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SC Court of Appeals

STATE OF SOUTH CAROLINA

In The Court of Appeals

 ORIGINAL

APPEAL FROM CHARLESTON COUNTY

 ORIGINAL

R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALAN L. BURNS,

APPELLANT

APPELLATE CASE NO. 2012-212760

RECORD ON APPEAL

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COUNTY OF CHARLESTON

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STATE OF SOUTH CAROLINA)

TRANSCRIPT OF RECORD

-VS-

April 1, 2011

ALAN BURNS,

Charleston, South Carolina

Defendant.)

B E F O R E:

The Honorable Deadra L. Jefferson, Judge.

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

Debbie Herring-Lash, Assistant Solicitor
Attorney for the State

Andrew Savage, Esquire
Attorney for the Defendant

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

1 (April 1, 2011.)

2 THE COURT: Is he representing himself?

3 MS. HERRING-LASH: He is, Your Honor.

4 THE COURT: Has he been screened for a public
5 defender?

6 MS. HERRING-LASH: I don't know. I think his
7 decision has been to represent himself.

8 THE COURT: Okay. Do you have a copy of the
9 motion, Your Honor?

10 MS. HERRING-LASH: Yes. I think the top one
11 is the one regarding this case.

12 THE COURT: Okay.

13 Are you Mr. Burns; is that correct?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Mr. Burns, you're representing
16 yourself, is that also correct?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And have you had the opportunity
19 to be screened by the public defender's office?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: You realize if you cannot afford
22 an attorney the Court will appoint someone to represent
23 you at no cost.

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: And knowing that there are

1 certain dangers inherent in representing yourself, you do
2 wish to represent yourself as a knowing and voluntary
3 decision?

4 THE DEFENDANT: Yes, ma'am, I do.

5 THE COURT: Okay.

6 Do you have any written or recorded
7 statements made by the defendant?

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

9 THE COURT: Sir, you understand there are no
10 statements, so there are none to turn over to you.

11 THE DEFENDANT: Actually, Your Honor, there
12 are. The solicitor has already turned over a couple
13 documents to me, written statements supposedly made by
14 me. In addition to that, in my specific Brady request, I
15 requested some other specific documents --

16 THE COURT: I'm going to deal with them one
17 at a time. What they've indicated to me is they have no
18 further written or recorded statements to turn over to
19 you, so that would be moot. In other words, there's
20 nothing to turn over, so there's nothing to compel, and
21 you indicate you already have the statements that they
22 have provided, correct?

23 THE DEFENDANT: Actually, I don't have the
24 complete statements.

25 THE COURT: What statements are you referring

1 to, sir? Do you have copies of the statements he's
2 referring to?

3 MS. HERRING-LASH: He has been turned -- 74
4 pages of discovery was given to him on January the 25th.

5 THE COURT: Okay. And did that include a
6 statement made by him?

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

8 THE COURT: Sir, what statement are you
9 referring to that you say you made?

10 THE DEFENDANT: Actually, one of the things
11 that the solicitor has turned over to me, she has somehow
12 or another manipulated one of the documents and took
13 portions of the statement out.

14 THE COURT: I need to know what you're
15 referring to, sir, specifically. Give me a date and give
16 me some synopsis of what the document is.

17 THE DEFENDANT: It's a letter supposedly
18 written by me, a letter that's dated May 13, 2010.

19 THE COURT: Are you familiar with what he's
20 referring to, Ms. Herring-Lash?

21 MS. HERRING-LASH: I think that may be a
22 letter he wrote to his father or mother.

23 THE COURT: Okay. And what are you saying?

24 THE DEFENDANT: If you look at the front
25 page, you'll see that a large part of the letter has been

1 deleted or erased by a computer, by the solicitor's
2 office. On the first page, there's supposed to have been
3 eight questions on that page. She -- what she did, she
4 scanned it into her computer, and then they erased the
5 questions out of there.

6 THE COURT: Ms. Herring-Lash?

7 MS. HERRING-LASH: May I see what he handed
8 up, Your Honor, what he's referring to?

9 THE DEFENDANT: In addition to that, that
10 very same letter and another letter that was written, she
11 also went in and deleted certain portions of the letter
12 when she sent me copies of it.

13 MS. HERRING-LASH: Your Honor, the only thing
14 I have is the same thing. Read this first and answer the
15 questions, and it's blank after that.

16 THE DEFENDANT: Under the best rule -- under
17 the best evidence rule, Your Honor, I think that I am
18 entitled to --

19 THE COURT: Sir, the best evidence rule is
20 only applicable during trial, and what the best evidence
21 rule states is that if you have a copy of the document
22 but you have the original that the original should be
23 provided, unless there's no other alternative, and so
24 since it's your -- I don't know who's in possession of
25 letter. The State is only required to turn over to you

1 what they have in their possession. She's indicated to
2 me that she gave to you exactly what she had, so absent
3 you being able to prove to me that she has something
4 else, then there is nothing for the Court to compel.

5 THE DEFENDANT: May I request inspection of
6 the original?

7 THE COURT: They've indicated they don't have
8 the original, correct?

9 MS. HERRING-LASH: I think law enforcement
10 probably has it.

11 THE COURT: Then that is within your control
12 so are you -- have you asked law enforcement for the
13 original?

14 MS. HERRING-LASH: I can ask someone to take
15 it to the jail for him to look at it.

16 THE COURT: Can we do that, please?

17 MS. HERRING-LASH: Uh-huh.

18 THE COURT: How long will it take you to do
19 that?

20 MS. HERRING-LASH: I'm meeting with officers
21 on this case this afternoon, so I'll ask the detective.

22 THE COURT: If you could do that for me
23 within ten days, please, of today.

24 Now, sir, part B of your motion is overly
25 broad. I don't know exactly what you're asking to look

1 at. It looks like a verbatim statement from the rule,
2 but it doesn't say exactly what you're wanting to look
3 at.

4 THE DEFENDANT: I want to inspect all the
5 original documents.

6 THE COURT: You're going to have to be more
7 specific than that.

8 THE DEFENDANT: The original letters, I want
9 to inspect all of them.

10 THE COURT: Do they have all of the original
11 letters?

12 MS. HERRING-LASH: Yes.

13 THE COURT: Then take all the original
14 letters over for him to look at.

15 THE DEFENDANT: Also, in my specific request,
16 I also requested that for any documents that I had
17 requested that they did not have that they inform me as
18 to whether the document was lost, stolen, misplaced,
19 whether it was delivered, created.

20 THE COURT: You have to be specific about
21 what it is you're asking them to do that for. That is an
22 overly broad request. What is it specifically that
23 you're asking about?

24 THE DEFENDANT: I'm asking about any and all
25 crime scene forensic reports, any and all CSA kit, any

1 suspect kit, any copies of any and all letters placed
2 into evidence, all reports, chain of custody sheets --

3 THE COURT: Do you have any of those things,
4 Ms. Herring-Lash?

5 MS. HERRING-LASH: Your Honor, there were no
6 forensic tests done. These cases stem from assaults that
7 occurred years -- several years ago, and they are now
8 adults that just came forward, so there are -- none of
9 the forensic testing was able to be done.

10 THE COURT: Sir, no such reports exist. What
11 else are you seeking?

12 THE DEFENDANT: I'm also asking for any and
13 all psychological or psychiatric reports and diagnosis,
14 evaluation, treatments of victims as it relates to the
15 charges.

16 THE COURT: Do you have any of that?

17 MS. HERRING-LASH: I do not yet, Your Honor.
18 As I get -- I may -- one of the victims may have been in
19 therapy, but I do not have any of his records yet.

20 THE COURT: Once you get those, you'll turn
21 those over?

22 MS. HERRING-LASH: I will continue to give
23 him discovery as I receive it.

24 THE COURT: Sir, do you understand?

25 THE DEFENDANT: Yes, sir, I fully understand.

1 I also ask for any and all crime scene photos, photo
2 lineup, information regarding crime scene photos,
3 information regarding photo lineups, information
4 regarding suspect identification by victims or
5 witnesses --

6 THE COURT: Do you have any of that?

7 MS. HERRING-LASH: No, Your Honor. He is the
8 victim's uncle, and they came forward -- he was in prison
9 for criminal sexual conduct with another child when they
10 came forward with these reports, and I did go -- have the
11 law enforcement go out and take pictures of the scene
12 where it happened and he has copies of those pictures,
13 but it's in the 1990's that it happened.

14 THE COURT: Sir, do you understand that no
15 such items exist?

16 THE DEFENDANT: I understand, Your Honor, but
17 the photos that were provided to me, they actually have
18 no bearing on any crime scene at all.

19 THE COURT: Well, that's not the standard.
20 You asked for the photos. They provided them for you.
21 That's the trial issue. That's an admissibility issue.
22 That's not appropriate for the Court to deal with that at
23 this time. It's premature.

24 Is there anything else you seek the State
25 produce to you that they have not already given to you?

1 THE DEFENDANT: Yes, ma'am. Any and all
2 protocol and procedure manuals, guidebooks which describe
3 and/or explain or otherwise outline the chain of command
4 to be followed in receiving process and investigating and
5 exposing of acquisitions and code sexual offense cases,
6 taking a look at statements and sexual offense
7 statements, the importance of and use of polygraph
8 examinations of victim and witnesses in such cases.

9 The importance and use of polygraph
10 examinations of the suspect defendant in such case the
11 importance and use of results of polygraph examination,
12 the question and/or interrogation of witness and victims
13 in cold cases --

14 THE COURT: Are there any such item that
15 exists?

16 MS. HERRING-LASH: There were no polygraphs
17 in this case, Your Honor.

18 THE COURT: He's asking for their procedure.

19 MS. HERRING-LASH: I don't know. They may
20 have procedure manuals.

21 THE COURT: Can you check this and see if
22 they have any of those? And, if they do, turn copies
23 over to him.

24 THE DEFENDANT: Any and all victim witness
25 statements, affidavits, written and/or recorded and

1 video, and any and all victim witness documents.

2 MS. HERRING-LASH: He has the witness
3 statements, and, Your Honor, as far as their procedures,
4 I don't know that that is relevant at this point in this
5 case.

6 THE COURT: I think he can discover it, and
7 it's relevant and germane to cross-examination. If they
8 did not follow procedure, it goes to the weight of the
9 examination.

10 MS. HERRING-LASH: There were no polygraphs
11 done, but he has the statements that the victims gave.

12 THE COURT: I don't believe any such manual
13 exists. He's asking specifically for handling cold
14 cases. I doubt that one exists. I don't think there is
15 any harm determining if it does.

16 If it doesn't, send him a note and let him
17 know that you have investigated and one does not exist.
18 I doubt any such document exists, but I'm going to have
19 her request. No polygraphs have been taken, and you have
20 victim's statements.

21 THE DEFENDANT: Right. Actually, there is a
22 -- I spoke to, I guess it was a clerk at the Mount
23 Pleasant Police Department, and actually they do have
24 procedural manuals that governs the proceedings as far as
25 investigating criminal sexual conduct cases, and there

1 are specific procedures listed in there that governs how
2 they are supposed to investigate card cases, cases that
3 are --

4 THE COURT: She's going to ask if it exists,
5 and if it does exist, she's going to get it for you.

6 THE DEFENDANT: Okay. I also ask in my
7 specific request any and all defendant statements.

8 THE COURT: We already covered that.

9 THE DEFENDANT: Any and all motions
10 persecutor's summary --

11 THE COURT: You're not entitled to her
12 summary, sir. That's work product.

13 THE DEFENDANT: Any and all Mt. Pleasant
14 Police Department incident reports and supplemental
15 reports.

16 THE COURT: I think you already provided
17 that.

18 MS. HERRING-LASH: He's got that.

19 THE DEFENDANT: The other thing I ask for is
20 my complete rap sheet, NCIC report.

21 MS. HERRING-LASH: He's got what I have.

22 THE DEFENDANT: Actually, I don't, Your
23 Honor. If I may, in the papers she gave me, she only
24 gave me one page of my rap sheet, which actually doesn't
25 include everything.

1 THE COURT: Do you have his entire rap sheet?

2 MS. HERRING-LASH: I do. I'll run another
3 copy and see if more comes up.

4 THE COURT: She said she'll give you an
5 entire copy of what she says in the event that on the
6 outside chance something is left out.

7 She's only required to turn over to you what
8 she has in her possession. She's not required to go to
9 the extra burden of running your actual criminal record
10 because you have access to that, and you can get that for
11 yourself. So she's only required to turn over to you
12 what she has, so whatever she's run she is going to turn
13 over to you.

14 THE DEFENDANT: Right. If she ran and
15 provided me with this copy, I believe that she has the
16 entire thing --

17 THE COURT: She said she's going to run
18 another copy. Just in an abundance of caution, she
19 indicated to me she's going to make that copy and send it
20 to you.

21 THE DEFENDANT: Any and all grand jury
22 information, including date, time, and place, proceeding
23 transcript, minutes --

24 THE COURT: You cannot get any of that. It's
25 secret in South Carolina. It's protected by privilege.

1 You can get the date the grand jury met and the date they
2 true billed your indictment, but the exact nature of
3 their investigation is not subject to discovery.

4 Do you have the date the grand jury has met?

5 MS. HERRING-LASH: It has not been indicted
6 yet. I'm meeting with three additional victims today.

7 THE COURT: Once it's indicted, they'll send
8 you a copy of the indictment, which if it is true billed,
9 it will show the date and time the grand jury met, but
10 that's all you're entitled to.

11 THE DEFENDANT: All right. There is another
12 motion that is actually on file. I filed that motion
13 prior to filing this motion.

14 THE COURT: What motion is that, sir?

15 THE DEFENDANT: I put a request in for a new
16 preliminary hearing.

17 THE COURT: Have you had a preliminary
18 hearing?

19 THE DEFENDANT: Actually, not --

20 MS. HERRING-LASH: He had one, Your Honor.

21 THE DEFENDANT: At the time I didn't receive
22 notice of the preliminary hearing.

23 THE COURT: Did you have a preliminary
24 hearing, sir?

25 THE DEFENDANT: I went for a preliminary

1 hearing, but I requested a continuance and informed the
2 judge that I couldn't go forward because I wasn't
3 informed and I wasn't prepared.

4 THE COURT: Then you need to address that to
5 the Magistrate's Court and ask them for another
6 preliminary hearing. This Court does not set preliminary
7 hearings. That's within the magistrate's prerogative.
8 You need to contact the chief magistrate about having
9 your case reset for preliminary hearing.

10 THE DEFENDANT: Okay. Your Honor, I also
11 wrote to the Clerk of Court and asked some subpoena
12 forms. The Clerk of the Court has refused to comply and
13 send me any subpoena forms from other cases, and I do
14 represent --

15 THE COURT: What is it that you want to
16 subpoena?

17 THE DEFENDANT: I want to subpoena witnesses.

18 THE COURT: Well, when it comes time for
19 that, you need to just provide a list of witnesses, and
20 we'll do the best we can to assist you with that and make
21 sure that any witnesses that you deem necessary for your
22 defense, that they are here and present if they are
23 amendable to, you know, to the subpoena powers of the
24 Court and make sure they're available.

25 But it's a little premature at this point

1 because your case has not yet been set for trial and
2 discovery has not yet been completed, and the case hasn't
3 even been indicted yet.

4 THE DEFENDANT: Your Honor, there is also one
5 other thing. I was informed by Sergeant Floyd at the
6 Charleston County Detention Center that the solicitor has
7 directed that all of my incoming and outgoing mail to be
8 forwarded to them for them to screen before it would
9 actually go to where it's supposed to be going.

10 I also put in a requester expungement of
11 several documents. I was informed that the solicitor has
12 delaying the process of the expungement, that documents
13 are -- and the charges are, under the law, expungable.

14 THE COURT: Have you paid the fee?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: What charges --

17 MS. HERRING-LASH: I have no idea what he's
18 talking about.

19 THE COURT: Do you have any indication of
20 some or by mail of this jail?

21 MS. HERRING-LASH: No, ma'am. I haven't
22 spoken to anybody at the jail about his case.

23 THE COURT: Okay.

24 THE DEFENDANT: This is a copy of the
25 tracking on the front and the order on the back. SLED

1 has already signed off on the expungement saying that the
2 charges are expungable, but the solicitor is now delaying
3 it and continue the process --

4 THE COURT: CSC minor with a second degree is
5 not expungable.

6 THE DEFENDANT: Yes, it is. I was not found
7 guilty of that charge.

8 THE COURT: Oh, you're saying you were found
9 not guilty. When was that?

10 THE DEFENDANT: That charge was nolle
11 prossed. I believe the date was early --

12 THE COURT: 2003?

13 THE DEFENDANT: 2003. The charge was nolle
14 prossed. It required a fee of \$335 to the solicitor's
15 office, \$25 to SLED, and \$35 to the clerk's office. All
16 that money has already been paid.

17 The expungement was received through
18 tracking. It was already forwarded through SLED. SLED
19 has already signed off saying that the charges can be
20 expunged. Right now the holdup is the solicitor's
21 office.

22 THE COURT: SLED doesn't sign off on the
23 expungements.

24 THE DEFENDANT: On the very bottom, if you
25 just look above where the judge signs --

1 THE COURT: That is for the solicitor to
2 sign.

3 THE DEFENDANT: Right. Above that, the line,
4 you see a line which states that the -- where it requires
5 SLED to verify the offense be listed as eligible for
6 expungement and they're supposed to verify the
7 eligibility.

8 THE COURT: That's after I sign it, after I
9 send it back out to them. That's an administrative thing
10 to check off on, but they have checked off.

11 THE DEFENDANT: That is my copy I retained
12 for myself. Actually, that portion was signed off by
13 SLED.

14 THE COURT: So where is the copy where they
15 signed off on it? I've never seen that part checked off,
16 and I sign about 100 expungements every day.

17 THE DEFENDANT: According to the instructions
18 that I received, what happens is once I fill out the
19 forms and send it in, the solicitor's office forwards
20 those forms to SLED. SLED verifies whether or not the
21 charges can be expunged. They check off either yes or
22 no. They return it back to the solicitor's office.

23 It's at that point that the solicitor either
24 consent, denies, declines consent, determines ineligible
25 for whatever reason, and then it goes to the judge.

1 In fact, I had already had a couple charges
2 expunged off of my record, and as soon as the solicitor
3 discovered what I was doing by cleaning my record up,
4 that is when she decided to impede that process.

5 THE COURT: It goes to a whole separate
6 department, and then they come to my office and my
7 secretary sanitizes them to make sure they're in place,
8 and then I sign it.

9 THE DEFENDANT: It goes to a different
10 department in the solicitor's office, but the solicitor
11 and that person in that department, they communicate and
12 they have communicated. The solicitor has told the
13 person in that department to delay in processing that
14 expungement.

15 THE COURT: What proof do you have of that?

16 THE DEFENDANT: I contacted the solicitor's
17 office by phone.

18 THE COURT: And they told you that?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: I just find that a little
21 incredulous, that they would tell somebody that are
22 subordinate to that they told them to delay, because,
23 really, that would be something Ms. Herring-Lash might
24 possibly be disciplined for, and I'm just real direct. I
25 don't know any other way to be. I just don't believe

1 that.

2 You would have to tell me who you talked to.
3 See, that's something I would remember. That just
4 doesn't make sense to me. If somebody told me that
5 somebody was directly and substantially impairing my
6 civil rights, I would remember their name. I would
7 remember the date and time I talked to them, and the
8 extension.

9 THE DEFENDANT: I could try again.

10 THE COURT: Can you find out what the status
11 of his expungement is?

12 MS. HERRING-LASH: I can try. I don't know
13 if he filed it or not.

14 THE COURT: Are you saying you actually filed
15 it, sir? When did you mail it?

16 THE DEFENDANT: If you look on there, they
17 have a case tracking number on there, and they have a
18 date list on that, stamped on the papers. I believe it
19 was January 7th.

20 THE COURT: Yeah, and that is really not that
21 long, because what they do is -- SLED doesn't deal with
22 this. They run your record and they look at it, and then
23 it goes through a few other things, and they attach some
24 stuff to it and then sent to my office.

25 We go through it, make sure everything is

1 attached. If everything is attached, we send it back for
2 what's missing, and then it comes back and then it will
3 get signed, but there are several processes that it goes
4 through.

5 THE DEFENDANT: Actually, I have one that's
6 already been done.

7 THE COURT: I need one that has been
8 submitted to me without my signature. Thank you.

9 I don't know how long it takes -- who does
10 those, Vicki or does Wanda still does them? How long
11 does it take once it gets into y'all's office?

12 MR. DuRANT: It depends if the documentation
13 is provided with the application. Sometimes we have to
14 find if it has, in fact, been dismissed. It does, in
15 fact, go to SLED, but for proof, there is a fee for that.
16 It comes back to us. We have a chance to enter an
17 objection if we do at that time. If not, we will do the
18 consent. It will go to you, you do what you do, it comes
19 back. Then it has to be distributed --

20 THE COURT: So it's seven or eight different
21 people?

22 MR. DuRANT: This is all mechanized now.
23 It's online. It's got a tracking number.

24 THE COURT: So we can look on line and see?

25 MR. DuRANT: Look online and determine

1 exactly where it is, Your Honor.

2 THE COURT: And what is that? --

3 MR. DuRANT: It can be accessed through our
4 own web site. There is a whole section on expungement
5 there.

6 THE COURT: Do you understand you can look up
7 the status of your expungement online?

8 THE DEFENDANT: I understand that, but the
9 Charleston County Detention Center doesn't have access to
10 online services, so since I didn't have access, so I
11 wrote a letter to Ms. Victoria Matthews, and I'm not
12 getting any responses from her office.

13 THE COURT: When did you mail the letter?

14 THE DEFENDANT: The last letter I wrote was
15 on March 21. I wrote to her also on March 1st, and I'm
16 not receiving any responses from her on any of those
17 issues.

18 THE COURT: Okay. Sir, is there anything
19 further you're seeking for the Court?

20 THE DEFENDANT: Not at this present time,
21 Your Honor.

22 THE COURT: All right. Thank you very much.
23 They'll let you know in lockup what the status of your
24 expungement is.

25 Thank you.

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2
3 STATE OF SOUTH CAROLINA
4 COURT OF GENERAL SESSIONS
5 COUNTY OF CHARLESTON 2011-GS-10-3387, 3390,
6 4776, 4778, 4479, 3388,
7 3389, 3391, 3392, 4777,
8 3172, 3173
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10 STATE OF SOUTH CAROLINA,)
11)
12)
13 -vs-)
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15)
16 ALAN L. BURNS,)
17)
18 Defendant.)
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22 November 2, 2011
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1 P-R-O-C-E-E-D-I-N-G-S

2 (Convened at 9:43 a.m., November 2, 2011).

3 THE COURT: These are indictments

4 2011-GS-10-4779, lewd act on a minor.

5 4776, criminal sexual conduct with minor

6 first degree.

7 4778, lewd act upon a minor.

8 3394, lewd act upon a minor.

9 3391, criminal sexual conduct with a minor
10 first degree.

11 3392, lewd act upon a minor.

12 3389, lewd act upon a minor.

13 3388 criminal sexual conduct with a minor
14 second degree.

15 3390, criminal sexual conduct with a minor
16 first degree.

17 3387, criminal sexual conduct with minor
18 first degree.

19 And 4777, criminal sexual conduct with a
20 minor first degree.

21 The State versus Alan Lee Burns, we're before
22 the Court this morning, I believe I have already
23 disposed of the motion where he asked, he requested
24 appointment of counsel on July 28, 2011. I'm
25 pretty certain I heard that the last time we heard

1 motions and I questioned him about that and -- do
2 you recall that, sir? I thought you told me you
3 still didn't want, or did you tell me you did, I
4 can't remember?

5 MS. HERRING-LASH: Your Honor, what happened
6 was he was here pro se and you spoke with him about
7 an attorney. He was adamant he did not want one
8 but when he got back to the jail he filed this
9 motion to have an attorney.

10 THE COURT: I got you. So let me ask you,
11 Mr. Burns, do you now want an attorney appointed to
12 represent you?

13 THE DEFENDANT: No, at this time, right now I
14 really don't know what I want because first I have
15 another motion before the Court.

16 THE COURT: I understand that, sir, but the
17 way motions are disposed of are at the Court's
18 prerogative, they go in the order I take them, so
19 we're going to deal with this one first and I need
20 to know if you desire to have counsel?

21 THE DEFENDANT: At this time I don't.

22 THE COURT: I'm going to mark that motion as
23 withdrawn since you have indicated you do not want
24 legal counsel at this time.

25 So, the motion that was filed, request for

1 appointment of counsel dated July 28, 2011, will be
2 marked as withdrawn, as Mr. Burns indicated to the
3 Court that he does not want appointment of counsel.

4 The next motion that was filed was October
5 10th of 2011, where Mr. Burns is asking for an
6 emergency hearing and an injunction and TRO, okay?
7 The gist of what Mr. Burns is asserting is that
8 he's not being allowed writing implements at the
9 jail, they are confiscating his legal documents
10 from his cell and that he wants that to stop
11 because he's being prejudiced and it's affecting
12 his right to a fair trial.

13 Is that it in a nutshell, Mr. Burns?

14 THE DEFENDANT: It's a lot more to it than
15 just that.

16 THE COURT: Well, I'm reading from what you
17 wrote. That is what you wrote. Is that a summary
18 of what you wrote in this motion?

19 THE DEFENDANT: Not in a nutshell. It is a
20 lot more to it than just that.

21 THE COURT: That wasn't my question. My
22 question is was that an accurate summary of what
23 you wrote in the document you filed in October?

24 THE DEFENDANT: It's a summary but not an
25 accurate summary. It leaves out a lot of

1 information. This all started occurring because I
2 discovered that individuals at the county jail were
3 taking monies out of inmates' accounts, money that
4 I have in my account to use in my defense has been
5 confiscated from me.

6 THE COURT: Did I leave that part out, I
7 apologize. All right, so what is it you're seeking
8 from the Court, Mr. Burns?

9 THE DEFENDANT: Right now they have documents
10 they have taken from me, that I don't have. I had
11 documents taken from me as late as last week that I
12 received from an attorney, Mr. Samuel Allen, they
13 confiscated those documents because those documents
14 pertained to the fact that monies were being taken
15 out of my account. Those documents also, the stack
16 of documents they took, they also pertain to my
17 criminal case.

18 THE COURT: Did you buy things from the
19 canteen or otherwise with that money that should
20 have been taken out of your account?

21 THE DEFENDANT: Yes, I bought things from the
22 canteen.

23 THE COURT: When they have taken money out
24 for that purpose?

25 THE DEFENDANT: They took money out for that

1 purpose, along with a lot of other things as well.

2 THE COURT: What else would they have taken
3 money out for? They have to account every time
4 they go into your inmate account.

5 THE DEFENDANT: I have documented proof they
6 took money out of my account unaccounted for.

7 THE COURT: Like what?

8 THE DEFENDANT: \$250 something dollars
9 refunded to me from South Carolina Department of
10 Corrections, I had money from the Charleston County
11 Clerk of Court, I had money from Attorney David
12 Lowe's office. Those monies, rather than adding it
13 to my account, they subtracted the amount of money
14 from my account. When I presented the money, when
15 I presented the facts to the person in charge of
16 the financial office they at first reviewed
17 everything and agreed the monies were missing. The
18 money is still missing but the people at the jail
19 responsible are refusing to put the money back in
20 my account.

21 THE COURT: Sir, I have no control over that.

22 THE DEFENDANT: As a result of that, they
23 came to my cell, confiscated all my legal stuff,
24 went through my legal papers and started
25 confiscating documents from me which included the

1 documents that they thought, the only documents
2 they thought I had proof of money being taken.
3 Along with that, they took a lot of documents that
4 pertain to my criminal case.

5 The first motion that was filed, which you
6 indicated you have before you, is dated October
7 10th, it was a motion that I had filed prior to
8 October 10th, that was filed on September 20th.
9 That motion was a request for recusal of you
10 because I don't feel like I can have a fair hearing
11 or trial standing before you.

12 THE COURT: I was not aware of that notion
13 but I will see if I can locate it. No, sir, there
14 is no such motion in the file. The last motion
15 before the one I referred to, September 20, which
16 was a motion to compel discovery -- oh, I see right
17 here, I apologize, September 20, motion for recusal
18 of me.

19 THE DEFENDANT: If I may continue, Your
20 Honor?

21 THE COURT: Sir, your motion will stand on
22 its own merits and I will mark it as heard. Is
23 there anything you want to add in addition to what
24 you have already written? I don't need you to read
25 the motion into the record, as it is already a part

1 of the record and the assertions you make stand on
2 their own as part of the record. Is there anything
3 in addition to that that you wish to state?

4 THE DEFENDANT: Yes, ma'am. At the time --
5 well, I believe it was on June 20 when I appeared
6 before the Court, I had brought to the Court's
7 attention the fact that it was caught on video that
8 officers had went through my legal property and
9 took a lot of legal documents and discarded them.

10 THE COURT: I'm listening, I can talk to my
11 clerk and listen to you at the same time, we're
12 multi-faceted, that is how we can raise children
13 and work.

14 THE DEFENDANT: Well, at that time it was
15 caught on video that a number of documents had been
16 taken from me and discarded. I had brought it to
17 the Court's attention and rather than the Court
18 requesting to see the video, the Court told the
19 Solicitor to have the jail to allow me to see the
20 video. I'm not the person that needs to see the
21 video personally because the --

22 THE COURT: Actually, sir, you asked to see
23 the video and I made arrangements, pursuant to your
24 request, to allow you to see the video. I have no
25 necessity to see the video. There is no reason for

1 me to see the video. You said they had taken
2 certain things out of your cell, that they had
3 destroyed them. I told you you had no independent
4 proof of that for me. You indicated you had a
5 video, that they had a video of what had taken
6 place and you wanted a copy of that video so that
7 you could have it as a part of your file and you
8 were very adamant that the video existed and what I
9 did out of an abundance of precaution, I made them
10 look into it to determine if there was a video and
11 if such a video existed, to also make arrangements
12 for the Detention Center to allow you to watch the
13 video so if in fact there was something on the
14 video you felt was germane to your defense or
15 whatever, whatever purposes you wanted to retain it
16 for, that you would have access to it, and as I
17 understand, that was done, so the Court does not
18 need to see any video of that type.

19 The things you're raising to some extent,
20 although the Court has been very generous in
21 entertaining it, I have absolutely nothing to do
22 with your defenses and to some extent are becoming
23 a gross waste of the Court's time. Now, I have out
24 of an abundance of precaution, because you're
25 representing yourself, entertained a lot more than

1 the Court would ever entertain from legal counsel
2 because I want you to perceive the system is fair
3 and you're being treated fairly. But what you need
4 to focus on at this point is your defense and
5 garnering information to support your defense.

6 All the things you are now raising about the
7 jail are administrative matters that I have
8 absolutely no control over, absolutely no control
9 over. I can't direct the jail to do anything and
10 really technically you're supposed to be pursuing
11 these things through the administrative process of
12 the jail, so I really don't have to entertain these
13 motions at all but out of an abundance of
14 precaution I have because I want to give you that
15 opportunity to feel that you're having it heard in
16 an objective forum.

17 Technically all these things you are doing
18 you are supposed to be following the administrative
19 process at the jail, the Court has absolutely no
20 authority over any of those things. For example,
21 if they are taking money out of your accounts there
22 is a process you can go through to determine if
23 that has happened and to pursue that.

24 If you feel they are taking papers from your
25 cell, that is a whole another story because you are

1 representing yourself and I need to make sure that
2 you do have access to those documents that you feel
3 you need to have access to to represent yourself,
4 but to the extent all of these other extraneous
5 matters that I have no control over, I think the
6 last time we spent almost an hour, probably over an
7 hour on a hearing over which this Court had no
8 control over three-quarters of the things that you
9 raised but even out of an abundance, way out of an
10 abundance of precaution I even required them to
11 turn over things to you that you really had no
12 legal access to or right to but I still asked them
13 to turn it over to you if they had it in their
14 possession because I wanted you to have access to
15 it if you felt it could assist in your
16 representation.

17 So, I didn't need to look at a video. If you
18 feel they have done things in your cell or
19 otherwise I mandated that they make the video
20 available to you.

21 One, was there a video, and did you have an
22 opportunity to review it?

23 MS. HERRING-LASH: Yes, Your Honor I reviewed
24 it all.

25 THE COURT: What did he request?

1 MS. HERRING-LASH: What he believes, out of
2 his rendition of it, when he gets some of his
3 property removed it is because he has violated the
4 rules and he is put in a different status and
5 you're not allowed to have as much material when
6 you're in that status.

7 THE COURT: When you say violated the rules,
8 what --

9 MS. HERRING-LASH: Well, he has had incident
10 reports, numerous incident reports of violations
11 at the jail.

12 THE COURT: Of what type?

13 MS. HERRING-LASH: Assaults and weapons
14 possession, possession of county property, indecent
15 exposure, destruction of county property, refusing
16 to obey orders, attempt to escape, alcohol
17 possession, riot inciting, riot incited,
18 interfering with law enforcement, lying to staff,
19 verbal abuse of staff, those are some of them.

20 THE COURT: As a result, that changes his
21 status to a more restricted status?

22 MS. HERRING-LASH: Right. Captain Keyes is
23 here.

24 THE COURT: I'm going to ask Captain Keyes.
25 Just so the record is clear, that put him in a more

1 restricted status?

2 MS. HERRING-LASH: Yes, and the video shows,
3 they do not destroy this material, they simply put
4 it in a container and safe-keep it, and it's in the
5 video, he can look at it, they take paper by paper,
6 they had to make sure there is not something like a
7 razor blade in it, and Captain Keyes has showed me
8 many videos but that one in particular --

9 THE COURT: So, his stuff is being
10 safeguarded until his status changes and then it
11 will all be returned to him?

12 MS. HERRING-LASH: There are not many days
13 there is not some kind of infraction.

14 THE COURT: Lieutenant Keyes, Captain, I
15 apologize, Captain Keyes, is that correct, that you
16 all have kept his things, you have safeguarded
17 those?

18 CAPTAIN KEYES: Yes.

19 THE COURT: What status is he in right now?

20 CAPTAIN KEYES: He is cleared. He isn't in
21 disciplinary. If there is violation --

22 THE COURT: So, his status right now is clear
23 or is it disciplinary?

24 CAPTAIN KEYES: It's clear.

25 THE COURT: Is he going back in regular

1 population?

2 CAPTAIN KEYES: Not regular population but
3 going to get his property back.

4 THE COURT: When will he receive his property
5 back?

6 CAPTAIN KEYES: He has already.

7 THE COURT: When should he have received
8 this?

9 CAPTAIN KEYES: That was the 23rd.

10 THE COURT: Of what month?

11 CAPTAIN KEYES: He should have it already, I
12 don't have the exact date.

13 MS. HERRING-LASH: October.

14 THE COURT: How was it, when you all
15 safeguarded it, did you put it in a container, an
16 envelope?

17 CAPTAIN KEYES: No, it's in a container and
18 we have a storage room.

19 THE COURT: So, you have already returned
20 that container to him?

21 CAPTAIN KEYES: Yes.

22 THE COURT: He has alleged that you all
23 basically are arbitrarily going in his room and
24 destroying materials, his legal materials that are
25 necessary and essential to his defense.

1 CAPTAIN KEYES: That is not true, Your Honor.

2 THE COURT: Do you all do regular security
3 checks?

4 CAPTAIN KEYES: We do security checks and
5 with him most of his activity is monitored.

6 THE COURT: Is that for his safety?

7 CAPTAIN KEYES: Yes.

8 THE COURT: What has prompted you all to do
9 that?

10 CAPTAIN KEYES: We have had, he has
11 masturbated in front of the officers, we had to go
12 in and do a property check for his safety,
13 different incidents.

14 MS. HERRING-LASH: He covers his window with
15 paper, toilet paper so they can't see in, then they
16 have to go in.

17 THE COURT: So a lot of this stuff is being
18 precipitated by Mr. Burns, is that what you're
19 basically telling us?

20 CAPTAIN KEYES: That's correct, Judge.

21 THE COURT: What safeguards do you all have
22 in place? In other words, I know you all allow,
23 the cells have to be searched for safety, but as a
24 policy how do you all determine what is legal
25 papers and what is not, what is contraband?

1 CAPTAIN KEYES: Contraband for us is anything
2 we don't issue. A magazine or something, we take
3 it. Like for his case we gave him additional
4 boxes, you know, we don't do it for everybody, the
5 only time we take it from him, if he had some
6 disciplinary action and his status changed.

7 THE COURT: What you're basically telling me,
8 his cell goes untouched unless his status changes,
9 then you all basically box it all up, put it in the
10 storage area and then when his status changes you
11 give it back?

12 CAPTAIN KEYES: Sometimes we have regular
13 searches, no matter what, he might be searched
14 then.

15 THE COURT: And you all have shown him the
16 video he said he requested at the last hearing,
17 that I asked you all to show him?

18 CAPTAIN KEYES: Yes.

19 THE COURT: Any of them show you all
20 destroying any of his material?

21 CAPTAIN KEYES: No.

22 THE COURT: Okay. Miss Herring-Lash, as an
23 officer of the court you watched them and can you
24 certify none of the videos show any of his
25 materials being destroyed?

1 MS. HERRING-LASH: Yes, Your Honor. I
2 watched several others.

3 THE COURT: Exactly what they have been
4 doing?

5 Captain Keyes, my other question is, have you
6 all looked at his allegations regarding, although I
7 have no authority over it, we're here, we might as
8 well try to deal with it, he indicated that certain
9 monies have been stolen from his canteen account.
10 Have you all looked into that?

11 CAPTAIN KEYES: I'm pretty sure the cash
12 office did, I didn't handle that, but I will check
13 on that when I get back.

14 THE COURT: Could you do that for me? I
15 assume the cash office has given him a full
16 accounting of what has been put in and subtracted
17 and that if he has some dispute about that what is
18 the procedure for him to challenge that?

19 CAPTAIN KEYES: He can put in a grievance.
20 I'm pretty sure they came to his cell and talked to
21 him already.

22 THE COURT: So it's the same with the
23 Department of Corrections, he would file a
24 grievance, get a hearing and if he didn't like that
25 he could appeal it within the chain of that

1 administrative procedure, correct?

2 CAPTAIN KEYES: Correct.

3 THE COURT: Okay.

4 Miss Herring-Lash, have you all given him all
5 the discovery he requested since the last hearing?

6 MS. HERRING-LASH: Yes, Your Honor.

7 THE COURT: Now, he had another motion in
8 here about some discovery that he filed on
9 September 20. Actually that is the recusal motion,
10 that is not, it says discovery but that is not
11 really what it is. The front page says motion to
12 compel discovery but then the other says recusal.

13 Does the State have any position on his
14 request for recusal, Miss Herring-Lash?

15 MS. HERRING-LASH: Your Honor, I don't think
16 there is any reason for the Court to be recused.

17 THE COURT: Captain Keyes, is there anything
18 else you want to share with the Court based on
19 these allegation Mr. Burns has made regarding his
20 motion?

21 CAPTAIN KEYES: No, ma'am.

22 THE COURT: Was there any other information
23 you would need to elicit from Captain Keyes, Miss
24 Herring-Lash?

25 MS. HERRING-LASH: No.

1 THE COURT: Mr. Burns, did you have any
2 questions of Captain Keyes regarding your
3 allegations, your motion?

4 THE DEFENDANT: Yes, ma'am, I do.

5 THE COURT: Sure, go ahead and ask him.

6 THE DEFENDANT: In here --

7 THE COURT: Right from there.

8 THE DEFENDANT: Captain Keyes, I have a
9 letter from Major Smith which clearly indicates
10 that some papers were taken out, some papers were
11 taken out of my cell and thrown in the trash,
12 destroyed. On the video, the video also shows that
13 papers were taken out of my cell and discarded in
14 the trash. Would it be fair to say that it's your
15 opinion, Captain Keyes, he lied?

16 CAPTAIN KEYES: I can't say for Captain
17 Smith.

18 THE DEFENDANT: Some things were taken out of
19 my property and discarded according to my testimony
20 and according to the judge now. Is it your
21 position no paper was taken out of this cell?

22 CAPTAIN KEYES: The video we watched, nothing
23 was taken out.

24 THE DEFENDANT: If Major Smith watched the
25 same video and he saw something different, that

1 would mean he was lying?

2 CAPTAIN KEYES: I can only tell you what we
3 seen, and nothing was taken in the video we
4 watched.

5 THE DEFENDANT: Could I pass this and ask him
6 to read it?

7 THE COURT: What is it you are referring to?

8 THE DEFENDANT: A letter from Major Smith
9 which clearly indicates some documents were taken
10 and discarded. I watched the same video and I saw
11 documents being taken off and being discarded. I
12 also watched Officer Perry take certain documents
13 and throw it in the trash can. That is why I had
14 went, at the previous hearing I requested that the
15 Court review the video because I presented that
16 document also to the Court and which clearly
17 indicated that there was a video, I knew that video
18 existed, I knew what was on the video and I asked
19 the Court review the video so the Court could make
20 the determination as to the documents were being
21 discarded.

22 MS. HERRING-LASH: Your Honor, the letter
23 says nothing was discarded but trash.

24 THE DEFENDANT: Who determines whether this
25 sheet of paper is trash, this paper is a legal

1 document? Captain Keyes or none of his officers
2 cannot go through my legal papers and tell me this
3 piece of paper is trash, they don't have that
4 authority, they don't have that right. The South
5 Carolina Supreme Court ruled that not even a judge
6 hearing a motion for discovery has the right to
7 determine the relevancy or admissibility of
8 evidence, that is something that is preserved for
9 the trial judge, so if a judge hearing motion for
10 discovery don't have that authority, surely the
11 officers at the Charleston County Detention Center
12 don't. The bottom line is they have taken
13 documents from me.

14 At trial that video will be subpoenaed. If
15 it is determined that they have been taking
16 documents out of my property and discarding it,
17 then that means I cannot get a fair trial and that
18 is what the whole, this whole thing boils down to.
19 Miss Herring-Lash, well, she is going to always
20 claim that nothing is being done wrong, nothing is
21 being done wrong and everything is always just
22 hunky-dory, but it isn't hunky-dory.

23 THE COURT: I have known Miss Herring-Lash a
24 long time, I have known you probably going on a
25 year. I have known her probably a lot longer than

1 you and it has been my experience with her she has
2 a very strong moral compass and if something is
3 going wrong she isn't going to take it,
4 irregardless of who will be upset. I feel very
5 comfortable saying she would tell them it should be
6 corrected if there is something wrong. That is
7 based on my experience with her. We are not
8 personal friends, we don't socialize, I have no
9 contact with her outside court, that has been my
10 experience, she says it just like it is and until
11 something else changes that is going to be my
12 opinion of her. I have never had any experience
13 contrary to that, I have never had any experience
14 with her when she has misled me, so based on that
15 experience, she and the County Detention Center
16 serve very different functions, she has no reason
17 to run interference for the Detention Center, so I
18 have to have a different perspective on that.

19 But since there is no discovery that is
20 outstanding and the State has already provided you
21 all your discovery, you have not met any burden of
22 proof to indicate that an emergency injunction or
23 TRO would be appropriate. I find Captain Keyes'
24 representation to the Court credible, I think that
25 you were having, based on the last hearing, several

1 disciplinary infractions or violations at the
2 detention center. I am now clear that when that
3 happens they change your status, that they record
4 everything that happened and they safeguard your
5 items and when that status is changed they return
6 those items to you. You have not presented
7 anything to the Court contrary to that, so that
8 motion would be denied.

9 Now, as regards your motion for the Court to
10 recuse itself, I am not foolhardy enough to believe
11 I'm the only judge in the circuit that can hear a
12 case and so that is not this Court's posture, nor
13 do I believe I'm indispensable. However, there are
14 certain benchmarks that the Court needs to look at
15 for recusal, and the Court always has to be mindful
16 of the prospect of judge shopping.

17 Judges make unpopular decisions, it is just
18 the nature of what we do for a living and
19 oftentimes people disagree with those decisions and
20 when they don't like the way they are going they
21 often want to have someone else hear it. But there
22 are five, six judges that rotate in and out, so
23 eventually at some point, I have no clue who is
24 going to hear your case when it finally comes to
25 trial, it could be one of six different people or

1 even more than that if we resume traveling, so
2 there is no guarantee I'm going to be hearing your
3 trial, and I don't know that -- of course the
4 motions rotate every Friday. Because of the
5 emergency nature of what you posed in your motion
6 it was heard by me in my capacity as chief
7 administrative judge but I would find for the
8 record that there has been no showing of any
9 alleged bias by this Court, that when there is an
10 allegation of bias that bias must be personal as
11 distinguished from judicial. That bias must stem
12 from some extrajudicial source and which makes a
13 decision of the Court not based on the merits and
14 that decision must not be based on consideration
15 other than what the judge learned from their
16 participation in the case. A motion to recuse
17 cannot be predicated on the judge's ruling on the
18 case before him or her or on a ruling of a related
19 case or on his demonstrated tendency to rule on a
20 particular matter or a particular judicial leaning
21 or attitude derived, and I emphasize, from his or
22 her experience on the bench. That is really what
23 the nature of your motion is, that based on my
24 demonstrated tendency to lean, to rule toward a
25 particular way based on my experience with this

1 case, that I should recuse myself.

2 There has been no showing of extrajudicial
3 bias, no showing that I have any personal bias
4 against you or that any bias stems from any
5 extrajudicial sources or that my decisions have
6 been made from information other than what I have
7 learned from my participation in your motions,
8 therefore that motion is denied and that is based
9 on Murphy versus Murphy, Roper versus Dynamic
10 Concepts, Diggs versus Berkeley County School
11 Commission, Ellis versus Proctor & Gamble,
12 Christianson vs. Michael.

13 Thank you so much, Mr. Burns.

14 What we will do, Lieutenant, I keep wanting
15 to call you Lieutenant, I know you're a Captain
16 now, what I need you to do for me, I'm certain you
17 all will continue to record things for his
18 protection as well as yours, I don't know what, how
19 do you designate what you would characterize as
20 trash?

21 CAPTAIN KEYES: If it's paper goods it's
22 discarded.

23 THE COURT: Something balled up that looks
24 like it's of no value?

25 CAPTAIN KEYES: Right.

1 THE COURT: Anything that is a piece of
2 paper, you're not going to destroy it, correct, and
3 his papers have already been returned to him,
4 correct?

5 CAPTAIN KEYES: Yes.

6 THE DEFENDANT: No.

7 THE COURT: In what condition were they
8 returned? Were they returned in a box or plastic
9 container? How were they returned?

10 CAPTAIN KEYES: He has three boxes.

11 THE COURT: In his cell?

12 CAPTAIN KEYES: Yes.

13 THE COURT: And you don't recall what date it
14 was returned?

15 CAPTAIN KEYES: No, ma'am.

16 THE COURT: Was it within the last week?

17 CAPTAIN KEYES: Yes.

18 THE COURT: Okay. The Court would find no
19 basis for TRO, restraining order, it is within the
20 he prerogative of the jail how they handle
21 disciplinary matters, the status they assign to
22 those that are in pretrial detention or serving a
23 90 day sentence, that is promulgated by state
24 regulation or statute, it is not for this Court to
25 interfere with that. There are public policy

1 resons for that, as well as reasons for the safety
2 of the inmate. As such, the Court has not heard
3 anything that would rise to the level of this
4 individual suffering any prejudice or any
5 prejudiced representation.

6 Mr. Burns, I have told you this several
7 times, I think you should give it some thought, if
8 you don't that's fine because ultimately it's your
9 decision but you need a lawyer, you need somebody
10 to walk you through this process, you need someone
11 to assist you in your defense.

12 You are facing now eleven indictments, all of
13 which carry really significant time. If you want
14 to represent yourself that's fine, we have people
15 represent themselves on serious charges all the
16 time but I will tell you this. I'm a lawyer and I
17 don't represent myself. If something comes up I
18 have a lawyer on retainer I call because I can't be
19 objective about my own situation, and you need
20 somebody that can be objective, that can assess
21 your case, that can look at it and help you, and
22 even if you decide you still want to represent
23 yourself and just want somebody to sit at the table
24 with you to help you with objections you need
25 somebody to help you walk through what is really,

1 I'm going to use the analysis, I had a dance
2 teacher say to me once, it has been profound enough
3 to stick with me through my life, she said people
4 that do things inordinately well really do others a
5 disservice because they make a very complicated
6 process look effortless, and that is what lawyers
7 do, they make something very complicated look
8 effortless and as a result people think they can do
9 it. It is almost like if I thought I could fix
10 plumbing in my house, when my plumber comes and he
11 does something it looks simple to him but if I
12 tried to do it myself I would make a mess of it.
13 He makes it look simple because he does it all the
14 time.

15 If you don't want a lawyer that's fine but I
16 strongly suggest you allow the Court to appoint
17 counsel to you. Think about that, go over it the
18 next few days and let me know, or simply when the
19 screener comes to the jail the next time you need
20 to make them aware you want to be screened and have
21 someone appointed to represent you.

22 Miss Herring-Lash, when do you think you all
23 will deal with this coming to trial?

24 MS. HERRING-LASH: Your Honor, I think it
25 will probably be in, say, around March.

1 THE COURT: March of 2012?

2 MS. HERRING-LASH: Yes, Your Honor.

3 THE COURT: And are you going to try all
4 these at the same time or are you going to try them
5 separately?

6 MS. HERRING-LASH: There will be three that
7 will be tried together.

8 THE COURT: And then you -- do any of these
9 subject him to LWOP notice or --

10 MS. HERRING-LASH: I don't know.

11 THE COURT: Do you think any of them are
12 classified as serious or most serious?

13 MS. HERRING-LASH: They are but many of them
14 occurred before --

15 THE COURT: The change in the statute?

16 MS. HERRING-LASH: The one, the conviction he
17 has that is most serious was, happened after these
18 charges.

19 THE COURT: Okay, I got you.

20 MS. HERRING-LASH: So I will look again but I
21 think the timing --

22 THE COURT: I just wanted to make sure that
23 he wasn't going to be subjecting himself to
24 enhanced penalties without realizing it. I assume
25 he is not subject to the first and second

1 appearance since he's in pretrial detention.

2 Have you all extended any, but still with
3 that timeline, are you going to be extending any
4 offers to him in writing?

5 MS. HERRING-LASH: I will.

6 THE COURT: Please do that and make sure
7 that, especially in his pro se capacity, that he
8 understands those offers expire. Okay?

9 MS. HERRING-LASH: Okay.

10 THE COURT: Thank you all very much.

11 THE DEFENDANT: There is another motion
12 pending.

13 THE COURT: what is that?

14 THE DEFENDANT: A motion to compel.

15 THE COURT: I did not see a motion to compel,
16 sir. What is it about, what date did you file it?

17 THE DEFENDANT: August 9th, 2011.

18 THE COURT: I think we have already dealt
19 with that.

20 THE DEFENDANT: Actually it was one of the
21 bases for my request for recusal. When I first
22 filed my request for discovery you and the
23 Solicitor had exparte --

24 THE COURT: Sir, I have never had any exparte
25 conversation about you or any other case. My

1 office is locked down like a sieve. I have
2 safeguards in place for a reason, nobody gets to me
3 until they get through my secretary and I can tell
4 you that is 99.9 percent unlikely. My family has a
5 problem getting to me in my office. You have to
6 fully explain what it is you need access for. I
7 assure you Miss Herring-Lash and I have never had
8 any discussion about you or about this case for
9 this very reason.

10 You need to tell us what it is you're
11 requesting so I can make sure you have it and can
12 prepare your defense.

13 THE DEFENDANT: Rule 49, Rule 43(J) gives the
14 moving party the right to open in full --

15 THE COURT: Are you referring to the criminal
16 rules or the civil rules?

17 THE DEFENDANT: Civil rules.

18 THE COURT: Civil rules don't apply.

19 THE DEFENDANT: The Supreme Court also
20 realized the moving party in the criminal case has
21 the right to open and close in full. Every time I
22 start to say three words I'm cut off.

23 THE COURT: Actually criminal rules are
24 absolutely different. The criminal rules provide
25 that you say what the basis is for what you want,

1 the only time the criminal court is required to
2 have argument is if the Court asks for it to aid it
3 in making a decision. The rules are very
4 different. If the Court does not need argument to
5 aid it in its decision the Court does not have to
6 take argument in a criminal case.

7 Now, having said that, the transcript will
8 reflect that I have let you talk a lot and made
9 full argument on every motion you have ever had, so
10 the rules that you cite are inaccurate and they are
11 inapplicable. If there is some discovery you need
12 you need to tell me what it is so I can give it to
13 you. I have given you everything you asked for in
14 the past. What exactly is it you're asking for
15 that you have not yet received?

16 THE DEFENDANT: Actually you haven't. When I
17 appeared in court on that morning, that was the
18 morning that the Solicitor handed me a discovery
19 package, I had not had time --

20 THE COURT: Tell me exactly -- listen to my
21 question. Tell me exactly what it is you're
22 requesting from the State that you have not yet
23 received, that I need to ask them to give to you?

24 THE DEFENDANT: Any and all Sheriff's
25 Department phone call logs and any documents which

1 outlines and describes the chain of command, the
2 receiving process, investigating and disposing
3 of --

4 THE COURT: I think we already determined that
5 didn't exist.

6 THE DEFENDANT: Actually I have discovered
7 that actually does exist because officers or
8 detectives don't just go out and investigate
9 haphazardly, they have to have rules and procedures
10 to follow.

11 THE COURT: I have heard that motion in full
12 before and I have had them investigate whether such
13 a document exists and it doesn't.

14 THE DEFENDANT: Not this motion, ma'am.

15 THE COURT: Are you asking, are you asking
16 for the very same thing that you asked for before
17 and we determined that such document does not
18 exist?

19 Mr. Keyes, he wants to know if there is a
20 manual on how you handle documents at the jail?

21 THE DEFENDANT: No, that is not it.

22 THE COURT: That is not any notion you filed
23 with the Court.

24 THE DEFENDANT: The matter I'm referring to
25 doesn't even apply to the Charleston County

1 Detention Center.

2 THE COURT: Who does it apply to?

3 THE DEFENDANT: It applies to the detectives
4 in the criminal investigation.

5 THE COURT: Yes, we covered that the last
6 time we had a hearing.

7 THE DEFENDANT: Actually we didn't cover
8 that.

9 THE COURT: At length, did we not, Miss
10 Herring-Lash?

11 MS. HERRING-LASH: He was provided the Mt.
12 Pleasant protocol and the county did not have one.

13 THE COURT: That is what I thought.

14 THE DEFENDANT: Actually we didn't cover
15 that. You and Miss Herring-Lash had a discussion
16 because I didn't know anything about what was going
17 on.

18 THE COURT: Sir, was it not in open court?

19 THE DEFENDANT: Ma'am?

20 THE COURT: Was it not in open court? Answer
21 the Court's question, were we not in open court?

22 THE DEFENDANT: We were in open court and you
23 and the Solicitor --

24 THE COURT: That is not an exparte
25 communication. In a private conversation you don't

1 have a court reporter. You asked for a document, I
2 clearly referred to whether it existed and I
3 instructed her to make an investigation as to
4 whether it existed and I gave her direct
5 instruction that whatever existed was to be turned
6 over to you, so apparently --

7 THE DEFENDANT: That is not true.

8 THE COURT: Don't overspeak the Court, Mr.
9 Burns, don't do that, it is not appropriate.
10 Whatever existed, I instructed her to turn over to
11 you, so apparently Mt. Pleasant had something that
12 she turned over to you and no such document exists
13 for Charleston, which is what my memory was of what
14 actually had transpired, so that motion has already
15 been disposed of.

16 Now, if you feel that such a document exists
17 you need to fill out a criminal subpoena ducis
18 tecum and you need to subpoena that from them.

19 THE DEFENDANT: You can't subpoena anything
20 because the Clerk of Court doesn't issue subpoenas
21 in accordance with the rules of court.

22 THE COURT: Actually rules are promulgated on
23 criminal subpoenas, I suggest you read them.

24 THE DEFENDANT: I have. There is also a
25 couple other issues.

1 THE COURT: Okay, what are they?

2 THE DEFENDANT: Items I requested, any and
3 all --

4 MS. HERRING-LASH: These are discovery
5 requests he has filed before.

6 THE COURT: Filed previously?

7 THE DEFENDANT: No, it is not.

8 THE COURT: Sir, what is the date on the
9 document you're referring to?

10 THE DEFENDANT: May 30, 2011.

11 THE COURT: Yes, we have already heard that
12 motion.

13 THE DEFENDANT: No, ma'am, we did not hear
14 this motion.

15 THE COURT: Yes, sir, we did hear this
16 motion.

17 THE DEFENDANT: This is not a motion filed
18 before the Court.

19 THE COURT: Pardon me?

20 THE DEFENDANT: When I made my discovery
21 request, ma'am, my discovery was not on record with
22 the Court, I just filed my discovery request,
23 according to the procedures, with the Solicitor.

24 THE COURT: I will tell you what I have in
25 this file. I have a motion dated 7/20, a motion

1 dated August 9th, I have one dated July 20 and then
2 I have one dated October 10th. That is it, that is
3 all I have in my file.

4 THE DEFENDANT: Would you like to see it,
5 ma'am?

6 THE COURT: I believe -- you can read it but
7 I believe it is exactly what you have already asked
8 for and we have already gone over before for an
9 hour and a half.

10 THE DEFENDANT: I requested in April all
11 booking reports. I have been booked into the
12 county jail and I know they do have booking records
13 on me, and the Solicitor failed to produce those.
14 I requested any and all mugshots and fingerprints.

15 THE COURT: We have already gone over this.
16 Miss Herring-Lash, have you provided this stuff?

17 MS. HERRING-LASH: He has been provided what
18 we have. I think the last time he said to the
19 Court, "I just got this discovery, I hadn't had a
20 chance to look at it yet."

21 THE COURT: Are there any booking reports
22 that you all have?

23 MS. HERRING-LASH: I'm sure we do.

24 THE COURT: Did you provide them to him in
25 discovery?

1 THE DEFENDANT: No.

2 THE COURT: I tell you what. Out of an
3 abundance of precaution why don't you all give him
4 the booking reports.

5 MS. HERRING-LASH: That's fine.

6 THE COURT: What else besides the booking
7 reports?

8 THE DEFENDANT: Names and addresses of any
9 and all gynecologists, psychologists,
10 psychiatrists, therapists, mental health, social
11 workers.

12 THE COURT: Okay, I know where you're going.
13 Haven't you provided him with all those?

14 MS. HERRING-LASH: He has all the interviews
15 and the booking reports are Rule 5 and Bates
16 stamped, but I will redo them.

17 THE COURT: If you could, accommodate him.
18 You have given him all the interview statements?

19 MS. HERRING-LASH: And most of these people,
20 being they are adults, there were no medical exams
21 done because these reports were made years
22 afterwards and the law enforcement officers took
23 their statements rather than sending them to
24 something like --

25 THE COURT: Are you telling me there are no

1 doctors, there are no psychiatrists, it is not like
2 you would have with a child or anything like that,
3 or with a rape kit?

4 MS. HERRING-LASH: No, and at trial we may
5 have an expert.

6 THE COURT: Have you identified that expert
7 to him?

8 MS. HERRING-LASH: No.

9 THE COURT: Okay. Once you identify that
10 expert --

11 MS. HERRING-LASH: I will let him know.

12 THE COURT: Sir, none of those things exist,
13 you have everything that would be available. We
14 have gone over all this before.

15 THE DEFENDANT: No.

16 THE COURT: If I had the ability I would send
17 you the transcript.

18 THE DEFENDANT: I request copies of all the
19 transcripts, I would like to request --

20 THE COURT: You have to pay the court
21 reporter.

22 THE DEFENDANT: I understand that. I need
23 his name and address.

24 THE COURT: I'm sure you can write him and
25 ask him for it. You have to write him and pay for

1 it in advance.

2 THE DEFENDANT: I understand all that, I have
3 no problem with doing none of that.

4 THE COURT: But we have already gone through
5 all this before. We went through it last hearing
6 and everything you're asking for from the State is
7 already provided to you.

8 What else is it? As I remember distinctly,
9 there are no medical reports otherwise and you have
10 already asked for those and you have already been
11 provided with all the interview statements, which
12 have all the germane and relevant information and
13 what the basis of the allegations are and who is
14 making the allegation, so you well know they are
15 adult victims and there are no medical exams.

16 THE DEFENDANT: I really don't know anything,
17 all I know is what they tell me, I'm going by the
18 record.

19 THE COURT: They will be required to turn
20 over to you what they have in their possession
21 except those thing they say don't exist. What
22 else?

23 THE DEFENDANT: Any policy and procedure
24 manuals dealing with examinations from the
25 Charleston County Sheriff's Department.

1 MS. HERRING-LASH: There were no polygraphs
2 involved in the case.

3 THE DEFENDANT: I didn't say polygraphs, I
4 said policies and procedures manuals.

5 THE COURT: For what purpose would that be
6 relevant?

7 THE DEFENDANT: It is.

8 THE COURT: You have to tell me why it is.

9 THE DEFENDANT: Because I would like to know
10 why they did not take polygraph examinations of
11 myself or any of the victims when they are alleging
12 things that supposedly happened some close to
13 thirty years ago.

14 THE COURT: This is all coming back to me, we
15 have heard all this.

16 THE DEFENDANT: You all have had discussions
17 on this.

18 THE COURT: We have?

19 THE DEFENDANT: I wasn't involved in
20 discussions, I --

21 THE COURT: Mr. Burns, we have already, I
22 have already gone over all this discovery you have
23 requested and I have already made rulings on all of
24 these things, so we're not going back and rehash
25 those.

1 Okay, thank you all very much.

2 THE DEFENDANT: It will be brought back up in
3 trial.

4 THE COURT: That's fine.

5 THE DEFENDANT: Because I understand you're
6 sitting here right now and you have been giving aid
7 to the State the entire time throughout this entire
8 case, that is the the reason why I asked you to be
9 recused.

10 THE COURT Mr. Burns, the Court has ruled.
11 There is to be no further discussion, have a good
12 day.

13 DEPUTY SHERIFF: Come on.

14 THE DEFENDANT: I'm getting this. Stand
15 back, I'm getting it.

16 (Hearing Concluded).

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
2011-GS-10-3387, 3390, 4776
4778, 4779, 3388, 3389
3391, 3392, 4777, 3172, 3173

STATE OF SOUTH CAROLINA
Plaintiff

V.

ALAN L. BURNS,
Defendant.

TRANSCRIPT OF RECORD

June 15, 2012
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. Debbie Herring-Lash, Assistant Solicitor
Representing The State

Mr. Alan Burns, In Proper Person
Ms. Lori Proctor, Assistant Public Defender
Mr. Ted Smith, Assistant Public Defender
Representing the Defendant

Anne Bouley Meyer, RPR
Circuit Court Reporter

1 THE COURT: We are here, I think we had a status
2 conference concerning some matters, one of which was
3 the -- had to do with the exemplar, I think.

4 MS. Proctor, I'd be happy to hear form you.

5 MS. PROCTOR: Yes, sir. It is my understanding
6 that the State had already done the exemplar.

7 Is that correct, Debbie?

8 MS. HERRING-LASH: From the victim.

9 MS. PROCTOR: From the victim.

10 THE COURT: Mr. Burns, through you, you
11 indicated Mr. Burns thought I had ordered that that
12 process be videoed? Is that --

13 THE DEFENDANT: I was asking that it be videoed.

14 THE COURT: You asked that, I denied that.

15 THE DEFENDANT: But I hadn't asked that at the
16 previous hearing.

17 THE COURT: well I deny that. I don't think
18 that's necessary. Thank you, sir.

19 THE DEFENDANT: Can it be done with someone from
20 the defense side?

21 THE COURT: The exemplars have been given, that
22 is what you have. That's the way it's going to be
23 done. Thank you, sir.

24 MS. PROCTOR: And It is my understanding now --

25 THE COURT: There is no reason to do that, Mr.

1 Burns. These are officers of the Court. And you are
2 not. And the reason you are not is because you are not
3 a lawyer.

4 They took an oath. And if you can find
5 something that they have done inappropriately, and
6 that's ever revealed, that's probably the most damaging
7 thing that could ever happen in your case for them, and
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9 She said, I believe your concern is that person
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11 THE DEFENDANT: I don't know whether that person
12 did or not.

13 THE COURT: They represent that that is true.
14 That's happens every day. That happens every single
15 day.

16 Just had a hearing before you came out. These
17 are the witnesses. And here are the addresses. If
18 there are other witnesses, they haven't given then they
19 have withheld something.

20 That's sanctionable, number one. And it can
21 result in all sorts of things. We never absolutely
22 verify everything. When a person says, this is the
23 exemplar, then it is until it's proven otherwise.

24 That's why I rule as quickly as I do. As I tell
25 lawyers all the time, most of the time it's in civil

1 because there is not a lot of discovery in criminal,
2 it's very limited. I wish there was, I think there
3 ought to be, but that's just my personal thoughts.
4 There have been committees working on that for years
5 and haven't come to an agreement.

6 But on the civil side, which I did it as a
7 lawyer and I did it as a judge, tons of discovery. I
8 tell people all the time. I trust what you say until
9 it's shown otherwise. Then, I may order those. Quite
10 honestly, may order those things when they have
11 demonstrated that they're not honorable and they're not
12 trustworthy.

13 I don't have any reason to believe that. So
14 that's the reason I denied it. So it's denied.

15 MS. HERRING-LASH: And, Your Honor, for the
16 record when the exemplars were taken, Mr. Smith came in
17 and observed some of that.

18 THE COURT: Mr. Smith is who?

19 MS. HERRING-LASH: Ted Smith.

20 THE COURT: Oh, Mr. Smith.

21 MS. HERRING-LASH: He came to our conference
22 room and observed some of that so he can verify.

23 THE COURT: So his adviser was present.

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25 THE COURT: I understand. But he saw something.

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3 experts, they -- they did not think they needed to be
4 present. Because you had said they had the right.

5 And Mr. Smith's expert didn't need to be there
6 in order --

7 THE COURT: Right. I said the expert could be
8 present. That's what I said.

9 MS. PROCTOR: He said he didn't need to be.

10 MS. HERRING-LASH: But they did -- mine did say
11 that if the victim gave the exemplars, that the
12 defendant needed to also.

13 And he agreed. He told Mr. Smith he would. But
14 then when they went to get his exemplars he refused.

15 THE COURT: Well, we've got to do that.

16 MS. HERRING-LASH: So we would like you to order
17 him to.

18 THE DEFENDANT: That wasn't what we agreed to.

19 THE COURT: I just ordered you to do that, Mr.
20 Burns, so do that. Okay? Thank you, sir.

21 Anything else?

22 Let me address something else, Mr. Burns,
23 because I think I need to clarify something. It may be
24 my inability to communicate. I'm not blaming you. And
25 you are doing exactly what you should do when you have

1 a question. I want you to say, wait a minute, that's
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3 Don't have a problem with that.

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9 to have this case. And you wanted to represent
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11 But that means you don't have a law firm.
12 They're not people that you can just direct and do what
13 you want done at your beck and call. Do you understand
14 that?

15 THE DEFENDANT: Okay. I understand what you are
16 saying.

17 THE COURT: And I understand how it can be
18 confusing when I say they're going to help you. It's
19 not like -- I had a law firm and at one time we had six
20 lawyers who all worked together. And we all helped
21 each other.

22 If somebody had a case, we would be working with
23 them all the time. I may not try the case, but I would
24 be out doing things, I would be talking to witnesses, I
25 may be getting statements, doing all kinds of things.

1 But that's not what you have. You are still a
2 sole practitioner when it comes to representing
3 yourself, okay?

4 THE DEFENDANT: Okay. So then by the same token
5 that means that when she said that Ted Smith went to
6 her exhibit --

7 THE COURT: Ted Smith, he did something above
8 and beyond he wasn't required to do. He did it to
9 accommodate you. That's what he did. Which ought to
10 be a credit. You ought to like that.

11 THE DEFENDANT: Your Honor, the thing is though
12 when we first came into court on May 29th, this is what
13 the solicitor said.

14 She said that she had two letters. And that the
15 only thing that she needed to do was get the original
16 letter from me so that once I got through having my
17 expert examine it, she would take the original letter
18 and give it to her expert so that they could examine
19 it. That's all that they requested.

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21 THE DEFENDANT: But then when they came to the
22 jail she changed up everything saying that you had
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24 She further stated that the process in which according
25 to the notes that Ms. Proctor gave me --

1 THE COURT: Mr. Burns, you know what, I will be
2 happy, we can get the court reporter to give a record
3 of that of whether I did or didn't say that at that
4 time. If I didn't then I -- we are talking about
5 exchanging discovery here. That's all we are talking
6 about it. It happens every single day.

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8 that happens that I see that again. Most of the time
9 in civil process, but that's not uncommon. That's not
10 any burden on anybody. That's not a burden on you.

11 So, okay, maybe if I wasn't clear, if I didn't
12 say it, I'm saying it now. Give them an exemplar.

13 Thank you, sir.

14 THE DEFENDANT: When do I get the exemplar from
15 them?

16 THE COURT: Sir?

17 THE DEFENDANT: The exemplar from them.

18 THE COURT: What are you talking about.

19 THE DEFENDANT: The victim is supposed to give
20 me an exemplar. That's what was first agreed. And I
21 never got that.

22 MS. HERRING-LASH: He has given -- and Mr. Smith
23 is going to give it to his expert.

24 THE COURT: So that's done. You have it.

25 Thank you, sir.

1 THE DEFENDANT: Can I talk to Ms. Proctor?

2 THE COURT: I will give you a break to speak
3 with her.

4 (Whereupon, a recess was taken.)

5 THE COURT: Mr. Burns, I understand from Ms.
6 Proctor your conversation is you don't think the
7 solicitor needs to be present when you do your
8 exemplars. Is that the essence.

9 THE DEFENDANT: Nobody from the prosecution
10 needs to be present.

11 THE COURT: I understand and that's fine. As I
12 told you before, and it's not that I'm in any way
13 suggesting -- I just don't have the oath aspect that I
14 have with the prosecutor and with a lawyer.

15 You are not a lawyer. So you don't have that
16 same that I could impose sanctions on you because there
17 is no oath that you took. I'm not saying you are not
18 going to do it.

19 What I'm going to do is ask that -- the only
20 thing that I ask is that person that I have appointed
21 to consult with you, either Mr. Smith or Ms. Proctor,
22 will be there when you do it and handle it so that she
23 represents to Ms. Herring-Lash, she is a lawyer, that
24 this is your exemplar. That's all I'm going to ask
25 that you do. But the prosecutor doesn't have to be

1 there.

2 MS. PROCTOR: Your Honor, there is a process
3 which we don't know and she just explained it.

4 THE COURT: All right. What is the process?

5 MS. HERRING-LASH: You have to use the lined
6 paper, the same as the original letter. It has to be a
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10 Then you have to go back and take like four
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12 THE COURT: Let me say this to you. Then I'm
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14 opportunity and his expert said I don't need to be
15 present as I understand, which that's fine. Until I
16 hear otherwise, I'm going to assume that's correct, and
17 that's your expert's choice.

18 Then your expert can be present. Your expert
19 can supervise it. But that's the person -- because
20 that's person that knows how it has to be done. Okay?

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22 They usually do them, but you want the --

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24 because that's the person that's going to make it. The
25 expert ought to be the one that's administering it if

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2 how else it can be supervised.

3 MS. HERRING-LASH: What the expert told me was
4 that she has always had Keith Hare do it because he has
5 been doing it for years and knows how.

6 THE COURT: Whomever the expert -- if that's a
7 tech or assistant for the expert, then that's fine.

8 MS. HERRING-LASH: He's an investigator.

9 THE COURT: If the expert says this is the
10 person that I'm sending -- what is the problem now?

11 MS. PROCTOR: He thinks that they have to give
12 him the victim's exemplar. And I said, that's
13 evidence. They don't give it to him. It goes to the
14 expert and the expert has it.

15 But he think he needs to have a copy.

16 THE COURT: When the expert finishes it, why
17 can't -- what did he say?

18 Let me hear from you, Mr. Burns.

19 THE DEFENDANT: Thank you. The same process
20 that they want to use to take an exemplar from me, I
21 would ask that they use the same process to get an
22 exemplar from the victim.

23 MS. HERRING-LASH: And that was used. It has
24 been done.

25 THE COURT: And that's what has been done.

1 THE DEFENDANT: No, Your Honor, that's not what
2 has been done.

3 THE COURT: How do you know? Were you there?

4 THE DEFENDANT: You stated that --

5 THE COURT: No, I didn't ask you that. I asked
6 you, how do you know that has not been done as she
7 stated? Were you there?

8 THE DEFENDANT: Because the defendant, I, the
9 person who represents me, was not present.

10 THE COURT: The person who represents you was
11 not present, just as you're not asking them -- you
12 represent yourself, sir, number one.

13 THE DEFENDANT: Exactly.

14 THE COURT: And you were not present. I just
15 said that Ms. Herring-Lash is not going to be present.
16 So that puts you on even basis.

17 THE DEFENDANT: Actually it don't.

18 THE COURT: Yes, actually it does.

19 Thank you, sir.

20 THE DEFENDANT: But the investigator from the
21 solicitor's office is a representative of the
22 solicitor's office.

23 THE COURT: That's fine.

24 THE DEFENDANT: Ted Smith doesn't represent me.
25 You already stated that.

1 THE COURT: He is an advisor for you. And he
2 has an obligation --

3 THE DEFENDANT: He is not my representative.

4 THE COURT: I said that, but that doesn't
5 alleviated his responsibilities as a lawyer in an
6 advisory capacity.

7 If he knows something is done wrong, he has a
8 duty to inform you. He has taken an oath to do that.
9 And he could lose his license if he didn't do that.
10 That's why I don't worry about it. Thank you, sir.

11 THE DEFENDANT: But he doesn't represent me so I
12 have worry about that.

13 THE COURT: He is your investigator insofar as
14 reporting what took place. You may rely on his
15 response.

16 Anything else, sir?

17 THE DEFENDANT: I won't rely on his response.

18 THE COURT: That's your choice, sir. Thank you,
19 sir. You are not going to be present.

20 Thank you, sir.

21 THE DEFENDANT: Then you won't get it.

22 THE COURT: That's fine.

23 THE DEFENDANT: That's fine too.

24 THE COURT: Oh, yes you will do it.

25 THE DEFENDANT: If I can't be present you won't

1 get it.

2 (The defendant exits the courtroom.)

3 THE COURT: Mr. Burns, wait a minute.

4 AN OFFICER: Come here.

5 THE COURT: Mr. Burns. Wait a minute, Mr.

6 Burns.

7 AN OFFICER: You need to come back out here.

8 AN OFFICER: Pull him out.

9 AN OFFICER: You better come back out here.

10 THE DEFENDANT: No one going to railroad me. No
11 one railroad me.

12 THE COURT: Wait a minute, Mr. Burns.

13 Well, I'm going to inform you if you don't you will be
14 in contempt of court. And I can sentence you up to a
15 year for contempt of court.

16 We will have a hearing. We will have a trial if
17 I go beyond six months. But that is what you are
18 facing. And you'll serve that before we do anything
19 else or at some point in time.

20 I'm ordering you to give an exemplar, just as I
21 ordered the State to provide it. And that will be done
22 in the fashion that we have set forth. And if you
23 choose not to, then we will bring you back here and we
24 will have a hearing on that, okay.

25 THE DEFENDANT: We can go ahead and set the

1 hearing date in the matter. I'll give an exemplar in
2 the manner in which they give me an exemplar.

3 THE COURT: Thank you, sir.

4 THE DEFENDANT: You can set the date for the
5 contempt charge.

6 THE COURT: Yes, sir, I will be happy to when
7 it's presented to me.

8 (Whereupon, the proceedings in this matter
9 before the Court were adjourned.)

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1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
2011-GS-10-3387, 3390, 4776
4778, 4779, 3388, 3389
3391, 3392, 4777, 3172, 3173

4 STATE OF SOUTH CAROLINA)
5)
6 Plaintiff)

7 V.)

TRANSCRIPT OF RECORD

8 ALAN L. BURNS,)
Defendant.)

9 July 15, 2012
10 Charleston, South Carolina

11
12 B E F O R E:

13 THE HONORABLE R. MARKLEY DENNIS, JR., JUDGE
14
15
16

17 A P P E A R A N C E S:
18

19 Ms. Debbie Herring-Lash, Assistant Solicitor
Representing The State

20
21 Mr. Alan Burns, In Proper Person
22 Ms. Lori Proctor, Assistant Public Defender
Mr. Ted Smith, Assistant Public Defender
Representing the Defendant

23
24 Anne Bouley Meyer, RPR
25 Circuit Court Reporter

1 THE COURT: We are here, I think we had a status
2 conference concerning some matters, one of which was
3 the -- had to do with the exemplar, I think.

4 MS. PROCTOR, I'd be happy to hear form you.

5 MS. PROCTOR: Yes, sir. It is my understanding
6 that the State had already done the exemplar.

7 Is that correct, Debbie?

8 MS. HERRING-LASH: From the victim.

9 MS. PROCTOR: From the victim.

10 THE COURT: Mr. Burns, through you, you
11 indicated Mr. Burns thought I had ordered that that
12 process be videoed? Is that --

13 THE DEFENDANT: I was asking that it be videoed.

14 THE COURT: You asked that, I denied that.

15 THE DEFENDANT: But I hadn't asked that at the
16 previous hearing.

17 THE COURT: Well I deny that. I don't think
18 that's necessary. Thank you, sir.

19 THE DEFENDANT: Can it be done with someone from
20 the defense side?

21 THE COURT: The exemplars have been given, that
22 is what you have. That's the way it's going to be
23 done. Thank you, sir.

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1 Burns. These are officers of the Court. And you are
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14 that's the reason I denied it. So it's denied.

15 MS. HERRING-LASH: And, Your Honor, for the
16 record when the exemplars were taken, Mr. Smith came in
17 and observed some of that.

18 THE COURT: Mr. Smith is who?

19 MS. HERRING-LASH: Ted Smith.

20 THE COURT: Oh, Mr. Smith.

21 MS. HERRING-LASH: He came to our conference
22 room and observed some of that so he can verify.

23 THE COURT: So his adviser was present.

24 MS. HERRING-LASH: Not for the whole time.

25 THE COURT: I understand. But he saw something.

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2 MS. HERRING-LASH: And after speaking with the
3 experts, they -- they did not think they needed to be
4 present. Because you had said they had the right.

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8 present. That's what I said.

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13 And he agreed. He told Mr. Smith he would. But
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16 MS. HERRING-LASH: So we would like you to order
17 him to.

18 THE DEFENDANT: That wasn't what we agreed to.

19 THE COURT: I just ordered you to do that, Mr.
20 Burns, so do that. Okay? Thank you, sir.

21 Anything else?

22 Let me address something else, Mr. Burns,
23 because I think I need to clarify something. It may be
24 my inability to communicate. I'm not blaming you. And
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3 Don't have a problem with that.

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9 accommodate you. That's what he did. Which ought to
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2 THE COURT: I will give you a break to speak
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4 (Whereupon, a recess was taken.)

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25 THE COURT: And that's what has been done.

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4 THE DEFENDANT: You stated that --

5 THE COURT: No, I didn't ask you that. I asked
6 you, how do you know that has not been done as she
7 stated? Were you there?

8 THE DEFENDANT: Because the defendant, I, the
9 person who represents me, was not present.

10 THE COURT: The person who represents you was
11 not present, just as you're not asking them -- you
12 represent yourself, sir, number one.

13 THE DEFENDANT: Exactly.

14 THE COURT: And you were not present. I just
15 said that Ms. Herring-Lash is not going to be present.
16 So that puts you on even basis.

17 THE DEFENDANT: Actually it don't.

18 THE COURT: Yes, actually it does.

19 Thank you, sir.

20 THE DEFENDANT: But the investigator from the
21 solicitor's office is a representative of the
22 solicitor's office.

23 THE COURT: That's fine.

24 THE DEFENDANT: Ted Smith doesn't represent me.
25 You already stated that.

1 THE COURT: He is an advisor for you. And he
2 has an obligation --

3 THE DEFENDANT: He is not my representative.

4 THE COURT: I said that, but that doesn't
5 alleviated his responsibilities as a lawyer in an
6 advisory capacity.

7 If he knows something is done wrong, he has a
8 duty to inform you. He has taken an oath to do that.
9 And he could lose his license if he didn't do that.
10 That's why I don't worry about it. Thank you, sir.

11 THE DEFENDANT: But he doesn't represent me so I
12 have worry about that.

13 THE COURT: He is your investigator insofar as
14 reporting what took place. You may rely on his
15 response.

16 Anything else, sir?

17 THE DEFENDANT: I won't rely on his response.

18 THE COURT: That's your choice, sir. Thank you,
19 sir. You are not going to be present.

20 Thank you, sir.

21 THE DEFENDANT: Then you won't get it.

22 THE COURT: That's fine.

23 THE DEFENDANT: That's fine too.

24 THE COURT: Oh, yes you will do it.

25 THE DEFENDANT: If I can't be present you won't

1 get it.

2 THE COURT: Wait a minute, Mr. Burns. Mr.
3 Burns. Mr. Burns, I'm going to inform you if you don't
4 do it, you will be in contempt of court. And I can
5 sentence you up to a year for contempt of court.

6 We will have a hearing. We will have a trial if
7 I go beyond six months. But that is what you are
8 facing. And you'll serve that before we do anything
9 else or at some point in time.

10 I'm ordering you to give an exemplar, just as I
11 ordered the State to provide it. And that will be done
12 in the fashion that we have set forth. And if you
13 choose not to, then we will bring you back here and we
14 will have a hearing on that, okay.

15 THE DEFENDANT: We can go ahead and set the
16 hearing date in the matter. I'll give an exemplar in
17 the manner in which they give me an exemplar.

18 THE COURT: Thank you, sir.

19 THE DEFENDANT: You can set the date for the
20 contempt charge.

21 THE COURT: Yes, sir, I will be happy to when
22 it's presented to me.

23

24

25

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2011-GS-10-3387
		2011-GS-10-3390
		2011-GS-10-4776
STATE OF SOUTH CAROLINA	)	2011-GS-10-4778
	)	2011-GS-10-4479
VS.	)	2011-GS-10-3388
	)	2011-GS-10-3389
ALAN L. BURNS,	)	2011-GS-10-3301
	)	2011-GS-10-3392
DEFENDANT.	)	2011-GS-10-4777
	)	2011-GS-10-3172
		2011-GS-10-3173

EMERGENCY HEARING

held before the Honorable Stephanie P. McDonald
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on Wednesday, August 1, 2012, Commencing at 1:59 p.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

APPEARANCES OF COUNSEL

FOR THE STATE: Debbie Herring-Lash, Esquire
9th Circuit Solicitor's Office
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Charleston, South Carolina 29402

FOR THE DEFENDANT: Pro Se

ALSO ATTENDING: L. Proctor, Esquire
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EXHIBITS

[None]

State v. Alan Burns
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PROCEEDINGS

1
2 THE COURT: Okay. Mr. Burns, I believe this is your
3 motion. We've got a request for an emergency motion
4 hearing.

5 MR. BURNS: Yes, ma'am.

6 THE COURT: Be happy to hear from you.

7 MR. BURNS: Yes, ma'am.

8 I've been having a problem for about eight or nine
9 months with officers going into my cell. They are
10 aware at the county jail that I represent myself and
11 every so often I have officers go into my cell even
12 after they have been informed by the staff at the jail,
13 and the judge at the other hearing, that anytime they
14 shake down my cell and go through my legal property it
15 should be videotaped. But whenever I leave out of my
16 cell to go into the shower or get a haircut, officers
17 sneak into my cell and go through my legal stuff --

18 THE COURT: Okay. Did --

19 MR. BURNS: -- and take legal documents.

20 THE COURT: One second.

21 Ms. Proctor, did Judge Dennis order that at the last
22 hearing? that anytime they go in his cell, that it be
23 videotaped?

24 MR. BURNS: This was done before Judge Dennis. This
25 was done since Judge Jefferson is handling the case.

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1 THE COURT: All right.

2 MR. BURNS: It's been going on for several months.
3 Captain Keys [phonetic] -- Captain Keys also came into
4 court. Ms. Herring-Lash had Captain Keys, from the
5 Charleston County Detention Center, come into court.
6 And he testified that anytime they go into my cell it's
7 videotaped for the purpose of verifying that no
8 officers are actually doing anything with my legal
9 stuff and it's more for their protection than for my
10 protection I guess because they're taking --

11 THE COURT: Okay. What do you allege was taken that
12 affects your ability to pursue your legal matter?

13 MR. BURNS: They took some -- a couple of statements
14 and affidavit.

15 THE COURT: Okay.

16 MR. BURNS: Well, not an affidavit. It was a draft,
17 a rough draft, of a letter that I was supposed to
18 write.

19 THE COURT: To whom? Unless that's part of your
20 strategy. You don't have to tell me.

21 MR. BURNS: That's a part of my strategy.

22 THE COURT: Okay. Okay. So statements, affidavits,
23 and a letter that was in draft?

24 MR. BURNS: Right.

25 THE COURT: Okay.

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1 MR. BURNS: The affidavit was in draft -- in a draft
2 form, also. It hadn't been -- actually notarized
3 anything, not yet.

4 THE COURT: Okay.

5 MR. BURNS: And they also took some articles from
6 the newspaper that I had that I was going to introduce
7 as evidence, as well.

8 THE COURT: Generally, those are not admissible in
9 evidence. But we'll hear about that in a minute.

10 Okay. Is that it?

11 MR. BURNS: Uh-huh.

12 THE COURT: All right. I'll hear from Ms. Herring-
13 Lash and then if we need to put up any witnesses, I'm
14 happy for y'all to do so.

15 MS. HERRING-LASH: Your Honor, we do have the --
16 both officers here that he alleged took the articles.
17 I think Officer Last [phonetic] would be the one that
18 did this. I can have her just come up here and be
19 sworn in and explain to you what they did, why they did
20 it, when they did it.

21 THE COURT: That will be wonderful.

22 [Whereupon, Ms. Last comes forward]

23 MS. HERRING-LASH: And just for the record, Your
24 Honor, when -- back when we had a hearing before Judge
25 Jefferson and Captain Keys testified, what his

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1 explanation was is when someone is in disciplinary
2 status, there is videotape; when they're not in
3 disciplinary status, they're not.

4 THE COURT: Okay.

5 MS. HERRING-LASH: Judge Jefferson has told him on
6 several occasions that she does not order the detention
7 center to do anything.

8 THE COURT: I did not think that they did and that's
9 why I wanted to make sure that that was, indeed,
10 something that a judge had said.

11 If I go back and look at transcripts and find out
12 that you deliberately misrepresented that, you're going
13 to have a problem. Okay? All right.

14 MR. BURNS: May I --

15 THE COURT: Thank --

16 MR. BURNS: May I --

17 THE COURT: It's her turn.

18 MR. BURNS: -- speak rebuttal?

19 THE COURT: No.

20 Yes, ma'am.

21 [Whereupon, Ms. Last is duly sworn by the Court as
22 follows: ma'am, do you swear to tell the truth, the
23 whole truth, and nothing but the truth, so help you
24 God].

25 THE WITNESS: Yes, ma'am.

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1 THE COURT: Thank you. And if you could give us
2 your full name for the record.

3 THE WITNESS: Melissa Ann Last.

4 THE COURT: Okay. Happy if you will tell us what
5 you allegedly took -- I see a stack of newspapers --
6 and then answer any questions these folks might have
7 for you.

8 MS. LAST: Yes, ma'am.

9 The newspapers, this -- this is what we took out of
10 his cell. He folded -- he folds the newspaper and
11 sticks it in the window. It's the same size as the
12 window.

13 THE COURT: Uh-huh.

14 THE WITNESS: And it's in the back window of his
15 cell, so that when sunlight comes in, and in the front
16 window of the cell so that you can't see into his cell.

17 And along with that, there was a stack of newspapers
18 sitting on the bottom bunk in his cell that has another
19 inmate's name on it. And according to our policy, if
20 this -- if an inmate does not subscribe to the
21 newspaper, if they have it in their cell it's
22 considered contraband. So I did take it.

23 I also took a magazine that has no front cover or
24 back cover, which is then considered contraband because
25 it's altered from its original state.

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1 I did not look in his legal mail. My main objective
2 was to get fire hazards out of the room and the
3 contraband.

4 THE COURT: Was -- was there any documentation taken
5 other than newspapers and what looks to me to be a
6 People or an In Style magazine?

7 MS. LAST: No, ma'am.

8 THE COURT: Okay. Anything further?

9 MELISSA ANN LAST,
10 Having Been Previously Sworn,
11 was Examined and Testified as Follows:

12 DIRECT EXAMINATION

13 BY MS. HERRING-LASH:

14 Q. Just would you explain why you went in and where he
15 was.

16 A. He was on rec. But what we had noticed when we took
17 over our shift that morning was that several rooms had
18 their windows covered by newspaper. So as they came out
19 for rec, we would go into the cell that was vacant. We
20 didn't pull anyone out of their cell. But because it's a
21 protected custody unit, that we've very careful of who's
22 out when and they only rec a few at a time.

23 So we would -- we would, as they came off of rec, go
24 into that room and then remove the contraband, which there
25 were probably five cells done before Mr. Burns' cell.

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1 THE COURT: Okay.

2 MS. HERRING-LASH: That's all the questions.

3 THE COURT: Mr. Burns, any brief questions for this
4 officer?

5 MR. BURNS: Yes.

6 CROSS-EXAMINATION

7 BY MR. BURNS:

8 Q. When you went in the cell, where was I at?

9 A. You were on rec, either in the shower or getting --

10 Q. And --

11 A. -- a haircut.

12 Q. -- was there any notice that you were going in my
13 cell prior to going in there?

14 A. No, sir.

15 Q. And where was the other officer when you went into
16 my cell?

17 A. I'm not sure.

18 Q. So you went into the cell by yourself?

19 THE COURT: Let's not ask any --

20 Q. [Mr. Burns] Policy --

21 THE COURT: Sir, if I cut you off, you have to stop
22 talking. Okay?

23 Because you're representing yourself, I have to
24 treat you as if you are an attorney. Okay? You've got
25 Mr. Smith and Ms. Proctor here to help you, and they

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1 certainly will if you need them to.

2 Ask her relevant questions, okay? It doesn't matter
3 if she was by herself or somebody was with her. Ask
4 her questions about what she says she took. Okay?

5 Continue.

6 MR. BURNS: Your mind is made up.

7 THE COURT: Well, you're certainly welcome to think
8 that. But I'm not seeing any documentation other than
9 stacks of newspapers, which are clearly contraband and
10 clearly a fire hazard.

11 Now, I'm going to see additional testimony and if I
12 find out you've wasted the Court's time, I'm going to
13 sanction you. Okay? Keep acting like that and I'm
14 going to sanction you.

15 Yes, ma'am? Anything further? You can sit down.

16 THE WITNESS: Thank you.

17 MS. HERRING-LASH: That's all, Your Honor.

18 THE COURT: Thank you.

19 MS. HERRING-LASH: Your Honor, Officer Mallard
20 [phonetic] is here, but I don't think he really has
21 anything to add about this --

22 THE COURT: Was that the only time that something
23 was removed from the cell?

24 MS. HERRING-LASH: That is the only time, that this
25 motion is about.

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1 He has made these allegations before.

2 THE COURT: Uh-huh.

3 MS. HERRING-LASH: And the last time there was -- it
4 was actually on video. And Judge Dennis watched the
5 video and explained what you're telling me is on the
6 video.

7 THE COURT: Okay. Thank you.

8 Yes, ma'am. Anything further?

9 MS. PROCTOR: I think --

10 [Whereupon, Ms. Proctor and Mr. Burns confer]

11 MR. BURNS: Are you finished with that?

12 THE COURT: Well, I haven't ruled, but I'm happy to
13 hear anything else you want to tell me.

14 MR. BURNS: I've got another motion I want to make.

15 I want a motion for the grand-jury panel documents
16 and any other supporting materials that was submitted
17 to the grand jury.

18 Under the State Supreme Court ruling of --

19 THE COURT: Okay. I don't understand. I have no
20 idea what you're talking about. Start back and tell me
21 what you want.

22 [Whereupon, Mr. Burns and Ms. Proctor confer]

23 MR. BURNS: I should go ahead --

24 THE COURT: Yes. That would be very helpful. Yes,
25 sir.

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1 [Whereupon, Mr. Smith proffers documents to the
2 Court]

3 THE COURT: Thank you, sir.

4 MR. SMITH: This has not been filed yet. Just
5 received it the other day.

6 THE COURT: All right. Mr. Burns, if y'all will
7 give me a minute to read this, I appreciate it.

8 [Whereupon, the Court reviews documents]

9 THE COURT: Okay. I'm still not sure that I
10 understand the motions, but I'm happy to hear from you.

11 MR. BURNS: I would like to request any grand-jury
12 documents and any -- the application that was sent to
13 the grand jury -- petition that was sent to the grand
14 jury, proposed indictments, I would like to listen to
15 any witnesses that testified at the grand jury, and I
16 would like to listen to the evidence that was presented
17 to the grand jury.

18 The secrecy of grand jury, according to the Supreme
19 Court in Evans v. State of South Carolina, 611 S.E.2d
20 510, states that the secrecy of the grand jury is
21 removed once the grand jury renders its decision and
22 indict.

23 THE COURT: Okay.

24 MR. BURNS: Therefore, the Supreme Court further
25 states that a defendant have a right to review the

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1 documents to determine whether Laconde [phonetic]
2 challenged the legality of the state grand jury which
3 indicted him.

4 So I would like to request all those documents.

5 THE COURT: All right. Sir, you're up for trial
6 next week, aren't you?

7 MR. BURNS: Yes, ma'am, I am.

8 THE COURT: Okay.

9 Yes, ma'am. Happy to hear from you.

10 MS. HERRING-LASH: Your Honor, I don't know what
11 he's talking about. We don't present anything to the
12 grand jury. An officer goes in and gives testimony.
13 They send a representative for each department.

14 It sounds like -- and I -- I am not aware of the
15 case he's talking about -- but he's talking about
16 the state grand jury. I think the state grand jury has
17 a -- more of an investigative --

18 THE COURT: Uh-huh.

19 MS. HERRING-LASH: -- part of it than our just
20 regular grand jury.

21 THE COURT: Okay. Have y'all given him everything
22 that he's entitled to have in your Rule 5 response and
23 pursuant to Brady v. Maryland?

24 MS. HERRING-LASH: Yes, Your Honor.

25 THE COURT: Okay. Anything he's missing that he

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August 1, 2012

1 needs to have?

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

3 THE COURT: Okay. Could Ms. Proctor or Ms. Smith
4 -- or Mr. Smith enlighten me on something that I might
5 be missing here?

6 MS. PROCTOR: [Indicates negatively]

7 THE COURT: No? Okay.

8 I'm going to look at your case real quick.

9 [Whereupon, the Court reviews documents]

10 THE COURT: Okay. That motion is denied. Thank
11 you, sir. I've read the Evans case and I've read your
12 motion.

13 I've held your emergency hearing. I don't find that
14 anything legally pertinent was taken from your cell.

15 You might want to listen.

16 [Whereupon, Mr. Burns and Ms. Proctor confer]

17 MR. BURNS: She -- that lady don't never rule in
18 favor of no defendant. Anytime you're going to go up
19 against her, she always rules in favor of the State,
20 everything that she rules.

21 THE COURT: You're treading very close to getting in
22 big trouble, sir.

23 MR. BURNS: What you going to do?

24 THE COURT: You're in contempt of Court, sir.

25 MR. BURNS: Okay. Fine --

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1 THE COURT: If y'all want to represent him later on
2 the contempt charge, or somebody wants to represent him
3 later --

4 MR. BURNS: I represent --

5 THE COURT: -- we can handle that.

6 MR. BURNS: -- myself in everything.

7 THE COURT: Okay.

8 MR. BURNS: You don't have to grab me. I can walk
9 out by myself.

10 THE COURT: Motion denied.

11 [Whereupon, Mr. Burns confers with officers]

12 OFFICER: Go on. Go on.

13 MR. BURNS: Fuck this bitch.

14 OFFICER: Go on.

15 THE COURT: And, again, you're in contempt.

16 We're going to set a hearing for later, although I
17 have a feeling he's going to have a worse time with
18 Judge Dennis next week so I probably don't really need
19 to even do anything. But we will chat about that
20 later.

21 Thank y'all for being there.

22 [HEARING CONCLUDES AT 2:10 P.M.]

23

24

25

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 11-GS-10-338 <i>et al</i>
	)	
Alan Burns,	)	
	)	
Defendant.	)	

TRANSCRIPT OF JURY TRIAL

The within Jury Trial was held August 6-10, 2012, before The Honorable R. Markley Dennis, Jr., in Courtroom 3A of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended, as follows:

APPEARANCES:

Debi Herring-Lash, Assistant Solicitor
 Randall Stoney, Assistant Solicitor
 9th JUDICIAL CIRCUIT SOLICITOR'S OFFICE
 101 Meeting Street, 4th Floor
 Charleston, SC 29402
 Appearing for State of South Carolina

Alan Burns, Defendant
 Appearing *Pro Se*

ALSO ATTENDING:

Lori Proctor, Public Defender
 Ted Smith, Public Defender
 Court-Appointed to Assist Mr. Burns

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

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Case No. 11-GS-10-3387 *et al*
Jury Trial of August 6-10, 2012
Before The Honorable R. Markley Dennis, Jr.

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1 THE COURT: I will happy to hear
2 from you.

3 MR. ALAN BURNS: Your Honor, on
4 August 1st, I appeared before the Court for a
5 Motions hearing. At that Motions hearing, I
6 specifically asked for the impanelment of a
7 grand jury, I asked for the impaneling
8 judge's Order. I also asked that the State
9 produce the petition and any other materials.
10 I also have copies of the -- in my original
11 specific Brady request, Rule 5, I asked for
12 these documents as well.

13 At the time that I made the request
14 for these documents, the State responded that
15 these documents do not exist. I would like
16 to challenge the legality of the County grand
17 jury and due to the fact that the State
18 states that these documents do not exist, I
19 would ask that the indictments be quashed on
20 the grounds that there is no proof that the
21 grand jury was legally impaneled.

22 And I would like to present, if I
23 may, copies of the -- that is the original
24 Rule 5 *Brady* request.

25 THE COURT: What does this have to

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1 do with -- the grand jury impaneling, with
2 the *Brady* request information?

3 MR. ALAN BURNS: I had requested
4 the grand jury documents in my Rule 5.

5 THE COURT: What grand jury
6 documents are you referencing?

7 MR. ALAN BURNS: The impaneling
8 documents.

9 THE COURT: What has that got to
10 do with *Brady* issues.

11 MR. ALAN BURNS: Well, I requested
12 it through *Brady*.

13 THE COURT: I understand. There
14 is no -- there's nothing about the grand jury
15 that would have anything to do with a *Brady*
16 motion. Why is that pertinent to a *Brady*
17 motion? Maybe I don't -- I don't understand.
18 Maybe you can clarify it for me. What the
19 grand jury constitution has to do with *Brady*.

20 MR. ALAN BURNS: The case law that
21 I have, it specifically states that if you
22 request it through *Brady* ---

23 THE COURT: What? Grand jury
24 material?

25 MR. ALAN BURNS: Yes, sir, can be

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1 requested through your Rule 5.

2 THE COURT: What case are you
3 relying on?

4 MR. ALAN BURNS: *Evans v. State.*

5 THE COURT: Do you have a copy of
6 it?

7 MR. ALAN BURNS: Yes, sir, I do.

8 THE COURT: May I see it?

9 MR. ALAN BURNS: (Tendered to
10 bench by Lori Proctor).

11 THE COURT: You want that to be
12 marked as a court's exhibit?

13 MR. ALAN BURNS: Yes, sir, I do.

14 THE COURT: Court's Exhibit 2 is
15 material provided which is in response to the
16 Brady motion, provided by the defendant.

17 (SO ENTERED AS COURT'S EXHIBIT 2)

18 MR. ALAN BURNS: I have some areas
19 in that already highlighted.

20 THE COURT: Well, sir -- some
21 areas in what?

22 MR. ALAN BURNS: In that case.

23 THE COURT: I am going to hand you
24 the case back, (tendering).

25 What is your response, Ms. Herring-

State of South Carolina v Alan Burns
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Before The Honorable R. Markley Dennis, Jr.

1 Lash?

2 SOLICITOR HERRING-LASH: Your
3 Honor, I am not exactly sure what he is
4 referring to. I think that he went over this
5 issue with Judge McDonald last week and the
6 case that he handed up at that time regarded
7 the statewide grand jury, which is a
8 different -- which is an investigatory grand
9 jury.

10 THE COURT: (Affirmative nod).

11 SOLICITOR HERRING-LASH: I don't
12 know exactly what he -- at that time he was
13 asking for witnesses and tapes that had to do
14 with the grand jury. I don't know what he is
15 talking about exactly. I didn't see the
16 case. I don't know if it is the same case or
17 not.

18 MR. ALAN BURNS: If I may, Your
19 Honor?

20 THE COURT: Sure.

21 MR. ALAN BURNS: In accordance
22 with this case, this South Carolina Supreme
23 Court case, it gives the defendant the right
24 to timely challenge the legality of the grand
25 jury that indicted him.

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1 THE COURT: I understand.

2 MR. ALAN BURNS: Upon that timely
3 request, it's incumbent upon the court to
4 verify that the grand jury was legally
5 constituted.

6 THE COURT: How have you
7 challenged it?

8 MR. ALAN BURNS: Yes, sir.

9 THE COURT: How have you timely
10 challenged the ---

11 MR. ALAN BURNS: That's what I
12 said. I made my request in my discovery and
13 I also made my request by submitting -- if I
14 may present you with a copy, (tendering).

15 THE COURT: Thank you. (Upon
16 review), this Motion that has been handed to
17 me, this matter has been raised, ----

18 MR. ALAN BURNS: Right, this has
19 been raised several times. This isn't the
20 first time.

21 THE COURT: This is what you
22 argued before Judge McDonald?

23 MR.. ALAN BURNS: Yes, sir.

24 THE COURT: She denied the Motion.

25 MR. ALAN BURNS: Yes, sir, for the

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1 impanelment documents.

2 THE COURT: Your Motion is then
3 denied. It's a part of the record of this
4 case. You don't raise that again. That's
5 already been raised.

6 MR. ALAN BURNS: So I can't ask
7 for the indictments to be ---

8 THE COURT: You can't ask me to do
9 that. You've already asked Judge McDonald to
10 do that, and she denied your Motion.

11 MR. ALAN BURNS: I understand.
12 What I am asking Your Honor is I'm raising a
13 matter of subject matter jurisdiction.

14 THE COURT: Well, I -- based on
15 what?

16 MR. ALAN BURNS: That if the grand
17 jury that impaneled -- if the grand jury was
18 illegally impaneled, then that would relieve
19 this court of subject matter jurisdiction.

20 THE COURT: Might. But that issue
21 has been raised and denied. So your Motion
22 now is denied further, denied based on the
23 fact that it has already been decided.

24 MR. ALAN BURNS: I just want to
25 make sure that it's on the record for appeal.

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1 THE COURT: Every Motion that has
2 been -- for which you've been to court and
3 Motions have been filed, all of those are
4 part of the record of your case. It doesn't
5 have to be heard by me. In fact, I can't
6 hear it because I can't change the decision
7 another judge has made. That's part of the
8 record. The reviewing court will consider
9 that and decide whether that judge made the
10 correct determination.

11 MR. ALAN BURNS: That was simply
12 the hearing judge. You're the trial judge
13 and ---

14 THE COURT: Sir, I -- you know
15 what? I appreciate your request. It doesn't
16 matter. I just simply stated and -- I know
17 that you're not a lawyer, but one of the
18 things you know is that -- in the Circuit
19 Court, we're all Circuit Court judges.

20 I will give you an example. Years
21 ago it was the first time that I ever
22 realized or it occurred to me that you might
23 as well do that, have those hearings, because
24 why do we wait for calling the case for trial
25 to hear the statement of the defendant,

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1 called a *Jackson v. Denno* hearing.

2 I was trying a case, there had been
3 a mistrial in the case. We were scheduling
4 the *Jackson v Denno* hearing. When I was
5 looking through the file, there was an Order
6 of a colleague of mine, who was then living,
7 in fact a classmate, Judge Westbrook, who had
8 ruled on the *Jackson v. Denno* hearing. There
9 was no reason for me to hear it. He had
10 already ruled on it.

11 That happens in civil cases quite
12 frequently. There will be a Motion heard by
13 a judge, then the trial judge hears the case.
14 When the case is appealed, if it is appealed,
15 that ruling of that prior trial judge will be
16 required. What happens when they report it,
17 then involved in that, you see two judges
18 because there were two judges that were
19 involved in the trial/disposition of that
20 case.

21 MR. ALAN BURNS: Correct.

22 THE COURT: So it is not revisited
23 by me. Okay?

24 MR. ALAN BURNS: Okay.

25 THE COURT: All right. Any

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1 I look forward to trying the case
2 with you. It's an honor to serve with each
3 one of you as a judge. I ask you -- and I
4 appreciate your attention to my remarks. I
5 ask you now to give that same attention to
6 the attorneys and to Mr. Burns as they give
7 their opening statements.

8 Ms. Herring-Lash.

9 SOLICITOR HERRING-LASH: Thank
10 you, Your Honor. Ladies and Gentlemen,
11 **Minor 2** is now twenty-two years of
12 age. In 2009 he was a college student at
13 Coastal Carolina College.

14 One evening he was sitting around an
15 apartment with a group of friends watching
16 television -- I think that he was watching an
17 episode of *Law & Order*. One of his friends
18 walked into the room carrying a knife that he
19 was going to cut a sandwich with, and a rag
20 in the other hand. All of a sudden, **Minor 2**
21 was flooded with a memory or memories of
22 something that had happened to him back when
23 he was a child.

24 He left and went into the bathroom
25 and called his mother. He was so hysterical

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1 that his mother couldn't really make out
2 exactly what he was saying but she knew that
3 he was hysterical and he was crying. So she
4 and his stepfather, her husband, got in their
5 car, late that evening, and drove to the
6 Coastal Carolina campus and got Minor 2

7 They spoke with him, they got him to
8 calm down. They brought him back to
9 Charleston. Eventually understood that he
10 was saying that he was molested by his uncle,
11 Alan Burns, and sexually assaulted by his
12 uncle, Alan Burns.

13 He stayed home to get calm for a few
14 days. Went back. His mother went up there
15 to check on him once. He came back for
16 spring break. His mother, Karen Smalls,
17 actually came forward at that time and
18 mentioned to him that she had known years ago
19 that this had happened to other nieces and
20 that no one in the family had done anything.
21 They had just kinda let it go as a secret, as
22 many families do. They discussed this.

23 Mr. Burns had moved away, he was not
24 living in Charleston for a while but he would
25 be coming back soon. This made Minor 2 know

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1 and his mother know that they needed to, this
2 time, do something that probably should have
3 been done back in the '80s.

4 So they went to the Mount Pleasant
5 Police Department, they told the Mount
6 Pleasant Police Department what had happened
7 to **Minor 2** They also told them, 'We know
8 that there are other family members. We are
9 not sure that they will come down here and
10 talk to you, because this is something that
11 they have not spoken about.'

12 They did eventually come. You will
13 hear from another niece, **Minor 4**
14 another niece, **Minor 3** who also goes by
15 "**Minor 3** another niece, **Minor 5** These girls
16 will explain being assaulted back in the mid
17 '80s.

18 They lived a lot of their lives,
19 when they were young, in the home where Mr.
20 Burns parents have a home. He was there. As
21 grandchildren they stayed -- two of them
22 actually stayed fulltime. One visited a lot.

23 Mr. Burns left Charleston in '87,
24 returned in '97. 1997 is when the assaults
25 on **Minor 2** occurred. So there was a time

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1 period that he was away. These other three
2 children were back before he left.

3 Another niece also came forward,
4 **Minor 1** who had actually been assaulted
5 after Mr. Burns moved back to Mount Pleasant
6 in '97.

7 They all eventually went in and gave
8 statements or talked to law enforcement. At
9 the time that these events were happening,
10 they were all afraid and scared to really
11 come forward.

12 At one point an adult aunt actually
13 walked in on it and what she did was to tell
14 Mr. Burns' mother. The mother beat him, but
15 that was it. That is how it was handled.

16 What they discovered, what law
17 enforcement discovered is that the first
18 three children, when these assaults occurred,
19 was before Venning Road was part of the city
20 of Mount Pleasant. So those three incidents
21 were referred to the Charleston County
22 Sheriff's Office, which is a little bit
23 unusual in that you'll have two
24 jurisdictions. That is why. Venning Road
25 did not become the City of Mount Pleasant

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1 until later.

2 Each of these five victims will have
3 to come in here and sit on the witness stand
4 and explain to you the details that they
5 remember about what occurred, as well as the
6 adults who saw things or heard things, who
7 now realize that things happened that they
8 should have known or picked up on.

9 The law in this case, I will briefly
10 go over -- as Judge Dennis explained, he will
11 explain the law to you.

12 It (projector) may not be working,
13 so I will just tell you. Criminal sexual
14 conduct with a minor in the first degree is
15 one of the charges that Mr. Burns is charged
16 with. That is when an actor engages in the
17 sexual battery with a victim who is less than
18 eleven years of age. One of the things that
19 may stand out to you when you read this is
20 that when you hear of criminal sexual conduct
21 a lot of times you'd think of some kind of
22 physical force or violence would be a
23 necessary element that would have to be
24 proven. But because of the age of the child,
25 being under the age of eleven, force and

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1 violence is not an element. The element is
2 the respective age of the child.

3 He is also charged with criminal
4 sexual conduct in the second degree. That is
5 when a person engages in a sexual battery
6 with a victim who is between the ages of
7 eleven and fourteen and/or a victim who is
8 fourteen or fifteen, less than sixteen, and
9 the actor is older than the victim or is in
10 some position of authority.

11 In this case, one of the victims has
12 a charge of criminal sexual conduct in the
13 second degree -- that's **Minor 1** -- because
14 she was not assaulted until she was over the
15 age of eleven.

16 He is also charged with lewd act on
17 a minor. It is unlawful for a person over
18 the age of fourteen to willfully and lewdly
19 commit or attempt to commit a lewd and
20 lascivious act with the body, or its parts
21 thereof, of a child under the age of sixteen
22 with the intent of arousing, appealing to or
23 gratifying the lust and passions or desires
24 of such person or the child.

25 We have two different statutes

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1 involved here. At one point, before 1996,
2 lewd act was if the child was under the age
3 of fourteen. So the children that were
4 assaulted in the '80s, it was under fourteen.

5 Lewd act is really what you would
6 see as child molestation: fondling and
7 touching, absent actual penetration which is
8 required for criminal sexual conduct.

9 A sexual battery is what is required
10 for criminal sexual conduct. A sexual
11 battery is defined as sexual intercourse,
12 cunnilingus, -- cunnilingus is oral sex upon
13 a female, -- fellation, which is oral sex on
14 a male, anal intercourse, or any intrusion,
15 however slight, into any part of a person's
16 body or any object into the genital or anal
17 openings of another person's body, except if
18 it is for medical purposes.

19 I will put this up here. Some
20 people remember what they read better than
21 what is said to them, so it may help you
22 remember. I know that these terms are very
23 foreign to you in your lives, so we will
24 probably go over them more than once.

25 As Judge Dennis said, Mr. Burns is

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1 representing himself. That in no way affects
2 the fact that the State has to present the
3 witnesses and the evidence to you or the way
4 that you look at the witnesses or the
5 evidence.

6 We will ask you, after you have
7 heard all the witnesses, to find Mr. Burns
8 guilty of the actions that he has committed.
9 Thank you.

10 THE COURT: Thank you. Mr. Burns.

11 MR. ALAN BURNS: Good morning. I
12 am not an attorney. I am representing
13 myself. I am representing myself for my own
14 personal reasons because I've lived through
15 some experiences with attorneys and I prefer
16 to represent myself.

17 If it doesn't make any sense, it's
18 probably because it's not true. Right now
19 the odds are stacked totally against me.
20 There are a number of people making false
21 accusations against me, some of the same sort
22 but that still doesn't make it true. It can
23 be untrue. You can have more than one people
24 make up a lie on you.

25 Don't let the fact that there are

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1 multiple charges against me be the deciding
2 factor. The solicitor here is well known for
3 processing cases. Believe this, she knows
4 all the tricks of manipulation to manipulate
5 you into seeing things differently than they
6 actually is.

7 You are going to hear her use words
8 about "justice", you're going to hear her use
9 words about "the law", such as what she just
10 had up on the bulletin board. What she just
11 put up on the bulletin board isn't actually
12 the law. Criminal sexual conduct in the
13 first degree doesn't have an element of age.
14 Criminal sexual conduct in the first degree
15 with a minor has an element of age.

16 That is just an example to show you
17 how she will try to manipulate you with stuff
18 that she is going to present to you.

19 Criminal sexual conduct in the first
20 degree, criminal sexual conduct first degree
21 with a minor. Those are two different
22 charges, they carry two different elements.

23 So does criminal sexual conduct in
24 the second degree and criminal sexual conduct
25 in the second degree with a minor. Those are

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1 two different charges.

2 The way that she put it up just now,
3 she wanted to play on your mind so that you
4 wouldn't see what she was actually saying.
5 It's a form of ---

6 THE COURT: Mr. Burns, I am going
7 to ask you to confine your opening statements
8 to just that. You'll have a chance to argue.
9 This is more argumentative than an opening
10 statement.

11 MR. ALAN BURNS: Yes, sir.

12 THE COURT: Thank you, sir.

13 MR. ALAN BURNS: You are going to
14 hear tales that don't make sense and you're
15 going to hear things that you are going to
16 think is just unbelievable.

17 You're going to hear from the
18 officer that was the lead officer, who went
19 so far to make an arrest that she violated
20 the law and committed a felony crime. I am
21 going to prove that to you. I will also show
22 you that that officer was so hot to make an
23 arrest and build an arrest record that she
24 didn't even attempt to verify anything. That
25 she went so far that she lied in an

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1 affidavit, she lied to a magistrate judge and
2 she openly tried to cover up unlawful actions
3 by ---

4 SOLICITOR HERRING-LASH: Your
5 Honor, I object to argument.

6 THE COURT: It's argument.

7 MR. ALAN BURNS: Very good.

8 THE COURT: The rules don't allow
9 that at this point, Mr. Burns. You'll have
10 an opportunity at another stage, another
11 point.

12 MR. ALAN BURNS: In this case
13 there is motivation. Everyone in this room
14 has a motivation, because everyone in this
15 room has an agenda.

16 The judge in this case, he has an
17 agenda. He has to see to it that there is a
18 fair trial. That's why he made an objection
19 to what I was saying just now.

20 THE COURT: Mr. Burns, ---

21 MR. ALAN BURNS: To ---

22 THE COURT: --- you are not
23 allowed to do that, sir, in our proceeding.
24 You must refrain from that. The rules don't
25 permit you to comment on that, sir. Okay?

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1 MR. ALAN BURNS: Okay. The
2 witnesses, they're going to be making a
3 statement because they are going to be trying
4 to support the people that they are here to
5 support. They already have a bias. You are
6 going to hear from each one of them and a lot
7 of the things that you are going to hear, it
8 just ain't going to make no sense.

9 During the time that they said these
10 things were committed, they said that these
11 things happened to these people when they
12 were kids, small kids. You're going to hear
13 testimony from the witnesses who are going to
14 say that throughout their entire lives they
15 were tormented, they were afraid, they
16 couldn't sleep, they had all kinds of
17 problems, but you're going to see evidence
18 presented by the solicitor which is going to
19 actually contradict this. She has photos
20 showing these victims, alleged victims, with
21 me, laughing, enjoying themselves.

22 You will hear testimony from these
23 same victims, who called me to give them
24 rides, to come to their house. If a person
25 is so afraid of you, why would a person do

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1 such a thing?

2 You're also going to hear testimony
3 where one of the alleged victims, who is
4 supposed to be so traumatized, brought her
5 child over to my house and left them with me
6 -- a person who was molested by this
7 gentleman over here, would not take her child
8 and leave it with that gentleman who molested
9 her.

10 Things just don't make sense. If it
11 don't make sense, it's probably because it's
12 not true. I just ask that you clear your
13 mind, open your minds -- I know that
14 everybody formulates an opinion when they
15 hear something because that's natural. That
16 is a natural thing for everybody to do. I
17 ask that you to set that aside momentarily
18 and look at the evidence. Forget what she
19 (indicating Ms. Herring-Lash) and forget what
20 I say. Listen to what they're going to say
21 and then you decide whether or not it makes
22 sense. If it don't make sense, it's probably
23 because it ain't true. It ain't true,
24 because I didn't do any of the things that
25 they say that I did. Thank you.

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1 THE COURT: Thank you, Mr. Burns.

2 You may call your first witness, Solicitor.

3 SOLICITOR HERRING-LASH: The

4 State would call Minor 2

5 (WITNESS TAKES STAND)

6 Minor 2 being duly sworn

7 to tell the truth, the whole truth and

8 nothing but the truth, testified, as follows:

9 DIRECT EXAMINATION

10 BY SOLICITOR HERRING-LASH:

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

12 A. .

13 Q. Where do you live?

14 A. Mount Pleasant.

15 Q. Where do you work?

16 A. Currently I am unemployed, and I am also
17 a model.

18 Q. A model?

19 A. Yes.

20 Q. What do you do in your spare time?

21 A. In my spare time, I am an artist. I
22 like to do some things of the artsy nature.

23 Q. Who was in your family, your direct
24 family? Like your mother, your stepfather,
25 who are they?

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1 A. My mother is Karen Smalls.

2 My stepfather is Ray Smalls.

3 I have an older brother, Kevin Washington;
4 two younger sisters, Cadre and Kimberly
5 Smalls. I have a son, Jacques Coltrane
6 (phonetic).

7 Q. Minor 2 could you move that microphone
8 a little closer to you so that we can make
9 sure that we hear what you say?

10 THE COURT: You'll have to pull up
11 to that.

12 DIRECT EXAMINATION CONTINUED

13 BY SOLICITOR HERRING-LASH:

14 Q. Minor 2 are you related to the
15 Defendant, Alan Burns?

16 A. Yes.

17 Q. How are you related?

18 A. He is my maternal uncle.

19 Q. Your mom's brother?

20 A. Yes.

21 Q. Is he an older brother or a younger
22 brother?

23 A. Younger.

24 Q. Do you have lots of cousins?

25 A. I do.

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1 Q. A pretty big family?

2 A. (Affirmative nod), very big.

3 Q. Where does your grandparents live -- or
4 your grandmother?

5 A. She resides off of Rands Hill Road in
6 Mount Pleasant.

7 Q. What about your grandfather, is he still
8 alive?

9 A. He's deceased.

10 Q. Now, when you were growing up, did you
11 spend time with your grandparents?

12 A. Yeah, I spent a lot of time.

13 Q. I am going to show you what has been
14 marked as State's Exhibit 1, can you identify
15 this as your grandmother's house?

16 A. (Affirmative nod), this is my grand-
17 mother's house.

18 Q. That's the grandmother's house where you
19 spent a lot of time, growing up?

20 A. Yes.

21 SOLICITOR HERRING-LASH: Your
22 Honor, at this time the State would move
23 State's Exhibit 1 into evidence?

24 THE COURT: Any objection, Mr.
25 Burns?

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1 MR. ALAN BURNS: No objection.

2 THE COURT: Without objection,
3 State's Exhibit 1, a photograph, is admitted.

4 (SO ENTERED AS STATE'S EXHIBIT 1)

5 DIRECT EXAMINATION CONTINUED

6 BY SOLICITOR HERRING-LASH:

7 Q. Behind you, is this the photo that you
8 just identified?

9 A. Yes.

10 Q. Did there come a time when your Uncle
11 Alan also stayed at that home?

12 A. Yes.

13 Q. What -- in your very early years, was he
14 there?

15 A. Yes.

16 Q. About what age did you first meet him?

17 A. I was around the age of seven.

18 Q. Where were you when you first met him?

19 A. As far as in the house?

20 Q. (Affirmative nod).

21 A. I was inside the dining room.

22 Q. That was inside that house?

23 A. Yes.

24 Q. And you said that you were around the
25 age of seven or eight?

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- 1 A. Yes.
- 2 Q. Do you recognize this picture?
- 3 A. Yes.
- 4 Q. What is that?
- 5 A. This is a school photograph.
- 6 Q. What year?
- 7 A. I believe 1997.
- 8 Q. What grade were you in then?
- 9 A. First grade.
- 10 Q. First grade, '97?
- 11 A. Yes.
- 12 Q. That is when you met Mr. Burns?
- 13 A. Yes.
- 14 Q. Tell me about your first meeting with
- 15 him.
- 16 A. I believe that I walked in with my Aunt
- 17 Cathy and -- it was through the back door, so
- 18 we had to go through the kitchen to get to
- 19 the dining room. He stood by the china
- 20 hutch. My Aunt Cathy asked me if I knew who
- 21 that was. I told her 'no.' She said 'that's
- 22 your uncle.' I kinda was lost because I'd
- 23 never met him before. She explained that was
- 24 my mother's younger brother, that he'd went
- 25 away for a while, he's back, so on and so

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1 forth.

2 Q. And what happened after that?

3 A. My aunt, my mother and I believe one
4 other aunt, they went to the store.

5 Q. When they went to the store, were you
6 left at home?

7 A. Yes, at my grandmother's house.

8 Q. What happened while you were at home?

9 A. He assaulted me.

10 Q. Can you repeat that?

11 A. He assaulted me.

12 Q. Can you explain to the jury what
13 happened?

14 A. Yes. He kinda started coming towards
15 me, touching me. He pulled down his pants,
16 exposed himself to me. He started putting
17 his penis towards my face, made me put my
18 mouth on his penis.

19 Q. Where were you when he was doing this?

20 A. This was inside my grandmother's middle
21 room, next to her bedroom.

22 Q. Minor 2 do you recognize this room?

23 A. Yes.

24 Q. Is that the room that you're talking
25 about?

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1 A. Yes.

2 SOLICITOR HERRING-LASH: Your
3 Honor, at this time the State would move
4 State's Exhibit 4 into evidence.

5 THE COURT: Any objection?

6 MR. ALAN BURNS: No objection.

7 THE COURT: State's Exhibit 4 is
8 admitted, a photograph.

9 (SO ENTERED AS STATE'S EXHIBIT 4)

10 DIRECT EXAMINATION CONTINUED

11 BY SOLICITOR HERRING-LASH:

12 Q. And what happened -- you told us some of
13 what happened. What happened after that?

14 A. He -- I actually started crying. He was
15 forcing himself on me.

16 Q. What do you mean by forcing himself on
17 you?

18 A. As putting his penis in my mouth. From
19 that he started getting angry.

20 Q. How could you tell that he was angry?

21 A. He started getting hostile. He started
22 grabbing me very, very tightly around my
23 wrists. From there, he told me to pull down
24 my pants. I kinda didn't want to, I was
25 fighting. He made me pull down my pants. He

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1 made me grab my ankles.

2 Q. He made you what?

3 A. Grab my ankles and then he put his penis
4 inside of me, he penetrated me.

5 Q. What did you do?

6 A. I screamed and cried.

7 Q. Did he do anything to make you stop
8 crying or screaming?

9 A. To make me stop screaming, he put a
10 towel in my mouth.

11 Q. A what?

12 A. A towel in my mouth.

13 Q. And what were you thinking of, **Minor 2**

14 A. 'Why?' I didn't know what was
15 happening, I was so confused. I did not
16 understand at all. I was lost as to who this
17 person was and what was going on.

18 Q. What happened after he assaulted you?

19 A. He grabbed the knife and he cut me a few
20 times on my left leg, on my shin, on my knee,
21 and as well on my left arm.

22 Q. What did he say?

23 A. He told me that he has ---

24 Q. Don't say anything that he said. Did he
25 threaten you?

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1 A. He threatened me.

2 Q. And what happened after that?

3 A. I was very, very afraid and I ran into
4 my grandmother's kitchen and ---

5 Q. Did you clean up in any way before that?

6 A. He made me take a bath.

7 MR. ALAN BURNS: Objection, Your
8 Honor.

9 THE COURT: What is the basis of
10 objection?

11 MR. ALAN BURNS: She's leading.

12 THE COURT: Overruled.

13 DIRECT EXAMINATION CONTINUED

14 BY SOLICITOR HERRING-LASH:

15 Q. Explain.

16 A. He made me take a bath. He made me wash
17 off. He stood in the doorway while I washed
18 off.

19 Q. And what happened after you washed off?

20 A. I ran into my grandmother's kitchen and
21 got in the kitchen cabinet under the sink.

22 Q. And what is the next thing that you
23 remember happening?

24 A. I remember either my aunt or my mother
25 coming home and finding me under the cabinet.

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1 Q. Did you tell them what had happened and
2 why you were under there?

3 A. No.

4 Q. Why not?

5 A. Because of the threat that he made to
6 hurt myself as well as others.

7 Q. Did anything happen other than that day?

8 A. (No verbal response).

9 Q. Any other location?

10 A. Yes.

11 Q. Tell us about that.

12 A. There were several times. There was an
13 incidence where he picked me up from the boys
14 and girls center which was in the old village
15 area of Mount Pleasant.

16 Q. The what?

17 A. The old village area of Mount Pleasant.
18 He said that he was going to take me home.
19 About halfway from one destination to the
20 next, I realized that we weren't going
21 anywhere near where I lived. He actually
22 took me by the preschool where I used to go.

23 Q. Do you know what street that was on?

24 A. The preschool is on Labor Camp Road.

25 Q. On Labor Camp Road?

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1 A. Yes.

2 Q. Can you speak up a little bit, **Minor 2**

3 A. Is that better?

4 Q. Yes. Thank you. What happened on Labor
5 Camp Road?

6 A. He actually assaulted me again inside
7 the back of his van. It was a red Ford
8 Astro, I believe.

9 Q. And tell the jury about how that
10 occurred?

11 A. We got to the location and he looked at
12 me, he just gave me this stare. He walked
13 around from the driver's side to the
14 passenger side and pulled me out and told me,
15 "Don't ever forget I will hurt you."

16 Q. What happened after he pulled you out?

17 A. He pulled me in the back of his van. He
18 actually only had one seat, which was in the
19 very far back of the van. He then assaulted
20 me again.

21 Q. When you say "assaulted you", what did
22 he do?

23 A. Raped.

24 Q. What does that mean?

25 A. Penetration with his penis.

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1 Q. Did you have your clothes on or off?

2 A. He pulled down my pants.

3 Q. What about his clothes?

4 A. His clothing was half off. As far as
5 his pants he kinda undid his belt and his
6 zipper.

7 Q. What about your shirt or his shirt?

8 A. They both were on. He didn't make me
9 take it off and he didn't bother to take his
10 off at all either.

11 Q. They were both on?

12 A. Yeah.

13 Q. Where did y'all go after you left Labor
14 Camp Road?

15 A. He took me back to my grandmother's
16 house.

17 Q. Did you say anything to anybody then?

18 A. Not directly.

19 Q. What do you mean, not directly?

20 A. It was more along the lines of me just
21 walking in, going to sleep, waking up crying,
22 saying that I had a nightmare. I just was
23 afraid. I didn't want any dinner. I just --
24 (pause) -- kinda gave signs, I guess, but
25 never actually said something.

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1 Q. Did anyone pick up on those signs?

2 Question you about them?

3 A. No, not at the time.

4 Q. Was there any other location where
5 anything occurred?

6 A. Yes.

7 Q. Where was that?

8 A. A few of my relatives' houses.

9 Q. Do you remember any in particular?

10 A. My birthday.

11 Q. Which house was that at, do you
12 remember?

13 A. I don't necessarily remember where that
14 happened. There was an instance where there
15 was a family gathering and all the children
16 would be outside, inside or something vice-
17 versa. He would kind of find his way, walk
18 towards me. That was also the time where he
19 would -- we had a shop outside, my
20 grandfather had a speakeasy and he would cut
21 hair there. There were several times inside
22 the speakeasy.

23 Q. Let me show you what has been marked as
24 State's Exhibits 6, 7 and 8. Starting with
25 Exhibit 6, can you tell us what that is?

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1 A. This is a picture of my grandmother's
2 backyard.

3 Q. Can you see what you call the speakeasy
4 in that picture?

5 A. On the far left-hand side.

6 Q. What about State's Exhibit 7?

7 A. That's a door, the door there was the
8 main entrance.

9 Q. To the what?

10 A. To the speakeasy.

11 Q. What about State's Exhibit 8?

12 A. This was the back room that he utilized
13 as -- I guess you could call storage. There
14 was a bathroom where that sheetrock is, where
15 the two lines are, and there was a cot on the
16 right-hand side.

17 Q. A cot?

18 A. Yes.

19 SOLICITOR HERRING-LASH: Your
20 Honor, at this time the State would ask to
21 admit State's Exhibits 6, 7, and 8.

22 THE COURT: Any objection?

23 MR. ALAN BURNS: No objection.

24 THE COURT: Without objection,
25 State's Exhibits 6, 7 and 7 are admitted.

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1 (SO ENTERED AS STATE'S EXHIBIT 6)

2 (SO ENTERED AS STATE'S EXHIBIT 7)

3 (SO ENTERED AS STATE'S EXHIBIT 8)

4 DIRECT EXAMINATION CONTINUED

5 BY SOLICITOR HERRING-LASH:

6 Q. You said that y'all called that the
7 speakeasy?

8 A. Yes.

9 Q. Look behind you, is that the picture
10 that you identified a moment ago as your
11 first grade picture?

12 A. Yes.

13 Q. When this first event happened?

14 A. Yes.

15 Q. Can you show the jury in this picture
16 where the speakeasy is?

17 A. It's on this left-hand side
18 (indicating).

19 Q. Is that it?

20 A. Yes.

21 Q. Is that inside?

22 A. Yes.

23 Q. What happened in the speakeasy, why
24 would you be going in there?

25 A. That is where he had a barbershop, as he

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1 called it.

2 Q. To cut hair?

3 A. Yes.

4 Q. Did he cut your hair?

5 A. Yes.

6 Q. Can you tell the jury what happened in
7 the speakeasy?

8 A. Normally we would be around -- I mean,
9 as far as the family as a whole. It could be
10 any occasion. He would actually say to my
11 mom, 'Minor 2' needs a haircut' or something
12 of that nature.

13 Q. How did you act about getting your hair
14 cut?

15 A. Very, very afraid. Literally I said "I
16 don't want a haircut." I protested lots of
17 times. I even cried.

18 Q. But you had to get it anyway?

19 A. I had to get it anyway.

20 Q. What happened in the speakeasy?

21 A. Inside the speakeasy where the cot was
22 ---

23 Q. Can you see in that picture where the
24 cot was?

25 A. On this right-hand side, on the far end

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- 1 where the box was.
- 2 Q. Where the box thing is?
- 3 A. Yeah.
- 4 Q. What happened in there?
- 5 A. He raped me again there.
- 6 Q. Can you explain? Was it on the cot?
- 7 A. Yes.
- 8 Q. How were you on the cot? What position?
- 9 A. I was actually humped over, meaning my
- 10 head was down.
- 11 Q. What about your uncle, what position was
- 12 he in?
- 13 A. Standing.
- 14 Q. Where was he standing?
- 15 A. He would be standing at the long end of
- 16 the bed or cot.
- 17 Q. You said that you were bunked over?
- 18 A. Yeah.
- 19 Q. What happened?
- 20 A. He anally penetrated me.
- 21 Q. Did you have your clothes on?
- 22 A. No.
- 23 Q. Where were they?
- 24 A. He actually made me take all of them
- 25 off.

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1 Q. What about your shirt?

2 A. Including my shirt.

3 Q. Is that the only time you can remember
4 when you had to take all of your clothes off?

5 A. It seemed like every time that we went
6 to the speakeasy that he made me take all of
7 my clothes off.

8 Q. So it happened more than once in the
9 speakeasy?

10 A. Yes.

11 Q. What about Mr. Burns' clothing?

12 A. He never really took off his clothing,
13 he just kinda exposed his front/genitals.

14 Q. During this time, did you continue to be
15 around him?

16 A. I tried not to.

17 Q. But did you have to?

18 A. I mean, there were times when we -- like
19 we might be leaving for church or we would
20 all have to be together for dinners, for
21 birthdays, anniversaries, holidays. He would
22 just make his way around, kinda making sure,
23 talking to me, saying something as a
24 reminder.

25 Q. Did you ever think about trying to tell

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1 anybody back then?

2 A. No, I was too afraid -- to die.

3 Q. Now, did Mr. Burns leave Charleston and
4 go away at some point?

5 A. At some point, I do remember him not
6 being around. I didn't know where he was.

7 Q. Did you stay in Charleston when he was
8 gone?

9 A. Yes.

10 Q. Or in Mount Pleasant?

11 A. Yes.

12 Q. Did you go to Wando High School?

13 A. I did.

14 Q. When did you graduate from Wando High?

15 A. In 2008.

16 Q. Where did you go after that?

17 A. I went to Coastal Carolina University.

18 MR. ALAN BURNS: Could he speak
19 up?

20 THE COURT: Yes. Pull up so that
21 you can speak closely into that mic, please.

22 DIRECT EXAMINATION CONTINUED

23 BY SOLICITOR HERRING-LASH:

24 Q. You have a very low voice, so try to
25 bring it up. Okay?

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1 A. Okay.

2 Q. You went to Coastal Carolina?

3 A. Yes.

4 Q. Where did you go -- when did you go?

5 Sorry. When did you go to Coastal Carolina?

6 A. In 2008, the same year that I graduated.

7 Q. And when was the first time that you
8 told someone?

9 A. The first time I actually said directly
10 that he did something to me was in 2010, I
11 believe that it was.

12 Q. Who was that?

13 A. It was my mother.

14 Q. Where were you when you told your
15 mother?

16 A. I was at a friend's house.

17 Q. Were you at college or here?

18 A. At college.

19 Q. And how did you tell her, was it in
20 person or ---

21 A. It was over the phone.

22 Q. Tell us about that.

23 A. I was actually with my friends and we
24 were watching TV, but we were all in
25 conversation. I looked up and I saw that a

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1 law show was on, of some sort. For some
2 reason I just started remembering that time
3 was running out. I kinda started panicking.
4 I got up and I went to the bathroom. I was
5 very hysterical. It all just came flashing
6 back to me that Uncle Alan did something to
7 me. I was very, very hysterical. Very
8 hysterical.

9 Q. And you called your mom?

10 A. I ran out of the house, went to my car,
11 called my mom.

12 Q. Did she come?

13 A. Yes, sometime later.

14 Q. She was coming from Mount Pleasant?

15 A. Yes.

16 Q. And did you tell her what had happened?

17 A. I did, (affirmative nod).

18 Q. Did there come a time when you decided
19 to go to the police?

20 A. Yes.

21 Q. Do you remember about when that was that
22 you went to the police?

23 A. It was in February of 2010.

24 Q. Who went with you?

25 A. My mother.

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1 Q. Who did you talk with at the police
2 department?

3 A. The initial time we didn't get a chance
4 to. But the second time that we went, I
5 spoke to Detective Bacon and gave her a
6 statement.

7 Q. When you talked to Detective Bacon, did
8 your mother go to the Police Department with
9 you?

10 A. She did.

11 Q. Did you talk to Detective Bacon in
12 private when you gave her your statement?

13 A. Yes.

14 Q. At that point in time when you first
15 talked to Detective Bacon, did you give her
16 the details of every event that ever
17 happened?

18 A. No.

19 Q. Do you remember the details of every
20 event that ever happened?

21 A. No.

22 Q. Did you tell Detective Bacon that there
23 were other people in your family that she
24 needed to talk to?

25 A. Yes, I told her about **Minor 5** and

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1 Minor 4

2 Q. Had your mother told you about them?

3 A. No.

4 Q. When did you first hear about these
5 other cousins?

6 A. It was my winter break in 2009 from
7 college. And I was actually at work, at
8 Dunleavy's Pub, where I worked with my Aunt
9 Cathy.

10 COURT REPORTER: The name of the
11 pub, again?

12 THE WITNESS: Dunleavy's. I --
13 we were talking and I -- she worked with the
14 Humanity Services and we went from talking
15 about STDs to things of sexual nature. After
16 some of my responses to some of the things
17 that she said, she kinda said, 'You know,
18 something happened years ago to Minor 4 and
19 to Minor 5

20 DIRECT EXAMINATION CONTINUED

21 BY SOLICITOR HERRING-LASH:

22 Q. And -- go ahead.

23 A. When she said that, I kinda -- I froze
24 up. I kinda questioned myself if she knew
25 what happened.

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1 Q. If she had been told about you?

2 A. Yes.

3 Q. And when you went to the police
4 department, you did tell them about these
5 other people?

6 A. Yes.

7 Q. And, **Minor 2** is this something that is
8 easy for you to talk about?

9 A. No.

10 Q. How do you feel about having told and
11 being here?

12 A. Cold, numb, I feel -- (pause) --
13 literally words cannot describe.

14 SOLICITOR HERRING-LASH: Court's
15 indulgence for one moment?

16 THE COURT: Yes, ma'am.

17 SOLICITOR HERRING-LASH: **Minor 2**
18 those are all the questions that I have. You
19 will now need to answer any that Mr. Burns
20 has.

21 THE COURT: You may cross-examine.

22 LORI PROCTOR: Court's indul-
23 gence?

24 THE COURT: Yes, ma'am.

25 LORI PROCTOR: (Sidebar with

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1 Defendant and Mr. Smith).

2 TED SMITH: Judge, may I approach?

3 THE COURT: Yes, sir.

4 (OFF RECORD SIDEBAR)

5 CROSS EXAMINATION

6 BY MR. ALAN BURNS:

7 Q. Hello. That was good testimony. Hold
8 on a second. You said in 1997 you didn't
9 know who I was, isn't that what you testified
10 to just now, when I first came home that you
11 didn't know who I was?

12 A. No.

13 Q. That you had never seen me before.

14 A. No.

15 THE COURT: You need to speak up,
16 please, to make sure that we hear you.

17 DEFENDANT: I said "no." I'd
18 never saw you before.

19 CROSS EXAMINATION

20 BY MR. ALAN BURNS:

21 Q. Did your family ever come up on visits
22 to see me in Columbia, bring the whole
23 family? Three carloads of people, a whole
24 caravan.

25 A. Not to my memory.

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1 Q. Did your family ever come to visit me at
2 McDougall, in Ridgeville?

3 A. Not to my knowledge or my memory.

4 Q. Not to your knowledge or your memory.
5 Okay, buddy.

6 THE COURT: Mr. Burns, I am going
7 to instruct you that Rule 611(a) -- I have a
8 responsibility to instruct you that you may
9 ask questions but that you're not to make
10 those statements.

11 MR. ALAN BURNS: I apologize.

12 THE COURT: Thank you, sir.

13 CROSS EXAMINATION CONTINUED

14 BY MR. ALAN BURNS:

15 Q. In your statement to Detective Bacon,
16 you never mentioned anything about a penis in
17 your mouth. Why is that?

18 A. I was very ashamed to actually be
19 speaking to somebody about it. Furthermore,
20 it was very, very hard for me. I cried the
21 whole entire time while I gave her the
22 statement.

23 Q. So it was -- it's easier for you now to
24 speak in a full courtroom, in front of all
25 these people, than it was to speak to one

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1 person?

2 A. After two years of counseling from
3 various counselors, (affirmative nod).

4 Q. It's easier?

5 A. And having to talk about it all the
6 time, yeah.

7 Q. So it's easier for you to talk now in
8 front of a full crowd of people ---

9 A. Yes.

10 Q. --- than it was for you to talk in front
11 of one person in privacy?

12 A. Yes.

13 Q. Interesting. I apologize. In your
14 statement to the police, you mentioned being
15 cut. What did you say in your statement to
16 Detective Bacon? Do you recall?

17 A. My exact? About the threat or?

18 Q. About being cut.

19 A. He cut me and told me that he would ---

20 Q. Where did you tell Detective Bacon that
21 I cut you?

22 A. On my arm.

23 Q. That's what you said?

24 A. (No verbal response).

25 Q. I have your statement here. According

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1 to your statement you told Detective Bacon
2 that you didn't know where you'd gotten cut
3 at. Right?

4 A. I told her that I could not remember.

5 Q. But now you can remember that you were
6 cut four or five times?

7 A. Three times.

8 Q. Three times?

9 A. Yes.

10 Q. So how is it that you couldn't remember
11 back then where you were even cut at, and now
12 you can remember being cut three times and
13 exactly where you were cut at?

14 A. Having to talk to a few counselors and
15 actually finding a very good one.

16 Q. So the counselor told you where you had
17 cut at?

18 A. No, she was able to get me to remember
19 exactly ---

20 Q. How did she get you to remember where
21 you got cut at?

22 A. (No verbal response).

23 Q. She pointed to scars on your body and
24 said 'that's probably it'?

25 A. No.

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1 Q. So, then, how did you remember?

2 A. Over time it just -- I remembered.

3 Q. Over time you remembered. Do you have a
4 scar?

5 A. I have ---

6 Q. Do you have scars?

7 A. Yes, I do.

8 Q. Would you mind showing us the scar on
9 your leg?

10 A. Sure, -- who do I need to show?

11 THE COURT: You may come down and
12 demonstrate the scar. Don't say anything
13 when you're down. Just point to it. Turn
14 and face the jury panel.

15 THE WITNESS: (Displaying),
16 from here to here there is a scar. On the
17 knee here and then the small one, (displaying
18 left arm).

19 MR. ALAN BURNS: Apparently you
20 lost that one again.

21 THE COURT: No, sir. Please, sir.
22 Take your seat.

23 THE WITNESS: (Complies)

24 CROSS EXAMINATION CONTINUED

25 BY MR. ALAN BURNS:

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1 Q. So you have a two and a half inch scar
2 on your leg and you had forgotten where that
3 one was when you spoke to Detective Bacon.
4 But when you talked to Detective Bacon, you
5 had a scar that you couldn't -- didn't know
6 where it was. Even just now in front of the
7 jury you were unable to -- you had to search
8 for it. How do you explain that?

9 A. I don't sit down and think about what
10 you did to me all day every day. I have a
11 life.

12 Q. I asked how do you explain that you
13 couldn't readily find the scar?

14 A. Was that not an explanation?

15 Q. No, it wasn't.

16 THE COURT: No, sir, that's
17 argumentative. He's answered your question.
18 Go on to something else, sir.

19 CROSS EXAMINATION CONTINUED

20 BY MR. ALAN BURNS:

21 Q. You also stated that you and your
22 friends were at -- what college did you say
23 that you attended?

24 A. Coastal Carolina.

25 Q. Whose house were you at that night when

1 you supposedly had the revelation?

2 A. Is that necessary?

3 THE COURT: No, sir. Answer the
4 question. You are not going to ask the
5 questions.

6 THE WITNESS: A friend of mine
7 by the name of Emily.

8 CROSS EXAMINATION CONTINUED

9 BY MR. ALAN BURNS:

10 Q. By the name of what?

11 A. Emily?

12 Q. Emily who?

13 A. Gibson.

14 Q. That is your girlfriend?

15 A. Is that necessary?

16 THE COURT: No, sir. Answer the
17 question. You are not going to ask the
18 questions.

19 THE WITNESS: No.

20 CROSS EXAMINATION CONTINUED

21 BY MR. ALAN BURNS:

22 Q. She is not your girlfriend?

23 A. No.

24 Q. Who else was at the house that night?

25 A. A few other people that I don't

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1 necessarily remember.

2 Q. How many people?

3 A. Three to four.

4 Q. It was her house? Who'all lived at the
5 house? Just her?

6 A. It was her and a roommate.

7 Q. A female?

8 A. Yes.

9 Q. It was you and three or four other guys?

10 A. No. It was myself and -- I believe that
11 there were a total of five people: myself,
12 her roommate, herself, and two other males.

13 Q. Who were those two other people?

14 A. I believe that they were my friends
15 Nolan and Mike.

16 Q. You don't have a mental problem or
17 anything like that that affects your
18 mentality, do you?

19 A. Not my mentality but my memory, yes.

20 Q. You don't have any types of ailments,
21 mental illness, anything like that?

22 A. I am diagnosed bipolar, if that is what
23 you mean.

24 Q. Humm?

25 A. I am diagnosed bipolar. Is that what

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1 you mean?

2 Q. You've been diagnosed bipolar?

3 A. Depressed, sleep/insomnia, some eating
4 disorders, ---

5 Q. Who diagnosed you as being bipolar?

6 A. Doctors.

7 Q. What doctor?

8 A. I don't know the name. I was at a
9 hospital, I sat inside the room, looked at a
10 screen and spoke to someone over a telecom
11 screen of some sort.

12 Q. How long ago were you diagnosed?

13 A. About two years now, probably three. It
14 was a while ago..

15 Q. Are you on some type of medication?

16 A. I was on lots of them.

17 Q. Are you on medication now?

18 A. At this moment, no.

19 Q. But you are still bipolar?

20 A. Yes.

21 Q. You don't know the doctor that diagnosed
22 you as being bipolar?

23 A. I do not remember the person's name.

24 Q. Let's go back to that house that night
25 when you had this revelation. What were you

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1 all doing at the house?

2 A. We were sitting around playing some card
3 games, I had a beer or two, the TV was on,
4 but we were mostly just talking. I mean, we
5 were college students.

6 Q. You weren't watching TV?

7 A. Not necessarily. I don't tend to watch
8 TV too much.

9 Q. You don't like watching TV too much?

10 A. No.

11 Q. In your statement to Detective Bacon --
12 let's see if I can find the precise page.

13 MR. ALAN BURNS: Do you mind if I
14 approach?

15 THE COURT: You may. Do you want
16 to have that marked?

17 MR. ALAN BURNS: That is the
18 statement that you gave to the police. Do
19 you want to take a look at it.

20 THE COURT: Mr. Burns, the process
21 is that you are to give it to court reporter
22 and let her mark it so that we can help
23 identify it.

24 MR. ALAN BURNS: (Tenders to court
25 reporter).

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1 COURT REPORTER: Thank you, sir.

2 Marked Defendant's Exhibit 1 for
3 identification.

4 THE COURT: Identification only.

5 CROSS EXAMINATION CONTINUED

6 BY MR. ALAN BURNS:

7 Q. On that statement right there, in the
8 yellow section, ---

9 A. Um-humm.

10 MR. ALAN BURNS: Your Honor, ---

11 THE WITNESS: I'm listening.

12 What do you have to say?

13 THE COURT: No, sir. Sir, I need
14 you to move forward and sit up the
15 microphone, like I'm asking you -- sir.

16 THE WITNESS: (Complies).

17 THE COURT: You may ask your
18 question. You may step back, you don't need
19 to be ---

20 MR. ALAN BURNS: Okay.

21 CROSS EXAMINATION CONTINUED

22 BY MR. ALAN BURNS:

23 Q. The yellow section right there that I
24 have highlighted, would you mind reading the
25 first few lines of it, please?

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1 THE COURT: Do you want him to
2 read it to himself.

3 MR. ALAN BURNS: Well, he can read
4 it to himself.

5 THE COURT: In order for him to
6 publish it aloud, you have to have it
7 admitted.

8 MR. ALAN BURNS: Okay.

9 CROSS EXAMINATION CONTINUED

10 BY MR. ALAN BURNS:

11 Q. Would you mind reading it to yourself
12 first, please, so that I can ask you a
13 question. Just the first three lines.

14 A. (Upon review), okay.

15 MR. ALAN BURNS: Your Honor, I
16 would like to admit this into evidence.

17 THE COURT: Any objection?

18 SOLICITOR HERRING-LASH: No, Your
19 Honor.

20 THE COURT: It is admitted. It's
21 Defendant's Exhibit 1.

22 (SO ENTERED AS DEFENDANT'S EXHIBIT 1)

23 MR. ALAN BURNS: So I can now have
24 him read it aloud?

25 THE COURT: You may.

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1 CROSS EXAMINATION CONTINUED

2 BY MR. ALAN BURNS:

3 Q. Would you mind reading that aloud,
4 please? Just the highlighted section, the
5 first three lines.

6 A. (Reading): "We were watching *Law &*
7 *Order, Special Victims Unit.* I used to watch
8 *it when I was younger, then I stopped. This*
9 *time was the first time in a very long time*
10 *that I actually sat down and watched some*
11 *episodes."*

12 Q. You said -- when I asked you what you
13 were doing when you were at your friend's
14 house, you said that you were just sitting
15 around playing cards, that you don't watch
16 TV. But according to your statement, you
17 knew exactly what you were doing that night.
18 You were sitting around drinking, watching
19 *Law & Order.* What prompted your episode that
20 night, whatever you want to call it?

21 A. What prompted my episode?

22 Q. Yeah.

23 A. (No verbal response).

24 Q. Did that show right there prompt you to
25 have your episode that night?

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1 A. You could say it triggered my episode.

2 What prompted my episode was that shortly I

3 would have to see you, sir.

4 Q. Excuse me? I didn't hear you.

5 A. Shortly I would have to see you, sir.

6 Q. So on that night you knew that you were
7 going to be seeing me soon?

8 A. No, on that night I -- like I said
9 earlier, I remembered that time was running
10 out and I did not necessarily understand
11 where that whole thought came from but I
12 started getting hysterical. Then I stepped
13 outside to the restroom and then I started
14 having some memories.

15 Q. You also mentioned something else in
16 that statement as well. You mentioned
17 something about a towel and a knife. Do you
18 recall what you said to Detective Bacon?

19 A. No, I don't.

20 Q. About the towel and the knife?

21 A. No, I don't.

22 Q. So when you -- you don't remember
23 anything that you said to the detective, or
24 you just made up some stuff and told to the
25 detective and now when you've come into the

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1 courtroom you're just making up some stuff.

2 SOLICITOR HERRING-LASH: Your
3 Honor, I would object as argumentative.

4 THE COURT: Sustained. That's
5 inappropriate.

6 CROSS EXAMINATION CONTINUED

7 BY MR. ALAN BURNS:

8 Q. So you don't remember any of the things
9 that are in the statement?

10 A. No, I don't. I remember some of the
11 things that I said to her but I don't
12 remember detailed, word for word. I have a
13 statement at home but, believe it or not, I
14 did not take the time to read over it.

15 Q. So the things that you said in the
16 statement, they're true; aren't they?

17 A. (Affirmative nod), Um-humm.

18 THE COURT: Is that a "yes"?

19 THE WITNESS: Yes.

20 CROSS EXAMINATION CONTINUED

21 BY MR. ALAN BURNS:

22 Q. So if they are true, how do you don't
23 remember what -- that that was the statement
24 that you gave to the police, telling her what
25 was supposed to have happened? Is it not?

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1 A. I don't understand what you're asking
2 me.

3 Q. Your statement has changed. Why is the
4 statement that you gave to the police
5 different from the one that you're testifying
6 to here today?

7 A. How so?

8 Q. The statement that you gave to the
9 police, you never mentioned anything about a
10 penis going in your mouth.

11 A. (No verbal response).

12 Q. In the statement to the police, you
13 never mentioned anything about the speakeasy.
14 Why is that?

15 A. (No verbal response).

16 THE COURT: Is that a question?

17 MR. ALAN BURNS: Yes, sir.

18 THE COURT: Answer the question.

19 THE WITNESS: Me meeting with
20 the detective for the first time after me
21 remembering bits and pieces of things that
22 happened to me in the past and mainly
23 remembering a lot of fear, mainly remembering
24 you and your knife and your threats, I kinda
25 necessarily didn't want to be there at all.

1 CROSS EXAMINATION CONTINUED

2 BY MR. ALAN BURNS:

3 Q. Speaking of the knife, how did the knife
4 look?

5 A. I don't remember exactly what kind of
6 knife that it was. I remember that it had a
7 very long blade.

8 Q. How long?

9 A. Not that long. It wasn't even
10 necessarily a knife, I believe that it was a
11 box cutter of some sort. But I am not -- I
12 can't ---

13 Q. So box cutters now have very long
14 blades?

15 THE COURT: No, sir. That's
16 argumentative, please. Restate your
17 question.

18 MR. ALAN BURNS: Okay.

19 CROSS EXAMINATION CONTINUED

20 BY MR. ALAN BURNS:

21 Q. You said a few seconds ago that it was a
22 very long knife. Then you instantly changed
23 it and said that you believed that it was box
24 cutter. Which was it? Was it a knife or a
25 box cutter?

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1 A. A box cutter.

2 Q. Okay. Do box cutters resemble knives,
3 in your opinion?

4 A. From the standpoint of a seven-year-old,
5 yes. And from the standpoint of a box cutter
6 that has an adjustable blade, yes.

7 Q. You mentioned something else. You said
8 that when I first came home from wherever I
9 was at that you was at home, in the dining
10 room?

11 A. Yes.

12 Q. Huh?

13 A. Yes.

14 Q. So you were living at this address?

15 A. In a sense, yes. I spent a lot of time
16 at my grandmother's ---

17 Q. You said ---

18 THE COURT: No, sir. Allow him to
19 answer the question before you ask him
20 another question. You may complete your
21 answer, sir.

22 THE WITNESS: I spent a lot of
23 time at my grandmother's house. My grand-
24 mother was retired, I believe, or she worked
25 at the nursing home -- I can't quite

1 remember. My mother worked, so when I did
2 need someone or I needed to be somewhere so
3 that I could be watched, my grandmother was
4 there. So, yeah, since I -- I lived there,
5 I spent a lot of time there.

6 CROSS EXAMINATION CONTINUED

7 BY MR. ALAN BURNS:

8 Q. So where were you living at, precisely?

9 A. I don't remember.

10 Q. Where was your address at?

11 A. I don't remember.

12 Q. Interesting. I had just came home, I
13 walked in the door and you were in the house.
14 I'd just came in with my bags and everything?

15 A. No, I walked in the door. You were in
16 the house, standing by the china hutch. I
17 walked in the door, through the back door,
18 through the kitchen towards the dining room.
19 You stood in the dining room by the china
20 hutch, your back towards the wall, facing
21 towards the kitchen area.

22 Q. That was the day that I came home?

23 A. I assume.

24 MR. ALAN BURNS: Your Honor, could
25 I have a moment, please?

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1 THE COURT: Sure.

2 MR. ALAN BURNS: (Sidebar with Ms.
3 Proctor and Mr. Smith). Okay.

4 CROSS EXAMINATION CONTINUED

5 BY MR. ALAN BURNS:

6 Q. You also said that when I picked you up
7 from the boys and girls club that I drove you
8 to some place. Where did you say that I
9 drove you to?

10 A. To the preschool that I had attended
11 when I was younger, off Labor Camp Road.

12 Q. That was down a dirt road?

13 A. I don't know what kind of road it was at
14 the time, but right now -- to this day it's
15 paved.

16 Q. This day it's paved but when you
17 contended, was it a dirt road?

18 A. I don't know. I don't know what kind of
19 road it was.

20 Q. Let me ask you another question. You
21 told Detective Bacon some stuff about your
22 oldest uncle. Do you remember what you told
23 Detective Bacon?

24 A. I didn't hear what you just said.

25 Q. About your eldest uncle.

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1 A. My eldest uncle?

2 Q. (Affirmative nod), the one that died.

3 SOLICITOR HERRING-LASH: Your
4 Honor, could Mr. Burns point out to me what
5 he is talking about in the statement?

6 THE COURT: He just asked him did
7 he make some statement. That's all that he
8 asked. If he can remember -- I don't know
9 what it is.

10 MR. ALAN BURNS: I'm sorry.

11 THE COURT: If you want to clarify
12 your question, you need to make your question
13 clear.

14 MR. ALAN BURNS: That's what I was
15 going to do.

16 THE COURT: Okay.

17 CROSS EXAMINATION CONTINUED

18 BY MR. ALAN BURNS:

19 Q. Did you make a statement to Detective
20 Bacon about your eldest uncle, Luther Burns,
21 involving me?

22 A. Not to my knowledge. I don't know what
23 you're talking about.

24 MR. ALAN BURNS: (Sidebar with
25 Solicitor Herring-Lash).

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1 CROSS EXAMINATION CONTINUED

2 BY MR. ALAN BURNS:

3 Q. I have a report from the Mount Pleasant
4 Police officer. In her report it reads ---

5 THE COURT: Wait a minute. You
6 are publishing from a report that this
7 witness did not prepare?

8 MR. ALAN BURNS: No, he didn't
9 prepare it.

10 THE COURT: He didn't prepare it?

11 MR. ALAN BURNS: No, sir.

12 THE COURT: Are you going to allow
13 him to publish it?

14 SOLICITOR HERRING-LASH: No, Your
15 Honor. I didn't know what he was going to
16 try to say.

17 THE COURT: You can't read from a
18 report. That would be hearsay, it's
19 improper. If this witness prepared it, then
20 fine, you can ask this witness about
21 something that he did. But you can't publish
22 from that. That would be inappropriate.

23 You can call the witness and ask the
24 witness who prepared that but you can't have
25 this witness testify to that.

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1 MR. ALAN BURNS: All right.

2 CROSS EXAMINATION CONTINUED

3 BY MR. ALAN BURNS:

4 Q. Did you, at any time, tell the police
5 that I had been molesting you?

6 A. Excuse me?

7 Q. Did you ever tell the police ---

8 THE COURT: Rephrase. Are you
9 asking him if he told the police that you had
10 been molesting him?

11 MR. ALAN BURNS: Yes, sir.

12 THE WITNESS: Not to my memory.

13 MR. ALAN BURNS: Okay.

14 CROSS EXAMINATION CONTINUED

15 BY MR. ALAN BURNS:

16 Q. I had started to ask you some stuff
17 earlier about that report that you put up
18 there, the night of the -- where was it?
19 North Myrtle Beach, Myrtle Beach? That's
20 where you was at, right?

21 A. What are you asking me?

22 Q. The night that you had the episode?

23 A. The night I had the episode?

24 Q. Right.

25 A. The night where I recollected some

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1 memories, I was in Conway, South Carolina.

2 Q. In Conway? That is where Coastal
3 Carolina is?

4 A. That's where Coastal Carolina is,
5 (affirmative nod).

6 Q. I don't know. That's why I am asking.

7 A. Okay. That doesn't have nothing to do
8 with me.

9 Q. The night that you had the episode, you
10 was watching *Law & Order*. In that report,
11 also it states that there was another event
12 that took place with the knife and towel,
13 that actually triggered -- that's what you
14 said, according to the statement that you
15 gave, that triggered the episode; is that
16 correct?

17 A. I don't know what you're talking about.
18 You've got me confused.

19 THE COURT: Show him the state-
20 ment. Review your statement. Give him a
21 moment to review it.

22 Sir, you asked him about the
23 statement that is in evidence. That's the
24 only way that you can ask that question.

25 MR. ALAN BURNS: Yes, sir, I

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1 understand.

2 THE COURT: Just show him -- why
3 don't you show him ---

4 THE WITNESS: I see what you're
5 saying.

6 THE COURT: Okay.

7 THE WITNESS: This says that at
8 the time that triggered my episode, as you
9 call it, I was in this living room kinda
10 paying attention to this TV, having my
11 conversations, sipping my beer and a friend
12 of mine walks in and had a knife in his hand.

13 CROSS EXAMINATION CONTINUED

14 BY MR. ALAN BURNS:

15 Q. Huh?

16 A. A friend of mine walked in from the
17 kitchen -- I can't remember what he was
18 doing, but he had a knife in his hand.

19 Q. A knife and a towel?

20 A. (Affirmative nod), and a towel.

21 Q. Just read this statement aloud if you
22 would.

23 A. (Reading): *"It was close to the end*
24 *of..."* ---

25 Q. Start from the beginning of that page

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1 and read the whole thing.

2 THE COURT: No, sir. You're going
3 to ask him -- why do you want him now, in
4 reference to the question that you just asked
5 him, he is going to read that portion. Then
6 if you wish him to publish more, you may ask
7 another question.

8 MR. ALAN BURNS: Yes, sir.

9 THE COURT: Read the portion that
10 you had just reviewed, please.

11 THE WITNESS: (Reading): "My
12 friend walked out of the kitchen from making
13 food with a rag in one hand and a knife in
14 the other, to clean the knife. I instantly
15 got very uncomfortable. I went to the
16 bathroom and the only thing I ..." -- and
17 that's the only thing that is highlighted.

18 THE COURT: Now you may ask a
19 followup question if you wish.

20 CROSS EXAMINATION CONTINUED

21 BY MR. ALAN BURNS:

22 Q. Read the entire statement for me, so
23 that we can get a fully understanding of
24 exactly what the statement says.

25 A. (Reading):

1 Q. Who is the first person that
2 you told and when?

3 A. This past February I was at my
4 girlfriend's house in Myrtle Beach. We were
5 watching Law & Order, Special Victims Unit.
6 I used to watch it when I was younger, then I
7 stopped. This was the first time in a very
8 long time that I actually sat down to watch
9 some episodes. It was around 9:00 p.m. I
10 had been sipping on a beer. I was halfway,
11 this episode was about a kid who was accused
12 and kicked out of school (phonetic, coughing
13 in courtroom). It was close to the end when
14 the kid was about to go to jail. My friend,
15 Mack, walked out of the kitchen from making
16 food with a rag in one hand and a towel in
17 the other -- a rag in one hand and a knife in
18 the other hand, to clean the knife. I got
19 very uncomfortable. I went to the bathroom
20 and the only thing that I could think was
21 that 'you were molested by Uncle Alan.' For
22 ten minutes, I was hysterical. I got the
23 sickening feeling in my stomach, I got cold
24 sweats, I was stomping my feet, to prevent

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1 *myself screaming I put a towel in my mouth.*

2 *From there, I dashed for the back door.*

3 *So -- then it stops.*

4 Q. A little while ago when the solicitor
5 was questioning you and I started questioning
6 you and I asked you about what you was doing
7 that night, you claimed that you couldn't
8 remember. Right?

9 A. I also haven't studied the statement
10 that I made two years ago.

11 Q. And you also stated that you weren't
12 watching TV because you don't watch TV that
13 much. Right?

14 A. I said that the TV was on but we were
15 playing cards, I was sipping a beer. But I
16 don't watch TV that much.

17 Q. And you'd said that you weren't really
18 paying attention to what was on TV; right?

19 A. Yeah.

20 Q. That's what you just testified to a
21 little while ago?

22 A. Yes.

23 Q. But the statement that you gave to the
24 police, it clearly shows that you were
25 watching TV more than doing anything else, do

1 much so that you knew exactly what episode of
2 *Law & Order* that you was watching and exactly
3 what was going on in the show.

4 A. From the statement, it proves that ---

5 Q. And you even mentioned what time that it
6 was.

7 A. From the statement it proves that
8 throughout the course of this show being on,
9 which I believe is about an hour long, if my
10 memory serves me correctly, I glanced enough
11 and pay attention to bits and pieces enough
12 to give a statement saying that this
13 particular instance happened.

14 Q. Okay. You said that when this first
15 incident happened at your grandma's house
16 that you were -- that I was in the house, you
17 came in, some other people had come in and
18 somehow or another we ended up by ourselves.
19 How did that come about, again?

20 A. Somehow or other, I remember us being by
21 ourselves. I don't remember exactly who was
22 around me at that time. That's what I
23 remember. I remember that the adults who
24 walked in with me or who I trusted, who I
25 knew, were not there anymore.

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1 Q. Who were those adults?

2 A. My Aunt Cathy.

3 Q. Your Aunt Cathy was there that day?

4 A. (Affirmative nod), and my mother.

5 Q. That was the day that I came home from
6 prison?

7 A. I believe that there was someone else
8 but I can't quite remember who it was. I'm
9 sorry, what did you say? That was the day
10 when?

11 Q. When I came home from prison?

12 A. Yeah, I believe so. Yes. I am not
13 entirely sure, I just remember you having on
14 an orange jumpsuit.

15 Q. I had on an orange jumpsuit?

16 A. Or a jumpsuit of some color. I am not
17 entirely sure. I believe that it was orange.

18 Q. All right. Let me ask you another
19 question. Who all was living at grandmama's
20 house at that time?

21 A. I don't remember. It was -- there was
22 spans of time that I remember ---

23 Q. 1997?

24 A. I don't remember.

25 Q. When you were in elementary school,

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1 where did you catch the school bus to go to
2 school?

3 THE COURT: Mr. Burns, sir, let's
4 move on to something else. He has already
5 answered your question. He can't remember.
6 So you've gotten your answer. Move on to
7 something else, sir. I assume that you are
8 talking about in 1997?

9 MR. ALAN BURNS: Um-humm.

10 THE COURT: Was that a "yes"? You
11 need to say yes or ---

12 MR. ALAN BURNS: Yes, sir. Yes.
13 I apologize.

14 THE COURT: You don't need to
15 apologize. We're trying to keep the record
16 straight.

17 MR. ALAN BURNS: All right, okay.
18 Yes, sir.

19 CROSS EXAMINATION CONTINUED

20 BY MR. ALAN BURNS:

21 Q. In your statement, you also mentioned
22 that somebody had did a family tree for you
23 and told you where I fit into the family. Do
24 you remember who did that for you?

25 A. Someone did a family tree for me?

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1 Q. Um-humm. That's what -- do you have the
2 statement before you?

3 A. I believe what I said and I believe what
4 should be in the statement is that Aunt Cathy
5 said 'that's your Uncle Alan, that's your
6 mama's younger brother.' I believe that's
7 what I thought I said.

8 Q. Let me ask you this question, too, so
9 that we can get clear on something. When you
10 say Cathy, who do you mean? Cathy? You have
11 two aunts by the name -- with similar names
12 of Cathy. Right?

13 A. I have one aunt by the name of Cathy.

14 Q. What is the other's name?

15 A. Catherine. Which is a little different
16 than Cathy.

17 Q. I understand what you're saying but I'm
18 just asking you to clarify for the record,
19 because when we used to refer to Cathy we
20 used to refer to them as Big Cathy and Little
21 Cathy?

22 A. I never referred to them -- I refer to
23 Aunt Cathy and then Catherine.

24 Q. Okay. So you're talking about your
25 Uncle Crissy's wife, Cathy?

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1 THE COURT: Move on, please, sir.

2 Move on to something more relevant, sir.

3 MR. ALAN BURNS: Okay.

4 CROSS EXAMINATION CONTINUED

5 BY MR. ALAN BURNS:

6 Q. When you said -- you mentioned several
7 incidents where I supposedly did these things
8 to you: one at a daycare center, the other
9 you said in the house, and -- where was the
10 other one again?

11 A. The speakeasy.

12 Q. The speakeasy, yeah. You said that you
13 used to come back there to get your hair cut?

14 A. Yes.

15 Q. When you came back there to get your
16 hair cut, who brought you back there to get
17 your hair cut?

18 A. You would be in the house or you would
19 already be in the back. I don't know what
20 you were doing. You'd actually come in -- at
21 some point in time you'd actually make your
22 way back to where everybody was and say to my
23 mother, 'Hey, **Minor 2** needs to get a
24 haircut.' Or you'd make some kind of comment
25 towards her to allow me in your presence

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1 inside the speakeasy so that you could cut my
2 hair and do whatever else you wanted. But
3 you -- go ahead.

4 Q. You have a brother, Kevin. He's older
5 than you, right?

6 A. Yes.

7 Q. By how many years? How much older than
8 you is he?

9 A. He's ---

10 THE COURT: Mr. Burns, a juror --
11 we've been going now for almost two hours.
12 I'm going to let the jury take a break. When
13 we come back, you can pick up at that point.

14 Ladies and Gentlemen, I am going to
15 let you go to your jury room. Do not begin
16 your deliberations, don't discuss the case.
17 We will be with you in about fifteen minutes.
18 Thank you.

19 (JURY OUT @ 3:55 P.M.)

20 THE COURT: First of all, Mr.
21 Washington, you're going to act properly in
22 this courtroom, sir. You're going to refrain
23 from any of these actions and gyrations that
24 you've been demonstrating. That's not
25 appropriate. We're not going to have that.

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1 I understand that it is very difficult for
2 you, sir, and I am sorry that you have to be
3 here but we are going to observe proper
4 decorum in the courtroom. Okay?

5 THE WITNESS: Yes, sir.

6 THE COURT: Mr. Burns, I wanted to
7 read to you 611(a), which places upon the
8 trial judge, I think, a very important
9 responsibility in handling matters of this
10 nature. 611(a), which is our rules of
11 evidence, says as follows -- and I checked to
12 make sure that the Federal Court has a
13 similar rule, and it does. It says -- it
14 talks about the mode and order of
15 interrogation and presentation. It says that
16 *"the Court shall exercise reasonable control*
17 *over the mode and order of interrogating*
18 *witnesses and presenting evidence so as to*
19 *make the interrogation and presentation*
20 *effective for the ascertainment of the truth,*
21 *to avoid needless consumption of time and*
22 *protect the witness from harassment and undue*
23 *embarrassment."*

24 That's why you have to be careful
25 what you're doing asking questions about

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1 something that was fifteen years ago that at
2 this point hasn't been demonstrated any
3 connection with what the allegations are.
4 Whether he remembers who was in a house has
5 nothing to do with the allegations at this
6 point. Now, if you want to bring out
7 something -- lay the foundation where it
8 becomes pertinent and germane, please do so.
9 Otherwise, I am going to consider you wasting
10 not my time but those folks that are sitting
11 in that box. We are going to move this case
12 forward. That's why I stopped you with the
13 comments that you made. You can't do that.

14 I, as the trial judge, am not trying
15 to interfere but I have to honor the
16 obligation that this rule places upon me to
17 make sure that a witness is not abused.
18 You're certainly entitled to cross-examine
19 him within the confines of the rules. Okay?

20 MR. ALAN BURNS: Yes, sir.

21 THE COURT: Thank you. We will be
22 at-ease for about fifteen minutes.

23 Mr. Washington, you may come down
24 but you are to have no conversation with
25 anyone during the break.

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1 (BRIEF RECESS)

2 (DEFENDANT PRESENT)

3 THE COURT: Let the record reflect
4 that Mr. Burns is present.

5 SOLICITOR HERRING-LASH: Judge,
6 there were two or three witnesses that were
7 sitting in the courtroom that Mr. Burns just
8 served.

9 THE COURT: All right.

10 SOLICITOR HERRING-LASH: So I
11 don't think that they were violating the
12 Order. They didn't know that they were going
13 to be served.

14 THE COURT: That's fine. Any
15 witnesses -- anyone here who is a witness or
16 who has been subpoenaed as a witness for
17 either the State or Mr. Burns? (No
18 response). Okay.

19 SOLICITOR HERRING-LASH: They've
20 left now.

21 THE COURT: Okay. Is the State
22 ready?

23 SOLICITOR HERRING-LASH: Yes,
24 sir.

25 THE COURT: Defense ready, Mr.

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1 Burns?

2 MR. ALAN BURNS: Yes, sir.

3 THE COURT: All right, we are
4 going to bring the jury back in. Be
5 prepared. We want to move on.

6 (WITNESS, Minor 2 RESUMES STAND)

7 (JURY IN @ 4:10 P.M.)

8 THE COURT: Thank you, Ladies and
9 Gentlemen. Mr. Burns, you may resume your
10 examination.

11 MR. ALAN BURNS: This is all part
12 of the same statement that I've already given
13 him, just the other pages.

14 COURT REPORTER: This will be
15 Defendant's Exhibit 2 for identification and
16 they are pages one, two, three, four, six and
17 seven of ---

18 THE COURT: So that's a portion of
19 Defendant's 1, is that correct?

20 MR. ALAN BURNS: Yes, sir.

21 THE COURT: And you want that to
22 be admitted?

23 MR. ALAN BURNS: Yes, sir.

24 THE COURT: Any objection?

25 SOLICITOR HERRING-LASH: No, Your

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1 Honor.

2 THE COURT: Defendant's Exhibit 2
3 is admitted into evidence without objection,
4 those additional pages.

5 (SO ENTERED AS DEFENDANT'S EXHIBIT 2)

6 CROSS EXAMINATION RESUMED

7 BY MR. ALAN BURNS:

8 Q. Minor 2 at some point in time within
9 the last couple of years, did you write a
10 letter to me?

11 A. Yes.

12 Q. In that letter, did you make any
13 references to how things around grandma's
14 and grandpa's house had changed over the
15 past year or so?

16 A. Not to my knowledge, no.

17 Q. In that letter, did you make any
18 reference to the fact that you didn't want me
19 to come home?

20 A. I might have, yes.

21 Q. And in that letter did you make any
22 reference to the animals that granddaddy used
23 to have there at the house?

24 A. No.

25 Q. Not being able to take care of them?

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1 A. No.

2 SOLICITOR HERRING-LASH: May I

3 see?

4 MR. ALAN BURNS: (Tenders document
5 to solicitor).

6 SOLICITOR HERRING-LASH: (Upon
7 review), Your Honor, we have a legal matter.

8 THE COURT: All right. Ladies and
9 Gentlemen, I need for you to return to your
10 jury room. There is a matter of law that I
11 need to take up first. Please do not begin
12 your deliberations. We will be with you as
13 quick as we can.

14 (JURY OUT @ 4:16 P.M.)

15 SOLICITOR HERRING-LASH: Your
16 Honor, I just wanted to make clear that Mr.
17 Burns understands -- because the situation
18 with the letter that he is referring to and
19 is going to show Mr. Washington is the letter
20 that SLED and the defense expert had both
21 analyzed and said that this witness did not
22 write.

23 THE COURT: That's fine.

24 SOLICITOR HERRING-LASH: I just
25 wanted him to understand ---

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1 THE COURT: First of all he needs
2 to understand -- Mr. Burns, have the court
3 reporter mark the letter, please. It will be
4 Defendant's Exhibit 3, if you plan to use it.

5 MR. ALAN BURNS: (Tenders to court
6 reporter).

7 COURT REPORTER: Defendant's
8 Exhibit 3 for identification, consisting of
9 two pages.

10 THE COURT: We are about to --
11 you're about to show him that. I don't know
12 what his testimony is going to be, but I
13 assume that he's probably going to say that
14 'I didn't write that letter.'

15 SOLICITOR HERRING-LASH: I assume
16 so.

17 THE COURT: That's as far as it
18 goes insofar as publishing the letter is
19 concerned, because he has to identify it
20 before it is admissible.

21 MR. ALAN BURNS: I understand.

22 THE COURT: Okay. So long as you
23 understand that and as long as you also
24 understand that by doing so that you're
25 opening the door to something that might not

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1 be otherwise presented for this jury's
2 consideration. That is that the letter was
3 not signed or prepared by that witness, by
4 Mr. Washington. You proceed as you deem fit.
5 Do you wish to go forward with that letter?

6 MR. ALAN BURNS: I just want to
7 ask the questions. I ---

8 THE COURT: I don't know what your
9 questions are but ---

10 MR. ALAN BURNS: I understand.

11 THE COURT: I've told you about
12 publishing, reading from that letter. You
13 cannot ask him that until the letter is
14 admitted.

15 MR. ALAN BURNS: That's ---

16 THE COURT: It can't be admitted
17 if he says 'I didn't write it.'

18 MR. ALAN BURNS: I understand.

19 THE COURT: Okay.

20 MR. ALAN BURNS: It's ---

21 THE COURT: Then you understand
22 that if there is an objection made that I
23 will probably sustain the objection. So -- I
24 don't know what your question is.

25 MR. ALAN BURNS: I wasn't even

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1 going to submit that letter into evidence.

2 THE COURT: Well, you have to --
3 when you refer to something, -- at this
4 point, it is not in evidence. It's only
5 marked for the record. Just so that you
6 understand, we mark it so that when they
7 review this -- when you show a document to a
8 witness it needs to have a name. The name is
9 Defendant's Exhibit 3.

10 MR. ALAN BURNS: Right.

11 THE COURT: That way when they
12 review it, they know what you're showing the
13 witness.

14 MR. ALAN BURNS: Right.

15 THE COURT: That's why we mark
16 things. That's why we say it's for
17 identification. It doesn't mean that it is
18 admitted, unless you offer it. Then I -- if
19 there is no objection, I will probably admit
20 it. If there is an objection, then I will
21 have to rule on whether it is admissible or
22 not.

23 MR. ALAN BURNS: Right.

24 THE COURT: Just because you're
25 marking it doesn't mean that it is admitted.

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1 MR. ALAN BURNS: Right. Exactly.

2 THE COURT: All right.

3 MR. ALAN BURNS: It doesn't mean
4 that I have to show it either.

5 THE COURT: To who?

6 MR. ALAN BURNS: To the witness.

7 THE COURT: Well, I don't know --
8 what's the purpose of marking it if you're
9 not going to show it to him?

10 MR. ALAN BURNS: That's what I was
11 saying. I wasn't ---

12 THE COURT: Well, then don't pull
13 out -- then -- let me explain something else
14 that you're just doing. Under 403 and under
15 Rule 611(a) you said, 'Did you write me a
16 letter?' You go get a letter. Then you hold
17 this letter, that's an old trick of the trade
18 -- we all have done that, to find out whether
19 a witness believes 'did I write it down.'
20 It's to catch them off guard. It's a trick.
21 There's no reason for you to show that.
22 That's just poor sports--, -- that is poor
23 gamesmanship in this courtroom, under 611(a),
24 unless you are going to ask this witness a
25 question about it. Okay?

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1 MR. ALAN BURNS: Yes, sir.

2 THE COURT: All right, sir. We're
3 on the same page. I was a lawyer for twenty-
4 one years, Mr. Burns. Okay. All right.
5 Let's bring in the jury.

6 COURT REPORTER: And I stand
7 corrected. It (Defendant's Exhibit 3) is
8 three pages.

9 MR. ALAN BURNS: Yes, three pages.

10 (JURY IN @ 4:20 P.M.)

11 THE COURT: Thank you, Ladies and
12 Gentlemen. Mr. Burns, you may cross-examine.

13 CROSS EXAMINATION CONTINUED

14 BY MR. ALAN BURNS:

15 Q. **Minor 2** did you ever indicate to me, by
16 any means, that no one in the family really
17 wanted me to come back home because of my
18 past?

19 A. Not to my memory.

20 THE COURT: Mr. Washington, you
21 need to pull up so that the microphone can
22 pick you up. Speak into the mic, please.

23 THE WITNESS: Not to my memory.

24 CROSS EXAMINATION CONTINUED

25 BY MR. ALAN BURNS:

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1 Q. Did you ever indicate to me, by any
2 means, that you were sorry for what you were
3 about to do to me?

4 A. No.

5 Q. Going forward to the police?

6 A. No.

7 Q. Did you ever indicate to me that when I
8 did return that I would probably want to go
9 back to raising hogs, the way I used to?

10 A. No.

11 Q. Did you know that I used to raise hogs
12 and stuff, ---

13 A. No.

14 Q. --- had a pet hog for all the kids to
15 ride, when I was a kid?

16 A. No.

17 Q. But you did write a letter to me
18 sometime in 2010; is that correct?

19 A. I believe so, yes.

20 Q. And that letter was in reference to you
21 speaking to me about these charges?

22 A. Yes.

23 Q. And in that letter you explained to me
24 that you were Karen's second son, trying to
25 identify who you were to me?

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1 A. Yes.

2 Q. And in that letter you explained that
3 you were a sophomore in college?

4 A. I believe so. Sure.

5 Q. Let me ask you, ---

6 MR. ALAN BURNS: I am going to
7 present the letter to him, Your Honor.

8 THE COURT: It is to be marked as
9 Defendant's Exhibit 3 for identification
10 only.

11 CROSS EXAMINATION CONTINUED

12 BY MR. ALAN BURNS:

13 Q. There you go -- take that.

14 A. (No verbal response).

15 SOLICITOR HERRING-LASH: Your
16 Honor, is there a question?

17 THE COURT: I don't know.

18 MR. ALAN BURNS: Yeah, I want him
19 to read the letter first and then I will ask
20 him about it.

21 THE COURT: What's the purpose for
22 which he is to read the letter? What's the
23 question? Phrase your question, please, Mr.
24 Burns. There is no need for him to read the
25 letter unless there is a question which

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1 requires him to read the letter.

2 CROSS EXAMINATION CONTINUED

3 BY MR. ALAN BURNS:

4 Q. Is there any truth in any of the things
5 that is said in the ---

6 THE COURT: No, sir, that is
7 publishing the letter, sir. What is it that
8 you want to ask him about? You've asked him
9 certain things that he's allegedly said. You
10 can ask him -- if there is some part of that
11 which you wish to further publish but asking
12 'did you say such and such', that's fine.
13 The question of 'is there any truth to it',
14 any truth to what? What does that reference?
15 That doesn't help us.

16 MR. ALAN BURNS: I want to ask him
17 if ---

18 THE COURT: Ask him specifically
19 what it is that you're asking, did he say so
20 and so. More importantly, you're going to
21 have to -- you're going to have to identify
22 the letter.

23 MR. ALAN BURNS: So can I go ahead
24 and enter the letter first?

25 THE COURT: You have to lay the

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1 foundation to enter the letter.

2 MR. ALAN BURNS: Okay.

3 THE COURT: You have to ask him
4 the question, does he recognize that letter.

5 MR. ALAN BURNS: Okay.

6 CROSS EXAMINATION CONTINUED

7 BY MR. ALAN BURNS:

8 Q. Do you recognize that letter, Minor 2

9 A. No.

10 Q. You never sent that letter to me?

11 A. No.

12 MR. ALAN BURNS: Your Honor, I
13 would like to enter that letter into
14 evidence?

15 THE COURT: Any objection?

16 SOLICITOR HERRING-LASH: Yes,
17 Your Honor, I object.

18 THE COURT: Sustained.

19 MR. ALAN BURNS: Withdrawn.

20 THE COURT: It stays with the
21 court reporter.

22 MR. ALAN BURNS: All right.

23 COURT REPORTER: Thank you, sir.

24 MR. ALAN BURNS: No further
25 questions at this time.

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1 THE COURT: Any redirect?

2 SOLICITOR HERRING-LASH: Just a
3 few questions, Your Honor.

4 REDIRECT EXAMINATION

5 BY SOLICITOR HERRING-LASH:

6 Q. [Minor 2] just to clarify, when Mr. Burns
7 asked you about the incident at the
8 preschool, were you actually in the preschool
9 when you were describing ---

10 A. No, just in the parking lot area.

11 Q. And when you were talking about the box
12 cutter or the knife, were you talking about
13 Mr. Burns or your friend? I think I got
14 confused.

15 A. The box cutter knife, that was in
16 reference to him (indicating Mr. Burns).

17 Q. Then your friend had a knife also?

18 A. Yes.

19 Q. Okay.

20 SOLICITOR HERRING-LASH: Your
21 Honor, may I approach?

22 THE COURT: Yes, you may.

23 COURT REPORTER: State's Exhibit
24 12 for ID.

25 THE COURT: Twelve for identifica-

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1 tion only.

2 SOLICITOR HERRING-LASH: Your

3 Honor, may I approach the witness?

4 SOLICITOR HERRING-LASH: Yes, you

5 may.

6 REDIRECT EXAMINATION CONTINUED

7 BY SOLICITOR HERRING-LASH:

8 Q. Minor 2 would you look at that?

9 A. (Review).

10 Q. Do you recognize that?

11 A. Yes.

12 Q. What is that?

13 A. This is the letter that I wrote to him.

14 MR. ALAN BURNS: Objection, Your

15 Honor.

16 THE COURT: Hold on a second. I

17 have an -- an objection to him testifying

18 that is the letter that he wrote? I mean,

19 what is the objection to? It hasn't been

20 offered yet. Did you offer that letter?

21 SOLICITOR HERRING-LASH: No, Your

22 Honor.

23 THE COURT: Okay.

24 REDIRECT EXAMINATION CONTINUED

25 BY SOLICITOR HERRING-LASH:

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1 Q. Did you write one letter or two letters?

2 A. I wrote one letter to him.

3 Q. And the letter that I just showed us is
4 that letter?

5 A. Yes.

6 SOLICITOR HERRING-LASH: Those
7 are all the questions that I have.

8 THE COURT: Recross?

9 MR. ALAN BURNS: No, Your Honor.

10 THE COURT: Thank you, Mr.
11 Washington. You may step down.

12 (WITNESS STEPS DOWN)

13 THE COURT: Call your next
14 witness.

15 SOLICITOR HERRING-LASH: The
16 State would call Karen Smalls.

17 (WITNESS TAKES STAND)

18 KAREN SMALLS, being duly sworn to
19 tell the truth, the whole truth and nothing
20 but the truth, testified, as follows:

21 DIRECT EXAMINATION

22 BY SOLICITOR HERRING-LASH:

23 Q. Mrs. Smalls, where do you live?

24 A. [REDACTED] in Mount Pleasant.

25 Q. Are you related to Minor 2 [REDACTED]

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- 1 A. I am.
- 2 Q. What is your relationship?
- 3 A. I am his mother.
- 4 Q. Who else is in your immediate family?
- 5 A. My husband, Ray, and our two daughters
- 6 -- Cadre, Kimberly and my son Kevin.
- 7 Q. Where do you work?
- 8 A. At Military Academy High School.
- 9 Q. What do you do there?
- 10 A. I am a high school math teacher.
- 11 Q. How long have you been a math teacher?
- 12 A. Since 1999.
- 13 Q. And you are Mr. Burns' what, what ---
- 14 A. Sister?
- 15 Q. When you grew up -- are you older or
- 16 younger than him?
- 17 A. Older.
- 18 Q. Did you have many, many siblings?
- 19 A. We did.
- 20 Q. How many?
- 21 A. I have four sisters and five brothers
- 22 living.
- 23 Q. Was he the youngest in the family?
- 24 A. No, he is not the youngest. He is the
- 25 youngest brother.

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1 Q. The youngest brother?

2 A. Yes.

3 Q. Did you grow up on Venning Road?

4 A. I did.

5 Q. Does your mother still live there?

6 A. She does.

7 Q. What is your mother's health right now?

8 A. She has dementia, early stage Alzheimer.

9 Q. So she is not actually coherent?

10 A. No, she doesn't remember a lot of stuff.

11 Q. During the time that your nieces and
12 nephews and sons were growing up, did they
13 spend a lot of time with their grandmother?

14 A. Yes.

15 Q. And that would have been in the home on
16 Venning Road?

17 A. Yes.

18 Q. Did some of them pretty much live there?

19 A. Yes.

20 Q. Who lived there, as far as your nieces?

21 A. Minor 4 lived there, and Minor 5
22 Burns lived there.

23 Q. Why did they live there?

24 A. Minor 5 mom was in the military and my
25 mom and dad got custody of her when my sister

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1 went away. Then [Minor 4] used to live there
2 because her mother and father were in New
3 York and she had asthma really bad, so they
4 let her stay here where the air is a little
5 better.

6 Q. During the time that [Minor 5] and [Minor 4]
7 lived there, was Mr. Burns also living there
8 for some part of that?

9 A. Yes.

10 Q. Did there come a time that he left and
11 went away?

12 A. Yes.

13 Q. Do you know the dates of when he left
14 and when he came back?

15 A. He went away in 1987, December, and he
16 came back in 1997 about the end of February
17 or the beginning of March.

18 Q. Did you and your family continue to go
19 to that home and stay there?

20 A. Yes.

21 Q. When he came back, did he move back in
22 and stay at that home again?

23 A. He stayed there for a little while, yes.

24 Q. How old was [Minor 2] when he moved back?

25 A. [Minor 2] was seven.

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1 Q. Did Minor 2 continue to visit over
2 there?

3 A. He did.

4 Q. Do you remember a specific time when you
5 left Minor 2 there?

6 A. I do.

7 Q. Can you explain to the jury about that?

8 A. Well, there was one time that I remember
9 specifically. My mother sent my sister and I
10 to WalMart to get some stuff for him.

11 Q. When you say him, you ---

12 A. For Alan. We were using her credit
13 card, but she sent us. So I left Minor 2
14 there.

15 Q. And was Alan there?

16 A. He was, (affirmative nod).

17 Q. Do you remember if that was one of the
18 first times that he met Mr. Burns?

19 A. It was one of the first times, yes.

20 Q. Do you remember what was going on when
21 you got home?

22 A. It was strange because when I came home,
23 I didn't see Minor 2 initially. You know,
24 when you're kinda looking around, he was
25 actually in the kitchen under one of my

1 mother's cabinets.

2 Q. What was he doing under there?

3 A. He was just tucked away in the back of
4 the pots and pans, just trying to -- kinda
5 all curled up in the back.

6 Q. Did you try to get him out?

7 A. I did. I asked him what was going on,
8 why was he under there. My mother came
9 around at the same time and said, oh, you
10 know, he must have been playing, *'Nothing's*
11 *wrong with that, he can play under there. I*
12 *will pull some pots out so that there will be*
13 *a little spot for him and whenever he needs*
14 *to go under there or wants to go under there,*
15 *he can go.'*

16 Q. Do you remember any other times that
17 **Minor 2** was with Mr. Burns?

18 A. I remember specifically at least one
19 more time when we were outside and I -- I
20 came over with my whole family and Alan was
21 supposed to be cutting his hair.

22 Q. Cutting **Minor 2** hair?

23 A. Yes.

24 Q. What happened?

25 A. Well, we had this little building in the

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1 back that we called the speakeasy that he
2 used to cut the hair in. I was telling
3 **Minor 2** to go and get a haircut back there
4 and he didn't want to go -- he was crying
5 whatever and I was just thinking that he just
6 didn't want to get a haircut. But I made him
7 go anyway to get the haircut.

8 Q. Was Mr. Burns the one that was cutting
9 his hair?

10 A. Yes.

11 Q. Now, did **Minor 2** go to daycare?

12 A. He did.

13 Q. And where did he go to daycare?

14 A. He went to a daycare on Labor Camp Road
15 in Mount Pleasant.

16 Q. In 1997, was he out of daycare already?

17 A. (Affirmative nod), he was out of
18 daycare.

19 Q. Do you remember any other times that Mr.
20 Burns would give **Minor 2** -- be alone with him
21 or give him rides, anything like that?

22 A. I didn't know of any other times, no.

23 Q. Now, did Mr. Burns also leave Charleston
24 again?

25 A. He did.

1 Q. When was that?

2 A. It was -- I don't know exactly when but
3 it was like in the early 2000s, 2001 or
4 sometime. I am not exactly sure.

5 Q. Did **Minor 2** go away to college?

6 A. He did.

7 Q. Where did he go?

8 A. He went to Coastal Carolina University.

9 Q. Do you know when he started college?

10 A. He graduated high school in 2008, so he
11 would have gone the Fall of 2008.

12 Q. During the time that he was in college,
13 did you get a call one evening from him?

14 A. I did.

15 Q. How was he acting when you received that
16 call?

17 A. He was hysterical. He was on the phone,
18 he was crying. It was a state that I'd never
19 seen him in before.

20 Q. Was this day or night?

21 A. It was at night, about 9:30 or 10:00 at
22 night.

23 Q. What did you do?

24 A. I tried to calm him down but I couldn't.
25 You know, he kept going on and on about him

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1 remembering something. I tried to calm him
2 down. I had another son that was up there.
3 I tried to get him to go over to find out
4 where **Minor 2** was. None of that worked, so
5 my husband and I got in the car and we went
6 to Coastal.

7 Q. Were you able to find him?

8 A. We were.

9 Q. When you got there, what was his
10 demeanor like?

11 A. It was pretty much the same.

12 Q. Was he able to discuss with you what had
13 happened?

14 A. Eventually he said that he kept
15 remembering something that happened to him
16 and he was asking me, you know. He said,
17 'I am remembering something happened to me.'
18 I was asking him what, you know. He didn't
19 go into a lot of details. You know, he kept
20 -- I didn't want to probe him too much. You
21 know, I was trying to settle him down.

22 Q. Did y'all bring him home?

23 A. We did, (affirmative nod).

24 Q. Did he eventually tell you that he had
25 been assaulted?

1 A. He did, (affirmative nod).

2 Q. Did he tell you where he was when he was
3 assaulted?

4 A. He did tell me.

5 Q. Where?

6 A. In my mom's house, in one of the
7 bedrooms that was there.

8 Q. Did he tell you any other place?

9 A. He also told me about -- he told me
10 about that -- he kept asking me questions
11 about the daycare thing and a big car.

12 Q. A big what?

13 A. Car, a big car. He kept asking me --
14 well, he told me about the speakeasy, about
15 the -- I don't think he said about the hair
16 cutting but he remembered going in the
17 speakeasy.

18 Q. Did he tell you when these events
19 occurred?

20 A. As far as ---

21 Q. What year? What timeframe?

22 A. He didn't specifically, you know, tell
23 me exactly what year -- he didn't say what
24 year it was.

25 Q. Has he ever been able to sit down and

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1 give you a lot of details?

2 A. No, he hasn't.

3 Q. Does he like to talk to you about this?

4 A. No, and he -- you know, when he talks to
5 me about it, he starts crying and he just
6 gets really in a bad way.

7 Q. Did he return to school?

8 A. He did.

9 Q. For about how long?

10 A. He went back to school. He stayed on
11 for that weekend, then we took him back.
12 Then I had to go back and get him again.

13 Q. How long was that?

14 A. It was within maybe a week or so.

15 Q. Why did you have to go back and get him?

16 A. Because he was still not in a good way.
17 We brought him home and we talked about it
18 some more.

19 Q. Did y'all eventually decide to go to law
20 enforcement?

21 A. Well, he actually decided -- after we
22 talked about it, he decided. I told him, you
23 know, that 'It is your call. I am not going
24 to tell you to do anything. What happened
25 happened to you, so that's a decision that

1 you have to make because you're grown.' You
2 know? 'Whatever you do, I'm going to support
3 you in that.' That's what he decided that he
4 wanted to do.

5 Q. Did you let him know that you knew about
6 other people, other nieces.

7 A. I did.

8 Q. Had you let him know before that time?

9 A. Before? That this had happened to him?

10 Q. (Affirmative nod).

11 A. I hadn't even spoken to him about that.

12 Q. You had never talked to him?

13 A. No.

14 Q. Did you go to the Police Department with
15 him?

16 A. We did go together. When we went the
17 first time, I don't know but for some reason
18 we didn't go because we thought that they
19 were open or -- for some reason we didn't --
20 it wasn't like he'd changed his mind but --
21 maybe we went to the wrong building or
22 something and we didn't go in. But the
23 second time we went in and I took him.

24 Q. Did you talk with the detective?

25 A. Minor 2 did.

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1 Q. Did she talk to him alone?

2 A. She did.

3 Q. Does [Minor 2] live here now?

4 A. He does.

5 Q. Did the detective have [Minor 2] write a
6 letter to Mr. Burns?

7 A. She did.

8 Q. Do you know why?

9 A. Well, she wanted -- and this was after
10 we'd gone to the police department. I think
11 it was when she'd spoken to him. She wanted
12 him to write a letter to see, you know, if he
13 could get Alan to confess what he'd done.

14 Q. Have you seen other victims after
15 they've told, and you've talked with them?

16 A. About?

17 Q. About their abuse? Have you spoken to
18 them in detail?

19 A. No.

20 Q. Do y'all sit around and talk about this
21 as a family?

22 A. I don't think so. We might talk about
23 -- not about what actually was done to them,
24 but as far as saying that the court date is
25 coming up, that we are going to support each

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1 other as a family. Things like that. That's
2 about it.

3 Q. Do you know why when you found out about
4 the nieces that no one in your family did
5 anything about that?

6 A. I don't know. I mean, I know that I was
7 a lot younger. I didn't have any children
8 myself. I found out -- I think maybe my
9 sister-in-law maybe had mentioned it. But I
10 -- I don't know why that decision was made.

11 SOLICITOR HERRING-LASH: Court's
12 indulgence.

13 THE COURT: Certainly.

14 SOLICITOR HERRING-LASH: Mrs.
15 Smalls, those are all the questions that I
16 have. If you would, please answer any that
17 Mr. Burns may have.

18 THE COURT: You may cross examine,
19 Mr. Burns.

20 CROSS EXAMINATION

21 BY MR. ALAN BURNS:

22 Q. I've only got a couple of questions.
23 How are you doing?

24 A. (No verbal response).

25 Q. The night that **Minor 2** called you, you

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1 said that you drove up there. Did you make
2 any inquiries as to whether or not he had
3 been drinking or using any type of drugs or
4 anything?

5 A. No.

6 Q. So there is a possibility that he could
7 have been ---

8 A. I don't know what he was doing as far as
9 drinking.

10 Q. Okay. I understand that you're saying
11 that you don't know but is it a possibility,
12 I'm asking. Yes or no?

13 SOLICITOR HERRING-LASH: Your
14 Honor, I think she answered the question.

15 THE COURT: She said that she doesn't
16 know. Under 602, if she doesn't know she
17 can't speculate. That would be speculation.

18 CROSS EXAMINATION CONTINUED

19 BY MR. ALAN BURNS:

20 Q. When **Minor 2** came back, you said that he
21 came back to get his haircut from me. Was
22 this done like a service that you or
23 somebody, him, paid for the haircut? Or did
24 I just do that ---

25 A. Did you charge me?

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1 Q. I am asking the question.

2 A. I don't know. I don't know if I paid or
3 not, but I know that you cut the hair.

4 Q. Okay. And you said that I had went away
5 in December of what year? December of '87?

6 A. Yes.

7 Q. It was September?

8 A. No, it was December.

9 THE COURT: Just answer the
10 question. It's argumentative. Ask another
11 question.

12 MR. ALAN BURNS: That's all that I
13 have. Thank you, Your Honor.

14 THE COURT: Redirect?

15 SOLICITOR HERRING-LASH: No, Your
16 Honor.

17 THE COURT: You may come down,
18 Mrs. Smalls.

19 (WITNESS STEPS DOWN)

20 THE COURT: Call your next
21 witness.

22 SOLICITOR HERRING-LASH: Cathy
23 Burns.

24 (WITNESS TAKES STAND)

25 CATHY BURNS, being duly sworn to

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1 tell the truth, the whole truth and nothing
2 but the truth, testified, as follows:

3 DIRECT EXAMINATION

4 BY SOLICITOR HERRING-LASH:

5 Q. Ms. Burns, where do you live?

6 A. I live at [REDACTED] Mount
7 Pleasant, South Carolina.

8 Q. How long have you lived there?

9 A. Since 1980.

10 Q. Before that where did you live?

11 A. Before that, I moved next door. I lived
12 at my mother-in-law's house, which was [REDACTED]
13 -- [REDACTED], one of the addresses, but I lived
14 right across the street from her.

15 Q. Did the address change from Venning to
16 Rands Hill?

17 A. Yes.

18 Q. And are you related to Alan Burns?

19 A. Yes, I am.

20 Q. How are you related?

21 A. Alan is my husband's baby brother.

22 Q. Do you have children?

23 A. Yes, I do.

24 Q. Who are they?

25 A. [REDACTED] Minor 4 Cheryl Burns, Olivia

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1 Burns, Oliver Burns III.

2 Q. Are you working right now?

3 A. No, I am not.

4 Q. Have you worked in the past?

5 A. Yes, I have.

6 Q. What was your job?

7 A. I was a kitchen manager at Dunleavy's
8 Pub for eighteen years.

9 Q. And when did you first meet Alan Burns?

10 A. I first met Alan in the summer of 1969.

11 Q. Is that when you met his brother?

12 A. Yes.

13 Q. You've been married to his brother for
14 how long?

15 A. I was married to Oliver for -- since
16 September 28th, 1973.

17 Q. And did there come a time that you and
18 Oliver moved away from Charleston?

19 A. Yes. We moved away in, I want to say,
20 1974.

21 Q. Did your daughter, **Minor 4** ever have to
22 come back and live here rather than staying
23 with you?

24 A. Yes. **Minor 4** came back to South
25 Carolina at the age of five to start

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1 kindergarten and she lived with my mother-in-
2 law.

3 Q. Why did she have to come back here?

4 A. We were getting ready to move back to
5 South Carolina and I was ill at the time --I
6 have epilepsy.

7 Q. So she had to live with Mr. and Mrs.
8 Burns on Venning Road?

9 A. Yes.

10 Q. Was Alan living there at the time?

11 A. Yes.

12 Q. Do you if at that time there were other
13 nieces also living there or staying there a
14 great deal of time?

15 A. At that particular time, I want to say
16 **Minor 5** was staying there. I am uncertain of
17 exactly how many children lived in the house
18 at the time because it was quite a coming-
19 and-going. I can't say specifically but I
20 know that over a period of time the children
21 would stay there.

22 Q. Why did **Minor 5** have to stay there?

23 A. **Minor 5** mom went into the military and
24 she was staying with her grandma.

25 Q. What about **Minor 3**

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1 A. [Minor 3] she ---

2 Q. You call [Minor 3] "[Minor 3] if that
3 right?

4 A. Yeah. [Minor 3] was there. I don't
5 remember if she lived in the house
6 permanently but they came in the summer and
7 on the weekends to stay with their grandma.

8 Q. After you moved back to Charleston, did
9 you move kinda across the street?

10 A. Yes.

11 Q. Did you live in a mobile home at the
12 time?

13 A. I lived in a mobile home.

14 Q. And did Mr. Burns visit you in that
15 mobile home?

16 A. Alan?

17 Q. Yes.

18 A. Yes, he did.

19 Q. Did [Minor 4] continue to go back and
20 forth between your home and her grandparents'
21 house?

22 A. Yes.

23 Q. Was there a period of time that Mr. Alan
24 Burns left?

25 A. Yes.

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1 Q. When you returned, did **Minor 4** continue
2 to visit over there?

3 A. Not as much as she used to. She would
4 go over if I went over or a family member
5 went over.

6 Q. How did y'all celebrate -- deciding
7 about Christmas? Tell us about that.

8 A. At Thanksgiving we would pull names. At
9 Christmastime -- the adults pulled names, the
10 children pulled names, then at Christmas we
11 would all meet at my mother-in-law's house at
12 about 6:00 o'clock and exchange the gifts.

13 Q. And that particular Thanksgiving, did
14 **Minor 4** draw Mr. Burns name?

15 A. Yes, she did.

16 Q. What happened?

17 A. She got this funny look in her eyes and
18 I asked her what was wrong. She told me that
19 she had pulled his name. That was the last
20 time that she participated. She put the name
21 back. It was a lot of commotion about why
22 she didn't want to have his name, but we
23 didn't say anything, we just let her put the
24 name back in.

25 Q. Is this after he returned in the home in

1 '97?

2 A. Yes.

3 Q. While he was gone away, did you receive
4 a letter from him or did your husband receive
5 a letter?

6 A. Yes.

7 Q. And did you open that letter?

8 A. Yes, I did.

9 Q. Why did you open it?

10 A. I opened the letter because about a year
11 prior to the letter, **Minor 4** had told me that
12 she was molested.

13 MR. ALAN BURNS: Objection.

14 THE COURT: Basis for objection?

15 MR. ALAN BURNS: Relevancy.

16 THE COURT: Overruled.

17 DIRECT EXAMINATION CONTINUED

18 BY SOLICITOR HERRING-LASH:

19 Q. What did you do with the letter when you
20 opened it?

21 A. I opened the letter, I read it. Once I
22 got through reading it, I took the letter
23 next door to my mother and father-in-law.

24 Q. Why did you do that?

25 A. Because I had held it so long, I wanted

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1 someone else to understand what I was
2 holding. I wanted them to see. Because I
3 did not tell my husband about the letter, I
4 wanted someone to see the letter. I went to
5 my mother-in-law and my father-in-law.

6 I read the letter -- halfway through
7 the letter, she took the letter from me and
8 she finished reading the letter.

9 Q. Your mother-in-law did?

10 A. My mother-in-law did. My father-in-law
11 sat in the chair. He didn't say anything.
12 He just had like one tear coming down from
13 his eye. My mother-in-law said, "He's just
14 kidding, that is not true."

15 Q. That what was not true?

16 A. In the letter he wrote that he'd found
17 the Lord, that the Lord had forgiven him and
18 that ---

19 MR. ALAN BURNS: Objection, Your
20 Honor.

21 THE COURT: Basis of objection?

22 MR. ALAN BURNS: Hearsay.

23 SOLICITOR HERRING-LASH: Your
24 Honor, I am fixing to offer the statement.

25 THE COURT: Under 801(d)(2) it is

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1 not hearsay.

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR HERRING-LASH:

4 Q. What else did she say?

5 A. Do you want me to continue?

6 Q. (Affirmative nod).

7 A. The letter said that he'd found the Lord
8 and that if it was within my husband's,
9 Oliver's, heart or whatever, I can't remember
10 word for word, could he please forgive him
11 for what he'd did to **Minor 4** and **Minor 5**

12 Q. Did you show your husband the letter?

13 A. No, I didn't.

14 Q. Did you tell anybody else about it?

15 A. I told no one about the letter but my
16 mother-in-law and my father-in-law..

17 Q. Why not?

18 A. It's family history. My husband and
19 Alan never really got along that well, lots
20 of domestic violence at times. Lots of
21 arguments. I just took it upon myself not
22 to show it to him because I did not want my
23 husband to go to jail. That was my mindset.

24 Q. Did **Minor 4** ever write your husband a
25 letter?

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1 A. Yes, she did.

2 Q. Did you ever give it to him?

3 A. I got the letter one morning. That
4 evening she called and said ---

5 Q. You can't say what she said.

6 A. I got the letter that morning. The
7 letter wasn't given to him until maybe six
8 months later.

9 Q. But you eventually gave it to him?

10 A. Yes.

11 Q. Now, when Alan came home in 1997, did he
12 move back in with your in-laws?

13 A. Yes.

14 Q. During that time, did you ever see him
15 with **Minor 1**

16 A. Yes.

17 Q. Explain that.

18 A. I would see him with **Minor 1** when he
19 would bring her -- we'd say 'in the corner.'
20 When he'd bring her in the corner.

21 Q. Is that what you called where you lived,
22 in the corner?

23 A. Yeah. Where my mother-in-law lived,
24 we'd say that's the corner. I would see her
25 when he brought her in the corner. She lived

1 in Hickory Shadow. I would see them in the
2 yard, you know, -- no reason.

3 Q. What about **Minor 2** did you ever see him
4 with **Minor 2**

5 A. Yes.

6 Q. What about that?

7 A. Again, maybe on a Saturday or whatever,
8 he used to cut the kids hair.

9 Q. Did there come a time when you realized
10 that this case was going to be reported to
11 the police?

12 A. Yes.

13 Q. What did you do when you heard about
14 that?

15 A. I spoke with my sister-in-law, Karen,
16 and she -- they were going to go to the
17 police about it. I told her that **Minor 4** was
18 willing to go along with it, to support ---

19 Q. **Minor 4**

20 A. **Minor 4** my daughter. To support him.

21 Q. What kind of social life has **Minor 4**
22 had?

23 A. None. She is thirty-eight years old,
24 never had a boyfriend, never goes out. Every
25 now and then she might go to the movies with

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1 her sisters. The majority of the time she
2 goes to the movies alone. She lives alone.
3 She goes to church and comes to our house.

4 Q. Does she also work?

5 A. Yes.

6 Q. How has she dealt with coming forward?

7 A. She goes for counseling.

8 Q. Did she just start?

9 A. No. **Minor 4** has been in counseling for
10 quite a while now. She has a new counselor,
11 but -- (pause).

12 SOLICITOR HERRING-LASH: Court's
13 indulgence for a moment?

14 THE COURT: Certainly.

15 SOLICITOR HERRING-LASH: Ms.

16 Burns, those are all the questions that I
17 have. If you could answer any from Mr.
18 Burns.

19 THE COURT: Any cross-examination,
20 Mr. Burns?

21 MR. ALAN BURNS: Yes, sir.

22 CROSS EXAMINATION

23 BY MR. ALAN BURNS:

24 Q. You mentioned a letter. Where is that
25 letter now?

1 A. I have no idea.

2 Q. Do you know who you gave it to?

3 A. Which one of the letters are you talking
4 about?

5 Q. The letter that you said that I wrote.

6 A. One letter was given to your mother and
7 another letter was given to my husband, and
8 we don't save trash.

9 Q. So those letters don't exist now?

10 A. Not to my knowledge.

11 MR. ALAN BURNS: Your Honor, at
12 this time I would move to have this witness'
13 testimony stricken because she testified to
14 hearsay that can't be substantiated.

15 THE COURT: Overruled. Denied.

16 CROSS EXAMINATION CONTINUED

17 BY MR. ALAN BURNS:

18 Q. You stated that Minor 4 has never had a
19 boyfriend?

20 A. Not to my knowledge. I'm talking about
21 a boyfriend, male/female relationship. No,
22 she has not.

23 Q. Because in her statement she stated that
24 she'd had a boyfriend that she was going to
25 counseling because when she'd tried to have

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1 sex with him that she couldn't.

2 A. Well, she didn't divulge that to me.

3 That's not something that you talk to your
4 mother about.

5 Q. Let me ask you a question about the
6 property that is Rands Hill.

7 A. Property?

8 Q. The property back on Rands Hill.

9 There's been a lot of development going on
10 back in that area where we live?

11 A. Rands Hill, where we live?

12 Q. Yes.

13 A. No, sir.

14 Q. A lot of individual developers coming
15 back ---

16 SOLICITOR HERRING-LASH: I would
17 object to relevancy.

18 THE WITNESS: Not to my
19 knowledge.

20 THE COURT: Hold on just one
21 second, please. Don't answer the question if
22 the lawyer raises an objection. What is the
23 relevance?

24 MR. ALAN BURNS: Motive. Motive
25 for them telling a lie, because they're

1 trying to sell the property. That's why they
2 don't want me back. My father wrote me a
3 letter that ---

4 THE COURT: I sustain the
5 objection.

6 MR. ALAN BURNS: Okay.

7 CROSS EXAMINATION CONTINUED

8 BY MR. ALAN BURNS:

9 Q. You also stated that you had sent
10 Minor 4 back from New York when she was five
11 years old because you were ill?

12 A. I didn't sent Minor 4 back. I brought
13 Minor 4 to South Carolina. Yes, I was ill.

14 Q. That was why you brought her back?

15 A. I brought her back so that she could
16 start kindergarten.

17 Q. Because you were ill?

18 A. Because I was ill and I was getting
19 ready to move back to South Carolina.

20 Q. Okay. I am just trying to get the facts
21 straight because Karen testified before you
22 and stated that Minor 4 was ill with asthma.

23 A. She did have asthma. That was one of
24 the reasons why we were leaving New York
25 also.

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1 Q. But you didn't move down to South
2 Carolina with Minor 4 when she was five years
3 old; isn't that true?

4 A. I did move back. I moved back in 1980.
5 I left her with Alisteen (phonetic) and
6 Oliver Burns in August.

7 Q. For how long?

8 A. Until I moved down in January 1980.

9 Q. And you left her, in what year did you
10 leave her down?

11 A. 1979.

12 Q. Okay. So the letter that you mentioned,
13 you do not have that?

14 A. (No verbal response).

15 Q. And you and Minor 4 your daughter,
16 you've never discussed anything having to do
17 with the birds-and-bees with her?

18 A. To be honest with you, I did not.

19 Q. Let me ask you this question, too. Do
20 you consider yourself to have been a good
21 mother?

22 A. Uh, ---

23 Q. On a scale of one to ten?

24 A. I'd say I'm a nine-and-a-half.

25 Q. A nine-and-a-half?

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1 A. (No verbal response).

2 Q. Okay. Would the average mother who had
3 had knowledge that their daughter had been
4 molested by somebody, do you think that they
5 would have hid that from their husband,
6 buried it someplace?

7 THE COURT: Mr. Burns, that's --
8 unless you can establish some basis for that,
9 under 602 that's pure speculation on her
10 part. You'd have to lay a foundation before
11 you can ask a question like that, under our
12 rules of evidence.

13 MR. ALAN BURNS: Okay.

14 CROSS EXAMINATION CONTINUED

15 BY MR. ALAN BURNS:

16 Q. So you think that you are being a good
17 mother by not going to your husband and
18 reporting what you'd found out?

19 A. Yes.

20 Q. That was being a good mother?

21 A. Yes.

22 Q. So you didn't consider it as being a
23 danger that I would be coming home? And you
24 said that this happened in what year, that
25 you got the letter?

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1 A. I am not sure what year that I got the
2 letter. She was in college at the time and
3 Mr. Alan Burns was in prison at the time.
4 When Mr. Burns came home from prison, Mr.
5 Burns got married and I gave Mr. Burns the
6 benefit of the doubt that he had changed --
7 because Mr. Burns got married and moved away.
8 Mr. Burns had also written a letter and asked
9 my husband to forgive him for what he had
10 done, so I assumed that Mr. Burns was not
11 going to do it again to -- not only not to
12 Minor 4 but not to anyone else.

13 So I consider myself a good mother
14 because I protected my child, because she did
15 not want anyone to find out -- she didn't
16 want her daddy to think that she was a "bad"
17 person. That's why I did not tell him.

18 Because she did not want her father
19 to look at her disgustingly. She thought
20 that she was a disgusting person because of
21 something that she had no control over, that
22 she didn't tell anybody for eighteen or
23 nineteen years, however long.

24 I protected her. She asked me not
25 to tell, I didn't. When she asked me to

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1 tell, I did.

2 Q. So, again, my question was -- because
3 you still didn't answer my question. My
4 question was, do you consider it to be a good
5 mother to allow the man who you said
6 molested/raped your daughter to come out when
7 you physically had a chance to keep him in
8 prison?

9 A. I am still a good mother. I consider
10 myself a good mother.

11 Q. And were you being a good mother at that
12 time?

13 A. Yes, I ---

14 THE COURT: She's answered ---

15 THE WITNESS: --- was.

16 THE COURT: Hold on. She's
17 answered the question about three times, Mr.
18 Burns.

19 MR. ALAN BURNS: That's all.

20 Thank you.

21 THE COURT: Redirect?

22 SOLICITOR HERRING-LASH: Just one
23 question.

24 REDIRECT EXAMINATION

25 BY SOLICITOR HERRING-LASH:

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1 Q. When you moved back here from New York,
2 did **Minor 4** still continue to go over and
3 spend time at the Oliver Burns residence?

4 A. Yes, she did.

5 SOLICITOR HERRING-LASH: Those
6 are all the questions that I have.

7 THE COURT: Recross?

8 MR. ALAN BURNS: (Negative
9 gesture).

10 THE COURT: You may come down.
11 Thank you.

12 (WITNESS STEPS DOWN)

13 THE COURT: Ladies and Gentlemen,
14 at this point we will take our recess for the
15 evening. Do not begin your deliberations,
16 don't discuss this case.

17 Please return -- I have a matter
18 scheduled, not in this case but in another
19 case at about 9:30 and I should be finished
20 with that in about ten or fifteen minutes.

21 Please be in your jury room by 9:45
22 and we will bring you in the courtroom to
23 resume the testimony.

24 Please remember something. You are
25 not at liberty, of course, to talk about this

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1 that I can address right now.

2 SOLICITOR HERRING-LASH: Well, I
3 will talk to him over the break.

4 THE COURT: Anything else?

5 SOLICITOR HERRING-LASH: No, Your
6 Honor.

7 MR. ALAN BURNS: Uh, ---

8 THE COURT: Yes, sir?

9 MR. ALAN BURNS: If I may, there's
10 just one thing that I want to be clear on.
11 Yesterday before we began, I made a motion
12 with regards to the grand jury.

13 THE COURT: Yes, sir.

14 MR. ALAN BURNS: The way that I
15 explained it, it sounded like I was asking
16 for the documents again but that wasn't what
17 I was requesting.

18 THE COURT: I didn't take it that
19 way.

20 MR. ALAN BURNS: I was just asking
21 because I wanted to try to get a hearing so
22 that you can decide the legality of the grand
23 jury process.

24 THE COURT: I saw Judge McDonald
25 to confirm. She heard that. She heard the

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1 issue concerning the issue concerning the
2 Grand Jury. Her ruling was -- she told --
3 her discussion with me was, 'I asked Ms.
4 Herring-Lash, did you give him everything
5 he needed in response to Rule 5?' "Yes."
6 The Motion to set aside the grand jury based
7 on the Rule 5 submissions has been denied.
8 So that matter has been addressed. Thank
9 you, sir.

10 MR. ALAN BURNS: Thank you, sir.

11 THE COURT: As I indicated to you,
12 that is a ruling that is subject to review,
13 if need be. Okay?

14 MR. ALAN BURNS: Thank you, sir.

15 THE COURT: You bet. Anything
16 else?

17 SOLICITOR HERRING-LASH: No, Your
18 Honor

19 THE COURT: Okay, let's bring in
20 our jury.

21 (JURY IN @ 9:58 A.M.)

22 THE COURT: Good morning, Ladies
23 and Gentlemen. I hope you had a good
24 evening, and a safe trip in with this
25 inclement weather. I know this is not a

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1 place you'd wish to spend your day, but at
2 least it's the kind of day where there's no
3 temptation to be elsewhere. That's for sure.

4 I ask you to now give your attention
5 to the next witness. Good morning, Ms.
6 Herring-Lash, you may call you first witness.

7 SOLICITOR HERRING-LASH: The
8 State calls Minor 4

9 (WITNESS TAKES STAND)

10 Minor 4 being duly sworn to
11 tell the truth, the whole truth and nothing
12 but the truth, testified, as follows:

13 DIRECT EXAMINATION

14 BY SOLICITOR HERRING-LASH:

15 Q. What is your date of birth?

16 A.

17 Q. Where do you live?

18 A. In Mount Pleasant.

19 Q. And where do you work?

20 A. I work for the Charleston County School
21 District.

22 Q. Are you a teacher?

23 A. Yes.

24 Q. How long have you been a teacher,

25 Minor 4

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1 A. This will be twelve years.

2 Q. What grades do you teach?

3 A. I've taught first grade, third grade and
4 now I teach kindergarten.

5 Q. Where do you teach?

6 A. Mary Ford Elementary School.

7 Q. Who is in your immediate family?

8 A. Oliver Burns, Jr.; Cathy Burns;
9 Sherrill, Olivia, and Christopher Burns.

10 Q. Are you also related to Alan Burns?

11 A. Yes.

12 Q. How are you related to him?

13 A. He is my uncle, my father's youngest
14 brother.

15 Q. When you were growing up, did there
16 come a time when you stayed with your grand-
17 parents, Mr. Burns' parents?

18 A. Yes.

19 Q. Where were your parents when you stayed
20 with them?

21 A. They were in New York and then they came
22 down later.

23 Q. After they came down, did you continue
24 to spend time with your grandparents?

25 A. Yes.

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1 Q. Did Alan Burns live there during this
2 time period?

3 A. Yes.

4 Q. What ages were you that you spent time
5 around Mr. Burns?

6 A. As far as I can remember, from the age
7 of about five to eight years old; then off
8 and on as I got older, because we moved out.

9 Q. **Minor 4** do you recognize this picture?

10 A. Yes.

11 Q. What is that?

12 A. A picture of me in first grade. It's a
13 school picture.

14 SOLICITOR HERRING-LASH: Your Honor,
15 at this time I would offer State's Exhibit 18
16 into evidence.

17 THE COURT: Any objection?

18 MR. ALAN BURNS: No, sir.

19 THE COURT: Without objection,
20 State's Exhibit 18 is admitted.

21 (SO ENTERED AS STATE'S EXHIBIT 18)

22 DIRECT EXAMINATION CONTINUED

23 BY SOLICITOR HERRING-LASH:

24 Q. **Minor 4** is that a picture of you during
25 this timeframe that we are talking about?

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1 A. Yes.

2 Q. Were there other cousins also around?

3 A. I just remember [Minor 5] being there.

4 Q. Do you ever remember [Minor 3] every
5 visiting or being there?

6 A. No.

7 Q. You just remember [Minor 5]

8 A. Yes.

9 Q. Did there come a time, [Minor 4] that
10 anything happened to you at your grand-
11 mother's home?

12 A. Yes.

13 Q. Where were you in that house?

14 A. In Alan's room.

15 Q. [Minor 4] I show you what has been marked
16 for ID as State's Exhibit 19. Do you
17 recognize that?

18 A. Yes.

19 Q. What is that?

20 A. Grandmama's house.

21 Q. Okay.

22 SOLICITOR HERRING-LASH: Your
23 Honor, at this time I would offer State's
24 Exhibit 19 into evidence.

25

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1 THE COURT: Any objection?

2 MR. ALAN BURNS: No, sir.

3 THE COURT: Without objection,
4 State's Exhibit 19 is admitted.

5 (SO ENTERED AS STATE'S EXHIBIT 19)

6 DIRECT EXAMINATION CONTINUED

7 BY SOLICITOR HERRING-LASH:

8 Q. [Minor 4] do you see -- can you tell in
9 that picture which room was Alan's room?

10 A. The far corner in the back, where the
11 light is coming through.

12 Q. Is that the room that you are talking
13 about?

14 A. Yes.

15 Q. What happened in that room?

16 A. There was a set of bunk beds in that
17 room. The head of the bed was near the door,
18 the foot of the bed is near the window facing
19 out towards the back of the house. [Minor 5]

20 was at that end near the window. I was at
21 the other end. Alan was inbetween us, in the
22 bed on his knees -- I can't remember the
23 exact position. He took his penis out,
24 masturbated and ejaculated on me.

25 Q. Did he say anything to you?

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1 A. I don't remember.

2 Q. Did you say anything to him?

3 A. I don't remember.

4 Q. Do you remember if **Minor 5** said or did
5 anything?

6 A. No.

7 Q. Do you have a very difficult time
8 remembering this period in your life?

9 A. Yes.

10 Q. Have you tried to remember?

11 A. No.

12 Q. Do you want to?

13 A. No.

14 Q. Now, do you remember if anybody else
15 came into the room or anything like that?

16 A. I don't remember anybody ever coming
17 into that room.

18 Q. Did you ever see him do something to
19 anyone else?

20 A. Not that I remember, no.

21 Q. Did something happen to you at another
22 place, on another occasion?

23 A. Yes. After we moved into our trailer, I
24 don't know why he was there but we were in
25 our room -- Olivia, Sherill, Christopher was

1 there.

2 Q. Are those your siblings?

3 A. Yes. We were on the floor playing a
4 board game. He was there with us. I don't
5 know -- I don't know why. He was touching
6 me, I don't know where but I know he was
7 doing something wrong. He was hiding it from
8 them, he wouldn't let them see what he was
9 doing.

10 Q. Do you remember how you felt?

11 A. I knew that something wrong was
12 happening.

13 Q. Did you ever tell anyone about this?

14 A. When I was in the fifth grade, I told my
15 best friend at the time.

16 Q. What prompted that?

17 A. We were watching a video in class about
18 good touching and bad touching. I told her
19 that had happened to me. She just looked at
20 me. I told her not to tell anybody. We
21 never talked about it again.

22 Q. Do you know where she is today?

23 A. No. She went to Moultrie Middle School
24 and I never saw her again.

25 Q. Did there come a time when you told your

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1 mom, Cathy Burns?

2 A. Not until I was in college.

3 Q. When you told her when you were in
4 college, what happened?

5 A. Nothing really. I told her. She got
6 this stunned expression on her face. She
7 didn't say anything for awhile. I don't
8 remember what came after that.

9 Q. Did you tell your dad?

10 A. No.

11 Q. Why did you decide to come forward at
12 this point at time, in 2010, with this
13 touching?

14 A. **Minor 2** came to me and asked me to speak
15 to the detective about what happened and I
16 told him that I would.

17 Q. Do you know how **Minor 2** knew?

18 A. No.

19 Q. Did you go to the police?

20 A. Detective Bacon actually called me on
21 the phone and my mom drove me to the police
22 station.

23 Q. Then you talked to the detective?

24 A. Yes.

25 Q. How do you feel about coming forward?

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1 A. I don't want to be here.

2 Q. Have you discussed these details with
3 any family members?

4 A. No.

5 SOLICITOR HERRING-LASH: Court's
6 indulgence for a moment.

7 THE COURT: Certainly.

8 SOLICITOR HERRING-LASH: **Minor 4**
9 those are all the questions that I have. You
10 will now need to answer any that Mr. Burns
11 has for you.

12 THE WITNESS: That's fine.

13 THE COURT: You may cross-examine,
14 Mr. Burns.

15 CROSS EXAMINATION

16 BY MR. ALAN BURNS:

17 Q. How long have you been a teacher?

18 A. I already answered that.

19 THE COURT: No, ma'am. Let me --
20 you'll answer the questions unless an
21 objection is made.

22 THE WITNESS: I've been a
23 teacher for eleven years.

24 CROSS EXAMINATION CONTINUED

25 BY MR. ALAN BURNS:

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1 Q. Your first teaching job, where was that?

2 A. McNair Elementary School.

3 Q. Where is that located at?

4 A. On Spruill Avenue.

5 SOLICITOR HERRING-LASH: Your

6 Honor, objection to relevance.

7 THE COURT: Sustained. Move on to

8 something relevant, please. What she is

9 doing today is not relevant, unless you can

10 lay a foundation for its relevancy.

11 CROSS EXAMINATION CONTINUED

12 BY MR. ALAN BURNS:

13 Q. Did you ever work at Midland Park

14 Elementary School?

15 A. As a substitute.

16 Q. During that time, you didn't have a

17 driver's license or your own transportation;

18 is that right?

19 A. No.

20 SOLICITOR HERRING-LASH: Your

21 Honor, I would object to the relevance.

22 THE COURT: Sustained.

23 CROSS EXAMINATION CONTINUED

24 BY MR. ALAN BURNS:

25 Q. At some point in time you had to catch a

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1 ride to and from work?

2 THE COURT: I have already
3 sustained the objection as to relevancy.

4 MR. ALAN BURNS: May I approach
5 the bench, Your Honor?

6 THE COURT: You surely may, sir.

7 (OFF RECORD BENCH CONFERENCE)

8 CROSS EXAMINATION CONTINUED

9 BY MR. ALAN BURNS:

10 Q. On several occasions, do you recall
11 calling me and asking me to pick you up from
12 Midland Park Elementary School, to give you a
13 ride home?

14 A. I never called you to pick me up from
15 Midland Park.

16 Q. Did I ever pick you up from Midland
17 Park?

18 A. No.

19 Q. Your mother never called me and asked me
20 to pick you up from Midland Park Elementary
21 either?

22 A. No.

23 Q. When you were college, you attended
24 Charleston Southern; is that correct?

25 A. Yes.

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1 Q. Did you ever write to me, write letters
2 or anything to me while I was away?

3 A. Not while I was in Charleston Southern.

4 Q. When was that that you wrote a letter to
5 me?

6 A. I wrote you a letter when I was in
7 Spartanburg Methodist College.

8 Q. Spartanburg. And at that time you sent
9 me a picture, a large picture?

10 A. I don't recall that.

11 Q. Did you ever take a picture where you
12 was wearing black pants, pink top, and
13 sitting on a director's chair?

14 A. I don't recall that.

15 Q. But you did write to me when you were in
16 college?

17 A. Spartanburg Methodist, yes.

18 Q. Okay. Was it only one time or more than
19 one time that you wrote to me?

20 A. I don't know.

21 Q. But you stated a little while ago that
22 while you was in college that I'd told your
23 mother that I had done something to you?

24 A. Yes.

25 Q. But you were still writing to me?

1 A. No, I was not.

2 Q. At some point during, I believe around
3 '98. '99, did you and I have an agreement for
4 you to tutor my son?

5 A. No.

6 Q. Okay. So my son, Danny, never ever was
7 tutored by you?

8 A. No.

9 Q. Okay. Did you and I ever have any
10 conversation regarding you tutoring my son?

11 A. No.

12 Q. Have you ever seen this photo, **Minor 4**

13 A. No. I am not even in that picture.

14 Q. No, I didn't ask you ---

15 THE COURT: Mr. Burns, you've
16 shown her something. Remember that we are
17 keeping a record, so we need to have it
18 identified. Have it marked for
19 identification.

20 COURT REPORTER: Defendant's
21 Exhibit 4 for identification.

22 THE COURT: Defendant's Exhibit 4
23 for identification only.

24 COURT REPORTER: Is there another
25 one that you want me to mark?

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1 MR. ALAN BURNS: Yeah.

2 COURT REPORTER: Defendant's

3 Exhibit 5 for identification.

4 THE COURT: Exhibit 5, a photo.

5 CROSS EXAMINATION CONTINUED

6 BY MR. ALAN BURNS:

7 Q. Have you ever seen this photo?

8 THE COURT: What is "this",

9 Exhibit 5?

10 MR. ALAN BURNS: Defendant's

11 Exhibit 5.

12 THE COURT: Thank you, sir.

13 CROSS EXAMINATION CONTINUED

14 BY MR. ALAN BURNS:

15 Q. Have you ever seen this photo,

16 Defendant's Exhibit 5?

17 A. I saw that photo yesterday.

18 Q. You say that you saw this photo

19 yesterday?

20 A. Yes.

21 Q. When you were preparing for your

22 testimony today?

23 A. No. No, but I've seen that picture.

24 Q. Who had possession of the photo when you

25 saw it yesterday, if you don't mind me

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1 asking?

2 A. The solicitor.

3 Q. So when she showed it to you -- she
4 showed it to you for ---

5 A. She asked me about the picture. I told
6 her that I didn't know anything about the
7 picture, the same thing I'm telling you. I
8 don't know anything about the picture.

9 Q. Did you see this one yesterday as well?

10 A. No.

11 THE COURT: What is this one?

12 MR. ALAN BURNS: Exhibit 4.

13 THE COURT: She's denied seeing
14 that, never seen it. You've already asked a
15 question about it. Five, she admits that she
16 saw it yesterday.

17 CROSS EXAMINATION CONTINUED

18 BY MR. ALAN BURNS:

19 Q. Do you recall the birthday party that
20 took place where those photos were taken?

21 A. No, I do not.

22 Q. So you weren't at a birthday party ---

23 THE COURT: That's an improper
24 phrasing. You asked her did she recall it.
25 She didn't say that she wasn't. She didn't

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1 recall it, so you -- you can restate your
2 question, please.

3 MR. ALAN BURNS: Okay. That's
4 all. Thank you.

5 THE COURT: Redirect?

6 SOLICITOR HERRING-LASH: Yes,
7 Your Honor, just briefly.

8 REDIRECT EXAMINATION

9 BY SOLICITOR HERRING-LASH:

10 Q. Minor 4 ---

11 A. Yes?

12 Q. --- you said that you did write Mr.
13 Burns a letter?

14 A. Yes.

15 Q. Do you know when that was?

16 A. It was between '92 and '94.

17 Q. And do you know what -- what was the
18 purpose of you writing him?

19 A. He wrote to me and grandmama asked me to
20 write to him. I did what she asked me to do.

21 SOLICITOR HERRING-LASH: Those
22 are all the questions that I have, Your
23 Honor.

24 THE COURT: Recross?

25 MR. ALAN BURNS: No, Your Honor.

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1 THE COURT: Thank you, you may
2 come down.

3 (WITNESS STEPS DOWN)

4 THE COURT: Call your next
5 witness, please.

6 SOLICITOR HERRING-LASH: Your
7 Honor, may **Minor 4** be excused?

8 MR. ALAN BURNS: Any objection,
9 Mr. Burns?

10 MR. ALAN BURNS: No, Your Honor.

11 THE COURT: She is free to leave.

12 SOLICITOR HERRING-LASH: **Minor 5**
13 **[REDACTED]**.

14 THE COURT: Very well.

15 (WITNESS TAKES STAND)

16 **Minor 5** being duly sworn
17 to tell the truth, the whole truth and
18 nothing but the truth, testified, as follows:

19 DIRECT EXAMINATION

20 BY MR. ALAN BURNS:

21 Q. **Minor 5** where do you live?

22 A. I live in Fayetteville, North Carolina.

23 Q. What is your date of birth?

24 A. **[REDACTED]**, **[REDACTED]**, **[REDACTED]**

25 Q. Who do you live with?

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- 1 A. My three children.
- 2 Q. What is your job right now?
- 3 A. I am a student.
- 4 Q. What are you studying?
- 5 A. Elementary education.
- 6 Q. Do you do any activities?
- 7 A. I volunteer thirty-five hours a week at
- 8 my daughters elementary school.
- 9 Q. Are you going to be a substitute teacher
- 10 there?
- 11 A. Yes, I am. I just obtained my license
- 12 to do that.
- 13 Q. And how long have you lived in North
- 14 Carolina?
- 15 A. Since May 27th, 2005.
- 16 Q. And was your mother in the military at
- 17 some point?
- 18 A. Yes, she was.
- 19 Q. Is that how you ended up at Fort Bragg,
- 20 in Fayetteville?
- 21 A. Yes. My mother and my stepfather are
- 22 both retired military.
- 23 Q. Are you related to Alan Burns?
- 24 A. Yes, I am.
- 25 Q. How are you related to him?

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- 1 A. He is my maternal uncle.
- 2 Q. So he is your mom's brother?
- 3 A. He is my mom's brother.
- 4 Q. Are you related to Alisteen and Oliver
- 5 Burns?
- 6 A. Yes, I am.
- 7 Q. How are you related to them?
- 8 A. They are my mother's parents.
- 9 Q. Did you live with them?
- 10 A. Yes, I did.
- 11 Q. Did they actually get custody of you for
- 12 a while?
- 13 A. Yes, they did.
- 14 Q. When was that, and why?
- 15 A. They got custody of me at the age of, I
- 16 want to say three. My mother was going in
- 17 the military, she was a single parent and she
- 18 could not enter the military as a single
- 19 parent, she had to forfeit legal custody of
- 20 me to someone else. So she gave legal
- 21 custody of me to her parents.
- 22 Q. How long did you stay in their custody
- 23 or stay with them?
- 24 A. I was with them from birth up until I
- 25 was seven, and then I went to live with my

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1 mom and her exhusband in Germany.

2 Q. How long did you stay in Germany before
3 coming back?

4 A. I went there in December of '84 and I
5 came back in June of '86.

6 Q. Then you stayed there, in Mount
7 Pleasant, for a while after that?

8 A. Yes, I did.

9 Q. And while you were living there at your
10 grandparents' house -- well, first of all, I
11 want to show you -- I am going to show you
12 what has been marked for ID as State's
13 Exhibit 13. Do you recognize that?

14 A. Yes, I do.

15 Q. What is that a picture of?

16 A. That's a picture of me, my first grade
17 picture.

18 Q. That's during the time that you were
19 living with your grandparents?

20 A. Yes.

21 Q. During the time that you were living
22 with your grandparents, did something happen
23 to you?

24 A. Yes.

25 Q. Can you tell us the first time that you

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1 remember?

2 A. The first time that I remember anything
3 happening to me, I was about two or almost
4 three years old. We were on the porch at my
5 grandmother's house. I was in a red crib. I
6 remember being in the crib, I remember my
7 Uncle Alan coming out there -- what he
8 originally came out there for, I have no
9 idea. But I was in a crib, he was reaching
10 his hand through the crib. Most of that was
11 just him fondling me.

12 Q. Was there another time?

13 A. There were many other times.

14 Q. Tell us about the next time that you
15 remember details.

16 A. The next time that I can remember -- at
17 this time I think that I was about maybe
18 three. I had just turned three. It was a
19 birthday party that I think that they were
20 having for me. It was more like a barbeque
21 where we were all in the yard, all the
22 neighborhood people, all my aunts and all
23 them. At this time, I had came in to use the
24 restroom and he was in the house then. That
25 time, he was just -- it was just fondling

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1 that time also.

2 Q. Do you remember what you had on that
3 day?

4 A. I had on a yellow jumper. It was like a
5 romper. It had two ties on the sides and had
6 red in it. I don't know why I remember but I
7 just remember that that is what I had on.

8 Q. I am going to show you what has been
9 marked as State's Exhibit 14 for ID. Do you
10 recognize that picture?

11 A. Yes, I do.

12 Q. What is that?

13 A. It's a picture of the party that we were
14 having at my grandmother's house, in her
15 yard.

16 SOLICITOR HERRING-LASH: Your
17 Honor, at this time the State would offer
18 into evidence State's Exhibit 14.

19 THE COURT: Any objection, Mr.
20 Burns?

21 MR. ALAN BURNS: Yes, I would
22 object, Your Honor.

23 THE COURT: What is the basis of
24 the objection?

25 MR. ALAN BURNS: That picture was

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1 never given to me in discovery.

2 THE COURT: Thank you, sir.

3 Subject to the objection of Counsel, it's
4 admitted. State's Exhibit 14.

5 (SO ENTERED AS STATE'S EXHIBIT 14

6 SUBJECT TO OBJECTION OF DEFENSE)

7 DIRECT EXAMINATION CONTINUED

8 BY SOLICITOR HERRING-LASH:

9 Q. Is that the barbeque that you were
10 talking about?

11 A. Yes.

12 Q. Is that what you were describing that
13 you had on at the time?

14 A. That is what I was describing.

15 Q. Now, is there another time when
16 something happened to you?

17 A. The next time that I remember, I think
18 that I was still also four at this time, we
19 were in his room.

20 Q. By "his" room, who do you mean?

21 A. I mean Alan's room. His room was
22 located down the hallway at my grandmother's
23 house, all the way to the back on the left-
24 hand side.

25 Q. Let me get back -- if you look at the

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1 pictures that have already been admitted into
2 evidence, do you see his room there?

3 A. Yes, I do.

4 Q. Which room is it?

5 A. It is the third door on the left.

6 THE COURT: What exhibit is that?

7 SOLICITOR HERRING-LASH: Exhibit
8 19 that I am showing the witness.

9 THE COURT: Thank you.

10 DIRECT EXAMINATION CONTINUED

11 BY SOLICITOR HERRING-LASH:

12 Q. What happened that day?

13 A. That particular day, he had me and -- to
14 the best of my recollection -- I think

15 **Minor 4** His way of getting us into his room
16 was always that he wanted us to come hear him
17 play his trumpet. I remember this trumpet
18 because it was like no other trumpet I've
19 ever seen. I haven't seen one since. That's
20 not to say that they don't exist but -- this
21 one was silver, where every other trumpet was
22 gold. It had like a silver tint to it.

23 When we went in the room, there were
24 bunk beds up along the back of the wall.

25 He -- it was like a closet that they had

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1 makeshift, like a rod that was going from one
2 corner of the wall to the next corner of the
3 wall. When you first walked in, there was a
4 dresser right there.

5 It was me and [Minor 4] in there. He was
6 doing things to her. At this particular
7 time, I was just watching.

8 Q. How was [Minor 4] acting?

9 A. She was scared, she was crying, I was
10 scared for her because I was watching this
11 happen to her and there was nothing that I
12 could do about it. So at that time, I didn't
13 know what was bothering me the most, the fact
14 that he was doing this to her or the fact
15 that I was there watching and couldn't do
16 anything about it.

17 Q. You were younger than [Minor 4]

18 A. I was younger. I am three years younger
19 than her.

20 Q. Was there a time when you and [Minor 4] --
21 well, did you see other things happen to
22 [Minor 4]

23 A. I saw many other things. I saw him
24 trying to penetrate her on numerous times.
25 I saw him had her fondle him.

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1 Q. Where would y'all be?

2 A. I saw Alan fondle Minor 4 and I saw Alan
3 make Minor 4 fondle him.

4 Q. Where were you?

5 A. I was sitting by the dresser.

6 Q. What room?

7 A. We were in his room. And I watched him
8 ejaculate on her leg. When I thought it was
9 over, then he turned around and he got me.

10 Q. What did he do to you?

11 A. He put me on the bed, he got on top of
12 me and he tried to enter me anally.

13 Q. When he did that, how did that feel?

14 A. It hurt. It felt like my insides was
15 ripping out.

16 Q. What happened after that?

17 A. He told me to stop crying, to be quiet.
18 He used to put his hands over our mouths. He
19 was gonna kill us, he was going to kill our
20 parents.

21 Q. Did you tell anybody at this time?

22 A. At this particular time, no.

23 Q. Why not?

24 A. Because I honestly believed him.

25 Q. That ---

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1 A. Because I felt like he was hurting me,
2 so anything that he said he was going to do,
3 he was going to do it.

4 Q. Did there come a time when any adult
5 walked in on y'all?

6 A. My Aunt Jacqueline walked in to us.

7 Q. What happened?

8 A. She called her husband, Davey. Davey
9 came and Davey beat him.

10 Q. Did she call anyone else?

11 A. She called my grandmother.

12 Q. What did your grandmother do?

13 A. My grandmother came home and beat him
14 some more. They beat him really bad.
15 Personally, I wanted them to beat him until
16 he couldn't breathe anymore. But -- that's
17 what I was thinking at that time.

18 Q. What happened when they were beating
19 him?

20 A. Alan ran in the bathroom, jumped out the
21 window -- and he decided that he wanted to go
22 and call the police. The police came -- and
23 for the life of me, I have no idea why they
24 sent him away, or whatever they said, but
25 nothing was done.

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1 Q. How did that make you feel?

2 A. I had mixed emotions. When they were
3 beating him, I thought it was all over. I
4 thought 'this is it, this is going to be
5 over, this is never going to happen to me
6 again.' But then it didn't stop.

7 I don't know if he became more enraged
8 because of what happened, but it didn't stop.

9 Q. Did it change?

10 A. It changed, (affirmative nod).

11 Q. How did it change?

12 A. He became more vindictive with it, as if
13 it wasn't already vindictive enough.

14 Q. Do you remember another event when
15 something happened?

16 A. I remember there were times when I would
17 get up in the middle of the night -- (sighs).

18 Q. What would you get up for?

19 A. I would get up to go use the bathroom --
20 you'll have to excuse me -- (emotional) --
21 because I am trying to contain myself.

22 Q. Get a glass of water.

23 A. No, it is ---

24 Q. I want to show you what has been
25 previously marked for ID purposes as State's

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1 Exhibit 17. Do you recognize that?

2 A. Yes, I do.

3 Q. Is the bathroom that you're talking
4 about in ---

5 A. This is a picture of the bathroom. I
6 mean, it's been remodeled but that's the
7 bathroom. It's still in the same place.

8 SOLICITOR HERRING-LASH: Your
9 Honor, at this time we would offer State's
10 Exhibit 17 into evidence.

11 THE COURT: Any objection?

12 MR. ALAN BURNS: No objection,
13 Your Honor.

14 THE COURT: Without objection,
15 State's Exhibit 17 is admitted.

16 (SO ENTERED AS STATE'S EXHIBIT 17)

17 DIRECT EXAMINATION CONTINUED

18 BY SOLICITOR HERRING-LASH:

19 Q. Is that the bathroom?

20 A. That is the bathroom.

21 Q. And you said that you got up in the
22 middle of the night to go to the bathroom.

23 A. Yes.

24 Q. What happened?

25 A. I was taken to Alan's room.

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1 Q. You were what?

2 A. He took me to his room, Alan took me to
3 his room.

4 Q. Can you see his room up there too?

5 A. Yes, his room is the room where the door
6 is open and the light is coming out, at the
7 far end on the left.

8 We heard a noise -- I don't know what it
9 was. I know at that particular time that my
10 grandfather, who was a merchant marine
11 seaman, was home during this time and he
12 normally walked the house, so I assumed that
13 it was him. I was told to go back to my
14 room. But I remember after that time it was
15 just to the point where I started using the
16 bathroom on myself. It was me wetting the
17 bed all the time. Then there were times that
18 I was so constipated because of the things
19 that he did to me where I just couldn't use
20 the bathroom at all.

21 Q. When you say the things that he did to
22 you, what are you talking about?

23 A. I am talking about the things when he --
24 I don't know any other way to put it, when he
25 raped me anally. Because that's what it was.

1 Q. Did that happen more than once?

2 A. It happened on more than one occasion.

3 Q. Where was it that it happened?

4 A. The majority of the time it was always
5 in that room.

6 Q. And you said that you had constipation?

7 A. Yes, I did.

8 Q. Did you ever go to a doctor about any of
9 these issues?

10 A. I went to a doctor -- I can't remember
11 where it was. I just remember being in this
12 room. I remember a catheter being stuck
13 inside me. They had me laying there for
14 hours. It was to see -- they told me that I
15 was being tested to see if I had a bladder
16 problem, a bladder control problem. I don't
17 know if they were waiting to see if how often
18 I was going to go to the bathroom or
19 whatever. I remember numerous occasions
20 where I had to be taken to the doctor for
21 being constipated and given enemas.

22 Q. During the time that they tested your
23 bladder, is that when you were wetting the
24 bed so much?

25 A. Yes.

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1 Q. Now, did you ever witness anything
2 happen to Minor 3

3 A. Only on one occasion.

4 Q. What was that?

5 A. That was one occasion where it was me,
6 Minor 3 and Minor 4 in the room. I never
7 could figure out why all three of us had to
8 be there. I don't know if it was just that
9 if we were all together then nobody would
10 assume we were one and not the other. But
11 the only thing that I can remember him doing
12 to her was him fondling her. I never
13 remember him trying to penetrate her. I do
14 remember him trying to penetrate Minor 4

15 Q. What part of Minor 3 body did you see
16 him attempt to fondle or to fondle?

17 A. Her vagina area, him making her touch
18 him.

19 Q. Did you and Minor 4 and Minor 3 ever
20 talk about this?

21 A. This is nothing that we sat down and
22 talked about.

23 Q. Was there ever a time that y'all
24 discussed it?

25 A. There was a time, once. I think that I

1 was about ten, in the fifth grade. They were
2 in middle school at the time. **Minor 4**
3 mentioned something and I looked at her
4 crazy-like, 'No, that happened. You didn't
5 imagine it. It's not something imaginary
6 that happened to you. It happened.'

7 Q. How did you know it happened?

8 A. I know it happened. I felt it, I still
9 feel it. I feel it emotionally. I don't
10 know what hurt me worse, him actually
11 molesting me or the emotional pain that I
12 sustained from him making me watch him molest
13 my cousins and me being in a position where
14 there was nothing that I could do about it.

15 Q. As you got older, did you continue to
16 visit?

17 A. To visit?

18 Q. Mount Pleasant? To your grandparents?

19 A. Yes. Mostly around holidays. I am not
20 trying to come back and live there but --
21 it's just not a place where I feel
22 comfortable or can stay for long periods of
23 time.

24 Q. Do you have another cousin, named

25 **Minor 1**

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1 A. Yes, I do.

2 Q. Did you ever witness Alan with Minor 1

3 A. The only time I can remember is that I
4 don't know what it was -- I don't know if it
5 was a Christmas party. I just know -- we
6 were always at my grandmother's a lot.
7 There's always a barbeque, a party or we're
8 doing gift exchange, so I don't remember the
9 instance.

10 But I do remember one time Minor 1 was
11 trying to get home to her mother's house and
12 he mentioned that he was about to leave and
13 that he would take her home.

14 Q. Did she go with him?

15 A. Yes, she did.

16 Q. Why did you -- or how did you end up
17 coming forward after all these years?

18 A. There's more than one answer to that
19 question.

20 Q. That's fine.

21 A. At the time Minor 4 called me and -- it
22 was May 10th, 2010. She texted me, actually.

23 Her text just said, "Minor 5 I have to
24 ask you a question."

25 I texted her back and said, "What?"

1 But I kinda already knew what she was
2 about to ask me, so instead of texting her
3 back, I called her. She told me that they
4 were bringing criminal charges on Alan. In
5 the conversation that me and her had, I
6 started naming a bunch of people. She asked
7 me how I knew, did they ever tell me
8 anything. I told her that I just knew.

9 Q. Were you contacted by the Mount Pleasant
10 police?

11 A. Yes.

12 Q. Did you send a statement to them?

13 A. No, I did not.

14 Q. Why not?

15 A. Because I felt like what I needed to say
16 or what could be said by me could not be put
17 into a statement.

18 Q. Did you eventually come to Charleston
19 and give a statement?

20 A. Yes, I did.

21 Q. How do you feel about coming forward
22 now?

23 A. I feel relieved. I feel like a lot of
24 things that I have been holding inside of me
25 so long -- I feel -- at first I felt scared,

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1 but -- I don't know how to describe it but I
2 serve a God that is mighty and He told me
3 that I don't have nothing to fear at all.
4 Nothing. His exact words were to me were
5 that "nobody has a heaven or hell to put me
6 in" but Him.

7 SOLICITOR HERRING-LASH: Court's
8 indulgence for one moment.

9 THE COURT: Certainly.

10 DIRECT EXAMINATION CONTINUED

11 BY SOLICITOR HERRING-LASH:

12 Q. [Minor 5] do you also remember being
13 around [Minor 2] when you would come back?

14 A. (Affirmative nod), I remember being
15 around [Minor 2]

16 Q. What do you remember?

17 A. A lot of times -- I don't know. [Minor 2]
18 used to be this happy-go-lucky person and
19 then -- I can't really explain it, like he
20 just wasn't the same person. But I thought
21 at that time that he was going to school, you
22 know, just different things, peer pressure.
23 He was still in school, so I didn't really
24 think anything of it.

25 Most of it was just us being together

1 at, like, family gatherings, birthday
2 parties, Christmas, Thanksgiving, in church,
3 different things like that.

4 Q. Did you ever see him get a haircut from
5 Alan Burns?

6 A. I never witnessed him get a haircut from
7 Alan Burns. I know that Alan had -- my
8 grandfather had like, I guess it was an old
9 trailer, and -- we were using it for storage
10 for many years. I knew that part of it was
11 still for storage and that Alan had set up a
12 barber shop in the back. I knew many of them
13 would go back there and get their hair cut.
14 I never personally saw, with my own two eyes,
15 Alan give him a haircut. But I knew that he
16 went back there.

17 SOLICITOR HERRING-LASH: Minor 5
18 those are all the questions that I have. If
19 you would now answer any that Mr. Burns has.

20 THE WITNESS: Sure.

21 THE COURT: Cross-examination.

22 CROSS EXAMINATION

23 BY MR. ALAN BURNS:

24 Q. You stated that your first memory was at
25 age two?

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1 A. Yes.

2 Q. Your second was at age three?

3 A. Yes.

4 Q. And at that age, age two, you remember
5 the color of your crib?

6 A. My crib was red. You want me to
7 describe the whole porch? Because I can give
8 you more memories.

9 THE COURT: Ma'am, just answer the
10 questions, please.

11 CROSS EXAMINATION CONTINUED

12 BY MR. ALAN BURNS:

13 Q. And at age two, you remember that you
14 were on the crib; is that correct, is that
15 what you're saying?

16 A. I was on the porch in a red crib.

17 Q. And at age three, you remember I had on
18 -- what color shirt I had on?

19 A. Your shirt was a blue and green plaid
20 shirt, you had on bluejeans.

21 Q. And you said that I took you into a back
22 room; is that right?

23 A. You took me into the back bedroom on the
24 left side.

25 Q. What color were the walls of the room?

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1 A. The walls in the room were white.

2 Q. Green.

3 A. Whatever.

4 THE COURT: No, sir, that's
5 argumentative.

6 THE COURT: I apologize, Your
7 Honor.

8 CROSS EXAMINATION CONTINUED

9 BY MR. ALAN BURNS:

10 Q. What color was the bed covering?

11 A. The bed covering?

12 Q. Yeah.

13 A. At that time that you took us back
14 there, that I remember, it was summertime.
15 You had sheets on the bed. There was no bed
16 covering on there.

17 Q. What color was the wall on the porch?

18 A. Alan, the porch was screened in. The
19 walls were grayish, palish blue looking
20 color.

21 Q. And you said that when you were four
22 that you remember me trying to do some things
23 to Minor 4 right?

24 A. Yes.

25 Q. What was I wearing that day?

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1 A. On that particular day, I honestly don't
2 remember.

3 Q. What were you wearing?

4 A. I honestly don't remember.

5 Q. But you remember when you was two what
6 you was wearing?

7 A. I remember because you did it to me that
8 day, so that's what made it significant. I
9 remember because the God that I serve allowed
10 me to remember.

11 Q. Is there a possibility that you remember
12 because you saw a picture wearing something
13 and you say that you remember ---

14 A. No, because -- you want to know what I
15 remember?

16 THE COURT: Allow him to finish
17 answering -- to finish asking the question
18 before you answer.

19 THE WITNESS: Okay.

20 CROSS EXAMINATION CONTINUED

21 BY MR. ALAN BURNS:

22 Q. Is it possible that you say that you
23 remember these specific colors and stuff from
24 when you were two years old because you've
25 seen pictures of these things?

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1 A. No.

2 Q. How about what was **Minor 4** wearing the
3 day we were in this room?

4 A. I don't remember.

5 Q. And this was when you was four?

6 A. Yes.

7 Q. You mentioned in your statement about a
8 time when you went to go live with your mom;
9 is that right?

10 A. Yes.

11 Q. What year did you say that was in?

12 A. About 1984.

13 Q. Do you remember or recall a time when I
14 left, as well?

15 A. Which particular time did you leave?
16 Because I can remember many times you left.
17 So which particular time? You left at one
18 time and you went to Miami, you left another
19 time and you went to New York, you left
20 another time and you was gone for a long
21 time.

22 Q. Do you remember when I left and went to
23 Job Corps?

24 A. No.

25 Q. What would have been in 1981.

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1 THE COURT: She doesn't remember,
2 so you can't testify now. You'll have an
3 opportunity later. Thank you, sir.

4 CROSS EXAMINATION CONTINUED

5 BY MR. ALAN BURNS:

6 Q. Do you remember in 19--, -- hold on a
7 second. Do you remember in 1982 when I left
8 home and started working with the traveling
9 sales company?

10 A. No.

11 Q. And in 1982, you would have been five
12 years old; right?

13 A. What is the relevance of this?

14 THE COURT: No. Ma'am, you just
15 answer the questions. You just said that you
16 don't remember. That's the answer that you
17 need to give.

18 THE WITNESS: Okay. "No."

19 CROSS EXAMINATION CONTINUED

20 BY MR. ALAN BURNS:

21 Q. You say you do recall the time when I
22 was in New York?

23 A. I remember you left and you went to New
24 York. Well, I don't remember you being --
25 like where you went. I found out after the

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1 fact that -- 'Where's Alan? Oh, he's in New
2 York.'

3 Q. What year was that that I went to New
4 York, do you know?

5 A. I don't know.

6 Q. You don't remember?

7 A. No. You were there for more than one
8 year.

9 Q. You said that I'd left and went to
10 Miami. Do you remember what year that was?

11 A. I am trying to remember the grade that I
12 was in.

13 Q. Let's see if I can juggle (sic) your
14 memory.

15 A. No, I don't need you to jog my memory.
16 Thank you.

17 Q. Did I go to New York before I went to
18 Miami or did I go to Miami before I went to
19 New York?

20 A. You went to Miami first and then you
21 went to New York.

22 Q. During the years that I was in Miami and
23 New York, where were you at?

24 THE COURT: Wait a minute. She
25 does not know when you were in New York. She

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1 said that -- she approximates. So she really
2 can't answer that question under 602. Unless
3 she knows when it is, she can't tell you
4 where she was, sir.

5 Let's move on to something that
6 she's answered that she has knowledge of.

7 CROSS EXAMINATION CONTINUED

8 BY MR. ALAN BURNS:

9 Q. You stated that I made some threats to
10 **Minor 4** do you remember that?

11 A. I said that you made threats to me.

12 Q. Did you make this story up, all this
13 stuff?

14 A. Do you really want me to answer that
15 question?

16 THE COURT: Yes, ma'am, answer the
17 question.

18 THE WITNESS: No, I did not.

19 CROSS EXAMINATION CONTINUED

20 BY MR. ALAN BURNS:

21 Q. Did you make up all the explicit
22 details?

23 A. No, I did not.

24 Q. You can't actually remember all these
25 things from when you were two years old. You

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1 just looked at some pictures and created the
2 memory. Is that true?

3 A. No. I remember. As much as I don't
4 want to remember, I remember. Since you
5 mentioned the picture, I saw that picture for
6 the first time maybe a week before I came
7 here, because my daughter inherited an
8 entertainment center from my mother. It was
9 in an album, as she was going through the
10 entertainment center, that was in there. I
11 never even knew that pictures existed of that
12 when I told her that happened, two years ago
13 I told her that happened.

14 Q. So you mean to tell me that you can
15 actually remember the clothing, color and
16 type of clothing, that I was wearing when you
17 was two years old?

18 THE COURT: She has answered that
19 question.

20 THE WITNESS: Alan, I told you
21 that I ---

22 THE COURT: No, ma'am. Ma'am,
23 when the court or attorneys speak, you must
24 stop. Okay? Under 611(a), she has already
25 answered that, Mr. Burns, several times.

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1 I've allowed you some leeway there. Now you
2 go on to something else, please.

3 CROSS EXAMINATION CONTINUED

4 BY MR. ALAN BURNS:

5 Q. Did you put all the details in your
6 story because you thought that it would be
7 more believable?

8 THE WITNESS: May I answer that
9 question?

10 THE COURT: Ma'am, answer the
11 question unless it is stopped otherwise by
12 a lawyer or the court. Okay?

13 THE WITNESS: Okay. I remember
14 that. I don't remember what you were wearing
15 all the time but I remember what you were
16 wearing on that particular time. I remember
17 the color crib I was in and I remember what
18 I was wearing on that particular time.

19 CROSS EXAMINATION CONTINUED

20 BY MR. ALAN BURNS:

21 Q. You're married, right?

22 A. (No verbal response).

23 Q. You're married?

24 A. No, I'm divorced.

25 Q. For a time, did you live in North

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1 Charleston?

2 A. Yes, I did.

3 Q. Did you live on Century Oaks Complex?

4 A. Yes, I did.

5 Q. And at a specific time while you were
6 living on Century Oaks, did I also live on
7 Century Oaks?

8 A. You were staying with some girl.

9 Q. And during that time, did I frequently
10 visit your house?

11 A. Unfortunately.

12 Q. And quite often when I came over to your
13 house, the first thing that I did was go into
14 the kitchen and get something to eat and play
15 with your kids?

16 A. Excuse me? You said quite often when
17 you came to my house that the first thing
18 that you did was go in the kitchen?

19 Q. Yes. In the family house that I go to,
20 I go into the ---

21 THE COURT: No, Mr. Burns, you're
22 -- again you're testifying, sir.

23 MR. ALAN BURNS: Oh, okay.

24 THE COURT: I am not going to
25 allow that at this point. Clarify the

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1 question. She asked you if that was the
2 first thing that you did when you went in.
3 You need to restate your question so that she
4 can understand it.

5 MR. ALAN BURNS: Yes, sir.

6 CROSS EXAMINATION CONTINUED

7 BY MR. ALAN BURNS:

8 Q. When I came over to your house, did I
9 routinely go in your kitchen and fix
10 something to eat?

11 A. Yes, you routinely went in my kitchen
12 but you did not fix anything to eat.

13 Q. Did I also play with your kids?

14 A. When you were at my house? Yes. My
15 then-husband was also there also.

16 Q. And you also frequently called me to
17 come and fix your car?

18 A. Can we get that statement correct? My
19 then-husband would call you to come fix the
20 car.

21 Q. But -- what year was this, if you can
22 recall?

23 A. That I was living in Century Oaks?

24 Q. Yes.

25 A. This was -- in the year 2000, because my

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1 son was born in '99.

2 Q. During that time you had knowledge and
3 remembrance of things that you say that I did
4 when you were two years old?

5 A. Yes.

6 Q. And you never once ran me out of your
7 house?

8 A. You know, what goes on behind closed
9 doors -- but since you brought it up. I told
10 my husband what happened. I told him that I
11 didn't want you in my house. He, for the
12 life of me, could not understand how it was
13 that you were back in our family if you had
14 did this. So that's why he and I are no
15 longer married. That's why he is wherever he
16 is and I'm where I am.

17 Q. And during that time, even though you
18 had knowledge that I had done this things to
19 you, supposedly, when you were two years old,
20 the things that you remember so vividly, you
21 never once yelled at me or cursed at me not
22 to touch your kids or to play with your kids?

23 A. Because I was in the room every time
24 that you were with my kids, except for one
25 time I wasn't there when you were around my

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1 children. One time. That was beyond my
2 control.

3 MR. ALAN BURNS: Your Honor, --
4 hold on a second -- (sidebar with Mr. Smith).
5 May I approach? May I see Defendant's
6 Exhibit 5 -- no, it has to be Exhibit 4.
7 No, it must be -- it must be the other one.

8 THE COURT: While you are doing
9 that, I am going to let the jury take a
10 break. Do not begin your deliberations,
11 Ladies and Gentlemen. We will be with you
12 shortly.

13 MR. ALAN BURNS: Thank you, Your
14 Honor.

15 (JURY OUT @ 10:58 A.M.)

16 THE COURT: Anything from the
17 State before we recess?

18 SOLICITOR HERRING-LASH: No, Your
19 Honor.

20 THE COURT: Anything from the
21 Defendant before we recess?

22 MR. ALAN BURNS: No, sir.

23 THE COURT: Mr. Burns, one of the
24 things -- and it's one of those unusual areas
25 here. As I told the jury, you have every

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1 right to represent yourself. That's fine.
2 I don't have a problem with that whatsoever.
3 But it's one of those unusual little areas
4 here, too. I've also told them that you
5 don't have to take the stand, you don't have
6 to say a word. Therefore I've got to balance
7 something here. I have to make sure that
8 you're being a lawyer and not being the
9 defendant, Mr. Burns, by testifying. Lawyers
10 cannot testify, so you have to be careful
11 there. I am going to stop you every time.
12 I am not trying to interrupt you but I can't
13 allow you to say things before the jury that
14 is subconsciously you testifying.

15 MR. ALAN BURNS: Right.

16 THE COURT: You can create some
17 issues for yourself by doing that. I am
18 trying to make sure that doesn't happen
19 either, sir.

20 MR. ALAN BURNS: I understand what
21 you're saying. I understand when you stop
22 me. I just get a little carried away.

23 THE COURT: I understand. So we
24 understand -- when a witness says something
25 that you disagree with, that's fine. But the

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1 way that you deal with that is to present
2 testimony which contradicts that. Then at
3 the end, you get to argue the contradiction.
4 Not during the time that the witness is
5 testifying. Okay?

6 MR. ALAN BURNS: Yes, sir.

7 THE COURT: Thank you, sir. All
8 right, we will be at-ease for about ten
9 minutes.

10 You (witness) may step down, if you
11 wish. I'd ask that you have no conversation
12 with anyone.

13 (BRIEF RECESS)

14 (DEFENDANT PRESENT)

15 THE COURT: Let the record reflect
16 that the Defendant is present. Is the State
17 ready to proceed?

18 SOLICITOR HERRING-LASH: Yes, sir.

19 MR. ALAN BURNS: Are you ready,
20 Mr. Burns?

21 MR. ALAN BURNS: Yes, Your Honor.

22 THE COURT: Let's bring in the
23 jury.

24 (JURY IN @ 11:24 A.M.)

25 THE COURT: Thank you, Ladies and

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1 Gentlemen. I noticed that you have now
2 occupied that seat for the third time. I
3 assure that you've been selected at the
4 presiding juror, is that correct?

5 JUROR NUMBER 243: Yes, sir.

6 THE COURT: Your name and number
7 for the record?

8 JUROR NUMBER 243: My name is
9 Gregory Olmstead, Number 243.

10 THE COURT: All right. Mr. Burns,
11 we've taken a break. You may resume your
12 examination.

13 CROSS EXAMINATION RESUMED

14 BY MR. ALAN BURNS:

15 Q. Minor 5 during the time that you lived
16 on Century Oaks, even though your husband and
17 I got along, you didn't get along with me; is
18 that right?

19 A. I was tolerable of you, I tolerated you.

20 Q. You tolerated me.

21 A. (No verbal response).

22 Q. But you didn't really speak to me that
23 often either, is that right?

24 A. I never said that I didn't speak to you.
25 I said that I tolerated you.

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1 Q. When you lived in North Carolina, did
2 you attend church?

3 A. Yes.

4 Q. What was the name of the church that you
5 attended?

6 SOLICITOR HERRING-LASH: Your
7 Honor, I would object to relevance.

8 THE COURT: Sustained.

9 MR. ALAN BURNS: (Tenders document
10 to be marked as exhibit).

11 COURT REPORTER: Defendant's
12 Exhibit 6 for identification.

13 CROSS EXAMINATION CONTINUED

14 BY MR. ALAN BURNS:

15 Q. Do you recognize that picture?

16 A. Yes, I do.

17 Q. Would you tell me who all is in that
18 picture?

19 A. You and I.

20 MR. ALAN BURNS: Your Honor, could
21 I have this picture put up on the board,
22 please.

23 THE COURT: Do you want to
24 introduce the picture?

25 MR. ALAN BURNS: Yes, sir.

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1 THE COURT: Any objection?

2 SOLICITOR HERRING-LASH: No, Your
3 Honor.

4 THE COURT: Without objection,
5 Defendant's Exhibit 6 is admitted.

6 (SO ENTERED AS DEFENDANT'S EXHIBIT 6)

7 THE COURT: Ladies and Gentlemen,
8 any exhibit admitted into evidence will be
9 sent to you in your jury room when you begin
10 your deliberations. You'll have the
11 opportunity to review any of those that are
12 admitted at that time.

13 CROSS EXAMINATION CONTINUED

14 BY MR. ALAN BURNS:

15 Q. Minor 5 in that picture, can you
16 describe what you're doing for me?

17 A. Putting on a necklace.

18 Q. Can you tell what the occasion was that
19 you were doing this?

20 A. It was Christmas. We had a gift
21 exchange at grandma's house.

22 Q. And the gift -- the necklace that you're
23 putting on me is a gift from you to me?

24 A. No, I did not pull your name.

25 Q. So that was a gift from somebody else

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1 and you were just putting it on me?

2 A. It was from somebody else. You were
3 standing there, I was sitting right there.
4 You held up your gift. You was like, 'Can
5 somebody put it on?' I was standing right
6 there. You asked me to put it on, I put it
7 on.

8 Q. And that was just one of those acts that
9 you tolerated me, that you mentioned?

10 A. You were in the house with the rest of
11 the family. How was I supposed to react to
12 you? I am a Christian woman.

13 Q. Were you a Christian woman when you were
14 living on Century Oaks?

15 A. I've been a Christian woman most of my
16 life.

17 Q. And when I came over to your house on
18 Century Oaks, you stated a little while ago
19 that your husband would talk to me but that
20 you didn't really -- you didn't really have
21 any dealings with me.

22 A. No. You said did I like you, did you
23 come over there. I said my husband liked
24 you. You came in the house. You asked me
25 did you go in my kitchen and fix food. I

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1 said you went in my kitchen but that you did
2 not fix food. I never said that you didn't
3 eat there. I said that you didn't fix it. I
4 never said that I didn't spoke -- speak to
5 you. I said that I tolerated you. You were
6 trying to make it seem like it all friendly
7 friendly and buddy-buddy and it was never
8 that.

9 Q. This picture was taken after the time
10 when I supposedly had molested you, though;
11 right?

12 A. Yes.

13 Q. And it was taken while you had full
14 remembrance of ---

15 THE COURT: Sir, she has already
16 answered your question. You don't need to
17 ask that question in follow up. She's
18 already responded to your question. You have
19 that answer. Move on to something else.

20 MR. ALAN BURNS: That's all that I
21 have for now.

22 THE COURT: Okay, sir. Thank you.
23 Redirect?

24 SOLICITOR HERRING-LASH: Yes,
25 Your Honor.

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1 REDIRECT EXAMINATION

2 BY SOLICITOR HERRING-LASH:

3 Q. Minor 5 we have seen pictures of the
4 house. I don't know if we can put that back
5 up -- (displaying).

6 THE COURT: What exhibit is this?

7 SOLICITOR HERRING-LASH: I don't
8 know ---

9 THE WITNESS: That is ---

10 THE COURT: Just one second.

11 SOLICITOR HERRING-LASH: I think
12 that's Exhibit 1.

13 THE COURT: State's Exhibit 1.

14 REDIRECT EXAMINATION CONTINUED

15 BY SOLICITOR HERRING-LASH:

16 Q. When you were talking about the porch.
17 The porch that is on that house now, was that
18 the porch back then?

19 A. It's in the same spot but they kinda
20 closed it in and made it a den. They put up
21 a wall and shortened the porch -- because the
22 porch had ran the whole front. Where the
23 window unit is, that is now part of my
24 grandmother's room but it wasn't -- that was
25 part of the porch.

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1 Q. Was it screened instead of ---

2 A. It was screen. It was board but where

3 the windows are, the screens came up. On

4 this end, closest to this side over here

5 where the air-conditioner unit is, that was

6 part of the porch. They put a wall there.

7 The wall is kinda of inbetween where that

8 air-conditioner unit is and the window that

9 is closest to the door. They extended my

10 grandmother's room into that and enclosed the

11 rest and made it a den.

12 Q. When Mr. Burns was questioning you about

13 the events that happened when you were two,

14 you told us about other events -- up to what

15 age?

16 A. The events that happened after two?

17 Q. (Affirmative nod).

18 A. There were events that happened up until

19 -- that I told earlier, was up until I was

20 about five, seven. Was the last time,

21 because I went and moved.

22 Q. You found the picture of you in the

23 jumper when?

24 A. It was -- I want to say about June 27th.

25 Q. How did you find it?

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1 A. My daughter has an entertainment center
2 that used to be my mom's. She was cleaning
3 it out and going through stuff and she was
4 adding more stuff to it. The way that the
5 entertainment center sits is that on the
6 bottom there are two double doors that meet
7 in the middle. She putting stuff in there
8 and she was like, 'Mommy, I can't put all my
9 stuff in there.' I was like, 'Well, you need
10 to go in there and see what's stopping it.'
11 When we went in to see what was stopping it,
12 she pulled out a photo album. As I started
13 looking through the photo album, there were
14 pictures in there. I said, 'Oh, this is
15 Mommy's.'

16 The first picture in there was a picture
17 of me in kindergarten.

18 Then after that, it was my mom and her
19 ex-husband, pictures of us when we were in
20 Germany with one my aunts who was also
21 stationed in Germany.

22 At the end of the book, there was
23 pictures of the -- that you had shown me.
24 Then I just remember looking at my daughter,
25 'Where did you find this?' That's when she

1 told me. She was like, 'I got it out of
2 there.' I always was telling her that 'I
3 didn't know that there was pictures of
4 these.' She was like, 'Pictures of what?' I
5 was like, 'I can't tell you what I'm talking
6 about but I never knew that pictures
7 existed.'

8 Q. Do you remember the date that you gave
9 your written statement about this?

10 A. I think it was April. I don't remember.
11 I am remembering all the days that I talked
12 to you. I know that I talked to you in March
13 and then ---

14 Q. If I showed you a copy of your written
15 statement, would it refresh your memory, just
16 to look at the date?

17 A. (No verbal response).

18 Q. Don't read it out loud but does that
19 refresh your memory that you gave the
20 statement?

21 A. April 12th, (affirmative nod).

22 Q. What is the date?

23 A. April the 12th, 2012.

24 SOLICITOR HERRING-LASH: Those
25 are all the questions that I have, **Minor 5**

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1 THE COURT: Recross?

2 RECROSS EXAMINATION

3 BY MR. ALAN BURNS:

4 Q. Who owns the photo album that you found
5 the pictures in?

6 A. I am assuming it was my mother's. I
7 don't know. I assumed that it was my
8 mother's since it was in the entertainment
9 center that she had. If it wasn't her, then
10 it was her exhusband's, because there were
11 pictures of him in there also of when they
12 were stationed at Fort Sam Houston, Texas.
13 It was mainly pictures of my mom, him and his
14 family. There were pictures of me and
15 another cousin, Michael, and his mom when we
16 were stationed in Germany -- or when my
17 parents were stationed in Germany. Then
18 there were just a few of those pictures at
19 the end.

20 Q. Where is the photo album right now? Do
21 you mind if I ask.

22 A. The photo album is at my house.

23 Q. So you're in possession of it?

24 A. My daughter is, (affirmative nod).

25 Q. Okay. What is your daughter's name?

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1 A. Lashone (phonetic).

2 SOLICITOR HERRING-LASH: What is the
3 relevance of this?

4 THE COURT: I will allow that
5 question.

6 THE WITNESS: Lashone
7 (phonetic) Handy.

8 RECROSS EXAMINATION CONTINUED

9 BY MR. ALAN BURNS:

10 Q. Does she live in South Carolina or is
11 she living in North Carolina?

12 A. She lives in North Carolina.

13 Q. So the photo album, at the present time,
14 is in North Carolina?

15 A. Yeah.

16 Q And you provided that photo to the
17 solicitor or to the police?

18 A. To the solicitor.

19 Q. Okay.

20 A. I never spoke to the police.

21 Q. You never spoke to Detective Michelle
22 Bacon?

23 A. I spoke to her on the phone but I never
24 gave her a statement, if that is what you're
25 asking. No.

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1 Q. But you just said that you never spoke
2 to her. That's all.

3 MR. ALAN BURNS: That's all, Your
4 Honor. Thank you.

5 THE COURT: You can explain your
6 answer if you need to. You said that you
7 spoke to her on the phone.

8 THE WITNESS: She called me on
9 the phone and asked me if I would like to
10 give her a statement. I told her that I was
11 going to give her a statement. I wrote the
12 statement on my computer. I never sent her a
13 written statement.

14 THE COURT: You may come down.
15 Thank you very much.

16 (WITNESS STEPS DOWN)

17 THE COURT: The State would call
18 Jacquelyn Blake.

19 (WITNESS TAKES STAND)

20 JACQUELYN BLAKE, being duly sworn to
21 tell the truth, the whole truth and nothing
22 but the truth, testified, as follows:

23 DIRECT EXAMINATION

24 BY SOLICITOR HERRING-LASH:

25 Q. Ms. Blake, where do you live?

1 A. Orangeburg, South Carolina.

2 Q. And are -- do you -- do you know or did
3 you used to be in the Burns Family?

4 A. Yes.

5 Q. How was that?

6 A. I was married into the family, to Davey
7 Burns.

8 Q. To who?

9 A. To Davey Burns, Sr.

10 Q. Can you move that microphone a little
11 closer. It's not picking up.

12 A. (Complies).

13 Q. Is Davey Burns related to Alan Burns?

14 A. Yes, that's his brother.

15 Q. When you married Davey, where did you
16 all live?

17 A. At his mom's house for a little while
18 and then in yard in a house that we built.

19 Q. You had a house in the same yard?

20 A. Yes.

21 Q. When you were married to him, did you
22 watch of care for **Minor 4** and **Minor 5**

23 A. Yes, I did.

24 Q. Did you do that like during the day?

25 A. Yes.

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1 Q. Where was Ms. Alisteen Burns?

2 A. At work.

3 Q. Do you know where she worked?

4 A. She was doing healthcare nursing at
5 Sandpiper Village, I believe.

6 Q. And what about Mr. Oliver Burns?

7 A. He was a merchant seaman, he was gone a
8 lot.

9 Q. Do you remember specifically caring for
10 **Minor 5** and **Minor 4**

11 A. Yes.

12 Q. Did there come a day when you witnessed
13 something?

14 A. Yes, I did.

15 Q. Can you just explain to the jury what
16 happened, from the beginning to end.

17 A. I was watching the girls. I was in the
18 kitchen, watching television. The girls were
19 playing -- at this time, I assume that it was
20 only me, **Minor 5** and **Minor 4** in the house
21 because that's usually how it was. Everybody
22 else would either be at work or at school.

23 **Minor 4** came in the kitchen crying. I
24 was asking her why she was crying, what
25 happened, what was wrong. For a minute or so

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1 she didn't tell me anything. Then finally,
2 after I kept asking her, she said that Uncle
3 Alan was hurting [Minor 5]

4 Q. Was she upset at this point?

5 A. She was very upset.

6 Q. I didn't believe her at first because I
7 didn't know Alan was in the house. I said,

8 'Well, what are you guys doing?'

9 She said, 'Uncle Alan is hurting
10 [Minor 5]'

11 I said, 'Come on, show me.'

12 So we got up, went down the hallway, she
13 went into the bathroom.

14 When I opened the door, Alan had [Minor 5]
15 -- Alan was sitting on the bed, [Minor 5] was
16 laying down and he had his finger in [Minor 5]
17 vagina.

18 When he turned around and saw me, he
19 jumped up, ran out of the room.

20 I got [Minor 5] She was crying and
21 screaming. I tried to calm the girls down.
22 I kept asking [Minor 5] you know, 'calm down,
23 calm down, what's wrong?' And she said
24 "Uncle Alan did it to me, too."

25 I said okay, okay. I tried to get them

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1 calmed down and I couldn't get them calmed
2 down. I tried to call Alan's mom at work and
3 told her that she needed to come home,
4 something had happened to the girls.

5 When she got home -- I don't know where
6 Alan was at the time, if he was in the yard
7 or where he was. She got home, I told her
8 what had happened, what the girls said, what
9 I saw. When they get back in the house, she
10 started beating Alan with an extension cord.

11 Somehow Alan got away from her. He went
12 in the bathroom and locked the door.

13 When we finally did get the door -- by
14 this time, his mom had already called Davey,
15 my husband, and by the time that he got there
16 and got the bathroom door open, Alan had
17 already jumped out the bathroom window.

18 Alan came back later on that night to
19 threaten me, to tell me that he's going to
20 get me -- I was pregnant, --that he was going
21 to kill me and my baby for telling and
22 calling his mom.

23 His mom decided at that time that every
24 since then she would drop me, **Minor 5** and
25 **Minor 4** to her sister's house, his auntie's

1 house, when she'd go to work. That's what we
2 did.

3 Q. Did you end up leaving?

4 A. I eventually left. I got divorced in
5 1993 and I moved out.

6 Q. Did you all move out of that house?

7 A. We moved out of that house a couple of
8 times and came back. When I got my divorce,
9 being that the house was on my in-law's land
10 they said that it wasn't legally my house but
11 they gave me the right to live in the house
12 until my youngest child graduated from high
13 school. I left that house completely in
14 2002.

15 Q. Do you know if **Minor 4** and **Minor 5**
16 continued to go over and stay with the
17 grandparents?

18 A. Yes, eventually -- **Minor 4** mom and dad
19 at the time were living in New York, **Minor 4**
20 was staying with her grandma in Charleston
21 and they were about to move to Charleston.
22 So they ended up moving down here.

23 Q. And when you say in a room, just to be
24 clear, whose room was it?

25 A. It was Alan's room. The last room in

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1 the house. The hallway is rather long. You
2 go down the hallway and there is a room on
3 the left and one of the right. Alan's room
4 was on the left.

5 Q. Now, after seeing this and telling your
6 mother-in-law, did you tell other people?

7 A. I believe that I told Davey, my husband.
8 I didn't think that it was my place to tell
9 anybody else, really.

10 Q. Do you remember if Alan got the police?

11 A. I don't recall. I remember an incident
12 and I think that it might be the same as when
13 he went -- somehow he got the police, saying
14 that his mom was abusing him, beating him or
15 whatever. But I remember her when they came
16 -- they told his mom that they were there
17 because he'd called and said that she was
18 abusing him or beating him. She told them
19 plain, 'If you think you can do a better job,
20 you take him with you.'

21 Q. Was that the end of that?

22 A. Um-humm.

23 SOLICITOR HERRING-LASH: Ms.

24 Blake, those are all the questions that I
25 have to ask you. Please answer any that Mr.

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1 Burns may have for your.

2 THE COURT: You may cross-examine.

3 MR. ALAN BURNS: Yes.

4 CROSS EXAMINATION

5 BY MR. ALAN BURNS:

6 Q. How long did you live with your mother-
7 in-law when you first got married?

8 A. About six months.

9 Q. What year did you married?

10 A. 1979.

11 Q. And you said **Minor 4** was in kinder-
12 garten?

13 A. No, I did not say that. I said **Minor 4**
14 was there during the summers until her mom
15 and dad decided to move there. Then **Minor 4**
16 just stayed there until they got there.

17 Q. But you say that when these incidents
18 occurred that the only people who were in the
19 house were you and the kids, and everybody
20 else was at school or at work?

21 A. Right.

22 Q. So that means that **Minor 4** wasn't in
23 school at the time?

24 A. Not at the time, at least not that day.

25 Q. So you would have been at least under

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1 four or five years old

2 A. I believe she and -- she may have been
3 five. There's two years between Minor 4 and
4 Minor 5 and Minor 5 was three.

5 Q. You ----

6 A. I am not sure.

7 MR. ALAN BURNS: Your Honor, I
8 have a legal issue that I need to raise.

9 THE COURT: Sidebar.

10 (OFF RECORD SIDEBAR)

11 THE COURT: Thank you, sir.

12 CROSS EXAMINATION CONTINUED

13 BY MR. ALAN BURNS:

14 Q. So you said that you lived in the house
15 for six months?

16 A. Around that time.

17 Q. Then you moved out?

18 A. Yes.

19 Q. Where did you move to?

20 A. Next door, about fifteen feet

21 Q. So the house next door was being built
22 during the first six months?

23 A. Yes, it was built -- I got married in
24 September. We moved in with Ms. Alisteen and
25 October -- the house was already built. It

1 was built as a one bedroom, one bath, just
2 basic because it was just me and Davey and I
3 was pregnant. The house wasn't a big house
4 when we first built it.

5 Q. When you first started building the
6 house, didn't Davey first start building the
7 house behind the house? Laid the foundation
8 to build the house behind the house, then
9 stopped and built it in front?

10 A. Where that house is is where that house
11 was supposed to be in the beginning. That's
12 where we started, that's where we finished.

13 MR. ALAN BURNS: That's all that I
14 have for you.

15 THE COURT: Redirect?

16 REDIRECT EXAMINATION

17 BY SOLICITOR HERRING-LASH:

18 Q. Mrs. Blake, just to clarify, at the time
19 of this event you were living not with your
20 in-laws but already had moved?

21 A. Right, into my own house.

22 SOLICITOR HERRING-LASH: Those
23 are all the questions that I have. Thank
24 you.

25 THE COURT: Recross?

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1 RECROSS EXAMINATION

2 BY MR. ALAN BURNS:

3 Q. You and Davey Burns, Sr. aren't together
4 anymore?

5 A. No.

6 Q Y'all not cohabit or -- you're able to
7 communicate and everything? The last time
8 you spoke to him, where was he living at?

9 A. The last time I spoke to Davey, Sr. he
10 was living in West Virginia with our son
11 Richard.

12 Q. Okay.

13 THE COURT: You may come down.

14 (WITNESS STEPS DOWN)

15 THE COURT: Who is your next
16 witness?

17 SOLICITOR HERRING-LASH: Minor 1

18 Whitaker. Your Honor, may Ms. Blake be
19 excused?

20 THE COURT: Any objection, Mr.
21 Burns?

22 MR. ALAN BURNS: No.

23 THE COURT: You are free to leave.

24 (WITNESS TAKES STAND)

25 Minor 1 being duly sworn

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1 to tell the truth, the whole truth and
2 nothing but the truth, testified, as follows:

3 DIRECT EXAMINATION

4 BY SOLICITOR HERRING-LASH:

5 Q. Minor 1 where do you live?

6 A. [REDACTED]

7 Q. Where do you work?

8 A. I do private nursing.

9 Q. Do what?

10 A. I do private nursing.

11 Q. What is your date of birth?

12 A. [REDACTED]

13 Q. How do you know the Burns family?

14 A. I was adopted into the Burns family.

15 Q. About what age were you, if you
16 remember, when you were first adopted?

17 A. Around eleven.

18 Q. How did you come to be adopted into that
19 family?

20 A. Through Alice Singleton.

21 Q. Explain that. Did she know your mother?

22 A. My aunt and her was best friends.

23 Q. Did something happen to your aunt?

24 A. Yes, on the day that she was supposed to
25 come get me, she passed away.

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1 Q. Then you stayed with who?

2 A. Alice Singleton.

3 Q. Is Alice Singleton related to Mr.
4 Burns?

5 A. Yes.

6 Q. What relationship are they?

7 A. Sister/brother.

8 Q. So when you came into their family, did
9 you meet Alan?

10 A. Yes.

11 Q. Did you visit with your grandparents?

12 A. Yes.

13 Q. Did you come to, at some point, think
14 of Oliver and Alisteen Burns as your grand-
15 parents?

16 A. Yes.

17 Q. And how often would you visit over
18 there?

19 A. I'd come every day, at least every day
20 or every other day.

21 Q. Showing you what has been marked for ID
22 as State's Exhibit 20. Do you recognize
23 that?

24 A. Yes.

25 Q. Who is that in the picture?

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1 A. Me, my mom, my Cousin Latasha.

2 Q. Is that shortly after you came with your
3 mother?

4 A. Yes.

5 SOLICITOR HERRING-LASH: Your
6 Honor, at this time the State would offer
7 State's Exhibit 20 into evidence.

8 THE COURT: Any objection, Mr.
9 Burns?

10 MR. ALAN BURNS: No objection.

11 THE COURT: Without objection,
12 State's Exhibit 20 is admitted.

13 (SO ENTERED AS STATE'S EXHIBIT 20)

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR HERRING-LASH:

16 Q. So is that your mom or who is that?

17 A. That is my mom.

18 Q. How close did your mom live to the Burns
19 family, if you have an estimate?

20 A. I would say no more than five minutes
21 driving from them.

22 Q. But she was not one of the people that
23 lived right in that very area?

24 A. Oh, no, ma'am.

25 Q. Do you remember when you first met the

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1 Defendant, Alan Burns?

2 A. Yes.

3 Q. When was that?

4 A. I can't remember what year that it was
5 but I remember meeting him.

6 Q. Do you remember where you were when you
7 first met him?

8 A. Yes.

9 Q. Where were you?

10 A. My mother's house.

11 Q. Did he make any comments to you?

12 A. No, not at first.

13 Q. Ever?

14 A. Yes.

15 Q. What were those?

16 A. It was more sexual comments like I'm
17 pretty or like I have some pretty breasts.

18 Q. Did he ever touch you in any way?

19 A. Then or?

20 Q. Then, in the beginning.

21 A. Not in the beginning, no.

22 Q. Did there some a time when he did do
23 something inappropriate to you?

24 A. Yes.

25 Q. Explain when that was?

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1 A. First it was more like feeling on me,
2 putting his hand in my pants.

3 Q. When you say put his hand in your pants,
4 what do you mean?

5 A. Just like squeezing my breast or
6 touching my private area, or something like
7 that.

8 Q. Did he put his hand in your pants?

9 A. Yes.

10 Q. Did he touch your private area on top or
11 inside?

12 A. Top, side, which -- yes.

13 Q. Inside?

14 A. Yes.

15 Q. Do you know where you were when this
16 happened?

17 A. I could be at my mother's house, my
18 grandmother's house.

19 Q. And is there a particular event that you
20 remember?

21 A. I remember all of them.

22 Q. Is there an event where more happened
23 than touching inside your pants?

24 A. By day at my grandmother's house -- it
25 was like a Monday through Friday because my

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1 mom was at work. She was just getting off,
2 she was tired. She told someone to come get
3 me, but then Alan was like -- well, Mr. Burns
4 -- he was going to go over there anyway to
5 look at her car because something was wrong
6 with it. So he said ---

7 Q. Did he work on her car?

8 A. Yes. And he said that he would take me.
9 But would he took me, instead of us -- we
10 came out of the -- instead of us -- I think
11 that's like a right turn. We kept on going
12 straight across ---

13 Q. Let me show you -- (displaying map).

14 SOLICITOR HERRING-LASH: Your
15 Honor, I just want to show this to the
16 witness for demonstrative purposes only.

17 THE COURT: Is it marked?

18 SOLICITOR HERRING-LASH: It is not
19 marked.

20 THE COURT: Let's mark it, please,
21 for demonstrative purposes only.

22 COURT REPORTER: State's Exhibit
23 21.

24 THE COURT: State's Exhibit 21 is
25 a map affixed to a board for ID purposes

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1 only.

2 (SO ENTERED AS STATE'S EXHIBIT 21 FOR ID)

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR HERRING-LASH:

5 Q. [Minor 1] you said that you left your
6 grandparents' house?

7 A. Um-humm.

8 THE COURT: Was that a "yes"?

9 DEFENDANT: Yes.

10 SOLICITOR HERRING-LASH: May the
11 witness come down?

12 THE COURT: You may, but keep your
13 voice raised when you -- you may step down.

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR HERRING-LASH:

16 Q. [Minor 1] to orient you, this is Venning
17 Road. What road did your grandparents live
18 on?

19 A. Which one is this?

20 Q. This is Venning Road and this is Rands
21 Hill.

22 A. Where is my grandmother's house?

23 Q. Rands Hill.

24 A. (Affirmative nod).

25 Q. This is Venning Road. You said that

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1 y'all went on Venning Road.

2 A. What is this roundabout?

3 Q. That's Rifle Range and Venning.

4 A. So my grandmother's house is this was?

5 THE COURT: No, ma'am, you can't
6 ask Ms. Herring-Lash.

7 THE WITNESS: Okay. This is my
8 grandmother's house. We came out there the
9 roundabout is and we ---

10 THE COURT: Ma'am, can you get on
11 the side so that the jury can see.

12 THE WITNESS: My grandmother's
13 house is right here. We turned this way.
14 The roundabout wasn't always there, they've
15 since build that there. It just went
16 straight.

17 DIRECT EXAMINATION CONTINUED

18 BY SOLICITOR HERRING-LASH:

19 Q. Where did you go?

20 A. We went straight back here. There were
21 some houses back here.

22 Q. That's where y'all drove to?

23 A. Yeah.

24 Q. What was the area like back there,

25 Minor 1

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1 A. Just a road, you could see some trees,
2 and if you go all the way in the back there
3 are like a couple of houses.

4 Q. Where did you go?

5 A. We went down by the house, we turned
6 around and came back up.

7 Q. What kind of car?

8 A. It wasn't a car. It was a van, a dark-
9 colored van.

10 Q. What happened with the van?

11 A. Nothing happened with it. We just
12 pulled over and I asked him what we were
13 doing and he said that we were waiting on
14 somebody. While he waited, he was tightening
15 something under the hood. So I sat in the
16 car and waited for him.

17 He came back around, he opened the
18 sliding door. So I just kept looking, I
19 don't say anything. Then he went back under
20 the hood.

21 Then he called me, I got out of the car.
22 He asked me to hand him a tool because there
23 was a toolbox in the back.

24 Q. Did you hand him the tool?

25 A. Well, when I went to bend over to hand

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1 him the tool he came in behind me. I thought
2 that he was coming to get the tool but then
3 everything just went crazy. He pushed me
4 somewhat to where I'm bending over to him.
5 He put his hand around my neck and with the
6 other hand he was taking off the bottoms.

7 Q: He was what?

8 A. He was taking off my pants and
9 underwear. I started crying, asking him what
10 he was doing. He told me to shut up because
11 I was "used to it." After that, he took his
12 penis out and he inserted it. He kept going
13 until it was time for him to ejaculate. He
14 grabbed a white shirt to clean himself off.
15 He threw it to me and told me to clean myself
16 off. I was still crying, but he told me to
17 shut up. I sat on the bottom of the car,
18 like where the floorboard is. He got a tool
19 out of there and he hit me with it and he
20 asked me if I saw how it feel. I told him
21 yes, that it hurt and I started crying even
22 more. He said 'shut up.' 'If you tell
23 anybody, I'll make sure that your mama get
24 into an accident on her way going to work.
25 I'll cut her brakes or something.'

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1 Q. Did you say anything to him?

2 A. No.

3 Q. What did he mean by "you're used to it"?

4 A. Because before I got to my adopted mom,
5 I was raped before that.

6 Q. Did he know about that?

7 A. I guess so.

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

9 A. I had already been bounced around, I
10 didn't want to leave, I didn't want to tell
11 her and then she turn me back over to DSS, so
12 I just stayed quiet.

13 Q. Did you continue to be around him?

14 A. Yes.

15 Q. Did you have any options?

16 A. No.

17 Q. Did anything else ever happen?

18 A. It was more, the touching got more.
19 There was more touching. He would come and
20 pick me up from places, like church or
21 something and tell me that my mom told him to
22 come get me. He would drive me to his
23 household on Ashley Phosphate Road at the
24 time, but I would never get out or anything.

25 Q. You never would get out of the car?

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1 A. No, just to ride around with him.

2 Q. Who was he living with in North
3 Charleston at the time?

4 A. It was my Aunt **Minor 5** at the time.

5 Q. Did you attend the boys and girls club?

6 A. No.

7 Q. Did she work there?

8 A. I can't recall.

9 Q. Over the years, did you ever confide in
10 anyone?

11 A. No.

12 Q. How did you come to go to the police?
13 What happened?

14 A. My mom called me one morning and she
15 asked me if anything ever happened and she
16 told me not to lie to her, so I told her the
17 truth.

18 Q. What did you do?

19 A. She told me to come over to her house
20 and sit down and talk to her.

21 Q. Did you do that?

22 A. Yes.

23 Q. Did you end up going to the police then?

24 A. Yes.

25 Q. Did you know **Minor 2**

1 A. Yes.

2 Q. When you were eleven and moved in there,
3 was he around there also?

4 A. Yes.

5 Q. **Minor 1** how do you feel about coming
6 forward now?

7 A. Pretty good.

8 Q. Feel?

9 A. Good.

10 Q. You do?

11 A. (Affirmative nod).

12 SOLICITOR HERRING-LASH: Those
13 are all the questions that I have, **Minor 1**
14 Answer any that Mr. Burns has. Okay?

15 THE COURT: Cross-examine.

16 CROSS EXAMINATION

17 BY MR. ALAN BURNS:

18 Q. You said that I drove you to an area off
19 of Venning Road?

20 A. Yes.

21 Q. Could you describe this area, what it
22 looked like?

23 A. Just the road, trees, palm trees and
24 there were houses in the back.

25 Q. And where did I park at?

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1 A. You parked on the side of the road, in
2 the middle of the palm trees.

3 Q. I parked in the middle of the palm
4 trees. How many palm trees?

5 A. It was two.

6 Q. Two?

7 A. Yes.

8 Q. What side of the road was I parked on?

9 A. You had to be parked on the left-hand
10 side.

11 Q. As you're going in or coming back out?

12 A. No, coming back out.

13 Q. And the field would have been on the
14 left-hand side, as well?

15 A. The field?

16 Q. The field that I was parked -- was I
17 parked in the field?

18 A. No, you were parked on the side of the
19 road.

20 Q. And there was no field or anything
21 around?

22 A. Not that I recall.

23 Q. Was this the first time you had ever
24 been to this area?

25 A. Yes.

1 Q. And you've never been back to that area
2 again?

3 A. Not to my knowledge.

4 Q. Not to this very day, you've not been
5 back to that area?

6 A. Not to my knowledge.

7 Q. You said that I hit you with a tool?

8 A. Yes.

9 Q. What did I hit you with?

10 A. On my knee.

11 Q. What type of tool was it?

12 A. I don't recall.

13 Q. At the time you said your mom had a car,
14 what kind of car did she have?

15 A. She had a blue car but I don't know the
16 make or model.

17 Q. Dark blue? Light blue?

18 A. Light blue.

19 Q. Why didn't you tell anyone?

20 A. Because you said that if I did that you
21 would cut her brakes or you would have did
22 something to her.

23 Q. Was there a time when you ran away from
24 home, from my sister's house?

25 A. Yes.

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1 Q. How long were you gone?

2 A. How long was I gone?

3 Q. Yes.

4 A. Two or three days.

5 Q. Were you found or did you come back home
6 on your own?

7 A. No, I was found.

8 Q. Where were you found at?

9 SOLICITOR HERRING-LASH: Your
10 Honor, I would object to relevance.

11 THE COURT: Sustained. Character.
12 Improper.

13 CROSS EXAMINATION CONTINUED

14 BY MR. ALAN BURNS:

15 Q. You said that there wasn't no field
16 around where ---

17 A. Not to my knowledge.

18 Q. And you said that I parked under two big
19 palm trees?

20 A. Yes.

21 MR. ALAN BURNS: Your Honor, could
22 I put out the State's exhibit and ask
23 something, because I couldn't see what she
24 was pointing to when she was pointing.

25 THE COURT: Yes, sir. Next time

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1 just move so that you can see. Certainly you
2 can reference whatever it is that you see.
3 The jury has seen it. You want her to show
4 you where it was?

5 MR. ALAN BURNS: Yes, sir.

6 THE COURT: Hold it up and let her
7 show you. No need for her to come down.
8 Just show her the exhibit. No need to put it
9 up or for her to come down since she has
10 already shown the jury. This is for your
11 benefit.

12 CROSS EXAMINATION CONTINUED

13 BY MR. ALAN BURNS:

14 Q. Can you show me?

15 A. Along this road.

16 Q. Where at along this road?

17 A. Right here.

18 Q. Show me exactly where.

19 A. Right along this road.

20 Q. You don't remember exactly where? D

21 A. No, I don't remember the exact spot.

22 THE COURT: She has answered your
23 question, Mr. Burns, to the best of her
24 ability. That's as far as you're going to go
25 on that issue. Thank you.

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1 CROSS EXAMINATION CONTINUED

2 BY MR. ALAN BURNS:

3 Q. Did you ever take the police and show
4 them the area where this supposedly happened?

5 A. No.

6 Q. Okay. Let me ask you this question, you
7 said that --you said when I went down the
8 road -- that I took you down the road, drove
9 all the way down by some houses and turned
10 around?

11 A. Yes.

12 Q. Then I came back up and parked by two
13 big palm trees, that there was just two big
14 palm trees there?

15 A. Yes.

16 MR. ALAN BURNS: (Tenders document
17 to be marked as exhibit).

18 COURT REPORTER: Defendant's
19 Exhibit 7 for identification.

20 CROSS EXAMINATION CONTINUED

21 BY MR. ALAN BURNS:

22 Q. Do you recognize the area in this
23 picture?

24 A. Yes.

25 Q. Where is it?

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1 A. That's the same road that you took me
2 down.

3 Q. Is this where I parked at?

4 A. No, you parked a little farther back.
5 So that's not the part of the road that I am
6 talking about. That is down the same road,
7 though.

8 MR. ALAN BURNS: (Tenders document
9 to be marked as exhibit)

10 COURT REPORTER: Defendant's
11 Exhibit 8 for identification.

12 (SO ENTERED AS DEFENDANT'S EXHIBIT 8 FOR ID)

13 THE COURT: Photograph, ID only.

14 CROSS EXAMINATION CONTINUED

15 BY MR. ALAN BURNS:

16 Q. Do you recognize this photo?

17 A. If you could hold it down some so that I
18 could see it.

19 Q. (Displaying).

20 A. Yes, I recognize that photo.

21 Q. Do you recognize the area that I parked
22 in, in this photo?

23 A. No.

24 Q. Is it further down than this?

25 A. Yes.

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1 Q. Very good.

2 MR. ALAN BURNS: Your Honor, I
3 would like to enter that.

4 THE COURT: Enter it into
5 evidence. Do you want it marked or?

6 MR. ALAN BURNS: Marked into
7 evidence.

8 THE COURT: For demonstrative
9 purposes. It's not the same thing as State's
10 Exhibit previously marked?

11 MR. ALAN BURNS: No, sir, it is
12 not.

13 THE COURT: All right, sir, that's
14 fine.

15 COURT REPORTER: Defendant's
16 Exhibit 9.

17 (SO ENTERED AS DEFENDANT'S EXHIBIT 9 FOR ID)

18 THE COURT: Defendant's Exhibit 9
19 is a blown up photograph, aerial photograph.

20 MR. ALAN BURNS: Your Honor, this
21 is an aerial photo of Venning Road as it
22 looked in 1979 -- excuse me -- in 1997 and
23 1998.

24 CROSS EXAMINATION CONTINUED

25 BY MR. ALAN BURNS:

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1 Q. Would you show me on this map
2 approximately how far down that we went?

3 A. I can't tell on this map.

4 Q. These are the palm trees that I just
5 showed you.

6 THE COURT: No, sir. Now, Mr.
7 Burns, you're testifying again.

8 MR. ALAN BURNS: Oh, I'm sorry.

9 THE COURT: She's said that she
10 cannot on that map. If you have something
11 else that you want to ask her about, that's
12 fine but the witness now would be speculating
13 if she locate it because she's said that she
14 can't tell.

15 MR. ALAN BURNS: Okay.

16 THE COURT: And you can't testify
17 at this point.

18 MR. ALAN BURNS: Okay, I just want
19 that entered in the record.

20 THE COURT: It is not entered. It
21 is for ID only.

22 MR. ALAN BURNS: (Tenders
23 documents to be marked as exhibits).

24 COURT REPORTER: Defendant's
25 Exhibit 10 for identification, and Exhibit

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1 11.

2 THE COURT: Defendant's 10 and 11
3 for ID only, each being a photograph.

4 CROSS EXAMINATION CONTINUED

5 BY MR. ALAN BURNS:

6 Q. Do you recognize these photos?

7 A. No, I don't.

8 Q. Do you recognize this photo?

9 A. No, I don't.

10 THE COURT: Which -- so that was
11 Exhibits 10 and 11 that you just showed her?
12 Is that correct, Mr. Burns?

13 MR. ALAN BURNS: Yes, sir. Ten
14 and eleven.

15 THE COURT: She doesn't recognize
16 either one of them.

17 CROSS EXAMINATION CONTINUED

18 BY MR. ALAN BURNS:

19 Q. So, Minor 1 I just showed you two
20 photos of the entire road.

21 THE COURT: No, sir. You are
22 testifying again. She didn't recognize them.
23 You can't tell her what that is. She said
24 that she doesn't recognize it, so you'd have
25 to testify. If you can prove what that is,

1 then you're entitled to make a statement but
2 first you have to prove it. It's an improper
3 question. You have to rephrase your question
4 without identifying what it is, because it
5 hasn't been identified.

6 MR. ALAN BURNS: Okay.

7 CROSS EXAMINATION CONTINUED

8 BY MR. ALAN BURNS:

9 Q. Minor 1 if you were to be taken back to
10 that area today, would you be able to
11 identify it?

12 A. Yes, sir, I would.

13 Q. So if I was to present to you photos of
14 that area, would you be able to identify it?

15 A. If it was clear photos then, yes, sir, I
16 would.

17 Q. Were the photos that I just showed you
18 clear enough for you to identify that was the
19 entire length of the road?

20 A. No, sir.

21 Q. All right. Let me ask you another
22 question. I don't expect you to know the
23 answer but ---

24 THE COURT: You don't expect her
25 to know the answer? Why are you asking her

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1 the question.

2 MR. ALAN BURNS: I am just
3 checking to see if she knows the answer.

4 THE COURT: Don't ask her a
5 question that you don't expect her to know
6 the answer because that's -- there is a rule
7 of evidence, 602, and it says witnesses are
8 not allowed to talk about things of which
9 they have no knowledge. So if a person
10 doesn't have knowledge, how can she testify?

11 MR. ALAN BURNS: I'll move to
12 something else.

13 CROSS EXAMINATION CONTINUED

14 BY MR. ALAN BURNS:

15 Q. Do you remember what you was wearing
16 that day?

17 A. No, sir.

18 Q. Do you remember what I was wearing that
19 day?

20 A. I know it was a white shirt.

21 Q. The same shirt that I used to wipe
22 myself ---

23 A. Yes.

24 Q. --- and wipe your back?

25 A. Yes.

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1 Q. Following that, did I put the shirt back
2 on?

3 A. No, sir, you didn't put the shirt back
4 on. You threw it in the backseat.

5 Q. At the time, how old did you say that
6 you were?

7 A. I was around eleven, eleven or twelve.

8 Q. I went barebacked.

9 A. Excuse me?

10 Q. I went home bare backed. I didn't have
11 any shirt on?

12 A. Yeah, you had a shirt. You had one of
13 those tank top type shirts on.

14 MR. ALAN BURNS: All right. That
15 will be it for now, Your Honor.

16 THE COURT: Redirect?

17 SOLICITOR HERRING-LASH: No, Your
18 Honor. May Ms. Whitaker be excused?

19 THE COURT: Any objection?

20 MR. ALAN BURNS: Yes, I would like
21 to call Ms. Whitaker back, Your Honor.

22 THE COURT: Did you subpoena her?

23 MR. ALAN BURNS: Yeah, I did sent
24 a subpoena for her.

25 THE COURT: Ms. Whitaker, you have

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1 to remain here but -- she may remain in the
2 courtroom. Thank you. If you choose to, or
3 you may remain outside. You're not free to
4 leave.

5 THE COURT: All right. At this
6 point we will take a recess for lunch. Do
7 not, Ladies and Gentlemen, begin your
8 deliberations, do not discuss the case among
9 yourselves and certainly while you are out do
10 not permit anyone to talk about the case in
11 your presence or talk about the case. Have a
12 good lunch.

13 I would ask that you please return
14 to your jury room by 1:45 and we will resume
15 the trial at that time. Thank you.

16 (JURY OUT @ 12:17 P.M.)

17 THE COURT: Anything from the
18 State before we recess?

19 SOLICITOR HERRING-LASH: No, Your
20 Honor.

21 THE COURT: Anything from the
22 Defendant, Mr. Burns?

23 MR. ALAN BURNS: I would like to
24 know if it would be possible for them to
25 bring me back up early before we get ready to

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1 proceed so that I can prepare.

2 THE COURT: Yes, we will talk
3 about that but right now -- yes, I will
4 accommodate you ---

5 MR. ALAN BURNS: Thank you.
6 There's nothing else, sir.

7 THE COURT: Who are your witnesses
8 this afternoon? I want you to make a list,
9 give Mr. Burns a list of the witnesses.

10 What I want you to do, Mr. Burns, so
11 that we will have what it is that you --
12 that's what we do with lawyers and --- you're
13 doing fine. You have the files but you need
14 to put those files and the matter that you
15 think that you may use -- you might not use
16 them -- but every matter that you think that
17 you might use on cross-examination, they need
18 to be in a place where you can put your hand
19 on them real quickly. I am going to require
20 them to give you the witnesses and the order
21 in which they will appear. I am going to
22 require them to do that so that you don't
23 have to sit there and go through all your
24 files as long as your have up to now.

25 SOLICITOR HERRING-LASH: Your

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1 Honor, I can put the order of -- there is one
2 person who is coming from Columbia and I will
3 put her up as soon as she gets here.

4 THE COURT: That's fine. Who is
5 the person from Columbia?

6 SOLICITOR HERRING-LASH: Gail
7 Heath. She is a handwriting analyst.

8 THE COURT: How long do you need
9 to be brought up before we start, Mr. Burns?

10 MR. ALAN BURNS: Ten, fifteen
11 minutes.

12 THE COURT: All right. We will
13 start back at 1:45 and he may be here by
14 1:30, please. We will be in recess until
15 1:45.

16 (LUNCH RECESS)

17 (DEFENDANT PRESENT)

18 SOLICITOR HERRING-LASH: Your
19 Honor, one matter. There are some witnesses
20 for Mr. Burns that have been in the courtroom
21 the whole time. I realize that he has not
22 been able to communicate with them, may not
23 know who they are. But it's been brought to
24 my attention that they have been in the
25 courtroom the whole time. I think it is

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1 Cecilia Burns and ---

2 THE COURT: Is there somebody
3 outside that's screening people as they come
4 in?

5 SOLICITOR HERRING-LASH: Not that
6 I know of.

7 THE COURT: That's fine. If you
8 are a witness, if you have been subpoenaed to
9 be a witness in this case, you're not -- we
10 are sequestering witnesses and you need to
11 wait outside. So -- any witnesses subpoenaed
12 by either side needs to leave.

13 So there is nobody here as witness.

14 FEMALE: I came -- can I talk to
15 you?

16 THE COURT: Yes, ma'am.

17 FEMALE: I got a subpoena yesterday.
18 I came today to verify when I'm supposed to
19 be questioned but I do have a job and school
20 and ---

21 THE COURT: Who subpoenaed you?

22 FEMALE: I was told the defense.

23 THE COURT: Then you will have to
24 talk to him. But right now if you've been
25 listed by either side, ---

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1 FEMALE: I understand but I didn't
2 even know the rules ---

3 THE COURT: Ma'am, I'm telling you
4 the rules.

5 FEMALE: Okay, tell me.

6 THE COURT: You can leave. Right
7 now you can sit outside -- ma'am, you have to
8 sit outside until your name is called. That
9 is the rules.

10 FEMALE: I am not a relative to this
11 whole case anyway. I believe that --
12 (talking as she exits courtroom)..

13 THE COURT: What did you say,
14 ma'am?

15 FEMALE: Nothing -- (exits
16 courtroom).

17 THE COURT: You better not be
18 saying anything. You might not be leaving at
19 all.

20 Mr. Burns, I've been patient with
21 you. You're going to have to make sure that
22 you're not communicating with any of these
23 people. When they come in the courtroom,
24 you're going to have to inform the court so
25 that I can instruct them to leave. You need

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1 to do that. You need to have told them that
2 they'd been sequestered. That was your
3 motion.

4 MR. ALAN BURNS: Right, I
5 understand that.

6 THE COURT: All right. Well, if
7 you understand that, don't let that happen
8 anymore.

9 MR. ALAN BURNS: Because I'm been
10 trying to ---

11 THE COURT: Let me finish and then
12 I will hear from you.

13 MR. ALAN BURNS: Okay.

14 THE COURT: We are giving you --
15 this is about the second time that has
16 happened. The next time that it happens --
17 because your motion to sequester the
18 witnesses was granted, you are now on notice
19 that the next witness that stays in this
20 courtroom -- I don't know what they are going
21 to testify to, but they will not be permitted
22 to testify. Okay? It's that important, so
23 you might better monitor that. Now I will be
24 glad to hear from you.

25 MR. ALAN BURNS: The situation is

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1 that when they keep coming in, I notify Ted.
2 I also told Ms. Herring-Lash at one time,
3 because the order that you gave when I first
4 made the request was for Ms. Herring-Lash to
5 appoint someone to ---

6 THE COURT: No, that's not what I
7 said. You misunderstood what I said. I said
8 she can designate your chief investigating
9 officer, who can remain here and that the
10 victims after they testify can remain in the
11 courtroom under the Victims Bill Of Rights.

12 Now, with respect to what you have
13 to do, that's your responsibility to monitor
14 the witnesses. I can't sanction you as a
15 lawyer, because you're not a lawyer. But I
16 can sanction you by not allowing the
17 witnesses -- whatever you have to do -- if
18 Mr. Smith has to go tell them to leave, he
19 can get up and leave to tell them that. But
20 it is your responsibility to keep those
21 witnesses out of court. You should be
22 communicating with them somehow, but that's
23 -- that's a problem and I understand that
24 logistical problem.

25 But I am just telling you that the

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1 one thing that I can do is prevent you from
2 calling the witnesses if they remain contrary
3 to the order which has been issued in this
4 case at your request, not the State's request
5 but your request.

6 MR. ALAN BURNS: Yes, sir.

7 THE COURT: If a witness has
8 already testified, they are free stay here or
9 they have been excused. There was one
10 witness that I think Mr. Burns had subpoenaed
11 that I would not allow because the person was
12 not a victim, as I understand.

13 SOLICITOR HERRING-LASH: Right.
14 And I think the only one that is not a victim
15 that is in here is Karen Burns, and she has
16 already testified. She has not be subpoenaed
17 by Mr. Burns.

18 THE COURT: Very well.

19 TED SMITH: Judge, just very
20 briefly, I talked with both of those
21 witnesses in the hallway. They both
22 indicated and that they would not be back.

23 THE COURT: Well, I don't know
24 what the purpose was of their being
25 subpoenaed, but -- Mr. Burns, you can

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1 subpoena anyone but -- I was a lawyer for
2 twenty-one years. One mistake that you do is
3 that you subpoena somebody and put them on
4 the stand and if you don't know what they are
5 going to say it's not always a good thing to
6 do. You might get somebody angry at you and
7 it might work against you.

8 So I don't know what your motive was
9 or what you intended to gain from these
10 people but somebody needs to be communicating
11 with these people. She was obviously angry
12 about being subpoenaed.

13 So I don't know what your purpose
14 and you don't need to discuss that to me, I'm
15 not asking you to do that, but I am just
16 cautioning you, having been a lawyer. It's
17 not always a good idea to put a witness, that
18 you have to do a direct examination and you
19 don't know what they are going to say.

20 Just with that -- I am adding that
21 -- you can ignore that, you can -- I am just
22 cautioning you as a person that's presenting
23 their case. Okay?

24 MR. ALAN BURNS: Thank you, sir.

25 LORI PROCTOR: Just one minute.

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1 THE COURT: Sure, Ms. Proctor.

2 LORI PROCTOR: (Sidebar with
3 Defendant and Mr. Smith). Thank you, Your
4 Honor, we're ready.

5 THE COURT: Bring in our jurors,
6 please. Thank you.

7 (JURY IN @ 12:40 P.M.)

8 THE COURT: Thank you, Ladies and
9 Gentlemen. I hope you had a good lunch. We
10 are now ready to continue. Please give your
11 attention to the next witness. Solicitor,
12 you may call your next witness.

13 SOLICITOR RAN STONEY: The State
14 calls Felicia Milson.

15 (WITNESS TAKES STAND)

16 FELICIA MILSON, being duly sworn to
17 tell the truth, the whole truth and nothing
18 but the truth, testified as follows:

19 DIRECT EXAMINATION

20 BY SOLICITOR RAN STONEY:

21 Q. Good afternoon. Ms. Milson, where do
22 you live?

23 A. I live at [REDACTED] Mount
24 Pleasant, South Carolina.

25 Q. How long have you lived in Mount

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1 Pleasant?

2 A. Right now about ten or twelve years.

3 Q. Do you know the Burns family?

4 A. Yes.

5 Q. How did you come to know the Burns?

6 A. I knew some of the brothers and sisters
7 when we went to high school together. I used
8 to hang out with the older sister.

9 Q. During that time did you see Alan Burns?

10 A. No, I never met him.

11 Q. Do you know Alan Burns?

12 A. I know him, you know, later on in life.
13 We started dating, then we got married, then
14 we got divorced.

15 Q. How long were you married to Mr. Burns?

16 A. I'd say about two years.

17 Q. Where did you and Alan live?

18 A. First we lived on the Jenkins Project
19 and then we moved with his parents and then
20 we moved to Dunlap Street in North
21 Charleston.

22 Q. Was Alan working at this time?

23 A. At first he was. He was a painter.

24 Q. Were you working?

25 A. Yes.

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1 Q. Where were you working?

2 A. I used to work for the school service in
3 the lunch room and then I worked the after-
4 school program. I worked at Piggly-Wiggly.
5 The later on I would work that evening at the
6 boys and girls club.

7 Q. While you were working at the boys and
8 girls club, would Alan come to visit you
9 there?

10 A. Yes.

11 Q. Did any of his nieces and nephews attend
12 any of the programs at the boys and girls
13 club?

14 A. Yes.

15 Q. Which ones?

16 A. It used to be **Minor 2** and Kevin.

17 Q. When Alan would come to visit you, would
18 he interact with his nephews?

19 A. Yes. Kevin mostly played with the other
20 kids. **Minor 2** mostly by himself, but he was
21 always asking **Minor 2** to go someplace with
22 him.

23 Q. Alan was asking **Minor 2** to go someplace
24 with him?

25 A. Um-humm.

1 THE COURT: Was that a "yes"?

2 THE WITNESS: Yes. Sorry about
3 that.

4 DIRECT EXAMINATION CONTINUED

5 BY SOLICITOR RAN STONEY:

6 Q. Would the two of them go alone?

7 A. Yes.

8 Q. Going back to Alan's parents' house, do
9 you remember them having an outbuilding known
10 as the speakeasy?

11 A. Yes.

12 Q. What was that?

13 A. It was just like a family gathering
14 spot. Then he turned it into a barber shop.

15 Q. So Alan would cut peoples hair back
16 there?

17 A. Yeah.

18 Q. Do you remember if **Minor 2** got his hair
19 cut back there?

20 A. Yes.

21 Q. Does anything stand out to you about
22 when **Minor 2** would get his hair cut?

23 A. He was mostly always crying, didn't want
24 to go back there; you know, more than the
25 other kids. He just did not want to go back

1 there. But his mom would always tell you
2 'you gotta get your hair cut' because, you
3 know, church was the next morning.

4 Q. So she would end up making him go get
5 his hair cut?

6 A. Yes.

7 Q. Do you know Minor 1

8 A. Yes.

9 Q. Do you ever remember seeing her around
10 with Mr. Burns?

11 A. Yes. Several times they came up to our
12 home on Dunlap Street, like in the
13 summertime. She would be in the car. I
14 would come to the door and she would be like,
15 'Hi, Aunt Felicia.' I would be thinking
16 like, 'What is she doing up here?' I asked
17 him, I said, you know, 'Why is Minor 1 with
18 you?' And he said, 'Oh, we were at the
19 church and I had to come home and get
20 something.' So in my mind, I am like 'does
21 Minor 4 know her daughter is up here?' You
22 know..

23 Q. Why was that strange to you, that she
24 would be up there?

25 A. Because she lived in Mount Pleasant.

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1 Why would she come all the way up here? Why
2 would you bring her up here instead of take
3 her home.

4 Q. When you say that you would walk to the
5 door, was that the door of the car?

6 A. The door -- the doorway of the house and
7 they would be parked in front of the doorway
8 and, you know, she would hail me.

9 Q. Did **Minor 1** ever get out of the car?

10 A. No, she just sat there.

11 Q. Do you remember if you saw **Minor 1** and
12 Mr. Burns together on more than one occasion?

13 A. No, just when they would come up.

14 Q. But more than one time?

15 A. Yes.

16 Q. While you were married to Alan, were you
17 part of the Burns family holiday festivities?

18 A. Yes.

19 Q. Any anything ever happen during the
20 holidays that you found strange?

21 A. Yes. One Thanksgiving -- you know, they
22 always put names in a bag that I had, you
23 know, for each one to pick a name out for
24 Christmas. This one particular Thanksgiving,
25 **Minor 4** had picked Alan's name. She was so

1 mad, she was crying, she was just beside
2 herself and -- you know, we just had to calm
3 her down and somebody else had to take his
4 name.

5 Q. Did you look into the fact any further
6 or ask Alan about it?

7 A. Yes.

8 Q. What was Alan's reaction when you asked
9 him about it?

10 A. I asked him what did you do to those
11 kids for those kids to act like that, you
12 know, you need to go and apologize to them,
13 ask them for their forgiveness.

14 He would be like, 'God will forgive me.
15 I've already forgive myself.' I said, 'well,
16 you need to go talk to them and ask them for
17 their forgiveness.'

18 Excuse me everybody, he said, 'Fuck
19 them.' I say, 'How you mean? You already
20 messed those kids up. Those kids -- those
21 kids have got to go through life like that.'
22 I told him that I was so sorry that I married
23 you, because if I'd knowed you were like
24 that, I would never have married you.' He
25 was like, 'Fuck them, fuck you.' I was,

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1 like, 'Okay.' You know.

2 Q. Did he ever deny the allegations?

3 A. (Negative gesture), no. No.

4 Q. During the time that you lived in North
5 Charleston, would Alan stay in Mount
6 Pleasant?

7 A. All the time. All the time, he was
8 always in Mount Pleasant.

9 Q. So is it fair to say that while you all
10 were married that you weren't necessarily
11 living in the same place?

12 A. We were living in the same house. He
13 would come home odd hours of the night.

14 SOLICITOR RAN STONEY: Court's
15 indulgence.

16 THE COURT: Yes, sir.

17 DIRECT EXAMINATION CONTINUED

18 BY SOLICITOR RAN STONEY:

19 Q. Can you tell me the dates that you were
20 married?

21 A. All I know is that we were dating in
22 1997 and -- I think we got married somewhere
23 in June of '98. I am not sure.

24 Q. How long did you say you were married?

25 A. About two years.

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1 Q. Do you remember what kind of car that
2 Alan used to drive?

3 A. Alan had many cars. I mean, I had a
4 Skylark, I had a Lincoln, Alan had several
5 vans, a boat, a little car -- I can't
6 remember the name of the little car. He had
7 a gray-and-burgundy car, he had a black car.
8 He just had a lot of cars. He used to drive
9 my car a lot too.

10 SOLICITOR RAN STONEY: Thank you.
11 Please answer any questions that Mr. Burns
12 has.

13 THE COURT: You may cross examine.

14 CROSS EXAMINATION

15 BY MR. ALAN BURNS:

16 Q. Good morning. When I first came home in
17 '97, where did you and I live?

18 A. When you came home in '97?

19 Q. (Affirmative nod).

20 A. We lived on Edmond Jenkins for a little
21 while.

22 Q. I asked where did we meet?

23 A. Oh, at a nightclub.

24 Q. Who introduced us?

25 A. Your Cousin Paul and Bonita.

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1 Q. And what was during the same week when I
2 first came home, right?

3 A. I don't know when you first came home.
4 They just said that you came out of prison
5 and you were looking for somebody to talk to.

6 Q. And it was within about two weeks that
7 you allowed me to move into your house with
8 you?

9 A. Yes.

10 Q. And we lived there together on Edmond
11 Jenkins Project until we moved; right?

12 A. Yes, to your mother's house.

13 Q. Right. During the time that we would be
14 living on the Jenkins Project, there was a
15 time when I came home from work one evening
16 and I caught Travis, your son, in the bedroom
17 rolling up some marijuana in bags to sell. I
18 took it from him and ---

19 SOLICITOR RAN STONEY: Objection.

20 THE COURT: Sustained. It's not
21 relevant.

22 MR. ALAN BURNS: Goes to
23 character, Your Honor.

24 THE COURT: That's correct.
25 That's why it is not relevant. It's

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1 inadmissible.

2 MR. ALAN BURNS: Okay.

3 THE COURT: Under the rules.

4 CROSS EXAMINATION CONTINUED

5 BY MR. ALAN BURNS:

6 Q. Whenever I attempted to discipline the
7 children, if I grounded them, tried to make
8 them study, did you always go behind me and
9 suspend the punishment for whatever it was
10 that they were doing?

11 A. Yes, Alan, because you were too harsh on
12 them. You beat them. You beat my son. You
13 beat my son, (emotional).

14 Q. Which ones of your sons did I beat?

15 A. Daniel. You got him -- oh, my god, you
16 got him so messed up.

17 Q. When you and I first met, since you
18 brought this up, was not Daniel in some type
19 of special classes in school?

20 A. Yes, he was.

21 Q. He had learning disabilities?

22 A. Yes, he did.

23 Q. And he had behavioral problems?

24 A. Yes, he did.

25 Q. Was there ever a time when his grades

1 had gotten so bad that I attempted to get him
2 a tutoring service?

3 A. I already had then in tutoring at the
4 Brown Church.

5 Q. We had already moved, so ---

6 THE COURT: That's arguing.

7 MR. ALAN BURNS: I apologize.

8 Thank you.

9 CROSS EXAMINATION CONTINUED

10 BY MR. ALAN BURNS:

11 Q. After we had moved to North Charleston,
12 did I ever attempt to get Daniel into various
13 basketball leagues, like the AAU?

14 A. You didn't do that. It was the school
15 that did that, it was the coaches.

16 Q. Did Daniel ever play high school
17 basketball?

18 A. Yes.

19 Q. Daniel's grades were at a level where he
20 was able to be on the team?

21 A. He used to play high school basketball.

22 Q. I'm talking about ---

23 A. I'm talking about Wanda High School when
24 he used to go to school there, yes.

25 Q. There was a time, and I don't know if

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1 you remember,

2 SOLICITOR RAN STONEY: Relevance?

3 THE COURT: I sustain the
4 objection. You've got with that as much as
5 you can go.

6 MR. ALAN BURNS: I'm ready to go
7 on to something else.

8 THE COURT: That's good. Then we
9 are both on the same page. I'm glad to know
10 that you are moving on, Mr. Burns. Thank
11 you, sir.

12 CROSS EXAMINATION CONTINUED

13 BY MR. ALAN BURNS:

14 Q. There was a time when, after me and you
15 had separated -- do you remember when we
16 separated?

17 A. Um-humm.

18 THE COURT: "Yes?"

19 THE WITNESS: Yes. I'm sorry.
20 It helps the record. It is not a problem but
21 we need to make sure of your answer.

22 THE WITNESS: Okay. "Yes."

23 CROSS EXAMINATION CONTINUED

24 BY MR. ALAN BURNS:

25 Q. And you had got some information from

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1 someone that said to keep me away from the
2 house that all you had to go was to make up a
3 story that I had threatened to burn the house
4 down?

5 A. You told me that yourself. We were
6 arguing and I told you, I said that I wanted
7 you out of the house. I wanted us to
8 separate. And you said if you had to leave
9 this house that you would burn it down with
10 us in it. I remember. I remember. I
11 remember everything.

12 Q. When you filed for the separation
13 papers, I was living at the house with you?

14 A. No, because you had got picked -- you
15 had got picked up. You got picked up.

16 Q. Exactly. So when I got out of jail, I
17 went on and got my own place; is that
18 correct?

19 A. Yes.

20 Q. Was there a time -- and during that time
21 you had moved into a trailer with your three
22 sons; is that correct?

23 A. Yes.

24 Q. And was there a time when you moved out
25 of the trailer with your three sons and moved

1 back over with your mother?

2 A. Yes.

3 Q. Shortly thereafter, did you come to me
4 and ask me to rent a room in my house?

5 A. Yes, just for myself.

6 Q. And this was after you had found out all
7 the stuff that you supposedly had found out
8 from **Minor 4** and everybody else?

9 A. Not supposedly.

10 Q. This was after you found out the stuff
11 from them?

12 A. Yes.

13 Q. So with the knowledge of all this stuff
14 in your mind, the knowledge that I beat your
15 son and you hated me so much, ---

16 A. I never hated you. I never hated you.

17 Q. Okay. You still came to live with me.
18 You left out of your mother's house where you
19 were living with ----

20 A. (Affirmative nod), to get closer to my
21 job.

22 Q. So you would risk being around me, a
23 person who you considered to be a person
24 who'd threatened ---

25 THE COURT: You have a compound

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1 question there. You need to break that up.

2 MR. ALAN BURNS: Sorry.

3 CROSS EXAMINATION CONTINUED

4 BY MR. ALAN BURNS:

5 Q. So you risked your safety for the
6 convenience of your job?

7 A. I wasn't scared of you. I never was
8 scared of you, but I didn't like what you was
9 doing to my kids.

10 Q. Was there ever a time I bought an old
11 car from the junkyard, a black car, and I
12 took it over to Mount Pleasant and took
13 Durell (phonetic) over there and told him
14 that I bought the car for him and asked him
15 to -- all we've got to do is fix it up and
16 it's your car?

17 A. Yes.

18 Q. Huh?

19 A. Yes.

20 SOLICITOR RAN STONEY: Objection.

21 THE COURT: Overruled.

22 CROSS EXAMINATION CONTINUED

23 BY MR. ALAN BURNS:

24 Q. And Durell refused, so I fixed the car
25 myself? After that ---

1 THE COURT: Wait a minute. Hold
2 on. Mr. Burns, you are stating things that
3 you've got to establish -- she'd have to have
4 knowledge of what you just said, for you to
5 ask the question in that fashion. As I told
6 you, one of the rules we have is that she has
7 to have independent knowledge of it for it to
8 be admissible. So you just stated something.
9 Again, you're testifying. Lay a foundation
10 for it.

11 MR. ALAN BURNS: Okay.

12 THE COURT: By asking this witness
13 what her knowledge is of that.

14 MR. ALAN BURNS: Okay.

15 CROSS EXAMINATION CONTINUED

16 BY MR. ALAN BURNS:

17 Q. Did there come a time after that that
18 Durell asked me for the car?

19 A. No, I don't remember that time.

20 Q. Did I ever give Durell a red or burgundy
21 car, the car that he wrecked?

22 A. All I remember is that black car.

23 Q. Was that car ever painted?

24 A. All I can say is that I remember the
25 black car.

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1 Q. What ever happened to that car?

2 A. I have no idea.

3 Q. Was not Durell in a car accident ---

4 THE COURT: She says that she
5 doesn't know.

6 MR. ALAN BURNS: No, I am asking
7 her another question.

8 THE COURT: You are going to have
9 to establish the relevance of him being in a
10 car accident, sir, for it to be germane to
11 the question.

12 CROSS EXAMINATION CONTINUED

13 BY MR. ALAN BURNS:

14 Q. You said that I did buy him a car and
15 that -- to give ---

16 THE COURT: No, sir, that's not
17 what she said. You phrased it, sir. I told
18 you to lay the foundation. Ask her knowledge
19 about that. You can't make those statements.
20 Ask the witness a question. She never said
21 that. She said that she knew about a black
22 car. She didn't say that she knew that you
23 bought it or anything else about it. You
24 have to lay the foundation. Please rephrase
25 the question. Ask the witness what her

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1 knowledge is of that.

2 CROSS EXAMINATION CONTINUED

3 BY MR. ALAN BURNS:

4 Q. Do you have knowledge of the fact that I
5 bought a black car for Durell?

6 A. I know you came home. You say that you
7 have a car that you are going to fix up.
8 That was it.

9 MR. ALAN BURNS: Your Honor, could
10 I have the reporter read back the questions
11 that I asked her?

12 THE COURT: Sir, -- no, you can't
13 at this point. She just said that 'I have
14 knowledge that you had a car.'

15 MR. ALAN BURNS: Okay.

16 THE COURT: Ladies and Gentlemen,
17 I am ---

18 MR. ALAN BURNS: I ---

19 THE COURT: Hold on a second. I
20 am going to ask tat you go to your jury room.
21 There is a matter of law that I need to take
22 up out of your presence.

23 (JURY OUT @ 2:23 P.M.)

24 THE COURT: Mr. Burns, I've been
25 very lenient with you in allowing you some

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1 leeway because you're trying to do it -- and
2 you're doing a job that -- quite frankly,
3 you're doing fine. We could all as
4 professionals discuss the pros and cons of
5 some of your questions, but that's okay.
6 You're handling yourself and you're
7 conducting yourself in accordance with the
8 rules of this court. I respect that. I
9 appreciate you doing that.

10 But you need to understand
11 something. There are a lot of -- the rules
12 of evidence govern what we're doing here.
13 The rules of this operation of this courtroom
14 govern what we do here.

15 While you are not a lawyer and I
16 can't -- your lawyers and the lawyers for the
17 State, I can sanction them because they are
18 officers of this court. They have sworn to
19 follow the rules. I can't sanction you as a
20 lawyer, because you're not a lawyer.

21 But one thing is for sure, if you
22 choose to enter this forum and enter the role
23 of being a lawyer, I am going to hold you to
24 those same rules. One thing is -- once I
25 rule, the Rule provides that you can't argue

1 with that ruling. You can appeal me, but you
2 can't argue with my ruling -- not at any
3 time, and you certainly are not going to do
4 it in the presence of the jury. That's a
5 challenge to my responsibility as a trial
6 judge. And this judge, I've tried -- not to
7 be heavy-handed but I have an obligation to
8 make this courtroom -- to keep it in an order
9 that I think is orderly and will proceed to
10 accomplish what I read to you about Rule
11 611(a), to the determination of the truth.

12 You're going to comply with the
13 Rules. Now, if you think this witness
14 answered your question, -- the way to do that
15 is to ask the question again. Not to say 'I
16 want you to read back.' You may have seen
17 that on TV, I've seen it on TV. That isn't
18 the way that it works. That's the problem,
19 TV doesn't depict what happens in a
20 courtroom. Therein lies the problem.

21 I am not threatening you. I just
22 want to caution you of something. Your
23 liberty to be in this courtroom, to be your
24 own lawyer depends on your compliance with
25 the Rules. There are a lot of cases where

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1 pro se litigants have lost that privilege for
2 not complying with the Rules. I am not
3 saying you are there. I am not threatening
4 you in that fashion. I am just reminding you
5 that's the ultimate sanction.

6 I assure you that I don't want to do
7 that and I have no reason at this juncture to
8 do that, but if that persists, I am going to
9 assume that you're pushing the envelope a
10 little bit and I am not going to permit it.
11 Okay?

12 MR. ALAN BURNS: Okay.

13 THE COURT: Thank you, sir.

14 MR. ALAN BURNS: Yes, sir.

15 THE COURT: Bring in our jury.

16 (JURY IN @ 2:28 P.M.)

17 THE COURT: Thank you, Ladies and
18 Gentlemen. Mr. Burns, you may continue your
19 examination, sir.

20 CROSS EXAMINATION CONTINUED

21 BY MR. ALAN BURNS:

22 Q. You testified that I was mean to your
23 boys? In my meanness, was I doing it to be
24 cruel to them or was I doing it because I
25 thought I was trying to be a good father,

1 discipline them and bring them up the right
2 way?

3 A. You were being cruel. You weren't a
4 good father.

5 Q. I probably wasn't.

6 MR. ALAN BURNS: Excuse me.

7 THE COURT: No, sir.

8 CROSS EXAMINATION CONTINUED

9 BY MR. ALAN BURNS:

10 Q. Was there a time when I took the oldest
11 son, Travis, to an Army recruiter and I was
12 trying to get him to enlist in the military?

13 A. Yes.

14 Q. Okay. Prior to us moving from my
15 mother's house and from Jenkins Project, was
16 there other times -- besides the one time
17 that I have already mentioned -- that I had
18 tried to get you and some others to see that
19 Travis was messing up, was in the street with
20 drugs and other stuff?

21 A. I can't recall that.

22 Q. Was there a time when you, myself and
23 Travis was going to Mount Pleasant and we had
24 to stop at the grocery store because Travis
25 said he wanted to get a job application?

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1 Travis got out of the car, met somebody at
2 the side of the grocery store, sold some
3 drugs, and when I pointed it out to you ---

4 SOLICITOR RAN STONEY: Objection.

5 THE COURT: Sustained. That's
6 character. Under 608, it's not permitted.

7 CROSS EXAMINATION CONTINUED

8 BY MR. ALAN BURNS:

9 Q. Was there ever a time when Travis got
10 into some other trouble and I went to the
11 police to ---

12 SOLICITOR RAN STONEY: Objection.

13 THE COURT: Sustained. Character
14 evidence. Not allowed under 608.

15 CROSS EXAMINATION CONTINUED

16 BY MR. ALAN BURNS:

17 Q. Did you work for the boys or girls club
18 of the Town of Mount Pleasant Recreation
19 Department?

20 A. They were both joined together.

21 Q. They weren't separate entities?

22 A. No, they were both joined together,
23 because the same kids would be there all day.

24 Q. Right. But you received your paycheck
25 from the Town of Mount Pleasant, not the boys

1 and girls club.

2 A. The Town of Mount Pleasant, and I worked
3 with the boys and girls club too.

4 Q. So you got a paycheck from them, as
5 well?

6 A. Um-humm.

7 THE COURT: Is that a "yes"?

8 THE WITNESS: "Yes." Sorry
9 about that.

10 CROSS EXAMINATION CONTINUED

11 BY MR. ALAN BURNS:

12 Q. When you moved in with me, when you
13 rented a room from me in North Charleston,
14 prior to you renting that room did I not
15 inform you that I had already moved on, that
16 I had a girlfriend, prior to you renting the
17 room?

18 A. Yeah, you had many girlfriends. You had
19 many little kids coming there, too.

20 Q. Okay. And you still agreed to come and
21 rent the room and live in the house with me?

22 A. I was barely there. I was always
23 working. I just wanted some place to sleep
24 so that I could go to work.

25 Q. Couldn't you have slept at your mother's

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1 house?

2 A. Like I told you before, I asked you to
3 let me stay there to be closer to my job. I
4 let my kids have the trailer where I was
5 renting, because it was too small for all of
6 us to live there.

7 Q. But you could have still stayed in the
8 trailer, though?

9 THE COURT: That's argumentative.

10 CROSS EXAMINATION CONTINUED

11 BY MR. ALAN BURNS:

12 Q. Let me ask you this, when you first
13 rented the trailer, isn't it true that you
14 had rented the trailer with a male friend of
15 yours, Charles Goodwater?

16 A. No.

17 Q. You and Charles Goodwater weren't dating
18 and living together during that time?

19 A. No.

20 SOLICITOR RAN STONEY: Objection.

21 THE COURT: Sustained. Character.

22 608, not permitted.

23 CROSS EXAMINATION CONTINUED

24 BY MR. ALAN BURNS:

25 Q. When you came and lived with me, was

1 there a time when -- a Saturday morning when
2 my niece **Minor 3** would come over and have me
3 look at her car?

4 A. I can't recall that. I never saw **Minor 3**
5 there. I saw your cousin there.

6 Q. Which one of my cousins?

7 A. There were two cousins, I guess they
8 were your two cousins. There were so many
9 different young ladies there. I described
10 them and then that's when I found out that
11 they were your sister's -- cousins.

12 Q. Prior to you coming to live with me, you
13 used to have a van, a blue van with a light
14 brown panel on it. Something. An Aerostar.
15 Do you recall that?

16 A. We had that together.

17 Q. No, I am not talking about the one that
18 we had.

19 THE COURT: No, sir.

20 MR. ALAN BURNS: Okay.

21 CROSS EXAMINATION CONTINUED

22 BY MR. ALAN BURNS:

23 Q. While we were separated, what type of
24 vehicle were you driving?

25 A. I had a Skylark.

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1 Q. Was that when we were together?

2 A. Together and after.

3 Q. You bought the Skylark, you traded a
4 gray and burgundy Mercury Monarch that I'd
5 owned to buy that Skylark?

6 A. Yes.

7 Q. So technically the Skylark was actually
8 mine?

9 A. If you say so.

10 Q. Let me ask you something else, too.
11 Prior to us getting together, getting
12 married, you said that you lived on the
13 projects; right?

14 A. Yes.

15 Q. How long had you lived on the projects?

16 A. I can't ---

17 SOLICITOR RAN STONEY: Objection.

18 THE COURT: Sustained. Not
19 relevant.

20 CROSS EXAMINATION CONTINUED

21 BY MR. ALAN BURNS:

22 Q. Shortly after we got married, ---

23 THE COURT: Mr. Burns, let's have
24 a conference, please.

25 (OFF RECORD BENCH CONFERENCE)

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1 MR. ALAN BURNS: All right, that's
2 all that I have then ---

3 THE COURT: Thank you, sir.

4 MR. ALAN BURNS: --- for now.

5 THE COURT: For now? This witness
6 is on the stand.

7 MR. ALAN BURNS: All right.

8 THE COURT: Redirect?

9 SOLICITOR RAN STONEY: Just briefly,
10 Your Honor.

11 REDIRECT EXAMINATION

12 BY SOLICITOR RAN STONEY:

13 Q. When you moved back in with Alan Burns
14 after having lived with your mother, was it
15 you and your children?

16 THE COURT: Mr. Burns, keep your
17 voice down, please.

18 THE WITNESS: It was just me.

19 REDIRECT EXAMINATION CONTINUED

20 BY SOLICITOR RAN STONEY:

21 Q. Just you? Not your children?

22 A. No, they just didn't want to be bothered
23 with him.

24 SOLICITOR RAN STONEY: That's all.

25 THE COURT: Recross, Mr. Burns?

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1 RECROSS EXAMINATION

2 BY MR. ALAN BURNS:

3 Q. Was it that they just didn't want to be
4 bothered with me or was it that they didn't
5 want to be disciplined, and you didn't take
6 the time to discipline them?

7 A. No. They just didn't want to be
8 bothered with you. They didn't want to be
9 around you, especially my young son.

10 Q. That's the one who, when you abandoned
11 him in North Charleston, they went in -- went
12 in and robbed someone at the mall.

13 A. I didn't abandon my son.

14 Q. You left the three of them in the
15 trailer to fend for themselves while you
16 moved back in with your mom, for convenience?

17 SOLICITOR RAN STONEY: Objection.

18 THE COURT: I will allow it.

19 THE WITNESS: I did not abandon
20 my sons.

21 RECROSS EXAMINATION

22 BY MR. ALAN BURNS:

23 Q. But the three of them was left in the
24 house to live alone ---

25 A. I went there every day.

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1 THE COURT: Ma'am, let him finish
2 asking the question before you answer it.

3 THE WITNESS: Okay.

4 RECROSS EXAMINATION CONTINUED

5 BY MR. ALAN BURNS:

6 Q. You left the three of them to live alone
7 in the trailer in Mount Pleasant. You knew
8 that ---

9 THE COURT: Don't ask multiple
10 questions.

11 MR. ALAN BURNS: All right.
12 Sorry.

13 RECROSS EXAMINATION CONTINUE D

14 BY MR. ALAN BURNS:

15 Q. You left the three of them alone, to
16 live in a trailer in North Charleston while
17 you moved back in with your mother; right?

18 A. My son Travis was of age.

19 Q. Did you leave the three of them in the
20 trailer in North Charleston while you moved
21 back in with your mother, yes or no?

22 A. Yes, but I came there every day. I paid
23 the rent, I paid the light bill, I made sure
24 that they had food in the house. I went
25 there every day.

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1 Q. And you knew that Travis got high and
2 sold drugs? You knew that Durell got high
3 and sold drugs?

4 SOLICITOR RAN STONEY: Objection.

5 THE COURT: Sustained. That's
6 character and you're not allowed to do that.

7 MR. ALAN BURNS: Okay.

8 RECROSS EXAMINATION CONTINUED

9 BY MR. ALAN BURNS:

10 Q. Was Daniel of age when you moved out of
11 the trailer?

12 A. Yes, he was sixteen going on seventeen.

13 THE COURT: I remind you, Mr.
14 Burns, that you're limited. This is recross.
15 It is very restricted, only to what was
16 opened on redirect. That's why I allowed the
17 first question but you've pretty much
18 exceeded it.

19 MR. ALAN BURNS: All right. That's
20 all that I have.

21 THE COURT: Thank you, ma'am. You
22 may come down.

23 (WITNESS STEPS DOWN)

24 THE COURT: Do you wish the
25 witness to be excused?

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1 SOLICITOR HERRING-LASH: Yes,
2 Your Honor.

3 THE COURT: Have you subpoenaed
4 this witness, Mr. Burns?

5 MR. ALAN BURNS: No, we didn't.

6 THE COURT: Any objection to her
7 leaving?

8 MR. ALAN BURNS: No.

9 THE COURT: Very well, you are
10 free to leave if you wish. Call your next
11 witness, please.

12 SOLICITOR HERRING-LASH: The State
13 calls Alice Singleton.

14 (WITNESS TAKES STAND)

15 ALICE BURNS SINGLETON, being duly
16 sworn to tell the truth, the whole truth and
17 nothing but the truth, testified, as follows:

18 DIRECT EXAMINATION

19 BY SOLICITOR HERRING-LASH:

20 Q. Ms. Singleton, where do you live?

21 A. In Mount Pleasant.

22 Q. How long have you lived there?

23 A. In Mount Pleasant, all of my life.

24 Q. Are you related to the Defendant, Alan
25 Burns?

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- 1 A. Yes.
- 2 Q. What is your relation?
- 3 A. He's my brother.
- 4 Q. Are you also related to Minor 1
- 5 Whitaker?
- 6 A. Yes, I am.
- 7 Q. How are you related to Minor 1
- 8 A. I am her mom.
- 9 Q. When did you -- are you her adopted mom?
- 10 A. Yes. Well, the Court appointed me her
- 11 mother.
- 12 Q. When was that?
- 13 A. I believe 1999, '98-'99.
- 14 Q. When Minor 1 came to live with you, did
- 15 she also come to be around your brother, Mr.
- 16 Alan Burns?
- 17 A. Yes.
- 18 Q. Were they ever alone together?
- 19 A. Not to my knowledge.
- 20 Q. Did he ever give her rides?
- 21 A. I found out later that he did, but not
- 22 with my permission.
- 23 Q. Not with your permission?
- 24 A. No.
- 25 Q. How did you find out later that he did?

1 A. [Minor 1] told me.

2 Q. Did he have a job that he did for you,
3 as far as cars?

4 A. He would repair my car.

5 Q. Did he have any other jobs around the
6 house?

7 A. If something was broken or stuff like
8 that, but he mainly did my cars.

9 Q. So he would come to your house?

10 A. To my house, my job, wherever my car was
11 broken.

12 Q. Where were you living at that time when
13 [Minor 1] moved in?

14 A. In a subdivision in Mount Pleasant,
15 Hickory Shadows.

16 Q. What she spend time at your parents'
17 house also?

18 A. Yes.

19 Q. Did Alan cut hair there?

20 A. Yes, he did.

21 Q. Did he ever cut your hair?

22 A. No, not mine.

23 Q. Did he cut like children's hair or ---

24 A. My nephews.

25 Q. Do you remember anything particular

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1 about that?

2 A. About him cutting hair?

3 Q. (Affirmative nod).

4 A. My dad had like a barn in the back and
5 he set up shop there and we would send the
6 kids there to get their haircuts.

7 Q. How did you find out about what **Minor 1**
8 has said that Mr. Burns did?

9 A. I asked her after I found out what was
10 doing on. I was told that he did something
11 to her. I called her and asked her.

12 Q. Did you go with her to the police?

13 A. I took her, yes.

14 Q. And have you talked to be supportive of
15 her?

16 A. Oh, yes.

17 SOLICITOR HERRING-LASH: Court's
18 indulgence -- that's all the questions that I
19 have.

20 THE COURT: Cross-examine?

21 CROSS EXAMINATION

22 BY MR. ALAN BURNS:

23 Q. Your testimony here today is only on
24 things that you were told?

25 A. Yes.

1 Q. And you don't have any actual knowledge
2 of any of the accusations against me, is that
3 right?

4 A. Actual knowledge is what my daughter
5 told me, that's actual.

6 Q. Have you ever seen me inappropriately
7 touch your daughter?

8 A. No.

9 Q. Have you ever seen inappropriately touch
10 **Minor 4**

11 A. No.

12 Q. Have you ever seen me inappropriately
13 touch **Minor 3**

14 A. No.

15 Q. Have you ever seen me inappropriately
16 touch **Minor 2**

17 A. No.

18 Q. Have you ever seen me inappropriately
19 touch **Minor 5**

20 A. No.

21 Q. Okay. Let me go to something else right
22 quick. When first came home in 1997, where
23 were you living then?

24 A. Same place that I am living at now.

25 Q. You weren't living at your mother's

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1 house when I ---

2 A. Oh, yes. When you first came, I was
3 living there. That's why I moved out.

4 Q. You moved out first, me or you?

5 A. I did.

6 Q. Was there a time when you and I got into
7 an argument because of a bathroom issue?

8 A. We probably did.

9 Q. And you accused me of trying to -- just
10 coming home and wanting to run the house?

11 A. I don't know what the argument was
12 about.

13 Q. Who else was living in the house at that
14 time?

15 A. My mother, my father and my children.

16 Q. Would you name your children, please?

17 A. Moses, So'Nia and Ashley.

18 Q. Was there also a stepdaughter of
19 Cecila's, Shonie or Shana, whatever her name
20 is?

21 A. I don't know. You've had to check with
22 Cecila.

23 Q. So you don't remember ---

24 A. She probably was living there. I don't
25 remember.

1 Q. Okay. Would you mind telling us what
2 the living arrangement was in the house at
3 that time?

4 A. The people that I just mentioned was
5 living in the house at that time.

6 Q. My question is, can you tell us what the
7 living arrangement was in the house at that
8 time?

9 A. It was the people living in the house:
10 my mom, my dad, myself and my children. That
11 was the living arrangements in the house at
12 that time.

13 Q. Okay. Let me rephrase it so that you
14 can understand it. What room were you
15 sleeping in at the time?

16 A. One of the bedrooms.

17 Q. Which one?

18 A. I am not sure.

19 Q. Which room was So'Nia and Cecila living
20 in at the time?

21 A. One of the bedrooms also.

22 Q. Which one?

23 A. I am not.

24 Q. Which one was Ashley sleeping in at the
25 time?

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1 A. One of the bedrooms.

2 Q. Which one?

3 A. I am not sure.

4 Q. Were all of the bedrooms in the house
5 being occupied?

6 A. I am not sure. I don't remember.

7 Q. When I first came home, where was I
8 sleeping at?

9 THE COURT: What is the relevance
10 of this, please? Because she has already
11 testified in answer to your questions that
12 she has no independent knowledge. You've
13 already covered everything else. Where you
14 were sleeping, where everybody -- unless you
15 can lay the foundation, I am not going to
16 allow you to ask any more questions about
17 that.

18 MR. ALAN BURNS: Okay.

19 CROSS EXAMINATION CONTINUED

20 BY MR. ALAN BURNS:

21 Q. Can you ever recall a time, during the
22 period of time on the day that I came home,
23 that I was left in the house with **Minor 2** or
24 anyone, by myself?

25 A. I don't remember.

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1 Q. What kind of car were you driving at the
2 time?

3 THE COURT: That's not relevant.

4 THE WITNESS: I don't remember.

5 THE COURT: Mr. Burns, again I am
6 going to have a sidebar with you.

7 (OFF RECORD SIDEBAR)

8 THE COURT: So you are going to
9 ask the questions that you think is pertinent
10 sir. Thank you, sir.

11 CROSS EXAMINATION CONTINUED

12 BY MR. ALAN BURNS:

13 Q. Did you ever notice any changes in
14 **Minor 1** that would indicate that something
15 may have been wrong?

16 A. What kind of changes?

17 Q. Behavior? Grades?

18 A. I don't remember. She was a normal
19 child. She started acting out at one point.

20 Q. Was she -- did she ever run away from
21 home?

22 A. Yeah, she did.

23 Q. Do you know the reason why?

24 A. No, I don't.

25 Q. How long was she gone?

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1 SOLICITOR HERRING-LASH: Your
2 Honor, I would object.

3 THE COURT: I will allow that.

4 THE WITNESS: Probably from
5 after school one day until dark.

6 CROSS EXAMINATION CONTINUED

7 BY MR. ALAN BURNS:

8 Q. How was her grades in school?

9 A. I don't remember.

10 Q. Did she graduate from high school?

11 A. I believe that she did.

12 Q. You didn't attend the graduation?

13 A. No, I didn't.

14 Q. Did you attend the graduation of Ashley?

15 A. I probably did, yes.

16 Q. Did you attend the graduation of Sonny?

17 A. I probably did.

18 Q. What about Moses?

19 A. Yes, I think that I did.

20 Q. Was there ever a time when you and

21 **Minor 1** ever got into serious arguments or
22 altercation?

23 A. I hope so. She was my daughter.

24 Q. And as a result -- that's why she ran
25 away from home?

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1 A. No.

2 Q. What about Luther?

3 A. What about him?

4 Q. Did he ever attack you? Choke you?

5 SOLICITOR HERRING-LASH: Your

6 Honor, I would object to relevance.

7 THE COURT: Luther was the person
8 that you asked out?

9 MR. ALAN BURNS: Right, that would
10 be Moses.

11 THE COURT: I sustain the
12 objection.

13 CROSS EXAMINATION CONTINUED

14 BY MR. ALAN BURNS:

15 Q. Did Minor 1 attend college?

16 A. I think she did.

17 Q. Did you foot the bill for college?

18 A. I didn't foot the bill for none.

19 Q. You didn't foot the bill for Sonya?

20 A. No, the state of South Carolina did.

21 Q. Which college did she attend?

22 A. Who?

23 Q. Sonya, So'Nia.

24 A. Clark, in Atlanta.

25 Q. That was the one where you frequently

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1 had me to take you to take her back to school
2 or to pick her up?

3 A. No.

4 Q. You never had ---

5 A. Not frequently. Once.

6 Q. Once?

7 A. (Affirmative nod), once.

8 Q. That was taking her or picking her up?

9 A. Picking her up and taking her.

10 Q. So twice?

11 A. Once picking her up. Once taking her
12 back.

13 Q. And you don't remember the sleeping
14 arrangements in the house or anything like
15 that?

16 A. Boy, didn't I already told you?

17 THE COURT: No, ma'am. Just
18 answer the question.

19 THE WITNESS: We slept in the
20 house.

21 THE COURT: That is as far as it
22 goes. You've already asked that question.

23 CROSS EXAMINATION CONTINUED

24 BY MR. ALAN BURNS:

25 Q. If -- I want to make sure that I word

1 this just right.. You're here today and you
2 are testifying simply to what your daughter
3 told you; is that correct?

4 A. I am testifying to the questions that
5 you just asked.

6 Q. Are you here today testifying to what
7 your daughter told you?

8 A. To all the questions that you just
9 asked.

10 MR. ALAN BURNS: Your Honor, could
11 you please ---

12 THE COURT: No, sir. She's
13 answered ---

14 MR. ALAN BURNS: --- instruct her
15 to answer the questions yes or not?

16 THE COURT: No, sir, she doesn't
17 have to answer it yes or not, Mr. Burns.
18 That's another television show. The witness
19 sometimes has to say yes or no but they can
20 explain their answer, and that's what our
21 rules allow. This question, you've already
22 asked it. That's called asked and answered.
23 You've asked her that in the first series of
24 question which she has answered. She has now
25 answered your question, the way that it is

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1 couched.

2 If you want to rephrase your
3 question, you may do so. I am not going to
4 instruct it any way other than the way that
5 she has answered it right now because she has
6 complied with your -- she's responded to your
7 question. Thank you, sir.

8 If you want to rephrase it, please
9 feel free to do so. Move on to some other
10 area.

11 CROSS EXAMINATION CONTINUED

12 BY MR. ALAN BURNS:

13 Q. Have your daughter ever been known to
14 lie to you?

15 A. All my children have lied to me.

16 Q. So there is a possibility that your
17 daughter could have lied to you about this?

18 A. No.

19 Q. How do you know that?

20 A. Because I know my daughter.

21 Q. Did you know your daughter on the other
22 occasions when she lied to you?

23 A. Yes, I did.

24 Q. When she lied to you, you knew?

25 A. Yes.

1 Q. But you say that you don't have any
2 actual knowledge of me doing anything to your
3 daughter?

4 A. Yes, I do. I have actual knowledge of
5 what she told me, and I believe that.

6 Q. Listen to this question carefully.

7 A. I just did.

8 THE COURT: She just explained it.

9 MR. ALAN BURNS: No, I am asking
10 her another question.

11 THE COURT: Well, ask her another
12 because you're -- when you say "listen to it
13 carefully..." it implies that you are going
14 to reask that question. She's answered it.
15 She has explained it. She has knowledge
16 based on what her daughter told her.

17 MR. ALAN BURNS: Okay.

18 THE COURT: So we don't need her
19 to agree. Okay?

20 MR. ALAN BURNS: I understand.

21 THE COURT: Move on to your next
22 question that you want to ask, please, sir.

23 CROSS EXAMINATION CONTINUED

24 BY MR. ALAN BURNS:

25 Q. Do you understand the difference between

1 actual knowledge about something, you studied
2 something, knowing something for a fact and
3 knowing only what somebody told you?

4 THE COURT: That's argumentative.
5 That's precisely what I am talking about.
6 You are at liberty to talk at the appropriate
7 stage in this process and argue to the jury
8 what you just said. This witness does not
9 have to agree with your position on that.
10 That's why I am saying that it is
11 argumentative. Move on to something else.

12 MR. ALAN BURNS: That's all that I
13 have.

14 THE COURT: Thank you, sir.

15 MR. ALAN BURNS: That's good.

16 SOLICITOR HERRING-LASH: I have
17 just one question.

18 REDIRECT EXAMINATION

19 BY SOLICITOR HERRING-LASH:

20 Q. When was it that **Minor 1** began to act
21 out?

22 A. It was about -- after she -- whatever
23 Alan did to her, it was after that time.

24 SOLICITOR HERRING-LASH: That's
25 all the questions that I have.

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1 THE COURT: Recross as to that
2 question?

3 RECROSS EXAMINATION

4 BY MR. ALAN BURNS:

5 Q. When did you say that Minor 1 first tell
6 you about all of this?

7 A. A few years ago. A year, maybe two. I
8 don't remember.

9 Q. So Minor 1 didn't start acting out until
10 a year or two ago?

11 A. No. She acted out -- she started acting
12 out after you molested her but I just found
13 out about it a year or two ago.

14 MR. ALAN BURNS: Thank you, Your
15 Honor.

16 THE COURT: You may come down.
17 Thank you, ma'am.

18 SOLICITOR HERRING-LASH: Was she
19 subpoenaed?

20 MR. ALAN BURNS: Yes.

21 THE COURT: Do you wish for her to
22 remain, Mr. Burns?

23 MR. ALAN BURNS: Yes, Your Honor.

24 THE COURT: Very well. You must
25 remain outside, please, ma'am.

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1 take the stand. Bring in our jury.

2 (WITNESS TAKES STAND)

3 (JURY IN @ 3:11 P.M.)

4 MICHELLE BACON, being duly sworn to
5 tell the truth, the whole truth and nothing
6 but the truth, testified, as follows:

7 DIRECT EXAMINATION

8 BY SOLICITOR RAN STONEY:

9 Q. Good afternoon, Detective Bacon. Where
10 do you work?

11 A. Mount Pleasant Police Department.

12 Q. How long have you been with Mount
13 Pleasant Police Department?

14 A. Eleven years.

15 Q. What are your duties with the Mount
16 Pleasant Police Department?

17 A. I am a detective with the criminal
18 investigative bureau and I investigate crimes
19 reported to our agency.

20 Q. Did you become involved in the case of
21 the State of South Carolina versus Alan
22 Burns?

23 A. Yes.

24 Q. When did you get this case?

25 A. April 6th, 2010.

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1 Q. How did you come to be involved in this
2 matter?

3 A. [Minor 2] one of the victims,
4 and his mother, Karen Smalls, and his father,
5 Ray Smalls, has showed up to our lobby and I
6 responded to the lobby and met with them.

7 Q. Did you talk with [Minor 2]

8 A. I did.

9 Q. Did you talk to him alone?

10 A. I did. I escorted him to an interview
11 room and I interviewed him.

12 Q. Did he tell you about an assault?

13 A. Yes, he did.

14 Q. Did he tell you where this assault
15 occurred?

16 (LOUD TALKING OUTSIDE COURTROOM)

17 THE COURT: Hold on just a second.
18 Mr. Robinson, could you assist and have that
19 outside door closed? Thank you.

20 DIRECT EXAMINATION CONTINUED

21 BY SOLICITOR RAN STONEY:

22 Q. Did he tell ---

23 A. He said that it occurred at his
24 grandparents' residence at 1719 Rands Hill
25 Road in Mount Pleasant and in a van.

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1 Q. Did he tell you when this occurred?

2 A. Approximately when he was a child,
3 between the ages of seven and nine years old.

4 Q. What was his demeanor like when he was
5 telling you about this experience?

6 A. He was very afraid. He was crying.
7 Just very upset.

8 Q. Did you also talk to his mother?

9 A. I did.

10 Q. As a result of these conversations, what
11 did you do?

12 A. I asked **Minor 2** -- because he had
13 mentioned in the interview that there were
14 some other cousins who were also victims, but
15 that he didn't know their names. I told him
16 to try to find out, ascertain their names,
17 and let me know who they were.

18 Q. Did he let you know?

19 A. Yes.

20 Q. Did you next contact **Minor 4**

21 A. I did.

22 Q. Did she come to the department?

23 A. Yes, she did.

24 Q. Did anyone come with her?

25 A. Yes, her mother came with her. Cathy

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1 Burns.

2 Q. Did you take a statement from her?

3 A. Yes. I interviewed both of them and
4 took a statement from both of them.

5 Q. What was **Minor 4** behavior like?

6 A. She, too -- she was just very, uh, she
7 seemed very afraid and upset. Scared.

8 Q. And you said that you also talk with
9 **Minor 4** mother, Cathy?

10 A. Yes.

11 Q. Did you contact anyone else as a result
12 of your meeting with Cathy?

13 A. **Minor 4** has mentioned another cousin,
14 **Minor 5** that had also been
15 molested by the Defendant. So she'd given me
16 her name and number.

17 Q. Was she able to come in and meet with
18 you?

19 A. No, she lived in North Carolina at the
20 time.

21 Q. Were you contacted by anyone else
22 regarding this case?

23 A. I was. I was contacted by an additional
24 victim, a cousin, **Minor 3**

25 Q. Did you set up an appointment with her?

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1 A. I did.

2 Q. Where did you see her?

3 A. She came into the Police Department on
4 May 18th, 2010.

5 Q. Did she also give you a history of
6 assault?

7 A. Yeah, she did.

8 Q. Where did this assault occur?

9 A. Also at her grandparents' residence at
10 [REDACTED] in Mount Pleasant.

11 Q. And when did she say that it occurred?

12 A. Beginning at age three.

13 Q. What was her demeanor like?

14 A. Similar to [REDACTED] Minor 4 and [REDACTED] Minor 2 She was
15 very -- she'd never told anybody, she said.
16 She was crying, she was upset during the
17 interview.

18 Q. During this interview, did she mentioned
19 that she'd witnessed this defendant doing
20 this to others?

21 A. Yes, she did.

22 Q. Did she explain this to you?

23 A. Yes, she said that the defendant would
24 line up the girls and she as always the first
25 one because she was the oldest.

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1 Q. Did you ever meet with [Minor 2] again?

2 A. I did. He came in to the Police
3 Department.

4 Q. As a result of this meeting, what did
5 you do next?

6 A. Well, he'd mentioned that there was
7 another cousin, [Minor 1] that was
8 also a victim of the defendant's.

9 Q. Did you meet with [Minor 1]

10 A. I did. I called her and set up an
11 appointment with her to come in and see me.

12 Q. Did she come to the Mount Pleasant
13 Police Department?

14 A. She did. Her mother, Alice Burns, came
15 with her.

16 Q. Did she give you a history of assault?

17 A. She did.

18 Q. Where did she say that this assault
19 occurred?

20 A. She said that it happened in a van off
21 of Venning Road. She mentioned just various
22 other places.

23 Q. When did she say that it happened?

24 A. From the ages of twelve to fourteen.

25 Q. Did you send any of these victims for

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1. medical evaluations?

2. A. No.

3. Q. Why not?

4. A. Because the SLED protocol, our State Law
5. Enforcement Division's protocol is that we
6. send for medical evaluation within seventy-
7. two hours of a sexual assaults. These
8. assaults occurred years ago, so -- no.

9. Q. Just for our information, what is
10. forensic evidence?

11. A. It's any trace evidence left on the
12. victim by the suspect.

13. Q. As a result of talking with all of these
14. individuals, what did you do?

15. A. I attained warrants for criminal sexual
16. conduct for a minor, first degree for
17. **Minor 2** assault and criminal sexual conduct
18. with a minor second degree for **Minor 1**
19. assault.

20. Q. So did you obtain warrants for **Minor 4**
21. and **Minor 3**

22. A. No, I didn't.

23. Q. Why not?

24. A. Because those incidents occurred prior
25. to 1993. Mount Pleasant didn't have

1 jurisdiction on Rands Hill Road or Venning
2 Road prior to 1993. So I had to contact the
3 Charleston County Sheriff's Office.

4 Q. Why didn't Mount Pleasant have
5 jurisdiction?

6 A. We just didn't have jurisdiction at the
7 time. There was some sort of County contract
8 that we entered into with Charleston County,
9 between the town of Mount Pleasant and
10 Charleston County, that allowed the Mount
11 Pleasant Police Department to begin enforcing
12 state law in various places. There are kind
13 of like "doughnut holes" throughout the town
14 of Mount Pleasant that Charleston County had
15 jurisdiction. We entered into that contact
16 like mid 1993.

17 Q. So that area became incorporated into
18 jurisdiction of the Town of Mount Pleasant?

19 A. Correct.

20 Q. Did **Minor 3** give another statement?

21 A. She did.

22 Q. When was this?

23 A. I don't recall the date. I met with
24 **Minor 3** **Minor 4** and Detective Rita Avila of
25 the Charleston County Sheriff's Office at

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1 Minor 4 place of employment. I believe
2 that was the Mary Ford Elementary School.
3 That's where Minor 3 gave an additional
4 statement, a more detailed statement, to
5 Detective Avila.

6 Q. What was her demeanor during this second
7 interview?

8 A. She was -- very similar, being upset,
9 she was crying but she said that she felt
10 very relieved for being able to just finally
11 get it out.

12 SOLICITOR RAN STONEY: Thank you.
13 Please answer any questions that Mr. Burns
14 has.

15 THE COURT: Cross examination.

16 CROSS EXAMINATION

17 BY MR. ALAN BURNS:

18 Q. In your report you stated that there was
19 a jurisdictional issue?

20 A. (No verbal response).

21 Q. As a result of that jurisdictional
22 issue. How did you verify that
23 jurisdictional issue?

24 A. Through our police department, through
25 our Town, our planning and zoning department.

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1 We were able to verify that ---

2 Q. Who in the planning and zoning
3 department did you speak to?

4 A. I don't recall.

5 Q. That area is annexed into the Town of
6 Mount Pleasant?

7 A. Correct.

8 Q. When did you say it was annexed into the
9 Town of Mount Pleasant?

10 A. I believe mid 1993.

11 Q. So that would show on the Town of Mount
12 Pleasant planning and zoning maps ---

13 A. I don't know.

14 Q. --- as being a part of Mount Pleasant?

15 A. I don't know.

16 Q. Okay. Does the Mount Pleasant Police
17 Department and the Town of Mount Pleasant
18 Planning and Zoning Department use the same
19 jurisdictional maps?

20 A. I don't know.

21 Q. So would the Town of Mount Pleasant
22 Police Department have a jurisdictional map
23 that they go by?

24 A. I believe so, yes.

25 Q. So -- and the address within the

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1 jurisdiction, they are recorded digitally in
2 the mapping system?

3 A. I don't know.

4 Q. If I showed you a map of the town of
5 Mount Pleasant, that area, would you be able
6 to identify it? A jurisdictional map of that
7 area?

8 A. As far as the place of jurisdiction?

9 Q. Right, in that area?

10 A. In the area of Venning Road?

11 Q. Right.

12 A. We have jurisdiction of all of Venning
13 Road at this point. There are no little
14 pockets.

15 Q. How can you -- can you verify that
16 jurisdiction?

17 A. I am sure there's paperwork. I mean,
18 I did the research on verifying if we can
19 jurisdiction on Rands Hill Road and Venning
20 Road at the time that I investigated this
21 case two years ago. So, you know, I am sure
22 that we had jurisdiction before going ahead
23 with the warrants. You know, is there
24 document? (Affirmative nod), I am sure we
25 can get that.

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1 Q. Okay. Because I had spoke ---

2 THE COURT: No, sir, you can't
3 testify about what you do. You can testify
4 at another point in this proceeding. You
5 can't use that as a foundation for this
6 witness. You can ask the witness what
7 knowledge she has, and she's testified to
8 that already.

9 MR. ALAN BURNS: Okay.

10 THE COURT: You can present any
11 witnesses that you want to. You don't have
12 to, of course, as I've told this jury. But
13 when the defense has the opportunity to
14 present witnesses, you can present any
15 witnesses that you want to, to testify about
16 this issue.

17 MR. ALAN BURNS: May I have this
18 marked, Your Honor, for presentation to the
19 witness.

20 THE COURT: You can have it marked
21 for identification.

22 COURT REPORTER: Defendant's
23 Exhibit 12 for identification.

24 THE COURT: A map.

25 CROSS EXAMINATION CONTINUED

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1 BY MR. ALAN BURNS:

2 Q. Do you recognize this map?

3 A. (Upon review), okay.

4 Q. Can you identify the area where these
5 events allegedly took place?

6 A. Is Rands Hill Road marked?

7 Q. Yes, (indicating). I have a smaller map
8 I can give you if you'd like to see that?

9 A. Rands Hill Road, right there.

10 Q. The other offenses that you said that
11 transpired, can you show me where that
12 happened at on Venning Road?

13 A. **Minor 1** stated that it happened right
14 past -- well, there's a traffic circle. She
15 said that there wasn't a traffic circle at
16 the time.

17 Q. Right.

18 A. So she said in that area right there,
19 just right past the traffic circle.

20 Q. Did you go and view that area?

21 A. No.

22 Q. You never went down and looked over the
23 area, to take any pictures or anything in
24 that area ---

25 A. No, because ---

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1 Q. --- during your investigation?

2 A. --- she described it to me. She said it
3 was on Venning Road right past the traffic
4 circle.

5 Q. Okay. And she said that it was like in
6 the first part of Venning Road, like right in
7 here?

8 A. Yeah.

9 Q. Let me ask you one more question before
10 I take this down. This map is an official
11 jurisdictional ---

12 THE COURT: No, sir. That's where
13 -- you can't phrase your question that way.
14 It's a map. You've got to lay the foundation
15 and you've got to have it admitted for that
16 purpose.

17 MR. ALAN BURNS: Okay. Can I have
18 it admitted now?

19 THE COURT: For what purpose?
20 It's a map for demonstrative purposes. It
21 would serve no other useful purpose than
22 you've shown the witness and she's pointed
23 out where it is. It comes in as a map.
24 That's all. You may want to wait until later
25 -- it's already marked. It may be introduced

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1 for some other purpose -- I don't know -- but
2 right now there is no need to admit it at
3 this point. No, sir. It's been marked,
4 leave it with the court reporter. Thank you
5 very much.

6 MR. ALAN BURNS: All right.
7 May I have this marked?

8 COURT REPORTER: Yes, sir.
9 Defendant's Exhibit 13 for identification.

10 THE COURT: Defendant's 13 for ID.

11 MR. ALAN BURNS: Two pages.

12 THE COURT: A two-page document.

13 CROSS EXAMINATION CONTINUED

14 BY MR. ALAN BURNS:

15 Q. Would you read that document and tell me
16 if you have any knowledge of it.

17 A. (Upon review), "A" or just what is
18 highlighted?

19 THE COURT: No, ma'am. Just read
20 the document. The question is, do you have
21 any knowledge of the document? Not what is
22 in it -- yet.

23 THE WITNESS: (Upon review), I
24 have never seen that.

25 THE COURT: Okay.

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1 CROSS EXAMINATION CONTINUED

2 BY MR. ALAN BURNS:

3 Q. You've never seen but do you have any
4 knowledge about it?

5 THE COURT: It goes up here (with
6 court reporter).

7 MR. ALAN BURNS: I keep forget-
8 ing.

9 THE COURT: That's fine. It
10 happens, no infrequently.

11 CROSS EXAMINATION CONTINUED

12 BY MR. ALAN BURNS:

13 Q. Do you have any knowledge about a
14 requirement by law officers operating outside
15 of the jurisdiction to have a signed written
16 agreement to go into another jurisdiction?

17 A. Repeat the question?

18 Q. Do you have any knowledge about a
19 written agreement for law enforcement offices
20 to be required to have a signed written
21 agreement before they can go inside another
22 jurisdiction?

23 A. No.

24 Q. As far as you know -- well, based on the
25 identification map that I just showed you

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1 just now, were you outside your jurisdiction?

2 THE COURT: No, sir, you haven't
3 established that that map shows anything
4 about jurisdiction. It's a map. That's all.
5 That questions is improperly phrased. If you
6 want to rephrase your question, you may do
7 so. But you can't tie it to a jurisdiction
8 because it hasn't been established yet.

9 CROSS EXAMINATION CONTINUED

10 BY MR. ALAN BURNS:

11 Q. When you conducted your initial
12 investigation and you first notice the
13 jurisdictional issue, you -- you went to
14 source. You said that the source with the
15 Town of Mount Pleasant. That's what you
16 said, right?

17 A. Yes.

18 Q. I just wanted to refresh my memory.
19 As a result of that, what happened with the
20 charges that you said were outside of your
21 jurisdiction. Did you forward that to the
22 appropriate jurisdiction of what did you do
23 with it?

24 A. No, I sent it up to the solicitor's
25 office.

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1 Q. Let me ask you some other questions. In
2 your report, one of the first notes that you
3 have in there is that there was another
4 child, Luther Burns, who died at age nineteen
5 in the Viet Nam war.

6 SOLICITOR HERRING-LASH: Your
7 Honor, I objection to his publishing the
8 document.

9 THE COURT: Sustained. Don't read
10 from the document. You can phrase a
11 question, certainly. That's proper. But you
12 can't refer to a document without it being
13 admitted into evidence.

14 MR. ALAN BURNS: I would like to
15 get it admitted into evidence.

16 THE COURT: You can try. I don't
17 think that you're going to be able to do that
18 under our rules but you can certain present
19 it if you want to.

20 MR. ALAN BURNS: I would like to
21 submit this into evidence, Your Honor.

22 THE COURT: Well, you have to mark
23 it, have it identified, lay the foundation.

24 MR. ALAN BURNS: I got you.

25 COURT REPORTER: Defendant's

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1 Exhibit 14 for identification, four pages.

2 THE COURT: Defendant's Exhibit 14
3 for ID only.

4 CROSS EXAMINATION CONTINUED

5 BY MR. ALAN BURNS:

6 Q. Do you recognize that document?

7 A. Yes, I do.

8 Q. It is a four-page document. Would you
9 look over the whole thing and make sure that
10 it's the report that you filed.

11 A. Okay. (Upon review), it appears to be.
12 Yes.

13 Q. On the first line of this document you
14 stated ---

15 THE COURT: No, sir.

16 CROSS EXAMINATION CONTINUED

17 BY MR. ALAN BURNS:

18 Q. Would you please ---

19 THE COURT: You can't publish from
20 the document without it being admitted. You
21 can't do that.

22 MR. ALAN BURNS: I haven't done
23 that yet?

24 THE COURT: No, sir.

25 MR. ALAN BURNS: It was just

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1 marked. I would like to submit this into
2 evidence.

3 THE COURT: Objection?

4 SOLICITOR HERRING-LASH: No
5 objection, Your Honor.

6 THE COURT: Very well.

7 MR. ALAN BURNS: Okay.

8 THE COURT: It is admitted.

9 (SO ENTERED AS DEFENDANT'S EXHIBIT 14)

10 CROSS EXAMINATION CONTINUED

11 BY MR. ALAN BURNS:

12 Q. Would you read the first line, the first
13 note that you have on the document, please?

14 A. (Reading): *"There was another child,*
15 *Luther Burns, who died at age nineteen in the*
16 *Viet Nam war. [Minor 2] advised me that he*
17 *learned from his family that Luther molested*
18 *Alan, Vera and Cecilia."*

19 Q. Did you take any steps to attempt to
20 verify that?

21 A. No.

22 Q. So in your investigation you didn't ask
23 nobody about that?

24 A. No.

25 Q. How many aunts did [Minor 2] have?

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1 A. On whose side?

2 Q. On his mother's side?

3 A. Four. Is that right? Four?

4 Q. Right. You met with how many of them
5 during the course of your investigation?

6 A. I met with Alice, Karen and Vera, I
7 think.

8 Q. And you didn't ask any of them anything
9 about that issue?

10 A. No.

11 Q. In your report, did you question anyone
12 about things that **Minor 2** stated had happened
13 to him?

14 A. Happened to him when?

15 Q. At any time, any molestation, anything
16 that I supposedly had done to him. Did you
17 question anyone else about that?

18 A. He mentioned that there were no
19 witnesses.

20 Q. Did you ever speak to his mother ---

21 A. And that he'd never told anybody. I'm
22 sorry. Go ahead.

23 Q. Go ahead.

24 A. He mentioned that there were no
25 witnesses and he never told anybody.

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1 Q. Did you -- you said that his mother was
2 at the police station?

3 A. Yes.

4 Q. You talked to her?

5 A. Briefly, yes.

6 Q. Did you ask her about any past out-
7 bursts, behavior problems, grades, his social
8 skills, anything like that?

9 A. I don't recall. No.

10 Q. So no, or you don't recall.

11 A. I don't recall.

12 Q. Did you have a chance to talk with his
13 stepfather?

14 A. No.

15 Q. Let me get the actual report. I want to
16 first ask you about the statement that you
17 took from **Minor 3** **Minor 3**

18 A. Okay.

19 MR. ALAN BURNS: Your Honor, may I
20 stand here at the podium?

21 THE COURT: Yes, sir.

22 CROSS EXAMINATION CONTINUED

23 BY MR. ALAN BURNS:

24 Q. In her statement she alleged a lot of
25 things happened when she was three years old.

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1 A. Okay.

2 Q. As a result of that, in your report you
3 stated that I couldn't be charged; isn't that
4 correct?

5 A. Uh, it's -- what page is that?

6 Q. (Indicating) ---

7 A. Which part?

8 Q. (Indicating) ---

9 A. Okay, (reading): "Alan was not charged
10 with the sexual assault on **Minor 3** She was
11 reported three years old at the time, which
12 would have made it thirteen years old at the
13 time of the offense."

14 Q. Okay.

15 A. When I initially interviewed **Minor 3**
16 she said three.

17 Q. And in the report that **Minor 3** made --
18 let me get that.

19 MR. ALAN BURNS: Let me get that
20 marked.

21 COURT REPORTER: Defendant's
22 Exhibit 15 for identification, consisting of
23 three pages.

24 THE COURT: A three-page document
25 for ID only.

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1 CROSS EXAMINATION CONTINUED

2 BY MR. ALAN BURNS:

3 Q. On the last page ---

4 A. I have ne.

5 THE COURT: You need to look at
6 the one that he is handing you because he is
7 going to be asking you questions about that
8 document.

9 CROSS EXAMINATION CONTINUED

10 BY MR. ALAN BURNS:

11 Q. The highlighted ---

12 THE COURT: No, sir. Remember the
13 sequence. You have to get it admitted before
14 you publish it.

15 MR. ALAN BURNS: Okay.

16 THE COURT: If you want her to
17 review it, that's fine.

18 MR. ALAN BURNS: I gotcha.

19 CROSS EXAMINATION CONTINUED

20 BY MR. ALAN BURNS:

21 Q. Do you recognize the document?

22 A. Yes.

23 MR. ALAN BURNS: I would like to have
24 this admitted, Your Honor.

25 THE COURT: What does she

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1 recognize it as being.

2 MR. ALAN BURNS: As ---

3 THE COURT: No, she needs to tell
4 you what it is.

5 CROSS EXAMINATION CONTINUED

6 BY MR. ALAN BURNS:

7 Q. What is the document?

8 A. This is a statement that I took from

9 Minor 3

10 THE COURT: Now, do you wish to
11 have that admitted?

12 MR. ALAN BURNS: Yes, sir.

13 THE COURT: Any objection?

14 SOLICITOR RAN STONEY: No, Your
15 Honor.

16 THE COURT: Without objection, it
17 is admitted as Defendant's Exhibit 15.

18 (SO ENTERED AS DEFENDANT'S EXHIBIT 15)

19 CROSS EXAMINATION CONTINUED

20 BY MR. ALAN BURNS:

21 Q. Now would you read the highlighted part
22 of that statement for me, please?

23 A. (Reading): "He would rub his penis
24 against my vagina but he never penetrated
25 with his penis."

1 Q. Okay. And at the time when you asked
2 Shelley these questions, did she not inform
3 you that there has never been anything else?

4 A. I don't know if she specifically said
5 nothing else ever happened. But to my
6 knowledge this was her statement at the time
7 that this was all that happened, but I don't
8 remember if she specifically said that this
9 is all that happened.

10 Q. Last question and last answer, last
11 page, would you please read that one for me?

12 A. (Reading):

13 Q. *Is there anything you would*
14 *like to add to your statement?*

15 A. *No, I still have nightmares.*

16 MR. ALAN BURNS: I need to see the
17 statement from **Minor 2** -- and the next one.

18 COURT REPORTER: (Tenders).

19 MR. ALAN BURNS: I have Plain-
20 tiff's Exhibits 1 and 2 that I would like to
21 present to the witness.

22 THE COURT: Very well. Thank you.

23 CROSS EXAMINATION CONTINUED

24 BY MR. ALAN BURNS:

25 Q. Do you recognize these documents?

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1 THE COURT: They have already been
2 admitted.

3 MR. ALAN BURNS: Right.

4 THE COURT: So she can publish
5 them now. Once they have been admitted, she
6 can publish them and I believe that those
7 have previously been admitted. So if you
8 want her to read from that now, she may do so
9 without her identifying them.

10 MR. ALAN BURNS: Okay. Thanks.

11 CROSS EXAMINATION CONTINUED

12 BY MR. ALAN BURNS:

13 Q. Do you recognize that?

14 A. Yes, this is a statement that I took
15 from Minor 2

16 Q. In Minor 2 statement, one of the first
17 things that Minor 2 told you was that he was
18 a sophomore at Coastal Carolina University.
19 Did you verify that?

20 A. No.

21 Q. And I take it that you didn't verify
22 what his major was in college?

23 A. No.

24 Q. Okay. Minor 2 stated that when he first
25 had his episode that he was at a girlfriend's

1 house, on page five?

2 A. Yes.

3 Q. Did you verify who the girlfriend was?

4 A. No.

5 Q. And he also stated that another friend
6 was at the house. Did you verify that?

7 A. No.

8 Q. Okay. **Minor 2** stated that he had been
9 watching a television show, *Law & Order*,
10 *Special Victims*.

11 A. No need to ---

12 Q. Why not?

13 A. --- verify any of that.

14 Q. Okay. **Minor 2** stated that he had --
15 that at 9:00 p.m. that night he had been
16 drinking when he had his episode. Did you
17 make any inquiries as to the amount of
18 alcohol he had consumed?

19 A. He said "I had been sipping on a beer, I
20 was halfway."

21 Q. Did you make any additional inquiries to
22 determine the amount of alcohol that he had
23 consumed that night?

24 A. By asking him, no.

25 Q. I been, you're an investigator.

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1 Investigators ask questions, don't they?

2 A. Yes. There was no need to verify that.

3 For what purpose?

4 Q. In your line of training, is it not
5 taught that when someone reports an alleged
6 offense of any sort that you should not
7 believe or disbelieve but investigate to find
8 out one way or the other, and the follow
9 where the investigation wherever it should
10 go.

11 A. You phrased that kind of ---

12 THE COURT: Repeat the question so
13 that she can understand the question.

14 THE WITNESS: Repeat the
15 question?

16 CROSS EXAMINATION CONTINUED

17 BY MR. ALAN BURNS:

18 Q. In your line of training, is it not
19 taught that when someone reports an alleged
20 offense, such as this, that you should not
21 believe or disbelieve but, rather,
22 investigate to either prove or disprove it?

23 A. I wouldn't say that we were taught to
24 believe or not to believe. We were taught to
25 investigate, to find out facts of the case.

1 Q. What steps did you take to verify any of
2 the things that he had alleged that
3 transpired the night that he had this
4 episode?

5 A. That was not the incident at hand.
6 There were no witnesses to the crime that we
7 are talking about here today. He had just
8 mentioned that when he first -- that he had
9 had an episode at his girlfriend's house. He
10 didn't tell any of them what had happened.
11 He went into the bathroom. So there was no
12 purpose for me to go find out how much beer
13 he had that night, or interview the people
14 that were at the house. You know, if he were
15 to have mentioned that there were witnesses
16 to actual assault, then I would have tried to
17 interview those witnesses.

18 Q. So there's a possibility that -- as far
19 as from your standpoint, ---

20 THE COURT: Rephrase that. What
21 is "that".

22 MR. ALAN BURNS: The incident that
23 night.

24 CROSS EXAMINATION CONTINUED

25 BY MR. ALAN BURNS:

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1 Q. The incident that night, you made no
2 attempt to verify whether that was true or
3 not -- in any manner?

4 A. That he got upset and went into the
5 bathroom?

6 Q. Yes.

7 A. And called his mother?

8 Q. Yes.

9 A. No. He was just describing how it kinda
10 came about.

11 Q. When you spoke to his mother, did you
12 ask her about that?

13 A. I believe that she told me about that.

14 Q. You didn't take notes from your
15 interview with his mother?

16 A. No, it was a very brief. Very brief
17 with Ms. Smalls.

18 Q. You didn't think that would have been
19 important for you to do a history background
20 on **Minor 2** behavior, that could have shed
21 some light on his acting out or doing
22 something over the period of time that he
23 alleged that this happened.

24 THE COURT: Don't answer that
25 questions. Mr. Burns, approach please.

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1 (OFF RECORD SIDEBAR)

2 THE COURT: You may continue your
3 examination consistent with the Rules.

4 CROSS EXAMINATION CONTINUED

5 BY MR. ALAN BURNS:

6 Q. Did you speak to any counselors in this
7 case?

8 THE COURT: Are you talking about
9 attorneys, or counselors ---

10 MR. ALAN BURNS: Psychiatric.

11 CROSS EXAMINATION CONTINUED

12 BY MR. ALAN BURNS:

13 Q. Psychologists, things like that ---

14 A. No.

15 Q. --- about Minor 2

16 A. No.

17 Q. To your knowledge, was he in counseling
18 or taking some type of treatment or
19 medication or anything?

20 A. He mentioned during the interview that
21 -- I asked him if he was in counseling and he
22 said yes, as of February 2010.

23 Q. What date did he report this to you?

24 A. April 6th, 2010.

25 Q. As far as your investigation into this

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1 entire matter with Minor 2 you only took the
2 statement -- you write the statement, didn't
3 you?

4 A. Yes.

5 Q. You got him to sign it?

6 A. Yes.

7 Q. That was all that you had done in the
8 case?

9 A. At what point?

10 Q. The entire case. What else did you do
11 in the case besides take the statement,
12 getting the warrants and having the warrants
13 served?

14 A. In just terms of Minor 2

15 Q. Yes.

16 A. Yes.

17 Q. That's all that you did?

18 A. Yes.

19 Q. Let me ask you a question about your
20 training, if you don't mind. Do you have
21 certificates in your personnel record in
22 regards to your training to investigate
23 criminal sexual conduct charges or any type
24 of sexual offense charges?

25 A. I do have certificates. I've attended

1 numerous training classes. I don't know if
2 it's kept in my personnel file or my training
3 file. There are several different files. I
4 don't know ---

5 Q. But any training classes that you had,
6 it would be recorded someplace in your
7 records to ---

8 A. Yes.

9 Q. --- verify that you've had that
10 training?

11 A. Yes. I would say my training records.

12 Q. A few weeks ago you were asked questions
13 in regards to your training file and it was
14 discovered that you didn't really have
15 anything in your training file. Is that
16 true?

17 A. What are you referring to?

18 Q. When you testified in court a few weeks,
19 in a case similar to this, ---

20 SOLICITOR RAN STONEY: Objection.

21 THE COURT: Sustained. It's not
22 relevant at this point. I don't know what
23 the purpose of that is, as to what she
24 testified to another court.

25 CROSS EXAMINATION CONTINUED

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1 BY MR. ALAN BURNS:

2 Q. Could you give the name of some of the
3 training classes that you've had?

4 A. The names?

5 Q. Yes, of the training classes that you've
6 took and have certification for in regards to
7 sexual offenses.

8 A. Detective Level I, child sexual abuse
9 investigation course; child abuse
10 investigations; advanced sexual assault.
11 Those are a few.

12 Q. Are all of those in your record?

13 A. Should be, yes. That's in addition to
14 the training that I received at the South
15 Carolina Criminal Justice Academy and during
16 basic law enforcement as well. We get a lot
17 of on-the-job experience as well.

18 Q. Could you explain what some of those
19 classes are, the ones that are pertinent to
20 this case?

21 SOLICITOR RAN STONEY: Objection.

22 THE COURT: Sustained. It's not
23 relevant to this. She has testified to what
24 she has participated in and your experience.
25 You haven't asked her to render an opinion.

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1 Really I don't know what else -- she has
2 testified to what she has done thus far.

3 Go on to something else.

4 That is unless you're trying to
5 qualify her as an expert and ask her an
6 opinion about something as an expert witness.

7 Unless you are doing that, you've
8 covered this area at this point.

9 CROSS EXAMINATION CONTINUED

10 BY MR. ALAN BURNS:

11 Q. As far as your case, the case that you
12 had investigating **Minor 1** -- let me
13 get that.

14 MR. ALAN BURNS: I would like to
15 have this marked.

16 COURT REPORTER: Defendant's
17 Exhibit 16 for identification, consisting of
18 three pages.

19 THE COURT: A three-page document,
20 Defendant's Exhibit 16 for ID only.

21 CROSS EXAMINATION CONTINUED

22 BY MR. ALAN BURNS:

23 Q. Can you identify that document?

24 A. (Upon review), yes. This is the
25 statement that I took from **Minor 1**

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1 MR. ALAN BURNS: I would like to
2 have this entered.

3 THE COURT: Any objection?

4 SOLICITOR RAN STONEY: No objection.

5 THE COURT: Without objection, it
6 is admitted.

7 MR. ALAN BURNS: He said that he
8 objected?

9 THE COURT: No, absolutely not. I
10 can promise you that.

11 MR. ALAN BURNS: Okay.

12 (SO ENTERED AS DEFENDANT'S EXHIBIT 16)

13 CROSS EXAMINATION CONTINUED

14 BY MR. ALAN BURNS:

15 Q. As to your investigation as to alleged
16 allegations by Minor 1 did you
17 attempt to verify anything that she had
18 alleged?

19 A. There were no witnesses, so I really
20 couldn't verify anything.

21 Q. In her statement, she states that I took
22 her to some area where -- let me get you the
23 statement, the highlight section.

24 A. (Reading): "He took me to some area
25 where there are two big palm trees. If

1 *you're on Venning Road going towards Rifle*
2 *Range Road, go straight through. The*
3 *roundabout wasn't there back then. There*
4 *were houses on the right side, not left. He*
5 *turned around and parked by two big palm*
6 *trees."*

7 Q. Did you attempt to verify that location,
8 two big palm trees, take pictures of it so
9 that you would have that as evidence to
10 verify that this is where it supposedly
11 happened?

12 A. No. She described the location. I was
13 familiar with the location and -- no.

14 Q. So you are familiar with the area?

15 A. I knew the area that she was talking
16 about.

17 Q. Okay. Can I see Exhibit -- the picture.

18 MR. ALAN BURNS: Exhibit 1?

19 COURT REPORTER: Sorry, I believe
20 that's a seven.

21 MR. ALAN BURNS: Oh, that's a
22 seven.

23 COURT REPORTER: Yes, sir.

24 CROSS EXAMINATION CONTINUED

25 BY MR. ALAN BURNS:

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1 Q. Do you know where that area is?

2 A. I can't really tell. I mean, there are
3 no street signs.

4 THE COURT: Mr. Burns, approach
5 please.

6 COURT REPORTER: Let me correct
7 that exhibit sticker so that it looks more
8 like a seven. Thank you.

9 (OFF RECORD SIDEBAR)

10 CROSS EXAMINATION CONTINUED

11 BY MR. ALAN BURNS:

12 Q. Did you speak to **Minor 1** mother and
13 make any inquiries if she had noticed any bad
14 behavior, acting out or anything of that
15 sort?

16 A. No.

17 Q. Was -- is **Minor 1** under some type of
18 counseling, did you make any inquiries along
19 those lines?

20 A. No, my understanding is that she did not
21 attend counseling.

22 Q. In the case of **Minor 1** as well as in
23 the case of **Minor 2** the only thing that you
24 did was take their statement, issue the
25 warrants, have the warrants served?

1 A. Yes. I was very limited on what I could
2 do in this case.

3 Q. You didn't attempt to verify whether or
4 not somebody could have happened to see them
5 going to this place versus any place?

6 A. Who would I have spoken to?

7 Q. Members of the family.

8 A. When I interviewed **Minor 1** and **Minor 2**
9 they told me that there were no witnesses to
10 what had happened.

11 Q. Did you **Minor 1** why she never told
12 anybody?

13 A. I believe that I did. Yes, I asked her
14 why she didn't tell anyone until now.

15 Q. And her response was what?

16 A. Her response was, (reading): "Because
17 it had happened to me before and that's how I
18 ended up with my mom. I didn't want my mom
19 to send me back. I didn't want to leave. I
20 didn't think anyone would believe me, because
21 I was new to the family."

22 Q. Did you attempt to make inquiries into
23 that statement?

24 A. Inquiries like what?

25 Q. What she just said, that something had

1 happened to her before? Maybe there was type
2 of record or something.

3 A. No, because -- no.

4 Q. Did you speak to her mother? Did you do
5 an interview with her mother?

6 A. I spoke with her. I didn't formally
7 interview her, take a statement. I believe
8 that she brought **Minor 1** to the police
9 station, so we met.

10 Q. So she was there in your presence? You
11 had an opportunity, you could have
12 interviewed her -- formally?

13 A. She had nothing to tell me. She was not
14 a witness to what had happened.

15 Q. And as far as you know she had no
16 knowledge about anything?

17 A. Correct.

18 Q. That's from **Minor 1** **██████████** stated
19 that her mother had no knowledge about
20 anything at all?

21 A. She said nobody had knowledge about
22 that.

23 Q. Did you attempt to verify how old
24 **Minor 1** was when she came to live with Alice?

25 A. No. She told me that she was twelve

1 years old, adopted into the family at twelve
2 years old.

3 Q. So when everybody just told you these
4 things, you just instantly believed them and
5 that's all that was needed? That's all that
6 you were looking for?

7 A. That's what she told me. She gave me a
8 sworn written statement to that.

9 Q. So when you took their statements, you
10 were only looking for enough so that you
11 could acquire warrants? Is that what you
12 were doing?

13 A. No.

14 Q. You were trying to find out the facts
15 and the truth?

16 A. Right. She told me and she swore to the
17 statement, the information that she gave me.

18 Q. Okay. Beyond that, there was nothing
19 else at all from **Minor 1**

20 A. (No verbal response).

21 Q. You didn't make any inquiries -- that's
22 all right. Let me move on to the next one.

23 The statement from **Minor 4** When you
24 took the statement from **Minor 4** did you at
25 any time attempt to verify anything that

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1 Minor 4 had said in her statement?

2 A.

3 MR. ALAN BURNS: (Tenders document
4 to be marked).

5 COURT REPORTER: Defendant's
6 Exhibit 17 for identification, consisting of
7 two pages.

8 THE COURT: A two-page document
9 for ID purposes only.

10 CROSS EXAMINATION CONTINUED

11 BY MR. ALAN BURNS:

12 Q. Can you identify this document, please?

13 A. This is the statement that I took from
14 Minor 4

15 MR. ALAN BURNS: I would like to
16 have this entered into evidence.

17 THE COURT: Without objection?

18 SOLICITOR RAN STONEY: No objection.

19 THE COURT: Without objection,
20 statement of Minor 4 is admitted into
21 evidence..

22 (SO ENTERED AS DEFENDANT'S EXHIBIT 17)

23 CROSS EXAMINATION CONTINUED

24 BY MR. ALAN BURNS:

25 Q. When you interviewed Minor 4 and she

1 gave you her statement, did you attempt to
2 verify any of the things which she had said
3 in her statement?

4 A. She mentioned [Minor 5] being in the room
5 at one point, and I believe [Minor 3] I made
6 an attempt to interview [Minor 5] and I did
7 interview [Minor 3] [Minor 3]

8 Q. Were the things in that statement
9 verified?

10 A. These specific incidences, I believe
11 between [Minor 3] and [Minor 4] that there were
12 so many that the specific incidents I'd say
13 that there would be no way to tell.

14 Q. According to [Minor 4] statement, how
15 many incidents were there?

16 A. (Upon review), it's hard to really tell
17 because she says between the years of 1979
18 and '89, then she kind of discusses that one
19 time this happened. 'I have a memory of
20 this.'

21 Q. How many incidents does she name in this
22 specific statement?

23 A. She says, "I remember games Alan would
24 play with me. One thing ..." -- she mentions
25 one time, an incident.

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1 Q. A few moments ago I asked you the same
2 question, could anybody corroborate her
3 statement. You said that there were "so many
4 times." But in the statement **Minor 4** only
5 told you about one incident.

6 A. She said that she was thinking that she
7 was seven or eight years old at the time, --
8 (reviewing). Then there were so many games
9 played, maybe when she was about nine or ten.

10 Q. But, still, she only made reference to
11 one incident?

12 A. Right.

13 THE COURT: Rephrase that ques-
14 tion, because that's a misleading question.
15 She only described one incident. The
16 statement doesn't say that there was only one
17 -- unless you can point it out in the
18 statement, restate your question.

19 CROSS EXAMINATION CONTINUED

20 BY MR. ALAN BURNS:

21 Q. So she only described one incident; is
22 that correct?

23 A. Just bear with me as I read the
24 statement.

25 THE COURT: Take your time. Read

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1 the entire statement if you need to. I tell
2 you what we will do, we will take a break and
3 let you hear the statement.

4 Ladies and Gentlemen, go to your
5 jury room for about ten minutes. Thank you.

6 (JURY OUT @ 3:40 P.M.)

7 THE COURT: Anything from the
8 State before we recess?

9 SOLICITOR RAN STONEY: No, Your
10 Honor.

11 THE COURT: Mr. Burns, anything?

12 MR. ALAN BURNS: No, sir.

13 THE COURT: All right, we will be
14 at-ease.

15 (BRIEF RECESS)

16 (DEFENDANT PRESENT)

17 THE COURT: Are you ready to
18 continue?

19 MR. ALAN BURNS: Yes, sir.

20 THE COURT: Bring in the jury.

21 (JURY IN @ 3:52 P.M.)

22 THE COURT: Thank you, Ladies and
23 Gentlemen. Mr. Burns, you may continue your
24 examination. I think Detective Bacon has had
25 an opportunity to review the statement now.

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1 THE WITNESS: Yes, sir. Thank
2 you. What was I asking her about?

3 COURT REPORTER: The pending
4 question is, "So she only described on
5 incident, is that correct?"

6 CROSS EXAMINATION CONTINUED

7 BY MR. ALAN BURNS:

8 Q. So you only describe one incident, is
9 that correct?

10 A. After I've had a chance to review the
11 statement, it appears to be two. She talks
12 about describing and talking about dreams
13 with cousins and -- she told them about a
14 dream that she had about Alan in the back
15 bunk in the bedroom at her grandmama's where
16 "he ejaculated on me." She said that
17 actually had happened. She told her cousins
18 that it was a dream but she said that it had
19 actually happened.

20 Q. She said in the statement that it
21 happened?

22 A. Yeah. I think on page -- were I did Q
23 and A, on page one of two.

24 Q. That's not entered into evidence.

25 A. Okay. Well, then, later on the in

1 statement I ask her, (reading):

2 Q. When you told you cousins about
3 your dream about your Uncle Alan, was that a
4 dream or do you know if it actually happened?

5 A. It actually happened but we
6 were talking about dreams, so I said it was a
7 dream.

8 Q. So ---

9 A. So that incident and then the incident
10 ---

11 Q. Wait a minute.

12 THE COURT: No, sir., She is going
13 through the statement. You've asked her to
14 read the statement so that she can tell you
15 about it. She can answer the question.

16 MR. ALAN BURNS: She's ---

17 THE COURT: Sir?

18 MR. ALAN BURNS: She's reading
19 something that ---

20 THE COURT: That's fine. You gave
21 it to her and you asked her whether there was
22 one or two, and she's telling. So she can
23 answer the question, sir. You've asked the
24 question. You asked the door for this.
25 Okay? That's what it is called. But she can

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1 answer the question. Now, just to the extent
2 that she has answered it doesn't open the
3 door for the entire statement yet.

4 You may continue to answer the
5 question.

6 THE WITNESS: As to the second,
7 "I also remember games that Alan played with
8 me at one time. I don't know why he was at
9 our house with us in our bedroom, we were
10 supposedly playing a board game but he kept
11 touching me at places and making me touch
12 him, laughing and pretending so that my
13 sisters and brothers wouldn't notice."

14 CROSS EXAMINATION CONTINUED

15 BY MR. ALAN BURNS:

16 Q. Did you attempt to ask any of the
17 sisters or brothers had they noticed?

18 A. No.

19 Q. And did you ever find out who her
20 counselor was?

21 A. No. Oh, I'm sorry. I think that she
22 might have told me in this statement. (Upon
23 review), Rosalyn Pollard (phonetic).

24 Q. Did you ever attempt to contact her in
25 any manner?

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1 A. No.

2 Q. You didn't attempt to interview her?

3 A. No.

4 Q. So as far as Minor 4 you didn't attempt
5 to interview anyone else?

6 A. She said ---

7 THE COURT: Hold on. Anyone else?
8 Who?

9 MR. ALAN BURNS: Anyone.

10 THE COURT: She has already
11 testified that she talked to some. Are you
12 talking about in addition to the persons that
13 she has already answered?

14 MR. ALAN BURNS: Right.

15 THE COURT: Okay.

16 THE WITNESS: In addition to
17 the people that I've already mentioned, no.

18 CROSS EXAMINATION CONTINUED

19 BY MR. ALAN BURNS:

20 Q. The only person that you mentioned was
21 Minor 3

22 A. Minor 3 (affirmative nod), and I made an
23 attempt with Minor 5

24 Q. You talked with her?

25 A. Minor 5

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1 Q. Yeah.

2 A. (Affirmative nod), I spoke with her on
3 the phone.

4 Q. Did she verify anything?

5 A. No, she didn't give a statement on the
6 phone; no.

7 Q. All right.

8 MR. ALAN BURNS: That's all the
9 questions that I have for you, Detective.

10 THE COURT: All right.

11 MR. ALAN BURNS: Thank you, Your
12 Honor.

13 THE COURT: Yes, sir. Redirect?

14 REDIRECT EXAMINATION

15 BY SOLICITOR RAN STONEY:

16 Q. Can you please explain again the
17 agreement entered into between the Court and
18 the Town of Mount Pleasant in 1993 with
19 regards to jurisdiction?

20 A. Basically, just to simplify it -- prior
21 to 1993, Charleston County had jurisdiction.
22 In 1993, the Town of Mount Pleasant and
23 Charleston County entered a mutual agreement
24 where the Town of Mount Pleasant can respond
25 to calls for service in specific areas that

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1 Charleston County had jurisdiction of in
2 Mount Pleasant.

3 Q. So since 1993, the Mount Pleasant Police
4 Department has handled cases in the Rands
5 Hill, Venning Road area?

6 A. Yes. We respond to 911 calls, take
7 reports, respond to calls for service; yes.

8 Q. Also in your report you mentioned a
9 brother, Luther, and allegations against him.
10 Why didn't you investigate those?

11 A. **Minor 2** had mentioned it to me. Those
12 victims were apparently his ---

13 Q. May I rephrase?

14 A. Yes.

15 Q. Was Luther around?

16 A. No. He said that he'd died when he was
17 nineteen years old, in Viet Nam.

18 Q. When you initially met **Minor 3** she gave
19 a statement -- did you meet with her again at
20 a later date?

21 A. **Minor 3**

22 Q. Yes.

23 A. Yes.

24 Q. And did she give you more information at
25 this meeting?

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1 A. Yeah, she gave additional details of
2 what occurred. She gave a statement to
3 Detective Avila.

4 Q. To your knowledge, had she ever told
5 anybody these details before?

6 A. No.

7 Q. Mr. Burns mentioned your investigation,
8 your looking into witnesses. During the
9 course of your investigation, were you not
10 able to uncover four additional victims in
11 addition to **Minor 2** as part of your
12 investigation?

13 A. Yes, because when **Minor 2** came, that's
14 all that we knew. It was just **Minor 2** at the
15 time.

16 Q. And that led you to take warrants out
17 against Mr. Burns?

18 A. Correct.

19 Q. Then, finally, with regards to **Minor 1**
20 and her statement, the area in which she
21 describes the sexual assault, has that area
22 changed since the assault occurred in 1997?

23 A. It probably has. I am sure the
24 landscaping has changed. She mentioned that
25 the roundabout wasn't even there back then,

1 and it is today. So, yes.

2 Q. And, finally, with regards to **Minor 5**
3 you talked to her?

4 A. Yes.

5 Q. Did she agree to give you a statement?

6 A. She did. She just was very upset. You
7 know, she said that when her cousins had
8 contacted her that she was having a very hard
9 time dealing with it, all of the emotions,
10 her coping with it. She just wanted to take
11 her time in getting me a statement. I didn't
12 want to pressure her at all, so I said
13 'whenever you are ready and able to, write
14 your statement and send it to me.' She said
15 that she would.

16 SOLICITOR RAN STONEY: That's all.

17 THE COURT: Recross, Mr. Burns.

18 RECROSS EXAMINATION

19 BY MR. ALAN BURNS:

20 Q. Under the agreement that you said that
21 the Town of Mount Pleasant and the County of
22 Charleston has, what is the title of that
23 agreement?

24 A. I don't have it with it.

25 Q. What statute is it?

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1 A. I don't know. I don't have it with me.

2 Q. When you investigated these alleged
3 charges, you investigated as an officer
4 vested under the color or law with the Mount
5 Pleasant Police Department?

6 A. Yes.

7 Q. You weren't acting as an agent for any
8 other agencies at the time, is that correct?

9 A. Correct.

10 MR. ALAN BURNS: Thank you.

11 THE COURT: You may come down.

12 (WITNESS STEPS DOWN)

13 THE COURT: Who is your next
14 witness.

15 SOLICITOR HERRING-LASH: Detective
16 Rita Avila.

17 (WITNESS TAKES STAND)

18 RITA AVILA, being duly sworn to tell
19 the truth, the whole truth and nothing but
20 the truth, testified, as follows:

21 DIRECT EXAMINATION

22 BY SOLICITOR HERRING-LASH:

23 Q. Detective Avila, where do you work?

24 A. Charleston County Sheriffs Office.

25 Q. How long have you worked there?

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1 A. Just over nine years.

2 Q. Back -- right now, what are your duties?

3 A. Right now -- I am a sergeant and I
4 supervise the special victims unit for our
5 criminal investigations division.

6 Q. What does that mean?

7 A. We investigate crimes against children,
8 sexual assaults and physical abuse of
9 vulnerable adults, as well as control the sex
10 offender registry and school resource
11 officers.

12 Q. Back in April of 2011, what were your
13 duties?

14 A. I was a detective in what is now called
15 the special victims unit. I investigated
16 crime scene involving children and sexual
17 assaults.

18 Q. When you were doing that, did you get
19 assigned to work on the case of the State
20 versus Alan Burns?

21 A. I did.

22 Q. When was that?

23 A. I was contacted -- I'm sorry, I don't
24 know the exact date that I was contacted but
25 it was in April of 2011.

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1 Q. Who contacted you about getting the
2 case?

3 A. Detective Bacon from Mount Pleasant.

4 Q. Why was she calling you?

5 A. She advised me that the case that she
6 was investigating, through her investigation
7 she had determined that some of the
8 incidences had occurred at an address -- that
9 at the time the incidents occurred -- that
10 had not been incorporated into the Town of
11 Mount Pleasant and were under the
12 jurisdiction of Charleston County.

13 Q. So did you meet with Detective Bacon?

14 A. I did.

15 Q. Did you go over her file?

16 A. I did.

17 Q. Then what did you do?

18 A. After reviewing her file, I set up a
19 time to meet with two of the victims: **Minor 4**
20 and **Minor 3**

21 Q. Where did you meet with them?

22 A. We met at the elementary school that
23 **Minor 4** was speaking -- I'm sorry, -- was
24 teaching at.

25 Q. Did you interview **Minor 3** at that time?

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1 A. I did. I spoke with her about what she
2 had disclosed to Detective Bacon.

3 Q. Did she give you additional information?

4 A. She did give me additional information.

5 Q. Did she at that time tell you about a
6 sexual assault?

7 A. She did.

8 Q. And did she tell you where it had
9 occurred?

10 A. She said that it occurred at her
11 grandparents' house.

12 Q. Did she tell you when?

13 A. She said it was when she was
14 approximately eight to nine years old.

15 Q. Did she write her statement that day?

16 A. She did not.

17 Q. Why not?

18 A. She was very emotional, crying. It was
19 difficult for her to give all the details.
20 She was very, very emotional and tearful.

21 Q. Had she ever give the details regarding
22 the sexual assault to anyone before?

23 A. Not to my knowledge, no.

24 Q. Did she give those details to Detective
25 Bacon in the beginning?

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1 A. She did not.

2 Q. Did you set up another time to meet with
3 her?

4 A. I did. We agreed to meet on April 21st,
5 2011.

6 Q. What happened at that time?

7 A. She came in. She was still very, very
8 emotional, very upset and tearful. So she
9 had asked if I could write down what she was
10 dictating to me. So I wrote down for her
11 whatever she said. I wrote it down for her
12 word for word, then she reviewed it and
13 signed it.

14 Q. Does **Minor 3** have any disability?

15 A. She does. I believe that she is -- I
16 don't know the extent of her hearing
17 impairment but she is hearing impaired.

18 Q. Did you also speak with **Minor 4**

19 A. I did.

20 Q. Did she give you any additional
21 information?

22 A. She did not give me any more additional
23 information than what she had given to
24 Detective Bacon.

25 Q. What was her demeanor?

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1 A. She had a very flat affect. She was
2 clearly upset but just very flat. Not to the
3 emotional tearful extent that **Minor 3** was,
4 but she was flat and very upset.

5 Q. Did you get an additional statement from
6 her?

7 A. I got a statement from her, asked her if
8 she had any additional information to give
9 me.

10 Q. She didn't?

11 A. She did not.

12 Q. Did you determine before you did these
13 warrants that at this point in time, back
14 when they were telling you about was, was in
15 Charleston County?

16 A. I did.

17 Q. How did you do that?

18 A. I ran a records check through our
19 records management system. It is basically a
20 computer data base that we have and it show
21 calls that we had at addresses dating back to
22 the '70s. I also went to our records
23 division and had them run a check to
24 determine if that address was in fact under
25 the jurisdiction of Charleston County at that

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1 time.

2 SOLICITOR HERRING-LASH: Court's
3 indulgence for one moment?

4 THE COURT: Certainly.

5 SOLICITOR HERRING-LASH: Those
6 are all the questions that I have. Please
7 answer any that Mr. Burns may have.

8 THE COURT: You may cross-examine,
9 Mr. Burns.

10 CROSS EXAMINATION

11 BY MR. ALAN BURNS:

12 Q. The warrants that you acquired for me,
13 it was based on Minor 4 -- based solely on
14 the affidavit taken by the Mount Pleasant
15 Police Department?

16 A. It was based on her statement to Mount
17 Pleasant as well as when I spoke with her.

18 Q. Did you take a statement from her?

19 A. Yes, I did.

20 Q. But you didn't get a written, signed
21 statement from her?

22 A. I did get a signed statement from her
23 asking her if there were any further details
24 than what she had given to Detective Bacon,
25 where she did give me a statement saying that

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1 'no, there were none.'

2 Q. So your warrants were based on the
3 statement given to the Mount Pleasant Police
4 Department?

5 A. As well as the statement -- the verbal
6 and the statement that she gave to me. Yes.

7 Q. And you had -- prior to taking a
8 statement from Shelley, did you read the
9 statement that she had given to the Mount
10 Pleasant Police Department?

11 A. I did.

12 Q. Did you read the report from the Mount
13 Pleasant Police Department?

14 A. I reviewed it, yes.

15 Q. In the report from the Mount Pleasant
16 Police Department, which has already been
17 entered into evidence, Detective Bacon said
18 that as a result of Shelley's first statement
19 that I couldn't be charged. I believe that
20 was in regards to Section 16-63 -- 63-19-
21 1210. All right. All you familiar with that
22 section?

23 A. By the statute number, I -- no. If you
24 give me the statute name, I probably would be
25 able to answer.

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1 MR. ALAN BURNS: If I could have
2 this marked ---

3 THE COURT: You don't need to.
4 She reviewed the document and -- we will make
5 it a court's exhibit. It is not evidence,
6 it's the law.

7 MR. ALAN BURNS: Thank you.

8 THE COURT: She's on notice of the
9 statute, if she is familiar with it.

10 THE WITNESS: I am not familiar
11 with the transfers of jurisdiction.

12 MR. ALAN BURNS: All right.
13 May I have that report?

14 COURT REPORTER: On **Minor 3**

15 MR. ALAN BURNS: Right. For
16 reference, it's Defendant's Exhibit 14.

17 THE COURT: Very well. Thank you,
18 sir.

19 SOLICITOR HERRING-LASH: Your
20 Honor, I think that he is giving her another
21 document, prepared by another individual. I
22 am not sure but ---

23 THE COURT: It's been admitted?
24 Has this one been admitted?

25 MR. ALAN BURNS: Yes, sir.

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1 THE COURT: It's in evidence.

2 CROSS EXAMINATION CONTINUED

3 BY MR. ALAN BURNS:

4 Q. Where it is underlined, would you read
5 that for me, please?

6 A. Aloud?

7 Q. Yes.

8 A. (Reading): "Alan was not charged with
9 the sexual assault on **Minor 3** as she
10 reported that she was three years old at the
11 time, which would have made Alan thirteen
12 years old during the time of the offense."

13 Q. Okay. And let me ask you to read
14 something else. Defendant's Exhibit 15,
15 would you read the highlighted part, please.

16 A. It's just a fragment of a sentence. Do
17 you want me to read the whole ---

18 Q. No, just the highlighted section,
19 please.

20 A. (Reading): "...penis against my vagina,
21 but he never penetrated with his penis."

22 Q. That was from her original statement and
23 report, which reflects that -- the report
24 from Detective Bacon, then the discovery of
25 that statement, they then contacted you. As

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1 a result you went to Shelley and you got
2 another statement from her where she, in the
3 statement that you took, alleged that there
4 was some penetration.

5 A. The statement that she gave to Detective
6 Bacon, which is referenced in her report, is
7 what she had disclosed about when she was
8 three years old. When I spoke with her, she
9 disclosed the ones when she was eight to nine
10 years old. So there were two different
11 instances.

12 Q. Well, but when she was reporting that,
13 she was referring to her entire childhood.

14 THE COURT: Wait a minute. Before
15 you answer that, you're going to lay a
16 foundation of how this witness knows what she
17 was telling somebody else at that time.
18 She's testified from her review of the
19 statement what she discerned. Then what her
20 statement was. But if you want her to
21 testify as to what the witness said to
22 another person, you've got to lay a
23 foundation. So rephrase your question.

24 CROSS EXAMINATION CONTINUED

25 BY MR. ALAN BURNS:

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1 Q. When Shelley gave her second statement
2 to you, did she at any time infer that her
3 first statement was only in relationship to
4 when she was three years old?

5 A. When we met with her on April 1st, my
6 first meeting with **Minor 3** who is referred
7 to as Shelley, she did come to me at that
8 point and said that there was more
9 information that she was wished to disclose.
10 She became very tearful, broke down and cried
11 and disclosed that there had been another
12 sexual assault, that it was when she was
13 older -- eight to nine years old. That she
14 had originally minimized when she spoke with
15 Detective Bacon. However, when she did speak
16 with me she disclosed what had happened when
17 she was eight to nine years old.

18 Q. In the statement that Shelley gave to
19 Detective Bacon -- well, let me get you to
20 read it. Would you read from the first
21 question and answer -- read the first
22 question and answer, and then the part that
23 is highlighted again.

24 A. (Reading):

25 Q. What happened when you were

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1 *eight or nine?*

2 A. *When he would approach me, I*
3 *would just run from him.*

4 Q. Read the highlighted part.

5 A. That was the highlighted part. Before
6 that it says, (reading):

7 Q. *How many times has your uncle*
8 *molested you?*

9 A. *Quite a few. He did it a few*
10 *times when I was three years old and he tried*
11 *to do it again when I was eight or nine.*

12 Q. *What happened when you were*
13 *eight or nine?*

14 A. *When he would approach me, I*
15 *would just run from him.*

16 Q. Read the next part?

17 A. (Reading):

18 Q. *Where was Alan's room?*

19 I'm sorry, (reading):

20 Q. *What happened when you were*
21 *eight or nine?*

22 A. *When he would approach me, I*
23 *would just run from him.*

24 Q. Okay. Now, in the statement that she

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1 gave to you, she said that when she was eight
2 or nine years old that she was penetrated; is
3 that correct?

4 A. Correct.

5 Q. So in the statement that she gave to the
6 Mount Pleasant police, was she not covering
7 also the ages of eight and nine, when she
8 declared that she had never been penetrated?

9 A. Again, she came -- when I spoke with
10 her, she said that she was disclosing more
11 information than what she had given to Mount
12 Pleasant, Detective Bacon.

13 Q. Okay. In statement one -- because there
14 are two statements. In statement one, the
15 alleged victim stated that when she was eight
16 or nine years old that she had never been
17 penetrated.

18 In statement two, the alleged victim
19 stated that when she was eight or nine that
20 she was penetrated.

21 In your opinion as an investigator,
22 do you find these two statements to be
23 contradictory?

24 A. I do not. In her first statement to
25 Detective Bacon, I believe that she actually

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1 states that he does penetrate her with his
2 fingers, I believe is what it says. Again,
3 in mine, again a different instance, she goes
4 on to say that when she was older -- in my
5 experience as an investigator, it is not
6 uncommon for a victim to give more details
7 at a later time, to not disclose all the
8 information the first interview. It is not
9 uncommon for a victim to now disclose all the
10 information immediately when an incident
11 happens. So the fact that she gave more or
12 additional information does not give me any
13 concern. It is quite common for victims to
14 give more information as an initial
15 interview.

16 Q. So if an individual told you that
17 something didn't happen, at all, and then an
18 individual comes back and tells you that it
19 did happen, you would tell me that there's
20 not a contradiction in that?

21 A. Again, the two different statements --
22 she is referring in the first -- in the first
23 statement to Detective Bacon, she gives
24 details about that and said that it happened
25 when she was three.

1 Then she talks about that he tries again
2 when she was eight or nine, and how she run
3 from him.

4 It is not uncommon, again, for victims
5 to give more to the police from the first
6 time once their comfort level is a little bit
7 better with the investigator or the instance
8 that they are dealing with. It's not
9 uncommon for them to give more details to
10 that.

11 MR. ALAN BURNS: I would like to
12 get this marked.

13 COURT REPORTER: Defendant's
14 Exhibit 19 (sic), one page.

15 THE COURT: Defendant's 19 (sic)
16 for ID only.

17 CROSS EXAMINATION CONTINUED

18 BY MR. ALAN BURNS:

19 Q. What is this?

20 A. This is page one of three from the
21 statement that I took from **Minor 3**

22 MR. ALAN BURNS: I would like to
23 enter this into evidence, Your Honor.

24 THE COURT: Any objection?

25 SOLICITOR HERRING-LASH: No objec-

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1 Burns?

2 MR. ALAN BURNS: No, sir, Your
3 Honor.

4 THE COURT: Very well, thank you.

5 SOLICITOR HERRING-LASH: Your
6 Honor, for the record, Miss Burns will speak.
7 She reads lips. She cannot reads lips from
8 this distance but she can speak.

9 (WITNESS TAKES STAND)

10 Minor 3 being duly
11 sworn to tell the truth, the whole truth and
12 nothing but the truth, testified as follows:

13 DIRECT EXAMINATION

14 BY SOLICITOR HERRING-LASH:

15 Q. Minor 3 what is your date of birth?

16 A. [REDACTED]

17 Q. Where do you work?

18 A. I am not working right now.

19 Q. Where have you worked?

20 A. I used to do housekeeping, cook and
21 other things.

22 Q. Where do you live?

23 A. North Charleston.

24 Q. Who lives with you?

25 A. My husband and two kids.

1 Q. And what are the ages of your children?

2 A. Four and sixteen.

3 Q. **Minor 3** do you have a hearing
4 disability?

5 A. Yes, I do.

6 Q. How long have you had that?

7 A. Since I was born.

8 Q. Are you related to Alan Burns?

9 A. Yes, I am.

10 Q. How are you related?

11 A. He is my uncle.

12 Q. On which side?

13 A. My dad's side.

14 Q. Did you stay with your grandparents
15 growing up?

16 A. Yes, during the summers and weekends
17 when my parents worked.

18 Q. Who else was there, as far as cousins?

19 A. **Minor 4** and **Minor 5**

20 Q. Did you become close?

21 A. Yes.

22 Q. Was Alan Burns also there?

23 A. Yes.

24 Q. What were your ages when you first went
25 there?

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1 A. I believe when I was born, small.

2 Q. How old were you when you left?

3 A. About three or four, my dad was in the
4 military.

5 Q. Then when did you come back to stay?

6 A. When I was eight, I believe.

7 Q. And did Mr. Burns do anything sexual to
8 you?

9 A. Yes, he did.

10 Q. What is the first thing that you
11 remember?

12 A. The first time that I remember is that
13 it happened when I was about three years old,
14 at my grandma's house.

15 Q. What happened?

16 A. I remember he had me, Minor 4 Minor 5
17 and my brother in the room.

18 Q. Which room?

19 A. His room.

20 Q. What happened?

21 A. He took turns fondling us.

22 Q. What do you mean?

23 A. Touching us inappropriately.

24 Q. Where did he touch you?

25 A. Between our legs.

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1 Q. Did you have your clothes on?

2 A. Yes.

3 Q. What about his clothes?

4 A. Pants down.

5 Q. Did he make you touch him?

6 A. I don't remember that part.

7 Q. Did you witness him touching any other
8 child?

9 A. Yes.

10 Q. Who?

11 A. Minor 4 and Minor 5

12 Q. What did you see?

13 A. Him touching us. He was taking turns.

14 Q. Where were y'all?

15 A. All of us were in his room.

16 Q. Was that always where you were?

17 A. Yes.

18 Q. Did anyone cry?

19 A. I remember Minor 4 and Minor 5 crying but
20 I don't remember if I was crying.

21 Q. When you moved away, where did you go?

22 A. I believe -- my dad was in the Army. I
23 believe that it was Tennessee, then Texas,
24 wherever.

25 Q. When you came back, did you go back over

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1 and stay at your grandparents?

2 A. Yes.

3 Q. And this was when, you said, you were
4 around eight?

5 A. Yes.

6 Q. Did anything happen then?

7 A. Yes.

8 Q. Can you tell the jury?

9 A. I remember taking a nap. It was in the
10 room across from where Alan's room is. I
11 woke up and he was standing over me.

12 Q. What happened?

13 A. That's when he violated me again.

14 Q. What do you mean by "violated"?

15 A. He was touching me, then he rapes me.

16 Q. What do you mean by rape?

17 A. Penetrated me, put his penis inside me.

18 Q. Where were you?

19 A. On the bed.

20 Q. You said the room across from Alan's
21 room?

22 A. Yes.

23 Q. Where was everyone else, if you know?

24 A. I don't remember.

25 Q. You said that you came in to take a nap?

1 A. Yes.

2 Q. Had you been outside or inside, to take
3 a nap?

4 A. Yes.

5 Q. Which one?

6 A. I believe that I was outside and came in
7 and took a nap. I don't remember all those
8 details.

9 Q. But you were laying on the bed?

10 A. Yes.

11 Q. How were you laying on the bed?

12 A. I was laying on the bed. When I woke
13 up, I was on the edge.

14 Q. What do you mean by the edge of the bed?

15 A. I was laying on the bed with my butt off
16 the bed.

17 Q. Were your feet on the floor?

18 A. Yes.

19 Q. What position were you in?

20 A. (No verbal response).

21 Q. Do you understand?

22 A. No.

23 Q. Was your stomach touching the bed or
24 your back?

25 A. My back was on the bed.

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1 Q. What happened?

2 A. (No verbal response).

3 Q. Were your clothes on or off?

4 A. My pants was down.

5 Q. How did they get down?

6 A. I don't know. I woke up, they was down.

7 He was standing over me.

8 Q. Who was standing over you?

9 A. Alan.

10 Q. What happened then?

11 A. He was just fondling me. Then he
12 stopped. I was bleeding. He told me to be
13 quiet and go to the bedroom.

14 Q. Did you go to the bathroom?

15 A. Yes.

16 Q. How did it feel to you?

17 A. At that time I was confused, it hurt.
18 I didn't know what I was going to do.

19 Q. You said that you were bleeding?

20 A. Yes.

21 Q. Where were you bleeding?

22 A. Between my legs.

23 Q. Did Mr. Burns say anything to you?

24 A. I remember him telling me not to say
25 anything to nobody.

1 Q. What did you do after this stopped?

2 A. I really don't anything.

3 Q. Do you remember what happened after you
4 left the restroom?

5 A. Not really.

6 Q. Did you tell anybody?

7 A. No.

8 Q. Why not?

9 A. Because I was scared.

10 Q. Were there other occasions when things
11 would happen?

12 A. I wouldn't remember.

13 Q. Did you ever discuss this with anyone?

14 A. I talked to Minor 4 about it one time
15 but anybody, in general, no.

16 Q. About how old were you when you talked
17 to Minor 4 if you know?

18 A. I talked to Minor 4 when it first
19 happened. We'd talk about it among each
20 other.

21 Q. When it first happened, do you mean back
22 when you were a little child?

23 A. Yes.

24 Q. Did there come a time when Alan went
25 away?

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1 A. Yes.

2 Q. During the years that he was gone, did
3 you tell anybody in the family about it?

4 A. No.

5 Q. How did you end up calling the Mount
6 Pleasant police?

7 A. **Minor 4** called me and told me that there
8 was a case going on in the family and asked
9 me if I wanted to say anything.

10 Q. How are people able to call you?

11 A. I don't know how she know, but she know.
12 She just called and told me about me.

13 Q. But do they have to use the rely system
14 on the phone?

15 A. No, she texted me on my cell phone.

16 Q. They text you?

17 A. Yes.

18 Q. Did you in fact talk or go to the Mount
19 Pleasant Police Department?

20 A. Yes, I did.

21 Q. Do you remember who that you first
22 talked with?

23 A. I don't remember her name but I talked
24 with a detective at the Police Department.

25 Q. Did you tell her about everything that

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1 had happened?

2 A. At first I didn't.

3 Q. Why not?

4 A. Because I felt that I just told them a
5 little bit that it would make a difference.

6 Q. You didn't want to talk about it?

7 A. Right.

8 Q. At that point in time, had you ever told
9 anybody about the details about the nap?

10 A. No, I didn't.

11 Q. Did you also talk to a Charleston County
12 Sheriff deputy?

13 A. Yes, I did.

14 Q. Where were you when you talked to her?

15 A. At [Minor 4] school.

16 Q. Pardon me?

17 A. At [Minor 4] school, Mary Ford.

18 Q. Did you tell her about the incident with
19 the nap?

20 A. Yes, I did.

21 Q. Do you know why you were able to tell
22 her about that?

23 A. Because she was asking questions, so I
24 decided to tell her more.

25 Q. Was that the first time ---

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1 A. Yes.

2 Q. How have you felt since talking or
3 telling about this?

4 A. A little bit relieved but at the same
5 time I just want to get it all out.

6 Q. Do you still think about this, have
7 dreams or have nightmares about this?

8 MR.. ALAN BURNS: Objection, Your
9 Honor.

10 THE WITNESS: Yes, I do.

11 THE COURT: Basis of objection?

12 MR. ALAN BURNS: I have a legal
13 issue that I need to bring up to you.

14 THE COURT: What is the basis of
15 your objection?

16 MR. ALAN BURNS: May we approach
17 the bench, Your Honor?

18 (OFF RECORD SIDEBAR)

19 THE COURT: You can put that on
20 the record at the first break. Objection is
21 overruled.

22 DIRECT EXAMINATION CONTINUED

23 BY SOLICITOR HERRING-LASH:

24 Q. **Minor 3** do you need me to repeat my
25 question?

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1 A. Please repeat.

2 Q. Do these memories still bother you?

3 A. Yes.

4 Q. In what way?

5 A. I have nightmares and -- I have
6 nightmares.

7 SOLICITOR HERRING-LASH: Minor 3
8 those are all the questions that I have. If
9 you will, answer any that Mr. Burns has.

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

12 MR. ALAN BURNS: Thank you, Your
13 Honor.

14 CROSS EXAMINATION

15 BY MR. ALAN BURNS:

16 Q. Minor 3, when you was first contacted
17 you gave the Mount Pleasant Police Department
18 a statement. In that statement ---

19 THE COURT: I am going to ask you,
20 Mr. Burns, you break your questions down this
21 morning. It will facilitate the record but
22 it will also help the interpreter.

23 MR. ALAN BURNS: Right.

24 THE COURT: You have to ask one
25 question at a time. Don't ask multiple

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1 questions. Let the -- the question was that
2 'you gave them a statement?' She needs to
3 answer that, yes or no. Then you can follow
4 up with your next question, but that's the
5 way that you are going to have to work it
6 this morning.

7 CROSS EXAMINATION CONTINUED

8 BY MR. ALAN BURNS:

9 Q. In the statement that you gave to the
10 Mount Pleasant Police Department, did you
11 state that there had been no penetration?

12 A. I did.

13 Q. Late on you gave a second statement, and
14 in that statement you said that there was
15 penetration.

16 A. Yes, I did.

17 Q. Why was there a difference in the two
18 statements?

19 A. Because when I gave the first statement,
20 I didn't want to tell every detail. When
21 they asked me again, at the second statement,
22 I decided to give them every detail.

23 Q. Why did you not want to give them all
24 the details at first?

25 A. Because I feel like I didn't know -- I

1 just felt like if they knew enough of the
2 details that it wouldn't make a difference.

3 Q. At some point you found out that the
4 police couldn't charge me for the first
5 details; is that correct?

6 A. I didn't know anything about the charge.
7 The only thing I know is that when they
8 questioned me the first time that I told them
9 what I told them. Then when they talked to
10 me again, I just decided to release myself
11 and let everybody know exactly -- everything
12 that I remember.

13 Q. When you gave the first statement, you
14 stated that when you was eight and nine that
15 there had never been any incidents that
16 occurred; is that true?

17 A. Repeat the question?

18 Q. Did you state that there were never any
19 incidents that occurred when you were eight
20 or nine?

21 A. I told what I remember.

22 Q. Showing you Defendant's Exhibit 15.
23 Would you read these two questions and
24 answers.

25 A. (Reading):

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1 Q. What happened when you were
2 eight and nine?

3 A. When he would approach me, I
4 would just run away from him.

5 Q. So you stated that when you were eight
6 and nine that you ran away from me and
7 nothing ever happened.

8 a. No.

9 Q. In that statement right there, did you
10 not state that you would just run away?

11 A. You did it to me that one time but you
12 -- you always tried to do it to me then, but
13 I wouldn't let you.

14 Q. So when I tried again, you didn't let
15 me? According to that statement and your
16 testimony now?

17 A. Yeah.

18 Q. Exhibit 18, would you read the
19 highlighted section?

20 A. (Reading):

21 A. He put his penis inside my
22 vagina and I started bleeding. He made me go
23 wash myself in the bathroom.

24 Q. So does that contradict what you just
25 testified to, that you I had never done

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1 anything to you when you were eight or nine?

2 A. You did things. I never said you
3 didn't.

4 Q. In the first statement, you stated that
5 when you were eight or nine ---

6 THE COURT: Mr. Burns, she has
7 testified. The statements speak for them-
8 selves. You're arguing with the witness.

9 MR. ALAN BURNS: Thank you, Your
10 Honor.

11 THE COURT: Move on to your next
12 question.

13 CROSS EXAMINATION CONTINUED

14 BY MR. ALAN BURNS:

15 Q. You also said that when you were three
16 that [Minor 4] [Minor 5] and B.J. (phonetic) were
17 in the room with you; is that correct?

18 A. Right.

19 Q. How old is [Minor 5] What is the
20 difference between your age and [Minor 5] age?

21 A. [Minor 5] was a baby. I don't remember
22 exactly how old she was but she was a baby.
23 She could barely walk at the time. That's
24 what I remember.

25 Q. She was able to walk or barely able to

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1 walk. I need to get clarification on that.

2 A. I don't remember. Like I said, she was
3 a baby.

4 Q. Yes.

5 A. Was she wearing diapers? Underwear?

6 How was she dressed?

7 A. She had clothes on. But when you were
8 putting your hands on her and inside her
9 clothes.

10 Q. Was I putting my hand inside her -- was
11 she wearing panties or underwear?

12 A. I don't remember, but I know what you
13 did to her.

14 Q. **Minor 5** birthday, if you can remember
15 this, is July 23rd, 1977; is that correct?

16 A. I believe so.

17 Q. So that would mean that when you were
18 three that **Minor 5** wasn't even one yet?

19 A. I am not saying exactly that I was
20 three. I said about three. I am not saying
21 exactly three.

22 Q. In your first statement you said that
23 you was first because you was the oldest.
24 How did you know that?

25 A. How did I know what?

1 Q. How did you know that you were first
2 because you were the oldest?

3 A. I was the oldest.

4 Q. How do you know that you were first
5 because you were the oldest?

6 THE COURT: I don't understand
7 your question. How do you know that you were
8 first what? Clarify your question. It's an
9 unclear question.

10 CROSS EXAMINATION CONTINUED

11 BY MR. ALAN BURNS:

12 Q. In your statement you said that "*Alan*
13 *lined up us girls. I was first because I*
14 *was the oldest.*" How do you know that I
15 placed you first because you were the oldest?

16 A. That's the way that I remember. I
17 remember you putting me in the line first and
18 then lining everybody else up.

19 Q. Okay. You gave two different
20 statements. One to the Mount Pleasant police
21 alleging one thing. Then a totally different
22 statement to the Charleston County Sheriff's
23 Office, alleging something else. Which
24 statement should the jury believe?

25 A. They should believe both. In the first

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1 statement I didn't give all the details.

2 In the second statement, I just added on
3 to the first statement.

4 MR. ALAN BURNS: I am going to
5 leave it right there.

6 THE COURT: Redirect?

7 SOLICITOR HERRING-LASH: No, Your
8 Honor. May the witness be excused?

9 THE COURT: Any objection, Mr.
10 Burns, to the witness being excused?

11 MR. ALAN BURNS: No objection.

12 THE COURT: You may come down and
13 you are excused.

14 (WITNESS STEPS DOWN)

15 SOLICITOR HERRING-LASH: Your
16 Honor, the interpreter has to turn in some
17 paperwork.

18 THE COURT: Ladies and Gentlemen,
19 why don't I let you go to your jury room for
20 a moment. There is a matter of law that we
21 need to take up before the next witness.

22 Please don't begin your delibera-
23 tions, don't discuss the case. We will be
24 with you in about ten minutes I would think.

25 (JURY OUT @ 10:05 A.M.)

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1 THE COURT: During the testimony
2 of the last witness, Minor 3 there was
3 an objection made by Mr. Burns, and a sidebar
4 held.

5 Mr. Burns advised the court that
6 Assistant Solicitor Stoney was signaling the
7 witness about how to answer. The court noted
8 that the witness was watching -- the witness,
9 who had a hearing impairment, totally was
10 focused on the interpreter throughout the
11 entire examination; otherwise, she couldn't
12 understand what was being asked in the first
13 place.

14 Also the court would like to note
15 for the record, because the court overruled
16 the objection, that the interpreter was
17 standing between Mr. Stoney and the witness,
18 as was Ms. Herring-Lash. I find it
19 incredible and incredulous would be able to
20 signal a witness in a fashion that she would
21 understand in the first place.

22 But the court notes the objection
23 for the record. I would be happy -- and I
24 will -- I believe that Mr. Burns said that he
25 observed, and I will allow you to say for the

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1 record what you observed Mr. Stoney doing.
2 I think you said that he was giving hand
3 signals up and down for "yes" or "no." Is
4 that correct?

5 MR. ALAN BURNS: Yes, Your Honor.

6 THE COURT: Up and down, -- the
7 witness very seldom answered yes or no but --
8 but her -- certainly her testimony speaks for
9 itself.

10 MR. ALAN BURNS: Yes, sir. I
11 informed Mr. Smith about this, it was on
12 Monday, that I had observed Mr. Stoney doing
13 this throughout the entire trial with all
14 witnesses. He has several signals. If you
15 sit back and you pay close attention, you
16 will see him give certain signals ---

17 THE COURT: I would suggest
18 something. I appreciate that. I appreciate
19 it and the record now contains your notation
20 of that. I would suggest to you -- and I am
21 not giving you advice, because I can't. I
22 was a lawyer for twenty-one years. It
23 probably would serve me more to focus on what
24 the witness is saying and doing than what
25 anybody else in this courtroom is doing. But

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1 you -- you look at whatever you want to look
2 at. Thank you, sir.

3 MR. ALAN BURNS: I just would like
4 to also have this Motion entered into the
5 record and preserved for appeal.

6 THE COURT: Mr. Burns -- and I
7 will accept that as not argument but really
8 that you just don't understand, at all, what
9 we are doing. Do you understand that's
10 precisely what I just did for you?

11 MR. ALAN BURNS: Okay.

12 THE COURT: You don't understand
13 that?

14 MR. ALAN BURNS: Yes, sir, I do.

15 THE COURT: That's why I excused
16 the jury and went into this long discourse
17 about what we have. I am not here just for
18 talk. But I'll accept it as -- not as some
19 kind of challenge to the court but, rather,
20 your truly not understanding the process.
21 Which again points out some of my concerns
22 when you wanted to represent yourself. Thank
23 you, sir.

24 State ready to continue?

25 SOLICITOR HERRING-LASH: Yes, Your

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1 Honor.

2 THE COURT: Mr. Burns, are you
3 ready to continue?

4 MR. ALAN BURNS: Yes, sir.

5 THE COURT: Thank you. Bring in
6 our jury.

7 Mr. Burns, I don't think that we are
8 going to have any more questions but I almost
9 called you down -- we will talk about that at
10 the end. I can talk about that during the
11 Motions period. That's not a problem. Thank
12 you.

13 (JURY IN @ 10:21 A.M.)

14 THE COURT: Thank you, Ladies and
15 Gentlemen. We are ready to continue. State
16 may call its next witness.

17 SOLICITOR HERRING-LASH: The
18 State calls Don Elsey.

19 (WITNESS TAKES STAND)

20 DONALD E. ELSEY, being duly sworn to
21 tell the truth, the whole truth and nothing
22 but the truth, testified, as follows:

23 DIRECT EXAMINATION

24 BY SOLICITOR HERRING-LASH:

25 Q. Dr. Elsey, where do you work?

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1 A. D. Norton Lowcountry Children's Center.

2 Q. How long have you worked there?

3 A. Fifteen years.

4 Q. What is your job there?

5 A. I am the clinical director.

6 Q. What is your educational background?

7 A. I have a bachelors in psychology and
8 sociology, a masters in clinical counseling
9 and a doctorate in childhood development.

10 Q. What are your professional
11 certifications?

12 A. I am a licensed professional counselor
13 and a licensed professional counselor
14 supervisor.

15 Q. And what has been your professional
16 experience?

17 A. I worked for twenty-five plus years in
18 the field of psychiatry and psychology and
19 currently I've been working with an interest
20 in child abuse, for the last fifteen years.

21 Q. And do you supervise other
22 professionals?

23 A. I supervise all the clinical staff at
24 our place.

25 Q. At the Lowcountry Children's Center?

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1 A. Yes, ma'am.

2 Q. What is the Lowcountry Children's
3 Center?

4 A. It is a child advocacy center. We see
5 children when there is a concerns about their
6 safety or possible abuse. We provide
7 treatment, also, as needed.

8 Q. How many children have you seen with
9 concerns of child abuse in your professional
10 career?

11 A. Above five thousand.

12 Q. And have you testified as an expert in
13 the area of the dynamics of child sexual
14 abuse?

15 A. Yes, ma'am.

16 Q. About how many times?

17 A. About a hundred and twenty-five times.

18 Q. And have you been offered as an expert
19 in that area?

20 A. Yes, ma'am.

21 SOLICITOR HERRING-LASH: Your
22 Honor, at this time I would offer Dr. Elsey
23 as an expert in the area of child sexual
24 abuse.

25 THE COURT: Do you care to examine

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1 Dr. Elsey concerning his qualifications, at
2 this point?

3 MR. ALAN BURNS: No, sir, Your
4 Honor.

5 THE COURT: Very well. I will
6 permit Dr. Elsey to render opinions in that
7 area.

8 DIRECT EXAMINATION CONTINUED

9 BY SOLICITOR HERRING-LASH:

10 Q. Dr. Elsey, in your profession what is
11 meant by delay in disclosure?

12 A. It means that when an event happens that
13 there is a period of time between the child
14 telling what happened to them.

15 Q. Why don't kids tell?

16 A. There are multiple reasons. Because
17 they are scared to death, usually, when
18 something traumatic has happened.

19 They don't understand it.

20 There may be a real or a perceived that
21 they won't be believed or protected by their
22 caregivers.

23 They may think that they are partially
24 responsible for it happening, because
25 sometimes what happens is that they involve

1 the kid. 'Won't this be fun?' 'Doesn't this
2 feel good?' Which confuses the child. They
3 feel like they are just as culpable as the
4 person doing it.

5 Q. Is there research in this area?

6 A. Yes, ma'am. There's tons of research in
7 this area.

8 Q. Has the research borne out your clinical
9 experience?

10 A. (Affirmative nod), and delayed
11 disclosure is the norm in child abuse.
12 That's been experience after experience,
13 research after research.

14 Q. And have you see that by clinical
15 experience, in your day to day work?

16 A. Yes, ma'am.

17 Q. Do you also do a special group?

18 A. I've run a group for the past ten years
19 for adult males who were sexually abused as
20 children. There was no such group in this
21 community and I was asked to run that, so
22 it's been going on for approximately ten
23 years.

24 Q. And in that group, I assume that they
25 are all adult males?

1 A. Correct.

2 Q. And what is the average time that they
3 have waited between abuse and disclosure?

4 A. Twenty-nine years on average. When I've
5 asked the guys how long, it's been
6 approximately twenty-nine years between when
7 it happened and then telling somebody.

8 Q. Is it often the first time that they've
9 told, when they come to your group?

10 A. Actually no, because to be referred to
11 my group they would have had had to tell
12 someone else. But it is consistent that
13 males have a harder time talking about this
14 than females do. That is also based on the
15 research.

16 Q. In the group, do they discuss their
17 abuse?

18 A. They do.

19 Q. Have you had adult males discuss
20 instances of abuse that happened in their
21 early childhood?

22 A. Absolutely.

23 Q. Are they are to recall the details?

24 A. They are. It varies. There are some
25 who recall precise details, others have foggy

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1 memories of it, others who have snapshots of
2 it. All remember on some level when they
3 come to my group..

4 Q. As far as their memories, is that petty
5 consistent with the research?

6 A. Yes, the research is -- again,
7 depending on age. Approximately after age
8 four memories are more robust, but you can
9 remember -- even younger than that some
10 people have very vivid memories.

11 Q. I guess there are different -- you said
12 snapshot memories. What is that?

13 A. They just remember bits and pieces of
14 events. There are all sorts of potential
15 psychological reasons for that. Maybe it's
16 just so emotionally laden that it is just too
17 hard to remember at this point.

18 One of the dynamics of children, when
19 there is abuse, is that they want to survive.
20 Sometimes to survive, for some kids, is to
21 remember every detail. For others, it's just
22 to push it away and not remember it.

23 Q. Have you had adults who have repressed
24 and just all of a sudden memories come back?

25 A. I have. I have had several guys come in

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1 and talk to me in therapy and this has come
2 up. Or they're moving to a another location,
3 it may have popped up. Talking to a friend
4 has made it pop up.

5 Q. Is that kind of -- forgetting is kind of
6 a way of self-preservation, if you will?

7 A. It is a coping skill. It is a way, as I
8 mentioned earlier, for kids to survive. This
9 is so horrific -- 'I can't remember, I can't
10 think about it.'

11 Q. Then when it comes back, is there an
12 emotional reaction?

13 A. Most of the time there is almost
14 definitely an emotional reaction. It's
15 almost like they were that child again on
16 some level.

17 Q. Have you had others that have always
18 remembered but just didn't want to talk about
19 it?

20 A. I would say that's probably more the
21 norm. It's kinda been there but it's not
22 something that you want to think about.

23 If someone had asked me about it, you may
24 mentioned it, maybe not. But it's still
25 there.