deputies, so -- and I
5 will be asking to get into details on those
6 statements, Your Honor, because the credibility
7 issue is based on her statement, the details of her
8 statement, the way it's written and the similarity
9 of those statements to the statements that she's
10 written against Oscar.

11 So the crux of our case is based on her
12 credibility, Your Honor. I don't see any reason why
13 we should be precluded from talking about the gang
14 rape or the sexual allegations against her
15 stepfather.

16 With the gang rape, I understand I will use as
17 much discretion as possible to not go into any of
18 the details because simply, Your Honor, there are no
19 details.

20 **THE COURT:** Is it the State's position that
21 these other things did happen or did not happen?

22 **MS. PATTERSON:** Did not happen, Your Honor.

23 **THE COURT:** So the statute, the shield -- the
24 rape shield statute is not in play?

25 **MS. PATTERSON:** No, sir, Your Honor. State v.

1 Boiter sets out a three part test. It does put the
2 burden on the defense to prove these allegations are
3 false. And also --

4 **THE COURT:** Well, I thought you just told me
5 that they were false or that one of them --

6 **MS. PATTERSON:** One of them we think is just an
7 illusion, nothing was ever reported. She said it
8 came to her in a dream at first. She was under
9 extreme stress. She was in an inpatient facility
10 seeking mental treatment. So I don't even -- I
11 mean, I'm just thinking that's a dream, that's an
12 illusion. I don't know.

13 Too remote, it happened when she was -- she
14 said it came to her when she was in the sixth grade,
15 so I'm thinking that's too remote. She had turned
16 15 at the time when she disclosed this.

17 **THE COURT:** So who did she report this dream
18 to?

19 **MS. PATTERSON:** One of her counselors when she
20 was in inpatient treatment at Springbrook Facility
21 in Greenwood, South Carolina.

22 **THE COURT:** After this incident?

23 **MS. PATTERSON:** Yes, sir, Your Honor.

24 **THE COURT:** When is it that the claim related
25 to her stepfather would have occurred?

1 **MS. PATTERSON:** It came to light during the
2 defendant's bond violation hearing in Richland
3 County.

4 **THE COURT:** When did she say that her step --
5 when did she say that the incident with her
6 stepfather occurred?

7 **MS. PATTERSON:** The defendant initially
8 reported -- he reported it that this is why he had
9 continued communication with her because she was
10 being raped at home. He stated that it happened the
11 weekend of November 14th, 2009, and this would have
12 been after our charges in Richland, Your Honor.

13 **THE COURT:** What did she say?

14 **MS. PATTERSON:** When the officer followed up on
15 it, Your Honor, she refused to talk to him about it
16 at that time.

17 **THE COURT:** So how would it come in, through
18 who?

19 **MR. LI:** I thought my witnesses -- I would use
20 the evidence just to impeach. And to answer your
21 question, in the statement, she alleges that the
22 alleged incident happened May of '09.

23 **THE COURT:** Is there any physical evidence in
24 this case?

25 **MR. LI:** That allegation?

1 **THE COURT:** Any physical evidence about her
2 from a doctor or medical provider that they did an
3 examination and that there was evidence of sexual
4 activity or sexual abuse or whatever.

5 **MS. PATTERSON:** No, sir.

6 **THE COURT:** Did they ever do a sexual protocol
7 kit?

8 **MS. PATTERSON:** No, sir. Are you talking about
9 the allegation that he --

10 **THE COURT:** Any time.

11 **MS. PATTERSON:** Yes, sir. In Richland County
12 on those charges, they did take her to Lexington
13 Medical Center and they did a rape kit with regards
14 to that allegation.

15 **THE COURT:** Is that coming in this trial?

16 **MS. PATTERSON:** No, sir, Your Honor.

17 **THE COURT:** Any of these statements written of
18 the victim?

19 **MS. PATTERSON:** Yes.

20 **THE COURT:** Which one?

21 **MS. PATTERSON:** Well, I mean, I have the
22 medical reports that she gave.

23 **THE COURT:** No. I'm sorry. I'm jumping around
24 on you. Has the victim given any written statements
25 that you all are trying to keep out?

1 **MS. PATTERSON:** She did -- she did talk to
2 Detective Chandler this past May and she gave a
3 statement saying that it did happen and then she did
4 later --

5 **THE COURT:** What happened?

6 **MS. PATTERSON:** That her stepfather -- she said
7 May of '09, her stepfather touched her right breast
8 and then just walked out the room and she gave that
9 statement June 7th. Then she gave another
10 statement, and it's not dated, Your Honor, that she
11 only accused her stepfather because she didn't want
12 to come home because she wasn't happy.

13 **THE COURT:** All right. I will be happy to
14 conduct any type of in camera hearings that you all
15 deem necessary. Based on what you're telling me
16 now, I'm not going to be able to exclude either one
17 of those in limine. If I need to have an in camera
18 hearing so I have a better understanding of it, I'd
19 be happy to conduct that.

20 As far as a Denno hearing, when do y'all want
21 to do that?

22 **MS. PATTERSON:** Can I first go back to the case
23 about the dream, Your Honor? Under Boiter, it is
24 three prongs, Your Honor. The first one is that we
25 must find that the allegation was in fact false, but

1 after that, if it is determined to be false, if the
2 report was too remote.

3 **THE COURT:** Do you have the case?

4 **MS. PATTERSON:** I don't, Your Honor. I can get
5 somebody to print it out.

6 **THE COURT:** Tell me the name of it.

7 **MS. PATTERSON:** It's State v. Boiter,
8 B-o-i-t-e-r, 396 S.E.2d 364.

9 **THE COURT:** If you want me to conduct this
10 hearing, when do you want to do it?

11 **MR. LI:** This afternoon is fine, Your Honor. I
12 will need a copy of this case. I will need some
13 time to read it, maybe about 30 minutes.

14 **THE COURT:** It's a very short case.

15 **MR. LI:** Okay. Might take me about ten
16 minutes.

17 **MS. PATTERSON:** We can go ahead and do the
18 Jackson v. Denno. Detective Hall is here.

19 **THE COURT:** How long will it take me to do the
20 in camera hearing on the issue of this Boiter case?

21 **MR. LI:** I'm ready to defend it now if you'll
22 just give me the three prongs.

23 **THE COURT:** Well, the first thing has to happen
24 is the Court has to determine if the allegation is
25 false.

1 MR. LI: Okay.

2 **THE COURT:** Which puts the Court in a really
3 awkward position. The Court doesn't usually make
4 determinations about whether something is true or
5 false. That's the threshold issue.

6 If the Court then determines that it's false,
7 you go to the next prong. And the next prong -- the
8 next thing deals with remoteness. And then the
9 factual similarity between the prior allegation and
10 the present allegation is to determine relevancy.

11 And then the next sentence in that paragraph
12 is, This holding is consistent with the well-settled
13 rule that admission of proffered testimony is
14 largely discretionary with the trial court and its
15 rulings will not be disturbed on appeal unless an
16 abuse of discretion is shown.

17 And that record, the previous allegation or
18 accusation was not investigated. The defense
19 presented no evidence to establish its falsity. The
20 trial court determined that the bare accusation of
21 an eight-year-old child made nine years earlier was
22 too remote to be a sufficient probative value.

23 So the remoteness apparently that they were
24 looking at was when it was reported.

25 Is the young lady here?

1 **MS. PATTERSON:** Yes, sir, Your Honor.

2 **THE COURT:** Would she be the only witness we
3 need from your side?

4 **MS. PATTERSON:** It's the defense burden. I
5 mean, I wasn't going to put her up for this motion.

6 **THE COURT:** I got a problem with that, too. I
7 don't know that it is a defense burden. I read that
8 language in there, but what you're wanting to do is
9 put her on the stand and then they want to question
10 her about things she said in the past that were
11 untrue.

12 This section of the opinion says, Evidence of
13 prior false accusations by a complainant may be
14 probative on the issue of credibility.

15 **MS. PATTERSON:** And, Your Honor, even if she
16 was to, you know, testify or you were able to make a
17 determination that they're false, I see no factual
18 similarities between those two instances and this
19 instance, Your Honor.

20 **THE COURT:** Well, see, number one, I don't even
21 know what this instance is. Nobody's told me. I
22 don't know. Number two, I don't know what the prior
23 instance was. Y'all are asking me to rule in the
24 dark, that's why I told you I'd be happy to have an
25 in camera hearing. I'd be happy to conduct it. I

1 just need to know how much time to set aside.

2 I'm going to give y'all five minutes to talk,
3 okay, both sides.

4 (Brief Recess.)

5 **THE COURT:** Bring the jury in.

6 (The jury returns to the courtroom.)

7 **THE COURT:** Ladies and gentlemen, that took a
8 little bit longer than I thought it would. Here's
9 what's going to happen. I'm going to give you some
10 instructions that I have to give you and after I
11 finish that, I'm going to let you go for the day.

12 I'm going to give you some ideas about how I
13 think your week is likely to go. I'm going to put
14 some caveats on that, though, but I'll give you my
15 best guess as to how things are likely to go. And
16 I'll have you call in tonight after 6:00 and find
17 out what time we need you to come back tomorrow.

18 Okay. When you take your oath as trial jurors,
19 you're going to be promising us that you are going
20 to decide the case based on the evidence and the law
21 and those things are going to come to you here in
22 the courtroom. So I'm going to give you some
23 instructions that relate to being able to honor that
24 -- that we're going to decide this case based on the
25 evidence and the law, you are. And I'll get you out

1 of here in about ten minutes.

2 Folks, I'll start with the one that I've
3 already told you. You are not to discuss this case
4 in any way among yourselves until I tell you to,
5 don't talk about the people, the subject matter of
6 the case, anything at all related to the case.

7 When you leave here, if anybody attempts -- you
8 can't discuss the case with anybody else until the
9 week is over and you've been discharged from this
10 jury and any other jury you might possibly be seated
11 on. If anybody should attempt to contact you and
12 discuss the case with you, you have to report that
13 to me so that I can deal with it.

14 Now, it's okay for you to tell a spouse or a
15 friend, for example, that you're on a jury, but you
16 cannot tell them anything about what the case is
17 alleged to be about or who's in it. You cannot
18 discuss the case in any way with anybody else until
19 the week is over.

20 Now, I never know if there's going to be media
21 coverage of a trial unless they ask to set up
22 television cameras in a courtroom. I don't know of
23 any media coverage of this trial. I don't expect
24 any media coverage of this trial, but I have to give
25 this instruction in every case. Do not let

1 yourselves be exposed to any media coverage of the
2 trial. If you are inadvertently exposed to any
3 media coverage, get away from it and report to me at
4 the first opportunity what you may have seen, heard
5 or read through the media.

6 Do not do any independent investigation. As I
7 explained to you, you're going to decide this case
8 based on the evidence and the law and those things
9 are going to come to you here in this courtroom.

10 Now, we're going to ask you to use your common
11 sense, but it's completely inappropriate for you to
12 do things like look up law. My job is to decide
13 what law applies to the case and tell you that law
14 at the end of the trial. It's inappropriate for you
15 to go try to do any research on anything related to
16 this incident or any similar incident.

17 I often tell juries that if there's a crime
18 scene involved, that is, you know, they're not to go
19 out there and look around. There are provisions for
20 that to be done if they need to be done, but they're
21 all handled by us and arranged by us. So you're not
22 to do any independent investigation of the case.

23 I have had people, for example, go to the
24 library and look up legal definitions. It creates a
25 whole problem. And it's not just a problem for us,

1 it's a problem for the jury because what happens is
2 if anything like that occurs, I've got to stop
3 everything we're doing, I've got to go through a
4 hearing, those hearings often take a full day or
5 more and it just shuts everything down. It's a huge
6 waste of time.

7 And if somebody willfully violates these
8 provisions or actually violates them, you know, I
9 can send that person to prison for six months. So
10 -- it's contempt of court. So don't do any
11 independent investigation.

12 The problem's gotten to be so widespread that
13 the Chief Justice had actually come out with some
14 information that we're supposed to share with you,
15 instructions. And the proliferation of the problems
16 coincided with the proliferation of smartphones.
17 People started using smartphones for the wrong
18 reasons. And a lot of courthouses, I don't even
19 know what we do here, I don't like taking up
20 people's cell phones, I don't want that
21 responsibility, but it varies from courthouse to
22 courthouse and I don't usually interfere with what
23 security does in a particular courthouse.

24 But these are the instructions that you have to
25 follow: You're not to discuss the case with others

1 including other jurors except as directed by the
2 Court. You're not to read or listen to any news
3 reports about the case. You're not to use a
4 computer, a cell phone or any other electronic
5 device with communication capabilities while
6 attending a trial or during deliberations. You may
7 use such devices during lunch breaks, but you cannot
8 use them to obtain or disclose information that's
9 prohibited.

10 You may not use a computer, a cell phone or any
11 other electronic device with communication
12 capabilities or any other method to obtain or
13 disclose information about the case when you're not
14 in court. Information about the case includes, but
15 is not limited to the following things: Information
16 about a party, a witness, an attorney or a court
17 officer, news accounts of the case, information
18 collected through juror research on any topics
19 raised or testimony offered by any witness,
20 information collected through juror research on any
21 other topic the juror might think would be helpful
22 in deciding the case. So that's the way the Chief
23 basically said don't do any independent
24 investigation.

25 I also was told by the bailiff that some of you

1 had questioned about whether you can take notes
2 during the trial. It is fine with me if you take
3 notes. The judges that don't let jurors take notes,
4 the reason they typically give is that they feel
5 that when you start your deliberations, that a juror
6 who has something written down will have an undue
7 amount of deference afforded to them. In other
8 words, other jurors will yield to them because they
9 have something written down.

10 I don't buy that. You folks know what you
11 remember, what you feel strongly about. It does not
12 matter to me one bit whether you take notes or not.
13 It's completely up to you. And if you want to take
14 notes, we'll provide you with the pads and pencils.
15 If you change your mind during the course of the
16 trial and you decide maybe I should take some notes,
17 just ask for it, all right.

18 But if we do allow you to take notes, we have
19 three rules. The first is any time during a break,
20 you have to leave your notes in the courtroom. So
21 just write your name on the pad somewhere so we can
22 identify it and you just turn it facedown during a
23 short break. During long breaks, the bailiffs will
24 take them up, but we never read anybody's notes. We
25 will not read your notes.

1 The second rule is that when you go back to
2 deliberate on the case, you may have your notes in
3 the jury room with you when you do that, but you
4 cannot physically show your notes to another juror.
5 Now, you may look at them and then you may say
6 whatever you like, but you can't say, look, I've got
7 it written right here, okay. You can't show your
8 notes to another juror.

9 And the third rule is that at the end of the
10 trial, the notes have to be destroyed. So you have
11 to give them to the bailiff and we will shred them
12 or tear them into little pieces. If you make notes
13 on something of your own, just realize we're going
14 to tear it up at the end of the trial or we're going
15 to take a black magic marker and obliterate whatever
16 you wrote. So with those three rules, you're
17 welcome to take notes.

18 All right. Here is what I think is likely to
19 happen. I think we're going to spend the rest of
20 the day on pretrial issues. We're going to break
21 for lunch. I know it's well past your lunchtime.
22 It's 15 minutes past ours.

23 We're going to break for the day. I'm going to
24 have you call tonight after 6:00. Depending upon
25 how far along we get -- there were some issues that

1 arose in our discussions that I think were slightly
2 unanticipated and that's nobody's fault. Until you
3 get into the trial, you don't really find out some
4 things. So we're going to try to get everybody
5 here. We're going to try to stay here as long as it
6 takes and get everything done today, but I might not
7 be able to get it all done today so that's why I'm
8 having you call to find out what time to come in
9 rather than just tell you to be here at a certain
10 time.

11 Call that number tonight after 6:00. If you
12 call before 6:00, you're wasting your time. Call
13 after 6:00 and listen for the message, you're on the
14 case of State versus Gramling. That's your name
15 like Grambling State Un -- no, it's not spelled the
16 same, but that's what it sounds like. State versus
17 Gramling, you listen for that part of the message.

18 When you come back, my anticipation is that
19 you'll be brought back some time tomorrow after I've
20 had a chance to go through the pretrial ruling, and
21 when you come back, come directly to the jury room.
22 The bailiff will show you how to report when you
23 come back tomorrow. Don't come into the courtroom,
24 come directly to the jury room.

25 If you have some true emergency that arises

1 that prevents you from being here, please have
2 somebody call the clerk's office and let us know
3 what's going on because if you're not here, we can't
4 go forward and I start sending people to look for
5 you. So if you've got a true emergency that arises,
6 please let the clerk know.

7 Any questions before I let you go?

8 (There was no response.)

9 **THE COURT:** My best guess is that this case
10 will take most of the week. My best guess is you'll
11 probably get it, now this is a guess, I told y'all I
12 don't know anything about this case, I think you'll
13 probably get it around Thursday, okay.

14 I don't envision anything that would take us
15 beyond a week, don't envision anything that would
16 take us into the weekend. In all my years on the
17 bench, I've never required a jury to come in on a
18 weekend. We have gone into other weeks, but that's
19 rare, too, okay.

20 All right, folks, if you'll follow the bailiff,
21 I need you to call tonight after 6:00. Make sure
22 you've got the telephone number.

23 (The jury was excused for the day.)

24 **THE COURT:** Mr. Gramling, I need you to give me
25 your attention just a moment. I have to make

1 decisions in every trial as to whether I take people
2 into custody or not, that varies from case to case
3 and sometimes I take people into custody and
4 sometimes I don't. I will tell you generally I do,
5 but I don't always, but the jury hasn't been sworn
6 and I'm not going to take you into custody now.

7 But I do have to explain to you, make sure you
8 know this, it's common sense, but I have to say it
9 on the record, all right. The trial has started.
10 We're going to continue with the trial whether
11 you're here or not, so make absolutely certain that
12 you're here whenever I direct that we start back or
13 if your lawyers say for you to be here sooner, you
14 be here when the lawyers tell you to be here as long
15 as it's sooner than what I said, but no later than
16 what I say.

17 And if you're not here, we can continue with
18 your trial. If you were to be found guilty, I would
19 then sentence you. Your sentence would be sealed.
20 A bench warrant would be issued for your arrest as
21 soon as you didn't show up. And whenever you did
22 appear, you would go before a judge and that
23 sentence would be unsealed and read to you. Do you
24 understand all that?

25 **DEFENDANT:** Yes, sir.

1 **THE COURT:** Now, the second thing I want to say
2 is something I also say in every case. Folks,
3 whenever y'all leave here for this lunch break,
4 we're going to break in just a minute, be real
5 careful that you don't have any contact with the
6 jurors.

7 The jurors do go back into a secured area, but
8 they funnel back around into those same common areas
9 that you're going to be in, so they'll be using the
10 same elevators, they'll be using the same entrances
11 and exits. If they go to eat lunch, they may choose
12 the same restaurant that you choose, so just be real
13 careful that you don't have contact with the jurors
14 and you don't say anything about the case or anybody
15 in it that might be overheard by a juror. Let's
16 start back at 2:30, okay.

17 **MS. PATTERSON:** Your Honor, may I say
18 something, please?

19 **THE COURT:** Sure.

20 **MS. PATTERSON:** First, in the interest of time,
21 I will withdraw part of my motion with respect to
22 the allegations against the stepfather so we won't
23 have to address that, but I do still hold the motion
24 with regard to the gang rape allegation.

25 **THE COURT:** All right.

1 **MR. LI:** Your Honor, I'm doing everything I can
2 to get ahold of my last person needed for that
3 hearing.

4 **THE COURT:** That's fine. I'll see y'all in an
5 hour and ten minutes. Thank you.

6 (Whereupon, there was a luncheon recess.)

7 **THE COURT:** All right. Are you ready on the
8 Denno hearing?

9 **MS. PATTERSON:** We are, Your Honor.

10 **THE COURT:** Call your witness.

11 **MS. COOPER:** State calls Officer Terry hall.

12 TERRY HALL,

13 having been duly sworn, testified as follows:

14 **THE CLERK:** Have a seat, please, sir. Once
15 you're seated, state your full name, spelling your
16 last.

17 **THE WITNESS:** My name is Terry Hall, last
18 name's spelled H-a-l-l.

19 DIRECT EXAMINATION

20 BY MS. COOPER:

21 **Q** Thank you, Officer Hall. For the purposes of
22 this hearing, I'm just going to ask you questions as
23 it pertains to the statement that you took. Did you
24 take a statement from the defendant in this case?

25 **A** Yes, ma'am, I did.

1 Q And on what date did you take that statement?

2 A That was on May the 16th, 2009.

3 Q 2009. And do you advise the defendant of his
4 Miranda rights prior to taking the statement?

5 A Yes, ma'am, I did.

6 Q And did you use anything to assist you in
7 advising the defendant of his rights?

8 A On a suspect's statements, there's a form that
9 has the Miranda rights already printed on there, so
10 we went over that and he -- individually one at a
11 time.

12 Q Okay. And did you bring that form with you
13 today?

14 A Yes, ma'am, I did.

15 MS. COOPER: Your Honor, may I approach the
16 witness?

17 THE COURT: Sure.

18 BY MS. COOPER:

19 Q I'm going to hand you statements provided, it
20 hasn't been marked, and is that the form -- well, if
21 you could just review that and tell me what it is.

22 A This is the suspect statement form that I used
23 to interview Oscar Gramling on the day of May the
24 16th, 2009.

25 Q Okay. And is that the original?

1 **A** This is the original.

2 **MS. COOPER:** At this time, Your Honor, we'd
3 like to offer this statement and Miranda form into
4 evidence as a court's exhibit.

5 **THE COURT:** Any objection?

6 **MR. LI:** No objection, Your Honor.

7 **THE COURT:** Mark it as a court's exhibit. You
8 can either mark it for I.D. or you can mark it as a
9 court's exhibit.

10 **MS. COOPER:** State's exhibit for I.D. 1.

11 (State's Exhibit Number 1, statement and
12 Miranda form, marked for identification purposes.)

13 BY MS. COOPER:

14 **Q** And, Officer Hall, where were you when you took
15 that statement from the defendant?

16 **A** At the sheriff's department interview room.

17 **Q** And was the defendant in custody at this time?

18 **A** Yes, ma'am, he was in custody..

19 **Q** Was he in handcuffs?

20 **A** He was in handcuffs. We use a transport belt
21 and I released one of his hands so he could write or
22 make his initials on the form.

23 **Q** And who was present when you took the
24 defendant's statement?

25 **A** Myself and the subject, Oscar Gramling.

1 Q Was it audio taped or video taped?

2 A No, ma'am, no video, no audio.

3 Q And so did you write the statement?

4 A Yes, ma'am. After I advised Mr. Gramling of
5 his rights, he waived his right to counsel and he
6 said he was willing to answer questions, but he did
7 not want to write his statement. He requested that
8 I write the statement for him, so we did a Q and A,
9 questions and answer, type statement.

10 Q Okay. And you say when you read him his
11 rights, could you read into the court's record
12 specifically what rights you read to him as they
13 were read to him that day?

14 A Yes, ma'am. Standard Miranda rights, the first
15 right, I have the right to remain silent. Anything
16 I say can and will be used against me in a court of
17 law. I have the right to talk to a lawyer for
18 advice before I asked -- before asked any questions
19 or to have him or her present with me during
20 questioning.

21 If I have no money for lawyer's fees, the court
22 will appoint one to represent me without cost to me
23 if I wish. I have decided to answer questions now
24 without a lawyer present. I will still have the
25 right to stop answering questions at any time. I

1 also have the right to stop answering questions at
2 any time until I talk with a lawyer.

3 And then the general statement at the bottom
4 says, I have read the statement of my rights. I
5 understand what my rights are. And then, I will
6 make the following statement.

7 **Q** And then did the defendant make any notations
8 on that form?

9 **A** Yes, ma'am. At the end of each right, there's
10 a sentence for each one. There's a section that's
11 underlined that the subject will put his initials to
12 that knowing -- acknowledging that he does
13 understand his rights. I also ask for a verbal yes
14 or no if he understands that right. So I ask him
15 each time, do you understand that right I just read
16 you?

17 **Q** And he indicated in the positive as such?

18 **A** Yes, ma'am, with his initials.

19 **Q** And did he fill out that -- his initials
20 himself?

21 **A** Yes, ma'am.

22 **Q** So what portion of the form did you fill out?

23 **A** The statement form at the bottom where I just
24 asked him questions. Normally that's an opportunity
25 given to the suspect to write in their own words at

1 that time, but the subject did not want to write a
2 statement with his handwriting, he asked that I
3 write the statement for him.

4 Q Okay. After you gave Mr. Gramling his -- read
5 him his Miranda rights, did he appear to understand
6 the rights as you read to him?

7 A Yes, ma'am, because before I started, I asked
8 him -- on this form, it's self-explanatory. It's
9 got some standard questions, today's date, place and
10 time started in the interview room, the subject's
11 name, how old he is, his date of birth, his address.
12 And there's a section in there that I paid
13 particular attention to. It says, I've completed
14 what grade level in school. And he also initials by
15 that what grade level he finished at school. He
16 indicated he went to high school and four years of
17 college, 16 years total of schooling.

18 Q And is that documented on the form?

19 A Yes, ma'am, with his initials, also.

20 Q Okay. So the defendant agreed to talk to you
21 at some point?

22 A Yes, ma'am, he did.

23 Q And did the defendant ask for an attorney at
24 any time?

25 A No, ma'am.

1 Q Did you threaten the defendant at any time?

2 A No, ma'am.

3 Q Did you attempt to coerce the defendant in any
4 way?

5 A No, ma'am.

6 Q Did you make any promises or rewards in
7 exchange for the defendant to speak to you?

8 A No, ma'am.

9 Q And to the best of your knowledge, Officer, was
10 the defendant's decision to speak with you freely
11 and voluntarily made?

12 A Yes, ma'am, it was.

13 Q Did he, in fact, answer your questions?

14 A In a roundabout way. He was kind of -- it's
15 almost like trying to get him to get the words out.
16 I just wrote down exactly what he said.

17 Q Okay. So is your testimony here that
18 everything on that statement is verbatim what the
19 defendant told you?

20 A Yes, ma'am, it is.

21 Q And did the defendant, in fact, answer the
22 questions that you asked him?

23 A Yes, ma'am, he did.

24 Q And did he ever refuse to answer any questions
25 or asked to stop the interview process?

1 **A** Toward the end, he started asking about he was
2 supposed to attend his son's birthday party that
3 evening. And, you know, he didn't -- he was kind of
4 -- wanted to be at his son's birthday party. And
5 after we ended the interview room -- the interview
6 session, I allowed him to use the telephone to call
7 his son.

8 **Q** Okay. So did the questioning stop essentially
9 when the defendant refused to answer any further
10 questions?

11 **A** Yes, ma'am. That's all he wanted after -- I
12 forget how many questions I asked him, but the last
13 question I asked him, you know, if he was remorseful
14 for his actions, and he said, you know, "that he was
15 because it not only affected him, but it affected
16 others. And, at that point, the questioning
17 stopped.

18 **MS. COOPER:** Beg the Court's indulgence, Your
19 Honor.

20 **THE COURT:** Yes, ma'am.

21 (Pause.)

22 **MS. COOPER:** No further questions.

23 Please answer any questions that Mr. Li has for
24 you also.

25 *****

CROSS-EXAMINATION

BY MR. LI:

Q Good afternoon, Investigator Hall.

A Afternoon, sir.

Q Now, when the Solicitor asked you did you coerce the defendant in any way, how long -- first of all, how long had he been in custody by the time you got to him?

A He was arrested around 11 o'clock and was booked into the jail at approximately, I think, 12:45, somewhere in that timeframe. And I didn't -- I was off duty that day and got word of the arrest, came in off duty and met with Mr. Gramling and we started the interview at 3:52 p.m.

Q Okay. Did you ever tell him that -- Mr. Gramling that you would help him with his bond process if he gave a statement?

A No, sir. What I told him was this was his time to get the truth out there and put down his side of the story.

Q Okay. So you told him that was his time -- did you make it seem like that would help him at the bond setting?

A I told him the truth would always help him.

Q Okay. Did you, in fact, tell him that you

1 would talk to the judge for him?

2 **A** I don't remember if I said that or not, sir.

3 **Q** Do you remember telling him that you would help
4 him get the earliest bond setting?

5 **A** I told him as soon as we completed the booking
6 process, that he would probably be going to the
7 first bond hearing if it was available which would
8 be the next morning.

9 **Q** This was a Saturday, correct?

10 **A** This was a Saturday afternoon, yes, sir.

11 **Q** So your testimony in this hearing is you do not
12 remember if you told him that you would help him
13 with the bond setting process if he gave a
14 statement?

15 **A** I don't remember -- I don't remember saying
16 that, sir. It's possible I may have, but I don't
17 recall saying that.

18 **Q** Okay. And, again, I know you've already said
19 this, but your testimony is that the words on the
20 statement were written as verbatim?

21 **A** Yes, sir.

22 **MR. LI:** No further questions.

23 **THE COURT:** Redirect.

24 **MS. COOPER:** None, Your Honor.

25 **THE COURT:** Thank you, sir. You may step down.

1 Any other evidence on the Denno hearing from
2 the State?

3 MS. COOPER: Nothing from the State, Your
4 Honor.

5 THE COURT: Does the defense have any evidence
6 to offer on the Denno hearing?

7 MR. LI: The defense calls Oscar Gramling.

8 THE COURT: Come around, please.

9 OSCAR GRAMLING, III,
10 having been duly sworn, testified as follows:

11 THE CLERK: Once you're seated, state your full
12 name, spelling your last.

13 THE WITNESS: My name is Oscar Gramling,
14 G-r-a-m-l-i-n-g.

15 DIRECT EXAMINATION

16 BY MR. LI:

17 Q Mr. Gramling, on May 16th when you were taken
18 into custody, approximately how long did you have to
19 wait before Investigator Hall came to speak with
20 you?

21 A Approximately four hours.

22 Q At that point was there a bond setting -- a
23 bond hearing already set to your knowledge?

24 A No, sir.

25 Q When Investigator Hall came to talk to you, did

1 he inform you that you had the right to an attorney?

2 A He did.

3 Q Did you, at any point, tell Investigator Hall
4 that you did not want to give a statement?

5 A No, I did not.

6 Q Did Investigator Hall promise to talk to the
7 judge for you in your bond setting?

8 A He did.

9 Q Tell me what you can recall of him saying.

10 A He said that the more helpful I am in this, the
11 more that they would help me with the bond when I go
12 in front of the judge.

13 Q Okay. And then you gave your statement after
14 he told you this?

15 A I did.

16 MR. LI: No further questions, Your Honor.

17 THE COURT: Any questions of the witness?

18 MS. COOPER: No questions from the State, Your
19 Honor.

20 THE COURT: Thank you. You may step down, sir.
21 Any other witnesses from the defense on Denno?

22 MR. LI: No, Your Honor.

23 THE COURT: Any reply?

24 MS. COOPER: No, Your Honor.

25 THE COURT: Any argument?

1 **MR. LI:** No, Your Honor.

2 **THE COURT:** All right. Based upon what's been
3 presented, the Court finds that the State has met
4 its requisite burden of proof and has established
5 that the purported statement of the defendant, which
6 is marked for identification purposes as State's
7 Exhibit 1, should be admitted into evidence.

8 The Court finds specifically that the State has
9 met at least the burden of proving by the greater
10 weight or preponderance of the evidence and clear
11 and convincing evidence that at the time that the
12 statement was given and at all relevant times
13 leading up to it, that the defendant was acting of
14 his own free will.

15 He was properly advised of his rights under
16 Miranda and the United States Constitution and the
17 Constitution of South Carolina. He was specifically
18 advised prior to any incustodial interrogation that
19 he had the right to remain silent, that anything he
20 said could and would be used against him in court,
21 that he had the right to talk to an attorney for
22 advice and prior to any questions being asked of him
23 and to have an attorney present during questioning,
24 that if he could not afford an attorney, one would
25 be appointed for him and that he could decide to

1 stop answering questions at any time, he can decide
2 to have an attorney present at any time.

3 And the Court finds that the statement that's
4 been marked in the record as State's Exhibit Number
5 1 was a product of the defendant's own free will,
6 was not the product of any type of improper force,
7 threats, duress, coercion, undue influence of any
8 kind.

9 With regard to any promises that were made,
10 there's nothing untoward about the promises that are
11 claimed to have been made by the State -- excuse me
12 -- by the defendant related to the bond. There's no
13 evidence that the Court has before it that anything
14 that the defendant is claiming was not actually
15 followed through with by the State, but, moreover,
16 the Court finds that the State has its requisite
17 burden of proof in establishing that there were no
18 improper promises or the hope of reward being
19 utilized improperly to obtain the statement.

20 The statement will be admitted to have the jury
21 consider if a proper foundation is established
22 during the trial. And, of course, the jury will
23 have to make a determination as to whether, if this
24 is admitted, as to whether the State has met all the
25 requirements of proof beyond a reasonable doubt.

1 All right. Now, I need to do an in camera
2 hearing on what issue?

3 MS. PATTERSON: The State has made the motion
4 that the prior false allegation involving the gang
5 rape be excluded by the defense and not subject to
6 cross-examination by the defense.

7 THE COURT: Do you have the witness here?

8 MR. LI: No, Your Honor. We've been unable to
9 get in touch with one of our witnesses. I'm
10 comfortable with going forward with just the two
11 that are here if you are.

12 MS. PATTERSON: We have provided Ms. H and
13 her mother.

14 THE COURT: All right. Call your witness.

15 MR. LI: The State would call Ms. C

16 H -- the defense will call C H

17 THE COURT: Come up to the clerk, please,
18 ma'am.

19 C H ,
20 having been duly sworn, testified as follows:

21 THE CLERK: Have a seat, please, ma'am. Once
22 you're seated, state your full name, spelling your
23 last.

24 THE WITNESS: C H , H

25 *****

1 DIRECT EXAMINATION

2 BY MR. LI:

3 Q Good afternoon, Ms. H. You were committed
4 to Brook Springs Treatment Center, correct?

5 A Springbrook.

6 Q Springbrook's Treatment Center in Travelers
7 Rest?

8 A I was.

9 Q While you were at Springbrook, did you ever
10 tell a counselor there that you had been gang raped
11 by --

12 A I did.

13 Q Did you later retract that?

14 A No, I never recanted that. It just never
15 pursued into an investigation.

16 Q Okay. And did you tell anybody else that?

17 A I told the therapist there and I told my
18 counselor, Ms. Claire Jones. We just didn't go into
19 conversation about that.20 Q Okay. Did anybody -- to your knowledge, did
21 anybody, the therapist or did your parents, did
22 anybody look into it any further?

23 A No.

24 Q And in the accusation of the gang rape, it
25 allegedly took place while you were in the --

1 A Sixth grade.

2 Q Sixth grade?

3 A Yeah.

4 Q And neither the therapist or the doctor nor
5 your parents took any steps to investigate this?

6 A No, because I didn't know who it was. My face
7 was covered, so I didn't know who it was.

8 MR. LI: No more questions for Ms. Hunt.

9 THE COURT: Do y'all have any questions of the
10 witness?

11 CROSS-EXAMINATION

12 BY MS. PATTERSON:

13 Q C , were you, in fact, gang raped by ten
14 men?

15 A I was.

16 Q And when did it occur?

17 A I was in sixth grade. I was getting off the
18 bus and ten guys attacked me.

19 Q Did you tell anyone that happened right
20 after --

21 A No, I waited. I, you know, was scared of
22 course. You know, I didn't want to talk about it.

23 Q When was the first time you told someone that
24 had happened?

25 A The first person I told was actually Oscar.

1 And then I then went to Springbrook and I told them
2 there that it had happened and they informed my
3 parents.

4 Q And when did you tell the therapist at
5 Springbrook?

6 A Maybe at the end of December.

7 Q So by the time you told someone other than
8 Oscar, about how long -- what's the time period that
9 had passed?

10 A Three years.

11 Q And when did you tell Ms. Jones?

12 A I told her after I got back from Springbrook.

13 Q Did you ever discuss it with your therapist at
14 Springbrook?

15 A We discussed it. We went into detail, but he
16 informed my parents and we just never investigated
17 it, you know.

18 Q So you hadn't told your parents?

19 A No, they had told her.

20 Q And did you ever talk about it with Ms. Jones?

21 A No. We didn't go into further detail, but she
22 knew about it.

23 Q Was this something that was hard -- why didn't
24 you discuss it with anybody?

25 A It was hard for me. You know, usually anyone,

1 I guess, that's raped especially with that many men
2 on top of you at the same time, who really wants to
3 discuss that and go into, you know, conversation
4 about some -- it's not a normal conversation you
5 have. So I was kind of scared and, you know,
6 ashamed sort of.

7 Q And how did the whole incident make you feel?

8 A At the time I felt worthless, but then I was
9 upset with myself because I didn't say anything and
10 I should have. I'm fine now, but before I was...

11 MS. PATTERSON: Beg the Court's indulgence.

12 THE COURT: Yes, ma'am.

13 (Pause.)

14 MS. PATTERSON: Thank you, Ms. Hunt. No
15 further questions.

16 THE COURT: Do you have anything else?

17 REDIRECT EXAMINATION

18 BY MR. LI:

19 Q You said that you did or you did not go into
20 detail with Ms. Claire Jones?

21 A I did not.

22 Q You did not go into detail with Ms. Jones?

23 A No.

24 MR. LI: Okay. No further questions, Your
25 Honor.

1 **THE COURT:** Anything further of the witness
2 from the State?

3 **MS. PATTERSON:** Nothing from the State.

4 **THE COURT:** How old are you now?

5 **THE WITNESS:** I'm 16.

6 **THE COURT:** And you said you were in the sixth
7 grade?

8 **THE WITNESS:** Yes, I was.

9 **THE COURT:** How old would you have been in the
10 sixth grade roughly?

11 **THE WITNESS:** Thirteen, 12 going on 13.

12 **THE COURT:** What's your date of birth?

13 **THE WITNESS:** /9 .

14 **THE COURT:** Are you going to school now?

15 **THE WITNESS:** I am attending school.

16 **THE COURT:** What grade will you be going in?

17 **THE WITNESS:** Ninth.

18 **THE COURT:** So this past school year were you
19 in the eighth?

20 **THE WITNESS:** Uh-huh, yes.

21 **THE COURT:** The previous school year were you
22 in the seventh?

23 **THE WITNESS:** I was.

24 **THE COURT:** And immediately before that, the
25 sixth?

1 **THE WITNESS:** Yes.

2 **THE COURT:** So you haven't had to repeat any
3 grades?

4 **THE WITNESS:** I did repeat two grades.

5 **THE COURT:** Since the sixth or not?

6 **THE WITNESS:** Before the sixth.

7 **THE COURT:** You only had one year in the sixth,
8 one year in the seventh, one year in the eighth?

9 **THE WITNESS:** Yes.

10 **THE COURT:** Okay. Do y'all have any questions
11 in light of the Court's questions?

12 **MR. LI:** Not from the defense, Your Honor.

13 **MS. PATTERSON:** Nothing from the State.

14 **THE COURT:** Thank you, Ms. Hunt. You may step
15 down.

16 All right. Any other witnesses?

17 **MR. LI:** Not after that, Your Honor. The
18 defense rests.

19 **THE COURT:** Do y'all have anything?

20 **MS. PATTERSON:** No, sir, Your Honor.

21 **THE COURT:** All right. And what's your motion?

22 **MS. PATTERSON:** My motion is to be able for the
23 State to exclude prior false claims. In speaking
24 with -- well, Ms. H s testimony was that this
25 actually did happen so it would not be a false claim

1 so we're not even going to get past the first prong
2 of State v. Boiter, Your Honor.

3 **THE COURT:** So you're withdrawing your motion?

4 **MS. PATTERSON:** We would still move that under
5 rape shield, that it would be excluded under rape
6 shield now that it's come to our attention that this
7 allegation wasn't false, it did happen, she just
8 delayed in reporting it. It was never -- just
9 delayed in disclosing it. It was never reported,
10 therefore never investigated.

11 **MR. LI:** Judge, the defense is prepared to
12 consent to that, Your Honor.

13 I do have one condition I would ask the Court
14 to consider. In the questioning of the mother,
15 there is sufficient evidence to indicate that she
16 herself doubted the -- Ms. H s story of the gang
17 rape. I have no problem not questioning Ms. H
18 about the gang rape, not going into that on
19 cross-examination, but there is sufficient evidence
20 here that I need -- I would like to talk to Ms.
21 A , the mother, about to show a pattern of her
22 not believing Ms. H and this -- this would be
23 just one example of it.

24 We consent not to go into any detail with
25 cross-examination with Ms. H since we can't prove

1 it wasn't true.

2 **THE COURT:** Hold on a second.

3 (Pause.)

4 **THE COURT:** Well, if the rape shield statute is
5 applicable, section 16-3-659.1, then I don't think
6 the evidence comes in at all.

7 Now, I'll let you all have a few minutes to
8 review the statute and the two subsections.
9 Subsection (2) deals with where the defense proposes
10 to offer the evidence and the requirement of an in
11 camera hearing for that. So, again, I would have to
12 hear what it is that you all are wanting to offer
13 into evidence before I can make any kind of a
14 determination, but I'll let you all look at that
15 since it's just been raised. I mean, I raised it
16 before lunch, but this is the first I've heard of it
17 being raised by the attorneys.

18 We'll be at ease for a few minutes.

19 (Brief Recess.)

20 **THE COURT:** All right. Can y'all tell me where
21 we are?

22 **MR. LI:** Judge, the defense concedes we will no
23 longer ask her about the gang rape or any of the
24 other witness (sic).

25 **THE COURT:** Okay. If there's a change of

1 heart, y'all let me know as soon as you change your
2 mind. To be honest with you, I've gotten kind of
3 confused with all this.

4 **MR. LI:** Well, Judge, I would like to clarify.
5 The concession is for the gang rape incident where
6 she told the counselors at Springbrook about an
7 incident that happened in the sixth grade, that is
8 off the table.

9 **THE COURT:** What about the dream?

10 **MR. LI:** The dream also. I'm not playing word
11 games. All of that is not going to be mentioned.

12 **THE COURT:** My concern earlier as far as -- I'm
13 just going to try to rule on what you all raised.
14 I'm not trying to inject myself into the trial in
15 any way, shape or form. I wanted to give you a
16 chance to look at the statute that was cited to me,
17 but I wasn't sure how all that played in. And when
18 you said that you just wanted to ask the mother
19 about whether she was believing her daughter, you
20 know, we were going to get into all kind of pitting
21 issues and things like that, but I'll go with
22 whatever y'all say. Y'all know the case far better
23 than I. I know absolutely nothing about it
24 basically except what I've heard in the court today.

25 So if there are no other pretrial issues, then

1 I look to see y'all at 9:30 in the morning.

2 MR. LI: Your Honor, there are more pretrial
3 issues.

4 THE COURT: What do you have?

5 MR. LI: Just very quickly, a motion to exclude
6 the use of prejudicial terms. I have a copy of the
7 motion right here. And I have one -- I have two
8 more after that, one of them is just oral.

9 I would ask a ruling from this Court to prevent
10 the State from referring to my client as a predator
11 or any derivation of that word including using the
12 word prey.

13 And I would ask the Solicitor's office, the
14 State, to prevent them from addressing the -- Ms.

15 C. H. as victim and the use of any
16 conjugation or derivation of that word including
17 victimization, been victimized, any derivation of
18 the word victim, Your Honor, or anything that
19 relates to any synonym of the word victim.

20 When referring directly about them, like,
21 obviously they could use the word throughout the
22 trial if not referred to them specifically. And we
23 would ask that same preclusion in any charge to the
24 jury.

25 THE COURT: What's the State's position?

1 **MS. PATTERSON:** Your Honor, I will not refer to
2 the defendant as a predator, but I do think I should
3 be allowed to call C. H. a victim. She is
4 a victim. It's stated within the statute, The
5 victim. I mean, she's the victim. I don't know
6 what else to call her.

7 **THE COURT:** Call her by her name. She's not a
8 victim until he's convicted or till there's a
9 factual determination.

10 Listen, this comes up in almost every trial.
11 We don't make the determination before the trial.
12 And the statute does use language about victim.

13 If somebody slips and says victim, I'm not
14 going to get upset about it, but I think we ought to
15 avoid the use of the term victim during the trial to
16 the extent that you possibly can.

17 **MS. PATTERSON:** Can I refer to her as C
18 instead of Ms. H. ? I think that kind of makes her
19 look like an adult. I mean, she was 14 when this --
20 when the incident occurred.

21 **MR. LI:** Allegedly occurred. And the defense
22 has no problem with the State calling her by
23 C. , Ms. H. , Cl. H. .

24 **THE COURT:** The only thing I said not to call
25 her is a victim. If I said to call her Ms. H. , I

1 apol -- I'm not trying to limit you in what you call
2 her other than just in most trials, I give the same
3 instruction, stay away from the use of the term
4 victim. I'm not saying it'll result in a mistrial.
5 I'm not saying if it inadvertently comes in, that
6 that's going to be a major issue, but I agree with
7 the defense on that.

8 What else?

9 **MR. LI:** Your Honor, my second to last motion
10 is a motion to prevent the State from referencing
11 statute -- South Carolina Statute 16-3-657 in either
12 the opening, closing. I've included a memorandum
13 with it including some case law, Your Honor.

14 The memo also addresses the fact that I would
15 like the exclusion that we're asking -- the defense
16 is asking for the exclusion of any reference to
17 section 16-3-657 in any closing charges you have to
18 the jury.

19 **THE COURT:** Do y'all want to be heard on this?

20 **MS. PATTERSON:** Yes, sir, Your Honor. I mean,
21 that's a standard jury instruction. In the case law
22 that he cited, it was held to be proper and not an
23 improper jury instruction, Your Honor.

24 **THE COURT:** Anything else, Mr. Li?

25 **MR. LI:** Your Honor, I would just like a chance

1 to argue it.

2 **THE COURT:** Argue what?

3 **MR. LI:** This motion that I just made, Your
4 Honor. I understand the case law that I cited did
5 say that it was not reversible error, Your Honor.
6 The defense respectfully asks you to make a
7 discretionary call and to pay attention to Justice
8 Pleicones's decent.

9 **THE COURT:** Well, I think very highly of
10 Justice Pleicones, but that motion is overruled,
11 denied.

12 **MR. LI:** Thank you, Your Honor.

13 **THE COURT:** What else do you have?

14 **MR. LI:** Just for all of the witnesses to be
15 sequestered during the trial.

16 **THE COURT:** What's the State's position?

17 **MS. PATTERSON:** Can I at least allow her mother
18 to remain in the courtroom with her?

19 **MR. LI:** Your Honor, we would object to that.
20 If the State plans on calling the mother, she should
21 not be allowed to hear the testimony of other
22 witnesses.

23 **THE COURT:** The motion to sequester is denied.
24 You know, I've got a teenage purported victim and
25 the Victims Bill of Rights gives the victim the

1 right to be in the courtroom. When we've got a
2 minor involved, I generally allow the parent to be
3 in. The chief investigating officer can be in. I'm
4 just going to deny the motion.

5 **MR. LI:** Thank you, Your Honor.

6 **THE COURT:** Anything else?

7 **MS. PATTERSON:** Nothing from the State, Your
8 Honor.

9 **THE COURT:** 9:30 in the morning. Thank you.

10 (The proceedings were concluded for July 12,
11 2010.)

12 (The following proceedings were held on July
13 13, 2010.)

14 **THE COURT:** Any matters to take up prior to
15 sending for the jury?

16 **MS. PATTERSON:** Yes, sir, Your Honor. The
17 State has several pictures that we're going to seek
18 to offer into evidence and it's my understanding
19 that the defense is going to object to these
20 pictures.

21 **THE COURT:** What's the objection?

22 **MR. LI:** Your Honor, the objection is twofold.
23 One is relevance. It doesn't tend to make it more
24 likely or less likely that the defendant and the
25 alleged victim had sexual encounters, Your Honor.

1 The second objection is based on the fact that
2 the Solicitor's office, the State, cannot prove the
3 connection between those pictures and my client.

4 They claim that phone logs -- these are just
5 pictures taken on a phone and some of them are
6 rather disturbing pictures, Your Honor, that are
7 more prejudicial than probative.

8 They've given us -- they've handed us the phone
9 logs and the only thing the phone logs indicate are
10 outgoing and incoming calls, these pictures that are
11 taken on the phone -- from her phone that she had in
12 her possession that cannot be traced to my client.

13 In addition, Your Honor, the phone numbers that
14 they have, there's no evidence that -- there's no
15 evidence that those phone numbers can be traced back
16 to my client.. They haven't done -- they haven't
17 done any investigative background on the phone
18 numbers that they're (sic) allegedly been sent to.
19 The phone log just has code names, Your Honor, code
20 names with numbers, the numbers that they haven't
21 matched to any phone belonging to my client.

22 If you take a look at these pictures, some of
23 them are of her naked. I would highly -- I would
24 strongly object to these pictures being shown to a
25 jury. The probative value is minimal and it would

1 have a strong tendency to produce an undue prejudice
2 towards my client. These pictures have no relevance
3 to the case at all, Your Honor.

4 **THE COURT:** What's the relevance?

5 **MS. PATTERSON:** Your Honor, the pictures are
6 very relevant. It shows the nature of the
7 relationship that it was personal, that it was
8 sexual. The defendant -- I mean, the victim will
9 testify that she did take these pictures of herself
10 with a phone that was provided to her by the
11 defendant and she sent them to the defendant via
12 text messages.

13 And the references that he's talking about, the
14 victim will also testify that this was a pet name
15 that she gave to the defendant and he signs his name
16 to a couple of letters that we have. He signs this
17 pet name to the letters that he gave to C ,
18 so that will show some identification as well, Your
19 Honor.

20 **MR. LI:** Your Honor, and I -- I told the
21 Solicitor that if she can lay the foundation for the
22 one message in there that has the word Stanka and
23 they can lay the foundation and try to connect the
24 dots, I have no objection to that one text message,
25 Your Honor. That's a text message that if they can

1 lay the foundation for it, I have no objection to
2 that.

3 The other ones are just pictures, Your Honor.
4 These are pictures that had not been -- if the
5 Solicitor is saying she's going to get the witness
6 to testify as to -- she's going to get the witness
7 to testify that she sent these text messages, why in
8 the world would they cost me \$150 to print out phone
9 records when the phone records don't indicate my
10 client, Your Honor, then this whole box of discovery
11 would be meaningless if she didn't think that there
12 had to be some connection.

13 With outgoing calls and incoming calls, there
14 are numbers and there is a code name on it. If she
15 can lay a foundation and connect the dot between the
16 code name and my client, no problem with getting in
17 ingoing (sic), outgoing calls, no problem with that.

18 The text messages, there's nothing linking text
19 messages on her phone nor on my client's phone
20 because they don't have my client's phone. They've
21 never linked any of the phone numbers on outgoing,
22 incoming calls to my client. But I suggest that
23 there may be a way for them, you know, it's possible
24 that they can connect it through pet names and
25 through other letters. I have no objection to that,

1 Your Honor.

2 The other pictures are just pictures and they
3 don't tend to prove -- and -- and, Your Honor, the
4 pictures are -- have no time stamp on them and
5 they're -- if they have a time stamp on them,
6 they're not relevant to the period that we're
7 talking about. The warrant says between -- the
8 indictment says between January and May 15th.

9 There's nothing that indicates whether or not
10 -- whether or not -- these pictures don't tend to
11 show whether or not they had sex, Your Honor. The
12 relevancy is highly in question. The probative
13 value is low and the prejudicial value is high. The
14 defense strongly objects to any pictures of her
15 being naked to come into the -- come into the trial.

16 **MS. PATTERSON:** And, Your Honor, if I may add,
17 in the My Space messages, there is a reference to
18 the defendant being called Stanka. That is to -- on
19 the text messages, it says, To Stanka. He
20 identifies himself as Stanka in the letters. And he
21 also talks about the letter -- talks about the nude
22 shots in the letter that he sent to the victim, Your
23 Honor.

24 I think we will be able to lay a foundation,
25 but, Your Honor, I mean, she's going to testify

1 that, you know, she took these pictures, she sent it
2 to him. It'll just be a credibility issue for the
3 jury.

4 **MR. LI:** Your Honor, this is not a question of
5 weight, Your Honor. This is a pure question of
6 relevancy and whether or not they can prove that
7 those pictures had been sent to my client.

8 They send you a whole box of discovery that
9 they claim -- from the phone companies, but none of
10 this discovery that I have proves that any text
11 messages were ever sent. There's no record of any
12 text messages being sent and that's definitely not
13 those -- definitely not those pictures or those
14 messages in particular.

15 Like I said, the Stanka issue, we'll deal with
16 that when we get to it. I have no objection to
17 anything that has the word Stanka in it. If they
18 want to bring that in, I've got no problem because I
19 think they can lay the foundation for that. I think
20 they can establish a connection between my client
21 and the word Stanka. I would still ask them to do
22 that on the record.

23 But as to the other pictures, Your Honor, I
24 would suggest you just take a look at them and judge
25 their probative value versus their prejudicial

1 value. Your Honor, take away those, that doesn't
2 have any tendency to show that the clients actually
3 had sex. It doesn't even show that those pictures
4 were sent to my client. There's no number. There's
5 nothing that indicates -- that traces those numbers
6 back to my client.

7 **THE COURT:** I'm confused again. You've got a
8 box of materials in discovery that are telephone
9 records.

10 **MR. LI:** They're telephone records and pictures
11 taken off of the phones that she has.

12 **THE COURT:** They do or do not include these
13 pictures?

14 **MR. LI:** The telephone includes those pictures,
15 Your Honor, yes. The telephone is of the victim.

16 **THE COURT:** What you got in discovery, did you
17 get these pictures?

18 **MR. LI:** Yes. Absolutely. I'm not claiming a
19 discovery, a Rule 5 violation, Your Honor. I'm
20 simply stating that what's the use of these phone
21 records if now they want to take the testimony of
22 the victim to establish that she sent them? If that
23 was the case, why even give these phone records
24 because then she could testify, well, yes, I made
25 incoming calls and I made outgoing calls to Mr.

1 Gramling. There's obviously a need to connect the
2 dots.

3 And for the pictures and text messages, there
4 are no connections between that phone or any other
5 phone, not even the fact that they were texted.
6 These are just from the camera.

7 **THE COURT:** All right. So there's no Rule 5
8 objection, no discovery objection?

9 **MR. LI:** No, Your Honor.

10 **THE COURT:** The objection is under relevance
11 and if the Court determines that they're relevant
12 under Rule 403 --

13 **MR. LI:** Yes, sir.

14 **THE COURT:** -- that any probative value is
15 substantially outweighed by the danger of unfair
16 prejudice and those other factors. And you're
17 saying that they cannot lay a foundation.

18 **MR. LI:** I'm saying they cannot lay a
19 foundation for the pictures, Your Honor.

20 The defense readily admits there is a
21 possibility that the one message that has the word
22 Stanka in it can be -- may be able to be traced to
23 my client, but there's one where it is an
24 exclamation point and a "at" symbol, I don't know
25 what that name of the symbol is, but it says, To,

1 "at" symbol, exclamation point. And they want to --
2 I don't think they can prove the foundation for
3 that, Your Honor.

4 **THE COURT:** Let me see the photographs. Why
5 did we not deal with it yesterday?

6 **MS. PATTERSON:** I apologize, Your Honor.

7 (Pause.)

8 **THE COURT:** Mark these for identification.

9 (State's Exhibit Numbers 2 through 11,
10 photographs, marked for identification purposes.)

11 **THE COURT:** All right. These photographs have
12 now been marked for identification purposes as
13 State's Exhibit 2 through State's Exhibit 11. I've
14 reviewed the photographs and there's no way that I'm
15 going to know if they can establish a foundation
16 until I hear testimony. If what the Solicitor
17 indicated that Ms. H will testify to, if that in
18 fact is what she testifies, then most likely that's
19 going to be a sufficient foundation.

20 With regard to the timing of these things, I
21 don't know what date she may say that these were
22 sent or received, I don't have access to the text
23 information from the phone records that you all
24 have.

25 The dates that appear on here -- there's a

1 photograph with a date of Monday, June the 8th, no
2 year, that's on State's Exhibit 2. There's another
3 one that has what appears to be a text message
4 Saturday, April 18th at 8:29 p.m., which is, if
5 that's in 2009, it's within the timeframe alleged in
6 the indictment. There's another one with what
7 appears to be a text message dated Wednesday, April
8 the 1st at 7:02 p.m., that again, if that's 2009,
9 it's within the timeframe.

10 **MR. LI:** Judge, I hate to interrupt. For some
11 of the pictures, I do have dates for those pictures.
12 And this is included in the records that they gave
13 us, if I can approach.

14 **THE COURT:** Go ahead.

15 (Pause.)

16 **THE COURT:** All right. In the discovery
17 material, apparently there are some times related to
18 these photographs which are after the timeframe
19 that's alleged in the indictments.

20 First of all, with regard to the timeframe, I
21 don't think that the mere fact that the things are
22 not within the timeframe would exclude them from
23 being admitted assuming that some sort of sufficient
24 foundation is established.

25 There's -- State's Exhibit 5 has a different

1 type of electronic device than a cell phone. It
2 appears to be a picture of the defendant on what
3 appears to be some sort of MP3 player or iPod type
4 device.

5 Was she pregnant?

6 **MS. PATTERSON:** Your Honor, she had a condition
7 known as pseudocyesis. It's a false pregnancy. She
8 actually thought she was pregnant. She had a lot of
9 the symptoms that a natural pregnant woman would
10 have and that is going to come up, Your Honor,
11 because she shared that information with the
12 defendant, but, in fact, she was not pregnant.

13 **THE COURT:** When was State's Exhibit 10 --
14 let's see, this picture of her where she's covering
15 her breasts and taking a picture of herself in the
16 mirror, that picture of her abdomen is flat.

17 **MS. PATTERSON:** That was taken April 19th,
18 2009.

19 **THE COURT:** All right. From the discovery
20 materials that were handed to the Court, it appears
21 that these that I indicated were -- I could not tell
22 they were 2009. They all appeared to have been made
23 in 2009 or transmitted in 2009. If there is no link
24 established in the testimony, then I'll entertain a
25 proper motion.

1 With regard to the Rule 403 -- first of all,
2 they do appear to be relevant to show a relationship
3 between these individuals if a foundation is
4 established. So I do not find them to be
5 irrelevant.

6 With regard to Rule 403, they do not appear, in
7 the Court's mind, to be barred under anything
8 related to Rule 403. So the in camera motion -- the
9 in limine motion, excuse me, to exclude them is
10 respectfully denied.

11 Now, an in limine motion ruling can change as
12 you well know. It's a preliminary ruling and it's
13 based on what the Court understands at the
14 particular time the ruling is made. I may have a
15 different understanding whenever these things are
16 offered in evidence.

17 Anything else before I bring the jury in?

18 **MS. PATTERSON:** Your Honor, I just have a
19 personal matter that -- can I stop forward?

20 **MR. LI:** You told me already.

21 I have no objections to this, Your Honor.

22 **THE COURT:** If it's what you talked to Shannon
23 about, that's fine.

24 **MS. PATTERSON:** Okay. Thank you.

25 **THE COURT:** So are y'all ready for the jury on

1 the State's side?

2 **MS. PATTERSON:** The State's...

3 **MR. LI:** The defense is ready, Your Honor.

4 **MS. PATTERSON:** Our victim just left. She just
5 had to go to the bathroom.

6 (Brief recess.)

7 **THE COURT:** All right. Bring the jury in,
8 please.

9 While they're doing that, let me just say, the
10 victim has a right to be in the courtroom, but now
11 I'm not going to wait 15 minutes on breaks, okay?

12 **MS. PATTERSON:** Yes, sir.

13 (The jury enters the courtroom at 10:05
14 a.m.)

15 **THE COURT:** All right. Ladies and gentlemen,
16 they had another issue when we got here this morning
17 that we didn't anticipate, so I'm sorry. We were
18 all here on time. It just took a little while extra
19 and that's the way trials are. There's often hurry
20 up and wait.

21 The first thing I have to do is have you placed
22 under the oath of a trial jury. So I need for you
23 to stand, raise your right hand and the clerk will
24 administer your oath.

25 (The jury was duly sworn by the Clerk of

1 Court at 10:07 a.m.)

2 **THE COURT:** I'm going to take about ten minutes
3 to explain to you how we normally operate court.
4 I'm going to go through how we're going to begin the
5 trial and then I'm going to give you some
6 instructions that you have to follow throughout the
7 trial.

8 We usually will start with you all at 9:30 in
9 the morning, sometimes 10:00, but it's usually one
10 of those two. We typically go to about one o'clock
11 and break for lunch. Normally, you're on your own
12 for lunch and we usually try to give you at least an
13 hour, sometimes we give the jury up to an hour and a
14 half for lunch. So we usually start back with the
15 jury around 2:00 to 2:30. And then we typically try
16 to break for the day between 5:00 and 5:30.

17 There are a few matters that we have to work
18 around. And, folks, I'm going to explain to you
19 that you're my top priority. I don't want you to
20 ever think differently.

21 South Carolina far and away has the highest
22 case load per judge of any state -- actually, we're
23 51st, I think. I think we follow behind Puerto Rico
24 or somebody that's counted in the -- but anyway, our
25 workload is that and because of that, they keep us

1 on the bench more than any other judges in the
2 country by far.

3 And I'm not saying that for sympathy. I'm
4 trying to explain something to you, that means the
5 only time I can do paperwork or schedule emergencies
6 or do things like that is around court. So I try to
7 do the best job with scheduling that we can.

8 And you may walk through here sometimes and it
9 looks like nothing's going on. And you may walk
10 through here sometimes and it might look like the
11 circus is in town. It's just -- you just have to
12 understand that we have to try to arrange things as
13 best we can. There are a couple of things that we
14 will be working around this week and I don't think
15 they will affect you at all, but I promise you that
16 you're my top priority.

17 Now, as I told you, my estimate is that you'll
18 probably get this case on Thursday. It could
19 possibly get to you sooner, but that's still my
20 guess. As things change, if things change, I'll try
21 to keep you abreast of where I think we are, but
22 that's no iron clad guarantee.

23 All right. The way the case is going to start
24 is that I will first recognize the attorneys to make
25 opening statements to you. In opening statements,

1 the attorneys are not permitted to engage in what we
2 call argument. Opening statements can be
3 introductions, outlines, overviews, but they cannot
4 extend into what we call argument.

5 Once the opening statements are finished, then
6 I'm going to call on the Solicitors to present the
7 State's case. The State brought these charges
8 against Mr. Gramling and the State has the entire
9 burden of proof. The State has to prove every
10 essential element of each offense charged beyond a
11 reasonable doubt.

12 I'm going to explain the concept of reasonable
13 doubt to you at the end of the trial. There are
14 different definitions of it. The definition that I
15 typically use is that you have to be firmly
16 convinced of the defendant's guilt. And I'm going
17 to flesh that out more and expand on that, but you
18 have to be firmly convinced that the State has
19 proven the guilt of the defendant beyond a
20 reasonable doubt.

21 The defendant is presumed to be innocent. He
22 has no obligation to prove anything at all. He is
23 entitled to the benefit of any doubt. So the State
24 has the burden of proof and I'll recognize the State
25 to present evidence in an attempt to meet that

1 burden.

2 When the State finishes presenting the case in
3 chief -- and sometimes I may say case in the
4 singular and sometimes I may say cases in the
5 plural, y'all know there's two separate indictments,
6 I've explained that to you. When the State finishes
7 presenting its cases in chief, the Solicitor will
8 inform me that the State rests. At that point, I
9 have to send you out of the courtroom and discuss
10 legal matters with the attorneys. When you come
11 back in after that, I'll tell you where we go from
12 there, but those are some of the landmarks you can
13 look for as to how we're proceeding with the trial.

14 Now, it's really important that you understand
15 some things. First, that oath that you just took
16 was one in which you promised us that you're going
17 to decide these cases based on the evidence and the
18 law. So you need to know where those things come
19 from.

20 As I mentioned to you yesterday in reverse
21 order, the law comes from me. It's my job to decide
22 the law that applies to these cases and tell it to
23 you at the end of the trial.

24 The evidence comes from the sworn testimony of
25 witnesses. Evidence can also come in the form of

1 exhibits. Now, an exhibit can be anything tangible
2 that's marked in the record. It can be a
3 photograph, a map, a chart, a video or audio tape,
4 anything tangible that's marked in the record.

5 If something is an exhibit, you have it with
6 you in the jury room when you decide the cases. And
7 the reason I'm telling you that is because it's not
8 unusual for an attorney to have something like a
9 small photograph and show it to you from a distance
10 or pass it into the jury box and ask you all to pass
11 it down and look at it so you're trying to look at
12 the thing and also pay attention to what's going on
13 up here. So just please understand that every
14 exhibit will be back with you in the jury room for
15 you to look at or listen to as much as you need to.

16 Now, sometimes things are used in a trial that
17 are not marked as exhibits. We call those things
18 being used for demonstrative purposes, to
19 demonstrate. I don't have any idea if they have
20 anything that they will use for demonstrative
21 purposes in this trial, but sometimes they'll have
22 something like an aerial photograph from a tax
23 assessor's office just to show locations. I doubt
24 they'd have things like that in this trial, but they
25 may need to show locations in a trial and they don't

1 put that into evidence, but they use it so it sort
2 of orients people.

3 So what I'm telling you that for is if you
4 can't see something or you can't hear something, try
5 to give me a signal. If I'm working on the computer
6 up here, because I'm going to be working on what I
7 tell you and looking up law and doing all the things
8 we have to do, get the bailiffs' attention and
9 they'll -- they'll get my attention and we'll make
10 sure that we do the best we can so that you can see
11 and hear everything.

12 Now, it's also important that you understand
13 that there are two judges in this courtroom. I'm
14 the judge of the law. I've told you a little bit
15 about what I do. I tell you the law at the end of
16 the trial. I rule on legal issues as they arise. I
17 preside over the trial and maintain order. That's
18 my job.

19 You're the other judge. You need to understand
20 that you are the only judge of the facts. Only you
21 are going to get to decide such things as whether
22 evidence is believable or not. Only you get to
23 decide if evidence is entitled to any weight and if
24 so, how much weight to give it. Those things are
25 entirely your prerogative and I'm not going to

1 invade your province.

2 Now, this is a little bit long, but to give you
3 an example of what I mean by our different roles,
4 from time to time throughout this trial one side or
5 the other may feel that the other side is trying to
6 put something before the jury that doesn't fit
7 within the rules for the jury to consider. And if
8 they do that, these attorneys took an oath just like
9 you've taken an oath and I've taken an oath and
10 they've got a job to do. And in order for the
11 system to work, they have to do their jobs and that
12 requires them to stand up and raise an objection.

13 Now, if they raise an objection, a lot of times
14 I'll send you out of the courtroom. First, please
15 don't worry about why I'm sending you out of the
16 courtroom, don't think anybody's trying to hide
17 anything from you, just let me do my job. The
18 reason I send you out of the courtroom is because I
19 can do things quicker if I have you out there and I
20 can cut straight to the heart of the thing and I
21 don't have to worry about messing up.

22 So if I sustain an objection, that means I have
23 ruled that that thing does not fit within the rules
24 for you to consider and you're to disregard it
25 totally because it's not proper for the jury to

1 evaluate or consider. But if I overrule the
2 objection, I allow it to come before you and then
3 you decide whether to believe it and you decide what
4 weight, if any, to put on it.

5 And I want you to understand that when I'm
6 making my decision about whether it comes before
7 you, it will not cross my mind as to whether that
8 thing's believable or not because that's not my job.
9 I will give no thought, not one second of thought
10 whether that thing's entitled to any weight because
11 that's not my job. My job is to decide, look at
12 that thing with tunnel vision, does it fit within
13 the rules for the jury to consider and if it does,
14 it goes before you and you make the evaluation about
15 believability and weight.

16 Okay. Now, while you've promised us that
17 you're going to decide these cases based on the
18 evidence and the law and you have to do that, I'm
19 not telling you to leave your common sense at home.
20 We want you to use your common sense. We want you
21 to use your sense of logic and reason and your good
22 judgment.

23 Now, it just makes good common sense that you
24 keep an open mind about this trial and you don't
25 make up your mind until you've heard all the

1 evidence and you know what the law is. So I have to
2 repeat that rule I told you yesterday.

3 You are not to discuss this case in any way
4 until I tell you to, don't talk about the people
5 involved, the subject matter, anything related to
6 the case, don't discuss the case with anybody else
7 until this case is completely over and you've been
8 discharged from your jury duty. If anybody attempts
9 to contact you and discuss the case with you, report
10 that to me so I can deal with it.

11 Again, being repetitive, I don't expect media
12 coverage of the trial, but I'm supposed to tell you
13 at this point once again, and this is the last time
14 I'll tell you other than mention it to you in
15 shorthand, if there's any media coverage, get away
16 from it and report to me at the first opportunity
17 what you read, heard or saw through the media.

18 Don't do any independent investigation. I gave
19 you my instructions yesterday and I read to you what
20 the Chief said about independent investigation.

21 The last thing I want to say to you folks is
22 thank you. I often tell juries you've probably
23 figured out by now that I have no personality. And
24 what little personality I do have, I don't tend to
25 spend a lot of time thanking juries, but the fact

1 that I don't do that is not based on anything other
2 than I think it cheapens it if I sat here and just
3 sort of cavalierly throw that out. So what I want
4 to do right now in all seriousness and as earnest as
5 I can be is to thank you for your service.

6 It's very easy to find yourself in a dispute
7 like these folks are in. If you're ever in that
8 situation or someone close to you is, on either
9 side, you'd be very grateful that 14 people like you
10 came away from everything they had to do in their
11 lives so that we can decide our disputes in a room
12 like this, so I thank you.

13 The only promise I can make you is that if
14 you're waiting on us, we're working. I can't
15 promise you there won't be hurry up and wait, you
16 already had some, but I can promise you that if
17 you're back there, it's driving me crazy and I'm
18 doing everything I can to get you out here. We will
19 not be out here goofing around, drinking coffee,
20 telling jokes if you're back there waiting on us.

21 If we run into situations where there's going
22 to be extended breaks, I'll do what I did yesterday,
23 I'll send you home or I'll tell you to be back at a
24 certain time. So thank you.

25 To honor my commitment to you that I'll do

1 everything I can not to waste your time, I'm going
2 to shut up now. And I recognize the State's
3 attorneys for opening statements. I invite your
4 close attention to the opening statements from the
5 State and the defense.

6 Solicitor, you're recognized.

7 MS. PATTERSON: Thank you, Your Honor. May it
8 please the Court.

9 THE COURT: Yes, ma'am.

10 MS. PATTERSON: Mr. Li.

11 OPENING STATEMENT

12 MS. PATTERSON: The teenage years are a time to
13 be cherished. It's an exciting time. It is also a
14 gradual process that takes a child from becoming a
15 child to becoming an adult. It's a gradual process
16 because it takes time for the mind to mature, mature
17 enough to make adult decisions, mature enough to
18 handle certain situations.

19 The beginning of the teenage years for
20 C H was anything but gradual. When she
21 met that man over there (indicating), her teenage
22 years were zapped away from her with deliberate
23 speed.

24 The defendant is charged with criminal sexual
25 conduct with a minor in the second degree and

1 contributing to the delinquency of a minor. He is
2 charged with criminal sexual conduct because he had
3 sex with C. H. when she was under the
4 age -- when she was 14 years old and he was in a
5 position of familial authority to coerce her into
6 that, into those actions. He engaged her in
7 activities that her childish mind just wasn't ready
8 for.

9 Now, you're going to hear from C.
10 She's 16 now, looks just a little different, just a
11 little older. And she's going to detail to you the
12 relationship she had with that man. And at times,
13 it's going to be embarrassing, it's going to be
14 graphic, but it is necessary to get through to you
15 just how her precious teenage years was gone, stolen
16 and destroyed for her.

17 Now, you're going to hear testimony from others
18 involved in the case and how they found out about
19 this relationship and what their reaction and
20 actions were.

21 Now, you may hear some other testimony that's
22 going to be thrown in to try to throw you off
23 course, but I just ask you to stay focused, use your
24 good common sense, good judgment and don't let that
25 throw you off from the responsibilities of the

1 defendant. And I promise you that the State will
2 prove beyond a reasonable doubt that he's guilty of
3 the crimes of criminal sexual conduct and
4 contributing to the delinquency of a minor. Thank
5 you.

6 **THE COURT:** Thank you, Solicitor.

7 Mr. Li, are you going to do the opening
8 statement?

9 **MR. LI:** Yes, sir. May it please the Court,
10 Your Honor.

11 **THE COURT:** Yes, sir.

12 **MR. LI:** Good morning, ladies and gentlemen.
13 Some of you I saw the faces on you when I did the
14 striking for jury duty and I apologize for that. We
15 do appreciate you taking your time to come here
16 today.

17 Hi. My name's Victor Li. I represent Mr.
18 Oscar Gramling. My legal partner is Ali Benevento.
19 We all thank you for being here this morning.

20 Now, Mr. Gramling is charged with two charges,
21 criminal sexual conduct in the second degree with a
22 minor, that's just a fancy word for statutory rape.
23 He's also charged with contributing to the
24 delinquency of a minor. I'm going to address each
25 charge separately.

1 The first charge, criminal sexual conduct in
2 the second degree with a minor, what is this case
3 about? This case is about sex. And I'm not going
4 to sit here and try to -- and try to Bill Clinton
5 you and let you know what is sex, what's the
6 definition of sex? Is it cunnilingus? Is it
7 fellatio? Is it vaginal sex? Is it anal sex?

8 I'm not playing word games with you. Physical
9 sex, physical contact. Can the State prove beyond a
10 reasonable doubt that there was some sort of
11 physical contact between them, that they had
12 physical sex? And remember I'm not playing word
13 games with the word sex, any -- did they have
14 physical sex?

15 Now, they're going to try to tell you, the
16 State is going to try to convince you beyond a
17 reasonable doubt that they did. And it's your job
18 to listen to the testimony, to view all of the
19 evidence, to listen to each witness carefully to
20 judge their credibility.

21 Like the Judge said, he is the judge of the law
22 and you are the judges of the facts, but that
23 includes judging the credibility of each witness,
24 judging where the source came from, where the source
25 of all this information. You're going to see them

1 put up multiple witnesses, ask yourself, where did
2 their information come from? Who's the one behind
3 them pulling the strings? Who's pushing this case
4 to go forward?

5 Pay attention, like Ms. Rhonda Patterson said,
6 the Solicitor, focus, but don't just focus on each
7 individual piece of evidence or each individual
8 testimony, focus on the big picture, focus on who's
9 here, who's not here, what evidence they choose to
10 present.

11 I kind of think of this prosecution, this
12 courtroom, this trial as kind of like a magic act.
13 You go to a magic act and they're going to bring you
14 on stage. They're going to let you -- they're going
15 to let you check the deck of cards. They're going
16 to let you check the handcuffs to make sure they're
17 real. They're going to let you pat down the side of
18 the box, make sure it's a real box. Let's just spin
19 it around for you, then move it side to side let you
20 know that this is a real box, you know, a real
21 person can fit inside, there's no way to get out.

22 But, ladies and gentlemen, the devil's in the
23 details. The devil is in the details because
24 they're not going to show you that the cards are
25 marked. They're not going to let you inspect the

1 back of the cards. They're not going to let you pat
2 down the magician and find out there's a key on him.
3 And when they move the box side to side, they're not
4 going to show you that it came back to the middle
5 and they're not going to let you inspect the
6 floorboard. They're not going to let you look at
7 the trapdoor underneath.

8 Pay attention to what they want to show you and
9 what they don't want to show you. Pay attention to
10 what they throw at you. Pay attention to whether or
11 not they can prove beyond a reasonable doubt that
12 they had physical sex. That's the bottom line.

13 The information from each witness comes from
14 one source. It comes from one source. And it's
15 your job to judge the credibility of that source.

16 Now, in addition to what they ask you to focus
17 on, I agree, you should focus on everything that
18 comes before you in this court. Also pay -- ask in
19 the back of your mind, what are they glossing over?
20 What don't they want you to focus on? That's the
21 question. What do they want to just brush to the
22 side and say, hey, look, look at this, don't look at
23 -- don't look at the rest of this thing? We're
24 going to put a nice frame around something. We're
25 going to present it to you. You look at that. You

1 judge, you tell me from everything that we bring to
2 you beyond a reasonable doubt that they had physical
3 sex.

4 Now, the contributing to the delinquency of a
5 minor, that's not just some secondary charge, that's
6 not just some lesser charge that they're throwing in
7 there, that's a serious charge. We ask that you pay
8 attention to all of the elements that is required to
9 prove contributing to the delinquency of a minor.

10 Read the statute when the Judge gives it to
11 you. Read the words carefully. The Legislature has
12 used specific words and it has meaning.

13 Contributing to the delinquency of a minor are
14 specific acts, specific things that the Legislature
15 has intended. It's not just helping a child do bad
16 things. There are specific -- a specific language
17 in the statute is there for a reason.

18 Pay attention -- pay attention to the details,
19 that's all I'm asking. The devil's in the details.
20 Pay attention, don't let them gloss over anything,
21 don't let them slide something under there. Ask
22 yourself everything, the questions they focus on
23 when they try to shift your attention to something
24 else when they want you to look over here to the
25 left like the magician, they want you to pay

1 attention to the girl, the assistant in the fancy
2 dress, they don't want you to look over here, they
3 want you to look over here, pay attention. Pay
4 attention to what they want you to do.

5 In the end, ladies and gentlemen, Oscar
6 Gramling is charged with two charges, statutory rape
7 and contributing to the delinquency of a minor. I
8 contend that the State cannot prove beyond a
9 reasonable doubt that my client and Ms. C
10 H. had physical sex.

11 Pay attention to the details. Pay attention to
12 what it means to contribute to the delinquency of a
13 minor. Pay attention to words like become or pay
14 attention to the words -- become and there are other
15 words in there that you should pay attention to.
16 Those words aren't in there just randomly. The
17 Legislature had intentional meaning when he put
18 those words in there.

19 Thank you, ladies and gentlemen. And please,
20 again, pay close attention to Ms. Rhonda Patterson
21 and give her your full attention. Thank you so
22 much.

23 **THE COURT:** Thank you, Mr. Li.

24 Call your first witness, Solicitor.

25 **MS. PATTERSON:** Your Honor, may we approach

1 very quickly?

2 **THE COURT:** Sure.

3 (Whereupon, a bench conference was held off
4 the record, in the presence of the jury, but out of
5 the hearing of the jury.)

6 **THE COURT:** Ladies and gentlemen, I need to ask
7 you to step in the jury room. If you've got notes,
8 leave them facedown in your chairs. Don't discuss
9 the case.

10 (The jury retires to the jury room.)

11 **MS. PATTERSON:** She's telling me he looks like
12 a former neighbor and his kids, they have played
13 with C.

14 **THE COURT:** Can you tell me what the person
15 looks like or what the person is wearing or anything
16 like that?

17 **MS. PATTERSON:** He has on a striped shirt. He
18 was sitting on the front row, the fourth seat.

19 **THE COURT:** How long ago were they neighbors?

20 **MS. A** : About four years ago...

21 **THE COURT:** Does she know her name -- know his
22 name, excuse me?

23 **MS. A** : She's not sure of what his name
24 is. It's between Lombardi or Soto. She doesn't
25 know what the last name was, so.

1 **MS. PATTERSON:** His daughters' names were
2 Angela and Danielle.

3 (Pause.)

4 **THE COURT:** All right. Of the 12 jurors, it
5 appears there are six males, John W. Daspit; Raymond
6 M. Doucett; Benjamin G. Simons, who's the foreman,
7 so it wouldn't be Mr. Simons; Jerry A. Gantt; James
8 A. Charlton; Terence L. Cox.

9 If that doesn't help, Mr. Carton, can you look
10 in there and see if there's one male juror wearing a
11 striped shirt? You don't need to tell them what
12 you're doing, just look in there and see if you can
13 pick out who it might be.

14 (Pause.)

15 **BAILIFF:** There is, Your Honor.

16 **THE COURT:** There's one guy?

17 **BAILIFF:** Yes, sir.

18 **THE COURT:** All right. What's the defense's
19 position?

20 **MR. LI:** They agree that he was a neighbor?

21 **THE COURT:** You heard everything I heard,
22 everything I know. I hadn't brought the juror out
23 and asked anything.

24 I guess what I'm asking you is do you want me
25 to make an inquiry? Do you want to move to set him

1 aside before the inquiry? Do you want to wait till
2 after the inquiry? Do you want to leave it alone?

3 **MR. LI:** I'd ask for the inquiry, Your Honor.

4 **THE COURT:** His daughter's name were what now?

5 **MS. A** : Angela and Danielle.

6 **THE COURT:** And where did y'all live at that
7 time?

8 **MS. A** : 1220

9
10 **MS. PATTERSON:** But she did say he moved away,
11 so his address wouldn't --

12 **THE COURT:** Oh, he moved.

13 **MS. PATTERSON:** Yes, sir.

14 **THE COURT:** Oh, I'm sorry. I thought they
15 moved.

16 All right. Art, if you can ask that gentleman
17 to come in here, all right?

18 (Whereupon, Juror Jerry A. Gantt enters the
19 courtroom.)

20 **THE COURT:** You can just have a seat anywhere
21 over there for me, please. Any of those first seats
22 will be fine. What's your name, sir?

23 **JUROR:** My name's Jerry Gantt.

24 **THE COURT:** Juror number 68.

25 I need to ask you a few questions. And there's

1 no issues, you're not in any trouble or anything. I
2 just need to ask some questions, okay?

3 **JUROR:** No problem.

4 **THE COURT:** And you're still under oath. Did
5 you ever live on ?

6 **JUROR:** No.

7 **THE COURT:** Do you have daughters named Angela
8 and Danielle?

9 **JUROR:** No.

10 **THE COURT:** Okay. They thought you were
11 somebody else, some folks who weren't here
12 yesterday.

13 **JUROR:** I have a twin.

14 **THE COURT:** You have a twin?

15 **JUROR:** I've been told that over and over and
16 over.

17 **THE COURT:** I think everybody from time to time
18 has been told they have a twin, but you hear it a
19 lot, huh?

20 **JUROR:** I do because I have Jerry's Used Cars
21 on Number 1 Highway right next to Woody's and
22 everybody come there and they would call me by a
23 different name. They said, How long have you been
24 working for Jerry? And I said, I am Jerry. And I'd
25 have to prove it.

1 **THE COURT:** Okay. Well, it was just a case of
2 mistaken identity. And I don't know if it would
3 have had any impact or not, but I had to explore it,
4 okay, that's all it was. So you can go back with
5 Mr. Carton if you will, please.

6 **JUROR:** Well, I done the Billy Graham thing two
7 years ago when the Billy Graham Crusade came to
8 town. Me and my company did that.

9 **THE COURT:** Okay. Well, they thought --
10 somebody thought you may have lived -- you were a
11 neighbor to one of the people involved in the case.
12 It apparently was somebody else.

13 **JUROR:** Yes, sir.

14 **THE COURT:** Thank you.

15 (The juror leaves the courtroom.)

16 **THE COURT:** All right. While we've got them
17 out, we'll take a few minutes.

18 Mr. Gramling, remember all of those admonitions
19 now. You have to be here. We're going to start
20 back in five minutes or so, okay.

21 **DEFENDANT:** Yes, sir.

22 **THE COURT:** All right. We're at ease.
23 Everybody be back in place quickly.

24 (Brief Recess.)

25 **THE COURT:** Is the State ready?

1 MS. PATTERSON: Yes, Your Honor, the State's
2 ready.

3 THE COURT: Defense?

4 MR. LI: Ready, Your Honor.

5 THE COURT: Bring the jury, please, Mr. Carton.

6 (The jury returns to the courtroom.)

7 THE COURT: All right. Call your first
8 witness.

9 MS. PATTERSON: Thank you, Your Honor. The
10 State calls C H

11 THE COURT: Come around, please, ma'am.

12 C H ,

13 having been duly sworn, testified as follows:

14 THE CLERK: Have a seat, please, ma'am. Once
15 you're seated, I need you to speak up loud and
16 clear, state your full name, spelling your last.

17 THE WITNESS: C H , H .

18 DIRECT EXAMINATION

19 BY MS. PATTERSON:

20 Q Ms. H , how old are you?

21 A I'm 16.

22 Q When is your birthday?

23 A 94.

24 Q Do you have any brothers or sisters?

25 A I do. I have two sisters and a brother.

1 Q How old are they?

2 A Twenty-three, 19 and five months.

3 Q You got a little baby brother?

4 A Uh-huh.

5 Q How is that working out?

6 A It's good.

7 Q And what are some things you like to do?

8 A Ballet, hang out with friends and that's about
9 it.

10 Q How many years have you done ballet?

11 A I would say pretty much my whole life. I've
12 wanted to go to Juilliard since I was six, so, you
13 know.

14 Q Are you still working towards that goal?

15 A I am.

16 Q And what school will you be going to?

17 A Irmo High.

18 Q Are you looking forward to that?

19 A No.

20 THE COURT: I couldn't hear. What was your
21 answer?

22 THE WITNESS: No.

23 THE COURT: Thank you.

24 BY MS. PATTERSON:

25 Q C what school did you previously go

1 to?

2 A Irmo Middle.

3 Q And while at Irmo Middle, did you participate
4 in any activities?

5 A I ran track. I liked it. I went to
6 after-school program, Boys and Girls Club.

7 Q Do you know the defendant, Oscar Gramling?

8 A I do.

9 Q And how do you know Oscar?

10 A He was doing an internship at my school. He
11 was a volunteer doing an internship at the Boys and
12 Girls Club.

13 Q Do you remember when you met him?

14 A In January I believe.

15 Q January what year?

16 A '09.

17 Q And how old were you then?

18 A I was 14.

19 Q And do you remember when you first met Oscar?

20 A Yeah, I remember when I first met him. I
21 didn't really like him.

22 Q Why didn't you like him?

23 A He was too nice to everybody. And I eventually
24 warmed up, but I didn't really like him at first.

25 Q Did you talk to him much at the after-school

1 program?

2 A No.

3 Q Did he help you out any?

4 A Yeah. I hurt my leg. I got shin splits when I
5 was running track and I was on crutches and he
6 helped me with my books and stuff.

7 Q Did he offer to help you with your books?

8 A Yes, he did.

9 Q How often did he do this?

10 A A good bit.

11 Q And did y'all talk about anything else?

12 A No.

13 Q And did you talk to him outside of the Boys and
14 Girls Club?

15 A Eventually.

16 Q And how did you communicate with him?

17 A I sent him a friend request on My Space.

18 Q Just explain to the jury what My Space is.

19 A It's -- it's a web site where you can approve
20 and deny friends, chat with them online, have a
21 profile stating your age, you know, telling who you
22 are, stuff like that. You can chat on there, too.

23 Q Did you tell your correct age on this?

24 A No. I said I was 59.

25 THE COURT: Did you say 59?

1 **THE WITNESS:** Yes.

2 BY MS. PATTERSON:

3 **Q** Did Oscar accept your friend request?

4 **A** He did.

5 **Q** Do you remember when?

6 **A** No, I don't remember when.

7 **Q** And did y'all communicate often?

8 **A** Yes.

9 **Q** And what do you mean by often? How often?

10 **A** Three or four times a week maybe.

11 **Q** And what kind of things would you talk about?

12 **A** Um, I did send, you know, sexual stuff, but he
13 really didn't, um, comment back on them. I would
14 send him stuff and he didn't show any reaction and
15 it did anger me sometimes.

16 **Q** And did he stop being your friend on My Space?

17 **A** No, I didn't delete him as a friend.

18 **Q** And did you guys communicate any other kind of
19 ways?

20 **A** Yeah. I eventually started calling him.

21 **Q** How did you get his number?

22 **A** He gave it to me.

23 **Q** Do you remember when you started calling him?

24 **A** Mid-February.

25 **Q** Do you know how old he was?

1 A I did.

2 Q How did you know?

3 A He told me.

4 Q And how old did he tell you he was?

5 A Twenty-seven, 28.

6 Q Do you know when his birthday...

7 A February 5th.

8 Q And did Oscar ever come to your house?

9 A (No response.)

10 THE COURT: Do you need a minute?

11 THE WITNESS: (No response.)

12 THE COURT: Do you need a break?

13 THE WITNESS: Please.

14 THE COURT: Ladies and gentlemen, step in the
15 jury room. Don't discuss the case.

16 (The jury retires to the jury room.)

17 THE COURT: Ms. H , we've got a rule about
18 once somebody takes the witness stand, you cannot
19 talk to anybody about your testimony. Now, you can
20 step down. You can talk about other things, but you
21 can't talk about your testimony in any way, okay?

22 THE WITNESS: Yes, sir.

23 THE COURT: All right. We'll be at ease.

24 (Brief Recess.)

25 THE COURT: Come back up here, please, ma'am.

1 (Witness resumes the witness stand.)

2 THE COURT: All right. Some of the jurors said
3 they can't hear you and I know I've had trouble
4 hearing you, so try to speak up, okay?

5 THE WITNESS: (No response.)

6 THE COURT: Did you hear me?

7 THE WITNESS: Yes, sir.

8 THE COURT: Thank you.

9 Bring in the jury.

10 (The jury returns to the courtroom.)

11 THE COURT: All right. You may continue.

12 MS. PATTERSON: Thank you, Your Honor.

13 BY MS. PATTERSON:

14 Q C , did Oscar ever come to your house?

15 A Yes, he did.

16 Q Do you remember when the first time he came to
17 your house?

18 A Maybe in March, beginning of March.

19 Q And do you remember what time of the day it
20 was?

21 A Late at night, early morning.

22 Q Did he come into the house?

23 A He did.

24 Q How did he get in?

25 A I let him through a back door.

1 Q How did you know he was there?

2 A I messaged him on My Space. He had a
3 blackberry so he can get instant messages.

4 Q And how did you find out he was at your house
5 to let him in?

6 A He told me.

7 Q Who was at home when he came over there?

8 A My mom and my sister.

9 Q And where were they?

10 A Sleep.

11 Q And when you let him in the house, where did
12 y'all go?

13 A To my room.

14 Q And did you share a room with anybody?

15 A No.

16 Q And when you got to your room, what happened?

17 A Watched T.V.

18 Q About how long did you watch T.V.?

19 A A good bit.

20 Q And what -- did anything else happen?

21 A (No response.)

22 Q What happened next?

23 A I let him out the house.

24 THE COURT: Did you say you let him out the
25 house?

1 THE WITNESS: Yeah.

2 THE COURT: I couldn't hear you.

3 THE WITNESS: Yes, sir.

4 BY MS. PATTERSON:

5 Q Did anything happen before you let him out the
6 house?

7 A No.

8 Q And where did you live, C ?

9 A 1220

10 Q And what county -- do you know what county it's
11 in?

12 A Lexington County.

13 Q And when is the next time you saw Oscar?

14 A School, after-school program.

15 Q And when was that in relation to when he came
16 to your house?

17 A Either the next day or that Monday.

18 Q Did y'all talk about anything?

19 A No.

20 Q Did he ever come back to your house?

21 A Yeah, he came back.

22 Q When did he come back to your house?

23 A That next weekend.

24 Q And did he come inside your house?

25 A Yes, he did.

1 Q And how did he get in?

2 A I let him in.

3 Q And how did you know he was there?

4 A I messaged him.

5 Q And when he came inside, what happened?

6 A We did the same thing we did last time.

7 Q And what did you do?

8 A Watched T.V.

9 Q And what else did you do?

10 A Talked.

11 Q And did anything else happen?

12 A No.

13 Q You're under oath now, C tell the

14 truth. Did anything else happen?

15 A Yes.

16 Q What happened?

17 A Oscar gave me oral and vaginal sex.

18 Q Were your clothes off?

19 A Yes.

20 Q And who took them off?

21 A We both did.

22 Q Did he take his clothes off?

23 A Yes.

24 Q And about how long did the sex last?

25 A About 15 minutes.

1 Q Did he use protection?

2 A Yes.

3 Q Did he say anything to you after the sex?

4 A No.

5 Q Did you say anything to him?

6 A No.

7 Q Did he make any promises to you after the sex?

8 A That he would be there and he cared about me.

9 Q And did you believe him?

10 A Yes, I did.

11 Q And how old were you again then?

12 A I was 14.

13 Q Do you know how old he was at this point?

14 A Twenty-seven.

15 Q How old?

16 A Twenty-seven.

17 Q And you said this happened what month?

18 A Well, in March, he was 28.

19 Q And after you had sex with him, when is the

20 next time you saw him?

21 A School.

22 Q Did y'all talk about what happened?

23 A No.

24 Q Did y'all talk at all about anything?

25 A No.

1 Q Did you two continue to communicate through My
2 Space?

3 A Yes, we did.

4 Q Did you continue to communicate over the phone?

5 A Yes.

6 THE COURT: What was your answer?

7 THE WITNESS: Yes.

8 BY MS. PATTERSON:

9 Q What kind of phone were you using to call him?

10 A He had bought me a phone.

11 Q Why did he buy you a phone?

12 A My mom took our phones away from us.

13 Q Why did she take your phone?

14 A Because she did -- I got in trouble or
15 something.

16 Q And did you tell Oscar you didn't have a phone?

17 A I did.

18 Q And when did he buy you that phone?

19 A Maybe the end of March, the beginning of May.

20 Q And would you send him any messages over the
21 phone?

22 A Yes, I send him messages.

23 Q Did you think you were in a relationship with
24 him?

25 A I did.

1 Q And why did you think that?

2 A Because I felt special and Oscar gave me what I
3 wanted.

4 Q What kind of things did he give you?

5 A Phones.

6 Q Did he give you anything else at this point?

7 A No, not at this point.

8 Q Did your mom ever find out about this phone?

9 A Yes, she found it and took it away from me.

10 Q And what happened after your mom took it?

11 A I told Oscar and he bought me another one.

12 Q And what kind of phones were these?

13 A Samsung, Verizon.

14 Q Do you remember what they looked like?

15 A Blue and black.

16 Q Were they both -- did they both look like that?

17 A Yes.

18 (State's Exhibit Number 12, cell phone,
19 marked for identification purposes.)

20 MS. PATTERSON: Your Honor, may I approach the
21 witness?

22 THE COURT: Yes, ma'am.

23 BY MS. PATTERSON:

24 Q C , I'm going to show you what's been
25 marked State's Exhibit 12 for identification

1 purposes only and just ask you to take a look at
2 that.

3 **A** (Witness complies.)

4 **Q** Do you recognize what I just handed up to you?

5 **A** Yes, I do.

6 **Q** And what is that?

7 **A** Cell phones Oscar bought for me.

8 **Q** And do they appear to be the same phones that
9 you had?

10 **A** Yes, they do.

11 **Q** Do they look like they've been changed in any
12 way?

13 **A** No.

14 **Q** Now, did you continue to go to the Boys and
15 Girls Club?

16 **A** For a little bit and then my mom seen my MP3
17 player and found out that I had a crush on Oscar and
18 she thought it was me so she took me out of the
19 program.

20 (State's Exhibit Number 13, MP3 player,
21 marked for identification purposes.)

22 **MS. PATTERSON:** Your Honor, may I approach the
23 witness?

24 **THE COURT:** Yes, ma'am.

25 **BY MS. PATTERSON:**

1 Q C , I'm going to show you what's been
2 marked as State's Exhibit 13 for identification
3 purposes only. Do you recognize this?

4 A Yes, that's my MP3 player.

5 Q And does it appear to be changed in any way?

6 A No.

7 Q It appears to be the MP3 player that your mom
8 found?

9 A Yes.

10 THE COURT: What was your answer?

11 THE WITNESS: Yes.

12 MS. PATTERSON: Your Honor, at this time, I
13 move that State's Exhibit 13 be admitted into
14 evidence.

15 THE COURT: Is there any objection?

16 MR. LI: No objection, Your Honor.

17 THE COURT: Mark it in evidence, please.
18 What's written all over that envelope?

19 MS. PATTERSON: Law enforcement information,
20 Your Honor.

21 THE COURT: Any problem with what's written on
22 the envelope?

23 MR. LI: No, Your Honor.

24 THE COURT: Mark it in evidence, please.

25 (State's Exhibit Number 13, MP3 player,

1 admitted into evidence.)

2 BY MS. PATTERSON:

3 Q C , I'm going to show you what's been
4 marked as State's Exhibit 4 and 5 for identification
5 purposes only and ask you if you recognize those two
6 items?

7 A Yes, I do.

8 Q And what are those?

9 A Pictures of Oscar.

10 Q And where are those pictures located?

11 A On my MP3 player.

12 Q And have those pictures -- are those the
13 pictures that you had?

14 A Yes, they are.

15 Q Are those the pictures that your mom discovered
16 on your MP3 player?

17 A Yes.

18 Q Do they look like they've been changed in any
19 way?

20 A No.

21 MS. PATTERSON: Your Honor, at this time, I
22 move that State's Exhibit 4 and 5 be admitted into
23 evidence.

24 THE COURT: Subject to previous objection?

25 MR. LI: No objection to those two photos.

1 **THE COURT:** Mark those in evidence, please,
2 ma'am.

3 (State's Exhibit Numbers 4 and 5,
4 photographs, admitted into evidence.)

5 BY MS. PATTERSON:

6 **Q** Did your mom discover anything else on your MP3
7 player?

8 **A** No.

9 **Q** Did you continue to see Oscar at the Boys and
10 Girls Club before your mom took you out?

11 **A** Yes, I did.

12 **Q** Now, the second cell phone, what happened to
13 it?

14 **A** My mom found it.

15 **Q** Do you remember when she found it?

16 **A** No, I don't.

17 **Q** Did you ever have -- did you have any nicknames
18 for Oscar?

19 **A** Yeah, I had nicknames for him.

20 **Q** What did you call him?

21 **A** Stanka and Hubby.

22 **Q** Did he have any nicknames for you?

23 **A** He called me Wifey on occasions.

24 **Q** Did he call you anything else?

25 **A** And C .

1 **Q** Did you and Oscar ever have sex again at your
2 house?

3 **A** No.

4 **Q** Did you ever meet any of his friends at this
5 point?

6 **A** No.

7 **Q** Did you ever meet any of his family?

8 **A** No.

9 **Q** Did you know anything about his family?

10 **A** Not really.

11 **Q** And did anyone at the Boys and Girls Club ever
12 find out what was going on between you and Oscar?

13 **A** Eventually.

14 **Q** Do you remember when you discovered that
15 someone else there found out?

16 **A** No.

17 **Q** And do you know what, if anything, happened to
18 Oscar?

19 **A** He was fired.

20 **Q** Now, do you remember when you got the second
21 cell phone?

22 **A** It was over the summer.

23 **Q** And how were you getting these cell phones from
24 Oscar?

25 **A** Oscar would bring them to me.

1 Q And where would --

2 MR. LI: Your Honor, I would object to the
3 relevancy of any cell phone given after the time in
4 question.

5 THE COURT: Objection's overruled. You may
6 continue.

7 BY MS. PATTERSON:

8 Q And where would you be located when he would
9 give you these cell phones?

10 A Up the hill.

11 Q Where is up the hill?

12 A In front of my mailbox.

13 Q And do you remember when your mom found out
14 about the second cell phone?

15 A No.

16 Q You don't remember when she found out?

17 A Huh-huh.

18 Q What happened when she found out?

19 A I got upset.

20 Q Why were you upset?

21 A Because she found it.

22 Q And why did that make you upset?

23 A Because I knew that Oscar was caught and I was.

24 Q And did you tell Oscar that she found this
25 second cell phone?

- 1 A I did.
- 2 Q And what did he do?
- 3 A He bought me another one.
- 4 Q And what happened to that cell phone?
- 5 A My mom found it.
- 6 Q And how did that make you feel?
- 7 A I was mad.
- 8 Q And what did you do?
- 9 A After that, I ran away.
- 10 Q Do you remember when that was?
- 11 A That was in November.
- 12 Q Now, did your mom find the cell phone -- did
- 13 you ever leave home before the time in November?
- 14 A I did.
- 15 Q And do you remember when that was?
- 16 A May.
- 17 Q And what made you leave home then?
- 18 A Well, I was actually with Oscar and her light
- 19 was on in the room. I didn't intentionally run
- 20 away, but the light was on and I thought I was
- 21 caught.
- 22 Q Do you remember when that was you were with
- 23 Oscar?
- 24 A That was in May.
- 25 Q Beginning of May?

1 A The middle.

2 Q Middle of May. And how did you get with Oscar?

3 A He picked me up.

4 Q Picked you up from where?

5 A My home.

6 Q Do you remember what time of the day it was?

7 A One o'clock, 1:30.

8 Q And how did you leave your home?

9 A He picked me up.

10 Q How did you get out of your home?

11 A Through the window.

12 Q Which window?

13 A The back window.

14 Q And when you left out of the window at 1:00 in

15 the morning, where did you meet Oscar?

16 A Up the hill.

17 Q And where did you two go?

18 A We went to his house.

19 Q And did you come back home?

20 A I came back home.

21 Q And what happened when you got back home?

22 A My mom's light was on in her room.

23 Q And how did you feel when you saw that light

24 was on?

25 A I was scared.

1 Q Why were you scared?

2 A Because I knew I was in trouble.

3 Q Did Oscar know the light was on?

4 A Yeah.

5 MR. LI: Your Honor, I object. How could she
6 know if Oscar knew?

7 THE COURT: You can't ask someone what somebody
8 else knew unless --

9 BY MS. PATTERSON:

10 Q Did you tell Oscar the light was on?

11 A Uh-huh.

12 THE COURT: You need to try to say yes or no.

13 THE WITNESS: Yes.

14 BY MS. PATTERSON:

15 Q And how did he react when you told him the
16 light was on?

17 A He was scared.

18 Q And how do you know he was scared?

19 A The look on his face.

20 Q Did you go inside the house?

21 A Inside Oscar's house?

22 Q Inside your house?

23 A No.

24 Q Where did you go?

25 A I went up the hill. We waited a couple hours.

1 Q Did anybody go up the hill with you?

2 A Just me and Oscar was in the car.

3 Q And how long did y'all stay up the hill?

4 A A couple hours.

5 Q And then what did you do?

6 A Went back with him.

7 Q I'm sorry, you what?

8 A Went back with Oscar.

9 Q And where did y'all go back to?

10 A His house.

11 Q Do you know if anybody came looking for you at
12 his house?

13 A Yes, the officer came.

14 Q Did you talk to that officer?

15 A No.

16 Q Where were you?

17 A I hid in the shower.

18 Q Do you know if Oscar talked to the officer?

19 A Yes.

20 Q And after he talked to the officer, did Oscar
21 say anything to you?

22 MR. LI: Your Honor, I object to the previous
23 question of whether or not she knew Oscar talked to
24 him. She was hiding apparently.

25 THE COURT: You have to lay a foundation as to

1 how she --

2 BY MS. PATTERSON:

3 Q How do you know an officer came to Oscar's
4 house?

5 A We both looked out the window and we saw the
6 police car.

7 Q And when you saw the police car, what did you
8 do?

9 A He told me to go hide.

10 Q And what did he do?

11 A Went to the door.

12 Q And did you hear them talking?

13 A I did hear them talking.

14 Q Did you hear what they were saying?

15 A No, not really.

16 Q And where were you hiding again?

17 A In the shower.

18 Q And did Oscar ever come and get you out the
19 shower?

20 A Yes.

21 Q Did he say anything to you?

22 A Not that I can remember.

23 Q So what happened after you got out the shower?

24 A I ran out of the back door.

25 Q Why did you run out the back door?

1 A Because we didn't know if the police was going
2 to come back and search the house for me.

3 Q And where did you go when you ran out the back
4 door?

5 A To another street.

6 Q Was anybody else at Oscar's house when this was
7 going on?

8 A No.

9 Q Who does he live with?

10 A His mother.

11 Q Anybody else live there?

12 A No.

13 Q Do you know where she was?

14 A I think she was at work.

15 THE COURT: I didn't hear you, I'm sorry.

16 THE WITNESS: I believe she was at work.

17 BY MS. PATTERSON:

18 Q Do you remember what day of the week this was?

19 A Tuesday or Wednesday.

20 Q And when you went to the next street over, what
21 happened?

22 A He came back and picked me up.

23 Q And why did you go to the next street over?

24 A I just ran, you know.

25 THE COURT: You were what?

1 **THE WITNESS:** I just ran.

2 BY MS. PATTERSON:

3 **Q** And how long was it when you were on the next
4 street over that he came around and picked you up?

5 **A** Two seconds maybe.

6 **Q** And how did he pick you up?

7 **A** In his car.

8 **Q** And where did you guys go?

9 **A** He dropped me off in West Columbia.

10 **Q** Who lives in West Columbia?

11 **A** One of my friends.

12 **Q** And did you ever talk to him that day again?

13 **A** Yes.

14 **Q** When?

15 **A** A couple hours later.

16 **Q** And how did you talk to him?

17 **A** I called him.

18 **Q** What kind of phone did you use?

19 **A** My friend's.

20 **Q** And what kind of phone were you calling him on?

21 **A** A cell phone.

22 **Q** And what did y'all talk about?

23 **A** Him coming to get me.

24 **Q** And did he come back and get you?

25 **A** He did.

1 Q And when did he come back and get you?

2 A About 15 minutes later.

3 Q Did he take you home -- or where did he take
4 you?

5 A He took me back to my residence.

6 Q Did you go home?

7 A No.

8 Q Where did you go?

9 A To one of my friend's house.

10 Q Where did your friend live?

11 A I wouldn't say directly next door, but some
12 houses down.

13 Q And what did you do at that friend's house?

14 A I called Oscar, told him that I wasn't, you
15 know, going home and I stayed there for that night.

16 Q And when is the next time after that you saw
17 Oscar?

18 A The next day.

19 Q And where did you see him?

20 A In my friend's backyard.

21 Q Do you remember what time that was?

22 A 10:15 maybe.

23 Q And at your friend's backyard, was anybody else
24 back there?

25 A Jordan, two of my other friends.

1 Q What were you and Oscar doing?

2 A Talking, trying to figure out what we were
3 going to do.

4 Q And what did you two decide to do?

5 A We never came to a decision, the police came.

6 Q Was anybody -- did anybody else come in the
7 back?

8 A The police officer and my mom's husband.

9 Q Your stepfather?

10 A Yes.

11 Q Who came around back first?

12 A First, I saw my stepfather, then I saw the
13 police officers.

14 Q Did your stepfather do anything when he saw
15 y'all back there?

16 A He had Oscar's shirt like he was about to punch
17 him.

18 Q Did Oscar say anything?

19 A He told me to leave it alone because I was in
20 between the two.

21 Q Did the police come?

22 A Yes.

23 Q And what did the police do?

24 A They handcuffed Oscar.

25 Q And how did this make you feel?

1 **A** I was scared for Oscar. I did care about him
2 and I was scared and upset.

3 **Q** Were you doing anything else?

4 **A** Just crying.

5 **Q** C , at any time, did you think you were
6 pregnant?

7 **A** Yes, it came up.

8 **Q** And why did you think you were pregnant?

9 **A** My menstrual cycle was delayed and -- my
10 menstrual cycle was delayed.

11 **Q** Did you and Oscar ever have sex, unprotected
12 sex?

13 **A** Yes, we did.

14 **Q** So who did you think got you pregnant?

15 **A** Oscar.

16 **Q** Did you tell him that?

17 **A** I did.

18 **Q** What was his reaction?

19 **A** He didn't really say anything.

20 **THE COURT:** I didn't hear you.

21 **THE WITNESS:** He didn't really say anything.

22 **BY MS. PATTERSON:**

23 **Q** Did he do anything?

24 **A** No.

25 **Q** Did he buy you anything?

1 A He bought me prenatal pills because I wasn't
2 going to tell my mother and he knew that, so if I
3 was, he wanted to make sure that I was taken care
4 of.

5 Q When -- after Oscar was arrested, when is the
6 next time you talked to him?

7 A About a week later.

8 Q And how did you talk to him?

9 A I called him.

10 Q Did you ever see him again?

11 A Yes, I did.

12 Q When is the next time you saw him?

13 A Maybe two weeks after we conversated (sic) and
14 he got out of jail.

15 Q And what did y'all talk about?

16 A I was just making sure he was okay because that
17 whole time I was worried about him.

18 Q And did you -- and where were you when you saw
19 him?

20 A He came and picked me up.

21 Q Picked you up from where?

22 A My residence.

23 Q And where did y'all go?

24 A I think that day we talked up the hill.

25 Q Did y'all go anywhere else?

1 A No.

2 Q Besides the phones, did he ever buy you
3 anything else?

4 A Yes.

5 Q What did he buy you?

6 A Jewelry.

7 Q What kind of jewelry?

8 A A ring.

9 Q What kind of ring was it?

10 A A diamond.

11 Q What kind of diamond ring?

12 A A diamond ring. I can't --

13 Q Did he make you any promises when he gave you
14 the ring?

15 A Previous, yes, he did.

16 Q What kind of promise did he previously make
17 you?

18 A That he would be there for me and he cared
19 about me.

20 Q And did he make you any other promises?

21 A We would get married eventually when I was of
22 age.

23 Q When did y'all have that conversation?

24 A Over the summer.

25 Q And when did you get this ring?

1 A Over the summer.

2 Q But after you had that conversation with him?

3 A Yes.

4 Q And where were you when he gave you that ring?

5 A In the car.

6 Q Whose car?

7 A His car.

8 Q And when he gave you the ring, did he say

9 anything to you?

10 A No.

11 Q What did you say to him when you got the ring?

12 A I was happy.

13 Q Why were you happy?

14 A Because I thought he was serious about marrying

15 me.

16 Q How did the ring look?

17 A It had two small diamonds embedded in the

18 sides. It had a big diamond in the middle and then

19 a diamond on each side of the big one.

20 Q Did it fit you?

21 A No.

22 Q Did you wear it?

23 A Yes.

24 Q How were you able to wear it if it didn't fit

25 you?

1 **A** I put tape on the bottom so no one could see
2 it.

3 (State's Exhibit Number 14, ring, marked for
4 identification purposes.)

5 **MS. PATTERSON:** Beg the Court's indulgence,
6 Your Honor.

7 **THE COURT:** Yes, ma'am.

8 (Pause.)

9 BY MS. PATTERSON:

10 **Q** C , I'm going to show you what's been
11 marked as State's Exhibit 14 for identification
12 purposes only and ask you if you recognize this?

13 **A** Yes, I do.

14 **Q** And what is this?

15 **A** The ring Oscar bought for me.

16 **Q** How do you know it's the ring?

17 **A** It looks like it. I put the tape on the bottom
18 of it.

19 **Q** Does it look different in any way?

20 **A** No.

21 **MS. PATTERSON:** Your Honor, at this time, I
22 would move that State's Exhibit 14 be admitted into
23 evidence.

24 **THE COURT:** Any objection?

25 **MR. LI:** No objection, Your Honor.

1 **THE COURT:** Mark it in evidence, please, ma'am.

2 (State's Exhibit Number 14, ring, admitted
3 into evidence.)

4 **BY MS. PATTERSON:**

5 **Q** Did you tell anybody about that ring?

6 **A** Yes, I did.

7 **Q** You told your mom?

8 **A** No, I didn't tell her.

9 **Q** Did she ever find out?

10 **A** She did.

11 **Q** How did she find out?

12 **A** She found it.

13 **Q** And what did she do?

14 **A** She said she was going to give it back to me
15 and she didn't and it made me more madder.

16 **Q** Did you ever send Oscar any text messages?

17 **A** Yeah, I did.

18 **Q** Did you ever send him any pictures?

19 **A** Yeah. Yes.

20 **Q** What kind of pictures would you send him?

21 **A** I've sent him head pictures of my face and I
22 think I sent some body pictures, too.

23 **Q** And what kind of body pictures?

24 **A** Of my body.

25 **Q** Did you have on clothes?

1 A Some of them I did, some of them I didn't.

2 Q And why would you send him pictures of you
3 without any clothes?

4 A I just did.

5 THE COURT: I'm sorry, I didn't hear you.

6 THE WITNESS: I just did.

7 MR. LI: Judge, I raise the same objection to
8 relevancy and 403.

9 THE COURT: Subject to previous objections --
10 you're offering those in evidence?

11 MS. PATTERSON: I would like to approach the
12 victim -- I mean, approach C

13 THE COURT: Sure.

14 BY MS. PATTERSON:

15 Q C , I'm going to first show you what's
16 been marked as State's Exhibit 2 for identification
17 purposes only. What is that a picture of?

18 A Me.

19 Q And where is that picture located?

20 A On the phone.

21 Q And what's the date on that picture?

22 A Monday, June 8th.

23 Q And would you have sent that picture -- did you
24 send that picture to Oscar?

25 A I may have.

1 Q Does that picture look like it's been changed
2 in any way?

3 A No.

4 Q Do you recognize that phone the picture's on?

5 A Yes.

6 Q And what do you recognize that phone to be?

7 A The phone Oscar gave me.

8 MS. PATTERSON: Your Honor, at this time, I
9 would move that State's Exhibit 2 be admitted into
10 evidence.

11 THE COURT: Subject to previous objections,
12 that picture is marked in evidence, Madame Court
13 Reporter.

14 (State's Exhibit Number 2, photograph,
15 admitted into evidence.)

16 BY MS. PATTERSON:

17 Q I'm going to show you what's been marked as
18 State's Exhibit 3 for identification purposes only.
19 Who is that?

20 A That's me.

21 Q And what are you doing in that picture?

22 A Throwing a peace sign.

23 Q And do you know how you took that picture?

24 A On the phone.

25 Q Do you know what phone you took that picture

1 on?

2 A The phone Oscar gave me.

3 Q And did you send that picture to Oscar?

4 A I believe so.

5 Q Did you send Oscar pictures like this?

6 A Yes.

7 MS. PATTERSON: Your Honor, at this time, I
8 would move that State's Exhibit 3 be admitted into
9 evidence.

10 THE COURT: Subject to previous objection?

11 MR. LI: Yes, Your Honor.

12 THE COURT: There's not a sufficient foundation
13 on that one. The objection's sustained.

14 BY MS. PATTERSON:

15 Q I'm going to show you what's been marked as
16 State's Exhibit 9 for identification purposes. Do
17 you recognize that picture?

18 A Yes.

19 Q And who is that a picture of?

20 A Me.

21 Q And what's in that -- what are you showing in
22 that picture?

23 A My breast.

24 Q And what else can you see in that picture?

25 A My shirt, my jacket, my hand.

1 Q And do you remember why you took that picture?

2 A No.

3 Q Do you remember what device you used to take
4 that picture?

5 A Cell phone.

6 Q And what cell phone would that have been?

7 A The phone Oscar gave me.

8 Q And did you send that picture to Oscar?

9 A I don't think I did.

10 MR. LI: Your Honor, I would ask that the
11 Solicitor refrain from letting the jury see the
12 photos before, to keep them more to herself
13 before --

14 MS. PATTERSON: I am.

15 THE COURT: Don't show any photos that are not
16 in evidence.

17 Ladies and gentlemen -- is that your only
18 issue?

19 MR. LI: That's my only issue, correct.

20 THE COURT: Go ahead.

21 BY MS. PATTERSON:

22 Q I'm going to show you what's been marked as
23 State's Exhibit 10 for identification purposes only
24 and ask if you can identify that picture?

25 A That's me.

1 Q And what's in that picture?

2 A Me holding my breast and the phone.

3 Q And what phone is that?

4 A The one Oscar gave me.

5 Q And why did you take that picture?

6 A No reason.

7 Q And did you send that picture to Oscar?

8 A I might have.

9 Q I'm going to show you what's been marked as
10 State's Exhibit 8 for identification purposes only.
11 Do you recognize that picture?

12 A Yes, I do.

13 Q And what is that picture?

14 A Picture of my stomach.

15 Q And how did you take that picture -- or who
16 took that picture?

17 A I did.

18 Q And how did you take that picture?

19 A Off of the phone Oscar gave me.

20 Q Did you send him that picture?

21 A I may have sent that one, too.

22 MS. PATTERSON: Beg the Court's indulgence,
23 Your Honor.

24 THE COURT: Yes, ma'am.

25 (Pause.)

1 BY MS. PATTERSON:

2 Q And did you send Oscar text messages?

3 A Yes.

4 Q I'm going to show you what's been marked as
5 State's Exhibit 7 for identification purposes only
6 and ask you if you recognize that?

7 A Yes, I do.

8 Q And what is that?

9 A Text message.

10 Q And who did you send that message to?

11 A Oscar.

12 Q And how do you know?

13 A Because I wrote it.

14 Q And how can you tell you sent it to Oscar? Who
15 does it say it's sent to?

16 A Stanka.

17 Q Who is Stanka?

18 A Oscar.

19 Q Do you recognize that phone?

20 A Yes.

21 Q And what phone is that?

22 A The phone Oscar bought.

23 THE COURT: Ms. H , I don't want to keep
24 interrupting you, but I really need you to speak up.

25 BY MS. PATTERSON:

1 Q C , what date is on that phone?

2 A Wednesday, April 17th -- no, April 1st.

3 MS. PATTERSON: Your Honor, at this time, I
4 move that State's Exhibit 7 be moved into evidence.

5 MR. LI: Same objection, Your Honor.

6 THE COURT: Let me see it.

7 You've got to establish what year.

8 BY MS. PATTERSON:

9 Q C , do you remember what year you wrote
10 that text message?

11 A '09.

12 MS. PATTERSON: Your Honor, at this time, I
13 move that State's Exhibit 7 be admitted into
14 evidence.

15 THE COURT: Subject to previous objection?

16 MR. LI: Yes, Your Honor.

17 THE COURT: Mark that one in evidence, please,
18 Madame Court Reporter.

19 (State's Exhibit Number 7, photograph,
20 admitted into evidence.)

21 BY MS. PATTERSON:

22 Q I'm going to show you what's been marked as
23 State's Exhibit 11 for identification purposes only.

24 Do you recognize that?

25 A Yes, I do.

1 Q And what is that?

2 A A text message.

3 Q And who wrote that text message?

4 A I did.

5 Q How do you know?

6 A Because I wrote it.

7 Q And who did you send it to?

8 A Oscar.

9 Q How do you know?

10 A Because I used abbreviations.

11 Q What kind of abbreviations are those?

12 A It's no meaning to it, but dots and "at"
13 symbols, quotation mark.

14 Q Did you use that abbreviation to send things to
15 him?

16 A Sometimes.

17 Q And why would you use that abbreviation?

18 A So no one would know who it was.

19 Q And do you recognize that phone?

20 A Yes.

21 Q And what phone is that?

22 A The phone Oscar bought.

23 MS. PATTERSON: Your Honor, at this time, I'd
24 move that State's Exhibit 11 be moved into evidence.

25 THE COURT: Let me see it.

1 **MR. LI:** Your Honor, the same objection,
2 including the fact that she said some time.

3 **THE COURT:** There's not a sufficient foundation
4 to enter that document into evidence -- or that
5 photograph into evidence. You can attempt to lay a
6 sufficient foundation or move on, whatever you
7 choose.

8 BY MS. PATTERSON:

9 **Q** Do you know when you sent that text message?

10 **A** No, I don't.

11 **Q** I'm going to show you what's been marked as
12 State's Exhibit 6 for identification purposes and
13 ask you if you recognize that?

14 **A** Yes, I do.

15 **Q** And what is that?

16 **A** A text message I sent to Oscar.

17 **Q** And how do you know you sent it to Oscar?

18 **A** Because it has Stanka in it and that's what I
19 called him. It has the abbreviations.

20 **Q** And would those be the same abbreviations that
21 you would use to communicate with him?

22 **A** Yes.

23 **Q** And when did you send that text message?

24 **A** Saturday, April 18th.

25 **Q** And what year would that have been?

1 A 2009.

2 Q And do you recognize the telephone that it's
3 on?

4 A Yes.

5 Q And what phone is that?

6 A The phone Oscar got.

7 MS. PATTERSON: Your Honor, at this time, I'd
8 move State's Exhibit 6 be admitted into evidence.

9 MR. LI: Same objections, Your Honor, also
10 object that at some point, this evidence is going to
11 become cumulative and repetitive.

12 THE COURT: Subject to previous objections and
13 to the objection based on the evidence being
14 unnecessarily repetitive under Rule 403, the
15 objections are overruled. Mark that photograph into
16 evidence, please, ma'am.

17 (State's Exhibit Number 6, photograph,
18 admitted into evidence.)

19 BY MS. PATTERSON:

20 Q And I'm going to show you what's been marked as
21 State's Exhibit 12. Again, do you recognize those?

22 A Yes.

23 Q And what are they?

24 A The phones Oscar bought.

25 Q And do they appear to be in the same condition

1 as when you had them?

2 A Yes, they do.

3 Q Do they appear to have been changed in any way?

4 A No.

5 MS. PATTERSON: And, Your Honor, I would move
6 that State's Exhibit 12 be admitted into evidence.

7 MR. LI: No objection.

8 THE COURT: Mark those in evidence, please,
9 ma'am.

10 (State's Exhibit Number 12, cell phone,
11 admitted into evidence.)

12 (State's Exhibit Number 15, cell phone,
13 marked for identification purposes.)

14 BY MS. PATTERSON:

15 Q C , I'm going to show you what's been
16 marked as State's Exhibit 15 for identification
17 purposes and ask if you recognize that?

18 A Yes.

19 Q And what is that?

20 A The third phone Oscar bought.

21 Q And when did he give you that cell phone?

22 A I got that over the summer.

23 Q Does that phone appear to be in the same
24 condition it was when you had it?

25 A Yes.

1 Q Does it look like it's been changed in any way?

2 A No.

3 MS. PATTERSON: Your Honor, I would move that
4 State's Exhibit 15 be admitted into evidence.

5 MR. LI: Your Honor, I object based on the time
6 period and relevancy again.

7 THE COURT: Objection's overruled. Mark it in
8 evidence, please.

9 (State's Exhibit Number 15, cell phone,
10 admitted into evidence.)

11 BY MS. PATTERSON:

12 Q Did anybody ever find out about that third
13 phone?

14 A Yes.

15 Q And who found out about it?

16 A My mom.

17 Q And do you remember when she found out?

18 A November.

19 Q And what was her reaction when she found out?

20 A She asked me whose it was and I lied to her.

21 Q And did she ever address it any other way?

22 A No.

23 Q And how did you feel when she found out about
24 that third cell phone?

25 A I was upset.

- 1 Q And how did Oscar get you that phone?
- 2 A He brought it.
- 3 Q And where did he bring it to you?
- 4 A In my apartment complex.
- 5 Q And how did you feel when your mom found out?
- 6 A I was upset.
- 7 Q Why were you upset?
- 8 A Because again we were caught.
- 9 Q And as a result of being upset, did you do
- 10 anything?
- 11 A Yes. I ran away.
- 12 Q And did you prepare to run away?
- 13 A That time, yes.
- 14 Q And what did you do?
- 15 A I packed up my clothes, went to school, put my
- 16 clothes in my locker and went to class.
- 17 Q And what kind of clothes did you pack?
- 18 A My underwear, jeans, stuff that I needed.
- 19 Q Did you pack anything else?
- 20 A No.
- 21 Q Did you ever have any of Oscar's clothing?
- 22 A Yes.
- 23 Q What did you have that belonged to him?
- 24 A A pair of his boxers.
- 25 Q And how did they look?

- 1 A They were gray.
- 2 Q And where did you get them?
- 3 A From his house.
- 4 Q Do you remember when?
- 5 A No.
- 6 Q Who gave them to you?
- 7 A Oscar.
- 8 Q And what did you do with them when you had
- 9 them?
- 10 A I wore them.
- 11 Q Did you wash them?
- 12 A Yes.
- 13 Q And what did you do with the boxers?
- 14 A I put them in dirty clothes and my mom found
- 15 them.
- 16 Q Now, when you packed your clothes, took them to
- 17 your locker, did you go home that day?
- 18 A Yes, I did.
- 19 Q And what did you do with those clothes you had
- 20 packed?
- 21 A They stayed in my locker.
- 22 Q And what did you do the next day?
- 23 A The next day I ran away. I left that morning.
- 24 Q And where did you leave from?
- 25 A My home.

- 1 Q And where did you go?
- 2 A Around my -- around where I live.
- 3 Q Around what?
- 4 A Around where I live.
- 5 Q And did you talk to Oscar that day?
- 6 A Yes, I did.
- 7 Q And how did you talk to him?
- 8 A I called him.
- 9 Q And what did you tell him?
- 10 A That I had left.
- 11 Q What did he say?
- 12 A He didn't say anything.
- 13 Q Did he do anything?
- 14 A I got picked up.
- 15 Q Who picked you up?
- 16 A One of his friends.
- 17 Q Do you know this friend's name?
- 18 A (No response.)
- 19 Q Answer the question, please.
- 20 A Yes.
- 21 Q What was the friend's name?
- 22 A Jamie.
- 23 Q Do you know her last name?
- 24 A Banks.
- 25 Q Had you met her before?

- 1 A No.
- 2 Q How did you know she was coming to get you?
- 3 A We were keeping contact.
- 4 Q Who is we?
- 5 A The three of us, me, Oscar and Jamie.
- 6 Q And where did Jamie take you?
- 7 A Back to her house.
- 8 Q Do you know how old she is or was?
- 9 A She was -- no.
- 10 Q Was she your age?
- 11 A No.
- 12 Q Older, younger?
- 13 A Older.
- 14 Q Do you know where she lived?
- 15 A Blythewood.
- 16 Q And what did you do when you got to her house?
- 17 A Talked, talked to Oscar.
- 18 Q Did you ever see him?
- 19 A No.
- 20 Q Did anyone ever come to Jamie's house looking
- 21 for you?
- 22 A No, not that I'm aware of.
- 23 Q Were you ever found at Jamie's house?
- 24 A I hid under the house.
- 25 Q Why did you hide under the house?

1 **A** Eventually the police came the next day.

2 **Q** And you were under the house?

3 **A** Yes.

4 **Q** Why were you under the house?

5 **A** The police were there.

6 **Q** How did they know where to find you?

7 **A** They just looked. I don't know how they found
8 out.

9 **Q** Did you tell anybody where you were?

10 **A** Yes, I did.

11 **Q** Who did you tell?

12 **A** My friend from where I live at.

13 **MS. PATTERSON:** Beg the Court's indulgence.

14 **THE COURT:** Yes, ma'am.

15 (State's Exhibit Number 16, boxers, marked
16 for identification purposes.)

17 BY MS. PATTERSON:

18 **Q** C , I'm going to show you what's been
19 marked as State's Exhibit 16, ask you if you
20 recognize it. Do you recognize that?

21 **A** Yes.

22 **Q** What is it?

23 **A** Oscar's underwear.

24 **Q** And how do you know they're Oscar's underwear?

25 **A** Because I wore them.

1 Q Do they look like they've been changed?

2 A No.

3 Q Do they look like they're in the same condition
4 as when you saw them last?

5 A Yes.

6 MS. PATTERSON: Your Honor, at this time, I
7 move that State's Exhibit 16 be admitted into
8 evidence.

9 THE COURT: Any objection?

10 MR. LI: Your Honor, I would argue that a
11 improper foundation, she said that she knew them
12 because she wore them, Your Honor.

13 MS. PATTERSON: She already testified that she
14 got them from him.

15 THE COURT: Anything else?

16 MR. LI: No, Your Honor.

17 THE COURT: The objection's overruled, goes to
18 weight not admissibility.

19 Mark it in evidence, please, ma'am.

20 (State's Exhibit Number 16, boxers, admitted
21 into evidence.)

22 BY MS. PATTERSON:

23 Q C , did Oscar ever write you any
24 letters?

25 A Yes, he did.

1 Q And how would you get the letters?

2 A He gave me some at the after-school program.

3 Q And how would you get the others?

4 A He gave them to me when I was at home.

5 (State's Exhibit Numbers 17 through 19,
6 letters, marked for identification purposes.)

7 BY MS. PATTERSON:

8 Q I'm going to show you what's been marked as
9 State's Exhibit 17, 18 and 19 and ask you if you
10 recognize those, please take a look at them.

11 A (Witness complies.)

12 Q Do you recognize those?

13 A Yes.

14 Q And how do you recognize these?

15 A It has Stanka in it.

16 Q And do you know Oscar's handwriting?

17 A Yes, I do.

18 Q How do you know his handwriting?

19 A He writes sloppy.

20 Q And had you seen it before, his handwriting?

21 A Yes.

22 Q On how many occasions?

23 A I don't remember.

24 Q And beginning with State's Exhibit 17, how do
25 you recognize that to be his handwriting?

1 A Because it's sloppy and it has Stanka in it.

2 Q And, again, who's Stanka?

3 A Oscar.

4 Q And what did he refer to you as?

5 A Hun.

6 Q Do you remember when you got that letter?

7 A No.

8 Q But you do recognize that it's his handwriting?

9 A Yes.

10 Q Does that letter appear to be in the same
11 condition it was when you received it from him?

12 A Uh-huh.

13 Q Does it look like it's been changed in any way?

14 A No.

15 MS. PATTERSON: Your Honor, I would like to
16 move State's Exhibit 17 into evidence.

17 MR. LI: I would object again to lack of
18 foundation. She claims that she recognized the
19 handwriting because of the word Stanka and that he
20 writes sloppy. Your Honor, those are the two basis
21 for the foundation.

22 THE COURT: Anything else from the State?

23 MS. PATTERSON: Yes, sir. She said she
24 recognized his handwriting, she's seen it.

25 MR. LI: She just made a conclusory statement,

1 Your Honor.

2 **THE COURT:** Objection's overruled. Mark it in
3 evidence.

4 **MS. PATTERSON:** Thank you, Your Honor.

5 (State's Exhibit Number 17, letter, admitted
6 into evidence.)

7 BY MS. PATTERSON:

8 **Q** I'm going to show you what's been marked as
9 State's Exhibit 18. Do you recognize that?

10 **A** Yes.

11 **Q** And where did you get that?

12 **A** Oscar.

13 **Q** And what is it?

14 **A** A letter he wrote to me.

15 **Q** And how do you know it's a letter he wrote to
16 you?

17 **A** It has Stanka in it.

18 **Q** Do you recognize the handwriting to be Oscar's?

19 **A** Yes.

20 **MS. PATTERSON:** And, Your Honor, I would move
21 State's Exhibit 18 be admitted into evidence.

22 **MR. LI:** Same objection.

23 **THE COURT:** When was it -- is it dated or
24 anything?

25 **MS. PATTERSON:** No, sir, Your Honor.

1 **THE COURT:** Let me see it.

2 (Pause.)

3 **THE COURT:** The objection's overruled. Mark it
4 in evidence.

5 (State's Exhibit Number 18, letter,
6 admitted into evidence.)

7 BY MS. PATTERSON:

8 **Q** And I'm going to show you what's been marked as
9 State's Exhibit 19 and ask you to identify it. Do
10 you recognize that?

11 **A** Yes, I do.

12 **Q** And what is that?

13 **A** A letter Oscar wrote.

14 **Q** And how did you get that letter?

15 **A** He gave it to me at the after-school program.

16 **Q** So when would that have been?

17 **A** During the school year.

18 **Q** And how do you recognize that to be a letter he
19 wrote to you?

20 **A** That's the name that he called me.

21 **Q** And what's that name?

22 **A** C .

23 **MS. PATTERSON:** Your Honor, at this time, I'd
24 move State's Exhibit 19 into evidence.

25 **MR. LI:** Renew same objections, including the

1 repetitive objection, Your Honor.

2 THE COURT: Objection's overruled. Mark it in
3 evidence.

4 (State's Exhibit Number 19, letter, admitted
5 into evidence.)

6 (State's Exhibit Numbers 20 through 28, My
7 Space messages, marked for identification purposes.)
8 BY MS. PATTERSON:

9 Q C , I'm going to show you what's been
10 marked as State's Exhibit 20 through 28 and ask you
11 to take a look at these.

12 A (Witness complies.)

13 Q Do you recognize what I just passed up to you?

14 A Yes.

15 Q And what are those?

16 A Messages from My Space that I sent to him.

17 Q And how do you recognize those to be the
18 messages you sent to him?

19 A It has all the names that I called him.

20 Q And what dates are on those?

21 A March 25th, 26th, 2009.

22 Q And how do you know they were sent to him?

23 A Some of them we messaged back and forth to each
24 other, so I know he got them.

25 Q Did he make any responses to you?

1 **A** Yes, in some of them.

2 **Q** C --

3 **MS. PATTERSON:** Your Honor, at this time, I
4 move that State's Exhibit 20 through 28 be admitted
5 into evidence.

6 **THE COURT:** Any objection?

7 **MR. LI:** No objection, Your Honor.

8 **THE COURT:** Mark those in evidence, please.

9 (State's Exhibit Numbers 20 through 28, My
10 Space messages, admitted into evidence.)

11 BY MS. PATTERSON:

12 **Q** Now, C , did you and Oscar have sex?

13 **A** Yes.

14 **Q** How many times did y'all have sex?

15 **A** More than ten.

16 **THE COURT:** Did she say more than two or more
17 than ten?

18 **THE WITNESS:** More than ten.

19 BY MS. PATTERSON:

20 **Q** And what type of sex did you have?

21 **A** Oral and vaginal sex.

22 **Q** And how did you feel about Oscar?

23 **A** I cared about him a lot. He was there for me.

24 **Q** And how did you think he felt about you?

25 **A** That he cared about me, too.

1 Q Did Oscar know how old you were?

2 A Yes.

3 Q Did you tell him?

4 A Yes, I did.

5 Q And when your mom and stepdad found out about
6 what was going on with you and Oscar, how did you
7 feel?

8 A I was upset with them.

9 Q And did you blame anybody?

10 A Yes. I blamed my stepfather and I blamed my
11 mother.

12 Q And did you ever tell anybody anything about
13 your stepfather because -- did you tell anybody
14 anything about your stepfather?

15 A Yes. I told Oscar that he had molested me.

16 Q And why did you tell Oscar -- did your
17 stepfather molest you?

18 A No.

19 Q And why did you tell Oscar?

20 A Because I was upset with him for doing what he
21 was doing to Oscar and I wanted him to feel how
22 Oscar was feeling, you know.

23 Q Did you ever tell anybody else anything about
24 your stepfather?

25 A I recanted it to many people, Detective

1 Chapell. Yeah, Detective Chapell.

2 Q And what did you think he was doing to Oscar?

3 A Throwing him in jail, making him go through
4 this because I feel like nobody on the planet is
5 perfect, we all make mistakes. And being that I
6 cared about Oscar and he was going through this, I
7 was upset.

8 Q Did Oscar ever tell you that your relationship
9 was wrong?

10 A We didn't really communicate about that. We
11 didn't really focus on the age difference. It was
12 there, it was a factor, but we didn't talk about it.

13 Q Do you know if he ever told anybody about you
14 two?

15 A Not that I know of.

16 Q Did he ever -- do you know if he ever told
17 anybody about you two having sex?

18 A No.

19 Q Did you know he had children?

20 A I did.

21 Q How did you know?

22 A He told me.

23 Q Do you know how old they were?

24 A Shania -- yes.

25 Q How old were they?

1 **A** They were nine and ten.

2 **Q** Did you ever meet them?

3 **A** I seen them.

4 **Q** How?

5 **A** He was taking them to Frankie's and he stopped
6 by to see me.

7 **Q** Did he introduce y'all?

8 **A** He just said that I was a friend.

9 **Q** Did you meet anybody else in his family?

10 **A** No.

11 **Q** Did y'all go anywhere in public?

12 **A** No.

13 **MS. PATTERSON:** Beg the Court's indulgence.

14 **THE COURT:** Yes, ma'am.

15 (Pause.)

16 **MS. PATTERSON:** C , please answer any
17 questions Mr. Li may have for you.

18 **THE COURT:** All right. Ladies and gentlemen,
19 we'll take a ten minute break. Don't discuss the
20 case. Leave your notes facedown. Thank you.

21 (The jury retires to the jury room.)

22 **THE COURT:** All right. Ms. H , during this
23 break, the same restriction, you can step down if
24 you like, but you cannot discuss your testimony with
25 anyone.

1 **THE WITNESS:** Yes, sir.

2 **THE COURT:** We're at ease for ten minutes.

3 (Brief Recess.)

4 (The jury returns to the courtroom.)

5 **THE COURT:** All right. Folks, once again,
6 something came up a little unexpectedly during the
7 break, so what we're going to do is let you all go
8 on to lunch and ask you to be back in the jury room
9 at two o'clock. Don't discuss the case. Two
10 o'clock. I hope you have a pleasant lunch. Thank
11 you. Leave your notes here.

12 (The jury was excused for lunch.)

13 **THE COURT:** All right. Ms. H , this rule
14 that I've been telling you, it's going to apply
15 during this whole lunch break, so don't discuss the
16 case with anybody.

17 You all be careful now that you don't have any
18 contact with the jury. The jury's going to come
19 right back around and use those same elevators right
20 out there, so the best thing to do is wait a few
21 minutes before you leave. If you go to a
22 restaurant, be careful that you look around, make
23 sure no jurors are there and realize that they're
24 going to be using the same common areas that you
25 would be using, just be careful.

1 Court's in recess until two o'clock.

2 (Whereupon, there was a luncheon recess.)

3 **THE COURT:** All right. Have y'all made a
4 decision?

5 **MR. LI:** Yes, Your Honor. We're going to plead
6 guilty. We'd ask if you defer sentencing to get my
7 people ready because it was such a surprise.

8 **THE COURT:** I'll defer sentencing, but I'll
9 take him into custody.

10 **MR. LI:** He's on GPS monitoring already.

11 **THE COURT:** I don't care.

12 **MR. LI:** I understand.

13 **THE COURT:** I mean, I'm going to be fair with
14 you. I'm not going to shoot you a line.

15 **MR. LI:** Fair enough. We'll go forward with
16 sentencing today.

17 **THE COURT:** I'll do the sentencing another day,
18 but I'm taking him into custody.

19 **MR. LI:** We'll go ahead and do it. It'll be
20 fine.

21 (Pause.)

22 **THE COURT:** All right. Mr. Gramling, I need
23 you to come around, please.

24 All right. Mr. Gramling, I have two
25 indictments. One charges that in Lexington County

1 on or about -- or between the dates of January 1,
2 2009 and May 16, 2009, you committed a sexual
3 battery on C H whose date of birth is May
4 the 3rd, 1994, she being at least 14 years of age,
5 but less than 16 years of age. And it's alleged
6 that you were older than she and it's alleged that
7 you had sexual intercourse with her.

8 Upon your arraignment on this charge, it
9 appears that you wish to enter a plea of guilty now
10 to criminal sexual conduct with a minor in the
11 second degree; is that right?

12 **DEFENDANT:** Yes, Your Honor.

13 **THE COURT:** The other indictment charges that
14 in Lexington County on or about March 1, 2009, you
15 being over the age of 18 years knowingly and
16 willfully encouraged, aided or caused or did an act
17 that caused and influenced a minor child to, one,
18 become and be incorrigible or ungovernable or
19 habitually disobedient to and beyond the control of
20 her parent, guardian, custodian or other lawful
21 authority, and/or, two, repeatedly desert from her
22 home or place of abode without consent of her
23 parent, guardian, custodian or other lawful
24 authority. It's alleged specifically that you aided
25 her in leaving her home without her parent's

1 consent.

2 Upon your arraignment on that charge of
3 contributing to the delinquency of a minor, it
4 appears that you wish to enter a plea of guilty; is
5 that right?

6 **DEFENDANT:** Yes, Your Honor.

7 **THE COURT:** Mr. Li, have you fully explained to
8 your client the nature and elements of the offense,
9 the possible punishment and his constitutional
10 rights, including trial by jury?

11 **MR. LI:** Yes, Your Honor.

12 **THE COURT:** Are you satisfied there's a factual
13 basis for both pleas?

14 **MR. LI:** Yes, Your Honor.

15 **THE COURT:** Do you agree with his decision?

16 **MR. LI:** Yes, Your Honor.

17 **THE COURT:** Mr. Gramling, today are you under
18 the influence of any medicine, alcohol, drug,
19 anything affecting your thinking?

20 **DEFENDANT:** No, sir.

21 **THE COURT:** Do you have physical or mental
22 problems affecting your thinking?

23 **DEFENDANT:** No, sir.

24 **THE COURT:** You're clearheaded? You know what
25 you're doing?

1 **DEFENDANT:** Yes, sir.

2 **THE COURT:** When you plead guilty, you give up
3 important rights, including your right to remain
4 silent and your right to a jury trial; do you
5 understand that?

6 **DEFENDANT:** Yes, sir.

7 **THE COURT:** If you want a jury trial, you're
8 presumed innocent. The State has to prove you
9 guilty beyond a reasonable doubt to convict you.
10 And you get to see, hear and have your lawyer
11 cross-examine every witness against you. Do you
12 understand?

13 **DEFENDANT:** Yes, sir.

14 **THE COURT:** If you chose to go forward with
15 your jury trial and you elected not to testify, I
16 will tell the jury that they cannot hold your
17 silence against you in any way at all. They can't
18 discuss it, they can't let it enter their minds in
19 making the decision on whether the State has proven
20 you guilty or failed to meet that burden. Do you
21 understand?

22 **DEFENDANT:** Yes, sir.

23 **THE COURT:** By pleading guilty, you give up all
24 of those rights. You give up defenses. You give up
25 challenges to evidence. You admit that both charges

1 are true. Do you understand?

2 **DEFENDANT:** Yes, sir.

3 **THE COURT:** Do you want a jury trial on either
4 charge?

5 **DEFENDANT:** No, sir.

6 **THE COURT:** All right. Listen to the State,
7 please.

8 **MS. PATTERSON:** Thank you, Your Honor. May it
9 please the Court.

10 The defendant, Oscar Gramling, began an
11 internship with the Boys and Girls Club at the Irmo
12 Middle School after-school program at the end of
13 January. C H was a student at Irmo
14 Middle School, Your Honor. And she attended the
15 after-school program sponsored by the Boys and Girls
16 Club.

17 Some time during the month of February, they
18 befriended each other and started communicating
19 various ways through My Space, cell phone, text
20 messages, letters, et cetera. And at the end of
21 February, beginning of March, the defendant showed
22 up at C 's home. She let him in. They
23 engaged in sexual intercourse, Your Honor. This was
24 vaginal and oral sex. After they had sex, Your
25 Honor, they continued constant communication through

1 the same measures, cell phone, text messaging, My
2 Space, face-to-face conversations.

3 Ultimately, this came to the attention of the
4 Boys and Girls Club staff. Mr. Gramling was called
5 in. They asked him about this communication. At
6 first, he denied it and then he later just said it
7 was just a few hi, how are you doings, things of
8 that nature.

9 They still didn't feel comfortable with his
10 responses and they inquired further at a second
11 meeting. And at that time, his My Space -- they
12 made him pull up his My Space messages and they were
13 able to ascertain some of the communications that
14 14-year-old C was having with the defendant
15 who was then 28 years old.

16 He was terminated from that internship.

17 C's mother took her out of that program,
18 however, the communication continued. They met up
19 numerous times. They further engaged in sexual
20 intercourse at times, sometimes at her house. I
21 think she said at one point in his car a couple of
22 times, but that jurisdiction could never be
23 established.

24 In May, Your Honor, the beginning of May -- and
25 he would buy her the cell phones that you heard a

1 little bit about during C 's testimony. He
2 would buy her cell phones. And at the beginning of
3 May, her parents discovered this cell phone. She
4 was upset. She planned another late night outing
5 with the defendant, tried to return home, saw that
6 her parents were up and she got scared, he got
7 scared, took her away. The defendant was arrested
8 when he tried to meet up with her two days later,
9 Your Honor, he was arrested.

10 Investigator Hall was the investigator on the
11 case. The defendant gave him a roundabout
12 confession, but he admitted that he made a bad error
13 in judgment with his relationship with C.
14 There were pictures, there were text messages, there
15 were just all kind of things that indicates that
16 this relationship was going on, Your Honor.

17 They cancelled the program at the middle
18 school. The Boys and Girls Club staff just felt
19 like they had been taken advantage of because he
20 lied to them.

21 He admitted to C s stepfather, Your
22 Honor, also that he had engaged in sexual
23 intercourse with C.

24 This has been a -- so much has happened in like
25 a ten month span with this case. He just wouldn't

1 leave her alone, Your Honor. He just kept going
2 back to her. They kept having sex. He kept buying
3 her cell phones. He bought her a ring and promised
4 to marry her. It's just so much went on, Your
5 Honor, with this 14, she then turned 15, year old
6 with this adult.

7 And there is -- he doesn't have a prior record,
8 Your Honor.

9 We would like the victims to be able to speak
10 tomorrow. If Your Honor will accept the defense
11 request to defer sentencing, we will just wait and
12 let the victim's family speak tomorrow.

13 **MR. LI:** He said he was going to take him into
14 custody, so we're going to do it today.

15 **MS. PATTERSON:** Oh, you're going to do
16 sentencing today?

17 **MR. LI:** Yes.

18 **MS. PATTERSON:** Okay. Your Honor, I apologize.
19 They are ready. We do have victim's impact at the
20 appropriate time.

21 **THE COURT:** Okay. Mr. Gramling, do you admit
22 you're guilty of these two charges?

23 **DEFENDANT:** Yes, sir.

24 **THE COURT:** Has anybody forced you, threatened
25 you, coerced you in any way to get you to plead

1 against your will?

2 **DEFENDANT:** No, sir.

3 **THE COURT:** Any plea bargains the State might
4 have made with you, any agreements about dropping
5 charges, reducing charges, recommending sentences or
6 anything like that, they have to say to me in open
7 court or you lose what they've not told me. Do you
8 understand?

9 **DEFENDANT:** Yes, sir.

10 **THE COURT:** Mr. Li, are there any plea
11 negotiations here?

12 **MR. LI:** Your Honor, we've agreed to plea
13 guilty based on the State's silence as to
14 sentencing.

15 **MS. PATTERSON:** Your Honor, we have agreed to
16 dismiss a companion enticing a child -- an enrolled
17 child from school charge.

18 **THE COURT:** So other than what's on the record,
19 Mr. Gramling, has anybody promised you anything or
20 offered you any hope of reward to get you to plead
21 guilty?

22 **DEFENDANT:** No, sir.

23 **THE COURT:** Are you fully satisfied with your
24 attorney?

25 **DEFENDANT:** Yes, sir.

1 **THE COURT:** Anything else you want your lawyer
2 to do on the case he hasn't done for you?

3 **DEFENDANT:** No, sir.

4 **THE COURT:** Have you had enough time to meet
5 with your attorneys and discuss things with you so
6 that they can properly represent you?

7 **DEFENDANT:** Yes, sir.

8 **THE COURT:** Have you had enough time to make up
9 your own mind about all of this?

10 **DEFENDANT:** Yes, sir.

11 **THE COURT:** Do you have complaints of any kind
12 against your attorney, law enforcement officials or
13 anybody else in your cases?

14 **DEFENDANT:** No, sir.

15 **THE COURT:** Criminal sexual conduct with a
16 minor in the second degree is a felony that carries
17 up to 20 years in prison as a possible punishment.
18 You understand that?

19 **DEFENDANT:** Yes, sir.

20 **THE COURT:** You have to provide a DNA sample.
21 Your DNA profile will be put in a central computer
22 registry. Do you understand that?

23 **DEFENDANT:** Yes, sir.

24 **THE COURT:** You'll be required to register for
25 the rest of your life as a sex offender. Do you

1 understand that?

2 **DEFENDANT:** Yes, sir.

3 **THE COURT:** Do you understand that those laws
4 related to sex offender registry and observation and
5 monitoring they seem to get more and more
6 restrictive every year. I don't know what the
7 future would bring, but that can have very serious
8 consequences on you being on the sex offender
9 registry. You understand?

10 **DEFENDANT:** Yes, sir.

11 **THE COURT:** All right. The Legislature's
12 enacted what's commonly called two strikes you're
13 out and three strikes your out. Those things are
14 technically called most serious offenses and serious
15 offenses.

16 Criminal sexual conduct with a minor in the
17 second degree is a most serious offense, that means
18 it's a strike. If you get the right combination of
19 strikes, you have to do life in prison without any
20 possibility of parole. Do you understand that?

21 **DEFENDANT:** Yes, sir.

22 **THE COURT:** It also falls under what's commonly
23 called truth in sentencing and that's really called
24 no parole offenses. What that means is that any
25 active sentence I give you you would have to serve

1 at least 85 percent of that time day for day before
2 you could possibly be released from prison. Do you
3 understand that?

4 **DEFENDANT:** Yes, sir.

5 **THE COURT:** That's no guarantee you would get
6 out in 85 percent, that's the least time you could
7 possibly do. You understand?

8 **DEFENDANT:** Yes, sir.

9 **THE COURT:** If you draw an active sentence on
10 this and you get out of prison, you automatically
11 would come out on a period of community supervision.
12 If you violate the terms of the community
13 supervision, you could be separately punished for
14 violating the terms of your community supervision.
15 Do you understand that?

16 **DEFENDANT:** Yes, sir.

17 **THE COURT:** The Legislature's classified this
18 as a violent crime. Do you understand that?

19 **DEFENDANT:** Yes, sir.

20 **THE COURT:** Violent offenders are treated
21 differently than nonviolent offenders by the
22 department of corrections. Do you understand?

23 **DEFENDANT:** Yes, sir.

24 **THE COURT:** You would not be eligible for
25 placement that a nonviolent offender might be

1 eligible for, you wouldn't be eligible for programs
2 that a nonviolent offender might be eligible for.
3 You understand?

4 **DEFENDANT:** Yes, sir.

5 **THE COURT:** Okay. I'm just about through with
6 these things, but I've got to make sure I cover at
7 least the essential things.

8 Mr. Gramling, you're in criminal court as you
9 know very well. There's a separate branch of the
10 court called civil court. Civil court is usually
11 where they have disputes over money, but there are
12 other things that go on in civil court.

13 There are procedures in civil court similar in
14 nature to what happens in a probate court where if
15 someone is an alcoholic or a drug addict, they can
16 be involuntarily committed to get treatment for
17 alcohol and drug abuse or if a person is mentally
18 ill, that person can be involuntarily committed to
19 get mental health treatment through the probate
20 court.

21 Well, there's a provision in civil court at
22 this level whereby a person can be declared a
23 sexually violent predator. And if a person is
24 declared to be a sexually violent predator, that
25 person can be held against his will, in theory, to

1 receive treatment until it's determined that that
2 person is no longer a danger to the community. And
3 one of the things that can trigger the Attorney
4 General bringing an action under that Sexually
5 Violent Predator Act would be this offense of
6 criminal sexual conduct with a minor in the second
7 degree. Do you understand what I've told you so
8 far?

9 **DEFENDANT:** Yes, Your Honor.

10 **THE COURT:** Okay. Now, I have no idea what
11 will happen. I don't know if they'll ever institute
12 the petition. I don't know if they did institute
13 it, there's a -- there are various steps it has to
14 go through, go before a review board and then
15 there's another determination of probable cause
16 determination by the court, there's a right to a
17 trial, all kinds of things, but if everything went
18 against you, you could be housed against your will
19 to receive treatment as a sexually violent predator
20 and, in theory, that could be the rest of your life.
21 You understand?

22 **DEFENDANT:** Yes, Your Honor.

23 **THE COURT:** Contributing to the delinquency of
24 a minor carries up to three years in prison and a
25 3,000 dollar fine. You understand?

1 **DEFENDANT:** Yes, Your Honor.

2 **THE COURT:** Okay. Mr. Gramling, have you
3 understood everything we've been over now?

4 **DEFENDANT:** Yes, Your Honor.

5 **THE COURT:** Understanding all of these things,
6 is it still your desire to waive your rights and
7 enter these two pleas of guilty?

8 **DEFENDANT:** Yes, Your Honor.

9 **THE COURT:** Mr. Gramling's made a free,
10 knowing, voluntary and intelligent decision to waive
11 his rights and plead guilty. He's done so upon the
12 advice of counsel with whom he's fully satisfied.

13 Your date of birth is February the 5th, 1981?

14 **DEFENDANT:** Yes, Your Honor.

15 **THE COURT:** And her date of birth is in May of
16 1994?

17 **DEFENDANT:** Yes, Your Honor.

18 **THE COURT:** There's a factual basis for both
19 pleas.

20 All right. If y'all prefer to sit, you can sit
21 while I hear from them.

22 **MR. LI:** Thank you, Your Honor.

23 **MS. PATTERSON:** We're going to hear from

24 C s mother, D. A.

25 **THE COURT:** Now, I want to make sure y'all

1 understand, I'd be happy to do the sentencing
2 tomorrow and let y'all bring whoever you want to
3 bring, but I'm going to take him into custody. I
4 may have taken him into custody anyway since we're
5 in the trial, but I'd be happy to do that now. But
6 I'm not going to have a Roman Polanski situation on
7 my hands where somebody decides to take off. And
8 I'm not saying your client would or wouldn't.

9 (Mr. Li conferring with the defendant.)

10 **MR. LI:** We'll go forward today, Your Honor.

11 **THE COURT:** Okay. Mr. Gramling, are you sure
12 you want to go forward today?

13 **DEFENDANT:** Yes, Your Honor.

14 **THE COURT:** Okay. Let me hear from the
15 victims.

16 **MS. F** Good afternoon. I'm D:

17 A I'm C H 's mother. She's my
18 youngest daughter.

19 During this situation with Oscar Gramling, it's
20 been a long year. We've had to deal with C
21 being unruly, feeling as though we're being unfair
22 because we've taken her boyfriend or fiancé away
23 from her.

24 Initially when we found out about it, it pretty
25 much shocked me because I didn't think that

1 something like this would happen in our family. But
2 as time went on, as the phones were found, as he
3 began to keep saying that these things weren't
4 happening, I had to continue to investigate and
5 investigate. And when she left the house in May, it
6 was devastating for me because she wasn't in the
7 house. I had no idea where she was. The window was
8 open. She was gone.

9 When I found out that there was sex involved,
10 it was shocking because she was in a program with
11 the Girls and Boys Club. And like I said, I just
12 did not think that this would happen.

13 But when it comes down to my daughter, she's a
14 very bright child. She is the brightest child I
15 have. She brings brightness to our family. She's
16 excitable. She is wanting to be a dancer. She has
17 commitment. Once she puts her mind to something,
18 she can do whatever she puts her mind to.

19 But this has happened and it's caused a rift in
20 the family. It's caused division in our family,
21 what I say don't go anymore. We've been through
22 counseling and we continue to go through counseling
23 with her. She is in counseling now with the
24 Lexington Mental Health Center with Ms. Gerber and
25 we will continue to do that. She's 16 years old at

1 the time right now and I realize I only have two
2 more years, so I'm trying to raise her and continue
3 to get her ready for the real world.

4 So in closing, this situation has really caused
5 us to be divided. I want the family to come back
6 together so that we can heal before she becomes 18.

7 With Mr. Gramling, I hope that he gets what he
8 needs. I don't know what that is, but I'm going to
9 strive to make sure C gets what she needs so
10 that she does not fit into this arena ever again.

11 I thank you for your time. I thank you for
12 what you've brought thus far and I think that you've
13 been fair.

14 **THE COURT:** Thank you very much, ma'am.

15 Anyone else?

16 **MS. PATTERSON:** That's all we have.

17 **THE COURT:** All right, Mr. Li.

18 **MR. LI:** Thank you, Your Honor. May it please
19 the Court.

20 **THE COURT:** Yes, sir.

21 **MR. LI:** This has not been an easy situation
22 for anybody involved, Your Honor. Oscar Gramling is
23 my first client coming out of the Solicitor's
24 office. I've grown to know him. I've grown to know
25 him for about two years now. And everything I know

1 about Oscar is contrary to the actions which he's
2 pleading guilty to.

3 He's a decent, hardworking young man. He
4 graduated from Benedict with honors this past
5 December, Your Honor. He was working with children
6 in recreation parks and he has letters of
7 recommendations from them. I have one of them with
8 me, Your Honor.

9 He made a terrible mistake. It's going to cost
10 him the rest of his life to not be able to live in
11 certain places, to not be able to work in certain
12 places, Your Honor. His whole life is about to
13 change.

14 He has spent the majority of his life doing
15 good, doing good for other people. He's been
16 helping other people. Everything he's studied for,
17 he's gone to school for, all of that's going to have
18 to be put, you know, is going to have to be reset.

19 To sentence somebody to a sex offender registry
20 list is tantamount to a life sentence, Your Honor.
21 That is not hyperbole as you've said, as you've told
22 my client already, this is something serious.

23 Mr. Gramling before this, before this, he was a
24 star track athlete. He was helping to train the
25 Benedict track team. He had hopes of making the

1 Olympics. He was training with the number four
2 hurdles runner in the United States, Your Honor. He
3 had so many dreams, so many aspirations, Your Honor,
4 now he's going to have to reset everything in his
5 life.

6 And he knows he made a mistake. He never
7 wanted to cause the family this much anguish and he
8 understands that. We all understand that. And by
9 pleading guilty today and pleading guilty at this
10 point, saves the family from having to hear a lot of
11 personal, very intensely personal and private
12 matters. He's willing to take responsibility for
13 what he's done.

14 Your Honor, I have a letter here from Dr.
15 George McKee who evaluated Oscar Gramling when he
16 was in the Alvin S. Glenn Detention Center.

17 Dr. McKee has ranked Mr. Gramling in the lowest
18 category, the lowest possible category of sexual
19 offenders, Your Honor. His risk of recidivism is
20 extremely low. He's considered not a pedophile,
21 Your Honor. The report indicates that Mr. Gramling
22 is a low risk for recidivism, Your Honor.

23 At the appropriate time, I would like for you
24 to hear from Mr. Oscar Gramling. We ask the Court
25 for your mercy and to take his family into

1 consideration. He has two kids, Your Honor.

2 His mother is here. His mother is -- there's
3 no -- the husband is not involved in her life, Your
4 Honor. She has no other kids at home just Oscar.
5 Oscar's the only person living with her, taking care
6 of her. She's here in the courtroom today. I would
7 like for you to hear from her if she has anything to
8 say.

9 But before this entire incident happened, Oscar
10 never missed a child support payment. He took care
11 of his kids. He saw them when he could.

12 Your Honor, we'd just ask for your mercy in not
13 imposing an active jail sentence along with the life
14 sentence of having to register on the sex offender
15 registry list. I would like for you to hear from
16 Mr. Gramling first.

17 **THE COURT:** Do you want to say anything, Mr.
18 Gramling?

19 **DEFENDANT:** Yes, Your Honor.

20 **THE COURT:** Go ahead.

21 **DEFENDANT:** First, I want to say sorry to the
22 family. I mean, it's been a long ordeal. It's been
23 a lot of stuff going on. And everyday I wish that
24 it would just end, but it wasn't.

25 My time that I spent away from everybody in

1 jail gave me a realization to the direction I needed
2 my life to go. I want to help out more and to be
3 able to let people know of the situations that could
4 occur if you didn't take the proper steps before you
5 got to them.

6 Before I knew what was going on, everything was
7 already happening. And when I met C. and we
8 talked, it wasn't sexual when we first talked. It
9 was more about situations going on with her trying
10 to help her to get herself together, but it seemed
11 like we got closer and closer and things did happen
12 and I'm sorry for them. I never meant for anyone to
13 get hurt. I never meant to hurt my family and her
14 family. And to even be here today, I'm sorry that
15 she had to sit on the stand today and open up the
16 way she did.

17 Your Honor, my time in jail was hard. It was
18 really hard. I seen one of the corrections officers
19 almost killed. I seen people get jumped for just
20 about anything.

21 The time in jail, I was able to find myself and
22 find a medium. I took as many classes I could
23 because they offered them if you ask for them. And
24 one of the corrections officers suggested I take as
25 many as I could and I did. And they helped me, they

1 helped me to see that the most important thing in my
2 life was to make sure my children didn't have to go
3 through anything I went through and for me to always
4 be there for them. And before I went to jail, I was
5 always with them, but I would never actually talk to
6 them as far as to the actions that they were doing
7 and why they needed to stop or it could lead to
8 problems later on, so I'll be able to explain to
9 them more about life.

10 I did a lot of writing and a lot of reading.
11 And I actually volunteered to go back to Benedict
12 and help with the seminar classes that they offered,
13 to come back and speak to the students so they can
14 help plan their life a little better and that even
15 when they're down and out, that they can still make
16 it and not to give up.

17 Like some scientists, some people give up when
18 they try something, but most discoveries in life
19 never happen not unless you keep trying at it.
20 Scientists tried thousands and thousands of times at
21 certain things in order to get one thing right, but
22 they never quit at it. And I want to be able to
23 come back and teach that to them. And my previous
24 professors have already agreed to it and they're
25 actually helping me look over my soliloquies (sic)

1 for me to come back and volunteer.

2 **THE COURT:** Thank you, sir.

3 Did you say his mother wanted to be heard?

4 **MR. LI:** Yes, sir.

5 **THE COURT:** What's your name, ma'am?

6 **MS. GRAMLING:** My name is Xoam Gramling.

7 **THE COURT:** Spell your first name.

8 **MS. GRAMLING:** X-o-a-m.

9 **THE COURT:** Yes, ma'am.

10 **MS. GRAMLING:** Yes. This is my son and I have
11 raised him to go out and help people, do a great
12 thing and I know he trying. It's just one mistake
13 that he go to for. He have children and they care.
14 If you put him in jail, who going to take care of
15 them?

16 And this is the only one that I have left at
17 home with me. And I think he learned his lesson
18 when he stay in the six month in jail (inaudible)...

19 **COURT REPORTER:** I couldn't hear you, I'm
20 sorry.

21 **THE COURT:** What was the thing you said about
22 after he spent six months in jail? You said he
23 learned his lesson and then what did you say?

24 **MS. GRAMLING:** He been in jail for six month.
25 I'm sure he have wake up to see what's more

1 important in life. I'm going to ask you to have
2 mercy on him that way he can have a job to support
3 his children.

4 **THE COURT:** Thank you, ma'am.

5 **MS. GRAMLING:** Thank you.

6 **THE COURT:** Anything else, Mr. Li?

7 **MR. LI:** Judge, we'd just respectfully ask for
8 a probationary sentence and the sex offender
9 registry list, just ask for the mercy of the Court,
10 Your Honor.

11 **THE COURT:** Did Ms. H want to be heard?

12 **MS. PATTERSON:** Beg the Court's indulgence.

13 (Pause.)

14 **MS. PATTERSON:** That's all the State has.

15 **THE COURT:** If there's nothing further, the
16 Court accepts the pleas.

17 Cuff him.

18 It's a very sad day. I've got young folks who
19 are trying to act like adults and I got adults who
20 are acting like young folks. There's not going to
21 be any good outcome and I realize people may
22 disagree with my decision. I'm not going to sit up
23 here and preach to anybody. I'm not going to sit up
24 here and lecture anybody. I'm just going to
25 announce the sentence.

1 Mr. Gramling, if you want to appeal anything
2 from this proceeding, you have to do so in writing
3 in a short timeframe. You have to tell your lawyer
4 right away if you want to file any types of appeal.
5 Now, by pleading guilty, you've given up many of
6 your issues on appeal, but you still may have some
7 things to appeal.

8 The sentence of the Court on criminal sexual
9 conduct with a minor in the second degree is eight
10 years plus costs and assessments. The sentence on
11 contributing to the delinquency of a minor is three
12 years plus costs and assessments. The sentences run
13 concurrently. You're given credit for jail time
14 under 24-13-40, that's calculated and applied by the
15 department of corrections.

16 Restitution is deferred. You're ordered to the
17 sex offender registry. You have to pay your court
18 costs at the rate of \$50 a month beginning 180 days
19 after you're released from maximum incarceration in
20 prison.

21 I've taken into account all of the factors, Mr.
22 Gramling. Quite frankly, I had planned to give you
23 more time -- where is he? Did he fall?

24 **MR. LI:** He's listening, Your Honor.

25 **THE COURT:** If he's going to fall on the floor

1 and act like a child, I'm going to -- I've sentenced
2 him. I'm through.

3 Court's in recess.

4
5 END OF PROCEEDINGS
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C E R T I F I C A T E

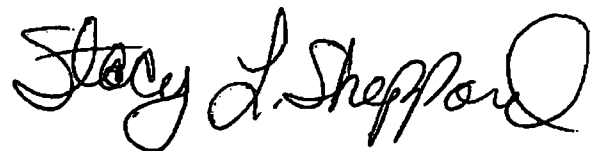
STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 13th of July, 2010.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 20, 2011



Stacy L. Sheppard, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF LEXINGTON ___) 2011-CP-32-01293

OSCAR GRAMLING)
 APPLICANT)
 vs.) TRANSCRIPT OF RECORD
)
STATE OF SOUTH CAROLINA)
 RESPONDENT ___)

November 14, 2012
Lexington, South Carolina

B E F O R E:

HON. EDGAR W. DICKSON, Judge.

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

ARIE D. BAX, ESQ.
Attorney for the Applicant

KAREN RATIGAN, ASSISTANT ATTORNEY GENERAL
Attorney for the State

CAROL M. THUEME, RPR
Official Court Reporter

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EXHIBITS

(NO EXHIBITS MARKED.)

1 THE COURT: Ms. Ratigan.

2 MS. RATIGAN: Thank you, Your Honor. May it
3 please the Court.

4 THE COURT: Yes, ma'am.

5 MS. RATIGAN: This is the case of Oscar
6 Gramling, III versus the State of South Carolina. The
7 Docket No. is 2011-CP-32-1293. Mr. Gramling was indicted
8 for contributing to the delinquency of a minor and
9 criminal sexual contact with a minor in the 2nd degree.
10 He was represented on this charge by Mr. Li, who is seated
11 to my right.

12 On July 13th of 2010, the case was brought to
13 trial. You'll see in your packet, Your Honor, there's
14 actually a fairly lengthy transcript. The case was
15 brought to trial; however, starting on page 208 of that
16 transcript is the guilty plea colloquy. After the
17 victim's direct testimony in this case, Mr. Gramling chose
18 to plead guilty. Again, that starts on page 208.

19 So on July 13th of 2010, Judge Keesley sentenced
20 him to concurrent terms of three years for contributing to
21 the delinquency of a minor, and then eight years for CSC
22 with a minor in the 2nd degree. He did not file an
23 appeal. The State is ready to proceed; however, I've been
24 advised Mr. Bax has something to put on the record at this
25 time.

1 THE COURT: All right. Mr. Bax, let me hear
2 from you, please, sir.

3 MR. BAX: Thank you very much, Your Honor, and I
4 appreciate the opportunity.

5 By way of background, Your Honor, and to put it
6 on the record, I was retained to represent Mr. Gramling by
7 his family after he had received this sentence and was
8 incarcerated with the South Carolina Department of
9 Corrections.

10 As I became informed, as I investigated this
11 case and looked into the facts of it and discussed it with
12 his prior trial attorney, Mr. Li, who is present in the
13 courtroom, I became aware of the fact that he had an
14 accompanying charge, and I believe it was criminal sexual
15 conduct in the 2nd degree. It may have been more than one
16 count -- it may have been just one count, I'm not really
17 sure -- in Richland County, being prosecuted by the Fifth
18 Circuit Solicitor's Office. Ms. Fant was the assistant
19 solicitor at the time, and I believe she still is, and she
20 is present here today.

21 Your Honor, I wanted to put on the record that
22 Ms. Fant is here and she has had discussions with the AG's
23 office as well as myself today because she came in order
24 to make an offer on that charge. And if I didn't say it
25 before, let me state that that charge in Richland County

1 is still pending and was never resolved.

2 As Ms. Ratigan has told you, there was a partial
3 trial that began here in Lexington on the Lexington County
4 charges, because apparently these events transpired across
5 that county line there in West Columbia and in Columbia.
6 As a result, you had two jurisdictions with charges based
7 on the same basic set of circumstances and events, the
8 same actors, basically the same allegations. And as a
9 result of that, Ms. Fant has come today to make an offer
10 to my client.

11 And if I misstate this, I certainly have no
12 problem with the Court letting Ms. Fant speak to the Court
13 if she desires, that she would offer that if he would
14 withdraw his PCR, that she would offer something that
15 would be concurrent. In other words, there will be no
16 additional time or additional time exposure that
17 Mr. Gramling would face.

18 As you have heard from the dissertation of the
19 procedural history, he received an aggregate sentence of
20 eight years with credit for time that he had served
21 pretrial. And so the question became, who communicates
22 this offer to Mr. Gramling. Obviously this
23 post-conviction relief application which he has filed and
24 I am representing him on, alleges that Mr. Victor Li was
25 ineffective, basically putting him in a contrary position,

1 legally. And it was our contention, I think Mr. Li
2 agreed, that he couldn't really advise Mr. Gramling about
3 this offer because of that existing conflict.

4 I agreed to advise him of the offer, Your Honor,
5 but I would like to put on the record what I stated to him
6 is that I was hired in this case, and my representation
7 has wholly been in this case as a representative on the
8 post-conviction relief action. I have looked at this case
9 in that light, and in that light only. I have not
10 prepared for advice to be provided to a client based on
11 guilt or innocence, based on representation in a criminal
12 defense case. I informed him of that, and I told him I
13 can't advise him whether to take it or not to take it
14 because of that. But I wanted to make sure that that was
15 on the record.

16 I conveyed the offer, as I've stated it here on
17 the record, to him and let him make the decision. He has
18 conveyed to me that he has decided to go forward with PCR
19 today. But before proceeding with that, I wanted to make
20 sure that's on the record. And if Your Honor needs to ask
21 him any questions, we're happy to have that done.

22 THE COURT: Okay. And Mr. Gramling?

23 MR. GRAMLING: Yes, sir.

24 THE COURT: Would you mind to stand up, please,
25 sir?

1 MR. GRAMLING: Yes, sir.

2 THE COURT: And once again -- she's going to
3 swear you in because I'm going to ask you just a couple of
4 questions.

5 OSCAR ALBERT GRAMLING, III, after being duly
6 sworn, testified as follows:

7 THE COURT: Okay. Mr. Gramling, we're here
8 today because of your post-conviction relief application.
9 Is that your understanding?

10 MR. GRAMLING: Yes, sir.

11 THE COURT: Okay. And this morning you -- or
12 this afternoon you were made aware from the Richland
13 Solicitor's office of a plea offer in their charges
14 against you in Richland; is that correct?

15 MR. GRAMLING: Yes, sir.

16 THE COURT: The charges in Richland, according
17 to your attorney, involve the same people and the same
18 basic allegations that you went to trial here in Lexington
19 on. Is that your understanding?

20 MR. GRAMLING: Yes, sir.

21 THE COURT: Okay. Now, it's my understanding
22 that basically what the Solicitor's office in Richland is
23 offering you is if you plead, you will be essentially be
24 sentenced to the same term that you are facing now on your
25 present charges in Lexington.

1 Is that correct, Ms. Fant?

2 MS. FANT: Yes, Your Honor, that is correct.

3 THE COURT: Okay. So you wouldn't serve any
4 additional time. The only difference would be you would
5 have, you know, obviously another conviction on those
6 Richland charges which are outstanding. Do you understand
7 that?

8 MR. GRAMLING: Yes, sir.

9 THE COURT: And you understand that you don't
10 have to take that plea, okay? The charges are
11 outstanding. You have the right to have a jury trial.
12 You have the right to make the State prove their charges
13 against you just like in the case here in Lexington.

14 Mr. Bax does not represent you on this criminal
15 matter, but he did advise you of that offer; is that
16 correct?

17 MR. GRAMLING: Yes, sir.

18 THE COURT: Okay. Do you have any questions
19 about that offer? Is there anything about that offer that
20 you don't understand?

21 MR. GRAMLING: Mr. Bax stated -- he explained
22 the offer to me.

23 THE COURT: Okay. Do you have any questions
24 about it, anything you don't understand about it?

25 MR. GRAMLING: I understand what they're asking.

1 THE COURT: Yes, sir.

2 MR. GRAMLING: I understand what the outcome
3 could be.

4 THE COURT: Yes, sir.

5 MR. GRAMLING: And I have turned that offer down
6 until I get further counsel.

7 THE COURT: Okay. All right, sir. But you
8 understand, he can't readvise you. That's not what he's
9 retained for. He's not your criminal attorney in that
10 matter.

11 Is somebody -- was Mr. Li appointed to represent
12 you on that matter as well in Richland?

13 MR. GRAMLING: At that point in time?

14 MR. LI: At that point I didn't, but he hired me
15 to take care of both charges.

16 THE COURT: Oh, okay.

17 MR. LI: So, yes, at that point, I did represent
18 him for both Lexington and Richland.

19 THE COURT: All right. Do you understand that
20 we'll be going forward on the PCR, but those charges in
21 Richland County are still outstanding. Do you understand
22 that?

23 MR. GRAMLING: Yes, sir.

24 THE COURT: Okay. Now, you've told me you do
25 not want to accept that offer; is that correct?

1 MR. GRAMLING: Yes, sir.

2 THE COURT: Okay. And you're doing this freely
3 and voluntarily?

4 MR. GRAMLING: Yes, sir.

5 THE COURT: Okay. All right, sir. And you
6 understand we'll go forward on the PCR today, and the
7 Richland County charges, you'll just have to wait and see
8 what happens with that.

9 MR. GRAMLING: Yes, sir.

10 THE COURT: And that's what you want to do?

11 MR. GRAMLING: Yes, sir.

12 THE COURT: All right, sir. Glad to do it. I
13 just wanted to make sure you understood it. Okay?

14 Thank you, sir. You may sit down.

15 Thank you, Ms. Fant, for coming here. I
16 appreciate it.

17 All right. Now we're ready go forward on the
18 PCR. Okay.

19 Mr. Bax?

20 MR. BAX: Thank you, Your Honor. And I'm just
21 going to cut right to it.

22 THE COURT: Yes, sir.

23 MR. BAX: The applicant's first witness would be
24 Oscar Gramling, and I'd call him to the stand at this
25 time, please.

1 THE COURT: Okay. And Mr. Gramling, you've
2 already been sworn in so you don't have to be sworn in
3 again.

4 MR. GRAMLING: Okay.

5 THE COURT: Yes, sir, your witness.

6 MR. BAX: May it please the Court, Your Honor,
7 thank you.

8 THE COURT: Yes, sir.

9 DIRECT EXAMINATION

10 BY MR. BAX:

11 Q Oscar, first of all, I think you've already done
12 this, but state your name for us, please.

13 A Oscar Albert Gramling, III.

14 Q All right. And, Oscar, as you have been questioned
15 by the Court, you're here on a post-conviction relief
16 application; is that right?

17 A Yes, sir.

18 Q Okay. And your family has retained me to represent
19 you, and I've visited you on a number of occasions at a
20 couple of different institutions; is that right?

21 A Yes, sir.

22 Q Okay. And we've talked about what post-conviction
23 relief is; is that right?

24 A Yes, sir.

25 Q Okay. I just wanted to get that out there.

1 Now, this is your day in court. Okay? So I
2 want to make sure that we cover everything.

3 Oscar, do you recall that you had a number of
4 charges or you had some charges in Lexington and Richland
5 County back in 2009; is that right?

6 A Yes, sir.

7 Q Can you tell us what your memory of those charges
8 are? What were those charges?

9 A In Richland County, it was criminal sexual conduct
10 with a minor. In Lexington County it's criminal sexual
11 conduct with a minor, contributing to the delinquency of a
12 minor. And the third one was thrown out. I don't recall
13 the third one.

14 Q Okay. All right. That's fine. Do you need any
15 water? I know that your hands are chained, so do you want
16 some water?

17 A Yes, please.

18 Q Now, Oscar, I know I mentioned this before, but I
19 want you to make sure that you speak up nice and clear and
20 loud for the court reporter because she's taking
21 everything down that we're doing here today, and I want
22 also for His Honor to be able to hear you clearly. Okay?

23 A Okay.

24 Q Thank you.

25 Now, do you recall when you were originally

1 arrested on these charges, Oscar?

2 A It was May 2009.

3 Q Okay. Now, who did you have representing you on
4 these charges?

5 A Victor Li.

6 Q Did you hire Mr. Li or was he appointed to represent
7 you?

8 A He was hired.

9 Q Now, do you recall when you hired Mr. Li?

10 A When the -- when Richland County pressed their
11 charges, after they pressed their charges, I did.

12 Q Okay. Let me ask you this. Okay. You said it was
13 after they had pressed their charges. Had you already
14 been arrested and bonded out on those charges before you
15 went and saw Mr. Li?

16 A That's correct.

17 Q Okay. All right.

18 A That was for the Lexington County charges, I was.
19 For the Richland County charges, I wasn't.

20 Q Okay. So you had been arrested on the Lexington
21 County charges but not on the Richland County charges; is
22 that correct?

23 A That's correct.

24 Q Okay. Were you aware that Richland County was
25 intending on charging you when you went and hired Mr. Li?

1 A I was. The investigator did call me.

2 Q And had you -- did you arrange ultimately to turn
3 yourself in on the Richland County charges?

4 A Yes, sir.

5 Q Okay. Now, how were you made aware of Mr. Li? I
6 mean, how did you find out about him?

7 A Through Todd Rutherford, through my track -- through
8 my track coach. He referred me to Todd Rutherford because
9 they were -- they were close. And then Todd referred me
10 to Mr. Li.

11 Q Okay. And did you actually get to sit down and meet
12 with Mr. Li when you were talking about the decision about
13 whether or not to hire him? Did you sit down and have a
14 meeting with him?

15 A Yes, I did.

16 Q Okay. And you say that was around May of 2009?

17 A The charges were about a month apart.

18 Q Okay.

19 A There had to be -- had to be in June because school
20 had already let out.

21 Q Okay. Sometime between May and June, possibly
22 June 2009.

23 Now, I believe you've already testified you had
24 bonded out or you were on pretrial release from Lexington
25 County when you met with Mr. Li; is that correct?

1 A Yes, sir.

2 Q When you turned yourself in in Richland County, was
3 Mr. Li present with you or did he know about it?

4 A He was there.

5 Q He was there?

6 A Yes, sir.

7 Q Okay. Did you get bonded out on the Richland County
8 charges as well?

9 A I was.

10 Q Okay. All right. Did you do all this yourself or
11 was your family aware what was going on?

12 A No.

13 Q Your family was not aware?

14 A No, they weren't. They were aware of the charges
15 from Lexington but not of Richland.

16 Q Now, after you hired Mr. Li, can you tell me --
17 obviously as we have got in front of us, the transcript
18 indicates that you had a trial in Lexington County on
19 July 12th and 13th of 2010. Is that your memory of it?

20 A Yes.

21 Q That is accurate?

22 A That is.

23 Q Okay. So roughly a little over a year later; is that
24 right?

25 A Yes.

1 Q In the interim time, you were on bond, but you
2 weren't out on bond the entire time leading up to that
3 trial, were you?

4 A That's correct.

5 Q Tell us what happened. Did you at any time have to
6 go back and serve any time at Alvin S. Glenn?

7 A I did. November of 2009 until May 2010.

8 Q And why was that?

9 A There was a violation of bond.

10 Q Okay. And what was that violation of bond based on?

11 A The victim had contacted me.

12 Q So there was an allegation that there was contact
13 between you and the victim which was in violation of your
14 bond; is that right?

15 A That's correct.

16 Q All right. Let me ask you this: In your time prior
17 to this trial, can you tell the Court how many times you
18 met with Mr. Li, roughly?

19 A Give me a second, please.

20 Q Sure.

21 Not to interrupt you, Oscar, but let me rephrase
22 and try to move this along and try to help you out. I
23 know that is a long period to remember.

24 Do you remember if you met with him regularly?

25 Did you meet with him once a month or every other month or

1 was it anything like that?

2 A It was about every week.

3 Q Every week?

4 A About every week.

5 Q Did you have appointments that you set up or did you
6 drop by, how did that work?

7 A It was -- they were set up, I believe they were
8 towards the end of the week. They were set up for because
9 it was a payment plan. And every time I'd go in, he'd
10 talk to me a little bit, let me know if something was
11 going on or not, and we'd sit down and talk about
12 something going on. I guess during that time period, that
13 was the only person that I could really talk to about
14 anything going on.

15 Q So it was in part because you were making payments,
16 and also you were able to talk to him at those times about
17 your case; is that right?

18 A Correct.

19 Q Okay. And that was pretty regular, about every week?

20 A Yes.

21 Q Now, in those meetings or any other meetings that you
22 had that were any longer, did you talk to Mr. Li about
23 discovery? Did he ever talk to you about discovery and
24 what that is and how he was going to get it?

25 A He did.

1 Q Tell us a little bit about that. What did Mr. Li
2 tell you about that?

3 A That he'd filed for Lexington to send over the
4 discovery -- I'm sorry, it was Richland County sent over
5 the discovery -- and that's the way he told me about it.
6 I didn't know there was two different discoveries for the
7 two different counties.

8 Q So you got the discovery from Richland fairly quickly
9 on; is that right?

10 A Yes.

11 Q Okay. Did you have an opportunity to go over what
12 was in that packet with Mr. Li?

13 A He printed out a copy and had -- let me read through
14 it.

15 Q Okay. And so you had a copy to review of what he had
16 received from Richland County?

17 A Correct.

18 Q Okay. Now, do you recall when you saw or if you ever
19 saw the discovery from Lexington County?

20 A I thought they were the same.

21 Q So you weren't aware of anything that was separate or
22 different or --

23 Let me rephrase that, Your Honor.

24 You weren't aware that there should have been
25 another discovery packet that came from the 11th Circuit

1 Solicitor's office?

2 A No.

3 Q Okay. Did you ever become aware of that at a later
4 time?

5 A During the trial when stuff was -- there wasn't stuff
6 that was in the Lexington County that was in the Richland
7 County.

8 Q Did you ever find out from Mr. Li when he had
9 received the discovery packet from Lexington?

10 A No.

11 Q And so during the trial -- and I want to go back here
12 in a minute, but your testimony is that during the trial,
13 things were discussed or introduced by the Solicitor's
14 office that were not in the discovery you had gotten a
15 copy of?

16 A That's correct.

17 Q Now, the Richland County discovery, do you recall
18 what was in that discovery? Do you recall kind of
19 generally what you had in that copy of yours?

20 A The majority of the things were the medical reports,
21 the -- the investigation from -- the investigator from
22 Richland County and -- that she went into the phone,
23 statements and things like that. She asked Sprint to send
24 the pictures and text messages I received that were sent
25 from her phone but they didn't have, but Sprint said that

1 there was nothing sent from that number. And there's no
2 pictures also from there, either. And it was -- it was
3 pretty thick. I don't remember all of it.

4 Q Okay. All right. Let me ask you this: Was there --
5 did you ever make a statement to law enforcement and was
6 it contained in the discovery from Richland County?

7 A It was.

8 Q You did make a statement to the Richland County law
9 enforcement?

10 A I did.

11 Q And that was after you were represented by Mr. Li?

12 A No. Before.

13 Q Okay. Is it a statement that you made to law
14 enforcement prior to being -- prior to turning yourself
15 in?

16 A It was prior to turning myself in to Richland County
17 but after I was arrested for Lexington County.

18 Q Okay. So these were things that you -- these are
19 statements that you had made prior to having the advice of
20 Mr. Li; is that right?

21 A Correct.

22 Q Okay. Then there was also -- let me ask you this:
23 Was there any statements from Ms. H who is listed as
24 the victim in this case?

25 A There was.

1 Q Okay. Was there also any copies or printouts of
2 Myspace pages in your discovery from Richland County?

3 A There was.

4 Q Okay. All right. Was all of the Myspace printouts
5 that were in your discovery, were those the same as some
6 of the ones that were introduced during your trial here in
7 Lexington County?

8 A They were.

9 Q They were the same ones?

10 A Yes.

11 Q Now, in your discussions with Mr. Li prior to your
12 trial or resolution of your case in any way, did you also
13 get an opportunity to talk to him about defenses? Did you
14 get to talk to him about whether or not you had any
15 witnesses that you wanted to bring forward, whether there
16 was any defenses?

17 A We did.

18 Q Did you get an opportunity to tell him about some of
19 the people that you might think would be helpful to call
20 as witnesses for your case?

21 A I did.

22 Q Okay. All right. Do you know whether or not he had
23 subpoenaed those people to be present at your trial in
24 July of 2010?

25 A I'm not sure.

1 Q You're not sure?

2 A No.

3 Q Do you recall if any of them were present in the
4 courtroom when you started your trial, because I believe
5 it went for two days before there was a plea in that case;
6 am I right?

7 A Correct.

8 Q Okay. Do you recall if there were any of the people
9 you had suggested as witnesses that were present in the
10 courtroom?

11 A Only -- there was one.

12 Q And which one was that?

13 A Jamie. Jamie was there.

14 Q Can you give us her full name, please?

15 A Jamie Banks.

16 Q Jamie Banks. Okay. So she was there. All right.

17 Now, let me ask you this: Was there ever a time
18 where at least in discussions with Mr. Li that you talked
19 to a psychiatrist?

20 A There was.

21 Q When was that? Can you tell us about that, please?

22 A I was at Richland County Detention Center at the
23 time.

24 Q Okay. And do you recall who it was that you talked
25 to, do you recall the name?

1 A I do not.

2 Q Okay. Was it someone who said that they were sent
3 there by Mr. Li, that they had talked to Mr. Li?

4 A Yes.

5 Q Okay. And that person told you they were a
6 psychiatrist or psychologist, do you recall?

7 A I don't remember whether he was a psychologist or
8 psychiatrist.

9 Q Was it a he or a she?

10 A It was a he.

11 Q It was a he. Okay. All right.

12 So it could have been a psychiatrist or
13 psychologist, you don't remember?

14 A Correct.

15 Q Okay. Now, when you hired Mr. Li or during any of
16 your discussions with Mr. Li, did you ever talk about him
17 utilizing the services of a private investigator to
18 investigate any of the facts surrounding your case or the
19 allegations against you?

20 A In the beginning.

21 Q And what did that discussion entail?

22 A That he would get a private investigator to also get
23 a statement and to look further into the allegations that
24 were -- that were set forth.

25 Q Okay. Do you know if that was ever done?

1 A No, I do not.

2 Q Did you ever speak with someone that said they were a
3 private investigator working for you or for Mr. Li?

4 A No.

5 Q Now, this case centers around allegations that there
6 was a sexual relationship between yourself and a

7 Ms. C. H is that correct?

8 A That's correct.

9 Q And the allegations -- what was established at the
10 time is that C H was under age at that time; is
11 that correct?

12 A That's correct.

13 Q Did you have an opportunity to talk to Mr. Li about
14 Ms. H and the issues that you had with her?

15 A We did.

16 Q Okay. Did you believe that -- did you and Mr. Li
17 talk about her as a credible witness? Did you talk about
18 her credibility and what issues that you might be able to
19 raise about her credibility? Do you remember any
20 discussions like that?

21 A At one point in time, he brought up that she was
22 institutionalized and that she wouldn't be as credible
23 because of it. And some other allegations she made
24 towards other individuals, too, along the way during that
25 time period.

1 Q So Mr. Li was aware of the fact that she in fact, I
2 think it was Springbrook; is that right, that she went to
3 a center called Springbrook in the upstate?

4 A That's correct.

5 Q And he was aware of that, correct?

6 A Yes.

7 Q And he discussed with you and was aware of the fact
8 that Ms. H had made allegations that she had been
9 molested by her stepfather at some point; is that right?

10 A That's correct.

11 Q Okay. And that she had made allegations that she had
12 been gang raped at one point or another by ten individuals
13 that she did not know; is that correct?

14 A That's correct.

15 Q And that happened some -- just a couple of years
16 before your trial; is that right?

17 A That's -- that was one thing she said. She also said
18 it happened at Springbrook, also.

19 Q She said it happened at Springbrook, also?

20 A Yes.

21 Q And do you remember talking with Mr. Li about this
22 and he was aware of this?

23 A Correct.

24 Q And did he talk to you what that would potentially --
25 did he ever talk to you about whether any of that was

1 admissible?

2 A No.

3 Q Did you ever have a discussion with him about what
4 admissibility is?

5 A I understand that vocabulary word of it, it's to not
6 allow something in. I guess whether or not they will be
7 able to use that in court.

8 Q Did he talk to you about whether or not he felt like
9 they could use it in court?

10 A No.

11 Q No?

12 A He -- he believed that they could.

13 Q He believe that they could, okay.

14 A Yeah.

15 Q So did he ever have a discussion with you about
16 whether or not there would be any objections to that
17 coming into the court? In other words, if there was going
18 to be any kind of fight about whether or not he could ask
19 Ms. H questions about those prior allegations?

20 A No.

21 Q Okay. Did he ever discuss with you anything called
22 the rape shield statute?

23 A No.

24 Q Now, did he ever talk to you about any psychiatrist
25 or counselors that had treated Ms. H as potential

1 witnesses in your case?

2 A Yes, he did.

3 Q Okay. That was someone that he discussed with you as
4 a potential witness and that would be talking about
5 Ms. H and her credibility; is that correct?

6 A Correct.

7 Q Okay. Did he ever talk to you about any social
8 workers that may have dealt with the victim?

9 A I don't recall any.

10 Q Okay. Now, let me get into something else, and I
11 know this is an important area.

12 Obviously you have talked about -- we've -- I've
13 asked you questions about the fact that at one point you
14 had a hearing on your bond, and it was considered to be in
15 violation and you received six months of time that you had
16 to spend for that bond violation from Judge Childs; is
17 that correct?

18 A That's correct.

19 Q Okay. But you said in your testimony that that was
20 contact that was initiated by Ms. H ; is that right?

21 A That's correct.

22 Q Was there anything that when you had -- let me strike
23 that. Let me rephrase.

24 After these charges were brought, did Ms. H
25 start trying to contact you right away?

1 A Repeat the question. I'm sorry.

2 Q I'm sorry. I will.

3 After these charges were first brought in May
4 and June of 2009 in Richland and Lexington, after you were
5 bonded out on it initially when they first got brought,
6 did Ms. H try to initiate contact right away? How long
7 before she tried to initiate contact with you?

8 A Maybe two, three weeks.

9 Q Okay. When she made -- when she initiated contact,
10 did she have any discussions, did you talk to her?

11 A I tried hanging -- hanging up, but she'd just call
12 right back. She kept calling back.

13 Q Ultimately did you have any conversation with her
14 about this case?

15 A I didn't necessarily have it as far as the case. I
16 was trying not to talk about it at all.

17 Q Did she ever convey to you that she intended on
18 testifying that there was no sexual contact, that she was
19 not going to testify against you?

20 A Along the way, yes.

21 Q When did she convey that to you?

22 A Probably -- probably -- probably about a month and a
23 half, two months.

24 Q Did you make Mr. Li aware of that?

25 A I did.

1 Q Okay. Did you ever -- to your knowledge, did
2 Ms. H ever contact your attorney's office?

3 A I believe she did.

4 Q You believe that she did.

5 What do you recall that she -- when she
6 contacted your attorney's office, who did she -- who did
7 she talk to? Do you know if she talked to Mr. Li?

8 A She talked -- I believe she talked to him.

9 Q And that's what he told you?

10 A Correct.

11 Q Okay. And what was it that Mr. Li told you that he
12 had heard from Ms. H ?

13 A That she was going to do that, that she wasn't going
14 to press charges.

15 Q And what was your discussion with Mr. Li about how
16 that impacted your case?

17 A That basically if she didn't testify, that basically
18 there was no case, there was -- he didn't say it like
19 that.

20 Q Well, let me ask you for the Court's purposes, can
21 you tell us, I don't want to hear what he didn't say.
22 Basically what I want to ask you is to the best of your
23 memory, what did he say about that?

24 A Verbatim? I couldn't tell you verbatim. It's been
25 so long ago. That we're going to be okay and that we're

1 going to win the case.

2 Q Did he ever talk to you about the idea of taking a
3 statement from Ms. H ?

4 A In the beginning, yes.

5 Q And what did he tell you about that?

6 A That we would hire an investigator to take a
7 statement from her.

8 Q Do you know whether that was ever done?

9 A No, I do not.

10 Q Okay. Did he ever tell you he had a statement from
11 Ms. H prior to getting into trial or during the trial?

12 A Just the statement that she gave to the Richland
13 County investigator.

14 Q All right. But to your knowledge, the statement that
15 she gave to the investigators is that it did happen; is
16 that right?

17 A That would be correct.

18 Q Okay. Now, prior to going into this, let's move
19 forward a little bit here. Obviously this trial occurred
20 in July of 2010. You had Mr. Li, you know, retained very
21 early on in this case, so he's been representing you for a
22 little over a year.

23 What was your understanding of what was going to
24 happen at the trial in July of 2010?

25 A That, again, that we was going to be okay and we was

1 going to win the trial, and that would help us with the
2 trial in Richland County.

3 Q And when those discussions were had between yourself
4 and Mr. Li, what reason did he give as to why you were
5 going to win the trial? What was the idea as to why you
6 were going to win the trial?

7 A Because C¹ was going to say that it didn't
8 happen.

9 Q So this was based on the idea that C was
10 going to say that it didn't happen?

11 A Correct.

12 Q And where to your knowledge, okay, Oscar, where was
13 this idea coming from? Where was the idea coming from for
14 you and for Mr. Li that she was going to testify that it
15 didn't happen? Where was that coming from?

16 A From Christine.

17 Q It was coming from C Okay.

18 Now, obviously we have the trial transcript, and
19 it speaks for itself, and obviously at the end you pled
20 guilty; isn't that right?

21 A That's correct.

22 Q And we're going to get into that a little bit.

23 But prior to you pleading guilty, there was a
24 number of things that were done in this trial; is that
25 right?

1 A Yes.

2 Q There was some pretrial hearings. Do you recall
3 that?

4 A I do.

5 Q And there was opening statements made to a jury that
6 was selected; is that right?

7 A Right.

8 Q And was there some testimony taken?

9 A During the trial?

10 Q Yes.

11 A There was.

12 Q Okay. In front of the jury?

13 A Some in front, yes, and some not with.

14 Q Once the jury was in and they called -- the State
15 called their first witness, who was it that they called?

16 A C .

17 Q Okay. C ...

18 And she testified and she was questioned by the
19 prosecutor; is that right?

20 A That's correct.

21 Q Who was that? Is that Ms. Patterson?

22 A First name Rhonda?

23 Q Yes.

24 A Correct.

25 Q After the prosecutor had gotten done questioning

1 Ms. Hunt -- well, let me back that up.

2 Did C H testify that it didn't --
3 that there was never any sexual contact between you and
4 her?

5 A She did. She did say that.

6 Q She did at first, right?

7 A Correct.

8 Q But did she continue to say that? As she went
9 through her questioning, did she at any time testify that
10 there was sexual contact between the two of you?

11 A She did change it.

12 Q She changed. Okay.

13 Ultimately what did she testify -- did she
14 testify in a way that was contrary to what you had
15 expected?

16 A Yes.

17 Q Yes. Okay.

18 At the end of her questioning by Ms. Patterson,
19 did Mr. Li question her?

20 A No.

21 Q Why is that?

22 A Because there was a -- there was another break, and I
23 was offered a plea to accept the guilty plea for the
24 contribute -- I mean, contributing to the delinquency of a
25 minor and the criminal sexual conduct with a minor, and

1 that I would be able to walk out that day.

2 Q Okay. Let's talk about that a little bit.

3 So there's a break after Ms. H s testimony
4 where she was questioned by the prosecutor; is that right?

5 A That's correct.

6 Q What we refer as to direct testimony. After that
7 direct testimony, this was -- and this was before your
8 attorney has had the opportunity to cross-examine
9 Ms. H ; is that right?

10 A Correct.

11 Q So he has at this point not asked any questions about
12 her time at Springbrook; is that right?

13 A That's correct.

14 Q He has not asked her any questions about the
15 psychiatrist she'd been treated by?

16 A That's correct.

17 Q He's not asked her anything about the number of times
18 she ran away?

19 A That's correct.

20 Q He hasn't asked her at all about the allegations
21 against her stepfather that she made; is that right?

22 A That's correct.

23 Q All right. So you said during this break, he came
24 and told you that there was an offer from the Solicitor's
25 office to plead guilty. Tell us what he told you, his

1 words the best you remember them about what that plea
2 offer was.

3 A That I could walk out of here today -- well, that
4 day, and I would still be able to have my life. I would
5 just have to be registered as a sexual offender, and I
6 would still be able to do everything I needed, like as far
7 as to live still.

8 Q All right. Well, let me ask you one of the things
9 that you said, and let me quote this. You said, "be able
10 to walk out of here today, or that day." Was that your
11 testimony?

12 A That's correct.

13 Q Okay. When Mr. Li talked to you about this, were you
14 alone with Mr. Li, were you around any other people, where
15 were you?

16 A We went to the room that -- I guess between the two
17 doors right there, off to the -- to the right.

18 Q One of the little meeting rooms they have in between
19 in the forays right here?

20 A Correct.

21 Q And who else was present during that time?

22 A My mom, Jamie, and the other attorney that was --
23 that was with us.

24 Q Okay. And what else did Mr. Li tell you about this
25 offer? And let's just tell the Court. What is it that

1 your discussion with Mr. Li entailed about this plea
2 offer?

3 A That pretty much that after the trial, I would pretty
4 much be able to go home.

5 Q Did he have any reason why he thought you should
6 take --

7 Well, let me ask you this: Did he say that he
8 thought you should plead guilty?

9 A He did.

10 Q And why did he say he thought you should plead
11 guilty?

12 A Because the -- it seemed like the case had bombed.
13 The witness changed her -- changed her testimony.

14 Q How did Mr. Li appear to you, Oscar? Did he appear
15 confident and calm? Did he appear to be in control?

16 A No.

17 Q How did he appear to you?

18 A Same as I was, nervous and kind of shocked and kind
19 of worried.

20 Q Would it be fair to say that he appeared to be
21 visibly shaken to you?

22 A Yes.

23 Q Okay. And you observed this about him?

24 A Yes.

25 Q Did that affect your ability to make a decision about

1 whether to take the plea?

2 A It did.

3 Q How did it affect it?

4 A I thought that was the only -- that was the best
5 thing to do.

6 Q What did you think about the idea of continuing
7 forward with trial with Mr. Li as your attorney?

8 A Because I was scared out of my mind.

9 Q Why?

10 A Because I really didn't know what was really going
11 on. And everything that was already going on, I was
12 already -- already nervous. And then the other stuff came
13 up so quick, I -- I didn't know what to expect. I didn't
14 know what to do. I just -- I mean, I looked to Mr. Li for
15 guidance because me and my mom just -- we just -- we was
16 just torn. We didn't -- I mean...

17 Q Well, let's talk about some of the things that you
18 have already said here about this conversation that we're
19 going back to what he said about, you can walk out of here
20 today.

21 Did Mr. Li discuss with you how much time the
22 judge could give you? Did he talk to you about, well, you
23 know, you could get this up to this? Did he give you some
24 kind of a range?

25 A Prior to us even coming to court or even --

1 Q I'm asking about this meeting that was in this room
2 right after Mr. H had testified. That's what I'm
3 asking you about.

4 A If we continued to trial, that I could get the full
5 time.

6 Q If you continued to trial, you could get the full
7 time?

8 A Correct.

9 Q Let me re-ask the question.

10 When he was talking about pleading guilty, did
11 he tell you how much time you could get from the judge
12 under the plea that he was discussing with you?

13 A No. It was that I could walk out. There was --
14 there was no time given. There was no specific time. He
15 just said I would be walking out today.

16 Q Did you ever ask him, is there a chance that I could
17 not walk out of here?

18 A No.

19 Q Why not?

20 A I trusted completely in Mr. Li. He's got me out of a
21 lot of things before, and he's always been there, and he's
22 the one I've been able to talk to about the whole
23 situation. And his decisions, I trusted him.

24 Q Now, I need to talk to you about this. What did you
25 ultimately decide to do?

1 A I -- to sign the paper.

2 Q To sign the paper?

3 A Yes.

4 Q And what do you mean by "sign the paper"?

5 A That I was given the plea deal in front of me, and I
6 just signed the paper because he asked me to.

7 Q Why did you ultimately decide to take the plea?

8 A I was scared to do prison time.

9 Q And you thought this was a way that you could end up
10 not doing jail time?

11 A Correct.

12 Q And what was that based on?

13 A Can you --

14 Q Your idea that this would result in you not having to
15 do jail time, what was that based on, Oscar?

16 A On Mr. Li letting me know that I could walk out.

17 Q And that's the only thing it was based on; is that
18 correct?

19 A Correct. That's the only thing that -- that's the
20 only thing because I couldn't speak to the solicitor or
21 anything, so...

22 Q Now, when you -- you went in front of Judge Keesley
23 for this plea; is that right?

24 A That's correct.

25 Q Now, Oscar, do you recall the judge asking you a

1 number of questions as part of that plea?

2 A For the most part, I remember some of the -- most of
3 the stuff, yeah.

4 Q Do you recall the Court asking you that in talking to
5 you about the fact that in pleading guilty, you waived
6 your right to a trial?

7 A I do.

8 Q Okay. And do you recall him going over the charges
9 that you were pleading guilty to and the amount of time
10 that he could sentence you to under those charges?

11 A I do. I do recall him saying the charges. I don't
12 remember the time that he said.

13 Q Do you recall what your answers were to him? When he
14 asked you if you understood that, what did you say?

15 A I said "yes."

16 Q Okay. Now, if you have a judge taking your plea,
17 sitting in the very place that His Honor is, telling you
18 that he has the ability to sentence you to a period of
19 imprisonment, and you say that, yes, you understand that,
20 but you're telling us that you expected to go home, why is
21 that -- why is that a contradiction? Why is it the judge
22 is telling you, I could sentence you up to 20 years and
23 you felt like you were going to be able to go home? Why
24 is that?

25 A Because the relationship me and Mr. Li built up, I

1 trusted him. And I mean, he said, you know to -- that
2 that's going to happen, I trusted that was going to
3 happen.

4 It's been -- I mean, we spent a lot of time
5 talking, and he's always given me good advice whether it
6 was the situation I was currently in or anything else. He
7 was always there for me just, you know, as someone to
8 always help me, because it was a tough time for me.

9 I mean, I couldn't talk to my family. I
10 couldn't talk to my friends. I kind of isolated myself
11 from everybody. He was the only person I was going to
12 see, besides the people I was on -- besides my track team,
13 and I wasn't going to talk to them about that. And when
14 he said that I was going to walk out, that's all I
15 believed is I was going to walk out.

16 Q Were you -- after having heard Ms. H s testimony,
17 having been in court to hear that in and front of the jury
18 and then in seeing Mr. Li and his reaction, were you
19 scared?

20 A I was.

21 Q Now, finally, Mr. Gramling, I think we have covered
22 the essentials of what your allegations are in your
23 application and what you and I have talked about, but I
24 want to do this because I always do this.

25 This is your day in court. Okay? You only get

1 one PCR. You don't get to have any more. There are
2 defenses against that, as you and I have talked about --

3 Well, let me ask you this: You and I have
4 talked about what a PCR is and what you can and can't do
5 with it, correct?

6 A That's correct.

7 Q Okay. And I have told you that the relief you are
8 asking the judge is to vacate your plea and send you back
9 to deal with these charges all over again; is that
10 correct?

11 A That's correct.

12 Q And you understand that that's the only relief that
13 we can get and ask for here today?

14 A Yes.

15 Q Okay. Is there anything else about Mr. Li's
16 representation or your conviction that I haven't gone over
17 today that you want to make the Court aware of, sir?

18 A That...

19 Q Say it again?

20 A I do recall -- excuse me. It's just hard for me to
21 talk, sometimes.

22 Q Take your time, Oscar.

23 A It was a long -- during that time, it was a long,
24 long process. It may have only been a year more, plus or
25 minus a couple of -- couple months. During that time

1 period, my life got turned upside down. I was a -- I was
2 magnum cum laude student about to go to grad school. I
3 was a professional track runner. And all of a sudden, I
4 get myself in a bad situation and my life turned upside
5 down. Everything was scary for me, everything was new.

6 What I learned from school about legal aspects
7 had nothing compared to being in an actual courtroom. I
8 learned how they run the facility. That's it.

9 This happened, and the only person that I could
10 reach out to is Mr. Li because he was the one who knew
11 everything that was going on. Everything that my life's
12 had, everything that -- all the potential I had,
13 everything that was good in my life, I had to just throw
14 away and focus on salvaging what was left. And I looked
15 to Mr. Li. During that time I was able to focus more on
16 family and try to re-establish my relationship with my
17 children.

18 But I'm saying, I really believe I deserve
19 another chance at this because with the evidence that we
20 have, I was shocked that I couldn't be with my children
21 every day. Right at the end I'm hearing them cry on the
22 phone, why is Daddy ain't here. That's it.

23 Q Let me ask you a couple of follow-ups. And if you
24 need to take a moment, that's fine. Just following up on
25 what you told the Court.

1 Had you ever had an attorney representing you in
2 anything like this before?

3 A No.

4 Q Okay. Had you ever had an attorney representing you
5 ever before on anything?

6 A No.

7 Q So Mr. Li was the first lawyer that you had ever
8 interacted with on a level of client to attorney; is that
9 right?

10 A Correct.

11 Q When Mr. Li looked visibly shaken, was nervous, was
12 sweating, was upset, did that make you confident in going
13 forward with him that day in Lexington County?

14 A Yes.

15 Q Did it make you confident in going forward with him
16 with a trial?

17 A It did.

18 Q So even though he was nervous and he was upset and he
19 was shaken by what Ms. H had testified to because it
20 wasn't what was expected, I believe your testimony before
21 was that affected your decision to take a plea; is that
22 right?

23 A Correct.

24 Q If Mr. Li had been calm and confident and ready to go
25 forward either way, would that have made you make a

1 different decision? If he had told you, I'm ready to go
2 and cross-examine this witness, and I will do my best to
3 attack her credibility, would that have affected your
4 decision to take a plea that day?

5 A If he was ready to go forward and he -- when he -- if
6 the plea wouldn't have been something we'd even have
7 played with.

8 MR. BAX: Please answer any questions that the
9 Attorney General has, Oscar. Okay?

10 Thank you very much.

11 THE COURT: Ms. Ratigan, your witness.

12 MS. RATIGAN: Thank you, Your Honor.

13 I'm just going to ask a few questions, Mr.
14 Gramling, just to make sure I'm understanding you.

15 CROSS-EXAMINATION

16 BY MS. RATIGAN:

17 Q So you reviewed the State's evidence with Mr. Li, but
18 only about those Richland County charges?

19 A Can you repeat the question? I'm sorry.

20 Q I will step a little closer to you. I'm losing my
21 voice. I want to make sure you can hear me.

22 So you reviewed the State's evidence with
23 Mr. Li, but it was only for those Richland County charges?
24 Is that what you're saying?

25 A Yeah.

1 Q The Richland County discovery?

2 A That's the only ones that I received, correct.

3 Q Okay. And you're saying today you never talked about
4 the Lexington County discovery with Mr. Li?

5 A I thought it was -- I thought the Richland and
6 Lexington was the same one.

7 Q And you testified on direct examination that some of
8 the Lexington issues came out at the trial and that
9 surprised you. Do you remember that?

10 A Yes.

11 Q What specifically came out at trial that you were
12 unprepared for? Do you remember?

13 A During the beginning in the -- when they was -- they
14 was going over the evidence --

15 Q Uh-huh.

16 A -- the Richland County investigator, she actually --
17 she actually went one step further, and she investigated
18 whether the pictures and things were sent to my phone.

19 Q This is all the stuff that happened pretrial before
20 the trial began?

21 A Correct.

22 Q Okay. And you had never known about this potential
23 evidence?

24 A When -- not with the pictures because the packet that
25 I had said that there wasn't anything sent to my phone.

1 Q Okay. And so that was a surprise to you.

2 Did you, you know, kind of poke Mr. Li and say,
3 this is the first I'm hearing of this? Did you all talk
4 about it?

5 A We did. And we tried to go through the packet, and
6 it wasn't in that packet because it was a Lexington County
7 packet.

8 Q And would it be fair to say you had a pretty good
9 relationship with Mr. Li, you all talked a bunch about the
10 case?

11 A We did.

12 Q And did you tell him about the details of your
13 relationship with the victim?

14 A We did.

15 Q Okay. And you testified that you gave him the names
16 of some witnesses. Aside from Jamie, who else did you ask
17 him to contact? Do you remember?

18 A There was a counselor that was at the Boys and Girls
19 Club.

20 Q Okay. Was that someone who would have been kind of,
21 like, your co-worker?

22 A Yes.

23 Q Okay.

24 A The -- I believe that -- I'm not sure, psychologist
25 or psychiatrist. And I can't remember anyone else. There

1 was -- there was some more people on the list, but I can't
2 remember.

3 Q What did you expect these witnesses to tell Mr. Li
4 that would have helped your case? Would they have been
5 alibi witnesses or character witnesses or would they
6 testify about your relationship with the victim? Do you
7 remember?

8 A Character witness.

9 Q Okay.

10 A Pretty much -- pretty much character witness.

11 Q Okay. And you testified while you were at the
12 Richland County Detention Center, you spoke to either a
13 psychiatrist or psychologist. Do you recall testifying
14 about that?

15 A I do.

16 Q And after you spoke to this person, did you talk to
17 Mr. Li about having spoken to this doctor while you were
18 at the detention center?

19 A Yes, I did.

20 Q Okay. And your testimony is that you spoke to this
21 doctor because that doctor was asked to speak to you by
22 Mr. Li?

23 A Correct.

24 Q Okay. Now, when you showed up to trial, your basic
25 testimony was you thought the victim would not implicate

1 you, that's why you decided to go to trial?

2 A That was one of the reasons.

3 Q Okay. So once she changed her story on the stand,
4 that's when you and Mr. Li started talking about maybe
5 pleading guilty?

6 A That -- that's when it came up, correct.

7 Q Now, when Mr. Li told you you would walk out that
8 day, what did you think that meant? Did you think that
9 meant that you would be sentenced later or that you would
10 receive no jail time?

11 A That I would receive no jail time.

12 Q Okay. Now, did Mr. Li actually tell you, you know,
13 Oscar, if you plead today, you're not going to jail? Did
14 he actually tell you that?

15 A Correct.

16 Q Okay. And when the Judge asked you during the plea
17 if, you know, anyone had made any kind of promises to you,
18 why didn't you tell him at the time, you know, Your Honor,
19 I have been told if I plead guilty today, I get to walk
20 out the front door? Why didn't you tell the Judge that?

21 A I was extremely nervous during the time.

22 Q Okay.

23 A And I believed that everything had been set up
24 because Mr. Li was talking to the solicitor, and I guess
25 they had already set it up.

1 Q So you believed it was a done deal, so that's why you
2 didn't say anything to the Judge?

3 A Yes.

4 MS. RATIGAN: That's all I have, Your Honor.

5 THE COURT: Anything on redirect?

6 MR. BAX: No, Your Honor.

7 THE COURT: All right. Thank you, sir, you may
8 step down.

9 Mr. Bax, your next witness, please.

10 MR. BAX: Your Honor, at this time -- well, I'm
11 going to let him step down here -- but the applicant would
12 call Mr. Victor Li to the stand, Your Honor.

13 THE COURT: Okay.

14 VICTOR LI, after being duly sworn, testified as
15 follows:

16 THE CLERK: Have a seat and state your name for
17 the record.

18 THE WITNESS: Victor K. Li, L-I.

19 DIRECT EXAMINATION

20 BY MR. BAX:

21 Q Good afternoon, Mr. Li.

22 A Good morning, Arie.

23 Q Obviously you've been present for the testimony of
24 Mr. Gramling in the PCR so far; is that correct?

25 A Yes, sir.

1 Q And, Victor, did you represent Mr. Gramling?

2 A Yes.

3 Q Okay. Can you tell the Court how you first met
4 Oscar?

5 A I believe he was coming to see Mr. Rutherford who I
6 shared office space with, I kind of worked with. And I
7 believe Mr. Rutherford either didn't want the case or
8 wasn't available that day, and then I ended up speaking
9 with Mr. Gramling, and we spoke about the case and he
10 ended up hiring me.

11 Q Okay. Now, let me ask you a little bit of background
12 questions if I can, Victor.

13 How long had you been in private practice when
14 you talked to Oscar?

15 A It was pretty early on into being a defense attorney.

16 Q Okay. And where had you been employed prior to that?

17 A Fifth Circuit Solicitor's office.

18 Q How long had you been with the Fifth Circuit
19 Solicitor's office?

20 A About a year.

21 Q About a year. Okay.

22 Had you had any positions as an attorney prior
23 to that with the Fifth Circuit Solicitor's office?

24 A No.

25 Q Okay. During your time at the Fifth Circuit

1 Solicitor's office, did you have the opportunity to try
2 any cases?

3 A One.

4 Q One. Okay.

5 A Maybe two.

6 Q Maybe two. Okay. And do you recall what charges
7 those trials entailed?

8 A One was a pointing or presenting of a gun, and the
9 other one was magistrate court. I believe it was an
10 assault and battery.

11 Q Okay. Thank you.

12 And, in fact, and you correct me if this is
13 incorrect, but I believe I read in the transcript when you
14 were talking to Judge Keesley at the close of the plea,
15 that this was your first defense case as a private defense
16 attorney.

17 Was that accurate when you told Judge Keesley
18 that?

19 A It was one of my first, yes.

20 Q Okay.

21 A It may not have been the first, but he was definitely
22 the first for a criminal charge of this nature.

23 Q All right. Now, when Mr. Gramling came to you and
24 you met with him, what was your understanding of what he
25 was charged with or being charged with?

1 A Oh, criminal sexual conduct with a minor 2nd.

2 Q Okay. And what kind of -- I mean, what did he tell
3 you about the facts surrounding this case?

4 A He was -- at that time, I thought he was very upfront
5 with it. He told us -- he told me everything. He told me
6 procedurally what had happened, that he had already been
7 arrested and bonded out in Lexington. He told me the
8 details of the case.

9 Q Okay. And at that time, was he handling this on his
10 own or was his family involved?

11 A What do you mean?

12 Q Did he have his mother or father or cousin or sister
13 with him when he came and met with you or was he by
14 himself?

15 A I believe he was by himself.

16 Q Okay.

17 A I believe. I don't really recall. But his mother
18 was involved.

19 Q And I know, Victor, you have continued in private
20 practice since this case up until this day, correct?

21 A Yes.

22 Q In fact, I believe you operate out of the office that
23 my partner used to have over in Jack Swerling's office,
24 correct?

25 A That's right.

1 Q Okay. You are certainly familiar with a lot of times
2 moms and dads come in and they'll pay your fee if it's a
3 younger individual. That wasn't happening here, correct?

4 A I don't believe so. I believe Oscar always made the
5 payments, Oscar signed the contract. The only thing I
6 remember dealing with the mother was after the bond
7 setting, after the bond setting in Richland County, I
8 believe that the mother posted a bond, a ten percent --
9 the bond was low enough to where he could post
10 ten percent. And so the only attempted dealings/attempted
11 dealing I had with the mother was to have her sign a -- to
12 have her sign an assignment of the bond for when the case
13 was over to satisfy part of his fee. That never happened
14 because I believe that she said that she needed the money.
15 For some reason, that didn't happen, but that was the only
16 attempt at getting -- or making some other contact about
17 financial arrangements with someone other than Oscar.

18 Q And the follow-up would be, was there any --
19 obviously that was the discussion just kind of a -- from
20 the sounds of it, purely financial in nature; is that
21 correct?

22 A Correct.

23 Q Was there any discussions with any other family
24 members about the facts of the case or what was going on
25 in the case?

1 A No.

2 Q Okay. All right. Now, obviously -- well, let me ask
3 you this: Mr. Gramling has testified that this was after
4 he had been arrested in Lexington but prior to him being
5 arrested or served with warrants in the Richland County
6 charges. Is that correct in your memory?

7 A I believe so.

8 Q Okay. And he's testified that he went and turned
9 himself in, and at some point during that you were with
10 him. Do you recall that being accurate?

11 A Yes.

12 Q All right. And the reason I raise that is, would you
13 agree that you were with him pretty early on in this
14 whole --

15 A Yes.

16 Q -- thing that happened?

17 A Yes.

18 Q Okay. All right. Victor, can you tell the Court, as
19 this case was progressing, did you file a motion to get
20 discovery in this case?

21 A Yes.

22 Q Did you file that in Richland County?

23 A Yes.

24 Q Did you also file one in Lexington County?

25 A I believe so.

1 Q Okay. Can you tell the Court, when did you receive
2 discovery from Richland County, to your remembrance?

3 A I don't remember.

4 Q Do you remember that you did have discovery from
5 Richland County, though?

6 A Yes.

7 Q Do you recall whether or not you received discovery
8 back from Lexington County?

9 A I was listening to the direct testimony of Oscar -- I
10 don't remember exactly when, but I know that I never had a
11 problem getting discovery through Ms. Patterson. She was
12 very available. Never had -- what they usually do is send
13 them on a CD, and I'm pretty sure I have the CDs. I would
14 not make any assertion that I didn't get the discovery.

15 Q Now, was Ms. Patterson always the assigned assistant
16 solicitor on this case or did she get assigned to it after
17 another solicitor had had it for a while?

18 A I'm -- I'm not sure.

19 Q So you don't recall whether or not Rhonda got this
20 case after it was reassigned from another attorney?

21 A I don't remember. I kind of remember just dealing
22 with Rhonda most of the time. Maybe there was another
23 person. I don't remember.

24 Q Okay. From your independent recollection, can you
25 recall whether or not you -- I mean, how early before this

1 trial did you get the Lexington County discovery? Can you
2 remember that?

3 A No.

4 Q Can you tell us kind of what the Lexington County
5 discovery consisted of? Do you recall?

6 A No.

7 Q Now, the Lexington County --

8 A If you're talking specifically, like, different from
9 the Richland County -- specifically different than the
10 Richland County. Obviously, I think it had some Lexington
11 County reports. I think there's -- I don't -- I don't
12 remember exactly what was different. All I do know is I
13 remember there was never a problem getting discovery from
14 Lexington County.

15 Q Okay. Now -- and I believe, you know, obviously I
16 have reviewed the transcript not just of the plea but of
17 the beginnings of the trial. There was a beginning of a
18 trial in this case, correct?

19 A That's correct.

20 Q Okay. And there were some discussions with you and
21 the Court, and I just want to ask if this is accurate
22 about the fact that while you did receive phone records,
23 they didn't indicate the things that they were then trying
24 to present at trial, and there was some objections based
25 on that; is that correct?

1 A I believe so.

2 Q So you had some kind of phone-related records that
3 you reviewed, and that was kind of the basis of that
4 problem at trial; is that correct?

5 A Well, I had a very thick box of phone records. And I
6 believe that whatever pictures she showed, I remember
7 there was an issue of that. I may have made an objection
8 to it, I don't really recall.

9 I do remember what you're talking about.

10 Q Okay.

11 A During the day of trial, there were some pictures
12 that were shown to me. I either objected or I told them
13 that we'd just continue, we have no objections to it. In
14 my mind, it didn't seem damaging to the case.

15 Q Well, we'll get into that in a little bit.

16 I just wanted to ask about discovery. Can you
17 tell me what you recall about your opportunities to go
18 over the discovery with Oscar prior to trial?

19 A Yes. We met multiple times. He -- anything I had, I
20 showed to him. Anything related to discovery from
21 Lexington or Richland County. I kind of treated it, both
22 of them, as basically this was a Lexington case with,
23 like, an extra side of Richland County incident because
24 most of the stuff was from Lexington. But I don't know if
25 I got that from -- from Ms. Fant or Ms. Patterson, but I

1 compiled a total -- a total package of discovery with an
2 extra portion just for the Richland County part because
3 the majority of it took place in Lexington, and then I
4 believe there is an extra section of -- it was like
5 Lexington plus Richland. So I went over everything I had
6 with -- everything that I had, I went over with
7 Mr. Gramling.

8 Q Okay. And during the course of this, reviewing
9 discovery with him, getting discovery from the two
10 different solicitor's offices, what was your remembrance
11 of how you guys were approaching this case? Were you
12 approaching it as a trial, where you approaching it as a
13 plea? How were you approaching this case?

14 A Approaching always from the start to keep both
15 options open. It could have been a plea, it could have
16 been a -- it could have been a plea, it could have been a
17 trial. I was working with Ms. Fant, I was bothering her a
18 lot and asking for a -- for a good deal or talking to
19 Ms. Patterson trying to get a deal. Obviously I talked to
20 Richland County more often. I'm more familiar with their
21 office. And so from the beginning, was trying to get a
22 plea.

23 The facts didn't look good for us, we didn't
24 really have much go on other than, you know, attacking her
25 credibility. Ended up getting a good offer from Richland

1 County, an offer that I thought was fair, an offer that I
2 relayed to Mr. Gramling. It was two ABHANs; one ABHAN for
3 Richland County, and she had -- I assumed that she had
4 been in touch with Ms. Patterson -- an ABHAN here, ABHAN
5 in Lexington, ABHAN in Richland County with the registry,
6 which we're fighting over. I think we, you know, the
7 final offer was registry up to the judge. So, yeah, from
8 that point, we were working on a plea.

9 And then, you know, once I relayed that
10 message -- once I relayed that offer, there's some
11 strategic things that we talked about, about her
12 credibility, about whether or not she was going to, you
13 know, whether or not she was going to deny, you know,
14 having a -- having a relationship with Mr. Gramling.

15 Her credibility and her willingness to testify
16 was -- got factored in, and the eventual decision -- the
17 eventual decision -- well, Mr. Gramling turned down the
18 offer of two ABHANs and registry up to the judge. And I
19 informed the solicitors that we were going to do that, and
20 then Ms. Patterson said, well, we're going call trial
21 first in Lexington County, so that's how it happened.

22 Q I want to touch on a couple of things that you just
23 said, Victor.

24 One, when you discussed this plea offer with
25 Mr. Gramling, what did you relay to him about whether or

1 not he would go -- you know, potentially be facing any
2 jail time? What was your discussion with him about the
3 potential for getting an active sentence that required him
4 to go to the Department of Corrections?

5 A Under the two ABHANS?

6 Q Yes, sir.

7 A I said that there was a chance that he could go to
8 jail. It carried zero to ten. It probably wouldn't be
9 consecutive. Probably be -- whatever we got would
10 probably be concurrent.

11 And, you know, then we would -- we would make
12 our argument to the judge of why he shouldn't be on the
13 registry. We'd use the -- we'd use the report from
14 Dr. McKey, and we'd bring in, you know, family and friends
15 to talk about his -- for mitigation purposes. And so I
16 told him that we'd argue -- argue for not sentencing, and
17 that, yes, he'd face jail time. And I believe -- I
18 believe I told him that.

19 Q And let me ask you, also, as far as this offer is
20 concerned, Victor, was it something that was discussed
21 with you as being something that would happen in Richland
22 County or in Lexington County?

23 A Don't think I discussed that with him.

24 Q Okay.

25 A At that point, I did not discuss that with him. I

1 assumed it would have been in Richland County, but, no, I
2 didn't tell him that -- I never advised him of -- because
3 at that point there was still preliminaries, it was an
4 idea that was kicked over -- there was an offer that was
5 kicked over by Margaret Fant, didn't have any details of
6 the plea, not in front of which judge, not in front of
7 when, it was just an idea, an offer that was made.

8 Q And it was your understanding that Oscar was just
9 finishing up a college education at that time, correct?

10 A That's right.

11 Q Okay. That he was looking at trying to go to some
12 postgraduate kind of education or school, correct?

13 A That's correct.

14 Q That he was an athlete?

15 A That's right.

16 Q Okay. So do you think the idea of whether or not he
17 was going to potentially get jail time affected his
18 decision on whether to take a plea?

19 A I mean, obviously that factors in because it was
20 going to be an open plea. There was no recommendations or
21 negotiations. So his fear of going to jail was -- the
22 thought of going to jail obviously factored in. I'm not
23 exactly sure what you're asking me.

24 Q Okay. Let me ask you this: This is kind of a
25 related issue.

1 You talked about the fact that in the end, the
2 issue of whether or not he was going to be placed on the
3 sex offender registry was going to be left up to the judge
4 under the offer you just talked about.

5 A Uh-huh.

6 Q What discussions did you have with Mr. Gramling about
7 what the sex offender registry is, what kind of impact it
8 can have on your life and all that?

9 A Oh, yeah. I don't know -- I don't remember exactly
10 what I told him, but I told him it would be hell, and he
11 knows that because he was definitely afraid of the
12 possibility of being on the sex offender registry list.

13 But, yes, in terms of the details, I'm not sure
14 we talked about the exact details. I told him that it was
15 going to be for life. It's very hard to get off, if even
16 possible. He knew the -- we both talked about the
17 damaging effect of being on a sex offender registry list.

18 Q Okay. Now, let me ask you about something else. You
19 talked about the fact that he ultimately decided not to
20 take that offer, and that you were going forward, that you
21 had discussions with him about the fact that the
22 credibility of the victim was key in this case.

23 Victor, did you ever get any communication from
24 him about Ms. H potentially not being willing or not --
25 basically saying that she was not going to testify that

1 they never had any kind of sexual contact?

2 A Well, yes.

3 Q Can you tell us what your understanding was of what
4 she potentially was going to testify to and where you got
5 that information from, please?

6 A The way I framed it was -- because I remember very
7 clearly -- I framed it to Mr. Gramling. I told him -- and
8 it's right around the time that we're talking about
9 whether or not to take this deal. I told him that
10 basically the only strategy we would have at trial is to
11 attack her credibility or if she had a change of heart and
12 she didn't show up. So I framed it to him like that. He
13 made assurances to me that -- he indicated to me that it
14 would be okay, she's not going to come testify. If she
15 does come testify, she's not going to -- she's not going
16 to say what happened.

17 Q Okay.

18 A So, yes, I clearly got that idea -- I got that
19 from -- from Mr. Gramling. So I explained -- I didn't
20 push -- with all my offers, I just throw the offer out
21 there. If they want to take them, I advise them, you
22 know, I think -- I tell them that, you know, I think it's
23 a pretty good offer, I think it's a bad offer. But the
24 final decision is always up to the client.

25 Q When you have these discussions with Oscar about

1 Ms. H: --

2 A Right.

3 Q -- the alleged victim in this case --

4 A That's right.

5 Q -- and what he felt that she would do or not do, did
6 you ever have a discussion with him about getting a
7 private investigator, even on his money, and sending that
8 private investigator to do any investigations, especially
9 potentially talking to this victim --

10 A Uh-huh.

11 Q -- and getting any new statement, any statement that
12 it didn't happen?

13 A I believe so, yes. And it never happened.

14 Q And what happened with that?

15 A Well, I believe that she was a minor at the time.
16 And I'm not sure -- I'm not sure what happened, why -- I
17 do remember having that conversation with Mr. Gramling
18 about getting a private investigator, and that never
19 happened.

20 Q And let me ask you this: There's been testimony from
21 Mr. Gramling he understood that Ms. H might have
22 contacted your office. Do you know if that ever happened?

23 A Yes.

24 Q Did you ever speak with Ms. H ?

25 A I did.

1 Q Okay. And what did she tell you?

2 A She spoke -- when she called my office and the
3 receptionist told me it was C H , many times I
4 would not talk to her. But then she kept calling. And so
5 then when she would call, I would have my paralegal in the
6 office as well, and she would talk. And then I would tell
7 her -- basic -- this is during -- this was during --
8 around the time when Oscar was getting -- or that the
9 Richland County Solicitor's office was filing to revoke
10 bond. So she was calling, questioning about bond, what's
11 going on happen, basically asking me a lot of, like,
12 procedural questions. If he -- if he gets -- she was
13 asking me if he goes in, if he gets booked, maybe if his
14 bond is revoked, how much would it cost to get him out
15 again, you know, questions that a lay person would ask
16 about the judicial process.

17 Q When you had your conversation with her, Victor --

18 A Right.

19 Q -- did you discuss at all the facts surrounding the
20 case or what she may or may not testify to?

21 A No.

22 Q Did you ever ask her if she would be willing to meet
23 with an investigator to give a statement?

24 A I don't remember.

25 Q Now, Victor, you're familiar with the idea that in

1 order for you to be able to impeach someone based on a
2 prior inconsistent statement, you have to hopefully in the
3 best of situations have some proof of that prior
4 inconsistent statement; is that correct?

5 A That's right.

6 Q Did you ever have any discussion with Oscar, just in
7 full disclosure about what would happen if she did not
8 testify as he expected, if she came in and testified as
9 the prosecution wanted her to testify?

10 A I did.

11 Q And can you tell us about that conversation?

12 A Okay. And he assured me, he said, that's not going
13 to happen.

14 Q And what did you tell him -- I guess let me make sure
15 that I make my question clear --

16 A Uh-huh.

17 Q -- okay.

18 What did you tell him about the possibility of
19 her not doing what he expected her to do? What did you
20 tell him about that?

21 A I told him -- well, to the best of my recollection,
22 you know, I think we told -- talked about the Hail Marys
23 that we had. You know, we had -- we had some -- we had
24 some evidence of her lying about her stepfather raping
25 her. We had -- we could attack her credibility sideways

1 if she just decided to testify not in our favor. We
2 had -- she lied to her stepfather, lied about being raped
3 by her stepfather, we had that.

4 She said she was pregnant, had pictures of
5 herself being pregnant, and she was actually in fact not
6 pregnant. Medically, she had some weird disorder that
7 made her body think that she was pregnant. So we had that
8 issue. We had issue with she alleged that she raped when
9 she was at this -- at this mental institute, it was a
10 treatment facility. So we had -- we had -- those were
11 what our Hail Marys were to go for attacking the
12 credibility if -- if that didn't happen. So everything
13 surrounded around her credibility. That was our basis --
14 that was the theory of our -- if we had to go to trial
15 strategy.

16 Q And so if I can summarize, please correct me if I'm
17 incorrect about this, Victor. When you had that
18 discussion with him and you discussed the idea of her
19 potentially not testifying the way he thought she would
20 and saying that this happened, your response was we would
21 then have to attack her on cross with these issues you
22 just named about credibility?

23 A That's right.

24 Q And do you recall, was that a conversation you had
25 more than once or just once? What is your memory of when

1 that happened in relation to the trial?

2 A Definitely -- definitely before the trial. I don't
3 remember exactly when.

4 Q Was it something you talked about more than once or
5 was it just a one-time conversation?

6 A He had brought these -- he had brought all those --
7 all these issues and all these -- the strategy, all this
8 was gotten -- I received from Oscar. And from that, I
9 subpoenaed medical reports from the treatment facilities.
10 I -- somehow, I think I either -- I subpoenaed them from
11 the police station -- I mean, from the, you know, from the
12 law enforcement. But I had -- I had -- I believe I had in
13 my file evidence of the alleged -- the alleged rape by the
14 stepfather as well. So, yes, I tried to get -- I gathered
15 up as much information as I could, as many documents as I
16 could in preparing for that part, that part of the
17 defense.

18 Q Okay. And let me ask you about something else. I
19 think this is important that we just kind of skirted over.

20 At some point or another, was there a
21 psychiatrist that went and saw Oscar for the purposes of
22 this case?

23 A Yes.

24 Q Can you tell us who that was?

25 A Dr. McKey.

1 Q Dr. McKey.

2 And who got Dr. McKey involved in the case?

3 A I did.

4 Q You did? Okay.

5 And what was your purpose in doing that?

6 A The purpose of doing that was just to, in case it --
7 in case it went to a plea -- and this was before -- I
8 believe this was before the plea offer, I'm not sure
9 exactly the timing of it, but I think it was pretty
10 standard. I talked to my friend, you know, Anna Good, and
11 she says it's pretty standard for people to -- who is
12 another attorney -- dealing with a sex case, it's pretty
13 standard to get a psychiatrist to evaluate them. It's
14 good for mitigation. It really doesn't have anything to
15 do with the actual case itself. But it was just in case,
16 you know, you needed it for mitigation purposes,
17 especially if we are going to attack the, you know, the
18 sex registry up to the judge or not. That was -- that was
19 a good thing to have.

20 Q And as a result of this examination with Dr. McKey,
21 did Dr. McKey make any kind of written report to you?

22 A He did.

23 Q And you were in possession of that?

24 A Yes.

25 Q And Dr. McKey, as far as you know, would have been

1 willing and available to testify about the findings in the
2 report?

3 A I believe it would have gotten objected to. I don't
4 think it was really relevant.

5 Q Well --

6 A Yes, he would have been available.

7 Q Let me rephrase the question for that purpose.

8 Even for mitigation, the doctor still would have
9 been available --

10 A Absolutely.

11 Q -- to testify where they couldn't object to it?

12 A That's right. For mitigation for sure.

13 Q And, Victor, based on what I've read in the
14 transcript, was Dr. McKey's examination to look at the
15 potential for recidivism and the potential for -- you
16 know, basically to look at someone to see whether they
17 truly are from a psychological standpoint a predator?

18 A That's right.

19 Your question is, what? I'm sorry.

20 Q I'm sorry. Let me repeat it.

21 The purpose of Dr. McKey's examination and the
22 report that this doctor put out, was it looking at his
23 potential for recidivism?

24 A Yes.

25 Q Was it also looking at, from a psychological

1 standpoint, whether one would really consider him a
2 predator or not?

3 A That's right, uh-huh.

4 Q So obviously what you're testifying to is it's not
5 necessarily something you could put into trial to
6 establish guilt or innocence; is that right?

7 A That's right.

8 Q But it would be something that potentially would have
9 been used in mitigation?

10 A Yes.

11 Q Was Dr.~McKey available for the plea?

12 A Did not contact him.

13 Q Okay. Did you -- and I know that --

14 A Wait, wait. I'm sorry. Did not contact him because
15 we pled halfway through the trial.

16 Q Right. Now -- and we're going to get to this in a
17 second.

18 But this was a situation where initially you
19 asked Judge Keesley whether or not you could enter the
20 colloquy and defer sentencing to a later time in order to
21 allow you to have people like Dr.~McKey or any other
22 mitigating witness present; is that correct?

23 A Yes, sir.

24 Q Did that ultimately happen?

25 A No.

1 Q Why not?

2 A Well, at that point, I believe that we may have spoke
3 with Oscar, and he didn't really -- at that point, it's
4 kind of a spur of the moment decision whether or not to
5 wait to do it. The mother was here, you know, and in
6 retrospect, maybe we should have waited, but it was just a
7 decision that we made at that point to go forward.

8 Q Now, Mr. Li, the transcript reflects this was a spur
9 of the moment decision that was made after Judge Keesley
10 made the determination that he was not going to leave
11 Mr. Gramling out on bond pending the sentencing hearing?

12 A That's right.

13 Q And that despite the fact that he was on electronic
14 monitoring, Judge Keesley was going to place him into
15 custody pending a sentencing hearing; is that correct?

16 A That's correct.

17 Q Did that bear on you all's decision --

18 Well, let me ask you this: Whose decision was
19 it to go ahead with sentencing as well as the plea on that
20 day without Dr.~McKey, without any other family members,
21 without any coaches, or anybody from Boys and Girls Club?

22 A I'm not sure. I believe it was mine. I believe I
23 had told Oscar that -- because I had the report from
24 Dr.~McKey. That was my main concern, the report from
25 Dr. McKey. I had -- the mother was here. And with the

1 fact that he really didn't want to go to jail, he really
2 didn't want to go jail, be incarcerated, in the
3 indeterminate time between deferred sentencing, that I
4 believe that I made a spur of the moment decision to -- or
5 I made a decision to go ahead and go the full plea that
6 day.

7 Q Okay. Let's talk about that a little bit. Obviously
8 there's been some testimony about this, and the record
9 reflects that the trial got started --

10 A That's right.

11 Q -- and that the solicitor, Ms. Patterson, called

12 C H as her first witness, correct?

13 A Yes.

14 Q Did C H --

15 Well, let me ask you this: How did C

16 H direct testimony go, in your opinion?

17 A Very favorably for the prosecution.

18 Q Okay. Did it go the way that Oscar had told you he
19 expected it to go?

20 A No.

21 Q It started out that way, correct? Isn't there a
22 point in which she said no?

23 A For about a minute and a half.

24 Q About a minute and a half. Okay.

25 I believe there was something about you're under

1 oath --

2 A That's right.

3 Q -- and it went south from there; is that correct?

4 A The flood gates opened.

5 Q All right. Now, you just testified that you had had
6 the discussion with Oscar that if that happens, you have
7 these elements of cross-examination that you were going to
8 utilize, correct?

9 A That's correct.

10 Q Did you cross-examine C H ?

11 A No.

12 Q Did you have any statement from her that you could
13 have utilized that said it didn't happen?

14 A No.

15 Q Had you ever sent an investigator to go talk to her?

16 A No.

17 Q After her direct testimony, there was a break.

18 There's been testimony that at that time, you had a
19 discussion with Mr. Gramling about a plea offer.

20 What was the plea offer at that time?

21 A At that point, it was -- I'm going to have to go back
22 a little bit during testimony just to make things make
23 sense.

24 During the direct testimony, there were many
25 things that were said, many things that were said by the

1 witness, Ms. H , that were completely left out by my
2 discussions with Mr. Gramling. One that I remember in
3 particular is an offer of a wedding ring to the -- to
4 Ms. H As soon as she said that, I looked over to
5 Mr. Gramling, and he just looked at me and said, "I'm
6 sorry. Don't say anything." So there were a lot of bombs
7 being dropped during the direct testimony Ms. H

8 So after the direct testimony, the judge said --
9 because I think it was a pretty long testimony -- Judge
10 Keesley said, "Let's take a ten-minute break." At that
11 point, I looked over to Oscar and, you know, he's not
12 feeling so good, I'm not feeling so good. I'm definitely
13 sure I was -- you know, I'm pretty sure I was sweating.
14 I'm pretty sure I was nervous because there were a lot --
15 a lot of unexpected things being said by the witness and
16 very, you know, in a very detailed way.

17 And so I went and talked to the prosecutor. I
18 went to see the prosecutor to see what they would offer
19 me, just in case -- because things were going south. And
20 I went and talked to them. And the specific offer they
21 had was to drop some piddly charge about the enticing a
22 minor to leave school, to drop that. They would make no
23 recommendation on sentencing, they would stay quiet as to
24 sentencing from the prosecution's side. And I believe
25 I -- I believe I had them agree that -- to inform the

1 victim's, the girl's parents to not make a suggestion as
2 to -- as to sentencing.

3 So sentencing would remain up to the judge
4 completely, and that was the accepted part. Everything
5 else was straight up. The CSC 2nd to a minor -- you have
6 CSC 2nd with a minor and the delinquency charge, I
7 believe. Those were -- the plea offer was to plead guilty
8 to those. No -- no recommendation as to time from the --
9 from the prosecution. I believe I had -- to have her
10 agree to tell the victims not to ask for time, either. So
11 that was the extent of our deal.

12 Q All right. Let me see if I can get -- you know, you
13 said a lot of things here.

14 First and foremost, your testimony is that there
15 was a number of things that she said during her direct
16 testimony that you had not had any prior knowledge of,
17 correct? You specifically referenced the wedding ring?

18 A Correct. That's the main one I remember.

19 Q Okay. And your testimony, Victor, is that you were
20 affected by this, that you were nervous, you were sweating
21 and that this was something that was not good?

22 A Absolutely.

23 Q And that you looked at Oscar with that reaction on
24 your face?

25 A Yes.

1 Q Did you at all think about the impact that that face
2 was going to have on your defendant?

3 A Well, no, not at the time. I was pretty nervous and
4 sweating. And then, you know, I do remember Oscar just
5 looking back at me and just saying, "I'm sorry." As soon
6 as that testimony came up, obviously I was in shock
7 because that would have been something useful to know that
8 happened.

9 Q And it's your testimony that at this very time when
10 you were nervous and sweating and it just, you know, had
11 some shocks, that you went to the solicitor with that
12 expression on your face to ask them what they would offer?

13 A Sure. Yes.

14 Q Okay. All right. Did you at any time --

15 I mean, let me ask you this: You obviously
16 testified that you had had some trial experience at that
17 time, correct?

18 A Very minimal.

19 Q Very minimal. Okay.

20 When Mr. Gramling was in all these discussions
21 prior to this trial, did you ever talk to him about your
22 trial experience?

23 A Yes.

24 Q So he was aware that you had maybe one to two trials?

25 A I don't remember telling him specifically, but I

1 would -- he knew that I was fresh out of the Solicitor's
2 office.

3 Q Okay. And your testimony is you didn't think about
4 the impact that it would have on Oscar and his
5 decision-making process to see his attorney nervous and
6 sweating and shocked?

7 A At this point, I'm pretty sure I tried to keep cool,
8 but, you know, when he said I was sweaty and nervous, I
9 wouldn't say that is not true.

10 Q So --

11 A But to answer your question, no, I didn't consciously
12 think about that my perspiration level would have an
13 effect on him.

14 Q Okay. All right. I'm sure you've thought of that
15 since then?

16 A I try to wear much more deodorant during trial.

17 Q Good deal.

18 Now, moving on, you've talked to us, you
19 testified about what Ms. Patterson, I suppose, told you
20 about what she would be willing to offer at that point.
21 It was basically a straight-up plea with the exception of
22 the smaller third charge of enticing a minor to leave
23 school, correct?

24 A Yes.

25 Q Okay. No sentencing recommendation was one of the

1 concessions, correct?

2 A No asking for time.

3 Q Right. In other words --

4 A But to stay quiet on asking for time.

5 Q Okay. Let me ask you this: Can you tell us, after
6 she told you that, you went and talked to Oscar, correct?

7 A Yes.

8 Q What did you tell Oscar?

9 A I told Oscar -- I told him what the -- what the offer
10 was. I believe I told him that, you know, I think that
11 if -- obviously we talked about how bad the direct
12 testimony of Ms. Hunt went, so we started to explore the
13 option of a plea. I told him that the offer that was made
14 by Ms. Patterson and her colleague -- I don't remember her
15 name -- but I told him that if -- I believe you're
16 addressing -- you're trying to get to whether or not I
17 promised him that we could walk out of court, correct?

18 Q Well, how did you describe what the terms of the plea
19 were to Oscar?

20 A Pretty much just like that. I believe there's no
21 other way I would have told him. It's a straight-up plea.
22 There's no -- no recommendation, that they would not be
23 asking for time, meaning that the prosecution would not be
24 asking the judge for time. Clearly, we had discussed that
25 there is a possibility of getting -- of getting time

1 because if there was no possibility of getting time or if
2 I was confident enough to know that there was no
3 possibility of getting time, I'm pretty sure I would not
4 have been as nervous or sweating as badly.

5 If I had made any kind of remarks, if there was
6 any kind of conscious thought in my head that it's
7 definitely guaranteed for Mr. Gramling to go home, I
8 believe that the issue was -- that was brought out by, you
9 know, Mr. Gramling was whether or not I told him that he
10 would definitely get to go home. I told him that, look,
11 if we go forward with the trial with that evidence that
12 was already presented, I put our chances at winning very
13 low. Okay? I believe that the trial tacts for -- the
14 unspoken trial tacts of going to trial and finishing and
15 getting found guilty, that you're definitely not going
16 home at that point. Okay?

17 At that juncture in the case, it was an open
18 plea, carried zero to 15, there was a chance to go home.
19 This is your best chance to go home is if you take the
20 plea midway through. Maybe we can save ourselves the
21 trial tacts of having to go through the whole thing,
22 accept -- accept responsibility, end it quickly, maybe the
23 Judge will take some mercy on you. And that's your only
24 shot of going home because I told -- I figured
25 strategically, and I'm sure I conveyed it to him, that if

1 we ended up going to trial with the evidence that was just
2 heard, that there's no way to go home.

3 So if there's any kind of miscommunication
4 there, it probably happened there. But at no point would
5 I have told him we're definitely going home. If I -- if I
6 had told him that and I believed that -- if I believed
7 that and told him that, I would not have been that nervous
8 or, you know, sweating as much. It would have been an
9 easy -- that would have been an easy decision to make.

10 But obviously the consideration of whether or
11 not -- the outside chance of going home factored into our
12 decision to plea. To not plea, there was no outside
13 chance. There was no slim margin of probability that we
14 would be able to go -- that he would be able to go home.
15 But with the plea and because he had no record, because he
16 had a favorable letter from Dr.~McKey, he was a bright
17 young man, went to college, went to grad -- was on his way
18 to grad school, because of those mitigating factors, the
19 only outside chance he would have is to go -- to walk home
20 that day would be to plea. And that was our strategic
21 decision to do that.

22 Basically it was our -- if you consider -- if
23 you consider walking home or getting probation or being
24 able to walk out of the courthouse that day the home run,
25 like, he wanted to -- we wanted -- no matter how small

1 that probability is, we wanted to take a chance at the
2 home run. And we figured if we kept going with trial, and
3 with the evidence that was coming out, if we finished with
4 trial, there was no chance. And if we pled, there was at
5 least a small chance that we would be able to go home -- or
6 he would be able to go home.

7 Q Let me kind of dig into the very detailed answer that
8 you have just given me.

9 You testified that after her direct testimony,
10 that you had estimated your chances of winning the trial,
11 in other words, getting a verdict of not guilty or
12 potentially getting a hung jury, depending on how you look
13 at victory, were very low. That was your testimony,
14 correct?

15 A Yes.

16 Q And this is something you communicated to
17 Mr. Gramling, correct?

18 A I believe so.

19 Q And this was before you had taken any opportunity to
20 cross-examine Ms. H on any of these things that we have
21 talked about in your testimony here today?

22 A That's right. I figured the earlier we end it -- the
23 earlier we ended it, the less trial tactics we would get
24 because if we -- you know, with that case, we might as
25 well wait until the very end and then wait until we're

1 almost done and then take it, and then -- strategically,
2 that's what we thought -- we thought, end it early, save
3 everybody, save -- and maybe it would show favor on the
4 Judge if he admitted -- if he took responsibility early
5 on, it would save us -- he would be -- that Judge Keesley
6 would be more lenient in the sentence if -- the earlier we
7 took it. If we wasted more court time where we went
8 forward with it, we believe that, you know, he may have
9 gotten more time or -- that was our -- those are
10 calculated -- that was our thought process at the time.

11 Q Okay. Now, was this something -- you said it was
12 "our thought process." Was this something that you --
13 this is what you told Oscar, correct?

14 A This is my thought process, but --

15 Q Your thought process?

16 A Right. But at that point, I -- anything else I was
17 thinking, I was pretty much telling Oscar, we were
18 discussing it together. But that was my internal
19 strategic calculation.

20 Q And you were telling him all whatever was coming in
21 your mind about what --

22 A I was trying to, yes.

23 Q Okay. And did you at any time talk to him about the
24 possibility of -- I mean, did you feel like that the offer
25 was going to get any worse after you cross-examined

1 Ms. Hunt with all of her issues?

2 A I believed the sentencing was going to be worse.

3 Q Let me ask you about that, then. We'll go to that,
4 and I will back up.

5 You talked about what you felt like potentially
6 would be a chance at walking out of there today. How many
7 cases had you tried or pled in front of Judge Keesley?

8 A Zero tried. I believe I've made one or two pleas in
9 front of him.

10 Q Were they pleas as a prosecutor?

11 A I believe so.

12 Q And what were they pleas on? Do you recall?

13 A I don't recall. When I was a prosecutor, though,
14 most people walked out.

15 Q They walked out.

16 Is that based on the kind of charges --

17 A That's right.

18 Q -- you were prosecuting, mostly magistrate level
19 or --

20 A Gun charges or drug charges.

21 Q Gun charges?

22 A Right.

23 Q All right. Do you have any specific memory of what
24 the results were in your pleas as a prosecutor in front of
25 Judge Keesley?

1 A No, not specifically.

2 Q Obviously we're both attorneys and know we cannot
3 judge shop, okay, we know that. However, let me ask you
4 this.

5 THE COURT: I'm glad you said that on the
6 record.

7 MR. BAX: I always say it on the record, Judge.

8 THE COURT: The Court appreciates that.

9 MR. BAX: Absolutely.

10 THE COURT: Thank you, Mr. Bax.

11 MR. BAX: You're welcome.

12 BY MR. BAX:

13 Q As I've stated, but at the same time, would you agree
14 that part of your job as an attorney is to try to make the
15 most accurate assessment of the judge that you're in front
16 of as to what that judge would do?

17 A Yes.

18 Q Okay. And so you're telling us that your experience
19 with Judge Keesley was some pleas you did as a prosecutor,
20 and you don't recall the kind of charges that they were?

21 A That's right.

22 Q Do you recall the results of pleas in front of
23 Judge Keesley?

24 A I know I didn't get any jail time.

25 Q You know you didn't get any jail time?

1 A Right.

2 Q Was any of them criminal sexual conduct with a minor?

3 A No.

4 Q Did any of them have a victim who was hurt in any way
5 whatsoever?

6 A No.

7 Q Had you done any research on what Judge Keesley's
8 typical sentence or average sentence or sentencing ranges
9 were in cases that involved the victim that was hurt or
10 threatened or in any way harmed --

11 A Huh-uh.

12 Q -- by any definition of the word "harmed"?

13 A No.

14 Q All right. And did you have an opportunity to ask
15 any of the attorneys --

16 A I know the reputation, you know, of Judge Keesley was
17 a strict sentencer, he is a harsh sentencer.

18 Q You knew that before that?

19 A I knew that before that, yes.

20 Q Okay.

21 A Yes.

22 Q So let me get back to something that we talked about
23 before.

24 Can you explain to this Court, knowing that
25 reputation, even without necessarily any specific

1 experience as we have talked about here today, what made
2 you decide not to take the time, whether Oscar had to
3 spend a couple nights in jail or not, which -- let me ask
4 you this: He has already spent --

5 A That's right.

6 Q -- a little bit of time in jail, six months in fact,
7 prior to that at Alvin S. Glenn, correct?

8 A Yes.

9 Q Which he talked to Judge Keesley about during his
10 plea, correct?

11 A That's right.

12 Q Okay. So whether or not Oscar would have had to go
13 to Lexington County Detention Center for a night or two,
14 can you tell us why, in your experience as an attorney,
15 with everything that you've told us, you would not take
16 the opportunity to have every mitigating witness possible
17 in front of Judge Keesley on something like this?

18 A No, I don't know why. That's maybe an error in
19 judgment. I've played that in retrospect, and I don't
20 know if that's the -- that was the right move.

21 Q And your testimony has been that you discussed with
22 Oscar that if there were to be any chance that the -- and
23 even if it's outside, that an outside chance, there was an
24 outside chance for him to walk away, i.e., a probationary
25 sentence if he pled that day?

1 A Yes. My comparison was between going forward with
2 the trial and getting found guilty at the end of trial
3 versus the chance of going home pleading midway.

4 Q Did you -- I mean, let me ask you this because the
5 way you describe it is concerning to me.

6 Did you -- realistically looking back at your
7 discretion, did you really give it any chance of victory?
8 Did you give it any change of a not guilty at that point
9 or was it pretty much in your remembrance of how you
10 talked to Oscar, was it a done deal?

11 A Pretty much a done deal.

12 Q Okay. And in light of that, did you ever talk to him
13 about the fact that to have any outside chance of walking
14 away, you really should go ahead and take the night in
15 jail so I can get some mitigating witnesses?

16 A I did not tell him that.

17 Q Why not?

18 A I don't know.

19 Well, you're right, that's probably an error in
20 judgment, you know. But I know I looked at him, and I --
21 and I -- at that point, he was just -- he was believing --
22 whatever I said, I knew that he was going to go with. And
23 so I made the decision. I figured we had Dr.~McKey's
24 letter, the mother was there, you know.

25 I still replay it. Maybe I should have waited.

1 I don't know -- I don't know why I went forward that day.
2 But his -- but I do remember his decision, the fact that
3 he may be incarcerated and the way he reacted to that,
4 that definitely played a part, a factor in this. Now, why
5 I let it play a factor, I don't know. But that definitely
6 was a factor in whether or not to wait to defer
7 sentencing.

8 Q So, in other words, his reaction to the idea that
9 Judge Keesley was going to put him into custody that
10 night, and I don't know whether you guys were going to try
11 and do sentencing the next day or two days down the road,
12 but the fact that he reacted negatively to the idea of
13 being put in custody in that pending interim of time
14 affected your decision about whether to go forward?

15 A It factored in, yes. It factored in.

16 Q Did you at all take time to talk with him about the
17 fact that it doesn't matter whether you spend a night or
18 two in jail, it may affect how long you spend in jail in
19 the future?

20 A Right. I did not.

21 Q You did not.

22 And after he received the sentence of eight
23 years, what did he do? Did he fall on the ground?

24 A Yes.

25 Q Okay. Now, just to cover -- and I know we have

1 talked about this, but I want to make sure that I'm
2 thorough for Mr. Gramling's purposes. As you've heard,
3 this is his only and one shot at this post-conviction
4 relief hearing. Okay?

5 A Yes.

6 Q There were some pretrials about what you could get
7 into with Ms. E prior to starting testimony in front of
8 the jury; is that correct?

9 A I believe so.

10 Q Okay. And do you recall ultimately what the ruling
11 was on what you were going to be able to go into as far as
12 her prior false allegations of sexual molestation of other
13 people?

14 A I believe -- I believe that the one I recall
15 offhand -- I'm sure I have notes of it -- is the issue of
16 whether or not she allegedly said that she was raped, from
17 being gang raped by ten people at the -- at the treatment
18 facility. That was -- we had an issue of whether or not
19 that was admissible, and we had a hearing on that.

20 Q And she ultimately testified in a hearing about that,
21 correct?

22 A Yes.

23 Q An in camera hearing?

24 A Right, correct.

25 Q Or an in limine hearing.

1 She actually testified that ten individuals,
2 none of whom she knew or she could identify or ever said
3 that she saw their faces, raped her soon as she got off
4 the bus. Do you recall that? A school bus.

5 A I don't remember the details of that, but it sounds
6 right.

7 Q Now, do you recall that originally the issue was
8 whether or not you would be able to bring the allegations
9 that she made against the stepfather as well, correct?

10 A I believe so.

11 Q And do you recall Ms. Patterson ultimately withdrew
12 her motion to exclude you from being able to ask her that?
13 In other words, she withdrew any objection to it, and you
14 were going to be able to ask her about those allegations?

15 A Yes.

16 Q I just -- the reason I ask is, I just wanted to make
17 sure that you were aware and that -- and I asked if you
18 had discussed with Oscar at all what you still had
19 available to cross-examine C: : H with?

20 A Your question is again one more time? I'm sorry.

21 Q What -- at the time that -- when the State got done
22 with their direct examination of C H in front
23 of the jury, what was your understanding of what you would
24 be able to cross-examine her about?

25 A The -- her changing of story -- of the story. Her --

1 I believe her -- her allegations against her stepfather.
2 I knew that -- I knew that I couldn't ask her about the
3 gang rape, so that's the only thing that I knew at that
4 point that I could not go into.

5 Q But you had the fact that she had been treated at
6 Springbrook?

7 A Yes.

8 Q You had the fact that she had made allegations
9 against her stepfather that she then said --

10 A Correct.

11 Q -- she just made up?

12 A Yes.

13 Q You had the fact that she had attempted to make
14 contact or that she had wanted to know about how to bond
15 him out?

16 A Yes.

17 Q And that would have been admissible, right, you would
18 have been able to ask her about that?

19 A I'm sure I could have, yes.

20 Q You had the fact that she had initiated a lot of the
21 contact?

22 A Yes.

23 Q You had the fact that she was the one that was
24 sending these pictures, correct?

25 A Yes. None of those are defenses to CSC 2nd with a

1 minor. Her credibility -- the only thing I would -- I
2 would care about asking was her credibility. I -- we
3 knew -- we knew that she had -- was not truthful about
4 her -- about her age, and she had initiated a lot of
5 contact with Mr. Gramling. That stuff just made it look
6 worse.

7 Q Well, let me ask you this. And I understand where
8 you're coming from. Let me just ask you this because
9 we're here on post-conviction relief.

10 A That's right.

11 Q Let me ask you this: Once you knew that this was
12 going to be a trial --

13 A Yes.

14 Q -- on this charge and that your first trial was going
15 to occur here in Lexington County --

16 A Yes.

17 Q -- did you at any time contact any Lexington County
18 lawyers who have tried CSC cases, 2nds or 1sts or
19 otherwise, in front of Lexington County juries? Did you
20 ever contact them and say, you know, what kind of stuff
21 should I be looking for here?

22 A No.

23 Q Okay. You didn't try to give Theo Williams a call?

24 A No.

25 Q Okay. You didn't try to give Wayne Floyd a call?

1 A No.

2 Q Didn't try to give me a call?

3 A I did not.

4 Q Okay. Do you regret that now?

5 A I regret a lot of things.

6 MR. BAX: No further questions at this time.

7 Thank you, Victor.

8 THE COURT: Anything on cross?

9 MS. RATIGAN: Very briefly, Your Honor. I am
10 just going to go back over some things again just to make
11 sure we're all on the same page.

12 CROSS-EXAMINATION

13 BY MS. RATIGAN:

14 Q After you received the discovery materials from both
15 Lexington and Richland, you discussed those with
16 Mr. Gramling?

17 A Yes.

18 Q Okay. And did you talk to him about his relationship
19 with the victim?

20 A Yes.

21 Q In your opinion, was he pretty forthcoming about what
22 the behavior they had engaged in together?

23 A Yes.

24 Q Would it be fair to say you had several meetings with
25 Mr. Gramling prior to the case being put on the trial

1 docket?

2 A Yes.

3 Q Did you discuss with him the potential sentencing
4 ranges for each of these charges?

5 A Yes.

6 Q At some point, Mr. Gramling told you that he was sure
7 that the victim would not testify against him?

8 A Yes.

9 Q Is that how it ended up on the trial docket?

10 A That is how it ended up on the trial docket, yes.

11 Q Now, when he told you this about the victim not
12 implicating him, do you remember if he told you that
13 before that ABHAN plea offer or after or about the time --

14 A After.

15 Q After? Okay.

16 A After.

17 That was a critical factor in deciding -- or, I
18 guess, for him deciding whether or not to go to trial. He
19 made the -- he made the final decision whether to take the
20 plea or to go to trial, anyway. But I could sense that
21 that was his internal reason for going to trial.

22 Q And he was pretty confident that she was not going
23 to --

24 A Yes.

25 Q -- throw him under the bus?

1 A Yes.

2 Q So when you went to trial that day, were you ready to
3 go to trial?

4 A Yes.

5 Q Were you prepared to go into the various impeaching
6 and credibility matters with the victim?

7 A Yes.

8 Q And you testified that you were very shaken after her
9 direct testimony; is that correct?

10 A Yes.

11 Q Was it because of what she was saying or was it how
12 she presented herself, was it all of the above?

13 A It was because of her demeanor, and it was because
14 that she appeared to be truthful. So I believe that
15 taking into account what the jury heard, it sounded pretty
16 good for the prosecution. And it was the fact that she
17 was saying a lot of things in a lot of detail that were
18 contrary -- or not contrary, but omitted by my discussions
19 with the client.

20 Q Now, when you all took that break, did you talk to
21 Mr. Gramling about your concerns about her demeanor, of
22 her appearance of truthfulness, did you all talk about
23 that?

24 A Yes.

25 Q Did you explain to Mr. Gramling your concerns that

1 her testimony would have on your ability to defend him at
2 trial?

3 A Can you say that one more time?

4 Q Did you tell him, you know, did you discuss, I'm very
5 concerned about her testimony and how this is going to
6 end --

7 A Yes, we talked about her testimony. And we both kind
8 of looked at each other and, you know.

9 Q It would be fair to say you were both concerned about
10 how she testified, how she presented herself?

11 A Correct.

12 Q And at that point, I believe you said you went to the
13 State and basically said, can you all make me something --

14 A Right.

15 Q -- some kind of offer?

16 A Right.

17 Q And when they made that offer of nol prosing the
18 minor charge and then not making a specific sentence
19 recommendation, you explained all that to Mr. Gramling?

20 A Yes.

21 Q And I believe -- let's see.

22 So you told him that there was no specific
23 sentence recommendation?

24 A I'm pretty sure I told him that the deal would be
25 that they would not ask for -- that they would not make an

1 exact -- they would not make a sentence recommendation.

2 Q Did you ever tell him, you know, Oscar, you're not
3 going to get any jail time? Did you ever make him any
4 kind of promise of a specific sentence he could probably
5 receive?

6 A No. The main -- the main thing we talked about
7 during the -- when we talked about the sentencing was the
8 best chance to have -- the best chance to walk home that
9 night.

10 Q And at the time of the plea, it was your opinion
11 based on your conversation with the State and Mr. Gramling
12 and what had already transpired in trial, it was your
13 opinion at that time was it was best just to go forward
14 with sentencing?

15 A Yes.

16 Q And you said you've had a chance to think about it,
17 but that's just in retrospect. You kind of wish now you
18 could go back and --

19 A That's right. That's just in retrospect. Maybe we
20 should have waited.

21 MS. RATIGAN: That's all I have, Your Honor.

22 THE COURT: Anything on redirect?

23 MR. BAX: Yes, Your Honor, briefly.

24 REDIRECT EXAMINATION

25 BY MR. BAX:

1 Q Victor, I just want to follow up.

2 First of all, you testified in cross-examination
3 that -- and you have testified to this on direct
4 examination as well -- that you told Oscar that his best
5 chance of possibly being able to walk away that day was to
6 plead, correct?

7 A That was something that we talked about. He kept
8 asking -- that was his main focus was to, what can I do to
9 walk out.

10 Q Okay. So --

11 A Yes. The answer to your question, yes. That was
12 the -- I guess that was the majority of the discussion
13 when it came to sentencing was which option would it
14 take -- which option would give you the best chance of, no
15 matter how slim or how great they are, which option gave
16 you the best chance to walk out.

17 Q And let me ask you this, then: What did you put that
18 chance at? You have testified that your best chance of
19 walking away --

20 A Right.

21 Q -- is to plead. What did you put that chance at?

22 A Actually, I expressed that to him.

23 Q Five percent, ten percent?

24 A No, I didn't express that to him. I didn't tell
25 him -- I didn't -- I didn't -- I would -- I mean, if I

1 could, you know, go back, I'm sure the chances would have
2 been, you know, I would have put it at five to 10 percent,
3 15 percent, tops.

4 Q Based on your remembrance of what happened, can you
5 testify here today under oath --

6 A Uh-huh.

7 Q -- that he understood that he was looking at a five
8 or ten percent chance of walking home?

9 A No, nothing I could say was to -- I'm sorry, what is
10 your question, again? Your question is to whether or
11 not...

12 Q Based on your remembrance of that conversation --

13 A Right.

14 Q -- that day, dealing with Oscar --

15 A Right.

16 Q -- that day --

17 A Right.

18 Q -- and the fact that you just testified that he was
19 focused on how do I not go to jail --

20 A Correct.

21 Q -- do you think he understood he was looking at a
22 five to ten percent chance of going home, and a 90 percent
23 or 95 percent chance of going to jail, prison?

24 A He understood that it was a slim chance, that the
25 chances weren't great. He understood his chances weren't

1 great. I'm not sure if he would put it at 25 percent. At
2 that point maybe -- at that point, he might be desperate,
3 or a person may be desperate or may be just clinging onto
4 hope and they may internalize, you know, a 35 percent or
5 50 percent chance. I can't tell you what he was thinking
6 on it, but no part of my -- no part of my behavior and my
7 profuse sweating and nervousness would exude any sort of
8 confidence that this man is going to go home.

9 So, yes. I don't know what exactly he was
10 thinking, but there was nothing -- I did not have an air
11 of confidence about me that was previously said, as was
12 previously mentioned, that this man would be walking home
13 that day. So, yeah, if it was a 15 percent chance, my
14 face showed it was a 15 percent chance of him going, you
15 know, of him not -- 15 percent chance of him going,
16 walking out, and then the rest of the percentage of him
17 going in.

18 So, yes, to answer your question, I can't tell
19 you what he was thinking in his head. I can't tell
20 that -- but I can tell you that I did not express some
21 sort of, you know, unjustified bravado that, you know, you
22 plea, you're going to go home. So I did not portray that.

23 Q But your testimony is, just to make sure that we're
24 clear, that you did not assign -- you didn't ever talk to
25 him and --

1 A I did not break it down. I never broke it down.

2 Q -- made it clear to him that your best chance is a
3 slim sliver of a chance?

4 A Correct. I did not -- I did not break it down to him
5 in percentages, and I did not break it down to him like
6 that.

7 Q Now, you also testified on cross about the fact that,
8 you know, after her direct testimony that things did not
9 look good, that they had come out best for the
10 prosecution, correct?

11 A Yes, sir.

12 Q Now, you're familiar that when you're calling your
13 case in front of a jury and it's your witness and your
14 direct testimony, that direct testimony is when you are
15 going to look the best, right?

16 A Yes.

17 Q And that if there's going to be any looking bad,
18 chances are it's going to be during cross-examination,
19 correct?

20 A That's right.

21 Q And that it was your job to make her -- to use your
22 skills to be able to show to that jury that there were
23 problems with her testimony, correct?

24 A Yes.

25 Q And let me ask you this: In your discussions with

1 Mr. Gramling in that break about that plea --

2 A Right.

3 Q -- did you at all discuss with him, you know, you
4 can't always wait until after I do my cross to make this
5 decision?

6 A No, never mentioned that to him.

7 Q You never mentioned that to him?

8 A No.

9 Q Did anyone else ever mention that? In your
10 remembrance, did anybody else say, why don't you wait
11 until after cross to make this decision?

12 A No.

13 Q So Ms. Benevento never said that?

14 A No.

15 Q And I know also one of the things that you talked
16 about was the fact that the ring that was mentioned that

17 C H said was given to her by Oscar --

18 A Uh-huh.

19 Q -- was a bomb that was dropped on you?

20 A That's right.

21 Q That's one of the things you described that way,
22 correct?

23 A That's right.

24 Q But the Solicitor's office had the ring, correct?

25 They presented the ring and it was introduced into

1 evidence; is that correct? Either that or a picture.

2 From my remembrance, it was either the ring or a picture
3 that was showed to her and was introduced into evidence.

4 Do you recall that?

5 A I don't recall that, but it doesn't surprise me.

6 Q In order for that to have happened, would it be
7 accurate to say that was in the discovery from Lexington
8 County, that ring?

9 A That was not provided to me in discovery.

10 Q Did you --

11 A I was shocked by the ring.

12 Q Okay. Let me ask you this: Did you object to the
13 ring and state to the Judge you were never provided that
14 in discovery?

15 A I don't think I did.

16 Q In fact, you didn't object to the introduction of the
17 evidence about the ring at all, correct?

18 A I did not.

19 Q And it affected how you presented yourself to Oscar
20 Gramling, correct?

21 A It did.

22 MR. BAX: No further questions at this time.

23 Thank you very much, Victor.

24 And thank you, Your Honor.

25 THE COURT: Anything on recross?

1 MS. RATIGAN: No, Your Honor.

2 THE COURT: All right. You may step down.
3 Thank you, sir.

4 THE WITNESS: Thank you, sir.

5 THE COURT: Any other witnesses, Mr. Bax?

6 MR. BAX: Your Honor, at this time, I would ask
7 for one five-minute recess. I do have one witness. I
8 have talked to that witness prior to this, but I just want
9 to make sure, as Your Honor is well aware, this is his one
10 shot, and I don't want to...

11 THE COURT: I'm well aware it's his one shot.

12 MR. BAX: I know. And I'm stating that more for
13 my client for the record than for Your Honor. I just want
14 five minutes to make sure, based on my discussion with
15 that witness, about our decision.

16 THE COURT: We will take the five minutes, and I
17 would like to talk to you and the attorneys for the next
18 one.

19 We are in recess.

20 MR. BAX: Thank you very much, Your Honor.

21 (Recess taken.)

22 THE COURT: Mr. Bax, have you had an opportunity
23 to talk to your additional witness?

24 MR. BAX: I have, Your Honor. You know,
25 obviously a lot of times with post-conviction relief

1 cases, there has been a good bit of time that's gone by
2 since the plea or trial or whatever it is.

3 THE COURT: Yes, sir.

4 MR. BAX: I just wanted to make sure that there
5 was no other memories that got sparked during all this
6 testimony. I have been assured by the witnesses that they
7 still don't remember anything more than what they did
8 before, and as a result, I'm not going to be calling any
9 other witnesses today.

10 I would like to ask the Court this, and I have
11 discussed this with opposing counsel, Ms. Ratigan, there
12 was another attorney that was sitting on this case,
13 Alexandra Benevento. She's still, based on AIS, our
14 wonderful new system, still works with Mr. Rutherford's
15 office, so I did make contact -- and I think I talked
16 about this in the beginning of the case -- I did make
17 contact with Mr. Rutherford's office recently and asked
18 whether I could speak with her because, you know, in my
19 preparing for this, it was Mr. Li's remembrance to me that
20 she did not do anything during the course of the trial,
21 and that's going by the transcript. Other than to say,
22 yes, that's my name to the jury, she never spoke a word.
23 And she was a very new attorney. I wanted to make sure,
24 though, that, you know, since she was present during some
25 of the conversations that occurred between Mr. Li and my

1 client prior to the plea, that she -- whether or not she
2 had any memory.

3 When I tried to contact her, I was told by
4 Mr. Rutherford's office that she's on maternity leave,
5 Your Honor. I left messages with my cell phone number,
6 have not heard back. I certainly don't blame her for
7 that.

8 THE COURT: For being on maternity leave?

9 MR. BAX: For not calling anybody while on
10 maternity leave.

11 THE COURT: Okay. I just wondered where we were
12 heading.

13 MR. BAX: I won't talk about whether I would
14 recommend anyone talking to my wife when she was on
15 maternity leave. So I'm not going to go any further than
16 that.

17 THE COURT: Yes, sir.

18 MR. BAX: But the only thing I would ask, Your
19 Honor, is permission from the Court to hold the record
20 open for a period of time in order for me to attempt to
21 get a hold of Ms. Benevento and find out whether or not
22 there is anything that she has to offer for this. And if
23 she does, ask for the Court's permission to have a
24 deposition conducted at the Attorney General's office and
25 present -- and it will be brief, and I have done this many

1 times in the past -- to the Court for its consideration
2 prior to a ruling.

3 As Ms. Ratigan has said to me, and I agree
4 wholly with this as a former Assistant Attorney General
5 who handled literally thousands of these myself, I have no
6 problem with us putting a time frame on that.

7 THE COURT: Okay.

8 MR. BAX: I am hoping to be able to at least
9 talk to Ms. Benevento via phone within the next 14 days.
10 I think that's a reasonable amount of time to be able to
11 find out whether she has something. And then I would ask
12 that if she does have something, as long as I contact
13 Ms. Ratigan within 14 days and say, yes, I would like to
14 do a deposition and get that deposition done.

15 Today is the 14th. As long as we can have it
16 scheduled for a time prior to the end of the year,
17 before -- I would say December 15th, as long as we have it
18 scheduled for a time at the AG's office before
19 December 15th, if the Court would allow, I would
20 appreciate that.

21 THE COURT: And, Mr. Bax, if you all want --
22 rather than to take a deposition, if you want to at the
23 same time just schedule the hearing in front of me,
24 wherever I am, I don't mind doing that.

25 MR. BAX: Wonderful, Your Honor. And I

1 appreciate that very much. In fact, I think that we'll
2 just confer and see which one is easier based on where
3 your location is and make that decision, if that is
4 amenable to the Court.

5 THE COURT: It's amenable to me.

6 Any objection, Ms. Ratigan?

7 MS. RATIGAN: No, Your Honor. Like I told Arie,
8 as long as it does have an end date on it so it doesn't
9 drag out in perpetuity, that's fine.

10 THE COURT: Oh, yes. I've just got to have a
11 time line on it.

12 MR. BAX: Well, and I promise you, Your Honor,
13 this case has, you know, been going on for long enough, as
14 far as I'm concerned. And I have made trips to facilities
15 that are at the ends of the earth. So I definitely want
16 to facilitate getting a resolution, too, Your Honor, as
17 quickly as possible.

18 THE COURT: Thank you, sir. I appreciate it.

19 MR. BAX: Thank you very much, Your Honor.

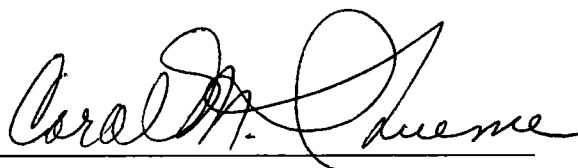
20 THE COURT: All right. Appreciate it. We'll
21 see you all in the morning.

22 (The proceedings were concluded.)

23 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

24

25

1
2
3
4 CERTIFICATE OF REPORTER5 STATE OF SOUTH CAROLINA)
6)
7 COUNTY OF LEXINGTON)8 I, CAROL M. THUEME, RPR, Official Court Reporter for
9 the 11th Judicial Circuit of the State of South Carolina,
10 do hereby certify that the foregoing is a true, accurate
11 and complete Transcript of Record of the proceedings had
12 and evidence introduced in the trial of the captioned
13 case, relative to appeal, in the Court of Common Pleas for
14 Lexington County, South Carolina, on the 14th day of
15 November, 2013.16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
1819
20 January 29, 201421
22 23 CAROL M. THUEME, RPR
24 Circuit Court Reporter
25

Lexington
County
STATE OF
J-846
MR.

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Criminal Sexual Conduct with a Minor-Second
Degree

§ 16-03-0655(B)(2)

At a Court of General Sessions, convened on August 2009, the Grand Jurors of Lexington County present upon their oath:

That Oscar Albert Gramling III in Lexington County, South Carolina, on or between January 1, 2009 and May 16, 2009 did commit a sexual battery upon, (date of birth /1994), a minor who was at least fourteen (14) years of age but who was less than sixteen (16) years of age, to wit: sexual intercourse and the Defendant was older than the victim or was in position of familial, custodial, or official authority to coerce the victim to submit, in violation of Section 16-3-655(B)(2), S.C. Code of Laws, (1976, as amended).

A TRUE COPY

[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

[Signature]
ASSISTANT SOLICITOR

BAIL set by

Age

Effect 1/5/7
5-17-09

De and Amount:

me of Surety:

10,000

PRELIMINARY HEARING held by

Age

endant Attorney:

ision:

DISPOSITION before

Age

(indicate jury trial, bench trial, plea, nol. pros., etc.)

osition:

itence:

JURORS

8 PM 4:54

CAL HIGG
COURT
TON, SC

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

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Name:

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Telephone:

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Name:

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Telephone:

CODEFENDANTS

SNL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Contributing to the Delinquency of a Minor
§ 16-17-0490

At a Court of General Sessions, convened on August 2009, the Grand Jurors of Lexington County present upon their oath:

That **Oscar Albert Gramling III** did in Lexington County, South Carolina on or about March 1, 2009, being over the age of eighteen years, knowingly and willfully encourage, aid, or cause, or did an act which caused and influenced a minor child to:

(1) become and be incorrigible or ungovernable or habitually disobedient to and beyond the control of her parent, guardian, custodian or other lawful authority and/or (2) repeatedly desert from her home or place of abode without the consent of his/her parent, guardian, custodian or other lawful authority to wit: the defendant aided the minor to leave her parental home without her parents' consent, in violation of Section 16-17-490 of the South Carolina Code of Laws, 1976, as amended.

A TRUE COPY
Lex. Co. C.C.C.P., G.S. & F.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

TNESSES

xington County Sheriffs Department

rry Hall

v Enforcement Case #: 09041427

SMB

ARREST WARRANT NUMBER

48741

ATION OF GRAND JURY

TRUE BILL

eperson of Grand Jury

e: 8-10-09

RDICT

eperson of Petit Jury

te:

DOCKET NO. 2009GS3202005

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

AUGUST TERM 2009

THE STATE

vs.

Oscar Albert Gramling III

CDR #: 0048

Indictment for

Contributing to the Delinquency of a Minor

§ 16-17-0490

DONALD V. MYERS, SOLICITOR

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 04/29/11

C

GRAMLING III, OSCAR ALBERT FBI # 722864KR1 SID# SC01265300 SCDC # 341691
OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE
INSTITUTION ... EVANS CORR INST INRM.....: F5C0125B
SECURITY/CUST.: 2 MINIMUM IN RACE.....: B SEX.....: M
CURR INCARC SENT...: 8 YRS 0 MOS 0 DYS PROJ MAXOUT DATE: 04/26/2017
CENTRAL MONITORING.: YES PROJ PAROLE DATE: 00/00/0000
SOCIAL SECURITY #....: EWC JOB...: LITERACY PROGRAM
EDUC PGM.: INMATE TUTOR
EWC LEVEL: 2F5 EEC LEVEL:
ASSIGNMENT...: EDUCATION

CURRENT PROGRAM...: NO CURRENT PROGRAM
AGF...: 30 DATE OF BIRTH...:

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE			COUNTY	SENTENCE	
	YRS	MOS	DYS		START	V/NU DATE
CONTRIB DELINQ MINOR	3	0	0	LEXINGTON	7/11/2010	N
CRIM SEX COND.W/MINOR(2N	8	0	0	LEXINGTON	7/11/2010	V

PRIOR COMMITMENTS OVER 90 DAYS:

MISSING PRIORS DATA

DETAINERS (HOLD,WANTED,NOTIFY):

CODE NOT IN TABLE

HOLD

IRO

CATEG:

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

NO NON-ASSAULTIVE DISCIPLINARY HISTORY

HISTORY OF MOVEMENTS:

10/19/10	EVANS	INCARCERATED	RETURN FROM COURT
10/19/10	RICHLAND CO	AUTH ABSENCE (AWL)	TO COURT
10/14/10	EVANS	INCARCERATED	RETURN FROM COURT
10/14/10	RICHLAND CO	AUTH ABSENCE (AWL)	TO COURT
9/30/10	EVANS	INCARCERATED	ADMINISTRATIVE
7/14/10	KIRKLAND	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB	START	END	TERMINATION
DESCRIPTION	DATE	DATE	REASON
LITERACY PROGRAM	01/21/11	0/ 0/ 0	
LITERACY PROGRAM	01/04/11	1/20/11	MI ELIGIBLE FOR LEVEL 2

HISTORY OF EARNED EDUCATION CREDITS:

EEC	START	END	TERMINATION
DESCRIPTION	DATE	DATE	REASON

NO SCHOOL ASSIGNMENTS

***** END OF REPORT *****

CMTI330D	SCDC OFFENDER MANAGEMENT SYSTEM	04/29/11
OMCOMITA	RELEASE DATE SCREEN	C048593
SCDC# > 341691		LOC: EVANS
GRAMLING III, OSCAR ALBERT	SCDC CLASSIFICATION...	VIOLENT
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE	SEXUAL REGISTRY...	Y
	SEXUAL PREDATOR...	PENDING
	DNA STATUS.....	COMPLETED
	GPS REQUIREMENT...	N
	PREA DECISION....	
CURRENT SENTENCE: 008-00-000	CONSECUTIVE SENTENCE ...	N
008-00-000	CURRENT SENT START DATE:	07/11/2010
PROJECTED COMPLETION DATES		
MAXOUT DATE: 04/26/2017	CURRENT EWC ..:	2 F 5
YOA SIX YEAR DATE: / /	CURRENT EEC ..:	NOT CURRENTLY EARNING EEC
INITIAL PAROLE DATE: 00/00/0000	NEXT PAROLE HEARING DATE:	00/00/0000
TOTAL GT DAYS EARNED: 000000	LABOR CREW/WORK PROG DATE:	99/99/9999
TOTAL EARNED WORK CREDITS ...: 000103	LABOR CREW DISQ REASON:	
TOTAL EDUCATION CREDITS: 000000	CURRENT OR PRIOR SEX CONDUCT CONVICT	
TOTAL EXTRA EARNED CREDITS ..: 000		
TOTAL SERVICE TIME EARNED ...: 000288		
PFKEYS: 5: HISTORY OF DATE CHANGES		
4-6	1 Sess-1 167.7.50.33	SCDC1051 3/11

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	Case No: 2011-CP-32-1293
	)	
Oscar Gramling, III. #341691.	)	
	)	
Applicant.	)	
	)	
v.	)	RETURN
	)	
State of South Carolina.	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed March 31, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the August 2009 term of the Lexington County Grand Jury for Contributing to the Delinquency of a Minor (2009-GS-32-2005) and Criminal Sexual Conduct with a Minor 2nd Degree (2009-GS-32-2003). Applicant was represented by Victor Li, Esquire. On July 13, 2010, the Applicant pled guilty as charged. The Honorable William P. Keesley sentenced the Applicant to confinement for a period of three (3) years for the Contributing to Delinquency charge and a concurrent period of eight (8) years for the Criminal Sexual Conduct charge. Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina

Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a) "misrepresented terms and conditions of my plea offer;"
 - b) "misrepresented potential maximum term of incarceration that I was facing under this plea and misrepresenting what I could reasonably expect as a sentence;"
2. Involuntary Guilty Plea – attorney unprepared for trial and left me no choice but to plea at his recommendation.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was

deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S.

52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

STATE OF SOUTH CAROLINA	)	
COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS
	)	
	)	2011-CP-32-1293
OSCAR GRAMLING, III, #341691	)	
Applicant,	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Arie D. Bax, Esquire
69 Robert Smalls Parkway, Ste. 3-C
Beaufort, SC 29902

DATED this 16th day of December, 2011

Lena Pelishenko

Lena Pelishenko, Legal Assistant
 For Respondent

VI.

WHEREFORE, having made its Return, the State requests that a hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Assistant Deputy Attorney General

KAELOE E. MAY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

December 16, 2011.