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THE STATE OF SOUTH CAROLINA
In The Supreme Court

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CERTIORARI TO SUMTER COUNTY
Court of Common Pleas

S.C. Supreme Court

The Honorable George C. James, Jr., Circuit Court Judge

Appellate Case No: 2014-001566
Lower Court Case No: 2013-CP-43-0037

RUSSELL EARLEY,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA

PETITIONER.

APPENDIX

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STATE OF SOUTH CAROLINA))
COUNTY OF SUMTER) GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)

STATE,)

v.)

TRANSCRIPT OF RECORD
09-GS-43-0712

RUSSELL EARLEY,)

DEFENDANT.)

July 17, 2012
Sumter, South Carolina

B E F O R E :

THE HONORABLE BENJAMIN H. CULBERTSON, JUDGE;
AND JURY

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

JOHN MEADORS, ESQ.
Assistant Solicitor

CHARLES T. BROOKS, III, ESQ.
Attorney for Defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter
Typed for Margaret Sullivan

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STATE'S:

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1 THE COURT: Ladies and gentlemen, the
2 Solicitor has called the case of State of South
3 Carolina v. Russell Scott Earley. Mr. Earley has
4 been charged and indicted by the grand jury on the
5 crime of criminal solicitation of a minor. The
6 allegations in this case are that on or about
7 November 22nd of 2008 Mr. Earley approached a minor
8 and solicited a sexual act from the minor. Is there
9 any member of the jury panel who has heard anything
10 read anything, knows anything, or discussed anything
11 about this case, if so, please stand.

12 (There was no response.)

13 THE COURT: All right. The defendant in
14 this case is Russell Scott Earley. This is
15 Mr. Earley.

16 MR. MEADORS: That's correct.

17 THE COURT: All right. And the alleged
18 victim in this case is Mr. **Victim**. Is he in
19 court? Is there any member of the jury panel
20 related by blood or marriage having close personal
21 relationship, business relationship, social
22 relationship, or any other type of relationship to
23 either the defendant Mr. Earley or the alleged
24 victim Mr. **Victim** if so, please stand.

25 (There was no response.)

1 THE COURT: Please listen up. These are
2 the potential witnesses who may testify in the case.
3 You certainly have the alleged victim Mr. **Victim**
4 the defendant Mr. Earley. You also have Detective
5 Robert Beckford, Sumter Police
6 Department; Lieutenant Evans from the Sumter Police
7 Department. Do we know Lieutenant Evans' first
8 name?

9 MR. MEADORS: It's Michael, I apologize.

10 THE COURT: Lieutenant Michael Evans,
11 Corporal Kevin Sargent of the Sumter Police
12 Department; Thomas Gales, Wal-Mart loss prevention;
13 Arlene H. Corbin; Allan Stewart; and Kim Turner. Is
14 there any member of the jury panel related by blood
15 or marriage, have a close personal relationship,
16 business relationship, social relationship, or any
17 other type of relationship to any of these potential
18 witnesses, if so, please stand.

19 (There was no response.)

20 THE COURT: The State of South Carolina in
21 this case is represented by attorney John P. Meadors
22 of the Third Circuit Solicitor's Office. The
23 defendant in this case is represented by attorney
24 Charles Brooks of the Charles Brooks' law office
25 here in Sumter, South Carolina. Is there any member

1 of the jury panel related by blood or marriage, have
2 a close personal relationship, business
3 relationship, social relationship, or any other type
4 of relationship with either of these attorneys, if
5 so, please stand.

6 (There was no response.)

7 THE COURT: Has any member of the jury
8 panel ever been represented by either of these
9 attorneys, if so, please stand.

10 (There was no response.)

11 THE COURT: Has any member of the jury
12 panel ever been involved in any legal action in
13 which either of these attorneys represented another
14 party to that action, if so, please stand.

15 (There was no response.)

16 THE COURT: Is there any member of the
17 jury panel who either personally, has a family
18 member or a close personal friend employed with the
19 Third Circuit Solicitor's Office, with the law
20 office of Charles Brooks, if so, please stand.

21 (There was no response.)

22 THE COURT: Has any member of the jury
23 panel formed or expressed an opinion about any issue
24 or matter involved in this case, if so, please
25 stand.

1 (There was no response.)

2 THE COURT: Is any member of the jury
3 panel aware of any bias or prejudice towards either
4 the State of South Carolina or the Defendant in this
5 case, if so, please stand.

6 (There was no response.)

7 THE COURT: Is there any member of the
8 jury panel that was a member of the grand jury that
9 issued the indictment in this case, if so, please
10 stand.

11 (There was no response.)

12 THE COURT: Is there any member of the
13 jury panel who is a member of or a contributor to
14 any group or organization that has as its primary
15 focus the promotion of law enforcement or victims'
16 rights? Some of these groups are Mothers Against
17 Drunk Drivers, what's commonly referred to as MADD;
18 Students Against Drunk Drivers, commonly referred to
19 as SADD; Citizens Against Violent Crimes, CAVE,
20 Citizens Against Spousal Abuse. Any member of the
21 jury panel a contributor to or a member of any such
22 organization, if so, please stand.

23 (There was no response.)

24 THE COURT: Has any member of the jury
25 panel either personally had a — or have a family

1 member or close personal friend that has ever been
2 charged with or been the victim of a violent or
3 sexual crime, if so, please stand.

4 All right, please stand right there one
5 second. All right, the first lady in the black
6 sweater and white top, your name?

7 POTENTIAL JUROR: Debra Teddar.

8 THE COURT: And your number?

9 THE POTENTIAL JUROR: 157.

10 THE COURT: All right. And then the lady
11 right behind her? Yes, ma'am, your name and number?

12 THE POTENTIAL JUROR: Danita Hallman. I
13 believe it's 183.

14 THE COURT: What is it?

15 POTENTIAL JUROR: Danita Hallman. I
16 believe it's 183.

17 THE CLERK OF COURT: 183, Your Honor.

18 THE COURT: All right. And then the lady
19 in the back, your name and number?

20 THE POTENTIAL JUROR: Kimberly McGowan,
21 number 97.

22 THE COURT: All right. Ms. Tedder, if I
23 can get you to come forward please.

24 Do the attorneys want to come?

25 (Juror approached the bench for an off-the-record

1 discussion.)

2 THE COURT: All right. Ms. Hallman.

3 (Juror approached the Bench for an off-the-record
4 discussion.)

5 THE COURT: Ms. McGowen.

6 (Juror approached the Bench for an off-the-record
7 discussion.)

8 (WHEREUPON, counsel approached the Bench
9 for an off-the-record discussion.)

10 THE COURT: Any other members of the jury
11 panel, personally, family member or close personal
12 friend, that has been charged with or been the
13 victim of a violent or sex crime, if so, please
14 stand.

15 (There was no response.)

16 THE COURT: Does any member of the jury
17 panel know of any reason whatsoever why he or she
18 should not serve as a juror in this case with
19 particular emphasis being placed on your ability to
20 be fair and impartial to both the State and the
21 Defendant in this case, if so, please stand.

22 (There was no response.)

23 THE COURT: Any additional questions from
24 the State — oh, yes, ma'am, your name and number?

25 THE POTENTIAL JUROR: Amanda Rogers,

1 number 130.

2 THE COURT: Hold on one second.

3 Ms. Rogers, if I can get you to come forward please.

4 (Juror approached the Bench for an off-the-record
5 discussion.)

6 THE COURT: Does anyone else know of any
7 reason why he or she should not serve as a juror in
8 this case with particular emphasis being placed on
9 your ability to be fair and impartial to both the
10 State and the Defendant, if so, please stand.

11 (There was no response.)

12 THE COURT: All right. Any additional
13 questions from the State?

14 MR. MEADORS: No, sir. Thank you, Your
15 Honor.

16 THE COURT: Any from the Defense?

17 MR. MEADORS: No questions, but I do have
18 issue to raise judge about.

19 THE COURT: All right.

20 MR. MEADORS: Some of the questions —
21 answers from some of the questions.

22 THE COURT: Y'all come on up.

23 (WHEREUPON, counsel approached the Bench
24 for an off-the-record discussion.)

25 THE COURT: The way the jury selection

1 works, I understand you probably have been through
2 it one time. Your names are placed on a list at
3 random, and you'll be called out in random. If your
4 name is called, if you will please come forward,
5 stand in front of the attorneys, face the attorneys.
6 And the State's attorney is gonna look at you a
7 little bit, then look at their notes a little while,
8 look back at you a little while, talk amongst
9 themselves a little while, then decide if they want
10 you as a juror. If they decide that they want you
11 as a juror, then the defense attorney is gonna look
12 at his notes a while, look at you a little while,
13 talk about you a little while, look back at his
14 notes and decide if he wants you as a juror. As we
15 go through this process, until we select twelve
16 jurors. Do we need an alternate or how many -- do
17 you want to go ahead and get an alternate?

18 MR. MEADORS: One, if you would consider
19 it, yes, sir.

20 THE COURT: So we'll go through this
21 process until we select twelve jurors and one
22 alternate. If your name is called if you would
23 please come forward, bring with you any pocketbooks,
24 any coats, umbrellas, books, whatever you might have
25 with you. Come stand in front of the attorneys and

1 face the attorneys. What are the strikes in this,
2 five and five?

3 MR. MEADORS: Yes, sir.

4 THE COURT: The State gets five strikes.
5 The Defense gets five strikes. Now, if you were
6 struck by either the State or the Defense in this
7 case, please do not take personal offense to being
8 struck. It just means that for whatever reason you
9 do not fit the profile they're looking for in this
10 particular case. I've known several places where a
11 juror has been struck in one case and then ten
12 accepted by the same side in the next case. I've
13 also known a juror to be accepted in one case and
14 struck by the same side in the following case so
15 there's really no rhyme or reason as to why you're
16 selected in a particular case or struck in a
17 particular case so please do not take offense if
18 either the State or the Defense strikes you in this
19 particular case. But if you'd please listen up and
20 as your name is called if you'd please come forward
21 and face the attorneys. Thank you very much.

22 THE CLERK OF COURT: May it please the
23 Court, Your Honor.

24 THE COURT: Yes, sir.

25 THE CLERK OF COURT: Juror number 34,

1 Joanne Davis (black female). What saith the State?
2 MR. MEADORS: Please present the juror.
3 THE CLERK OF COURT: What saith the
4 Defense?
5 MR. BROOKS: Please seat the juror.
6 THE CLERK OF COURT: Have a seat in the
7 jury box please, ma'am.
8 Juror number 35, Aishea Dickerson (black
9 female). What saith the State?
10 MR. MEADORS: Please present the juror.
11 THE CLERK OF COURT: What saith the
12 Defense?
13 MR. BROOKS: Please seat this juror.
14 THE CLERK OF COURT: Have a seat in the
15 jury box please, ma'am.
16 Juror number 85, Johnetta Lewis (black
17 female). What saith the State?
18 MR. MEADORS: Please excuse the juror.
19 THE CLERK OF COURT: Have a seat back in
20 the panel. You've been excused from this trial
21 please, ma'am.
22 Juror number 22, Celeste Butler (black
23 female). What saith the State?
24 MR. MEADORS: Please present the juror.
25 THE CLERK OF COURT: What saith the

1 Defense?

2 MR. BROOKS: Seat the juror.

3 THE CLERK OF COURT: Have a seat in the
4 jury box please, ma'am.

5 Juror number 158, Susan Thompson (white
6 female).

7 MR. MEADORS: What was that number?

8 THE CLERK OF COURT: 158.

9 MR. MEADORS: I apologize.

10 THE CLERK OF COURT: What saith the State?

11 MR. MEADORS: Please present the juror.

12 THE CLERK OF COURT: What saith the
13 Defendant?

14 MR. BROOKS: Excuse this juror.

15 THE CLERK OF COURT: Juror number 149,
16 Debra Smith (white female). What saith the State?

17 MR. MEADORS: Please present the juror.

18 THE CLERK OF COURT: What saith the
19 Defense?

20 MR. BROOKS: Seat this juror.

21 THE CLERK OF COURT: Have a seat in the
22 jury box please, ma'am.

23 Juror number 47, Maria Evans (white
24 female). What saith the State?

25 MR. MEADORS: Please present the juror.

1 THE CLERK OF COURT: What saith the
2 Defendant?

3 MR. BROOKS: Seat the juror.

4 THE CLERK OF COURT: Have a seat in the
5 jury box please, ma'am.

6 Juror number 95, Charles McCoy (black
7 male). What saith the State?

8 MR. MEADORS: Please present the juror.

9 THE CLERK OF COURT: What saith the
10 Defendant?

11 MR. MEADORS: Please seat the juror.

12 THE CLERK OF COURT: Have a seat in the
13 jury box please, sir.

14 Juror number 10, Matthew Berger (white
15 male). What saith the State?

16 MR. MEADORS: Please present the juror.

17 THE CLERK OF COURT: What saith the
18 Defendant?

19 MR. MEADORS: Please excuse this juror.

20 THE CLERK OF COURT: Have a seat back in
21 the jury. You've been excused from this trial
22 please, sir.

23 Juror number 172, Angela Williams (black
24 female). What saith the State?

25 MR. MEADORS: Please present the juror.

1 THE CLERK OF COURT: What saith the
2 Defendant?

3 MR. BROOKS: Please seat the juror.

4 THE CLERK OF COURT: Have a seat in the
5 jury box please, ma'am.

6 Juror number 131, Debra Rogers (white
7 female). What saith the State?

8 MR. MEADORS: Please present the juror.

9 THE CLERK OF COURT: What saith the
10 Defendant?

11 MR. MEADORS: Please excuse this juror.

12 THE CLERK OF COURT: Have a seat back in
13 the panel. You've been excused from this trial
14 please, ma'am.

15 Juror number 145, William Singleton (black
16 male). What saith the State?

17 MR. MEADORS: Please excuse the juror.

18 THE CLERK OF COURT: Have a seat back in
19 the panel. You've been excused from this trial
20 please, sir.

21 Juror number 16, Randy Brisbane (black
22 male). What saith the State?

23 MR. MEADORS: Please present the juror.

24 THE CLERK OF COURT: What saith the
25 Defendant?

1 MR. BROOKS: Please seat this juror.

2 THE CLERK OF COURT: Have a seat in the
3 jury box please, sir.

4 Juror number 25, Sharesa Childers (white
5 female). Chrissy Childers. What saith the State?

6 MR. MEADORS: Please present the juror.

7 THE CLERK OF COURT: What saith the
8 Defendant?

9 MR. BROOKS: Seat this juror.

10 THE CLERK OF COURT: Have a seat in the
11 jury box please, sir.

12 Juror number 18, Kirby Brown (white male).
13 What saith the State?

14 MR. MEADORS: Please present the juror.

15 THE CLERK OF COURT: What saith the
16 Defendant?

17 MR. BROOKS: Please excuse this juror.

18 THE CLERK OF COURT: Have a seat back in
19 the panel. You've been excused from this trial
20 please, sir.

21 Juror number 179, Jennifer Wolfe (white
22 female). What saith the State?

23 MR. MEADORS: Please present the juror.

24 THE CLERK OF COURT: What say the
25 Defendant?

1 MR. BROOKS: Please seat the juror.

2 THE CLERK OF COURT: Have a seat in the
3 jury box please, ma'am.

4 THE COURT: All right. We'll select an
5 alternate. The State gets one strike; Defense gets
6 two.

7 THE CLERK OF COURT: Alternate juror,
8 juror number 90, Tonia Major (black female). What
9 saith the State?

10 MR. MEADORS: Please present the juror.

11 THE CLERK OF COURT: What saith the
12 Defendant?

13 MR. BROOKS: Please seat the juror.

14 THE CLERK OF COURT: Have a seat in the
15 jury box please, ma'am.

16 THE COURT: Ladies and gentlemen, you will
17 be the jury that will preside in this case. I've
18 got a matter we need to take up with the attorneys
19 before we proceed so I'm gonna excuse you to go back
20 in the jury room just a few minutes. It will give
21 you an opportunity to see where you will be residing
22 during the trial of this case when you're not here
23 in the jury box. So please, I'll excuse you back in
24 the jury room just a few minutes. We'll bring you
25 back out in just one second.

1 (WHEREUPON, the jury was removed from the
2 courtroom and the following
3 proceedings commenced in open court.)

4 THE COURT: Any challenges to the
5 selection of the composition of the jury by the
6 State?

7 MR. MEADORS: No, sir, Your Honor.

8 THE COURT: Any by Defense?

9 MR. BROOKS: No, sir.

10 (WHEREUPON, the jury was returned to the
11 courtroom and the following proceedings
12 commenced in open court.)

13 THE COURT: Ladies and gentlemen, you are
14 the jury that will be presiding over this first
15 case, and you will be presiding as jurors in this
16 first case State v. Earley; but we will not be
17 starting this case until tomorrow morning so I'm
18 going to excuse you for remainder of the day. I'm
19 gonna ask that you please be back in the jury room
20 tomorrow morning at 9:30, okay? And when you get
21 back at 9:30, soon thereafter as we can get started
22 we'll get started on the trial of this case. Now
23 when you come back to the jury room, if I can get
24 you to do one thing and that will be to select a
25 foreperson for this jury. If you're unable to

1 select a foreperson don't worry about it; I can
2 appoint someone to serve as the foreperson. Many
3 judges appoint their own foreperson. I like to give
4 the jury the opportunity to select one on their own
5 accord if they're able to do so, and they might not
6 know each other. But the foreperson, the sole
7 responsibility of the foreperson is to act as a
8 liaison between the jury and the Court. If the jury
9 has a question the foreperson lets the Court know.
10 If a jury has a need, the foreperson lets the Court
11 know. When it's time to deliberate the foreperson
12 will preside over the deliberations; but other than
13 that, the foreperson has no more authority, no more
14 influence, or no more importance than any other
15 juror.

16 The only restriction would be, Ms. Major,
17 as the alternate at this point in time you would not
18 be eligible to serve as the foreperson since you are
19 an alternate to this jury at this time. Any other
20 member of the jury can serve as a foreperson. When
21 you select a foreperson's name, if you will just
22 write his or her name on a sheet paper with the
23 juror number, give it to bailiff and we'll bring you
24 back into the court tomorrow morning when you do
25 that. Now when you come back into the courtroom the

1 foreperson will always occupy this first seat that
2 is closest to the witness. The alternate will
3 always occupy the seat that you now sit in. The
4 rest of you are at liberty to sit in whatever seat
5 you like. If you want to sit in the same seat
6 throughout the trial of the case you can do that.
7 If you want to alternate seats during the trial of
8 the case you can do that. The only requirement that
9 we have is that the alternate always sits in the
10 alternate seat unless or until you become a part of
11 the jury, and that the foreperson always sits in the
12 first seat closest to the witness.

13 But I'm gonna excuse you for the remainder
14 of the day. I ask that you please be back at 9:30.
15 I caution you, do not conduct any independent
16 investigations in this case. Do not discuss this
17 case with anyone. Do not even discuss it among
18 yourselves at this point in time. Don't go on the
19 internet or look into the newspaper. Don't try to
20 find out anything about this case. Everything you
21 need to make a decision in this case will be
22 presented to you during the trial of this case and i
23 thank you for that service. I'm gonna excuse you
24 for the remainder of the evening, and I look forward
25 to seeing you back at 9:30 tomorrow morning. Thank

1 you very much.

2 (WHEREUPON, the jury was removed from the
3 courtroom and the following proceedings
4 commenced in open court.)

5 THE COURT: Anything further from the
6 State before we —

7 MR. MEADORS: Your Honor, the only other
8 issue which I'm not taking a position on at all,
9 whatever Your Honor feels, he has been out on bond;
10 the case is called. Just if Your Honor insure that
11 he knows to come back tomorrow, whatever fashion you
12 deem will be appropriate.

13 THE COURT: All right. At this juncture
14 since we haven't even sworn the jury at this point
15 in time, I am going to allow the defendant to go
16 home and come back tomorrow morning.

17 But Mr. Earley, I need to remind you, if
18 you do not appear, the trial will still go forward
19 in your absence. Just because you're not here
20 doesn't mean they won't hold the trial, okay? Also,
21 a bench warrant will be issued for you and you can
22 be charged with failure to appear in court. You
23 understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Anything the

1 Defense wants to place on the record? I know Mr.
2 Meadors, you were wanting some of the jurors struck
3 but need to call, if you want to put something on
4 the record.

5 MR. BROOKS: Judge, ask the court some
6 jurors would come up during questioning indicated
7 they were victims of sexual violent crimes ask they
8 be stricken cause; but as the court indicated they
9 may not even call them so I just want to place that
10 on the record.

11 THE COURT: So we'll have an accurate
12 record, the Defense prior to striking the jury asked
13 that juror number 157, Debra A. Tedder, and juror
14 number 183, Daneda (ph) K. Hall be struck for cause
15 as being victims of sexual crimes. I denied the
16 motion. Their names were not called during the jury
17 selection process, but so we have an accurate record
18 we now have that on the record. All right, Anything
19 further from the State before we recess?

20 MR. MEADORS: No, sir, thank you.

21 THE COURT: Anything from Defense before
22 we recess?

23 MR. BROOKS: No, sir.

24 THE COURT: All right, we'll get ready for
25 tomorrow. As i said, I'll be here before 9:30 If

1 you have anything; otherwise, we'll go ahead and get
2 started at 10 tomorrow. Thank you.

3 (WHEREUPON, the proceedings were concluded
4 for the day to be reconvened on June 18,
5 2012.)

6 THE COURT: All right. We're on the
7 record in the State of South Carolina versus Russell
8 Scott Earley, docket number 2009-GS-43-712 before
9 the jury yesterday. We're ready to start the trial
10 of this case. Before we proceed I do have some
11 matters that I do need to put on the record. First
12 of all, as I discussed with the attorneys in
13 chambers, we had a juror, Ferrell Evans. I don't
14 know if that's the juror's name, but that might be
15 the juror's —

16 MR. MEADORS: Maria Evans.

17 THE COURT: That's the husband's, okay.

18 THE CLERK OF COURT: Juror 47, Judge.

19 THE COURT: Juror 47, Maria L. Evans.

20 That was her husband. He cut his leg with a
21 chainsaw yesterday, he's at home, so I went ahead
22 and excused her and we'll seat the alternate in her
23 place. So Ms. Macon will become a part of the
24 regular jury. Juror number, 95, Charles McCoy, I
25 understand has been selected as the foreperson of

1 the jury. That's all I have from the Court.
2 Anything from the State before we bring the jury in?

3 MR. MEADORS: No, sir.

4 THE COURT: Anything from the Defense?

5 MR. BROOKS: Yes, Your Honor.

6 THE COURT: All right, let me hear from
7 you.

8 MR. BROOKS: Judge, in chambers we had
9 talked about, yesterday, in regards to the alleged
10 victim's Facebook page. I brought the Court's
11 attention during the — our research when we had
12 pulled up his Facebook page with his face and a
13 photograph of smoke weed every day. Obviously that
14 would be alluding to marijuana use. We talked about
15 potentially using that for impeachment purposes.
16 Obviously this case boils down to credibility and
17 believability, and we had talked about our position
18 of wanting to use it.

19 THE COURT: All right. And as I discussed
20 in chambers I'm not going to allow you to use it
21 unless something presents itself that makes it
22 admissible; but it's not a conviction, and it's not
23 a act that affects moral turpitude So the fact that
24 he had pictures of marijuana on his Facebook page or
25 on the internet or whatever, I don't think is

1 admissible for credibility purposes so. All right?

2 MR. BROOKS: Second thing we had, Judge,
3 is just an inventory and discovery has been
4 submitted to us. There's no dispute we had filed
5 Rule 5 and discovery. And what we have received
6 from Solicitor's Offices in addition to the
7 indictment, my client's criminal record, police city
8 investigative report with the incident report and
9 the allegation in that incident report. We don't
10 have any statements — oh, we also have a photo of
11 my client, but we don't have any statements of my
12 client. I just want to make sure that that's
13 included.

14 THE COURT: Are you talking about written,
15 oral?

16 MR. BROOKS: Written or oral. There's
17 nothing in the report that says anything about that
18 to my knowledge.

19 MR. MEADORS: No, sir.

20 MR. BROOKS: Is that correct?

21 MR. MEADORS: Yes, sir. Just a follow up
22 to that too, there's also a C-A-D, CAD operation
23 report, there's a picture of **Victim** at the time this
24 incident happened.

25 MR. BROOKS: Well, obviously that's

1 something I'm gonna object to if the State is going
2 use it.

3 MR. MEADORS: I'm just covering what he
4 has.

5 THE COURT: All right. So that was
6 produced in discovery is what ---

7 MR. BROOKS: As the -- the CAD we got
8 yesterday along with the photo, obviously Judge, we
9 would have a position pursuant if the State is going
10 to try to use this for this to be ---

11 MR. MEADORS: I mean, this is how he
12 looked when this thing happened and His mother,
13 grandmother, and **Victim** are going to say this was
14 taken around that time period just to show the jury
15 what he looked like ---

16 THE COURT: Are you talking about the
17 alleged victim?

18 MR. MEADORS: Yes, sir.

19 THE COURT: Okay.

20 MR. BROOKS: Judge, it's ---

21 MR. MEADORS: And I have the -- let me --
22 can I mark this just ---

23 THE COURT: Yeah, let's mark it.

24 MR. MEADORS: That's State's 1 for ID.

25 (WHEREUPON, State Exhibit Nos. 1 and 2

1 were marked for identification only.)

2 MR. MEADORS: Judge, I'm showing you
3 what's State's 1 for ID. The person with the
4 Carolina shirt on in the middle would be the victim
5 in this case.

6 THE COURT: All right, this is marked for
7 identification as State's Exhibit 1, item -- what is
8 the objection?

9 MR. BROOKS: Judge, obviously the
10 objection that we don't know anything about that
11 photograph, when it was taken, who took it ---

12 THE COURT: Well, I agree with that. They
13 are going to have to lay a proper foundation so I'm
14 not going to rule that it is admissible, but I don't
15 know as a matter of law that it is inadmissible at
16 this point in time. But I agree with you, they're
17 going to have to lay down the proper foundation,
18 when it was taken, who took it, is it an accurate
19 depiction. All of the requirements necessary to get
20 in a photograph, they're gonna be held to that
21 standard. But I didn't know if you had like a
22 motion in limine if there was a legal reason -- say
23 for the sake of argument they can meet all the
24 requirements, are you aware of any matter of law as
25 to why it's not admissible?

1 MR. MEADORS: No, sir, Judge. I did say
2 that, you know, of course we just got it yesterday
3 so.

4 THE COURT: I got you. All right.

5 MR. BROOKS: It's not like we had a
6 regular time to check it out and investigate it and
7 that sort of thing. We — it's that part I just got
8 yesterday.

9 MR. MEADORS: And I just got it yesterday
10 in preparation, and I was out —

11 THE COURT: Well, due to the age of the
12 case I think it probably should have been turned
13 over earlier, but I don't know of any matter of law
14 as to why I can keep it out as long as they lay the
15 proper foundation, okay?

16 MR. BROOKS: We would put on the record
17 obviously from discovery issue, the lateness getting
18 it. We basically got it when the case was called
19 so. I would object to it for purpose right now for
20 those reasons.

21 THE COURT: Okay. I'm gonna deny your
22 motion in limine. When they move to introduce it
23 I'll listen to any arguments at that point in time
24 and I'll make the decision then. I don't know why
25 they just given the age of this case they're just

1 now bringing it forward, but I don't know of any
2 reason to grant your motion in limine, okay?

3 MR. BROOKS: I understand, Judge.

4 THE COURT: All right. Anything else from
5 the Defense?

6 MR. BROOKS: That's it.

7 THE COURT: All right, yes, sir.

8 MR. MEADORS: Yesterday I learned — I
9 think it was yesterday or the day before — that
10 Mr. Brooks had said that his client may or may not
11 say or may have said that the victim in this case
12 had stole some disks or CDs, I don't know. Nothing
13 of that was in the report. As I told Mr. Brooks,
14 I've never seen it, never heard about it, so he said
15 it. And to state ---

16 MR. BROOKS: That's why we put on the
17 record about the discovery rule, and law enforcement
18 through the Solicitor's Office indicated to us that
19 there was no statement taken.

20 MR. MEADORS: And I'm following up that
21 right now in response to that.

22 THE COURT: Right.

23 MR. MEADORS: Obviously this is an old
24 case that we all inherited and we just, it's time to
25 move. I called Detective Beckford; and what he told

1 me was that when he went to serve the warrants on
2 the defendant, the defendant said, well, I was
3 approximately, well, I thought he had stole some
4 CDs. Beckford then says, okay, do you want to give
5 a statement. He then lawyers up, lawyers up, and
6 says, no, I don't. So that's what I learned since
7 you told me that that was the only thing reference
8 to a CD when he was at the jail that he said, well,
9 I was going, going to talk to him or whatever 'cause
10 he stole some CDs. I kind of want that to come in;
11 I think he's trying to divert attention. But I'm
12 not saying I'm going to offer it; but for the
13 record, that's the only statement out there that I
14 know of, an oral statement that's not written, not
15 in our discovery, would not have known to ask about
16 it, instead Mr. Brooks brought it to my attention.
17 And I'm not planning on offering that because he
18 lawyered up right after that and I, you know, but if
19 that — just for the record, that's out there and as
20 I followed up with what he told me, and that's the
21 only statement I know of about the victim.

22 THE COURT: Well, and I'm not going to let
23 you put it in your case in chief. If he decides to
24 take the stand and he opens the door then we can,
25 you know, then certainly he can testify as to what

1 he said. But since that was not produced as a
2 statement by the defendant I want let that statement
3 in their case in chief unless the door is opened.
4 Determine -- if you bring it up in issue on
5 cross-examination then it comes in.

6 MR. MEADORS: Of course, he knew about it
7 and I didn't. Of course that's -- but I'm fine with
8 your ruling. I just want to --

9 MR. BROOKS: For impeachment purposes.

10 THE COURT: Yeah, well --

11 MR. MEADORS: I won't try to unless he
12 takes the stand, I mean, and it can go both ways. I
13 mean, I understand --

14 THE COURT: It really can, and I don't
15 think it's going to make a whole lot of difference.
16 either he said it or he didn't say it. But since
17 the State did not produce to the defendant that as a
18 statement of the defendant I'm not gonna allow you
19 to use it in your case in chief. If the Defense
20 opens the door either through his testimony or
21 through cross-examination with one of the State's
22 witnesses, then it may very well come in. Okay?

23 MR. MEADORS: Other than that that's all
24 we have.

25 THE COURT: All right. Anything further

1 from the Defense?

2 MR. BROOKS: That's it, Your Honor.

3 THE COURT: All right. I guess we'll go
4 ahead and bring the jury in. I'll give them some
5 preliminary charges and then go straight into
6 opening arguments and the trial of the case; is that
7 correct?

8 MR. MEADORS: Yes, sir, my first witness
9 is ready. We're ready.

10 THE COURT: All right, sounds good, let's
11 go ahead and bring the jury in.

12 (WHEREUPON, the jury was returned to the
13 courtroom and the following proceedings
14 commenced in open court.)

15 THE COURT: Ladies and gentlemen, welcome
16 back this morning. I appreciate everybody being
17 prompt, and I want to apologize to you for keeping
18 you back in the jury room for so long but we do have
19 some legal matters that we did need to take up and
20 listen to some other matters before we begin the
21 trial of this case. I do have some preliminary
22 instructions I need to give you.

23 But before we get to that, I do need to
24 let you know, Ms. Major, as the alternate you're now
25 part of the jury. We had Ms. Ferrell; she had an

1 incident. I think her husband suffered an accident
2 yesterday and so we had to excuse her so you are now
3 part of the jury at this point in time. I
4 understand, Mr. Charles R. McCoy, you are the
5 foreman. You were selected as foreman. I want to
6 thank you for serving in that capacity. If you
7 would always sit in the seat that you now occupy.
8 As I said yesterday, the rest of you are at liberty
9 to sit in whichever seat you like. If you want to
10 sit in the same seat during the trial of the case
11 you can. If you want to alternate seats during the
12 trial you can do that. The only requirement is that
13 the foreperson sits closest to the witness.

14 Now as is the case during jury
15 qualifications, voir dire, jurors are constantly
16 taking oaths, and that is no different. So
17 everybody please stand and raise your right hand
18 while you're administered the oath provided as
19 jurors in this particular case.

20 (Whereupon, the jury was sworn.)

21 THE CLERK OF COURT: Please respond by
22 saying I will.

23 (Jurors responded.)

24 THE CLERK OF COURT: Thank you. You may
25 be seated.

1 THE COURT: If there's any member of the
2 jury that did not respond to the oath by saying I
3 will, if so, please stand.

4 (There was no response.)

5 THE COURT: Thank you very much. All
6 right, ladies and gentlemen, we're about to begin
7 the trial of the case. As the Clerk's Office told
8 you It's the trial of the case of the State of South
9 Carolina versus Russell Scott Earley. Now before we
10 begin this trial I want to tell you that this trial
11 will probably be different from what you might
12 expect. Watching television shows, reading books,
13 movies, and things of that nature, trials are often
14 full of a lot of action, a lot of anxiety, a lot of
15 suspense. And while that might be the case in this
16 trial, it probably won't be. The primary function
17 of this trial is a search for the truth; and that is
18 often a slow, deliberate, repetitive process, the
19 exact opposite of what you might be accustomed to
20 when watching the movies or reading books, TV shows,
21 or things of that nature.

22 The attorneys that appear before you are
23 advocates for the parties that they represent; but
24 first and foremost, they're officers of the Court.
25 They're sworn to uphold the integrity and fairness

1 of our judicial system and to help you in a search
2 for the truth. You should expect them to be
3 professional, competent, and ethical in the
4 representation of their client's interest.

5 Now what I will now say is intended to
6 serve as an introduction to the trial of this case.
7 These remarks are not a charge on the law in this
8 case, and I will instruct you on the law applicable
9 to this case at the end of the trial before you
10 retire to consider your verdict. This is merely an
11 explanation of the procedure that we will follow in
12 the trial of this case so that you can better
13 understand what's happened.

14 The defendant is charged by an indictment.
15 This is an indictment. He's charged by an
16 indictment filed in this court, and he's charged
17 with the crime of criminal solicitation of a minor.
18 Now the elements of that crime I'll explain to you
19 at a later time. However, this indictment is simply
20 the charge by which this case is brought into this
21 court. It is not in any sense evidence of any of
22 the allegations contained in the indictment. The
23 defendant has pled not guilty to this indictment.
24 The State therefore has the burden of proving each
25 of the elements of the indictment beyond a

1 reasonable doubt. It will be your duty, ladies and
2 gentlemen, to decide whether or not the State has
3 met that burden. Your purpose as jurors is to find
4 and determine the facts of this case. You are the
5 sole judge of the facts of this case. If at any
6 time I make any comment regarding the facts you must
7 disregard my comments. You are to determine the
8 facts from the testimony you hear and the other
9 evidence introduced in court. It is up to you to
10 determine the inferences which you feel may properly
11 be drawn from that evidence. It is especially
12 important that you perform your duty in determining
13 the facts diligently and conscientiously because
14 ordinarily there is no way to correct an erroneous
15 interpretation of the facts by a jury.

16 On the other hand and with equal emphasis,
17 the same law that makes you the judge of the facts
18 makes me the judge of the law in this case. The law
19 as given by the Court is the only law that you can
20 consider. You must accept and follow the law as I
21 give it to you even though you may disagree with it.
22 Just as I cannot tell you what the facts of this
23 case are, you cannot disagree with me about the law
24 to be applied in this case. Your job as jurors is
25 to take the law as I give it to you and apply that

1 law to the facts as you find those facts to be.
2 After doing that you will render your verdict, a
3 true and just verdict under the solemn oath that you
4 just took as jurors.

5 Now until I advise you to begin your
6 deliberations you must not discuss this case with
7 anyone, including your fellow jurors. Do not
8 discuss it with any friends, family members, or
9 anyone involved in the case. After the case is
10 submitted to you you must discuss it only in the
11 jury room with your fellow jurors. Attorneys and
12 parties in this case have been advised that they're
13 not to talk to you at all. So if you see anyone
14 involved in the case and they do not speak to you,
15 they're not being rude, they're just following the
16 instructions of the Court. During the trial you're
17 not to read or listen to or watch any news reports
18 about this case. Do not include -- do not go
19 looking through the newspapers, on the internet,
20 radio, or anything of that nature to find out
21 anything about the case. You must not consider
22 anything that you have read or heard about the case
23 outside of the courtroom whether that be before the
24 trial of this case or during the trial of this case.

25 It is important that you keep an open mind

1 and not decide any issue in the case until all of
2 the evidence has been presented to you, the parties
3 have made their closing arguments, and I've
4 instructed you on the law of the case. It's your
5 solemn responsibility to determine the guilt or
6 innocence of the defendant. Your verdict must be
7 based solely on the evidence as it is presented to
8 you in this trial and on the lawyer as I instruct
9 you during and at the close of the trial.

10 Now in just a moment the Solicitor will
11 make what's called an opening statement in which the
12 Solicitor will explain to you the issues in this
13 case, or at least what the solicitor feels the
14 issues in this case are. The attorney for the
15 defendant may also make an opening statement
16 although he is not required to do so. What the
17 attorneys tell you during their opening statement is
18 not evidence in this case. The evidence in this
19 case will be presented to you by testimony of sworn
20 witnesses from the witness stand and any other
21 exhibits that may be introduced at the trial.

22 Now in determining what the true facts are
23 in this case you must decide whether or not the
24 testimony or evidence presented is believable. It
25 will be my responsibility to rule as a matter of law

1 whether certain testimony is admissible or not.
2 However, once testimony is admitted into trial,
3 whether or not you believe it is solely for you to
4 determine. In deciding whether to believe a witness
5 you have the right to consider the interest of any
6 witness, the bias of any witness, the prejudice of
7 any witness, the opportunity for the witness to have
8 seen the matters and things about which the witness
9 may testify and the way the witness acts on the
10 witness stand. You have the right to consider
11 anything that is in the record that will help you
12 evaluate the testimony of the witnesses. That means
13 that it is your duty to pay close attention to these
14 witnesses, to observe the witnesses, listen to the
15 witnesses, and to pay close attention to the
16 attorneys and to the Court. Don't let your thoughts
17 wander but Give strict attention to the testimony in
18 this case so at the end of all of the testimony,
19 after the arguments of counsel and a charge you on
20 the law by the court, you will then be in a position
21 to determine what the true facts are and to apply
22 the law to those facts and thus render a true and
23 just verdict.

24 Are there any challenges to the opening
25 charges by the State?

1 MR. MEADORS: No, sir.

2 THE COURT: Any by the Defense?

3 MR. BROOKS: No, sir.

4 THE COURT: All right. Ladies and
5 gentlemen, we'll begin the trial of this case with
6 the opening statements by the attorneys. Before we
7 do so I do want to remind you if you have any cell
8 phones or pagers, devices, or things of that nature,
9 if you would turn them off at this point in time.
10 Also, if you have any trouble hearing anything —
11 and the acoustics are pretty good to me up here, but
12 if you have any trouble hearing anything just raise
13 your hand and let me know, okay?

14 All right, sir.

15 MR. MEADORS: Can we approach briefly?

16 THE COURT: Yes, sir.

17 (WHEREUPON, counsel approached the Bench
18 for an off-the-record discussion.)

19 MR. MEADORS: A young man, boy, child,
20 **Victim**, thinks about computers, electronics, maybe
21 starting to think about girls, maybe starting to
22 think about driving. But what a 14 year old doesn't
23 think about or doesn't accept is for a 38 year old
24 man outside of a public restroom at Wal-Mart to come
25 up to him and say, do you want a blow job, as he

1 points to his genitals. A 14 year old doesn't and
2 shouldn't be exposed to that. And in response to
3 that, as you'll hear and the evidence will show, he
4 says, hell no, F-U. That's what this case is about.

5 Mr. Foreman, ladies and gentlemen, good
6 morning. I'm assistant solicitor in the Third
7 Judicial Circuit. I have the honor and privilege of
8 working for your elected solicitor the Honorable
9 Ernest A. "Chip" Finney, III. He was here yesterday
10 and will be in and out of this trial. My job here
11 today is to represent the people of Sumter, the
12 people of the State of South Carolina, against the
13 defendant Russell Scott Earley. The defendant sits
14 with his lawyer, Mr. Charles Brooks. This is going
15 to be brief. The law allows us to give you an
16 opening of what we believe the evidence will show,
17 opening statement. I'm going to briefly talk to you
18 about the elements, about our burden, and then go
19 over what I believe the evidence will show. I do
20 want to thank you for being here. Being a juror is
21 not an easy job; but without y'all the system just
22 wouldn't exist, but thank you.

23 What's he charged with, His Honor
24 mentioned it to you and he will go further in much
25 more detail at the end of the trial. Defendant

1 Russell Scott early is charged with the crime of
2 criminal solicitation of a minor. It kind of says
3 it all. Criminal solicitation of a minor. That's
4 what the evidence is going to show. So what do we
5 have to show, what are the elements we have to show?
6 We'll have to show that Russell Scott Earley did in
7 this county, Sumter County — it's going to be in
8 your Wal-Mart here. And we have to show that he's
9 over the age of 18, that he did contact and/or
10 communicate with a person under the age of 18, that
11 being the victim here Victim [REDACTED] The evidence
12 will show he was 14 at the time, that he did contact
13 and communicate with Victim [REDACTED] — Victim [REDACTED]
14 for the purpose or with the intent of persuading,
15 inducing, enticing, or coercing Victim [REDACTED] to
16 engage in a sexual act, in this case, oral sex.
17 Your Honor is going to define sexual act to the end.
18 We would submit that it will show this will fit in
19 one of those acts of the statute that you're not
20 supposed to solicit a young person, a minor, for
21 oral sex.

22 Now I want to say right of the bat this is
23 a serious case. I may say that a bunch during this,
24 in my closing, because this is a serious case. I
25 mean it is. It's a serious and important case to be

1 tried under any -- in this courtroom this week in
2 Sumter or any courtroom in this great state we live
3 in. It's important to Russell Scott Earley. It's
4 important to Victim [REDACTED] his grandmother. It's
5 important to Sumter. And I say that to just, pay
6 attention as I know you will, listen to the facts
7 and listen to the evidence. But this is an
8 important case.

9 What's the burden of proof that's on me,
10 on the State? Well, it's the same as it is in every
11 case. Y'all know it as good as I do; you hear it on
12 TV. Beyond a reasonable doubt. We got a defendant,
13 prove the defendant guilty beyond a reasonable
14 doubt. Not beyond all doubt, that's impossible.
15 The judge will charge you again. You don't have to
16 prove beyond each and every doubt. We have to prove
17 beyond a reasonable doubt, beyond a doubt that makes
18 reasonable folks hesitate to act.

19 Now there are several types of evidence.
20 Generally you see -- in this case you may not see
21 them all but you'll see some, documentary evidence
22 perhaps, perhaps some pictures. Circumstantial
23 evidence is a testimony or proof of a fact that
24 indicates fact or facts which indicates the
25 existence of another fact. We went to bed last

1 night, it wasn't snowing. You went to bed, you get
2 up and see snow on the ground, that's circumstantial
3 evidence. You know it happened even though you
4 didn't see it. Another type of evidence you see in
5 usually every case and certainly in this case, it's
6 going to boil down to this as it usually does in
7 every case, is direct evidence. Your Honor will
8 tell you. Direct evidence is evidence you seize or
9 gather with one of your senses. You see it, you
10 smell it, you touch it, you feel it, you hear it.
11 And you come in here and you take this witness stand
12 and you tell -- you, the witness tells you, what I
13 saw, what I heard, what I felt, what I touched,
14 that's direct evidence. Watch the witnesses as they
15 testify. That's all you can decide this case on,
16 ladies and gentlemen. It's what comes from this
17 witness stand and the exhibits; that's it. Watch
18 and listen. Decide what's credible, what's
19 believable. I'll get more to that, more in a
20 minute.

21 What happened? This isn't going to be a
22 long trial. Again, it doesn't take away from the
23 importance, significance. It's not going to be a
24 long trial. We may be finished today, maybe
25 tomorrow, I don't know. So what's the evidence

1 gonna show? What are y'all going to hear? Well,
2 you're going to hear that back on November 22nd of
3 '08 this lady right here, Ms. Arlene Corbin, went to
4 Wal-Mart, calls her son, his grandmom, she raised
5 him since he was little. They go to Wal-mart. He
6 wants to look at some electronics; she goes with
7 him. She goes to the grocery part of Wal-mart;
8 y'all know where it is. He goes to the electronics.
9 Then he decides he's gonna go to the bathroom. He
10 goes into the bathroom and there's a person outside
11 the bathroom. There's a person outside the
12 bathroom, and after **Victim** goes in the bathroom this
13 person comes in. The evidence will show **Victim** used
14 the bathroom. This other person wasn't he'll
15 testify, was just in there, followed him in there.
16 Followed him in there the evidence will show. **Victim**
17 will say he might have had a brief conversation. If
18 you watch him and listen to him he'll say he had to
19 leave. He felt he had to leave; he didn't even wash
20 his hands. Just didn't feel right, he left. He
21 leaves and goes back into Wal-Mart. And I submit to
22 you, well, said that -- he goes back to Wal-Mart
23 outside the bathroom back at Wal-Mart, he sneezes.
24 He's going to testify to this. Something comes of
25 his nose so he then goes back to the bathroom. He's

1 going to testify to this. Something comes out of
2 his nose. He doesn't know if this person still in
3 there or not. He goes back in the bathroom to wash
4 his hands, this person is still in there. He comes
5 out of the bathroom; this person follows him out.
6 Then outside of the bathroom the evidence will show;
7 and he says, that's when he said do you want a blow
8 job, as he points to his genitalia.

9 Criminal solicitation of a minor. 38, 14.
10 38, 14 the evidence will show. And he says, hell
11 no, fuck you. Excuse my language. Is he serious?
12 Does he want something? He goes and tells the
13 people at Wal-Mart, this just happened right here in
14 your store. Thomas Gales, who works at Wal-mart the
15 evidence will show, comes and **Victim** shows Thomas,
16 that's the guy right there. That's what the
17 evidence will show. And Thomas Gales follows
18 Russell Scott Earley out to the Wal-Mart, goes out
19 the door and sees him get in a white Dodge pickup
20 truck, gets the driver's license tag the evidence
21 will show. Gives it to law enforcement. They do
22 what's a bolo, be-on-look-out for. And the officer,
23 right here, happens to be working that area. He
24 gets the bolo. Less than five minutes the white
25 Dodge truck is stopped near, right near Jones

1 Chevrolet, Alice and Broad, right across from
2 Wal-Mart. **Victim** then gets in the car, goes over,
3 goes by and says that's the guy, there he is, that's
4 the guy. He's arrested for criminal solicitation of
5 a minor.

6 This is an important case. This is
7 serious, ladies and gentlemen. It's serious.
8 What's your role? Now Mr. Campbell, there he is,
9 your fine clerk. When you came in here Monday
10 Monday, he does not have a school for you, a
11 Campbell school for being a juror. Y'all come in --
12 and he does a great job making sure y'all are
13 prepared for court. Don't get me wrong but there's
14 no school telling you how to be a jury; but I submit
15 and I think you'll understand that you've been going
16 to that school your whole life how to be a juror.
17 It's the school of common sense. It's the school of
18 looking at people, evaluating people, and
19 interacting with people, deciding what's credible in
20 your everyday life. You bring all those experiences
21 in here today to decide this case. And that's all
22 we can ask you. That's all Mr. Brooks can ask you,
23 all I can ask you. Because there's several roles I
24 want to make it clear. His Honor, Judge Culbertson,
25 is the law. There's no question about it; he is the

1 law. This is his courtroom He's the law. He
2 decides what the law is and nobody disputes it. And
3 He's gonna tell y'all at the end of the case this is
4 the law and you have to go by it.

5 You too are judges in a sense. You don't
6 have the robe, you don't have a gavel. But you're
7 judges; you're judges of the facts. As His Honor
8 told you, you will decide based on your common sense
9 and listening and evaluating the testimony what the
10 truth is, what's believable, what's credible.
11 You'll take the law His Honor gives you, find those
12 facts and that law and come up with a verdict. It's
13 a beautiful system; I love it. You come in, decide
14 what's credible, judge states the law, you come up
15 with a verdict. It's just a great country because
16 of this system. That's all we ask you to do.

17 Ladies and gentlemen, when we get through
18 today or tomorrow, we'll be allowed to come back up.
19 All I can ask you is again to listen. Thank you for
20 being here. At the close of the case I will
21 respectfully ask that you return a verdict that says
22 on November 22nd of 2008, 38 year old Russell Scott
23 Earley tried to give oral sex to 14 year old **Victim**
24 **██████**. It's wrong, it's against the law, and
25 we're gonna ask you to find him guilty. Thank you.

1 THE COURT: Mr. Brooks, does Defense have
2 an opening statement?

3 MR. BROOKS: Yes, Your Honor.

4 THE COURT: All right, sir.

5 MR. BROOKS: I'm Charles Brooks and I
6 represent Russell who's seated at the table with the
7 blue shirt. The one thing I do agree with Solicitor
8 Meadors about is this is a serious case. It's a
9 very serious case. And you know, it's also very
10 serious to say that somebody did something when they
11 may not and probably not, didn't do it. And bear in
12 mind that the system we're in places a huge burden
13 on the prosecution to prove their case beyond a
14 reasonable doubt. We come into this court presumed
15 innocent. When I say "we" I'm talking about -- and
16 obviously you guys are going to be judges of the
17 facts. Bear in mind, he doesn't have to prove I
18 didn't say that. They have to prove he did say
19 that. And follow the law as the judge will instruct
20 you. You have to prove the State proved their case
21 beyond a reasonable doubt.

22 Now Solicitor Meadors said not all doubt,
23 but beyond a reasonable doubt. Let me give you an
24 example of what reasonable doubt is. I think you
25 know the guy -- quite a few ladies on here -- you

1 know, a lot of gentlemen, we understand the basis of
2 the game of football. What I mean by the game of
3 football is, we know that one team's goal is to get
4 the ball into the end zone against the other team.
5 Well, I would equate beyond a reasonable doubt as
6 getting the ball into the end zone, not getting the
7 ball across the field, not that it's probably
8 happened, this could have happened, not even what's
9 my opinion on the government doing this or the
10 government doing that. Beyond a reasonable doubt
11 means getting the ball in the end zone. We think
12 that, we feel very strongly that if you keep that
13 open mind, which we're sure will, listen to the
14 evidence, and believe me, I get the opportunity to
15 ask questions as well that you will find that the
16 State does not prove their case beyond a reasonable
17 doubt. And that's just their case. But bear in
18 mind, we don't have to present any. We come to this
19 courtroom presumed innocent. We may or may not
20 present a case. My client may or may not testify.
21 He has the right to do so; he has the right not to
22 do so. And you're to view that and look at that, to
23 not look at that and hold that against him because
24 it is the State's job to prove their case beyond a
25 reasonable doubt. That's very important.

1 As we start talking about situations like
2 this and situations that you recall Mr. Meadors got
3 up here as far as opening is, he said/she said.
4 Well, in this case what it may have been he said/she
5 said, okay. So I think that one thing you do know
6 what it is very serious. On one end we watch a lot
7 of movies and things, sometimes people will chuckle
8 and trivialize that. This is very serious. He's
9 charged with a crime and stand before you, my
10 client, Russell Earley. We expect, we know that
11 you're gonna look at this with an open mind and
12 listen to all the evidence that's presented. And we
13 feel that at the conclusion of this case you will
14 conclude that my client is not guilty, that the
15 State has not proven their case beyond a reasonable
16 doubt. Thank you.

17 THE COURT: Mr. Meadors, the State can
18 call its first witness.

19 MR. MEADORS: If it pleases, Your Honor.

20 THE COURT: Yes, sir.

21 MR. MEADORS: Your Honor, at this time the
22 State of South Carolina calls Ms. Arlene Corbin.

23 THE CLERK OF COURT: Place your left hand
24 on the Bible, raise your right hand. State your
25 name please.

SW - A. CORBIN - DIRECT

1 THE WITNESS: My name is Arlene Corbin.

2 WHEREUPON,

3 **Arlene Corbin,**

4 having been duly sworn by the Clerk of Court,

5 testified as follows:

6 THE CLERK OF COURT: Thank you. Have a
7 seat. Please state your full name, spell your last
8 name for the record.

9 THE WITNESS: My name is Arlene Helen
10 Corbin, C-O-R-B-I-N.

11 THE COURT: All right, Mr. Meadors.

12 MR. MEADORS: Thank you. May it please,
13 your Honor.

14 **DIRECT EXAMINATION**

15 BY MR. MEADORS:

16 Q Good morning, Ms. Corbin.

17 A Good morning.

18 Q As I do with every one of my witnesses would you
19 please tell the ladies and gentlemen of the jury a
20 little bit about Arlene Corbin, where you're from,
21 your background, your schooling, if you don't mind?

22 A Okay. I'm originally from Rhode Island. I was
23 born in Providence and I went to school there. I
24 went to elementary school at Rose Garden (ph) School
25 and then I went to Saint Matthews School for the 5th

SW - A. CORBIN - DIRECT

1 grade through the 9th grade. And then I went to
2 Saint Mary Academy-Bayview all girl school for the
3 10th, 11th, and 12th grade. After high school I
4 went to Rhode Island College and graduated with a
5 degree in early childhood education. And then many
6 years later I got my Master's degree here at the
7 University of South Carolina.

8 Q And why did you come to South Carolina?

9 A My first husband was in the military, was
10 stationed at Shaw.

11 Q So you did, you had a Master's degree in early
12 childhood education?

13 A I have one now. I did not have it when I got
14 here. I got it while I was teaching school.

15 Q And where were you teaching school?

16 A Here I taught at Chestnut (ph).

17 Q Where?

18 A At Chestnut.

19 Q And what did you teach there?

20 A First, second, and third grade, all three.

21 Q Okay. How long did you do that?

22 A Six-and-a-half years.

23 Q And prior to that -- and you don't have to go
24 into -- you taught at other places?

25 A Yes, I did. I taught three years in France and

SW - A. CORBIN - DIRECT

1 Rhode Island and in Montana and New Brunswick,
2 Canada.

3 Q Okay.

4 A And Montana.

5 Q And so when did you come to Sumter?

6 A Seventy-- 1979.

7 Q After you retired or stopped teaching, you met
8 Doctor Corbin at Sumter here?

9 A No, I met Doctor Corbin before I stopped
10 teaching. I was teaching school and I met him and
11 he -- we got married. And he told me I did not need
12 to work and -- but I could work if I wanted to. And
13 I quit school. I quit teaching at Christmas time of
14 the year we got married. We married right after
15 Hugo. And stopped at Christmas time so it was a
16 pretty good break on the children so that they
17 wouldn't be just disrupted at all but we just --

18 Q How many children do you have?

19 A I have three girls at my home, and my husband has
20 three children from a previous marriage and then we
21 have **Victim** that we're raising as our own child.

22 Q Okay. That --

23 A He's --

24 Q Go ahead, I'm sorry.

25 A That's all right. I was going to say my youngest

SW - A. CORBIN - DIRECT

1 daughter had him when she was 16. She was 16 and so
2 her boyfriend was 16 years old, and we — he stayed
3 with me while she went to school, and he just became
4 very attached. And when she wanted, really wanted
5 to take him he really wanted to stay with us. And
6 so that's kind of how the situation is. He sees his
7 mother, he sees his father, but our house is the
8 home base.

9 Q So to sum all that up then, is it fair to say you
10 raised **Victim**

11 A Yes, I raised **Victim**

12 Q In fact he calls you mom?

13 A He does.

14 Q And you are his mom, not to take you away from
15 that, but you're actually his grandmama?

16 A I'm actually his grandmother, but he calls me
17 mom.

18 Q Which is — okay. Now, I'd like to go back if
19 you don't mind, please ma'am, to November 22nd of
20 2008. And do you know what day of the week that
21 was?

22 A It was a Saturday.

23 Q How do you remember that?

24 A Well, we had just — **Victim** was an altar server at
25 church and so we had just left at 5:00. We went to

SW - A. CORBIN - DIRECT

1 5:00 mass. It was over at 6 and Victim served at mass
2 as an altar server. And he was to serve every other
3 Saturday night at 5:00. And we went over to
4 Lenscrafters to pick up glasses that I had ordered
5 for him. And then he said, hey, can we go over to
6 Wal-Mart. He wanted something, and right now I
7 couldn't — I couldn't begin to guess what it was.
8 And some kind of headphone, something in the
9 electronics department.

10 Q Do you remember about what time this was,
11 Ms. Corbin?

12 A It had to be around 7:00 because mass was out at
13 6, and we went straight up to Lenscrafters and then
14 we went over to Wal-Mart. So I'm just guessing
15 that, you know, time to drive uptown, get back and
16 forth and in out of the car. So it was somewhere
17 around 7. So we get to Wal-Mart. And I said, Victim
18 I said you go over to electronics and I'll meet you
19 over there in a few minutes, there's a couple of
20 things I want to pick up in groceries, milk, bread,
21 that kind of thing, not a big grocery shopping.

22 Q Was the plan you were going to buy him some type
23 of something —

24 A I was going to buy him whatever it was that he
25 wanted. And I just don't, I just don't know what it

SW - A. CORBIN - DIRECT

1 was that he wanted because it's kids. You know,
2 sometimes you go in they want headphones or they
3 want a -- they want whatever. And you -- but I
4 agreed that whatever it was I was going to buy it
5 for him. And so I picked up a few things, and I
6 went over to electronics and he wasn't there. And I
7 wandered around up and down the little aisles there,
8 where is this, you know, where is this kid. And so
9 ---

10 Q When you say a kid how old was he?

11 A 14.

12 Q And do you know his date of birth?

13 A [REDACTED], 1994.

14 Q So on November 22nd of 2008 Victim [REDACTED] was 14
15 years old?

16 A He was 14.

17 Q And you've raised him since birth?

18 A Yes.

19 Q All right, go ahead. You're weaving in and out
20 of the lines looking ---

21 A Sure I looked all around electronics; I didn't
22 see him. I said, well, maybe he went over to toys.
23 You know, you never can tell where kids run to. So
24 I went over to the toys and I didn't see him. And
25 then I went back to electronics and I thought, where

SW - A. CORBIN - DIRECT

1 is this child, I don't know. And it was at that
2 time that the po— that my name was called, Arlene
3 Corbin, come on over to the front of the store.

4 Q Like over the loud thing, speaker whatever?

5 A Over the loud speaker. And I -- so I went up to
6 the front, and I believe it was Officer Sargent that
7 came up to me and he said --

8 MR. BROOKS: Objection.

9 THE COURT: Sustained.

10 BY MR. MEADORS:

11 Q This is Corporal Kevin Sargent?

12 A Yes.

13 Q And then had you known him before?

14 A Yes, I had. I knew who he was but he came up to
15 me. He said don't worry about it --

16 Q Don't, okay. He came up to you, and as a result
17 of that what happened?

18 A He told me --

19 MR. BROOKS: Objection.

20 THE COURT: Ma'am, you can't get into
21 something he said to you.

22 THE WITNESS: Oh, I -- okay, all right,
23 fine, I can only say what I did.

24 THE COURT: That's correct.

25 THE WITNESS: All right. He brought me to

SW - A. CORBIN - DIRECT

1 a room over near the exit of Wal-Mart on the grocery
2 side. There's a room in there. I didn't even know
3 there was a room.

4 BY MR. MEADORS:

5 Q Is it clear to say he eased your apprehension?

6 A Yes. Yes.

7 Q All right. So you go over to this room beside
8 where?

9 A Beside the — it's near the exit. It's out in
10 like the hallway of Wal-Mart.

11 Q Okay. So you're there with Corporal Kevin
12 Sargent, correct?

13 A I believe so, yes.

14 Q And what happened after that, if anything?

15 A I'm not sure how I'm supposed to word it because
16 —

17 Q Well, just do it and—

18 A He let me —

19 Q —see if they object. Go ahead.

20 A He let me know where **Victim** was and told me what
21 had — nope, I can't tell it, I can't say that but.

22 Q If you're not offering it for the truth of the
23 matter asserted you can see it, but if it's what
24 somebody else said, no, you can't. What did you do
25 next? What happened next?

SW - A. CORBIN - DIRECT

1 A I stayed in that room and waited for **Victim** to come
2 back from his ride. And that's basically — they
3 talked to me there to reassure me that he was fine
4 and told me what had happened. I guess, but can I
5 say that — I'm not —

6 Q Don't say what they said, okay. You found out
7 what had happened —

8 A What had happened and where **Victim** was. It was
9 kind of hard to come up with something like that.

10 Q Is it fair to say that you found out that **Victim**
11 was fine, something like that?

12 A That's — I did find out he was okay.

13 Q And while he's at electronics I think you said
14 you were over in the grocery store getting
15 some stuff, part of the store?

16 A Yea, I was still in the store.

17 Q When did you see **Victim** after that?

18 A They brought him into the room.

19 Q At Wal-Mart?

20 A At Wal-Mart.

21 MR. MEADORS: Beg the Court's indulgence.

22 THE COURT: All right.

23 MR. MEADORS: May I approach the witness?

24 THE COURT: Yes, sir.

25 BY MR. MEADORS:

SW - A. CORBIN - DIRECT

1 Q I'm gonna show you what's marked as State's 1 for
2 identification at this point. If you'll listen to
3 me please, ma'am. I want you to look at it, tell me
4 if you recognize it, okay, and does it relate to
5 your testimony? Don't say anything else at that
6 point. State's 1, do you recognize that?

7 A Yes.

8 Q Does it relate to your testimony?

9 A Yes.

10 Q Do you know when that was taken?

11 A In the summer of 2008.

12 Q Okay. Where was that taken?

13 A It's right outside my house.

14 Q So your house is actually in the background?

15 A Yeah, these are the steps and this is the porch,
16 the screen porch.

17 Q Who took that?

18 A I did.

19 Q You did?

20 A Yeah.

21 Q So does that accurately reflect the people in
22 that picture as of the summer of 2008 when you took
23 it?

24 A Yea.

25 Q That is what it is?

SW - A. CORBIN - DIRECT

1 A Yeah, that's what **Victim** looked like in the summer
2 of 2008.

3 Q Okay. Thank you.

4 MR. MEADORS: Your Honor, we now offer
5 State's 1?

6 THE COURT: Any objection?

7 MR. BROOKS: Yes.

8 THE COURT: All right. State's Exhibit
9 Number 1 is admitted into evidence over defendant's
10 objection.

11 (WHEREUPON, State Exhibit No. 1 was
12 admitted into evidence.)

13 BY MR. MEADORS:

14 Q It appears to be a picture of five folks in here?

15 A Uh-huh.

16 Q Who are they?

17 A This is my daughter Stacy who is **Victim** birth
18 mother. This is my ---

19 Q That's who you're referring to?

20 A Yes.

21 Q All right, go ahead.

22 A Okay. I can't say see that one.

23 Q Let me do it this way, I'm sorry.

24 A Okay, all right. And this is her husband Brian
25 who's in the air force. And this is Stacy's --

SW - A. CORBIN - DIRECT

1 **Victim** brother, stepbrother Andrew. And this is
2 Brian's son Brandon.

3 Q Who is this person in the middle?

4 A **Victim**

5 Q So the summer of 2008, is that the way **Victim**
6 appeared?

7 A Yes.

8 Q His hair like that?

9 A Yes.

10 Q His face like that?

11 A Yes.

12 Q Now did he play a lot of sports?

13 A Yes, I'm trying to recall what he played from
14 each season. We went from when he played football,
15 football, or sometimes I had him in baseball.

16 Baseball is his favorite sport. He played
17 basketball at the Y. He — and then he played
18 baseball for parks and recreation and —

19 Q Now would you —

20 A Those were his — and he played soccer also one
21 year.

22 Q Now I know early on **Victim** went to school. Have
23 you been home schooling him?

24 A I have.

25 Q And since when?

SW - A. CORBIN - DIRECT

1 A Since when? Since the 4th grade.

2 MR. MEADORS: Beg, Your Honor.

3 THE COURT: All right.

4 MR. MEADORS: Just a second please.

5 THE COURT: All right.

6 MR. MEADORS: Your Honor, that's all we
7 have. Thank you.

8 THE COURT: All right. Mr. Brooks,
9 cross-examination.

10 **CROSS-EXAMINATION**

11 BY MR. BROOKS:

12 Q Ms. Corbin, you're married to Doctor Corbin?

13 A Yes, I am.

14 Q And he's a pretty successful doctor here in town?

15 A He was. Right now he's retired. He's been
16 retired for two, well, two-and-a-half years.

17 Q Okay. He was successful enough to tell you you
18 didn't have to work, right?

19 A That's exactly what he told me. When we got
20 married he said he was tired of watching me. He
21 said I really — you can do what you want, but I
22 really prefer if you would quit your job because he
23 said I'm afraid to get out of the bed in the morning
24 the way you fly around getting ready to leave. And
25 he said I would really — you really do not have to

SW - A. CORBIN - CROSS

1 work but you can if you want to. He left it up to
2 me.

3 Q How long have you been married to Doctor Corbin?

4 A Oh, 20 something — we got married right after
5 Hugo so it was 20, 21, 22. I can't remember when it
6 was. It was a long time ago.

7 Q And he was — he was practicing then; wasn't he?

8 A He was practicing then, yes.

9 Q Fairly successful then; is that right?

10 A Yes.

11 Q Okay. And pretty much fairly successful up until
12 he retired?

13 A Yes.

14 Q Okay. And let me ask you about this picture that
15 you took?

16 A Uh-huh.

17 Q Now the picture itself, it basically only shows
18 the top half of **Victim** is that correct? This
19 picture —

20 A Probably —

21 Q It doesn't show him from head to toe?

22 A No.

23 Q Okay.

24 A No, because I wanted a picture of everybody up
25 close. I may have another picture at home that's

SW - A. CORBIN - CROSS

1 further away, but I just brought a picture —

2 Q Okay.

3 A —of what he looked like in that time period.

4 Q Okay. And he was roughly 6 foot tall then; is
5 that correct?

6 A Somewhere around there. 5'11', 6'. He used to
7 like, you know, be a little larger but I guess all
8 boys are a little larger. I believe he was about 6
9 feet tall.

10 Q 'Cause you testified that he was fairly
11 proficient in sports; is that correct?

12 A Yes, very, very athletic.

13 Q Football, basketball, soccer?

14 A Right.

15 Q Baseball?

16 A In fact, with the soccer he -- one year he only
17 gave -- the only thing he could play in the fall
18 'cause I kept him busy. 'Cause I was home schooling
19 him I wanted him to stay with activities too so that
20 he would have a chance daily to see other kids and
21 be involved with them and all that kind of thing ---

22 Q Yes, ma'am.

23 A ---and enjoy the sports. And when he went to
24 play soccer he hadn't played it since the 3rd grade,
25 and they -- he put, they him on the team and this

SW - A. CORBIN - CROSS

1 was last I think parks and recreation and he made
2 all star so he's just, he was just athletic.

3 Q Pretty big for his size?

4 A Good size kid but not, not, not bigger than some
5 of the other kids on the team. I mean, he wasn't
6 —

7 Q But he was good enough and proficient enough to
8 be all star, right?

9 A Yeah.

10 Q So he was pretty good?

11 A Right.

12 Q Okay. And he was pretty good in a multitude of
13 sports; is that correct?

14 A Yes.

15 Q Okay.

16 A He played baseball and made all star there.

17 Q Okay.

18 A And —

19 Q You're familiar —

20 A —still playing baseball now.

21 Q He's still playing baseball?

22 A Right.

23 Q Would you say — and I know you're his
24 grandmother so you might be a little biased.

25 A I might be.

SW - A. CORBIN - CROSS

1 Q Would you say he's fairly good?

2 A Yeah.

3 Q Okay.

4 A He is.

5 Q And he could hit pretty well?

6 A He could do what?

7 Q Hit, hit the ball pretty well?

8 A Yes.

9 Q Now you're not saying that just because you're
10 his grandma?

11 A Oh, no, I'm gonna tell you. He hit — one year
12 he had two home runs. One was where we played
13 Providence Athletic Club.

14 Q Uh-huh.

15 A It's a group in Columbia. We would play baseball
16 and they formed a baseball team and they're forming
17 other teams. He hit a home run out of Wilson Hall,
18 out of the —

19 Q That's a pretty big park; isn't it?

20 A Wilson Hall School, their baseball. He hit a
21 home run back there, and then he hit another home
22 run in another area too.

23 Q And those are pretty big parks, right?

24 A Not really. I guess they're a decent size.

25 Wilson Hall, I think, is a little bit smaller than

SW - A. CORBIN - CROSS

1 the other fields. It went over the fence.

2 Q Yes, ma'am. And you are obviously a proud
3 grandmother then; is that right?

4 A I was, and I am.

5 Q So he is fairly good in a lot of these sports and
6 ---

7 A Sports, yes.

8 Q And he's a fairly big kid for his size; is that
9 correct?

10 A No, he's not a big --- he's not that much bigger
11 than or bigger than --- really, he's got friends that
12 are the same size as he is. And even when he was
13 playing sports he had friends that were the same
14 size as he is. They're all --- they all shot up at
15 somewhere in the area of around 14.

16 Q They shot up to close to 6 feet tall, that's fair
17 to say? 5'11?

18 A Some of them. Some of them did. He was not, he
19 was not the short --- he was not the tallest kid on
20 the team all the time. They were right in there.
21 Some of them are there. Some of them are small.
22 Some of them didn't, hadn't shot up but some of them
23 had.

24 Q But he wasn't one of the smaller ones, was he?

25 A No, no.

SW - A. CORBIN - CROSS

1 Q He was, he was big enough to hold his own, right?

2 A Yeah.

3 Q Okay. Now when y'all went to the — and I want
4 to make sure I got this correct. Y'all went to the
5 grocery store — excuse me, you went to Lenscrafters
6 and then you decide to go to Wal-Mart; is that
7 correct?

8 A Right. First we went to — first we went to
9 church.

10 Q Okay.

11 A Because **Victim** had the — had to — he was an altar
12 server at church so he went there. And then we went
13 to pick up his glasses at Lenscrafters.

14 Q Okay.

15 A And then **Victim** —

16 Q Now let me stop you now. He wasn't wearing
17 glasses on that day, was he?

18 A No, because he never really liked glasses and he
19 never really wanted to wear them. But we had his
20 eyes checked for some reason; and he had a, I guess,
21 a small inability to see great distance away. He
22 was —

23 Q Nearsighted?

24 A Nearsighted.

25 Q Okay.

SW - A. CORBIN - CROSS

1 A So he could see up close; but you know, way down
2 he didn't see quite as well.

3 Q Okay. And then when y'all, when y'all went to
4 Wal-Mart y'all separated. You went to the grocery
5 section and he went to the electronics?

6 A He wanted something, and I don't even remember
7 but it was in electronics. So I said **Victim** while
8 I'm here let me run and get, you know, a loaf of
9 bread. I was getting like a loaf of bread, maybe
10 some milk and, I don't know, some other item,
11 something, nothing — I wasn't there grocery
12 shopping. It was ---

13 Q Going to pick up a few things you might know ---

14 A Pick up a couple of things, a box of cereal or
15 something, but you know, a quick ---

16 Q Quick run in and out.

17 A Well, it was a quick run-in to get what I was
18 getting because I was never — I guess I need to say
19 I was not always comfortable to leaving him alone
20 anyway, but just because I kind of traveled with
21 him. We went to — wherever we were going I was the
22 driver so we did a lot of traveling together.

23 Q Okay.

24 A And I just said, well, you know, you can go over
25 there. And I did say pick out whatever it was, look

1 look at what's over there. And I wish I could
2 remember what we were going for and I'll meet you
3 over there in a couple of minutes.

4 Q Okay.

5 A 'Cause I figured he wasn't interested in going
6 grocery shopping.

7 Q I understand.

8 MR. BROOKS: Beg the Court's indulgence,
9 Your Honor?

10 THE COURT: All right.

11 MR. BROOKS: No further questions.

12 THE COURT: All right, redirect?

13 **REDIRECT EXAMINATION**

14 BY MR. MEADORS:

15 Q He was 14?

16 A 14.

17 MR. MEADORS: Thank you. That's all.

18 THE COURT: You may step down. The State
19 can call its next witness.

20 MR. MEADORS: If it pleases, Your Honor,
21 the State of South Carolina will now call **Victim**

22 **██████████**.

23 THE COURT: All right.

24 THE CLERK OF COURT: Raise your right
25 hand. State your name please.

1 THE WITNESS: Victim

2 WHEREUPON,

3 Victim

4 having been duly sworn by the Clerk of Court,
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. MEADORS:

8 Q Are you nervous today?

9 A A little bit.

10 Q Have you ever testified before?

11 A No, sir.

12 Q Just talk into the mic so this court reporter and
13 His Honor and the jury can hear you.

14 A All right.

15 Q Tell these folks a little bit about Victim
16 and — where were you born?

17 A I was born in Sumter.

18 Q Did you go to elementary schools before you
19 started going to home school?

20 A Yes, sir, I went to Thomas Sumter Academy.

21 Q And you don't have to talk that close, I'm sorry.
22 Go ahead.

23 A Thomas Sumter.

24 Q Where else?

25 A On Camden Drive.

SW - A. Victim - DIRECT

- 1 Q And then your mom, grandmom, started home
2 schooling you?
- 3 A Yes, sir.
- 4 Q Okay. And you live with her and the doctor?
- 5 A Uh-huh, yes, sir.
- 6 Q Okay. And Mr. Brooks asked -- and I think I
7 asked too, what's your favorite subject, Victim
- 8 A I guess math.
- 9 Q Math?
- 10 A Yeah, yes, sir.
- 11 Q And do you enjoy sports?
- 12 A Yes, sir.
- 13 Q And are you involved in sports?
- 14 A Yes, sir.
- 15 Q What do you play?
- 16 A Baseball, football, basketball, and anything.
- 17 Q Enjoy athletics?
- 18 A Yes, sir.
- 19 Q And I think your mom -- your birthday
20 [REDACTED] '94?
- 21 A Yes, sir.
- 22 Q So when this happened you were 14?
- 23 A Yes, sir, it did.
- 24 Q Have you also -- have you worked any, did any
25 other odd jobs or anything too as you were home

1 schooling?

2 A No, I never really worked.

3 Q Okay. And I had down here Outward Bound. Is
4 that something y'all were thinking about doing?

5 A Outward Bound?

6 Q Yes, sir.

7 A Yeah, I was thinking about it. It's like a
8 survival camp, and I was going to go last summer but
9 it was (inaudible), you know, do it so.

10 Q And how many brothers and sisters do you have,

11 **Victim**

12 A I have one biological brother, and I have one
13 biological sister; but the rest are all step, you
14 know, brothers and sisters.

15 Q And I understand your mom had you when you were a
16 little infant but —

17 A Yes, sir.

18 Q — this is — and I know you love your mom but
19 grandma has raised you basically?

20 A Yes, sir.

21 Q Still have a relationship with your mom but
22 grandma has raised you?

23 A Definitely.

24 Q Now going back to November 22nd of '08, what were
25 all of your about, do you remember that day?

SW - A. Victim - DIRECT

1 A Vaguely but, you know, I remember it though.

2 Q And you remember going to Wal-Mart with your
3 grandma, with your mom?

4 A Yes, sir.

5 Q Okay. And tell the ladies and gentlemen of the
6 jury why were you -- you went with your mom, right?

7 A Yes, sir.

8 Q Was she going to buy you something?

9 A Yeah, she was gonna buy me some headphones or
10 something like that.

11 Q And when you get to the store was she driving or
12 you driving?

13 A She was driving.

14 Q What kind of car was she driving?

15 A Lincoln Town car.

16 Q And when you got there to the store what did you
17 do?

18 A I walked in the store and I went to the front and
19 all I did was go -- I walked around, then I went to
20 bathroom, yes, sir.

21 Q And take your time. When you walked to the
22 bathroom -- you went to the bathroom?

23 A Yes, sir.

24 Q And as you were approaching the bathroom what, if
25 anything, did you observe?

SW - A. Victim - DIRECT

- 1 A I mean, I observed a man walking in behind me.
- 2 Q Okay. And what happened after that? Did you go
- 3 in the bathroom?
- 4 A Yeah, I went in the bathroom.
- 5 Q And you said this person came in behind you?
- 6 A Yes, sir.
- 7 Q All right. Had you seen that person as you were
- 8 going in the bathroom?
- 9 A Yeah.
- 10 Q Okay. Do you remember what he was wearing?
- 11 A Blue jeans and a blue hat, and a jacket.
- 12 Q You're now in the bathroom?
- 13 A Yes, sir.
- 14 Q You say this person came in?
- 15 A Uh-huh.
- 16 Q Did you use the bathroom?
- 17 A Yes, sir, I did. Didn't wash my hands.
- 18 Q Sir?
- 19 A I didn't wash my hands. I walked right out.
- 20 Q Let me ask you this, I don't mean to get personal
- 21 but we ain't got no choice. Did you go to a stall
- 22 or one, just a urinal on the wall?
- 23 A Urinal on the wall.
- 24 Q Did you use the bathroom?
- 25 A Yes, sir.

SW - A. Victim - DIRECT

- 1 Q All right. Did this person who came in behind
2 you use the bathroom?
- 3 A He was just standing there.
- 4 Q He was just standing there?
- 5 A Yeah.
- 6 Q How far was he from you?
- 7 A About 5, 10 feet.
- 8 Q Excuse me?
- 9 A 5, 10 feet. He was like right by the door but
10 not really.
- 11 Q Was the lighting in there, did it have lights
12 inside the bathroom?
- 13 A Yes, sir.
- 14 Q Could you see inside the bathroom?
- 15 A Yes, sir.
- 16 Q Could you see the urinal as you're using the
17 bathroom?
- 18 A Uh-huh.
- 19 Q Could you see this person in the bathroom?
- 20 A Yes, sir.
- 21 Q Anything obstructing your view between you and
22 this other person that you've described in that
23 bathroom?
- 24 A No, sir.
- 25 Q Did you look at him?

SW - A. Victim - DIRECT

1 A Yes, sir.

2 Q Did you see him?

3 A Yes, sir.

4 Q Now you said that you didn't even wash your
5 hands. Your grandmama has raised you and all. Were
6 you raised to wash your hands after you use the
7 bathroom?

8 A Yes, sir.

9 Q I mean, you are, aren't you? I mean, wash your
10 hands after you use the bathroom?

11 A Yes, sir.

12 Q And you did not wash your hands this time,
13 correct?

14 A Yes, sir, I didn't.

15 Q Why?

16 A I was a little nervous.

17 Q You were nervous?

18 A Uh-huh.

19 THE COURT: Excuse me, is that a yes?

20 THE WITNESS: Yes, sir.

21 BY MR. MEADORS:

22 Q Why were you nervous?

23 A I mean, he was standing there and I kind of felt
24 awkward so I just left the restroom.

25 Q Did you know this fellow?

SW - A. Victim - DIRECT

- 1 A No, sir.
- 2 Q Ever seen him before?
- 3 A No, sir.
- 4 Q Know who he was?
- 5 A No, sir.
- 6 Q So you used the bathroom, nervous, leave?
- 7 A Yes, sir.
- 8 Q What happens after that? What do you do after
- 9 you leave the bathroom?
- 10 A I left and I sneezed in my hands so I ---
- 11 Q Now Victim I'm sorry, I apologize, this lady has
- 12 got to take you down. Please slow down a little
- 13 bit.
- 14 A Yes, sir. All right, so I left. And I sneezed
- 15 in my hand and I had to go back in there, you know,
- 16 to wash my hands so I did.
- 17 Q And when you sneezed in your hand ---
- 18 A Yeah.
- 19 Q I mean, stuff come out of your nose?
- 20 A Yes, sir.
- 21 Q Did you know whether or not that person was still
- 22 in the bathroom?
- 23 A No, sir, I didn't.
- 24 Q You go back in the bathroom what happens?
- 25 A He was sitting in the bathroom. He didn't ask

SW - A. Victim - DIRECT

- 1 me, you know, what he did, until I left 'cause he
2 was out there in the store.
- 3 Q Say that one more time?
- 4 A He was out there in the store.
- 5 Q When you come back in the bathroom was he in
6 there?
- 7 A Yes, sir.
- 8 Q What happened when you went back in the bathroom
9 for the second time?
- 10 A Washed my hands and I left.
- 11 Q Okay. And did you — and I'm gonna be fixing to
12 say this wrong. Did you have any verbal interaction
13 with him prior to that?
- 14 A In the bathroom?
- 15 Q Yes, sir.
- 16 A I mean, but I said, what's up. You know, I said
17 hey to the guy and guy/girl, what's up, you know.
- 18 Q Okay. You come to the bathroom, not wash hands,
19 sneeze, back to bathroom, right?
- 20 A Yes, sir.
- 21 Q He's still in there?
- 22 A Uh-huh.
- 23 Q Is that — say yes or no?
- 24 A Yes, sir.
- 25 Q You leave out the bathroom. Does he come out

SW - A. Victim - DIRECT

- 1 after that?
- 2 A Yes, sir.
- 3 Q What happens after that?
- 4 A He calls me over to where he was, and he asked me
- 5 — do I have permission by the Court?
- 6 Q I'm sorry?
- 7 A Do I have permission to say what he said?
- 8 Q Your Honor — I think Your Honor will give
- 9 permission to say what he said, yes, sir.
- 10 A He said do you want a blow job and I said, hell
- 11 no, fuck you.
- 12 Q How far was he from you when he said do you want
- 13 a blow job?
- 14 A He was like 2 feet away from me.
- 15 Q Did you see him?
- 16 A Yes, sir.
- 17 Q Did you understand what he was saying?
- 18 A Yes, sir, it was clear.
- 19 Q And you said hell no, F-U?
- 20 A Yes, sir, correct.
- 21 Q Did he motion in any way?
- 22 A He pointed to my genitals. He just pointed and
- 23 that's when I said what I said.
- 24 Q May I — I'm about to approach, I apologize. So
- 25 you say you're 2 feet from him?

SW - A. Victim - DIRECT

- 1 A Yes, sir.
- 2 Q And he said you want a blow job?
- 3 A Yes, sir.
- 4 Q And pointed at your genitals?
- 5 A Yes, sir.
- 6 Q Ever seen him before?
- 7 A No, sir.
- 8 Q Know him?
- 9 A No, sir.
- 10 Q Did you want him to say that?
- 11 A No, sir.
- 12 Q How old were you then?
- 13 A 14.
- 14 Q How old?
- 15 A 14.
- 16 Q How did it make you feel?
- 17 A I mean, it made me angry of course; but I mean, I
- 18 was scared, you know, a 14 year old, I was just a
- 19 kid.
- 20 MR. BROOKS: Objection, Your Honor.
- 21 THE COURT: Overruled, I'll allow the
- 22 question.
- 23 BY MR. MEADORS:
- 24 Q You said it made you angry and it made you
- 25 scared?

SW - A. Victim - DIRECT

- 1 A Angry and kind of scared.
- 2 Q Were you in the boy scouts?
- 3 A Yes, sir.
- 4 Q Did they teach you what to do or did you learn
- 5 through your grandma if you'd been approached by
- 6 somebody what you should do?
- 7 A Yes, sir.
- 8 Q And as a result of that training or just
- 9 whatever, what did you do?
- 10 A I went to authority.
- 11 Q Did you do it — how long after that did you do
- 12 it?
- 13 A A minute, like, a minute. You know, as soon as
- 14 he said what he, you know, did I went to authority.
- 15 Q And do you remember this fellow Thomas Gales by
- 16 any chance from Wal-Mart?
- 17 A Yes, sir.
- 18 Q Did you point out the guy to this gentleman?
- 19 A Yes, sir.
- 20 Q Did you physically say that's the guy?
- 21 A Yes, sir.
- 22 Q And how close were you to him when he made, when
- 23 he propositioned you?
- 24 A 2 feet away.
- 25 Q If I asked before I apologize to everybody, was

SW - A. Victim - DIRECT

- 1 anything bothering you?
- 2 A No, sir.
- 3 Q Was that the same person you saw in the bathroom?
- 4 A Yes, sir.
- 5 Q Was it the same person?
- 6 A Yes, sir.
- 7 Q After you told Mr. Gales or pointed out who had
- 8 done it did you have an occasion to go near Jones
- 9 Chevrolet where a white truck had been stopped?
- 10 A Yes, sir.
- 11 Q And did you pick out the person or tell law
- 12 enforcement whether or not that was the same person
- 13 you'd just seen in the bathroom not that long
- 14 earlier?
- 15 A Yes, sir.
- 16 Q And did you -- what did you tell them?
- 17 A I pointed out, you know, we, I -- law enforcement
- 18 --
- 19 Q I mean, your at the pickup truck, did you tell
- 20 him that was the guy or wasn't the guy?
- 21 A Yes, sir, that was the guy.
- 22 Q And when you saw him was any question in your
- 23 mind that was him?
- 24 A No, sir, no question.
- 25 Q You told them that?

SW - A. Victim - DIRECT

1 A Yes, sir.

2 Q After that where did you go?

3 A We went back to Wal-mart.

4 Q And at that point did you -- were you reunited
5 with your mom?

6 A Yes, sir.

7 Q This officer here is Corporal Kevin Sargent. Did
8 you have occasion to see him then too?

9 A Yes, sir.

10 Q And you knew Kevin?

11 A Yes, sir.

12 Q Excuse me, I apologize, you knew Corporal
13 Sargent?

14 A Yes, sir.

15 Q You knew his son, right?

16 A Yes, sir.

17 Q From sports?

18 A Yes, sir.

19 MR. MEADORS: Beg the Court's indulgence.

20 THE COURT: All right.

21 BY MR. MEADORS:

22 Q This is State's 2 for identification purposes.

23 Approaching again with your permission. Did you
24 have an occasion two days later to give a statement
25 to law enforcement?

SW - A. Victim - DIRECT

- 1 A Yes, sir.
- 2 Q Is that your signature down there?
- 3 A Yes, sir.
- 4 Q November 24th, 2008?
- 5 A Yes, sir.
- 6 MR. MEADORS: Thank you, Your Honor.
- 7 BY MR. MEADORS:
- 8 Q Just a couple of other questions. The
- 9 proposition that you testified about, did that occur
- 10 outside the bathroom?
- 11 A Yes, sir.
- 12 Q Was that after the first or second visit?
- 13 A That was the first -- or the second.
- 14 Q Second visit?
- 15 A Yeah.
- 16 Q And you said you immediately went to somebody.
- 17 Did you go to customer service?
- 18 A Yes, sir, I went to customer service.
- 19 Q So you talked to them before you talked to Gale?
- 20 A Uh-huh, yes, sir.
- 21 Q Then Mr. Gale became involved?
- 22 A Yes, sir.
- 23 Q Based on the time -- Victim listen to me please.
- 24 Based on the time that you saw this person in the
- 25 bathroom the first time when you left and didn't

SW - A. Victim - DIRECT

1 wash your hands, the second time when you came in
2 and saw the person, and the third time when the
3 person as you've testified propositioned you and
4 wanted you to know if you wanted him to give you a
5 blow job. Based on that time and the opportunity
6 you had to view in the bathroom, in the bathroom,
7 and outside when he's propositioned you, okay?

8 A Yes, sir.

9 Q You following me?

10 A Yes, sir.

11 Q Is that person in this courtroom today?

12 A Yes, sir.

13 Q Would you please point him out for the judge and
14 the ladies and gentlemen of this jury?

15 A (Indicates by pointing.)

16 MR. MEADORS: Your Honor, I'd like the
17 record to reflect he's pointing to the gentleman to
18 the left of Mr. Brooks.

19 THE WITNESS: Yes, sir.

20 MR. MEADORS: Your Honor, we'd like the
21 record to reflect he's pointed out Mr. Earley. One
22 final question, Judge, I'm sorry.

23 BY MR. MEADORS:

24 Q This was serious to you; wasn't it?

25 A Yes, sir.

SW - A. Victim - DIRECT

1 Q That's all.

2 MR. MEADORS: Excuse me, Judge, one
3 second. Thank you, sir. That's all.

4 THE COURT: All right, cross-examination.

5 **CROSS-EXAMINATION**

6 BY MR. BROOKS:

7 Q Victim

8 A Yes, sir.

9 Q What do you -- is that the name you go by, Victim

10 A Yes, sir.

11 Q Is that what everybody calls you?

12 A Yes, sir.

13 Q Now you indicated that you had gone into the
14 bathroom on two occasions; is that correct?

15 A Yes, sir.

16 Q And that you -- you did not wash your hands
17 coming out?

18 A Yes, sir.

19 Q And you left, then you went out, and then you
20 sneezed, and that caused you to go back into the
21 bathroom?

22 A Yes, sir.

23 Q You testified earlier when Mr. Meadors was asking
24 you question that the reason you didn't wash your
25 hands the first time is that you were nervous, you

SW - A. Victim - CROSS

1 felt awkward; is that correct?

2 A Yes, sir.

3 Q Okay. Now you said you saw the man standing
4 there in the bathroom doing nothing; is that
5 correct?

6 A Yes, sir.

7 Q While you were using the bathroom?

8 A Yes, sir.

9 Q You were using a urinal; is that correct?

10 A Yes, sir.

11 Q Okay. Now I know Mr. Meadors had asked you some
12 questions that probably made you feel a little
13 uncomfortable about going to the bathroom so you
14 feel a little more comfortable now after him asking
15 these questions; is that correct?

16 A Yes, sir.

17 Q When you went into the restroom to use the
18 restroom, to use the bathroom, and you went to the
19 urinal -- and I know this might be uncomfortable
20 question, Victim Did you, when you used the restroom
21 did you unzip, or did you take your pants down to
22 use the restroom?

23 A Unzipped.

24 Q Okay. And while you -- based on what Mr. Meadors
25 was asking you, while you were using the restroom

SW - A. Victim - CROSS

1 you were looking at the man; is that correct?

2 A Yes, sir.

3 Q Okay. And as you recall, while you were using
4 the restroom you were looking at him and he was just
5 standing there?

6 A Yes, sir.

7 Q Doing nothing?

8 A Yes, sir.

9 Q He wasn't near the sink. He was just standing
10 near the wall; he was looking at you?

11 A Yes, sir.

12 Q Okay. And can you give me an idea how long it
13 took you to start to finish to use the restroom?

14 A Maybe five, ten seconds I was out there.

15 Q Okay. In that five or ten seconds you were still
16 looking at him because you felt uncomfortable?

17 A Yes, sir.

18 Q Then you left?

19 A Yes, sir.

20 Q And he stayed in the restroom?

21 A Yes, sir.

22 Q Okay. Now, you went out. Shortly thereafter he
23 went out the restroom as well; is that correct?

24 A Yes, sir.

25 Q Okay. And you started going back into the store?

SW - A. Victim - CROSS

- 1 A Yes, sir.
- 2 Q Okay. Then you went and sneezed, and you went
- 3 back into the restroom?
- 4 A Correct.
- 5 Q Okay. You went back in the restroom and that was
- 6 for the purpose of washing your hands?
- 7 A Correct.
- 8 Q You washed your hands. How long did it take you
- 9 to wash your hands?
- 10 A About maybe five seconds, give or take.
- 11 Q Okay. In the restroom did it have towels, did it
- 12 have a blow dryer?
- 13 A I mean, dryer I guess.
- 14 Q Do you recall?
- 15 A No, sir.
- 16 Q Okay. When you left -- it's your testimony that
- 17 he came back into the restroom the second time?
- 18 A Yes, sir.
- 19 Q Okay. While he was -- while you were washing
- 20 hands was he just standing there?
- 21 A Yes, sir.
- 22 Q Still looking at you?
- 23 A Yes, sir.
- 24 Q And it took you maybe, what, 10, 15 seconds to
- 25 wash your hands?

SW - A. Victim - CROSS

- 1 A 10 seconds, 15 seconds.
- 2 Q You still feeling nervous; is that correct?
- 3 A Yes, sir.
- 4 Q So is that why you didn't dry your hands, or you
- 5 don't recall?
- 6 A I don't recall.
- 7 Q Okay. So you left with your hands wet; is that
- 8 fair to say?
- 9 A I honestly don't recall. Like I mean, I could
- 10 have left with them wet; I could have left with them
- 11 dry.
- 12 Q And you were still, because you felt nervous and
- 13 awkward, you were still looking at him; is that
- 14 correct?
- 15 A Yes, sir.
- 16 Q Then you leave out of the restroom the second
- 17 time. You had exited the restroom; is that correct?
- 18 A Correct.
- 19 Q Okay. And then he exits the restroom?
- 20 A Correct.
- 21 Q Okay. And then he calls you over?
- 22 A Correct.
- 23 Q What did he say to call you over? Did he say,
- 24 hey, come here?
- 25 A Yeah, that's basically it. Hey, come here.

SW - A. Victim - CROSS

- 1 Q He said, hey, come here?
- 2 A Yes, sir.
- 3 Q And you walked over to him?
- 4 A Correct.
- 5 Q How far away from him were you before he said
- 6 come here?
- 7 A It would have been like 10, 15 feet away.
- 8 Q Okay. So he says, come here, and you walked over
- 9 to him?
- 10 A Correct.
- 11 Q Is that correct? And then he — obviously, he
- 12 says, hey, do you want a blow job, and points to
- 13 your genital area?
- 14 A Yes, sir.
- 15 Q All right. And of course, you said hell no, fuck
- 16 no, and then you obviously immediately left him; is
- 17 that correct?
- 18 A Yes, sir.
- 19 Q Okay. Did you still look at him as you were
- 20 walking away?
- 21 A No, sir.
- 22 Q Okay. As a part of your testimony you indicated
- 23 that you went to customer service?
- 24 A Correct.
- 25 Q Okay. And then customer service in turn led you

SW - A. Victim - CROSS

- 1 to the security guard Mr. Gales?
- 2 A Correct.
- 3 Q Okay, you then pointed Mr. Earley out to Mr.
- 4 Gales; is that correct?
- 5 A Correct.
- 6 Q So how long did it take you to eventually get to
- 7 Mr. Gales would you say?
- 8 A It didn't take but a few seconds.
- 9 Q A few seconds?
- 10 A Yeah.
- 11 Q Once you got to Mr. Gale you told him what
- 12 happened; is that correct?
- 13 A Correct.
- 14 Q And then you ended up — he asked you who did it?
- 15 A Correct.
- 16 Q And then you said it's the guy — you pointed him
- 17 out?
- 18 A Yes, sir.
- 19 Q When you pointed him out was Mr. Earley running
- 20 out of the store?
- 21 A I mean, yeah, he was running out of the store. I
- 22 mean, he didn't run, he walked out.
- 23 Q Just walking out like every other customer; is
- 24 that correct?
- 25 A Yes, sir.

SW - A. Victim - CROSS

1 Q Now during the — during this time in the store
2 this — I believe your grandmother had talked about
3 it being around 7:00. Is that fair to say it was
4 like 7:00 on a Saturday?

5 A Yes, sir.

6 Q Okay. And Wal-Mart here in Sumter?

7 A Yeah.

8 Q 7:00 on Saturday?

9 A Yes, sir.

10 Q Okay. And when you pointed out Mr. Earley to Mr.
11 Gales he was walking out just like every other
12 customer, was walking out or walking into the store?

13 A Yes, sir.

14 Q I mean, he wasn't running trying to get away in a
15 hasty speed; is that correct?

16 A Yes, just walking.

17 Q Okay. And at that point is that when, when he
18 walked out did you stop seeing him up until law
19 enforcement had got you and —

20 A I can't recall, but he walked out of the store
21 and that's when they got him. I guess they got the
22 license plate and I. D. and they identified him and
23 that's how it went.

24 Q Okay, but — and I'm just taking you through it
25 step by step. After you saw him walking out the

SW - A. Victim - CROSS

1 store, is that when -- you stopped seeing him up
2 until law enforcement arrived?

3 A Correct.

4 Q Okay. And you -- and when law enforcement
5 arrived he was gone; is that correct?

6 A Correct.

7 Q He was no longer in the store?

8 A Correct.

9 Q And you told law enforcement what happened; is
10 that correct?

11 A Correct.

12 Q Okay. And then as you told law enforcement what
13 happened they then transported you to, according to
14 your statement, by McLaughlin Ford; is that correct?

15 A Yes, sir.

16 Q That's what your statement has, McLaughlin Ford?

17 A Yes, sir.

18 Q And you clearly understand the differen-- you
19 lived in Sumter all your life; is that correct?

20 A Yes, sir.

21 Q And you clearly know the difference between Jones
22 Chevrolet and McLaughlin Ford; is that correct?

23 A Yes, sir.

24 Q Jones Chevrolet is closer to Wal-Mart; isn't that
25 correct?

SW - A. Victim - CROSS

1 A Yes, sir.

2 Q McLaughlin Ford is closer to Highway 15 North
3 Main; is that correct?

4 A I mean, that was in my statement but I just got
5 my dealerships mixed up. I mean, it's still ---

6 Q I ---

7 THE COURT: Just answer the question.

8 BY MR. BROOKS:

9 Q It's your statement; isn't that correct?

10 A Yes, sir.

11 Q This statement that you gave -- and Mr. Meadors
12 has showed it to you. I'll show you it to you
13 again. This is your statement; isn't that correct?

14 A Yes, sir.

15 Q It's the statement that you -- that's your
16 signature; is that correct?

17 A Right there?

18 Q Right here. It says signed. That's your
19 signature?

20 A Yes, sir, Victim

21 Q And that's your signature that given on the
22 statement November 28th, 2008; is that correct?

23 A Yes, sir.

24 Q And in that statement it talks about you being
25 transported to McLaughlin Ford where you identified

1 Mr. Earley; is that correct?

2 A Yes, sir.

3 Q That is in the statement?

4 A Yes, sir.

5 Q Okay. This statement was given two days after
6 the incident occurred; is that correct?

7 A Yes, sir.

8 Q The day is July 18th, which is almost, almost
9 four years since the incident occurred; is that
10 correct?

11 A Yes, sir.

12 Q So this would have been probably more accurate
13 reflection of what you recall back then; isn't that
14 correct?

15 A Yes, sir. May I ask when the statement was
16 taken?

17 Q Okay. I mean, it's fair to say that you would
18 remember things — the report indicating what you
19 recall two days after the incident would be ---

20 A Yes, sir.

21 Q ---were more accurate than what you would
22 accurately remember almost four years later; is that
23 correct?

24 A Yes, sir.

25 Q That's fair to say.

SW - A. Victim - CROSS

1 A But what I'm saying is that I might have just,
2 you know, any other day would have been like yeah,
3 Jones, McLaughlin, Chevy, I mean, it doesn't matter.
4 I mean, I didn't know really which dealership I went
5 to. I might have got it, you know, I made a
6 mistake.

7 Q Okay. In your statement you also indicated that
8 he's approximately 6'4"; is that correct?

9 A Yes, sir.

10 Q Okay. Now you testified earlier that when you
11 first went into the bathroom that you felt awkward
12 and nervous?

13 A Yes, sir.

14 Q While you were using the restroom because he was
15 just standing there watching you?

16 A Correct.

17 Q And that caused you to not wash your hands which
18 is different than what you normally would do; is
19 that correct?

20 A Correct.

21 Q And you felt nervous about it because of the way
22 he was looking at you?

23 A Yes, sir.

24 Q That caused you not to wash your hands and
25 immediately leave the restroom once you were done?

SW - A. Victim - CROSS

1 A Yes, sir.

2 Q Okay. And then once you got back out into the
3 store you sneezed. Even though you felt nervous and
4 awkward about what happened the first time in the
5 restroom you felt comfortable enough to go back in
6 there; is that correct?

7 A Correct, but may I look at the statement.

8 Q Sure.

9 A I honestly didn't know if he was in the bathroom
10 so, I mean, how could I feel uncomfortable, I mean.

11 Q Now let me ask you this though, Victim You
12 indicated that you were watching him the whole time
13 while you were using the restroom?

14 A Correct.

15 Q Because you were nervous and you felt awkward.

16 A Uh-huh.

17 Q He was commanding your attention because he was
18 just standing there?

19 A Correct.

20 Q Wasn't washing his hands, he wasn't using the
21 restroom, by your statement; is that correct?

22 A Correct.

23 Q So you were focused on him; isn't that correct?

24 A Correct.

25 Q Okay. And you felt nervous and awkward enough

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1 and uncomfortable enough to not wash your hands
2 which is different than what you normally do when
3 you go to the restroom; isn't that correct?

4 A Yes, sir.

5 Q Okay. And because you felt uncomfortable you
6 thought it best to leave the restroom immediately,
7 isn't that correct, and not wash your hands?

8 A Yes, sir, but it —

9 Q Then once you got out there for whatever reason,
10 according to your statement and according to what
11 you testified here today, you sneezed. At that
12 point you now felt comfortable enough to go back
13 into the restroom; isn't that correct?

14 A Correct.

15 Q Okay. You felt comfortable enough to go back
16 into the restroom and go to the sink and wash your
17 hands; is that correct?

18 A I didn't know if he was in the bathroom so I
19 mean, I could felt comfortable. I could have felt
20 uncomfortable. I mean, I didn't feel any so. I
21 didn't know if he was in the bathroom at all so.

22 Q Okay. Let me ask you this, you -- according to
23 what you testified, the first time you immediately
24 left the restroom you stepped out and you sneezed
25 and then you immediately went back. Isn't that

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1 correct?

2 A Yes, sir, but I mean, would you, would you go
3 back to the bathroom if you sneezed all over your
4 hands?

5 Q I —

6 A I'm just asking a question.

7 THE COURT: Sir, you just need to answer
8 their questions. You can't ask questions. They'll
9 ask you questions. You need to just answer, okay?

10 THE WITNESS: Yes, Your Honor.

11 MR. BROOKS: All right.

12 BY MR. BROOKS:

13 Q According to your testimony you felt comfortable
14 enough to go back into the restroom the second time.

15 A Yes, sir.

16 Q And you felt comfortable enough to go to the
17 sink, turn the water on. And you use soap; is that
18 correct?

19 A Yes, sir.

20 Q And you were focused on washing your hands; is
21 that correct?

22 A Yes, sir.

23 Q Okay. And you felt comfortable, wash your hands.
24 And according to your testimony he's there in the
25 restroom; is that correct?

SW - A. Victim - CROSS

1 A Correct.

2 Q And the same gentleman that caused you to feel
3 nervous and awkward the first time; is that right?

4 A Correct.

5 Q Okay. And I'm sure because you felt nervous and
6 awkward the first time I'm sure your attention went
7 back to him the second time; isn't that correct?

8 A Correct.

9 Q Because what you testified to already he was
10 standing there again the second time doing nothing.
11 He was just standing there. He wasn't washing
12 hands. He wasn't using the restroom; is that
13 correct?

14 A Correct.

15 Q Okay. So that meant if you went out of the
16 restroom the first time after using the urinal,
17 sneezed, and immediately went back, you never left
18 the restroom; isn't that correct?

19 A I mean, correct.

20 Q Okay. So you felt nervous and awkward to not
21 wash your hands and leave, but did not feel nervous
22 and awkward after sneezing to go back into the
23 restroom; isn't that correct?

24 A I mean, yes, sir, but it was just unsanitary. I
25 had to go to the bathroom 'cause I had snot all over

SW - A. Victim - CROSS

1 my hands.

2 Q Okay, but that was — the point though, you did
3 not feel uncomfortable to go back into the restroom
4 even though he's in there?

5 A I honestly didn't know he was in there.

6 Q Okay. Once you saw him you still went in to the
7 sink, right, 'cause you saw him prior to going to
8 the sink once you entered into the bathroom the
9 second time?

10 A Yes, sir.

11 Q Okay. Now during the first time in the restroom
12 or the second time in the restroom did you notice
13 anybody else around?

14 A No, sir.

15 Q Okay. Nobody else around the first time you went
16 into the restroom. Was there anybody immediately —
17 anybody else immediately outside of the restroom
18 once you came out the first time?

19 A I can't recall.

20 Q Anybody in the restroom once you went back in the
21 second time?

22 A Can't recall.

23 Q Okay. Anybody immediately outside the restroom
24 when you came out the second time? Anybody else
25 other than him?

1 A No, I can't recall.

2 Q Okay. Anybody else around when he says, hey, you
3 want a blow job?

4 A Other store, you know, people walking around the
5 store. But I mean, other than that no one was like
6 right next to us listening.

7 Q Okay. And it was at Wal-Mart on a Saturday
8 around 7:00?

9 A Correct.

10 Q Okay.

11 MR. BROOKS: No other questions.

12 THE COURT: All right. Redirect?

13 **REDIRECT EXAMINATION**

14 BY MR. MEADORS:

15 Q Was it the car dealership right near Wal-Mart
16 when you went and picked him out?

17 A Yes, sir.

18 Q And Mr. Brooks asked you about your statement,
19 State's 2 for ID. Did you put in here a description
20 of the person and what he was wearing?

21 A Yes, sir.

22 Q Did you put in here that he called you over
23 standing by the bathroom and asked you if you wanted
24 a blow job?

25 A Yes, sir.

1 Q You put in here that you said, hell no, fuck no?

2 A Yes, sir.

3 Q Did you put in here the guy came in the bathroom
4 after you the first time?

5 A Yes, sir.

6 Q Did you put in here you had to return to the
7 bathroom because you sneezed on your hands?

8 A Yes, sir.

9 Q Put in there you saw the same guy in the bathroom
10 again?

11 A Yes, sir.

12 Q He's asked you a bunch of questions about after
13 you left the first time. Did you know whether or
14 not the defendant was in there when you left?

15 A I really don't.

16 Q Did you put in here you identified the guy as the
17 same guy that approached you?

18 A Yes, sir.

19 Q But you said it was at Datsun Ford?

20 A Yes, sir.

21 Q But it was the right near here, right, at Jones?

22 A Yes, sir.

23 Q Thank you. That's all.

24 THE COURT: You may step down.

25 MR. MEADORS: Can we approach, Judge.

1 (WHEREUPON, counsel approached the Bench
2 for an off-the-record discussion.)

3 THE COURT: Ladies and gentlemen, we've
4 been doing some scheduling. I think it's a good
5 time for us to take a break. You've been at it for
6 a little while. I excuse you back in the jury room.
7 Get something to drink, use the restroom. We'll
8 take about a 10 or 15 minute break. You can check
9 your phones, you can return messages, whatever the
10 case may be. However, I caution you, do not talk
11 about this case even among yourselves at this point
12 in time. It's still too early for deliberations.
13 Don't conduct any independent investigations. We'll
14 take about a 15 minute break and bring you back in
15 shortly. Thank you very much. Everyone remain
16 seated while the jury is excused.

17 (WHEREUPON, the jury was removed from the
18 courtroom and the following
19 proceedings commenced in open court.)

20 THE COURT: Anything from the State before
21 we take a break?

22 MR. MEADORS: No, sir.

23 THE COURT: Anything from the Defense?

24 MR. BROOKS: Nothing, Judge.

25 THE COURT: Let's take about a 15 minute

SW - T. GALES - DIRECT

1 break, okay.

2 (WHEREUPON, a recess was taken from the
3 proceedings.)

4 WHEREUPON,

5 **Archie Thomas Gales, Jr.,**

6 having been duly sworn by the Clerk of Court,
7 testified as follows:

8 THE CLERK OF COURT: Thank you, sir. Have
9 a seat in the witness chair please. Please state
10 your name, spell your last name for the record.

11 THE WITNESS: Archie Thomas Gales, Jr.,
12 G-A-L-E-S.

13 **DIRECT EXAMINATION**

14 BY MR. MEADORS:

15 Q Good afternoon, Mr. Gales. Would you please tell
16 the ladies and gentlemen of this jury a little bit
17 about Thomas Gales, where you were born, where
18 you're from and background, education, and jobs,
19 things like that please?

20 A Yes, sir. I was born and raised in Clarendon
21 County, Manning, South Carolina, graduated from
22 Newberry College in December of '92. From there I
23 went to work for the Foster of Newberry County
24 Sheriff's Office and then returned back to Clarendon
25 County where I worked for Pilgrims (ph) Collins on a

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1 drug task force for about three years. After about
2 seven years of law enforcement I got out of law
3 enforcement. I was self-employed in the poultry
4 business, did that for a little while and then sold
5 out. And sat around for a couple of years and went
6 to work with Wal-mart as asset protection associate
7 and stayed with them for a short time, and now I'm
8 back in the poultry business again.

9 Q And where's your poultry business?

10 A Clarendon County.

11 Q Now back during your Wal-Mart years, if you will,
12 your job was what for them?

13 A Asset protection associate.

14 Q Security?

15 A Yes, but no. We're more or less about for the
16 benefit of Wal-Mart trying to keep shoplifters from
17 stealing our product as well as protecting
18 Wal-Mart's assets, you know, in the process.

19 Q And again, you left there what year?

20 A I believe it was '07, '08, somewhere around
21 there.

22 Q Well this happened in '08 so it would have been
23 after this?

24 A Yes, sir, that's correct. As a matter of fact, I
25 started with Pilgrims February of '09 so that's when

SW - T. GALES - DIRECT

1 I left Wal-Mart.

2 Q Mr. Gales, if I could please draw your attention
3 back to November 28th of '08 at approximately 6:45,
4 7:00 that evening, were you working?

5 A Yes, sir.

6 Q And your job on November 22nd of '08 was same
7 job?

8 A Yes, sir.

9 Q Did you have an occasion to come in contact with
10 the victim in this case Mr. Victim who
11 testified a little while ago?

12 A Yes, sir, I did.

13 Q And can you tell these folks how that came about?

14 A Yes, sir, on that particular night — I'm not
15 exactly sure what time it was — customer service
16 paged me through the intercom system. I walked to
17 the front of the store, and that's where I was
18 introduced to Mr. Victim and I was notified of what
19 had happened back in the back part of the store.

20 Q And that's at customer service?

21 A Yes, sir.

22 Q And is that near the bathroom?

23 A Not near the particular bathroom this happened.
24 The bathroom where his encounter was at the back of
25 the store. Customer service was at the front of the

1 store.

2 Q And what happened when you met **Victim**?

3 A When I met **Victim** if I remember correctly, the
4 customer service representative told me that he was
5 ---

6 MR. BROOKS: Objection.

7 THE COURT: Sustained, hearsay.

8 BY MR. MEADORS:

9 Q As a result of your customer service conversation
10 what did you do?

11 A That **Victim** was propositioned in the restroom ---

12 MR. BROOKS: Objection.

13 THE COURT: Sustained.

14 BY MR. MEADORS:

15 Q Well, you were doing your job for what reason?
16 Did you find out something allegedly had happened to
17 **Victim**

18 A Yes, sir.

19 Q As a result of that did you get in contact with
20 **Victim**

21 A Yes, sir.

22 Q And was this shortly after you responded to
23 customer service?

24 A Yes, sir.

25 Q I mean, was it quick?

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1 A Yes, sir.

2 Q How long?

3 A Maybe a minute, minute-and-a-half at the most.

4 Q And he's testified, already been subject to
5 cross-examination, you talked to **Victim** and find out
6 what happened?

7 A Yes, sir, I did.

8 Q Okay. Did he point anybody out to you?

9 A Yes, sir.

10 Q Tell these folks how that came about?

11 A As we're standing at the front of the store in
12 front of customer service he was telling me what had
13 happened, and I was getting a description of the
14 individual that was involved and as we're doing that
15 he pointed to the gentleman leaving the store
16 whenever he identified him. I followed him out of
17 the store. And while doing this I called law
18 enforcement, gave a description of the individual,
19 all info on his vehicle, gave law enforcement a
20 description of the vehicle as well as the tag
21 number. And I was given direction of travel he left
22 the store.

23 Q And when Mr. **Victim** pointed this individual out
24 to you did you have any trouble understanding from
25 him when he was indicating?

SW - T. GALES - DIRECT

1 A No, sir.

2 Q And did he physically point him out to you?

3 A Yes, sir.

4 Q And I don't know if I asked Mr. Brooks, describe
5 this person how they were leaving the store as far
6 as I guess their pace. I don't know, how were they
7 leaving?

8 A As I recall he was steady paced leaving the
9 store, not your general casually. There was a
10 steady pace about his step.

11 Q And this was the same person Mr. **Victim** had
12 pointed out?

13 A Yes, sir.

14 Q How did you — you followed him out the store,
15 where did you follow him specifically?

16 A We left out the general merchandise exit.

17 Q That's the GM?

18 A Yes, sir.

19 Q You got a food side and general merchandise?

20 A Yes, sir.

21 Q You followed him out the GM side?

22 A Yes, sir.

23 Q And then did you see him go in the parking lot?

24 A I did.

25 Q Did you see him get in the car?

SW - T. GALES - DIRECT

1 A Yes, sir, a truck.

2 Q What color was it?

3 A A white truck.

4 Q Were you able to get the tag?

5 A Yes, sir, I did.

6 Q All right. And what did you do with that?

7 A I gave it to law enforcement as I read it to them
8 while I was on the phone.

9 Q And you're familiar with a bolo?

10 A Yes, sir.

11 Q And so he points him out to him, you follow him,
12 get in the truck, call in the number, correct?

13 A Yes, sir.

14 Q Now besides that did you, or did you — I don't
15 know if you did or not. Did you see what direction
16 this person that you saw get in the truck that **Victim**
17 had pointed out to you, did you see which direction
18 they went in?

19 A Yes, sir.

20 Q Can you tell us these folks?

21 A Yes, sir. Whenever he got in his vehicle and the
22 Wal-Mart parking lot he came back towards around the
23 store, went out of our parking lot to Alice Drive,
24 made a right, went down to the stoplight and then
25 turned left from there. After that I couldn't see

SW - T. GALES - DIRECT

1 him anymore.

2 MR. MEADORS: Your Honor, with your
3 permission can I ask him to step down briefly?

4 THE COURT: All right.

5 MR. MEADORS: This is State's 2 without
6 objection I believe, Your Honor.

7 THE COURT: Any objection?

8 MR. BROOKS: No objection.

9 THE COURT: State's Exhibit 2 is admitted
10 into evidence.

11 MR. MEADORS: I apologize, it's 3.

12 THE COURT: Oh, 3? Any objection?

13 MR. BROOKS: No objection.

14 THE COURT: All right. So correction, not
15 State's Exhibit 2. State's Exhibit 3 is admitted
16 into evidence without objection.

17 (WHEREUPON, State Exhibit No. 3 was *marked &*
18 admitted into evidence.)

19 BY MR. MEADORS:

20 Q I'll be brief, but if you could come down and
21 speak up so the court reporter can hear you and the
22 ladies and gentlemen of this jury please.

23 A (Witness steps down.)

24 Q I'm gonna show you what's been entered as State's
25 Exhibit 3. Is this an aerial you recognize?

SW - T. GALES - DIRECT

- 1 A Yes, sir.
- 2 Q Can you point out Wal-Mart?
- 3 A Yes, sir, this is the Wal-Mart right here.
- 4 Q Is this in Sumter County by the way?
- 5 A Yes, sir, it is.
- 6 Q Do you -- you said you followed this person that
- 7 Mr. **Victim** had pointed out outside the store?
- 8 A Yes, sir.
- 9 Q Can you generally show us where you saw him going
- 10 out?
- 11 A Yes. The general merchandising area would have
- 12 been on this side of the Wal-mart. Grocery is on
- 13 this side, and this is the part if you're facing
- 14 Wal-Mart. So we would come out of this exit here.
- 15 He was parked in this general area. As he got into
- 16 his vehicle he came back to the store and exited out
- 17 toward Alice Drive where from there he -- if you're
- 18 in the parking lot he would have taken a right, come
- 19 back to the stoplight on Broad Street, and from
- 20 there as he turned left.
- 21 Q And you observed that?
- 22 A Yes, sir.
- 23 Q And you conveyed that to law enforcement?
- 24 A Yes, sir.
- 25 Q Which direction he was going?

SW - T. GALES - DIRECT

1 A Yes, sir, as it happened.

2 Q And is there a car dealership right near there
3 when you take a left from Alice on to Broad?

4 A Yes, sir.

5 Q Can you show it to us?

6 A Yes, sir. I believe right here at the Jones
7 Chevrolet.

8 Q And that's Jones Chevrolet?

9 A Yes, sir.

10 Q Not McLaughlin?

11 A That's correct.

12 Q I think that's all for this.

13 A Okay.

14 (Witness resumes seat on the stand.)

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

16 THE COURT: All right.

17 BY MR. MEADORS:

18 Q You didn't know this person, right?

19 A Which person?

20 Q Mr. Earley?

21 A No, sir.

22 Q I mean, you're just doing your job as security?

23 A That's correct.

24 Q This is a crazy question. Wal-Mart sells stuff?

25 A Yes, sir.

SW - T. GALES - DIRECT

- 1 Q People go to Wal-Mart to buy stuff?
2 A That's correct.
3 Q Food?
4 A Yes, sir.
5 Q GM?
6 A Yes, sir.
7 Q When they buy stuff they go through the cashier?
8 A Yes, sir.
9 Q Do they pay for it?
10 A Yes, sir.
11 Q Not free?
12 A That's correct.
13 Q And after they pay for it they leave with their
14 merchandise, right?
15 A That's correct.
16 Q If they bought something?
17 A That's correct.
18 Q Did you see the person that Mr. **Victim** had
19 identified to you with any merchandise?
20 A No, sir, I didn't.
21 Q Didn't have anything?
22 A No, sir.
23 MR. MEADORS: Beg the Court's indulgence.
24 THE COURT: All right.
25 MR. MEADORS: Thank you, Judge, that's

SW - T. GALES - CROSS

1 all.

2 THE COURT: All right, cross-examination.

3 **CROSS-EXAMINATION**

4 BY MR. BROOKS:

5 Q Mr. Gales?

6 A Yes, sir, Gales.

7 Q Mr. Gales, I think you earlier testified a little
8 bit about your background as law enforcement
9 background?

10 A Yes.

11 Q I think you said Newberry Sheriff's Department?

12 A That's correct.

13 Q How long were you in Newberry?

14 A It was less than a year.

15 Q When about — when about were you in Newberry?

16 A I graduated Newberry College in '92. I was hired
17 in '93, Newberry Academy.

18 Q And then you said after that you came back to
19 Clarendon County, worked in law enforcement?

20 A Yes, sir.

21 Q Okay. So obviously — and you were with
22 Clarendon County for how long?

23 A Roughly I'm gonna say four to five years, in that
24 area. And I don't believe I mentioned this in my
25 background, but after Clarendon County I did — I

SW - T. GALES - CROSS

1 worked for the city of Manning. I was a sergeant
2 for them, and that's where I did law enforcement in
3 that department.

4 Q Okay, so base -- and when did you start at
5 Wal-Mart?

6 A I don't remember exactly, but I'm thinking it was
7 '08 that I started, the first part of '08.

8 Q So you weren't there very long?

9 A No, sir, no, sir, not very long at all.

10 Q But you've had -- I mean, it's fair to say you
11 had pretty much an extensive law enforcement career?

12 A That's correct, yes, sir.

13 Q And when you worked at Wal-Mart you guys do have
14 the power to arrest somebody; isn't that correct?

15 A No, sir, we don't have power of arrest, no.

16 Q Somebody was coming out suspected of shoplifting
17 it's your job to stop them, right?

18 A Within policy of Wal-Mart we can detain them, but
19 Wal-Mart policy is very straightforward we cannot do
20 that.

21 Q All right. So on this situation the only -- the
22 only power you had as a loss prevention person at
23 Wal-Mart would have been to limit detainment if
24 somebody was suspected of shoplifting?

25 A That's correct.

SW - T. GALES - CROSS

1 Q Okay, all right. Now when you were working for
2 Clarendon County you had the power of arrest; isn't
3 that correct?

4 A That's correct.

5 Q And you kept that current even after leaving
6 Clarendon County?

7 A No, sir, once my commission expired I didn't keep
8 it current.

9 Q Okay. Did it —

10 A Well, let me back up. When I went to the city of
11 Manning it stayed current.

12 Q You were with the county, then with the city?

13 A That's correct.

14 Q Then you went to Wal-Mart?

15 A That's — well, not in that order, not exactly.

16 Q Okay.

17 A After the city of Manning is when I got to the
18 poultry business and I was self-employed for a
19 period of time.

20 Q And then that's when you allowed it to expire?

21 A That's correct.

22 Q Okay. And then you went to work with Wal-mart?

23 A That's correct.

24 Q Then you went back to the poultry business?

25 A That's correct.

SW - T. GALES - CROSS

1 Q Okay, just trying to keep it straight. Now
2 you've been at Wal-Mart fair to say about a year.
3 You worked there for about a year?

4 A Close, yes, sir.

5 Q And would you say that on a Saturday Wal-Mart is
6 fairly crowded?

7 A It would really depend. I've been there some
8 Saturday nights and you wonder where all your
9 customers are. And I've been there some Saturday
10 nights and, you know, you're just overwhelmed with
11 the fact people come in and out. Most of the time
12 on a Saturday it would be later at night, 9, 10:00
13 once your mall closed and traffic picked up at
14 Wal-Mart.

15 Q Now this was in November, late November?

16 A That's correct.

17 Q Okay. So we getting into Thanksgiving, Christmas
18 season. That fair to say that's the shopping
19 season; isn't that right?

20 A That's correct.

21 Q And generally during the shopping season you're
22 gonna have a bit more folks coming in there that you
23 normally would; isn't that fair to say?

24 A At certain times, yes. If you allow me to
25 elaborate I can explain.

SW - T. GALES - CROSS

1 Q Go right ahead.

2 A And most of the time — and this was, you know,
3 any holiday that came up while I was employed at
4 Wal-mart you have some shoppers that want to come
5 get their stuff done early. But 80 percent, 80
6 percent of your shoppers come last minute. So with
7 the Thanksgiving rush coming it'd been that
8 Wednesday, Tuesday or Wednesday before Thanksgiving
9 that your big rush would have been there. Believe
10 it or not you're slow up until a few days before
11 your holidays.

12 Q Do you recall how busy it was on this particular
13 day which was almost four years ago on a job that
14 you no longer work at, say roughly two-and-a-half,
15 three years ago?

16 A I don't recall it being extremely busy because if
17 it was it would have taken me a while to respond to
18 it. I don't recall being extremely busy. But I
19 can't tell you exactly.

20 Q But you don't recall it being basically vacant in
21 your store; isn't that correct?

22 A That's correct.

23 Q The property was probably a uneventful number of
24 people in there, wasn't too busy and it wasn't real,
25 real slow?

1 A That's correct.

2 Q Okay. And you got this call and you responded
3 and to use your words, immediately; isn't that
4 correct?

5 A That's correct.

6 Q Okay. And once you responded you indicated that
7 Mr. **Victim** pointed out Mr. Earley; is that correct?

8 A Not immediately when I got there, but during a
9 few minutes after being there and discovering what
10 had happened, yes, he pointed him out.

11 Q And he pointed him out?

12 A Yes, sir.

13 Q You saw when he was walking out the store along
14 with other customers; is that correct? I mean,
15 customers coming and going?

16 A That's correct.

17 Q Okay. I mean, which was nothing unusual?

18 A That's correct.

19 Q Okay. There was nothing unusual about him
20 leaving the store?

21 A No, sir.

22 Q Okay. And based on, you know, your interaction
23 with Mr. **Victim** that's when you followed
24 Mr. Earley out of the store; is that correct?

25 A Yes, sir, that's correct.

SW - T. GALES - CROSS

1 Q And you follow Mr. Earley out of the store, you
2 saw what car he got into and at the same time you
3 called law enforcement?

4 A That's correct.

5 Q Okay. And you gave law enforcement a report of
6 what Mr. Victim had told you when you were making
7 that call; is that correct?

8 A Yes, sir, I believe so.

9 Q Okay. And the only — you had no other
10 independent information about Mr. Earley except what
11 Mr. Victim had told you; is that correct?

12 A That's correct.

13 Q You told law enforcement this is the car he was
14 in, this is the tag number, he's leaving the parking
15 lot, he's pulling out, he makes the right. You gave
16 them all that information up until he was no longer
17 in your line of sight; is that correct?

18 A That's correct.

19 Q Okay. And the only person that you talked to
20 about this case back then would have been
21 Mr. Victim is that correct, other than when I say
22 you talked to Mr. Victim and then you relay that
23 information to law enforcement?

24 A That's correct.

25 Q Okay.

SW - T. GALES - CROSS

1 A Now during the conversation customer service was
2 a part of my conversation because I actually had to
3 relay to them what had happened and then so actually
4 it was relayed to them.

5 Q So when you talked to him it wasn't just you
6 talking to me it was some other individuals around?

7 A It was just me and him talking but customer
8 service had been notified first, and they stayed
9 with him with the circumstances of what came --

10 Q Until you got -- until you got there?

11 A That's right.

12 Q And then they participated in conversation or
13 they pretty much went back to what they were doing
14 and left him to you?

15 A No, no, they stayed right there with me because
16 whenever I left to follow Mr. Earley out I asked
17 them to stay with him 'cause he was just a kid,
18 grandmother hadn't been located yet, and I didn't
19 want to leave him by himself with what had happened.

20 Q Okay. Based on what he had told you; is that
21 correct?

22 A That's correct.

23 Q No other questions.

24 THE COURT: All right, redirect?

25 **REDIRECT EXAMINATION**

SW - T. GALES - REDIRECT

1 BY MR. MEADORS:

2 Q You said you left him there with somebody because
3 he was just a kid?

4 A That's correct.

5 Q Thank you.

6 THE COURT: You may step down. All right,
7 ladies and gentlemen of the jury, given the time of
8 day it's a good time break for lunch. I'm going to
9 allow you to go to lunch on your own. Please do not
10 discuss the case even among yourselves at this point
11 in time, okay? Don't conduct any independent
12 investigation or any independent research in this
13 case. I've got it's about ten till one. Let's
14 shoot to be back about 2:15, and does that sound
15 agreeable with everyone? All right, please be back
16 in the jury room at 2:15 and we'll try to get
17 started as soon after that as we can. Everyone else
18 please remain seated while the jury is excused.

19 (WHEREUPON, the jury was removed from the
20 courtroom and the following
21 proceedings commenced in open court.)

22 THE COURT: All right, anything from the
23 State before we break for lunch?

24 MR. MEADORS: No, sir, thank you.

25 THE COURT: All right. Anything from the

1 Defense?

2 MR. BROOKS: No, sir.

3 THE COURT: All right. We'll go ahead and
4 break for lunch. Get the jury back at about 2:15.
5 I'll try to take the Bench somewhere about 2, 2:25,
6 somewhere around there.

7 MR. MEADORS: We'll be ready.

8 THE COURT: All right, sounds great.

9 MR. MEADORS: Your Honor, I ask Mr. Gales
10 be excused from his subpoena. I just asked if
11 there's an objection.

12 MR. BROOKS: That's fine.

13 THE COURT: He's excused.

14 (WHEREUPON, a lunch break was taken.)

15 (WHEREUPON, the jury was returned to the
16 courtroom and the following proceedings
17 commenced in open court.)

18 THE COURT: Thank you very much. Ladies
19 and gentlemen, I hope everyone had a good lunch.
20 We're now ready to resume the trial of this case.
21 The State can call its next witness.

22 MR. MEADORS: If it please the Court.

23 THE COURT: Yes, sir.

24 MR. MEADORS: The State of South Carolina
25 would call Allan Stewart.

1 Defense?

2 MR. BROOKS: No, sir.

3 THE COURT: All right. We'll go ahead and
4 break for lunch. Get the jury back at about 2:15.
5 I'll try to take the Bench somewhere about 2:25,
6 somewhere around there.

7 MR. MEADORS: We'll be ready.

8 THE COURT: All right, sounds great.

9 MR. MEADORS: Your Honor, I ask Mr. Gales
10 be excused from his subpoena. I just asked if
11 there's an objection.

12 MR. BROOKS: That's fine.

13 THE COURT: He's excused.

14 (WHEREUPON, a lunch break was taken.)

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16 courtroom and the following proceedings
17 commenced in open court.)

18 THE COURT: Thank you very much. Ladies
19 and gentlemen, I hope everyone had a good lunch.
20 We're now ready to resume the trial of this case.
21 The State can call its next witness.

22 MR. MEADORS: If it please the Court.

23 THE COURT: Yes, sir.

24 MR. MEADORS: The State of South Carolina
25 would call Allan Stewart.

1 THE CLERK OF COURT: Place your left hand
2 on the Bible, raise your right hand. State your
3 name please.

4 THE WITNESS: Allan Stewart.
5 WHEREUPON,

6 **ALLAN STEWART,**
7 having been duly sworn by the Clerk of Court,
8 testified as follows:

9 THE CLERK OF COURT: Thank you. Have a
10 seat up here please. Please state your full name,
11 spell your last name for the record.

12 THE WITNESS: Allan Stewart,
13 S-T-E-W-A-R-T.

14 **DIRECT EXAMINATION**

15 BY MR. MEADORS:

16 Q Good afternoon, Mr. Stewart. I can tell from
17 your accent that you're not from here.

18 A No, sir.

19 Q So would you tell the ladies and gentlemen of
20 this jury about Allan Stewart, where you were born,
21 your education and then, and your employment up to
22 today please?

23 A (Inaudible) also decision to travel with
24 (inaudible) and until 1994, went to school in South
25 Carolina, graduated from Sumter High School in 2002.

1 I attended USC 2003 to 2007, studied finance and
2 decided I didn't like finance between 2008 to 2010
3 and I become a full-time student in the criminal
4 justice system at (inaudible) the end of this year.

5 Q And I could hear you, and I thank you if I could,
6 just speak in there I'd appreciate it. And your
7 tenure in law enforcement, 2008, 2010, that was with
8 whom?

9 A Sumter City Police Department, sir.

10 Q And what was your job there?

11 A Patrolman.

12 Q And what does that mean?

13 A Just answer routine calls, be visible, presence
14 in the city.

15 Q And did you have a certain geographical area of
16 Sumter that you were responsible for?

17 A Yes, sir.

18 Q And what was that area back in November of 2008?

19 A We would refer to it as out west, become Wal-mart
20 area, up that street out west.

21 Q So if a call comes in or a bolo in that area,
22 whoever is assigned to that area would respond to
23 it?

24 A Yes, sir.

25 Q Well, let's get right to it then. Back on

1 November 28th of 2008 you were employed as an
2 officer with the Sumter Police Department?

3 A Yes, sir.

4 Q And do you remember what shift you were on?

5 A I was on C shift, sir.

6 Q And what does that mean?

7 A That would be just -- there's four shifts, it's
8 A, B, C, D. That's just officers that we have
9 assigned patrol areas.

10 Q Well, for my purposes and for this trial
11 purposes, at the time this happened you were
12 working?

13 A Yes, sir.

14 Q Okay. And your office, I guess, assigned to an
15 office where you check in, is really on the streets
16 in your car, right? I mean, it's, you're just kind
17 of patrolling?

18 A Yes, sir.

19 Q It's what you do, right? And back on November
20 the 22nd of 2008 approximately 7:00, did you receive
21 a bolo?

22 A Yes, sir.

23 Q What's a bolo?

24 A It's a be-on-the-look-out. White Dodge pickup
25 truck and had license tag. I'm not sure of ---

1 knows, but that just kind of goes out over law
2 enforcement and radio?

3 A Yes, sir, be-on-the-look-out for subject.

4 Q And what area were you in?

5 A I was, best of my knowledge, traveling north on
6 Alice Drive towards Wal-mart when the call came out.

7 Q And how far from Broad Street on Alice Drive were
8 you?

9 A To the best of my knowledge I was in this
10 vicinity. I can't remember which cross street I was
11 approaching, but close by.

12 Q So you received this bolo to be-on-the-lookout
13 for a Dodge, white Dodge pickup truck?

14 A Yes, sir.

15 Q As a result of the bolo did you know it was
16 coming from Alice Drive direction?

17 A Yes, sir, it was southbound.

18 Q You get the bolo, you're in your patrol car, you
19 get that, what do you do?

20 A I started out towards the possible location. I
21 see the pickup truck turn left on Broad Street at
22 Broad and Alice, which would be eastbound towards
23 town, Broad Street.

24 Q How long after the bolo did you see the truck
25 take a left from Alice on to Broad?

- 1 A Within a couple of minutes.
- 2 Q Bolo, there it is.
- 3 A Yes, sir.
- 4 Q What do you do?
- 5 A I turned my blue lights and sirens on and end up
- 6 stopping in front of the dealership that's located
- 7 outside Broad Street.
- 8 Q And again, I don't know, how far is that
- 9 dealership from the intersection of Alice and Broad?
- 10 A 200 feet.
- 11 Q So you actually stopped the truck?
- 12 A Yes, sir.
- 13 Q And I believe you testified earlier you not only
- 14 had a description but you had a license tag —
- 15 A Yes, sir.
- 16 Q —that was given with the bolo?
- 17 A Yes, sir.
- 18 Q Was that the same license tag that you stopped?
- 19 A Yes, sir.
- 20 Q You now got your lights on, you're behind this
- 21 truck, what do you do, if anything?
- 22 A Once he gets to a stop, I approached the vehicle.
- 23 There was also with the bolo a description of the
- 24 suspect which matched the description of the
- 25 individual driving the truck.

1 Q You say it did match?

2 A Yes, sir.

3 Q Okay. At that point did you hold the suspect
4 till something else happened?

5 A Yes, sir.

6 Q And did you get him out of the vehicle?

7 A He's taken out of the vehicle and taken back to
8 my vehicle.

9 Q Okay. At some point later did a -- who you later
10 became to know and met with, did the victim come by?

11 A Yes, sir.

12 Q Explain that to the ladies and gentlemen of this
13 jury?

14 A It's a process known as a show-up where an
15 alleged offense happens, someone, or the person at
16 the time, the victim, come by and identify the
17 suspect.

18 Q And you were outside, I guess, both the vehicles,
19 yours and this Dodge pickup, with the defendant,
20 correct?

21 A Yes, sir.

22 Q And another officer brought the victim by his
23 car, correct? Now is there anything done to keep
24 the alleged perpetrator from looking back at the
25 victim?

1 A Yes, sir.

2 Q All right, what is that and was that done in this
3 case?

4 A Yes, sir. Sergeant Evans was the other officer.
5 He had the victim in the back of his car. In order
6 to shield the victim's identity from the suspect the
7 small light that you see on many patrol cars which
8 he uses to shine as the victim, towards the suspect.
9 This way he came by. He notified me that was the
10 same individual that made those statements to him.

11 Q So it kind of shields the alleged victim and then
12 it — you can light where the person can see whether
13 or not that's the same suspect, right?

14 A Yes, sir.

15 Q And it's typically done to show up when it's
16 shortly after an alleged incident, right?

17 A Yes, sir.

18 Q And how far was this one on?

19 A 4 or 500 feet.

20 MR. MEADORS: And I hate to do it, but if
21 you don't mind, can I ask him to come down just —
22 it won't be long.

23 THE COURT: All right.

24 (Witness complies.)

25 BY MR. MEADORS:

1 Q I know you're soft spoken so if you will come up
2 here and just speak in here —

3 A Yes, sir.

4 Q —so the court reporter and the ladies and
5 gentlemen and the judge can. This is State's 3.
6 And do you recognize this as Wal-mart?

7 A Yes, sir.

8 Q And can you point on here Broad and Alice?

9 A This is Broad Street. This is Alice.

10 Q When you received the bolo where were you?

11 A I was traveling somewhere in this vicinity going
12 towards Wal-Mart.

13 Q And you see this vehicle you describe as a truck
14 which was on the bolo turn left where, if anywhere?

15 A Right here at the intersection at the stoplight.

16 Q And after he turns left, show these ladies and
17 gentlemen what you do.

18 A I'm northbound from Alice Drive. I see him
19 coming southbound when I was driving, taking a left
20 going westbound on Broad Street. Back here where I
21 initiated stop, found him stopped at this location
22 approximately this area.

23 Q Then you exit your vehicle and then get him out
24 of his vehicle?

25 A Yes, sir.

1 Q When this show-up was done, show the ladies and
2 gentlemen how the show-up was. What, does the
3 drive-by, show on here what — it's a terrible
4 question but you know what I mean. Go on.

5 A Officer Evans comes — I believe he's coming with
6 traffic. He has a spotlight. The victim identifies
7 the suspect.

8 Q Cars close to each other?

9 A Very close.

10 Q Okay. That was all I had, thank you.

11 Mr. Earley, the defendant, was identified by the
12 victim, —

13 A Yes.

14 Q —correct? And then what do you do, if
15 anything, with the defendant?

16 A The defendant is then arrested, taken to Sumter
17 Lee Regional Detention Center and booked.

18 Q And you write a ticket at first?

19 A Yes, sir.

20 Q And then a investigator comes later and served
21 the warrants?

22 A Yes, sir.

23 Q Which actually happened two days after that,
24 correct?

25 A (No verbal response.)

1 THE COURT: Excuse me, you need to give a
2 verbal response.

3 THE WITNESS: I'm sorry, yes, sir.

4 BY MR. MEADORS:

5 Q Now you're a patrolman?

6 A Yes.

7 Q Do you also have other duties as a patrol
8 officer? You respond to this bolo that was alleged
9 victim in this case. Did you do anything else after
10 taking the defendant to the Sumter Lee Regional
11 Detention Center with this case, specifically with
12 the victims?

13 A Yes.

14 Q Please tell these ladies and gentlemen about
15 that?

16 A I filled out what was called a victim's (ph)
17 ticket. When you have offender, a victim, you fill
18 this out. What it does it lets the jail notify the
19 victim when the suspect is released from jail just
20 to give them a heads-up.

21 Q All right. And I guess the more important
22 question, did you have a chance to go see the
23 victim?

24 A Yes, I gave a copy of that ticket to the victim's
25 family.

1 Q Where did you go see him?

2 A To the best of my knowledge it was their
3 residence.

4 Q And you remember Ms. Corbin being there?

5 A I —

6 Q If you don't, that's fine, I just — Do you
7 remember seeing the victim?

8 A Yes, I do remember seeing —

9 Q Talking to the victim?

10 A Yes.

11 Q I will show you what's State's 1, just ask you do
12 you recognize anybody there and does it relate to
13 the time period in this case you're talking about?

14 A Yes, sir, the child in the middle.

15 Q The child in the middle?

16 A Yes, sir.

17 Q And is that — you didn't know him before this
18 day, did you?

19 A No, sir.

20 Q Does that appear to you to be how he looked then
21 back in July?

22 A Yes, that's a fair and accurate representation.

23 Q And is the person that you detained on Broad
24 Street and subsequently took down and wrote a ticket
25 and was arrested, is he in the courtroom?

1 A Yes, sir.

2 Q And is that him over there?

3 A Yes, sir.

4 Q All right. Mr. Earley?

5 A Yes, sir.

6 Q All right. And you're sure about that?

7 A Positive.

8 MR. MEADORS: And we'd like the record to
9 so reflect. Beg the Court's indulgence.

10 THE COURT: All right.

11 MR. MEADORS: That's all. Thank you.

12 THE COURT: All right, Mr. Brooks,
13 cross-examination.

14 **CROSS-EXAMINATION**

15 BY MR. BROOKS:

16 Q Mr. Stewart?

17 A Yes, sir.

18 Q Just to be clear, you were not present for any
19 interaction between Mr. Victim and my client; is
20 that correct, —

21 A No, sir.

22 Q —at the Wal-Mart?

23 A No, sir.

24 Q You only know what's been reported to you?

25 A Yes, sir.

SW - A. STEWART - CROSS

1 Q Okay. Other than when you got the bolo and you
2 stopped my client; is that correct?

3 A Yes, sir.

4 Q That's the only information you know first-hand;
5 is that correct?

6 A Yes, sir.

7 Q And when you stopped my client he was not unruly
8 in any way with you, was he?

9 A No, sir.

10 Q He was very cooperative?

11 A Yes, sir.

12 Q He followed your instructions to the letter; is
13 that correct?

14 A That's correct.

15 Q And he did not give any representation to you
16 that he was trying to get away now, did he?

17 A No, sir.

18 Q Okay. No other questions.

19 THE COURT: Redirect.

20 **REDIRECT EXAMINATION**

21 BY MR. MEADORS:

22 Q You put the blue light on him behind him?

23 A Yes, sir.

24 Q When you do that most people stop?

25 A Most people, yes, sir.

SW - A. STEWART - REDIRECT

1 Q Thank you.

2 THE COURT: You may step down, thank you.
3 If the State would call its next witness.

4 MR. MEADORS: If it pleases Your Honor,
5 Kevin Sargent, Corporal Kevin Sargent.

6 THE CLERK OF COURT: Place your left hand
7 on the Bible, raise your right hand. State your
8 name please.

9 THE WITNESS: Kevin Sargent, Senior.
10 WHEREUPON,

11 **KEVIN L. SARGENT, SR.,**
12 having been duly sworn by the Clerk of Court,
13 testified as follows:

14 CLERK OF COURT: Thank you, sir. Have a
15 seat up here please. State your full name, spell
16 your last name for the record.

17 THE WITNESS: Kevin L. Sargent, Sr.,
18 S-A-R-G-E-N-T.

19 **DIRECT EXAMINATION**

20 BY MR. MEADORS:

21 Q And you're a corporal?

22 A Correct, sir.

23 Q Good afternoon, Corporal. Would you please tell
24 the ladies and gentlemen of this jury in this case
25 about Corporal Kevin Sargent, where you're born,

SW - K. SARGENT - DIRECT

1 your background, training, education, and in
2 particular, any of the education and in the field
3 you've chosen as your profession please.

4 A I was born a navy brat. My dad was stationed all
5 throughout the Midwest so I was born in Doylestown,
6 Pennsylvania. And upon his retirement he retired
7 (inaudible). I graduated Lindin High School. On
8 graduation I went to work for Doylestown Township
9 Fire Department where I was there for two years when
10 I went in United States navy, served in the United
11 States navy as an aviation ordinance man on board
12 the United States Teddy Roosevelt and the United
13 States Enterprise. Upon completion of my
14 retirement, my four-and-a-half year service, I
15 exited there, went into the landscaping profession
16 back in Ohio where I started with the Lindin Fire
17 Department as a volunteer. I worked my way up to a
18 battalion lieutenant while I worked at job working
19 towards safety warehouse manager. Due to downsizing
20 I was laid off, moved to South Carolina where I
21 joined the Sumter Detention Center. At the time it
22 was located on North Main Street. After harassment
23 from the city police department to come to work from
24 the road I decided to join the City Police
25 Department as a patrol officer.

SW - K. SARGENT - DIRECT

1 Q They wanted you to come?

2 A Correct.

3 Q And what year was that?

4 A I joined Sumter County Detention Center in 2000.

5 I went a year later in April of 2001 with the Sumter
6 City Police Department.

7 Q Does that say on your badge there when y'all
8 started?

9 A Yes, it is.

10 Q 2001?

11 A Correct.

12 Q And you've been serving there continuously since?

13 A Yes, sir.

14 Q What different positions have you held?

15 A I started in general patrol on what's known as B
16 shift. I went into the community warrant policing
17 program where I drove down patrol, two years on
18 bicycle. My predominant area was patrolling areas
19 where I got to meet a lot of nice folks, interact
20 with them, and determine how we settle the problems
21 within the drug areas where high crime is. Then
22 after the program I went to back to patrol on C
23 shift where I've been ever serving since working my
24 way up to field training officer where I help train
25 most of the new recruits as they come into the city.

SW - K. SARGENT - DIRECT

1 Q And as a corporal now, is your position different
2 than it was in November of 2008?

3 A Yes, sir.

4 Q What's the different duties do you have now or
5 from ---

6 A At the time I was a corporal. At that time the
7 longer you were with the department the more
8 responsibilities you have to assess trainees and
9 bringing both throughout the department, teach them
10 to do the right thing.

11 Q Fair to say you like your job; don't you?

12 A Yes, sir.

13 Q Now back in November 2008 what specifically --
14 you responded to Wal-Mart?

15 A Yes, I did.

16 Q Okay. And what shift were you working?

17 A I was working C shift, and we were assigned night
18 shift at the time which would be from 5:45 at night
19 to 6:00 in the morning.

20 Q So that's C shift?

21 A Yes, sir.

22 Q That's what C shift was assigned to the time
23 period?

24 A Correct.

25 Q I got you, okay. Why had you responded alone?

SW - K. SARGENT - DIRECT

- 1 A We get a call of a civil disturbance at Wal-Mart,
2 and our dispatcher put out a general bolo about a
3 white Dodge pickup truck. I must have been in the
4 immediate area because the time of dispatch is the
5 same time as my arrival time so I go meet loss
6 prevention or asset protection at the customer
7 service counter at Wal-Mart.
- 8 Q And that was what time?
- 9 A Roughly around 6:53 or 6:50, 10 minutes to 7.
- 10 Q And you know that because -- did you fill out the
11 incident report as the --
- 12 A Yes.
- 13 Q --first responding officer?
- 14 A I was the one who did complete the incident
15 report.
- 16 Q And did you put that time down on your incident
17 report?
- 18 A Yes, sir, I did.
- 19 Q 18:53 which means what?
- 20 A That's 21 in our time in military time so we
21 refer back to 12 minus 24 is just 12 hour time and
22 just goes back to 6:53 at night.
- 23 Q All right. And when you got to Wal-Mart on
24 October -- excuse me, strike that please, I
25 apologize. November 22nd, 2008, did you have an

SW - K. SARGENT - DIRECT

1 occasion to see Thomas Gales who testified earlier?

2 A I did, sir.

3 Q And did you see Ms. Corbin?

4 A I did, sir.

5 Q And did you see **Victim** at some point?

6 A Some point during the time, yes, sir.

7 Q When you got there who was the first — did you
8 see Ms. Corbin when you first got there?

9 A I did.

10 Q And Mr. Gales?

11 A Correct.

12 Q Now was Ms. — did you know Ms. Corbin prior to
13 this?

14 A Yes, sir, I do.

15 Q All right, how?

16 A **Victim** and my son both came up to park and
17 recreation baseball game so on occasion I seen
18 Ms. Corbin on the field as the children played
19 together.

20 Q But it was from that relationship of sporting,
21 not close personal or anything, —

22 A No.

23 Q —just through a sporting event that your son
24 played with **Victim**

25 A That is correct.

SW - K. SARGENT - DIRECT

1 Q And that's how you had seen Ms. Corbin?

2 A Yes, sir.

3 Q And so I guess the point is when you saw her that
4 day you knew who she was?

5 A Yes, sir, I did. She was concerned so I tried to
6 console her that everything was fine.

7 Q Did you stay at that location — well, did you go
8 out to the show-up?

9 A No, sir, I did not. I stayed with Ms. Corbin at
10 Wal-Mart.

11 Q Okay. And at some point I think you said earlier
12 you saw **Victim** later?

13 A Correct.

14 Q And then — and how much later?

15 A Probably about 15, 20 minutes later.

16 Q He'd gone to the show-up, right?

17 A Correct.

18 Q First responder, you filled out the incident
19 report, correct?

20 A Yes, sir, I did.

21 Q Took information about — and I think I asked it
22 earlier but this Wal-Mart is at 1283 Broad Street?

23 A Yes, sir, it is.

24 Q That is in Sumter —

25 A Yes, sir, it is.

SW - K. SARGENT - DIRECT

1 Q —County? Do you also take down in addition to
2 the incident location victim's names and addresses?

3 A I did, sir. I had further information from Mr.
4 Gales as well where I did a broadcast on the
5 vehicle.

6 Q Say that one more time, I apologize. You got
7 further information too?

8 A From Mr. Gales on the vehicle where I initiated
9 another general broadcast for another bolo of the
10 veh— of the white Dodge pickup truck.

11 Q And how long approximate, if you need to refer to
12 your report, was it after that general bolo until he
13 was actually stopped by Mr. Stewart?

14 A Matter of minutes.

15 Q Minutes?

16 A Anywhere from five to ten minutes. It wasn't
17 very long.

18 Q All right. And after that in the course of
19 investigation as first responder did you learn that
20 **Victim** had said, that's the guy?

21 A Correct.

22 Q And you took down Russell Scott Earley's
23 information, correct?

24 A At that exact time?

25 Q At some point in time?

SW - K. SARGENT - DIRECT

1 A I had not known the suspect was Russell Scott
2 Earley.

3 Q On your incident report did you fill out his
4 background, where his address, and his date of
5 birth?

6 A At the time, again, I did not know Mr. Earley.

7 Q I understand that.

8 A I —

9 Q At some point during your investigation —

10 A At some time — I understand your question now.
11 Yes, sir, at some time after receiving Mr. Earley's
12 information I did write this down on the incident
13 report.

14 Q And what is Mr. Earley's date of birth?

15 A 3/26 of 1970.

16 Q And so that would have made him 38 in November of
17 '08?

18 A Give or take, yes, sir.

19 Q And that's what's included on the incident report
20 from the Sumter Police Department, correct?

21 A It is.

22 Q It's got his residence 9422 Plowden?

23 A Yes, sir.

24 Q Alcolu —

25 A Alcolu —

SW - K. SARGENT - DIRECT

- 1 Q Told him — I guess, I'm sorry. And white male?
- 2 A Correct.
- 3 Q Date of birth 3/26/70?
- 4 A Yes, sir. All this information, where he came
- 5 from, the arrest report off of Mr. Stewart.
- 6 Q You weren't there when the incident happened.
- 7 You don't work at Wal-Mart?
- 8 A That's correct.
- 9 Q You responded, talked to Gales, correct?
- 10 A Correct.
- 11 Q Mr. Gales, I apologize. And is it fair to say in
- 12 your incident report that — you didn't know
- 13 Mr. Gales, did you?
- 14 A That's correct.
- 15 Q And then you basically referred to him as an
- 16 employee of the Wal-Mart, correct?
- 17 A Yes, sir.
- 18 Q Okay. Now you said you knew Ms. Corbin; you knew
- 19 **Victim** through sports. I'm gonna show you State's 1,
- 20 and tell me if you recognize it and do you see **Victim**
- 21 in there?
- 22 A Yes, sir. Mr. **Victim** is located at the center
- 23 of this photo.
- 24 Q And based on that night at Wal-Mart and also
- 25 based on the time maybe at the ball field and the

SW - K. SARGENT - DIRECT

1 same time area, does that appear, does that, based
2 on your own eyes, back then is that how Victim Stewart
3 appeared?

4 A Yes, sir.

5 Q And you ultimately saw Mr. Victim again at
6 Wal-Mart?

7 A Yes, sir, I did.

8 Q How would you describe him then?

9 A Mr. Victim sir? As he approached me he was
10 very distraught, just very upset, withdrawn young
11 man. He did not know how to take it —

12 MR. BROOKS: Object, Your Honor.

13 THE COURT: I sustain, strike the last
14 statement.

15 MR. MEADORS: Beg the Court's indulgence.
16 Your Honor, I'm sorry, just one second.

17 THE COURT: That's all right, take your
18 time, no rush.

19 BY MR. MEADORS:

20 Q Did you ever come in contact with the defendant
21 Mr. Earley?

22 A No, sir.

23 Q Is this Victim

24 A Yes, sir, it is.

25 Q Thank you. That's all.

SW - K. SARGENT - CROSS

1 THE COURT: All right, cross-examination.

2 CROSS-EXAMINATION

3 BY MR. BROOKS:

4 Q Corporal Sargent?

5 A Good afternoon, sir.

6 Q How are you doing today?

7 A It's a beautiful day.

8 Q It is. It's hot out there; isn't it?

9 A It's a little warm, yes, sir.

10 Q All right.

11 THE COURT: Excuse me for a second, I
12 apologize for interrupting. I think we got somebody
13 kind of dozing off. If we could -- okay, go ahead.

14 BY MR. BROOKS:

15 Q Corporal Sargent, you -- as Mr. Meadors has asked
16 you, you're the one that filled out the report; is
17 that correct?

18 A That is correct, sir.

19 Q And he's shown you that report again as part of
20 his question?

21 A Yes, sir, he has.

22 Q Do you need to see it again?

23 A I may depending on the question.

24 Q Okay. You got the information about Mr. Earley
25 from Officer Turner; is that correct? I mean,

SW - K. SARGENT - CROSS

1 Officer Stewart?

2 A Correct.

3 Q I'm sorry. Officer Allan Stewart, I'm sorry.
4 The other information you got from Mr. Victim or
5 the Wal-Mart employee; is that correct?

6 A That is correct.

7 Q And as far as information from Mr. Victim you're
8 the one that put on the incident report that he was
9 6 feet tall; is that correct?

10 A Information I was given, yes, sir.

11 Q Okay. But I mean you, you put the information
12 that he was 6 foot tall?

13 A For Mr. Victim

14 Q Correct.

15 A Correct, yes, sir.

16 Q Now as far as, you never had any contact with Mr.
17 Earley?

18 A That's correct.

19 Q And just to make it clear you were not present
20 when this alleged statement occurred; is that
21 correct?

22 A Of which statement, sir?

23 Q The alleged statement between Mr. Earley to Mr.
24 Victim, you were not present —

25 A That is correct.

SW - K. SARGENT - CROSS

1 Q —at the Wal-Mart?

2 A That is correct.

3 Q After —

4 A I was not on scene at the time of the incident.

5 Q Okay.

6 MR. BROOKS: Beg the Court's indulgence.

7 THE COURT: All right.

8 BY MR. BROOKS:

9 Q You did indicate that you knew Mr. Victim and
10 his grandmother Ms. Corbin prior to this; is that
11 correct?

12 A Not on a personal level, but Mr. Victim and my
13 child both played baseball together during the park
14 and recreation program.

15 Q How long did they play baseball together?

16 A Two or three years.

17 Q Okay. But you knew who he was when you saw him,
18 correct?

19 A I knew of Mr. Victim yes, sir.

20 Q And you knew who his grandmother when you saw
21 her?

22 A That is correct.

23 Q No other questions.

24 THE COURT: All right, redirect.

25 MR. MEADORS: No, sir.

1 THE COURT: You may step down. Thank you,
2 sir.

3 THE WITNESS: Thank you.

4 MR. MEADORS: Beg the Court's indulgence.

5 THE COURT: All right.

6 MR. MEADORS: Thank you. The State rests.

7 THE COURT: Ladies and gentlemen of the
8 jury, the State has presented their case in chief.
9 And now is the time in the trial where I need to
10 take up some matters of law with the attorneys so
11 I'm gonna send you back to the jury room just a few
12 minutes. And I'll tell you why we excuse you back
13 to the jury room. As I told you at the outset, you
14 and you alone decide what the facts of this case
15 are. I decide the law in this case. Oftentimes
16 when the attorneys and I discuss the law and what
17 law to be applied, it requires us to discuss factual
18 issues. Or what they say and what I say when we
19 decide these legal matters is not evidence in this
20 case so that's why we excuse you back to the jury
21 room while we deal with these matters of law. It's
22 not that we're trying to hide anything from you;
23 it's just that we want to keep you from being
24 influenced by anything that I might say or anything
25 that the attorneys might say in discussing these

1 legal matters. We don't want you to be influenced
2 by that when you decide factually what happened in
3 this case so that's why we excuse you back to the
4 jury room. So I would excuse you back there, give
5 you an opportunity to get something to drink,
6 stretch your legs, whatever the case may be. I
7 caution you, do not discuss the case even among
8 yourselves at this point in time. All right, we'll
9 take a short break. Thank you very much.

10 (WHEREUPON, the jury was removed from the
11 courtroom and the following
12 proceedings commenced in open court.)

13 THE COURT: All right, any motions?

14 MR. BROOKS: Your Honor, we would
15 respectfully put on the record a motion for directed
16 verdict in this matter. It's our position the State
17 has not put forth enough evidence to support the
18 charge of criminal solicitation of a minor.

19 THE COURT: All right. I understand your
20 motion; I'll note it. I'm gonna deny it. I think
21 they've reached enough to at least get past the
22 directed verdict stage. Anything else?

23 MR. BROOKS: Judge, at this point we need
24 to deal with Fifth Amendment charge, also my
25 client's record for purpose of ---

1 THE COURT: Let me go over first with
2 you — let me go ahead and question your client on
3 his right to testify, okay? All right, let's place
4 Mr. Earley under oath please.

5 THE CLERK OF COURT: Place your left hand
6 on the Bible, raise your right hand. State your
7 name please.

8 THE DEFENDANT: Russell Scott Earley.
9 WHEREUPON,

10 **RUSSELL SCOTT EARLY,**
11 was duly sworn by the Clerk of Court.

12 THE CLERK OF COURT: Thank you.

13 THE COURT: All right, sir, your name is
14 Russell Scott Earley?

15 THE WITNESS: Yes, sir.

16 THE COURT: Mr. Earley, at this time I'm
17 going to explain to you certain rights that you have
18 under the United States Constitution. If you do not
19 understand anything I say please let me know. If
20 you want me to explain anything in more detail
21 please let me know. You understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. We've now reached
24 the stage of the trial where you may present your
25 defense. You have the right to claim the

1 protections given to you by the Fifth Amendment of
2 the United States Constitution that states in part
3 that no person shall be compelled in any criminal
4 case to be a witness against himself. That means
5 that you cannot be required to testify in this case.
6 You have the right to testify on your own behalf;
7 however, no one can make you testify. This is a
8 personal right and no one can waive this right
9 except for you. If you decide to testify you will
10 be subject to the same rules that govern other
11 witnesses, and you may be examined and
12 cross-examined on any relevant issue in this case.
13 In addition, if you have any convictions involving
14 dishonesty or false statement or for crimes
15 punishable by imprisonment for more than one year
16 and this Court determines that the probative value
17 of admitting this evidence outweighs its prejudicial
18 effect, the solicitor will be able to introduce your
19 record to attack your credibility.

20 First, let me ask the State at this point
21 in time, is there any prior criminal record or bad
22 acts that the State will be using to impeach his
23 testimony?

24 MR. MEADORS: We will attempt to ask Your
25 Honor to consider them, yes, sir.

1 THE COURT: All right, what are those?

2 MR. MEADORS: Judge, I'm just going to go
3 through if I can. The first is a DUS from 1990. I
4 don't think that would apply. A distribution of
5 marijuana, two counts, and criminal conspiracy, two
6 counts; DUS, habitual offender. And all that is
7 from 1993, Your Honor. Possession of 28-grams or
8 less of marijuana, second offense, 1997; DUS '98,
9 DUS second, 2000; a possession of less than 5-pounds
10 or greater than 4-ounces. I think it's a conviction
11 from 19— excuse me, 1996 from Texas.

12 THE COURT: Possession of what?

13 MR. MEADORS: Marijuana.

14 THE COURT: Okay.

15 MR. MEADORS: I have a bank robbery from
16 March of 2003, six years five months time and three
17 years probation, and a — Your Honor, I show another
18 bank robbery with seventy-seven months, three years
19 term of supervision around the same — it's the same
20 court date it looks like, 9/30/2003.

21 THE COURT: You're saying that's the same
22 crimes?

23 MR. MEADORS: Or —

24 MR. BROOKS: It's a federal case, Judge.

25 MR. MEADORS: Or either two counts. I

1 can't tell if it's one, two, or three counts. It's
2 on here three times, but maybe he can clarify that.
3 It's a federal case but it's a bank robbery.

4 MR. BROOKS: It was a federal case, one
5 incident. He has served time for that.

6 THE COURT: Okay.

7 MR. MEADORS: That's it.

8 THE COURT: All right. I'm not going to
9 allow you to use any of that except for the 2003
10 bank robbery. That's been within the last ten
11 years. That's a crime of dishonesty, moral
12 turpitude so I'll have — Mr. Earley, if you do take
13 the stand they will be allowed to introduce into
14 evidence and to cross-examine you regarding the 2003
15 conviction for bank robbery, okay? All right. If
16 you decide to testify this decision on your part
17 must be freely, voluntarily, and intelligently made
18 with knowledge of the protections given to you by
19 the Fifth Amendment and the consequences of your
20 decision to testify. If you decide not to testify I
21 will instruct the jurors that they cannot give the
22 fact that you did not testify any consideration
23 whatsoever and that there is to be absolutely no
24 prejudice to you because you did not testify. It's
25 left entirely up to you whether or not you testify.

1 You may talk with your attorney, your family and
2 friends or anyone else; but the final decision is
3 left entirely up to you. You understand what I've
4 explained to you?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. You have any
7 questions about what I've explained to you?

8 THE DEFENDANT: No, sir.

9 THE COURT: I'm gonna -- let's go ahead
10 and take about a five or ten minute break. I'm
11 gonna let you discuss it further with your attorney.
12 When I come back I'm gonna ask you whether or not
13 you wish to testify in this case, okay?

14 All right, let's take about a five, ten
15 minute break, okay?

16 (WHEREUPON, a recess was taken from the
17 proceedings.)

18 THE COURT: Regarding your right to
19 testify and right to remain silent in this case, do
20 you recall those instructions?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Have you had ample opportunity
23 to discuss this matter with your attorney, with
24 whomever else you wish to discuss it with?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And do you wish to testify in
2 this case?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Anything further Defense wants
5 to place on the record in that regard?

6 MR. BROOKS: No, sir.

7 THE COURT: Anything further the State
8 wants to place on the record in that regard?

9 MR. MEADORS: No, sir.

10 THE COURT: Thank you very much. Anything
11 from the State before we bring the jury in?

12 MR. MEADORS: No, sir.

13 THE COURT: Anything from the Defense
14 before we bring them in?

15 MR. BROOKS: No, sir.

16 THE COURT: All right. Go ahead and bring
17 the jury in.

18 (WHEREUPON, the jury was returned to the
19 courtroom, and the following proceedings
20 commenced in open court.)

21 THE COURT: Ladies and gentlemen, welcome
22 back.

23 As I told you before we took a break the
24 State has presented their case in chief and now is
25 the time in the trial where the Defense can present,

1 or the defendant can present a defense should he
2 choose to do so.

3 MR. BROOKS: All right, Mr. Russell —

4 THE COURT: Mr. Brooks, Defense can call
5 its first witness.

6 MR. BROOKS: We call Russell Earley to the
7 stand.

8 THE COURT: Thank you very much.

9 THE CLERK OF COURT: Place your left hand
10 on the Bible, raise your right hand. State your
11 name please.

12 THE WITNESS: Russell S. Earley.

13 WHEREUPON,

14 **RUSSELL S. EARLY,**
15 having been duly sworn by the Clerk of Court,
16 testified as follows:

17 THE CLERK OF COURT: Thank you. Have a
18 seat up here please. State your name for the
19 record. Spell your last name for the record.

20 THE WITNESS: Russell Scott Earley,
21 E-A-R-L-E-Y.

22 MR. BROOKS: Ready, Judge?

23 THE COURT: Yes, sir.

24 **DIRECT EXAMINATION**

25 BY MR. BROOKS:

DW - R. EARLEY - DIRECT

- 1 Q Mr. Earley, how are you today?
- 2 A Okay.
- 3 Q I want to make sure you speak up now, okay?
- 4 A Okay.
- 5 Q All right. You come along closer to the mic,
- 6 feel free to do so. I know you're kind of a soft
- 7 spoken fella so I got to make sure everybody can
- 8 hear you, okay?
- 9 A Yes, sir.
- 10 Q Now Russell, where do you live?
- 11 A Alcolu, South Carolina.
- 12 Q Okay. And Alcolu is just short before getting to
- 13 Manning; is that correct?
- 14 A Yes, sir.
- 15 Q And you've been pretty much a lifelong resident
- 16 down there?
- 17 A About 20 something years.
- 18 Q All right. Now Russell, I'm gonna get to the
- 19 heart of the matter. November 22nd, 2008, were you
- 20 at Wal-Mart?
- 21 A Yes, sir.
- 22 Q Okay. And do you remember seeing Mr. **Victim**
- 23 A Yes, sir.
- 24 Q Tell us what happened.
- 25 A On that night me and a bunch of friends went out

DW - R. EARLEY - DIRECT

- 1 to eat, and after we ate we went to Wal-mart. We
2 (inaudible) one of our kids birthday parties there.
3 So we went to Wal-Mart to look for something for the
4 kids. Well, the kids didn't find nothing so we was
5 going to go to Kmart. On the way to everybody — we
6 all started leaving going to Kmart I had to use the
7 restroom so I went to the restroom. Went in the
8 bathroom to the urinal by the sinks. When I started
9 using the bathroom I saw the defendant, or whatever.
- 10 Q You talking about Mr. **Victim**
- 11 A Mr. **Victim** He was acting nervous at the sinks
12 with his hand — he had a hoodie on and with his
13 hands in his hoodie. You could hear him tearing up
14 plastic, like opening up CDs.
- 15 Q Okay.
- 16 A So, you know, I finished using the bathroom. On
17 the way out I said — I looked down and said, hey, I
18 wouldn't be doing that, I wouldn't be stealing, and
19 walked on out. I walked on over to my truck. When
20 I got in my truck, go down the road. As soon as I
21 turned on to Broad Street that's when the lieutenant
22 pulled me over and said I was charged with
23 soliciting to a minor.
- 24 Q Now you've known about this case because it's
25 your case?

DW - R. EARLEY - DIRECT

- 1 A Yes, sir.
- 2 Q And you've sat in court here today?
- 3 A Yes, sir.
- 4 Q And you've heard what you've been accused of?
- 5 A Yes, sir.
- 6 Q And I don't know every— I think people on the
- 7 jury heard those words said during the State's
- 8 version of the case. Now I'll ask you point blank,
- 9 did you say that?
- 10 A No, sir.
- 11 Q Are you sure?
- 12 A I swear, sir.
- 13 Q Okay. Now, you know, as far as your situation,
- 14 Russell, I mean, you do have a past record; is that
- 15 correct?
- 16 A Yes, sir.
- 17 Q And you had something of a bank robbery; is that
- 18 correct?
- 19 A Yes, sir.
- 20 Q And that was in federal court?
- 21 A Yes, sir.
- 22 Q And you went to prison for that; is that right?
- 23 A Yes, sir.
- 24 Q Now you pled to that; is that correct?
- 25 A Yes, sir.

DW - R. EARLEY - DIRECT

1 Q And you did time?

2 A Yes, sir.

3 Q Okay. Now why did you plead to that?

4 A Well, I did it.

5 Q All right. Now in this allegation, accusation
6 here, you're not pleading to it?

7 A No, sir.

8 Q Why not?

9 A I didn't do it.

10 Q All right. Now did you ever tell anybody about
11 what was going on in the bathroom with Mr. **Victim**

12 A Not until after I was arrested.

13 Q Okay. And you told — you remember who you told
14 that too?

15 A Well, the deputy that arrested me put me in the
16 vehicle. I told him the only thing I knew it could
17 be possibly about I was being arrested for was the
18 kid stealing CDs. Then when I got to the jailhouse
19 the investigator, when he came and talked to me, I
20 gave him the same statement about the kid stealing
21 CDs; and he just, whatever. And that's the end of
22 the story.

23 Q Okay. You've never seen that in black and white,
24 have you?

25 A Never.

DW - R. EARLEY - DIRECT

1 Q And that's been almost four years?

2 A Yes, sir.

3 Q Okay.

4 A I mean, I have never -- I didn't know what this
5 boy looked like until two days ago. You know, I
6 seen him five seconds so I didn't even know what he
7 looked like.

8 Q Okay.

9 A All I knew he was tall, had a hoodie on, and that
10 was it.

11 Q Okay. And being tall you didn't kind of keep a
12 record in your mind of somebody happening to run
13 into almost four years ago; is that correct?

14 A (No verbal response.)

15 Q Okay. But I'll ask you this, are you sure that
16 perhaps maybe you said, perhaps you may have said
17 something inadvertent, made some reference to -- are
18 you sure that that never happened?

19 A Never did*.

20 Q Okay. Answer any questions the prosecution has.

21 MR. MEADORS: May it please the Court.

22 THE COURT: Yes, sir.

23 **CROSS-EXAMINATION**

24 BY MR. MEADORS:

25 Q Come here, do you want a blow job? Now that's

DW - R. EARLEY - DIRECT

1 Q And that's been almost four years?

2 A Yes, sir.

3 Q Okay.

4 A I mean, I have never — I didn't know what this
5 boy looked like until two days ago. You know, I
6 seen him five seconds so I didn't even know what he
7 looked like.

8 Q Okay.

9 A All I knew he was tall, had a hoodie on, and that
10 was it.

11 Q Okay. And being tall you didn't kind of keep a
12 record in your mind of somebody happening to run
13 into almost four years ago; is that correct?

14 A (No verbal response.)

15 Q Okay. But I'll ask you this, are you sure that
16 perhaps maybe you said, perhaps you may have said
17 something inadvertent, made some reference to — are
18 you sure that that never happened?

19 A Never did.

20 Q Okay. Answer any questions the prosecution has.

21 MR. MEADORS: May it please the Court.

22 THE COURT: Yes, sir.

23 **CROSS-EXAMINATION**

24 BY MR. MEADORS:

25 Q Come here, do you want a blow job? Now that's

DW - R. EARLEY - CROSS

- 1 bad.
- 2 A Very bad.
- 3 Q Very bad. You'll admit that that's, that's
- 4 awful?
- 5 A That's nasty.
- 6 Q Criminal solicitation of a minor?
- 7 A To anybody really.
- 8 Q And you knew he was less than 18; didn't you?
- 9 A No.
- 10 Q I mean —
- 11 A I did not even know how old he was.
- 12 Q All right, look at that state—
- 13 A I didn't even know who he was.
- 14 Q But when you were in the bathroom you saw him,
- 15 right?
- 16 A Standing over there. He was in one area; I was
- 17 over there.
- 18 Q You could tell he's a kid just looking at him?
- 19 A Yeah.
- 20 Q How old did you think he was?
- 21 A I didn't have any idea. 16, 14, or 21.
- 22 Q It could have been any of those?
- 23 A Yeah.
- 24 Q So I mean, you got a long enough look at him to
- 25 tell that he could have been up to 21?

DW - R. EARLEY - CROSS

- 1 A However long it took me to pee.
- 2 Q Where was he when you were peeing?
- 3 A Well, he was standing up there.
- 4 Q Does that look like him there?
- 5 A (Inaudible.)
- 6 Q You can tell me that's a kid there.
- 7 A A tall kid.
- 8 Q Just a kid?
- 9 A Okay.
- 10 Q You can tell that he's less than 18?
- 11 A Whatever.
- 12 Q You can't tell that he's less than 18?
- 13 A (There was no response.)
- 14 Q Now you said on direct that November 22nd, 2008,
- 15 approximately 7:00 you were in Wal-Mart?
- 16 A Yeah.
- 17 Q You were in the restroom in Wal-Mart?
- 18 A Yes, sir.
- 19 Q Never see him before, **Victim** right?
- 20 A No, sir.
- 21 Q You were waiting outside the restroom; weren't
- 22 you?
- 23 A No, sir.
- 24 Q Who were you there with?
- 25 A A bunch of friends.

DW - R. EARLEY - CROSS

- 1 Q Who were they?
- 2 A Friends of the family. We been knowing each
3 other since 20, 30 years.
- 4 Q Can you tell me who they were?
- 5 A David Barritan, Justin Barritan, her two kids,
6 and her brother.
- 7 Q Y'all all come together?
- 8 A Yes, sir.
- 9 Q All of you came there looking for what?
- 10 A Birthday gift for her son.
- 11 Q For who?
- 12 A Her son. It was four years ago, I mean, I don't
13 remember everything.
- 14 Q But you came looking for birthday — how old is
15 the kid's birthday?
- 16 A He was, or she — I think she was about six.
- 17 Q So you came to look for a birthday gift at
18 Wal-Mart for your kid?
- 19 A Yeah.
- 20 Q For her kid? You couldn't find anything?
- 21 A No, sir, that's why we decided to go to Kmart.
- 22 Q All came together; all left together?
- 23 A We took three different vehicles, yes, sir.
- 24 Q All right. So nobody rode with you?
- 25 A No.

DW - R. EARLEY - CROSS

- 1 Q Where were y'all coming from?
- 2 A Casa Linda's across the street.
- 3 Q Couldn't find anything at Wal-Mart for a birthday
- 4 present?
- 5 A She didn't want anything.
- 6 Q Did the rest of them go to Kmart?
- 7 A Yes, sir, they all waited on me when I was
- 8 exiting.
- 9 Q Where were they when you were exiting the store
- 10 by yourself?
- 11 A As we walking out the door I cut off to use the
- 12 bathroom and then right behind them.
- 13 Q But they didn't wait for you?
- 14 A No, they was going on. We had planned on having
- 15 a little party later.
- 16 Q How long had you been there?
- 17 A Probably around five, ten minutes.
- 18 Q Five or ten?
- 19 A Just enough to walk around inside.
- 20 Q And so they decided five or ten minutes they
- 21 couldn't find anything at Wal-Mart and needed to go
- 22 to Kmart?
- 23 A Yes, sir.
- 24 Q How many times did you go in the bathroom?
- 25 A One time.

DW - R. EARLEY - CROSS

1 Q Are you attracted to young boys?

2 A No, sir.

3 Q You admit that -- acknowledge it's my English
4 friend here, correct, who stopped you, right? You
5 stopped because of a blue light, right?

6 A Yes, sir.

7 Q **Victim** comes by and points you out, no question
8 about that, right?

9 A No.

10 Q I mean, none of that is in dispute. When another
11 officer, comes by, says you're the fella, right?

12 A (There was no response.)

13 Q You never told this officer about any CDs, did
14 you?

15 A Yes, sir.

16 Q What'd you tell him?

17 A I told them -- he goes, well, you know what
18 you're being arrested for. I said, I guess as far
19 as something to do with the kid stealing the CDs out
20 the store. That was it.

21 Q So you're being arrested about the kid -- did
22 that, did you, weren't you angry about that?

23 A Oh, yeah. If you'd be arrested you'd be angry
24 too.

25 Q But you said, I guess it's about that. You

DW - R. EARLEY - CROSS

1 didn't just raise cain, what are you talking about,

2 I didn't —

3 A I've been through the law and ain't no need to
4 raise cain.

5 Q So you thought you guessed you being arrested
6 because the other kid had CDs.

7 A Or he knew I, he knew that I knew he was stealing
8 them so he thought I wouldn't tell or I could tell,
9 all I can say.

10 Q But you didn't go tell anybody in the store?

11 A I was hoping he would quit 'cause I've had a few
12 friends that, you know, been caught all along. I
13 know how they catch them, keep it up it will be.

14 Q You didn't go to security?

15 A No.

16 Q You didn't go to Mr. Gales? Do you remember the
17 guy following you out?

18 A Yes.

19 Q You saw him following you; didn't you?

20 A Yes.

21 Q You saw him looking at your truck. If you'd been
22 around, like you said, didn't you come back and say,
23 man, why you following me?

24 A No.

25 Q It didn't bother you he was following you?

DW - R. EARLEY - CROSS

1 A Just ---

2 Q I mean, is that no?

3 A Just a normal person coming out of Wal-mart
4 looking around.

5 Q But I thought you said you knew he was following
6 you?

7 A No, I didn't know he was following me.

8 Q So you did or didn't see him following you?

9 A I seen people coming out the store, yes. I
10 didn't see him following me.

11 Q So you didn't tell anybody in the store that this
12 kid is in there with CDs?

13 A No, sir.

14 Q And he's at the urinal using the bathroom?

15 A No, sir.

16 Q Where was he?

17 A He was at the sinks. Not using the sinks, just
18 looking at his things, tearing the CDs apart.

19 Q Tearing the CDs apart?

20 A Tearing something plastic. I figured it was CDs.
21 Most people, that's what, steal, you know, CDS or
22 games ---

23 Q So you don't really know if it was a CD?

24 A No, 'cause I just didn't ---

25 Q You don't know what it was?

DW - R. EARLEY - CROSS

- 1 A Exactly.
- 2 Q Exactly.
- 3 A I told him you don't need to be stea— I knew he
4 was opening up a package.
- 5 Q Could have been a thing of gum?
- 6 A Could have been.
- 7 Q So is that as a result it could have been gum you
8 said you better be careful doing that?
- 9 A Yeah.
- 10 Q So what started out as a CD you don't know even
11 know if it's gum now, right, you really don't?
- 12 A Right.
- 13 Q You really didn't know.
- 14 A It was big enough he had to have both hands in
15 his pocket.
- 16 Q He had to have both hands in his pocket to open
17 it so you couldn't see what was he was trying to
18 open. And you were peeing; weren't you? Excuse my
19 language. You were using the bathroom. He's behind
20 you?
- 21 A No, he was over here to my —
- 22 Q So you're looking at him?
- 23 A I viewed at him. I mean, it's a little strange
24 somebody standing in the bathroom, you know, ripping
25 up plastic in his jacket. It don't sound good.

DW - R. EARLEY - CROSS

1 Q Never seen him before?

2 A No. Haven't seen him until two days ago.

3 Q Hadn't had any contact with him?

4 A No, don't know him or his family.

5 Q Hadn't had any direct or indirect contact with
6 him since the store November 22nd, 2008, right?

7 A Right.

8 Q Scheduled to go last week, weren't we, a week ago
9 Monday, this case?

10 A Yes, sir.

11 Q Just got continued for administrative reasons,
12 fair to say?

13 A Yes, sir.

14 Q Later on that day you — you put a message on his
15 Facebook that said, see ya, didn't you, from Russell
16 Early?

17 A Yeah.

18 Q You sure did.

19 A 'Cause I looked it up that day.

20 Q And you just testified a minute ago you hadn't
21 had any contact with him, direct or indirect. The
22 day when this case gets — let me finish please,
23 sir. The day when this case gets continued for
24 administrative reasons you go and contact the victim
25 on his Facebook and put, see ya; didn't you?

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1 A (There was no response.)

2 Q Didn't you think that'd be a little intimidating,
3 Mr. Early?

4 A No, sir.

5 Q Didn't know him?

6 A Still don't.

7 Q Charged with committing a sexual assault on him
8 saying, you want me to give you a blow job, right?

9 MR. BROOKS: Objection, Your Honor, sexual
10 assault.

11 MR. MEADORS: It is.

12 THE COURT: I will allow the question. Go
13 ahead.

14 MR. MEADORS: I'm sorry.

15 BY MR. MEADORS:

16 Q You're charged with saying criminal solicitation
17 of a minor, do you want me to give you a blow job
18 and pointed at his groin, right?

19 A That's not true.

20 Q Supposed to stay away from him, aren't you, not
21 talk to him, have no contact with him?

22 A Nobody ever told me that.

23 Q Nobody's ever told you that? And you contact him
24 on his Facebook admittedly right now, a day, same
25 day the case is pending and you know it was coming

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- 1 up this week. Did you think that'd make him feel
2 good?
- 3 A Probably.
- 4 Q Probably? So you admit it as a nice gesture?
- 5 A 'Cause his time will come.
- 6 Q His time will come?
- 7 A He's in this court.
- 8 Q Your time gonna come.
- 9 A That's why I'm here.
- 10 Q March 27th, 2003 was your bank robbery
11 conviction, correct?
- 12 A Yes, sir.
- 13 Q That's in another state?
- 14 A Some of them could be, yes, sir.
- 15 Q Some of them. So it's more than one?
- 16 A Yes, sir.
- 17 Q More than one bank robbery?
- 18 A Yes, sir.
- 19 Q How many?
- 20 A Total is nine.
- 21 Q Nine bank robberies?
- 22 A Yes, sir.
- 23 Q What different states were they in?
- 24 A Georgia, South Carolina. I was charged with
25 nine, with me and my defendant.

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1 Q Sir?

2 A With me and my defendant. I took a plea for all
3 of it in 2008 because I was there.

4 Q Because you were what?

5 A I was there at all of them. I didn't do them all
6 but I pled guilty to all of them.

7 Q Did you email those victims before that court
8 date?

9 A Sir?

10 Q Did you email those victims before that court
11 date and say, see ya?

12 A (There was no response.)

13 MR. MEADORS: We got a matter, Judge. I'd
14 like to approach please.

15 THE COURT: All right.

16 (WHEREUPON, counsel approached the Bench
17 for an off-the-record discussion.)

18 BY MR. MEADORS:

19 Q You went to Casa Lindas or you came from — you
20 went to Casa Lindas afterwards or —

21 A Before.

22 Q I'm not trying to trip you up on that. This
23 thing was not quite four years ago, right?

24 A Not exactly.

25 Q Casa Lindas been closed about five years; hadn't

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1 it?

2 A What's the Mexican restaurant across the street?

3 Q Well, it's not just a -- okay, I mean, you said
4 you went to Casa Lindas?

5 A I don't --

6 Q But it was closed.

7 A It's been four years. I don't remember what it
8 was called.

9 Q You don't know if what he was even playing with
10 in his shirt, plastic or whatever, CD or gum or you
11 don't know what it is?

12 A I didn't search him.

13 Q And you didn't see it. You're making it up;
14 aren't you?

15 A Nope, did not see it. I could hear it.

16 Q Did you know his grandmama was there with him to
17 buy him something?

18 A Nope.

19 Q What was your role in Wal-Mart the day with this
20 group you were with?

21 A Just hanging with friends?

22 Q Were you going to pay for something?

23 A No.

24 Q Did you follow them around when they shopped?

25 A Yeah.

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1 Q You did?

2 A Yes.

3 Q But you ended up at the bathroom?

4 A On the way out.

5 Q You saw **Victim** go in?

6 A No.

7 Q You didn't see him. So when you were in he was
8 already in there?

9 A Yes.

10 Q And your testimony is you didn't go back in
11 again?

12 A Yes.

13 Q Did he wash his hands when he was in the
14 bathroom?

15 A No, I left -- I left him in there.

16 Q He started to say, no, sir, but I mean, did --

17 A I didn't see -- he had his hands in his jacket
18 the whole time I was in there.

19 MR. MEADORS: Beg the Court's indulgence.

20 THE COURT: All right.

21 BY MR. MEADORS:

22 Q So he had his hands in the jacket the whole time,
23 but you initially said you can describe the object?

24 A Right, it sounded like a --

25 Q It sounded like a disk?

1 A Yeah, plastic.

2 Q Thank you, sir.

3 A All right.

4 THE COURT: Redirect?

5 **REDIRECT EXAMINATION**

6 BY MR. BROOKS:

7 Q Mr. Meadors asked you about going —

8 MR. MEADORS: Your Honor, can we approach.

9 THE COURT: All right.

10 (WHEREUPON, counsel approached the Bench
11 for an off-the-record discussion.)

12 BY MR. BROOKS:

13 Q Mr. Early, Mr. Meadors kept making an issue about
14 Casa Lindas?

15 A Yes, sir.

16 Q TJ Maxx is across the street from Wal-Mart; is it
17 not?

18 A Yes, sir.

19 Q And there's a Legacies; isn't that correct?

20 A Yes.

21 Q And right next to Legacies isn't there a Mexican
22 restaurant?

23 A Yes, sir.

24 Q A lot of times it has changed its name throughout
25 the years; isn't that correct?

DW - R. EARLEY - REDIRECT

1 A Yes.

2 Q But you're sure there's a Mexican restaurant over
3 there?

4 A Yes, sir.

5 Q Okay. No other questions.

6 THE COURT: All right, you may step down.

7 You can call your next witness.

8 MR. BROOKS: Defense rests, Judge.

9 THE COURT: All right. Let me see the
10 attorneys please one second.

11 (WHEREUPON, counsel approached the Bench
12 for an off-the-record discussion.)

13 THE COURT: All right, ladies and
14 gentlemen of the jury, the Defense has presented
15 their defense in the case and just like at the close
16 of the State's case it's time for me to take up some
17 matters of laws with the attorneys so I'm going to
18 excuse you back to the jury room just a few minutes.
19 We'll bring you back out in just a second. Please
20 do not discuss the case even among yourselves at
21 this point in time. Thank you.

22 (WHEREUPON, the jury was removed from the
23 courtroom and the following
24 proceedings commenced in open court.)

25 THE COURT: All right, I know we had a

1 couple of side bars during the defense; and so, if
2 y'all want to go ahead, and I made my rulings from
3 here and so it probably didn't get on the record so
4 if y'all want to go ahead and put it on the record.
5 I know, Mr. Meadors, you had raised the issue as to
6 whether or not you could during cross-examination
7 raise the fact that the defendant asserted his right
8 not to talk any further.

9 MR. MEADORS: Judge, I wasn't going to ask
10 that question. I think what I was going to followup
11 with was just say you mentioned that to the officer
12 but then you did not provide any other details, did
13 you. And that's as far as I was going to go. I
14 would not have ever suggested that he invoked his
15 rights or anything. I felt like I got boxed in
16 'cause, see, in response to a question he said, well
17 they didn't do anything else about it. Well, the
18 officer tried. He tried to go -- he said, all
19 right, tell me about it; he said I want my lawyer.
20 So all he said was a statement, I saw the kid with
21 CDs. And so that's all I was going to say, well,
22 actually you didn't provide any information. I was
23 going to stop there. I understand it's a tough area
24 and I understand that, and I certainly would not do
25 anything but that was it.

1 THE COURT: Well, and you know, the -- and
2 I still just go ahead and put on the record that I
3 was not going to allow you to question him about his
4 failure to cooperate or offer any additional
5 information or remain silent or request an attorney
6 or anything of that nature.

7 MR. MEADORS: I understand, yes, sir.

8 THE COURT: All right, Mr. Brooks, do you
9 want to place your -- you wanted to cross him --

10 MR. BROOKS: I did, Judge. I understand
11 Your Honor's ruling on the side bar, but our
12 position was that while my client testified
13 Mr. Meadors had asked him about going on to Mr.
14 Victim ██████████ Facebook page and leaving a message. And
15 obviously, Judge, what we had talked about before
16 was the message that we had gotten off of Facebook
17 page and printed a copy. We talked about that
18 earlier in trial, and it was our intent to talk
19 about that in response to Mr. Meadors' question
20 about the Facebook page.

21 THE COURT: And I ruled that you not --
22 that I was not allowing you to put in the
23 information you got off of the victim's Facebook
24 about smoking marijuana, whatever.

25 MR. BROOKS: And Judge, I wanted to make

1 sure — I was not going to offer it into evidence,
2 but I wanted to ask my client what did he find on
3 the Facebook page.

4 THE COURT: Yeah, I would have allowed you
5 to get into anything regarding him leaving a message
6 on Mr. **Victim** Facebook page, but not any other
7 information that he might have come across on the
8 Facebook so that's why I ruled that you do not
9 introduce that, okay?

10 Anything else the State wants to place on
11 the record at this time?

12 MR. MEADORS: No, sir, we just need a few
13 minutes.

14 THE COURT: Anything the Defense wants to
15 place on the record at this time?

16 MR. BROOKS: That's it, Judge.

17 THE COURT: All right, let's take — I'm
18 assuming you just want to decide whether you're
19 going to do reply or —

20 MR. BROOKS: I think, Judge, I guess I
21 want to put my — I want the Court to know our
22 motion for a directed verdict again just to be clear
23 for the record.

24 THE COURT: I note your defendant's motion
25 for directed verdict. I'm gonna deny that at this

1 point, okay? Given the time of day, it's about ten
2 to four. We've got time to go into reply if you
3 want to do reply. If you don't have reply I don't
4 think we have time for me to charge and start
5 deliberation. Do y'all want — let's say you don't
6 do reply, do y'all want to go ahead and do closings
7 or do you want to wait and do closings right before
8 I charge tomorrow morning?

9 MR. MEADORS: If you charge tomorrow I'd
10 rather argue, if that's okay.

11 THE COURT: Yeah, that's fine. That's no
12 problem. All right, let's take about five, ten
13 minute recess. Y'all decide what you want to do.
14 Thank you very much.

15 (WHEREUPON, a recess was taken from the
16 proceedings.)

17 THE COURT: Anything on reply?

18 MR. MEADORS: Your Honor, after
19 consultation with several cocounsel we are not.

20 THE COURT: Excuse me?

21 MR. MEADORS: We're not, no, sir.

22 THE COURT: So the only thing we have left
23 now is closing arguments, jury charges, and
24 deliberations; is that correct?

25 MR. MEADORS: Yes.

1 THE COURT: Okay.

2 MR. MEADORS: Yes, sir.

3 THE COURT: All right. As I explained to
4 you, it's a situation the way it is, Mr. Earley,
5 since all the evidence has been presented in this
6 case I am going to have them take you into custody
7 and contain you tonight until we come back with
8 closing arguments and charges just because all the
9 evidence portion of the trial has ended, okay.

10 Anything from the State before we bring
11 the jury back in?

12 MR. MEADORS: What time are we going to
13 start?

14 THE COURT: What time y'all want to?

15 MR. MEADORS: I'd like to start 10:00.

16 THE COURT: 10:00?

17 MR. MEADORS: Since you asked, if that's
18 not too late.

19 MR. BROOKS: That's fine with me.

20 THE COURT: All right, 10:00. I'll
21 probably tell the jury to get here about 9:45 and
22 I'll try to take the Bench at 10:00. How does that
23 sound?

24 MR. MEADORS: We'll be ready. Thank you.

25 THE COURT: Anything from the Defense

1 before we bring the jury back?

2 MR. BROOKS: That's it, Judge.

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

4 (WHEREUPON, the jury was returned to the
5 courtroom and the following proceedings
6 commenced in open court.)

7 THE COURT: Ladies and gentlemen, welcome
8 back. We've reached the stage in the trial where
9 all the testimony and evidence to be presented in
10 this case has been presented to you, and the only
11 thing left in this case is for the attorneys to make
12 their closing arguments and for me to charge you on
13 the law to be applied in this case. However, that
14 will take some time. Given the time of day I think
15 we want to go ahead and break for today, and I'm
16 gonna allow you to go home for the evening, and
17 we'll finish this up tomorrow morning. I ask you be
18 back in your jury room tomorrow morning at 9:45. We
19 will start as soon as after 9:45 as we can.

20 I caution you again, it is still too early
21 for you to be discussing the case even among
22 yourselves at this point in time. Don't go on the
23 internet, looking through the newspapers or anything
24 of that nature to try to find out anything about the
25 case because the attorneys still have to make their

1 closing arguments and I've got to charge you on the
2 law before you begin your deliberations. I hope you
3 have a good evening and we'll see you back at 9:45
4 tomorrow morning. Thank you.

5 (WHEREUPON, the jury was removed from the
6 courtroom and the following
7 proceedings commenced in open court.)

8 THE COURT: All right, I'll be here
9 probably 9:00 or a little after tomorrow morning.
10 If you have any special charges, I'll have a copy of
11 the charges for y'all to review before you make your
12 closing arguments. I go straight by the charge
13 book. If you have anything specific that you want
14 me to charge let me know. The first thing that
15 comes to mind I need to get your input, under the
16 statute for criminal solicitation of a minor, I
17 don't remember the exact language, but it just
18 basically says it's illegal to solicit someone to
19 commit a sexual act as defined by —

20 MR. MEADORS: Section 16-15-375, yes, sir.

21 THE COURT: I looked through — all right,
22 it says, illegal to solicit to a person under 18 for
23 the purpose of with the intent to persuade, induce
24 and entice and coerce the person to engage or
25 participate in a sexual activity as defined by

1 section 16-15-375(5). The only sexual activity in
2 that section that pertains to this court case is it
3 finds oral intercourse as a sexual activity, and so
4 that's the only sexual activity I've taken out of
5 that code section. Look through and see if there's
6 anything else you want to put in there because I
7 don't see anything else. It says, just sexual
8 activity as defined in section 16-15-375 (5) or a
9 violent crime as defined in section 16-1-60. The
10 only violent crime that I've seen that is really
11 applicable to this case is committing lewd act on a
12 minor so I think I need to charge them on whether or
13 not he solicited a minor to participate in that as
14 well. But look through those violent crimes to see
15 if there's anything else that you think is
16 applicable.

17 MR. MEADORS: That's an "or", right, Your
18 Honor?

19 THE COURT: Yeah, "or".

20 MR. MEADORS: Or.

21 THE COURT: It's whether or not he
22 solicited to engage in a sexual activity as defined
23 by this statute or a violent crime as defined by
24 this statute.

25 MR. MEADORS: Yes, sir.

1 THE COURT: And the only sexual activity
2 under this statute that I saw applicable was the
3 activity of oral intercourse. And the only violent
4 crime I saw applicable in this statute -- again, I'm
5 gonna be honest with you, I looked over it quick. I
6 was looking quick because of time constraints, and
7 so I'll go back and look tonight and see if I see
8 anything else. The only thing that kind of popped
9 out at me was committing lewd act on a minor.

10 MR. MEADORS: And I just remembered the
11 other one. I don't know if fellatio is in there or
12 not. I mean, it's been years since I looked at it.

13 THE COURT: It's got to be in there
14 somewhere but I never did find it, and that's why
15 ---

16 MR. MEADORS: But I find with -- whatever
17 the court, it's obviously whatever Your Honor ---

18 THE COURT: I know fellatio is not defined
19 in the statute and neither is ---

20 MR. MEADORS: Judge, can I ask just ---

21 THE COURT: Yeah.

22 MR. MEADORS: A person who is under the
23 age of 18 or a person who is reasonably believed to
24 be under the age of 18, is Your Honor just -- as far
25 as charging the statute, I mean, clearly he's 14 in

1 this case and I don't, as we discussed previously, I
2 think it's kind of a strict liability defense. Is
3 Your Honor just going to charge straight from the
4 statute?

5 THE COURT: Yeah, I was just going to go
6 straight from the statute. And a person it's
7 illegal I think — well, I'll show you. Best I can
8 recall, it says defendant has been charged with
9 criminal solicitation of a minor. Then I just go
10 in, it says a person 18 years of age or older
11 commits the offense of criminal solicitation of a
12 minor if he knowingly contacts or communicates with,
13 blah, blah, blah, blah. The only thing I do is in
14 this statute I leave out, I just say — I leave out
15 the code sections. Enticing, coercing a person to
16 engage or participate in sexual activity or a
17 violent crime. Sexual activity is — and then I
18 give that definition. A violent, included in a
19 violent crime is committing lewd act on a minor.

20 MR. MEADORS: Thank you.

21 THE COURT: All right. I'll have that for
22 you to look at, all right?

23 MR. MEADORS: All right.

24 THE COURT: Do I need or are you gonna
25 request that I charge on identification? I don't

1 see where identification is really an issue in this
2 case.

3 MR. BROOKS: No, sir.

4 THE COURT: Okay, all right. I had that
5 just kind of anticipating that I might be able to
6 put it in, but I'm going to go ahead and take that
7 out. If anything else comes up just let me know and
8 we can address it tomorrow, okay?

9 All right, anything from the State before
10 we recess?

11 MR. MEADORS: No, sir. Thank you.

12 THE COURT: Anything from the Defense?

13 MR. BROOKS: No, sir.

14 THE COURT: All right. We'll stand in
15 recess until 10:00 tomorrow morning. I'll ask y'all
16 please take the defendant into custody.

17 (WHEREUPON, the proceedings were concluded
18 for the day to be reconvened on June 19,
19 2013.)

20 THE COURT: Anything from the State with
21 regard to the charges?

22 MR. MEADORS: Not at all on the charges.
23 And I just thought of this, there's a charge in a
24 CSC case, I think, where it says a victim's
25 testimony need not be corroborated. I don't know if

1 that applied here or not. I just thought about it
2 on the way up here. I was trying to —

3 THE COURT: My law clerk mentioned that to
4 me and I looked it up right quick. It says it
5 applies to — I forget the code section, but it
6 didn't apply with criminal solicitation of a minor.

7 MR. MEADORS: Thank you.

8 THE COURT: All right. I'll deny your
9 request in that regard.

10 MR. MEADORS: Yes, sir.

11 MR. BROOKS: Judge, I briefed your law
12 clerk and told Mr. Meadors about this, but we were
13 going to respectfully ask the Court on statement of
14 age defense that — and I know if this had been a
15 criminal sexual conduct of a minor, if you follow
16 the State's version of events and if interaction had
17 taken place and sexual intercourse had taken place,
18 then my client would have been allowed to have a
19 charge from on the statement of age defense if it
20 was obviously more serious crime of criminal sexual
21 conduct. The difference in this case is obviously
22 there was no engagement that had taken place. There
23 is testimony about whether or not my client thought
24 the gentleman was older than what he was. If you
25 remember when Mr. Meadors cross-examined him, my

1 client testified that I didn't know how old he was,
2 could have been 14, he could have been 21. I know
3 that if you follow the statute criminal solicitation
4 of a minor it does — there's not a provision in
5 there. But from a legal statement, Judge, it
6 doesn't mean it makes sense if you don't have that
7 protection to make a request. But if you do have
8 that protection if you make a request and then
9 there's reciprocation, if you follow what I mean by
10 that.

11 THE COURT: I understand your argument.
12 I'm gonna deny your request for a charge on that,
13 especially in light of the defense that the request
14 was never made to start with.

15 MR. BROOKS: I understand.

16 THE COURT: You know, if it had been a
17 case of where he said, yeah, I made the request or
18 yeah, I did this but I thought that he was over 18
19 years of age, that he was over 18 years of age, then
20 I'd probably give it a little bit more consideration
21 at this point in time. But since his position is, I
22 don't care how old he is, it never happened to start
23 with, I'm gonna deny your request for that charge.

24 MR. BROOKS: I understand, Judge. I just
25 wanted to put that on the record.

1 THE COURT: Thank you very much. Anything
2 further from the State before we bring the jury in?

3 MR. MEADORS: No, sir.

4 THE COURT: Anything further from the
5 Defense?

6 MR. BROOKS: That's it, Judge.

7 THE COURT: All right. As I understand
8 we'll go straight into closing arguments.

9 Mr. Brooks, I'm assuming the State is
10 going to waive closing first?

11 MR. MEADORS: Yes. Yes, sir.

12 MR. BROOKS: Can I make my argument -- can
13 I make him present the law, Judge?

14 THE COURT: No, I'm gonna go ahead, I
15 think he can waive that. Let me get y'all to do
16 something. I've never really gotten a definitive
17 answer on whether or not the State can waive an
18 opening charge on the law or whether the Defense can
19 require it.

20 MR. MEADORS: I've never had anybody but
21 Mr. Brooks not make me waive first of all. Second
22 of all, Judge, I think -- and I think out of
23 precaution, if he doesn't want me to waive it I
24 don't want to do it, wasn't planning on doing it,
25 wasn't prepared to do it; but I think that he can

1 require me to do it. And I'm not hundred percent
2 sure, but out of abundance of caution I, you know...

3 THE COURT: All right, so what we'll do
4 is we'll bring them in. You'll do your closing on
5 the law and you'll do your closing, then you can
6 respond to his closing arguments.

7 MR. MEADORS: Can I have one second.

8 THE COURT: Yeah.

9 (Pause.)

10 MR. MEADORS: Yes, sir. Thank you.

11 THE COURT: All right. Anything further
12 from the State ---

13 MR. MEADORS: No, sir.

14 THE COURT: ---before we bring the jury?
15 Anything from the Defense?

16 MR. BROOKS: No, sir.

17 THE COURT: Let's go ahead and bring the
18 jury in.

19 (WHEREUPON, the jury was returned to the
20 courtroom and the following proceedings
21 commenced in open court.)

22 THE COURT: Ladies and gentlemen, good
23 morning to you. Welcome back. I appreciate
24 everybody being on time, being prompt. We're ready
25 to resume the trial of this case. We've reached the

1 stage of the trial where the attorneys present their
2 closing arguments to you. The State will begin the
3 closing arguments by giving you the law in the case.
4 The Defense will make their closing arguments and
5 then the State can respond to the Defendant's
6 closing arguments. Now just like their opening
7 statements, these closing arguments are not evidence
8 in this case. It is simply the attorneys'
9 contention as to what they think the evidence has
10 shown and what they think the law is in this case.
11 If at any time an attorney makes reference to a
12 factual issue that is different from the facts as
13 you find those facts to be or references the law
14 that is different from the law as I will instruct
15 you at the end of their closing arguments, then
16 you're to disregard their closing argument or that
17 portion of their closing arguments because this is
18 not evidence. It's simply their contention as to
19 what the facts are which you are to find based upon
20 your review of the evidence, and then I will
21 instruct you on the law at the conclusion of the
22 case.

23 All right, Mr. Meadors.

24 MR. MEADORS: May it please the Court.

25 THE COURT: Yes, sir.

1 MR. MEADORS: Mr. Brooks.

2 Mr. Foreman, ladies and gentlemen, good
3 morning. Again, thank you for being here. I told
4 you this might be a short trial, but it does not
5 take away from the importance. Thank you for being
6 here; thank you for listening. I'm gonna be very
7 short right now. This is called an opening on the
8 law, and I'm gonna briefly tell you what the law is.
9 His Honor, as I talked to you earlier, is the law in
10 this courtroom and he will instruct you at the end.
11 After I'm through Mr. Brooks will be allowed to come
12 up and tell you what he believes the facts are and
13 the reasonable inferences. And then because we have
14 the burden of proof the State will be allowed to
15 come back and talk to you about the facts and what
16 we think the reasonable inferences are. Please
17 listen to Mr. Brooks. Listen to me when I come
18 back, and then you'll make a decision that I'll talk
19 with you a little bit more about it with y'all when
20 I come back up here.

21 The law, criminal solicitation of a minor.
22 I really think you can take the definition from the
23 statute, put these facts in there, and that's what
24 it is. To communicate or contact — well,
25 intentionally a person under the age of 18. If

1 you're over the age of 18 — well, there's no
2 dispute here it's 38 and 14, person under the age of
3 18. Communicating or contacting a person -- in this
4 case 14 years of age — for the purpose of
5 persuading, inducing, enticing, or coercing,
6 persuading, inducing, enticing, or coercing this
7 victim, this young person, to engage in a sexual
8 activity. His Honor is going to define sexual
9 activity. One of those definitions is oral
10 intercourse. Sorry about some of the language and
11 what's going on, but this is the real world that
12 Wal-Mart, fortunately or unfortunately,
13 unfortunately, sexual activity, oral intercourse.
14 If you believe that, believe that's what he was
15 deciding to do, then the State has met its burden of
16 enticing, persuading, trying to get a young man to
17 let him perform oral sex on him. It says "or". And
18 you don't have to have both or of coercing him to
19 engage in a violent crime. In this case it'd been
20 to complete a lewd act, but you don't have to have
21 even both of them. Persuade, enticing, coerce, let
22 give him oral sex. Sexual act. If you believe
23 those facts, believe that's what happened, he's
24 guilty. That's the law.

25 The burden beyond a reasonable doubt,

1 listen to His Honor's charge to be. You've heard
2 all the evidence. If you're firmly convinced of the
3 defendant's guilt then that oath Mr. Bradley gave
4 you, you must find him guilty. If on the other hand
5 you believe there's a real possibility he's not
6 guilty you must find him not guilty. And it's all
7 blended in with those two beautiful words I talk
8 about, and I'm gonna talk about some more when I
9 come back. Common sense.

10 What else is important here? It's
11 important in this case — and really, maybe seem
12 more, direct evidence in this. You got to see
13 testify. I'm gonna talk about this some more. You
14 got to evaluate the demeanor, the credibility.
15 That's what you're gonna decide it on. The Judge is
16 going to charge you on credibility. Believability.
17 You can believe all what somebody says, part of what
18 they say [but you use your background experiences as
19 you come in here and you say, y'all gonna decide it,
20 you know what the truth is by watching him. You'll
21 go back there and talk about it. You listen to
22 them. Credibility and believability. Every case
23 that comes down to comes down to this cases and
24 y'all are less than 10 feet from it.

25 The judge is also going to charge you on

1 intent. Every case, criminal case, the State must
2 prove intent. Now you can't go and open somebody's
3 head and look down at their brain and see what the
4 brain was thinking about it. The law knows that.
5 The law makes amends for that or says that State
6 doesn't have to prove that because you can't. So
7 you can prove intent, intent, by looking at the
8 facts and circumstances and then inferring. That's
9 just common sense knowing what to do at most time.
10 So what's intent? He comes and says, hey, I'm gonna
11 give you a blow job. Did he intend to engage in
12 sexual activity with him? Is that a reasonable
13 inference? Of course it is. That would be proof of
14 intent beyond a reasonable doubt if you believe
15 that.

16 Ladies and gentlemen, I'm gonna sit down
17 in a minute and come back when Mr. Brooks is
18 through. I again want to thank you. Remember now,
19 I used to say it last. You heard the word verdict.
20 Speak the truth. And that's beautiful, isn't it?
21 Just speak the truth. That's all we can ask of you.
22 Whenever I come back I'm going ask you to return a
23 verdict that speaks the truth in the case. Thank
24 you.

25 THE COURT: Mr. Brooks.

1 MR. BROOKS: Ladies and gentlemen of the
2 jury, this is my last time I get to address you.
3 Again, like Mr. Meadors, that's our job as
4 attorneys. And obviously I'm representing my client
5 Russell who's been seated over there at the table
6 and we've had opportunity to hear from him. Ladies
7 and gentlemen, my client didn't have to take the
8 stand. He has the right to remain silent and sit
9 there and could have just sat there and said, look,
10 I'm not going to present any evidence, I'm not going
11 to say anything. He didn't have to do that, and he
12 did. He got up on the stand and told you what
13 happened. And basically, even though you got a
14 number of people sitting at this table on this side,
15 when you really break it down you really got one
16 person saying Russell said this. And you got
17 Russell saying, I didn't say anything, this is what
18 actually happened. So you know you got all these
19 other people that testified that, you know,
20 Mr. **Victim** came up to them, told them what happened
21 and saw Russell walk out, got his license plate.
22 All those people really don't know what happened in
23 the bathroom or outside of the bathroom.

24 Now bear in mind, this is Wal-Mart here in
25 Sumter on a Saturday somewhere near the holiday

1 season. I don't know if it was thanksgiving, before
2 Thanksgiving, or after Thanksgiving. So presumably
3 you're talking about other people in the store. We
4 don't have anybody else to testify that they saw
5 these two interacting. Out of all the people that
6 presumably would have been at Wal-Mart we have
7 nothing else to present. And what the State is
8 asking you to do, is they're asking you to just
9 simply take this young man's version of events and
10 disregard Russell's version of events that took
11 place.

12 Now bear in mind, it's their burden; we
13 don't have to prove anything. They're the one that
14 have the burden of proof. They have to prove the
15 case beyond a reasonable doubt. Now like I told you
16 at the beginning, they got to put the ball in the
17 playing field. And all they got is one young man
18 who says, guy motioned me to come over and asked me
19 if I want a blow job. That's it. We could have sat
20 over there and said that ain't enough to prove their
21 case beyond a reasonable doubt, but we took it a
22 step further on our own. Russell got up on the
23 stand when he had no obligation to do so, and he
24 told you what happened. He told you what happened
25 with that interaction. He told you about what this

1 young man was doing. You have no evidence by the
2 State that they even checked that out. So a lot of
3 times what the State does, prosecution — and my
4 friend Mr. Meadors will probably do the same -- is
5 they'll argue to you and say use your common sense.
6 And a lot of times my response to that is when they
7 say use common sense is typically a code word for
8 help us out. We don't have a third witness, fourth
9 witness, who says they saw these guy over here and
10 so forth. That was just take this young man's, take
11 that as, take that as the gospel. And that's what
12 they're relying on you to do when we don't think
13 that's fair. We don't think that that's enough.

14 This young man said what he said. Russell
15 said, hey, this kid comes in, he's got, carrying
16 CDs, putting something in his pocket. I told police
17 once they stopped me. That's what he said on the
18 stand. And now the State is wanting you to
19 basically disregard that. They don't have any
20 evidence about whether or not that was said, whether
21 they actually fail or dispute that. Yet they want
22 you to basically disregard Russell's testimony and
23 give them proof beyond a reasonable doubt. Ladies
24 and gentlemen, that's not enough.

25 In this country we live in the defendant

1 Russell Early comes into this courtroom presumed
2 innocent. Any ties go through the rough. And what
3 I mean by that is, well, we got he said he said.
4 Naw, I don't know, I have an opinion, it might have
5 been — that ain't enough. I might have an opinion.
6 Well, he might have been telling, then he might have
7 been telling the truth. If you got that in your
8 head that's doubt, that's reasonable doubt. And we
9 would submit to you that it would be unfair for you
10 not to have that doubt. Because that's the whole
11 entire state and all them you to do is take this
12 young man's word, no more, no less. Nobody checked
13 out Russell's story. Russell told you what
14 happened. Nobody checked it out. Mr. Meadors
15 wanted to make a big deal about, well, Russell, when
16 you were testifying you had these other people
17 supposedly came in with you, who were they? Russell
18 told you who they are. Do you have anything from
19 the State saying they checked those people out?
20 Mr. Meadors tried to make a big deal about he said
21 the Mexican restaurant, that it was closed. And of
22 course, you will recall I asked Russell is the
23 restaurant across the street next to Legacies. That
24 restaurant kind of changed a few times. That's a
25 Mexican restaurant. Yes. That's where you were:

1 Yes, that's where we were.

2 So the point is, while the State has this
3 young man come in and say this is what happened,
4 that's all they have. And that's all they hang
5 their hat on and want you to believe to basically to
6 Russell's detriment, for you to basically turn a
7 blind eye to what that gentleman got on the stand
8 and said about what happened. I don't know why they
9 didn't check that out. He testified that he didn't
10 have to. And now they want you basically say please
11 forget about that, look at these holes here, and he
12 say/he say, well, let's go with this credible story.
13 Ladies and gentlemen, it's their obligation. They
14 have to prove the case to you beyond a reasonable
15 doubt. They have nothing. And despite hanging all
16 that aside versus no relationship aside, all of the
17 people don't have any idea what occurred in the
18 reasonable interaction in the bathroom in Wal-Mart
19 just outside the bathroom. Nobody else. They don't
20 give you anybody else that put the two there. They
21 don't give you anybody else that would say, I saw
22 Russell motion to Mr. Victim to come over here.
23 And here again, this is Wal-Mart. You know, we all
24 know Wal-Mart. I have yet to go in Wal-Mart and not
25 see they're busy on 7:00 on Saturday. And what I

1 mean by busy, I'm not saying packed wall to wall;
2 but there's going to be other people, enough people
3 in there that somebody else had seen this
4 interaction. And there's nobody else that the State
5 presents. And remember, it's their burden to prove
6 this case.

7 Mr. Meadors is going to get up here after
8 me, just like he said, he has the burden of proof.
9 And that's what I do. The tide goes to the run. We
10 are presumed innocent, we don't have to prove to you
11 that Victim [REDACTED] was in there with CDs in the
12 bathroom. They got to prove beyond a reasonable
13 doubt that Russell said these things to Victim [REDACTED] And
14 that's all you got. You don't even have any other
15 witnesses. You don't have surveillance video or
16 anything like that. When you put these two in a
17 bathroom or just outside the bathroom to show
18 they're walking in approximately around the same
19 time. And just like Mr. Meadors said, this is a
20 serious case, and we think it's a serious case. And
21 if it's a serious case they could have presented
22 that, that you don't have. And yet, that's why the
23 prosecutor say we want you to use your common sense.
24 We want you to help us out. That's what common
25 sense is, code word. We might have a hole there

1 that you might have a question about that might
2 cause you to have doubt. Well, use your common
3 sense. What that means, help us out a little bit.
4 That's what that means. They don't say it, but that
5 is really what that means.

6 Now Mr. Meadors, he gets the last word and
7 he'll come up and he'll hound on the demeanor in the
8 witness chair. But you know what, the twelve of you
9 guys saw that and you saw Mr. **Victim** demeanor in
10 the witness chair and you saw his demeanor when I
11 asked him questions. And you saw Russell's demeanor
12 in the witness chair. You saw his demeanor when Mr.
13 Meadors asked him questions. Now bear in mind, is
14 Russell an angel? No. He testified that, yes, he
15 had been to prison for bank robbery. And if you
16 recall I asked him, I said, how did you get in that
17 case. I pled to it. Why did you plead to it?
18 Well, I did it. Well, why you ain't plead to this?
19 Well, I didn't do this, Mr. Brooks, plain and
20 simple. Okay. And we don't have to come in here
21 and prove to you that Russell is an angel. He's
22 not, and he told you he's not. But what this lawyer
23 here says he asked this young man, do you want a
24 blow job. He submitted to you that he did not do
25 that, and the State doesn't have anything else that

1 says otherwise other than one young man. Ladies and
2 gentlemen, that ain't enough. That simply is not
3 enough. Thank you.

4 THE COURT: Mr. Meadors.

5 MR. MEADORS: May it please the Court.

6 THE COURT: Yes, sir.

7 MR. MEADORS: I want you to listen and
8 evaluate everything that defendant said. I want to
9 run from that. I want you to think about it,
10 dissect it. We're gonna talk about it 'cause I
11 think that was the most powerful evidence for the
12 State, and I'm going to go over it with you in
13 detail. It's November 22nd of 2008, ladies and
14 gentlemen. Victim — and this happens in a
15 lot of sexual assault, criminal sexual solicitation
16 cases. It's why I think respectfully some victims
17 don't come forward with it. This is the victim in
18 this case. It's not the State of South Carolina
19 versus Victim He's the victim. He was with
20 his mom and his grandma. He just served as an altar
21 server at the church and they're coming to Wal-Mart.
22 Go by Lenscrafters and the decide to come into
23 Wal-Mart. She goes to get some groceries. He's
24 going to the GM side which we find out is the
25 general merchandise side to look at electronics,

1 whatever electronics, what a 14 year old boy young
2 man would be looking for. They're coming in.

3 Ladies and gentlemen, this does boil down
4 to credibility and believability, and I'm not
5 sending you a code word. Just to be clear for the
6 record, this isn't a code word to use your common
7 sense. I'm not asking you to help me. This isn't
8 about me. It's about the victim, and it's about
9 doing what's right and deciding. I'm not sending
10 you a code word. I'm asking you to use your common
11 sense because that's what you do in life, and
12 there's nothing wrong with that. And that's a smoke
13 screen him saying I'm going to do that. See through
14 that.

15 She's going to buy him something. Arlene
16 Corbin is coming back, I'm gonna buy you something.
17 That's pretty significant. I'm going to buy you
18 something, go pick out what you want. Totally
19 inconsistent with the defendant getting up here and
20 saying, whoa, whoa, he was gonna steal something.
21 I'll get to that in a minute it; I promise you.
22 He's gonna steal something in front of his grandma?
23 She's going to buy him something. Does that make
24 any sense?

25 He goes to the bathroom, says he sees

1 Early out there, walks in. Early comes behind him.
2 And he's talking about, again, is that no one else
3 there but the victim and the defendant. That's real
4 life sometime. Behind me. You don't punish the
5 victim for that. You then look, okay, what else do
6 we have to corroborate it. We evaluate the
7 defendant's testimony, who's telling the truth?
8 That's what you have to do. He goes to the
9 bathroom, 14 years old, hey, what's up. They say to
10 each other, (inaudible), you don't know the fella.
11 Uses the bathroom and he says he's just standing
12 there, just standing there. You feel awkward?
13 Yeah. He was in the department according to that
14 store it was the YGM is where he was in, the youth
15 guide merchandise. He was in the part of the
16 department store he wanted to be. And so he follows
17 him in there. And what does, what does **Victim** say? I
18 didn't even wash my hands. You raised to wash your
19 hands by your grandmama at boy scouts? Yes, sir.
20 Nervous, didn't wash my hands. He leaves. He then
21 goes and he says, I sneezes. And I don't think he
22 made this up. I mean, he sneezes and -- excuse me,
23 I'm sorry, snot comes out and he's gotten it on his
24 hands. And he says he goes back into the bathroom
25 he doesn't know if the defendant is there or not,

1 not thinking about that. He goes back into the
2 bathroom the defendant still there. Now here's
3 where Mr. Brooks in his cross-examination of the
4 defendant goes on and on about how big he is, how
5 well he is in sports, are you athletic. Well,
6 what's that go to do with whether he was — someone
7 trying to get him to let them put his penis in his
8 mouth? Is he trying to say you're big enough he
9 shouldn't let? I don't know where all that was
10 coming from, but he comes back in to wash his hands
11 and said Earley is still there. He comes out and
12 again, now, again, I'm not sending you a message,
13 I'm not asking for your help, but use your common
14 sense when you come out. You think Early is going
15 to scream it out and say, hey come over here, you
16 want a blow job. I mean, is that what you do when
17 you're trying to get any person to do it? No.
18 Talking about all these other people out there.
19 That's not the real world. He calls him over. Do
20 you want a blow job? Do you want a blow job? You
21 want a blow job? He points to his genitals. And a
22 14 year old boy who said he's scared says, hell no,
23 fuck you. That's real. You can't make that up.
24 Don't want your help; use your common sense.
25 You know, I was thinking about this last

1 night. I think maybe, and I think it's inferential
2 that if Early was in that bathroom, then they left,
3 comes back, maybe in his mind -- I don't know, this
4 makes sense to me. Maybe in his mind he thought
5 that **Victim** was coming back because he wanted it; I
6 don't know. **Victim** wasn't coming back, didn't know he
7 was there, just wanted to wash his hands.

8 What happens next? What do we tell, what
9 are victims told by the momma, grandmama by the boy
10 scouts. What are they told? What do we teach our
11 youth? This is Wal-Mart. Does the child have a
12 right to go to Wal-Mart at 7:00 and use the bathroom
13 without somebody coming up and saying can I give you
14 a blow job? Yes, ma'am, yes, sir, he does. It
15 shouldn't happen, doesn't need to happen. Needs to
16 stop today, period. What does he do? What does he
17 want to do? What does he do immediately? He goes
18 to authorities. I mean, he goes straight to
19 authorities. Doesn't have anything stolen on him.
20 Doesn't make sense. He goes straight to
21 authorities. Customer service, what do they do?
22 Thomas Gales, god bless him, he's here. Tells you
23 what happens. This is a child. Looks at that
24 picture of a young kid, didn't want to leave him
25 there by hisself later. What does he do? He tells

1 him what happens. That's good. Something happens
2 to a victim, they tell somebody. I tell you what,
3 if they didn't they'd definitely scream it. They'd
4 tell him (inaudible) jam your neck down your throat.
5 Now you got it right when it, tells it right when it
6 happens. Is that fair? He goes and tells, this is
7 what happened. And guess what, there's the guy,
8 plaid, blue jeans, that's him. What does Thomas
9 tell you? He's walking steadily out the door. I
10 don't remember what it was, going out, nothing in
11 his hand. That will come in later when he has to
12 come up with a story about family being there. I
13 don't know if they were or not, it doesn't matter,
14 not going through this. I submit to you that's a
15 story they'll be giving. Leaving Wal-Mart, nobody
16 else around him, nothing in his hand, walking
17 steadily. And we don't lose sight of him. They
18 know that. They took the stand, conceded that — I
19 don't know whether he was (inaudible). He goes
20 outside, Mr. Gales does, sees him get in the white
21 — sees the white truck, calls law enforcement, gets
22 the tag, be on-the-lookout for, tells Kevin, tells
23 somebody, they call out. Sees him come out of
24 Wal-mart, take a right on Alice, go up to Broad and
25 take a left. Low and behold — police get a bad

1 name sometime. Walks over here; Allen's over here.
2 Hears the bolo, looks up, he's coming up out of the
3 drive, there it is. Puts on his blue light, pulls
4 him over, he stops him. Gets him out of the car,
5 less than ten minutes from the time of the incident,
6 the sergeant, the corporal sergeant testified to.
7 **Victim** is then driven by -- and this isn't in dispute.
8 I mean, it's not an I.D. case of whether they're in
9 the bathroom. See, a lot of time -- he even admits
10 he's in the bathroom at than one time. Said
11 (inaudible) confessed and said, I was there, I
12 didn't do it. And he's not contesting this bolo.
13 Yeah, they came by, yeah, he was there, he did it,
14 he showed it to me. That's the guy, less than a few
15 minutes. That's him. He's arrested. Allan takes
16 him down to booking, gives him a ticket, he's given
17 a warrant a couple of days later I believe his
18 testimony is. He says, **Victim** says, he then goes out,
19 he says takes the victim paper to him just to advise
20 of their rights, bond setting, that sort of thing.
21 And I ask him, I said, well, State's 1, is that what
22 he looked like then? Yeah, just a kid. He tried a
23 little bit, trying to get him up to 21 years. I
24 don't know why, maybe trying to explain his actions.
25 A child. Two days later he gives a statement. The

1 rules don't allow that to come to y'all, but he
2 gives a statement, whatever. Mr. Brooks goes on and
3 on and on about you said McLaughlin Ford. Well, if
4 that bothers you let him go. That's not a
5 reasonable doubt; that's reality. It was a
6 dealership right there at Wal-Mart. It's not in
7 dispute. He says too later it was McLaughlin Ford.
8 If that bothers you then let him go. That's not a
9 reasonable doubt. He's trying to sit down and make
10 you think it is. Did you put in there about going
11 to the bathroom? Yes. Did you put in there about
12 leaving? Yes. Did you put in there that you
13 sneezed in your nose and it came out? Yes. Did you
14 put in there he was still in there? Yes. When he
15 came back out you put in there he called you over
16 and said -- you don't want me to say it, I don't
17 need to say it no more. Yes. What happened? Well,
18 I went by McLaughlin Ford. It's not perfect. Well,
19 that's good, there needs to be something exactly
20 perfect. It's not true, but it's the truth. Don't
21 hold that against him.

22 You know what else? I believe we've met
23 our burden. I don't believe we met it beyond a
24 reasonable doubt; I think we met it beyond all
25 doubt. You got to see the defendant take the stand.

1 And again, I want you to hear every word. I want
2 you to think about it.

3 And folks, reality is, in cases like this,
4 one person gets the other. Because somebody gets up
5 and says I didn't do it, well that in and of itself
6 is not reasonable doubt. If that was true anybody
7 can say that. You have to look at their actions,
8 their inactions, their statements, their demeanor.
9 See if that non — see in that common sense. It's
10 in that common sense. And I'm not asking for your
11 help; I'm just asking you to evaluate the evidence.
12 'Cause if they're not telling the truth one time, in
13 here you got to see three nontruths, lie. I mean,
14 it was lie. I've never seen it before. You can
15 evaluate his demeanor. Well, if he's lying then, I
16 can think he's probably lying here and that's the
17 only way to do it. And what did you see lying up
18 close and personal in this court? And he says for
19 the first time, in here, I was with his family. His
20 family, we were going to look for birthday presents.
21 And Mr. Brooks said, well they didn't bring these in
22 here. I didn't know that till yesterday. Thanks a
23 lot. How am I supposed to go find out? I think
24 it's a lie. Your common sense will tell if you go
25 in with a bunch of people like at Wal-Mart 5 or 7,

1 you go and you can't find a birthday present. Did
2 you go to Kmart? You go to a restaurant (inaudible)
3 I think he's making up stories as he goes along.
4 And once he's caught and once it doesn't fit that he
5 changes it. He did that in front of y'all; I'm
6 gonna show you that. And that's why you can't
7 believe it. That's why you got to believe **Victim**
8 that's why this happened.

9 Where's the family? Did they get up and
10 testify and say, where's the family. I'm allowed to
11 argue that since they got up and testified. Think
12 they'd brought have them in here if they'd been with
13 him? He's by himself. Puts that in there because
14 he's leaving with no merchandise. That doesn't look
15 good after you've tried to proposition a young man.
16 That's the first, respectfully, lie I think he was
17 caught in here. He tries to say 'cause he knows
18 he's got be back, **Victim** has got to be waiting outside
19 the bathroom. He says — and I'm not mentioning, I
20 believe y'all remember 'cause y'all remember — he
21 says I saw him taking a CD. You remember? He says
22 I saw him taking a CD apart. Cross is not that
23 difficult unless you ask questions. Well, okay, I
24 didn't know that, tell me about it. Did you see the
25 CD? Well, no, I heard plastic. You heard plastic.

1 So you didn't see the CD like you said? No, I
2 didn't see it, I heard plastic. Well, do you know
3 what it was? Well no. I said, well could it have
4 been some gum? Yeah, it could have been gum. You
5 don't really know what it was, do you? No, I don't.
6 Trying to make y'all think a story made up 'cause he
7 knows he got caught. He knows this person stood up
8 to him and said, no, and went and told. He's trying
9 to tell now, yeah, I saw him with the CD. But when
10 he was pressed, he was pushed, I don't know what it
11 was, you have no idea what was in there. And go
12 back again tonight, the code word, thanks for your
13 help. Common sense. If **Victim** had stole something
14 and he says he's at the scene, you think he's going
15 to be up there with a stranger right here taking
16 open a CD letting him see it. He probably went in
17 the stall with it. Remember, his grandma is
18 buying him something; it's just ridiculous. It's a
19 story trying to explaining this and to turn it
20 around and make him the bad guy. Isn't that what
21 you do when you control, you make them look like
22 doing something wrong, you divert it. Kids do it.
23 And this time the adults doing it after he's tried
24 to molest the kid. Caught him in a lie on that.

25 Thomas Gales right here, asked him, Gale,

1 you remember this fella? He said yes. Do you
2 remember following you out? You remember following
3 him out to the truck? Yes. Then I think it hit,
4 him, well, that doesn't make sense. Tell CD story
5 to income probably should have department tell me
6 about the story. And he's gonna say, well, you
7 know, just take care of yourself, I just, you ought
8 not do that. He walks out and then he says, well,
9 no, I didn't see that. There's just a bunch of
10 people coming out because he knows he saw it. You
11 saw his first reaction. He knows that he saw him if
12 that was the real story, he should have told him,
13 but he didn't because it's a lie so he changed up
14 there in front of you. And that's what you have to
15 decide credibility on. There's no way I can show to
16 you, no way I can prove it to you. He proved it to
17 you, said this was asked about it, changed totally,
18 two times right in a row. That means, respectfully,
19 he's not credible. How's he do it?

20 Now this one, and the judge is going to
21 charge you and I'm gonna be very clear. I'm not
22 asking you, if you cannot say he is more likely to
23 have committed this offense because he has these
24 bank robberies; you can't. I'm not asking you to.
25 But what the law allows and what the judge will tell

1 you is, you are allowed to consider those in
2 evaluating his credibility which is what this case
3 is about, and I would ask you to do that. On direct
4 I'd say it was intentional. Asked him, well you had
5 one, hadn't you? Had one. On cross, how many have
6 you had? Nine? Is that a (inaudible) saying from
7 direct to cross? Not one time. You can consider
8 that in evaluating his credibility and
9 believability. I don't think he wanted to talk
10 about it. Evaluate it for his credibility,
11 believability. (Inaudible.) Y'all know what that
12 stands for.

13 This will be lie number four, three or
14 four. Depending on what you want to count
15 reasonable. Three in front of me. Decide judge
16 this is the real Russell Scott Early. You can't
17 make this up, and I don't think he can make this up.
18 I just don't think he can. And it's a continuation
19 of what happened in Wal-Mart. He can't help it,
20 doesn't justify it. I can't explain it. He's going
21 after a young man trying to get him to put his penis
22 in his mouth. And I'll tell you that, you know,
23 it's serious. He knows it's serious. That's why
24 he's trying to lie his way out. And so I ask you,
25 you didn't know this child before then. This was a

1 random victim taken from the night, trying to be
2 taken from the night. He stood up to him. He's
3 known him before, hadn't seen him before now. And
4 based on I'm just trying to say no, good or bad, he
5 just didn't know him. Hadn't talked to him since,
6 have you? Important. Have you talked to him since
7 directly or indirectly? No, sir, have not. And
8 what do y'all think that? Had not. Hadn't talked
9 to him direct or indirect. Last Monday, Mr. Earley.
10 This is the point -- I've never seen this before.
11 Last Monday this case was called it was continued
12 for administrative reasons; wasn't it, Mr. Earley?
13 Yes, sir, it was. Last Monday after that on
14 Facebook, Facebook, you contacted the victim in this
15 case. Yes, sir. Sincere? Yes, sir. So you lied
16 about not having direct or indirect contact. Right
17 in front of you, number four, three or four. It's
18 all about credibility, believability. Why did you
19 do that? I don't know. Didn't really have a good
20 answer to start with, maybe he just wanted to say
21 hey, I don't know. Were you trying to make him feel
22 bad. Do you think it might have intimidated him,
23 you're own trial, he's the witness, said you did
24 this. And what does he finally say? You can't make
25 this up. You stood up to me, you were told I'm

1 telling the story now about CDs or some other junk
2 trying to put the blame back on him. Why did you
3 put it on there? His time will come. That's the
4 real Russell Scott Early. He's still doing it,
5 can't help it. It's still threatening. I mean, it
6 is. A trial is going on and you're sending a
7 massage. He's worried about his testimony, his
8 credibility. It's insulting. You think that's not
9 a threat? You think that's not a threat? He's
10 going to go straight to law enforcement when his
11 momma is gonna buy him something, CDs (inaudible).
12 Is that the case here? Ladies and gentlemen, I'm
13 about through. On November 22nd, 2008, Victim
14 did what he was taught to do. He went and told.
15 Thank goodness he did. Thank goodness he was taking
16 control of it, go somewhere at the coercion,
17 insistence of a man who is 34, 38 years old, didn't
18 get assaulted that night. Thank God he didn't.
19 Thank God he didn't. 'Cause he said no. He said
20 no, and he went and told on him. He said this needs
21 to some. Thomas Gales said it needs to stop. Allan
22 Stewart says it needs to stop. And they stopped.
23 When I was younger my dad gave me a book and I still
24 have it. I left it downstairs. I meant to bring it
25 up here. It's called your greatest power. Your

1 Greatest Power. Basically the book outlines which
2 I've learned as I've gotten older, your greatest
3 power is the power to choose. What's your greatest
4 power? You're lying, the choices you make is your
5 greatest power. You decide what you are going to
6 do. You decide decisions. You suffer the
7 consequences. I made that decision and I'm going to
8 suffer the consequences. But your greatest power is
9 the power to choose. He chose, he chose to go after
10 church to look at some merchandise. He chose to try
11 and go get oral sex. He then chose to stand up to
12 him, stand up to him. He then chose to threaten
13 him. He's making evidence. He's making evidence.
14 Good evidence was. But he chose to do that.

15 And Mr. Earley, your time has come and
16 it's time for you to make your choice. And I don't
17 ask you to do it 'cause I'm sending you a code word
18 because this is a strong case, a strong factual case
19 from a young man that got only cross-examined on he
20 asked one question about what he said, or all he
21 asked about was how big he was, how he played sport.
22 He got up, was credible, consistent, versus Russell
23 Scott Early I got caught in lies, changed his
24 stories so they didn't fit just because he was
25 trying to shame on what he's done. But now it's

1 time for you to choose.

2 Ladies and gentlemen, please use your
3 common sense when you go back there listen and
4 evaluate and decide what's right. And with your
5 verdict come back like **Victim** Thomas, Allan, Kevin,
6 and put it all together. He was there waiting with
7 your mama, waiting till they came back. Yeah, he's
8 just a kid, kid. Everybody says he's a kid except
9 Russell Early, he's got him up to 21. He was back
10 there walking with grandmama and ma was helping him.
11 It's got to stop. It's got to stop. Tom, it's got
12 to stop. Ladies and gentlemen, with your verdict,
13 when you go back there I'm respectfully asking you
14 based on the evidence you heard, the evaluation of
15 the demeanor, that your verdict says it's gonna
16 stop, you're guilty of criminal solicitation of a
17 minor. Thank you.

18 THE COURT: Ladies and gentlemen, all of
19 the evidence in this case has been presented to you.
20 The attorneys have made their closing arguments and
21 now is the time in the trial that I will charge you
22 with the law to be applied in this case. The
23 indictment in this case charges the defendant with
24 criminal solicitation of a minor. I remind you that
25 the fact that the defendant was arrested, charged,

1 and indicted in this case is not evidence in this
2 case and cannot be considered by you as evidence of
3 guilt in this case; nor does the defendant's arrest,
4 charge, or indictment create any presumption or
5 inference of guilt. The indictment is simply the
6 formal written instrument which contains the charge
7 against the defendant. It is the formal document by
8 which this case is brought into this court.

9 The defendant pleads not guilty to this
10 indictment. That plea puts the burden on the State
11 to prove the defendant guilty. A person charged
12 with committing a criminal offense in South Carolina
13 is never required to prove his innocence. I charge
14 you that an important rule of the law is that the
15 defendant in a criminal trial, no matter what the
16 seriousness of the charge, may be or will always be
17 presumed to be innocent of the crime from which the
18 indictment is issued unless guilt has been proven by
19 evidence satisfying you of that guilt beyond a
20 reasonable doubt. Presumption of innocence does not
21 end when you begin your deliberations, but it
22 accompanies the defendant throughout the trial until
23 you reach a verdict of guilt based on evidence
24 satisfying you of that guilt beyond a reasonable
25 doubt. The presumption of innocence is like a robe

1 of righteousness placed about the shoulders of the
2 defendant, which remains with the defendant until it
3 is stripped from the defendant by evidence
4 satisfying you of the defendant's guilt beyond a
5 reasonable doubt. Presumption of innocence is not a
6 mere legal theory. It's not just a legal phrase.
7 It is a substantial right in which every defendant
8 is entitled unless you, the jury, are satisfied from
9 the evidence of the defendant's guilt beyond a
10 reasonable doubt.

11 And what is a reasonable doubt in the law?
12 A reasonable doubt is the kind of doubt that would
13 cause a reasonable person to hesitate to act. Proof
14 beyond a reasonable doubt is proof that leaves you
15 firmly convinced of the defendant's guilt. We know
16 very few things in this world with absolute
17 certainty. And in criminal cases the law does not
18 require proof that overcomes every possible doubt.
19 Based on your consideration of the evidence if you
20 are firmly convinced that the defendant is guilty of
21 the crime with which he has been charged you must
22 find the defendant guilty. If on the other hand,
23 you think a real possibility exists that the
24 defendant is not guilty you must give the defendant
25 the benefit of the doubt and find him not guilty.

1 I remind you that during this trial you
2 and I have certain duties to perform. As the judge
3 my responsibility is to preside over the trial of
4 this case. I also have the duty to rule on the
5 admissibility of evidence offered during this trial.
6 You are to consider only the competent evidence
7 before you. If any testimony was ordered stricken
8 from the record in this case during this trial you
9 must disregard that testimony. You're to consider
10 only the testimony which has been presented from the
11 witness stand, any exhibits which have been made
12 part of the record in this case, any stipulations of
13 counsel.

14 I have the additional duty to charge you
15 the law applicable to this case. As the judge I am
16 the sole judge of law in this case. Your duty as
17 jurors is to accept and apply the law as I now state
18 it to you. If you have any idea as to what the law
19 is or what the law ought to be and your idea is
20 different from what I tell you the law is, you must
21 disregard your idea of what the law is or ought to
22 be because you were sworn to accept the law and
23 apply the law exactly as I state it to you.

24 In every case tried in this court before a
25 jury the jury is the sole and exclusive judge of the

1 facts in the case. A judge cannot intimate, state,
2 comment on, or make any statement to a jury about
3 the facts in a case. Since you, the jury, are the
4 sole judge of the facts in this case you're not to
5 infer from what I have said during the progress of
6 the trial and rule on the admissibility of evidence
7 or otherwise, or anything that I say now during the
8 course of this instruction to you that I have an
9 opinion about the facts of this case. The law does
10 not allow me to have an opinion about the facts in
11 this case. This is a matter solely for you, the
12 jury, to determine.

13 As jurors your duty is to determine the
14 effect, value, weight, and truth of the evidence
15 presented during this trial. Necessarily, you must
16 determine the credibility of witnesses who have
17 testified in this case. Credibility simply means
18 believability. Your duty as jurors is to analyze
19 and to evaluate the evidence and determine which
20 evidence convinces you of its truth. In determining
21 the believability of witnesses who have testified in
22 this case you may believe one witness over several
23 witnesses or several witnesses over one witness.
24 You may believe a part of the testimony of a witness
25 and reject the remaining part of the testimony of

1 that same witness. You may believe the testimony of
2 a witness in its entirety or reject the testimony of
3 a witness in its entirety. You may consider whether
4 any witness has exhibited to you any interest, bias,
5 prejudice, or other motive in this case. You may
6 also consider the appearance and manner of a witness
7 while on the witness stand. Evidence has been
8 presented that a witness made prior statements which
9 are not consistent with the witness' present
10 testimony. You may use this evidence to decide
11 whether to believe the witness. You may also use
12 evidence of the earlier contradictory statement to
13 determine the truth of that statement. You are to
14 decide whether to believe the earlier statement or
15 testimony given at trial. If a witness is shown to
16 have knowingly testified untruthful concerning any
17 material matter you may consider this in determining
18 whether to trust the witness' testimony as to other
19 matters. You may reject all of the testimony of
20 that witness or give all or part of the testimony
21 the weight you think it deserves.

22 You have heard evidence that the defendant
23 was convicted of a crime other than the one which
24 the defendant is now on trial. This evidence may be
25 considered by you, if you conclude it is true, only

1 in deciding whether the defendant's testimony is
2 believable and for no other purpose. You must not
3 consider the defendant's prior record as evidence of
4 the defendant's guilt of the charge in this case.

5 In order to establish criminal liability
6 criminal intent is required. For example, the
7 mental state required to be proven by the State for
8 a particular crime might be purpose, intent,
9 knowledge, recklessness, or criminal negligence.
10 Criminal intent must be proven by the State beyond a
11 reasonable doubt. Criminal intent is always a
12 matter that must be determined by the jury from the
13 circumstances surrounding the situation. There is
14 no way to prove intent to a mathematical certainty.
15 There's no way medical science can dissect a
16 person's brain and determine what the person had in
17 mind so the law says that criminal intent may be
18 inferred in circumstances shown to have existed.
19 This is how you make a determination of whether or
20 not the element requiring intent is present.
21 Criminal intent is not apt to be established by
22 direct and positive evidence, but intent may be
23 established by inference in the same way as any
24 other act by taking into consideration the acts of
25 the parties and all the facts and circumstances of

1 the case. Criminal intent is a mental state, a
2 conscious wrongdoing. You are to determine what the
3 defendant intended to do based on the circumstances
4 shown to have existed. Criminal intent can arise
5 from an action or a failure to act. It may arise
6 from negligence, recklessness, or indifference to
7 duty or to consequences that is considered by the
8 law to be the equivalent of criminal intent.

9 As stated before, the defendant has been
10 charged with criminal solicitation of a minor. A
11 person 18 years of age or older commits the offense
12 of criminal solicitation of a minor if he knowingly
13 contacts or communicates with or attempts to contact
14 or communicate with a person who is under the age of
15 18 or a person reasonably believed to be under the
16 age of 18, for the purpose of or with the intent of
17 persuading, inducing, enticing, or coercing a person
18 to engage or participate in a sexual activity or
19 violent crime, or with the intent to perform a
20 sexual activity in the presence of the person under
21 the age of 18 or person reasonably believed to be
22 under the age of 18.

23 Sexual activity includes oral intercourse.
24 Violent crime includes committing or attempting a
25 lewd act upon a child under 16. Under state law it

1 is unlawful for a person over the age of 14 years to
2 willfully and lewdly commit or attempt a lewd or
3 lascivious act upon or with the body or its parts of
4 a child under the age of 16 years with the intent of
5 arousing, appealing to, or gratifying the lust or
6 passion or sexual desires of a person or of a child.
7 Willfully means voluntarily and intentionally with
8 the specific intent to do something the law forbids.
9 Lewd means obscene, lustful, indecent, and
10 lecherous. Lascivious means tending to incite lust,
11 lewd, indecent, obscene, pretending to deprave the
12 morals in respect to sexual relations.

13 There are two possible verdicts which you
14 may find in this case. No significance whatsoever
15 should be given to the order in which I state these
16 verdicts to you. I simply have to say one first and
17 one second. The possible verdicts in this case are
18 guilty or not guilty. Ladies and gentlemen, your
19 verdict must be a unanimous one. Mr. McKoy, as
20 foreperson, when the jury agrees upon a verdict you
21 will write that verdict underneath the verdict
22 portion on the indictment. Then you will sign your
23 name and date it and then knock on the door and
24 advise the bailiff that the jury has reached a
25 verdict in this case. Now I'm gonna excuse you back

1 to the jury room at this point in time but please do
2 not begin your deliberations. I have to check with
3 the attorneys to see if they have any additions or
4 challenges to my charge to the law to you. If they
5 have and I deem they are appropriate challenges,
6 I'll bring you back out and instruct you. If there
7 are no additional charges to be given to you, then
8 we will send the indictment and the exhibits back to
9 the jury room and the bailiff will instruct you that
10 you can begin your deliberations at that point in
11 time. So I will send you back to the jury room.
12 Please do not begin your deliberations until the
13 bailiff instructs you to do so. Thank you very
14 much.

15 (WHEREUPON, the jury was removed from the
16 courtroom and the following
17 proceedings commenced in open court.)

18 THE COURT: Any exceptions to the jury
19 charge by the State that we've not already
20 addressed?

21 MR. MEADORS: No, sir.

22 THE COURT: Any by the Defense?

23 MR. BROOKS: No, sir.

24 THE COURT: Let's make sure we got all the
25 exhibits, and we'll go ahead and give you the

1 indictment and take the exhibits back with them to
2 begin deliberations.

3 (Attorneys review exhibits.)

4 THE COURT: Anything from the State before
5 we recess while they deliberate?

6 MR. MEADORS: No, sir. Thank you, Judge.

7 THE COURT: Anything from Defense?

8 MR. BROOKS: No, sir.

9 THE COURT: All right.

10 (Jury began their deliberations at 11:24 a.m. and
11 court was in recess.)

12 THE COURT: I understand the jury has
13 reached a verdict; is that correct?

14 MR. MEADORS: Yes, sir, Your Honor.

15 THE COURT: Anything from the State before
16 we bring the jury in?

17 MR. MEADORS: No, sir, Your Honor.

18 THE COURT: Anything from the Defense?

19 MR. BROOKS: No, sir.

20 THE COURT: All right, let's bring the
21 jury in.

22 (WHEREUPON, the jury was returned to the
23 courtroom at approximately 12:29 p.m., and
24 the following proceedings commenced in
25 open court.)

1 THE COURT: Welcome back, ladies and
2 gentlemen. Mr. McKoy, the jury reached a verdict
3 in this case; is that right?

4 THE FOREMAN: We have, Your Honor.

5 THE COURT: And have you completed the
6 verdict portion of the indictment, signed it, dated
7 it?

8 THE FOREPERSON: We have.

9 THE COURT: If you'd please hand that to
10 the bailiff.

11 (Verdict for tendered to the Court.)

12 THE COURT: All right. I ask you to
13 please publish the verdict.

14 Defendant, please stand.

15 THE CLERK OF COURT: For the State of
16 South Carolina, County of Sumter, in the Court of
17 General Sessions, the State versus Russell Scott
18 Early, indictment number 2009-GS-43-712. As to the
19 verdict: We, the jury, find the defendant guilty.
20 Signed Charles R. McKoy, foreperson, dated
21 July 19th, 2012. Ladies and gentlemen of the jury,
22 is this your verdict, if so, say you all by raising
23 your right hand please.

24 (Jurors complied by raising their right hand.)

25 THE COURT: Let the record reflect all

1 jurors raised their right hand. Any polling of the
2 jury?

3 MR. BROOKS: Yes, sir.

4 THE COURT: Ladies and gentlemen, we're
5 going to poll the jury at this point in time. What
6 this means is when your name is called, if you would
7 please stand and the clerk is going to ask you two
8 questions. The first question is going to be, is
9 this your verdict; and the second question is going
10 to be, is this still your verdict. If you would
11 please respond to those questions when your name is
12 called by the clerk.

13 THE CLERK OF COURT: Juror number 34, Joan
14 Davis, is this your verdict and still your verdict?

15 JUROR DAVIS: Yes.

16 THE CLERK OF COURT: Thank you. You may
17 be seated.

18 Juror number 35, Aishea Dickerson, is this
19 your verdict and still your verdict?

20 JUROR DICKERSON: Yes.

21 THE CLERK OF COURT: Thank you.

22 Juror number 22, Celeste Butler, is this
23 your verdict and still your verdict?

24 JUROR BUTLER: Yes.

25 THE COURT: Thank you.

1 Juror number 158, Susan Thompson, is this
2 your verdict and still your verdict?

3 JUROR THOMPSON: Yes.

4 THE CLERK OF COURT: Thank you.

5 Juror number 149, Deborah Smith, is this
6 your verdict and is it still your verdict?

7 JUROR SMITH: Yes.

8 THE CLERK OF COURT: Thank you.

9 Juror number 95, Charles McCoy, is this
10 your verdict and still your verdict?

11 JUROR MCCOY: Yes.

12 THE CLERK OF COURT: Thank you.

13 Juror number 172, Angela Williams, is this
14 your verdict and still your verdict?

15 JUROR WILLIAMS: Yes.

16 THE CLERK OF COURT: Thank you.

17 Juror number 16, Randy Brisbane, is this
18 your verdict and still your verdict?

19 JUROR BRISBONE: Yes.

20 THE CLERK OF COURT: Thank you.

21 Juror number 25, Christy Childers, is this
22 your verdict and still your verdict?

23 JUROR CHILDERS: Yes.

24 THE CLERK OF COURT: Thank you.

25 Juror number 75, Darryl Johnson, is this

1 your verdict and still your verdict?

2 JUROR JOHNSON: Yes, sir.

3 THE CLERK OF COURT: Thank you.

4 Juror number 179, Jennifer Wolfe, is this
5 your verdict and still your verdict?

6 JUROR WOLF: Yes.

7 THE CLERK OF COURT: Thank you.

8 Juror number 90, Tonia Major, is this your
9 verdict and still your verdict?

10 JUROR MAJOR: Yes.

11 THE CLERK OF COURT: Thank you.

12 Your Honor, the jury has been polled and
13 the verdict stands.

14 THE COURT: Thank you very much.

15 Ladies and gentlemen, that will not only
16 conclude your service as jurors in this particular
17 case, it also concludes your duty as jurors for the
18 week and I want to thank you sincerely for your
19 service as jurors. You provided an invaluable
20 service to the community; I want to thank you for
21 that. I'm gonna excuse you back to the jury room
22 for just a few minutes. We're done with this case;
23 however, I do like to come and personally thank the
24 jury, particularly in general sessions cases for
25 their services, because I know it's not an easy job

1 and I know it's not the way you wanted to spend the
2 last couple of days of your time but it is vitally
3 important. I'm gonna excuse you to the jury room.
4 I'll be back in just a few minutes to excuse you and
5 thank you for your services. Thank you very much.

6 (WHEREUPON, the jury was removed from the
7 courtroom and the following
8 proceedings commenced in open court.)

9 THE COURT: All right. Any post-trial
10 motions at this time?

11 MR. BROOKS: Yes, sir, Judge. We would
12 renew all of our post-trial motions that we had put
13 on the record at the close of the State's case, in
14 addition to asking the Court to set aside the
15 verdict.

16 THE COURT: All right. I note your
17 motions. I'm gonna deny them. There's sufficient
18 evidence to support the jury verdict. All right,
19 anything else at this time?

20 MR. BROOKS: That's it.

21 THE COURT: Let's just sit tight. If
22 you'd go ahead -- you got a sentencing sheet?

23 MR. MEADORS: I may need to get a new one.
24 I'll do that right now.

25 THE COURT: All right. I'll go back and

1 thank the jurors, see if they have any questions.
2 If you'd go ahead and get the sentencing sheet.
3 Mr. Brooks, any reason why we cannot go ahead and
4 impose sentence at this time?

5 MR. BROOKS: No, sir.

6 THE COURT: All right. Let's take about a
7 five minute recess while Mr. Meadors gets a
8 sentencing sheet. He'll back in just a second and
9 I'll be back in just a moment.

10 (WHEREUPON, a recess was taken from the
11 proceedings.)

12 THE COURT: The defendant or anybody that
13 wants to speak on his behalf?

14 MR. BROOKS: Judge, I just talked to his
15 folks. They just stand in support. They don't have
16 anything to say other than just want to make you be
17 as merciful as possible as far as his sentence is
18 concerned. My client, he prefers not to say
19 anything, Judge, other than please have mercy as far
20 as his sentence is concerned.

21 THE COURT: All right. Does the victim
22 wish to speak or anybody want to speak on the
23 victim's behalf?

24 MR. MEADORS: May it please the Court,
25 yes, sir.

1 THE COURT: Please come forward and give
2 the court reporter your name.

3 MS. CORBIN: My name is Arlene Corbin and
4 I'm the victim's, Victim mom/grandmama. I want to
5 say, first of all, as a mother, a grandmother of 14
6 and a great grandmother of two, that I feel very, I
7 feel bad and Victim also mentioned that he felt bad
8 for the family of Mr. Earley, especially his mother.
9 I just — it bother, that bothered me. But I also
10 want to say that we both wanted to go ahead with
11 this because we didn't want this to happen to
12 another child in Wal-Mart or Kmart or some other
13 place. We wanted to go ahead and say that what he
14 did upset us, and — well, it kind of frightened me
15 because I remember asking the policeman will he come
16 after us, will he come to our house and bother us.
17 I just didn't know how anything like that would
18 fall. So I guess my main thing is I did want the
19 family to know that I as a mother felt bad; but I
20 also am happy — not happy, pleased with the
21 verdict.

22 THE COURT: Thank you, ma'am.

23 MS. CORBIN: Okay.

24 THE COURT: Anyone else on the victim's
25 behalf or the victim?

1 (No response.)

2 THE COURT: All right, any prior criminal
3 record?

4 MR. MEADORS: Yes, sir. The DUS from
5 1990, distribution of marijuana two counts, and
6 criminal conspiracy two counts, a DUS third and
7 habitual offender from '93, possession of 28-grams
8 less marijuana, DUS second. That marijuana was '97.
9 DUS '98. Another DUS, 2000. Possession of
10 marijuana less than five pounds, greater four
11 ounces, looks like a Texas conviction in '96. Then
12 we found out yesterday, I think, the nine bank
13 robberies from '03 in several different states, Your
14 Honor.

15 Judge, I just want to thank law
16 enforcement for their work in this case. It was a
17 less than ten minutes they had the suspect, and I
18 want to thank the victims for their patience in this
19 getting to Court and also Solicitor Finney and his
20 staff and Tom and, or Miller for helping us. That's
21 all I have. Thank you.

22 THE COURT: Thank you.

23 MR. MEADORS: And Your Honor, I too would
24 like to thank the jury for their verdict. Thank
25 you.

1 THE COURT: All right, Mr. Early, the jury
2 has found you guilty of solicitation of a minor.
3 The sentence of the Court is that you be confined to
4 the State Department of Corrections for eight years.
5 You'll to be given credit for time served. You'll
6 be placed on the central registry for child abuse
7 and neglect. Thank you very much.

8
9 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

1 C E R T I F I C A T E O F R E P O R T E R
2
34 STATE OF SOUTH CAROLINA)
5 COUNTY OF FLORENCE)
67 I, FRANCES BAKIS-RAY, Registered
8 Professional Reporter (RPR), court reporter for the
9 State of South Carolina, Twelfth Judicial Circuit,
10 do hereby certify that the foregoing proceeding was
11 transcribed for Margaret Sullivan through
12 computer-aided transcription; that the foregoing
13 transcript contains a true record of the proceedings
14 to the best of my ability.15 I further certify that I am neither
16 counsel for, nor related to nor employed by any of
17 the parties connected to the action, nor am I
18 financially interested in the action.19 Witness my hand at Florence, South
20 Carolina, this 2nd day of September, 2013.
2122 Frances B Ray
23 FRANCES BAKIS-RAY, RPR
24
25

The South Carolina Court of Appeals

The State, Respondent

v.

Russel E. Early, Appellant

Appellate Case No. 2012-212540

The Honorable Benjamin H. Culbertson
Sumter County
Trial Court Case No. 2009GS4300712

ORDER

It appears that Russell S. Early, with full understanding of all possible consequences of this action and with agreement of counsel, wishes to withdraw and dismiss this matter. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Charles Thomas Brooks

John P. Meadors

Robert Michael Dudek

Salley W. Elliott

FILED

9/21/12 AT



255
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OCT - 9 2012

Case

ATTORNEY GENERALS
OFFICE

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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October 08, 2012

The Honorable James C. Campbell
141 N Main St Rm 308
Sumter SC 29150-4965

REMITTITUR

Re: The State v. Russell S. Earley
Lower Court Case No. 2009GS4300712
Appellate Case No. 2012-212540

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Robert Michael Dudek
Charles Thomas Brooks
Salley W. Elliott
John P. Meadors

FORM 5

STATE OF SOUTH CAROLINA

RECORDED

COUNTY OF SUMTER

2013 JAN -7 PM 1:15

IN THE COURT OF COMMON PLEAS

RUSSELL EARLEY #199848

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

JAMES D. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.2013-CP-43- 37

v.

State of South Carolina

APPLICATION FOR COPY
OF ORIGINAL FILE

POST-CONVICTION RELIEF

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA**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 Hwy. 9 West, Bennettsville, SC 29512.

2. Name and location of Court which imposed sentence Sumter County Court of General Sessions, 141-N Main Street, Sumter, SC 29150.

3. Name(s) of co-defendant(s) (if any) _____

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2009-GS-43-0712, Solicitation of a minor

(b) _____

(c) _____

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

SC Attorney General
RECEIVED

JAN - 8 2013

Referred to PCR / dmAnswered _____
Revised 3/2005

- (a) July 19, 2012 - Eight (8) years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty x
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Withdrawn
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. September 21, 2012
- 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) _____
- (b) _____
- (c) _____

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

(a) Ineffective assistance of counsel

(b) _____

(c) _____

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

(a) _____

(b) _____

(c) _____

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

(a) any petition in a State Court under South Carolina Law? _____

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

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. _____

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. _____

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) _____

(b) _____

(c) _____

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

(a) your arraignment and plea? _____

(b) your trial, if any? X

(c) your sentencing? X

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? X

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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. Charles T. Brooks, III, P.O. Box 3512, Sumter, SC 29150

ii. _____

iii. _____

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

i. trial, sentencing, appeal

ii. _____

iii. _____

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

New trial

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

No

STATE OF SOUTH CAROLINA)

County of Marlboro)

VERIFICATION

I, Russell Earley, 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.

Russell A Earley 129140

SWORN to and subscribed before me this 2nd
day of January, 2013.

Chris J. Hagan (L.S.)
Notary Public

My Commission Expires: Feb. 9th, 2020

Department of Corrections, and the Applicants appellate records. The trial transcript has been ordered and will be forwarded upon receipt. 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.

Any claims not specifically enumerated in the post-conviction application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his 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.

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.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

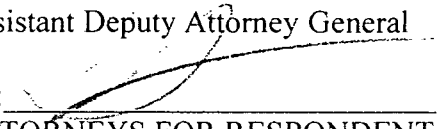
V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the issue of ineffective assistance of counsel and whether the Applicants plea was involuntary.

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

April 9, 2013

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2013-CP-43-0037
	)	
RUSSELL EARLEY, 199848,	)	
	)	
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:

Tommy Thomas, Esquire
Post Office Box 88
Irmo, SC 29063

DATED this 10th day of April, 2013.

Lauren Meara
 Lauren Meara, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
2) IN THE COURT OF COMMON PLEAS
3 COUNTY OF SUMTER)
4
5 RUSSELL EARLEY,)
6 Plaintiff,)
7 Vs.) CASE NO. 2013-CP-43-00037
8 STATE OF SOUTH CAROLINA,)
9 Defendants.)

10
11 FEBRUARY 24, 2014

12 SUMTER, SOUTH CAROLINA

13
14 HONORABLE GEORGE C. JAMES JR, JUDGE

15
16 A P P E A R A N C E S:

17 BY: TOMMY A. THOMAS, ESQUIRE

18 Attorney for the Plaintiff

19 BY: DANIEL F. GOURLEY II, ESQUIRE

20 Attorney for the Defendants

21
22
23 MARGARET T. SULLIVAN

24 OFFICIAL COURT REPORTER
25

1			<u>I N D E X</u>		
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	RUSSELL EARLEY				
4	Mr. Thomas	6			
5	Mr. Gourley		25		
6	CHARLES BROOKS				
7	Mr. Gourley	29		54	
8	Mr. Thomas		39		56
9	The Court		57		
10	Ruling of the Court		58		
11	Certificate of Reporter		60		
12					
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E X H I B I T S

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EX</u>
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2				
3	A-1	Statement	10	11
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1 THE COURT: The applicant is Russell Earley. He can
2 call his first witness. Anything that anybody wants to
3 put on the record before we start?

4 MR. THOMAS: Your Honor, if it please the Court,
5 I'll be glad to summarize the issues for you.

6 THE COURT: All right.

7 MR. THOMAS: It's an ineffective assistance of
8 counsel case based on, talking with my client, the
9 issues that he'd like to present today are basically
10 along the lines -- or they're all along the lines of
11 ineffective assistance, he says Mr. Brooks failed to
12 adequately prepare the case. Failed to adequately go
13 over the States case and discovery with the defendant.
14 That he failed to adequately convey and explain the -- I
15 think there was one plea offer in this case.

16 THE COURT: So failed to discuss the plea offer with
17 him?

18 MR. THOMAS: Yeah, he knew about the plea offer,
19 Your Honor. He did convey the offer, but that he just
20 failed to adequately discuss it with him.

21 THE COURT: Okay.

22 MR. THOMAS: Failed to establish timeline. Hoping
23 that if the timeline had been established, it would have
24 shown that it was impossible for him to have committed
25 this crime during the period of time allowed.

1 THE COURT: Okay.

2 MR. THOMAS: Also that he failed to adequately show
3 at trial the discrepancies between the testimony that
4 was given by the witnesses' statements and interim
5 report. There are allegations that where this crime
6 happened and it seems to kind of vary throughout the
7 testimony and the statements.

8 THE COURT: Okay.

9 MR. THOMAS: And the last one, Your Honor, is failed
10 to adequately advise regarding his decision to testify.
11 And failed to adequately discuss with him the use of his
12 prior record in deciding to testify.

13 THE COURT: Did he end up testifying?

14 MR. THOMAS: He did testify, Your Honor.

15 THE COURT: Okay. You can call your first witness.

16 MR. THOMAS: All right. Your Honor, if it please
17 the Court, we call Mr. Russell Earley to the stand.

18 THE BAILIFF: State your name, please.

19 MR. EARLEY: Russell Earley.

20 RUSSELL EARLEY,
21 being first dully sworn was examined and testified as
22 follows:

23 THE BAILIFF: State your name and spell your last
24 for the record.

25 A Russell Earley. E-A-R-L-E-Y.

RUSSELL EARLEY - DIRECT EXAMINATION BY MR. THOMAS

1 MR. THOMAS: Your Honor, if it please the Court.

2 THE COURT: Yes, sir.

3 DIRECT EXAMINATION BY MR. THOMAS:

4 Q Mr. Earley, you're serving what kind of sentence?

5 A Eight-year.

6 Q And what are you serving time for?

7 A Solicitation of a minor.

8 Q Is this a trial or a plea?

9 A A trial.

10 Q How long did the trial last?

11 A I believe two or three days.

12 Q Okay. And when do you max out?

13 A August 2016.

14 Q Now, you're being housed where?

15 A Wateree Correctional.

16 Q All right, sir. And do you have any
17 disciplinaries?

18 A No, sir.

19 Q What do you do at Wateree?

20 A Janitor.

21 Q Okay. And that's a medium institution?

22 A Yes, sir.

23 Q All right, sir. And you have filed a
24 postconviction relief?

25 A Yes, sir.

RUSSELL EARLEY - DIRECT EXAMINATION BY MR. THOMAS

1 Q Alleging ineffective assistance of counsel?

2 A Yes, sir.

3 Q And specifically those topics that I've advised the
4 Court of?

5 A Yes, sir.

6 Q All right, sir. And you understand that with a
7 postconviction relief action, you're asking for a new
8 trial?

9 A Yes, sir.

10 Q And the charge will be reinstated if you go back to
11 trial and that you will be sentenced as to whatever that
12 crime will carry?

13 A Yes, sir.

14 Q Are you willing to accept that risk?

15 A Yes, sir.

16 Q And if you win you want the Court to grant you a
17 new trial?

18 A Yes, sir.

19 Q All right, sir. You want to go forward today?

20 A Yes, sir.

21 Q Mr. Earley, you were arrested when?

22 A November 22, 2008.

23 Q 2008?

24 A Yes, sir.

25 Q All right, sir. And did you get out on bond?

1 A Yes, sir.

2 Q How long were you in jail?

3 A I believe three days.

4 Q All right, sir. So during this period of time that
5 you were out on bond in June, were you appointed an
6 attorney or did you retain an attorney?

7 A I retained one.

8 Q And you retained Mr. Brooks?

9 A Yes, sir.

10 Q Did you have -- so you had plenty of time to have
11 spoken with Mr. Brooks?

12 A Yes, sir.

13 Q About this case?

14 A Yes, sir.

15 Q How many times did you speak with him?

16 A A couple of dozen.

17 Q Okay. Now, how many times did you specifically
18 talk with him about the facts of this case?

19 A I believe the initial, the first visit.

20 Q All right. So you're saying that you met with him
21 a couple of dozen times, but you actually in fact
22 discussed the case that one time that you met him after
23 you got out?

24 A Yes, sir.

25 Q Okay. And the trial was four years later; is that

1 correct?

2 A Yes, sir.

3 Q Now, did you go over with Mr. Brooks any of the
4 discovery? Do you know what I mean by discovery?

5 A The evidence.

6 Q The evidence that the State had?

7 A Yes, sir. I was told it was none, so there was
8 nothing to go over.

9 Q All right. No forensics or nothing like that?

10 A No, sir.

11 Q And did you talk to Mr. Brooks about I think -- did
12 you give a statement?

13 A Yes, sir.

14 Q All right. Was it written down?

15 THE COURT: Clarify statement please.

16 Q Did you give a statement to the police --

17 A Yes, sir.

18 Q -- when you were arrested?

19 A Yes, sir.

20 Q And that statement wasn't used, was it?

21 A No, sir.

22 Q And, in fact, there was no -- they didn't write any
23 of that down?

24 A No, sir.

25 Q So there was no written statement for you to sign?

1 A No, I believe not, sir.

2 Q And there was no oral statement that you alledgedly
3 gave that was presented at trial?

4 A No, sir.

5 Q Now, the victim in this case did give a statement?

6 A Yes, sir.

7 Q And did you see a copy of that statement?

8 A Yes, sir.

9 Q Did Mr. Brooks show you a copy of it?

10 A I believe so.

11 Q Okay.

12 MR. THOMAS: Your Honor, may I approach?

13 THE COURT: Yes, sir.

14 Q Mr. Earley, I'm going to show you this document and
15 see if you can identify that please.

16 THE COURT: Mark it for ID please just to make sure
17 the record is clear.

18 MR. THOMAS: Yes, sir.

19 THE COURT: This will be number one.

20 MR. THOMAS: Yes, sir.

21 (WHEREUPON, Applicant's Exhibit No. 1 was marked for
22 ID)

23 Q Can you identify that?

24 A Yeah. That's the statement that the victim gave.

25 Q And this is a statement that you've received a copy

1 of from Mr. Brooks?

2 A Yes, sir.

3 Q Okay.

4 A I believe I got one of those.

5 MR. THOMAS: Your Honor, we'd like to introduce this
6 as Applicant's One.

7 THE COURT: Any objection?

8 MR. GOURLEY: No, Your Honor.

9 THE COURT: All right.

10 (WHEREUPON, Applicant's Exhibit No. 1 was entered)

11 THE COURT: Do you need to hand this back to him?

12 MR. THOMAS: Yes, if that's all right.

13 Q Mr. Earley, I want to draw your attention to the
14 statement. And at the top of the page, I guess, the
15 second sentence it says that he went to the bathroom in
16 the back of the Wal-Mart?

17 A Yes, sir.

18 Q Now, there were -- were there several bathrooms in
19 the Wal-Mart?

20 A Yes, sir. There's one in the front and in the
21 back.

22 Q Okay. And he was saying -- in the next statement
23 there was this guy standing -- or sitting there; is that
24 correct?

25 A Yes, sir.

1 Q And it was your understanding that he was saying
2 that this happened in the back of the Wal-Mart and that
3 you were sitting in the bathroom?

4 A Yes, sir.

5 Q All right. Now, in preparation of this case, did
6 you talk to Mr. Brooks about the evidence that the State
7 was going to present about how this incident alledgedly
8 happened? What they said that you did?

9 A Yes, sir.

10 Q Okay. And were there some inconsistencies in what
11 they said that you did?

12 A Yes, sir.

13 Q And what were those inconsistencies?

14 A The place where I was in the bathroom, what
15 happened, when it happened.

16 Q Now, the victim gave a statement saying that this
17 happened in the back?

18 A No, sir.

19 Q All right. Then he said that you were sitting in
20 the bathroom?

21 A Yes, sir.

22 Q Were there any chairs in the bathroom?

23 A No, sir.

24 Q Was there anywhere to sit in the bathroom?

25 A No, sir.

RUSSELL EARLEY - DIRECT EXAMINATION BY MR. THOMAS

1 Q Did Mr. Brooks obtain any pictures of that
2 bathroom?

3 A No, sir.

4 Q So was he able to show to the jury that you were in
5 fact there was nowhere for you to sit?

6 A No, sir.

7 Q Okay.

8 MR. THOMAS: Your Honor, I beg the Court's
9 indulgence just for a second.

10 THE COURT: Yes, sir.

11 MR. THOMAS: Your Honor, may I approach?

12 THE COURT: Yes, sir.

13 MR. THOMAS: Your Honor, I'm going to refer to the
14 transcript, page 77.

15 THE COURT: All right. I've got it.

16 MR. THOMAS: And it's going to be pages 18 through
17 20, Your Honor.

18 THE COURT: You mean lines 18?

19 MR. THOMAS: Yes. I'm sorry, lines 18 through 20.

20 Q Mr. Earley, I'm going to show you this copy of the
21 transcript of trial. Who was this gentleman that says
22 direct examination of who?

23 A **Victim** [REDACTED]

24 Q And who is that?

25 A That's the victim.

1 Q The victim and this is the same gentleman who had
2 written the statement?

3 A Yes, sir.

4 Q Now, I want to draw your attention to pages 18
5 through 20. And where does he say this happened?

6 A The front of the store.

7 Q Front of the store?

8 A Yes, sir.

9 Q And is that inconsistent with what he said?

10 A Yes, sir.

11 Q About in his statement?

12 A Yes, sir.

13 Q Do you know if Mr. Brooks brought this to the
14 attention of the jury?

15 A I never heard him bring it up.

16 Q All right, sir. And so did you feel that this was
17 important?

18 A Yes, sir.

19 Q And why did you feel that this was important?

20 A Because he was I felt, you know, he was making the
21 whole thing up anyway. So, it was like, should have
22 been brought up.

23 Q Now, and you had -- you and I discussed and you had
24 told me that you felt there was a reason why this young
25 man would say this about you?

1 A Yes, sir.

2 Q And why was that?

3 A Figured he would get me before I got him.

4 Q What do you mean by that?

5 A When I walked into the bathroom, I felt real good
6 about he was stealing items out of the store. Because
7 when I walked by him, I said, you know, I wouldn't be
8 stealing if I was you. And kept walking. So he thought
9 I was going to go tell, you know, the security. And I
10 figured he would probably get me before I got him.
11 That's the only reason I could think he would say
12 something.

13 Q So you had witnessed him shoplifting?

14 A Yes, sir.

15 Q And you said something to him --

16 A Yes, sir.

17 Q -- about that?

18 A Yes, sir.

19 Q Now, I read the transcript and I was a little
20 confused about something. Was he actually unwrapping a
21 CD?

22 A That's what it sounded like.

23 Q And he was unwrapping a -- it sounded like he was
24 unwrapping a CD and where was that?

25 A Standing at the mirrors of the bathroom.

1 Q In the bathroom. All right. And he testified that
2 he went into the bathroom to use the bathroom and then
3 left and then went back in?

4 A Yes, sir.

5 Q And then where did this alleged proposition happen?

6 A I believe he testified it happened outside the
7 bathroom.

8 Q All right. And that was the first or second time
9 that he exited the bathroom?

10 A Second, I believe he said.

11 Q And his testimony was that you were still in the
12 bathroom when he went back in the second time?

13 A Yes, sir.

14 Q Now, Mr. Brooks points that out to the jury; is
15 that correct?

16 A Yes, sir.

17 THE COURT: And he said the victim said the
18 proposition occurred where?

19 MR. THOMAS: Outside of the bathroom, Your Honor.
20 He went in the first time, the victim used the restroom
21 and came out.

22 THE COURT: Okay.

23 MR. THOMAS: Then had to go back in and wash his
24 hands. Went back in the bathroom and then came out and
25 supposedly that was when this proposition happened, Your

1 Honor, in the front of the Wal-Mart.

2 THE COURT: Trial testimony?

3 MR. THOMAS: Trial testimony. Yes, sir.

4 Q Now, you and I spoke about this in regards to
5 preparation of the case. Did Mr. Brooks have a theory
6 of defense? Do you know what I mean by "theory of
7 defense?"

8 A No, sir.

9 Q Okay. How was he going to defend you? Did he talk
10 about what your defenses were going to be and how you
11 were going to try your case?

12 A No, sir.

13 Q When did you find out the case was for trial?

14 A A couple of days. A day or two before.

15 Q Okay. And did you meet with Mr. Brooks when he
16 called and said your case was up for trial?

17 A I don't believe so.

18 Q All right, sir. Now, were there plea offers made?

19 A In the courtroom he told me it was a plea of
20 probation. No limit or anything and that's as far as it
21 went.

22 Q So, in other words, you were going to plead. Do
23 you remember what you were going to plead to?

24 A I believe solicitation to a minor.

25 Q And then that the recommendation was going to be

1 for probation?

2 A Yes, sir.

3 Q Did you accept that?

4 A No, sir.

5 Q Why didn't you accept it?

6 A I didn't want the sex register that was behind it,
7 too.

8 Q And you were assertive that you were not guilty of
9 this crime?

10 A Yes, sir.

11 Q And that's what you are telling this Court?

12 A Yes.

13 Q Did he discuss with you about North Carolina verses
14 Alford about an Alford plea?

15 A No, sir.

16 Q Do you know what that is?

17 A I do now, sir.

18 Q All right. Now, you had some potential witnesses?

19 A Yes, sir.

20 Q And who were those folks?

21 A The people I was with that night.

22 Q And you had wanted him to call those people because
23 of why?

24 A Shows them I was only in the bathroom long enough
25 to use it and out. You know, a matter of seconds

1 instead of as the victim said I was in there for minutes
2 and minutes.

3 Q And your allegations are -- or your story about
4 what happened was what, Mr. Earley?

5 A We went out to eat, me and all my friends, we went
6 to Wal-Mart with his daughter, it was a birthday party,
7 so we was going to by a gift for her. When we got
8 there, you know, we shopped around a while, she couldn't
9 find nothing, and so we figured we would go to K-Mart.
10 And on the way out of Wal-Mart, I took off to use the
11 bathroom while they went to the vehicle. On the way out
12 of the bathroom, you know, they were pulling out the
13 parking lot and I was coming, you know, I was going
14 toward my vehicle.

15 Q Yes, sir.

16 THE COURT: Y'all were in separate cars?

17 A Yes, sir.

18 Q And you were hoping that they will testify to
19 establish a timeline?

20 A Yes, sir.

21 Q Okay. And your timeline in your mind was that it
22 was not enough time to have committed this crime?

23 A No, sir.

24 Q As described by the victim?

25 A Yes, sir.

1 Q Did you talk to Mr. Brooks about that?

2 A Yes, sir.

3 Q You talked to him about a timeline?

4 A Not about a timeline, just about having -- I told
5 him about my witnesses that I wanted them there if I
6 needed them if it would help or anything.

7 Q Did you -- and you gave all that information to
8 Mr. Brooks?

9 A Yes, sir.

10 Q About how long you were in there, those types of
11 things?

12 A Yes, sir.

13 Q And did he use those folks at trial?

14 A No, sir.

15 Q He did not?

16 A No.

17 Q All right.

18 MR. THOMAS: Your Honor, may I approach?

19 THE COURT: Yes, sir. Did he call the witnesses to
20 appear at the trial and did not call them or did they
21 get subpoenaed at all?

22 Q Mr. Earley, do you know if they were?

23 A None of them was. He didn't call them.

24 Q Were they in the courtroom?

25 A No, sir.

1 Q All right. Let me show you this.

2 MR. THOMAS: Your Honor, we're going to look at page
3 93 of the transcript and lines 24 and 25.

4 THE COURT: Ninety-three?

5 MR. THOMAS: Yes, sir. Ninety-three and lines 24
6 and 25.

7 Q All right. This is -- who is this gentleman?

8 A Victim [REDACTED]

9 Q And that's the alleged victim in this case?

10 A Yes, sir.

11 Q And it says "cross," is that cross examination?

12 A Yes, sir.

13 Q By Mr. Brooks. I just wanted to draw your
14 attention to 24 and 25. And what is he asking
15 Mr. Victim about?

16 A Washing his hands.

17 Q And what does he ask him about washing his hands?

18 A How long it took.

19 Q And he's talking about seconds?

20 A Yes, sir.

21 Q Okay. Now, at that point in time, did you think
22 that Mr. Brooks was going to maybe tie this into whether
23 or not you had time to commit this crime or do you know?

24 A I don't know, sir.

25 Q Don't know. Now, were there cameras working?

1 A We was told they were not.

2 Q Or video?

3 A No, sir.

4 Q Okay. And you testified at trial?

5 A Yes, sir.

6 Q And why did you testify?

7 A I just felt compelled -- I mean, no one was
8 actually -- everything was against me and nobody was
9 even saying anything that was, you know, that was saying
10 I didn't do it. You know, nobody was on my, you know,
11 from my side.

12 Q All right. Now, do you remember the Judge asking
13 you questions about whether you wanted to testify or
14 not?

15 A Yes, sir.

16 Q Okay. And he asked you that, you know, and told
17 you that you didn't have to testify?

18 A Yes, sir.

19 Q And that -- that he asked you whether or not you
20 were making this decision, you know, freely and
21 voluntarily and this was your decision to testify?

22 A Yes, sir.

23 Q And the purpose of your testimony was that you felt
24 like there was no evidence to show that you were not
25 guilty of the crime?

1 A Yes, sir.

2 Q Now, when you and I spoke, you said that you were
3 concerned about Mr. Brooks not putting up the witnesses
4 in regards to the timeline?

5 A Yes, sir.

6 Q And what were your concerns about that?

7 A I just believe it would show that, you know, I
8 wasn't in there when he said I was in there. Or, you
9 know, his whole story was, you know, made up in my mind.

10 Q All right. And you felt like that if these folks
11 had testified in regards to the timeline that you would
12 not have had to testify?

13 A Yes, sir.

14 Q So it was your decision to testify influenced by
15 the fact that these witnesses were not called?

16 A Yes, sir.

17 Q Mr. Earley, you and I talked about this, this is
18 your opportunity -- you've been waiting a long time for
19 this hearing today for your postconviction. I'm not
20 suggesting that I've left something out or that I forgot
21 something, it's your case. Is there anything else that
22 you would like to bring to the Court's attention or is
23 there anything else that you feel like that I may have
24 not presented that you feel that's important?

25 A I believe you've covered most of it.

1 Q Covered everything?

2 A I believe so.

3 Q All right.

4 THE COURT: Now, Mr. Thomas, you asked him you said
5 to me something about his criminal record?

6 MR. THOMAS: Yes, sir.

7 THE COURT: How about -- you need to ask so the
8 record can be complete.

9 MR. THOMAS: Yes, sir.

10 Q Now, Mr. Earley, in regards you do have a prior
11 criminal record?

12 A Yes, sir.

13 Q And did you talk to Mr. Brooks about how that could
14 be used in court against you?

15 A No. Everything was talked about in trial, you
16 know. The jurors left and we spoke about it and that
17 was about it.

18 Q Did you know that he could bring those things up?

19 A Yes, sir.

20 Q Okay. And -- but you felt that even though you had
21 a prior criminal record that you still were almost
22 compelled to testify?

23 A Yes, sir.

24 Q And what could Mr. Brooks have done better for you?

25 A I just feel like, you know, he could argue some of

1 the different problems, you know, that I've seen, you
2 know, in the two transcripts that I've looked at. There
3 was just different statements. Just different -- just
4 all little lies I figured, you know, we could point it
5 out instead of I just sat there. Somebody needed to
6 point them out, you know, no one even pointed them out.

7 Q Yes, sir. And you were sentenced to eight years;
8 is that correct?

9 A Yes, sir.

10 MR. THOMAS: Your Honor, I have no further
11 questions.

12 THE COURT: Okay. Mr. Gourley?

13 MR. GOURLEY: Thank you, Your Honor.

14 CROSS EXAMINATION BY MR. GOURLEY:

15 Q Mr. Earley, how many times did you meet with
16 Mr. Brooks prior to your trial?

17 A A lot.

18 Q A lot. Can you give like a rough estimation it may
19 have been? Some kind of hundred? More than a dozen
20 times?

21 A A couple dozen.

22 Q A couple dozen. Okay.

23 A I always checked in to see whether we was going to
24 trial. Where we going to trial.

25 Q Okay. And do you recall viewing discovery with

1 him, the evidence?

2 A Yes, sir.

3 Q Okay. Did y'all discuss any possible defenses?

4 A Not really.

5 Q No. Okay. Did you give any type of -- well, you
6 stated already to the couple of witnesses that you were
7 with at the Wal-Mart, were there any additional
8 witnesses that you wanted him to look into?

9 A Just the statement I gave to the investigator, you
10 know, and the police officer I gave a statement, you
11 know, give him the same statement, too.

12 Q So you did talk to the police when you were
13 arrested; right?

14 A Yes, sir.

15 Q Okay. And when you took the stand, you told the
16 jury that as well; right?

17 A Yes, sir.

18 Q Mr. Brooks pointed out that was not written down;
19 right?

20 A Yes, sir.

21 Q Okay. Regarding the plea offer, you turned down
22 the plea offer; correct?

23 A Yes, sir.

24 Q So you were aware of it and you chose not to accept
25 it for -- due to the requirement of the registry?

1 A Yes, sir.

2 Q So that was your decision?

3 A Yes, sir.

4 Q Okay. Now, regarding this differentiation between
5 whether he was in the front of the bathroom or the back
6 of the bathroom, you were in the bathroom with the
7 victim; right? There is no question about that? You
8 don't dispute that?

9 A Yes, sir.

10 Q You just dispute the amount of time that you spent
11 in the bathroom; right?

12 A And what I said.

13 Q But there no question that you were with the victim
14 in the bathroom?

15 A Correct.

16 Q And the Court advised you regarding your rights to
17 testify; right?

18 A Yes, sir

19 Q And they went over your prior record and they told
20 you that they could be used to impeach your credibility
21 when you took the stand; right?

22 A Yes, sir.

23 Q So you were aware of that prior to testifying;
24 correct?

25 A Yes, sir.

1 Q And you freely and voluntarily made the decision to
2 testify; right?

3 A Yes, sir.

4 Q Okay. And, again, you took the stand and you told
5 your story and you explained that you went to the
6 Wal-Mart to pick up some gifts for children/child's
7 birthday, et cetera; right?

8 A Right.

9 Q Okay. So the jury heard your side of the story;
10 right?

11 A Yes, sir.

12 Q And they believed the victim over you; correct?

13 A Yes, sir.

14 Q Okay.

15 MR. GOURLEY: No further questions, Your Honor.

16 THE COURT: Redirect?

17 MR. THOMAS: I have nothing further, Your Honor.

18 THE COURT: Mr. Earley, you can step down. Any
19 additional witnesses from the Applicant?

20 MR. THOMAS: Your Honor, if it please the Court,
21 that's our case.

22 THE COURT: Thank you, sir. Mr. Gourley?

23 MR. GOURLEY: Mr. Brooks, Your Honor.

24 THE BAILIFF: State your name, please.

25 MR. BROOKS: Charles Brooks.

1 CHARLES BROOKS,
2 being first dully sworn was examined and testified as
3 follows:

4 THE BAILIFF: State your name and spell your last
5 for the record.

6 A Charles Brooks. B-R-O-O-K-S.

7 DIRECT EXAMINATION BY MR. GOURLEY:

8 Q Mr. Brooks, how long have you been practicing law?

9 A I think about 18 years now.

10 Q And you were retained in this case?

11 A I was.

12 Q How many times did you meet with the Applicant
13 prior to his trial? A rough estimation.

14 A It was probably too many to count. Russell would
15 -- when he retained me, kind of what he said, he would
16 come by the office at least once a month, probably more
17 than that. He just came by and I'd talk to him briefly
18 to see how things were going and, you know, he was
19 working. I met, you know, his folks. I think it was
20 pretty much consistent with the way he described it.

21 Q Okay. And did you file any Rule 5 regulations?

22 A I did.

23 Q Did you review that with him?

24 A Yeah. But it really wasn't much to review.

25 Basically the State's case was this kid. I can't

1 remember his name, but he was basically made the
2 allegation that Russell had solicited him in Wal-Mart.
3 And that was his statement. But that was basically the
4 case.

5 Q So it was simply a he said, she said kind of case?

6 A Basically.

7 Q No real direct evidence other than the word?

8 A There was nobody else. I mean, other than from my
9 recollection, the kid went to Customer Service desk,
10 then they contacted, I guess, they had like a security
11 guard that had seen Russell leave the store, get in the
12 vehicle, and drive off. And, of course, they radioed to
13 police and they stopped him and pulled him over as he
14 had left the Wal-Mart parking lot.

15 Q Okay. Mr. Earley has alleged that he gave a
16 statement to the police. Were you able to follow-up on
17 that or did you ever discover any type of statement?

18 A His statement was not something that hurt him. It
19 was not, you know, I didn't do this. I didn't say this.
20 And he -- what he basically testified here today was
21 basically what he testified to during the trial. He had
22 basically indicated that he saw the kid in the restroom,
23 he indicated to the kid that something about he thought
24 the kid was stealing, and told the kid not to do that.
25 And, of course, the kid's version was obviously what was

1 in the transcript that this guy had solicited him. So
2 that was basically it.

3 Q Did you ever look into see if Wal-Mart had any
4 cameras or anything like that?

5 A No. We really didn't look into that. Bear in mind
6 that, you know, a portion of this had taken place in the
7 restroom and I don't think they have cameras in the
8 restroom.

9 Q I would hope not.

10 A And I do know it was a case that had gone on a long
11 time from the time that this had happened and Russell
12 retained me to the time that it had come up for trial.

13 Q Do you recall how long of a time lapse that was
14 between actual incident and the time you were retained?

15 A From the time I was retained?

16 Q Yes.

17 A I can't really remember that. I do remember that
18 it was quite a while. And Russell would come by like he
19 said repeatedly and I would try to tell him, you know,
20 settle down, I don't want to go in the Solicitor's
21 Office and rock the boat because I know it happened
22 during one Solicitor's administration, but then it was
23 tried during the next Solicitor's administration. And I
24 do know Russell really wanted to get the case over with.
25 And I kept telling him, you know, be careful what you

1 wish for. We don't want to do that. The worse thing is
2 to push the Solicitor's Office about going to trial. I
3 do know Russell had some type of -- I think he was doing
4 some type of work with his brother that would allow him
5 to go on to -- well, the work that his brother did I
6 think was -- I can't remember what the work was, but it
7 was somewhere where he would go into a school. I can't
8 remember just something like air-conditioning or
9 construction, but it was something along those lines and
10 Russell had indicated to me that that was holding him up
11 financially.

12 So that was the motivating reason for wanting to
13 see a resolution to the case. As a defense lawyer, I
14 was like, I understand that, but you don't want to do
15 that because obviously going to court only bad outcome
16 could happen is he could end up going to jail. And I
17 was hopeful that, hey, we don't say nothing, Solicitor's
18 Office don't say anything, we never go to trial, and
19 maybe this case just goes off to the wild blue yonder
20 somewhere, and the Solicitor's Office will never hear
21 about it again or whatever.

22 But Russell wanted a resolution to the case and he
23 wanted me to go in and find out who was assigned to the
24 case and it was Tyler Brown and John Meadors. And I do
25 recall going to them and, you know, they didn't even

1 know what I was talking about initially. They had to
2 find it. And finally, you know, John came to me and
3 said, you know, hey, what you want to do with it? It's
4 so often Solicitor's say and I said, well, I want you to
5 dismiss it. That's what I want you to do with it. And,
6 of course, he said, no, we're not going to do that.
7 Because according to John and I believe Tyler, I believe
8 they found the victim because like I said, it was like
9 three or four years later. And they indicated to me
10 that the victim was around. A lot of times you hear
11 defense lawyers, you're hoping that maybe the victim is
12 not around anymore or anything like that.

13 But the Solicitor's Office said, no, victim is
14 still around, he's living with his grandmother, their
15 posture is we still want to prosecute the case. And
16 they indicated that we will be willing to do anything
17 like probation or anything like that. And obviously
18 that would put Russell in a situation where he would
19 have to register as a sex offender. So that's what
20 complicated that.

21 We had the case set for trial in front of Judge
22 Young. And Judge Young had done some work for Russell
23 and had saw him in the courtroom and said, hey, you
24 know, I got a conflict. I can't do this. And that's
25 what caused it to get continued to the next week when

1 Judge Culbertson, Horry and Georgetown counties came and
2 presided over the case. That was the reason it got
3 continued for that one week.

4 Q Did you advise him of his Fifth Amendment Right?

5 A I did.

6 Q Did you discuss it in full?

7 A Discuss it in full? We had done some -- one of the
8 assistance in my office had done some little research.
9 We had -- a lot of times when doing some Family Court
10 cases like we do, sometimes you look and see if people
11 have a Facebook page or anything like that. And we
12 discovered that this kid had a Facebook page. And it
13 had on there some character. And it says, "I smoke weed
14 all day." So we thought, hey, you know, maybe this is
15 something that we could eventually impeach this kid's
16 character. So we had it in preparation for the trial
17 before Judge Young.

18 And, of course, when it got continued, I had told
19 Russell about that and showed him, look at this thing we
20 found on this kid's Facebook page. Anyway, I said,
21 well, Russell, we'll get back together next week. It
22 looks like the Solicitor said they're going to call it
23 for trial next week and we'll be prepared for it. We'll
24 be ready.

25 And, of course, as far as his testifying, I say

1 "everybody," the solicitor, myself, Russell, we knew he
2 had the convictions from where he had gone to Federal
3 prison. That was clear. Everybody knew that. And I
4 don't think that that inhibited his ability to get up
5 and testify in this type of situation. Because we
6 thought this was kind of apples and oranges.

7 What did happen and I was totally unaware of this
8 is that Russell had had some communication with the kid
9 during the two weeks or during the week between when it
10 got continued in front of Judge Young and then we came
11 back to trial in front of Judge Culbertson and I didn't
12 know that he had done this. And, of course, what
13 actually happened is, he sent this communication to the
14 kid and evidently the kid turned around and gave it to
15 John Meadors.

16 So when Russell took the stand, if you read the
17 transcript, John goes on this line of questioning of,
18 you haven't talked to the kid? You haven't seen him?
19 It's been four years. He goes through -- and, of
20 course, I'm like, uh oh, something's coming. And then,
21 you know, Russell goes down that line of questioning on
22 cross examination and then John whips out the email
23 correspondence. And that's what killed us in that
24 trial. That's what killed us when it came to the
25 sentencing. That's what killed us when it came to I

1 thought with the jury.

2 Because up until that point, I thought we had made
3 some headway in terms of the cross examination of the
4 kid. There was some issues about where this
5 conversation took place. It says the conversation
6 started in the bathroom. Then the solicitation occurred
7 right outside the bathroom. There's nobody else around
8 to verify that. Three or four years go by. Maybe you
9 didn't hear him. You know, I thought we had made some
10 -- I thought we scored some points with the cross
11 examination. But when he -- when it came out that he
12 had tried to contact the kid, that set the Judge off. I
13 think it hurt us in the eyes of the jury because it just
14 undermined his credibility --

15 Q Okay.

16 A -- on that.

17 Q Now, in regards to the witnesses Mr. Earley stated
18 he informed you of, did you ever look into those
19 witnesses or recall anything about that?

20 A It never really did because this wasn't a forensic
21 type case. And what he was charged with being the
22 solicitation, it, you know, it doesn't really take long
23 for you to say, hey, dude, you want a blow job. It
24 doesn't really take long for that. So unless there was
25 somebody there when the alleged request for solicitation

1 was made, I didn't really think that would help you.

2 Because when you start talking about a timeline, I
3 mean, like I said, it wasn't -- there wasn't physical
4 contact. There wasn't, you know, it was just this
5 incident. And Russell, you know, he testified. And I
6 thought on direct, I thought he was coming across very
7 well with the jury. You know, you get out, you know,
8 you had this conviction in Federal Court, I can't
9 remember exactly what it was, but it wasn't something
10 anywhere close to anything like this. It wasn't
11 something that I thought would hurt him in this
12 situation, get it out so the jury would understand. And
13 the fact that he had plead to that showed that he had
14 taken responsibility for that. Whereas this is
15 different, this didn't happen. You know, that's what
16 our posture was.

17 And I just thought that communication or attempted
18 communication with the kid that that's what undermined
19 his credibility. Because like I said, I didn't think
20 the kid came across as a star witness or is sound and is
21 believable as you would like as a prosecutor. But I
22 thought that that was the issue.

23 Now, as far as I know, Mr. Meadors had made a point
24 of emphasis like nobody else is here. Because Russell
25 had testified about being there with a group of people,

1 getting a present or something like that. You know,
2 John tried to say that with nobody else around, I didn't
3 think that that caused any problems. Because, you know,
4 he might have showed up with somebody else who goes off
5 to a different part of the store than he was at.

6 But the issue was, did this allegation of
7 solicitation take place. And like I said, it doesn't
8 take long -- if the request was made, it doesn't take
9 long to do it. Walk up to you and say, you want a blow
10 job. That doesn't take ten seconds. So the issue
11 really for me was was there anybody else there. And I
12 thought that the fact that there was nobody else there
13 would actually help Russell's case. Because Russell
14 said, hey, listen, I saw the kid in the restroom and
15 looked like he was unwrapping some CD's and that would
16 show that the kid has a reason to say one thing verses
17 another.

18 I just simply think that that attempted contact via
19 email during that two weeks, I thought that week when it
20 was continued, I thought that that just hurt his case
21 tremendously. In fact, because I didn't even know
22 anything about it until it happened, until it was
23 brought up in trial.

24 Q He never told you about it?

25 A He didn't tell me anything about it.

1 MR. GOURLEY: All right. No further questions, Your
2 Honor. Thank you, Mr. Brooks.

3 THE COURT: Mr. Thomas?

4 MR. THOMAS: Yes, Your Honor, may it please the
5 Court.

6 CROSS EXAMINATION BY MR. THOMAS:

7 Q Mr. Brooks, do you feel like you had adequate time
8 to prepare the case for trial?

9 A Yes, sir.

10 Q And you were able -- did you -- were you able to
11 sit down with Mr. Earley and go through what the
12 discovery was? What the State's evidence was?

13 A Yes, sir.

14 Q Now, you said that the -- there was no direct
15 evidence in this case other than the victim's testimony?

16 A Right.

17 Q Because all the other witnesses that testified all
18 testified about what happened afterwards?

19 A That's correct.

20 Q He came out and told someone ---

21 A He went to the Customer Service desk, Customer
22 Service desk then they call the police, they stop him.
23 All those other witnesses would not have been able to
24 factually say that this actually happened. They only
25 got involved as a result of the kid going to Customer

1 Service, that's correct.

2 Q So without the victim, there would have been no
3 case? They couldn't have proven anything?

4 A That's correct.

5 Q Now, Mr. Earley during this time was telling me --
6 that basically what he was telling them that he was not
7 guilty of this crime?

8 A That's correct.

9 Q And I think you did bring out that what was
10 testified to was that the victim goes into the bathroom
11 and that he goes in and uses the restroom. He then
12 feels uncomfortable, goes outside, and then at that
13 point in time something happens. He sneezes, he wants
14 to wash his hands, so he goes back into the bathroom and
15 then it was the second incident he was propositioned
16 outside the restroom?

17 A I think that's -- you know, it's been a little
18 while. I think that's the time that things occurred
19 according to him.

20 Q Right. And you did bring out the fact that if he
21 was afraid or uncomfortable of this gentleman, why did
22 he go back into the bathroom?

23 A That's correct.

24 Q And all of this took some time, didn't it?

25 A Yeah.

1 Q It had taken some time for him to go in and use the
2 restroom, go back outside, sneeze, turn around and go
3 back into the restroom, wash his hands and then come
4 back out of the restroom and then run into Mr. Earley?

5 A Correct.

6 Q Actually, I think his testimony was that Mr. Earley
7 was in the restroom?

8 A I recall him saying that. He said something like
9 Mr. Earley was in the restroom just standing there.

10 Q I think he said he was sitting in there, doesn't
11 he?

12 A Sitting or standing. Something to -- what I recall
13 and, you know, look back at the transcript to be sure,
14 but he said something like Russell was just in there.
15 Whether he was sitting or standing, he was just like
16 waiting in the restroom.

17 Q Right. Like he had been -- I mean, when I read the
18 transcript is it was almost like he was saying that
19 Russell was kind of stalking the bathroom. That he was
20 in there for a while and comes out and back in and still
21 in the bathroom?

22 A Yeah. That's -- to me that was kind of the posture
23 of his testimony.

24 Q Okay. Which if that's the case, it would have all
25 taken time?

1 A Correct.

2 Q Okay. Now, did you -- if he was saying if he was
3 sitting, did you feel it necessary to take pictures of
4 the restroom?

5 A No.

6 Q And you didn't have any pictures of the restroom?

7 A I did not.

8 Q All right. So if he had said that he was sitting
9 in the restroom, the only place he could have been
10 sitting was, I guess, on one of the toilets or -- on the
11 toilet?

12 A That would be my guess.

13 Q Now, as far as the cameras are concerned, do you
14 feel that the -- that in looking into any video would
15 have been important because the allegations that this
16 proposition occurred outside of the restroom?

17 A No.

18 Q It also allegations that Mr. Earley points to his
19 private area when he makes this comment or makes this
20 statement?

21 A Right.

22 Q Did you look to see if there was any closed circuit
23 footage of that area?

24 A I don't think I did.

25 Q Would it have been important to have done that

1 especially in light of the allegations that there was a
2 physical gesture towards his private area?

3 A Well, I don't know if that would have made that
4 much difference. Because the way the young kid
5 described it was, you know, all of this took, you know,
6 it was just a quick point that I don't think would have
7 been -- really could have been evidence on a camera.
8 Assuming that there was a camera in existence.

9 Q Yes, sir.

10 A Because there was no physical contact and all of
11 this would have taken a moment of seconds.

12 Q Right.

13 A So I didn't think that that would be something
14 worth looking into.

15 Q Now, I mean, you're right, the actual proposition
16 would have taken seconds, but the whole transaction as
17 described by the victim would have taken longer than
18 seconds?

19 A Correct.

20 Q Now, I notice in your transcript you do ask --
21 start asking some questions about how long did this take
22 especially about washing his hands and those kind of
23 things. Were you thinking at that time about the
24 possibility of some sort of timeline defense or ---

25 A Well, what I was trying to do is see how much this

1 alleged victim would remember.

2 Q Yes, sir.

3 A And to see whether or not his memory was consistent
4 to go back through all of the things during his alleged
5 action with Russell.

6 Q Right.

7 A Sometimes I find that people, you know, they may
8 not be able to -- they forget something I think is very
9 critical interaction, so that's what my attempt to do is
10 -- with my line of questioning.

11 Q And, in fact, he was inconsistent with ---

12 MR. THOMAS: May I approach, Your Honor?

13 THE COURT: Yes, sir.

14 MR. THOMAS: Your Honor, again, this is page 77,
15 lines 18 through 20 of the transcript.

16 Q Mr. Brooks, I'm going to ask you if you would,
17 please, sir, to look at that area right fast.

18 A The highlighted portion?

19 Q Yes, sir.

20 A He said, "I walked in the store and I went to the
21 front and all I did was go. I walked around, then I
22 went to bathroom." Yes, sir.

23 Q And this is Mr. **Victim**

24 A That would be the kid, young man.

25 Q All right, sir. So there was inconsistencies in

1 that he was saying that this occurred in the bathroom in
2 the front of the store?

3 A Yes, but I think -- I think he was a bit confused
4 about which restroom we all were talking about. So I
5 didn't take that as one area where I thought I'd score
6 some points. I took it where he was a little bit unsure
7 of all of the events that happened while he was in the
8 restroom.

9 MR. THOMAS: May I approach, Your Honor?

10 THE COURT: Yes, sir.

11 MR. THOMAS: Your Honor, this is page 112 of the
12 transcript of Mr. T. Gales. I think he is a loss
13 prevention officer.

14 THE COURT: And last name is spelled how?

15 MR. THOMAS: G-A-L-E-S, Your Honor. And we're going
16 to be looking at pages 18 through 19.

17 THE COURT: Lines 18?

18 MR. THOMAS: Yes, I'm sorry. Lines 18 through 19.

19 Q Do you know who Mr. Gales is?

20 A I guess he was the loss prevention guy. Asset
21 Protection Associate.

22 Q All right. And he says that he was called to
23 where?

24 A He says, "I was notified of what had happened back
25 in the back part of the store."

1 Q All right, sir.

2 A That's what he said.

3 Q And then this is Applicant's One, and do you
4 recognize that document?

5 A That was Mr. **Victim** the kid, that was his
6 statement that he had given to law enforcement.

7 Q And where does he say that this happens?

8 A "I went to the bathroom in the back of Wal-Mart."

9 Q All right. But his testimony at trial was all this
10 happened in the front?

11 A He does mention that.

12 Q All right. Did you bring this inconsistency to the
13 attention of the jury?

14 A I probably could have done a little better job of
15 bringing that out in hindsight.

16 Q I guess the theory of defense was that the
17 motivation and you do bring that up, motivation is the
18 stealing?

19 A Correct.

20 Q Now, this is the motivation for him to kind of do
21 this to Mr. Earley and then that his testimony would
22 have been untruthful. Do you think this would have been
23 beneficial and helpful to establish that he could have
24 potentially been untruthful?

25 A Possibly. I know Russell's position was that he

1 was stealing or attempting to steal.

2 Q Yes, sir.

3 A I guess that could have helped him. It could have
4 helped in hindsight in terms of maybe causing more
5 disbelief to this young man's testimony.

6 Q Let's move on to the Facebook page. You found that
7 the victim had a Facebook page?

8 A I did.

9 Q And in this Facebook page there were allegations to
10 smocking marijuana?

11 A It didn't say. It was something like a cartoon
12 character.

13 Q Yes, sir.

14 A And it says, "I smoke weed all day." And I know I
15 had tried to raise it up, but Judge Culbertson wouldn't
16 let me.

17 Q Yes, sir.

18 A Because I did want to try to use that to undermine
19 Mr. Victim credibility. But like I said, he wouldn't
20 let me.

21 Q Through that discovery, Mr. Earley learned that he
22 had a Facebook page?

23 A That's correct.

24 Q And then you said that at trial you were surprised
25 by the fact that there had been a comment made by

1 Mr. Earley?

2 A I was surprised that he had alledgedly tried to
3 contact Mr. Victim

4 Q Okay. And do you remember that the -- what he said
5 to him was that I would see you?

6 A It was something like -- and, of course, it's in
7 the transcript. It was something like I'll see you next
8 week or we'll get up next week or something along those
9 lines.

10 Q Could that have been that he was making reference
11 to like I'll see you in court?

12 A Yeah, it could have been. But the problem was,
13 when Mr. Meadors asked him the questions on cross
14 examination, his questions were, you hadn't had any
15 contact with him? And Russell said, no, he talked to
16 him. Hadn't done any of those things. So now when
17 Mr. Meadors pulls out the email contact, not only does
18 it show that he's trying to contact him, but now it
19 shows -- is what Mr. Meadors and Mr. Brown would try to
20 do is discredit Mr. Earley's testimony.

21 Q Yes, sir.

22 A Which now says you saying you hadn't had contact,
23 but just last week which may have been different if it
24 was two or three years ago. Okay. Like when, you know,
25 years ago when the incident happened. But it had

1 happened just last week. I mean, probably less than
2 seven days ago.

3 Q Yes, sir.

4 A From the time he testified. That was very
5 problematic.

6 Q Now, you filed a Rule 5?

7 A I did.

8 Q Was this contact or this statement, do you think it
9 was exculpatory? They have an obligation to provide
10 this information to you prior to trial?

11 A Well, I guess they could have shared it with me.

12 Q Could it have been potentially a Rule 5 violation?

13 A Come to think of it, it's a statement or alleged
14 statement by my client.

15 Q It could be construed, but I don't think it was
16 intended for that. I think it was intended to say, I'll
17 see you in court. It could be construed been a threat,
18 I will see you.

19 A That's what -- I think that was the posture that
20 Mr. Meadors was going to try to portray it as.

21 Q Right.

22 A Obviously, if I had known about it ahead of time,
23 that would have kind of changed my posture with Russell
24 taking the stand assuming he had. I probably would have
25 tried to get it out to minimize the sting of it.

1 Q Well, that's what jumps out at me. Is that had you
2 known about this prior to trial, it's certainly
3 something that you could have discussed with your
4 client?

5 A Yes. And like I knew about the Federal conviction
6 for bank robbery, I probably would have gotten that out
7 to like I said, minimize the sting in front of the jury
8 so that part of what hurt Russell's testimony was it
9 looked like he was lying on John Meadors' cross
10 examination. Because of course he's asking him, you
11 ain't had no contact. You ain't talked to the kid. You
12 ain't done anything. You haven't seen him. And then he
13 whips this out and said, you did have contact. You did
14 send him an email. You did it last week, da, da, da.
15 So to me that was powerful. And, of course, it was
16 unbeknownst to me that that had occurred.

17 Q All right. And they could have chosen to present
18 in their case in chief, prove victim by saying, have you
19 been contacted by Mr. Earley?

20 A Yeah, they could have. They could have done that.

21 Q He threatened you. Oh, yes, I perceived it as a
22 threat. They didn't do that, did they?

23 A No, sir, they did not.

24 Q So they waited until they put Mr. Earley -- until
25 you put Mr. Earley on the stand?

1 A That is correct.

2 Q To use that information?

3 A That is correct.

4 Q And you said that you felt like that that was so
5 detrimental that it was potentially what got him
6 convicted as well as the reason that he got an
7 eight-year sentence?

8 A That is correct.

9 Q Had you had that information, had it been divulged
10 to you, would you have handled this case differently?

11 A I would have definitely handled Russell testifying
12 differently. I would have -- first off, I would have
13 talk to him about it. Hey, you take the stand, they're
14 going to know about this. Second, I would have talked
15 to him about, hey, you may not want to take the stand.
16 Or, hey, you want to wave the white flag and take the
17 plea. Obviously, it would have changed because then I
18 would have known it was coming.

19 Q Right. But if they didn't use it in the case in
20 chief, which they did, if you did not call Russell
21 Earley to the stand, they would have never been able to
22 introduce that document?

23 A That's correct.

24 Q Because they had missed their opportunity to
25 introduce it?

1 A That's correct.

2 Q And based upon that, in your testimony, it would
3 not have been so detrimental as to have gotten eight
4 years or in your testimony a conviction?

5 A It was -- it played a huge role in the case.

6 Q Yes, sir.

7 A If anything, I thought the jury probably was --
8 they saw some inconsistencies with Mr. Victim
9 testimony and Russell had a plausible explanation for
10 being there. Bathroom Wal-Mart. And he said, hey, the
11 kid was unwrapping CD's. You know, I thought that that
12 was perfect explanation. But the problem was, like I
13 said, and if I had known about it, and obviously Russell
14 -- if I had known about it, I would have brought it out
15 as a part of my direct questioning to him. So that
16 would have taken the sting out of it and it would have
17 inhibited Mr. Meadors from using it to try to show him
18 as being untruthful.

19 Q Right.

20 A If nothing else. It would have kept Mr. Meadors
21 from showing him to the jury as being untruthful.

22 Q Because it could be -- you could construe it
23 anyway, but it could have been construed to say, I'm
24 innocent that I will see you in court?

25 A It could have been that way.

1 Q It was that situation because he was in fact going
2 to trial --

3 A Correct.

4 Q -- next week?

5 A Correct.

6 Q Let's move on to the timeline issue. He had a
7 couple of witnesses that he wanted to use?

8 A We really didn't spend a lot of time talking about
9 those, you know, other witnesses.

10 Q Right.

11 A Because, you know, the time it takes to say, you
12 know, the alleged incident took place.

13 Q Right. Did you talk to those folks?

14 A I don't recall doing so.

15 Q I think that they were folks that were with him was
16 Jason Farrington and Betty Farrington?

17 A No.

18 MR. THOMAS: Your Honor, may I beg the Court's
19 indulgence?

20 THE COURT: All right.

21 MR. THOMAS: Just for a second. Your Honor, I have
22 no further questions.

23 THE COURT: Okay. Redirect?

24 MR. GOURLEY: Yes, Your Honor, just briefly. May I
25 approach, Your Honor?

1 THE COURT: Yes, sir.

2 REDIRECT EXAMINATION BY MR. GOURLEY:

3 Q Mr. Brooks, page 79, line 1 through 5. And read
4 those to yourself very quickly.

5 MR. THOMAS: I'm sorry, what page?

6 MR. GOURLEY: Page 79, line 1 through 5. And this
7 is the victim's direct testimony.

8 THE COURT: This is direct?

9 MR. GOURLEY: Yes, Your Honor.

10 A "Question. All right. Did this person came in
11 behind you use the bathroom?" And his answer is, "he
12 was just standing there."

13 Q Okay. So he was standing in the bathroom according
14 to the victim, not sitting?

15 A That's correct.

16 Q Okay. All right.

17 A He was just standing there. Yeah. That was it.

18 Q Okay. And in regards to the Facebook message made
19 by Mr. Earley, he had a Facebook page himself, didn't
20 he?

21 A No, he didn't.

22 Q So it was to his detriment not to tell you?

23 A Yeah. If I had known about it I would have
24 obviously handled it differently. I would have made
25 sure that we had, number one, you know, known about it

1 as far as whether or not Russell should testify and then
2 if he did testify, knowing that this is going to come
3 out just like the bank robbery conviction came out. And
4 I think when I had the direct examination of him, I
5 think I brought that out. And I would have brought out
6 this email exchange in order to try like I said to
7 minimize the sting of what Mr. Meadors ended up doing.

8 Q And Mr. Thomas just asked you about two specific
9 witnesses that were alledgedly with Mr. Earley at the
10 time. Do you recall who they were?

11 A Other than the names he just said.

12 MR. GOURLEY: All right. And, Your Honor, I will go
13 to page 174, lines 1 through 6. This is cross of
14 Mr. Earley.

15 Q If you read that.

16 A "Who were they?" And he says, "friends of the
17 family. We've been knowing each other since 20,
18 30 years. Can you tell me who they are? David
19 Berratan, Justin Berratan, her two kids, and her
20 brother."

21 Q Okay. So the witnesses that were alleged to be
22 with Mr. Earley, he didn't testify that they were
23 present with him at the Wal-Mart did he? According to
24 his testimony at trial?

25 A No.

1 Q Okay.

2 MR. GOURLEY: No further questions, Your Honor.

3 THE COURT: Anything else?

4 MR. THOMAS: Your Honor, if it please the Court.

5 Just possibly one question. May I approach, your Honor?

6 THE COURT: Yes, sir.

7 RECROSS EXAMINATION BY MR. THOMAS:

8 Q Mr. Brooks, I want to show you what's been marked
9 as Applicant's One and ask you to look at the second
10 part of the second sentence. That's the victim's
11 statement?

12 A Which?

13 Q This is a statement from ---

14 A Victim [REDACTED]

15 Q Right. And it says -- where does he say that this
16 person is?

17 A He says -- the highlighted portion?

18 Q Yes, sir.

19 A "I went to the bathroom in the back of Wal-Mart.
20 There was this guy sitting there."

21 Q And that's different than what he testified to?

22 A That is correct.

23 Q Now, your Rule 5, you would expect to get
24 statements?

25 A Always.

1 Q All right. And did you get -- did you get
2 Mr. Earley's statement?

3 A I never got -- when you say a statement.

4 Q The comment that was made on the Facebook page?

5 A No, I did not.

6 MR. THOMAS: No further questions, Your Honor.

7 THE COURT: Okay. Anything else?

8 MR. GOURLEY: No, Your Honor.

9 THE COURT: Any objection to me asking him a
10 question?

11 MR. THOMAS: No, Your Honor.

12 MR. GOURLEY: No, Your Honor.

13 EXAMINATION BY THE COURT:

14 THE COURT: Did you ask Mr. Earley at sometime why,
15 you know, outside, why did you put that message on
16 Facebook?

17 A Why did he try to email the kid?

18 THE COURT: Did you ask him later on?

19 A After it happened? Judge, honestly, I don't recall
20 if I did.

21 THE COURT: Okay. That's fine. Thank you. You can
22 step down.

23 MR. BROOKS: Can I be excused, Judge?

24 THE COURT: Any objection?

25 MR. THOMAS: No objection.

RULING OF THE COURT

1 MR. GOURLEY: No, Your Honor.

2 THE COURT: Any additional witnesses from the State?

3 MR. GOURLEY: No, Your Honor.

4 THE COURT: Any reply?

5 MR. THOMAS: No, Your Honor.

6 THE COURT: Okay. Any closing remarks from the
7 Applicant?

8 MR. THOMAS: Your Honor, nothing other than
9 Mr. Earley's request to go over everything again. I
10 think that we would suggest that the evidence presented
11 today supports his claim for a postconviction relief and
12 we would ask the Court to grant the relief.

13 THE COURT: All right. Anything from the State?

14 MR. GOURLEY: No, Your Honor.

15 THE COURT: All right. It's a quarter to one which
16 we haven't had a morning break. We didn't start until
17 10:15, I'm not inclined to start another one unless it's
18 five minutes long.

19 MR. GOURLEY: It's a withdrawal, Your Honor.

20 THE COURT: Let me back up. Mr. Earley, the way the
21 process will work is this. I've got a fair amount of
22 material to review. I will make a decision and it will
23 either be to grant your application. If that is done
24 and the State doesn't appeal, the case will come back to
25 the General Sessions Court in Sumter County and the case

1 will be handled as the Solicitor sees fit.

2 If I deny your application, an order will be issued
3 providing that and, of course, your attorney can counsel
4 you as to the time for appeal and then the case in that
5 fashion can proceed to the Appellate Court. Do you
6 understand that?

7 MR. EARLEY: Yes, sir.

8 THE COURT: Did I state all that correctly?

9 MR. GOURLEY: You did, Your Honor.

10 THE COURT: All right. Thank you. Thank you for
11 your presentation.

12 - - -END OF REQUESTED TRANSCRIPT OF RECORD- - -

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

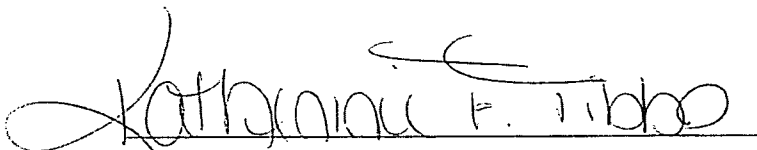
COUNTY OF SUMTER)

I, KATHERINE F. TIBBS, Registered Professional Reporter for the Forty-third Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Sumter County, South Carolina, on the 24th of February, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

(This transcript was transcribed from the record taken by Margaret T. Sullivan)

November 24, 2014

A handwritten signature in cursive script, reading "Katherine F. Tibbs", written over a horizontal line.

Katherine F. Tibbs

Registered Professional Reporter

VICTIM STATEMENT

Sumter, SC 29150

Victim
NAME

ADDRESS

DOB

1994

SSN

PHONE

Case# 08131354

On November 22, 2008 at approx. 7:00 p.m. I went to Walmart with my grandmother. I went to the bathroom in the back of Walmart. There was this guy sitting there. He was a white male wearing a blue plaid jacket with baggy blue jeans, approx. 6'4. The guy came in the bathroom behind me. I said to him, "Hey what's up?" I then left the bathroom. I didn't even wash my hands. I had to return back to the bathroom to wash my hands because I had sneezed. I saw the same guy in the bathroom again. After about 15 seconds the guy came out and then I came out. He called me over to where he was standing by the bathroom and he asked me if I wanted a blow job. He pointed toward my genital area. I said, "Hell no, fuck you." I then went to customer service and I called the police. A police officer came and he drove me by McLoughlin Ford where the police had the guy detained. I identified the guy as the same guy that approached me in the bathroom at Walmart.

I have read or had read to me the above statement, consisting of 1 page and attest that is a true and accurate account, to the best of my knowledge, of the events which took place on or about or during the above given time. I have received a copy of this statement from Det. Robert Beckford.

SIGNED:

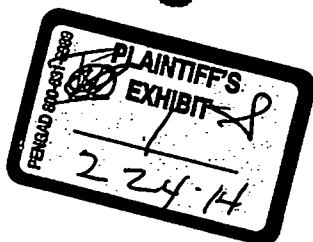
W. J. Goodwin

DATE: November 24, 2008

WITNESS:

Arlene H. Corbin

WITNESS:

R. Beckford

Receipt for Exhibits

Case # 2013 CP 43-0037 Judge James
Plaintiff Russell O. Early Plt's Atty Thomas A. Thomas
Defendant Step Def's Atty Amel Hourley
Date Trial Started 2-24-14 Date Trial Ended 2-24-14
Received of Margaret Sullivan Court Reporter for the above case, these exhibits:

1. Victim Statement
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____
14. _____
15. _____
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19. _____
20. _____

This 24 day of February, 20 14 Page 1 of 1

Sumter County Clerk of Court

By: [Signature]

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Russell Earley, # 199848,	)	Case No. 2013-CP-43-37
	)	
Applicant,	)	MEMORANDA OF LAW
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed January 7, 2013. An evidentiary hearing into the matter was convened on February 24, 2014 at the Sumter County Courthouse. Applicant was present at the hearing proceeded and represented by Tommy Thomas, Esquire. The Respondent was represented by Daniel Gourley, Esq., of the South Carolina Attorney General's Office. Applicant testified along with Paul Fata, Esq. This Court requested briefing on the following issues:

Questions presented

(1) Whether the failure to turn over Facebook post stating "see ya" amounts to a Rule 5 violation under Rule 5 (a)(1)(A)?

DISCUSSION

I.

During the evidentiary hearing applicant claims trial counsel was ineffective for failing to object to the introduction of the "See ya" message posted by the applicant on the victim's Facebook page the week before trial. The Applicant claims that trial counsel should have asked for a mistrial once the message was referenced on cross-examination of the applicant by the solicitor; the basis for the mistrial would have been the solicitor's failure to provide the Facebook message to trial counsel as part of Rule 5 disclosures, as the Applicant claims the

message was a statement made by the applicant that was in the custody of the solicitor. The trial transcript reveals that the Applicant was questioned at trial by the solicitor as to whether the applicant had had any contact with the victim during the time leading up to the trial. The Applicant replied that he had had no contact with the victim. The solicitor then questioned the Applicant about the Facebook message and the Applicant admitted he posted the message. The Applicant maintained the surfacing of that statement was crucial in undermining his credibility with the jury and that the State was required to turn over the statement pursuant to Rule 5, SCRCrP.

In State v. Lawton, 382 S.C. 122, 675 S.E.2d 454 (2009), the South Carolina Court of Appeals found that the State's failure to turn over a letter written by the Defendant to his ex-wife admitting that his story was "full of lies" amount to a Rule 5 violation. In reversing the PCR court's decision, the Court of Appeals found that the letter was relevant and was not merely impeaching. The court further found that the defendant was prejudiced as it would have likely affected his decision to testify.

However, Lawton is distinguishable from the instant case. Lawton dealt with a personal letter written in private to Defendant's ex-wife. Lawton, 382 S.C. at 127. In the instant case, Applicant posted on a public forum. Furthermore, Lawton's letter was relevant because it specifically dealt with his version of events. Unlike the instant case, Applicant merely posted two words having absolutely no bearing on his version of events¹. The meaning of "relevant" is "having a significant and demonstrable bearing on the matter at hand." Id. Under Rule 401 "evidence is relevant if it has any tendency to make the existence of any fact that is of

¹ Applicant alleged that he was in the bathroom with Victim. Applicant stated Victim was opening up some sort of plastic covering. Applicant asserted that Victim was shoplifting. Applicant argued that Victim accused Applicant of soliciting sexual acts to protect himself from being accused of shoplifting.

consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE. Again, a Facebook post stating “see ya” does not have “significant and demonstrable bearing” on whether the Applicant solicited sexual acts from a minor. The Facebook post was simply used for impeachment purposes to further impeach Applicant’s credibility.

Furthermore, Applicant can show no resulting prejudice. The Court of Appeals found in Lawton that Defendant was prejudiced because there was a “reasonable probability” that he would not have testified had he known about the strong impeachment evidence. Id. In the instant case, the Applicant had no defense to the charges other than his own testimony. Applicant did not call nor did he present any evidence except for his testimony stating his version of events. Applicant had no choice but to take the stand to explain his version of events. Applicant chose to take the stand knowing that his credibility was going to be impeached with his 2003 bank robbery charge. Applicant’s credibility was further impeached when he stated he had dinner at Casa-Linda’s prior to entering Wal-Mart, where in fact Casa-Linda’s had been closed for some time. The State would submit that Applicant can show no prejudice as a result of the State’s failure to turn over the Facebook post because it was not relevant and Applicant testified knowing that his credibility was going to be impeached with a 2003 Bank robbery charge. The use of the Facebook post to impeach Applicant’s credibility was merely cumulative impeaching evidence.

CONCLUSION

Therefore, Respondent submits that Applicant has not met his burden of prove entitling him to relief.

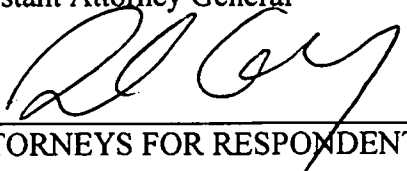
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

March 27, 2014

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
		2013-CP-43-37
RUSSELL EARLEY #199848	)	
	)	
Applicant,	)	
	)	MEMORANDUM IN SUPPORT OF
v.	)	POST-CONVICTION RELIEF
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Applicant asserts that trial counsel was ineffective for failing to object to the introduction of evidence in the form of a Facebook message ("See ya.") allegedly posted by the Applicant on the victim's Facebook page in the days prior to trial. The electronic message was referenced by the Solicitor during cross-examination of the Applicant.

The trial transcript reveals that the Applicant was questioned at trial by the Solicitor as to whether the Applicant had had any contact with the victim during the time leading up to the trial. The Applicant replied that he had had no contact with the victim. The Solicitor then questioned the Applicant about the Facebook message and the Applicant admitted he posted the message.

As with any statement made by the Applicant that was in the custody of the Solicitor, whether handwritten or electronic, Trial Counsel was entitled to receive the statement as part of the Rule 5 of the South Carolina Rules of Criminal

Procedure disclosures provided by the Solicitor. In the case at hand, Trial Counsel was not notified of or given a copy of the statement prior to its introduction at trial.

The Applicant asserts that the statement at issue goes beyond mere impeachment purposes. As in the case of a letter at issue in State v. Lawson, 382 SC 122, 675 SE2d 454 (Ct. App. 2009), the Facebook statement directly impacts on the credibility of the Applicant, which is relevant to the Applicant's defense.

As in Lawton, the statement should have been provided to Trial Counsel as part of the normal course of a Rule 5 disclosure. "Evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE.

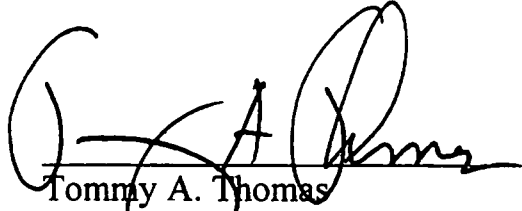
The Applicant was prejudiced by the failure to disclose the message prior to trial, in that it was clearly material to the preparation of the Applicant's defense.

In addition, had Trial Counsel been notified of the existence and content of the message, it may have affected the Applicant's decision to testify at trial, which once again, clearly prejudiced the Applicant. Failure to turn over the message as required effectively denied the Applicant the fundamental right to decline to testify. As in the introduction of the written letter in Lawton, the surprise introduction of the electronic message at hand clearly prejudiced the Applicant and rose beyond mere impeachment purposes.

Failure to object to the surprise admission of the Facebook statement is not explained by a valid trial strategy. The State had an obligation to provide a copy and/or divulge the existence of the statement pursuant to a Rule 5 request.

Trial Counsel was clearly ineffective.

Respectfully submitted,



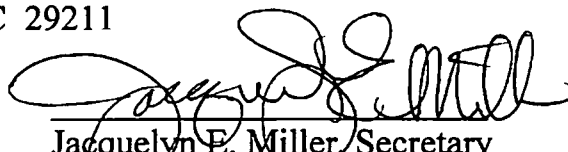
Tommy A. Thomas
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

March 27, 2014

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	2013-CP-43-37
RUSSELL EARLEY #199848	)	
	)	
Applicant,	)	
	)	CERTIFICATE OF SERVICE
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for Appellant in the above action, hereby certify that I placed in the United States Mail, a copy of a Memorandum in Support of Post-Conviction Relief with postage prepaid, and the return address clearly shown on said envelope to Daniel Gourley, Esq. at:

Daniel Gourley, Esq.
 Assistant Attorney General
 P.O. Box 11549
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Irmo, South Carolina
 March 27, 2014

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Russell Earley, # 199848,

Applicant,

v.

State of South Carolina,

Respondent.

RECORDED THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

2014 JUN 30 PM 1:11
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

2013-CP-43-0037

ORDER GRANTING
POST-CONVICTION RELIEF

CERTIFIED TRUE COPY
OF ORIGINAL FILED

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter came before the Court pursuant to an application for post-conviction relief filed January 7, 2013 by Russell Earley. The State filed a return dated April 9, 2013. An evidentiary hearing was convened at the Sumter County Judicial Center on February 24, 2014. The applicant was present and represented by Tommy A. Thomas, Esquire. The State was represented by Daniel Gourley, Assistant Attorney General.

PROCEDURAL HISTORY

The applicant is presently confined in the South Carolina Department of Corrections pursuant to a conviction in Sumter County. The applicant was indicted in July 2009 for Criminal Solicitation of a Minor. He was represented at trial by Charles T. Brooks, III, Esq. On January 5-6, 2009, the applicant was tried and convicted following a jury trial before the Honorable Benjamin H. Culbertson. Judge Culbertson sentenced the applicant to eight years imprisonment. A notice of appeal was timely filed, but the appeal was dismissed after the applicant notified the Court of Appeals he wanted to withdraw his appeal.

STANDARD OF REVIEW

In a post-conviction relief proceeding, the applicant bears the burden of proving his allegations by a preponderance of the evidence. Caprood v. State, 338 S.C. 103, 109-110, 525 S.E.2d 514, 517 (2000); Rule 71.1(e). Where ineffective assistance of counsel is alleged 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 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The correct measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, *supra*. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case." Caprood, *supra*, at 109, 525 S.E.2d at 517 (citations omitted). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 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. When a defendant challenges his conviction after a trial, the proper consideration is whether there is a reasonable probability that, absent the errors, the fact-finder would have had a reasonable doubt respecting guilt. Smith v. State, 375 S.C. 507, 515, 654 S.E.2d 523, 527-28 (2007). (citations omitted). In order to receive relief, an applicant must prove both ineffective assistance and resulting prejudice. See, e.g., Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007).

ALLEGATIONS

Mr. Earley alleged in his application and at the hearing that he is entitled to post-conviction relief for the following reason(s):

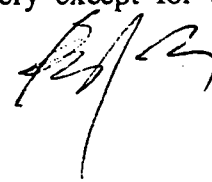
1. Trial counsel did not adequately prepare.
2. Trial counsel failed to review discovery with him.
3. Trial counsel failed to fully discuss the State's plea offer with him.
4. Trial counsel failed to establish a timeline to establish he could not have committed the offense.
5. Trial counsel failed to properly cross-examine the victim as to certain discrepancies between the victim's statement to law enforcement and his trial testimony.
6. Trial counsel failed to adequately advise him of his right to testify and the ramifications of criminal record.
7. Trial counsel failed to object to evidence that the applicant had posted a message on the victim's Facebook page the week prior to trial, and failed to move for a mistrial for a discovery violation committed by the State.

SUMMARY OF RELEVANT FACTS

The applicant was arrested for criminal solicitation of a minor after the victim reported to Walmart security and to law enforcement that the applicant had propositioned him in or just outside a bathroom at the Walmart store in Sumter. Specifically, the victim claimed that when he encountered the applicant, the applicant said, "Hey, do you want a blow job?", and then pointed at the victim's groin area. The sole witnesses to the alleged event were the victim and the applicant. The victim gave a written statement to law enforcement. The applicant was arrested after he left the store.

PCR HEARING

The applicant and trial counsel testified at the hearing. The applicant testified on direct examination that trial counsel met with him a couple of dozen times but that they discussed the case only once. He claims trial counsel told him there was no discovery except for the victim's



statement to law enforcement, which trial counsel showed him. He claims that the statement and the victim's trial testimony were inconsistent as to which bathroom the incident occurred in. That issue will be discussed fully below. Trial counsel seemingly agreed during cross-examination that he did not explore the alleged inconsistency. The applicant repeated his trial testimony that he was using the bathroom in the front of the store and that he observed the victim apparently attempting to open a package. He claims he thought the victim was shoplifting, so he told the victim his shouldn't be stealing. He believes the victim assumed he was going to report the shoplifting to security, so the victim fabricated the solicitation incident so he would not get arrested for shoplifting. The applicant testified trial counsel never explained to him how the case would be defended and that he learned of the trial only two days before. He claims the State offered a plea deal calling for probation but that he did not accept the offer because he would have to be on the sex offender registry and because he was not guilty. He testified he wanted to call the people he went to Walmart with in order to prove he was in the bathroom for a couple of minutes and that the timeline was very short. None of these witnesses were called at trial or at the PCR hearing. He testified that trial counsel's failure to call these witnesses influenced his decision to testify, though he had convictions for bank robberies. He admitted he knew the convictions could be used against him. He claims trial counsel told him video footage of the event was not available.

Trial counsel testified he met with the applicant "too many times to count". He stated the applicant wanted to get the case over with, but a new solicitor had been elected and he did not want to "rock the boat". He found out that solicitors John Meadors and Tyler Brown were assigned to the case, but when he spoke to them, they were not even aware of the case.

Trial counsel further testified that he was aware that the victim's Facebook page had a cartoon of a man with a caption reading "Smoke weed all day" and that the applicant was aware of that. He testified that unbeknownst to him, the applicant had posted a message on the victim's

Facebook page the week prior to trial saying something to the effect of "See ya". He summarized the solicitor's cross-examination of the applicant about any communication with the victim, and that the applicant denied any communication. However, the solicitor then brought out the Facebook posting and the applicant admitted that communication. Trial counsel testified that the applicant did not tell him about the Facebook posting. He testified that the cross-examination on that issue was devastating because the applicant was caught in a blatant lie and the sole issue in the case was the credibility of the victim and the applicant. He testified that if he had known about it, he would have advised the applicant to either not testify or to not deny communicating with the victim.

Trial counsel testified that he did not call as witnesses the people who went to Walmart with the applicant because they would not have added anything to the facts, as none of these people went to the bathroom with the applicant, and the alleged incident took only seconds. He also said there was no real timeline to establish, because the alleged incident took only seconds. He testified he did not see the need to request surveillance video to see if there was a recording of the applicant pointing at the victim's groin area or otherwise showing an encounter, because the incident took only a short time. Trial counsel testified that he did not realize at trial that the victim's written statement and trial testimony were inconsistent as to whether the incident occurred in the bathroom in the front of the store or the back of the store. He testified that in hindsight, he could have done a better job of exploring that point.

Trial counsel testified that the applicant did not tell him about the Facebook posting

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In considering the Applicant's case, this court had before it the Applicant's PCR file, including all pleadings filed, the records of the Sumter County Clerk of Court regarding the

conviction, the Applicant's records from the South Carolina Department of Corrections, and the trial transcript. This Court carefully listened to all of the testimony presented at the hearing and weighed the same according to credibility. The court's findings are as follows.

Adequate Preparation

I first conclude that, overall, trial counsel was prepared. He had developed a reasonable strategy centering upon the credibility of the victim and the applicant. There was obviously a problem with the admissibility of the applicant's bank robbery conviction(s), but there was no other reasonable strategy to employ other than making the case a proverbial swearing contest. Relief is denied on this ground.

Review of Discovery

It is apparent there was no discovery to review, except for the victim's statement. Perhaps it would have been advisable to determine whether there was video of the encounter; however, no video was introduced at the hearing and there is no evidence as to what, if anything, any video would have shown. Therefore, the applicant has established no prejudice for trial counsel's failure to obtain video. Relief is denied on this ground.

Failure to Fully Discuss Plea Offer

Relief is denied on this ground. The applicant testified he did not accept an offer calling for probation because he would have been on the sex offender registry and because he was not guilty. The applicant has presented no evidence of ineffective assistance of counsel as to this ground.

Failure to Establish Timeline

There was no real timeline to establish, as the incident took only a few seconds. The applicant did not call at the PCR hearing the individuals he claims accompanied him to Walmart. Therefore, the applicant cannot establish the prejudice prong on the issue as to whether their testimony at trial would have been beneficial to the applicant.

Failure to Adequately Advise Applicant of Ramifications of his Criminal Record

The transcript reveals that the trial judge fully examined the applicant as to whether he understood his right to testify or not testify. The record shows he understood his rights. The trial transcript establishes the trial judge ruled that the applicant's "2003 bank robbery conviction" would be admissible. The applicant testified at the PCR hearing that he knew his bank robbery convictions could be introduced if he testified at trial. See a more complete discussion below of the introduction of the applicant's nine bank robbery convictions.

Failure to Explore Inconsistencies Between Victim's Written Statement and Direct Testimony

I conclude the applicant is not entitled to relief on this ground. The applicant contends that counsel failed to explore discrepancies in the victim's testimony and pre-trial statements as to which bathroom was the location of the encounter. In his statement to the police given two days after the incident, the victim stated "I went to the bathroom in the back of Walmart." He proceeded to give details of the defendant's actions leading the criminal charge of solicitation of a minor. At trial, the victim's testimony as to the location of the bathroom was less specific, obviously because he was never asked to pinpoint whether the incident occurred in the bathroom at the front of the store or the bathroom at the back of the store. For example, on page 77 of the trial transcript, the victim's testimony reads, "I walked in the store and I went to the front and all I did was go – I walked around, then I went to the bathroom, yes, sir." The Walmart loss prevention officer testified that he was told the encounter took place in the bathroom at the back of the store. In my view, there is no location discrepancy between the victim's trial testimony and his statement to law enforcement. He testified that he walked in the store, went to the front, walked around, and went to the bathroom. This testimony alone does not indicate he went to the bathroom in the front of the store or the back of the store. At best, the testimony is inconclusive on that point. It is unusual, at least in my experience, for a victim to be called as a witness at a PCR hearing; however, the victim could have

been called to testify at the hearing and clarify which bathroom he claims was the location of the encounter.

On the issue of which bathroom was the incident location, the area in which I believe trial counsel's performance may have fallen below accepted norms was in his failure to realize, explore, and argue to the jury that the applicant's version of events had the encounter occurring in the bathroom in the front of the store (see Transcript, page 175, lines 11-12). Mr. Early testified, "As we walking out the door I cut off to use the bathroom and then right behind them." This clearly indicates the applicant had the encounter occurring in or around the front bathroom. However, I find the applicant has not established the prejudice prong, as I find that he has not proven that there is a reasonable probability that the outcome of the trial would have been different if this issue had been more fully explored. Pointing out to the jury that the two people involved in the incident testified differently as to where the incident happened would not have, by itself, made it reasonably likely the outcome would have been different. Absent proof that the victim gave conflicting statements as to where the incident occurred, the crucial issue was not **where**, but **whether**, the incident occurred.

Failure to Object to Evidence of Facebook Posting and Failure to Move for Mistrial

The applicant testified in his own defense at trial. On cross-examination, the solicitor asked the applicant if he had had any direct contact with the victim from the day of the incident up to the time of trial, a period of almost four years. The applicant responded that he had had no contact with the victim during that time; however, the solicitor had been provided with information, presumably by the victim, that the applicant had posted a message on the victim's Facebook "wall" the week before trial. The message said "See ya". After the applicant denied he had had any contact with the victim, the solicitor confronted the applicant with the message and the applicant admitted he had posted the message. During closing, the solicitor highlighted this exchange to the jury as one

reason to find the applicant not credible, arguing that the applicant had lied about having any contact with the victim, and that "It's all about credibility, believability."

In State v. Lawton, 382 S.C. 122, 675 S.E. 2d 454 (Ct. App. 2009), the Court of Appeals considered whether a letter written by the defendant to his ex-wife was a "statement" under Rule 5, SCRCrP. Lawton was indicted for burglary and weapons charges after entering his ex-girlfriend's home. Before trial, he wrote his ex-wife a letter in which he stated, "I know that my story is full of lies, but no more than hers, mine just have to be better than hers." The letter was not disclosed to the defense. The defendant testified and the solicitor produced the letter on cross-examination, and the defendant objected based on the State's failure to disclose in violation of Rule 5 (a) (1) (A). The State argued Rule 5 did not apply because the statement was used on cross-examination. The trial judge overruled the objection on that basis. The trial court further stated that the letter involved Lawton's credibility, which the trial court viewed as merely collateral, thereby rendering the letter not "relevant" within the meaning of 5 (a) (1) (A). On appeal, the Court of Appeals held that the letter should have been disclosed to the defense because it was "clearly relevant". The court also ruled that the statement was also material to the preparation of Lawton's defense under Rule 5 (a) (1) (C).

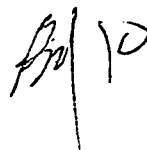
Rule 5 (a) (1) (A) provides in pertinent part that upon request the prosecution shall permit inspection and copying of any relevant written or recorded statements made by the defendant within the possession, custody or control of the prosecution or the existence of which is known to the prosecution. Rule 5 (a) (1) (C) provides that the prosecution, upon request, shall permit the defendant to inspect and copy papers, etc., within the possession of the prosecution "and which are material to the preparation of his defense...."

Trial counsel testified on cross-examination that if he had been provided the Facebook posting, he would have counseled the applicant about not denying its existence or would have

counseled him not to testify. Trial counsel testified that in his opinion, the Facebook posting "played a huge role" in the jury convicting the applicant because credibility of the victim and the applicant was the key to the case.

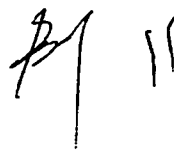
I first conclude that the Facebook posting was a "statement" made by the defendant, the existence of which was known to the State under Rule 5 (a) (1) (A). Though the posting was not written in the literal sense, it was typed by the defendant and electronically transmitted to the victim. In my view, that is a writing. The statement was also "relevant", as used by the State, for the purpose of attacking the applicant's credibility and for the purpose of establishing the inference that the applicant was trying to intimidate the victim (See cross-examination, Trial Transcript, page 180, lines 5-21; page 181, lines 2-3; page 181, line 23 through page 182, line 2; see also closing argument of solicitor, page 228, lines 15, through page 229, line 9; page 230 ,lines 22-24). Rule 5 (a) (1) (A) speaks in terms of "any relevant written statement" and does not require only the production of statement relevant to the direct issue of guilt. The Lawton court clearly understood this, as it held the State must produce statements relevant to the issue of credibility. Though Lawton's letter in and of itself raised direct issues of credibility, the Facebook posting made by the applicant was ultimately relevant to the issue of credibility.

I also conclude that the posting was a paper or document material to the preparation of the applicant's defense. Trial counsel testified that if he had known about the posting, he would have counseled the applicant to not deny having made the posting or to not testify at all. In my view, there was no practical way for the applicant to avoid testifying, because if he did not testify, the only story the jury would have heard was the victim's relatively uncontradicted testimony. However, the decision of whether to testify must be made with knowledge of all relevant facts and circumstances, including the proper production of all discoverable material. If the posting had been disclosed and the defendant still elected to testify, it is obvious that trial counsel would have



counseled the applicant how to respond to the question of whether he'd had any contact with the victim. Thus, it was material to the preparation of the applicant's defense. See Lawton, 382 S.C. at 127-128.

For the foregoing reasons, I conclude trial counsel's failure to move for a mistrial based on a Rule 5 violation fell below accepted professional norms. That satisfies the first prong of the PCR analysis. The second prong that the applicant must establish is whether there is a reasonable probability that but for counsel's unprofessional errors, the outcome of the trial would have been different. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome of the trial. As is typically the case, this is a difficult issue. It is undeniable that credibility of the victim and the applicant was central to the jury's resolution of the case and credibility was the focal point of the State's closing argument. Both sides argued credibility to the jury, and the relevant issues boil down to "He said, he said." The State has a heavy burden of proof and the subject crime allegedly occurred out of view of any person other than the victim and the defendant; therefore, their credibility is paramount. The applicant's credibility was substantially undermined when he denied having had contact with the victim since the incident date and he then was immediately compelled to admit he had contacted the victim by Facebook a week before trial. On the other hand, the applicant had been convicted of bank robbery and the trial judge ruled that "the 2003 bank robbery conviction" would be admissible; for some unknown reason, the applicant volunteered on cross-examination that he had been convicted of nine bank robberies. Evidence of being convicted of one bank robbery is damaging enough to one's credibility, but evidence of nine bank robbery convictions is perhaps much more damaging. If the Facebook posting had been disclosed to the defense and had the applicant not been caught saying he'd had no contact when he actually had contact, there would still have been an issue of whether he had been trying to intimidate the victim, an argument which the State still could have pursued.

Handwritten signature and initials, possibly "B" and "11", in the bottom right corner of the page.

As noted, the applicant must establish that there is a reasonable probability that the outcome of the trial would have been different if counsel had performed properly. In the context of trial counsel failing to object to the State's use of the Facebook posting and failing to move for a mistrial, the analysis of the second prong must include an analysis of the question of whether the trial judge would have been required to grant a motion for mistrial. See Weinn v. State, 281 S.W. 3d 633 (Tex-App. 2009) (Failure to move for a mistrial is ineffective assistance of trial counsel if a motion for mistrial should have been granted, if made). The court realizes that the decision to grant or deny a motion for a mistrial would be within the trial judge's discretion, and "the granting of a mistrial is a serious and extreme measure which should only be taken when the prejudice can be removed no other way." State v. Ferguson, 376 S.C. 615, 658 S.E. 2d 101 (2008), quoting State v. Edwards, 373 S.C. 230, 236, 644 S.E. 2d 66, 69 (Ct. App. 2009). Many South Carolina appellate cases involving mistrial motions based upon the State's failure to fully respond to Rule 5 and Brady motions have been addressed in the context of the motion for mistrial having been made, denied, and a curative instruction having been given. In those cases, the appellate courts have held that the curative instruction to disregard certain evidence was sufficient to cure any prejudice. However, the rule has been stated somewhat differently by our Supreme Court in several cases, e.g., "An instruction to disregard incompetent evidence is usually deemed to have cured the error **unless on the facts of the particular case** it is probable that, notwithstanding the instruction, the accused was prejudiced." State v. Bell, 293 S.C. 391, 360 S.E. 2d 706 (1987), citing State v. Craig, 267 S.C. 262, 227 S.E.2d 306 (1976); State v. Smith, 290 S.C. 393, 350 S.E.2d 923 (1986) (emphasis added).

I conclude that in this particular case, the trial judge would have been compelled, upon proper motion, to grant a mistrial. A curative instruction would not have been sufficient to cure the prejudice resulting from the State's failure to disclose the statement. Again, victim/defendant credibility was the paramount, if not the sole, issue for the jury to determine. Trial counsel's failure

to move for a mistrial left the applicant's credibility severely damaged with little room for rehabilitation.

As noted above, the applicant's credibility was arguably substantially undermined when he volunteered on cross-examination that he had been convicted of nine bank robberies instead of just one. I conclude this is of no import to the determination of whether the trial judge would have been required to grant a mistrial with regard to the Facebook evidence. Overall, the applicant has established that a mistrial would have to have been granted if trial counsel had objected to the discovery violation and moved for a mistrial.

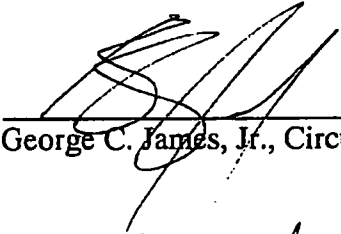
CONCLUSION

In conclusion, based upon the entire record, this court finds and concludes that the applicant has met his burden of proof under Strickland v. Washington, 466 U.S. 668 (1984), and Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Counsel's attention is directed to Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), and Rule 59(e), SCRCP, regarding the filing of a Motion to Alter or Amend should counsel believe this Order fails to adequately address all issues raised as required by S.C. Code Ann. § 17-27-80 (2003). This Court further advises that if either party desires to secure appellate review of this order, a notice of appeal must be filed and served **within thirty (30) days** of the service of this order. The applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

IT IS THEREFORE ORDERED THAT the application for post-conviction relief is granted and the matter is remanded to the Sumter County Court of General Sessions for a new trial.

June 30, 2014


George C. James, Jr., Circuit Judge

COUNTY OF Sumter
STATE VS.
Russell Scott Earley

AKA:
Race: 1 Sex: M Age: 42

DOB: 1970 SS#: [REDACTED]

Address: 9424 Plowden Mill Road

City, State, Zip: Alcolu, SC 29001

DL#: [REDACTED] SID#: SC 00714272

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

In disposition of the said indictment comes now the Defendant who was
TO: Solicitation of a minor

INDICTMENT/CASE#: 2009-GS-43-0712

A/W#: M000057

Date of Offense: 11/22/2008

S.C. Code §: 16-15-342

CDR Code #: 3129

SENTENCE SHEET
OF ORIGINAL FILE

☒ CONVICTED OF ☐ PLEADS

DEPUTY CLERK OF COURT

in violation of § 16-15-342 -15-342

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

w/minor 1st or Lewd Act)

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

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

ATTEST: John P. Meadors 10429
Meadors, John P SC Bar#

Defendant

Attorney for Defendant

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 X years
and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment
of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X

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 the 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 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	\$ 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 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

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

\$ paid to Public Defender Fund

Other: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

Margaret Sullivan
2148
July 19, 2012

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)

INDICTMENT FOR

CRIMINAL SOLICITATION OF A MINOR

NOTIFIED TRUE COPY
 OF ORIGINAL FILE

At a Court of General Sessions, convened on July 16, 2009, the Grand Jurors of
 SUMTER County present upon their oath:

SUMTER COUNTY
 SOUTH CAROLINA

That RUSSELL SCOTT EARLEY did in Sumter County on or about November 22, 2008, violate Section 16-15-342 of the Code of Laws of South Carolina (1976), as amended, in that RUSSELL SCOTT EARLY did commit the crime of criminal solicitation of a minor by knowingly contacting or communicating with, or attempting to contact or communicate with, a person under the age of eighteen, to wit: Victim age 14, for the purpose of or with the intent of persuading, inducing, enticing, or coercing Victim to engage or participate in a sexual activity as defined in Section 16-15-375(5) or a violent crime as defined in Section 16-1-60, or with the intent to perform a sexual activity in the presence of Victim in that the said RUSSELL SCOTT EARLEY did accost Victim and ask him if he wanted a blow job.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

P. Kelly Jackson
 SOLICITOR

DOCKET NO. 2009-GS-43- 712
The State of South Carolina
County of SUMTER

COURT OF GENERAL SESSIONS

JULY TERM 2009

THE STATE
vs.

RUSSELL SCOTT EARLEY

Indictment for

CRIMINAL SOLICITATION OF A MINOR

C. KELLY JACKSON, SOLICITOR

WITNESSES

SPD

Beckford

ARREST WARRANT NUMBER

M000057

D/A: 11/24/08

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

July 19, 2009