

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Berkeley County

G. Thomas Cooper, Circuit Court Judge

RECEIVED

JUL 27 2015

S.C. Supreme Court

TYRONE MOORE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002758

APPENDIX

TIFFANY L. BUTLER
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

ASHLEIGH R WILSON
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED JUL 27 – 29, 2009.....	1
APPLICATION FOR POST-CONVICTION RELIEF	328
RETURN	335
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED SEPTEMBER 8, 2014	340
PLAINTIFF’S EXHIBIT # 1 (MOTIONS LIST)	421
PLAINTIFF’S EXHIBIT # 2 (WITNESS LIST)	422
ORDER OF DISMISSAL	423
INDICTMENTS AND SENTENCE SHEETS	434

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF BERKELEY	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 08-GS-08-1020
	)	
Tyrone Moore,	)	
	)	
Defendant.	)	

TRANSCRIPT OF JURY TRIAL

The within JURY TRIAL was held in the above-captioned case on July 27-28, 2009, before The Honorable R. Markley Dennis, Jr. in Courtroom E of the Berkeley County Courthouse, 300 California Street, Moncks Corner, South Carolina; attended by Counsel, as follows:

APPEARANCES:

Debi Herring-Lash, Assistant Solicitor
 Kristen Ncely, Assistant Solicitor
 9TH JUDICIAL CIRCUIT SOLICITOR'S OFFICE
 300-B California Avenue
 Moncks Corner, SC 29416
 Appearing for State of South Carolina

Eduardo Curry, Esq.
 P O Box 42270
 North Charleston, SC 29423
 Moncks Corner, SC 29461
 Appearing for Defendant

DEBORAH GARRISON
Circuit Court Reporter - 9th Judicial Circuit
 Post Office Box 901
 Johns Island, South Carolina 29457
dGarrison@sccourts.org

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

INDEX

Index of Testimony	3
Index of State's Exhibits	4
Index of Defendant's Exhibits	4
Index of Court's Exhibits	4
Jury Qualification	5
Jury Selection	30
Judge's Opening Comments	44
Opening Statements	
Ms. Herring-Lash	56
Mr. Curry	61
Motion for Directed Verdict	236
Examination of Defendant	237
Charge Conference	256
Closing Arguments	See Vol 2
Ms. Herring-Lash	
Mr. Curry	

(INDEX TO BE CONTINUED NEXT VOLUME)

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

3

INDEX OF TESTIMONY

WITNESS	Direct	Cross	Redirect	Recross
Minor 2	65	83	97	101
Elcorese Thomas	102	114		
Minor 1	124	135	147	149
Carla Clark	154	166	177	178
Eddie Bullard	179	184	194	198
Karen Nix	199	206		
Donald E. Elsey	212	229	233	

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

INDEX OF STATE'S EXHIBITS

Number	Description	Reference
1	Photograph of family room	73
2	Photograph of sofa in family room	
3	Photograph of bookcase	70
4	Photograph of games in closet	70
5	Photograph of pool table	70

INDEX OF DEFENDANT'S EXHIBITS

1	Statement of Eddie Bullard re: Minor 2
2	Statement of Minor 1
3	Statement by Carla-Clark
4	Page 3 Barrow's Statement
5	Excerpt from Smalls interview

INDEX OF COURT'S EXHIBITS

1	Jury Note

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

5

1 JULY 27, 2009

2:00 P.M.

2

3

(DEFENDANT PRESENT)

4

(STATUTORY JURY QUALIFICATION)

5

THE COURT: Let me go ahead now and
6 qualify you in this case. There are a number of
7 questions that I have to ask of you.

8

What I will do first is identify the
9 dispute. This is a criminal dispute, so when --
10 when we have a criminal dispute in this state,
11 one of the parties will be the State of South
12 Carolina because that's the party that makes the
13 claim.

14

The claim in this case is being made
15 against Mr. Tyrone Moore. We designate Mr. Moore
16 as the "defendant". That term really is just a
17 term that is synonymous with a way of identifying
18 Mr. Moore and it means nothing more than the fact
19 that he is a person against whom a claim is being
20 made. That is the sole significance of it.

21

Mr. Moore happens to be seated at this
22 table to my left. Good afternoon, Mr. Moore. If
23 you would, please stand and face the jury panel
24 for me.

25

DEFENDANT: (Complies).

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 THE COURT: The person in the middle
2 of Mr. Tyrone Moore. Thank you, you may be
3 seated. Are there any members of the jury panel
4 who are related by blood or marriage, socially or
5 casually acquainted with, has any connection with
6 Mr. Moore whatsoever, please stand. (No
7 response). Thank you, there appear to be none.

8 THE COURT: Mr. Moore is represented
9 in this matter by Mr. Curry. If you would,
10 identify yourself and anyone who will be
11 assisting you, sir.

12 MR. CURRY: Thank you very much, Your
13 Honor, may it please the court, I'm Eduardo
14 Curry. Also here is my son, Eduardo the Second,
15 and my administrative assistant.

16 THE COURT: Thank you. Are there any
17 members of the jury panel related by blood or
18 marriage, any connection with, any business
19 dealings with, who are socially or casually
20 acquainted either Mr. Curry or ever been
21 represented by Mr. Eduardo Curry? If so, please
22 stand. (No response). Thank you, there appear
23 to be none.

24 Are there any members of the jury panel
25 related by blood or marriage, have any business

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

7

1 dealings with, socially or casually acquainted
2 with, ever been represented by or have any
3 connection with the Solicitor, Scarlet Wilson?
4 If so, please stand. (No response). Thank you,
5 there appear to be none.

6 Ms. Wilson is being represented in this
7 matter by one of her assistants or deputy
8 solicitors, Ms. Herring-Lash. If you would,
9 please identify yourself and anyone who will be
10 assisting you.

11 MS. HERRING-LASH: Thank you, Your
12 Honor. I am Debi Herring-Lash. Sitting with me
13 and assisting me is Kristen Neely.

14 THE COURT: Thank you. Are there any
15 members of the jury panel related by blood or
16 marriage, who have any business dealings with,
17 socially or casually acquainted with, ever been
18 represented by Ms. Herring-Lash or Mr. Neely? If
19 so, please stand. (No response). Thank you,
20 there appear to be none.

21 Are there any members of the jury panel
22 related by blood or marriage, have any business
23 dealings with, socially or casually acquainted
24 with anyone employed with the Solicitor's Office
25 for the Ninth Circuit? It has offices in

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 Charleston and in Berkeley County. If so, please
2 stand. (No response).

3 I am going to identify a number of
4 persons, Ladies and Gentlemen. If you are
5 related by blood or marriage, have any business
6 dealings with, socially or casually acquainted
7 with any of these persons you need to stand and
8 share that information, please, with the court:

9 Minor 2

10 Carla Ferrette Clark

11 Minor 1

12 Elcorese Barrow Thomas

13 Karen Nix, who is with the Goose

14 Creek Police Department

15 Eddie Bullard with the North

16 Charleston Police Department,

17 Don Elsey

18 Dexter Green

19 Gregory Clark

20 Erica Moore

21 Ortez Simmons

22 Angalena Bradley

23 Sabrina Delaney

24 Tierra Ravenel

25 Antwan Russell

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

9

1 Robert Moore

2 Willie Moore, III

3 Lemandra Sheppard

4 Any of those? Yes, ma'am?

5 JUROR NUMBER 162: Don Elsey.

6 THE COURT: Don Elsey, you know him?

7 JUROR NUMBER 162: We work at the
8 same center.

9 THE COURT: You work at the same
10 place?

11 JUROR NUMBER 162: Yes, sir.

12 THE COURT: Would that affect or
13 influence you in this matter?

14 JUROR NUMBER 162: No.

15 THE COURT: If Don Elsey testifies
16 would you consider Don Elsey's testimony the same
17 as any witness who testifies in this case?

18 JUROR NUMBER 162: Yes.

19 THE COURT: Would you base your
20 decision based on the evidence and would that
21 decision be fair to the State and to Mr. Moore?

22 JUROR NUMBER 162: Yes.

23 THE COURT: Your name and number,
24 please?

25 JUROR NUMBER 162: Linda Walton,

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 Number 162.

2 THE COURT: Thank you, you may be
3 seated. Are there others? (No response). Thank
4 you, there appear to be none.

5 The dispute, Ladies and Gentlemen, is
6 framed, if you will, or set forth in these two
7 documents that I hold in my hand. They are
8 called indictments, which is a formal name for
9 the formal charge or claim being made against Mr.
10 Moore. They are what they appear to be to you,
11 pieces of paper. They are not evidence, they
12 won't accompany you to your jury room.

13 It sets forth the allegations that are being made
14 against Mr. Moore. I need to share with you what
15 is alleged so that I can ask you some questions
16 but, again, I remind you that what I am about to
17 share with you should not be considered as
18 evidence.

19 It is alleged that Mr. Moore, a person
20 over the age of fourteen years, did in Berkeley
21 County between January of 2004 and August of 2006
22 willfully and unlawfully commit a lewd or
23 lascivious act upon or with the body or any part
24 or member thereof of a child under the age of
25 sixteen years -- and there are two children

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

11

1 alleged, one in each document; one being Minor 1

2 [REDACTED] and the other being Minor 2 [REDACTED] --

3 with the intent of arousing, appealing to or
4 gratifying the lust or passion or sexual desires
5 of himself or said child; which is alleged to be
6 in violation of the provisions of the section of
7 the Code which deals and sets forth a lewd act
8 upon a minor.

9 I share that with you first of all to
10 find out if any member of the jury panel has
11 heard anything, read anything, if you have any
12 prior knowledge of this dispute. If so, please
13 stand. (Jurors stand). All right, I will ask
14 those persons to come forward, if you will, and
15 we will take them one at a time.

16 BAILIFF: Juror Number 176, Deborah
17 Baker.

18 SIDEBAR:

19 THE COURT: Ms. Baker.

20 JUROR NUMBER 176: Is his name Mr.
21 Moore?

22 THE COURT: Yes, ma'am.

23 JUROR NUMBER 176: I believe
24 that I taught his boys.

25 THE COURT: If you did, would

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 that affect or influence you in this matter?

2 JUROR NUMBER 176: I think --

3 (affirmative nod).

4 THE COURT: Thank you.

5 (SIDEBAR CONCLUDED)

6 THE COURT: 176 is excused from
7 participation in this dispute. You're free to
8 leave.

9 BAILIFF: Juror Number 119, Norma J.
10 Myles.

11 SIDEBAR:

12 THE COURT: Good afternoon, Ms.
13 Myles.

14 JUROR NUMBER 119: I actually
15 know him from going to church there.

16 THE COURT: You attended his
17 church?

18 JUROR NUMBER 119: Yes, sir.

19 THE COURT: You believe that
20 would affect or influence you in this matter?

21 JUROR NUMBER 119: It would.

22 THE COURT: Thank you, ma'am.

23 (SIDEBAR CONCLUDED)

24 THE COURT: I am going to excuse Juror
25 Number 119 from participating in this dispute.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

13

1 You are free to leave.

2 BAILIFF: Juror Number 19, Gwendolyn
3 Bishop.

4 SIDEBAR:

5 THE COURT: Good afternoon, Ms.
6 Bishop.

7 JUROR NUMBER 19: I know some
8 things. I don't know exactly what but I've heard
9 some things.

10 THE COURT: You believe that
11 would affect or influence you in this matter?

12 JUROR NUMBER 19: Probably.

13 THE COURT: Could you set aside
14 what you might have heard and be fair and
15 impartial in this considering this case?

16 JUROR NUMBER 19: I think so.

17 THE COURT: Thank you.

18 JUROR NUMBER 19: One other thing,
19 I know Tyrone's mother.

20 THE COURT: Would that affect or
21 influence you in this matter?

22 JUROR NUMBER 19: No, sir.

23 THE COURT: Thank you.

24 (SIDEBAR CONCLUDED)

25 THE COURT: Number 19 will remain.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 BAILIFF: Juror Number 129, Jonah
2 Prioleau.

3 SIDEBAR:

4 THE COURT: Good afternoon.

5 JUROR NUMBER 129: I don't know
6 anyone but I've been following it in the papers,
7 so I know what I've read in the paper.

8 THE COURT: Would that knowledge
9 influence you in this matter?

10 JUROR NUMBER 129: It could.

11 THE COURT: Do you believe that
12 you can set aside what you've read in the papers
13 and be a fair and impartial judge, ---

14 JUROR NUMBER 129: (Negative
15 gesture), it would be hard. I'd rather not.

16 THE COURT: Thank you.

17 (SIDEBAR CONCLUDED)

18 THE COURT: Number 29 will be excused
19 from participation in this dispute.
20 I'm sorry, 129. Thank you.

21 BAILIFF: Juror Number 148, Dennis
22 L. Snipe.

23 SIDEBAR:

24 THE COURT: Yes, sir.

25 JUROR NUMBER 148: I only know

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

15

1 what I've read in the papers, the News.

2 THE COURT: Would that affect or
3 influence you in this matter?

4 JUROR NUMBER 148: No, sir.

5 THE COURT: You could be fair and
6 impartial and consider only the evidence
7 presented in this court?

8 JUROR NUMBER 148: Yes, sir.

9 THE COURT: Would you base your
10 decision based on the evidence and the law and be
11 fair to both the State and to Mr. Moore?

12 JUROR NUMBER 148: I would.

13 THE COURT: Thank you.

14 (SIDEBAR CONCLUDED)

15 THE COURT: Number 148 will remain.

16 BAILIFF: Juror Number 84, Jennifer
17 L. Kline.

18 SIDEBAR:

19 THE COURT: Yes, ma'am?

20 JUROR NUMBER 148: I don't know
21 if this but -- I don't know if it makes any
22 difference but my boyfriend is a detective with
23 Berkeley County and I hear about these cases
24 regularly.

25 THE COURT: Who is ---

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 JUROR NUMBER 148: Brian

2 Mosher.

3 THE COURT: Is he involved in
4 this investigation?

5 MS. HERRING-LASH: No, sir.

6 THE COURT: Would that
7 relationship affect your ability to be fair and
8 impartial in considering the facts of this case?

9 JUROR NUMBER 148: No, sir.

10 THE COURT: I appreciate your
11 candor, but that would not influence you?

12 JUROR NUMBER 148: No, sir.
13 I just thought that I should mention it.

14 THE COURT: You would not be
15 influenced by ---

16 JUROR NUMBER 148: No, sir.

17 THE COURT: Would you base your
18 decision based on the evidence and law you hear
19 in this courtroom and nothing else, and would
20 your decision be fair to both the State and Mr.
21 Moore?

22 JUROR NUMBER 148: Yes, sir.

23 THE COURT: You could make that
24 commitment?

25 JUROR NUMBER 148: Yes, sir.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

17

1 (SIDEBAR CONCLUDED)

2 THE COURT: Number 84 will remain.

3 BAILIFF: Juror Number 33, Brittany

4 L. Cason.

5 SIDEBAR:

6 THE COURT: Yes, ma'am?

7 JUROR NUMBER 33: When I was
8 younger, I was involved in a situation and I
9 believe that in a case like this that it would
10 affect my judgment.

11 THE COURT: Do you believe
12 that it would affect your ability to make a
13 commitment to the parties to be a fair and
14 impartial judge in this matter?

15 JUROR NUMBER 33: I think so. Yes.

16 THE COURT: Thank you.

17 (SIDEBAR CONCLUDED)

18 THE COURT: Juror Number 33 will be
19 excused from participation in this matter. You
20 are free to leave, ma'am.

21 BAILIFF: Juror Number 133, Ruthie

22 B. Rush.

23 SIDEBAR:

24 THE COURT: Good afternoon, Ms.

25 Rush.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

18

1 JUROR NUMBER 133: I've read about
2 this case in the paper, saw the news about it.

3 THE COURT: Would that affect
4 or influence your ability to be a fair and
5 impartial juror, to consider the evidence and the
6 law in this case?

7 JUROR NUMBER 133: I don't
8 think so.

9 THE COURT: Well, I appreciate
10 that but could you could put aside what you've
11 heard about the case and make a commitment to
12 make a decision that would be fair to both the
13 State and to Mr. Moore based on what you hear in
14 this courtroom?

15 JUROR NUMBER 133: Yes, sir.

16 (SIDEBAR CONCLUDED)

17 THE COURT: Number 133 will remain.
18 Are there others? (No response). Thank you,
19 there appear to be none.

20 (OFF RECORD SIDEBAR WITH COUNSEL)

21 THE COURT: If I could see Juror
22 Number 162, Ms. Walton. I am going to ask you
23 come forward, please. Sorry to bother you.

24 (OFF RECORD SIDEBAR WITH JUROR NUMBER 162)

25 THE COURT: Number 162, has been --

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

19

1 because she has already stated her direct
2 involvement with one of the witnesses, I will out
3 of an abundance excuse her from participation in
4 this case to avoid any appearance of impropriety.
5 Thank you..

6 The nature of this charge, I need to ask
7 if there is anything about the accusation that
8 you because of some philosophy that you have,
9 some strong feelings that you may have, something
10 that may have happened to you,
11 a family member or a close personal friend that
12 would affect or influence in any way your ability
13 to be fair and impartial in considering the
14 evidence, evaluating that evidence in deciding
15 what you believe to be the true facts and then
16 once deciding that taking the law and applying
17 that law fairly and impartially.

18 If you think that there is something, please
19 stand. (Jurors stand). Okay, I will that
20 you'all come forward, please.

21 BAILIFF: Number 41, Judge, Whitney
22 Connor.

23 SIDEBAR:

24 THE COURT: Yes, ma'am?

25 JUROR NUMBER 41: I have

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 something similar happen to me when -- and --

2 (pause).

3 THE COURT: Yes, ma'am, thank
4 you.

5 (SIDEBAR CONCLUDED)

6 THE COURT: Number 41 is excused from
7 participation in this dispute. Have a good day.
8 You're free to leave.

9 BAILIFF: Number 112, Janet E.
10 Morton.

11 SIDEBAR:

12 JUROR NUMBER 112: I don't --
13 (inaudible).

14 COURT REPORTER: Judge, I can't
15 hear her.

16 THE COURT: Okay. So you think
17 that would affect you?

18 JUROR NUMBER 112: Yeah.

19 (SIDEBAR CONCLUDED)

20 THE COURT: Number 112 is excused from
21 participation in this dispute. Thank you, you're
22 free to leave.

23 BAILIFF: Number 65, Francisco
24 Gilmore.

25 (SIDEBAR WITH JUROR NUMBER 65)

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

21

1 THE COURT: Number 65 will be excused
2 from participation in this dispute.

3 COURT REPORTER: Judge, if they could
4 step back a bit closer so I can hear them.

5 THE COURT: I'm sorry.

6 BAILIFF: Juror Number 130, Lancer
7 R. Pyle.

8 SIDEBAR

9 JUROR NUMBER 130: Your Honor,
10 I had a brother-in-law that was ---

11 THE COURT: Okay, thank you.

12 (SIDEBAR CONCLUDED)

13 THE COURT: Number 130 will be excused
14 from participation in this dispute. Thank you,
15 sir.

16 Are there others? (No response).

17 BAILIFF: Number 182, Judge.
18 Colleen Gorchyca.

19 SIDEBAR:

20 THE COURT: Yes, ma'am.

21 JUROR NUMBER 182: I'm a teacher and
22 just the nature of this, with children, I think I
23 would have a problem with ---

24 THE COURT: You think that would
25 affect you?

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

22

1 JUROR NUMBER 182: Yes, sir, I

2 do. I mean ---

3 THE COURT: Do you think that you
4 could set those feelings aside and make a
5 decision based on the evidence, the evidence
6 presented and any exhibits entered, and the law
7 as I instruct you?

8 JUROR NUMBER 182: I could but
9 I -- I don't know.

10 THE COURT: Your call.

11 JUROR NUMBER 182: I think it
12 would influence me.

13 THE COURT: Thank you. I
14 appreciate your coming forward. I appreciate
15 your candor.

16 JUROR NUMBER 182: Thank you.

17 (SIDEBAR CONCLUDED)

18 THE COURT: 182 will be excused from
19 participation in this dispute. Thank you.
20 You're free to leave.

21 Are there others? (No response). Thank
22 you, there appear to be none.

23 Are there any members of the jury panel,
24 members of your immediate family that have ever
25 been involved in a criminal dispute? Either you

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

23

1 were or you are a person alleged to have been the
2 victim or you were called to testify to what
3 happened to a person who claims to be a victim or
4 you were the person accused of committing a
5 criminal offense or you purportedly testified in
6 favor of the person who had been accused of
7 committing a criminal offense. If you have,
8 please stand. (No response). Thank you, there
9 appear to be none.

10 The fact that the alleged victims in
11 this case are children, would that fact alone
12 affect your ability to be a fair and impartial
13 judge in evaluating the evidence or making a
14 commitment to the parties? If so, please stand.
15 (Jurors stand).

16 THE COURT: I am going to ask that you
17 come forward.

18 BAILIFF: Juror Number 111, Stephen
19 Morrison.

20 SIDEBAR:

21 JUROR NUMBER 111: It would
22 affect me.

23 THE COURT: It would?

24 JUROR NUMBER 111: Yes, sir,
25 with children. I mean, I could but it -- it's

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 not fair to children. I would be more partial
2 towards children.

3 THE COURT: Thank you.

4 (SIDEBAR CONCLUDED)

5 THE COURT: Juror Number 11 will be
6 excused. Thank you.

7 BAILIFF: Juror Number 170, Deborah
8 J. Wilmoth.

9 SIDEBAR:

10 JUROR NUMBER 170: Good
11 afternoon, Your Honor. I have two grand-
12 children. I can't do this. Sorry.

13 THE COURT: Thank you, ma'am, for
14 your candor.

15 (SIDEBAR CONCLUDED)

16 THE COURT: Juror Number 170 is
17 excused from participation in this dispute.
18 Thank you, Ms. Wilmoth, you are free to leave.

19 BAILIFF: Number 184, Adrian A.
20 Williams.

21 SIDEBAR:

22 JUROR NUMBER 184: I can tell
23 you that I just can't be fair with children
24 involved. I don't want to be involved where
25 children have been put in that position.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

25

1 THE COURT: You could not set
2 that aside?

3 JUROR NUMBER 184: No, sir, I
4 cannot.

5 THE COURT: I appreciate you
6 coming forward.

7 (SIDEBAR CONCLUDED)

8 THE COURT: Number 84 is excused.
9 Good luck to you, sir.

10 Are there any others? (No response).
11 Thank you, there appear to be none.

12 The Defendant, as I understand, is a
13 pastor. Would the fact that he is a pastor
14 affect your ability to be fair and impartial
15 juror? If so, please stand. (No response).
16 Thank you, there appear to be none.

17 Are there any members of the jury panel
18 that have had any dispute or been involved in any
19 dispute, either direct or behalf of somebody,
20 with the Solicitor's Office for the Ninth
21 Circuit? Again, they have offices in Charleston
22 and in Berkeley. If so, please stand. (No
23 response). Thank you, there appear to be none.

24 Are there any members of the jury panel
25 who are close personal friends with or who have

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 attended Full Word Ministries at 2930 (sic)
2 Gordon Street North Charleston? (No response).
3 Thank you, there appear to be none.

4 Are there any members of the jury panel
5 who are members of organizations or support in
6 any way organizations that deal with criminal act
7 or criminal conduct or that support law
8 enforcement, such as CADRE, PAR, MADD, those
9 organizations? If so, please stand. (No
10 response). Thank you, there appear to be none.

11 Are there any members of the jury panel
12 who have family members or close personal friends
13 who are involved in law enforcement for Berkeley
14 County? If so, please stand. (Jurors stand).

15 Okay, your name and number again?

16 JUROR NUMBER 84: Jennifer Kline,
17 Number 84.

18 THE COURT: And, Ms. Kline, your
19 boyfriend is a detective; is that correct?

20 JUROR NUMBER 84: That's correct.

21 THE COURT: You've previously
22 indicated that that would influence you or affect
23 you in any way.

24 JUROR NUMBER 84: No.

25 THE COURT: It would not?

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

27

1 JUROR NUMBER 84: It would not.

2 THE COURT: Thank you. Yes, ma'am?

3 JUROR NUMBER 7: Number 7, Tamera
4 Barnette. My nephew is in law enforcement.

5 THE COURT: Would that affect or
6 influence you?

7 JUROR NUMBER 7: No, sir. And my
8 stepfather is an officer with ---

9 THE COURT: Would you base your
10 decision on the evidence and the law and that
11 decision be fair to both sides?

12 JUROR NUMBER 7: Yes, sir.

13 JUROR: My cousin is works for the
14 Highway Patrol but that would not affect me.

15 THE COURT: That would not affect you?

16 JUROR: No, sir.

17 THE COURT: Thank you.

18 JUROR: I am friends with some of the
19 people who work for the Charleston County and the
20 Berkeley County Sheriffs' departments.

21 THE COURT: Would that affect you in
22 any way?

23 JUROR: No, sir.

24 THE COURT: Would you base your
25 decision on the evidence and the law and would

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 your decision be fair to both sides?

2 JUROR: Yes, sir.

3 THE COURT: Are there any others?

4 (No response). Thank you, there appear to be
5 none.

6 Ladies and Gentlemen, the last question
7 that I have of you is this, and some of you have
8 already heard it. Just as I did when I took this
9 job, I raised my hand and took an oath to be the
10 fairest, most impartial judge that I knew how to
11 be. I try to honor that every time I walk in
12 this courtroom, or any courtroom. I make a
13 commitment to you that I'm going to do my best to
14 honor that commitment in this case. I make that
15 commitment to you, to the State and to Mr. Moore
16 as well. Based on what you've heard thus far, is
17 there anything that you've heard that would give
18 you any concern about your ability to make that
19 commitment, as well? That is that at the
20 appropriate time you would apply your common
21 sense, your sense of logic and reasoning fairly
22 and impartially in analyzing the evidence and
23 deciding what you believe to be the truth. Then
24 once that is done, you'll apply the law to those
25 facts as I give you the law and render a decision

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

29

1 that will be fair to both sides. If you feel
2 that you could not make that commitment, for any
3 reason, please stand. (No response). Thank you
4 very much.

5 What is going to happen now is that your
6 names are going to be called by the clerk. She
7 is going to hand out a list right now. We will
8 go down that list and when your name is called,
9 if you will come forward -- bringing with you
10 your personal effects -- and stand where I
11 standing here, facing outward. First the State
12 will say -- they have the first option -- to seat
13 the juror or to excuse the juror. Or sometimes
14 they say 'swear the juror.' Then if the State
15 says to seat the juror then Mr. Moore will have a
16 similar opportunity and he can say seat the jury,
17 swear the juror or excuse the juror.

18 Each side in this dispute can excuse
19 five persons. If you're excused, it doesn't mean
20 anything; just take your belonging and go back
21 and take your seat.

22 We will go through that process until
23 we've selected our twelve jurors and one
24 alternate. It shouldn't take much longer. Thank
25 you so much for your patience.

1 (CLERK DISTRIBUTES STRIKE SHEET)
2 THE COURT: Does everyone have their
3 list?
4 MR. CURRY: Yes, Your Honor.
5 THE COURT: Yes, sir.
6 THE COURT: Madame Clerk, you may
7 proceed.
8 CLERK: Ladies and Gentlemen, when I
9 call your name if you will please come forward.
10 Juror Number 80, Sabrina Johnson.
11 (JUROR COMES FORWARD)
12 CLERK: What says the State?
13 MS. HERRING-LASH: Please present
14 the juror.
15 CLERK: What says the defense?
16 MR. CURRY: Please swear the juror,
17 Madame Clerk, in this case.
18 CLERK: Please seat the juror.
19 (JUROR NUMBER 80 SEATED IN JURY BOX)
20 CLERK: Juror Number 106, Christine
21 Mitchum.
22 (JUROR COMES FORWARD)
23 CLERK: What says the State?
24 MS. HERRING-LASH: Please present
25 the juror.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

31

1 CLERK: What says the defense?

2 MR. CURRY: Please strike the juror,
3 Madame Clerk.

4 CLERK: The juror is excused.

5 (JUROR NUMBER 106 EXCUSED)

6 CLERK: Juror Number 128, Joyce Powell.

7 (JUROR COMES FORWARD)

8 CLERK: What says the State?

9 MS. HERRING-LASH: Please present
10 the juror.

11 CLERK: What says the defense?

12 MR. CURRY: Please seat the juror to
13 serve in this case, Madame Clerk.

14 CLERK: Please seat the juror.

15 (JUROR NUMBER 128 SEATED IN JURY BOX)

16 CLERK: Juror Number 183, Felicia
17 Nelson.

18 (JUROR COMES FORWARD)

19 CLERK: What says the State?

20 MS. HERRING-LASH: Please present
21 the juror.

22 CLERK: What says the defense?

23 MR. CURRY: Please seat the juror in
24 the service of this case, Madame Clerk.

25 CLERK: Please seat the juror.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 (JUROR NUMBER 183 SEATED IN JURY BOX)

2 CLERK: Juror Number 70, Penni L.
3 Hayward.

4 (JUROR COMES FORWARD)

5 CLERK: What says the State?

6 MS. HERRING-LASH: Please present
7 the juror.

8 CLERK: What says the defense?

9 MR. CURRY:

10 CLERK: Seat the juror.

11 (JUROR NUMBER 70 SEATED IN JURY BOX)

12 CLERK: Juror Number 71, Brittany
13 Heisler.

14 (JUROR COMES FORWARD)

15 CLERK: What says the State?

16 MS. HERRING-LASH: Please present
17 the juror.

18 CLERK: What says the defense?

19 MR. CURRY: Please seat the juror for
20 service in this case, Madame Clerk.

21 CLERK: Please seat the juror.

22 (JUROR NUMBER 71 SEATED)

23 CLERK: Juror Number 104, Bryan Miles.

24 (JUROR COMES FORWARD)

25 CLERK: What says the State?

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

33

1 MS. HERRING-LASH: Please present
2 the juror.

3 CLERK: What says the defense?

4 MR. CURRY: Please excuse the juror
5 from the service of this case, Madame Clerk.

6 CLERK: The juror is excused.

7 (JUROR NUMBER 104 EXCUSED)

8 CLERK: Juror Number 133, Ruthie Rush.

9 (JUROR COMES FORWARD)

10 CLERK: What says the State?

11 MS. HERRING-LASH: Please excuse the
12 juror.

13 CLERK: The juror is excused.

14 (JUROR NUMBER 133 EXCUSED)

15 CLERK: Juror Number 150, Patricia
16 Sparks.

17 (JUROR COMES FORWARD)

18 CLERK: What says the State?

19 MS. HERRING-LASH: Please present
20 the juror.

21 CLERK: What says the defense?

22 MR. CURRY: Please excuse the juror
23 from service in this case, Madame Clerk.

24 CLERK: The juror is excused.

25 (JUROR NUMBER 150 EXCUSED)

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 CLERK: Juror Number 3, Philip Atkins.
2 (JUROR COMES FORWARD)
3 THE COURT: What says the State?
4 MS. HERRING-LASH: Please present
5 the juror.
6 CLERK: What says the defense?
7 MR. CURRY: Please excuse the juror
8 from serving in this case, Madame Clerk.
9 CLERK: The juror is excused.
10 (JUROR NUMBER 3 EXCUSED)
11 THE COURT: The defendant has one
12 strike remaining.
13 MR. CURRY: Thank you, Your Honor
14 CLERK: Juror Number 51, David Davis,
15 Jr.
16 (JUROR COMES FORWARD)
17 CLERK: What says the State?
18 MS. HERRING-LASH: Please present
19 the juror.
20 CLERK: What says the defense?
21 MR. CURRY: Please seat the juror in
22 the service of this case, Madame Clerk?
23 CLERK: Please seat the juror.
24 (JUROR NUMBER 51 SEATED IN JURY BOX)
25 CLERK: Juror Number 21, Rebecca Britt.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

35

1

2

(JUROR COMES FORWARD)

3

CLERK: What says the State?

4

MS. HERRING-LASH: Please present

5

the juror.

6

CLERK: What says the defense?

7

MR. CURRY: Please swear the juror in

8

the service of this case, Madame Clerk.

9

CLERK: Please seat the juror.

10

(JUROR NUMBER 21 SEATED IN JURY BOX)

11

CLERK: Juror number 76, Gary Hurst.

12

(JUROR COMES FORWARD)

13

CLERK: What says the State?

14

MS. HERRING-LASH: Please present

15

the juror.

16

CLERK: What says the defense?

17

MR. CURRY: Beg the court's

18

indulgence.

19

THE COURT: Certainly. Take your

20

time, sir.

21

MR. CURRY: Please swear the juror in

22

the service of this case, Madame Clerk?

23

CLERK: Please seat the juror.

24

(JUROR NUMBER 76 SEATED IN JURY BOX)

25

CLERK: Juror Number 84, Jennifer

1 Kline.

2 (JUROR COMES FORWARD)

3 CLERK: What says the State?

4 MS. HERRING-LASH: Please present
5 the juror.

6 CLERK: What says the defense?

7 MR. CURRY: Court's indulgence.

8 THE COURT: Yes, sir.

9 MR. CURRY: Please excuse the juror
10 from the service of this case, Madame Clerk.

11 CLERK: Juror is excused.

12 (JUROR NUMBER 84 EXCUSED)

13 CLERK: Juror Number 62, Rene Free.

14 (JUROR COMES FORWARD)

15 CLERK: What says the State?

16 MS. HERRING-LASH: Please present
17 the juror.

18 CLERK: Any cause for challenge from
19 the defense?

20 MR. CURRY: None from the defense.

21 (JUROR NUMBER 62 SEATED IN JURY BOX)

22 CLERK: Juror Number 61, Troy
23 Forrester.

24 (JUROR COMES FORWARD)

25 CLERK: What says the State?

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

37

1 MS. HERRING-LASH: Please present
2 the juror.

3 CLERK: Any cause for challenge from
4 the defense?

5 MR. CURRY: None from the defense.

6 (JUROR NUMBER 61 SEATED IN JURY BOX)

7 CLERK: Juror Number 7,
8 Tamera Barnette.

9 (JUROR COMES FORWARD)

10 CLERK: What says the State?

11 MS. HERRING-LASH: Please present
12 the juror.

13 CLERK: Any cause for challenge from
14 the defense?

15 MR. CURRY: None from the defense.

16 (JUROR NUMBER 7 SEATED IN JURY BOX)

17 CLERK: Juror Number 90,
18 Donald Lavassar.

19 (JUROR COMES FORWARD)

20 CLERK: What says the State?

21 MS. HERRING-LASH: Please present
22 the juror.

23 CLERK: Any cause for challenge from
24 the defense?

25 MR. CURRY: None from the defense.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 (JUROR NUMBER 90 SEATED IN JURY BOX)

2 THE COURT: Let's select one
3 alternate. The strikes will be one and two.

4 MR. CURRY: Thank you, Your Honor.

5 CLERK: Yes, sir. Juror Number 58,
6 Sheree Ferguson.

7 (JUROR COMES FORWARD)

8 CLERK: What says the State?

9 MS. HERRING-LASH: Please present
10 the juror.

11 CLERK: What says the defense?

12 MR. CURRY: Please swear the juror in
13 the service of this case, Madame Clerk.

14 CLERK: Juror is seated.

15 (JUROR NUMBER 58 SEATED IN JURY BOX)

16 THE COURT: Any Motion from the State
17 regarding the selection?

18 MS. HERRING-LASH: No, Your Honor.

19 THE COURT: Any Motions from Mr. Moore
20 regarding the selection?

21 MR. CURRY: None, Your Honor, from the
22 defense.

23 THE COURT: Thank you. Ladies and
24 Gentlemen, those of you that were not selected,
25 thank you very much for your assistance. You are

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

39

1 now free to leave, have a great day. Good luck
2 to each one of your.

3 (JURY SEATED @ 4:00 P.M.)

4 (JURY PANEL POOL DISMISSED)

5 THE COURT: Ladies and Gentlemen,
6 those of you that were selected, thank you very
7 much as well. As I mentioned to you -- it is
8 4:00 o'clock and there are some matters that I
9 need to take up, so we wouldn't be able to get
10 too far in the case. The better thing to do is
11 to go ahead and take our recess now for the
12 evening.

13 Let me talk to you a little bit about a
14 couple of things. Ms. Ferguson, you're an
15 alternate. That term doesn't really have any
16 meaning right now. All it means is that you were
17 selected in that spot. One good thing about an
18 alternate, you can have either one of those
19 chairs. They belong to you during this trial, so
20 you can sit in either one that you wish. I would
21 ask that the jurors as you come in leave those
22 two vacate, please. That lets us know -- two
23 reasons. Number one, that we have an alternate
24 and, number two, it's easier to glance and know
25 that all of you are together. If there an empty

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

40

1 chair -- and I confess it's laziness. I could
2 count them but it's easier to glance and see that
3 they're all occupied.

4 The only other assigned seat, Mr.
5 Lavassar is occupying that seat. He is eligible,
6 as are any of the first twelve of you that were
7 selected, to serve as your presiding juror,
8 foreperson, foreman, forelady. I call them
9 presiding jurors. That is what in essence you
10 do. Someone has to be responsible for signing
11 the verdict form on behalf of the jury when the
12 jury reaches a decision. If there are exhibits
13 that are introduced during the trial, the
14 presiding juror receives those from the court
15 and, when the jury has completed its
16 deliberations, returns those exhibits to the
17 court. That is really the essence of your
18 duties.

19 Once that person is selected -- the
20 statute allows me to appoint a presiding juror or
21 for the jury to select the presiding juror. I
22 let the jury select their presiding juror. The
23 only person that is not eligible is Ms. Ferguson,
24 but any of the other twelve of you are. I would
25 simply ask that at some point that you would do

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

41

1 that and once you've identified that person, I
2 would simply ask that that individual occupy that
3 seat. But until the person has been so
4 identified, you're free -- any of you are free to
5 occupy the seat as you come into the courtroom.

6

7 I am going to excuse you. I ask that
8 you exit through the door here. You need to give
9 the bailiffs certain information. Once you have
10 done that you're free to leave. Make sure that
11 you give them the information that they ask of
12 you, though.

13 Please remember that you've heard no
14 evidence. So don't speculate about this case.
15 There is no need to do that. Don't conduct any
16 independent investigations, either tonight at any
17 time during this, because the commitment that you
18 will make is that you will decide this case based
19 on the evidence. The evidence is what you hear
20 during the trial.

21 While nothing that someone may say to
22 you outside this courtroom -- you may be able to
23 say 'I am not going to be influenced by that.'
24 But as you saw me, I excused a juror because
25 there could have been some appearance of some

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

42

1 problem. So you want to avoid all that, too.
2 Make sure that nobody talks to you about this
3 case or talks about it in your presence. Please
4 don't talk among yourselves about this case. I
5 ask that you not to talk with anyone at home
6 about the case while the case is continuing.

7 Have a good evening. Please return to
8 your jury room at 9:30 in the morning and we will
9 resume the trial at that time.

10 (JURY OUT @ 4:06 P.M.)

11 THE COURT: Any matters from the State
12 before we recess, Ms. Herring-Lash?

13 MS. HERRING-LASH: No, Your Honor.

14 THE COURT: The trial has commenced.
15 Mr. Moore has been on bond, is that correct?

16 MR. CURRY: That's correct, Your
17 Honor.

18 THE COURT: Do you know whether the
19 bondsman is willing to continue on that?

20 MR. CURRY: Judge, I have not spoken
21 to the bondsman but I have no indication that he
22 would not.

23 THE COURT: I am going to allow him to
24 remain out on bond although the case has started.
25 Mr. Moore, as you know and you've participated

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

43

1 thus far, your case has commenced. We will
2 continue that case whether you're present or not.
3 I assume that you will be present and I will
4 trust you to be there at 9:00, 9:30 in the
5 morning. Have a good evening, sir. He may
6 receive on bond.

7 MR. CURRY: Thank you very much, Your
8 Honor.

9 THE COURT: All right, we will see
10 you'all at 9:30 then. Thank you.

11 (COURT IN RECESS UNTIL 9:30 A.M.)

12 (TRANSCRIPT CONTINUED NEXT PAGE)

13

14

15

16

17

18

19

20

21

22

23

24

25

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 JULY 28, 2009 9:30 A.M.

2 (DEFENDANT PRESENT)

3 THE COURT: Please let the record
4 reflect that Mr. Moore is present, the jury is
5 present. There are no matters from the State
6 before bringing the jury in; is that correct?

7 MS. HERRING-LASH: That's correct,
8 Your Honor.

9 THE COURT: No matters of law from the
10 defendant?

11 MR. CURRY: None from the defendant,
12 Your Honor.

13 THE COURT: Thank you very much.
14 Let's ask the jury to join us.

15 (JURY IN @ 9:39 A.M.)

16 THE COURT: Good morning, Ladies and
17 Gentlemen. Thank you very much. I hope that you
18 had a good evening. We are ready now to resume
19 the matter that was commenced yesterday when you
20 were selected to help us resolve this dispute.

21 The first item of business, we need to
22 administer your oath. So if you would, please
23 give your attention to Ms. Hill as she
24 administers your oath.

25 (WHEREUPON JURY SWORN)

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

45

1 THE COURT: Thank you very much,
2 Ladies and Gentlemen. You now have become a
3 judge with me. Now you and I together will help
4 resolve this dispute. If you recall, when I
5 talked with you yesterday I mentioned to you that
6 our roles are well-defined.

7 You just took an oath that you would
8 decide the case based on the facts and then, of
9 course, apply the law as I give it to you. That
10 commitment remains throughout. By that, I mean
11 simply this: at no point in this proceeding
12 should you ever consider anything that I say or
13 do to be a suggestion of how you're to resolve a
14 factual issue. That is your sole job, I have
15 nothing to do with that now; by virtue of that
16 oath.

17 Likewise, nothing of the law that may
18 occur such as -- what is he talking about?
19 Obviously at the end of this trial, I will give
20 you a charge on the law, I will give instruction
21 on the law. We are going to talk about some of
22 the basic legal principles in just a few moments.
23 But that law that I give to you it is very
24 important that you honor that separation. That
25 means simply this, most of you would say 'of

1 course, I would do that, that is not a problem.'

2 One of the things that I mentioned when
3 I was qualifying you is the statute concerning
4 whether you had an ID card, a driver's license, a
5 voter registration certificate, and I said that I
6 know that you do because you were there.
7 Obviously you did. We couldn't have sent you the
8 invitation if we didn't. Maybe there is a better
9 way to do it, and I've thought about it over
10 fifteen or so years and I can't come up with a
11 suggestion to the legislature. So I keep my
12 mouth shut. But it seems odd to me that we have
13 to do that since you have already received it.
14 But, then again, I will continue to do it. I
15 have done it since I took this job in '94 and I
16 will continue to do it as long as that is the
17 law. Why? Because I, like you, have taken an
18 oath to honor the law notwithstanding my personal
19 opinion.

20 You may hear some principle of law that
21 may cause you to say, 'you know, there is a
22 better way of writing that, we can make that law
23 clearer.' I respect your right to feel that way.
24 In this country we even have the right to take it
25 to the next level, and follow that thought

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

47

1 through to hopefully a culmination of
2 modification of it.

3 But for this proceeding you've made a
4 commitment to the State and to Mr. Moore that you
5 will set that feeling aside, take the law as I
6 give it to you and apply that law fairly and
7 impartially. I am confident that each one of you
8 will do that.

9 You have brought with you -- as I said
10 yesterday, you have everything and you've brought
11 this morning everything that you are going to
12 need. There is nothing that you are going to
13 have to worry about insofar as fulfilling the
14 commitment that you just made.

15 I say that for this reason, that all anyone
16 expects you to do is to apply your commonsense,
17 your sense of logic and reasoning. That is what
18 you do every day of your life, that is what
19 you've done to get where you are. You rely on
20 your commonsense, your sense of reason and your
21 ability to analyze.

22 Some of us are better than others. Some
23 of us are bottomline persons, some of us are
24 detail people. I don't know where you are in
25 that spectrum, but what you've promised is that

1 for purposes of this proceeding you will rely on
2 that ability to analyze and you will analyze all
3 of the evidence and the law.

4 Until you have heard it all, I would
5 urge you and tell you that part of the oath that
6 you just took was that you won't make any
7 decisions prematurely. So in addition to
8 bringing with you your common sense, your
9 sense of logic and reasoning, you also brought
10 something else. If you think about it, that's
11 what we did when we qualified you. Remember we
12 asked questions and you saw me excuse some jurors
13 who came up and expressed some concerns. Their
14 concerns were that they weren't sure that they
15 could be totally fair and impartial in applying
16 their common sense, either because of something
17 had happened in their lives or some knowledge
18 that they had about this disputes. Whichever,
19 they said or they should have said, 'I need to
20 remove myself.' But you didn't.
21 Either you responded to a question and said, 'No,
22 it won't affect me. It won't affect my ability
23 to be fair and impartial in applying my common
24 sense' or, by not responding you said, 'Nope,
25 there's nothing.' Because, if you remember, the

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

49

1 last question -- I said, was there anything that
2 you've heard that would give you any concern
3 about your ability to make a commitment that
4 you've now made. You said that there was not.

5 So you've brought an open mind. You
6 haven't predetermined anything, you haven't
7 decided any issue. Maintain that. Do whatever
8 is necessary for you to maintain that because
9 that is critical, I would submit to you, in
10 honoring the oath that you just took.

11 Let's talk about why. Well, first
12 of all there are four distinct parts to this
13 proceeding and each is very important to this
14 process of dispute resolution. In just a moment
15 the attorneys for each party will speak to you in
16 what we call opening statements. This process
17 affords the attorneys two opportunities, once
18 before you hear the evidence and then after
19 you've heard all the evidence, then they speak to
20 you again. One we call opening statements, which
21 is basically an overview of the dispute. They
22 will talk about some of the issues that will
23 appear and that will ultimately resolve. They
24 may discuss some legal principles with you.
25 Their remarks will be helpful, I think, as you go

1 through the trial portion of this, the
2 evidentiary portion of this.

3 Then after you've heard the evidence,
4 they will speak to you again and discuss that
5 evidence and reasonable inferences that you may
6 draw from that.

7 Now, the attorneys are officers of this
8 court and they have a very important
9 responsibility in this process. You should, and
10 I expect will, give your undivided attention to
11 them when they speak to you. But just as my
12 remarks should never be considered any statement
13 on the evidence, or any evidence, their remarks
14 likewise should not be considered evidence. The
15 evidence is the testimony of witnesses and the
16 exhibits that are introduced through that
17 testimony, and that alone.

18 Now, after the attorneys speak to you
19 then we move into the evidentiary portion. The
20 first party that will present evidence is
21 governed -- and the reason this is so is because
22 the State makes the accusation. Now, maybe some
23 of you have participated in some form or fashion
24 in a civil proceeding in your life, or observed
25 one. Basically the format is the same, four

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

51

1 distinct parts. But there are two major
2 differences, one of which is what I'm about to
3 say. In a civil proceeding there are occasions
4 when the party against whom a claim is made may
5 have some limited version of proof, but not in
6 this. Not in this.

7 Mr. Moore has absolutely nothing to
8 prove because Mr. Moore, just as any person
9 accused of committing a criminal offense in this
10 state and in this country, does not have any
11 responsibility to prove or disprove anything.
12 They don't have to explain anything, they don't
13 have to prove their innocence. You should never
14 at any point during this proceeding look to him
15 with an expectation
16 of answering something. That is not his
17 responsibility. He doesn't have to do that.

18 In fact, he doesn't have to present any
19 evidence. He doesn't have to testify, because
20 the burden rests solely on the party that brings
21 the claim in a criminal dispute, and that party
22 is the State of South Carolina.

23 The law says that they have the burden
24 of proving each element of the crime of lewd act
25 upon a minor. I will define those for you when

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

52

1 I give you the charge. I will give you those
2 elements that are required of the State to prove
3 to a standard that we call beyond a reasonable
4 doubt. Now, that standard -- that is the second
5 difference, a major difference, from the civil
6 proceedings because "beyond a reasonable doubt"
7 is the highest standard that we can apply. That
8 is the highest level that has to be reached
9 before you may return a verdict of Guilty. The
10 State has prove each element to that standard.

11 What is that standard? I will define
12 it for you when I charge you but I will tell you
13 now that a reasonable doubt is a doubt that
14 would make a honest, sincere, conscientious
15 juror who is searching for the truth in a case
16 to hesitate to act, take some action. That is
17 the standard that you will apply.

18 Civil proceeding, it's a probability
19 standard. It's called preponderance of the
20 evidence or greater weight of the evidence, that
21 it is more probable than not. Beyond a
22 reasonable doubt is greater than that.

23 That is what you will apply and that is
24 what you will do when you have heard all of the
25 evidence, you've heard the arguments, the

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

53

1 opening statements from the attorneys, you've
2 received my charge on the law and then you will
3 exit this courtroom and at that time you will
4 begin to decide this case.

5 What will you be doing? You will
6 simply analyze the evidence and decide whether
7 the State has convinced you of each of those
8 elements beyond a reasonable doubt. If they
9 have, then my instruction is that you must
10 return a verdict of Guilty. On the other hand,
11 if the State fails on any one element, does not
12 convince you beyond a reasonable doubt on one
13 element, then you must return a verdict of Not
14 Guilty because that's what "verdict" -- that's
15 what a verdict, Guilty or Not Guilty, means in a
16 criminal dispute.

17 Guilty means simply that the State
18 presented the case and convinced that jury
19 beyond a reasonable doubt as to each of the
20 elements.

21 Not Guilty means that the State failed
22 on one of more elements and that jury, as
23 instructed by that judge, returned a verdict of
24 Not Guilty.

25 That's what you will do. Part of the

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

54

1 commitment that you made also is -- part of my
2 instruction to you is when you may start your
3 deliberations. So when I say to you to make
4 sure that you maintain that open mind, it's
5 important because you need to hear all of it --
6 obviously -- but it is also important because
7 that's part of the law. You aren't -- you
8 aren't at liberty to begin to decide any issue
9 until the court gives you that instruction. So,
10 please do that.

11 As I stated, some of us are bottom line
12 people and there are persons who are detail
13 persons. A bottom line person, and I confess
14 that I am one of those persons, I have a
15 tendency to jump ahead -- to a fault sometimes.
16 I have to remind myself constantly because I
17 recognize that about me. I don't know whether
18 you are, but if you are then you are going to
19 have to use extra energy and effort to make sure
20 that you don't reach any conclusion until you've
21 heard all the case and received all the evidence
22 and the law. You need to do that because that's
23 the promise that you just made to both sides.

24 Now, while I mentioned to you that the
25 State has the sole burden of proof, they present

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

55

1 their evidence first. Mr. Moore has absolutely
2 nothing to prove or disprove but he still has
3 the opportunity and right to present witness if
4 he chooses to. He doesn't have to but if he
5 chooses to -- and you won't hear that evidence
6 until you've heard all of the State's evidence.
7 Another very good reason for you not to reach
8 any conclusions, because you need to hear all of
9 the evidence, of course, before you decide
10 anything. So please remember that as we go
11 through this process. It is very well-defined
12 for us. You will have this case at some point
13 and you will then apply your common sense, your
14 sense of logic and reasoning fairly and
15 impartially.

16 I look forward to trying this case with
17 you. It's an honor to serve as a judge with
18 each one of you. I appreciate the commitment
19 that you make to the process. I thank you for
20 your attention to my remarks and ask you now to
21 give that same attention to the attorneys as
22 they give their opening statements on behalf to
23 their client.

24 Ms. Herring-Lash.

25 MS. HERRING-LASH: We all go to our

1 places of worship, no matter what they may be,
2 looking for a place of safety and a place where
3 we can find sanctuary and peace of mind. We look
4 to our religious leader for guidance for both
5 ourselves and our children.

6 This was especially true for Ms. Carla
7 Clark and Ms. Elcorese Barrow. They were single
8 mothers at the time, they had young sons about
9 the ages of ten, eleven, twelve and they held
10 positions in the ministry at Full Word
11 Ministries where the defendant, Tyrone Moore,
12 was the pastor.

13 Both women become intensely involved in
14 the ministry at Full Word Ministries.

15 Ms. Barrow at one point when her son,
16 Minor 2 was around ten or eleven, went
17 to Mr. Moore, the Defendant, for some counseling
18 for Minor 2 He was beginning to act like a
19 boy more than the little baby that she had dealt
20 with. She wanted a father figure for her son at
21 that point in time.

22 So they set up counseling and at that
23 point in time Minor 2 began to go and spend
24 nights with them, spent a lot of time at the
25 Moore residence. He liked the fact that there

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

57

1 were games, that there was a pool table, there
2 was a lot of socializing. He began to have a
3 good relationship with the pastor, the
4 Defendant, Tyrone Moore.

5 He kept on going there until at one
6 point in late August of 2006, after returning
7 from a trip, Ms. Barrow asked Minor 2 you
8 know, 'You're staying at the pastor's house, at
9 Tyrone Moore's house a lot. Tell me, you know,
10 what's going on there.' He told her that was
11 none of her business. That shocked her because
12 he was not -- that was unusually rude of
13 Minor 2 to act that way.

14 She then went to Mr. Moore and asked
15 him and he said, 'Well, he shouldn't have been
16 rude to you but it is none of your business.'

17 At that point in time, she didn't let
18 her son go back over there for extended periods
19 of time.

20 Ms. Clark, who was Minor 1 mother,
21 also was involved in the ministries at the
22 church. She was head of the children's ministry
23 and would visit and bring her son to visit the
24 Moore home.

25 At some point during the visits they

1 realized that [Minor 1] could sing, had a wonderful
2 and beautiful singing voice. At that point in
3 time, [Minor 1] also began spending a lot of time at
4 the Moore home -- nights, weekends -- a lot of
5 time.

6 At some point that ended and he no
7 longer wanted to go. His mother now looks back
8 at it and he stopped even wanting to go into the
9 service. He wanted to stay in the children's
10 ministry part of the service, which he actually
11 at that point had been going to adult services
12 already.

13 But neither of these mothers, neither
14 of these woman really suspected anything like
15 child molestation was going on. [Minor 1] nor
16 [Minor 2] had never told anybody. They never
17 told each other, they never told anybody until
18 December 11th, 2006 when Ms. Barrow gets a call
19 from [Minor 2] school that there are police
20 officers at the school and she needs to come.
21 She goes there and she gives permission for the
22 officers to speak with [Minor 2] alone.
23 After that interview, she discovered
24 that [Minor 2] had been molested in the home of
25 the pastor.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

59

1 The next day, December the 12th of 2006,
2 Ms. Clark gets a call from the officers to come
3 to **Minor 1** school. She goes there, she
4 gives permission for the officers to speak to
5 **Minor 1** alone and she finds that her son also had
6 been molested by the pastor.

7 Neither of these boys would probably
8 have ever told anyone had the officers not shown
9 up and asked them the question.

10 As a result of those interviews, Mr.
11 Moore is charged with lewd act upon a minor.
12 I will go over with you briefly what the
13 elements of that charge are.

14 Lewd act upon a minor is the charge.
15 The elements -- and the elements are the parts
16 of the crime that the State must prove.

17 First I will go over the whole statute.
18 It is unlawful for a person over the age of
19 fourteen years to willfully and lewdly commit or
20 attempt a lewd and lascivious act upon or with
21 the body or its parts of a child under the age
22 of sixteen with the intent of arousing,
23 appealing to or gratifying the lust or passion
24 of sexual desire of the person or the child.
25 The State must prove to you that the Defendant

1 is over the age of fourteen; that the victim at
2 the time was under the age of sixteen. This has
3 been since 2006. Both boys are much older and
4 bigger now. They are much more grownup than
5 they were back in 2005 when this happened. At
6 the time they were under the age of sixteen and
7 a lewd and lascivious act was committed. What
8 we normally think of as fondling, child
9 molestation, the rubbing or the touching of the
10 genitals of a child. That the intent was the
11 gratifying of the lust or passion of sexual
12 desires of a child or the actor.

13 You will have to look at what was going
14 on to decide what intent of someone fondling the
15 genitals of a child would be.

16 When you see these elements, you see
17 that this is not the kind of crime that you
18 would have, not the kind of evidence that you
19 hear about on TV. This isn't the kind of crime
20 where you have DNA. This was fondling, it
21 happened years ago, these children didn't tell
22 then what was going on. It was painful, it is
23 embarrassing. It is painful to these boys who
24 are now verging on young men to come in here and
25 explain to you being touched and fondled, but it

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

61

1 is necessary that you hear it from them.

2 We ask that when you listen to the
3 evidence that you listen with the ear of how
4 painful it is and that, after hearing the
5 evidence, which will be them telling you what
6 happened, that you find a verdict that speaks
7 the truth, that Tyrone Moore fondled these two
8 young men. Thank you.

9 THE COURT: Mr. Curry?

10 MR. CURRY: Thank you very much, Your
11 Honor, may it please the court, Solicitor.
12 Ladies and Gentlemen of the jury, I'm Eduardo
13 Curry. I represent Reverend Tyrone Moore, the
14 Pastor of Full Word Ministries.

15 The president once a while back, by the
16 name of Abraham Lincoln, said that other than
17 service to your country in the military that
18 there is no greater service than that of jury
19 service. We are here and we're thankful that
20 you've agreed to listen to this case as the
21 trier of the facts.

22 The judge has already instructed you in
23 this opening as to the testimony being evidence
24 produced. You'll get a chance to do what we all
25 do every day. I agree with Judge Dennis, you

1 get a chance to use the logic and reasoning,
2 your common sense, your life experiences, in
3 order to settle this dispute.

4 Now, in settling this dispute there are
5 ways to settle it. Here today there is going to
6 be a particular order. Now, that order is not
7 because one is more likely and one is less
8 likely. That order is because the burden of
9 prove beyond a reasonable doubt rests squarely
10 on the prosecution. The judge told you that.

11 When you think about whether or not a
12 defendant has to prove anything, you sort of
13 have to think about it like a balloon. There is
14 a presumption of innocence. That air stays in
15 that balloon until it is pierced and the air is
16 let out by facts and testimony beyond a
17 reasonable doubt.

18 Now, you'll get a chance to do a couple
19 of things. You'll get a chance to look at the
20 witnesses, to examine, to listen to them, put it
21 through your feeder and your sorter. You can
22 believe one over a whole bunch or a whole bunch
23 over one. You get a chance to hear the people
24 who have made allegations, some of them
25 children. You get a chance to hear police

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

63

1 statements. You have to use -- you have a
2 chance to hear all of that but you have to use
3 your common sense while you do it. As you are
4 doing that, you as the trier of the facts will
5 come up with an opinion.

6 So, what do we think that the facts are
7 going to show? We believe that the facts will
8 show that Tyrone Moore, preacher at Full Word,
9 started out in a little ministry about 2002 and
10 then it grew. I am not talking about taking in
11 one member a month or one member a week. It
12 grew from a handful of small, a ragtag bunch
13 meeting in a hotel to two thousand members.

14 What do we think that the facts are
15 going to show, that the evidence is going to
16 show? It's going to show that Mr. Moore
17 genuinely loves children, children love him.
18 It's not uncustomary for children running up to
19 him, running behind him, trying to meet him at
20 his car, trying to come to his house. You'll
21 hear evidence that he has children. He has an
22 older son, an older daughter and a set of twins.
23 Okay? That children from the church come to his
24 house.

25 What does that mean? You have to make

1 the examination of the facts. Tyrone Moore is
2 here because he believes that after you've heard
3 the facts that you are going to issue a verdict
4 of Not Guilty.

5 Tyrone Moore is here because he
6 believes that when you start looking at the
7 facts you're going to hear things that are
8 inconsistent with the theory that the
9 prosecution wants you to believe.

10 I didn't hear it, but I can tell you
11 that the facts will unfold to show that both
12 Minor 2 and Minor 1 denied ever being touched,
13 initially. Then Investigator Nix got involved,
14 other people got involved and, some kind of way,
15 they changed their story. That's why it's your
16 job to listen to all the evidence.

17 What I say is not evidence. Certainly
18 what Assistant Solicitor Ms. Herring-Lash said
19 was not evidence. But I can tell you that they
20 denied it initially, the evidence will show it,
21 and then after the fact additional information
22 started coming out.

23 You be the judge. I am going to ask
24 questions. It's going to be my turn -- the
25 prosecution gets direct, they can set it up and

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

65

1 then I get a chance to do what they call cross-
2 examination. That's a chance where maybe I can
3 ask the witnesses something that they didn't say
4 before or maybe examine something a little
5 closer. My cross-examination is as important as
6 direct examination.

7 Listen intensely. I believe, and Mr.
8 Moore, believes that after you've heard all of
9 the evidence and listened to all of the
10 testimony that you will find that the prosecutor
11 fails in their burden beyond a reasonable doubt
12 and that you will issue a verdict of Not Guilty.
13 I thank you.

14 THE COURT: Ms. Herring-Lash, you may
15 call your first witness.

16 MS. HERRING-LASH: The State would
17 call Minor 2

18 (WITNESS TAKES STAND)

19 Minor 2 being duly sworn to
20 tell the truth, the whole truth and nothing but
21 the truth, testified, as follows:

22 DIRECT EXAMINATION

23 BY MS. HERRING-LASH:

24 Q. Minor 2 what is your date of birth?

25 A.

- 1 Q. And how old are you now?
- 2 A. Sixteen years old.
- 3 Q. Where do you live?
- 4 A. Goose Creek, South Carolina.
- 5 Q. You may want to try to speak directly into
- 6 that microphone so that we can make sure that
- 7 these people can hear you.
- 8 A. All right.
- 9 Q. What school do you go to now, Minor 2
- 10 A. Goose Creek High School.
- 11 Q. What grade are you in?
- 12 A. Eleventh.
- 13 Q. Who lives with you?
- 14 A. My mother, my stepfather and my brother.
- 15 Q. How old is your brother?
- 16 A. Eighteen years old.
- 17 Q. Your stepfather -- your mother is now
- 18 married?
- 19 A. Yes, ma'am.
- 20 Q. Do you like school?
- 21 A. Yes, ma'am.
- 22 Q. What is your favorite thing to do?
- 23 A. Math.
- 24 Q. Math?
- 25 A. (Affirmative nod).

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

67

1 Q. Minor 2 where do you go to church now?

2 A. I really don't.

3 Q. You don't anymore?

4 A. (Negative gesture).

5 Q. Have you in the past gone to church?

6 A. Yes, ma'am.

7 Q. Where did you go?

8 A. Full Word.

9 THE COURT: Speak up, please. Thank
10 you.

11 MS. HERRING-LASH: I don't know --
12 if the microphone could be turned up any?

13 THE COURT: Just lean forward and
14 speak into that mic.

15 MS. HERRING-LASH: Lean forward --
16 can you scoot your chair up? You may be too
17 tall to ---

18 THE WITNESS: (Leans forward to
19 microphone.

20 MS. HERRING-LASH: Okay.

21 DIRECT EXAMINATION CONTINUED

22 BY MS. HERRING-LASH:

23 Q. Do you remember when you started going to
24 Full Word Ministries?

25 A. No, ma'am.

- 1 Q. Did your mom go there?
- 2 A. No, ma'am.
- 3 Q. Did your mother ever go there?
- 4 A. Yes, ma'am.
- 5 Q. Was she a member of the church?
- 6 A. Yes, ma'am.
- 7 Q. Do you know what she did at the church
- 8 besides just attend?
- 9 A. No, ma'am.
- 10 Q. Did she have activities that she
- 11 participated in there?
- 12 A. No, ma'am.
- 13 Q. What about you?
- 14 A. I was in the Youth Choir.
- 15 Q. The youth choir?
- 16 A. (Affirmative nod).
- 17 Q. Did you'all just sing at the church or did
- 18 you travel?
- 19 A. No, we didn't travel.
- 20 Q. Did there come a time when you began
- 21 visiting with the pastor of that church?
- 22 A. Yes, ma'am.
- 23 Q. Who was the pastor?
- 24 A. Pastor Tyrone Moore.
- 25 Q. Do you see Pastor Tyrone Moore in this

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

69

1 courtroom today?

2 A. Yes.

3 Q. What does he have on?

4 A. A suit.

5 MS. HERRING-LASH: Let the record
6 reflect that the victim has identified the
7 Defendant.

8 THE COURT: It so reflects.

9 DIRECT EXAMINATION CONTINUED

10 BY MS. HERRING-LASH:

11 Q. Do you remember why you first started going
12 over to visit with Mr. Moore?

13 A. No, ma'am.

14 Q. Why did you go over?

15 A. Because I just heard that it was a lot of
16 fun, so I -- I just wanted to hang out with him
17 because he seemed cool, to me.

18 Q. He seemed "cool" to you?

19 A. (Affirmative nod).

20 Q. What did you hear was fun over there?

21 A. Games and stuff.

22 Q. What?

23 A. Video games and movies and stuff.

24 Q. Let me show you what has been marked as
25 State's Exhibits 4, 5 and 3.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 MR. CURRY: These are without
2 objection.

3 THE COURT: All of them?

4 MR. CURRY: Four, five and three are.

5 THE COURT: Four, five and three
6 are admitted as State's Exhibits 4, 5 and 3,
7 each being a photograph, are admitted without
8 objection.

9 (SO ENTERED AS STATE'S EXHIBIT 3)

10 (SO ENTERED AS STATE'S EXHIBIT 4)

11 (SO ENTERED AS STATE'S EXHIBIT 5)

12 DIRECT EXAMINATION CONTINUED

13 BY MS. HERRING-LASH:

14 Q. Let me show you State's Exhibit 4,

15 Minor 2 Do you recognize that?

16 A. Yes, ma'am.

17 Q. What is that?

18 A. The closet in the family room.

19 Q. What is in that closet?

20 A. Board games and clothes.

21 Q. Board games?

22 A. (Affirmative nod).

23 Q. And Exhibit 5, do you recognize that?

24 A. Yes, ma'am.

25 Q. What is that?

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

71

- 1 A. The pool table.
- 2 Q. The pool table?
- 3 A. (Affirmative nod).
- 4 Q. Exhibit 3, what is this?
- 5 A. That is the movies and the games.
- 6 Q. You're going to have to speak up into the
- 7 microphone.
- 8 A. That's where they kept the movies and
- 9 stuff.
- 10 Q. Okay. And is this how it looked when you
- 11 visited the home?
- 12 A. Yes, ma'am.
- 13 MS. HERRING-LASH: Let's display it
- 14 for the jury so that they can see what you've
- 15 been talking about. It's been on the screen
- 16 behind you -- (displaying State's Exhibit 4).
- 17 DIRECT EXAMINATION CONTINUED
- 18 BY MS. HERRING-LASH:
- 19 Q. Those are the board games that you're
- 20 talking about?
- 21 A. Yes, ma'am.
- 22 Q. Would you play board games when you were
- 23 over?
- 24 A. Yes, ma'am.
- 25 Q. And was -- the next exhibit, State's

- 1 Exhibit 5, are those videos that you would play?
- 2 A. Video games, (affirmative nod).
- 3 Q. What are they sitting on?
- 4 A. Pool table.
- 5 Q. Where was that pool table?
- 6 A. It was really in the center of the room,
- 7 just about.
- 8 Q. Go ahead.
- 9 A. It was in the center, just about.
- 10 Q. What room was it in?
- 11 A. The family room.
- 12 Q. And State's Exhibit 3, what did you say
- 13 that was?
- 14 A. The movies.
- 15 Q. Speak into the microphone.
- 16 A. Movies.
- 17 Q. And what is in the case there?
- 18 A. That's a chinchilla.
- 19 Q. Chinchillas?
- 20 A. (Affirmative nod)
- 21 Q. And where was this?
- 22 A. I don't remember all the -- I don't
- 23 remember.
- 24 Q. What room was it in?
- 25 A. The family room.

State of South Carolina v. Tyrone Moore
Case No. 08-CS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

73

1 Q. The family room?

2 A. (Affirmative nod).

3 Q. I am going to show you now what has been
4 marked as State's Exhibit 1.

5 MR. CURRY: Without objection, Your
6 Honor.

7 THE COURT: State's Exhibit 1 is
8 admitted without objection.

9 (SO ENTERED AS STATE'S EXHIBIT 1)

10 DIRECT EXAMINATION CONTINUED

11 BY MS. HERRING-LASH:

12 Q. Minor 2, what is State's Exhibit 1 a
13 picture of?

14 A. A couch.

15 MS. HERRING-LASH: If we could show
16 that to the jury -- (displaying).

17 DIRECT EXAMINATION CONTINUED

18 BY MS. HERRING-LASH:

19 Q. Can you turn around and explain what that
20 room is?

21 A. That's the family room.

22 Q. Is that where all these articles that you
23 have pointed out were, in that room?

24 A. Yes, ma'am.

25 Q. Minor 2, do you remember the first time

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 that you spent the night over?

2 A. It was after church was over. I left the
3 church with him after everything was over.

4 Q. Then you spent the night?

5 A. Yes, ma'am.

6 Q. Where did you sleep?

7 A. On the couch.

8 Q. On that couch?

9 A. Yes, ma'am.

10 Q. Do you know where on that couch that you
11 slept?

12 A. No, ma'am.

13 Q. Do you know which side?

14 A. No, ma'am.

15 Q. Did it fold out or did it stay like that?

16 A. It did.

17 Q. Which -- did you fold it out?

18 A. Yes, ma'am.

19 Q. And you slept?

20 A. Yes, ma'am.

21 Q. What happened, if anything, that evening?

22 A. Nothing.

23 Q. And what did you do the next day?

24 A. I don't remember.

25 Q. Did you go back home or did you stay?

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

75

1 A. I think that I went back home.

2 Q. Now, was there ever another time that you
3 spent the evening or the weekend at Mr. Moore's
4 house?

5 A. Yes, ma'am.

6 Q. How would it be that you would get there?

7 A. I would like be -- I would go to the church
8 and he would be there and, like, you know he'd
9 be at the church and I'd leave with him whenever
10 he was done with what he was doing there.

11 Q. When you left with him, where would you go?

12 A. To the house.

13 Q. To the house?

14 A. (Affirmative nod).

15 Q. Were there times that your mother would
16 take you there or other people?

17 A. No, ma'am.

18 Q. So you would go with him?

19 A. (Affirmative nod).

20 Q. How did you get home?

21 A. I would go to the church -- like I'd leave
22 on a Sunday -- and then I'd leave with my mom.

23 Q. You'd do what?

24 A. I'd leave with my mama after going to
25 church.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 Q. So you would go home after the pastor would
2 bring you back to the church?

3 A. Yes, ma'am.

4 Q. You said that you liked going there?

5 A. Yes, ma'am.

6 Q. Did there come a time that something made
7 you uncomfortable when you were there?

8 A. Yes, ma'am.

9 Q. Do you know when that was?

10 A. No, ma'am.

11 Q. It was after the first time that you spent
12 the night?

13 A. Yes, ma'am.

14 Q. Where were you when this happened?

15 A. On the couch, sleeping.

16 Q. Is that the couch you were on (indicating
17 in photograph)?

18 A. Yes, ma'am.

19 Q. Do you know if there was anyone else in the
20 home at the time?

21 A. No, ma'am.

22 Q. Do you know if there was another -- well,
23 who lived in that house? Tell us that?

24 A. His family.

25 Q. Who was his family?

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

77

- 1 A. His wife and kids.
- 2 Q. Where did his wife stay?
- 3 A. Downstairs.
- 4 Q. Was there a bedroom down there?
- 5 A. Yes, ma'am.
- 6 Q. What about his children?
- 7 A. They were upstairs.
- 8 Q. Did they have bedrooms or did they stay in
- 9 the family room?
- 10 A. They had bedrooms.
- 11 Q. When you spent the night there you slept on
- 12 the couch?
- 13 A. Yes, ma'am.
- 14 Q. What happened when you were sleeping on the
- 15 couch?
- 16 A. He put me on top of him and then put his
- 17 hand in my pants and massaged my privates.
- 18 Q. How did he get you on top of him?
- 19 A. He lifted me up and put me on top of him.
- 20 Q. When it started out where were you?
- 21 A. On the couch.
- 22 Q. What were you doing?
- 23 A. Sleeping.
- 24 Q. Do you know how you were sleeping, whether
- 25 you were on your tummy or on your back, on your

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 side?

2 A. I was on my stomach.

3 Q. On your stomach?

4 A. (Affirmative nod).

5 Q. How did he lift you up?

6 A. He just like eased his way under me.

7 Q. Then what?

8 A. He reached his -- put his hand in my pants.

9 Q. When he eased his way under you, what part
10 of you was touching him?

11 A. Just my chest.

12 Q. Your chest?

13 A. Yes, ma'am.

14 Q. How was he laying?

15 A. On his back.

16 Q. Do you remember what you had on?

17 A. No, ma'am.

18 Q. Did you sleep or did you have on -- did you
19 wear or take pajamas or other things?

20 A. I'd sleep in my clothes.

21 Q. Clothes?

22 A. (Affirmative nod).

23 Q. And what happened?

24 A. He reached his hand in my pants and started
25 massaging my privates.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

79

1 Q. How did he get his hand in your pants?

2 A. He -- the waistband.

3 Q. Was it the kind of waistband that would
4 have buttons or no buttons?

5 A. No buttons.

6 Q. When he put his hand in your pants, what
7 did he do?

8 A. He massaged my privates.

9 Q. Did he say anything to you?

10 A. No, ma'am.

11 Q. Did you say anything?

12 A. No, ma'am.

13 Q. Why didn't you say something?

14 A. Shocked.

15 Q. What shocked you?

16 A. The fact that it was him, that he was
17 actually doing that.

18 Q. What about the fact that it was him that
19 shocked you?

20 A. The pastor of the church, everybody knows
21 him. I just thought, why would he do something
22 like that?

23 Q. Up until the first time that he did that,
24 how did you feel about him?

25 A. I really didn't even -- I couldn't stand

1 the presence of him, I couldn't be around him.

2 Q. That's how you felt afterwards?

3 A. Yes, ma'am.

4 Q. Before he ever did that how did you feel
5 about him?

6 A. Well, I would say that I looked up to him
7 really. He was everything -- he was liked, he
8 was popular, he did good things -- well, before
9 I found out what he was doing.

10 Q. What kind of good things did he do?

11 A. He bought me school shoes and a game
12 station.

13 Q. A what?

14 A. A PSC.

15 Q. A play game station?

16 A. Yes, ma'am.

17 Q. Did that happen to you one time or more
18 than one time?

19 A. Just that one time.

20 Q. Did you say anything to anybody?

21 A. No, ma'am.

22 Q. Why not?

23 A. I guess I didn't want anyone to know that
24 it happened to me.

25 Q. Why not?

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

81

- 1 A. I really don't know.
- 2 Q. Did you ever tell your mama about it?
- 3 A. No, ma'am.
- 4 Q. Why didn't you tell your mama?
- 5 A. I didn't want her to know that it'd
- 6 happened to me.
- 7 Q. Did there come a time when someone
- 8 questioned you about it?
- 9 A. No, ma'am.
- 10 Q. Did the police ever question you?
- 11 A. Yes, ma'am.
- 12 Q. Where were you when the police questioned
- 13 you?
- 14 A. School.
- 15 Q. What?
- 16 A. School.
- 17 Q. Did you know that they were going to be
- 18 coming to your school?
- 19 A. No, ma'am.
- 20 Q. What happened when they came?
- 21 A. They came and wanted me to explain the
- 22 details of what happened, all how I met him and
- 23 things like that.
- 24 Q. Did you tell them what happened?
- 25 A. Yes, ma'am.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 Q. Was your mother there at the school?

2 A. Yes, ma'am.

3 Q. After that did she question you about it?

4 A. No, ma'am.

5 Q. Did you tell her after you told the police?

6 A. Yes, ma'am.

7 Q. Have you talked to a lot of people about
8 this?

9 A. No, ma'am.

10 Q. How do you feel about talking to people
11 about it?

12 A. Uncomfortable.

13 Q. How does it make you uncomfortable,

14 Minor 2

15 A. Everything about it.

16 Q. If the police had not come there and asked
17 you, do you think that you would have ever told
18 anybody?

19 A. No.

20 Q. Are you happy that you told or not?

21 A. Yes, very.

22 Q. Why?

23 A. Because there's people -- to let people
24 know that there are people like him out there
25 who are after kids.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

83

1 Q. Minor 2 you said that you've described to
2 us that happened only happened one time. Did
3 anything different happen on other occasions?

4 A. No, ma'am.

5 MS. HERRING-LASH: Beg the court's
6 indulgence for a moment.

7 THE COURT: Certainly.

8 MS. HERRING-LASH: Those are all
9 the questions that I have.

10 THE COURT: You may cross-examine,
11 Mr. Curry.

12 MR. CURRY: Thank you very much, Your
13 Honor. Your Honor, may I approach the podium?

14 THE COURT: You may.

15 CROSS EXAMINATION

16 BY MR. CURRY:

17 Q. Mr. Barrow, I'm Eduardo Curry. I'm the
18 attorney for Pastor Tyrone Moore. How are you
19 today?

20 A. I'm fine.

21 Q. What grade you in?

22 A. Eleventh.

23 Q. Okay. You plan on going to college?

24 A. Yes, sir.

25 Q. Doing pretty well at school?

1 A. Yes, sir.

2 Q. Having a good time?

3 A. (Affirmative nod).

4 Q. Is that a "yes"?

5 A. Yes, sir.

6 Q. All right. I've got a question for you,
7 have you gone to see any psychologists or
8 sociologists about the incident?

9 A. No, sir.

10 Q. And -- I want to clear the record so that I
11 can get it straight. Now, you did speak to your
12 mother about this incident; didn't you?

13 A. Yes, sir.

14 Q. In fact, now you and I just talking, in
15 fact your mother asked you whether or not Pastor
16 Moore had touched you. Didn't she?

17 A. Yes, sir.

18 Q. Okay. And isn't it true, Minor 2 you
19 told your mother that Pastor Moore had not
20 touched you?

21 A. Yes, sir.

22 Q. Okay. All right. Okay. Now, when the
23 Assistant Solicitor asked you had you told
24 anybody about this, you told this jury 'no'.
25 Now, didn't you?

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

85

1 A. Yes, sir.

2 Q. Speak up now.

3 A. Yes, sir.

4 Q. Okay. But in fact you did tell your mother
5 that he hadn't touched you, didn't you?

6 A. After the fact that the police talked to
7 me.

8 Q. I want to ask you, did you tell her or
9 didn't you?

10 A. No, sir.

11 Q. You didn't tell her -- what?

12 A. What had happened.

13 Q. Okay. Did you tell her that he did not
14 touch you?

15 A. Yes, sir.

16 Q. Now, I want to get another thing clear.
17 Ms. Herring-lash asked you had anything else
18 happened on any other occasion and you said --
19 what?

20 A. No.

21 MR. CURRY: Your Honor, I want to
22 have something marked if I could for
23 identification purposes.

24 THE COURT: Sure.

25 COURT REPORTER: Defendant's Exhibit

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 1 for identification.

2 MR. CURRY: If you could staple it
3 together -- thank you. May I approach the
4 witness, Your Honor?

5 THE COURT: Yes.

6 CROSS EXAMINATION CONTINUED

7 BY MR. CURRY:

8 Q. I hand you what has been previously marked
9 as Defendant's Exhibit 1 for identification
10 purposes only. Do you recognize that?

11 A. (No verbal response).

12 Q. Is that your signature underneath, at the
13 bottom?

14 A. That's my signature, (affirmative nod).

15 Q. That's your signature?

16 A. (Affirmative nod).

17 Q. What about on page two, is that your
18 signature?

19 A. Yes.

20 Q. What about on page three, is that your
21 signature?

22 A. Yes.

23 Q. Now, in this statement -- that is your
24 signature, is that correct?

25 A. (Affirmative nod).

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

87

1 Q. "Yes"?

2 A. Yes, sir.

3 Q. All right. Now, I want you to read what
4 somebody wrote for you. Why don't you read that
5 right in the middle, you want to read that for
6 me? About how many times -- why don't you read
7 it out?

8 A. (Reading): "How many times do you remember
9 Pastor Moore doing this to you?"

10 Q. Read what your answer was, that somebody
11 wrote for you.

12 A. (Reading): "I remember four times. I know
13 it was more than that."

14 Q. Okay. All right, so today you're saying
15 that it had happened one time but you gave a
16 statement at some point where you said that it
17 happened numerous time. Is that correct?

18 A. I didn't understand what she was saying.

19 Q. I understand this is a scarey moment for
20 you and I -- am I correct?

21 A. No, sir.

22 Q. It's not a scarey moment for you?

23 A. No, sir.

24 Q. All right, then let's get down to it. You
25 have already testified that you stated that it

1 only happened once, from your testimony; is that
2 correct?

3 A. Sir?

4 Q. You said that this only happened once.

5 A. Yes, sir.

6 Q. Okay. All right, now that one time,
7 according to you, Pastor Moore reached inside
8 your pants and that he masturbated you until you
9 ejaculated. Is that correct?

10 A. Yes, sir.

11 Q. Okay. Did you tell somebody about that?

12 A. No, sir.

13 Q. Now, in your statement you stated that it
14 happened numerous times that he would come in,
15 numerous times, and masturbate you and you would
16 ejaculate. Is that correct?

17 A. Yes, sir.

18 Q. But you didn't tell the jury that on
19 direct, did you?

20 A. (No verbal response).

21 Q. Did you?

22 A. No, sir.

23 Q. Okay. All right. Mr. Barrow, why?

24 A. Why what?

25 Q. Why wouldn't you have told them all the

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

89

1 times that you said it occurred ---

2 A. I didn't understand, how she was putting
3 her question.

4 Q. Well, you've talked to the solicitor
5 before; haven't you?

6 A. Yes.

7 Q. This is not the first time that you've met
8 here, today, is that correct?

9 A. Yes, sir.

10 Q. And she has gone over all the information
11 that you gave to her, am I correct?

12 A. Yes, sir.

13 Q. But you say that you don't understand her
14 today?

15 A. (Negative gesture).

16 Q. Is that a "no"?

17 A. (Affirmative nod), -- "No, sir."

18 Q. Okay. Did you understand the police when
19 they were asking you at this particular time
20 that you gave this statement?

21 A. Yes, sir.

22 Q. You understood them then?

23 A. (Affirmative nod).

24 Q. Yes?

25 A. Yes, sir.

1 Q. Okay. Now, according to your statement you
2 was going every Friday night and every weekend
3 to Pastor Moore's house. Am I correct?

4 A. Just about, yes.

5 Q. And if you were going every weekend, who
6 was letting you go over there?

7 A. My mom.

8 Q. All right. You weren't ever spending any
9 time with your mother?

10 A. Yes.

11 Q. It had to be during the weekdays, right?

12 A. Yes.

13 Q. The weekends you wanted to go to Pastor
14 Moore's house, right?

15 A. Some weekends I didn't go.

16 Q. Well, ---

17 A. You're saying that like I went every
18 weekend.

19 Q. Well, you said that you went every Friday
20 night.

21 A. I did not say that.

22 Q. Okay. All right.

23 MR. CURRY: May I continue to
24 approach, Your Honor?

25 THE COURT: Yes, sir.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

91

1 CROSS EXAMINATION CONTINUED

2 BY MR. CURRY:

3 Q. (Tendering), to each question I want you to
4 read the answer.

5 A. (Reading): "How often do you go to Pastor
6 Moore's house?"

7 Q. And what did you say?

8 A. "Every Friday night and spent the weekend."
9 I did not go every Friday night, though.

10 Q. All right. So now we're established that
11 at least one thing that you said in this
12 statement is not true; is that correct?

13 A. Yes.

14 Q. Was that a "yes"?

15 A. (Affirmative nod).

16 Q. I can't hear you. "Yes"?

17 A. (Affirmative nod), yes.

18 Q. Okay. All right. How would I know that
19 anything else that you said in this statement is
20 true, Mr. Barrow?

21 A. You don't.

22 Q. That's exactly right. That's exactly right
23 and I appreciate you answering ---

24 THE COURT: I am going to ask you to
25 confine your questions to questions, sir. You

1 can make your arguments in closing.

2 MR. CURRY: That's fine, Your Honor.

3 THE COURT: Please don't argue with
4 the witness.

5 MR. CURRY: That's fine, Your Honor.

6 CROSS EXAMINATION CONTINUED

7 BY MR. CURRY:

8 Q. Now, when you were at the house of Pastor
9 Moore was there anybody else there?

10 A. There were, (affirmative nod).

11 Q. Who was there?

12 A. There was different people every time that
13 I went.

14 Q. Right. What about his family members? His
15 wife, would his wife be there?

16 A. Yes, sir.

17 Q. What about his oldest son, Antwan? Would
18 Antwan be there?

19 A. Yes, sir.

20 Q. What about his nephew, Cardova -- Cadera.
21 Would Cadera be there?

22 A. Yes, sir.

23 Q. What about his daughter, Tierra. Would
24 Tierra be there?

25 A. Yes, sir.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

93

1 Q. What about -- he has a set of twins, right?

2 A. (Affirmative nod).

3 Q. What were their names?

4 A. Tyrece and Tyrone.

5 Q. Would that be there?

6 A. Yes, sir.

7 Q. Would any other people be there with you
8 when you'd be there every Friday night or every
9 weekend?

10 A. Yes, sir.

11 Q. Who might that be, do you recall?

12 A. No, sir.

13 Q. You said that you didn't go to church, how
14 did you get to Full Word when you were thirteen,
15 fourteen, thirteen?

16 A. With my aunt.

17 Q. They have a car, right?

18 A. (Affirmative nod).

19 Q. Is that right?

20 A. Yes, sir.

21 Q. Do you have a car now?

22 A. No, sir.

23 Q. How would you go to church if you were to
24 go?

25 A. With my mama.

- 1 Q. Your mama doesn't go to Full Word anymore;
2 is that correct?
- 3 A. No, sir. (Affirmative nod).
- 4 Q. Do you live with your mother?
- 5 A. Yes, ma'am -- yes, sir.
- 6 Q. How often do you live with her?
- 7 A. Every day.
- 8 Q. So your mother gets up, goes to church and
9 does not take you with her?
- 10 A. She doesn't go to church.
- 11 Q. She doesn't go to church either?
- 12 A. (Negative gesture).
- 13 Q. All right. What about your aunt?
- 14 A. She does.
- 15 Q. You were going to Full Word with your aunt,
16 is that correct?
- 17 A. Yes, sir.
- 18 Q. Does your aunt go to church every day?
- 19 A. No, sir.
- 20 Q. Does she go to church every weekend?
- 21 A. Yes, sir.
- 22 Q. Do you go to church with her?
- 23 A. No, sir.
- 24 Q. Has she asked you to come to church with
25 her?

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

95

1 A. Yes, sir.

2 Q. But any way that you'd go to church would
3 be in a car, is that correct?

4 A. Yes, sir.

5 Q. And you don't own a car, do you?

6 A. No, sir.

7 Q. Have you got a driver's license?

8 A. No, sir.

9 Q. Now, just one final set of things.

10 MR. CURRY: Your Honor, may I
11 continue to approach?

12 THE COURT: Yes, sir.

13 CROSS EXAMINATION CONTINUED

14 BY MR. CURRY:

15 Q. I hand you what has been marked as State's
16 Exhibits 3 and 5. You recall those, because you
17 identified them.

18 A. Yes, sir.

19 Q. As evidence, right?

20 A. Yes, sir.

21 Q. Now, you -- move to strike. It won't be
22 your testimony that you were watching dirty
23 movies or any kind of that stuff at Pastor
24 Moore's house, would it?

25 A. No.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 Q. No sexually explicit movies, correct?

2 A. (Negative gesture) -- No, sir.

3 Q. Just like video game and whatever movies
4 that had came out, is that correct?

5 A. Yes, sir.

6 Q. All right. And those movies were
7 appropriate, from what you knew, correct?

8 A. Yes, sir.

9 Q. All right. Your testimony is not going to
10 be that anything happened on the pool table or
11 any of that stuff, is that correct?

12 A. Not on the pool table, (negative gesture).

13 Q. The testimony is only that something
14 happened one time on a couch?

15 A. (No verbal response).

16 Q. Is that correct?

17 A. Yes, sir.

18 MR. CURRY: Beg the court's
19 indulgence.

20 THE COURT: Certainly.

21 MR. CURRY: Please answer any
22 questions for Ms. Herring-Lash.

23 THE COURT: Redirect?

24 MS. HERRING-LASH: Your Honor, may
25 we approach?

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

97

1 THE COURT: Sure.

2 (SIDEBAR)

3 REDIRECT EXAMINATION

4 BY MS. HERRING-LASH:

5 Q. Minor 2 when Mr. Curry asked you if at
6 some point your mother asked you about this and
7 you told her that nothing had happened. Is that
8 true?

9 A. Yes, ma'am.

10 Q. Why didn't you tell her?

11 A. I didn't want her to know that it happened.

12 Q. Was it after that that the police
13 approached you at your school?

14 A. Yes, ma'am.

15 Q. And after the police talked with you, did
16 you then tell her 'yes', that it had happened?

17 A. Yes, ma'am.

18 Q. Have you still got a copy of that statement
19 up there?

20 A. Um-humm.

21 Q. I am going to ---

22 MS. HERRING-LASH: May I approach
23 the witness, Your Honor?

24 THE COURT: Certainly.

25 REDIRECT EXAMINATION CONTINUED

1 BY MS. HERRING-LASH:

2 Q. I am going to show you a copy of the
3 statement that Mr. Curry just showed you and --
4 can you tell us how old you were when you were
5 questioning about that?

6 A. Thirteen.

7 Q. What was the date?

8 A. (Reviewing statement).

9 Q. Do you want me -- read right there,
10 "Statement is given..." -- what is that date
11 that the statement was given?

12 A. December 11, 2006.

13 Q. That was several years ago?

14 A. Yes, ma'am.

15 Q. As Mr. Curry pointed out, in this statement
16 you said that Mr. Moore had done something to
17 you on more than one occasion?

18 A. Yes, ma'am.

19 Q. Do you remember today the details of the
20 other occasions?

21 A. No, ma'am.

22 Q. Was it the same thing or something
23 different?

24 A. Same thing.

25 Q. He also asked you about your statement

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

99

1 about can you describe how he touched you.

2 MS. HERRING-LASH: May I approach
3 the witness, Your Honor?

4 THE COURT: You may.

5 REDIRECT EXAMINATION CONTINUED

6 BY MS. HERRING-LASH:

7 Q. This question right here, what was the
8 question and the answer?

9 A. (Reading): "While I was sleeping he would
10 put his hands down my pants..."

11 Q. What else does it say?

12 A. --- massaged my privates.

13 Q. Excuse me?

14 A. He massaged my privates.

15 Q. Are those the words that are written there?

16 A. (No verbal response).

17 Q. What words are written there?

18 A. That he jacked me off.

19 Q. Jacked you off?

20 A. (Affirmative nod).

21 Q. And you've changed those words today?

22 A. Yes, ma'am.

23 Q. Why?

24 A. Because I was uncomfortable saying that..

25 Q. You need to speak into the microphone.

1 A. Because I was uncomfortable saying that.

2 Q. Is it, Minor 2 was it easier to talk
3 with these two officers in the privacy of your
4 school room than it is to talk to this jury here
5 today?

6 A. Yes.

7 Q. Are you nervous?

8 A. Not too much.

9 Q. What makes it hard to talk about this?

10 A. The number of people in here.

11 Q. What?

12 A. Number of people in here.

13 Q. The number of people?

14 A. (Affirmative nod).

15 Q. You talked about not going to church
16 anymore. Why don't you go to church anymore,

17 Minor 2

18 A. I guess I just -- because of this, you
19 know. I guess I just stopped going because I
20 felt like -- well, if a person like this is
21 capable of this, I will just stay away from
22 everything.

23 Q. When you tell that this happened, are you
24 sure that this happened to you?

25 A. Yes, ma'am.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

101

1 Q. And are you telling us that you're sure
2 that this happened to you?

3 A. Yes, ma'am.

4 Q. Thank you.

5 THE COURT: Recross?

6 RECROSS EXAMINATION

7 BY MR. MOORE:

8 Q. Mr. Barrow, you were at school when the
9 police came; is that correct?

10 A. Yes, sir.

11 Q. You didn't know why they were coming, did
12 you?

13 A. I had a feeling.

14 Q. You had a feeling why the police would
15 come?

16 A. (Affirmative nod).

17 Q. It wasn't scary talking to them?

18 A. No, sir.

19 Q. Did you talk to them by yourself?

20 A. Yes, sir.

21 Q. Did you write that statement or did
22 somebody write the statement for you?

23 A. They were writing it.

24 Q. They were writing it? "They" who?

25 A. The police.

1 Q. When your mother asked whether or not Mr.
2 Moore had touched you, you said 'no' at that
3 time', correct?

4 A. It was before that time.

5 MR. CURRY: Okay. All right. Thank
6 you.

7 THE COURT: You may come down, sir.

8 (WITNESS STEPS DOWN)

9 THE COURT: Call your next witness.

10 MR. NEELY: The State calls Elcorese
11 Barrow Thomas.

12 (WITNESS TAKES STAND)

13 ELCORESE BARROW THOMAS, being duly
14 sworn to tell the truth, the whole truth and
15 nothing but the truth, testified, as follows:

16 DIRECT EXAMINATION

17 BY MR. NEELY:

18 Q. You may need to speak a little more into
19 that microphone so that we can all hear you.

20 A. This better?

21 Q. A little bit better.

22 A. Okay.

23 Q. If you could speak a little bit louder, try
24 that.

25 A. "Testing".

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

103

- 1 Q. May I call you Miss Thomas?
- 2 A. Yes, sir.
- 3 Q. Ms. Thomas, where do you currently live?
- 4 A. I live in Goose Creek, South Carolina.
- 5 Q. Who lives with you there?
- 6 A. My husband and children.
- 7 Q. How many children do you have?
- 8 A. I have three children.
- 9 Q. Is one of your kids Minor 2?
- 10 A. Yes.
- 11 Q. Are you employed?
- 12 A. Yes.
- 13 Q. How long have you been married?
- 14 A. A little over a year.
- 15 Q. Do you currently attend church?
- 16 A. I visit, I don't have a membership standing
- 17 anywhere.
- 18 Q. What was your last church where you were a
- 19 member?
- 20 A. Full Word Ministries.
- 21 Q. When did you start attending there?
- 22 A. Around the fall of 2004.
- 23 Q. Do you recall why you chose that particular
- 24 church?
- 25 A. I was invited to visit and partake in the

1 Bible study.

2 Q. Did you do that?

3 A. Yes.

4 Q. Was that enjoyable or beneficial to you?

5 A. Yes.

6 Q. Were you active in the church at that time?

7 A. Not right at that time. I had officially
8 -- I don't think I'd joined particular ministry
9 at that time.

10 Q. At some point did you?

11 A. Yes.

12 Q. Which ministry or activity did you
13 participate in?

14 A. First it was the choir and then secondly I
15 volunteered in the office.

16 Q. Okay. Did the kids go to church with you?

17 A. Yes.

18 Q. Did Minor 2 participate in the church?

19 A. He went to Bible study and prayer and
20 church service, he wasn't on any particular
21 ministry.

22 Q. At some point did you have contact with the
23 pastor?

24 A. Yes.

25 Q. Was there an incident where you took

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

105

1 Minor 2 to talk to the pastor?

2 A. Yes.

3 Q. Would you tell the jurors about that?

4 A. Okay, as the children were getting older,
5 as a single parent I noticed that there were
6 some issues that they were having in school with
7 bullies and just trying to fit in as they were
8 getting into middle school. I was concerned, so
9 I thought that if they spoke to the Pastor that
10 he would give them some words of encouragement,
11 anger management and what to do when you're in a
12 tough situation. That's where the counseling
13 sessions began.

14 Q. Was that something that the pastor invited?

15 A. No. On occasion you would hear about it
16 but I requested it because I thought that he --
17 he was counseling other youths and I thought
18 that it might be a help for my family also.

19 Q. How did Minor 2 contact with the pastor
20 change, if at all, after those sessions?

21 A. Well, he began going to visit with the
22 other children on the weekends. They would --
23 he would go on different trips with the other
24 kids but predominately Minor 2 was going off to
25 their house more by himself than with the entire

1 family.

2 Q. How would he get there?

3 A. Someone from the church would take him
4 there.

5 Q. At that time how did you feel about his
6 going to the pastor's house?

7 A. I was excited. I wanted him to see more
8 positive role models in action, I wanted him to
9 be around positive young boys who were trying to
10 do the right thing, deal with everyday life as a
11 Christian.

12 Q. Did there ever come a time when the pastor
13 would buy or bought Minor 2 any gifts?

14 A. Yes.

15 Q. Would you tell the jury about that?

16 A. As a single parent, I didn't have every-
17 thing; but I wanted to make sure that they had at
18 least what they needed. He bought Minor 2 a
19 couple of pairs of tennis shoes around
20 Christmastime when they were out shopping
21 around, whatnot, and he bought Minor 2 a very
22 expensive PlayStation game; which I was
23 impressed by that, but at the same time I
24 thought -- well, I thought that was very nice.
25 T-shirts, jeans, different things like that.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

107

1 I just thought that he was trying to help him,
2 motivate him.

3 Q. Did you see anything wrong with that?

4 A. No, not initially.

5 Q. Was there ever a time when you questioned
6 Minor 2 about what took place at the pastor's
7 house?

8 A. Yes.

9 Q. Without telling me what the response was,
10 what was your reaction to his response?

11 A. Shock.

12 Q. What did you do as a result of that?

13 A. I was so angry with Minor 2 that I went to
14 report him to the Pastor. I went to tell on him
15 because they -- tell him how -- I thought he
16 disrespected me as a parent, so I thought that
17 if I told him that he would straighten him out.

18 Q. Did you do that?

19 A. I do.

20 Q. Tell me about that, what happened when you
21 did that?

22 A. I received another shocking response from
23 the pastor.

24 Q. What was that?

25 A. He laughed and he said, 'Well, he shouldn't

1 have said that to you but it is true.'

2 Q. Okay. Was there a time when Minor 2
3 behavior changed about going to the pastor's
4 house?

5 A. His behavior towards me changed. I felt
6 like we weren't as close as we used to be.
7 Minor 2 used to be somewhat sort of babyish and
8 we were close and he -- when he didn't -- he
9 used going there as his escape because we
10 weren't getting along, so to speak, and I just
11 couldn't understand why. It was gradual but
12 sudden.

13 Q. What was his disposition towards you and
14 with the other members of your family?

15 A. Frustration. From -- not angry but
16 distant. I just couldn't figure out where that
17 was all coming from and that's when I started
18 questioning him more about, you know, what was
19 going on with him.

20 Q. Well, let me ask you this, did he appear
21 angry towards you?

22 A. Oh, yeah.

23 Q. Why do you think that was, or why were you
24 thinking at that time?

25 A. At the time I just couldn't figure out what

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

109

1 was wrong between he and I. It was just like he
2 was going through some teenage rebellion or
3 something. I just couldn't figure out what was
4 wrong with him.

5 Q. Would he get along with the family or was
6 the interaction -- was there family tension?

7 A. He did but he still had that sort of
8 agitated demeanor. You know, 'don't ask me
9 this, don't', you know, he just had a negative
10 demeanor. It didn't seem to have any -- we at
11 home didn't understand how could you be so
12 frustrated when you have the joy of the Lord.
13 You know, I just couldn't figure out why he was
14 acting that way.

15 Q. Well, let me ask this. Were you ever
16 called to Minor 2 school?

17 A. Yes.

18 Q. What was going on when that happened?

19 A. The principal called me and asked me to
20 come by the school because the police wanted to
21 speak with Minor 2 and myself.

22 Q. At that time did you know what the police
23 wanted to talk to you guys about?

24 A. Not exactly. I just thought he'd got in
25 some sort of trouble at school.

1 Q. What happened when you got there?

2 A. Well, when I got there the principal sat me
3 in one room and let me know that they were
4 coming. When they arrived, we all sat in the
5 conference room and they said that they wanted
6 to talk to me about an investigation that was
7 going on that may or may not have involved my
8 son.

9 Q. Did the police talk with you about some
10 type of investigation?

11 A. Well, -- yeah.

12 Q. Did they speak with **Minor 2** about it?

13 A. Yes.

14 Q. Were you present when the investigators
15 were talking to **Minor 2** about the incident?

16 A. No, not when he gave his statement to them.

17 Q. At some point did you -- I assume that you
18 left the room when he gave a statement?

19 A. Yes.

20 Q. At some point did he return to that room?

21 A. Yes.

22 Q. Did the police then talk to you about what
23 **Minor 2** relayed or said ---

24 A. Yes.

25 Q. What was your reaction when that happened?

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

111

1 A. Shock. I was just -- I really didn't have
2 much of reaction. I really was just in --
3 upset. I felt like my entire world just fell
4 apart because I prided myself on trying to do my
5 best to take care of my children and protect
6 them. For me to bring them to a place where I
7 thought that there was safety, there was family,
8 there was love, that everyone cared about each
9 other, to find out something like that happened,
10 I was just floored. I didn't think that could
11 happen in a church.

12 Q. Well, let me ask this, did there come a
13 time when **Minor 2** went into details about what
14 actually happened, with you?

15 A. Yes.

16 Q. Did he tell you exactly what happened or
17 did he just kind of respond to your ---

18 MR. CURRY: Objection, Your Honor.

19 THE COURT: What is the objection?

20 He is not asking yet what he said.

21 MR. CURRY: All right, Judge. I'll
22 withdraw my ---

23 THE COURT: Listen to the question,
24 please, and answer only the question. Rephrase
25 your question.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 MR. NEELY: Thank you, Judge.

2 DIRECT EXAMINATION CONTINUED

3 BY MR. NEELY:

4 Q. Did he go into details about what happened
5 or did he give you a brief overview?

6 A. He just wanted - he told me that he wanted
7 to ---

8 Q. Don't tell me what he said.

9 A. All right.

10 Q. I just want to know if it was a full
11 conversation or just something brief.

12 A. Just something brief.

13 Q. Did you press him about the details?

14 A. No. I thought it was probably too painful.

15 Q. Can you tell the jury about his disposition
16 now?

17 A. After that everything changed. He wanted
18 to take care of me, he just wanted to make sure
19 that I was okay. We did some things together,
20 just he and I, to spend some time together.
21 Everything just changed, like immediately.

22 Q. Has he been to any counseling?

23 A. We initially started going to visit People
24 Against Rape in Moncks Corner. Over time, we
25 just did some things together because the direct

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

113

1 referrals that they were giving us I couldn't
2 really afford to see that he had regular
3 scheduled counseling. We just tried
4 to spend some time. We sat and we talked
5 with each other, just to kind of see where
6 everybody's feelings were and how that they were
7 getting around after the -- (pause).

8 Q. Ms. Thomas, did there come a time when
9 you heard the defendant respond to these
10 allegations?

11 MR. CURRY: Objection, Your Honor.

12 THE COURT: Approach.

13 MR. CURRY: Judge, may I approach?

14 THE COURT: I invited you to
15 approach.

16 MR. CURRY: Yes, sir. I'm sorry.

17 (SIDEBAR)

18 THE COURT: The objection based on
19 hearsay is overruled. You may proceed.

20 MR. NEELY: Thank you, Judge.

21 DIRECT EXAMINATION CONTINUED

22 BY MR. NEELY:

23 Q. Did there come a time when you heard the
24 defendant respond to these allegations?

25 A. Yes.

1 Q. Would you tell the jury what was said?

2 MR. CURRY: I object to ---

3 THE COURT: You just did, Mr. Curry.
4 You don't have to object but once. The
5 objection is preserved to this question. It's
6 overruled on hearsay.

7 THE WITNESS: He said, "I'm
8 human."

9 DIRECT EXAMINATION CONTINUED

10 BY MR. NEELY:

11 Q. And what happened after you heard that?

12 A. I promptly left the premises.

13 MR. NEELY: Those are all the
14 questions we have.

15 THE COURT: You may cross-examine,
16 Mr. Curry.

17 MR. CURRY: Thank you very much, Your
18 Honor.

19 CROSS EXAMINATION

20 BY MR. CURRY:

21 Q. Ms. Thomas, I am Eduardo Curry and I
22 represent Pastor Tyrone Moore. Good morning.

23 A. Good morning.

24 Q. You're the mother of Minor 2 is
25 that correct?

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

115

1 A. Yes.

2 Q. You and Minor 2 had been having 'growing
3 pains', would that be an accurate statement?

4 A. Yes.

5 Q. In fact, Minor 2 didn't even want to be
6 with you during Mother's Day, did he?

7 A. Correct.

8 Q. That you'all would get into arguments and
9 you would get angry or he would get angry when
10 you tried to discipline him; is that correct?

11 A. Yes.

12 Q. How old was Minor 2 during that time?

13 A. I'm sorry?

14 Q. How old was Minor 2 during that time?

15 A. I'd say between eleven and twelve.

16 Q. Going into the teenage years, would you say
17 that to be about right?

18 A. Yes.

19 Q. Sometimes he'd be smelling himself? You
20 know, that's the old world talk. Am I correct?

21 A. Yes.

22 Q. Minor 2 was growing, is that correct?

23 A. Yes.

24 Q. Any facial hair?

25 A. No.

1 Q. Was his voice getting deeper?

2 A. Not at that time.

3 Q. Was he trying to be independent?

4 A. No.

5 Q. In fact, you and Minor 2 had a
6 conversation once where he called you a "loser",
7 didn't he?

8 A. Yes.

9 Q. That made you mad, didn't it?

10 A. It did.

11 Q. In fact when you went to the pastor to ask
12 him about the statement where Minor 2 said it
13 was not any of your business, you used the words
14 that you were "pissed off", weren't you?

15 A. I was.

16 Q. You worked for Pastor Moore, is that
17 correct?

18 A. Yes.

19 Q. Did you have any problems working with
20 Pastor Moore?

21 A. He wasn't there predominant of the time
22 that I was there. I was an administrative
23 assistant in the office, so I didn't spend the
24 entire time that I was there with him.

25 Q. Okay. So I ask you the question again,

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

117

1 did you have any problems working for him?

2 A. No.

3 Q. Now, how often would your son go to Pastor
4 Moore's house?

5 A. I'd say probably about maybe every other
6 weekend, I guess depending on what was going on.
7 About every other weekend.

8 Q. He stayed there the whole entire weekend?

9 A. Not always.

10 Q. How would he go then, what time during the
11 weekend would he go?

12 A. He may leave on Friday evening and we would
13 see each other at church on Sunday morning and
14 then he would come home with us.

15 Q. Did you call him while he was at Pastor
16 Moore's house?

17 A. No, I didn't really call him much.

18 Q. Okay. How long did this every other
19 weekend, how long did that go on?

20 A. I'd say for close to a year.

21 Q. Close to a year?

22 A. (Affirmative nod), I'd say that.

23 Q. So fifty-two weeks, about twenty-seven of
24 those weeks he'd be at Pastor Moore's house,
25 according to your testimony today?

- 1 A. That sounds accurate.
- 2 Q. Did you ever have a concern that he was
- 3 going to the house every other weekend?
- 4 A. No.
- 5 Q. No?
- 6 A. I thought he was safe.
- 7 Q. Okay. All right. Did you ever have any
- 8 problems with, you know, -- you said that he had
- 9 bought him a couple pairs of tennis shoes. Did
- 10 you ask him to return the tennis shoes?
- 11 A. No.
- 12 Q. What about this PSC game. Did you say
- 13 'Son, that's too expensive of a gift. Give it
- 14 back to Pastor'?
- 15 A. I don't think that I did.
- 16 Q. Okay. All right. In fact, you received
- 17 gifts, did you not?
- 18 A. I'm sorry, I don't understand your
- 19 question.
- 20 Q. You received the gifts into your house?
- 21 A. Yes.
- 22 Q. Pastor Moore spoke to you about your son
- 23 hanging out with the wrong crowd, didn't he?
- 24 A. (Affirmative nod), I'm sure.
- 25 Q. Is that a "yes"?

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

119

1 A. Yes.

2 Q. How did that make you feel?

3 A. I just thought it was wisdom speaking.

4 I didn't think anything was wrong with it.

5 Q. Did it ever make you have a problem?

6 A. Him saying that he was hanging out with the
7 wrong crowd?

8 Q. Yes, with Minor 2

9 A. I just don't understand. Can you, I guess,
10 rephrase the question because I don't under-
11 stand what you mean.

12 Q. All right, I will.

13 A. Okay.

14 Q. When Pastor Moore spoke to you about
15 Minor 2 hanging out with the wrong crowd,
16 did you think that he was overstepping his
17 authority?

18 A. No, we accepted him as a father figure in
19 his life, so I didn't think he was overstepping
20 his bounds or anything.

21 Q. All right. Did you ask Minor 2 whether or
22 not Pastor Moore touched him?

23 A. When?

24 Q. At any time.

25 A. Before the -- well, after the -- yes, I

1 did.

2 Q. And what did he tell you?

3 A. He wanted to speak to the police.

4 Q. He didn't tell you 'no'?

5 A. When I -- I guess I should rephrase that.

6 When I told him about -- when I told him about
7 the arrest, I did ask him and he took -- he shut
8 down. I asked him if he wanted to talk about it
9 and he said 'no.'

10 Q. So he never told you 'no', that he didn't
11 touch him?

12 A. No.

13 MR. CURRY: Beg the court's
14 indulgence.

15 THE COURT: Certainly.

16 MR. CURRY: I have no further
17 questions of this witness.

18 THE COURT: Redirect?

19 MR. NEELY: Just a moment.

20 THE COURT: Certainly.

21 MR. NEELY: No questions, Your Honor.

22 THE COURT: Okay. Ladies and
23 Gentlemen, at this point we will take a recess
24 for about ten minutes and let you go to your
25 jury room. Do not begin your deliberations,

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

121

1 don't discuss the case. We'll be with you
2 shortly.

3 (JURY OUT @ 11:07 A.M.)

4 THE COURT: Before we had a sidebar
5 concerning the objection that Mr. Curry timely
6 made concerning the questions of the solicitor.
7 There was an alleged statement and at the
8 sidebar we discussed basically the defendant's
9 right not to say anything. Of course, I agree
10 with that. He has not said anything and the
11 court does not consider that to invoke that
12 aspect of it. I don't think that it applies to
13 that particular situation.

14 The next question was, was it hearsay.
15 Under 801(d)(2) it clearly states that when
16 there is some sort of admission against persons
17 or a party, when it is being offered against
18 that person, it is not hearsay as defined by
19 801(d)(2). For that reason, I overruled the
20 hearsay objection. Counsel then raised the
21 issue about probative value, the prejudice
22 outweighing the probative value. Because the
23 court found it to be relevant, I did not think
24 it was necessary to go into more re-analyses. I
25 don't think that there was -- I think for the

1 purposes of the record that clearly the
2 statement, the setting, the inference to be
3 drawn from that, there is an inference which the
4 court can conclude something was done. There is
5 an inference to support that he didn't do
6 anything. So I don't think that it really
7 -- I think that's a fair assessment that the
8 jury can make, can be argued. I think the
9 probative value of the statement clearly
10 outweighs any prejudice to the defendant. It
11 goes to the heart of this case, it is germane
12 and pertinent and the court will allow it.

13 MR. CURRY: Thank you, Your Honor.

14 THE COURT: Anything further from the
15 State?

16 MS. HERRING-LASH: Not at this
17 point.

18 THE COURT: Anything further from the
19 defense?

20 MR. CURRY: Nothing.

21 THE COURT: We will be at-ease for
22 about ten minutes. Your next witness is how
23 long?

24 MS. HERRING-LASH: The next witness
25 is probably fairly short. It's Minor 1 mother.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

123

1 THE COURT: Okay.

2 MS. HERRING-LASH: What time do you
3 plan on breaking ---

4 THE COURT: I have a meeting today
5 with someone, Mr. Fashion and Dan Davis, at
6 12:00, a lunch meeting, so I need to try to work
7 that in if I can.

8 MS. HERRING-LASH: I just have a
9 witness coming from Colleton and I wanted to
10 make sure to tell them.

11 THE COURT: I would say that we would
12 be down from about 12:00 to about 1:45.

13 MS. HERRING-LASH: Thank you.

14 (BRIEF RECESS)

15 (DEFENDANT PRESENT)

16 THE COURT: Is the defense ready?

17 MR. CURRY: Yes, Your Honor.

18 THE COURT: State ready?

19 MS. HERRING-LASH: Yes, sir.

20 THE COURT: Let the record reflect
21 that Mr. Moore is present. Bring in our jury,
22 please.

23 (JURY IN @ 11:19 A.M.)

24 THE COURT: Thank you, Ladies and
25 Gentlemen. We are now ready to continue.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 Solicitor, you may call your next witness.

2 MS. HERRING-LASH: The State calls

3 Minor 1

4 (WITNESS TAKES STAND)

5 Minor 1 being duly sworn to
6 tell the truth, the whole truth and nothing but
7 the truth:

8 DIRECT EXAMINATION

9 BY MS. HERRING-LASH:

10 Q. What is your date of birth, Minor 1

11 A. .

12 Q. How old are you now?

13 A. Fourteen.

14 Q. Where do live?

15 A. Summerville.

16 Q. Who do you live with now?

17 A. My parents.

18 Q. Who are they?

19 A. Greg Clark and Carla Clark.

20 Q. Do you have any brothers or sisters?

21 A. Yes.

22 Q. Who are they?

23 A. Laya and Ken Smalls (phonetic).

24 Q. And is Mr. Clark your stepfather?

25 A. (Affirmative nod), stepfather.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

125

- 1 Q. Where do you go to school, **Minor 1** .
- 2 A. I am going to Summerville High School this
- 3 year.
- 4 Q. Will that be your first year of high
- 5 school?
- 6 A. Yes, ma'am.
- 7 Q. So what grade will you be in?
- 8 A. I will be in the ninth grade.
- 9 Q. Where did you go last year?
- 10 A. I went -- I went to Alston Middle School
- 11 last year.
- 12 Q. Do you like school?
- 13 A. Yes, ma'am.
- 14 Q. And where do you go to church now?
- 15 A. I go to Faith Assembly of God.
- 16 Q. Where is that?
- 17 A. I don't know.
- 18 Q. You just go with your mom and stepfather?
- 19 A. Yes, ma'am.
- 20 Q. Before that did you ever go to Full Word
- 21 Ministries?
- 22 A. Yes, ma'am.
- 23 Q. And who was your pastor there?
- 24 A. Tyrone Moore.
- 25 Q. Did you mother go there also?

1 A. Yes, ma'am.

2 Q. Did you get to know Pastor Moore from going
3 there?

4 A. Yes, ma'am, I got to know him.

5 Q. How did you get to know him?

6 A. I would go to his house sometimes.

7 Q. How did you end up going to his house?

8 A. I would either leave with him from the
9 church or either my parents would take me.

10 Q. At the time when you first started going
11 there, was your mother married to your
12 stepfather?

13 A. Not at that time but a little while after
14 that then she got married to him.

15 Q. And did you like going to the pastor's
16 house at first?

17 A. Yes, ma'am.

18 Q. What would you do there?

19 A. I would hang out with him. We'd do -- we
20 played board games and did a lot of stuff,
21 activities.

22 Q. I think that the jury has seen the pictures
23 of the games. Showing State's Exhibit 4, is
24 that what you're talking about, the games?

25 A. Yes, ma'am.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

127

1 Q. Did you like playing games?

2 A. Yes, ma'am.

3 Q. Who would be there when you'all would play?

4 A. It would be me, Tyrone Moore and some other
5 people that was there.

6 Q. And what about his family, who was in his
7 family?

8 A. His wife and his kids.

9 Q. They stayed there, they lived there?

10 A. Yes, ma'am.

11 Q. You said that you would get picked up from
12 the church by the pastor?

13 A. Yes, ma'am.

14 Q. Would you spend nights or weekends or what
15 did you do?

16 A. I'd spend the night and sometimes the
17 weekend.

18 Q. How would you get back to your mom's house?

19 A. They would come and get me.

20 Q. To the pastor's house?

21 A. Yes, ma'am.

22 Q. And when you spent the night there, where
23 would you sleep?

24 A. I would sleep in the twins' room or either
25 in the family room.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 Q. What -- where was the family room?

2 A. It was -- as soon as you walked upstairs it
3 would be the first room.

4 Q. So the family room was upstairs?

5 A. Yes, ma'am.

6 Q. Where -- do you know what a master bedroom
7 is?

8 A. It was right downstairs.

9 Q. So the master bathroom was downstairs?

10 A. Yes, ma'am.

11 Q. I want to show you what has been admitted
12 into evidence as State's Exhibit 1, behind you.
13 What is that a picture of, Minor 1

14 A. The couch in the living room.

15 Q. You'd sleep there sometimes?

16 A. Yes, ma'am.

17 Q. Would you sometimes fall asleep on the
18 couch?

19 A. I would fall asleep on the couch,
20 (affirmative nod).

21 Q. Why would that be?

22 A. Being up late.

23 Q. What would you be doing to be up late?

24 A. We'd -- I'd either be watching TV or I'd be
25 playing with my friends.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

129

1 Q. Would Pastor Moore be up there also?

2 A. Yes, ma'am.

3 Q. Did there come a time that something
4 happened that made you feel uncomfortable?

5 A. Yes, ma'am.

6 Q. Do you know when that was?

7 A. No, ma'am.

8 Q. Do you know about how old you were?

9 A. No, ma'am.

10 Q. But it was when you were at his house?

11 A. Yes, ma'am.

12 Q. Where were you?

13 A. I was in there.

14 Q. If you would -- this is a pointer.

15 MS. HERRING-LASH: May I approach
16 the witness?

17 THE COURT: You may.

18 DIRECT EXAMINATION CONTINUED

19 BY MS. HERRING-LASH:

20 Q. If you push that button you can point up
21 there. Can you show us where you were?

22 A. My head would be on the arm of the chair
23 and I would be going that way.

24 Q. When that happened, were you laying on your
25 back or your stomach or your side?

- 1 A. I was laying on my back.
- 2 Q. What happened?
- 3 A. I woke up out my sleep because I was --
- 4 (pause). I felt uncomfortable.
- 5 Q. What did you do?
- 6 A. I thought someone was touching my private
- 7 area.
- 8 Q. When you woke up, was someone touching your
- 9 private area?
- 10 A. Yes, ma'am.
- 11 Q. Who was that?
- 12 A. Tyrone Moore.
- 13 Q. Do you see Tyrone Moore in this courtroom?
- 14 A. Yes, ma'am.
- 15 Q. Can you describe him to the jury? Today,
- 16 what does he have on?
- 17 A. He have on what he be wearing to service.
- 18 Q. Today?
- 19 A. Yeah.
- 20 Q. Can you describe it?
- 21 A. Not really.
- 22 Q. Well, what color is his jacket today?
- 23 A. Black.
- 24 Q. And does he have a tie on?
- 25 A. Yes, ma'am.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

131

1 Q. What color is his tie?

2 A. I can't tell.

3 Q. Does it have designs on it?

4 A. Yes, ma'am.

5 MS. HERRING-LASH: Let the record
6 reflect that the victim has identified the
7 Defendant.

8 THE COURT: It so reflects.

9 DIRECT EXAMINATION CONTINUED

10 BY MS. HERRING-LASH:

11 Q. So you woke up and what was Tyrone Moore
12 doing?

13 A. He was sitting right there and he was -- he
14 was touching my private area and all. Then
15 after that, that's when I got up and left the
16 family room.

17 Q. When he was touching your private area,
18 what did you do?

19 A. I laid -- I went to the restroom and then
20 after that I went in the twins' room.

21 Q. Did you say anything?

22 A. No, ma'am.

23 Q. Did he say anything?

24 A. No, ma'am.

25 Q. Did you talk at all or did you keep your

1 eyes closed or what did you do?

2 A. I just -- I just left the room.

3 Q. Where did you go?

4 A. I went to the twins' room.

5 Q. Who are the twins?

6 A. His sons, Tyrece and Tyrone.

7 Q. Are they younger than you?

8 A. Yes, ma'am.

9 Q. Do you know how old they are?

10 A. No, ma'am.

11 Q. Were they little kids?

12 A. Yes, ma'am.

13 Q. When you got in that room what did you do?

14 A. When I got there, I asked the youngest one
15 if he knew where they kept the sticks that they
16 use to unlock the door. He showed me, so I took
17 it down and that's what I locked the door with.

18 Q. When you say "sticks", what do you mean?

19 A. The -- like it looks like chopsticks that
20 you use when you eat Chinese food.

21 Q. What did they use them for?

22 A. To lock the doors.

23 Q. And you took them?

24 A. (Affirmative nod).

25 Q. Why did you take them?

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

133

1 A. So that I wouldn't be bothered again.

2 Q. And what did you do with the door after you
3 took the sticks?

4 A. After I took the sticks, I locked the door
5 and ---

6 Q. Did you tell anybody about this at the
7 time?

8 A. No, ma'am.

9 Q. Why didn't you tell your mom?

10 A. I didn't -- I felt that they wouldn't
11 believe me because he didn't seem like a person
12 who would do that.

13 Q. What do you mean that he didn't seem like a
14 person that would do that?

15 A. His -- his background. I mean, a pastor
16 doesn't -- he didn't seem like a person -- you
17 couldn't look at him and tell that he does this.

18 Q. Did you like Pastor Moore before that?

19 A. Yes.

20 Q. Did you have fun with him before that?

21 A. Yes, ma'am.

22 Q. Did you continue to go over to his house
23 after that?

24 A. After that I went over a couple of more
25 times and that's when you'all came up and talked

1 to me.

2 Q. When you say you'all, can you -- who do you
3 mean?

4 A. You and some other people.

5 Q. The police?

6 A. Yes, ma'am.

7 Q. And so when the police came to your school,
8 do you know what grade you were in?

9 A. I was in the sixth grade when they came to
10 my school.

11 Q. And do you know -- how did you know that
12 they were there?

13 A. My -- the assistant principal came to my
14 house and that's when he said, you know, to come
15 with him.

16 Q. Do you remember if your mother was also
17 called to the school or not?

18 A. (Affirmative nod), I remember that she was
19 there.

20 Q. Did you tell the police what had happened?

21 A. Uh -- yes, ma'am.

22 Q. Before that had you told your mom?

23 A. No, ma'am.

24 Q. Did you -- since then have you talked with
25 your mom about?

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

135

1 A. Since then I've talked to my mom about it.

2 Q. Do you talk about it a lot?

3 A. No, ma'am.

4 Q. How do you feel talking about it?

5 A. I feel -- every time that it is mentioned I
6 feel hurt.

7 Q. What do you mean by "hurt"?

8 A. I feel let down, used.

9 Q. Are you grateful that the police asked you
10 about it?

11 A. Yes, ma'am.

12 MS. HERRING-LASH: Beg the court's
13 indulgence for a moment.

14 THE COURT: Certainly.

15 MS. HERRING-LASH: That's all the
16 questions that I have, **Minor 1** Please answer any
17 that Mr. Curry may have.

18 THE COURT: You may cross-examine.

19 MR. CURRY: Thank you, Judge.

20 CROSS EXAMINATION

21 BY MR. CURRY:

22 Q. Mr. Smalls, good afternoon -- or good
23 morning.

24 A. Good morning.

25 Q. I am Eduardo Curry. I'm Pastor Moore's

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 attorney. How are you today?

2 A. Good.

3 Q. Good. How you doing in school?

4 A. Good.

5 Q. What grade are you in?

6 A. I am going into the ninth grade.

7 Q. All right. Going to the Summerville Green
8 Wave?

9 A. Yes, sir. Yes, sir.

10 Q. Are you going to play sports or do anything
11 there?

12 A. No, sir.

13 Q. You're not going to do anything?

14 A. (No verbal response).

15 Q. Do you have good grades?

16 A. Yes, sir.

17 Q. All right. Okay. Now, did you ever tell
18 your mother that Pastor Moore didn't touch you?

19 A. I told her that the first time when she
20 asked me.

21 Q. That would be a yes?

22 A. Yes, sir.

23 Q. Now, when -- in fact, the police came to
24 your school; is that correct?

25 A. Yes, sir.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

137

1 Q. Who came to your school?

2 A. It was Ms. Herring-Lash and some people.

3 Q. You don't recognize any of them in the
4 courtroom other than Ms. Herring-Lash?

5 A. No, sir.

6 Q. And they took you out of your classroom, is
7 that correct?

8 A. Yes, sir.

9 Q. What class were you in?

10 A. I believe that I was in my Math class.

11 Q. They took you to the principal's office?

12 A. Yes, sir.

13 Q. Would you agree with me that when you go to
14 the principal's office that is no good news;
15 right?

16 A. Yes, sir.

17 Q. Okay. And when you got there you saw the
18 police, did you not?

19 A. Yes, sir.

20 Q. The police wanted to talk to you and they
21 gave you some information before they talked to
22 you, didn't they?

23 A. Yes, sir.

24 Q. All right. Okay. Then after they gave you
25 some information then they wanted to ask you

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 what you knew, is that correct?

2 A. Yes, sir.

3 Q. And you gave a statement, is that correct,
4 you gave a written statement?

5 A. I don't remember.

6 MR. CURRY: Your Honor, may I
7 approach?

8 THE COURT: You may.

9 MR. CURRY: (Tenders document to
10 court reporter).

11 COURT REPORTER: Defendant's Exhibit
12 2 for identification.

13 MR. CURRY: May I approach the
14 witness, Your Honor?

15 THE COURT: Yes.

16 CROSS EXAMINATION CONTINUED

17 BY MR. CURRY:

18 Q. I hand you what has been previously marked
19 as defense exhibit number two for identifica-
20 tion purposes only. Do you recognize that
21 signature?

22 A. Yes, sir.

23 Q. What signature is it?

24 A. Mine.

25 Q. What name does it say?

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

139

1 A. **Minor 1**

2 Q. Okay. Now, Mr. Smalls, did you write the
3 statement or did someone else write it for you?

4 A. I made the statement and someone else was
5 writing it.

6 Q. Okay. All right. All right. That person
7 would have been a male, do you recall?

8 A. Yes, sir.

9 Q. Would it be Detective Bullard?

10 A. I think it was but I'm not sure.

11 Q. In the statement you said that you wanted
12 to tell them about things that Pastor Moore had
13 done to you, is that correct?

14 A. Yes, sir.

15 Q. Now, today you've testified to one thing.
16 Are you saying that there were more things?

17 A. What do you mean?

18 Q. Do you want to read that first sentence,
19 right here, "Detective Bullard..." ---

20 A. (Reading): "Detective Bullard is writing
21 this statement for me as I am telling him about
22 things that Pastor Moore had done to me."

23 Q. All right. So "things", with an "s"; is
24 that correct?

25 A. Yes, sir.

- 1 Q. That is more than one, is that correct?
- 2 A. Yes, sir.
- 3 Q. All right. But today you've testified that
- 4 there was only one thing that happened to you,
- 5 am I correct?
- 6 A. Yes, sir.
- 7 Q. So it wasn't multiple, was it?
- 8 A. No, sir.
- 9 Q. All right, I appreciate it. Now, when you
- 10 were in there playing games and having fun, who
- 11 else was in there with you?
- 12 A. It was some friends from the church.
- 13 Q. What about Pastor Moore's children?
- 14 Antwan?
- 15 A. Antwan was in there.
- 16 Q. Right. What about Tierra?
- 17 A. She was in there.
- 18 Q. What about the twins?
- 19 A. They were in there also.
- 20 Q. What about -- have you ever heard anybody
- 21 named Cordera, Cordell?
- 22 A. Yes, sir.
- 23 Q. He was there?
- 24 A. Yes, sir.
- 25 Q. And what about your cousin, Minor 2

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

141

1 A. Sometimes when I went there he wasn't
2 there.

3 Q. All right. But **Minor 2** is your cousin,
4 isn't he?

5 A. Yes, sir.

6 Q. What degree are you'all? First? Second?
7 Third?

8 A. I don't know what you mean.

9 Q. Is your mother and his mother like sisters
10 or are ---

11 A. Oh, yes, sir.

12 Q. So you'all are like first cousins, right?

13 A. Yes, sir.

14 Q. All right. Okay. So your testimony today
15 is that Pastor Moore touched you in the wrong
16 spot, according to your statement; is that
17 correct?

18 A. Yes, sir.

19 Q. Now, in terms of that spot was that outside
20 your clothes or inside your clothes?

21 A. It was outside my clothes.

22 Q. So somewhere he touched you. Where? On
23 your penis? On your bottom? Where did he touch
24 you?

25 A. My privates.

1 Q. Okay. All right. Where was -- what would
2 that be, the front or the back?

3 A. The front.

4 Q. Okay, all right. How did he touch it?

5 A. He reached for it and grabbed it. That's
6 how I woke.

7 Q. Okay. Then you woke and he stopped,
8 according to your testimony; correct?

9 A. Yes, sir.

10 Q. All right. Were the lights on or off?

11 A. The lights were off.

12 Q. In the dark, would you agree with me -- if
13 I may continue with this, State's Exhibit 1,
14 would you agree with me that that would be the
15 room where you said that this allegedly
16 occurred?

17 A. Yes, sir.

18 Q. All right. At nighttime it would be dark
19 in there, would you say that, would that be
20 correct?

21 A. Yes.

22 Q. Is that correct?

23 A. Yes, sir.

24 Q. All right. Okay. And in the darkness you
25 said that Pastor Moore reached down and touched

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

143

1 you outside of your clothes on your private area
2 in the front?

3 A. Yes, sir.

4 Q. All right. That was it?

5 A. That was it.

6 Q. You jumped up.

7 A. (Affirmative nod), and ran out of the room.

8 Q. Did you ever go back to Pastor Moore's
9 house?

10 A. Yes, sir.

11 Q. Did he ever try to touch you again?

12 A. No, sir, because I basically wasn't around
13 him except sometimes.

14 Q. But you didn't tell anybody about this?

15 A. No, I didn't.

16 Q. Of course you didn't ejaculate or do any of
17 that, is that correct?

18 A. No, sir.

19 Q. You didn't have an erection or any of that,
20 did you?

21 A. No, sir.

22 Q. You'all didn't talk, did you?

23 A. We talked but ---

24 Q. When you and Pastor Moore were doing that
25 at that particular time when that alleged

1 incident was happening?

2 A. (No verbal response).

3 Q. I will rephrase. During the time that you
4 allege Pastor Moore touched you in the wrong
5 spot in the dark living room in the middle of
6 the night, he didn't say anything to you, did
7 he?

8 A. He didn't say anything.

9 Q. He didn't say anything to you, did he?

10 A. He didn't say anything.

11 Q. You didn't say anything to him, did you?

12 A. No.

13 Q. And you never told anybody about this, is
14 that correct?

15 A. Yes, sir.

16 Q. And when your mother asked you had he
17 touched you, you told her no; is that correct?

18 A. Right.

19 Q. And only after you talked to the police or
20 something along those lines then you gave them a
21 statement that Detective Bullard wrote for you;
22 is that correct?

23 A. Yes, sir.

24 Q. All right. Now, you never told them that
25 you saw Pastor Moore's privates, did you?

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

145

1 A. No, sir.

2 Q. All right, but they asked you about that,
3 didn't they?

4 A. Yes, sir.

5 Q. All right. I've got a question for you.
6 What is sexual harassment?

7 A. What he did.

8 Q. What is -- do you know what the meaning of
9 sexual harassment is?

10 A. No.

11 Q. Have you ever told somebody that he
12 sexually harassed you?

13 A. No, sir.

14 MR. CURRY: May I continue to
15 approach the witness?

16 THE COURT: Yes, sir.

17 CROSS EXAMINATION CONTINUED

18 BY MR. CURRY:

19 Q. I want you to read part two of your
20 statement. I want you to read the question,
21 "Can you tell me about that?" I want you to
22 read that and I want you to read your response
23 and answer. Read it for me, son.

24 A. (Reading): "Can you tell me about what he
25 ..."

1 Q. Right here.

2 A. The first part?

3 Q. Yes, read the question and then read your
4 answer.

5 A. (Reading): "Can you tell me about what" and
6 then it says "he rubbed it like sexual
7 harassment."

8 Q. Okay. So you're telling me that you never
9 told anybody that he sexually harassed you; is
10 that correct?

11 A. Yes.

12 Q. All right. But it is clearly here in this
13 document, is that correct?

14 A. Yes, sir.

15 Q. And this document is a document that you
16 signed, is that correct?

17 A. Yes, sir.

18 Q. Did you say it, son, or didn't you?

19 A. Did I say what?

20 Q. About sexual harassment?

21 A. I did tell you.

22 Q. You did?

23 A. (Affirmative nod), I did say that.

24 Q. Okay. So when I asked you earlier did you
25 tell anybody that he had sexually harassed you

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

147

1 and you said no, that wasn't accurate, was it?

2 A. No.

3 Q. Okay. Thank you.

4 THE COURT: Redirect?

5 REDIRECT EXAMINATION

6 BY MS. HERRING-LASH:

7 Q. May I approach the witness?

8 A. You may?

9 Q. **Minor 1** I am going to show you the same copy
10 of your statements. This is the question that
11 Mr. Curry just asked you to read, (indicating),
12 "Can you tell me about this?" Can you start
13 with that question and just read that one and
14 then that one? And the answers, the ones right
15 before and after that one.

16 A. Read from here to here?

17 Q. Uh-huh, the question and the answer.

18 A. (Reading):

19 "Which spot was it?"

20 "My privates."

21 "Can you tell me about that?"

22 "He rubbed it like sexual harassment."

23 "How many times did this happen?"

24 "Once in the summer of the year when I was
25 eleven years old."

1 Q. So you told the police officers that day
2 that it happened once?

3 A. Right.

4 Q. That's what you told the jury here today,
5 that it happened once?

6 A. Right.

7 Q. Mr. Curry asked you about your mom. Did
8 your mom ask you about this before the police
9 ever talked to you?

10 A. Yes, ma'am.

11 Q. What did you tell her then?

12 A. "No."

13 Q. Why did you tell her 'no'?

14 A. Because I was afraid.

15 Q. What were you afraid of?

16 A. I mean, I didn't think that she would
17 believe me.

18 Q. And when the police came and asked you, did
19 you tell them?

20 A. Yes, ma'am.

21 Q. That was the statement that you gave?

22 A. (Affirmative nod).

23 Q. After you told the police, then did you
24 tell your mom that it had happened?

25 A. After I told the police, I told my mom. I

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

149

1 came clean.

2 Q. What changed in your mind that made you be
3 able to tell her after you told the police?

4 A. Because -- I mean, they talked to me and
5 I'd told them that it happened, so I -- I might
6 as well go ahead and tell her. They might have
7 told her, too.

8 Q. They may have told her, as well?

9 A. (Affirmative nod).

10 Q. Are you thankful that the police came and
11 asked you about it?

12 A. Yes, ma'am.

13 Q. Why?

14 A. Because I wanted it to be fixed. I didn't
15 want it to happen to anybody else.

16 Q. Okay, **Minor 1** those are all the questions
17 that I have. I don't know if Mr. Curry may have
18 any more or not.

19 THE COURT: Recross, Mr. Curry?

20 RE CROSS EXAMINATION

21 BY MR. CURRY:

22 Q. You love your mother, is that correct?

23 A. Yes, sir.

24 Q. All right. You been trusting her with
25 everything in your life up to that point, is

1 that correct?

2 A. Yes, sir.

3 Q. Okay. Did you have any reason not to trust
4 your mother in order to tell her the truth?

5 A. Yes, sir.

6 Q. You did have a reason or you didn't?

7 A. I did have a reason.

8 Q. You had a reason not to trust your mother?

9 A. I did have a reason not to trust my mother.

10 Q. What was that reason?

11 A. To not hurt anybody else.

12 Q. But you kept going to Pastor Moore's house,
13 didn't you?

14 A. Yes, sir.

15 Q. Why?

16 A. Because he -- it was just -- because it was
17 just a mistake. I mean -- (pause).

18 Q. And it never happened again, according to
19 you; correct?

20 A. No, sir.

21 Q. It was in the dark, am I correct?

22 A. Yes, sir.

23 Q. Could have been a mistake, couldn't have
24 it?

25 A. Yes, sir.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

151

1 Q. Thank you.

2 MR. CURRY: Thank you.

3 THE COURT: You may come down, sir.

4 Thank you.

5 (WITNESS STEPS DOWN)

6 THE COURT: Ladies and Gentlemen, at
7 this point we will recess early for lunch. I
8 have a meeting that I have to attend, not
9 related to this case, at 12:00 o'clock. I'm
10 sorry. It was scheduled two weeks ago. We try
11 to coordinate as much as we can. You'll get a
12 little bit longer for lunch than customarily.

13 I ask you to be back in your jury room,
14 please, at 1:45 and we will resume the trial at
15 that time. Please when you're out do not
16 discuss this case, of course not among yourself,
17 and do not permit anyone to talk about the case
18 in your presence. Have a good lunch and we'll
19 see you at 1:45.

20 (JURY OUT @ 11:46 A.M.)

21 THE COURT: Anything from the State
22 before recessing?

23 MS. HERRING-LASH: No, Your Honor.

24 THE COURT: Anything from the
25 defendant?

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 MR. CURRY: Not from the Defendant,
2 judge.

3 THE COURT: All right. The
4 defendant is still on bond?

5 MR. CURRY: Yes, sir.

6 THE COURT: He may remain on bond.
7 Mr. Moore, I expect you will be here at 1:45
8 when we resume.

9 DEFENDANT: Yes, sir.

10 THE COURT: Of course if you are not
11 present the trial will proceed without you, do
12 you understand that?

13 DEFENDANT: Yes, sir, I'll be here.

14 THE COURT: Thank you, sir.

15 (LUNCH RECESS)

16 (DEFENDANT PRESENT)

17 THE COURT: Is the State ready?

18 MS. HERRING-LASH: Yes, sir.

19 THE COURT: Please let the record
20 reflect that Mr. Moore is present. Is the
21 Defendant ready to proceed?

22 MR. CURRY: Yes, Your Honor.

23 THE COURT: Invite the jury to
24 return.

25 BAILIFF: It will be just a moment,

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

153

1 Judge.

2 THE COURT: All right, whenever they
3 are ready.

4 BAILIFF: (Tenders not to jury).

5 THE COURT: Thank you. (Upon
6 review), Mr. Forrester is the foreperson.

7 (JURY IN @ 1:48 P.M.)

8 THE COURT: Thank you very much,
9 Ladies and Gentlemen. I hope that you had a
10 good lunch. Again, I apologize for the extra
11 length of time. I hope that it wasn't too much
12 of an imposition to you and for you.

13 Mr. Forrester, it appears that the jury
14 has selected you as the foreperson. Is that
15 correct?

16 JUROR NUMBER 61: Yes, sir.

17 THE COURT: Thank you very much,
18 Ladies and Gentlemen. That will be your seat
19 for the balance of the trial, sir. Thank you.
20 If you would now, give your attention to the
21 next witness. You may call your next witness,
22 Solicitor.

23 MS. HERRING-LASH: Thank you, Your
24 Honor. The State calls Carla Clark.

25 (WITNESS TAKES STAND)

1 CARLA FERRETTE CLARK, being duly sworn
2 to tell the truth, the whole truth and nothing
3 but the truth, testified, as follows:

4 DIRECT EXAMINATION

5 BY MS. HERRING-LASH:

6 Q. Would you please spell Ferrette for the
7 court reporter?

8 A. It's F-e-r-r-e-t-t-e.

9 Q. Is Clark your married name?

10 A. It is.

11 Q. Where do you live, Ms. Clark?

12 A. I live in Summerville.

13 Q. Who lives with you now?

14 A. My three sons and my husband, Gregory.

15 Q. How long have you been married?

16 A. Three years.

17 Q. When did you get married?

18 A. July 2 of 2006.

19 Q. And what do you do for a living?

20 A. I am a customer service rep and I am also
21 in the United States Air Force Reserves.

22 Q. And how long have you been in the Reserves?

23 A. I've been in the Reserves for seven years.

24 Q. What activities do you participate in?

25 A. I am currently enrolled in school, I am

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

155

1 also -- I joined a good cause, From Darkness to
2 Light. They are a group that helps children
3 deal with sexual abuse. I go to church. I ---

4 Q. What church do you go to?

5 A. I go to Faith Assembly in Summerville.

6 Q. Before going to Faith Assembly where did
7 you go?

8 A. I went to Full Word Ministries.

9 Q. When did you begin going to Full Word
10 Ministries?

11 A. I began going to Full Word Ministries in
12 September of 2002.

13 Q. When did you start going there like
14 regularly?

15 A. I started going regularly in -- (pause) --
16 I believe the end of 2003, because I went into
17 the Air Force Reserves in 2003.

18 Q. What ministries there did you participate
19 in?

20 A. I participated in the children's ministry.

21 Q. What did that entail?

22 A. At first I was just a volunteer. I would
23 help the head of the ministry with all the
24 activities dealing with the kids in the nursery
25 and in the Challenger Room, then the Crusader

- 1 Room. Then at one point the head over that
2 ministry had left the church and I became head
3 of the ministry.
- 4 Q. Who was the pastor of that church?
- 5 A. The pastor was Tyrone Moore.
- 6 Q. Did your son Minor 1 go to church with
7 you?
- 8 A. He did.
- 9 Q. What was your relationship like with Pastor
10 Moore?
- 11 A. When I went to the church our relationship
12 was that I was a member and he was the Pastor.
13 I dealt with him on that level for a while due
14 to respect out of the pastor and just me being,
15 I felt like -- believed, you know, that's where
16 I left it for awhile. He was my pastor and I
17 respected him as such.
- 18 Q. Did that change?
- 19 A. Eventually it did.
- 20 Q. How was that?
- 21 A. When you become head of a ministry you have
22 to deal on a different basis with the pastor.
23 You're in a lot -- you know, you go to meetings.
24 It's more like a lot of one-on-one time or --
25 not just one-on-one but all the other heads of

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

157

1 the ministries. You get a more closer
2 bond/relationship.

3 Q. That happened when you became head of the
4 children's ministry?

5 A. (Affirmative nod), I believe. Yes, it did.

6 Q. And what about **Minor 1** what was his
7 relationship like with the pastor?

8 A. **Minor 1** was in the children's ministry until
9 he was old enough to go out into the sanctuary
10 and actually sit still. Once **Minor 1** got into the
11 sanctuary, their relationship really didn't get
12 close at that point.

13 Q. Did it get close at some point?

14 A. It did get closer.

15 Q. Tell us about that.

16 A. **Minor 1** began showing an interest in going
17 over to the pastor's house. Me being a single
18 mother, I would tell him that if all couldn't go
19 one couldn't go. So he would ask me and I would
20 tell him no.

21 But he had an opportunity to go and
22 asked the pastor himself and he said that Pastor
23 Moore told him that it was fine. Being that he
24 was my pastor and I respected him, and I
25 figured, you know, that he's the pastor of the

1 church, I didn't have a problem with him going.

2 Q. Did **Minor 1** begin to sing?

3 A. He did. He found out -- I found out,

4 actually, that **Minor 1** could sing one day at

5 Pastor Moore's house. It was a shock to

6 everybody. Pastor Moore was actually pecking on

7 the piano with some other kids and **Minor 1** kept

8 going in and out of the room and -- (emotional)

9 -- he kept going in and out of the room and he

10 began -- Pastor Moore asked him, you know, 'You

11 coming in and out of there, you can sing.' He

12 sang and it was -- (emotional) -- they all came

13 up excited. He said, 'I want you to come

14 upstairs, I want you to hear **Minor 1**. **Minor 1** sang

15 and it was the first time I'd ever heard him

16 singing. That is when he started.

17 Q. And at some point after that did **Minor 1**

18 begin to go spend time at Pastor Moore's house?

19 A. He did.

20 Q. How did that come about?

21 A. **Minor 1** would ask -- he would ask if he could

22 go over there and I allowed him to because I

23 thought that it was okay.

24 Q. How would he get there?

25 A. They would leave from the church sometimes

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

159

1 with the first family, different people.

2 Q. By the first family you mean the pastor's
3 family?

4 A. Right, in the car with their family or if
5 there would be other kids there -- if there was
6 more than -- you know, you couldn't put too many
7 people in the car so there were other vehicles
8 that would be used to take the kids if there was
9 a certain amount of children going.

10 Q. Did you ever go to the pastor's house?

11 A. (Affirmative nod), I have.

12 Q. Just one question about that, did you ever
13 seen anything that may have been used to unlock
14 doors?

15 A. I have. It was these long little things,
16 little sticks.

17 Q. You saw them?

18 A. I have, yes.

19 Q. Did there come a time when there was a
20 confrontation between you and the pastor and

21 **Minor 1**

22 A. There was a situation. He had brought
23 **Minor 1** back to the church and said that **Minor 1** had
24 done something and that he wasn't going to be
25 able to come back to their house. But I never

1 questioned what Minor 1 did, because again out of
2 respect for him and his position, him being the
3 pastor, and -- I didn't know what the something
4 was. I just told Minor 1 not to worry about it,
5 that everything would be okay.

6 Q. Was he yelling at you?

7 A. At that time, no.

8 Q. Did he?

9 A. (Affirmative nod), he did.

10 Q. When was that, that he yelled at you?

11 A. There was something going on at the youth
12 center and he came in and asked me to come up to
13 his office, that he needed to talk to me about
14 the situation with Minor 1 I went, Minor 1 went,
15 and Greg came -- I can't remember if he came
16 with me or if he came ----

17 Q. He is your husband?

18 A. He's my husband now but we were -- I can't
19 remember the exact date, so I don't want to -- I
20 don't remember if he was at that time or if we
21 were going to be married.

22 He was yelling at Minor 1 and I never got to
23 -- I don't know what Minor 1 did but out of
24 respect and -- he's the pastor, touch not my
25 anointed. You know, out of respect. Out of

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

161

1 respect -- I was the mother and that's okay, he
2 was my son, but I said to him -- I left. I got
3 in an argument with Greg about it and, you know,
4 I just kind of brushed it off because, again, at
5 church -- respecting the church, my position at
6 the church, I felt like 'Okay, you know, --
7 (pause).

8 Q. What were you told about respecting the
9 pastor?

10 A. He's the pastor and you respect him as
11 such. He's the pastor and you respect the
12 pastor.

13 Q. When did **Minor 1** stop going to Pastor Moore's
14 house?

15 A. I believe that it was in the summer of
16 2006.

17 Q. The summer of 2006 is when he stopped?

18 A. Yes.

19 Q. Did he continue to go to services?

20 A. Because I worked in the children's ministry
21 a lot, I really wasn't in the sanctuary to see
22 whether or not **Minor 1** was staying in the
23 sanctuary or not. There was an incident where
24 at the time Greg, because he was on the PPH,
25 he'd come in the back looking for **Minor 1** I

1 didn't know that he wasn't going into service
2 that much, like before.

3 Q. So he ---

4 A. He was kind of like hiding out, I guess.

5 Q. Did you notice a change in **Minor 1** behavior
6 around that time?

7 A. He was like -- he was always a quiet child
8 but he loves church. Before, he'd get me up to
9 get ready to go to church. His drive for like
10 taking his notes in church, he stopped taking
11 his pad and -- that drive that he had, he just
12 kinda backed off of. I thought it was because
13 he was getting older and he'd think, 'well,
14 church is boring' or stuff like that, so I
15 didn't think nothing of anything else.

16 Q. As things continue, in December of '06,
17 you were still the minister of the children's
18 ministry?

19 A. Um-humm.

20 Q. How were things at the church then?

21 A. (No verbal response).

22 Q. Between you and the pastor, were things
23 fine at that point in time?

24 A. No.

25 Q. I'm talking about before you got called to

State of South Carolina v. Tyrone Moore
Case No. 08-CS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

163

1 the school?

2 A. Well, before we got called the school
3 everything was fine. I -- everything was fine.

4 Q. Do you remember getting called to **Minor 1**
5 school?

6 A. I do, (affirmative nod).

7 Q. Who called you?

8 A. It was a guidance counselor, I believe, or
9 -- it was somebody from the school.

10 Q. And where did you go?

11 A. I went to the fifth grade guidance
12 counselor's office.

13 Q. Did you meet with police officers there?

14 A. I believe at the time that it was two
15 detectives and the guidance counselor.

16 Q. Did they ask you if you would allow them to
17 speak with **Minor 1**

18 A. (Affirmative nod), they did.

19 Q. And did you allow them to speak with him?

20 A. I did.

21 Q. And after they spoke with him, did they
22 tell you what **Minor 1** had said? You can't say it
23 but did they tell you?

24 A. They told me.

25 Q. What did you do?

1 A. I cried.

2 Q. Have you questioned him about that since?

3 A. I have but -- (pause) -- I questioned in a

4 way that was motherly because I didn't -- I

5 didn't want to be too hard on him. I know --

6 you know how when you -- what do you do?

7 Q. Has there come a time or did there come a

8 time when you could talk to Pastor Moore about

9 this?

10 A. Well, there was a time that I wanted to

11 talk to him because the Bible says that if you

12 have a arg against your brother that you ---

13 Q. A what?

14 A. An arg against your brother.

15 Q. A what?

16 A. I guess an "issue".

17 Q. All right.

18 A. Or a problem.

19 Q. I just couldn't understand the word that

20 you're saying.

21 A. I may be saying it wrong. I'm sorry.

22 Q. So you were going to talk with him?

23 A. Well -- (affirmative nod). I asked my

24 husband to come but I told him that he didn't

25 have to be in the room.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

165

1 Q. So did you meet with him?

2 A. I did.

3 Q. Where did you meet with him?

4 A. Where he was staying. He was at a family
5 member's house.

6 Q. At that meeting did you discuss what
7 happened with Minor 1

8 A. We did not go into details but I did say
9 things about Minor 1. It was more so of me being
10 upset and hurt and feeling like my child was
11 abused and -- if you cared for me like you said,
12 you said I was your daughter and that --
13 I was mad, but I didn't want to stay mad.

14 Q. What do you mean?

15 A. I wanted to tolerate forgiveness, I wanted
16 to feel better about it because I felt like I
17 didn't do my job as a mama.

18 Q. And did the pastor deny this?

19 A. He didn't deny but he didn't say that he
20 had done anything.

21 Q. Just didn't speak?

22 A. Well, he spoke but it was pertaining to the
23 ministry and things that he couldn't say, he
24 said.

25 Q. Now, how is Minor 1 now?

1 A. Minor 1 lost faith.

2 Q. Is that bad?

3 A. He doesn't have the respect for God the way
4 that he did. I know that he is young and that I
5 know as time goes on that faith will change but
6 the fire that he had within himself for loving
7 church and loving God and honoring, he don't
8 have that no more, he don't have that drive.

9 MS. HERRING-LASH: Beg the court's
10 indulgence, Your Honor.

11 THE COURT: Certainly.

12 MS. HERRING-LASH: Ms. Clark,
13 please answer any questions that Mr. Curry may
14 have.

15 THE COURT: You may cross-examine.

16 MR. CURRY: Thank you, Your Honor.

17 CROSS EXAMINATION

18 BY MR. CURRY:

19 Q. Ms. Clark, ---

20 A. Yes, sir?

21 Q. --- good afternoon.

22 A. Good afternoon.

23 Q. I am Eduardo Curry and I'm the attorney for
24 Tyrone Moore. How are you today?

25 A. I'm well.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

167

1 Q. Perfect. Now, you said that **Minor 1** won't
2 sing. Was he singing for you before?

3 A. No, he wasn't.

4 Q. Okay. So it's not uncusomary that he
5 would be not singing for you now, would it?

6 A. It is uncusomary because at that time he
7 was excited about it, it was something that made
8 him feel good, I guess. So for him to just cold
9 turkey stop singing and change the way that he
10 feels about it is not normal.

11 Q. How old was he when he first started
12 singing?

13 A. How old?

14 Q. How old?

15 A. The days that he went there -- excuse me,
16 let me think. It may have been between the ages
17 of ten to twelve.

18 Q. Okay. Ten to twelve?

19 A. (Affirmative nod).

20 Q. During a two-year period?

21 A. (Affirmative nod).

22 Q. You're not sure, though; right?

23 A. I'm not sure.

24 Q. All right. And do you know what part that
25 he was singing? Tenor, baritone, bass, do you

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 know what part?

2 A. As you can hear on this mic, I have a
3 horrible raspy voice, so I couldn't tell you the
4 first thing about singing.

5 Q. Do you know the kind of songs that he was
6 singing?

7 A. He was singing a Christian song that day.

8 Q. Like what?

9 A. They were rehearsing a song that Mr. Moore
10 said that he has written or -- it was a song
11 that they were practicing. I don't know the
12 name of the song.

13 Q. When you were over to the house, were you
14 over to the house by yourself or were there a
15 lot of people over there?

16 A. That day I was sitting downstairs and there
17 wasn't a lot of people there, no, sir. There
18 were some kids there but as far as adults,
19 actually singing, ---

20 Q. No, I didn't ask that. I just asked you if
21 there ---

22 A. Okay. I can't remember the number, sir,
23 but it was more than three.

24 Q. Okay. Now, have you taken **Minor 1** to
25 counseling?

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

169

1 A. He refused.

2 Q. How old is he again?

3 A. **Minor 1** is fourteen now.

4 Q. Have you ever heard the phrase 'the tail
5 doesn't wag the dog'?

6 A. I have, sir.

7 Q. Who is in charge in your house, you or your
8 son?

9 A. Well, me being the parent, I'm in charge.

10 Q. He refused and you've never tried to
11 insist?

12 A. I have.

13 Q. And he still refuses?

14 A. He decided on his own that he would talk to
15 his guidance counselor and his social studies
16 teacher, and I told him that was fine with me as
17 long as he spoke with somebody.

18 Q. Okay. Now, how many times do you believe
19 that **Minor 1** went to Pastor Moore's house?

20 A. A numerous amount of times, sir.

21 Q. When you say numerous, can you tell ---

22 A. More than five.

23 Q. More than five?

24 A. (Affirmative nod).

25 Q. More than ten?

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

- 1 A. Possibly.
- 2 Q. More than fifteen? Would that be right?
- 3 A. I'd say that'd be about right.
- 4 Q. Okay. In those over fifteen times that you
- 5 say would be about right, did **Minor 1** ever tell
- 6 you anything out of the ordinary happened?
- 7 A. No, sir, he didn't.
- 8 Q. Did you ask him?
- 9 A. Eventually I did.
- 10 Q. And when you asked him, he told you that
- 11 he hadn't been touched by Rev. Moore; is that
- 12 correct?
- 13 A. That's what he told me, sir.
- 14 Q. Did you see **Minor 1** get any gifts?
- 15 A. I would actually give him the money to take
- 16 **Minor 1** shopping.
- 17 Q. So you -- go ahead.
- 18 A. That's fine.
- 19 Q. No, I apologize.
- 20 A. **Minor 1** wanted -- I'd told **Minor 1** no, but he
- 21 I guess asked Pastor Moore about some shoes.
- 22 I came in the office and Pastor Moore said
- 23 'here's some money, you take him shopping.'
- 24 So I did that.
- 25 Q. So Pastor Moore gave you the money and you

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

171

1 went shopping for him?

2 A. I took **Minor 1** yes.

3 Q. You found him to be generous and kind, is
4 that correct?

5 A. (Affirmative nod), I did.

6 Q. Okay. All right. Now, I want to get the
7 record clear. You've not given any written
8 statement or any taped statement to anybody with
9 regard to this. Is that correct?

10 A. I have not.

11 Q. All right. And your first opportunity to
12 speak in a public forum about what has happened
13 is today; is that correct?

14 A. Yes, sir.

15 Q. All right. Did you tell the solicitor all
16 the stuff that you've testified to, did you tell
17 them about this?

18 A. I told the solicitor the things that
19 happened.

20 Q. When did they ask you these questions?

21 A. Which questions, sir?

22 Q. The questions that you have testified to
23 today?

24 A. Do you mean the questions that you're
25 asking me or the questions that she asked me?

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 Q. The questions that Ms. Herring-Lash asked
2 you, when did you first tell the solicitor's
3 office that information?

4 A. When I was asked to go down to the
5 solicitor's office.

6 Q. When was that?

7 A. I don't remember the exact date, sir.

8 Q. You can remember all the facts but you
9 don't remember when was the first time you
10 actually met with these solicitors here?

11 A. I don't remember the exact date.

12 Q. All right. Okay. You've never given any
13 written statement to it?

14 A. No, sir.

15 Q. Did you not think that was important?

16 A. I figured that writing something down that
17 you lived through, that means a lot to you, I
18 mean whether you write it down or not, sir, I
19 know what my son told me.

20 Q. All right. Did you ever tell anybody that
21 you didn't want to be notified of any judicial
22 proceedings regarding Tyrone Moore?

23 A. I don't recall that.

24 Q. Okay.

25 MR. CURRY: Your Honor, may I

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

173

1 approach the witness?

2 THE COURT: Yes, sir.

3 MR. CURRY: (Tenders document to
4 court reporter).

5 COURT REPORTER: Defendant's Exhibit
6 3 for identification.

7 MR. CURRY: May I approach the
8 witness, Your Honor?

9 THE COURT: You may.

10 CROSS EXAMINATION CONTINUED

11 BY MR. CURRY:

12 Q. I hand you what has been previously marked
13 as defense exhibit number three, is that your
14 signature and handwriting?

15 A. Yes, it is.

16 Q. What name does it say that it is?

17 A. This says Carla Ferrette.

18 Q. Now, Ms. Ferrette, if you'll read this
19 paragraph for me that is circled for the jury?

20 A. It says, (reading): "I hereby acknowledge
21 that the reporting officer in this case has
22 advised me of my rights as a victim in this
23 matter (see backup form) and I understand them
24 completely. I do, or do not, want to be
25 notified about this subject judicial proceeding

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 or release."

2 Q. Which one did you circle?

3 A. I circled "do not".

4 Q. Okay. So you did not want to be notified
5 of anything that was going on, any judicial
6 proceedings or release from Tyrone Moore
7 according to this; is that correct?

8 A. Yes, sir.

9 Q. Now, the question that I raise to you is,
10 why not? If you care about your son, if you
11 want to know what is going on, why would you
12 sign a document like that saying that you don't
13 want to be notified?

14 A. Okay. With everything that had happened
15 and -- when I say "everything", I am limiting it
16 to my son. When everything had happened, I was
17 in a bit of shock, I was frustrated, I was angry
18 and at that time I wasn't feeling so Christian,
19 so I didn't know what to do. I didn't think
20 clearly. Maybe I just signed whatever because I
21 was shocked. If your child comes home and tells
22 you something and it's a person that you trust
23 so much, a teacher, a pastor, a police officer
24 or whoever -- the guidance counselor at a school
25 -- if somebody notifies you of something like

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

175

1 that, that's a big deal. I don't know how
2 anybody else would handle it. I can't tell you
3 how much I love my children and I love my son,
4 so -- I understand that you have to ask question
5 but please understand that this is my child.

6 Q. Did you sign that document saying that you
7 don't want to know?

8 A. I did.

9 Q. Okay. All right. When **Minor 1** told you that
10 he wasn't touched by Pastor Moore, you told that
11 to the police; didn't you?

12 A. I told them what he'd said, yes.

13 Q. Okay. All right. Now, since that time
14 he's changed his mind, isn't that correct?

15 A. Well, I wouldn't use the words "changed his
16 mind". I am not going to use that word. I
17 believe that my son was afraid and didn't know
18 what to say to me.

19 Q. Did you show him love all the time prior to
20 that?

21 A. I sure have.

22 Q. Did you show you trust all the time prior
23 to that?

24 A. I have.

25 Q. Were you his protector at all times prior

1 to that?

2 A. I was.

3 Q. Did you'all have a falling out any time
4 prior to that?

5 A. No.

6 Q. Did he ever tell you that he was afraid to
7 talk to you ---

8 A. After ---

9 Q. --- prior to that?

10 A. Prior to that, no, sir.

11 Q. So you had no real reason to believe that,
12 did you?

13 A. Believe what.

14 Q. That he was afraid to talk to you or
15 confide in you?

16 A. At that time, no, sir.

17 Q. Now, in the fifteen times or so that **Minor 1**
18 went to Pastor Moore's house sometimes you had
19 gone there too, would that be a fair statement?

20 A. Yes, sir.

21 Q. And when you went there, you saw Antwan
22 there?

23 A. I did.

24 Q. You saw Tierra Ravenel there, right?

25 A. I did.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

177

1 Q. You saw Cardaro there, right?

2 A. I did.

3 Q. You saw the twins, Tyrece and Tyrone there;
4 right?

5 A. I did.

6 Q. You saw other children?

7 A. I did.

8 Q. And **Minor 1** not one time, ever told you
9 anything strange occurred there and neither
10 did any of those children, did they?

11 A. He did not.

12 Q. Thank you.

13 THE COURT: Redirect?

14 MS. HERRING-LASH: Yes, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. HERRING-LASH:

17 Q. Ms. Clark, did you ever question any of
18 those other children that were there?

19 A. Did I question them?

20 Q. About anything that happened?

21 A. No, I never questioned them.

22 Q. How old were the twins, do you remember?

23 A. They were young. They could have been
24 three. I'm not sure -- I can't remember.

25 Q. And you testified that at some point you

1 asked Minor 1 and that he told you 'no', that he
2 had not been touched?

3 A. Right.

4 Q. Then law enforcement asked him about it?

5 A. Yes, ma'am.

6 Q. Has he ever denied it to you since law
7 enforcement -- since he told law enforcement?

8 A. No, ma'am, he hasn't -- (emotional) -- I'm
9 sorry.

10 Q. That's okay. A moment ago Mr. Curry asked
11 you if you had any reason to believe that he was
12 afraid to talk with you. Do you have any reason
13 to believe that he was afraid to talk with you?

14 A. You know, I did ask him 'why did you feel
15 that you couldn't tell me that' and I guess it
16 was like I wouldn't have believed him or -- I'm
17 not sure if he felt like I would spaz-out. I
18 don't know.

19 Q. But he has not denied it since he finally
20 came forward with it?

21 A. He has not denied it.

22 MS. HERRING-LASH: That's all the
23 questions that I have.

24 THE COURT: Recross?

25 MR. CURRY: None.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

179

1 THE COURT: You may come down.

2 (WITNESS STEPS DOWN)

3 THE COURT: You may call your next
4 witness.

5 MS. HERRING-LASH: The State would
6 call Officer Eddie Bullard.

7 (WITNESS TAKES STAND)

8 EDDIE BULLARD, being duly sworn to tell
9 the truth, the whole truth and nothing but the
10 truth, testified, as follows:

11 DIRECT EXAMINATION

12 BY MS. HERRING-LASH:

13 Q. Detective Bullard, you work at North
14 Charleston Police Department?

15 A. Yes, ma'am.

16 Q. How long have you worked there?

17 A. About thirteen years.

18 Q. And what are your duties now?

19 A. I am a corporal over the patrol division in
20 the north.

21 Q. Back in 2006 what were your duties at the
22 North Charleston Police Department?

23 A. Juvenile crime investigation.

24 Q. What does that mean?

25 A. We investigate crimes of juveniles, whether

1 they are victims or suspects.

2 Q. On November the 28th were you contacted by
3 the Goose Creek Police Department?

4 A. Could you repeat that?

5 Q. On November the 28th, 2006, were you
6 contacted by the Goose Creek Police Department?

7 A. I contacted Goose Creek, yes.

8 Q. You contacted them?

9 A. Yes.

10 Q. And when you are investigating a crime in
11 another jurisdiction, do you have to contact
12 them before you can go investigate?

13 A. That's correct.

14 Q. Is that why you called them?

15 A. I did, yes.

16 Q. After talking to them, did you meet with a
17 Goose Creek police officer?

18 A. I did.

19 Q. Who was that?

20 A. Investigator Nix.

21 Q. When and where did you'all meet?

22 A. I met her at the Goose Creek Police
23 Department on the 29th.

24 Q. So the next day after you'd contacted her?

25 A. Yes, ma'am, the 29th.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

181

1 Q. And after that did you'all make arrange-
2 ments to visit with Minor 2

3 A. We did. Yes, ma'am.

4 Q. Where did you go to visit with him?

5 A. Moultrie Middle School.

6 Q. Where is that?

7 A. In Summerville.

8 Q. Where he went to school?

9 A. Yeah, I am not exactly what jurisdiction
10 is that.

11 Q. Okay. So when you went to the school to
12 see Minor 2 did you speak to school personnel?

13 A. Yes, ma'am.

14 Q. And did they contact his mother?

15 A. Yes.

16 Q. Is that pretty much procedure, as far as
17 you know?

18 A. Yes.

19 Q. Before they will allow you to talk with the
20 child?

21 A. That's correct.

22 Q. And did you and Officer Nix talk with
23 Minor 2 together in the beginning?

24 A. In the beginning.

25 Q. Did something happen so that you both

1 didn't talk with him?

2 A. Yeah. He didn't feel comfortable, so I
3 spoke with him by myself.

4 Q. He didn't feel comfortable with?

5 A. With a female in his room.

6 Q. So you spoke with him alone?

7 A. Yes.

8 Q. Did he give you any information about the
9 assault?

10 A. He did.

11 Q. Did he tell you where it happened?

12 A. Yeah, he said that it was at Mr. Moore's
13 house, which is 108 Applebee Court in Goose
14 Creek.

15 Q. Did he tell you when it had happened?

16 A. 2005.

17 Q. And what was his demeanor like?

18 A. He was kind of shy, didn't want to
19 disclose, kind of embarrassed.

20 Q. I've asked particular questions but did he
21 give you more detail? You cannot say but did he
22 give you more detail -- you can't tell us what
23 those were.

24 A. He did, yes.

25 Q. Now, what did you do next?

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

183

- 1 A. Made arrangements to meet with Minor 1.
2 Smalls.
3 Q. Did Minor 2 give you Minor 1 name?
4 A. No.
5 Q. So he did not mention Minor 1.
6 A. No.
7 Q. Where did you meet with Minor 1.
8 A. Alston Middle School.
9 Q. And when you got to that middle school,
10 what happened?
11 A. We met with administration and his mother
12 was there.
13 Q. Did they call her?
14 A. I believe so, I'm pretty sure.
15 Q. Did you and Officer Nix talk with Minor 1
16 together or how did that work?
17 A. We initially went in together again and
18 then she left the room and I interviewed him.
19 Q. And did he give you information about the
20 assault?
21 A. He did.
22 Q. Did he tell you where it had occurred?
23 A. It had occurred at Mr. Moore's house, 108
24 Applebee Court in Goose Creek.
25 Q. And did he tell you when?

1 A. I believe summer of 2006, the summer of
2 that year and it was December the 12th when I
3 spoke with him.

4 Q. So the summer of that year?

5 A. Yes

6 Q. Or of 2006?

7 A. Yes.

8 Q. Did you accompany Officer Nix with any
9 other visits in this case after that?

10 A. I did go with her on a search warrant on
11 108 Applebee Court and we took some photographs
12 of the residence.

13 Q. Why did you take those photographs?

14 A. To corroborate information that was given
15 to us.

16 Q. Was the end of your involvement in this
17 case?

18 A. Yes, ma'am.

19 MS. HERRING-LASH: Beg the court's
20 indulgence.

21 THE COURT: Yes, ma'am.

22 MS. HERRING-LASH: That's all the
23 questions that I have.

24 THE COURT: Cross examination?

25 MR. CURRY: Thank you, Your Honor.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

185

1 CROSS EXAMINATION

2 BY MR. CURRY:

3 Q. Mr. Bullard, how are you? I'm Eduardo
4 Curry. How you doing?

5 A. Pretty good, sir.

6 Q. Good. You and I know each other, is that
7 correct?

8 A. We ---

9 Q. We've worked on a lot of other kinds of
10 cases, is that correct?

11 A. That's correct, sir.

12 Q. So I can get right to the point, you met
13 with **Minor 2** did you not?

14 A. I did.

15 Q. All right. And you took a statement from
16 him, a statement that you wrote as he told it to
17 you; is that correct?

18 A. Question-and-answer, yes.

19 Q. All right, that's how you did that?

20 A. (Affirmative nod).

21 Q. You questioned him and he then gave you an
22 answer and you wrote it down?

23 A. (Affirmative nod).

24 Q. So you try to write down the question and
25 to write down the answer; is that correct?

- 1 A. That's correct.
- 2 Q. That's -- you've been to the Academy, is
- 3 that correct?
- 4 A. That's correct.
- 5 Q. Graduated from the Academy, what, in
- 6 Columbia?
- 7 A. That's correct.
- 8 Q. They teach you a lot of things, don't they?
- 9 A. Um-humm.
- 10 Q. What kind of things do they teach you?
- 11 A. Basically law, handguns, ---
- 12 Q. Report writing?
- 13 A. (Affirmative nod), report writing.
- 14 Q. Right?
- 15 A. (Affirmative nod).
- 16 Q. All kinds of reports? Incident reports?
- 17 Witness statements? Those kinds of things,
- 18 correct?
- 19 A. That's correct.
- 20 Q. And do they teach you how to ask questions?
- 21 A. In basic academy you don't really get that.
- 22 Q. Right. So basic academy, you just get the
- 23 kind of reading, writing, arithmetic of
- 24 policing; correct?
- 25 A. Pretty much.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

187

1 Q. All right. Would you agree with me that
2 sexual cases are not basic academy?

3 A. I would agree.

4 Q. All right. Okay. And would you agree with
5 me that, you know, it would help to take some
6 kind of classes or some kind of seminars in
7 policing about how to deal with sexual things;
8 is that correct?

9 A. That's correct.

10 Q. I want to ask you, did you take any of
11 those?

12 A. Yes, sir.

13 Q. What did you take in those?

14 A. I don't have a list with me. You'd have to
15 pull my certification but, yes, I've been doing
16 juvenile investigations for seven years. I've
17 had experience with that.

18 Q. Correct. Would you agree with me that when
19 you're dealing with children and people that
20 have sexual -- you ask questions or -- they call
21 them "prompts", don't they?

22 A. You ask questions.

23 Q. But the questions are called also prompts,
24 would you agree with me?

25 A. Different terminology, (affirmative nod).

1 You ask questions.

2 Q. Yes. All right. Let's talk about the type
3 of questions that you could ask. The questions
4 called free recall, do you know anything about
5 free recall?

6 A. Yes.

7 Q. What is that?

8 A. That's where you ask a question and they
9 recall, you don't give any suggestion.

10 Q. And then there is recognition memory prompt
11 questions, right?

12 A. (Affirmative nod).

13 Q. And what is that?

14 A. That's where you suggest it and they recall
15 it from memory.

16 Q. Then there is like open-ended prompts or
17 questions. Right?

18 A. (Affirmative nod).

19 Q. What are those?

20 A. You basically let them say what they have
21 to say to questions.

22 Q. All right. Then besides that you do like
23 direct questions -- who, when, what, where, why.
24 Correct?

25 A. (Affirmative nod).

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

189

1 Q. Is that a "yes"?

2 A. Yes.

3 Q. Okay. Then sometimes you give them option
4 kinds of questions, where it is either black or
5 white; correct?

6 A. Yeah.

7 Q. Yeah?

8 A. (Affirmative nod).

9 Q. Then sometimes you give them what they call
10 suggestive prompts or suggestive questions?

11 A. (Affirmative nod).

12 Q. What are those, Detective Bullard?

13 A. A suggestive question?

14 Q. Um-humm.

15 A. Meaning -- I mean, there's different.
16 You'd have to be more specific.

17 Q. Well, let's talk about it. You may
18 introduce undisclosed info and request
19 confirmation or rejection or selection, you know
20 something that they wouldn't know. You may say
21 'somebody else said this', you know,
22 'I know you know something' and then you allow
23 them to sort of come into that. Do you know
24 anything about that?

25 A. Again you'd have to be a little bit more

1 specific, as to the exact type of ---

2 Q. All right, I'll get more specific. The
3 kind of questions that you could introduce to
4 someone that could contaminate their memory
5 suggestively by implanting information through
6 leading questions and suggested information.
7 Could you do that?

8 A. I am sure that you could.

9 Q. In fact, that is one of the ways that you
10 could question people, isn't that correct?

11 A. It is a way. Yes, sir.

12 Q. And in fact if you do it that way then
13 people are more likely to give information so
14 that you can clean up the case and find out what
15 the problem is, would you agree with that?

16 A. Well, the goal is to get the truth and it
17 is -- you don't suggest something that they
18 would have knowledge of. You wouldn't do it
19 like that. You might reassure someone that
20 'if you have knowledge that someone else has
21 said something, then it's okay to disclose
22 something.' But that would be the extent of it.
23 You'd still let the person say what they've got
24 to say.

25 Q. Okay. Now, there are ways to avoid the

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

191

1 impermissible suggestion, would you agree with
2 me that there are ways to avoid that?

3 A. I'm sure, yeah.

4 Q. Like you could videotape it, right?

5 A. (No verbal response).

6 Q. Like you could record it, audio; correct?

7 A. That's right.

8 Q. Like you could have witnesses in there that
9 would corroborate what the person is saying as
10 you are recording it. Is that correct?

11 A. That's correct.

12 Q. And now in this particular case, did you
13 have anybody that you videotaped?

14 A. No.

15 Q. Did you have anybody that did audio?

16 A. No.

17 Q. Did you have anybody that sat there as you
18 took the statement and corroborated what this
19 person allegedly said to you so that it would be
20 accurate?

21 A. There is no evidence of that.

22 Q. All right. All right. Do you have a copy
23 of your report with you?

24 A. I do.

25 Q. Would you turn to page three, please?

1 A. Okay.

2 MR. CURRY: Your Honor, may I
3 approach?

4 THE COURT: Yes.

5 CROSS EXAMINATION CONTINUED

6 BY MR. CURRY:

7 Q. I hand you what has been previously marked
8 as Defense Exhibit 1 for identification purposes
9 only. Please turn to page three? You have a
10 copy of that, right?

11 A. (Upon review), I do.

12 Q. This here is your report, is that correct?

13 A. That is.

14 Q. That would be your signature?

15 A. (Affirmative nod).

16 Q. All right. Can you go down the -- question
17 three, "Did you say anything to anyone about
18 this before today?"

19 A. That's correct.

20 Q. Would you read the questions and then read
21 the answer for me, please? This is on Minor 2
22 Barrow, is that correct?

23 A. That is correct.

24 Q. All right.

25 A. (Reading):

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

193

1 Q. Did you say anything to anyone
2 about this before today?

3 A. No. My mom asked me about this
4 after Pastor Moore was arrested and I told her
5 that he did not do anything. I wanted to talk
6 to the police before I told her.

7 Q. All right. From this statement, Pastor
8 Moore had already been arrested on the charge
9 and according to Minor 2 his mother asked him,
10 right? And he tells her 'no.' Is that correct?

11 A. That is correct.

12 Q. And you wrote that down, correct?

13 A. Yes.

14 Q. Now, we know that there is no -- you didn't
15 recover any DNA?

16 A. No.

17 Q. You didn't have any reports of bruises on
18 children's bodies, did you?

19 A. No, sir.

20 Q. You didn't recover any reports about blood
21 samples or semen samples, did you?

22 A. No.

23 Q. Did you recover anything about scratches or
24 anything on Minor 2 body, did you?

1 A. No.

2 Q. You didn't recover any eyewitness testimony
3 or corroborating testimony as to these events
4 that occurred, did you?

5 A. No.

6 Q. Of course the body parts of his young man
7 were intact, his penis and anus; correct?

8 A. (No verbal response).

9 Q. From what you know?

10 A. I -- (no verbal response).

11 Q. So the only thing that we have basically is
12 the interaction between you and Minor 2
13 that is uncorroborated by any other thing; isn't
14 that correct?

15 A. We have his statement.

16 Q. That's all that we have?

17 A. (Affirmative nod).

18 Q. Is that a "yes"?

19 A. Yes.

20 MR. CURRY: Please answer any
21 questions that the Solicitor may have of you.

22 THE COURT: You may redirect.

23 MS. HERRING-LASH: Yes, Your Honor.

24 REDIRECT EXAMINATION

25 BY MS. HERRING-LASH:

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

195

1 Q. Detective Bullard, Mr. Curry was asking you
2 about the way that you ask questions to get
3 information.

4 A. Yes, ma'am.

5 Q. I want to show you your statement, page
6 two, ---

7 MS. HERRING-LASH: May I approach
8 the witness, Your Honor?

9 THE COURT: Yes, ma'am.

10 REDIRECT EXAMINATION

11 BY MS. HERRING-LASH:

12 Q. The last question on this page is the
13 question where you ask him what has happened?

14 A. Yes, ma'am.

15 Q. Is that the question where you ask him what
16 had happened?

17 A. (Upon review), are you talking about the
18 very last question?

19 Q. On that page two, right.

20 A. (Upon review) -- yes.

21 Q. And what was that question?

22 A. (Reading): "What did you do while you were
23 with Pastor Moore?"

24 Q. Is that what you would call an open-ended
25 statement?

1 A. No, ma'am.

2 Q. Does that statement suggest anything, as
3 far as what you knew?

4 A. No, ma'am. As far as I knew, no.

5 Q. That was the question, "What did you do
6 while you were with Pastor Moore?"

7 A. That's correct.

8 Q. And you can't give us his answer but is
9 that when he gave the history of what happened?

10 A. Yes.

11 Q. As far as your documentation, what you
12 documented as question-and-answer, question-and-
13 answer?

14 A. That is correct.

15 Q. And you wrote down your questions and his
16 answers?

17 A. That's correct.

18 Q. Now, Mr. Curry had you read another
19 questionnaire. Did you say anything to anyone
20 about this before today?

21 A. Yes, ma'am.

22 Q. Is that on page three?

23 A. Yes, ma'am.

24 Q. And what was his answer?

25 A. (Reading): "No. My mom asked me about

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

197

1 this after Pastor Moore was arrested and I told
2 her that he did not do anything. I wanted to
3 talk to the police before I told her."

4 Q. So this day when you wrote that, was this
5 the first day that you had spoken with Minor 2
6 Barrow?

7 A. Yes.

8 Q. Was there any arrest made regarding
9 Minor 2 before this date?

10 A. No, not regarding him.

11 Q. So what prompted you to make an arrest
12 for the assault on Minor 2 was this
13 statement?

14 A. Correct.

15 Q. And you saw Minor 1 when?

16 A. Let me look at this for a second -- (upon
17 review), on December the 12th.

18 Q. Was that the day after you saw Minor 2
19 Barrow?

20 A. Yes, ma'am.

21 Q. Was there any arrest made regarding Minor 1
22 Smalls before you saw Minor 1

23 A. No, ma'am.

24 Q. Did anything in Minor 2 statement lead
25 you to believe that there would be an eyewitness

1 for you to go and talk to?

2 A. No, ma'am.

3 Q. Did anything in his statement lead you to
4 believe that there would be bodily fluids that
5 would remain at that time?

6 A. No, ma'am.

7 MS. HERRING-LASH: Beg the court's
8 indulgence for a moment.

9 THE COURT: Certainly.

10 MS. HERRING-LASH: That's all that
11 I have.

12 THE COURT: Recross?

13 MR. CURRY: Yes, Your Honor.

14 RECROSS EXAMINATION

15 BY MR. CURRY:

16 Q. Now, there was some comment about
17 ejaculation. Was that correct, in Minor 2
18 statement?

19 A. I would have to go back and look to make
20 sure -- (reviewing).

21 Q. Maybe the words were "jacked me off", do
22 you remember -- page three?

23 A. Yes, that's correct.

24 Q. What do you know, based on your experience
25 and training, what "jacked me off" means?

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

199

1 A. That's means ejaculation.

2 Q. All right. Ejaculation would be semen; is
3 that correct?

4 A. That's correct.

5 Q. So did you look at any semen (phonetic) to
6 make sure?

7 A. No, I did not.

8 Q. Why?

9 A. Timeframe.

10 MR. CURRY: Thank you.

11 THE COURT: All right. You may come
12 down.

13 (WITNESS STEPS DOWN)

14 THE COURT: Do you wish this witness
15 to be excused?

16 MS. HERRING-LASH: Yes, Your Honor.

17 THE COURT: Any objection?

18 MR. CURRY: No objection, Judge.

19 THE COURT: You're also free to
20 leave. Thank you.

21 MS. HERRING-LASH: The State would
22 call Officer Karen Nix.

23 (WITNESS TAKES STAND)

24 KAREN NIX, being duly sworn to tell the
25 truth, the whole truth and nothing but the

1 truth, testified, as follows:

2 DIRECT EXAMINATION

3 BY MS. HERRING-LASH:

4 Q. Officer Nix, where do you work?

5 A. Goose Creek Police Department.

6 Q. And how long have you been there?

7 A. I am been with Goose Creek seven and a half
8 years.

9 Q. What are your duties there now?

10 A. I am a lieutenant in the office of
11 professional standards. I conduct polygraph
12 examination, I do internal affairs
13 investigations, use-of-force investigations,
14 background investigations on new hires.

15 Q. Back in December of 2006, November or
16 December of 2006, what were you doing?

17 A. I was an investigator.

18 Q. And in that capacity were you contacted by
19 Detective Bullard of the North Charleston Police
20 Department?

21 A. Yes, I was.

22 Q. When did you meet with him?

23 A. I met with him -- the 28th I was provided
24 documentation from North Charleston pertaining
25 to this investigation, from Detective Bullard,

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

201

1 and we made arrangements to meet on the 29th of
2 November.

3 Q. Did you meet then and discuss this case?

4 A. We did.

5 Q. What did you do after that?

6 A. We discussed the investigation and made
7 arrangements to go to Moultrie Middle to
8 interview Minor 2 [REDACTED]

9 Q. And did you go there to see Minor 2
10 Barrow?

11 A. Yes, we did.

12 Q. Were you able to talk with him?

13 A. Yes, we were.

14 Q. Did you both talk with him?

15 A. Initially we did. Due to Minor 2 [REDACTED] body
16 language and embarrassment, I asked him if he
17 would prefer to speak with the male officer,
18 male investigator and he requested so.

19 Q. So you left the room?

20 A. Yes.

21 Q. Did his mother also arrive?

22 A. Yes, she was contacted prior to our
23 speaking to him.

24 Q. Did you contact her or did the school
25 contact her?

- 1 A. The school contacted her.
- 2 Q. Did you speak with her?
- 3 A. I did.
- 4 Q. Did you speak with her after [Minor 2] had
5 spoken with the two of you?
- 6 A. We did.
- 7 Q. At that point in time did Detective Bullard
8 advise you of what [Minor 2] had told him?
- 9 A. Yes, he did.
- 10 Q. And did you have any further contact with
11 [Minor 2] or his mother after that date?
- 12 A. I know that I asked her to provide contact
13 information for the resources program, for Ms.
14 Barrow. I don't believe any contact was made
15 after that point.
- 16 Q. Did -- from your information, did [Minor 2]
17 give any information about [Minor 1] at that
18 point in time?
- 19 A. He mentioned [Minor 1] name but that
20 was not how I knew of [Minor 1].
- 21 Q. But he did not give you information to go
22 and see [Minor 1].
- 23 A. No.
- 24 Q. What did you do next?
- 25 A. I arranged to interview [Minor 1].

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

203

- 1 Q. Where did you to?
- 2 A. To Alston Middle School.
- 3 Q. Did you interview Minor 1
- 4 A. I began to interview Minor 1 he showed the
- 5 same type of behavior and embarrassment and I
- 6 asked if he would prefer to speak with a male
- 7 detective regarding the situation and he advised
- 8 that he would.
- 9 Q. After that did you secure a warrant
- 10 regarding Minor 1 and Minor 2
- 11 A. We did.
- 12 Q. Can you tell us what -- when you draw up
- 13 your warrants, do you do a booking report?
- 14 A. I do.
- 15 Q. What was the age of Tyrone Moore?
- 16 A. He was thirty-nine (sic).
- 17 Q. What is his date of birth?
- 18 A. His date of birth is [REDACTED] [REDACTED] [REDACTED].
- 19 Q. After the 12th, did you do anything else in
- 20 regards to this case?
- 21 A. I did.
- 22 Q. When was that?
- 23 A. After the 12th of?
- 24 Q. December.
- 25 A. Oh, December. I apologize. December the

1 14th, yes.

2 Q. Was that the search warrant?

3 A. (Affirmative nod), that was the search
4 warrant.

5 Q. And did you photograph the house?

6 A. The investigators assisting with the search
7 warrant did photograph it, yes.

8 Q. You've been sitting in here, you've seen
9 the photographs that were displayed?

10 A. Yes, ma'am.

11 Q. Were those some of the photographs that
12 you'all took?

13 A. Yes, ma'am.

14 Q. Why did you go in and take those
15 photographs?

16 A. To corroborate the information regarding
17 the family room, the video games, the pool
18 table, the sofas in the family room.

19 Q. Did you have any information based on these
20 statement to look for an eyewitness?

21 A. No.

22 Q. What about bodily fluids?

23 A. Bodily fluids obviously would come from the
24 ejaculation. Due to the volume of people that
25 Mr. Moore mentioned that has been in and out of

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

205

1 that room, there was no examination; so, no, we
2 did not collect DNA.

3 Q. How long had it been since you talked with
4 Minor 2 since the incident had occurred?

5 A. As far as when he was interviewed?

6 Q. No, as far as when he was assaulted?

7 A. He was interviewed when he was thirteen
8 years of age and he was between eleven and
9 twelve at the time of the alleged assault.

10 Q. So it had been at least a while?

11 A. Yes, ma'am.

12 Q. In your experience as an investigator, do
13 you go in and look for bodily fluids a year
14 after an assault?

15 A. No, ma'am.

16 MS. HERRING-LASH: Beg the court's
17 indulgence a moment, Your Honor.

18 THE COURT: Certainly.

19 DIRECT EXAMINATION CONTINUED

20 BY MS. HERRING-LASH:

21 Q. Just one more question, Detective Nix.

22 Where was Mr. Moore's home?

23 A. 108 Applebee Road within the city limits of
24 Goose Creek.

25 Q. Berkeley County?

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 A. County of Berkeley, yes, ma'am.

2 MS. HERRING-LASH: That are all the
3 questions that I have.

4 THE WITNESS: Thank you

5 THE COURT: You may cross-examine.

6 CROSS EXAMINATION

7 BY MR. CURRY:

8 Q. Detective Nix, I am Eduardo Curry. You and
9 I have met before, is that correct?

10 A. Yes, sir.

11 Q. On several occasions?

12 A. Yes, sir.

13 Q. You didn't interview Minor 2 did
14 you?

15 A. I was in there initially during the
16 interview of the investigation of Minor 2 yes.

17 Q. And it was going nowhere because you said
18 that he was tense and you exited the room, is
19 that correct?

20 A. He made disclosure that he was touched by
21 Mr. Moore. Knowing how to interview children
22 and realizing that it was -- that it would be
23 better for him to discuss this private matter
24 with a male investigator, I exited.

25 Q. All right. Okay. I guess I got the ---

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

207

1 MR. CURRY: Your Honor, may I
2 approach the witness?

3 THE COURT: Yes.

4 MR. CURRY: (Tenders document to
5 court reporter).

6 COURT REPORTER: Defendant's Exhibit
7 4 for identification.

8 MR. CURRY: May I approach the
9 witness, Your Honor?

10 THE COURT: Yes, sir.

11 MS. HERRING-LASH: Your Honor, may
12 I see the piece of paper?

13 THE COURT: Sure.

14 MR. CURRY: (Tenders to Ms. Herring-
15 Lash).

16 MS. HERRING-LASH: (Upon review,
17 returns to Mr. Curry).

18 MR. CURRY: Your Honor, may I
19 approach the witness?

20 THE COURT: You may.

21 CROSS EXAMINATION CONTINUED

22 BY MR. CURRY:

23 Q. I hand you what has been marked as defense
24 exhibit number three for identification purposes
25 only. What is it?

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 A. It is page three of the incident report
2 involving Minor 2

3 Q. And you've got a copy of it sitting there
4 with you; is that correct?

5 A. Yes, sir.

6 Q. All right. Now, I want to go down to the
7 second paragraph where it says "Smalls", do you
8 see it?

9 A. (No verbal response).

10 Q. The second paragraph, where it goes down to
11 where ---

12 A. I am on page three of the narrative for
13 Minor 2 statement. Which one are you
14 on? Which page and line?

15 MR. CURRY: If I may approach the
16 court reporter, Your Honor.

17 COURT REPORTER: Defendant's Exhibit
18 5 for identification.

19 THE WITNESS: Are we discussing
20 Minor 1

21 CROSS EXAMINATION CONTINUED

22 BY MR. CURRY:

23 Q. Well, let's discuss Minor 2 first.

24 A. Okay.

25 Q. Then we can go ---

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

209

1 A. Okay.

2 Q. Are you with me? Let's go to the second
3 paragraph again. Are you with me? It says --
4 how long were you in the room before, according
5 to your report, **Minor 2** made some kind of
6 allegation?

7 A. It doesn't state exactly. It doesn't say
8 'five minutes, two seconds.' It states that
9 Barrow was advised of the reason and stated that
10 he had been touched by Tyrone Moore.

11 Q. Okay. So you don't know how long you were
12 in there before he said that?

13 A. Well, we explain the reason we're here. We
14 don't just go and start throwing questions at a
15 child. We explained our purpose and laid the
16 foundation for the reason that we were
17 interviewing him.

18 Q. Right. Laying the foundation, sort of
19 giving him some background information as to why
20 you want to talk to him. Correct?

21 A. That's what I do as an investigator for the
22 Goose ---

23 Q. All right.

24 A. --- Creek Police Department. I was told to
25 speak with him, yes.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 Q. You, too, have been to the Academy?

2 A. Yes.

3 Q. All right. You, too, have gone through the
4 ABC's of the police academy?

5 A. I have.

6 Q. Have you taken any additional courses on
7 sexual abuse, disclose and ---

8 A. I have. I have over a hundred and fifteen
9 hours of training in investigating child
10 molestation and sexually deviant behavior. Here
11 is a list of my classes as of September '02
12 regarding investigating and prosecuting child
13 molesters.

14 Q. So then I could ask you some questions
15 about your information, right?

16 A. Yes.

17 Q. Would you agree with me ---

18 THE COURT: We have already been
19 through this. If you want to be specific about
20 this particular case, I'll allow you some leeway
21 in asking all the potential questions but we're
22 not going to go through that again with this
23 witness.

24 MR. CURRY: That's fine, Your Honor.

25 THE COURT: Move on. That's what I

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

211

1 want you to do.

2 MR. CURRY: Very well, Your Honor.

3 THE COURT: Thank you, sir.

4 CROSS EXAMINATION CONTINUED

5 BY MR. CURRY:

6 Q. In asking a child a question, how do you
7 avoid being impermissibly suggestive?

8 A. (A), depending on the age of a child --
9 I am not certified in what they call defining
10 words which establish the credibility of the
11 child, so I cannot discuss that. I am not an
12 expert in that. If they are a certain age, I
13 refer them to LCC for interview by someone who
14 is trained.

15 Due to Minor 2 age and education
16 that he was in at the time, obviously you state
17 who you are and your purpose for speaking to
18 him, in a manner that is not leading. He will
19 provide information, then you can do followup
20 questions with him.

21 As far as Mr. Barrow's report, it was a
22 short and exact interview and I'd left the room
23 so I am not -- (pause).

24 Q. I gather that if you left the room that you
25 didn't write the report, that Bullard did?

1 A. Correct.

2 Q. Okay.

3 MR. CURRY: I have no more questions
4 of this witness.

5 THE COURT: Redirect?

6 MS. HERRING-LASH: No redirect.

7 THE COURT: You may come down. Thank
8 you.

9 (WITNESS STEPS DOWN)

10 MS. HERRING-LASH: The State would
11 call Don Elsey.

12 MR. CURRY: May we approach?

13 THE COURT: Yes, sir.

14 (OFF RECORD SIDEBAR)

15 (WITNESS TAKES STAND)

16 DONALD E. ELSEY, being duly sworn to tell
17 the truth, the whole truth and nothing but the
18 truth, testified, as follows:

19 DIRECT EXAMINATION

20 BY MS. HERRING-LASH:

21 Q. Dr. Elsey, where do you work?

22 A. Donald Elsey.

23 Q. I'm sorry?

24 A. Donald Elsey, E-l-s-e-y.

25 Q. Where do you work?

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

213

1 A. The Lowcountry Children's Center.

2 Q. What is that?

3 A. That is a child advocacy center.

4 Q. What is your position there?

5 A. I am the clinical director, which means
6 that I supervise the other staff and carry a
7 caseload myself.

8 Q. Meaning that you see patients?

9 A. Yes.

10 Q. What is your educational background?

11 A. I have a bachelors in psychology and
12 sociology. I have a graduate degree in clinical
13 counseling. I have a doctorate in childhood
14 development.

15 Q. What is your professional background?

16 A. I have run programs for children in
17 psychiatrist hospitals, I have been the director
18 of central services at the Lowcountry Children's
19 Center for thirteen years, I am a licensed
20 professional counselor and I'm a licensed
21 professional counselor supervisor.

22 Q. Do you at the Lowcountry Children's Center
23 see children who have been sexually abused?

24 A. Yes.

25 Q. Do you have any specialized training in

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 child sexual abuse?

2 A. Yes. All the therapists and myself have
3 been -- have had training on interviewing
4 children, I've been trained both in what we call
5 defining words and I've also been trained
6 nationally through the American Professional
7 Society on Abuse of Children. In addition to
8 that, we have ongoing supervision on a daily and
9 weekly basis, talk about cases to make sure that
10 we're doing the best job that we can.

11 Q. What areas are you licensed in?

12 A. I am licensed as professional counselor and
13 as a supervisor.

14 Q. In your experience have you counseled
15 yourself victims of child sexual abuse?

16 A. I have.

17 Q. Have you done training yourself for ---

18 A. Yes, ma'am.

19 Q. --- for counseling ---

20 A. Training for counselors, Department of
21 Social Services, law enforcement, people in the
22 community, various populations.

23 Q. Have you previously testified in court?

24 A. Yes, I have.

25 Q. Have you previously been qualified as an

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

215

1 expert in the area of child sexual abuse?

2 A. Yes, ma'am.

3 MS. HERRING-LASH: Your Honor, at
4 this time the State would offer Dr. Elsey as an
5 expert in the area of child sexual abuse?

6 THE COURT: Do you care to examine
7 him as to qualifications?

8 MR. CURRY: Yes, Your Honor.

9 THE COURT: You may proceed.

10 MR. CURRY: Dr. Elsey, I'm Eduardo
11 Curry, Mr. Moore's attorney. Do you have any
12 books, writings, journals regarding -- that deal
13 specifically with delayed reporting and
14 reluctant disclosure in child sexual abuse
15 cases?

16 THE WITNESS: Do you mean have I
17 authored text?

18 MR. CURRY: (Affirmative nod).

19 THE WITNESS: No, sir.

20 MR. CURRY: Have you appeared in
21 symposiums, seminars at which you issued some
22 kind of speeches with regard to delayed
23 reporting or reluctant disclosure in child
24 sexual abuse cases?

25 THE WITNESS: Yes, sir.

1 MR. CURRY: Where?

2 THE WITNESS: Where?

3 MR. CURRY: (Affirmative nod).

4 THE WITNESS: Just last week in
5 Columbia I spoke to thirty-some DSS workers and
6 that was part of the topics I talked about. I
7 talked about a whole range of issues on sexual
8 abuse. I've presented at statewide American
9 Professional -- the South Carolina Society on
10 Abuse of Children, I've presented there a number
11 of years. I am a past-president of that
12 organization. I've presented to various
13 populations about that topic there. I've
14 presented that topic at My Sister's House
15 trainings that I have done, various other
16 organizations as part of my topic.

17 MR. CURRY: All right. I notice that
18 you said you have a doctorate, is that a Ph.D.

19 THE WITNESS: It's a doctorate in
20 education.

21 MR. CURRY: An Ed.D.?

22 THE WITNESS: Correct.

23 MR. CURRY: Your Ed.D. is in
24 childhood development; is that correct?

25 THE WITNESS: Yes, sir.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

217

1 MR. CURRY: Is there any sort of
2 training for sexual abuse cases within that
3 Ed.D.?

4 THE WITNESS: There were cases
5 that involved sexual development courses,
6 certainly some abuse courses, but no per se
7 sexual abuse as a specific area.

8 MR. CURRY: You said your graduate
9 school degree, you said you'd gone to grad
10 school, what kind of graduate school degree did
11 you receive?

12 THE WITNESS: A master's in
13 Education, Clinical Counseling.

14 MR. CURRY: And your master's in
15 clinical counseling, where did you get that,
16 receive that degree?

17 THE WITNESS: The Citadel.

18 MR. CURRY: Did you have any area
19 of speciality dealing with delayed reporting or
20 reluctant disclosure in these kind of abuse
21 cases?

22 THE WITNESS: Not as a primary
23 topic area. No, sir.

24 MR. CURRY: Where did you receive
25 your Ed.D. from?

1 THE WITNESS: Nova University in
2 Florida.

3 MR. CURRY: Thank you.

4 THE COURT: Any objection to him
5 being qualified to render opinions in the area
6 of child sexual abuse?

7 MR. CURRY: Yes, Your Honor.

8 THE COURT: What is the objection?

9 MR. CURRY: Your Honor, he has a
10 master's degree in

11 THE COURT: No, sir, just tell me
12 your objection.

13 MR. CURRY: The objection ---

14 THE COURT: You don't need to qualify
15 it.

16 MR. CURRY: He's not qualified.

17 THE COURT: Very well. Subject to
18 the objection of counsel, he will be permitted
19 to render opinions in the area of child sexual
20 abuse.

21 DIRECT EXAMINATION CONTINUED

22 BY MS. HERRING-LASH:

23 Q. Doctor, what is meant by the term "delay
24 reporting of abuse"?

25 A. Meaning there's a period between the child

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

219

1 having experienced something and their telling
2 somebody about it.

3 Q. Is that something that you commonly see?

4 A. Yes, it is almost the norm in my field.

5 Q. Has that -- how did that become so?

6 A. Back in the early '80s a gentleman by the
7 name of Dr. Summit did some research on that,
8 talking to his colleagues, and found that
9 children tend to keep it a secret. From that
10 time, it has been researched many, many times
11 since then. Research in the late '80s, recent
12 research in 2005, a gentleman named London did a
13 lot of research with many different studies
14 showing that most children do not tell as a
15 child about something that happened to them.
16 Q. And what you have been telling the jury
17 about is research showing children. In your
18 clinical experience, has that been what you've
19 found?

20 A. It has. One of the things that we try to
21 do at work is try to get the caregiver to be
22 supportive of their child. Quite often a parent
23 will come in and say, 'my child isn't telling me
24 what I know they did' and we explain to them
25 that we know the child loves you but that are

1 reasons why children don't tell right away.

2 Also adult males who were sexually abused
3 as children can -- I asked them, 'how long was
4 it between the time you were abused and you
5 telling somebody?' Again, this isn't research
6 but I ask them that and it might have been
7 twenty-plus years as an adult before they told
8 somebody -- for many reasons.

9 Q. And that involves males?

10 A. That is just males.

11 Q. What are the reasons that you have found
12 and that the literature has given why children
13 do not tell right away?

14 A. It's scary. What happened to them, it's
15 scary. They don't understand it. Some
16 children may think that it's their fault.
17 Another reason is that it involves what is,
18 quote, unquote, "bad" to them but it is
19 embarrassing. It's embarrassing to talk about
20 these types of things. Kid feel ashamed.

21 Another area why children don't tell is
22 lack of support or the perception of lack of
23 support. 'If mama finds out, she's going to be
24 upset, she will be mad at me.' That's another
25 reason.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

221

1 Another is that this person who did the
2 thing is someone that they trust. Most of the
3 children that I see -- if you think about the
4 circle of trust around our children, that's
5 where unfortunately much of this happens. It's
6 a family trust.

7 Q. Does it then make a difference if it is a
8 person who holds a position of trust in the
9 family and ---

10 A. It does. In my world, again that is almost
11 a norm. I've seen close to five thousand
12 children for forensic interviews and only two
13 have been abused -- or reported the abuse -- by
14 a stranger. It's just so rare that it is
15 someone that they don't know.

16 Q. Do most cases that you see in your day-to-
17 day work involve children?

18 A. Yes.

19 Q. Obviously if you're a child and you've
20 experienced an assault, what are some of the
21 things that prompts a child to actually tell?

22 A. With particularly young children, it is
23 accidental. They may say something to the
24 caregiver or to the parents who say, 'Whoa,
25 how did you learn about that?' That may prompt

1 the child to say, 'so and so did something to
2 me.' So it can be accidental.

3 With older children, something might anger
4 them, that happened to them as a child. 'Let me
5 tell you about what so and so did to me years
6 ago.'

7 Something has to motivate them on some
8 level to tell.

9 Q: In some cases have you seen the motivation
10 is someone actually sits them down and asks
11 them?

12 A. That absolutely can happen. Sometime the
13 educational -- they didn't realize that it was
14 wrong until they got some education around it.
15 Or the parent may have heard something or
16 somebody else could have said something and
17 they'd, in turn, ask the child about that.

18 Q. So when someone actually questions them,
19 that may prompt them to tell?

20 A. It may.

21 Q. Does a support system help a child to be
22 able to talk about it?

23 A. Absolutely. One of the primary reasons
24 that children can tell is because they feel
25 support from their caregivers.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

223

1 Q. Would it be important to know the
2 relationship between the child's parents and the
3 perpetrator in understanding the delay?

4 A. It is because, as I mentioned earlier, this
5 person is normally in the circle of trust. If
6 this child has been told, 'this is someone that
7 we trust, do what they say' -- for example, the
8 child is going to perceive, 'Mama and Daddy say
9 it's okay, so it must be okay, so I am not going
10 to say anything about this because they might be
11 mad at me.' 'They won't believe me', possible.

12 Q. Have you seen children in your clinical
13 experience that even though they are there to
14 talk about it still seem embarrassed, hesitant
15 to actually disclose all the details?

16 A. Absolutely. Many children that we see --
17 if you think about how children tell, just
18 generally -- 'How did you do at school today?'
19 Didn't do anything or 'I did one thing.' Later
20 then they'll tell you more, children tend to
21 tell little bits and pieces at a time. In
22 particular when there is something going on that
23 is disturbing or they feel they're in trouble
24 they may tell just enough to shut you up and
25 then later tell more, especially when they

1 understand more and feel more comfortable.

2 Q. Like if they understand -- you mean, like
3 if they're old enough to know that there is
4 something wrong they tell you enough to shut you
5 up.

6 A. (Affirmative nod), or maybe they've been
7 told by the person who did this, 'If you tell
8 your mama, she's going to hate you' or 'she's
9 going to be hurt'. When they realize that
10 doesn't happen maybe they feel safe enough to
11 tell more.

12 Q. Do children sometimes become, I guess I'll
13 use the term "passive" to abuse?

14 A. They do.

15 Q. Do you have a term for that?

16 A. It is a term that we use is called
17 "accommodation". Kids are put in situations
18 where they can't stop this person from doing it.
19 We wish that they could. While we tell kids
20 'don't let anybody do this to you', they can't
21 stop it. So they get put in situations where 'I
22 didn't stop it, so it's my fault. They are
23 going to be mad at me if I tell, so I am just
24 not going to say anything. I am going to have
25 to survive.'

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

225

1 Q. And in those situations maybe they continue
2 to be in the presence of the person who is doing
3 something to them, over and over?

4 A. Not only could they be in the presence but
5 they may seek that person out.

6 Q. Why would they seek the person out?

7 A. Because the relationship has been so
8 distorted by the actions of the offender, that
9 the relationship -- they begin to think, 'well,
10 this person cares about me' because of some type
11 of behavior, what we call grooming, which means
12 slowly getting a child to feel okay with it.

13 Q. Are some children, I guess, conflicted in
14 that they care about the person, that they don't
15 want to hurt them?

16 A. That's why we have to be careful when
17 talking to the child because it absolutely could
18 happen. If you say 'that person is bad, he's
19 going to jail' that could make the child stop
20 talking, because they just want the behavior to
21 stop. You know, it may be a favorite uncle or a
22 favorite teacher. They just want the behavior
23 to stop.

24 Q. So it could be someone that they continue
25 to care about and continue to be around but want

1 them to stop the behavior?

2 A. That's what happens most of the time, in my
3 experience.

4 Q. So you have seen situations where a child
5 will continue to go to the home of a person or
6 accepts gifts?

7 A. Yes, ma'am.

8 Q. Did you, Dr. Elsey, see either **Minor 2**
9 Barrow or **Minor 1**

10 A. No, ma'am.

11 Q. So you're talking to us in general about
12 how children react to this?

13 A. Yes, ma'am.

14 MS. HERRING-LASH: Those are all of
15 the questions that I have of Dr. Elsey.

16 THE COURT: Very well. Do you expect
17 to have lengthy cross-examination?

18 MR. CURRY: Judge, I do. If you want
19 to take a break, ---

20 THE COURT: We'll do that for the
21 jury if that'll work for you.

22 MR. CURRY: That's fine. That'll
23 work for me, Your Honor.

24 THE COURT: Ladies and Gentlemen,
25 let's take a break at this point. I'll let you

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

227

1 go to your jury room. Do not begin your
2 deliberations. Do not discuss the case. We
3 will be with you shortly.

4 (JURY OUT @ 3:08 P.M.)

5 THE COURT: Thank you very much.
6 Before we recess -- and thank you, Mr. Curry.
7 The objection was to his qualifications and the
8 court overruled your objection. I believe based
9 on the testimony of this witness the questions
10 asked were certainly pertinent and germane
11 questions and very appropriate for the jury. I
12 will instruct that they have to make the
13 determination as to the weight to be given any
14 opinion. I believe that it goes to the weight
15 and not to the ability or qualifications to
16 testify. I think, based on his background,
17 training, experience, basically life, it's
18 obvious that he has an expertise. Now, whether
19 or not it's to the level that entitles him to
20 give validity opinions; that's what the jury
21 will ultimately decide. That's the basis for my
22 overruling the objection.

23 MR. CURRY: Thank you, Your Honor.

24 THE COURT: Anything from the State
25 before we recess?

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

228

1 MS. HERRING-LASH: No, sir.

2 THE COURT: Anything from the
3 defendant?

4 MR. CURRY: Nothing.

5 THE COURT: Doctor, during the recess
6 you may step down if you wish but I would ask
7 that you not have an conversation with any of
8 the attorneys.

9 THE WITNESS: Yes, sir.

10 THE COURT: Thank you, sir. We will
11 be at-ease.

12 (BRIEF RECESS)

13 (DEFENDANT PRESENT)

14 THE COURT: Is the defendant ready to
15 continue?

16 MR. CURRY: Yes, Your Honor.

17 THE COURT: Let the record reflect
18 that Mr. Moore is present. Is the State ready?

19 MS. HERRING-LASH: Yes, sir.

20 THE COURT: Let's bring in our jury,
21 please.

22 BAILIFF: Just a few minutes.

23 THE COURT: Sure, no rush.

24 (JURY IN @ 3:25 P.M.)

25 THE COURT: Thank you, Ladies and

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

229

1 Gentlemen, we are now ready to continue. Mr.
2 Curry, you may commence your cross-examination.

3 MR. CURRY: Thank you very much, Your
4 Honor.

5 CROSS EXAMINATION

6 BY MR. CURRY:

7 Q. Dr. Elsey, I'm Eduardo Curry and I'm Pastor
8 Moore's attorney. How are you today?

9 A. Good, thank you.

10 Q. Have a good trip from Charleston?

11 A. I did. Thank you.

12 Q. Good. I wanted to ask you some questions
13 and see if we can get some clarity on the jury's
14 behalf and maybe my behalf.

15 A. Okay.

16 Q. Now, just for clarification sake, you or
17 Lowcountry Children's Center has never seen

18 Minor 2 or Minor 1 is that
19 correct?

20 A. (Affirmative nod), not that I am aware of.

21 No.

22 Q. You have opined some things but that is
23 really for general children and not necessarily
24 a specific case; is that correct?

25 A. That's correct.

1 Q. You can get a lot of estimations about
2 different kinds of facts and scenarios from the
3 prompt itself; is that correct?

4 A. I'm not sure what prompt you're talking
5 about.

6 Q. The assistant solicitor, Ms. Herring-Lash,
7 asked you about what kinds of things would
8 prompt children to tell and you said accidental,
9 anger.

10 A. Yes, sir.

11 Q. All right. Okay. Now, there are a couple
12 of things that I didn't hear and maybe they
13 don't exist but maybe you can fill in the
14 blanks. What about children changing their
15 stories? Have you had opportunities where
16 children started in one direction and then
17 changed their story to another?

18 A. Yes, sir.

19 Q. Do you have any percentages with regard to
20 the five thousand children or so that you've
21 seen?

22 A. The research typically shows, the Smith
23 study for example talks about roughly twenty
24 percent of the children who give disclosure at
25 some point recanted it; which means that they

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

231

1 took it back. Then later did reaffirm that it
2 did happen, but as far as the process certainly
3 children have taken back what they've said
4 initially.

5 Q. And would you agree with me that even in
6 the scientific explanation that it is not
7 without some uncertainty; is that correct?

8 A. That's correct.

9 Q. So there is some percentage in anything
10 because nothing is absolute. Correct?

11 A. There are different studies that show
12 different numbers, yes, sir.

13 Q. What about propensity to lie, are there any
14 studies based on what you've seen that would
15 lead -- so that we would understand children's
16 propensity to lie and how that fits into your
17 model?

18 A. Again, I'll cite the same Smith study
19 because a lot of children initially in that
20 study -- and these were children that reports or
21 the perpetrators had confessed or there had been
22 some severe medical evidence. Initially most of
23 those children denied that it happened, so they
24 lied. They said that it didn't happen when they
25 were first asked the questions.

1 Q. All right. Did -- in your experience, did
2 you and Lowcountry Children's Center, have you
3 ever had a child say there was no sex abuse and
4 then later you found out there was sex abuse,
5 even after going through your prompting and your
6 screening?

7 A. Yes, sir.

8 Q. Okay. All right. Does that cause you any
9 concern if they say no sex abuse and then later
10 come back and say sex abuse?

11 A. Well, I think there are multiple
12 hypotheses. One is that something happened to
13 make them report, maybe something supportive or
14 something negative. I am amazed, to be honest
15 with you, that kids disclose -- because of all
16 that they are put under when this happens, all
17 the pressure on them to tell. I am amazed every
18 day that kids can look through all that and
19 still be able to talk about things that happened
20 to them.

21 Q. In this case that we're speaking of with
22 Minor 2 [REDACTED] and Minor 1 [REDACTED] we're talking
23 about delayed reporting; aren't we?

24 A. I really don't know the case.

25 Q. Okay. You don't know anything about the

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

233

1 facts of this case?

2 A. Very little.

3 Q. All right. Have you -- do you have any
4 information on -- since we are talking in
5 generalities and not with specificity at this
6 point, in your generality of knowledge talking
7 about false allegations, would you agree with me
8 that you can contaminate the memory bank by
9 suggestively implanting information by using
10 leading and suggestive questions?

11 A. You certainly can lead a child down a path
12 by asking leading questions. In terms of
13 contaminating memory, the research is pretty
14 clear that's very rare. It can happen but it's
15 pretty rare.

16 Q. Without you knowing the specificity of this
17 case, you can't rule it out; can you?

18 A. No, sir.

19 Q. Thank you.

20 THE COURT: Redirect?

21 MS. HERRING-LASH: Just a few
22 questions.

23 REDIRECT EXAMINATION

24 BY MS. HERRING-LASH:

25 Q. In your experience, have you seen children

1 that have been questioned by family members and
2 it was denied -- that have come into your office
3 and admitted that something had happened?

4 A. I'm sorry? Admit to something that
5 happened?

6 Q. That they have been abused?

7 A. That they didn't disclose abuse?

8 Q. Right.

9 A. Yes.

10 Q. So they didn't disclose it at first, denied
11 it but then later disclosed?

12 A. I've certainly had that many times. Yes.

13 Q. And are there children that you see at your
14 office who deny it to you and then later you
15 discover that in fact they have admitted that
16 they have been abused?

17 A. Yes, that's absolutely happened.

18 Q. The article that you talked about, those
19 are cases that are cases that are confessions or
20 pregnancies or venereal disease where the
21 researchers knew that the children had been
22 assaulted and they still denied it?

23 A. That's what made that study so interesting
24 because those were cases where we knew that it
25 had happened and the children still denied

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

235

1 initially. The majority did.

2 MS. HERRING-LASH: Those are the
3 questions that I have.

4 THE COURT: Recross?

5 MR. CURRY: I have no questions.

6 THE COURT: Thank you. Dr. Elsey,
7 you may step down.

8 (WITNESS STEPS DOWN)

9 THE COURT: Do you wish for this
10 witness to be excused?

11 MS. HERRING-LASH: Yes, sir.

12 THE COURT: Any objection?

13 MR. CURRY: No objection.

14 THE COURT: Dr. Elsey, you are
15 excused.

16 THE WITNESS: Thank you.

17 THE COURT: Call your next witness.

18 MS. HERRING-LASH: Your Honor, the
19 State would rest.

20 THE COURT: Ladies and Gentlemen, at
21 this point there are matters of law that I must
22 take up out of your presence. I need for you to
23 go to your jury room for just a few moments. Do
24 not begin your deliberations. Do not discuss
25 the case. We will be with you momentarily.

1 (JURY OUT @ 3:32 P.M.)

2 THE COURT: Any Motions from the
3 State?

4 MS. HERRING-LASH: No, Your Honor.

5 THE COURT: Any motions from the
6 defendant?

7 MR. CURRY: Yes, Judge. I would ask
8 that a directed verdict be issued on behalf of
9 the Defendant as the State has failed in their
10 burden of proof beyond a reasonable doubt. I
11 would ask Your Honor to grant a directed
12 verdict.

13 THE COURT: Based on the testimony of
14 the alleged victims, the ages of those victims,
15 the age of the defendant which is part of the
16 record, coupled with testimony from Dr. Elsey,
17 there is substantial circumstantial evidence.
18 In the light most favorable to the State, I
19 would respectfully deny your Motion.

20 MR. CURRY: Thank you, Your Honor.

21 THE COURT: Do you intend to call any
22 witnesses?

23 MR. CURRY: Judge, if I could have
24 about three minutes to speak to Mr. Moore?

25 THE COURT: Yes, sir.

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

237

1 (BRIEF RECESS)

2 (DEFENDANT PRESENT)

3 MR. CURRY: Your Honor, may it please
4 the court, after consultation with Mr. Moore and
5 his wife, particularly my client, Mr. Moore, he
6 elects not to testify and the defense rests.

7 THE COURT: Very well. Mr. Moore,
8 -- thank you very much, Mr. Curry. Mr. Moore,
9 you may remain seated, sir. Your attorney, Mr.
10 Curry, has advised me that you -- that he has
11 talked with you about your right to testify or
12 not to testify. Is that correct?

13 DEFENDANT: Yes, sir.

14 THE COURT: And you've had sufficient
15 time to reflect on his advice and your
16 discussion with him concerning this issue?

17 DEFENDANT: Yes, sir.

18 THE COURT: And you have made a
19 conscious decision for yourself, after having
20 the opportunity to discuss the matter with your
21 lawyer and any other family members that you
22 wish, and you have elected not to take the
23 stand; is that correct?

24 DEFENDANT: Yes, sir.

25 THE COURT: Of course you heard me

1 tell the jury when we started that they should
2 never look to you to prove anything because you
3 don't have to. In fact, I stated that you don't
4 have to present any evidence. I will further
5 instruct the jury and remind them that they
6 cannot consider that when they begin their
7 deliberations. I'm sure your attorney has
8 advised you of that, as well; is that correct?

9 DEFENDANT: Yes, sir.

10 THE COURT: But it is your right to
11 testify if you so choose. Of course, if you do
12 then you have the right to come forward and
13 testify. Of course, you would be subject to
14 cross-examination. You realize that?

15 DEFENDANT: Yes, sir.

16 THE COURT: Are you under the
17 influence, sir, of any alcohol or any type of
18 medication here today or any type of drugs that
19 would affect or in any way influence a decision
20 of this nature?

21 DEFENDANT: No, sir.

22 THE COURT: Do you know of any --
23 do you feel any undue pressure concerning the
24 decision? You've already stated that you've had
25 sufficient time to reflect on this issue, is

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

239

1 that correct?

2 DEFENDANT: Yes, sir.

3 THE COURT: So there's nothing
4 forcing you to make this decision, is that
5 correct?

6 DEFENDANT: No, sir.

7 THE COURT: That is correct?

8 DEFENDANT: Yes, sir.

9 THE COURT: Are you satisfied with
10 the manner in which your attorney has advised
11 you in this matter, advised you specifically as
12 to your right to testify or to not testify?

13 DEFENDANT: Yes, sir.

14 THE COURT: Very well. Thank you so
15 much, Mr. Moore. I appreciate it, sir. I find
16 Mr. Moore has demonstrated by his responses that
17 he has made a conscious decision, one that he
18 makes freely and voluntarily, knowingly and
19 intelligently that he will exercise his
20 Constitutional right not to testify. I find
21 that he has had the benefit of very competent
22 counsel, that he has indicated that he is
23 totally satisfied with that decision. Again,
24 I think that further reflects and supports the
25 decision as one that he makes knowingly and

1 intelligently. Thank you so much, sir.

2 When we come back, when the jury
3 returns I will ask you -- what I have started
4 doing lately is to follow with -- what I tell
5 them is -- I will ask does Mr. Moore wish to
6 present any witnesses.

7 MR. CURRY: Very well.

8 THE COURT: That's the way that I
9 couch the question.

10 MR. CURRY: Very well. Thank you.

11 THE COURT: Any objection to the
12 question being posed in that fashion?

13 MR. CURRY: No objection, Your Honor.

14
15 THE COURT: Given the hour, it would
16 probably be -- after closing arguments -- how
17 long do you anticipate your closing argument?

18 MS. HERRING-LASH: I would think
19 about ---

20 THE COURT: Of course, your closing
21 argument will be an opening argument.

22 MS. HERRING-LASH: It should be
23 fairly quick. Maybe twenty to thirty minutes at
24 the very most.

25 THE COURT: And yours?

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

241

1 MR. CURRY: I'm thinking the same,
2 you know, between twenty and thirty minutes.

3 THE COURT: All right. Given my
4 experience over the years that generally takes
5 about thirty to forty-five, just to be fair. We
6 still have to discuss -- and that's not a
7 criticism, that's just the way that it goes.
8 I was guilty of the same thing when I was
9 sitting there.

10 I think that would put us to 4:30,
11 probably 5:00 o'clock. I am probably going to
12 tell the jury to come back in the morning rather
13 than go to the jury today. I will give them the
14 option if they want to, but I'll let them --
15 I've found that they feel a little better about
16 it when they participate with it.

17 When you rest, I'm going to send them
18 out and ask them to talk about that and then we
19 will -- we will have our Motions and then we can
20 bring them back in for them to tell us what they
21 want to do. Or, they could let us know. If
22 they do -- and we need to have a brief charge
23 conference. I've looked at your requests and
24 most of them covered, I think; if not verbatim,
25 I think pretty clearly covered in my general

1 charge.

2 MR. CURRY: Yes, Your Honor.

3 MS. HERRING-LASH: Your Honor,
4 would that have the option to start
5 deliberating?

6 THE COURT: No, what I'm going to say
7 that is that if we charge -- what I've said --
8 and the last time we did this, the jury said
9 'hummm.' I would think that they would probably
10 get the case at the earliest, the best case
11 scenario, if you'all are twenty minutes, twenty
12 minutes, that's forty and it would take me
13 probably about thirty minutes, maybe, all said
14 and done. We're talking about at least an hour,
15 so I think the best case scenario is a quarter
16 of 5:00. I don't think that's a realistic
17 expectation. And, who knows how long they are
18 going to deliberate? I'll just let them pick
19 it, because I would want them to deliberate at
20 the end.

21 MS. HERRING-LASH: Okay.

22 MR. CURRY: Okay.

23 THE COURT: Let's invite the jury to
24 return.

25 (JURY IN @ 3:44 P.M.)

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

243

1 THE COURT: Thank you, Ladies and
2 Gentlemen. I appreciate your patience.
3 Solicitor, the State rests.

4 MS. HERRING-LASH: Yes, sir.

5 THE COURT: Mr. Curry, does Mr. Moore
6 wish to present any testimony or to present any
7 witnesses for the jury's consideration?

8 MR. CURRY: No, Your Honor, the
9 defense rests.

10 THE COURT: Very well, and I had that
11 -- I knew that was coming before, because we've
12 talked about that. It is now about a quarter of
13 4:00. When I first started, my boss, the then
14 Chief Justice Harwell, in '94 when I started his
15 rule was, just sort of typically a rule of
16 thumb, don't make a jury start deliberating
17 after 4:00. If you can't get a case to the jury
18 before 4:00 o'clock, you need to think about it.
19 Over the years I've found some jurors that said
20 'yes, absolutely, I don't want to do that'.
21 I've had some that said, 'nope, I'd rather stay
22 and push through it.' I have typically now let
23 the jury make that call.

24 There are two remaining parts. There
25 is a matter that I now have to take up out of

1 your presence, again some matters of law. Then
2 we would be able to probably start with the
3 closing arguments, best case probably about 4:00
4 o'clock. I would anticipate that the next two
5 parts will take, at a minimum, an hour and
6 fifteen to an hour and thirty minutes. That
7 would put us past 5:00 before you could begin
8 the process of deciding this case. How long
9 that is going to take, nobody knows because you
10 all have honored the commitment that you made in
11 that you have not started your deliberations,
12 and I've confident of that.

13 I share that with you to say that I'm
14 going to let you tell me what you want to do. I
15 need to excuse you now to discuss these matters
16 of law out of your presence.

17 Mr. Presiding Juror, if you would just
18 talk with your jury in your jury room and let me
19 know what -- the options are that we can push
20 forward and you'll get the case as quickly as
21 can, it would be after 5:00 I would anticipate,
22 but if you want to come back -- if you'd rather
23 do it tomorrow, we will report at 9:30 and then
24 do the parts and you'll have the case probably
25 before lunch, certainly by 11:00 or 11:30. Then

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

245

1 you will have the better part of the day.
2 That's up to you. So if you will retire to your
3 jury room. Do not begin your deliberations.
4 Just let us know.

5 FOREMAN: Would you do the closing
6 arguments tonight regardless?

7 THE COURT: No. That's a very
8 legitimate question. There have been some --
9 and as a lawyer I begged judges not to do that,
10 and I'll tell you why. The closing arguments,
11 they talk about the charge and I think that it
12 is very helpful to do it -- I think it is nice
13 when one follows the other. In fact, we have a
14 judge and I am very close to doing it -- he's
15 kind of a -- he's been doing it for a little bit
16 longer than I have, he's retired and I admire
17 him but he started doing -- normally the order
18 is what I just -- what I mentioned when we
19 started, closing arguments would be next and the
20 last thing is the charge. Judge Cottingham
21 gives the charge and then lets the lawyers argue
22 about what the law is. That might not be a bad
23 idea, because the jury hears the law and then
24 the lawyers talk about what's been said when
25 they argue the law. It's just reverse. Most

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 lawyers will argue exactly what my charge is
2 going to be anyway, but that's the reason --
3 certainly the factual part of it, I don't have
4 any problem with that but when we talk about the
5 part that the argue and the law, I think it is
6 helpful to have them together. That's why I
7 don't separate them. So if you will retire and
8 discuss that and just let us know what your
9 thoughts are. Thank you very much. Thank you,
10 Ladies and Gentlemen.

11 (JURY OUT @ 3:46 P.M.)

12 THE COURT: Any Motions on behalf of
13 the State?

14 MS. HERRING-LASH: No, Your Honor.

15 THE COURT: Mr. Curry?

16 MR. CURRY: Just renew the Motions
17 that we have made.

18 THE COURT: Thank you very much.
19 Based on the light most favorable to the State,
20 as I am required to do at this point, I must
21 respectfully deny that Motion.

22 MR. CURRY: Thank you, Your Honor.

23 THE COURT: Okay. Looking at your
24 charge, I am going to -- the credibility and
25 believability of a witness, that is charge

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

247

1 number one. It's in my general charge
2 generally. I've already done that but will
3 continue to address the duties of the judge and
4 the jury. I think that I addressed that to some
5 extent in my preliminary charge.

6 I have advised them but will reiterate
7 that they are the sole judges of the facts,
8 which is charge number three.

9 Charge number four, I would certainly
10 cover the defendant's right not to testify.

11 Charge number five is covered in my
12 charge of presumption of innocence.

13 Charge number six, I use -- I've
14 already told them the *State v. Manning* but I
15 also incorporate the *Lincoln v. Nebraska* charge,
16 as well.

17 Direct and circumstantial evidence, I
18 will give my charge concerning those. The
19 existence, both types and I -- I use the *Grippon*
20 charge that there is not any greater proof
21 required.

22 Charge number eight, criminal intent.
23 I will charge that. It's in my general charge.

24 Charge number nine, I don't think that
25 we have any evidence that would warrant the

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

1 character or reputation evidence of the
2 defendant.

3 MR. CURRY: That's correct, Your
4 Honor.

5 THE COURT: So I decline that.
6 Charge number ten, I think in anticipation of
7 some other charges, second degree criminal
8 sexual conduct is not an issue.

9 MR. CURRY: Right.

10 THE COURT: I assume that's
11 withdrawn.

12 MR. CURRY: That's correct, Your
13 Honor.

14 THE COURT: Okay. Charge number
15 eleven, I will cover the lewd act charge.
16 Basically it's the language contained there in
17 your request to charge.

18 Charge number twelve, again I assume
19 it's withdrawn. That deals with criminal sexual
20 conduct with a minor under sixteen.

21 MR. CURRY: That's right.

22 THE COURT: Okay. So I think I have
23 covered them all. I will hold them out. If
24 there is any portion that you think I should
25 charge, I'll be happy for you to state that and

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

249

1 we can make it a court's exhibit or we will
2 address it. Unless I hear otherwise, I will
3 assume that you're satisfied that your requests
4 to charge are covered. However, if you wish me
5 to make the packet a court's exhibit, I will be
6 glad to do so.

7 MR. CURRY: Judge, that's fine.

8 THE COURT: Thank you so much, sir.
9 All right, we will wait and see what the jury
10 wants to do.

11 MS. HERRING-LASH: Your Honor, do
12 you charge the statute that says -- (coughing in
13 courtroom, inaudible).

14 THE COURT: Last time I looked at
15 that, I took it out because I'd had a -- it was
16 just a lewd act and I don't think that it covers
17 a lewd act. I'll check it again and see. Have
18 they decided?

19 (NOTIFIED AT 4:05 P.M. OF JURY REQUEST)

20 THE COURT: Have they decided?

21 BAILIFF: Yes, sir.

22 THE COURT: What did they decide?

23 BAILIFF: I didn't ask them.

24 THE COURT: Well, we need to ask them
25 whether they made a decision. If they have, I

1 need to bring them in. If they haven't, I'm
2 going to take about a five-minute break.

3 BAILIFF: Tomorrow.

4 THE COURT: Ask them to come in.
5 I hope that suits everyone else, as well?

6 MR. CURRY: Yes, Your Honor.

7 MS. HERRING-LASH: Yes, sir.

8 (JURY IN @ 4:00 P.M.)

9 THE COURT: Thank you very much,
10 Ladies and Gentlemen. Thank you, Mr. Forrester.
11 As I understand, you've talked to the jury and
12 the jury has decided that the jury will return
13 in the morning to complete the trial?

14 FOREMAN: Yes, sir.

15 THE COURT: I appreciate that, Ladies
16 and Gentlemen. Thank you. I am going to let
17 you go. There is the human temptation to start
18 resolving this case, that is just the way we're
19 made. Please remember something if you do, you
20 will have violated the commitment that you made
21 this morning when we started. If you do, you
22 will have started your deliberation in this
23 case. You must resist that temptation.

24 Now, certainly no one expects you not
25 to make those mental notes of things that

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

251

1 happened, things that a witness said that are
2 important to you in ultimately deciding the
3 credibility and believability of witnesses.
4 Those are the things that you will talk about.
5 I just ask you not to reach any conclusion about
6 any witness, because until you've heard the
7 closing arguments and until you've heard the law
8 it would be inappropriate to do so.

9 Also tonight when you go home, if there is
10 someone there I would imagine the first question
11 is going to be, 'What are you involved in, what
12 is this case about?' now that you've heard it.
13 I mean, yesterday you were picked and you really
14 didn't know much other than what I shared with
15 you having been alleged but now you've heard
16 some things. If you start talking about the
17 case, even with somebody at home, you will have
18 commenced your deliberation. Please know that
19 is so critical that you not do that.

20 I share this, not in any way to
21 belittle anyone who has been involved, because I
22 don't think I stress it enough and I take
23 responsibility for it but I sent a jury home,
24 much as you're doing, and thank goodness the
25 foreperson did what he did when they came back

1 because one of the jurors said, 'You know, I was
2 talking to my...' -- it was a civil case and
3 they were talking about some of the damage
4 elements. This juror said, 'You know, I was
5 talking with my husband last night and he
6 reminded me of something that our family had, a
7 similar situation, somebody in our family, we
8 talked about it.' Well, folks, that case had to
9 be mistried because that foreperson did what
10 they should have done, they made that known to
11 me and we had to excuse the jury and retry the
12 case.

13 The reason for it not that you would be
14 influenced by what somebody said, but the reason
15 is that you make a commitment to decide the case
16 based on what you hear and only that. So it is
17 very important that you not engage in any
18 conversation.

19 Don't conduct any independent research.
20 We're living in a world and I --
21 I talked about the Chief Justice. Recently we
22 had our new judges school and I was involved in
23 it and she came in and said, 'I am going to be
24 developing something that deals with a problem
25 that is beginning to rear its head.' Most of

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

253

1 the time I think they take the -- do you take
2 their cell phones, too?

3 BAILIFF: They are not allowed to
4 bring them in the building.

5 THE COURT: Well, okay, that's one
6 way of dealing with it. Some places apparently
7 they let them keep them, keep their Blackberry.
8 Guess what happens. They go in the jury room,
9 they get online and they start looking up
10 information where they have questions. You
11 can't do that. That violates the whole concept
12 of what we're doing. I share those with you not
13 because I want you to go out and do that, but
14 just to share -- to impress upon you how
15 critical that it is and important that it is
16 that you not do that. I know that you won't.

17 Have a wonderful evening, I hope you
18 get a good night's rest and we will see you at
19 9:30 in the morning. Come directly to your jury
20 room. Thank you.

21 (JURY OUT @ 4:05 P.M.)

22 THE COURT: Anything from the State
23 before recessing?

24 MS. HERRING-LASH: No, Your Honor.

25 THE COURT: Anything from the

1 defendant before recessing.

2 MR. CURRY: Nothing, Your Honor.

3 THE COURT: Thank you. Reverend
4 Moore, again I will allow you to remain out on
5 bond. I know you will be here in the morning.
6 I look forward to seeing you at 9:30, sir.
7 I will tell you because I've had this happen,
8 just as I shared that story, I had a defendant
9 who -- we recessed for the evening, I left him
10 out and he didn't come back for the closing
11 arguments and the jury verdict. As it turned
12 out, unfortunately for him, the jury couldn't
13 make a decision but he ended up being in jail
14 because he wasn't present and a bench warrant
15 was issued for him. So, we'll go forward
16 tomorrow but I would expect to see you sitting
17 next to counsel.

18 DEFENDANT: Yes, sir.

19 THE COURT: Have a good evening.

20 MR. CURRY: Thank you.

21 (COURT IN RECESS)

22 (TRANSCRIPT CONTINUED NEXT PAGE)

23

24

25

State of South Carolina v. Tyrone Moore
Case No. 08-GS-08-1020
Jury Trial of July 27-29, 2009
before The Honorable R. Markley Dennis, Jr.

255

1 CERTIFICATE OF REPORTER

2

3 I, the undersigned, Deborah Garrison,
4 official court reporter for the 9TH Judicial
5 Circuit of the State of South Carolina, do
6 hereby certify that the foregoing is a true,
7 accurate and complete transcript of the jury
8 trial held before The Honorable R. Markley
9 Dennis, Jr., on July 27-28, 2009;

10 I further certify that I am neither kin nor
11 counsel to any of the parties and have no
12 interest in the outcome of this action.

13

14



15

Deborah Garrison

16

Circuit Court Reporter

17

9th Judicial Circuit

18

19

20

21

22

23

24 Charleston, South Carolina

25 June 9, 2010

1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
2008-GS-08-1020, 1021

3 STATE OF SOUTH CAROLINA)
4)
5)
6)
7)
8)
9)
10)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

Plaintiff

V.

TRANSCRIPT OF RECORD

TYRONE MOORE,

Defendant.

JULY 29, 2009
Charleston, South Carolina

B E F O R E:

THE HONORABLE R. MARKLEY DENNIS, JR., JUDGE

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

MS. DEBORAH HERRING-LASH, Assistant Solicitor
MR. KRIS NEELY, Assistant Solicitor
Representing the State

MR. EDUARDO K. CURRY, Esquire Representing
the Defendant

Anne Bouley Meyer, RPR
Circuit Court Reporter

I N D E X

WITNESSES

Page

PRELIMINARY MATTERS BY THE COURT	2:1
CLOSING ARGUMENT BY MS. HERRING-LASH	3:10
CLOSING ARGUMENT BY MR. CURRY	16:13
FINAL JURY INSTRUCTIONS BY THE COURT	33:3
JURY NOTE BY THE COURT	51:23
VERDICT BY THE COURT	53:17
SENTENCING BY THE COURT	58:3

EXHIBITS

For Court:

1 Jury Note	
For Identification	52:12

1 THE COURT: I'm advised the jury is present.
2 Is the State ready to proceed?

3 MS. HERRING-LASH: Yes, Your Honor.

4 THE COURT: Let the record reflect Mr. Moore
5 is present. Good morning, sir.

6 THE DEFENDANT: Good morning.

7 THE COURT: Mr. Curry, are you ready to
8 proceed, sir?

9 MR. CURRY: Yes, Your Honor.

10 THE COURT: Very well. Let's bring in our
11 jury, please.

12 (Whereupon, the jurors enter the courtroom.)

13 THE COURT: Good morning, ladies and
14 gentlemen. I hope you had a good evening. We are
15 ready now to continue the matter that we recessed
16 yesterday. When we recessed, we had completed the
17 evidentiary portion of the proceeding. There still
18 remains however the closing arguments, and of course
19 the charge.

20 The closing arguments will be the second
21 opportunity the attorneys have to speak to you, as I
22 mentioned to you when we started. They now will
23 discuss the evidence with you and suggest reasonable
24 inferences that you may draw from that evidence.

25 I am confident that you will find their

1 remarks extremely beneficial when you begin the
2 process of deciding this case, both in analyzing the
3 evidence and applying the law. Please give them your
4 attention. But remember that their remarks, while
5 very important and very helpful, should never be
6 considered evidence. Following the closing
7 arguments then I will give you the charge on the law.

8 Ms. Herring-Lash.

9 MS. HERRING-LASH: May it please the Court.

10 THE COURT: Yes.

11 MS. HERRING-LASH: Child sexual abuse and
12 molestation cases are not like other crimes. In a
13 burglary law enforcement can go and find evidence and
14 have it there to show you what was done. The child's
15 trust in an adult is what is stolen in child
16 molestation cases.

17 In a DUI officers or other citizens can see
18 the impaired driver. Child sexual molestation takes
19 place in the secrecy of the home.

20 In an assault case, a doctor can take an x-ray
21 or a photograph and show you the damage. The damage
22 isn't visible when someone fondles a child.

23 Lewd act and other crimes like this the
24 defendant controls the when, the who and the where.
25 These children visited this defendant's home on many

1 occasions. Sometimes, as you heard, with lots of
2 other people there. Sometimes just the family
3 members. The family members had their own rooms, the
4 master bedroom being downstairs, and this family room
5 where they were assaulted upstairs. The defendant of
6 course was able to choose when would be the safest
7 time, when would he be the most safe in committing
8 this crime.

9 And also in child molestation cases, the
10 evidence is the child's word. There would be no
11 physical evidence from fondling. Just think about
12 it. Rarely are there eyewitnesses, because the
13 defendant will choose the time and place. And they
14 don't choose to do it in front of other witnesses.

15 So in these cases you have the child's word.
16 As I said, the trust is stolen, it's in the secrecy
17 of the home, and there is no physical damage.

18 Ladies and gentlemen, you are the judges of
19 the credibility of the witnesses. And you start that
20 off let's talk about Minor 2 credibility,
21 Minor 2 testimony. He was embarrassed and
22 hesitant. Did he appear to you like someone who just
23 made this up? And came in here and took that chair
24 and just talked about something that didn't really
25 happen? That he just made up? Was it just easy for

1 him to do it?

2 Remember his demeanor. He was a teenage boy
3 trying to talk about something that was so
4 embarrassing for a teenage boy to talk about.

5 He did give you details. He did not remember
6 exactly where on the couch that he was laying when
7 this happened. He remembered the first night that he
8 ever spent the night there which has been New Years,
9 that the couch had folded out and he was on the
10 fold-out part. But he didn't remember on this night.
11 He didn't make up, well this is where I was. He
12 easily could have done that if this was not about the
13 truth.

14 He told you he was laying on his stomach.
15 That the defendant came and lay and pulled him on top
16 of the defendant's body so that they were chest to
17 chest; that he put his hand inside of his pants; that
18 he had a waistband and not a zipper; and that he --
19 the word that he used in here was messaged his
20 privates. He had used another word earlier, but he
21 didn't want to use that word in here and that's
22 understandable.

23 His clothes stayed on. The defendant's clothes
24 stayed on. It would be easy to jump up if something
25 was heard. Their clothes were on. If there was any

1 kind of ejaculation it would be in Minor 2
2 clothes. Did it happen once or more than
3 once? He may have been too embarrassed at 16 to
4 admit that he let it happen more than one time. He
5 may have remembered more back in 2006 than he did
6 today. Or one time is all we need. If this man did
7 this to this child one time that is lewd act upon a
8 minor. And it was back in, he said, the summer of
9 2006.

10 Just try to remember how difficult, even while
11 -- as he began his testimony, a big crowd walking in
12 of people that he knew. Just his testimony, he said
13 under cross-examination he knew he was there more
14 than 5 times, maybe not 15, maybe 10 times.

15 But on this particular evening that this
16 occurred he was asleep. He showed you where his head
17 was laying on the couch. And that he was awakened by
18 the defendant's rubbing his privates, the part, spot
19 that he pees with. That he called it sexual
20 harassment at the time.

21 He didn't know the definition of what exactly
22 harassment was, but like kids he knew that it was
23 sexual, he knew that it was wrong. It was enough
24 that it woke him up from his sleep.

25 And when you are looking at intent, you can

1 use the other act as evidence of intent. What he did
2 to [Minor 2] which was no mistake putting his hand in
3 his pants, as an intent he had with [Minor 1]

4 what [Minor 1] did though was something unusual
5 for this defendant. He jumped up and looked for a
6 way -- he said he looked for those sticks that he
7 knew that they kept above the doors so if the kids
8 locked themselves in the room, and got those and
9 locked himself in the bedroom with the twins. He
10 said in his statement that we brought out that this
11 happened in the summer of 2006.

12 Also in the summer of 2006 is when his mother
13 said he stopped going over there because she had
14 gotten married that summer also. So he truly may not
15 have been over there but one maybe time after this.

16 Also in the summer of 2006 what happened was
17 that the defendant confronted [Minor 1] Do you remember
18 Ms. Clark said she was called with [Minor 1] into the
19 office and the defendant confronted him pretty
20 aggressively. She didn't know why. The why was
21 never explained.

22 I submit to you maybe it was because [Minor 1] did
23 not obediently lay there and was as obedient to him
24 as he expected, as everyone else was.

25 what did his mother do? She didn't say, don't

1 talk to my child that way. Tell me what my child
2 did. If my child did anything wrong, I will punish
3 him. She was under the spell. She just let him
4 chastise her child. No wonder **Minor 1** thought, well
5 will she believe me if I tell her about this?

6 When you look at the credibility of these
7 witnesses, also look at it through the eyes of
8 teenage boys. I submit to you it would be easier
9 probably for an eight-year-old to come in here and to
10 explain to you what happened rather than a
11 16-year-old. There is no harder thing than for a
12 male to talk about being molested by another male,
13 especially when you become in your teenage years.

14 Also in judging the credibility of a witness,
15 and you do this every day in your day-to-day life
16 when someone tells you something. You not only look
17 at what they say and how they say it, but what is
18 their motive? What is their bias? What reason do
19 they have to say this?

20 Well think about the motive of these young
21 boys. They have absolutely nothing, nothing in this
22 world to gain by saying this. They would have never
23 said it had law enforcement not gone and asked them.

24 You have heard from Ms. Clark and Ms. Barrow
25 that things were fine. They were going to church,

1 they were faithfully in service of this man, of this
2 pastor. They were happy in this church. There was
3 nothing going on to cause this.

4 Both boys had stopped going four months
5 earlier. **Minor 1** because Ms. Clark got married and he
6 now had a stepfather in the home. And that
7 confrontation with the defendant or whatever that
8 was, she didn't question it. It didn't make her
9 angry at the defendant.

10 **Minor 2** had absolutely no reason to make this
11 up. There was just nothing go on. They had told you
12 they said this because they didn't want it to happen
13 to anyone else. But they would have never said it
14 had law enforcement not asked them. They didn't lie
15 to them.

16 The defendant, I think, that **Minor 2** said he
17 thought he was cool. They respected him. That this
18 was a shock when he did this. And when law
19 enforcement asked them they told.

20 Now they did not tell their parents. Both of
21 them told you, I did not think my mother would
22 believe me. And you can see why. These women were
23 so faithful in service of this man.

24 The defense would have you believe that
25 perhaps they told law enforcement this because there

1 were suggestive questions used. But the question
2 asked in the Q and A that Detective Bullard read was:
3 what did you do while you were with Pastor Moore?
4 Now that doesn't suggest anything. That was the
5 question asked of Minor 2 what did you do while
6 you were with Pastor Moore? And this is one of the
7 things that came out.

8 The disclosure. They had told no one else.
9 They hadn't told their friends. They hadn't told
10 each other, they didn't know it happened to each
11 other. They hadn't told their mothers. And they
12 wouldn't have told had law enforcement not asked.

13 Were there any repercussions, any impact? The
14 worst thing that happened was Minor 2 no longer
15 wants to go to church. That is a horrible thing for
16 a young man this age to not want to go to church
17 anymore. It could affect his religion or his faith
18 for the rest of his life.

19 And with Minor 1 his mother became upset
20 talking about his singing. They had realized that
21 this young man had this wonderful ability to sing,
22 and he won't sing anymore.

23 Ms. Barrow Thomas, you heard from her, she was
24 trying to be a good mother. As Minor 2 got to be
25 around the age of 11 or 12, she noticed some changes,

1 she did not have a husband in the home at that time.
2 She knew other members of the church had gone to the
3 pastor for some help with children, so she took
4 Minor 2 to have some bible study with the pastor.

5 And that is when the relationship began and
6 Minor 2 began going over and spending time. What
7 she tells you is that what happened then is Minor 2
8 becomes angry, she feels angry at her. He is short
9 with the family, she doesn't know what is going on.

10 The other thing she tells you is that after
11 this comes out, he's back to being his sweet little
12 self. Even though he's older, and you'd think the
13 behaviors would be escalating at this point, he is
14 back to being okay again after this has come out.

15 She hasn't taken him to the counseling he
16 probably needs for financial and other reasons. But
17 she has talked to him about it, and he seems much
18 better now that he is not being left and he has been
19 able to talk about it.

20 Ms. Clark was very involved with the church,
21 with the ministry. She obviously looked up to this
22 pastor, to this defendant. And so much so that she
23 was even willing to what she was allowing him to boss
24 her son around.

25 She was upset when she found out about this.

1 Deeply upset. She confronted the defendant. Really
2 what she said to you is she confronted him not about
3 this case in particular, but because she wanted to
4 find she wanted to forgive. She wanted to find
5 forgiveness in her heart. But when she confronted
6 him, he didn't deny it. He did not deny it.

7 The officers testified that they were now had
8 spoke with these young boys and got these statements.
9 The defense questioned, well why didn't they try to
10 get physical evidence? well it had been some time,
11 and as we've discussed before what physical evidence
12 would they leave?

13 But often defense will put up -- just throw
14 out things, DNA. And you think, oh, on TV they
15 always get DNA, just to kind of make you start
16 thinking. Well, a lot of times what happens in TV
17 shows they're looking at a stranger on a strangers.
18 And if you can find they have ever been in the
19 presence of each other that is evidence.

20 There is no doubt these boys were molested.
21 There is no doubt the defendant lived in this home.
22 Finding anything, proof that they were there means
23 nothing.

24 And if there was body fluids, it would have
25 been months earlier and they would have been in

1 Minor 2 pants. They did go there and get pictures
2 just to corroborate that the boys said that it was an
3 L-shaped couch, there were games and whatever that
4 was there. But don't be fooled. Think of what the
5 evidence could be in this kind of a case.

6 Next you heard from Don Elsey. Don Elsey did
7 not come in here to tell you because these boys did
8 not tell right away, because they denied it to their
9 parents, because they continued to go back in the
10 presence of the defendant, because they accepted
11 gifts, because they didn't run and tell that it
12 happened, of course he didn't come in here to tell
13 you that.

14 why he did come is because these behaviors,
15 continuing to go somewhere, not telling a parent, or
16 even denying it to a parent at first, not running to
17 the other adults that may have been in the home, us
18 as lay people may think, that's a illogical, I think
19 that I can use that behavior to say to myself this
20 couldn't have happened.

21 well, it would be unfair to you to ask you to
22 judge that behavior without the knowledge that Don
23 Elsey had, from not only his experience in working
24 with these kinds of cases and with children, but what
25 the literature says.

1 If you didn't know this information, it would
2 be easy to think, well, it just couldn't be. If this
3 happened, you just wouldn't go back. Or if this
4 happened, you would tell your Mama. Or if your Mama
5 asked you, you would tell her. But in fact that is
6 not the reality of how children deal with being
7 sexual molested.

8 The last thing they often want to do is tell.
9 Sometimes they even tell and then take it back. Or
10 tell and then minimize it. I think he even said,
11 what is a wonder is that they ever tell, because of
12 what they have to go through. As experienced in this
13 courtroom, it's not easy.

14 The State must prove to you each of these
15 elements beyond a reasonable doubt. The elements of
16 lewd act upon a minor are the age of the defendant,
17 that he is over 13. Detective Nix gave you his birth
18 date when she testified. The age of the victim, if
19 they're under 16. They gave you their ages, I think
20 they were 11 and 12 at the time that this happened.

21 That there was an intentional child
22 molestation, an intentional lewd act. There is no
23 doubt of an intent of putting your hand in someone's
24 pants or rubbing their genitals. And you have both
25 of those.

1 And what is beyond a reasonable doubt? That
2 is one of the hardest legal concepts I have heard
3 from jurors from what they tell me. I can tell you
4 that it is not beyond every doubt. It is not beyond
5 any doubt. It is not beyond, what you hear
6 sometimes, a shadow of a doubt. It is a reasonable
7 doubt that would cause an honest and reasonable juror
8 seeking the truth to hesitate to act.

9 There are few things, if any, in this world
10 that you, any of you, will ever know with absolute
11 certainty. And absolute certainty is not the
12 standard. If that were the standard, there could
13 never be a conviction. Because if you were
14 absolutely certain that this happened, that means
15 that you would evidence, and you would have been
16 sitting up there and not there.

17 If after hearing this evidence you are firmly
18 convinced that this happened, the State has met that
19 burden. When you came in here on Monday you did not
20 know any of these people, and you didn't know
21 anything about this. If you are now convinced that
22 this happened, that's not a coincidence, that is the
23 evidence that has been presented to you that
24 convinced you of that.

25 The State has proven that if you believe these

1 boys, if you believe that this happened. And you
2 don't have just one person who has told you this, you
3 have two independent kids who have told you that this
4 man did this, who never spoke about it with each
5 other, who didn't know it happened to each other,
6 until all of this came out.

7 The defendant took control of these people.
8 He really -- they really looked up to him. So much
9 so that when Ms. Barrow confronted him he finally
10 said that he -- I am human. That was his response.
11 I am human. And, ladies and gentlemen of the jury,
12 he is a flawed human who molested these two children.
13 And you must find him guilty of that crime.

14 THE COURT: Thank you. Mr. Curry.

15 MR. CURRY: May it please the Court.

16 THE COURT: Yes, sir.

17 MR. CURRY: Solicitor Herring-Lash, Mr. Neely,
18 Mr. Moore, ladies and gentlemen of the jury, I
19 personally want to take the opportunity and time to
20 thank you. Thank you for being here. Thank you for
21 agreeing to uphold your sworn oath to listen to the
22 testimony.

23 Now at the very beginning of our meeting,
24 Judge R. Markley Dennis stood before you. He asked
25 you to use your common sense, sense of logic, sense

1 of reasoning, ability to analyze, to be fair and/or
2 impartial. And I believe the last couple of days you
3 have been doing that.

4 Now I told you, I said, the prosecution has
5 the burden of persuasion and going forward, that's
6 their burden. Pastor Tyrone Moore doesn't have to
7 prove anything. Because I told you he had a bubble,
8 a bubble of presumption of innocence. And that air
9 will stay in there unless it was deflated
10 sufficiently, and that there had to be a standard and
11 that standard was beyond a reasonable doubt.

12 Judge Dennis told you, he is going to tell you
13 again, that that is a doubt that would cause a
14 reasonable person, or in your case a reasonable
15 juror, to hesitate to act.

16 You are the fact finders. We all have a job
17 to do. I would say this to you, I have been
18 practicing for a little bit of time. And being a
19 defense lawyer sometimes is a lack of love test.
20 Nobody loves people like me. Why? Because I have to
21 ask hard questions. I have to ask questions that are
22 not asked.

23 So I told you up front listen to the direct,
24 but also listen to the cross-examination. Because
25 some things are going to come out.

1 Now let's talk about, let us remember together
2 the points of doubt and connect them because I
3 believe that after you've connected them in your mind
4 according to your memory, that you would deliver a
5 verdict of not guilty. Let's talk about it.

6 Minor 2 Looking in the courtroom,
7 where is he? It's okay for you to look. He is not
8 there. Mama is not there. But let's talk about

9 Minor 2

10 I asked him on cross, son, isn't it true that
11 you told your mother and the police that you weren't
12 touched by Pastor Moore? He had to admit, yes, sir,
13 I told them that. When you are seeking the truth,
14 people who want to tell you the truth tell it to you
15 what? Up front. That's common sense, that's logic,
16 that's experience.

17 Had all the opportunity under direct
18 examination to tell this juror, I really told them
19 that Pastor Moore didn't touch me. Didn't do it.

20 I said, well, how do they start off? They
21 start off by giving you the impression that Minor 2
22 Barrows wasn't going to church because of this
23 incident. Start asking, well, let's talk about
24 reality. Well, really I wasn't going to church with
25 my mother, really I was going to church with my aunt.

1 My aunt is not going to the church, I don't have a
2 car, there is all kinds of reasons why Minor 2
3 [REDACTED] wasn't going to church. And it's not, I tell
4 you, behind this allegation.

5 Then they get into this thing of wanting to
6 show you stuff. You know family room, video,
7 pictures, the whole nine yards. And I was scratching
8 my head. Because I was like, why are they doing it?
9 That's common sense. How are they going to connect
10 this to the case?

11 well, they want you to believe that there is
12 some kind of way there is something going on. But I
13 asked him on cross, are you telling me that he showed
14 you any kind of sexual pictures, any kind of
15 inappropriate stuff? No, sir, I'm not saying any of
16 that. No reason for it.

17 Let's talk about his statement. Was the
18 statement that's written by -- who? Detective
19 Bullard. Now they want to say these young boys gave
20 you the story and all of this, where it's clear that
21 inherent in both of the statements, and I'll talk
22 about Minor 1 later, but inherent in Minor 2
23 statement Detective Bullard is writing it, okay.

24 So I started to ask him, well didn't you say
25 in your statement that you weren't touched by Pastor

1 Moore? Yeah, I said that. It didn't come out in
2 direct. You stated in your statement that you
3 weren't touched, so that would mean that you weren't
4 touched there, yeah, okay.

5 But then you said -- well, you know, now you
6 testified, I was touched once. And then in your
7 statement said, well maybe it was numerous times.
8 You've got to examine the credibility of the
9 witnesses, the ability to recall, their ability to
10 recollect, what do they remember?

11 You know they will say, well they were young
12 then and now they're testifying. They are the
13 alleged victims. They have talked to the solicitor.
14 They have talked to the police. Then they get on the
15 stand and can't remember. Is that a reasonable
16 doubt? I submit to you, yes.

17 Conflicts in oral statements, conflicts in
18 written statements that's for you to examine. For
19 you to say, well, I asked him on his written
20 statement didn't he say this? Then now here they're
21 saying well something different. One of the first
22 things he said happened multiple times, but here on
23 the stand he's saying it was just one time. What is
24 the truth?

25 Now he says this uncontrovertedly, I told my

1 mother I was not touched. He says this
2 uncontrovertedly. I did not go to counseling, no
3 psychologist, no psychiatrist. I said, okay, I
4 accept that.

5 His mother gets on the stand, this is from
6 what I recall, Elcorese Thomas. She gets on the
7 stand, she says, well, you know, I admit Pastor Moore
8 was generous. Maybe he was giving gifts, I did not
9 ask my son to take it back. I did not find it a
10 problem. I admit my son was going through rebellion.

11 Well common sense and judgment and experience
12 allows you draw from what you know about children,
13 adolescents and young boys that are moving from
14 adolescence to what, to teenage-hood. Well, he is no
15 longer a baby, she said. I was concerned because he
16 was moving from being a babyish to now filling
17 himself. Remember I asked her, you know, smelling
18 yourself. She went, oh, yeah, yeah, yeah.

19 What did she say about it? Well, he started
20 staying stuff like, Mama, I don't want to be with you
21 on Mother's Day, I want to be somewhere else. Oh,
22 that made her mad. Said that, well, I tried to
23 discipline him and he got angry. What does your
24 common sense and experience say? That's natural with
25 children they don't want to be disciplined.

1 Says, well, he called me a loser. Oh, Mama,
2 maybe I'm judging who you are. She got angry. You
3 see it coming? Then she said, I was pissed off. Now
4 you can give whatever value you want to give to that.
5 That's strong language.

6 Why? Because I asked him what happened over
7 at Pastor Moore's house and he said, Mama, it's none
8 of your business. I'll go to Pastor Moore and said
9 that he laughs and says, well, you know, guess what,
10 he shouldn't have said that. That's some
11 disrespectful. But the truth of the matter is it was
12 probably none of your business. Got an axe to grind
13 now. How dare him talk to me like that.

14 Then finally how do you get back if you're
15 Elcorese Thomas against Pastor Moore? I'm going to
16 get him because I'm going to lie. Her son Minor 2
17 said, I told my Mama I wasn't touched. I asked her
18 on the witness stand, Ms. Thomas, did your son ever
19 tell you he wasn't touched by Pastor Moore? She
20 looked at me and she said no.

21 That's a direct contravention on what
22 Detective Bullard said, direct contravention of what
23 Minor 2 said. Why? She has got an axe to grind.
24 I'm going to get Tyrone Moore if that's the last
25 thing I do. And it was the last thing that she did

1 because she is not here in the courtroom today.

2 She says, oh no, we went to counseling. If
3 you want to believe the words of a child, if that's
4 what you want to believe, he said that we didn't go
5 to no counseling. You heard it.

6 [Minor 1] [REDACTED] says, I'm going to
7 Pastor Moore's house. I'm going with other children,
8 his family is there, his wife is there, I'm back and
9 forth. Detective Nix says, there's volumes of people
10 coming there. I wrote that down, volumes of people
11 coming in and out of that house.

12 Said, I don't know how old -- [Minor 1] I don't
13 know how old I was or when it happened, the alleged
14 incident occurred. The truth of the matter is he
15 wants to testify, I was afraid to tell my mother.
16 But I asked him, son, do you have any real reason for
17 not wanting to tell your mother or any basis in fact?
18 No, sir. Why? It's illusory.

19 Now on cross, once again on direct he could
20 have said, hey, I've admitted Tyrone Moore didn't
21 touch me. But he don't do it on direct. I've got to
22 ask him the questions. Son, isn't it true? He says,
23 yes, I said that. Tyrone Moore, Pastor Tyrone Moore
24 did not touch me.

25 So I was a little -- I wanted to probe a

1 little more. He said, well he rubbed me outside of
2 my pants, all right, like sexual harassment.
3 Automatically a red flag went up for me. That's a
4 big word. Who wrote his statement? Detective
5 Bullard. Like sexual harassment I asked him, son,
6 what is sexual harassment? I don't know. First he
7 said, I didn't say that. Of course I refreshed his
8 memory. Is that your signature? Didn't you say it?

9

10 So then he has to say, yeah, I did say it. So
11 I said, well what is it? In 2009 he doesn't know
12 what sexual harassment is. Just like he didn't know
13 in 2006. Who wrote that statement? Detective
14 Bullard. Adult language in a child's statement. Use
15 your common sense, your logic, your reasoning.

16 Then I started at the very end, you recall. I
17 said, son, you used to sleep in his family room,
18 right? Yeah. This family room that is State's
19 Exhibit No. 1. Yes. I said, at nighttime? Yeah.
20 It was dark in there, wasn't it? Yeah.

21 Now let's get it straight, there were no
22 talking going on between you and you said this
23 incident, allegedly between you and Pastor Moore,
24 right? No. No communication, nothing going on. So
25 I asked him, could it have been a mistake? And what

1 did he say? Yes, it could have been a mistake.

2 Now I submit to you if the victim, allegedly
3 the victim, would say it was a mistake, who better
4 than him, if you wanted to listen to the word of a
5 child or the words of a victim or the words of a
6 witness, who better than the witness to tell you if
7 it's a mistake. That's a reasonable doubt. Doubt
8 that would cause a reasonable juror to what?
9 Hesitate to act. No talking, nothing said. Just a
10 mistake according to him.

11 Carla Foreck Clark. Starts off, good memory,
12 reserve with the United States Air Force, I'm head of
13 the children's ministry, I'm involved, I've got trust
14 in here. You know, then I started on cross with her.
15 First she started, my son stopped singing and all
16 this stuff, stopped bringing his pad to church and
17 all of this.

18 So I asked her, was he singing with you
19 before? What was the answer? No. So it was
20 uncusomary that after you stopped going to church or
21 after you stop doing things he stopped what?
22 singing. It's logical. It's reasonable, a
23 reasonable inference.

24 He wasn't singing for his Mama before, not
25 singing for her after. Who was he singing for?

1 Pastor Tyrone Moore, he was going to church. I said,
2 well, son, did he touch you? No, he didn't touch me.
3 Carla Foreck, she wants to be concerned because she
4 comes in and she's sniffing and she's crying because
5 you notice the more I talked to her, the harder she
6 got. Let me tell you.

7 I asked her, well, you know, tell me about
8 your son, what part does he sing, you know tenor,
9 baritone? With a voice like this, I cannot tell you
10 nothing. Why it's starting to come out. The
11 exterior is shading and now we see the interior of
12 the person. Oh, you really care about your son.
13 Yeah, he's going over there, you are not asking him
14 how things were, what's going on, the whole nine
15 yards? No, I'm not doing any of that.

16 So then I ask, do you care about our son?
17 Yeah. What did I ask her? Isn't it true that what
18 you said was, look, I don't want to be apprised, I
19 don't want to have any notice about judicial
20 proceedings involving Pastor Tyrone Moore or his
21 release.

22 Does that sound like somebody who is concerned
23 about their child, concerned about the system,
24 concerned about the welfare, concerned about making
25 sure that somebody was done something to your child

1 is -- justice is had? No, it doesn't.

2 Now they go even different, talk about
3 confrontation. I didn't hear anything -- she
4 confronts Pastor Moore, according to her, according
5 to her. Says, hey, you know, you did this, all this
6 other stuff. But she has to admit, he didn't say I
7 did it, he didn't say I didn't. He doesn't have to
8 prove anything. And she didn't say he admitted
9 anything. Common sense, logic and judgment.

10 Detective Bullard. Crime scene investigator.
11 You recall him. Came in, let me tell you how this
12 scenario works. Children have school, you send them
13 off, you give them a lunch and they're at school
14 doing their work in math class, one of them
15 testified. The guidance counselor
16 comes, gets them and brings them in there and guess
17 who is there to meet them? The police. Jesse even
18 said this. I said, you know when you are going to
19 the principal's office that means what? He said,
20 that means trouble.

21 So you bring them in there, out of nowhere,
22 you are police officers. We are going to talk to you
23 about some stuff. We are going to give you some
24 information. We are going to review it. We don't
25 just sit down -- and Detective Nix said this, but I

1 caught it eventually -- we don't just sit down and
2 start asking questions, we tell you why we're here,
3 we do all of that stuff.

4 why? Because they're setting it up so that
5 they can get into suggestivity. Setting it up so
6 that they can ask the questions. You know, I started
7 asking Detective Bullard, there are kinds of ways
8 that you use prompting to ask questions, right? He
9 had to admit it, he had a lot of knowledge. I know
10 how to use finding words. I know how to ask
11 open-ended questions. I know how to use leading
12 questions. why? Because that's what they're trained
13 when you want to get information. You ask somebody
14 the right question, they will lead you down the path
15 because there is an answer for the question that they
16 asked.

17 He knew about it. Let me tell you how deep it
18 gets. Detective Nix leaves the room while he's in
19 there with **Minor 2** No audio, no video, no
20 corroborating witness. And then he begins to ask him
21 leading questions. While he is asking him leading
22 questions, he is leading him down the path about
23 certain things.

24 But the kid tells him, I'm not touched. I
25 wasn't touched. And I told my mother. He is asking

1 him questions, why? Because they're putting a case
2 together.

3 Detective Bullard wrote, [Minor 2]
4 statement and he wrote [Minor 1] Small's statement. Like
5 sexual harassment. A child wouldn't say that, that
6 is something an adult would say.

7 Detective Nix gives you one of the
8 qualifications. She says, you know, I work here. I
9 ID, I do polygraph, I do background for new hires, I
10 have taken some sexual abuse classes, here is my
11 credentials. Here's that. She obviously, no doubt
12 when she came in here because I wanted to ask her a
13 question. What do you know about leading questions
14 and suggestivity? She says, well I'm not certified
15 in finding words, I don't know anything about that.

16 So it's amazing, she doesn't know anything
17 about it. But the person who does know something
18 about it is in the room alone with [Minor 2] and takes
19 the statement of [Minor 1] but she is not in there. So
20 she does not know anything about what occurred.
21 Can't validate what Bullard did or did not do. She
22 doesn't know.

23 She said there are volumes of people coming in
24 and out of there. If that's the case, somebody
25 should have known.

1 Finally, we get to Don Elsey. Now you heard
2 the qualifications. Once again the prosecution on
3 the qualifications says, tells me about your
4 qualifications. He says, I have a bachelor's degree,
5 I have a graduate school degree and I have a
6 doctorate. He was nice and small with that.

7 So the Judge says, Mr. Curry, you want to ask
8 him about his qualifications? I said, gladly, Your
9 Honor. I come up, sir, all right, let's talk about
10 it. You got a bachelor's degree? Yes. I said, you
11 have a master's degree, what is it in? He says,
12 clinical counseling. Okay. Anything in sexual
13 abuse? Childhood? Well I mean I took a class and
14 did a reading or so but no.

15 I said, well, let's talk about your doctorate,
16 that's a Ph.D., right? He said, no, no, no, no, it's
17 a EDD. It's not a doctorate of philosophy, it's
18 something else. Okay, so what is it in? I thought
19 he was going to tell me it was in something clinical.
20 He says, it's in early childhood development.

21 Now you give whatever weight you want to give
22 to him being an expert. So I figure, okay, let me
23 ask him. He gets up, you know, he is -- on direct he
24 is giving you all of these generalities, he's quoting
25 why children tell and everything along the lines.

1 And it makes you feel like, wow, this guy has
2 a lot of information. He is quoting Snow, and he is
3 quoting this. I said, fine he can quote the
4 information. On cross he sounds convincing until on
5 cross the wheels fall off.

6 This is how they fall off. I said, well,
7 isn't it true you've never seen **Minor 2** and **Minor 1**
8 what is the answer? That's true, I haven't seen
9 them. In fact I know very little about this case.

10 So really, doctor, you are talking about
11 generalities, aren't you, and not specificities.
12 Yeah, I guess you're right. Then we start talking
13 about well can children lie? Can they recant their
14 story? He says, yeah, about 20 percent of them
15 recant their story. Sometimes they change their
16 mind, and there are other studies that have different
17 percentages.

18 So I said, you can't rule out children
19 changing their story and denying it, right? Yeah. I
20 said why? There are multiple, multiple hypotheses.
21 I wrote that down. Hypotheses are educated guess.
22 He realized there's a lot of information out there,
23 and he realized I would know something about it.

24 I said, well tell me, doctor, could you
25 impermissibly suggest to a child something happened

1 by using leading questions and therefore affecting,
2 you know, memory stuff like that. You know what he
3 says, he says, yeah, you can impermissibly -- this is
4 what I recall now -- you can impermissibly affect
5 their testimony and false accusations. He says that.

6 The kind of questions that Bullard asked with
7 children by himself with his training, yes. Own
8 state's expert says that. Then the bombshells go
9 off. You know very little about this case. Children
10 can lie.

11 Then he says this, he is under oath, I cannot
12 rule out suggestivity with the use of leading
13 questions. That's their witness on their stand when
14 on my cross. And he admits that suggestivity could
15 be used to implant information for false accusations.

16 we are at the end. I told you at the very
17 beginning, a great president said that there is no
18 greater service, other than giving your life for your
19 country, than juror service. I'm going to tell you
20 now. You are the gate-keepers of the finders of
21 fact. That's your job. That's what you are sworn to
22 do. It's what you said you would do.

23 You have no friends to reward or no enemies to
24 punish. There have been other fact-finders in
25 history. Some who when the people presented

1 individual -- an individual, this man, after looking
2 through all the facts, went to the crime and said I
3 find no fault in him. But if you want to crucify
4 him, crucify him.

5 But today, on this day in July, you all are
6 the triers of the facts. You can say, I find no
7 fault in this man. That the government, the State
8 has failed in their burden of proof. They won't be
9 mad, that's why we are here.

10 Find a verdict that speaks the truth. I
11 challenge you. Stand up and find Pastor Tyrone Moore
12 not guilty. Thank you.

13 THE COURT: All right, ladies and gentlemen,
14 if I could have your attention now we will move into
15 the final stage of this process where it becomes my
16 responsibility to give you the law which you, of
17 course, have promised that you will accept and apply
18 fairly and impartially to the facts that you will
19 determine very shortly when you begin your
20 deliberations in this case.

21 Because under this process, the State and Mr.
22 Moore expect that you will, when you do deliberate,
23 conscientiously consider and evaluate the evidence
24 and decide what you find to be the true facts. And
25 then once doing so take this law and apply it to

1 those facts.

2 And once you've done that, both the parties in
3 this dispute will obtain a fair and impartial
4 determination, and you will have honored the
5 commitment that you made to this Court and to the
6 parties when we commenced the process.

7 As I mentioned to you, I believe when we were
8 selected you and I was basically identifying the
9 dispute, I mentioned that persons against whom claims
10 are made in this process are called defendants.
11 That's the sole significance of the term. During my
12 instruction you may hear me refer to Mr. Moore as the
13 defendant or defendant. Please know that that's just
14 a way of identifying him, it's not to be taken in any
15 other context or place, any other emphasis on it.

16 I also mentioned to you that in this process
17 he has been accused, and I shared with you the
18 contents of these documents, and I told you they are
19 what they appear and they still are just pieces of
20 paper. They are not evidence. They will not
21 accompany you to the jury room.

22 They merely contain the accusations against
23 him, and to these indictments he has rendered a plea
24 of not guilty which places then upon the State the
25 burden of proving his guilt beyond a reasonable

1 doubt.

2 As I have already indicated to you, persons
3 who are accused of committing criminal offenses in
4 this state and in this country are never required to
5 come and prove himself or herself innocent. They're
6 not required to explain anything, they're not
7 required to say anything, they're not required to put
8 up any evidence.

9 Because persons accused of committing criminal
10 offenses are presumed to be innocent. And that is an
11 active presumption which means that you, each of you,
12 under that principle of law is to actively presume
13 that Mr. Moore is not guilty of these offenses. And
14 that can only be changed when and if the State
15 presents enough evidence that satisfies you in your
16 deliberations beyond a reasonable doubt that he is
17 guilty of one or more of these offenses.

18 Obviously, ladies and gentlemen, since persons
19 accused of committing criminal offenses are not
20 required to prove anything or disprove anything, a
21 person accused does not have to testify in his or her
22 own behalf, and that fact cannot be considered
23 against that person under any circumstances.

24 Because a person so accused has the right to
25 remain silent, and the assertion of such

1 constitutional right cannot and must not be
2 considered by a jury in its deliberations.
3 Therefore, under your oath, you are to reach no
4 inference and to draw no conclusion whatsoever from
5 the fact that Mr. Moore did not testify in this
6 matter.

7 His failure to testify shouldn't even be
8 discussed by you in the jury room. The burden of
9 proof, as I have stated throughout, rests upon the
10 state to prove his guilt beyond a reasonable doubt.
11 And the failure or his failure to testify is not a
12 factor for your consideration or discussion.

13 What is a reasonable doubt? A reasonable
14 doubt is a doubt that would make an honest, sincere,
15 conscientious juror in search of the truth of the
16 case to hesitate. Proof beyond a reasonable doubt is
17 proof that leaves you firmly convinced of the
18 defendant's guilt.

19 Now there are very few things in this life and
20 in this world that we know with absolute certainty.
21 And in criminal disputes or criminal cases our law
22 does not require proof that overcomes every possible
23 doubt. If based on your consideration of the
24 evidence you are firmly convinced that the defendant
25 is guilty of one or more of these crimes, then you

1 must find him guilty.

2 If, on the other hand, you think there is a
3 real possibility that he is not guilty, then you must
4 give him the benefit of the doubt and return a
5 verdict of not guilty.

6 Reasonable doubt may arise from the evidence
7 which is in the case, or the lack or absence of
8 evidence in the case. And it's up to you to
9 determine whether or not a reasonable doubt exists as
10 to the guilt of Mr. Moore.

11 And I charge you that he is entitled to every
12 reasonable doubt arising in the whole case. That
13 phrase means simply this. If upon any issue of fact
14 which would be essential to a conviction and a
15 verdict of guilty you should have a reasonable doubt
16 as to how that issue should be resolved, it would be
17 your duty to resolve that in his favor.

18 Now the evidence which you are to consider
19 consists of the testimony of the witnesses and
20 exhibits that have been introduced through their
21 testimony.

22 My rulings on matters of law should not be
23 considered by you in any fashion. That is part of
24 the process. And generally, those occurred out of
25 your presence. But there were occasions when either

1 side may have said objection, Your Honor, and there
2 was a matter that we had to resolve. And my rulings
3 was either to sustain the objection or to overrule
4 the objection. That's not for your consideration and
5 should not be a part of your discussion.

6 In fact, probably one of those rulings I guess
7 best illustrates, I think, how we work together. If
8 I overruled the objection, I said as a matter of law,
9 and generally it dealt with a rule of evidence, I
10 said, I'm going to permit that question and/or
11 answer.

12 That is as far as it goes. You
13 are not to put any weight on it because I said it's
14 okay to ask the question. Frankly that was my
15 responsibility at that point and you had nothing to
do with that.

16 But once I said it's okay, then it shifts to
17 you. You then have to decide whether or not you
18 believe it, and if you do how strongly you believe
19 it. So you see, that really is how we work together.
20 I made rulings that allowed the question or did not
21 allow the question.

22 But those questions that were allowed, then
23 you must consider and evaluate. Those questions that
24 were not, you may not and should not consider those
25 in any fashion whatsoever. Because if you do, then

1 you have stepped over into my area of responsibility.
2 And likewise if you put any emphasis on the questions
3 that I permitted because I allowed it, then you have
4 allowed me to step over into your responsibility. We
5 have to keep those separate. And I'm confident that
6 you will.

7 Also please understand that the remarks of the
8 attorneys, as I have stated throughout, are very
9 important. But their remarks, likewise, should never
10 be considered evidence because again the evidence
11 consists of the testimony. In fact my instruction
12 would be that any remark of the attorney which is
13 inconsistent with your recollection of the evidence,
14 you are instructed to disregard that remark because
15 you are the sole judges of the facts.

16 If there were any remarks of the attorneys
17 that differ from my instructions on the law, you are
18 to disregard those statements on the law and take
19 what I tell you because for purposes of this
20 proceedings I'm the sole judge of the law.

21 Now please understand something. When I say
22 your recollection, I'm talking about your collective
23 recollection. There are times when jurors, during
24 the deliberations, may differ as to what a witness
25 said or did not say. And most of the time jurors

1 resolve that through that discussion process. But
2 there are occasions when it cannot be resolved.

3 Please remember that the person in charge of
4 keeping the record is the court reporter. They're
5 keeping it, that's their responsibility as I
6 mentioned to you. That is solely their job.

7 So if you have a dispute about what a witness
8 said or didn't say we can resolve that for you
9 because we can replay that testimony for you should
10 that become necessary.

11 Likewise, if you have a discussion about what
12 I said or didn't say, I can answer that question also
13 if you cannot collectively resolve that.

14 Now generally, ladies and gentlemen, it's not
15 uncommon in disputes such as this for you to consider
16 two types of evidence. There are two types of
17 evidence which I will -- this process recognizes; one
18 is direct evidence, the other is circumstantial
19 evidence.

20 Direct evidence, as the name would generally
21 imply, is generally the sensory perception of an
22 individual. And it's the testimony of a person who
23 claims to have actual knowledge of a fact or
24 circumstance such as an eyewitness. It is evidence
25 which immediately establishes the fact to be proved

1 if it convinces you beyond a reasonable doubt.

2 Circumstantial evidence is proof of a chain of
3 facts and circumstances indicating the existence of a
4 fact. It is evidence which immediately establishes
5 collateral facts from which the main fact may be
6 inferred. In other words, you consider a group of
7 facts leads you to a logical conclusion of something
8 that was not specifically testified to.

9 Circumstantial evidence is based on inference
10 and not on personal knowledge or observation. Now I
11 will tell you that with regard to direct and
12 circumstantial evidence, the law makes absolutely no
13 distinction between the weight or the value to be
14 given to either. Nor is there any greater degree of
15 certainty required of circumstantial evidence than of
16 direct evidence.

17 You are instructed to consider all of the
18 evidence in the case, and weigh that evidence and
19 decide what you find to be credible and believable.
20 I would instruct you, however, that the mere fact
21 that the circumstances brought out in a case are
22 strongly suspicious of guilt, or that the
23 circumstances are such that a defendant's guilt is
24 probable, that that would not be enough to sustain a
25 conviction because the proof offered by the State has

1 to be more than a suspicion, it has to be more than
2 someone being probably guilty, it has to be proof
3 that convinces you beyond a reasonable doubt.

4 Now generally, ladies and gentlemen, our rules
5 of evidence do not permit witnesses to testify about
6 opinions or conclusions except in very limited areas.
7 There is an exception to this rule that exist for
8 witnesses that we call or label as expert witnesses.

9 Those witnesses, who by education and
10 experience, have become an expert in some art,
11 science, profession or calling are permitted to state
12 an opinion as to the relevant and material matters in
13 which that witness claims some expertise, and may
14 also state the reasons for that opinion.

15 You are instructed to consider any expert
16 opinion received in evidence in this case, and like
17 any other evidence, give it the weight that you
18 believe it deserves. If you decide that the opinion
19 of the expert is not based on sufficient education
20 and experience, or if you conclude that the reasons
21 given for support of the opinion are not sound, or
22 that the opinion is outweighed by other evidence, you
23 are entitled to disregard the opinion in its
24 entirety.

25 Because an expert witness's testimony it to be

1 given no greater weight than any other witness simply
2 because that person claims an expertise. It's not
3 for the purpose of controlling your judgment, but
4 rather for the purpose of helping you to analyze and
5 decide the facts in this particular case. Further,
6 you are not required to accept an expert's opinion
7 even though it is not contradicted.

8 Now how do you decide the facts in a case?
9 You do it, as I've stated throughout, by exercising
10 your sense of logic, your good judgment, your
11 reasoning abilities, and all those factors that
12 you've used to assist you in your life in making this
13 type of decision.

14 It would -- we'd probably be amazed if we were
15 to sit down and honestly write down how many times we
16 make a decision of whether we believe something or
17 not in a given day. As I stated when I was
18 qualifying you, most of the time it's a subconscious
19 process, but this is now one where you may be
20 required to give a reason for it. And there are many
21 reasons that we may use up to assist us or apply in
22 determining this. Sometimes it's just
23 what the person says just simply doesn't make any
24 sense. Just doesn't connect. It's just not
25 reasonable and logical. Even though it's not

1 contradicted directly.

2 And there are a number of factors that one may
3 consider. I'm going to discuss some of them with you
4 now, but if I don't mention a method of factor that
5 you've used in your life and you found it to be
6 reliable, when you begin this process of analyzing
7 the evidence please use it and apply it in analyzing
8 and making the determinations in this case.

9 You may want to consider the appearance of the
10 witness, how did they appear to you, straightforward
11 or hesitant in answering questions; was the testimony
12 of a witness consistent or was it inconsistent; was
13 it strengthened or weakened by other evidence in the
14 case; is there a reason for a witness to testify to
15 certain facts or circumstances, in other words was
16 the witness bias or prejudice in any fashion; how did
17 the witness come to know the facts that he or she
18 testified to and what was the ability of that witness
19 to know those particular facts or circumstances.

20 In making the determination of the credibility
21 and believability you are given very broad
22 discretions because our law says you may believe one
23 witness against many, you may believe many witnesses
24 against one, you may believe all of a witness's
25 testimony, parts of a witness's testimony, or none of

1 a witness's testimony.

2 Now of course you don't make these decisions
3 arbitrarily. But if there is a reason in the record
4 of this case for taking that position, you have that
5 prerogative because your objective is to determine
6 the truth regardless of the source of the evidence.

7 Now while you are given very wide latitude and
8 broad discretion when it comes to making a
9 determination of the facts, you don't enjoy the same
10 with the law. As I stated it to you, it is my
11 responsibility to be the sole judge of the law and
12 you've made a commitment to accept the law as I give
13 it to you and apply it fairly and impartially to the
14 facts.

15 And that means setting aside, if you should
16 have an opinion about any principle of law that gives
17 you some concern that you, as I stated when we first
18 started, that maybe you think there's a better way of
19 saying that, I respect your right to feel that way
20 but you promised everyone in this process, including
21 the court, that you would set that aside and take the
22 law and apply it fairly and impartially and I'm sure
23 you will do that.

24 The order of my instruction means nothing. I
25 had to put it in some order. Don't put any greater

1 weight on any one part than you do on the other,
2 consider the charge as a whole.

3 And the fact that I give you an instruction on
4 a particular issue is not to be considered by you or
5 taken by you as a suggestion of what you are to do,
6 or how you are to conclude a certain factual dispute.
7 That's your job, I don't have anything to do with
8 that. And my instruction in no way is to assist you
9 in that because that would be invading your province.

10 Let's talk about this charge. I told you I
11 will define for you the charge of lewd act upon
12 minor. Because that's the charge that appears in
13 these two indictments or that you will ultimately
14 consider when you begin your deliberations in just a
15 few moments.

16 The defendant is charged with committing a
17 lewd act on a minor. A minor is a person under the
18 age of 18. The State must first prove beyond a
19 reasonable doubt that the defendant, at the time of
20 this act, was over the age of 14.

21 Next the State must prove the defendant
22 willfully and lewdly committed or attempted a lewd or
23 lascivious act on or with the body or its parts of a
24 child under the age of 16 years, with the intent to
25 arouse, appeal to, or gratify the lust, passions or

1 sexual desires of the defendant or the child.

2 willfully means voluntarily and intentionally
3 with the specific intent to do something that the law
4 forbids. Lewd means obscene, lustful, indecent or
5 lecherous. Lascivious means tending to incite lust,
6 lewd, indecent, obscene or tending to deprave the
7 morals in respect to sexual relations.

8 Criminal intent, ladies and gentlemen, is a
9 necessary element that must be proved by the State
10 beyond a reasonable doubt. Criminal intent is always
11 a matter that is determined by the jury from
12 considering the circumstances surrounding the
13 situation.

14 So the law states that criminal intent may be
15 inferred from the circumstances which if shown to
16 have existed. This is how the jury makes a
17 determination as to whether or not that element is
18 present. Criminal intent is a state of mind that
19 operates jointly with an act in the commission of a
20 crime. Intent would include the very consequences
21 which represents the -- consequences which represent
22 the very purpose for which the act is done, or are
23 known to be substantially certain to result
24 regardless of one's specific desire.

25 Criminal intent is a mental state, a

1 conscience wrongdoing. And I tell you that it has to
2 be established, as every other element, beyond a
3 reasonable doubt.

4 Ladies and gentlemen, you, as I told you, were
5 not selected to be partisans or advocates for either
6 side. You aren't here to reward any friends, nor are
7 you here to punish any enemies. You don't have any
8 in this process.

9 You were selected to decide this case by
10 applying your common sense, your sense of logic and
11 reason, your knowledge, your life's experiences,
12 fairly and impartial, and analyzing the evidence in
13 making your decision of what you want to do.

14 And I would suggest to you and submit to you
15 that in performing that task, just as I am performing
16 my task and making rulings on matters of law, we have
17 to promise to set aside all human emotion. Because
18 it has no place in this process, none. We have to do
19 it very deliberately and methodically and very
20 carefully apply that knowledge that we have and use
21 it there.

22 When you have done that you will have
23 fulfilled your responsibility and the obligation in
24 the past that you accepted when you held your hand up
25 when we started this case.

1 To assist you in reporting that decision I
2 have prepared two verdict forms which I'd like to
3 discuss now with you, Mr. Presiding Juror, and ladies
4 and gentlemen. You will note that there is a caption
5 and you will have them in the jury room with you.
6 The caption is simply to facilitate the filing and
7 that's the significance of that.

8 And you have two, one that will deal with each
9 one. One is Mr. Barrows and the other is Mr. Smalls,
10 and their names are written out so that you will know
11 which one that you are dealing with.

12 The verdict forms are identical in that there
13 are two choices. And the order that the choices
14 appear means nothing at all. I had to put them in
15 some order. But it says, as to indictment -- and you
16 are given the indictment number -- we, the jury, by
17 unanimous consent find the defendant, the first
18 choice is guilty of lewd act -- and this happens to
19 be Minor 2 Barrow's form -- guilty of lewd act upon
20 Minor 2. The second choice is not guilty.

21 What will you be saying if the first choice is
22 the one that you select? You will be saying that all
23 of you, unanimous consent means 12 to zero, all of
24 you have to agree, that each of you have analyzed
25 this case and you are convince beyond a reasonable

1 doubt as to each of the elements as to Mr. Barrow,
2 and therefore you are returning to verdict of guilty.

3 If not guilty is your decision, you are
4 stating that each of you has analyzed the evidence
5 and that you are not convinced beyond a reasonable
6 doubt as to each element and therefore, as
7 instructed, are returning a verdict of not guilty.

8 Whichever your choice, Mr. Presiding Juror, if
9 you will place an X or checkmark in the blank that
10 precedes the choice and circle it as well, to make
11 sure that you are selecting your choice, and then
12 sign it where it says presiding juror, you will have
13 completed that form.

14 The same process is to be followed as to Mr.
15 Smalls as well. And you will consider the two
16 choices.

17 I know you are anxious to get started, and you
18 are almost there. And I told you the last thing I
19 would tell you is when you can commence your
20 deliberations.

21 First let me ask you, of the first 12
22 selected, do any of you believe that you will not be
23 able to continue in the process, if so raise your
24 hand.

25 Madam Alternate, it appears at this point the

1 first 12 are able to continue. So when the jury and
2 you are dismissed in just a moment, I'm going to ask
3 that you not rejoin the jury panel. They will take
4 to another room. And I will be in very shortly to
5 discuss with you how much longer I need for you to
6 remain with us.

7 I need to discuss my charge with the attorneys
8 and it may be necessary to return you to the
9 courtroom to give you some additional instruction or
10 clarification. If so we will return all of you,
11 including the alternate, to the courtroom.

12 But if there aren't any additions, then we
13 will gather the exhibits and the verdict forms and
14 get them to you. When you receive those exhibits,
15 then you may begin your deliberations but not before.

16 Now once the deliberations start, ladies and
17 gentlemen, the only restriction that I place on those
18 deliberations is this. If any juror has to leave the
19 table during the deliberations for any reason, you
20 must stop deliberating until all 12 of you are
21 together. Other than that, you may proceed as you
22 deem fit.

23 Thank you for your attention. Please retire
24 to your jury room and await your exhibits before
25 commencing your deliberations.

1 (Whereupon, the jurors exit the courtroom.)

2 THE COURT: Exceptions or additions from the
3 State?

4 MS. HERRING-LASH: None, Your Honor.

5 THE COURT: Exceptions of additions from the
6 defendant?

7 MR. CURRY: None from the defendant, Your
8 Honor.

9 THE COURT: Thank you all. Appreciate it and
10 we are going to check the exhibits and we will be at
11 ease. Thank you.

12 (Whereupon, the jury began deliberations at
13 10:46 a.m.)

14 (Whereupon, a jury note is received at 10:56
15 a.m.)

16 THE COURT: The first question's answer is I
17 can't answer the question.

18 What made the North Charleston Police to
19 question the children?

20 Well we know the answer but we can't tell
21 them. I'm going to tell them that that's a question
22 of fact that they have to resolve if it's necessary.
23 I can't, that's up to them. They have to consider
24 it.

25 Any objection from the State?

1 MS. HERRING-LASH: No, Your Honor.

2 THE COURT: From the Defendant?

3 MR. CURRY: No, Your Honor.

4 THE COURT: All right. Bring them in, please.

5 (Whereupon, the jurors enter the courtroom.)

6 (Whereupon, Court's Exhibit No. 1 is marked
7 for identification.)

8 THE COURT: Thank you very much, ladies and
9 gentlemen. I have what is now Court's Exhibit 1 and
10 if you would sign it as the Presiding Juror when you
11 do write me a note also.

12 I know from whom this the author of this note.
13 The question is one, as I understand, what made the
14 North Charleston Police to question the children?

15 That is a question of fact. As I mention to
16 you, I cannot assist you with that. That's not an
17 area which I can delve, that's yours to decide. And
18 you must resolve it from the record, if it's
19 necessary to resolve, that's up to you.

20 But that's an issue that we can't -- I can't
21 comment on because it's a question of fact.

22 So having answered that you may retire and
23 resume your deliberations.

24 (Whereupon, the jurors exit the courtroom.)

25 THE COURT: Any exceptions or additions from

1 the State?

2 MS. HERRING-LASH: Not from the State.

3 THE COURT: Any exception or additions from
4 the defendant?

5 MR. CURRY: None from the defendant.

6 THE COURT: Thank you very much. We will be
7 at ease.

8 (Whereupon, a recess was taken.)

9 (Whereupon, the parties reconvene at 11:20
10 a.m.)

11 THE COURT: All right, I'm advised that the
12 jury has received a verdict. Let the record reflect
13 that Mr. Moore is present.

14 Is the defendant ready to receive the verdict?

15 MR. CURRY: Yes, Your Honor.

16 THE COURT: Is the State ready to receive the
17 verdict?

18 MS. HERRING-LASH: Yes, Your Honor.

19 THE COURT: Ladies and gentlemen, thank you
20 very much again for your continued observing my
21 request of demonstrating and exhibiting proper
22 decorum.

23 We are about to receive a verdict. And this
24 is certainly something that I realize and understand
25 as a human that can be some strong emotional feelings

1 about it. And that is very normal and very human.
2 But one thing I will not tolerate is any reaction at
3 all to this verdict.

4 And if you feel you can't observe that, then I
5 respect that and understand that but I just simply
6 ask that you leave now. Because if you remain, I'm
7 going to assume and expect that you will follow that
8 instruction.

9 And again, thank you again for the curtesy
10 that you have extended to this Court thus far.

11 All right, let's bring in the jury, please.

12 (Whereupon, the jury enters the courtroom.)

13 THE COURT: Thank you very much, ladies and
14 gentlemen. Mr. Forester, as I understand the jury
15 has reached a verdict, sir?

16 A JUROR: Yes, sir.

17 THE COURT: If you would pass the verdict
18 forms, please.

19 As to the defendant, please rise. The verdict
20 forms have been properly completed. State of South
21 Carolina, County of Berkeley. State of South
22 Carolina versus Tyrone Moore. Case number
23 2008-GS-08-1020. We, the jury, by unanimous consent
24 find the defendant guilty of lewd act upon the minor,
25 Minor 2 signed by Mr. Forester as the

presiding juror.

Indictment

2008-1021. We, the jury, by unanimous consent find the defendant guilty of lewd act upon a minor, Minor 1 Smalls, again signed by Mr. Forester as the presiding juror.

Ladies and gentlemen, if the Court has accurately published your verdict, please indicate that by raising your right hand.

Thank you, you may put them down. Let the record reflect that each juror in response to the Court's inquiry raised his or her right hand indicating and affirming that it was their respective verdict.

You may take your seat, Mr. Curry and Mr. Moore, thank you.

Anything further from the jury from the State?

MS. HERRING-LASH: Not at this point, Your Honor.

THE COURT: Anything further, Mr. Curry?

MR. CURRY: Not at this time.

THE COURT: Ladies and gentlemen, I appreciate so much your assistance and participation in this matter. I appreciate the manner in which you approached your responsibilities as jurors.

As I stated to you, it has been an honor and a

1 privilege to serve with you as a Judge in this county
2 and in this proceeding. You are now free to leave if
3 you wish. What will happen next, there will be some
4 matters of law that I have to take up. You are
5 welcome to remain or you are welcome to leave.

6 Also if there are any questions or concerns
7 that any of you may have about this process, if you
8 wish if you will remain in your jury room I will be
9 happy to try to address those. But if there aren't
10 any you are free to leave. You are excused from any
11 further service.

12 Please understand that there is no way in the
13 world that we can compensate you for the service that
14 you've rendered this week. By submitting and
15 presenting yourselves to be available to serve as a
16 juror, as I stated when I qualified you, it's the one
17 thing that really gives me a good feeling. And that
18 has been further confirmed this week with having a
19 chance to work with you.

20 You've earned your exemption for the next
21 three years. And if I happen to be holding court,
22 and you were selected and wish to be excused, then I
23 will be privileged to excuse you. If you want to
24 stay and work with me, then I will look forward to
25 working with you again.

1 You are also free now to talk about this case
2 if you wish. That is your choice. If somebody asks
3 you some questions about it and you choose to talk
4 about it, that's fine. If you choose not to talk
5 about it that's also fine, that's your right. And if
6 persists in asking you questions and won't leave you
7 alone, you make that known to Ms. Brown and she can
8 convey that to me and we will try to take care of
9 that for you. Have a great day. You are free to
10 leave.

11 (Whereupon, the jurors exit the courtroom.)

12 MS. HERRING-LASH: Your Honor, I don't have a
13 sentencing sheet.

14 THE COURT: We will be at ease for a few
15 moments at this time.

16 MR. CURRY: That's fine, Your Honor.

17 THE COURT: Obviously at this point Mr. Moore
18 is in custody.

19 MR. CURRY: That is correct, Your Honor.

20 THE COURT: Thank you very much.

21 MR. CURRY: You're welcome, Your Honor.

22 THE COURT: We will take a few moments then.

23 (Whereupon, a recess was taken.)

24 THE COURT: We can start. I have the
25 indictment and I've heard the case. I will defer to

1 you all, but I don't need it to commence the process
2 if you want to get started.

3 MS. HERRING-LASH: That's fine with me.

4 MR. CURRY: That's fine, Your Honor.

5 THE COURT: That way we won't keep you all
6 waiting.

7 MR. CURRY: That's fine.

8 THE COURT: Solicitor, I have heard the case
9 obviously, I have not heard -- I know we had some
10 discussion about I think that Mr. Moore may have a
11 record, but I'm not familiar with it. If you want to
12 give me that and anything else the State wants to say
13 at this point.

14 MS. HERRING-LASH: Yes, Your Honor. He has a
15 1988 arrest, 1989 conviction for lewd act upon a
16 minor. He received six years suspended on 15 months
17 confinement and 2 years probation at that time.

18 In 1991 he was convicted of two counts of
19 criminal sexual conduct with a minor in the second
20 degree for which he received 18 years confinement and
21 4 years probation. Your Honor, we also have other
22 charges pending with other victims that are pending
23 in Berkeley County.

24 And at the -- I don't know if you want to hear
25 now, but I think that the grandmother may want to

1 speak.

2 THE COURT: I will be happy to hear from
3 anyone that wants to speak at this point.

4 MS. HERRING-LASH: Sabrina Johnson is the
5 grandmother.

6 THE COURT: Okay.

7 Come forward, ma'am, so that you can speak
8 into the microphone for me. Thank you.

9 . JOHNSON: To the Court, Judge, State and all
10 the jury members, and everyone that is here today, I
11 just want to say I thank you all for doing -- for --
12 I just thank everybody for their participation, and
13 their part of rectifying these matters.

14 And I want to say that I'm very proud of my
15 two daughters -- and I have two sons too, they're not
16 here -- I'm very proud of my two daughters and all of
17 my grandsons and my very one granddaughter, I love
18 them very much.

19 And I want to say that perfect love is what we
20 got to really work on as people. Without love you
21 have nothing. No charity, you have nothing. So
22 thank you.

23 THE COURT: Thank you, ma'am.

24 MS. HERRING-LASH: Your Honor, no one else
25 wants to speak. I would just on behalf of the State

1 say that I think this man has proven from the past
2 and with two different situations where he has had
3 the opportunity for probation after his sentence,
4 that he is truly a danger to our society. I would
5 ask for as much or as maximum a sentence as this
6 Court feels is possible.

7 THE COURT: Thank you very much, Ms.
8 Herring-Lash.

9 Mr. Curry, appreciate your patience. I would
10 be delighted to hear from you now and anyone on Mr.
11 Moore's behalf, sir.

12 MR. CURRY: Thank you very much, Your Honor,
13 if it pleases the Court.

14 Judge, I would like for you to hear from his
15 wife. Mr. Moore is married, has children, his wife
16 and his mother are both here and they would like to
17 speak just briefly on his behalf. And I would like
18 to cap it from there.

19 THE COURT: Definitely no problem, sir.

20 MR. CURRY: Call Erica Moore.

21 MS. MOORE: Your Honor, and to all, no
22 disrespect to anyone but I feel like my husband has
23 been failed by the system because they have not
24 proved that his intentions was to commit a criminal
25 act, a lewd act. And I also feel like it was a

1 biased move. And I have two twin sons
2 that's going to be devastated because they don't have
3 their father in the home. When these people came to
4 our home we welcomed them in, and you know he did
5 what he needed to do for them.

6 That was taken away from me and my kids. And
7 I just feel like a disservice has been done to my
8 kids. And I just wanted to say that. And that's all
9 I have to say.

10 THE COURT: Thank you, Ms. Moore.

11 MR. CURRY: Also call Ms. Lonnie Ruth Palmer.

12 MS. PALMER: Good evening, everyone. I'm
13 Tyrone Moore's mother. I'm the mother of nine
14 children.

15 I only saw, I know she talked about the past.
16 I was there with my son. And when my son came out
17 his intentions was to only to do good. I have saw
18 since he came out do nothing but help people.

19 And my feelings, Judge, and I could be wrong,
20 but my feelings is this. I think that there was a
21 lot of -- because some people know his past, they
22 brought up things to do this for many reasons. I am
23 not going to get into it. I think they know, and a
24 lot of other people know why they did it.

25 He was being successful with what he was

1 doing. He was helping people in the community. I
2 believe if they were to get testimonies, I don't know
3 if they did, but to bring out how many people he
4 helped; elderly people as well as people off the
5 streets and everything.

6 So I am saying, as his wife has said, his sons
7 need him. I truly believe he is not a threat. I
8 believe he wants to do nothing but good. And so,
9 Judge, this is what I am going to leave you with. I
10 have to go by what I feel in my gut instinct that I
11 have been checking into some things, and I think a
12 lot of it is really just a big conspiracy. Thank
13 you.

14 THE COURT: Thank you, ma'am.

15 MR. CURRY: Your Honor, if it pleases the
16 court I would say that Mr. Moore obviously has been
17 judged by a jury. So I am not here to contest that,
18 you've heard the testimony. I am here to ask for
19 mercy, okay.

20 If there is any mercy to be had with regard to
21 a structuring of a sentence that may give him an
22 opportunity at some point in his life to maybe resume
23 hopefully, while he is in there, when he gets back
24 out that he will be able to conform his conduct to
25 the way the law. I thank you.

1 THE COURT: Thank you, sir.

2 Anything else?

3 MR. CURRY: That will be all, Your Honor.

4 THE COURT: Okay. These cases are never easy.

5 And they lend themselves to, as I have stated

6 throughout, much emotion on both sides.

7 But one thing to me is, and I respect

8 everyone's opinions and beliefs and really

9 assessments. There is one thing I have commented

10 over and over because it has been made clear to me so

11 many, many, many, many times. Something that I heard

12 my mother say to me when she was alive many times,

13 and now that I have been blessed enough to live as

14 long as I have and have children and grandchildren, I

15 have had even more so revealed and then I see it

16 everyday, I have seen it here today.

17 The depth of a mother's love is hard to

18 fathom. It is something that -- and I'm a father,

19 and I strive to have the love that my wife has for my

20 children and our grandchildren because that is

21 something worth emulating.

22 But my mother also said, son, you could be

23 wrong and I wouldn't love the wrong but I would never

24 ever not love you. And I think that's clear, and I

25 think it's beautiful.

1 And I think, and, Mr. Moore, in fairness I'm
2 going to preface my few remarks that I'm going to say
3 before I impose a sentence, not that it need be
4 because I probably shouldn't say a thing, but I think
5 it's worthy, especially with the persons here.

6 And I have to confess this because I have to
7 be sure that I'm not responding to this feeling that
8 I have and have had for as long as I really can
9 remember, and began to come to the realization maybe
10 with the minister that I had in my -- when I was 30,
11 he served our church for about eight years, and began
12 to develop a different perspective.

13 But I think we tend to hold our Ministers to a
14 standard that is maybe not even fair. We put
15 Ministers on a pedestal, and we fail to realize that
16 they're human beings. And that, I confess, maybe
17 that's not fair.

18 But the flip side of that though is, because
19 Ministers know that, and they know that they are
20 earning the trust of persons every day, that they are
21 -- have become really the rub, if you will, in many
22 lives of their parishioners. Not that the
23 parishioners shouldn't be a minister because, because
24 I think we all are, I think that's what the Bible
25 says.

1 You would be the person that was called at
2 that particular point to serve that particular
3 parish, or that particular church.

4 Is it wrong for you to be human? No. It's
5 normal. There is no question in my mind, though,
6 based on what I have heard, I think the jury made the
7 correct decision based on the evidence. And I
8 certainly don't fault anyone in this congregation, in
9 this group that feels otherwise.

10 But it points out something that really and
11 truly that what I am about to do is so small to
12 rectifying the problem that's created here.

13 Because I have got people sitting there whose
14 lives and beliefs have just been shattered. Family,
15 children that are not going to have their father and
16 their husband. I didn't offer that, that's the
17 consequence of acts. And that's important, so I
18 think, to distinguish.

19 I am sorry that those things have been
20 shattered. I hope and pray that they can be rebuilt.
21 I think one of the most disturbing things that I
22 heard, and Mr. Curry very appropriately pointed out
23 other things, other reasons maybe, but if the reason
24 that those young men have decided not to go to church
25 is because of what you did, how do you give that

1 back? What is that worth?

2 I pray that they will be able to find some
3 peace in their lives. And I really mean that
4 sincerely. The tremendous courage to come forward
5 and talk about something that is horrible. And they
6 did nothing to deserve it, nothing at all but trust.

7 And when we start destroying people because
8 they trusted you, then we really are in a mess in our
9 society. I think it's important and imperative that
10 each one of us take from here something that we have
11 as a personal mission, and that is to try to make
12 sure that we do all every day, as was stated, love.
13 That love in the full true and context of that, in
14 how it was demonstrated by the man that walked this
15 earth; a complete love and an unselfish love, not
16 expecting anything in return.

17 And I hope we can achieve that, it's tough
18 though. It's extremely difficult when we have had
19 these things kind of get in the way.

20 But as that Minister that was with me used to
21 say, you know, I don't know why good people have to
22 have bad things happen to them. It's just bad things
23 that exist in the world. And has been and always
24 will be. But that shouldn't deter us from doing what
25 we can do to make it a better place.

1 One thing is for certain for me, I tried to be
2 consistent with this for 15 years. When someone
3 demonstrates that they have a tendency to repeat in
4 one area where I really and truly -- I had a lady
5 tell me years ago in Charleston, I will never forget
6 it, because I told her she was telling me she wanted
7 me to impose a sentence.

8 I said, ma'am, I tell you what, I have a blank
9 here and I can write a number from zero to ten. You
10 tell me what number you want me to write and I will
11 write it down. And she hesitated and looked at me,
12 and she was the victim, and she said, I can't tell
13 you that. I just want you to do justice.

14 Well that's a fleeting term. That's a term I
15 don't know. So I just try to do what my heart tells
16 me and what I believe is the right thing.

17 And in this particular case, with the person
18 that has a lewd act charge for which he was punished,
19 followed very quickly by a criminal sexual conduct
20 charge for which he was punished, and I appreciate
21 the feeling of a conspiracy and that the system
22 failed, but quite frankly -- I respect your right to
23 say that -- but I don't think so at all.

24 I think it's a remarkable system where the
25 State is restricted from talking about things that

1 may have some influence, may have some importance,
2 but the jury didn't hear that. They didn't know
3 that. That's protecting and making sure it doesn't
4 go because you've done something wrong before.

5 But when it comes to me, it says something to
6 me. It says, I don't know what it is about you and I
7 don't think you are a bad person, don't hear me say
8 that because I think you've done some remarkable good
9 and for that I commend you, sir. And thank you for
10 that, that you have rendered that and made lives
11 better.

12 But I also know there is a part of you that
13 you can't control. So to protect society I'm going
14 to try to help them. So the sentence of the Court,
15 Mr. Moore, on indictment 2008-1021 -- excuse 1020,
16 which would be the controlling first one is 15 years.

17 And the sentence of the Court on 2008-1021 is
18 15 years. They're consecutive. Now, your lawyer has
19 probably said it to you, and you know it as well,
20 that these are non-violent offenses. Unlike a
21 violent offense where you have to max out the first
22 one before you started earning credits on the second
23 one, just for the benefit of everybody here, that is
24 something I don't control.

25 I wish it was 30 years to be honest with you.

1 But they'll start earning it day one you will be
2 earning it on the second one, and he knows that too.
3 So good luck to you, sir.

4 MR. CURRY: Thank you, Your Honor.

5 THE COURT: Did he serve any time, Mr. Curry,
6 before bonding out?

7 MR. CURRY: Yes, Judge, there's a varied
8 amount. I'd have to calculate it.

9 THE COURT: That's all right. I will just
10 check the box and make sure they give him credit for
11 this.

12 MR. CURRY: Thank you very much, sir.

13 THE COURT: Thank you, sir.

14 (Whereupon, the proceedings in this matter
15 before the Court were adjourned.)

16 * * * * *

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record, and of all the proceedings had and evidence introduced in the above captioned case, relative to appeal, in the Circuit Court for South Carolina, on the 29th day of July, 2009.

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

-----*Anne Bouley Meyer*-----

Anne Bouley Meyer, RPR
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of Berkeley)Tyrone Moore #156462)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2013 CP-01876

APPLICATION FOR

POST-CONVICTION RELIEF

2013 JAN 18 PM 4:31
CLERK OF COURT
BERKELEY COUNTY, SC

FILED

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Institution
2. Name and location of Court which imposed sentence Berkeley County
General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2008-GS-08-1020 (Lived not)

- (b) 2008 GS-08-1021 (Criminal act)
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) July 29, 2009
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty jury trial
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. June 6, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2012-UP-344
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A

- (b) _____
 (c) _____

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

- (a) 6th. Amendment Violation
 (b) 14th. Amendment Violation
 (c) _____

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

- (a) Ineffective Assistance of Counsel
 (b) _____
 (c) _____

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

- (a) any petition in a State Court under South Carolina Law? No
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? No

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

- (a) the specific nature thereof:
 i. N/A
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. N/A
 ii. _____
 iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

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

N/A No

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

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) 1st. PCR
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? N/A
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or 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. Eduardo K. Curry
7013 Dorchester Road, Unit E, Box 5
- ii. P.O. Box 42270
N. Charleston, SC 29423
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. jury trial
sentencing
- ii. direct appeal
- iii. _____

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

New Trial

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Dorchester)

VERIFICATION

I, Tyrone Moore, 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.

Tyrone Moore

SWORN to and subscribed before me this 11th day of January, 2013.

Sylvia Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

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

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

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

Tyrone Moore
Applicant

SWORN or affirmed to and subscribed before me this
11th day of January, 2013.

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

FILED
2013 JAN 18 PM 4:30
MARY H. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS

2013-CP-08-0164

Tyrone Moore,
S.C.D.C. No. 156462,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

13 OCT 17 AM 11:48

DW
FILED

The Respondent, making its Return to the application for post-conviction relief (PCR) filed January 18, 2013, 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 Berkeley County Clerk of Court. The Applicant was indicted at the May 2008 term of the Berkeley County Grand Jury for two (2) counts of lewd act upon a minor (2008-CP-08-1020,-1021). Applicant was represented by Eduardo K. Curry, Esquire.

The Applicant proceeded to trial on July 29, 2009 and was found guilty as indicted. Applicant was sentenced by the Honorable R. Markley Dennis, Jr. to confinement for a period of fifteen (15) years for each count of lewd act on a minor. The sentences are to be served consecutively.

A timely Notice of Appeal was filed on behalf of the Applicant. The appeal was perfected by Eduardo K. Curry, Esquire. The South Carolina Court of Appeals affirmed the Applicant's

N/C

704

convictions and sentences. (State v. Moore, Op. No. 2012-UP-344, June 6, 2012). The Remittitur was issued on June 25, 2012.

Attached herewith and incorporated herein are the records of the Berkeley County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective Assistance of Counsel

III.

The Applicant alleges ineffective assistance of counsel. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624,

625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688). 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

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

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: ASH R. WILSON
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

October 10, 2013.

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

TYRONE MOORE, #156462

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2013-CP-08-0164

AFFIDAVIT OF SERVICE BY MAIL

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

OCT 17 AM 11:48

FILED

1. I am an employee of the Respondent in the abovecaptioned 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:

Rodney D. Davis, Esquire
Lowcountry Law Office
4000 Faber Place Drive
Suite 300
Charleston, SC 29405

DATED this 11th day of October, 2013

Anne R. Henley
Anne Henley, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

TYRONE MOORE)

Applicant)

vs.)

STATE OF SOUTH CAROLINA)

Defendant)

THE COURT OF COMMON PLEAS

DOCKET NO. 2013-CP-08-0164

TRANSCRIPT OF RECORD

September 8, 2014

Charleston, South Carolina

B E F O R E:

THE HONORABLE G. THOMAS COOPER, JR, JUDGE

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

RODNEY D. DAVIS, ESQ.
Attorney for the ApplicantASHLEIGH R. WILSON, ESQ.
Attorney for the DefendantJOYCE C. RUEGER, CVR-M
Circuit Court Reporter

INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	4
EDUARDO K. CURRY	
Direct Examination by Mr. Davis	10
Examination by the Court	15
Direct Examination by Mr. Davis (resumes)	18
Cross-Examination by Ms. Wilson	32
TYRONE MOORE	
Direct Examination by Mr. Davis	41
Cross-Examination by Ms. Wilson	57
EDUARDO K. CURRY (recalled)	
Direct Examination by Ms. Wilson	60
Cross-Examination by Mr. Davis	63
Cross-Examination by The Court	66
CLOSING ARGUMENTS	
By Mr. Davis	72
By Ms. Wilson	75
CERTIFICATE OF THE COURT REPORTER	81

INDEX TO EXHIBITS

PAGE

PLAINTIFF (applicant)

<u>No.</u>	<u>Description</u>	<u>Marked / Admitted</u>
1	Motions list	19
2	Witness list	30

Tyrone Moore v State of S. C.
Proceedings
September 8, 2014

PROCEEDINGS

THE COURT: Ms. Wilson?

MS. WILSON: Yes, Your Honor.

THE COURT: You may proceed.

MS. WILSON: Thank you, Your Honor.

THE COURT: Yes, ma'am.

MS. WILSON: This case is Tyrone Moore v the State of South Carolina. I'm Ashleigh Wilson for the State of South Carolina and this is docket number 2013-CP-08-164. Mr. Moore was indicted in May 2008 for two counts of Lewd Act on a Minor. And those were indictment numbers 2008-GS-08-1020 and 1021.

He proceeded to trial and was convicted by a jury on July 29, 2009. He received 15 -- two 15 year sentences to be served consecutively for a total of 30 year sentence. He was represented in that trial by Mr. Eduardo Curry and he proceeded to trial before Judge Dennis.

He filed a notice of appeal. His appeal -- I mean, his conviction was affirmed by the Court of Appeals on June 6, 2012 and the remittitur was issued in that case on June 25, 2012. He filed his application for post conviction relief on January 18, 2013 and the State filed its return. In his application he alleged ineffective assistance of counsel. And the State is here ready to

Tyrone Moore v State of S. C.
Proceedings
September 8, 2014

1 proceed and we would just ask that Mr. Moore -- he
2 specify which claims of ineffective assistance of counsel
3 he's proceeding on today because he did not in his
4 application.

5 THE COURT: Mr. Davis?

6 MR. DAVIS: Good morning, Your Honor, may we
7 approach for just a moment, Your Honor?

8 THE COURT: Certainly.

9 [Whereupon, an off the record bench conference is
10 held]

11 THE COURT: Mr. Moore. Mr. Tyrone Moore, I just
12 met your attorney for the first time. Let me just,
13 before you begin or before he begins -- I assume he's
14 told you that if you are successful in this post
15 conviction relief, you were charged and convicted on two
16 counts of Lewd Act. But, if you were -- if you are
17 successful, that the State could reopen any other pending
18 -- any other cases that may have been dismissed prior to
19 that trial. Do you understand that?

20 MR. MOORE: Yes, sir.

21 THE COURT: Okay. And I don't know how many --
22 the Attorney General tells me there are other -- were
23 other cases that were dismissed as a result of this trial
24 -- before this trial. And that if the State -- and I
25 have no knowledge of what the Solicitor's Office here did

Tyrone Moore v State of S. C.
Proceedings
September 8, 2014

1 or would do, but potentially they could go back since
2 this case would require a new trial. They could
3 potentially go back and bring up some of your other --
4 what may have been other cases at that time which could
5 ultimately end up with a greater sentence than you have
6 now. Do you understand that?

7 MR. MOORE: Yes, sir.

8 THE COURT: Your lawyer explained that to you?

9 MR. MOORE: Yes, sir.

10 THE COURT: You wish to proceed on knowing, fully
11 knowing that and being advised of your rights in this
12 regard?

13 MR. MOORE: Yes, sir.

14 THE COURT: All right, fine. Thank you very much.
15 You may proceed. You may proceed, Mr. Davis.

16 MR. DAVIS: And Your Honor, to respond to the
17 State's request, Judge, we have three major thrusts of my
18 client's complaint.

19 THE COURT: Is there an amended application?

20 MR. DAVIS: No, Your Honor.

21 THE COURT: Okay.

22 MR. DAVIS: It all falls under the umbrella of
23 ineffectiveness, but to be specific we are happy to
24 respond to the State's former motion this morning.

25 THE COURT: If I can identify any phones that go

Tyrone Moore v State of S. C.
Proceedings
September 8, 2014

1 off in this courtroom, I'm going to take them. Do you
2 understand? Everybody understand? Check your phones.
3 Do you understand that, Mr. Bailiff?

4 MR. BAILIFF: Yes, sir.

5 THE COURT: All right, you may proceed Mr. Davis.
6 Tell me about your...

7 MR. DAVIS: Thank you, Your Honor. Judge, it
8 basically falls under three -- two issues that I'll deal
9 with both Mr. Curry and my client. He did not testify at
10 his trial.

11 THE COURT: Did not testify.

12 MR. DAVIS: That is a point of contention on the
13 advice he received in deciding not to testify and that
14 the evidence he would have -- testimony he would have
15 presented had he testified. Secondarily to that, an
16 appeal was made from this conviction by Mr. Curry and one
17 of the two arguments to be made dealt with cross-
18 examination of a law enforcement officer who was involved
19 in this case, specifically, from Goose Creek from
20 Berkeley County. This was a Berkeley County conviction,
21 Your Honor.

22 THE COURT: Wait a minute, Curry being his
23 appellate counsel?

24 MR. DAVIS: Trial and appellate.

25 THE COURT: Trial and appellate?

Tyrone Moore v State of S. C.
Proceedings
September 8, 2014

1 MR. DAVIS: Yes, Your Honor.

2 THE COURT: He did both?

3 MR. DAVIS: Yes, Your Honor.

4 THE COURT: Good.

5 MR. DAVIS: He raised the issue about the fact that
6 he was limited in cross-examination by the trial judge.
7 However, it was not objected to contemporaneously and
8 therefore not preserved for appeal. Those are the major
9 two thrusts of our ineffectiveness claim.

10 THE COURT: So you've got two specifications.

11 MR. DAVIS: Yes, Your Honor.

12 THE COURT: Of ineffectiveness?

13 MR. DAVIS: Yes, Your Honor. The fact that no --
14 my client did not testify nor were any other witnesses
15 called, so the advice he received in presenting the
16 defense we will focus on that and then the failure to
17 preserve the one appellate issue. There were two issues,
18 the second one was ruled on, it was preserved for appeal.
19 The first one was not.

20 THE COURT: All right. You may proceed, call your
21 first witness.

22 MR. DAVIS: Thank you, Your Honor. Thank you, Your
23 Honor. We would call Mr. Curry to the stand.

24 THE COURT: Eduardo Curry?

25 MR. DAVIS: Yes, Your Honor.

Tyrone Moore v State of S. C.
Proceedings
September 8, 2014

1 [Whereupon, Mr. Curry comes forward]

2 THE COURT: Place your hand on the Bible and raise
3 your right hand.

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: State your full name and spell
7 your last name for the record.

8 THE WITNESS: Eduardo Kelvin Curry, C-U-R-R-Y.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Tyrone Moore v State of S. C.
Eduardo Curry-Direct Examination by Mr. Davis
September 8, 2014

1 EDUARDO CURRY,

2 Having been first duly sworn,

3 Was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. DAVIS

6 Q. Good morning, Mr. Curry.

7 A. Good morning, Mr. Davis.

8 Q. Good to see you.

9 A. Pleasure as well.

10 Q. First -- let's talk about the second issue first.

11 Let's talk about the cross-examination part of this case.

12 You had the opportunity to prepare and to cross-examine

13 two different detectives in this case, is that correct?

14 A. That's correct.

15 Q. Detective Bullard from Charleston County and then

16 Detective Nicks from, I believe it was Goose Creek Police

17 Department?

18 A. I think so.

19 Q. And the record reflects, and I hope you recall, that

20 you were able to quite extensively cross-examine

21 Detective Bullard as far as obtaining statements from the

22 accusers. Is that correct?

23 A. That's correct.

24 Q. And a point of your cross-examination, a major point

25 of your cross-examination was dealing with the

Tyrone Moore v State of S. C.
Eduardo Curry-Direct Examination by Mr. Davis
September 8, 2014

1 suggestibility of leading questions. Is that accurate?

2 A. I think that would sum it.

3 Q. And you would thoroughly in your ability in front of
4 the court to question Detective Bullard, but then you
5 attempted to do the same with Detective Nicks. Is that
6 accurate?

7 A. That would be accurate.

8 Q. But at some point early on in that cross-examination
9 Judge Dennis indicated that that was as far as you needed
10 to go.

11 A. Yes, he sort of interrupted it.

12 Q. You had other questions you wished to ask Detective
13 Nicks.

14 A. Well, potentially.

15 Q. But, at that point in deference to the court you
16 stopped the questioning, correct?

17 A. Yes, what had happened is that we had belabored the
18 point in the initial witness. And it is my I guess my
19 thoughts, as well as the court's response that, I had
20 pressed the issues and beating a dead horse in the first
21 witness and that the period of the issue of
22 suggestibility certainly did not exist in this particular
23 case.

24 And as you know from the record, I was attempting to
25 undermine their testimony in a way to show that maybe

Tyrone Moore v State of S. C.
Eduardo Curry-Direct Examination by Mr. Davis
September 8, 2014

1 some form of questioning by the law enforcement officer
2 would have elicited a particular response that may not
3 have been previously in the mind of the witness.

4 And so, when I got to the second police officer, the
5 Judge interrupted me and said basically we're not going
6 to go there, you know, you've done enough with regard to
7 that and nothing pretty much came out. My thought was
8 nothing pretty much came out of the initial witness
9 Bullard.

10 And so when I was -- got to Nicks, you know, that
11 was his response. Now, of course, whether or not I
12 could have elicited any information independently I was
13 just trying to see if I could undermine their credibility
14 from the jury whether or not factually it would be so.

15 Q. It is an issue you raised during the appeal of this
16 conviction, though, correct?

17 A. I raised it and how I became his appeal counsel Mr.
18 Moore certainly didn't have the money and had thought
19 that maybe this was an issue in regard to it and I agreed
20 to at least if his family could come with some money in
21 order to file the appeal and pay for the cost.

22 And so I raised it after going through, you know,
23 the transcript in detail trying to find something or
24 anything that you could hang your hat on without just
25 filing an Anders Brief or something along the lines that

Tyrone Moore v State of S. C.
Eduardo Curry-Direct Examination by Mr. Davis
September 8, 2014

1 would say there's no actual issues with regard to it.

2 Q. The -- you had two issues. What we're discussing
3 now being one and the qualifying Doctor Don Elsey as an
4 expert witness was your other intention on appeal?

5 A. Those were the issues that I thought had any meat on
6 it.

7 Q. You made an objection to the court's finding of
8 Doctor Elsey as an expert contemporaneously at the trial,
9 correct?

10 A. I made an objection because I thought that Doctor
11 Elsey had a previous position and maybe not a deep enough
12 knowledge after querying him in the voir dire, but the
13 judge ruled that he was an expert...

14 THE COURT: I didn't hear you.

15 THE WITNESS: The judge ruled that Doctor Elsey was
16 an expert and allowed his testimony to come in.

17 Q. [Mr. Davis] In contrast to the issue of being
18 limited in cross-examination, you did not make a
19 contemporaneous objection at trial when Judge Dennis
20 prohibited more questions.

21 A. If that's what the record indicates, I did not. But
22 in my professional judgment, I was trying to as you could
23 say, see if I could craft or elicit anything from this
24 witness that would assist to influence the jury about the
25 facts or knowledge. So, it wasn't that serious enough

Tyrone Moore v State of S. C.
Eduardo Curry-Direct Examination by Mr. Davis
September 8, 2014

1 that for me to say hey, well Judge I want to object if
2 you don't do it. Judge said hey; move on, I'm not going
3 to let you do it. I went back and found that particular
4 issue and I did. But if the record reflects I didn't
5 object to it, I don't think it was harmful.

6 Q. You obtained the unpublished opinion really against
7 you from the Court of Appeals, did you get it?

8 A. Huh?

9 Q. You recall that that was why they dismissed the
10 first complaint in your appeal is that it was not
11 preserved for appeal?

12 A. If that's what it says in the record, then I'll
13 agree.

14 MR. DAVIS: Your Honor, if I could have just a
15 moment.

16 THE COURT: Do you mind if I ask a question?

17 MR. DAVIS: Go right ahead, Your Honor.

18

19

20

21

22

23

24

25

Tyrone Moore v State of S. C.
Eduardo Curry-Examination by the Court
September 8, 2014

1 THE COURT: Mr. Curry, at that time was there any
2 objection from the State when you say Judge Dennis cut
3 you off. Was there an objection that he based that on?

4 THE WITNESS: Judge, I can't readily, I think it was
5 from the bench on his own saying that ---

6 THE COURT: --- sua sponte?

7 THE WITNESS: Sua Sponte, yes Your Honor and just
8 that I think you need to move on. We've dealt with these
9 issues, we've dealt with these questions before and so
10 move on. And upon review, the reason I used it on appeal
11 is because I was trying to find anything that I thought
12 maybe could help Mr. Moore in his particular case.

13 Not that any information that was objected from or
14 subjected from the witness would have helped his case.
15 It didn't help it in Detective Bullard and in Detective
16 Nicks, she knew even probably less that Detective
17 Bullard.

18 THE COURT: How much cross-examination did you do
19 of Officer Nicks?

20 THE WITNESS: After ---

21 THE COURT: --- did you do any?

22 THE WITNESS: Yes, Your Honor. After the initial
23 when I started with the line of questioning, because I
24 had multiple lines of questioning and then when the Judge
25 cut me off of that, I just went on to another subject

Tyrone Moore v State of S. C.
Eduardo Curry-Examination by the Court
September 8, 2014

1 title ---

2 THE COURT: --- but you did ---

3 THE WITNESS: --- Yes, Your Honor ---

4 THE COURT: --- in your mind fully cross-examine
5 him with the exception of this ---

6 THE WITNESS: --- that is correct, Your Honor ---

7 THE COURT: --- one subject.

8 THE WITNESS: And I was thorough with it.

9 THE COURT: Sir?

10 THE WITNESS: I was thorough in my cross-
11 examination with her other than just this is just one of
12 multiple things that I asked this lady.

13 THE COURT: What was his role in this case?

14 THE WITNESS: Detective Nicks, she was one of the
15 investigating officers from the Goose Creek Police
16 Department. Judge, if I may give you some contextual
17 history, what had happened in this particular case was
18 that Mr. Moore was a pastor of a church called Full Word
19 [phonetic]. As a result, he had pastor's personal
20 helpers.

21 Mr. Moore traveled around the places with his
22 assistants and also with young men. In addition, Mr.
23 Moore had invited these young men to come to his house
24 for social gatherings and eventually led to sleepovers.
25 Some of these young men testified that Mr. Moore would

Tyrone Moore v State of S. C.
Eduardo Curry-Examination by the Court
September 8, 2014

1 come in the middle of the night and would attempt to
2 penetrate ---

3 THE COURT: --- okay.

4 THE WITNESS: Okay. And so, the witnesses were
5 scattered throughout the church and so Detective Nicks
6 had ---

7 THE COURT: --- you said young. How old were ---

8 THE WITNESS: --- these were 10 and 12 year olds,
9 these were young ---

10 THE COURT: --- okay. Did they go through
11 forensic interviews?

12 THE WITNESS: Yes, Your Honor. Lowcountry Doctor
13 Elsey was the Lowcountry Children's Center with regard to
14 it. And so what had happened in this particular case is
15 that Detective Nicks was tasked with the obligation of
16 trying to find witnesses and to give written reports in
17 terms of the testimony. So, she was just one of multiple
18 people in terms of investigating that was dealing with
19 these particular crimes.

20 THE COURT: Okay. Thank you very much.

21 THE WITNESS: You're welcome, Judge.
22
23
24
25

Tyrone Moore v State of S. C.
Eduardo Curry-Direct Examination by Mr. Davis (resumes)
September 8, 2014

1 DIRECT EXAMINATION (RESUMES)

2 BY MR. DAVIS:

3 Q. Mr. Curry, I hope I misunderstood. You just
4 referenced Doctor Elsey at Lowcountry Children's Center.
5 He did not interview these accusers.

6 A. No, he was one of the people that was there. They
7 had the forensic test done by other people within
8 interviews done by other people.

9 Now, Doctor Elsey testified as to the propensity for
10 children to lie and whether or not these boys would have
11 lied, or made it up, or were suggestive, you know and so
12 that's how we got into the suggestively.

13 I found a scintilla of information and some other
14 writings that led to believe that sometimes children may
15 make up things and may very well lie. But that's not the
16 basics of it because these children had offered up their
17 own testimony.

18 Q. But, I'll go back. You made it very clear on the
19 record that Doctor Elsey never interviewed either one of
20 the two accusers from this trial?

21 A. I made it clear, but what Doctor Elsey was actually
22 testifying to is to their propensity to lie or whether or
23 not they had credibility issues.

24 Q. In fact, you had asked for any taped interviews from
25 Lowcountry Children's Center they didn't exist because it

Tyrone Moore v State of S. C.
Eduardo Curry-Direct Examination by Mr. Davis (resumes)
September 8, 2014

1 didn't happen, correct?

2 A. Certainly, if the record reflects that I asked for
3 them, then that's what it would be.

4 Q. You don't recall whether you asked for those or not?

5 A. This case happened 2008-2009. My independent
6 recollection might be dim, but if you have some record
7 that would help me remember I will certainly like to see
8 it.

9 MR. DAVIS: May I approach, Your Honor?

10 THE COURT: Yes.

11 [Whereupon, plaintiff's exhibit 1 is marked by the
12 court reporter]

13 MR. DAVIS: May I approach the witness, Your Honor?

14 THE COURT: Yes, sir.

15 Q. [Mr. Davis] Mr. Curry, I'm going to show you what's
16 been marked as plaintiff's number 1, we reviewed this
17 before court today. Do you recognize that document?

18 [Whereupon, the witness is shown document]

19 A. I recognize it as a document that was in our file
20 when you and I met and I offered you a copy of it.

21 Q. And, in fact, that a list of four motions that
22 you made at the trial of this case?

23 A. I don't know very well if I made these motions, I
24 don't see a stamped copy bates to see that and I don't
25 recall whether or not I made it the record. I may have

Tyrone Moore v State of S. C.
Eduardo Curry-Direct Examination by Mr. Davis (resumes)
September 8, 2014

1 recalled covering them with Mr. Moore because it appears
2 that I have some handwriting issues on the side, but that
3 may have been just talking to him or investigating or
4 speaking to Assistant Solicitor Debbie Herring-Lash with
5 regard to it.

6 So, I mean, I don't know very well if these were
7 filed. If the record says they were filed, then I filed
8 them. If the oral record says that I filed, then I made
9 the oral motions. Other than that, I can't tell you
10 independently.

11 Q. Item number four is request for intakes from
12 Lowcountry Children's Center, correct?

13 A. I remember four says that all taped interviews from
14 Lowcountry Children's Center be turned over to the
15 defendant. That's what I have on this list I've checked.

16 Q. And what's the notation to the side of that?

17 A. I wrote in it, it's my handwriting, saying no tape.

18 Q. And you would've discovered that from the State, in
19 some way?

20 A. I filed Brady motions and Rule 5 motions. If they
21 had the tapes they were duty obligated to give them to
22 me. So, I had filed the motions.

23 Q. Let's go back to something that Judge Cooper asked
24 you about. During the cross of Officer Nicks --
25 Detective Nicks, you had inquired about her education

Tyrone Moore v State of S. C.
Eduardo Curry-Direct Examination by Mr. Davis (resumes)
September 8, 2014

1 into the area of investigating child abuse, sexual
2 assault. Is that a general statement that you had begun
3 into that process?

4 A. If the record reflects that.

5 MR. DAVIS: And, Your Honor, I believe you have a
6 copy of the transcript as well, in the packet.

7 THE COURT: I do.

8 MR. DAVIS: This is from page two; actually, may I
9 approach the witness, Your Honor?

10 THE COURT: Yes.

11 Q. [By Mr. Davis] This is from the transcript of the
12 trial, page 210, line 6 and 7. This is Detective Nicks'
13 testimony. Is it fair, Mr. Curry that you were asking
14 about her educational background in these types of cases
15 in line 6 and 7?

16 [Whereupon, the witness is shown document]

17 A. What I was asking, amongst things, that -- would you
18 like me to read it?

19 Q. That'd be fine.

20 A. Okay. [Reading] Question, starting at I guess, 210
21 one. You two have to the Academy? Yes. Question: All
22 right, you two have gone through the ABC's of the Police
23 Academy? Answer: I have. Question: have you taken any
24 additional courses on sexual abuse disclosed? Answer: I
25 have. I have over 115 hours of training and investigating

Tyrone Moore v State of S. C.
Eduardo Curry-Direct Examination by Mr. Davis (resumes)
September 8, 2014

1 child molestation and sexually deviant behavior. Here's
2 a list of my classes as of September '02 regarding
3 investigating and prosecuting child molesters. So, then
4 could I ask you some questions about your information,
5 right? Yes. Would you agree with me --- The court:
6 We've already been through this if you want to be
7 specific about this particular case, I'll allow you some
8 leeway in asking all the potential questions, but we're
9 not going to go through this again with this witness.
10 That's fine, Your Honor. The court: Move on. That's
11 what I -- do you want me to continue --

12 Q. --- yes please.

13 A. --- [Reading] -- want you to do. Mr. Curry: Very
14 well, Your Honor. The court: Thank you, sir. Cross-
15 examination continues.

16 Do you want me to continue reading it?

17 Q. Yes please.

18 A. [Reading] By Mr. Curry: Question: In asking the
19 child questions, how do you avoid being impermissibly
20 suggestive? Answer: A, depending on the age of the
21 child I'm not certified in what they call defining words
22 which establishes the credibility of the child, so I
23 cannot discuss that. I am not an expert in that. If
24 they are a certain age, I refer them to L-C-C for an
25 interview by someone who is trained. Due to -- age and

Tyrone Moore v State of S. C.
Eduardo Curry-Direct Examination by Mr. Davis (resumes)
September 8, 2014

1 education, that he was in at that time, obviously you
2 state who you are and your purpose of speaking to him in
3 a manner that's not leading. He will provide the
4 information, then you can do follow up questions with
5 him.

6 As far as Mr. Bowers' report, it was a short and
7 exact interview and I left the room so I did not --
8 pause. Question: I gather that if you left the room,
9 that you did not write the report that Bullard did?
10 That's the end of page 211, would you like for me to
11 continue?

12 Q. If I may, just a moment.

13 A. Page 212 ---

14 Q. --- yes, please?

15 A. [Reading] Correct. Okay. Mr. Curry: I have no more
16 questions of this witness. Court: Redirect. Herring-
17 Lash: No redirect. Court: You may come down. Thank
18 you.

19 Q. Thank you, Mr. Curry.

20 A. Want me to stop right there?

21 Q. That's fine, yes. That's the end of Detective
22 Nicks' testimony, correct?

23 A. That is correct.

24 Q. So, the Judge did sua sponte interrupt you. There
25 is no objection from the state, correct?

Tyrone Moore v State of S. C.
Eduardo Curry-Direct Examination by Mr. Davis (resumes)
September 8, 2014

1 A. Yeah, I -- this was the Judge on the Judge's own.--

2 Q. Now, I'd like to shift over -- thank you for that
3 and I would like to shift over to at the end of the
4 State's case you made a directed verdict motion that was
5 denied, correct?

6 A. If that's the record, yes.

7 Q. And then, you asked for a moment to speak with Mr.
8 Moore and his family, then again this was the Berkeley
9 County Courthouse, correct?

10 A. That is correct.

11 Q. And so you had, the Judge allowed you some amount of
12 time to speak with Mr. Moore and his family; I believe
13 outside the courthouse, do you recall?

14 A. It was probably in the vestibule or something
15 outside, but it was a significant portion. It wasn't
16 like three minutes, two minutes, it was -- may have been
17 close to an hour.

18 Q. And, during that discussion was -- did you review
19 the potential witnesses that you had?

20 A. I reviewed any witness that Mr. Moore had offered to
21 me or that I uncovered in my investigation.

22 Q. And what was your advice to Mr. Moore about calling
23 in any of these witnesses?

24 A. If he wanted to call them, I would have called them
25 for him on his behalf, and if he didn't want to call them

Tyrone Moore v State of S. C.
Eduardo Curry-Direct Examination by Mr. Davis (resumes)
September 8, 2014

1 then I wouldn't call them. I mean, I had no ax to grind
2 if he wanted to put a witness in, I'd put a witness in.
3 If he could either -- or they would be present.

4 Q. Did you, so, I don't want to words in your mouth but
5 were you -- did you have an opinion about whether he
6 should have called any witnesses or not in the defense?

7 A. My opinion is always to advise my client the perils
8 of either putting up witnesses, not putting up witnesses,
9 testifying, and not putting up any testimony.

10 But, it lies solely within the power of my client to
11 make a determination as to whether or not, who he wants
12 to call or whether or not he wants to testify.

13 Q. All right. So then as to the specific issue of Mr.
14 Moore testifying in his own trial, you discussed that as
15 well?

16 A. Mr. Moore and I had a conversation with he and his
17 wife.

18 Q. Okay. What was your advice, if any, about whether
19 he should testify or not?

20 A. Again, I covered the information. I talk about the
21 perils of testifying or not testifying. But it is my
22 client who makes the determination as to whether or not
23 he wants to testify. And I think, Judge Dennis actually
24 queried him about that from the stand.

25 Q. But, prior to that query by the court, did you have

Tyrone Moore v State of S. C.
Eduardo Curry-Direct Examination by Mr. Davis (resumes)
September 8, 2014

1 a specific recommendation to Mr. Moore as to whether to
2 testify or not?

3 A. No, I tell them the perils again of testifying or
4 not testifying. And it's up to the client whether or not
5 they want to testify. And that's been my standard for I
6 guess this is my twenty-fifth year.

7 Q. In discussing his decision to testify, you were
8 aware of his prior convictions?

9 A. I was aware of his prior convictions and we covered
10 them together.

11 Q. And what I have, you recall a 1989 Lewd Act
12 conviction in Charleston and a 1991 CSC with a Minor,
13 also in Charleston. Do you recall that being the prior
14 record ---

15 A. --- I don't know. If the record indicates that,
16 then that's what it would be.

17 Q. You discussed the possibility if he testified of
18 those convictions being raised against him as
19 impeachment, you would've discussed that?

20 A. It would be my standard discussion to discuss it. I
21 don't have any independent recollection of whether or not
22 he and I talked about it, but that's -- that would
23 normally be my standard.

24 Q. And ultimately did he -- well, forget it, let me
25 back up. The ability of the State to cross-examine on

Tyrone Moore v State of S. C.
Eduardo Curry-Direct Examination by Mr. Davis (resumes)
September 8, 2014

1 the prior record would have been the decision by Judge
2 Dennis the trial judge, correct?

3 A. If in fact my client was going to testify, then I
4 would've gotten a ruling from the Judge to see whether or
5 not they would be able to use his prior criminal record
6 to impeach.

7 If he's not going to testify, I wouldn't need a
8 ruling from the judge in order to do that because I won't
9 be exposing him to the potential liability.

10 Q. I understand, but before he made his decision to
11 testify or not, he didn't know whether those prior
12 convictions would be addressed or not.

13 A. Well, I beg to differ. Per my standard, I would
14 have talked to my client and let him know that if he
15 wants to testify, prior to making that declaration in
16 open court, I would get some ruling from the Judge as to
17 whether or not any of his prior criminal history would be
18 able to be used against him in an impeachment issue.

19 And so that's -- I don't have to do that in advance
20 if he's not going to testify. That's why we talked about
21 it.

22 Q. For the hour after the State rested?

23 A. No, we talked about it. The hour was just, they've
24 rested. But, prior to that, you know I wasn't anonymous
25 in terms of handling his case. So, we had talked about

Tyrone Moore v State of S. C.
Eduardo Curry-Direct Examination by Mr. Davis (resumes)
September 8, 2014

1 everything from his testimony, to what the potential or
2 what -- they were potential victims at that point, but
3 whether the victims and what they would testify. So, we
4 walked into this -- we walked into it with a strategy.
5 We didn't walk into it just let's shoot from the hip and
6 see exactly what's going on.

7 If you understand the facts surrounding this case,
8 these were church people and church mothers who trusted
9 him. And so the whole issue about what kind of testimony
10 would come out was problematic already because there were
11 people who said some things, who retracted some things.
12 There were some people who said some things that would
13 not go forward and so we were trying to sort through all
14 of the cases because it was just more than two, it was
15 probably like 10 or 12.

16 And, so eventually this is what the prosecutor
17 brought forward and so we were going through this on a
18 daily or on a weekly basis trying to ascertain what would
19 be the testimony and how we would refute it.

20 And so, he knew up front whether or not he was going
21 to testify based on what we talked about if the people
22 said X-Y-Z and he sat there, heard them say it, and had
23 the right to come forward and say look. But, he was
24 afraid of his own criminal past, two-time offender with
25 regard to issues with children. And he made the

Tyrone Moore v State of S. C.
Eduardo Curry-Direct Examination by Mr. Davis (resumes)
September 8, 2014

1 determination that he did not want to testify. I didn't
2 make that determination.

3 Q. The trial commenced on July 27, 2009. Do you recall
4 that?

5 A. If that's what the record indicates.

6 Q. The most recent conviction was in 1991 which was
7 more than 10 years before the trial. Could you not have
8 attempted to prohibit the prior record from being used
9 for impeachment because of the age of the convictions?

10 A. Attorney Davis, you're presuming that Mr. Moore
11 wanted to testify ---

12 Q. --- Mr. Curry ---

13 A. --- Mr. Moore indicated, well I will explain it to
14 you, Mr. Moore indicated.

15 THE COURT: Answer his question, you can explain
16 it.

17 Q. [Mr. Davis] Could you have moved to try to block the
18 two convictions from being used for impeachment purposes
19 because of the age of the convictions?

20 A. Technically, if he was going to testify, yes.

21 Q. Could you also, even the court had ruled that they
22 were admissible for impeachment, could you also have
23 asked the court instead of naming the exact offense for
24 which he was convicted in the alternative argued that he
25 was convicted of a felony on these counts so that the

Tyrone Moore v State of S. C.
Eduardo Curry-Direct Examination by Mr. Davis (resumes)
September 8, 2014

1 actual crime would not have been revealed to the jury.
2 Could you have also made that argument?
3 A. Potentially we could have.
4 MR. DAVIS: May I approach, Your Honor.
5 THE COURT: Yes.
6 [Whereupon, plaintiff's exhibit number 2 is marked
7 by the court reporter]
8 Q. [Mr. Davis] Mr. Curry, I'm going to show you what's
9 been marked plaintiff's exhibit number 2, if you can
10 identify that for the court.
11 [Whereupon, the witness is shown document]
12 A. It appears to be a witness list.
13 Q. For the defense?
14 A. Yes. Or at least, it's mine it was not filed, but
15 its witnesses.
16 Q. I understand. But that's a document that either you
17 or your staff would have prepared in this ---
18 A. --- oh, I recognize it. It's my signature.
19 Q. Okay. And forgive me they're not numbered, eight
20 or ten witnesses?
21 A. I can count them for you.
22 Q. That'd be great, thanks.
23 A. One, two, three, four, five, six, seven, eight,
24 nine, ten.
25 Q. Including Mr. Moore and his wife?

Tyrone Moore v State of S. C.
Eduardo Curry-Direct Examination by Mr. Davis (resumes)
September 8, 2014

1 A. Potentially, yes.

2 Q. You've talked to all those witnesses?

3 A. I talked to any of the ones that were presented to
4 me or that we could find or that he said were witnesses
5 with regard to his character or fact witnesses --

6 Q. Okay. Then let's do it the other way. What of
7 those witnesses did you not talk to?

8 A. I wouldn't be able to recall.

9 Q. There were some that you did not speak with?

10 A. I wouldn't -- I don't recall.

11 MR. DAVIS: Your Honor, can I have just one moment?

12 [Whereupon, Mr. Davis confers with his client]

13 MR. DAVIS: Your Honor, thank you. No other
14 questions. Thank you Mr. Curry.

15 THE COURT: Cross-examination?

16 MS. WILSON: Thank you, Your Honor.
17
18
19
20
21
22
23
24
25

Tyrone Moore v State of S. C.
Eduardo Curry-Cross-Examination by Ms. Wilson
September 8, 2014

1 CROSS-EXAMINATION

2 BY MS. WILSON:

3 Q. Mr. Curry, can you just give us a brief background
4 of your years of practicing law.

5 A. Yes, I was admitted to practice in 1990. This is
6 going on my 25th year. I have an Associate of Business
7 degree; I have a Bachelor's in Criminal Justice and Minor
8 in Sociology. I have a Master's in Criminal Justice. I
9 have a Master's of Divinity, from Seminary. I also have
10 a Doctorate of Jurisprudence through law school.

11 Q. And tell me; the whole 25 years you've been
12 practicing, have you been practicing criminal law?

13 A. Yes. I've practiced criminal law both in state and
14 federal court.

15 Q. And do you recall when you were retained to
16 represent Mr. Moore?

17 A. It would have been sometime in '06 or '07 when these
18 charges first came about.

19 Q. Do you recall how many times you met with Mr. Moore?
20 Was it frequently?

21 A. It was very frequently. Met him in my office, met
22 him at his church across from Garrett High. Met him at
23 scenes and places where he said things allegedly
24 occurred.

25 Q. Okay. Now, you testified today that you filed

Tyrone Moore v State of S. C.
Eduardo Curry-Cross-Examination by Ms. Wilson
September 8, 2014

1 Brady and Rule 5 motions on his behalf, is that correct?

2 A. Yes, that is correct.

3 Q. And all the materials that you received from the
4 state, did you review it with Mr. Moore?

5 A. Yes I have. Yes I did.

6 Q. Did you talk to him about the elements of the
7 charges he was facing and what the State had to prove to
8 convict him?

9 A. Yes I did.

10 Q. Did you talk to him about his version of the facts?

11 A. Yes I did.

12 Q. Did you talk to him about possible defenses?

13 A. Yes.

14 Q. And can you kind of give the State -- give the
15 court, I guess a review of what your trial strategy was
16 going into trial and what kind of defense you were trying
17 to present for him?

18 A. Sure. There were multiple kinds of issues. This
19 was a unique case in that you had young children who were
20 making allegations of sexual overtures.

21 But, you also had some teenagers that weren't in
22 this particular case, but in other cases that had made
23 those particular overture or at least allegations at that
24 particular point. And so first of all we had to see
25 whether or not times, dates, and fact scenarios lined up.

Tyrone Moore v State of S. C.
Eduardo Curry-Cross-Examination by Ms. Wilson
September 8, 2014

1 Second of all we had to look into the credibility of the
2 witnesses, whether or not there would be any issues or
3 people would say anything that would influence them.

4 And we had some tough times because there were
5 mothers who were extremely loyal to, at that point,
6 Reverend Moore who were influencing their children's
7 testimonies either to not testify or to not give accurate
8 allegations. There was a problem with finding
9 witnesses, a problem with people coming forward.

10 So, our strategy was, first of all, to deal with
11 factual issues, but then deal with issues of credibility
12 if they were to emerge and also deal with the issues with
13 the police, whether or not they had done anything that
14 would be out of course with their training from the
15 Academy, whether or not Doctor Elsey had any -- would
16 understand the issue of impermissible subjectivity.

17 Like, for instance, if a police officer takes a
18 photo line-up or photo show up and will point to a
19 particular person and say, are you sure this is not that
20 person? Well, most folk wouldn't think anything of it.

21 But some people psychologically are being
22 impermissibly suggested that hey, this might be a person
23 that I could say actually did it. So, we covered it. I
24 got two boxes of files that are sitting right behind you
25 of which I covered it with Mr. Moore to see whether or

Tyrone Moore v State of S. C.
Eduardo Curry-Cross-Examination by Ms. Wilson
September 8, 2014

1 not allegations from the Solicitor were correct, whether
2 or not factual allegations were correct, whether or not
3 the statute that he was charged with, whether or not
4 elements were met with regard to the crime.

5 So, you know, we wanted to be thorough with it
6 because if he was innocent then I wanted him to have the
7 best shot in walking free.

8 Q. Do you feel like you had ample time to prepare for
9 trial with Mr. Moore?

10 A. Absolutely.

11 Q. Okay. When you were questioned by Mr. Davis, you
12 reviewed the portion of the transcript where the court
13 wouldn't let your line of questioning with Detective
14 Nicks go any further with regard to suggestibility. I
15 mean, was it a strategic reason you didn't object and
16 didn't kind of push further?

17 A. Well, because what had ended up happening lawyers a
18 lot of times don't ask questions they don't know and
19 that, I knew that Detective Bullard had been the lead
20 investigator in the case. And in fact, when we read on
21 the transcript in one of the young men's actual interview
22 Detective Nicks wasn't even in the room.

23 So, she wouldn't have had factual information anyway
24 to have actually dealt with whether or not it was
25 impermissible suggestively. But, however, you try to see

Tyrone Moore v State of S. C.
Eduardo Curry-Cross-Examination by Ms. Wilson
September 8, 2014

1 if you can sometimes in witnesses, I hate to say it like
2 this, you throw it against the wall and see what sticks.
3 And so, it wasn't in this particular case for the Judge
4 to say hey, you spent an inordinate time with Bullard
5 trying to get all this stuff and I'm not going to go
6 forward with this.

7 You know, she had some level of training, it wasn't
8 going to be effective one way or another because a jury a
9 lot of times won't get into, you know, making a
10 determination whether or not a detective is really an
11 expert or has particular training in a particular area.

12 Once they know that they're the police and they
13 certified in some area and gone to the Academy, the rest
14 of it goes in one ear and out the other. But I always
15 use strategies to see if I can ring the bell.

16 Q. And now after that and you represented Mr. Moore in
17 trial, can you kind of describe your appellate process
18 and how did you conclude that the two issues you raised
19 were issues you wanted to present to the court?

20 A. Well, normally my plea agreement doesn't include the
21 cost of an appeal. His family wanted, you know they were
22 really pleased with my -- I hate to say performance, I'll
23 say services rendered as a trial lawyer, wanted to push
24 it as an appellate lawyer and so we filed a notice. We
25 perfected it and I went actually to Lieber where Mr.

Tyrone Moore v State of S. C.
Eduardo Curry-Cross-Examination by Ms. Wilson
September 8, 2014

1 Moore was actually housed, covered the issues that I
2 thought was there, gave a copy of the transcript to I
3 think his wife. You know, we talked about everything and
4 then I was looking for something because I will say this
5 and this is not being narcissistic or arrogant, I think
6 that I'm a very good trial lawyer.

7 And so, I tell clients this all the time, whether or
8 not you're going to have appealable issues it's going to
9 be very narrow because I'm not going to leave a stone
10 unturned. That's just my history; it's just my way.

11 And so, I met with Mr. Moore on multiple occasions,
12 you know we covered everything that was there. On face
13 value, he's a nice guy; it's just there weren't a lot of
14 issues to try to hang my hat on. And those are the two
15 that I tried to make some hay with.

16 Q. We also talked about Mr. Moore and his decision to
17 testify. And, you testified today that ultimately you
18 felt it was Mr. Moore's decision to not take the stand at
19 trial?

20 A. Has been my stand, yes ---

21 Q. --- okay, I ---

22 A. --- and that's my testimony.

23 Q. And you also agree that the court fully advised him
24 of that right and he responded to the court and told him
25 that it was his decision not to testify, do you recall

Tyrone Moore v State of S. C.
Eduardo Curry-Cross-Examination by Ms. Wilson
September 8, 2014

1 that?

2 A. That is correct.

3 Q. Also, you said you talked to him about his prior
4 convictions and that type of thing and is it your
5 testimony today that you discussed that with him and had
6 he decided to proceed and testify at trial you would have
7 obtained a ruling on his prior convictions?

8 A. That is correct.

9 Q. Can you also recall when the decision was made about
10 calling witnesses? Was it before trial when you were
11 kind of discussing strategy, or was it after the State
12 rested and you heard the testimony from the State's
13 witnesses?

14 A. Honestly, I didn't prepare that witness list right
15 there once the State rested. It was something in
16 advance, you know, talking about who could potentially be
17 there, who would testify, and what they testify to.
18 Because, you know we're making a chess move.

19 The State offers evidence, you want to refute it,
20 even though he has no duty to offer evidence or to refute
21 anything, I would be fooled as a lawyer if I didn't have
22 some kind of prep strategy.

23 And then, once the State rested, you know the
24 question was we talked about everything from who gets the
25 first and the last with regard to closing. We talked

Tyrone Moore v State of S. C.
Eduardo Curry-Cross-Examination by Ms. Wilson
September 8, 2014

1 about what could your witness offer up that would be able
2 to refute whether or not his wife wanted to testify and
3 she was -- Ms. Erica was there with him all the time,
4 whether or not he wanted to testify.

5 And it was his conclusion that I should not call any
6 witnesses or that I -- that he should testify. He said,
7 no, he didn't want to.

8 Q. Thank you, Mr. Curry.

9 THE COURT: May I ask Mr. Curry something?

10 THE WITNESS: Yes, Your Honor.

11 THE COURT: What was the courtroom atmosphere like?
12 Was it well attended, or did you have a lot of community
13 interest in this case?

14 THE WITNESS: Judge, it was well attended by
15 members of Full Word Ministries which was Tyrone Moore's
16 church. Very well attended, in fact, the night before
17 the jury came back, Mr. Moore had an event at his house
18 because he really thought that we had won the case.

19 I wasn't invited, I normally routinely don't go to
20 those, but it came back to me that they had praise that
21 they really believed that we had prevailed. And so when
22 the jury came back guilty, they were bitterly
23 disappointed, but still strong and wanted to support him.
24 But in terms of a whole bunch of news media and
25 television and radio, no sir, it wasn't like that. I

Tyrone Moore v State of S. C.
Eduardo Curry-Cross-Examination by Ms. Wilson
September 8, 2014

1 think there was a court reporter from one of the
2 newspapers that actually came in, but it was well
3 attended by his church and his ---

4 THE COURT: --- supporters ---

5 THE WITNESS: --- supporters. Yes, Your Honor well
6 attended. Probably over 100.

7 THE COURT: In one sense there may not have been
8 any pressure on him not to testify ---

9 THE WITNESS: That's correct.

10 THE COURT: From outraged citizens or parents or
11 anything like that.

12 THE WITNESS: No, Your Honor. In fact there were
13 people who changed sides and originally had been accusers
14 or maybe had allegations against him who sat with his
15 church people because this was a strong culture of church
16 members.

17 THE COURT: All right, thank you.

18 THE WITNESS: You're welcome, Your Honor.

19 THE COURT: Redirect?

20 MR. DAVIS: None, Thank you, Your Honor.

21 THE COURT: All right, you may come down.

22 THE WITNESS: Thank you, Your Honor.

23 [Whereupon the witness exits the stand]

24 THE COURT: Next witness.

25

Tyrone Moore v State of S. C.
Tyrone Moore-Direct Examination by Mr. Davis
September 8, 2014

1 MR. DAVIS: We would call Tyrone Moore, Your Honor.

2 THE COURT: Come around, Mr. Moore.

3 [Whereupon, Mr. Moore comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: Speak into this microphone and
7 state your full name and spell your last name for the
8 record.

9 THE WITNESS: Full name, Tyrone Moore. Last name
10 M-O-O-R-E.

11 TYRONE MOORE,

12 Having been first duly sworn,

13 Was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. DAVIS:

16 Q. Mr. Moore, before we get into your complaints that
17 serve as the application for this PCR, I'd like the Judge
18 to get to know you just a little bit.

19 Can you tell him a little bit about your background,
20 how old you are, where you're from, your educational
21 background.

22 A. My name is Tyrone Moore. I was born and raised in
23 Charleston, South Carolina. I have a high-school
24 equivalent. I have some education within religious
25 education studies, also heavily involved in music

Tyrone Moore v State of S. C.
Tyrone Moore-Direct Examination by Mr. Davis
September 8, 2014

1 education.

2 Q. How old are you now, sir?

3 A. I'm 47 years old.

4 Q. At the time of this trial, what was your occupation?

5 A. My occupation, I was a full-time, senior pastor.

6 Q. At where?

7 A. At Full Word Ministries, located in the Charleston
8 area on Garden Street.

9 Q. All right. I want to turn your attention to your
10 conviction from July of 2009. Let's talk about -- let's
11 cut straight to it. Let's talk about the decision to
12 call witnesses or testify, okay?

13 A. Yes, sir.

14 Q. Can you tell the court what discussions you would
15 have had with Mr. Curry prior to trial about calling
16 witnesses or about you testifying or not?

17 A. Yes, sir. The conversation me and Curry had was
18 there were witnesses that were given to speak on behalf
19 of the information that was inaccurate based on the
20 accusations that were held against me.

21 We had some family members that was willing to
22 testify. We've had other witnesses that was willing to
23 testify that Sergeant Bullard came to them and basically
24 told them to lie concerning the me ---

25 MS. WILSON: --- objection, Your Honor, hearsay.

Tyrone Moore v State of S. C.
Tyrone Moore-Direct Examination by Mr. Davis
September 8, 2014

1 THE COURT: I'll allow it, go ahead. There is no
2 jury here.

3 A. We had witnesses -- I had witnesses in my home, I do
4 have four children. Two of them were my step-children
5 but they're like my children and two boys.

6 We had two older, my older children, the boys were
7 younger they were babies at the time, they were
8 witnesses. I was considering also testifying at the
9 beginning of talking with Curry.

10 Q. [Mr. Davis] At the time the trial started, had a
11 decision been made on whether any witnesses would be
12 called?

13 A. The ironic thing is after the State rest their case
14 ---

15 Q. --- Mr. Moore, let me ask you again ---

16 A. --- yes, sir.

17 Q. At the beginning of trial ---

18 A. --- yes, sir, okay ---

19 Q. --- had a decision been made about whether you or
20 any other defense witnesses would testify?

21 A. The decision was made that the witnesses that we had
22 would testify. That all -- we had my wife was to
23 testify, my two children were to testify, we had Tez
24 Simmons [phonetic] was to testify, Willie Moore was to
25 testify at the beginning of the case. Early on he

Tyrone Moore v State of S. C.
Tyrone Moore-Direct Examination by Mr. Davis
September 8, 2014

1 discussed with me and I can recollect because this has
2 affected me, he discussed with me that he don't think it
3 would be in my best interest to testify prior to my
4 previous record. This was what he said to me.

5 Q. When was that discussion, prior to trial or during
6 trial?

7 A. This was prior to trial.

8 Q. You were present for your entire trial, is that
9 correct?

10 A. Yes, sir.

11 Q. I believe you were out on bond, is that right?

12 A. Yes, sir.

13 Q. But you appeared for the three days of the trial?

14 A. Yes, sir.

15 Q. You were able to observe the witnesses for the State
16 testify?

17 A. Yes, sir.

18 Q. At the end of the State's case, was there a
19 discussion between you and Mr. Curry about whether to
20 call any witnesses including yourself?

21 A. Yes, sir. At the end of the State, when they rest
22 they case, Curry asked for the -- he asked the Judge to
23 speak with me concerning us presenting our witnesses and
24 the Judge granted him the opportunity to speak with me.
25 He spoke with me and my wife outside of the court, in the

Tyrone Moore v State of S. C.
Tyrone Moore-Direct Examination by Mr. Davis
September 8, 2014

1 vestibule area and this is his exact words to me. I
2 don't see it necessary for you to present your witnesses.
3 We have a good case, I think you going to win the case
4 and my wife was out there at the time that he gave this
5 advice.

6 I was adamant; I say well I think we need to have
7 these witnesses testify on my behalf. And Mr. Curry
8 along with his son, his son was out there, and they were
9 adamant on telling me there's no necessity to present
10 your witnesses. We have a strong case and why put your
11 children and wife through that, we have a strong case.

12 And at his advice and pushing the fact that he
13 didn't deem it necessary to present the witnesses, of
14 course he's my lawyer so I took his advice. Because he
15 emphatically said that we have a strong case and I
16 believe we won the case.

17 Q. Did he discuss with you the order in which closing
18 arguments were to be given, whether you presented
19 witnesses or not, did he talk to you about that?

20 A. No, he did not.

21 Q. Did he talk to you about the possibility of your
22 prior convictions being brought up?

23 A. Yes he did. We talked about that early on and me
24 going to his office meeting with him, we talked about
25 that early on. And he emphatically said you testifying

Tyrone Moore v State of S. C.
Tyrone Moore-Direct Examination by Mr. Davis
September 8, 2014

1 is not a good thing and I don't advise you to testify
2 because of my prior conviction.

3 Q. So that was a conversation before trial?

4 A. Yes, sir.

5 Q. Was there a conversation about that during the break
6 after the State rested?

7 A. No, we did not converse about that. He just said
8 that we don't need to present our witnesses. He
9 generalized it and I already knew that he told me I
10 didn't need to testify, but we were prepared for all the
11 other witnesses that I had to testify.

12 Q. Did he ever share with you a witness list that he
13 had created? Did you ever see that document?

14 A. I never saw that document. I only saw the names,
15 the list of the people that I gave him in his office.
16 You know, he showed me the list of people that I gave him
17 that he wrote down.

18 But, that list that I saw that you showed me when
19 you came to see me was the first time actually me seeing
20 it in that form.

21 Q. Other than you and your wife, were any of the other
22 people that you had told Mr. Curry about present at the
23 courtroom that day?

24 A. Yes, sir.

25 Q. Were all the witnesses there that day?

Tyrone Moore v State of S. C.
Tyrone Moore-Direct Examination by Mr. Davis
September 8, 2014

1 A. No, sir.

2 Q. Do you recall going back into the court after the
3 break and talking with Judge Dennis about whether you
4 were going to testify or not?

5 A. Yes, sir.

6 Q. So you remember telling the Judge you were not going
7 to testify?

8 A. Yes, sir.

9 Q. Can you tell Judge Cooper why you decided not to?

10 A. Well, Judge, I decided not to testify at the counsel
11 of my lawyer. My lawyer emphatically told me at the
12 onset that it would not be wise for me to testify based
13 on my prior -- previous record because I really wanted to
14 state my side and to state the truth of the whole
15 situation.

16 And I know that the situation was sensitive and I
17 told him that I wanted to testify and he said it wouldn't
18 be good to testify because of my previous record, that
19 they could use it against me.

20 This was his exact words, they could bring it up and
21 begin to talk to you about that and it could prejudice
22 the jurors. And so, based on that, that's why I made the
23 decision not to testify.

24 Q. Ultimately you were convicted of two counts in
25 Berkeley County, is that correct?

Tyrone Moore v State of S. C.
Tyrone Moore-Direct Examination by Mr. Davis
September 8, 2014

1 A. Yes, sir.

2 Q. Two different counts of Lewd Act on a Minor, is that
3 correct?

4 A. Yes, sir.

5 Q. Two different accusers, is that correct?

6 A. Yes, sir.

7 Q. Mr. Moore, I would like you now to tell the Judge if
8 you had testified, if you had not listened to your
9 attorney's advice and testified what would have been your
10 testimony about these two convictions -- about these two
11 prior convictions?

12 A. Well, Judge, I would have testified to the fact that
13 these two particular, and they two were cousins they were
14 family members. At the time they ---

15 THE COURT: --- your family?

16 A. Not my family, no, they were each other's first,
17 they were cousins of each other. At the time that these
18 particular boys was at my home, it was not upon my
19 request. Like I said I have four other children and at
20 the ---

21 THE COURT: -- that live with you?

22 A. Yes, sir. My four children lived with me at the
23 time. One daughter, she was my step-daughter, but I
24 basically raised her since she was five years old. And I
25 had a son, his name is Antoine and two of my biological

Tyrone Moore v State of S. C.
Tyrone Moore-Direct Examination by Mr. Davis
September 8, 2014

1 boys. And being that the ministry was so large they
2 developed relationships with my children. I did a lot of
3 travel, so at the time they was at my house and there was
4 a short period of time that they would come some
5 weekends.

6 A lot of the times I was not even present at the
7 short time that they was going there. And this is what
8 my son was going to testify to, but so I never did ask
9 them to come to the house. They asked to come to spend
10 the time with my children, the relationship they had with
11 my children.

12 I received a call from my wife on one occasion that
13 I was out of town dealing with ministry work in
14 Hartsville and she was upset because one of them got into
15 a situation with my daughter. At that particular time I
16 informed her, you need to stop allowing them to come over
17 to the house. And that brought about some tension and
18 some situation with the parents in relation to the fact
19 that they couldn't come over to the house anymore.

20 And things got a little heated in relation to
21 conversations that took place, that they got upset that I
22 stopped them from coming over to the house. And so, the
23 allegations that was brought against me and since my --
24 since all of these other allegations were brought up,
25 Your Honor, it was a group of them that were -- was

Tyrone Moore v State of S. C.
Tyrone Moore-Direct Examination by Mr. Davis
September 8, 2014

1 disenfranchised at the discipline that took place within
2 the ministry and their parents was very hot that I
3 stopped them from coming to the house. And I told them
4 that they need to take responsibility for their children
5 because they were single and they could no longer come
6 over to the house.

7 So, to say that I invited them over is incorrect and
8 to say that I was at the house when they were there at
9 the short time that they were coming over on the weekends
10 is inaccurate also. And I had documentation to show me
11 being out of town a whole lot, basically Fridays and
12 Saturdays, especially in Hartsville because there's
13 another work that we wanted to begin there.

14 But, this is the testimony that I wanted to give to
15 clarify, to be honest about the fact that the allegations
16 were not true and why they may have said the things that
17 they've said and I've shared this also with my, with
18 Curry, about a group of them getting together,
19 accusations being made because of certain parents being
20 upset at the way that I ministered.

21 We have -- Your Honor and I don't know if this is
22 relevant to this situation, but the ministry that we had
23 was more of an inner-city ministry. So, we deal with a
24 lot of issues with single parents, men that been on the
25 street with drugs, and based on the fact that I was very

Tyrone Moore v State of S. C.
Tyrone Moore-Direct Examination by Mr. Davis
September 8, 2014

1 stern in relation to people taking responsibility, some
2 of them didn't appreciate that. But, this is the nature
3 that happened with their parents in relation to them not
4 coming over to -- not being able to come over to the
5 house anymore. And this is what I wanted to testify to
6 and was not, did not testify at the advice of my lawyer.

7 Q. [Mr. Davis] Mr. Moore, I'm going to go in order.
8 The first child testified basically the accusations were
9 that he was spending the night, he was asleep on the
10 couch, and while he was asleep on the couch that you got
11 on top of him and massaged his privates with your hand.
12 As to that allegation, what would have been your
13 testimony?

14 A. That's not true.

15 Q. While I'm looking up the next part in the
16 transcript, let me ask you this, at any time while Mr.
17 Curry was representing you did he discuss with you the
18 need to hire an investigator?

19 A. He told me, this is what Mr. Curry told me, he said
20 in my initial talking with him along with my wife that he
21 would get an investigator. That was never done. He
22 said that he was going to get an investigator and that
23 was never done, but it was mentioned.

24 Q. As to the second indictment, the second count the
25 second child that testified, similar allegation.

Tyrone Moore v State of S. C.
Tyrone Moore-Direct Examination by Mr. Davis
September 8, 2014

1 [Reading] I woke up, out of my sleep and I felt -- I
2 felt uncomfortable, I thought someone was touching my
3 private area. And then later on, on page 131, line 11.

4 [Reading] So you woke up and was Tyrone or what was he
5 doing? He was sitting right there and he was -- he was
6 touching my private area -- and then after that that's
7 when I got up and left the family room.

8 And as to that allegation, what would your testimony
9 have been at trial?

10 A. That's not true.

11 Q. Just a few more questions, Mr. Moore that I have.
12 You've talked about trying to flesh out that there may
13 have been some collaboration in this case when it comes
14 to the children.

15 Talk about it briefly to the Judge, please and can
16 you be as specific as you can as to the collaboration
17 that you believe happened from any of the accusers.

18 A. Well, initially there was one accuser that initiated
19 all of this and his name was Monterious [phonetic], his
20 name was Monterious [phonetic]. He was the initiator of
21 making accusations.

22 And Monterious [phonetic] -- and I want to be very
23 simple, I don't want to take up too much time, but
24 basically Monterious [phonetic] got upset with me
25 initially because like I said we had a very large

Tyrone Moore v State of S. C.
Tyrone Moore-Direct Examination by Mr. Davis
September 8, 2014

1 ministry. And he came into the church, his family and
2 our family grew up in a previous church, matter of fact
3 my grandfather's church. Well he came to that church
4 and he began to influence a lot of the young people
5 negatively.

6 Taking them to places, robbing in stores, and when
7 it was brought to my attention by the youth pastor
8 because we do have a youth pastor that's responsible for
9 the youth, I made the suggestion that he be removed from
10 all youth activities that he would not be allowed to
11 actively operate in the ministry because of his
12 influence, negative influence on the youth.

13 It is a known fact that Monterious [phonetic] left
14 the ministry and we had one of -- his aunt, matter of
15 fact, wanted to testify on my behalf. He left the
16 ministry and his exact words were, I'm going to get him.

17 I know he has a prior record. I know what to do in
18 order to get back at him. And from there some of the
19 other people that made accusations also left the church
20 for other reasons.

21 Q. Were all of these accusers part of the youth
22 ministry at your church?

23 A. Yes.

24 Q. This is slightly off subject, but in the two cases
25 for which you were convicted in Berkeley County, was

Tyrone Moore v State of S. C.
Tyrone Moore-Direct Examination by Mr. Davis
September 8, 2014

1 there any or was there no forensic evidence; bodily
2 fluids, fingerprints, that kind of thing, did any of that
3 exist or not?

4 A. No, sir.

5 Q. Okay. So it was testimony, eyewitness testimony
6 only?

7 A. Yes, sir.

8 Q. I think lastly Your Honor -- in addition to
9 collaboration among accusers, there was an attempt by you
10 and defense at trial to show some influence by law
11 enforcement, is that accurate?

12 A. Yes, sir.

13 Q. And you recall who the two major investigators
14 involved were, police officer investigators?

15 A. Sergeant Bullard and I forget her name; she's from
16 Berkeley County...

17 Q. Let's focus on Sergeant Bullard. Is there a
18 complaint about Mr. -- Sergeant Bullard that caused you
19 concern?

20 A. There's a heavy complaint about him and I brought
21 this to my lawyer's attention, that Sergeant Bullard used
22 to be a correctional officer ---

23 MS. WILSON: --- objection Your Honor, I don't see
24 how this is relevant.

25 MR. DAVIS: Judge, I think you know in the

Tyrone Moore v State of S. C.
Tyrone Moore-Direct Examination by Mr. Davis
September 8, 2014

1 remainder of his sentence and if you feel it's
2 irrelevant...

3 THE COURT: I fail to see the relevance of it at
4 this point. Go ahead and let him answer the question.

5 Q. [Mr. Davis] Where did he work?

6 A. He used to work at Lieber Correctional Institute.

7 Q. Why is that important?

8 A. That's important because he knew me.

9 Q. You were incarcerated there?

10 A. Yes.

11 Q. And that was for the prior convictions that have
12 been previously discussed on the record?

13 A. Yes.

14 MR. DAVIS: Your Honor, if I could have just a
15 moment.

16 [Whereupon, Mr. Davis reviews documents]

17 MR. DAVIS: Your Honor, I believe that's all I have
18 --

19 Q. [Mr. Davis] But Mr. Moore out of an abundance of
20 caution, you're the one who filed the original complaint
21 as to Mr. Curry's handling of your case or any other
22 collateral matters, anything else you would like to put
23 on the record?

24 A. I think that's it, Your Honor.

25 MR. DAVIS: No other questions, then, Your Honor,

Tyrone Moore v State of S. C.
Tyrone Moore-Direct Examination by Mr. Davis
September 8, 2014

1 Thank you, Your Honor. Thank you, Mr. Moore.

2 THE COURT: Cross-examination.

3 MS. WILSON: Thank you, Your Honor.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Tyrone Moore v State of S. C.
Tyrone Moore-Cross-Examination by Ms. Wilson
September 8, 2014

CROSS-EXAMINATION

BY MS. WILSON:

Q. Good morning, Mr. Moore.

A. Good morning.

Q. So, is it your testimony that going into trial, that you were aware of your right to testify that you could take the stand, is that correct? Going into trial, you knew you could testify if you wanted to?

A. Yes, ma'am.

Q. Do you also recall telling the court during the trial that you didn't want to testify?

A. Yes, ma'am.

Q. And did you also tell the court that you didn't feel pressured by anyone to testify -- to not take the stand, is that correct, do you remember about that?

The Judge asked you did you feel pressured by anybody to take the stand or to not testify. Do you recall telling him you did not feel pressured?

A. I believe I did.

THE COURT REPORTER: I didn't hear your answer.

A. Yes.

Q. And you testified today that Mr. Curry told you that your priors could be used against you, is that correct?

A. Yes, ma'am.

Q. And you also testified that based on that, Mr. Curry

Tyrone Moore v State of S. C.
Tyrone Moore-Cross-Examination by Ms. Wilson
September 8, 2014

1 telling you that your priors could be used against you,
2 you decided not to testify, is that correct?

3 A. Yes, ma'am.

4 Q. Mr. Davis presented to you the list of witness
5 names, did you see that the list of the witnesses?

6 A. Yes, ma'am.

7 Q. You saw that? And, the names of the people listed
8 on there; did you give those names to Mr. Curry?

9 A. Yes, with other names that I didn't -- that's not on
10 that list.

11 Q. Okay. But you testified that all those people
12 listed weren't present at trial, is that correct?

13 A. That's correct.

14 Q. Also when you were talking about what you would have
15 testified to the court about if you had taken the stand
16 at trial, you testified that the victims were frequently
17 at your home because they played with your children
18 often, is that correct?

19 A. Yes, well, on the weekends -- some weekends.

20 Q. But you also agree that not all the allegations
21 against you were alleged to take place in your home is
22 that correct?

23 A. Those?

24 Q. With all the allegations against you raised by the
25 State, not necessarily in these two, but including these

Tyrone Moore v State of S. C.
Tyrone Moore-Cross-Examination by Ms. Wilson
September 8, 2014

1 two, there were other allegations of other locations in
2 your home, is that correct or not in your home?

3 A. Yes, ma'am.

4 Q. And this person that you talked about that you said
5 was the first accuser against you, Mr. Monterious
6 [phonetic] a boy named Monterious [phonetic] he wasn't a
7 victim in this case, was he? He wasn't a victim in this
8 case, correct?

9 A. No, ma'am.

10 Q. Okay. Well, did you have any, did Mr. well, I say
11 Mr., but did the boy Monterious [phonetic] make any
12 allegations against you regarding sexual, any sexual
13 offenses or molestation?

14 A. Yes, he did.

15 Q. Thank you.

16 THE COURT: You may come down, thank you.

17 [Whereupon, the witness is excused and exits the
18 witness stand]

19 MR. DAVIS: That's the applicant's case, Your Honor.

20 THE COURT: Ms. Wilson?

21

22

23

24

25

Tyrone Moore v State of S. C.
Eduardo Curry-Direct Examination by Ms. Wilson
September 8, 2014

1 MS. WILSON: Your Honor, the State would recall Mr.
2 Curry.

3 [Whereupon, Mr. Curry retakes the witness stand]

4 THE COURT: Still under oath, Mr. Curry.

5 THE WITNESS: Yes, Your Honor.

6 - - - - -

7 EDUARDO CURRY,

8 Having been previously duly sworn,

9 Was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MS. WILSON:

12 Q. Briefly, Mr. Curry, with regard to your advice to
13 Mr. Moore about whether or not he should testify or take
14 the stand, did you ever affirmatively advise him that it
15 wasn't in his benefit to take the stand?

16 A. No, I did not.

17 Q. It was your advice that it was his choice?

18 A. Yes.

19 Q. Also, if your client like Mr. Moore was as adamant
20 about calling witnesses at trial as he says he is -- he
21 was today, would you have presented the witnesses he
22 wanted at trial?

23 A. Absolutely.

24 Q. Also, let's talk a little bit about, going back to
25 this issue about the things you raised on appeal. Did

Tyrone Moore v State of S. C.
Eduardo Curry-Direct Examination by Ms. Wilson
September 8, 2014

1 you have any discussions with Mr. Moore about the
2 potential success for the issues that you raised in your
3 brief to the court?

4 A. Yes, I did.

5 Q. And what were your discussions with him like?

6 A. I told him that it was hard fleshing out issues that
7 could have some potential for giving him success, but
8 these are the issues that I thought I could try to make,
9 but it was just going to be tough other than filing an
10 Anders brief saying I don't have any issues I was trying
11 to find something that would work for him.

12 Q. All right. Do you think there was success that Mr.
13 -- it was a potential for the court to bring him to trial
14 based off of the issues that you raised?

15 A. No, I thought it was a long shot, but I wanted to
16 try to give him some hope as I could. But I really,
17 really believed it was a long shot.

18 Q. Okay. And you hear the testimony that Mr. Moore
19 gave today about what he would have testified at trial,
20 is that correct?

21 A. I heard what he said today.

22 Q. Okay. And when you talked to him about the case and
23 his version of the facts, did he ever tell you about this
24 theory about the families being upset?

25 A. No, he did not.

Tyrone Moore v State of S. C.
Eduardo Curry-Direct Examination by Ms. Wilson
September 8, 2014

1 Q. And, do you recall if all the allegations against
2 Mr. Moore took place in his home?

3 A. No. In fact there were other cases that were
4 dismissed ---

5 MR. DAVIS: --- Your Honor, I'm going to object to
6 relevance. It's a PCR on the conviction, so whether
7 there are allegations outside the location I'm not sure
8 is relevant at this point.

9 THE COURT: I'll allow her some leeway. Let's go
10 ahead; overruled.

11 A. Some happened in the hotels in Hartsville and other
12 places.

13 Q. [Ms. Wilson] Did you know anything about -- since
14 Mr. Moore testified that all this, all these disgruntled
15 parents and victims stem from a situation with a boy
16 named Monterious [phonetic] at the church, did you know
17 anything about this Monterious [phonetic]?

18 A. It's my understanding he made the allegations and
19 that they ended up settling in civil court regarding the
20 allegations, for money.

21 Q. Thank you.

22 MR. DAVIS: Your Honor, if I could have just one
23 moment please.

24 [Whereupon, Mr. Davis confers with his client]
25

Tyrone Moore v State of S. C.
Eduardo Curry-Cross-Examination by Mr. Davis
September 8, 2014

CROSS-EXAMINATION

1
2 BY MR. DAVIS:

3 Q. Mr. Curry, I want to be clear and I don't want to
4 misstate the State's question to you. But were you or
5 were you not aware prior to the trial that Mr. Moore
6 denied these allegations and felt as though these
7 accusers were creating this story and collaborating, knew
8 each other, collaborated?

9 A. I was not aware about collaboration. What -- I
10 mean, I was made known as the case progressed that maybe
11 these young men were actual cousins or relatives. But
12 there were other allegations of people who were not
13 relatives. So we had more than just these two cases.

14 There were like eight, or nine, or ten other cases
15 with allegations. So I had no reason to believe that all
16 of them independently were collaborating with each other
17 as a conspiracy against Mr. Moore. So, I had to deal
18 with each allegation as if it was factually true in order
19 to make sure that my investigation...

20 Q. All right. You've opened the door a little bit;
21 let's talk about the other ones then just to this extent.
22 Is it accurate that Detective Bullard was involved in
23 these other accusations?

24 A. I -- Bullard, Nicks, other people, I don't know with
25 all specificity, but I mean, you know Bullard was

Tyrone Moore v State of S. C.
Eduardo Curry-Cross-Examination by Mr. Davis
September 8, 2014

1 involved ---
2 Q. --- okay ---
3 A. --- and Nicks was involved.
4 Q. Okay. And so as to Bullard, a main thrust of your
5 cross-examination was to show that to attempt to show
6 that he was drawing up this information by improper,
7 leading questions, is that accurate?
8 A. Well, I mean that's just one of the theories we
9 tried to bring, I mean ---
10 Q. --- I understand, sure ---
11 A. --- in terms of accurateness.
12 Q. You pursued that at this trial?
13 A. I tried my best.
14 Q. And so, if Detective Bullard was involved in these
15 other cases, it would have been a similar strategy to the
16 other cases that he was helping manufacture this story.
17 A. Well, just potentially. I mean, you know, each case
18 falls in its own merit and so, you know, if I could
19 connect it in some kind of way that he had some --
20 against Mr. Moore it just would have been another arrow
21 in the bunch.
22 Q. It is fair to say that prior to trial; you knew that
23 all of these accusers were in the church youth group?
24 A. Oh, they were involved in -- they may not have been
25 in the youth group depending on, but their families and

Tyrone Moore v State of S. C.
Eduardo Curry-Cross-Examination by Mr. Davis
September 8, 2014

1 the parents and all these children and everybody came out
2 of this church, for the most part.

3 Q. And it's fair that Detective Bullard was involved in
4 the investigation of all the cases?

5 A. He was an investigator, yes.

6 Q. Thank you, Mr. Curry. No other questions.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Tyrone Moore v State of S. C.
Eduardo Curry-Examination by The Court
September 8, 2014

1 EXAMINATION

2 BY THE COURT:

3 Q. Mr. Curry, I'm concerned about this issue of the
4 defendant's prior record. Did you believe that that
5 record constituted impeachable offenses that if he were
6 to take the stand could have been used against him?

7 A. Judge, I, you know I'm struggling, you know, with my
8 mind. That was just one of the issues that was there. I
9 did not know if it would come in under prior bad acts or
10 if it would be outside the ten year rule.

11 Those things, we talked about all those things, but
12 when he said he wasn't going to testify as I started to
13 talk to him about what happened ---

14 Q. --- that's not -- that's avoiding the issue, I
15 think. It's hard for me to imagine that he would testify
16 without knowing that.

17 A. Right.

18 Q. That he would have to know whether his prior record
19 could be used to impeach him prior to making the
20 decision. That's why I'm asking you what your opinion
21 was of whether or not those offenses could be used
22 against him. And you say you don't know, is that
23 correct?

24 A. I don't recall. But if you're asking me what would
25 be my professional opinion, I would have to see piece by

Tyrone Moore v State of S. C.
Eduardo Curry-Examination by The Court
September 8, 2014

1 piece depending on where the prosecutor was going to go
2 with that. So, I think as my job as the defense counsel
3 is to say hey, let's talk about this, this is your prior
4 criminal record, you've got this stuff going on,
5 potentially it could be used against you, but I have to

6 ---

7 Q. --- I'm going to stop you right there.

8 A. Yes, sir?

9 Q. How do you know that?

10 A. Judge, I have experience and then eventually once we
11 talk about whether or not he's going to testify, at some
12 point I'm going to get in front of a judge and ask to see
13 whether or not this is going to be the kind of stuff that
14 could be used to impeach him.

15 Q. Well, then why didn't you?

16 A. Because he was adamant, up front, as we started to
17 talk about it that he didn't want to testify. And so
18 when he said that then I don't have to go in front of a
19 judge to find out whether or not it's there.

20 If he's not going to testify, then it doesn't become
21 part of my strategy. But if he has, says look I think
22 I'm going to testify, then we've got to go to another
23 step and we weren't forced to make that decision prior to
24 the ---

25 Q. --- how could he possibly make the decision whether

Tyrone Moore v State of S. C.
Eduardo Curry-Examination by The Court
September 8, 2014

1 to testify or not if he doesn't know what the state has
2 to confront him with to impeach his testimony?

3 A. But he can't make that decision prior to the State
4 putting up their testimony and so, he never made that
5 decision ---

6 Q. --- the State put up their testimony, correct?

7 A. Right, Judge. And so, at that point we started
8 talking about it because the Judge gave us some time to
9 talk about whether or not he wanted to testify.

10 Q. All you had to do was ask the Judge whether or not
11 those offenses, they're part of the record, could be used
12 to impeach him. And then, he could make an informed
13 decision about whether to testify or not, don't you
14 think?

15 A. Well, Judge, I see your logic. However, I would
16 disagree. I would disagree given the fact that there
17 were more factors than just his determination that the
18 jury found him guilty or without ever making a
19 consideration as to whether or not he had prior criminal
20 history that would taint or that would taint it, taint
21 the situation.

22 That never was an issue and so we never talked about
23 -- in fact, I listed him on the witness list because
24 potentially he said he was going to testify. And so,
25 when I asked him between that break, that hour or so when

Tyrone Moore v State of S. C.
Eduardo Curry-Examination by The Court
September 8, 2014

1 Judge Dennis gave us that time to talk alone and see what
2 was going on he still said -- at that point you know I
3 don't think I want to testify because, he didn't want to
4 testify because he wasn't sure how he was going to come
5 across to the jury as being the pastor of the church and
6 we talked about all of this stuff.

7 Because all these people were his parishioners, they
8 weren't like independent folk that had just made an
9 allegation and I think he was concerned about that. And
10 so, he was concerned about what he already knew in his
11 mind about his prior criminal record, he was concerned
12 about being a pastor with regard to that. And so when I
13 asked him, you know, I was very clear about that. It's
14 not something that I make a determination.

15 What I can do is, once you say you want to testify,
16 before we get up there to Judge Dennis, we want to talk
17 about his prior criminal record. We can do it in camera
18 outside; it won't be prejudiced to him outside the
19 hearing of the jury, talk to Judge Dennis about it. The
20 Judge is saying yes he can, no I can't and then he can
21 still make that determination.

22 Q. But the fact that you decided to perfect his appeal,
23 you think this is an issue that should have been raised
24 at the Appellate Court, that there was no ruling on
25 whether or not his prior criminal record could or would

Tyrone Moore v State of S. C.
Eduardo Curry-Examination by The Court
September 8, 2014

1 have been used against him for impeachment purposes at
2 trial.

3 A. Judge, I don't think that's the issue. I don't
4 think we raised that issue on appeal.

5 Q. That's my question.

6 A. Right.

7 Q. Why did you not raise that issue?

8 A. Because I -- it was a non -- I thought it was a non-
9 issue from my strategy from looking at everything that
10 was there. I didn't believe there was an issue that
11 could be perfected on appeal.

12 Q. All right. Thank you very much.

13 A. You're welcome.

14 THE COURT: Anything further?

15 MS. WILSON: Nothing further from the State.

16 THE COURT: You may come down.

17 THE WITNESS: Thank you, Judge.

18 [Whereupon, the witness is excused and exits the
19 witness stand]

20 THE COURT: Next witness.

21 MS. WILSON: Nothing further from the State.

22 THE COURT: All right. No further witnesses?

23 MS. WILSON: No further witnesses, Your Honor.

24 THE COURT: Anything in rebuttal?

25 MR. DAVIS: No, Your Honor.

Tyrone Moore v State of S. C.
Eduardo Curry-Examination by The Court
September 8, 2014

1 THE COURT: All right. Any summation on the part
2 of the applicant?

3 MR. DAVIS: If I may just briefly.
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Tyrone Moore v State of S. C.
Closing Argument by Mr. Davis
September 8, 2014

CLOSING ARGUMENT

BY MR. DAVIS:

To the appeal issue, Judge, we would argue that Mr. Curry was ineffective for not objecting when Judge Dennis interrupted the cross-examination questioning. He did not make any contemporaneous objection or at any other time during the trial, failing to preserve that issue for appeal.

If it had been preserved, that's an issue that goes to credibility. We've already heard that both the accusers and law enforcement's obtained evidence from the accusers were a main thrust to this defense. And we would argue that if the credibility of both investigators had been able to have been discussed totally in front of the jury, the outcome may have been different. So, we would argue that the failing to preserve that for appeal is error.

Two, and I'll not belabor the point, Your Honor, but to the last issue you were just inquiring about from the bench, it is our position that an attorney should advise a client in deciding whether to testify or not. Of course about their constitutional right to remain silent, there's a presumption of innocence, but should review the weight of the testimony that's already been presented by the State at the close of the State's case. Any benefits

Tyrone Moore v State of S. C.
Closing Argument by Mr. Davis
September 8, 2014

1 of testifying and any risks of testifying, and ultimately
2 we would argue that an attorney should provide an
3 opinion. We agree that ultimately as to the defendant,
4 it's a personal decision, as opposed to any other
5 witnesses a trial strategy for the lawyer to decide.
6 But, for the defendant to testify or not, it's a personal
7 opinion. But, I believe it's obligatory of the trial
8 counsel to give an opinion as to testify or not.

9 You've heard conflicting testimony. Mr. Moore will
10 testify that he was advised by his attorney to not
11 testify because of the risks because he felt the evidence
12 was insufficient that the State had presented. But then
13 ultimately, Your Honor, that the risk to testify would
14 open up his prior record which could be damning -- would
15 be damning despite an instruction from the Judge to not
16 consider it in a probative weight.

17 If the prior convictions for Lewd Acts and CSC on a
18 Minor were raised, certainly that's a bomb shell. But,
19 as you inquired about and is clear on the record, that
20 discussion was never had before Judge Dennis to haggle
21 really on that issue, the major factor why Mr. Moore did
22 not testify. Whether he was going to or not, his
23 attorney had an obligation to seek out that ruling so
24 that when they did discuss it in the vestibule for
25 however long they discussed it that that could factor

Tyrone Moore v State of S. C.
Closing Argument by Mr. Davis
September 8, 2014

1 into his decision along with all the other things that
2 should have factored into his decision. That was not
3 done here, it is clear by the record it was not done, we
4 believe that was ineffective and we believe that the
5 testimony he had given, of course it would have been much
6 more detailed during trial both direct and cross-
7 examination. But he would have taken the stand, denied
8 these allegations in front of the jury.

9 While he's under no obligation to do so, you would
10 have those convictions that apply. He also would have
11 simply they would have been referred to as felonies, not
12 the actual substance of the offense. So, for those
13 reasons we would argue that counsel was ineffective and
14 the outcome would have been different had he rendered
15 effective assistance. Thank you, Your Honor.

16 THE COURT: Thank you. Ms. Wilson?
17
18
19
20
21
22
23
24
25

Tyrone Moore v State of S. C.
Closing Argument by Ms. Wilson
September 8, 2014

CLOSING ARGUMENTS

BY MS. WILSON:

May it please the court, Your Honor? With regard to the allegation about whether or not counsel preserved the issue about the court's sua sponte preventing him from cross-examining one of the State's witnesses further on the issue of potential suggestibility, I mean questioning of the victims, first of all, Your Honor, he's trying to say that Mr. Curry should have preserved that issue for appeal.

He's provided no proof, or no evidence or arguments to support the claim that had that issue been preserved for appeal and ruled on by the court that it would have been a meritorious claim. We heard testimony from Mr. Curry that he didn't have very much to go on and to raise on appeal, that he didn't think that the allegations would likely result in a new trial for Mr. Moore.

Also, Your Honor, with regard to his allegation about counsel being ineffective for not obtaining a ruling about his prior record and for his advice toward the defendant about testifying, the record reflects that the applicant was fully advised of his right to remain silent. The fact that the state had to prove him guilty by reasonable doubt, with all these advisements that Mr. Davis speaks of just now, but Your Honor, it's the

Tyrone Moore v State of S. C.
Closing Argument by Ms. Wilson
September 8, 2014

1 State's position that Mr. Curry wasn't ineffective for
2 not obtaining a ruling prior when Mr. Moore ---

3 THE COURT: --- why not ---

4 MS. WILSON: --- decided -- well, Your Honor Mr.
5 Moore he was aware that it could go either way from Mr.
6 Moore -- from Mr. Curry's testimony ---

7 THE COURT: --- what do you mean either ---

8 MS. WILSON: --- he knew that ---

9 THE COURT: --- what do you mean either way?

10 MS. WILSON: He knew going into trial that if he
11 testified it was a possibility that the State would try
12 to use his prior convictions against him. He also knew
13 that it was possibility that they couldn't use it against
14 him. And from Mr. Curry's testimony, there were other
15 considerations other than whether or not the State could
16 use his prior convictions that he thought about when he
17 was deciding to testify. Mr. Curry testified that ---

18 THE COURT: --- he didn't know. He didn't have any
19 certainty about that issue.

20 MS. WILSON: Well, Your Honor, Mr. Curry testified
21 that he would have provided certainty had Mr. Moore
22 indicated he wanted to testify ---

23 THE COURT: --- whose responsibility is it?

24 MS. WILSON: Well, Your Honor, I think Mr. Curry's
25 fulfilled his responsibility by telling Mr. Moore that

Tyrone Moore v State of S. C.
Closing Argument by Ms. Wilson
September 8, 2014

1 it's possible that these events -- offenses, these prior
2 convictions that we're reviewing could be used against
3 you at trial. And he had that to consider along with the
4 other factors that Mr. Curry said he felt by weighing his
5 decision not to testify ---

6 THE COURT: --- do you think they could have been
7 used against him.

8 MS. WILSON: I'm sorry?

9 THE COURT: Do you think they could have been used
10 against him?

11 MS. WILSON: Oh, Your Honor, it seems like the
12 length of time may have been an issue, but Your Honor,
13 it's one of those things that, you know, Mr. Curry in his
14 lengthy talks with Mr. Moore, he knew whether or not his
15 client kind of had an indication to take the stand. And
16 he also told him other opinions.

17 He said that Mr. Moore had some considerations
18 about, you know, the fact that he was a pastor and how it
19 would he be perceived if he gave certain testimony. And
20 he also knew about his background, so I don't think it
21 was unreasonable for Mr. Curry to wait until his client
22 decided to testify to seek a ruling from the court. And
23 we just ask that you ---

24 THE COURT: --- pretty unusual, though, don't you
25 think?

Tyrone Moore v State of S. C.
Closing Argument by Ms. Wilson
September 8, 2014

1 MS. WILSON: What did you say?

2 THE COURT: It's pretty unusual to wait that late
3 to make a decision, don't you think?

4 MS. WILSON: Well, Your Honor, in my experience,
5 I've seen it done both ways and just as frequently. I
6 can't say that people always seek a ruling before they
7 advise their client because I've seen it both ways. But,
8 Your Honor, it's just the State's position that you deny
9 and dismiss this application based on those arguments.
10 Thank you.

11 THE COURT: What about the -- wait a minute ---

12 MS. WILSON: --- oh, sorry ---

13 THE COURT: --- you're not getting off that easily.

14 MS. WILSON: Okay.

15 THE COURT: Even if there's a time factor, isn't
16 there a propensity factor also?

17 MS. WILSON: Your Honor, there is and I'll have to
18 say I haven't -- I know some of the convictions that were
19 on his record, but I haven't fully reviewed his record.
20 And I'm happy to ask the Solicitor if she would like to
21 give some sollicitate -- some, you know ---

22 THE COURT: --- some sollicitate ---

23 MS. WILSON: --- sorry, if she would like to give
24 some review of what his record was and I mean, but I'm
25 happy to do that.

Tyrone Moore v State of S. C.
Closing Argument by Ms. Wilson
September 8, 2014

1 THE COURT: Well, I mean, I can't retry the case
2 here, but that just is a -- I've been doing this 15 years
3 and it's...

4 MS. WILSON: --- Your Honor ---

5 THE COURT: --- seems like a normal strategy to at
6 least advise your client what he's facing when he gets on
7 the stand.

8 MS. WILSON: Well, Your Honor, I just think that
9 there's no prejudice here because he testified that --
10 well, from his testimony, he knew that that was a factor
11 and that if he took the stand the State could present
12 that. So, he knew one way or another -- he thought about
13 ---

14 THE COURT: --- what if Judge Dennis had ruled that
15 that was not admissible impeachment testimony?

16 MS. WILSON: Well, he was aware of that possibility
17 though. From Mr. Curry's testimony, he told him that it
18 could be used against him and it might -- I mean, I just
19 don't think there's any prejudice with that regard, Your
20 Honor.

21 THE COURT: Okay.

22 MS. WILSON: Thank you. Am I done?

23 THE COURT: Yes, ma'am.

24 MS. WILSON: Thank you.

25 THE COURT: Thank you very much. All right,

Tyrone Moore v State of S. C.
Closing Argument by Ms. Wilson
September 8, 2014

1 counsel I'll review the record. I'd like proposed orders
2 from you. How much time do you need?

3 MS. WILSON: Can I have 30 days, Your Honor?

4 THE COURT: Yes, ma'am. Thirty days. Thank you
5 very much.

6 MS. WILSON: Thank you.

7 MR. DAVIS: Thank you, Your Honor.

8 *****END OF TRANSCRIPT OF RECORD*****
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

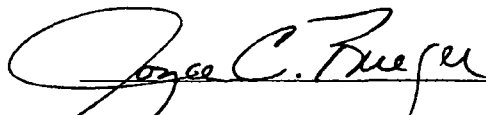
Tyrone Moore v State of S. C.
Certificate of Court Reporter
September 8, 2014

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of Common Pleas for Berkeley County, South
Carolina on the 8th day of September, 2014.

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

February 16, 2015.


Joyce C. Rueger, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA)
)
 STATE OF SOUTH CAROLINA)
)
 VS.)
)
 TYRONE MOORE,)
)
 DEFENDANT.)
 _____)

IN THE COURT OF GENERAL SESSIONS
 NINTH JUDICIAL CIRCUIT
 WARRANT NUMBERS:

H-962691, H-962695, H-962705
 H-962706, H-962725, H-962726
 H-962727, H-962728, H-962741

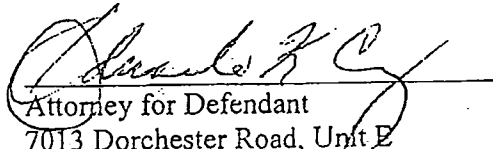
MOTIONS LIST

NOW COMES the Defendant by and through his Attorney and moves for the following motions:

- NO*
1. That the State not be allowed to introduce, use, or mention the Defendant's prior criminal history or the fact that he is a registered sex offender. ✓
 - ALL* 2. That all fact witness excluding the Defendant be sequestered during the pendency of the trial. ✓
 - Denied* 3. That no television, no news media be allowed in the Courtroom. ✓
 - No Tape* 4. That all taped interviews from the Lowcountry Children's Center be turned over to the Defendant. ✓

RESPECTFULLY SUBMITTED,

THE CURRY LAW FIRM, LLC
EDUARDO K. CURRY, ESQUIRE


 Attorney for Defendant
 7013 Dorchester Road, Unit E
 Post Office Box 42270
 North Charleston, South Carolina 29423
 (843) 767-5284
 (843) 767-5286 (Fax)

Dated: July 27, 2009

**PLAINTIFF'S
 EXHIBIT**

F.D.

STATE OF SOUTH CAROLINA)
 STATE OF SOUTH CAROLINA)
 VS.)
 TYRONE MOORE,)
 DEFENDANT:)

IN THE COURT OF GENERAL SESSIONS
 NINTH JUDICIAL CIRCUIT
 WARRANT NUMBERS:

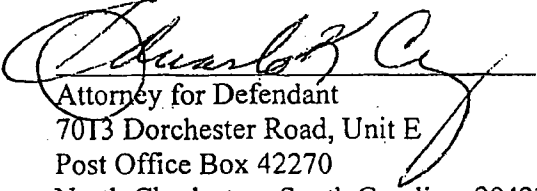
H-962691, H-962695, H-962705
 H-962706, H-962725, H-962726
 H-962727, H-962728, H-962741

WITNESS LIST

TYRONE MOORE
 ERICA MOORE
 - ORTEZ SIMMONS
 ANGALENA BRADLEY
 SABRINA DELANEY
 TIERRA RAVENEL
 ANTWAN RUSSEL
 - ROBERT MOORE
 WILLIE MOORE, III
 LEMANDRA SHEPARD

RESPECTFULLY SUBMITTED,

**THE CURRY LAW FIRM, LLC
 EDUARDO K. CURRY, ESQUIRE**


 Attorney for Defendant
 7013 Dorchester Road, Unit E
 Post Office Box 42270
 North Charleston, South Carolina 29423
 (843) 767-5284
 (843) 767-5286 (Fax)

Dated: July 27, 2009

**PLAINTIFF'S
 EXHIBIT**

F.D. 2

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Tyrone Moore, #156462,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2013-CP-08-0164

ORDER OF DISMISSAL

FILED
2014 DEC 15 PM 2:37
CLERK OF COURT
BERKELEY COUNTY, SC

SW

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Trial Counsel:
Date of Hearing:
Court Reporter:

The Honorable G. Thomas Cooper
Rodney Davis, Esquire
Ashleigh R. Wilson, Esquire
Eduardo Curry, Esquire
September 8, 2014
Joyce Rueger

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 18, 2012. The Respondent made its Return on October 10, 2013. An evidentiary hearing on the matter was convened on September 8, 2014 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Rodney Davis, Esquire. Ashleigh R. Wilson, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

Also present and testifying was Eduardo Curry, Esquire. This Court had before it the trial transcript, the Charleston County Clerk of Court records, the Applicant's records from the South Carolina Department of Corrections, the Applicant's application, the Respondent's return, the Applicant's appellate records, and two exhibits submitted by the Applicant.¹

¹ Applicant's Exhibit 1 was a Motions List submitted by trial counsel on July 27, 2009. Applicant's Exhibit 2 was a Witness List submitted by trial counsel on July 27, 2009.

GR

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Berkeley County Clerk of Court. The Applicant was indicted at the May 2008 term of the Berkeley County Grand Jury for two counts of lewd act on a minor (2008-GS-08-1020, -1021). He was represented by Eduardo Curry, Esquire.

The Applicant proceeded to trial and was found guilty by a jury. On July 29, 2009, the Honorable R. Markley Dennis sentenced the Applicant to confinement for fifteen (15) years on each count of lewd act on a minor. The sentences are to be served consecutively for a total confinement of thirty (30) years.

A timely Notice of Appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Eduardo Curry, Esquire, also represented the Applicant on appeal. The South Carolina Court of Appeals affirmed the Applicant's convictions and sentences. State v. Moore, Up. Op. No. 2012-UP-344 (S.C. Ct. App. June 6, 2012).

ALLEGATIONS

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

1. Ineffective Assistance of Counsel.

At the hearing, Applicant proceeded solely on the following allegations:

1. Ineffective Assistance of Counsel.
 - a. Counsel failed to properly advise the Applicant regarding his right to testify at trial.
 - b. Counsel failed to preserve for appeal the issue regarding his cross-examination of a law enforcement officer.

GR 2

FINDINGS OF FACT AND CONCLUSIONS OF LAW

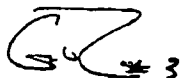
This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

Summary of the Testimony

Eduardo Curry, Esquire, was present and testified he has been practicing mainly criminal law since 1990. Counsel testified he was retained to represent the Applicant shortly after the Applicant's arrest. He testified he met with the Applicant frequently prior to trial. Counsel testified he filed Brady and Rule 5 motions on the Applicant's behalf and reviewed the material he received with the Applicant.

Counsel testified he discussed with the Applicant the elements of the charges he was facing and what the State was required to prove to convict the Applicant. Counsel also testified they discussed the Applicant's version of facts and possible defenses. Counsel testified he had ample time to prepare for trial. He testified his trial strategy was to challenge the credibility of the State's witnesses, to call into question the conduct of the police, and to cross-examine Dr. Elsey on suggestibility.

Counsel testified he cross-examined Officer Bullard on suggestibility based on the way he questioned various witnesses. Counsel testified he wanted to show from this line of questioning that the form of questioning used by police may have elicited responses that were not initially in the minds of the witnesses. He testified he also tried to cross-examine Officer Nix on the same topic, but Judge Dennis interrupted his cross-examination. Counsel testified he

 3

belabored the point with Officer Bullard and thought that he had preserved any appellate issues that came up during his testimony. Counsel testified he ultimately concluded that the suggestibility he tried to uncover did not exist and any further questioning of Officer Nix on the topic would likely have been unhelpful. He testified he did not think the Court's *sua sponte* interruption of his cross-examination was serious enough to object.

Counsel testified he spoke with the Applicant and his wife for a significant amount of time about taking the stand to testify at trial. Counsel testified he advised the Applicant of the pros and cons of both testifying and not testifying. He testified the Applicant was also advised of his right to testify by the Court at trial. He testified the Applicant was adamant from the beginning that he did not want to testify at trial.

Counsel testified they reviewed the Applicant's two prior convictions for lewd act and criminal sexual conduct with a minor. He testified he discussed with the Applicant prior to trial the fact that the State could use his prior record to impeach him if he took the stand. Counsel testified it is his general practice to tell his clients that if they chose to testify at trial, he would obtain a ruling from the Court on the admissibility of their prior record for impeachment purposes. He testified because the Applicant chose not to testify at trial, he did not need to obtain a ruling from the Court on the Applicant's prior record.

Counsel testified he spoke regularly with the Applicant about his case and the Applicant knew upfront that he could testify at trial. He testified he did not advise the Applicant on whether or not he should take the stand to testify. He testified that it was ultimately the Applicant's decision to make. Counsel testified the Applicant was afraid of his criminal past and made the decision not to testify at trial. He testified the Applicant was also concerned about how he would be perceived by the jury and how he would come off as a pastor. Counsel testified he put no

GX - 4

pressure on the Applicant to waive his right to testify and the Applicant was adamant from the start that he did not want to testify.

Counsel testified he heard the Applicant's testimony at the evidentiary hearing and it was his first time hearing the version of events given by the Applicant at the hearing. He testified the Applicant never told him this theory that all the victims and their families were upset with the Applicant and had made up the allegations.

Counsel testified they also discussed calling witnesses to testify prior to trial and at the close of the State's case. Counsel testified he told the Applicant that if he wanted to call witnesses at trial, they would do so at trial. Counsel testified he discussed with the Applicant the perils of calling witnesses at trial and explained that ultimately it was the Applicant's decision whether or not they presented witnesses. Counsel testified he also discussed with the Applicant preserving last argument. Counsel testified the Applicant ultimately decided they would not call any witnesses at trial.

Counsel testified he was also retained by the Applicant's family to represent the Applicant on appeal. He testified he filed a Notice of Appeal on the Applicant's behalf. He testified he met with the Applicant to discuss possible issues they could raise on appeal. Counsel testified there were not a lot of meritorious issues the Applicant could flesh out on appeal. He testified he raised the issue of Officer Bullard's cross-examination on appeal because he was looking for anything he could raise with potential merit. Counsel testified he thought the issues he raised were a long shot.

The Applicant was present and testified he had family members who were willing to testify on his behalf at trial. He testified the decision was made at the start of his trial to call his family members as witnesses at trial. The Applicant testified he was adamant about calling

GR # 5

witnesses at trial, but counsel told him and his wife that presenting witnesses was not necessary since they had a strong case. The Applicant testified he decided to go with his attorney's advice.

The Applicant testified he was aware of his right to testify prior to trial and that he was considering testifying when he initially spoke with trial counsel. The Applicant testified counsel told him it was not in his best interest to testify at trial because of his prior record. He testified he discussed the use of his prior convictions with counsel early on. He testified he told the Court that he did not want to testify at trial. He testified he told the Court that he was not forced or pressured to waive his right to testify. The Applicant testified he wanted to testify, but did not testify because of counsel's advice.

The Applicant testified if he had taken the stand he would have told the jury that the victims were at his home on the weekends because they were developing relationships with his four children. He testified he would have testified that lots of time he was not home when the victims were at his home. The Applicant also testified he would have told the jury that a group of his church members were upset with him about the way he disciplined at his church. He testified he told his attorney that the victims were making allegations because their parents were upset with him. The Applicant testified he would have told the jury at trial that the victims' statements were not true.

Ineffective Assistance of Counsel

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

For the Applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under

GR x 6

prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668 (1984), Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668).

As an initial matter, this Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

The Applicant alleges counsel was ineffective for failing to object and preserve for appellate review the trial court's limitation of counsel's cross-examination of Officer Nix at trial. This Court finds this allegation is wholly without merit. This Court finds the Applicant has failed to carry his burden of proving counsel was ineffective for failing to preserve this issue for appellate review. This Court finds counsel's performance was not deficient in this regard.

GC 7

This Court finds counsel's failure to object to the Court's limitation of his cross-examination of Officer Nix did not affect the outcome of the Applicant's trial. This Court finds persuasive counsel's credible testimony that the line of questioning he was trying to pursue with Officer Nix would likely have been unhelpful to the defense. This Court also finds persuasive counsel's testimony that he did not think the issue of the court's limitation of his cross-examination would be successful on appeal.

This Court also finds the Applicant has failed to show that if counsel had objected and preserved the issue for appellate review, the issue would have been meritorious on appeal. See State v. Aleksey, 343 S.C. 20, 33-34, 538 S.E.2d 248, 255 (2000) (stating the trial court retains broad discretion to limit the scope of cross-examination) and Delaware v. Van Arsdall, 475 U.S. 673, 679 (1986) ("Trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or marginally relevant.") This Court finds the Applicant has failed to show that he was prejudiced by counsel's failure to object or preserve this issue for appellate review. This Court finds counsel's performance was not deficient and did not affect the outcome of the Applicant's appellate proceeding.

The Applicant alleges counsel was ineffective for failing to properly advise him of his right to testify at trial. This Court finds this allegation is wholly without merit. Under the United States and South Carolina Constitutions, a criminal defendant has a right to remain silent and to not testify during his trial. U.S. Const. amend. V; S.C. Const. art. I, § 12. State v. Weaver, 361 S.C. 73, 88, 602 S.E.2d 786, 794 (Ct. App. 2004) aff'd as modified, 374 S.C. 313, 649 S.E.2d 479 (2007). A defendant's decision to testify or not must be made with knowledge of the

consequences of either choice. Brown v. State, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000). It is the defendant who retains the ultimate authority to decide whether or not to testify. Jones v. Barnes, 463 U.S. 745, 751 (1983). South Carolina courts have declined to require an on-the-record waiver of a defendant's right against compelled testimony. Brown at 595, 533 S.E.2d at 310 (2000). "[T]rial counsel, not the court, has the primary responsibility for advising the defendant of his right to testify and for explaining the tactical implications of doing so or not." Sexton v. French, 163 F.3d 874, 882 (4th Cir.1998).

Under Strickland v. Washington, 466 U.S. 668, 694 (1984), in order to prove ineffective assistance of counsel based on a claim that counsel prevented a defendant from exercising his right to testify, the defendant must show both that his attorney violated his right to testify and that his testimony had a "reasonable probability" of changing the outcome of his trial. United States v. Squillacote, 183 F. App'x 393, 394 (4th Cir. 2006).

This Court finds the Applicant has failed to carry his burden of proving counsel violated his right to testify. This Court finds the Applicant was fully advised by both the Court and trial counsel of his right to testify at trial. Trial counsel provided credible testimony that he and the Applicant had significant conversations about whether or not the Applicant would testify at trial. The record reflects the trial court also informed the Applicant of his right to testify on the record after the completion of the State's case. The trial court advised the Applicant of the following: (1) the Court would instruct the jury that the State had the burden of proof and the Applicant did not have to present any evidence at trial (Tr.237:25-238:9) and (2) it was the Applicant's right to testify if he so chose and he would be subject to cross-examination (Tr. 10-15).

The Applicant told the Court that he had spoken with counsel about his right to testify (Tr. 237:7-13), that he had sufficient time to reflect on counsel's advice and their discussions on

5029

testifying at trial (Tr. 237:14-17, 238:24-239:2), and that he elected not to take the stand after discussing his decision with family and counsel (Tr. 237:18-24). The Applicant also told the Court that he was not under the influence of any alcohol or drugs, that he did not feel any undue pressure concerning his decision, and that he was not forced to make this decision. (Tr. 238:16-239:8). This Court finds most telling the Applicant's statement to the trial court that he was satisfied with the manner in which his attorney advised him on his right to testify. (App. 239:9-13).

This Court also finds the Applicant was fully advised that his prior record could be used by the State to impeach him if he chose to testify at trial. This Court finds trial counsel provided credible testimony that they reviewed the Applicant's prior record and that the Applicant knew it was a possibility the State would be able to impeach him with his prior convictions. This Court finds counsel's advice to the Applicant on the use of his prior convictions was proper.²

This Court finds the Applicant was fully aware of the consequences of taking the stand to testify at trial. This Court finds counsel adequately advised the Applicant of his right to testify and explained both the pros and cons of taking the stand. This Court finds the Applicant freely and voluntarily waived his right to testify at trial. This Court finds further the Applicant has also failed to carry his burden of proving that the testimony he presented at the evidentiary hearing had a reasonable probability of changing the outcome of his trial. This Court finds the Applicant has failed to carry his burden of proving that counsel was ineffective for failing to adequately advise him of his right to testify at trial.

² The Applicant's SCDC records reflect a prior conviction for criminal sexual conduct with a minor that could possibly have been used to impeach the Applicant if he had chosen to testify at trial. The records reflect the Applicant completed an 18 year sentence for this conviction and was released on August 22, 2000 which would have put the conviction within the 10 year time period outlined in Rule 609, SCRE.

All Other Allegations

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

CONCLUSION

Based on all the forgoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 11 day of December, 2014


 The Honorable G. Thomas Cooper
 Presiding Judge
 9th Judicial Circuit

County, S.C., South Carolina.

GCPD, NIX

In. Engr. mpt

DOCKET NO. 2008-GS-03-1020

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

MAY TERM 2008

THE STATE

Vs.

TYRONE MOORE

ARREST WARRANT NUMBER
DIRECT INDICTMENT

ACTION OF GRAND JURY

True Bill

Bruce Kist
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

LEWD ACT UPON A MINOR

FILED
2008 MAY 14 PM 1:05
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

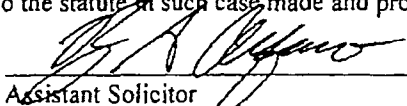
STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT FOR
LEWD ACT UPON A MINOR

At a Court of General Sessions, convened on May 14, 2008 the Grand Jurors
of Berkeley County present upon their oath:

That Tyrone Moore, a person over the age of fourteen (14) years, did in Berkeley
County between January 2004 and September 2006, willfully and unlawfully
commit a lewd or lascivious act upon or with the body, or any part member
thereof, a child under the age of sixteen (16) years of age, to wit: Minor 2
DOB [REDACTED], with the intent of arousing, appealing, or gratifying the
lust or passions or sexual desires of himself or of said child, Minor 2 in
violation of §16-15-140 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Assistant Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Berkeley
STATE VS.
Tyrone Moore
AKA: _____
Race: B Sex: M Age: 42
DOB: [REDACTED] SS#: [REDACTED]
Address: _____
DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 08GS081020
A/W#: 08GS081020
Date of Offense: 12/20/2006
S.C. Code § : 16-15-0140
CDR Code #: 2468

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

In disposition of the said indictment comes now the Defendant who was
TO: Lewd Act on a Minor

in violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 2468
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Deborah Nunez 20th 10485
Alfred Bryant A SC Bar# _____ Defendant _____ Attorney for Defendant _____ SC Bar# _____
Debra Nunez

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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ set by SCDPPPS _____

Recipient: _____

*Fine:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
§ 47.12 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$100	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
§ 90.7 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol testing _____
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____
☐ Appointed PD or appointed other counsel, §47.12
requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk
Court Reporter: Anne Meyer
SCCA/217 (06/2009)

PRESIDING JUDGE [Signature]
Judge Code: 2
Sentence Date: 7/22/09

GCPD NIX

La. Knight 2008

DOCKET NO. 2008-GS-08-1021

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

MAY TERM 2008

THE STATE

Vs.

TYRONE MOORE

ARREST WARRANT NUMBER
DIRECT INDICTMENT

ACTION OF GRAND JURY

True Bill

Brown Court
Foreperson of Grand Jury

VERDICT

Indictment for

LEWD ACT UPON A MINOR

Foreperson of Petit Jury

Date:

FILED
2008 MAY 14 PM 1:05
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

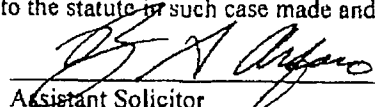
STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT FOR
LEWD ACT UPON A MINOR

At a Court of General Sessions, convened on May 14, 2008 the Grand Jurors
of Berkeley County present upon their oath:

That Tyrone Moore, a person over the age of fourteen (14) years, did in Berkeley
County between January 2004 and August 2006, willfully and unlawfully commit
a lewd or lascivious act upon or with the body, or any part member thereof, a child
under the age of sixteen (16) years of age, to wit: Minor 1 [REDACTED] DOB [REDACTED]
with the intent of arousing, appealing, or gratifying the lust or passions or sexual
desires of himself or of said child, Minor 1 [REDACTED] in violation of §16-15-140 of the
South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Assistant Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Berkeley
STATE VS.
Tyrone Moore

AKA:

Race: B Sex: M Age: 42

DOB: [REDACTED] SS#: [REDACTED]

Address:

DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 08GS081021

A/W#: 08GS081021

Date of Offense: 12/20/2006

S.C. Code §: 16-15-0140

CDR Code #: 2468

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSIn disposition of the said indictment comes now the Defendant who was
TO: Lewd Act on a Minor

in violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 2468

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

ATTEST:

Attorney for Defendant: [REDACTED] SC Bar# [REDACTED] Defendant: [REDACTED] Attorney for Defendant: [REDACTED] SC Bar# [REDACTED]

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: 2008 GS-08-1020
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms: Obtain GED

☐ set by SCDPPPS Attend Voc. Rehab. or Job Corp.

Recipient: May serve W/E beginning

*Fine: \$ Substance Abuse Counseling

§ 14-1-206 (Assessments 107.5 %) \$ Random Drug/Alcohol testing

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ pmts. of \$ beginning

§ 56-5-2995 (DUI Assessment) \$12 \$ \$ paid to Public Defender Fund

§ 56-1-286 (DUI Breath Test) \$25 \$ Other:

§ 47.12 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$

§ 14-1-213 (Drug Court Surcharge) \$100 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

§ 90.7 (SCCJA Surcharge) \$5 \$ 5.00

% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

Clerk of Court Deputy Clerk

Court Reporter:

CCA/217 (06/2009)

PRESIDING JUDGE

Judge Code: 2

Sentence Date: 7/29/09