

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No. 2015-000136

KEVIN C. BRADLEY, 339031,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER.

ATTORNEYS FOR RESPONDENT.

**Appellate Case 2015-000136
On the 2010 PCR Docketed at 2010-CP-45-389
Indictment 2009-GS-45-249**

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¹ Applicant originally filed a timely Post-Conviction Relief Application (Docket No. 2010-CP-45-389) on September 29, 2010. In this original application, Applicant raised various allegations stemming from both Indictment No. 2009-GS-45-249 and Indictment No. 2010-GS-45-030. Applicant filed an amendment to that application on June 13, 2012. Due to the fact that both of these indictments are completely unrelated, the State requested PCR Counsel file a separate PCR Application for Indictment #2010-GS-45-030. Subsequently, PCR Counsel filed a new PCR Application (Docket No. 2013-CP-45-098) for Indictment No. 2010-GS-45-030 on February 25, 2013)

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF WILLIAMSBURG	)	
	)	
THE STATE	)	JANUARY 25, 2010
	)	
PLAINTIFF,	)	
	)	
VERSUS	)	
	)	
KELVIN BRADLEY,	)	2010-GS-45-249
	)	
DEFENDANT.	)	
_____	)	

BEFORE

THE HONORABLE CLIFTON NEWMAN

APPEARANCES

KIMBERLY BARR, ESQUIRE
ATTORNEYS FOR THE STATE

WILLIAM L. CARRAWAY, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

Pamela Ozment-Cartee
Circuit Court Reporter

THE STATE VERSUS KEVIN BRADLEY

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1 **MS. BARR:** Your Honor, the next matter before you is
2 Indictment Number 2009-GS-45-249, The State versus Kevin
3 Bradley. It is a two-count Indictment, one for criminal
4 sexual conduct with a minor in the first degree. And count
5 two is criminal sexual conduct with a minor in the second
6 degree.

7 The defendant is entering a guilty plea of count one.
8 The state is going to dismiss count two of the Indictment.
9 And with regard to this Indictment, he is being represented
10 by Attorney Richard Strobel.

11 He is also before the court on Indictment Number 2010-
12 GS-45-30. And judge, this is an Indictment for criminal
13 sexual conduct with a minor in the second degree. Your
14 Honor, he is entering a guilt plea as indicted. He is
15 waiving his right to have the case presented to the grand
16 jury and wants to enter a guilty plea today.

17 And in connection to this plea, he is being represented
18 by Mr. Carraway.

WHEREUPON, KEVIN BRADLEY**AFTER FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS**

21 **MR. BRADLEY:** I do.

22 **THE COURT:** Mr. Bradley, I have in my hand two
23 Indictments. One is for criminal sexual conduct with a
24 minor first degree. And the other is criminal sexual
25 conduct with a minor second degree. The Solicitor said that

THE STATE VERSUS KEVIN BRADLEY

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1 you want to plead guilty to these two Indictments. Is that
2 right?

3 MR. BRADLEY: That's correct.

4 THE COURT: Are you guilty of these two charges?

5 MR. BRADLEY: Yes, Your Honor.

6 THE COURT: And, before I can accept your guilty
7 plea, I need to make sure that you understand your
8 constitutional rights concerning these charges and the
9 guilty plea. As I understand it, Mr. Strobel represents you
10 on the charge of criminal sexual conduct with a minor in the
11 first degree. Is that right, Mr. Strobel?

12 MR. STROBEL: Yes, sir. I have an Affidavit that I
13 want to file and make a part of the record. We filled out
14 when we filed this case. And I submit this to the court.

15 THE COURT: All right. And, this as I understand
16 it, Mr. Carraway, you represent him on the second degree CSC
17 charge?

18 MR. CARRAWAY: That's correct, Your Honor.

19 THE COURT: Thank you. And Mr. Bradley, do you
20 understand that for the offense of criminal sexual conduct
21 in the first degree there is a mandatory minimum sentence of
22 twenty-five years, no part of which may be suspended, or
23 probation granted. Do you understand that?

24 MR. BRADLEY: Yes, sir.

25 THE COURT: The maximum sentence for that offense is

THE STATE VERSUS KEVIN BRADLEY

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1 life imprisonment?

2 MR. BRADLEY: I understand that sir. Yes, sir.

3 THE COURT: And for criminal sexual conduct with a
4 minor second degree, that is no less than ten and no more
5 than thirty; is that right, Ms. Barr?

6 MS. BARR: Judge, actually thought it was zero to
7 twenty, but I must be wrong on that.

8 THE COURT: A person pleading guilty to A-2 11

9 MS. BARR: Are we under B-1?

10 THE COURT: I'm sorry, B-1.

11 MS. BARR: Yes.

12 THE COURT: B-1, a penalty of not more than twenty
13 years?

14 MS. BARR: Yes, sir.

15 THE COURT: Do you understand that up to twenty-
16 years is the penalty for criminal sexual conduct with a
17 minor second degree?

18 MR. BRADLEY: I do, Your Honor.

19 THE COURT: All right. And, Mr. Strobel has handed
20 up to me an Affidavit of Guilty Plea, which contains a
21 Waiver of Constitutional Rights, and indicates that you
22 understand the nature and consequences of a guilty plea, and
23 understanding about plea negotiations, and the voluntariness
24 of this guilty plea. Satisfaction with your attorney, and
25 all of that. And you have completed this form indicating

THE STATE VERSUS KEVIN BRADLEY

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1 that you understand all of the information contained in
2 here.

3 **MR. BRADLEY:** Negative, Your Honor.

4 **THE COURT:** Sir? Have you signed the forms?

5 **MR. BRADLEY:** I did.

6 **THE COURT:** And do you understand what is in the
7 forms?

8 **MR. BRADLEY:** No, Your Honor.

9 **THE COURT:** I am going to review with you, then sir,
10 your constitutional rights.

11 First of all as you stand before me you are presumed to
12 be not guilty of this charge. You have a right to remain
13 silent concerning this matter. You have the right to have a
14 jury trial. And if you were to have a jury trial, the state
15 would be required to present evidence which convinces each
16 and every juror of your guilt beyond a reasonable doubt.
17 And if they were not convinced, then they must find you not
18 guilty. You have a right to waive your right to a jury
19 trial, give that up and plead guilty if you want to.

20 You have a right to, if you were to have a jury trial,
21 to confront any witnesses against you. Have your lawyers
22 cross examining any witnesses against you, to bring in any
23 witnesses to testify that you may have for you, and to
24 challenge any of the evidence that the state may offer
25 against you. Do you understand those rights that you have?

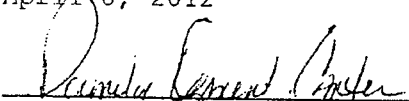
CERTIFICATE OF REPORTER

8

I, the undersigned, Pamela Ozment-Cartee, official court reporter for the Fourth Judicial Circuit of South Carolina, do hereby certify, that the foregoing is a true, accurate and complete Transcript of Record in the trial of the above captioned case, relative to appeal, in The Court of General Sessions in Williamsburg County, South Carolina, on the 25th day of January 2010.

I do further certify that am neither, of kin, counsel, nor interest of any party hereto.

April 8, 2012



Pamela Ozment-Cartee
Circuit Court Reporter

THE STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF WILLIAMSBURG)
THE STATE) JANUARY 25, 2010
PLAINTIFF,)
VERSUS)
KEVIN BRADLEY,) 2010-GS-45-249
DEFENDANT.)

BEFORE

THE HONORABLE CLIFTON NEWMAN

APPEARANCES

KIMBERLY BARR, ESQUIRE
ATTORNEYS FOR THE STATE

RICHARD STROBEL, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

Pamela Ozment-Cartee
Circuit Court Reporter

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WITNESSES

NAME	VOIR DIRE	DIRECT	CROSS	REDIRECT
Barbara Gregg, R.N.	052	054	073	
Sadie A, McBride		074	083	
Gaye Allen Cook	085	087	None	
~~XXXXXXXXXX~~ VICTIM		107	124	
Susan G. Luberoft, M.D.	134	136	None	
Robin Tyler Griggs	143	145	None	
Lt. Jeffrey Scott		164	None	
Corp. Trina Hamlet		168	176	
Janice Bacon, M.D.	180	183	189	
Tina Goff		191	None	
William Ceaderstaff		196	None	
Grayson A. Amick, Ph.D.	199	201	206	207

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DEFENDANT'S CASE

NAME	DIRECT	CROSS	REDIRECT	RE-CROSS
Dasheia McBride	211	222		
Kevin Bradley	235	236		

REBUTTAL TESTIMONY

NAME	DIRECT	CROSS	REDIRECT	RE-CROSS
Dasheia McBride	248	None		

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VOIR DIRE

Case No.: 2010-GS-45-00249 Date: January 25, 2010
 Plaintiff: The State Attorney: Kimberly Barr
 Defendant: Kevin Bradley Attorney: Richard Strobel
 Presiding Judge: Clifton Newman Reporter: Pamela Ozment-Cartee

*****				***** STRIKES *****		
Juror #	Name	Race	Sex	Court	State	Def
086	Henry J. Jackson	B	F		x	--
191	Delta W. White	B	F		✓	✓
179	Heath Tisdale	W	M		X	--
133	Gyrenevieve NeSmith	B	F		x	--
099	Walter L. Mack	B	M		x	
128	Foyola D. Murphy	B	F		✓	X
082	Cecil M. Hughes	W	F		✓	x
096	Kenneth L. Laster	W	M		✓	x
120	Sharon A. Mitchum	B	F		✓	✓
081	Linda D. Horton	W	F		✓	x
172	Alberta Taylor	B	F		✓	✓
061	Tracy D. Gadson	B	F		✓	✓
088	Leonard Johnson	B	M		✓	✓
160	Aja E. Singletary	B	F		✓	✓
196	Sandra D. Wilson	B	F		✓	✓
090	Walter C. Johnson, Jr.	W	M		✓	✓
145	Ed S. Pressley	B	M		✓	✓
066	Celeste W. Gatlin	W	F		✓	x
131	Teresa G. Murray	B	F		✓	x
104	Teresa K. McCants	W	F		✓	x
201	Ricky L. Martin	W	M		✓	X
124	Demetric A. Mosley	B	M		x	--
030	Tareasha Chandler	B	F		✓	✓
063	Joseph Gambell	B	M		✓	✓
016	Kenneth W. Brown	W	M		✓	x
057	Elaine H. Fulton	W	F		✓	✓
023	Alice M. Burgess	B	F		✓	✓
<u>ALTERNATE JURORS</u>						
029	Patricia M. Chandler	W	F		✓	x
080	Yara Hilton	B	F		✓	x
002	Rev. Bradley W. Barnes	W	M		✓	✓
073	Evelyn B. Green	B	F		✓	✓

VOIR DIRE

Case No.: 2010-GS-45-00249 Date: January 25, 2010
 Plaintiff: The State Attorney: Kimberly Barr
 Defendant: Kevin Bradley Attorney: Richard Strobel
 Presiding Judge: Clifton Newman Reporter: Pamela Ozment-Cartee

*****				*** STRIKES ***		
Juror #	Name	Race	Sex	Court	State	Def
160	Aja E. Singletary	B	F		✓	✓
138	Rosa Parsons			x		
133	Gyrenevieve NeSmith	B	F		x	--
037	Samantha C. Cooper	B	F		✓	x
201	Ricky L. Martin	w	m		✓	x
031	Larry Chiva	b	m	x		
096	Kenneth. Laster	w	m		✓	✓
029	Patricia M. Chandler	W	F		✓	✓
145	Ed S. Pressley	B	M		✓	✓
086	Henry J. Jackson	B	M		✓	✓
191	Oleta W. White	B	F		✓	✓
128	Foyola D. Murphy	B	F		✓	✓
082	Cecil M. Hughes	W	F		✓	✓
124	Demetric A. Mosley	B	M		✓	✓
136	William A. Newby	W	M		✓	x
120	Sheron A. Mitchum	B	F		✓	x
196	Sandra D. Wilson	B	F		✓	✓
090	Walter C. Johnson, Jr.	W	M		✓	✓
104	Teresa K. McCants	W	F		✓	x
	ALTERNATE JURORS					
054	Darrell D. Frazier	b	m		✓	x
119	Roy L. Mitchell	B	M		✓	x
057	Diane H. Fulton	W	F		✓	✓
088	Leonard Johnson	B	M		x	--
048	Noreen Edwards	W	F		✓	✓

STATE EXHIBITS

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NO EXHIBITS OFFERED BY THE DEFENDANT

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1 (Whereupon, this trial began at 3:56 p.m.
2 on Monday, January 25, 2010.)

3 THE COURT: All right Ladies and Gentlemen, the
4 Jury panel is now qualified. And I want to welcome you
5 all here to this week's term of General Sessions Court.
6 General Sessions Court is also referred to sometimes as
7 Criminal Court. It's a court in which we hear criminal
8 cases. And you are here to see if you will be selected to
9 serve on a Jury in or on one of the cases that may be
10 heard this week.

11 Again, my name is Clifton Newman. I have been
12 assigned to preside over this term of court. Next to me
13 is my law clerk, Ms. Danielle Beck of Charleston. She's a
14 lawyer graduate of Charleston Law School. And you've met
15 your Clerk of Court. Also, up front is Ms. Sharon
16 McCutchen, who works with Ms. Williams as a deputy, and
17 the court reporter, Ms. Pamela Ozment-Cartee. You will
18 also encounter the bailiffs this week, Reverend James
19 Brown, a bailiff; Ms. McElvene and Ms. Canty in the back.
20 We will do all we can to make this week as pleasant and as
21 comfortable as it can be under the circumstances of what
22 we're dealing with. You will not be required to be here
23 all the time. You will just need to be here if you're
24 serving on a Jury and also if you are told to return at a
25 certain time when you're not serving. You are otherwise

THE STATE VERSUS KEVIN C. BRADLEY

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1 required to be here unless I excuse you from being here.
2 Is the State ready to proceed with the Jury selection in
3 the first case?

4 MS. BARR: The State is ready, Your Honor.

5 THE COURT: All right, you may call your first
6 case.

7 MS. BARR: May it please the Court, Judge?

8 THE COURT: Yes, ma'am.

9 MS. BARR: At this time, the State calls case number
10 2009-GS-45-249, The State versus Kevin Bradley. Your
11 Honor, it's a two-count indictment for criminal sexual
12 conduct with a minor in the first degree and criminal
13 sexual conduct with a minor in the second degree.

14 Mr. Bradley is represented by Richard Strobel, and
15 the State is ready to try it.

16 THE COURT: All right. Ladies and gentlemen, the
17 State has called for trial the case of the State versus
18 Kevin Bradley. He is in court as the result of an
19 indictment returned by the Grand Jury of Williamsburg
20 County, charging him with criminal sexual conduct with
21 a minor in the first-degree and criminal sexual conduct
22 with a minor in the second-degree, alleging that he
23 committed a sexual battery with a victim under the age of
24 eleven years old and a child between the ages of eleven
25 and fourteen years of age.

THE STATE VERSUS KEVIN C. BRADLEY

10

1 Mr. Strobел, are you ready to proceed?

2 MR. STROBEL: We are, Your Honor.

3 THE COURT: All right, Mr. Bradley, if you will
4 stand and face the Jury panel.

5 That being said, Ladies and Gentlemen, the
6 Defendant, Mr. Bradley, has plead not guilty to these
7 charges. He is presumed to be not guilty of these
8 charges. He can not be found guilty of these charges
9 unless the State convinces each and every juror who
10 serves on the case that he is guilty beyond a
11 reasonable doubt. Otherwise you must find him not
12 guilty. The State is represented by Ms. Kimberly Barr,
13 the Solicitor, and Solicitor Doward Harvin, Assistant
14 Solicitor. Ms. Barr, if you wish to introduce anyone
15 else at the table?

16 MS. BARR: Yes, please, may it please the Court?
17 We have Officer Trina Hamlet of the Kingstree Police
18 Department. Participating in the trial of this case, we
19 have our victim's witness advocate, Ms. Linda Woods. And,
20 Your Honor, also Assistant Solicitor, Ronnie Sabb will
21 participate in the trial as well.

22 THE COURT: All right. And the Defendant is
23 represented by Mr. Strobел. Is there anyone else you would
24 like to introduce, Mr. Strobел?

25 MR. STROBEL: No, Sir.

THE STATE VERSUS KEVIN C. BRADLEY

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1 THE COURT: All right. Ladies and Gentlemen, I'm
2 going to ask you a series of questions to assist in
3 determining your qualifications to serve and also in
4 assisting the lawyers with Jury selection. The alleged
5 offense occurred -- or offenses occurred between June 1st,
6 2008 and August 14th, 2009 in and around what areas of the
7 county, Ms. Barr.

8 MS. BARR: Kings Crossing Apartment Complex right
9 here in Kingstree.

10 THE COURT: King's Crossing here in Kingstree.
11 If any member of the Jury panel knows anything about
12 this case, has heard anything about this case, please
13 stand, and, Ms. Barr, the names of the alleged victims
14 are?

15 MS. BARR: ~~Shirley~~ ^{Victim}, Your Honor.

16 THE COURT: And, Ladies and Gentlemen, the
17 Defendant is Mr. Kevin Bradley who has stood, the
18 alleged victim is one, ~~Shirley~~ ^{Victim}. If you know
19 either of them, if you are a friend, associate or
20 acquaintance of any of them or any members of their
21 immediate family, please stand. All right, and we have
22 already indicated to you Mr. McCrae, that you will not
23 serve on this case. Thank you. You will stay with us,
24 however, until I excuse everyone who will be excused.
25 Thank you very much.

THE STATE VERSUS KEVIN C. BRADLEY

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1 If there is anything about the nature of these
2 charges that would make -- would cause you to not be able
3 to be fair and impartial as a juror, please stand.

4 (TWO LADIES STOOD)

5 All right, ma'am, please tell us your name?

6 JUROR: Parsons.

7 THE COURT: Parsons? And, ma'am, your name?

8 JUROR: Marie Taylor.

9 THE COURT: All right, Ms. Parsons and Ms. Taylor,
10 we will not consider you all for selection on this case
11 but please stay with us. Ladies and Gentlemen, the
12 other people who may testify in this case include Trina
13 Hamlet, Chief Robert Ford of the KPD, Joseph Graham,
14 Lieutenant Jeffrey Scott, of the Sheriff's Office,
15 Sadie McBride, Erica McBride, Dasheia McBride, Annie
16 Tisdale, Barbara Gregg who is a registered nurse,
17 Robin Griggs from the Durant Children's Center, Gaye
18 Allen Cook, who is a child therapist, Doctor Susan
19 Luberroth from the Durant Children's Center, Dr. Janice
20 Bacon who is an obstetrics and gynecologist, Pamela
21 Harrison of DSS in Williamsburg County, Kathy Speights of
22 DSS, Tena Goff of the Richland County Sheriff's
23 Department, Grayson D. Amick of the Richland County
24 Sheriff's Department. Any other prospective witnesses
25 for the State or that you are aware of at this time, Ms.

THE STATE VERSUS KEVIN C. BRADLEY

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1 Barr?

2 MS. BARR: No, Your Honor.

3 THE COURT: Ladies and Gentlemen, if you are a
4 friend, acquaintance or relative of any of the people who
5 may testify, whose names I just called, please stand.

6 Yes, ma'am?

7 JUROR: I'm not actually an acquaintance of the
8 McBrides but I do know them, some of their family are
9 married to my family.

10 THE COURT: What's your name, please?

11 JUROR: Linda Tucker.

12 THE COURT: Linda Tucker?

13 JUROR: Yes, Sir.

14 THE COURT: And, Ms. Tucker, would that prevent
15 you from being fair and impartial?

16 JUROR: No, Sir.

17 THE COURT: All right, thank you for bringing that
18 to our attention.

19 If you are a client, current or former, of Mr.
20 Strobel or Ms. Barr or Mr. Harbin; Mr. Sabb; or the Third
21 Circuit Solicitor's Office, please stand if you have been
22 represented by any of them.

23 (NO ONE STOOD)

24 All right, no one has stood. Ladies and Gentlemen,
25 if you know of any reason why you cannot give both the

THE STATE VERSUS KEVIN C. BRADLEY

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1 State and the Defendant a fair and impartial trial,
2 please stand. If you know of any other reason why you
3 should not be selected to be a juror on this case,
4 please stand.

5 (NO ONE STOOD)

6 Anything else from the State or the Defense?

7 MS. BARR: Nothing else from the State, Your Honor.

8 MR. STROBEL: Nothing further.

9 THE COURT: All right, those of you who are -- I
10 indicated to that you will not be considered for selection
11 on this case because you were excused for tomorrow, and,
12 Mr. McCrae, you all can leave now if you would like to.
13 Reverend; the Department of Corrections lady -- she has
14 gone already? -- I'm sure she has -- Mr. McCrae. Yes,
15 ma'am?

16 (A LADY STOOD)

17 Ma'am, your name is?

18 JUROR: Shawn Copeland (phonetic).

19 THE COURT: And, you had a conflict with an
20 appointment, did you say?

21 JUROR: Of my grandchildren.

22 THE COURT: Your grandchildren, oh, that's right.
23 Thank you, Ms. Copeland.

24 JUROR: Thank you, Your Honor.

25 UNIDENTIFIED JUROR: I am a doctor?

THE STATE VERSUS KEVIN C. BRADLEY

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1 THE COURT: Yes, sir, you can go now.

2 UNIDENTIFIED JUROR: Thank you, Your Honor.

3 THE COURT: Now, all of you -- Mr. -- Reverend,
4 um?

5 MS. BARR: Pinson.

6 THE COURT: I think I told them to call back
7 tomorrow. Ms. Pennington, make sure they call back
8 tomorrow after 6:30 for further instructions, all of
9 them.

10 All right, Ladies and Gentlemen, we will proceed
11 now for picking a Jury. Give the Clerk your attention.

12 THE CLERK: Members of the petit Jury, as I call out
13 your name or your number, please come to the front of my
14 desk, turn around, face Counsel and await further
15 instructions.

16 THE COURT: Strikes are, I think, five and ten,
17 based on the charges.

18 THE CLERK: Ladies, as your names are called, please
19 bring your personal belongings with you. Juror number 86,
20 Henry Jackson.

21 THE COURT: Strikes are numbers five and ten.

22 THE CLERK: Please excuse Mr. Jackson in the trial
23 of just this case. If you will return to your seat, Mr.
24 Jackson. Number 191, Oleta White.

25 MS. BARR: Please present Ms. White.

THE STATE VERSUS KEVIN C. BRADLEY

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1 MR. STROBEL: Swear the juror.

2 THE CLERK: Have a seat to my right in the Jury box.
3 Number 179, Heath Tisdale?

4 MS. BARR: Please excuse Mr. Tisdale.

5 THE CLERK: Number 133, Ms. Nesmith?

6 MS. BARR: Please excuse Ms. Nesmith for just this
7 trial.

8 THE CLERK: Number 99, Walter Mack?

9 MS. BARR: Please excuse Mr. Mack from the trial of
10 this case.

11 THE CLERK: You are excused, Mr. Mack. Number 128,
12 Foyola Murphy?

13 MS. BARR: Please present Ms. Murphy.

14 MR. STROBEL: We would excuse Ms. Murphy for the
15 trial of this case.

16 THE CLERK: Number 82, Mr. Cecil Hughes?

17 MS. BARR: Please present Mr. Hughes.

18 MR. STROBEL: We would excuse Mr. Hughes for the
19 trial of this case.

20 THE CLERK: Number 96, Kenneth Laster?

21 MS. BARR: Present Mr. Laster.

22 MR. STROBEL: We would excuse Mr. Laster for the
23 trial of this case.

24 THE CLERK: One twenty, Sharon Mitchum?

25 MS. BARR: Please present Ms. Mitchum.

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1 MR. STROBEL: Swear the juror.

2 THE CLERK: Number 81, Linda Horton?

3 MS. BARR: Please present Ms. Horton.

4 MR. STROBEL: We would excuse Ms. Horton for the
5 trial of this case.

6 THE CLERK: One seventy-two, Alberta Taylor?

7 MS. BARR: Please present Ms. Taylor.

8 MR. STROBEL: Swear the juror.

9 THE CLERK: Number 61, Tracy Gadson?

10 MS. BARR: I'm sorry, Madam Clerk, what was the
11 juror number again?

12 THE CLERK: Sixty-one, Tracy Gadson.

13 MS. BARR: Please present the juror.

14 MR. STROBEL: Swear the juror.

15 THE CLERK: Number 88, Leonard Johnson?

16 MS. BARR: Present Mr. Johnson.

17 MR. STROBEL: Swear the juror.

18 THE CLERK: One sixty, Aja Singletary?

19 MS. BARR: Present Ms. Singletary.

20 MR. STROBEL: Swear the juror.

21 THE CLERK: One ninety-six, Sandra Wilson?

22 MS. BARR: Present Ms. Wilson.

23 MR. STROBEL: We would excuse Ms. Wilson for the
24 trial of this case.

25 THE CLERK: Number 90, Walter Johnson?

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1 MS. BARR: Present Mr. Johnson.

2 MR. STROBEL: Swear the juror.

3 THE CLERK: One forty-five, Ed Pressley?

4 MS. BARR: Present Mr. Pressley.

5 MR. STROBEL: Swear the juror.

6 THE CLERK: Sixty-six, Celeste Gatlin?

7 MS. BARR: Please present Ms. Gatlin.

8 MR. STROBEL: We would excuse Ms. Gatlin for the
9 trial of this case.

10 THE CLERK: Number 131, Teresa Murray?

11 MS. BARR: Present Ms. Murray.

12 MR. STROBEL: We would excuse Ms. Murray for the
13 trial of this case.

14 THE CLERK: One-0-4, Teresa McCants?

15 MS. BARR: Present Ms. McCants.

16 MR. STROBEL: We would excuse Ms. McCants for the
17 trial of this case.

18 THE CLERK: Two-0-1, Ricky Martin?

19 MS. BARR: Please present Mr. Martin.

20 MR. STROBEL: We would excuse Mr. Martin for the
21 trial of this case.

22 THE CLERK: One twenty-four, Demetric Mosley?

23 MS. BARR: Please excuse Mr. Mosley for the trial of
24 just this case.

25 THE CLERK: You may return to your seat.

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1 Number 30, Tareasha Chandler?

2 MS. BARR: Present Ms. Chandler.

3 MR. STROBEL: Swear the juror.

4 THE CLERK: Sixty-three, Joseph Gambell?

5 MS. BARR: Present Mr. Gambell.

6 MR. STROBEL: Swear the juror.

7 THE CLERK: Number 16, Kenneth Brown?

8 MS. BARR: Present Mr. Brown.

9 MR. STROBEL: We would excuse Mr. Brown for the
10 trial of this case.

11 THE CLERK: You may return to your seat.

12 Number 57, Diane Fulton?

13 MS. BARR: Present Ms. Fulton.

14 MR. STROBEL: Swear the juror.

15 THE CLERK: Have a seat in the Jury box. Number 23,
16 Alice Burgess?

17 MS. BARR: Present Ms. Burgess.

18 MR. STROBEL: Swear the juror.

19 THE CLERK: Have a seat, please, in the Jury box.

20 THE COURT: All right, we need two alternates.

21 Strikes are one and two.

22 THE CLERK: Number 29, Patricia Chandler?

23 MS. BARR: Present Ms. Chandler.

24 MR. STROBEL: Excuse Ms. Chandler for the trial of
25 this case.

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20

1 THE CLERK: You are excused. Number 80, Yara
2 Hilton?

3 MS. BARR: Present Ms. Hilton.

4 MR. STROBEL: We would excuse Ms. Hilton for the
5 trial of this case.

6 THE CLERK: Number 2, Bradley Barnes -- Reverend
7 Bradley Barnes.

8 MS. BARR: Present Pastor Barnes.

9 MR. STROBEL: Swear the juror.

10 THE CLERK: Number 73, Evelyn Green?

11 MS. BARR: Present Ms. Green.

12 MR. STROBEL Swear the juror.

13 THE CLERK: Have a seat in the Jury box.

14 THE COURT: Are there any matters of law regarding
15 the Jury selection?

16 MS. BARR: Uh, one matter from the State, Judge?

17 THE COURT: All right. Ladies and Gentlemen, we
18 need to have you to go to the Jury room while we discuss
19 some matters outside of your presence. Please do not talk
20 about this case while you're back there.

21 (Whereupon the Jury exited the Courtroom at
22 4:25 p. m.)

23 THE COURT: All right, Ladies and Gentlemen, those
24 of you who were not selected, we're going to have you
25 all take a break, and we need all of you to leave the

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1 courtroom, Jury panel members through the back door,
2 until -- it will be at least fifteen minutes, but, if
3 you all will go that (indicating) way and be prepared
4 to come back in but do not come back in until the
5 bailiffs' lets you in. All folks here, you all may
6 leave, all jurors, jurors only.

7 (Whereupon the jury panel was released for
8 break at 4:26 p. m.)

BATSON MOTION

9
10 THE COURT: All right, Ms. Barr.

11 MS. BARR: Your Honor, if it please the Court?
12 Judge, we would make a motion pursuant to Batson versus
13 Kentucky. Judge, as a part of the motion, we would place
14 on the record that the Defendant has exhausted all of his
15 pre-emptory challenges. That, out of the twelve
16 preempotory challenges that he exercised, eight of those
17 challenges were used to strike jurors who are caucasian.
18 Out of the twelve preemptory challenges that he
19 exercised, nine of those jurors were female, and,
20 Judge, we would assert that, Caucasians as well as
21 female jurors are members of a protected class and
22 that the Defendant should be required to provide race-
23 neutral and gender-neutral reasons for exercising the
24 challenges that he exercised.

25 THE COURT: All right, he will be allowed to state

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1 his -- anything further, Ms. Barr.

2 MS. BARR: Judge, I will just say that Juror number
3 128 was a black female; Juror number 82 was a black
4 female; Juror number 96 was a white male; Juror number
5 81 was a white female; Juror number 196 was a black
6 female; Juror number 66 was a white female; Juror number
7 131 was a black female; Juror number 104 was a white
8 female; Juror number 201 was a white male; Juror number
9 16 was a white male. The alternate strikes that he
10 exercised, Juror number 29 was a white female; Juror
11 number 80 was a black female. And, Judge, please also
12 let the record reflect that, of the jurors who were
13 actually selected, only two of those jurors were
14 caucasian. And, Judge, the only time that the second
15 juror -- caucasian juror, actually made it was because
16 the Defendant actually ran out of the preemptory
17 challenges.

18 THE COURT: All right, our State law has most
19 recently pronounced in the case of State versus Edwards
20 from right here in Williamsburg County, the court outlined
21 -- reiterated the law stemming from the case of Batson
22 versus Kentucky, and State versus Heigler, in which the
23 court has held that, when one party strikes a member of a
24 cognizable racial group or gender, the trial court must
25 hold the hearing if the opposing party requests one, and

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1 the State has requested a hearing based on the striking of
2 whites and women from the Jury. What says the Defense?

3 MR. STROBEL: Your Honor, my client says that he
4 didn't strike under the Batson -- he didn't strike anybody
5 because of race or gender. He struck by the way they
6 presented themselves to him and the way they answered the
7 questions and the way that they looked at him in
8 particular.

9 THE COURT: Repeat those reasons again?

10 MR. STROBEL: One of the jurors, I struck myself
11 without consulting my client, because I was trying to find
12 her ---

13 THE COURT: I'm just trying to understand what you
14 just said.

15 MR. STROBEL: Well, he said that -- he deals with
16 personalities, and he looks at them to see the way they
17 were acting looking at him. And, if they looked in such a
18 way that they did not want to look at him it scared him.
19 He chose not to select them. There was one that I struck
20 that I didn't consult with him, because I had made up my
21 mind earlier. She worked with DSS in Department of Social
22 Services, and I know they are going to be pulling them as
23 some of their witnesses, Tara Hilton. Other than that,
24 that's what he told me. The way they presented themselves
25 to him; the way they looked in the beginning, and the way

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1 they reacted when they were called up to the front.

2 THE COURT: Anything further from the Defense?

3 MR. STROBEL: That's all.

4 THE COURT: All right, Ms. Barr?

5 MS. BARR: Judge, we would ask that the Defendant
6 provide more legitimate detailed explanations for why
7 he exercised the strikes that he did. It's just odd to
8 me that the first ten white jurors who were called, that
9 nine out of the first ten looked at him a certain way.
10 I don't know that that is enough to survive a Batson
11 challenge that you make generalities that if someone
12 looked at me a certain way or if I had like judged on
13 personality. Judge, I would ask that the Court require
14 of the Defendant the reason why he struck each of the
15 jurors, because all of them, in some form or another,
16 are members of a protected class. So, Judge, I would
17 ask for him to provide a reason why he struck each one
18 that he did so that I can, and the Court determine
19 whether or not those reasons given were protectual.
20 And there is no way for us to know that without him
21 having to come forth with the reason as to why he
22 struck each particular juror.

23 THE COURT: Well, the law requires that the
24 proponent of the strike must offer a race or gender
25 neutral explanation, and, in that connection, Mr. Strobel,

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1 you need to -- you must give an explanation for each
2 strike that you did. We will begin with your first strike
3 of Murphy and then go through each strike and tell me the
4 basis for each strike.

5 MR. STROBEL: The first strike was who, Your Honor?

6 THE COURT: Ms. Murphy, juror number 128, Murphy.

7 (Whereupon, a bench conference was held in
8 the presence of the jury, but out of their hearing range.)

9 MR. STROBEL: He said that he didn't like the way
10 she presented herself as a juror. He said he can't be
11 more specific; that's it.

12 THE COURT: Next is number 82, Hughes.

13 MR. STROBEL: (After discussion with Defendant) He
14 has the same answer, same response, Your Honor.

15 THE COURT: Which is what, now?

16 MR. STROBEL: If I remember correctly, he says he
17 didn't like the way they presented themselves, uh, in this
18 courtroom. Is that correct?

19 MR. BRADLEY: Yes, sir.

20 MR. STROBEL: That is correct.

21 THE COURT: Number 96, Laster -- Kenneth Laster?

22 MR. STROBEL: He said the same excuse, no different.

23 THE COURT: Number 81, Linda Horton?

24 MR. STROBEL: He stated that, on her, Your Honor, he
25 did not understand fully her explanation of employment and

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1 where she worked.

2 THE COURT: Which is where? What did she say that
3 wasn't understandable?

4 MR. STROBEL: He said he just didn't catch where she
5 worked at; he could not understand what she said.

6 THE COURT: All right. Number 196, S. Wilson,
7 Sandra Wilson?

8 MR. STROBEL: He said that he did not like the way
9 she presented herself.

10 THE COURT: Number 66, Celeste Gatlin?

11 MR. STROBEL: He said he did not like the way she
12 presented herself.

13 THE COURT: Number 131, T. Murray?

14 MR. STROBEL: Even though she said where she worked,
15 he did not understand exactly where it was that she
16 worked.

17 THE COURT: All right, 104, T. McCants, Teresa K.
18 McCants?

19 MR. STROBEL: Sir?

20 THE COURT: One O Four is Teresa McCants, white
21 female.

22 MR. STROBEL: Yes, Sir, I played a major role in
23 that. He didn't have anything to say much on that one,
24 Your Honor.

25 She sat here on the front row about the fourth one

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1 down. She -- of course, I'm always leary of people who
2 sit on the front row anyway, but she seemed to be very
3 excited, very into it, and the way she was looking at
4 them, I felt as if she was already pro-Solicitor's Office
5 before she even got up here to be qualified on the Jury.

6 THE COURT: Number 201, R. Martin, Ricky L.
7 Martin?

8 MR. STROBEL: He became hesitant when finding out
9 that she was a school teacher in the Johnsonville School,
10 and she became somewhat concerned with the amount of
11 deputy sheriffs and all that are associated with the
12 school system, and she didn't like, also, the way she
13 presented herself.

14 THE COURT: Number 16, K. Brown, Kenneth Brown?

15 MR. STROBEL: Yes, Sir, he worked with the Kingstree
16 Fire Department. He is associated with the Law
17 Enforcement Division as a part of the fire department.
18 They communicate together, and he felt as if he would be
19 biased towards the -- he works for Timmonsville Fire
20 Department, he would be biased toward the Timmons --
21 excuse me, the Kingstree Police Department.

22 THE COURT: Any further explanation by the
23 Defense?

24 Anything further?

25 MR. STROBEL: No, Sir.

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1 THE COURT: All right, Ms. Barr?

2 MS. BARR: Your Honor, I believe that there were two
3 additional strikes, Juror number 29 who is a white female,
4 and juror number 80 who is a black female. I think Mr.
5 Strobel indicated as it relates to Juror number 80, that
6 she works for the Department of Special Needs, and he was
7 concerned that there may be some sort of bias or
8 affiliation with Department of Social Services. I don't
9 believe he provided any sort of explanation as it relates
10 to Juror number 29, who is a white female, Patricia
11 Chandler.

12 THE COURT: All right, Juror number 29, Mr.
13 Strobel?

14 MR. STROBEL: He didn't have any reason for Patricia
15 Chandler; he just didn't want her to serve on his Jury.
16 He gave no reason.

17 THE COURT: All right. Ms. Barr?

18 MS. BARR: Your Honor, we would submit to the Court
19 that, based on the explanation provided by Counsel, that
20 these are not race-neutral or gender-neutral reasons
21 contemplated by a Batson, particularly as it relates to
22 Juror 128, who is a black female; Juror number 82, who is
23 a white female; Juror number 96, who is a white male; he
24 indicates as it relates to Juror number 81 who is a black
25 female, that he didn't understand where she worked; he

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1 said he simply did not like the way that she presented.
2 When talking about Juror number 196, who is a black
3 female, the same explanation was given for Juror number 66
4 who is a white female. Your Honor, no reason at all was
5 given for Juror number 29. Who is a white female. And,
6 Judge, I think that's just the type of selection that's
7 contemplated and prohibited by Batson versus Kentucky,
8 and, Judge, we would ask that this Jury be stricken and
9 that we be allowed to select another Jury.

10 THE COURT: Any response, Mr. Strobel?

11 MR. STROBEL: No, Sir.

12 THE COURT: All right, we will take a break for
13 about five minutes, or so.

14 MR. STROBEL: Are you going back to your chambers,
15 Your Honor?

16 THE COURT: Yes, sir.

17 MR. STROBEL: Could she (indicating Ms. Barr) and I
18 see you in your chambers for just a minute?

19 THE COURT: Sure.

20 (Whereupon a recess was had between 4:55 p.
21 m. until 5:01 p. m.)

22 THE CLERK: You may be seated. Thank you.

23 THE COURT: The law says that the proponent of a
24 strike must offer a race or gender-neutral explanation.
25 The proponent must show the race or the gender-neutral

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1 explanation as mere pretext, which is generally
2 established by showing the party did not strike a
3 similarly situated member of another's race or gender.
4 Under some circumstances, the explanation given by the
5 opponent may be so fundamentally implausible that the
6 trial judge may determine the explanation was mere pretext
7 even without showing the treatment, and the opponent
8 strike carries the ultimate burden of persuading the trial
9 court that the challenged party exercised strikes in a
10 discriminatory manner. The trial judge's finding of
11 purposeful discrimination based largely on his evaluation
12 of demeanor and credibility or from the demeanor of the
13 challenged attorney will be the best on the evidence of
14 the discrimination. And, an evaluation of the attorney's
15 mind lies peculiarly within a trial judge's province.
16 Furthermore, a strike must be examined in light of the
17 circumstances under which it was exercised including an
18 examination of an explanation offered for other strikes.

19 In this case, it appears that the strikes, or the
20 reasons given by the strikes, were reasons given by the
21 Defendant, since it appears that Counsel deferred to the
22 Defendant to make the strikes as opposed to Counsel
23 exercising professional judgment and consultation with
24 the Defendant in exercising the strikes, except under
25 the two circumstances under which Counsel indicated that

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1 he determined the strikes to be improper, those strikes
2 being of Juror number 104, the juror who sat on the front
3 row who appeared to be pro-state, based on his -- based
4 on her emotional connection or excitement towards serving.
5 Also the explanation given to strike the DSS employee ---

6 MS. BARR: Juror number 80, Judge.

7 THE COURT: --- Juror number 80, and also Juror
8 number 16, in fact, would be a third one; that's Mr. Brown
9 who worked at the fire department and who would have a
10 connection -- possible connection with law enforcement.
11 All of the other strikes, Counsel said that the Defendant
12 provided a generalized explanation that he didn't like the
13 way they presented themselves or the way they looked or
14 that he was confused about their employment information.
15 And, the Court will take judicial notice that the Juror
16 Information Sheet contains the Jury information concerning
17 all of the jurors, except for Juror number 81, Linda
18 Horton, which was not included in the Juror information
19 that was made available to Counsel but what was provided
20 to the Court by the Clerk.

21 So, I find, therefore, that the -- the Court has to
22 determine first of all whether the strikes were done
23 discriminatorily and the reasons given were pretextual.
24 Of course, this word, pretextual, the meaning of which is
25 something that is put forth to conceal a true purpose or

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1 object or a misleading representation as to the actual
2 reason for the strike. And, in this case, I find that the
3 reasons given are so fundamentally implausible that the
4 explanations given for striking Juror number 128; number
5 82; number 196; number 66; number 131; number 124 -- no,
6 I'm sorry, not 124, that juror was struck by the State --
7 strike the reference to number 124; and Juror number 29;
8 that those strikes were done in a discriminatory manner.
9 The fact of the matter is when one says that: I struck
10 the juror because I didn't like the way the juror looked,
11 that's saying that: I didn't like the way the juror
12 presented herself or himself; I didn't like the way the
13 juror looked. Those reasons are pretextural.

14 Now, the court has heard several cases in the past
15 few years -- the Appellate Courts have had several cases
16 in the past few years, one in which a juror was struck
17 because the juror had dread locks, and the State struck
18 that juror, and the Appellate Court in a sharply divided
19 opinion concluded that that was pretextural. The fact
20 that a person has dread locks is not an indication of
21 characteristics of the individual or the ability of that
22 person to serve as a fair and impartial juror and found it
23 to be pretextural.

24 On the other hand, there are some cases in which the
25 courts have held that jurors who appear before in court

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1 and they are unkempt; they may have knappy hair or
2 uncombed hair or a beard or just otherwise their
3 appearance is unkempt. The courts have held that that can
4 be a race-neutral reason. But, the law demands more than
5 deferring strikes to the Defendant who merely says: I
6 did not like the way that juror presented themselves; I
7 didn't like the way that juror looked, and then to use
8 that as a basis for a race-neutral strike that that is a
9 glaring violation of the rights of jurors to not be
10 discriminated against based on race and gender, and it
11 is a violation of Batson versus Kentucky and State v.
12 Edwards and all of the other laws of this state
13 regarding jury selections.

14 So, therefore, I grant the State's motion, and we're
15 going to re-strike the Jury in which the jurors who were
16 discriminated against cannot be discriminated against in
17 any future Jury selection in this case.

18 MS. BARR: Thank you, Your Honor.

19 THE COURT: Anything else before the Jury comes
20 back in?

21 MS. BARR: Nothing else from the State.

22 THE COURT: All right, everybody back in the box.
23 (Whereupon, the jury enters the courtroom
24 at 5:12 p.m..)

25 THE COURT: Ladies and Gentlemen, we are going to

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1 re-strike the Jury. Thank everyone for their cooperation.
2 You may proceed, Madam Court Clerk.

3 THE CLERK: Members of the Petit Jury stand for
4 instructions.

5 THE COURT: This time, Ladies and Gentlemen, we
6 will just have you stand where you are and wait for
7 further instructions from the clerk. Rather than
8 walking down here, stand and wait for further
9 instructions.

10 THE CLERK: Number 160, Aja Singletary?

11 MS. BARR: Present Ms. Singletary.

12 MR. STROBEL: Swear the juror.

13 THE CLERK: Please come down, Ms. Singletary and
14 have a seat in the Petit Jury box. One thirty-eight,
15 Rosa Parsons?

16 THE COURT: I think she has already been excused
17 from serving on this case.

18 THE CLERK: She has. One thirty-three, Gyreneoleve
19 Smith?

20 MS. BARR: Please excuse Ms. Smith.

21 THE CLERK: Number 37, Samantha Cooper?

22 MS. BARR: Present Ms. Cooper.

23 MR. STROBEL: We would excuse Ms. Cooper from the
24 trial of this case.

25 THE CLERK: Number 201, Ricky Martin?

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1 MS. BARR: Present Mr. Martin.

2 MS. STROBEL: We would excuse Mr. Martin for the
3 trial of this case.

4 THE COURT: Would Counsel approach a moment?
5 (Whereupon, a bench conference was held in
6 the presence of the jury, but out of their hearing range.)

7 THE CLERK: Number 31, Larry China?

8 MS. BARR: Your Honor, may Counsel approach?

9 THE COURT: Yes. Mr. China, would you come up
10 here a minute?

11 (JUROR COMPLIED)

12 THE COURT: (After conferring off the record with
13 Counsel and Juror) He will not serve.

14 THE CLERK: Number 96, Kenneth Laster?

15 MS. BARR: Keep Mr. Laster.

16 THE CLERK: Come forward, Mr. Laster. Have a seat
17 in the Petit Jury box. Number 29, Patricia Chandler?

18 THE COURT: Just a moment. What says the Defense
19 concerning Mr. Laster?

20 MR. STROBEL: Swear the juror.

21 THE CLERK: Number 29, please have a seat, Ms.
22 Chandler -- what says the Defense?

23 MR. STROBEL: Swear the juror.

24 THE CLERK: Come forward, Ms. Chandler and have a
25 seat in the Jury box. One forty-five, Ed Pressley?

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1 MS. BARR: Present Mr. Pressley.

2 MR. STROBEL: Swear the juror.

3 THE CLERK: Have a seat in the Petit Jury box, Mr.
4 Pressley. Number 86, Henry Jackson?

5 MS. BARR: Present Mr. Jackson.

6 MR. STROBEL: Swear the juror.

7 THE CLERK: Please come forward, Mr. Jackson and
8 have a seat in the Petit Jury box. Number 191, Oleta
9 White?

10 MS. BARR: Present Ms. White.

11 MR. STROBEL: Swear the juror.

12 THE CLERK: Please come forward and have a seat in
13 the Petit Jury box. Number 128, Foyola Murphy?

14 MS. BARR: Present Ms. Murphy.

15 MR. STROBEL: Swear the juror.

16 THE CLERK: Please come forward Ms. Murphy and have
17 a seat in the Jury box. Mr. Cecil Hughes, number 82?

18 MS. BARR: Seat Ms. Hughes.

19 MR. STROBEL: Swear the juror.

20 THE CLERK: Please come forward, Ms. Hughes and
21 have a seat in the Petit Jury box. Number 124, Demetric
22 Mosley?

23 MS. BARR: Present Mr. Mosley.

24 MR. STROBEL: Swear the juror.

25 THE CLERK: Please come forward and have a seat in

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1 the Petit Jury box. Number 136, William Newby?

2 MS. BARR: Present Mr. Newby.

3 MR. STROBEL: Excuse the juror for the trial of
4 this case.

5 THE CLERK: One twenty, Sharon Mitchum?

6 MS. BARR: Present Ms. Mitchum.

7 MR. STROBEL: We would excuse Ms. Mitchum for the
8 trial of this case.

9 THE CLERK: One ninety-six, Sandra Wilson?

10 MS. BARR: Seat Ms. Wilson.

11 MR. STROBEL: Swear the juror.

12 THE CLERK: Please come forward and have a seat in
13 the Petit Jury box. Number 90, Walter Johnson?

14 MS. BARR: Present Mr. Johnson.

15 MR. STROBEL: Swear the juror.

16 THE CLERK: Please come forward, Mr. Johnson, and
17 have a seat in the Petit Jury box. Number 104, Teresa
18 McCants?

19 MS. BARR: Present Ms. McCants.

20 MR. STROBEL: Excuse the juror.

21 THE CLERK: Number 30, Tareasha Chandler.

22 MS. BARR: Present Ms. Chandler.

23 MR. STROBEL: Swear the juror.

24 THE CLERK: Please come forward and have a seat in
25 the Petit Jury box. Number 54, Darrell Frazier?

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1 MS. BARR: Present Mr. Frazier.

2 MR. STROBEL: We would excuse Mr. Frazier from the
3 trial of this case.

4 THE CLERK: Number 119, Roy Mitchell?

5 MS. BARR: Present Mr. Mitchell.

6 MR. STROBEL: We would excuse Mr. Mitchell for the
7 trial of this case.

8 THE CLERK: Number 57, Diane Fulton?

9 MS. BARR: Present Ms. Fulton.

10 THE COURT: Any challenge for cause as to this
11 juror?

12 MR. STROBEL: No, Sir.

13 THE CLERK: Please come forward, Ms. Fulton and have
14 a seat. Number 88, Leonard Johnson?

15 MS. BARR: Please excuse Mr. Johnson.

16 THE CLERK: Number 48, Noreen Edwards?

17 MS. BARR: Please present Ms. Edwards.

18 MR. STROBEL: Swear the juror.

19 THE CLERK: Please come forward and have a seat in
20 the Petit Jury box.

21 THE COURT: Are there any matters of law regarding
22 the Jury selection?

23 MS. BARR: None from the State, Your Honor.

24 MR. STROBEL: No, Sir.

25 THE COURT: All right, Ladies and Gentlemen, you

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1 have been selected to be the Jury in the trial of this
2 case. Ladies and Gentlemen, those of you who were not
3 selected, I'm going to excuse you all for the remainder of
4 this day. I'm going to excuse you all for all day
5 tomorrow. I want you to call back tomorrow after 6:00 p.
6 m. Call tomorrow after 6:00 p. m. to find out when you
7 are supposed to come back. Thank you very much, and you
8 all can go.

9 (Whereupon, the jury panel was released at
10 5:33 p.m..)

11 THE COURT: Ms. Barr and Mr. Strobels, as far as
12 scheduling purposes with this Jury, when do you want to
13 get rolling tomorrow?

14 MS. BARR: Your Honor, may we approach?

15 THE COURT: Yes.

16 (Whereupon, a bench conference was held.)

17 THE COURT: All right, Ladies and Gentlemen, since
18 we have used up this day, we've got to do a couple of
19 things before you all get started here tomorrow morning.
20 So, we will need you all back here at 10:30 tomorrow
21 morning. Is there anyone on this Jury we just selected
22 that cannot be here at 10:30? We expect everyone on
23 time at 10:30. If you all will go with Reverend Brown
24 to just get acquainted with the Jury room and so he can
25 tell you the way to come in without coming through the

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1 courtroom. Also, I want to admonish you -- I'll tell
2 you much more about this later. Basically, you are put
3 on a Jury who must decide the case based solely on the
4 evidence presented in the courtroom, not based on
5 things that you might hear outside of the courtroom
6 and also not based on conversations that you might have
7 with people outside the courtroom; that's point number
8 one.

9 Point number two is that you must listen to the
10 entire case and my instruction regarding the law before
11 you discuss the case. So, in that connection, when you go
12 back to the Jury room, it will be totally inappropriate
13 for you to talk about this case. You haven't heard
14 anything about it; you haven't heard the law to apply to
15 it; so you are not to discuss the case with each other or
16 anyone outside of the courtroom, anyone else, period,
17 until I tell you to do so. And, that will be after you
18 have listened to all of the evidence as well as my
19 instructions concerning the law.

20 You certainly play a very important pivotal role in
21 the process as jurors. You have a constitutional office
22 that you are now bound to embark upon, because the right
23 of Jury service is a constitutional right. I look forward
24 to helping uphold that right with you all and making sure
25 that we abide by that law, the main responsibility that

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1 goes along with that right. So, if you all will follow
2 Reverend Brown, and we will look forward to seeing you all
3 at 10:30 tomorrow. Thank you very much.

4 (Whereupon, the jury exits the courtroom at
5 5:38 p.m..)

6 THE COURT: All right, is there anything else
7 that we need to talk about today?

8 MS. BARR: Nothing else that I can think of, Judge.

9 MR. STROBEL: Nothing for the Defense.

10 THE COURT: We will all gather together at 10:00
11 tomorrow morning for any preliminary matters. You will
12 have half an hour to focus on the Jury coming in at 10:30.
13 We will be ready to deal with them at 10:30. If there are
14 any other matters from the State, Probation, or otherwise,
15 we should attend to today before we go?

16 THE CLERK: No, Sir, not today. I wouldn't do that
17 to the court reporter.

18 THE COURT: All right, we will be in recess until
19 tomorrow morning.

20 (Whereupon, the court concludes its
21 business for the day at 5:40 p.m.)

22 -- END OF DAY ONE OF TRIAL --
23

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1 (Whereupon, the court begins its business
2 for the day in the case of The State versus Bradley on
3 Tuesday, January 26, 2010 at 10:30 a. m.)

4 -- DAY TWO OF TRIAL --

5 THE COURT: Ms Barr, concerning this motion that
6 you said yesterday that we needed to hear before the Jury
7 comes in, and the reason why we had the Jury to come in at
8 10:30, because you said that you had some matters before
9 the Jury comes in, what happened to that?

10 MS. BARR: Your Honor, in the Bench conference, Mr.
11 Strobel indicated to the Court that he did not object to
12 the motion that I made concerning the forensic interview
13 of the minor victim. That was my understanding of what he
14 told the Court.

15 MR. STROBEL: Let'S make sure I understand what it
16 is that you wanted to show.

17 MS. BARR: Your Honor, it was, for the record, our
18 motion to admit the out-of-court statements of the minor
19 victim, the statements that were made to the forensic
20 interviewer at the Durant Center. And, during a Bench
21 conference when I indicated to the Court that we would
22 make a motion and actually have it heard prior to the Jury
23 coming in, it's my understanding from Mr. Strobel that he
24 indicated that, in all the cases that he has tried, it
25 comes in and that he would not object. Based on that,

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1 Judge, I instructed that witness to be here at 2:00 this
2 afternoon rather than this morning.

3 THE COURT: All right, Mr. Strobel?

4 MR. STROBEL: Is she talking about the video that
5 the Durant Center where she testified as to what occurred
6 and what had happened to her?

7 MS. BARR: Yes, Sir, that's what I'm referring to.

8 MR. STROBEL: And, is she going to be here, the
9 victim?

10 MS. BARR: Yes, she's here.

11 MR. STROBEL: Okay, and is she going to take the
12 stand yet, or do you know?

13 MS. BARR: She is.

14 MR. STROBEL: She's going to testify?

15 MS. BARR: Yes, she is.

16 MR. STROBEL: Then that would give me the
17 opportunity to question her of anything concerning that
18 video, and I have no opposition to it.

19 THE COURT: All right.

20 (Whereupon, a recess was taken from this
21 trial from 10:30 until 10:48 a.m..)

22 THE COURT: All right, have we got all of them
23 now?

24 THE BAILIFF: Yes, Sir.

25 THE COURT: All right, Ladies and Gentlemen, if

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1 you all will stand and be sworn.

2 (Whereupon, the jury enters the courtroom
3 at 10:50 a.m. and is duly sworn.)

4 THE CLERK: Please be seated.

5 THE COURT: Now, Ladies and Gentlemen, you have
6 just taken an oath to well and duly try this case and
7 render a true verdict according to the law and according
8 to the evidence, so help you, God. And, as long as you
9 hold true to that oath that you took, you will have
10 fulfilled your duty as jurors, and justice will prevail in
11 this case.

12 The case we are about to begin is the case of the
13 State versus Kevin Bradley. Mr. Bradley was indicted by a
14 Grand Jury in Williamsburg County and charged with
15 criminal sexual conduct with a minor first degree on count
16 one, and criminal sexual conduct with a minor second
17 degree on count two.

18 Now, the indictment is just simply the charge, the
19 paper that brings the case into court; it's not proof of
20 guilt. He has plead not guilty to these charges, and he
21 is presumed to be not guilty of these charges and he
22 cannot be found guilty of these charges unless the State
23 proves his guilt beyond a reasonable doubt. And the State
24 must convince each and every juror of his guilt beyond a
25 reasonable doubt. Otherwise, he will be found not guilty.

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1 Your job as jurors will be to determine whether the
2 State meets that burden of proving guilt beyond a
3 reasonable doubt, and you do that -- you do your job by
4 listening closely to all of the evidence, paying close
5 attention to all of the witnesses so that, in the end, you
6 will be able to decide the facts of this case, because out
7 of all the people who will be here in the courtroom only
8 you, the Jury, can decide the facts of this case. And
9 that's why you all were selected to decide the facts of
10 this case.

11 Now, just as only you can decide the facts of this
12 case, as the trial judge, I am the sole judge of the law
13 of this case. I will tell you what law that you are to
14 apply to the facts that you find to be the facts. You
15 determine the facts and you apply the law that I will give
16 you and reach a verdict in this case.

17 I am the sole judge of the law and you must accept as
18 correct the law as I give it to you at this time during
19 the trial and in greater detail at the end of the trial.
20 As I indicated to you yesterday, you must not discuss the
21 case before I tell you the time to talk about the case.
22 You must not talk with each other about it, anyone else
23 about it, family, friends, anyone else. You must listen
24 to the entire case and deliberate at the appropriate time
25 with your fellow jurors. That's the method that we use in

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1 court and that's the method that you are to comply with.

2 Now, later in the process, I will appoint one of you
3 to serve as the foreperson of the Jury. The foreperson
4 will take the second chair there in the front row, and it
5 will be the responsibility of the foreperson to serve as
6 the spokesperson for the Jury. It will be the
7 responsibility of the foreperson to preside over the Jury
8 deliberation, and it will be the responsibility of the
9 foreperson to complete the verdict form representing the
10 unanimous verdict of each and every juror in this case.

11 I look forward to working with you in this case. It
12 is a very important case, as they all are, and you have a
13 very important role to play in this case, because you are
14 exercising your constitutional right to serve as jurors
15 and you have been selected and you are to provide that
16 service by listening, deciding, and deliberating and
17 rendering a unanimous verdict based on the evidence in
18 this case.

19 I will do what I can to make sure that you don't get
20 worn out by having to sit in those chairs for too long. I
21 know it can be difficult to have to sit and sit and sit
22 and look and look and look, so we will take breaks from
23 time to time. Whenever any of you need a break for any
24 reason, let me know and we will take a break and we will
25 press on with this matter. We will press on first by

OPENING STATEMENT BY MS. BARR

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1 listening to the opening statements, first by the State.
2 Ms. Barr?

3 MS. BARR: Thank you, Your Honor. May it please the
4 Court?

OPENING STATEMENT BY MS. BARR

5
6 THE COURT: Yes, ma'am.

7 MS. BARR: Ladies and Gentlemen of the Jury, good
8 morning. I want to thank you all for being here today and
9 to remind you that I know that you all are here because
10 you were forced to be here in court, and I am sure that
11 nobody volunteered. Nobody is sitting here with thoughts
12 of I'm not doing anything this week, I love to just kind
13 of hang out in court and hear a criminal case. But we
14 certainly appreciate the fact that you are here. But,
15 folks, let's be clear more than this is the attention that
16 you will give this case. The judge is a hundred percent
17 right when he talks about this is an important case. This
18 case concerns allegations of the rape of a child and so it
19 is one of the most serious cases that can be heard in our
20 judicial system. Now, you all may recall that on
21 yesterday we went through the entire Jury selection
22 process and we all know that some of the jurors were
23 picked and some jurors were not picked. And, I can tell
24 you some of the reasons we went through that whole process
25 is because I don't know any of you. The Defense lawyer

OPENING STATEMENT BY MS. BARR

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1 probably doesn't know any of you. But we had to make a
2 split-second decision to try to figure out whether or not,
3 as individual jurors, you all could give this case the
4 kind of attention that it needs. And we had to make that
5 decision without knowing a whole lot about you, we had to
6 rely on our gut instincts a lot. But, folks, I am pleased
7 to say I think we got it right. I think that we have in
8 this Jury the only thing that we want in any Jury, we want
9 an intelligent Jury; we want an attentive Jury; we want a
10 Jury that's going to be fair. And, I think we've got it
11 and I think you will all do just fine and I want to thank
12 you all in advance.

13 Now, folks, let me tell you why we're here. One of
14 the things is that I don't want you all to be fooled by
15 the appearance of Kevin Bradley. He looks youthful. He
16 looks like he would not hurt a fly. But his appearance is
17 deceptive. You are going to hear evidence that probably
18 would suggest to you during the course of this trial that
19 he uses his appearance, the fact that he does look so
20 young and he does look like he wouldn't hurt a fly and he
21 uses that as a weapon to prey on a young child. The
22 evidence is going to show in this case is that for about a
23 year -- throughout an entire year -- he repeatedly raped
24 his girlfriend's tenor eleven year old cousin. It started
25 when she was ten. And the only reason it stopped, folks,

OPENING STATEMENT BY MS. BARR

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1 the only reason it stopped is she got pregnant and then it
2 came to the attention of law enforcement. She just
3 happened to be at a doctor's office getting a check up and
4 it was just disclosed that she was pregnant. And as a
5 result of this intervention of law enforcement it came to
6 the attention of the Department of Social Services, and
7 they took action to remedy the situation.

8 Folks, he's charged with two counts in the
9 indictment. The first count is criminal sexual conduct
10 with a minor in the first degree, and that particular
11 charge requires the State to prove that he engaged in
12 sexual battery, i.e., intercourse, with a child under the
13 age of eleven. The second count of the indictment charges
14 him with criminal sexual conduct in the second degree, and
15 that particular charge requires the State prove that he
16 engaged in sexual intercourse with a child between the
17 ages of eleven and fourteen. That's why you have two
18 counts, because the rape occurred when she was ten and it
19 also occurred when she was eleven.

20 Now, one of the things I will tell you in advance is
21 that the little girl, when she gets up here and testifies,
22 she is going to be nervous; she is probably going to be
23 very guarded; I imagine that as it goes we all know it
24 would be difficult for a grown person and tell a stranger
25 what happened, and it's going to be difficult for her. I

OPENING STATEMENT BY MR. STROBEL

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1 ask you in advance to be patient and try to understand
2 that she is going to have a difficult experience, but
3 she's going to tell you what happened.

4 In addition to hearing her, we are going to be able
5 to present five nurses and doctors who treated her, and
6 you are going to hear from Law Enforcement, and they are
7 going to tell you all the facts about this case.

8 Now, at the conclusion of the case, once you have
9 heard all the evidence, I will again have the opportunity
10 to stand back before you and, folks, at that time, we are
11 going to be asking you, based on everything that you have
12 heard from the witness stand and based on everything that
13 she said, and based on the law that the judge is going to
14 give to you at the conclusion of this case, I'm going to
15 ask you to find him guilty.

16 And, folks, I'm going to ask you to find him guilty
17 not because you may feel sorry for the little girl and you
18 may feel anger toward him, because it's your right to feel
19 anger, but it's going to be based on the facts. And, so,
20 Ladies and Gentlemen, I thank you for your time and I
21 thank you most importantly for your attention.

22 THE COURT: Mr. Strobel?

23 OPENING STATEMENT BY MR. STROBEL

24 MR. STROBEL: May it please the Court?

25 THE COURT: Yes, sir.

OPENING STATEMENT BY MR. STROBEL

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1 MR. STROBEL: Ms. Barr, Ladies and Gentlemen of the
2 Jury, I am Richard Strobel, and I am here to present the
3 facts as they are and as it relates to Kevin Bradley. The
4 judge earlier told you about the allegations. Those are
5 only allegations, not the facts. You are the judges of
6 the facts in the case, only you. You are going to hear
7 allegations, observe the witnesses, numerous witnesses
8 that are going to testify on behalf of the State. That's
9 the logical way in which any case is done to have a point
10 and tell what happened. Don't make up your mind or judge
11 the facts. Wait until you have heard the statement by the
12 Defendant as to what occurred and happened in this
13 particular case.

14 This is a case that there is a defense, and that
15 defense is February 8, 2009. That is when she turned from
16 ten to eleven. You have to make the determination whether
17 the facts are sufficient to you to determine that this
18 sexual intercourse happened when she was tenor if it
19 occurred or if it happened at eleven. That is critical,
20 and that is why I am here. I want you to listen carefully
21 to the facts that are presented in this case. You are not
22 going to determine what the facts are until you go back
23 there and deliberate. You may believe this; this one may
24 believe this; and you're going to make a determination as
25 to what is the truth and you are here only for the truth.

BARBARA GREGG - VOIR DIRE EXAMINATION

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1 This verdict must speak the truth, and, in a case of this
2 nature, it is imperative that the truth comes out. Don't
3 resolve in your mind as to what facts are true till you
4 have heard everything, Go back and start your
5 deliberations. Only then, must you let your common sense
6 come in, you know, read things for what they really are.
7 You are all adults. You are intelligent people. And, as
8 part of that, you are here to make a decision that speaks
9 the truth. Thank you.

10 WHEREUPON, BARBARA GREGG

11 WAS DULY SWORN AND TESTIFIED AS FOLLOWS

12 MS. BARR: May it please the Court?

13 THE COURT: Yes, ma'am.

14 VOIR DIRE EXAMINATION BY MS. BARR

15 Q. State your full name for me?

16 A. My name is Barbara Gregg.

17 Q. And, where do you work?

18 A. Right now, I am retired about three months now. I
19 was working at Kingstree Family Practice.

20 Q. And, how long had you been working there?

21 A. Seven years.

22 Q. What did you do there?

23 A. I'm a nurse practitioner.

24 Q. And, would you please provide the Jury a little bit
25 of background information about your education, your

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1 training and degrees that you hold?

2 A. Um, I attend Medical University of South Carolina. I
3 have a Master's Degree in nursing, and I am certified
4 as a family nurse practitioner.

5 Q. When did you earn your Master's Degree?

6 A. Ninety-six.

7 Q. Okay. And, give us a little bit of background on the
8 types of services that you provide as a nurse
9 practitioner, what would be -- would have been your
10 day-to-day when you were working?

11 A. Well, I diagnose and treat acute and chronic
12 illnesses; I do physical exams, including pap smears,
13 well-child check ups, etc. I can write
14 prescriptions. I order tests. Basically anything a
15 physician does, I can do.

16 Q. So you can do pretty much anything that a physician
17 does?

18 A. Pretty much.

19 Q. You just don't get the pay, I suppose?

20 A. I do not.

21 Q. All right, now, ma'am, have you ever testified in
22 court before?

23 A. I have. It was not anything of medical testimony.

24 MS. BARR: Judge, at this time, we would tender Ms.
25 Gregg as an expert in the field of nursing.

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1 MR. STROBEL: No objection.

2 THE COURT: Ladies and Gentlemen, she is an expert
3 in the field of nursing and any witness who is declared by
4 the Court to be an expert witness, that witness can offer
5 opinions within their field of expertise, whereas most
6 other witnesses cannot offer up opinions. You may
7 proceed.

8 MS. BARR: Thank you, Your Honor.

9 DIRECT EXAMINATION BY MS. BARR

10 Q. Ms. Gregg, you indicated that you had been employed
11 by Dr. Allen's office for seven years. Are you --
12 based on in that capacity, were you familiar with
13 Sadie McBride?

14 A. Yes, Sadie has been my patient since I started
15 working there.

16 Q. And, tell the Court about what relationship existed
17 between Sadie McBride and ~~she was a~~ ^{victim} ~~child~~?

18 A. I believe Sadie is the child's grandmother, and the
19 child had been living with Sadie.

20 Q. For some years?

21 A. Yeah, as far as I know.

22 Q. Now, do you have a copy of the child's medical
23 records from Dr. Allen's office?

24 A. Yes.

25 Q. And, the child had been treating with Dr. Allen since

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1 November of 2000, is that correct?

2 A. Well, actually, she was -- yeah.

3 Q. Since November of 2000?

4 A. Yes, 2000 when she was two and a half.

5 Q. Okay, she was two-and-a-half. What's her birth date?

6 A. February the 15th, '98.

7 Q. February the 15th, 1998?

8 A. Um-hmm.

9 Q. So, when she first came to see Dr. Allen, she would
10 have been almost three?

11 A. Yeah.

12 Q. Okay. And, your office would have treated her for
13 various illness or ailments since she was two-and-a-
14 half years old?

15 A. Yes.

16 Q. All right, now, I am particularly interested in two
17 visits that the child had with your office, or Dr.
18 Allen's office. The first visit I want to talk about
19 is June 24th of 2008. Do you have the records that
20 relate to that particular visit?

21 A. Yes.

22 Q. And, the child was seen by you and Dr. Allen on that
23 occasion; is that correct?

24 A. She was seen by myself and my student. I had a
25 student at the time.

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1 Q. On this visit, June 24th of 2008, how old was the
2 child then?

3 A. Ten.

4 Q. And, she was brought in by whom?

5 A. By her grandmother.

6 Q. And, that's Ms. Sadie McBride?

7 A. Yes.

8 Q. All right, did Ms. McBride -- why was she brought in?
9 Why did her grandmother bring her in?

10 A. She had a vaginal discharge, her grandmother was
11 concerned about it, and also had caught her with a
12 boy and was concerned that the child had some kind of
13 sexual disease.

14 Q. Okay. She was checked and treated at that time?

15 A. She was checked for yeast, Trichomonas, Gonorrhea,
16 Chlamydia, and all those tests were negative.

17 Q. All right, and this was in June of 2008?

18 A. Yes.

19 Q. All right, now, the next visit that I want to talk
20 about is August the 14th of 2009. Were you at the
21 office when she was seen on that date?

22 A. I was.

23 Q. And, who brought the child in on that occasion?

24 A. Sadie.

25 Q. And, what was the reason why the child was being

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1 brought in on that occasion?

2 A. Well, she was brought in because it was time for her
3 little child check up. We performed the exam;
4 everything was fine; and then Sadie mentioned that
5 the child had not had a period in a while. And, I'm
6 thinking: All right, the child is eleven and it's
7 not unusual for a child that age to skip periods. I
8 went ahead and did a pregnancy test, and it
9 immediately popped up positive.

10 Q. It immediately popped up positive?

11 A. Yeah, sometimes it takes a minute or two to show that
12 you're pregnant; this was immediate.

13 Q. Okay, what did you do with the information you
14 discovered -- that the pregnancy test was positive?

15 A. Well, I went back in the room, and I told the child
16 and Sadie, I said, "You know you're pregnant." And,
17 she ---

18 MR. STROBEL: Objection to anything she will say,
19 Your Honor.

20 THE COURT: Do not repeat what she said; that was
21 the objection?

22 MR. STROBEL: Yes, Sir.

23 THE COURT: Go ahead, Ms. Barr.

24 MS. BARR: Judge, it would be our position, one,
25 that it is an excited utterance or, two, that it's a

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1 statement made for purposes of medical diagnosis and
2 treatment.

3 THE COURT: All right, I think when she is about
4 to testify as to some of Sadie McBride's expression, or
5 demeanor, I think that's what she was about to testify --
6 any objection of stating the question again?

7 MR. STROBEL: No objection.

8 RESUMED DIRECT BY MS. BARR

9 Q. All right, Ms. Gregg, tell me, after you told the
10 child and the grandmother that the child was
11 pregnant, what did the child say at that point? What
12 was her overall demeanor?

13 A. She became very hysterical, crying, saying that she
14 can't be pregnant; that she was only eleven years
15 old; she had to go to school; and she kept begging me
16 to, "get it out, take it out, take it out". And, I
17 told the child that I needed to know who did this to
18 her, because I needed to call the police, and she
19 said, "I can't ---"

20 MR. STROBEL: I object.

21 THE COURT: I sustain that objection.

22 Q. All right. Let me ask you this: How did that --
23 this was five or six months ago, how is it that you
24 remember?

25 A. It was very traumatic to see this little child, who

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1 was eleven years old, pregnant. That would upset
2 anybody.

3 Q. Now, was there some point in time that you left the
4 room?

5 A. Yes, after several minutes of the child not being
6 able to even speak because she was crying so much,
7 and I was only medical provider that day, and I had
8 other patients, so I told Sadie just to stay with her
9 and talk to her and see if she could get anything out
10 of the child, and I went and saw some more patients
11 before coming back into the room.

12 Q. Um, what was the purpose of you leaving the room;
13 were you just -- did you just need to see other
14 patients or did you want to give her a moment with
15 her grandmother?

16 A. Well, both. I needed to see the other patients,
17 because I was definitely backed up, but I thought
18 maybe the child would talk to the grandmother more
19 than she would talk if I was in there.

20 Q. All right, when you came back -- don't mention
21 anything to me just yet about what the child or what
22 the grandmother said -- but when you came back to the
23 room, what was the child's demeanor and state of mind
24 at that time?

25 A. She was calmer. She was still crying, just kind of

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1 soundly, I mean, tears pouring down, but she was not
2 thrashing around on the exam table like she had been
3 before.

4 Q. She was, you said, thrashing around earlier on the
5 exam table?

6 A. Yes. Like I said, she was hysterical; she was just
7 beside herself.

8 Q. Okay. All right, how long were you gone?

9 A. I would say about thirty minutes.

10 Q. And, when you came back, you indicated that she was
11 calmer but still crying and still upset but you were
12 at least able to understand what she was saying?

13 A. Yes.

14 Q. All right, now, when you came back in, what did you
15 ask her?

16 A. I said, "Do you know anything yet?", speaking to
17 Sadie, the grandmother. And, she said, "Yes, she
18 told me who it was."

19 Q. And, did you actually talk to ~~Victim~~ ^{Victim} at that time?

20 A. I asked her did she tell her grandmother who it was?

21 Q. What was her response?

22 A. She said -

23 MR. STROBEL: Objection. Is she going to name
24 names, Your Honor, or just is the answer going to be Yes?
25 What I'm trying to do is I just don't want things blurted

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1 out without legal provocation.

2 THE COURT: All right, Ms. Barr?

3 MS. BARR: Judge, we would take the position that
4 under Rule 803 subsection 2, that anything that the child
5 said would be considered an excited utterance given her
6 state of mind and given her emotional state at the time
7 she learned that she was pregnant.

8 MR. STROBEL: Well, it can't be excited, because she
9 left the room for a period of time and then came back
10 later. It wasn't a spontaneous response from the child.
11 She had plenty of time to think clearly about what was
12 being said, and I just don't think that's proper. She's
13 going to be testifying later, and she can tell us then
14 what she said.

15 MS. BARR: And, Judge, I would respectfully
16 disagree; it's not a matter of at what time the statement
17 that was made. Time is not the issue. The question is
18 whether or not the child was under the stress of the
19 condition that caused the excited utterance at the time
20 that it was made; it's not the timing. And, Judge,
21 clearly, if she left the room for thirty minutes and came
22 back and the child was still crying after having learned
23 that she was pregnant, she would still be under the
24 stress.

25 MR. STROBEL: And, of course, I disagree.

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1 THE COURT: What is your question for the witness?

2 MS. BARR: I asked her what the child told her when
3 she came back into the room, and she was getting ready to
4 testify as to what she heard.

5 THE COURT: Ladies and Gentlemen, I'm going to
6 have you go to the Jury room while we talk about these
7 matters. You are admonished to please not discuss the
8 case.

9 (Whereupon, the jury exits the courtroom at
10 11:17 a.m.)

11 MOTION

12 THE COURT: All right, Ms. Barr, my thought is if
13 a person is answering a question and the witness is
14 responding to a question, then, how can that be an excited
15 utterance?

16 MS. BARR: Judge, Under 803(2), and rules of a case
17 of a statement relating to a startling event or condition
18 made by the declarant that's under the stress and
19 excitement caused by the event or condition is admissible
20 hearsay. And, the child was asked the question while she
21 was still under the stress of the event the event of her
22 condition being the discovery that she was pregnant, then,
23 Judge, we think it would be admissible. Judge, we take
24 the position that it matters not when a statement was
25 made. There are case laws that allows statements to come

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1 in that was made 20 hour later. We would take the
2 position that the child having learned that she was
3 pregnant was still understandably very upset by that
4 discovery and therefore someone had asked her a question
5 of whether or not it was made just out of disclosure only,
6 it would still be and the hearsay exception under 803(2).
7 And, I don't agree with Counsel that it has to be a
8 spontaneous answer, or response. I don't think the rule
9 requires that. It just simply says that a witness has to
10 be under the stress of the excitement caused by the event
11 or condition. And, clearly, the witness has laid the
12 foundation that the child is still upset and crying.

13 THE COURT: All right, Mr. Strobel?

14 MR. STROBEL: Your Honor, I don't think this
15 qualifies for excitable utterance. There is just too much
16 time elapsed, too many questions were asked of her. It's
17 not like you walk into the room and say, "Who did this?"
18 and they give her this false fact. That is just not the
19 case in this situation. If it was a question that was
20 taking place sometime later after the event.

21 MS. BARR: Your Honor, we would just simply say that
22 the timing of it and the Defense's reliance on time that
23 it happened is just misplaced. There has been numerous
24 cases where people have been raped and reported it hours
25 later and the appellate courts have held that it qualifies

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1 as an excited utterance. And, Your Honor, we don't feel
2 that this case bears any significance for a distinction.

3 MR. STROBEL: In this case, Your Honor, no crime was
4 committed on the date of the examination. It was
5 something that was committed -- apparently, this testimony
6 involved -- but I have read the report -- she was thirteen
7 and a half weeks pregnant at the time. The event took
8 place long before. This just does not qualify as
9 excitable utterance by the victim.

10 MS. BARR: And, Your Honor, I will just say this,
11 and I will be done, if I may. It doesn't matter when the
12 crime occurred, the rule doesn't say that the excited
13 utterance as to following the time of the happening of the
14 crime. But, it says that the witness, or the Declarant
15 has to be under the stress of excitement created by the
16 event. Judge, we submit that the excitable event or
17 condition was the discovery by the child that she was
18 pregnant.

19 THE COURT: All right. Well, we have two cases,
20 State v Sims and the other is State versus Ladner, dealing
21 with the statement of a two-and-a-half year old in which
22 the trial court admitted a statement by the two-and-a-half
23 year old her caretakers immediately after they discovered
24 blood coming from her vaginal area and which she indicated
25 that her "tush" hurt and that the defendant did it. That

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1 was admitted an excited utterance, because the statement
2 related to, one a startling event of a victim had been
3 injured in the vaginal area, the victim complained about
4 the pain and bleeding and the statement was made while
5 under the stress of her attack. And finally, the stress
6 obviously was caused by the startling event of the assault
7 itself. The court went on to say that the utterance was
8 stated to be an excited utterance and must relate to a
9 startling and bad condition, must have been made while the
10 Declarant was under the stress that is excitement and the
11 stress of excitement must have caused this startling
12 event. And, the excited utterance is hearsay exception
13 based on the rationale that the startling event so sparing
14 the Deaclarant's process of -- reducing the likelihood of
15 fabrication. The court must consider the totality of the
16 circumstances in determining whether or not the statement
17 relates to startling -- whether or not the statement is an
18 excitable utterance. And, that case was a matter of first
19 impression. Stating that that is a matter of first
20 impression, the incompetency of the Declarant at the time
21 of the trial does not preclude the admission of the
22 Declarant's excited utterance through other witnesses.
23 The fact that a Declarant is not able to testify is not --
24 does not diminish the reliability of the excited
25 utterance. The decision of the court to admit the

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1 statement under those circumstances, a court upheld it not
2 being improper, an improper admission of evidence. Then
3 in State versus Sims, the child was six years old, in that
4 particular case. And, that case involved the murder of
5 the child's mother, and the child made a statement to the
6 police officer naming the defendant as the man at the
7 house the night of the murder, and the court upheld that
8 as being an excited utterance. The question in this case
9 is whether the excited utterance is --- would be the fact
10 of the crime itself, of having potential sex with a minor,
11 or whether the excited utterance was the startling event
12 being the discovery of the child's pregnancy, and I think
13 the State's arguing that the startling event was not the
14 crime itself but the startling event was her discovery
15 that she was pregnant.

16 MS. BARR: That's correct, Your Honor.

17 MR. STROBEL: And that's my argument.

18 THE COURT: The statements made by the child while
19 under the stress and excitement of those events make this
20 admissible as excited utterance.

21 Anything else on that point, Mr. Strobel?

22 MR. STROBEL: Just note my objection.

23 THE COURT: All right.

24 THE COURT: Then, I find that the statements made
25 while under the stress of discovery that she was pregnant

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1 at the age of eleven constitute an excited utterance. So,
2 I overrule the objection, but while the Jury is out, I
3 want to be clear as to what the witness is going to talk
4 about. What was your answer to that question going to be?

5 MS. GREGG: His name, Kevin.

6 MS. BARR: And, Your Honor, while we have -- her
7 records also reflect that the child -- and I think she
8 will testify to this -- that the child said that he has
9 been having sex with her since she was ten. And, we would
10 seek to admit that evidence in as well.

11 MR. STROBEL: I didn't hear that, Your Honor.

12 THE COURT: His name was Kevin and that he has
13 been having sex with her since she was ten?

14 MR. STROBEL: Well, obviously, I object to that.
15 That's has nothing to do with exciting utterance.

16 THE COURT: All right. I want to think about
17 that. We will take about five minutes.

18 (Whereupon, a bench conference was held in
19 the presence of the jury, but out of their hearing range.)

20 (Whereupon, a recess was taken from 11:30
21 a.m. until 11:40 a.m..)

22 THE COURT: All right. Let's hear the preferred
23 testimony beyond the witness. Continue, Ms. Barr.

24 MS. BARR: Yes, sir.

25 RESUMED DIRECT EXAMINATION BY MS. BARR

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1 Q. Ms. Gregg, you indicated that you came back into the
2 room after you had given ~~Chandra~~ ^{Julia} and her grandmother
3 an opportunity to speak --- that you came back in and
4 you asked her a question about who had done this to
5 her. And, I need you to tell me what her response
6 was?

7 A. She said it was Kevin.

8 Q. Okay?

9 A. And, I said, Do you know him? You know, like, were
10 they familiar with each other, or was this just a --
11 you know, a chance meeting. And, she said it was her
12 cousin's boyfriend.

13 Q. Okay.

14 A. And that he had been having sex with her since she
15 was ten years old.

16 Q. All right. And, can you describe her state of mind
17 and her demeanor the entire time you were having this
18 conversation with her?

19 A. She was calmer, but she was still very upset, you
20 know, tense. So, I was very happy to get that
21 information out of her, because, initially, I didn't
22 think I would ever get anything out of her.

23 Q. Now, when you were describing how she was, she
24 appeared to be shaking?

25 A. Yes, she was shaking.

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1 Q. She was shaking; okay.

2 THE COURT: All right, Mr. Strobel, do you wish to
3 proffer any questions on this proffer?

4 MR. STROBEL: Your Honor, I still object. All the
5 situations that relate has to do with the utterance as to
6 the crime. She is not talking about the crime of rape
7 that apparently happened some three and a half months
8 prior to that; she is talking about finding out that she
9 was pregnant. To me, that does not qualify, and I haven't
10 read a case law concerning pregnancy or determining some
11 other factor as an exciting utterance to qualify this
12 hearsay testimony to be offered, and thusly, I object,
13 Judge.

14 THE COURT: Madam Barr?

15 MS. BARR: Judge, we would -- I'm not -- well, one
16 thing is I'm not quite certain as to why Counsel believes
17 that the last time it happened was the date of conception.
18 We don't know that. That's the last time that we have
19 medical evidence that that's when it happened, but he
20 could have had sex with her -- for all we know. I don't
21 know why that seems to be a bone of contention.

22 But, in any event, Judge, it's the State's position
23 that it's not when the rape occurred; it's what the child
24 said while she was in an excited state following the
25 discovery of her pregnancy. And, Judge, we think that the

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1 Court's recitation of prior case law is on point.

2 I think that if the child had come and said that John
3 Doe from Indiana raped her, and this was said while she
4 was in an excited state after having learned that she was
5 pregnant, that it's admissible. I think that anything
6 that's relevant that's said by the child while in the
7 excited state is admissible.

8 THE COURT: All right, the rule relates to a
9 statement relating to a startling event. It doesn't
10 continue down as to what the statement must be concerning,
11 but any statement made while the child was relating to a
12 startling event or condition, would constitute an
13 exception, the point being that the child would not likely
14 fabricate under the circumstances of her emotional state
15 at the time.

16 I note the objection. I overrule the objection and
17 allow the testimony.

18 Let's bring the Jury in.

19 MR. STROBEL: It should not be necessary that I
20 object during her testimony since you have already ruled,
21 is that correct, it's still noted?

22 THE COURT: That is correct.

23 MR. STROBEL: It is still noted?

24 THE COURT: It goes beyond the bounds.

25 MR. STROBEL: Okay.

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1 (Whereupon, the jury enters the courtroom
2 at 11:40 a.m..)

3 THE COURT: Objection is overruled, you may
4 proceed.

5 RESUMED DIRECT EXAMINATION BY MS. BARR

6 Q. Ms. Gregg, I think the last question that I asked you
7 was, when you returned to the room where ~~she was~~ ^{Victim} and
8 her grandmother were in the room, what did you ask
9 the child?

10 A. Well, like I said, the child was calmer; she was
11 still upset; she was shaking, crying still. And, I
12 said: Did you tell your grandmother, or words to
13 that effect, and she said Yes. And I said: Who was
14 it? And she said it was Kevin. And I asked her did
15 she know Kevin.

16 Q. Why did you ask her that?

17 A. Because I didn't know if this was somebody she knew,
18 like a family member or friend, or this is somebody
19 that she knew from school, you know, I didn't know
20 how old Kevin was.

21 Q. Sure.

22 A. And, she said yes, it was her cousin's boyfriend.
23 Again, did you ask her how old is he? And she said
24 about twenty. And, I said: Was this the first time
25 that he had ever touched you, and she said: No, he

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1 has been having sex with me since I was ten.

2 Q. Now, following those remarks that were made by her,
3 what action did you take?

4 A. I had the nurses call DSS and the Police Department.

5 Q. And, the Kingstree Police Department responded out?

6 A. They did. At one point, there were four male
7 policemen there. And, I said you can't talk to this
8 child; we need a female. So, they did call a female
9 policewoman to come and talk to the child. And, then
10 at some later point, DSS sent a caseworker over.

11 Q. Okay. And, your understanding following that was
12 that the child would be later seen at the Durant
13 Center in Florence?

14 A. That's right. We had initially made an appointment
15 with Care House, and --

16 Q. Tell us, tell the jury what Care House is?

17 A. It is a place in Florence that caters to rape that
18 comes under the age of eighteen.

19 Later that day, DSS called and said that
20 they had cancelled that appointment and was
21 taking her somewhere else to get the proper
22 care, and it is my understanding that they took
23 her wherever they did, and she received an
24 abortion.

25 MS. BARR: Ms. Gregg, I believe that's all the

BARBARA GREGG - CROSS EXAMINATION

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1 questions that I have.

2 If you will, please answer any questions that they
3 might have for you.

4 CROSS EXAMINATION BY MR. STROBEL

5 Q. Ms. Gregg, I believe you said you saw her in August
6 of 09?

7 A. Yes.

8 Q. Could you make a determination without an examination
9 as to how far along she was with her pregnancy?

10 A. No. Number one, she didn't --

11 Q. -- Okay, we have qualified you as an expert, could
12 you give me a guess?

13 A. No, because I didn't know when the last period was.

14 Q. Oh, so -- okay --

15 A. -- And she didn't know when her last period was.

16 Q. Well, was she showing?

17 A. No.

18 Q. Okay. So, that didn't tell you anything at all?

19 A. No, and I am not an OB expert. I am a Family
20 Practice.

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

22 THE COURT: Thank you. Anything else, Ms. Barr?

23 MS. BARR: No, Your Honor. We would ask this
24 witness be excused.

25 THE COURT: All right. All witnesses after they

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1 testify are excused. Otherwise, stay.

2 MS. BARR: I call Ms. Sadie McBride.

3 THE COURT: Ms. Sadie McBride.

4 WHEREFUPON, MS. SADIE MCBRIDE

5 WAS DULY SWORN AND TESTIFIED AS FOLLOWS

6 DIRECT EXAMINATION BY MS. BARR

7 Q. Ma'am, let me get you to state your full name for me?

8 A. Sadie Arrowood McBride.

9 Q. All right. And, Ms. McBride, where do you live?

10 A. On ~~XXXXXX~~ Avenue.

11 Q. That's here in Kingstree?

12 A. Yes, ma'am.

13 Q. How long have you lived at that address?

14 A. Ever since 91.

15 Q. Okay. How old are you, Ms. McBride?

16 A. Seventy-one.

17 Q. How many children do you have?

18 A. Two.

19 Q. Two children? What are their names?

20 A. Erica McBride and James McBride.

21 Q. All right. Ma'am, what is your relationship to

22 ~~Shirley~~ ^{Victim} ~~James~~?

23 A. I raised her.

24 Q. Okay. She's your granddaughter?

25 A. No, she is Erica's sister daughter, and I adopted her

MS. SADIE MCBRIDE - DIRECT EXAMINATION

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- 1 through the welfare office.
- 2 Q. Okay. Does she refer to you as her grandmother?
- 3 A. Uh-huh.
- 4 Q. Okay, I need you to say Yes or No.
- 5 A. Okay.
- 6 Q. She does?
- 7 A. Yeah.
- 8 Q. And, she has been living with you since she was how
- 9 old -- I'm sorry?
- 10 A. Six months old.
- 11 Q. So, she was six months old; where are her parents?
- 12 A. In Florida.
- 13 Q. Ma'am?
- 14 A. In Florida.
- 15 Q. Okay. How old is ~~she~~ *Shataria*?
- 16 A. Eleven.
- 17 Q. She's eleven years old?
- 18 A. Yeah.
- 19 Q. You indicated that you adopted her?
- 20 A. It's not quite an adopting over her.
- 21 Q. You all didn't go to a court and have an official
- 22 adoption, but you have been raising her as if she
- 23 were your own, is that correct?
- 24 A. Yes, ma'am, yes.
- 25 Q. Now, back in August of 2009, where was Shataria going

MS. SADIE MCBRIDE - DIRECT EXAMINATION

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1 to school?

2 A. Kingstree Elementary.

3 Q. Okay, did anybody live in the house with you other
4 than ~~anybody~~ **Victim**?

5 A. Not then.

6 Q. All right. Do you know the Defendant, Kevin Bradley?

7 A. Yeah.

8 Q. How is it that you know him?

9 A. I've knowed him about two-years.

10 Q. You've known him about two-years, is that right?

11 A. Yeah.

12 Q. Okay, how do you know him?

13 A. Since he started talking to my granddaughter.

14 Q. All right, what's your granddaughter's name?

15 A. Dasheia McBride.

16 Q. Okay, Dasheia is Erica's daughter?

17 A. Daughter.

18 Q. So, Kevin Bradley was dating Dasheia ---

19 A. Yeah.

20 Q. --- who is your granddaughter?

21 A. Yeah.

22 Q. Now, what does ~~anybody~~ **Victim** call Dasheia? How does she
23 refer to her?

24 A. Her aunt.

25 Q. She calls Dasheia her aunt?

MS. SADIE MCBRIDE - DIRECT EXAMINATION

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1 A. Yeah.

2 Q. All right, how old is Dasheia?

3 A. Um, twenty-one.

4 Q. And, do you know how old Kevin is?

5 A. I think he's twenty-one; I ain't sure.

6 Q. About twenty or twenty-one?

7 A. Uh-huh.

8 Q. Now, I need you to say yes or no?

9 A. Yes.

10 Q. Okay. Your Honor, may I approach the witness?

11 THE COURT: Yes.

12 Q. Ms. McBride, I'm going to hand you what has been
13 marked as State's Exhibit Number 1, is that
14 ~~Shawanda's~~ ^{Victim} birth certificate?

15 (A DOCUMENT WAS HANDED TO WITNESS)

16 A. Yeah.

17 Q. Okay. And, that indicates her birth date is ~~February 11,~~
18 ~~Feb.~~, 1998, is that right?

19 A. Yeah.

20 Q. All right. So she would be eleven years old right
21 now, correct?

22 A. Yeah.

23 Q. Her birthday is next week, right?

24 A. Yeah.

25 MS. BARR: Judge, we would move State's Exhibit

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1 Number 1 into evidence.

2 MR. STROBEL: No objection.

3 THE COURT: It's admitted.

4 WHEREUPON, STATE'S EXHIBIT

5 NUMBER 1 ADMITTED INTO

6 EVIDENCE

7 Q. And, Dasheia had been dating Kevin for about two
8 years?

9 A. I think so ---

10 Q. Or, you have just known him for two years?

11 A. Yeah.

12 Q. You've just known him for two years?

13 A. No, I've known him longer than that -- you know ---

14 Q. Okay. Ma'am, you own a night club here?

15 A. Yeah.

16 Q. Okay, what's the name of that night club?

17 A. Dew Drop Inn.

18 Q. Dew Drop Inn?

19 A. Yeah.

20 Q. Where is that located?

21 A. On Thorns Avenue.

22 Q. On Thorn Avenue. How long have you operated that
23 business?

24 A. Ever since 63.

25 Q. Ever since 1963?

MS. SADIE MCBRIDE - DIRECT EXAMINATION

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- 1 A. Yeah.
- 2 Q. Okay, so about forty-five-years, is that right?
- 3 A. Yeah.
- 4 Q. Okay. Now, ~~she~~ ^{Victim} had been living with you up
- 5 until August or September of last year?
- 6 A. Yeah.
- 7 Q. And, of course, you are aware that DSS removed her
- 8 from your home?
- 9 A. Yeah.
- 10 Q. But, you still see her, is that right?
- 11 A. Yeah.
- 12 Q. Did you -- were you with her when she went to the
- 13 doctor's office and discovered that she was pregnant?
- 14 A. Yeah.
- 15 Q. Was that a shock to your family?
- 16 A. Yeah.
- 17 Q. All right. Now, did you make the decision that you
- 18 would terminate her pregnancy?
- 19 A. Yeah.
- 20 Q. All right. And, where did she have that done at?
- 21 A. Columbia.
- 22 Q. Were you concerned about her age?
- 23 A. Yeah.
- 24 Q. So, you took her to Columbia where she had the
- 25 procedure done?

MS. SADIE MCBRIDE - DIRECT EXAMINATION

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1 A. Yeah.

2 Q. Now, Ms. McBride, I want to ask you about a
3 conversation that you had with Kevin Bradley. Do you
4 remember having a conversation on the telephone with
5 him?

6 A. He was talking about Dasheia and Dasheia hadn't been
7 at home.

8 Q. Okay. Was this after you found out that your
9 granddaughter was pregnant?

10 A. Yeah.

11 Q. Okay. Do you know how long after it was that you had
12 this conversation with him on the phone?

13 A. No.

14 Q. Okay. Um, tell me what he told you when Dasheia
15 handed you the phone?

16 A. I'm very sorry, he said.

17 Q. What was he apologizing for?

18 A. Messing --

19 Q. -- Say again?

20 A. Messing with her.

21 Q. For messing with your granddaughter?

22 A. Yeah.

23 Q. And, what did you say?

24 A. I didn't say nothing.

25 Q. What did you do?

MS. SADIE MCBRIDE - DIRECT EXAMINATION

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1 A. Handed the phone back to Dasheia.

2 Q. Where was Dasheia living at the time you found out
3 that your granddaughter was pregnant?

4 A. King's Crossing.

5 Q. King's Crossing Apartments?

6 A. Yeah.

7 Q. Okay. That's here in Kingstree in Williamsburg
8 County, right?

9 A. Yeah.

10 Q. Do you know how long she had been living there?

11 A. I'd say about a year and a half.

12 Q. About a year and a half. Now, does Dasheia have any
13 children?

14 A. Yeah.

15 Q. Okay, how many children does Dasheia have?

16 A. One.

17 Q. All right. Is it a boy or a girl?

18 A. Girl.

19 Q. She has a little girl. How old is the little girl?

20 A. Two.

21 Q. Okay. What's her name?

22 A. Uh ---

23 Q. If you don't know, that's fine.

24 A. I call her Stinker but I'm ---

25 Q. You call her Stinker?

MS. SADIE MCBRIDE - DIRECT EXAMINATION

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- 1 A. Yeah.
- 2 Q. Okay. Um, during the year before you found out that
- 3 your grandbaby was pregnant, before you found out
- 4 that ~~she~~ ^{Victim} -- let me put it that way -- was
- 5 pregnant, did ~~she~~ ^{Victim} ever go over to Dasheia's
- 6 house?
- 7 A. Yeah.
- 8 Q. Why would she go there?
- 9 A. Because she was going to sit with the baby.
- 10 Q. She was going to sit with Dasheia's baby?
- 11 A. Yeah.
- 12 Q. Does she have a close relationship with Dasheia's
- 13 baby?
- 14 A. Yeah.
- 15 Q. Okay. Was she babysitting from time to time?
- 16 A. Sometimes.
- 17 Q. Where was Dasheia working during this time?
- 18 A. Actually, I don't know, but she had two jobs, I mean,
- 19 she used to work but I don't know which one.
- 20 Q. Okay. So, Dasheia worked two jobs, and ~~she~~ ^{Victim}
- 21 would babysit her little girl -- and you need to say
- 22 Yes or No?
- 23 A. Yes.
- 24 Q. Okay. How often would ~~she~~ ^{Victim} go to Dasheia's
- 25 house?

MS. SADIE MCBRIDE - CROSS EXAMINATION

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1 A. Oh, once a week.

2 Q. About once a week?

3 A. Yeah.

4 Q. Okay. And, do you know whether or not the Defendant
5 was at Dasheia's house during some of the times when
6 Shataria would go there to babysit?

7 A. Yeah.

8 Q. You would see him there at times?

9 A. Yeah.

10 Q. Okay. How did Shataria feel about Dasheia's little
11 girl?

12 A. She loved her to death.

13 Q. She loved Stinker to death?

14 A. Uh-huh, yeah.

15 Q. Okay. Ms. McBride, I believe that's all the
16 questions I have for you. Thank you, ma'am.

17 THE COURT: Cross examination?

18 CROSS EXAMINATION BY MR. STROBEL

19 Q. Ms. McBride, you stated that you had a conversation
20 with Kevin Bradley soon after the incident at the
21 doctor's office in August of 09, is that correct?

22 A. Yeah.

23 Q. And, -- but you didn't see him?

24 A. No.

25 Q. When was the occasion that you saw him prior to

MS. SADIE MCBRIDE - CROSS EXAMINATION

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1 August of 09?

2 A. I don't know.

3 Q. You don't know?

4 A. No.

5 Q. You further stated on direct testimony that you knew
6 that, on occasion, that she would go over to babysit
7 with -- by the way, the child was named Adoria if I
8 remember correctly, the one-year-old, who you say is
9 now two. You stated that you knew he was there?

10 A. Yeah.

11 Q. Did you see him?

12 A. Yeah.

13 Q. I ask you, on what occasions have you seen Kevin
14 prior to August at the doctor's office of 09. Can
15 you recall when you saw him?

16 A. No.

17 Q. You testified just generally that you had seen him
18 there?

19 A. Yeah.

20 Q. Do you know when that was?

21 A. No, I can't remember the date.

22 Q. There was further testimony, and I don't know why
23 this wasn't asked, but it kind of caught me by
24 surprise; I wasn't aware of it ---

25 MS. BARR: Is there a question? We object to

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1 Counsel speaking.

2 Q. Okay. Did you hear -- do you know anything about the
3 direct testimony we heard earlier where you stated in
4 June of 08 you caught her with another boy, and, as a
5 result, you wanted her checked out for some venereal
6 disease; that she was having a discharge -- that was
7 what we heard from the doctor's office, the doctor,
8 earlier?

9 A. Yeah.

10 Q. Okay. Who was the boy?

11 A. I ain't never caught her with no boy.

12 MR. STROBEL: Thank you. That's all.

13 THE COURT: Redirect?

14 MS. BARR: No questions, Your Honor. We would ask
15 that Ms. McBride be excused if she wants to.

16 THE COURT: All right. Call your next witness.

17 MS. BARR: I call Gaye Allen Cook.

18 THE COURT: What was that name again?

19 MS. BARR: Gaye Allen Cook. She's in the
20 Solicitor's Office.

21 THE COURT: Okay.

22 MS. GAYE ALLEN COOK

23 WAS DULY SWORN AND TESTIFIED AS FOLLOWS

24 VOIR DIRE EXAMINATION BY MS. BARR

25 Q. Good afternoon, Ms. Cook.

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1 A. Hi.

2 Q. How are you doing?

3 A. I'm good, thank you.

4 Q. If you would, kindly introduce yourself to the Jury
5 and tell them what it is that you do for a living?

6 A. My name is Gaye Allen Cook, and I am a Clinical Child
7 and Family Psycho-therapist practicing in Florence,
8 South Carolina. I specialize in child trauma and
9 abuse.

10 Q. Okay. Tell us a little bit about your background,
11 your training, your education, your degrees?

12 A. I have a Bachelor's Degree from Francis Marion
13 University in Early Childhood Education. I have a
14 Master's Degree in Clinical Counseling from
15 Southeastern Baptist College. I have a Post-graduate
16 studies in trauma and abuse from Gardner Webb
17 University. I am currently working on a Doctorate of
18 Psychology right now; I'm a resident in the spring of
19 next year. And, I am also on the University of South
20 Carolina Children's Law Office list of expert
21 witnesses in the field of Child Trauma and Abuse.

22 Q. All right. Well, congratulations on the work you
23 have adopted. We certainly wish you the best with
24 regard to that achievement. Give us a little bit of
25 an idea of how long you have been a therapist and

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1 what it is that you do from day to day?

2 A. I have been practicing in the area of child therapy
3 for nine years, mainly specializing in trauma and
4 abuse. What that means is the children and families
5 who come into my practice are coming because
6 something has happened to them, be it child sexual
7 abuse, child physical abuse, witnessing domestic
8 violence, emotional abuse. Many of them have been
9 involved in the system, meaning the Department of
10 Social Services, the Solicitor's Office, or some type
11 of law enforcement involvement. They are there
12 because something has happened to them that has
13 caused them some type of trauma or abuse.

14 Q. Okay. And, ma'am, you indicated that you're on the
15 South Carolina Children's Law Office list of expert
16 witnesses. You have testified in court many times?

17 A. I have.

18 Q. In the Circuit Court as well as the Family Court?

19 A. Yes, ma'am.

20 Q. And you have testified as an expert in the field of
21 child abuse and treatment?

22 A. That's correct.

23 Q. All right. Judge, at this time, we would tender Ms.
24 Cook as an expert in the field of child abuse
25 assessment and treatment.

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1 MR. STROBEL: No objection.

2 THE COURT: All right, she is so admitted.

3 MS. BARR: Thank you, Judge.

4 DIRECT EXAMINATION BY MS. BARR

5 Q. Now, ma'am, you are currently treating ~~Sharon~~ ^{Victim}

6 ~~Cooper~~, is that correct?

7 A. I am.

8 Q. And, how old is she?

9 A. She is 11, will be twelve ~~February~~ the ~~first~~.

10 Q. And, how long have you been treating her?

11 A. Since August of this past year, which was 2009.

12 Q. Okay. And, how often do you see her?

13 A. ~~Victim~~ ^{Victim} is seen one time per week.

14 Q. And, you normally see her on Mondays?

15 A. I do when I am here in Williamsburg County
16 practicing.

17 Q. All right. Now, of course, we all know why we are
18 here and why she ultimately came to see you. Who
19 referred her to you?

20 A. Pamela Harrison from the Williamsburg County
21 Department of Social Services.

22 Q. All right. Now, give us a little bit of information
23 about ~~Victim~~ ^{Victim} in terms of how she's doing; how she
24 progressed while being treated by you?

25 A. Well, she has been seen since August. Yesterday made

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1 her eighteenth individual therapy session. ~~Victim~~
2 went through some assessment procedures with me where
3 I administered several Post-traumatic Stress Disorder
4 Inventories to kind of rule out if she had what we
5 call PTSD. She has a diagnosis of sexual abuse as a
6 child, based upon her own disclosure of what happened
7 to her. She also has a diagnosis of Post Traumatic
8 Stress Disorder.

9 Q. Okay, slow down for me. Tell the Jury what that
10 means?

11 A. Which one?

12 Q. The Post Traumatic Stress Disorder?

13 A. We also call that PTSD. What happened was when
14 people came back from the war years and years ago, we
15 couldn't quite figure out why they were having the
16 symptoms that they were having, and so lots of
17 physicians, psychologists got together and coined the
18 term PTSD.

19 What that means in ~~Shirley's~~ ^{Victim} case is she
20 has nightmares about what happened to her and
21 she has impairments often in the school setting
22 which means, that she may be sitting in class in
23 the elementary school and may think back to what
24 happened. She may retreat into what we call
25 fetal position, which is where she will hide to

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1 protect herself because she thinks something is
2 going to happen to her again. She has lots of
3 night terrors, which means that when she is
4 sleeping she may wake up in the night sweating,
5 having bad headaches, heart racing, feeling like
6 someone is going to harm her again.

7 She has great difficulty trusting adults.
8 She has had some difficulty trusting me and
9 opening up to me as far as what's happened to
10 her. All of these are classic, what we call
11 PTSD symptoms.

12 She also often has some difficulty in the
13 school setting relating to age-appropriate
14 peers. Because of the things that she has
15 experienced, she is advanced beyond her years as
16 far as knowledge of sex, as far as knowledge of
17 trauma. She knows a lot more than most of the
18 other children in her class do.

19 ~~Victim~~ **Victim** has a very low tolerance for
20 anything that's out of the ordinary. What I
21 mean by that is that she's in the school or home
22 setting and the structure is supposed to go a
23 certain way, anything different sets her off.
24 What I mean by that is not your typical kid
25 pitching a tantrum or gets mad and mouths off at

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1 their parents. What I mean by that is she finds
2 her security in things being the same way. So,
3 anything that's different causes her a setback.
4 Oftentimes, the caregiver will have to call me
5 on the phone to talk with her if she has had a
6 bad day at school.

7 We have had several times where she has had
8 to be called in for a extra session during the
9 week maybe being seen two times instead of one
10 time, just because she's not coping very well
11 with all that's happened to her.

12 Q. Okay. Did you note in your medical records for
13 ~~Victim~~ that one of the problems that she had was
14 that she slept a lot?

15 A. She does. She actually continues to have some
16 difficulty sleeping quite more than we would expect.
17 Oftentimes, depression is very closely related to
18 Post Traumatic Stress Disorder, and what we find
19 especially in adolescent females is that when they
20 are overwhelmed and when the trauma is just kind of
21 impairing them, the only thing they want to do is
22 sleep. Because, if they are sleeping and they are
23 away from society, they don't have to wonder if
24 someone is going to harm them; that something is
25 going to happen. The difficulty for her is she

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1 doesn't sleep well at night because of what I said is
2 the night terrors and the night traumas. She wakes
3 up having to be reassured that everything is okay, so
4 by the time she falls back to sleep, maybe a couple
5 of hours, before she is able to fall back to sleep
6 and get good solid sleep.

7 Q. Okay. I was reviewing your records, and I noticed
8 something interesting. You mentioned something about
9 bedwetting as it relates to ~~victim~~ ^{victim}. Can you tell
10 me about that?

11 A. What we call that is enuresis, which means that
12 children often either wet themselves during the day
13 or wet their bed at night. That is another symptom
14 of what we call PTSD. What happens is when children
15 have especially been sexually abused one of the ways
16 they cope with that is through trying to find any
17 type of control they can get. So, many times what
18 they will do, is, instead of being in the classroom
19 or the bed and knowing that they have to get up and
20 go to the restroom, they will wet their clothes as a
21 symptom of control and then they get up and they have
22 to clean themselves up. This can happen sometimes
23 two or three times a night for this particular child.
24 Q. And, she has had problems with that and that would be
25 consistent with the post-traumatic stress disorder.

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1 A. That's correct. And, my understanding has been this
2 started, you know, once the disclosure had been made
3 of the abuse.

4 Q. Explain to us what is meant along with the
5 psychologic about the delayed disclosure?

6 A. Delayed disclosure is a very common symptom of
7 children when they have been sexually abused. We
8 mostly see that in children who know the person that
9 has abused them. In this particular situation, this
10 child did know the man that is accused of sexually
11 abusing her. And, so, what happens is children go
12 along and they don't tell for various reasons, and
13 then sometimes they break and they tell or sometimes
14 it may be, the circumstances that have happened in
15 their lives that have forced them to go ahead and
16 tell that something has happened to them.

17 Q. Okay. Then, why is it that it is more common that a
18 child will not tell when the child knows the
19 perpetrator as opposed to the perpetrator being a
20 complete stranger; why is it more likely to delay
21 telling if the perpetrator is known?

22 A. Because what happens is when a child knows the alleged
23 perpetrator, there often is a relationship there, and
24 that causes some people some question. Well, how will
25 there be a relationship when someone has been sexually

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1 abusing a child. What we know about sexual abuse is
2 that most of the time, ninety-seven percent of
3 children who are sexually abused know their offender.
4 And, what happens is that offender is someone that
5 they trust. It's someone that they may see on a daily
6 basis. It's someone that maybe knows their family.
7 It's someone who may come into their family. It may
8 be someone that their family trusts. And, so, it's
9 difficult for a child to have to say, Wait a minute;
10 this person that I trust; that my family trusts, has
11 done something that's not okay. To me, and then they
12 face the kind of, I guess misunderstanding of: Wait
13 a minute, if I tell, what's going to happen? So many
14 children who are abused by someone they know just
15 don't tell, or circumstances like in this situation
16 forces them to have to tell.

17 Q. The circumstances that forced her to have to tell
18 being the fact that she learned that she had been
19 impregnated?

20 A. Correct.

21 Q. Now, would the fact that the child has a close
22 relationship to a sibling or, for example, a baby, a
23 two-year-old, would that affect at all her decision
24 not to tell versus whether to tell?

25 A. It could. Yes, ma'am.

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- 1 Q. And, are you aware of the type of relationship that
2 ~~she~~ *victim* has with Dasheia's little girl?
- 3 A. From reports of ~~she~~ *Victim*, they are very close. She
4 spent lots of time with her fixing her hair, playing
5 with her, you know, watching cartoons with her. I
6 always kind of liken that almost to a big sister role.
- 7 Q. All right. Now, we can imagine that, with adult rape
8 victims, that there might be feelings by the victim of
9 shame or guilt or embarrassment. Do we expect to see
10 those type feelings as it relates to a child victim of
11 rape?
- 12 A. We can, but it really varies. Some children have a
13 sense of: Oh, my goodness, you know, I'm the only
14 person this has ever happened to. If I tell, no one
15 is going to like me. People are going to think, you
16 know, I'm loose. People are going to think it was my
17 fault. And that is the case in this particular
18 situation. The positive thing about this case is
19 that the Department of Social Services recognized
20 early on that this child needed treatment. Not just
21 any type of treatment, but a trauma focused to where
22 we look at these things. And, one of the very first
23 things that ~~she~~ *Victim* and I did when she came to me in
24 August was we spent time doing what we call psycho-
25 education, which means that I as the therapist help

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1 her understand and educate her that she's not the only
2 person that this has ever happened to. You know, yes,
3 this is difficult but she can get better. Part of the
4 education also comes in educating the caregivers,
5 letting them know why this child is wetting the bed;
6 letting them know why this child has major emotional
7 ups and downs where one second she is crying, the next
8 second she is happy and the next second, you know, she
9 may be very angry. But that is the very beginning of
10 what we call a Trauma Focused Model is educating this
11 child on: How do you feel? Why do you feel this
12 way? Another really big part of this model is
13 relaxation and teaching this child that when they feel
14 like something is going to happen to them again or
15 when they start to remember things that have happened,
16 if we are able to relax, we are able to practice
17 proper breathing. Because, in this particular
18 situation, this is such a small community that a lot
19 of the places that ~~children~~ ^{victim} went even after being
20 removed from the alleged perpetrator, she would still
21 remember things, you know, children will see a car
22 that maybe looks like the car that the alleged
23 offender drives. Children may smell a certain cologne
24 that makes them think that: This is the cologne that
25 the alleged offender wore. And, whenever kids start

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1 to do that, we have to help them to be able to relax
2 so they don't fall apart and so they are able to go
3 ahead and finish their day maybe at school or if
4 they're in the middle of a convenience store or
5 something like that, so we have had to do that piece
6 of this model also. This model has lots of different
7 other pieces that we are currently working on. The
8 end of this model is this child being able to
9 implement safety mechanisms to protect herself so that
10 if something like this ever did happen again she would
11 maybe be able to tell sooner and be able to protect
12 herself in the way that she wasn't unable to do in
13 this particular setting.

14 Q. Okay. Now, when you talk about the emotion of delayed
15 disclosure, can you give the Jury some examples of
16 different cases that you have been involved in where
17 there was delayed disclosure in terms of time frames,
18 and, when I mean time frames, I mean time spans like
19 the types of cases that you have been involved in
20 involving children, whether it be time spans from when
21 it happened and when it was disclosed. Was it weeks,
22 months, years, decades? Give us some examples of
23 those types of situations that you have been involved
24 in?

25 A. Well, May was nine years that I have been practicing

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1 in this field, and I have had the privilege of working
2 with hundreds and hundreds of children, the majority
3 of them being trauma and abuse cases. What happens is
4 you have to look at the age frame of a child.
5 Oftentimes, really young children, you know, four,
6 five or six years old, they often will tell and they
7 don't tell us by their words but they tell us by their
8 behaviors. I mean, they may be acting up at school
9 or, you know, talking back or throwing temper
10 tantrums. And, finally, one day the caregiver just
11 sits down and says: Tell me what's going on, you
12 know, and the kid begins to disclose, and this could
13 have happened weeks ago, months ago. I've treated
14 children who waited two and three years to come out
15 and tell what has happening. In ~~Victim~~ ^{Victim} s case,
16 she's eleven, almost twelve, which means that she is
17 entering into an adolescent period. What happens with
18 these kids is there is the taboo that often society
19 gives them that if you tell you are not going to be
20 believed, or, if you tell, you're going to have an X
21 over your head and nobody's going to want to be around
22 you anymore. And, my practice has told me that the
23 highest rate of delayed disclosure is in the
24 adolescent time frame, which is where this child is.
25 I can give you an example of a teenage girl that had

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1 just turned 12 when she went ahead and disclosed and
2 this had been happening ever since she was five, um,
3 on and off for seven years. And, like I said, in
4 ~~Victim~~^{Victim}'s case, what happened was she didn't just
5 come out and tell us what happened. She ends up at
6 the doctor's; she finds out that she is pregnant; and
7 then she begins to disclose.

8 Q. She is forced to at that point?

9 A. Exactly. The circumstances around everything forced
10 her to go ahead and say: This is what's been
11 happening to me. I'm eleven years old and I'm
12 pregnant. This is why.

13 Q. When children start to disclose sexual abuse, do they
14 typically remember chronologically the events as they
15 occurred, or is it a situation where you could expect
16 a child of eleven or twelve years old not to remember
17 chronologically the events that took place?

18 A. Normally, what we see in the eleven and twelve year
19 old and even ten age range is that children tell us a
20 little bit, they see how we do with that and then they
21 tell us more and they see how we deal with that. And,
22 when I say see how we deal with it, I mean, the people
23 that they are disclosing to; the therapist that they
24 are disclosing to; maybe their school teacher; maybe
25 their peers -- and, what happens is they don't always

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1 remember: Okay, this happened on Friday and this
2 happened on Monday and then this happened three months
3 later. What they remember is not necessarily the time
4 frame but what actually took place. And, what I mean
5 by that is a child may not remember that a man had sex
6 with her on August the 14th at 3:00 p. m. What she
7 may remember is: Wait a minute here. I was at this
8 house; he came in; he put his penis inside of me; it
9 hurt; this is what I remember. And then, once she
10 tells that part, she may come back and say: Okay,
11 but these are the other things that happened. And,
12 what we do with children when they are making those
13 disclosures is we don't focus on, okay, wait a minute,
14 when did this happen? What day did this happen? How
15 old were you again? We focus more on letting this kid
16 tell her story and letting this kid get out all of the
17 things that they have had pushed way down deep inside.
18 And, oftentimes, forensic evaluations, if you do
19 forensic interviews, they are more of the people who
20 say: Okay, wait a minute. How long has this been
21 going on? How many times did this happen? I am the
22 person that's been called in to treat this child for
23 the trauma, so I have not been focused necessarily on
24 the details of where? How? When? And, I have been
25 focused on helping this little girl. We know what she

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1 said has happened; let's help her move forward and
2 help her put her life back together again, so she can
3 have some semblance of normalcy as she continues to
4 grow into adolescence and the teenage years.

5 Q So, it would not be unusual if Shataria is unable to
6 give the Jury an exact number of times and the dates
7 that these alleged events occurred?

8 A. That's correct. And the reasons for that is when
9 we've been through a trauma, what happens is we
10 remember the difficult parts of it. We remember the
11 parts that were really hard for us, meaning a child
12 may remember laying on a bed and having someone, you
13 know, get on top of them and put their penis inside of
14 them, and then they may not remember that it happened
15 again for six more months, you know. Or, they may
16 say: Oh, it only happened three times when really it
17 may have happened thirty times. What we're seeing
18 with ~~victim~~ **victim** is she is classic post-traumatic stress
19 disorder. And, when we look at children who have
20 post-traumatic stress disorder, we look at how long
21 this has been going on. She is a chronic case,
22 because what we do is we look and we say: Okay, this
23 happened. Has it been more than three months since
24 the symptoms have occurred? Yes, it has. As I told
25 you, I started treating her in August. It's the end

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1 of January; she still has symptoms; she has chronic
2 post-traumatic stress disorder, which means when you
3 ask her questions about what happened to her, you may
4 see her not get excited. You may see her withdraw.
5 You may see her quietly answer a question. You may
6 see her shrug her shoulders. You may hear her say she
7 doesn't remember. Because, what she remembers is the
8 very very difficult part of this, and what she
9 remembers today may not be exactly what she remembers
10 tomorrow as far as details go or what she even
11 remembered yesterday.

12 Q. Now, you talked about the forensic interview. Can you
13 tell the Jury a little bit about the Durant Center?

14 A. I actually practiced there for two years. That was
15 about four years ago. And, what they do is they are
16 one of the child advocacy centers for the Pee Dee area
17 and, typically, what happens is when a child has
18 disclosed that something has happened to them, a DSS
19 worker or a law enforcement agent will make a referral
20 to a place like the Durant Center where the child can
21 go for a medical exam and where the child can go for
22 what we call a forensic interview.

23 A forensic interview is a video taped
24 interview of a person who is trained in asking
25 children questions about what happened to them,

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1 and it's an opportunity for a child to get to
2 tell their story around something that allegedly
3 occurred.

4 Q. All right. I think I've got just one or two more
5 questions and I'm finished. You have been treating
6 this child since August. Are you familiar with her
7 family background, who she lives with, the
8 circumstances surrounding who was caring for her up
9 until last year when she was taken into foster care?

10 A. Yes, ma'am.

11 Q. Okay. And, your understanding was that she was being
12 cared for by who she calls her grandmother, Sadie
13 McBride?

14 A. Correct.

15 Q. All right. Now, were you aware that Ms. McBride owned
16 a night club?

17 A. I was.

18 Q. Okay. Does any of ~~Sadie~~^{Victim}'s background, her family
19 dynamics, play into her inability to disclose the
20 abuse issue. And, if so, how?

21 A. Oftentimes, what we find is when children have been
22 raised, you know, with a grandmother who owns a night
23 club, you know, of course, they unfortunately find out
24 adult information sometimes about what goes on in
25 night clubs. When I first started working with

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GAYE ALLEN COOK - DIRECT EXAMINATION

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1 A. What we find is obviously children were never made to
2 have sex. You know, a ten year old, a nine year old
3 and an eleven year old little girl was never made to
4 have sexual relations with a man or a woman. What we
5 find is when kids have been exposed to sexualized
6 behaviors when they are early, when they are young,
7 when they are in elementary school, this oftentimes
8 can lend itself to provocative behaviors which, what I
9 mean by that is this kid may feel that it's okay to
10 have sex; that it's okay. To maybe dress in a manner
11 that, you know, many of us would find generally
12 inappropriate. Um, what happens is that when kids
13 have had that part of them ignited early on, they
14 don't have the same taboo sense that you and I do
15 anymore. You know: This has happened. You know, I
16 have become pregnant; I have had someone have
17 relations with me multiple times. So, this must not
18 be a really bad thing anymore. This must be an okay
19 thing to have happen to me. Part of the education
20 that we do around this child is helping them
21 understand that at ten, eleven, nine-year old little
22 girls were never made to have sexual relations. And,
23 the other thing we have to do is really hit the safety
24 piece of this really hard. This is the way you dress,
25 you know, you don't dress with body parts hanging out,

GAYE ALLEN COOK - DIRECT EXAMINATION

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1 because, you know, you're not a typical eleven year
2 old little girl, you have had things happen to you,
3 and we have to protect you. The other piece of that
4 is really telling this parent: Wait a minute here.
5 This isn't your typical elementary school age kid, you
6 know, just talking about boys or, you know, wanting to
7 have a boyfriend for the first time. This is a little
8 girl who has been highly sexualized; who has been
9 violated, not once but many times. And, so, what we
10 have to do is help this child stop and say: This is
11 not okay; it's not okay that I was pregnant at age
12 eleven; it's not okay that I know things about sex
13 that some people don't find out until they're twenty.
14 And so, what we have to do is really work with her to
15 help her understand that: Yes, this is what's
16 happened to you; it wasn't okay; it wasn't your fault;
17 it shouldn't have happened; but that doesn't give you
18 a path to go and say: I'm going to go and keep, you
19 know, willingly having sex with people; I'm going to
20 continue to dress, you know, in a manner that says,
21 "I'm sexy", because oftentimes, when children have
22 been traumatized and they have been abused, they don't
23 understand that what happened to them is not okay. It
24 becomes a part of their everyday life; it becomes a
25 part of who they are. And, so, we have to retrain

~~Substantive~~ **Victim**~~Substantive~~ - DIRECT EXAMINATION

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1 their thoughts and help them to start to put other
2 mechanisms in place to keep themselves safe.

3 MS. BARR: Thank you so much, Ms. Cook. Please
4 answer any questions that Mr. Strobel may have.

5 MR. STROBEL: I have no questions of Ms. Cook.

6 THE COURT: Thank you, Ms. Cook. You may step
7 down.

8 MS. COOK: I'm sorry. Would I be allowed to come
9 into the audience when the child testifies?

10 THE COURT: Yes, you may.

11 MS. COOK: Thank you.

12 MS. BARR: Your Honor, may we approach the Bench?

13 THE COURT: Yes. (To the Jury) I'm sorry, Ladies
14 and Gentlemen, you may stand for a moment, and you may
15 stretch.

16 (Whereupon, a brief recess was taken.)

17 THE COURT: All right. Very good. Next witness,
18 please.

19 MS. BARR: I call ~~Substantive~~ **Victim**, Your Honor.

20 WHEREUPON, ~~Substantive~~ **Victim**

21 WAS DULY SWORN AND TESTIFIED AS FOLLOWS

22 DIRECT EXAMINATION BY MS. BARR

23 Q. ~~Substantive~~ **Victim** hi there. How are you?

24 A. Fine.

25 Q. You need to speak up nice and loud for me now, okay?

~~Victim~~ - DIRECT EXAMINATION

108

- 1 A. Yes, ma'am.
- 2 Q. This lady here is going to be taking down every word
- 3 you say, so you have to speak up so she can hear you,
- 4 okay?
- 5 A. Yes, ma'am.
- 6 Q. All right, tell me your full name?
- 7 A. ~~Victim~~.
- 8 Q. Spell your first name for me?
- 9 A. ~~Victim~~.
- 10 Q. How old are you?
- 11 A. Eleven.
- 12 Q. What is your birth date?
- 13 A. ~~February~~ of 1998.
- 14 Q. Now, ~~Victim~~, who is Sadie McBride to you?
- 15 A. Well, my grandmother -- my mother kind of.
- 16 Q. You call her your grandma?
- 17 A. Yes, ma'am.
- 18 Q. How long have you been living with her?
- 19 A. Since I was two.
- 20 Q. Since you were two?
- 21 A. Yes, ma'am.
- 22 Q. What is your mom's name?
- 23 A. Fallon Gaines.
- 24 Q. Fallon Gaines?
- 25 A. Yes, ma'am.

~~Victoria~~

- DIRECT EXAMINATION

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- 1 Q. Where is your mom now?
- 2 A. Florida.
- 3 Q. What about your father? Do you know anything about
- 4 him?
- 5 A. No, ma'am, but I know is that he's in Florida.
- 6 Q. He's in Florida as well?
- 7 A. Yes, ma'am.
- 8 Q. Where do you go to school?
- 9 A. St. Mark Elementary.
- 10 Q. How long have you been going to St. Mark Elementary?
- 11 A. I would say about three months.
- 12 Q. How do you like it there?
- 13 A. Good.
- 14 Q. You like it?
- 15 A. Yes, ma'am.
- 16 Q. Are you ready to go back to school today?
- 17 A. Yes, ma'am.
- 18 Q. What grade are you in?
- 19 A. Fifth.
- 20 Q. Before you started going to St. Mark, where were you
- 21 going?
- 22 A. Kingstree Elementary.
- 23 Q. Kingstree elementary. And, ~~Victoria~~, you are living
- 24 in a foster home now with a foster mother?
- 25 A. Yes, ma'am.

~~Victim~~ **Victim**

- DIRECT EXAMINATION

110

- 1 Q. What is her name?
- 2 A. Mrs. Amy Tisdale.
- 3 Q. Do you get along pretty good with Ms. Amy Tisdale?
- 4 A. Yes, ma'am.
- 5 Q. **Victim**, do you know Kevin Bradley?
- 6 A. Yes, ma'am.
- 7 Q. How long have you known him?
- 8 A. A good while.
- 9 Q. A good while?
- 10 A. Yes, ma'am.
- 11 Q. How old were you when you came to know him? How do
- 12 you know him?
- 13 A. Well, my cousin, Dasheia.
- 14 Q. Your cousin Dasheia?
- 15 A. Yeah.
- 16 Q. What was his relationship with your cousin, Dasheia?
- 17 A. At first, he was her friend and then he was her
- 18 boyfriend.
- 19 Q. They were boyfriend/girlfriend?
- 20 A. Yes, ma'am.
- 21 Q. Where did Dasheia live?
- 22 A. Kings Crossing Apartments.
- 23 Q. Okay. How long has Dasheia lived there. Do you know?
- 24 A. A good while.
- 25 Q. Now, we heard in court today something about a little

~~Victoria~~ ~~Shelby~~ - DIRECT EXAMINATION

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- 1 girl called Stinker. Do you know her?
- 2 A. Yes, ma'am.
- 3 Q. Now, who is that?
- 4 A. Dasheia's baby.
- 5 Q. That's Dasheia's baby?
- 6 A. Yes, ma'am.
- 7 Q. How old is she?
- 8 A. Two.
- 9 Q. Your grandmother calls her Spanky is that right?
- 10 A. Yes ma'am.
- 11 Q. What is her name?
- 12 A. Adoria [REDACTED] (phonetic) [REDACTED] M [REDACTED].
- 13 Q. All right her name is Adoria?
- 14 A. Adoria.
- 15 Q. Her middle name
- 16 A. [REDACTED] Mc [REDACTED].
- 17 Q. Okay, I think I'll explain that later, all right. Now
- 18 Adoria, you said she is two years old, right?
- 19 A. Yes, ma'am.
- 20 Q. Adoria is not the Defendant's baby, is she?
- 21 A. No.
- 22 Q. All right, Dasheia had Adoria with another guy, is
- 23 that right?
- 24 A. Yes, ma'am.
- 25 Q. Now, when we talk about Kevin Bradley, I need to make

~~XXXXXXXXXX~~ - DIRECT EXAMINATION

112

- 1 sure that we're talking about the same person, okay?
- 2 A. Yes, ma'am.
- 3 Q. I'm going to ask you to do this one time. I'm not
- 4 going to ask you to do it anymore, okay?
- 5 A. Okay.
- 6 Q. Kevin Bradley, is that the guy seated over there at
- 7 the defense table (indicating)?
- 8 A. Yeah.
- 9 Q. Now, you said at some point that Kevin and Dasheia was
- 10 friends and that they then became boyfriend and
- 11 girlfriend?
- 12 A. Yes, ma'am.
- 13 Q. Did he ever stay at her house?
- 14 A. Yes, ma'am.
- 15 Q. How many -- well, I say a house -- it's an apartment,
- 16 right?
- 17 A. Yes, ma'am.
- 18 Q. How many bedrooms are in the apartment?
- 19 A. One.
- 20 Q. And is that a bedroom, livingroom -- how many rooms
- 21 are in that house?
- 22 A. Um ---
- 23 Q. A livingroom, a bedroom, a bathroom and I guess a
- 24 kitchen/dining room?
- 25 A. Yes, ma'am, four.

~~Victim~~
~~Victim~~

- DIRECT EXAMINATION

113

- 1 Q. How often would you go to Dasheia's house in the last
2 year and a half?
- 3 A. A lot.
- 4 Q. You would go there a lot?
- 5 A. Yes, ma'am.
- 6 Q. And what would be the reason you would go to Dasheia's
7 house?
- 8 A. To babysit Spanky.
- 9 Q. And when you would go and you would babysit Adoria,
10 where would Dasheia be?
- 11 A. At work.
- 12 Q. At work? Where was she working?
- 13 A. I think it was Subway.
- 14 Q. She was working at Subway?
- 15 A. Yes, ma'am.
- 16 Q. Now, were there times when you would go and babysit
17 Adoria when Dasheia was at work and Kevin was at the
18 house?
- 19 A. Yes. Yes, ma'am.
- 20 Q. Now, ~~Victim~~, you know why we're here today, is that
21 right?
- 22 A. Yes, ma'am.
- 23 Q. Now, you understand that when Ms. Williams made you
24 put your hand on the Bible that you had to tell the
25 truth, right?

~~Victim~~

- DIRECT EXAMINATION

114

- 1 A. Yes, ma'am.
- 2 Q. Are you going to tell me the truth when I ask some
- 3 questions?
- 4 A. Yes, ma'am.
- 5 Q. Do you understand that you have to tell the truth,
- 6 and, if you don't, something bad could happen to you?
- 7 A. Yes, ma'am.
- 8 Q. And do you understand everything I have asked you so
- 9 far?
- 10 A. Yes, ma'am.
- 11 Q. Okay. All right, now, in August you went to Dr.
- 12 Allen's office. Do you remember that?
- 13 A. Yes, ma'am.
- 14 Q. Why did you go to the doctor's office?
- 15 A. I think it was for a checkup.
- 16 Q. Who took you there?
- 17 A. My grandma.
- 18 Q. And you found out that day that you were pregnant,
- 19 right?
- 20 A. Yes, ma'am.
- 21 Q. Do you remember the police coming and the nurse
- 22 talking with you?
- 23 A. Yes, ma'am.
- 24 Q. And you were asked who got you pregnant?
- 25 A. Yes, ma'am.

~~Victim~~ - DIRECT EXAMINATION

115

- 1 Q. All right, tell the Jury who got you pregnant?
- 2 A. Kevin Bradley.
- 3 Q. He had sex with you?
- 4 A. Yes, ma'am.
- 5 Q. When did it start?
- 6 A. The summer of 2008.
- 7 Q. The summer of 2008?
- 8 A. Yes, ma'am.
- 9 Q. How old were you during the summer of 2008?
- 10 A. I was ten.
- 11 Q. Ten years old?
- 12 A. Yes, ma'am.
- 13 Q. Can you tell the Jury about the first time it
- 14 happened. Where were you at the time it happened?
- 15 A. At Dasheia's house.
- 16 Q. You were at Dasheia's house?
- 17 A. Yes, ma'am.
- 18 Q. Where was Dashiea?
- 19 A. She was at work.
- 20 Q. Okay. And what were you doing over there the first
- 21 time? Babysitting?
- 22 A. Yes, ma'am.
- 23 Q. So where was Adoria that first time?
- 24 A. She was in the livingroom.
- 25 Q. I need you to tell us what happened that first time.

~~Victim~~ ~~Witness~~ - DIRECT EXAMINATION

116

- 1 Tell us how it happened?
- 2 A. I come out of the bathroom ---
- 3 Q. You were coming out of the bathroom?
- 4 A. Yes, ma'am. He was sitting on the bed, or whatever,
- 5 and he was watching TV. He said, Come here. He told
- 6 me to come here, or whatever. So I said, For what?
- 7 He was like just sit on the bed. And I sat on the bed
- 8 or whatever. And, then that's when he ---
- 9 Q. I need you to tell me -- you said: That's when, you
- 10 know, and you stopped. I know it's hard, Baby, but I
- 11 need you to tell me what he did to you?
- 12 A. He started touching me and feeling me and stuff.
- 13 Q. Where was he touching you?
- 14 A. My private parts.
- 15 Q. On your private parts?
- 16 A. Yes, ma'am.
- 17 Q. You say your private parts. Where do you mean?
- 18 A. Like this part (indicating); that part (indicating).
- 19 Q. Like your chest?
- 20 A. Yes.
- 21 Q. Your breast area?
- 22 A. Yes, ma'am.
- 23 Q. You said this part, and you are pointing downward?
- 24 A. Yes, ma'am.
- 25 Q. Are you referring to your vagina?

~~SAINT~~ **Victim** - DIRECT EXAMINATION

117

- 1 A. Yes, ma'am.
- 2 Q. All right, he touched you there, and then what did he
- 3 do?
- 4 A. He was like -- he just kept touching and touching and
- 5 then he unbuttoned my pants or whatever.
- 6 Q. Then he did what?
- 7 A. Unbuttoned my pants and then he did the stuff.
- 8 Q. He did the stuff?
- 9 A. Yes, ma'am.
- 10 Q. What do you mean by that when you say he did the
- 11 stuff?
- 12 A. He did it to it.
- 13 Q. What did he do; you have to tell me?
- 14 A. Put his -- in my ---
- 15 Q. He put his what in your what?
- 16 A. Put his thing in my crotch.
- 17 Q. Now, when you say, his thing, you are talking about
- 18 his penis?
- 19 A. Yes, ma'am.
- 20 Q. Do you remember the second time that it happened?
- 21 A. No, ma'am.
- 22 Q. How many times do you think it happened?
- 23 A. I really don't remember.
- 24 Q. You don't remember how many times?
- 25 A. No, ma'am.

~~Victoria~~ - DIRECT EXAMINATION

118

- 1 Q. Did it happen -- well we know it happened at least
2 twice. You talk about the first time that it happened
3 was in the summer of 2008?
- 4 A. Yes, ma'am.
- 5 Q. Do you remember the last time it happened?
- 6 A. The Fourth of July.
- 7 Q. The Fourth of July what year? This past year, 2009?
- 8 A. Yes, ma'am.
- 9 Q. Now, did the Fourth of July came on the weekend. Do
10 you remember whether it happened on the weekend or was
11 it a weekend?
- 12 A. It was a weekend.
- 13 Q. It was a weekend?
- 14 A. Yes, ma'am.
- 15 Q. When it happened the last time, where was Dasheia?
- 16 A. She was at work.
- 17 Q. Did it happen more than those two times?
- 18 A. Yeah, yes, ma'am.
- 19 Q. Did it happen more than five times do you think?
- 20 A. Yes, ma'am.
- 21 Q. Did it happen more than ten times?
- 22 A. No..
- 23 Q. So, somewhere between five and ten times?
- 24 A. Yes, ma'am.
- 25 Q. Now, when I asked how many times did "it" happen,

~~Victim~~ **Victim** - DIRECT EXAMINATION

119

- 1 specifically talk to me about how many times he placed
2 his penis in your vagina. Do you think that that
3 happened more than five times?
- 4 A. Yes, ma'am.
- 5 Q. And it would always happen in the same place?
- 6 A. Yes, ma'am.
- 7 Q. And where was that? At Dashiea's house?
- 8 A. Yes, ma'am.
- 9 Q. It never happened any other place?
- 10 A. No, ma'am.
- 11 Q. Was anyone else around other than the baby when it
12 would happen?
- 13 A. No, ma'am.
- 14 Q. Would Kevin ever spend the night at Dasheia's house?
- 15 A. Sometimes.
- 16 Q. Where would they sleep?
- 17 A. In the bed.
- 18 Q. In the same bed that he raped you in?
- 19 A. Yes.
- 20 Q. Do you have a pretty close relationship with Adoria?
- 21 A. Yes, ma'am.
- 22 Q. Did he ever -- what would he say to you when he was
23 doing these things to you?
- 24 A. Um, ---.
- 25 Q. Was there ever a point in time when you fought him

~~Victim~~ **Victim** - DIRECT EXAMINATION

120

1 off?

2 A. Well, I tell him to stop, sometimes. But it was like
3 it wouldn't work -- it wouldn't work, so I just gave
4 up.

5 Q. You told him to stop. It didn't work. So you just
6 quit fighting him?

7 A. Yes, ma'am.

8 Q. When he would do those things to you, would it hurt
9 you -- physically I mean?

10 A. Yes, ma'am.

11 Q. Where would it hurt?

12 A. Like down in that part down there (indicating).

13 Q. Your private part?

14 A. Yes, ma'am.

15 Q. Did you ever -- were you ever bleeding?

16 A. Yes, ma'am, a couple of times.

17 Q. A couple of times?

18 A. Yes, ma'am.

19 Q. Okay. Did blood ever get on the bed or anything --
20 any clothes or like your underwear or anything?

21 A. Yes, ma'am.

22 Q. How would you explained that -- I mean, would anybody
23 ask you about seeing blood?

24 A. Oh, my grandma used to ask me, but I was, like, scared
25 to tell her what happened, so I was just like it was

~~Victim~~ - DIRECT EXAMINATION

121

1 my menstrual cycle, or whatever.

2 Q. You would just tell her you were just having your
3 period?

4 A. Yes, ma'am.

5 Q. Do you remember going to Dr. Allen's office on -- and
6 I know you don't remember the date -- I don't remember
7 dates either, but do you remember going to Dr. Allen's
8 office in the Summer of 2008 when your grandma took
9 you?

10 A. No, ma'am.

11 Q. How do you remember that first time happened in the
12 Summer of 2008 ---

13 MR. STROBEL: Your Honor, I object. She is leading
14 the witness.

15 THE COURT: Do not lead the witness. Just state
16 your question.

17 MS. BARR: All right, Judge, I think the only thing I
18 asked was how was it that she could remember. I wasn't
19 leading her. I was just asking her how did -- how it is
20 that she was able to remember.

21 Q. How do you remember that first time happened when you
22 were ten, as opposed to when you were eleven?

23 A. Because it was just like the Summer. We had just got
24 out of school, and everybody was -- or whatever, and
25 I just remember being at Dasheia's house and that

~~DAISHIA CAMPBELL~~ **Victim** - DIRECT EXAMINATION

122

1 happened.

2 Q. Was that after you got out of school?

3 A. Yes, ma'am.

4 Q. After you went to Doctor Allen's office in August of
5 last year and everybody learned that you were
6 pregnant, your grandmother made the decision that she
7 would end the pregnancy. Is that right?

8 A. Yes, ma'am.

9 Q. So you went to Columbia to have that done?

10 A. Yes, ma'am.

11 Q. You told me earlier that when your grandmother would
12 notice the blood in your underwear that you would tell
13 her that it was just your period?

14 A. Yes, ma'am.

15 Q. And that you were just scared to tell her, your
16 grandmother?

17 A. Yes, ma'am.

18 Q. Could you just kind of explain to us a little bit why
19 you were scared to tell her, the real reason?

20 A. Because I was scared because -- he didn't tell me the
21 he was going to do anything to me, but I was scared if
22 I would have tell he would have done something, but I
23 was just like -- that's why I kept it to myself.

24 Q. How did Dashiea get along with Kevin before all this
25 came out?

~~Victim~~

- DIRECT EXAMINATION

123

- 1 A. So-so. It was -- all I can tell you it was so-so.
- 2 Q. Do you know how old he is?
- 3 A. I think twenty.
- 4 Q. About twenty years old?
- 5 A. Yes, ma'am.
- 6 Q. How do you refer to Dashiea? Who is she to you; what
- 7 do you call her?
- 8 A. I call her my cousin.
- 9 Q. You call her your cousin?
- 10 A. Yes, ma'am.
- 11 Q. And the Defendant, is he the only person that you know
- 12 by the name of Kevin that dates your cousin?
- 13 A. Yes, ma'am.
- 14 Q. And he was the one who did all these things do you?
- 15 A. Yes, ma'am.
- 16 Q. Did you know that you were pregnant when you went to
- 17 the doctor?
- 18 A. No, ma'am.
- 19 Q. How did you react when you found out?
- 20 A. I was kind of sad.
- 21 Q. Did you tell your grandmother what happened?
- 22 A. After, yes, ma'am.
- 23 Q. What about the police officer, the lady that's sitting
- 24 next to you, did you tell her too?
- 25 A. Yes, ma'am.

~~Victim~~ ~~_____~~ - CROSS EXAMINATION

124

1 Q. Do you remember going to Florence, a place in Florence
2 called the Durant Center?

3 A. Yes, ma'am.

4 Q. Do you remember talking with the lady there about what
5 happened?

6 A. Yes, ma'am.

7 Q. Everybody was asking you about what happened to you?

8 A. Yes, ma'am.

9 Q. All right, ~~Victim~~, give me just a few minutes; I
10 think I might be about done. Your Honor, that's all
11 the questions that I have. ~~Victim~~, Mr. Strobel may
12 have some questions for you, okay?

13 THE COURT: Mr. Strobel?

14 MR. STROBEL: Yes, Sir.

15 CROSS EXAMINATION BY MR. STROBEL

16 Q. ~~Victim~~ now, I'm not going to ask you anything that
17 you don't understand -- and ask me to repeat it. I
18 want to make sure I fully understand your testimony,
19 okay? When she first asked you about how many times
20 that this occurred, I think you said twice, is that
21 correct?

22 A. No.

23 Q. Well, you remember it was more than five?

24 A. Yeah, it was more than five. She asked me at the time
25 how many -- the two times I remember, and I said

~~Victim~~ - CROSS EXAMINATION

125

1 twice.

2 Q. So it was on two occasions you remember when it
3 occurred, the other ones you don't remember when it
4 occurred?

5 A. No, sir, but I do know that they occurred.

6 Q. What?

7 A. I said, but I know that they occurred.

8 Q. You know it happened, but you can't remember that it
9 happened, is that correct?

10 A. Yeah, like certain dates like I remember those two.

11 Q. And, she further stated that you remembered two
12 occasions, one was in 08 and the other was July the
13 Fourth of 09, is that correct?

14 A. Yes, ma'am -- yes, sir.

15 Q. I don't mean to confuse you in any way; I just want
16 the truth; I just want to understand what you're
17 saying, okay? And then she later, in my opinion, led
18 you to say that it occurred in the summer of 08?

19 A. Yes, sir.

20 Q. And then you came back and said: Yes, I remember one
21 occasion in 08 that it happened after school got out?

22 A. Yes, sir.

23 Q. And you know I'm not familiar with the school system,
24 but I suppose -- we talking about maybe the end of May
25 or first of June when school was out?

~~Victim~~ **Victim** - CROSS EXAMINATION

126

- 1 A. Yes, sir, but was like a couple of months after school
2 was out, but I said when school just got out.
- 3 Q. Okay. Now, do you remember going to see the doctor in
4 May or June of 08 about possible infection you had
5 down there?
- 6 A. Are you talking about for my check up.
- 7 Q. I beg your pardon?
- 8 A. Are you talking about for my checkup.
- 9 Q. Well let's say it was for your check up you went to
10 Dr. Allen's office?
- 11 A. Yes.
- 12 Q. Do you remember that?
- 13 A. Yes.
- 14 Q. Okay. And did you hear your grandmother say anything
15 to the doctor or any of the nurses there that she had
16 caught you with another guy?
- 17 A. No, sir.
- 18 Q. You didn't hear that?
- 19 A. No, sir.
- 20 Q. Had you been with another guy at all?
- 21 A. No, sir.
- 22 Q. Now, what is it that occurred -- I mean, you said it
23 was after school got out. How long after school got
24 out?
- 25 A. I'd say about a month right after school got out.

~~Victim~~ **Victim** - CROSS EXAMINATION

127

- 1 School got out in May, and I think it's the end of
2 June.
- 3 Q. What?
- 4 A. The end of June.
- 5 Q. The end of June?
- 6 A. Yes, sir.
- 7 Q. How do you remember specifically that date?
- 8 A. I don't recall the specifically the date. I just
9 remembered that month and that happening.
- 10 Q. That month, might it have been July?
- 11 A. Yeah, one happened in July on the Fourth of July, yes.
- 12 Q. I'm talking about 08?
- 13 A. Oh, I don't know. Could you repeat your question
14 because you got me confused, you asked me ---
- 15 Q. Oh, I'm sorry. All right in July, we're only talking
16 about that one time that it happened?
- 17 A. Can you repeat it.
- 18 Q. Yes. I thought you said it occurred after you got out
19 of school, and now you say that it occurred towards
20 the end of June?
- 21 A. That's when we got out of school. We got out of
22 school in May, but it started happening in June.
- 23 Q. What specific event occurred that you can specifically
24 remember that it occurred the end of June of 08?
- 25 A. Because that was his first time doing something like

~~WITNESSES~~ **Victims** - CROSS EXAMINATION

128

1 that to me.

2 Q. Okay. But, what I'm trying to -- this was what, about
3 a year and a half ago?

4 A. I don't get what you're asking me. You are kind of
5 like confusing me.

6 Q. Okay, but ---

7 A. You are confusing me.

8 Q. Oh, I don't want to confuse you. What I'm trying to
9 say is was there a particular event -- did you look at
10 a calendar -- was there something definite that
11 occurred that we know that it happened at the end of
12 June of 08?

13 A. No, sir.

14 Q. All right, will you tell me how you know that it
15 definitely happened the end of June of 08?

16 MS. BARR: Judge objection. That question has been
17 asked and answered repeatedly.

18 MR. STROBEL: I don't understand the answer?

19 A. Well, I don't understand the question.

20 Q. How do you know that the incident occurred ---

21 MR. STROBEL: Judge, I have to state an objection.
22 That question has been asked and answered repeatedly.

23 THE COURT: The objection is overruled. Ask the
24 question. Restate the question, please.

25 Q. This is so important. This is ---

~~WILLIAM A. GIBBS~~ **Victim** - CROSS EXAMINATION

129

- 1 A. I already answered it.
- 2 Q. Answer the question.
- 3 THE COURT: Just a moment. Just a moment. Pose
- 4 the question, and she will pose the answer.
- 5 Q. How do we know -- did any event occur or something
- 6 happened that we know that this happened at the end of
- 7 June of 08?
- 8 A. No, sir.
- 9 Q. And this was approximately a year and a half ago?
- 10 A. Yes, sir.
- 11 Q. And you know that it was the end of June around that
- 12 time?
- 13 A. Yes.
- 14 Q. Is that correct?
- 15 A. Yes, sir.
- 16 Q. Is Adoria's father still living?
- 17 A. No, sir.
- 18 Q. He died, is that correct?
- 19 A. Yes, sir.
- 20 Q. Was he living in June of 08?
- 21 A. I'm not sure, but he died. I do not remember the date
- 22 that he died. I don't remember the date he died.
- 23 Q. I'm not asking you if you remember the date, I'm just
- 24 asking you was he alive in June of 08?
- 25 A. What I'm saying is I don't know that.

~~WITNESSES~~ **VICTIM** - CROSS EXAMINATION

130

- 1 Q. Do you know what year he died in?
- 2 A. No, sir.
- 3 Q. So you didn't go to the funeral or anything?
- 4 A. I went to the funeral, but I cannot remember what day
- 5 he -- it was on the obituary or what ever. I do not
- 6 remember the date, but it was on the obituary. I do
- 7 not remember
- 8 Q. You went to the funeral?
- 9 A. Yes, sir.
- 10 Q. Do you know-what year it was in?
- 11 A. No, sir.
- 12 Q. Was Adoria at the funeral?
- 13 A. Yes, sir.
- 14 Q. So that meant that she would have to be at least a
- 15 year-old, right?
- 16 A. No.
- 17 Q. No?
- 18 A. Yes.
- 19 Q. She was a year old when you were babysitting for her,
- 20 right?
- 21 A. Yes, sir.
- 22 Q. So if she was at the funeral that you say you were
- 23 there, she would have had to have been at least a
- 24 year-old, right?
- 25 A. Yes, sir.

~~XXXXXXXXXX~~ - CROSS EXAMINATION

131

- 1 Q. And you can't remember that event?
- 2 A. No, sir.
- 3 Q. Not even what year?
- 4 A. No, sir.
- 5 Q. Did he ever -- on any of the occasions that you
- 6 babysat for Adoria, was her father there; living
- 7 there; staying there; spending nights there?
- 8 A. Yes, when she was first born.
- 9 Q. Oh, so, we're talking about he was there in 07, and
- 10 not in 08?
- 11 A. 07, yeah.
- 12 Q. Well, he was never there in 08 when you were there?
- 13 A. Yes, but I'm telling you I do not remember the date he
- 14 died and not the year.
- 15 Q. I'm beyond that. Do you recall if he was living in
- 16 08?
- 17 A. No, sir.
- 18 Q. You testified earlier that in June of 08, Dasheia was
- 19 working at Subway, right?
- 20 A. Yes, sir.
- 21 Q. What Subway?
- 22 A. Kingstree -- at the Shell Station.
- 23 Q. Okay. And you babysat for Adoria while she worked at
- 24 the Subway?
- 25 A. Yes, sir.

~~Victim~~ - CROSS EXAMINATION

132

1 Q. And on that occasion is when Kevin came over?

2 A. Yes, sir.

3 Q. There is no question about that, is that correct?

4 A. ---

5 Q. You remember all that?

6 A. Yes, sir.

7 Q. That's all I have.

8 THE COURT: Any redirect?

9 MS. BARR: No, Your Honor.

10 THE COURT: All right, thank you. You may step
11 down. Ladies and Gentlemen, that brings us to lunch time.
12 We need you back at 2:30. Please do not discuss the case.
13 And let me explain further to you that, when you're on the
14 Jury, you should avoid contact with anyone who is connected
15 with the case. You should attempt to communicate only with
16 court officials. And, when I say court officials, I mean
17 Ms. Williams, members of her staff, the bailiffs, and, if
18 you have questions, try to ask them. Anyone -- any other
19 people who are not connected with the case or any other
20 people, period, who might be around the courthouse, you
21 should limit your contact with all of those folks. In
22 addition, you should -- when we leave and take a break, you
23 should leave immediately and then when you come back, come
24 back to the Jury room. At no time should you come in the
25 courtroom, mill around the hallway or be around where

~~Victim~~ - CROSS EXAMINATION

133

1 people connected to the case might be around. And, you
2 should avoid any miscellaneous contact or miscellaneous
3 conversation concerning this matter with anyone. I hope
4 you have a good lunch, and we'll see you back at 2:30.

5 (Whereupon, the jury exits the courtroom at
6 1:08 p.m..)

7 THE COURT: Any other matters, Ms. Barr, before we
8 break?

9 MS. BARR: No, Sir. judge. Nothing from the State.

10 MR. STROBEL: Nothing, Your Honor.

11 THE COURT: All right. Give the Jury a chance to
12 leave before the Defendant goes back that way for example
13 and before people start going around where they might be.
14 We will be back at 2:30. We will be in recess until that
15 time.

16 (Whereupon, a lunch recess was taken from
17 1:10 p.m. until 2:30 p.m..)

18 THE COURT: Thank you. Please be seated. Where is
19 the Defendant?

20 MR. STROBEL: I haven't seen him, Your Honor.

21 (Whereupon, the Defendant was brought into
22 the courtroom)

23 THE COURT: Anything before the Jury comes in?

24 MS. BARR: No, Your Honor.

25 MR. STROBEL: No, Judge.

SUSAN GREELAND LUBEROFF - VOIR DIRE EXAMINATION 134

1 THE COURT: All right, bring the Jury in.

2 (Whereupon, the jury enters the courtroom at
3 2:36 p.m..)

4 THE COURT: All right, you may call your next
5 witness.

6 MS. BARR: May it please the Court, Judge, we call
7 Dr. Susan Luberoff.

8 THE COURT: Come forward please.

9 WHEREUPON, SUSAN GREELAND LUBEROFF
10 WAS DULY SWORN AND TESTIFIED AS FOLLOWS

11 VOIR DIRE EXAMINATION BY MS. BARR

12 Q. Ma'am, if I can, let me get you to state your full
13 name for me?

14 A. Susan Greeland Luberoff.

15 Q. And, Dr. Luberoff, tell us what do you do for a
16 living?

17 A. I'm a pediatrician at the Children's Advocacy Centers
18 in Columbia and Florence and West Columbia.

19 Q. And give us a little bit of information about your
20 background, your training and your education?

21 A. Thank you. I graduated from the Medical School at
22 USC School of Medicine in 1983 with my M.D. degree and
23 then I completed a three-year residency in Pediatrics
24 at Children's Hospital at Richland Memorial in 1986.
25 After that, I have worked as a pediatrician in a few

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1 different settings. I have been with the Department
2 of Pediatrics as a teacher since I finished my
3 residency. I have also worked for many years in the
4 Children's Advocacy Center. I did a six months
5 training in Denver at the Kent National Center on
6 Child Abuse in the summer of 1991, which I was termed
7 a Scholar in Residence. It's kind of like having a
8 mini-fellowship for advanced training in child abuse
9 that a pediatrician would be involved in. And I have
10 attended numerous other trainings and continuing
11 education opportunities throughout my career on
12 various aspects of the medical exam in a child
13 suspected of possibly having been abused and other
14 medical aspects of that.

15 I am currently a Clinical Associate
16 Professor of Pediatrics with the USC School of
17 Medicine. I am the medical director in Columbia
18 of the Assessment and Resource Center which is
19 the Children's Advocacy Center in Columbia. And
20 what we do there is we evaluate children who are
21 suspected of having been either physically or
22 sexually abused. And I am an employee of the
23 South Carolina School of Medicine. I also travel
24 to the Children's Advocacy Centers in Florence
25 and West Columbia to perform medical exams and to

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1 be the medical part of the teams that they set up
2 there.

3 Q. All right. Dr. Luberoff, if you will, tell us, have
4 you ever testified in court before?

5 A. Yes, I have.

6 Q. As an expert witness?

7 A. Yes.

8 Q. In the Circuit Courts in South Carolina?

9 A. I have testified in the Circuit Court and Family Court
10 in South Carolina, as well as one occasion in another
11 state in a Family Court.

12 Q. Your Honor, at this time, we would tender Dr.
13 Luberoff as an expert witness in the field of
14 pediatrics.

15 MR. STROBEL: No objection.

16 THE COURT: So ordered.

17 DIRECT EXAMINATION BY MS. BARR

18 Q. Dr. Luberoff, if you could explain to us the purpose
19 of the Children's Advocacy Center. What do you all do
20 there and what's the purpose behind it?

21 A. At the Children's Advocacy Center, they are set up
22 generally -- some of them are staffed a little
23 differently, but what we try to do is to provide as
24 many services in one place as possible for a child who
25 is undergoing evaluation for abuse. Children's

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1 Advocacy Centers typically will have someone that can
2 do a medical exam, someone who can do a forensic
3 interview, which is a specialized interview with a
4 child which is aimed at finding out the facts about
5 what happened. And most of them have therapists that
6 can work with a child on emotional issues and
7 sometimes work with parents on emotional issues that
8 result. The Children's Advocacy Centers that I'm
9 involved with evaluate children with concerns of
10 possible sexual abuse, physical abuse, neglect or
11 witnesses to violence such as a homicide within the
12 family, or something like that.

13 Q. And, within your capacity as a pediatrician and in
14 working with the Children's Advocacy Centers, did you
15 have occasion in August of 2009 to perform an
16 examination on ~~XXXXXX~~ ^{XXXXXX} ~~XXXXXX~~?

17 A. Yes, I did.

18 Q. And she was referred to your agency either by Law
19 Enforcement or by the Department of Social Services?

20 A. She was referred either by Law Enforcement or
21 Department of Social Services or directly from the
22 physician's office where she had originally presented.
23 They were all directly involved very early on, and one
24 or the other would have referred her to us -- I can
25 probably answer that question -- Law Enforcement

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1 actually did the referral to our center in Florence.

2 Q. When was ~~Victim~~ seen?

3 A. She had been seen originally at our center on August
4 14th for a forensic interview and then I would go to
5 Florence about twice a month, but I saw her for the
6 medical exam on August the 26th.

7 Q. Okay, so about almost two weeks later?

8 A. About twelve days later.

9 Q. Tell us about that examination of ~~Victim~~ on the 26th
10 of August?

11 A. When we do an examination in the setting of the
12 Children's Advocacy Center, we actually are looking
13 for evidence of any kind of maltreatment or neglect,
14 so the basic exam includes a really good look at
15 everything about the child such as old injuries or
16 fresh injuries, a detailed look at the genital areas;
17 height and weight and general health appraisal; and
18 then depending on what the concern is and depending on
19 what the physical exam shows, then we may obtain
20 laboratory specimens also to test for various things.
21 And ~~Victim~~'s exam was what I just said she had a
22 good head-to-toe physical exam with particular
23 attention to her genital area. And, in doing her
24 exam, we also most often in children who come to one
25 of the centers, we use a professional instrument

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1 called a culpascope, which is basically a pair of
2 binoculars, so it magnifies things that we see, and
3 it's got really good lights attached to it so we have
4 a good bright light, and those help us when we are
5 looking at the genital area to see anything that might
6 be hard to see without really good light and without
7 magnification.

8 Q. Tell me what was the result of that examination on the
9 child's genital area?

10 A. ~~Victim~~ actually had an old injury to her genital
11 area. She had a tear in her hymen, which is the piece
12 of flesh that is there at the beginning of the vagina,
13 that was an old tear that had finished the healing
14 that was going to be but hadn't actually joined back
15 together. So it was certainly a V-shaped tear in the
16 bottom of her hymen. Also she had venereal warts just
17 outside the hymen in the vaginal area, and she had
18 quite noticeably on her general exam an enlarged
19 uterus.

20 Q. Okay. Now, the vaginal tear that you talked about, of
21 course, that would be consistent with sexual abuse?

22 A. That's consistent with what we call blunt force
23 penetrating trauma to the vaginal area which ---

24 Q. Blunt force penetrating?

25 A. Yes.

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1 Q. And, the genital warts, of course, that's what we
2 would commonly call a sexually transmitted disease?

3 A. Yes.

4 Q. And tell us about the enlarged uterus?

5 A. When I felt ~~her~~ **Victims** abdomen, I could feel the top
6 edge of her uterus all the way up half-way the
7 distance to her belly button which tells me that she
8 was in the neighborhood of 12 weeks or so pregnant.
9 Also on her exam, before I forget to mention this, I
10 did do laboratory tests to check for other sexually
11 transmitted diseases. Based on the information that I
12 had already received from her previous physician's
13 office and based on my exam that showed that she had a
14 very enlarged uterus and after consultation with her
15 and her grandmother and determining that they wished
16 to look into terminating that pregnancy, I call the
17 University of South Carolina Department of OB/GYN and
18 had an appointment made for her later that same day to
19 go to Columbia and have an ultrasound to better
20 determine the date of her pregnancy, or how far along
21 she was in her pregnancy.

22 Q. The vaginal tearing that you talked about that had
23 already healed or begun to heal, would you be able to
24 tell us with any reasonable degree of medical
25 certainty how long the child had been sexually

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1 assaulted?

2 A. No. Injuries in that area heal very fast, and this
3 was not a fresh injury. It had finished doing all the
4 healing it was going to do, and that would usually be
5 accomplished within two weeks. So all I can tell you
6 about that is that it was not something that happened
7 within the two weeks before I saw her. It could have
8 been two months ago or two years ago or ---

9 Q. It could have been as old as two years ago?

10 A. Or, it could have been many years old. It had
11 finished healing and beyond that it really doesn't
12 change. Just like I have a scar where my dog
13 scratched me, and, once it healed, it was healed. So
14 I can't look at that and tell you how long ago my dog
15 scratched me. But I can tell you was not last week.

16 Q. Now, your records reflect that the child was how old
17 when she came to your office?

18 A. Um, eleven.

19 Q. You indicated to the Jury that you did lab work to
20 check for any other sexually transmitted diseases?

21 A. Yes, I did.

22 Q. Did you get the lab report back?

23 A. Yes, I did. I checked ~~Victim~~ ^{Victim} for HIV and syphilis,
24 gonorrhea, chlamydia and pregnancy, of course, which
25 is a sexually transmitted condition. We don't call

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1 that infection but a sexually transmitted condition.
2 And her testing for gonorrhea came back positive.
3 That was repeated by the gynecologist when she
4 underwent her procedure two days later and it was
5 positive there also.

6 Q. All right. So this child was age eleven when she came
7 to see you; she was at least 12 weeks into the
8 pregnancy?

9 A. Actually, when she had her ultrasound, it showed her
10 to be almost fourteen weeks pregnant. Thirteen weeks
11 and six days was the estimate that the ultrasound gave
12 -- that's correct. The ultrasound that she had in
13 Columbia estimated the fetus's age at thirteen and
14 six-sevenths, or almost fourteen weeks.

15 Q. So that would mean that the date of conception
16 would've been sometime around the beginning of June?

17 A. All right, in August when I saw her, August the 26th,
18 and fourteen weeks is three-and a-half months and
19 August is the eighth month so that would put it in
20 early May.

21 Q. So in addition to being thirteen weeks pregnant, this
22 child was diagnosed with gonorrhea?

23 A. Yes.

24 Q. And, genital warts?

25 A. And genital warts, yes.

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1 Q. Did she receive treatment for those two diseases at
2 your office or was that done at the gynecologist's
3 office in Columbia?

4 A. She received treatment for the gonorrhea through the
5 gynecologist in Columbia, because that's where she
6 happened to have her next appointment after these
7 tests came back positive. So she received that
8 treatment there. It's my understanding that they
9 elected to not treat the warts at that time and just
10 see what would happen with time, which is a very
11 acceptable treatment if you don't have a large amount
12 of warts present. I will also mention that, when I
13 did her medical exam, her demeanor appeared depressed
14 and sad and she did acknowledge that she had thoughts
15 of hurting herself and that she had already begun
16 getting into a therapy referral for that.

17 Q. Dr. Luberoff, that's all my questions. Thank you.
18 Please answer Mr. Strobel's questions.

19 THE COURT: Counsel?

20 MR. STROBEL: I have none.

21 THE COURT: Thank you, Doctor, you may step down.

22 MS. BARR: Your Honor, we would ask that Dr. Luberoff
23 be excused.

24 THE COURT: All witnesses are excused when they
25 step down unless I state otherwise.

ROBIN TYLER GRIGGS - VOIR DIRE EXAMINATION

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1 MS. BARR: I call Robin Griggs.

2 WHEREUPON, ROBIN TYLER GRIGGS

3 WAS DULY SWORN AND TESTIFIED AS FOLLOWS

4 VOIR DIRE EXAMINATION BY MS. BARR

5 Q. Ms. Griggs, while we are setting up, let me just ask
6 you just a couple of preliminary questions if I can.
7 State your full name for the record?

8 A. My name is Robin Tyler Griggs.

9 Q. And, please tell us where you are employed?

10 A. I am employed with the Durant Children's Center. We
11 have a center in Florence and one in Hartsville.

12 Q. And, tell us a little bit about the Durant Center, um,
13 familiarize the Jury with that office and tell us what
14 you do there?

15 A. The Durant Center is a child advocacy center there in
16 Florence and in Hartsville, we have been asked to do
17 medical exams. I do the forensic interviews and we
18 have therapists there to do therapy with families and
19 children.

20 Q. Okay. How long have you worked in that capacity?

21 A. I have been there five years.

22 Q. And, can you tell us a little bit about your training
23 and your background for that position?

24 A. Well, actually, I started out with the Department of
25 Social Services in Darlington County doing child abuse

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1 investigations for 19 and a half years. Then, I moved
2 to the Durant Children's Center. As a part of my
3 training in forensic interviewing, I did a forty-hour
4 class in Huntsville, Alabama at the National
5 Children's Advocacy Center. I also came back to
6 Columbia two years later and did another forty-hour
7 interview called Child First, so I have had two
8 different courses on interviewing kids, plus, every
9 year, we have other training.

10 Q. Okay. How many children have you interviewed or
11 assessed whether or not they have made allegations of
12 sexual or physical abuse?

13 A. At the Durant Center, I would guess close to 200.

14 Q. And, have you testified in court before?

15 A. Yes, ma'am, both in General Sessions and Family Court.

16 Q. Okay. About how many times?

17 A. Oh, numerous times in Family Court and probably about
18 20 or 25 in General Sessions.

19 Q. And, have you been declared an expert in the area of
20 forensic interview in child abuse assessment?

21 A. Yes, I have, both in Family Court and in General
22 Sessions.

23 Q. Your Honor, at this time, we would tender Ms. Griggs
24 as an expert in the field of forensic interviewing and
25 child abuse assessment.

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1 MR. STROBEL: No objection.

2 THE COURT: She is.

3 DIRECT EXAMINATION BY MS. BARR

4 Q. Ms. Griggs, tell us what is meant by a forensic
5 interview.

6 A. Forensic interview is just a fancy term for an
7 interview in a child-friendly setting. It's not the
8 police station; it's not the DSS building; it's really
9 a comfortable place. The whole point of the interview
10 is just to sit down and talk with the child, gain a
11 rapport with the child and ask questions. Every child
12 that comes in, I interview for all types of
13 possibilities. I talk about how they get punished; I
14 look for any kind of physical abuse; I ask about
15 witnessing grown-ups fighting to look for domestic
16 violence. I ask about alcohol and drug exposure. I
17 ask about pornography exposure. And, I ask about
18 inappropriate touching. So, every child that comes
19 in, regardless of what the concern is, I ask all those
20 questions of. The whole point of that is not for me
21 to do the investigation, it's for me to get the
22 information about the child and then pass it on to
23 either DSS or Law Enforcement or both and let them
24 follow up with their investigation.

25 Q. Okay. And, how do you conduct a forensic interview?

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1 A. They are child-friendly, non-leading interviews. Now,
2 that's not to say that there is not a leading question
3 every now and then, nobody's perfect, but the point is
4 just to let the child tell you the story with minimal
5 instruction from me. Some kids that are traumatized,
6 though, would need me to guide them a little more than
7 some other children might.

8 Q. All right, are there certain guidelines that you set
9 out? Do you tell the child how the interview is going
10 to be conducted or recorded?

11 A. No, we do tell them, all the children, even the little
12 ones, we interview from age three to age 18, we tell
13 them all that it is video-taped and, if there is
14 anybody watching the interview behind the mirror, we
15 let them know about that. We go through the process
16 of getting them to define the truth so that they can
17 -- the young ones, I can determine if they understand
18 telling the truth or the consequences to telling a
19 story or a lie. We also go through asking them to
20 correct me if I get something wrong and that they can
21 say: I don't know, if they really don't know the
22 answer to a question that I might ask. And, I just
23 let them know that I'm going to be asking them a lot
24 of questions.

25 Q. Now, who all is allowed in the interview room with you

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1 and the child?

2 A. No one.

3 Q. No one else, just you?

4 A. Just myself and the child.

5 Q. Why is that?

6 A. Because we don't want anyone in there that could
7 influence the child in any way. Now, we have had
8 interpreters in the room, but they strictly interpret
9 everything we say verbatim. But, other than an
10 interpreter, it's just myself and the child.

11 Q. You mentioned that you interview children from as
12 young as three years old to as old as eighteen. When
13 you're dealing with a young child, -- of course, we
14 all know as adults when you come into court and you
15 are sworn in and you know that you have to tell the
16 truth and all that -- what means do you all have to
17 make sure a child understands that he or she has to be
18 truthful? How do you know whether or not they know
19 the difference between telling the truth and not
20 telling the truth?

21 A. With the little ones, we have what's called the
22 Truth/Lie Assessment Inventory that was developed by
23 Tom Lyon, who is a very well-known person in dealing
24 with children and forensic interviewing. And, it
25 basically gives a scenario like: You ask the child,

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1 What is this, and it's an apple. And, one of the
2 things would be that this child looked at the apple
3 and says an apple, and this child looks at the apple
4 and says an orange, which one told the truth. And
5 then someone will ask which one told a lie, so that
6 they are not getting into a routine of saying it's
7 always the one on the right or the one on the left.
8 The older children, that's from like three or four or
9 five, and some six year olds, depending upon their
10 developmental capability, but, beyond that, I just ask
11 them to define the truth for me. And, a lot of them
12 can, although even -- most of them will say that it
13 means don't lie. And, I understand they get that.
14 And, then, I will ask them is it a good thing to tell
15 a lie or a bad thing; and most of them will say it's
16 not a good thing, or I'll get a spanking or something
17 that will lead me to believe that they understand the
18 difference.

19 Q. Now, sometimes we will have situations where children
20 will be interviewed using diagrams in terms of
21 diagrams and body parts. Do you all do that as well?

22 A. Yes, we do. They are anatomically correct body parts.
23 That's for a lot of reasons that's, number one, to
24 make sure I don't make a mistake; number two, some
25 kids don't use names that you learn in the text books,

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1 they have like pet names or slang names, so to make
2 sure that I know exactly what they're talking about, I
3 will pull these drawings out and actually have the
4 child label those parts for me so that I'm not making
5 a mistake. Now, some children cannot discuss it, but
6 they can point to the body parts that we have labeled,
7 so that's the whole purpose of the diagrams.

8 Q. Now, you talked about the precautions that you
9 normally take in interviewing a child who is believed
10 to have been sexually assaulted. Did you take those
11 precautions in this particular case of ~~Victoria~~ *Victoria*

12 ~~Victoria~~

13 A. Yes, I did.

14 Q. The interview was recorded?

15 A. It was.

16 Q. And, you conducted the interview on August the 14th, I
17 believe?

18 A. August the 14th, right after she had left the doctor's
19 office, and, I do have to say that Shataria was a
20 little more difficult than most eleven year olds. Um,
21 she was having trouble, really, talking, as you would
22 expect some eleven year olds to do.

23 Q. Now, when she arrived at your agency, who brought her?

24 A. I'm not exactly sure who drove, but the law
25 enforcement officer, Hamlet, and the DSS worker, Ms.

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1 Fulton, were at the center with ~~Victim~~ *Victim*

2 Q. And, did your office provide the solicitor's office,
3 upon receipt of a subpoena, a copy of that forensic
4 interview?

5 A. Yes, we did.

6 Q. Okay. And, you have reviewed that prior to your
7 testimony?

8 A. Yes, ma'am, I did.

9 Q. And, did it accurately depict the interview of the
10 child back on August 14th, 2009?

11 A. Yes, ma'am.

12 Q. Now, Ms. Griggs, um, I'm going to hand you what's been
13 marked as State's Exhibit Number 2 and I ask you if
14 you recognize this particular exhibit?

15 (AN ITEM WAS SHOWN TO WITNESS)

16 A. Yes, ma'am, that's the video tape -- I mean the DVD of
17 Shataria with our chart number on it.

18 MS. BARR: All right, Judge, we would move State's
19 Exhibit Number 2 into evidence at this time.

20 THE COURT: Any objection?

21 MR. STROBEL: No objection.

22 THE COURT: It's admitted without objection.

23 WHEREUPON, STATE'S EXHIBIT

24 NUMBER 2 ADMITTED INTO

25 EVIDENCE:

ROBIN TYLER GRIGGS - DIRECT EXAMINATION

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1 MR. STROBEL: Your Honor, can I say something?

2 THE COURT: Yes, sir.

3 MR. STROBEL: Mr. Bradley has a constitutional right
4 to see any and all witnesses and testimony against him. We
5 can't see anything. I was under the impression that that
6 was going to be played from here and that table was going
7 to be moved so we could see it. He needs to see the
8 testimony that's going to be brought against him and, if
9 you want to make arrangements for him to see it over here
10 (indicating) somewhere, that will be fine ---

11 THE COURT: That will be fine.

12 MR. STROBEL: Thank you.

13 (Whereupon, a video player was rearranged
14 for viewing)

15 MS. BARR: Your Honor, request permission to publish?

16 THE COURT: Yes, ma'am.

17 (Whereupon, the video/DVD was published for
18 the jury)

19 RESUMED EXAMINATION BY MS. BARR

20 Q. Ms. Griggs, if I can -- just a moment -- if you would
21 just step off the witness stand for me? Who is the
22 person on the video?

23 A. That's myself.

24 Q. This (indicating) is the interview room where
25 made the disclosure?

Victim

ROBIN TYLER GRIGGS - DIRECT EXAMINATION

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1 A. Yes, ma'am.

2 Q. And, that (indicating) appears to be a chalkboard or a
3 screen there -- what is the purpose for that?

4 A. It's a blackboard hanging for anatomical drawings. I
5 make very minimal notes and the older kids, they can
6 draw on it with erasable markers.

7 Q. And, when you left the room, tell us where you went?

8 A. To get ~~the~~ **victim**.

9 Q. That's your voice we hear?

10 A. Yes.

11 Q. And, this (indicating) is ~~that~~ **victim**?

12 A. Yes.

13 (Whereupon, the video tape is being played)

14 THE COURT: Ms. Barr, could you stop it?

15 (Whereupon, the DVD/video player was
16 stopped)

17 THE COURT: This voice is coming from the
18 computers?

19 MS. BARR: That is correct, Your Honor.

20 THE COURT: And, could you put it by the Mike?

21 MS. BARR: Judge, we actually have a microphone here
22 by the Mike, and I think ---

23 THE COURT: Is it working?

24 (Whereupon, adjustments were being made for
25 possible audio clarity in the courtroom)

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RESUMED EXAMINATION BY MS. BARR

Q. Ms. Griggs, I may need your help on some of this. You've got -- on the interview with her. Where are the microphones situated in that room?

A. The microphones are on one cord and there's a cord that comes down -- it would be right just above where that (indicating) is. It's got a little bug on it so we can tell the little kids that the bug is a microphone.

Q. Okay. Now, we seem to hear your voice pretty clearly and not to hear hers so much so. Um, is that the way she was talking? That she was ---

A. She was very, very quiet, and I'm a little bit louder person, but I have the benefit of when I review my tapes, I have headphones to use to hear what's going on, and she's a little clearer in the headphones than what you can hear on the tape.

Q. All right. Um, what I need is to just go ahead and play the tape, and I may need to ask you some specific questions regarding the interview?

(Whereupon, the video/audio tape resumed the playing for the jury.)

RESUMED EXAMINATION BY MS. BARR:

Q. Ms. Griggs, let me stop you for just a moment. In the video, can you tell us for clarity how ~~Victim~~

ROBIN TYLER GRIGGS - DIRECT EXAMINATION

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- 1 identified pertinent parts on the female -- for the
2 little girl?
- 3 A. Ta-Tas --
- 4 Q. I'm sorry. Go ahead and say that again, please?
- 5 A. Um, I will pick up the drawing, whichever drawing I'm
6 using, and circle the part that I want the name for
7 and ask the child to give it a name that I can use for
8 the interview.
- 9 Q. Okay. And, when you circled what appeared to be the
10 breast areas of the little girl, how did she identify
11 the breasts of the little girl?
- 12 A. Ta-tas.
- 13 Q. Okay. And, when you circled what appears to be the
14 genital area for the little girl, how did she identify
15 that?
- 16 A. Vagina.
- 17 Q. And, when you circled the area that appeared to be the
18 buttocks of the little girl, how did she identify that
19 part?
- 20 A. Butt.
- 21 Q. Okay. Now, when you showed her the drawing for the
22 little boy, you circled the chest area of the little
23 boy, how did she identify that?
- 24 A. She said nipples.
- 25 Q. Okay. And, when you circled what appeared to be the

ROBIN TYLER GRIGGS - DIRECT EXAMINATION

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1 genital area for the little boy on the drawing, how
2 did she identify that?

3 A. She called it a pajina.

4 Q. A pajina?

5 A. Pajina.

6 (Whereupon, the video/audio presentation to
7 the jury was resumed.)

8 Q. Okay. Ms. Griggs, let me ask you some questions about
9 the child's statement. When you interviewed her, you
10 asked her the question: Has anybody messed with your
11 ta-tas? Is that correct?

12 A. Yes.

13 Q. Okay. And, can you tell me what her response was?

14 A. Yes, she said she couldn't -- she basically -- I asked
15 her if anything happened to any of her parts that we
16 had named, and she said: Yes, to her vagina and her
17 ta-tas.

18 Q. And, did you ask her who had touched her on her ta-tas
19 and vagina?

20 A. At first, she said ---

21 MR. STROBEL: I object, Your Honor.

22 THE COURT: Your objection?

23 MR. STROBEL: The Jury has the absolute right of
24 hearing what the child has to say, and we don't need her to
25 tell what the child testified to on the video. It's what

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1 the Jury hears.

2 MS. BARR: Judge, the video is in evidence, without
3 objection.

4 MR. STROBEL: They hear it the way they hear it.
5 Because, I didn't hear it. But what I'm saying is that she
6 cannot testify as to what somebody else said. She thinks
7 that she can testify to it because of what she thinks that
8 she hears the child saying on the video. We are hearing
9 the actual child testify, and the Jury has the right to
10 hear what they hear.

11 THE COURT: You're giving a speaking objection --
12 give me a legal basis for your objection only.

13 MR. STROBEL: It's hearsay.

14 THE COURT: All right, the objection is overruled
15 to the extent that the witness can answer yes or no.

16 MR. STROBEL: All right, Sir.

17 RESUMED EXAMINATION BY MS. BARR

18 Q. Did you hear what the child's response was when asked
19 if any one had messed with her private parts?

20 A. Yes.

21 Q. Without necessarily testifying as to who she named,
22 did she say that somebody had in fact messed with her
23 body parts?

24 A. Yes, ma'am.

25 Q. Okay. And, during the course of that interview, did

ROBIN TYLER GRIGGS - DIRECT EXAMINATION

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1 she tell you where it began -- what had happened?

2 A. Yes, ma'am.

3 Q. When did she say it happened?

4 A. Well, she said that it started last year in the summer
5 when she was still in school -- I'm sorry -- the last
6 incident was when she wasn't in school. So that would
7 have been the year before I saw her.

8 Q. Okay, so it would have happened in 2008?

9 A. Yes, ma'am.

10 Q. And what was your understanding as to the child's
11 birth date?

12 A. At the time that I saw her she was eleven. I have her
13 birth date in my records.

14 Q. What do your records reflect is her birthday?

15 A. ~~February~~ the ~~10th~~, 1998.

16 Q. So, if her birth date was ~~February~~ the ~~10th~~, 1998, she
17 would have turned eleven on ~~February~~ the ~~5th~~ of 2009.
18 So at any point in 2008 she would have been how old?

19 A. Twelve.

20 (Whereupon, the video/audio tape was resumed
21 in the presentation to the jury.)

22 Q. I hear in your questions to ~~Victim~~ *Victim* that you asked
23 her where it happened?

24 A. Yes, ma'am.

25 Q. Did she disclose to you where it happened?

ROBIN TYLER GRIGGS - DIRECT EXAMINATION

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- 1 A. Yes, ma'am.
- 2 Q. And where did she say that it happened?
- 3 A. She said it was in her cousin Dasheia's house.
- 4 Q. Okay, did she indicate in which room in the house that
- 5 it occurred?
- 6 A. Dasheia's bedroom.
- 7 Q. And there was some discussion we could sort of hear
- 8 about the location of the bedroom and the bathroom?
- 9 A. Yes.
- 10 Q. Can you tell us about her disclosure about that?
- 11 A. She said that she was walking out of the bathroom and,
- 12 to get to the bathroom had to go through the bedroom,
- 13 and that he called her over to the bed.
- 14 Q. Now, during the course of the interview, was ~~she~~ ^{Victim}
- 15 as forthcoming on details about the assault as some of
- 16 the other victims you have seen?
- 17 A. No, I had to work really hard to get the information I
- 18 did get. I don't know if it was clear, because you
- 19 could hardly hear her, but I would have to repeat what
- 20 she said and then what happened trying to get her to
- 21 give me information that I needed that I knew other
- 22 people needed without, you know, putting words in her
- 23 mouth.
- 24 Q. Now, you asked her where was Dasheia at the time that
- 25 these incidents occurred. What was her response?

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1 A. Dasheia was at work.

2 Q. Now, at some point during this interview, of course
3 you were aware before you interviewed her that she was
4 pregnant, right?

5 A. Yes, ma'am.

6 Q. Did you ask her about that?

7 A. I did.

8 Q. What was her reaction when you asked about the
9 pregnancy?

10 A. She could not say the word. She just teared up and
11 got very quiet, kind of almost hunched over into
12 herself.

13 Q. Now, you have indicated that you have interviewed a
14 number of children who at least there were allegations
15 made that they were victims of sexual abuse or
16 physical abuse?

17 A. Yes, ma'am.

18 Q. Would you describe ~~her~~ ^{Victim}s reaction to you, her
19 refusal or inability if you will, to give you certain
20 details about the incident. Would you characterize
21 that as normal and common among these type victims, or
22 uncommon?

23 A. It's very common, especially since she had just left
24 doctor's office and come straight to my office.

25 Q. This would have been the first time you had met her,

ROBIN TYLER GRIGGS - DIRECT EXAMINATION

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1 is that correct?

2 A. That's correct.

3 Q. Now, did you ask her about whether or not anyone else
4 was present at the time that the sexual abuse
5 incidents took place?

6 A. I did.

7 Q. What was her response?

8 A. She said Adoria, which is Dasheia's daughter, was
9 there, but she was in the livingroom. She was not in
10 the actual bedroom.

11 Q. Based on your interview of her, what recommendations
12 did you make?

13 A. I said that she needed immediate counseling. She had
14 also given me some indication that she was considering
15 harming herself, so she needed immediate counseling
16 and the counselor to be given a copy of my report;
17 that she should not be around Kevin and that she
18 should be around supportive family members to help her
19 with the trauma.

20 Q. Now, did you get any background information from her
21 regarding who she was living with; where her parents
22 were and that sort of thing?

23 A. I got a brief information. It was the only
24 information that I could get from Officer Hamlett and
25 from Ms. Littleton. My understanding that she was

ROBIN TYLER GRIGGS - DIRECT EXAMINATION

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1 living with her grandmother rather than her biological
2 parents.

3 Q. Now, you mentioned earlier that you will ask children
4 certain questions about whether or not they understand
5 the difference between right and wrong. Are you
6 trying to determine whether or not they are competent
7 to give you statements?

8 A. Yes, ma'am.

9 Q. Did you have any questions or concerns regarding
10 ~~Victim~~'s competency at the time you conducted the
11 forensic interview?

12 A. No, ma'am.

13 Q. And, we heard Dr. Luberoff testify earlier about the
14 physical exam that occurred on the 26th. Was that at
15 the same location that the medical exam occurred?

16 A. It was. It was just on a different date.

17 Q. I beg the Court's indulgence. -- Ma'am, that's all the
18 questions I have. Please answer the questions Defense
19 Counsel may have for you.

20 MR. STROBEL: I have no questions of her, Your Honor.

21 THE COURT: All right, you may step down.

22 Ladies and Gentlemen, we will take a break now. When
23 we return, Ms. Patricia Chandler, I'm appointing you to
24 serve as foreperson of the Jury. Let them get through with
25 this -- which, for the most part, eliminates the necessity

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1 for a break, but we will take them anyway. And, Ms.
2 Chandler, when we return, if you will take the foreperson's
3 seat and serve as foreperson of the Jury. As foreperson,
4 you will be the Jury spokesperson; you will preside over
5 the Jury deliberations and you will complete the verdict
6 form representing the unanimous verdict of the Jury.
7 Please do not discuss this case. Please go to the Jury
8 room.

9 (Whereupon, the jury retired to the jury
10 room at 3:35 p.m.)

11 THE COURT: How many more witnesses do you have,
12 Ms. Barr?

13 MS. BARR: Judge, we expect just to call Lieutenant
14 Jeff Scott -- he had taken a Buccal Swab from the
15 Defendant, and my physician and the DNA analyst from
16 Columbia. They are not available until tomorrow afternoon.

17 THE COURT: Well, the physician is scheduled today?

18 MS. BARR: Yes, Sir. The physician, I don't know if
19 she had surgery or what the situation was, but she was not
20 available tomorrow morning. And my expectation was to call
21 her regarding the procedure and giving the fetal tissue to
22 Officer Hamlet. Officer Hamlet will testify about the
23 chain of custody. Then we have the gentleman from Richland
24 County Sheriff's Office as to testify as to the analysis of
25 that fetal tissue.

LT. JEFFREY SCOTT - DIRECT EXAMINATION

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1 THE COURT: What are the results of that?

2 MS. BARR: Ninety-nine point nine percent (99.9%)
3 probability of his paternity.

4 THE COURT: All right, so ---

5 MS. BARR: I'm sorry. While we are taking a break
6 now, I will call them and see if there's any possibility
7 they can be here in the morning.

8 THE COURT: Well, you are ready for them now,
9 aren't you?

10 MS. BARR: No, Sir, not now.

11 THE COURT: All right, we will take a break.

12 (Whereupon, a recess was taken from 3:40
13 p.m. until 3:49 p.m..)

14 THE COURT: Bring the Jury in.

15 (Whereupon, the jury enters the courtroom at 3:50
16 p.m..)

17 THE COURT: Ms. Barr?

18 MS. BARR: We call Lt. Jeffrey Scott.

19 WHEREUPON, LT. JEFFREY SCOTT

20 WAS DULY SWORN AND TESTIFIED AS FOLLOWS

21 DIRECT EXAMINATION BY MS. BARR

22 Q. Lieutenant Scott, would you state your full name for
23 me?

24 A. Lieutenant Jeffrey Scott, Williamsburg County
25 Sheriff's Department.

LT. JEFFREY SCOTT - DIRECT EXAMINATION

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1 Q. And, how long have you been employed with the
2 Williamsburg Sheriff's Office?

3 A. For the last 16 years.

4 Q. Okay. And are you a certified police officer?

5 A. Yes, I am.

6 Q. Tell us what you do for the Sheriff's Department?

7 A. Currently, my duties are evidence custodian, crime
8 scene investigator and training officer for the
9 department.

10 Q. Okay, and what does that mean in terms of day-to-day.
11 What do you do there day-to-day?

12 A. Basically, what I do day-to-day is I do training and
13 all the training for our officers. I process crime
14 scenes as called upon to do so by our organization or
15 anybody that needs assistance. And I also collect and
16 store and transport evidence to the crime labs in any
17 cases involving criminal activity.

18 Q. All right. Now, as an employee of the Williamsburg
19 County Sheriff's Department, do you sometimes assist
20 other agencies -- I mean law enforcement agencies, in
21 the collection of evidence?

22 A. Yes, I have.

23 Q. Okay. And, in September of last year, did you assist
24 officer Hamlet with the Kingstree Police Department as
25 it relates to collecting evidence in this case?

LT. JEFFREY SCOTT - DIRECT EXAMINATION

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1 A. Yes, I did.

2 Q. And, she requested your assistance regarding certain
3 DNA evidence?

4 A. Yes, she did.

5 Q. Sir, what day did you meet with her?

6 A. It was on the first of September, 2009.

7 Q. Was in September the first or the second?

8 A. The first.

9 Q. The first?

10 A. Um, according to my records, it was the first.

11 Q. I hand to you what has been marked as State's Exhibit
12 Number 3, and I will ask you if you recognize it?

13 (Whereupon, a document was handed to
14 witness)

15 MR. STROBEL: Okay?

16 A. Yes, ma'am, I do recognize it.

17 Q. And, tell us how it is that you recognize it?

18 A. This is one of the Buccal forms kit is that I use
19 through our department. The top part is the top
20 portion on the outside actually has my handwriting on
21 it and the officer's name and a case number and the
22 subject's name.

23 Q. Okay. What is a Buccal swab; what is that?

24 A. A Buccal swab basically is the tissue swab. It's a
25 kit that comes in two pieces that are used to swab the

LT. JEFFREY SCOTT - DIRECT EXAMINATION

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1 inside teeth of the mouth for Buccal cells and saliva.

2 Q. So that is something used in taking a DNA sample?

3 A. Yes.

4 Q. All right. And that exhibit that I handed you, that
5 contains a Buccal swab from who?

6 A. A Kevin C. Bradley.

7 Q. All right, and that was taken on September first?

8 A. September 1st of 2009.

9 Q. And you took that Buccal swab from the Defendant?

10 A. Yes, I did.

11 Q. And where did that collection take place

12 A. It took place in the Grand Jury room right here on the
13 third floor of the courthouse.

14 Q. So in the -- located next to the room where the jurors
15 are located, was it next-door?

16 A. It was right here, yes, right on the third floor.

17 Q. All right. So the Defendant was in court in
18 September, and you were permitted to take a Buccal
19 swab or a DNA sample from his mouth?

20 A. Yes, ma'am, I was.

21 Q. Okay. Was his lawyer present at the time you
22 collected that sample?

23 A. Yes, he was.

24 Q. Prior to your collection of the Buccal swab from the
25 Defendant, had you ever taken a saliva sample from any

TRINA HAMLET - DIRECT EXAMINATION

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1 other person as far as your investigation duties with
2 the Sheriff's Office?

3 A. Yes, I have taken quite a few.

4 Q. And, when you took this sample, was it consistent with
5 how you are trained to collect this type of evidence?

6 A. Um, yes.

7 Q. All right. I think that's all the questions that I
8 have of you. Please answer any questions that the
9 Defense might ask of you.

10 MR. STROBEL: I have none, Your Honor.

11 THE COURT: Thank you. You may step down.

12 MS. BARR: Judge, we call Trina Hamlet.

13 WHEREUPON, TRINA HAMLET

14 WAS DULY SWORN AND TESTIFIED AS FOLLOWS

15 DIRECT EXAMINATION BY MS. BARR

16 Q. Ma'am, let me get you to state your full name?

17 A. Wilmaterina Hamlet.

18 Q. And where do you work?

19 A. Kingstree Police Department.

20 Q. Are you a certified police officer?

21 A. I am.

22 Q. You went to the South Carolina Criminal Justice
23 Academy in Columbia?

24 A. I did.

25 Q. How long have you been working for the Kingstree

TRINA HAMLET - DIRECT EXAMINATION

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1 Police Department?

2 A. Nine years.

3 Q. Tell the judge and the Jury what it is that you do?

4 A. I work in the schools; I respond to calls; I
5 investigate crimes, just average police officer I
6 guess.

7 Q. Are you assigned to any particular division or are you
8 a part of a patrol or investigations or ---

9 A. I serve wherever I'm needed.

10 Q. Okay, I got you. Now, Officer Hamlet, were you
11 working back on August the 14th of 2009?

12 A. I was.

13 Q. And did you receive a call from Dr. Raymond Allen's
14 office here in Kingstree?

15 A. Yes.

16 Q. You were sent by Central dispatch?

17 A. I was.

18 Q. Okay what was the nature of the call?

19 A. He responded they are because they had a an
20 11-year-old that had just tested positive for
21 pregnancy.

22 Q. Okay. Tell me when you got to Dr. Allen's office did
23 you see ~~Victim~~ **Victim**.

24 A. Yes, I did.

25 Q. Who else, by the time that you got there, was with

TRINA HAMLET - DIRECT EXAMINATION

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- 1 her?
- 2 A. Inside the room it was just ~~victim~~ ^{Victim} and her aunt
- 3 Erica McBride.
- 4 Q. Erica McBride?
- 5 A. Yes.
- 6 Q. Now, do you know how Erica McBride is related to Sadie
- 7 McBride?
- 8 A. That's her daughter.
- 9 Q. And how is Erica related to Dasheia McBride?
- 10 A. Dashiea is Erica's daughter.
- 11 Q. Okay. Can you describe the physical state of and the
- 12 emotional state of ~~victim~~ ^{Victim} when you --- you
- 13 were at the doctor's office?
- 14 A. Very withdrawn, crying, really didn't want to talk.
- 15 Just in shock. Just -- you know.
- 16 Q. About what time did you get out there?
- 17 A. At 3:25.
- 18 Q. P. M.?
- 19 A. Yes, that afternoon.
- 20 Q. And, did you talk with her and ask her about how it
- 21 was that she, being eleven years old, ended up
- 22 pregnant?
- 23 A. I did.
- 24 Q. What did she tell you?
- 25 A. She said that Kevin Bradley had forced having sex with

TRINA HAMLET - DIRECT EXAMINATION

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1 her.

2 Q. Did she indicate to you how long it had been going on?

3 A. She said since the summer before, in 2008.

4 Q. Now, based on her statement and based on the results
5 of her pregnancy test with the doctor, what action did
6 you take as it relates to Kevin Bradley?

7 A. Well, in reference to ~~she~~ ^{Victim} we got her, you know,
8 and she needed a forensic interview at the Durant
9 Center and concurring her admissions there, we got an
10 arrest warrant for the Defendant.

11 Q. You obtained an arrest warrant charging him with
12 criminal sexual conduct with a minor?

13 A. Yes.

14 Q. Now, after he was arrested, at some point, did you
15 also participate in the gathering and collection or
16 transport of certain DNA evidence?

17 A. Yes.

18 Q. Tell us about that?

19 A. On September 1st, myself and Lt. Scott of the
20 Sheriff's Office, Mr. Bradley and his attorney then,
21 Stephen McKnight, met here in the little room for
22 swabbing, and I took collection of it and the very
23 next morning I took it over to the Richland County
24 Sheriff's Department.

25 Q. So Mr. Bradley voluntarily gave a DNA sample?

TRINA HAMLET - DIRECT EXAMINATION

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1 A. Right.

2 Q. And you took that sample to the Richland County
3 Sheriff's Office?

4 A. Yes.

5 Q. For what purpose were you taking this to the Richland
6 County Sheriff's Office?

7 A. We were matching DNA with the fetus tissue and
8 swabbing ~~swabbing~~ **Victim** for DNA matching in reference to
9 that unborn fetus.

10 Q. Your Honor, we would request that that be marked as
11 State's Exhibit Number three.

WHEREUPON, STATE'S EXHIBIT

NUMBER 3 WAS MARKED INTO

EVIDENCE

15 Q. Is that the Buccal swab that was taken from Mr.
16 Bradley back on September the 1st of 09?

17 A. Yes, ma'am.

18 Q. Does that exhibit have your name on it?

19 A. It does.

20 Q. And you took it to where?

21 A. Richland County Sheriff's Office.

22 Q. What time did you arrive in Columbia at the Richland
23 County Sheriff's Office?

24 A. At 10:45 a.m.

25 Q. And, the person who issued that appeared on and sealed

TRINA HAMLET - DIRECT EXAMINATION

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1 by is someone at the Richland County Sheriff's
2 Department?

3 A. Yes, from their evidence.

4 Q. Okay. Now you mentioned receiving tissue from the
5 fetus of ~~Shirley~~ **Victim** pregnancy?

6 A. Yes.

7 Q. When did you get that piece of evidence?

8 A. On August the 28th.

9 Q. On August the 28th?

10 A. The 28th, yes.

11 Q. And, is that the date the procedure was performed?

12 A. Yes, right.

13 Q. And who actually performed that procedure?

14 A. Dr. Grayson.

15 Q. Doctor Grayson is where?

16 A. She's at the County of Richland ---

17 Q. Now, you were actually there at the time the procedure
18 was performed?

19 A. Yes.

20 Q. I will talk to you about the fetal tissue later. Were
21 you there when a DNA sample was gathered from ~~Shirley~~ **Victim**

22 ~~Gathered~~

23 A. Yes.

24 Q. Then there were two types of DNA taken from her,
25 right?

TRINA HAMLET - DIRECT EXAMINATION

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1 A. Right.

2 Q. Describe -- tell us what those two types of DNA were?

3 A. They actually took a swab from her as well and they
4 took blood.

5 Q. And they took blood?

6 A. Yes.

7 Q. You say they. Are you talking about the doctor?

8 A. Yeah, the nurse from the doctor's office.

9 Q. Is that something somebody told you they did or were
10 you actually there when that happened?

11 A. I was there when it happened.

12 Q. Once they drew blood from her and they took the Buccal
13 swab, what did they do with it?

14 A. They gave it to me and I had a container there with
15 ice and immediately when it was drawn they placed it
16 in the ice and gave it to my custody.

17 Q. Now, tell us about how you came into possession of the
18 fetal tissue?

19 A. As soon as the procedure was finished, the doctor came
20 and got me, because she wanted me to -- she wanted to
21 watch the chain of command so she had full custody of
22 it, and she gave it directly to me and we sealed the
23 box together.

24 Q. All right. So you got the fetal tissue from Doctor
25 Bacon?

TRINA HAMLET - DIRECT EXAMINATION

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1 A. From the doctor, yes.

2 Q. And, what did you do with the fetal tissue, the saliva
3 sample and the blood sample from ~~victim~~ **victim**?

4 A. As soon as I got the fetal tissue, I went directly to
5 the Richland County Sheriff's Office.

6 Q. To the same place?

7 A. To the same place.

8 Q. All right. And let me hand you what has been marked
9 for identification purposes as State's Exhibit Number
10 4, and tell me if you recognize this exhibit?

11 (Whereupon, a document was handed to the
12 witness.)

13 A. Yes, ma'am, I do.

14 Q. How is it that you recognize that exhibit?

15 A. These are the items that we received from ~~victim~~ **victim**
16 that I took over to Richland County.

17 Q. When you say the items we're talking about what items,
18 specifically?

19 A. The saliva swabbing and the blood sample.

20 Q. Okay. Based on this particular exhibit, the fetal
21 tissue here that you received, is your name on here
22 anywhere?

23 A. Yes.

24 Q. And did they determine ---

25 A. The date and time that I received it would have been

TRINA HAMLET - CROSS EXAMINATION

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1 at 8:34 in the morning, and it was given to the
2 Richland County Sheriff's Office at 8:51.

3 Q. I beg the Court's indulgence. I think that's all the
4 questions that I have. Please answer the questions
5 that Mr. Strobел may have for you.

6 MR. STROBEL: Are you going to let me see that?

7 MS. BARR: It's up here.

8 (Whereupon, Mr. Strobел observed a document)

9 CROSS EXAMINATION BY MR. STROBEL

10 Q. This says the subject is Kevin Bradley, is that
11 correct?

12 A. Yes.

13 Q. And that is his swab that the deputy sheriff testified
14 that he took?

15 A. Correct.

16 Q. You took one too?

17 A. Did I take one?

18 Q. Is says here on yours: Kevin Bradley test tube and
19 swab? I was just wondering why his name was on there?

20 A. Well, when we take it there, they want to know who all
21 the subjects are and at that time all they needed was
22 just his. And then this would be the next lady that
23 took it when I went there, and she wanted to know who
24 all the subjects that were involved, because I was
25 taking the fetal tissue then at the time.

TRINA HAMLET - CROSS EXAMINATION

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1 Q. So, when it says subject, that is not the person
2 that's in here, it's just people that are involved?

3 A. Right. Yes.

4 Q. I just wanted to clarify that, Your Honor. I have no
5 further questions of her.

6 THE COURT: Anything further?

7 MS. BARR: None, Your Honor.

8 THE COURT: You may step down.

9 MS. BARR: Your Honor, the physician and two
10 witnesses from Richland County Sheriff's Department are
11 unavailable until tomorrow afternoon at 2:00 o'clock, and,
12 so that we would respectfully request that we reconvene the
13 trial tomorrow.

14 All right, is there anything else on this case?

15 MS. BARR: No, Sir, Your Honor.

16 THE COURT: We will take care of any other matters
17 tomorrow morning, and we will be in recess for this case
18 until 2:00-o'clock tomorrow. Thank you, and have a good
19 evening.

20 (Whereupon, the jury is dismissed at 4:14
21 p.m. on Tuesday, January 26, 2010.)

22 THE COURT: All right, anything else on this case
23 today?

24 MS. BARR: No, Sir, Your Honor. With the three
25 witnesses, the state is going to rest after we call those

TRINA HAMLET - CROSS EXAMINATION

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1 witnesses.

2 THE COURT: Any other matters, we will take up
3 tomorrow morning. We will be in recess on this case until
4 2:00 tomorrow.

5 (Whereupon, the court concludes its business
6 for the day at 4:15 p.m.)

7 -- END OF DAY TWO OF TRIAL --

8

TRINA HAMLET - CROSS EXAMINATION

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1 (Whereupon, the court begins its business
2 for the day in the case of The State versus Bradley on
3 Wednesday, January 27, 2010 at 2:00 p. m.)

-- DAY THREE OF TRIAL --

4
5 THE COURT: Have we got them all in here?

6 MS. BARR: Your Honor, Dr. Janice Bacon is here and
7 Dr. Grayson Amick is also here, and they are down the hall.
8 They will be here in just a second.

9 THE COURT: Ms. Barr, are you ready to go?

10 MS. BARR: Yes, Sir. Dr. Amick, he is a forensic
11 scientist from the Richland County Sheriff's Office.
12 He's trying to get a hold of two persons for the chain
13 of custody. Judge, they were subpoenaed for court in
14 Richland County this morning. I talked with the
15 assistant solicitor there, and she said that she would
16 make sure that they were out by 12:00, so I expect them
17 any moment, now. I just wanted to let the Court know
18 that they are not here as of yet. Also, Judge, I have
19 two witnesses. Your Honor, we have one additional
20 witness, William Cedarstaff. He is just testifying as to
21 the chain of custody. And, Your Honor, I would just ask
22 to be allowed to place him on the witness list and ask
23 that the Court poll the Jury as to whether or not they
24 have any ---

25 THE COURT: Any objection to that, Mr. Strobel?

DR. JANICE L. BACON - VOIR DIRE EXAMINATION 180

1 MR. STROBEL: She wants to take her witnesses out of
2 order and do the chain after one of the doctors testifies?

3 THE COURT: And, call a witness who the Jury wasn't
4 qualified as to whether or not they know that particular
5 witness.

6 MR. STROBEL: I'm not following you, I'm sorry.

7 THE COURT: Well, to call a witness who is not on
8 the list ---

9 MR. STROBEL: I have no problem with that.

10 THE COURT: And, the name again of that person?

11 MS. BARR: William Cedarstaff, C-E-D-A-R-S-T-A-F-F.

12 THE COURT: All right. Okay, if you will bring in
13 the Jury, please.

14 (Whereupon, the jury enters the courtroom at
15 2:15 p.m..)

16 THE COURT: All right, welcome back, Ladies
17 and Gentlemen. Continuing with the State's case, day
18 three. Ms. Barr?

19 MS. BARR: Your Honor, may it please the court, I
20 would call Dr. Janice Bacon.

21 THE COURT: Dr. Bacon.

22 WHEREUPON, DR. JANICE L. BACON

23 WAS DULY SWORN AND TESTIFIED AS FOLLOWS

24 VOIR DIRE EXAMINATION BY MS. BARR

25 Q. All right. Dr. Bacon, thank you for being here today.

DR. JANICE L. BACON - VOIR DIRE EXAMINATION

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1 Now, you are from Columbia?

2 A. Yes.

3 Q. Please state your full name for us?

4 A. Janice L. Bacon.

5 Q. Ma'am, tell me where you are employed?

6 A. I am employed by the University of South Carolina with
7 the Department of Obstetrics and Gynecology.

8 Q. Okay, and you are a medical doctor?

9 A. Yes.

10 Q. And when did you receive your medical degree?

11 A. I graduated from the University of South Florida
12 School of Medicine in 1979.

13 Q. Okay. And, can you give the Jury a little information
14 about your background and training, your education to
15 be a obstetrician?

16 A. Well, in medical school we are exposed to a variety
17 of critical fields of medicine so that we can make
18 our choice. And at the end of medical school we
19 choose the career that we want go into and then we
20 go into a residency. So when I graduated from medical
21 school I moved to Columbia, South Carolina to do a
22 resident in obstetrics and gynecology which is four
23 years of training. During my residency, I learned and
24 participated in all aspects of obstetrics and
25 gynecology. My special interest in obstetrics and

DR. JANICE L. BACON - VOIR DIRE EXAMINATION

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1 gynecology that has developed over the years, is that
2 of pediatrics and adolescent gynecology. When I
3 finished my residency training, I was hired as a
4 faculty member by the Department of OB/GYN, and I
5 have stayed with them throughout my career and I am
6 currently the chairman of the department.

7 Q. Tell me what is the field of obstetrics and
8 gynecology. What does that mean?

9 A. That means that we take care of women's
10 reproductive system. We take care of them when
11 they are pregnant. We take care of pregnancies
12 which are good, which are bad, which are in the
13 right place such as the uterus or which are in
14 the tubes. We take care of their periods. We
15 provide family planning services. We do
16 hysterectomies, help to manage pre-malignant
17 conditions of the genital tract, all the areas
18 pertaining to the reproductive tract in women.

19 Q. Now, Dr. Bacon, have you ever testified before in
20 court?

21 A. Yes.

22 Q. And have you testified as an expert witness?

23 A. Yes. I have testified as a physician in sexual
24 assault cases previously.

25 Q. Your Honor, at this time we would tender Doctor

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1 Bacon as an expert in the field of obstetrics and
2 gynecology.

3 THE COURT: Mr. Strobel?

4 MR. STROBEL: No objection.

5 THE COURT: She is an expert in the field.

6 DIRECT EXAMINATION BY MS. BARR

7 Q. Thank you, Your Honor. Doctor Bacon, you saw the
8 victim in this case, ~~the victim~~ ^{Victim}, is that correct?

9 A. Correct.

10 Q. Tell me when was the first time that you saw her?

11 A. Her first visit was August 26th, 2009 when she came to
12 Columbia and saw me in our office.

13 Q. And what was the reason for her visit?

14 A. She was coming to see us because she had sustained
15 sexual assault and was found to have a pregnancy of
16 unknown gestational age, and the need would be
17 consulted to evaluate her for how far along the
18 pregnancy was, and to talk with her about the
19 pregnancy options, I mean, for the termination of the
20 pregnancy.

21 Q. Okay. Do you recall who came with her to that visit
22 on the 26th of August?

23 A. Yes, the Sheriff's officer and I believe it was her
24 grandmother.

25 Q. Okay. All right, now you indicated that you have

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1 concentrated some of your practice in the field of
2 adolescent gynecology?

3 A. Yes.

4 Q. Tell us about that, what that means?

5 A. What that means is through practice, educational
6 training working with other physicians who have that
7 as a special interest that I see a great number of
8 patients. My partner and I probably see the majority
9 of adolescents and pediatric patients who have
10 problems with their reproductive tract in the
11 four-county area surrounding Columbia.

12 Q. Okay. Now, when ~~Victim~~ and her grandmother came to
13 see you on August the 26th, tell me what you did while
14 they were there. What did you do for her and what
15 types of diagnostic tests did you administer?

16 A. We did a physical exam, and we did an ultrasound so
17 that we could look at her uterus, ovaries and to
18 determine that she was pregnant, where the pregnancy
19 was located in her uterus and to determine the
20 gestational age.

21 Q. Were you able to do that?

22 A. Yes.

23 Q. Now, we have heard about women who are pregnant and
24 heard that, you know, that there is a machine called
25 an ultrasound that you all use to determine the

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1 gestational age of the fetus. Was that used here?

2 A. Yes.

3 Q. Were you able to determine the gestational age of
4 ~~Victim~~s fetus?

5 A. It was thirteen weeks, five days, plus or minus a few
6 days, and the first trimester ultrasound is the most
7 accurate.

8 Q. Okay. So, on August the 26th of 2009 you estimated
9 that she was thirteen weeks and five days into her
10 pregnancy?

11 A. Yes.

12 Q. So if we do the calculations that would put her date
13 of conception around what time?

14 A. That would have been about the third week in May
15 around 5/21/09 or 5/22/09.

16 Q. At 5/21/09 or 5/22/09, that fell on what day of the
17 week?

18 A. I believe that fell on a Friday or a Saturday.

19 Q. Okay. Now, after you used the ultrasound, tell me
20 what if anything else you did for ~~Victim~~?

21 A. Well, we sat down with ~~Victim~~ and her grandmother
22 with the police officer present, and we discussed the
23 plans for the pregnancy and plan was made that day to
24 proceed with terminating the pregnancy by what we call
25 a D and C, which stands for dilatation and curettage.

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1 That's an outpatient procedure in the operating room
2 where the cervix is gently opened and the pregnancy
3 tissue is removed.

4 Q. And, you would have subsequently saw ~~the~~ ^{victim} for the
5 D and C procedure on what date?

6 A. We had performed the procedure on August 28th.

7 Q. So two days later?

8 A. Yes.

9 Q. And, I think that was a Friday?

10 A. Yes.

11 Q. And, what time did she arrive at the hospital?

12 A. In general, patients arrive two hours before, so I
13 don't have her exact time of arrival, but it would
14 have been between 6:00 and 7:30.

15 Q. In the morning?

16 A. Yes.

17 Q. Okay, was her grandmother with her?

18 A. Yes.

19 Q. You mentioned law enforcement was there on the 26th.
20 Did law enforcement also accompany the child and
21 grandmother to the procedure on the 28th?

22 A. Yes.

23 Q. And by law enforcement you talking about officer Trina
24 Hamlet?

25 A. Yes.

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1 Q. All right. And how long did the procedure actually
2 take?

3 A. The procedure itself takes only ten or 15 minutes, but
4 the time in the operating room involves going to sleep
5 and waking up. In addition to that, we did do a
6 pelvic exam. We examined her genitalia, her vagina,
7 her cervix. We tested her for sexually transmitted
8 diseases, gonorrhea and chlamydia by taking a swab
9 from the entrance to the cervix. And, then we
10 performed the D and C procedure. Following that, we
11 checked with the ultrasound to make sure everything
12 was normal and then she was gently wakened up and then
13 taken to the recovery room.

14 Q. And, there were no complications?

15 A. No.

16 Q. Now, following the procedure, did you meet with law
17 enforcement?

18 A. Yes.

19 Q. That was again Officer Hamlet?

20 A. Yes.

21 Q. What was the purpose of meeting with her following the
22 proceeding?

23 A. The plan was that a small portion of the tissue
24 would go to the pathology laboratory to make sure
25 that there were no abnormal cells. The test for

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- 1 gonorrhea and chlamydia, likewise went into
2 different areas of the laboratory to be done.
3 And, then the other products of conception were
4 carefully labeled, and a chain of custody was
5 developed where I kept these products in my hand
6 and went straight from the operating room to the
7 officer, and we began the chain of custody.
- 8 Q. Just so we're clear and we know exactly what we've
9 talked about, when you say, the products of
10 conception, you're talking about fetal tissue, the
11 pregnancy ---
- 12 A. The pregnancy tissue and portions of the fetus and
13 placenta.
- 14 Q. All right, so, those were removed from ~~subject~~ ^{Victim} by you
15 and given to Officer Hamlet?
- 16 A. Yes.
- 17 Q. You also indicated that you tested ~~subject~~ ^{Victim} for
18 certain sexually transmitted diseases?
- 19 A. Yes.
- 20 Q. Did you later come to learn that she had, in fact,
21 contracted a sexually transmitted disease?
- 22 A. Yes. Her test for gonorrhea was positive.
- 23 Q. She was treated for that?
- 24 A. She was treated, and we contacted the family and she
25 was treated and subsequently reevaluated September 29

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1 to make sure the treatment was adequate and her test
2 was now negative.

3 Q. I beg the Court's indulgence. Dr. Bacon, I believe
4 that's all the questions that I have. Please answer
5 the questions Mr. Strobel might have.

6 CROSS EXAMINATION BY MR. STROBEL

7 Q. Doctor, did you find, as was previously testified,
8 that she likewise had genital warts as another?

9 A. I did not see visual evidence of genital warts.

10 Q. Thank you. I have nothing further.

11 MS. BARR: I have a follow-up question, if I may,
12 for Dr. Bacon.

13 REDIRECT EXAMINATION BY MS. BARR

14 Q. How is it possible that a person be infected with
15 with genital warts at one point in time and two
16 weeks later you not see visual evidence of it?

17 A. Yes. Um, genital warts are caused by a virus called
18 human papilloma virus. That virus can enter the
19 female genital tract on the vulva or the external
20 genitalia, the vagina or the cervix. What causes the
21 warts to appear is the individual's immune system
22 causing the virus and its manifestation to disappear.
23 It takes, you know, different lengths of time in
24 different patients and also the size of the appearance
25 of the lesions -- it's a lot easier to get rid of a

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1 small lesion than a very large lesion by some
2 people's immune system.

3 Q. Thank you, Dr. Bacon. That's all my questions.

4 THE COURT: Anything further.

5 MS. BARR: Nothing further.

6 THE COURT: All right thank you. You may step
7 down.

8 MS. BARR: Your Honor, may we approach the Bench?

9 THE COURT: Yes.

10 (Whereupon, a bench conference was held in
11 the presence of the jury, but out of their hearing range.)

12 THE COURT: Ladies and Gentlemen, we need to take
13 up a matter outside of your presence. If you will please
14 go to the Jury room for a moment, and please do not discuss
15 the case.

16 (Wherefore the jury exited the courtroom at
17 2:28 p.m.)

18 MR. STROBEL: If you will tell me what she said, Your
19 Honor. I understand she wanted a break so she could go see
20 what happened to the two witnesses who were supposed to be
21 here for the chain of custody.

22 THE COURT: All right.

23 MS. BARR: When I called before, I got someone from
24 the Sheriff's Office, and, Judge, if you would give me just
25 a few minutes ---

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1 THE COURT: All right we will take a short recess.

2 MS. BARR: Thank you, Your Honor.

3 (Whereupon, a recess was taken from 2:29
4 p.m. until 2:41 p.m..)

5 THE COURT: You may bring the Jury in.

6 (Whereupon, the jury enters the courtroom at
7 2:42 p.m..)

8 THE COURT: Okay the Jury is back. You may
9 proceed, Ms. Barr.

10 MS. BARR: I call Tina Goff, Your Honor.

11 WHEREUPON, TINA GOFF

12 WAS DULY SWORN AND TESTIFIED AS FOLLOWS

13 DIRECT EXAMINATION BY MS. BARR

14 Q. Ma'am, would you state your name for me?

15 A. Tina Goff.

16 Q. Spell your last name?

17 A. G-O-F-F.

18 Q. And, Ms. Goff, if you will tell the Jury, you were
19 subpoenaed by the State?

20 A. Yes, ma'am, I was.

21 Q. Tell us where you work?

22 A. I work with the Richland County Sheriff's Department.

23 Q. How long have you worked there?

24 A. Seventeen years.

25 Q. And what is it that you do there?

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1 A. I work in the evidence room.

2 Q. And give us an idea of what you do everyday when you
3 work in the evidence room at the Sheriff's Office?

4 A. Our job is to accept, store and maintain the evidence
5 as well as the chain of custody of the evidence. We
6 need to be able to show when we received evidence;
7 when we got it in; what it is and then every time it's
8 been signed in and out of the evidence room and then
9 when it's been released.

10 Q. Now, have you all, your agency, had occasion to assist
11 other law-enforcement agencies in the gathering and
12 securing of evidence on criminal cases?

13 A. Yes, ma'am.

14 Q. All right. And, back in August of 2009, did you
15 assist the Kingstree Police Department in the securing
16 of certain evidence?

17 A. Yes, ma'am.

18 Q. Evidence regarding which subject?

19 A. Kevin Bradley.

20 Q. Did you have any background information regarding
21 Kevin Bradley in terms of birth date or anything along
22 those lines?

23 A. I was given a birth date of [REDACTED]/1989.

24 Q. So, back then when you assisted the Police Department
25 in this case, he would have been twenty years old?

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1 A. He was twenty yes, ma'am.

2 Q. And, what did you receive?

3 A. I received, um, one tube of blood from ~~Victim~~
4 ~~Victim~~, a Buccal swab from ~~Victim~~s and some
5 fetus tissue.

6 Q. Okay. And, who did you receive those items from?

7 A. An Officer Hamlet.

8 Q. When did you get them?

9 A. I received them on August 28th of 2009.

10 Q. At about what time?

11 A. About 9:14 in the morning.

12 Q. Ma'am, I'm going to hand you what's been marked for
13 identification purposes as State's Exhibit Number 4.
14 Tell me if you recognize that particular exhibit?

15 (Whereupon, an item was shown to witness)

16 A. I do.

17 Q. Okay. How is it that you recognize it?

18 A. Well, this is our evidence bag that we use, and it
19 has our case number that we generate in our evidence
20 room for when we are assisting outside agencies. It
21 also has my signature and date at the bottom of when
22 I accepted it, and it also has our computer
23 authorized computer generated ID barcodes on the
24 back.

25 Q. And what is actually in that package you all

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1 acknowledge receipt of?

2 A. The bag says a tube of blood from ~~Victim~~
3 and a Buccal swab from ~~Victim~~.

4 Q. And you indicated that you also acknowledged
5 receiving what you believed to be fetal tissue?

6 A. Yes, ma'am.

7 Q. Now, once you received that package -- well, first
8 of all, -- strike that -- before you received it,
9 can you tell me the kind of condition the package
10 was in when you received it?

11 A. It was packaged inside this (indicating) envelope
12 that's inside here and it was sealed. We asked
13 Deputy Hamlet to package it in ours and she sealed
14 it.

15 Q. Okay. She did that in your presence?

16 A. She did.

17 Q. Tell me what types of security measures do you all
18 employ to make sure that evidence, particularly DNA
19 evidence is not tampered with in any way?

20 A. We have about ten security measures in place for the
21 evidence room. We have cameras, motion detectors,
22 magnetic strips on our doors and the obvious key lock
23 system. If you're not hired as an evidence
24 personnel staff or part of the supervisory staff
25 you are not allowed in the evidence room.

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1 Q. All right. Now how many persons work in the
2 evidence room?

3 A. Right now, there are six of us.

4 Q. That day in August of 2009, would it have been about
5 the same amount?

6 A. No, ma'am, there were three.

7 Q. Three folks then -- okay. All right. Now, it
8 appears that -- I'm sorry -- let me ask it a
9 different way. Was this package opened after it
10 reached the Richland County Sheriff's Office?
11 You indicated that Deputy Hamlet sealed it in your
12 present, correct?

13 A. She did.

14 Q. Was it opened for analysis after it reached the
15 Richland County Sheriff's Office?

16 A. It was only opened after it was chained over to Dr.
17 Amick.

18 Q. And Dr. Amick is the gentleman back there (indicating)
19 with a suit on, is that correct?

20 A. Yes.

21 Q. And that would be the only time that it was opened?

22 A. Yes. Yes, ma'am.

23 Q. So, does the package look any differently after Dr.
24 Amick did his analysis?

25 A. Only around the part where he broke the seal and he

TINA GOFF - DIRECT EXAMINATION

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1 resealed it. Other than that, it's in the same
2 condition.

3 Q. All right. Ms. Goff, I believe that's all I have for
4 you. Please answer any questions the Defense may
5 have.

6 MR. STROBEL: No questions.

7 THE COURT: Okay, thank you very much.

8 MS. BARR: Judge, the next witness we would have is
9 Mr. William Cedarstaff, and he is the witness that I spoke
10 with the Court about.

11 THE COURT: All right, Ladies and Gentlemen, when
12 the case was called, initially, the name of William
13 Cedarstaff was not called as a prospective witness. If
14 any of you know Mr. Cedarstaff - if any of you know him,
15 please let me know by raising your hand. All right, no
16 one appears to know him. Where are you from Mr.
17 Cedarstaff?

18 MR. CEDARSTAFF: Virginia, Sir.

19 THE COURT: What part of Virginia?

20 MR. CEDARSTAFF: Portsmouth.

21 THE COURT: Portsmouth, Virginia, do you all know
22 him? Nobody knows him. All right, very good.

23 WHEREUPON, WILLIAM CEDARSTAFF

24 WAS DULY SWORN AND TESTIFIED AS FOLLOWS

25 DIRECT EXAMINATION BY MS. BARR

WILLIAM CEDARSTAFF - DIRECT EXAMINATION

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1 Q. All right, Mr. Cedarstaff, good afternoon?

2 A. Good afternoon.

3 Q. If you would at this time introduce yourself to the
4 ladies and gentlemen of the Jury, and tell them what
5 it is that you do and where you work?

6 A. My name is William Cedarstaff. I work at Richland
7 County Sheriff's Department as an evidence technician.

8 Q. All right. So you work with with Ms. Goff?

9 A. That is correct.

10 Q. How long have you worked for Richland County?

11 A. Two and a half years.

12 Q. And, sir, did you assist the Kingstree Police
13 Department in collecting and storing evidence in
14 connection with the case of The State versus Kevin
15 Bradley?

16 A. Yes, ma'am.

17 Q. And, I'm going to hand you, Mr. Cedarstaff, what has
18 been marked for identification purposes as State's
19 Exhibit 3, and I ask that you tell me if you recognize
20 it?

21 (Whereupon, an item was shown to witness)

22 A. Yes, ma'am.

23 Q. How is it that you recognize it?

24 A. It's one of our evidence bags. It has my initials and
25 date on the bottom of when I received it from Officer

WILLIAM CEDARSTAFF - DIRECT EXAMINATION

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1 Hamlet.

2 Q. What is that?

3 A. It is a Buccal swab from Bradley, Kevin.

4 Q. Okay, and you received it from whom?

5 A. From Corporal W. Hamlet.

6 Q. Okay, now tell me when you received it?

7 A. This was on the, uh, September 2nd of 2009 at
8 approximately 10:45 hours.

9 Q. All right. And if you would tell me, kind of describe
10 the packaging of the items when you receive them?

11 A. It was packaged in the same envelope that it's in and
12 we had her put it in one of our envelope bags and seal
13 it.

14 Q. Okay. And that was done in your presence?

15 A. Correct.

16 Q. And, you were in the court, of course, when Ms. Goff
17 testified. Do you concur with her testimony regarding
18 the security measures for the storing of DNA evidence
19 by your agency?

20 A. Yes, ma'am.

21 Q. All right. Now, after what's been marked as State's
22 Exhibit Number 3 entered the evidence room, was it
23 opened by anyone?

24 A. Yes, it was.

25 Q. By whom?

DR. GRAYSON AMICK - VOIR DIRE EXAMINATION

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1 A. It would have been Doctor Amick.

2 Q. And it would have been opened only by Dr. Amick?

3 A. That was who it was chained out to.

4 Q. All right. Now, sir, the packaging that that
5 particular exhibit has, is it different in any way
6 from when you first received it from Corporal Hamlet
7 on September 2nd?

8 A. Yes, ma'am.

9 Q. Okay, how is that?

10 A. After it was signed out to Dr. Gray, he opened it and
11 then he resealed it and initialed it.

12 Q. Sir, that's all the questions I have. Please answer
13 any questions the Defense might have for you.

14 MR. STROBEL: I have none.

15 THE COURT: Thank you, sir.

16 MS. BARR: Judge, we would call Dr. Grayson Amick.

17 THE COURT: If you would come forward, please

18 WHEREUPON, DR. GRAYSON AMICK

19 WAS DULY SWORN AND TESTIFIED AS FOLLOWS

20 VOIR DIRE EXAMINATION BY MS. BARR

21 Q. All right, Dr. Amick, good afternoon?

22 A. Good afternoon.

23 Q. Sir, you were subpoenaed to testify in this case, is
24 that correct?

25 A. I was.

DR. GRAYSON AMICK - VOIR DIRE EXAMINATION

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1 Q. And, tell us a little bit about where you work and
2 what you do?

3 A. I am currently working at the Richland County
4 Sheriff's Department, and I am the DNA technical
5 leader, or the supervisor of the forensic DNA Crime
6 Lab.

7 Q. How long have you worked for the Sheriff's Office?

8 A. I have worked for the Sheriff's Office for, I believe
9 six years in March -- five years in March -- I'm
10 sorry. 2004 is when I started.

11 Q. Would you explain what you mean when you talk about
12 your career in the Richland County Sheriff's Office?

13 A. Well, my background is I have a Biology Degree in
14 1989, I have a Ph.D. in Biochemistry four years
15 later. I worked at the South Carolina Law Enforcement
16 Division, commonly known as SLED, for eleven years. I
17 was trained by court qualified experts in the fields
18 of forensic serology and forensic DNA analysis. Upon
19 being hired at the Sheriff's Department in 2004, I
20 established a DNA laboratory there and have worked
21 there since, processing evidence, trying to develop
22 DNA profiles from the evidence and standards, and
23 match the two under their own type of case.

24 Q. All right. Now, you indicated that you started at the
25 Sheriff's Department in 2004 and you all developed a

DR. GRAYSON AMICK - DIRECT EXAMINATION

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1 DNA lab?

2 A. That's correct.

3 Q. That lab is fully accredited?

4 A. It is. It's accredited by the American Society of Lab
5 Directors, which is actually an international
6 accreditation body.

7 Q. Sir, have you had occasion in your career with the
8 Sheriff's Office and with SLED to testify as an expert
9 witness in court?

10 A. Yes, I have.

11 Q. Has it been in the Circuit Courts of this state?

12 A. Yes.

13 Q. And, about how many times?

14 A. Upwards of sixty times.

15 MS. BARR: Your Honor, at this time, we would tender
16 Dr. Amick as an expert in the field of forensic DNA
17 analysis.

18 MR. STROBEL: No objection.

19 THE COURT: All right, he is an expert in the field
20 of forensic DNA analysis.

21 MS. BARR: Thank you, Your Honor.

22 DIRECT EXAMINATION BY MS. BARR

23 Q. Dr. Amick, tell us what is meant by DNA. We hear that
24 all the time. Explain to us what that means?

25 A. It's basically the blueprint for human life, or any

DR. GRAYSON AMICK - DIRECT EXAMINATION

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1 life for that matter, so you -- you get half of it
2 from your mother and you get half from your dad, it's
3 inherited that way. It is unique to each individual
4 except for identical twins. Identical twins share the
5 same DNA. But it makes us who we are. So it can be
6 used or exploited to identify human remains or human
7 beings or identify in the medical field certain things
8 about humans for diagnosis and stuff like that.

9 Q. Now, sir, have you, during the course of your career,
10 assisted various law enforcement agencies throughout
11 the state?

12 A. Yes, I have.

13 Q. And, as a matter of fact, I believe in October you
14 provided services to the Kingstree Police Department
15 in the case of the State versus Kevin Bradley, is that
16 right?

17 A. Yes, we did.

18 Q. And, tell the Jury what items of evidence you received
19 in assisting the Kingstree Police Department in this
20 case?

21 A. Okay, I received item numbers one through four which
22 were blood from ~~Victim~~ ^{Victim}, Buccal swab from
23 ~~Victim~~ ^{Victim} -- which is a swab of the mouth --
24 fetal issue, and a Buccal swab from Kevin Bradley.

25 Q. And, sir, can you explain to the Jury just how those

DR. GRAYSON AMICK - DIRECT EXAMINATION

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1 items were packaged when you received them?

2 A. Any evidence I receive, I check the integrity of the
3 packaging, so it has to be in a sealed condition,
4 whether it be a heat-sealed pouch -- which in this
5 case I think it's how they were sealed, or in any kind
6 of envelope or box with evidence tape with their
7 initial and the date on it.

8 Q. Now, sir, do you recognize what has been marked as
9 State's Exhibits 3 and 4?

10 (Whereupon, a items were shown to witness)

11 A. I do.

12 Q. All right, tell the Jury how you recognize those
13 objects.

14 A. They are the Richland County Sheriff's Department's
15 heat-sealed bags, evidence bags, and they also bear my
16 initials and date of when I cut them open and resealed
17 them.

18 Q. What date was that?

19 A. One of them is October 1st of 2009, and the other one
20 is October the 5th of 2009.

21 Q. And you -- for what reason did you cut those packages
22 or items?

23 A. Um, to access the evidence which was inside.

24 Q. And what were you able to evaluate?

25 A. What we do in this case -- and both of these are

DR. GRAYSON AMICK - DIRECT EXAMINATION

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1 standards from the people involved in this case, so I
2 would analyze those in separate time and space, which,
3 basically, I would not have them open at the same
4 time. It's a procedural matter. I open them up,
5 access the -- in this case swabs, like Q-tips, make a
6 cutting of the swab and do my analysis of that portion
7 of the evidence. I would do that for each item.

8 Q. Tell the Jury what the results of your analysis was as
9 it equates to the fetal tissue, the Buccal swab for
10 ~~child~~ ^{Victim} and the Buccal swab from Kevin
11 Bradley?

12 A. As I put on my report, the DNA profile developed from
13 item three which was the fetal tissue and which for
14 the reports say is called child, it's consistent with
15 being an offspring of ~~child~~ ^{Victim} mother, and
16 Kevin Bradley, the alleged father.

17 Q. Now, what are the statistical probabilities that the
18 Defendant is the biological -- was the biological
19 father of the, quote, unborn child?

20 A. What we do is we quote the two main racial groups, so
21 African-American and Caucasian, in our statistics.
22 So, in the African-American population group, it is
23 1.8 million times more likely to see these genetic
24 results if the alleged father was the true biological
25 father than if a random man was the father. And in

DR. GRAYSON AMICK - DIRECT EXAMINATION

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1 the Caucasian population that would be 12 million
2 times more likely.

3 Q. And with those genetic results obtained, what's the
4 probability of paternity?

5 A. Well, that is the probability of paternity -- we also
6 express it in terms of kind of an exclusion, and that
7 is with the genetic results obtained greater than
8 ninety-nine point nine, nine, nine percent (99.999%)
9 of randomly tested individuals, or men, would he
10 excluded as potential contributors. So, you're
11 basically making a statement here basically excluding
12 everybody else in the second part of that statement.

13 Q. Ninety-nine point nine, nine, nine, nine percent
14 (99.9999%) of every other man in the world would be
15 excluded by that?

16 A. Ninety-nine point nine, nine, nine, nine percent
17 (99.9999%) is what has been published, correct.

18 Q. Now, in those sealed pouches, is there a container
19 where the fetal tissue was?

20 A. No, that is not in those sealed packages, no.

21 Q. What happened to that container?

22 A. I'm not sure I would have returned it. It's either in
23 the freezer in my laboratory or in the freezer in the
24 evidence room or back to the agency.

25 Q. Okay. Your Honor, we would move exhibits 3 and 4 in

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1 evidence.

2 THE COURT: So, what says the Defense?

3 MR. STROBEL: No objection.

4 THE COURT: It's admitted without objection.

5 WHEREUPON, STATE'S EXHIBITS

6 NUMBERS 3 AND 4 WERE ADMITTED

7 INTO EVIDENCE:

8 Q. Dr. Amick, that's all the questions that I believe I
9 have. Please answer any questions Mr. Strobel might
10 have for you.

11 CROSS EXAMINATION BY MR. STROBEL

12 Q. Doctor Amick, I'm just curious about one aspect of
13 your testing. They drew blood from ~~_____~~ ^{Victim},
14 and that was sent to you. According to your document,
15 you never tested that; is that correct? You only
16 tested the swab that's from her?

17 A. That's correct.

18 Q. Are we to assume then that a saliva swab would be more
19 accurate than -- excuse me -- that blood -- the saliva
20 would be more accurate than blood from her?

21 A. No, that is not a correct assumption. It's just a
22 matter of preference in handling the Q-tip swab versus
23 the steps in handling of blood to group blood.

24 Q. Did you ever test her blood?

25 A. No. There was no analysis performed on the blood.

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1 Q. Thank you.

2 REDIRECT EXAMINATION BY MS. BARR

3 Q. Just a follow-up. Doctor Amick, can a person's DNA --
4 can a person's DNA profile be found in their saliva?

5 A. Yes, that's why we use the Buccal swab.

6 Q. And in their blood as well?

7 A. Yes, that's correct.

8 Q. Would you expect that the results would be different
9 if you tested the blood as opposed to the saliva?

10 A. No. It would be the same DNA profile. Every body
11 fluid: blood, semen, saliva, whatever the type,
12 would give the same DNA profile and the same DNA.

13 Q. Okay. Thank you.

14 THE COURT: Anything further?

15 MR. STROBEL: No, Sir.

16 THE COURT: Thank you, Doctor.

17 MS. BARR: Your Honor, that concludes the testimony
18 for the State. With that testimony, the State would rest.

19 THE COURT: All right. Ladies and Gentlemen, that
20 is the State's case. Any other matters involved prior to
21 proceeding?

22 MR. STROBEL: I have a motion to make your honor.

23 THE COURT: All right. Ladies and Gentlemen, we
24 will need to have you take another break, but you can talk
25 about something else while you're in break.

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1 (Whereupon, the jury retired to the jury
2 room at 3:04 p. m.)

3 MOTION

4 THE COURT: Yes, sir, Mr. Strobel?

5 MR. STROBEL: Your Honor, we make a motion for a
6 directed verdict of not guilty as it relates to count two
7 in that the State has not produced sufficient testimony as
8 to warrant this matter proceeding.

9 THE COURT: All right, Ms. Barr?

10 MS. BARR: Your Honor, as to the indictment charging
11 the Defendant with criminal sexual conduct with a minor in
12 the second degree, it alleges that at some point between
13 February 5th of 2009 and August the 14th of 2009, the
14 Defendant engaged in sexual battery with the victim,
15 ~~Victim~~ who was under the age of 14. And, Judge,
16 during that time period, it is uncontradicted that the
17 child was eleven years old. The child testified that,
18 during that time the Defendant having sex with her was the
19 weekend of July the Fourth of 2009. The doctor testified
20 that, at the time of the D and C procedure that the child
21 was thirteen weeks and five days pregnant, and that would
22 have can resulted in conception of the child sometime
23 before the third week of May of 2009. So, Judge, we would
24 submit that, clearly there is evidence in the record and
25 that the Defendant engaged in sexual battery with this

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1 child while she was age eleven during the time frame
2 specified in the indictment.

3 THE COURT: I find that there is adequate evidence
4 from which the Jury can conclude that the Defendant is
5 guilty of both count one and count two, and I deny the
6 motion.

7 MR. STROBEL: I didn't make the motion as to count
8 one. Um, but that's okay if you jumped the gun and assumed
9 I was.

10 THE COURT: Well, there is an assumption -- the
11 rules required as a matter of law a directed verdict on any
12 count on any indictment ---

13 MR. STROBEL: Okay.

14 THE COURT: --- where the evidence is insufficient.
15 I find that, based on the evidence presented, that the Jury
16 can conclude that he is guilty of both counts, and I deny
17 your motion as to count two and I rule as a matter of law
18 as to count one that the evidence is sufficient for the
19 Jury's consideration of guilt or innocence as to count one
20 and count two. Anything further before we proceed with the
21 Defense?

22 MS. BARR: Nothing from the State, Your Honor.

23 THE COURT: All right. Mr. Strobel, have you
24 conferred with your client as to whether or not he should
25 testify.

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1 MR. STROBEL: Not yet, Your Honor.

2 THE COURT: Do you need a moment to confer with him
3 concerning that?

4 MR. STROBEL: I -- I wanted to wait until after I had
5 presented my case and then talk to him, but if you want me
6 to now I reckon I can.

7 THE COURT: Well, sir -- if you're otherwise ready
8 to proceed with other matters, we can proceed and address
9 it.

10 MR. STROBEL: One my first witnesses is ready. I
11 sent my secretary for her. She's supposed to be up here in
12 the waiting area.

13 THE COURT: All right, no problem.

14 MS. BARR: Your Honor, Mr. Strobel, briefly -- Judge,
15 I don't necessarily know if the Defense listed any
16 witnesses on Monday and, to that extent they are not on our
17 list, I would I ask ---

18 MR. STROBEL: The witness is on your list.

19 MS. BARR: Then that's fine.

20 THE COURT: Okay. All right, we will be at ease
21 for a moment or two getting ready for the Defense.

22 (Whereupon, a brief recess was taken from
23 3:04 p.m. until 3:18 p.m..)

24 THE COURT: All right, bring the Jury in.

25 MR. STROBEL: Your Honor, the Defendant has asked to

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1 go to the restroom?

2 THE COURT: All right, hold up a minute while he
3 gets a chance to go to the restroom.

4 (Whereupon, the jury enters the courtroom at
5 3:18 p.m..)

6 THE BAILIFF: You may be seated.

7 PRESENTATION OF THE DEFENDANT'S CASE

8 THE COURT: All right, Madam Forelady and members
9 of the Jury, you have heard the State's case. It is now
10 the Defense's turn. Mr. Strobel?

11 MR. STROBEL: Yes, Your Honor. We call Dasheia
12 McBride to the stand.

13 THE COURT: Ms. McBride, if you will come forward.

14 WHEREUPON, DASHEIA McBRIDE

15 WAS DULY SWORN AND TESTIFIED AS FOLLOWS

16 DIRECT EXAMINATION BY MR. STROBEL

17 Q. State your name for the record?

18 A. Dasheia McBride.

19 Q. And, where do you live Ms. McBride?

20 A. Here in Kingstree.

21 Q. Where.

22 A. ~~Two hundred and thirty-four, East Main Street, Kingstree, South Carolina.~~

23 Q. I'm sorry?

24 A. ~~Two hundred and thirty-four, East Main Street, Kingstree, South Carolina.~~

25 Q. ~~Apartment four?~~

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- 1 A. F.
- 2 Q. And you are the mother to Adoria?
- 3 A. Adoria, yes, sir.
- 4 Q. Okay. And you were, I understand, subpoenaed by the
- 5 State to testify, one of their long list of witnesses,
- 6 is that correct?
- 7 A. Yes, sir.
- 8 Q. Okay. But you did not testify, is that correct?
- 9 A. Yes, sir.
- 10 Q. Okay. Now, I hear your last name is McBride. Are you
- 11 any kin to the lady we heard testify, yesterday I
- 12 think it was, Sadie McBride?
- 13 A. Yes, sir.
- 14 Q. And what relation are you to her?
- 15 A. My Grandmother -- I'm her grandchild.
- 16 Q. Oh, you are her grandchild?
- 17 A. Uh-huh.
- 18 Q. Well, ~~she~~ ^{Victim} also states that that is her
- 19 grandmother, is that correct, or how does that work?
- 20 A. Well, she -- my grandma had got custody over her.
- 21 Q. Okay. Is she any blood kin to the McBride family?
- 22 A. No, sir.
- 23 Q. Okay. But she refers to her as her grandmother,
- 24 right?
- 25 A. Yes, sir.

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1 Q. And Mrs. Sadie, your grandmother, has raised her since
2 she was a small child?

3 A. Two-years-old, yes, sir.

4 Q. Two-years-old?

5 A. Uh-huh.

6 Q. Okay. And we heard testimony further from ~~████████~~ ^{victim} --
7 I hope I pronounce that correctly either way -- that
8 there was a -- that Adoria's father died?

9 A. Yes, sir.

10 Q. What was his name?

11 A. Durell McCrae.

12 Q. Okay, Durell McCrae?

13 A. Yes, sir.

14 Q. And how old was he?

15 A. When he passed, he was thirty-five.

16 Q. Thirty-five?

17 A. Yes, sir.

18 Q. And, when did he die?

19 A. At the end of May or sometime in June.

20 Q. His name is Durell?

21 A. Durell.

22 (Whereupon, a document was shown to witness)

23 Q. Would this (indicating) help you relate to when he
24 died?

25 A. He died June 3rd.

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1 Q. What?

2 A. June 3rd.

3 Q. June 3rd of 08?

4 A. Yes, sir.

5 Q. And when was the burial?

6 A. June 8th of 08.

7 Q. Now, where was he living during the time up until his
8 death?

9 A. We was living together.

10 Q. Y'all were living together?

11 A. Yes, sir.

12 Q. So he was living with you and --

13 A. Adoria.

14 Q. Adoria. Now I never got into it, because I didn't
15 know whether it was a criminal matter or whatever, but
16 I asked you how it was that a young man like this just
17 died in June, and you said that he was shot?

18 A. Yes, sir.

19 Q. Was that like a criminal case that they had down here
20 in Winnsboro County, or was it an accidental shooting?

21 A. It was a criminal case.

22 Q. A criminal case?

23 A. Yes, sir.

24 Q. So, somebody was prosecuted for his murder?

25 A. Yes, sir.

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- 1 Q. Okay. But he was living with you?
- 2 A. Yes, sir.
- 3 Q. Okay. And ~~S~~ ^{Victim} further testified that she went to
- 4 the funeral, but she couldn't remember when it was,
- 5 but she saw Adoria there at the funeral, is that
- 6 correct?
- 7 A. Yes, sir.
- 8 Q. Now, I also noticed that he died at the Medical
- 9 University in Charleston, is that correct?
- 10 A. Yes, sir.
- 11 Q. But y'all had the funeral here in Kingstree?
- 12 A. Yes, sir.
- 13 Q. Now, up until that time, had ~~S~~ ^{Victim} ever babysat for
- 14 Adoria?
- 15 A. No, sir.
- 16 Q. And, what happened while he was in the hospital? Did
- 17 anybody come to live with you?
- 18 A. Yes, sir.
- 19 Q. Who was that?
- 20 A. Tiara Ferguson.
- 21 Q. Tiara Ferguson?
- 22 A. Yes, sir.
- 23 Q. She's what? Around 19 or 20?
- 24 A. Yes, sir.
- 25 Q. And, where does Tiara live today?

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- 1 A. Here in Kingstree.
- 2 Q. Do you know what address?
- 3 A. No, sir.
- 4 Q. Does she work anywhere?
- 5 A. No, sir.
- 6 Q. Okay. And she came to live with you?
- 7 A. Yes, sir.
- 8 Q. At the end of the funeral, which was on the 8th of
- 9 June, did she continue to stay with you?
- 10 A. Yes, sir.
- 11 Q. Did she not live in your apartment until December of
- 12 08?
- 13 A. Yes, sir.
- 14 MS. BARR: Objection. He's leading the witness, Your
- 15 Honor.
- 16 Q. Can you tell us when she left your apartment?
- 17 A. Around December.
- 18 Q. Of what year?
- 19 A. Of 08.
- 20 Q. During that period of time, did you have a job?
- 21 A. Yes, sir.
- 22 Q. Where were you working?
- 23 A. Subway.
- 24 Q. Subway?
- 25 A. Yes, sir, in Kingstree.

DASHEIA McBRIDE - DIRECT EXAMINATION

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- 1 Q. And where did Tiara Ferguson work?
- 2 A. Nowhere. She was unemployed.
- 3 Q. So, what did she do?
- 4 A. Stayed at my home and kept Adoria.
- 5 Q. She looked after your daughter?
- 6 A. Uh-huh. While I was at work when she was living with
- 7 me.
- 8 Q. Well, tell me this. How many times in all of 08 did
- 9 ~~Sasha~~ ^{Victim} come to your apartment and babysit for your
- 10 child?
- 11 A. She never come to babysit.
- 12 Q. Never?
- 13 A. She used to come over, but she never babysat.
- 14 Q. Okay. The times that she would come over I believe
- 15 she came to visit with her grandmother?
- 16 A. Uh-huh, yes, sir
- 17 Q. Your grandmother?
- 18 A. Yes, sir.
- 19 Q. Was there always an adult there?
- 20 A. Yes, sir.
- 21 Q. Was Kevin Bradley ever there?
- 22 A. No, sir.
- 23 Q. In December of 08, it's my understanding that she left
- 24 your apartment?
- 25 A. Uh-huh, I had put her out.

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1 Q. Tiara?

2 A. Yes, sir.

3 Q. Okay. And, in January of 07, you were still working
4 at Subway?

5 A. In 09. Not in 07, 09.

6 Q. I'm sorry; you're right. So, in January of 09 you
7 worked where?

8 A. At Subway.

9 Q. Still at Subway?

10 A. Yes, sir.

11 Q. Okay. And on those occasions, since Tiara was no
12 longer living with you to look after your child, did
13 you do anything with your child during that period of
14 time?

15 A. Yes, sir, I placed her in day care at Daisy Scott Day
16 care.

17 Q. Did ~~she~~ ^{Victim} ever, in January or -- let's say the
18 first week in February -- ever babysit for you in that
19 apartment?

20 A. No, sir.

21 Q. Why wouldn't you have a ten-year-old babysit for you?

22 A. Because my baby was -- really was a arm baby; she
23 really wasn't a newborn but she was still a arm child.

24 Q. You said that to me, and I had never heard that
25 expression, you called her an arm baby?

DASHEIA McBRIDE - DIRECT EXAMINATION

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- 1 A. Yes, sir.
- 2 Q. And you would not let a ten-year-old look after an arm
3 baby?
- 4 A. A arm baby, no.
- 5 Q. Okay. When Adoria became two, or thereabouts, did
6 ~~Victim~~ ever then babysit at all for you?
- 7 A. When she became two?
- 8 Q. Yes?
- 9 A. Well, when Adoria became two, ~~Victim~~ was done out in
10 foster -- she wasn't even around.
- 11 Q. Did you take the child, Adoria, to your grandmother's
12 for her to babysit for the child?
- 13 A. My grandma used to watch her for me, yes, sir.
- 14 Q. Okay. When did you start dating Kevin Bradley? First
15 of all, let me ask you this: was there any time at
16 all in 08 that y'all were together?
- 17 A. No, sir.
- 18 Q. You told me that you knew him quite well?
- 19 A. We went to school together, yes, sir.
- 20 Q. I didn't understand this part. You told me he used to
21 live with you, with you and your mother?
- 22 A. When we was in high school, yes, sir.
- 23 Q. So, in high school, y'all lived in the same house?
- 24 A. Yes, sir.
- 25 Q. He didn't live with his mother and father?

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1 A. No, sir, he had -- he lived with his mother but he
2 came to stay with us ---

3 Q. Who is your mother again?

4 A. Erica McBride.

5 Q. Erica?

6 A. McBride, yes, sir.

7 Q. So y'all knew each other quite well back when y'all
8 were in high school, right?

9 A. Yes, sir.

10 Q. All right, when did y'all become romantically
11 involved?

12 A. (No answer)

13 Q. At any time in 08, did you become romantically
14 involved?

15 MS BARR: I object. That question has been asked and
16 answered.

17 MR. STROBEL: That's a question.

18 THE COURT: The objection is overruled.

19 Q. At any time in 08 did you become romantically involved
20 with Kevin Bradley?

21 A. No, sir.

22 Q. You're saying that under oath?

23 A. You say in 0 -- could you repeat the question.

24 Q. Any time in 08, which would be I suppose from the
25 first of June of 08 to December of 08, did you ever

DASHEIA McBRIDE - DIRECT EXAMINATION

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1 become romantically involved with Kevin Bradley?

2 A. No, sir.

3 Q. And, today, I believe you tell me you work with
4 Kentucky Fried Chicken?

5 A. Yes, sir.

6 Q. That's the one I see on the right when I come into
7 town?

8 A. Yes, sir.

9 Q. Okay. Let me ask you this so I can completely
10 understand it. In June after the burial on June the
11 8th, that month of June, did you -- other than the
12 funeral, did you ever see ~~Victim~~?

13 A. You said in the month of June did I ever see her?

14 Q. On June 8th was the funeral?

15 A. Uh-huh.

16 Q. Okay. After that -- let's just say the fourth of July
17 of 08, did you see ~~Victim~~ Did you go see her?

18 A. No, because the fourth of July I went out with a
19 friend.

20 Q. I'm talking about any time from the funeral, up until
21 -- let's say one month after the funeral?

22 A. No, sir, I was living with my mama. When Durell
23 passed, I was living with my mama. I wasn't staying
24 at my house.

25 Q. Okay. So, if ~~Victim~~ testified that in the latter

DASHEIA McBRIDE - CROSS EXAMINATION

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1 part of June of 08 she was babysitting for your child
2 and was left alone with Kevin Bradley, it's your
3 testimony that that could not have happened?

4 A. That could not happen.

5 MS. BARR: Objection, Judge. That's leading, first
6 of all. Second, it's pitting witnesses.

7 MR. STROBEL: I withdraw, and I will rest.

8 THE COURT: You withdraw the question, did you say.

9 MR. STROBEL: Yeah. I think her testimony is clear.

10 THE COURT: All right the Jury is to disregard the
11 comment of Counsel as to what he thinks. Cross-examination

12 CROSS EXAMINATION BY MS. BARR

13 Q. Thank you, Your Honor. Now, Dasheia, Victim
14 to you as her cousin?

15 A. Yes, ma'am.

16 Q. And, you would certainly agree with me that Victim
17 has a close relationship with your daughter?

18 A. With Adoria, yes, ma'am.

19 Q. When was Adoria born?

20 A. ~~November 1977~~.

21 Q. Of what year?

22 A. ~~November 1977~~ of 07, I'm sorry.

23 Q. All right. Mr. Strobel asked you this question, but I
24 don't know if you ever answered it. When did you
25 start a romantic relationship with Kevin Bradley?

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1 A. I can't -- I can't really remember right off when we
2 started, you know.

3 Q. Okay. Give me some idea? Give me your best estimate?
4 How long has it been?

5 A. I've known him forever, but a relationship, I can't
6 tell you. I don't know, we've been friends forever
7 but ---

8 Q. When I say romantically, I mean sleeping together?

9 A. We -- been hanging out.

10 Q. Okay. When was that?

11 A. Probably in late November or the middle -- I'll say
12 February.

13 Q. February of what year?

14 A. 09.

15 Q. Prior to February of 09, I'm assuming that you all had
16 some kind of courting period before you had
17 intercourse, right?

18 A. You mean ---

19 Q. You dated for a while?

20 A. We never have really -- we were just close, real
21 close.

22 Q. So, part of that being close is that he would come
23 visit you at your house, right?

24 A. Well, in 08 and 07 we wasn't, you know, seeing each
25 other like that. I would just see him in passing,

DASHEIA McBRIDE - CROSS EXAMINATION

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1 because I wouldn't talk to him, you know, I would see
2 him in passing and stuff like ---

3 Q. Okay. Now, I'm not talking about while Adoria's
4 father was living, I'm talking about after he died, he
5 would come and visit with you in your house, right?

6 A. He would come by, yes.

7 Q. Now, Durell, he died June 3rd, but he was actually
8 shot on May 17th, is that correct?

9 A. Yes, ma'am.

10 Q. And, of course, he was shot in the head and he was at
11 MUSC for several weeks?

12 A. Three weeks, yes, ma'am.

13 Q. On life-support?

14 A. Yes, ma'am.

15 Q. So, at least as of May 17th of 2008, Durell was no
16 longer living with you in your home, correct?

17 A. No, ma'am. I wasn't living there either.

18 Q. Where were y'all staying together?

19 A. Who? Me and Durrell?

20 Q. Yes?

21 A. Right there in ---

22 Q. Kingstree Apartments, right?

23 A. Yes, ma'am.

24 Q. Kings Crossing Apartments?

25 A. Yes, ma'am.

DASHEIA McBRIDE - CROSS EXAMINATION

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- 1 Q. And, that is the one bedroom apartment that's right
2 here in Kingstree, right?
- 3 A. Yes, ma'am.
- 4 Q. Now, so we know that after May 17th when Durell was
5 shot he was no longer in your apartment?
- 6 A. No, ma'am.
- 7 Q. And, when he passed on the 17th, after his death,
8 ~~Victim~~ continued to come to your house, right?
- 9 A. I wasn't living at my house when he had passed. I
10 lived with my mom.
- 11 Q. When did you start back living in the apartment?
- 12 A. When Tiara came to stay with me.
- 13 Q. Okay. That would have been when?
- 14 A. I'll say -- I really can't say, because I can't
15 remember.
- 16 Q. So, it's possible it could have been a month or two
17 after Durell was shot?
- 18 A. Uh-huh.
- 19 Q. You need say yes or no?
- 20 A. Oh, yes.
- 21 Q. So, now you indicated that in 2008 you were working at
22 Subway, right?
- 23 A. Yes, ma'am.
- 24 Q. And, this girl, Tiara Ferguson, where is she now?
- 25 A. She's staying in Kingstree.

DASHEIA McBRIDE - CROSS EXAMINATION

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1 Q. Do you know where she lives now?

2 A. No, ma'am.

3 Q. All right. When she was staying with you, what grade
4 was she in?

5 A. She wasn't in school.

6 Q. Does she have any children?

7 A. No, ma'am.

8 Q. And, during this time, a lot of times, ~~Victim~~ would
9 come see you or see the baby on weekends, right?

10 A. Sometimes my grandma would bring her and just let her
11 run up there and see the baby and she would go back,
12 yes, ma'am.

13 Q. She was real close to the baby, right?

14 A. Yes.

15 Q. She just wanted to play with the baby?

16 A. Yes, ma'am.

17 Q. Okay. Now, on the weekends you wouldn't take Adoria
18 to day care would you?

19 A. No, ma'am.

20 Q. Okay. And, on the weekends, although the child wasn't
21 in day care, a lot of times you had to work, right?

22 A. Yes, ma'am.

23 Q. So, on the weekends when you were working and ~~Victim~~
24 was in your house, you don't know who was there during
25 the time you were at work, right?

DASHEIA McBRIDE - CROSS EXAMINATION

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1 A. Not when I was at work, no.

2 Q. Right. You wouldn't have any idea who was in your
3 house while you were at work, right?

4 A. No, ma'am.

5 Q. So, you're not here to testify that ~~Victim~~^{Victim} was never
6 alone with Kevin in 2008 when you weren't there, are
7 you? Because you wouldn't know, right?

8 A. 2008, me and Kevin wasn't -- in 2008, I knew him, but
9 he had his own family his own self, I mean, it wasn't
10 nothing like come by -- it wasn't nothing like that.

11 Q. Are you sure about that?

12 A. Yes, ma'am.

13 Q. Now, after this all came out about your cousin,
14 ~~Victim~~^{Victim}, -- I'll call her your cousin, -- Kevin
15 called you, right?

16 A. Right.

17 Q. And, he had a conversation with you when all this came
18 out and ---

19 A. After everything that had done come out?

20 Q. Yes?

21 A. Uh-huh.

22 Q. And it in that conversation he said that he was sorry
23 for what he did to your cousin, right? He apologized
24 to you?

25 A. Apologized, yes, ma'am.

DASHEIA McBRIDE - CROSS EXAMINATION

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1 Q. For what he did your cousin?

2 A. Uh-huh.

3 Q. So, he admitted that he had a sexual relationship with
4 your cousin?

5 A. It wasn't a -- he didn't straight come out and say it,
6 no.

7 Q. Well, when he apologized that was the same as
8 admitting it, right?

9 A. That there was a relationship.

10 Q. Now, he would have had intercourse with your
11 11-year-old cousin in the same bed that you were
12 sleeping with him in, right?

13 A. Oh, I don't know. I don't know where ---

14 Q. Well, you and he slept together in the bedroom that's
15 in your apartment at Kings Crossing?

16 A. Right.

17 Q. That's a one-bedroom apartment?

18 A. Yes.

19 Q. Yours?

20 A. Yes.

21 Q. There are no other beds in that apartment, correct?

22 A. No.

23 Q. So, if he had sexual intercourse with her in a bedroom
24 in that apartment, it would have had to be the same
25 bed that you slept with him in?

DASHEIA McBRIDE - CROSS EXAMINATION

229

1 A. Yeah, that's right.

2 Q. And, there is no doubt in your mind that he had sexual
3 intercourse with your cousin, right?

4 A. He -- relationship -- with my cousin.

5 Q. Is there a doubt in your mind?

6 A. Huh-uh.

7 Q. I need you to say yes or no?

8 A. No.

9 Q. Now, despite the fact that you knew about this, you
10 continued to see him, correct?

11 A. Yes, ma'am.

12 Q. So, you talked with him several times since this all
13 came out?

14 A. Yes, ma'am.

15 Q. You have gone to see him and bought him things, right?
16 Clothes, food, money?

17 A. Everything.

18 Q. So, you don't have a problem with what he did?

19 A. I have a problem with it, but I'm satisfied the
20 relationship that he had, and I was just being his
21 friend, because I just felt like, you know, he needs -
22 - he needed somebody by his side be there for him ---

23 Q. So, as a part of your being a friend to him and
24 helping him out and being there for him to basically
25 try to provide an alibi and say that it was not

DASHEIA McBRIDE - CROSS EXAMINATION

230

1 possible that he raped her when she was ten but he did
2 when she was eleven? Is that part of what you're
3 doing today?

4 A. No, that is not what I'm doing.

5 Q. When ~~Victoria~~ went to the Durant Center on August the
6 14th after she left Dr. Allen's office, you and your
7 grandmother were with her?

8 Q. Do you remember going up to that place where they did
9 the interview of ~~Victoria~~?

10 A. They -- yeah.

11 Q. Did they check your baby to make sure that nobody had
12 been messing with her?

13 A. Yes, ma'am.

14 Q. She was pretty upset that they was that she?

15 A. Who?

16 Q. ~~Victoria~~?

17 A. That day we went?

18 Q. Yes?

19 A. She wasn't upset.

20 Q. You didn't hear her crying?

21 A. No, ma'am.

22 Q. You didn't go with her to the doctor's office? You
23 weren't inside the doctor's office?

24 A. Well, I went with them -- I don't understand why me
25 and my grandma and the police right there -- I mean

DASHEIA McBRIDE - CROSS EXAMINATION

231

1 what I'm saying I don't remember that day her crying
2 and ---

3 Q. Did you realize that the Defendant had impregnated
4 your cousin?

5 A. Yes, ma'am.

6 Q. When was the last time you had sexual relationship
7 with him?

8 A. It's been a long time.

9 Q. What's a long time?

10 A. Even before he got locked up. It has been a long time
11 since that.

12 Q. Did he ever come to your house after he was arrested
13 for raping your 11-year-old cousin?

14 A. No, I seen him. Well, I'm saying I have seen him.

15 Q. When did you talk to Mr. Strobel? He kept saying that
16 you told me this and you told me that. When did you
17 have that conversation?

18 A. I talked to him yesterday.

19 Q. Do you remember talking with me yesterday?

20 A. Well, you asked me -- you told me yesterday that you
21 had called me, but you said you didn't call me.

22 Q. What did you tell me about your wanting to testify
23 here today?

24 A. That I was just sick, cause I ---

25 Q. What else did you say?

DASHEIA McBRIDE - CROSS EXAMINATION

232

1 A. About what?

2 Q. About whether or not you wanted to testify today, what
3 did you tell me?

4 A. I thought that I was supposed to testify for
5 something, and you was like, No, that I was supposed
6 to testify for them, and I was like ---

7 Q. Then you said what?

8 A. I said I -- I can't remember ---

9 Q. You don't recall saying you didn't want to testify in
10 this case?

11 A. I said I was scared, but, I mean, I know if I'm
12 subpoenaed to do something I got to do it but I just
13 said ---

14 Q. But you don't remember saying that you didn't want to
15 testify?

16 A. No, I don't.

17 Q. Judge, that's all the questions that I have.

18 THE COURT: Mr. Strobel?

19 MR. STROBEL: No, Sir, nothing further.

20 THE COURT: You may step down.

21 THE COURT: Madam Clerk, if you will have the
22 members of the Jury wait a minute. We will be at ease for
23 a minute, Madam Clerk.

24 (Whereupon the jury exited the courtroom at
25 3:46 p.m.)

DASHEIA McBRIDE - CROSS EXAMINATION

233

1 THE COURT: We will be at ease for a minute or two.

2 THE BAILIFF: All rise.

3 THE COURT: You may be seated. Mr. Strobels, do you
4 have other witnesses to come.

5 MR. STROBEL: Um, I have talked with him, Your Honor,
6 and he relates to me that he wants to testify.

7 THE COURT: All right. Sir, I'm going to review
8 with you your constitutional rights. If you would come
9 stand in front of me. If you would swear him, please?

10 WHEREUPON, KEVIN BRADLEY

11 WAS DULY SWORN AND EXAMINED AS FOLLOWS:

12 THE COURT: Now, Mr. Bradley, we have reached a
13 point in the trial where you are in the process of
14 presenting your Defense and, at this time, I am going to
15 explain to you certain of your rights. If you do not
16 understand anything that I say, let me know and I will
17 explain it in greater detail and be happy to answer any
18 questions that you might have. Do you understand?

19 MR. BRADLEY: Yes, Sir.

20 THE COURT: Now, you have the right to claim the
21 protections given to you by the Fifth Amendment of the
22 Constitution, the Fifth Amendment to the Constitution of
23 the United States. This amendment, in part, states that
24 no person shall be compelled in any criminal case to be a
25 witness against himself. This means that you cannot be

DASHEIA McBRIDE - CROSS EXAMINATION

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1 required to testify in this case. You do, however, have
2 the right to testify on you own behalf. However no one can
3 make you testify. This is a personal right. No one can
4 waive this right except you. Now, if you decide to
5 testify, you will be subject to the same rules that govern
6 other witnesses, and you may be examined and cross-examined
7 on any relevant issue in this case. In addition, if you
8 have any convictions involving dishonesty or false
9 statement or crimes punishable by more than one year in
10 prison, and I determine that the probative value of
11 admitting this evidence outweighs its prejudicial effect to
12 you, the solicitor then will be able to introduce your
13 record to attack your credibility. Now if you decide to
14 testify, this decision must be freely, voluntarily and
15 intelligently made by you with knowledge of the protections
16 given to you by the Fifth Amendment and the consequences of
17 your decision to testify. If you decide not to testify, I
18 will instruct the jurors that they cannot give the fact
19 that you did not testify any consideration whatsoever, and
20 that there is to be absolutely no prejudice to you because
21 you did not testify. It is left entirely up to you on
22 whether or not you testify. You may talk with your
23 attorney, Mr. Strobels more, family, friends or anyone else
24 you want to talk to. But the final decision will be left
25 entirely up to you. Do you understand what I have

DASHEIA McBRIDE - CROSS EXAMINATION

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1 explained to you?

2 MR. BRADLEY: I understand that.

3 THE COURT: Do you have any questions about what
4 I've explain to you.

5 MR. BRADLEY: No, Your Honor.

6 THE COURT: Have you talked with your lawyer, Mr.
7 Strobel, about whether or not you should testify, is that
8 right?

9 MR. BRADLEY: Yes, Your Honor.

10 THE COURT: And, do you need to talk to him
11 anymore about it?

12 MR. BRADLEY: No, Sir.

13 THE COURT: Do you wish to testify?

14 MR. BRADLEY: Yes, I do.

15 THE COURT: All right, very good. Thank you.
16 Let's bring the Jury in.

17 (Whereupon, the jury enters the courtroom at
18 3:56 p.m..)

19 THE COURT: All right, the Jury is back. Mr.
20 Strobel, call your next witness?

21 MR. STROBEL: We call Kevin Bradley to the stand,
22 Your Honor.

23 THE COURT: All right Mr. Bradley, if you'll come
24 to be sworn.

25 WHEREUPON, KEVIN C. BRADLEY

KEVIN C. BRADLEY - DIRECT EXAMINATION

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WAS DULY SWORN AND TESTIFIED AS FOLLOWS

DIRECT EXAMINATION BY MR. STROBEL

Q. Sir, state your name for the record?

A. Kevin Christopher Bradley.

Q. How old are you, sir?

A. Twenty.

Q. Okay, have you ever had sexual relations with ~~_____~~ *Victim*

~~_____~~ prior to February the 5th of 2009?

A. No, sir.

Q. Have you had sexual relations with ~~_____~~ *Victim*
after February the 5th of 2009 and before her
pregnancy was discovered in August of 2009?

A. Yes, sir.

Q. That's all, Your Honor.

THE COURT: Ms. Barr?

CROSS EXAMINATION BY MS. BARR

Q. When?

A. I don't have a specific date, Ms. Barr.

Q. How many times?

A. I can't answer that.

Q. More than once?

A. Yes.

Q. More than five times?

A. No, not more than five times.

Q. More than twice?

KEVIN C. BRADLEY - CROSS EXAMINATION

237

- 1 A. Yes, ma'am.
- 2 Q. Now, you didn't know that child's birth date until the
3 trial, did you?
- 4 A. I'm sorry?
- 5 Q. You didn't know her birthday was [REDACTED]
6 until we tried this case, right?
- 7 A. No, ma'am.
- 8 Q. All right. So what is the significance about you
9 knowing when you had sex with her being after [REDACTED]
10 [REDACTED] 2009. What's the significance of that?
- 11 A. I'm sorry, what ---
- 12 Q. How is it you know you had sex with her, yet you don't
13 remember the dates?
- 14 A. Correct.
- 15 Q. How do you know you didn't rape her until after she
16 turned eleven? How do you know that?
- 17 A. Because I was not nowhere around the victim in the
18 year of 2008.
- 19 Q. Are you sure about that?
- 20 A. I'm positive.
- 21 Q. Were you around Ms. McBride in 2008?
- 22 A. I've been around Ms. McBride seeing her and spoken
23 with her on numerous of occasions but not so far as --
24 can you define your question.
- 25 Q. You have been with her -- you have been to the

KEVIN C. BRADLEY - CROSS EXAMINATION

238

- 1 apartment, Dasheia's apartment?
- 2 A. Yes, correct.
- 3 Q. You have been to her apartment and visited the lady in
- 4 2008?
- 5 A. Correct.
- 6 Q. And you have stayed in her house at some point in
- 7 2008?
- 8 A. No, ma'am.
- 9 Q. No? Now, you have on a pink shirt and gray pants,
- 10 right?
- 11 A. I'm sorry. No, ma'am, I don't.
- 12 Q. What color is that? It looks pink to me?
- 13 A. It's a pink shirt and blue pants.
- 14 Q. Now, your friend over there, Dashiea, has on what
- 15 color clothing?
- 16 A. An off-pink and I don't know what color pants.
- 17 Q. It kind of looks like the ones you're wearing?
- 18 A. That's correct.
- 19 Q. Is that a coincidence?
- 20 A. Well, Ms. Barr, my mother brought my clothes to me
- 21 this morning. I'm incarcerated, so it's -- I don't
- 22 have a choice of what I wear.
- 23 Q. When is the last time you saw her outside of court?
- 24 A. On our visitation at the Winnsboro County Detention
- 25 Center.

KEVIN C. BRADLEY - CROSS EXAMINATION

239

Victim

- 1 Q. You don't remember the first time you raped ~~the victim~~
2 is that your testimony?
- 3 A. No, that's not my -- I know my testimony is it was
4 after ~~the victim~~ of 2009.
- 5 Q. You know that; that's the magic date for you. You
6 just know that?
- 7 A. I know this.
- 8 Q. Is there a difference in your mind between raping an
9 11-year-old versus raping a ten-year-old?
- 10 A. Is ---
- 11 Q. Does it make it not as bad if she's eleven versus she
12 is ten?
- 13 A. Morally and legally, no, it doesn't. It makes me feel
14 terrible.
- 15 Q. So terrible that you did it over and over and over?
- 16 A. What took place, Ms. Barr, was wrong.
- 17 Q. When did you realize that, after you were arrested?
- 18 A. During the time of intercourse, after the time of
19 intercourse actually, when, uh, after the time of the
20 intercourse when I got up and, um, the victim tried --
21 assumed, assumed further. And, when I say assumed as
22 in kissing and wanting a hug, and I felt morally wrong
23 inside of myself for what I have done, just what I've
24 done, of what caused me to did it -- I can't answer
25 that, but, I mean, morally, I was wrong inside for

KEVIN C. BRADLEY - CROSS EXAMINATION

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1 what I had done but, what made me realize what I had
2 done was wrong was when she took it further than where
3 I had wanted to. When I realized what I have done she
4 with her kissing me and fondling of me and hugging me
5 and so forth ---

6 Q. You remember that?

7 A. I'm not the ---

8 Q. If you ---

9 A. I'm not the victim, I'm not the victim, I'm not the
10 victim, no.

11 Q. Is that what you told Dashiea?

12 A. I'm sorry?

13 Q. Is that the story that you told Dashiea?

14 A. I didn't told Dashiea, Ms. McBride, no story. I told
15 her I apologized for the pain and suffering I caused
16 upon her and her family.

17 Q. You told Dashiea that this 11-year-old girl came on to
18 you and propositioned you, is that what you're telling
19 me?

20 A. Once again, I did not told Ms. McBride anything, I'm
21 sorry.

22 Q. Well, isn't that what you are telling us today?

23 A. Is what?

24 Q. That she, this eleven-year-old child, propositioned
25 you and came onto you. That's what you're telling us

KEVIN C. BRADLEY - CROSS EXAMINATION

241

1 today?

2 A. No, I'm not telling you that.

3 Q. But you're ---

4 A. What I'm telling you, Ms. Barr, is an intercourse took
5 place, yes, indeed it did. After the fact of the
6 intercourse took place, it led to more things as in
7 things I just wasn't comfortable with, myself,
8 personally.

9 Q. Why didn't you just stop?

10 A. Stop what?

11 Q. Stop having sex, raping, sleeping with your
12 girlfriend's 11-year-old cousin then. Why didn't you
13 just stop that?

14 A. I can't answer that, Mrs. Barr.

15 Q. Okay. Then the fact of the matter is the only reason
16 that you stopped was that you were arrested, right?
17 That's the only reason that you stopped, because you
18 got caught?

19 A. No, Ms. Barr. Actually it was ceased after a time of
20 just being tired. I mean tired of myself and what I
21 was doing. You understand what I'm saying? When I
22 say that, it came to a point in time where I had to
23 say: Look, I'm doing something wrong here. And I
24 stopped myself. This was way before any
25 law-enforcement got involved.

KEVIN C. BRADLEY - CROSS EXAMINATION

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1 Q. You are owning it?

2 A. That's correct.

3 Q. And you have a respect for the laws of doing what's
4 right and for justice?

5 A. I do, Ms. Barr, but, at the same time, I am only
6 human, and all humans do make mistakes.

7 Q. All humans make mistakes?

8 A. That's correct.

9 Q. So you think a 20-year-old man sleeping with an
10 11-year-old girl that's just a human mistake for
11 people?

12 A. It's done all over the world, Ms. Barr.

13 A. It's done all over the world, Ms. Barr.

14 Q. Do you think you should be punished?

15 A. I mean -- when you say punished, I mean, I feel as
16 though once again, Mrs. Barr, I was on a good path in
17 life. Do you understand? This was four years in the
18 military, clean record, never done one thing wrong in
19 my life, but what I have done I can't take back. I
20 wish I could.

21 Q. The reality is, Mr. Bradley, the only reason that you
22 are conceding that you raped the child when she was
23 eleven is that DNA evidence. That's the only reason
24 you concede that point, is that it?

25 A. Once again, Ms. Barr, I'm telling you the truth. I'm

KEVIN C. BRADLEY - CROSS EXAMINATION

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1 admitting to intercourse with a child at eleven. Yes,
2 I am admitting that. Despite the date of when it did
3 or when it didn't happen, I'm telling you it was after
4 [REDACTED], 2009.

5 Q. And it happened where?

6 A. In Kings Crossing Apartments.

7 Q. In the bed?

8 A. At [REDACTED].

9 Q. In the bed?

10 A. On the couch.

11 Q. How many times did it happen?

12 A. Once again, I can't answer that.

13 Q. Okay. So you have never slept with that child in the
14 bed?

15 A. No, I have not. No.

16 Q. Slept with her?

17 A. No.

18 Q. Are you sure?

19 A. Positive.

20 Q. Isn't that what you told her?

21 A. Once again, I haven't told Ms. McBride no story.

22 Q. All right, so the child is lying about where it
23 happened is what you're saying?

24 A. Correct.

25 Q. And what do you believe her reason to be for that?

KEVIN C. BRADLEY - CROSS EXAMINATION

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Victim

- 1 A. I can't answer that. Only you can ask ~~that~~
- 2 that.
- 3 Q. Now, do you realize that it is a more serious crime if
- 4 you're convicted of raping her when she was ten versus
- 5 eleven-- you know that, right?
- 6 A. In my opinion, it's ---
- 7 Q. I didn't ask your opinion. My question is do you
- 8 realize and you know that it is a more serious crime
- 9 in South Carolina if you raped her when she was ten
- 10 versus eleven, right? You know that?
- 11 A. I'm not a lawyer. I don't know that.
- 12 Q. I didn't ask you if you were a lawyer. Are you aware
- 13 ---
- 14 A. I'm answering your question. No, ma'am I don't.
- 15 Q. And, criminal sexual conduct with a minor in the first
- 16 degree is more serious than criminal sexual conduct
- 17 with a minor in the second degree. You know that,
- 18 right? You have already told me that, right?
- 19 A. That's correct.
- 20 Q. So, if you are convicted of criminal sexual conduct of
- 21 a minor in the first degree, that is a more serious
- 22 charge punished more harshly than a second degree
- 23 criminal sexual conduct punishment?
- 24 A. That's correct.
- 25 Q. And, criminal sexual conduct with a minor first degree

KEVIN C. BRADLEY - CROSS EXAMINATION

245

1 is when you have a sexual battery with a victim under
2 the age of eleven?

3 A. That's correct.

4 Q. And, criminal sexual conduct with a minor in the
5 second degree is when you have a sexual battery with a
6 victim who is between eleven and 14, right?

7 A. That's correct.

8 Q. So, the only reason that you are contesting the point
9 that you had sex with her when she was ten is
10 because you don't want to get convicted of the more
11 serious crime, right?

12 A. I'm sorry, Ms. Barr. Sorry -- are you telling me what
13 I'm saying.

14 Q. I'm asking you. The only reason why this is a point
15 of contention, the only reason why you even said that
16 you know you did not have sex with her until after
17 ~~February~~ 2009, that's when she turned eleven and
18 that would have made it criminal, right?

19 A. No, ma'am.

20 Q. When did you start having sex with Dasheia?

21 A. In the year of 2009.

22 Q. You didn't have a romantic relationship with her at
23 all in 2008?

24 A. That's correct.

25 Q. Is that true?

THE STATE VERSUS KEVIN C. BRADLEY

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1 A. That's correct. Because -- yes, that's correct.

2 Q. That's your testimony under oath, and you're being
3 truthful?

4 A. That's correct.

5 Q. Judge, that's all the questions I have.

6 THE COURT: Anything further?

7 MR. STROBEL: No, Sir.

8 THE COURT: You may step down.

9 MR. STROBEL: That's the Defendant's case. And I
10 have a motion I'd like to make, Your Honor.

11 THE COURT: All right. Ladies and Gentlemen, that
12 is the Defense's case. All motions must remain outside of
13 the Jury's presence. If you'll go back to the Jury room.
14 We will not be long. Please do not discuss the case.

15 (Whereupon, the jury retires to the jury
16 room at 4:13 p.m..)

17 THE COURT: Yes Sir.

18 MR. STROBEL: I didn't mean to jump the gun, Your
19 Honor. I didn't know there was any rebuttal testimony. I
20 forgot about that part of it.

21 MS. BARR: And, Judge, I think he's right on that.
22 To protect the record you have to make your motion.

23 MR. STROBEL: Okay.

24 THE COURT: Yes, sir. Go ahead

25 MR. STROBEL: Your Honor, I make a motion for

THE STATE VERSUS KEVIN C. BRADLEY

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1 directed verdict like the ones I made after she presented
2 her case in that I don't feel that as to count one or count
3 two that the State has made out a case that would warrant
4 this matter going to the Jury.

5 THE COURT: All right, she says she was ten when it
6 started; he says she was eleven when it started. It's up
7 to the Jury to decide ---

8 MR. STROBEL: Yes, Sir.

9 THE COURT: --- the credibility of witnesses, so I
10 deny the motion.

11 MR. STROBEL: Yes Sir.

12 THE COURT: Do we have reply?

13 MS. BARR: Just one witness.

14 MR. STROBEL: What did she say?

15 THE COURT: Just one witness, she said.

16 MR. STROBEL: Okay.

17 THE COURT: And, who might that witness be?

18 MS. BARR: Ms. McBride.

19 THE COURT: And then, regarding the requested Jury
20 charges and final argument at all that and Jury
21 deliberations, do y'all want to do all that today.

22 MR. STROBEL: Yes, Sir.

23 THE COURT: All right. Ms. Barr?

24 MS. BARR: Judge, that's fine with me.

25 THE COURT: Any requested charges.

DASHEIA MCBRIDE - REBUTTAL EXAMINATION

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1 MR. STROBEL: None on behalf of the Defense.

2 MS. BARR: Um, Judge, none other than the standard
3 ones from the law of credibility of the witnesses, direct
4 and circumstantial evidence.

5 THE COURT: Direct and circumstantial?

6 MS. BARR: Yes, Sir.

7 THE COURT: All right. Bring them on.

8 (Whereupon, the jury enters the courtroom at
9 4:16 p.m..)

10 THE COURT: Ladies and Gentlemen, you have heard
11 the Defense's case. Any reply by the State?

12 MS. BARR: We would recall Dashiea McBride.

13 THE COURT: Please come forward, and, Ms. McBride,
14 you're still under oath.

15 WHEREUPON, DASHEIA MCBRIDE

16 BEING DULY SWORN TESTIFIES AS FOLLOWS

17 DIRECT EXAMINATION ON REBUTTAL BY MS. BARR

18 Q. Ms. McBride, you understand that you are still under
19 oath, right?

20 A. Uh-huh, yes, ma'am.

21 Q. You testified earlier in the trial of the case that
22 you and Mr. Bradley were not developing a romantic
23 relationship until 2009, is that still your testimony?

24 A. Yes, ma'am.

25 Q. Do you recall making a report with the Kingstree

DASHEIA MCBRIDE - REBUTTAL EXAMINATION

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1 Police Department back in October of 2008 regarding
2 Kevin Bradley?

3 A. Of what?

4 Q. Do you recall calling the police officers on October
5 4th ---

6 MR. STROBEL: Your Honor, is she leading her witness?

7 MS. BARR: Well, she ---

8 THE COURT: All right, we are going to hear the
9 question before hearing any objection.

10 Q. Do you recall telling the Kingstree Police Department
11 on October the 4th of 2008 that your boyfriend, Kevin
12 Bradley, had assaulted you and damaged your property?

13 A. Oh, yes, ma'am, I remember that.

14 Q. All right. And you indicated that he had ran over
15 some sort of game and this happened at your apartment
16 located on ~~Northlake Road~~?

17 A. ~~Northlake Road~~.

18 Q. Do you remember that?

19 A. Uh-huh.

20 Q. So, you qualified him as your boyfriend in October of
21 08. Wouldn't that be kind of inconsistent with your
22 testimony earlier?

23 A. Oh, we wasn't together we just we just had a
24 misunderstanding, and he got mad and was throwing my
25 stuff up in his truck.

THE STATE VERSUS KEVIN C. BRADLEY

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1 Q. But you said he was your boyfriend?

2 A. He wasn't my boyfriend at the time.

3 Q. Judge, that's all the questions I have.

4 MR. STROBEL: I have nothing.

5 THE COURT: You may step down.

6 MS. BARR: The state rests, Your Honor.

7 THE COURT: All right, Ladies and gentlemen, you
8 have now heard all of the evidence in this case. It is now
9 time for closing arguments. All witnesses are excused if
10 you want to go. Mr. Strobel?

11 CLOSING ARGUMENTS BY MR. STROBEL

12 MR. STROBEL: Yes, Sir. May it please the Court,
13 Solicitor Barr, Madam Forelady and Ladies and Gentlemen of
14 the Jury. I addressed you in the beginning of this trial,
15 and I told you then that what I wanted you to listen to and
16 be very careful as it's crucial to this case as to the
17 testimony before and after ~~February 11~~ of 2009. And I
18 put that in there as that is very as I talked about before.
19 That is crucial. It is crucial. ~~Victim~~ first testified
20 on direct examination of basically two occasions that she
21 was aware of, one happening in June of 08 and another time
22 happening July 4th of 09. She later testified that it
23 happened more than five times, but less than ten. But I'm
24 only concerned with those occasions, or that occasion, that
25 she testified to that occurred in June of 08. I asked her

CLOSING ARGUMENTS BY MR. STROBEL

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1 clearly, I want to make sure I understand exactly when this
2 occurred, and, at first, she said it was after school --
3 and let me just simply say this -- and Your Honor will tell
4 you. What I remember is not important, it's what you
5 remember. If I say something different than what you
6 understood, go with what you remember was said, not what I
7 -- I am not a witness; I am just trying to recall to the
8 best of my knowledge as to the way I understand it. She
9 said it was right after I got out of school and I said well
10 I don't go to school in Williamsburg County but I assumed
11 it was towards the end of May or the first of June. And
12 she later testified that I understood it was towards the
13 end of the month of June is when this occasion occurred.
14 So I wanted to make sure that I understood with her --- her
15 relevancy as to time, so I asked her: Do you remember the
16 death of Adoria's father? Yes. Did you go to the funeral?
17 Yes. Was Adoria there? Yes. Do you remember when it was?
18 No. Was it even in 08? I don't remember. And I'm saying
19 to myself, isn't that something; she can't remember the
20 funeral that would have taken place no more than two or
21 three weeks prior to this incident that she said took
22 place. And I said, well, you know, I'm losing something
23 somewhere. Well, it was answered. It was answered by Dr.
24 Cook. Her full name was Gaye Allen Cook who you will
25 recall her, it was the lady with long blond hair. My mama

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1 -- I'm from the country in South Carolina, and my mama
2 always says that those that talk a mile a minute, that's
3 the way Yankees talk. I don't know whether she is or not,
4 but she sure talks mighty fast (attorney makes a fast-
5 sounding sound with his tongue). And maybe it is because
6 she is very knowledgeable, she's got all kinds of degrees,
7 I can't tell you what all she has. But what did she say
8 about the condition that this child suffers from? She can
9 tell you all about the occasion, or the incident that took
10 place, but she can't tell you when it took place. Listen,
11 she didn't testify or say that sometimes they can't,
12 sometimes they do know, she can't remember even two weeks
13 or two months or two years. She can't relate as to time.
14 She can tell you they can relate with the syndrome as to
15 the incident took place. Remember she said she was coming
16 out of the bathroom. He said: sit on the bed, he started
17 fondling her taking her pants or whatever happened. That's
18 when it occurred. When did it happen? According to Dr.
19 Cook -- and she is the -- what did she say? She is the
20 classic case. Time and dates? Can't do it. Doctor Cook
21 testified and said that on three separate occasions. As
22 you will recall, I did not ask her a single question
23 because I didn't need to because she had presented my case
24 for me. When that child said only one time in 08 that it
25 occurred and that it happened the latter part of June of 08

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1 is when it happened, but yet she can't tell you when the
2 funeral was that she went to that did occur on June the
3 8th. Now that testimony that you heard from one other
4 witness whose apartment it was who relates to you that this
5 did not occur; it did not happen; it was impossible; there
6 was no way for any of this to occur in the month of June
7 but basically said it couldn't have happened in July,
8 August, September, October, November or December neither.
9 That child was never there to babysit. I have never heard
10 the expression: she was an arm child until -- I kind of
11 thought that was cute -- the child was too young to have a
12 ten -year-old babysitting for her. It never occurred in
13 08. She further testified that the lady who was living
14 with her and staying with her, Tiara, left in December, but
15 she was there from the time of the end of the funeral she
16 was together with her and stayed with her because she was a
17 friend. She had lost Adoria's father, a very tragic
18 situation, they were living together like husband and wife,
19 and she went to live with her and be company with her and
20 she babysat for Adoria, not any ten -year-old child. And
21 she further said that she never babysat for me that entire
22 year. ~~Adoria~~ ^{Victim} said one time I did the latter part of
23 June. I was there; he was there and this is what happened.
24 I'm telling you that, based upon the testimony of Dr. Cook,
25 that is unreliable, because she suffers from a classic case

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1 she can remember a situation, but she has difficulty
2 telling you when it occurred and when it happened. And I'm
3 telling you there is a world of difference between this
4 side (indicating with hands) of the bridge and this side
5 (indicating with hands) of the bridge. There is a DNA test
6 which shows that he is the father of that child but the
7 child is eleven. How do we know that? Because it was done
8 in August. You've heard the testimony from two doctors the
9 exact date of May 21 was the time of conception. Well, May
10 21st is here, she turned eleven here on February the 5th.
11 About three months later -- was the time of conception, no
12 question about that; there's scientific evidence of that
13 fact. She wants to say this child was raped when she was
14 ten , and we are saying that is highly unlikely. We do not
15 feel that she actually could say that it could not happen,
16 but we are saying that her testimony according to Dr. Cook
17 is unreliable. She has no witnesses, nobody can say she
18 was there in June, who? Who did ~~Sharon~~ ^{Vicki} have to say that
19 she -- that I know I was there on that particular occasion.
20 Who? Who took her there? Did her grandmother take her
21 there to the apartment? She can't drive at ten , somebody
22 had to take her there. Who was it? Who took her there?
23 Ms. McBride didn't say that. I asked Ms. McBride about
24 times and places and, bless her heart, she just can't
25 remember well about dates and times and what happened in 08

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1 or whatever happened. But you know, this is a court of
2 law. If you have a reasonable doubt, a doubt for which you
3 can give a reason as to believe that this child was raped
4 in the last week or whatever of the last part of June of
5 08, if you have a reasonable doubt, and you took an oath to
6 God and this country and this Court, that you must acquit.
7 And let me tell you, you know, my heart goes out to that
8 child and my client -- I know he hates for me to say this -
9 - cried to me over what's happened to this child. He's
10 sorry for what he did and he told his grandmother that he
11 was sorry for what happened. So, I know how you feel, you
12 know, but don't let your feelings come and play games with
13 you as to what in fact is the truth. Verdictum, where we
14 get the word, means to speak the truth, that's all I'm
15 asking. What is the truth? Not what you feel, what is the
16 truth the truth? What does the facts show you? It's what
17 occurred on this side of that ten that concerns me. That
18 is why I am here. I personally don't feel that there is
19 sufficient testimony to warrant a conviction of guilt,
20 guilty of first-degree sex criminal sexual conduct. And
21 according to Dr. Cook, she doesn't either. She sees her
22 every Monday of every week right here in Kingstree, and her
23 condition has not changed as of today. Every Monday she
24 comes here and talks with her, and she is the classic case
25 except for one little thing she said that she is a little

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1 bit different in than other people she normally treats, and
2 that is the fact with ~~Victim~~ that if every little thing
3 isn't laid out just right for her she gets awfully upset
4 and she may have to come down with the crises. She may
5 have to come down on another occasion. But normally she's
6 here, she's here once a week because she's still in that
7 condition. I'm telling you, let's not ruin the boy's life.
8 Oh, he is going to go to prison, no question about that.
9 But let's not ruin the rest of his life on a situation
10 where you have a professional who testifies that ~~Victim~~
11 is going to not be able to clarify as to dates and time,
12 and you've heard testimony from the only other adult person
13 who was ever around in that apartment, the owner of the
14 apartment, who was subpoenaed to testify for the State and
15 they chose not to, but I did, because I am seeking the
16 truth. I want to know what happened; could this have
17 occurred and could this have happened. It's more than a
18 reasonable doubt for me. Let me explain one other thing to
19 you and I want to be sure you understand this. There are
20 two trials here. You can be guilty of one and not guilty
21 of the other, or you can be not guilty of one trial and
22 guilty of the other trial. You are to reach two verdicts.
23 Or you could be guilty of both or not guilty of both. It
24 is two separate trials. And when you go into that Jury
25 room you are to divide it up. You are to say, whichever way

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1 you want to go, talk about it in the second degree and look
2 at the evidence and the facts in determining whether there
3 is sufficient evidence presented to you beyond a reasonable
4 doubt that he is guilty or not guilty of count two. Then
5 you can look at the evidence as it relates to count one and
6 is the evidence sufficient to you beyond a reasonable doubt
7 to determine whether a person is guilty or not guilty.
8 It's two separate trials, and you are to reach two
9 verdicts. It's unusual, you've got two separate cases
10 against one Defendant, and they must be treated separately
11 and you must reach a decision separately. We're only
12 asking for the truth. The judge will charge you as to the
13 law. You are the sole judges of the facts. Thank you.

14 THE COURT: Ms. Barr?

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15 MS. BARR: May it please the Court? Ladies and
16 Gentlemen of the Jury, good afternoon. I started off by
17 thinking: This is a case you have had for two or three
18 days now, and I have had it for a few months, and it was
19 difficult when I started and is difficult today. There has
20 been horrible crimes committed in our case. And sometimes,
21 folks, when people commit crimes, you all have to decide,
22 one, whether or not a crime actually happened, and, two, if
23 the State has the right person. Well, that job made a
24 little easier today by the Defendant's own testimony. He
25

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1 admitted to raping this little girl. The Defense lawyer
2 asked you to let's not ruin his life. Yeah, he was wrong.
3 Yeah, he said he was sorry. He called and even apologized,
4 let's just send him home. Let's not ruin his life. Well,
5 let me tell you what he did to this child's life. She will
6 never be the same. She will never start off with a clean
7 slate. She, at age eleven, had to deal with a pregnancy,
8 had to deal with being repeatedly raped by her cousin's
9 boyfriend, had to deal with being diagnosed with gonorrhea
10 and genital warts. He took everything that was pure and
11 sweet and trusting and innocent from this child, and he has
12 turned her in to a child that wakes up in the middle in the
13 night and sweats, who is mistrustful of adults, is
14 paranoid, who is depressed, who wants to hurt herself, but
15 let's not ruin his life. He doesn't care what he did to
16 her life. I asked him because I knew that this was coming.
17 The only reason, folks, that he is denying the fact that he
18 raped her when she was ten is he doesn't want that
19 first-degree criminal sexual conduct charge, that's the
20 only reason. If he was so sorry about what he did and he
21 so acknowledged that what he did was wrong, why didn't he
22 just plead to count two? If he wants y'all to believe that
23 he's remorseful and he's being a man and he's standing up
24 for what he did, why didn't he just come and say: Judge,
25 I know I'm guilty of the second charge, but I didn't do the

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1 first one. He would have a little more credibility if he
2 did that. He put that in your hands to decide. And,
3 folks, the only reason why he did that, the only reason why
4 he did that, because he knew his goose was cooked on that,
5 that's the only reason why. Do you think if his child
6 hadn't gotten pregnant and there was no DNA evidence, do
7 you think he would have even admitted that? No. He gets
8 up here and he says: You know, I don't have many times I
9 raped her, and I don't know when it first happened and when
10 it last happened, but I can tell you it wasn't till after
11 ~~February 14, 2009~~ of 2009. I know that for sure. Well, you
12 know he doesn't remember when it first happened; he doesn't
13 remember the last time it happened, because nothing
14 traumatic happened to him. I beg you -- probably everybody
15 in this court room can remember the first time they had a
16 sexual relationship. I'll bet you everybody in this court
17 room can remember the last time they had a sexual
18 relationship, but can you remember the third or the fourth
19 or the fifth? No. They make a big deal about that. But
20 the reality is she remembers because, for her, it was a
21 traumatic event. I think about this girl's testimony, and
22 I think about what we would have to believe and what we
23 would have to accept as true to believe that she is just
24 wrong about it starting when she was ten. And, folks,
25 when we're talking about it starting when she was ten,

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1 that means she just got out of the third grade. She was
2 going to the fourth grade. And she entered the
3 fourth-grade as a rape victim. But here's what basically
4 you have to disregard. First of all, when she talks about
5 she remembered that it was about a month or so after she
6 got out of school for the summer, she said that she thought
7 -- you may recall she said she thought it was late June.
8 Well, now, I don't know if you all remember this, but
9 Shataria was not in the court room when the nurse from Dr.
10 Allen's office testified; she didn't come in until after.
11 Well, the nurse testified about this visit that ~~Shataria~~ **Victim**
12 had with Dr. Allen's office on June 24th, 2008, and she
13 said that ~~Shataria~~ **Victim**'s grandmother brought her into the
14 doctor's office because she saw a discharge in her
15 underwear. Well, folks, that's the same time that ~~Shataria~~ **Victim**
16 testified when he first raped her. And she didn't know
17 what that nurse was going to say. ~~Shataria~~ **Victim** didn't even
18 remember the visit. Do you think it's a coincidence that
19 the grandmother saw a discharge or some thing in her
20 underwear, and then that's the same month he raped her.
21 You would have to just completely disregard that evidence.
22 Here's what else you have to disregard. When ~~Shataria~~ **Victim** was
23 in Dr. Allen's office in August of 09 for her well-child
24 check up, when the nurse came in and said, you're pregnant,
25 she said, I will never forget her reaction. The child

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1 started kicking and screaming and crying: No, you're
2 lying; I can't be pregnant; I'm only eleven years old; I
3 have to go school. And in the midst of all that, when the
4 nurse is asking: who did this to you? How long has this
5 been going on? She said it happened last summer, the
6 summer of 2008, and she said my cousin's boyfriend, Kevin,
7 raped me. Now, this girl is going to have to be awfully
8 quick and awfully smart to come up with a lie that quick in
9 the midst of finding out about thirty minutes ago that she
10 was pregnant. Does she strike you as the kind of person
11 that was cunning enough to do that? I submit to you that
12 she did not. On top of that, they take her to the Durant
13 Center that same day, and Robin Griggs from the Durant
14 Center asked her questions: When did it happen? How long
15 has it been going on? What did she tell Robin? That same
16 thing. When she gets into court and she testifies, what
17 does she tell you? She never saw that videotape. She
18 never talked to Robin Griggs after that date, but she told
19 Robin and you the exact same thing. You see that's the
20 great thing about truth, the truth doesn't change. I
21 didn't have to worry about her, because I knew when she got
22 on that stand she was going to tell the truth, and I knew
23 what the truth was. He gets in here today -- I'm telling
24 you, folks, that's the worst type of Defendant, he really
25 is. It scares me when you have an adult man that can do

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1 this to a child and simply have no remorse about it. He
2 feels bad, he feels bad. Do you know why he feels bad?
3 Because he's looking at going to prison; he got caught;
4 that's why he feels bad. For some reason, and I'm not
5 clear in my mind, but for some reason, he's gotten Dasheia
6 McBride to feel sorry for him to the point where she has
7 let all reason and rationality go, and she's willing to
8 overlook the fact that he raped her cousin, a child, in the
9 same bed that he shares with her. She's willing to
10 overlook all that and align herself with him. They came in
11 here looking like kissing cousins in here today. Well,
12 folks, somebody has to stand up for truth. Somebody has to
13 stand up for justice. The only thing law enforcement could
14 do was stop him from raping her. Only you can say what
15 justice is. Their job ended once they locked him up. Do
16 we want to live in a society where a person does this to a
17 child? I submit to you, folks, that we do not. You know,
18 kids do not asked to come here; they don't ask to be here.
19 And he picked her because she was a perfect victim. She
20 was a ten -year-old girl; didn't live with her parents;
21 the only Guardian that she had was a 70 year-old woman who
22 runs a nightclub and wears an oxygen tank; didn't have any
23 male figure in her life. He didn't have to worry about the
24 big brother coming to knock the hell out of him. He didn't
25 have to worry about her daddy coming and knocking the hell

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1 out of him. And, while he was laying up in Dasheia's bed
2 while Dashiea was out working and earning a living, he was
3 laying up in her bed, and he calls himself an Army soldier.
4 He did something ugly, and he has the guardian ad litem to
5 sit here and tell you: What I did was morally wrong and
6 legally wrong and I know it. You all are the most
7 important and powerful people in this court room. You all
8 have the power to say: No, maybe it was wrong and we're
9 going to say that it was wrong, but we are going to stand
10 up for truth and justice. And folks, I'm telling you, the
11 only way to do that is with the power of truth. Now, the
12 Forelady in this case will get a verdict form, and Mr.
13 Strobels is right, there are two charges on there, criminal
14 sexual conduct in the first degree and criminal sexual
15 conduct in the second degree. The evidence in this case is
16 clear. This guy raped this little girl repeatedly over the
17 span of a year. He had the power to stop it, and he
18 didn't. And, Madam Forelady and Ladies and Gentlemen of
19 Jury, find him guilty. Thank you all.

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20
21 **THE COURT:** Madam Forelady and Members of the Jury,
22 you have heard the testimony and evidence and arguments of
23 the State and the Defendant. I will now explain to you the
24 law that applies in this case. Under the Constitution and
25 Laws of South Carolina, you are the finders of the facts in

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1 this case. I do not have the right to pass upon the facts
2 or even express any opinion that I might have as to them,
3 because this is a matter solely for you, the Jury, to
4 determine. And as jurors then it is your duty to determine
5 the facts, the value, the weight and the truth of the
6 evidence presented during this trial. You are also the
7 judges, the sole judges, of the credibility, that is, the
8 believability of the witnesses who have testified in this
9 case. And, in passing upon their credibility, you may take
10 into consideration many things such as the demeanor or the
11 manner of testifying; whether the witness had a reason to
12 be biased or prejudiced; whether a witness's testimony was
13 contradicting on the one hand or supportive and
14 corroborative on the other hand. You may believe a small
15 portion of a witness's testimony and disregard the large
16 part or vice versa. You may believe one witness against
17 many or many against one. All of these things you will
18 consider, bearing in mind that you should give the
19 Defendant the benefit of any reasonable doubt. It becomes
20 your duty as jurors to analyze and to evaluate the evidence
21 and determine that evidence which convinces you of its
22 truth. Now there are two types of evidence which are
23 generally presented during a trial, direct evidence and
24 circumstantial evidence. Direct evidence is the testimony
25 of the person who claims to have actual knowledge of a

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1 fact, such as an eyewitness. It is evidence which
2 immediately establishes the fact to be proven.
3 Circumstantial evidence is proof of a chain of facts and
4 circumstances indicating the existence of a fact. It is
5 evidence which immediately establishes a level of facts,
6 and of course the main facts may be inferred.
7 Circumstantial evidence is based on inference and not on
8 personal knowledge or observation. The law makes
9 absolutely no distinction between the weight or value when
10 you get into either direct or circumstantial evidence, nor
11 is a greater degree of certainty required of circumstantial
12 evidence than of direct evidence. You should weigh all of
13 the evidence in this case. After weighing all of the
14 evidence, if you are not convinced of the guilt of the
15 Defendant beyond a reasonable doubt, you must find the
16 Defendant not guilty. As the trial judge, it is my
17 responsibility to preside over the trial of this case, and
18 I also have a duty to rule upon or pass upon the
19 admissibility of the evidence offered during this trial.
20 You are to consider only the testimony which has been
21 presented from this witness stand together with any
22 exhibits which have been made part of the record in this
23 case. I have the additional duty to charge you the law
24 applicable in this case. And, as the presiding judge, I am
25 the sole judge of the law of this case. It is your duty as

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1 jurors to accept and apply the law exactly as I have stated
2 it to you and then reach a verdict. And finally, I charge
3 you in this regard that you should not be concerned of what
4 you think or what you think the law ought to be, but what I
5 charge you the law to be. Now, the fact that a Defendant
6 was arrested, charged and indicted in this case is not
7 evidence in this case and cannot be considered by you as
8 evidence of guilt in this case, nor does it create a
9 presumption or inference of guilt. These indictments is
10 simply the formal written instrument which contains the
11 charges made against the Defendant. The indictment is a
12 formal document of which this case is brought into court.
13 The Defendant has pled not guilty to this indictment. And
14 that plea puts the burden on the State to prove the
15 Defendant guilty. A person charged with committing a
16 criminal offense in South Carolina is never required to
17 prove himself innocent. I charge you that it is an
18 important rule of the law that the Defendant in a criminal
19 trial no matter what the seriousness of the charge may be
20 will always be presumed to be innocent of the crime for
21 which the indictment was issued unless guilt has been
22 proven by evidence satisfying you of that guilt beyond a
23 reasonable doubt. This presumption of innocence does not
24 end when you begin your deliberations. But it accompanies
25 the Defendant throughout the trial until you reach a

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1 verdict of guilty based on evidence satisfying you of that
2 guilt beyond a reasonable doubt. The presumption of
3 innocence is like a robe of righteousness placed about the
4 shoulders of the Defendant which remains with the Defendant
5 until it has been stripped from the Defendant by evidence
6 satisfying you of the Defendant's guilt beyond a reasonable
7 doubt. A presumption of innocence is not merely a theory;
8 it's not just a legal phrase, it is a substantial right to
9 which every Defendant is entitled unless you, the Jury, are
10 satisfied by the evidence of the Defendant's guilt beyond a
11 reasonable doubt. The State must prove the Defendant
12 guilty beyond a reasonable doubt. So, what is a reasonable
13 doubt in the law? A reasonable doubt is a doubt which
14 makes an honest, sincere and conscientious juror in search
15 of the truth to hesitate throughout to prove beyond a
16 reasonable doubt, therefore the proof of such a convincing
17 character that a reasonable person would not hesitate to
18 rely and act upon the most important of this case. Proof
19 beyond a reasonable doubt can also be described as proof
20 that leaves you firmly convinced of the Defendant's guilt.
21 Now there are varying things we have in this world that are
22 absolutely certain. In criminal cases the law does not
23 require proof that overcomes every possible doubt. But,
24 based on your consideration of the evidence, you are firmly
25 convinced that the Defendant is guilty then you must find

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1 him guilty. If, on the other hand, if you think there's a
2 real possibility that he is not guilty, if so then you must
3 give him the benefit of the doubt and find him not guilty.
4 The indictment in this case alleges two different offenses
5 against the Defendant. The charges are criminal sexual
6 conduct with a minor in the first degree and criminal
7 sexual conduct with a minor in the second degree. These
8 charges are separate in the state of offenses. You must
9 decide each charge separately on the evidence and the law
10 applicable to it uninfluenced by your decision as to any
11 other charge. The Defendant may be convicted or acquitted
12 on any or all of the offenses charged. You will be asked
13 to provide a separate verdict of guilty or not guilty for
14 each charge. As to criminal sexual conduct with a minor in
15 the first degree, the Defendant is charged with criminal
16 sexual conduct with a minor in the first degree. The State
17 must prove beyond a reasonable doubt that the Defendant
18 engaged in sexual battery with the victim. The sexual
19 battery is sexual intercourse or any intrusion however
20 slight in any part of a person's body or of any object into
21 a genital opening of another person's body except when the
22 intrusion is accompanied by medically recognized treatment
23 for diagnostic purposes. The State must then prove beyond
24 a reasonable doubt that the victim was less than eleven
25 years old at the time of the sexual battery. As to

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1 criminal sexual conduct with a minor second degree, the
2 Defendant is also charged with criminal sexual conduct with
3 a minor in the second degree. The state must prove beyond
4 a reasonable doubt that the Defendant engaged in a sexual
5 battery of the victim. The state must then prove beyond a
6 reasonable doubt that the victim was at least eleven years
7 old, but not more than fourteen years old, at the time of
8 the sexual battery. Consent, willingness, indifference or
9 ignorance on the part of the minor, if any, as to what was
10 taking place, does not in any way affect the charge of
11 criminal sexual conduct with a minor, because an unmarried
12 woman under the age of fourteen cannot legally consent to
13 sexual intercourse. Now, you were selected by both the
14 State and the Defendant to be fair and impartial jurors.
15 It is your duty then in your joint deliberations to
16 determine the truth in this case, giving the Defendant the
17 benefit of every reasonable doubt on each and every issue.
18 And from the facts which you determine to be true, you take
19 and apply the law which I have just given you and thus
20 arrive at a verdict which speaks the truth in this case. I
21 have told you the standards you have to apply to the
22 charges of criminal sexual conduct with a minor in the
23 first degree and criminal sexual conduct with a minor
24 second degree. I will give you a copy of these
25 instructions in written form during your deliberations and

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1 you may refer to these instructions and use it to guide
2 your decision making. You must consider the instructions
3 as a whole and not follow some and ignore others. You
4 should return these instructions to the Court at the time
5 the verdict is rendered. You have heard the evidence and
6 now you have heard the law. Direct your verdict as to each
7 charge, Madame Forelady. You will indicate by checking not
8 guilty or guilty on the Burnett form. This is the verdict
9 form. There is no significance in the order in which I
10 state these possible verdicts. Simply, one must be stated
11 first. You will then have to check in with each of the
12 appropriate boxes as to each of these charges and you will
13 then sign the verdict form. And remember that although the
14 foreperson is the only juror who signs this verdict, it is
15 not hers alone. The verdict has to be a unanimous verdict
16 as to each charge. Madam Forelady, you are not authorized
17 to write on or sign that verdict until all have agreed as
18 to what the verdict should be. Now, Ladies and Gentlemen,
19 I am going to send you to your Jury room, but do not begin
20 discussing the case until you receive a copy of the charge
21 and the verdict form, and the exhibits. Once you receive
22 these things, that will be your signal for you to commence
23 your deliberations. Once you begin your deliberations, you
24 will deliberate until you have reached a verdict, at which
25 time you will knock on the door and find a bailiff and he

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1 will bring you out to receive your verdict. I ask that you
2 go to the Jury room, all of you except for the last two
3 jurors selected. We select fourteen, the reason we only
4 use twelve to participate in deliberations and the twelve
5 that will deliberate will be the first twelve selected.
6 All of you will go to the Jury room except for the last two
7 selected.

8 (Whereupon, the jury exits the courtroom at
9 5:05 p.m..)

10 THE COURT: Are there any additions or exceptions
11 to the charge?

12 MS. BARR: None from the State, Your Honor.

13 MR. STROBEL: There are no additions or exceptions on
14 behalf of the Defense.

15 THE COURT: All right, thank you very much. If you
16 all will review the exhibits and pass them to the bailiff
17 and the Jury can begin the deliberating.

18 (Whereupon, the state and the defense
19 counsel reviews the exhibits.)

20 THE COURT: To the two alternates, I want thank you
21 all for your service in here, and being ready to step in
22 should something happen to any of the first twelve jurors.
23 A Jury of twelve must decide a case. If we only pick
24 twelve jurors and something happens to one juror, any juror
25 during the trial, we have to declare a mistrial and then

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1 come back months later and start the whole process again.

2 In order to avoid that, we usually pick fourteen.

3 Okay, the jury can begin deliberating.

4 (Whereupon the jury began deliberations at
5 5:09 p.m.)

6 (Whereupon, the court received a note from
7 the jury at 6:20 p.m..)

8 THE COURT: All right. Ms. Barr, we have two notes
9 from the jury. One saying, that they are unable to decide
10 count one. Secondly, can they get a copy of ~~_____~~ ^{VICTIM}
11 testimony. What says the State?

12 MS. BARR: Your Honor, we have no objection to the
13 court reporter playing the child's statement -- testimony.

14 THE COURT: Mr. Strobel?

15 MR. STROBEL: Your Honor, are you going to charge
16 them as to count one to go back and do further
17 deliberations concerning count one or are you -- you said
18 they can't reach a decision as to count one.

19 THE COURT: I'm telling you what the note says.

20 MR. STROBEL: Yes, Sir.

21 THE COURT: I have two notes.

22 MR. STROBEL: Yes, sir.

23 THE COURT: One is they can't decide count one,
24 and secondly, can they get a copy --- They have decided
25 count two. And secondly, can we get a copy of ~~_____~~ ^{victim}s

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1 testimony.

2 MR. STROBEL: Yes, Sir, I certainly don't mind that
3 being played back as to the issue, but -- Okay.

4 THE COURT: Well, if they are requesting testimony,
5 that means that they are still deliberating.

6 MR. STROBEL: Right. That might help.

7 THE COURT: So, it would not be appropriate to give
8 an Allen Charge while they are deliberating.

9 MR. STROBEL: Right. I understand. Thank you.

10 THE COURT: All right, if you will have them come
11 in.

12 THE COURT: Do you know the length of the
13 testimony?

14 MADAME COURT REPORTER: It looks like nineteen
15 minutes and fifty six seconds.

16 THE COURT: How long?

17 MADAME COURT REPORTER: I'm not sure, Your Honor.
18 Part nineteen minutes and fifty six seconds.

19 THE COURT: Bring the jury in.

20 (Whereupon, the jury returned to the
21 courtroom at 7:02 p.m.)

22 THE COURT: Madame Forelady, members of the jury,
23 you sent out a note that asks if you can get a copy of
24 ~~Victim~~ s testimony. We do not have instant copies of
25 testimony to give to juries. And if you will notice, the

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1 court reporter was transcribing her testimony during her
2 voice dictation. That means that she is making a recording
3 of it, and at some belated time she has the ability to type
4 it up. So we do not have instant typed up copies to give
5 to the jury. If you are interested in hearing the
6 testimony, then the court reporter can play the recording,
7 and you can listen to the testimony.

8 Again, is that what the jury wants?

9 MADAME FORELADY: Yes, sir.

10 THE COURT: All right. Madame Court Reporter, you
11 can do that.

12 (Whereupon, the entire testimony of ~~Kevin~~ **Victim**
13 ~~Kevin~~ was played for the jury.)

14 THE COURT: All right. You may return to your
15 jury room to assume deliberations.

16 (Whereupon, the jury exits the courtroom to
17 continue their deliberations at 8:04 p.m..)

18 THE COURT: Is there anything from the state or
19 the defense?

20 MR. STROBEL: I'm sorry, I didn't hear you sir?

21 THE COURT: Is there anything from the state or
22 the defense?

23 MR. STROBEL: No, sir.

24 THE COURT: We will be in recess awaiting the
25 jury.

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1 (Whereupon, the jury announced a verdict at
2 8:35 p.m..)

3 THE COURT: I understand they have reached a
4 verdict. Bring in the jury.

5 (Whereupon, the jury enters the courtroom at
6 8:35 p.m.)

7 THE CLERK: Madame Forelady, we understand that you
8 have reached a verdict?

9 MS. CHANDLER: Yes, Your Honor, we have.

10 THE CLERK: Is it unanimous?

11 MS. CHANDLER: It is.

12 THE COURT: The Defendant will rise. Will the
13 Clerk announce the verdict?

14 THE CLERK: State versus Kevin Bradley: We, the
15 Jury, by unanimous consent, find the Defendant, Kevin
16 Bradley, as to criminal sexual conduct with a minor first
17 degree, guilty.

18 As to criminal sexual conduct with a minor second
19 degree, guilty.

20 If this be your verdict say ye all by raising your
21 right hand?

22 THE COURT: Is your hand raised?

23 JUROR: Yes, sir.

24 THE COURT: All right. Any additional polling
25 requested by the defense?

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1 MR. STROBEL: No, sir.

2 THE COURT: All right. The verdict appears to be
3 a unanimous verdict.

4 Any post trial motions?

5 MR. STROBEL: Yes, sir.

6 THE COURT: We will hear them now.

7 MOTION FOR A NEW TRIAL

8 MR. STROBEL: Your Honor, we make a motion for a new
9 trial, based on the fact that there was no legal
10 efficiency, or sufficiency, of the evidence to properly --
11 or was there neither any reasonable evidence tending to
12 establish guilt on these charges.

13 THE COURT: Ms Barr?

14 MS. BARR: Your Honor obviously, The State presented
15 it's case, and it was within the purview of the jury to
16 determine credibility and there was evidence in the record
17 sufficient evidence in the record to support their verdict.

18 THE COURT: The victim testified that the sexual
19 assaults occurred when she was ten years old. Under the
20 law that evidence which the jury could conclude that he is
21 guilty. The jury finds the defendant guilty, and the post
22 trial motion is denied, finding there is an abundance of
23 evidence to support the jury's verdict, direct and
24 circumstantial evidence. And I respectfully deny the
25 motion.

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1 Ladies and gentlemen, I want to thank you for your
2 services in this case. You didn't volunteer. You were
3 drafted. If for some reason you would find yourself in
4 the courtroom, with a family loved one, yourself, you would
5 like someone like yourself. We certainly want the jury to
6 consider the case and to consider it, and to deliberate in
7 an honest, sincere and conscious manner. And thank you for
8 the time that you took with your deliberations. It was
9 obviously not an easy thing for twelve people from various
10 backgrounds, places, experiences to come together and
11 quickly reach a verdict, because everyone has an opinion,
12 and the matter at hand is one which serious deliberation is
13 required and you all did that. And having done that you
14 reached a unanimous verdict, and that verdict speaks the
15 truth in this case, as far as I am concerned. I thank you
16 for having found the defendant guilty, then it becomes my
17 responsibility to impose a sentence. You have no role in
18 the sentencing. But my experience is that jurors are
19 interested in what happens, and will proceed to that phase
20 of it with you sitting right there. You relax.

21 If you would bring him around.

22 MR. STROBEL: Yes, sir.

23 (PAUSE.)

24 THE COURT: Ms. Barr.

25 MS. BARR: Your Honor, if it please the court, Judge.

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1 With regard to the defendant's prior criminal record, Your
2 Honor, with the exception of some driving offenses back in
3 2007, 2008, plus the conviction for simple assault and
4 battery, and that is the extent of his criminal record.

5 Now, as Your Honor is aware, he has a pending case for
6 criminal sexual conduct with a minor in the second degree
7 for another victim. That charge is still pending.

8 Judge, the other thing that I would say at this point
9 is I am aware that the criminal sexual conduct with a minor
10 first degree is a mandatory minimum of incarceration. And
11 judge in the trial of this case, I see why the Legislature,
12 in its wisdom, chose the mandatory minimum that it did.

13 When I heard the doctor testify yesterday, about how
14 she had to test this eleven year old for HIV, that really
15 hit me. And I looked at all of the things that this child
16 has to go through and has gone through and will continue to
17 go through.

18 And, Judge he has changed her life forever. I think
19 you need to change his life forever. And Judge, I think
20 the punishment should fit the crime.

21 THE COURT: Sir, does the victim or anyone else
22 want to come back for sentencing?

23 MS. BARR: She wanted to go back to school. I spoke
24 with her counselor, and asked her whether or not she
25 thought it would be important to have her here during this

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1 part of the trial. And she really doesn't want to be in
2 the room with him. And she says that if she was told by me
3 what happened after it was over, she thought that would be
4 acceptable.

5 THE COURT: All right. Mr. Strobел.

6 MR. STROBEL: Your Honor, he is twenty years of age.
7 He has no prior criminal record, other than those
8 misdemeanors. He was at home with his mother, who is from
9 Mullin, (phonetic) and he was working at Sikes at the time
10 this incident occurred and took place. He has prepared a
11 statement that he wanted to read to you. And I will let
12 him read that to you.

13 THE COURT: Yes, sir.

14 STATEMENT BY KEVIN BRADLEY

15 MR. BRADLEY: Your Honor, greetings to you. My
16 purpose for writing to you is because I am in need of your
17 help and mercy. Right now, I am facing twenty-five-years
18 to life for the charge that I have committed. I do
19 understand that what I do is legally and morally wrong.
20 And I do feel more than terrible for my actions. I never
21 realized how much pain I placed upon the victim and their
22 family against me inside my heart. Your Honor, I am deeply
23 sorry for my actions. Your Honor, I am begging you as
24 humble as I can, begging you to have mercy upon me, and to
25 not sentence me to a prison but for a lot of years. For

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1 you can see, Your Honor, I am only twenty years old, and I
2 was on a straight path to a bright future, but falling
3 along the way.

4 I have served four years in the South Carolina Army
5 National Guard. I have maintained a good review. With a
6 few misdemeanors, which were due to traffic offenses. Last
7 but not least I have just enrolled in Southeastern
8 University and am taking up criminal investigation. Your
9 Honor, any type of stress or pain I have caused to the
10 family I am beyond sorry, and wish to ask for their
11 forgiveness.

12 So, Your Honor, I guess you could say I am one hundred
13 percent sorry, Your Honor, for my actions. I am not only
14 asking you but the family to give me a better chance in
15 society to prove that I will be a good U. S. Citizen.

16 THE COURT: All right.

17 MR. BRADLEY: Your Honor, I ask you for your mercy,
18 Your Honor. I know I messed up. I know I made a mistake.
19 And lord, please don't take my life away for me and my
20 family. I know what I did was wrong. I understand that.
21 I wouldn't hurt a fly, Your Honor. I am in the Army. I
22 couldn't even picture myself shooting anybody.

23 THE COURT: You would not hurt a fly.

24 MR. BRADLEY: Your Honor, I understand the
25 allegations and everything upon me. Your Honor, please.

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1 THE COURT: You are beyond allegations at this
2 point.

3 MR. BRADLEY: Please, Your Honor, please, I am
4 begging you. Don't take my life away. I have four kids,
5 Your Honor. And I have a set of twins.

6 THE COURT: You have four kids.

7 MR. BRADLEY: Twins, and two boys.

8 THE COURT: How old are they?

9 MR. BRADLEY: Two and one.

10 THE COURT: Two and one.

11 MR. BRADLEY: The twins are two, Your Honor, and my
12 two sons are one.

13 THE COURT: How old are their mothers?

14 MR. BRADLEY: Twenty-one and twenty-two. I'm sorry,
15 twenty-one and twenty-three, Your Honor.

16 THE COURT: Who are the mothers?

17 MR. BRADLEY: Ms. Adriena Faison, and Ms. Jessica
18 Snow.

19 THE COURT: The girls over there?

20 MR. BRADLEY: Yes, sir, Your Honor.

21 THE COURT: She is the mother of --

22 MR. BRADLEY: Three. Of three of my kids.

23 THE COURT: Of three of your kids?

24 MR. BRADLEY: Yes, Your Honor. The twins and my
25 babies -- I mean this from the bottom of my heart, Your

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1 Honor. If I could take back every wrong that I have done
2 Your Honor, I would. I am pretty sure that any man that
3 has ever done anything wrong would do anything to take it
4 back, Your Honor.

5 THE COURT: How many girlfriends do you have?

6 MR. BRADLEY: One Your Honor. That is my girlfriend
7 right there. That is my girl.

8 THE COURT: So that lady back there is not a
9 girlfriend?

10 MR. BRADLEY: Adriena Faison, that's my kids mother,
11 and I lover her. But that is my girl.

12 THE COURT: The mothers are girlfriend?

13 MR. BRADLEY: Right.

14 THE COURT: And the fourth child is how old again?

15 MR. BRADLEY: One.

16 THE COURT: So she is younger than the --

17 MR. BRADLEY: My son is older than my babies.

18 THE COURT: The girl that testified for you. Is
19 it Dasheia?

20 MR. BRADLEY: That's correct, Your Honor.

21 THE COURT: When did she stop being your
22 girlfriend?

23 MR. BRADLEY: After I --- after I caught this charge,
24 Your Honor.

25 THE COURT: Which was? When was he arrested?

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1 MS. BARR: August 26th, I believe.

2 THE COURT: Mr. Bradley, what else do you want to
3 tell me?

4 MR. BRADLEY: Please, Your Honor, have mercy upon
5 me.

6 THE COURT: Before the trial started, you signed a
7 --- your lawyer had prepared and you handed me this
8 Affidavit which you admitted being guilty. And you put in
9 your own handwriting on page three of it, with a question
10 of: What acts did you do which caused you to think that you
11 were guilty of the charge or charges to which you now want
12 to plead guilty. And, in our own handwriting you wrote: I
13 had sex with ~~_____~~ ^{VICTIM} age ten.

14 MR. BRADLEY: I didn't write that, Your Honor.

15 THE COURT: You didn't write it?

16 MR. BRADLEY: No, Your Honor.

17 THE COURT: Who wrote it?

18 MR. STROBEL: I did it.

19 THE COURT: He signed it?

20 MR. STROBEL: Oh, yes, sir. Not only did I read it
21 to him, he told me what to put. When I finished everything
22 and he read it over, and then signed it up here.

23 MR. BRADLEY: Your Honor --

24 THE COURT: Sir,

25 MR. BRADLEY: Your Honor, this was my first time ever

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1 in trial or anything. I didn't know what to do. They
2 brought this to me, and I told them I didn't feel
3 comfortable signing this. For one she was not ten. That
4 is for one. But when they offered me twenty-five, it was
5 better --- they were telling me just what to do, or he was
6 going to give you life.

7 THE COURT: So, you signed this paper. Admitted
8 to being guilty. And then you decided you wanted a guilty
9 trial. Then took the witness stand, and denied being
10 guilty. And as far as her being ten years old at the
11 time. So, what is your position at this point? Did you
12 ask her how old she was when you started having sex with
13 her?

14 MR. BRADLEY: I don't understand what you are asking
15 me, Your Honor.

16 THE COURT: How old was she when you started
17 having sex? What is your current position on that issue?

18 MR. BRADLEY: She was at the age of eleven, and I was
19 at the age of nineteen.

20 THE COURT: All right. Anything further?

21 MR. BRADLEY: No, Your Honor.

22 MR. STROBEL: Your Honor, this is his mother to his
23 right.

24 THE COURT: Anything you want to say, ma'am?

25 STATEMENT OF MR. BRADLEY'S MOTHER

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1 MOTHER: Well, I know one thing, like he says, he's
2 human. Everybody in this courtroom is human. Nobody is
3 beyond mistake or failure, and I think everyone deserves a
4 second trial as to mercy. Yes, he was wrong. And who can
5 stand in this courtroom and say they have not done no
6 wrong? You know? Who can hold their head up and say they
7 have done no wrong. Yes, you are the Judge, but you will
8 also be judged. Do you understand what I'm saying?

9 THE COURT: I understand exactly what you are
10 saying.

11 MOTHER: But two wrong can't make a right. That is
12 your power and that is your right. The jury has found him
13 guilty. And your job is to sentence him. But life, can
14 you imagine one person holding another person's hand life?
15 I have seen people come and take away and no life sentence.
16 You know, just to get a clear picture how someone can pick
17 someone like Kevin did but they don't get sentenced for
18 life. So, someone help me understand that.

19 THE COURT: Even if I were to, I could not
20 sentence him less than the mandatory minimum, which is
21 twenty-five years. That is a minimum sentence that he is
22 facing, no portion of which can be suspended.

23 MOTHER: Yes, sir, I understand. But he will still
24 have life.

25 THE COURT: Anything else, ma'am?

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1 MOTHER: No, sir. I understand, and I respect you.

2 THE COURT: Tell me everything you want to say.

3 MOTHER: What I am just saying is, I don't want no
4 one to look at him as though he is beneath dirt, or
5 immorally wrong. But, like I say, no one is perfect.
6 There is no such thing. Everything is a sin, I don't care
7 what it is, that is my point. He has done a good/bad, bad
8 thing. I am a woman, I have a daughter. I understand.
9 But, still he is my child also. Anybody who has a child
10 and thinks they are going to be perfect, they just are
11 waiting to see where it will take them. You never know.
12 We can never say what we will and what we don't. Sometimes
13 we don't understand why we do things. I have another older
14 son. Sometimes things click in their head, and you don't
15 understand what happened. No one can understand. You have
16 met my other son. He has been before you.

17 THE COURT: What is his name?

18 MOTHER: Ken Lane.

19 THE COURT: Where is he now?

20 MOTHER: He is home with me.

21 THE COURT: He broke into her house, got a gun and
22 started shooting to keep him away from her?

23 MOTHER: Right.

24 THE COURT: Is that case still pending or over?

25 MOTHER: We don't understand why people do something.

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1 THE COURT: So, if I remember he had some mental
2 issues?

3 MOTHER: He wasn't like that. That is what I'm
4 trying to say.

5 THE COURT: So he had some mental issues? How
6 about this boy?

7 MOTHER: Did I know --

8 THE COURT: Have you ever had any mental issues in
9 your lifetime?

10 MOTHER: No, sir.

11 THE COURT: His father or anyone?

12 MOTHER: But like I say, we don't know why people do
13 things. They are different mentally, one might be apparent
14 one way -- they don't understand.

15 THE COURT: All right. This boy, does he still
16 think he is like a twelve year old, or has he ever grown
17 up? Why is he bothering these young --

18 MOTHER: I don't --

19 THE COURT: -- Baby girls.

20 MR. BRADLEY: If I may make one more statement, Your
21 Honor.

22 THE COURT: Please.

23 MR. BRADLEY: In the year 2009, Your Honor, I
24 encountered a lot of things happening. I was hit with a
25 paint bottle at a club, and I got knocked unconscious. I

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1 got here, here, and here, and I was robbed. And I felt
2 like the guy who hit me was charged with strong armed
3 robbery. Later on, two weeks a month later, Dasheia ran me
4 over with a car. I almost died. I came home. I pressed
5 charges. And a few months later down the line after
6 getting the charge CSC first, and a few months down the
7 line I came before Ms. Barr, and I said, Ms. Barr, I want
8 to drop these charges. And she said, what charges, and I
9 told her the ones brought for Shawn (phonetic) and Dasheia
10 McBride for assault and battery high and aggravated nature.
11 And she looked over the files, and she said well I'm not
12 going to drop the charges but I am going to reduce it. And
13 she will drop Ms. McBride, because she has no record. She
14 told me all of this happened, you might need to move out of
15 town. But what I told her after she told me that why would
16 you want to drop these charges. No one has been man enough
17 to stand up to me and say I'm sorry. Just like Jesus does,
18 I forgive them. Like every man deserves a second chance,
19 Your Honor. I'm not telling you what to do, Your Honor. I
20 can't tell you what to do. But, Your Honor, I withhold my
21 tears, and I stand before you as a man, and I'm telling you
22 --- and if the family was here, I wish I could tell them
23 too. I am sorry. Please give me a second chance. Thank
24 you, sir.

25 THE COURT: Anything else Mr. Strobel?

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1 MR. STROBEL: No, sir.

2 THE COURT: This offense, criminal sexual offense
3 with a minor. You might remember a few years ago, in
4 various parts of the country children would come up
5 missing, in Florida, California and Utah. And in many of
6 them children would get kidnaped coming home from school.
7 They would just come up missing. And then they would
8 search to find out where all of the pedophiles in the area
9 lived, and who they were. And often times, tracing back to
10 those pedophiles are people who prey on young children.
11 They would find a killer. And as a result of that the
12 legislature in many states decided we are going to have to
13 toughen these laws. We are going to have to do something
14 about it. And South Carolina was one of those states. So
15 that is a result of that. They changed the law for
16 criminal sexual conduct with a minor drastically, and
17 increased the penalty from a maximum of thirty years to a
18 minimum of twenty-five years. And a maximum of -- in
19 prison. The second thing they did was, if a person was
20 convicted of criminal sexual conduct with a minor first
21 degree, and then picked up another charge for the same
22 thing, committing the same thing with a second child under
23 the age of eleven, the case was punishable by death. You
24 get the death penalty. Now, even if the event is not
25 criminal sexual conduct first degree, but criminal sexual

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1 conduct second degree, the first offense is a most serious
2 crime, under the two strike law. And the second offense is
3 punishable with or life without the possibility of parole.
4 So as you stand right here right now, having been convicted
5 --- not simply of criminal sexual conduct second degree,
6 but also criminal sexual conduct first degree, and the
7 Solicitor has a pending charge involving you and how old is
8 this other charge?

9 MS. BARR: Thirteen years old.

10 THE COURT: Thirteen years old. The state can
11 serve notice of life without the possibility of parole.
12 And whatever I give you this is mandatory. So it is not
13 simply as your mother seems to think all the power is in my
14 hands. I don't pass the laws, I am here to hold the law
15 and to enforce the law. The law that was passed by the
16 state legislature, and these are serious offenses, because
17 these children are vulnerable, and they are vulnerable to
18 predators like your son. And they are damaged and
19 destroyed for life as a result. He said he wants her to
20 fly, but he has destroyed, virtually destroyed the life of
21 this child. She is not a fly.

22 Secondly, a question for Ms. Barr. And this is
23 pursuant to the statute. The statute indicates that
24 where the jury has found a person guilty of criminal
25 sexual conduct first degree, I need to pull the statute

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1 to review it, because I think the jury must find a
2 subsequent finding as to whether --- makes a finding of
3 guilt for criminal sexual conduct first degree the jury
4 must make a finding as to whether the offense involved
5 sexual or anal intercourse or intrusion by an object.
6 What is the state's position as to whether under the new
7 law, whether the jury must make a finding on that issue?

8 MS. BARR: Judge, I think that the
9 uncontradicted evidence presented was that this was a
10 genital penetration as opposed to a anal penetration.
11 One of the things that the did not play very well during
12 the trial, but one of the things that Ms. Greggs asked
13 ~~the~~ ^{victim} during the forensic interview was whether or not
14 there was anal penetration, and she said there was not,
15 nor oral penetration.

16 THE COURT: The definition of sexual battery does
17 not distinguish what openings are penetrated. In the
18 portion of the statute, the last part, A(1) it relies under
19 C(1) last sentence, thus the jury make a finding as to the
20 specific finding --

21 MS. BARR: Judge, it indicates here, if I am
22 reading the statute correctly, that in the case of a
23 person pleading guilty, now looking to a violation of
24 A(1), the judge must make a specific finding on the
25 record that constituted sexual battery, vaginal sexual

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1 or anal intercourse by a person or intrusion.

2 THE COURT: Keep reading.

3 MS. BARR: Violation of A(1) the judge or jury,
4 which ever one is applicable, must designate as part of
5 the verdict whether the conduct constituted sexual
6 batter involving sexual or anal intercourse by a person
7 or intrusion, or by an object.

8 THE COURT: What is the state's position?

9 MS. BARR: Is that the jury would have to designate
10 whether it was anal intercourse or sexual intercourse.

11 THE COURT: So the verdict form is --- Madame
12 Clerk. A verdict form --

13 Madame Forelady and members of the jury, your job
14 is not over as it turns out. The jury must make a
15 determination as to whether the sexual battery involved
16 sexual or anal intercourse. On the bottom of the verdict
17 form I am going to write that question, and have you all
18 go to the jury room and make that determination. And by
19 the time you all get up there I will have this up there
20 for you, and you make that unanimous verdict. And let us
21 know and we will have you come back and we will continue.
22 Meanwhile we will stop these proceedings.

23 (Whereupon, the jury exits the courtroom at
24 9:09 p.m.)

25 MS. BARR: Your Honor, this is as to count one; is

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1 that correct?

2 THE COURT: Yeah. It is as to count one.

3 (Whereupon, a recess was taken to prepare
4 the verdict form.)

5 (Whereupon, the jury begins deliberations at
6 9:15 p.m. and reaches a verdict at 9:18 p.m..)

7 THE COURT: Bring them in.

8 THE CLERK: Stand for me one more time. Have you
9 reached a verdict?

10 MS. CHANDLER: We have.

11 THE CLERK: Is it unanimous?

12 MS. CHANDLER: It is.

13 THE COURT: The verdict says, that the conduct as
14 to count one involving sexual intercourse, and anal
15 intercourse by intrusion by an object; circle one
16 sexual intercourse. That it did involve sexual
17 intercourse. Is that correct, Madame Forelady?

18 MS. CHANDLER: Yes, Your Honor.

19 THE COURT: If that is the verdict of each and
20 every one of the jury let it be know by raising your right
21 hand please?

22 Did you raise your hand? You can raise your left hand
23 then, how about that. Okay the verdict appears to be
24 unanimous as to that fact. Any other question or issue or
25 polling of this issue?

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1 MR. STROBEL: No polling.

2 THE COURT: Very good. Thank you, ladies and
3 gentlemen. Once again I thank you. This is a new law
4 that was passed in 2008, as a result of this big issue.
5 And in response to all of these, you have kidnaping and
6 killing, and sometimes not kill but kidnaped and raped.
7 And the whole question by the Attorney General and others
8 concerning whether a question if the person can be given
9 the death penalty if they killed someone. And the
10 legislature of this state says yes. That if you rape a
11 child under eleven and you are convicted of it you are
12 the same thing again, and you can get the death penalty.
13 But the jury must make a finding in the first case, or
14 the judge if the person pleads guilty as to whether or
15 not it involves sexual intercourse, anal intercourse, or
16 through some object being placed in the genital area.
17 So, thank you very much for your service on that.

18 Let's finish this, please. How about the
19 girlfriend back there, the ex-girlfriend? The mother of
20 the three babies. Let's see if she wants to say something.

21 (A LADY CAME FORWARD)

22 STATEMENT BY ADRIENA FAISON

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

24 MS. FAISON: Adriena Faison.

25 THE COURT: Adriena Faison. How are you doing?

THE STATE VERSUS KEVIN BRADLEY

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1 MS. FAISON: Fine.

2 THE COURT: Good. What do you have to say about
3 it?

4 MS. FAISON: Nothing much I can say. Everyone has
5 been said by his mother, and him. Just clear, it is
6 going to be the same repeat. But he knows and everybody
7 knows, that, you know, he was wrong. And, I think he is
8 really sorry for what he did, but he was wrong. He
9 can't take back what he did; no one can. He loves the
10 kids to death, and he loves them so much. They call him
11 my Kevin. They call him My Kevin.

12 THE COURT: They call him what?

13 MS. FAISON: My Kevin.

14 THE COURT: And, how old are these children?

15 MS. FAISON: We have a set of twins, they'll be
16 three in March, and we have a one-year-old. He turned
17 one in October.

18 THE COURT: And, how do you know Bradley here?

19 MS. FAISON: Um, we was dating since high school.
20 He was in tenth grade and I met him in ROTC. I was the
21 Command Sergeant Major and he was a Private.

22 THE COURT: And, you are how old, now?

23 MS. FAISON: I'm twenty-one.

24 THE COURT: Twenty-one, and you have three
25 children?

THE STATE VERSUS KEVIN BRADLEY

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1 MS. FAISON: Yes, Sir.

2 THE COURT: Okay. All right, anything else, madam?

3 MS. FAISON: I just ask -- I know you can't do but
4 so much, just you know, can you find it in your heart to
5 have mercy, that's all.

6 THE COURT: Well, he is facing twenty-five-years
7 to life. How many do you want me to give him? How many
8 do you think I should give him?

9 MS. FAISON: I wish you could give him none.

10 THE COURT: Well, we have to start at twenty-five;
11 I have no options on that.

12 MS. FAISON: Well, can he have twenty-five with
13 parole?

14 THE COURT: Say that again?

15 MS. FAISON: Twenty-five with parole.

16 THE COURT: There is no parole.

17 MS. FAISON: No parole?

18 THE COURT: Under the law, no parole, non-
19 paroleable. He must do eight-five-percent of the time.
20 You will not be seeing him soon. I appreciate your
21 interest, I mean, he ---

22 MS. FAISON: I'm sorry. If it is possible, twenty-
23 five, at least. He will be up and running --

24 THE COURT: He'll be up and running?

25 MS. FAISON: You know, he might, you know this is ---

THE STATE VERSUS KEVIN BRADLEY

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1 kids and everything.

2 THE COURT: Are you going to take them to see him?

3 MS. FAISON: Huh?

4 THE COURT: Are you going to take the babies to see
5 him?

6 MS. FAISON: Yes, Sir, I take them now when he was
7 over there at the Detention Center.

8 THE COURT: Why didn't y'all get married?

9 MR. BRADLEY: It was my fault.

10 THE COURT: Your fault?

11 MR. BRADLEY: Young and dumb.

12 THE COURT: Young and dumb? You've got three
13 babies with her. She's only twenty-one. She said y'all
14 have been going together since high school. How old were
15 you back then, young lady?

16 MS. FAISON: Probably fifteen, I was in the tenth
17 grade.

18 THE COURT: Fifteen. And, he was how old?

19 MS. FAISON: He was in the ninth grade. He was
20 probably about fourteen.

21 THE COURT: So, you are older than he is?

22 MS. FAISON: Yes, Sir.

23 THE COURT: Okay. All right. He never asked you
24 to marry him?

25 MS. FAISON: Yes, Sir.

THE STATE VERSUS KEVIN BRADLEY

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1 THE COURT: What did you say?

2 MS. FAISON: Um, at the time, we were kind of rocky,
3 so I told him -- I told him yeah and then no.

4 THE COURT: You told him yeah and no?

5 MS. FAISON: That was the first time. The second
6 time he asked me I said yeah.

7 THE COURT: So, why didn't y'all get married?

8 MS. FAISON: (No answer)

9 THE COURT: You just decided not to?

10 MS. FAISON: Some things came up.

11 THE COURT: Some things came up? Like what? Some
12 of these cases?

13 MS. FAISON: No, not necessarily, um, because, I
14 still love him regardless, just, you know, he made a
15 mistake. Everybody makes mistakes.

16 THE COURT: Yeah, that's the problem these days.
17 Some of these mistakes, I mean, a lot of people these days
18 make mistakes, and they're dead, or doing life in prison,
19 or they're heading off like him.

20 Why did you start bothering those young girls?

21 MR. BRADLEY: I can't say nothing. I'm just saying I
22 was young and dumb.

23 THE COURT: Young and dumb.

24 MR. BRADLEY: I mean, dumb decisions, Your Honor.

25 THE COURT: All right, Mr. Bradley, anything else?

THE STATE VERSUS KEVIN BRADLEY

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1 I think we're all ready to go.

2 MR. BRADLEY: No, Sir.

3 SENTENCE OF THE COURT

4 THE COURT: Okay, on count number one, the sentence
5 is twenty-five-years, and count number two, the sentence
6 is twenty-years. And, he gets credit for time served.

7 And, strange as that may seem, that's the minimum
8 sentence on these charge. Unfortunately, however, if you
9 are convicted of that pending charge, that's life without
10 the possibility of parole. The judge has no role in the
11 sentencing.

12 MR. BRADLEY: Your Honor, on that, you know, let
13 me ask you, I spoke with my attorney earlier, if -- I
14 know we had this plea bargain before. Could we just --
15 I don't want to plead guilty, cause I know I'm not guilty
16 of that crime. But, couldn't we just go ahead and get
17 it over with and get that to run concurrently with this
18 charge?

19 THE COURT: Well, I don't accept guilty pleas from
20 people who are not guilty. I only take guilty please
21 from people who are guilty. They have to convince me,
22 just as the Solicitor has to convince the jury that you
23 are guilty in this case, you've got to convince me that
24 you are guilty in that other case before I can accept a
25 guilty plea. We'll give you overnight to think about that.

THE STATE VERSUS KEVIN BRADLEY

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1 MR. STROBEL: Your Honor, I just want to make sure I
2 understand it. This is consecutive, right?

3 THE COURT: No, it's not consecutive; it's ---

4 MR. STROBEL: Concurrent?

5 THE COURT: --- Concurrent.

6 MR. STROBEL: Thank you, Your Honor. Do I have to
7 be here in the morning with the other matter concerning
8 the other case?

9 THE COURT: No, you are not his lawyer on that
10 case, so you're out of here. You're one and done; you're
11 good to go.

12 All right, Ladies and Gentlemen, it's hard but it's
13 fair, and it turns out we need you back tomorrow for the
14 next case.

15 Tomorrow at noon, be here at noon tomorrow for the
16 next case. We will start at 11:00; jury is set at 12:00.

17 (Whereupon, this trial was concluded at
18 9:48 p.m. on Wednesday, January 27, 2010.)

19 -- END OF TRANSCRIPT --

20

CERTIFICATE OF REPORTER

301

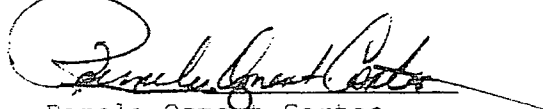
The State of South Carolina	)	In the Court of General Sessions
	)	
County of Williamsburg	)	
	)	
The State	)	January 25, 2010
	)	
Plaintiff,	)	
	)	
Versus	)	
	)	
Kevin Bradley,	)	2010-GS-45-249
	)	
Defendant.	)	

I, the undersigned, Pamela Ozment-Cartee, official Court Reporter for the Fourth Judicial Circuit of South Carolina, do hereby certify, that the foregoing is a true, accurate and complete Transcript of Record in the above captioned case, relative to appeal, in The Court of General Sessions in Williamsburg County, South Carolina, on the Monday, January 25, Tuesday, January 26, and Wednesday, January 27, 2010.

This transcript was transcribed under my direct supervision by Edith Kimbrell, a retired court reporter for the State of South Carolina.

I do further certify that am neither, of kin, counsel, nor interest of any party hereto.

October 20, 2011


Pamela Ozment-Cartee
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS

2010-CP-45-389

KEVIN C. BRADLEY, #339031)
 Applicant,)

v.)

THE STATE OF SOUTH CAROLINA,)
 Respondent.)

APPLICATION FOR
 POST-CONVICTION RELIEF

10:57:00
 00:11:00

INSTRUCTIONS – READ CAREFULLY

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

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

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

1. Place of detention: Lee Correctional Institution, 990 Wisacky Highway, Bishopville, South Carolina 29010
2. Name and location of Court which imposed sentence Williamsburg County General Sessions Court
3. Name(s) of co-defendant(s) (if any) : N/A
4. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2009-GS-45-0249 Criminal Sexual Conduct with Minor- First Degree
 - (b) 2009-GS-45-0249 Criminal Sexual Conduct with Minor, Second Degree
 - (c) 2010-GS-45-030 Criminal Sexual Conduct with Minor, Second Degree

5. The date upon which sentence was imposed and the terms of the sentence:
- (a) January 27, 2010- Twenty-Five (25) years concurrent.
 - (b) January 27, 2010 - Twenty (20) years concurrent.
 - (c) January 28, 2010 – Five (5) years consecutive to sentence imposed on Indictment No. 2009-GS-45-0249.
6. Check whether a finding of guilty was made
- (a) after a plea of guilty Yes Indictment No. 2010-GS-45-030.
 - (b) after a plea of not guilty Yes Indictment No. 2009-GS-45-249.
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? No
8. If you answered “yes” to (7), list
- (a) the name of each Court to which you appealed:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (b) the result in each such Court to which you appealed:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (c) the date of each such result:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. N/A

iii. N/A

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

(a) N/A

(b) N/A

(c) N/A

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

(a) The Applicant received Ineffective Assistance of Counsel prior and during his trial in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution.

(b) Trial counsel deprived the Applicant of his right to a direct appeal by failing to file a Notice of Appeal on his behalf following his jury trial on Indictment No. 2009-GS-45-0249.

(c) The Applicant's plea of guilty on Indictment No. 2010-GS-45-30 was not voluntarily and intelligently entered.

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

(a) Counsel failed to provide client effective assistance of counsel prior to and during his trial proceeding. Inasmuch as Counsel failed to recognize errors which occurred during his trial, and therefore failed to make appropriate objections, and supporting legal arguments relating thereto. Counsel's failure to make these objections may have changed the outcome of the Applicant's trial and deprived him of the opportunity to have these issues addressed on their merits on direct appeal.

(b) Trial counsel neglected to file a direct appeal for the Applicant and the Applicant did not knowingly waive his right to a direct appeal.

(c) The Applicant pleaded guilty on his 2010 indictment without being fully advised of his right to appeal the judgments and sentences entered against him the previous day.

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

(a) any petitions in a State Court under South Carolina law? n/a

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief? n/a

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? n/a

(d) any other petitions, motions or applications in this or any other Court? n/a

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. n/a

ii. n/a

iii. n/a

iv. n/a

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

i. n/a

ii. n/a

iii. n/a

iv. n/a

(c) the disposition thereof:

i. n/a

ii. n/a

iii. n/a

iv. n/a

(d) the date of each such disposition:

i. n/a

ii. n/a

iii. n/a

iv. n/a

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

i. n/a

ii. n/a

iii. n/a

iv. n/a

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. n/a

ii. n/a

iii. n/a

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

i. n/a

ii. n/a

iii. n/a

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) Collateral review through PCR represents the first appropriate opportunity the Applicant has had to raise these issues.

(b) _____

(c) _____

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

(a) your arraignment and plea? yes

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A

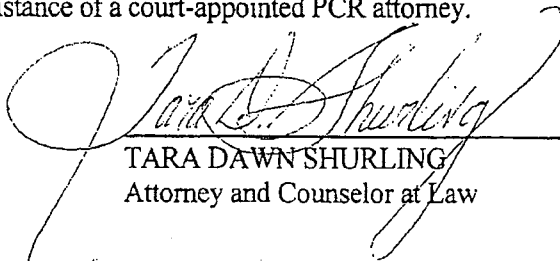
(e) preparation, presentation or consideration of any petitions, motions, or applications with respect to this conviction, which you filed? N/A

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. Richard Strobel, Esquire, P. O. Box 349, Florence, SC 29503.
 - ii. Richard Strobel, Esquire, P. O. Box 349, Florence, SC 29503
 - iii. Richard Strobel, Esquire, P. O. Box 349, Florence, SC 29503
- (b) the proceedings at which each such attorney represented you:
- i. Trial and Sentencing
 - ii.
 - iii. _____
19. State clearly the relief you seek in filing this application. Vacation of judgments and sentences. Applicant seeks a new trial on all charges.
20. Are you now under sentence from any other court that you have not challenged? no

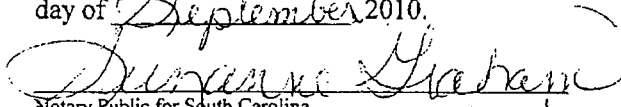
STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

VERIFICATION

I, Tara Dawn Shurling, retained counsel for the Applicant, 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. The Applicant *does not* desire the assistance of a court-appointed PCR attorney.


TARA DAWN SHURLING
Attorney and Counselor at Law

SWORN to and subscribed before me this 25th
day of September 2010.


Notary Public for South Carolina

My Commission Expires: 3/12/2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS

KEVIN C. BRADLEY, #339031)
 Applicant,)

2010-CP-45-389

v.)

**AMENDED APPLICATION FOR
 POST-CONVICTION RELIEF**

THE STATE OF SOUTH CAROLINA,)
 Respondent.)

INSTRUCTIONS – READ CAREFULLY

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

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iii. N/A

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

(a) N/A

(b) N/A

(c) N/A

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

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i. n/a

ii. n/a

iii. n/a

iv. n/a

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

i. n/a

ii. n/a

iii. n/a

iv. n/a

(c) the disposition thereof:

i. n/a

ii. n/a

iii. n/a

iv. n/a

(d) the date of each such disposition:

i. n/a

ii. n/a

iii. n/a

iv. n/a

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

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(b) _____

(c) _____

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

(a) your arraignment and plea? yes

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A

(e) preparation, presentation or consideration of any petitions, motions, or applications with respect to this conviction, which you filed? N/A

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. Richard Strobel, Esquire, P. O. Box 349, Florence, SC 29503.

ii. William LeGrand Carraway, 124 South Academy St., Kingstree, SC 29556

iii.

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

i. 2009 Charges Trial Date of January 25- 27, 2010 and Sentencing

ii. 2010 Charge, plea after trial.

iii. _____

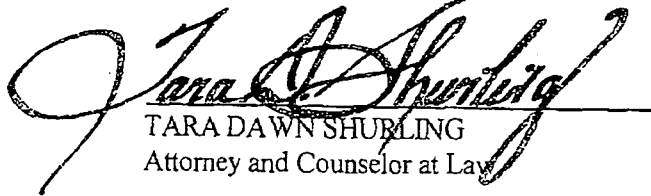
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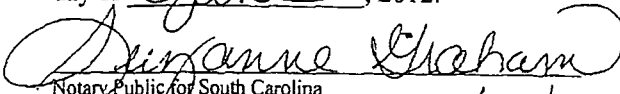
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COUNTY OF WILLIAMSBURG

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TARA DAWN SHURLING
Attorney and Counselor at Law

SWORN to and subscribed before me this 5th
day of June, 2012.


Notary Public for South Carolina
My Commission Expires: 3/12/2013

FILED
12 JUN 12 AM 11:55
CLERK OF COURT
WILLIAMSBURG, S.C.

Department of Corrections and the trial transcript.¹ The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel.
 - a. "Counsel failed to provide client effective assistance prior to and during his trial proceeding. Inasmuch as Counsel failed to recognize errors which occurred during his trial, and therefore failed to make appropriate objections, and supporting legal arguments relating thereto. Counsel's failure to make these objections may have changed the outcome of Applicant's trial and deprived him of the opportunity to have these issues addressed on their merits on direct appeal."
 - b. "Trial counsel failed to file a direct appeal for the Applicant and the Applicant did not knowingly waive his right to a direct appeal."
 - c. "Applicant pled guilty on his 2010 indictment without being fully advised of his right to appeal the judgments and sentences entered against him the previous day."

Any claims not specifically enumerated in the PCR 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

¹ As of the date of this Return, the trial transcript has been ordered but not yet received. The same will be forwarded upon receipt.

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.

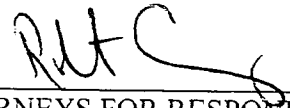
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ROBERT D. CORNEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

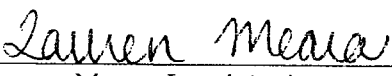
September 7, 2011.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG	)	
	)	
	)	2010-CP-45-0389
	)	
KEVIN C. BRADLEY, 339031,	)	
	)	
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:

Tara Dawn Shurling, Esquire
Law Office of Tara Dawn Shurling, PA
3614 Landmark Drive, Ste. D
Columbia, SC 29204

DATED this 7th day of September, 2011.


 Lauren Meara, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS

KEVIN C. BRADLEY, #339031)
 Applicant,)

2010-CP-45-389

v.)

AMENDED APPLICATION FOR
 POST-CONVICTION RELIEF

THE STATE OF SOUTH CAROLINA,)
 Respondent.)

FILED
 13 FEB 25 PM 4:33
 SHAWNEE COUNTY CLERK
 WILLIAMSBURG, S.C.

INSTRUCTIONS – READ CAREFULLY

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

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

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

1. Place of detention: Lee Correctional Institution, 990 Wisacky Highway, Bishopville, South Carolina 29010

2. Name and location of Court which imposed sentence Williamsburg County General Sessions Court

3. Name(s) of co-defendant(s) (if any) : N/A

4. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) 2009-GS-45-0249 Criminal Sexual Conduct with Minor- First Degree

(b) 2009-GS-45-0249 Criminal Sexual Conduct with Minor- Second Degree

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

(a) January 27, 2010- Twenty-Five (25) years concurrent.

(b) January 27, 2010 - Twenty (20) years concurrent.

A CERTIFIED TRUE COPY
 W. Stagg
 CLERK OF COURT
 WILLIAMSBURG COUNTY

6. Check whether a finding of guilty was made
- (a) after a plea of guilty
 - (b) after a plea of not guilty YES
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? No
8. If you answered "yes" to (7), list
- (a) the name of each Court to which you appealed:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (b) the result in each such Court to which you appealed:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (c) the date of each such result:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. N/A
 - iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Trial Counsel neglected to preserve the Applicant's right to a direct appeal by filing a Notice of Appeal on his behalf.

(b) N/A

(c) N/A

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

(a) The Applicant received Ineffective Assistance of Counsel prior and during his trial in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution.

(b) Trial counsel deprived the Applicant of his right to a direct appeal by failing to file a Notice of Appeal on his behalf following his jury trial on Indictment No. 2009-GS-45-0249.

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

(a) Counsel failed to provide client effective assistance of counsel prior to and during his trial proceeding. Inasmuch as Counsel failed to recognize errors which occurred during his trial, and therefore failed to make appropriate objections, and supporting legal arguments relating thereto. Counsel's failure to make these objections may have changed the outcome of the Applicant's trial and deprived him of the opportunity to have these issues addressed on their merits on direct appeal..

(b) Trial counsel neglected to file a direct appeal for the Applicant and the Applicant did not knowingly and voluntarily waive his right to a direct appeal.

(c)

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

(a) any petitions in a State Court under South Carolina law? n/a

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief? n/a

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? n/a

(d) any other petitions, motions or applications in this or any other Court? n/a

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. n/a

ii. n/a

iii. n/a

iv. n/a

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

i. n/a

ii. n/a

iii. n/a

iv. n/a

(c) the disposition thereof:

i. n/a

ii. n/a

iii. n/a

iv. n/a

(d) the date of each such disposition:

i. n/a

ii. n/a

iii. n/a

iv. n/a

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

i. n/a

ii. n/a

iii. n/a

iv. n/a

14. Has any ground set forth in (10) been previously presented to this or any other Court, State of 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. n/a

ii. n/a

iii. n/a

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

i. n/a

ii. n/a

iii. n/a

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) Collateral review through PCR represents the first appropriate opportunity the Applicant has had to raise these issues.

(b) _____

(c) _____

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

(a) your arraignment and plea? yes

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A

(e) preparation, presentation or consideration of any petitions, motions, or applications with respect to this conviction, which you filed? N/A

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. Richard Strobel, Esquire, P. O. Box 349, Florence, SC 29503.

ii. Richard Strobel, Esquire, P. O. Box 349, Florence, SC 29503

iii. Richard Strobel, Esquire, P. O. Box 349, Florence, SC 29503

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

i. Trial and Sentencing

ii.

iii. _____

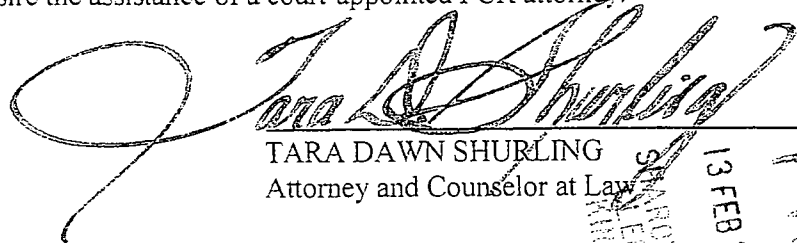
19. State clearly the relief you seek in filing this application. Vacation of judgments and sentences. Applicant seeks a new trial on all charges. The Applicant also seeks a belated direct appeal.

20. Are you now under sentence from any other court that you have not challenged? no

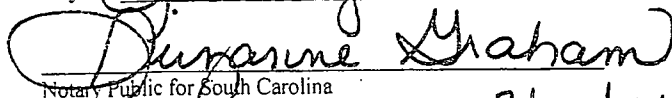
STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

VERIFICATION

I, Tara Dawn Shurling, *retained* counsel for the Applicant, 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. The Applicant *does not* desire the assistance of a court-appointed PCR attorney.


TARA DAWN SHURLING
Attorney and Counselor at Law

SWORN to and subscribed before me this 21ST
day of February, 2013.


Notary Public for South Carolina
My Commission Expires: 3/12/2013

FILED
13 FEB 25 PM 4:34
CLERK OF COURT
WILLIAMSBURG, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
	)	2010-CP-45-0389
Kevin C. Bradley, #339031,	)	
	)	
Applicant,	)	
	)	
v.	)	AMENDED RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Amended Return to the application for post conviction relief (PCR) filed September 9, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. The Applicant was true bill indicted at the January 2010 term of the Williamsburg County Grand Jury for Criminal Sexual Conduct with a Minor—First Degree and Criminal Sexual Conduct with a Minor- Second Degree (2009-GS-45-249). Richard Strobel, Esquire represented Applicant. Applicant proceeded to a jury trial before the Honorable Clifton Newman and on January 27, 2010, Applicant was found guilty. Judge Newman sentenced Applicant to twenty five years imprisonment for Criminal Sexual Conduct with a Minor—First Degree and twenty years for Criminal Sexual Conduct with a Minor—Second Degree. The sentences were to run concurrently. Applicant did not appeal his conviction or his sentence.

Attached herewith and incorporated herein are the records of the Williamsburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina

Department of Corrections, and the plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "The Applicant received Ineffective Assistance of Counsel Prior and during his trial in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I., Section 14 of the South Carolina Constitution."
 - a. "Counsel failed to provide client effective assistance of counsel prior to and during his trial proceeding. Inasmuch as Counsel failed to recognize errors which occurred during his trial, and therefore failed to make appropriate objections and supporting legal arguments relating thereto. Counsels failure to make these objections may have changed the outcome of the Applicants trial and deprived him of the opportunity to have these issues addressed on their merits on direct appeal."
2. "Trial counsel deprived the Applicant of his right to a direct appeal by failing to file a Notice of Appeal on his behalf following his jury trial on Indictment No. 2009-GS-45-0249"
 - a. "Trial Counsel neglected to file a direct appeal for the Applicant and the Applicant did not knowingly and voluntarily waive his right to a direct appeal."

Any claims not specifically enumerated in the PCR 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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

In his second allegation, Applicant claims that he was denied effective assistance of counsel because his trial attorney did not appeal his conviction. Respondent submits that trial counsel for the Applicant was diligent in his representation of Applicant and that he performed within the wide range of reasonable professional assistance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). In Strickland, the United States Supreme Court held that a convicted defendant's claim that counsel's assistance was so defective as to require a reversal of a conviction requires that the defendant show, first, that counsel's performance was deficient and, second, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. Respondent submits that trial counsel's performance was not deficient nor was the Applicant prejudiced in any way by such performance. The decision of the South Carolina Supreme Court, in White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), holds that even though the post-conviction relief court finds that the Applicant had never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. However, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

Respondent submits that this allegation is totally frivolous and demands strict proof thereof. Nevertheless, the allegation raises a question of fact, which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

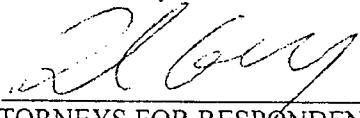
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

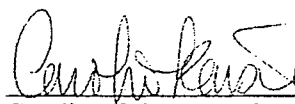
October 28, 2013.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG	)	
	)	
	)	2010-CP-45-389
	)	
KEVIN C. BRADLEY, #339031,	)	
	)	
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 **Amended Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tara Dawn Shurling, Esquire
 Law Office of Tara Dawn Shurling, PA
 3614 Landmark Drive
 Suite A
 Columbia, SC 29204

DATED this 28th day of October, 2013.


 Caroline Kaiser, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG	)	
 KEVIN C. BRADLEY, #339031	)	2010-CP-45-389
Applicant,	)	
	)	
v.	)	SECOND AMENDED APPLICATION
	)	FOR POST-CONVICTION RELIEF
THE STATE OF SOUTH CAROLINA,	)	
Respondent.	)	
_____	)	

The Post-Conviction Relief Application previously filed on September 29, 2010 under docket number 2010-CP-45-389 and amended on February 25, 2013 is hereby amended to include the following additional allegations:

1. Trial Counsel was ineffective for failing to sufficiently argue the validity of the race neutral explanations given by the Applicant for striking jurors during the selection of the first jury selected in his case.

2. Trial Counsel was ineffective for failing to fully argue against the selection of a second jury panel in the Applicant's case where the reasons given by the Applicant for striking the jurors in question during the State's *Batson* challenge were sufficiently race neutral pursuant to known precedent in South Carolina at the time of the Applicant's trial.

3. Trial Counsel was ineffective for failing to repeat and fully articulate for the record the Applicant's reasons for striking each of the jurors in dispute at his trial during the *Batson* hearing held pursuant to motion by the State.

4. Trial Counsel was ineffective for failing to explain to the Applicant that all of his reasons for striking each juror against whom he exercised a peremptory strike had to be fully stated for the record *as to each juror* when the strike used against that particular juror was addressed during the *Batson* hearing held pursuant to the State's motion.

5. Trial Counsel failed to provide the Applicant with reasonable professional assistance of counsel in that he failed to advise the Applicant, who being allowed by Trial Counsel to participate in decisions concerning the use of preemptory strikes in the selection of his jury, that in order to preserve a record for appeal from the trial court's ruling on a potential

Batson motion by the State, he needed to be prepared fully articulate his reasons for using strikes against each juror.

6. Trial Counsel failed to provide the Applicant with reasonable professional assistance of counsel in that he failed to restate for each juror addressed during the *Batson* hearing the Applicant's reasons for using strikes against each juror as articulated in Trial Counsel's general response to the State's *Batson* motion..

7. Trial Counsel was ineffective for neglecting to exercise a peremptory strikes to remove five (5) jurors from the Applicant's jury who had been previously struck by the Applicant in the selection of his first jury where the explanations given by the Applicant for the use of a strike against each of these jurors, if properly articulated, provided a race neutral justification for the use of a peremptory strike against each of these jurors.

8. Trial Counsel was ineffective for characterizing the Applicant's reason for striking Juror number 96, Kenneth Lancaster, as an excuse, where this statement supported the prosecution's position that the reasons proffered by the Applicant for striking this juror were pretextual.

9. Trial Counsel was ineffective for failing to fully articulate the Applicant's objection to the testimony of State witness Barbara Gregg and for failing to present appropriate authority in support of the Applicant's objection to this testimony.

10. Trial Counsel was ineffective for failing to research and present potential character witnesses to testify in the Applicant's behalf at trial; specifically Sgt. Robert McClary, Debra Black, Manager at Skyes in Kingstree, South Carolina, Sgt. Staggers, employed with the 1052nd Transportation Company Army National Guard, and Frederick Davis of the Kingstree Police Department.

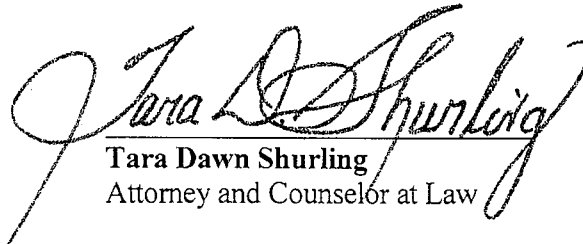
11. Trial Counsel was ineffective for failing to present testimony from Sgt. Robert McClary, Army National Guard, who would have been able to present alibi evidence for some of the dates the Applicant was accused of committing sexual battery upon the victim, Shataria G. and where said witness could have presented character testimony for the Applicant.

12. Trial Counsel was ineffective for failing to request a continuance after a material amendment to Applicant's indictment where the new indictment was presented to the Grand Jury days before the Applicant's trial, and where he was not made aware of the more serious charge brought in the new indictment until immediately before his trial.

 2

The Applicant has no further amendments at this time. For the reasons set forth herein, as well as those set forth in his original application, the Applicant asserts that his right to effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14, of the South Carolina Constitution, was violated prior to and during his guilty plea proceeding in the Court of General Sessions. Copies of these amendments have been served on opposing counsel, Daniel Gourley, Assistant Attorney General, and Trial Counsel for the Applicant, Richard W. Strobel, Esquire and William LeGrand Carraway.

Respectfully submitted,

A handwritten signature in black ink, reading "Tara Dawn Shurling". The signature is fluid and cursive, with the first name "Tara" being particularly prominent.

Tara Dawn Shurling
Attorney and Counselor at Law

3614 Landmark Dr., Ste. A
Columbia, SC 29204
803-738-8622
803-738-1600 (Fax)

ATTORNEY FOR APPLICANT

This 20th day of May, 2014.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF WILLIAMSBURG)

KEVIN C. BRADLEY, #339031)
 Applicant,)

2010-CP-45-0389

v.)

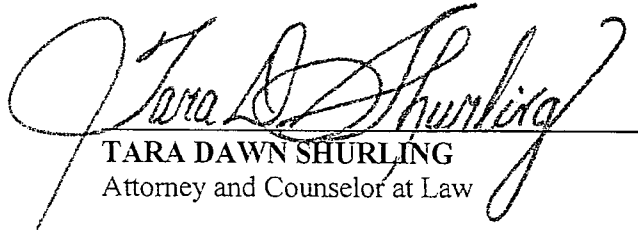
CERTIFICATE OF SERVICE

THE STATE OF SOUTH CAROLINA,)
 Respondent.)

The undersigned attorney hereby certifies that a true copy of the Second Amended Post-Conviction Relief Application in the above matter has been faxed and hard copy by mail on this 20th day of May, 2014 to:

Richard W. Strobel, Esquire
 P. O. Box 349
 Florence, SC 29503
strobellawfirm@aol.com

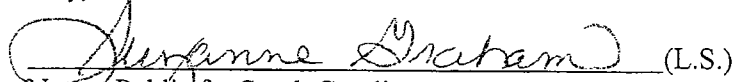
The original having been sent to the Williamsburg County Clerk of Court for filing.


TARA DAWN SHURLING
 Attorney and Counselor at Law

3614 Landmark Drive, Suite A
 Columbia, S.C. 29204
 (803) 738-8622
 (803) 738-1600 Fax

ATTORNEY FOR THE APPLICANT.

SWORN TO BEFORE ME this 20th day of
 May, 2014.

 (L.S.)
 Notary Public for South Carolina
 My Commission Expires: 2/28/2024

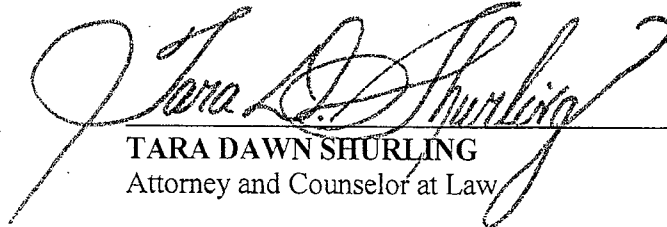
STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF WILLIAMSBURG)

KEVIN C. BRADLEY, #339031) 2010-CP-45-0389
 Applicant,)
)
 v.) **CERTIFICATE OF SERVICE**
)
 THE STATE OF SOUTH CAROLINA,)
 Respondent.)
 _____)

The undersigned attorney hereby certifies that a true copy of the Second Amended Post-Conviction Relief Application in the above matter has been faxed and hard copy by mail on this 20th day of May, 2014 to:

Daniel F. Gourley
 Assistant Attorney General
 P. O. Box 11549
 Columbia, SC 29211

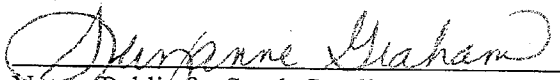
The original having been sent to the Williamsburg County Clerk of Court for filing.


TARA DAWN SHURLING
 Attorney and Counselor at Law

3614 Landmark Drive, Suite A
 Columbia, S.C. 29204
 (803) 738-8622
 (803) 738-1600 Fax

ATTORNEY FOR THE APPLICANT.

SWORN TO BEFORE ME this 20th day of
 May, 2014.

 (L.S.)
 Notary Public for South Carolina
 My Commission Expires: 2/28/2024

347
WITNESSES
KINGSTREE PD

Joseph Graham

DOCKET NO. 2009-GS-45-249

The State of South Carolina

County of WILLIAMSBURG

FRI FEB 13

09:07:03 02/11/09

CLERK OF COURT
KINGSTREE, S.C.

COURT OF GENERAL SESSIONS

OCTOBER TERM 2009

THE STATE

VS.

KEVIN BRADLEY

ARREST WARRANT NUMBER
M 170205

D/A: 8/19/09

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: 10/8/09

VERDICT

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR - FIRST DEGREE AND
CRIMINAL SEXUAL CONDUCT WITH A
MINOR - SECOND DEGREE

C. KELLY JACKSON, SOLICITOR

Foreperson of Petit Jury
Date:

2 Kelly

349
WITNESSES

KINGSTREE PD

Joseph Graham

AMENDED
DOCKET NO. 2009-GS-45- 249

The State of South Carolina

County of WILLIAMSBURG

COURT OF GENERAL SESSIONS

JANUARY TERM 2010

THE STATE
vs.

KEVIN BRADLEY

ARREST WARRANT NUMBER

M 170205

D/A: 8/19/09

ACTION OF GRAND JURY

TRK B.11

Foreperson of Grand Jury

Date: 1-21-10

VERDICT

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR - FIRST DEGREE AND
CRIMINAL SEXUAL CONDUCT WITH A
MINOR - SECOND DEGREE

C. KELLY JACKSON, SOLICITOR

A CERTIFIED TRUE COPY
SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY

CLERK OF COURT
KINGSTREE, S.C.

10 JAN 21 PM 12:41

FILED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG) **INDICTMENT FOR**
CRIMINAL SEXUAL CONDUCT WITH A MINOR
- FIRST DEGREE AND CRIMINAL SEXUAL
CONDUCT WITH A MINOR - SECOND DEGREE

At a Court of General Sessions, convened on January 25, 2010, the Grand Jurors of WILLIAMSBURG County present upon their oath:

COUNT ONE - CRIMINAL SEXUAL CONDUCT WITH A MINOR - FIRST DEGREE

That **KEVIN BRADLEY** did in Williamsburg County between June 1, 2008 and February 4, 2009, violated Section 16-3-655 (A) of the Code of Laws of South Carolina (1976), as amended, in that the defendant, a male over the age of eighteen (18) years, engaged in sexual battery with the victim, a child under the age of eleven (11) years old.

COUNT TWO - CRIMINAL SEXUAL CONDUCT WITH A MINOR - SECOND DEGREE

That **KEVIN BRADLEY** did in Williamsburg County between February 5, 2009 and August 14, 2009, violated Section 16-3-655 (B) of the Code of Laws of South Carolina (1976), as amended, in that the defendant, a male over the age of eighteen (18) years, engaged in sexual battery with the victim, a child between eleven (11) and fourteen (14) years of age.

A CERTIFIED TRUE COPY

Sharon W. Staggers

SHARON W. STAGGERS
 CLERK OF COURT
 WILLIAMSBURG COUNTY

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

CLERK OF COURT
 WILLIAMSBURG COUNTY
 10 JAN 21 PM 12:41

FILED

C. Kelly Zabo
 SOLICITOR

351

ARREST WARRANT

M-170205

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

KINGSTREE

THE STATE
against

KEVIN BRADLEY

KINGSTREE SC 29556

SSN: _____

Race: B Height: 5-7 Weight: 160

L State: SC DL#: _____

DOB: 1/1989 Agency OR#: SC0450200

Rescuing Agency: KINGSTREE POLICE DEPT.

Rescuing Officer: CPL. HAMLET/MAJOR GRAHAM

Offense: CRIMINAL SEXUAL CONDUCT WITH A

MINOR 1ST DEGREE

Offense Code: 0385

Data/Ordinance Sec: 16-03-0655 (A) (1), 0656

his warrant is CERTIFIED FOR SERVICE in the

] County/ ☐ Municipality of

to be arrested and brought before me to be

with according to law.

The accused

Signature of Judge _____ (L.S.)

Return

copy of this arrest warrant was delivered to

defendant KEVIN BRADLEY

Signature of _____

Signature of _____

Signature of _____

Signature of _____

Signature of _____

Signature of _____

Signature of _____

Signature of _____

Signature of _____

Signature of _____

Signature of _____

Signature of _____

Signature of _____

Signature of _____

Signature of _____

Signature of _____

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
KINGSTREE

AFFIDAVIT

Personally appeared before me the affiant MAJOR JOSEPH GRAHAM / CPL. W. HAMLET
being duly sworn deposes and says that defendant KEVIN BRADLEY
did within this county and state on 06/01/2008 to 08/14/2009 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of KINGSTREE

in the following particulars:

DESCRIPTION OF OFFENSE: 16-03-0655 (A) (1), 0656 / CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THAT BETWEEN JUNE 2008 THUR AUGUST 2009 ONE KEVIN BRADLEY DID COMMIT THE OFFENSE OF CRIMINAL SEXUAL CONDUCT WITH A MINOR UNDER THE AGE OF 11 BY HAVING SEXUAL INTERCOURSE WITH THE MINOR CHILD, SHATARIA GAINES, ON SEVERAL OCCASIONS RESULTING IN A PREGNANCY AT THE AGE OF 11. THE INCIDENT OCCURRED AT THE KING CROSSING APARTMENT COMPLEX LOCATED WITHIN THE CITY LIMITS OF KINGSTREE, SC. ONE KEVIN BRADLEY WAS IDENTIFIED BY THE VICTIM DURING AN INTERVIEW AT THE CHILDREN'S DURANT CENTER. CRIMINAL SEXUAL WITH A MINOR 1ST DEGREE IS IN VIOLATION OF THE SC CODE OF LAWS ACCORDING TO SECTION CODE 16-3-655(A)(1).

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

KINGSTREE

Signature of Affiant

Signature of Affiant

Signature of Affiant

Signature of Affiant

Signature of Affiant

Signature of Affiant

Signature of Affiant

Signature of Affiant

Signature of Affiant

Signature of Affiant

Signature of Affiant

Signature of Affiant

Signature of Affiant

Signature of Affiant

Signature of Affiant

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Signature of Affiant

Signature of Affiant

Signature of Affiant

Signature of Affiant

Signature of Affiant

Form Approved by
S.C. Judicial System
July 28, 1990
SCCA 618

OCT 29 2013

ORIGINAL

Case: 09-3699

Judge Ball set by 8-19-07
Matthew & Carolyn

on 8-19-07

Type and Amount: 20,000.00 C/S

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____
(Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____
Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

FILED
09 AUG 21 AM 11:00
CLERK OF COURT
KIM T. S. C.

**STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)**

**INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR
- FIRST DEGREE AND CRIMINAL SEXUAL
CONDUCT WITH A MINOR - SECOND DEGREE**

At a Court of General Sessions, convened on January 25, 2010, the Grand Jurors of WILLIAMSBURG County present upon their oath:

COUNT ONE - CRIMINAL SEXUAL CONDUCT WITH A MINOR - FIRST DEGREE

That **KEVIN BRADLEY** did in Williamsburg County between June 1, 2008 and February 4, 2009, violated Section 16-3-855 (A) of the Code of Laws of South Carolina (1976), as amended, in that the defendant, a male over the age of eighteen (18) years, engaged in sexual battery with the victim, a child under the age of eleven (11) years old.

COUNT TWO - CRIMINAL SEXUAL CONDUCT WITH A MINOR - SECOND DEGREE

That **KEVIN BRADLEY** did in Williamsburg County between February 5, 2009 and August 14, 2009, violated Section 16-3-655 (B) of the Code of Laws of South Carolina (1976), as amended, in that the defendant, a male over the age of eighteen (18) years, engaged in sexual battery with the victim, a child between eleven (11) and fourteen (14) years of age.

CERTIFIED TRUE COPY
Carolyn F. Williams
CAROLYN F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

C. Kelly Jackson
SOLICITOR

FILED
10 JAN 21 PM 12:41
CAROL M. WILLIAMS
CLERK OF COURT
KINGSTREE, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF WILLIAMSBURG

STATE VS.

KEVIN C. BRADLEY

AKA:

Race: Black

Sex: Male

Age: 20

DOB: 11/11/1988

SSN: 000-00-0000

Address:

000-000 Road

City, State, Zip

Kingstree, SC 29556

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#

2009-GS-45-0249

AMW# M 170205

Date of Offense: June 1, 2008 - August 14, 2009

S.C. Code § 16-3-555(A)(1)

CDR Code # 0 / 3 / 8 / 5

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE FIRST DEGREE

In violation of § 16-3-555(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0 3 8 5

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

w/minor 11 or Less Age)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant Initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:*Kimberly V. Bann*
Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 25 days/months/years or ☐ Under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____ plus costs and assessments as applicable, the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-26-135.☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

SPECIAL CONDITIONS:

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____

\$ _____ Public Defender Fund

Other: _____

CAROLYN E. _____

CLERK OF COURT

WILLIAMSBURG COUNTY

☒ Appointed Attorney/Defendant's Attorney, §33-13-10

Requires \$500 be paid to clerk upon probation.

Recipient:

*Fine:

§14-1-208 (Assessments 107.5%)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2985 (DUI Assessment)

§35.13 (Public Def/Prob)

§73.3, 1B TP (Law Enforce. Funding)

§33.7, 1B TP (Drug Court Surcharge)

§50-21-114 (BUJ Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$100	
\$100	
\$42	
\$500	
\$25	
\$100	
\$50	
\$40/ea	
\$	
\$	

Carolyn E. Williams
Clerk of Court/Deputy Clerk

Court Reporter:

Amelia D. Carter

Presiding Judge:

Judge Code:

Sentence Date:

C. Neward

2-17

2nd July 29, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF WILLIAMSBURG

INDICTMENT CASE#

STATE VS.

2009-GS-450249

KEVIN C. BRADLEY,

AAW# No Warrant

AKA:

Date of Offense: June 1, 2008 - August 14, 2009

Race: Black Sex: Male Age: 20

S.C. Code §: 16-3-655(B)(1)

DOB: 01/11/1989 SS#: 248-79-9474

CDR Code #: 0396

Address: 1300 13th

Kingstree, SC 29556

SENTENCE SHEET

DL# 10000000 SID#

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF ☐ PLEADS

TO: CRIMINAL SEXUAL CONDUCT WITH A MINOR - SECOND DEGREE

In violation of § 16-3-655 (B)(1) of the S.C. Code of Laws, bearing CDR Code #0396

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS/CSO ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment and Jury, (Defendant Initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Kimberly V. Butler 8443
Clerk of Court

Defendant:

Attorney for Defendant:

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$, provided that upon the service of days/months/years and/or payment of \$ plus costs and assessments as applicable, the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ plus 25% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fees:

\$14-1-206 (Assessments 107.65%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114 (BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$
\$
\$100
\$100
\$12
\$500
\$25
\$100
\$50
\$40/ea
\$
\$

days/hours Public Service Employment

Obtain GED

Attend 100 Rehab or 100 GED

May serve 100 Beginning

Substance Abuse Counseling 100 HRS TRUE

Random Drug/Alcohol Testing

Firearm Ban, no alcohol consumption, no work/working

points of \$

Other: *Carroll F. Wright*

Other:

CAROLYN F. WRIGHT

CLERK OF COURT

WILLIAMSBURG

☐ Appointed PD or appointed other county §56-13-14

Requires \$500 be paid to Clerk during probation.

Carolyn F. Wright
Clerk of Court/Deputy Clerk

Court Reporter:

Kimberly V. Butler

PRESIDING JUDGE

Judge Code:

Sentence Date:

C. Newman

January 27, 2010

356

STATE OF SOUTH CAROLINA

COUNTY OF WILLIAMSBURG

STATE VS.

KEVIN C. BRADLEY,

AKA:

Race: Black Sex: Male Age: 20

DOB: 12/19/1989 SS#: 248-79-9474

Address: 2000 Rd

Kingstree, SC, 29526

DL# 248-99-9474 SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2009-GS-45-0249

A/W#: No Warrant

Date of Offense: June 1, 2008 - August 14, 2009

S.C. Code §: 16-3-655 (B) (1)

CDR Code #: 0396

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: CRIMINAL SEXUAL CONDUCT WITH A MINOR - SECOND DEGREE

in violation of § 16-3-655 (B)(1) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:



Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____ plus costs and assessments as applicable*, the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

PTUP

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)	\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100
\$14-1-211(A)(2) (DUI Surcharge)	\$100
\$56-5-2995 (DUI Assessment)	\$12
\$35.13 (Public Def/Prob)	\$500
\$73.3, 1B TP (Law Enforce. Funding)	\$25
\$33.7, 1B TP (Drug Court Surcharge)	\$100
\$50-21-114(BUI Breath Test Fee)	\$50
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

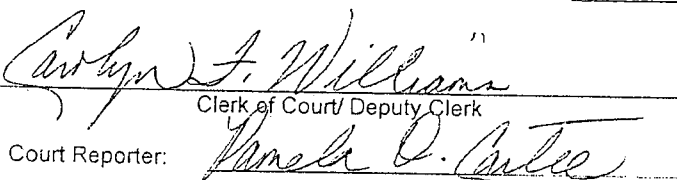
Fine may be pd. in equal, consecutive weekly/monthly

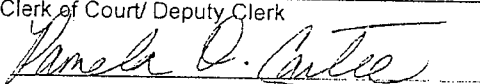
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

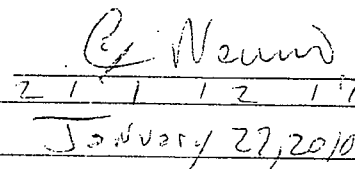


Clerk of Court/Deputy Clerk
Court Reporter: 

PRESIDING JUDGE

Judge Code:

Sentence Date:



2111211
January 27, 2010

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 07/18/11
 OMCOMITA RELEASE DATE SCREEN C040481
 SCDC# > 339031 LOC: LEE
 BRADLEY, KEVIN CHRISTOPHE SCDC CLASSIFICATION... VIOLENT
 OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: Y
 SEXUAL PREDATOR...: PENDING
 DNA STATUS...: COMPLETED
 GPS REQUIREMENT...: Y
 PREA DECISION...:
 CURRENT SENTENCE: 030-00-000 CONSECUTIVE SENTENCE ...: Y
 030-00-000 CURRENT SENT START DATE: 10/03/2009
 PROJECTED COMPLETION DATES
 MAXOUT DATE: 04/17/2039 CURRENT EWC ..: NOT CURRENTLY EARNING EWC
 YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
 INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

 TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
 TOTAL EARNED WORK CREDITS ...: 000000 LABOR CREW DISQ REASON:
 TOTAL EDUCATION CREDITS: 000000 CURRENT OR PRIOR SEX CONDUCT CONVICT
 TOTAL EXTRA EARNED CREDITS ..: 000
 TOTAL SERVICE TIME EARNED ...: 000645

 PFKEYS: 5:HISTORY OF DATE CHANGES
 4-© 1 Sess-1 167.7.50.33 SCDC1421 3/11

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 07/18/11

C040

BRADLEY, KEVIN CHRISTOPHE FBI # 170518RCO SID# SC01751288 SCDC # 339031

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ... LEE CORR INST

SECURITY/CUST.: 3 MINIMUM IN

CURR INCARC SENT...: 30 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: YES

SOCIAL SECURITY #...: [REDACTED]

DORM.....: CHE1160T

RACE....: B SEX...: M

PROJ MAXOUT DATE: 04/17/2039

PROJ PAROLE DATE: 00/00/0000

FNC JOB...: NO CURRENT JOB

EDUC PGM.: NO CURR EDUC PROGRAM

FNC LEVEL: 0 SEC LEVEL:

ASSIGNMENT...: GENERAL DETAIL UNEN

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 22 DATE OF BIRTH...: [REDACTED]/89

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE YRS MOS DYS	COUNTY	SENTENCE START U/NU	CATEGORY
CRIM SEX COND.W/MINOR(2N	5 0	0 WILLIAMSBURG	10/ 8/20 9 U	4
CRIM SEX COND.W/MINOR(2N	20 0	0 WILLIAMSBURG	10/ 8/20 9 U	4
CRIM SEX COND.W/MINOR(1S	25 0	0 WILLIAMSBURG	10/ 3/20 9 U	5

PRIOR COMMITMENTS OVER 90 DAYS:

MISSING PRIORS DATA

DETAINEES (HOLD,WANTED,NOTIFY):

CODE NOT IN TABLE

HOLD

IRD

CATEG: 5

NO DETAINEES

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

6/14/11 USE, POSS NARC, MARIJ, UNAU CONVICTED	MAJOR
6/14/11 REFUSING OR FAILING OBEY CONVICTED	ADMIN
6/14/11 REFUSING OR FAILING OBEY CONVICTED	ADMIN
3/15/11 INTERFERING WITH COUNT DROPPED	OTHER
3/15/11 REFUSING OR FAILING OBEY DROPPED	OTHER
1/ 6/11 GAMBLING AND LOAN SHARKI CONVICTED	MAJOR
1/ 6/11 POSS. OR/ATTEMPT TO POSS CONVICTED	MAJOR
12/31/10 POSSESSION OF CONTRABAND CONVICTED	ADMIN
11/14/10 USE, POSS NARC, MARIJ, UNAU CONVICTED	MAJOR
10/24/10 EXHIBITIONISM AND PUBLIC DROPPED	MAJOR

HISTORY OF MOVEMENTS:

5/25/11	LEE	INCARCERATED	ADMINISTRATIVE
5/24/11	KIRKLAND	INCARCERATED	MEDICAL
4/ 5/11	LEE	INCARCERATED	ADMINISTRATIVE
4/ 5/11	EVANS	INCARCERATED	MEDICAL
10/11/10	LEE	INCARCERATED	ADMINISTRATIVE
10/11/10	KIRKLAND	INCARCERATED	MEDICAL
9/13/10	LEE	INCARCERATED	ADMINISTRATIVE
9/13/10	KIRKLAND	INCARCERATED	MEDICAL
8/27/10	LEE	INCARCERATED	ADMINISTRATIVE
8/27/10	PALMETTO RCHLAN	AUTH ABSENCE (AWL)	MEDICAL
8/23/10	LEE	INCARCERATED	ADMINISTRATIVE
8/23/10	KIRKLAND	INCARCERATED	MEDICAL
7/26/10	LEE	INCARCERATED	ADMINISTRATIVE
7/26/10	KIRKLAND	INCARCERATED	MEDICAL
3/15/10	LEE	INCARCERATED	ADMINISTRATIVE
2/ 1/10	KIRKLAND	INCARCERATED	R&E PROCESSING
2/ 1/10	LITERER	INCARCERATED	NEW ADMISSION

BRADLEY, KEVIN CHRISTOPHE FBI # 170518RC0 SID# SC01751288 SOTC # 339031 (CONT)

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB	START	END	TERMINATION	JOB
DESCRIPTION	DATE	DATE	REASON	LVL

*NO WORK ASSIGNMENTS *

HISTORY OF EARNED EDUCATION CREDITS:

FEC	START	END	TERMINATION
DESCRIPTION	DATE	DATE	REASON

LVL 3 - FULL TIME(ND EWC) 03/16/10

1/ 3/11 PLACED IN ST/SP CUSTODY

***** END OF REPORT *****

COUNTY OF WILLIAMSBURG
STATE VS.

KEVIN BRADLEY,

AKA:

Race: Black Sex: Male Age: 20

DOB: 07/19/1989 SS#:

Address: 2000 Rd

City, State, Zip:

Kingstree, SC 29556

DL# 1000000000 SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2010-GS-45-30

A/W#: M-170251

Date of Offense: October 1, 2006

S.C. Code §: 16-3-655 (B) (1)

CDR Code #: 0 / 3 / 9 / 6

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: CRIMINAL SEXUAL CONDUCT WITH A MINOR - SECOND DEGREE

in violation of § 16-3-655 (B)(1) of the S.C. Code of Laws, bearing CDR Code # 0 3 9 6

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. KB (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State

ATTEST:

Stephen V. Barr 87443
Solicitor[Signature]
Defendant[Signature]
Attorney for Defendant #13157WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and

assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2009-GS-45-249☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$
§14-1-211(A)(2) (DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$100
§35.13 (Public Def/Prob)	\$12
§73.3, 1B TP (Law Enforce. Funding)	\$500
§33.7, 1B TP (Drug Court Surcharge)	\$25
§50-21-114(BUI Breath Test Fee)	\$100
§56-5-2942(J) (Vehicle Assessment)	\$50
3% to County (if paid in installments)	\$40/ea
TOTAL	\$

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning: CONFIDENTIAL TRUST COURT

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: CLERK OF COURTWILLIAMSBURG COUNTY☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.Carolyn J. Williams
Clerk of Court/ Deputy Clerk

Court Reporter:

Parola G. Crater

PRESIDING JUDGE

Judge Code:

Sentence Date:

C. Newman2 11 1 1 2 17
January 28, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

361

COUNTY OF WILLIAMSBURG
STATE VS.

KEVIN C. BRADLEY,

AKA:

Race: Black Sex: Male Age: 20

DOB: 01/1989 SS#: 212-78-3442

Address: 222 E. 1st Rd

Kingstree, SC, 29526

DL# 212-78-3442 SID#

INDICTMENT/CASE#:

2009-GS-45-0249

A/W#: No Warrant

Date of Offense: June 1, 2008 - August 14, 2009

S.C. Code §: 16-3-655 (B) (1)

CDR Code #: 0396

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: CRIMINAL SEXUAL CONDUCT WITH A MINOR - SECOND DEGREE

in violation of § 16-3-655 (B)(1) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Kimberly V. Barr 8443
Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and
assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department
of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:	\$
§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100
§14-1-211(A)(2) (DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§35.13 (Public Def/Prob)	\$500
§73.3, 1B TP (Law Enforce. Funding)	\$25
§33.7, 1B TP (Drug Court Surcharge)	\$100
§50-21-114(BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$

\$ paid to Public Defender Fund

Other:

CAROLYN E. WILLIAMS

CLERK OF COURT

WILLIAMSBURG

☐ Appointed PD or appointed other counsel, \$35.13 TP

Requires \$500 be paid to Clerk during probation.

Carolyn E. Williams
Clerk of Court/ Deputy Clerk

Court Reporter:

Kimberly V. Barr

PRESIDING JUDGE

Judge Code:

Sentence Date:

C. Weir
2111211
January 27, 2010

STATE OF SOUTH CAROLINA

COUNTY OF WILLIAMSBURG
STATE VS.

KEVIN C. BRADLEY

AKA:

Race: Black Sex: Male Age: 20

DOB: 1988

SS#: 948-78-0443

Address: Road

City, State, Zip Kingstree, SC 29556

DL# SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2009-GS-45-0249

A/W#: M 170205

Date of Offense: June 1, 2008 - August 14, 2009

S.C. Code §: 16-3-655 (A)(1)

CDR Code #: 0 / 3 / 8 / 5

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE FIRST DEGREE

in violation of § 16-3-655 (A)(1) of the S.C. Code of Laws, bearing CDR Code # 0 3 8 5

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☒ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Kimberly V. Barr 8443
Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____ plus costs and
assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department
of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)		\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§35.13 (Public Def/Prob)	\$500	\$
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$
§33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
% to County (if paid in installments)		\$
TOTAL		\$

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

CAROLYN E. _____

CLERK OF _____

WILLIAMSBURG _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.Carolyn E. Williams
Clerk of Court/ Deputy Clerk

Court Reporter:

Pamela D. Carter

PRESIDING JUDGE

Judge Code:

Sentence Date:

C. Venn
21711217
January 27, 2010

State of South Carolina

Court of Common Pleas

County of Williamsburg

2010-CP-45-00389

Kevin Christopher Bradley

:

:

-VS-

:

TRANSCRIPT OF RECORD

:

The State of South Carolina

:

May 27, 2014

Sumter, South Carolina

B E F O R E:

The Honorable R. Ferrell Cothran, Jr., Judge.

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

Tara Dawn Shurling, Esquire
Attorney for the Applicant

Daniel Gourley, Esquire
Attorney for the State

Daphne D. Helms
Circuit Court Reporter

I N D E XWitnessRichard W. Strobel

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Kevin Bradley

Direct Examination by Ms. Shurling.....	74
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1 **The Court:** Thank you. You can be seated.

2 **Ms. Shurling:** Thank you, Your Honor.

3 **The Court:** You're welcome.

4 **Mr. Gourley:** May it please the Court, Your Honor?

5 **The Court:** Yes, sir.

6 **Mr. Gourley:** This is Kevin Bradley versus the State of
7 South Carolina, docket number 2010-CP-45-389. He is
8 presently confined in the South Carolina Department of
9 Corrections pursuant to orders of commitment out of the
10 Williamsburg County Clerk of Court. He was true-bill
11 indicted at the January 2010 term of the Williamsburg County
12 grand jury for criminal sexual conduct with a minor first
13 degree and then criminal sexual conduct with a minor in the
14 second degree.

15 Mr. Richard Strobel represented him. He proceeded to a
16 jury trial before the Honorable Clifton Newman on January 27,
17 2010, and was subsequently found guilty. Judge Newman
18 sentenced him to 25 years imprisonment for criminal sexual
19 conduct with a minor in the first degree and 20 years
20 imprisonment for criminal sexual conduct with a minor in the
21 second degree. Those sentences were to run concurrently. He
22 did not appeal his conviction or sentences.

23 Subsequently, he filed his application for post-
24 conviction relief on September 9th, 2010, alleging
25 ineffective assistance of counsel and involuntary guilty

1 plea. Ms. Shurling filed an amended application on May the
2 21st, 2014, and the State made its amended return on
3 October 28th, 2013.

4 He is represented in this matter by Ms. Shurling, and I
5 will turn it over to Ms. Shurling, Your Honor.

6 **The Court:** Did -- was the -- did he go to trial on the
7 first and plead on the second?

8 **Ms. Shurling:** Correct, Your Honor.

9 **The Court:** So it was a trial on the criminal sexual
10 conduct first degree and then he pled to the second degree?

11 **Mr. Gourley:** No, Your Honor. He was convicted of
12 C.S.C. first and C.S.C. second on one victim and then pled
13 guilty to a C.S.C. second on a second victim.

14 **The Court:** Oh, okay. Okay. Thank you.

15 **Mr. Gourley:** Yes, sir.

16 **The Court:** Yes, ma'am?

17 **Ms. Shurling:** Thank you, Your Honor. Just by way of
18 brief explanation, when I originally filed the post-
19 conviction relief application in this matter, because the two
20 cases are so intertwined, I addressed allegations concerning
21 representation of Sixth Amendment claims with regard to the
22 trial and the plea in a single application. Subsequently and
23 in talking with my colleagues at the Attorney General's
24 office, they indicated a preference for having them
25 technically separated and agreed for me to file an amended

1 application addressing the guilty plea so that it would have
2 a separate CP number and would be heard separately. They
3 also agreed to ensure that both cases were heard on the same
4 day so that we could hear one and the second one on the plea
5 immediately following, and they've obviously been good to
6 their word on that. We're prepared to go forward today on
7 both, but that is the reason for the amendment.

8 Your Honor, I served not only the Attorney General's
9 office but trial counsel and -- well, I'm going to fall into
10 addressing both the trial and the plea at various junctures,
11 Your Honor, and if I do that, forgive me. They're so
12 intertwined that it's difficult not to do that, but for now I
13 will hand up for the Court's information a clocked copy of
14 the second amended application in the case involving the jury
15 trial which is the one we're going to proceed on first.

16 The Court: Okay.

17 Mr. Gourley: Your Honor, your packet does have a copy
18 of that---

19 The Court: Yeah.

20 Mr. Gourley: ---but the stamps didn't come through all
21 the way, so...

22 The Court: Okay. Okay. I see it in the file.

23 Ms. Shurling: The stamp just wasn't very clear---

24 The Court: I see it.

25 Ms. Shurling: ---to read, so I'm giving you a better

1 one, Your Honor.

2 **The Court:** Okay.

3 **Ms. Shurling:** Thank you. Your Honor, in the second
4 amended application for post-conviction relief, I have set
5 forth with a little more specificity the 15 allegations the
6 applicant wishes to raise with regard to his jury trial which
7 was held before the Honorable Clifton Newman January 25th
8 through the 27th, 2010. He was represented in that
9 proceeding by Richard Strobel.

10 Your Honor, the cover also indicates that William
11 LeGrand Carraway was counsel for the applicant. It is
12 apparent in reviewing the trial transcript that Mr. Carraway
13 was not actually involved in the trial of this case. There
14 was an aborted attempt at a guilty plea on the same day as
15 sentencing at the end of this trial, and that's when Mr.
16 Carraway stepped in because he was representing the applicant
17 on the charge that was addressed in that guilty plea
18 proceeding.

19 So I wanted to make it clear, Your Honor, that with
20 regard to the actual trial of this case, from opening through
21 verdict it's my understanding that Richard Strobel was the
22 only counsel of record in this matter, and with that I would
23 call Mr. Strobel as the applicant's first witness.

24 **The Court:** Okay.

25 Richard W. Strobel, after being duly sworn,

1 testified as follows:

2 **The Clerk:** Please state your full name and spell your
3 last name for the record.

4 **The Witness:** Richard Wayne Strobel, S-T-R-O-B-E-L.

5 Direct Examination

6 By Ms. Shurling:

7 Q. Mr. Strobel? Mr. Strobel?

8 A. Am I to say what?

9 Q. Sir?

10 A. Sir?

11 Q. Sir? Mr. Strobel?

12 A. Sir? What are you asking me?

13 Q. I was fixing to ask my first question. I didn't want to
14 -- you were looking down. I wanted to make sure you were---

15 A. Oh, I hear everything you're saying.

16 Q. Okay. Thank you, Mr. Strobel. Mr. Strobel, do you
17 recall representing Kevin Bradley?

18 A. I do.

19 Q. And were you the only attorney of record in the trial of
20 these -- the charges?

21 A. I was.

22 Q. And were you retained or Court-appointed?

23 A. Retained.

24 Q. How long did you represent Mr. Kevin Bradley before his
25 case went to trial?

1 A. Seemed like for years. These instances took place
2 sometime before the trial.

3 Q. Do you have any indication in your file exactly when you
4 were retained?

5 A. I don't recall.

6 Q. Okay. And was Mr. Bradley on bond pending trial?

7 A. He got out on bond. A condition of the bond was he was
8 to stay away from the victim's family. Knowing him, he
9 couldn't do it and he didn't, and they locked him back up.
10 So at the time of the trial of the case, I think he was
11 incarcerated.

12 Q. Okay. And did anybody assist you during the actual
13 trial of this case? Did you have---

14 A. No.

15 Q. Did you have a paralegal or a legal assistant present in
16 the courtroom taking notes for you?

17 A. I did.

18 Q. And who would that have been, sir?

19 A. Sonya.

20 Q. And her last name, please?

21 A. Well, she hasn't worked for me in so many years, so...

22 Q. Okay.

23 A. I forgot her last name.

24 Q. From the time you were hired right up until shortly
25 before trial, what was Mr. Bradley charged with?

1 A. He was charged with raping a 10-year-old child. She
2 gave birth to a baby when she was 11. They did D.N.A.
3 testing of the baby, and it turned out that he was the father
4 and he alleged that he raped her when she was 11, not 10. So
5 basically that was the issue: When was she raped?

6 Q. Mr. Strobel, isn't it true that your client was
7 originally only charged with second degree criminal sexual
8 conduct with regard to this same victim?

9 A. I don't remember.

10 Q. I know it's probably been a long time since you looked
11 at this but---

12 A. Four years.

13 **Ms. Shurling:** May I approach?

14 **The Court:** Yes, ma'am.

15 By Ms. Shurling:

16 Q. Do you recognize this indictment?

17 A. Yes.

18 Q. And this indictment---

19 A. Two-count indictment.

20 Q. Pardon?

21 A. It's a two-count indictment; right?

22 Q. Yes, sir. And this two-count indictment, in fact, says
23 that it is an amended indictment? Correct?

24 A. Where do you see that at?

25 Q. At the top toward the center.

1 A. Yes, it is.

2 Q. Thank you. And the date that the grand jury foreman
3 signed the true bill, could you publish that for us, please?

4 A. 1/21.

5 Q. 2010.

6 A. Yes.

7 Q. And this case proceeded to trial on January 25th, 2010;
8 correct?

9 A. It wasn't supposed to be, but it did.

10 Q. Okay. So the amended indictment which charged your
11 client for the first time with first degree criminal sexual
12 conduct was issued four days before this trial began;
13 correct?

14 A. That's correct.

15 Q. Do you recall how long before the trial started you were
16 made aware that the State had upgraded the charge to first
17 degree criminal sexual conduct?

18 A. I don't remember.

19 Q. Did you know before you walked in the courtroom that
20 day?

21 A. Yes, because we were going to plead to it.

22 Q. Okay. And you have no recollection of how long before
23 that you became aware that the charges had been upgraded from
24 second degree to first degree.

25 A. No.

1 Q. The attempt to plead to these two charges and the charge
2 that was subsequently addressed in a guilty plea involving a
3 different young lady making accusations, at the time of that
4 aborted attempt for a plea, were you ready to proceed to
5 trial?

6 A. I was ready to proceed, but I had no idea I was going to
7 be going to trial. He had signed an affidavit as to his
8 guilt. He told the judges he was guilty, and everything was
9 going fine. Then his personality set in and he said he
10 wanted a jury trial, so we proceeded with a jury trial.

11 Q. Well, you actually had a hearing where you began a plea
12 in front of Judge Newman---

13 A. That's correct.

14 Q. And when Judge Newman asked him if he was, in fact,
15 pleading guilty, he said, "No, sir," and didn't want to waive
16 his right to trial by jury; correct?

17 A. I don't recall that.

18 Q. A moment's indulgence, Your Honor. Do you have a copy
19 of the January 25th, 2010, hearing at which you attempted to
20 entertain -- to present guilty pleas on all the charges?

21 A. I do.

22 Q. Okay. Would you turn with me---

23 A. I don't have it with me.

24 **Ms. Shurling:** May I approach, Your Honor?

25 **The Court:** Yes, ma'am.

1 **Ms. Shurling:** Your Honor, this, for the record, is the
2 January 25th, 2010, transcript of an attempted guilty plea
3 proceeding held before the Honorable Clifton Newman on
4 indictment 2009-GS-45-249 as well as a separate indictment
5 that the court reporter has not listed on the cover, and I'll
6 give Your Honor that number in a moment, however.

7 By Ms. Shurling:

8 Q. Could you please refresh your recollection, starting
9 with line 2 going through about line 6?

10 A. (The witness complies.) "And do you want to give up
11 those rights and plead guilty?" "No, Your Honor, I don't
12 want to give up my rights." "Do you want a jury trial?"
13 "Yes, Your Honor." "All right. There is no guilty plea. A
14 jury trial."

15 Q. Okay. Now, prior to this proceeding, do you have any
16 recollection as to when you informed your client for the
17 first time that he was facing a charge of first degree
18 criminal sexual conduct with a minor?

19 A. No. The judge read the indictment to him, and he
20 likewise went over with him the two counts. He said he fully
21 understood it, and he asked him was he pleading guilty and he
22 said yes. Then he later said he wanted a jury trial all in
23 the same proceeding.

24 He told me he wanted to plead guilty. I had an
25 affidavit for him to fill out, which I gave to the judge.

1 Reminds me that when Ralph King Anderson was on the bench you
2 always had to file an affidavit. The affidavit set forth --
3 you give the reason you're pleading guilty, what facts
4 presented -- the fact that you're pleading guilty. You're
5 doing this free and voluntarily. It's read back to him and
6 then he signs it. So we were all ready for the plea.

7 Q. Okay. Mr. Strobel, at the outset of this plea
8 proceeding -- Your Honor, I'm looking at page 3.

9 **The Court:** Okay.

10 By Ms. Shurling:

11 Q. Assistant Solicitor Barr makes the Court aware that your
12 client is entering pleas to the two-count document docketed
13 at 2009-GS-45-249 and also the one-count indictment for
14 second degree criminal sexual conduct with a minor found on
15 indictment number 2010-GS-45-30. Do you recall that?

16 A. No.

17 Q. And specifically -- I'll hand you the transcript. If
18 you look at the transcript, page 3, beginning at line 22,
19 going over to the next page: When your client admits guilt,
20 it appears from the record he's addressing the two-count
21 indictment involving ~~Strobel~~ ^{Victim}; correct? The two-count
22 indictment---

23 A. Are you talking -- are you talking about mine or
24 Carraway's?

25 Q. Assistant Solicitor Barr has made the Court aware that

1 your client is pleading to both charges on the two-count
2 indictment that you were handling---

3 A. Right.

4 Q. ---as well as a plea to the one-count indictment that
5 Mr. Carraway was handling.

6 A. That's what I was asking. All I know is he was pleading
7 guilty to my two. I don't know about Carraway.

8 Q. Well, my question is: You had said that on the record
9 your client had already admitted his guilt and said he was
10 guilty and wanted to plead. In fact, the colloquy with the
11 Court is addressing the two-count indictment that
12 contained---

13 A. Oh, yeah, he wanted to plead guilty to mine. I don't
14 know about Carraway.

15 Q. Okay. So if we move forward to when the plea proceeding
16 broke down---

17 A. Right there.

18 Q. ---on the last page that we referenced a few moments ago
19 on page 7---

20 A. Yeah.

21 Q. ---and the Court says, "Do you want to give up those
22 rights and plead guilty?" at that point why didn't you ask
23 the Court to give you a few minutes with your client to
24 determine where your client stood on this plea situation?

25 A. It was a funny thing that went through my mind. I have

1 never given this any thought. Can someone say that they are
2 guilty of the charges against them, but they will not give up
3 their constitutional rights for a jury trial? And I'm saying
4 he is saying that he wants a jury trial even though he's
5 saying that he's guilty. Can you get a jury trial and plead
6 guilty at the same time?

7 You know, a lot was going through my mind. I've never
8 had that -- I've never run into that situation before, and so
9 that was what was on my mind.

10 Q. I understand, Mr. Strobel, but my point is: At that
11 point the Court has been informed in the presence of your
12 client that this is a plea on three charges, two that are on
13 the indictment you're handling and one on the indictment that
14 Mr. LeGrand Carraway is handling; correct?

15 A. If you say so. I don't recall Carraway. I just riddled
16 my mind.

17 Q. Okay. And at some point the Court indeed has questioned
18 your client with regard to his culpability and his desire to
19 plead on your case, as you say, the two-count indictment that
20 you were representing him on.

21 A. Yes.

22 Q. But when the Court says, "Do you want to give up those
23 rights and plead guilty" how do you know that Mr. Bradley
24 wasn't responding to a desire not to plead guilty to the
25 charge before the Court that was Mr. LeGrand Carraway's?

1 **Mr. Gourley:** Objection, Your Honor. That's
2 speculation.

3 **The Witness:** I don't know anything about LeGrand
4 Carraway's case. I was up there on my rapes. I don't know
5 what about his rape, and I'm answering on behalf of the
6 charges that I was there for.

7 By Ms. Shurling:

8 Q. I understand---

9 A. In fact, I can't even remember if LeGrand Carraway was
10 even in the courtroom. I assume he was.

11 Q. According to the court reporter, he was. His name is on
12 the cover.

13 A. Yeah.

14 Q. And, again, if I could draw your attention to page 3---

15 A. Could I ask you this?

16 Q. No, in candor. If you'll look at page 3, the assistant
17 solicitor is speaking. It's very clear that this is a plea
18 on all three charges, is it not?

19 A. I don't think so. If I were handling this -- he came
20 before the Court on two separate rape cases, one represented
21 by me and one by Mr. Carraway. You said Mr. Carraway was
22 there. So I could speak for my two, and then after I speak
23 for mine, then I assume the Court would address Mr. Carraway
24 concerning his. So you'd be doing two pleas at one time;
25 that's the way I would look at it.

1 Q. Okay. And so I'll ask again and we'll move on. When
2 your client indicated that, no, he didn't want to give up his
3 right to trial by a jury, why didn't you ask the Court to
4 afford you the opportunity to speak with your client and
5 ascertain what exactly the problem was?

6 A. And what's the question again? Why didn't I ask for a
7 break?

8 Q. Why didn't you ask for a moment's indulgence to speak
9 with your client and determine whether that statement with
10 regard to wanting a trial was directed at your case, the
11 two-count indictment you were handling, or whether it was
12 directed at the case that was being handled by Mr. Carraway?

13 A. I believe I answered that earlier in that I could not
14 understand where the judge was going with this. To me, I
15 didn't know if a person can plead guilty and then say, "But I
16 want a jury trial also." To me, I've never been confronted
17 with that before; maybe Mr. Carraway has. But it was new to
18 me, and I was still somewhat puzzled as to the direction we
19 were going. Judge Newman whom I -- he used to be the
20 prosecutor in that same courtroom. He didn't waste any time.
21 He said the jury is here; we're ready to go. So we went
22 right into the trial.

23 Q. Okay.

24 A. And Mr. Carraway did not sit with me, do anything else
25 at all. In fact, I didn't even know he was there until you

1 told me.

2 **Ms. Shurling:** Just a moment's indulgence, Your Honor.

3 **The Court:** Okay.

4 By Ms. Shurling:

5 Q. I'm shuffling too much paperwork. All right. Once the
6 plea fell apart---

7 A. Yes.

8 Q. ---and you proceeded to trial---

9 A. Yes.

10 Q. ---obviously the first thing you did was select a jury;
11 correct?

12 A. Yes, and that was awful.

13 Q. Following -- thank you. Following the plea falling
14 apart, you went directly that same day, January 25th, 2010,
15 into trial; correct?

16 A. Well, he was ready to go, yes.

17 Q. Okay. And if I could direct your attention -- do you
18 have a copy of the trial transcript there with you?

19 A. No. All I have is that piece of paper you left me
20 earlier, the amended indictment.

21 **Ms. Shurling:** May I, Your Honor?

22 **The Court:** Yes, ma'am.

23 By Ms. Shurling:

24 Q. If I could get you to look with me to page 23. Actually
25 the State interjected their Batson challenge beginning on

1 page 21, line 9, Your Honor. And moving to page 23, I ask
2 you to pay special attention to your statements on the record
3 from line 3 through 8. Does that refresh your recollection
4 on your response to the---

5 A. Oh, I remember that.

6 Q. Okay. And then moving along, the State ultimately asked
7 for more specific detailed explanations for why each juror
8 was struck. Do you recall that?

9 A. I think so.

10 Q. I specifically draw your attention to page 24, lines 5
11 through 22.

12 A. (The witness reads.) And what's the question?

13 Q. After that position was put on the record by the State,
14 do you recall going through the list of jurors that had been
15 stricken by you, with input from your client, and giving
16 individual explanations as to why each was struck?

17 A. Yes.

18 Q. Could I get you to look at page 25, line 22, which was
19 your answer with regard to Juror Number 96?

20 A. (The witness reads.)

21 Q. Mr. Strobel, if you'll let me know when you've located
22 that testimony and reviewed it, please.

23 A. I'm down to line 20. Is that too far or what?

24 Q. Page 25, line 21 and 22 is all I need you to look at.

25 A. Oh, I'm sorry.

1 Q. That's all right.

2 A. Okay. I think I've read it. I remember some of this.

3 Q. Okay. And can you tell us, sir, why you indicated to
4 the Court that your client's explanation for wanting to
5 strike that juror was an excuse?

6 A. Was a what?

7 Q. An excuse. Line 22: He said, "The same excuse, no
8 different."

9 A. Oh, well, what I mean by that is I would turn to him and
10 ask him -- you know, this whole thing down in Williamsburg
11 County has to do with race, and Lord help if you strike a
12 white person down in Williamsburg County. You better come up
13 with a reason. So I turned to him and I said, "Now, all
14 white jurors, if you're going to excuse them, you're going to
15 have to give me a reason," and his reason was when they stood
16 before the jury -- well, when they stood and faced back
17 towards the other jurors, he was always -- they were always
18 looking at the solicitor's office but if they -- if they
19 swore the witness -- the juror, then he would ask: What is
20 my response?

21 Some would turn their head and look towards us and some
22 would not, and if they did not look at my client, he did not
23 like that and he asked that that individual be struck. If
24 that person was -- and I don't, you know, mean anything by
25 it, but I told him, "Now, I'm going to tell you: If that

1 person is white that you're striking, I'm going to want a
2 full explanation as to what you mean by they won't look at
3 you," and that's how I went through it. So usually the --
4 the number one excuse was: He didn't like their personality
5 and the fact that they would not look at him.

6 Q. Mr. Strobel, how long have you been a trial lawyer?

7 A. Forty-two years.

8 Q. And what percentage of your practice deals with criminal
9 defense?

10 A. Ninety percent.

11 Q. And are Batson motions a fairly commonplace event that
12 you have to deal with in the course of criminal jury trials?

13 A. No.

14 Q. They are not?

15 A. They are not.

16 Q. Are you familiar with the law as it relates to Batson
17 challenges?

18 A. I do (verbatim).

19 Q. And are you familiar with what is known as the
20 Contemporaneous Objection Rule in South Carolina with regard
21 to issue preservation for appeal?

22 A. No.

23 Q. If you're going to raise an issue on appeal and win
24 relief, isn't it true that you have to raise that issue fully
25 and develop it and your grounds for your objection at trial?

1 A. Yes, but I didn't see anything to object to.

2 Q. Pardon?

3 A. I didn't see anything to object to with drawing this
4 jury.

5 Q. Okay. Let's go back for a moment, if we can, to your
6 initial broad explanation on page 23, lines 3 through 8,
7 specifically lines 5 through 8. He struck by the way they
8 presented themselves to him, the way they answered the
9 questions, and the way they looked at him in particular. So
10 basically three things: The way they generally presented
11 themselves, the way they answered questions, and how they
12 looked at him. Fair enough?

13 A. Yeah, but what's that to appeal about? They didn't put
14 any jurors on that jury that we didn't want. I didn't object
15 to any of the jurors.

16 Q. Okay. Subsequently, sir, when you went through juror by
17 juror -- and let's look specifically at Juror Number 96 again
18 on page 25. Line 22 you say, "He said the same excuse, no
19 different." Do you remember that?

20 A. Yeah, we went through that earlier.

21 Q. Okay. And were you not concerned that the word "excuse"
22 could be equated with the State's argument that these strikes
23 were pretextual in nature?

24 A. No.

25 Q. You were not. Did you not think it was necessary to

1 repeat what you had specifically said with regard to the fact
2 that he didn't like the way they presented themselves, the
3 way they answered questions, and the way they looked at him?

4 A. Tell me: What are you getting at? The person didn't
5 sit on the jury, did he?

6 Q. This jury was quashed and---

7 A. Right.

8 Q. ---and a new panel had to be picked.

9 A. That's correct.

10 Q. And that same juror -- juror wound up on the jury that
11 found your client guilty. Are you aware of that?

12 A. Yes, because he looked at him. The first time he didn't
13 look at him; the second time he did look at him.

14 Q. Moving on---

15 A. If he told me -- if your -- if he told me he did not
16 want that particular person on the jury, I'd have said
17 something.

18 Q. Were you not concerned that the person being on the
19 second jury, after being booted from the first one, would be
20 inherently prejudicial to your client?

21 A. No, because if I remember correctly, the judge went
22 through all of this with the jury listening, and there was
23 nothing personal against him. It was the fact on the first
24 go-round he wouldn't look at my client; the second go-round
25 he did. So how could that be in any way -- make the juror

1 angry or upset?

2 Q. Were you not concerned, sir---

3 A. No.

4 Q. Mr. Strobel, respectfully, you haven't heard my
5 question. Were you not concerned that the jurors had had
6 time for a learned response? In other words, they didn't
7 look at him the first time they got struck, so the second
8 time they knew to look him in the eye?

9 A. That wasn't my call. That was my client's call, and it
10 didn't bother me.

11 Q. Again, let's look at page 26 quickly, Juror Number 196,
12 Sandra Wilson. He said he did not like the way she presented
13 herself. Okay? You didn't say anything about the way she
14 answered questions or about her -- the way she looked at your
15 client. Any particular reason why you didn't give the
16 detailed explanation?

17 A. I wasn't asked to.

18 Q. Thank you, sir. Were you aware ultimately that at least
19 Juror Number 96 and 196 as well as 128, 82, and 29 that were
20 struck for other reasons ended up back on the jury panel
21 after the first panel was struck?

22 A. I didn't count them, but I'm sure a lot of them were.

23 Q. And you weren't concerned about that at all.

24 A. No.

25 Q. All right. Let's move on.

1 A. Remember, when you strike somebody, normally you don't
2 give a reason.

3 Q. Pardon?

4 A. When you strike somebody, you don't give a reason then.
5 You just say: I prefer that this witness (verbatim) does not
6 sit in the trial of this case.

7 Q. Yes, sir, Mr. Strobel, but when a Batson motion is made
8 and the Court requires, you then do have to put a reason on
9 the record. Isn't that true?

10 A. Afterwards.

11 Q. Okay. Prior to picking the second jury after the Batson
12 motion advanced by the State was granted, did you have a
13 specific conversation with your client concerning whether or
14 not it would be advisable trial strategy to use your strikes
15 to remove any jurors from the first panel that showed back up
16 on the second panel?

17 A. No.

18 Q. Why not?

19 A. I didn't see any need in it.

20 Q. Okay.

21 A. If I had said something negative to any of the other
22 jurors or given a reason that would have angered them, then
23 I'd have struck them myself.

24 Q. Based on your understanding of the case law as it
25 relates to race-neutral exercise of peremptory strikes, would

1 the way a juror presented themselves, the way they answered
2 questions and even the way they looked at your client be a
3 sufficient race-neutral explanation to withstand a Batson
4 challenge, in your legal opinion?

5 A. Would it withstand a Batson challenge?

6 Q. Yes.

7 A. Certainly.

8 Q. Pardon?

9 A. Yes.

10 Q. It would. Thank you. Again - and I'm moving on - but
11 why didn't you use some of your strikes to get rid of these
12 folks when they showed up on the same jury -- on the next
13 jury? Excuse me.

14 A. I've already told you.

15 Q. Okay.

16 A. They looked at my client. He was satisfied and that's
17 it.

18 Q. We're going to go back for just a moment to the question
19 of this indictment. When the plea that was proffered before
20 Judge Newman fell apart on January 25th, did you consider
21 asking for a continuance based on the fact that the State had
22 elevated the charge from second degree to first degree only
23 days before this trial?

24 A. No. What are you smiling about? I didn't consider any
25 continuance.

1 Q. Did you consider yourself to be fully prepared on the
2 question of challenging what age the victim was when the
3 initial sexual conduct happened?

4 A. Was I what again?

5 Q. Did you consider yourself to be prepared---

6 A. Yes.

7 Q. ---to adequately challenge the assertion of the State
8 that she was younger than 11 when the initial sexual conduct
9 happened?

10 A. Yes.

11 Q. Okay.

12 A. You can read Ms. Barr's argument to the jury.

13 Q. Pardon?

14 A. I thought it was neat, but what Ms. Barr argued to the
15 jury...

16 Q. Yes, sir.

17 A. The concluding argument I thought was pretty neat.

18 Q. Did you have any conversations with the State in which
19 you questioned why they waited until the last minute to
20 charge your client with first degree?

21 A. No. If they did, I didn't question it.

22 Q. The charges had been pending for quite some time, had
23 they not?

24 A. Yes.

25 Q. Okay. Moving along. You objected to the testimony of

1 Barbara Griggs at trial. Do you recall that?

2 A. No.

3 Q. Ms. Griggs was a registered nurse who had seen the child
4 when she was initially taken for medical care. Do you recall
5 that?

6 A. That was in June of -- when she was 10?

7 Q. In August when she was 11.

8 A. No, I don't remember it.

9 Q. You objected to her testimony. Your Honor, her
10 testimony begins on page 52 of the transcript and goes on
11 over to approximately page 80 something. You raised a
12 general objection to hearsay statements from her. Did you
13 consider objecting to her testimony going beyond recitations
14 as to time and place of the incident?

15 A. I don't know.

16 Q. The only objection that was -- that was developed at the
17 time of this trial dealt with outcry evidence, res gestae.
18 Do you recall that?

19 A. No.

20 Q. You do not?

21 A. I remember the child started screaming and hollering
22 when she found out that she was pregnant. She says, "What am
23 I going to do? I've got to go to school," and she was all
24 emotionally all upset. I do remember that, if that's what
25 you're talking about.

1 Q. A moment's indulgence, Your Honor. If you would, please
2 look at page 58, lines 13 through 16, where this nurse quotes
3 the child as begging her to get it out, take it out, take it
4 out---

5 A. I remember that.

6 Q. ---begging for an abortion.

7 A. I remember that.

8 Q. Do you recall that?

9 A. Yes.

10 Q. And you objected to that. Do you see your objection on
11 line 20?

12 A. Well, line 20 is what Ms. Barr is saying; correct? Are
13 we on page 57?

14 Q. No, line 20 -- page 58, line 20, is your objection. You
15 just say, "I object."

16 **The Court:** His objection is 16 on mine. Your numbers
17 and my numbers---

18 **Ms. Shurling:** Are we using two different -- oh, I---

19 **The Court:** Your numbers and my numbers and his numbers
20 are different.

21 **Ms. Shurling:** I'm sorry, Your Honor. I'll have to get
22 my copy---

23 **The Court:** That's -- I noticed before you kept asking
24 him and he was giving you line by line and your numbers
25 didn't line up with his because mine says line 16 is---

1 **Ms. Shurling:** May I see? I apologize, Your Honor. I
2 didn't know I had been given two different copies of the
3 transcript.

4 **The Witness:** But what's the question?

5 By Ms. Shurling:

6 Q. Did you consider objecting to that testimony as unduly
7 prejudicial in that it was calculated to inflame the passions
8 and prejudices of the jury?

9 A. No.

10 Q. On page 60 of mine -- my Lord, I don't know---

11 **The Court:** On 58 is the question you asked, line 16.

12 **Ms. Shurling:** Okay. I apologize.

13 By Ms. Shurling:

14 Q. In the copy I have marked, the nurse talks about leaving
15 the room for 30 minutes and coming back in and talking to the
16 grandmother and saying, "Do you know anything yet," speaking
17 to Sadie, the grandmother, and she said, "Yes, she told me
18 who it was." Do you recall that?

19 A. I think I do.

20 Q. Okay.

21 A. That's when she had that discharge?

22 Q. Yes, sir, Your Hon -- that is the doctor's visit that
23 started out with a complaint about a discharge.

24 A. Right.

25 Q. Okay. And you objected to that, again saying that you

1 anticipate that the answer is going to be yes, and that's
2 when you get into the whole discussion about excited
3 utterances in the pages that follow. Do you recall that?

4 A. I think so.

5 Q. Did you consider arguing that that was hearsay on
6 hearsay to allow her to testify not only to what the child
7 had said but to what the -- indirectly as to what the
8 grandmother said the child said?

9 A. No.

10 Q. Okay. Moving along, you said you felt prepared to
11 defend against the accusation that this was first degree
12 criminal sexual conduct with a minor, not second degree, at
13 the time the case went to trial on January 25th?

14 A. Yes.

15 Q. And prior to -- four days earlier, it had always been
16 your understanding that it was going to be second degree,
17 that the allegation was it was after the child's---

18 A. The plea was.

19 Q. ---11th birthday. Pardon?

20 A. The plea was.

21 Q. Well, the indictment was for second degree.

22 A. Yeah.

23 Q. Okay. So in the four days that you had to get ready for
24 trial, can you describe for us what you were able to do in
25 terms of developing a way to impeach this child's credibility

1 concerning the timing of the event?

2 A. I don't do that.

3 Q. Well, you did question the child about how she could be
4 certain it was the summer of 2008, didn't you?

5 A. Well, she said she was 10 years old, June of 10
6 (verbatim). I can't remember what year. What I mean by
7 that: When you've got a small child on the stand, it's
8 different than having a normal person on the stand, and if
9 I'm mean and I come across arrogant, the jury is going to
10 turn against me and against my client. So I have to be very
11 careful as to how I present each and every question to that
12 little girl.

13 Q. You questioned the child about the age of the child she
14 had been babysitting at the residence where the sexual
15 assault was alleged to have occurred; correct?

16 A. Yes.

17 Q. Was there any reason why you never developed that to
18 establish how old that child would have been that summer?

19 A. No.

20 Q. And yet---

21 A. The child said she was 10.

22 Q. No, sir, I mean the child, the infant child, that the
23 victim was supposedly -- was babysitting in the summer of
24 2008.

25 A. And what's the question?

1 Q. The record reflects that you questioned her about the
2 fact that she said she didn't start babysitting the child
3 until it was about a year old; correct?

4 A. I can't remember that.

5 **Ms. Shurling:** Okay. Your Honor, I'm afraid to give
6 page numbers at this point. It's in the cross-examination of
7 the victim in my transcript.

8 **The Court:** Okay.

9 By Ms. Shurling:

10 Q. You questioned her about the fact that in previous
11 statements she had said that she started babysitting when the
12 child was like a year old, something to that effect. Do you
13 recall that?

14 A. No.

15 Q. Okay. And you talked to her about how she could be so
16 certain that it was the summer of 2008 when the first sexual
17 conduct between herself and your client happened. Do you
18 remember that?

19 A. Was that to who? Who was I questioning? The nurse or
20 the child?

21 Q. To the victim. To the victim.

22 A. Okay.

23 Q. You were questioning her about that.

24 A. Right.

25 Q. And you were also questioning her about the death of

1 that infant's father. Do you recall that?

2 A. Yes.

3 Q. Is there any particular reason why you didn't
4 subsequently develop a timeline for the jury as to exactly
5 when that child was a year old and when the gentleman whose
6 funeral you talked about in cross, when that funeral took
7 place?

8 A. Well, it was trial strategy for me to stick with what
9 the child -- what she testified to. The grandmother,
10 remember, testified that when she was 10 years old in that
11 June the child had a discharge and she took the child to the
12 doctor, and she said that: I knew she was seeing a boy and
13 -- but she never did tell us who it was, and I sure the devil
14 wasn't going to ask her. But there was no question that the
15 child was 10 years of age when she had that discharge and
16 went to the doctor, and that was of concern to me.

17 Q. Well, actually, sir, the child was 11 when she went --
18 if we look at the testimony of Ms. Griggs, the nurse, her
19 testimony indicates that the child was 11, that it was August
20 of the year the child turned 11 in ~~February~~. If the record
21 says that, you don't dispute it, do you?

22 A. Huh?

23 Q. If the record reflects through the testimony---

24 A. I go with what the record says.

25 Q. All right. The testimony of Nurse Griggs indicates that

1 it was August 2009 which would have been when the child
2 was -- had turned 11 in ~~February~~ at the time she was brought
3 in complaining of a discharge. You don't -- if the record
4 says that, you don't dispute it.

5 A. No.

6 Q. Okay. Now, the record - also further developed through
7 the testimony of Dr. Susan Luberoff - indicates, does it not,
8 that the child in August of that year was approximately 13
9 and a half weeks pregnant? Correct?

10 A. If she said so.

11 Q. Okay. So if you back out 13 and a half weeks from
12 August of that year, you're going to get a conception date in
13 May of that year; correct?

14 A. If you say so.

15 Q. And, in fact, the good doctor testified to a probable
16 conception date of approximately May something. The record
17 will speak for itself. At---

18 A. Well, I'm not concerned with when he got her pregnant.
19 I'm concerned with when he first started---

20 Q. I understand, sir.

21 A. ---screwing her.

22 Q. My question is: Did you consider when you were cross-
23 examining the child -- and I understand what you're saying
24 about your strategy with regard to cross-examining the child,
25 but you did cross-examine her about the age of the little

1 girl she was babysitting; right?

2 A. If you say so.

3 Q. And you cross-examined her about somebody that died and
4 the funeral and when that happened; right? So you didn't
5 just leave her alone. You did ask her questions about how
6 she could be so certain when it happened or when the conduct
7 initiated -- began. Do you recall that?

8 A. If you say so. I don't remember it all.

9 Q. Why didn't you question her concerning how long before
10 it was discovered she was pregnant she had begun having
11 sexual relations with Mr. Bradley?

12 A. I don't know. All I know is when she said it started.
13 It was during the summer, June, when she was 10 years of age;
14 she remembers that specifically. And I think that Mrs. Barr
15 summed it all up with her argument to the jury. I thought it
16 was real -- I was going to tell you about this earlier. She
17 says, "There's one thing you don't ever forget and that's
18 when you lose your virginity, whether you're a boy or a girl.
19 The first time you ever did it, you can tell me." You always
20 remember that whereas -- you know, it's just an event that
21 you'll remember when you're 60 years old, and the little girl
22 said it was right after school and I was 10 years of age and
23 I had never given that any thought 'til Mrs. Barr argued that
24 to the jury, but anyway...

25 Q. Were you familiar with the facts and circumstances

1 surrounding the abortion? Had you reviewed the medical
2 records and knew when---

3 A. Yes.

4 Q. ---the pregnancy was discovered and when it was
5 terminated and all that?

6 A. Yes.

7 Q. You knew that. Okay. And if you take the date that the
8 pregnancy was terminated, you get a late May, early June
9 conception date in 2009, not 2008. Taking those facts as a
10 given, why didn't you consider questioning the young girl as
11 to whether it was perhaps May/June of 2009, not 2008, when
12 this relationship initiated?

13 A. She had already testified when it began; she was 10
14 years old. I'm not going to scream and holler that you were
15 9, not 10 -- I mean 11, not 10.

16 Q. And I'm not suggesting---

17 A. She told us clearly when it was.

18 Q. Sir, I'm not suggesting that you should have ever
19 screamed at a child, but in your experience do 10-year-olds
20 get confused sometimes?

21 A. Say that again.

22 Q. In your experience, do 10-year-olds sometimes get
23 confused?

24 A. Not the first time.

25 Q. And are 10-year-olds sometimes easily influenced and

1 malleable by the adults in their environment?

2 A. You can say that about my testimony now. Anybody can be
3 influenced by anything. It's just what do you believe, and
4 the jury believed her. She was 10.

5 Q. And did you not find it at least a factor that gave rise
6 to cause for concern that the indictment alleging that she
7 was under 11 at the time didn't drop from the grand jury --
8 didn't come out until four days before this trial?

9 A. Are you asking me am I concerned about that?

10 Q. Yes, sir.

11 A. No, I'm ready to go to trial. I got all the facts I
12 need.

13 Q. Your client took the stand and admitted that he had
14 actually had intercourse with this girl, didn't he?

15 A. He raped her.

16 Q. That's not what he testified to, did he?

17 A. Well, you can call it what you want. An 11-year-old is
18 rape, even if it's done consensually.

19 Q. And at the time your client was approximately 18
20 himself; correct?

21 A. If you say so.

22 Q. The only thing he disputed was whether or not it had
23 started up as early as they said it started up; right?

24 A. During the trial, that's correct. Not before.

25 Q. Pardon me?

1 A. He gave a statement to me of the rape and how many times
2 he did it; it was around six. All of that had no -- he had
3 no knowledge when she turned 11 from 10 which was in February
4 of that year, no knowledge. That was brought out during the
5 trial of the case, and he told me that all the times: So
6 you're telling me, Mr. Strobel, that if she was 11 and not 10
7 that that would make a big change in -- he was asking me the
8 things which I thought was kind of funny because we had gone
9 through all of that long before.

10 Q. Well, you said -- and I'm cognizant of the fact that an
11 allegation of ineffective assistance of counsel waives
12 attorney/client privilege, so we're on the same page about
13 that, but you're saying he admitted having sex with the young
14 girl five or six times; correct?

15 A. And that's what she said.

16 Q. But in any of those confessions he didn't specifically
17 tell you that it began when she was 10 years old, did he?

18 A. No.

19 Q. In fact, he didn't give you specific timing on any of
20 them, did he?

21 A. No.

22 Q. So, again, what he told you was consistent with what he
23 said at trial. He admitted it happened more than once, said
24 probably not more than five, but disputed that it began the
25 summer when she was 10 years old; right?

1 A. It began in the summer when she turned 10; that's
2 correct.

3 Q. And he disputed that, is my point, both at trial and in
4 his conversations with you.

5 A. No.

6 Q. I thought you just said he never talked about when they
7 happened.

8 A. He never disputed anything with me.

9 Q. But he also never told you the dates the things had
10 occurred; right?

11 A. No.

12 **Ms. Shurling:** A moment's indulgence, Your Honor. Your
13 Honor, one moment's indulgence.

14 (An off-the-record discussion takes place between Ms.
15 Shurling and Mr. Gourley.)

16 **Ms. Shurling:** Your Honor, in preparing for this hearing
17 I discovered, in light of some more recent case law, some
18 additional problems I had which address the testimony of the
19 forensic examiner in this case, and to be candid with the
20 Court, at the time I found that and then I looked at the
21 amended application that I have done, I believed that that
22 forensic examiner was Witness Griggs that I addressed earlier
23 who was the registered nurse.

24 I have a couple of questions that I would like to
25 proffer with regard to why certain matters were handled the

1 way they were with regard to the forensic examiner. I
2 believe, based on the testimony here today, that the record
3 has developed those issues, and I would like to present that
4 for the Court at this time.

5 **Mr. Gourley:** And, Your Honor, just for the record I
6 would object for lack of notice. They were not pled in the
7 P.C.R. application or the amendment, so I haven't had time to
8 speak with Mr. Strobel or prepare any case law or anything
9 and to review that allegation.

10 **The Court:** You want to ask him about the forensic exam?

11 **Ms. Shurling:** All I want to ask him, Your Honor, is why
12 he didn't raise certain objections, and in light of the fact
13 that I did not raise this previously, I would certainly be
14 amenable to the record being held open for a memorandum or
15 something of that sort from counsel for the respondent if he
16 wished more time to address those issues.

17 **The Court:** All right. How many questions do you want
18 to ask?

19 **Ms. Shurling:** Sir?

20 **The Court:** How many -- I'll let you ask him a proffer
21 and I'll -- based on the response as to---

22 **Ms. Shurling:** Thank you, sir.

23 **The Court:** ---whether I'll actually let it go in the
24 record.

25 **Ms. Shurling:** Thank you.

1 **Mr. Gourley:** Thank you, Judge.

2 By Ms. Shurling:

3 Q. I'm going to make this as quick as I can. Mr. Strobel,
4 do you recall the State introducing testimony from a forensic
5 examiner named Robin Tyler Griggs?

6 A. No.

7 Q. Do you recall anyone during this trial being qualified
8 by the Court as an expert in -- and I'm looking at page --
9 Your Honor, on my transcript it's page 145, lines 23 through
10 25, where the State tenders Ms. Griggs as an expert in the
11 field of forensic interviewing and child abuse assessment.
12 Do you remember anybody being qualified as an expert in those
13 fields?

14 A. No.

15 Q. During the interview of Ms. Griggs, the State proffers
16 the videotape of her interview with the victim as a Court's
17 exhibit. Is there any reason why you did not object to the
18 introduction of that interview?

19 A. Why?

20 Q. Did the victim-child in this case testify?

21 A. Did the what?

22 Q. The victim-child in this case testified, did she not?

23 A. She did.

24 Q. She was present, answered questions, and was cross-
25 examined; correct?

1 A. Correct.

2 Q. Why would the forensic examiner's videotaped statement
3 with the child not have been cumulative and prejudicial?

4 A. Well, it looks like to me if you have an event that
5 you're trying to present to the Court, having one or two
6 witnesses saying the same thing is certainly not prejudicial,
7 if they're saying the same thing. If there's a conflict,
8 then it needs to be determined.

9 Q. Did you consider arguing that the showing of the
10 videotape was intended to bolster the credibility of the
11 child's testimony with cumulative evidence?

12 A. No.

13 **Mr. Gourley:** Your Honor, I would object. That's
14 leading.

15 **The Court:** Okay. I sustain the objection as far as
16 leading. You need to ask it another way.

17 By Ms. Shurling:

18 Q. On page 157 at some point she's asked a question about
19 what the child said concerning certain body parts, beginning
20 on page 156 of my transcript. I'm sorry. It's during direct
21 examination; I don't know where it is on the copy you have.
22 And the State responds that the video is in evidence without
23 objection. Do you recall that?

24 A. No.

25 Q. And, of course, your objection was subsequently

1 overruled. Do you recall this witness giving details about
2 the sexual encounters with your client? Just one example on
3 page 159 of the record I have describing how she had been
4 called over to the bed by your client, do you recall that?

5 A. Yes.

6 Q. Did you consider objecting to that as exceeding the
7 boundaries of State versus Munn and its prodigy (verbatim)
8 with regard to hearsay testimony?

9 A. No.

10 Q. How about the fact---

11 A. Can I -- can I get an understanding of what you just
12 said?

13 Q. Okay. Are you familiar with the rule that says---

14 A. He's lying in the bed. The child has to go use the
15 bathroom and she has to go through his room. After using the
16 bathroom, she comes back out and he says, "Get in the bed."
17 Well, if these are statements that are made by the defendant,
18 how is that hearsay?

19 Q. This witness is reporting statements that were made by
20 the victim concerning her sexual assault; correct?

21 A. Okay. Well, that would be hearsay.

22 Q. Okay. Moving along, are you familiar with the case law
23 that indicates that credibility of witnesses is within the
24 province of the jury to determine?

25 A. Yes.

1 Q. Do you recall -- well, going back to one more detail, do
2 you recall this forensic examiner being allowed to testify
3 that the child's mother was at work when this assault
4 allegedly happened? Do you remember her testimony to that
5 effect?

6 A. No.

7 Q. Again, if you had noticed that, would you have deemed
8 that to be impermissible hearsay repeating a detail---

9 A. Yes, I think it would.

10 Q. Thank you. And was there any strategic or tactical
11 reason for not objecting to that?

12 A. Trial strategy.

13 Q. And what was that strategy, sir?

14 A. To win.

15 Q. Moving along. Going back to the beginning - and I am
16 almost through, Your Honor - this witness was, as we've
17 already discussed, qualified as an expert in the field of
18 forensic interviewing and child abuse assessment. Do you
19 recall -- you said you don't specifically recall that.

20 A. No.

21 Q. Okay. Well, the record reflects -- and again, Your
22 Honor, I hate this, but in my transcript it's on page 160
23 beginning on page -- I mean, line 18 going over to page 161.
24 Specifically, she testifies that -- I said, "She needed
25 immediate counseling. She'd also given me some indication

1 that she was considering harming herself, so she needed
2 immediate counseling and the counselor had been given a copy
3 of my report, that she should not be around Kevin and that
4 she should be around supportive family members to help her
5 with the trauma." Was there any particular reason why you
6 did not object to that testimony, testimony in which she is
7 indirectly, if not directly, naming the child's perpetrator,
8 having been told that Kevin was the perpetrator by the child?

9 A. Any particular reason why I didn't?

10 Q. Yes, sir.

11 A. No.

12 Q. Okay. Moving along. Going back to what I was saying
13 just a moment ago, whose role is it to determine the
14 credibility of witnesses?

15 A. The jury.

16 Q. Okay. Do you recall a line of questioning -- and, Your
17 Honor, it's on page 162, starting on line 3 in my record, and
18 I'll stand here so Mr. Gourley can... On page 162 where she
19 talks about how she determines competency during a forensic
20 interview, do you remember that?

21 A. No.

22 Q. And there are a series of questions asked concerning
23 whether or not in her judgment the child knew the difference
24 between right and wrong and was competent to give statements.
25 Do you remember that testimony?

1 A. No.

2 Q. Had you recognized that testimony as, in effect, being
3 tantamount to a statement of her belief of the child's
4 credibility, would you have objected to it?

5 A. If I felt that if she related testimony to the Court
6 that she believed in her -- in the minor child and the
7 statements made by the minor child, I would have objected to
8 it. Is that what you're saying?

9 Q. If you had perceived her testimony to, in effect, be
10 proffered as expert testimony concerning the child's
11 competency to testify and ability to ascertain right from
12 wrong, would you have objected?

13 A. No.

14 Q. Why not?

15 A. I don't want to play with it.

16 Q. Would you consider the question of whether or not the
17 child could ascertain right from wrong and whether or not the
18 child was deemed competent to give statements to directly
19 bear on the question of the child's credibility?

20 A. I do.

21 Q. And, again, you've already admitted that credibility is
22 a factor for the jury to determine, not anyone else.

23 A. That's correct.

24 Q. And, in fact, this woman was not a psychiatrist or a
25 psychologist, was she?

1 A. I don't think so.

2 Q. So did you consider objecting to that testimony on the
3 ground that she had not been qualified as an expert in a
4 field that would render her qualified to give expert opinion
5 on that subject matter?

6 A. No.

7 **Ms. Shurling:** A moment's indulgence. Your Honor, in
8 light of the testimony concerning the forensic examiner, I
9 would also ask the Court to allow me to ask two questions
10 concerning the testimony of Trina Hamlet, an officer with the
11 Kingstree Police Department.

12 **The Court:** Okay.

13 **Mr. Gourley:** And, Your Honor, again just for the
14 record, they weren't pled in the amendments or the P.C.R.
15 application, so we'd just object for lack of notice and lack
16 of opportunity to speak to Mr. Strobel.

17 **The Court:** Okay. All right. I'll let you proffer
18 those, and I'll decide later whether I'm going to let it in.

19 **Ms. Shurling:** Thank you, Your Honor.

20 By Ms. Shurling:

21 Q. Mr. Strobel, do you remember Trina Hamlet with the
22 Kingstree Police Department---

23 A. No.

24 Q. ---testifying at this trial?

25 A. No.

1 Q. Have you had a chance to review the trial transcript in
2 preparation for this P.C.R. hearing today?

3 A. No.

4 Q. Do you still have a copy of the transcript up there with
5 you or did I take it back?

6 A. You took it back because it was wrong.

7 Q. Pardon?

8 A. You said the pages were wrong from what you had. You
9 took it from me.

10 Q. Okay. Let me see if I can find this particular
11 reference and see if the pages are jibing on that. Hold on
12 just a second. Sorry, Your Honor. I'm trying to reconcile
13 these transcripts. During the testimony of Trina Hamlet,
14 she's asked about interviewing the victim in this case and
15 then she's asked, "What did she tell you?" Do you recall
16 that?

17 A. No, but I'll agree with the correct transcript.

18 Q. Okay. And in response to that question, she testified
19 specifically -- Your Honor, it's page 170, line 25, going to
20 171, line 1, in my copy of the transcript. She said that
21 Kevin Bradley had forced having sex with her. Was there any
22 strategic or tactical reason for not objecting to that
23 hearsay testimony?

24 A. Is she saying that's what the child told her?

25 Q. Yes, sir.

1 A. I'm not going to object to that. It's certainly not --
2 no.

3 Q. Is it your understanding that there are no limits to
4 what you can ask concerning statements made by the child?

5 A. No, there's limits.

6 Q. And would naming -- identifying the perpetrator not be
7 outside those limits?

8 A. She has already testified to that. She's told everybody
9 that. To have somebody else to say the same thing she's
10 already told -- if that was the first time I had heard about
11 it or knew anything about it, I would object, but we know
12 exactly what the child's going to say.

13 **Ms. Shurling:** Thank you. No further questions.

14 **The Court:** Yes, sir.

15 **Mr. Gourley:** Thank you, Judge.

16 Cross-Examination

17 By Mr. Gourley:

18 Q. Mr. Strobel, how many times did you meet with the
19 applicant prior to trial?

20 A. Meet with who?

21 Q. With Kevin Bradley prior to trial.

22 A. Many times.

23 Q. Many times?

24 A. How many, I don't know.

25 Q. Did he cooperate during your meetings?

1 A. Well, the times that I had to meet with him he was in
2 the detention center in Kingstree after they locked him back
3 up. So, yes, he cooperated.

4 Q. Okay. And did you file any Brady or Rule 5 motions---

5 A. Yes.

6 Q. ---in this case?

7 A. Yes.

8 Q. Did you review that material with Mr. Bradley?

9 A. I did.

10 Q. Okay. Did y'all discuss the elements of the charges and
11 what the State had to prove?

12 A. Yes.

13 Q. Did y'all discuss his version of the facts? Did you
14 discuss his version of the facts?

15 A. Yes.

16 Q. Okay. Did y'all discuss any possible defenses?

17 A. No.

18 Q. Okay. In your opinion, were there any defenses to this
19 crime?

20 A. Not with the blood results, no.

21 Q. Other than the fact that he alleged that he did not have
22 sexual intercourse with her at the age of 10.

23 A. Correct.

24 Q. Now, can you briefly describe the State's evidence
25 against Mr. Bradley?

1 A. Briefly describe it?

2 Q. Yes, sir, or I can -- I can walk through it if you'd
3 like, if that would be easier. Well, Mr. Bradley admitted on
4 the stand that he had sex with ~~the victim~~ **Victim**; correct?

5 A. Yes.

6 Q. Okay. And she was pregnant with his child; correct?

7 A. Yes.

8 Q. Okay. And Mr. Bradley asserted that he did not have sex
9 with her when she was 10; right?

10 A. Correct.

11 Q. Okay. And you put up Dateisha (phonetic) - her last
12 name escapes me right now - in order to corroborate Mr.
13 Bradley's testimony; right?

14 A. Yes.

15 Q. That he was not babysitting the child, the victim, at
16 the time that the child alleged he was babysitting her;
17 right?

18 A. Right.

19 Q. And that also brought out -- and Ms. Shurling hit on the
20 fact that you didn't bring out the whole timeline with the
21 death of the baby's father, but Dateisha actually brought all
22 that out; right?

23 A. Yes.

24 Q. And Dateisha asserted that Mr. Bradley was not at her
25 apartment where Mr. Bradley admitted to having sex with her

1 in June of 2008, right, that it was not possible?

2 A. Yes.

3 Q. But Ms. Barr impeached her essentially with the police
4 report alleging Mr. Bradley was her boyfriend in the year of
5 2008; right?

6 A. Correct.

7 Q. Okay. Now, did Mr. Bradley give you any sort of alibi
8 witnesses or anything like that?

9 A. No.

10 Q. Okay. Did he ever give you any type of witnesses at all
11 for investigation purposes?

12 A. No.

13 Q. Did you feel you had ample time to prepare for trial?

14 A. Yes, I did.

15 Q. And we've kind of hit on this, Mr. Strobel, but with the
16 Batson motions the defendant requested that those jurors be
17 struck; correct?

18 A. Correct.

19 Q. Okay. And you attempted to argue to the judge the
20 defendant's reasoning as to why he wanted those jurors
21 struck; right?

22 A. Yes.

23 Q. Okay. And that included the fact that some of them
24 weren't dressed properly, some of them looked at him funny,
25 so on and so forth; right?

1 A. Correct.

2 Q. Okay. And do you feel as the attorney that you had the
3 -- do you feel personally as the attorney that you had any
4 basis to strike those jurors outside of the defendant's
5 requests?

6 A. Say that again.

7 Q. Do you feel personally as the attorney that you had any
8 basis to strike those jurors outside of the defendant's
9 request to strike them?

10 A. No.

11 Q. Okay. So the second time around when those jurors came
12 back up for the second jury panel, you didn't feel like you
13 had a new basis to strike those jurors; right?

14 A. No. I don't know anybody in Williamsburg County.

15 Q. Okay. But based off of the voir dire and the jury
16 qualification and everything like that, you didn't feel like
17 you had any reason outside of the defendant's request to
18 strike those jurors.

19 A. No.

20 Q. Okay. And you argued the defendant's reason for
21 striking the jurors to the judge; right?

22 A. Yes.

23 Q. Did you feel like you could have argued that any better
24 or developed it any more fully than you did at trial or
25 during the jury selection?

1 A. No.

2 Q. Okay. And, in your opinion, did the defendant have a
3 fair and impartial jury?

4 A. He did.

5 Q. And regarding Barbara Griggs' testimony, you objected to
6 her testimony as a basis of hearsay; correct?

7 A. Yes.

8 Q. Okay. And do you feel you articulated your objection to
9 the best of your abilities?

10 A. I did.

11 Q. Okay. And the judge overruled your objection; right?

12 A. Correct.

13 Q. In regards to some character witnesses that the
14 applicant has alleged---

15 A. Who?

16 Q. Sir?

17 A. What character witnesses?

18 Q. The applicant has alleged that you failed to call
19 Sergeant Robert McClary (phonetic)---

20 A. Never heard of him.

21 Q. ---and Sergeant Staggers?

22 A. I know nothing about it.

23 Q. And Frederick Davis.

24 A. I know nothing about it.

25 Q. Never heard of those people? Did he ever tell you

1 anything about those people?

2 A. No.

3 **Mr. Gourley:** Okay. Beg the Court's indulgence, Your
4 Honor.

5 **The Court:** All right.

6 By Mr. Gourley:

7 Q. Now, regarding the discharge that the victim had, she
8 was taken to the doctor and I believe it was---

9 A. You said he was taken to the doctor?

10 Q. She.

11 A. Okay.

12 Q. She was taken to the doctor by her grandmother on
13 June 24th, 2008; correct?

14 A. In June, right.

15 Q. Yes, sir. Okay. So that was the first initial doctor's
16 visit where the grandmother complained of the child having
17 discharge and she was around with the boy; right?

18 A. Right.

19 Q. And then in August of 2009 she went back to the doctor
20 for her yearly checkup in which case they discovered that she
21 was pregnant; right?

22 A. Yes.

23 Q. Okay. So that does corroborate the child's testimony at
24 trial that the sexual intercourse started in June of 2008;
25 right?

1 A. That's correct.

2 Q. Okay. The defendant did not dispute that he had sex
3 with ~~Shirley~~ **Victim** (verbatim), did he?

4 A. No.

5 Q. Okay. And did he ever tell you that he -- did he ever
6 tell you that he was aware of her birth date?

7 A. No.

8 Q. Okay. Did he ever request that an appeal be filed, a
9 direct appeal be filed?

10 A. No.

11 Q. Did y'all discuss that?

12 A. No.

13 **Mr. Gourley:** Okay. Your Honor, I don't have any other
14 questions.

15 **The Court:** Okay.

16 **Ms. Shurling:** Briefly.

17 Redirect Examination

18 By Ms. Shurling:

19 Q. With regard to the appeal, did you ever have a
20 conversation with Mr. Bradley advising him of his right to a
21 direct appeal following his jury trial?

22 A. Very quickly.

23 Q. And did---

24 A. I told him he had the right to appeal this, but it must
25 be done or I be notified within 10 days of today.

1 Q. And did you subsequently go see him and have a
2 discussion with him about whether or not he wanted to appeal?

3 A. It was at the trial.

4 Q. Pardon?

5 A. At the trial.

6 Q. At the end of the trial---

7 A. Yes, ma'am.

8 Q. ---is when you had this brief conversation. And did he
9 ever tell you he didn't want to appeal?

10 A. No.

11 Q. Okay.

12 A. He did tell me -- he didn't tell me he wanted to appeal,
13 but he did not tell me I do not want to appeal.

14 Q. Are you familiar with the standing order of the Supreme
15 Court in re---

16 A. No.

17 Q. ---an anonymous member of the bar addressing the duty to
18 preserve right to an appeal?

19 A. Say that again.

20 Q. Are you familiar with the Supreme Court standing order
21 captioned "in re, an anonymous member of the bar" in which
22 the Supreme Court made it clear the obligations of trial
23 counsel to preserve the client's right to a direct appeal
24 unless the client had specifically waived that right?

25 A. In other words, you're saying I have to file a notice of

1 intention to appeal even though he doesn't want one?

2 Q. Well, I believe you just testified he never told you he
3 didn't want one.

4 A. I asked him, "Do you want me to appeal?" and he said,
5 "No," but he didn't tell me not to appeal. I asked him, "Do
6 you want me to appeal this? If you do, you've got 10 days
7 from today to file the appeal." He didn't say anything.

8 Q. He didn't say anything.

9 A. That's correct.

10 Q. Okay.

11 A. He didn't tell me not to; he didn't tell me to do it.

12 Q. Okay. And in any event, you didn't file it.

13 A. No.

14 Q. Okay. During the testimony of Nurse Griggs, she
15 testified to the child being given various tests for S.T.D.'s
16 that were all negative. Do you recall that testimony?

17 A. No.

18 **Ms. Shurling:** And, Your Honor, I'll provide the Court
19 with page numbers in a minute when I can reconcile them with
20 these transcripts. And subsequently---

21 **The Court:** The Attorney General didn't bring anything
22 up about that, did he?

23 **Ms. Shurling:** Yes, sir. You were questioning him about
24 the---

25 **Mr. Gourley:** I questioned him about the nurse's -- the

1 June 10 or the June 24th doctor's meeting.

2 **The Court:** The doctor's visit.

3 **Mr. Gourley:** Right.

4 **The Court:** It corroborated the---

5 **Ms. Shurling:** And about---

6 **Mr. Gourley:** No, I didn't---

7 **Ms. Shurling:** ---the testimony about---

8 **Mr. Gourley:** I didn't---

9 **Ms. Shurling:** ---venereal diseases.

10 **Mr. Gourley:** No, Your Honor, I didn't ask anything
11 about---

12 **The Court:** He just simply asked did the doctor's visit
13 in 2008 -- did it corroborate the sexual intercourse. He
14 didn't go into anything about, that I remember, about
15 S.T.D.'s.

16 By Ms. Shurling:

17 Q. Do you recall during direct examination you were
18 questioned about the child first being brought to the doctor
19 complaining of a discharge? Do you recall that in your
20 direct testimony moments ago?

21 A. No.

22 Q. And do you recall during the trial the testimony of Dr.
23 Susan, pardon me, Luberoff, M.D., reflecting that the child,
24 in fact, had vaginal warts and gonorrhea?

25 **Court Reporter:** I'm sorry---

1 **Mr. Gourley:** And, Your Honor, I also object.

2 **Court Reporter:** Wait.

3 **Mr. Gourley:** That's outside the---

4 **Court Reporter:** There was coughing when you were saying
5 "had vaginal" and then there was coughing and I didn't hear
6 what you said.

7 **Ms. Shurling:** Vaginal warts and gonorrhea.

8 **Mr. Gourley:** And, Your Honor, I would object. That's
9 outside the scope of cross-examination.

10 **Ms. Shurling:** Your Honor, he questioned him about the
11 child being taken to the doctor complaining of a discharge.

12 **The Court:** You did. He did. All right. I'll allow
13 it. I'll allow him to answer that question if that's the --
14 if this was at the same visit. You're telling me the same
15 visit that he asked about the child had vaginal warts and
16 gonorrhea? That visit? I thought that was the second visit
17 when she was pregnant and she had all that.

18 **Ms. Shurling:** The pregnancy was determined at the
19 second visit, Your Honor.

20 **The Court:** Right.

21 **Ms. Shurling:** The initial visit which the State has
22 questioned him about was about a vaginal discharge.

23 **The Court:** Right. And at that visit she had vaginal
24 warts and gonorrhea?

25 **Ms. Shurling:** According to the doctor's testimony, at

1 the time of the second visit she tested positive for vaginal
2 warts and gonorrhea, but there's no testimony about how long
3 she would have had those. The testimony of Registered Nurse
4 Griggs reflects a negative test for syphilis and something
5 else, but gonorrhea and vaginal warts, chlamydia,
6 specifically was not mentioned during the testimony of the
7 nurse.

8 **The Court:** Okay.

9 By Ms. Shurling:

10 Q. Now, did you ever talk to your client about whether or
11 not he had ever had gonorrhea?

12 A. No.

13 Q. Did you ask your client whether or not he'd ever been
14 tested for chlamydia?

15 A. No.

16 Q. Did you consider the possibility of having your client
17 tested to determine whether or not he, in fact, had those
18 S.T.D.'s?

19 A. Why? He admitted to having intercourse with her, even
20 impregnated her, so why do I care about that?

21 Q. And I believe the testimony has been that the timing of
22 the visit complaining of the discharge was part of their case
23 concerning the timing of the onset---

24 A. But that was in June when she was 10, not 11. She had a
25 discharge in June. She went back in August, and that's when

1 they found the pregnancy; right?

2 Q. The initial visit to the doctor was before the visit
3 because she had missed periods.

4 A. Right.

5 Q. The initial visit to the doctor was earlier in time and
6 addressed the presence of a suspicious discharge.

7 A. When?

8 Q. Do you recall that?

9 A. When?

10 Q. I'm sorry. I don't have the specific date. Your Honor,
11 I can take a moment to look it up.

12 **The Court:** No, I've got... Go ahead.

13 **Ms. Shurling:** Your Honor, page 56 again of my
14 transcript---

15 **The Court:** Okay.

16 **Ms. Shurling:** ---the testimony of Barbara Griggs says
17 that the test for -- and I apologize. Tests for yeast,
18 trichonoma (verbatim), chlamydia, and it says gonorrhea.
19 Those were all negative in June 2008.

20 **The Court:** Right.

21 By Ms. Shurling:

22 Q. And at the subsequent visit, August 14th, they're
23 addressing the pregnancy issues. Do you recall that?

24 A. I think so. August of the same year?

25 Q. Yes, sir.

1 **The Court:** No.

2 By Ms. Shurling:

3 Q. No, pardon me. August of the following year.

4 A. That's right. That's what I thought.

5 Q. August of 2009. And my question to you is: Did you
6 consider having your client tested or presenting evidence
7 that your client had never had the diseases that were being
8 identified as those suffered from by this child?

9 A. Well, let me make sure I understand it. In June she was
10 tested. Nothing. In August of the next year, which is a
11 year and a half later when they found the pregnancy, she had
12 gonorrhea and warts and whatever. Well, that means that she
13 could have gotten those at any -- long after the sexual
14 intercourse that my client -- that the State was saying that
15 was taking place from her discharge in June when she was 10
16 to the other time. So what would it prove that if I did
17 these tests to show that he was not when he told me that he
18 was?

19 Q. Was this child admitting having been sexually active
20 with anyone other than your client?

21 A. No.

22 Q. She, in fact, was claiming that your client was the only
23 person she'd had sex with; right?

24 A. I'm trying to remember from the transcript. The only
25 thing I do remember is when they first took the child for the

1 discharge, the grandmama said that there was another boy
2 involved. I don't think she said on the record who it was.
3 There was another boy that she was seeing or something, but
4 other than that, I don't recall any other males being
5 involved.

6 Q. During the testimony of Nurse Griggs, Nurse Griggs said
7 the grandmother said she was bringing her in because she
8 caught her with a boy; correct?

9 A. I think so, yeah.

10 Q. And subsequently in the grandmother -- Sadie's
11 testimony, she denied that. She said she had never caught
12 the child with another boy, did she not?

13 A. I think you're right.

14 Q. Okay. So my question is: Did you ever consider
15 engaging in trial preparation that would have enabled you to
16 demonstrate for this jury that the child could not have
17 gotten gonorrhea between June 2008 and August 2009 from your
18 client because your client had never had gonorrhea?

19 A. You know, I don't -- oh, I see what you're trying to
20 say. You're trying to say that the only person she had --
21 she was raped by was him, nobody else.

22 Q. I'm saying that the child -- neither the child nor the
23 grandmother are admitting that the child had had any kind of
24 sexual conduct with anybody other than your client; correct?

25 A. I think that's what you're saying.

1 Q. Okay. And if, in fact, the child was suffering from an
2 S.T.D. and it could have been proven that your client did not
3 have that disease nor had he ever had it, would that not have
4 been valuable for the defense?

5 A. No.

6 Q. Thank you. One moment's indulgence, Your Honor. Oh, I
7 can -- I can tell you what I wanted to ask. This -- this
8 indictment -- the child testified that it was in the summer
9 of 2008 when she was 10 that this sex stuff with your client
10 started; right?

11 A. Correct.

12 Q. The indictment actually alleges that it happened
13 sometime between June 1st, 2008, all the way up to
14 February 4th, 2009; correct?

15 **Mr. Gourley:** And, Your Honor, I'm just going to have to
16 object. That's outside the scope. I didn't ask anything
17 about the indictment.

18 **The Court:** Yeah, that's true; he didn't.

19 **Ms. Shurling:** I believe, Your Honor, that he was
20 examining him on cross about why he did and didn't cross-
21 examine concerning certain matters.

22 **The Court:** I understand.

23 **Ms. Shurling:** Did you not touch on that?

24 **The Court:** Tell me what the point is in the indictment.
25 I read the indictment and I understand the timeframes. Now,

1 what difference does that make?

2 By Ms. Shurling:

3 Q. Well, my question is: Did you ever do anything to
4 investigate why the State was putting the time period at so
5 broad a period of time from June 1st, 2008, through
6 February 2009 if the child was specifically reporting that
7 there was an onset of behavior in June of 2008?

8 A. Well, she said it happened a half dozen times. Just one
9 is all I -- one is all the State needs.

10 Q. Okay. A moment's indulgence. You were questioned on
11 direct about why you handled the jury selection issues the
12 way you handled them, so I want to touch on that real
13 briefly. Two things. One: Did you ever explain to your
14 client the need to use peremptory strikes when some of these
15 same jurors came up in the second panel, in order to preserve
16 that issue for appellate review?

17 A. Yes.

18 Q. You did.

19 A. Certainly.

20 Q. And he said he just didn't want to preserve that.

21 A. That's correct.

22 Q. All right. And throughout the judge's ruling on the
23 Batson issue, the judge refers in passim about four times to
24 the fact that your client had struck jurors because he didn't
25 like the way they looked. Do you recall that?

1 A. No. I remember him telling me he doesn't like the fact
2 that they didn't look at him.

3 Q. Okay.

4 A. Not how they were dressed. He may have; I just don't
5 recall it.

6 **Ms. Shurling:** Okay. May I approach, Your Honor?

7 **The Court:** Yes, ma'am.

8 By Ms. Shurling:

9 Q. Just one example real quickly at the bottom of page 30.
10 Could you read the last line?

11 A. The last line? "The way they presented themselves on
12 the way they---"

13 Q. Looked.

14 A. ---looked are" -- and I can't see...

15 Q. So would you agree at least in that segment that the
16 Court appears to be referencing the way the jurors looked as
17 opposed to the way they looked at him, at your client?

18 A. Both.

19 Q. And you didn't consider objecting to the ruling of the
20 Court on that basis as not accurately reflecting the race-
21 neutral reasons your client had proffered?

22 A. No.

23 **Ms. Shurling:** No further questions, Your Honor.

24 **The Court:** Okay.

25 **Mr. Gourley:** Judge, just one question, if I may.

1 Recross Examination

2 By Mr. Gourley:

3 Q. Mr. Strobel, the reason why -- is the reason why you
4 didn't have your client tested for gonorrhea and the other
5 S.T.D.'s that the victim tested positive for is because he
6 was admitting to having sex with the victim when she was
7 11 years old?

8 A. Ten.

9 Q. Right. But he -- he got up on the stand and admitted
10 that he had sex with her; right?

11 A. Certainly.

12 Q. And whether or not he tested positive for gonorrhea or
13 the other S.T.D.'s that she tested positive for wouldn't
14 really matter because he was admitting to having sex with
15 her; right?

16 A. Yes, but again it's the way I view things.

17 Q. Yes, sir.

18 A. And you don't understand that.

19 Q. Can you---

20 A. You're sitting on that jury.

21 Q. Yes, sir.

22 A. And you're already having to deal with the fact that an
23 11-year-old child had been raped at least a half a dozen
24 times. I do not want the jury to get involved in genital
25 warts and gonorrhea and, you know, and the child tested

1 positive for it and they're saying: I can't believe that he
2 did all this. You just -- I try to stay away from nasty
3 things because it's going to prejudice the jury. Now, if
4 there was some particular point that I had to make, then I
5 would, but just the mere fact to bring out all that kind of
6 stuff before a jury is -- you know, I'm just killing myself.

7 **Mr. Gourley:** Yes, sir. No further questions, Your
8 Honor. Thank you, Mr. Strobel.

9 **The Court:** Thank you, sir. You can step down. Tell me
10 the page and line that she tested positive for these.
11 Anybody know?

12 **The Witness:** Are you talking to me?

13 **The Court:** No, no. You can get down.

14 **The Witness:** Okay.

15 **The Court:** I want you to get down before anybody asks
16 you another question.

17 **The Witness:** Your Honor, this is worse than the trial.

18 **Ms. Shurling:** Your Honor, I'm going to move closer so I
19 can hear the question you were asking us.

20 **The Court:** I want to know in the transcript where she
21 tested positive.

22 **Ms. Shurling:** I'm sorry; I still couldn't hear you.

23 **Mr. Gourley:** I got it, Judge.

24 **The Court:** In the transcript. I've got a copy. Just
25 give me the page and number.

1 **Mr. Gourley:** Page 57 or page 56, lines 11 and 12. You
2 have a redacted version and I don't believe that we have the
3 same version that you do, so here is an unredacted version---

4 **The Court:** It says negative. Everything I have says
5 negative. That's why she kept saying that. My whole
6 transcript says it's negative.

7 **Mr. Gourley:** No, sir. There's -- let me grab my...

8 **Ms. Shurling:** And I apologize, Your Honor. I don't
9 know how -- I mean, I've got the transcript from---

10 **Mr. Gourley:** Yeah, we had---

11 **Ms. Shurling:** Before you -- before Mr. Gourley---

12 **The Court:** See, mine -- I've never -- I can't find
13 anything in my transcript that says she was positive for any
14 venereal disease.

15 **Mr. Gourley:** It's 188.

16 **Ms. Shurling:** I'll find...

17 **Mr. Gourley:** It starts on page 188. Yeah. Lines 14 --
18 starting on 14.

19 **The Court:** Yeah. Okay. When was that test done?

20 **Mr. Gourley:** It was done in August, Your Honor.

21 **The Court:** Okay. When she was pregnant?

22 **Mr. Gourley:** Yes, sir.

23 **The Court:** Okay. All right. Thank y'all. Let me
24 write that down.

25 **Ms. Shurling:** Your Honor, respectfully, I don't believe

1 that the record verifies at which visit the tests the good
2 doctor is testifying to were taken.

3 **The Court:** Okay. Then I'll read through that then.
4 Thank y'all.

5 **Ms. Shurling:** Thank you. Does Your Honor wish to break
6 for lunch at this time or do you want me to proceed with
7 Mr.---

8 **The Court:** Yeah, I mean, unless you've got a two-minute
9 witness. If we don't break now, we're not going to get
10 lunch.

11 **Mr. Carraway:** It's quick.

12 **The Court:** You're the two-minute witness?

13 **Mr. Carraway:** Yes.

14 **The Court:** What about your client?

15 **Ms. Shurling:** Your Honor---

16 **The Court:** She can't do anything in two minutes.

17 **Ms. Shurling:** We'll have probably 30 minutes, maybe 45,
18 testimony from Mr. Bradley and cross, and we still have a
19 second case to do, so we're...

20 **The Court:** All right. I've got another hearing at
21 1:30. Okay. Then we're going to break for lunch.

22 **Mr. Strobel:** Can I be excused, Your Honor?

23 **The Court:** Yes, sir.

24 **Mr. Strobel:** Thank you.

25 **Ms. Shurling:** Did you want him to be excused?

1 **Mr. Gourley:** Mr. Strobel -- Judge, I may keep Mr.
2 Strobel here.

3 **The Court:** That's up to you. All right. I'll---

4 **Ms. Shurling:** Your Honor, did I understand you to say
5 you have a hearing at 1:30?

6 **The Court:** I do.

7 **Ms. Shurling:** So I need to pack up all this stuff?

8 **The Court:** I don't know how much room they need and
9 what they've got going on.
10 (Whereupon, an off-the-record discussion took place, and
11 a lunch break was taken.)

12 **The Court:** Thank you. You can be seated. Are we
13 ready?

14 **Ms. Shurling:** Yes, sir, Your Honor. At this time I
15 would call the applicant, Kevin Bradley.

16 **The Court:** Okay.

17 Kevin Bradley, after being duly sworn, testified as
18 follows:

19 **The Clerk:** Have a seat up there. Please state your
20 full name and spell your last name for the record.

21 **The Witness:** Kevin Bradley, B-R-A-D-L-E-Y.

22 **Ms. Shurling:** Mr. Bradley.

23 **The Witness:** Yes.

24 **Mr. Shurling:** Is Your Honor ready to proceed?

25 **The Court:** Yes. I'm sorry.

1 **Ms. Shurling:** Thank you.

2 Direct Examination

3 By Ms. Shurling:

4 Q. Mr. Bradley, do you recall appearing before Judge
5 Clifton Newman on January 25th, 2010, before your jury trial
6 commenced?

7 A. Yes.

8 Q. What time of day was that hearing? Do you remember?

9 A. It was in the morning.

10 Q. In the morning? And what day of the week was that?

11 A. It was on a Monday.

12 Q. Okay. And prior to that Monday morning, when would the
13 last time you met with Mr. Strobel have been?

14 A. It would probably have been the week before that -- I
15 would say on a Thursday.

16 Q. Okay. And at what point in time did Mr. Strobel advise
17 you that the State had taken your case back before the grand
18 jury and gotten an indictment charging you with one count of
19 first degree C.S.C. with a minor and one count second degree
20 C.S.C. with a minor?

21 A. I believe it was that Thursday or either that day of the
22 trial when I took the plea.

23 Q. You don't remember which?

24 A. I really don't remember.

25 Q. Okay. And did he discuss with you at that time what the

1 difference was between the original indictment and the one
2 that had been handed down on January 21st?

3 A. No. No, ma'am. He's never discussed -- I never knew
4 there was a new indictment.

5 Q. Did he give you a copy of it?

6 A. No, not until I came -- after I was convicted did I
7 actually see the actual indictments.

8 Q. Okay. Well, I just asked you a moment ago -- I'm not
9 trying to trip you up, but I asked you when you first became
10 aware that the State had gotten a new indictment and you said
11 either Thursday or Monday.

12 A. Correct.

13 Q. So you knew there was a new indictment.

14 A. Well, I knew he -- he came and addressed the charges
15 that was going to be held against me when we was to go to
16 court, but I never was told anything about an indictment or
17 what the indictment consisted of.

18 Q. Okay. So when you had that conversation with him
19 immediately before going to trial, that was the first time
20 you knew that first degree criminal sexual conduct with a
21 minor was going to be on the table?

22 A. Correct. Correct.

23 Q. Okay. Prior to that, you believe you had met with him
24 on or about Thursday?

25 A. That's correct.

1 Q. And Thursday would have, by my calculation, have been
2 the 21st.

3 A. Yes, ma'am.

4 Q. Of January.

5 A. I would believe so; yes, ma'am.

6 Q. Okay. And at that meeting on Thursday, the 21st, was
7 Mr. Strobel at that point telling you that you were going to
8 be on trial for first degree or did you find out about that
9 the following Monday?

10 A. I found out about that the following Monday.

11 Q. Prior to going to trial -- it's apparent from the
12 transcript from the hearing that was held before Judge Newman
13 that you started a guilty plea---

14 A. Correct.

15 Q. ---hearing.

16 A. Correct.

17 Q. On the 25th. That Monday.

18 A. Yes, ma'am.

19 Q. Correct?

20 A. Yes, ma'am.

21 Q. And the transcript has both Richard Strobel's name on it
22 and William LeGrand Carraway on it. What was Mr. Carraway
23 representing you on?

24 A. On another charge, another case.

25 Q. Okay. During this proceeding, His Honor asked you if

1 you were pleading guilty on the indictment that contains two
2 counts. When you indicate that you were pleading guilty, did
3 you mean you were pleading guilty on both -- that you were
4 guilty on both counts? What were you saying you were guilty
5 of?

6 A. I was pleading guilty to the -- to the second degree
7 charge.

8 Q. That's what you thought you were pleading to with
9 reference to the young lady whose last name began with a [REDACTED]

10 A. Correct. Correct.

11 Q. The victim in the case that eventually went to trial.

12 A. Yes, ma'am.

13 Q. And when the Court -- on page 3 of that transcript when
14 Assistant Solicitor Barr advises the Court that it's a two-
15 count indictment for criminal sexual conduct with a minor
16 first degree and count two is criminal sexual conduct with a
17 minor second degree, prior to hearing that in the courtroom
18 did you know that you were being charged with first degree?

19 A. No, I did not.

20 Q. Okay. So moving forward, when the Court asks you if you
21 want to waive, give up your rights and plead guilty on page 7
22 of that transcript, you say, "No, Your Honor, I don't want to
23 give up my rights." Why did you say that?

24 A. Well, because I didn't wanted (verbatim) to plead guilty
25 of a charge I didn't know anything about and I was not guilty

1 of.

2 Q. Okay. And, again, you freely admitted having
3 intercourse with the girl. It was just your position that it
4 didn't happen until she was -- after her 11th birthday.

5 Correct?

6 A. That's correct.

7 Q. And did you also dispute your guilt on the other
8 unrelated indictment?

9 A. I did.

10 Q. Okay. Now, can you recall what -- when you got ready to
11 go to trial, the preceding week when you met with Mr. Strobel
12 were you preparing for trial or just preparing for a plea?

13 A. We was preparing for a plea.

14 Q. Okay. And did Mr. Strobel tell you that if for any
15 reason the guilty plea did not go through that you would be
16 starting your jury trial that day?

17 A. No, ma'am.

18 Q. So you did not have any idea you'd be starting a trial
19 that day.

20 A. No, ma'am.

21 Q. Okay. Once the trial began and you began selecting a
22 jury, do you recall voicing, pardon me, the desire to see
23 certain jurors struck, using one of your peremptory strikes?

24 A. Yes, ma'am.

25 Q. And can you articulate for us what you told your lawyer

1 was the reason you wanted those people struck from jury
2 service?

3 A. Well, I told him that some of the jurors had looked at
4 me in a mean, stern way. Some of them had looked pro State.
5 Some of them just -- they -- they -- the way they just looked
6 at me. Some of them, it was because of their employment
7 issues. One of the jurors, he didn't mention this reason,
8 but, however, it was -- it's notated on the jurors' list.
9 That's Juror Number 29 on page 5 of the jurors' list where
10 his handwriting mentions that this juror was a retired
11 professor. However, he articulated to the -- to the judge at
12 the time that the reason of us striking that juror was we had
13 no reason at all. But I specifically spoken (verbatim) with
14 him and said that I did not want a teacher nor of any kind to
15 be a part of this jury because I felt as though a teacher
16 would automatically be biased against us. That's the same
17 reason why we struck Juror 201, which you can find in the
18 trial transcript as well.

19 Q. So it was your position that he failed to adequately
20 articulate your reason for striking Juror Number 29?

21 A. That's correct.

22 Q. Now, when the State's Batson motion was granted and the
23 jury panel selected was quashed and a new jury was selected,
24 Juror Number 29, Patricia Chandler, was selected again for
25 jury service but as an alternate. Isn't that correct?

1 A. No, she was selected as a forelady.

2 Q. Well, hold on. I'm going to approach with leave of the
3 Court, of course. (Ms. Shurling shows a document to Mr.
4 Bradley.)

5 A. This is the first jury selection.

6 Q. Huh?

7 A. That's the first jury selection. That's the second jury
8 selection.

9 Q. Okay. I stand corrected. At the second trial -- the
10 first trial she was chosen as an alternate. At the second
11 trial she was, in fact, seated on the primary jury; correct?

12 A. Give me a second.

13 Q. Not the second trial; I'm sorry. When the second panel
14 was picked.

15 A. Well---

16 Q. Ms. Chandler---

17 A. Correction. The first selection she was struck by the
18 defense, by me and my attorney.

19 Q. Correct.

20 A. And on the second selection she was picked by my
21 attorney.

22 Q. Okay. So Ms. Chandler was struck when she was presented
23 as a potential alternate juror in the first panel.

24 A. Correct.

25 Q. And she was struck by you.

1 A. Yes, ma'am.

2 Q. And in the second panel she was selected without
3 objection, without use of a peremptory by you and your
4 attorney.

5 A. Correct.

6 Q. Okay. And as well we have Juror Number 196?

7 A. Yes, ma'am.

8 Q. And Juror Number 96.

9 A. Yes, ma'am.

10 Q. Both of whom were struck in the selection of the
11 original jury based on demeanor issues, how they presented
12 themselves to you.

13 A. Yes, ma'am.

14 Q. And they ended up back on your jury; right?

15 A. Correct.

16 Q. Okay. In between when the first panel was struck and
17 you picked the second panel, did you have discussions with
18 Mr. Strobel about whether or not you should use peremptory
19 strikes to once again object to these same people being on
20 your jury panel?

21 A. I did and the reason was because I stated because he
22 said, "Well, the judge has mandated for us to select these
23 jurors, so we need a reason to strike these jurors," and my
24 reason was we just struck them. That is our reason: We just
25 struck these jurors. And if you're not going to question

1 them on if they're going to be able to decide fairly because
2 we just struck them, then they shouldn't be seated, but he
3 chose to seat them instead.

4 Q. Okay. So they were initially struck either because of
5 employment concerns or because of the way they presented to
6 you, the way they looked at you or didn't look at you,
7 whatever, and when the second panel was chosen, you wanted
8 them struck not only for the original reasons but also
9 because they had been struck once before.

10 A. Correct.

11 Q. And Mr. Stobel indicated to you that you could not use
12 your peremptory strikes for that reason.

13 A. Correct. He said -- he stated that the judge said that
14 we must select these jurors.

15 Q. Did he discuss with you what impact, if any, failing to
16 use a peremptory strike on these same jurors might have on
17 the viability of that issue at a subsequent appeal on the
18 ruling on the Batson motion?

19 A. No, ma'am.

20 Q. And again it's your position that you specifically did
21 ask him to strike these individuals.

22 A. I did, yes.

23 Q. And can you list for the Court the numbers of the
24 individuals that appeared on your second jury that were
25 originally struck in the first panel?

1 A. Sure. The first juror would be Juror Number 128, and
2 this can be found on trial transcript page 25, lines 9
3 through 11. The second juror would be Juror Number 82, and
4 this could be found on trial transcript page 25, lines 16
5 through 18. Next juror is Juror Number 96, and this can be
6 found on page 25, lines 21.

7 **The Court:** What was that last number? Juror what?

8 **The Witness:** Juror Number 96.

9 **The Court:** Okay.

10 **The Witness:** The next juror would be Juror Number 196,
11 and this can be found on page 26 of the trial transcripts,
12 lines 8 through 9. And the last juror was Juror Number 29,
13 and this can be found on trial transcripts page 28, lines 14
14 through 16.

15 By Ms. Shurling:

16 Q. Okay. When you stated at the hearing before the trial
17 started that you didn't want to waive your right to a jury
18 trial, you wanted to go to trial---

19 A. Yes, ma'am.

20 Q. ---at that point it appears the hearing was over pretty
21 quick as soon as you said that. Was there any side bar
22 discussion, any brief recess that's not reflected in the
23 record, any further discussion of why the plea was falling
24 apart?

25 A. No, none whatsoever.

1 Q. Did your lawyer ever discuss with you the possibility of
2 asking for a continuance if the case was going to go forward
3 with a trial to allow him more time to investigate possible
4 ways to attack the State's position that this was first
5 degree C.S.C. with a minor as opposed to what you'd been
6 charged with for almost a year which was second degree?

7 A. No.

8 Q. If you had known that he could have asked for a
9 continuance on that basis, would you have wanted him to do
10 so?

11 A. Of course. Yes.

12 Q. Okay. You had alleged that you felt that he should have
13 objected to the testimony of the nurse, Nurse Griggs, in this
14 matter.

15 A. Yes, ma'am.

16 Q. Can you tell us why you felt her testimony was
17 prejudicial?

18 A. Yes, because her testimony -- it actually bolstered the
19 victim's testimony. Mrs. Griggs' testimony -- at the
20 beginning of the trial she first named me as the perpetrator,
21 and then she later went on into details as far as what took
22 place and give -- give -- it just made the victim's story
23 look more solid as to just letting the victim testify as to
24 what happened.

25 Q. Okay. Now, you didn't have a direct appeal, did you?

1 A. No, ma'am, I didn't.

2 Q. Did you want one?

3 A. I did.

4 Q. Did Mr. Strobel discuss with you your right to a direct
5 appeal?

6 A. No, ma'am, he didn't.

7 Q. Is the issue concerning the selection of your jury one
8 of the issues that you would have wanted to present on direct
9 appeal?

10 A. Yes.

11 Q. Is the fact that the lower Court overruled your
12 attorney's objections to Nurse Griggs' testimony also an
13 issue that you would have wanted raised on direct appeal?

14 A. Yes.

15 Q. And you didn't know that your lawyer wasn't filing one
16 for you.

17 A. I didn't know this, no.

18 Q. Okay. Moving along. During your trial, after the jury
19 was selected and the State made a Batson motion and the Court
20 at the request of the State asked for individual explanations
21 as to each specific juror---

22 A. Uh-huh.

23 Q. ---as the Court and your attorney and the State went
24 through this list of jurors one by one, did your trial
25 attorney in your opinion effectively articulate your reason

1 for wanting to strike each of those jurors?

2 A. No. I felt like he was being very nonchalant and didn't
3 have -- he had a didn't-care attitude when he presented my
4 reasonings.

5 Q. And do you recall him referring to your reason for
6 striking one of the jurors as an excuse?

7 A. Yes, I do.

8 Q. And in your opinion, did that prejudice you in the eyes
9 of the Court?

10 A. It did.

11 Q. How so?

12 A. Because it showed -- it showed -- it showed that what I
13 was saying and what he was saying was just something being
14 made up. It was an excuse. I was just -- it was more than
15 an excuse. It was my valid reason for why I struck this
16 juror, and had he displayed the actual reason, had he put it
17 on the record of the actual reasoning instead of just saying
18 an excuse, the trial Court may have not struck the jury and
19 later re-selecting a jury with five jurors that was
20 previously struck that convicted me. The outcome of my trial
21 would have been totally different, I feel as though, had
22 trial counsel -- would have articulated the actual reasoning
23 of why we struck this juror instead of saying, "Same excuse."

24 Q. Now, let's be real specific here. Okay? You did not
25 deny having sexual relations with this young girl, did you?

1 A. No, I did not.

2 Q. The sole reason that you went to trial versus going
3 forward with the plea was that you contested the fact that it
4 had happened while she was under 11. Is that accurate?

5 A. That's correct.

6 Q. Okay. You've heard the testimony -- earlier today we
7 were talking about various things including the testimony of
8 the forensic examiner in this case. Would you have wanted
9 your attorney to object to that testimony if you had known
10 there was a basis for doing so?

11 A. Of course, yes.

12 Q. There was also testimony from Dr. Susan -- and I
13 apologize. I don't know why the good doctor's name won't
14 stick in my brain. Luberoff. Dr. Luberoff.

15 A. Yes, ma'am.

16 Q. Concerning the timing of her examination of this victim,
17 the timing of the termination of her pregnancy -- and let's
18 stop there for a second. You heard your defense attorney say
19 that this young girl had actually given birth to your baby.
20 That isn't true, is it?

21 A. That she...

22 Q. You heard Mr. Stobel say from the stand that this girl
23 had given birth to your baby. She didn't have the baby she
24 became pregnant with, did she?

25 A. No, she did not.

1 Q. And the record reflects that the pregnancy was
2 terminated when she was approximately 13 and a half weeks
3 pregnant; correct?

4 A. That's correct.

5 Q. In late August 2000...

6 A. Thirteen. I'm sorry. Nine.

7 Q. Nine.

8 A. Correct.

9 Q. So do you also recall Dr. Luberoff saying that placed
10 the date of conception somewhere around late May, early June,
11 something to that effect?

12 A. That's correct.

13 Q. Okay. Would you have wanted your defense attorney to
14 try to utilize that chronology to establish that the onset of
15 this sexual relationship, in fact, happened after the girl's
16 11th birthday in February of 2009?

17 A. Yes.

18 Q. And did he do so at trial?

19 A. No, he did not.

20 Q. Okay. Now, you remember the testimony of Dr. Luberoff
21 saying that the young girl had gonorrhea and chlamydia.

22 A. Correct.

23 Q. Have you ever tested positive for either of those
24 S.T.D.'s?

25 A. No, ma'am.

1 Q. Never.

2 A. Never.

3 Q. Would you have been willing to submit to medical
4 testing, if such was available, to establish that you, in
5 fact, were not the source of her venereal disease?

6 A. I would.

7 Q. And would you still be willing to do so today?

8 A. Yes, I will.

9 Q. Okay. We'll move forward on to something else for right
10 now. But let's talk about -- during this trial the testimony
11 from the forensic examiner was introduced, but in addition,
12 during her testimony the State asked to introduce the C.D.,
13 the video, of her actual exam with the young victim; correct?

14 A. Correct.

15 Q. Did you have any discussion with your attorney prior to
16 trial concerning whether or not you would object to that if
17 the State attempted to introduce that video?

18 A. I told him the day that they was going to do this that
19 he should object to it because again it was just going to
20 bolster the story of the victim and the victim was going to
21 testify, but he said that this is done all the time. So he
22 said he wasn't going to object to it, but I asked him and I
23 pled -- I begged with him. I said, "You need to object to
24 this because it's just -- it's just going to just add on to
25 the victim's story."

1 Q. If you had known that he could have objected to that
2 video of the so-called forensic interview with the young
3 woman as being merely cumulative to her testimony that had
4 already been heard, would you have wanted him to do so?

5 A. Yes.

6 Q. And likewise would you have wanted him to object to the
7 portions of the testimony of Nurse Griggs and the portions of
8 the testimony of the forensic interviewer concerning hearsay
9 statements attributed to the victim concerning who was
10 responsible for her assault and under what circumstances it
11 happened?

12 A. Yes, those as well as the Kingstree Police Department,
13 Officer Trina Hamlet.

14 Q. That was my next question. In addition, would you have
15 wanted him to object to your identification as the
16 perpetrator by Officer Tena Goff (verbatim)?

17 A. Trina Hamlet?

18 Q. Excuse me. Trina Hamlet. I apologize.

19 A. Yes, ma'am.

20 Q. Got the wrong one.

21 A. Yes, ma'am.

22 Q. Trina Hamlet.

23 A. Yes.

24 Q. Now, you do understand though that your identity as
25 someone who did have sex with the girl was established

1 through D.N.A. testing.

2 A. Correct.

3 Q. Okay? So toward that end, how do you feel you were
4 harmed by this woman and others identifying you as someone
5 who had had sex with the girl?

6 A. Because their testimonies bolstered the victim's
7 testimony and the testimony at the end of the trial was her
8 -- the victim's testimony at the end of the trial was
9 actually used. It was requested by the jury to be used
10 again, listened to as part of the deliberation and so---

11 Q. Stop.

12 A. Okay.

13 Q. Let me ask questions. So you feel that every time
14 someone was allowed to testify to hearsay, verifying facts
15 testified to by the victim, it bolstered her credibility.

16 A. It did, yes.

17 Q. And her credibility on one issue was extremely important
18 to your case, wasn't it?

19 A. It was.

20 Q. That being the question of exactly when this whole
21 business started.

22 A. Correct.

23 Q. Okay? Would you have wanted your attorney to ask her
24 how long before her pregnancy was discovered she began having
25 sex with you?

1 A. Yes.

2 Q. Would you have wanted your attorney to explore with the
3 prosecution why they were just four days before the jury
4 trial coming up with an allegation that you had had sex with
5 her before she turned 11?

6 A. Yes.

7 Q. It's hard to do this P.C.R. without talking about the
8 other one that we're going to start next, but in reference to
9 this trial, you understand that you got the minimum you could
10 have gotten for first degree criminal sexual conduct with a
11 minor.

12 A. Correct. Yes.

13 Q. Correct. And I have to ask you this. The record's got
14 to reflect that you and I have discussed the fact that under
15 the existing statute at the time of the alleged act that it
16 carried a sentence of what?

17 A. Life. Life without parole?

18 Q. Well, starting at -- what was the least you could have
19 gotten?

20 A. Twenty-five years.

21 Q. Which is what you got; right?

22 A. Yes.

23 Q. Going all the way up to?

24 A. Life without parole.

25 Q. Now, when is your birthday?

1 A. [REDACTED], 1989.

2 Q. [REDACTED], 1989. So in June of 2008 you would have been
3 19?

4 A. That's correct.

5 Q. Okay. Do you understand that - as they say, keep your
6 eye on the ball - if you win this P.C.R. -- and I know I've
7 hammered you about this, but I haven't hammered you on the
8 record, so I have to do that. If you win a new trial, at
9 that point you go back for a new trial on both charges, and
10 if the jury, yet another jury, were to find you guilty of
11 first degree, you could be sentenced to somewhere between
12 25 years and life. You understand that.

13 A. Yes.

14 Q. And you understand that there's absolutely no guarantee
15 that the judge at a new trial would follow the sentencing
16 that you received from Judge Newman at this trial.

17 A. Yes, ma'am.

18 Q. So you have a lot at risk. You understand that.

19 A. Yes, ma'am.

20 Q. Notwithstanding that risk, it's still your desire to go
21 forward with this---

22 A. Yes, ma'am.

23 Q. ---P.C.R. and ask for a new trial.

24 A. Yes, ma'am.

25 Q. I also have to ask you this and I'll have to cover it

1 again when we do the other one, but you also entered a plea
2 on a separate unrelated indictment to one count of second
3 degree criminal sexual conduct with a minor involving a
4 different young lady; correct?

5 A. Correct.

6 Q. But the time you got on that charge was run concurrent,
7 pardon me, consecutive---

8 A. Consecutive.

9 Q. ---with the time you got in this case; correct?

10 A. Yes, ma'am.

11 Q. You do understand that the judge gave you how much in
12 that case?

13 A. Five years.

14 Q. And you could have gotten up to how much?

15 A. Twenty.

16 Q. Okay. Just making sure all those lessons took. Up to
17 20 years. So, again, you understand that there's no
18 guarantee -- it's flipped around on you now. If the judge
19 were to grant you a new trial on the jury trial and not grant
20 you a new proceeding on the plea, then any judgment that
21 might be issued at the jury trial will now be second to the
22 plea judgment and sentence.

23 A. Yes.

24 Q. Do you understand what I'm saying?

25 A. I understand.

1 Q. So any sentence that you might receive after being found
2 guilty at a jury trial could be ordered to be served
3 consecutively to the five years you got in the guilty plea.
4 So not only might you get somewhere between 25 years and
5 life, but it could conceivably be consecutive to the five
6 years imposed in this case.

7 A. Yes.

8 Q. Okay. And notwithstanding that really serious risk, do
9 you still want to go through with this?

10 A. Yes.

11 Q. Are you sure?

12 A. I'm positive.

13 Q. How many times have I asked you that?

14 A. Over a dozen.

15 Q. Okay. We'll leave it alone then. All right. You
16 finished up this trial and then you moved in to doing the
17 plea on the second charge a few days later; correct?

18 A. Yes. Well, actually it was the next day.

19 Q. The next day?

20 A. Correct.

21 Q. Okay. Let's go back for just a few minutes to... I
22 just want the record to be clear here. You had originally
23 asked that I raise the question of whether or not you could
24 have presented potential character witnesses---

25 A. Yes, ma'am.

1 Q. ---at your proceeding?

2 A. Yes, ma'am.

3 Q. As well as potential alibi witnesses; correct?

4 A. Correct.

5 Q. And you and I discussed the fact that, given the broad
6 window of time that this was alleged to have occurred during,
7 that it would be kind of hard to have an alibi.

8 A. Correct.

9 Q. That during that time period you were home some of that
10 time, and it would be hard to have an alibi for all the time
11 during that window of opportunity.

12 A. Yes, ma'am.

13 Q. So you're okay with us not going forward on that alibi
14 issue.

15 A. Yeah. That's fine.

16 Q. Pardon?

17 A. That's fine. Yes, ma'am.

18 Q. Let's be clear here. You and I have had this
19 discussion. You understand why we're not proceeding on that
20 issue.

21 A. Yes, ma'am, I understand.

22 Q. And with regard to the character witness testimony,
23 we've also discussed the fact that where a D.N.A. test
24 unequivocally established that you had, after she was 11, had
25 sex with this girl and as a result of which she became

1 pregnant that the operative question of your having had
2 sexual relations with the girl was established and not only
3 that, you testified about it as well. Right?

4 A. Yes, ma'am.

5 Q. Okay. And so the only question that we would have been
6 introducing character testimony toward would have been your
7 reputation for truthfulness and veracity with regard to the
8 timing of the event; right?

9 A. Yes, ma'am.

10 Q. And I explained to you, did I not, that there was other
11 evidence that went to the issue of the timing that was more
12 beneficial to you in my judgment than the question of
13 character witnesses?

14 A. Yes, ma'am.

15 Q. And based on that, you made a decision to allow me not
16 to proceed on that allegation. Is that correct?

17 A. Correct.

18 Q. Okay. Now, you've been sitting here the whole time I
19 was examining Mr. Strobels. Have I covered with him all of
20 the main issues that you wanted me to cover with him?

21 A. I believe so. I just wanted -- there's some issues that
22 I would like to bring up.

23 Q. Pardon?

24 A. There's some that I wanted to bring up for
25 clarification.

1 Q. Well, you and I went over the list of issues that I was
2 prepared to present on your behalf before the hearing today,
3 didn't we?

4 A. Yes, ma'am.

5 Q. And I provided you a draft of this amended application a
6 couple of months ago?

7 A. No, just a few -- about last week.

8 Q. The final draft you got last week.

9 A. Yes. Yeah, the final draft. I'm sorry. Yes, ma'am.

10 Q. And you're saying that there are issues that are not
11 covered in here other than the question about the forensic
12 examiner because the Court's allowed me to go into that and
13 allowed me to ask a couple of quick questions about Corporal
14 Trina Hamlet's testimony. Other than that, what is it that
15 you wanted to address that we have not addressed here today?

16 A. Well, when Attorney Strobel mentioned that he gave me an
17 affidavit to sign, in trial transcript page 283 I
18 specifically stated -- the judge asked me before the trial
19 started you signed a -- you signed a -- your lawyer had
20 prepared me and handed me this, an affidavit in which you
21 admitted being guilty and you put in your own handwriting on
22 page 3 of it with the question of, "What acts did you do
23 which caused you to think that you are guilty of the charge
24 or charges to which you now want to plead guilty? And in
25 your own handwriting you wrote, 'I had sex with ~~Shirley~~ *Victim*

1 [REDACTED], age 10, ' and I said to the Court that I did not
2 write that. And the judge asked me: I did not wrote
3 (verbatim) that? I said, "No." He asked who wrote that, and
4 Mr. Strobel admitted to him writing that. And I'm saying
5 here that I did not do anything of nature. I didn't wrote
6 anything as far as what was on that affidavit at the time of
7 the plea before the trial began.

8 Q. So you're saying that there were additions made to the
9 affidavit in handwriting?

10 A. Correct.

11 Q. And those were matters that were added to the affidavit
12 after you signed it?

13 A. Yes, ma'am.

14 Q. And had those matters been on the affidavit at the time
15 you signed it, would you have signed it?

16 A. No. No. No. No. No, definitely not.

17 Q. Okay. Okay. What else?

18 A. Also, where the -- the solicitor asked the Court on page
19 24, lines 5 through 7 -- the solicitor threw in a Batson
20 motion. The solicitor asked the courts to -- that the
21 defendant provide a more legitimate detailed explanation for
22 why we exercised the strikes that we did, and I felt as
23 though had trial counsel articulated and objected to this --
24 to this request, then again the trial Court would have not
25 struck the jury. And after the -- my lawyer, Mr. Strobel,

1 had articulated the reasons of the employment issues, that
2 their demeanor -- presenting it, their -- all these reasons I
3 felt as though he should have already -- we've already given
4 the courts our reasoning.

5 Q. Okay. Mr. Bradley?

6 A. Yes, ma'am.

7 Q. I didn't ask you if there were issues that we'd already
8 covered here today that you thought you could repeat a little
9 bit better than I'd already done.

10 A. I'm sorry.

11 Q. That wasn't the question. To be fair, do you recall us
12 going over the testimony on page 23 where your lawyer
13 articulated generally your reason for striking each of the
14 jurors?

15 A. Yes, ma'am.

16 Q. And do you recall me asking Mr. Strobel why when it came
17 to an individual discussion of each of these jurors why he
18 did not repeat with specificity the detailed objection that
19 he had originally announced to the Court on page 23, lines 3
20 through 8?

21 A. Yes, ma'am.

22 Q. And so that's what you were just repeating now. Am I
23 correct?

24 A. Yes, ma'am.

25 Q. That he should have -- with regard to each witness, he

1 should have stated with specificity all the details of your
2 reason for striking that person, not just: Didn't like the
3 way they presented or, even worse, eventually going so far as
4 to say, "Same excuse."

5 A. Correct.

6 Q. Okay. All right. Any other actual issues that you
7 wanted me to address concerning the trial that I have not
8 covered here today?

9 A. No, ma'am. I believe that would be all of the issues
10 that I want to have raised.

11 Q. Are you sure?

12 A. Yes, ma'am.

13 Q. Okay. I want you to listen very carefully to the
14 questions put to you by counsel for the State and answer them
15 truthfully, please.

16 A. Okay.

17 Cross-Examination

18 By Mr. Gourley:

19 Q. Mr. Bradley, do you recall how many times you met with
20 Mr. Strobels prior to your trial?

21 A. Probably about three or four.

22 Q. Three or four times? Do you recall going over
23 discovery?

24 A. No, never seen discovery.

25 Q. Never saw discovery. Did y'all talk about any defenses?

1 A. No.

2 Q. Okay. Did you give him any type of leads or witnesses
3 or anything to look into?

4 A. I did.

5 Q. And who were they?

6 A. It was sergeant -- Sergeant McClary with the South
7 Carolina National Guard.

8 Q. Uh-huh.

9 A. Ms. Deborah Black with Sykes Enterprises who was a
10 manager there.

11 Q. Okay.

12 A. Mr. Frederick Davis who's with the Kingstree Police
13 Department and I believe that's all of the---

14 Q. All right.

15 A. ---witnesses that I had for him.

16 Q. All right.

17 A. Oh, and also Sergeant Staggers---

18 Q. Okay.

19 A. ---who is also with the Kingstree Police Department as
20 well as the South Carolina National Guard unit in Kingstree.

21 Q. All right. And now you were pleading guilty to this
22 charge, right, or these charges; right?

23 A. No.

24 Q. You were in the process of pleading guilty?

25 A. To the second degree.

1 Q. To the second degree?

2 A. Yes.

3 Q. And so I guess when the judge read that you were being
4 charged with C.S.C. first, you decided not to plead guilty?

5 A. Correct.

6 Q. Okay. Now, you testified at trial; right?

7 A. I did.

8 Q. And you testified that you did have intercourse with the
9 victim in this case; right?

10 A. Yes, I did.

11 Q. And that you got her pregnant; right?

12 A. I did.

13 Q. And you told the jury that you felt terrible and that
14 you were wrong and you just felt morally wrong about the
15 situation; right?

16 A. Correct.

17 Q. Okay. So you don't -- you don't deny that you had sex
18 with the victim; right? You don't deny that you had sex with
19 the victim.

20 A. I've already answered that.

21 Q. You need to answer the question, Mr. Bradley.

22 A. Yes.

23 Q. Thank you. And the sex took place at her quote/unquote
24 cousin Dasheia's house; right?

25 A. Yes.

1 Q. Okay. You testified that took place on the couch?

2 Right?

3 A. Correct.

4 Q. Okay. Now, your testimony at trial is that you were
5 nowhere near the victim in 2008; is that correct?

6 A. Yes, ma'am -- I mean, yes, sir.

7 Q. All right. But your counsel called Danesha (phonetic)
8 up to the stand and she testified to that as well; right?

9 A. Correct.

10 Q. Okay. But the State introduced a police report that was
11 filed against you by Danesha stating that you were her
12 boyfriend in October of 2008; right? Do you remember that?

13 A. Yes.

14 Q. Sir?

15 A. Yes.

16 Q. Okay. But you weren't around in 2008?

17 A. That's -- no, I was not.

18 Q. Okay.

19 A. Not around the victim, no.

20 Q. Okay. But you were around Danesha?

21 A. Dasheia, yes.

22 Q. How do you pronounce it?

23 A. Dasheia.

24 Q. Dasheia? Okay.

25 **Court Reporter:** Will you spell it, please?

1 **Mr. Gourley:** Wait one second, obviously. I can get it
2 to you afterwards. Is that okay?

3 **Court Reporter:** (Nodded head up and down.)

4 By Mr. Gourley:

5 Q. Mr. Bradley, what more did you want your defense counsel
6 to do to argue that you weren't molesting her when she was 10
7 years old?

8 A. Well, he could have -- again, he could have called these
9 witnesses that I've asked him to call to show that I was
10 nowhere in the vicinity at the majority of these times.

11 Q. Okay.

12 A. And he could have gotten work documentation. He could
13 have went to the National Guard and seen that I been on duty
14 a lot of times, out of state a lot of time (verbatim) with
15 the military.

16 Q. Okay.

17 A. Along with that, I expected for him to, you know, make
18 -- make more objections to just -- plain just not doing
19 nothing is what I basically seen him do.

20 Q. Uh-huh.

21 A. Nothing.

22 Q. Okay. So you felt like he should have maybe presented
23 some witnesses on your behalf to assert that you weren't
24 around the victim herself in 2008.

25 A. Also had he -- had he investigated, he would have known

1 about this police report against Dasheia -- well, the report
2 Dasheia had against me, but Dasheia was a last-minute thing.
3 It was -- I told him during the trial: Okay, this is -- you
4 need to talk to her. And he pickted (verbatim) a date during
5 the trial probably 20, 30 minutes, then later put her on the
6 stand without knowing nothing.

7 Q. So -- but Dasheia said that you weren't around in 2008;
8 right?

9 A. I wasn't around the victim in 2008.

10 Q. Okay.

11 A. She didn't say I wasn't around.

12 Q. Okay. All right. So, again, your testimony today is
13 that your counsel should have looked up some of these
14 witnesses and presented these character witnesses and
15 established that you were working at the National Guard at
16 this time, so on and so forth; right?

17 A. As well as just did a better investigation.

18 Q. Just did a better investigation? Anything else in
19 regards to this investigation that he could have found or
20 turned up outside of what you've stated?

21 A. I wrote him and I asked him to look into the victim's --
22 the victim's character as far as the school records and so
23 forth and D.S.S. records and stuff of that nature, and he
24 didn't---

25 Q. Uh-huh. Again, you don't dispute that you had sex with

1 her.

2 A. Again, no.

3 Q. Okay.

4 A. At the age of 11.

5 Q. Your issue was just that you didn't have sex with her
6 when she was 10.

7 A. I'm sorry?

8 Q. I said you are disputing whether or not you had sex with
9 her when she was 10.

10 A. Yes, I was disputing that I did not have sex with her at
11 the age of 10.

12 **Mr. Gourley:** Your Honor, I don't have any other
13 questions. Thank you. Thank you, Mr. Bradley.

14 **The Court:** Okay.

15 Redirect Examination

16 By Ms. Shurling:

17 Q. During the time period that you say some of these
18 individuals could have provided alibi evidence for you, these
19 people weren't around you 24 hours a day, were they?

20 A. Well, with the military, yes, in certain areas, certain
21 times.

22 Q. My point is: In taking the dates when the contact was
23 alleged to have occurred, there were times when you were not
24 with any of these people.

25 A. That's correct.

- 1 Q. Correct?
- 2 A. That's correct.
- 3 Q. And Danesha is the mother of your children?
- 4 A. No.
- 5 Q. Okay. She's not.
- 6 A. No, she's not.
- 7 Q. Okay. She is the mother of Adoria (phonetic)?
- 8 A. Yes, she is.
- 9 Q. And what is the connection between her and your
- 10 girlfriend? Any? Is there any connection between your
- 11 girlfriend and---
- 12 A. Well, she was my girlfriend at the time, Dasheia.
- 13 Q. Okay.
- 14 A. Correct.
- 15 Q. But she's not the mother of your children.
- 16 A. No, she's not.
- 17 Q. How old was Adoria in the summer of 2008?
- 18 A. She wasn't even one yet.
- 19 Q. Okay. She was an infant?
- 20 A. She was an infant.
- 21 Q. Okay. A moment's indulgence. Just to backtrack for
- 22 just a second, on page 283 of the transcript I have, the part
- 23 of the affidavit that was handwritten said - and I quote - "I
- 24 had sex with ~~Victoria~~ ^{Victoria}, age 10." Correct?
- 25 A. Correct.

1 Q. And that is the portion that you say you did not write.

2 A. That's correct.

3 Q. And it was not on there when you executed the affidavit.

4 A. It was not.

5 Q. And Mr. Strobel admitted on the record that he wrote
6 that.

7 A. Yes, he said, "I did that. I did it."

8 **Ms. Shurling:** No further questions, Your Honor.

9 **The Court:** Okay. You can step down. Is it y'all's
10 contention that this Batson hearing that Judge Newman held
11 was in front of the jury panel? Because the allegations were
12 that the second jury knew the reasons they got struck the
13 first time. So you're telling me that the Batson hearing was
14 conducted in front of the panel and the reasons were given in
15 front of the panel?

16 **Ms. Shurling:** Well, Your Honor, in every jury trial
17 I've done they bring the jurors out one at a time and the
18 State says either present the juror or strike---

19 **The Court:** Right.

20 **Ms. Shurling:** ---the jury (verbatim) and then the
21 defense says present the juror or strike the juror. So, yes.

22 **The Court:** Right. No, but then the State made a Batson
23 motion, and the judge heard the Batson motion on the record.
24 But your contention is that the jurors heard the Batson
25 motions?

1 **Ms. Shurling:** No, sir, Your Honor.

2 **The Court:** Okay. Because that's what it seemed implied
3 that they knew the reason they were struck, but they don't
4 know the reason they're struck. They simply knew whether
5 they were struck or not struck because I never had a judge
6 that had a Batson motion in front of the panel and had the
7 other side explain. So it seemed -- y'all seemed to imply
8 that somehow these jurors knew the reasons they were struck.
9 They only knew whether they were struck or not and not why.
10 So it was done outside of their presence like...

11 **Ms. Shurling:** Yes, sir, Your Honor. That's my
12 understanding.

13 **The Court:** Okay. And that's where I---

14 **Ms. Shurling:** The point I was making is that they were
15 aware that -- they -- not only were they aware that they had
16 been struck, but they were aware that they were struck by the
17 defense.

18 **The Court:** Right. Okay.

19 **Ms. Shurling:** And---

20 **The Court:** They just didn't know the reason why.

21 **Ms. Shurling:** And the fact that the defense thought
22 there was some reason they didn't want them on the jury, even
23 that would be enough to make them perhaps interact
24 differently with the defendant in terms of eye contact and
25 body language and everything the second go-around than they

1 did the first time.

2 **The Court:** Well, they couldn't be struck the second go-
3 around. The defense can't strike them the second go-around;
4 they don't have that option. That's what Judge Newman told
5 them and that's the law. You strike them one time and give
6 the reason. If the reason is not sufficient, you can't come
7 up with a new reason.

8 **Ms. Shurling:** I understand that, Your Honor, but I also
9 understand his position that he could have made -- presented
10 the alternate theory which is that I now think that I should
11 be allowed to use a strike because they are aware that I
12 struck them---

13 **The Court:** Okay.

14 **Ms. Shurling:** ---from the first panel and that fact
15 alone may negatively impact their reaction to me, and I think
16 that's a new reason that could have been presented.

17 **The Court:** So you think that could be presented.

18 **Ms. Shurling:** Pardon?

19 **The Court:** Do you have any case law that that's ever
20 been presented?

21 **Ms. Shurling:** No, sir, Your Honor, but I do have a
22 number of cases that very clearly say that when someone was
23 struck from the first panel for an -- for a reason that
24 should have been upheld as sufficiently racially neutral and
25 then they wind up back on the jury on the second panel,

1 that's it. That's the end of the discussion. You don't have
2 to demonstrate prejudice from that person ending up back on
3 the jury.

4 **The Court:** Right.

5 **Ms. Shurling:** It's automatic.

6 **The Court:** Because once they rule that the judge is
7 wrong in the Batson motion...

8 **Ms. Shurling:** Correct, Your Honor.

9 **The Court:** I understand that. I -- okay.

10 **Mr. Gourley:** And, Your Honor, just for the record it
11 would be the State's assertion that that's a direct appeal
12 issue. That's not appropriate for P.C.R. as to whether or
13 not the judge properly granted the Batson motion.

14 **The Court:** I understand.

15 **Ms. Shurling:** And, of course, Your Honor, not to play
16 Ping-Pong too long with this, but the fact is he hasn't had
17 his direct appeal and that's one of the issues before the
18 Court.

19 **The Court:** Right.

20 **Ms. Shurling:** But the secondary issue is that he's not
21 particularly set up to have his optimum opportunity to argue
22 that issue well on direct appeal because of the less-than-
23 thorough way the issue was handled during the Batson
24 proceeding.

25 **The Court:** I understand. I just -- it seemed to imply

1 - and it's something that I picked up wrong - that somehow
2 the judge had had the Batson hearing in front of the jury
3 panel and I thought that that was highly unusual, and that's
4 why I asked to see if that had happened in this case. But I
5 understand now that it's just like every other one that's...

6 **Ms. Shurling:** Thank you, Your Honor. If I gave you
7 that impression, I apologize. I---

8 **The Court:** And I don't -- I don't know that you did. I
9 just kind of picked that up from the testimony from your
10 questions that maybe that was the contention but---

11 **Ms. Shurling:** Thank you, Your Honor.

12 **The Court:** Okay. All right. Now, you can...

13 **Ms. Shurling:** One quick moment, please. No further
14 witnesses, Your Honor.

15 **The Court:** Okay.

16 **Mr. Gourley:** I have nothing, Your Honor. Nothing in
17 reply.

18 **The Court:** All right.

19 **Ms. Shurling:** Your Honor, with regard to the Batson
20 issue, I would direct the Court to three cases, all of which
21 are substantially newer---

22 **The Court:** Right.

23 **Ms. Shurling:** ---than the time period we're dealing
24 with but each of which relies on a body of case law, the
25 majority of which was developed well before this trial. So

1 those cases are State versus McMillan, 400 South Carolina
2 298, 734 Southeastern Second 171, which was decided in
3 November of 2012 by the Court of Appeals. Then we have State
4 versus Rogers, 405 South Carolina 520, 748 Southeastern
5 Second 247, which was a 2013 case decided by the Court of
6 Appeals. And additionally State v. Scott, 406 South Carolina
7 749 - excuse me - 406 South Carolina 108, 479 Southeastern
8 Second 160, and that, too, is a 2013 case decided by the --
9 let me make sure I'm not misspeaking here. That one is also
10 decided by the Court of Appeals.

11 Significantly in Scott, the Court addresses the fact
12 that the proponent of the strike has to come forward with a
13 race-neutral explanation but is not demanded to produce an
14 explanation that is persuasive or even plausible as long as
15 it's race-neutral. Likewise, in the Rogers case, the Court
16 found that if a trial Court improperly grants a State's
17 Batson motion but none of the disputed jurors serve on the
18 jury, any error in improperly quashing the jury is harmless
19 because the defendant is not entitled to a jury of her
20 choice. Inferentially the Court and in other language in
21 both the Rogers decision and in the McMillan decision, they
22 addressed the fact that there is a showing per se once you
23 have illustrated that the juror was struck for a race-neutral
24 reason, that the Batson motion was improperly granted, and
25 that some of the struck jurors ended up on the second panel.

1 For Your Honor's convenience, I have made you copies of those
2 decisions.

3 **The Court:** Okay.

4 **Ms. Shurling:** Likewise, on the questions concerning the
5 hearsay testimony originating from - pardon me - originating
6 from both Nurse Greggs (verbatim), from the forensic
7 interviewer, Ms. -- I'm sorry, Your Honor. It's Griggs.
8 Pardon me. Her name was Robin Tyler Griggs and the testimony
9 from Corporal Trina Hamlet. I would provide to the Court
10 copies of our -- one case from the Court of Appeals and two
11 from the Supreme Court.

12 The two from the Supreme Court are State versus Miama
13 Kromah, and I'm sorry I only have copies from the slip
14 opinions, but that was decided in January of 2013. In
15 addition, I have The State versus Hendricks case decided by
16 the Court of Appeals in April 2014, and a moment's
17 indulgence, Your Honor. There's one more.

18 Just a second, Your Honor. My piles got jumbled before
19 lunch and now I can't find it. Ah, State versus Caesar
20 Portello which is also a Court of Appeals decision filed in
21 April 2014, and I will hand up for the Court's convenience
22 copies of those three decisions, and I have extra copies for
23 Mr. Gourley as well.

24 **The Court:** Okay. Thank you. Your contentions is he
25 gave race-neutral reasons and the judge was wrong and he

1 didn't appeal it.

2 **Ms. Shurling:** I'm sorry, Your Honor. The acoustics are
3 getting to me.

4 **The Court:** That's all right. The contention is that
5 your client and his attorney gave racially-neutral reasons
6 and that the judge improperly granted the State's Batson
7 motion and those jurors ended up on the jury and the judge
8 was wrong, and so there's a P.C.R. because he didn't appeal
9 that fact.

10 **Ms. Shurling:** Correct, Your Honor.

11 **The Court:** Okay.

12 **Ms. Shurling:** I believe, even based on the record as it
13 exists, that the issue is somewhat preserved for direct
14 review of a substantive error of law on a belated White v.
15 State, Davis v. State appeal. On the other hand, I also
16 believe that the issue could have been better fleshed out at
17 trial and a stronger position stated for the record with
18 regard to the strikes used in this case and that we have made
19 a Sixth Amendment claim based on counsel's failure to
20 thoroughly and adequately address the reasons for striking
21 each of these jurors and failure to make an effort to use
22 peremptory strikes when the second panel was chosen, not on
23 the original grounds because I'm certainly familiar with the
24 case law on that score, but, as my client has said, because
25 the juror -- the jurors in question were aware that they had

1 originally been stricken by the defense and that counsel
2 could have advanced the argument that because the jurors were
3 themselves aware that they had been stricken by the defense
4 that that in and of itself was potentially detrimental to the
5 defense and for that reason they should have been able to
6 exercise in their discretion their use of a peremptory strike
7 on that argument, not the original argument advanced.

8 **The Court:** Okay.

9 **Ms. Shurling:** Thank you, Your Honor.

10 **The Court:** Thank you. Okay.

11 **Mr. Gourley:** Judge, I also have this one case, State v.
12 Franklin, which stands for the proposition that you can't
13 come back and strike a juror a second time. The judge can
14 prevent them from---

15 **The Court:** Right.

16 **Mr. Gourley:** ---striking the juror the second time
17 unless there's new facts developed in between the first jury
18 panel and the second jury panel.

19 **The Court:** And that's -- that's my understanding of the
20 law. So even though he -- you know, if counsel had made
21 that, the judge would have chastised him completely and said,
22 you know, I've already ruled; you can't do that. Now, I
23 understand you may want to make new law, but my understanding
24 of the law in this state is you can't go that way.

25 **Mr. Gourley:** Yes, sir.

1 **The Court:** Anyway...

2 **Mr. Gourley:** Thank you, Judge.

3 **Ms. Shurling:** Nevertheless, Your Honor, it would be our
4 position that we've demonstrated error on the part of trial
5 counsel in failing to develop a -- as full a record as
6 possible on the reasons for the exercise of the peremptory
7 strikes and that the prejudice arising from the failure to do
8 so may yet become apparent on the belated direct appeal.
9 We'll have to see.

10 **The Court:** Okay. Thank you.

11 **Ms. Shurling:** Thank you, Your Honor.

12 **Mr. Gourley:** Thank you, Judge.

13 **The Court:** Okay.

14 (Whereupon, the proceedings were concluded. There were
15 no exhibits introduced.)
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1 I, the undersigned Daphne D. Helms, official court
2 reporter for the Fifth Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate, and complete transcript of record of all the
5 proceedings had and evidence introduced in the trial of the
6 captioned case, relative to appeal, in the circuit court for
7 Williamsburg County, South Carolina, on the 27th of May,
8 2014.

9 I do further certify that I am neither of kin,
10 counsel, nor interest to any party hereto.

11
12
13 June 1, 2014

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16 Daphne D. Helms, court reporter
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