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SC SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY

The Honorable R. Scott Sprouse, Circuit Court Judge

Appellate Case No: 2015-001769

ROY JAMES JENKINS,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

APPENDIX

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INDEX

TRIAL TRANSCRIPT.....	1
MOTION FOR MISTRIAL TRANSCRIPT	238
FINAL BRIEF OF APPELLANT	285
FINAL BRIEF OF RESPONDENT.....	298
UNPUBLISHED OPINION (2013-UP-124)	316
REMITTITUR	318
POST-CONVICTION RELIEF APPLICATION	319
RETURN.....	326
POST-CONVICTION RELIEF HEARING TRANSCRIPT	331
ORDER GRANTING POST-CONVICTION RELIEF	366
INDICTMENT	371
SENTENCING SHEETS	373

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,) TRANSCRIPT
5) OF
6 PLAINTIFF,)
7 VS.) RECORD
8 ROY JAMES JENKINS,) 2008-GS-42-7197
9 DEFENDANT.)

10 January 26th and 27th, 2012
11 Spartanburg, South Carolina
12

13 B E F O R E:

14 THE HONORABLE JOHN C. HAYES, III, Judge, and a jury.

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

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17 ASSISTANT SOLICITOR
18 Attorney for the State

19 PATRICIA ANDERSON
20 ESQ.
21 Attorney for the Defendant

22
23
24 PAMELA E. GREEN
25 Circuit Court Reporter
Seventh Judicial Circuit

I N D E X O F W I T N E S S E S

<u>WITNESSES</u>	<u>PAGE</u>
Jury Selection	9
Opening by the Court	20
Motions	25
Opening by Solicitor Gray	29
Opening by Ms. Anderson	31
████████████████████	
Direct examination by Sol. Gray	33
Cross-examination by Ms. Anderson	50
Redirect examination by Sol. Gray	70
JACK HARDEN	
Direct examination by Sol. Gray	73
Cross-examination by Ms. Anderson	74
SUSAN HUGHES	
Direct examination by Sol. Gray	77
Cross-examination by Ms. Anderson	81
JUDY SMITH	
Direct examination by Sol. Gray	85
Cross-examination by Ms. Anderson	90
Redirect examination by Sol. Gray	100
Recross examination by Ms. Anderson	101

1	<u>WITNESSES</u>	<u>PAGE</u>
2		
3	Motions	105
4		
5	ROY JENKINS	
6	Direct examination by Ms. Anderson	108
7	Cross-examination by Sol. Gray	121
8	Redirect examination by Ms. Anderson	134
9	MELANIE JENKINS	
10	Direct examination by Ms. Anderson	136
11	Cross-examination by Sol. Gray	144
12	NEAL JENKINS	
13	Direct examination by Ms. Anderson	149
14	Cross-examination by Sol. Gray	153
15	NICK JENKINS	
16	Direct examination by Ms. Anderson	155
17	Cross-examination by Sol. Gray	158
18	FRANK JENKINS, JR.	
19	Direct examination by Ms. Anderson	160
20	Cross-examination by Sol. Gray	163
21	Redirect examination by Ms. Anderson	165
22	ALBERT JENKINS	
23	Direct examination by Ms. Anderson	165
24	Cross-examination by Sol. Gray	167
25		

4

1	<u>WITNESSES</u>	<u>PAGE</u>
2		
3	FRANK JENKINS, SR.	
4	Direct examination by Ms. Anderson	168
5	Cross-examination by Sol. Gray	172
6	JUSTIN RAY	
7	Direct examination by Ms. Anderson	173
8	Cross-examination by Sol. Gray	176
9	SHIRLEY JENKINS	
10	Direct examination by Ms. Anderson	177
11	Cross-examination by Sol. Gray	181
12	SUSAN HUGHES	
13	Direct examination by Sol. Gray	184
14	Cross-examination by Ms. Anderson	185
15	██████ ██████	
16	Direct examination by Sol. Gray	187
17		
18	Closing by Ms. Anderson	196
19	Closing by Solicitor Gray	207
20	Charge by The Court	212
21	Question from the Jury	228
22	Verdict	234
23	Sentencing	236
24	Certificate	238
25		

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>

State's Exhibits

S-1	DVD		28

6

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2		<u>Defendant's Exhibits</u>		
3				
4	D-1	School Records		60
5	D-2	List		61
6	D-3	List		63
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2		<u>Court's Exhibits</u>		
3				
4	C-1	Note from Jury	233	
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

P R O C E E D I N G S

1

2

3

4

THE COURT: Are we ready to proceed with Mr. Roy James Jenkins?

5

SOLICITOR GRAY: Can we approach?

6

(WHEREUPON, a bench conference was held at this time.)

7

SOLICITOR GRAY: Your Honor, 16-3-659.1.

8

THE COURT: 16-3---?

9

SOLICITOR GRAY: 659.1.

10

THE COURT: Okay. Are we ready?

11

Strikes are five and five?

12

MS. ANDERSON: I thought I got ten.

13

14

15

16

THE COURT: I was having my clerk check. I don't, I don't question that. We were just checking on it. We've got a little cheat book we use, and unfortunately we didn't bring it in this morning. So, I'll---

17

SOLICITOR GRAY: I think it's five and ten, Your Honor.

18

THE COURT: Five and ten is fine.

19

All right. Anything before we get the jury around

20

to---

21

SOLICITOR GRAY: Yes, sir, one more thing.

22

(WHEREUPON, a bench conference was held at this time.)

23

SOLICITOR GRAY: One additional thing.

24

May we approach, Your Honor, real quick?

25

THE COURT: Yes, sir.

1 (WHEREUPON, a bench conference was held at this time.)

2 MS. ANDERSON: Your Honor, I'm gonna have one
3 additional witness. Albert Jenkins.

4 THE COURT: Albert Jenkins?

5 MS. ANDERSON: Yes, sir.

6 (WHEREUPON, the following takes place within the
7 presence of the entire jury panel.)

8 THE COURT: Members of the jury panel, we're gonna
9 start another trial here in this courtroom this morning.
10 It's the case of the State versus Roy James Jenkins.

11 Mr. Jenkins, would you stand and let the jury see who
12 you are and he's represented -- she -- he is represented by
13 Ms. Pat Anderson, Ms. Patricia Anderson.

14 (WHEREUPON, Ms. Anderson and the defendant stand at
15 this time.)

16 THE COURT: You may be seated.

17 (Parties comply.)

18 THE COURT: The State will be represented by Mr. Abel
19 Gray of the solicitor's office.

20 (Solicitor Gray stands at this time.)

21 THE COURT: You may be seated.

22 (Solicitor Gray complies.)

23 THE COURT: Roy James Jenkins is charged with two
24 counts of criminal sexual conduct with a minor in the second
25 degree. It's alleged that he committed a sexual battery on

1 [REDACTED] [REDACTED] when she was between 11 and 14, and
2 also when she was between 14 and 16 years of age. He has
3 entered pleas of not guilty to these charges, and the State
4 would have to prove his guilt beyond a reasonable doubt.

5 First, are any of you related by blood or marriage to
6 Mr. Roy James Jenkins or are any of you a close personal
7 friend or acquaintance of Mr. Roy James Jenkins, if so,
8 please stand.

9 (No response.)

10 THE COURT: No one stands.

11 Any of you -- do any of you know anything about this
12 case?

13 Have any of you heard about it from any source
14 whatsoever or have any of you formed or expressed an opinion
15 about the matters or issue involved, issues involved in a
16 case such as this, if so, please stand.

17 (No response.)

18 THE COURT: No one stands.

19 Were any of you members of the Grand Jury which passed
20 on these charges at an earlier time, if so, please stand.

21 (No response.)

22 THE COURT: No one stands.

23 Are any of you or a member of your immediate family
24 involved in law enforcement at any level, anything from the
25 MP's to the sheriff, public safety, constable, anything like

1 that, if so, please stand.

2 (Jurors respond.)

3 THE COURT: All right. What I'm gonna do is just ask
4 each of you, as I, as we've already done before, just to
5 give me your name again and, again, Uncle Eddie's a
6 policeman or whatever, and then, then I'll ask all of you
7 about your ability to be fair and impartial.

8 All right. We'll start at the front, the lady in the
9 purple.

10 JUROR: I'm Emory Roberts, Juror Number 147. My
11 husband's a Spartanburg County sheriff's deputy.

12 THE COURT: All right. Is this a Spartanburg -- is
13 this a county case?

14 SOLICITOR GRAY: It's a county case, Your Honor.

15 THE COURT: All right. Well, I'll excuse you from --
16 don't, don't leave. Just have a seat. But I'll go ahead
17 and excuse you since this is a case involving your husband's
18 agency.

19 All right. Yes, ma'am.

20 JUROR: 153, Nancy Sanders. My husband is an ex-police
21 officer for Greer.

22 THE COURT: All right. Remain standing. You just
23 remain standing please.

24 Yes, sir.

25 JUROR: Number 172, Eugene Soley. I was a military

1 policeman.

2 THE COURT: All right.

3 JUROR: Jim Ferrell, Number 179. I've got Air Force
4 security and police training.

5 JUROR: Juror Number 162, Dupre Sims. My dad's a
6 lieutenant with the Spartanburg County Detention Center.

7 THE COURT: Okay. Yes, sir.

8 JUROR: 97. My dad's a policeman in Woodruff.

9 THE COURT: And your name?

10 JUROR: Josh Jenkins.

11 THE COURT: All right.

12 JUROR: Number 181, Gary Kirkland. My brother-in-law
13 is a guard at the Tyger River.

14 THE COURT: All right. Remain standing.

15 Yes, sir.

16 JUROR: 120, Steven Mullinax. I was formerly employed
17 with the Sheriff's Office.

18 THE COURT: All right. Those of you who remain
19 standing, if your past experience or present experience in
20 law enforcement or relation to law enforcement, if that
21 would prevent you from being fair and impartial, please
22 raise your right-hand.

23 (No response.)

24 THE COURT: No one does. Thank you. You may be
25 seated.

1 Are any of you or a member of your immediate family
2 involved in the prosecution of criminal cases at any level,
3 solicitor, judge advocate general, anything dealing with the
4 prosecution of criminal cases, U.S. attorney, anything like
5 that, please stand.

6 (No response.)

7 THE COURT: No one stands.

8 Are any of you members of the, contributors to
9 organizations such as Mothers Against Drunk Drivers,
10 Students Against Drunk Drivers, Citizens Against Violence,
11 the Troopers Association, the Sheriff's Association,
12 Fraternal Order of Police or any like organization, if so,
13 please stand.

14 (No response.)

15 THE COURT: No one stands. Have any of---

16 (Juror responds.)

17 THE COURT: Oh, yes, ma'am, your name and number?

18 JUROR: My name is Eula Loles. My Number's 116. I'm a
19 victim advocate for Safe Home Rape Crisis.

20 THE COURT: Would that affect your ability to be fair
21 and impartial---

22 JUROR: No, sir.

23 THE COURT: ---in the trial of this case?

24 JUROR: No, sir.

25 THE COURT: Okay. Thank you. Be seated.

1 Have any of you been represented by Ms. Anderson or her
2 law firm or have any of you been, wouldn't of been
3 represented by the solicitor, but any of you been involved
4 with the Solicitor's Office in any capacity such as a
5 victim's advocate, an investigator, a volunteer, a witness,
6 anything like that, if so, please stand.

7 (Jurors respond.)

8 THE COURT: All right. Yes, ma'am, your, your name and
9 number?

10 JUROR: Melissa Blackwell, 16. Ms. Anderson was a
11 guardian ad litem for my husband.

12 THE COURT: All right. Just remain standing.

13 Yes.

14 JUROR: Steven Mullinax, 120. I was also with the
15 Coroner's Office. I was involved in some cases.

16 THE COURT: All right. Would, would that affect either
17 of your ability to be fair and impartial?

18 If it would affect your ability, raise your right-hand.

19 (No response.)

20 THE COURT: Neither does. Thank you. You may be
21 seated.

22 The next question is one of those that's somewhat
23 awkward to ask, but I have to ask it, and I'm not gonna ask
24 you to go into great detail, but if any of you or a member
25 of your family been either the, either the victim of what

1 you would consider a sexual battery, sexual assault, or been
2 charged with having committed a sexual battery or sexual
3 assault, if so, please stand.

4 THE COURT: All right. Yes, ma'am, your name and
5 number?

6 Again, I'm not gonna ask you to go into great detail
7 because that's not fair to you, but just---

8 JUROR: Number 83, Christen Holmes. My nephew is
9 incarcerated for criminal sexual conduct.

10 THE COURT: All right. Just remain standing.

11 Yes, ma'am.

12 JUROR: Simone Nivens, Number 15. I don't want to go
13 into details.

14 THE COURT: I know and I don't want you to.

15 But having this as part of your life experience, if
16 that would affect your ability to be fair and impartial in
17 this trial, please raise your right-hand.

18 (Juror responds.)

19 THE COURT: All right. Your name again?

20 I got---

21 JUROR: Simone Nivens.

22 THE COURT: All right. I'm gonna excuse you. Don't
23 leave. Just have a seat.

24 The other lady did not raise her hand. Thank you.

25 Thank you both.

1 Have any of you or a member of your immediate family
2 been involved with the Department of Social Services
3 regarding any type of abuse, either sexual or otherwise, to
4 a minor, to a child, if so, please stand.

5 And, again, I'm not gonna ask you to go into
6 particulars.

7 (No response.)

8 THE COURT: No, no one stands. Thank you.

9 (Juror responds.)

10 THE COURT: Oh, I'm sorry, yes, sir.

11 JUROR: I adopted two girls that was abused.

12 THE COURT: All right. Your name and number?

13 JUROR: Darryl Threadgill, 177.

14 THE COURT: Would that affect your ability to be fair
15 and impartial in this trial?

16 JUROR: No, sir.

17 THE COURT: Okay. Thank you. You may be seated.

18 All right. The following are possible witnesses in
19 this trial. I do not know that all will testify. They're
20 quite a few. If you recall, there were quite a few on the
21 one the other day and not all of them ended up testifying.
22 I can't tell you whether all these will or will not, but you
23 may, even if they don't testify, their name may be
24 mentioned. So, if any of you are related by blood or
25 marriage or if you're a close personal friend or

1 acquaintance, go to the same church, belong to the same
2 club, play bridge with, play golf with, anything like that,
3 any of these individuals, please stand.

4 And if they're present, if they would stand so --
5 sometimes people can recognize the faces as opposed to the
6 name.

7 [REDACTED].

8 (Witness stands.)

9 THE COURT: Okay. You may be seated.

10 (Witness complies.)

11 THE COURT: Once you stand you can just, and turn, then
12 you can be seated.

13 Justin Ray.

14 (Witness stands.)

15 THE COURT: Susan Hughes.

16 (Witness stands.)

17 THE COURT: Judy Smith.

18 (Witness stands.)

19 THE COURT: T. Alderidge of the Spartanburg County
20 Sheriff's office.

21 THE COURT: Jack Harden.

22 (Witness stands.)

23 THE COURT: Albert Jenkins.

24 (Witness stands.)

25 THE COURT: Melanie Jenkins.

1 (Witness stands.)

2 THE COURT: Shirley Jenkins.

3 (Witness stands.)

4 THE COURT: Frank Jenkins, Senior.

5 (Witness stands.)

6 THE COURT: Nick Jenkins.

7 (Witness stands.)

8 THE COURT: Neal Jenkins.

9 (Witness stands.)

10 THE COURT: And Frank Jenkins, Junior.

11 (Witness stands.)

12 THE COURT: Any of you related by blood or marriage or
13 close personal friend or acquaintance of any of those
14 individuals, if so, please stand.

15 (No response.)

16 THE COURT: No one stands.

17 Anything further from the State?

18 SOLICITOR GRAY: No, sir, Your Honor.

19 THE COURT: Anything from the defense?

20 MS. ANDERSON: No, sir.

21 THE COURT: Do any of you know of any reason whatsoever
22 why you could not or should not serve as a fair and
23 impartial juror in the trial of this particular case, if you
24 do, please stand at this time.

25 (No response.)

1 THE COURT: No one stands.

2 Now, you've all been in here and seen how we draw the
3 jury. And, so, please come forward, and as I, as you, as we
4 did the other day, turn around, face the table with the
5 solicitor who will say either excuse or present. If you
6 hear excuse, return to your seat. If you hear present, turn
7 to where Mr. Jenkins and Ms. Anderson are seated, and she
8 will say either say swear the juror or excuse the juror.

9 (WHEREUPON, a jury panel consisting of 12 jurors was
10 selected at this time.)

11 THE COURT: All right. We'll draw an alternate.

12 Strikes will be one and two.

13 (WHEREUPON, an alternate juror was selected at this
14 time.)

15 THE COURT: Anything from the State involving the
16 striking of the panel?

17 SOLICITOR GRAY: No, sir, Your Honor.

18 THE COURT: Anything from the defense?

19 MS. ANDERSON: None, Your Honor.

20 THE COURT: All right. Those of you who were chosen,
21 if you'll please stand, the clerk's gonna administer the
22 oath, and when you sit down, Mr. Hyleman, and Ms. Beck, I'm
23 gonna ask y'all to change seats. I'm gonna ask you to be
24 the foreman of this jury. So, the two -- why don't y'all
25 just go ahead and do it now?

1 All right. Raise your right-hand and the clerk will
2 administer the oath.

3 (WHEREUPON, the jury panel was placed under oath at
4 this time.)

5 THE COURT: You can be seated.

6 I'm gonna chat with you just for a moment or two and
7 then turn the case over to the attorneys.

8 To these charges, Mr. Jenkins has entered pleas of not
9 guilty. His pleas of not guilty place on the State the
10 burden of proving his guilt beyond a reasonable doubt.
11 Anyone, including Mr. Jenkins, who is charged with any
12 offense in our system is presumed innocent of the charge.
13 The State has to prove that person's guilt beyond a
14 reasonable doubt.

15 Now, each attorney has a right, but no obligation, to
16 come before you in just a moment and make what are called
17 opening statements. The attorneys are not witnesses. So,
18 they're not testifying, and, at this point, they are not
19 giving you or not asking you to reach a certain conclusion.
20 They're gonna give you a blueprint or an outline of the
21 trial.

22 At a later point they will have the opportunity to make
23 what we call closing arguments or summations, and at that
24 point they will be trying to convince you that your verdict
25 is based on the law and the evidence in the trial should be

1 a certain verdict.

2 I have three primary jobs in a trial such as this. One
3 is I rule on questions of evidence. If one party believes
4 that certain evidence should be allowed into the record,
5 either an exhibit or testimony, and the other, based on some
6 law or rule of evidence, believes that that evidence should
7 not be allowed, it's up to me, as the trial judge, to
8 determine whether that evidence is admitted or not.

9 I also am the logistics persons. I sometimes refer to
10 it as the wagon master. I make sure we take breaks, that
11 one person speaks at a time, and try to make sure you can
12 hear and see what's going on.

13 My third job is that I'm the sole judge of the law in
14 this case. You must take, accept, and apply the law as I
15 charge it, and this is true even if you think I charged the
16 law in error or even if you think the law should be
17 different. Your oath requires you take, accept, and apply
18 the law as I charge it.

19 I'm giving you some legal principles now. Perhaps,
20 during the trial, I will and at the end of the trial I will
21 give you a concise and comprehensive charge on the law that
22 you are to apply to the facts as you determine the facts to
23 be.

24 You're not to infer from anything I say or do at
25 anytime as indicating an opinion of mine on the facts. I'm

1 not allowed to formulate or express to you any opinion on
2 the facts. It's solely your job, as the trial jury in this
3 case, to examine the evidence, to give to the evidence the
4 effect, the value, the weight, the truth you believe it
5 should have.

6 In doing this you may believe one witness as opposed to
7 several, several witnesses as opposed to one, and you may
8 believe all, part, or none of a witness' testimony. Use
9 your common sense, your sense of logic, your sense of
10 reason. Use your experiences in life as you analyze the
11 evidence.

12 As judges of the facts, you must judge the credibility,
13 that is the believability of the witnesses who testify. In
14 assessing credibility, use the things I've just talked
15 about. Use the things that you, in your day-to-day life,
16 find as being indicative of truthfulness, and you can use
17 certain evaluators, a witness' demeanor, how they act on the
18 stand, are they hesitant, straight forward in responding to
19 questions.

20 Consider the opportunity a witness had to know the
21 things about which they testified. You can consider any
22 bias or prejudice. That is whether a witness would wish to
23 help or hurt one side or the other. All these things you
24 consider in determining the true facts, apply the law, and
25 you'll be in a position to return a verdict that speaks the

1 truth.

2 You're not to discuss the case outside the courtroom
3 with anyone. If anyone does try to discuss this case with
4 you, report that back to me hopefully giving me that
5 person's identity because I will have to take action against
6 someone who is trying to talk to a seated juror.

7 Do not discuss the case among yourselves, and do not
8 try to make up your own mind until we reach the point where
9 I instruct you to jointly deliberate and return a unanimous
10 verdict. Prior to that time you're equipped with all the
11 tools you need to make a fair and reasoned decision.

12 Do not do any independent research on this case. Don't
13 go on line. Don't use any electronic device to obtain any
14 information about this case, about the charge, about the
15 parties, about the attorneys, about me, about trial
16 procedure. In short, don't do any research whatsoever of
17 any fashion. You must base your verdict solely on the law
18 and the evidence. I mean I know it's tempting, because we
19 have so many sources now, but it would be a violation of
20 your oath if you went on-line or tweeted or anything else
21 about this case. So, do not do that.

22 I do not know that this case will receive any news
23 coverage, but if it does do not let yourself be exposed to
24 it. Don't read about this case, watch anything, or listen
25 to anything that could remotely deal with this trial. If

1 anything catches your eye or ear, please make sure you don't
2 hear anything about the case.

3 You don't need to take notes.

4 Mr. Foreman, you will be a liaison between the jury and
5 me. You will preside over the jury's deliberation and
6 ultimately sign the jury's unanimous verdict.

7 We'll take breaks -- if you can't see or you can't
8 hear, cup your ear, give me a voice raising gesture. This
9 courtroom is set up pretty, pretty well so that you should
10 be able to hear the witnesses, but if you can't, some people
11 have soft voices, let me know and I'll try to make a witness
12 speak louder. If something's blocking your view, just give
13 me a nudging gesture and I'll try to make sure that you can
14 see what you need to see, and hear what you need to hear.

15 We take breaks about every hour and a half. I find
16 that that is a pretty good break time for most people. But
17 if anybody needs a break at anytime, simply raise your right
18 hand, and no questions asked, we'll take a break.

19 And I extend that to counsel and to the defendant.

20 We want to move the case along, but we're not in such a
21 hurry that we won't take a break if someone needs to take a
22 break, and everybody's comfort level is different, and I'm
23 certainly gonna honor anybody's need to take a break.

24 So, at this time I'm going to allow the attorneys to
25 make before you their opening statements.

1 MS. ANDERSON: May we, may we---

2 THE COURT: Well, do I need to excuse the jury just for
3 a few minutes?

4 MS. ANDERSON: Yes, sir.

5 THE COURT: Okay. Let me let you go to the jury room.
6 We've been -- I've been working since 9:00. I need a break
7 anyway. I'm raising my right hand.

8 So, if you'll go, we'll take a break and take up some
9 matters, and, and then I'll send for you.

10 (WHEREUPON, the following takes place outside the
11 presence of the jury.)

12 THE COURT: All right.

13 MS. ANDERSON: Your Honor, I actually needed a bathroom
14 break --

15 THE COURT: Okay.

16 MS. ANDERSON: -- but we do have motions too that---

17 THE COURT: All right. Why don't we take about a ten
18 minute break, and then we'll, we'll be back, reconvene in
19 about ten minutes and do the motions.

20 MS. ANDERSON: Yes, sir, thank you.

21 (WHEREUPON, a short recess was taken at this time.)

22 THE COURT: All right. Ms. Anderson or Mr. Gray.

23 SOLICITOR GRAY: Yes, sir.

24 THE COURT: One of you.

25 MS. ANDERSON: Your Honor, my first motion is to

1 suppress the introduction of a recorded telephone
2 conversation. They actually provided me with two
3 conversations. One of which you could hear nothing on it,
4 and the second is not my client, and I think it's pretty
5 obvious if you hear my client speak, and the tape, the tape
6 that they're proposing or they're introducing into evidence
7 is not my client.

8 SOLICITOR GRAY: I've spoken to my witnesses, Your
9 Honor. She is correct.

10 THE COURT: Okay.

11 MS. ANDERSON: What?

12 SOLICITOR GRAY: You're correct.

13 MS. ANDERSON: I'm correct. Okay.

14 THE COURT: So those won't be coming in?

15 SOLICITOR GRAY: No, sir.

16 MS. ANDERSON: Thank you.

17 THE COURT: Okay. All right.

18 MS. ANDERSON: Okay. I have asked to be allowed to
19 bring in the fact that the, [REDACTED] [REDACTED] mother had taken
20 her to the doctor to get birth control pills.

21 SOLICITOR GRAY: Your Honor, I don't see the relevance
22 of that at all, at all.

23 THE COURT: I don't either. I'll -- I'm not gonna
24 allow that. Even if that's true and even if that -- that
25 has nothing to do with whether or not someone has violated

1 the law regarding having sexual relations with someone who's
2 not old enough to do it.

3 MS. ANDERSON: All right. And I believe you've already
4 ruled on---

5 THE COURT: So, I'm -- you're on the record as
6 having -- I don't think you've made a proffer on that, but
7 if you -- I'm not gonna allow you to go into it.

8 MS. ANDERSON: That's fine, Your Honor, and I believe I
9 mentioned my motion to quash the second indictment. I
10 believe you ruled on it from the bench.

11 THE COURT: Well, well, I didn't rule, but what, what
12 it boiled down to, if I understood it, was that the second
13 count, which has to do with criminal sexual conduct second
14 degree, the victim being 14 to 16 years of age, that you had
15 been unaware of that. However, it's also my understanding
16 this case was called August of 2011, not tried for reasons I
17 don't know, and at that time you were put on notice of that
18 charge.

19 MS. ANDERSON: Well, actually it was 2010.

20 THE COURT: Oh, okay. Well -- so---

21 MS. ANDERSON: It was filed on November 21st, 2008.
22 So --.

23 THE COURT: All right. Well, your motion is to quash
24 Count Two?

25 MS. ANDERSON: And this was for lack of notice, but

1 I'm, I'm assuming that, since I've now had two years --.

2 THE COURT: Yeah, I think you've had plenty of notice
3 and---

4 MS. ANDERSON: Yes, sir.

5 THE COURT: So, so, I deny that motion.

6 MS. ANDERSON: Thank you, Your Honor.

7 SOLICITOR GRAY: Thank you. We have one stipulation
8 as, as to, to a piece of evidence, Your Honor.

9 THE COURT: Okay.

10 (WHEREUPON, the DVD was marked as State's Exhibit No. 1
11 and received into evidence at this time.)

12 SOLICITOR GRAY: State's Exhibit No. 1, the taped
13 testimony of a, not an expert necessarily, but someone who
14 was, interviewed Miss [REDACTED], counseled her. That's
15 Michelle Aroya Staggs. That was done in 2011. Ms. Anderson
16 was present. She cross-examined Mrs. Staggs as to this
17 case, and I believe there's a stipulation that that
18 videotaped testimony be admitted.

19 MS. ANDERSON: That's correct, Your Honor.

20 THE COURT: Okay. Anything else before we get the jury
21 in?

22 SOLICITOR GRAY: No, sir, Your Honor.

23 THE COURT: All right. Well, since it's -- I -- we'll
24 see how it goes, but we'll probably work a little late
25 tonight so we can make sure that we, we will be able to

1 finish tomorrow. I'm not talking about 8:00 or 9:00.

2 SOLICITOR GRAY: Yes, sir.

3 THE COURT: But we won't be breaking at 5:00. We'll
4 probably work till 6:00 or a little after just so---

5 SOLICITOR GRAY: Yes, sir.

6 MS. ANDERSON: Thank you, Your Honor.

7 THE COURT: ---for your planning.

8 All right. Bring in the jury.

9 (WHEREUPON, the following takes place within the
10 presence of the jury.)

11 THE COURT: All right. Mr. Gray.

12 SOLICITOR GRAY: Thank you, Your Honor.

13 May it please the Court, Ms. Anderson.

14 Good morning, ladies and gentlemen. My name is Abel
15 Gray. I'm an assistant solicitor here in Spartanburg
16 County. I'll talk to you briefly about this case.

17 The victim in this case is Miss [REDACTED]. This
18 case is relatively old, but not to Miss [REDACTED]. See, she
19 was adopted by Mr. and Mrs. Jenkins when she was very very
20 young. They were her parents as far as she knew.

21 At a young age she alleges that Mr. Jenkins started
22 grooming her, touching her, doing different things to her.
23 This started about 2002 when she was under the age of 11.
24 It---

25 MS. ANDERSON: Your Honor, I would object that she was

1 under the age of 11.

2 THE COURT: well, I think he's said that's when things
3 that---

4 SOLICITOR GRAY: I apologize.

5 THE COURT: Okay.

6 SOLICITOR GRAY: Thank you.

7 THE COURT: Let's just move on.

8 Disregard that part of the statement.

9 SOLICITOR GRAY: Thank you.

10 Anyway, from 2002 to 2005 sexual battery occurred
11 between the defendant and the victim.

12 Sexual battery takes many different forms. Oral sex,
13 digital penetration, and intercourse. Unfortunately they're
14 some details this morning from the victim about possibly all
15 three, and one day, when she was old enough to leave, she
16 did, but she is held on to the premise that this happened.

17 what you won't hear today is some type of CSI, DNA, all
18 that type of thing situation. You're gonna hear about
19 actions and behavior and the totality of the behavior of the
20 victim and the defendant. And based upon those actions,
21 their behavior, you're gonna see that over possibly a four
22 to five year period he steadily repeatedly sexually abused
23 this young lady.

24 Even though she's an adult now, she still wants to tell
25 her story to you, and the judge is gonna tell you, at the

1 end of this trial, you can believe one person or many or
2 many over one.

3 when you do that, judge her credibility.

4 what does she have to gain by this or is she just plain
5 old fashioned telling you the truth?

6 And if she is, that means that man is guilty of
7 criminal sexual conduct on a minor. Not as she is now, but
8 on a minor.

9 I thank you for your attention.

10 MS. ANDERSON: Your Honor, if it please the Court?

11 THE COURT: Yes, ma'am.

12 MS. ANDERSON: I'm Pat Anderson. I'm from Spartanburg,
13 grew up here, and I've been practicing criminal law for the
14 last 25 years. Actually started a little late. I was 37
15 when I got out of high school, I meant out of, excuse me,
16 out of Law school. So, I looked like an experienced lawyer
17 when I first started even though I wasn't.

18 But I think Mr. Gray said it right. This is a, what I
19 call a he said/she said case. We don't have DNA. We don't
20 have any of the, as he said, the things that you see on TV
21 here. But we have a family who adopted [REDACTED] when she was
22 six years old. She was Melanie Jenkins, Roy's wife's
23 daughter, her sister's daughter. They adopted her and
24 treated her as one of their own children.

25 They have two sons who are also here with us, and what

1 you're gonna hear today is that [REDACTED] was a pretty difficult
2 child. You'll hear from her grandparents that she couldn't
3 keep a secret. You'll hear that she had good grades in
4 school. She was in the honor guard, I mean the color guard
5 at her, at Dorman for all, the whole time of high school.
6 She actually had a job and worked after school, and -- but
7 the trouble started when she became a teenager.

8 And what Melanie and Roy Jenkins did to discipline
9 their children was to take away privileges, and right before
10 Miss [REDACTED] went to the police about this, she had had, she
11 had been grounded. She could not -- she had allowed her 15
12 year old boyfriend, who's no longer 15, and is in here also,
13 to drive her mother's car, and that was absolutely
14 forbidden. So, they took away her car privileges.

15 And right after that, Roy's truck was stolen, and it
16 turned out that no one was ever arrested in it, but when it
17 was found it had [REDACTED]'s belongings in it. And anyway --
18 again, no car privileges, and this is when she went to the
19 police.

20 I mean she, she has -- her school record is good. She
21 didn't miss school. But she did like most teenagers, you
22 know, act like a teenager and tried her parent's limits.
23 But what's so sad about this is this is -- basically you're
24 gonna have to decide who's telling the truth. There's no
25 other way to prove or disprove this because you're gonna

1 hear what she says and you're gonna hear what Roy says, and
2 then you're gonna have to say who's telling the truth.

3 And I know that y'all are good citizens and will be
4 able hopefully to tell. The judge is gonna, has a little
5 bit to explain to you about how you can believe part of what
6 one witness says and part of what another says. But I
7 believe, if you listen very carefully to this, you will find
8 that, unfortunately, that this was something made up by
9 [REDACTED] to get her parents in trouble, to get her
10 father in trouble because she was mad that they'd taken her
11 car away.

12 I thank you and I hope y'all will listen very
13 carefully.

14 Thank you.

15 THE COURT: You may call your first witness.

16 SOLICITOR GRAY: Thank you, Your Honor.

17 State calls [REDACTED].

18 THE COURT: Please come up and be sworn.

19 [REDACTED], having been first duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY SOLICITOR GRAY:

23 Q Miss [REDACTED], state your full name please.

24 A [REDACTED].

25 Q How old are you, Miss [REDACTED]?

- 1 A I'm 22.
- 2 Q Now, when is your date of birth?
- 3 A ██████████.
- 4 Q Where were you born, Miss ██████████?
- 5 A I believe here in Spartanburg.
- 6 Q And who was your birth mother?
- 7 A Dana Smith.
- 8 Q Does she have any relationship to Mr. and Mrs. Jenkins?
- 9 A She is Melanie Jenkins sister.
- 10 Q Now, how did it come to be that you moved in with
- 11 Mr. and Mrs. Roy Jenkins?
- 12 A From as far as I know, I've always lived with my
- 13 grandparents, the parents of Dana and Melanie. When they
- 14 both passed away, in '96 my grandmother passed away, which
- 15 my grandpa had already passed away, I was then placed into
- 16 the care of them.
- 17 Q You were how old at that time?
- 18 A I was seven, around that age.
- 19 Q Had you known Roy and Melanie Jenkins before, before
- 20 that time?
- 21 A Yes, I knew them as my aunt and uncle at that time.
- 22 Q Were there any problems with you moving in there?
- 23 A Nothing I know of, no.
- 24 Q Do they have any other children in the home?
- 25 A They did have two sons.

1 Q How old were they?

2 A Nick may of been nine. He's two years older than me,
3 and Neal is six years older than me. So --.

4 Q Do you know the address of Mr. and Mrs. Jenkins at the
5 time?

6 A At the time they lived at ██████████ ██████████ ██████████,
7 South Carolina.

8 Q That's here in Spartanburg County?

9 A Yes, sir.

10 Q Now, how -- did they ever move from that address?

11 A They did.

12 Q When did they move?

13 A I'm not sure of the exact date, but after probate had
14 been followed through with the deceased of my grandparents,
15 they resided in their home on West Haven Court in
16 Spartanburg also.

17 Q Is that where you spent the bulk of your childhood?

18 A Yes.

19 Q Did you stay there until you left the home?

20 A Yes.

21 Q At West Haven Court?

22 A Yes.

23 Q Here in Spartanburg County?

24 A Yes, sir.

25 Q In the City of Spartanburg?

1 A I don't know if it's in the city limits, but maybe in
2 the county.

3 Q All right. Now, that will be ██████████ ██████?

4 A 211, sir.

5 Q 211.

6 That was the original address?

7 A That was the first address that I moved into with them.

8 Q Was it normal for a while living there?

9 A No, it was never normal. I was an only child with my
10 grandparents and I moved into a house where there were two
11 children and it was hard to transition.

12 Q How were you treated?

13 A I felt like I was treated differently from them, from
14 the other children.

15 Q How so?

16 A I don't think I was understood maybe. They got more,
17 more things given to them than I got.

18 Q Okay. Did that make you resentful of your adoptive
19 parents?

20 A No, I can understand it.

21 Q Now, how long did you stay there until some things
22 started happening between you and Mr. Jenkins?

23 A It wasn't long before things started happening. They
24 graduated up. He would ask me to do small favors for him
25 like massage his back or massage his feet and legs and

1 things like that to start off with, and everything
2 progressed from that. It's not like one day he come in and
3 said you do this. It's everything just progressed up from
4 me doing massages on him.

5 Q Nothing before 11 years of age, nothing sexual?

6 A No.

7 Q All right. Now, between 11 and 14 I'm guessing some
8 things happened --

9 A Yes.

10 Q -- of a sexual nature?

11 Please describe those incidents.

12 A He would ask me to not only massage his feet and
13 shoulders, back, and legs, but he would then ask me to
14 massage his penis for him. So called give a hand job to
15 him. And later on that progressed into oral sex. He would
16 fondle me as I was doing that for him.

17 Q What were the circumstances surrounding these requests?

18 A At a very young age I was a smoker, and they would
19 provide my cigarettes for me.

20 Q Who would?

21 A Roy and Melanie Jenkins --

22 Q Uh-huh. (Affirmative).

23 A -- would provide my cigarettes for me, and at that time
24 it'd become a habit, and I would be refused of cigarettes if
25 I didn't perform these certain acts. I would be grounded

1 from certain things. At the time I didn't have a driver's
2 license. So, I couldn't go anywhere. So, like they would
3 just take away my TV or something, you know, anything they
4 could take away.

5 Q You say they would do it. well---

6 A well, Roy would do it, but she always backed him up.
7 whatever he said went was like he was the king of the house
8 or something.

9 Q And what were the reasons for this---

10 A He would make---

11 Q ---punishment?

12 A He would make up anything he wanted to. One of the,
13 one of the simplest things was I didn't put a Pepsi back in
14 the fridge after I drank the last one and I got grounded for
15 that. Like he could just find any reason to make it look
16 like I did something wrong to ground me for it. I did
17 receive spankings as well.

18 Q Were there any -- it's 2002 and 2003 time.

19 Before you were 14, any problems in school at that
20 time?

21 A No, I don't believe so.

22 Q Any discipline from Mr. and Mrs. Jenkins because school
23 related activities or problems?

24 A No, I don't think.

25 Q Were you exclusively punished, you believe, for not

1 fulfilling Mr. Jenkins' wants?

2 A At least 95 percent of the time. I'm not gonna sit
3 here and say I didn't do any wrong as a child because I did,
4 but the majority of the time were because I did not fulfill
5 his needs.

6 Q And, again, before you turned 14, what were these
7 actions and desires and needs of Mr. Jenkins?

8 A He wanted me to perform then just the hand jobs and the
9 oral sex on him as he fondled me and touched me.

10 Q And, of course, was any of this consensual?

11 A No, I didn't want to do it.

12 Q Any initiation by you at all?

13 A No.

14 Q You were smoking cigarettes at 12 and 13?

15 A Yes, actually before then.

16 Q Who gave you your cigarette, your first cigarette?

17 A My first cigarette was from my brother.

18 Q And who was that?

19 A Nick Jenkins.

20 Q Nick Jenkins.

21 And after that, Mr. Jenkins provided you cigarettes for
22 you?

23 A Yes.

24 Q Now, after you turned 14 -- well, in 2002/2003, how old
25 were you?

1 A 2002 and 2003?

2 Q Uh-huh. (Affirmative).

3 A Thirteen and fourteen I guess.

4 Q And your birthday is?

5 A ██████████

6 Q And that's when you turned -- in 2003 I guess---

7 A I was turning 14.

8 Q Okay. So, between 14 to 15, what happened differently?

9 A It graduated into more of an intercourse. Not just the
10 oral sex and the fondling, but he started to ask for more.

11 Q Why did it graduate from fondling to intercourse?

12 A I believe at the time he had found out that I had
13 become sexually active with my boyfriend at the time.

14 Q All right. And at that time how would the request or
15 demands take place?

16 How would the requests or demands take place from Mr.
17 Jenkins?

18 A I'm not really---

19 Q What would he say to you?

20 A He would just -- the biggest thing he would say to me,
21 the most often thing he would say to me was well, if I don't
22 do this, then, you know, it's gonna hurt -- something about
23 he had a prostate problem. If I don't get off, then I'll
24 get backed up I think is how he described it, and supposedly
25 his wife wasn't doing it for him.

1 Q And you were 14/15 years old at this time?

2 A Yes.

3 Q What was the frequency of the sexual abuse?

4 A He would ask me to do it anywhere between two to three
5 times a week.

6 Q At this time were you still doing well in school?

7 A Yes.

8 Q Did you have a car?

9 A I -- not in my name. I drove their truck and their --
10 they also had other cars that I drove that were theirs.

11 Q Were you still getting the same type of punishment if
12 you refused Mr. Jenkins?

13 A Uh-huh. (Affirmative).

14 Q Like what?

15 A I'd be grounded from going anywhere. They'd take the,
16 whatever car I was driving and I couldn't go anywhere, and
17 they even grounded me from wearing makeup one time to
18 school. Just anything they could think of.

19 Q But were you also rewarded---

20 A Oh, yes.

21 Q ---for performing sexual acts?

22 A Uh-huh. (Affirmative).

23 Q Like what?

24 A Well then he would buy my cigarettes and they would
25 all -- he would also buy my alcohol for me.

1 Q Buy you alcohol?

2 A Yes, sir.

3 Q Did you ever go out to any clubs or anything with Mr.
4 Jenkins?

5 A Yes.

6 Q Tell me about that.

7 A We went to -- they owned a lake house on Lake
8 Greenwood, and we would go to -- at the time I believe the
9 name of it was Harris Landing and there was another one
10 called T. Roy's. We went to those bars pretty often.

11 Q And how old were you?

12 A At the time between 13 to 15 I guess when they got the
13 lake house, and we were going to those places.

14 Q Would Mr. Jenkins buy you cigarettes then?

15 A Yes.

16 Q Would he buy you alcohol in these establishments?

17 A He couldn't buy them and give them to me in the
18 establishments. We could go outside. He mostly bought my
19 alcohol for me to drink at home.

20 Q That he would take you to these establishments anyway?

21 A Yes, I still went with them.

22 Q All right. What would happen inside these places?

23 A A lot of them were like karaoke bars, and we'd sing
24 karaoke and dance.

25 Q You danced with Mr. Jenkins?

- 1 A I did.
- 2 Q He danced with his wife there?
- 3 A Seldom, but I believe he has maybe a couple times.
- 4 Q Why was he dancing with you?
- 5 A I'm not sure why he'd rather dance with me.
- 6 Q Any, anybody else there to witness these dancings or
- 7 whatever?
- 8 A Yes.
- 9 Q Who else?
- 10 A Jack Harden has witnessed it.
- 11 Q All right. How long, I guess between age 11 and 16,
- 12 this sexual abuse went on?
- 13 A Yes, sir.
- 14 Q You didn't tell anybody from 11 to 16 what was going
- 15 on?
- 16 A I made hints, but I never came out and said anything.
- 17 I would tell Melanie can I please go with you to the store,
- 18 don't leave me here with him, can I please go, and things
- 19 like that, but I never come out and said he was doing this
- 20 to me between those ages.
- 21 Q Now, this occurred at, as you said, at the house in Una
- 22 and the house in Spartanburg---
- 23 A Yes.
- 24 Q ---correct?
- 25 Any other places?

1 A And the house at Lake Greenwood.

2 Q And the house on Lake Greenwood, but that wasn't here
3 in Spartanburg County, was it?

4 A No, it's in Laurens County I believe.

5 Q All right. But you were in high school?

6 A Uh-huh. (Affirmative).

7 Q Was it sexual abuse still going on?

8 A (Witness nods affirmatively.)

9 Q But---

10 THE COURT: You got to answer with words.

11 A Yes.

12 Q I'm sorry.

13 By all accounts, you appeared to be a normal teenager,
14 correct?

15 A Yes.

16 Q What kind of activities were you into?

17 A I was in the color guard my 9th and 10th grade year
18 only.

19 Q Why is that?

20 A I began working at Bi-Lo and I started cosmetology
21 school at R.D. Anderson and it left no room in my academics
22 to continue with the color guard.

23 Q Did you continue your, I don't want to call it, for
24 lack of a better word, relationship with Mr. Jenkins this
25 entire time?

1 Was, was he---

2 A The entire time being what?

3 Q From your entire high school matriculation.

4 A Not my senior year. I actually moved out of the
5 residence when I was 17 right before my senior year.

6 Q And why is that?

7 Why did you move at age 17?

8 A I found a way to move, actually somewhere to go. So, I
9 took that opportunity and went with it.

10 Q Where did you go?

11 A I moved out of their residence in May of 2007 after
12 school had ended and moved in with their oldest son, Neal
13 Jenkins, for the summer. I just kind of stayed for the
14 weekend and never really went home. Just come back
15 everytime they were gone and grabbed a few more clothes.

16 Q Was there any type of sexual relationship after you
17 moved out?

18 A No.

19 Q Any type of, type of threats or punishment after you
20 moved out?

21 A After I moved out and their car got stole they did come
22 over and threaten me. They thought it was the boyfriend I
23 had at the time who did it, and I had no idea what was going
24 on. But that was the only time I remember them coming to
25 threaten me about anything.

1 Q Did you tell anybody about this teenage, well, I guess
2 12 to 16 year old situation where you were 12 till almost
3 16, you were being sexually abused by Mr. Jenkins, correct?

4 A Right.

5 Q Did you tell anybody before you moved out?

6 A Before I moved out, no.

7 Q Who did you tell after you moved out?

8 A I received a phone call from Judy Smith and she asked
9 me if---

10 MS. ANDERSON: I would object.

11 THE COURT: Yeah, I sustain the objection.

12 SOLICITOR GRAY: That's fine.

13 THE COURT: He'll ask you another question.

14 SOLICITOR GRAY: Thank you.

15 Q Just please tell me who you told.

16 A Okay. I told Judy Smith.

17 Q All right. Did you give her details of what had
18 happened to you?

19 A Not direct details.

20 Q Did you tell who had done this to you?

21 A I did.

22 Q Did you tell her where it happened?

23 A I did.

24 Q Did you tell the approximate time frame?

25 A I did.

1 Q Was she ever present -- well, what was Judy Smith's
2 relationship to you or Mr. Jenkins?

3 A A friend of the family.

4 Q Okay. Was she ever present when you went to the bars
5 or anything like that?

6 A I don't think she was present at the bars. She doesn't
7 really go to bars that much. So, I don't remember her being
8 at a bar with us.

9 Q After you talked to Judy Smith and what did you do?

10 A After I talked to Judy I felt more comfortable
11 disclosing, and I did let Melanie know what was going on.

12 Q That's Melanie Jenkins?

13 A Yes, sir.

14 Q Did Mrs. Jenkins take any action on your behalf?

15 A No, when I first told her she was silent, you know.
16 She didn't want to really talk about it, and then she
17 started crying and told me that she was so sorry and that
18 she was gonna talk to him, and so I was like okay. And then
19 I went back to my residence with my brother, and a week
20 later I called her and she completely changed her opinion
21 and no longer believed me, and then that's when I went to
22 the police.

23 Q That would be the Sheriff's Department here in
24 Spartanburg County?

25 A Yes, sir.

1 Q And you made a report?

2 A I did.

3 Q And I'm assuming a warrant was sworn out for Mr.
4 Jenkins arrest?

5 A Uh-huh. (Affirmative).

6 Yes.

7 Q All right. Did you do any of this out of retaliation
8 against Mr. or Mrs. Jenkins?

9 A No.

10 MS. ANDERSON: I'm sorry. I can't hear.

11 THE COURT: Ask the question again.

12 SOLICITOR GRAY: Thank you.

13 A No.

14 Q Did you do any of this out of retaliation against Mr.
15 or Mrs. Jenkins?

16 A No.

17 Q You were out of the home at the time?

18 A Yes.

19 Q You had your own place basically, correct?

20 A Yes.

21 Q Were you dependent on Mr. and Mrs. Jenkins for any type
22 of support?

23 A No.

24 Q Were they making any threats towards you at this time?

25 A Only the one about the truck.

1 Q And my guess is you made this report in 2007?

2 A Yes.

3 Q It's now 2012.

4 What do you hope to gain from this?

5 A Just that he can never do it again. I don't have
6 anything else to gain. I've lost my dignity by even
7 speaking out, but if he can't do this to anyone else, then
8 I've gained something.

9 Q Did you ever ask him for money to not go forward with
10 this case?

11 A No.

12 Q Ever try to blackmail him?

13 A No.

14 Q Did -- can you please point out the individual that
15 sexually molested you from 2002 to 2005?

16 A He's right there beside Pat Anderson.

17 SOLICITOR GRAY: Let the record reflect that she
18 pointed to the defendant, Mr. Roy James Jenkins.

19 And you're positive it was Mr. Jenkins?

20 A Absolutely sure.

21 Q At his home?

22 A Yes.

23 Q All right. Miss ██████████, at this time I have no further
24 questions for you. Please answer any questions that Ms.
25 Anderson may have for you.

1 A Okay.

2 CROSS-EXAMINATION

3 BY MS. ANDERSON:

4 Q You are 22 now?

5 A Yes, ma'am.

6 Q And you testified that you lived with your
7 grandparents, which are Melanie's parents --

8 A Correct.

9 Q -- until your grandmother died, and then you moved --
10 then Roy and Melanie adopted you, is that correct?

11 A Right.

12 Q Now, you said that life was never normal over there,
13 that you felt like you were treated differently?

14 A Yes.

15 Q By how?

16 A Like I said, I wasn't their child. They showed more
17 favoritism to their kids. They believed their kids' story
18 over mine if we were playing and something happened.

19 Q And you---

20 A Little things like that.

21 Q You said they got more presents than you did?

22 A I didn't say presents, but they did get more things
23 handed to them.

24 Q What are you talking about?

25 A They received cars when they turned a certain age. I

1 didn't. They, you know, got gas money from them all the
2 time. They helped them a lot more than they helped me on
3 things like that.

4 Q So, they provided a car for you, didn't they?

5 A They provided a car for me. It wasn't mine. It was
6 theirs. They provided it for me to drive, yes.

7 Q Okay. And you're saying that's how you were treated
8 differently because they actually gave your brother's cars?

9 A It's an example of how I was treated different.

10 Q Were they titled in the brother's name?

11 A Excuse me?

12 Q Were they titled in their names?

13 A I don't know that information.

14 Q So, you don't know if they actually gave them a car or
15 they just let them use the car like they let you?

16 A I know they bought it in intentions on giving it to
17 them.

18 Q Okay.

19 A That I do know.

20 Q All right. You said you got grounded for stupid stuff.
21 I think you said something about wearing makeup to school.

22 A They took away my privileges to wear makeup to school
23 as a punishment. My ninth grade year to be exact.

24 Q Well, I thought you said you were grounded for wearing
25 makeup to school?

1 A No, I did not say that.

2 Q Okay. But now you're saying that they took away your
3 makeup privileges?

4 A They grounded me from wearing makeup.

5 Q Okay. All right. Now, you started smoking at how old?

6 A Around ten or eleven.

7 Q Okay. And Melanie and Roy did not give you that first
8 cigarette, did they?

9 A No.

10 Q Okay. Let me ask you about this going to Lake
11 Greenwood.

12 who went to the bars with y'all?

13 A Me and Melanie and Roy went. Sometimes different
14 people, different couples would come with us or --.

15 Q So, you never went with Roy by yourself?

16 A No, Melanie was always there pretty much.

17 Q Okay. Were the brothers there too?

18 A At times.

19 Q Okay. So, you never went to a bar with Roy alone?

20 A I won't say I never went to a bar with Roy alone. I
21 don't recall an exact moment or an exact time where I went
22 to a bar with him alone.

23 Q Well, I think you did say that you didn't go to bars
24 that y'all did not go to bars very many times.

25 A No, we went to a bar every weekend that we went to the

1 take pretty much.

2 Q Okay. well, I could---

3 A I said Judy didn't go to bars.

4 Q Okay. All right. But y'all went to the bars and
5 you're saying that Roy gave you alcohol at the bars?

6 A He would give me drinks outside the bar. I could drink
7 from his cup. He mostly bought my alcohol to consume at
8 home.

9 Q Okay. Now, when were you and Roy at home by yourself?

10 A We were at home by ourselves a lot.

11 Q Let's see, he worked full-time?

12 A He got off around five o'clock every day almost.

13 Q Okay. And nobody else was home?

14 A Not all the time. Neal had a job. Nick had a job.

15 Q They didn't get off at 5:00 either?

16 A Not all the time.

17 Q Okay. What about Melanie?

18 A She was there a lot of the times that these things
19 happened asleep in her bedroom.

20 Q Okay. So, you're saying that this occurred in front of
21 these people basically?

22 A I did not say that, no.

23 Q I mean but you're saying people were at the house when
24 this occurred?

25 A There were people at the house when these events

1 occurred.

2 Q Okay.

3 A But it was not in front of them for them to see, no.

4 Q Where was it?

5 A Some of, some -- not everytime, but at times they would
6 take place in the living room while Melanie was asleep in
7 her room.

8 Q Where were---

9 A While Neal and Nick were asleep in their room or
10 playing the video game in their room.

11 Q Okay. So, your, your testimony is, despite the whole
12 family's in the house---

13 A Not everytime.

14 Q But I'm just saying, you're saying they're times when
15 y'all had intercourse with everybody in the house?

16 A Not just intercourse. Sometimes it could -- it was the
17 oral sex too.

18 Q And this was all in the living room?

19 A Sometimes it was done in the living room. Sometimes my
20 bedroom.

21 Q Where was your bedroom?

22 A Across the hall from their bedroom, Melanie and Roy's.

23 Q Okay. And where were the boys' bedrooms?

24 A The first bedroom on the right going down the hall.

25 Q They shared a room?

- 1 A They did.
- 2 Q But you had a room to yourself?
- 3 A Yes.
- 4 Q So, they treated you differently, you got a room to
- 5 yourself?
- 6 A I had a guardian ad litem, and as a child being placed
- 7 in the care, you're not suppose to have your own room if
- 8 you're a different sex of that child?
- 9 Q Well, I'm just saying you had a room of your own.
- 10 A I did.
- 11 Q Okay. And you're saying that Roy sexually molested you
- 12 in that room with his wife across the aisles, across the
- 13 hall and the boys down the hall?
- 14 A Yes, ma'am.
- 15 Q Okay. Do you know where Roy works?
- 16 A At the time Dan Therm. I don't know now.
- 17 Q Do you know what time he went to work?
- 18 A Around about -- earlier but -- before we went to school
- 19 he was usually gone.
- 20 Q Okay.
- 21 A Sometimes not.
- 22 Q So, he didn't take you to school?
- 23 A No, not all the time.
- 24 Q Who took you to school?
- 25 A Melanie took me to school, and then when the boys

1 started driving they took me to school.

2 Q Okay. who picked you up from school?

3 A Melanie.

4 Q what about your grandmother?

5 A which grandmother?

6 Q The grandmother that's right there, Shirley.

7 A what about her?

8 Q Did she pick you up from school?

9 A She may have, a few times. It wasn't a regular basis.

10 Q So -- I'm sorry. I got something caught in my throat.

11 You're saying she rarely took you to school?

12 A who?

13 Q I mean picked you up, Shirley Jenkins.

14 A She did not pick me up on a regular basis. She has

15 picked me up from school before.

16 Q were there problems when she tried to pick you up?

17 A I don't believe so. I don't remember that far back.

18 Q Okay. But this -- you're remembering a lot of other
19 stuff that far back?

20 A These were traumatic events. I don't remember who

21 picked me up from school everyday of my life.

22 Q Okay. Are you married now?

23 A No.

24 Q Are you divorced?

25 A Yes.

- 1 Q Okay. And you're 22?
- 2 A Yes.
- 3 Q When did you get married?
- 4 A When I was 19, April 25th, 2009.
- 5 Q Okay. And do you have any children?
- 6 A I do.
- 7 Q How many?
- 8 A One.
- 9 Q And are you -- did you say you're divorced?
- 10 A I am.
- 11 Q Okay. Now, you did not marry your boyfriend --
- 12 A No.
- 13 Q -- that's here today?
- 14 A No.
- 15 Q Okay. When did you get divorced?
- 16 A In May of 2010, almost a year later.
- 17 Q Okay. And you didn't live here in Spartanburg?
- 18 A No.
- 19 Q You did well in school, didn't you?
- 20 A Yes.
- 21 MS. ANDERSON: May I approach?
- 22 THE COURT: Yes, ma'am.
- 23 Q Are these your school records?
- 24 A Yes.
- 25 Q Okay. Could you look on the second page?

1 A (Witness complies.)

2 Q Okay. These are your grades, correct?

3 A Yes.

4 Q And you have pretty good grades, didn't you?

5 A Yes.

6 Q Now, what was your grade point?

7 Was it 3.59?

8 A It depends on which year you're asking about.

9 Q Well, I say -- let's change. Go -- you usually had A
10 or B averages, is that correct?

11 A Yes, ma'am.

12 Q Okay. Now, you look at the next page, that's your
13 standardized test grades. We're not gonna look at those
14 really.

15 But then they have your discipline records, is that
16 correct?

17 A Yes.

18 Q Okay. You got in trouble on 12/9/04, is that correct?

19 A Yes.

20 Q What did you do?

21 A I hit another child with a empty drink bottle.

22 Q Okay.

23 A I threw it across the cafeteria---

24 Q Okay.

25 A --and it hit someone.

1 Q Did you get suspended for that?

2 A I don't think I did, no.

3 Q I think it says detention, got detention.

4 A Yeah.

5 Q And you, also in '05, slapped another student in the
6 face and used profanity towards her?

7 A Yes.

8 Q Got suspended there.

9 Now, you actually had a telephone conversation with
10 your father about that, is that correct?

11 A Yes, Roy came and picked me up from that.

12 Q And you had in school, out of school suspension or in
13 school?

14 A Out of school suspension.

15 Q Okay. In '05 you also got suspended for leaving
16 school, cutting classes, and you had a verbal fight in '07,
17 and then you were tardy, but that's basically most of the
18 problems you had in school, wasn't it?

19 A That was all the problems I had pretty much in four
20 years of high school.

21 Q In what?

22 A In four years of high school.

23 Q Yeah, that's what we're looking at. Just your high
24 school.

25 So, I'd like to enter this into evidence.

1 THE COURT: Any objection?

2 SOLICITOR GRAY: No, sir, Your Honor.

3 THE COURT: Entered without objection.

4 (WHEREUPON, the school records were marked as
5 Defendant's Exhibit No. 1 and received into evidence at this
6 time.)

7 Q Now, you said that you never told anybody about this?

8 A While I lived in the home I didn't.

9 Q Okay. And you said the first person you told was Judy
10 Smith?

11 A Yes.

12 Q Did you tell Judy Smith that before you told your
13 boyfriend, Justin?

14 A No, Justin knew while I was living in the home.

15 Q So, he knew about it?

16 A Yes.

17 Q Okay. Now, when you told your mother, this was after
18 you told Judy Smith, you told your mother this and you're
19 saying that she said she was sorry for that?

20 A She did. She hugged me and said she was sorry as she
21 was crying.

22 Q Now, after you left the home, you sent for a list of
23 belongings that you wanted, wasn't that correct?

24 A I did.

25 Q And you---

1 A Well, I just asked for my belongings. I didn't give
2 them a list.

3 Q You didn't?

4 A I don't remember giving them a list. I don't know what
5 all was in my room. I know I wanted some pictures, my
6 graduation pictures. That was pretty much all I remember
7 asking for.

8 Q Could you identify this document?

9 A Okay. Yes.

10 Q And isn't this a list of everything you asked to have?

11 A Yeah, I do -- these were all the things I could
12 remember that were important to me I guess.

13 Q Now, you also have a statement at the bottom that you
14 wanted her -- could you read that?

15 A A statement from and signed by you releasing all rights
16 to me and giving the school permission to remove you from my
17 emergency contact. Say you aren't responsible for me.

18 MS. ANDERSON: Okay. I'd like to enter this into
19 evidence.

20 SOLICITOR GRAY: No objection.

21 THE COURT: In without objection.

22 (WHEREUPON, the list was marked as Defendant's Exhibit
23 No. 2 and received into evidence at this time.)

24 Q Now, you said that they actually didn't support you or
25 do anything for you, is that correct?

1 A I never said they didn't support me or do anything for
2 me. They supported their children more than they did me.

3 Q Well, after you left the home, didn't they provide
4 health insurance and car insurance on you?

5 A Health insurance they did.

6 Q Did you get your own insurance when you were buying the
7 car from Neal?

8 A No, I used the insurance that was already on the car.
9 I only had that car for not even a month maybe. I used the
10 insurance that was already on there. I believe his wife's
11 cousin or uncle or something had insurance on that car.

12 Q But your parents did cover you with health insurance,
13 correct?

14 A Yeah, they did.

15 Q I'm sorry. I left out a part of your request for
16 belongings.

17 Is this a part of that list or is that a separate list?

18 A I'm not sure.

19 Q But is that in your handwriting?

20 A It is my handwriting.

21 Q Okay.

22 A I'm not sure if they went together.

23 Q Okay. But these were other things you wanted?

24 A Yeah.

25 Q Okay. And you got all these things?

1 Could I make this an exhibit please?

2 SOLICITOR GRAY: No objection.

3 THE COURT: In without objection.

4 (WHEREUPON, the list was marked as Defendant's Exhibit
5 No. 3 and received into evidence at this time.)

6 Q So, the whole last year of high school that you didn't
7 live with them, they carried you on their medical insurance,
8 correct?

9 A Yes, they dropped me first. I had to contact my lawyer
10 to get in touch with you to get it fixed. Something went on
11 with it. But I needed health insurance, and we got it all
12 straightened out through our lawyers.

13 MS. ANDERSON: Excuse me, Your Honor.

14 (Pause.)

15 Q I believe -- wasn't it Tonya Alderidge who contacted
16 you about this?

17 A Yeah, I believe she was my detective at the time.

18 Q Uh-huh. (Affirmative).

19 Because -- no, actually wasn't it Judy Smith?
20 wasn't she the one that contacted you?

21 A About what, the insurance?

22 Q About -- yes, the insurance and health insurance and
23 what, the items on your list.

24 A Judy Smith works with Melanie Jenkins. She may of
25 discussed it with her at work. I know I passed the notes

1 through Judy, but I do not recall any insurance going
2 through Judy. I don't remember that. I know I did talk to
3 my lawyer or Tonya about it. I talked to someone in the
4 department about the insurance.

5 Q Okay. But they did -- they had you on their health
6 insurance despite your moving out?

7 A Yes, after we got it all situated.

8 Q After you had -- you went to the -- you talked to Tonya
9 Alderidge, right, at the Sheriff's Department?

10 A Uh-huh. (Affirmative).

11 Q Okay. Did you go to the Children's Advocacy Center?

12 A Yes.

13 Q And that's when you saw---

14 A Michelle.

15 Q ---Michelle Aroya Staggs?

16 A (Witness nods affirmatively.)

17 Q Okay.

18 A Yes.

19 Q And you went to see her for---

20 A A year almost.

21 Q ---almost a year?

22 And did you just stop going or did you feel like you
23 didn't need to go anymore?

24 A I was moving and I think she was too. So, we decided
25 that we would be all right without continuing in the

1 therapy.

2 Q Okay. Okay. Now, asked -- you said that they
3 threatened you about the truck.

4 Wasn't Roy's truck taken from his driveway?

5 A Yes, from what I understand.

6 Q And wasn't there some suspicion that your boyfriend had
7 taken it?

8 A There was. They actually came to Neal's residence
9 where I lived and made me get in the car and take them to
10 where Justin was at so that Roy could identify that it
11 wasn't Justin he saw driving the truck down the street, and
12 at that time he did say that was not the guy.

13 Q Okay. Did you also make a comment to Roy and Melanie,
14 using profanity, about the truck?

15 A I'm pretty sure it might have happened.

16 Q Did you say something like I'll make sure you get your
17 f'ing truck back?

18 A What?

19 Q I'll make sure you get jury f'ing truck, truck back?

20 A I don't remember saying that cause I had nothing to do
21 with the truck being stole at all.

22 Q Okay. But your belongings were in it?

23 A I drove that truck. That was the truck that they
24 provided for me to drive to school. I actually wrecked it
25 in the Dorman parking lot one year.

1 Q Okay. And it was also full of stolen tools, correct?

2 A I don't know.

3 Q Okay. But you're saying without a doubt that the man
4 who adopted you when you're seven years old sexual abused
5 you from the time you were 11 to 16?

6 A Yes, he did.

7 Q Okay. And you didn't tell anybody in the family---

8 A No, I did not tell anybody in the family.

9 Q ---about it?

10 A I hinted to my boyfriend at the time. He had a cousin
11 that was going through something like that, and I told him
12 that I understood her a lot better than he knows---

13 Q But---

14 A ---and those were my words to him.

15 Q ---you didn't tell -- you got an extended family here.
16 You didn't tell any of them?

17 You actually moved in with your brother, Nick.

18 You didn't tell him, did you?

19 A After I moved in with him I did. His wife actually
20 took me to the police department to fill out the report.

21 Q Okay. But you said you hadn't -- you just said you
22 didn't tell anybody in the family, but you did tell your
23 brother?

24 A After I moved out I did.

25 Q Okay.

1 A Not when I was living there I did not.

2 Q Okay. And I think you went to the counselor at Dorman
3 too?

4 A The counselor called me into her office after I had
5 filed the police report, and I let her know that I was
6 handling it with the police.

7 Q Okay. Now, when you -- how long did you stay with your
8 brother, Neal?

9 A I moved out maybe in August. Right round the time
10 school started if not right -- right about that time.

11 Q And where did you move?

12 A With Judy Smith.

13 Q Okay. Did you live with Judy and her boyfriend?

14 A Yes.

15 Q Okay. How long did you stay with them?

16 A About a year.

17 Q Okay. And you knew Judy because she was friends with
18 your adoptive mother---

19 A Uh-huh. (Affirmative).

20 Yes, ma'am.

21 Q ---Melanie, and they actually work together?

22 A Yes.

23 Q So, did you have your own room at their house?

24 A Yes.

25 Q Did they help support you?

1 A Not financially. They put a roof over my head, and
2 they cooked for me at times.

3 Q Okay. Well, you were working, weren't you?

4 A I was.

5 Q Okay. Did you graduate from school?

6 A I did.

7 Q When you were talking about the -- you're saying that
8 the abuse that you call, that you call abuse was fondling
9 and oral sex and that, but you said it became, it graduated
10 to real or true intercourse after you became sexually
11 active?

12 A Yes.

13 Q Okay. How would anybody know you were sexually active?

14 A I told Melanie that I was sexually active. I asked her
15 to be put on birth control pills because I was sexually
16 active, and she did not want to put me on birth control
17 pills. Roy actually tried to convince her to put me on
18 birth control pills, and I went, took it upon myself to go
19 to the Tobias Clinic I believe, and they provided me birth
20 control without parent consent.

21 Q Okay. Did Melanie take you?

22 A No.

23 Q Okay.

24 A I went.

25 Q So, you haven't had any contact with them?

1 A No contact.

2 Q Since what, 2000---

3 A Seven.

4 Q ---seven?

5 A When I left the home I haven't made any effort to
6 contact them.

7 Q Okay. Even your grandparents?

8 A I've not called them. I've seen people out in public,
9 but not made any attempt to see them.

10 Q Okay. You've talked to any of the, your uncles?

11 A Yes, I've talked to them, but not really anything about
12 the case.

13 Q Okay. You do admit that you got grounded over letting
14 your boyfriend drive the car?

15 A Yes.

16 Q And your car privileges were taken away?

17 A Yes.

18 Q And that made you very angry, didn't it?

19 A In a way. It was over summer break. So, it wasn't
20 that bad cause I didn't need to go to school or anything.
21 The last week of school is actually when it happened, and I
22 had to bum rides to school. They didn't even provide me
23 transportation to school. I had to bum rides. I think
24 Justin's mom took me one time, a few friends took me. After
25 that it wasn't so bad.

1 Q Okay. Now, were you still in the home when the truck
2 was stolen or had you left?

3 A No, I had already moved in with Neal.

4 Q Okay. All right. All right. When you talk about the
5 bars that you say that Melanie and Roy took you to, aren't
6 they also restaurants?

7 A Yeah, they were like bar and grills.

8 Q Well, Harrison's is a restaurant, correct?

9 A Yeah, it's a bar and a grill, yes.

10 Q Yes?

11 A They serve food there, yes.

12 Q Okay. It's served at the other place you named too?

13 A T. Roy's, yeah.

14 Q Okay. So, it wasn't like y'all went to a honkey tonk
15 bar.

16 You actually went to a restaurant that served drinks,
17 correct?

18 A These were bars pretty much. They were like bar and
19 grills. They weren't a restaurant that I would take my one
20 year old daughter to.

21 MS. ANDERSON: Those are all the questions I have right
22 now.

23 THE COURT: Redirect.

24 SOLICITOR GRAY: Briefly, Your Honor.

25 REDIRECT EXAMINATION

1 BY SOLICITOR GRAY:

2 Q Ms. Anderson asked you about these list you made about
3 things you wanted from the home.

4 A Uh-huh. (Affirmative).

5 Q Were they, they your items?

6 A They were all my items.

7 Q Did you ever ask for anything that didn't belong to
8 you?

9 A No.

10 Q Did you---

11 A The only thing I asked for that I didn't receive was
12 the senior pictures that I had took. They actually paid for
13 them and did not give them to me because they had paid for
14 them, which I understand.

15 Q Did you ask for any money from them?

16 A No.

17 Q You asked for health insurance?

18 A Yes.

19 Q Cause you couldn't provide it on your own---

20 A I couldn't.

21 Q ---as a 17 year old?

22 A No.

23 Q And legally they were responsible for you?

24 A Yes.

25 Q Was it your attempt to make a clean break of this

1 situation?

2 I mean to just move out and never go back, was that
3 your intent?

4 A Oh, yes, my intent was to never have to go back, yes.

5 Q And you didn't ask for anything else?

6 A No, other than what's on the list, which were just
7 material items of mine.

8 SOLICITOR GRAY: One moment, Your Honor.

9 At the time you went to see Detective Alderidge like
10 Ms. Anderson asked you, is that correct?

11 A I'm sorry?

12 I didn't---

13 Q When you moved you went to see Detective Alderidge?

14 A I did.

15 Q You said earlier today your reason for doing this now,
16 was that the same reason then?

17 A Yes, at the time I didn't have a child, but at the time
18 Neal had a, I think she was two at the time, little girl and
19 they were letting her spend the night with him, and
20 eventually they started letting them take her to the lake
21 house with them without Neal and his wife being there, and
22 it scared me to death that that would happen to that little
23 girl --

24 Q Is that---

25 A -- or any other little girl for that matter with her

1 being the closest.

2 Q Thank you.

3 Nothing further.

4 MS. ANDERSON: Nothing further, Your Honor.

5 THE COURT: All right. You may step down and have a
6 seat.

7 All right. Call your next witness.

8 SOLICITOR GRAY: Yes, sir, Your Honor.

9 I call Mr. Jack Harden.

10 JACK HARDEN, having been first duly
11 sworn, testified as follows:

12 SOLICITOR GRAY: I wanted to let the Court know Mr.
13 Harden's a little hard of hearing.

14 THE COURT: Yes, sir.

15 SOLICITOR GRAY: So, I'm gonna speak up a little bit.

16 THE COURT: All right.

17 DIRECT EXAMINATION

18 BY SOLICITOR GRAY:

19 Q Please state your full name, sir.

20 A Jackie L. Harden.

21 Q Do you know Miss ██████ ██████?

22 A Yes, I do.

23 Q Do you know Mr. Roy Jenkins?

24 A Yes, I do.

25 Q How long have you known Mr. Jenkins?

1 A I want -- I'm gonna guess 15 years.

2 Q How long have you known Miss [REDACTED]

3 A Since she was a just baby.

4 Q Did you ever use to hang out with Mr. Jenkins and his
5 family at different bars and grills or bars or restaurants?

6 A Yes, sir, a few times.

7 Q Were there instances where Mr. Jenkins and Miss [REDACTED]
8 were dancing at these places?

9 A Yes, sir.

10 Q Any other type of behavior between the two of them
11 happen in your presence?

12 A Yes, sir, I -- we was at T. Roy's down at Greenwood,
13 and him and Melanie and [REDACTED] came in. We was all drinking,
14 and he was letting her drink outside. He was calling her
15 his second wife and telling everybody in the bar this is my
16 second wife, this is my second wife, and I never seen him
17 once dance with his wife that night. Everytime he did dance
18 it was with [REDACTED] slowly. No fast dancing.

19 Q How old was [REDACTED] at the time?

20 A She was about 15 years old.

21 Q All right. Thank you, sir. Nothing further. Answer
22 any questions Ms. Anderson might have.

23 CROSS-EXAMINATION

24 BY MS. ANDERSON:

25 Q Now, [REDACTED] moved in with you and Mrs. Smith, is that

- 1 correct?
- 2 A Yes, ma'am.
- 3 Q Okay. And did y'all have a place at Lake Greenwood?
- 4 A No, ma'am, we had other friends that we went and stayed
- 5 with. We did stay with Roy and one, Roy and Melanie one
- 6 time. But we had other friends that had places down there
- 7 and we stayed down there with them.
- 8 Q Okay. But you actually did stay in their house?
- 9 A At one -- one time, yes, ma'am.
- 10 Q Okay. And you said all of you were drinking?
- 11 A Yes, ma'am.
- 12 Q Okay. And that you saw [REDACTED] drink out of Roy's drink?
- 13 A I saw what?
- 14 Q [REDACTED] drink out of Roy's drink.
- 15 A I seen her drink a beer outside of the T. Roy's that
- 16 Roy had give her.
- 17 Q Okay. She was 15 years old?
- 18 A Yes, ma'am.
- 19 Q Do y'all have any kids?
- 20 Did anybody else have any kids with them?
- 21 A I do, yes, ma'am.
- 22 Q Were they with y'all?
- 23 A No, ma'am.
- 24 Q Where were they?
- 25 A They're in Australia.

1 Q Oh, okay.

2 A So, they couldn't be with me.

3 Q Okay. But did anybody else have kids here at the,
4 the---

5 A At the bar?

6 Q ---at the bar you're talking about?

7 A No, not at that time, no, ma'am.

8 Q But wasn't there a large group of y'all who were all
9 friendly that got together on the weekends there?

10 A Ma'am?

11 Q Weren't -- wasn't there a large, fairly large group of
12 y'all who went to Lake Greenwood regularly on the weekends?

13 A No, hu huh. (Negative). We usually went with two of
14 our other friends, and, like I said, one time we did go with
15 them one incident, but all the other times we went we was
16 with other friends. We would meet at bars.

17 Q So, that's what I was asking.

18 Basically there was some friends who would meet in Lake
19 Greenwood at different bar/restaurants?

20 A Yes, ma'am.

21 Q Okay. Were you convicted of a house breaking?

22 A Yes, ma'am.

23 Q Okay. And of assault and battery?

24 Assault and battery?

25 A Yes, ma'am.

1 MS. ANDERSON: Those are all my questions.

2 SOLICITOR GRAY: Nothing further, Your Honor.

3 THE COURT: You can step down and be excused if you
4 wish.

5 Call your next witness.

6 WITNESS: Thank you.

7 SOLICITOR GRAY: State calls Mrs. Susan Hughes.

8 SUSAN HUGHES, having been first
9 duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY SOLICITOR GRAY:

12 Q Please state your full name, ma'am.

13 MS. ANDERSON: Your Honor, may Mr. Gray and I approach?

14 THE COURT: Yes.

15 Come around here and we'll step down.

16 (WHEREUPON, a bench conference was held out of the
17 hearing of the jury at this time.)

18 Q Sorry, ma'am.

19 Again, please state your full name.

20 A Susan Montjoy Hughes.

21 Q Where do you live, Mrs. Hughes?

22 A I live in Gray Court. It's in Laurens County.

23 Q All right. Are you familiar with Mr. and Mrs. Roy
24 Jenkins?

25 A I am.

1 Q How long have you known them?

2 A Melanie came to work probably where we're working at
3 now ten years ago.

4 Q All right. She still works with you?

5 A Yes, she does.

6 Q What's the name of that business, ma'am?

7 A Woodward.

8 Q Now, you know Miss [REDACTED]?

9 A I do.

10 Q How long have you known her?

11 A We had gone to a cookout down to Melanie and Roy's home
12 probably seven years ago and that's where I met [REDACTED]

13 Q Okay. Was [REDACTED] in high school then?

14 A No, she was not. She was still in grammar school.

15 Q All right. Did you ever see interactions between Mr.
16 Jenkins and Miss [REDACTED]?

17 A Just one time. We have, had a camper set up on the
18 lake, and Melanie and Roy and [REDACTED] had come, and during
19 that day Roy had taken [REDACTED] driving, and [REDACTED] had a
20 bathing suit on and she had a hickie on her shoulder, and I
21 said [REDACTED], what is that hickie on you. She said I don't
22 have a hickie, and I said Melanie, look, and I said look at
23 what she has.

24 And then Roy had previously told us that they, he had
25 been teaching [REDACTED] how to drive. But that's all, you know,

1 that physically that I've seen that could lead me to
2 believe.

3 Q No other behavior between those two?

4 A Oh, there was a lot of behavior.

5 Q Like what?

6 A There was a lot behavior. As stated earlier, Roy made
7 several comments about [REDACTED] being his second wife.

8 Q Over that day---

9 A This is---

10 Q ---at the lake or---

11 A ---just the whole time. I mean me and Melanie and Roy
12 and my husband hang, hung out a lot. We did a lot together.

13 Q Is this over a number of days or a number of years?

14 A Number of years and I had made statements to Melanie
15 about things that I thought and her statement was always---

16 MS. ANDERSON: I would object.

17 THE COURT: Yeah, I sustain the objection.

18 Q Oh, what were your -- what were your thoughts then?

19 A My thoughts were that Roy was, I'm not saying sexually,
20 but Roy was messing with [REDACTED] It's just the way he acted
21 around her, the way he looked at her, the way he punished
22 her, conversations that had taken place between me and Roy's
23 wife how he had---

24 MS. ANDERSON: I would object. That's---

25 THE COURT: Don't, don't, don't go into what either---

1 WITNESS: Okay.

2 THE COURT: ---Mr. Jenkins or his wife said.

3 WITNESS: Okay.

4 THE COURT: If it's something you heard---

5 WITNESS: Just things that I have observed?

6 We went on vacation one year, and Roy made a point
7 several times during the day to call [REDACTED] He never called
8 his boys. He always made a point to call [REDACTED] because she
9 was his second wife, and she always got more upset over
10 things that he said and did than his own wife did.

11 Q What do you mean?

12 A Well, one time [REDACTED] had caught Roy talking to some
13 other woman on the phone, and she was more upset over it
14 than Melanie was.

15 Q Did this, this seem odd to you?

16 A Very odd, very odd.

17 Q How old was [REDACTED] at the time?

18 A [REDACTED], at that time, was probably 13 or 14 years old.

19 Q And he considered her his second wife?

20 A He always considered her as his second wife.

21 Q Over the years?

22 A Oh, the whole time I knew him.

23 Q Thank you, ma'am.

24 No further questions.

25 THE COURT: Wait.

1 WITNESS: Oh, I'm sorry.

2 CROSS-EXAMINATION

3 BY MS. ANDERSON:

4 Q Okay. Mrs. Hughes?

5 A Uh-huh. (Affirmative).

6 Q You and Melanie Jenkins worked at the same place---

7 A Yes, ma'am, we do.

8 Q ---is that correct?

9 Okay. And you say that you and your husband were
10 actually friendly with Roy --

11 A Yes, we were.

12 Q -- and with Melanie?

13 A Yes.

14 Q And you're saying -- do you have a degree in psychology
15 or---

16 A No, ma'am, I don't.

17 Q Any?

18 A No, ma'am.

19 Q Any training in---

20 A No, ma'am.

21 Q ---psychology problems?

22 A I just know what I see is what I see.

23 Q Okay.

24 A No, ma'am, I have no degree in psychology.

25 Q So, so, basically what you said was you said there was

1 a hickie on her neck?

2 A No, ma'am, I did not say her neck. I said on her back.

3 Q Okay.

4 A Yes, ma'am.

5 Q And this was when she was 15?

6 A Fourteen or fifteen.

7 Q Okay. And she had a boyfriend, was that not correct?

8 A I don't believe at that she was allowed to have a
9 boyfriend.

10 Q Okay. So -- but you're not positive about that?

11 A Oh, at that time, yes, ma'am, I know she was not
12 allowed to have a boyfriend. So, she had to be 13 or 14.

13 Q Well, with teenagers, does that mean that they don't
14 see people?

15 A With [REDACTED], [REDACTED] never got to go anywhere at that
16 time. She never got to go anywhere.

17 Q Were you at their house everyday?

18 A Not at their house, no I was not, but I did talk to
19 Melanie on a daily basis.

20 Q I understand that.

21 But this is not from your personal observations,
22 correct?

23 A No, it's from Melanie's conversations.

24 Q But this is not your -- you really have no actual
25 knowledge of this?

- 1 A Just Melanie's conversations.
- 2 Q So, you really didn't observe any of this?
- 3 A I observed several things that went on and I, I stated
- 4 that.
- 5 Q About -- well, you -- now, I think your testimony was
- 6 Roy was talking to some other woman on the phone?
- 7 A Yes.
- 8 Q Now, were you there?
- 9 A No, ma'am, but Melanie was the one told me that
- 10 conversation.
- 11 Q But you didn't observe that, did you?
- 12 A No, ma'am, I did not.
- 13 Q Okay.
- 14 A No.
- 15 Q So -- and you said y'all were on vacation with them and
- 16 the children weren't with y'all?
- 17 A No.
- 18 Q Okay. And was [REDACTED] the baby of the family?
- 19 A Yes, she was.
- 20 Q So, in fact, Neal's six years older than her?
- 21 A I believe so.
- 22 Q And Nick is a couple of years older than her?
- 23 A Yeah.
- 24 Q So, do you know who was keeping the children while
- 25 y'all were on vacation?

1 A Nobody.

2 Q Okay.

3 A They were keeping their self.

4 Q Okay. So, him calling -- Roy calling [REDACTED], isn't that
5 normal parent concern about a young child?

6 A It's a, it's a normal behavior for a parent, yes,
7 ma'am.

8 Q well, thank you.

9 when Roy said [REDACTED] was his second wife --

10 A Uh-huh. (Affirmative).

11 Q -- did he explain to you what he meant?

12 A That she did -- she picked up the slack pretty much.

13 You know, she, she, she did the things, not per se that

14 Melanie didn't do, he never stated that. But if anything

15 ever happened to Melanie, his statement was [REDACTED] was gonna
16 be his wife.

17 Q well, isn't it true that they were having her help
18 learn how to take care of bills?

19 A No, I'm not aware of that.

20 Q Okay. All right. So, basically everything that you've
21 testified about is been not of your own personal knowledge?

22 A I -- some of it -- I mean the certain things, you know,
23 with the hickie that, you know, that was of my knowledge
24 and, yeah.

25 Q But nothing else?

1 well, excuse me. Roy calling.

2 A what I was asked I answered to what I was asked. There
3 was -- there's several instances I could go into, but I
4 wasn't asked about those.

5 Q Okay. Thank you.

6 A Okay.

7 THE COURT: One second yet.

8 You have any---

9 SOLICITOR GRAY: No, sir.

10 THE COURT: Now you can step down.

11 WITNESS: Sorry.

12 THE COURT: Thank you. Appreciate your time.

13 Call your next witness.

14 SOLICITOR GRAY: Judy Smith.

15 JUDY SMITH, having been first duly
16 sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY SOLICITOR GRAY:

19 Q Please state your full name, ma'am.

20 A Judy Smith.

21 MS. ANDERSON: Sorry, Your Honor.

22 Could she speak up?

23 WITNESS: Judy Smith.

24 MS. ANDERSON: Okay.

25 Q where do you live, ma'am?

1 A Boiling Springs.

2 Q Are you familiar with Mr. Jenkins and Mrs. Jenkins?

3 A Uh-huh. (Affirmative).

4 Q How long have you known them?

5 A Eleven years.

6 Q Okay. Are you familiar with Miss [REDACTED] here?

7 A Uh-huh. (Affirmative).

8 Q How long have you known her?

9 THE COURT: You need to say -- instead of uh huh and uh
10 huh we need yes and no.

11 WITNESS: Okay.

12 Q Sorry.

13 You're familiar with Miss [REDACTED]?

14 A Yes.

15 Q How long have you known her?

16 A Eleven years.

17 Q Were you there for the adoption of Miss [REDACTED]?

18 A No.

19 Q About how old was she when you met her?

20 A [REDACTED] was probably 13, 14.

21 Q At that time, did you talk to her about anything that
22 was going on in the home?

23 A At that time, no.

24 Q All right. How long, after you met her, did things
25 start coming out about Mr. Jenkins?

1 A I had suspicions. So, I called and asked her and she
2 told me.

3 Q Did she tell you where it happened?

4 A Yeah.

5 Q Where?

6 A Mostly at home and, and when they would go to the lake.

7 Q But mostly at home?

8 A Uh-huh. (Affirmative).

9 THE COURT: You got to say yes or no.

10 WITNESS: Yes.

11 Q Where Mr. Jenkins lived?

12 A Right.

13 Q And where Miss [REDACTED] lived?

14 A Yes.

15 Q And sometimes at the lake?

16 A Yes.

17 Q Did she say when it happened or how long it happened?

18 A I think three to four years I think. I'm not real sure
19 on the time, but it was for a few years.

20 Q And basically you're talking about the abuse that she's
21 testified to?

22 A Yes.

23 Q Now, you said you had your suspicions.

24 was that based on her behavior or Mr. Jenkins behavior?

25 A Mostly hers.

1 Q What, what type of behavior?

2 A She just was an unhappy child and she acted like there
3 was something wrong.

4 MS. ANDERSON: Your Honor, I would object to her being
5 able to testify as to the child's psychological well being.

6 THE COURT: Well, I, I overrule the objection as to
7 she's not qualified as an expert. She's just testifying as
8 a lay person. But I think, from her prospective, she can
9 testify regarding those.

10 MS. ANDERSON: Thank you, Your Honor.

11 Q And did you ever talk to her about her unhappiness?

12 A [REDACTED]?

13 Q Yes, ma'am.

14 A Yes.

15 Q Was this while she was in the home or out of the home?

16 A She was already out of the home.

17 Q And where did she did to -- where did she come to live
18 after she left the home?

19 A She lived with me and Jack.

20 Q How long did she live with you?

21 A For almost one year.

22 Q Was -- and how -- do you remember how old she was?

23 A She was 17.

24 Q Now, during that time did you ever see her or hear her
25 ask them for money?

- 1 A No.
- 2 Q Her behavior, did it change in your home?
- 3 A She, she got better. She seemed happier.
- 4 Q This was her senior year of high school?
- 5 A Uh-huh. (Affirmative).
- 6 Q Did she graduate on time?
- 7 A She did.
- 8 Q Do you remember her grades during her senior year?
- 9 A They were good.
- 10 Q Any problems in school?
- 11 A No.
- 12 Q During her senior year?
- 13 A Well, I mean she missed some days and stuff, but, you
- 14 know, I mean she did good in school.
- 15 Q Did she ever talk to you about any revenge or anything
- 16 against Mr. Jenkins?
- 17 A About what?
- 18 Q Revenge.
- 19 A No, no.
- 20 Q About demanding any money --
- 21 A No.
- 22 Q -- from Mr. Jenkins?
- 23 About -- did she even want to go to the police, to the
- 24 police before she moved in with you?
- 25 A She went before she moved in with me. She was living

1 with her brother.

2 Q And that's when she did it?

3 A Right, when she moved out of the home.

4 Q Did -- was it your idea or her idea?

5 A No, she did it before I knew about it. She'd already
6 did it.

7 Q This entire time has she ever wavered in her
8 convictions about this incident?

9 A No.

10 Q Has she ever changed her story to you about these
11 incidents, incidents involving Mr. Jenkins?

12 A No.

13 Q What has she gained from this, well, almost nine year
14 ordeal?

15 A I think peace of mind for her and then just hoping that
16 it don't happen to anybody else.

17 Q Thank you, ma'am. Answer any questions Ms. Anderson
18 may have.

19 CROSS-EXAMINATION

20 BY MS. ANDERSON:

21 Q You just said that [REDACTED] had already been to the police
22 when she moved in with you?

23 A I think she had.

24 Q And you're saying you didn't know about this until she
25 moved in with you?

1 A No, I knew about it a couple weeks before she moved in
2 with me.

3 Q Did she disclose this to you?

4 A She did.

5 Q Okay. Now, according to your boyfriend's testimony --
6 according to your boyfriend's testimony, y'all socialized
7 with Melanie and Roy, is that correct?

8 A Some.

9 Q Okay. Well, what I'm wanting to know is that -- you
10 didn't work -- did you work with Melanie?

11 A I do.

12 Q Okay. So, if you didn't socialize with them, when did
13 you see [REDACTED]?

14 A We went out to eat, went shopping a couple times.

15 Q Okay. So, just a couple of times --

16 A Uh-huh. (Affirmative).

17 Q -- went out to eat and these couple of times that you
18 saw -- well, I mean was [REDACTED] with them when y'all went out
19 to eat?

20 A It was [REDACTED] and me and her children.

21 Q Whose children?

22 A Melanie's children.

23 Q Okay.

24 A The two boys.

25 Q So, it was Neal, Nick --?

1 A This particular time I'm thinking of it was the two
2 boys and a daughter-in-law and the grandchild and me and
3 [REDACTED] and Melanie.

4 Q Okay. And that was -- you went out to eat?

5 A Uh-huh. (Affirmative).

6 Q And did you gather from that that she was an unhappy
7 child?

8 A Not at that time, no.

9 Q Okay. well---

10 A Oh, yes, yes, I did too. I take that back. I did.

11 Q Okay. where did y'all go eat?

12 A Cracker Barrel.

13 Q Okay. And did you have a, any conversation with [REDACTED]?

14 A At that time, no.

15 Q Okay. So, you're just saying, from looking at her, you
16 decided she was an unhappy child?

17 A Just I -- after I got to know her.

18 Q well, that's what I'm trying to find out.

19 How did you get to know her if you only had involvement
20 with her a few times?

21 A well, we went to their place at the weekend, you know,
22 at the lake one weekend and just we went shopping and just
23 different things.

24 Q But I mean are we talking about you saw on a regular
25 basis?

- 1 A [REDACTED] on a regular basis?
- 2 Q Uh-huh. (Affirmative).
- 3 A No.
- 4 Q Okay. So, about how many times?
- 5 A Six.
- 6 Q About six times --
- 7 A Uh-huh. (Affirmative).
- 8 Q -- in the 11 years that you know of?
- 9 A It could of been more. I'm not sure exactly how times.
- 10 Q Okay. But you didn't see her on a daily basis---
- 11 A No.
- 12 Q ---or even a weekly basis?
- 13 A No.
- 14 Q Okay. And she didn't talk to you about anything, did
- 15 she, until I guess her, right before her senior year, is
- 16 that correct?
- 17 A Right.
- 18 Q And why did she talk to you?
- 19 A Because I called her and asked her if something was
- 20 going on.
- 21 Q Was -- had you found out she had moved out?
- 22 A Yeah.
- 23 Q Okay.
- 24 A Yes.
- 25 Q So, you called her, this person you maybe interacted

1 with, maybe ten times over eleven years?

2 A (Witness nods affirmatively.)

3 Q I mean why?

4 A Because I just had -- you can, you can tell. I just
5 knew that there was something wrong. She, you know---

6 Q In the times you saw her, over that period of years,
7 you felt comfortable calling her and you asked her if
8 something's going on and---

9 A I did.

10 Q ---is this when she told it to you?

11 A She did.

12 Q Okay. When did you ask her to live with you?

13 A After her brother told her she didn't have anywhere to
14 go. I mean she didn't have anywhere to live.

15 Q Okay.

16 A Actually he brought her clothes to Bi-Lo and put them
17 in a shopping cart, and she didn't have anywhere to go.

18 Q Okay.

19 A So, I, I took her in. We took her in.

20 Q Okay. All right. Let me -- did -- she called you?

21 A She did and I went and picked her stuff up and it was
22 sitting in a shopping cart in the Bi-Lo parking lot on
23 Reidville Road.

24 Q Now, this is her brother?

25 A Right, this is.

1 Q Can you identify this document?

2 A Yes.

3 Q What is it?

4 A It's saying that she has moved in with me and they're
5 providing coverage for her.

6 Q Is this not a letter from me to you?

7 A It is, but I didn't, I didn't remember you.

8 Q Okay. Well, but you previously---

9 A I never met you.

10 Q But you received this letter -- well, it was sent on
11 October 23rd, 2007?

12 A I did.

13 Q Okay. And basically, in the letter -- would you read
14 it please?

15 A Would I read it out?

16 Q Yes.

17 SOLICITOR GRAY: Objection, Your Honor. I don't see
18 the relevance to this. She---

19 THE COURT: I sustain the objection---

20 MS. ANDERSON: Okay.

21 THE COURT: ---at this point.

22 Q All right. In this, did I inform you that -- did the
23 letter inform you that they were very unhappy about her
24 moving out?

25 SOLICITOR GRAY: Objection, Your Honor.

1 THE COURT: Well, no, I overrule the objection.

2 A I don't know if it says that or not. This is been a
3 long time ago. She had already moved out of their home.
4 She was living with her brother when you sent that.

5 Q In October?

6 A She moved from her brother's to my house.

7 Q So, when did she move in with you?

8 A Whenever she moved out with her brother. I'm not sure
9 of the exact time and date.

10 Q Well, was it around the beginning of the school or was
11 it closer to Christmas?

12 A It was probably about the middle of the year. I'm not,
13 I'm not really sure.

14 Q Okay. When you say the middle of the year, what does
15 that mean?

16 A Middle of the school year.

17 Q At Christmas?

18 A Maybe. I'm not sure.

19 Q Okay. So, you're not sure when she moved in with you?

20 A No.

21 Q But you did receive this letter from me?

22 A I did.

23 Q And it did ask you about whether or not she had
24 insurance?

25 A It said that I need to be provided, but the lawyer said

1 that her parents should provide it.

2 Q Well, isn't that, isn't that---

3 A Not the, the lawyer---

4 Q ---what you were informed of with the---

5 A ---the detective.

6 Q I'm sorry.

7 what?

8 A The detective said her parents should provide that,
9 that I, I shouldn't provide it.

10 Q But that's what her parents---

11 A It was not my responsibility.

12 Q I'm sorry.

13 But that's what her parents did, isn't it?

14 A Not until the lawyer, not the lawyer, the detective
15 asked him -- they had dropped her insurance, and they had to
16 pick her back up on their insurance.

17 Q Now, who -- you heard this from somebody else?

18 A The detective.

19 Q Okay. So -- but she did get her belongings.

20 Now, these were belongings that Melanie actually
21 brought to work to give to you, is that correct?

22 A Uh-huh. (Affirmative).

23 Q Not---

24 THE COURT: You got to say yes or not.

25 WITNESS: Yes.

1 Q I mean this isn't anything that was in a grocery cart?
2 Melanie and Roy had nothing to do with the grocery
3 cart, did they?

4 A No.

5 Q All right. But Melanie brought the things that [REDACTED]
6 asked for to you at work, correct?

7 A Yes, not, not when she first asked them. It was a
8 while.

9 Q But do you remember when she first asked them?

10 A It was a couple of months, two, three months before.

11 Q But you're still not quite sure when you, when [REDACTED]
12 moved in with y'all?

13 A No, I don't know the month or anything.

14 Q Okay. Why did she move out?

15 A Why did she move out of her brother's house?

16 Q No, your house.

17 A My house -- because she, she moved in with her aunt. I
18 guess because it was more like family to her.

19 Q Okay. Y'all didn't support her while she lived with
20 you, did you?

21 A No, [REDACTED] had a job, and, you know, stuff. [REDACTED] took
22 care of herself.

23 Q Okay. So, the most relationship that you had with
24 [REDACTED] was the however many months she lived with you?

25 You said you thought it was a year, but then you said

1 it was the middle of the year.

2 So, do you know?

3 A It was around nine months.

4 Q Okay. All right. At that time was she dating this
5 boyfriend?

6 A She was, part of the time.

7 Q Okay. And y'all had no -- you didn't control her, her
8 life, did you?

9 A What do you mean by control her life?

10 Q Well, did you treat her like she was y'all's child and
11 gave her rules to live by and punished her if she didn't
12 live by those rules?

13 A [REDACTED], [REDACTED] didn't really need any rules. [REDACTED]
14 did -- [REDACTED] worked and went to school and came home at
15 night, and she didn't -- the only -- she only -- she didn't
16 have much free time, but she was a good child.

17 Q Okay. But y'all didn't -- you didn't say these are our
18 rules, this is what you have to do?

19 A No, I don't think we actually sit down and said that.

20 Q Okay. Did she ever stay out all night long?

21 A No.

22 Q She always came home?

23 A Right.

24 Q Okay. And you said you thought she was happier living
25 with y'all?

1 A Uh-huh. (Affirmative).

2 Yes.

3 Q Now, she did have a lot of rules living with Melanie
4 and Roy, wasn't that correct?

5 A She did.

6 Q So, do you think that her happiness might of come from
7 not having any rules?

8 A No, I don't think so.

9 Q Okay. Well, you said it was a very restrictive
10 environment and they moved, and she moved---

11 A It was.

12 Q ---in with y'all and she was not in a---

13 A But I mean it was too, it was too strict there.

14 Q But y'all weren't strict at all?

15 A [REDACTED] just respected us enough to do what, you know,
16 she was suppose to do.

17 Q Okay. That's all the questions I have.

18 THE COURT: Any redirect?

19 SOLICITOR GRAY: Yes, Your Honor, briefly.

20 REDIRECT EXAMINATION

21 BY SOLICITOR GRAY:

22 Q You say you could tell a change in her?

23 A Sir?

24 Q You could tell a change in her?

25 A I did.

1 Q And she reported this incident to police before she got
2 to your home, correct?

3 A True.

4 Q But did she report this while she was living with her
5 brother?

6 A Yes.

7 Q Is that why he threw her out?

8 A I think so.

9 MS. ANDERSON: I would object.

10 THE COURT: Yeah, I sustain the objection.

11 SOLICITOR GRAY: Nothing further, Your Honor.

12 THE COURT: Disregard that question and answer.

13 SOLICITOR GRAY: No further questions.

14 MS. ANDERSON: Yes.

15 RE CROSS EXAMINATION

16 BY MS. ANDERSON:

17 Q You said that there'd been a big charge in [REDACTED]?

18 A Uh-huh. (Affirmative).

19 Q So---

20 THE COURT: Yes or no.

21 WITNESS: Yes. I'm sorry.

22 Q So, the few times in the 11 years you saw her, and then
23 she came to live with you where she didn't have restrictive
24 rules you saw a change in her?

25 A I did.

1 Q Thank you.

2 THE COURT: You can step down. Thank you.

3 Call your next witness.

4 SOLICITOR GRAY: May we approach, Your Honor?

5 THE COURT: All right.

6 (WHEREUPON, a bench conference was held out of the
7 hearing of the jury at this time.)

8 THE COURT: Members of the jury panel, this, I'm being
9 told, is a good time to break for lunch. It's ten after
10 12:00. I'll ask that you be back at 1:30. We'll try to
11 start as promptly at 1:30 as we can. So, have a pleasant
12 lunch and we'll see you back at 1:30.

13 (WHEREUPON, the following takes place outside the
14 presence of the jury.)

15 THE COURT: We'll be in recess until 1:30.

16 SOLICITOR GRAY: Yes, sir, Your Honor.

17 (WHEREUPON, Court was in recess for the lunch break.)

18 THE COURT: Mr. Gray, you ready?

19 SOLICITOR GRAY: Yes, sir.

20 THE COURT: All right. Ms. Anderson, you ready?

21 MS. ANDERSON: Yes, sir.

22 THE COURT: All right. The video's gonna be next?

23 SOLICITOR GRAY: Yes, sir.

24 How would you like me to do that?

25 Just---

1 THE COURT: I was, I was just gonna tell them that the,
2 the witness was gonna be by video, by video, and, and that's
3 really about it.

4 SOLICITOR GRAY: Yes, sir.

5 THE COURT: All right.

6 MS. ANDERSON: Do you mind if my witnesses move over
7 this way?

8 THE COURT: They can move wherever they want so they
9 can see. That's certainly -- that's all right.

10 All right. You can bring in the jury.

11 (WHEREUPON, the following takes place within the
12 presence of the jury.)

13 THE COURT: Members of the jury panel, the next witness
14 is gonna be by way of video. The witness is unavailable.
15 So, the parties, by agreement, are, are doing the video.
16 There was questioning of the witness and counsel for Mr.
17 Jenkins, as you will see from the video, was present when
18 the video was prepared, and was allowed and did
19 cross-examine the witness.

20 So, even though the witness is not here and not
21 available, this will be treated just as though the witness
22 were treated just like the other witnesses have been.

23 All right.

24 (WHEREUPON, a portion of State's Exhibit No. 1 was
25 played for the jury at this time.)

1 SOLICITOR GRAY: Need a moment, Your Honor.

2 (Pause.)

3 SOLICITOR GRAY: Need a break, Your Honor, to fix it.

4 THE COURT: All right. We'll take a break while we see
5 what's wrong with the equipment. If you'd go to your jury
6 room.

7 (WHEREUPON, the following takes place outside the
8 presence of the jury.)

9 MS. ANDERSON: Your Honor, is it okay for me to---

10 THE COURT: Yes.

11 MS. ANDERSON: Thank you.

12 (Pause.)

13 SOLICITOR GRAY: I think I'm ready.

14 THE COURT: As soon as Ms. Anderson gets back we will
15 proceed.

16 SOLICITOR GRAY: Yes, sir.

17 THE COURT: Bring in the jury.

18 (WHEREUPON, the following takes place within the
19 presence of the jury.)

20 (WHEREUPON, the remaining portion of the videotape was
21 played for the jury at this time.)

22 SOLICITOR GRAY: That concludes that, Your Honor.

23 THE COURT: Turn that off then and you can call your
24 next witness.

25 SOLICITOR GRAY: Your Honor, at this time the State

1 rests.

2 THE COURT: All right. Members of the jury panel, the
3 State is resting. That is the State is telling us it's
4 presented its case.

5 So, at this point in the trial we have to take up some
6 matters of law outside of your presence. So, I'm gonna let
7 you go to the jury room while we take up some legal matters.

8 (WHEREUPON, the following takes place outside the
9 presence of the jury.)

10 THE COURT: Ms. Anderson, anything?

11 MS. ANDERSON: Yes, sir, Your Honor.

12 I'd like to make a motion for a directed verdict at
13 this time. I do not believe that the State has proven their
14 case. There's a lot of differing statements about the age.
15 The therapist said it was from 15 to 17, and she never
16 mentioned any other time. But I don't believe that there's
17 been enough evidence produced that Mr. Jenkins perpetuated
18 any acts of sexual abuse against his daughter.

19 THE COURT: I'll deny the motion. I believe there --
20 evidence has been presented by the alleged victim in and of
21 itself. I think that's a substantial or enough testimony
22 from this jury could reach a conclusion that these acts
23 occurred and that they occurred at the ages she has alleged
24 in the indictments. So, I deny the motion as to directed
25 verdict on both counts.

1 MS. ANDERSON: Thank you.

2 THE COURT: All right. Mr. Jenkins, can you hear me?

3 DEFENDANT: Yes, sir.

4 THE COURT: We've reached the point in the trial where
5 you have a right to present a defense if you wish, but you
6 do not have to. As you may recall earlier today, I told the
7 jury you are presumed innocent of the charges against you.
8 You do not have to prove your innocence. The State must
9 prove your guilt beyond a reasonable doubt, but you can
10 present and call witnesses if you wish, but you don't have
11 to.

12 NOW, you can testify or you can exercise your
13 Constitutional right to remain silent.

14 Does he have any impeachable offenses?

15 SOLICITOR GRAY: Not in the past ten years, Your Honor.

16 THE COURT: All right. If you testify, you will, of
17 course, be under oath and answer questions from your
18 attorney and then you will be cross-examined by the State.
19 If you choose to exercise your Constitutional right to
20 remain silent I will tell the jury you have done that. I
21 will tell the jury that they can not hold that against you
22 in anyway whatsoever, that you have a right to remain
23 silent, and that the State must prove your guilt beyond a
24 reasonable doubt, and I'll remind them that you're presumed
25 innocent and need not prove your innocence.

1 So, you have a right to testify, have a right to remain
2 silent, and you have a right, but no requirement, to put up
3 witnesses, of course.

4 You understand all that?

5 DEFENDANT: Yes, sir.

6 THE COURT: Do you have any questions about any of
7 that?

8 DEFENDANT: No, sir.

9 THE COURT: All right. Well, you know it's your
10 decision as to whether or not to testify, and you've got
11 family here you can discuss it with, and, of course, Ms.
12 Anderson you can discuss it with, but ultimately it's your
13 decision.

14 Do you understand that?

15 DEFENDANT: Yes, sir.

16 THE COURT: All right. Now, Ms. Anderson, you do have
17 a list of witnesses. So, I presume you are gonna call some
18 witnesses?

19 MS. ANDERSON: Yes, sir.

20 THE COURT: All right. And, Mr. Jenkins, have you
21 reached a decision yet if you're gonna testify or exercise
22 your right to remain silent?

23 DEFENDANT: I'm gonna testify, sir.

24 THE COURT: All right. Well, we'll take a break and
25 take about a ten minute break and then we will move on. I

1 don't think we'll be able to get it to the jury today even
2 if we finish all the witnesses. We may not finish them, but
3 we'll take a break.

4 MS. ANDERSON: Thank you, Your Honor.

5 SOLICITOR GRAY: Thank you, Your Honor.

6 (WHEREUPON, a short recess was taken at this time.)

7 THE COURT: State ready?

8 SOLICITOR GRAY: Yes, sir, Your Honor.

9 THE COURT: Defense ready?

10 MS. ANDERSON: Yes, sir.

11 THE COURT: All right. Bring in the jury.

12 (WHEREUPON, the following takes place within the
13 presence of the jury.)

14 THE COURT: All right.

15 MS. ANDERSON: I call Roy Jenkins.

16 THE COURT: Please come up and be sworn.

17 ROY JENKINS, having been first duly
18 sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. ANDERSON:

21 Q Please state your name.

22 A Roy Jenkins.

23 Q How old are you, Roy?

24 A Forty-nine.

25 Q And what do you do for a living?

- 1 A I'm a logistics manager at Dantherm.
- 2 Q How long have you been there?
- 3 A I been there 14 years.
- 4 Q Okay. Before that, where did you work?
- 5 A I worked at Beverage Air.
- 6 Q And how long were you there?
- 7 A Eighteen years.
- 8 Q So, you've had two major jobs in your life?
- 9 A Yes.
- 10 Q Okay. You're married to Melanie Jenkins, is that
- 11 correct?
- 12 A That is correct.
- 13 Q How long have y'all been married?
- 14 A We've been married 30 years.
- 15 Q Okay. When did y'all first start dating?
- 16 A We were about 13 years old.
- 17 Q So, y'all were boyfriend/girlfriend and then married?
- 18 A Yes.
- 19 Q How many children do you have?
- 20 A We have three.
- 21 Q Who are they?
- 22 A My oldest son is Neal.
- 23 Q How old is he?
- 24 A He's 28.
- 25 Q Is he here in the courtroom?

1 A Yes.

2 Q And?

3 A My second son is Nick. He's 24.

4 Q And?

5 A And my daughter is [REDACTED] which is 22.

6 Q Okay. Now, you and Melanie adopted [REDACTED] when she was
7 how old?

8 A Six or seven.

9 Q Okay. And what was [REDACTED]'s relationship to your
10 family?

11 A She was my wife's sister's daughter.

12 Q Okay. And did she have any contact with [REDACTED] after
13 y'all adopted her?

14 A No.

15 Q Was she still around here?

16 A Yes, she actually lived right next door to us.

17 Q And she -- yet she had no contact with [REDACTED]

18 A No, ma'am, she would never come over and see her.

19 Q Did [REDACTED] try to see her?

20 A She'd be out in the yard playing, whatever, and I guess
21 if she saw her mom go, go by, but her mom never really
22 acknowledged her.

23 Q Okay. What did [REDACTED] call you and Melanie?

24 A She called us mom and dad.

25 Q Okay. Were you surprised by these accusations of

1 [REDACTED]?

2 A Absolutely.

3 Q Did you ever touch [REDACTED] sexually?

4 A No.

5 Q Did -- so, you're denying that what [REDACTED] testified to
6 happened?

7 A That is correct. I'm, I'm denying it.

8 Q What -- now, see, she lived with y'all from six or
9 seven till she was 17?

10 A Yes.

11 Q Okay. What kind of family life did y'all have?

12 A We had a, we had a really good family life. Done
13 things on the weekend and stuff together.

14 Q What kind of things?

15 A We always go to the lake.

16 Q Y'all have a place there?

17 A We, we have a lake house.

18 Q And it's where?

19 A Greenwood.

20 Q Okay. Did you go every weekend?

21 A We went every weekend.

22 Q Okay. Now, who -- when you say we, who went?

23 A My wife, Melanie, the two boys, Nick and Neal. They
24 would be several nephews would probably come down. We
25 always have maybe some other couples that would come by.

1 Q Did [REDACTED] go?

2 A Yes.

3 Q Okay. So, this was a normal family routine?

4 A Yes, every weekend.

5 Q Okay. You heard what [REDACTED] said about going to bars
6 and about you giving her liquor.

7 Did you give her -- or alcohol.

8 Did you ever give [REDACTED] alcohol?

9 A Absolutely not.

10 Q Now, you admit you bought her cigarettes?

11 A I admit that I bought cigarettes, yes.

12 Q And why was that?

13 A Well, we bought cigarettes because we knew they were
14 smoking, and, and, in your family, my wife's sister, when
15 she was small, actually burnt their house up. So, instead
16 of someone sneaking around and stealing cigarettes and
17 hiding them, maybe starting a fire, we just elected to go
18 ahead and purchase their cigarettes. At that point we knew
19 they were smoking and they smoked in the den.

20 Q Okay. But you never -- do -- you're saying you never
21 gave her alcohol?

22 A Absolutely not.

23 Q Okay. How did [REDACTED] do in school?

24 A [REDACTED] done great in school. She was the -- if I can
25 recall, an honor roll student. Her grades were always good.

1 Q And was she in the color guard?

2 A She was also in the color guards.

3 Q Okay. And what happened about age 15?

4 A Well, at age 15 she got real rebellious. Just real
5 terrible.

6 Q What kind of things would she do?

7 A Well, she would sneak out of the house, and once you
8 confronted her about it she'd always lie. All the kids had
9 chores to do. Her room looked like a disaster area, and,
10 so, it was---

11 Q Would she do her chores?

12 A No.

13 Q Explain how -- how did you and Melanie handle
14 discipline of the children?

15 A Well, pretty much if it wasn't real bad, then they got
16 things taken away from them.

17 Q Like what?

18 A They couldn't go out to say like movies. They couldn't
19 do any kind of maybe spending the night with someone, and,
20 and if they were planning on taking a trip, sometimes that
21 got cancelled.

22 Q Okay. And as far as the things they were allowed to do
23 on the weekends, did they have to earn those through their
24 chores?

25 A Absolutely.

1 Q All right. An incident occurred on April 27th of
2 2007 with [REDACTED] and one of y'all's cars.

3 Could you -- what happened?

4 A Yes, on that date, I believe it was the prom at Dorman.
5 She was given permission to drive the car, her only, and me
6 and my wife took off to the lake, and we had a phone call
7 shortly after we were down there that, at that time, her
8 boyfriend, Justin --

9 Q Who's sitting here in the courtroom?

10 A Yes.

11 Q Okay.

12 A By my oldest son saw him driving our Focus that we had
13 just purchased probably, like I say, no more than six, six
14 months to a year earlier.

15 Q Did you confront [REDACTED] about it?

16 A Well, actually me and her mom both confronted her about
17 it that Sunday when we got back home.

18 Q Okay. And how did she react to you?

19 Did -- what -- did you take away her privileges?

20 A We took all driving privileges away from her with any
21 vehicle in that yard, and at that point the doors, you know,
22 started slamming doors, yelling, all, all kinds of crazy
23 things.

24 Q Okay. So, this was in April 2007?

25 A (Witness nods affirmatively.)

1 Q After that, was that when she moved out of y'all's
2 home?

3 A I believe so. Shortly after that, yes.

4 Q Okay. And where did she move?

5 A She actually moved in with my oldest son Neal.

6 Q And his wife?

7 A And his wife.

8 Q Okay. Did you and Melanie try to talk her out of it?

9 A Actually I did. I told her, you know, stop this
10 nonsense and everything will calm back down, and she
11 didn't -- she wasn't gonna have any part of that. So, she
12 just left.

13 Q Okay. I believe she turned 17 at that time?

14 A Yes.

15 Q Okay. So, she moved in with your oldest son Neal?

16 A Yes.

17 Q And do you know why she left there?

18 A I had heard that they was some issue with monies and
19 maybe a car that she was supposedly buying from them.

20 Q Did Neal charge her rent?

21 A I believe Neal was charging her rent as far, as far as
22 what I can gather from them. But I really honestly didn't
23 know at the time.

24 Q Okay. Well, right closely after this was there another
25 incident with one of y'all's cars?

1 A Yes, shortly after that -- I have a F-150 Ford. It was
2 parked in the drive, the driveway. Only immediate family
3 knew where the spare hidden key was and it got stolen.

4 Q And was this on July 16th of 2007?

5 A Yes.

6 Q Okay. Did you call the police about this?

7 A Yes, I did.

8 Q You made a report?

9 A I made a report.

10 Q Okay. But did you actually see this truck a few days
11 later?

12 A Well, shortly after that I had went to work, and on the
13 way back home from work I spotted my truck at the Li'L
14 Cricket there on North Blackstock, and I tried to get in
15 behind the truck so whoever was driving it could not get
16 away from me, and unfortunately I was not able to do that,
17 and I got within arm's length of the driver, and they was a
18 passenger in there also. But I couldn't be a hundred
19 percent sure who the passenger was at that time.

20 Q Did you recognize the driver?

21 A I recognized the driver and I did do a lineup, photo
22 lineup from the officer --

23 Q Uh-huh. (Affirmative).

24 A -- and I picked the driver out. But at that point too
25 I still wanted to know what Justin looked, looked like. So,

1 I went back to Neal's house to get a picture.

2 Q Was this from [REDACTED]?

3 A Yes, from [REDACTED] to see if that was Justin in the back.
4 But I still couldn't be a hundred percent sure, and we had
5 [REDACTED] to take us over to where he was staying at.

6 Q Where Justin, the boyfriend?

7 A Where Justin was staying at --

8 Q Uh-huh. (Affirmative).

9 A -- her boyfriend at that time, and it was myself, my
10 wife, and my brother, Frank Junior, and she made the comment
11 that she would make sure that we would, that I would get my
12 f'ing truck back.

13 Q And this was in front of the three of y'all?

14 A Yes.

15 Q Okay. Was your truck found?

16 A It was found about two days later at the Evangel
17 Cathedral Church there on 85.

18 Q Okay. What was in the truck?

19 A There was a bunch of stolen construction equipment,
20 tools in the back. We also found a hair brush, cell phone,
21 and stuff that belonged to [REDACTED].

22 Q Okay. Do you think [REDACTED] had something to do with the
23 truck being stolen?

24 SOLICITOR GRAY: Objection, Your Honor.

25 THE COURT: I sustain the objection.

1 Q All right. All right. At this point -- let me ask you
2 this. Let me ask you to go back a minute and ask you about
3 your work.

4 when would you go to work?

5 A Back then?

6 Q Uh-huh. (Affirmative).

7 A I would go to work between probably 5:00 and 6:00 in
8 the morning.

9 Q And when did you get home?

10 A Probably around about 11:00 or 12:00 in the evening.

11 Q At night?

12 A At night.

13 Q Okay. So, were you at home at 5:00 anytime?

14 A No, ma'am.

15 Q Okay. Did you go see Tonya Alderidge at the Sheriff's
16 Office?

17 A Yes.

18 Q Did she ask you to come in?

19 A Yes, she did.

20 Q And you made a statement, didn't you?

21 A Yes, I do.

22 Q And in that statement what did you tell her---

23 A Told her I---

24 Q What did you state?

25 A Told her I didn't understand why I was even sitting

1 here, but, you know, I'm not, I'm not guilty of what they're
2 trying to push on me.

3 Q So, you're -- you state you wrote, made a written
4 statement that you had nothing to do or you did not do any
5 sexual battery or sexual, sexual abuse of your daughter?

6 A That's correct.

7 Q Okay. I need to ask you about going to the -- tell me
8 what Harrison's is at the lake.

9 A Harrison's Landing is a smaller version of a Fatz,
10 Applebee's if you want to call it. It serves all kinds of
11 food on the menus, and, yes, it does sell beer and wine like
12 all your other modern restaurants do.

13 Q Okay. And what was the other one that was mentioned?

14 A T. Roy's.

15 Q Okay. What kind of place was that?

16 A T. Roy's, T. Roy's sells hamburgers, hot dogs, the fast
17 food stuff off of the lake there.

18 Q Okay.

19 A And, of course, beer.

20 Q Okay. Now, do you agree that y'all would go there
21 occasionally?

22 A Yes, we'd, we frequent Harrison's Landing every Friday.

23 Q And who went with you to Harrison's Landing?

24 A Nick, Neal, [REDACTED], Melanie, whoever else may would be
25 joining our family at that weekend.

1 Q Was there dancing there?

2 A At one time they did do a karaoke set up there, and,
3 yes, I mean there was dancing there. I mean it was nothing
4 major. I mean it was a really small area.

5 Q Did you dance with Melanie?

6 A Yes.

7 Q You danced with [REDACTED]?

8 A Yes.

9 Q Dance with anybody else?

10 A They wasn't nobody else there that I really wanted to
11 dance with.

12 Q Okay. And you are stating that, at no point at any of
13 these places, did you give [REDACTED] anything alcoholic to
14 drink?

15 A No.

16 Q Explain about the second wife.

17 A The second wife is a family joke. That's all it's ever
18 been. It is no more than how women nag at men all the time
19 about things, and she was a constant nagger, and---

20 Q Now you're talking about [REDACTED]?

21 A Yes. And it was just -- it's just a family joke within
22 our family. No one took it serious. I mean you can take
23 anything out of context, but it's nothing serious there.
24 It's just a joke.

25 Q Did you and Melanie love [REDACTED]?

1 A Absolutely.

2 Q You still love her?

3 A Yes.

4 Q Do you understand why she's doing this to you?

5 A No, I don't.

6 Q But you're denying that you did anything that you've
7 been accused of?

8 A I'm denying it.

9 Q Okay. Now, back in 1986 and '87, did you get charged
10 with possession of ball tickets?

11 A Yes, I did.

12 Q And that's the only thing that's ever -- you've ever
13 been in trouble before prior to this?

14 A That is correct. I, I sold ball, ball tickets back in
15 the 80's.

16 Q Okay. Answer any questions Mr. Gray might have.

17 CROSS-EXAMINATION

18 BY SOLICITOR GRAY:

19 Q Now, when you say you worked these 6:00AM to 11:00PM?

20 A Yes.

21 Q Five days a week?

22 A Sometimes six, six days a week.

23 Q Six days.

24 Do you have a bowling league you went to?

25 A I do that on Thursdays, yes.

1 Q So, how could you do that if you're working all day?

2 A Well, sometimes I would pre, prebowl, what they call
3 prebowling on Sundays. Sundays would be my day off.

4 Q So, there's time you would be alone on your day off
5 prebowling so to speak?

6 A Alone?

7 Q Yes, sir.

8 A No, I would meet -- other members of my teams would and
9 show up.

10 Q But not on Thursday?

11 You would, you would never go bowling on Thursday?

12 A I'm not saying that. I said on some occasions I would
13 prebowl, and there were some Thursdays that I would bowl.

14 Q Okay. So, you didn't work five days a week every week
15 that [REDACTED] was in your home, correct?

16 A I worked every day of the week. I, I would get off
17 maybe long enough to go bowling, and then I would go back to
18 work because I had things that I had to get done.

19 Q Now, which job was this, the 18 year job or 13 year
20 old?

21 A This is the 14, 14 year old job.

22 Q Fourteen year old job.

23 And what did you do there?

24 A At that time I was the production manager.

25 Q And what does a production manager do?

1 A Production manager pretty much comes in, he sets up the
2 factory floor, has everything ready to be, for the days
3 shift. I open the plant. I close the plant.

4 Q Now, that required you to be there 17 hours?

5 A I -- well, all, all my other extra duties that I was
6 doing, keeping up with the schedules, and work load and
7 stuff, it took a lot of time.

8 Q But you made time to go bowling sometimes?

9 A I would occasionally, yes.

10 Q All right. You made time for anything else?

11 A Not during the week I wouldn't, no.

12 Q During the weekend you did?

13 A The weekend, the weekend we went to the lake.

14 Q Went to the lake.

15 Did you stay at the lake all day every weekend?

16 A Every weekend we would go, go down on say Friday
17 evening and come back Sunday afternoon.

18 Q But if you worked five days a week on Friday evening
19 you would still be at work at eleven o'clock, correct?

20 A Yes.

21 Q So, you would leave at midnight to go to the lake?

22 A I have done that, yes.

23 Q With your entire family?

24 A Yes.

25 Q Now -- and this small Applebee's place would still be

1 opened?

2 A They're summer, summer hours, yes.

3 Q You said every week.

4 So, then it may be from winter or summer?

5 A Well, now during the winter months they would close
6 earlier, but I would try to get down there earlier, and I
7 would limit my work time during the winter months to where I
8 could actually get off a little earlier to get on down the
9 road.

10 Q So, you could adjust your time as you saw fit?

11 A I would have to go through my boss.

12 Q But you would, if you saw the need to do that?

13 A If I saw that I could leave maybe around five, six,
14 seven o'clock on a Friday afternoon --

15 Q Uh-huh. (Affirmative).

16 A -- then I would talk it over with my boss and then I
17 would leave.

18 Q Or sometimes on a Thursday to go bowling?

19 A Correct.

20 Q So, there was some times that you could of been in the
21 house alone with your daughter?

22 A No, sir.

23 Q Never?

24 A No, sir.

25 Q From the age seven to age 17 you were never alone in

1 the house, your house with [REDACTED] not once?

2 A I do not believe so because my wife and my boys were
3 always there.

4 Q well, that's not necessarily true, is it?

5 Didn't Neal move out?

6 A Well, Neal, Neal moved out after he got married.

7 Q Right.

8 So, he wasn't there, there all the time, and didn't
9 Nick have a job?

10 A At that time I -- he worked a job through school, which
11 he got home probably around I would say four o'clock maybe.

12 Q So, he---

13 A I would think.

14 Q He wasn't there all the time, correct?

15 A And I wasn't either.

16 Q And what about your wife?

17 A Now, my wife, when the time she gets off of work, she
18 would be at home.

19 Q All right.

20 A She comes straight home after work.

21 Q How do you know, you weren't there?

22 A I'm just going -- well, yes, you're right. That's just
23 hearsay from her side of it.

24 Q Uh-huh. (Affirmative).

25 So, that -- basically about all this interaction with

1 [REDACTED], how did you find time to buy her cigarettes if you're
2 always working?

3 A Well, they have a 24-hour store right above the house
4 there and on the way in. If they left, if they left me a
5 note or whatever I would stop and buy their cigarettes.

6 Q Okay. So, you would give them cigarettes sometimes?
7 Would you wake everybody up in the house and say hey, I
8 got your cigarettes?

9 A No.

10 Q No. Thank you.

11 So, there's sometimes you'd come in the house and
12 everybody would be asleep?

13 A Not at my house, no.

14 Q Were, were they asleep or weren't they asleep all, all
15 the time, some of the time?

16 A Some of the time they would be asleep.

17 Q Okay. Everybody including your wife?

18 A Yes.

19 Q Now, where is your daughter's room located in the
20 house?

21 A All the way down the hall the last room on the left
22 across from our room.

23 Q Across from your room?

24 A Yes.

25 Q Your son's room next to that?

1 A The son's room is the first room on the right going
2 down the hall.

3 Q Okay. Were there some instances where you went into
4 your daughter's room at night and not waking anybody else up
5 in the house?

6 A No.

7 Q You---

8 A Because, because the door that closes in that room
9 sticks, and if you try to get in that room, it's noise.

10 Q Okay. It's noise.

11 But are you positive that everybody woke up in the
12 house when you went into her room?

13 A Repeat that again.

14 Q Are you positive everybody in your house woke up when
15 you went into her room?

16 A I'm not positive everyone woke up, but they knew
17 someone was there.

18 Q How would you know if they were asleep or not?

19 A I mean ask -- well, I, I really wouldn't know if, if
20 the boys woke up in their room.

21 Q Right.

22 So, it's possible you could of been in there with this,
23 with this loud door you're saying and awake nobody after you
24 get, gotten them their cigarettes, correct?

25 A Their cigarettes would be sitting on the counter in the

1 kitchen.

2 Q Okay. What did each person smoke?

3 A I believe at that time I believe [REDACTED] may have smoked
4 Marlboro's I think and Nick would of smoked Newports.

5 Q Your wife didn't smoke?

6 A My wife's been quit smoking for over 20 years.

7 Q All right. Now, you made some mention about chores in
8 the house.

9 Are you saying that she never did her chores in the
10 house?

11 A A good majority of it she never did her chores.

12 Q She never did her chores.

13 You got her a car?

14 A I got---

15 Q Did you get her a car?

16 A No.

17 Q You didn't get her a car to drive?

18 A She had use of the vehicles in our yard at that time.

19 Q Okay. And this whole thing about the boyfriend, and
20 F-150, what does that have to do with whether or not you
21 molested her?

22 A Well, I'm thinking that she's trying to get back even
23 with me for stealing my trucks, cars, you know.

24 Q But how does that affect you molesting her if her --
25 you're, you're accusing her boyfriend from 2006 or 2007 of

1 doing this. It's 2012.

2 How does that affect whether or not you molested her in
3 2003/2004?

4 A I did not molest her.

5 Q Please answer the question.

6 Were -- whether or not her boyfriend took your truck,
7 how does that affect whether or not you molested her?

8 A I'm really not understanding what you're trying to get
9 me to answer you here because I know that they done things
10 to try to get even with me because I'm, I was so rough to
11 them.

12 Q You didn't even know what he looked like?

13 How, how---

14 A I did not know what he looked it.

15 Q So, how could you be rough with him?

16 A Well, I just knew of him.

17 Q You just knew of him?

18 A Right.

19 Q All right. You knew of him.

20 Now, 2007, she left your home, is that correct?

21 A Yes.

22 Q And you say she possibly wanted to get back at you for
23 you being rough on them, correct?

24 A Yes, sir.

25 Q So, what month in July did she leave your home?

1 A It would of been---

2 Q I think it was July 2007, correct?

3 A 2007 I believe, yes.

4 Q was it July possibly?

5 A Yes, somewhere in there, yes, sir.

6 Q Spring maybe?

7 A It could of been, yes.

8 Q All right. And she moved in with your son and his
9 wife?

10 A Yes.

11 Q When were you arrested on these charges?

12 A I believe it was June, in June of 2008.

13 Q 2008.

14 This revenge plot took a year. She left your house in
15 Spring of 2007, but you weren't arrested until June of 2008,
16 correct?

17 A Yes.

18 Q Again, how does her boyfriend stealing your truck
19 figure into a year delay of leaving your house to her going
20 to the police?

21 A Well, I just really don't know why it took them so long
22 to come over and, and, and steal the things that they did.

23 Q And she moved in with her friend of yours, correct, a
24 friend of the family?

25 A Yes.

1 Q And she stayed there for about a year?

2 A Yes.

3 Q That entire time she never went to the police as far as
4 you know?

5 A As far as I know.

6 Q As a matter of fact, she was appointed counsel,
7 correct?

8 A As far as I know. I mean---

9 Q Right.

10 So, this wasn't about an F-150, was it?

11 Was this about her driving privileges?

12 MS. ANDERSON: Your Honor, I believe Mr. Gray has his
13 dates confused.

14 A Well---

15 THE COURT: Well---

16 MS. ANDERSON: Okay.

17 THE COURT: The witness can answer what he knows and
18 what he doesn't know.

19 A Could you repeat that?

20 Q Yes, sir.

21 Was this about an F-150?

22 A This was about the F, F-150 and driving privileges,
23 yes.

24 Q And driving privileges.

25 Do you know if she had a car with, while she was with

1 Mrs. Judy Smith?

2 A I do not know.

3 Q You do not know?

4 A I do not know.

5 Q Okay. So, she took care of -- do you know if she had a
6 job when she lived with Mrs. Judy Smith?

7 A well, I knew when she left the house she had a job at
8 Bi-Lo's.

9 Q All right. Did she ever call you during the year she
10 was in counseling or living with Mrs. Judy Smith and ask you
11 for her driving privileges to be restored?

12 A No.

13 Q why would she do this?

14 A I don't know.

15 Q why is she doing this now?

16 A I really don't know.

17 Q Has she asked you for any money?

18 A No.

19 Q Has she made any blackmail threats or anything to you?

20 A No.

21 Q Any extortion threat?

22 A No.

23 Q And she left her home after she turned 17, correct?

24 A Yes.

25 Q And she, she didn't go immediately to a stranger's

1 house, did she?

2 A She went straight to the oldest son's house.

3 Q A family member?

4 A A family house.

5 Q So, did she ever try to get any charges against your
6 wife, Melanie Jenkins?

7 A Could you repeat that again?

8 Q Did she ever get any, try to get any charges against
9 your wife?

10 A That I do not know.

11 Q You don't know?

12 A I don't.

13 Q Or your sons?

14 A I do not know.

15 Q And all these people were in the home, home during this
16 time?

17 A Yes.

18 Q And the only problem -- only person she had a problem
19 with was you, correct?

20 A That is correct.

21 Q So, almost 20 years after you -- well, 15 years after
22 you adopted her, you're the only one she still has a problem
23 with?

24 A Cause I am very strict on the kids.

25 Q She hasn't been in your house since 2007.

1 How can you be strict on a grown woman?

2 A I was strict -- I'm speaking in the latter, the
3 earlier---

4 Q Yes, sir.

5 But how can you be strict on a grown woman now---

6 A I can not be strict.

7 Q ---if that's the reason she's doing this?

8 Five years have passed.

9 A I can not be strict on her now.

10 SOLICITOR GRAY: All right. Nothing further, Your
11 Honor.

12 THE COURT: Redirect.

13 REDIRECT EXAMINATION

14 BY MS. ANDERSON:

15 Q Roy, Mr. Gray was asking you about going in [REDACTED]'s
16 room when you come home after work.

17 Did you ever go in her room?

18 A No.

19 Q Okay. So -- and he was also asking or telling you that
20 this took a year before she ever went to the police.

21 Isn't it true that she went to the police in August of
22 2007?

23 A Yes.

24 Q About a month after the incident with the Ford with the
25 truck?

1 A Yes.

2 Q So -- and it took the police a year to -- well, nearly
3 a year to arrest you, is that correct?

4 A Yes.

5 Q But she, but she went to the police, in fact, on
6 August, August 20th, 2007, correct?

7 A That is correct.

8 Q And cause it was during that time that you went and
9 talked with Tonya Alderidge?

10 A Correct.

11 Q So, this was all in '07.

12 So, when she went to the police was pretty much close
13 on the time period when you took away her driving privileges
14 and the incident with the truck?

15 A Yes.

16 Q Okay. But, again, Mr. Gray was asking what did the
17 truck have to do with, with you sexually abusing her.

18 You didn't sexually abuse her, did you?

19 A No.

20 Q And one other thing. ████████ mentioned about the boys
21 having cars.

22 Did they buy their own cars?

23 A The boys never had a car on their own in their own
24 name. We had the cars, me and my wife. They were allowed
25 to drive them.

1 Q Same thing with [REDACTED].

2 So, she was treated any differently?

3 A No.

4 MS. ANDERSON: Okay. That's all I have, Your Honor.

5 THE COURT: Recross.

6 SOLICITOR GRAY: No, sir.

7 THE COURT: All right. You may step down. Have a seat
8 at the table. Thank you.

9 Call your next witness.

10 MS. ANDERSON: Melanie Jenkins.

11 MELANIE JENKINS, having been first duly
12 sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. ANDERSON:

15 Q Speak up, Melanie.

16 Okay. Please state your full name.

17 A Melanie Parris Jenkins.

18 Q And how old are you?

19 A I'm 48.

20 Q And you're married to Roy?

21 A I am.

22 Q And I believe he testified y'all been married 30 years?

23 A Correct.

24 Q And was he correct on how many children you have?

25 A He is.

- 1 Q Okay.
- 2 A Three.
- 3 Q And you adopted [REDACTED]
- 4 She was your sister's child?
- 5 A Right.
- 6 Q And was that correct that you adopted her after your
- 7 mother died?
- 8 A It is.
- 9 Q Okay. Do you work?
- 10 A I do.
- 11 Q Where do you work?
- 12 A Woodward.
- 13 Q And what is that?
- 14 A Where?
- 15 Q What is it?
- 16 A It's a place we make gas nozzle, turbines, or allow the
- 17 turbines to make power over the world.
- 18 Q Okay. How long you been there?
- 19 A Ten and a half years.
- 20 Q Did you work somewhere before?
- 21 A Charles Lea Center.
- 22 Q What did you do at Charles Lea?
- 23 A Cook.
- 24 Q Okay. Before that were you a homemaker?
- 25 A Yeah.

1 Q How would you describe y'all's family life?

2 A We had a good life. Everybody went to school.

3 Everybody did what they were, normal activities. Come home,
4 we ate supper together.

5 Q Now, Roy wasn't always there for supper, was he?

6 A No, but who was, who was there we ate supper together.

7 Q Okay.

8 A And we would leave his on the stove.

9 Q Okay. Well, did he work the long hours he said he did?

10 A He did.

11 Q Okay. [REDACTED]'s room was right across from your room?

12 A It is.

13 Q Okay. Do you think you would of known if Roy went in
14 and tried to have sex with [REDACTED]?

15 SOLICITOR GRAY: Objection.

16 THE COURT: Rephrase the question. I sustain the
17 objection.

18 Q Okay. Did you ever notice anything unusual going on
19 between Roy and [REDACTED]?

20 A No.

21 Q Okay. You also had another child living with you,
22 didn't you?

23 A We did.

24 Q And who was that child?

25 A Our nephew, Frankie Jenkins.

- 1 Q And that's the son of --?
- 2 A Frank, Junior.
- 3 Q Frank, Junior.
- 4 Okay. I believe you have some health problems?
- 5 A I do.
- 6 Q And what are those?
- 7 A I am a Type II diabetic and I have osteoarthritis.
- 8 Q Okay. Other than that is your health okay?
- 9 A It is.
- 10 Q Was [REDACTED] a difficult child?
- 11 A She was.
- 12 Q Why was that?
- 13 A I -- honestly she's just stubborn. She didn't believe
- 14 our rules applied to her.
- 15 Q Okay. Did you have different rules for her than you
- 16 did for your sons?
- 17 A We did not.
- 18 Q Did you treat all three of them the same?
- 19 A We tried to treat everyone the same.
- 20 Q Okay. When did the problems really start with [REDACTED]?
- 21 A Around 15.
- 22 Q When she was 15.
- 23 What was she doing that was causing problems?
- 24 A Skipping school or sneaking out of the house, having
- 25 friends over that wasn't suppose to be there on the weekends

1 after we told her not to have no one there.

2 Q Okay. And how did you handle disciplining [REDACTED]

3 A We took away her going to someone else's house to spend
4 the night.

5 Q Okay. And did the children all have specific chores?

6 A Specific chores to do. The boys was outside and hers
7 was pertaining to the house.

8 Q Okay. And if they didn't do their chores what
9 happened?

10 A Their privilege also got took away. They didn't get to
11 do the -- if they had something planned for the weekend, it
12 got took away, grounded.

13 Q Okay. During this time period, she was making good
14 grades, wasn't she?

15 A She was.

16 Q And she was in color guard?

17 A She was.

18 Q And an honor roll student?

19 A She was.

20 Q She also got a job when she was 16?

21 A Sixteen, uh-huh. (Affirmative).

22 Q And where was that?

23 A Bi-Lo.

24 Q Did Nick and Neal also have jobs when they were 16?

25 A I believe they, they may of had a little part-time job,

- 1 yes.
- 2 Q Okay. Cause [REDACTED]'s was part-time, right?
- 3 A Uh-huh. (Affirmative).
- 4 Q Okay. Roy told us about the incident about the prom,
5 and basically you agree your punishment was she couldn't use
6 any of the cars?
- 7 A Right, I agree.
- 8 Q Okay. And how did she react?
- 9 A She kind of raised a little sand.
- 10 Q Okay. Did [REDACTED] tell you that Roy had sexually
11 molested her?
- 12 A She did.
- 13 Q Do you remember when she told you that?
- 14 A I believe it was in August after registration from high
15 school.
- 16 Q So, that was 2007?
- 17 A Uh-huh. (Affirmative).
- 18 Q Okay. Did you believe her?
- 19 A I did not.
- 20 Q She said that you hugged her and told her you were
21 sorry and you believed her.
- 22 Did you ever do that?
- 23 A I may have -- she was broke down and tearful. So, I
24 tried to console her, but then -- that's all I did was --.
- 25 Q Did you ever tell her that you---

- 1 A No.
- 2 Q Okay. Do you believe Roy did any of this?
- 3 A No, I do not believe Roy did any of that.
- 4 Q why?
- 5 A My husband would not hurt a child whatsoever.
- 6 Q Okay. Did he ever really have the opportunity to do
- 7 all the things that [REDACTED] said he did?
- 8 A No, he did not.
- 9 Q Did he work the hours he said he did?
- 10 A He worked those hours. He did.
- 11 Q And y'all did go to the lake on the weekend?
- 12 A We did go to the lake on the weekends.
- 13 Q Did all of the children go with you every weekend?
- 14 A Not every weekend.
- 15 Q Okay.
- 16 A The boys at the time.
- 17 Q Okay. Did [REDACTED] stay home sometimes?
- 18 A Not by herself.
- 19 Q But she was staying with Neal or---
- 20 A Or Nick.
- 21 Q ---Nick?
- 22 Okay. So, she didn't always go on the weekends?
- 23 A No.
- 24 Q Did anyone -- did you ever see Roy give her alcohol?
- 25 A No.

- 1 Q Now, y'all did buy their cigarettes?
- 2 A We did do the cigarettes.
- 3 Q And was it for the reasons that Roy said?
- 4 A It was for the reasons Roy said.
- 5 Q Was it your sister that burned down the house?
- 6 A It was my sister that snuck around and put a cigarette
- 7 out under a bed and the bed caught fire.
- 8 Q Was this [REDACTED]'s---
- 9 A The house we're living in now.
- 10 Q Was this [REDACTED]'s mother that did that?
- 11 A This is [REDACTED]'s mother that did that.
- 12 Q Okay. And did [REDACTED]'s mother have anything to do with
- 13 [REDACTED]
- 14 A No.
- 15 Q And she did just live next door?
- 16 A And she did live next door for a little while, yes.
- 17 Q Okay. Did [REDACTED] did [REDACTED] keep secrets?
- 18 A Keep secrets?
- 19 Q Uh-huh. (Affirmative).
- 20 A She must have.
- 21 Q Are you talking about this?
- 22 A Uh-huh. (Affirmative).
- 23 Q But she normally -- would she normally tell you
- 24 everything that was going on?
- 25 A She would tell me things that would happen in school as

1 far as the color guards, color guards practices and stuff
2 like that and if she needed anything for school.

3 Q Okay.

4 A But as far as everything else, no.

5 Q Tell me about the second wife story.

6 A The second wife story goes that I am a diabetic. I
7 could go anytime. So, we felt that she would be the last
8 one at home. She would be the responsible one to take care
9 of the bills, make sure everything got paid cause our other
10 two were kind of out on their own, and that's all that
11 meant. She didn't have to do the, the other duties. Just
12 the taking care of my husband's -- Roy would have somewhere
13 to live.

14 Q Okay. Did [REDACTED]'s accusations cause a rift in the
15 family?

16 A It did.

17 Q Okay. Do you love [REDACTED]?

18 A I do.

19 Q You still do?

20 A I do.

21 Q All right. Those are all the questions I have. Answer
22 any questions Mr. Gray might have.

23 CROSS-EXAMINATION

24 BY SOLICITOR GRAY:

25 Q You expected a 13 or 14 year old to take over your

- 1 duties as a wife if you died?
- 2 A Not all of my duties.
- 3 Q Okay. Which ones?
- 4 A Just the bill paying part of my duties.
- 5 Q And how, how was she suppose to do that at 13 or 14?
- 6 A She was the smart one. Like I said, she would of been
- 7 the last one left at home had she been there. The other two
- 8 boys had moved out, and we just assumed that she would be
- 9 the one left to take care of everything.
- 10 Q But that second wife joke, did your husband ever state
- 11 that she would pick up the slack?
- 12 A That would be the slack, the bill paying.
- 13 Q The bill---
- 14 A None of the sexual duties, no.
- 15 Q No.
- 16 Did you have a nickname for [REDACTED]?
- 17 A Excuse me?
- 18 Q Did you have a nickname for [REDACTED]
- 19 A I don't remember.
- 20 Q Miss Thang?
- 21 Did you talk to---
- 22 A That was---
- 23 Q ---Judy smith who's sitting here---
- 24 A Okay. That was the color guard, Miss Thang.
- 25 Q Uh-huh. (Affirmative).

1 All right. And you talked to Judy Smith or Susan
2 Hughes about these accusations?

3 A Pardon?

4 Q Did you talk to Susan Hughes or Judy Smith about these
5 allegations?

6 A Allegations?

7 Q Against your husband.

8 A No, I did not.

9 Q Never?

10 A Not that I recall.

11 Q Did you talk to them about [REDACTED] and what she was
12 saying?

13 A I was proud of [REDACTED] and her color guards and I
14 traveled with her to her competitions. They come to see her
15 competitions in schools also.

16 Q Did [REDACTED] ever tell you what happened to her with your
17 husband?

18 A No, not in the explanation she give. She just said
19 that he done things to her that I do not believe he did.

20 Q So, you didn't hug her and cry with her and told her---

21 A I hugged her because she was upset.

22 Q Did you discuss her allegations with your husband?

23 A It -- later on that day I think we, we had a
24 conversation.

25 Q And did the two of you talk to [REDACTED] about it?

- 1 A No.
- 2 Q No.
- 3 A Not that I recall.
- 4 Q I'm -- every weekend you went to the lake?
- 5 A We tried to go every weekend.
- 6 Q In wintertime also?
- 7 A In wintertime also.
- 8 Q You leave her behind with her brothers?
- 9 A With her brother or she spent the night with one of her
- 10 friends.
- 11 Q And how long did you stay there, from Friday to Sunday?
- 12 A Yes.
- 13 Q And the bowling league on Thursday nights, did that
- 14 happen with your husband?
- 15 A It did. He would, like he say, he would leave and come
- 16 right back, go right straight back to work and come off when
- 17 he got off of work.
- 18 Q All right. And everybody in the house was working at
- 19 sometimes and [REDACTED] was home paying the bills as you said.
- 20 was it possible your husband could of come home without
- 21 you being there?
- 22 A No.
- 23 Q No.
- 24 A No.
- 25 Q why not?

1 A I rarely went out anywhere.

2 Q But you did go sometimes?

3 A If I went she would be at work also and I would be
4 there by myself. After I went to get my groceries and I
5 come back home, I would be the only one there till everybody
6 come home from work.

7 Q So, what were your hours of work?

8 A My hours are 6:00 to 3:00, 6:00 to 2:30.

9 Q And you come straight home?

10 A And it would take me 30 minutes to get to my house.

11 Q And you stay in the house all day long after that?

12 A If I---

13 Q Every day?

14 A No, I would have to go buy groceries.

15 Q Now one time---

16 A And I would go straight to the grocery store, get my
17 groceries, and come straight home, and then I would not
18 leave.

19 Q Not one time between 2002 and 2006 was she ever at home
20 alone?

21 A She's home alone?

22 Q Between 2002 and 2006, was she ever at home alone one
23 time?

24 A If there was it was a couple of hours, and that would
25 be about it. Never for a length of time.

1 Q I'm sorry. Thank you. No further questions.

2 MS. ANDERSON: I have no further questions.

3 THE COURT: All right. You can step down and have a
4 seat. Thank you.

5 Call your next witness.

6 MS. ANDERSON: Neal Jenkins.

7 NEAL JENKINS, having been first duly
8 sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. ANDERSON:

11 Q Please state your name.

12 A James L. Jenkins.

13 Q And everyone calls you Neal?

14 A Neal, yes, ma'am.

15 Q Okay. How old are you, Neal?

16 A Twenty-eight.

17 Q And you are Roy and Melanie's oldest son?

18 A Yes.

19 Q Okay. You married?

20 A Yes.

21 Q Okay. Are you working?

22 A Not at the moment.

23 Q Okay. Have you been laid off?

24 A Yes, ma'am.

25 Q Okay. You said you're married.

1 Do you have children?

2 A Yes, ma'am.

3 Q How many?

4 A I have two girls and one on the way.

5 Q Is it a girl?

6 A Yes, ma'am.

7 Q So, three girls.

8 Q Okay. How old were you when [REDACTED] moved in with y'all?

9 You're six years older than her?

10 A Yes, I was 22.

11 Q Not when she moved in with you.

12 A Oh, I---

13 Q Oh, no, I see what you're talking about. No, when she
14 moved in with your family, Roy and Melanie and you and Nick.

15 A I was probably 13, 14.

16 Q Okay. All right. Were y'all a close family?

17 A Yes.

18 Q Did you ever notice anything going on between [REDACTED] and
19 Roy?

20 A No, ma'am.

21 Q Okay. Did your parents treat y'all all the same?

22 A Yes, ma'am.

23 Q Okay. When you were living there, was [REDACTED] sneaking
24 out or---

25 A Yes, ma'am.

- 1 Q So, you, you were aware that she'd sneak out?
- 2 A Yes, ma'am.
- 3 Q How were y'all punished?
- 4 A Well, like, like you've heard, if we didn't do our
- 5 chores we do get things taken away, and our driving
- 6 privileges was taken away as well.
- 7 Q Okay. [REDACTED] moved in with you, didn't she?
- 8 A Yes, ma'am.
- 9 Q And this was after school ended in 2007?
- 10 A Yes, ma'am.
- 11 Q Okay. And did you charge her rent?
- 12 A Yes, ma'am.
- 13 Q How much did you charge her?
- 14 A Twenty-five dollars a week.
- 15 Q Okay. And I believe she was buying a car from you?
- 16 A Yes, ma'am.
- 17 Q Okay. Why did she leave?
- 18 A That I have -- I don't -- I really don't know why she
- 19 left us.
- 20 Q Okay. So, when she said or someone said that your wife
- 21 actually took [REDACTED] to the police station, okay, is that
- 22 true?
- 23 A Yes.
- 24 Q Did your wife know why [REDACTED] was going?
- 25 A No, ma'am.

1 Q Okay. when did y'all find out?

2 A About the same time that we all found out. About two
3 weeks later.

4 Q Okay. Did you, after she went to the police station,
5 is that when she left your house?

6 A Yes.

7 Q Okay. Did you put all her stuff in a grocery cart
8 and---

9 A No, ma'am.

10 Q What did you do with her stuff?

11 A I really don't know how it got out of the house. I
12 don't remember how that happened.

13 Q But did you take it and leave it in a parking lot or---

14 A No, ma'am, it was just left in the room that she was
15 renting.

16 Q Okay. And then it was gone?

17 A Yeah, I assume that she came and got it.

18 Q Cause she had a key to the house, didn't she?

19 A She did. She had one just to the door itself. Not to
20 the dead bolt.

21 Q Okay. But she could get in and get her stuff---

22 A Yes, ma'am.

23 Q ---if she needed to?

24 A Yes, ma'am.

25 Q Okay. Do you believe that your father sexual molested

- 1 [REDACTED]
- 2 A No, ma'am.
- 3 Q Did he ever have an opportunity that you know of?
- 4 A No, ma'am.
- 5 Q How far was y'all, your and Neal's room, I mean your
- 6 and Nick's room from [REDACTED]'s room?
- 7 A Probably about 15 feet---
- 8 Q Okay.
- 9 A I think, if that.
- 10 Q Okay. And it was an old house, wasn't it?
- 11 A Yes, ma'am.
- 12 Q Squeaky?
- 13 A Yes, ma'am.
- 14 Q Okay. And you heard [REDACTED] talk about this, these, her
- 15 allegation or things happening in the living room?
- 16 A Yes, ma'am.
- 17 Q Now, was that the family room?
- 18 A Yes, ma'am.
- 19 Q Did y'all all use it?
- 20 A Yes, ma'am.
- 21 Q Would there be times that your father could of had an
- 22 opportunity to have sex with [REDACTED] in the living room?
- 23 A No, ma'am.
- 24 Q Answer any questions that Mr. Gray has.
- 25 CROSS-EXAMINATION

1 BY SOLICITOR GRAY:

2 Q when did you get your first job?

3 A when I was 16 -- 15 or 16.

4 Q Fifteen or 16.

5 A Probably 16.

6 Q That means you had to leave the house, right?

7 A sir?

8 Q You had to leave the house?

9 A Yes.

10 Q So, how -- did you know what's going on at the house if
11 you're away from the house?

12 A well, I didn't know when I was at work.

13 Q So, you didn't know?

14 A Not always.

15 Q So, how -- opportunity you said your father couldn't
16 have had she, he could of had, correct, cause you don't know
17 what happened?

18 A If I wasn't at home, yeah, I couldn't tell what, you
19 know.

20 Q So, why did you just testify that there's just no
21 opportunity, no chance whatsoever?

22 A As we were all there there was no opportunity.

23 Q If you were all there, right. Okay. That's assuming
24 everybody's there.

25 How could she sneak out of that house at night?

1 A At night?

2 Q How could she sneak out?

3 A After we all asleep. Even if we weren't all asleep.
4 It's not that hard to do.

5 Q Okay. Hear about these loud house, squeaky floors,
6 squeaky doors, she can get out of the window without anybody
7 noticing, correct?

8 A Get out of a window?

9 Q Or get out -- you tell me.

10 How did she get out if she---

11 A Through the front door.

12 Q Through the front door?

13 A Yeah.

14 Q And nobody noticed?

15 A Yeah, we---

16 Q Well, that's it. No further questions.

17 A All right.

18 MS. ANDERSON: I have no other questions.

19 THE COURT: All right. You may step down. Have a
20 seat. Thank all.

21 Call your next witness.

22 MS. ANDERSON: Nick Jenkins.

23 NICK JENKINS, having been first
24 duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MS. ANDERSON:

2 Q Please state your name.

3 A Roy Nicholas Jenkins.

4 Q And you are the son of Roy and Melanie Jenkins?

5 A Yes, sir.

6 Q How old are you?

7 A Yes, ma'am. Twenty-four.

8 Q Okay. You work?

9 A Yes, ma'am.

10 Q Where do you work?

11 A A place called Seework.

12 Q What do you do?

13 A Mix ink.

14 Q Okay. And how long have you been there?

15 A Four years.

16 Q Okay. Do you still live with your parents?

17 A Yes, ma'am.

18 Q Have you always lived with your parents?

19 A Till I moved out and then I moved back in.

20 Q Okay. You're not married?

21 A No, ma'am.

22 Q Okay. You grew up with [REDACTED], didn't you?

23 A Yes, ma'am.

24 Q What, are you two years older than her?

25 A Four years.

- 1 Q Four years?
- 2 A No, two years. Yes.
- 3 Q How many?
- 4 A Two.
- 5 Q Two.
- 6 Okay. How did y'all all get along?
- 7 A Like normal brothers and sisters.
- 8 Q But you fussed and fight?
- 9 A Fuss, fight, argue, normal, typical.
- 10 Q Was she ever treated differently because she was
- 11 adopted?
- 12 A No, ma'am.
- 13 Q What your brother and parents have said, is this true
- 14 that you-all had chores and y'all had to do them?
- 15 A Yes, ma'am, we had chores to do.
- 16 Q And if you didn't do them you got privileges taken
- 17 away?
- 18 A Yes, ma'am.
- 19 Q Okay. Was [REDACTED] a lively child or did she talk a lot?
- 20 A She talked a lot.
- 21 Q Okay. Did you ever know her to keep a secret?
- 22 A To you -- repeat that.
- 23 Q Did you ever know her to keep something secret?
- 24 A Yes, ma'am.
- 25 Q What was that?

1 A Uh.

2 Q Maybe you didn't understand my question.

3 Did [REDACTED] usually tell you what was on her mind?

4 A Tell you what's on her mind like how you feel or --?

5 Q Well, I mean, yeah.

6 Did -- if she -- would she tell or talk to you about
7 what was going on with her?

8 A Her personal life---

9 Q About school---

10 A ---school?

11 Q ---and everything?

12 A If it's -- yeah, if it's something to do with school,
13 yeah.

14 Q Okay. Do you think your father molested [REDACTED]?

15 A No, ma'am.

16 MS. ANDERSON: That's all the questions I have.

17 CROSS-EXAMINATION

18 BY SOLICITOR GRAY:

19 Q You say your father and mother treated all of you the
20 same?

21 A Yes. Yes, sir.

22 Q When did your father or mother buy you your first beer?

23 A My what?

24 Q First beer.

25 A My first beer.

- 1 Q Yes, sir.
- 2 A They never bought me a first beer.
- 3 Q They never got you a beer?
- 4 A Hu huh. (Negative).
- 5 Q They treated you-all the same. They got beers for
- 6 [REDACTED].
- 7 They didn't get beers for you?
- 8 A No, he didn't buy me no beer.
- 9 Q When did you have your first beer?
- 10 How old were you?
- 11 A My first beer?
- 12 Q Yeah.
- 13 A Probably 16, 17.
- 14 Q Sixteen or 17.
- 15 At home?
- 16 A At home.
- 17 Q Okay. I'm assuming you had a job sometime while [REDACTED]
- 18 was living with you?
- 19 A Yes, sir.
- 20 Q And the job was outside the home also?
- 21 A Yes, sir.
- 22 Q And you weren't at home 24 hours a day?
- 23 A I wasn't at home. I was at work.
- 24 Q All right. So, you don't know what happened at your
- 25 house when you weren't there, do you?

- 1 A Not when I wasn't there, but I'd be at work.
- 2 Q All right. And you said you and [REDACTED] would talk---
- 3 A Yeah.
- 4 Q ---sometimes?
- 5 A About school.
- 6 Q About school.
- 7 A How school's going, school work.
- 8 Q Boyfriend and girlfriends?
- 9 A No, we didn't talk about no girlfriends.
- 10 Q Sex?
- 11 A Hu huh. (Negative).
- 12 Q All right. Thank you. Nothing further.
- 13 MS. ANDERSON: I have no further questions.
- 14 THE COURT: All right. You can step down. Thank you.
- 15 MS. ANDERSON: Frank Jenkins, Junior.
- 16 FRANK JENKINS, JUNIOR, having been
- 17 first duly sworn, testified as follows:
- 18 DIRECT EXAMINATION
- 19 BY MS. ANDERSON:
- 20 Q Please state your name.
- 21 A Frank Jenkins, Junior.
- 22 Q And what is your relationship to Roy Jenkins?
- 23 A His brother.
- 24 Q Are you older than him?
- 25 A No, ma'am.

- 1 Q Well, who's the oldest brother?
- 2 A Roy.
- 3 Q Oh, okay. Do you work?
- 4 A Yes, ma'am.
- 5 Q Although I think -- didn't you just have a -- you
- 6 didn't have a heart attack?
- 7 A No, that's my other brother.
- 8 Q Albert did. Other brother had a heart attack just
- 9 recently.
- 10 How close are you to Roy?
- 11 A Pretty close.
- 12 Q In fact, they're -- how many sons are there?
- 13 A There's a total of four boys, one girl.
- 14 Q Were y'all -- your parents children?
- 15 A Yes, ma'am.
- 16 Q Okay. And do y'all still live around here?
- 17 A Yes, ma'am, we all live within like 15 miles of the old
- 18 house.
- 19 Q Okay. Do you socialize with your brothers and sisters?
- 20 A Yes, ma'am.
- 21 Q Parents?
- 22 A Yes, ma'am.
- 23 Q So, you've been around---
- 24 A Everyday.
- 25 Q You've been around everybody a lot?

- 1 A Yes, ma'am.
- 2 Q Including [REDACTED]?
- 3 A Yes, ma'am.
- 4 Q Okay. What did you know about the second wife story?
- 5 A It's -- actually it's a joke. That's all. You know,
- 6 it's all I could see it would be is a joke.
- 7 Q Was it true that [REDACTED] nagged Roy?
- 8 A She's a female.
- 9 Q Okay. All right. So, I take that yes, she nagged him?
- 10 A Yes.
- 11 Q Okay. Did you ever see anything unusual between Roy
- 12 and [REDACTED]?
- 13 A No, ma'am.
- 14 Q Do you have children?
- 15 A Yes, ma'am.
- 16 Q How many children do you have?
- 17 A I got a boy and a girl, Frankie and Ashley Jenkins.
- 18 Q Okay. How old are they?
- 19 A Frankie is 22. Ashley's 28.
- 20 Q Okay. Did they spend time over at Roy and Melanie's
- 21 house?
- 22 A Yes, ma'am.
- 23 Q Do you ever worry about your daughter being over there
- 24 with Roy?
- 25 A Lord no. No.

- 1 Q So, you don't believe he did anything to [REDACTED]?
- 2 A No, ma'am.
- 3 Q Has [REDACTED] tried to contact you since she left home?
- 4 A Yeah, we've had contact with each other.
- 5 Q Okay. Y'all didn't talk about this?
- 6 A No.
- 7 Q Okay. But she has -- are you about the only person in
- 8 the family she's talked to?
- 9 A I reckon.
- 10 Q Okay. Those are all the questions I have.
- 11 CROSS-EXAMINATION
- 12 BY SOLICITOR GRAY:
- 13 Q Mr. Jenkins, are you and your brother close?
- 14 A Yes, sir.
- 15 Q Talk about a lot of things?
- 16 A Yes, sir.
- 17 Q How much money did he get for adopting [REDACTED]
- 18 A How much money did he get?
- 19 Q Yes, sir.
- 20 A That's his business. It ain't mine. I couldn't tell
- 21 you.
- 22 Q But you said you were close---
- 23 THE COURT: wait just a minute. Let's -- we need to
- 24 finish up back at the back.
- 25 Go ahead.

1 SOLICITOR GRAY: Thank you.

2 Q So, you say you and, you and he are fairly close,
3 correct?

4 A Yeah.

5 Q You talked about a lot of things?

6 A Yes, sir.

7 Q But he didn't tell you about that?

8 A I don't get into his personal business. That's
9 personal.

10 Q Well, what kind of business is there with your brother?

11 A Do you know your financial status of your brother?

12 Q Excuse me. Excuse me. Excuse me.

13 THE COURT: You've got to answer -- you don't get to
14 ask him questions. You got to answer his.

15 Q Well, what kind of business do you have with your
16 brother?

17 A Repeat that again please.

18 Q What kind of business do you have with your brother?

19 A What kind of business?

20 Q Besides personal.

21 A What kind of business besides personal?

22 Q Business.

23 A I ain't got no business. We just brothers.

24 Q Just brothers.

25 Ain't never talked to him about the money he got for

1 adopting---

2 A No.

3 Q -- [REDACTED]

4 So, you don't know anything about that?

5 A Like I said, that ain't none of my business.

6 Q So, there's -- well, there's other things that you may
7 not know also?

8 A Yeah, that's true.

9 Q Thank you. Nothing further.

10 REDIRECT EXAMINATION

11 BY MS. ANDERSON:

12 Q Have you ever heard any mention of Roy getting money
13 for adopting [REDACTED]?

14 A No.

15 Q Thank you.

16 THE COURT: You can step down. Thank you.

17 MS. ANDERSON: Albert Jenkins.

18 ALBERT JENKINS, having been first
19 duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. ANDERSON:

22 Q Please state your name.

23 A Albert Jenkins.

24 Q what's your relationship to Roy?

25 A Brother.

1 Q Okay. And you are the one that just had a heart
2 attack?

3 A I am.

4 Q All right. well, thank you for being here.
5 where are you in the line-up of, of the sons?

6 A I'm the third.

7 Q The third.

8 Okay. And you live around here?

9 A I live in Boiling Springs.

10 Q And you have children?

11 A I do.

12 Q How many?

13 A I have two.

14 Q who are they?

15 A Justin was three months old when he passed away and I
16 have a daughter who's 22.

17 Q And her name is [REDACTED]?

18 A Her name is [REDACTED].

19 Q So, she's the same age as this [REDACTED]?

20 A She's about nine days younger than that [REDACTED].

21 Q Okay. Did [REDACTED] spend, your daughter [REDACTED], spend time
22 at Roy and Melanie's house growing up?

23 A Absolutely.

24 Q would she spend the night over there?

25 A Yes, ma'am.

1 Q Okay. Did you ever worry about [REDACTED] being over there?

2 A Absolutely not.

3 Q Okay. Did you know about the second wife joke?

4 A I've heard it, yes.

5 Q So, this was something that's pretty common in the
6 family?

7 A Yes, it was.

8 Q Okay. Were -- have you been around them a lot, around
9 your brothers and sister?

10 A Off and on, yes.

11 Q Okay. You go to the lake too, don't you?

12 A I did.

13 Q Okay. Did you ever notice anything unusual between Roy
14 and, and [REDACTED]?

15 A Absolutely not.

16 Q If you thought there was something unusual going on
17 would you have let your daughter go over there?

18 A Absolutely not.

19 Q Okay. But do you believe Roy did anything to [REDACTED]

20 A No, ma'am.

21 Q Thank you. That's all the questions I have.

22 CROSS-EXAMINATION

23 BY SOLICITOR GRAY:

24 Q Just briefly, sir.

25 Did you let your daughter go over there everyday or did

1 she live with you?

2 A I can not hear him.

3 Q I'm sorry. I apologize.

4 Did you let your daughter go over there everyday or did
5 your daughter live with you?

6 A My daughter lives with me now.

7 Q Okay. At that time, 2002/2003, did she live with you?

8 A Yes.

9 Q 2004/2005/2006?

10 A Yes.

11 Q So, you don't know what happened for sure everyday in
12 your brother's household, do you?

13 A No, I do not.

14 Q Thank you.

15 Nothing further.

16 MS. ANDERSON: I have no further questions.

17 THE COURT: You can step down. Thank you. Appreciate
18 your time.

19 MS. ANDERSON: Frank Jenkins, Senior.

20 FRANK JENKINS, SENIOR, having been
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. ANDERSON:

24 Q Please state your name.

25 A Frank Jenkins, Senior.

- 1 Q So, you're the father of these boys?
- 2 A Yes, ma'am.
- 3 Q And grandfather of [REDACTED]
- 4 A Yes, ma'am.
- 5 Q And Neal and all the other---
- 6 A Yes, ma'am.
- 7 Q ---grandchildren?
- 8 You're married to Shirley?
- 9 A Yes, ma'am.
- 10 Q How long?
- 11 A Fifty-one years.
- 12 Q Y'all been married 51 years and you have five children?
- 13 A Yes, ma'am.
- 14 Q Are y'all a close family?
- 15 A Yes, ma'am.
- 16 Q You spend time together as a family?
- 17 A As much as we can.
- 18 Q Okay. Did you spend a lot of time with [REDACTED]?
- 19 A Which [REDACTED]?
- 20 Q Oh, Roy and Melanie's [REDACTED].
- 21 A Yes, ma'am.
- 22 Q Okay. Did she come over and spend the night at y'all's
- 23 house?
- 24 A She has.
- 25 Q Did Nick and Neal also do that?

- 1 A They did.
- 2 Q Okay. Did y'all always go -- did you go to the lake
- 3 with them?
- 4 A well, I got a place at the lake too.
- 5 Q Oh, okay.
- 6 A And [REDACTED] come up all the time.
- 7 Q Now, you're talking about this [REDACTED]?
- 8 A (Witness points.)
- 9 Q Okay.
- 10 A She come up all the time.
- 11 Q would she stay with y'all?
- 12 A She wouldn't stay the night with us, but she'd always
- 13 go with her daddy and mama down the lake, and when they go
- 14 down the lake -- they live on down the lake from where I do.
- 15 Q Okay.
- 16 A It'd be the next day before I seen any of them.
- 17 Q Okay. Did you ever have to pick [REDACTED] up from school?
- 18 A Yes, ma'am.
- 19 Q Did you have difficulty doing that?
- 20 A Yes, ma'am.
- 21 Q what was the problem?
- 22 A She's always running behind with the boys.
- 23 Q was she suppose to be at a certain place to be picked
- 24 up?
- 25 A She had a designated, designated place to be. I'd pull

1 up there -- cause I'd have to get off from work and run over
2 there and pick her up and go back to work and -- cause a lot
3 of times my wife couldn't get home in time and I'd go by and
4 pick them up. I'd go in there and ask the principal. I
5 says is [REDACTED] been put back in school for something this
6 evening. Said no, she's gone.

7 well, I'd go out and look and I'd ask some of the kids
8 and I'd said you seen [REDACTED] [REDACTED]. Yeah, she down
9 behind the building.

10 Q So, she wasn't where she was suppose to be?

11 A No.

12 Q Did you ever notice anything unusual between Roy and

13 [REDACTED]

14 A No, ma'am.

15 Q Did he and Melanie treat their children equally?

16 A They was just as good to their kids as anybody else
17 would be.

18 Q Okay. Do you know the joke about the second wife?

19 A well, about everybody in the whole wide world knows
20 that. That's just a little thing you do.

21 Q Okay.

22 A I mean we been doing that ever since she was a baby.

23 Q Okay. So, y'all have a lot of contact with her?

24 A Lord, yeah. We went to the beach. We went to the
25 mountains. We'd go everywhere. We'd go to the lake. We

1 just, you know, everywhere they ever wanted to go.

2 Q Could [REDACTED] keep a secret?

3 Could [REDACTED] keep a secret?

4 A Not a bit more than this can.

5 Q So, you don't believe [REDACTED]?

6 A I don't believe one iota. If it's my last breath on
7 this earth I'll not, not believe her.

8 Q Okay. Those are all the questions I have.

9 CROSS-EXAMINATION

10 BY SOLICITOR GRAY:

11 Q Can your son keep a secret?

12 A Ma'am?

13 Q Can your son keep a secret?

14 A Can my son keep a secret?

15 Q Yes, sir.

16 A He probably could, but---

17 Q Thank you.

18 A ---cause he ain't never kept one from me.

19 Q Thank you very much.

20 THE COURT: Ask you to step down. Thank you.

21 MS. ANDERSON: I'd like to call Justin Ray please.

22 THE COURT: Okay. Please come up and be sworn.

23 JUSTIN RAY, having been first duly
24 sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MS. ANDERSON:

2 Q Please state your name.

3 A I'm Justin Ray.

4 Q And you, at one time, dated [REDACTED] [REDACTED]?

5 A Yes, ma'am.

6 Q Okay. Were you dating her in -- did you start dating
7 her -- when did you start dating her?

8 A August 2nd, 2006.

9 Q I'm sorry. What?

10 A August of 2006.

11 Q Okay. And I believe she testified that y'all were
12 sexually active?

13 SOLICITOR GRAY: Objection, Your Honor.

14 MS. ANDERSON: She testified---

15 THE COURT: I sustain the objection.

16 Q Okay. All right. I believe that [REDACTED] told you that
17 her father was molesting her, is that correct?

18 A I -- she hinted and I figured it out, put the pieces
19 together, yes, ma'am.

20 Q Okay. So, you're saying she hinted.

21 okay. In fact, y'all talked about your cousin,
22 Kristen, didn't you?

23 A Yes, ma'am.

24 Q And hadn't your cousin, Kristen, just filed sexual
25 assault charges on your step -- grandfather?

- 1 A Yes, ma'am.
- 2 Q Okay. And did you tell [REDACTED] all about that?
- 3 A Not all about it, but she was there for me.
- 4 Q That what?
- 5 A Not all about it, but she was there for me.
- 6 Q I can't understand.
- 7 What---
- 8 A She was there for me.
- 9 Q She was there for you?
- 10 A Yes, ma'am.
- 11 Q About what?
- 12 A The difficulty that I was going through.
- 13 Q Oh, you were having trouble because of your cousin
- 14 filing sexual charges against your step-grandfather?
- 15 A Yes, ma'am.
- 16 Q Okay. How long did you and [REDACTED] date?
- 17 A A little over two years.
- 18 Q I'm having a hard time hearing you.
- 19 A Two years.
- 20 Q Two years.
- 21 It -- was it two years?
- 22 Is that what you said?
- 23 A Yes, ma'am.
- 24 Q When did y'all break-up?
- 25 A November 2008.

1 Q And you denied that you were convicted of burglary
2 second degree?

3 A No.

4 Q You were convicted of that?

5 A Yes, ma'am.

6 Q Okay. And were you convicted of petty larceny?

7 A Yes, ma'am.

8 Q And were you also convicted of DUI?

9 A Yes, ma'am.

10 Q Those are all the questions I have.

11 THE COURT: Just a minute. Mr. Gray may have some
12 questions.

13 SOLICITOR GRAY: Yes, sir.

14 CROSS-EXAMINATION

15 BY SOLICITOR GRAY:

16 Q Of those convictions, did they take place while you,
17 you were dating [REDACTED]?

18 A No, sir.

19 Q Was it a year after, correct?

20 A Yes, sir, several years after, sir.

21 Q And what does that have to do with how her father
22 molested her?

23 A Nothing, sir.

24 Q Excuse me?

25 A Nothing.

1 THE COURT: You need to answer loud.

2 A Nothing.

3 Q Thank you.

4 Nothing further, Your Honor.

5 MS. ANDERSON: I have nothing further.

6 THE COURT: You can step down. Take your seat.

7 MS. ANDERSON: Shirley Jenkins.

8 THE COURT: All right. Mrs. Jenkins, you can just
9 sit -- if someone wants to help her that's certainly all
10 right. Get her up here beside the jury box. Obviously she
11 doesn't have to get out of her chair and get in it.

12 SHIRLEY JENKINS, having been first
13 duly sworn, testified as follows:

14 THE COURT: How loud a voice you got, Mrs. Jenkins?

15 WITNESS: Well, I can get pretty loud if I have to.

16 THE COURT: Okay. You sound good to me. I believe
17 you'll be okay without it.

18 WITNESS: Yeah.

19 DIRECT EXAMINATION

20 BY MS. ANDERSON:

21 Q Okay. Please state your name.

22 A Shirley Jenkins.

23 Q And you're the mother of the, the Jenkins brothers and
24 of Roy?

25 A Yes, ma'am.

1 Q Okay. And did you use to work?

2 A Yes, ma'am.

3 Q Where did you work?

4 A Charles Lea.

5 Q What did you do at Charles Lea?

6 A Special diets for clients that couldn't be ate through
7 their mouth. They had to be fed tubed.

8 Q Okay. Did you also do that at Fairforest School?

9 A At Fairforest I just did regular diets.

10 Q Okay. How long did you work?

11 A I worked, a total at the schools, about 15 years.

12 Q Okay. Did you help Melanie and Roy in picking up their
13 children from school?

14 A Yes, ma'am, I was given custody of Franklin the III.

15 Q Uh-huh. (Affirmative).

16 A And, so, I would pick them up at Fairforest Elementary
17 for Roy, I mean middle school, excuse me, for Roy and Mel
18 and then go to Roy's and Mel's and wait till Melanie got
19 home and let [REDACTED] out of the car, and then when Nicholas I
20 think was the first to go on to Dorman, I would pick up
21 Frankie and [REDACTED], and do the same. Just take [REDACTED] home
22 and wait on Melanie to get home, and then when Frankie
23 started to, to Dorman, I would pick up [REDACTED] at Fairforest,
24 and I would take her home and wait in the parking lot, I
25 mean in the driveway and Melanie would go to Dorman and pick

1 up the two boys and we would meet at her house.

2 Q Okay. Did you have trouble picking up [REDACTED]?

3 A Sometimes, yes, ma'am.

4 Q What was the problem?

5 A I couldn't find her. She wasn't where she was suppose
6 to be, and when I would get her and she'd get in the back
7 seat she would be mumbling and a grumbling, and talking to
8 herself. I mean she's just rebellious.

9 Q Okay. Did you have a close relationship with her?

10 A I thought I did, yes, ma'am.

11 Q Did she ever tell you that Roy sexually assaulted her?

12 A No, ma'am.

13 Q Do you believe Roy did anything to [REDACTED]?

14 A No, ma'am.

15 Q Okay. Do you think, if he had, [REDACTED] would of told
16 you?

17 A Yes, ma'am.

18 Q Why is that?

19 A Because she can't a secret. She was always -- I mean
20 if -- she was very opinionated. If she thought something
21 she said it. If she didn't like something she objected to
22 it. I mean she wouldn't just sit there and take anything
23 somebody did. She told what she wanted to be said.

24 Q Okay. Did you and Roy have a conversation, and I think
25 this was in front of [REDACTED] about his prostate?

1 A No, ma'am, it wasn't in front of [REDACTED] I had a
2 brother---

3 SOLICITOR GRAY: Objection, Your Honor.

4 A ---I'm at the---

5 THE COURT: Well, I---

6 SOLICITOR GRAY: This line of questioning and relevance
7 of it.

8 THE COURT: Well, based on some testimony that was
9 given earlier by the, by [REDACTED] I overrule your objection.

10 SOLICITOR GRAY: Yes, sir.

11 Q Yes, ma'am.

12 A Can I do it?

13 Q Yes, ma'am.

14 A Okay. I lost a brother at 16 years old from---

15 Q Prostate?

16 A Uh-huh. (Affirmative).

17 Cancer. So, I taught my boys, if they had a problem,
18 they were to come to me because I didn't want the same to
19 happen to them. So, Roy came to the house and he was
20 telling me and he had told all of them to go outside. She
21 snuck back in. She's nosy. She had to have her nose in
22 everything, and that's how she found out about it. It
23 wasn't that it was told out in front of her. She snuck. I
24 caught her.

25 Q Okay. But do you believe Roy did anything to [REDACTED]?

1 A No.

2 Q Thank you. Those are all the questions I have.

3 CROSS-EXAMINATION

4 BY SOLICITOR GRAY:

5 Q Excuse me, ma'am.

6 Did you ever pick up [REDACTED] from Dorman High School?

7 A Did I pick her up from Dorman?

8 Q (Solicitor Gray nods affirmatively.)

9 A No, cause she drove. She drove all the time at Dorman.

10 Q At age 14 she was driving?

11 A Oh, I don't know about that cause I know when, when she
12 was at Dorman she drove.

13 Q And Melanie picked her up till she got to where she
14 could drive.

15 Q So, say about---

16 A May I---

17 Q ---not being able to pick her up or whatever---

18 A Sir, I can't understand you. Come over here please.

19 Q So, this whole thing about not being able to pick her
20 up or whatever --

21 A Uh-huh. (Affirmative).

22 Q -- did this happen at Dorman?

23 A No, it was at Fairforest Middle.

24 Q At Fairforest Middle?

25 A Yes.

1 Q Not at Dorman?

2 A Not at Dorman.

3 Q All right.

4 A Not for me.

5 Q Yes, ma'am. Thank you.

6 MS. ANDERSON: I have no further questions.

7 THE COURT: All right. Thank you. You can go down.

8 Get you put back over there.

9 MS. ANDERSON: Your Honor, that's our case.

10 THE COURT: Anything in reply from the State?

11 SOLICITOR GRAY: One moment, Your Honor.

12 THE COURT: Okay. We'll take a, a real, real short
13 just refresher break and see where we are. Just long enough
14 to go in and those of you who need to use the fatalities, do
15 that and I'll bring you back out and we'll see where we are.

16 (WHEREUPON, the following takes place outside the
17 presence of the jury.)

18 THE COURT: If any of y'all need to use the facilities,
19 just don't be out too long. I'm not gonna leave out. I'll
20 stay in here.

21 (WHEREUPON, a short recess was taken at this time.)

22 THE COURT: I understand we got the two reply
23 witnesses.

24 SOLICITOR GRAY: Yes, sir.

25 THE COURT: After that I'll let the jury go for the day

1 and then we'll talk about the charge. I don't think that
2 will take very long.

3 SOLICITOR GRAY: Yes, sir.

4 THE COURT: Start back at 9:30 in the morning.

5 Anybody got any problems with that?

6 SOLICITOR GRAY: No, sir.

7 MS. ANDERSON: No, sir, that sounds fine.

8 THE COURT: Okay.

9 MS. ANDERSON: Could I ask who the reply witnesses are?

10 THE COURT: [REDACTED]

11 SOLICITOR GRAY: I'm sorry. You can't see me here?

12 MS. ANDERSON: Can't hear you.

13 SOLICITOR GRAY: Miss [REDACTED].

14 MS. ANDERSON: And who?

15 SOLICITOR GRAY: Susan.

16 MS. ANDERSON: Okay.

17 THE COURT: All right. Bring in the jury.

18 (WHEREUPON, the following takes place within the
19 presence of the jury.)

20 THE COURT: The State is gonna call witnesses in reply.
21 They're already under oath. So they won't be sworn in.
22 They're two.

23 SOLICITOR GRAY: Yes, sir.

24 Susan Hughes.

25 SUSAN HUGHES, having been previously

1 sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY SOLICITOR GRAY:

4 Q Thank you, Mrs. Hughes.

5 You ever just see the Jenkins boys, meaning [REDACTED]'s
6 brothers, underage drinking?

7 A Yeah.

8 Q Where?

9 A The very first time that we had gone down to Melanie
10 and Roy's house for a cookout. We were out on the porch
11 cause Roy was gonna grill, and Nick walked out on the porch
12 with a beer in his hand.

13 Q And about how old was Nick then?

14 A Nick was probably 13 or 14.

15 Q And who was there at the house?

16 A Melanie and Roy. [REDACTED] was there. We had some other
17 friends that we worked with that were there, and I mentioned
18 it to Melanie, and I said Melanie, that is not a beer he has
19 in his hand, is it. She said yeah, I'd rather them do it in
20 front of me than I have for them to do it behind my back.

21 Q All right. Do you know anything about this money?

22 A When Melanie's parents, her mom had passed away,
23 evidently they had money in the bank and what Melanie had
24 done she had taken---

25 MS. ANDERSON: Your Honor, I would object to how she

1 has this knowledge.

2 THE COURT: Yeah, I think we need to lay a better
3 foundation for this.

4 SOLICITOR GRAY: Yes, sir, Your Honor.

5 THE COURT: I sustain the objection.

6 SOLICITOR GRAY: No further questions.

7 THE COURT: well, no, wait, wait, wait.

8 WITNESS: I'm sorry.

9 THE COURT: Ms. Anderson is gonna ask you some
10 questions.

11 WITNESS: I keep forgetting.

12 CROSS-EXAMINATION

13 BY MS. ANDERSON:

14 Q what year was this --

15 A what year was it?

16 Q -- that, that you said you saw Nick drinking beer?

17 A I have been working at my previous job for 12 years.

18 So, that means Melanie has been there for ten. So, it was
19 probably nine years ago.

20 Q Okay. You don't know for sure?

21 A No, ma'am, I don't. I know it was -- cause when
22 Melanie had first started to work there we had not really
23 built a relationship till we started working together, and
24 then she had invited us down to her lake house.

25 Q So, was this at the lake house or their home?

1 A Lake house.

2 Q I thought you said it was their home?

3 A No, ma'am, I did not. I said the lake house.

4 MS. ANDERSON: Just one second, Your Honor.

5 (Pause.)

6 Q And this is the only time you saw this?

7 A No, ma'am. No, it's not. That was the first time. He
8 asked me when was the first time --

9 Q Okay.

10 A -- and that was the first time and there was several
11 other occasions.

12 Q Do you remember when?

13 A Probably -- I would say probably seven years ago, him
14 and [REDACTED] had taken a ride down to the lake, and at that
15 time he had bought her a beer.

16 Q Neal---

17 A Already had beer.

18 Q Nick had?

19 A No, no, no, Roy.

20 Q You saw Roy buy it?

21 A I did not see him buy it, but I know that he had given
22 it, had given it to [REDACTED].

23 Q Did you see him give it to her?

24 A I knew he had given it to [REDACTED]

25 Q Did you see him---

1 A Yes, ma'am.

2 Q ---give it to her?

3 A On several occasions I've saw him give her beer, yes,
4 ma'am. Yeah.

5 Q You're friends with them?

6 A Yes, ma'am.

7 Q Thank you.

8 THE COURT: All right. You can step down.

9 SOLICITOR GRAY: Nothing further, Your Honor.

10 THE COURT: You can step down. Thank you.

11 All right.

12 SOLICITOR GRAY: [REDACTED].

13 THE COURT: Miss [REDACTED], you're still under oath.

14 [REDACTED], having been previously
15 sworn, testified as follows

16 DIRECT EXAMINATION

17 BY SOLICITOR GRAY:

18 Q I just want to ask you briefly this, about you being
19 picked up by this person or that person at Fairforest Middle
20 School.

21 A Uh-huh. (Affirmative).

22 Q Who picked you up there?

23 A Not then everytime, but just about everytime Melanie
24 Jenkins picked me up from school. She was working at
25 Woodward. She would go and pick up her oldest son, Neal,

1 from Dorman, and then come back to Fairforest and get me.

2 Q Not your grandmother or grandfather?

3 A She did not pick me up on a regular basis and neither
4 did the grandfather.

5 Q what about from Dorman?

6 A She never picked me up from Dorman that I can recall.

7 Q And also were you ever alone with your father during
8 the week anytime?

9 A Yes, he would also ask if, make up a reason for me and
10 him just to go to the lake during the weekday for a certain
11 reason like to check and see if---

12 MS. ANDERSON: Your Honor, I would object.

13 A ---the water broke or something.

14 MS. ANDERSON: This is reply testimony. He's had his
15 opportunity---

16 THE COURT: Yeah.

17 MS. ANDERSON: ---to ask this before.

18 THE COURT: Let's stick to new things that reply to
19 stuff that's brought out in the case for the defense.

20 SOLICITOR GRAY: Your Honor, I believe he said they
21 were never alone together.

22 THE COURT: Well, I'll let you go into that briefly,
23 but just keep in mind you've already presented your case in
24 chief. So---

25 SOLICITOR GRAY: Yes, sir, Your Honor.

1 THE COURT: Go ahead. You---

2 Q How many other times were you alone together?

3 A Countless times.

4 Q In the house during the day and the night?

5 A Uh-huh. (Affirmative).

6 Q Thank you.

7 A The boys would play their video games and Melanie would
8 be asleep a lot.

9 Q Thank you.

10 MS. ANDERSON: I have nothing further.

11 THE COURT: All right. You can have a seat.

12 Anything else from the State?

13 Anything else?

14 SOLICITOR GRAY: No, sir.

15 THE COURT: All right. Members of the jury panel, it's
16 almost 4:30. So, we're gonna stop for the day. You've
17 received, heard all the testimony and we'll start back in
18 the morning. It's too late to finish up today. So, we'll
19 start back at 9:30. Please be back at 9:30. But don't yet
20 try to make up your own mind because you hadn't heard my
21 charge, and you hadn't heard the closing arguments of the
22 attorneys, and, of course, don't do any research. I've
23 talked to you about that. Don't be exposed to any news
24 coverage. If there is any, I know I've talked to you about
25 that.

1 Be back at 9:30 and we should be in a position to go
2 forward. We got a couple legal things we have to do. So,
3 we'll be here for not late into the evening, but we got a
4 couple things we need to do outside your presence. So,
5 we'll take care of those today so we can start as promptly
6 at 9:30 as we possibly can.

7 Have a pleasant evening.

8 (WHEREUPON, the following takes place outside the
9 presence of the jury.)

10 THE COURT: The jury's been excused.

11 Anything from the State before we stop for the evening
12 other than we'll talk about the charge in just a minute?

13 SOLICITOR GRAY: No, sir, Your Honor.

14 THE COURT: Anything from the defense?

15 MS. ANDERSON: No, sir, Your Honor.

16 THE COURT: All right. Any request to charge?

17 Just the statute -- the charge is pretty, actually
18 pretty short. The statute, other than when it gets into
19 some things, is pretty, pretty short.

20 What's the State's position and the defense's position
21 as to whether they're any lesser includeds under this
22 charge?

23 SOLICITOR GRAY: Under this one, I would, I would not
24 have any objection to a lesser included, Your Honor.

25 THE COURT: Assault and battery of a high and

1 aggravated nature?

2 SOLICITOR GRAY: Lewd act.

3 THE COURT: Oh, lewd act.

4 SOLICITOR GRAY: Yes, sir.

5 THE COURT: All right. Ms. Anderson.

6 MS. ANDERSON: And assault and battery?

7 THE COURT: All right.

8 SOLICITOR GRAY: I think ABHAN is probably -- the old
9 ABHAN. Not the new one, but I don't think assault and
10 battery applies in this situation.

11 THE COURT: well, let's see what law you can find on it
12 over night and we'll get together and take a look at it
13 really quick. I have some concerns. It would be under the
14 old, the old law.

15 SOLICITOR GRAY: Yes, sir.

16 THE COURT: So, just see what y'all can find on those
17 two issues and we'll talk about that in the morning.

18 SOLICITOR GRAY: All right.

19 THE COURT: Any, any other requests?

20 SOLICITOR GRAY: Yes, sir, the testimony of the victim
21 need not be corroborated.

22 THE COURT: Okay. Let me write that down. I don't
23 believe we got that out, but that, that is statutory?

24 SOLICITOR GRAY: Yes, sir.

25 THE COURT: Statutory?

1 SOLICITOR GRAY: 16-3-657.

2 THE COURT: 16-3?

3 SOLICITOR GRAY: 657.

4 THE COURT: All right. would you mind -- my clerk, I
5 let him have a day and a half off. So, he's not here.

6 would you mind just having me a copy of that in the
7 morning?

8 SOLICITOR GRAY: Yes, sir.

9 THE COURT: I'm familiar with it. I've charged it many
10 times, but at this -- if you don't mind.

11 SOLICITOR GRAY: Yes, sir.

12 THE COURT: Anything---

13 SOLICITOTR GRAY: And also I would like to request a
14 minor under 16 can not legally consent.

15 THE COURT: That -- yeah, that I think is in -- say
16 that again.

17 SOLICITOR GRAY: Minor under 16 can not legally consent
18 to sex, sexual acts.

19 THE COURT: Okay.

20 SOLICITOR GRAY: I believe that's an old Family Court
21 case. I believe it went to the Supreme Court.

22 MS. ANDERSON: Yes.

23 SOLICITOR GRAY: Yes, sir.

24 THE COURT: well, if you've got that, pull it for me.
25 The problem I have with that is basically actually the

1 statutory definition seems to be a little bit in conflict
2 with that, that legal consent because as to 14 to 16---

3 SOLICITOR GRAY: Yes, sir.

4 THE COURT: ---it says the actor, defendant, engages in
5 sexual battery with a victim. The victim was at least 14
6 years of age, but was actually 16, and the actor is in a
7 position of familial, custodial, or official authority to
8 coerce the victim to submit or is older than the victim.

9 SOLICITOR GRAY: Yes, sir.

10 THE COURT: So, that's the definition of the crime.

11 SOLICITOR GRAY: Yes, sir.

12 THE COURT: So, I don't know that I need, can go
13 outside of that.

14 MS. ANDERSON: I wouldn't think so.

15 THE COURT: Yeah, I'm gonna stick with what -- and if
16 you can find me a case, we'll look at that too.

17 SOLICITOR GRAY: Yes, sir, Your Honor.

18 THE COURT: But, but---

19 SOLICITOR GRAY: I understand, I understand your point.

20 THE COURT: Yeah.

21 SOLICITOR GRAY: It seems kind of like piling on, and
22 yes, sir, I'll check on it.

23 THE COURT: Okay. All right. Anything else from the
24 State?

25 SOLICITOR GRAY: No, sir, Your Honor.

1 THE COURT: All right.

2 MS. ANDERSON: Just your regular charges about
3 witnesses and reasonable doubt.

4 THE COURT: Okay. All right. All right. Well,
5 we'll -- let's try to be here a few more minutes, a few
6 minutes before 9:30 and if you find those, if you'll just
7 leave them on my desk---

8 SOLICITOR GRAY: Yes, sir.

9 THE COURT: ---when you get them and we'll get cranked
10 up and see where we go.

11 All right. We'll be at ease till 9:30.

12 MS. ANDERSON: Thank you.

13 SOLICITOR GRAY: Thank you, Your Honor.

14

15

16 (WHEREUPON, Court was in recess for the evening.)

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1 Friday, January 27th, 2012

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3 THE COURT: We have gone over my charges and verdict
4 form with the attorneys, and I believe we're ready to go
5 with closing arguments. I'll take a short break after
6 closing arguments because I'm having to -- I hope that's
7 okay.

8 (Pause.)

9 THE COURT: State ready?

10 SOLICITOR GRAY: Yes, sir, Your Honor.

11 THE COURT: Defense ready?

12 MS. ANDERSON: Yes, sir.

13 THE COURT: All right. We've discussed the charges and
14 the verdict form, and unless anybody wants to put anything
15 on the record regarding that, we'll get the jury on in
16 before closing arguments. I will take a short break between
17 the closing arguments before we, before I charge because I'm
18 having the verdict forms typed up. I didn't want to do that
19 till we cleared a couple things.

20 So -- all right. You -- and the State waives opening?

21 SOLICITOR GRAY: Yes, sir.

22 THE COURT: All right. Bring in the jury.

23 (WHEREUPON, the following takes place within the
24 presence of the jury.)

25 THE COURT: Good morning.

1 The attorneys will now make their closing arguments to
2 you where the State will go last. And before I charge you,
3 once we hear the arguments, we'll take a little short break
4 between the arguments and when I charge you. During that
5 break you still won't be in a position, and I'll remind you,
6 to discuss the case. But after they make their arguments
7 we'll take a short break, bring you back in, and then I'll
8 charge you the law.

9 All right. Ms. Anderson.

10 MS. ANDERSON: I'm almost tall enough to see over this.

11 First of all, I want to thank y'all for your attention
12 in this case. You heard a lot of testimony in a fairly
13 short period of time yesterday and I appreciate that.
14 You're the reason our judicial system works.

15 You've actually heard from 14 witnesses in this case.
16 It was kind of this side of the room against that side of
17 the room yesterday, and in this case the judge is going to
18 charge you and instruct you how you can believe part of
19 someone's testimony. You can decide if they're telling the
20 truth based on their demeanor, how they answer questions.
21 He will instruct you on this.

22 But you are the finders of fact in this case, which
23 means you've got to weigh the evidence, look at what you've
24 heard, and decide whether or not Roy Jenkins is guilty of
25 these two offenses.

1 I want to go over a little bit of each person's
2 testimony. First you had [REDACTED], who is the alleged
3 victim in this case. She testified she was adopted by Roy
4 and Melanie, and -- when she was six or seven, and that her
5 biological mother was Melanie's sister. She also told y'all
6 that she was treated differently by Roy and Melanie Jenkins
7 than her brothers were.

8 She said they got more presents than she did and they
9 got cars when she didn't, but you heard from them that
10 they -- no one was given a car. They were allowed to use
11 the cars and she was also allowed to use the car. She
12 testified that Melanie and Roy let her smoke at an early
13 age. She also said that Roy gave her alcohol, and then she
14 said that he sexually molested her from age basically 11 to
15 16, and it graduated from oral sex to fondling to full
16 intercourse, and she wants y'all to believe that, in the
17 household of five people, that Roy had the guts, I'd say, to
18 have sexual intercourse with her in their living room when
19 everyone was home. I mean we have teenage boys, we had a
20 wife, and she wants you to believe that they had sex when
21 everybody was there.

22 She talked about going to the lake house in Greenwood,
23 but she neglected to tell the whole family went and friends
24 and relatives. It was a big deal for this family to go to
25 Lake Greenwood every weekend.

1 Also, she did well in school during this time. She was
2 an honor roll student. She was in the Dorman color guard,
3 and she worked, worked part-time at Bi-Lo's.

4 She said that if she didn't perform sex acts for her
5 father she would lose privileges, and she also said that Roy
6 would dance with her. I think that was some of the other
7 witnesses, and that I believe she testified that Jack Harden
8 was at one of these bar/restaurants with them, but she
9 neglected to say that her mother, Melanie, her two brothers,
10 and various other people were also there.

11 She told y'all that she moved out of her parent's home
12 when she turned 17 and moved in with the older brother Neal.
13 Now, she says that her brother kicked her out. He told
14 y'all that was not the case. He said that her belongings
15 were in a shopping cart and Neal said that was not the case.

16 She also said she never told anybody about Roy
17 supposedly molesting her all these years, and yet you could
18 tell, from her demeanor, that she, she definitely has -- she
19 says what she wants, and when -- about when she thinks it
20 she says it. And, so -- but that she kept this a secret
21 from everybody for all these years.

22 After -- I think what the main, and I know this sounds
23 petty now, but I think she moved out because they took away
24 her driving privileges because of the prom night that she
25 let her boyfriend, Jody, drive the car because that's when

1 she, she moved out, and then right after that is when the
2 truck was stolen, and they, Roy and Melanie, and I think his
3 brother, Frank, all went over to Neal's house and asked
4 [REDACTED] to give them a picture of the boyfriend, and then she
5 took them over to the house where her boyfriend lived, and,
6 you know -- and she did say that she hoped -- she would make
7 sure they got their f'ing truck back. It was found two days
8 later at the Evangel parking lot.

9 Now, what to me was made the, made the fact that she
10 might of known what went on with the truck was because her
11 cell phone was in that truck.

12 Now, do you know a 17 year old who is not attached
13 almost physically to their cell phone?

14 I mean no one would go and -- if she moved out, cause
15 she said that was the truck, that was the car she drove, she
16 moved out right after school ended, and yet the truck was
17 not taken till July 15th.

18 So, do you believe that she would of been without her
19 phone all that time?

20 I find that hard to believe.

21 It was at this time, after the truck incident, that
22 [REDACTED] told her mother about the alleged abuse, and it was at
23 that time, on August 20th, that she got her, in '07, she
24 got her sister to take her, her sister-in-law to take her to
25 the Sheriff's Office, but she didn't tell the sister-in-law

1 or her brother why they were going. They didn't find out
2 until two weeks later.

3 She says she told Judy Smith about these allegations,
4 and she testified to y'all that her mother believed her, and
5 that was not Melanie's testimony yesterday.

6 what -- another very interesting thing in this case to
7 me is the fact that she went to the police on
8 August 20th of 2007. There was no warrant -- there were
9 never a warrant signed on Roy Jenkins until June 30th of
10 2008.

11 Now, we're talking not -- well, almost a year that
12 supposedly the police were investigating this. During that
13 time she also went to the Children's Advocacy Center to get
14 counseling from Michelle Aroya Staggs, but no warrant had
15 been signed on him.

16 Also I thought it was interesting that the
17 investigating officer, Tonya Alderidge, didn't come to court
18 and didn't testify. It took her a year, nearly a year to
19 get a warrant against Roy and it would of been interesting
20 to find out what she had to say about that.

21 Now, Jackie Lee Harden got up, and all of these people
22 that testified for [REDACTED] were supposedly Roy and Melanie's
23 friend who said -- Jackie said he had known Roy for 15
24 years, and he had seen Roy dancing with [REDACTED], and he had
25 seen Roy give [REDACTED] beer to drink.

1 He didn't tell, in his testimony, again, that the whole
2 family, Melanie, the two sons, and other relatives were all
3 there because that was a thing they did. They went to this
4 place on Friday nights when they could to eat and to drink
5 and to do the karaoke and to dance.

6 You will also be instructed -- you can look at the
7 witnesses, the witnesses, if they have a criminal record
8 that was talked about, whether or not you believe them, and
9 Mr. Harden had a record for house breaking and assault and
10 battery.

11 The next witness, Susan Hughes, testified that she
12 worked with Melanie, and had known her for ten years, and
13 had met [REDACTED] about seven years ago. She testified that she
14 thought that there was something suspicious going on between
15 Roy and [REDACTED]. She also thought it was odd that Roy called
16 [REDACTED] when they were on vacation with them. Now, [REDACTED] was
17 a minor at that time, and she had been left at home with her
18 brothers, and I think it's pretty normal to call to see if
19 everybody's okay. In her reply testimony she said she saw
20 Nick, another son, drinking a beer at the lake house.

21 Now, other than her saying she saw the beer and the
22 dancing, she had absolutely no direct observation or
23 knowledge of anything that happened between [REDACTED] and Roy
24 Jenkins. Judy Smith also said she was a friend of Melanie's
25 and Roy's and that she and Melanie worked together and she

1 had known Melanie for about 11 years, and she said over the
2 11 year span she had -- and I actually put the ten in there,
3 but she said maybe six or so interactions with [REDACTED] over an
4 11 year period, but she said because the -- and it was very
5 limited contact. She said she had determined that [REDACTED] was
6 unhappy, and that she offered [REDACTED] a place to stay.

7 Now, she couldn't remember when [REDACTED] moved in with
8 her, and she -- in with her and her boyfriend, Jackie Smith.
9 Anyway -- but she said that [REDACTED] disclosed to her that Roy
10 had sexually abused her.

11 Now, she admitted that the contact between she and
12 [REDACTED] were limited to maybe six or so times, but [REDACTED] was a
13 troubled child and her whole life changed when she started
14 living with her and her boyfriend.

15 She told you that [REDACTED]'s parents were very protective
16 and very strict over their children, but [REDACTED] was so much
17 happier than living with Judy and her boyfriend. She told
18 y'all she didn't give [REDACTED] any rules to live by. She, she
19 says she seemed happier and at peace, but I'm not sure what
20 Judy Smith could base this on with her limited contact with
21 [REDACTED] and moving from a house where their rules, where you
22 got to do chores, where you work, and, you know, going to an
23 environment where there's no rules.

24 What 17 year old would not be happier if they didn't
25 have someone telling them what to do?

1 Then you saw the videotape with Michelle Aroya Staggs.
2 she had no independent knowledge other than what [REDACTED] told
3 her. She didn't talk to anyone else in the family. I don't
4 know how much contact she had with Tonya Alderidge. But she
5 did -- one interesting thing was she said that you could
6 find out how to get your parents in trouble pretty easily on
7 the Internet. There's some -- they're ways you could find
8 out how to do this.

9 Then we get to our witnesses. You heard Roy. Roy's a
10 hard working person, and, you know, I think he to, takes his
11 job very seriously and works very hard for that. In fact,
12 if you look at the whole family, from Frank, Senior,
13 everyone in that family works. Everyone is hard working.
14 They all had jobs at young ages, and this just went down
15 through the family, and, and [REDACTED] was part of that family.
16 She worked hard. She had good grades. She did -- she had
17 chores.

18 But as they told, as Roy said, when she turned 15, all
19 of a sudden she didn't want to do anything. She was
20 sneaking out of the house, and she was just very difficult
21 and she lied to them about things. He also talked about the
22 prom night and how they took away her driving privileges.

23 well -- and they said that she screamed and yelled and
24 slammed doors, and right after that is when she moved in
25 with Neal.

1 Now, Roy told y'all he tried to talk her out of that.
2 He did not want her -- cause she had her senior year to go
3 in high school.

4 I'm not quite sure and I don't think anybody seemed to
5 know quite when [REDACTED] moved in with, with Neal, but we know
6 it was before the truck was stolen because that's where they
7 went to find [REDACTED] to get her to give them a picture of her
8 boyfriend. Again, the interesting thing to me was the cell
9 phone was in there.

10 Roy adamantly denied to y'all that he had ever touched
11 [REDACTED] sexually or had any kind of sexual intercourse or any
12 fondling or anything cause she was his daughter, and he
13 loved her and still loves her despite all of this.

14 Melanie testified that she too loved [REDACTED] and still
15 loved her now, loved her then, and it's just so sorry that
16 this is come to this. I do believe that Melanie and Roy
17 came across as caring parents, but strict parents, very
18 protective.

19 The second wife joke is what it was. It was just a
20 joke. I actually clerked for one of the judges, who's now
21 deceased, and his wife would laugh and called -- she was the
22 first wife, his secretary was the second wife, and I was the
23 third wife.

24 Now, there wasn't anything sexual or, about that. But
25 I mean people do make jokes like that.

1 Melanie discussed the problems that she had with, with
2 [REDACTED] and Melanie did not believe [REDACTED] that Roy did
3 anything to her because, again, we're talking about a house,
4 with five people living in it, and the lake house, I'm not
5 sure how many people were, were there over a time period,
6 but at -- the whole family worked hard. But, again, this is
7 up to y'all to decide what went on. But I think that Roy
8 and Melanie were adamant that this did not occur.

9 Nick and Neal both told you that they, they grew up
10 with them, and they didn't ever see any evidence of Roy and
11 [REDACTED] having any sexual activity going on. It's stated that
12 they got punished just like Melanie did, and if they did
13 what they were suppose to do, they got what -- they got --
14 were able to do what they wanted to do on the weekends, and
15 they let their children smoke at an early age.

16 I don't know when y'all started smoking, but we started
17 smoking at a pretty early age, but my parents didn't let me
18 smoke. But luckily I was able to quit. But Neal and Nick
19 both said they don't know how this could of happened.

20 I mean, again, what man is going to have sex with his
21 daughter in the living room when everybody's at home?

22 That just makes no sense.

23 His brothers testified that they had children, and if
24 they had thought anything like this was going on they
25 certainly would not have let their children spend all the

1 time with Roy and Melanie that they did.

2 Frank, Senior, again, he, he said there's no way that
3 Roy could of done this, and Shirley, who did tell y'all that
4 Roy had talked to her about his prostate problems, and that
5 [REDACTED] that [REDACTED] had snuck back in the house and heard what
6 was going on, and she's the one that told y'all that there's
7 no way that [REDACTED] could keep a secret. She was very mouthy
8 and she was very opinionated, and she would -- she always
9 was voicing her opinion, and I think y'all saw some of that
10 on the stand, that she was very adamant.

11 And you heard from the boyfriend. And, again, you saw
12 the record that he had, but one -- what I want y'all to
13 think about is -- I tried to briefly to go over everybody's
14 testimony and what I saw and -- but this is very serious.
15 This is very serious, very serious charges.

16 I want you please to very carefully think about what
17 you've seen and heard before you determine Roy's guilt or
18 innocence. I believe that he is innocent of this charge. I
19 don't know why [REDACTED] would do this because, to me, it seemed
20 like she had a really good family, maybe a little male
21 chauvinistic, but a good family who had rules and who raised
22 children to be productive members of society.

23 But I hope that, and I feel confident that you will
24 take this very seriously, and will find Roy not guilty of
25 these charges.

1 Thank you.

2 SOLICITOR GRAY: Thank you, Your Honor.

3 May it please the Court?

4 THE COURT: Yes, sir.

5 SOLICITOR GRAY: Ms. Anderson.

6 5,256,000 minutes.

7 She was adopted at age seven.

8 She left at age 17.

9 5,256,000 minutes. That man testified he was not alone
10 with his daughter for one minute over a ten year span.

11 He's the world's greatest worker or the world's worst
12 father or he didn't tell you the truth. Not one minute over
13 a ten year span did he spend alone with his daughter.

14 In this case, basically you have testimony of the
15 victim here. The victim.

16 what does she have to gain in this situation?

17 She's 22 years old. She's out of the house. Been gone
18 for five years. They want you to believe that it's over,
19 over chores, over strict rules.

20 what strict rules?

21 This is a grown woman.

22 what chores?

23 She got up here and told you it, it started -- the
24 grooming started of her when she was seven or eight.

25 Rubbing his back, rubbing his feet. Between the ages of 11

1 and 14, the fondling, the masturbation. Then it graduated
2 in 14 when she became, as she says, sexually active.

3 Sexually active, yes, with him. Sexually active with
4 him from 14 to 16, and then 17 years old she found her way
5 out. She moved in with her brother, then moved in with a
6 friend of the family cause her entire family turned their
7 back on her.

8 They don't know what happened, they have no clue, and
9 they want to give you this smoking mirrors. She was a bad
10 kid, but she made great grades. She was really talkative,
11 couldn't keep a secret, but he can. Blame the victim.

12 Now, for one year no charges were brought against this
13 defendant. You saw the expert testimony of her counselor.
14 For an entire year. That's the time frame.

15 After she moved out of the house, she went through an
16 entire year of counseling. She became strong enough at that
17 time. She, as Michelle put it, began to express her
18 feelings better, her self worth increased, then the charges
19 were brought against this man.

20 That's why. These are serious charges, in-depth
21 investigation, and, more importantly, everybody wanted to
22 make sure she was okay, to handle this situation. There was
23 no grudge. There's no motive. They're no chores. They
24 haven't provided a car. They cut off her health insurance
25 for moving out.

1 MS. ANDERSON: Your Honor, I would, I would object to
2 that.

3 THE COURT: Yeah, I sustain the objection. I don't
4 believe there's any evidence to that effect. So, disregard
5 that statement by the solicitor.

6 You may proceed.

7 SOLICITOR GRAY: Thank you, Your Honor.

8 There is no retribution by the victim in this case
9 against the family. She didn't name one other person. She
10 went to her mother and told her. Her mother said I'm sorry,
11 hugged her.

12 There's testimony from people that have no dog in this
13 fight. They gave beer to their children. There was
14 corroborated testimony they gave the children cigarettes.
15 So, she told you the truth on the stand, ladies and
16 gentlemen.

17 It's not a CSI case and it's not a situation where
18 there is lots of evidence here. But, over these 87, 87,000
19 hours, these 3,650 days that she was in the home something
20 happened. It started out gradually and escalated to
21 intercourse when she was 11 to 14 and 14 to 16.

22 You're gonna hear the judge's charge about what sexual
23 battery is, what criminal sexual conduct is. It's not
24 force.

25 Listen carefully to the definitions, ladies and

1 gentlemen. Listen to her testimony again if you need to.

2 There's no doubt, no reasonable doubt. Don't let this
3 smoke screen of blaming the victim cloud your judgment,
4 ladies and gentlemen.

5 Beyond a reasonable doubt that man is guilty of two
6 counts, at least two counts of criminal sexual conduct of a
7 minor.

8 Thank you.

9 THE COURT: Like I said, we'll take a real short break
10 at this point, and don't start deliberating yet. We'll send
11 for you. This is just a refresher break.

12 (WHEREUPON, the following takes place outside the
13 presence of the jury.)

14 THE COURT: All right. Yes, ma'am.

15 MS. ANDERSON: Your Honor, I checked my notes. I know
16 Mr. Gray argued that this started when she was seven years
17 old, and I don't think that that was ever any testimony
18 about seven about the massaging the feet.

19 THE COURT: I don't remember the testimony that
20 clearly. If -- but what do you want me to do?

21 I mean what is your---

22 MS. ANDERSON: Well, I---

23 THE COURT: What relief are you seeking that we -- if
24 it's, if it's something that you want to, to discuss
25 further, we can maybe have the court reporter go back to her

1 testimony and find out whether or not she talked about what
2 age, at what age that started.

3 why don't we do that under the break, and then you can
4 decide what, if anything, you want me to do about it, and
5 also y'all can, y'all -- counsel can look at the verdict
6 forms.

7 MS. ANDERSON: Okay.

8 (WHEREUPON, a short recess was taken at this time.)

9 THE COURT: We had a break and the verdict form has
10 been viewed by both sides, and the court reporter was able
11 to pull up some testimony.

12 So, where are we, Ms. Anderson?

13 MS. ANDERSON: Your Honor, I believe age seven was
14 brought up and nothing sexual before age 11. There wasn't
15 anything sexual.

16 SOLICITOR GRAY: Your Honor, the testimony it says from
17 the beginning. It is well established she's adopted at the
18 age of seven, and it said on there foot rubs and back rubs.

19 THE COURT: All right. All right. What are you asking
20 me to do?

21 MS. ANDERSON: I, I would just ask that -- I don't
22 believe there's any testimony that she was doing foot rubs
23 that -- I guess Mr. Gray made it sound like it was sexual
24 and it wasn't.

25 THE COURT: Well, here's what I'm gonna do, what I try

1 to do everytime is tell the jury to recall the testimony,
2 and if any lawyer, in their arguments, misstated anything,
3 it's up to them to remember the testimony. That any
4 misstatement, if there was any, was unintentional. I
5 believe the---

6 MS. ANDERSON: That's fine.

7 THE COURT: Okay. All right. Bring in the jury.

8 (WHEREUPON, the following takes place within the
9 presence of the jury.)

10 THE COURT: Members of the jury panel, I thank you for
11 your attention that you have given to the witnesses and to
12 the attorneys and to me. I'm now going to charge you the
13 law which you are to apply to the facts as you determine
14 them to be in this case.

15 You've just heard the closing arguments of the
16 attorneys. It's up to you to recall what the witnesses
17 testified to. Again, the attorneys are not witnesses.

18 So, what they are relating to you is their recollection
19 of the testimony. If an attorney, and I'm not saying that
20 any did, but if any attorney misstated any testimony, you
21 rely on the testimony as given. Again, if anyone did
22 misstate any testimony I'm sure it was done inadvertent.

23 Now, the fact that Mr. Jenkins is here on trial -- can
24 I have the indictment back?

25 The fact that he is on trial, the fact that he was

1 arrested, the fact that these charges are pending is not
2 evidence he committed these offenses. That is just the way
3 our system works. When someone is charged with an offense,
4 they are charged, arrested, and the case is processed
5 through our court system, and the case comes on for trial,
6 and then it is up to the jury to determine whether or not
7 the State has proven that person's guilt beyond a reasonable
8 doubt.

9 So, this -- the fact that he is charged is no evidence
10 of his guilt. It does not create any inference or
11 presumption of guilt. The charge set forth in the
12 indictment is the charge brought by the State, and the
13 indictment is simply the paperwork by way of which this case
14 is processed through our Court system and will be where the
15 foreman ultimately enrolls the jury's unanimous decision.

16 Now, the fact that there are two counts is of not, is
17 of no importance either. You must determine each count
18 separately. The fact that they're two counts does not
19 create any inference again or presumption that either or
20 both on what your verdict should be. You are to look at the
21 facts as they pertain to the charge.

22 The charges, one, that Mr. Jenkins committed criminal
23 sexual conduct while the victim was between 11 and 14, and a
24 second, that he committed criminal sexual conduct between 14
25 and 16.

1 Now, the Legislature has determined those age brackets
2 and made certain offenses within those age brackets. I will
3 charge you that in a few minutes. But the fact that there
4 are two charges is of no importance, and you are to examine
5 each separately and return a verdict based on what the State
6 has proven or failed to prove regarding each charge.

7 Now, Mr. Jenkins is presumed innocent of these charges.
8 Anyone charged with any offense in our system is presumed
9 innocent by law. They need not prove and Mr. Jenkins need
10 not prove his innocence. He is presumed innocent. This
11 presumption of innocence is a substantial right. It's not
12 just a legal theory or a mere legal phrase. It is a
13 substantial right that attached to Mr. Jenkins at the time
14 he was arrested. It is remained with him as his case is
15 processed through our Court system. The presumption of
16 innocence, in Mr. Jenkins favor, exist at this moment. It
17 even exists as you deliberate. The presumption of innocence
18 is removed, if it is removed, only if and when you determine
19 that the State has proven his guilt as to one or more of
20 these offenses beyond a reasonable doubt.

21 Now, the State is not required to prove his guilt
22 beyond all beyond, beyond every doubt, but beyond a
23 reasonable doubt. Our case, our courts have described a
24 reasonable doubt as the kind of doubt that would cause a
25 reasonable person to hesitate to act.

1 Proof beyond a reasonable doubt is proof that leaves
2 you firmly convinced of someone's guilt. Of course, they're
3 very few things that we can know with absolute certainty in
4 our life, and the law does not require absolute certainty in
5 a case such as this. If, based on your consideration of the
6 evidence, you are firmly convinced that Mr. Jenkins is
7 guilty of one or both of these offenses you would find him
8 so. That is guilty.

9 If, on the other hand, you think there's a real
10 possibility that he is not guilty, you must give him the
11 benefit of that reasonable doubt and find him not guilty.
12 He is entitled to the benefit of any reasonable doubt you
13 have as to any element in this charge, in, any element in
14 regard to the offenses.

15 I remind you that I am the sole judge of the law in
16 this case. You must take, accept, and apply the law as I
17 charge it, and this is true even if you think I charge the
18 law in error or even if you think the law should be
19 different. Your oath requires you to take, accept, and
20 apply the law as I charge it.

21 You're not to infer from anything I have said or done
22 or anything I now say or do as being an indication of an
23 opinion of mine on the facts. Our law does not allow a
24 trial judge to formulate or express to a jury any opinion of
25 the facts. It is solely up to you to examine the evidence

1 and give to the evidence the effect, the value, the weight,
2 and the truth you believe it should have. In doing this you
3 may believe one witness as opposed to several, several
4 witnesses as opposed to one. You may believe all, part, or
5 none of a witness' testimony. Use your common sense, your
6 sense of logic, your sense of reason. Use your experiences
7 in life as you analyze the evidence.

8 As judges of the facts, you must necessarily judge the
9 credibility. That is the believability of the witnesses
10 who've testified. In assessing credibility, use those
11 things that I've just mentioned. Use those things that you,
12 in your day-to-day life, find as being indicators of
13 truthfulness in people, and you can use certain evaluators,
14 a witness' demeanor, how they act on the stand, are they
15 hesitant, straightforward.

16 You can look at consistencies or inconsistencies in a
17 witness' testimony. You can look at any bias or prejudice
18 as to whether a witness would wish to help or hurt one side
19 or the other. You can consider the opportunity a witness
20 had to know those things about which that witness testified,
21 and you can consider any criminal record in regard to
22 believability of any witness who is testified. What you do
23 is, as I said, determine the, evaluate the truth of the
24 evidence as presented, and you can return, and you will be
25 able to return a verdict that speaks the truth.

1 In this case we had experts testify. You recall that
2 there were certain individuals who were tendered and asked
3 the Court to declare, declare them experts, DNA,
4 fingerprint. They -- and I so ruled, and if you recall on
5 the, the video, Judge Couch who was presiding over that,
6 qualified a lady that testified to that as an expert in a
7 certain area.

8 Now, the testimony of experts is allowed in evidence to
9 assist you. It is not binding on you. You can take,
10 accept, or reject the expert's testimony. Generally
11 individuals can not testify as to opinions. However, where
12 someone has certain skill, training, knowledge, education,
13 or experience in a certain area, that person can take facts
14 and render opinions. Generally witnesses can only testify
15 to something that they sensed with one of their five senses.
16 It's, of course, usually something they've seen or heard,
17 but it could pertain to touch or smell.

18 However, where an individual has certain expertise,
19 they are allowed to take facts, and from those facts, reach
20 opinions. As I just stated, these opinions are allowed in
21 evidence to assist you. They're not binding on you. You
22 look at an expert's testimony with all the same tools I just
23 talked about. That is, you look at them just as you look at
24 any other witness' testimony.

25 In addition, as to an expert, you -- even though I have

1 or Judge Couch did qualify them as experts, it's up to you
2 to determine, in your mind, whether or not their
3 qualifications make them, put them in a position to make
4 opinions, to reach the opinions that they did. And also, as
5 to their opinions, you are to look at the reasons they
6 reached those opinions. So, the testimony of experts is
7 allowed to assist you, but is not binding on you.

8 In cases such as this they're generally two types of
9 evidence, circumstantial and direct evidence. Direct
10 evidence is testimony of an individual who has claimed to
11 have actual knowledge of something. That is they have
12 actual knowledge of the facts that establish the main fact
13 sought to be proven.

14 Circumstantial evidence is proof of a chain of facts
15 and circumstances which indicate the existence of a fact.
16 Circumstantial evidence is evidence which immediately
17 establishes collateral facts from which the main fact may be
18 inferred. Circumstantial evidence is based on inference and
19 not on personal knowledge or personal observation. Our law
20 makes absolutely no distinction between the weight or value
21 to be given either direct or circumstantial evidence. Our
22 law does not require a greater degree of certainty for
23 circumstantial evidence as opposed to direct evidence.

24 what you should do is weigh all of the evidence in this
25 case. After weighing the evidence, if you're not convinced

1 of Mr. Jenkins guilt, you, of course, find him, beyond a
2 reasonable doubt, you, of course, find him not guilty.

3 There are two charges against Mr. Jenkins. As I told
4 you, they are bracketed into separate age brackets, and that
5 is what our Legislature has done. They've made it a certain
6 offense to commit certain, be involved in certain matters
7 with a minor between the ages of 11 and 14, and they've also
8 established criteria for being involved with minors in
9 sexual situations between the ages of 14 and 16.

10 These are statutory provisions that have been enacted
11 by our Legislature and are the laws of South Carolina. Mr.
12 Jenkins is charged with second degree criminal sexual
13 conduct with a minor. The State must, as to this charge,
14 prove, beyond a reasonable doubt, that he, Mr. Jenkins,
15 engaged in a sexual battery with the victim who is [REDACTED]
16 [REDACTED]. A sexual battery is sexual intercourse,
17 cunnilingus, fellatio, anal intercourse, or any intrusion,
18 however slight, of any part of a person's body or of any
19 object into the genitalia or anal, anal openings of another
20 person's body except when the intrusion is accomplished for
21 medically recognized treatment or diagnostic purposes.

22 The State must prove, beyond a reasonable doubt, that
23 Mr. Jenkins committed the sexual battery, and as to the
24 first count, they must also prove that the victim was at
25 least 11 years of age, but not more than 14 years of age at

1 the time of the sexual battery.

2 As to the second count, the State must prove that the
3 victim was less than 16 years old, but at least 14 years old
4 and that the defendant was either in a position of familial,
5 custodial, or official authority to coerce the victim to
6 submit or that the defendant was older than the victim.

7 Consent, willingness, indifference, or ignorance on the
8 part of the minor, if any, as to what was taken place, does
9 not, in any way, effect the charge of criminal sexual
10 conduct with a minor because unmarried women under the age
11 of 14 can not legally consent to sexual intercourse. The
12 testimony of an alleged victim need not be corroborated in
13 criminal sexual conduct prosecutions.

14 Now, in this state we have what are called lesser
15 included offenses. That is, under our legal system, if
16 someone is charged with something and the State does not
17 prove, beyond a reasonable doubt, that charge, in certain
18 circumstances there are lesser charges. That is the charges
19 of a lesser degree that you may have to, but you may
20 consider. I analogize it to stair steps. At the top of the
21 step is the charge he's facing, criminal sexual conduct with
22 a minor. The next step down, to a lesser degree of
23 severity, is something called lewd act on a minor, and I'll
24 define that for you in a moment, and one step down below
25 that, to a lesser degree, is assault and battery of a high

1 and aggravated nature.

2 As to lewd act, if you find the State has failed to
3 prove Mr. Jenkins guilty of criminal sexual conduct with a
4 minor in the second degree, as to either age bracket, you
5 may consider whether or not the State has proven him guilty,
6 beyond a reasonable doubt, of committing a lewd act on a
7 minor. A minor is a person under the age of 18. This is
8 also a statutory offense just like the ones I've gone over
9 with criminal sexual conduct.

10 Under the statute that applies here, in order to
11 convict Mr. Jenkins of a lewd act, the State must prove that
12 he, Mr. Jenkins, was over the age of 14 and that the person
13 in question, that is the minor, was under the age of 14.
14 Next, the State must prove the defendant willfully -- I'm
15 sorry. I'm sorry. Let me rephrase that. I misstated. I
16 misread my notes.

17 If you find the State has failed to prove Mr. Jenkins
18 guilty of criminal sexual conduct in the, either age
19 bracket, you may consider whether or not the State has
20 proven he committed a lewd act on a minor. I told you a
21 minor is a person under the age of 18. As to this charge,
22 the State must prove that the defendant, at the time of the
23 alleged offense, was over the age of 14.

24 Next, the State must prove that the defendant willfully
25 and unlawfully committed or attempted to commit a lewd act

1 or lascivious act on or with the body or parts of a child
2 under the age of 16 with the intent to arouse, appeal to, or
3 gratify the lust, passions, or sexual desires of the
4 defendant or of the minor victim.

5 willfully means voluntarily and intentionally, with a
6 specific intent to do something the law forbids.

7 Lewd means obscene, lustful, indecent, lecherous.

8 Lascivious means tending to insight lust, lewd,
9 indecent, obscene, or intending to deprive the moral,
10 deprive the morals of others in respect to sexual relations.

11 Now, of course, the State must prove that offense
12 before you can convict Mr. Jenkins of that lesser included
13 offense of lewd act on a minor beyond a reasonable doubt.

14 If the State has failed to prove that offense and
15 criminal sexual conduct, you may consider that, the third
16 step, which is assault and battery of a high and aggravated
17 nature. An assault occurs when a person unlawfully attempts
18 or offers to commit a violent injury upon another person and
19 has the presentability to complete the attempted injury. An
20 assault is the intentional creation of the reasonable fear
21 of immediate bodily harm.

22 It is not necessary that the attempted injury or harm
23 actually take place to constitute an assault. I always use
24 this example. If I am close enough to you to touch you, and
25 I rare back my hand in a mean, and resentful, and rude,

1 angry, angry manner as though I am going to strike you, I
2 have assaulted you.

3 The battery is the unlawful touching of another person
4 by a person who is committed an assault. An unlawful
5 touching can be caused by a part of an accused body. A
6 battery is the completion of the assault by using or
7 applying force to another person, however slight, in a rude,
8 angry, or resentful manner without legal justification for
9 doing so.

10 To follow through on my example, if I have rared back
11 to assault you, and then I follow through and hit you, I
12 have committed an assault and then I committed a battery by
13 coming into contact with you.

14 To prove assault and battery of a high and aggravated
15 nature, the State must prove that Mr. Jenkins committed an
16 assault and battery on the victim and must prove also that
17 the assault and battery was accompanied, accompanied by an
18 aggravation, an aggravated circumstance. It is up to you to
19 determine what are aggravating circumstances. But examples
20 of aggravating circumstances include an intent to commit a
21 felony, a great disparity between the ages or genitals or
22 physical conditions of the parties, the taking of indecent
23 liberties or familiarities with a female, the use of force,
24 or the personal, purposeful infliction of shame and
25 disgrace.

1 Now, as I said, the State must prove that charge beyond
2 a reasonable doubt before you could convict Mr. Jenkins as
3 to assault and battery of a high and aggravated nature.

4 I'm gonna go over with you, in just a moment,
5 Mr. Foreman, the verdict form. Your verdict must be
6 unanimous. All 12 jurors must agree. Your verdict can not
7 be based on sympathy, passion, prejudice, or public opinion,
8 or matters outside the record. You are not to be swayed by
9 passion, as I said, sympathy for public opinion, or matters
10 outside the record.

11 You -- if you have any questions while you are
12 deliberating, please write them down, knock on the door, and
13 a bailiff will bring them to me. After consulting with the
14 attorneys, I will respond. It may be that I can write an
15 answer on the note. It may be that I'll have to bring you
16 here into the courtroom and answer the question. If I do
17 write an answer on the note and send it back, keep it and
18 turn it in with the evidence. That has to be part of the
19 record.

20 If you need to hear testimony we can have testimony
21 replayed. Just let me know. Please, if you want testimony,
22 be as specific as you can because it does take us a little
23 time to find it.

24 We do not, in South Carolina, send in a written charge
25 on the law, but if you have any questions about the law,

1 please let me know and I'll bring you back here in open
2 court, and I will recharge you any part or all of it, the
3 law.

4 Keep in mind that the indictment that you'll have in
5 the jury room with you is not evidence. When you first go
6 to the jury room in just a minute, do not start
7 deliberating. I have to go over with the attorneys my
8 charge. If I have made an error, I'll have to bring you
9 back in and correct it. If not I'll send in the verdict
10 form, send in any exhibits, and the exhibits will be brought
11 in, and the bailiff will tell you to start deliberating.

12 When you've reached a unanimous verdict, knock on the
13 door, tell the bailiff, and the bailiff will let me know,
14 and we'll send for you. We're not starting another trial
15 today. So, I should be able to send for you promptly.

16 If you go to the extent where you believe you need us
17 to order a meal for you, let me know. It probably takes
18 about an hour for us to get a meal here. So, if you decide
19 that you need to order a meal, please let me know.

20 When you first go out, when you go out at this time,
21 again, do not start deliberating until the bailiff tells you
22 to do so.

23 The alternate, you'll stay in here. You'll not be
24 participating any further.

25 Now, on the verdict form, I have set forth, under Count

1 One and Count Two, Count One is the ages of 11 to 14, Count
2 Two, ages 14 to 16, and the options are identical. The
3 order they're in is of no import, no importance. I have to
4 put them in some order. I always put them in this order.

5 Mr. Foreman, as to the verdict, you will put an X in
6 front of the line that states the jury's unanimous finding.
7 The first line says we find the defendant guilty of criminal
8 sexual conduct with a minor in the second degree, and that's
9 the same for Count One and Count Two. If you find the State
10 has failed to prove that beyond a reasonable doubt, and I've
11 told you you can consider whether or not the State has
12 proven Mr. Jenkins guilty of the lesser included lewd act
13 upon a minor, if you so find, you put an X in front of that
14 line, and the same is true with the third in the series of
15 the lesser included offenses. That is of assault and
16 battery of a high and aggravated nature, and that the jury's
17 unanimous verdict is that he is guilty of that. You will
18 put an X in front of that line. The fourth line in each
19 count says we find the defendant not guilty, and if the
20 State is failed to prove Mr. Jenkins guilty beyond a
21 reasonable doubt, you would use that line.

22 Now, I'm gonna let you go. Everybody but the alternate
23 go in the jury room. Do not start deliberating yet.

24 (WHEREUPON, the following takes place outside the
25 presence of the jury.)

1 THE COURT: I'll be with you in just one minute.

2 JUROR: Okay.

3 THE COURT: Anything from the State?

4 SOLICITOR GRAY: No, sir, Your Honor.

5 THE COURT: Anything from the defense?

6 MS. ANDERSON: Your Honor, I understood that you were
7 not going to charge that a minor under 14---

8 THE COURT: Yeah, I, I had told you that and I'm sorry
9 that I misled you, but that is part of my regular charge.
10 And, so, I had -- it had slipped my mind, but I, I -- it is
11 coupled in the charge I've been using. So, I apologize to
12 you. I didn't mean to mislead you, and I kind of hesitated
13 when I got there, but it's what I usually charge.

14 MS. ANDERSON: Thank you, Your Honor.

15 THE COURT: Okay.

16 All right. Anything else?

17 MS. ANDERSON: No, sir.

18 THE COURT: All right. Now, the clerk's done a great
19 job, but she's misread, misread some of my writing because
20 she's got ages 14 to 26 when it ought to be 14 to 16. So,
21 she's gonna retype that, and we'll send in the verdict form,
22 and check it before it goes in, and check the exhibits and
23 we'll send them out, and tell the, have the bailiff tell
24 them to start deliberating and we'll be at ease.

25 (WHEREUPON, the alternate juror was dismissed at this

1 time.)

2 MS. ANDERSON: Your Honor, Mr. Gray says he's going to
3 send in the videotape of Mrs. Staggs. I would object.

4 THE COURT: I don't think so. That's, that's not --
5 that's just testimony. That was just testimony preserved.

6 SOLICITOR GRAY: Yes, sir.

7 THE COURT: So, I'm not gonna send that back.

8 MS. ANDERSON: Thank you, Your Honor.

9 SOLICITOR GRAY: All right.

10 THE COURT: All right. We'll be at ease. Don't wonder
11 too far in case we need you for anything. I'll be over in
12 the bowels of the courthouse where my office is.

13 SOLICITOR GRAY: Yes, sir.

14 (WHEREUPON, the jury began deliberations at 10:42 and
15 returned with a question at 11:44.)

16 THE COURT: All right. The jury has asked that I
17 recharge, and for some reason the indictment didn't get
18 back. That's my fault. We'll send that back when they go
19 back and recharge the elements of the charges, and I will do
20 that, and we'll go through including the lesser included.

21 All right. Any comment before we do that from the
22 State?

23 SOLICITOR GRAY: No, sir, Your Honor.

24 THE COURT: Any from the defense?

25 MS. ANDERSON: No, sir.

1 THE COURT: All right. And the note, I don't think
2 you've seen it, just this is it. It says we need a
3 definition of the charges. We would like to hear the
4 charges explained again please. So, that's what we'll do.

5 All right. Bring in the jury.

6 (WHEREUPON, the following takes place within the
7 presence of the jury.)

8 THE COURT: All right. Members of the jury panel, I've
9 received your note, and I am going to recharge you the
10 charges.

11 I did not, for some reason, the indictment got mixed in
12 with the paperwork. So, I'll send that in. It has the
13 verdict, but, again, keep in mind that that indictment is
14 simply the paperwork. It's not evidence. It's the
15 paperwork that sets forth the charges, and ultimately will
16 be where the verdict is enrolled.

17 Mr. Jenkins is charged with second degree criminal
18 sexual conduct with a minor. The State must prove, beyond a
19 reasonable doubt, that Mr. Jenkins engaged in a sexual
20 battery with the vehicle, Miss Parris.

21 A sexual battery is sexual intercourse, cunnilingus,
22 fellatio, anal intercourse, or any intrusion, however
23 slight, of any part of a person's body or of any object into
24 the genital or anal openings of another person's body except
25 when the intrusion is accomplished for medically recognized

1 treatment or diagnostic purposes.

2 As to Count One, the State must prove the sexual
3 battery and must also prove that the victim was, at the time
4 of the occurrence, if you find it occurred, was at least 11
5 years old, but not more than 14. As to the second count,
6 the victim must have been less than 16 years of age, but at
7 least 14 years of age, and you must find that the defendant,
8 Mr. Jenkins, was either in a position of familial,
9 custodial, or official authority to coerce the victim to
10 submit, or that the defendant, Mr. Jenkins, was older than
11 the victim.

12 Consent, willingness, indifference, or ignorance on the
13 part of the minor, if any, as to what is taken place does
14 not, in any way, effect the charge of criminal sexual
15 conduct with a minor because an unmarried woman under the
16 age of 14 could not legally consent to sexual intercourse.
17 The testimony of the victim need not be corroborated in a
18 criminal sexual conduct prosecution.

19 Now, remember those steps I talked about, those are the
20 charges, criminal sexual conduct with a minor in the second
21 degree. Two age brackets, 11 to 14, and 14 to 16. If you
22 find the State has failed to prove Mr. Jenkins guilty of
23 either of those or not guilty of both of them, you may --
24 it's up to you to determine whether or not to consider the
25 State has proven Mr. Jenkins guilty of committing a lewd act

1 on a minor, and a minor is a person under the age of 18.

2 In order to prove lewd act on a minor, the State must
3 prove that the defendant, at the time, was over the age of
4 14. Next, the State must prove that the defendant willfully
5 and unlawfully committed or attempted to commit a lewd or
6 lascivious act on or with the body or body parts of a child
7 under the age of 16 with the intent to arouse, appeal to, or
8 gratify the lust, passions, or sexual desires of the
9 defendant or of the child victim.

10 willfully means voluntarily and intentionally, with a
11 specific intent to do something the law forbids.

12 Lewd means obscene, lustful, indecent, lecherous.
13 Lascivious means tending to insight lust, lewd, indecent,
14 obscene in respect to sexual relations.

15 If you find the State has failed to prove either
16 criminal sexual conduct with a minor or the lesser lewd act,
17 you may, again you don't have to, but you may consider
18 assault and battery of a high and aggravated nature. An
19 assault occurs when a person unlawfully attempts or offers
20 to commit a violent injury upon another person and has the
21 presentability to complete the attempted injury. An assault
22 is the intentional creation of a reasonable fear of
23 immediate bodily harm. It is not necessary that the
24 attempted injury and harm actually take place, and that was
25 my example about raring back my fist within striking

1 distance.

2 A battery is the unlawful touching of another person by
3 a person who is committed an assault. An unlawful touching
4 can be caused by a part of an accused body or by any part of
5 the accused body, accused body. A battery is the completion
6 of an assault by using or applying force to another person,
7 however slight, in a rude, angry, or resentful manner
8 without legal justification for doing so, and my example, an
9 assault takes place when I rare back. The battery takes
10 place if I come forward and strike you.

11 To prove assault and battery of a high and aggravated
12 nature, the State must prove that the defendant committed an
13 assault and battery on the victim and must also prove,
14 beyond a reasonable doubt, that the assault and battery was
15 accompanied by an aggravated circumstance. You can
16 determine what circumstances may be considered aggravated,
17 but examples of circumstances of aggravation include the
18 intent to commit a felony, a great disparity between the
19 ages or physical conditions of the parties, a difference in
20 the genders of the parties, the taking of incident liberties
21 or familiarities with a female through the use of force or
22 the purposeful infliction of shame and disgrace.

23 Those are the three, the charges and the two lesser
24 included.

25 Now, I am told it takes about an hour to, for us to get

1 our lunch. So, if you want lunch, just let us know. I'll
2 let you go back to deliberating and I'll hand to you as you
3 go out, the indictment.

4 (WHEREUPON, the following takes place outside the
5 presence of the jury.)

6 THE COURT: Anything from the State?

7 SOLICITOR GRAY: No, sir, Your Honor.

8 THE COURT: Defense?

9 MS. ANDERSON: No, sir, Your Honor.

10 THE COURT: All right. I'll make the note a Court's
11 Exhibit, and hopefully we'll hear whatever we hear.

12 (WHEREUPON, the note from the jury was marked as
13 Court's Exhibit No. 1 for identification purposes only at
14 this time.)

15 (WHEREUPON, the jury began deliberations at 11:50 and
16 returned with a verdict at 12:05.)

17 THE COURT: I understand the jury has reached verdicts.
18 So, we'll -- anything before the jury comes in?

19 SOLICITOR GRAY: No, sir, Your Honor.

20 THE COURT: Anything from the defense?

21 MS. ANDERSON: No, sir, Your Honor.

22 THE COURT: All right. We'll have the jury brought in
23 then.

24 (WHEREUPON, the following takes place within the
25 presence of the jury.)

1 THE COURT: Mr. Foreman, I understand the jury has
2 reached verdicts.

3 FOREMAN: We have, Your Honor.

4 THE COURT: Hand them to the bailiff.

5 (WHEREUPON, the foreman complies.)

6 CLERK: In the Court of General Sessions, Case Number
7 2008-GS-42-7197, the State of South Carolina versus Roy
8 James Jenkins, Count One, we find the defendant guilty of
9 criminal sexual conduct with a minor second degree.

10 Count Two, we find the defendant guilty of criminal
11 sexual conduct with a minor second degree.

12 This is signed by the foreman and dated today's date.

13 Ladies and gentlemen of the jury, if this is your
14 verdict and still your verdicts, please raise your right
15 hand.

16 (WHEREUPON, all jurors raise their hands at this time.)

17 CLERK: So say you-all.

18 THE COURT: All right. Anything from the State before
19 the jury is dismissed?

20 SOLICITOR GRAY: No, sir, Your Honor.

21 THE COURT: Anything from the defense?

22 MS. ANDERSON: I ask that you poll the jury.

23 THE COURT: All right. Members of the jury panel, the
24 clerk is gonna ask you a question about your verdict.
25 She'll call your name and then hear your name called --

1 well, she'll tell you how to do it.

2 CLERK: Okay. I will pose a question to you. After
3 which I will call your name individually. You will stand
4 and answer my question. The question being is this your
5 verdict and still your verdict.

6 (WHEREUPON, the jury was polled at this time and all
7 jurors answered in the affirmative that this is their
8 verdict and still their verdict.)

9 THE COURT: Anything else?

10 MS. ANDERSON: No, sir, Your Honor.

11 (WHEREUPON, the jury was dismissed at this time.)

12 THE COURT: The jury's been dismissed.

13 Anything else from the State before we talk about
14 sentencing?

15 SOLICITOR GRAY: No, sir, Your Honor.

16 THE COURT: Anything else from the defense?

17 MS. ANDERSON: No, sir.

18 THE COURT: All right. Let's bring Mr. Jenkins around,
19 and I'll be glad to hear anybody on the victim or anybody on
20 her behalf from the State, and, Ms. Anderson, anybody on Mr.
21 Jenkins behalf also.

22 The only prior record would be the ball tickets?

23 SOLICITOR GRAY: That's '86 I believe. Over 25 years
24 ago, and that, that was it, Your Honor.

25 THE COURT: Okay. Does the victim want to say anything

1 else?

2 SOLICITOR GRAY: Your Honor, she just doesn't want this
3 to happen to anybody else.

4 THE COURT: All right. Now, Ms. Anderson.

5 MS. ANDERSON: Your Honor, you heard my client's
6 testimony. Although the jury did find him guilty, I still
7 believe that he was not guilty of this offense.

8 He's a hard working person. He's raised his children
9 to be hard working. He has strong family ties, and I really
10 would hate to see him go to jail for a very long time. I
11 understand the sentencing range in this, but I just would
12 hate that you give him the maximum in these, in this case.

13 You've heard from his family. I won't have them say
14 anything because you heard that they all believe in his
15 innocence and that he could not have done this, and I would
16 just ask that you be merciful in your sentencing of him for
17 this offense.

18 THE COURT: All right. Mr. Jenkins, anything you want
19 to say?

20 DEFENDANT: No, sir.

21 THE COURT: Well, short of murder and some other
22 things, this offense is about as bad of an offense as you
23 can get.

24 The sentence on both of these will run concurrent.
25 They're both 20 years and you're to be registered on the Sex

1 offender Registry.

2 Thank you.

3

4 (WHEREUPON, Court was in recess in this case.)

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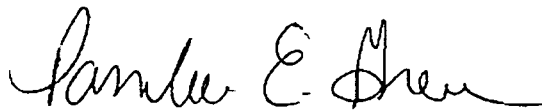
C E R T I F I C A T E

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I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 26th and 27th day of January, 2012.

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

April 29th, 2012



PAMELA E. GREEN, Court Reporter

238

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 Roy James Jenkins,) 2008-GS-42-7197
7 Defendant.) February 28, 2012
8 Spartanburg, South Carolina
9

10 B E F O R E:

11 HONORABLE JOHN C. HAYES, III, JUDGE
12
13

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

15 RUSSELL D. GHENT, ESQ.
16 ABEL ORLANDO, GRAY, ESQ.
17 Attorneys for the State

18 J. PATRICIA ANDERSON, ESQ.
19 Attorney for the Defendant
20
21
22

23 Margaret A. Woods
24 Circuit Court Reporter
25

COPY

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
D-1	Photograph	7	
D-2	Photograph	7	
D-3	Photograph	7	
D-4	Photograph	7	

1 THE COURT: Next matter's State of South Carolina vs. Roy
2 James Jenkins. Mr. Jenkins was tried, convicted and sentenced
3 a couple weeks back looks like January 27th or thereabouts,
4 anyway Mrs. Anderson on his half -- behalf has filed a motion,
5 I'll let her proceed.

6 MS. ANDERSON: Yes, sir. As I was finishing my brief, I
7 realized that I had mislabeled my motion. I asked for a
8 mistrial in the body of it but I didn't have it under the
9 correct criminal stat -- rule and I corrected that with the
10 amended motion for a new trial but basically today we're here
11 because Adam E. Durham who was Juror No. 56, who was the sixth
12 juror seated, did not know of his relationship with these
13 parties.

14 THE COURT: Did not, he didn't know of it?

15 MS. ANDERSON: I did not know of it.

16 THE COURT: Oh, you did not know, okay.

17 MS. ANDERSON: I did not. He did not disclose during the
18 voir dire when everybody family member stood up and faced the
19 jury panel that he knew this family and so the question in my
20 motion is this: Was the concealment of his relationship with
21 this with the victim and the defendant and the extended family
22 was it an intentional concealment because according to State
23 v. Gullette and Kelly the the reasoning is that juries have a
24 right to question jurors through the judge through in the voir
25 dire and this is done not only to show grounds for a challenge

1 for cause but also to elicit facts that would enable the
2 parties to intelligy -- intelligently exercise their strikes,
3 the pre -- I can't ever say that word, peremptory challenge,
4 excuse me. When a juror conceals information, ---

5 THE COURT: Well why don't we start by jumpin' the first
6 hurdle to see ---

7 MS. ANDERSON: Okay.

8 THE COURT: --- what the -- where we are with the the
9 predicates are of what what -- Mr. Durham's present?

10 MS. ANDERSON: Yes, sir.

11 THE COURT: Okay, you you intend to call him as a witness
12 or ---

13 MS. ANDERSON: I do.

14 THE COURT: Well why don't we do that first ---

15 MS. ANDERSON: Okay.

16 THE COURT: --- and then he can get outta here and also
17 we will we'll find out what we're dealin' with.

18 MS. ANDERSON: Okay.

19 THE COURT: Mr. Durham, will you come on up. We
20 apologize for having to bring you back up here.

21 MR. DURHAM: I I apologize I didn't know.

22 THE COURT: Alright, put your left hand on the Bible and
23 raise your right.

24 MR. DURHAM: Alright.

25 ADAM E. DURHAM, having

1 been first duly sworn, testified as follows:

2 THE COURT: Just ask you some questions.

3 MR. DURHAM: Alright. Alright.

4 DIRECT EXAMINATION BY MS. ANDERSON:

5 Q. Okay. Your name is Adam E. Durham, is that correct?

6 A. Yes, ma'am.

7 Q. And you were seated on the case of the State vs. Roy
8 James Jenkins.

9 A. Yes, ma'am.

10 Q. And you were I don't know if you remember the number but
11 you were the sixth person seated during the ---

12 A. I ---

13 Q. --- seating of the ---

14 A. --- it mighta ---

15 Q. --- jurors.

16 A. --- been, yeah, I don't remember.

17 Q. Now before we picked the jury the judge asked you
18 questions, asked everybody in the jury panel specifically, Did
19 you know the victim or did you know the defendant or did you
20 know their family members ---

21 A. Yes, he did.

22 Q. --- and every from [REDACTED] [REDACTED] to Roy and to his
23 extended family everyone stood up and faced the jury, is that
24 not correct?

25 A. Some of 'em did, not all of 'em was here that was here

1 today.

2 Q. Okay, ---

3 THE COURT: Let me stop ---

4 MS. ANDERSON: --- but ---

5 THE COURT: --- real quick, you brought up a point. The
6 State comply with the Victim's Rights Act? I think the victim
7 would have a right to ---

8 MR. GRAY: Yes, sir, Your Honor, we contacted the victim
9 in this case, she's at a funeral right now.

10 THE COURT: Okay. Alright, well I just wanna make
11 sure.

12 MR. GRAY: Yes.

13 BY MS. ANDERSON:

14 Q. Okay, but the ones that stood up you didn't announce to
15 the Court that you knew them, did you?

16 A. No, at the moment I didn't.

17 Q. Okay, did there come a moment when you did?

18 A. Almost when it was there over with I realized, yeah.

19 Q. Okay, but you didn't tell anyone.

20 A. No, it's first time I don't know, ya know, what I'm
21 sayin', I've never done this before.

22 Q. So re -- you realized you knew the victim, you knew the
23 Jenkins family.

24 A. No, I did not know the victim at all.

25 Q. Okay, show you some pictures. Were you ever at a

1 birthday party at Frank Jenkins' house?

2 A. Yeah, but this is when I was like 12, maybe 13, 11.

3 Q. Okay, is this (indicating) you in there?

4 A. Uh, yeah, that's me ---

5 Q. Okay, and ---

6 A. --- I think, yeah.

7 Q. --- and [REDACTED] Jenkins is in there?

8 A. I don't recall.

9 Q. Neil Jenkins? Weren't you friends with Frankie
10 Jenkins?

11 A. Frankie I was, yeah.

12 Q. Okay, and he is Ashley's father?

13 MR. GHENT: Your Honor, could we ask that that be marked?

14 THE COURT: Yeah, let's ---

15 MS. ANDERSON: Oh, okay. I provided them a copy so but I
16 will mark all of 'em?

17 MR. GHENT: Yes, ma'am, any any that you intend to
18 question the witness from.

19 MS. ANDERSON: Okay.

20 MR. GHENT: Thank Your Honor.

21 (Photographs marked Defendant's Exhibit Nos. 1, 2, 3 and
22 4 for identification.)

23 MS. ANDERSON: Thank you.

24 COURT REPORTER: You're welcome.

25 BY MS. ANDERSON:

1 Q. Alright, I'm handin' to you Defendant's Exhibit No. 1.
2 Now you have -- you've acknowledged that you're in this
3 picture ---

4 A. Correct.

5 Q. --- and one of the people that stood up -- would you
6 like, I got a ---

7 THE COURT: Okay. You you got an extra set? I mean, if
8 you have ---

9 MS. ANDERSON: Yeah.

10 THE COURT: --- an extra set, it would help me follow
11 along but and do you have a set?

12 MR. GHENT: Yes, sir, I do, Your Honor.

13 MS. ANDERSON: Now this is in black and white or I can
14 question him with the black and white ---

15 THE COURT: No, no, I -- it's ---

16 MS. ANDERSON: --- and you with colors.

17 BY MS. ANDERSON:

18 Q. Alright, going back to Exhibit 1, who is this
19 (indicating)?

20 A. Uh, it says Neil.

21 Q. Okay. Didn't Neil Jenkins stand up during the *voir dire*?

22 A. I do believe so.

23 Q. Okay, how 'bout Nick Jenkins?

24 A. I don't remember Nick.

25 Q. Okay.

- 1 A. I mean, I was a kid ---
- 2 Q. Okay, ---
- 3 A. --- and it's hard ---
- 4 Q. --- but ---
- 5 A. --- for me to remember. I'm sorry.
- 6 Q. --- but Fra -- Frankie was your friend, right?
- 7 A. Frankie was, yeah.
- 8 Q. Okay, and but you admit you were at Frank -- were you at
- 9 Frank Jenkins' house at his party?
- 10 A. I believe that's where that's at.
- 11 Q. Okay. Alright, would you look at Defendant's No. 2.
- 12 (Whereupon, the witness complied.)
- 13 Who are these people?
- 14 A. Well that's (indicating) my dad.
- 15 Q. And who is this (indicating)?
- 16 A. I I can't tell, it's a half picture.
- 17 Q. Okay, but that is your dad?
- 18 A. It's my father, yes.
- 19 Q. Okay, Defendants No. 3, are you in this (indicating)
- 20 picture?
- 21 A. That's supposed to me?
- 22 Q. Um-hum.
- 23 A. I reckon.
- 24 Q. Is this (indicating) your brother?
- 25 A. Uh, yeah.

1 Q. Is this (indicating) Ashley Jenkins?

2 A. Right.

3 Q. And Frankie Jenkins?

4 A. Right, which neither one were here that day ---

5 Q. Alright, but ---

6 A. --- just so...

7 Q. --- but anyway you admit you were in a picture with ---

8 A. Uh, ---

9 Q. --- these.

10 A. --- yeah, I suppose that's me.

11 Q. Okay. Now you and Ashley Jenkins went to the same
12 church.

13 A. There for a while, yeah.

14 Q. It was your grandfather's church.

15 A. Correct.

16 Q. And were ya'll in the same Sunday school class?

17 A. Uh, I think, uh, I can't remember how they done that. I
18 think we were there a time but I knew they split off like
19 girls and boys too ---

20 Q. Okay.

21 A. --- at one point in time.

22 Q. But you knew Ashley through church?

23 A. I knew Ashley, yeah.

24 Q. And you went over to Ashley and Frankie's house, didn't
25 ya?

1 A. When I was a child, yeah.

2 Q. Okay, so you would have seen his his -- Frankie and
3 Ashley's father ---

4 A. Right.

5 Q. --- and grandparents.

6 A. Correct.

7 Q. Defendants No. 4 is again another picture with you and
8 the Jenkins, is that correct?

9 A. I I think that is, I can't really see it.

10 Q. Okay, but in this picture is Franklin Jenkins, Frankie
11 Jenkins ---

12 A. Okay, which I never new his name was Frank. I always new
13 knew him as Burt.

14 Q. Okay, but you do knew -- you did know him?

15 A. Yeah, back then, yeah.

16 Q. Okay. Alright, didn't, um, ---

17 A. And he's changed dramatically like I'm just saying he
18 don't look nothin' like he used to when I was a kid.

19 Q. You don't look like you did either ---

20 A. I I ---

21 Q. --- as a kid.

22 THE COURT: I don't know, he's a pretty big kid.

23 (Laughter.)

24 MR. DURHAM: That's what I'm sayin', I've I've always
25 been big but...

1 BY MS. ANDERSON:

2 Q. But bottom line is you knew the Jenkins family.

3 A. Uh, part of 'em.

4 Q. Okay.

5 A. Most of 'em that's here I don't know.

6 Q. What about Roy Jenkins' parents?

7 A. I don't know Roy.

8 Q. I'm askin' about his parents, Shirley and Frank.

9 A. Not that I'm aware of.

10 Q. Isn't it correct that they helped raise money for your
11 brother when he had cancer?

12 A. I -- we had a lotta benefits goin' on. I mean, they
13 could've, I'm not sayin' they didn't, ya know, ---

14 Q. You ever see 'em ---

15 A. --- I honestly ---

16 Q. --- at your ---

17 A. --- don't know.

18 Q. --- church?

19 THE COURT: Let, let him finish.

20 BY MS. ANDERSON:

21 Q. I'm sorry.

22 A. Not that I'm aware of but like I said I was a kid, I
23 don't remember half my childhood, just sayin'. I'm almost
24 26-years-old now.

25 Q. Okay, and but you do remember Ashley and Frank.

1 A. Yeah, I do ---

2 Q. Okay.

3 A. --- remember them.

4 Q. When you realized you knew these people and how how is it
5 you came to that realization that you knew 'em?

6 A. Uh, I think it was 'bout halfway through it when, uh,
7 well I know him as Brute but I think they call him Frank or
8 Frankie or sumtin', uh, he, uh, said Ashley Jenkins and
9 Frankie Jenkins was his daughter and son, that's when it kinda
10 hit me, ya know, hey I think I know this guy.

11 Q. Yeah, but you didn't inform the Court of this.

12 A. No, but I didn't know. I, this is the first time I've
13 ever, I've never even been in trouble in my life, ya know, I
14 didn't know what ---

15 MR. GHENT: Your Honor, ---

16 MR. DURHAM: --- I was supposed to do ---

17 MR. GHENT: --- at this ---

18 MR. DURHAM: --- or what.

19 MR. GHENT: --- time could the Court clarify he's not in
20 trouble with the Court ---

21 THE COURT: I was just gonna say that. Yeah, you're
22 you're not in trouble now.

23 MR. DURHAM: Okay.

24 THE COURT: I was gettin' ---

25 MS. ANDERSON: Well I I I ---

1 THE COURT: --- I was gettin' ready to say that.

2 MR. GHENT: Thank you, sir.

3 MR. DURHAM: Yeah.

4 MS. ANDERSON: He called me and I told him that also ---

5 THE COURT: Alright.

6 MS. ANDERSON: --- so...

7 BY MS. ANDERSON:

8 Q. Now we're just tryin' to find out if Mr. Jenkins may not
9 have gotten a fair trial because you knew the family and
10 didn't tell anybody ---

11 A. Okay.

12 Q. --- so but you're not in trouble.

13 A. Okay.

14 MS. ANDERSON: Your Honor, those are all the questions I
15 have.

16 MR. GHENT: May it please the Court.

17 THE COURT: Yes.

18 CROSS-EXAMINATION BY MR. GHENT:

19 Q. Mr. Durham, we've never met before, correct?

20 A. Correct.

21 Q. Alright. And you say you're approximately
22 26-years-old?

23 A. Yeah, well I'll be 26 in June.

24 Q. When is the last time to the best of your recollection
25 you have been to the Jenkins' home ---

1 A. It's ---

2 Q. --- roughly?

3 A. --- I would, I'd say at least ten years.

4 Q. At least ten years?

5 A. At least.

6 Q. And how was it that it came to now the Court's attention
7 that you had recalled this the fact that you knew some members
8 of the defendant's family?

9 A. Uh, I I have no idea.

10 Q. Okay. You have no idea how that happened?

11 A. Uh-uh (negative).

12 Q. It wasn't you who contacted defendant's attorney?

13 A. No, sir.

14 Q. You didn't contact the Court?

15 A. No, sir.

16 Q. You didn't contact a member of the Jenkins family?

17 A. No, sir.

18 Q. Now to clarify can you tell me how many people in the
19 courtroom are members of the Jenkins family? I mean, can you
20 tell me the number?

21 A. Honestly no.

22 MR. GHENT: Your Honor, if we might could I ask for a
23 show of hands because I would like to count and put that into
24 the record.

25 THE COURT: How many Jenkinses do we have here

1 extended ---

2 MS. ANDERSON: A bunch.

3 THE COURT: --- family? Okay, well count 'em for us.

4 BY MR. GHENT:

5 Q. One, two, three, four, five, six, seven eight, nine, ten,
6 eleven, twelve, thirteen. Thirteen members of the Jenkins
7 family not counting the defendant, that would be fourteen
8 members of the Jenkins family here today, is that correct,
9 sir?

10 A. Correct.

11 Q. And you're not the one who came forward ---

12 A. No, sir.

13 Q. --- and to clarify it you didn't wilfully try to hide
14 something, your recollection is or your understanding or what
15 you're telling the Court is during the trial towards the end
16 you remembered them.

17 A. Correct.

18 Q. And this is the defendant's family, correct?

19 A. Yeah.

20 Q. To the best of your recollection, had there ever been
21 anything that you had done that reflected any ill will towards
22 the defendant ---

23 A. No, sir.

24 Q. --- or ill will by the Jenkins family towards you ---

25 A. No, sir.

1 Q. --- or towards any member of your family?

2 A. No, sir.

3 Q. I hate to ask this but well well is this one of the first
4 times you've ever testified?

5 A. Yes, sir.

6 Q. The first time?

7 A. The first time.

8 Q. How many times have you been a juror in a trial of any
9 sorts before this?

10 A. Uh, I had one trial before this in the same week but
11 these were my first cases I ever been on.

12 Q. It's kind of a ---

13 A. Yeah, it kinda makes me not wanna do jury no more.

14 (Laughter.)

15 Q. That wasn't gonna be my question, sir, but I can
16 understand ---

17 A. Yeah.

18 Q. --- that but the first time coming through you have the
19 judge, the prosecutor, the defense attorney, all kinds of
20 things happening, did you find it somewhat intimidating?

21 A. Somewhat, yeah.

22 Q. Okay. And again, this is one of the first times you've
23 been in a courtroom when this happened ---

24 A. Yes, sir.

25 Q. --- and today is the first time you've testified?

1 A. Yes, sir.

2 Q. Can you explain what the concept of prejudice is in a
3 criminal proceeding?

4 MS. ANDERSON: Your Honor, I would ---

5 MR. DURHAM: I don't ---

6 MS. ANDERSON: --- object.

7 MR. DURHAM: --- know.

8 MS. ANDERSON: I'm not sure what he is supposed to ---

9 THE COURT: Well it's cross-examination of a witness that
10 you called to ---

11 MS. ANDERSON: Yes, sir, ---

12 THE COURT: --- support your position so ---

13 MS. ANDERSON: --- but I -- isn't it callin' for a legal
14 conclusion?

15 MR. GHENT: I'm not askin' for a legal conclusion, I'm
16 just askin' if he e -- can explain it. I'm not gonna ask
17 him to -- just yes or no, Your Honor.

18 MR. DURHAM: Yeah, I can't explain.

19 BY MR. GHENT:

20 Q. Okay, and again I wanna clarify you never did anything to
21 offend these people, is that correct?

22 A. Correct.

23 Q. They never did anything to offend you.

24 A. Correct.

25 Q. And whoever was in the courtroom and stood and looked at

1 you -- Your Honor, can I also ask that anybody including the
2 defendant who stood and looked at this individual or who were
3 in the courtroom and saw this individual that they stand up as
4 well?

5 THE COURT: Anybody that was here that day that of the
6 trial please stand.

7 UNIDENTIFIED WOMAN: I can't stand.

8 THE COURT: Okay, yes, ma'am, I understand. She she was
9 present and testified.

10 BY MR. GHENT:

11 Q. That's one, two, three, four, five, six to one. Six
12 people, twelve pairs of eyes on you at the time of this.
13 Thank you.

14 THE COURT: You can sit down. Thank you.

15 BY MR. GHENT:

16 Q. Looking at you and your recollection is that nobody ever
17 did anything to each other but twelve pairs of eyes saw you
18 and you were essentially the deer frozen in the headlights?

19 A. Pretty much.

20 Q. Okay.

21 MR. GHENT: If I might have a moment, Your Honor.

22 THE COURT: Alright.

23 MR. GHENT: No further questions, Your Honor. Thank you,
24 sir.

25 THE COURT: Any follow up?

1 MS. ANDERSON: No, sir.

2 THE COURT: Alright, Mr. Durham, thank you, you ---

3 MR. DURHAM: Thank you, sir.

4 THE COURT: --- you can go.

5 (Whereupon, the witness left the stand.)

6 MS. ANDERSON: Is it alright that he be excused?

7 THE COURT: Yeah, he can be excused.

8 MR. DURHAM: Okay, thank you.

9 THE COURT: Alright, now you you have any other witnesses
10 you wanna call?

11 MR. ANDERSON: I have other witnesses.

12 THE COURT: Alright.

13 MR. GHENT: Your Honor, then could I ask that he -- it it
14 it has occurred to me just assuming there's ---

15 THE COURT: Alright, why don't you stick around just
16 for -- we'll ask you to ---

17 MR. DURHAM: Yeah, ---

18 THE COURT: --- to stay a ---

19 MR. DURHAM: --- that's fine, I can sit down.

20 THE COURT: --- we'll let you stay a little while.

21 MR. GHENT: Okay. Thank Your Honor.

22 THE COURT: Alright, call your next witness.

23 MS. ANDERSON: I'd like to call Jana Durham.

24 THE COURT: Come up, put your left hand on the Bible and
25 just raise your right.

1 JANA DURHAM, having been first
2 duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MS. ANDERSON:

4 Q. Ms. Durham, is Adam your son?

5 A. Yes.

6 THE COURT: Let's let's start off by gettin' her to spell
7 her name.

8 MS. ANDERSON: Oh, I'm sorry, excuse me.

9 MS. DURHAM: J-A-N-A. You need the last one spelled?
10 Want me to spell the last name?

11 THE COURT: No, that's fine, we got the Durham, I just
12 didn't know what -- I put -- I wrote down two Ns and it's one.

13 MS. DURHAM: That's okay.

14 BY MS. ANDERSON:

15 Q. What's your relationship to Adam Durham?

16 A. I'm his mother.

17 Q. Okay, and is it true that you had a son who had cancer?

18 A. Yes, he suffered, he's still sufferin' for 16 years.

19 Q. Okay, and at some point did Frank and Shirley Jenkins
20 help raise money for your son?

21 A. Yeah, they did.

22 Q. In fact, didn't they give you tires for your car?

23 A. Oh, I don't remember but they may have, I don't know.

24 Q. And you had had ---

25 A. I've had so much on my mind all these years.

1 Q. Okay, but you have, you've also been to the Jenkins'
2 house, haven't you?

3 A. Yes, I have, long time ago.

4 Q. I've got Defendant's No. 2, Exhibit No. 2, is this
5 (indicating) you in this picture kinda cut off?

6 A. Yeah, I can tell that's half of my -- yeah, but ---

7 Q. That's (indicating) you and that's (indicating) your
8 husband.

9 A. Oh, yeah, we were so small then. I wish I was that size
10 now.

11 MS. ANDERSON: Those are all the questions I have.

12 MR. GHENT: May it please the Court.

13 THE COURT: Yes.

14 CROSS-EXAMINATION BY MR. GHENT:

15 Q. Ms. Durham, I apologize, may I return to the ordeal of
16 your sons?

17 A. Yes, that's okay. I hope I don't start cryin' 'cuz I
18 don't like to talk about it.

19 Q. Well if you want I'll leave it alone.

20 A. No, go ahead, that's fine.

21 Q. Okay. Your son had cancer?

22 A. Yeah, he's had four brain tumors and the last one was
23 cancer. He's crippled up, he's bedridden, he wears diapers.
24 We have to do everything for him.

25 Q. And through the church assistance was given to ya'll?

1 A. Yeah, several churches helped us years ago, yes.

2 Q. Year -- how -- about how many years?

3 A. Probly when he was only 12 or 15 but that and 'cuz he
4 hadn't had another, another church hasn't raised any money
5 since then I don't think.

6 Q. I will simply ask you have you ever that you can recall
7 had so much as a cross word with any of the Jenkins family?

8 A. Oh, no. I I love, I love Johnny and Ashley and all of
9 'em. No, we've always gotten along very good.

10 Q. Have they ever gotten into it with you?

11 A. No.

12 Q. Okay, any member of your family that you know of?

13 A. Not that I know of.

14 Q. Okay.

15 A. Uh-uh (negative).

16 Q. Do you know how it came to light that your son had been
17 on a jury where Roy James Jenkins had been convicted?

18 A. Yeah, after it it was over he he told me that, um, 'cuz,
19 ya know, he ain't supposed to talk about the trial ---

20 Q. Um-hum.

21 A. --- but after it was all over he said he realized that
22 that was -- well we called him Brute but they said his na --
23 real name's Frank Jenkins and and but my son said but he's
24 changed mama so much, like we all have over the years, that
25 he's bigger and he's he doesn't have any hair or he's lost

1 most of his hair now.

2 Q. Ms. Jenkins, you said -- excuse me, ---

3 A. That's alright.

4 Q. I'm sorry. Ms. Durham, you said somethin' I wanna return
5 to. Have ya ever served on a jury?

6 A. No, I don't want to either.

7 Q. Is this the first time you've ever been in a courtroom?

8 A. No, it's not the first time. My nephew stole from me and
9 my son that's sick, took everything he had last year and I had
10 to go to court for that.

11 Q. Okay. Other than that ---

12 A. Let me ---

13 Q. --- had ---

14 A. --- back that up. I, yes, I did, I did sit on a, yes, I
15 did testify with, I'm nervous, I testified ---

16 Q. That's okay.

17 A. --- at that tri -- trial because he had stole from my
18 son, ---

19 Q. Okay.

20 A. --- yeah, but that was the very first time in my life and
21 I'm 'bout to be 51 so...

22 Q. Your son testified that it was the first time he'd ever
23 had jury duty ---

24 A. Um-hum.

25 Q. --- and you said something just in passing I wanna return

1 to ---

2 A. Okay.

3 Q. --- about the fact that he couldn't talk to anybody
4 during the trial. Those were the instructions from the ---

5 A. Right.

6 Q. --- trial judge, did he tell ya that?

7 A. Yeah, he t -- and I knew that too, I I like to watch
8 forensic files and all that stuff.

9 Q. So you were aware it's against the rules once somebody
10 gets sworn to be talkin' about things.

11 A. Oh, yeah.

12 Q. Is your son a good young man?

13 A. Yes, he is.

14 MS. ANDERSON: Your Honor, I I think this is way
15 beyond ---

16 THE COURT: Yeah, ---

17 MS. ANDERSON: --- the scope of my ---

18 THE COURT: --- well ---

19 MS. ANDERSON: --- direct questioning.

20 THE COURT: --- well it doesn't have to be on cross we
21 don't have that scope ---

22 MS. ANDERSON: I understand that but ---

23 THE COURT: Well I ---

24 BY MR. GHENT:

25 Q. I just wanna clarify if the judge said don't talk about

1 somethin' to anybody ---

2 A. Um-hum.

3 Q. --- would your son is he the typa young man who'd follow
4 those instructions?

5 A. Yes.

6 Q. Thank you, ma'am.

7 THE COURT: I I've got one question.

8 MS. DURHAM: Okay.

9 THE COURT: The the son that's has the cancer ---

10 MS. DURHAM: Um-hum.

11 THE COURT: How old is he now?

12 MS. DURHAM: He's gonna be 28 in June.

13 THE COURT: Okay, thank you.

14 MS. DURHAM: Um-hum. Thank you.

15 THE COURT: Any further questions?

16 MS. ANDERSON: I have no further questions.

17 THE COURT: Alright, you can step down, ---

18 MS. DURHAM: Okay.

19 THE COURT: --- just have a seat and ---

20 MS. DURHAM: Okay.

21 (Whereupon, the witness left the stand.)

22 MS. ANDERSON: I call Shirley Jenkins.

23 THE COURT: Alright.

24 (Whereupon, a discussion was held off the record.)

25 SHIRLEY JENKINS, having been first

1 duly sworn, testified as follows:

2 (Whereupon, a discussion was held off the record.)

3 DIRECT EXAMINATION BY MS. ANDERSON:

4 Q. Please state your name.

5 A. Shirley Jenkins.

6 Q. And what's your relationship with Roy Jenkins?

7 A. Mother.

8 Q. And do you know Adam Durham?

9 A. Yes.

10 Q. Okay. How do ya know him?

11 A. Through the churches we were raisin' money for his
12 brother that had brain cancer and we would visit his grandpa's
13 church the Tabernacle of Love, we would go over there to fund
14 raisin's and we went to the fire department and all the fund
15 raisin's we went to to help with the boy's cancer.

16 Q. What about the tires for the car?

17 A. Yes, we donated tires for the car for them to take him
18 back and forth to the hospital.

19 Q. Now who owned the tire store?

20 A. Roy and my husband.

21 Q. Okay, so Roy and your husband gave the tires to the
22 Durham family.

23 A. Yes.

24 Q. Okay. When did you realize you recognized Allen -- Adam
25 Durham?

1 A. Well when he was seated somethin' just came to me that I
2 I knew, I mean, I knew him but, ya know, I couldn't picture
3 who he was till he came back in. The jury had been dismissed
4 and he started in the juror room with his cap on and somebody
5 reached and got the cap, I don't know who it was, and it was
6 just a certain way he moved all of a sudden and I knew who he
7 was, it was just a certain way he moved his face and I said
8 that's Adam Durham.

9 Q. Was this at the end of the trial?

10 A. Yeah.

11 Q. Had the jury already given their verdict?

12 A. Not yet, I mean, they had brought it in I think but they
13 hadn't stated what it was.

14 Q. Okay, so the jury was actually in here?

15 A. Yeah.

16 Q. Okay.

17 A. Yes, ma'am, I'm sorry.

18 Q. Alright. I believe you provided me with these
19 (indicating) pictures here.

20 A. Yes, ma'am.

21 Q. And could you tell me where this picture was taken and
22 that is ---

23 A. Okay.

24 Q. --- Defendant's No. 4.

25 A. Okay, Frank, Jr.'s house.

1 Q. Okay, is that Frank, Jr.?

2 A. That's (indicating) Frank, Jr., that's (indicating)
3 Frank, Sr., that's (indicating) Roy, that's (indicating) Neil,
4 that's (indicating) Adam and that's (indicating) Joshua,
5 Joshua Newman, I'm sorry, I shoulda said their last names, and
6 I don't believe I -- that's (indicating) Ashley but I don't
7 know who that (indicating) little girl is.

8 Q. Okay. Do you remember when you took these pictures?

9 A. I'm thinkin' it was a -- at [REDACTED]'s -- Ashley's 18th
10 birthday ---

11 Q. Okay.

12 A. --- but I don't know ---

13 Q. Okay.

14 A. --- for sure.

15 Q. But you took all of these and ---

16 A. Yeah.

17 Q. --- and you knew Jana and, uh, ---

18 A. I I met Mr. Durham more than I did her.

19 Q. Okay.

20 A. Uh-huh (affirmative).

21 Q. Alright.

22 A. More associated with him.

23 Q. Okay. And this is again is that same party.

24 A. Yes, ma'am, and this (indicating) is my daughter,

25 Deborah, this (indicating) is [REDACTED], [REDACTED] right

1 there (indicating).

2 Q. Um-hum.

3 A. We have two [REDACTED]s so I have to say [REDACTED] [REDACTED] 'cuz
4 we have a [REDACTED] Marie. So that's (indicating) [REDACTED] [REDACTED]
5 and that's (indicating) Joshua ---

6 Q. And [REDACTED] [REDACTED] is [REDACTED] [REDACTED]?

7 A. Uh-huh (affirmative).

8 Q. [REDACTED] ---

9 A. [REDACTED] [REDACTED] [REDACTED] [REDACTED], yeah.

10 Q. Okay, and this is another ---

11 A. Eighteenth birthday. Yeah, that's (indicating) Ashley
12 and Frankie and that's (indicating) the little boy that had
13 the cancer, Lee, and that's (indicating) Adam ---

14 Q. Okay.

15 A. --- and I don't know who that (indicating) little fella
16 is.

17 Q. And this all occurred at your son's house.

18 A. Yes, ma'am.

19 Q. Okay. When you realized that you knew this juror, ---

20 A. Um -- hum.

21 Q. --- did you tell me immediately?

22 A. I called ya the next day.

23 Q. Okay, and you provided me with these pictures, is ---

24 A. Yes, ma'am.

25 Q. --- that correct?

1 A. Yes, ma'am.

2 Q. Did y -- at any point durin' the trial, did you, Oh, I
3 know him?

4 A. Not till right at the last.

5 Q. And why was it you said you recognized him then?

6 A. It's just a certain way he moved. I I mean, a hat, I
7 don't know if you'll understand what I'm sayin', it's just
8 that I ki -- honed in on him. I I I knew I knew him but I
9 could not place him till just when he moved that certain way
10 when he reached back to get the cap from the way he twisted a
11 certain way and I -- somebody snatched his cap off his head, I
12 don't know who it was.

13 Q. Okay, and but this was the first time you knew that he
14 was connected to your family.

15 A. Yeah, are you talkin' about durin' the trial?

16 Q. Yes.

17 A. Yes.

18 Q. Okay. And why didn't ya'll tell me that day?

19 A. I didn't know it that day.

20 Q. I'm talkin' about right after you recognized him, ---

21 A. Uh, we ---

22 Q. --- why ---

23 A. --- were so distraught we couldn't even find ourselves.

24 I don't know if I was just so upset and tore up, I was re -- I
25 was heartbroken.

1 Q. So but it was the next day that you contacted ---

2 A. Yes, ---

3 Q. --- me.

4 A. --- I called the next day.

5 Q. Okay, answer any questions that, um, ---

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

7 Q. --- Mr. Ghent might have.

8 MR. GHENT: Thank you. May it please the Court.

9 CROSS-EXAMINATION BY MR. GHENT:

10 Q. Ms. Jenkins, ---

11 A. Yes, sir.

12 Q. --- were you in the courtroom during jury selection?

13 A. Yes, sir.

14 Q. And you saw the jurors stand when the judge asked
15 questions.

16 A. Yes.

17 Q. And the other five members of your family including your
18 son ---

19 A. Yes.

20 Q. --- were in the courtroom?

21 A. Yes.

22 Q. Everybody saw each of the jurors stand?

23 A. Well that's what -- yes.

24 Q. Nobody ---

25 A. Yes, I questioned it, that's what I said, I questioned

1 it.

2 Q. At the very first?

3 A. Yes, I said at the first that that I knew him but I
4 couldn't place where I knew him and who he was.

5 Q. Did you let Ms. Anderson know it?

6 A. No, I didn't till ---

7 Q. Did you ---

8 A. --- the last ---

9 Q. --- mention it to anybody else?

10 A. To my son.

11 Q. To your -- the the defendant?

12 A. No, ---

13 Q. Oh.

14 A. --- to another son.

15 Q. And did he tell Ms. Anderson?

16 A. No.

17 Q. Alright. It was you said only at the end of the trial
18 but before was when the jury had been seated but the verdict
19 had not yet been announced ---

20 A. That's right.

21 Q. --- that as he was coming back in he had a cap on his
22 head?

23 A. Yes, sir.

24 Q. Backwards or sumtin'?

25 A. Sideways I think.

1 Q. Sideways. And somebody snatched the cap off his head?

2 A. Yes, sir.

3 Q. Did that somebody by any chance was he wearin' a red
4 coat?

5 A. I could not see and I'm not gonna sit here and tell a
6 story.

7 Q. I know.

8 A. I I di -- I could not see who done it, all I know is the
9 cap got snapped, the cap got snatched off his head ---

10 Q. But ---

11 A. --- so I don't know who done it.

12 Q. --- he was the snatchee, you don't recall who the red
13 coated snatchor was.

14 A. I didn't see a red coat, that's what I'm tellin' ya. I
15 didn't see a red coat, all ---

16 Q. Or or ---

17 A. --- I seen was ---

18 Q. --- the snatchor.

19 A. Yeah, ---

20 Q. Okay.

21 A. --- I just seen the hat go off his head.

22 Q. And it was clear until the next day that you brought it
23 to Ms. Anderson's ---

24 A. I knew ---

25 Q. --- attention.

1 A. --- it before I left the courtroom, I mean, the
2 courthouse.

3 Q. No, ma'am, ---

4 A. Okay.

5 Q. --- my question was, please, ---

6 A. Yes, sir.

7 Q. --- it was clear until the next day before you told
8 Ms. Anderson?

9 A. Yes, I called her the next day, next mornin'.

10 Q. You heard the testimony that there's never been any kind
11 of ill will, ---

12 A. Oh, yes.

13 Q. --- is that true?

14 A. Yes.

15 Q. That ya'll have never had any kinda fuss with the Durham
16 family, they've never had any fuss with ya'll?

17 A. No, sir.

18 Q. Thank you.

19 A. Um-hum.

20 MR. GHENT: No further questions, Your Honor.

21 MS. ANDERSON: I have no more questions ---

22 THE COURT: Okay.

23 MS. ANDERSON: --- for this witness.

24 THE COURT: Alright, if you'll have -- thank you,
25 Ms. Jenkins.

1 MS. JENKINS: Did she say no?

2 THE COURT: She said no more questions.

3 MS. JENKINS: Okay, I'm sorry, I didn't understand.

4 THE COURT: Well, hold up, hold, up.

5 MS. JENKINS: Okay. Okay.

6 (Whereupon, the witness left the stand.)

7 MS. ANDERSON: I need to call Ashley Jenkins.

8 THE COURT: Okay.

9 MS. ANDERSON: Okay. I'm sorry, Ashley Copeland.

10 ASHLEY DAWN COPELAND, having been
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MS. ANDERSON:

13 Q. Please state your full name.

14 A. Ashley Dawn Copeland.

15 Q. And are you related to the Jenkins family?

16 A. Yes, I am. I am Roy's niece and Shirley and Franks'
17 granddaughter and Frank Brute's daughter.

18 Q. Okay, your father's not here today.

19 A. No, he is not.

20 Q. And you weren't here during the trial.

21 A. Unfortunately no, I was not.

22 Q. Okay. How long have you known Adam Durham?

23 A. All of his life.

24 Q. Did ya'll grow up in the same church?

25 A. Yes, ma'am.

1 Q. And we had the exhibits, the pictures from your
2 grandmother ---

3 A. Yes.

4 Q. --- did she get the time right on on this (indicating)
5 one?

6 A. No, ma'am, that was my mother's 30th birthday party.

7 Q. And that was this Defendant's 4.

8 A. Yes.

9 Q. Okay, and how old were you in that?

10 A. Thirteen 'bout to be or I might have actually been 14 by
11 then.

12 Q. Okay, you remember how old Adam was?

13 A. He was 13, he's a year younger than me.

14 Q. Okay, and this was the same party.

15 A. Yes, ma'am.

16 Q. Okay. And is that the inside of ya'lls house?

17 A. Yes, ma'am.

18 Q. Franklin Brute Jenkins' house?

19 A. Yes.

20 Q. Okay. Now tell me about Defendant's No. 3.

21 A. This (indicating) is me, my brother Frankie, Adam, a guy
22 Jason from our church, my best friend, Jenna, and Lee, Adam's
23 brother.

24 Q. Okay, how old were you when this was taken?

25 A. Almost 18.

1 Q. So there's a five-year span between the first pictures
2 that you and Adam are in pictures together and then five years
3 later you're still ---

4 A. Yes, ma'am.

5 Q. --- so did he come over to your house a great deal?

6 A. Yes, when we were younger we were really close. I
7 actually dated his his brother while he had the brain tumor so
8 I went back and forth with them to Atlanta ---

9 Q. Okay.

10 A. --- to take him to the hospital ---

11 Q. And was Adam aware of who your daddy was?

12 A. I'm assuming he was, yes, ---

13 MR. GHENT: Objection, Your ---

14 MRS. COPELAND: --- be ---

15 MR. GHENT: --- Honor, to what she's assuming. The
16 question was was she aware.

17 THE COURT: Well it ---

18 MRS. COPELAND: Well I I'm sorry. I can't answer
19 personally for him ---

20 THE COURT: That's what he ---

21 MRS. COPELAND: --- but ---

22 THE COURT: --- was saying.

23 MRS. COPELAND: --- to my understanding ---

24 THE COURT: Yeah.

25 MRS. COPELAND: --- is I don't see how ---

1 THE COURT: Now wait ---

2 MRS. COPELAND: --- you would ---

3 THE COURT: --- wait just a minute, ---

4 MRS. COPELAND: --- forget someone.

5 THE COURT: --- that's that's what he's saying but
6 there's no jury here ---

7 MRS. COPELAND: Okay.

8 THE COURT: --- and I ---

9 MR. GHENT: That's fine.

10 THE COURT: --- think I can weed out the things that
11 are ---

12 MR. GHENT: Yes.

13 THE COURT: --- outside personal knowledge so go ahead.

14 BY MS. ANDERSON:

15 Q. Okay. So you've known Adam you said his whole life?

16 A. Yes.

17 Q. Okay. Answer any questions that Mr. Ghent may have.

18 CROSS-EXAMINATION BY MR. GHENT:

19 Q. It's Ashley?

20 A. Yes, sir.

21 Q. Ashley Copeland?

22 A. Yes, sir.

23 Q. How long have you been married?

24 A. Almost a year in April.

25 Q. Almost a year?

1 A. Yes.

2 Q. When was the last time you saw Adam Durham before
3 today?

4 A. Um, probly when I was 18, 19 -- oh, I'm sorry I lied,
5 actually went to their church two years ago and I seen him and
6 his wife and his two daughters.

7 Q. How long did you visit with him there?

8 A. Just through the church service afterwards.

9 Q. Okay. That was it?

10 A. Yes.

11 Q. Has he been over to your house since any of these
12 pictures were taken?

13 A. I can't answer that because my grandparents live in the
14 same yard as we do and I do not know if hi -- him or his
15 family came and visited them so I can't state if he's been to
16 that address since then.

17 Q. You heard Adam's mother testify about the ordeal?

18 A. Yes.

19 Q. It's your testimony you were dating the boy who has ---

20 A. Yes.

21 Q. --- the brain tumor?

22 A. When we were younger, yes.

23 Q. Have you been over to see him in the past eight years or
24 so?

25 A. No, I've I seen him, God it was right after my divorce

1 26th, I think 21, maybe 22 he came over with his parents and
2 came down to my house and I spoke with him then.

3 Q. To your house?

4 A. Yes.

5 Q. Okay. And that was the house you lived in with your
6 husband?

7 A. Yes, the house I lived in with my parents, ---

8 Q. With ---

9 A. --- yes.

10 Q. --- your parents or ---

11 A. Um-hum.

12 Q. --- your husband?

13 A. Well me and my husband stayed there for a period of time
14 but I'm currently back there so ---

15 Q. Okay.

16 A. --- but at the time that's where I was stayin'.

17 Q. And you've not seen him since then?

18 A. No, sir, I I only seen his father since then.

19 Q. And you were not in court for ---

20 A. Un ---

21 Q. --- the trial.

22 A. --- unfortunately no.

23 Q. When you say unfortunately I I'll ask you too, has there
24 been any kind of ill will between your family and Adam's
25 family?

1 A. No, none.

2 Q. Thank you.

3 MS. ANDERSON: Those are all the questions I have, Your
4 Honor.

5 THE COURT: Thank you. You can step down.

6 (Whereupon, the witness left the stand.)

7 MS. ANDERSON: Those are all my witnesses.

8 THE COURT: Alright, the State have any witnesses?

9 MR. GHENT: No, sir.

10 THE COURT: Alright, I'll be glad to hear, uh, you've
11 done very, both of you done very good briefs but I'll still be
12 glad to indulge some arguments.

13 MS. ANDERSON: Your Honor, I I believe that *State vs.*
14 *Woods* controls this. I think it sets out how you determine if
15 something's intentional or unintentional and it says the
16 reasonable, get the exact quote, it actually is in types, I'm
17 sorry, *O'Rourke* where it sets out the standard that what it
18 says is it's intentional if the question is reasonable and
19 comprehensible to the average juror and it also if it's
20 unintentional it is reasonably comprehensible to the average
21 juror and the subject says of, I'm sorry this is intentional,
22 of such a significance that the juror's failure to respond is
23 unreasonable, that's the standard, and unintentional is when
24 the question posed is ambiguous or incomprehensible to the
25 average juror or where the subject of the inquiry in so and of

1 such insignificance are so far removed in time that the
2 juror's failure to respond is reasonable. I do believe in
3 this case that Mr. Durham he may not have recognized 'em at
4 first but he then recognized them and I think he had a duty to
5 tell the Court that because of this was because Roy was
6 entitled to a fair trial, an unbiased trial and we don't have
7 to show under the *Woods* standard we don't have to show that
8 there was prejudice, all we have to show is that it was
9 intentional concealment and I think that's what we have here
10 and because of that I wasn't given -- if he had just said he
11 knew the family, I could've at least found out if I wanted to
12 challenge him for cause or if I wanted to strike him but he
13 did not respond and the questions, Do you know Roy, Frank
14 Jenkins, do you know Shirley Jenkins, do you know Frank
15 Jenkins, they were comprehensible to the average juror and I'm
16 not saying that Mr. Durham should be in trouble for this but
17 he should have not hidden the fact that he knew the family at
18 this time. I mean, he grew up with Franklin Jenkins' daughter
19 and yes, it's been a few years but they were together when
20 they were 18 and they're what 25 now, but, ya know, and she
21 dated his brother. I just think there's just too much that he
22 he should have revealed this because I've certainly, I had
23 four strikes left, I would have not had him as a juror had I
24 known his relationship with the parties.

25 THE COURT: Well help me with your argument though; he's

1 saying he didn't realize a connection until almost the end
2 the trial.

3 MS. ANDERSON: Well they didn't either.

4 THE COURT: Well I I jus ---

5 MS. ANDERSON: I ---

6 THE COURT: --- but you keep saying he should've done
7 somethin' so you could exercise his strikes but he's sayin' he
8 didn't realize it until well after all your strikes were and
9 the trial was almost over.

10 MS. ANDERSON: I I kind of thought he said it was toward
11 the middle of the trial that he recognized ---

12 THE COURT: Well he said halfway, halfway through ---

13 MS. ANDERSON: Halfway through.

14 THE COURT: --- then he said he came in and it was
15 ev -- well anyway during the trial, okay

16 MS. ANDERSON: But the bottom line is he didn't disclose
17 it because had he disclosed it when he realized it I would've
18 asked for a mistrial then and I think that the law is very
19 clear on this and we don't have to show that there was
20 prejudice by us not having it, we just have to s -- actually,
21 if the juror conceals it then it infers bias on the juror's
22 part and I -- there just -- this isn't just an isolated
23 relationship with this family. He knew the victim, he knew
24 most of the family, he'd been over to their -- had parties at
25 their house, his brother dated one of the Franklin's children.

1 I think that's just too many things that I believe it was
2 concealed and I believe we're entitled to a new trial on this.
3 I don't think Roy got a fair and unbiased jury because if you
4 go by the case law because it was not revealed, his bias is
5 inferred.

6 THE COURT: Mr. Ghent.

7 MR. GHENT: May it please the Court. First of all, with
8 respect to it being intentional, I respectfully submit as I
9 pointed out through the demonstration six pairs of eyes missed
10 telling defense, let's assume that for the moment, one pair of
11 eyes frozen in the headlights missed it in terms of
12 recognition. Your Honor, I'm gonna tiptoe around this part as
13 we all know who have been a part of this system for any
14 lengtha time we don't select juries so much as we deselect
15 'em. The simple truth is having been a defense attorney,
16 having previously been a prosecutor, being a prosecutor again,
17 while it is true we want a jury which is fair and impartial,
18 we also want a jury that will render a decision which we're
19 happy with at the end of it. Six pairs of eyes missed it, one
20 pair of eyes that had plenty of distractions missed it too,
21 the mother of the defendant did not catch it according to her
22 testimony until right at the end. Under those circumstances
23 the issue of whether or not it could remotely be construed as
24 an intentional, wilful, deliberate deception on the part of
25 Mr. Durham at the front end is that's a bridge too far, that's

1 really a stretch. The other thing is that under *State vs.*
2 *Gulledge*, it is required that there be prejudice when it's a
3 situation with information that is questionable whether it
4 shoulda been provided. The real reason why counsel is moving
5 so desperately towards an intentional concealment, which is
6 not there, is she doesn't want to recognize the fact that
7 she's landing the airplane backwards and upside down. Under
8 these circumstances these good people are exactly the t --
9 kind of jurors that you would want on your jury. She would
10 have had no reason whatsoever to exercise a challenge for
11 cause, prosecution may well have, she would have had no reason
12 whatsoever to exercise a peremptory challenge and take that
13 potential juror outta the jury pool. Bottom line is no
14 intent, moving on under *Gulledge* there was no prejudice, there
15 was no reason for this juror to have been stricken. Under the
16 circumstances we respectfully ask that the motion be denied.
17 Thank you.

18 THE COURT: I'm gonna take it under advisement. I'll
19 issue an order as promptly as I can.

20 MR. ANDERSON: Thank Your Honor.

21 THE COURT: Appreciate everybody bein' here.

22 MR. GHENT: Thank you, Your Honor.
23
24
25

CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on February 28, 2012 at the time and place heretofore set forth; and that the foregoing pages numbered from 3 through 46, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

April 21, 2012

Margaret A. Woods 7/16/12

Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
General Sessions Court

The Honorable John C. Hayes, III, Circuit Court Judge

Case No. 2008-GS-42-07197

State of South Carolina

Respondent,

vs.

Roy James Jenkins,

Appellant.

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Authorities.....	1
Statement of Issues on Appeal.....	1
Statement of the Case.....	2
Standard of Review.....	3
Arguments	
I. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING APPELLANT A NEW TRIAL.	4
A. ADAM DURHAM'S FAILURE TO DISCLOSE HIS RELATIONSHIP TO APPELLANT, APPELLANT'S FAMILY, APPELLANT'S WITNESSES, AND THE VICTIM WAS INTENTIONAL.	5
B. ADAM DURHAM'S INTENTIONAL FAILURE TO DISCLOSE HIS RELATIONSHIP WITH APPELLANT, APPELLANT'S FAMILY, AND THE WITNESSES AT TRIAL MEETS THE SECOND HALF OF THE <u>O'ROURKE</u> TEST.	10
Conclusion.....	12

TABLE OF AUTHORITIESCASES

<u>Morris v. Jensen</u> , 309 S.C. 153, 420 S.E.2d 710 (Ct. App.1992)	3
<u>State v. Baccus</u> , 367 S.C. 41, 625 S.E.2d 216 (2006)	3
<u>State v. Britt</u> , 237 S.C. 293, 117 S.E.2d 379 (1960)	4
<u>State v. Gullede</u> , 277 S.C. 368, 287 S.E.2d 488 (1982)	4
<u>State v. Holland</u> , 261 S.C. 488, 201 S.E.2d 118 (1973)	4
<u>State v. Kelly</u> , 331 S.C. 132, 502 S.E.2d 99 (1998).	3, 5
<u>State v. Savage</u> , 306 S.C. 5, 409 S.E.2d 809 (Ct. App. 1991)	4, 5, 11
<u>State v. Sparkman</u> , 358 S.C. 491, 596 S.E.2d 375 (2004)	6
<u>State v. Stone</u> , 350 S.C. 442, 567 S.E.2d 244 (2002)	10
<u>State v. Woods</u> , 345 S.C. 583, 550 S.E.2d 282 (2001)	4, 5, 6, 10, 11
<u>Thompson v. O'Rourke</u> , 288 S.C. 13, 339 S.E.2d 505 (1986)	4, 5, 9, 10, 11

STATUTES AND RULES

<u>U.S. Const. Amend. IV</u>	4
<u>U.S. Const. Amend. XIV</u>	4
<u>S.C. Const. art. 1 § 14</u>	4
<u>S.C. Code § 16-3-655(B)</u>	2

STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ABUSE ITS DISCRETION BY DENYING APPELLANT A NEW TRIAL AFTER ONE OF THE JURORS INTENTIONALLY FAILED TO RESPOND TRUTHFULLY TO VOIR DIRE?

STATEMENT OF THE CASE

On June 26, 2008, law enforcement arrested Roy James Jenkins (hereinafter "Appellant") on charges of Criminal Sexual Conduct with a Minor in the Second Degree (11-14). He was ultimately indicted on two separate counts of the same crime as codified by South Carolina Code Section 16-3-655(B). Both indictments involve the same alleged victim – Appellant's adopted daughter. The incidents allegedly occurred in October of 2003 – nearly five years prior to Appellant's arrest.

The case came to trial on January 26, 2012. Jury selection began that day. Among those selected to serve on the jury was Juror Number 56. He was selected as the sixth member of the jury. At the time, Appellant had used only six of his ten peremptory challenges.

On January 27, 2012, the jury found Appellant guilty on both counts. The Court sentenced him to twenty years on each charge, with the sentences to run concurrent. The Court also ordered Appellant be placed on the Sex Offender Registry.

Appellant filed a Motion for a New Trial¹ on February 2, 2012. The Motion stemmed from Appellant's post-trial confirmation that Juror Number 56 – identified in the Motion as Adam E. Durham – gave false responses to voir dire. In specific, Adam E. Durham had a relationship with the Defendant, the Defendant's family, several witnesses, and the victim. Appellant stated in the Motion that Adam E. Durham did not answer truthfully about these relationships during voir dire.

¹ The Motion itself was captioned "Motion to Reconsider." However, Appellant's trial lawyer wrote the Court on February 21, 2012 asking the Court to treat the Motion as a Motion for New Trial. R. p. 298.

The Court held an evidentiary hearing on February 28, 2012. The Court heard testimony from various witnesses, including Adam Durham, Adam Durham's mother, and members of Appellant's Family. At the hearing, Adam Durham confirmed under oath he knew members of Appellant's family, including several witnesses at trial.

Despite this testimony, the Court (in an Order filed March 27, 2012) denied Appellant's Motion for New Trial. Appellant filed his Notice of Appeal on March 29, 2012.

STANDARD OF REVIEW

In reviewing criminal cases on appeals, the appellate courts of South Carolina may only look at errors of law. The appellate courts are bound by the trial court's findings unless these findings are "clearly erroneous." State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Granting a Motion for New Trial based on a juror's failure to give honest responses to voir dire is with the sound discretion of the trial court. Morris v. Jensen, 309 S.C. 153, 420 S.E.2d 710 (Ct.App.1992). On Appeal, this discretion can only be overturned by a finding of abuse of discretion. State v. Kelly, 331 S.C. 132, 146, 502 S.E.2d 99, 106-107 (1998).

ARGUMENT**I. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING APPELLANT A NEW TRIAL.**

In criminal trials in South Carolina, Defendants have a fundamental right to a trial by an impartial jury. U.S. Const. amends. IV and XIV; S.C. Const. art. 1§ 14. The trial judge must ensure that all jurors called to a case are without bias and can be both fair and impartial. See, e.g., State v. Britt, 237 S.C. 293, 117 S.E.2d 379 (1960); State v. Holland, 261 S.C. 488, 201 S.E.2d 118 (1973). Courts must disqualify potential jurors if it appears to the Court that that individual cannot be indifferent. State v. Woods, 345 S.C. 583, 590, 550 S.E.2d 282, 285 (2001) (citations omitted).

The primary mechanism through which the trial judge ensures impartiality is through voir dire. This grants Defendants— through the trial judge — two separate but equally important rights. First, Defendants use voir dire “for the purpose of showing grounds for a challenge for cause.” State v. Gulledge, 277 S.C. 368, 370, 287 S.E.2d 488, 490 (1982) (citations omitted). Second, Defendants use voir dire to allow them, within “reasonable limits, to elicit such facts as will enable them intelligently to exercise their right of peremptory challenge....” Id. When a question becomes part of the voir dire inquiry, Defendants are “entitled to a truthful answer to the question.” Id.

If a potential juror does not provide truthful responses to voir dire, a criminal Defendant may be eligible for a new trial. That new trial is required when the Court makes two findings: (1) that the concealment was intentional, and (2) that the concealed information would either have supported a challenge for cause or would have been a material factor in the use of a peremptory challenge. Thompson v. O'Rourke, 288 S.C. 13, 15, 339 S.E.2d 505, 506 (1986). Failure to disclose relationships to Defendants or

witnesses requires the Court to infer (absent justification or evidence to the contrary) that the potential juror cannot be impartial; however, “innocent” and unintentional failures do not permit such inferences. See, e.g., State v. Savage, 306 S.C. 5, 409 S.E.2d 809 (Ct. App. 1991).

To be entitled to a new trial, Appellant must establish both elements of the O’Rourke test.

**A. ADAM DURHAM’S FAILURE TO DISCLOSE HIS
RELATIONSHIP TO APPELLANT, APPELLANT’S
FAMILY, APPELLANT’S WITNESSES, AND THE VICTIM
WAS INTENTIONAL.**

The first element of the O’Rourke test requires an intentional concealment. See, e.g., State v. Kelly, 331 S.C. 132, 146, 502 S.E.2d 99, 106-107 (1998). The South Carolina Supreme Court defined intentional concealment in State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2001). In Woods, the Supreme Court looked at two voir dire questions:

Question 1: Now you can tell me are you friends or casual acquaintances with any of them [i.e., the attorneys involved in the trial] or business associates or social acquaintances with any of them, that would also include having been represented by any of them in the past[?] [I]f so please stand.

Question 2: Ladies and gentlemen, are any of you contributors to or supporters of any organization which has as its primary function the promotion of law enforcement or protection of victims' rights such as MADD, SADD, CAVE, or the like[?] [I]f so please stand.

Id. at 586, 550 S.E.2d at 283. The potential juror at issue in the case did not stand in response to either question. Id. The juror was presented and seated at a time when the Defendant had one remaining peremptory strike remaining. Id.

In looking at the two voir dire inquiries, and in examining prior case law requiring

were “a close personal friend or acquaintance, go to the same church, belong to the same club, play bridge with, play golf with, anything like that, any of these individuals.” R. p. 27, line 24 – p. 17, line 3. Each of the potential witnesses stood up and faced the jury panel in order that the panel members could “recognizes the faces as opposed to the name.” R. p. 28, lines 5-6. Again, there was no ambiguity in this question.

In order to remove ambiguity as to the subject of the question, the Court then called out the names of thirteen witnesses, having each of them stand up and face the potential jurors. R. p. 28, line 7 – p. 29, line 16. No one from the jury panel stood up to admit they knew any of them. R. p. 29, lines 12-16.

As it turned out, Juror Number 56 – Adam E. Durham – knew the Appellant’s family. At the hearing on Appellant’s Motion for New Trial, he testified under oath. R. p. 253, lines 22-25. He remembered being asked by the Court if he knew the Appellant or the victim or their family. R. p. 254, lines 17-21. He was friends with Frankie Jenkins, son of Frank Jenkins, Jr.² R. p. 256, lines 9-11. He went to the same Church as Ashley Jenkins.³ R. p. 259, lines 11-13, Appellant’s niece. R. p. 285, lines 15-16. The Court specifically mentioned Church in its questioning about witnesses. Furthermore, Adam Durham was a regular at Ashley’s home. R. p. 287, lines 5-6. Ashley dated his brother and traveled with the brother to receive medical treatment in Atlanta, Georgia. R. p. 287, lines 5-8. He admitted being in a family picture with Neil Jenkins⁴. R. p. 257, lines 18-20. He admitted that the picture was taken at a party at Frank Jenkins Sr.’s home. R. p. 258, lines 8-10.

² During voir dire, the Court called Frank Jenkins, Jr.’s name, and he stood and faced the jury panel. R. p. 29, lines 4-5.

³ Ashley Jenkins is now known as Ashley Dawn Copeland. See R. p. 285.

⁴ Neal Jenkins faced the jury panel during voir dire. R. p. 29, lines 8-9.

Not only did Adam Durham admit he knew these people at the Motion hearing, he also admitted knowing them while the trial was on-going. He testified that he realized he knew them “halfway through” the trial. R. p. 262, lines 4-7. He made the connection when Frank Jenkins, Jr. testified that “Ashley Jenkins and Frankie Jenkins was his daughter and son.” R. p. 262, lines 8-9. Frank Jenkins, Jr. faced the jury panel during voir dire. R. p. 29, lines 10-11. He did testify to having two children named Frankie (Frank Jr.) and Ashley. R. p. 173, lines 16-17. According to Adam Durham, “that’s when it kinda hit me, you know, hey I think I know this guy.” R. p. 262, lines 9-10. He admitted he did not inform the Court of this. R. p. 262, lines 11-12.

Adam Durham’s own mother testified at the Motion hearing. R. p. 270, lines 15-16. She admitted that Frank and Shirley Jenkins⁵ had helped to raise money for a son of hers who had cancer. R. p. 270, lines 19-21. Adam Durham told her about being involved in the trial after the trial had ended and admitted knowing the family connection. R. p. 272, lines 16-24.

Family members didn’t recognize Adam Durham until the end of the trial. R. p. 277, lines 9-10. At that point, the jury had reached their verdict and was coming into the Courtroom. R. p. 277, lines 11-14.

Appellant introduced several photographs into evidence at the Motion hearing. Among the photographs was one of the victim taken at a birthday party that Adam Durham attended. R. p. 278, line 2 – p. 30, line 9. Another photograph had Adam Durham and Appellant together. R. p. 277, line 21 – p. 278, line 7.

The totality of the testimony presented makes it clear that Adam Durham’s failure to respond was unreasonable. Despite the overwhelming evidence that Adam Durham

⁵ Frank Jenkins, Sr. and Shirley Jenkins both faced the jury panel during voir dire. R. p. 29, lines 2-5.

had significant ties to Appellant's family, he did not admit that during voir dire. More significantly, he did not bring it to the Court's attention when he realized that he knew several of the witnesses. By his own testimony, he realized he knew these individuals during the testimony of Frank Jenkins, Jr. Six more witnesses testified after Frank Jenkins Jr. R. p. 14, line 18 – p. 15, line 16. The Court dismissed the jury for the evening prior to closing arguments, which resumed at 9:30 a.m. R. p. 200, lines 15-25. There was plenty of time for Adam Durham to inform the Court of his newly recalled relationships with the witnesses.

The questions were clear and unambiguous. The subject matter was material to the parties and to the witnesses. There was simply no excuse for Adam Durham's failure to disclose his relationships. Therefore, Appellant has met his burden under the first half of the two-pronged O'Rourke test.

B. ADAM DURHAM'S INTENTIONAL FAILURE TO DISCLOSE HIS RELATIONSHIP WITH APPELLANT, APPELLANT'S FAMILY, AND THE WITNESSES AT TRIAL MEETS THE SECOND HALF OF THE O'ROURKE TEST.

The second requirement under O'Rourke is that that the concealment would either have supported a challenge for cause or would have been a material factor in the use of a peremptory challenge. Thompson v. O'Rourke, 288 S.C. 13, 15, 339 S.E.2d 505, 506 (1986). This is an either-or requirement. State v. Woods, 345 S.C. 583, 590, 550 S.E.2d 282, 285-286 (2001).

If a Defendant had remaining peremptory challenges, a statement of trial counsel that a truthful response would have led that attorney to use a peremptory challenge is sufficient to meet this requirement, especially if the record is absent of refuting evidence. Id. But see State v. Stone, 350 S.C. 442, 448-449, 567 S.E.2d 244, 247-248 (2002) (juror's "scant acquaintance" with a potential witness was an innocent failure to disclose, especially when juror testified that this "scant acquaintance" would not have affected her ability to serve.)

Ultimately, the jury was selected. Adam Durham was accepted as the sixth member of the jury. R. p. 299. At the time, Appellant had used six peremptory strikes. R. p. 299. He had ten strikes to use at the beginning of jury selection. R. p. 19, lines 11-18. He could have used one of his four remaining strikes and chosen to strike Adam Durham. In oral argument at the Motion hearing, Appellant's trial counsel stated that "if he had just said he knew the family, I could've at least found out if I wanted to challenge him for cause or if I wanted to strike him." R. p. 292, lines 10-12. When Adam Durham did not stand in response to the voir dire on these questions, Appellant and his attorney

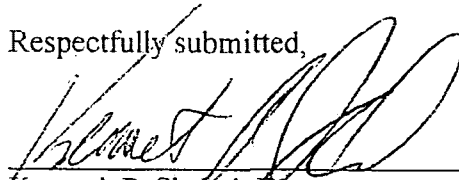
were denied their opportunity to exercise their right to strike him. When Adam Durham did not later disclose these relationships when (on his own testimony) he became aware of them, Appellant and his attorney were denied their opportunity to exercise their right to strike him.

There is no requirement for prejudice under O'Rourke. Once there has been an intentional (as defined under Woods) failure to disclose, the bias is inferred (as required by Savage). The test is not whether Appellant would have struck Adam Durham or would have challenged him for cause. The test is whether it was a factor. Clearly, given the relationship that Adam Durham had with the members of the Appellant's family, it would have been a factor. When it is a factor, it meets the second half of the O'Rourke test.

CONCLUSION

For the reasons and on the grounds stated, Appellant respectfully requests that the Court reverse the decision of the trial court and grant Appellant a New Trial based on Adam Durham's intentional failure to disclose his relationship to Appellant, to Appellant's family, and to the witnesses at trial.

Respectfully submitted,



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October 5, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable John C. Hayes, III, Circuit Court Judge

Appellate Case No: 2012-211108

THE STATE,

Respondent,

v.

ROY JAMES JENKINS,

Appellant.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUE ON APPEAL.....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF THE FACTS	3
ARGUMENT	
The trial court did not abuse its discretion in denying Appellant's motion for a new trial	7
CONCLUSION.....	13

TABLE OF AUTHORITIES

Cases:

<u>State v. Aldret</u> , 333 S.C. 307, 509 S.E.2d 811 (1999)	11
<u>State v. Guillebeaux</u> , 362 S.C. 270, 607 S.E.2d 99 (Ct. App. 2004)	9, 10
<u>State v. Gulledge</u> , 277 S.C. 368, 287 S.E.2d 488 (1982).....	5,6
<u>State v. Kelly</u> , 331 S.C. 132, 502 S.E.2d 99 (1998)	7, 8
<u>State v. Stone</u> , 350 S.C. 442, 448, 567 S.E.2d 244, 247 (2002)	11
<u>State v. Taylor</u> , 348 S.C. 152, 558 S.E.2d 917 (Ct. App. 2002).....	7
<u>State v. Woods</u> , 345 S.C. 583, 550 S.E.2d 282 (2001).....	6, 8, 10, 11, 12
<u>Thompson v. O'Rourke</u> , 288 S.C. 13, 339 S.E.2d 505 (1986)	5, 6, 7, 8, 12

Other Authorities:

U.S. Const. amend. VI; S.C. Const. art. I, § 14	7, 8

STATEMENT OF ISSUE ON APPEAL

The trial court did not abuse its discretion in denying Appellant's motion for a new trial.

STATEMENT OF THE CASE

A Spartanburg County Grand Jury indicted Appellant for two counts of second-degree criminal sexual conduct with a minor. (ROA. pp. 3-4.) On January 26, 2012, Appellant proceeded to trial before a jury. Patricia Anderson, Esquire, represented Appellant, and Assistant Solicitor Abel Gray represented the State. The jury found Appellant guilty of both charges. (ROA. p.245.) The Honorable John C. Hayes, III sentenced Appellant to twenty years' imprisonment for each offense, to be served concurrently. (ROA. p.247.) Appellant filed a motion for a new trial on February 2, 2012. The trial court held an evidentiary hearing on February 28, 2012, and took the matter under advisement. On March 27, 2012, the trial court filed an order denying Appellant's motion for a new trial.

On March 29, 2012, Appellant filed a Notice of Intent to Appeal.

STATEMENT OF FACTS

Appellant and his wife adopted her sister's daughter, Victim, when the girl was six or seven years old. (ROA. p.45 lines 10-18; ROA. p.121 lines 6-8.) Victim testified that Appellant began asking her to massage his back, feet, and legs shortly after she moved in with him. (ROA. p.47 lines 23-25; ROA. p.48 lines 1-4.) Victim stated that between the ages of eleven and fourteen, the incidents became sexual, progressing to "hand jobs," oral sex, and fondling. (ROA. p.48 lines 7-16.) She further testified that between the ages of fourteen and fifteen, the incidents graduated to intercourse. (ROA. p.51 lines 8-10.) Eventually, Victim told a family friend about the incidents. (ROA. p.57 lines 16-25.) Victim then told her adopted mother, who Victim reported was initially sorry but then changed her opinion and no longer believed her. (ROA. p.58 lines 10-22.) At that point, Victim went to the Spartanburg County Sheriff's Office. (ROA. p.58 lines 21-25.)

Appellant was indicted on two counts of second-degree criminal sexual conduct with a minor. (ROA. pp.3-4) During *voir dire*, the trial court asked the jurors whether any of them were a close personal friend or acquaintance of Appellant, and there was no response. (ROA. p.21 lines 5-10.) The trial court also called out the names of all potential witnesses and asked the jurors to respond "if you're a close personal friend or acquaintance, go to the same church, belong to the same club, play bridge with, play golf with, anything like that" (ROA. p.27 line 18-25; ROA. p.28 lines 1-25; ROA. p.29 lines 1-11.) There was no response. (ROA. p.29 lines 15-16.) Finally, the trial court asked if any juror knew any reason he could not or should not serve as a fair and

impartial juror in the trial of that particular case, and there was no response. (ROA. p.29 lines 21-25.)

Ultimately, the jury found Appellant guilty of both counts, and the trial court sentenced him to twenty years' imprisonment for each offense, to be served concurrently. (ROA. p.247 lines 24-25.) Appellant filed a motion for a new trial on February 2, 2012. The trial court held an evidentiary hearing on February 28, 2012.

During the hearing, Appellant alleged Juror No. 56 did not disclose during *voir dire* that he knew Appellant's family. (ROA. p.252 lines 17-19.) Appellant called Juror No. 56, and he testified that during *voir dire* he did not realize he knew any of Appellant's family members. (ROA. p.255 lines 14-16.) However, he explained when the trial was almost over, he realized he knew some of them but did not tell anyone. (ROA. p.255 lines 17-21.) Appellant introduced a photograph of Juror No. 56 at a birthday party at the home of Appellant's family, and Juror No. 56 verified he was in the photo and was somewhere between the ages of eleven and thirteen. (ROA. p.255 line 25; ROA. 256 lines 1-4.) He admitted that as a child he visited Ashley and Frankie Jenkins, who were the children of Frank Jenkins, Jr., one of the witnesses. (ROA. p.259 lines 24-25; ROA. p.260 line 1.) However, Juror No. 56 did not know his childhood friends' father as Frank, but rather by the name Burt or Brute.² (ROA. p.260 lines 12-13.) He also testified that Frank Jenkins, Jr. changed dramatically from how he looked when Juror No. 56 was a kid. (ROA. p.260 lines 17-18.) Juror No. 56 further explained he did not know Appellant or Appellant's parents, Shirley Jenkins and Frank Jenkins, Sr. (ROA. p.261 lines 6-9.) He was not aware Appellant's parents helped raise money for

² The first time Frank Jenkins, Jr.'s nickname is mentioned in the transcript, it is spelled "Burt." However, for the rest of the time he is referred to as "Brute."

his brother when he had cancer. (ROA. p.261 lines 10-17.) Further, Juror No. 56 testified at the hearing that he did not know Victim at all. (ROA. p.255 lines 22-24.)

When Frank Jenkins, Jr., Appellant's brother, was called to testify and said Ashley and Frankie were his children, Juror No. 56 testified that he then realized he knew him. (ROA. p.262 lines 4-10.) He admitted he did not inform the court. (ROA. p.262 lines 11-12.) Juror No. 56 testified he was twenty-five years old and had not been to Appellant's family's home in at least ten years. (ROA. p.263 lines 21-25; ROA. p.264 lines 1-5.) He explained he did not willfully try to hide anything and that he had no ill will toward Appellant. (ROA. p.265 lines 13-25.) Shirley Jenkins, Appellant's mother, testified she knew Juror No. 56 at the beginning of the trial but could not place him and did not tell Appellant's counsel. (ROA. p.282 lines 2-6.) She then realized who Juror No. 56 was at the end of the trial right before the verdict was announced. (ROA. p.276 lines 24-25; ROA. p.277 lines 1-13.) Shirley Jenkins did not inform Appellant's lawyer until the following day. (ROA. p.279 lines 1-4.)

Following all the testimony, Appellant argued the situation with Juror No. 56 satisfied the test in Thompson v. O'Rourke, 288 S.C. 13, 339 S.E.2d 505 (1986), because the concealment was intentional. (ROA. p.291 lines 13-25; ROA. p.292 lines 1-2.) Appellant further argued that Juror No. 56 had a duty to tell the court when he recognized Frank Jenkins, Jr. and alleged that he would have struck that juror if he had known about the relationship. (ROA. p.292 lines 2-24.) The trial court noted that Juror No. 56 did not recognize the witness until well after all Appellant's strikes were over. (ROA. p.293 lines 6-9.) Appellant then argued he would have moved for a mistrial if Juror No. 56 had disclosed the relationship when he realized it. (ROA. p.293 lines 16-18.) The State argued that because the non-disclosure was unintentional, State v. Gullede requires a

showing of prejudice, and there was no prejudice. 277 S.C. 368, 287 S.E.2d 488 (1982). (ROA. p.294 lines 22-25; ROA. p.295 lines 1-16.)

In its order denying the motion for a new trial, the trial court found Juror No. 56's concealment of information during *voir dire* was not intentional. (Or. 3.) Moreover, it found pursuant to State v. Woods, 345 S.C. 583, 588, 550 S.E.2d 282, 284 (2001), "the subject of the inquiry [was] insignificant or so far removed in time that the juror's failure to respond [was] reasonable under the circumstances." (Or. 4.) Because the court found Juror No. 56's failure to respond was reasonable and unintentional, it did not need to determine whether the information concealed would have supported a challenge. (Or. 5.) See Thompson, 288 S.C. at 15, 339 S.E.2d at 506. The court further noted there was no evidence of bias or prejudice. (Or. 5.)

ARGUMENT

The trial court did not abuse its discretion in denying Appellant's motion for a new trial.

Appellant contends the trial court abused its discretion in denying Appellant a new trial. First, he asserts Juror No. 56 intentionally failed to disclose his relationship with Appellant, Appellant's witnesses, and the victim. Second, he argues the intentional failure to disclose meets the second part of the two-part test based on Thompson v. O'Rourke, 288 S.C. 13, 15, 339 S.E.2d 505, 506 (1986), for determining whether a juror's failure to disclose information warrants granting a new trial. However, because Juror No. 56 did not realize he knew any of Appellant's family members and had not seen any of them in at least ten years, the failure to disclose was clearly unintentional. Thus, it fails the O'Rourke test on the first prong without even having to get to the second prong. Accordingly, the trial court was within its discretion in finding the failure to disclose was both unintentional and reasonable under the circumstances, correctly found the failure to disclose information during *voir dire* did not warrant granting a new trial, and properly denied Appellant's motion.

"It is well settled that the grant or refusal of a new trial is within the sound discretion of the trial [court]." State v. Taylor, 348 S.C. 152, 159, 558 S.E.2d 917, 920 (Ct. App. 2002) (citations omitted). "A trial court's denial of a new trial motion will not be disturbed on review absent a showing of an abuse of discretion which results in prejudice to the defendant." State v. Kelly, 331 S.C. 132, 145, 502 S.E.2d 99, 106 (1998).

"The United States and South Carolina Constitutions guarantee a criminal defendant the right to an impartial jury." Id. at 145, 502 S.E.2d at 106 (citing U.S. Const.

amend. VI; S.C. Const. art. I, § 14). “Necessarily it is expected and required that jurors in their answers shall be completely truthful and that they shall disclose, upon a general question, any matters which might tend to disqualify them from sitting on the case for any reason.” *Id.* at 146, 502 S.E.2d at 106. “When a juror conceals information inquired into during *voir dire*, a new trial is required **only** when the court finds the juror **intentionally** concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges.” *State v. Woods*, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001) (emphasis added). “The inquiry must focus on the character of the concealed information, not on the mere fact that a concealment occurred.” *Thompson v. O'Rourke*, 288 S.C. 13, 15, 339 S.E.2d 505, 506 (1986).

In *Woods*, the supreme court defined what constitutes intentional concealment.

We hold that intentional concealment occurs when the question presented to the jury on *voir dire* is reasonably comprehensible for the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable. Unintentional concealment, on the other hand, occurs where the question posed is ambiguous or incomprehensible to the average juror or where the subject of the inquiry is insignificant or so far removed in time that the juror's failure to respond is reasonable under the circumstances.

Id. at 588, 550 S.E.2d at 284. The court found that determining if a juror's failure to respond is intentional is fact intensive and should be made on a case by case basis. *Id.* *Woods* clarified that when a juror's failure to disclose information is intentional, bias will be inferred. *Id.* at 589, 550 S.E.2d at 284. On the other hand, no inference of bias can be drawn from an unintentional failure to disclose. *Id.*

In State v. Guillebeaux, 362 S.C. 270, 275, 607 S.E.2d 99, 102 (Ct. App. 2004), this court found a juror did not intentionally conceal information when she was not asked during *voir dire* if she knew any of the witnesses but was asked if she had any type of social relationship with the witness in question. This court found the juror's knowledge of who the witness was did not constitute a "social relationship." Id. Thus, this court found the juror answered the *voir dire* questions honestly, and her failure to reveal her knowledge of the witness was a reasonable response and did not amount to intentional concealment. Id. at 276, 607 S.E.2d at 102. Further, the juror indicated during *voir dire* that she knew of no reason she could not be impartial to both the defense and the State and there is no evidence to the contrary. Id. This court found no intentional concealment on the juror's part, determined it need not decide whether the information would have been a material factor in the exercise of Guillebeaux's peremptory strikes, and found the trial court did not abuse its discretion in denying the motion for a new trial. Id.

In the case sub judice, Juror No. 56 was asked during *voir dire* to respond "if you're a close personal friend or acquaintance, go to the same church, belong to the same club, play bridge with, play golf with, anything like that" with any of the witnesses. At that time, each witness who was present stood before the jury panel. Because Juror No. 56 did not recognize any of the witnesses, including Frank Jenkins, Jr., he did not respond. This was not an intentional failure to disclose because he did not recognize Frank Jenkins, Jr. by name or appearance at the time. As revealed during the motion hearing, Juror No. 56 did not know Frank Jenkins, Jr. by that name and had not seen Frankie Jenkins (Frank Jenkins, Jr.'s son who was not a witness) in approximately ten years. Additionally, Juror No. 56 did not know Shirley or Frank Jenkins, Sr., so he had no reason to respond when they stood. Finally, just as the juror in Guillebeaux, Juror No.

56 did not respond when asked whether he knew of any reason he could not or should not serve as a fair and impartial juror. According to the court's definition of unintentional concealment in Woods, "the subject of the inquiry is insignificant or **so far removed in time** that the juror's failure to respond is reasonable under the circumstances." Woods at 588, 550 S.E.2d at 284 (emphasis added). Juror No. 56 was approximately fifteen years old the last time he saw anyone in Appellant's family. He did not recognize any of the witnesses, either by name or appearance. Further, although Appellant argues Juror No. 56 also did not disclose his relationship to Appellant and Victim, Juror No. 56 testified at the hearing that he did not know Victim or Appellant at all. Even if Juror No. 56 had realized he knew Frank Jenkins, Jr. as the father of his childhood friends, based on this court's analysis in Guillebeaux, it would have been reasonable for him not to respond. He was not a close personal friend or acquaintance of any of the witnesses. Accordingly, even more so than the juror in Guillebeaux, Juror No. 56's failure to disclose was unintentional and reasonable under the circumstances.

Because the failure to disclose the information was unintentional, it is not necessary to determine "if the information concealed would have supported a challenge for cause or would have been a material factor in the use of [Appellant]'s peremptory challenges." Woods at 590, 550 S.E.2d at 285. "[A] determination that a juror did not intentionally conceal the information ends the court's inquiry." Guillebeaux, 362 S.C. at 274, 607 S.E.2d at 101. Nonetheless, because Juror No. 56 was friends with Appellant's brother's children, it could be argued the defense would have desired to have him on the jury instead of striking him. At the hearing, Appellant's mother admitted she had recognized Juror No. 56 "at the first" but could not place where she knew him or who he was. At that point, she did not inform Appellant's counsel she recognized the juror. At

the end of the trial but prior to the verdict, Appellant's mother realized who Juror No. 56 was; yet she still did not tell Appellant's counsel until the next day. The supreme court has held a defendant's failure to call alleged juror misconduct to the trial court's attention at his first opportunity to do so procedurally bars him from raising the issue in a motion for a new trial. See State v. Aldret, 333 S.C. 307, 312, 509 S.E.2d 811, 813 (1999).

Finally, Appellant argues he was denied his opportunity to strike Juror No. 56 because he did not disclose his relationship when he became aware of it. However, in State v. Stone, our supreme court considered whether the trial judge erred in removing a juror during trial after the juror recognized one of witnesses testifying during the sentencing phase of Stone's capital trial. 350 S.C. 442, 448, 567 S.E.2d 244, 247 (2002). After the witness, who was Stone's aunt, took the stand, the juror revealed she was a casual acquaintance with the witness, was unfamiliar with the witness' name, and had previously lived down the street from the witness five to six years earlier. Id. The solicitor challenged the juror based on the potential impact the discovered relationship potentially could have had on the juror's ability to sentence an acquaintance's nephew, and the trial judge removed the juror and replaced her with an alternate. Id. On appeal, the supreme court looked to the test enunciated in State v. Woods, 345 S.C. 583, 587-588, 550 S.E.2d 282, 284 (2001), and determined the trial judge abused his discretion in removing the juror based on the fact the juror's non-disclosure was unintentional and the unrevealed information would not have been a material factor in the exercise of a peremptory strike. Id. at 448-449, 567 S.E.2d at 247-248. Thus, if Appellant had taken an opportunity to strike Juror No. 56 if the juror had disclosed his knowledge of the witness when he realized it, and the trial court had replaced him with an alternate, it likely would have been reversed based on the reasoning in Stone.

312

In this case, the failure to disclose during *voir dire* does not meet the test articulated in Thompson and Woods, and no new trial was required under the circumstances of this case. Accordingly, the trial court's decision to deny the motion for a new trial should be affirmed.

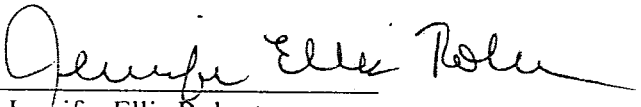
CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

BY: 
Jennifer Ellis Roberts
Bar # 79818

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ATTORNEYS FOR RESPONDENT

October 4, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable John C. Hayes, III, Circuit Court Judge

Appellate Case No: 2012-211108

THE STATE,

Respondent,

v.

ROY JAMES JENKINS,

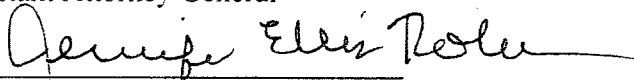
Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies
with Rule 211(b), SCACR.

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

BY: 
Jennifer Ellis Roberts
Bar # 79818

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ATTORNEYS FOR RESPONDENT

October 4, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable John C. Hayes, III, Circuit Court Judge

Appellate Case No: 2012-211108

THE STATE,

Respondent,

v.

ROY JAMES JENKINS,

Appellant.

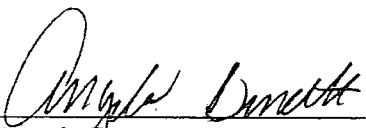
PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Kenneth P. Shabel, Esquire
Campbell & Shabel, LLC
104 N. Daniel Morgan Avenue, Suite 201
Spartanburg, SC 29306

I further certify that all parties required by Rule to be served have been served.

This 4th day of October, 2012.



Angela Bennett
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Roy James Jenkins, Appellant.

Appellate Case No. 2012-211108

Appeal From Spartanburg County
John C. Hayes, III, Circuit Court Judge

Unpublished Opinion No. 2013-UP-124
Submitted February 1, 2013 – Filed March 27, 2013

AFFIRMED

Kenneth Philip Shabel, of Campbell & Shabel, LLC, of
Spartanburg, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Jennifer Ellis Roberts, both of
Columbia, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Guillebeaux*, 362 S.C. 270, 274, 607 S.E.2d 99, 101 (Ct. App.
2004) ("The denial of a motion for a new trial will be disturbed on appeal only

upon a showing of an abuse of discretion."); *State v. Woods*, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001) ("When a juror conceals information inquired into during *voir dire*, a new trial is required only when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges."); *id.* at 588, 550 S.E.2d at 284 ("Unintentional concealment . . . occurs where the question posed is ambiguous or incomprehensible to the average juror, or where the subject of the inquiry is insignificant or so far removed in time that the juror's failure to respond is reasonable under the circumstances."); *Guillebeaux*, 362 S.C. at 274, 607 S.E.2d at 101 ("[A] determination that a juror did not intentionally conceal the information ends the court's inquiry."); *State v. Stone*, 350 S.C. 442, 448-49, 567 S.E.2d 244, 247-48 (2002) (holding the trial court abused its discretion when it removed a juror who did not recognize a witness until the sentencing phase of a capital trial when the juror's failure to disclose the relationship was innocent and the relationship "would neither have supported a challenge for cause nor would it have been a material factor in the state's exercise of its peremptory challenges").

AFFIRMED.¹

HUFF, WILLIAMS, and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

318



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The South Carolina Court of Appeals

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April 16, 2013

The Honorable M. Hope Blackley
PO Box 3483
Spartanburg SC 29304-3483

REMITTITUR

Re: The State v. Jenkins, Roy
Lower Court Case No. 2008GS4207197
Appellate Case No. 2012-211108

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Kenneth Philip Shabel
Jennifer Ellis Roberts

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

ROY JAMES JENKINS (SCDC #349450)

Plaintiff(s)

vs.

STATE OF SOUTH CAROLINA

Defendant(s)

Submitted By: KENNETH P. SHABEL, ESQ.

Address: 104 N. DANIEL MORGAN AVE., SUITE 201
SPARTANBURG, SC 29306

IN THE COURT OF COMMON PLEAS

319

CIVIL ACTION COVERSHEET

2013-CP-42-4560

SC Bar #: 16136

Telephone #: 864-583-0001

Fax #: 864-583-1199

Other:

E-mail: kshabel@gc-lawfirm.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached) PCR

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20__-CP-_____ ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☒ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature: _____

Date: 8/2/13

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

320
SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

ROY JAMES JENKINS

v.

State of South Carolina

321

IN THE COURT OF COMMON PLEAS

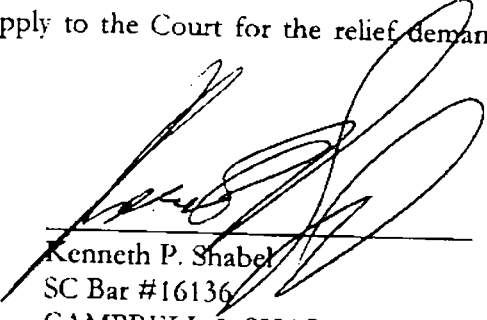
2013-CP-42-4560

SUMMONS

(POST-CONVICTION RELIEF)

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Petition and Application for Post-Conviction Relief herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, an Affidavit of Default will be filed in this case against you, and the Plaintiff shall apply to the Court for the relief demanded in the Complaint.


Kenneth P. Shabel

SC Bar #16136

CAMPBELL & SHABEL, Attorneys at Law

104 North Daniel Morgan Avenue, Suite 201

Spartanburg, South Carolina 29306

864.583.0001

864.583.1199 (Fax)

M. HOPE BLANKENHORN

2013 NOV - 8

CLERK

SPARTANBURG

Dated: August 2, 2013
Spartanburg, South Carolina

322

FORM 5

2013-CP-42-4560

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

ROY JAMES JENKINS

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION RELIEF

THE UNDERSIGNED PLAINTIFF/APPLICANT hereby Petitions this Court for Post-Conviction Relief in accordance with State Law. The Applicant would show this Court as follows:

1. Applicant is a resident of the State of South Carolina. He is a prisoner in the South Carolina Department of Corrections, incarcerated at Lieber Correctional Facility.
2. Applicant's incarceration is the result of a sentence imposed by the sentence of the Honorable John C. Hayes, III, Presiding Judge of the Spartanburg County Court of General Sessions.
3. Applicant had no co-Defendants at trial.
4. The Grand Jury indicted Applicant on two separate counts: Indictment Number 2008-GS-42-7187 for Criminal Sexual Conduct with a Minor in the 2nd Degree with a victim between the ages of 11 and 14, and Indictment Number 2008-GS-42-7197A for Criminal Sexual Conduct with a Minor in the 2nd Degree with a victim under the age of sixteen.
5. Applicant was sentenced on both indictments to twenty years, concurrent, on January 27, 2012.

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2013 NOV - 8
M. HOPE BLANK

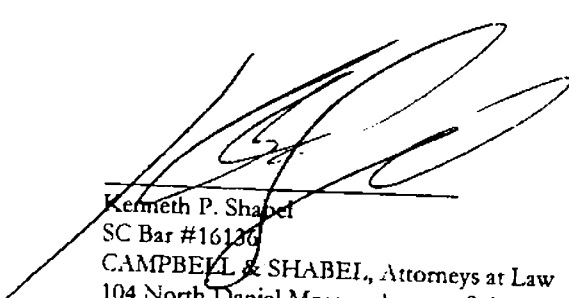
6. Applicant's sentence came after a plea of not guilty and a trial by jury.
7. Applicant appealed his sentence.
8. The Court of Appeals affirmed Applicant's sentence on March 27, 2013 in opinion number 2013-UP-124.
9. Applicant did not Petition the Supreme Court for Certiorari after the Court of Appeals Affirmed the sentence. Prior to this application, Applicant has not filed any petition in the United States Supreme Court for certiorari.
10. Applicant is seeking Post-Conviction Relief based upon the ineffective assistance of his counsel at the trial of his case.
11. Prior to this application, Applicant has not filed any petition in any State Court under South Carolina Law. He has not filed any petition in State or Federal Courts for habeas corpus or post-convictions relief. He has not filed any other petitions, motions or applications in this or any other Court other than a Motion for Reconsideration filed under both criminal indictments prior to his Appeal.
12. None of the grounds set forth in Paragraph Ten (10) above have been previously presented to this or any other Court, State or Federal, in any petition, motion or application.
13. This is Applicant's first Petition for Post-Conviction Relief.
14. Throughout his trial and sentencing, Applicant was represented by attorney J. Patricia Anderson, Post Office Box 1507, Spartanburg, SC 29304. This attorney also filed a Motion for Reconsideration on behalf of Applicant.
15. Applicant was represented on appeal by the undersigned attorney.
16. Applicant seeks a new trial on both indictments.

324

17. Applicant is not now under any sentence from any other Court not otherwise challenged herein.

WHEREFORE, Applicant respectfully requests that this Court grant him Post-Conviction Relief on both Indictments and grant him a new trial on both Indictments.

Respectfully Submitted,



Kenneth P. Shabel
SC Bar #16136
CAMPBELL & SHABEL, Attorneys at Law
104 North Daniel Morgan Avenue, Suite 201
Spartanburg, South Carolina 29306
864.583.0001
864.583.1199 (Fax)

Dated: 8/2/13
Spartanburg, South Carolina

CLERK OF COURT
SPARTANBURG
2013 NOV - 8 11
M. HOPE BLAIR

325

STATE OF SOUTH CAROLINA,)
COUNTY OF SPARTANBURG)
ROY JAMES JENKINS)
Plaintiff)
vs.)
STATE OF SOUTH CAROLINA)
Defendant.)

IN THE COURT OF COMMON PLEAS

SEVENTH JUDICIAL CIRCUIT

MOTION AND AFFIDAVIT TO
PROCEED IN FORMA PAUPERIS

FILE NO.

2013-CP-42-4560

The Undersigned Attorney, on behalf of the applicant ROY JAMES JENKINS, hereby respectfully requests that this complaint be filed and service made without costs. This request is supported by the attached affidavit of the applicant.

The Undersigned so moves this second day of August, 2013

Kenneth P. Shabel

SC Bar #16136

CAMPBELL & SHABEL, Attorneys at Law

104 North Daniel Morgan Avenue, Suite 201

Spartanburg, South Carolina 29306

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864.583.1199 (Fax)

ORDER

☒ Leave is *granted* to proceed in forma pauperis without payment of the filing fee.

☐ Leave is granted to proceed in forma pauperis without payment of the service cost.

☐ Leave is *denied* to proceed in forma pauperis.

Dated:

11/18, 2013

Spartanburg, South Carolina

JUDGE/CLERK OF COURT

NOTICE TO PLAINTIFF: The Court may assess costs against either party at hearing.

SCCA 405CP (10/10)

326

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	2013-CP-42-4560
Roy James Jenkins, #349450,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed November 8, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the December 2008 term of the Spartanburg County Grand Jury for two counts of criminal sexual conduct with a minor, second degree (2008-GS-42-7197, counts 1 and 2). The Applicant was represented by J. Patricia Anderson, Esquire. On January 27, 2012, the Applicant proceeded to trial and was convicted as indicted on both counts. The Honorable John C. Hayes III, sentenced Applicant to two concurrent sentences of twenty years. Upon information and belief, a Motion for Reconsideration was filed on Applicant's behalf, but was denied.

A timely Notice of Appeal was filed on the Applicant's behalf and an appeal was perfected. Following the submission of a brief pursuant to Anders v. California, 386 U.S. 738 (1967), the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Jenkins, No. 2013-UP-124 (filed March 27, 2013). The Remittitur was issued on April 16, 2013.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, trial transcript, and the Applicant's appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel.

Any claims not specifically enumerated in the post-conviction application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCPP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the claim of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

329

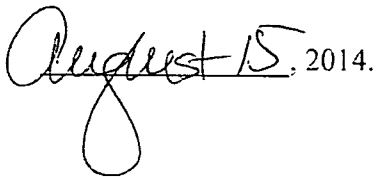
JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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Columbia, SC 29211
Telephone: (803) 734-3737

 August 15, 2014.

330

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

ROY JAMES JENKINS, #349450)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

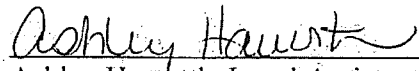
2013-CP-42-4560

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Mr. Kenneth Philip Shabel
Campbell & Shabel, LLC
175 Magnolia Street, Suite 201
Spartanburg, SC 29306**

DATED this 15TH day of August, 2014.



Ashley Haworth, Legal Assistant
For Respondent

1 State of South Carolina

In the Court of Common Pleas

2 County of Spartanburg

3

4 Roy James Jenkins,)

5 Applicant,)

2013-CP-42-4560

6 -vs-)

June 12, 2015

7 State of South Carolina,)

8 Respondent.)

Transcript of Record

9

10

11

B E F O R E:

12

The Honorable R. Scott Sprouse, Judge

13

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

15 Kenneth Philip Shabel, Esquire
Attorney for Applicant

16

Suzanne H. White, Esquire
Attorney for Respondent

17

18

19

20

21

Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

22

23

24

25

I N D E X

<u>Witnesses</u>	<u>Page</u>
ROY JAMES JENKINS	
Direct Examination By Mr. Shabel	5
Cross-Examination By Ms. White	14
Redirect Examination By Mr. Shabel	18
ALBERT JENKINS	
Direct Examination By Mr. Shabel	19
JULIA PATRICIA ANDERSON	
Direct Examination By Ms. White	21
Cross-Examination By Mr. Shabel	30
Reporter's Certificate	35

E x h i b i t s

For the Applicant:

Marked	Description	I.D.	Admitted
	None offered.		

For the Defendant:

Marked	Description	I.D.	Admitted
	None offered.		

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 10:38 a.m.)

4 MS. WHITE: May it please the Court. This is the
5 case of Roy James Jenkins versus the State. It's case
6 number 2013-CP-42-4560. Mr. Jenkins was indicted
7 December of 2008 on a charge of CSC with a minor second
8 degree. I believe there were two counts. He proceeded
9 to trial January 27, 2012. He was represented by
10 Ms. Pat Anderson at trial, was convicted and received a
11 sentence of 20 years on both charges concurrent.

12 There was an appeal filed and it was dismissed.
13 The convictions were affirmed, and he has filed this
14 application alleging ineffective assistance of counsel.

15 Your Honor, I did ask for some more specificity of
16 the claims, and Mr. Shabel indicated that there was an
17 allegation of ineffective assistance for failure to
18 call, I believe, a forensic interviewer as a witness,
19 but I'll let him clarify.

20 MR. SHABEL: Your Honor, the primary issues we'll
21 be going forward on today are as follows: I believe
22 there are four, but please forgive me if the math ends
23 up being wrong.

24 Issue number one is a failure to request a
25 transcription of the forensic interviewer's testimony.

1 As will be presented to the Court today, there was a
2 witness at trial that testified by way of a -- the
3 equivalent of a de bene esse deposition by way of a DVD
4 that was not transcribed into the record. That's issue
5 number one.

6 Issue number two as related to the appeal or,
7 excuse me, as you will notice from the appellate work
8 that was done in the case, there was an issue with a
9 known juror that my client and my client's family knew,
10 and we believe Ms. Anderson was ineffective as far as
11 her selection of the jury process as a result.

12 My client also has some issues with some of the
13 medical information that she knew of as well as the
14 suppression that Pat Anderson did of the audio
15 recordings that the State was going to try to prove.
16 Ms. Anderson asked for and received a suppression of
17 that tape. My client did not want it suppressed.

18 Those will be the primary topics we will be
19 discussing today.

20 THE COURT: All right. Ms. White, does that
21 sufficiently answer your request?

22 MS. WHITE: Yes, your Honor. The State generally
23 objects to any amendments. I know that's not
24 necessarily an amendment, but if there is any issue
25 that we feel that we need to do any additional research

1 since we were not aware of that before, if the Court
2 will allow at the end of the hearing maybe.

3 MR. SHABEL: Absolutely. No objection to that,
4 your Honor.

5 THE COURT: So noted.

6 All right, Mr. Shabel.

7 MR. SHABEL: May it please the Court.
8 Mr. Jenkins.

9 ROY JAMES JENKINS,
10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:
11 DIRECT EXAMINATION

12 BY MR. SHABEL:

13 Q Mr. Jenkins, I know you're a little soft-spoken.
14 There's going to be a lady right between us here that's
15 going to be transcribing every word you say, so I need
16 you to speak as loudly as you can. Okay?

17 A All right.

18 Q How old are you, sir?

19 A 52.

20 Q Are you currently incarcerated within the South
21 Carolina Department of Corrections?

22 A Yes.

23 Q Which institution?

24 A Lieber.

25 Q Are you currently serving a 20-year sentence for

1 two counts of criminal sexual conduct?

2 A Yes.

3 Q Did you go to trial on those two charges in
4 January of 2012?

5 A Yes.

6 Q Who were you represented by?

7 A Pat Anderson.

8 Q And can you tell the Court when you were arrested
9 and charged with these -- with the offense or the
10 offenses?

11 A Well, when the allegations came up, I was arrested
12 almost a year later on one charge.

13 Q How long after you were arrested did you
14 ultimately go to trial?

15 A Five years.

16 Q And the victim in the case was your daughter,
17 correct?

18 A She was my adopted daughter.

19 Q Right. She was originally your niece, but you
20 adopted her?

21 A Yes, that is correct.

22 Q And she made allegations against you?

23 A Correct.

24 Q There were no -- I believe your attorney at trial
25 mentioned this was a he said she said kind of case?

1 A Correct.

2 Q No medical examination was ever done, correct?

3 A That is correct, no medical examination.

4 Q Does the jury -- did the jury receive any physical
5 evidence of the allegations?

6 A No.

7 Q Okay. And, in fact, was this one of those cases
8 where she disclosed what happened to her allegedly
9 late -- early in life?

10 A That's correct.

11 Q Thank you. Now, when did you retain Pat Anderson
12 on these charges?

13 A I believe it was July or August, I think it was,
14 when I got Pat.

15 Q Did you get her pretty early in the process?

16 A As soon as the detective came and asked for me to
17 come to the jailhouse or the sheriff's office, and I
18 went and asked Pat for some counseling, and that's when
19 I retained her because I didn't know what all was going
20 on.

21 Q I understand. So you retained her before you got
22 arrested?

23 A I think so.

24 Q Okay.

25 A I think so.

1 Q Now, was she your attorney throughout the entire
2 process?

3 A Yes.

4 Q Did you meet with her on multiple occasions?

5 A I met with her a couple times, yes.

6 Q All right. You mentioned that you were arrested
7 on one charge. When did you find out you had two
8 charges?

9 A Well, I really didn't know about the second charge
10 until, I guess, almost the time to come to trial.

11 Q Okay. And ultimately you took the case to a jury?

12 A Yes.

13 Q And you were convicted of both counts?

14 A That's correct.

15 Q Now, are you receiving a consecutive sentence or a
16 concurrent sentence?

17 A A concurrent.

18 Q Thank you. Now, let's talk about -- let's talk
19 about the work that was done before trial. All right?
20 Do you have any concerns about what Ms. Anderson did
21 before the trial began?

22 A Well, I mean, I had stated, you know, we need to
23 do some investigation here because, you know, I
24 didn't -- I didn't do this. And had the investigative
25 work been done, if they had come to the neighborhood,

1 at that time we had an elementary principal right
2 across the street from us, and all the other neighbors
3 there, you could have come and, you know, talked with
4 the neighbors and even took pictures. I mean, there's
5 just no way that this happened.

6 Q Okay. Do you believe that Ms. Anderson did an
7 adequate investigation of your case before that case
8 went to trial in January 2012?

9 A I do not.

10 Q Now, first thing that happened at trial was jury
11 selection, I believe?

12 A Correct.

13 Q Was there a member of the jury panel that knew you
14 and knew your family?

15 A That's what it turned out, yes.

16 Q Who was that?

17 A I think it was Juror 56.

18 Q What was his name?

19 A Adam Durham, I think it was.

20 Q Okay. And did you have an opportunity to review
21 the jury list before you walked in that hearing?

22 A I just glanced over it. Maybe -- I mean, it's
23 been -- I can't really recall on that one.

24 Q Were you aware if any member of your family
25 received a copy of the jury list?

1 A Not -- not to my knowledge, no.

2 Q Okay. And as a result, was that individual
3 selected on the jury?

4 A Yes, he was.

5 Q Were you and your family trying to tell
6 Ms. Anderson that you knew this person?

7 A Yes.

8 Q Did you do that through the entire trial?

9 A I believe I had a couple of my family members
10 trying to tell her through the whole trial that someone
11 on the jury knew us.

12 Q Now, after the jury came back with the verdict,
13 did Ms. Anderson ultimately file a motion to reconsider
14 based on this fact?

15 A I think so.

16 Q And you had a hearing before the same judge on
17 just the juror information?

18 A Yes. Yes.

19 Q But at any point during the actual trial of the
20 case, did Ms. Anderson bring that issue to the Court's
21 attention?

22 A I think no, not while the case -- the trial was
23 going on.

24 Q All right. Now, who were the primary witnesses
25 against you at the trial?

1 A There was Susan Montjoy.

2 Q Obviously, your daughter?

3 A VICTIM.

4 Q Were there any --

5 A Jack and -- Jack Harden and Justin Ray. And I
6 can't think of the other lady's name.

7 Q I understand. Was there an expert that testified
8 at the trial --

9 A No.

10 Q -- on behalf of the State?

11 A No.

12 Q Did the State play a videotape or a DVD or some
13 kind of video of somebody testifying?

14 A Yes.

15 Q Do you know who that person was?

16 A I was told that it was Arroyo-Staggs, some lady.

17 Q Had you ever seen that video before trial?

18 A Not before trial.

19 Q Now, let me back up a little bit. Did the State
20 provide your attorney with some discovery?

21 A Yes.

22 Q As part of that discovery, did they present her
23 with an audio recording?

24 A Yes.

25 Q Tell the Court a little bit about the -- well,

1 what did the State argue was -- let me try again.

2 What did the State try to say that recording was?

3 A They tried to say that that was myself talking
4 with the victim.

5 Q Okay. Was it your voice?

6 A No, it was not.

7 Q Okay. Was there anything on the tape said by the
8 person that was supposed to be you that, in your mind,
9 made it clear it wasn't you?

10 A Absolutely.

11 Q What was it?

12 A It stated that, "I'm a one-armed, one-legged man.
13 Why are you doing this to me? I need my checkbook
14 back."

15 Q And, again, this was a conversation that the State
16 says was between you and your daughter?

17 A Correct.

18 Q So your daughter is on the recording, and there's
19 this other guy that they said was you?

20 A That's -- that's what it played.

21 Q Did you want that played for the jury?

22 A Yes.

23 Q Why?

24 A Because if you played it in front of the jury, and
25 I would have stood up, the jury could have seen that I

1 have, you know, all of my limbs.

2 Q Okay.

3 A And I would not be the man that's in the video
4 because of my speech.

5 Q You felt Pat should have cross-examined her on
6 that?

7 A I feel like -- yes.

8 Q Okay.

9 MR. SHABEL: Beg the Court's brief indulgence.

10 Q Are you asking this Court to grant you
11 postconviction relief?

12 A Yes, I am.

13 Q Do you understand that if you are given
14 postconviction relief, the remedy you would receive
15 would be a new trial?

16 A Okay.

17 Q Do you understand that?

18 A Yes.

19 Q Do you understand that doesn't mean you're found
20 not guilty?

21 A Right.

22 Q You understand you would go back to trial and
23 could have a completely different result?

24 A Correct.

25 Q Do you understand that you could receive a

1 consecutive sentence at a second trial?

2 A Yes.

3 Q Do you understand -- so, basically, you could come
4 out worse, but come out better?

5 A Could, yes.

6 Q Are you asking this Court, knowing that, to grant
7 you postconviction relief?

8 A Yes.

9 MR. SHABEL: That's all I have for this witness.

10 THE COURT: Ms. White.

11 MS. WHITE: Thank you, your Honor.

12 CROSS-EXAMINATION

13 BY MS. WHITE:

14 Q Mr. Jenkins, a couple questions. You said that
15 the second charge you weren't aware of until almost
16 trial?

17 A Could you repeat that?

18 Q The second count, you were not aware of until the
19 time almost for trial?

20 A Correct.

21 Q Your attorney made a motion to quash count -- the
22 second count because of a lack of notice, didn't she?

23 A That's what I read in the transcript, yes.

24 Q Okay. But, actually, the Court indicated that it
25 actually had been filed, and they were -- it was --

1 y'all should have been on notice since 2010 is what the
2 Court said; is that right?

3 A Yes.

4 Q In regards to the juror issue, there was a hearing
5 after your trial about this, wasn't there?

6 A Yes.

7 Q And the judge has a copy of that transcript. It
8 was a motion for a new trial based on the essential
9 juror misconduct for the fact that Mr. Durham did not
10 say he knew y'all?

11 A Correct.

12 Q Is it not true that in the transcript of that,
13 when some of your family were testifying, they said
14 that even if during the trial that they recognized him,
15 they didn't tell Ms. Anderson?

16 A Ma'am, I had one or two of my family members I
17 know of kept saying that they had known someone on the
18 jury.

19 Q But at the hearing on that -- and let me flip back
20 so I can tell you exactly who we're talking about --
21 Shirley Jenkins. Who is that for you?

22 A That's my mother.

23 Q Did Ms. Jenkins, your mother, not testify that she
24 knew that during trial but never told Ms. Anderson?

25 A I believe she told Ms. Anderson.

1 Q If the transcript reflects that Ms. Anderson says,
2 "Why didn't y'all tell me that day," and she says, "I
3 didn't know it." "I'm talking about after you
4 recognized him." And she said, "We were so distraught,
5 we couldn't even find ourselves. I was heart
6 breaking," so she said she called the next day; is that
7 right?

8 A I guess. I mean, I was gone by then. I don't
9 know.

10 Q You weren't present for the motion for new trial?

11 A I was there, but they had led me out after some of
12 this other conversation was taking place.

13 Q Okay. And, in fact, the State pointed out that if
14 anybody knew who he was and if y'all had known him,
15 your family, then they argued it was your
16 responsibility to say something about it, did they not?

17 A I don't recall that, no.

18 Q Okay. In regards to the testimony or the
19 audiotape, you said you wished for it to have been
20 played. Your attorney first made a motion to suppress
21 it, right?

22 A Correct.

23 Q The State acknowledged that they had determined
24 that was not your voice, did they not?

25 A After it was suppressed.

1 Q And if the transcript reflects that they actually
2 withdrew that and said that they would not be
3 introducing it instead of the Court suppressing it,
4 would you agree with me that that's what happened?

5 A I agree that my attorney at that time suppressed
6 it before the State stepped up and said that they
7 didn't want to play it.

8 Q So your understanding, on page 25 and 26 of the
9 transcript, when she makes an initial motion to
10 suppress, and then the solicitor indicates that the
11 tapes would not be coming in because they have spoken
12 to the witnesses and they were correct that that was
13 not your voice, you believe that that was suppressed by
14 the Court?

15 A I believe it was suppressed, yes.

16 Q Okay. The witnesses, the victim testified at
17 trial, did she not?

18 A Yes.

19 Q Okay. And you said the DVD was played of
20 Ms. Arroyo-Staggs; is that correct?

21 A That's correct.

22 Q And was she the one that had interviewed the
23 victim once she had disclosed the abuse?

24 A I believe she is.

25 Q Okay. You wanted the Court -- you wanted the jury

1 to have the transcript of the person that interviewed
2 her saying that the victim told her you had abused her?

3 A Yes.

4 Q Okay.

5 MS. WHITE: Your Honor, that's all I have at this
6 time.

7 THE COURT: Mr. Shabel, anything further?

8 MR. SHABEL: Yes, your Honor.

9 REDIRECT EXAMINATION

10 BY MR. SHABEL:

11 Q Mr. Jenkins, the videotape of Ms. Arroyo-Staggs,
12 when you appealed this case, was her testimony at all
13 outlined in the transcript?

14 A Could you break that down for me. I don't really
15 understand what you're asking me.

16 Q Sure. The videotape that was played at trial of
17 the testimony of Ms. Staggs, was that conversation,
18 that testimony, put into the transcript of the trial?

19 A No.

20 Q Okay. Thank you.

21 MR. SHABEL: That's all I have.

22 MS. WHITE: Nothing further, your Honor.

23 THE COURT: Okay. Thank you, Mr. Jenkins. You
24 can step down.

25 MR. SHABEL: I'd like to call Mr. Albert Jenkins

1 very briefly, your Honor.

2 **ALBERT JENKINS,**

3 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

4 **DIRECT EXAMINATION**

5 **BY MR. SHABEL:**

6 Q Sir, how do you know Roy Jenkins?

7 A My brother.

8 Q And were you active and present for the court
9 hearings in January of 2012?

10 A I was.

11 Q Were you -- well, I use the word "participating,"
12 but were you involved in some of the discussions with
13 Ms. Anderson, your brother's attorney, and other
14 members of the family?

15 A I was.

16 Q Okay. Were you present for jury selection that
17 day?

18 A I was.

19 Q And at any point prior to jury selection did you
20 receive or were you shown a list of the potential
21 jurors that would be selected from for your brother's
22 trial?

23 A No.

24 Q How much conversation were you able to have with
25 other members of your family during this period of

1 time?

2 A During the trial?

3 Q Yes.

4 A Very little.

5 Q Not just during the actual trial itself, but
6 outside in the halls, in the evenings in between the
7 two days of trial?

8 A We spoke.

9 Q Okay. You kind of like bonded together during
10 this period of time, right?

11 A Absolutely, yes.

12 Q To your knowledge, do you know if any member of
13 your family had a copy or had an opportunity to have a
14 copy of that jury list?

15 A No.

16 Q Did you recognize a member of that jury panel?

17 A Yes.

18 Q Who do you recognize?

19 A Adam.

20 Q And what is Adam's last name?

21 A Durham.

22 Q Okay. And how did you know Adam Durham?

23 A Just from growing up, I've seen him around.

24 Q Was he at your brother's house from time to time?

25 A Which brother?

1 Q Roy.

2 A That I could not testify to.

3 Q I understand. Was he at some family functions?

4 A I believe so.

5 Q Okay. And I think you were present at the motion
6 hearing that was discussing Adam's involvement with the
7 family?

8 A Yes.

9 Q And were you aware there were some photographs
10 introduced at that hearing showing he was actually at
11 some of these places?

12 A Yes.

13 MR. SHABEL: Thank you. That's all I have for the
14 witness.

15 MS. WHITE: The State has nothing, your Honor.

16 THE COURT: Thank you, Mr. Jenkins.

17 MR. SHABEL: Petitioner rests.

18 THE COURT: Thank you, Mr. Shabel.

19 All right, Ms. White.

20 MS. WHITE: Thank you, your Honor. The State
21 would call Pat Anderson.

22 **JULIA PATRICIA ANDERSON,**

23 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

24 **DIRECT EXAMINATION**

25 **BY MS. WHITE:**

1 Q Ms. Anderson, do you recall representing
2 Mr. Jenkins on these charges?

3 A Yes, I do.

4 Q And is he correct that he -- you represented him
5 for a pretty lengthy time from the point at which he
6 was arrested until years later during the trial?

7 A Yes.

8 Q So did you feel that you were fairly familiar with
9 the facts of the case?

10 A Yes.

11 Q And did you feel like you were prepared to go to
12 trial at the time they did finally call the trial?

13 A Yes.

14 Q Okay. This was, as we said, a case of just no
15 physical evidence, no witnesses to anything but the
16 victim's testimony, essentially, against the defendant;
17 is that right?

18 A Yes.

19 Q Okay. In regards to the audio recording, you
20 initially made a motion to suppress. What was the
21 basis for that?

22 A I was afraid that a jury might determine that it
23 was Mr. Jenkins on the tape. And he did want me to put
24 it in.

25 Q So the audiotape that the State had was someone

1 essentially admitting to this; is that what they
2 thought or --

3 A Yes.

4 Q Okay. And so the danger, if it went in, was that
5 it could make him look more guilty if the jury believed
6 that was him?

7 A Yes.

8 Q Okay. And you said he did want it to come in.
9 How long had you been practicing law at the time you
10 represented him at trial?

11 A I started in 1987, and this was 2012.

12 Q Okay. And had you represented cases before
13 involving criminal sexual conduct charges?

14 A Yes.

15 Q Did you advise him that that was risky?

16 A I did.

17 Q Okay. And is that why you ultimately made the
18 motion?

19 A Yes. But it was -- he wanted me to play it.

20 Q Would you have been able to -- obviously the State
21 decided they didn't want to put it in?

22 A Right.

23 Q Knowing that it was not his voice and that the
24 State acknowledged it was not his voice, is there any
25 way you could have introduced it, to your knowledge,

1 during the case?

2 A I probably should have tried.

3 Q And what way would you have tried to do that?

4 A I guess to say based on the State's newly
5 discovered evidence, I believe that the tape should
6 have been played. And I really do. I think I made a
7 big mistake there.

8 Q Is there a legal basis, you think, that the Court
9 would have allowed that tape to be introduced when
10 there was no one there to authenticate it, no testimony
11 of who the actual person was speaking?

12 A Well, I think because the State determined it was
13 not my client, I should have been able to play it
14 because they had been using this against him, and I
15 should have asked -- at least asked that it be put into
16 evidence.

17 Q Okay. But you acknowledge that they did not use
18 that against him at trial?

19 A No.

20 Q So the jury never heard that?

21 A No.

22 Q Okay.

23 A But it might have helped. And that's the problem.

24 Q Right. But you don't even know if it could have
25 come in, do you?

1 A Well, I should have tried.

2 Q Okay. And do you feel that Mr. Jenkins was guilty
3 in this case?

4 A No.

5 Q So you felt like he should have been acquitted?

6 A Yes. I wake up many nights over this case. He
7 should not have gone to jail.

8 Q Did you talk with him about the fact that going to
9 trial, he was at risk of being convicted if the jury
10 believed the victim over him?

11 A I did.

12 Q And he was aware of that risk?

13 A Yes.

14 Q In regards to the second charge, you made a motion
15 to quash the indictment, but ultimately it was
16 presented, I guess, that you actually had about two
17 years of notice of the second charge; is that right?

18 A Yes.

19 Q So the case had been tried -- had been called for
20 trial earlier?

21 A Yes.

22 Q And at that point you would have known, but at
23 this point you and the defendant both had notice of
24 that charge?

25 A Yes.

1 Q Okay. There were no witnesses to any allegations,
2 correct, nobody that was alleged to have seen abuse of
3 her?

4 A No.

5 Q Okay. So were there any witnesses that could have
6 testified as to events that occurred on the date at the
7 time in the house when the victim alleged she was
8 abused?

9 A The time frames she gave were vague. And, I mean,
10 we did have testimony about their usual pattern in the
11 household.

12 Q And you presented testimony on the defense side,
13 did you not?

14 A Yes.

15 Q And that was partially to show that the victim was
16 still involved with the family after some of this
17 allegation was to have occurred?

18 A Yes.

19 Q And then, in fact, did you try to show she had a
20 reason to make these allegations?

21 A Yes, I did.

22 Q What was that?

23 A Basically, she had a boyfriend that the family did
24 not approve of, and he had stolen -- I may be wrong.
25 He had stolen their truck and the police were called,

1 and she got mad because of this.

2 Q And so your defense strategy was to say he was not
3 guilty, but not only that, the victim had a motive?

4 A Yes.

5 Q In regards to the juror, obviously that became a
6 big issue, and there was a motion for a new trial and a
7 hearing held on that?

8 A Yes.

9 Q During the trial, do you recall anyone from the
10 family telling you that they knew that juror?

11 A I knew about it the next day.

12 Q And when you say the next day, is that the next
13 day after jury selection?

14 A After -- no. I didn't know about it until after
15 the trial was over. Because I was horrified that he
16 had been on the jury. But he had been -- he had
17 changed in appearance. So I'm not sure that the family
18 would have recognized him, and I did not give them a
19 list of the jurors. I should have and I didn't. But I
20 still can't believe that he was not given a new trial
21 based on Mr. Durham's testimony, the family's
22 testimony, the actual pictures we had of the juror with
23 the family at a get-together, and the fact that the
24 juror said he realized halfway through the trial that
25 he knew these people. But he did not ever tell anyone

1 or tell the judge, which I think was an intentional
2 concealment.

3 Q This was presented to the appellate court on
4 appeal, wasn't it?

5 A Yes.

6 Q And to your understanding, they dismissed and
7 affirmed it, finding it was not an intentional
8 concealment?

9 A Well, basically, I believe it was based on that it
10 was to the trial judge's discretion whether or not to
11 give him a new trial based on this.

12 Q Okay. And they decided that they didn't see
13 enough that would cause them to question that?

14 A There was abuse of discretion, yes.

15 Q In regards to the DVD and the deposition of
16 Ms. Arroyo-Staggs, she was the forensic interviewer of
17 the victim; is that right?

18 A Yes.

19 Q That was presented, too, during the trial; is that
20 correct?

21 A Yes.

22 Q And but it was not transcribed to send back to the
23 jury; is that what I'm understanding?

24 A Yes.

25 Q Okay.

1 A I should have done that and I did not.

2 Q Okay. In general, you said you've represented CSC
3 cases before?

4 A Yes.

5 Q Is the forensic interviewer generally a helpful
6 witness for a defendant?

7 A Sometimes. Sometimes they are.

8 Q Did you feel like Ms. Arroyo-Staggs in this case
9 was helpful to the defense?

10 A Yes.

11 Q Okay. And the jury heard her testimony through
12 the video deposition, did they not?

13 A Yes, but it was not preserved for appeal.

14 Q And I'm going to ask you what exactly you mean by
15 "it was not preserved for appeal."

16 A It was not transcribed into the -- it was not put
17 in the transcript of the hearing.

18 Q Okay. And your testimony is that if it was, there
19 would have been an objection to it?

20 A No. I should have asked that -- I should have
21 made the motion for it to be made part of the record.
22 We just showed -- it was a video.

23 Q So you're saying "preserve for appeal" would have
24 been your motion to have it made part of the record or
25 transcribed?

1 A I should have asked that it be made part of the
2 record at the time it was played.

3 Q Okay. I guess I'm trying to figure out what issue
4 was not preserved for appeal as it relates to that.

5 A Well, the entire record wasn't preserved because
6 the videotape was part -- and it was helpful to both
7 sides because it was one of the generic things, but it
8 was helpful to both.

9 Q You understand that for there to have been
10 something raised on appeal, there has to have been
11 something ruled upon by the Court?

12 A Yes.

13 Q Okay.

14 MS. WHITE: Your Honor, I think that's all I have
15 at this time.

16 MR. SHABEL: May it please the Court.

17 CROSS-EXAMINATION

18 BY MR. SHABEL:

19 Q Ms. Anderson, do you recall that it took a while
20 for Mr. Jenkins to actually get arrested on these
21 charges?

22 A Yes.

23 Q Do you know why?

24 A I think the case was so weak, and it was just
25 amazing to me that they were able to bring the charges

1 at all.

2 Q Did that audio recording that was ultimately
3 suppressed occur shortly before his arrest?

4 A Yes.

5 Q Was that made aware of -- were you made aware of
6 that shortly before his arrest or after his arrest?

7 A After his arrest.

8 Q Do you think the phone conversation that they
9 thought was Mr. Jenkins had a lot to do with his
10 ultimate arrest?

11 A Yes.

12 Q So that we can have a record, tell a little bit
13 about what the Children's Advocacy Center does in
14 general.

15 A My true opinion?

16 Q We'll save that for another day. What is the
17 intent of the Children's Advocacy Center?

18 A The intent of the Children's Advocacy Center is to
19 talk to children who have been or who have accused
20 people of abusing them sexually, or any other way, but
21 mostly sexually, to basically get a statement from them
22 that abuse occurred.

23 Q And Ms. Arroyo-Staggs, was she the forensic
24 interviewer from the Children's Advocacy Center that
25 interviewed the child in this case?

1 A Well, she was a teenager. In fact, she might have
2 been 18 when she was interviewed.

3 Q But she actually conducted the interview?

4 A Yes.

5 Q Do you recall why she wasn't able to be present
6 for the trial itself?

7 A Yes. She had moved to California, I believe.

8 Q Okay.

9 A Or Florida, I'm not sure. But she moved out of
10 state, and we agreed to do -- we actually did her
11 testimony in the courtroom.

12 Q And who was present for the testimony being taken?

13 A The assistant solicitor, my client, and I'm
14 assuming that the alleged victim was there, too, but I
15 can't remember.

16 Q So this was basically a videotape of testimony?

17 A Right.

18 Q And normally when a forensic interviewer
19 testifies, she comes in with the jury sitting there or
20 he comes in there with the jury sitting there, and the
21 court reporter writes everything down?

22 A Right.

23 Q Did you at any point ask the Court to have the
24 court reporter transcribe what this individual was
25 saying?

1 A No, I didn't, and that was my mistake.

2 Q Thank you.

3 MR. SHABEL: I have nothing further for the
4 witness.

5 MS. WHITE: Nothing further, your Honor.

6 THE COURT: Thank you, Ms. Anderson. You can step
7 down.

8 MS. WHITE: The State has no other witnesses, your
9 Honor.

10 MR. SHABEL: No redirect.

11 THE COURT: Okay. Thank you. I have some
12 materials to review. I have two transcripts. I have
13 an application. I'm going to take this matter under
14 advisement, and I will notify the attorneys of my
15 decision.

16 MR. SHABEL: For the record, your Honor, I would
17 like to state that this hearing was originally
18 scheduled for Tuesday, and due to an illness that I
19 had, I was unable to attend, so I apologize to the
20 Court, my client, and his family for the inconvenience,
21 and I thank the Court for its time this morning.

22 THE COURT: Mr. Shabel, we're glad that you are
23 feeling better.

24 MR. SHABEL: Thank you, your Honor.

25 MS. WHITE: Thank you, your Honor.

1 (WHEREUPON, the hearing ended at 11:13 a.m.)

2 ***END OF REQUESTED TRANSCRIPT OF RECORD***

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Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Spartanburg County, South Carolina, on the 12th day of September 2015.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

September 28, 2015

Diane L. Marcengill

Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

366

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Roy James Jenkins (SCDC #349450),

Applicant,

Vs.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS

) SEVENTH JUDICIAL CIRCUIT

) ORDER GRANTING
) POST CONVICTION RELIEF

) Docket Number:

) 2013-CP-42-4560

This matter comes before the Court by way of an Application for Post-Conviction Relief filed on November 8, 2013. The Respondent made its return on or about August 15, 2014. An evidentiary hearing into the matter was convened on Friday, June 12, 2015 at the Spartanburg County Courthouse. The hearing had been previously docketed for Tuesday, June 9, 2015, but the hearing was reset to June 12 due to an illness of the Applicant's attorney.

The Applicant was present and represented by Kenneth P. Shabel, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent. The Applicant testified on his own behalf and called an additional witness. J. Patricia Anderson, Esquire, testified on behalf of the Respondent. The Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, including multiple exhibits and transcripts. The Court also reviewed records from Applicant's file with the Department of Corrections, the relevant pleadings, and relevant appellate records.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted by the Spartanburg County Grand Jury (December 2008 term) for two counts of criminal sexual conduct with a minor, second degree (2008-GS-42-7197, counts 1 and 2). Applicant was represented by J. Patricia Anderson, Esquire. In fact, according to the testimony presented, Applicant retained Ms. Anderson to represent him even prior to his arrest and indictment on these charges. The case went to trial on January

26-27, 2012. On January 27, 2012, the jury found the Applicant guilty on both counts. Applicant was sentenced by the Honorable John C. Hayes, III on January 27, 2012 to confinement for twenty years on both charges, with the terms to run concurrently. Attorney J. Patricia Anderson filed a Motion for New Trial on February 2, 2012. The Motion was heard on February 28, 2012, and the Court denied the Motion by Order filed on March 27, 2012.

A timely Notice of Appeal was filed and an appeal perfected. Kenneth P. Shabel, Esquire, filed the Appeal on behalf of the Applicant. The Court of Appeals affirmed the conviction and sentence without oral argument. State v. Jenkins, Op. No. 2013-UP-124 (Ct. App. filed March 27, 2013). The Remittitur was returned on April 17, 2013.

ALLEGATIONS

In the current application, the Applicant alleged he was being held in custody unlawfully because of the ineffective assistance of his counsel at the trial of this case. Although the Petition was not specific, the initial statements of counsel informed the Court that the Applicant's concerns centered around three issues:

- (a) Failure to introduce an audio recording of the victim for impeachment purposes;
- (b) Failure to preserve the videotaped testimony of Michelle Arroyo-Staggs for the transcript and record; and
- (c) Failure to strike a specific juror during the trial of the case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). When ineffective assistance of counsel is a ground for relief, the Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having a just result.” Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgement. Butler, *id.* The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms.” Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceedings would have been different.” Cherry, 300 S.C. at 117-118, 385 S.E.2d at 625 (citing Strickland).

The Court finds that Applicant has not met his burden of proof regarding his claims over the failure to preserve testimony and failure to strike a juror. However, the Court finds that the Applicant has met his burden of proof regarding his claim over his attorney’s failure to introduce an audio recording of the victim for impeachment purposes.

According to the testimony of both the Applicant and his trial attorney, it appears that law enforcement did not immediately arrest Applicant for the charges and that there was a significant period of time after the allegations came about before he was arrested. At a time shortly before the Applicant’s arrest, law enforcement became aware of a phone conversation involving the victim. Another individual

in the conversation questioned the victim as to why she would do this to him and may have confessed to the crime.

The other voice in the recording was purported to be the Applicant. It was shortly after this conversation came to light that Applicant was arrested. Therefore, this Court concludes that law enforcement used said audio tape in securing a warrant for defendant's arrest.

Throughout Ms. Anderson's representation, Applicant insisted that the voice was not his on the recording. The other individual indicates that he had one arm and one leg. It was clear to the Court that the Applicant had both of his arms and both of his legs. It was clear that Applicant's trial attorney had sufficient information to believe that the voice on the recording was not the Applicant's voice but was, instead, a third party.

Applicant's trial attorney testified that she was concerned that the jury might mistakenly identify the person on the tape as the Applicant. Therefore, instead of attempting to admit it into evidence to challenge the victim's credibility, she instead took the affirmative step of asking the Court to prohibit the State from introducing the evidence at trial. See Transcript of Trial p. 25, line 25 – p. 26, line 7. The State agreed to the prohibition and even acknowledged that Ms. Anderson was "correct" in her statement to the Court that the person on the recording was not the Applicant. See Transcript of Trial p. 26, lines 8-9.

At the PCR hearing, J. Patricia Anderson was questioned regarding the failure to have tape admitted into evidence. She testified that she made "a big mistake" in not having the audio tape admitted. She also acknowledged that she "should have tried" to have the tape admitted into evidence.

This Court takes note of the fact that this was a case without any physical evidence to support the allegations. In such a case, credibility of a victim is a central issue. If the alleged victim had perpetuated a fraud in the preparation of the audio tape, that piece of evidence would have direct exculpatory effects at trial.

370

The court finds that the failure to admit the disputed audio tape constitutes deficient performance on the part of trial counsel. The court further finds that, due to the nature of the case, the deficient performance of trial counsel directly affected the outcome and there is a reasonable probability that the outcome of the trial would have been different had the audio tape been admitted.

Based upon these findings of fact, and upon the applicable law of this State, **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that the Applicant's application for Post-Conviction Relief is GRANTED.

~~IT IS FURTHER ORDERED, ADJUDGED AND DECREED~~ that the Applicant's convictions under indictment number 2012-GS-42-7197 is set aside and that the Applicant shall be given a new trial on this indictment.

AND SO IT IS ORDERED this 21 day of July, 2015.

R. Scott Sprouse
R. SCOTT SPROUSE
PRESIDING CIRCUIT COURT JUDGE
SEVENTH JUDICIAL DISTRICT

Wahalla, South Carolina

A CERTIFIED COPY

M. Hope Blackley

CLERK OF COURT

SPARTANBURG COUNTY

DATED 7-28-15

CLERK OF COURT
SPARTANBURG COUNTY
2015 JUL 28 AM 9:57
M. HOPE BLACKLEY

WITNESSES

Spartanburg County Sheriff's Office

ISSUED

RECEIVED

FILED

INDEXED

SEARCHED

SERIALIZED

WARRANT NUMBER

M1804078 DIRECTOR

ACTION OF GRAND JURY

Tyler Bell

Foreperson of Grand Jury

Date: 11-21-08

VERDICT

Count One

Count Two

Foreperson of Petit Jury

Date:

DOCKET NO.

08-03-03-1197(A)

1st State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

OFF. 11 2008

TERM

THE STATE

VS.

Roy James Jenkins

Indictment for

COUNT ONE: CRIMINAL SEXUAL CONDUCT
WITH A MINOR, SECOND DEGREE, (B) (1);
COUNT TWO: CRIMINAL SEXUAL CONDUCT
WITH A MINOR, SECOND DEGREE, (B) (2)
SC Code(s): 16-03-655 (B) (1); 16-03-655 (B) (2)

CDR Code(s): 0396; 0397
Class: FEL/C (V); FEL/C (V)

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

NOV 21 2006

At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE: CRIMINAL SEXUAL CONDUCT WITH A MINOR, SECOND DEGREE,
11 TO 14 YEARS OF AGE

That the Defendant, Roy James Jenkins, did in Spartanburg County, between the dates of November 19, 2002 and November 18, 2003, commit the crime of Criminal Sexual Conduct with a minor in the Second Degree in that the Defendant did commit a sexual battery upon the minor, [REDACTED] who was fourteen (14) years of age or less, but who was at least eleven (11) years of age at the time of the incident. Said incident occurred in Spartanburg County, South Carolina, in violation of Section 16-03-655 (B) (1), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

COUNT TWO: CRIMINAL SEXUAL CONDUCT WITH A MINOR, SECOND
DEGREE, 14 TO 16 YEARS OF AGE

That Roy James Jenkins, did in Spartanburg County, between the dates of November 19, 2003 and November 18, 2005, commit the crime of Criminal Sexual Conduct with a Minor in the Second Degree, in that the Defendant did commit a sexual battery upon the minor, [REDACTED], who was less than sixteen (16) years of age, but who was at least fourteen (14) years of age at the time of the incident and Roy James Jenkins was in a position of familial, custodial, and/or official authority to coerce the victim to submit and/or the defendant was older than the victim, in violation of §16-03-655 (B) (2), *CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG

STATE VS.

Roy James Jenkins

AKA:

Race: WHITE Sex: M Age: 49

DOB: [REDACTED] SS#: [REDACTED]

Address: 105 Westhaven Court

City/State/Zip: Spartanburg, SC 29301

DL#: [REDACTED] SID#: [REDACTED]

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

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

TO: Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive - Second deg.

in violation of § 16-03-0655(B) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
 ATTEST: Phil C. Gray 1216-1 Roy Jenkins Patricia Hudson 9701
 GRAY, ABEL SC Bar# Defendant Attorney for Defendant SC Bar#
WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

INDICTMENT/CASE#: 2008GS4207197

A W#: M180487

Date of Offense: 10/1/2003

S.C. Code § 16-03-0655(B)

CDR Code #: 0396

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0655(B) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
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 for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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SPECIAL CONDITIONS:

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

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

SEX OFFENDER REGISTER

PTUP

_____ days/weeks Public Service Employment

Obtain GED. ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge

Judge Code:

Sentence Date:

John C. Gray
 2049
 11/27/12

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.AKA: **374** Roy James Jenkins

Race: WHITE Sex: M Age: 49

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Spartanburg, SC 29301

DL#: [REDACTED] SID#: [REDACTED]

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

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

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

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

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Gray, Abel 12164 Roy Jenkins 9701
SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 1/27/12☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 14-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment.

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (DUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL:	\$133.90

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

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

\$ _____ paid to Public Defender Fund

Other: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter: Pam

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2089Sentence Date: 1/27/12