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SC SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
R. Scott Sprouse, Circuit Court Judge

JOSEPH G. COBB,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001960

A P P E N D I X

DAVID ALEXANDER
Appellate Defender

ALAN WILSON
Attorney General

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

ALICIA OLIVE
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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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 Joseph Gabriel Cobb,) 2007-GS-42-3875
7 Defendant.) March 9 - 10, 2011
8) Spartanburg, South Carolina
9

10 B E F O R E:
11

12 HONORABLE J. DERHAM COLE, JUDGE; and a jury
13
14

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

16 JENNIFER A. J. JORDAN, ESQUIRE
17 Attorney for the State

18 RICHARD H. WHELCHER, ESQUIRE
19 Attorney for the Defendant
20

21 Linda D. Moffitt
22 Circuit Court Reporter
23
24
25

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	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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5	S-4	Photograph	47	53
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Jury qualification

1 (Proceedings March 9, 2011)

2 THE COURT: Are there any matters we need to address
3 prior to jury selection?

4 MS. JORDAN: Nothing from the state, Your Honor.

5 MR. WHELCHER: No, sir.

6 THE COURT: All right. Bring the panel around,
7 please.

8 (The following takes place in the presence of the jury
9 venire.)

10 THE COURT: Good morning, ladies and gentlemen of the
11 jury panel.

12 We are ready to begin with jury selection in the next
13 case that's going to require some of your participation.
14 The title of this case is Joseph Gabriel Cobb.

15 Mr. Cobb has been accused by the prosecutor with
16 having committed the crime of criminal sexual conduct with
17 a minor in the second degree.

18 The state alleges by way of an indictment that the
19 defendant did here in Spartanburg County on or about
20 June -- July the 10th of 2007 commit the crime of criminal
21 sexual conduct with a minor in the second degree in that he
22 did commit a sexual battery upon Complaining Witness who was a
23 person under the age of -- or at least 16 years of age, but
24 more than 14 years of age at the time of the event, and
25 that he was older than she.

Jury qualification

1 As to those allegations and as to that charge he has
2 entered a plea of not guilty. And a plea of not guilty
3 places upon the state the burden of proving the allegations
4 set forth, the burden of proving each of the essential
5 elements of the crime, therefore the burden of proving the
6 guilt of the defendant to the satisfaction of 12 jurors
7 beyond a reasonable doubt:

8 So we're going to select 13 of you to participate, 12
9 primary jurors and one additional juror to serve as an
10 alternate. And you're simply going to be called upon to
11 listen to testimony, consider any other evidence
12 introduced, from that evidence decide what you believe to
13 be the true facts as they relate to these allegations. And
14 upon deciding the facts you'll apply the law that I will
15 provide you, and you will determine whether or not the
16 defendant has been proven guilty beyond a reasonable doubt.

17 Before we begin with that jury selection I'm going to
18 be asking you -- first I'm going to introduce some folks to
19 you, and then I'll ask you some questions.

20 The purpose of all of this is to determine if there is
21 a reason why any one of you jurors should not be selected
22 to participate in this particular case. And so as these
23 people are introduced I need to know if you know any of
24 them, you're connected with them, you're related to them,
25 you go to work with them, you go to school with them, you

Jury qualification

1 go to church with them, you socialize with them or you know
2 them, you've met them in some context.

3 If that's the case, I'll ask you to stand when this
4 person's name is called. And then remain standing until I
5 recite all of the introductions. And then I'll address
6 with any standing jurors who you know, how you know them
7 and whether it would affect your judgment.

8 First of all, as I told you, the defendant, that is
9 the person who is accused of having committed this crime,
10 is Joseph Gabriel Cobb.

11 Mr. Cobb, if you will, stand and face the jury panel
12 please.

13 (Whereupon, the defendant stood.)

14 THE COURT: Thank you. Be seated.

15 Mr. Cobb is represented by Dick Whelchel, his lawyer.
16 He'll be assisting him in the trial of the case.

17 The person who is alleged to have been the victim of
18 this event is Complaining Witness

19 Ms. Bishop, if you will, please stand and face the
20 jury panel.

21 (Whereupon, the victim stood.)

22 THE COURT: Presenting the case on behalf of the state
23 is Jennifer Jordan. She is an assistant circuit solicitor
24 for the 7th Judicial Circuit.

25 (Whereupon, Ms. Jordan stood.)

Jury qualification

1 THE COURT: Potential witnesses to be called during
2 the trial include Nicki Cantrell with the sheriff's
3 department; Kevin Bobo with the sheriff's department;
4 Joseph Bohon with the sheriff's department; Harry Cline
5 with the sheriff's department; David Hogsed with the
6 sheriff's department; Anita Mullinax with the sheriff's
7 department; Robert Shaffer with the sheriff's department;
8 Robert Rosenberg with the sheriff's department; Jack
9 Westmoreland with the sheriff's department; Margaret Greer
10 with the sheriff's department; Danielle Spivey, Complaining
11 Bishop Bowen. That's Ms. Bishop.

12 Okay. You've already stood.

13 Tim Bishop; Lynn McMillan employed with the Children's
14 Advocacy Center; Barry Cobb; Tony Cobb; Lenora Grizzle;
15 Jeannie Cobb; Son Cobb; Daughter Cobb; Tammy Clawson; Mike
16 Jones with the county detention facility; Sue Mobley, a
17 nurse with the Spartanburg Regional Medical Center; Pat
18 Ramsey, a nurse with the Regional Medical Center, Jean
19 Boutin, a nurse formerly with the Regional Medical Center;
20 Nicki Perry from the state law enforcement division; Jasper
21 Humbert, formerly with the state law enforcement division;
22 Sherri Brown with the state law enforcement division; Doris
23 Yarborough with the state law enforcement division; Micah
24 Roy, physician, Spartanburg Regional Medical Center.

25 Any other potential witnesses on behalf of the state?

Jury qualification

1 MS. JORDAN: No, sir, Your Honor.

2 THE COURT: The defendant?

3 MR. WHELCHER: No, sir, Your Honor.

4 THE COURT: All right. Does any juror know any of
5 those people that have been introduced to you? Have any
6 connection whatsoever? If so, please stand.

7 And he let me ask this too. If you know anybody who
8 is employed in the 7th Judicial Circuit Solicitor's Office
9 and-or the 7th Judicial Circuit Public Defender's Office, I
10 want you to stand also.

11 All right. I'll start on the front row and work my
12 way back. And then I will jump the aisle.

13 You, sir, give me your name and number, please, sir.

14 JUROR NO. 92: Jeff Gilbert, 92.

15 THE COURT: And who do you know?

16 JUROR NO. 92: Margaret Briggs. She's my
17 sister-in-law.

18 THE COURT: She's your sister-in-law?

19 JUROR NO. 92: Yes.

20 THE COURT: Would it have any bearing upon your
21 decision in the case?

22 JUROR NO. 92: No, sir.

23 THE COURT: Thank you. Be seated.

24 Yes, ma'am.

25 JUROR NO. 64: Sixty-four and --

Jury qualification

1 THE COURT: You said 64?

2 JUROR NO. 64: Sixty-four, yes, sir. I know Officer
3 Westmoreland with the county sheriff's department. Also,
4 my sister is director of the guardian ad litem program.

5 THE COURT: Would either of those facts have any
6 bearing upon your decision?

7 JUROR NO. 64: Probably so.

8 THE COURT: All right. We'll excuse Juror No. 64 from
9 service in the trial of this case. But don't leave yet.
10 Yes, sir.

11 JUROR NO. 70: Scott Duke, No. 70.

12 THE COURT: Who do you know?

13 JUROR NO. 70: I know Ms. Cantrell.

14 THE COURT: How do you know her?

15 JUROR NO. 70: Just from church.

16 THE COURT: Would it have any bearing upon your
17 decision?

18 JUROR NO. 70: No, sir, no, sir.

19 THE COURT: Thank you. Be seated.

20 Yes, sir.

21 JUROR NO. 293: William Wood, 293. Familiar with
22 several of the witnesses from the sheriff's department.

23 THE COURT: And how do you know them?

24 JUROR NO. 293: I've got 21 plus years in law
25 enforcement. I worked with some of them.

Jury qualification

1 THE COURT: All right. And would any of those
2 connections have any bearing upon your decision in the
3 case?

4 JUROR NO. 293: No, sir.

5 THE COURT: Thank you. Be seated.

6 Yes, sir.

7 JUROR NO. 226: Ken Roach, No. 226. I just know the
8 deputy solicitor, Derrick Bulsa.

9 THE COURT: And would that have any bearing upon your
10 decision in this case?

11 JUROR NO. 226: No, sir.

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

13 This is an event that the state alleges occurred back
14 on July the 10th of 2007, wherein they allege that the
15 defendant committed a sexual battery upon Complaining Witness
16 And they allege that this event occurred at the defendant's
17 residence on the Carolina Country Club Road located in the
18 Roebuck community of Spartanburg.

19 Does any juror think that you may have heard, seen or
20 read something about this case from some source? In other
21 words, have you been exposed to any type of information
22 that would relate to this particular case from any source?
23 If so, please stand.

24 (No response.)

25 THE COURT: Is there anything about the nature of the

Jury qualification

1 case itself, that is what the allegations are, that would
2 prevent any juror from being able to be fair and impartial
3 to both sides if you were called upon to serve in the case?
4 If so, please stand.

5 All right. I'm going to start with you, ma'am, if
6 you'll give me your name and your juror number.

7 JUROR NO. 95: Alma Glenn, 95.

8 THE COURT: And you have some reason why you think you
9 could not be fair in this trial?

10 JUROR NO. 95: Yes, sir.

11 THE COURT: All right. We'll excuse Juror No. 95.

12 JUROR NO. 92: Jeff Gilbert, No. 92.

13 THE COURT: Ninety-two. And, Mr. Gilbert, you feel
14 like you have some reason why you could not be fair in this
15 case?

16 JUROR NO. 92: Yes, sir.

17 THE COURT: All right. Well, I'll excuse you from
18 service in the case.

19 Yes, sir.

20 JUROR NO. 119: William Huffman, No. 119.

21 THE COURT: And, Mr. Huffman, do you have some reason
22 why you think you could not be fair and impartial in the
23 case?

24 JUROR NO. 119: Yes, sir.

25 THE COURT: All right. We'll excuse Juror 119.

Jury qualification

1 Yes, sir.

2 JUROR NO. 290: Daniel Wilson, 290.

3 THE COURT: And you have some reason why you believe
4 you could not be fair and impartial in the case?

5 JUROR NO. 290: Yes, sir.

6 THE COURT: All right. We'll excuse you from service
7 also.

8 Is there anyone else that has such a reason? If so,
9 please stand.

10 (No response.)

11 THE COURT: All right. Has any member of the jury
12 panel or any member of your immediate family -- an
13 immediate family member being defined as a parent, spouse,
14 child or sibling -- parent, spouse, child or sibling --
15 have you or any members of your immediate family ever been
16 the victim of any type of an assault, as well as have you
17 or a family member ever been accused of having committed
18 any type of an assault? If so, please stand.

19 All right. Mr. Gilbert, I'm glad you stood, but
20 you've already been excused, so you don't have to answer
21 any further questions.

22 You, sir.

23 JUROR NO. 124: No. 124, Richard Ireland.

24 THE COURT: 124. All right. And do you mind
25 answering the question standing where you are?

Jury qualification

1 JUROR NO. 124: No, I don't.

2 THE COURT: Okay. And were you or a family member the
3 victim of an assault, or were you or a family member
4 accused of having committed an assault?

5 JUROR NO. 124: Family member was a victim.

6 THE COURT: Okay. And what relation was the family
7 member to you?

8 JUROR NO. 124: Mother.

9 THE COURT: And was it a physical assault or was it a
10 physical and/or sexual assault?

11 JUROR NO. 124: It was a physical and sexual.

12 THE COURT: All right. And would anything about that
13 fact impair your ability to be fair and impartial in the
14 trial of this case?

15 JUROR NO. 124: Yes, it would.

16 THE COURT: All right. Well, we'll excuse Juror
17 No. 124 from service in the case.

18 Anyone else need to respond to that question?

19 (No response.)

20 THE COURT: Has any member of the jury panel ever been
21 called to testify as a witness in a criminal case, either
22 called by the prosecution or called by the defense? Have
23 you ever been called to testify as a witness in the trial
24 of a criminal case? If so, please stand.

25 All right. Mr. Wood, 293.

Jury qualification

1 JUROR NO. 293: Yes, sir.

2 THE COURT: And was that in your employment capacity?

3 JUROR NO. 293: Yes, sir.

4 THE COURT: Okay. Would it that any bearing upon your
5 decision?

6 JUROR NO. 293: No, sir.

7 THE COURT: Thank you. Be seated.

8 Does any member of the jury panel belong to any type
9 of organizations that might be characterized as law
10 enforcement support organizations or victims' rights
11 organizations or victims' advocacy types of organizations?

12 And those would include organizations like Mothers
13 Against Drunk Drivers, Citizens Against Violent Crime, the
14 South Carolina troopers' association, the honorary
15 sheriffs' association, the fraternal order of police, a
16 neighbor watch organization or any other similar type of
17 organization.

18 Do you belong to any or do you contribute time or
19 money to any of those organizations? If so, please stand.

20 All right. I'll start with you, ma'am, if you'll give
21 me your name and your number. And then tell me how the
22 question relates to you.

23 JUROR NO. 217: Yes, sir. I'm Kimberly Pritchett,
24 217. And I was working on my internship with -- affiliated
25 with Converse College at the Children's Advocacy Center.

Jury qualification

1 THE COURT: Okay.

2 JUROR NO. 217: That was the line of work I was going
3 into.

4 THE COURT: All right. Would that have any bearing
5 upon your decision in this case?

6 JUROR NO. 217: No, sir, not at all.

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

8 Yes, ma'am.

9 JUROR NO. 2: Juror No. 2, Elizabeth Allum. I donate
10 to the South Carolina sheriffs' association.

11 THE COURT: And would it have any bearing upon your
12 decision?

13 JUROR NO. 2: No, sir.

14 THE COURT: All right. And Mr. Wood, 293.

15 JUROR NO. 293: Yes, sir. F.O.P and the troopers'
16 association.

17 THE COURT: Would that have any bearing upon your
18 decision?

19 JUROR NO. 293: No, sir.

20 THE COURT: Thank you. Be seated.

21 Has any member of the jury panel ever been employed in
22 a law enforcement agency, or have any of your family
23 members, immediate family members, ever been employed in
24 any type of law enforcement agency -- civilian or military
25 police organizations? If so, please stand.

Jury qualification

1 Okay. I'll start with you, ma'am. Number, please.

2 JUROR NO. 144: 144.

3 THE COURT: How does that question relate to you?

4 JUROR NO. 144: My husband is a disabled correctional
5 officer from North Carolina State.

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

7 MR. WHELCHER: Could I get that number again?

8 THE COURT: 144.

9 MR. WHELCHER: Thank you, sir.

10 THE COURT: 217.

11 JUROR NO. 217: 217, Kimberly Pritchett. My brother
12 has recently retired and been affiliated with the
13 Spartanburg County Sheriff's Department, with SLED, and
14 also with the county department -- coroner facility.

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

16 Yes, ma'am, front row.

17 JUROR NO. 78: Seventy-eight, Sonya Crocker. Father,
18 military.

19 THE COURT: Thank you. Be seated.

20 Yes, ma'am.

21 JUROR NO. 246: 246. My brother and my nephew were
22 police officers.

23 THE COURT: Where?

24 JUROR NO. 246: My brother in Camden, and my nephew is
25 in, I think, Greer now.

Jury qualification

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

2 Yes, ma'am.

3 JUROR NO. 201: No. 201. My father was a police
4 officer in Spartanburg County -- Duncan.

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

6 And 293.

7 JUROR NO. 293: Yes, sir. I was employed by the
8 Department of Corrections, City of Spartanburg Public
9 Safety Department and Woodruff Police Department.

10 THE COURT: Any relatives employed?

11 JUROR NO. 293: No, sir.

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

13 Has any member of the jury panel already formed an
14 opinion as to how you think the case ought to be decided
15 based upon what you've heard up to this point or based upon
16 any other consideration? Have you already made up your
17 mind or formed any opinion as to the outcome? If so,
18 please stand.

19 (No response.)

20 THE COURT: Does any juror know of any reason at all
21 why you think you could not be fair and impartial if you
22 were called upon to serve as a juror in this particular
23 case? Do you have any reason at all why you think you
24 could not be fair in this case? If so, please stand.

25 (No response.)

Jury qualification

1 THE COURT: Any other questions requested by the
2 state?

3 MS. JORDAN: No, sir, Your Honor.

4 THE COURT: The defendant?

5 MR. WHELCHER: None, Your Honor.

6 THE COURT: All right. Has everybody in this panel
7 participated in jury selection in a criminal case? You
8 know, Monday was a civil case. Judge Hayes picked a jury
9 next door I think this morning. That was a criminal case,
10 and this is a criminal case over here. So everybody knows
11 you got to come forward and face.

12 Okay. All right. As your name is called please come
13 forward. Each side -- the bailiff will show you where.
14 And if both agree to have you seated you will be having a
15 seat in the jury box to your right and to my left.

16 (Whereupon, a jury was impaneled.)

17 THE COURT: Those selected, please go with the bailiff
18 to the jury room, and I will bring you back in just a few
19 minutes.

20 (The following takes place outside the presence of the
21 jury.)

22 THE COURT: Are there any matters that need to be
23 addressed regarding jury selection by the state?

24 MS. JORDAN: No, sir, Your Honor.

25 THE COURT: The defendant?

1 MR. WHELCHEL: None, Your Honor.

2 (Whereupon, the remaining members of the jury venire
3 were excused.)

4 THE COURT: Any matters to address prior to the jury
5 being sworn?

6 MS. JORDAN: None from the state, Your Honor.

7 MR. WHELCHEL: No, sir.

8 THE COURT: All right. Bring the jury in. Ask
9 Mr. Coley to take the foreperson's seat -- Mr. Coley.

10 (The following takes place in the presence of the
11 jury.)

12 THE COURT: All right. Ladies and gentlemen, we are
13 ready to begin with the trial.

14 Mr. Coley, I'm going to ask you to serve as the
15 foreperson of the jury. As the foreperson you'll have
16 three duties none of the other jurors will have.

17 First, you're going to be asked to serve as the
18 spokesperson for the jury. And so if during this trial
19 something arises that needs to be brought to my attention,
20 you or a fellow juror has some difficulty, problem or
21 question, it'll be you who will let me know of that fact.
22 And I'll try to address it.

23 Secondly, you're going to be called upon to preside
24 over jury deliberations when the time comes. That of
25 course won't be until the end of the trial after all of the

1 evidence has been received and I've instructed you on the
2 law that's applicable in the case. But when the does --
3 when the time does come for jury deliberations you are
4 going to be called upon to preside over that process in the
5 jury room simply to ensure that those deliberations are
6 carried out in some orderly fashion.

7 Thirdly, you're going to be asked to actually write
8 the verdict or the decision of the jury. You'll do that on
9 a form that I'll provide you at the trial's conclusion on
10 which you will indicate the jury's unanimous decision.

11 Now, the foreperson has those duties that I have just
12 indicated. That doesn't mean he's any more important than
13 any of you other jurors, because the decision of a jury
14 panel is the unanimous consensus opinion of all 12 jurors.
15 And so all of you will have an equal say and an equal vote
16 in what the ultimate decision in the case will be.

17 Someone simply has to be delegated those
18 responsibilities that I have just indicated, and I have
19 delegated those to Mr. Coley in appointing him as the
20 foreperson. But each of you jurors are equally important
21 so far as the ultimate decision is concerned, because, as I
22 have stated, the verdict has to be unanimous. All of you
23 must be in agreement.

24 Ms. Smith, you've been selected as an alternate juror.
25 The function of an alternate is to take the place of one of

Jury sworn

1 the original 12 if during the trial one of these 12 cannot
2 continue to serve.

3 So it is important that you pay just as careful
4 attention as we ask of all of the jurors in the case
5 because it does occur from time to time for one reason or
6 another one of these 12 may be unable to continue. In that
7 event you take their place. You become the 12th.

8 So we do appreciate your participation as an alternate
9 juror, just as we appreciate the participation of each of
10 you jurors who have been selected for the purpose of
11 deciding the verdict in this case.

12 You may swear the panel.

13 (Whereupon, the jury was duly sworn.)

14 THE COURT: All right. Ladies and gentlemen, as you
15 know, you've been selected to decide the verdict in the
16 case of the State vs. Joseph Gabriel Cobb.

17 As you know, he's been accused of the crime of
18 criminal sexual conduct with a minor in the second degree.

19 The state alleges by way of an indictment, which is a
20 charging document, that the defendant, Mr. Cobb, did here
21 in Spartanburg County on July the 10th of 2007 commit the
22 crime of criminal sexual conduct with a minor in the second
23 degree in that he did commit a sexual battery upon Complainant
24 Bishop who was less than 16 years of age but more than 14
25 years of age, or 14 or more, at the time of the event, and

1 that he was older than was she.

2 As you know, as to those allegations he's entered a
3 plea of not guilty. As I told you, that plea of not guilty
4 places upon the state the burden of proving what they have
5 set forth in the indictment, and therefore the burden of
6 proving each of the essential elements of the crime, and
7 therefore the burden of proving that the defendant is
8 guilty of the crime they allege he committed.

9 Now, the way the trial will proceed is that in a
10 moment the lawyers will address you in opening statements.

11 There are two occasions in a trial where lawyers can
12 address the jury, and that is at the beginning before any
13 evidence is introduced and then at the end of the trial
14 after all of the evidence has been received.

15 But the lawyers' statements aren't evidence, and
16 that's because they're not witnesses to anything. They
17 don't know anything about this case of their own personal
18 knowledge or experience. They're not going to take the
19 witness stand. They're not going to testify under oath.
20 They're not going to be subjected to direct and
21 cross-examination like witnesses will be. And so what they
22 tell you is not to be considered by you as evidence. But
23 you should listen to what they have to say because the
24 statements serve a purpose.

25 The opening statements will serve to provide you with

1 a basic understanding as to what this case is about from
2 both the perspective of the state and of the defense so
3 that you'll have some context in which to place the
4 evidence that will be received shortly thereafter.

5 The closing statements, again, are not considered --
6 are not to be considered as evidence. But it does afford
7 the lawyers an opportunity to discuss with you the evidence
8 that you have seen and heard during the trial.

9 And through that discussion each will have an
10 opportunity to try to persuade you or to convince you that
11 that evidence does or does not support a particular
12 decision. It's in between those statements that we receive
13 the evidence upon which you will base your decision.

14 And, as you know, the state has the burden of proof.
15 They brought the accusation. They made the charge. They
16 have the burden of establishing the defendant's guilt
17 beyond a reasonable doubt. And so they will go forward
18 first in their presentation of evidence, because they have
19 the burden of proof.

20 A defendant has no burden of proof. A defendant does
21 not have to testify, does not have to call any witnesses.
22 The burden is not upon a defendant to prove that he or she
23 is not guilty or to prove that he or she is innocent
24 because in some cases that might not even be a possibility.
25 However a defendant is afforded an opportunity to testify

1 or present evidence should he or she wish to do so.

2 After all of the evidence has been received and you
3 hear the final summations of the lawyers, I will then
4 instruct you fully on the law that's applicable in a case
5 like this.

6 After that you'll be asked to go back and begin with
7 your deliberations. In that process you'll examine all of
8 the evidence. From that evidence you'll decide what you
9 believe to be the true facts as they relate to these
10 allegations. And after you decide the facts you'll apply
11 the law that I will have provided you.

12 You will determine whether or not the defendant has
13 been proven guilty of criminal sexual conduct with a minor
14 in the second degree beyond a reasonable doubt. And if he
15 has, then your verdict is guilty. If he has not, then your
16 verdict is not guilty.

17 All that we're going to ask for you to do is to pay
18 careful attention throughout the course of the trial.
19 There might be several witnesses that testify during the
20 case.

21 Sometimes by the time you get done you've had a number
22 of witnesses testify, and sometimes they've testified
23 contrary to another or in conflict or there's some facts in
24 dispute. And if that's the case and those facts relate to
25 a material element that has to be established in order for

1 you to arrive at a decision, it is you who must determine
2 what is the most credible and believable evidence. And
3 that's the evidence you'll accept. And you'll reject any
4 testimony or evidence that you find not to be credible or
5 believable.

6 And that's why it's important to pay careful attention
7 throughout the trial, because it may be that you'll have to
8 evaluate and assess a particular witness' credibility and
9 believability. And in order to do that fairly you've got
10 to judge that testimony in light of not just that witness'
11 testimony but in light of all of the testimony and all of
12 the evidence in the case. So pay attention throughout the
13 course of the trial.

14 It's also important that you keep an open mind
15 throughout the course of the trial. And that just means
16 that you are not to begin making up your minds or
17 formulating your opinions as to what you think the ultimate
18 decision in the case ought to be until all of the evidence
19 has been received, until I have instructed you on the law
20 and until you've been asked to begin jury deliberations.
21 That is the process that is designed for you 12 jurors to
22 arrive at a fair and just decision in the case.

23 So I do want to thank you in advance for your
24 participation, as well as for your careful attention. I
25 would ask that you please give the lawyers your attention

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1 now as they give you their opening statements.

2 Ms. Jordan.

3 MS. JORDAN: Your Honor, may I approach?

4 THE COURT: Yes.

5 (Bench conference held off the record in the presence
6 of the jury but out of the hearing of the jury.)

7 MS. JORDAN: May it please the Court.

8 THE COURT: Ms. Jordan.

9 MS. JORDAN: Ladies and gentlemen of the jury, as
10 you've heard, this is a case involving the defendant. He
11 is charged with criminal sexual conduct with a minor in the
12 second degree.

13 The victim in this case was 15 years old back on
14 July the 10th of 2007. She's seated just behind me here.

15 The defendant and the victim knew each other. The
16 defendant is related to the victim's dad. They're distant
17 cousins. They knew each other. They'd spent time
18 together. She was over at his house on several occasions,
19 vice versa. They were family.

20 On the night of or on the day of July the 9th of 2010
21 the victim, Complaining went over to the defendant's home
22 that he shared with his wife, Jeannie Cobb.

23 The judge told you that was on Country Club Road. She
24 went over there to babysit their kids. They had three
25 children at the time.

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1 Later on that night the defendant and the victim I
2 believe went to some -- I'm sorry. The defendant and his
3 wife went to brother's house and came back. All the kids
4 were in one bedroom. And you'll hear from testimony that
5 inside of one of the bedrooms there was a regular bed or a
6 twin bed, and then on the floor was a mattress.

7 You're going to hear that everybody was watching some
8 movies, and then it was time to go to bed. After midnight
9 the victim and the defendant's five-year-old son were
10 laying in the twin bed. The defendant and his wife were
11 down on the mattress on the floor.

12 The victim got up at some point after midnight, the
13 morning of July the 10th, and went to the bathroom to take
14 a shower. She said it was nothing unusual, that she'd done
15 before. She waited until the five-year-old Son had
16 fallen asleep.

17 She got up to take a shower. The bathroom was just
18 outside the bedroom door.

19 When she got out of the bathroom the defendant walked
20 in. She said he walked in and pushed her down on the
21 ground and held her down and penetrated her with his penis
22 in her vagina.

23 You're going to hear from Complaining She's going to
24 tell you about what happened that night in the bathroom at
25 that residence when she was 15.

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1 Ladies and gentlemen, she went the next day. The next
2 day she was taken home to her dad and his live-in
3 girlfriend. They'd been together over ten years. She was
4 taken home to them.

5 The first thing she did when she walked in she told
6 her step-mom, Danielle, what happened.

7 She was taken to the emergency room where a rape kit
8 was performed on her. She spoke to nurses there that
9 night; she spoke to law enforcement that night. She later
10 went to the Children's Advocacy Center. And you're going
11 to hear from various people that she spoke to.

12 Ladies and gentlemen, in addition to what you're going
13 to hear from Complaining you're also going to hear from the
14 nurses who treated her that night, you're going to hear
15 from law enforcement officers who spoke with Complaining and
16 who spoke to the defendant.

17 You're also going to hear from individuals from the
18 state law enforcement division, or SLED as we call them.
19 And they're going to talk to you about what they found in
20 Complaining rape kit when it was sent down and tested by
21 them.

22 Ladies and gentlemen, we do have to prove beyond a
23 reasonable doubt to prove every element of criminal sexual
24 conduct with a minor in the second degree.

25 Criminal sexual conduct with a minor in the second

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1 degree, we have to prove that the defendant committed a
2 sexual battery on the victim and that she was, as the judge
3 told you, between 14 and 16. You're going to hear she was
4 15. You're going to hear the defendant was older than her.
5 He was in his 40's at that time.

6 Sexual battery is any intrusion, however slight, in
7 the vaginal or oral or anal area of the victim. Just
8 remember any intrusion, however slight, is a sexual
9 battery.

10 One thing that I love about the criminal justice
11 system is that no one asks the members of the jury to check
12 their common sense at the courthouse steps, because you get
13 to bring that in here and collectively as a group of 12
14 listen to the facts, listen to all the evidence that's
15 presented and make a decision.

16 This is one of the things I love, that you get to come
17 in here with your common sense. And I'm going to ask that
18 you listen to all that you hear, to the officers, to the
19 victim, to the nurses, to everything in this case. And at
20 the end I'll be back to talk to you and ask you to return a
21 verdict of guilty.

22 THE COURT: Mr. Whelchel.

23 MR. WHELCHER: Mr. Foreman and ladies and gentlemen of
24 the jury, I represent Joseph Cobb, as you've already been
25 told. But what you need to understand I think the judge

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1 has already told you, but I need to emphasize this at this
2 point.

3 Joseph Cobb is not guilty -- Joseph Cobb is not
4 guilty. Every person who sits at that table or a table
5 like that in courtrooms across this state and country is
6 presumed innocent under the law of our land -- presumed
7 innocent under the law of our land.

8 Now, the burden of proving -- as the judge has told
9 you earlier -- the burden of proving that somebody is
10 guilty lies with the state. That's why you see the state
11 and all of these witnesses and all of these people from the
12 police department and SLED and everywhere else, because
13 they have to prove to you and you and you and all of you as
14 a collective body that what they say in this indictment
15 actually happened and that Joseph Cobb did what they say
16 that he did.

17 Now, because they have the burden of proof they are
18 required obviously to go first. And you'll hear from all
19 of their witnesses.

20 The judge has already told you this. Joseph Cobb
21 doesn't have to testify. Joseph Cobb doesn't have to put
22 up any witnesses or any kind of paperwork.

23 Joseph Cobb has no burden of proof, no burden of any
24 kind whatsoever today and as we go throughout this trial.
25 You need to understand that. There can't be questions,

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1 well, what if, why didn't. He is not required to prove
2 anything to you.

3 The prosecutor and I have known each other for a
4 while. We don't need to talk about how long. And we do
5 agree on this. When he walked in that door and on Monday
6 when you were sworn in or selected as a jury panel, and
7 then today when you were sworn in for this one, we do not
8 want your common sense checked at that door.

9 That's why there's 12 of you. That's why we don't
10 have a bunch of lawyers decide this all of the time,
11 because you couldn't get 12 lawyers to agree that I'm fat.
12 Pretty obvious. But you couldn't get them to do it. Well,
13 maybe if I picked them you could.

14 But that's why you're here. You're here because
15 there's a dispute. Obviously, if we didn't have a dispute,
16 if there were no disagreement, we wouldn't need you.

17 And simply because the state has said that this
18 happened does not mean that it happened or that it happened
19 in the way that they say it happened or that it happened at
20 all, because the state has the burden of proving to you
21 with evidence so strong and so convincing that it removes
22 the cloak or the presumption of innocence from Joe Cobb.

23 That's their burden. They have to prove to you as a
24 collective body of 12 and individually that what they say
25 happened, how is it it happened, and when they say it

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1 happened.

2 There are elements that they must prove to you. Those
3 are simply the requirements of a particular crime. And
4 they must prove all of those to you.

5 You'll hear a charge from the judge at the end of this
6 case. He's already told you some of the stuff that I'm
7 talking about. But what we need for you is simply this --
8 your attention, your common sense, because you are the
9 deciders of the facts.

10 Just because somebody said this happened this way
11 doesn't mean it did. You decide what you believe. And the
12 judge I think may have already told you. You can decide to
13 believe part of what a witness says and not believe another
14 part of what a witness says. But if he hasn't told you
15 that already I'm sure he will at the closing charge.

16 So that's why you're here. You listen to the facts.
17 Everybody has got a job here. The judge determines what
18 the law is. You determine what the facts are by listening
19 to testimony and whatever is put in as physical evidence
20 and then deciding does this add up, do I believe this.

21 And there's no magic formula. You decide today and in
22 the coming days on this case whether or not you believe
23 something or someone the same way you decide it every day
24 when you're talking to your husbands or wives or sisters or
25 brothers or coworkers or children. It's kind of like, you

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1 know, when you're -- I had this happen to me recently. I
2 had my son. I was having some problems with my car, and so
3 he came and picked me up -- came and picked me up in the
4 truck, and I was in the car. And we got it jumped off.

5 When I left the parking lot the car was fine, I mean,
6 the truck was fine. But when he got it home somebody had
7 hit the back end of the truck. I didn't notice it when I
8 went out to see earlier. And he says, well, I didn't do
9 it. Kind of suspect.

10 That's what you do. That paint didn't just jump off
11 my truck. Something happened to it. It's obvious.

12 But that's your job. You decide what you believe or
13 if you believe it or if you think everything that is
14 alleged has happened the way it's presented to you or if
15 there's another reason possibly that somebody might be
16 telling you this. And ultimately it is your job to deliver
17 a verdict, a unanimous verdict. All 12 of you must agree.
18 If you listen to what's presented and then listen to what
19 the judge tells you the law is you can reach a verdict in
20 this case.

21 Verdict just means to speak the truth. It's a
22 combination of two Latin words. That's all I ask of you.
23 Listen to what's testified or what's alleged through
24 testimony. And remember while all of this is going on
25 Joseph Cobb is innocent. He's not guilty by law. Thank

1 you.

2 THE COURT: Ladies and gentlemen, we're going to break
3 for lunch.

4 Let me caution you before you go. During the course
5 of this trial you're never permitted to talk about the case
6 with any person in any fashion whatsoever. That includes
7 your fellow jurors. You can only discuss it during
8 deliberations, and that's not until the end of the trial
9 after the evidence has been received. So during the break
10 or any other time no discussions about the case until
11 you're asked to begin deliberations.

12 Also, you can't conduct your own research or do your
13 own investigation into any issue that might arise during
14 the course of the trial. You have to base your decision on
15 what you see and hear during the trial. You can't
16 supplement that knowledge by way of outside research.

17 And I don't know that there'll be any media coverage,
18 but you can't be exposed to any type of media coverage that
19 relates to a case either. So if something should appear on
20 television, radio or newspaper avoid it.

21 Do have a good lunch, and please report to your jury
22 room at 2:30, at 2:30 this afternoon.

23 (The following takes place outside the presence of the
24 jury.)

25 THE COURT: Court's in recess until 2:30.

1 (Whereupon, a recess was taken.)

2 THE COURT: All right. Any matters to address before
3 the jury is brought in?

4 MS. JORDAN: Your Honor, I believe there is.

5 My officer was apparently caught behind a wreck and is
6 on her way. She has the evidence that I needed to have
7 premarked that I'll be showing to the witnesses who would
8 be fourth and fifth.

9 We do have issues as far as the written -- the three
10 different statements that he gave and what we've agreed
11 upon as far as redactions.

12 Your Honor, it's my understanding from Mr. Whelchel
13 that he's not requesting a Jackson vs. Denno hearing in
14 that he's not going to be contesting the voluntariness of
15 the statement that was given.

16 Based upon that I'll let the Court know that the
17 defendant gave what I would deem as three statements. One
18 was an oral statement to Detective Cantrell on July the
19 10th. The second was same date a written statement; and
20 the third was a video-taped statement the following day.

21 As to the oral statement, I believe Mr. Whelchel and I
22 have agreed, and they're bringing down an extra copy so I
23 can provide it to the Court of what we intend to introduce
24 from that. But we have agreed to take out or we have
25 agreed to place this on the record as far as what he told

1 Detective Cantrell.

2 "I asked him if he knew what he was being accused of.
3 He said that he did not know for sure. I told him that
4 Complaining stated that he raped her on the bathroom floor.
5 He insisted that he did not rape her. I explained to him
6 that she went to Spartanburg Regional and had a rape kit
7 done. I explained to him that if he had sexual intercourse
8 with Complaining more than likely his D.N.A. would be found in
9 her rape kit. He stated that his D.N.A. might be found
10 inside her kit, but he denied having sex with her. He
11 explained that by saying when he went to bed the night of
12 the incident he was wearing boxers and he was trying to
13 arouse his wife. He stated that his wife turned him down
14 but he precame in his boxers. He stated, he said that he
15 went to the bathroom and changed boxers. He stated that he
16 went back to bed. Immediately after that Complaining went to
17 the bathroom. He stated that she must have gotten his
18 D.N.A. off his boxers."

19 Detective Cantrell states that she told him that was
20 very unlikely and asked him why he thought that Complaining
21 would have made these allegations. He said that -- he said
22 that he was trying to help Complaining because her parents are
23 divorced and she is pulled back and forth between them."

24 We are in here agreeing to take out, "He stated that
25 she suffers from depression and has a lot of problems.

1 She -- he stated that Complaining talked to him in the past
2 because she thought she might be pregnant from her
3 boyfriend. He said that she was around people that used
4 drugs." We've agreed to take those out.

5 The next part is that Jos -- that we've agreed that
6 comes in is, "Joseph stated that" -- I apologize. There's
7 a hole punch on my copy.

8 THE COURT: Well, let me ask you this. Rather than
9 just reading that do you have a copy of that statement that
10 you can either highlight the portions y'all have agreed to
11 admit or highlight the portions you've agreed to exclude?

12 MS. JORDAN: We did, we do, Your Honor, and I
13 apparently have left that extra copies that I made
14 upstairs, and they could not find it for me. If I might
15 have a second I can get another copy.

16 THE COURT: Okay.

17 MS. JORDAN: Your Honor, I'll move on to the written
18 statement.

19 THE COURT: Okay.

20 MS. JORDAN: We've agreed to take out just a few, one
21 line and one word out of another line if I may approach the
22 Court.

23 As I've shown Mr. Whelchel, one copy is blacked out
24 with a marker. One copy is marked out with white-out. I
25 didn't know which the Court would prefer to use. We took

1 out a statement that says, "And I went to anger management
2 classes at Carolina Counseling."

3 And then further down we took out the word "parenting"
4 as to which class his wife had to go to. Those were the
5 words that we removed from that statement.

6 THE COURT: All right. Well, Mr. Whelchel, do you
7 have a copy of the redacted statement?

8 MR. WHELCHER: Not yet, Your Honor, but I know they're
9 working on it. But I reviewed that already.

10 MS. JORDAN: I showed him both of those.

11 THE COURT: Well, yeah. You're in agreement that
12 that's to be admitted?

13 MR. WHELCHER: Yes, sir. I can just keep this one,
14 Your Honor, if that's all right.

15 THE COURT: Okay.

16 MS. JORDAN: Your Honor, finally as to the video-taped
17 statement.

18 THE COURT: Let me do this before we go any further.

19 Mr. Whelchel, you have talked to Mr. Cobb about his
20 right for the Court to conduct a hearing in order to
21 determine the voluntariness of any statement he is alleged
22 to have made?

23 MR. WHELCHER: Yes, sir.

24 THE COURT: And after that discussion did you and he
25 determine whether or not such a hearing is desirable?

1 MR. WHELCHER: Yes, sir, we did. We didn't think --
2 we didn't think it was desirable at this point.

3 THE COURT: And are you and he in agreement that the
4 statements attributed to your client were voluntarily
5 made --

6 MR. WHELCHER: Yes, sir.

7 THE COURT: -- and he was not under any coercion or
8 pressure or promise of reward?

9 MR. WHELCHER: No, sir.

10 THE COURT: Mr. Cobb, did you understand what I just
11 engaged in, discussions with your lawyer?

12 THE DEFENDANT: Yes, sir, Your Honor.

13 THE COURT: Are you in agreement with his position
14 that any statement you made to law enforcement was, in
15 fact, made freely and voluntarily?

16 THE DEFENDANT: Yes, sir, Your Honor.

17 THE COURT: Do you understand you do have the right to
18 have the Court conduct a hearing?

19 THE DEFENDANT: Yes, sir, Your Honor.

20 THE COURT: But you do not wish for the Court to
21 conduct that hearing?

22 THE DEFENDANT: Not on this basis, no.

23 THE COURT: Sir?

24 THE DEFENDANT: No, sir, Your Honor.

25 THE COURT: You're in agreement that the statements

1 were voluntarily made by you.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. Next is the video.

4 MS. JORDAN: Yes, Your Honor, the next thing we have
5 is the video.

6 Although Mr. Whelchel has -- Mr. Whelchel and I have
7 talked about the eight seconds that we took out. He has
8 not listened to it to see if he's in agreement with the
9 redaction that was made by someone in our office. But we
10 took out -- Ms. Cantrell asked the defendant on the record
11 if he was afraid to tell the truth the night before based
12 upon his prior dealings with the system, to which he
13 responded yes. We took that out by editing it out.

14 I have not shared that with Mr. Whelchel yet. If all
15 goes according to plan I would not think that Ms. Cantrell
16 will take the stand until the morning.

17 THE COURT: Okay. All right. So we have the
18 substance of the oral statement which y'all are in
19 agreement on?

20 MR. WHELCHER: I haven't seen the redacted copy yet,
21 Your Honor, but that's coming to me. I don't think that
22 would be a problem.

23 MS. JORDAN: I apologize, Your Honor. I made copies
24 before I came down here, and I have just misplaced them.
25 They're taking care of that right now.

1 THE COURT: Oh, well, I didn't understand. You've
2 never had a copy of that.

3 MR. WHELCHER: No, sir. I've seen the one she brought
4 down here, but there are others things we agreed on --

5 THE COURT: Okay.

6 MR. WHELCHER: -- since that need to be removed.

7 MS. JORDAN: He wanted more taken out, and I agreed to
8 take the extra stuff out.

9 MR. WHELCHER: But if they're not going to get to that
10 until the morning I don't think it's going to be a problem,
11 Your Honor.

12 MS. JORDAN: I don't think we will.

13 THE COURT: Okay. Well, just be sure we address that
14 by the end of the day or first thing in the morning.

15 MS. JORDAN: Yes, sir. And, Your Honor, I plan
16 through my first witness seek to introduce eight pictures
17 that I've placed on Mr. Whelcher's desk to see if he has
18 any objection to them.

19 Your Honor, if we could place on the record,
20 Mr. Whelcher I believe is going to make a motion to
21 sequester.

22 I would ask that my victim of course remain present,
23 along with my lead officer. I will have her father and her
24 step-mother exit the courtroom.

25 THE COURT: Okay.

1 MS. JORDAN: And her mother is listed as a victim --
2 as a witness on my witness list, however I am not calling
3 her. So I would ask that she be allowed to remain if
4 possible. And that's it.

5 THE COURT: Okay.

6 MR. WHELCHER: No objection, Your Honor.

7 MS. JORDAN: They're my second and third witnesses.
8 They're just going to step right outside.

9 THE COURT: Okay. All right. Anything else we need
10 to address?

11 MS. JORDAN: No, sir.

12 THE COURT: All right. Bring the jury in, please,
13 sir.

14 (Photographs marked State's Exhibits No. 1 through 8
15 for Identification; Miranda form marked State's Exhibit No.
16 9 for Identification; written statement marked State's
17 Exhibit No. 10 for Identification; Miranda form marked
18 State's Exhibit No. 11 for Identification; statement on
19 video marked State's Exhibit No. 12 for Identification;
20 defendant's buccal swab marked State's Exhibit No. 13 for
21 Identification; victim's swab of left breast marked State's
22 Exhibit No. 14 for Identification; victim's swab of right
23 breast marked State's Exhibit No. 15 for Identification;
24 victim's swab of left side neck marked State's Exhibit No.
25 16 for Identification; victim's swab of mid lower abdomen

Complaining Witness

Direct examination by Ms. Jordan

1 marked State's Exhibit No. 17 for Identification; victim's
2 swab of mid center chest marked State's Exhibit No. 18 for
3 Identification; victim's swab of right side neck marked
4 State's Exhibit No. 19 for Identification; victim's swab of
5 vagina marked State's Exhibit No. 20 for Identification;
6 oral swab of victim marked State's Exhibit No. 21 for
7 Identification; victim's standard marked State's Exhibit
8 No. 22 for Identification; victim's fingernail scrapings
9 from left hand marked State's Exhibit No. 23 for
10 Identification; victim's fingernail scrapings from right
11 hand marked State's Exhibit No. 24 for Identification.)

12 (The following takes place in the presence of the
13 jury.)

14 THE COURT: Good afternoon, ladies and gentlemen.

15 We are ready to begin with the reception of evidence,
16 so we'll begin with the state's presentation.

17 Ms. Jordan.

18 MS. JORDAN: Thank you, Your Honor. The state's first
19 witness is Complaining Witness

20 Complaining Witness having
21 been first duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MS. JORDAN

23 Q Will you state your full name for the jury?

24 A Complaining Witness

25 Q What is your date of birth?

Complaining Witness

Direct examination by Ms. Jordan

1 A

2 Q Okay. How old are you now?

3 A I'm 18.

4 Q Okay. Back in July of 2007 how old were you?

5 A Fifteen.

6 Q Okay. In July of 2007 who did you live with?

7 A I lived with -- I was back and forth. I lived with my
8 mother and my father. They had joint custody.

9 Q Okay. Who else lived with your dad?

10 A My step-mother and my brother at the time.

11 Q Okay. What is your dad's name?

12 A Timothy Bishop.

13 Q What is your step-mom's name?

14 A Danielle Spivey.

15 Q Okay. Now, if I understand, your dad and step-mom are
16 not married, they just lived together for a while.

17 A Yes, ma'am.

18 Q Okay. Do you know the defendant, Joe Cobb?

19 A Yes, ma'am.

20 Q How do you know him?

21 A He is my father's first cousin, so my second.

22 Q Okay. So you guys are related by blood?

23 A Yes, ma'am.

24 Q Okay. Were you -- was your dad close to the
25 defendant?

Complaining Witness

Direct examination by Ms. Jordan

- 1 A Yes, ma'am.
- 2 Q Okay. Did you spend time with the defendant?
- 3 A Yes, ma'am.
- 4 Q Did you spend time at his home?
- 5 A Yes, ma'am.
- 6 Q Okay. Could you tell the jury, back in July of 2007,
- 7 who lived at the house with the defendant?
- 8 A Him, his wife Jeannie, their son, Son and their
- 9 daughters Daughter and Daughter
- 10 Q Okay. Approximately how old were Son Daughter and
- 11 Daughter 2
- 12 A Five.
- 13 Q Who was five?
- 14 A Son
- 15 Q Okay. Daughter was?
- 16 A I believe she was six or seven.
- 17 Q Okay. And --
- 18 A And Daughter was nine.
- 19 Q Okay. Did you see the defendant regularly?
- 20 A Yes, ma'am.
- 21 Q Okay. And you also visited his home?
- 22 A Yes, ma'am.
- 23 Q On July the 9th of 2007 did you go to the defendant's
- 24 home?
- 25 A Yes, ma'am.

Complaining Witness

Direct examination by Ms. Jordan

1 Q Okay. I'm going to show you what's previously been
2 marked as State's Exhibit No. 1 and ask if you recognize
3 this photograph.

4 A Yes, ma'am.

5 Q Okay. Could you tell me what this is a photograph of?

6 A It's a photograph of their home.

7 Q Okay. Is this the house that you went to on July the
8 9th of 2007?

9 A Yes, ma'am.

10 MS. JORDAN: Your Honor, at this time the state would
11 move to admit State's Exhibit No. 1.

12 MR. WHELCHER: No objection, Your Honor.

13 THE COURT: It's admitted.

14 (Photograph marked State's Exhibit No. 1.)

15 Q Complaining do you know where this house was located
16 back in July of '07?

17 A Spartanburg County.

18 Q Okay. What was the purpose or why did you go to their
19 home that night?

20 A They were supposed to be going out for an anniversary
21 dinner or a date, and they ended up --

22 Q Who is they?

23 A Jeannie and Joseph.

24 Q Okay.

25 A And they ended up staying at home and went to a

Complaining Witness
Direct examination by Ms. Jordan

- 1 sister's house, which is pretty much the neighbor.
- 2 Q Okay. Did you stay at home with the children?
- 3 A Yes, ma'am.
- 4 Q What happened later in that day, in that evening?
- 5 A We sat around. I sat around with the kids. We
- 6 watched movies. And then later that night they come back
- 7 home.
- 8 Q Okay. Where did you watch movies?
- 9 A In Joseph and Jeannie's bedroom.
- 10 Q Okay. I'm going to show you a couple of more
- 11 photographs, State's 2 through 8, and just ask you to look
- 12 through those photographs. Do you recognize the items in
- 13 those photographs?
- 14 A Yes, ma'am.
- 15 Q Okay. Starting with State's No. 2 on top can you tell
- 16 me what that is a picture of?
- 17 A That is the hallway going into, leading into, the
- 18 bathroom at the bedroom.
- 19 Q Okay. Would you tell me what this picture of State's
- 20 No. -- what is pictured in State's No. 3?
- 21 A That is a picture of the bedroom.
- 22 Q Okay. State's No. 4.
- 23 A The bathroom.
- 24 Q Five.
- 25 A Bathroom.

Complaining Witness

Direct examination by Ms. Jordan

1 Q Six.

2 A A picture of their bed.

3 Q Okay. Seven.

4 A A picture of both the beds in their room.

5 Q Okay. And No. 8.

6 A A picture of their room.

7 Q Okay. Do those accurately depict how their residence
8 looked back in July of 2007?

9 A Yes, ma'am.

10 MS. JORDAN: Your Honor, at this time we'd move
11 State's 2 through 8 in.

12 MR. WHELCHER: No objection.

13 THE COURT: They're admitted.

14 (Photographs marked State's Exhibits Nos. 2 through
15 8.)

16 Q Complaining what happened that night once Joe and
17 Jeannie returned home?

18 A We all sat around for a little while -- me, Jeannie
19 and the kids and Joe. And shortly after they told the
20 girls to go ahead and go to bed. The five-year old Son
21 had fell asleep. Then when he fell asleep I continued to
22 get up and go take a shower.

23 Q Okay. I'm going to show you once again State's
24 Exhibit No. 8. Could you tell the jury again with them
25 looking at it what this is a photograph of?

Complaining Witness
Direct examination by Ms. Jordan

1 A A picture of their bedroom.

2 Q Okay. In State's No. 7 there are two beds. Could you
3 explain to the jury who was in each bed?

4 A The mattress on the floor is where Jeannie and Joe
5 slept. And the, the bed beside that is where the
6 five-year-old slept.

7 Q Okay. Which bed were you in?

8 A I was in the bed with the five-year-old.

9 Q Okay. Is that where you were watching television?

10 A Yes, ma'am.

11 Q When you went to the bathroom, do you know about what
12 time it was?

13 A It was around 1:00 or 1:30 a.m.

14 Q Okay. When you went to the restroom what did you do?

15 A I hung a towel on the outside of the door because I
16 was going to take a shower. Their bathroom door doesn't
17 lock. And I proceeded to take a shower.

18 Q Okay. Had you taken showers at their home before?

19 A Yes, ma'am.

20 Q Okay. What -- tell the jury what happened when you
21 stepped out of the shower.

22 A I stepped out of the shower and I had my clothes
23 laying on the very outside of the door where the washer and
24 the dryer is, and I reached around to grab my clothes. And
25 that's when Joseph Cobb walked in the restroom or in the

Complaining Witness

Direct examination by Ms. Jordan

1 bathroom.

2 Q Okay. Were you dressed at that time?

3 A I had a towel on.

4 Q Okay. How was the defendant dressed?

5 A He had on boxers and a tank top.

6 Q Okay. Was that unusual that he walked into the
7 bathroom when you were in there?

8 A Yes, ma'am.

9 Q What happened next?

10 A He come in and he pulled my towel off. He pushed me
11 down on the floor on my stomach, and then he proceeded to
12 rub on me. And he flipped me over. And then we had
13 penetration. He put his penis inside of me.

14 Q Complaining when you say that he touched or he rubbed
15 all over you, can you explain to me what you mean by that?

16 A He was just like rubbing his hand around my shoulders
17 and around the lower part of my back.

18 Q Okay. Could you also explain to the jury, when you
19 said he flipped you over and penetrated you, could you go
20 into a little bit more detail for them?

21 A He, he was -- after he was rubbing on me for a little
22 bit he -- then he flipped me over. And then he was sitting
23 there talking to me for a minute. And he told me, he said,
24 "We are going to fuck," is what he said. And then he said
25 afterwards I want you to suck my dick. And then he started

Complaining Witness

Direct examination by Ms. Jordan

1 kissing on my chest and rubbing on me. And he started the
2 penetration.

3 Q Okay. What part of his body did he put into your
4 body?

5 A His penis.

6 Q And where did he put it?

7 A Into my vagina.

8 Q Okay. Where were his arms that day?

9 A He had one around my stomach, and the other one he had
10 his left arm pressed against my throat.

11 Q Okay. What do you remember next?

12 A I remember he told me. He said, "If you tell
13 anybody," he said, "I will hunt you down." He said, "I
14 don't care where you live." He said, "This is not
15 something that's supposed to be told." And he told me that
16 he would hurt me bad if he found out I did it.

17 Q Okay. And this occurred in the bathroom.

18 A Yes, ma'am.

19 Q And is the bathroom right outside their bedroom?

20 A Yes, ma'am.

21 Q Was there any -- did you notice anything in your
22 vaginal area after this happened?

23 A Yes, ma'am. I had some slight bleeding.

24 Q What do you remember next after the bathroom?

25 A After the bathroom, it honestly just gets blurry. And

Complaining Witness

Direct examination by Ms. Jordan

1 I remember waking up the next morning in the bed.

2 Q Who was in the bed with you?

3 A Son

4 Q Who was in the bed beside you?

5 A They -- Jeannie and Joe was in the bed beside me.

6 Q What happened the next morning?

7 A The next morning they woke up around 8:00 or 8:30.

8 And he had to take Jeannie to a parenting class or some
9 kind of nursing class near downtown. And I told him I
10 wanted to go home. And he told me that I could not go home
11 until after he picked her up from school.

12 Q Okay. Did Joe and Jeannie have one, or how many cars
13 did Joe and Jeannie have?

14 A They had one.

15 Q Okay. What happened in the remainder of the morning?

16 A He took her to her class. He come back home. I had
17 rode with them. And when we got back home he told me to
18 get out of the car, and I told him no. And he come around
19 to passenger side of the car and pulled me out of the car
20 and into the house.

21 Q Tell the jury what happened.

22 A He pushed me up against the wall in the living room
23 and he started kissing on my neck and rubbing on me and
24 then stuck his hands down my pants and into my vagina.

25 Q Complaining did you tell Jeannie that anything had

Complaining Witness

Direct examination by Ms. Jordan

1 happened to you?

2 A No, ma'am.

3 Q Did you tell any of the three kids?

4 A No, ma'am.

5 Q Where did -- what happened next?

6 A After that he, he told me that we were going to have
7 sex again, and I told him no. He got mad and stormed off
8 to the bedroom. And he was in there for around 20 minutes.
9 He came back out. And then we went to pick her up from
10 class.

11 Q Did you -- when were you taken home?

12 A As soon as we picked her up from class.

13 Q Who was the first person you saw when you got home?

14 A My step-mother, Danielle Spivey.

15 Q And when you dropped off did anyone come inside?

16 A No, ma'am.

17 Q What happened when you were -- did Jeannie -- did
18 Jeannie come inside?

19 A No, ma'am.

20 Q Did Joe come inside?

21 A No, ma'am.

22 Q Okay. What, what happened when you went inside?

23 A I fell to the floor and started crying and told my
24 step-mother what happened. And she tried to get in contact
25 with my father. He was at work. And then she decided not

Complaining Witness

Direct examination by Ms. Jordan

1 to wait on him any longer. And we went straight to the
2 hospital.

3 Q And what happened at the hospital?

4 A I had a couple of nurses come in, and they did a rape
5 kit. They did an evaluation on me. They checked for any
6 scratches, cuts, anything like that. And then they had
7 officers come in and take a statement.

8 Q Okay. So you spoke with how many nurses that day, do
9 you recall?

10 A I know when I first got there I was speaking with two,
11 but I think there's probably around three more that come in
12 after that, just coming in to check on me and stuff like
13 that.

14 Q Okay. Did you also speak with Officer Cantrell who is
15 seated at this table?

16 A Yes, ma'am.

17 Q Did you speak with anybody -- did you also go to the
18 Children's Advocacy Center later on and speak with someone
19 there?

20 A Yes, ma'am.

21 Q And you've met with me in the past?

22 A Yes, ma'am.

23 Q You've also met with Mr. Whelchel in the past?

24 A Yes, ma'am.

25 Q Complaining did you -- did you yell for help or anything

Complaining Witness

Cross-examination by Mr. Whelchel

1 that night?

2 A I tried to, but I couldn't.

3 Q Okay. Why could you not yell?

4 A He had -- where he had his left arm over -- his
5 forearm was directly over my throat.

6 Q Please answer any questions Mr. Whelchel may have.

7 CROSS-EXAMINATION

8 BY MR. WHELCHER

9 Q Do you remember talking to me last week, Complaining

10 A Yes, sir.

11 Q Okay. Had you stayed at this particular house
12 before --

13 A Yes, sir.

14 Q -- with Joe and Jeannie? Do you remember how many
15 times?

16 A Numerous.

17 Q Okay. You had stayed at other houses prior to this,
18 is that correct, with Joe and Jeannie?

19 A No, sir.

20 Q Okay. So this is the only house you ever went to?

21 A Yes, sir.

22 Q Okay. This bathroom door you're telling us about, the
23 door had been broken?

24 A Yes, sir.

25 Q Okay. Showing you State's Exhibit No. 7. Who sleeps

Complaining Witness
Cross-examination by Mr. Whelchel

- 1 in that room?
- 2 A Jeannie and Joe and the child Son
- 3 Q The little boy Son --
- 4 A Uh-huh.
- 5 Q -- sleeps in that bed?
- 6 A No. They sleep on the mattress on the floor and he
- 7 sleeps in the bed.
- 8 Q I'm sorry. I got it backwards. They sleep on the
- 9 floor and he sleeps in that bed?
- 10 A Yes, sir.
- 11 Q Okay. Thank you, ma'am.
- 12 And the other children sleep in the other bedroom.
- 13 A Yes, sir.
- 14 Q Okay. Had y'all been anywhere -- when I say y'all I
- 15 mean you and Joe and Jeannie. Had the three of you been
- 16 anywhere earlier that day?
- 17 A Yes, sir. We went to a, a water park, like a little
- 18 river.
- 19 Q Uh-huh.
- 20 A Anderson Mill River, I think it was.
- 21 Q A swimming hole.
- 22 A Yes, sir.
- 23 Q Okay. And all of you went swimming, I assume.
- 24 A Uh-huh.
- 25 Q Okay. What did you do with the swimsuit and all the

Complaining Witness
Cross-examination by Mr. Whelchel

1 wet stuff when you got back to the house?

2 A Jeannie had thrown all of our bathing suits and stuff
3 into the dryer.

4 Q Okay. What time was it when you got back to the
5 house? Do you remember that?

6 A It was, I know it was, early in the day. The sun was
7 still out.

8 Q Still daylight.

9 A Yes, sir.

10 Q Okay. Before or after suppertime?

11 A Before.

12 Q Okay. Who cooked supper that night?

13 A We ate out.

14 Q Where did you go?

15 A Well, I had eat out. They had eat their own thing. I
16 ate before I left my father's house.

17 Q Okay. Well, what time was it when they came and
18 picked you up?

19 A It was early in the day. It was a little, a little
20 after lunchtime.

21 Q Okay. From there you went swimming.

22 A Yes, sir.

23 Q Who all went swimming?

24 A Just me, Jeannie and Joe.

25 Q Okay. And when did you get to Jeannie and Joe's house

Complaining Witness

Cross-examination by Mr. Whelchel

1 after you went swimming approximately?

2 A Approximately around 6:00 o'clock.

3 Q Okay. And where were the children?

4 A The children were there.

5 Q Okay. How did the children get there if you know?

6 A The next-door neighbor had been watching them earlier.

7 Q Okay. So after y'all get back to Jeannie and Joe's,
8 is that when everybody had supper?

9 A They eat, yes, sir.

10 Q Okay. But you had already eaten --

11 A Yes, sir.

12 Q -- earlier in the day?

13 A Uh-huh.

14 Q Wasn't hungry.

15 A Uh-uh.

16 Q Okay. Now, at some point later in the night y'all are
17 watching movies, is that correct?

18 A Yes, sir.

19 Q Where were you watching the movies?

20 A In Jeannie and Joe's bedroom.

21 Q Is that the only place where there's a C.D. player?

22 A No. That's just where all the kids wanted to lay.

23 Q Okay. And then later the older two children were sent
24 to bed.

25 A Yes, sir, after Jeannie and Joe had returned home.

Complaining Witness

Cross-examination by Mr. Whelchel

1 Q Okay. Any idea what time that was?

2 A It was close to midnight...

3 Q Okay. When were they gone from? What hours did they
4 leave and come back?

5 A Between 8:00 and midnight.

6 Q Okay. So you were there alone with the children
7 between 8:00 and midnight.

8 A Yes, sir.

9 Q Okay. And when they get, Jeannie and Joe get, back at
10 midnight, excuse me, is when the older two children were
11 sent from the movie-watching bedroom to their own room.

12 A Yes, sir.

13 Q Correct? Okay. Then was Son still awake at that
14 time?

15 A No, sir. He had already fallen asleep.

16 Q Okay. So you went to sleep or laid in the bed with
17 Son is that right?

18 A Yes, sir.

19 Q So there's Son next to the wall, and you, and
20 Jeannie and Joe on the floor?

21 A Yes, sir.

22 Q Okay. When did y'all get in the bed there together?

23 A Me and Son

24 Q You and Son When did y'all get in the bed?

25 A We were already in the bed. We were laying there when

Complaining Witness
Cross-examination by Mr. Whelchel

1 we was watching movies. And the two girls were laying on
2 Jeannie and Joe's bed.

3 Q The two girls leave. Jeannie and Joe get in the bed?

4 A Yes.

5 Q About what time was that?

6 A And that was around midnight.

7 Q Okay.

8 A So they sent them to bed about five or ten minutes
9 after they got home.

10 Q Okay. Had all of the children showered earlier --

11 A Yes, sir.

12 Q -- when they, when they got home? Okay. Do you know
13 if Jeannie and Joe showered, or do you remember if Jeannie
14 and Joe showered that night?

15 A No. I had put Daughter and Daughter and then Son had
16 took a bath.

17 Q Okay. So all the children showered that night, but
18 you did not.

19 A I waited until after the little boy went to bed.

20 Q Okay. But by then Jeannie and Joe were home?

21 A Yes, sir.

22 Q Okay. Now, you stated a moment ago that you decided
23 to take a shower.

24 A Yes, sir.

25 Q It was about 1:00 or 1:30?

Complaining Witness
Cross-examination by Mr. Whelchel

- 1 A Yes, sir.
- 2 Q Okay. Did you wash your hair when you took a shower?
- 3 A Yes, sir.
- 4 Q Did you use two towels, one for your hair and one for
- 5 your body?
- 6 A No, sir.
- 7 Q So when you got out of the shower how many towels did
- 8 you have on?
- 9 A I had one.
- 10 Q Okay. You didn't dry your hair?
- 11 A Yes, sir.
- 12 Q I'm confused.
- 13 A I dried my hair with my towel, and then I dried my
- 14 body off and wrapped my towel around me.
- 15 Q Same towel?
- 16 A Yes, sir.
- 17 Q Okay. And your clothes were outside the door.
- 18 A Yes, sir.
- 19 Q Washer and dryer is just outside the door, is that
- 20 correct?
- 21 A Uh-huh.
- 22 Q What is penetration, ma'am?
- 23 A Meaning that he had put his penis inside of me.
- 24 Q Okay. Had you ever used the words penetration before
- 25 in talking to any of the people you talked to, or is today

Complaining Witness
Cross-examination by Mr. Whelchel

1 the first time you used the word penetration?

2 A No, sir.

3 Q You have?

4 A No, I haven't used it before. I mean, I've used it
5 before today.

6 Q You have used it before today.

7 A Yes.

8 Q When was that then?

9 A Previous statements.

10 Q To who?

11 A Between Barry, Jennifer.

12 Q When you're talking to the prosecutor.

13 A Yes.

14 Q Okay. He came into the shower -- I want you to
15 correct me if I'm wrong -- and pushed you down on your
16 stomach?

17 A Yes, sir.

18 Q And you stated earlier that he started the
19 penetration. Is that on your stomach or when you were on
20 your back?

21 A No. He pushed me down on my stomach at first, and
22 then he rolled me over onto my back. And that's when the
23 penetration happened.

24 Q When you were on your back.

25 A Yes, sir.

Complaining Witness
Cross-examination by Mr. Whelchel

- 1 Q Okay. And he -- you could cry for help but didn't cry
2 for help because he had his arms on your throat?
- 3 A Yes, sir.
- 4 Q One arm or both?
- 5 A It was one. It was his left arm.
- 6 Q His left arm.
- 7 A Yes, sir.
- 8 Q Show me how.
- 9 A He had it like this pressed against the middle of my
10 throat.
- 11 Q Okay. You said there was some slight bleeding. Did I
12 hear you right?
- 13 A Yes, sir.
- 14 Q Slight bleeding. Was there blood on the towel?
- 15 A I had wiped off with a towel, yes.
- 16 Q Okay. Do you recall asking him what to do with the
17 blood?
- 18 A Yes, sir.
- 19 Q Okay. Did you have a cell phone, ma'am?
- 20 A Excuse me?
- 21 Q Did you have a cell phone?
- 22 A I had a cell phone but it didn't work.
- 23 Q Okay. Do you remember telling me when I talked to you
24 earlier that you threatened to call your parents with the
25 cell phone the next day?

Complaining Witness

Cross-examination by Mr. Whelchel

1 A No. I threatened to call the police, not my parents.

2 Q You threatened to call somebody with the cell phone.

3 A Yes, sir.

4 Q Okay. Now, the next morning do you remember what time
5 it was when you woke up?

6 A It was around 8:00 a.m., 8:00 a.m.

7 Q I'm sorry. And you rode with Joe to take Jeannie to
8 her class?

9 A Yes, sir.

10 Q What time was that?

11 A We left the house around 8:30.

12 Q Okay. Did y'all stop and get some breakfast or
13 anything like that?

14 A No, sir.

15 Q And the class, do you remember where that was?

16 A I remember what it's next to. It was near the old
17 Pepsi plant near downtown.

18 Q Down on South Church Street?

19 A Yes, sir.

20 Q Okay. And after you went to the Pepsi plant, did
21 y'all go anywhere after that?

22 A Back to the house.

23 Q Okay. Did you go to the library?

24 A No, sir.

25 Q Okay. And about what time was it when you got back to

Complaining Witness
Cross-examination by Mr. Whelchel

- 1 the house?
- 2 A I know it was at least 20 minutes after 9:30, going
3 into 10:00.
- 4 Q Okay. And did you get out of the, out of the car and
5 walk into the house?
- 6 A No, sir.
- 7 Q What happened?
- 8 A He told me to come in the house. And he come around
9 to the side of the passenger, and he pulled me into the
10 house.
- 11 Q Okay. So when you got back to the house you stayed in
12 the car.
- 13 A Yes, sir. I told him I wanted to go home.
- 14 Q Okay. And you stayed in the car.
- 15 A Yes, sir.
- 16 Q Did you lock the door?
- 17 A It didn't have a lock.
- 18 Q So that would be no. Okay. Where were you when he
19 took Jeannie to this class? Were you in the back seat?
- 20 A Yes, sir.
- 21 Q Okay. How many doors on the car?
- 22 A Four.
- 23 Q Okay. Did they all work?
- 24 A Uh-huh.
- 25 Q Okay. Took Jeannie to -- was it a school that he took

Complaining Witness

Redirect examination by Ms. Jordan

1 her to?

2 A I'm thinking that. Either a school or a little
3 building for classes.

4 Q Okay. Were there people in the building? Did you see
5 them?

6 A Yes, sir.

7 Q People outside the building?

8 A There were people outside smoking.

9 Q Okay. Thank you, ma'am.

10 MS. JORDAN: Just a few questions, Your Honor.

11 THE COURT: Okay.

12 REDIRECT EXAMINATION

13 BY MS. JORDAN

14 Q Complaining Mr. Whelchel made a point of the fact that
15 you used the word penetrate.

16 Going back to July the 10th of 2007 did you talk to
17 nurses? The first person you talked to was your step-mom,
18 Danielle. What did you tell her he did to you?

19 A I just said that he had raped me and that he hurt me.

20 Q Did you state whether or not anything was put into
21 your body?

22 A She asked me, you know, if anything like that did
23 happen. I told her it did.

24 MR. WHELCHER: Objection, Your Honor. I don't know
25 who she's talking about -- she.

Complaining Witness

Redirect examination by Ms. Jordan

1 MS. JORDAN: The step-mama, Danielle.

2 THE COURT: I thought she said her step-mother.

3 You can clear it up.

4 BY MS. JORDAN

5 Q The "she" you're referring to is your step-mom,
6 Danielle?

7 A Danielle Spivey, yes, ma'am.

8 Q Okay. And you also spoke to your father?

9 A When he come to the hospital, yes, ma'am.

10 Q And you also spoke to the nurses.

11 A Yes, ma'am.

12 Q Did you also tell them the same thing?

13 A Yes, ma'am.

14 Q You also spoke to Officer Cantrell.

15 A Yes, ma'am.

16 Q Did you also state that he had placed his penis inside
17 your vagina?

18 MR. WHELCHEL: Objection, Your Honor. It's leading.

19 Q What did you tell Officer Cantrell?

20 A I told Officer Cantrell. She asked me if there was
21 any intercourse or if I had any object entered into my
22 body, and I said yes, ma'am, that he had entered his penis
23 and his fingers into my body.

24 Q Okay. You also told that to Lynn McMillan with the
25 Children's Advocacy Center?

Danielle Spivey
Direct examination by Ms. Jordan

1 A Yes, ma'am.

2 MS. JORDAN: Nothing further, Your Honor.

3 May this witness step down?

4 THE COURT: She may. Thank you.

5 MS. JORDAN: State calls Danielle Spivey.

6 DANIELLE SPIVEY, having been
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MS. JORDAN

9 Q Please state your name for the record.

10 A Danielle Spivey.

11 Q How do you know Complaining Witness

12 A Step-daughter.

13 Q And how long have you -- I assume you lived with her
14 father.

15 A Uh-huh.

16 Q How long have you lived with him?

17 A Twelve years.

18 Q Okay. Have you known Complaining all the time?

19 A Yes.

20 Q How do you know the defendant?

21 A That's Tim's cousin.

22 Q Okay. Did you, did you spend much time with him and
23 his family?

24 A A little bit.

25 Q Okay. Do you recall Complaining going to visit his

Danielle Spivey
Direct examination by Ms. Jordan

1 house?

2 A Yes.

3 Q Would she do that -- did she do it once or more than
4 once?

5 A More than once.

6 Q More than once. Would she do it five times or more
7 than five times?

8 A Maybe five.

9 Q Okay. Did she -- what would ^{complain} complaining do over at Joe's
10 house if you have any idea?

11 A Just watch the kids mostly.

12 Q You also know Jeannie Cobb?

13 A Uh-huh.

14 Q Could you tell me what happened on the night of -- or
15 what do you recall from on the night of -- or the morning
16 of July the 10th of 2007?

17 A When she came home she was really upset, and she told
18 me. I asked her what was wrong, and she said that Joe
19 raped her.

20 MR. WHELCHEL: Objection, Your Honor. I think it's
21 hearsay, and it's got to be an exception to hearsay in
22 order for them to be able to elicit this testimony.

23 THE COURT: Be sure to term it appropriately.

24 MS. JORDAN: I'm sorry, Your Honor?

25 THE COURT: Be sure to term it appropriately.

Danielle Spivey
Direct examination by Ms. Jordan

1 MS. JORDAN: Yes, sir.

2 Q When Complaining came home, how did Complaining get home?

3 A They brought her home.

4 Q Okay. Did anyone come in with Complaining

5 A No.

6 Q Okay. When she came in, can you describe her demeanor
7 to you? Could you describe how she appeared?

8 A Upset.

9 Q Okay. Was she crying?

10 A Yes.

11 Q Was -- describe -- if you could, just describe for the
12 jury how, how she appeared to you.

13 A In tears, literally shaky.

14 Q Did she ever come home like that before?

15 A No.

16 MS. JORDAN: Your Honor, at this time we would move to
17 have her state what was stated as far as it being an
18 excited utterance, or also in the alternative present sense
19 impression.

20 MR. WHELCHER: Your Honor, for it to be an excited
21 utterance it's got to be immediately.

22 THE COURT: Overruled.

23 Go ahead.

24 MS. JORDAN: May we approach?

25 THE COURT: Uh-huh.

Danielle Spivey
Direct examination by Ms. Jordan

1 (Bench conference held off the record in the presence
2 of the jury but out of the hearing of the jury.)

3 BY MS. JORDAN

4 Q Danielle, did ^{Complaining} state whether or not she had
5 been sexually assaulted on the morning of July the 10th of
6 2007?

7 A Yes.

8 Q Did she make that statement -- when did she make that
9 statement to you?

10 A When I asked her what was wrong when she come in the
11 door.

12 Q About what time did she come home?

13 A It was late morning.

14 Q Okay. Did she state when that sexual assault
15 occurred?

16 A Yes.

17 MR. WHELCHER: Objection, Your Honor.

18 THE COURT: Overruled.

19 Q Did she state when that sexual assault occurred?

20 A Yes.

21 Q What did she say?

22 A The night before.

23 Q Did she also -- okay. Did she also state where it
24 happened?

25 A Yes.

Danielle Spivey
Direct examination by Ms. Jordan

- 1 Q Where was that?
- 2 A In the bathroom.
- 3 Q Okay. Bathroom where?
- 4 A In his home.
- 5 Q Back on July the 10th and July the -- July the 9th and
- 6 10th of 2007, how many nights did she, Complaining stay at
- 7 Joe and Jeannie's home?
- 8 A What do you mean?
- 9 Q How many, how many nights was she there?
- 10 A One or two. I really can't remember exactly.
- 11 Q But she came home on July the 10th.
- 12 A Yes.
- 13 Q Okay. What did you do after she reported that sexual
- 14 assault to you?
- 15 A I called her dad.
- 16 Q Okay. What happened after that?
- 17 A We waited for a while, and then I took her to the
- 18 hospital.
- 19 Q Okay. Which hospital did you take her to?
- 20 A Spartanburg Regional.
- 21 Q Okay. What happened once you arrived there?
- 22 A We -- they admitted her in and did the sexual assault
- 23 kit and spoke with us. And it's all a blur really, so.
- 24 And then later her dad showed up.
- 25 Q Please answer any questions Mr. Whelchel may have.

Danielle Spivey
Cross-examination by Mr. Whelchel

1 CROSS-EXAMINATION

2 BY MR. WHELCHER

3 Q How much later did her dad show up?

4 A It was a couple of hours.

5 Q After y'all got to the hospital?

6 A Right.

7 Q How long did you wait before -- between the time that
8 Complaining got home and the time that you left for the
9 hospital?

10 A For about an hour or so.

11 Q Okay.

12 A I don't remember exactly.

13 Q Okay. Did you have transportation or did you have to
14 wait?

15 A I did.

16 Q I'm sorry?

17 A I did.

18 Q Okay. So once Complaining gets home you wait about an
19 hour and then you go to the hospital.

20 A Right.

21 Q And two hours later is when her dad shows up.

22 A About, yes.

23 Q Okay. And you're the one that told her dad what had
24 been told to you, is that correct?

25 A Right.

Timothy Lee Bishop
Direct examination by Ms. Jordan

1 Q Okay.

2 THE COURT: Ms. Jordan, do you have anything else?

3 MS. JORDAN: No, sir, Your Honor.

4 THE COURT: All right. You may step down.

5 MS. JORDAN: Your Honor, may this witness remain in
6 the courtroom?

7 THE COURT: She may.

8 MS. JORDAN: State calls Tim Bishop.

9 TIMOTHY LEE BISHOP, having
10 been first duly sworn, testified as follows:

11 DIRECT EXAMINATION BY MS. JORDAN

12 Q Please state your name for the record.

13 A Timothy Lee Bishop.

14 Q Who is your daughter?

15 A Complaining Renee Bishop.

16 Q How do you know the defendant?

17 A He's my cousin.

18 Q Okay. Were you close to your cousin back in 2007?

19 A Not really.

20 Q Did you see him?

21 A Yeah, on a regular basis, probably once or twice a
22 week.

23 Q Okay. Did you allow your child, Complaining to go over
24 to his home?

25 A Sometimes.

Timothy Lee Bishop
Direct examination by Ms. Jordan

1 Q Okay. On July the 9th of 2007 did Complaining go to his
2 home?

3 A I believe it was, it was either the 8th or 9th. I'm
4 not really sure. I can't remember exactly.

5 Q Okay. On July the 10th of 2007 did you receive a
6 phone call from Danielle?

7 A Yes, ma'am, while I was at work.

8 Q Okay. What did you do as a result of that phone call?

9 A I came home as soon as I could get done doing what I
10 was doing working.

11 Q Okay. Did you meet Complaining and Danielle at the
12 hospital?

13 A I went home. I thought I was going to catch them at
14 home, and they wasn't at home. And then I went to the
15 hospital where they was at. My brother had called me and
16 told me they went to the hospital.

17 Q Okay. How was Complaining when you saw her at the
18 hospital on July the 10th of 2007?

19 A Real upset. She couldn't even hardly talk to me when
20 I got there.

21 Q Okay. Did you have a chance to talk to her?

22 A Way later on in the evening. I was there for probably
23 two or three hours before I ever got to talk to her.

24 Q Okay. Did she state to you whether or not she had
25 been sexually assaulted?

Timothy Lee Bishop
Direct examination by Ms. Jordan

1 A Well, she --

2 MR. WHELCHEL: Objection, Your Honor. This is the
3 hearsay. There's been no foundation laid for it. It
4 doesn't fall under the excited utterance because he's
5 already testified it was hours later.

6 THE COURT: Overruled.

7 Go ahead.

8 BY MS. JORDAN

9 Q Did she state whether or not a sexual assault had
10 occurred?

11 A Yes, ma'am.

12 Q Did she state where it occurred?

13 A Yeah, at his house.

14 Q Did she state specifically where in his home?

15 A Well, at first she was trying to tell me, but the
16 nurse came in and said they had to do another test on her
17 or something. And we -- they brought her back. Then she
18 told me that it happened right inside the doorway in the
19 bathroom at their home.

20 Q Okay. Did she also state when this happened?

21 A It was early in the morning. It was after midnight.
22 I can't tell you exactly what time. I mean, it's been so
23 long I can't remember the exact time she told me.

24 Q Did she state it was the same night or the same day
25 that she went --

Timothy Lee Bishop
Cross-examination by Mr. Whelchel

1 A That she -- that she spent the night there, yeah.

2 Q Okay. Please answer any questions Mr. Whelchel may
3 have.

4 CROSS-EXAMINATION

5 BY MR. WHELCHER

6 Q Let me see if I understand this correctly, Mr. Bishop.
7 You and Joe are cousins?

8 A Yes, sir.

9 Q But you're not close.

10 A No, not real close. We're distant cousins. We're not
11 like first or second cousins.

12 Q What you mean, you're not close to each other --

13 A No.

14 Q -- or not good friends.

15 A No.

16 Q But he comes over twice a week.

17 A No. I see him once or twice a week, not come over to
18 my house. I see him out when I was working and stuff like
19 that.

20 Q Okay.

21 A And then every once in a while he might stop by.

22 Q Okay. You don't go to his house?

23 A I went to his house once.

24 Q Okay. But Complaining that goes to his house or went to
25 his house frequently, correct?

Sue Mobley
Direct examination by Ms. Jordan

1 A Yeah, because she was friends with his wife and she
2 loved their children a lot.

3 Q But she went to their house frequently, correct?

4 A Yes, sir.

5 Q And all you know about what allegedly happened on the
6 8th, 9th or 10th of July is what you've been told by
7 Complaining is that correct?
.....

8 A Yes, sir.

9 Q Hours after she had been interviewed at the hospital,
10 is that correct?

11 A Yes, sir.

12 Q Okay. You don't have any independent knowledge of any
13 of this stuff, do you?

14 A No, because I wasn't present at the time it happened.

15 Q Thank you, sir.

16 THE COURT: You may step down.

17 MS. JORDAN: Your Honor, may this witness remain in
18 the courtroom?

19 THE COURT: He may.

20 MS. JORDAN: The state calls Sue Mobley.

21 SUE MOBLEY, having been first
22 duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MS. JORDAN

24 Q Please state your name for the record.

25 A Sue Mobley.

Sue Mobley
Direct examination by Ms. Jordan

- 1 Q Where are you currently employed?
- 2 A Spartanburg Regional E.R.
- 3 Q What is your position there?
- 4 A Staff nurse.
- 5 Q How long have you been employed there?
- 6 A 8/8/88.
- 7 Q Okay. What is your background as far as education?
- 8 A I have a master's in nursing and also have sexual
- 9 assault nurse examiner training.
- 10 Q Okay. How long have you been -- how long have you had
- 11 the training, sexual assault nurse training?
- 12 A Over ten years.
- 13 Q Okay. Over the course of those ten years or over the
- 14 course of your entire career as a nurse have you performed
- 15 sexual assault kits on rape victims?
- 16 A Yes.
- 17 Q I know you don't know a specific number, but
- 18 approximately how many have you performed?
- 19 A I'd say it would be greater than ten.
- 20 Q Okay. Have you also assisted in the preparation of
- 21 other sexual assault kits?
- 22 A Yes.
- 23 Q Okay. Were you working on the day of July the 10th of
- 24 2007?
- 25 A Yes.

Sue Mobley
Direct examination by Ms. Jordan

1 Q Okay. When you were working that day did you have an
2 occasion to see Complaining Witness

3 A Yes.

4 Q Okay. Was there another nurse present?

5 A Yes. Pat Ramsey.

6 Q Okay. Did you assist Ms. Ramsey?

7 A Yes.

8 Q What did you help Ms. Ramsey do that day?

9 A She asked me to come in and help her collect evidence.

10 Q Okay. I'm going to show you what's previously been
11 marked as State's Exhibit No. 22 and ask if you recognize
12 this.

13 A Yes.

14 Q Okay. Could you tell the jury what that is?

15 A It's a blood sample in the SLED kit for sexual assault
16 evidence collection that we collect for SLED.

17 Q Okay. Do you recognize your signature on there?

18 A Yes.

19 Q Okay. Did you collect a blood sample from the victim,
20 Complaining Witness

21 A Yes.

22 Q Okay. And that was done on July the 10th of 2007?

23 A Yes.

24 Q Okay. What did you do once you collected her sample?

25 A Labeled it and put it in the appropriate envelope and

Sue Mobley
Direct examination by Ms. Jordan

1 placed it into the kit.

2 Q Okay. Who had control or possession of the kit?

3 A Pat Ramsey.

4 Q Okay. Just briefly tell the jury if you don't mind
5 what is normally inside of a rape kit.

6 A You have collection of hair samples, blood samples and
7 any kind of collection of any kind of body fluids that we
8 collect.

9 Q Okay. Are there -- how, how are the things labeled
10 inside of the rape kit?

11 A You have separate envelopes for each one of the
12 specimens that's collected.

13 Q Okay. And in Complaining Witness case the one specimen
14 that you collected was her blood?

15 A Yes.

16 Q Can you describe what Complaining demeanor was to the
17 jury?

18 A She was tearful but cooperative.

19 Q Okay. Were you present during the entire exam?

20 A No.

21 Q Okay. Did you just assist?

22 A Just assisted Pat Ramsey.

23 Q Okay. Please answer any questions Mr. Whelchel may
24 have.

25 A Okay.

Sue Mobley
Direct examination by Ms. Jordan

1 MR. WHELCHER: I don't have any questions of this
2 witness, Your Honor.

3 THE COURT: All right, sir. You may step down.

4 MS. JORDAN: Your Honor, may I approach?

5 THE COURT: Yes, ma'am.

6 (Bench conference held off the record in the presence
7 of the jury but out of the hearing of the jury.)

8 THE COURT: All right. Ladies and gentlemen, we need
9 to take a short break, so I'll ask you please go to your
10 jury room.

11 Do not yet discuss the case in any fashion. It's not
12 concluded. I'll bring you back after that break.

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

15 THE COURT: Court's in recess for ten minutes.

16 (Whereupon, a recess was taken.)

17 THE COURT: All right. Are we ready for the jury?

18 MS. JORDAN: Yes, sir, Your Honor.

19 THE COURT: Okay. Bring them in.

20 (The following takes place in the presence of the
21 jury.)

22 THE COURT: All right. Next witness.

23 MS. JORDAN: The state calls Pat Ramsey.

24

25

Patricia A. Ramsey
Direct examination by Ms. Jordan

1 PATRICIA A. RAMSEY, having
2 been first duly sworn, testified as follows:
3 DIRECT EXAMINATION BY MS. JORDAN
4 Q Please state your name for the record.
5 A Patricia A. Ramsey.
6 Q Where are you currently employed?
7 A Village Hospital, the Village of Pelham.
8 Q Okay. Is that connected with a hospital around here?
9 A Excuse me?
10 Q Is that connected to a hospital around here?
11 A Yes, ma'am, Spartanburg Regional.
12 Q Okay. Were you employed by Spartanburg Regional back
13 on July the 10th of 2007?
14 A Yes, ma'am.
15 Q What is your position at Spartanburg Regional or
16 Village at Pelham?
17 A Registered nurse in the emergency room, often doing
18 charge position.
19 Q Okay. How long have you been a nurse?
20 A This May will be 18 years, so about 17, almost 18
21 years.
22 Q Okay. What is your educational background?
23 A I have an associate's degree in nursing. I've done
24 trauma nursing, I.C.U., critical care and even flight
25 nursing.

Patricia A. Ramsey
Direct examination by Ms. Jordan

1 Q On July the 10th of 2007 did you have an occasion to
2 meet Complaining Witness

3 A Yes, ma'am.

4 Q Okay. Were you working that day?

5 A Yes, ma'am.

6 Q Could you tell the jury how you came into contact with
7 Ms. Bishop?

8 A I was working in the Women's Center at Spartanburg
9 Regional, and they brought in a -- the patient for a
10 forensic exam.

11 Q Okay. Did you complete a sexual assault kit on the
12 victim --

13 A Yes, ma'am.

14 Q -- Complaining Witness Were you assisted by any other
15 nurses?

16 A Sue Mobley.

17 Q Could you describe for the jury what Complaining
18 demeanor was like when she came to the E.R.?

19 A Emotional, distraught and kind of scared and kind of
20 had all the fear in her.

21 Q Okay. Did you have a chance to speak with Complaining
22 that day?

23 A Yes, I did.

24 Q Did Complaining state to you whether or not a sexual
25 assault occurred?

Patricia A. Ramsey
Direct examination by Ms. Jordan

- 1 A Yes, ma'am.
- 2 Q Okay. Did she state where it occurred?
- 3 A I cannot remember or recall like a physical address.
- 4 Q Okay.
- 5 A But it was in a facility or a residence where there
- 6 was involvement with a child watching a child.
- 7 Q Okay. Did she state when it happened?
- 8 A I would have to reflect on the notes to say exactly
- 9 like time span.
- 10 Q Okay.
- 11 A But over a period of, if I recall right like over a
- 12 period of, 24 hours or like part of a day.
- 13 Q Okay. Did you perform a sexual assault kit on
- 14 Complaining Witness
- 15 A Yes, ma'am.
- 16 Q Okay. I'm going to show you brief -- or I am going to
- 17 show you several items. Can you identify State's Exhibit
- 18 No. 14 for me?
- 19 A Yes, I can.
- 20 Q Can you tell me what that is?
- 21 A It is miscellaneous body fluid stating -- there's
- 22 different areas of the body that may have been in contact
- 23 with the suspect or something. We will isolate that area
- 24 and try to target that area to obtain any kind of evidence.
- 25 Q Okay. So did you speak with Complaining about different

Patricia A. Ramsey
Direct examination by Ms. Jordan

1 parts of her body?

2 A Yes, ma'am.

3 Q And based upon your conversation with her did you swab
4 certain parts of her body?

5 A Yes, ma'am.

6 Q Okay. Do you recognize your handwriting on that
7 envelope?

8 A Yes, ma'am.

9 Q Okay. Has -- inside of that, is there anything
10 additional inside of that envelope or inside of the
11 sandwich baggie?

12 A Right. You have a sample in here, yes, ma'am. There
13 was different swabs placed in this miscellaneous envelope.

14 Q Okay. What did you write on State's No. 14 as far as
15 the location of Complaining body that you took a swab from?

16 A Left breast, slash, nipple, saliva indicated. That's
17 what she indicated to me that it was possibly there on the
18 July 10th '07 at 1601 with my signature.

19 Q Okay. I'm going who show you also State's 15, 16, 17,
20 18 and 19 and ask you to identify those for the jury.

21 A Okay. On No. 15 it says right breast nipple, at 1600,
22 with my signature and, again, saliva with the date,
23 7/10/07.

24 Q Okay. I know it's tedious, but can you go through
25 each item and state what it is?

Patricia A. Ramsey
Direct examination by Ms. Jordan

1 A Each case is kind of individualizing. If a patient or
2 a, you know, victim tells me what they recollect or a
3 portion of their body that was touched, we will in a very
4 sterile fashion, gloves, we will swab areas and concentrate
5 on specific areas that they recall that may have been
6 touched.

7 And we will obtain the swab. We will air dry it so
8 that it's not contaminated when it's put in a sterile cover
9 like this. Then we go ahead and seal it into the sexual
10 assault kit and keep it in there so that no further
11 touching or anybody can come in contact unless it goes to
12 SLED.

13 Q Okay. Can you state to the jury the location of
14 Complain^{ing} body you took for the remainder of the swabs?

15 A Yes, ma'am. This was done at 1558 on 7/10/07 on the
16 left side of her neck.

17 Q Could you state which number is on the red sticker?

18 A Sixteen.

19 Q Okay. Moving on to No. 17, where was that taken from?

20 A This was taken from the mid-lower abdomen. And,
21 again, you know, indicating that I was trying to -- she
22 said that -- indicated there may be some saliva.

23 Q Okay. Moving on to 18.

24 A This is the mid-center chest taken at 1602.

25 Q Okay. I believe you also have 19.

Patricia A. Ramsey
Direct examination by Ms. Jordan

1 A Yes, ma'am. This was on the right side of her neck
2 at -- it was obtained at 1556 time-wise.

3 MR. WHELCHER: Excuse me. Was that 19?

4 THE WITNESS: Fifteen. I was quoting the time.

5 MR. WHELCHER: No, ma'am. The number.

6 MS. JORDAN: The number, 19, State's Exhibit 19.

7 MR. WHELCHER: Okay.

8 BY MS. JORDAN

9 A I'm sorry.

10 Q I'm also going to show you what's been previously
11 marked as State's Exhibits No. 20 and 21 and ask you if you
12 can identify those items.

13 A Okay. On No. 20 it says that these were vaginal swabs
14 that were obtained, and they were obtained through a public
15 (sic) examination.

16 Q Okay. Could you also state what is on No. 21, I
17 believe?

18 A These are oral swabs that were obtained from Complaining

19 Q Okay. When you take -- well, I'm going to show you
20 State's Exhibit No. 24 and ask if you can identify that
21 also.

22 A These are both vaginal smears and oral smears.

23 Q How are those created?

24 A We will take a sterile Q-tip and we will swab and then
25 we'll put it on a little glass slide, allow it to air dry.

Patricia A. Ramsey
Direct examination by Ms. Jordan

1 And then it goes into this container which is sealed. And,
2 you know, it's labeled. On the inside it's labeled vaginal
3 and oral so we know which ones are which.

4 Q Okay. Further I'm going to show you what's been
5 marked as State's No. 23 and ask if you can describe for
6 the jury what is contained in that envelope.

7 A Twenty-three is fingernail scrapings, and that's No.
8 23. And it's saying that was obtained at 1612.

9 Q Okay. In addition to those items that are in front of
10 you were additional items taken as part of your traditional
11 sexual assault protocol?

12 A I would have to look at the kit. There may have been
13 some debris collection or clothing collection. You know,
14 and, again, each case is very individualized. But if it
15 definitely warrants, I'd have to see the kit and the list
16 to see that I actually, you know, obtained anything from
17 her at that time.

18 Q Okay. Once you obtained all of those items, what did
19 you do with them?

20 A When they are completely dried and ready to go into
21 these envelopes to be sealed, we close it up into a
22 complete kit. And they have seals along on the outside
23 that we have to sign, and those seals cannot be broken.
24 And then we call law enforcement. And we'll sign them over
25 to them on a chain of custody.

Patricia A. Ramsey
Direct examination by Ms. Jordan

1 Q Okay. So you placed it -- if I'm correct, you placed
2 all of these items into a box and then seal the box.

3 A Yes, ma'am.

4 Q And the box is handed over to law enforcement.

5 A Yes, ma'am.

6 MS. JORDAN: Your Honor, at this time we would move
7 these items into evidence.

8 THE COURT: Tell me what the numbers are again.

9 MS. JORDAN: Fourteen -- State's 14, 15, 16, 17, 18,
10 19, 20, 21, 22, 23 and 24.

11 THE COURT: All right. Mr. Whelchel, any objections?

12 MR. WHELCHER: Beg the Court's indulgence, Your Honor.

13 (Pause.)

14 MR. WHELCHER: No objection to those items, Your
15 Honor.

16 THE COURT: All right. Fourteen through 24 are
17 admitted.

18 (Victim's swab of left breast marked State's Exhibit
19 No. 14; victim's swab of right breast marked State's
20 Exhibit No. 15; victim's swab of left side neck marked
21 State's Exhibit No. 16; victim's swab of mid lower abdomen
22 marked State's Exhibit No. 17; victim's swab of mid center
23 chest marked State's Exhibit No. 18; victim's swab of right
24 side neck marked State's Exhibit No. 19; victim's swab of
25 vagina marked State's Exhibit No. 20; oral swab of victim

Patricia A. Ramsey
Direct examination by Ms. Jordan

1 marked State's Exhibit No. 21; victim's standard marked
2 State's Exhibit No. 22; victim's fingernail scrapings from
3 left hand marked State's Exhibit No. 23; victim's
4 fingernail scrapings from right hand marked State's Exhibit
5 No. 24; underwear marked State's Exhibit No. 25 for
6 Identification.)

7 Q Ms. Ramsey, I'm also going to show you what's just
8 been marked as State's No. 25 and ask if you can identify
9 that. You can manipulate the bag if you need to to read
10 the label on the inside.

11 A It is labeled underwear from Complaining Witness that she
12 was wearing when she came into the department.

13 Q Okay. Is that also part of your -- of a standard
14 sexual assault kit?

15 A Yes, ma'am.

16 MS. JORDAN: Your Honor, at this time we move State's
17 Exhibit No. 25 into evidence.

18 THE COURT: Well, let me see y'all just a minute.

19 (Bench conference held off the record in the presence
20 of the jury but out of the hearing of the jury.)

21 MS. JORDAN: Your Honor, we're going to correct the
22 number and marked that State's No. 26 since we already have
23 labeled something No. 25.

24 THE COURT: Any objection, Mr. Whelchel?

25 MR. WHELCHER: No, sir.

Patricia A. Ramsey
Cross-examination by Mr. Whelchel

1 THE COURT: All right. It is admitted.

2 (Underwear previously marked State's Exhibit No. 25
3 for Identification marked State's Exhibit No. 26.)

4 Q Please answer any questions Mr. Whelchel may have.

5 MR. WHELCHER: Beg the Court's indulgence, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. WHELCHER

8 Q Other than talk to her and take these scrapings and
9 swabs, that's all you did, is that correct? And then take
10 it and then give it to the evidence technician or whoever
11 from law enforcement.

12 A The kit. But I also take a statement, or not a
13 statement, but I will take down some history of the
14 situation that occurred.

15 Q Well, I understand that. But the physical things,
16 these are the things that you actually take.

17 A Yes, sir.

18 Q And let me make sure I understand. The difference
19 between a swab and a smear is that a smear is a swab that's
20 been smeared onto a --

21 A A little glass.

22 Q Okay. Kind of like you look at with a --

23 A Microscope.

24 Q Okay. Thank you, ma'am.

25 MS. JORDAN: Your Honor, may Ms. Ramsey be excused?

Robert Shaffer
Direct examination by Ms. Jordan

1 THE COURT: You may step down. You may also be
2 excused.

3 THE WITNESS: Thank you.

4 (Whereupon, the witness was excused.)

5 MS. JORDAN: The state calls Robert Shaffer.

6 ROBERT SHAFFER, having been
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MS. JORDAN

9 Q Please state your name for the record.

10 A Robert Shaffer.

11 Q Where are you currently employed?

12 A With the Spartanburg County Sheriff's Office.

13 Q Where were you employed --

14 THE COURT: Excuse me just a minute.

15 I don't think you need to lean into that microphone.
16 Just speak out and it'll pick it up.

17 Q Where are you employed, or how long have you been
18 employed at the sheriff's office?

19 A It will be 12 years this May.

20 Q Okay. What is your job title there?

21 A Forensics officer.

22 Q What was your job title in July of 2007?

23 A Forensics officer.

24 Q Okay. Did you have an occasion to work a case
25 involving the victim, Complaining Witness

Robert Shaffer
Direct examination by Ms. Jordan

1 A Yes, I did.

2 Q Did you respond to the Spartanburg Emergency Room --
3 Spartanburg Reginal Medical Center E.R.?

4 A Yes, I did.

5 Q Once there, what did you do?

6 A I collected a C.S.C. kit.

7 Q Okay. Was that -- what condition was the kit in when
8 you received it?

9 A It was sealed.

10 Q Okay. Who did you receive the kit from?

11 A I believe a Patrick -- my notes -- a Nurse Ramsey,
12 R.N.

13 Q Okay. Did you alter or change that kit once you
14 received it in any way?

15 A No, I did not.

16 Q What did you do with that kit once you received it?

17 A I put the outer clothing bag in the property and
18 evidence room. I put the other kit in the refrigerator and
19 secured it.

20 Q In which refrigerator?

21 A The one located in our lab with the lock on the door.

22 Q That lab, where is the lab located?

23 A In the sheriff's office.

24 Q Please answer any questions Mr. Whelchel may have.

25 MR. WHELCHER: I don't have any questions, Your Honor.

Margaret Greer
Direct examination by Ms. Jordan

1 THE COURT: You may step down.

2 MS. JORDAN: State calls Margaret Greer.

3 MARGARET GREER, having been
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MS. JORDAN

6 Q Please state your name for the record.

7 A Margaret Greer.

8 Q Where are you currently employed?

9 A I work for Spartanburg County Sheriff's Office.

10 Q How long have you been employed there?

11 A I have worked for the sheriff's office for a little
12 over six years. I've been in law enforcement 19.

13 Q What is your current position?

14 A My current position is master deputy on uniform
15 patrol. At the time of this case I worked in evidence.

16 Q Okay. Did you, did you receive a sexual assault kit
17 in this case?

18 A I did.

19 Q Okay. And what did you do with that kit?

20 A I took the kit into evidence and assigned it a space.
21 I -- do you have the evidence sheet and I can --

22 Q Yes, ma'am.

23 A Thank you.

24 Okay. I received a sexual assault evidence kit on
25 looks like July 11th of 2007, and picked it up at

Margaret Greer
Cross-examination by Mr. Whelchel

1 7:00 o'clock and then assigned it a box.

2 Q Okay. Who did you receive the kit from?

3 A It looks like since I received it at 7:00 o'clock, it
4 looks like I received it from the evidence locker.

5 Q Okay. Who -- does your form indicate who placed it in
6 the locker?

7 A Robert Shaffer.

8 Q Please answer any questions that Mr. -- I actually
9 apologize.

10 While you had the kit did you tamper with the kit in
11 any way?

12 A No, ma'am.

13 Q Please answer any questions Mr. Whelchel may have.

14 CROSS-EXAMINATION

15 BY MR. WHELCHER

16 Q When you place it in the evidence locker do you take
17 it out when you get in from being off? Is that correct?

18 A Yes, sir.

19 Q That's 7:00 o'clock in 0700 or --

20 A 0700, yes, sir.

21 Q Thank you, ma'am.

22 THE COURT: You may step down.

23 MS. JORDAN: The state calls Tammy Clawson.

24

25

Tammy Clawson
Direct examination by Ms. Jordan

1 TAMMY CLAWSON, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MS. JORDAN

4 Q Please state your name for the record.

5 A Tammy Clawson.

6 Q Ms. Clawson, do you know the defendant, Joseph Cobb?

7 A I do.

8 Q How do you know him?

9 A He was married to my sister.

10 Q Okay. Who is your sister?

11 A Jeannie.

12 Q Do you know when they were married?

13 A I'm not exactly sure when.

14 Q Okay. I'm going to take you back to the day of July
15 the 10th of 2007. Did you speak with Joe Cobb that day?

16 A I did.

17 Q Okay. Where did you see Joe that day?

18 A They were at my house.

19 Q Okay. Do you know Complaining Witness

20 A I've seen her, but I don't know her.

21 Q Okay. Did any of your conversations with -- back on
22 July the 10th of 2007 -- did Joe Cobb make any comments to
23 you about Complaining Witness

24 A Him and my sister were arguing in my front yard and
25 she came in crying. And then we all went outside and was

Anita Mullinax
Direct examination by Ms. Jordan

1 talking. And he said that he tried to have sex with her
2 but he couldn't get it up to get it in her.

3 Q Okay. Did he state, did he state what he did with
4 Complaining
....

5 A He said he tried to have sex with her.

6 Q Okay. And you do not know Complaining Witness
....

7 A I've seen her a few times. But as far as know-know, I
8 don't really know-know her.

9 Q Okay. Did you also -- well, I tell you what. Please
10 answer any questions Mr. Whelchel may have.

11 MR. WHELCHER: No questions.

12 THE COURT: You may step down.

13 MS. JORDAN: The state calls Anita Mullinax.

14 ANITA MULLINAX, having been
15 first duly sworn, testified as follows:

16 DIRECT EXAMINATION BY MS. JORDAN

17 Q Please state your name for the record.

18 A Anita Mullinax.

19 Q Where are you currently employed?

20 A Spartanburg County Sheriff's Office.

21 Q How long have you been employed by the sheriff's
22 office?

23 A Since 1983.

24 Q Okay. What is your current position there?

25 A I'm an evidence custodian.

Anita Mullinax
Direct examination by Ms. Jordan

1 Q Okay. What, what was your position back in July of
2 2007?

3 A I was a warrant officer.

4 Q Okay. Did you also work or did you eventually work in
5 the evidence room?

6 A I got transferred to evidence back in about the end of
7 February of 2008.

8 Q Okay. Just briefly, can you describe to the jury how
9 the evidence room at the sheriff's office is kept? Who has
10 control of the room?

11 A We currently have three evidence custodians.
12 Everything is locked. We're the only ones that have a key
13 to the office. The only way that you can enter the office
14 is not only with a key but a personal code and also a
15 fingerprint. So you have to do all of those in order to
16 get in.

17 Q Okay. How are -- did you happen to -- did you come
18 into contact with a sexual assault kit that was performed
19 on Complaining Witness

20 A I did.

21 Q Okay. What did you do with that item?

22 A I got a request to send it to SLED, and so I
23 transported it to SLED.

24 Q Okay. Where was the item when you transported it?

25 A Sexual assault kits we keep in our refrigerator until

Anita Mullinax
Direct examination by Ms. Jordan

1 they're transported. So I would've gotten it out of our
2 refrigerator and transported it at that time.

3 Q Okay. Once the item is taken to SLED can you tell the
4 jury what happens to it down there?

5 A When we take any item, not just a sexual assault item,
6 but when we take an item to SLED what they do is on a
7 sexual assault kit, they actually all of the small
8 envelopes that are in the box. They take them out. They
9 give us the box back. And then they put it in a larger
10 clear envelope, and they seal it in our presence. And then
11 we initial our name and the date that we took it. So it's
12 actually sealed.

13 Q So just for clarification, it was opened in your
14 presence?

15 A Correct.

16 Q And then sealed in your presence.

17 A Correct.

18 Q Okay. Did you -- do you recall what date you took
19 that item down to SLED?

20 A It would had to have been in 2008 or after.

21 Q Will you tell the jury what date you took that item to
22 SLED?

23 A I transported it on October 15th of 2008.

24 Q Okay. Did you have an occasion to come back into
25 contact with that kit again?

Anita Mullinax
Cross-examination by Mr. Whelchel

1 A I returned it from SLED on July 9th of 2009.

2 Q Okay. Did you have any other occasion?

3 A Yes. I also returned the underwear associated with
4 that kit. I returned it from SLED on December 18th of '09.

5 Q Okay.

6 A And then I also returned the kit after it had been
7 taken again on January 5th of 2011.

8 Q Please answer any questions Mr. Whelchel may have.

9 CROSS-EXAMINATION

10 BY MR. WHELCHER

11 Q Anita, I didn't hear you earlier. I'm sorry --
12 Ms. Mullinax. I didn't hear you earlier. You started in
13 evidence -- was it February of '08?

14 A The end of February of 2008.

15 Q Okay. I'll let you look at this while I ask you
16 questions. It'll probably be easier that way.

17 A Okay.

18 Q This is when you say you took the sexual assault kit
19 down.

20 A Correct. In October.

21 Q Down to SLED in October of '08.

22 A Correct.

23 Q You returned it from SLED in July of '09.

24 A That's correct.

25 Q Okay. And you returned the underwear from SLED in

Anita Mullinax
Cross-examination by Mr. Whelchel

1 December of '09.

2 A Correct.

3 Q Any idea why the underwear was separated from the
4 remainder of the kit?

5 A It was more than likely in the clothing section.

6 Q Okay. And then --

7 A Because there are only two submissions that you --
8 when you have a sexual assault. SLED will only accept the
9 sexual assault kit and the underwear under the first
10 submission.

11 Q Okay.

12 A They won't take the other clothing.

13 Q And then you took something, or you returned something
14 again from SLED.

15 A I -- on, on December 18th of '09 I returned just the
16 underwear only. Another officer had taken the kit again
17 prior to me.

18 Q Uh-huh.

19 A So then in January of this year I returned the kit.

20 Q The underwear only.

21 A No, no.

22 Q Okay.

23 A The rest of the kit.

24 Q Okay. All right. Now I understand.

25 A Because it had gone again.

David Hogsed
Direct examination by Ms. Jordan

1 Q Thank you.

2 MR. WHELCHEL: That's all I have, Your Honor.

3 MS. JORDAN: May this witness be excused?

4 THE COURT: You may step down.

5 (Whereupon, the witness was excused.)

6 MS. JORDAN: Your Honor, the state calls David Hogsed.

7 DAVID HOGSED, having been
8 first duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MS. JORDAN

10 Q Please state your name for the record.

11 A David Hogsed.

12 Q Where are you currently employed?

13 A Spartanburg County Sheriff's Office.

14 Q How long have you been employed there?

15 A Right at six years with the sheriff's office.

16 Q Okay. Do you have any prior law enforcement
17 experience?

18 A Yes. I was with the city of Spartanburg for about 15
19 and a half years. I'm in my 22nd year in law enforcement.

20 Q What is your current position there?

21 A Sergeant with the crime scene unit.

22 Q Okay. What position were you in in October, I'm
23 sorry, July of 2007?

24 A Master deputy with the crime scene unit.

25 Q Okay. Did you have an occasion to work with Detective

David Hogsed
Direct examination by Ms. Jordan

1 Cantrell on a case involving the defendant, Joseph Cobb?

2 A Yes, I did.

3 Q Okay. Could you tell this jury what you did on July
4 the 11th of 2010, I'm sorry, 2007?

5 A I received a phone call. Sergeant Bobo asked if I
6 could meet Investigator Cantrell at the hospital with a
7 video recorder to record an interview between her and
8 Mr. Cobb.

9 I met Investigator Cantrell at the hospital and sat up
10 the video recorder and as she talked to him recorded the
11 conversation.

12 Q Okay. Who was in the room when this conversation was
13 recorded?

14 A Myself, Investigator Cantrell and Mr. Cobb.

15 Q Okay. What, what were you wearing that day?

16 A It would have been my issued uniform.

17 Q Okay. In your years in law enforcement have you had
18 the opportunity to see defendants who may be under the
19 influence of drugs or alcohol?

20 A Yes.

21 Q Okay. And did you see the defendant that day?

22 A I did.

23 Q Did he appear based upon your experience and knowledge
24 to be under the influence of drugs or alcohol?

25 A Not in my opinion, no.

David Hogsed
Direct examination by Ms. Jordan

1 Q Were you present when Officer Cantrell read him his
2 rights?

3 A On video, yes.

4 Q Did he appear to understand those rights?

5 A Yes.

6 Q Okay. Did you see Officer Cantrell go through each
7 right with him?

8 A Yes. I basically set the video camera up behind them
9 and just stood there beside the camera as it recorded and
10 just stayed quiet while she conducted the interview.

11 Q Did she read him his rights?

12 A Yes.

13 Q Did he sign stating that he understood his rights?

14 A Yes.

15 Q Did he waive those rights?

16 A Yes.

17 Q Okay. Could you describe to the jury what the
18 defendant's physical appearance was that day?

19 A He really -- when we went in Investigator Cantrell
20 introduced me and told him why, told him why I was there.
21 He seemed fine to me, didn't -- wasn't agitated, wasn't
22 upset, seemed willing to talk.

23 And so we sat the video recorder up. And, like I
24 said, I stood back behind Nicki. And while she spoke with
25 him I recorded the conversation.

David Hogsed
Direct examination by Ms. Jordan

1 Q Okay. Did -- was his speech coherent or incoherent?

2 A It was fine, a little low in volume at times. But, I
3 mean, there was no, nothing slurred that indicated to me
4 that he was -- had been drinking alcohol or taking
5 anything, narcotics or anything like that.

6 Q Okay. Did either you or Investigator Nikki Cantrell
7 promise the defendant anything in exchange for making a
8 statement?

9 A No. I, I don't even know if I ever spoke to him.

10 Q Was he ever threatened or coerced in any way in your
11 presence?

12 A No, ma'am.

13 Q Did he make a statement in response to Officer
14 Cantrell's statement or request?

15 A Yes.

16 Q Okay. Did you record that conversation?

17 A I did.

18 Q What did you do with the recording once you made it?

19 A The recording was actually done on 8mm video tape. I
20 took that 8mm video tape, transferred it to a VHS tape and
21 then turned it into the evidence at the Spartanburg County
22 Sheriff's Office.

23 Q Throughout the course of the time that you were in the
24 room with the defendant did he, did he appear to be in
25 any -- under any duress?

David Hogsed
Direct examination by Ms. Jordan

1 A No.

2 Q Did he appear to be under -- or did he appear to be
3 under the influence of any -- anything?

4 A Not in my opinion, no.

5 Q Going away from that day, did you have another
6 occasion to work on this case?

7 A Actually, yes, in August of 2009.

8 Q What happened in August of 2009?

9 A I received a court order actually from the circuit
10 court, which is a court order to collect nontestimonial
11 evidence which was -- the Court order was for a D.N.A.
12 standard or buccal swab for Mr. Cobb.

13 I went to the county jail and executed that court
14 order collecting that D.N.A. standard for Mr. Cobb.

15 Q I'm going to show you what's now been marked as
16 State's Exhibit No. 13 and ask if you can identify that.

17 A Yes, ma'am.

18 Q What is that?

19 A This is, it's the evidence envelope, D.N.A. standard,
20 with the D.N.A. standard after buccal swabs have been
21 placed in after I collected them from Mr. Cobb.

22 Q Can you describe the process of collecting a buccal
23 swab to the jury?

24 A A buccal swab is basically taking two sterile
25 cotton-tipped applicators, cotton swabs, and swab the

David Hogsed
Direct examination by Ms. Jordan

1 inside of the mouth in order to collect saliva and skin
2 cells and so forth. And, and basically once it's done
3 that's put into a sterile box, and then the box is sealed.

4 Q Okay. What did you do with the box once it is sealed?

5 A Once it's sealed it goes into an evidence envelope.
6 After we mark it it goes into an evidence envelope. And
7 then it is then turned into the evidence at the sheriff's
8 office.

9 Q How do you mark the envelope?

10 A Case number and item number, and then tells the
11 description of what. It's basically here a D.N.A.
12 standard. In parenthesis put buccal. Then I put the
13 defendant's name, Joseph G. Cobb. Date and time of
14 recovery, where it was recovered from, recovered by. I
15 always print and sign my name. And then suspect, under
16 suspect block, I put Cobb, Joseph G. I did not put the
17 victim's name at the time, because at that time I did not
18 know it. And type of offense, I wrote C.S.C.

19 Q Did you seal that item?

20 A I did.

21 Q Okay. And what did you do with the item once you
22 sealed it?

23 A It's -- a property sheet is filled out and it's turned
24 into evidence at the sheriff's office.

25 MS. JORDAN: Your Honor, if I may have one moment.

David Hogsed
Cross-examination by Mr. Whelchel

1 (Pause.)

2 Q Please answer any questions Mr. Whelchel may have.

3 CROSS-EXAMINATION

4 BY MR. WHELCHER

5 Q Thank you. This date and time -- excuse me -- this
6 date and time of recovery, that's the actual time, the date
7 and time, that you took the swab?

8 A That the swabs were actually taken from the mouth,
9 yes, sir.

10 Q That would be August of 2009?

11 A Yes, sir. It was August the 19th of 2009 at 1431
12 hours, which is actually 2:31 in the afternoon.

13 Q Thank you, sir.

14 THE COURT: You may step down.

15 MS. JORDAN: Your Honor, may this witness be excused?

16 THE COURT: He may be.

17 (Whereupon, the witness was excused.)

18 MS. JORDAN: The state calls Robert Rosenberg.

19 ROBERT ROSENBERG, having been
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MS. JORDAN

22 Q Please state your name for the record.

23 A Robert Rosenberg.

24 Q Where are you currently employed?

25 A Spartanburg County Sheriff's Department.

Robert Rosenberg
Direct examination by Ms. Jordan

1 Q How long have you been employed there?

2 A Approximately 26 years.

3 Q What is your current position there?

4 A I am currently an evidence custodian.

5 Q What was your position in July of 2007?

6 A An evidence custodian.

7 Q Okay. I'm going to take you back to September the
8 9th of 2009 and ask you if you had an occasion to work on a
9 case involving Joseph Cobb.

10 A September of 2009?

11 Q Yes, sir, right, yes, sir.

12 A Yes, ma'am.

13 Q Could you tell the jury what your -- what you did on
14 this case?

15 A I took evidence in that had been turned in by David
16 Hogsed and placed it into evidence.

17 Q Okay. I'm going to direct you to what's directly in
18 front of you as State's Exhibit No. 13 and ask if you can
19 identify that.

20 A It is a -- it's item No. 3, a D.N.A. standard buccal
21 swab of Joseph Cobb.

22 Q Okay. Is that the item that you took from Officer
23 Hogsed on the -- on September the 9th of 2009?

24 A I took it in on the 19th.

25 Q I apologize.

Robert Rosenberg
Cross-examination by Mr. Whelchel

1 A Apparently he took it the day before, and it's
2 probably in our evidence locker.

3 Q Okay. Once that was taken in what -- did you alter or
4 amend it in any way?

5 A No, ma'am. The only thing I would have done, the
6 only -- I'd have put a little sticker on it after we enter
7 it into the computer to show where it's located.

8 Q Please answer any questions Mr. Whelchel may have.

9 A Okay.

10 CROSS-EXAMINATION

11 BY MR. WHELCHER

12 Q Is that the sticker you're talking about --

13 A Yes, sir.

14 Q -- for the computer?

15 A Yes, sir.

16 Q Okay. Is this the only piece of, item of, evidence
17 that you received on this case?

18 A No, sir.

19 Q Okay. There are the --

20 A The originals, yes, sir.

21 Q Did you receive these items too in this case?

22 A Yes, sir.

23 Q Okay. And when did you receive these items?

24 A On July 11th of 2007.

25 Q Okay. Do you know where they are now?

Robert Rosenberg
Redirect examination by Ms. Jordan

1 A No, sir, I do not.

2 Q Okay. They've been lost, is that right?

3 A I can't say they've been lost.

4 Q Misplaced.

5 A That, or probably, yes.

6 Q You can't find them in the evidence room.

7 A No, sir.

8 Q Okay. Thank you, sir.

9 MS. JORDAN: A couple of questions, Your Honor.

10 REDIRECT EXAMINATION

11 BY MS. JORDAN

12 Q Officer Rosenberg, what were the items that were lost
13 by the sheriff's office?

14 A The items that are discussed, it was one of the --
15 green toothbrush from back bathroom medicine cabinet. And
16 the other I think was a kitchen trash bags -- trash pull.
17 Do you want me to read each item?

18 Q Yes, sir.

19 A Okay. Dr. Pepper, a 2-liter bottle from trash bag No.
20 1, broken clear glass from trash bag No. 1, brown washcloth
21 from trash bag No. 1, torn prescription info from trash bag
22 No. 1, Dr. Pepper 20-ounce bottle from trash bag No. 2, a
23 sterile X-R medication guide from trash bag No. 2, and one
24 light blue -- I don't understand -- I can't read his
25 writing -- boxers from clothes basket No. 2. I wonder if

Robert Rosenberg
Recross-examination by Mr. Whelchel

1 it's in reference to clothing basket No. 2. One light blue
2 something boxers from clothes basket No. 2, white men's
3 boxers from washing machine.

4 MS. JORDAN: If I may approach, Your Honor.

5 THE COURT: Yes.

6 A That is another sheet.

7 Q In line with what Mr. Whelchel was asking you, I've
8 shown you another evidence log. Could you state to the
9 Court what that is?

10 A It's also a buccal swab from Joseph Cobb.

11 Q When was that turned into evidence?

12 A July 7th. No. July 11th of 2007.

13 Q Okay. What happened to that item?

14 A I do not know, ma'am.

15 Q Okay. Was it -- is it no longer available, or has it
16 been misplaced along with the other items?

17 A I believe so.

18 MS. JORDAN: Nothing further, Your Honor.

19 RECROSS-EXAMINATION

20 BY MR. WHELCHER

21 Q The buccal swab from July the 11th was lost, correct,
22 or misplaced or whatever?

23 A Yes, sir.

24 Q And that's why we have the buccal swab from August, a
25 year later, is that right?

Robert Rosenberg
Recross-examination by Mr. Whelchel

1 A Yes, sir.

2 Q Excuse me. Two years later, is that right?

3 A Yes, sir.

4 Q Okay. Thank you, sir.

5 MS. JORDAN: Your Honor, may this witness be excused?

6 THE COURT: He may be.

7 (Whereupon, the witness was excused.)

8 MS. JORDAN: Your Honor, may Mr. Whelchel and I
9 approach?

10 THE COURT: Yes, ma'am.

11 (Bench conference held off the record in the presence
12 of the jury but out of the hearing of the jury.)

13 THE COURT: All right, sir. Ladies and gentlemen,
14 we're going to have to recess for the afternoon based upon
15 witness scheduling, so we'll do so.

16 Keep in mind as you leave you're still to obey the
17 caution I've given you previously, and that is you're to
18 have no discussions about this case with any person
19 whatsoever in any fashion whatsoever.

20 You're not to conduct any research or do your own
21 investigation into any issue that relates to the case in
22 any fashion. And you're not to permit yourselves to be
23 exposed to any type of media coverage that might relate to
24 the trial.

25 With that, have a good evening. Please report to your

1 jury room at 9:30 in the morning, 9:30 in the morning.

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Court is in recess until 9:30 in the
5 morning.

6 END OF PROCEEDINGS MARCH 9, 2011

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Lynn McMillan
Direct examination by Ms. Jordan

1 (Proceedings March 10, 2011)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Are we ready for the jury?

5 MS. JORDAN: Yes, Your Honor.

6 THE COURT: Bring them in.

7 (The following takes place in the presence of the
8 jury.)

9 THE COURT: Good morning, ladies and gentlemen.

10 When we recessed yesterday the state was in this midst
11 of their presentation of evidence. So we will continue
12 with that this morning.

13 Ms. Jordan.

14 MS. JORDAN: Thank you, Your Honor. The state calls
15 Lynn McMillan.

16 LYNN McMILLAN, having been
17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MS. JORDAN

19 Q Please state your full name for the record.

20 A Lynn McMillan.

21 Q Okay. Ms. McMillan, where do you work?

22 A I work at the Children's Advocacy Center and the
23 University of South Carolina.

24 Q What is your occupation?

25 A I'm a social worker. At the Children's Advocacy

Lynn McMillan
Direct examination by Ms. Jordan

1 Center I'm a forensic evaluator. I conduct forensic
2 assessments of children who've been referred to the
3 advocacy center. And through the University of South
4 Carolina I'm adjunct faculty in the college of social work.

5 Q As part of your work have you had the opportunity to
6 conduct forensic assessments?

7 A Yes.

8 Q Okay. Did you have an opportunity to conduct a
9 forensic assessment on Complaining Witness

10 A Yes, I did.

11 Q Okay. Before we get to the forensic assessment that
12 you conducted on Complaining I'm going to ask you a couple of
13 questions about your background.

14 Are you licensed by the state of South Carolina?

15 A Yes, I am. I'm licensed, I'm licensed by the state of
16 South Carolina as what we call an L.I.S.W.C.P. That's a
17 licensed independent social worker for clinical practice.

18 Q Okay. Tell the jury a little bit about your
19 educational background.

20 A I am currently a Ph. D. candidate at the University of
21 South Carolina in the College of Social Work. I have my
22 master's degree in social work as well from U.S.C. That
23 was in 1986. And I have an undergraduate degree in social
24 work from East Carolina University in Greenville, North
25 Carolina. And that was in 1979. So I've been a social

Lynn McMillan
Direct examination by Ms. Jordan

1 worker for over 30 years.

2 Q Okay. Please give the jury if you don't mind a brief
3 history of your work experience.

4 A Well, I've been a social worker for over 30 years, and
5 I have worked as a social worker both in medical settings
6 and in psychiatric settings, both in-patient setting where
7 people were admitted to the hospital, but also in community
8 mental health.

9 Most of my clinical work has been in up-front
10 assessments of people for various reasons. I've been at
11 Children's Advocacy Center since 2001 where I primarily
12 conduct forensic evaluations on children who are referred
13 to us. And I also have some administrative
14 responsibilities there.

15 Q Have you received any special training for the
16 forensic interviewing of children in the area of physical
17 or sexual abuse?

18 A Yes, I have.

19 Q Will you tell the jury about when and where your
20 training was?

21 A Under my licensure we're required to have continuing
22 education, and-but also as part of my work --

23 THE COURT: Let me ask you to pull that microphone up,
24 please, ma'am.

25 THE WITNESS: Yes, sir.

Lynn McMillan
Direct examination by Ms. Jordan

1 THE COURT: And if you'll look towards the
2 prosecutor --

3 THE WITNESS: Okay.

4 THE COURT: -- that way the court reporter can see at
5 least your profile, because she has a difficult time if she
6 can't see your face. When you turn away from her, she
7 can't see you.

8 THE WITNESS: Thank you. Is that better?

9 BY MS. JORDAN

10 A Okay. I forgot the question.

11 Q Okay. When and where have you received training in
12 forensic science?

13 A Thank you.

14 Throughout, through the Children's Advocacy Center
15 since 2001, specifically to forensic evaluations and issues
16 around maltreatment in children.

17 We -- I attend on a regular basis international,
18 national, state and local conferences where there are
19 specialized trainings regarding all aspects of forensic
20 evaluations.

21 Q Okay. Approximately how many forensic evaluations or
22 interviews have you conducted during your career?

23 A I have done, specific to forensic evaluations I've
24 done, over 800.

25 Q Have you ever been called upon to testify in court

Lynn McMillan
Direct examination by Ms. Jordan

1 regarding child sexual abuse and forensic interviewing?

2 A Yes, I have.

3 Q Could you tell the jury about how many times and
4 where?

5 A I would estimate around 25 to 30 times, both in family
6 court and in general sessions court in Spartanburg County,
7 Cherokee County, Greenville County and Laurens County.

8 Q Okay. I'm going to turn back to the forensic
9 assessment that you completed on Complaining Witness How did
10 you come into contact with Complaining

11 A She was referred to us by the Spartanburg County
12 Sheriff's Office.

13 Q Okay. On how many occasions did you meet with
14 Complaining

15 A I met with Complaining twice.

16 Q When did you meet with her?

17 A The two times that I met with her, on November 7th of
18 2007 and again on November 15th of 2007.

19 Q Okay. When you interviewed her who was -- where did
20 you interview her?

21 A I interviewed her in one of our interview rooms that
22 we have at the Advocacy Center. Our Advocacy Center is a
23 2-story house, and our interview rooms are located on the
24 second floor. And they are -- we had two interview rooms
25 at the time, and I interviewed her in one of those.

Lynn McMillan
Direct examination by Ms. Jordan

1 Q Okay. Who was present in the room when you
2 interviewed Complaining

3 A Only me and Complaining

4 Q Okay. Was that during both interviews?

5 A Yes. Correct.

6 Q Okay. How old was Complaining at the time that you spoke
7 with her?

8 A At the time of the interviews she was 15.

9 Q Okay. What, if any, rules or guidelines do you set
10 forth in interviews, and did you set those forth in your
11 interview with Complaining

12 A Yes, we do have rules about talking in the interview
13 room, and I did set those with her.

14 The rules that we have with the children who come to
15 us are that it's really important that we only talk about
16 the truth when we're in there, and also to let the children
17 know that if I ask a question and they don't know the
18 answer to that or they don't remember the answer, they can
19 say I don't know or I don't remember. I don't want them
20 making things up for me.

21 The other rule that I have is that if they get a sense
22 that I'm getting mixed up about something, I give them
23 permission to correct me on it.

24 Q Okay. When you spoke with Complaining did she state
25 whether or not a sexual assault had occurred?

Lynn McMillan
Direct examination by Ms. Jordan

1 A Yes, she did.

2 Q Did she state where the assault occurred?

3 A Yes, she did.

4 Q Could you tell the jury where that was?

5 A She said that it occurred at a residence where she was
6 spending the night.

7 Q Did she state when that happened?

8 A Yes.

9 Q Could you tell the jury when she stated it happened?

10 A It happened in July of 2007.

11 Q Ms. McMillan, do you also in the course of your --
12 course of your job counsel children in sexual -- who have
13 been sexually abused?

14 A I do not specifically provide the therapy. We provide
15 therapy at the Advocacy Center, and that's part of my
16 training, but that's not part of my actual job.

17 Q Let me ask you. Do you -- can you describe to the
18 jury what some of the demeanors are that you would normally
19 see in a child that has been sexually abused?

20 A Well, it really depends on that particular child.
21 Some children are very serious and very straight forward in
22 their demeanor for me. Others may be very tearful during
23 the abuse part of the interview, whereas they may be, say,
24 friendlier and more open and talkative about things that
25 don't relate specifically to the abuse. And so sometimes I

Lynn McMillan
Cross-examination by Mr. Whelchel.

1 can see that transition just during the interview process.

2 Q Please answer any questions Mr. Whelchel may have.

3 CROSS-EXAMINATION

4 BY MR. WHELCHER

5 Q Did she tell you that she had -- that she threatened
6 to call the police? You can look at your notes, ma'am.

7 A Yes, sir, she did.

8 Q With her cell phone?

9 A She didn't say specifically with her cell phone. She
10 said she had her cell phone with her. She just said she
11 threatened to call the police.

12 Q She had her cell phone with her, but it was not turned
13 on, is that right?

14 A That is correct.

15 Q Thank you, ma'am.

16 MS. JORDAN: Your Honor, may this witness be excused?

17 THE COURT: You may step down. You may also be
18 excused.

19 (Whereupon, the witness was excused.)

20 MS. JORDAN: The state calls Jack Westmoreland.

21 JOHN WESTMORELAND, having been
22 first duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MS. JORDAN

24 Q Please state your name for the record.

25 A John Westmoreland.

John Westmoreland
Direct examination by Ms. Jordan

- 1 Q Where are you currently employed?
- 2 A Spartanburg County Sheriff's Office.
- 3 Q How long have you been employed there?
- 4 A Over 27 years.
- 5 Q What is your current position there?
- 6 A Court division.
- 7 Q Where did you -- at what time did you work in evidence
- 8 at the sheriff's office?
- 9 A From 10/07 to 10/10.
- 10 Q Did you have an occasion to work on a case involving
- 11 the defendant, Joseph Cobb?
- 12 A I carried some items to SLED.
- 13 Q Okay. Could you tell the jury what you carried to
- 14 SLED and when you carried it so SLED?
- 15 A I carried a sexual assault evidence collection kit on
- 16 a Bishop. I can't read the first name. S.A.M. That was
- 17 on 9/9 of '09.
- 18 Q Where did you carry it to?
- 19 A To SLED.
- 20 Q Okay. Did you carry anything else to SLED?
- 21 A I did.
- 22 Q Would you tell the jury what that was?
- 23 A A D.N.A. standard buccal from Joseph C. Cobb -- G.
- 24 Cobb.
- 25 Q Okay. When you received both of those items were

John Westmoreland
Cross-examination by Mr. Whelchel

1 either of those items open?

2 A No, they were not.

3 Q Okay. Were they ever opened in your presence?

4 A No, they were not.

5 Q Okay. Did you tamper or damage those items in any way
6 when you had control of them?

7 A No, I did not.

8 Q Please answer any questions Mr. Whelchel may have.

9 CROSS-EXAMINATION

10 BY MR. WHELCHER

11 Q When did you take the buccal swab to SLED, Jack?

12 A On 9/9 of '09.

13 Q So you took them both at the same time.

14 A The same time, yes, sir.

15 Q Okay. Thank you, sir.

16 THE COURT: Step down.

17 THE WITNESS: Thank you, sir.

18 MS. JORDAN: The state calls Sherri Brown.

19 SHERRI BROWN, having been
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MS. JORDAN

22 Q Please state your name for the record.

23 A Sherri Brown, B-R-O-W-N.

24 Q Ms. Brown, where are you currently employed?

25 A South Carolina Law Enforcement Division, also known as

Sherri Brown
Direct examination by Ms. Jordan

1 SLED.

2 Q How long have you worked at SLED?

3 A A little over 16 and a half years.

4 Q Okay. What are your duties at SLED?

5 A One of my -- I'm a forensic technician within the
6 D.N.A. departments. And one of the duties within the
7 D.N.A. department is when any evidence that comes into
8 SLED, if it has a liquid blood tube in it, I stabilize it
9 and go through our process and take the liquid and make it
10 into a dry form by pouring it onto filter paper.

11 Q Okay. Did you have an occasion to receive a sexual
12 assault kit on a Complaining Witness from the sheriff's office,
13 Spartanburg County Sheriff's Department?

14 A Yes.

15 Q Okay. When you received that item what kind of
16 condition was it in?

17 A It was in a heat-sealed pouch. The paper envelope
18 with all the evidence -- the pieces from the sexual assault
19 kit was in a heat-sealed pouch, but it's sealed and dated
20 by the submitting person.

21 Q Okay. Did you break the seal on that pouch?

22 A Yes.

23 Q What was the purpose of that?

24 A So I can get in and retrieve the liquid blood that was
25 taken at the time the kit was collected.

Sherri Brown
Direct examination by Ms. Jordan

1 Q Okay. And did you do that in this case?

2 A Yes.

3 Q Okay. What day did you do that?

4 A I took it into my custody on October the 16th of 2008,
5 and it was sealed. And sometime between the 16th of
6 October and the 20th of October I stabilized it because it
7 was in my custody. And the, the next step was it was
8 transferred until -- to a storage bin on October the
9 20th of 2008.

10 Q Okay. After you stabilized it did you seal the
11 package again?

12 A Yes. Once it's air dried, according to our policy and
13 procedure, it was repackaged up into the sexual assault kit
14 and heat sealed. The heat-sealed pouch was sealed with my
15 initials and date on it.

16 Q Okay. Do you know what happened to the sexual assault
17 kit once you sealed it again?

18 A It was put -- according to our policies at the time,
19 it was stayed to six months or more, and then if it would
20 not have been assigned, the case, it was returned to the
21 submitting agency.

22 Q Okay. Do you show from your documentation whether or
23 not that kit was returned to the submitting agency?

24 A Yes, it was.

25 Q Do you also show in your documentation whether or not

Sherri Brown
Cross-examination by Mr. Whelchel

1 SLED came back into contact with that sexual assault kit?

2 A Yes. On September the 10th of 2009 I took custody of
3 it again. And on, on that same date I transferred it into
4 a secure location within the D.N.A. department so that it
5 could be analyzed.

6 Q Okay. Please answer any questions that Mr. Whelchel
7 may have.

8 CROSS-EXAMINATION

9 BY MR. WHELCHER

10 Q Let me make sure I understand what you said,
11 Ms. Brown.

12 A Uh-huh.

13 Q You originally received or personally received this,
14 these particular items, on October the 16th of '08.

15 A Yes.

16 Q Okay. And nothing was done.

17 A At that time it was -- case could not be assigned to
18 be anal --

19 Q Within SLED.

20 A Within SLED, sir.

21 Q Okay. And at some point subsequent to that it was
22 shipped back to the sheriff's department here --

23 A Yes.

24 Q -- in Spartanburg. You received it again in
25 September 10th of '09.

Jasper Humbert
Direct examination by Ms. Jordan

1 A Yes.

2 Q Okay. And I'm assuming it was assigned at that point.

3 A It, it was not assigned to -- right then and there.

4 But a few months later it was assigned to D.N.A. analyst
5 Jasper Humbert.

6 Q Oh, okay. And other than -- you didn't do any testing
7 or analysis or anything like that.

8 A No. I did not.

9 Q Thank you.

10 MS. JORDAN: May this witness be excused?

11 THE COURT: Yes.

12 Step down. Thank you.

13 (Whereupon, the witness was excused.)

14 MS. JORDAN: The state calls Jasper Humbert.

15 JASPER HUMBERT, having been
16 first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MS. JORDAN

18 Q Please state your name for the record.

19 A Jasper Humbert.

20 Q Mr. Humbert, where were you employed prior to January
21 of this year?

22 A At the South Carolina Law Enforcement Division.

23 Q How long did you work there?

24 A Approximately four and a half years.

25 Q Are you -- have you since left SLED?

Jasper Humbert
Direct examination by Ms. Jordan

1 A Yes, I have.

2 Q Okay. While you were at the South Carolina -- while
3 you were at SLED did you have a chance to analyze a sexual
4 assault kit that was completed on Complaining Witness _

5 A Yes, I did.

6 Q I'm going to first start out by showing you what's
7 already been marked as State's Exhibit No. 13 and ask if
8 you recognize that item.

9 A Yes, I do.

10 Q Could you tell the jury what that is?

11 A It's listed as my item four because I have the SLED
12 case number and my initials on it. And this is a -- buccal
13 swabs from a Joseph Cobb.

14 Q Okay. When you received that item was it sealed?

15 A Yes, it was.

16 Q Okay. Were you the first person to break the seal on
17 that item?

18 A I was the one to break the seal on this pouch, this
19 evidence pouch.

20 Q Okay.

21 A And when I got done with it I sealed it back and
22 initialed it when I returned it.

23 Q Okay. Did you also initial the inside envelope?

24 A Yes, I did.

25 Q The one that's --

Jasper Humbert
Direct examination by Ms. Jordan

1 A Yes.

2 MS. JORDAN: Your Honor, at this time the state would
3 move State's Exhibit No. 13 into evidence.

4 MR. WHELCHEL: I need to see it.

5 MS. JORDAN: I'm sorry.

6 (Pause.)

7 MR. WHELCHEL: No objection.

8 THE COURT: It's admitted.

9 MS. JORDAN: Thank you.

10 (Defendant's buccal swab marked State's Exhibit No.
11 13.)

12 Q I'm also going to go through a process real quick of
13 just showing you some other items and asking you if you can
14 identify those.

15 Let me show you State's No. 22. These items have
16 already been marked and entered into evidence.

17 A Okay. This is a blood standard from the case, this
18 case.

19 Q Who is the blood -- who is the blood standard of?

20 A Complaining Witness

21 Q Okay. What SLED item number is that for you?

22 A Item 1.1.

23 Q I'm also going to show you -- just in front of you is
24 item or State's Exhibit No. 23 -- and ask if you can
25 identify that.

Jasper Humbert
Direct examination by Ms. Jordan

1 A This is Item 1.6 from my item, and it's some
2 fingernail scrapings from the, the sexual assault kit.

3 Q And did you analyze those fingernail scrapings?

4 A Yes, I did.

5 Q And it's my understanding those are the fingernail
6 scrapings of Complainant Witness _

7 A That's correct.

8 Q Were you able to make any identifications as to D.N.A.
9 on either of the scrapings that you have?

10 A Yes, I was. I did the left hand and right hand
11 because of the scrapings from both hands. And Item
12 1.6.1 -- the partial D.N.A. profile developed from that
13 item was consistent with Complainant Witness _

14 Q Okay. What about Item 1.6.2, which I believe is the
15 fingernail scrapings from her right hand?

16 A Okay. The D.N.A. obtained from Item 1.6.2, which was
17 the right hand, is a mixture of at least two individuals.

18 Complainant Witness _ cannot be excluded as a possible
19 contributor to this mixture. And then Joseph Cobb is
20 excluded as a contributor to that mixture.

21 Q So if I'm understanding correctly, the one D.N.A. item
22 from that fingernail scraping that you could identify was

23 Complainant Witness _

24 A That's the only one I could not exclude.

25 Q Not exclude.

Jasper Humbert
Direct examination by Ms. Jordan

1 A Yeah.

2 Q Okay. I'm going to now show you what's been
3 previously marked as State's Exhibit No. -- actually we'll
4 start with 24 and ask if you can identify this.

5 A These are the smears from the sexual assault kit.

6 Q Okay. And I am going to show you what's also been
7 marked previously and admitted as State's 20 and 21 and ask
8 if you can identify those for the jury.

9 A Item 21 would be my Item 1.4, which is oral swabs from
10 the sexual assault kit. And this item, Item 1.3 on my
11 paperwork, are the vaginal swabs from the sexual assault
12 kit.

13 Q Were you able to identify any D.N.A. off of either one
14 of those swabs?

15 A Well, I did testing for semen on those items, and I
16 got negative tests for semen. And because of that I didn't
17 do any D.N.A., further D.N.A., analysis on it, because
18 after I did the test for semen it's SLED policy not to go
19 forward if it's negative.

20 Q Okay. Is that uncommon to sometimes have a negative
21 presumptive test on any swabs that are taken?

22 A That's not uncommon at all. I would say half of all
23 of the sexual assault kits I ever did didn't have positive,
24 or were negative basically.

25 Q I'm going to flip now and show you beginning with --

Jasper Humbert
Direct examination by Ms. Jordan

1 I'm going to show you State's No. 17, which is already
2 marked and admitted, and ask if you can identify this.

3 A Okay. All right. This is a swab labeled mid lower
4 abdomen which corresponds with some items that I
5 subitemized in this case. 1.5.4 would be the SLED item,
6 mid lower abdomen, so.

7 Q Were you able to extract any D.N.A. from that item?

8 A Let's see. No, I was not. I didn't get any human
9 D.N.A. from the item when I extracted from it, so.

10 Q I'm now going to show you what's previously marked and
11 admitted as State's No. 16. Can you identify that?

12 A This is a swab, left-side neck, which would be Item
13 1.5.3 from my kit or from my analysis.

14 And the results that I got for it, the D.N.A. obtained
15 from Item 1.5.3 is a mixture of at least two individuals.
16 The D.N.A. profile developed from the major contributor of
17 this mixture is consistent with the D.N.A. profile of
18 Complainant Witness Joseph Cobb cannot be excluded as a minor
19 contributor to this mixture.

20 Q Okay. And what area of the body was that swab from,
21 again?

22 A Left-side neck.

23 Q I'm now going to show you what's been marked as
24 State's Exhibit No. 19 -- I believe it's SLED 1.5.6 -- and
25 ask if you can identify that. It's already been marked and

Jasper Humbert
Direct examination by Ms. Jordan

1 admitted.

2 A Item 1.5.6, which is right side of neck, the result
3 that I got for it was the D.N.A. profile obtained from Item
4 1.5.6 is a mixture of at least two D.N.A. or at least two
5 individuals. The D.N.A. profile, the major contributor to
6 Item 1.5.6, matches the D.N.A. profile of Joseph Cobb.

7 Q And where on Complaining Witness body was that swab
8 identified as having been taken from?

9 A Right side of neck.

10 Q Now I'm going to show you State's No. 15, which I
11 believe corresponds with SLED's 1.5.2, and ask if you can
12 identify this.

13 A It's Item 1.5.2 on my paperwork. It's right -- swab
14 from right breast nipple.

15 The result that I got was that the D.N.A. profile
16 obtained from Item 1.5.2 is a mixture of at least two
17 individuals.

18 The D.N.A. profile -- the major contributor to this
19 item matches the D.N.A. profile of Joseph Cobb. The D.N.A.
20 profile, the minor contributor, is consistent with the
21 D.N.A. profile of Complaining Witness

22 There is D.N.A. present on Item 1.5.6, which is the
23 last item, because these two items had similar results that
24 couldn't be contributed to either people, meaning there was
25 a number. A D.N.A. profile is a series of numbers, and

Jasper Humbert
Direct examination by Ms. Jordan

1 there was one or two extra numbers that wasn't from those
2 two.

3 Q But if I'm correct what you testified to is that as to
4 the right breast and as the right side of her neck a major
5 contributor to the D.N.A. that was there was that of Joseph
6 Cobb.

7 A That is correct.

8 Q What type of D.N.A. were you able to -- I apologize.
9 I'm going to show you now what's been marked -- and I
10 believe this is our last one -- as State's Exhibit No. 14,
11 which corresponds to SLED No. 1.5.1 and if ask if you can
12 identify this.

13 A Thank you. Left-breast nipple, which is SLED Item
14 1.5.1. And the result that I got for it was the D.N.A.
15 profile developed from Item 1.5.1 matches the D.N.A.
16 profile of Joseph Cobb.

17 The probability of randomly selecting an unrelated
18 individual having a D.N.A. profile matching this item --

19 MR. WHELCHEL: Objection. He's not been sworn -- he's
20 not been qualified as any kind of expert witness or any
21 kind of mathematician or anything like that. He's here as
22 a SLED chemist. I would object to any testimony about
23 probability at this point.

24 MS. JORDAN: Your Honor, could I lay a foundation?

25 THE COURT: You may.

Jasper Humbert
Direct examination by Ms. Jordan

1 Q What is your educational background, Mr. Humbert?

2 A I have a bachelor's of science degree in biology from
3 Armstrong Atlantic State University in Savannah, Georgia.

4 I have a master's degree in biological sciences from
5 the University of Iowa.

6 I have a further three years of graduate education in
7 a genetics Ph. D. program from the Penn State Medical
8 College in Hershey, Pennsylvania.

9 I also was trained as a forensic D.N.A. analyst at the
10 South Carolina Law Enforcement Division in the D.N.A.
11 department under a court-qualified analyst where under her
12 direction I basically did hundreds of D.N.A. samples under
13 her supervision until such time that I had gone through all
14 of my training. And then I started my own cases and was
15 basically -- had done my own cases for approximately three
16 years while I was at SLED.

17 Q Have you received training in the area of D.N.A.
18 analysis?

19 A Yes, I have.

20 Q Okay. And approximately how many of these kits have
21 you worked on over the years?

22 A Probably well over a hundred sexual assault kits.

23 Q Have you ever testified before in the state of South
24 Carolina as an expert?

25 A Yes, I have.

Jasper Humbert
Direct examination by Ms. Jordan

1 Q How many times?

2 A Approximately 15.

3 Q Okay. And which courts, or courts and counties?

4 A Charleston, Berkeley County, Lexington County,
5 basically all over the state.

6 Q Have you ever...

7 MS. JORDAN: And, Your Honor, at this time we would
8 move to have him admitted as an expert in the field of
9 D.N.A. analysis.

10 MR. WHELCHER: Subject to my earlier objections, Your
11 Honor.

12 THE COURT: All right. He is so qualified.

13 BY MS. JORDAN

14 Q Going back to the swab from Complaining left breast,
15 could you continue telling the jury about the D.N.A. that
16 you were able to retrieve from that swab?

17 A Yes, I can. The D.N.A. profile developed from Item
18 1.5.1, which was a swab from the left-breast nipple,
19 matches the D.N.A. profile of Joseph Cobb. The probability
20 of randomly selecting an unrelated individual having a
21 D.N.A. profile matching this item is approximately one in
22 12 quadrillion.

23 Q So it's my understanding that the one in 12
24 quadrillion with it being anybody other than him -- or I
25 apologize.

Jasper Humbert
Direct examination by Ms. Jordan

1 A That's the probability of like a random person putting
2 their D.N.A. profile on the item.

3 Q Okay. Is that a relatively high probability?

4 A Yes, very, extremely so.

5 (SLED D.N.A. report marked State's Exhibit No. 25 for
6 Identification.)

7 Q Mr. Humbert, I'm going to show you what's been marked
8 now as State's Exhibit No. 25 and ask you if that's the
9 four pages of your report in this case or if that's a copy
10 of the first four pages of your report in this case.

11 A It appears to be, yes.

12 Q Is the page that's missing, in fact, just the table
13 with a lot of numbers in it?

14 A Yeah. That's basically my table with all of the
15 D.N.A. profiles from the case.

16 Q And it's a lot of numbers?

17 A Yes. It's a good number of numbers, yes.

18 MS. JORDAN: Your Honor, at this time the state would
19 move to admit State's No. 25 into evidence.

20 MR. WHELCHER: No objection.

21 THE COURT: It's admitted.

22 (SLED D.N.A. report marked State's Exhibit No. 25.)

23 Q Please answer any questions Mr. Whelchel may have.
24
25

Jasper Humbert
Cross-examination by Mr. Whelchel

1 CROSS-EXAMINATION

2 BY MR. WHELCHER

3 Q Humbert?

4 A That's correct.

5 Q Thank you, sir.

6 Mr. Humbert, using item or State's Evidence Exhibit
7 No. 25, the one that was just admitted, your analysis, I
8 need to ask you some questions, specifically Item 1.5.4.

9 A Okay.

10 THE COURT: Please be careful of the microphone.
11 Don't rub up against it.

12 THE WITNESS: Oh, okay. Sorry.

13 A Okay.

14 Q That, sir, is the swab from the mid lower abdomen
15 that's suspected saliva. These swabs are from Complaining
16 Bishop that were obtained and forwarded to you, correct,
17 sir?

18 A That's correct.

19 Q Okay. And the result of your analysis is that no
20 human D.N.A. can be found or identified?

21 A No human D.N.A. was obtained from the item.

22 Q Okay. Even though we know it came from the abdomen of
23 Complaining Witness no human D.N.A. can be obtained from that
24 swab.

25 A No human D.N.A. was obtained from it when I did my

Jasper Humbert
Cross-examination by Mr. Whelchel

1 analysis.

2 Q All right. Now, Items 1.1 and 4 are known items, is
3 that correct, so that you'll have the D.N.A. of the two
4 individuals, correct?

5 A That is correct. Those are D.N.A. standards.

6 Q Okay. So you can compare the standards to what you
7 get from the swabs.

8 A That's correct.

9 Q Okay. And even though you have those you can't find
10 those at 1.5.4 or any human D.N.A. at 1.5.4, is that right?

11 A That's correct.

12 Q Okay. I just want to make sure I'm understanding
13 correctly.

14 And, again, you testified earlier on the fingernail
15 scrapings, those are known scrapings from Complaining Witness
16 correct?

17 A That's correct.

18 Q Okay. And Item 1.6.1 is consistent with Complaining
19 Bishop.

20 A That's correct.

21 Q That's the same thing as a match?

22 A Because the numbers in that are matching to hers. But
23 it's a very low D.N.A. profile meaning some of the numbers
24 are missing. So it is consistent with her. So all the
25 numbers present in that partial D.N.A. profile that I have

Jasper Humbert
Cross-examination by Mr. Whelchel

1 here are also in Complaining Witness D.N.A. profile.

2 Q Okay. So the swabs from the left and right breast
3 that were suspected saliva, particularly 1.5.1, you say
4 it's consistent with Mr. Cobb.

5 A I said that the profile matches the D.N.A. profile of
6 Joseph Cobb.

7 Q Okay. And 1.5.2 and 1.5.6, which is your next items
8 that you tested --

9 A Yes.

10 Q -- are mixtures of at least two individuals. That
11 would be Complaining Cobb, excuse me, Joseph Cobb and Complaining
12 Bishop, correct?

13 A That's correct. They are both in those D.N.A.
14 profiles.

15 Q Okay. And there's D.N.A. on 1.5.6 that cannot be
16 attributed to Complaining Witness or Joseph Cobb.

17 A That is correct. I have numbers that aren't in their
18 profiles, is basically what that means.

19 Q Okay. And Item 1.5.3 also is a mixture of at least
20 two other individuals, is that correct?

21 A That's correct.

22 Q That would be Mr. Cobb and Ms. Bishop.

23 A That is correct. Joseph Cobb could not be excluded as
24 a minor contributor, meaning that the numbers in the minor
25 contributor match or are in his profile.

Jasper Humbert
Cross-examination by Mr. Whelchel

1 Q So the numbers are consistent with some of his
2 numbers, correct?

3 A Yes, that's correct.

4 Q Those are the only items that you analyzed, is that
5 correct, page -- I'm looking at page three. Excuse me.

6 A Three. I'm sorry.

7 Q Of this one, your report.

8 A All right. Those are the only ones that I did D.N.A.
9 analysis on.

10 Q Okay.

11 A The ones listed under D.N.A. analysis. I analyzed the
12 other items for serology when I tested them as negative for
13 semen in the rape kit, but these are the only items that
14 D.N.A. had been -- an analysis or an extraction had been
15 carried.

16 Q So the D.N.A. is a further step. After you've done
17 the original analysis and you've determined that there was
18 on the smears vaginal and oral, no analysis was performed,
19 no further analysis was performed, is that correct? I'm
20 talking about Item 1.2.

21 A That is -- I didn't do any analysis on those smears,
22 that's correct.

23 Q Okay. And Item 1.3 you analyzed and no semen's
24 identified.

25 A That is correct.

Jasper Humbert
Redirect examination by Ms. Jordan

1 Q Those were the vaginal swabs.

2 A That's correct.

3 Q And the oral swabs were the same way.

4 A That's correct. I didn't detect any semen on those.

5 Q Thank you, sir.

6 MS. JORDAN: A few questions on followup, Your Honor.

7 REDIRECT EXAMINATION

8 BY MS. JORDAN

9 Q Is it unusual to not be able to obtain D.N.A. from
10 swabs that are submitted?

11 A It depends on the type of swab. With blood you
12 usually expect it. I mean, if it's a touch or a contact
13 swab it's not rare, I mean, it's not -- it's very common to
14 not get anything. That's basically it, so.

15 Q But you were able to find the defendant's D.N.A. on
16 samples, on some of the samples, as far as the right
17 breast, right side of the neck and the left breast that
18 belonged to the defendant, Joseph Cobb.

19 But I will go one by one. 1.5.2, which was the right
20 breast, along with 1.5.6, which is I believe the second
21 paragraph --

22 A I was able to find D.N.A. that matched his profile.

23 Q The same thing with 1.5.1, which was the left breast.

24 A That is correct.

25 MS. JORDAN: Nothing further, Your Honor.

1 THE COURT: You may step down.

2 MS. JORDAN: Your Honor, may Mr. Whelchel and I
3 approach for scheduling?

4 THE COURT: Yes.

5 (Bench conference held off the record in the presence
6 of the jury but out of the hearing of the jury.)

7 THE COURT: All right. Let me ask the jury to please
8 go to your jury room. Don't yet discuss the case. I'll
9 bring you back in just a few minutes.

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

12 MS. JORDAN: Thank you, Your Honor.

13 THE COURT: We will take ten minutes.

14 (Whereupon, a recess was taken.)

15 MS. JORDAN: Your Honor, may I approach with
16 Mr. Whelchel?

17 THE COURT: Yes, ma'am.

18 (Bench conference held off the record.)

19 THE COURT: All right. Are we ready for the jury?

20 MS. JORDAN: Yes, Your Honor, if I can just remove
21 this cord so that it doesn't cause a hazard.

22 THE COURT: Bring the jury, please.

23 (The following takes place in the presence of the
24 jury.)

25 THE COURT: All right. Ms. Jordan.

Nicki Cantrell
Direct examination by Ms. Jordan

1 MS. JORDAN: The state calls Officer Nicki Cantrell.

2 NICKI CANTRELL, having been
3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MS. JORDAN

5 Q Please state your name for the record.

6 A Nicki Cantrell.

7 Q Where are you currently employed?

8 A Spartanburg County sheriff's office.

9 Q How long have you been employed there?

10 A Almost ten years.

11 Q What is your current position?

12 A I'm a detective. I investigate all crimes that are
13 sexually motivated and all crimes against children.

14 Q How long have you been in that position?

15 A Seven years.

16 Q On -- I'm sorry. On July the 10th of 2007 did you
17 have an occasion or were you on call that day or working
18 that day?

19 A I was.

20 Q Did you receive a call in reference to Joseph Cobb?

21 A I received a call in reference to Complainant Witness
22 being at Spartanburg Regional.

23 Q Okay. Based upon that phone call, what did you do?

24 A I responded to Spartanburg Regional and met with the
25 officer that was there.

Nicki Cantrell
Direct examination by Ms. Jordan

1 Complaining Witness _ was in an exam room, and they had
2 already started the rape kit. The officer had not received
3 much information other than the victim's name at that
4 point. By the time he got there they were already getting
5 ready to start a sexual assault kit on her. So I told him
6 he could go ahead and leave and I would, I would take the
7 case from there.

8 Q Okay. Who did you speak with at the hospital?

9 A I spoke with a nurse that was doing the sexual assault
10 kit. I also spoke with Complaining Witness _ and I spoke with
11 her step-mother, Danielle.

12 Q Okay. When you spoke with Complaining did she state
13 whether or not a sexual assault had occurred?

14 A She did.

15 Q Did she say where it occurred?

16 A Yes. She stated that it happened at Home
17 Home in Roebuck at Joseph Cobb and Jeannie
18 Cobb's residence.

19 Q What county is that residence in?

20 A Spartanburg County.

21 Q Okay. Did she state when it happened?

22 A Yes. She stated it happened around 1:00 a.m. on that
23 day, July the 10th of 2007.

24 Q Okay. How did -- can you describe Complaining demeanor
25 and how she looked when you were interviewing her that day?

Nicki Cantrell
Direct examination by Ms. Jordan

1 A Yes. She was very, very tearful. She was crying.
2 She seemed exhausted. She had already talked to the nurses
3 about it. She, she didn't really want to have to keep
4 going through what had happened. She would get so upset --
5 she was sobbing -- that she couldn't hardly speak.

6 Q Okay. What did you do next in your investigation?

7 A I did have to interview her to obtain some
8 information. And I explained that to her that I just
9 needed to ask her a few questions.

10 So I did. I interviewed her briefly. And then after
11 that in speaking to the nurse -- and she had told me what
12 she had been told by Complaining which was consistent with
13 what Complaining had told me -- then at that point I decided
14 to do a search warrant at the incident location.

15 So I had somebody, another officer, drive by the
16 incident location and get me a description of the house
17 while I went back to the office and wrote a search warrant
18 which I presented to a judge. And the judge did sign the
19 search warrant.

20 Q Okay. Were you present when the search warrant was
21 executed?

22 A I was.

23 Q And were items taken from that search warrant?

24 A Yes, ma'am.

25 Q You've been in here in court. Were those the items

Nicki Cantrell
Direct examination by Ms. Jordan

1 that we now know have been either lost or misplaced?

2 A Yes, ma'am.

3 Q And what were those items again?

4 A Do you have the property sheet?

5 MS. JORDAN: Your Honor, if I may approach the
6 witness.

7 A The items that were collected were two Dr. Pepper
8 two-liters that were taken from a trash can, broken glass
9 from a trash can, torn prescription information from a
10 trash can, a medication guide from the trash, light blue
11 men's boxer shorts from a basket beside the washer, and two
12 pairs of white men's boxer shorts from the washing machine,
13 one green in color toothbrush from the medicine cabinet in
14 the master bathroom.

15 Q Okay. While you were there -- or who was at the
16 residence when you arrived?

17 A Jeannie Cobb, her three children and Joseph Cobb.

18 Q Okay. Did you have a chance to speak to Joseph Cobb
19 at the residence?

20 A Very briefly.

21 Q Okay. What did you decide to do with the defendant?

22 A I asked, I asked him if he would come to the sheriff's
23 office to speak with us, because out there on the scene it
24 was kind of difficult to talk to him with the children and
25 his wife.

Nicki Cantrell
Direct examination by Ms. Jordan

1 Q Did he agree to talk to you?

2 A He did.

3 Q How did, how did he get to the sheriff's office?

4 A He was transported by a police officer -- took him to
5 the sheriff's office, because they only had one vehicle.

6 And he said that he wanted to leave that vehicle with his
7 wife and her children so that they would have a vehicle.

8 So he asked for, he asked for a ride, which we provided for
9 him.

10 Q Okay. Detective Cantrell, I'm going to show you
11 what's previously been marked as State's Exhibit No. 9 and
12 ask if you can identify that.

13 A This is one of our forms. It's called a
14 preinterrogation waiver form. Before we question any
15 suspects in the case we go over their rights with them.

16 Q Okay. Where did you -- when at the sheriff's
17 department where did you speak to the defendant?

18 A I spoke to him at my desk.

19 Q Could you describe to the jury where your desk is
20 located at the sheriff's office?

21 A The sheriff's office has two -- it's two stories. The
22 second story is the detectives' division. And it's a giant
23 room bigger than probably this courtroom. And it has
24 cubicles that are, I would say, maybe not, maybe five foot
25 tall. When you stand up you can see over them all. So all

Nicki Cantrell
Direct examination by Ms. Jordan

1 of our desks are broken up with cubicles.

2 Q Okay. And that's where you spoke with the defendant?

3 A Yes, ma'am.

4 Q Was anyone else present when you spoke with him?

5 A Nobody was in my cubicle with him. I believe my
6 sergeant was upstairs in the office, and that was about it.
7 That's why we spoke in my cubicle because there was really
8 nobody upstairs at that time of the night.

9 Q Okay. What's your sergeant's name?

10 A Sergeant Kevin Bobo.

11 Q Okay. When you -- will you go through the jury and
12 tell them how you spoke to the defendant using State's
13 Exhibit No. 9?

14 A Yes. I wrote down his information, his name, address,
15 age, the date that day, which was July 10th of 2007, the
16 time, which was 9:56 p.m. when we sat down at my desk, and
17 that we were at the sheriff's office.

18 And then I, I show him the form, and it's laying out
19 facing him. And I asked him to read along with me while I
20 read it. And you just want me to go through it as if he
21 was sitting right here?

22 Q If I could stop you one moment, did you go back and
23 state -- did you ask the defendant what his age was?

24 A Yes.

25 Q Did you record that on the sheet?

Nicki Cantrell
Direct examination by Ms. Jordan

1 A Yes.

2 Q What was his age?

3 A Forty-two at the time.

4 Q Yes, ma'am. If you could, just let the jury know how
5 you read to the defendant.

6 A On the form it says I, but when I'm reading it to them
7 so that they understand, I say, "You have the right to
8 remain silent. Anything you say can and will be used
9 against you in a court of law. You have the right to talk
10 to a lawyer and have him present with you while you're
11 being questioned. If you cannot afford to hire a lawyer
12 one will be appointed to represent you before any
13 questioning if you wish. And you have the right to stop
14 answering questions at any point during the questioning.
15 The above rights have been read to you by me, Detective
16 Cantrell. You have read the same and understand your
17 rights fully."

18 And I ask him if he understands all of those rights or
19 if he has any questions. He said no. When I would say
20 each, each line, I would draw a line next to it and he
21 would initial that, meaning that he read it and he
22 understood it and didn't have any questions. And then he
23 signed that top section.

24 And then we went on to the second section which says,
25 "You have the right to waive or give up your rights as

Nicki Cantrell
Direct examination by Ms. Jordan

1 explained above and you agree to talk to," me, "Officer
2 Cantrell, in reference to Complaining Witness And any
3 statement you make is of your own free will without fear,
4 threat, promise, favor or reward of any kind. You're able
5 to read and write the English language and finished eight
6 years in school."

7 And he also obtained a G.E.D., because I asked him
8 that information so I can fill in those blanks.

9 And I asked him if he agreed with that and if he was
10 willing to speak with me and waive his rights. He said
11 yes. And he signed right here to indicate that, and
12 Sergeant Bobo notarized the form.

13 MS. JORDAN: Your Honor, at this time...

14 Q Had that form been altered or amended in any way since
15 you completed it that night on July the 11th?

16 A No, ma'am.

17 Q July the 10th?

18 A No, ma'am.

19 MS. JORDAN: Your Honor, at this time we move State's
20 Exhibit No. 9 into evidence.

21 MR. WHELCHER: No objection.

22 THE COURT: It's admitted.

23 (Defendant's Miranda form marked State's Exhibit No.
24 9.)

25 Q Just to go back, what time is located -- what time is

Nicki Cantrell
Direct examination by Ms. Jordan

1 indicated on that?

2 A 9:56 p.m.

3 Q Okay. And what date?

4 A July 10th of 2007.

5 Q Okay. When you read him those rights did he appear to
6 understand them?

7 A He did.

8 Q Did he appear to -- did he -- did he appear to be
9 under the -- have you ever dealt with people who have been
10 under the influence of drugs or alcohol in the course of
11 your career?

12 A Yes, ma'am.

13 Q Did he appear to be under either drugs or alcohol that
14 night?

15 A No, ma'am.

16 Q How was his speech?

17 A It was normal. It was not slurred, broken or
18 anything.

19 Q Did he appear to understand the rights?

20 A He did.

21 Q Did he appear to -- or did you -- did you promise him
22 anything in return to making this statement?

23 A No, ma'am.

24 Q Did you threaten or coerce him in any way?

25 A No, ma'am.

Nicki Cantrell
Direct examination by Ms. Jordan

1 Q In your opinion did he -- or to the best of your
2 knowledge was the defendant's statement freely and
3 voluntarily give?

4 A Yes, ma'am.

5 Q Did the defendant make a statement in response to your
6 questions?

7 A He did.

8 Q Did you at some point in time reduce his statement to
9 writing?

10 A I did.

11 Q Okay. Before you reduced the statement to writing did
12 he speak with you orally, or did he speak to you?

13 A He did.

14 Q Okay. Could you tell the jury what the contents of
15 that conversation were?

16 A Basically, I went over with him that ^{Complaining} had
17 stated that he had raped her. And he insisted that he did
18 not.

19 I explained to him that if he had had sexual
20 intercourse with her more than likely his D.N.A. could be
21 found in her rape kit. And I explained that she was at the
22 hospital having a rape kit.

23 He indicated to me that more than likely his D.N.A.
24 would be in her rape kit. And I asked him if he didn't
25 have sex with her why would his D.N.A. be inside of her

Nicki Cantrell
Direct examination by Ms. Jordan

1 rape kit. And he explained that away by telling me that he
2 was trying to arouse his wife that evening and his wife
3 turned him down but he did -- the words he used were he
4 precame in his boxers and he went in the bathroom to change
5 his boxers.

6 He said he went back to bed. And immediately after
7 that he said is when Complaining went in the bathroom. He
8 stated she must have gotten his D.N.A. off of his boxers.

9 I explained to him that that kind of seemed very
10 unlikely, and I asked him why he thought Complaining would
11 make these allegations against him. And he did not have
12 an -- he did not go into that much.

13 He explained to me that Complaining was there that night
14 to watch the children. He said he would never rape
15 Complaining because she was too young and that he had a
16 daughter that would have been a little bit older than
17 Complaining but she had passed away.

18 Q Did he say to you how he looked at Complaining

19 A Yes. He told me that Complaining was only 15 years old.

20 Q Okay. Did you then return the conversation back to
21 the sexual assault kit that Complaining had done at the
22 hospital that day?

23 A I did.

24 Q Okay. What was the discussion that you continued to
25 have with him in regard to that?

Nicki Cantrell
Direct examination by Ms. Jordan

1 A He then -- I asked him again about the D.N.A. He had
2 explained to me that he sleeps very hard and he thought
3 maybe that Complaining had gotten on top of him while he was
4 sleeping and had sex with him, he said because he felt at
5 some point that night like he was suffocating like somebody
6 was on top of him, so that must have been how his D.N.A.
7 would get in her sexual assault kit.

8 Q Did you ask him a question in response to that
9 scenario that he gave you?

10 A I did. I asked him if he thought his wife would have
11 sex with him while he slept at night, if he had felt that
12 before. He said no, why would I think that.

13 Q Did you continue to talk to him about the sexual
14 assault kit?

15 A I did.

16 Q Would you tell the jury what that conversation
17 consisted of?

18 A He continued to talk about it, and he was very
19 insistent that his D.N.A. was in her sexual assault kit.
20 And I asked him why he was so certain, because I had never
21 told him his D.N.A. was. And I explained to him that SLED
22 would have to analyze the rape kit and we don't have that
23 information at that time. And he explained that that would
24 just be his luck that his D.N.A. would be found.

25 I asked him if he would consent to us, for us to get

Nicki Cantrell
Direct examination by Ms. Jordan

1 his D.N.A. to compare through a buccal swab by just
2 swabbing the inside of his cheek. And he agreed, and he
3 signed a permission-to-search form allowing us to swab his
4 cheek.

5 Q Officer Cantrell, you've been in the courtroom today
6 and yesterday. Is that the same swab that we now
7 understand was either missing or destroyed?

8 A Yes, ma'am.

9 Q Okay. Did you -- after speaking with the defendant
10 did you ask if he would like to put his statement in
11 writing?

12 A I did.

13 Q Okay. What did he say?

14 A He agreed. He said he could not write it himself
15 because he had arthritis in his hands and asked that I
16 would type his statement.

17 Q Did you, in fact, type a statement for the defendant
18 that night?

19 A I did.

20 Q Detective Cantrell, I'm going to show you what's been
21 marked previously as State's Exhibit No. 10 and ask if you
22 recognize that.

23 A I do. This is a statement that I typed at his
24 direction.

25 Q Okay. Did you allow him to review the statement?

Nicki Cantrell
Direct examination by Ms. Jordan

1 A I did. He would tell me what to type and I would type
2 it. And then when we were completely finished I printed it
3 out. I read it out loud. And he also read it as we were
4 going through it.

5 Q Okay. Did he even, in fact, ask you to change
6 something in it?

7 A He did.

8 Q And did you make that change for him?

9 A I did.

10 Q Okay. Did he, did he then sign the statement?

11 A He did.

12 Q Did you also witness the statement?

13 A I did. I witnessed it and Sergeant Kevin Bobo
14 notarized it. And he completed the statement at 10:59 p.m.
15 on July 10th of 2007.

16 MS. JORDAN: Your Honor, at this point we would move
17 State's Exhibit No. 10 into evidence.

18 MR. WHELCHEL: No objection.

19 THE COURT: It's admitted.

20 (Defendant's written statement marked State's Exhibit
21 No. 10.)

22 Q Please read to the jury what the defendant told you in
23 his written statement that night at first.

24 A "This statement is typed by Detective Ann (sic)
25 Cantrell at Joe Cobb's direction and request. I understand

Nicki Cantrell
Direct examination by Ms. Jordan

1 that Complaining has said I had sex with her. I did not
2 consent to sex with her. Complaining is my third cousin's
3 daughter and she is too young to mess with. We picked
4 Complaining up to spend the night. We picked her up from her
5 grandmother's house. We went swimming at the
6 Clifton-Glendale River. My wife and Complaining took me home
7 and I took a bath. They left and picked the kids up from
8 daycare. They came back with the kids. When I got home I
9 ate. We watched some movies on T.V. We watched movies in
10 our bedroom. I was in bed with my wife, and Complaining was
11 in the bed with our son in a twin bed beside us. My girls
12 went to bed around 8:00 p.m. We talked about getting up
13 early in the morning. My son slept in the bed with
14 Complaining My wife and I were in our bed. We went to bed
15 somewhere around 11:00 p.m. to midnight, or sooner. I
16 tried to get my wife aroused. She was tired. I precame in
17 my boxers. We went to the bathroom to change them. I was
18 wearing a pair that snap in the front and were plain. They
19 were either white or blue. I wiped myself off with a piece
20 of toilet paper and put on some other boxers. I went to
21 bed and was going to sleep. Complaining got up and went into
22 the bathroom after me. A few minutes later she came back
23 in and went to bed. During the night I felt suffocated and
24 laid down. I am a deep sleeper and my wife is a deep
25 sleeper too. The next morning I got up before everyone

Nicki Cantrell
Direct examination by Ms. Jordan

1 else. I got the kids up for daycare and woke my wife up.
2 Then I woke ^{Complaining} up. We took the kids to daycare and
3 took my wife to a class at 10:30 a.m. ^{Complaining} asked me
4 where I was going from there. I told her I was going to
5 drop some movies off and look at the internet at the
6 library. ^{Complaining} told me that I could not take her home
7 because her dad would be upset that she showed up with only
8 me and not my wife. She said that the best thing would be
9 for me -- would be for her to go with me to the library and
10 when we pick up my wife we take her home then. Me and
11 ^{Complaining} went to the library on the east side and got up --
12 got on the internet. We stayed there for about 30 minutes.
13 She asked, asked that when I pick Jeannie up we take her
14 home. We went back and got my wife. We took ^{Complaining} home
15 to her father's house."

16 Q Officer Cantrell, once, once that statement was
17 completed, what, what did you do with Joseph Cobb?

18 A After he was finished with his statement I asked him
19 if he would come back in the next day to speak with me and
20 possibly another detective some more, because it was
21 getting kind of late. So I just asked that he would come
22 back in the next morning.

23 Q Did he agree?

24 A He did.

25 Q Okay. Was he allowed to leave that night?

Nicki Cantrell
Direct examination by Ms. Jordan

1 A He was.

2 Q Okay. How did -- I'll ask you this. When is the next
3 time you came into contact with Joseph Cobb?

4 A On July 11th, 2007, around at 12:15.

5 Q How did you come into contact with him again?

6 A I had -- he had called our captain at the sheriff's
7 office and left him a message that he was -- Joseph left a
8 message stating that he was at Spartanburg Regional and
9 would not be able to come in to talk to me that day and he
10 would contact me later.

11 Q Okay. What did you do in reference to that message?

12 A I also spoke to Jeannie Cobb, his wife at the time.
13 And she stated that he was at the hospital.

14 MR. WHELCHEL: Objection, Your Honor, to anything
15 Jeannie Cobb said.

16 THE COURT: Sustained.

17 MS. JORDAN: I'll withdraw that, Your Honor.

18 Q What did, what did you do next?

19 A I went to Spartanburg Regional.

20 Q Okay. Once you were at Spartanburg Regional did you
21 find Joseph Cobb?

22 A I did.

23 Q Before you got there did you make any other phone
24 calls? Did you ask another officer to meet you there?

25 A When I got there I had made a phone call to Officer

Nicki Cantrell
Direct examination by Ms. Jordan

1 Hogsed and asked him to come with the camcorder.

2 Q Okay. Was he the officer who was present here in the
3 courtroom yesterday and testified?

4 A He was.

5 Q Okay. Tell us how you came into contact with Joseph
6 Cobb once you were at the hospital.

7 A I had asked where his location was in the hospital,
8 and I was directed to that area of the emergency room. And
9 as I was walking through that area to go find the nurse to
10 talk to her I passed by where Joseph Cobb was at, and he,
11 he hollered at me and asked me to stop. And he stated that
12 he still wanted to come to the sheriff's office and talk.

13 And I asked him what was going on with him, because he
14 was there at the hospital. And that's when he informed me
15 that he needed help. I asked him what had happened, and he
16 stated that he had tried to kill himself and that he was
17 walking down South Church Street in front of traffic trying
18 to get run over. And that was in the early morning of
19 July 11th of 2007.

20 He stated it would just be easier on everyone if he
21 were gone and that he was going to lose everything
22 including his wife and children.

23 He told me that he wanted to tell me the truth because
24 he hadn't before. He stated that he did not rape Complaining
25 but he did have sex with her. He stated that she had

Nicki Cantrell
Direct examination by Ms. Jordan

1 initiated it.

2 I stopped him there and told him that I would have to
3 come back and talk with him in a minute.

4 Q Okay. Did you speak with someone? And you can't tell
5 me what they said, but did you speak with someone at the
6 hospital?

7 A I did.

8 Q Who did you speak with?

9 A I smoke with Jean Boutin.

10 Q Who is she?

11 A She's a psychiatric liaison.

12 Q Okay. Did you, did you at that point in time meet up
13 with Officer or Detective Hogsed?

14 A I did.

15 Q I'm going to show you. I am going to show you what's
16 been previously marked as State's No. No. 11 and ask if you
17 recognize that.

18 A I do.

19 Q What is that?

20 A It's another preinterrogation waiver form.

21 Q Okay. I'm going to step back one moment.

22 When you went back into his room and began speaking
23 with him was Officer Hogsed present?

24 A When I first went back into his room, no, Officer
25 Hogsed was not present. We were waiting on him to get

Nicki Cantrell
Direct examination by Ms. Jordan

1 there.

2 Q Okay. And when Officer Hogsed got there what
3 happened?

4 A I had asked Joseph if he minded if we could video tape
5 the conversation, and he had agreed. So that's when he
6 turned on the video tape.

7 Q By he, are you referring to Detective Hogsed?

8 A Yes.

9 Q Okay.

10 A And before asking Joseph any questions and going into
11 the interview we went over the preinterrogation waiver form
12 again.

13 Q Okay. Did -- who was the room when this occurred?

14 A When we went over this form I believe Officer Hogsed
15 was in the room. He may not have been yet. I would have
16 to see what time I started the video tape and what time --
17 he signed this at 1:20 p.m.

18 Q Would you -- you've already gone through the procedure
19 with how you fill out a form, one of the statement forms,
20 with a defendant.

21 Did you go through that same process with Mr. -- with
22 Joseph Cobb, the defendant, on the 11th?

23 A I did.

24 Q Okay. What was, what was the information that he gave
25 you at the top on that day?

Nicki Cantrell
Direct examination by Ms. Jordan

1 A That his name's Joseph Cobb and that he lived at 3195
2 Carolina Country Club Road and that he was 42 years old.
3 The date was July 11th of 2007, and the time was 1:20 p.m.
4 And we were at Spartanburg Regional.

5 Q Okay.

6 A Could I get some more water? I'm so sorry.

7 Q Yes, ma'am.

8 (Pause.)

9 Q Did you go over each right with him?

10 A I did.

11 Q Did he initial beside each right stating that he
12 understood them?

13 A He did.

14 Q Did he sign the form stating that he understood them?

15 A He did.

16 Q Did you witness it?

17 A I did.

18 Q Okay. Did he also sign on the second portion stating
19 that he wished to waive those rights?

20 A He did.

21 Q Okay. When you were talking with him that day,
22 describe his demeanor to the jury.

23 A He was very calm. He was sitting. He was sitting on
24 like a, the bed, the hospital bed, and I was sitting in the
25 chair. He was speaking clearly. He wasn't -- his speech

Nicki Cantrell
Direct examination by Ms. Jordan

1 was not slurred. He was very humble.

2 Q Did he appear to be under the influence of any drugs
3 or alcohol?

4 A No.

5 Q Did you even ask him if he was under the influence of
6 any or if he had taken any medication that day?

7 A I did.

8 Q What did he say?

9 A He had had a blood sugar pill that day, and that was
10 all. And his blood sugar wasn't even that high.

11 Q Did he appear to understand everything that you had
12 talked about?

13 A He did.

14 Q Did -- was this -- and this video tape or this
15 conversation was recorded by Officer Hogsed?

16 A It was.

17 Q Can you tell the jury once you began speaking with him
18 after...

19 MS. JORDAN: I am sorry, Your Honor. At this time the
20 state would move State's Exhibit No. 11 into evidence.

21 MR. WHELCHER: Is that the one you just showed me?

22 MS. JORDAN: Yes, sir.

23 MR. WHELCHER: No objection, Your Honor.

24 THE COURT: It's admitted.

25 (Defendant's Miranda form from July 11, 2007, marked

Nicki Cantrell
Direct examination by Ms. Jordan

1 State's Exhibit No. 11.)

2 Q Would you tell the jury what he told you on the
3 11th of July of 2007?

4 A He said that he did not force Complaining to have sex.
5 He stated that she came onto him. He said that he tried to
6 have sex with her but he had difficulty getting an erection
7 and that he had lied before to me because he was scared.

8 He said that -- he had also said that he was not
9 forced or coerced or threatened yesterday or that day.
10 His, his fear was not based on that.

11 He said that he thought Complaining was 16 years old. I
12 questioned him about why he was telling me now that he
13 thought she was 16 years old, because the day before he had
14 told me she was 15 years old when we had talked. And he
15 told me that she was 15 and a half and she was going to be
16 16 soon, so that's why he was saying 16.

17 Q Did he also go into specifics with you as far as his
18 position on Complaining that day?

19 A I don't understand what you're asking.

20 Q Did he give you details as far as how he was -- how he
21 tried to have sex with her?

22 A Yes.

23 Q Okay. I'm going to show you what's previously been
24 marked as State's Exhibit No. 12 and ask if you recognize
25 this. Or have you had an opportunity to view what's on

Nicki Cantrell
Direct examination by Ms. Jordan

1 this disc?

2 A I have. It's my interview with Joseph Cobb at
3 Spartanburg Regional.

4 Q Okay. And your conversation with him is recorded on
5 that?

6 A Yes, ma'am.

7 Q Okay.

8 MS. JORDAN: Your Honor, at this time we ask -- we
9 move to admit State's Exhibit No. 12 into evidence.

10 MR. WHELCHEL: No objection.

11 THE COURT: It's admitted.

12 (Defendant's statement on video marked State's Exhibit
13 No. 12.)

14 Q Did he make any comments to you at the end of the
15 video as far as anything that he needed?

16 A He had told me that he needed help.

17 Q Okay. Did he state anything about this investigation
18 or about what happened to Complaining on the 10th to you?

19 A Yes.

20 Q What did he say?

21 A I'm -- what we just went over?

22 MS. JORDAN: Your Honor, I'll withdraw that question.

23 Q Officer Cantrell, do you see the defendant in court
24 today?

25 A I do.

Nicki Cantrell
Direct examination by Ms. Jordan

1 Q Okay. Has his appearance changed in any way from July
2 of 2007 until today?

3 A Yes, ma'am.

4 Q How has it changed?

5 A He looks like he's lost about 50 pounds probably.

6 Q Okay. So he was 50 pounds heavier back then?

7 A Yes, ma'am.

8 Q Okay. And that video tape is the contents of the oral
9 statement he gave you on July the 11th of 2007?

10 A Yes, ma'am.

11 Q Are you aware in this case that the -- Complaining
12 sexual assault kit went to SLED twice?

13 A Yes, ma'am.

14 Q Could you explain to the jury why it went to SLED
15 twice?

16 A When, when we do a sexual assault kit sometimes we
17 send the -- like the detectives will send the kits down to
18 SLED. And sometimes the I.D. officer will fill out the
19 paperwork and have the kit sent down to SLED. And we also
20 kind of wait to see what's going to happen with the case,
21 if they need that information for the case, if they're
22 going to need that or not.

23 So when Complaining kit was sent down to SLED they just
24 sent her kit to SLED. And SLED will keep, will analyze
25 that and keep that information, but they will only keep it

Nicki Cantrell
Cross-examination by Mr. Whelchel

1 for six months unless they have a comparison as far as a
2 suspect sample to compare to the D.N.A. kit.

3 So when they sent her kit to SLED they did not send
4 the suspect sample to compare. So they sent Complaining kit
5 back. And then when they went to send the suspect kit they
6 realized they didn't have the suspect swabs because we had
7 changed over our whole evidence system during that time
8 period and that had gotten thrown away, misplaced or
9 something. So we obtained his D.N.A. sample again and sent
10 her kit along with the D.N.A., his D.N.A., back down for
11 analysis.

12 Q Please answer any questions that Mr. Whelchel may
13 have.

14 CROSS-EXAMINATION

15 BY MR. WHELCHER

16 Q Let's back up to the search warrant. What time did
17 you get it?

18 A What time did I get it signed or what time did we
19 execute it?

20 Q What time did you get it?

21 A I would guess I probably -- let's see. I went to the
22 hospital at 4:00 o'clock that afternoon. I probably spent
23 around an hour or so at the hospital. And then I had to
24 type it up and then go get it signed. So I would say
25 guessing around 5:30, 6:00.

Nicki Cantrell
Cross-examination by Mr. Whelchel

1 Q Do you have a copy with you?

2 A I probably do.

3 MS. JORDAN: Your Honor, if it would save time, I have
4 a certified copy I can provide to Detective Cantrell.

5 THE COURT: Okay.

6 A Okay. All it says on here is when it was executed.
7 It doesn't say what time the judge signed it.

8 Q Okay. When did you go to the house?

9 A We executed it at -- on July 10th of 2007 at 7:10 p.m.

10 Q Okay. So at approximately 7:00 o'clock you arrived at
11 Joseph Cobb's house?

12 A Correct.

13 Q When did you leave the house?

14 A We arrived back at the sheriff's office -- I arrived
15 back at the sheriff's office at 9:56 p.m.

16 Q So was Mr. Cobb with you or with another officer?

17 A He was with another officer.

18 Q So he was taken out of the house so you, y'all, could
19 perform the search, is that correct?

20 A Yes.

21 Q Okay. So from approximately 7:10 he's outside the
22 house, is that correct?

23 A He was outside the house, probably not that long. I
24 believe he left the house probably closer to 9:00 p.m. The
25 officer transported him to the sheriff's office, and I

Nicki Cantrell
Cross-examination by Mr. Whelchel

1 stayed on the scene for a little while longer talking to
2 Jeannie.

3 Q Okay. He's outside the house from 7:00 to 9:00 while
4 the search warrant's being executed. In the custody of
5 another officer or just sitting on a picnic table or what?

6 A Yeah. There was another officer -- there actual --
7 there was another officer, a uniformed officer, probably
8 sitting out there.

9 Q He was not free to leave.

10 A He was free to leave. He was not under arrest. And
11 he was explained that when I asked him to come to the
12 sheriff's office to speak with us, that he was not under
13 arrest and he, he didn't have to come. And that's why we
14 offered to let him drive himself.

15 Q But they had only one car, correct?

16 A Correct.

17 Q And he opted for sheriff's office transportation.

18 A Correct.

19 Q Okay. And the items you mentioned earlier were the
20 items that were taken at the search warrant?

21 A Yes, sir.

22 Q Okay. And those are the items that have been forever
23 lost.

24 A Yes, sir.

25 Q Okay. You've been a detective for, I believe, seven

Nicki Cantrell
Cross-examination by Mr. Whelchel

1 to ten. I want to make sure.

2 A I've been a detective seven years and a police officer
3 for ten.

4 Q With the, with the sheriff's department?

5 A Yes, sir.

6 Q Okay. This residence is a mobile home, is it not?

7 A Correct.

8 Q Okay. And it's located very close to the intersection
9 of Country Club Road and McAbee Road, is that correct?

10 A Correct. It's almost right on the corner.

11 Q If I'm at the mobile home, the house, out on the porch
12 or in the yard or whatever, diagonally across the street is
13 the Quick Shop there at the corner of McAbee Road and
14 Country Club Road, correct?

15 A Correct.

16 Q And up behind it is Lee's Lawnmower Repair.

17 A Correct.

18 Q I don't know if you know about them or not. Correct?

19 A Yes.

20 Q That's where this mobile home was located when y'all
21 made the search warrant, correct?

22 A Correct.

23 Q Okay. What time did you start this statement that you
24 say you took from my client at the sheriff's office?

25 A I don't know what time I started typing it.

Nicki Cantrell
Cross-examination by Mr. Whelchel

1 Q What time did you start the process, did you start
2 your interview?

3 A At 9:56 p.m.

4 Q 9:56.

5 A Uh-huh.

6 Q Okay. And when did you start typing? Do you know
7 when you started typing the statement?

8 A I don't know what time I started typing the statement.
9 I know I finished typing it at 10:59 p.m.

10 Q Uh-huh. And he signed it approximately that same
11 time?

12 A Right.

13 Q So from 7:00 to 11:00 he was outside, and then at the
14 sheriff's office being interviewed, is that correct?

15 A Correct.

16 Q Okay. Now, the next day you interviewed him at the
17 hospital.

18 A Correct.

19 Q Okay. And the interview was conducted at the hospital
20 because he contacted the sheriff's office and left a
21 message with someone at your office that he was at the
22 hospital --

23 A Correct.

24 Q -- and couldn't make it back in.

25 A Correct.

Nicki Cantrell
Cross-examination by Mr. Whelchel

1 Q Okay. Do you have your investigative report with you,
2 ma'am?

3 A I do.

4 Q Page four of seven, do you see that one?

5 A I do.

6 Q Okay. Back up to page three. You explained to him
7 when you first started this process that a sexual assault
8 kit had been done?

9 A Correct.

10 Q And you told him that if he had had sexual intercourse
11 with Complaining more than likely his D.N.A. would be found in
12 her rape kit, is that correct?

13 A Correct.

14 Q Okay. Now, on page four you told him during the
15 interview that if he had had sex with Complaining but did not
16 violently rape her he needed to tell you that because that
17 could make a difference.

18 A Correct. And that's when he indicated to me that it
19 didn't matter, he would get in trouble no matter what
20 because she was only 15.

21 Q And you told him that he could be charged with having
22 consensual sex with her because of her age, but he could be
23 charged with violently raping her as well.

24 A Right.

25 Q Is that right?

Nicki Cantrell
Cross-examination by Mr. Whelchel

1 A If there's a difference, yes. Those are two separate
2 charges.

3 Q And at that time you knew she was 15?

4 A Yes. I knew she was 15 when I got to the hospital.

5 Q And at that time you knew that she couldn't consent to
6 sexual intercourse.

7 A Correct. And he knew that as well.

8 Q Did you tell him that?

9 A No. He told me that. He said that he would get in
10 trouble no matter what because she was only 15 years old,
11 that she was too young, that she -- he could not have sex
12 with her.

13 Q Said she was too young to mess with.

14 A Uh-huh.

15 Q You assumed by that that he meant have sexual
16 intercourse, correct?

17 A Correct. Because that's what we were talking about.

18 Q Well, I understand that. Did you ever explain to him
19 what a sexual battery was?

20 A I asked him if he had had sex with her. I did not go
21 into the definition of sexual battery.

22 Q Okay. Thank you, ma'am.

23 MS. JORDAN: Followup questions, Your Honor.

24 THE COURT: Okay.

25

Nicki Cantrell
Redirect examination by Ms. Jordan

1 REDIRECT EXAMINATION

2 BY MS. JORDAN

3 Q Officer Cantrell, when he, when the defendant, came to
4 the sheriff's office on the night of July the 10th when
5 y'all were executing the search warrant did he come of his
6 own will?

7 A Yes, ma'am.

8 Q Was he given the option to come or not to come?

9 A Yes, ma'am.

10 Q And he did go.

11 A Yes, ma'am.

12 Q Mr. Whelchel talked about a 7:00 to 11:00 timeframe.
13 But when did you actually speak to him?

14 A I did not start my interview until 9:56 p.m.

15 Q Okay. When do your notes indicate that he left?

16 A He left -- he finished his statement and left a few
17 minutes afterwards at 10:59 p.m.

18 Q Okay. And he was free to go.

19 A Yes, ma'am.

20 Q And you allowed him to leave.

21 A Yes, ma'am.

22 Q Okay. And the defendant stated -- what did the
23 defendant state to you in regards to Complaining age on the
24 night of July the 10th?

25 A That she was 15 years old and she was too young.

Nicki Cantrell
Recross-examination by Mr. Whelchel

1 Q Okay. When you were talking to the defendant about
2 the sexual assault kit did you know what the results were
3 from the kit?

4 A No, ma'am.

5 Q How long was it before you found out the results of
6 that kit?

7 A I didn't find out the results until SLED got those
8 back in I believe '09.

9 Q Would it have been longer than that?

10 A Yes.

11 Q Okay. So you didn't know on the night of July the
12 10th or the 11th what was in the kit.

13 A No, ma'am.

14 Q Okay.

15 MS. JORDAN: Nothing further, Your Honor.

16 RECROSS-EXAMINATION

17 BY MR. WHELCHER

18 Q Those results do, in fact, show D.N.A. from Joseph
19 Cobb, correct?

20 A Correct.

21 Q On the neck, on swabs taken from the neck of the
22 alleged victim.

23 A Yes, ma'am.

24 Q And the breasts.

25 A Yes.

1 Q Nothing from the vagina.

2 A No, sir.

3 Q Thank you, ma'am.

4 THE COURT: You may step down.

5 MS. JORDAN: Your Honor, at this time the state rests.

6 THE COURT: Ladies and gentlemen, that is all of the
7 testimony or other evidence to be offered by the state, at
8 least in their case in chief.

9 Before we go any further I've got some matters to
10 address with the lawyers. So again I'll ask you to please
11 go to your jury room. Do not yet discuss the case. I'll
12 bring you back in just a few minutes to continue.

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

15 THE COURT: Motions or other matters?

16 MR. WHELCHEL: Your Honor, at this time I would be
17 required to make a motion for a directed verdict on behalf
18 of Mr. Cobb based on the insufficiency of the evidence that
19 was presented by the state.

20 THE COURT: All right. Well, it appears the evidence
21 is sufficient if found to be credible by the jury, so your
22 motion is denied.

23 Anything else? Have you talked to Mr. Cobb about
24 testifying or not?

25 MR. WHELCHEL: I have in the past several days. I

1 have not today, Your Honor.

2 Your Honor, at this point I would like to inquire of
3 the Court or request of the Court a charge in this case of
4 aggravated assault and battery as a lesser included. I
5 would inquire of the Court if the Court plans on charging
6 aggravated assault and battery.

7 THE COURT: Well, we haven't gotten to the point of
8 charges yet. Right now we're dealing with whether he's
9 going to testify or not.

10 MR. WHELCHER: That has bearing on whether or not that
11 decision --

12 THE COURT: Well, I won't know that until all the
13 testimony is in.

14 MR. WHELCHER: Well, at this time, Your Honor, can we
15 take a break so I can talk to him?

16 THE COURT: We will take ten minutes.

17 (Whereupon, a recess was taken.)

18 THE COURT: All right. Mr. Whelcher, what does
19 Mr. Cobb say he wants to do about testifying?

20 MR. WHELCHER: Mr. Cobb is not going to testify, Your
21 Honor.

22 THE COURT: All right. Mr. Cobb, you heard what your
23 lawyer just told me.

24 THE DEFENDANT: Yes, sir, Your Honor.

25 THE COURT: Do you understand when you're charged with

1 a crime you have an absolute right to remain silent if you
2 wish to? Nobody can make you take the witness stand and
3 testify or answer any questions about it.

4 At the same time, if you wish to provide this jury
5 with any additional information now is the only opportunity
6 that you're going to have to do so. In other words, you
7 can't wait until after the decision has been reached and
8 change your mind about whether or not you would testify.
9 So if you want to testify now is the time to do that. But
10 it's your choice. It's your decision. Only you can make
11 it.

12 Have you and Mr. Whelchel discussed the advantages of
13 your testifying, as well as not testifying?

14 THE DEFENDANT: Yes, sir, Your Honor.

15 THE COURT: And have y'all discussed the disadvantages
16 of testifying as well as not -- of testifying as well as
17 not testifying?

18 THE DEFENDANT: Yes, sir, Your Honor.

19 THE COURT: And do you appreciate what those
20 advantages and disadvantages are?

21 THE DEFENDANT: Yes, sir, Your Honor.

22 THE COURT: And have you had time to reflect upon your
23 decision about whether or not you'll testify?

24 THE DEFENDANT: Yes, sir, Your Honor.

25 THE COURT: And have you reached a decision?

1 THE DEFENDANT: Yes, sir, Your Honor.

2 THE COURT: What is it?

3 THE DEFENDANT: I will not.

4 THE COURT: And is that a decision that you reached of
5 your own free will and accord?

6 THE DEFENDANT: Yes, sir, Your Honor.

7 THE COURT: Anybody force you into it?

8 THE DEFENDANT: No, sir, Your Honor.

9 THE COURT: Pressure you into it?

10 THE DEFENDANT: No, sir.

11 THE COURT: It is your decision?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You're satisfied with it?

14 THE DEFENDANT: Yes, sir, Your Honor.

15 THE COURT: Okay. Do you have any other witnesses you
16 want Mr. Whelchel to call on your behalf?

17 THE DEFENDANT: Not at this time.

18 THE COURT: Well, do you understand this is the only
19 time you've got?

20 THE DEFENDANT: No, sir, Your Honor.

21 THE COURT: You don't understand it?

22 THE DEFENDANT: I do understand, sir.

23 THE COURT: Do you have any other witnesses you want
24 him to call?

25 THE DEFENDANT: No, sir, Your Honor.

1 THE COURT: Okay. All right. Thank you. Be seated.
2 Any other matters we want to address?

3 MS. JORDAN: Your Honor, I submitted two requests to
4 charge this morning to the Court, and I would ask that both
5 of those be charged to the jury.

6 THE COURT: Okay.

7 MS. JORDAN: I provided copies to Mr. Whelchel also.

8 THE COURT: All right. Mr. Whelchel, any objection?

9 MR. WHELCHER: No, sir.

10 THE COURT: All right. Do you have any requests?

11 MR. WHELCHER: I would renew any earlier request that
12 the Court charge aggravated assault and battery in this
13 case. There is testimony from --

14 THE COURT: What's the state's position?

15 MS. JORDAN: Your Honor, the state would oppose that.
16 It's --

17 THE COURT: All right. Well, let me hear Mr. Whelchel
18 then.

19 MR. WHELCHER: There was testimony early on, Your
20 Honor, from a Tammy Clawson who said that she heard my
21 client talking with his sister and that he said that he
22 tried to have sex with her -- but I am using her words,
23 Your Honor -- but that he couldn't get it up.

24 Based on that testimony, Your Honor, and the testimony
25 of SLED where -- from the evidence from SLED that all of

1 the swabs are from the breasts and neck and that there is
2 no semen found, I would request a charge of aggravated
3 assault and battery as a lesser included offense at this
4 time.

5 THE COURT: All right. Ms. Jordan.

6 MS. JORDAN: Your Honor, I think there's ample
7 evidence in there that there was penetration in this case.

8 As to the sexual assault and battery or sexual -- or
9 sexual battery as required by the law, on the video tape
10 that's now in evidence but has not been played for the jury
11 but is a part of the record the defendant states to Officer
12 Cantrell that he had consensual sex with the victim. He
13 also described to Officer Cantrell how he was on top of the
14 victim, how he was balancing his weight.

15 I don't think this is a case of indecent liberties
16 with a female or an assault and battery just based upon the
17 fact that there's differences in sex or the size or the age
18 of the individuals in this matter. I think there's ample
19 evidence, including the defendant's own statement to
20 Officer Cantrell, that he had consensual sex with her.

21 THE COURT: All right. Let me see y'all just a
22 minute.

23 (Bench conference held off the record in the presence
24 of the jury but out of the hearing of the jury.)

25 THE COURT: All right. Mr. Whelchel, I'm going to

1 decline your request to instruct the jury on the lesser
2 included offense because it does appear in this case the
3 only evidence is that there was a sexual battery committed
4 by the defendant, and therefore the lesser included offense
5 is not appropriate.

6 MR. WHELCHER: If I may, Your Honor, for the record it
7 is the defense's position that there is evidence in the
8 case that could be construed by the jury that there was not
9 a sexual battery in this matter, and that based on that
10 fact or that testimony that aggravated assault and battery
11 should be charged in this particular instance, specifically
12 the testimony of Tammy Clawson that he tried to have sex
13 with her but couldn't get it up.

14 But there was testimony I think from his own statement
15 with the investigator that he attempted to have sex or
16 tried to have sex but could not do that, Your Honor. I
17 think that -- it doesn't matter whether or not there's
18 testimony or evidence of a sexual battery or allegation,
19 because once she testifies that evidence is in --

20 THE COURT: I understand that.

21 MR. WHELCHER: -- of the sexual battery.

22 THE COURT: I understand that, but there's testimony,
23 there's also testimony, that he admitted to having
24 committed the sexual battery.

25 MR. WHELCHER: He admitted to having sex, Your Honor.

1 And I specifically asked her if she told him about what a
2 sexual battery was and what that entailed, and she said she
3 did not.

4 We submit that him having -- saying that he had sex is
5 not saying that he had intercourse with her, that there's
6 many things that could be -- that you could do that are
7 under the umbrella of having sex and because of that that
8 it should be charged as an aggravated assault and battery
9 as a lesser included offense to this criminal sexual
10 conduct second degree.

11 THE COURT: All right. Anything else?

12 MS. JORDAN: No, sir, Your Honor.

13 MR. WHELCHER: Your Honor, I have something else.

14 THE COURT: All right.

15 MR. WHELCHER: Your Honor is denying my motion --

16 THE COURT: Yes.

17 MR. WHELCHER: -- to charge aggravated assault and
18 battery.

19 At this time, Your Honor, I would request that the
20 Court charge attempted criminal sexual conduct second
21 degree.

22 The testimony is specific from Ms. Clawson that he
23 attempted, he tried, to have sex with her but he couldn't
24 get it up. That same testimony is echoed in the statement
25 he made to the investigator. And I would ask that the

1 Court charge attempted criminal sexual conduct second
2 degree because of the testimony.

3 THE COURT: All right. Ms. Jordan.

4 MS. JORDAN: Your Honor, I think it goes back in line
5 of the reasoning of the Court as far as the ABHAN in that
6 there was a sexual battery and that there was not a sexual
7 battery.

8 THE COURT: All right. I'm going to decline your
9 request.

10 MR. WHELCHER: Your Honor, it's our position that
11 there is evidence of both the attempted sexual battery or
12 attempt to commit criminal sexual conduct and the
13 aggravated assault and battery. But I want it -- the
14 Court's denying both of those, is that correct?

15 THE COURT: Yes, sir.

16 All right. Anything else?

17 MS. JORDAN: Nothing from the state, Your Honor.

18 THE COURT: All right. How long do y'all think you're
19 going to need to argue to the jury?

20 MS. JORDAN: I'd say probably 25 or 30 minutes.

21 MR. WHELCHER: Same timeframe, Your Honor, at least.

22 THE COURT: All right. I'm going to excuse the jury
23 for lunch, and we'll start back after lunch.

24 Bring the jury in.

25 (The following takes place in the presence of the

1 jury.)

2 THE COURT: All right. Ladies and gentlemen, as you
3 know, the state has concluded in their presentation.

4 Mr. Whelchel, does the defense wish to present any
5 additional evidence?

6 MR. WHELCHER: The defense rests, Your Honor. We
7 present no evidence.

8 THE COURT: That's all the evidence to be presented in
9 the trial of the case.

10 What remains to be done are the lawyers' final
11 summations, after which I'll instruct you on the law, and
12 then you can begin deliberations.

13 Now, because of the hour we'll recess for lunch now.
14 We'll resume with the conclusion of the trial at 1:15, at
15 1:15 this afternoon.

16 So you're excused for lunch now. Please report to
17 your jury room at 1:15. Have a good lunch.

18 (The following takes place outside the presence of the
19 jury.)

20 THE COURT: Court's in recess until 1:15.

21 (Whereupon, a recess was taken.)

22 THE COURT: All right. Any matters we need to address
23 before the jury is brought in?

24 MS. JORDAN: Your Honor, on behalf of the state I
25 withdraw my objection to the charge of attempted C.S.C.

Closing arguments

1 with a minor in the second degree.

2 THE COURT: Okay. Mr. Whelchel, do you still wish for
3 the Court to instruct the jury on attempted?

4 MR. WHELCHER: Yes, sir. It was my understanding the
5 Court could do that, yes, sir.

6 THE COURT: Okay. I'll do it.

7 All right. Bring the jury in, please, sir.

8 (The following takes place in the presence of the
9 jury.)

10 THE COURT: Good afternoon, ladies and gentlemen.

11 All the evidence is in. The lawyers are going to give
12 you their final summations. Then I'll instruct you on the
13 law. Then you can begin your deliberations.

14 So please give the lawyers your attention now as they
15 give you their final summations.

16 Ms. Jordan.

17 MS. JORDAN: Thank you, Your Honor.

18 Ladies and gentlemen, as I told you on yesterday
19 afternoon, I was going to be back here today and talk to
20 you, at the end of the trial to talk to you, about this
21 case.

22 Joseph Cobb is guilty of criminal sexual conduct with
23 a minor in the second degree. And why do we know that?
24 From all the evidence that you have heard from the witness
25 stand.

Closing arguments

1 Criminal sexual conduct with a minor in the second
2 degree, as I told you yesterday and as the judge will
3 instruct you on later on, is that the defendant committed a
4 sexual battery upon a child between the ages of -- who was
5 at least 14 but less than 16 and that he's older than the
6 victim. That's what criminal sexual conduct with a minor
7 second degree is.

8 Sexually battery is defined as any intrusion, however
9 slight, into the vaginal, oral, anal openings of another
10 that's not done for medical purposes. Any intrusion
11 however slight.

12 You heard from Complaining on the stand. She was 15 on
13 July the 10th of 2007. You heard Detective Cantrell -- and
14 it's on the records over there -- that the defendant was 42
15 back then -- 15 -- 42.

16 You're also going to hear if you listen to the judge's
17 instruction, he's going tell you that in the state of South
18 Carolina the general assembly has determined a minor under
19 the age of 16 is not capable of voluntarily consenting to a
20 sexual battery committed by an older person.

21 He's also going to tell you that the testimony of the
22 victim need not be corroborated. Luckily, in this case it
23 is.

24 Let's go back over -- well, I will also tell you this.
25 The judge is also going to instruct you that if you find

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1 that the state did not prove beyond a reasonable doubt the
2 defendant is guilty of the criminal sexual conduct with a
3 minor second degree you can consider attempt, attempted
4 criminal sexual conduct with a minor in the second degree,
5 that he attempted but that there wasn't a sexual battery.
6 Our contention is there was a sexual battery, any intrusion
7 however slight.

8 I'll do beyond a reasonable doubt real quick. It's a
9 high standard, the highest one you can have in the court
10 systems of the United States -- beyond a reasonable doubt.
11 The one thing that it is is not, beyond any and all doubt.
12 It's a reasonable doubt, would a reasonable person hesitate
13 to act upon what they have learned. That is what a
14 reasonable doubt is. Not any and all doubt, but beyond a
15 reasonable doubt, would a reasonable person listening to
16 what you heard in this courtroom have any doubt. Ladies
17 and gentlemen, there's no doubt in this case.

18 Let's look at the evidence. You heard from Complaining
19 Bishop. She told you how she was -- she's cousins. Her
20 dad is a cousin to the defendant. She knew him, went over
21 there a lot, babysat their kids. He's got three kids,
22 lived at that trailer with his wife and his kids.

23 She went over there and she would babysit just like
24 she did on July the 9th of 2007. She watched the kids.
25 They were all laying in the bedroom watching television.

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1 And I'll admit this. It's an odd sleeping arrangement.
2 There's a twin bed where apparently the five-year-old is
3 sleeping with a fifteen-year-old babysitter, slash, cousin,
4 Complaining is. And then the defendant and his wife are on
5 the mattress on the floor.

6 She tells you about how they watched television,
7 Son fell asleep, everyone fell asleep. She got up and
8 went into the bathroom just around, outside the door. The
9 door didn't lock. She put a towel on the door and she took
10 a shower. Said she had done that in the past. She gets
11 out. And who meets her in the bathroom? Him.

12 Remember what Detective Cantrell stated. He met her
13 in the bathroom. He was about 50 pounds heavier back then.
14 She was 15. He pushed her to the ground. She's on her
15 stomach at first. He kisses and touches her on the back
16 and then flips her over, hands on her neck, penetrates her.

17 Mr. Whelchel made a point of saying, well, you've
18 never used the word penetrate before until today. Ladies
19 and gentlemen, she's talked to numerous people. Numerous
20 people stated she reported a sexual assault. We're going
21 to go and talk about what each one of those people said
22 later.

23 She clearly stated he placed his penis in my vagina,
24 sexual battery, any intrusion, however slight. His hand
25 was on her neck. This man, 50 pounds heavier, on her.

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1 She's not a big person -- 50 pounds heavier over here is.

2 Had her down on the bathroom floor, penetrated her.

3 She talked about how he kissed and touched her all over,
4 all over her chest.

5 She states next thing she remembers she was in the
6 bedroom, back in the bedroom where she's in bed with
7 Son

8 She gets up the next day. He's still there. The man
9 that she says threatened her not to tell anybody is still
10 there. They want to make a big deal about the fact that
11 she didn't tell anybody. Who was she going to tell, his
12 wife, his three kids? Who was she going to tell? She's
13 going to tell the first person she sees without him by her
14 side. And she does that. She said he threatened me, told
15 me he would hunt me down.

16 She's finally able to leave his side at a certain
17 point. And she tells you that he takes her home. He
18 doesn't come inside the house with her. He just drops her
19 off with his wife and they go. He doesn't come inside.
20 Nothing. Leaves her there.

21 She says she gets down on her knees crying to her
22 step-mom. Is that the normal reaction of somebody who had
23 nothing happen to them when they went over to babysit a
24 cousin's kids that was just a regular old night? No.
25 That's the reaction of someone who's been sexually

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1 assaulted.

2 Her step-mom talked about the fact that when she came
3 home immediately she could tell something was wrong. She
4 was crying, she's upset. And she tells her. She discloses
5 a sexual assault happened at his house during the night.

6 I believe she states it was after 1:00 o'clock in the
7 morning, sometime around then. Sounds like that watched a
8 few movies, stayed up a little late and everybody fell
9 asleep..

10 Her step-mom calls her dad. They wait on the dad. He
11 doesn't get there quick enough in the step-mom's
12 determination, and she goes ahead and she takes her to the
13 hospital. She does what any parent would do. She takes
14 her to the hospital.

15 At the hospital, what does she get to do there? A
16 sexual assault kit. Gets to speak to a couple of people
17 she doesn't know. It's hard to imagine telling your
18 step-mom who you've known for many years that you've been
19 sexually assaulted. But can you imagine telling relatives
20 -- telling people you've never met before, telling two
21 nurses at a hospital during a sexual assault kit what
22 happened to you at 15?

23 The next person that she gets to talk -- or later on
24 that day she gets to talk to other people who come in.
25 Detective Cantrell shows up at some point, described her as

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1 crying, upset, but she still talks to her. She reports a
2 sexual assault. Her dad gets to see her at some point.
3 She reports a sexual assault. We know that sometime later
4 she went to the Children's Advocacy Center and reports a
5 sexual assault.

6 Ladies and gentlemen, yesterday she came into this
7 courtroom, sat on that stand in front of 13 people she
8 doesn't know and did the same thing. Most of the kids in
9 my family, I'd have trouble getting them to take the stand
10 and tell you what they had for breakfast one day, telling
11 you what they did at their last basketball game. She took
12 the stand in front of 13 people and described one of the
13 most horrific nights of her life to you. You don't do that
14 for any other reason than it's the truth.

15 Let's look at that. Why would she lie? Why would she
16 make this up? What did she have to gain? Well, she got to
17 gain the trip to the E.R., the sexual assault kit. You
18 heard Pat Ramsey and Sue Mobley, and you've seen the
19 evidence over here as to what they did to her. We checked
20 areas that she reported -- that she reported that she was
21 touched or where the assault, assault occurred.

22 There's a vaginal swab over there. There's an oral
23 swab. There's swabs over different parts of her body. Why
24 would you make it up to go through that? Why would you
25 make it up to sit in the E.R. with people you don't know

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1 and talk to them about it, to talk to an officer, to talk
2 to a lady from the Advocacy Center months later, people
3 that you don't know to describe one of the most intimate
4 things that can happen to you. You don't make it up. It's
5 the truth.

6 Unfortunately, we live in a television world where all
7 you hear about is C.S.I. and different television shows
8 like that. And you would hope that you can come in and
9 always have something on everything in every case.
10 Unfortunately, we don't have that. It's not as easy as
11 somebody drops a fingerprint or somebody drops a hair and
12 the cops are able to go in and go and find it.

13 In this case the nurses did a thorough job, all the
14 swabs that they took. We have D.N.A. on some things and we
15 don't have D.N.A. on the other. But just because we don't
16 have the D.N.A. doesn't mean it didn't happen.

17 There's nothing on her vaginal swab. You heard
18 Mr. Humbert who used to work with SLED who's testified in
19 many cases before state that's not unusual. I think his
20 percentage was 50 percent of the cases there's no D.N.A. on
21 those vaginal swabs.

22 What do you have? You do have a one in 12 quadrillion
23 chance that there somebody else's D.N.A. on her left breast
24 that's his. She told you he kissed me, he licked me all
25 over my chest area. And guess what they find? His D.N.A.

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1 there, along with his D.N.A. in other places on her body.
2 But I'll tell you there was no D.N.A. in her vaginal area.
3 Around 50 percent of the cases they don't find it there.

4 A lot of witnesses that you heard from yesterday may
5 even get a little tedious at points. They were just
6 officers who testified as what they did with the evidence
7 once they received it just so that you know while those
8 items that have been introduced into evidence were in their
9 case they weren't altered or amended in any way.

10 I will say this. You have heard that there was a
11 mistake made at the sheriff's office. There was some
12 evidence taken as part of a search warrant and as part of
13 consent by the defendant for his D.N.A. that was missing.
14 There's no excuse for where it is, no excuse for what
15 happened to it. But it's all gone.

16 But I want to focus on what we do have. And you've
17 got it here with you today. And what you do have proves
18 beyond a reasonable doubt that he is guilty of the crimes.

19 Tammy Clawson came up here and testified. She was in
20 the middle of all of those witnesses yesterday. If you'll
21 recall, she's the sister of the defendant's then wife,
22 Jeannie.

23 She says I saw him on the night of July the 10th. He
24 said he tried to have sexual -- he tried to have sex with
25 her but he couldn't get it up. I don't remember if those

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1 were his exact words or not -- her exact words or not, and
2 I apologize for being so crude, but that's what she said he
3 told her.

4 One thing that I thought was remarkable about her
5 testimony, she was like I've seen Complaining Witness before
6 but I don't know her. Why would she make any of this up?
7 Tammy Clawson was related by blood to the defendant. She
8 didn't know her.

9 Let's take some time and focus on what the defendant
10 told you in his statements. I remember growing up I used
11 to stay -- this lady kept me and my brothers and my sister.
12 And during the day we'd watch those television game shows.
13 And I always remember we'd watch "Let's Make A Deal" where
14 they'd give you all the different doors with the different
15 boxes to choose from, and that's kinda what he's done in
16 this case.

17 He wants to divert you from the truth, which is that
18 he committed a sexual battery on Complaining, because he wants
19 to explain away certain things by giving you other options.
20 His first option that he tells Officer Cantrell is that --
21 Officer Cantrell tells him, you know, Complaining gone to
22 the hospital, she's had a rape kit or a sexual assault kit
23 completed on her.

24 She doesn't know what the results are. None of us
25 knew what the results were until the SLED analysis sent,

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1 was sent. And you'll see on the record he completed this
2 analysis back on September the 10th of 2010. No one knew
3 what the results of this were until then, until we received
4 it.

5 But what did the defendant say when he found out that
6 Complaining had undergone a sexual assault kit? He says,
7 well, my D.N.A. might be found inside her kit, but he
8 denied having sex with her. He says that he didn't rape
9 her but his D.N.A. might be found inside the kit.

10 He even further stated to Officer Cantrell, "I tried
11 to arouse my wife earlier that night." So in his story
12 he's in the bedroom with his five-year-old child,
13 fifteen-year-old cousin in a bed right beside him trying to
14 arouse his wife. And he precame in his boxers. And then
15 he goes into the bathroom and changes boxers.

16 That's the funny part of this story. He told you he
17 come back into the bedroom and then Complaining goes to the
18 bathroom. Just like she said, she went to the bathroom.

19 So his explanation is Complaining went to the bathroom,
20 she must have gotten my D.N.A. off the boxers. You know,
21 that doesn't make any sense. He's trying to explain away
22 why his D.N.A. might be found inside of her by saying that
23 he left his boxers in the floor and Complaining must have gone
24 in there and gotten his D.N.A. off of those. So the
25 fifteen-year-old walked in there and for entertainment

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1 value apparently picked up his used boxers and rubs them on
2 her.

3 Look at the D.N.A. report. It talks about his saliva
4 up in this area. He didn't know any of that back then. He
5 didn't know back then that that vagina swab was going to
6 come back with nothing on it. But he sure made excuses for
7 why his stuff might be there. Why do you do that but for
8 the fact that you're guilty and you committed a sexual
9 battery?

10 Nicki says she asked him again. He said, he said that
11 might be why his D.N.A. is in her. I asked him why he was
12 certain his D.N.A. would be inside of her because she never
13 told him it was. She didn't know. None of us knew until
14 September the whatever the date is on there from 2010. He
15 stated that that was just his luck that his D.N.A. would be
16 in there, just his luck.

17 I'm not, I'm not, I'm not one of those people who
18 believes in luck. Things happen because they happen. He
19 thought his D.N.A. was going to be in there because he
20 penetrated her. That's why it's there, not because of
21 luck.

22 So let's see. We've got -- my boxers are on the
23 floor, that's how the D.N.A. made it in the kit. We've got
24 just random luck. Apparently he was just having an unlucky
25 day. His D.N.A. may be in there.

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1 The next thing you've got, door No. 3 shows that he
2 says, well, I'm a heavy sleeper and I kind of felt like I
3 was suffocating at certain points that night so maybe
4 Complaining while my wife and my five-year-old are in the room
5 got up, got on top of me and had sex with me. Maybe that's
6 how it happened. If it wasn't the boxers in the bathroom
7 floor or luck maybe it's just that. I woke up or I just
8 felt her on me and maybe she was having sex with me.
9 That's ridiculous. I don't think there's any other word to
10 describe that story that he gave, which is that. It's
11 ridiculous.

12 He gives a written statement to Officer Cantrell that
13 day, puts it down in writing. He reiterates some of the
14 stuff that he stated in his written statement. "I didn't
15 consent to sex with her. I precame in my boxers and went
16 to the bathroom and changed them. Complaining got up and went
17 to the bathroom after me." Perfect timing. I added that
18 part in.

19 "A few minutes later she came back in and went to bed.
20 During the night I felt suffocated and weighed down. I'm a
21 deep sleeper and my wife is a deep sleeper too. The next
22 morning I got up before everybody else," and he talks about
23 how the rest of the day went.

24 There's three different ways in there that he could
25 have committed a sexual battery and his D.N.A. could have

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1 been in there on that statement.

2 What happens next time Officer Cantrell sees him? She
3 gets a phone call. He's at the emergency room the next
4 day. He leaves the sheriff's office around 11 o'clock on
5 the 10th, 11:00 p.m. at night. I believe it's about 12:15
6 or 1:00 he shows up at the emergency room threatening to
7 himself by walking in front of cars on Church Street, I
8 believe us what the testimony was.

9 Officer Cantrell -- seven years of doing this job as
10 an investigator, ten years as a cop -- calls another
11 officer to bring a video tape out. Why don't you meet me
12 at the hospital and let's videotape this guy, he agrees to
13 talk to me. He does and they video taped it. You've got
14 that video tape.

15 You're going to have a computer back in the back that
16 you can watch it and see what he says. Watch his demeanor
17 when you pull it up. Watch the occasional smile that he
18 gives you when he's talking about the consensual sex.
19 Watch how he's just there just talking in a nice quiet
20 voice about what he did.

21 Tells Detective Cantrell on there that this is bigger
22 than me, I need help. I think I might have found something
23 I finally agreed with him on. I'm going to play just a
24 portion of it for you real quick. But, as I said, you're
25 going to have it in the back and you're going to have a

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1 chance to watch it. You're going to have the chance to
2 hear him say I had consensual sex with her.

3 She's attractive. You're also going to hear where he
4 talks in there -- and I guess you would term this I don't
5 know door No. 4 or door No. 5 or 6, whichever number we're
6 at now, when he goes into this detail about how Complaining
7 came onto him that night. And he's going to give you
8 details about how he tried to have sex with her but he just
9 wasn't able. He tries to have sex with her in the room yet
10 again with his wife and his five-year-old. Complaining says
11 all of this happened in the bathroom next door, which is
12 more plausible.

13 He's going to tell you a story on the video about how
14 she come onto him. She pulled her panties aside and
15 touched herself and touched him. It's all on video that
16 you can watch back in the back. It's kind of hard to hear.
17 I just want to play a piece of it for you and give you a
18 chance to see what he looks like then.

19 (Whereupon, the video was played for the jury.)

20 MS. JORDAN: It's hard to hear. That's why I say
21 you'll have it in the back if you want to listen to it --
22 the computer -- listen to it there. But you heard what he
23 said -- it wasn't rape, it was consensual. The judge is
24 going to tell you, as I told you earlier,
25 sixteen-years-olds can't consent.

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1 Ladies and gentlemen, this isn't a case about consent
2 even if that could be the law. She said he pushed her down
3 in the bathroom floor and penetrated her.

4 Mr. Whelchel is going to argue we didn't prove this
5 beyond a reasonable doubt, but we did, ladies and
6 gentlemen. All that you've heard, all that you've seen,
7 all that you'll get to see even in the back that's in
8 evidence, you can look at all of this. Look at the swabs,
9 listen to the video, take it all in.

10 He's going to say, well, maybe, maybe he attempted,
11 maybe he just attempted to have sex with her, it was just
12 an attempt at criminal sexual conduct. But listen to all
13 of it. And remember a sexual battery is any intrusion,
14 however slight. How do you know if he attempted if he
15 didn't make any intrusion, however slight?

16 He talks in the video about how he was on top of
17 Complaining he was carrying his own weight when he tried to
18 have sex with her. Any intrusion, however slight.

19 This case has been proved beyond a reasonable doubt
20 that Joseph Cobb committed a sexual battery against

21 Complaining Witness

22 I'm asking that when you go into the jury room that
23 you consider everything that you've heard today, you apply
24 your common sense to it and you return a verdict of guilty
25 as to criminal sexual conduct with a minor in the second

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1 degree. Thank you.

2 THE COURT: Mr. Whelchel.

3 MR. WHELCHER: Thank you, Your Honor.

4 July of 2007. Joseph Cobb in July of 2007 is accused
5 of raping this young woman. Today and yesterday he gets to
6 go to trial. And he gets to go to trial without everything
7 that they took from the house in the search warrant -- the
8 underwear, the boxers. Everything that was taken is gone.
9 The buccal swab that he gave them voluntarily, it's gone.
10 And what are we hearing? Well, that shouldn't have
11 happened. Mistakes shouldn't happen. Sitting by me three
12 and a half years later, sitting here.

13 Is that reasonable? Ask yourself that question. Is
14 that reasonable? Because you must remember what I talked
15 to you about yesterday and what the judge has already
16 talked to you about in his initial charge to you, and will
17 talk to you about again.

18 The state has the burden of proving to you beyond a
19 reasonable doubt that this happened the way they say it
20 happened, when they say it happened, with evidence so
21 strong and so convincing as to remove the cloak of
22 innocence that Joseph Cobb still wears, yes, still wears.

23 You will listen to the judge's charge in a minute, and
24 he will tell you in that charge that Joseph Cobb is
25 presumed innocent, is innocent now and is innocent in that

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1 delivery -- in that deliberating room, the jury room,
2 unless and until you find evidence so strong and so
3 convincing as to remove that cloak of innocence, evidence
4 so strong and so convincing, evidence beyond a reasonable
5 doubt.

6 Now, the prosecutor just told you a moment ago, and
7 I'm going to talk about reasonable doubt. Yeah, they're
8 going to talk about reasonable doubt all right. That long.

9 I used to be a prosecutor a long time ago.
10 Prosecutors don't like to talk about reasonable doubt.
11 Why? She's right. It is the highest standard in the legal
12 system. And there's a reason for that, a very simple
13 reason.

14 Joseph Cobb is being accused of rape. The burden of
15 proof of that rape lies with this table, with the
16 prosecutors and the state officers. And now we hear, well,
17 you don't have to have anything other than her saying that
18 he raped her. And you'll hear from the judge about that.
19 But then why do we do the protocols? And when we do the
20 protocols, the assault kit, what do we find?

21 Well, there's no semen on the swabs. There's no semen
22 anywhere remotely connected with the vagina after this
23 brutal rape.

24 Remember I asked her about some blood, said she
25 cleaned it up. We don't have that either. Why don't we

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1 have that? It got -- we lost that stuff, but we've got
2 plenty of other stuff.

3 Let me show you what we've got. We've got saliva
4 here, here and here. We've got saliva from everywhere, and
5 we got semen from nowhere. We don't have anything other
6 than the bare allegation, we don't have anything to tell
7 you, yeah, in addition to her allegation and this.

8 You don't have that. And you don't have any way to
9 try to get it from the stuff that was taken in the search
10 warrant, and must have been important because look how fast
11 they're there with that search warrant that day. Must have
12 been important, but it's not important now. Think it might
13 be important to Joe Cobb? It's difficult for me to know
14 that I'm getting you to understand how very important what
15 we don't have is.

16 You listen to the judge's charge. He will tell you
17 that you can base your decision on what you don't have as
18 well as what you allegedly do have. He will tell you that
19 in his charge.

20 What else don't we have? Well, we don't have any
21 evidence of any trauma whatsoever. Two very professional
22 nurses on the stand interviewed her, talked to her.

23 She's supposed to have been held down with an arm
24 across her throat. She's supposed to have been raped. And
25 you don't hear any testimony about trauma here or

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1 elsewhere. Why? That is a very good prosecutor. And if
2 it was there and available as evidence, it would be in
3 evidence, but it's not. I guess we just chalk it up with
4 the we-lost-that-stuff-sorry.

5 This isn't a baseball game. This ain't somebody
6 claiming that you juiced up the bats or something like
7 that. Carolina-Clemson. We don't want to talk about it.

8 This is a trial to determine a man's future, and there
9 just seems to be a collective shrug of the shoulders. It
10 happened, it shouldn't happen, but it happens. You need to
11 understand how very important what you don't have is.

12 And let's talk about reasonable for a moment. A young
13 woman who has allegedly been violated that way who has a
14 cell phone chooses not to use it. Doesn't call parents.
15 Says she threatened to call the police but didn't.

16 Do you find that odd? Speaking of odd, her choice of
17 words, he had penetration. Who talks like that -- who
18 talks like that? Never heard anybody testify that she had
19 talked to that morning or that next day saying she said we
20 had penetration. And there's a reason for that. Without
21 penetration and proof of penetration you have no criminal
22 sexual conduct, or attempt.

23 That's why when I was asking questions of the
24 investigator, the lead investigator on this thing, did you
25 talk to Joe about a sexual battery, did you tell him what

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1 sexual battery means, no. She said I just assumed he knew,
2 I just assumed that's what he meant.

3 Now, you can mean a lot of things when you start
4 talking about having sex. It doesn't have to mean the
5 ultimate act.

6 But here's the problem. The very people who are
7 required to prove this to you and you and you and you and
8 the rest of you beyond a reasonable doubt, they dropped the
9 ball. I just assumed he knew what we were talking about.
10 I don't know what happened to all of that missing stuff
11 that was taken.

12 You decide today what is a reasonable doubt. You
13 decide today whether it's reasonable after three and a half
14 years to give the state a pass.

15 Well, yeah, it's your job to collect this evidence and
16 to keep it and to bring it to court and to carry the burden
17 of proving someone guilty beyond a reasonable doubt.
18 That's their job.

19 That's your job, but we're going to give you a pass.
20 That's what they're asking you to do. I mean, they
21 apologize nicely for it. But think about it. They
22 apologize nicely for it.

23 If I get rear-ended at a red light, and say, oh, I'm
24 so very sorry, that doesn't fix what he tore up and what he
25 lost. Can't get it back.

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1 I understand how very important that is. As I said
2 earlier, what you don't have is. What you don't have in
3 these cases is just as important as what you do have. And
4 simply because somebody says that something happened
5 doesn't make it so.

6 You heard testimony from Complaining that the next
7 morning I think she's supposed to be home by 8:00. They
8 get up and go running -- says he leaves by going.

9 They go to take Joe's wife to a class. And do you
10 remember what I asked her about going to that class? Were
11 there people outside? Yeah. Could you see people inside
12 the school? Yeah. Two-door or four-door car? Four-door.
13 You in the back? Yeah.

14 Is it reasonable? Do you believe that a young woman
15 who's been assaulted in the way and degraded in the way
16 that you've been told today having that opportunity to step
17 out of the car and go tell these people help me, he raped
18 me, passes it up?

19 Remember when I was talking to or questioning the
20 investigator, the store across the street opens. They get
21 up in the morning and go there. Not until she gets home do
22 you see the emotion of that. She's already way past time
23 to be home. And you'll hear in her statement -- Joe's
24 statement -- what she told him. You need to take me home
25 with Jeannie. I'll get in trouble.

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1 Ladies and gentlemen, you decide today what is
2 acceptable in this state and in this particular case and in
3 this county.

4 And you need to understand something. Simply because
5 he's charged with this offense means absolutely nothing.
6 There's an indictment that the judge will give to you
7 later, but that's the charging paper. There's got to be
8 some kind of paper to tell you what you're charged with.

9 That's of no value whatsoever. The value that you
10 have is what you determine the truth to be. You decide who
11 you believe and what you believe and if you believe it.

12 Everything that seems to be in this infamous case is
13 not of any evidentiary value connected with the vaginal
14 region. It's not there. It's not unusual for it not to be
15 there.

16 And as I told you earlier, there's no evidence of
17 trauma introduced into this case whatsoever. You go on
18 what evidence that you have. If we had anything you could
19 look at it.

20 We will never know, none of us. Can you convict?
21 That's what they're asking you to do based on the statement
22 this happened, I went to the hospital and cried and told
23 them this happened. This happened.

24 Now, I understand that they're claiming that they've
25 got proof, evidence of some item, things like that. You've

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1 never seen them. They've got to prove to you penetration
2 in order to convict. That's the key element. That's why
3 that it is so important that you hear early on in the
4 testimony penetration is made. And I thought they allowed
5 to question everybody. That's the result from being talked
6 to, being told.

7 There is nothing wrong with talking to witnesses. I'm
8 not saying that there is. Nobody put the witnesses on the
9 stand and hadn't talk to them before. But let's talk about
10 where there is witnesses on the stand.

11 I think we're done now. Up and down real quick.
12 Heard Joe talking to his wife, the aftermath. And
13 basically says I couldn't get an erection. That's long
14 before anybody's talking to the police or to the
15 investigators who are trained for seven years to do this
16 but don't bother to make sure that the person they're
17 talking to understands that we're talking about a sexual
18 battery, and this is what a sexual battery is. That is
19 said long before anybody's ever read any rights. Now, they
20 say it happened. You've got Complaining No question.

21 Ask yourself this question. Has the state proven to
22 you beyond a reasonable doubt that this happened the way
23 they say it happened, how they say it happened with
24 evidence so strong and so convincing, evidence beyond a
25 reasonable doubt?

Closing arguments

1 The judge will define reasonable doubt to you. It is
2 simply defined and best defined as a doubt which would
3 cause a reasonable person to hesitate to act, to hesitate
4 to believe. Losing all of the evidence taken, is that
5 reasonable? There is a reasonable doubt.

6 Nothing other than a bare assertion that this
7 happened, and there is a reasonable doubt. Evidence from
8 the protocol, sexual assault, that there was no semen. And
9 you'll see in State's Exhibit No. 25 that vaginal smears,
10 they didn't bother to analyze it. Vaginal swabs, no semen.
11 Oral swabs, no semen. Pubic hair combs, known head hairs,
12 no analysis performed. Look at all of this stuff where
13 there's no analysis performed by the very people with which
14 the burden of proof rests.

15 Your decision, your verdict, must be unanimous.
16 Simply speaking, all 12 of you have to agree that the
17 evidence submitted during this trial is so good, it is so
18 strong as to remove the cloak of innocence that Joseph Cobb
19 enjoys throughout this trial and even as you begin your
20 deliberations and until you are convinced. And unless you
21 are convinced otherwise he is not guilty. That's the law
22 of the land.

23 So I told you yesterday it's very important for you to
24 understand he's not guilty. They must prove to you with
25 evidence so strong and so convincing beyond a reasonable

Jury charge

1 doubt. Yeah, I keep talking to you about that. They don't
2 want to talk to you about it, because, like she said, it's
3 the highest standard in the law.

4 So you must ask yourself this question. Have I been
5 convinced with the evidence that's presented and
6 considering the evidence that's not been presented and the
7 evidence that is lost and never will be found, have I been
8 convinced that this happened the way they say it happened,
9 have I been convinced that Joseph Cobb is guilty beyond a
10 reasonable doubt. As this evidence, what it is, so strong
11 as to remove the presumption of innocence that the law of
12 this state affords him and everybody else, regardless of
13 how minor or serious the offense is, the law of this state
14 affords those persons.

15 I submit to you on behalf of Joseph Cobb that the
16 verdict that is proper, the verdict that speaks the truth
17 when you consider what's alleged, what you don't have and
18 what you hear identified, you consider it all, that the
19 proper verdict is not guilty. Thank you.

20 THE COURT: Ladies and gentlemen, it is your exclusive
21 duty to determine what the facts are. You do that through
22 your own common sense examination and evaluation of all of
23 the testimony and the other evidence received during the
24 trial of this case.

25 You 12 jurors alone will decide what weight, value and

Jury charge

1 effect to give to any particular witness' testimony, or
2 portions of testimony. Your sole objective is to simply
3 reach the truth in the matter. And by doing that you will
4 have fulfilled your obligations as jurors, and that is to
5 simply give both the state and this defendant a fair and
6 impartial trial.

7 Now, in this case, as you know, the state through the
8 prosecutor has accused the defendant of having committed
9 the crime of criminal sexual conduct with a minor in the
10 second degree. The allegations setting forth that charge
11 are contained in that document which I referred to prior to
12 and after your selection.

13 The indictment will be in the jury room because it's
14 on the back of that indictment, Mr. Foreman, that you're
15 going to be asked to indicate the jury's unanimous
16 decision. But other than serving as the verdict form the
17 indictment serves no purpose so far as you jurors are
18 concerned.

19 The indictment does not prove anything. It does not
20 establish anything. It is simply the means by which any
21 person who is accused of a crime is brought into this court
22 to stand trial on that charge. And of course it serves to
23 put a defendant on notice as to what crime the state claims
24 they have committed. And in the trial of a case it serves
25 as the verdict form. But other than serving as the verdict

Jury charge

1 form it serves no purpose so far as you jurors are
2 concerned.

3 Now, as to the allegations contained in the indictment
4 and the charge set forth the defendant has entered a plea
5 of not guilty. And that plea of not guilty has therefore
6 placed upon the state the burden of proving the allegations
7 that they have set forth, the burden of proving each of the
8 essential elements that constitutes the crime alleged in
9 the indictment; and therefore the burden is upon the state
10 to establish the defendant's guilt to the satisfaction of
11 you 12 jurors beyond a reasonable doubt before any verdict
12 of guilty could be returned.

13 The burden is never upon a defendant or a person
14 accused of a crime to prove that they are not guilty or to
15 prove that they are innocent, because in some cases that
16 might not be possible. The burden is always upon the state
17 because they have brought the charge against another to
18 establish that person's guilt beyond a reasonable doubt.

19 It is a vital, important and cardinal rule of law that
20 every defendant in a criminal trial, no matter how serious
21 the offense might be for which that person stands charged,
22 that person shall always be presumed innocent of the
23 charge.

24 That presumption of innocence remains with any
25 defendant, as it does with this defendant, from the time

Jury charge

1 that he is placed under arrest and throughout the course of
2 the criminal process and even throughout the course of the
3 trial.

4 As I told you, that presumption of innocence will be
5 with this defendant even as you go back to begin with your
6 deliberations in the case. And that presumption of
7 innocence will be with him in the jury room, and it'll be
8 with him forever unless you 12 jurors determine that he's
9 no longer entitled to that presumption of innocence.

10 In other words, after you've carefully considered all
11 of the evidence in the case and from that evidence you have
12 determined what you believe to be the true facts as they
13 relate to these allegations, and upon deciding those facts
14 you apply the law that I will have provided you, if you 12
15 jurors unanimously determine that his guilt has been proven
16 beyond a reasonable doubt, then he would no longer be
17 entitled to the presumption of innocence. But it's only
18 if, unless and until you are satisfied of his guilt beyond
19 a reasonable doubt that the presumption of innocence would
20 no longer be applicable.

21 Now, while the state does have the burden of proving
22 the defendant's guilt to your satisfaction beyond a
23 reasonable doubt, that doesn't mean that the state has to
24 prove his guilt beyond all doubt or beyond any possible
25 doubt. But it does require the state to prove his guilt to

Jury charge

1 your satisfaction beyond a reasonable doubt.

2 The term reasonable doubt should be given its plain
3 and ordinary meaning. A reasonable doubt is the kind of
4 doubt that would cause a reasonable person to hesitate to
5 act upon the information provided.

6 A defendant is entitled to any reasonable doubt that
7 arises from the evidence or lack of evidence in a case.
8 And if upon any factual issue essential to a finding of a
9 verdict of guilty you have some reasonable doubt as how
10 that issue should be resolved, it would be your duty to
11 resolve that reasonable doubt in favor of the defendant.

12 And therefore if upon your consideration of the whole
13 case you have a reasonable doubt as to his guilt, you must
14 resolve that reasonable doubt in his favor and return a
15 verdict of not guilty.

16 And, at the same time, after you've carefully
17 considered all the evidence, and from that evidence you
18 have decided the facts, and after deciding those facts you
19 apply the law that I will have provided you, if you have no
20 reasonable doubt as to his guilt it would be your
21 corresponding duty to find him guilty of any crime that you
22 are satisfied has been proven beyond a reasonable doubt.

23 Now, the same law that provides that you are the
24 judges of the facts also provides that I am the judge of
25 the law. And that simply means that nobody's going to tell

Jury charge

1 you how to arrive at your determination of fact in this
2 case.

3 You do that, as I've stated, through the exercise of
4 good judgment and common sense conscientiously applied to
5 the testimony and evidence received during the trial of the
6 case.

7 You must however under your oath as a juror accept the
8 law as I provide it to you as being the law that is
9 applicable in this particular case. In other words, you're
10 never to concern yourself with what you thought the law was
11 before you came to serve as a juror this week or what you
12 think the law ought to be.

13 You must simply under your oath accept the law as I
14 provide it to you as being the law that is applicable in
15 this case. Then you take that law and you apply it to the
16 facts as you 12 jurors determine those facts to be based
17 upon your common sense examination and evaluation of the
18 evidence in the case.

19 Now, because you are the sole judge of the facts in
20 this case you are therefore necessarily the sole judges of
21 the credibility or the believability of each witness that
22 has testified during the course of the trial. You 12
23 jurors alone will decide what weight, value and effect to
24 give to any particular witness' testimony, or even a
25 portion of that testimony.

Jury charge

1 There are several factors which you should consider in
2 arriving at your assessment as it relates to a particular
3 witness' credibility, and I'm going to list those factors
4 for you.

5 But you are to consider the demeanor of the witness,
6 that is how the witness appeared to you as the witness
7 testified from the witness stand. Was the witness
8 straightforward in responding to questions, or was the
9 witness hesitant or evasive in responding to questions that
10 were asked of the witness.

11 Simply put, did the witness appear to you to be
12 telling the truth and to have knowledge of the facts to
13 which that witness has testified.

14 You should also consider whether or not the testimony
15 of a witness is consistent, or is it inconsistent with that
16 own witness' testimony provided in court, as well as any
17 statements that might have been made by that witness
18 outside of court. And you should also consider whether or
19 not the testimony of a witness is consistent or
20 inconsistent with other witnesses' testimony or other
21 evidence received during the trial of the case.

22 You are also to consider how the witness came to know
23 the facts to which a witness has testified. In other
24 words, what was a particular witness' opportunity and
25 ability to perceive the existence of those facts to which

Jury charge

1 that witness has testified by having previously used his or
2 her senses, and then what is that witness' ability to be
3 able to come into court and to accurately recollect to you
4 as to what they have previously perceived.

5 You may also consider any bias or prejudice or
6 interest that the witness might have with regard to a case.
7 In other words, do you find some reason that a particular
8 witness would testify one way or another to help or to hurt
9 one side or the other. And you may consider any interest
10 that the witness might have in the outcome of the case if
11 you determine that a witness does have such an interest and
12 you find that that interest would bear upon that particular
13 witness' credibility.

14 You are also to consider whether or not the testimony
15 of a witness is strengthened, or is it weakened by other
16 testimony or other evidence received during the course of
17 the trial.

18 You as the finders of the fact and you as the judges
19 of the credibility of each witness are permitted to believe
20 as much or as little of what a witness has testified to as
21 you deem is appropriate. And therefore you may believe
22 everything that a witness testified to; you may choose to
23 believe none of it. You may believe some portion of a
24 witness' testimony and reject some other portion of that
25 same witness' testimony.

Jury charge

1 In a given case you could believe one witness as
2 opposed to several, or several as opposed to one. But
3 whatever your good judgment and common sense tells you is
4 the most credible and believable testimony is the testimony
5 you should accept. And you should reject any testimony or
6 other evidence that you find not to be credible and
7 believable. Again, your sole objective is to simply reach
8 the truth in the matter. And by doing that you will have
9 fulfilled your obligations as jurors, and that is to give
10 both sides a fair and impartial trial.

11 Now, while there are various forms of evidence such as
12 testimony, photographs, documents, charts or other types of
13 physical exhibits, there are really only two types of
14 evidence. Either or both of those types of evidence may be
15 used to prove any fact in issue. But the two types of
16 evidence are direct evidence and circumstantial evidence.

17 Now, direct evidence is the testimony of a person who
18 testifies from actual knowledge of the fact. It is
19 testimony by a person who has perceived the existence of a
20 fact by means of his or her senses. And then that persons
21 comes into court and they testify as to what they have
22 previously perceived.

23 Circumstantial evidence, on the other hand, is the
24 proof of some other fact or set of facts which taken either
25 singly or collectively may prove the existence of a fact in

Jury charge

1 consequence -- excuse me, may prove the existence of a fact
2 in question as a necessary consequence. That is by an
3 inference.

4 An inference is simply a deduction of fact that may
5 logically and reasonably be drawn from the proof of some
6 other fact or set of facts. In other words, it's not a
7 fact which is proven by the direct testimony of a person
8 based upon their personal perception, but it is a
9 conclusion which might reasonably be drawn from the proof
10 of other facts.

11 In other words, you may infer that a particular event
12 occurred or that a particular fact exists based upon the
13 proof of sufficient factual circumstances which would
14 reasonably warrant your arriving at a particular
15 conclusion.

16 The law however does not make any distinction between
17 the weight or value to be given to direct evidence as
18 opposed to circumstantial evidence, nor is a greater degree
19 of certainty required of circumstantial evidence as opposed
20 to direct evidence.

21 Whatever the type of evidence used to prove any fact
22 in issue, you should consider all of the evidence presented
23 during the trial of the case. And after carefully
24 considering all of that evidence and weighing it in your
25 minds if you are not convinced of the guilt of the

Jury charge

1 defendant beyond a reasonable doubt, then you must resolve
2 that doubt in his favor and return a verdict of not guilty.

3 Now, in this case, as you know, the defendant is
4 charged with the crime of criminal sexual conduct with a
5 minor in the second degree.

6 That's a statutory offense. And that just means it's
7 defined by the legislature in a code section. And that
8 code section is 16-3-655. And that code section provides
9 in its relevant part, parts as follows: A person is guilty
10 of criminal sexual conduct with a minor in the second
11 degree if the actor engages in sexual battery with a victim
12 who is at least 14 years of age but who is less than 16
13 years of age and the actor is older than the victim.

14 So, again, the crime is defined as a person is guilty
15 of criminal sexual conduct with a minor in the second
16 degree if the actor engages in sexual battery with a victim
17 who is at least 14 years of age but who is less than 16
18 years of age and the actor is older than the victim.

19 Now, there is another code section which sets forth
20 certain definitions which are applicable to these statutes.
21 In that section it defines actor as a person accused of
22 criminal sexual conduct. In this case that would be Joseph
23 Gabriel Cobb.

24 That section defines a victim as being a person who is
25 alleged to have been subjected to criminal sexual conduct.

Jury charge

1 In this case that would be Complaining Witness

2 A sexual battery is defined as sexual intercourse or
3 any intrusion, however slight, of any part of a person's
4 body or of any object into the genital or anal openings of
5 another person's body.

6 And therefore based upon the language of the statute
7 there are three essential elements which must be
8 established beyond a reasonable doubt before the defendant
9 could be found guilty of criminal sexual conduct with a
10 minor in the second degree.

11 First, it must be proven that the defendant, Joseph
12 Gabriel Cobb, did engage in a sexual battery as I have
13 defined that term for you, and that that was engaged in
14 with Complaining Witness

15 Secondly, it must be proven that at the time of the
16 commission of any sexual battery the victim, Complaining
17 Bishop, was at least 14 years of age but less than 16 years
18 of age.

19 And, thirdly, it must be proven that the defendant,
20 Joseph Gabriel Cobb, was older than the victim, Complaining
21 Bishop.

22 You are further instructed that consent is not an
23 issue in the trial of this case or in any case of criminal
24 sexual conduct involving a minor under the age of 16 years.
25 Under the law of this state a child under the age of 16

Jury charge

1 years is not legally capable of voluntarily consenting to a
2 sexual battery committed by an adult.

3 You are further instructed that while the law does not
4 require that the testimony of a minor claiming to have been
5 the victim of criminal sexual conduct be corroborated, the
6 law does require that the three elements I have just
7 explained to you be proven beyond a reasonable doubt.

8 If after considering all of the testimony and all of
9 the evidence in this case any one or more of the three
10 elements required to be proven is not proven to your
11 satisfaction beyond a reasonable doubt, then your verdict
12 must be for the defendant, and he would be found not
13 guilty.

14 Now, if after your consideration of the evidence in
15 this case you find that the state has failed to prove
16 beyond a reasonable doubt the defendant's commission of the
17 crime of criminal sexual conduct with a minor in the second
18 degree, you may consider the included offense of attempted
19 criminal sexual conduct with a minor in the second degree.

20 An attempt is defined as the commission of an overt
21 act done in furtherance of an intent to do a specific thing
22 which tends towards the accomplishment of the intended goal
23 but which falls short of completion.

24 An attempt to commit a specific crime means the making
25 of an effort or the doing of an act towards the commission

Jury charge

1 of the crime intending to be committed. In order to be
2 found guilty of attempted criminal sexual conduct with a
3 minor in the second degree it must be proven beyond a
4 reasonable doubt that the defendant had a specific intent
5 to commit the crime accompanied by some overt act towards
6 the commission of the crime which would become part and
7 parcel of the criminal offense if completed and which,
8 except for some intervening cause preventing the completion
9 of the intent, would have resulted in the complete
10 commission of the crime of criminal sexual conduct with a
11 minor in the second degree.

12 Ladies and gentlemen of the jury, I am not in any way
13 concerned with what your decision is, but I do tell you
14 that your verdict has to be unanimous. All 12 of you must
15 be in agreement before any decision may be rendered.

16 Mr. Foreman, you're going to have the indictment in
17 the jury room. It's going to be on the back of the
18 indictment -- you'll see in the lower left-hand corner of
19 the back of the indictment the word verdict. There's a
20 clock stamp there which is not supposed to be there. So
21 just ignore that and just write through it. But beneath
22 the word verdict write the unanimous decision of the jury.

23 In this case you're going to have three potential
24 verdict forms. Those three potential verdict forms are
25 guilty, guilty of attempted criminal sexual conduct with a

Jury charge

1 minor in the second degree and not guilty.

2 Now, as you complete the verdict form if you simply
3 write the one word guilty that means guilty of the crime
4 charged in the indictment. If you find the defendant to
5 have been proven only guilty of attempted criminal sexual
6 conduct with a minor in the second degree you've got to
7 write that out. And that would be guilty of attempted
8 criminal sexual conduct with a minor in the second degree.

9 And the third potential form is not guilty if neither
10 of those crimes have been proven beyond a reasonable doubt.

11 Then sign your name as the foreperson, place the
12 appropriate date on it, notify the bailiff you've reached a
13 decision. We'll bring you back to receive the verdict.

14 Now, when you complete the verdict form after you've
15 made a decision when you notify the bailiff that you've
16 reached that decision, you will maintain possession of the
17 verdict form. Don't give it to the bailiff. You hold on
18 to it. And I'll get it from you when you come back into
19 the courtroom.

20 Now, during your deliberations there may come a time
21 where you have some question about the facts of the case.
22 Please understand that I am never permitted to comment upon
23 the facts or to answer any questions that relate to the
24 facts of the case.

25 Also, if you are wondering if there's some other piece

Jury charge

1 of evidence, does it exist, or if it does can you have it,
2 no additional evidence can be received now that you're
3 going back to deliberate. So don't ask for any additional
4 evidence that you don't have, because even if it exists you
5 couldn't have it because the evidence has been closed.

6 If you have a question about a witness' testimony and
7 you think that question can be answered by having a --
8 having the witness' testimony replayed in whole or in part,
9 we can bring you back into the courtroom for that purpose.

10 I do not have transcripts of the witnesses' testimony,
11 so I can't send you a transcript. But if you do need to
12 have a witness' testimony reheard I can bring you back into
13 the courtroom and have it relayed for your benefit, either
14 all of it, or just some portion of it if that's all you
15 need.

16 If you ever have a question about the law that is
17 applicable, I am permitted to answer those questions. So
18 if you need for me to give you a reinstruction on the law
19 or to give you an explanation of something already provided
20 or to clarify something that I have provided, you let me
21 know. And I can always bring you back to give you
22 additional assistance and clarification on any point of law
23 that is applicable in the case.

24 So, Mr. Foreman, if at any time you need to direct
25 some question or comment to me if you'll write it on a

Jury charge

1 piece of paper, give it to the bailiff, he'll provide it to
2 me and I'll respond as necessary.

3 I don't know if we have any smokers on the jury. If
4 you want to smoke, you can. But you can't smoke in the
5 jury room. You have to go outside for that purpose. But
6 you are instructed that deliberations can only take place
7 when all 12 jurors are present in the room so that all can
8 participate.

9 So if at any time any juror is absent for an
10 authorized purpose the deliberations have to stop. They
11 may only resume when all 12 jurors are present so that all
12 can participate in those deliberations.

13 I think that covers everything. If not, I'll bring
14 you back.

15 But right now I'll ask the 12 primary jurors.

16 Ms. Smith, you just stay with me.

17 The 12 primary jurors please go with the bailiff to
18 your jury room and await my instruction as to when to begin
19 your deliberations.

20 (Whereupon, the jury retired to deliberate at
21 2:42 p.m.)

22 (Whereupon, the alternate juror was excused.)

23 THE COURT: Are there any exceptions taken to the
24 instruction or requests for additions to the instruction by
25 the state?

Verdict

1 MS. JORDAN: None by the state, Your Honor.

2 THE COURT: By the defendant?

3 MR. WHELCHER: Nothing other than my earlier request
4 to charge aggravated assault and battery, Your Honor.

5 THE COURT: Okay. Let me ask y'all to verify the
6 exhibits, please, before they go back.

7 (Pause.)

8 MS. JORDAN: They are all there, Your Honor.

9 THE COURT: They are all accounted for.
10 Send them back and tell the jury to begin
11 deliberations and notify us when they've concluded.

12 We will be at ease for ten minutes.

13 (Whereupon, the exhibits were submitted to the jury at
14 2:46 p.m.)

15 (Whereupon, a recess was taken.)

16 THE COURT: I am told the jury has reached a decision.
17 Are we ready to receive it?

18 MS. JORDAN: Yes, sir.

19 MR. WHELCHER: Yes, sir.

20 THE COURT: Okay. Bring them in.

21 (Whereupon, the jury returned to the courtroom at
22 4:35 p.m. to report its verdict.)

23 THE COURT: Mr. Foreman, have you and your fellow
24 jurors reached a unanimous decision?

25 THE FOREMAN: Yes, sir, we have.

Verdict

1 THE COURT: Have you indicated that decision on the
2 back of the indictment as requested?

3 THE FOREMAN: Yes, sir.

4 THE COURT: And did you sign your name as the
5 foreperson?

6 THE FOREMAN: What, sir?

7 THE COURT: Did you sign your name?

8 THE FOREMAN: Yes, sir.

9 THE COURT: If you will, please hand that form up by
10 way of the bailiff.

11 You may publish the verdict.

12 THE CLERK: State of South Carolina, County of
13 Spartanburg, in the Court of General Sessions, the State
14 vs. Joseph Gabriel Cobb, Indictment No. 2007-GS-42-3875,
15 indictment for criminal sexual conduct with a minor second
16 degree, we, the jury, find the defendant guilty. Signed by
17 the foreperson, Robert Cooley, Coley, today's date,
18 3/10/2011.

19 Ladies and gentlemen of the jury, is this your verdict
20 and still your verdict? If so, please raise your right
21 hand.

22 (Whereupon, all jurors responded in the affirmative.)

23 THE CLERK: So say you all.

24 THE COURT: Does the defendant wish to have the jury
25 polled?

1 MR. WHELCHER: Yes, sir, Your Honor.

2 THE COURT: All right. Poll the jury, please, ma'am.

3 THE CLERK: Ladies and gentlemen of the jury, I'll be
4 asking you a question, and that question is is this your
5 verdict and still your verdict. When I call your name and
6 your jury number, if you would, just answer yes or no.

7 Juror No. 228, Felicia Rogers.

8 THE JUROR: Yes.

9 THE CLERK: Juror No. 51, Harold Cleveland.

10 THE JUROR: Yes.

11 THE CLERK: Juror No. 45, Maria Castillo.

12 THE JUROR: Yes.

13 THE CLERK: Juror No. 242, Deborah Smith.

14 THE JUROR: Yes.

15 THE CLERK: Juror No. 53, Robert Coley.

16 THE JUROR: Yes.

17 THE CLERK: Juror No. 296, Jason Wyatt.

18 THE JUROR: Yes.

19 THE CLERK: Juror No. 202, Thong Pathoummahong.

20 THE JUROR: Yes.

21 THE CLERK: Juror No. 201, Elizabeth Passmore.

22 THE JUROR: Yes.

23 THE CLERK: Juror No. 41, Garnet Carbon.

24 THE JUROR: Yes.

25 THE CLERK: Juror No. 108, Mark Haulbrook.

1 THE JUROR: Yes.

2 THE CLERK: Juror No. 33, Wanona Burgett.

3 THE JUROR: Yes.

4 THE CLERK: Juror No. 143, Karen Knon.

5 THE JUROR: Yes.

6 THE CLERK: The jury has been polled.

7 THE COURT: All right. Any other matters that need to
8 be addressed with the jury present?

9 MS. JORDAN: None from the state, Your Honor.

10 MR. WHELCHER: No, sir, Your Honor.

11 (Whereupon, the trial jury was excused.)

12 THE COURT: All right. Any matters to address before
13 the imposition of sentence?

14 MR. WHELCHER: Your Honor, at this time I would ask
15 for a -- make a motion for a judgment, notwithstanding the
16 verdict, or in the alternate a new trial based on
17 previously mentioned lack of evidence, insufficiency of the
18 evidence, and, specifically, Your Honor, my request to have
19 Your Honor charge the jury aggravated assault and battery
20 in this matter.

21 Based on that I would make the motion for a new trial
22 or a judgment notwithstanding the verdict.

23 THE COURT: Well, I'll treat that as a motion for a
24 new trial, and that's denied.

25 MS. JORDAN: Your Honor, if I may for the record, and

Sentence

1 I can mark these as either court exhibits or state
2 exhibits. I have -- let me get the court numbers. Would
3 the Court prefer that these be marked? It's some
4 affidavits of service.

5 THE COURT: It doesn't matter how you mark them.

6 (Notice of life sentence marked Court's Exhibit No. 1;
7 affidavit marked Court's Exhibit No. 2; affidavit marked
8 Court's Exhibit No. 3; affidavit of service marked Court's
9 Exhibit No. 4.)

10 MS. JORDAN: Your Honor, if I may, I am going to hand
11 up to the Court Court's Exhibit No. 1, which is a notice of
12 a life sentence pursuant to 17-25-45 where it states in
13 there that the Court -- that the state is going to seek a
14 life sentence based upon the defendant's 1992 convictions
15 for two counts of voluntary manslaughter.

16 Attached to the notice of -- notice of motion to seek
17 a life sentence is the defendant's rap sheet, along with
18 copies of the sentencing -- the indictment. And I believe
19 back then they used a 1-page sentencing sheet also attached
20 to the notice that's Court's Exhibit No. 1.

21 As to Court's Exhibit No. 2, it's a copy of an
22 affidavit signed by Alisha Pickens. She's a paralegal in
23 our office. She delivered the notice of intent to seek
24 life on Joseph Cobb here at the courthouse on the 10th day
25 of August of 2007.

Sentence

1 Your Honor, at that time the defendant was represented
2 by Josh Schultz who was with the public defender's office.
3 She also served a notice of life on him on the same date,
4 the 10th of August of 2007.

5 Just to make sure that there were no issues since he's
6 no longer represented by Josh Schultz, Crystal Szar with
7 our office served Dick Whelchel personally here at the
8 courthouse on February the 22nd of 2011 with the same
9 notice of intent to seek a life sentence.

10 Mr. Whelchel was well aware of it, however we served
11 it just out of an abundance of caution since he was a
12 different attorney on the case at the time, although he was
13 still with the public defender's office.

14 Your Honor, in addition to the two counts of voluntary
15 manslaughter from 1992 the defendant also has a record for
16 criminal domestic violence of a high and aggravated with a
17 conviction date of 2004. That's the extent of his record.

18 May I approach?

19 MR. WHELCHER: Your Honor, I don't know what address
20 to put on here because he's been in the jail for the last
21 three and a half years -- on this sentencing sheet. I
22 guess we can put the address.

23 THE COURT: Just put his last known address.

24 Mr. Whelchel, are you and Mr. Cobb in agreement with
25 the state that all of the requirements for sentencing

Sentence

1 pursuant to 17-25-45 have been met in this case?

2 MR. WHELCHER: Yes, we are, Your Honor.

3 THE COURT: Okay. Do you have anything you'd like to
4 tell me prior to the imposition of the sentence?

5 MR. WHELCHER: No, sir.

6 THE COURT: Mr. Cobb, do you have anything you'd like
7 to tell me?

8 THE DEFENDANT: No, sir.

9 THE COURT: All right. On Indictment 2007-3875,
10 that's an indictment for criminal sexual conduct with a
11 minor in the second degree, a most serious offense under
12 the law of this state, and wherein you have been previously
13 found guilty of a most serious offense, the Sentence of the
14 Court is that you, Joseph Gabriel Cobb, be confined to the
15 South Carolina Department of Corrections for the period of
16 your natural life pursuant to 17-25-45.

17 Mr. Cobb, you have a right to appeal the decisions of
18 the jury and the Sentence of the Court. You must file any
19 notice of your intent to appeal those decisions within ten
20 days of today's date. Mr. Whelcher will advise you on
21 that.

22 END OF REQUESTED TRANSCRIPT OF RECORD
23
24
25

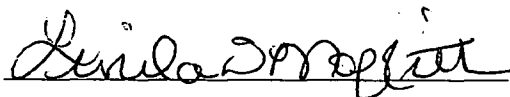
Certificate

CERTIFICATE

I, the undersigned Linda D. Moffitt, 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 all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 9th and 10th days of March 2011.

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

August 10, 2011



Linda D. Moffitt
Circuit Court Reporter

Spartanburg County Courthouse
RANDOM STRIKE SHEET

245

JUDGE NAME : Cole, J. Derham
TRIAL TYPE : Criminal
PANEL ID : 2007GS4203875
COURTROOM JAR

DESCRIPTION : STATE VS. JOSEPH COBB

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
1 Rogers, Felicia N	228	B	F	✓	✓	()	
2 Cleveland, Harold G	51	B	M	✓	✓	()	
3 Duke, Scott C	70	W	M	✓	✗	()	
4 Castillo, Maria I	45	H	F	✓	✓	()	
5 Smith, Deborah M	242	W	F	✓	✓	()	
6 Coley, Robert A	53	W	M	✓	✓	()	
7 Walker, Janice M	273	W	F	✓	✗	()	
8 Dantzler, Romey L	62	B	M	✗	()	()	
9 Wyatt, Jason Duane	296	W	M	✓	✓	()	
10 Pathoummahong, Thong	202	A	F	✓	✓	()	
11 Passmore, Elizabeth H	201	W	F	✓	✓	()	
12 Carbon, Garnet D	41	B	M	✓	✓	()	
13 Mcleod, Lealon Earl	166	W	M	✓	✗	()	
14 Haulbrook, Mark A	108	W	M	✓	✓	()	
15 Burgett, Wanona R	33	W	F	✓	✓	()	
16 Wood, William J	293	W	M	✗	()	()	
17 Roach, Kenneth R	226	W	M	✓	✗	()	
18 Knon, Karen D	143	W	F	✓	✓	()	
19 Smith, Sylvia E	247	B	F	✓	✓	()	
20 Tutterrow, Marion E	266	W	M	()	()	()	
21 Radke, Michael J	219	W	M	()	()	()	
22 Fernanders, Brandon R	79	B	M	()	()	()	
23 Harrison, Jon T	106	W	M	()	()	()	
24 Mcdaniel, Paula M	163	W	F	()	()	()	

245

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF

SPARTANBURGJOSEPH GABRIEL COBB 183773

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2013 07-42-

APPLICATION FOR

2913
POST-CONVICTION RELIEF

M. HOPE BLACKLEY

2013 JUL 19 PM 4:11

CLERK OF COURT
CLERK OF COURT
CLERK OF COURT

FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and veified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make chr to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exeise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay threes and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention PERRY CORRECTIONAL INSTITUTE.
2. Name and location of Court which imposed sentence SPARTANBURG Courthouse
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007 GS 4203875
 - (b) CRIMINAL SEXUAL CONDUCT WITH A MINOR-
 - (c) SECOND DEGREE
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) MARCH 10th - 2011
 - (b) LIFE WITH PAROLE.

Revised 3/2003



- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. APPELLATE COURT Columbia SC.
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. SENTENCE AFFIRMED.
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. N/A
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) N/A
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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M. HOPE BLACKLEY
CLERK OF COURT
SOUTH CAROLINA COUNTY

- (a) _____
 (b) _____
 (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) X/A
 (b) X/A
 (c) X/A

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? N/A
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
 (d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. X/A
 ii. X/A
 iii. X/A
 iv. X/A

(b) the name and location of the Court in which each was filed:

- i. _____
 ii. X/A
 iii. X/A
 iv. _____

(c) the disposition thereof:

- i. _____
 ii. X/A
 iii. _____

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 COURT
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 2013 JUL 19 PM 4:11
 M. HOPE BLACKLEY

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. N/A
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. N/A
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. N/A
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. N/A
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) N/A
- (c) _____

17. Were you represented by an attorney at any time during the course of:

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CLERK OF COURT
2013 JUL 19 PM 4:11
M. HOPE BRACKLEY

- (a) your arraignment and plea? _____
- (b) your trial, if any? ☒ _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. TRIAL
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
REVOKE SENTENCE.
20. Are you now under sentence from any other court that you have not challenged?
N/A

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 JUL 19 PM 4:11
M. HOPE BLACKLEY

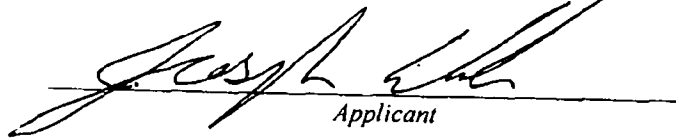
Revised 3/2003

2013-CF-42-251
2013

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
15th day of July, 2013.


Notary Public

My Commission Expires: 1-23-2013

DATE MAILED
7/17/2013

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 JUL 19 PM 4:11
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	2013-CP-42-2913
Joseph Gabriel Cobb, #183773,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION TO DISMISS
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed July 19, 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 August 2007 term of the Spartanburg County Grand Jury for criminal sexual conduct with a minor, second degree (2007-GS-42-3875). The Applicant was represented by Richard H. Whelchel, Esquire. On March 10, 2011, the Applicant proceeded to trial and was convicted as indicted. The Honorable J. Derham Cole sentenced Applicant to life without parole.

A timely Notice of Appeal was filed on the Applicant's behalf and an appeal was perfected by Breen Richard Stevens, Esq. 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. Cobb, No. 2013-UP-122 (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, 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 for post-conviction relief the Applicant alleges that he is being held in custody unlawfully, yet fails to state the grounds upon which he bases this allegation or any facts to support the allegation.

III.

The Court should summarily dismiss this ground for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.... S.C. Code Ann. § 17-27-20 (1976).

In his application for post-conviction relief, the Applicant fails to set forth with specificity the grounds upon which his claims of unlawful custody are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds

upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

IV.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

V.

WHEREFORE, Respondent moves to summarily dismiss the application because it fails to state a cognizable claim and fails to establish a prima facie case.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

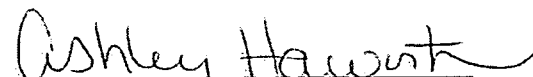
[signatures continued on next page]

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
	)	2013-CP-42-2913
JOSEPH GABRIEL COBB, #183773	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

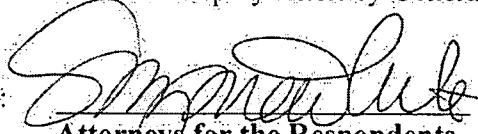
Mr. John Brandt Rucker, Esquire
Brandt Rucker Attorney At Law
522 North Church Street
Greenville, SC 29601

DATED this 5TH day of September, 2014.


 Ashley Haworth, Legal Assistant
 For Respondent

SUZANNE WHITE
Assistant Deputy Attorney General

By:

A handwritten signature in cursive script, appearing to read "Suzanne White", written over a horizontal line.

Attorneys for the Respondents

P.O. Box 11549
Columbia, S.C. 29211

September 5, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Joseph Gabriel Cobb 3183773)

Applicant,)

State of South Carolina)

Defendant.)
_____)

IN THE CIRCUIT COURT

CLERK OF COURT
SPARTANBURG COUNTY
C/A# 2013-CP-42-2913

2015 MAR 19 AM 9:54

M. HOPE BLACKLEY

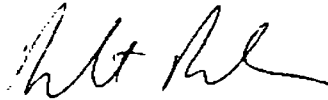
**NOTICE OF MOTION TO AMEND
APPLICATION FOR POST-CONVICTION
RELIEF**

The Applicant, by and through his attorney, Brandt Rucker, hereby moves this Honorable Court to amend his Post Conviction Relief Application, pursuant to S.C. Codes of Law Section 17-27-70 (1976) and South Carolina Rules of Civil Procedure by adding the following grounds to his previous application.

Ineffective Assistance of Counsel

1. Trial Counsel was ineffective for failing to move for a mental evaluation of the Applicant.
2. Trial Counsel, and previous defense counsel, were ineffective for failing to properly investigate.
3. Trial Counsel was ineffective in for failing to discuss the alteration of trial exhibits, and failed to prevent such alteration, and failed to move to suppress the publication of the video tape because of the severely diminished sound quality of the video tape.
4. Trial Counsel was ineffective in failing to inform the Applicant of a plea deal until it was too late to accept the plea deal.

Respectfully submitted,



Brandt Rucker
Attorney for Applicant
522 North Church Street
Greenville, S.C. 29601
(864)271-9925

Greenville, S.C.
March 17, 2015

STATE OF SOUTH CAROLINA
 COUNTY OF Spartanburg

IN THE COURT OF COMMON PLEAS
 7th JUDICIAL CIRCUIT

CASE NO.: 2013-CP-42-2913

Joseph Gabriel Cobb Inmate # 183773

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

vs.

State Of South Carolina

Defendant.

Plaintiff's Attorney: Brandt Rucker, Bar No. 0069403 Address: 522 North Church Street Greenville, S.C. 29601 Phone: 864.271.9925 Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/ ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☒ Plaintiff / ☐ Defendant 3/19/15 Date submitted	
SECTION III: Motion Fee ☐ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☒ Indigent Status ☐ Sexually Violent Predator Act ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions ☒ State Agency v. Indigent Party ☐ Post-Conviction Relief ☐ Motion for Execution (Rule 69, SCRCP) Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

1 State of South Carolina
2 County of Spartanburg

In the Court of Common Pleas

3
4 Joseph G. Cobb,)
5 Applicant,) 2013-CP-42-02913
6 -vs-) June 8, 2015
7 State of South Carolina,)
8 Respondent.)
9 -----) Transcript of Record

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 Suzanne H. White, Esquire
Attorney for the Respondent

16

17 John Brandt Rucker, Esquire
Attorney for Applicant

18

19

20

21 Diane L. Marcengill, RPR, CRR
22 Circuit Court Reporter

23

24

25

26

I N D E XWitnessesPage

JOSEPH GABRIEL COBB

Direct Examination By Mr. Rucker 4

Cross-Examination By Ms. White 25

Redirect Examination By Mr. Rucker 32

ROBERT HALL

Direct Examination By Ms. White 34

Cross-Examination By Mr. Rucker 36

RICHARD WHELCHER

Direct Examination By Ms. White 40

Cross-Examination By Mr. Rucker 47

Redirect Examination By Ms. White 57

Recross-Examination By Mr. Rucker 61

Reporter's Certificate 66

E x h i b i t s

For the Applicant:

Marked	Description	I.D.	Admitted

None offered.

For the Respondent:

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 2:17 p.m.)

4 MS. WHITE: Joseph Cobb versus the State. Case
5 2013-CP-42-2913. Mr. Cobb is present, represented
6 today by Mr. Brandt Rucker. Mr. Cobb was indicted in
7 August of '07 on a charge of criminal sexual conduct
8 with a minor, second degree. He proceeded to trial
9 represented by Mr. Richard Whelchel, and at that time
10 they had served him notice, your Honor, pursuant to
11 17-25-45 of intent to seek life without parole based on
12 prior convictions. He was found guilty and received a
13 sentence of life without parole.

14 He's filed this application July 19, 2013, amended
15 March 19, 2015, alleging ineffective assistance of
16 counsel in that counsel failed to move for a mental
17 evaluation of the defendant, counsel and prior defense
18 counsel failed to properly investigate, counsel failed
19 to discuss alteration of trial exhibits to prevent such
20 alteration and to move to suppress the publication of
21 the videotape based on the severely diminished sound
22 quality, and counsel failed to inform the defendant of
23 a plea deal until it was too late to accept.

24 And at this point I'll turn it over to Mr. Rucker.

25 MR. RUCKER: Your Honor, may it please the Court.

1 I call my client, Joseph Cobb, to the stand.

2 JOSEPH GABRIEL COBB,

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 THE COURT: Please state your name for the record.

5 THE WITNESS: Joseph Gabriel Cobb.

6 THE COURT: Thank you, Mr. Cobb. You can have a
7 seat.

8 Mr. Rucker, your witness.

9 MR. RUCKER: Thank you. May it please the Court.

10 DIRECT EXAMINATION

11 BY MR. RUCKER:

12 Q Mr. Cobb, you heard the recitation of your
13 sentence by the attorney general. Is that correct? Is
14 that the sentence you're serving right now?

15 A It is.

16 Q What were you convicted of?

17 A Criminal sexual conduct with a minor in the second
18 degree.

19 Q All right. Do you have a prior record before
20 that?

21 A I do.

22 Q And what was that prior record?

23 A Two counts of manslaughter.

24 Q Was that used to go for the life without parole,
25 to your knowledge?

1 A It was.

2 Q How did you get Mr. Whelchel as your attorney?

3 A Mr. Whelchel was appointed to me by the
4 Spartanburg public defender's office.

5 Q Do you recall when he was appointed?

6 A Not the actual date and time, no, sir.

7 Q When did you first meet with him?

8 A Goodness, gracious. I would say it was in
9 probably 2010.

10 Q And when was your actual trial?

11 A 2011.

12 Q What specific date was your trial?

13 A It was March 9th and March 10th of 2011.

14 Q How many times did you meet with him in total?

15 A Probably around three or four.

16 Q And how long would each meeting last?

17 A Just minutes.

18 Q When you say "just minutes," like 59 minutes or
19 10 minutes, 15 minutes?

20 A Probably anywhere from ten to 15.

21 Q Were you in jail during this whole case?

22 A I was confined in jail, yes, sir.

23 Q Did Mr. Whelchel -- first of all, do you know what
24 discovery in a criminal case is?

25 A I do.

1 Q What is that?

2 A It's where the State has got the evidence against
3 you, has built the evidence against you that they're
4 willing to push forward to make a case. And he did
5 show me this at the end, probably when it was time for
6 us to go to trial, just about when it was time to go to
7 trial I seen the *Brady* motion material.

8 Q You saw *Brady* motion material and regular
9 discovery material?

10 A I did. And some of the *Brady* material, there was
11 pages missing. They had been clock stamped, and the
12 Children's Advocacy Center was missing two pages.

13 Q Now, when we're speaking of *Brady* material, you
14 understand *Brady* material is evidence that would tend
15 to mean that you were not guilty; do you understand
16 that? Are you calling *Brady* material your general
17 discovery material?

18 A Yes, I am.

19 Q So there was absent -- some things were not
20 included in your material?

21 A Yes, sir.

22 Q Did you point that out to Mr. Welchel?

23 A I did, but he changed the subject and went to
24 something else, and the pages never showed. Even
25 during the court hearing, the two pages are missing

1 until today. I don't know what they said.

2 Q What is the CAC or Child Advocacy Center, do you
3 know?

4 A The Child Advocacy Center?

5 Q Yes.

6 A That's a branch of what the county uses for a
7 victim in Spartanburg County to build their case.

8 Q How did that apply in your case?

9 A It was applied with the criminal sexual conduct,
10 second degree to build the case.

11 Q Was the alleged victim taken to the CAC, and did
12 she issue a statement there, was videotaped there?

13 A She issued actually two statements that were
14 inaudible that were played before the jury. You
15 couldn't hear the audio -- voices in that either. I
16 actually viewed those in 2009 through my second
17 attorney, along with what the State was going to use
18 against me in the video. And none of it was audible.

19 Q Let's go back. Who represented you throughout --
20 who were the attorneys that represented you throughout
21 this case?

22 A All of them came from the Spartanburg public
23 defender's office. The first was Joshua Schultz. The
24 second was Robert Hall, and the third is Mr. Whelchel.

25 Q Did you review the video through Mr. Hall or

1 Mr. Schultz?

2 A Mr. Hall.

3 Q Did you notice there were problems with that video
4 at that time with Mr. Hall?

5 A Yes. And he brought it to me, too, that he
6 couldn't get the volume to come up.

7 Q Do you know why you had three separate public
8 defenders in this case at separate times?

9 A Yes, sir, I do.

10 Q Why is that?

11 A Well, my first attorney, he would not do any
12 time-sensitive evidence search for me. There was
13 things that were needed to build a case that he would
14 not research.

15 Q What were those things?

16 A Well, me and the victim had went to a Westside
17 library. Surveillance footage showed us there at the
18 library. She signed on to MySpace.com using the
19 computer lab computer, and I said, can you get that?
20 And none of that ever happened, so I had him removed
21 through the bar.

22 Q Did you speak later with Mr. Welchel about
23 evidence you thought could have been retrieved from the
24 library?

25 A Yes, I did. I asked him to retrieve that

1 evidence.

2 Q And to your knowledge, did he do that?

3 A No. It wasn't presented during trial at all --

4 Q Okay.

5 A -- if he did.

6 Q Did you go into trial thinking he had that
7 evidence?

8 A I did.

9 Q Did that affect your strategy during trial?

10 A It did.

11 Q Did y'all meet shortly before trial to go back
12 over the evidence and what your strategy was going to
13 be?

14 A We met at the county detention center and talked
15 about it shortly, yes, sir.

16 Q Okay. What was the strategy? What were y'all
17 trying to show?

18 A There was actually no defense strategy at all. We
19 was just going to go into the courtroom, and he told me
20 what was going to be put -- placed against me if they
21 found me guilty, and that was about it.

22 Q Okay. Did you -- and you said there were things
23 missing from the CAC report; is that right?

24 A Missing from the child advocacy report, yes, sir.

25 Page two, I think, and page five.

1 Q What did those pages contain?

2 A I have no idea.

3 Q Did you point that out to Mr. Welchel?

4 A I did.

5 Q And what did he say to you in response to that?

6 A He changed the subject and went to another area of
7 my case. And those pages, 'til today, I don't know
8 what they said.

9 Q Okay. To your knowledge, he had the full
10 paperwork -- all the paperwork he could get from CAC?

11 A I believe so, yes.

12 Q Did you discuss with him your prior relationship
13 with the victim in the case?

14 A How we were related?

15 Q Right.

16 A Yes.

17 Q And he told you there was no defense to this case,
18 or how did he approach that with you?

19 A He never actually said there was no defense in
20 this case. He never prepared a defense for this case.
21 The March -- I'd say March 9 when we went to trial,
22 during opening presentations between the State and the
23 defense, the State presented a damaged offer of
24 audio/video CD in which eight seconds was deleted from
25 that videotape.

1 Q How do you know eight seconds were deleted from
2 that tape?

3 A They had admitted it inside the transcript here.

4 Q And the judge will have the transcript in front of
5 him when he's reviewing the case.

6 What happened to those eight seconds, do they say?

7 A They had conspired to remove the eight seconds. I
8 had no knowledge of that whatsoever until I had
9 actually -- there at the jury trial that it had been
10 deleted. They conspired together, Mr. Whelchel and the
11 State's prosecutor, to remove the eight seconds.
12 During the deletion of that, I would say near the end
13 of that tape, near crucial areas where I had voiced to
14 the lead investigator at the sheriff's department that
15 I didn't commit the criminal sexual conduct with a
16 minor, I didn't have sexual intercourse with the
17 victim.

18 Q Okay. Specifically we're talking about a
19 statement you gave that they view as a confession; is
20 that right?

21 A Yes.

22 Q When you say Mr. Whelchel conspired with the
23 State, what do you mean by "conspire"?

24 A Well, I had no knowledge of it. I had no
25 knowledge that anything had been altered or tampered

1 with in that video. And when we came to court, that's
2 what was presented by the State firsthand during
3 presentation was that they had agreed to take out eight
4 seconds of the audio/video interrogation statement.

5 Q Did Mr. Whelchel tell you you needed to testify in
6 this case or you needed not to testify?

7 A Well, we talked about that. We took a ten-minute
8 break during the jury trial, and I was wanting to
9 testify. And I said, "I would like to testify." And
10 he said, "Well, they'll impeach you." And he said,
11 "I'll lose closing argument."

12 Q Did you, in fact, testify in this case?

13 A I did not.

14 Q And you did not because of his advice?

15 A Yes.

16 Q Did he tell you -- why did he tell you -- what did
17 he say they would use against you to impeach you?

18 A My prior criminal background and history.

19 Q What is your prior criminal background and
20 history?

21 A The two manslaughter charges they would bring
22 forward.

23 Q When were those manslaughter charges -- when were
24 you convicted of manslaughter?

25 A 1992.

1 Q And how long before this trial was that?

2 A Gosh, my count is off. 2011.

3 Q Okay. So it was a lot of time -- almost 20 years
4 between?

5 A It was quite a while, yes, sir.

6 Q And did he talk to you about his ability to have
7 those convictions not used against him?

8 A No, he did not.

9 Q All right. To your knowledge, in addition to
10 that, did he have any other information he believed
11 that they would use to impeach you with?

12 A No, sir.

13 Q All right. And is it fair to say this case in a
14 lot of ways was your word versus her word?

15 A It was. The evidence, for one thing, if you will
16 go to the SLED, South Carolina Law Enforcement
17 Division, scientific laboratory analysis, you will see
18 that they have fingernail scrapings from the victim.
19 They have where I kissed the young lady on the neck,
20 the lips, and the breast area, but there was no semen
21 identified. If you go to the hospital assessment, I
22 think five or six pages, it all shows negative. There
23 was no trauma. There was nothing. If you go to the
24 appellant's respondent's brief, to the appellant court,
25 the district attorney's office had used a portion of

1 the doctor's -- examiner's statement that her hymen was
2 intact, and in his professional opinion he didn't
3 believe that sexual intercourse had actually occurred.

4 Q Was that person called to testify during the
5 trial?

6 A No, he wasn't.

7 Q All right. Did Mr. Welchel know about that
8 potential testimony beforehand?

9 A I would believe there was no way he couldn't know
10 that. I never knew it.

11 Q Okay. How did you find out about it?

12 A I had actually got the respondent's brief and
13 found it inside the respondent's brief.

14 Q Was that information you could have -- he could
15 have found within the discovery packet he received from
16 the solicitor's office?

17 A Probably so. There is a lot of it I didn't get.

18 Q Were you accused of forcefully raping this victim?

19 A I was.

20 Q Okay. How old was the victim at the time of
21 the --

22 A She was 15 years old.

23 Q Okay. Did he talk to you about the issue with her
24 age and your age?

25 A Yes, he did.

1 Q Did you give a statement where you consent -- you
2 believe she consented to sex or did you deny having sex
3 with her?

4 A I used the word consensual sex. I didn't know the
5 full meaning of that word in its capacity.

6 Q All right. At the time what did you believe
7 consensual sex meant?

8 A We agreed to have sex, and what I was calling sex
9 was the kissing of the girl's lips, her neck and the
10 breast area.

11 Q You deny that y'all ever had sex, actual physical
12 intercourse sex?

13 A We did not.

14 Q And did you talk to Mr. Whelchel about a possible
15 lewd act charge in this case?

16 A I did not.

17 Q All right. Now, I want to go back before I get
18 too deep into this. You said there was an offer
19 extended to you that you never had a chance to respond
20 to. What was that offer?

21 A With my second attorney, Mr. Robert Hall, we --
22 when we couldn't get the audio/video sound to come up,
23 I introduced -- I gave him an offer for a deal to where
24 I could get out and be with my family because it had
25 been such a while since I had been with them. I had

1 known of homicide, but my life had been threatened if I
2 had told anyone. The Gaffney killer had just killed
3 five people and brought it to my attention real hard, I
4 think this is the time to remove this guy from the
5 street. It's time to put me back on it where I belong
6 with my family. So I brought it to his attention, and
7 Mr. Hall was familiar with the case. He told me that
8 it was being put into motion, that he was talking with
9 the right people. And two weeks had passed, and I
10 heard nothing from him, so I wrote to Judge Couch and
11 asked that he remove him.

12 Q Did you ever, in fact, get an offer from the
13 solicitor's office?

14 A Well, Mr. Hall had came back, and he had a manila
15 envelope with him and some paperwork in it and a CD
16 inside of a packet. He said, "I've got your deal." I
17 said, "Well," I said, "I've got something I need to
18 tell you." He said, "What is it?" I said, "I have had
19 you removed as my counsel."

20 Q What was the actual offer from the State?

21 A It was an ABHAN charge for me to testify against
22 the homicide suspect.

23 Q Were you ever asked to then testify against that
24 homicide suspect?

25 A It never went that far.

1 Q All right. Now, at the point that Mr. Hall comes
2 back to meet with you at the jail, you have had him
3 removed and Mr. Whelchel was on the case?

4 A Not yet.

5 Q Okay. So nobody is on the case at that point?

6 A And he told me he would have to go back and talk
7 with his boss.

8 Q Did you ever have a discussion with Mr. Whelchel
9 about that previous offer and about your willingness to
10 testify?

11 A I did.

12 Q Okay. And what happened as a result of that?

13 A He told me he would check into it. Near the end
14 of -- close to us going to trial, I had asked him about
15 that deal that we had discussed with Mr. Hall, was he
16 able to accumulate that deal for me. He said that deal
17 no longer existed between me and Mr. Hall.

18 Q So Mr. Whelchel told you that or Mr. Hall told you
19 that?

20 A Mr. Whelchel told me that.

21 Q How close to trial date was that?

22 A I would say that was within probably a month.

23 Q Okay. In addition to the things we've spoken
24 about, I mean, I know there is a lot here, name some of
25 the -- strike that.

1 What do you believe Mr. Whelchel did incorrectly
2 in addition to what we've already talked about as far
3 as trial strategy?

4 A Well, I think there was multiple breaks in the
5 chain of evidence that he didn't build a defense on.
6 The South Carolina -- excuse me. The Spartanburg
7 sheriff's department lost a whole lot of the evidence
8 against me.. They entered in that they had lost that
9 during remodeling of their system, and we never had
10 that evidence to analyze or have it expert analyzed or
11 anything or use it as a defense. It wasn't available
12 for the jury. The evidence that they lost was gone.
13 And he never built a defense on that. He never moved
14 for a mistrial on the lost evidence.

15 Q All right. Did a forensic interviewer testify in
16 your case; do you recall that?

17 A He did.

18 Q Do you recall who that -- I mean, it's in the
19 transcript. Do you recall who the forensic interviewer
20 was?

21 A I do not right off the top of my head.

22 Q Do you recall that forensic interviewer testifying
23 about the credibility of the witness, of the alleged
24 victim?

25 A I don't remember him talking about the credibility

1 of the witness.

2 Q What do you remember the forensic interviewer
3 testifying about?

4 A He did testify that the samples, of course, in his
5 profession that were mine and hers, it was of serology,
6 that no semen was identified. No vaginal smears was
7 performed.

8 Q Specifically what I'm asking about is the person
9 who did the tape at the CAC that met with the child
10 that morning. Do you recall that person testifying?

11 A She testified to the veracity, I guess is the word
12 I would use, of the victim and that everything that she
13 said was -- seemed to be up to par.

14 Q All right. Did Mr. Whelchel object to that
15 testimony?

16 A No, he did not.

17 Q All right. What you're saying is veracity. She's
18 commenting on the credibility of the witness?

19 A Yes, sir.

20 Q All right. This is 2011 when this trial was
21 happening?

22 A She did that through the children's advocacy also
23 forensic assessment.

24 Q All right. Did the child -- did the 15-year-old
25 testify in this case?

1 A She did.

2 Q Did Mr. Whelchel cross-examine her?

3 A He did.

4 Q All right. What did he do wrong about that
5 situation with the victim?

6 A I believe that he failed to build a defense on the
7 inconsistency of statements the victim had made. They
8 didn't add up.

9 Q Did the forensic interviewer testify about her
10 credibility before or after she testified?

11 A She did through the forensic assessment. I
12 believe she did during trial, as well.

13 Q Was that in testimony before the victim testified
14 or after the victim testified?

15 A I'm not sure, sir. It's in the transcript who
16 testified first. I would think it was after.

17 Q Who else -- did anybody else testify about the
18 character of the witness -- of the victim, I should
19 say?

20 A She had a mother and a father there that
21 testified.

22 Q Did you believe that you needed to testify to
23 counteract some of her testimony?

24 A Do I believe that I did?

25 Q Yeah.

1 A Most definitely.

2 Q All right. And you chose -- we have gone over
3 this before -- you chose not to testify because your
4 attorney advised that those manslaughterers would be used
5 against you?

6 A Yes. And I figured that would prejudice the jury.

7 Q Was the confession used against you in this case?

8 A The confession?

9 Q The alleged confession, the video and any written
10 statement?

11 A Yes, it was.

12 Q All right. Did you have a chance then to explain
13 to the jury what you meant by those words?

14 A No.

15 Q All right. Why did Mr. Welchel tell you that
16 this was the proper defense to use or proper strategy
17 to use?

18 A He actually never shared that with me. We never
19 had a strategy. We just went into the courtroom, and
20 it happened the way it happened. There was no defense
21 strategy.

22 Q Okay. What else specifically -- you raised a
23 conflict of interest issue. What is that conflict of
24 interest?

25 A I brought to Mr. Welchel's attention that I had

1 asked him who was going to preside over the jury trial,
2 and he told me it would be Judge Cole. I said, "Well,"
3 I said, "I've had a conflict of interest with him," I
4 said, "stemming from a 2001 criminal domestic violence
5 HAN charge. Is there any way possible you can motion
6 for us to go before another judge?" He said, "Well, we
7 only have two weeks. There's not time."

8 Q Okay. What was the basis of the motion to have
9 the judge recuse himself? What was the conflict?

10 A My wife was present at that 2001 hearing, and she
11 was eight and a half months pregnant. During that
12 hearing the judge questioned my wife and says, "Are you
13 under the care of a mental physician," and she says,
14 "No." He says, "Well, you should be." He says, "Are
15 you aware that Mr. Cobb has been incarcerated for two
16 counts of murder?" And she says, "Yes, sir." He said,
17 "Are you also aware that history has been known to
18 repeat itself?" My wife turned frail and pale at that
19 time and asked if she could be seated. She was seated
20 and I was seated also, and Judge Cole looked at me for
21 a space of three to five minutes intentionally with the
22 courtroom quiet. The only way that that look broke is
23 I looked away and looked in a different place in the
24 court and court went on like it was supposed to.

25 My wife went into labor right there in the

1 courtroom. Her water broke and she had to be rushed to
2 the hospital to deliver.

3 Q Based on that you believe that Judge Cole would
4 have remembered you, and based on that also you think
5 it would cast questions of whether the trial was going
6 to be fair or not?

7 A Most definitely.

8 Q Specifically within the trial itself, what do you
9 think Judge Cole did that showed that there was a
10 conflict of interest?

11 A Well, everything that Mr. Whelchel tried to build
12 a defense of hearsay, and he shot that down. He took
13 and allowed the evidence that had been tampered and
14 altered to be admitted into evidence and never said
15 anything. He allowed the tape to be played before the
16 jury that was inaudible.

17 Q All right. Did Mr. Whelchel object to the -- to
18 this evidence coming in during the trial itself?

19 A He voiced -- he said, "Well, if it's inaudible,
20 you know, the jury can't hear it." But as far as a
21 verbal objection, he did not.

22 Q What other issues beyond the ones we've already
23 talked about do you believe our PCR judge should be
24 familiar with?

25 A The oral argument that was presented during

1 presentations on March 9th.

2 Q Okay. Are you talking about the closing argument
3 or the opening statement?

4 A It's the oral statement that I had made to the
5 sheriff's department's lead investigator. It had been
6 altered as well.

7 Q Okay.

8 A Portions and paragraphs in it had been deleted, an
9 area where I had shared with even Mr. Whelchel that on
10 7/9/07, the suspect had shared with me that she thought
11 she was pregnant by her boyfriend, that she may be
12 pregnant by her boyfriend. We agreed that this was her
13 motive to lie, and we were going to set this up for
14 evidence as a defense, but I don't know what happened
15 with that because that was deleted and it was presented
16 by the prosecutor that it was deleted.

17 Q Were you ever given a copy of your actual
18 statement by the Spartanburg County Sheriff's Office?

19 A I can't recall that I have, no, sir.

20 Q But you can recall what you actually told them and
21 you know that portions of your statement had been
22 deleted?

23 A I do.

24 Q Did your attorney, Mr. Whelchel, object to the
25 introduction of that evidence?

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1 A He did not.

2 Q Did he talk to you at any time about why he was
3 not going to object to it being introduced?

4 A He did not.

5 Q In addition to that issue, do you have any
6 additional issues for the judge to review?

7 A That should be all.

8 MR. RUCKER: No further questions.

9 THE COURT: All right. Ms. White.

10 MS. WHITE: Thank you, your Honor.

11 CROSS-EXAMINATION

12 BY MS. WHITE:

13 Q Mr. Cobb, you said -- first of all, you said that
14 the only other convictions that could have been used to
15 impeach you were the two voluntary manslaughters?

16 A That was --

17 Q You were convicted of criminal domestic violence
18 high and aggravated nature as well, weren't you?

19 A Yes, ma'am. But they were basing the motion to
20 pursue my life on the two manslaughter charges.

21 Q But in regards to whether or not you would be
22 testifying, that was another criminal conviction that
23 would be considered?

24 A I don't know how that works, ma'am. I know this
25 was the criminal sexual conduct hearing.

1 Q Right. And you said you did talk with
2 Mr. Whelchel about the possible impeachment of you with
3 prior convictions, right?

4 A Yes, ma'am.

5 Q And that is a prior conviction of yours?

6 A The two manslaughters were, yes, ma'am. And the
7 CDV high and aggravated is also, yes.

8 Q Thank you. You said that you never discussed
9 actually a defense strategy, but was it not your
10 defense that no intercourse had ever actually happened?

11 A That was, but it was actually never really argued
12 to the extent. This girl was saying that sexual
13 intercourse had taken place. During the questioning,
14 the cross-examination, I feel like my attorney never
15 went in depth with that with her and used the
16 statements that she had made.

17 Q In fact, did your attorney, though, not use your
18 own statement to say that it was more of an attempt,
19 you actually attempted sexual intercourse, but because
20 of the inability to maintain an erection, were not able
21 to complete the act, and that's why there was no semen?

22 A Well, we both was wearing our undergarments, first
23 of all. There was no genital-to-genital contact,
24 ma'am. I didn't get aroused with what was going on.
25 We had -- it was never going to go that far. All we

1 were doing was kissing.

2 Q My question, though, is not -- is that what was
3 presented, and, in fact, not in your own statement?

4 A No. I wasn't attempting to commit criminal sexual
5 conduct with a minor in the second degree, no, ma'am.

6 Q Okay.

7 MS. WHITE: One moment, please, your Honor.

8 Q Is it not correct that Officer Nicki Cantrell,
9 during her direct examination, when she discussed what
10 statement you made to her, said on page 143 of the
11 record on appeal, "He did not force the victim to have
12 sex. He tried to have sex with her but had difficulty
13 getting an erection," and that he had lied to her
14 before because he was scared and that you thought she
15 was 16?

16 A It goes back to what I was calling sex, ma'am.
17 The kissing of the young lady's neck, her lips and her
18 breast area, that's what I considered sex.

19 Q Okay.

20 A As far as trying to get aroused, I didn't get
21 aroused with what was going on. I was trying to
22 entertain a 15-year-old. I never had 15-year-olds in
23 my home. This one had came on to me. That's as far as
24 we went.

25 If you will go back to -- in the transcript,

1 Mr. Whelchel had also questioned Ms. Nicki Cantrell
2 that she had never told me what a sexual battery was or
3 explained it to me, so I had no idea what I gave her
4 was what happened.

5 Q Right. So you wanted your attorney to present as
6 your defense you testifying saying that you believed
7 sex was kissing?

8 A I did.

9 Q Okay. And you thought that was a good strategy?

10 A I thought -- I thought the kissing of the neck and
11 the lips and the breast area was sex. When I used the
12 word "consensual sex," that's what I was consenting to,
13 that right there. As far as sexual intercourse, ma'am,
14 that never occurred.

15 Q You have children, right?

16 A I do.

17 Q And those were conceived with you and your wife?

18 A We were -- they were.

19 Q In regards to the video, the eight seconds that
20 were missing, you said that your attorney and the State
21 conspired together to remove that. What evidence do
22 you have of that?

23 A The transcript itself. There was no discussion
24 with me that that was going to take place. During that
25 eight seconds near the end, ma'am, is where I had

1 expressed to the lead investigator that I didn't have
2 sexual intercourse with the young lady. That should
3 have never been deleted.

4 Q And, in fact, there was a statement given when you
5 came into -- voluntarily came into the sheriff's office
6 and then the videotaped statement; is that correct?

7 A Yes, ma'am.

8 Q And the videotaped statement was taken at the
9 hospital, was it not?

10 A It was.

11 Q Okay. In discussing the defense, is it not
12 correct that your attorney actually asked several times
13 for the jury to be charged with attempted aggravated --
14 excuse me -- aggravated assault and battery or
15 attempted criminal sexual conduct on your behalf?

16 A I believe so. According to the transcript, yes,
17 ma'am.

18 Q So he made the argument several times that no
19 intercourse, no penetration had occurred, did he not?

20 A He did.

21 Q Okay. But -- and the jury was presented with the
22 option of attempted criminal sexual conduct, were they
23 not?

24 A They were, but it goes the same way as the
25 sentence itself, and I think he knew that. I didn't

1 feel comfortable with that.

2 Q But the jury didn't believe that it was attempted
3 anyway, did they?

4 A No, because I didn't take the stand and testify
5 when I should have. If I had been directed in the
6 right way, I would have took the stand and testified
7 for myself, ma'am.

8 Q And explaining your definition of sex?

9 A This is my first time today. This is the first
10 time my testimony has come out, today. This is it.

11 Q Okay. You testified that you felt there were
12 issues with chain of custody. Your attorney
13 cross-examined the evidence custodians and the officers
14 about the fact that there was some lost evidence,
15 didn't he?

16 A Most definitely, yes, ma'am.

17 Q In fact, he drew that out and tried to draw
18 attention to the fact that this evidence had been lost,
19 that maybe they had not done a complete investigation,
20 did he not?

21 A Well, there's evidence lost that could have worked
22 in my defense as well, evidence that could have been
23 scientifically analyzed that was missing. It's missing
24 forever. We never had a chance the view it.

25 Everything was read back into the transcript of the

1 evidence, but the evidence, as far as being present
2 during that hearing, was gone. It's lost forever.

3 Q And in regards to the statement, you said that you
4 weren't able to use anything that the victim had said
5 about possible pregnancy, did your attorney ever talk
6 to you about the Rape Shield law and what they could go
7 into in regards to a victim's prior sexual history?

8 A No.

9 Q Okay. And in regards to the alleged offer you
10 said you received for an ABHAN charge to testify
11 against murder, there was nothing you ever signed in
12 regards to an offer or acceptance of a deal?

13 A Well, I had got rid of my attorney before that
14 could take place, ma'am. I figured he wasn't going to
15 be a reliable source representing me because he hadn't
16 contacted me back in two weeks like he was beforehand.

17 Q Okay. So you were offered a deal for ABHAN, but
18 instead of signing the deal for ABHAN, you got rid of
19 your attorney because you didn't think he was a good
20 representative for you?

21 A I believe he was putting together a deal for
22 ABHAN. I believe that I dismissed him before we
23 could -- I could sign any paperwork for that to take
24 place.

25 Q So you dismissed him before the deal?

1 A I dismissed him before I could sign the deal,
2 ma'am. I believe Mr. Hall, in my heart, should have
3 picked that deal up and we should have went on with it
4 because he was my next attorney.

5 Q So you expected the deal to be continued, even
6 though you had not taken it in that sort of time; is
7 that right?

8 A I didn't get the chance to, yeah, to sign.

9 Q Thank you.

10 In reference to the testimony you said was in the
11 respondent's brief about the victim's hymen --

12 A Was still intact. It's the ER doctor's statement.

13 MS. WHITE: Strike that, your Honor.

14 The State has no further questions, your Honor, at
15 this time.

16 MR. RUCKER: I do have a few questions. May it
17 please the Court.

18 REDIRECT EXAMINATION

19 BY MR. RUCKER:

20 Q Mr. Cobb, when was that CDVHAN that you were
21 convicted of, when did that occur?

22 A I think that occurred in 2001.

23 Q Okay. And your trial was in what year again?

24 A I think it was in 2003.

25 Q No. Your trial for the case we're talking about

1 today.

2 A 2011.

3 Q Okay. And just to clarify, it's your belief that
4 Mr. Hall received an offer from the State, but you
5 fired him before you knew about this offer, and by the
6 time you got the offer, you were actually technically
7 not represented by anyone, just someone within the
8 public defender's office would be your attorney?

9 A At the point that I had fired him, I had no
10 attorney for a space. I believe that he was putting
11 the deal into effect. He returned to me. He had been
12 fired a few days after he had returned to me with the
13 deal.

14 Q But at the point that he showed up with the
15 paperwork, you informed him he was no longer your
16 attorney?

17 A I had to, yes.

18 Q But you didn't have an attorney to go over that
19 paperwork with because you had fired him, you didn't
20 have any confidence in him; is that fair?

21 A That's fair.

22 MR. RUCKER: Nothing further.

23 MS. WHITE: Nothing further, your Honor.

24 THE COURT: Thank you, Mr. Cobb. You can step
25 down.

1 MR. RUCKER: Your Honor, Mr. Cobb is our only
2 witness.

3 MS. WHITE: Your Honor, if the State may have a
4 brief moment because the testimony he discussed raised
5 issues having to do with another attorney, we've been
6 able to get him here. If I could have a moment.

7 THE COURT: Okay. We'll go off the record for a
8 few minutes.

9 MS. WHITE: Thank you, your Honor.

10 (WHEREUPON, a recess was taken from
11 2:51 p.m. to 2:53 p.m.)

12 MS. WHITE: The State would call Robert Hall to
13 the stand, please.

14 THE COURT: Mr. Hall, come around, please, sir.

15 ROBERT HALL,

16 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

17 THE COURT: Please state name for the record.

18 THE WITNESS: Robert Hall.

19 THE COURT: Ms. White, your witness.

20 MS. WHITE: Thank you, your Honor.

21 DIRECT EXAMINATION

22 BY MS. WHITE:

23 Q Mr. Hall, do you recall representing at one point
24 Mr. Cobb?

25 A Yes, I do.

1 Q Okay. And I'm not sure if you were in here
2 earlier, but Mr. Cobb indicated that during your
3 representation he offered information regarding a
4 murder, and he mentioned the Gaffney murder, the guy
5 that killed five people over in Gaffney. Do you recall
6 any information he had or going to the sheriff's office
7 or anything about that?

8 A Not about the Gaffney -- I assume you mean the guy
9 that was going to people selling hay and shooting
10 folks. I don't recall anything about that. What he
11 offered was supposedly he had some good information
12 about the bike shop, the motor sport bike shop killing.
13 I contacted the sheriff's office, Gary Williams, and
14 had him transported over there, spoke with him before.
15 And then he sat down and told the story that it was a
16 rumor floating around everywhere about Mexican Mafia,
17 and they kindly told me that that was not credible.
18 They, in fact, knew that that probably was not the
19 case, and that at that point he had no credibility with
20 the sheriff's department.

21 Q And to your recollection was there ever an offer
22 for him to plead to an ABHAN charge?

23 A There was never an offer in this case. I think
24 that was part of his frustration with me. I couldn't
25 make them make an offer.

1 Q So to your understanding, there was never any time
2 that he, as he indicated, was going to testify against
3 anyone at trial enabling him to have reduced charges
4 or --

5 A No. The only thing he approached me about and I
6 pursued, then I pursued that, was the motor sport bike
7 shop, and the things he told, some of the things, they
8 just knew were not true. He was just repeating things
9 he had heard. But as far as any other thing, I had
10 nothing to take to the sheriff's department or anybody
11 else to try to help him.

12 Q Okay. Thank you. That's all I have for this
13 witness, your Honor.

14 THE COURT: Mr. Rucker.

15 MR. RUCKER: Thank you, your Honor. May it please
16 the Court.

17 CROSS-EXAMINATION

18 BY MR. RUCKER:

19 Q Mr. Hall, are you sure that's what y'all talked
20 about as far as the motor bike incident, the murder at
21 the motor bike place?

22 A Oh, I'm absolutely certain.

23 Q You know that from your notes or just your
24 independent recall?

25 A My independent recall because I told him it better

1 be good information because this is your one shot. And
2 he assured me it was. We went and sat down. And we
3 were at the Spartanburg County Sheriff's Office, not
4 the Cherokee County Sheriff's Office, and it's about
5 the killings at the motorcycle shop.

6 Q All right. It was not about the 1992 vehicular
7 homicide on Church Street of a woman that's still a
8 cold case?

9 A There was -- he did try to offer information to
10 the city on that, and they said they weren't
11 interested, that the information he had, from what I
12 was able to relay to them, that they weren't interested
13 in that. It wasn't accurate.

14 Q You were, in fact, fired by him at some point,
15 correct?

16 A Yes. As soon as I was taken off his case, I was
17 given a case Mr. Whelchel had and Mr. Whelchel was
18 given Mr. Cobb's case. Just transferred files.

19 Q Were you ever given an offer by the solicitor's
20 office in this case before Mr. Whelchel got in, even
21 outside of any kind of negotiations about testimony?

22 A I don't recall ever having any offer, but like I
23 said, I came up here to speak to Mr. Cheek and I got
24 brought in the courtroom. So I obviously had not had
25 the opportunity to review the file.

1 Q Well, if you reviewed the file, would you be able
2 to find any other offers? Mr. Whelchel, I'm assuming,
3 would have access to your files, wouldn't he?

4 A It would be the same file.

5 Q Y'all were operating the same company,
6 basically --

7 A Yes.

8 Q -- organization. Okay.

9 Do you recall your strategy in this case, what you
10 were planning on doing as far as working the case?

11 A We didn't get that far. I remember reviewing
12 things, tracking him down saying that his confession
13 was based on being drugged when he was at the hospital
14 from an IV, and it turned out there was nothing,
15 according to the medical records, I could find. It was
16 saline solution, nothing more.

17 I know I used a lot of clout, so to speak, with
18 the sheriff's department to get the interview. And
19 like I said, also now that you remind me of it, the
20 city police, the thing on Church Street, a person was
21 run over. And like I said, they really weren't
22 interested in anything on that.

23 Q And really what I'm getting at is did you go over
24 the discovery with him?

25 A As best as I recall, we went over some of the

1 discovery. Specifically, there's no way of remembering
2 at this point not being prepared at all.

3 Q I understand. What about -- do you recall the
4 videotape, having problems with parts of it being cut
5 off?

6 A No, I don't recall that.

7 MR. RUCKER: No further questions.

8 MS. WHITE: Nothing further from the State, your
9 Honor.

10 THE COURT: Any objection to this witness being
11 excused?

12 MS. WHITE: Not from the state.

13 MR. RUCKER: No, sir.

14 THE COURT: Thank you, Mr. Hall. You are excused.

15 THE WITNESS: Thank you, your Honor.

16 MS. WHITE: The State would call Richard Whelchel,
17 your Honor.

18 **RICHARD WHELCHEL,**

19 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

20 THE COURT: Please state your full name for the
21 record, please, sir.

22 THE WITNESS: Richard Whelchel, W-h-e-l-c-h-e-l.

23 THE COURT: Thank you, Mr. Whelchel. You can have
24 a seat.

25 Ms. White, your witness.

1 MS. WHITE: Thank you, your Honor.

2 DIRECT EXAMINATION

3 BY MS. WHITE:

4 Q Mr. Whelchel, do you recall receiving Mr. Cobb's
5 case?

6 A Yes, ma'am.

7 Q And do you recall how far in advance of the trial
8 in March of 2011 that you took over?

9 A No, ma'am. I don't recall that. I think it was
10 months before the trial. I'm not sure, though.

11 Q And I'm going to start back with some of the
12 things he said. Mr. Cobb testified that you met three
13 or four times for minutes, ten to 15 minutes maybe,
14 apiece. Does that sound correct, or do you recall any
15 additional meetings?

16 A Any time you meet with a client at the jail, it's
17 15 minutes minimum because they want to talk about
18 their case. And I can't tell you exactly how many
19 times I talked to him, but as the case progressed
20 closer to trial and we were actually prepping for
21 trial, it would have been substantially longer than
22 15 minutes.

23 Q In regards to the evidence the State had, can you
24 give us a brief overview of what they had to present at
25 trial against Mr. Cobb?

1 A Well, they had his statements, oral statement and
2 the video, and they had the testimony of the girl, the
3 alleged victim, they had the testimony of the
4 investigating officers, Nicki Cantrell, and they had
5 the testimony of the witness from the Child Advocacy
6 Center. In addition to the other, you know, cops who
7 are always involved in investigations of this nature.

8 Q Now, the testimony was that there was no DNA from
9 semen present; is that correct?

10 A Yes, ma'am.

11 Q But the DNA was found on her breast area, her neck
12 and other places on the victim's body; is that right?

13 A Yes, ma'am.

14 Q And in regards to trial strategy or defense
15 strategy, what was your strategy for this case?

16 A I had to inform Mr. Cobb or educate Mr. Cobb about
17 the fact that he thought that simply because there was
18 no DNA in the vaginal vault or anywhere associated with
19 the vaginal vault, that he could not be convicted. And
20 I explained to him that her testimony in and of itself,
21 by itself, is sufficient for him to be convicted of a
22 sexual assault, that all of that DNA and all the other
23 evidence is extra. It doesn't have to be there. It
24 helps them if it is, but it's not necessary.

25 Q And, in fact, the victim testified that she was

1 baby-sitting his children on the night that this
2 happened, went in to take a shower, and when she got
3 out of the shower, he came in and forced himself on
4 her; is that right?

5 A I think so, yes, ma'am.

6 Q Okay. Was there any issue with like delayed
7 disclosure in this case? Did the victim wait for
8 months to tell anybody, or did she tell the very next
9 day?

10 A I think she told quite soon or very soon, I just
11 don't remember exactly if it was the next day or the
12 next week, but I think it was.

13 Q If the transcript reflects that after she was
14 taken home, she immediately told her stepmom, does that
15 sound familiar?

16 A Yes, ma'am.

17 Q And, in fact, she then went to the hospital; is
18 that right?

19 A Yes.

20 Q Was there ever any testimony -- he's testified
21 about something in the appellate record regarding an
22 emergency room doctor's testimony. To your
23 recollection, was there ever an emergency room doctor
24 that testified at trial?

25 A No.

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1 Q Okay. In fact, there was a nurse that did the
2 sexual assault kit?

3 A Yes, ma'am.

4 Q But no doctor testified. And there was no
5 testimony about whether or not her hymen was intact at
6 trial?

7 A Not that I recall, no.

8 Q Okay. In regards to Mr. Cobb presenting his own
9 testimony, based on what you've heard today, does that
10 change your feeling that it was not in his best
11 interest to testify at trial?

12 A No.

13 Q And what did you discuss with him about the
14 possibilities, if he did testify, how that could help
15 or harm?

16 A When I talk to a client, from the very beginning,
17 they have to understand that should it go to trial,
18 they're going to have to make a decision as to whether
19 or not they're going to want to testify. Obviously
20 they can testify, but they don't have to testify, and
21 that they're told that very early. And through the
22 course of trial, it is reiterated. I think it's in the
23 transcript where the judge asked me if he was going to
24 testify, and that's when the issue of aggravated
25 assault and battery was raised initially. But my

1 clients are informed when they're in a trial that they
2 don't have to testify, they can't be forced to testify,
3 they can testify, and the fact that they do not testify
4 cannot be held against them, the judge will instruct
5 the jury it will not be held against them. All of that
6 was explained to Mr. Cobb both before we had the trial
7 and during the course of trial. And the decision, as
8 you can see, was his because I can't make it for him.

9 Q And do you think it would have helped to present a
10 defense that his definition of sex equated to kissing
11 compared to sexual intercourse?

12 A No.

13 Q Okay. Was there any issue raised -- do you recall
14 anything having to do with a potential conflict with
15 Judge Cole?

16 A He may have. I don't know. I mean, I heard what
17 he said today, and he may have told me that, but it was
18 so far in the back -- so far prior to that, and I
19 didn't think -- you know, assuming it was all true, I
20 didn't think that Judge Cole would recuse himself based
21 on what he told me.

22 Q And that was the conviction was ten years prior?

23 A Yes, ma'am.

24 Q Okay. And you made several objections. Some were
25 sustained, some were overruled. But you also argued

1 for the aggravated assault and then also the jury
2 charge of attempted CSC; is that right?

3 A Yes, ma'am.

4 Q And, ultimately, you did get an attempted CSC
5 charge?

6 A Yes, ma'am.

7 Q Have you had a chance to review the appellate
8 opinion, do you recall, or have you --

9 A I think I glanced over it this morning.

10 Q Okay. And would you agree with me if it says they
11 affirmed it based on the fact that there was no
12 evidence that he only committed or that he was guilty
13 of only the attempted CSC?

14 A Yes, ma'am.

15 Q You would agree with me?

16 A Yeah.

17 Q In regards to the statements he had made to
18 police, those were made prior to your representation,
19 correct?

20 A Yes, ma'am.

21 Q And do you think that they helped in any way since
22 in the statements he talked about trying to have sex,
23 not being able to complete it? Were they more harmful?

24 A Well, they cut both ways. And the statements were
25 already in. The statements were put in by the State.

1 The State put in what he essentially wanted to testify
2 to, and one of the discussions that we had specifically
3 on the day that we were in trial was, "Do you want to
4 open yourself up to cross-examination?" I think he's
5 talking about impeachment, but it's cross-examination
6 that I was concerned about. Do you want to open
7 yourself up to cross-examination by the State's
8 attorney, who is a trained lawyer, and you are not?
9 And, ultimately, the decision to make about whether you
10 testify or not is yours.

11 Q Do you recall anything about eight seconds being
12 missing from the video as something that you and the
13 State maybe may have stipulated to or maybe it was
14 redacted?

15 A I remember there being some problem, according to
16 Mr. Cobb, with the tape, but I didn't see the problem
17 with the tape. I don't recall there being -- I think
18 it was -- I thought it was just a problem with the tape
19 not starting as soon as he thought it ought to have
20 started. I just don't remember, to be honest with you.

21 Q Okay. And in regards to any testimony being able
22 to be presented about the victim potentially thinking
23 she was pregnant by her boyfriend, is that something
24 that, in your experience, can be presented as a
25 defense?

1 A That was not coming in.

2 Q And were there ever any issues -- obviously some
3 of the evidence was lost; is that right?

4 A Oh, yeah.

5 Q And you raised that and cross-examined the
6 evidence custodians and the officers about that?

7 A Yes, ma'am.

8 Q Was there anything else -- do you think --
9 Mr. Cobb suggested maybe a motion for mistrial based on
10 the lost evidence. If you thought that was a viable
11 motion, would you have made it?

12 A If I thought it was viable, yes.

13 MS. WHITE: Your Honor, that's all I have.

14 THE COURT: Mr. Rucker.

15 CROSS-EXAMINATION

16 BY MR. RUCKER:

17 Q Mr. Whelchel, what evidence was actually lost, to
18 your knowledge?

19 A I think it was clothes and stuff of that nature.
20 I'm not sure because I haven't been able to review the
21 file. The file is missing. We have searched for it.

22 Q The public defender file is missing?

23 A Yes, sir.

24 Q Did you talk about my client's testimony at length
25 with him, what his testimony would be before the jury?

1 A I did.

2 Q Okay. Did you also mention to him that it was
3 your belief -- and you were in here during his
4 testimony -- that they could use prior convictions
5 against him to impeach him with those prior
6 convictions?

7 A Yes.

8 Q Is your belief that the manslaughter cases and the
9 CDVHAN could be used to impeach him?

10 A I told him they could attempt to use those,
11 depending on how the Court would rule.

12 Q In your review of the law, specifically *State vs.*
13 *Bryant*, do you believe those convictions could be used
14 against him?

15 A It's possible, yes.

16 Q Where are you getting that from the law that it
17 could be used?

18 A Based on the fact that those were prior
19 convictions for manslaughter and the CDV high and
20 aggravated specifically was within the time frame.

21 Q But do you understand part of the analysis is that
22 you have to look to see if it has anything to do with
23 honesty or dishonesty, don't you?

24 A I understand that.

25 Q And also they're looking to see if it's unduly

1 prejudicial to bring in previous cases?

2 A I understand that.

3 Q What about manslaughter or CDVHAN shows that he's
4 not a truthful person?

5 A I'm just believing at the time that it may be
6 allowed in, based on the judge that we have.

7 Q But you also, as part of your job as his trial
8 lawyer, help him with his appeal in that you set the
9 groundwork in case it needs to be appealed so other
10 judges can look at it?

11 A Yes, sir.

12 Q Is it your belief that he decided not to testify
13 because he thought those prior convictions were going
14 to be used against him?

15 A No.

16 Q All right. Why did he not testify, then?

17 A I think he didn't testify because his story was
18 already out. He had already told them through his
19 statements what he wanted to tell them. I think he
20 didn't testify, I'm really sure he didn't testify,
21 because he didn't want to open himself up to
22 cross-examination by the State's attorney. She is
23 rather good.

24 Q Was he able -- he was not able to explain that
25 confession then, or that alleged confession then, was

1 he?

2 A I think the alleged confession explained itself.

3 Q All right. You understand that he believes that
4 eight seconds of that statement disappeared, right?

5 A I understand what he says he believes, yes, sir.

6 Q Like other evidence in this case file disappeared?

7 A Yes, sir.

8 Q And if the judge who looked at the video, would it
9 be obvious that there was something missing from that
10 statement?

11 A I don't know.

12 Q All right. Can you recall if it's an abrupt
13 cutoff?

14 A I'm trying to remember. I can't remember if it's
15 at the beginning or the end of the -- I just do not
16 remember. I -- I didn't see a problem with it the way
17 he did.

18 Q Okay. Did you -- now, you testified that the
19 forensic interviewer testified?

20 A Yes, sir.

21 Q Did the forensic interviewer comment on the
22 veracity or credibility of the witness?

23 A They may have.

24 Q All right. Did you object to that testimony?

25 A I can't tell you that.

1 Q If the judge reviewed the transcript, you're not
2 questioning whether the transcript is accurate?

3 A No. I'm not saying the transcript is not
4 accurate. I'm just telling you it's been four years
5 ago.

6 Q In your current practice, and you're a very
7 experienced attorney, is it your understanding under
8 the law that forensic interviewers are not allowed to
9 testify about the credibility of witnesses?

10 A No, they're not supposed to testify about the
11 credibility of witnesses.

12 Q There's actual South Carolina Supreme Court law
13 that clearly lays out they can't get into any of this.
14 They basically are the people who cut the machine on,
15 do the interview, and then leave it up to the jury to
16 make that determination; is that fair?

17 A Yes.

18 Q Is part of that reason because they may have undue
19 influence on the jury because they are perceived as
20 some kind of experts when they are not experts?

21 A Yes.

22 Q And you failed to object to that testimony at all?

23 A I didn't object to anything that I thought was
24 objectionable.

25 Q Why did you not object to anything you thought was

1 objectionable?

2 A I didn't see anything objectionable. That's what
3 I'm saying.

4 Q Okay. I'm sorry. I misunderstood.

5 A That's okay.

6 Q But you agree that the forensic interviewer did
7 testify about this person being believable?

8 A They use the word "credible."

9 Q The exact word "credible"?

10 A I believe so. They always try to use the word
11 "credible."

12 Q All right. So in addition to the testify of the
13 forensic interviewer and Nicki Cantrell's testimony, is
14 she the officer who took the statement?

15 A I think so, yes.

16 Q You have hair of his that's found on the victim;
17 is that right?

18 A Yeah. I guess.

19 Q There's no trick here. I'm just trying to make
20 sure I understand what your testimony is.

21 A Yeah.

22 Q There's no medical testimony showing that she was
23 raped; is that right?

24 A There's no semen. There's no evidence of
25 penetration or anything. There's no physical damage to

1 the child.

2 Q Okay. But the testimony of the child was that
3 that, in fact, occurred -- well there was at least an
4 attempted CSC, right?

5 A Uh-huh.

6 Q Right?

7 A Yes.

8 Q And -- but you have her version of events, and you
9 have the hair that's found, and everybody agrees that
10 she was over baby-sitting at his home, right?

11 A Yes, sir.

12 Q And she could have actually picked up some of
13 those hairs just being there?

14 A Yeah.

15 Q Did you pursue that line of questioning with her?
16 I understand it's tough to cross-examine alleged
17 victims of this, but did you discuss that with her?

18 A I don't recall. Probably not. I don't think so.
19 I think I'd remember it if I did.

20 Q I understand. What was your strategy as far as
21 cross-examining her?

22 A Just to poke holes in what testimony she had.

23 Q Do you think you were successful in doing that?

24 A I tried as best I could, yes.

25 Q Did you review the medical records from the

1 hospital that indicated there was no trauma shown to
2 her?

3 A Yeah.

4 Q Is it fair to say the only expert that could say
5 that this happened was a forensic interviewer who
6 should not have been allowed to testify to that?

7 A I don't think the forensic expert can testify that
8 an assault took place, period. There was no evidence,
9 expert testimony -- excuse me. There was no expert
10 testimony from a doctor in this case.

11 Q No nurse testified, or a doctor?

12 A There was the nurse that testified about the
13 collection of the rape kit or the sexual assault kit,
14 excuse me. But as far as testifying about any physical
15 trauma, what I explained to Mr. Cobb is that when I was
16 a prosecutor and as a defense attorney, I have learned
17 over the years that there will be testimony if you have
18 that expert, that just because you don't have trauma
19 doesn't mean that a sexual assault didn't occur.

20 Q Right. I understand.

21 A And I tried to explain that to him because he was
22 bound and determined that because there wasn't semen,
23 because there wasn't trauma, it didn't happen. It
24 couldn't have happened. They can't believe that. And
25 I said, yes, they can. You need to understand, yes,

1 they can.

2 Q Sure. What I'm asking, though, in the end, this
3 was a her-word-versus-his-word situation?

4 A Exactly.

5 Q But he didn't get to give his full testimony. He
6 simply had an alleged confession that came in?

7 A Yeah. But it told his story that he wanted to get
8 in.

9 Q But you don't know if there was going to be more
10 that he would have testified to, do you?

11 A Well, no, not without him testifying.

12 Q You heard what he talked about today?

13 A Oh, yeah.

14 Q But in addition to that, all the jury is looking
15 at is some junk science from the forensic interviewer;
16 is that fair?

17 A Yeah.

18 Q And just her statement, her testimony -- I'm sure
19 it was emotional -- versus him just sitting there with
20 the statement being read into the record or at least
21 handed to the jury?

22 A I understand what you're saying, but the bottom
23 line is I talked to him about that, and he made the
24 decision not to testify.

25 Q But you gave him some faulty information in making

1 that decision in that the prior convictions probably
2 would not be able to be used against him?

3 A They were going to attempt to use the prior
4 convictions, and I didn't know which way the judge was
5 going to go. Obviously, you can make it an issue on
6 appeal.

7 Q Well, it's the practice in Spartanburg, I believe,
8 in reviewing cases, that the judge would ask the
9 prosecutor if there were any prior convictions they
10 will use or intend to use. I mean, basically, you have
11 a hearing on that, don't you? Yes or no? I'm sorry.

12 A Yes.

13 Q And that would be outside the hearing of the jury?

14 A Yes.

15 Q And then you would have a determination based on
16 that, and that could influence his ability to testify
17 or not testify, right?

18 A Yes.

19 Q But that didn't happen in this case?

20 A Didn't happen.

21 Q He was going on what y'all were talking about.
22 And he wouldn't even know that you could go in front of
23 the judge with that, would he?

24 A No. He was going on was he going to open himself
25 up to cross-examination.

1 Q But that's not just what he testified to earlier.
2 He said the prior convictions were also an issue.

3 A I understand he says that.

4 Q And his understanding, based on his testimony and
5 based on your conversation with him, those manslaughters
6 might come out to the jury and the jury think this is
7 an awful guy. Of course he did. It that fair?

8 A Yeah.

9 Q So he's looking at this as a layperson who's been
10 accused of a terrible crime looking at a jury looking
11 at even worse crimes being used against him when he
12 testified, couldn't that have influenced his testimony
13 just as much as the fear of cross-examination?

14 A I don't know.

15 Q Okay.

16 MR. RUCKER: No further questions.

17 MS. WHITE: If I may approach, your Honor.

18 REDIRECT EXAMINATION

19 BY MS. WHITE:

20 Q Mr. Whelchel, I was going to bring up the
21 testimony of the forensic interviewer. Would the name
22 Lynn McMillan, is that the person that potentially
23 could have been the forensic interviewer?

24 A Yeah.

25 Q And you have your transcript. I'll ask you to

1 turn to page 92 in the record on appeal, and it's
2 listed as 121 on the transcript page.

3 A Give me a second. 192.

4 Q 92 up on the top number, 121 at the bottom.

5 A Okay.

6 Q And the testimony line beginning at line 16, is
7 that Lynn McMillan?

8 A Yes, ma'am.

9 Q Is that the person that we're discussing when we
10 talk about a forensic interviewer?

11 A Yes, ma'am.

12 Q Okay. I'm going to direct you to page 125 --
13 excuse me, 126, on the bottom, the section starting
14 with line 12 where Ms. McMillan testified that she
15 discussed the rules with the victim about telling the
16 truth, if they don't remember, they should say they
17 don't remember and how to answer questions; is that
18 correct?

19 A Yes, ma'am.

20 Q And then if you will flip to the next page, at the
21 bottom, line 17, she's asked what demeanors are found,
22 and she talks about some can be serious, some are
23 straightforward, some might be tearful. Is there
24 anywhere in there where she said this victim was
25 credible or that her testimony was consistent with

1 sexual abuse?

2 A Not in that section, no, ma'am. I mean, I don't
3 see anything in there.

4 Q And, in fact, on the next page you had a short
5 cross-examination with her, but this is a total of
6 about five or six pages of testimony; is that right?

7 A Yes, ma'am. Five or six, yes.

8 Q And, in fact, Ms. McMillan was not qualified as an
9 expert?

10 A No, ma'am.

11 Q And the judge can review, obviously, for himself,
12 but nowhere in her testimony does she use the word
13 "credible" or "veracity" or "truth," other than the
14 fact that she says they advised the victims or the
15 interviewees to tell the truth?

16 A That's all I see in what you've shown me.

17 Q And, in fact, she did not testify more than that
18 the victim told her an assault had occurred. She told
19 her where it had occurred, at a residence where she was
20 spending the night, and when it occurred. Is that not
21 within the legal -- the bounds of the law for a
22 forensic interviewer?

23 A That falls within the parameters of what she's
24 supposed to be allowed to testify to.

25 Q So in reviewing that, there's nothing that you

1 would have -- or was there anything that you would have
2 objected to in regards to her testimony?

3 A No, ma'am.

4 Q And you testified there was no expert testimony
5 about any kind of physical evidence. You were asked
6 about, I believe, hair in regards to DNA. There was
7 also saliva that was found through swabs on the
8 victim's body?

9 A Yes, ma'am.

10 Q And that matched the defendant; is that not right?

11 A I believe so, yes.

12 Q And did he not, at one point, provide a story
13 where he believed that the victim had gone in and maybe
14 collected some of his DNA after he had tried to arouse
15 his wife and come back in, and that's how it was
16 present on her, or do you recall that?

17 A He may have. I just do not recall. I mean, I
18 can't tell you yes or no on that.

19 Q Okay. And was there not also testimony from his
20 former sister-in-law that after the event, after he was
21 accused of that, that he, outside, told her, "I tried
22 to have sex with her, but it didn't happen"? And that
23 was a Ms. -- I'm trying to -- page 75 on the top, 103
24 on the bottom. A Tammy Clawson testified and said that
25 when she went outside, Mr. Cobb said he tried to have

1 sex with her but couldn't get it up to get it in her,
2 referring to the victim?

3 A Yes, ma'am.

4 Q So that testimony was presented as evidence
5 against him as well?

6 A Yes, ma'am.

7 Q And, again, do you think that after hearing the
8 testimony today, whether or not he believed the
9 convictions could have been used to impeach him, do you
10 think he would have presented a very credible or
11 believable defense had he testified on his own behalf?

12 A No.

13 Q Thank you.

14 MS. WHITE: That's all I have, your Honor.

15 MR. RUCKER: Your Honor, just a few brief recross
16 questions.

17 RE CROSS-EXAMINATION

18 BY MR. RUCKER:

19 Q Mr. Whelchel, as a seasoned trial attorney, what's
20 the point of the testimony that a person has been told
21 to tell the truth by a forensic interviewer?

22 A Excuse me. What's the purpose of --

23 Q Why would that be introduced in front of a jury?

24 A Because they want to make the jury believe that
25 what they're hearing is the truth.

1 Q Right. She was -- Ms. McMillan has actually given
2 testimony about what demeanor to look for, that the
3 jury should look at when the person is testifying,
4 correct?

5 A They asked her about her demeanor, the child's
6 demeanor, yes.

7 Q Right. And what I'm saying is Ms. McMillan is
8 then instructing the jury on what you're looking for as
9 far as demeanor, it could be this, it could be that to
10 determine if they're telling the truth or not, right?

11 A Well, I don't know if she's telling them that, to
12 tell them that that's telling the truth. She's just
13 telling there's different demeanors for each child.

14 Q What's the relevance of her testimony on any of
15 that?

16 A Because each child is different and each child can
17 testify. One will get up and be crying and not
18 responsive at all, and another will be up and laughing
19 about it --

20 Q Sure.

21 A -- and things of that nature.

22 Q What I'm asking is what's the foundation for her
23 to give that opinion?

24 A Because of what her job is.

25 Q Her job as a forensic interviewer?

1 A Her job as an interviewer of these persons, yes.

2 Q Okay. So did you explore her qualifications to
3 make those psychological determinations?

4 A Did I what?

5 Q Did you ask her cross-examination questions to
6 explore her ability, her qualifications, to ask those
7 kind of questions and make determinations based on
8 those results?

9 MS. WHITE: Your Honor, I don't think there are
10 any determinations. I'm not sure where the question
11 is, and maybe that's just my interpretation.

12 MR. RUCKER: Your Honor, I believe that issue is
13 up to you in the end.

14 THE COURT: I'll let him ask the question.

15 THE WITNESS: I don't see anything in here like
16 that, no.

17 BY MR. RUCKER:

18 Q Well, my simple question -- I think this is the
19 supreme court's question -- is why are these
20 interviewers being called to testify in the first
21 place? Somebody can authenticate the tape. The tape
22 can then be played. What's the actual relevant purpose
23 of a forensic interviewer's testimony from a
24 prosecutor's standpoint?

25 A Because they want them to help because they're

1 another potential witness. And they try to get them to
2 be seen as an expert. They don't use the term
3 "expert." They won't let them use the term "expert,"
4 but they try to tap dance around it. That's why there
5 was never any motion made for her to be accepted as an
6 expert witness, and I wasn't going to push it.

7 Q I'm sorry, go ahead.

8 A That's it.

9 Q In your opinion, though, did she give some
10 expertise testimony based on her experience or her
11 education in interviewing children?

12 A Yeah. She gave testimony based on her
13 interviewing and everything like that. You could call
14 it expertise. I don't know.

15 Q Well, based on her -- I mean, I'm not going to
16 argue with you about what "expert" means. That's not
17 what I'm trying to do.

18 A I understand. I didn't think that what she
19 testified to was objectionable and was going to be
20 sustained.

21 Q Do you agree that the supreme court or the courts
22 believe that the forensic interviewer testimony in that
23 case was proper, though, in your case?

24 A In this case? It may be.

25 Q Okay. But, I mean, in your view of the case law

1 dealing with forensic interviewers, the court of
2 appeals actually says forensic interview is basically a
3 dinosaur and it's going away and it's going to be done
4 away with; is that fair?

5 A Yes.

6 Q At least their testimony to jurors?

7 A Yeah.

8 MR. RUCKER: No further questions, your Honor.

9 MS. WHITE: Nothing further from the State, your
10 Honor.

11 THE COURT: Thank you, Mr. Whelchel.

12 THE WITNESS: Thank you, sir.

13 THE COURT: Anything further?

14 MS. WHITE: Nothing further, your Honor.

15 MR. RUCKER: No, sir.

16 THE COURT: Okay. I have before me the
17 application, the return from the State, some other
18 documents submitted by both parties. I want to take a
19 little while to read the transcripts. I'm going to
20 take this under advisement.

21 MS. WHITE: Thank you, your Honor.

22 THE COURT: I'll let the parties know when I've
23 reached a decision.

24 (WHEREUPON, the hearing ended at 3:29 p.m.)

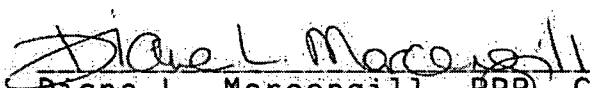
25 ***END OF REQUESTED TRANSCRIPT OF RECORD***

1 Certificate of Reporter
2

3 I, Diane L. Marcengill, Official Court Reporter
4 for the Tenth Judicial Circuit of the State of South
5 Carolina, do hereby certify that the foregoing is a
6 true, accurate, and complete transcript of record of a
7 portion of the proceedings had and evidence introduced
8 in the trial of the captioned case, relative to appeal,
9 in the Circuit Court for Spartanburg County, South
10 Carolina, on the 8th day of June 2015.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.
13 I do further certify that I am neither of kin, counsel,
14 nor interest to any party hereto.

15 December 11, 2015
16

17 
18 Diane L. Marcengill, RPR, CRR
19 Circuit Court Reporter
20
21
22
23
24
25

Whelchel, Esquire. On March 10, 2011, the Applicant proceeded to trial and was convicted as indicted. The Honorable J. Derham Cole sentenced Applicant to life without parole.

A timely Notice of Appeal was filed on the Applicant's behalf and an appeal was perfected by Breen Richard Stevens, Esq. 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. Cobb, No. 2013-UP-122 (filed March 27, 2013). The Remittitur was issued on April 16, 2013.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that;
 - a. Counsel failed to move for a mental evaluation of the Applicant,
 - b. Counsel and prior defense counsel failed to properly investigate,
 - c. Counsel failed to discuss the alteration of trial exhibits, failed to prevent such alteration, and failed to move to suppress publication of the video tape based upon the severely diminished sound quality of the video tape,
 - d. Counsel failed to inform Applicant of a plea deal until it was too late to accept the deal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Initially, this Court finds Applicant's testimony to be not credible. In contrast, this Court finds Counsel's testimony to be credible.

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Spartanburg County
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J. HOPE BLACKLEY

credible. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. 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), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 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 judgment. 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 proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186

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M. HOPE BLACKLEY
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480 S.E.2d 733, 735 (1997) (citing Strickland).

1. Failure to move for mental evaluation

Applicant alleges trial counsel was ineffective for failing to have Applicant mentally evaluated. This allegation is without merit.

A defendant must be mentally competent to stand trial to assist counsel in his defense. Drope v. Missouri, 420 U.S. 62 (1975). In determining if counsel is ineffective for failing to request a competency hearing, an applicant must show that a reasonable probability exists that he would be found incompetent at the time of this trial or plea. Jeter v. State, 308 S.C.230, 417 S.E.2d 594 (1992). Counsel may reasonably rely on his own perceptions in deciding if a client is competent to stand trial. Id.

After reviewing the record before the Court and thoroughly evaluating the testimony presented at the PCR hearing, this Court finds Applicant failed to meet his burden of proof. This Court finds Applicant failed to present credible evidence that he was not competent to stand trial for the offenses of which he was convicted. Furthermore, trial Counsel did not testify that he had any concerns relating to Applicant's mental state. Accordingly, this issue without merit.

2. Failure to investigate

This Court finds Applicant failed to meet his burden to prove that counsel's performance was either deficient or ineffective for failing to properly investigate. "Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted). Regardless, the allegation rests entirely on speculation. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) ("failure to conduct an independent investigation does not

constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.”).

At the PCR hearing, Applicant testified Counsel only went over discovery with him immediately prior to the trial. Applicant testified Counsel only met with him three or four times, for no longer than ten to fifteen minutes per meeting. Applicant testified Counsel did not prepare for trial and had no strategy. In contrast, Robert Hall, Applicant’s initial defense attorney, testified he believed he did review the discovery materials with Applicant. Additionally, Richard Whelchel (Counsel) testified that when he took over the case, he discussed with Applicant the possibility of Applicant testifying at trial and the possibility he could be impeached with his prior convictions. Counsel also testified he went over the evidence against Applicant with him, including the two statements Applicant gave. Counsel testified he explained to Applicant that just because no DNA was found inside the Victim, it did not mean there was no evidence of rape. Counsel testified the Victim’s testimony was enough to convict Applicant.

After weighing the testimony of Applicant and Counsel, this Court finds Applicant has not presented any credible evidence that Counsel was unprepared for trial. At the PCR hearing, Counsel demonstrated a clear understanding of Applicant’s case and the evidence against him. Furthermore, this Court finds Applicant’s testimony to be not credible with regard to the amount of time he met with Counsel prior to his trial. This Court finds Applicant’s unsupported allegations do not merit post-conviction relief in this matter.

3. Alteration of exhibits and suppression of the videotape

Applicant alleges Counsel was ineffective for failing to move to suppress evidence that Applicant believes was altered or destroyed. This Court finds this allegation to be without merit.

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SPARTANBURG COUNTY
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M. HOPE BLANKLEY

RSS

At the PCR hearing, Applicant alleged the videotape of his statement was missing eight seconds of the interview. Applicant also alleged various pieces of evidence were incomplete or missing. In contrast, Counsel testified he did not believe there was anything wrong with the videotape of Applicant's statement. Counsel also testified that at Applicant's trial, Counsel did raise to the trial judge that some evidence appeared to have been lost.

This Court finds that based upon Counsel's testimony, Applicant has failed to show any ineffectiveness. Counsel cannot be ineffective for failing to object where he did raise to the trial court that he believed some evidence was missing. Furthermore, this Court finds Counsel credible where he testified he did not believe there was anything wrong with the tape. As such, the allegations are without merit.

4. Failure to inform Applicant of plea deal

Applicant alleges Counsel did not inform him of the State's plea offer until it was too late to accept it. This allegation is without merit.

To be successful on an allegation of an un-conveyed plea offer, Petitioner must prove: (1) trial counsel's failure to communicate the State's initial plea offer constituted deficient performance, and (2) Petitioner was prejudiced by the deficient performance, or there was a reasonable probability that but for this deficient performance, he would have accepted he original plea offer. Davie v. State, 381 S.C. 601, 608, 675 S.E.2d 416, 420 (2009). Generally, failure to convey a plea offer constitutes deficient performance, although the existence of prejudice needs to be evaluated on a case-by-case basis. Id. at 613, 675 S.E.2d at 422. To show prejudice from a failure to convey a plea offer, Applicant must:

Demonstrate a reasonable probability [he] would have accepted the earlier plea offer had they been afforded effective assistance of counsel. [He] must also demonstrate a reasonable probability the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it, if they had the

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M. HOPKINS
ATTORNEY

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authority to exercise that discretion under state law. To establish prejudice in this instance, it is necessary to show a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.

Missouri v. Frye, ___ U.S. ___, 132 S.Ct. 1399, 1409 (2012).

At the PCR hearing, Applicant testified his first attorney, Robert Hall, came to him with a plea offer for ABHAN, but it was too late for him to accept the offer. In contrast, Hall testified he did not recall the solicitor ever extending any plea offers to Applicant. This Court finds Hall's testimony credible and Applicant's testimony not credible. As such, Applicant has presented no credible evidence that Hall, or Welchel, failed to convey any plea offers. Accordingly, the allegation is without merit.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedure as to appeal.

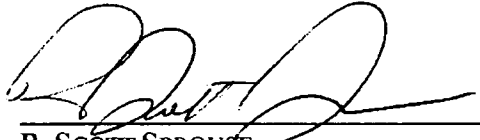
IT IS THEREFORE ORDERED:

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H. HOLE BLACKLEY

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1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 3 day of August, 2015.


R. SCOTT SPROUSE
Presiding Judge
Seventh Judicial Circuit

Waller, South Carolina

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 AUG -6 AM 9:40
M. HOPE BLACKLEY

DOCKET NO.

07-GS-42-3875

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

AUG 27 2007

TERM

THE STATE

VS.

Joseph Gabriel Cobb

Indictment for

CRIMINAL SEXUAL CONDUCT
W/MINOR, SECOND DEGREE

SC Code: 16-03-655 (3)

CDR Code: 0397

Class FEL/C

WITNESSES

Spartanburg County Sheriff's Office

2. REPORT ENDED

3. CARD FILLED

4. INDEXED

5. ALL CARD WITNESSES

6. CHECKED SIGNATURE

7. RECHECKED INDEX

FILE CARD BLANK

8. TRAFFIC VIOLATIONS COPY

ARREST WARRANT NUMBER

K262523

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: 8-23-07

VERDICT

Guilty

MARC KITCHENS

2007 AUG 29 PM 8:07

Foreperson of Grand Jury

Date: 3-10-2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

AUG 23 2007

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, SECOND DEGREE

That Joseph Gabriel Cobb, did in Spartanburg County, on or about July 10, 2007, 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 Joseph Gabriel Cobb was older than the victim, in violation of §16-03-655 (3), *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

SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

335

OF SPARTANBURG

VS.
Joseph Gabriel Cobb

INDICTMENT/CASE#: 2007GS4203875

A/W#: K262523

Date of Offense: 7/11/2007

S.C. Code § : 16-03-0655(3)

CDR Code #: 0397

Race: W Sex: M Age: 46

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Spartanburg, SC 29376

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

☒ CONVICTED OF or ☐ PLEADS

TO: Sex / Criminal sexual conduct with minor - victim under 16 yrs of age - Second degree

SENTENCE SHEET

in violation of § 16-03-0655(3) 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: JORDAN, JENNIFER A SC Bar# 69423 Defendant J. L. [REDACTED] Attorney for Defendant SC Bar# 6057

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of life 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 ☐ OrderedTotal: \$ 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 (SCCJA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/ Deputy Clerk KG McKinney

Court Reporter: Linda Moffitt

SCCA/217 (06/2010)

 days/hours Public Service EmploymentObtain 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 FundOther: ☐ Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2053

Sentence Date: March 10, 2011

Computer

ARREST WARRANT

K- 262523

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
SPARTANBURG COUNTY

THE STATE

against

COBB, JOSEPH GABRIEL

Address: CAROLINA COUNTRY CLUB RD
ROEBUCK, SC 29369

Phone: SSN:

Sex: Race: W Height: 5'07 Weight: 230

DL State: DL#:

DOB: Agency ORI#:

Prosecuting Agency:

Prosecuting Officer: CANTRELL, NICKI / SO

Offense: SEX / CRIMINAL SEXUAL CONDUCT

WITH MINOR - VIC Offense Code: 0397

Code/Ordinance Sec: 16-03-0655(C)

This Warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant COBB, JOSEPH GABRIEL

on 7-11-07

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

DAVID TURNER
180 MAGNOLIA STREET
SPARTANBURG, SC 29306

STATE OF SOUTH CAROLINA)

☐ County/ ☐ Municipality of)
SPARTANBURG COUNTY)

Personally appeared before me the affiant CANTRELL, NICKI / SO
being duly sworn deposes and says that defendant COBB, JOSEPH GABRIEL
did within this county and state on 07/10/07 violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of SPARTANBURG)
in the following particulars:

DESCRIPTION OF OFFENSE: SEX / CRIMINAL SEXUAL CONDUCT WITH MINOR - VIC
16-03-0655(C)

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
THE DEFENDANT DID COMMIT A SEXUAL BATTERY UPON ONE [REDACTED], SAID
VICTIM BEING UNDER THE AGE OF SIXTEEN AND THE DEFENDANT BEING 42 YEARS OF
AGE.

AFFIANT'S RELIEF BASED ON POLICE INVESTIGATION. YVK

Signature of Affiant

STATE OF SOUTH CAROLINA)

☒ County/ ☐ Municipality of)
SPARTANBURG)

Affiant's Address SC80

Affiant's Telephone 000-0000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 07/10/07 defendant COBB, JOSEPH GABRIEL
did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of SPARTANBURG) as set forth below:

DESCRIPTION OF OFFENSE: SEX / CRIMINAL SEXUAL CONDUCT WITH MINOR - VIC
16-03-0655(C)

Having found probable cause and the above affiant having sworn before me, you are empowered to arrest the
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me)

on JULY 11, 2007)

Signature of Issuing Judge (L.S.))

Judge Code: 079)

DAVID TURNER)

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ORIGINAL

AFFIDAVIT

CASE # K262523

Form Approved
S.C. Affo
April 21, 1994
SCCA 618

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CLERK OF COURTS

SPARTANBURG COUNTY

BY: D.C

DATED 07-18-07

Judge's Address 180 MAGNOLIA STREET

SPARTANBURG, SC 29306

Judge's Telephone 864-596-2220

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit