

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Oconee County

Frank R. Addy, Circuit Court Judge

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SC SUPREME COURT

STEVEN G. FROST,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002098

A P P E N D I X

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1 STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL
2 OCONEE) SESSION
3) TENTH JUDICIAL CIRCUIT
4) CASE NO: 2012-CP-37-00549

5)
6 STATE OF SOUTH)
7 CAROLINA,)
8 PLAINTIFF,) TRANSCRIPT OF RECORD
9) TRIAL
10 -vs-)
11 STEVEN GREGORY FROST,)
12 DEFENDANT.)

13 September 17th, 18th, 19th, 2012
14 OCONEE, SOUTH CAROLINA

15 B E F O R E:

16 THE HONORABLE J. CORDELL MADDOX, JR., JUDGE.

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

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1 ** START OF STATE VS. GARY EUGENE FROST TRIAL **

2 (Whereupon, the State of South Carolina v. Steven
3 Gregory Frost commenced on September 17, 2012, at
4 approximately 11:28 a.m.)

5 **THE COURT:** All right. Ladies and gentlemen, I
6 have some questions that I need to ask you about the
7 case that we're gonna try. Do you want to go ahead and
8 call the case now?

9 **THE CLERK:** Yes, Your Honor. The State calls State
10 of South Carolina versus Steven Gregory Frost on
11 2012-GS-37-549. The indictment is for criminal sexual
12 conduct with a minor in the first degree.

13 **THE COURT:** All right. Thank you.

14 Ladies and gentlemen, the questions that I'm gonna
15 ask you are particular to this case, but you need to
16 answer them exactly the same. Stand up, give us your
17 name and number, and respond.

18 The first thing I'm gonna do is ask the lawyers to
19 stand up, introduce themselves and their clients. After
20 they've done that, I'm gonna ask you if you have any
21 close business or personal relationship, are you related
22 by blood or marriage, or have you ever been or are you
23 currently represented by these attorneys.

24 So Mr. Day?

25 **MR. DAY:** Thank you, Your Honor. I'm Danny Day.

1 I'll be representing Steven Frost, and I'll be assisted
2 by Rusty Patrick. Thank you.

3 THE COURT: Yes, ma'am.

4 MS. SIMMONS: My name is Lindsey Simmons. I'm
5 Assistant Solicitor here in the Oconee Solicitor's
6 Office. I'm employed by your elected Solicitor, Chrissy
7 Adams. The law enforcement officer assisting me in this
8 case is Sergeant Gentry Hawk in the Oconee County
9 Sheriff's Office. Thank you.

10 THE COURT: Okay. The first question is are any of
11 you related by blood or marriage or do you have any
12 close business or personal relationship or are you
13 represented now or have you ever been represented by any
14 of the attorneys in this case? If so, please stand.

15 Okay. Sir, give us your name and number.

16 PROSPECTIVE JUROR: Malcolm Simpson, 147.

17 THE COURT: Okay. And have you ever been
18 represented or do you just have a close relationship?

19 PROSPECTIVE JUROR: I've been represented by Danny
20 Day back in '96.

21 THE COURT: Okay. The fact that he represented you
22 back then, would that prevent you from being fair and
23 impartial in this case?

24 PROSPECTIVE JUROR: No, sir.

25 THE COURT: And can you render a verdict based only

1 on the evidence that you hear in this courtroom?

2 PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: Okay. Any questions from the State?

4 MS. SIMMONS: No, Your Honor.

5 MR. DAY: No, sir.

6 THE COURT: Okay. Well, thank you, sir.

7 Yes, sir?

8 PROSPECTIVE JUROR: Al Littlejohn, 94. Mr. Day
9 represented me in 1980.

10 THE COURT: Okay. Would that fact prevent you from
11 being fair and impartial in this case?

12 PROSPECTIVE JUROR: No, sir.

13 THE COURT: And can you render a verdict based only
14 on the facts seen in this courtroom?

15 PROSPECTIVE JUROR: Yes, sir.

16 THE COURT: All right. I assume no questions.

17 MS. SIMMONS: No, Your Honor.

18 MR. DAY: No, Your Honor.

19 THE COURT: Oh, yes, sir. Please give us your name
20 and number.

21 PROSPECTIVE JUROR: James Ellenburg, 39. Mr. Day
22 represented my two sons.

23 THE COURT: Okay. Would that fact prevent you from
24 being fair and impartial in this case?

25 PROSPECTIVE JUROR: No, sir.

1 THE COURT: And can you render a verdict based only
2 on the evidence that you hear in this case?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: Thank you, sir.

5 All right. Ladies and gentlemen, is anyone related
6 by blood or marriage or do you have any close business
7 or personal relationship with Steven Gregory Frost? If
8 so, please stand.

9 (Whereupon, there was no response.)

10 THE COURT: All right. I'm gonna read off a fairly
11 long list of witnesses. These are potential witnesses
12 in this case. Some of them may or may not testify but
13 after I read this list I'm gonna ask you the exact same
14 questions: Are you related by blood or marriage or do
15 you have any close business or personal relationship
16 with any of these potential witnesses?

17 Sergeant Gentry Hawk, Deputy Brandon Meadows,
18 Stacy Gianiodis, is that right, Gianiodis?
19 Dr. Sallie Carter, Christine Longwith, Adrian Longwith,
20 VICTIM | , anyone employed by the Oconee County
21 Sheriff's Department. And, by the way, Ms. Gianiodis
22 works with Foothill Alliance; is that correct?

23 MS. SIMMONS: Yes, Your Honor.

24 THE COURT: Marvin Kearley, Chelsea Price, Emily
25 Fowler, Jimmy Norris, Danny Freeman or Doris Blackwell.

1 Those are the potential witnesses. Does anyone on
2 the panel have any close business or personal
3 relationship or are you related by blood or marriage to
4 any of those potential witnesses?

5 All right. Yes, sir. Give us your name and
6 number.

7 PROSPECTIVE JUROR: Rayford Simpson, 145.

8 THE COURT: All right. Which one of them?

9 PROSPECTIVE JUROR: Close friends with Deputy
10 Brandon Meadows.

11 THE COURT: All right. When you say close friend,
12 how do you -- social acquaintances or friends?

13 PROSPECTIVE JUROR: Yes, sir. Go to church
14 together.

15 THE COURT: Okay. So you know him pretty well?

16 PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: Would that prevent you from being fair
18 and impartial in this case?

19 PROSPECTIVE JUROR: No, sir.

20 THE COURT: All right. Can you render a verdict
21 based only on the evidence that you hear in this
22 courtroom and disregard the fact that you are friends
23 with the witness?

24 PROSPECTIVE JUROR: I can.

25 THE COURT: Okay. And what was your number again?

1 I'm sorry.

2 PROSPECTIVE JUROR: 145.

3 THE COURT: All right, 145.

4 All right. Yes, ma'am?

5 PROSPECTIVE JUROR: Barbara Bright, Juror Number
6 19. I have two nephews that are Deputy sheriffs with
7 Oconee County.

8 THE COURT: Yeah. I was gonna ask you that in a
9 minute, but I'm glad you went ahead and stood up. So
10 you have two nephews who work with the Oconee County
11 Sheriff's Department?

12 PROSPECTIVE JUROR: (Nodded head.)

13 THE COURT: Would that fact prevent you from being
14 fair and impartial in this case?

15 PROSPECTIVE JUROR: No, sir.

16 THE COURT: And can you render a verdict based on
17 the evidence you hear in this courtroom?

18 PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: And what was your juror number?

20 PROSPECTIVE JUROR: 19.

21 THE COURT: 19. Anyone else?

22 Yes, sir?

23 PROSPECTIVE JUROR: Your Honor, I'm John Brunson.
24 I think I'm 26. I'm not sure. I didn't know if the
25 question you asked, my brother-in-law is Curtis Rogers.

1 I don't know if that means anything or not. He's not on
2 the witness list, but I didn't know if you had said
3 something about that.

4 THE COURT: Who does he work for?

5 PROSPECTIVE JUROR: He's over the deputies.

6 THE COURT: Okay. So he's with the Oconee County
7 Sheriff's Department?

8 PROSPECTIVE JUROR: Yes, sir. I didn't know if you
9 asked that question or not.

10 THE COURT: Well, I sort of did. And I actually
11 realized halfway through that, that I was gonna ask that
12 question again. But so if you think it applies to you
13 I'd rather you stand. All right. So he -- that's your
14 nephew, right?

15 PROSPECTIVE JUROR: No. He's my brother-in-law.

16 THE COURT: Your brother-in-law?

17 PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: All right. Would that fact prevent you
19 from being fair and impartial in this case?

20 PROSPECTIVE JUROR: No, sir.

21 THE COURT: And can you render a verdict based
22 solely on the evidence that you hear in this courtroom
23 and disregard your relationship with him?

24 PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: All right. And what was your number

1 again? 26?

2 THE CLERK: No, 22.

3 PROSPECTIVE JUROR: I'm 22.

4 THE COURT: Number 22.

5 Yes, ma'am?

6 PROSPECTIVE JUROR: Yes. I'm Susan Certain, number
7 30. I've got a first cousin in law enforcement.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR: Deputy sheriff.

10 THE COURT: Up here?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Would that fact prevent you from being
13 fair and impartial in this case?

14 PROSPECTIVE JUROR: No, it will not.

15 THE COURT: Can you render a verdict based solely
16 on the evidence that you hear in this case?

17 PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: Can you disregard the relationship you
19 may have with someone who may work for the Sheriff's
20 Department?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: All right. Thank you, ma'am.

23 All right. Has any member of the panel or your
24 immediate family or a close personal friend ever been
25 prosecuted by the 10th Circuit Solicitors, which is the

1 Solicitor's Office over Anderson and Oconee County? If
2 that applies to you, please stand.

3 All right. Yes, sir. Give us your name and number
4 again.

5 PROSPECTIVE JUROR: James Ellenburg, 39.

6 THE COURT: All right.

7 PROSPECTIVE JUROR: A close personal friend was
8 prosecuted several years ago.

9 THE COURT: Okay. Will that fact prevent you from
10 being fair and impartial in this case?

11 PROSPECTIVE JUROR: No, sir.

12 THE COURT: And can you render a verdict based
13 solely on the evidence that you hear in this courtroom
14 and disregard that fact?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Thank you, sir.

17 Has any member of the jury panel or a family member
18 or a close personal friend been accused of and/or
19 prosecuted for criminal sexual conduct? If so please
20 stand. All right.

21 Ma'am, we'll go to you first. Give us your name
22 and number.

23 PROSPECTIVE JUROR: Julie Donald, Number 35.

24 THE COURT: Okay. And what was the circumstance?

25 PROSPECTIVE JUROR: My husband was accused by the

1 same Solicitor's office.

2 THE COURT: All right. Was he actually charged
3 with it?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: All right. And how long ago was that?

6 PROSPECTIVE JUROR: About I'd say 19 years.

7 THE COURT: Okay. Will that fact prevent you from
8 being fair and impartial in this case?

9 PROSPECTIVE JUROR: No.

10 THE COURT: And can you render a verdict based only
11 on the evidence that you hear in this courtroom and
12 disregard that your husband may have been charged by the
13 same Solicitor's Office?

14 PROSPECTIVE JUROR: Yes, sir.

15 THE COURT: Okay. Thank you, ma'am.

16 All right. Yes, sir?

17 PROSPECTIVE JUROR: A boss of mine and friend was
18 accused of criminal sexual conduct in the early
19 nineties. I'm not sure of the year.

20 THE COURT: Okay. And will that fact prevent you
21 from being fair and impartial on this case?

22 PROSPECTIVE JUROR: No, sir.

23 THE COURT: And can you render a verdict based only
24 on the evidence that you hear in this courtroom and
25 disregard those facts?

1 PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: Okay.

3 COURT REPORTER: And I'm sorry, his name?

4 THE CLERK: He was Number 39, James Ellenburg.

5 THE COURT: Number 39, James Ellenburg.

6 I sort of asked this question, but let me make sure
7 that I did. Has any member of this panel or your
8 immediate family or close personal friend been employed
9 by any law enforcement office in this state other than
10 those that have stood up?

11 All right. Yes, sir. Give us your name and
12 number.

13 PROSPECTIVE JUROR: Raymond Brown White, 224. My
14 first cousin works for the Oconee Sheriff's Department.

15 THE COURT: Okay. Will that fact prevent you from
16 being fair and impartial in this case?

17 PROSPECTIVE JUROR: No, sir.

18 THE COURT: And can you render a verdict based only
19 on the evidence that you hear in this courtroom?

20 PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: All right. Thank you, sir.

22 Yes, sir?

23 PROSPECTIVE JUROR: Andrew McKnight, Number 112.

24 THE COURT: Okay.

25 PROSPECTIVE JUROR: Mr. Rick Thompkins is my uncle.

1 THE COURT: I'm sorry I didn't hear you.

2 PROSPECTIVE JUROR: Mr. Rick Thompkins is my uncle.

3 THE COURT: I'm sorry about that, but let me ask
4 you this: (Laughter.) Will that fact prevent you from
5 being fair and impartial in this case?

6 PROSPECTIVE JUROR: No, sir.

7 THE COURT: And can you render a verdict based only
8 on the evidence that you hear in this courtroom?

9 PROSPECTIVE JUROR: Yes, sir.

10 THE COURT: All right, thank you, sir. Rick, I'm
11 sorry, I just couldn't help it.

12 Yes, sir?

13 PROSPECTIVE JUROR: 61, Scott Harbin. My sister is
14 a Federal Probation Officer and my brother-in-law is
15 retired from law enforcement.

16 THE COURT: All right. Will that fact or those
17 facts prevent you from being fair and impartial on this
18 case?

19 PROSPECTIVE JUROR: No.

20 THE COURT: And can you render a verdict based only
21 on the evidence that you hear in this case and disregard
22 those facts?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Okay. All right. Any other questions
25 by the State?

1 MS. SIMMONS: No, Your Honor.

2 THE COURT: By the Defense?

3 MR. DAY: None, Your Honor, thank you.

4 THE COURT: Okay. What are the strikes in this
5 case?

6 MS. SIMMONS: Ten and five, Your Honor.

7 MR. DAY: Ten and five.

8 THE COURT: All right. Ladies and gentlemen, the
9 way that juries are selected in criminal court is very
10 different. This is gonna be a Criminal or General
11 Sessions Court week. But the way we select jurors is
12 very different than the way we do it in Civil court or
13 Common Pleas week.

14 Judges in South Carolina, because there's only 46
15 of us, do civil and criminal work. So I may pick a jury
16 one way one week and one way the next. But the way this
17 will be handled is there will be a new list generated of
18 potential witnesses and then you'd be called up here and
19 you will actually have to come physically up, bring all
20 of your belongings with you, and then the State and the
21 Defense will decide whether or not to seat you as
22 jurors.

23 Now, you need to know that the State and the
24 Defense have a certain number of strikes. They can
25 strike you for any reason really except for a religious

1 beliefs or ethnic heritage, race. There are certain
2 basic reasons that you can't be stricken. But once you
3 get outside that sort of circle of reasons for striking
4 a juror, you may be stricken.

5 And occasionally jurors get very angry at this.
6 The way we pick Circuit Court jurors they don't ever
7 know if they are on the list or not. But in General
8 Sessions you'll know if you're stricken. Don't get mad.

9 As a lawyer for 21 years, before I became a judge
10 11 years ago, I hated looking people in the eye and
11 saying please strike this person or please seat this
12 person because sometimes there are reasons that just may
13 be a gut feeling, or there may be something -- and I've
14 had jurors get mad about it. So please don't. If you
15 really don't want to serve on a jury, don't kiss a
16 lawyer in front of everybody or thank them too profusely
17 for striking them. Okay?

18 All right. Lindsay, do you need a little time to
19 get ready?

20 MS. SIMMONS: I'm just waiting for it to get
21 generated.

22 THE COURT: Okay. While she's printing out the
23 list, because I normally would take a break at this
24 point and let the Clerk's Office print off the list. I
25 travel a lot. The other thing about being a Judge is

1 you have statewide jurisdiction. So every six months I
2 travel to Charleston, Beaufort, Jasper County, just
3 about every county in the state to hold court. And you
4 quickly find out who knows what's going on and who
5 doesn't. Y'all's Clerk's Office up here is as good as
6 any I've seen. Lisa Burton, who is sitting right here
7 who, by the way, today is her birthday -- sorry -- she's
8 made my life a whole lot easier. Beverly Whitfield your
9 clerk has been great to me, and I really appreciate it.
10 It means a lot to me. She's 30 today.

11 Is the State ready?

12 MS. SIMMONS: Yes, Your Honor.

13 THE COURT: Defense?

14 MR. DAY: Yes.

15 THE COURT: We're gonna do two alternates, too.

16 THE CLERK: Ladies and gentlemen, as I call your
17 name if you would please come forward bringing your
18 personal belongings. We'll need for you to stand here
19 and face the gallery.

20 Number 94, Albert Littlejohn.

21 (Whereupon, a White male approached.)

22 THE CLERK: What says the State?

23 MS. SIMMONS: Please present the juror.

24 THE CLERK: What says the Defense?

25 MR. DAY: Please seat Mr. Littlejohn.

1 THE CLERK: Sir, if you would please take a seat in
2 the jury-box.

3 Number 29, Michael Cawthon.

4 (Whereupon, a White male approached.)

5 THE CLERK: What says the State?

6 MS. SIMMONS: Please present the juror.

7 THE CLERK: What says the Defense?

8 MR. DAY: Please seat Mr. Cawthon.

9 THE CLERK: Sir, if you would please take a seat in
10 the jury-box.

11 Number 19, Barbara Bright.

12 (Whereupon, a White female approached.)

13 THE CLERK: What says the State?

14 MS. SIMMONS: Please present the juror.

15 THE CLERK: What says the Defense?

16 MR. DAY: Excuse Ms. Bright in this case, please.

17 THE CLERK: Ma'am, you have been excused for this
18 case, you may be seated.

19 Juror Number 175, Carl Wulff.

20 (Whereupon, a White male approached.)

21 THE CLERK: What says the State?

22 MS. SIMMONS: Please present the juror.

23 THE CLERK: What says the Defense?

24 MR. DAY: Please seat Mr. Wulff.

25 THE CLERK: Sir, if you would please take a seat in

1 the jury-box.

2 Number 78, Ricky Jenkins.

3 (Whereupon, a White male approaches.)

4 THE CLERK: What says the State?

5 MS. SIMMONS: Please excuse the juror from the

6 trial of this case.

7 THE CLERK: Sir, you have been excused from this

8 case, you may be seated.

9 Number 185, Scott Burrell.

10 (Whereupon, a White male approached.)

11 MR. DAY: What was that number again, please?

12 THE CLERK: Number 185.

13 What says the State?

14 MS. SIMMONS: Please present the juror.

15 THE CLERK: What says the Defense?

16 MR. DAY: Excuse Mr. Burrell in this case, please.

17 THE CLERK: Sir, you have been excused from this

18 case, you may be seated.

19 Number 16, Rhonda Brady.

20 (Whereupon, a White female approached.)

21 THE CLERK: What says the State?

22 MS. SIMMONS: Please present the juror.

23 THE CLERK: What says the Defense?

24 MR. DAY: Please seat Ms. Brady.

25 THE CLERK: Ma'am, if you would please take a seat

1 in the jury-box.

2 Number 39, James Ellenburg.

3 (Whereupon, a White male approached.)

4 THE CLERK: What says the State?

5 MS. SIMMONS: Please excuse the juror from the
6 trial of this case.

7 THE CLERK: Sir, you have been excused from this
8 case, you may be seated.

9 Number 1, Maria Adams.

10 (Whereupon, a White female approached.)

11 THE CLERK: What says the State?

12 MS. SIMMONS: Please present the juror.

13 THE CLERK: What says the Defense?

14 MR. DAY: Excuse Ms. Adams in this case, please.

15 THE CLERK: Ma'am, you have been excused from this
16 case, you may be seated.

17 Number 38, Kendra Dyer.

18 (Whereupon, a White female approached.)

19 THE CLERK: What says the State?

20 MS. SIMMONS: Please excuse the juror from the
21 trial of this case.

22 THE CLERK: Ma'am, you have been excused from this
23 case, you may be seated.

24 Number 160, Richie Turpin.

25 MR. DAY: What was that number again? I'm sorry.

1 THE CLERK: Number 160.
2 What says the State?
3 MS. SIMMONS: Please present the juror.
4 THE CLERK: What says the Defense?
5 MR. DAY: Excuse Mr. Turpin in this case, please.
6 THE CLERK: Sir, you have been excused from this
7 case, you may be seated.
8 Number 164, Grace Waldroup.
9 (Whereupon, a White female approached.)
10 THE CLERK: What says the State?
11 MS. SIMMONS: Please present the juror.
12 THE CLERK: What says the Defense?
13 MR. DAY: Excuse Ms. Waldroup in this case, please.
14 THE CLERK: Ma'am, you have been excused from this
15 case, you may be seated.
16 Number 30, Susan Certain.
17 (Whereupon, a White female approached.)
18 THE CLERK: What says the State?
19 MS. SIMMONS: Please present the juror.
20 THE CLERK: What says the Defense?
21 MR. DAY: Please seat Ms. Certain.
22 THE CLERK: Ma'am, if you would please take a seat
23 in the jury-box.
24 Number 145, Rayford Simpson.
25 (Whereupon, a White male approached.)

1 THE CLERK: What says the State?

2 MS. SIMMONS: Please present the juror.

3 THE CLERK: What says the Defense?

4 MR. DAY: Excuse Mr. Simpson in this case, please.

5 THE CLERK: Sir, you have been excused from this
6 case, you may be seated.

7 Number 84, Cathy Jordan.

8 (Whereupon, a White female approached.)

9 THE CLERK: What says the State?

10 MS. SIMMONS: Please present the juror.

11 THE CLERK: What says the Defense?

12 MR. DAY: Please seat Ms. Jordan.

13 THE CLERK: Ma'am, if you would please take a seat
14 in the jury-box.

15 Number 224, Raymond White.

16 (Whereupon, a White male approached.)

17 THE CLERK: What says the State?

18 MS. SIMMONS: Please present the juror.

19 THE CLERK: What says the Defense?

20 MR. DAY: Please seat Mr. White.

21 THE CLERK: Sir, if you would please take a seat in
22 the jury-box.

23 Number 73, Brian Howard.

24 (Whereupon, a White male approached.)

25 THE CLERK: What says the State?

1 MS. SIMMONS: Please present the juror.

2 THE CLERK: What says the Defense?

3 MR. DAY: Please seat Mr. Howard.

4 THE CLERK: Sir, if you would please take a seat in
5 the jury-box.

6 Number 66, Robert Hendrickson.

7 (Whereupon, a White male approached.)

8 THE CLERK: What says the State?

9 MS. SIMMONS: Please present the juror.

10 THE CLERK: What says the Defense?

11 MR. DAY: Excuse Mr. Hendrickson in this case,
12 please.

13 THE CLERK: Sir, you have been excused from this
14 case, you may be seated.

15 Number 32, Amyie Crane.

16 (Whereupon, a White female approached.)

17 THE CLERK: What says the State?

18 MS. SIMMONS: Please present the juror.

19 THE CLERK: What says the Defense?

20 MR. DAY: Excuse Ms. Crane in this case, please.

21 THE CLERK: Ma'am, you have been excused from this
22 case, you may be seated.

23 Number 27, Ricky Cantrell.

24 (Whereupon, a White male approached.)

25 THE CLERK: What says the State?

1 MS. SIMMONS: Please present the juror.

2 THE CLERK: What says the Defense?

3 MR. DAY: Please seat Mr. Cantrell.

4 THE CLERK: Sir, if you would please take a seat in
5 the jury-box.

6 Number 6, Johnathan Barker.

7 (Whereupon, a White male approached.)

8 THE CLERK: What says the State?

9 MS. SIMMONS: Please present the juror.

10 THE CLERK: What says the Defense?

11 MR. DAY: Please seat Mr. Barker.

12 THE CLERK: Sir, if you would please take a seat in
13 the jury-box.

14 Number 147, Malcolm Simpson.

15 (Whereupon, a White male approached.)

16 THE CLERK: What says the State?

17 MS. SIMMONS: Please excuse the juror from the
18 trial of this case.

19 THE CLERK: Sir, you have been excused from this
20 case, you may be seated.

21 Number 61, William Harbin.

22 (Whereupon, a White male approached.)

23 MR. DAY: What was that number again, please?

24 THE CLERK: Number 61.

25 What says the State?

1 MS. SIMMONS: Please present the juror.

2 THE CLERK: What says the Defense?

3 MR. DAY: Excuse Mr. Harbin in this case.

4 THE CLERK: Sir, you have been excused from this
5 case, you may be seated.

6 Number 134, Ricky Phylow.

7 (Whereupon, a White male approached.)

8 THE CLERK: What says the State?

9 MS. SIMMONS: Please present the juror.

10 THE CLERK: What says the Defense?

11 MR. DAY: Please seat Mr. Phylow.

12 THE CLERK: Sir, if you would please take a seat in
13 the jury-box.

14 Number 204, Tenneil James.

15 (Whereupon, a White female approached.)

16 THE CLERK: What says the State?

17 MS. SIMMONS: Please present the juror.

18 THE CLERK: What says the Defense?

19 MR. DAY: Excuse Ms. James from this case, please.

20 THE CLERK: Ma'am, you have been excused from this
21 case, you may be seated.

22 Number 26, John Byrne.

23 (Whereupon, a White male approached.)

24 THE CLERK: What says the State?

25 MS. SIMMONS: Please present the juror.

1 THE CLERK: What says the Defense for cause?

2 MR. DAY: No cause.

3 THE CLERK: Sir, if you would please take a seat in
4 the jury-box.

5 And this will be for alternate number one. Andrew
6 McKnight, Number 112.

7 (Whereupon, a White male approached.)

8 What says the State?

9 MS. SIMMONS: Please present the juror.

10 THE CLERK: What says the Defense?

11 MR. DAY: Excuse Rick's nephew in this case.

12 THE CLERK: Sir, you have been excused from this
13 case, you may be seated.

14 Number 170, Chris Wilkie.

15 (Whereupon, a White male approached.)

16 THE CLERK: What says the State?

17 MS. SIMMONS: Please present the juror.

18 THE CLERK: What says the Defense?

19 MR. DAY: Please seat Mr. Wilkie.

20 THE CLERK: Sir, if you would please take a seat in
21 the jury-box.

22 Number -- and this will be for alternate number
23 two. Number 188, Susan Cox.

24 (Whereupon, a White female approached.)

25 THE CLERK: What says the State?

1 MS. SIMMONS: Please present the juror.

2 THE CLERK: What says the Defense?

3 MR. DAY: Please seat Ms. Cox.

4 THE CLERK: Ma'am, if you would please take a seat
5 in the jury-box.

6 THE COURT: All right. Ladies and gentlemen, the
7 first thing I'm gonna do is I'm gonna send you back to
8 the jury-box (sic) and let you sit back there for five
9 or ten minutes. I'm gonna tell you two things, one of
10 which I'll tell you every time you leave this courtroom.
11 Please don't begin talking about this case now. The
12 only time you should begin talking about this case in
13 particular is after you have heard all of the evidence
14 from both sides, and after I've given you the law in
15 this case which would be at the very end of the case.
16 And then at that point you will begin for the first time
17 discussing this case.

18 The reason for that is, you've heard all the
19 questions and we spent three hours basically trying to
20 come up with 14 people that both sides trust to listen
21 to the testimony from this witness stand and review any
22 documents that may be entered into evidence and to come
23 up with a verdict. And one of the parts of that trust
24 is that you won't talk about this case until you have
25 heard both sides. So I'll tell you that every time you

1 leave the courtroom.

2 The other thing I'm gonna tell you, and I'll
3 explain a little bit more about this tomorrow when we
4 start the trial. You heard the Solicitor this morning
5 read from an indictment. This is the indictment she
6 read from. The case that we'll be trying is the State
7 versus Steven Gregory Frost. And the crime that he is
8 indicted for is criminal sexual conduct in the first
9 degree.

10 An indictment is literally just a piece of paper
11 that starts this process moving forward. And, again,
12 tomorrow I'll give you a fairly long charge on this, but
13 the Defendant in this case has pled not guilty to this
14 charge. You should never consider at any point in your
15 mind or in your discussions the fact that he's been
16 indicted as evidence of guilt. As I said, an indictment
17 is a piece of paper that starts the process some time
18 ago which leads us here today for this trial. Again,
19 you will hear a lot more about this tomorrow.

20 But the fact that he's pled not guilty, he has
21 about him what we call the robe of righteousness or
22 innocence. He's innocent until you strip that robe from
23 him or until you determine that the State has proved
24 their case beyond a reasonable doubt. I'll tell you a
25 lot more about it tomorrow, but I do want you to

1 understand that the indictment should never be
2 discussed.

3 So I'll send you back now. You can discuss
4 anything you want, introduce yourselves. When you come
5 back in in a few minutes, Mr. Littlejohn, I'm appointing
6 you foreman of the jury. You will be the only person
7 who has a place to sit and you will need to sit on the
8 first seat in the front row. The rest of you can sit
9 wherever you are wherever you want. The two alternates
10 will need to sit on the first two seats on the back row
11 like you are doing now.

12 All right. Go back in there and get acquainted and
13 Mr. Bibb will call you back in in a few minutes.

14 (Whereupon, the Jury left the courtroom at
15 approximately 12:03 p.m.)

16 **THE COURT:** All right. Ladies and gentlemen,
17 normally what would happen at this point is I would give
18 you a phone number to call and tell you to call tomorrow
19 night after 6:00 and the recorded message would be for
20 you to come in the next day for jury selection or to
21 make the call the next night. In other words, you would
22 be calling in to determine whether you need to come
23 back.

24 We know that with the length of this trial and with
25 some of the other matters that we have to do that don't

1 require juries that there will only be one jury selected
2 this week, so you're not gonna have to come back or make
3 a call.

4 The other good thing for you is that you may have
5 remembered that I said you only had to serve as a juror
6 once every three years. The fact that you've been
7 qualified to serve, this counts as your once every three
8 years, so the fact that you were qualified means that
9 you can stand up if you get a notice and say that even
10 though you didn't serve on the jury you were qualified
11 to serve. So there is some benefit this morning, but
12 the benefit is you don't have to do it again until four
13 years from now.

14 Does anybody have any questions? Normally at the
15 end of the week, because normally we would have the jury
16 come back at least another day or two and I would give
17 you another opportunity to ask me another question about
18 the system or what we're doing here or how we do it.
19 I'll be happy to answer any questions that you have.

20 (Whereupon, there was no response.)

21 Nobody wants to -- I mean, when you get a Judge
22 that says he'll answer any question, there's always some
23 smart-aleck who wants to know how much I get paid or
24 some crazy thing like that. All right. Have a good
25 week. Thank you very much, and I appreciate your

1 patience.

2 (Whereupon, jury panel was excused for the week at
3 approximately 12:05 p.m.)

4 **THE COURT:** Before we go off the record, any
5 objections to the selection of the jury? I probably
6 should have asked you a while ago, but...

7 **MS. SIMMONS:** No, Your Honor.

8 **MR. DAY:** None, Your Honor.

9 **THE COURT:** All right. So we're gonna start this
10 case tomorrow at one, right?

11 **MR. DAY:** Yes, sir.

12 **THE COURT:** Okay. I'll be here pretty close to
13 1:00 and I'll do the opening charge. Do you think that
14 your witnesses will take up until Wednesday morning?

15 **MS. SIMMONS:** Judge, I would anticipate I could
16 complete testimony tomorrow afternoon.

17 **THE COURT:** Okay. And then ---

18 **MR. DAY:** Your Honor, like I said, probably because
19 it should be late in the afternoon before we start, but
20 I'll have a couple of things to take up with the Court,
21 not take a lot of time. But other than that, if the
22 State finishes tomorrow, I would probably request that
23 we present whatever -- I'm going to have the Defendant
24 advised of his rights, et cetera, tomorrow afternoon and
25 then Wednesday morning we'll either present witnesses or

1 we'll go to the jury.

2 THE COURT: Okay. So basically I need my charge
3 ready Wednesday morning?

4 MR. DAY: Yes, sir.

5 THE COURT: Okay. All right. Now, is he on bond?

6 MR. DAY: No, sir. He's incarcerated.

7 THE COURT: Okay. All right. So we don't need to
8 deal with that. Anything we need to deal with before we
9 let you go?

10 MR. DAY: No, sir.

11 MS. SIMMONS: No, Your Honor.

12 THE COURT: I'll see y'all tomorrow at 1:00.

13 (Whereupon, the Jury entered the courtroom at
14 approximately 12:14 p.m.)

15 THE COURT: All right. Ladies and gentlemen, it's
16 a little unusual for me to select you today and tell you
17 not to be back in the jury room until 1:00 tomorrow.
18 Again, a lot of it has to do with scheduling. But you
19 won't need to be back here until 1:00 tomorrow, and I'll
20 do my best to get back here by one.

21 One of the things I'm gonna tell you, tomorrow I
22 have two jobs. I need to regulate the courtroom and
23 keep the matter moving and then I have certain legal
24 requirements that I have to do.

25 One of the things I'll tell you tomorrow, if you

1 get mad because you are sitting back there more than you
2 wish you would or think you should, to get mad at me
3 because it's my fault. If I'm a little late tomorrow
4 it's my fault. I don't anticipate being late, but I
5 didn't anticipate having to go.

6 The other thing I want to tell you, which is quite
7 serious. As I told you earlier, you shouldn't discuss
8 this case with anybody. Your family is gonna ask you
9 what kind of a case it is. You should tell them that
10 the Judge ordered you not to. You're gonna know more
11 about this case than anybody in the world by the time we
12 finish this case, and we should finish it Wednesday.

13 The problem with talking about it to people is that
14 people make offhand comments to you that may somehow
15 affect your thought processes on it. And like I said,
16 we spent a lot of time trying to select 14 people that
17 everybody agreed would be fair. So please tell them
18 that you can't talk about it till Wednesday.

19 The other thing which has become a real problem,
20 don't do any research in this case. I'm ordering you
21 right now not to go on the internet, not to read old
22 newspapers, not to do anything research wise to try to
23 find out what this case is about. Because I've ordered
24 you not to do that, you could be subject to contempt if
25 we find out you've done it. And there have been jurors

1 in this state who have gone home and thought they could
2 get away with looking something up on the internet or
3 looked up the case because they wanted to know something
4 about the case and they have served jail time. So don't
5 put me in that position.

6 And, again, I will tell you that there's nothing
7 you will be able to find out in the world that you are
8 not gonna hear in here. In fact, quite frankly most
9 things you read about in the press are wrong. So please
10 don't do that, put me in the position of having to have
11 you get a lawyer and come back in front of me because I
12 don't want to deal with that and I know you don't.

13 If somebody contacts you about your jury service,
14 and this won't happen, but if you get any contact
15 whatsoever from anybody about the fact that you are
16 serving on this jury, tell them you can't talk about it
17 and then tomorrow let Mr. Bibb know that you have been
18 contacted and I'll deal with them pretty harshly.
19 Nobody should talk to you about your jury service up
20 here.

21 All right. Again, have a great afternoon and
22 morning tomorrow and I'll see you about one tomorrow.
23 Thank you all.

24 (Whereupon, the Jury left the courtroom at
25 approximately 12:18 p.m.)

1 THE COURT: Okay. 1:00 tomorrow?

2 MS. SIMMONS: Yes, Judge. We have some things this
3 afternoon, pleas and probation matters, if that's all
4 right with you.

5 THE COURT: Yeah. What time do you want to start,
6 2:30?

7 MR. WAGNER: 2:30 is great.

8 MS. SIMMONS: Yeah, 2:30 is great.

9 THE COURT: How many you got?

10 MR. WAGNER: Five, six, seven tops. Maybe not even
11 that many.

12 MS. SIMMONS: Definitely less than ten.

13 THE COURT: Okay.

14 MR. WAGNER: Yeah, it's not a lot.

15 THE COURT: All right.

16 MR. WAGNER: We've got Dunaway coming from
17 Anderson, so...

18 THE COURT: Okay. All right. I'll see you at
19 2:30.

20 MR. WAGNER: Yes, sir.

21 (Whereupon, this ends day one of trial at 12:22
22 p.m.)
23
24
25

1 This is Tuesday, September 18, 2012, Oconee County
2 General Sessions, Judge Maddox. Day 2 in the State of
3 South Carolina versus Steven Gregory Frost.

4 (Whereupon, Court convened with court reporter out
5 of room.)

6 **THE COURT:** What I've done is just replace --
7 rather than putting them in a hat, I'm replacing that
8 juror with the first alternate that was selected. And I
9 don't know who that was.

10 **THE CLERK:** It would be Number 170, Chris Wilkie.

11 **THE COURT:** Okay. Any objection to me doing that?

12 **MS. SIMMONS:** No, Your Honor.

13 **MR. DAY:** No, Your Honor.

14 **THE COURT:** All right. And by the way, he was the
15 same as y'all, he had no idea that there was a problem.
16 And I believe him, I mean end of story. To be honest
17 with you, I wouldn't know my great-aunt if she walked up
18 and kicked me in the face. You know, I wouldn't know.
19 So thank y'all for doing that.

20 **THE COURT:** Your Honor, one other thing just as a
21 pretrial matter before we get it cranked up so we don't
22 have to do it again, I understand that the forensic
23 interviewer is not gonna testify. I want to make sure
24 that the State makes no statement about the
25 believability of the alleged victim, about whether the

1 State believes the victim is telling the truth or
2 anything like that since our courts have said the
3 veracity of any witness is determined by the jury and
4 that would be improper bolstering of a witness. I just
5 wanted to make sure that doesn't come out. I understand
6 the Solicitor, the Solicitor wouldn't be here if she
7 didn't believe in her case, but it would be improper if
8 she says she believes what she is saying.

9 MS. SIMMONS: Judge, I certainly am not going to
10 express my personal beliefs during my openings or my
11 closings or during my case in chief. There may be some
12 arguments as to consistency, but certainly not as to my
13 personal beliefs.

14 THE COURT: You are not calling the forensic
15 interviewer?

16 MS. SIMMONS: As of this point, Judge, I don't
17 intend to call her.

18 THE COURT: Okay. What we'll do, and I understand
19 that y'all are in agreement, I'll give my short opening,
20 I'll let you give your opening, then we'll take a break,
21 and I'll explain to them as best I can why. And then
22 I'll let you proffer the testimony from the child.

23 MS. SIMMONS: Judge, just to be clear we're only
24 gonna proffer the competency hearing, correct?

25 THE COURT: Right.

1 **MS. SIMMONS:** Okay.

2 **THE COURT:** Right. And then we'll go from there.
3 And like I said, I'll take the heat heavy in just a few
4 minutes for being late. You know, I put that in my
5 charge because most of the time I'm ready and it's the
6 lawyers responsible for the delay. But I always don't
7 want jurors to blame the lawyers, but -- so I figure
8 what the heck, I'll tell them to blame me. But the last
9 two times it's been literally my fault and I feel sort
10 of dishonest for telling them the truth.

11 **MR. DAY:** And if you do that I won't tell them.

12 **THE COURT:** Okay. Well, you know, I'm sure if I
13 lied you would get up in opening and say we've been
14 ready here, too.

15 **THE COURT:** All right. So y'all are consenting to
16 the way we are doing the alternate because there is a
17 statute and a rule that are in contravention, but if
18 y'all consent to the first alternate then we are okay.

19 **MS. SIMMONS:** Yes, Your Honor.

20 **MR. DAY:** On behalf of the Defendant, Yes, Your
21 Honor.

22 **THE COURT:** All right. We'll bring them in.
23 Are you gonna swear them?

24 **THE CLERK:** Yes, sir.

25 (The Jury entered the courtroom at approximately

1 2:31 p.m.)

2 THE COURT: What was the juror's name, Wilkie?

3 THE CLERK: Yes, Mr. Chris Wilkie.

4 THE COURT: All right. Ladies and gentlemen,
5 yesterday when I told you that I thought I might be 10
6 or 15 minutes late this morning I had no idea that I was
7 gonna be an hour-and-a-half late. Apparently during my
8 pre-op procedure this morning I asked the wrong question
9 which was misunderstood by a physician's assistant which
10 caused them to take an extra hour, and I've just been
11 climbing out of my skin. I'm sorry.

12 The lawyers have been here ready, everybody else
13 has been here ready waiting on me. I know you have been
14 waiting on me. And I can only apologize. So when this
15 case is over with, I'll come back and speak to you
16 briefly, and I'll explain a little bit more at that
17 time.

18 Now, the first thing I need to tell you is that
19 Mr. Wilkie you are now on the jury. We replaced one of
20 the jurors with you.

21 JUROR: (Nods head.)

22 THE COURT: Again, that's why we have two
23 alternates. As an alternate you need to listen very
24 carefully.

25 The other thing I'll tell you right before we swear

1 you in is that several of those witnesses yesterday, my
2 voice is just about gone. I'm falling apart, in other
3 words, from the knee up but I'm gonna get through as
4 much as I can. I understand if y'all have sneezing and
5 coughing. They've given me this this morning. This is
6 the first time in 11 years they've given me a tissue.

7 But at any point either during my opening or at any
8 time when I'm talking to you if I think I'm getting
9 ready to go into one of those coughing fits, I'm gonna
10 send you out so you don't have to see it. Just
11 understand up front.

12 And I will tell you this again, like I did
13 yesterday, I'm gonna give you a short opening statement
14 after you are sworn in. And I'll tell you if at any
15 time you need a break to raise your right hand. And I
16 mean that. I know that a lot of people are sick and
17 y'all have been stuck there during that hour and a half,
18 so if you need a break just raise your hand.

19 All right. Let's swear the jury in.

20 **THE CLERK:** Ladies and gentlemen, if you would
21 please stand and raise your right hand. (Comply.)

22 You shall well and truly try in true deliverance
23 made between the State of South Carolina and the
24 Defendant, whom you shall have in charge and a true
25 verdict give according to the law and evidence. I will?

1 JURORS: (All say I will.)

2 (Whereupon, the jury was sworn)

3 THE CLERK: Please be seated.

4 THE COURT: All right. Ladies and gentlemen,
5 again, thank you so much for your patience. One of the
6 things that I tell every jury before we start a trial in
7 a civil case or in a criminal case is that one of the
8 greatest concerns that judges now have about juries is
9 the influence of television. I don't watch legal shows.

10 My parents watch them and my mother is often
11 telling me how exciting my life must be because I'm
12 involved in what goes on on television. This is not
13 gonna be as exciting as a legal television show. And
14 I've watched jurors over the last ten years get
15 frustrated at the pace of the courtroom.

16 As you can see this morning, you're not gonna sit
17 for an hour and a half, but there are gonna be times
18 when I just have to send you out. So understand that
19 this case will not be over in an hour with 22 minutes
20 worth of commercials.

21 There are gonna be times when you are frustrated,
22 you're not gonna understand what's going on. You're
23 just gonna at this point have to trust me when I tell
24 you that I have to send you out of the courtroom there's
25 a reason for it. And, again, when this case is over

1 with, I'll come back and talk to you and I'll let you
2 ask me any question you want about this case. But a
3 trial doesn't go by that I don't see one or two jurors
4 get frustrated. And I don't know whether it's
5 television or not, but people seem to think things move
6 quicker than they do. The courtroom now these days is
7 purposely slow.

8 We are here today and tomorrow and quite possibly
9 the next, but we may finish this case up tomorrow, to
10 find the truth. That's what verdict means. And that is
11 a place -- this is a place of honor. And we go as slow
12 as we have to go to make sure that both sides are
13 treated fairly. And so I just wanted to tell you that.
14 I know that there will be times and you're gonna tell me
15 when we talk at the end of this that you are frustrated
16 and I understand that so please don't get frustrated.

17 The other thing I want to tell you before I go into
18 the actual charge is what I just said, if you need a
19 break at any time, even if somebody is testifying or I'm
20 talking to you, just raise your hand and get my
21 attention or get Mr. Bibb's attention and we'll take a
22 break. Okay? I understand that. Whatever your reason
23 is will never be talked about. It's not gonna be a
24 problem.

25 But we will take breaks every hour or hour and a

1 half, but because of my lateness we're probably gonna
2 push it this afternoon. So if any of y'all need a short
3 break that's fine, don't worry about it.

4 All right. Ladies and gentlemen, during the course
5 of this trial you and I have very different roles.
6 You're the judge of the facts. You have to listen to
7 the testimony from this witness stand. You'll review
8 any documents that are introduced and accepted as
9 evidence in this courtroom, and you'll have to determine
10 what the facts are in this case. You are the only 12
11 people plus one alternate who can determine what the
12 facts are.

13 I'm the judge of the law. I have to make rulings
14 on objections, on admissibility of evidence. One of the
15 main things that my law clerk and I will be doing is
16 we'll be e-mailing back and forth the final charge on
17 this case because after you have heard all the testimony
18 and the final arguments from the lawyers, I'll have to
19 literally read to you the law that applies to this case
20 and it might be 30 or 40 pages long. But that's the
21 requirement in South Carolina that I read the law to
22 you. So I'm gonna be ruling on objections, dealing with
23 legal matters, and putting that final charge together.

24 If at any time during the course of this trial you
25 think I believe a witness or disbelieve a witness,

1 disregard it. You are the only judges of the facts in
2 this case. If I turn red and I yell, if I look
3 frustrated and you just look at me and think that I
4 don't believe what somebody is saying, disregard my look
5 because quite frankly whether I agree with them or not
6 believe them should mean nothing to you. You are the
7 only 12 people who can decide what the facts are. And
8 I'm the only person in the courtroom that can decide the
9 law.

10 And so what happens is after you heard all the
11 testimony, you will take the facts as you determine them
12 to be, apply the law as I give them to you, and that's
13 how you reach your verdict. But our roles never cross.
14 So you're gonna have to take the law as I give it to you
15 and you're gonna have to accept the facts as you
16 determine them to be and that's how you reach a verdict.

17 I told the whole group yesterday, but -- and I had
18 the indictment up here at some point yesterday. Here it
19 is. The reason I want to hold this up is this Defendant
20 has pled not guilty to these charges. The fact that he
21 has been indicted by you should never be discussed
22 because the indictment, which you will have in the jury
23 room with you by the way, you will have this piece of
24 paper. This is literally just a piece of paper that
25 starts the process that leads us to today. And quite

1 frankly, you know, the fact that a person has been
2 indicted once they plead not guilty should never be
3 discussed.

4 I used the example yesterday of a robe of
5 righteousness. The reason I use that is judges have
6 been using that for a long time in South Carolina, but
7 it seems to describe what you have to do best to be.
8 Because he has pled not guilty, he has about his
9 shoulders a robe of innocence or righteousness, and that
10 robe stays on his shoulders throughout this trial. He
11 is innocent under the Constitution.

12 The presumption of innocence is an important
13 presumption under the State Constitution and the Federal
14 Constitution. So if he has that innocence or
15 righteousness about his shoulders throughout this trial,
16 he has it about him now. That robe of righteousness or
17 innocence will only be taken from him after you've
18 deliberated and determined that the State has proven
19 their case beyond a reasonable doubt and come back with
20 your verdict.

21 But this presumption of innocence phrase sometimes
22 is treated a little bit lightly. It is a serious
23 Constitutional protection that we have, and this
24 Defendant has pled not guilty so he is not guilty. The
25 State has to prove their case beyond a reasonable doubt.

1 And I will give you a very long definition of beyond a
2 reasonable doubt at the end of the case. But the
3 sentence that tells me what it means is proof that
4 leaves you firmly convinced of the defendant's guilt.
5 And that is what, when you boil it all down, that's what
6 reasonable doubt is.

7 But the State has to prove each and every element
8 of this cause of action beyond a reasonable doubt. And,
9 again, I'll tell you the elements of this charge later
10 during the opening statement, I'm sure the attorneys may
11 tell you a little bit more about the elements. But
12 understand that this indictment should mean nothing to
13 you at this point.

14 Now, in just a few minutes the State and the
15 Defense will give you their opening statement and the
16 opening statements are not evidence and shouldn't be
17 considered evidence from you or by you. The only
18 evidence in this case will come from this witness stand.
19 And one of the main things you have to do during the
20 course of this trial is determine the credibility of
21 witnesses.

22 Credibility under the law in South Carolina simply
23 means believability. You can believe everything that a
24 witness says from this witness stand or you can believe
25 nothing they say. You can believe a portion of what a

1 witness testifies to and disregard the remainder.

2 One of the huge jobs you're gonna have is
3 determining the credibility of these witnesses. And I
4 can't tell you how to do that. You have to do that
5 individually and collectively. But once the testimony
6 comes in and all the testimony is in, the parties will
7 give you a closing statement.

8 The attorneys' statement to you in closing is more
9 of an argument but it's not evidence either. And then
10 at that time I will read to you this long series of
11 charges on the law, and we will deliver the evidence to
12 you and give you a verdict form and that's the first
13 time you should begin discussing this case.

14 As I told you yesterday, y'all are gonna be
15 shuffling back and forth a lot today. And at some point
16 in the next hour you're gonna have to sit back there for
17 15 or 20 minutes. You cannot discuss this case until
18 you've heard all the evidence, and I trust you not to do
19 that. There are some times I know jurors aren't
20 listening. I know y'all are listening to me. Don't
21 discuss the case until you have heard all the evidence.

22 And so when you go back you can talk about anything
23 you want. You can talk about Peyton Manning's three
24 interceptions in the first eight minutes last night or
25 anything else you want, but don't discuss this case.

1 All right?

2 The last thing I want to tell you before the
3 lawyers come out is there may be some publicity on this
4 trial. I'm ordering you and asking you, please don't
5 read anything in the paper, listen to anything on the
6 radio or watch anything on television that may mention
7 this trial. You're gonna know more than anybody. As I
8 told you yesterday, and that's, I try to be honest with
9 jurors, you really will know more than anybody. So
10 please don't read anything or watch anything or listen
11 to anything in the media about this case. It can only
12 hurt you.

13 And we're down to one alternate. I don't want to
14 take any more jurors off. But, you know, if you
15 inadvertently see something, let us know. I understand
16 how hard that is.

17 All right. And ladies and gentlemen, again lastly
18 if you need a break raise your hand. And for the last
19 time I'll apologize. I promise you that I won't be late
20 tomorrow. But I am gonna tell you that after the
21 opening statements we'll immediately have to take a
22 break because at that point in the trial there are some
23 matters that I have to take up outside of your presence.
24 I want to make it as short as possible, but this is
25 gonna be the longest time you'll be back there in the

1 jury room other than waiting on me, okay? All right.

2 Thank you very much for your patience.

3 Yes, ma'am?

4 MS. SIMMONS: Thank you, Your Honor. May it please
5 the Court?

6 THE COURT: Sure.

7 MS. SIMMONS: Mr. Day.

8 Good afternoon ladies and gentlemen. As I told you
9 yesterday, my name is Lindsey Simmons and I am an
10 Assistant Solicitor here in the Oconee County
11 Solicitor's Office. I grew up in Walhalla and in 2005
12 when Solicitor Wagner was elected, it gave me an
13 opportunity to come back where I grew up and practice
14 law.

15 I want to thank you for your service today. I know
16 there are probably a million things that you would
17 prefer doing this other than this, but your job is a
18 very important one over the next couple of days. And we
19 picked the 13 of you because we had faith you could
20 carefully make a decision based on what you heard in
21 that jury-box.

22 It's an important job and you brought with you the
23 most important tool for a jury, your common sense. I
24 simply ask that you use your common sense, apply it to
25 the evidence that you see in this case.

1 The Defendant in this case is charged with criminal
2 sexual conduct with a minor in the first degree. It's
3 not something that most people are comfortable talking
4 about. What that means is that I have to prove to you
5 that the Defendant committed a sexual battery on a child
6 that's less than 11 years old.

7 A sexual battery can be a number of things. Under
8 our law a sexual battery can be penetration of the
9 vagina, anal intercourse, penetration by an object, oral
10 sex. All of those things are sexual battery. In this
11 case I anticipate the evidence will be that the
12 Defendant used his fingers to penetrate the vagina of an
13 eight-year-old girl.

14 This is, as the Judge told you, this is not *CSI*,
15 it's not *Forensic Files*, there is not DNA evidence in
16 this case. You will not hear anything about that and
17 it's not as exciting as *Law & Order Special Victims*
18 *Unit*. But you are gonna hear about a little girl named
19 VICTIM. She's nine years old now, and from that
20 witness stand she's gonna tell you that back in October
21 of 2011 that the Defendant used his hands and put his
22 fingers inside her vagina.

23 She knows the Defendant because VICTIM is an
24 adopted child. She was adopted by Ms. Christine
25 Longwith back in late, I think, 2007. But VICTIM has

1 been living with Ms. Longwith since she was 18 months
2 old. For all practical purposes it's her mama. But
3 Ms. Longwith is also the mother of the Defendant.
4 That's how VICTIM knows him. That's how he had access
5 to her. She trusted him, he's her brother. She's not
6 perfect, she's nine years old and she's gonna do her
7 best to tell you what happened back in October of 2011.

8 You're also gonna hear from Christine Longwith,
9 VICTIM and the defendant's mother. She is going to
10 tell you about what she saw at her home in the middle of
11 October of 2011.

12 You also are gonna hear from Dr. Sallie Carter.
13 She works with the Foothills Alliance for Children and
14 she conducted a medical exam of VICTIM in March of
15 2012. She is going to tell you about medical evidence
16 that she found that would be indicative that VICTIM had
17 suffered a sexual trauma.

18 At the end of this case I'm gonna ask that you
19 carefully consider all of the evidence that is put forth
20 toward you. And I do have to prove to you beyond a
21 reasonable doubt that this crime happened. It is a
22 burden I welcome. We are up for the challenge. At the
23 end of this case, probably tomorrow, I am going to have
24 the opportunity to speak to you again. And when I speak
25 to you for the final time I'm gonna ask you to find the

1 Defendant, Steven Frost, guilty of criminal sexual
2 conduct with a minor in the first degree. Thank you.

3 THE COURT: Yes, sir.

4 MR. DAY: Thank you, Your Honor.

5 I'm Danny Day, and as I said before, I represent
6 Steven Frost sitting here. This is his first day in
7 court. On this charge, he has never been given the
8 opportunity to have the charges against him aired in
9 public to determine whether or not this charge is
10 correct.

11 So now we have that opportunity and as the
12 Solicitor said, it's her burden. In this case,
13 Mr. Frost can go to sleep. He doesn't have to be in the
14 courtroom or anything else. Our law is very specific.
15 You are innocent until you are proven guilty. He sits
16 before you today an innocent person, and the State must
17 prove his innocence. As the Judge will explain to you
18 and has been talking about with the burden of proof and
19 beyond a reasonable doubt so that you firmly believe
20 that he's guilty and only at that point does it change.

21 This is a very terrible case. You cannot listen to
22 the charge or the crime itself without cringing.
23 Everyone feels that way, and that's certainly
24 understandable. We would expect that of you. We all
25 do. He is charged with criminal sexual conduct of an

1 eight-year-old girl. There's just no way you can say
2 that without it sounding absolutely horrible. That's
3 why it's so very important that the evidence be such
4 that you believe that. That you believe it occurred;
5 that you believe the evidence is sufficient for you to
6 say, yes, he's guilty, without any hesitation.

7 And that's not always easy because our law says
8 that you must do this in your collective wisdom and you
9 must do so individually. So I am here to make sure that
10 Steven Frost gets his day in court because he says he's
11 not guilty. By gosh, that's why we're here because he
12 says he's not guilty.

13 And you're gonna be looking at the facts and you
14 must look at all of those. As the Judge said, the
15 credibility of the witness is up to you. You've got to
16 put it all together. The facts of this case, as the
17 Solicitor said, that sometime in the middle of October
18 somewhere, they say, from the 1st of October to the 1st
19 of November, according to the indictment that this
20 occurred.

21 You'll also hear testimony that nobody else heard
22 about it until February, even though the Solicitor says
23 there's a witness that supposedly saw it when it
24 happened and you're gonna have to get beyond that. How
25 in the world did that occur? There's a lot of things

1 here you're gonna have to look at. I only ask you to
2 pay close attention, not be swayed by anything said
3 outside this courtroom. And if you give that close
4 attention, you'll see that the evidence is not there.
5 It sounds bad, it looks bad, but he didn't do this and
6 that's what he has said.

7 We appreciate your doing this. This is not gonna
8 be easy. We're going to be using language that quite
9 honestly will embarrass you. I'm an old guy, I've been
10 around, but I tell you, some of the language that we
11 will have to use and some of the descriptions we'll have
12 to use is embarrassing. I find it most difficult. I
13 can tell you that.

14 I believe that if my mother heard me say some of
15 the things that we're going to have to say in this
16 courtroom that she would slap me, but we have to do it.
17 We don't have any choice. So I ask you to get beyond
18 that, look at it very closely, and I think you'll
19 understand that in this case Steven Frost is not guilty
20 of this heinous crime. Thank you.

21 **THE COURT:** All right. Ladies and gentlemen, as
22 I've said, unavoidably at this point in trial I have to
23 send you out because I have to take testimony outside
24 your presence. This is gonna take 15 or 20 minutes and
25 I'm just gonna tell you up front.

1 Do we have any smokers on the jury? Really? I
2 knew somebody would raise their hand. I don't want you
3 climbing the walls back there so Mr. Bibb have you got
4 somebody to take them out there and smoke? We'll let
5 you smoke because it's gonna take us that long. And I
6 apologize. But please don't discuss this case. We'll
7 bring you in the second I can bring you back in.
8 Thanks.

9 (Whereupon, the Jury left the courtroom at
10 approximately 2:55 p.m.)

11 THE COURT: Okay. Do you want to proffer this?

12 MS. SIMMONS: Yes, Your Honor.

13 THE COURT: Okay. I didn't mean to throw myself on
14 on the sword too much, but I'm sure I'll get questions
15 from them. Okay. You can call your first witness.

16 PROFFER TESTIMONY:

17 MS. SIMMONS: Thank you. Judge, the State calls
18 VICTIM I .

19 THE COURT: Okay.

20 (Whereupon, the Witness comes forward.)

21 THE CLERK: If you'll place your left hand on the
22 Bible and raise your right hand. (Complies.)

23 Do you solemnly swear or affirm the testimony you
24 give the Court will be the truth, the whole truth, and
25 nothing but the truth?

1 THE WITNESS: Yes, ma'am.

2 THE CLERK: Please be seated.

3 THE COURT: Yes, ma'am.

4 VICTIM ,

5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. SIMMONS:

8 Q. VICTIM , we just have a few questions for now that
9 both sides are gonna ask you and the Judge may ask you
10 some questions, okay?

11 A. Uh-huh.

12 Q. And I need you to say yes or no because this lady
13 here is taking down everything you say.

14 VICTIM , can you spell your name for her?

15 A. VICTIM

16 Q. And your last name?

17 A. VICTIM

18 Q. Thank you. VICTIM , how old are you?

19 A. Nine.

20 Q. Okay. And what grade are you in?

21 A. Fourth.

22 Q. And where do you go to school?

23 A. JMB.

24 Q. And what is JMB?

25 A. James M. Brown Elementary.

- 1 Q. Okay. And where is that?
- 2 A. It's in Walhalla.
- 3 Q. Okay. What kind of things do you like to do at
- 4 school?
- 5 A. Math, games, and reading.
- 6 Q. And reading?
- 7 A. Uh-huh.
- 8 Q. So you can read and write?
- 9 A. Uh-huh.
- 10 Q. Okay. And you need to say yes or no.
- 11 A. Yes.
- 12 Q. Okay. What kind of things do you like to do
- 13 outside of school?
- 14 A. Play on the slide, run.
- 15 Q. Do you play any sports?
- 16 A. Basketball.
- 17 Q. Okay. VICTIM, do you know the difference between
- 18 right and wrong?
- 19 A. Yes.
- 20 Q. Can you tell me?
- 21 A. If you do something right that mean it's good and
- 22 if you do something wrong that means it's bad.
- 23 Q. Is it right or wrong if I went to the convenience
- 24 store down the street and stole a candy bar and didn't
- 25 pay for it?

1 A. No.

2 Q. Is that right or wrong?

3 A. Wrong.

4 Q. Okay. Do you know the difference between the truth
5 and a lie?

6 A. Yes.

7 Q. Can you tell me?

8 A. If you, if you tell the truth that means that you
9 didn't lie, but if you tell a lie that means that you
10 did something but you didn't admit it.

11 Q. Okay. If I told you that the jacket I'm wearing is
12 red is that the truth or a lie?

13 A. Lie.

14 Q. Okay. If I told you the jacket I'm wearing is
15 gray, is that the truth or a lie?

16 A. The truth.

17 Q. Okay. Do you promise today to only talk about real
18 true things that actually happened?

19 A. Yes.

20 Q. And you promise not to tell any lies in this
21 courtroom?

22 A. Yes.

23 MS. SIMMONS: Please answer any questions -- this
24 is Mr. Day and he's gonna ask you a couple questions,
25 okay?

1 CROSS-EXAMINATION

2 BY MR. DAY:

3 Q. VICTIM , I just have a few questions, if I may.

4 Okay? If you don't understand any of my questions just
5 say so, it's all right. Don't worry about it. If you
6 don't understand it, probably nobody else does either so
7 don't be afraid to say that. Okay?

8 A. Okay.

9 Q. VICTIM , how many people have you talked to about
10 what you are going to say today?

11 A. Um, two.

12 Q. Two? I'm sorry. Did I hear it correctly?

13 A. What was the question?

14 Q. How many people have you spoken to about what you
15 are supposed to say today? If you don't have a number,
16 if you want to name them, that's okay, too.

17 A. None.

18 Q. None? Okay. And do you understand why we're here
19 today?

20 A. Yes.

21 Q. Okay. And has anyone spoken to you about why you
22 are here today?

23 A. No.

24 Q. And to make sure I understand -- well, that didn't
25 make any sense either, even as I was trying to say it.

1 Where did you say you go to school?

2 A. At James M. Brown.

3 Q. At James M. Brown. Okay. And at your school do
4 they have any classes or what teachers tell you about to
5 tell the truth and not to tell the truth?

6 A. Uh-huh, yes.

7 Q. They do have some classes like that?

8 A. (Nodded head.)

9 Q. Well, that's good. All right. And you know today
10 you are supposed to tell just the truth?

11 A. Yes.

12 Q. Okay.

13 MR. DAY: I think that's all the questions I have,
14 Your Honor.

15 THE COURT: Okay. Any follow-up?

16 MS. SIMMONS: Just a couple, Judge.

17 THE COURT: Okay.

18 REDIRECT EXAMINATION

19 BY MS. SIMMONS:

20 Q. VICTIM, do you know why we are in court today?

21 A. Uh-huh. Yes.

22 Q. Okay. And Mr. Day I think may have asked you a
23 question that was confusing to you. Have you talked to
24 people before court about what happened to you?

25 A. Yes.

1 Q. Okay. And how many people have you talked to about
2 that, if you can give us a number?

3 A. Two.

4 Q. Okay. And have you, and have you also been to
5 counseling?

6 A. Yes.

7 Q. Okay. Would that make three people?

8 A. Yes.

9 Q. Okay. So who are the names of the people you have
10 talked to now?

11 A. Angie -- Angie.

12 Q. And you may not know the name. Did you talk to
13 another lady, though?

14 A. Um, yes.

15 Q. Do you remember going to Anderson to do that, to
16 the big white house?

17 A. Uh-huh, yes.

18 Q. Okay. So that would be the two people you have
19 talked to about this?

20 A. Yeah.

21 Q. And you have also talked to me?

22 A. Yeah.

23 Q. Okay.

24 MS. SIMMONS: Thank you, VICTIM, I just wanted to
25 clear that up.

1 THE COURT: I'll allow it if you have another
2 question.

3 MR. DAY: No, Your Honor, I think I can still,
4 based on what she said so far. I don't agree. I'll
5 wait and see if the Court had any questions.

6 THE COURT: Well, I do.

7 VICTIM , you need to understand something. You
8 can, when you are asked a question in here, it's okay to
9 say you don't know if you don't know, okay? I mean you
10 can answer yes or you can answer no or you can answer
11 that you don't know. Do you understand that?

12 THE WITNESS: Yes.

13 THE COURT: And if you're asked a question in here
14 by anybody, the lawyers, are you gonna tell the truth?

15 THE WITNESS: Uh-huh.

16 THE COURT: Do you understand that that's what you
17 have to do?

18 THE WITNESS: Yes.

19 THE COURT: Okay. And if I let you testify, are
20 you gonna tell the truth?

21 THE WITNESS: Yes.

22 THE COURT: Okay.

23 All right. I don't have any other questions. I
24 just wanted her to understand she can answer I don't
25 know. I think that's my main concern.

1 MR. DAY: Okay. I might have just one followup on
2 that one, Your Honor. Just brief.

3 THE COURT: Okay.

4 RECROSS-EXAMINATION

5 BY MR. DAY:

6 Q. VICTIM, do you know what an oath is?

7 A. No.

8 MR. DAY: Okay. No more questions.

9 THE COURT: All right. VICTIM, do you understand
10 that before you testify they're gonna place your hand on
11 the Bible and you're gonna basically swear to tell the
12 truth. Do you understand that?

13 THE WITNESS: Yes.

14 THE COURT: And do you understand that you're gonna
15 have to do that, place your hand on the Bible and raise
16 your right hand and tell the truth? You do understand
17 that?

18 THE WITNESS: (Nodded head.)

19 THE COURT: You have to say yes because she's
20 taking everything down.

21 THE WITNESS: Yes.

22 THE COURT: All right. Did you know that that was
23 an oath or you just didn't know that was called an oath?

24 THE WITNESS: No.

25 THE COURT: You didn't know?

1 THE WITNESS: (Shook head.)

2 THE COURT: Okay. And that's what I'm saying. You
3 can answer I don't know. If you don't know the answer
4 to something, you just say I don't know, okay? But you
5 knew that you were gonna have to put your hand on the
6 Bible and raise your right hand and swear to tell the
7 truth; is that correct?

8 THE WITNESS: Yes.

9 THE COURT: Okay. Anything else?

10 MS. SIMMONS: Judge, we would just move for a
11 finding of competency of the witness. The Defendant
12 made no pretrial motions for an independent evaluation
13 of her competency. I believe that she, given her age
14 and the questions she's answered today, she is competent
15 to tell her story.

16 THE COURT: Okay. You can put anything you need to
17 on the record.

18 MR. DAY: Yes, Your Honor. We would, of course,
19 submit she is not. One, she answered the questions that
20 she hadn't spoken to anyone prior to this and it took
21 the Solicitor to redirect that to her to get her to go
22 back and change her answer. Second, she doesn't
23 understand what an oath is. I submit to the Court it
24 does not rise to the level of competency to be a witness
25 in court and as such we would submit that she is

1 incompetent to testify in this matter.

2 THE COURT: Okay. All right. You're protected for
3 record, but I'm gonna make a finding she is competent.
4 Mainly she said she's gonna tell the truth. And I've
5 had highly educated doctors who have had to have people
6 redirect them. I'm sure, Mr. Day, you have redirected
7 witnesses before.

8 And the issue of the oath, I think she understood
9 what it was. So I'm gonna find that she's competent to
10 testify, okay?

11 All right, VICTIM, you can step down. Thank you
12 very much.

13 (Whereupon, Witness leaves witness stand.)

14 THE COURT: All right. Is there anything we need
15 to take up before we bring them back in?

16 MS. SIMMONS: No, Your Honor.

17 THE COURT: All right. Well, this went quicker
18 than I thought so I'm gonna make sure that they're --
19 we'll stand at ease for just a second.

20 (Whereupon, Judge briefly leaves bench.)

21 THE COURT: Okay. Are you all ready?

22 MS. SIMMONS: Yes, Your Honor.

23 MR. DAY: Yes, Your Honor.

24 THE COURT: Okay. He can bring them all back.

25 (The Jury entered the courtroom at approximately

1 3:19 p.m.)

2 THE COURT: Thank you ladies and gentlemen.

3 Solicitor, call your first witness.

4 MS. SIMMONS: Thank you, Your Honor. The State
5 calls VICTIM

6 THE COURT: All right.

7 (Whereupon, Witness comes forward.)

8 THE CLERK: Please place your left hand on the
9 Bible and raise your right hand. (Complies.)

10 Do you solemnly swear or affirm the testimony you
11 give the Court to be the truth, the whole truth and
12 nothing but the truth?

13 THE WITNESS: Yes.

14 THE CLERK: Please be seated.

15 THE COURT: Yes, ma'am.

16 MS. SIMMONS: Thank you, Your Honor.

17 VICTIM
18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. SIMMONS:

21 Q. Good afternoon, VICTIM . . . How old are you?

22 A. Nine.

23 Q. Okay. And where do you go to school?

24 A. James M. Brown.

25 Q. Is that an elementary school?

- 1 A. Yeah.
- 2 Q. And when is your birthday?
- 3 A.
- 4 Q. Of what year?
- 5 A. (No response.)
- 6 Q. Do you know?
- 7 A. No.
- 8 Q. How old are you?
- 9 A. Nine.
- 10 Q. Okay. And do you know the difference between right
- 11 and wrong?
- 12 A. Yes.
- 13 Q. Can you tell me that?
- 14 A. If you do something right it is good and if you do
- 15 something wrong it's bad.
- 16 Q. Okay. If I stole a candy bar without paying for it
- 17 from the store, would that be right or wrong?
- 18 A. Wrong.
- 19 Q. Okay. And do you know the difference between the
- 20 truth and a lie?
- 21 A. Yes.
- 22 Q. Can you tell me the difference?
- 23 A. If you tell the truth, that's good and if you tell
- 24 a lie that's bad.
- 25 Q. What happens if you lie?

- 1 A. You get in really bad trouble.
- 2 Q. Uh-huh. And do you promise today to only talk
3 about the truth and things that really happened?
- 4 A. Yes.
- 5 Q. Okay. Who do you live with now?
- 6 A. My mom, dad, me, and my two brothers.
- 7 Q. Okay. And how old is your younger brother?
- 8 A. Eight.
- 9 Q. Okay. And what's your mom's name?
- 10 A. Christine.
- 11 Q. Do you have any other brothers that don't live with
12 you?
- 13 A. No.
- 14 Q. Okay. So your brother, how old is your younger
15 brother?
- 16 A. Eight.
- 17 Q. Okay. And he's your brother by blood?
- 18 A. Yes.
- 19 Q. Okay. And how do you know the Defendant, Steve
20 Frost, the man sitting right there?
- 21 A. (No response.)
- 22 Q. Take your time.
- 23 A. 'Cause that's her son.
- 24 Q. Okay. That's her son?
- 25 A. Yeah.

1 Q. And her is?

2 A. My mom.

3 Q. Okay.

4 MS. SIMMONS: And, Judge, let the record reflect
5 that she has identified the Defendant Steven Frost.

6 THE COURT: So reflected.

7 MS. SIMMONS: Thank you, Judge.

8 BY MS. SIMMONS:

9 Q. This time last year, last fall before Halloween,
10 what grade were you in last year?

11 A. Third.

12 Q. And do you remember how old you were then?

13 A. Yes.

14 Q. How old were you?

15 A. Eight.

16 Q. And if I ask you a question that you don't know the
17 answer or you don't understand, make sure you tell me,
18 okay?

19 A. Okay.

20 Q. Back last fall, did -- was Steve Frost around your
21 house some?

22 A. Yes.

23 Q. Okay. How much time was he there? Was he living
24 there or no?

25 A. No.

1 Q. Okay. How much time do you think he spent there?

2 A. A little.

3 Q. Do you remember a time before Halloween when he was
4 around in the month of October?

5 A. Yes.

6 Q. When he came over, did he come over during the day
7 or did he come over and sleep, too?

8 A. Both.

9 Q. And when he slept at your house, where did he
10 sleep?

11 A. In my room.

12 Q. And where did you have to sleep then?

13 A. In the living room.

14 Q. Okay. Do you remember in that time frame being
15 alone with him in your bedroom?

16 A. Yes.

17 Q. Okay. Why did you go in your bedroom alone with
18 him?

19 A. He wanted me to change the movie.

20 Q. Okay. Why could he not change the movie himself?

21 A. (No response.)

22 Q. Is it your DVD player?

23 A. Yes.

24 Q. Okay. So you know how to work it?

25 A. Yeah.

1 Q. When you went in, did you go in there and change
2 the movie?

3 A. Yes.

4 Q. Where was Steve when you went in your bedroom and
5 changed the movie?

6 A. On the bed.

7 Q. Okay. After you changed the movie, what happened?

8 A. He told me to come here.

9 Q. Okay. And what happened after that?

10 A. (No response.)

11 Q. Did you go there?

12 A. Yes.

13 Q. Okay. Where did, where did you end up in your
14 room?

15 A. Like kind of on the side of the bed.

16 Q. Okay. Why did he want you to come over there?

17 A. I don't know.

18 Q. What happened once you went over there to the side
19 of your bed?

20 A. (No response.)

21 Q. Take your time.

22 A. He told me to come closer.

23 Q. And when you went closer what happened?

24 A. He pulled out his -- private area.

25 Q. Okay. And his private area, is that a private area

- 1 in his pants or?
- 2 A. Yes.
- 3 Q. Okay. What did his private area look like?
- 4 A. Um, I forgot.
- 5 Q. And that's a, that's a good answer. When he showed
- 6 you his private area, what did he say?
- 7 A. Nothing.
- 8 Q. Did he try to get you to touch his private area?
- 9 A. Yes.
- 10 Q. Okay. Did you touch it?
- 11 A. No.
- 12 Q. What do you call your private areas?
- 13 A. The wrong spot.
- 14 Q. The wrong spot?
- 15 A. Yeah.
- 16 Q. Okay. And are your privates -- is the wrong spot,
- 17 is that underneath your panties?
- 18 A. Yes.
- 19 Q. Okay. Did he, did anything happen with your wrong
- 20 spot after he showed you his privates?
- 21 A. Yes.
- 22 Q. What happened?
- 23 A. He stuck his hand down there and started moving it
- 24 around.
- 25 Q. Okay. When he stuck his hand down there, was that

- 1 on top of your panties or underneath your panties?
- 2 A. Under.
- 3 Q. Okay. And was his hand in your wrong spot or on
- 4 your wrong spot? Was it inside or outside?
- 5 A. Inside.
- 6 Q. Okay. When his fingers were inside you, did it.
- 7 hurt?
- 8 A. Yes.
- 9 Q. And was it in there for a second or did they move
- 10 around a lot?
- 11 A. Moved around, moved around.
- 12 Q. It hurt -- how long did it hurt after that day,
- 13 your private area?
- 14 A. Like a day.
- 15 Q. Did he say anything to you while his hand was
- 16 inside your private area, your wrong spot?
- 17 A. Yes.
- 18 Q. What did he say?
- 19 A. Does that feel good?
- 20 Q. And did you say anything back to him?
- 21 A. Yes.
- 22 Q. What did you say?
- 23 A. No.
- 24 Q. While this was happening, did anyone walk in the
- 25 room or see what he was doing?

- 1 A. Yes.
- 2 Q. Who was that?
- 3 A. My mom.
- 4 Q. What did your mom see when she came in?
- 5 A. She said, what are you doing?
- 6 Q. And what did he say?
- 7 A. Nothing.
- 8 Q. Did you later tell your mom what had happened that
- 9 day?
- 10 A. Yes.
- 11 Q. When did you do that?
- 12 A. Right after she walked in, she pulled me and took
- 13 me outside and I told her.
- 14 Q. Okay. And did you tell her what you told me here
- 15 today?
- 16 A. Yes.
- 17 Q. Did you, did you have to go talk to some other
- 18 people in Anderson about what happened to you at a big
- 19 white house?
- 20 A. Yes.
- 21 Q. And did you also have to go to the doctor?
- 22 A. Yes.
- 23 Q. Okay. So just to make sure I understand, sometime
- 24 in October of last year, Steve Frost called you into
- 25 your room to change a movie?

1 A. Yes.

2 Q. And he put his hand inside your wrong spot?

3 A. Yes.

4 Q. Okay. Give me just one second, okay?

5 (There was a pause in the proceedings.)

6 (Discussion off the record.)

7 MS. SIMMONS: VICTIM, I appreciate you talking to
8 me. And this is Mr. Day and he's gonna ask you just a
9 few questions, okay? Thank you.

10 CROSS-EXAMINATION

11 BY MR. DAY:

12 Q. Okay, VICTIM. I'm gonna ask you questions that
13 may be a little embarrassing, okay?

14 A. Okay.

15 Q. I'm not trying to embarrass you and I don't want to
16 hurt your feelings, okay, so if you don't understand
17 what I'm asking you, say so.

18 A. Okay.

19 Q. It's okay. All right?

20 You said that Steve was on the bed and I think you
21 said something about a movie?

22 A. Yes.

23 Q. And what was it he wanted you to do?

24 A. Change it.

25 Q. Okay. What, just put the CD in or whatever it is?

1 A. Yeah, put a different CD in.

2 Q. Okay. And I think you -- I want to make sure here.
3 I think you said that he touched you. And, again, I'm
4 not trying to embarrass you, but I believe you said
5 touched you in your wrong spot?

6 A. Yes.

7 Q. When you spoke to the lady over in Anderson in the
8 room, you know, where the camera was ---

9 A. Yes.

10 Q. --- and the thing drawing, I believe you told her
11 that you called that your privacy?

12 A. Yeah.

13 Q. Okay. So why is it now that you have changed that?

14 A. I forgot what the other one, what the other name
15 was.

16 Q. And you said something in response to one of the
17 questions from Ms. Simmons that you thought it was in
18 October.

19 A. Yes.

20 Q. Is that what you remember now?

21 A. Yes.

22 Q. When you spoke to the lady in Anderson, you said
23 you didn't know when it happened; isn't that right?

24 A. Yes.

25 Q. Okay. And you never said anything to her about

1 Halloween or October or anything, did you?

2 A. Huh-uh.

3 Q. Okay. And now you're saying it was October, is
4 what you're telling us today?

5 A. Yes.

6 Q. And I also understand your mom came in the room?

7 A. Uh-huh.

8 Q. And y'all went out of the room?

9 A. Yes.

10 Q. And you told her what happened, you said?

11 A. Yes.

12 Q. Same thing you told -- make sure -- you're
13 answering quick on me. It's all right. I know you're
14 nervous, okay?

15 What you're telling us here today is what you
16 remember telling your mom that day; is that right?

17 A. Yes.

18 Q. Okay. And then you spoke to others?

19 A. Yes.

20 Q. I think that's what you said, okay?

21 How long after this day that you just talked about
22 did you talk to these other people?

23 A. Um...

24 Q. As best you can remember.

25 A. (No response.)

1 Q. Was it, say, a week later?

2 A. Yeah.

3 Q. Okay. And when Steve was there at this time when
4 you say this happened, he was there every day for a
5 while there, wasn't he?

6 A. Yeah.

7 Q. Okay. And I think your mom was letting him use
8 your room and you slept, what was it, in the living
9 room?

10 A. In the floor in the living room.

11 Q. All right. Okay. So Steve -- there wasn't anybody
12 else in the room but Steve that wasn't sleeping in
13 there, were they?

14 A. No.

15 Q. Okay. All right.

16 MR. DAY: VICTIM, thank you very much.

17 THE COURT: Any other questions from the State?

18 MS. SIMMONS: Beg the Court's indulgence for a
19 moment.

20 THE COURT: Sure.

21 MS. SIMMONS: Nothing further from this witness,
22 Judge.

23 THE COURT: All right. VICTIM, you can step down.
24 Thank you.

25 (Whereupon, The Witness left the witness stand.)

1 THE COURT: All right. You can call your next
2 witness.

3 MS. SIMMONS: The State calls Dr. Sallie Carter.
4 (There was a pause in the proceedings.)

5 MS. SIMMONS: Judge, the doctor was in the hallway.
6 May I check on her?

7 THE COURT: Sure.

8 MS. SIMMONS: Thank you.

9 (Whereupon, Witness came forward.)

10 THE CLERK: Place your left hand on the Bible and
11 raise your right hand. (Complies.)

12 Do you solemnly swear or affirm the testimony you
13 give the Court will be the truth, the whole truth, and
14 nothing but the truth?

15 THE WITNESS: I do.

16 THE CLERK: Please be seated.

17 THE COURT: Yes, ma'am. You can start.

18 MS. SIMMONS: Thank you, Judge.

19 DR. SALLIE CARTER,

20 having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. SIMMONS:

23 Q. Good afternoon, Dr. Carter.

24 A. Good afternoon.

25 Q. Could you spell your first and last name for the

1 record?

2 A. Sallie, S-a-l-l-i-e, Carter, C-a-r-t-e-r.

3 Q. And Dr. Carter, where are you from?

4 A. Well, I'm from Anderson, South Carolina now.

5 Q. And are you a licensed physician in this state?

6 A. I am.

7 Q. And when did you receive your license to practice
8 medicine?

9 A. In 19 -- well, when I first received it was in
10 1986, but I've been in Anderson since 1989.

11 Q. And you have a license to practice law -- I mean,
12 not law, medicine in South Carolina?

13 A. I do.

14 Q. What, medical college did you attend?

15 A. Medical College of Georgia.

16 Q. And, and you've practiced in Anderson for how long?

17 A. Since 1989.

18 Q. During your years in practice in Anderson, have you
19 ever had occasion to treat and examine victims of sexual
20 assault?

21 A. I have.

22 Q. And how many times would you estimate you've done
23 that?

24 A. Probably five or 600 times.

25 Q. And do you have specialized training in the area of

1 sexual assault?

2 A. I do.

3 Q. And pediatrics?

4 A. Yes.

5 Q. Could you tell us a little bit about your
6 specialized training?

7 A. There's a training program that's throughout the
8 country in several different university centers for
9 evaluation of children who have had sexual abuse. And
10 I've had these trainings in Minneapolis, in Atlanta, and
11 in Charleston and various other centers.

12 Q. And how long have you been conducting sexual
13 assault examinations at Foothills Alliance?

14 A. Since 2002.

15 MS. SIMMONS: Judge, at this time we would move
16 Dr. Carter in as an expert on child sex abuse.

17 THE COURT: Any objection?

18 MR. DAY: Let me make sure I understand this. She
19 is an expert in doing examinations, is that what you're
20 saying?

21 MS. SIMMONS: May I ask Dr. Carter?

22 THE COURT: Right.

23 BY MS. SIMMONS:

24 Q. Have you been qualified as an expert previously in
25 child sexual abuse?

1 A. Yes.

2 Q. Okay. And how many times would you estimate that
3 you have testified?

4 A. 25 to 35 times.

5 Q. As an expert in that field?

6 A. Yes.

7 MR. DAY: I'm just trying to -- I didn't hear what
8 she said. Expert in?

9 THE COURT: Yeah, repeat your question. I think
10 somebody coughed at the end of your thing. That's not a
11 problem.

12 MS. SIMMONS: Judge, I moved to declare Dr. Carter
13 an expert in pediatric child sex abuse, in child sex
14 abuse examinations.

15 THE COURT: Child sex abuse examinations?

16 MR. DAY: Yes.

17 THE COURT: All right. She's so admitted without
18 objection.

19 MS. SIMMONS: Thank you.

20 BY MS. SIMMONS:

21 Q. And Dr. Carter, you work with the Foothills
22 Alliance?

23 A. I do. Well, let me clarify. I work for the South
24 Carolina Department of Mental Health. I'm under
25 contract with the Foothills Alliance through my job at

1 the South Carolina Department of Mental Health.

2 Q. Thank you for clarifying that. On March the 5th of
3 2012 did you have occasion to see VICTIM ! in
4 your professional capacity?

5 A. I did.

6 Q. And had your center previously seen her for a
7 forensic interview?

8 A. I don't know.

9 Q. Where did you see her?

10 A. I saw her at the Child Advocacy Center which is
11 part of the Foothills alliance.

12 Q. And do you recall who was with her?

13 A. I have documented that an aunt was with her and the
14 name here is on the record as Lucille Cooper.

15 Q. Thank you. What was VICTIM 's condition at the
16 time when you examined her?

17 A. She was a healthy, alert, I think eight-year-old
18 child.

19 Q. Were you given any medical history of VICTIM ?

20 A. Only, only from the aunt.

21 Q. Okay. And what did that -- what was the medical
22 history you were given?

23 A. I was told she had been treated for precocious
24 puberty and that she had some behavioral problems, had
25 been in counseling for that. And that she had some

1 problems with frequent urination and this had been quite
2 long-standing.

3 Q. And the precocious puberty, would that explain why
4 she's so tall?

5 A. Well, yes. Children with precocious puberty do
6 grow faster than their peers. That's one of the reasons
7 that we treat it because although they grow faster when
8 they're young, they do not reach normal adult height
9 because their bones -- the bone growth plates fuse too
10 early so that they don't attain normal adult height even
11 though they're initially taller and more mature than
12 their peers.

13 Q. And did VICTIM appear to have any behavioral
14 difficulties during her exam with you?

15 A. She was very cooperative during the exam. I did
16 not observe any behavioral difficulties.

17 Q. Did you have, did you have any specifics of the
18 allegations or a general allegation when you conduct
19 these exam?

20 A. General. I make it a point not to read the
21 forensic and not to read any of the law enforcement
22 descriptions because I think it's better to come to the
23 exams with a naive point of view and simply describe
24 what we see.

25 Q. And what kind of examination did you conduct on

1 .VICTIM ?

2 A. Well, as I say, she was eight and so I conducted a
3 general pediatric exam, which included the vital signs,
4 weight and height. And just a head to toe exam,
5 including a more extensive exam of the external
6 genitalia. Typically in a child we don't do a speculum
7 exam without, without a strong indication because it
8 would be traumatic for a child. And sometimes if a
9 speculum exam is required we actually do it under
10 general anesthesia.

11 Q. When you examined .VICTIM , examined .VICTIM 's
12 private parts, what did you find?

13 A. Um, she had some mild estrogen stimulation of the
14 mucosa. The mucosa is a specialized type of tissue
15 which lines body tubes and openings. It lines the nose,
16 the mouth, the intestines and the genital area. And
17 when a child has estrogen stimulation like going through
18 puberty or being an adult, there are some changes in the
19 mucosa of the genital area. But aside from that, she
20 had a healed transsection of the hymen between five and
21 6:00. She also had a scar on the posterior fourchette.

22 Q. And, Dr. Carter, most people think there are pretty
23 boring concepts to all this. Would you mind drawing for
24 us what a normal child at that age looks like versus
25 what you saw?

1 A. Yes. I would not mind.

2 Q. I'm gonna give you a big piece of paper.

3 Judge, may the witness step down?

4 THE COURT: Any objection?

5 MR. DAY: No objection to her stepping down, no.

6 THE COURT: Dr. Carter, you may step down and draw
7 with that if you want.

8 Any objections from the Defense for her drawing
9 this for demonstrative purposes?

10 MR. DAY: No, Your Honor.

11 BY MS. SIMMONS:

12 Q. Can you show us what a, what a normal exam in a
13 eight or nine-year-old girl would look like?

14 A. Well, first of all, let me say that hymens are like
15 noses. Everybody's is different.

16 Q. Okay.

17 A. Although they are generally similar, okay? So, you
18 know, you can't say that every eight-year-old child is
19 gonna look exactly the same. But when we look at a
20 little girl, we see the labia minora, which are the
21 inner valves of tissue and then there's a little opening
22 for the urine to come out which is called a urethra and
23 it sits on a little mound, so it's pretty easy to
24 identify.

25 And below that is kind of where the bony prominence

1 of the pubis is. And usually there is a very smooth, in
2 a young child, a very smooth regular hymen with no
3 scars. No, we use the terms scarring. Transsection.
4 Clefts is another word we use sometimes if there's an
5 irregularity that doesn't look like a scar, it would be
6 characterized as a cleft.

7 And below that there's also an area called a
8 posterior fourchette, which again another smooth area.
9 And you'll be familiar with this because when there's an
10 episiotomy in childbirth, what is being cut is this
11 posterior fourchette because it can be kind of tense and
12 tight and thick, and that's what they cut when they do
13 an episiotomy at childbirth. Not everybody has an
14 episiotomy at childbirth, but this area of tissue is,
15 you know, fairly, fairly dense and an episiotomy can be,
16 can be fairly thick, but we're just looking at the
17 superficial aspect of it.

18 Q. Can you now draw me the same or what you saw with
19 VICTIM ?

20 A. Yeah. And I actually have the photographs, so --
21 and I didn't really describe that. When we do these
22 exams we use a high tech piece of equipment called a
23 colposcope, which is like a telescope, and it has a
24 camera attached to it so that we actually do record
25 these exams with photographs. And, therefore, we record

1 normal exams as well as abnormal exams. And so I can go
2 back and, you know, I don't have to rely entirely on my
3 memory to come here and talk to you about what exactly I
4 saw.

5 In VICTIM we had normal labia minora, which is
6 under the folds of skin, had a normal urethra. And then
7 the hymen, instead of looking like a nice smooth
8 opening, looked more like this. (Drawing.) Okay? And
9 this is the actual photograph, so it looks very much
10 like that. And the posterior fourchette rather than
11 being nice and smooth and un, uncut, I guess you would
12 say, or nice and smooth, had a kind of scar that looked
13 like that. (Indicating.)

14 Q. And Dr. Carter are these fair and accurate
15 representations of what you would know as a normal exam,
16 a normal exam and what you saw in your exam of VICTIM ?

17 A. Yes, they are.

18 Q. Okay. And you may go back to the witness stand.
19 Thank you. (Witness resumes stand.)

20 MS. SIMMONS: And, Judge, we would move to admit
21 Dr. Carter's drawing as State's Exhibit 1.

22 THE COURT: Any objection?

23 MR. DAY: Excuse me, I'm sorry?

24 (Counsel confer.)

25 MR. DAY: Okay. No objection.

1 THE COURT: All right. Without objection.

2 MS. SIMMONS: Thank you, Judge.

3 (Whereupon, State's Exhibit Number 1, Dr. Carter's
4 Drawing, was marked for identification.)

5 (Whereupon, State's Exhibit Number 1 was entered
6 into evidence.)

7 BY MS. SIMMONS:

8 Q. Dr. Carter, based on what you saw in VICTIM 's
9 exam, what is that consistent with in your opinion?

10 A. Well, there's been some sort of disruption, some
11 sort of injury.

12 Q. Is it consistent with a penetrating injury of that
13 area?

14 A. It is.

15 Q. And are those physical findings that you had
16 consistent with what you now know are the allegations in
17 this case?

18 A. Well, I haven't studied up on what the allegations
19 in this case are. I'm simply reporting on my exam.

20 Q. And your exam is consistent with a penetrating
21 injury?

22 A. It is.

23 Q. How could such an injury like that be caused?

24 A. Well, you know, when we examine an injury we can
25 describe the injury but we can't always say what caused

1 it. Now, a child can have a penetrating injury. There
2 are such injuries and I know that the defense will ask
3 me about bicycle seats, fence post-injuries, falling on
4 a tree limb, things like that. But typically when a
5 child describes an injury, a child can tell you what
6 caused it, you know, whether it's a bruise or whether
7 it's, you know, if there's blood in the panties usually
8 they can say what caused it.

9 In this particular case I didn't -- I knew the
10 child had had a forensic, or I guess I supposed the
11 child had had a forensic interview, and I typically do
12 not repeat any of the questions from the forensic
13 interview. So I noted that I really, you know, just
14 simply said see referral about the history of injury.
15 And I did not take any history of the injury, so I
16 cannot tell you what caused this except that it is more
17 typical of a penetrating injury than it is of a blow to
18 the area as would be received from a bicycle seat, fence
19 post, a tree limb or such.

20 Q. And when you say penetrating injury, something was
21 actually inside the vagina?

22 A. That's what it appears.

23 Q. Could it be consistent with digital penetration?

24 A. Digital, probably not because the finger is not
25 large enough to cause that much of an injury. That's a

1 full transsection. We actually grade transsections to
2 partial transsections, full transsections and that's a
3 full transsection.

4 Q. If it was a significant digital penetration of more
5 than one finger, could this have been caused by that?

6 A. Yes. The larger the penetrating object the more
7 damage.

8 Q. Is there a stage of healing of these injuries or
9 can you just tell us that they are healed?

10 A. Just that they are healed. Actually, some of them
11 completely heal up. There have been studies in girls
12 who have had traumatic vaginal injuries or hymenal
13 injuries and sometimes, probably half the time they heal
14 completely up, but then half the time they don't so
15 there is residual evidence.

16 Q. Would you expect to find DNA evidence in one of
17 your exams? Do you collect DNA?

18 A. My only -- I do not collect DNA. And I would look
19 for that only if the alleged incident had been very
20 recent, say within 24 hours, and if the allegation had
21 been digital penetration we, you know, we might not look
22 for DNA anyway.

23 Q. Okay. And no further -- and just to recap, the
24 injury to the hymen posterior fourchette is consistent
25 with some sort of penetration to the area, but you can't

1 tell us what would have penetrated it?

2 A. That's correct.

3 MS. SIMMONS: Thank you very much. Please answer
4 any questions Mr. Day may have.

5 CROSS-EXAMINATION

6 BY MR. DAY:

7 Q. Dr. Carter, I'm Danny Day. I have a few questions
8 for you, if I may.

9 Again, I don't think I heard it. When was it that
10 you did this examination of VICTIM ?

11 A. March the 5th, 2012.

12 Q. Okay. And I believe you said you found an injury,
13 which is what you described at that time. Was this
14 injury healed?

15 A. Yes.

16 Q. And how long had it been healed?

17 A. Well, I guess I would say I found evidence of a
18 prior injury. I did not find an acute injury. And I
19 cannot give you a time frame on the healing of that. I
20 can just say there was not any bruising or evidence of
21 an acute injury.

22 Q. Okay. And just so I get a better understanding,
23 and I am by no means any way learned in medical
24 procedure or whatever, so whatever I know I'm probably
25 gonna guarantee you I will say it wrong, ask it wrong or

1 whatever, but I'm gonna try to get it across. Okay?

2 On March the 5th when you saw her, you found a
3 healed injury. In looking at that injury, at the time
4 in which it occurred, which we don't know, how long
5 would it take to heal? Are we talking about a week?

6 Two weeks?

7 A. Yeah. Mucus membranes heal very rapidly. If
8 you've ever had an ulcer in your mouth it will be
9 present two or three days and then it'll be gone. The
10 mucus membranes are very, very well vascularized and
11 very moist, therefore, they heal very rapidly. So it
12 could be, you know, for this to be completely healed, it
13 was probably, certainly had been more than a week, but I
14 cannot get any closer than that.

15 Q. Okay. Certainly it would take about a week you say
16 to possibly heal. And I understand, I'm not trying to
17 hold you to an exact, but in about one week it would be
18 healed; is that correct?

19 A. Yes.

20 Q. Okay. And in looking at it on March the 5th it
21 certainly had been at least longer than a week. It
22 could have been a month; is that correct?

23 A. That's right.

24 Q. Okay. All right. And just to make sure I
25 understand, you took the medical history you said from

1 the aunt, Lucille Cooper?

2 A. Well ---

3 Q. That's what your records show.

4 A. They asked me who was present.

5 Q. Oh, I see.

6 A. And the person present from the, for the exam is
7 documented to be the aunt. But the -- let me just look
8 over here at who actually filled out the information
9 about the child's history. Filled out by Christine
10 Longwith.

11 Q. Oh, okay.

12 A. So I don't know who that is. The mother.

13 Q. I'm sorry. I was just a little mixed up on the
14 names there and that corrected that. Thank you. Okay.

15 MR. DAY: One second, Doctor.

16 (Whereupon, a discussion was held off the record.)

17 MR. DAY: Dr. Carter, thank you very much. I
18 appreciate that.

19 THE COURT: Any redirect?

20 REDIRECT EXAMINATION

21 BY MS. SIMMONS:

22 Q. Just a couple followup Dr. Carter. So you cannot
23 give us a time frame on when this injury would have
24 happened other than it was older than a week, this
25 healing was older than a week?

1 A. Yes. It was completely healed.

2 Q. Okay. That could be days, weeks, months, you have
3 no idea?

4 A. That's right.

5 Q. And what you saw is consistent with a penetrating
6 injury of that area, though?

7 A. Yes.

8 MS. SIMMONS: Nothing further.

9 THE COURT: All right. Thank you Dr. Carter. You
10 can step down. Can she be released and go?

11 MS. SIMMONS: Yes, Your Honor.

12 MR. DAY: No objection.

13 THE COURT: All right. Thank you Dr. Carter. You
14 are released from your subpoena.

15 THE WITNESS: Thank you very much.

16 THE COURT: Yes, ma'am. Have a good trip back.
17 (Whereupon, the Witness was excused and leaves
18 witness stand.)

19 MS. SIMMONS: Can I have about a five-minute break
20 before the next witness? Thank you.

21 THE COURT: Ladies and gentlemen, I'll give you a
22 ten-minute break and let you go down. Please don't
23 discuss this case. We'll bring you back in briefly.

24 (Whereupon, the Jury left the courtroom at
25 approximately 4:00 p.m.)

1 MS. SIMMONS: Thank you, Judge.

2 THE COURT: Thank you.

3 (Whereupon, a recess was taken.)

4 THE COURT: Okay. You can bring them back in.

5 (Whereupon, the Jury entered the courtroom at
6 approximately 4:15 p.m.)

7 THE COURT: Again, thank you for your patience.
8 You can call your next witness.

9 MS. SIMMONS: Thank you, Your Honor. The State
10 calls Christine Longwith.

11 (Whereupon, Witness comes forward.)

12 THE CLERK: If you'll place your left hand on the
13 Bible and raise your right hand. (Complies.)

14 Do you solemnly swear or affirm the testimony you
15 give the Court will be the truth, the whole truth, and
16 nothing but the truth?

17 THE WITNESS: Yes, I do.

18 THE CLERK: Please be seated.

19 THE COURT: Yes, ma'am.

20 CHRISTINE LONGWITH,
21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. LONGWITH:

24 Q. Ms. Longwith, would you please state -- spell your
25 name for the court reporter.

1 A. C-h-r-i-s-t-i-n-e L-o-n-g-w-i-t-h.

2 Q. Ms. Longwith, where do you live?

3 A. I I I .

4 Q. And is that in Oconee County?

5 A. Yes, ma'am.

6 Q. Who presently lives in your home?

7 A. Me, my husband, my son Michael, and my
8 granddaughter, Emily , VICTIM , and Adrian or Duke
9 our grandchildren.

10 Q. And Emily , how is she related to you?

11 A. She's my granddaughter.

12 Q. And the Defendant is her father?

13 A. Yes.

14 Q. Can you tell me the names and ages of all your
15 children?

16 A. My first child is named Shirley Doley. She lives
17 in Myrtle Beach and she's 48. My next son is Steven
18 Frost, he's 40 -- no, he's 45. There's four years
19 between them. Shirley was born in '62, Steven was born
20 in '67, and Michael, he was born in '71.

21 Q. And when did you adopt Adrian and VICTIM ?

22 A. I think it was around April in 2007.

23 Q. And how long have Adrian and VICTIM been with you?

24 A. We got Adrian from the hospital, straight from the
25 hospital in '03, and VICTIM she was about 18 months old

1 when we got her.

2 Q. And they've been with you ever since?

3 A. Yes, ma'am.

4 Q. What's VICTIM's date of birth?

5 A.

6 Q. How old would she have been last October?

7 A. Eight. About eight and a half.

8 Q. You mentioned that VICTIM and Adrian had been with
9 you their whole life. The prior witness mentioned that
10 she had some behavioral problems. How old was she when
11 she had that?

12 A. She was still in DSS care and they referred me to
13 do that. She was probably two or three or four,
14 something like that.

15 Q. It's been a long time?

16 A. Oh, yes.

17 Q. In October 2011 did your son Steve move back to
18 this area?

19 A. Yes.

20 Q. Okay. Would he come around your home then?

21 A. Yes.

22 Q. How often did he come around?

23 A. At first he was coming around often because he
24 didn't have nowhere else to go, no home. And he was
25 just visiting with friends and cousins.

1 Q. What kind of things did you help him out with then?

2 A. With food, washing his clothes, taking him to
3 places to get his disability started, and let him stay
4 there when he didn't have a place to stay a night or so.
5 Just a few nights.

6 Q. When he spent the night, where did he sleep?

7 A. In VICTIM 's room in her bed.

8 Q. Where did VICTIM sleep?

9 A. In the family room, I guess you would call it. In
10 the floor. I made her a little bed in the floor.

11 Q. Do you remember sometime around the second weekend
12 of October him coming around?

13 A. Yes.

14 Q. Who did he come around with?

15 A. He had a girlfriend with him.

16 Q. Okay. Do you know her name?

17 A. Sarah. I'm not sure of her last name.

18 Q. What do you know -- can you tell me anything about
19 her?

20 A. What do you mean?

21 Q. Do you know anything about her, what she looks
22 like, anything?

23 A. Yeah. She was a black girl, probably about his
24 age. And she lived over there close to him I think.

25 Q. And do you recall them coming, around October 15th

1 them both coming over?

2 A. Yes.

3 Q. Can you tell me what happened that night?

4 A. Well, it was -- I had told him to leave and not to
5 come, and he didn't have no place to go, so I figured
6 that he might come so I stayed up 'cause he said he
7 didn't have nowhere to go, he had to sleep somewhere.

8 So it was about 5:00 in the morning and he and her came
9 in and they was very drunk and they came in.

10 Q. Did you allow them into your home?

11 A. I didn't have much choice. He knocked on the --
12 banged on the door, and when I opened the door they just
13 come on in. And he started to go back to the bedroom.
14 And told him -- I asked him where was he going and he
15 said to bed. And I said you can't do that. I said
16 VICTIM is in her bed. And I said you're not going back
17 there. So he just sat back down on the couch and said,
18 well, I guess I'll sleep here. So they sat on the
19 couch.

20 Q. What happened after that?

21 A. They went to sleep laying on each other and just
22 piled up on the couch.

23 Q. Did the kids eventually get up the next morning?

24 A. Yeah. It was about 9:00 when the kids started
25 getting up.

1 Q. Did Steve's girlfriend stay or leave?

2 A. She was getting a call from her children, I think,
3 and they were wanting her to come home so she left.

4 Q. When VICTIM got up, what did Steve do?

5 A. He said he was going to the bathroom, but he went
6 back there and got in her bed.

7 Q. So Steve is asleep in VICTIM 's bed. What's going
8 on in the household?

9 A. I was fixing breakfast for all the kids and getting
10 them ready for the day.

11 Q. What did you guys do that day?

12 A. We went outside and we was raking leaves and, um, I
13 might have been pulling some stuff out of the storage
14 building, I'm not sure.

15 Q. Did at any point in time did y'all go back in?

16 A. VICTIM went in before we went in. She went in to
17 get some water or something she needed, but she came
18 back out.

19 Q. Did anything that concerns you or sticks out in
20 your mind happen that day?

21 A. Well, we came back in, all of us came in a little
22 bit later to fix lunch for the children. And he had
23 hollered for her to come in and change his movie, so she
24 went back that way. And she was gone for a little while
25 and I went to see where she was at. I thought it didn't

1 take that long to change a movie, you know.

2 Q. When you got to VICTIM 's room, what did you see?

3 A. When I walked in, Steve's hand was under her
4 clothes in the back and he had his right-hand and he had
5 his left hand, had ahold of her hand, his left hand was
6 holding her hand.

7 Q. His hand was under her dress or in her pants?

8 A. Yeah, in the back. Yeah, his hand. When I walked
9 in he was kind of pulling his hand up.

10 Q. When you saw that, what did you do?

11 A. I asked him what in the H was he doing, you know.

12 Q. Did you get any response?

13 A. Yeah. He said nothing. And then I said the H you
14 are, you know. And I got her hand and pulled her on out
15 of the room and I asked her, I said, what was he doing?
16 And she just looked at me. Then we went on in to the
17 bathroom, into our, the master bathroom back that way.
18 And I asked her again, I said what was he doing? And
19 she said, he had his hand in her, her clothes, her,
20 let's see what she said, her poopy hole. He had her
21 hand in her potty hole, that's what it was her potty
22 hole.

23 Q. Were you concerned at this point?

24 A. Yeah, I was concerned. I was -- well, first off I
25 was shocked, you know, when I went in there and saw that

1 because I, that's my son, you know, and that's my little
2 girl. And then I was mad, angry, and I was scared not
3 knowing what to do because I think well there's my
4 husband and Michael, there could be a big fight, you
5 know, so what do I do, go back in there and have it out
6 with him or what? And so I sit down with VICTIM and we
7 sat there.

8 She didn't want to talk much, you know, she didn't
9 want to when I asked her something, she'd just answer.
10 She wasn't, she was kind of scared. And then she
11 started telling me that he had his hand in her.

12 Q. What did you do with Steve after you were able to
13 get VICTIM calmed back?

14 A. I went back in there and told him to get out, to
15 leave. And he told me to get back in there and shut up,
16 that he would leave when he was ready and that somebody
17 was coming to get him.

18 So I went back in there in the other room. And
19 then still setting there, you know, and I'm not knowing
20 what to do because I don't know what's gonna happen, you
21 know, say something there's gonna be a big fight or
22 what. So I go back in there and tell him to leave. And
23 about that time his girlfriend showed up, and I told her
24 to get him out of the house and she took him and left
25 with him.

1 Q. Did you immediately call law enforcement after he
2 left?

3 A. No.

4 Q. Why not?

5 A. I don't know. I was scared and I didn't know what
6 to do. You know, I'm confused because what's going on,
7 you know? My son touching my daughter and what did I
8 do? You know. And is there gonna be a fight or what?
9 I didn't know what to do.

10 Q. Once these allegations came to light in February,
11 were you cooperative with law enforcement?

12 A. Yes. And I took all kind of courses, too, to help
13 me to realize what to do if something like this was to
14 ever to happen again and how to go about reporting
15 things.

16 Q. When ---

17 A. I've done that.

18 Q. I didn't mean to cut you off. When he left, did
19 you allow him any unsupervised contact with the children
20 again?

21 A. No, ma'am.

22 Q. Did you try to keep him away?

23 A. Yes.

24 Q. Did he come around or no?

25 A. I even took money out and rented him a house out of

1 my own money to rent him a house so he wouldn't have no
2 reason to come there till he got his disability started.

3 Q. Since you were contacted by law enforcement about
4 this, have you been completely cooperative?

5 A. Yes.

6 Q. And have you accompanied VICTIM to doctors
7 appointments, interviews and all those sort of things?

8 A. Yes.

9 Q. Has VICTIM ever had a bicycle accident or fall
10 where she could have possibly injured her private parts?

11 A. Not that I know of.

12 Q. Ms. Longwith, do you love your son?

13 A. I sure do.

14 Q. Do you love your daughter?

15 A. Yes, I do.

16 MS. SIMMONS: Please answer any questions Mr. Day
17 may have.

18 CROSS-EXAMINATION

19 BY MR. DAY:

20 Q. Ms. Longwith I'm Danny Day, as you know. I've got
21 a few questions for you, if I may. As I understand it,
22 Steve would come back, he was staying there at the house
23 for a while, and had been there, what, about a week or
24 so?

25 A. About a week, but he wasn't there the whole time.

1 He spent some nights with his cousins and his friends.

2 He wasn't there the whole time, the whole week.

3 Q. Okay. But actually this is where he was living at
4 the time, he hadn't gotten him a place to stay yet?

5 A. When he left I told him -- right before he left,
6 before this happened, I told him he had to leave because
7 I couldn't have him there, and that's why he went to
8 stay with his cousins and all.

9 Q. Okay. But he was still coming back and staying
10 there?

11 A. Taking baths and getting something to eat mostly,
12 you know.

13 Q. But he was waiting on his disability checks to
14 resume; is that correct?

15 A. Yes.

16 Q. Okay. All right. Now, this supposedly happened, I
17 think you said, it was a weekend, you said October 15th?

18 A. Yes, sir.

19 Q. Approximately on a Saturday?

20 A. Yes.

21 Q. Okay. But you never said anything to anybody at
22 all, did you?

23 A. I told my granddaughter, it was around Christmas or
24 Thanksgiving. She was the only person I told about it
25 and because I didn't know what to do. I thought, you

1 know, I need to tell somebody, I need to, but I didn't
2 know how to go about doing it. I mean I just hurt, I
3 didn't want to -- I don't know how -- I was just
4 confused.

5 Q. You told your husband, though, didn't you?

6 A. Yeah, I told my husband, yeah.

7 Q. And he didn't tell anybody?

8 A. No.

9 Q. All right. Did you tell, tell your other children?
10 Did you tell Mike, Mike Heads?

11 A. Not till later. He found out when the other ones
12 came out there.

13 Q. All right. Okay. Do you remember --

14 A. Because ---

15 Q. Oh, I'm sorry.

16 A. Because if I had told them there probably would
17 have been a fight.

18 Q. Okay. But by then Steve was long gone, right?

19 A. No. He was just over there at Westminster.

20 Q. But I mean he wasn't living at your house anymore?

21 A. But he threatened if we do this he'll be right over
22 there.

23 Q. He threatened you?

24 A. Yes. And ---

25 Q. Well, ma'am -- I'm sorry, go ahead.

1 A. One time I told him, I said Steve, I said you know
2 this is gonna come out. I said this is gonna be told
3 about. He said, well, the best thing you do is just
4 keep your mouth shut and just be quiet.

5 Q. Why didn't you tell that to anybody else before
6 today?

7 A. Like I said, because -- what do you mean?

8 Q. About this threat.

9 A. I told a lot of people about it. He -- people know
10 about him. They know he threatens me if I don't do what
11 he wants, then he'll get it one way or the other.

12 Q. Tell me one person you told about this threat?

13 A. Probably all my family.

14 Q. And none of them said anything to anybody?

15 A. No, they didn't that I know of.

16 Q. Didn't tell the police, did you?

17 A. Not that I know of.

18 Q. Okay. So this was the first time anyone's heard
19 that outside of the people you just said?

20 A. What?

21 Q. That you claim that Steve threatened you.

22 A. He's told me to keep my mouth shut.

23 Q. All right. On February the 8th ---

24 A. He said the best thing for me to do is to keep my
25 mouth shut.

1 Q. All right. On February the 8th you spoke to an
2 officer named John Vickery. Do you remember that, a
3 Deputy at the Sheriff's Department?

4 A. On what date?

5 Q. February the 8th, 2012. Do you remember that?

6 A. At the Sheriff's Department I gave a statement,
7 yes.

8 Q. Yes, you did.

9 Do you have that statement that she can look at?

10 MS. SIMMONS: (Handing.)

11 BY MR. DAY:

12 Q. I want to show you what appears to be a copy of a
13 statement. Please look at that to make sure that's what
14 we're talking about.

15 A. I don't have my glasses, though. (Witness reads
16 document.) In this I was just talking about what
17 happened that day.

18 Q. Yes, ma'am. That's the statement that you wrote?

19 A. He wasn't threatening me on that day. I mean, I
20 was just telling him about what happened that day. He
21 threat -- when he told me to keep my mouth shut it was
22 after Christmas, somewhere first of the year.

23 Q. Okay. But this is February the 8th; is that
24 correct?

25 A. Yeah, somewhere in there he told me.

1 Q. Okay.

2 A. But still, sir, in this I didn't need to put
3 anything in it because I was just talking about her
4 being touched and all.

5 Q. Okay.

6 A. I didn't say anything about what I felt or what I
7 was feeling.

8 Q. Okay. In this statement, you signed -- that's your
9 signature down there, isn't it?

10 A. Yes.

11 Q. And it says that you have read every page of this
12 statement consisting of one page, each page of which
13 bear my signature and corrections, if any, bear my
14 initials and I certify that the facts contained herein
15 are true and correct. That's what it says.

16 A. Yes.

17 Q. Was certified, made no request.

18 A. On that day, on that day is when I made a no
19 trespassing sign and motive and what you call a no
20 contact on him. So if I wasn't afraid of him, why would
21 I do that?

22 Q. That's a good question. Maybe you can tell us then
23 why you said that when you came in and I'm looking at
24 it. Please make sure I'm saying it correctly, if you
25 would. "Weekend of the second week of October 2011,

1 when he touched my daughter .VICTIM I saw his hand on
2 her dress in the back."

3 A. Yeah. Up her dress in the back.

4 Q. No, ma'am, that's not what you say. Look at it and
5 see. I want to be sure now. "I saw his hand on her
6 dress in the back of her when I walked in the room."

7 Nothing about being under her dress, nothing about being
8 under her clothes, nothing about anything except on her
9 back you say; isn't that correct?

10 A. Under her dress.

11 Q. No, ma'am. Please read it. You read it.

12 A. I know what this says, but I know what I saw.

13 Q. All right. So you lied here?

14 A. I wouldn't say I lied.

15 Q. You didn't tell the truth; is that correct?

16 A. I just didn't represent, say it right.

17 Q. Didn't say it right.

18 A. Yeah.

19 Q. Okay. "And I asked what he was doing and he said
20 nothing." Right? But you said a minute ago that you
21 saw his hand under her dress, but that is not what you
22 wrote in your own words. They weren't threatening you
23 there at the Sheriff's Department, were they?

24 A. No, but I was upset. When you are upset you don't
25 put down everything that you feel.

1 Q. All right. When you're upset you don't tell the
2 truth. Is that what you're telling me?

3 A. That's not saying I lied. I just didn't put down
4 everything.

5 Q. Didn't the officer ask you to put down what
6 happened?

7 A. Well, most of the time if you say what happened you
8 don't sit there -- as a matter of fact, that day I
9 didn't have my glasses on. I had to go outside and get
10 my glasses. And I was upset 'cause I had been up there
11 arguing with the lady from DSS and talking with her, and
12 I was just upset. I didn't know what I was putting
13 really. I mean, I knew what I was putting but I didn't
14 put all of it.

15 Q. You are pretty upset now, aren't you?

16 A. No, sir.

17 Q. Not at all?

18 A. I'm upset. I'm nervous.

19 Q. Okay. But when you wrote this statement you were
20 asked to put down exactly what happened so you wrote it
21 in your own hand using your own words in this statement;
22 is that correct?

23 A. Yes.

24 Q. Okay. All right. And I think you said she used
25 the term potty hole?

1 A. Yeah.

2 Q. When she testified she called it, what was it,
3 wrong place?

4 A. Well, I found out that you need to teach your
5 children what the real body parts are so when they say
6 something you'll know what they're talking about. If
7 it's one thing it's that thing, if it's another it's
8 another. If it's a penis, it's a penis. It's not
9 private part. If it's a vagina, it's a vagina, not a
10 potty hole.

11 Q. Okay. But you put down what she said?

12 A. Yeah.

13 Q. Okay.

14 A. Because she wasn't taught. I didn't teach my
15 children. My mama didn't teach me to say those things.

16 Q. All right. And I understand that. I agree. And
17 this was October the 15th you said, and this was
18 February the 8th before you wrote down this statement.
19 And this was after supposedly DSS came and took the
20 children?

21 A. Yes.

22 Q. Okay. Now, Steve was there for a little while, and
23 you said you gave him some money. He paid you back that
24 money, though, didn't he?

25 A. I didn't give him money. I paid Mr. Roy Holbrooks

1 rent to get him a house, and I paid for a motel and all
2 kind of stuff.

3 Q. But you got your money back?

4 A. Yes, sir.

5 Q. When his check came in?

6 A. I repaid -- I paid his rent one month.

7 Q. But I'm saying you got repaid?

8 A. I don't know if I got repaid, but I got some money
9 back.

10 Q. Okay. Now, we heard VICTIM say that it was a week
11 after this happened when she went to see the doctor and
12 these other people.

13 A. VICTIM is a child. She don't remember what one
14 week was or two months ago. You can ask her or even --
15 she don't remember all these dates and all these months
16 and all. She might look like a big girl, but she has a
17 nine-and-a-half-year-old mind.

18 MR. DAY: That's all the questions I have. Thank
19 you.

20 THE COURT: Redirect?

21 MS. SIMMONS: Just a couple follow-up.

22 REDIRECT EXAMINATION

23 BY MS. SIMMONS:

24 Q. You told Mr. Day that DSS took your children as a
25 result of this incident, right?

1 A. Yes.

2 Q. Have you complied with DSS fully?

3 A. Yes, everything.

4 Q. And are your children back at home with you?

5 A. They've been back since June the 1st, and she made
6 her last visit last Saturday, this past Saturday.

7 Q. And what you saw that day, you walked in on your
8 son, Steve Frost's, hand ---

9 A. In her dress and had I not suspected wrong, why
10 would I say what are you doing?

11 MS. SIMMONS: I don't have any further questions
12 for this witness. Thank you, Judge.

13 THE COURT: All right. Thank you, ma'am. You may
14 step down.

15 (Whereupon, Witness leaves witness stand.)

16 THE COURT: All right. You can call your next
17 witness.

18 MS. SIMMONS: The State calls Sergeant Gentry Hawk.

19 (Whereupon, Witness comes forward.)

20 THE CLERK: If you'll place your left hand on the
21 Bible and raise your right hand. (Complies.)

22 Do you solemnly swear or affirm the testimony you
23 give the Court to be the truth, the whole truth, and
24 nothing but the truth?

25 THE WITNESS: Yes, ma'am.

1 THE CLERK: Please be seated.

2 THE COURT: Yes, ma'am.

3 MS. SIMMONS: Thank you, Judge.

4 SARGEANT GENTRY HAWK,
5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. SIMMONS:

8 Q. Sergeant Hawk, where are you employed?

9 A. I'm with the Oconee County Sheriff's Department.

10 Q. In what capacity are you employed there?

11 A. Investigations, specifically dealing with child
12 abuse and elder abuse.

13 Q. How long have you been investigating those cases?

14 A. Approximately eight to nine years.

15 Q. Do you have any specialized background and training
16 in investigating cases like this?

17 A. Yes, ma'am. I've been to numerous schools
18 concerning child abuse, physical abuse, sexual abuse,
19 also elderly, vulnerable adult abuse. I've been out to
20 California for the national symposium on child
21 maltreatment. Finding words at the time is what it's
22 called. It's a forensic interviewing of kids where they
23 just do the, take us through how to interview a child
24 and...

25 Q. How did you become involved in the case relating to

1 this Defendant? When did you receive the report?

2 A. I received the report -- what happens is an officer
3 goes out and takes an incident report and it comes
4 through the system and assigned to me as an investigator
5 to follow up on.

6 Q. And officer Meadows had received a DSS report?

7 A. Yes, ma'am.

8 Q. And it was referred to you?

9 A. Yes, ma'am.

10 Q. Now, do you have any idea of when you received that
11 report?

12 A. I do not. I don't remember the date on the report.
13 It was a couple days after he had gone out there.

14 Q. Would it have been immediately after this incident?

15 A. What are you asking? No.

16 Q. Like Dr. Carter testified that she did the exam in
17 March. Would that have been close to the time you
18 received your ---

19 A. Yes. That was in February.

20 Q. Okay, thank you. Based on your experience
21 investigating these types of cases, are reporting delays
22 common?

23 MR. DAY: Objection, Your Honor. That goes well
24 beyond the expertise of this witness.

25 THE COURT: All right. Ladies and gentlemen, I

1 need to send you out of the room for just a few minutes.

2 Please don't discuss this case.

3 (Whereupon, the Jury left the courtroom at

4 approximately 4:44 p.m.)

5 THE COURT: All right. What was your question?

6 MS. SIMMONS: I asked, I asked ---

7 THE COURT: I want to make sure I heard it right.

8 MS. SIMMONS: --- based on his experience as an
9 investigator of child sex crimes, are reporting delays
10 common?

11 MR. DAY: Your Honor, I don't think that asking
12 whether the delay is common, does that mean it happens
13 every time or is there some sort of evidence? Is there
14 some of research? Is there some sort of statistic that
15 would indicate that he could answer that question? I
16 just don't think that, that common delayed. I don't
17 think that's a proper question. And I don't think this
18 witness is properly prepared to say he has done
19 statistical research to indicate that.

20 THE COURT: All right. Well, let's ask him that
21 question since we're ---

22 Sergeant, do you understand her question was are
23 these delayed reports common?

24 THE WITNESS: I --

25 THE COURT: How would you answer that?

1 THE WITNESS: I would say that, you know, as far as
2 children victims delayed disclosure is common as far as
3 a child disclosing. As far as my experience, I have
4 dealt with not very many, but some cases that were
5 delayed disclosure by the parents due to family
6 situations.

7 THE COURT: But your question was specifically
8 regarding the child?

9 MS. SIMMONS: No. I was ---

10 THE COURT: That was why I wanted to understand the
11 question.

12 MS. SIMMONS: Yeah. I'm sorry, Your Honor. I was
13 not clear. Delayed disclosure by a family.

14 THE COURT: By anybody?

15 MS. SIMMONS: By a family. Basically I was just
16 trying to see if he's encountered in cases it's uncommon
17 for delays in these cases. I wasn't gonna expound on it
18 once he gave that answer.

19 THE COURT: Okay. So your answer to that question,
20 is it common for there to be delays by families in
21 reporting interfamily sex abuse and that answer would
22 be?

23 THE WITNESS: It's not common as far as, as a
24 family. It's more common for children to do the delayed
25 disclosure of abuse.

1 THE COURT: Okay. Let's just move on.

2 MS. SIMMONS: I'll withdraw the question. Thank
3 you.

4 THE COURT: All right. You can bring them back in.
5 I mean, I know what you're asking but I think that
6 will get into more trouble than it's worth.

7 MS. SIMMONS: Thank you, Judge.

8 (The Jury entered the courtroom at approximately
9 4:47 p.m.)

10 THE BAILIFF: There's one in the bathroom.

11 THE COURT: Okay. That's fine. (Last juror in
12 approximately 4:48 p.m.)

13 BY MS. SIMMONS:

14 Q. Sergeant Hawk, so you were the investigator
15 assigned to this case?

16 A. Yes, I was.

17 Q. Did you have an interview of the victim conducted?

18 A. I did.

19 Q. And where was that done?

20 A. That was done at the Child Advocacy Center there
21 Anderson.

22 Q. What did those allegations reveal in your
23 investigation?

24 A. I'm sorry, can you repeat that?

25 Q. Based on, based on that interview, did you conduct

1 a further investigation?

2 A. I did. I sent, after the forensic interview I
3 referred the child to the Child Advocacy Center again
4 for a medical exam.

5 Q. And did you also arrange to have witness statements
6 taken in this case?

7 A. I did not. The witness statement was taken by
8 another officer.

9 Q. But you arranged for that to happen?

10 A. No, ma'am.

11 Q. When you have a, when you have a person forensic
12 interview that results in a disclosure, do you search
13 for corroborating evidence?

14 A. I'm sorry, what was that last part?

15 Q. Do you search for corroborating evidence?

16 A. I do.

17 Q. And were you able to obtain corroborating evidence
18 in your case?

19 MR. DAY: Objection, Your Honor. Speculating about
20 it. If there's evidence, let him identify the evidence
21 and see if it's permissible.

22 THE COURT: Overruled. Your question was, was
23 there any.

24 BY MS. SIMMONS:

25 Q. Was there any corroborating evidence for the

1 victim's story?

2 A. The medical evidence in the report.

3 Q. Okay. And did you also, did your department also
4 obtain a statement from Ms. Longwith?

5 A. We did.

6 Q. Based on the interview with Ms. Longwith, were you
7 able to determine where these events occurred?

8 A. I heard both from Ms. Longwith and the child it
9 occurred at the residence, at their residence.

10 Q. And was the residence in Oconee County?

11 A. Yes, ma'am.

12 Q. And how were you able to create a time frame for
13 these events?

14 A. I did because of the statement from the mother it
15 was in October. And because it was a child victim under
16 the age of nine, I did my timeline from the first of
17 October to the first of November.

18 Q. What did you eventually charge the Defendant with?

19 A. With criminal sexual conduct with a minor first
20 degree.

21 Q. And what elements did that include?

22 A. It has to be a child under the age of 11. It has
23 to be some kind of sexual battery, penetrating,
24 penetration of the anus or the vagina of the victim or
25 oral sex.

1 MS. SIMMONS: Please answer any questions Mr. Day
2 may have.

3 CROSS-EXAMINATION

4 BY MR. DAY:

5 Q. To make sure I understand this, if I may, Deputy
6 Hawk, the Solicitor asked you that as a result of your
7 investigation, and you got a warrant, you said what it
8 was for, et cetera, and that was based upon, I believe
9 you said, medical evidence. We heard the doctor testify
10 where she says there was an injury but no idea when or
11 how; is that correct?

12 A. Yes sir.

13 Q. And you had Christine Longwith's statement?

14 A. Yes, sir.

15 Q. The one she just got up there and said wasn't
16 correct?

17 A. Yes, sir.

18 Q. Okay. And in this regard, you're the one that went
19 and took this to a magistrate and then got a warrant?

20 A. Yes, sir.

21 Q. And it went to the grand jury but you didn't
22 testify before the grand jury?

23 A. No, sir.

24 Q. Okay. I believe that was Amanda Keplar that -- was
25 she involved in this case?

1 A. No, sir. She -- what happens with the grand juries
2 we have a person assigned who presents the cases to the
3 grand jury and she's the one who does the grand jury.

4 Q. All right, sir. I believe that's all the questions
5 I have. Thank you, sir.

6 THE COURT: Anything on Redirect?

7 MS. SIMMONS: No, Your Honor.

8 THE COURT: All right. Thank you, sir. You may
9 step down.

10 (Whereupon, the Witness left the witness stand.)

11 THE COURT: All right. Any other witnesses?

12 MS. SIMMONS: Judge, at this time the State would
13 rest.

14 THE COURT: Okay. All right. Ladies and
15 gentlemen, at this point the State has rested, which
16 means basically that they have called all the witnesses
17 that they're gonna call. If it was earlier in the day,
18 I would say I need to take up matters outside your
19 presence at this point anyway. We're gonna stay and
20 take those up. So rather than do that and have you come
21 back in, I'm gonna ask that you be in the jury room at
22 10:00 in the morning, which would give us time to do
23 what we need to do before the Defense begins tomorrow.
24 So 10:00 tomorrow morning. Please don't read
25 anything, listen to anything or watch anything that

1 would pertain to the case. And, again, I apologize for
2 the delay this morning.

3 Don't talk about the case and I'll see you about
4 10:00 in the morning.

5 We're gonna stay and do the motions, okay?

6 (Whereupon, the Jury left the courtroom at
7 approximately 4:54 p.m.)

8 **THE COURT:** Okay. Any motions at this point?

9 **MR. DAY:** Yes, Your Honor. We would move for a
10 directed verdict in this matter. We would submit to the
11 Court, Your Honor, that the evidence presented so far
12 does not raise to the level, the threshold necessary to
13 prove all of the elements of the particular crime,
14 criminal sexual conduct with a minor.

15 In this regard, Your Honor, there is medical
16 testimony only shows an injury and yet the doctor was
17 emphatic, has no way of knowing how that occurred, when
18 it occurred or anything else. We have conflicting
19 testimony as to whether or not it occurred in October.
20 One says yes, the other says don't know. The young
21 victim has said that it occurred a week before she went
22 to see the doctors in Feb -- in March.

23 All of this added up, Your Honor, does not indicate
24 -- particularly considering that the evidence that led
25 to the arrest and led to the issuance of the indictment

1 was based upon a statement from a witness who now has
2 denied that that statement was true; that she was too
3 nervous to tell the truth. In that regard, Your Honor,
4 we would submit that the State has failed to meet the
5 threshold required in this particular case and we would
6 move for a directed verdict on the charge.

7 THE COURT: All right. Yes, ma'am.

8 MS. SIMMONS: Judge, as you know, you're not
9 concerned with the existence or non-existence -- with
10 your consistent -- with your existence or non-existence
11 is not the weight of the evidence at this point in the
12 trial. I think that's putting words in Ms. Longwith's
13 mouth to say she recants her statement. I think that
14 she said that there was more to the story than she put
15 in that statement.

16 But, Judge, we have established that we identified
17 the Defendant, the victim identified him. It did occur
18 in Oconee County. We established her age. We
19 established sexual battery, she said his fingers were
20 inside her. The victim testified to that and
21 Ms. Longwith testified this happened in the middle of
22 October 2011. Certainly we think this is enough to send
23 this case to the jury.

24 THE COURT: All right. I understand your motion
25 and you're protected for the record, but I'm gonna deny

1 your motion for a directed verdict. I think there's
2 enough evidence in. I mean, a lot of your arguments go
3 to the weight of the evidence and I'll let you argue
4 that, but...

5 All right. Mr. Day, what's your plan tomorrow with
6 witnesses?

7 MR. DAY: Your Honor, we would -- we have some
8 witnesses that are on standby. I'm gonna talk to them.
9 If we do, I would anticipate if I do call witnesses, the
10 ones I'm talking to is 30 minutes, maybe. Because it's
11 very narrow because needless to say there are no
12 eyewitnesses, we're not submitted an alibi by any means,
13 so that would not be an issue. But probably not be more
14 than 30 minutes at most. I mean, it would be one of
15 those five questions and then their turn.

16 THE COURT: Okay. So we should be able to finish
17 -- I would assume that if we finish in half an hour,
18 that y'all can do your close tomorrow morning?

19 MR. DAY: Yes, sir.

20 THE COURT: And come back after lunch and charge?
21 Because this charge is so specific. This is the hardest
22 jury charge to give to a jury. I want y'all to go
23 through it before we do, so I mean it's the same every
24 time, but it's just difficult to give and I want you all
25 to read it.

1 Has your client made a decision about whether or
2 not he's gonna testify? And I'm not asking, I'm just --
3 y'all need to talk about that tonight.

4 MR. DAY: We will, Your Honor, and we can put that
5 on the record first thing if he decides not to. If he
6 does then he would probably be my first witness and the
7 longest one. And, like I said, it would be pretty
8 narrow. The hardest thing he understands that his
9 record would be subject to cross-examination, so that
10 would be one of the things that as part of your advice
11 to him.

12 I would ask the Court to consider this evening as
13 far as jury charges, I think the Court's jury charge is
14 pretty much covered. But I would like the Court to
15 consider at this point that based upon the evidence
16 that's been submitted that the possibility of the
17 assault and battery in third and second degree as a
18 possible charge. I am not requesting it at this time.
19 I'd ask the Court to look at that, and then if I decide
20 to make an official request I will do that first thing
21 in the morning, but I would like the Court to have an
22 opportunity to look at that.

23 THE COURT: I appreciate that. I'll look at that
24 tonight.

25 Okay. I'll stop apologizing for this morning

1 seeing we finished up. I'll see y'all at 10:00
2 tomorrow. Do you know whether you will have anything in
3 rebuttal or does it just depend?

4 MS. SIMMONS: I have no idea what his witnesses
5 would testify to at this point.

6 THE COURT: I understand.

7 MS. SIMMONS: I would assume if I had rebuttal it
8 would be brief as long as I could get the witnesses
9 here.

10 And, Judge, it's my understanding as far as the
11 charge the jury on the verdict form needs to make a
12 factual finding as well; is that correct?

13 THE COURT: Yeah. If y'all have, just because of
14 the way we're set up, we got new computers yesterday
15 that were delivered in Anderson. If you have a sample
16 that you want me to look at, how about doing it for me.
17 It's real difficult for us to coordinate and the printer
18 can't help. So if y'all will do a verdict form that
19 would help.

20 So I'll see y'all tomorrow at 10:00.

21 (Whereupon, Court adjourned at 5:01 p.m. on 2nd day
22 of trial.)
23
24
25

1 This is Wednesday, September 19, 2012, Oconee
2 County General Sessions, Maddox, Day 3 of the State v.
3 Frost.

4 THE COURT: Okay. All right. Mr. Frost, if you
5 would, I need you and your attorney to step up here to
6 the mic, please.

7 What I need you to do is have you place your left
8 hand on the Bible and raise your right. (Complies.)

9 Do you swear to tell the truth, the whole truth,
10 and nothing but the truth so help you God?

11 THE DEFENDANT: Yes, sir.

12 (Whereupon, the Defendant was sworn.)

13 THE COURT: All right. Mr. Frost, we've reached
14 the point in the trial where a decision has to be made
15 as to whether or not you're gonna testify. Do you
16 understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And you understand that the Fifth
19 Amendment of the Constitution says that no person shall
20 be compelled to testify against themselves. Do you
21 understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: That means basically that in a criminal
24 case it can't be held against you that you don't testify
25 and you don't have to testify if you don't want to. Do

1 you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Do you understand that this
4 right is a personal one, it's not something for your
5 attorney to choose, it's something that you have to make
6 a decision on in conjunction with your attorney. Do you
7 understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And have you had plenty of time to
10 speak with your lawyer about that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And you do understand that if you do
13 testify you will be subject to cross-examination and any
14 admissible evidence regarding a past record could come
15 into play and it could come into evidence. Do you
16 understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Have you had time to ask
19 your attorney all the questions that you need to ask him
20 about whether or not you should testify?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And have y'all talked about it?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And have you made a decision?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And what's your decision?

2 THE DEFENDANT: Not testify.

3 THE COURT: All right. And do you understand that
4 I'll instruct the jurors that the fact that you have not
5 testified can't be held against you? Do you understand
6 that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you have any questions for me at
9 this time?

10 THE DEFENDANT: No, sir.

11 THE COURT: All right. Mr. Day, do you have any
12 questions for your client?

13 MR. DAY: No, sir.

14 THE COURT: All right. So you've decided not to
15 testify?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And you understand everything I've
18 talked to you about?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. Thank you.

21 The other thing I need to talk to you about before
22 we start, you have a check list on your verdict form.
23 Is there a new requirement for that checklist on your
24 verdict form?

25 MS. SIMMONS: Judge, the way I understand

1 Subsection 16-3-655 ---

2 THE COURT: Okay. Yeah, because I can't pull it
3 up, so...

4 MS. SIMMONS: 16-3-655 subsection A (1) is -- under
5 C (1) it says: If a person is convicted of A(1), which
6 is criminal sexual conduct with a minor first degree, it
7 says that the Judge, let's see, the case of a person
8 pleading guilty to a violent offense convicted at trial
9 under section A(1) must designate as part of the verdict
10 whether the conduct that constituted sexual battery
11 involved sexual or anal sexual intercourse or intrusion
12 by an object.

13 THE COURT: Okay.

14 MS. SIMMONS: I never made one that looks like
15 that, but I think we have to include it.

16 THE COURT: I hadn't either. But that -- it may
17 have been amended. If it hadn't been amended, it's
18 something that hasn't been done. I understand why it
19 needs to be done.

20 Have you had a chance to look at the verdict form?

21 MR. DAY: Yes.

22 THE COURT: Do you agree that's ---

23 MR. DAY: That appears that's the way I would have
24 written it, Your Honor, based on the statute.

25 THE COURT: Well, I trust you both and I can't pull

1 it up, so...

2 MS. SIMMONS: Judge, I'll be happy to hand you my
3 copy.

4 THE COURT: Let me just look at it. It seems odd
5 to me, but...

6 And, Mr. Day, you have a couple witnesses?

7 MR. DAY: No.

8 THE COURT: You're gonna rest?

9 MR. DAY: We're gonna rest.

10 (Whereupon, off-the-record discussion occurred at
11 sidebar.)

12 THE COURT: All right. Just for the record we've
13 had an off-the-record discussion. Because of the change
14 in the statute, assault and battery second degree does
15 apply because the legislature apparently took out the
16 word adult. So what I'll do is I'll charge criminal
17 sexual conduct in the first degree and assault and
18 battery in the first and second degree, and then as a
19 lesser-included.

20 MR. DAY: And what I'll do is I'll just wait till
21 the end of the charge and then I'll put on the record my
22 objection not having qualified as third, assault and
23 battery third and we'll finish that off.

24 THE COURT: All right. What we'll do then is,
25 since I thought we'd be doing this during lunch, I'll

1 bring them in and let you do your closing and then I'll
2 have to give them a fairly substantial break while we
3 put this together. Okay?

4 All right. Are you all ready for your closing?

5 MS. SIMMONS: Yes, Your Honor.

6 THE COURT: Mr. Day?

7 MR. DAY: Yes, Your Honor.

8 THE COURT: All right. You can bring them in.

9 The first thing I'll do is tell them that they
10 can't hold the fact that he's not testifying against him
11 so we'll go from there.

12 (Whereupon, Counsel confer off the record.)

13 (Whereupon, the Jury entered the courtroom at
14 approximately 10:33 a.m.)

15 THE COURT: All right. Mr. Day, do you have any
16 witnesses?

17 MR. DAY: Your Honor, at this time the Defense
18 rests, Your Honor.

19 THE COURT: All right, thank you.

20 All right. Ladies and gentlemen, you have heard
21 all the testimony that you're gonna hear in this case.
22 The Defendant, as I told you at the beginning, has pled
23 not guilty in this trial. I'll explain more in my long
24 jury charge to you, but just briefly he has a Fifth
25 Amendment right not to testify if he chooses not to.

1 And that's a personal decision. No person shall be
2 compelled in a criminal case to testify against himself.
3 As I said, the presumption of innocence in this country
4 is an important function and he's decided not to
5 testify, so you cannot hold the fact that he did not
6 testify against him. He's just asserting his right.

7 At this point in the trial because there are no
8 witnesses from the Defense, we're moving straight into
9 the closing arguments. This is a little earlier than I
10 thought. So we're gonna let the attorneys do their
11 closing arguments and then unfortunately I have to take
12 a fairly long break before I give you the charge. I
13 have a printing issue that's going to take a little
14 while so I apologize.

15 But after the closings, we'll take a break as quick
16 as we can. We'll bring you back in and then I will have
17 to read to you the jury charge. Again, it's gonna be 30
18 or 40 pages. So make sure when you come back in you are
19 awake and ready to listen.

20 As I told many a jury, I read to two people in my
21 life, I've read to my children to put them to sleep and
22 juries to try to not put them to sleep. So during the
23 break you're gonna have time to get up and walk around
24 and that might be a good idea.

25 All right. Are you ready to close?

1 MS. SIMMONS: Yes, Your Honor.

2 THE COURT: Thank you, ma'am.

3 MS. SIMMONS: Thank you, Your Honor, Mr. Day.

4 Good morning ladies and gentlemen, first I want to
5 thank you for paying attention the last couple of days.
6 I want to thank you and I know you have carefully listen
7 to the witnesses in this case. It is my obligation to
8 prove to you beyond a reasonable doubt that this
9 Defendant committed the crime of criminal sexual conduct
10 with a minor in the first degree. I want to tell you a
11 little bit about the law in this case and how it
12 applies.

13 Reasonable doubt is the kind of doubt that causes a
14 reasonable person to hesitate to act. When you are in
15 that jury room, it is not beyond all doubt. Reasonable
16 doubt is not obtained, it is a standard. The standard
17 is reasonableness and you are all reasonable people.

18 The law on criminal sexual conduct with a minor in
19 the first degree, again, I have to prove to you that a
20 sexual battery was committed by this Defendant on a
21 child that is less than 11. A sexual battery can be a
22 number of things. It can be actual sexual intercourse
23 from the penis being inserted in the vagina. It can be
24 oral sex. It can be anal sexual intercourse and it can
25 also be penetration of a body part, in this case the

1 fingers into the vagina, as well as the penetration by
2 an object. There are lots of kinds of sexual
3 intercourse and in this case the sexual intercourse
4 would be that the victim being penetrated by the
5 defendant's fingers.

6 The law in South Carolina also requires that when
7 you convict a Defendant for criminal sexual conduct with
8 a minor in the first degree the jury has to make certain
9 factual findings. You have three options in that.
10 Unfortunately you have to make a factual finding what
11 kind of sexual battery occurred. Your options are
12 sexual intercourse, anal sexual intercourse or intrusion
13 by an object. I would submit to you in this case the
14 option would be sexual intercourse being the penetration
15 of the victim's vagina by the Defendant's hand.

16 The Judge most importantly is going to tell you
17 that in South Carolina the standard is that the
18 testimony of a victim in a criminal sexual conduct case
19 does not have to be corroborated. In this case there
20 was corroborating evidence, but it is not required under
21 the law.

22 The Judge also is gonna charge you on some
23 lesser-included offenses. Those are various degrees of
24 assault. I submit to you that those lesser-included
25 offenses do not apply in this case. The only evidence

1 you heard from the victim is that there was a
2 penetrating injury to her vagina. The lesser-included
3 offenses involve only an unlawful nonconsensual touching
4 of the parts, not the penetration of the parts. But it
5 is my position to you that criminal sexual conduct with
6 a minor in the first degree is clearly what happened in
7 this case.

8 I want to spend a little time talking about the
9 defense in this case. It's kind of like what I call
10 smoke and mirrors. They want to get you off track by
11 confusing you, asking questions that aren't really
12 important or are designed to mislead. They want you to
13 forget about VICTIM who is nine years old, and forget
14 there's a victim in this case.

15 Ms. Longwith is as close to an eyewitness as you
16 will ever get in a criminal sexual conduct case. Quite
17 frankly, people don't invite a crowd to molest a child.
18 Much ado has been made about her statement and her
19 testimony. Let me reiterate to you, she never said the
20 statement she gave was false. She said there was more
21 detail than what was written in the statement. She
22 herself was asked by an officer to write down what
23 happened. She wrote down what happened, what she saw
24 that day.

25 It's not a be all end all account of this incident

1 how it affected her life and her relationship with her
2 son. She told you she saw the Defendant's hand in the
3 victim's dress. She took an oath to tell you the truth,
4 and I submit that is indeed what she saw back in October
5 of 2011. She may have written the word on the statement
6 instead of the word in, but what difference does it
7 really make? At the end of the day, at the end of any
8 interpretation of her statement she walked in on her
9 adult son in a bedroom alone with her eight-year-old
10 daughter with his hand in a very compromising position
11 on her body.

12 VICTIM disclosed to her mother immediately after
13 what happened, told her as soon as they got out of the
14 room this is what he did to me. Ms. Longwith did not
15 immediately report this testimony to the police. You
16 heard her testimony. This is a woman conflicted. It's
17 hard to call the law on your own child, call the police.
18 It's hard to make an embarrassing family spectacle.

19 This woman who has raised her four children, she is
20 now raising two children that belong to somebody else
21 and she's raising the Defendant's daughter. Once this
22 came to light, this woman was 100 percent cooperative.
23 She told you on cross-examination that the Defendant
24 scares her, that he threatened her if she told you about
25 this. She told you she fed this man, she did his

1 laundry, she gave him rides, she gave him money. She
2 gave him a place to lay his head when no one else would.

3 How was she repaid? He ends up drunk on her
4 doorstep at 5:00 in the morning with his girlfriend and
5 then shows his mother the ultimate disrespect by
6 molesting his own eight-year-old sister. Trying to
7 shift the blame to Christine Longwith is simply an
8 insult.

9 Dr. Carter testified on the medical evidence in
10 this case. True, she cannot give you a time frame for
11 these injuries. She can only tell us they were
12 completely healed and they happened more than a week,
13 they were more than a week old. But she can tell us
14 these injuries are more consistent with a penetrating
15 injury to the vagina rather than a blunt force injury
16 which is like a fence post or a bike accident.

17 And remember she told us it's unusual for a single
18 finger to cause the injury. It is possible for this
19 injury to be caused by multiple fingers being inserted
20 in the vagina. I would remind you that VICTIM said
21 fingers the plural and recounted the fingers moving
22 around inside her.

23 I expect the Defense is also gonna talk to you
24 about witness credibility. There is no such thing as a
25 perfect witness. People are taken from their everyday

1 lives to the tense environment of a courtroom, somewhere
2 they probably have never been before. Small details may
3 be overlooked. Minor inconsistencies are going to
4 emerge. However, overall the witnesses have been
5 consistent. VICTIM recalled details from almost a year
6 ago and she's been consistent on what happened to her.

7 She's a child. She was eight years old when this
8 happened. She's nervous, but she's consistent. So what
9 if she uses a different name for the body part today
10 than what she used a year ago? Children's vocabulary
11 emerges, changes over time, especially if you have been
12 forced to talk about this in a public forum these very
13 private things. At the end of the day, it's still the
14 same body part she was talking about that was injured by
15 this Defendant.

16 Most importantly I want you to look at motive to
17 lie. There is none. Why would VICTIM want to get her
18 brother in trouble? Is her life better because she told
19 this story? Not only did she endure the embarrassment
20 of telling this story multiple times to complete
21 strangers, the most private things, she also endured an
22 invasive medical procedure. And more importantly, for a
23 period of time she was taken from the only home she's
24 ever known, from the only mother she'd ever known. Then
25 she has to come to court and relive it all again.

1 Why would an eight-year-old go to such lengths to
2 perpetuate a lie? I submit to you she would not. Is an
3 eight-year-old really capable of concocting a grand plan
4 to frame her brother and get her mother to go along with
5 it and miraculously produce medical evidence that
6 corroborates her story? Ladies and gentlemen, a theory
7 such as that would be ludicrous. No mother is going to
8 take part in framing her own son for a crime, especially
9 not one like this.

10 Look at our case. Again, let's look at VICTIM
11 Her facts, her details and her consistency, the courage
12 it takes to tell your story to complete strangers. The
13 details are pretty good. She told you he was watching a
14 movie in her bed. He called her into the room. He
15 asked her to change the movie, asked her to come closer.
16 Exposed his penis to her and put his hand inside her
17 private parts and moved it around. He even asked her
18 does it feel good.

19 She said he touched her privates with his hand, not
20 just with the hand, not just a singular finger she used
21 the word fingers. Fingers. I submit to you this
22 Defendant is a big man. Big people have big hands, have
23 big fingers. Fingers that can damage the private parts
24 of little eight-year-old girls.

25 Yes, VICTIM and the Defendant were alone, but

1 Ms. Longwith came in at the end of this incident. It's
2 very rarely we have eyewitnesses to a crime of this
3 sort.

4 VICTIM 's recall is pretty good. Most of us can't
5 remember what we did last week. We can nit-pick her
6 story to death, but at the end of the day you will still
7 overall find consistency that this man inserted his
8 fingers in her vagina and moved them around. Most
9 importantly, in this case you find corroboration,
10 corroboration by her own mother, corroboration by the
11 medical evidence.

12 In a little bit you're gonna be asked to go into
13 the jury room and deliberate this case. I told you
14 yesterday the most important tool you bring is your
15 common sense. You didn't leave it at the door when you
16 came in here. Your common sense tells you VICTIM is
17 telling you the truth. Your common sense does not
18 believe the defense assertions in this case.

19 Remember that no witness in this case stands alone.
20 This case does not solely rest on VICTIM , Dr. Carter or
21 Ms. Longwith. You take their testimony as a whole.
22 It's like putting the pieces of a puzzle together. I
23 submit to you that pieces of the puzzle are together and
24 you do have a complete accurate picture of what happened
25 October of 2011. Your common sense tells you that this

1 man used his fingers to penetrate the vagina of
2 eight-year-old VICTIM in October of last year.

3 There are some things this case is about betrayed
4 trust. VICTIM trusted the Defendant because she knew
5 him as a brother. The way little girls trust adults, a
6 hundred percent pure simple kind of trust. This
7 Defendant betrayed that trust in one of the worst way
8 you can imagine. He violated this little girl. She was
9 only eight. She wasn't even old enough to understand
10 truly what he was doing. And in the course of
11 committing this horrible act this man betrayed his own
12 mother.

13 Under the last two days VICTIM has trusted me to
14 tell you her story and make you understand what happened
15 in the events of October of 2011. I ask that you go to
16 the jury room and use your common sense, deliberate the
17 totality of everything you've heard in this case. I
18 simply ask that you find this man guilty of criminal
19 sexual conduct with a minor in the first degree. Thank
20 you.

21 THE COURT: Yes, sir.

22 MR. DAY: Thank you, Your Honor.

23 Mr. Foreman, ladies and gentlemen, as we said at
24 the beginning, these cases don't take long because in
25 South Carolina it's not like it is on the television,

1 not like it is in some other states. We believe that
2 when you are looking for the truth and you're looking
3 for justice you should do it as quickly as possible.

4 I've actually read the transcripts of some cases
5 that were actually driving under the influence cases
6 from other states that took two months to try. If you
7 can imagine sitting in that box for two months hearing a
8 case on driving under the influence you would understand
9 why jurors sometimes feel they've been put upon and why
10 people don't want to be on a jury. And I can understand
11 that, too.

12 This case is coming to an end, and it now comes to
13 the most important part and that is it is time for you
14 to take all of the evidence that has been presented
15 here, right from there, and it is time for you to
16 determine whether or not this man's life is gonna change
17 completely from here on out. His life is in your hands.

18 Soon the Judge will be able to give you a charge on
19 the law which he will tell you to apply to the facts.
20 He'll explain to you what the laws in South Carolina and
21 this great country of ours is and you will have to make
22 a decision. It's never an easy one, but you have to
23 make that decision.

24 When you realize that the reason we're here is
25 because of our Constitution, this is actually

1 Constitution week celebrated by the Daughters of the
2 American Revolution. And last Monday was Constitution
3 day and all of our schools in South Carolina are
4 celebrating the Constitution. The Constitution is a
5 great document and that's why we're here. It protects
6 you and me and the Judge, the Solicitor, everyone. And
7 it does it by guaranteeing one of the greatest rights
8 ever, and that is to have a jury determine your guilt or
9 innocence. In this case you must make that decision,
10 guilty, not guilty.

11 The Judge is gonna give you the law that in our
12 state, in our country means so much. But it's very
13 simply the person with the burden of proof is always on
14 the State. It's right here. It never leaves. And the
15 reason it's there is because when our country came into
16 being, when this country started, the rule of law was if
17 you are charged with a crime you are guilty and you must
18 prove your innocence. We decided that wasn't right. It
19 should be the other way around. And that's why we exist
20 as a country today. One of the main reasons is we
21 didn't like that. Didn't like being treated that way.

22 The Judge has explained to you once, and he'll tell
23 you again, that you must apply all of your common sense
24 to it. And part of that is looking at it, being serious
25 and determines whether you have found that the evidence

1 goes beyond a reasonable doubt. Beyond. And the
2 Solicitor is correct. It's not beyond every possibility
3 by no means. We can say that I doubt that we're gonna
4 see the sun tomorrow. Why? Because it's not tomorrow
5 yet.

6 Let's be realistic. That's not a reasonable doubt
7 that the sun is not gonna be here tomorrow. We're
8 pretty sure it's gonna be here. It hasn't missed a day
9 in a long time. It has not missed a day since the
10 second day when God created light and day and night and
11 day and dark and light. Hasn't missed a one. But you
12 do have to look beyond a reasonable doubt.

13 And the Judge used the word that is so true. And
14 that is you must firmly believe in the guilt of the
15 Defendant. You must believe firmly in the guilt of
16 Steve Frost. That's what we're here for.

17 Now, as I said before, there is a presumption that
18 is with Steve, just as it is with everyone else, and
19 that is that you are innocent. So let's look at this
20 case. The Solicitor thinks I'm gonna nit-pick
21 everything. What do you think we're gonna do? We can't
22 just come up here and say well some of it may not make
23 sense and some may contradict each other. But you've
24 got to look at that, you've got to weigh it.

25 VICTIM 's story changed so many times, weighing

1 each of the things that went on, but let's see if we can
2 figure it out. If we believe everything presented here
3 today, supposedly October 15th, which is a set day
4 according to Christine Longwith which is exactly when it
5 had happened. And she said in February, which according
6 to my calculations is 111 days later, when the doctor
7 saw her. She says in February that then she was asked
8 to tell what happened and she gave a statement.

9 Now, the Solicitor may want you to believe that she
10 was asked to give a statement, something to this effect.
11 Here, ma'am, write down what happened. I'll be back in
12 a minute. I want to get some coffee. And the law
13 enforcement officer walks away or sits in a chair across
14 the room. Wrote it down. Okay. Well, okay. Looks
15 okay, signed it. That's the truth. Okay. Put it in my
16 little folder, take that back, give it to the chief
17 investigating officer and let's move on.

18 Now, that might be in some Sheriff's Department,
19 but by God I don't believe it's Ocone County. We got a
20 pretty good Sheriff's Department. We got a pretty good
21 bunch of officers there. I don't think that's the way
22 it happened. I think she was asked to write down what
23 happened. She was asked, is that it? What else would
24 you like to put there? Is this everything? What went
25 on? You sure this is what you want to put down? Nobody

1 is threatening you, nothing at all, just tell us what
2 happened. Write it down, okay?

3 I have found in my 34-plus years of practicing up
4 here and with the Oconee County Sheriff's Department
5 that she would be willing to write it for you if you
6 want him to. You tell me. I'll write it down. You
7 look it over and make sure it's right.

8 But in her statement she said something completely
9 different from what she said up here. Up here she's
10 trying to say all sorts of things in February after she
11 claimed this happened October the 15th. As a matter of
12 fact, considering the fact that she gave that statement,
13 said it was the middle of October, and the weekend of --
14 said the weekend of the second week of October which
15 happened to be Saturday, would be the 15th of October,
16 2011. Sunday would be the 16th. She said it was that
17 weekend.

18 However, the indictment said somewhere between
19 October 1st and November 1st. So apparently what was
20 presented to the grand jury didn't say anything about
21 October 15th, just said somewhere in there, so that
22 wasn't presented. The person who signed the warrant
23 didn't even talk to the grand jury, someone else did who
24 didn't have anything to do with the case.

25 So we end up here today and the Judge tells you

1 it's the indictment that brings us here. You can't have
2 a trial without an indictment. You can't have a
3 complete charge in a criminal case without an
4 indictment. And what we have here is an indictment that
5 doesn't even get close to what she was saying. It's
6 testimony that's different.

7 .VICTIM , like I said, kept changing and describing
8 things. And look, we all know eight and nine years old,
9 we don't know. But she's been with her mama all that
10 time. She said that when, according to this statement,
11 her testimony, and according to Christine, then also
12 told her dad at the same moment within minutes of time
13 at that time as to what supposedly what happened.

14 Where is dad? Why haven't we heard from him?
15 Christine said, oh, she thought there might be some kind
16 of trouble. The dad, .VICTIM 's dad, wife of Christine,
17 is not Steve Frost's father. He would be considered his
18 step-dad I reckon. There was no trouble.

19 He didn't do anything, which leaves me to believe
20 possibly he didn't believe it because he sure wasn't
21 here today. He sure didn't check anything, he didn't
22 make any statements. Nothing. No one else in that
23 house has testified here. No one that's in that house
24 wrote a statement. Nothing at all.

25 From October until February. And the doctor didn't

1 see her until March the 5th of 2012.

2 VICTIM 's testimony went through there, you saw her
3 demeanor when testifying. I'm sure that she was
4 nervous. I think I would be. I think you would be.
5 Even at your age right now if you had never been in a
6 courtroom you would be nervous. If you sat up there and
7 looking out at this big room with all these people
8 running around here trying to figure out what all these
9 people are doing you're going to be nervous. You got to
10 see at the time she was testifying how she responded to
11 questions.

12 Was it free flowing? When you speak the truth, it
13 flows freely. It's not hard. You tell the truth, it
14 just comes out. She kept responding with short answers
15 to things she expected. When she was asked something
16 that wasn't expected, nothing came. It might be a while
17 or nothing verbal. She wasn't expecting a question like
18 remember seeing the doctor? Yeah. How long after this
19 supposedly happened did you see the doctor? (Pauses) a
20 week. She wasn't expecting that one. So she didn't
21 know what to answer. A lot of questions there.

22 Also, when she went to the doctor and saw
23 Dr. Carter, Dr. Carter did an examination and she told
24 her what her examination found. I wasn't gonna question
25 Dr. Carter about what she found. She seems to know what

1 she's doing. When she sees something, she knows what it
2 is and how to describe it. That's true.

3 She took no history and she did nothing whatsoever
4 to try to tie in what she saw. She said it was an
5 injury to the incident which is what brings us here
6 today. Is there any link between those two? She said,
7 I don't know. When did it happen? I don't know. How
8 long before you saw her? I don't know. How did it
9 happen? I don't know. Is it consistent? Yes. Is it
10 consistent with other possibilities? Yeah. Well, tell
11 me some more. I don't know anything more. I told you
12 all I know. That was it.

13 She did not put them together. She can't say what
14 she found to support anything. She didn't find anything
15 about how, when or anything else that could tie it
16 together. She never did anything. Nothing was
17 presented to you other than what she saw at that time in
18 March.

19 And then Christine gets up here. Christine made it
20 pretty clear that when she wrote that statement in
21 February she was nervous or she was scared or she was
22 frustrated. Whatever you want to say. She was sitting
23 in a room, she was with an officer, she was not being
24 threatened, no one is trying to hurt her, no one is
25 forcing her to do anything, and she says she wrote down

1 what happened and then she testified to something
2 completely different up here. So what she did is she
3 made it very clear if I'm scared or frustrated I'm gonna
4 lie. I'm not going to tell the truth. I'm gonna do
5 what I got to do at the moment. And that's what she
6 did.

7 She said one thing. She said she saw Steve's hand
8 on her back, on VICTIM 's back. That's what she wrote
9 when there was no one threatening her in February, some
10 what 111 days after this supposedly happened, close to
11 that. When she wrote that statement, she was much
12 closer to when it happened and she had a reason at that
13 point if she wanted to try to tell the truth she could
14 have told the whole truth, had plenty of time to do it
15 and wrote it in her own hand.

16 And no, I do not believe for one minute that
17 anybody rushed her into doing it. Nobody. I don't
18 believe anybody forced her to write just a few sentences
19 and quit. I don't believe anybody tried to scare her in
20 some way.

21 What I do believe is she was trying to write down
22 something that she said that she saw and his hand was on
23 her back, not under her dress in any way. That's what
24 she said. She could have changed that any time she
25 wanted to. That was February of this year, and this is

1 now the end of September. She could have written
2 another statement saying, you know, I've been thinking
3 on it. Maybe I was scared. Let me write it again. She
4 didn't do that. Nope. Not at all.

5 Remember she kept saying she was worried and she
6 was scared. As I said before, nothing happened. Her
7 husband was told the very same day, we don't know of
8 anything he did. Never made a statement, never looked
9 at anything, never tried to find out anything, nobody
10 else in the house did. Not at all. Not one thing.

11 This case is based on what the Sheriff's Department
12 said was a medical exam where nothing was shown or
13 proven as to when or how it happened and a statement
14 from Christine Longwith which she now says wasn't true.
15 That's what this case is based on. That's how they
16 brought it. That's how we ended up here.

17 I think Christine was willing to do about anything,
18 particularly when DSS got involved, because there was
19 some sort of allegation. She said they took the
20 children out of that house. Steve wasn't there. He'd
21 been gone for months. But they took them away, and I
22 think she was willing to do anything and say anything,
23 anything, to try to get people to stop looking at her.

24 Ladies and gentlemen, it's a serious charge. It's
25 a horrible charge. This crime is a terrible crime.

1 There's nothing good about this crime. There's no way
2 to defend this crime. But you can defend the facts of
3 an allegation, a claim, a charge against a person, Steve
4 Frost. With the evidence that's been presented here,
5 you've got to take what the Judge says as law, as to the
6 possible charges that he could be found guilty of or not
7 guilty of.

8 One, I don't think the evidence has shown beyond a
9 reasonable doubt, firmly beyond a reasonable doubt that
10 he committed a crime of criminal sexual conduct. I just
11 don't think it's there.

12 Two, there is evidence also that says he may have
13 touched her. In this case that evidence is contradicted
14 between a nine-year-old child and an adult. Was there a
15 touching? We don't know. There could have been. You
16 will have to decide that and the Judge will explain that
17 to you.

18 There was a lesser-included charge. If it wasn't
19 that, could it be something else? And our law is such
20 it will allow you to consider that. First you got to
21 prove to yourself in your mind that he committed a
22 crime; and if you believe he did, what crime did he
23 commit? And that evidence has got to be beyond a
24 reasonable doubt, firmly beyond a reasonable doubt.
25 That's what it's all about.

1 You now have an opportunity to go back in that jury
2 room. So you will understand something. In our
3 country, which is a great country, don't get me wrong,
4 with all the problems we've had in this country, with
5 all the mistakes we have made down through the years,
6 there is one place that is inviable and that is back in
7 that jury room. When you go back there, no one can
8 look, no one can listen.

9 Your bedroom can be bugged by the government, and
10 it happens all the time. But that room back there can't
11 be bugged, nobody can listen. But when you go back
12 there, this is your opportunity to make a decision and
13 nobody is to bother you, none at all. And while it's
14 hard and while it's difficult, it is so important
15 because you have taken an oath and that oath is very
16 serious and that oath says that you will look at
17 everything and you will make a determination and it's
18 gonna be hard. You will make that.

19 And no one can ask you why you did it or anything
20 else unless you want to answer a question from anyone.
21 The Judge will tell you somebody comes up to you, me or
22 anybody else and ask you how did you come to your
23 decision? You don't have to talk to me. You don't have
24 to talk to anybody. You don't have to talk to your
25 wives or husbands. You don't have to talk to your

1 children. You don't have to talk to anybody if you
2 don't want to. It's entirely up to you because it's
3 that important.

4 Winston Churchill said that the most important
5 thing that a citizen can do, most importantly beyond
6 wartime is sitting on a jury because you can make the
7 system work. You protect the rights of all of us,
8 yourself included, by going into that room, making the
9 determination, making the hard decision. And for that
10 we thank you.

11 And it's just a good thing you don't have to do it
12 again for another three years. And you're getting paid
13 for this. Not much, but they actually pay you
14 something. We appreciate the fact that you have
15 listened to everything, paid attention, it's gonna be a
16 decision that only you can make and we will sit and
17 wait. Thank you.

18 **THE COURT:** All right. Ladies and gentlemen, I
19 need to send you out. As I said, we've got several
20 matters to take up. Originally we had planned to send
21 you out closer to lunchtime to give us some time to work
22 these out. But I'm gonna need you to sit back there for
23 20 minutes or so. Please don't discuss this case yet.
24 And when I bring you back in, I will charge you on the
25 law. And as I said, it's a very long, involved charge.

1 After I've charge you, I will send you out of the
2 jury room for a few minutes, I'll give the lawyers an
3 opportunity to ask me to recharge something or put on
4 the record any mistakes they think I've made on the law
5 in this case. And then after that's over, we'll get you
6 the verdict form and any introduction of evidence and
7 you will begin your deliberations.

8 I'm sorry for this long break this morning, but
9 you're pretty close to getting this case. Those smokers
10 if you need to can go out and smoke. If you just can't
11 stand sitting back there because it's gonna take 20 to
12 25 minutes, if we have the manpower, I don't mind
13 somebody walking around with you. We have to send
14 somebody with you for everybody's protection, but please
15 bear with us one last time. Please don't discuss the
16 case yet.

17 (Whereupon, the Jury left the courtroom at
18 approximately 11:12 a.m.)

19 **THE COURT:** Okay. It's being printed now. Let me
20 look at it and I'll get you a copy. So y'all take a
21 break for a minute.

22 (Whereupon, a recess was taken.)

23 **THE COURT:** Y'all have had a chance to go through
24 the charge and we've made the corrections that I think
25 she said; is that right?

1 MS. SIMMONS: Yes, Your Honor.

2 MR. DAY: Yes.

3 MS. SIMMONS: Thank you.

4 THE COURT: Well, I'm sorry for the update problem.
5 I'm not sure -- I'm going to check on that today. I
6 just think that the updates are sitting in our office
7 waiting for IT to come up. I got an e-mail during the
8 testimony that because of problems in the IT department,
9 which everybody seems to have, they're delaying their
10 implementation of the new computers. So anyway.

11 All right. Anything I need to take up before I
12 charge the jury?

13 MS. SIMMONS: No, Your Honor.

14 MR. DAY: No, sir.

15 THE COURT: Okay.

16 Okay. They can bring them in.

17 (The Jury entered the courtroom at approximately
18 11:57 a.m.)

19 THE COURT: All right. Ladies and gentlemen, I
20 seem to be apologizing for delays a lot. I do apologize
21 for this last delay. And, as I said, after I finish
22 this charge and after you've deliberated and rendered a
23 verdict, I'll come back and talk to you and I'll be able
24 to explain a little more. It's not as mysterious as it
25 sounds, but a lot of it is mechanically oriented. So we

1 have everything done now. I appreciate your patience
2 and the time you have spent listening to the witnesses.

3 It is now my duty and obligation to charge you on
4 the law in this case. And I'll tell you it's not as
5 long as I thought, but it's 17 pages of applicable law.
6 Some of it is a little repetitive, but required to be
7 charged. After I charge you on the law, I'll send you
8 back. And as I think I told you yesterday, I give the
9 attorneys an opportunity to ask me to correct the
10 charge, make an addition, make a subtraction. Quite
11 frankly, while you've been out we've done that, so
12 unless we've made an error, I don't think we'll be
13 having much of that to do.

14 But I will send you out and then we have one piece
15 of evidence entered. And once we delivered that piece
16 of evidence and the verdict form to you at that point
17 you can begin your deliberations.

18 Now, again, for the last time if you need a break
19 at any point during any of this -- this isn't going to
20 take as long as I thought, but it's gonna take a little
21 time. But give Mr. Bibb's attention or my attention and
22 just raise your hand and we'll take a break.

23 CHARGE TO THE JURY:

24 All right. Ladies and gentlemen, as I told you at
25 the first of this trial, the Defendant, Mr. Frost, has

1 been charged with criminal sexual conduct with a minor
2 under 11 years of age in the first degree.

3 This process was started by the indictment. You'll
4 have the indictment with you in the jury room when you
5 begin your deliberations. The fact that this Defendant
6 was arrested, was charged and was indicted by the State
7 of South Carolina should never be discussed by you. You
8 shouldn't discuss the fact that there has been an
9 arrest, charge or an indictment because he's pled not
10 guilty. And I know that it's somewhat flowery to
11 describe the presumption of innocence as a robe of
12 righteousness, but it's that important.

13 And I want to charge you that the Defendant has
14 pled not guilty to this indictment and that plea puts
15 the burden on the State to prove the Defendant guilty.
16 A person charged with committing a criminal offense in
17 South Carolina is never required to prove himself
18 innocent.

19 I charge you that it's an important rule of the law
20 that the Defendant in a criminal trial, no matter what
21 the seriousness of the charge may be, will always be
22 presumed to be innocent of the crime for which the
23 indictment has been issued unless guilt has been proven
24 by evidence satisfying you of that guilt beyond a
25 reasonable doubt. This presumption of innocence does

1 not end when you begin your deliberations, but it
2 accompanies the Defendant throughout the trial until you
3 reach a verdict of guilt based on the evidence
4 satisfying you of that guilt beyond a reasonable doubt.

5 As I said, the presumption of innocence is like a
6 robe of righteousness placed about the shoulders and is
7 still about his shoulders. He's pled not guilty. The
8 only way that robe can be taken from him is after you
9 deliberate and find the State has proven their case
10 beyond a reasonable doubt. Then you can take that robe
11 of innocence or righteousness from him, but that
12 continues in the jury room until you finish your
13 deliberations.

14 I charge you that the State has the burden of
15 proving the Defendant guilty beyond a reasonable doubt.
16 Some of you may have served as jurors in civil cases
17 where you were told it's only necessary to prove that a
18 fact is more likely true than not true, such as by the
19 greater weight or a preponderance of the evidence. In
20 criminal cases, the State's proof must be more powerful
21 than that. It must be beyond a reasonable doubt.

22 Proof beyond a reasonable doubt is proof that
23 leaves you firmly convinced of the Defendant's guilt.
24 There are very few things in this world that we know
25 with absolute certainty, and in criminal cases the law

1 does not require proof that overcomes every possible
2 doubt that you may have. If, based on the consideration
3 of the evidence, you are firmly convinced that the
4 Defendant is guilty of the crime charged, you must find
5 the Defendant guilty. If, on the other hand, you think
6 that there is a real possibility that the Defendant is
7 not guilty, you must give him the benefit of the doubt
8 and find him not guilty.

9 As I told you at the beginning of this trial, you
10 and I have had different roles. You have listened very
11 carefully to this case. You have to determine the facts
12 in this case and you will take this law as I give it to
13 you, apply it to the facts and come up with a verdict.
14 If I've given you any impression I believe or disbelieve
15 a witness during the course of this trial, I don't think
16 that I have, but if for some reason I've given you that
17 impression please disregard that. My opinion as to the
18 facts should mean nothing to you.

19 I charge you there are two types of evidence which
20 are generally presented during a trial. There's direct
21 evidence and circumstantial evidence. Direct evidence
22 is the testimony of a person who claims to have actual
23 knowledge of a fact such as an eyewitness. It is
24 evidence which immediately establishes the main fact to
25 be proved. Circumstantial evidence is proof of a chain

1 of facts and circumstances indicating the existence of a
2 fact. It is evidence which immediately establishes
3 collateral facts from which the main fact may be
4 inferred. Circumstantial evidence is based on the
5 inference and not on the personal knowledge or
6 observation.

7 The law makes absolutely no distinction between the
8 weight or value to be given either direct or
9 circumstantial evidence, nor is a greater degree of
10 certainty required of circumstantial evidence than of
11 direct evidence. You should weigh all the evidence in
12 this case and after weighing the evidence, if you are
13 not convinced of the guilt of the Defendant beyond a
14 reasonable doubt you must find the Defendant not guilty.

15 Necessarily as a part of your deliberations you
16 have to determine the credibility of witnesses.
17 Credibility under the law in South Carolina simply means
18 believability. It becomes your duties as jurors to
19 analyze and to evaluate the evidence and determine which
20 evidence convinces you of its truth. In determining the
21 believability of witnesses who testified in this case,
22 you may believe one or several witnesses or several
23 witnesses over one witness. You may believe part of the
24 testimony of a witness and reject the remaining part of
25 the testimony of that same witness.

1 You may believe the testimony of the witness in its
2 entirety or reject the testimony of a witness in its
3 entirety. You may consider whether any witness has
4 exhibited to you any interest, bias, prejudice, or other
5 motive in this case. You may also consider the
6 appearance and manner of a witness while on the witness
7 stand.

8 Now, I charge you that in South Carolina the law is
9 that the testimony of a victim in a criminal sexual
10 conduct case need not be corroborated by another
11 witness. That is not required in this state.

12 Now, during this trial you've heard the testimony
13 from a child. Where a witness is a child, you must
14 determine, as with any witness, whether that testimony
15 is believable. In deciding believability, you may
16 consider not only matters already discussed and talked
17 with you several times, but you may also consider the
18 age of the child, the child's ability to observe and
19 remember facts, the child's ability to understand and
20 answer questions. Because children may not fully
21 understand what is happening in the courtroom, it is up
22 to you to decide whether the child understood the
23 seriousness of this case and the questions being asked.

24 You have to decide whether the child has a good
25 memory and whether the child understands the difference

1 between lying and telling the truth. In addition, young
2 children may be influenced by the way the questions are
3 asked. It's up to you, the jury, to decide whether the
4 child understood the questions asked.

5 Now, the Rules of Evidence ordinarily do not permit
6 witnesses to testify to opinions or conclusions. An
7 exception to this rule exists for witnesses that we term
8 expert witnesses. A witness who by education and
9 experience has become expert in some art, science or
10 profession or calling may state an opinion as to
11 relevant and material matter in which the witness claims
12 to be an expert and may also state the reasons for that
13 opinion.

14 You should consider any expert opinion received in
15 this case like any other evidence in this case, and you
16 have to give it the weight that you think it deserves.
17 If you decide that the opinion of an expert witness is
18 not based on sufficient education or experience, or if
19 you conclude that the reasons given in support of the
20 opinion are not sound or that the opinion is outweighed
21 by other evidence, you may disregard the opinion of the
22 expert in its entirety.

23 An expert witness's testimony is to be given no
24 greater weight than that of other witnesses simply
25 because the witness is an expert. Further, you're not

1 required to accept an expert's opinion even though it's
2 not contradicted by the testimony.

3 I'm gonna instruct you again and charge you and
4 emphasize that the fact the Defendant did not testify in
5 this case is not a factor to be considered by you in any
6 way in your deliberations and in your consideration on
7 the question of guilt or innocence. It must not be
8 considered by you in any manner whatsoever. A Defendant
9 has the Constitutional right to remain silent and the
10 assertion of that right must not be considered by you in
11 your deliberations. I repeat, under your oath you are
12 to draw no conclusions whatsoever by the fact the
13 Defendant in this case did not testify.

14 The fact that this Defendant did not testify should
15 not even be discussed in the jury room. The burden of
16 proof, as I've stated to you, is on the State. The
17 Defendant is not required to prove his or her innocence.
18 The burden of proof remains on the State to prove guilt
19 beyond a reasonable doubt.

20 Now, ladies and gentlemen, you're gonna have to
21 deliberate and make a decision on three separate
22 offenses. I'm gonna charge you the law on each of those
23 offenses, but just in brief, you're gonna have to
24 determine whether or not this Defendant is guilty or not
25 guilty of criminal sexual conduct with a minor, or

1 whether he is guilty or not guilty of assault and
2 battery in the first degree or guilty or not guilty of
3 assault and battery in the second degree. Those are
4 three separate deliberations that you must make.

5 I'm now going to give you the law in its entirety
6 on criminal sexual conduct in the first degree, assault
7 and battery in the first and second degree.

8 The Defendant is charged with criminal sexual
9 conduct with a minor in the first degree. The State
10 must prove beyond a reasonable doubt that the Defendant
11 engaged in a sexual battery with the victim. A sexual
12 battery in South Carolina is sexual intercourse,
13 cunnilingus, fellatio, anal intercourse, sexual
14 intercourse, or any intrusion however slight of any part
15 of a person's body or of any object into the genitalia
16 or anal openings of another person's body, except when
17 the intrusion is accomplished for medically recognized
18 treatment or diagnostic purposes.

19 The State must prove beyond a reasonable doubt that
20 the victim was also less than 11 years old at the time
21 of the sexual battery. Consent, willingness,
22 indifference or ignorance on the part of the minor, if
23 any, as to what is taking place does not in any way
24 affect the charge of sexual or criminal sexual conduct
25 with a minor because an unmarried woman under the age of

1 14 in South Carolina cannot legally consent to sexual
2 intercourse or activity.

3 I'm also charging you on the law in regard to
4 assault and battery in the first degree. The Defendant
5 is also charged with assault and battery in the first
6 degree. The State must prove beyond a reasonable doubt
7 that the Defendant committed this offense.

8 A person commits the offense of assault and battery
9 in the first degree if the person unlawfully injures
10 another person and either the act involved nonconsensual
11 touching of the private parts of a person either under
12 or above the clothing with lewd and lascivious intent or
13 the act occurred during the commission of another crime
14 under the statute.

15 The act offers -- the act must have occurred during
16 the commission of a robbery, burglary, kidnapping or
17 theft to come under the second portion of the statute,
18 but that doesn't apply so you just need to worry about
19 the first.

20 I don't want to cause any undue attention to
21 assault and battery in the first degree, but just again
22 let me repeat because there was a mistake. In order to
23 find the Defendant guilty of assault and battery in the
24 first degree the State must prove beyond a reasonable
25 doubt that the Defendant committed this offense. He

1 commits the offense of assault and battery in the first
2 degree if the person unlawfully injures another person
3 and the act involves nonconsensual touching of private
4 parts of a person either under or above the clothing
5 with lewd and lascivious intent.

6 The Defendant is also charged with assault and
7 battery in the second degree. To prove this the State
8 must prove beyond a reasonable doubt that the Defendant
9 committed this offense. A person commits the act of
10 assault and battery in the second degree if a person
11 unlawfully injures another person or offers or attempts
12 to injure another person with the present ability to do
13 so, and either there is a moderate bodily injury to
14 another person that results in, to another person, or
15 the act involves a nonconsensual touching of the private
16 parts of a person under or above the clothing.

17 And, again, since I did the first degree and second
18 degree, I'm gonna charge you again on the second degree.
19 I'm not -- the only reason I'm doing that is because
20 there's a smaller error here. I don't want to call
21 attention to assault and battery first and second degree
22 by recharging it again, but I am gonna tell you what
23 assault and battery in the second degree is.

24 In order to be found guilty for assault and battery
25 in the second degree, the State must prove that the

1 person commits the offense of assault and battery in the
2 second degree, in the second degree, if he unlawfully
3 injures another person or offers or attempts to injure
4 another person with the present ability to do so and the
5 act involves nonconsensual touching of the private parts
6 of a person either under or above their clothing.

7 Again, please don't take into account or place any
8 importance on the fact that I charged assault and
9 battery in the first degree and the second degree twice.
10 It was an error that I wanted to make sure it was
11 correct.

12 Now, basically ladies and gentlemen, there are
13 three separate charges that you're gonna have to deal
14 with. And Mr. Foreman, just very briefly let me tell
15 you how we're gonna do this. On the verdict form we
16 have, we the jury by unanimous consent find the
17 Defendant Steven Gregory Frost, one, guilty of
18 first-degree criminal sexual conduct with a minor. Now,
19 if you find him guilty of first-degree criminal sexual
20 conduct in the first degree with a minor, if you would
21 put a check there. And then you have to check under the
22 law that the sexual battery involved one of the
23 following: Sexual intercourse, anal intercourse, or an
24 intrusion by an object. That's required to be checked
25 if you find him guilty.

1 Then underneath that I have not guilty. Now,
2 again, I know that sounds ridiculous, but the law
3 requires me to tell you that place no importance on the
4 fact that we put guilty in front of not guilty on the
5 verdict form. One has to come first. We place guilty
6 first.

7 So on that charge, criminal sexual conduct with a
8 minor, which is charge number one, you'll find guilty or
9 not guilty. If you find guilty, you must decide which
10 of the three sexual batteries are involved. Or you can
11 find the Defendant guilty of assault and battery first
12 degree or not guilty of assault and battery in the first
13 degree or guilty of assault and battery in the second
14 degree or not guilty of assault and battery in the
15 second degree.

16 And then you will just, Mr. Foreman, have to sign
17 your name and date it here. Again, these are three
18 separate charges and you have to decide between guilt or
19 innocence on all three of those charges and you need to
20 take them separately, deal with each separately. We
21 tried to do that on the verdict form and we've tried to
22 make these verdict forms as simple as possible. Not
23 because I don't think you can't understand them, but
24 because there are requirements that have to be placed in
25 there. So address each one separately.

1 Your verdict has to be unanimous. In other words,
2 you all have to agree as to the charge and as to the
3 guilt or innocence of the person.

4 I'm gonna send you back now and, again, let the
5 attorneys ask me to recharge. I want to advise you
6 again that the fact that I charged you twice on assault
7 and battery in the first and second degree only was
8 because of a mistake in the charge not because I want to
9 place any inference on those two charges.

10 Once you begin your deliberations, the only way I
11 can discuss anything with you is on the record. So,
12 Mr. Foreman, if you have any questions about this or any
13 problems or issues, there will be a pad and you'll need
14 to write down the question or issue, put the time and
15 date if you don't mind, and then knock on the door and
16 Mr. Bibb will bring it to me.

17 If you need me to recharge any or all of that
18 charge that I just read to you, I'll be happy to do it.
19 You will not have the charge in the jury room,
20 unfortunately. So if you have some feeling that you
21 need the whole charge or a portion of the charge
22 recharged, I'll have to bring you back in to do that and
23 I'll be happy to do it.

24 If you have a question, write that question on your
25 note. If I can answer the question under the law in

1 South Carolina I'll bring you in and answer the
2 question. If I can't answer the question under the law
3 in South Carolina, I'll bring you in and tell you I just
4 can't answer that question. So any communication
5 between you and I from this point forward will need to
6 be in writing from the foreman to me.

7 So if you would, go back one last time. I don't
8 expect to bring you back in here. In just a few minutes
9 I think we'll deliver this verdict form, along with the
10 one piece of evidence that was introduced and at that
11 time you can begin your deliberations. Again, if you
12 got any questions or concerns or problems, write them
13 out, knock on the door and then we'll deal with it.

14 You-all have been very patient. I apologize for
15 that mistake in the charge, but I think we've corrected
16 it. But I'll let the lawyers ask me to read it again if
17 they want me to.

18 Don't begin your deliberations until we deliver the
19 evidence, but go back there one last time.

20 And the alternate, if you would wait in the hall
21 back there.

22 (Whereupon, the Jury left the courtroom at
23 approximately 12:17 p.m.)

24 **THE COURT:** All right. Other than the recharging
25 twice of assault and battery first and second, it was

1 just worded strange and then I realized I probably
2 should have taken out the robbery and kidnapping and I
3 just didn't do it. Are there any other additions,
4 alterations, changes or subtractions from the State or
5 from you?

6 MS. SIMMONS: No, Judge.

7 THE COURT: Okay.

8 MR. DAY: Two things really just for the record,
9 note my objection to failing to charge assault and
10 battery third degree.

11 THE COURT: Okay.

12 MR. DAY: Second, Your Honor, I believe when you
13 read on the, when you read the assault and battery in
14 the second degree, under 16-3-600 D (1). Do you see
15 that? Anyway.

16 THE COURT: No, I haven't. What was it?

17 MR. DAY: D(1), of course, is a person commits an
18 offense of assault and battery, that created a second
19 degree, a person unlawfully injures another, attempts to
20 injure another person or the present ability to do so
21 and -- and then A says: Moderate bodily injury to
22 another person results or moderate bodily injury could
23 have resulted or the act involves nonconsensual touching
24 of the private parts of a person either under or above
25 the clothing.

1 I don't believe you actually read (A), which is
2 moderate bodily injury to another person results or
3 could have resulted. I didn't know if you decided not
4 to put that in there or what. I just think because
5 there was testimony of some injury --

6 THE COURT: Well, you know ---

7 MR. DAY: I know because of the way the ---

8 THE COURT: The way the statute is written, I
9 actually just thought the second paragraph applied more
10 to the, to the testimony. I don't mind bringing them
11 back in and telling them that there is moderate bodily
12 injury to another person or moderate bodily injury could
13 have occurred, or the act involves a nonconsensual
14 touching of the private parts of a person. I don't mind
15 doing that. I just wasn't sure if that top part applied
16 quite frankly. I'll be happy to charge them that first
17 paragraph.

18 MS. SIMMONS: Judge, if we're gonna charge assault
19 one more time, I'll be ---

20 THE COURT: You want me to redo criminal sexual
21 conduct?

22 MS. SIMMONS: I do.

23 THE COURT: I think she's right. If I bring them
24 back in, I'm not comfortable, I'm uncomfortable with it.
25 I've done it twice. I don't mind recharging them on all

1 three..

2 MR. DAY: Well, let's just leave it the way it is.
3 We don't need to hear criminal sexual conduct again.

4 THE COURT: Okay.

5 MS. SIMMONS: Thank you, Judge.

6 THE COURT: And, again, I apologize for that. I
7 actually think that I ---

8 MR. DAY: I think the first time you did, the
9 second time you didn't.

10 THE COURT: Yeah. Yeah, I think you are right. If
11 they're having some confusion they'll let me know, trust
12 me. I suspect, looking at their faces that they're
13 gonna want me to recharge it all anyway. And I've never
14 done a criminal sexual conduct with a minor that I
15 haven't had to recharge out of ten maybe. Here's the
16 verdict form. Y'all have looked at that, right?

17 MS. SIMMONS: Yes, Your Honor.

18 MR. DAY: Yes, sir.

19 THE COURT: I apologize for that. That was just
20 rough wording.

21 THE SHERIFF'S DEPUTY: Do you want to start?

22 THE COURT: Yeah. And tell the alternate I'll be
23 right out.

24 MS. SIMMONS: Thank you, Judge.

25 (Whereupon, jury starts deliberations at

1 approximately 12:21 p.m.)

2 THE COURT: Lisa, she's gonna stay in here. Thank
3 you very much.

4 (Whereupon, the alternate juror stayed to observe
5 the proceedings.)

6 (Whereupon, there was a question from the jury at
7 approximately 12:45 p.m.)

8 (Whereupon, Court's Exhibit Number 1, Jury Note,
9 was marked for identification.)

10 THE COURT: We're back on the record. I have a
11 question and the question is: Do we have to find on all
12 of the charges or just one of them? I think the answer
13 is just one of them.

14 MS. SIMMONS: I agree, Your Honor.

15 THE COURT: So I'll just call them in and tell them
16 that they need to find on just one of the three.

17 MR. DAY: Or they can find not guilty on all three.

18 THE COURT: I could go in and I could say they
19 could find guilty or not guilty on all three or they can
20 just, once they find guilty on one, then they're done.
21 I'm just gonna say that they deal with them separately
22 and they only have to find on one, find a verdict on one
23 of them. How about that?

24 MS. SIMMONS: Thank you, Judge.

25 THE COURT: Okay.

1 MR. DAY: I don't want them to think they have to
2 find somebody guilty.

3 THE COURT: No. I'm just gonna say verdict on one
4 of them. I'll say they have to do each one separately,
5 have to find guilty or not guilty.

6 MR. DAY: Oh, okay. I missed that part. Okay.
7 I'm sorry, thank you.

8 (Whereupon, the Jury entered the courtroom at
9 approximately 12:47 p.m.)

10 THE COURT: Y'all approach a minute over here.
11 (Whereupon, a discussion at sidebar occurred off
12 the record.)

13 THE COURT: All right. Mr. Foreman, I received
14 your question. This is exactly the way I need you to do
15 it. The question is: Do we have to find on all of the
16 charges or just one of them; is that correct?

17 THE FOREMAN: That's correct, yes, sir.

18 THE COURT: The answer is just one of them. So if
19 you would go back and continue deliberating. If you
20 have another question or problem, this is exactly the
21 way to do it. I appreciate it.

22 THE FOREMAN: Thank you, sir.

23 THE COURT: And we made that question an exhibit.
24 (Whereupon, the Jury left the courtroom at
25 approximately 12:49 p.m.)

1 THE COURT: We'll just wait.

2 (Whereupon, off-the-record while jury deliberates.)

3 THE COURT: The question is: Does digital
4 penetration qualify as, one, sexual intercourse or, two,
5 intrusion by an object? What's y'all's answer to that?

6 MS. SIMMONS: It's my position it's sexual
7 intercourse. I think it can be either, but ---

8 THE COURT: I don't know how sexual intercourse --
9 have you got a definition of sexual intercourse? I
10 think it's an intrusion by an object, quite frankly. I
11 think sexual intercourse is defined.

12 MS. SIMMONS: Judge, to be honest with you, I had a
13 dilemma about which one it was. I think it could be
14 concluded either, so...

15 THE COURT: Yeah. I mean, I just -- and I don't
16 know whether they're stuck on that -- I don't know what,
17 but I sort of expected that question because I don't
18 think it's sexual intercourse by definition.

19 (Whereupon, counsel confer off the record.)

20 MS. SIMMONS: I know the definition of sexual
21 battery is codified, but...

22 MR. DAY: It just talks about more and more about
23 it, which doesn't have anything to do with this.

24 THE COURT: Well, sexual battery means sexual
25 intercourse. The other definitions are any intrusion

1 however slight. I don't think it's sexual intercourse.
2 I mean, I think just by definition it's probably got to
3 be intrusion by an object.

4 **MS. SIMMONS:** Thank you, Judge. I could not find
5 sexual intercourse as defined.

6 **MR. DAY:** It's not in the statute I don't think.

7 **THE COURT:** No, it's not. Sexual battery. But I
8 think just by very definition, and I certainly don't
9 hold myself out as any type of textbook, but I'm more
10 comfortable with going with intrusion by an object.

11 **MS. SIMMONS:** We have no objection, Judge.

12 **THE COURT:** Any objection to that from either side?

13 **MR. DAY:** Well, the problem I have is object. An
14 object tends to be something that is separate from an
15 individual, and would be an inanimate object because it
16 says object. It doesn't say ---

17 **THE COURT:** It doesn't say inanimate object.

18 **MR. DAY:** I know, but object in itself.

19 **THE COURT:** Well, I mean, if -- the way the statute
20 is written, it's one of those three, and if I had to
21 pick between those two in that question, then I think it
22 would be intrusion by an object. I mean, let's face it.
23 When that statute was written, whoever did it didn't
24 follow through with it.

25 **MR. DAY:** I know this particular statute is too,

1 too young for that to have come up. I almost want to
2 argue that it's neither one.

3 THE COURT: Well, you can.

4 MR. DAY: I certainly don't believe that it's
5 sexual intercourse, but whether it be an object.
6 Because they could have said after sexual intercourse or
7 intrusion into the body by part of the ---

8 THE COURT: Well ---

9 MR. DAY: By the accused.

10 THE COURT: If sexual battery is sexual
11 intercourse, the various other definitions, or any
12 intrusion however slight of any part of the person's
13 body or any object into the genital area. So I think
14 you got to go with intrusion by an object. It's not
15 sexual intercourse.

16 MR. DAY: Then note my objection, Your Honor.

17 THE COURT: Okay. Y'all can bring them in.

18 (Whereupon, the Jury entered the courtroom at
19 approximately 1:23 p.m.)

20 THE COURT: Mr. Foreman, I understand your question
21 does digital penetration qualify as, one, sexual
22 intercourse or, two, intrusion by an object; is that
23 correct?

24 THE FOREMAN: Yes, Your Honor.

25 THE COURT: All right. For the sake of the choices

1 that you have before you, my interpretation is that it
2 would be intrusion by an object. And, again, you've
3 done this exactly right. I appreciate it. If you've
4 got another question, just send it out.

5 THE FOREMAN: Okay.

6 (Whereupon, the Jury left the courtroom at
7 approximately 1:23 p.m.)

8 (Whereupon, Court's Exhibit Number 2, Jury Note,
9 was marked for identification.)

10 (Whereupon, the jury resumed their deliberations at
11 approximately 1:23 p.m.)

12 (Whereupon, the jury reached a verdict at
13 approximately 1:27 p.m.)

14 (Whereupon, clerk entered courtroom at
15 approximately 1:33 p.m.)

16 THE COURT: Okay. You can bring them in.

17 (Whereupon, the Jury entered the courtroom at
18 approximately 1:33 p.m.)

19 THE COURT: All right. I understand, Mr. Foreman,
20 you have a verdict?

21 THE FOREMAN: We do, Your Honor.

22 THE COURT: All right. If you would hand it to
23 Mr. Bibb.

24 THE FOREMAN: (Complies.)

25 THE COURT: All right. If you would publish it.

1 If you would all please stand. All right. Go ahead.

2 THE CLERK: In the matter of the State of South
3 Carolina versus Steven Greg Frost on indictment
4 2012-GS-37-549 we, the jury, by unanimous consent find
5 the Defendant Steven Greg Frost guilty of first degree
6 sexual -- criminal sexual conduct with a minor, the
7 sexual battery involved intrusion by an object.

8 Ladies and gentlemen, of the jury if this was your
9 verdict and remains your verdict, please indicate so by
10 raising your right hand.

11 Let the record reflect that all members of the jury
12 have raised their right hand.

13 THE COURT: Thank you. Ladies and gentlemen, I
14 have to send you back one last time. I'll be back to
15 talk to you personally in about two or three minutes, so
16 please just remain back in the jury room.

17 (Whereupon, the Jury left the courtroom at
18 approximately 1:35 p.m.)

19 THE COURT: What we'll do -- we're talking about --
20 I'm gonna go back there and talk to them. Because we
21 did a verdict form and there's a question from the
22 Clerk's Office about conforming the indictment, writing
23 guilty on it. I don't think that's necessary when you
24 have a verdict form. We'll just attach the verdict form
25 to the indictment, okay? All right. What we'll do, I'm

1 gonna go back and speak to them. If you could fill out
2 a sentencing sheet, I'll be back in just a few minutes.

3 Before I do that, do you have any motions that you
4 want to take up?

5 MR. DAY: Your Honor, we would, of course, for the
6 record renew our motion as stated for the directed
7 verdict. Also, a motion for a new trial based upon the
8 failure to charge assault and battery third as well as
9 on the question, response to the question particularly
10 as to object that under the statute may not fall into
11 it, but because of the fact that it was a part of his
12 body and we would ask the Court for a new trial based on
13 those issues.

14 THE COURT: Okay. All right. And you are
15 protected on the record on those. I understand you have
16 to make them, but those are denied.

17 So I'll be back in just a minute. I always give
18 them an opportunity to leave or come back in.

19 (Whereupon, the court conferred with the clerk off
20 the record.)

21 THE COURT: By the way, what's the sentencing range
22 under the new law?

23 MS. SIMMONS: 25 to life, Judge.

24 THE COURT: So it is different than the old one?

25 MS. SIMMONS: Yes, Your Honor.

1 (Whereupon, Court leaves courtroom and confers with
2 jury in the jury room.)

3 (Whereupon, Court and members of the jury panel
4 enter courtroom.)

5 THE COURT: Thanks. Have a seat.

6 MS. SIMMONS: Judge, may I approach?

7 THE COURT: Yeah. Hold on one second. I forgot to
8 take the antibiotics. Hold on a minute.

9 Mr. Day, how long has your client been in jail?

10 MR. DAY: 195 days, Your Honor.

11 THE COURT: 195. And again, just to be clear,
12 because the law has changed so severely, what is the
13 sentence range now, 25 to life?

14 MS. SIMMONS: Judge, it would be 25 to life, and
15 it's mandatory GPS if he's ever released from the
16 Department of Corrections and sex offender registry.
17 And I have his criminal history whenever you want that.

18 THE COURT: Yeah, I'm gonna want that in a minute.
19 But the minimum is 25, and I guess you take the position
20 25, 26, 27 up to life?

21 MS. SIMMONS: Yes, Your Honor.

22 THE COURT: Rather than 25 or life?

23 MS. SIMMONS: Yes, Your Honor.

24 THE COURT: And Mr. Day do you agree with that?

25 MR. DAY: Yes, sir.

1 **THE COURT:** Okay.

2 All right. Yes, ma'am. If you would, could you
3 tell me his record?

4 **MS. SIMMONS:** Yes, Judge. It starts in 1984 with
5 simple possession of marijuana, open container. 1985,
6 breaking and entering and grand larceny and attempted
7 grand larceny. 1985, simple possession of marijuana and
8 petit larceny. 1985, attempted grand larceny. 1985,
9 simple possession of marijuana, two counts, petit
10 larceny and open container, housebreaking and grand
11 larceny. In 1986, failure to stop for a police officer,
12 simple possession of marijuana.

13 1987, breaking and entering of motor vehicle, two
14 counts, and malicious injury of property. 1990, two
15 counts of reckless homicide. 1994, four counts of
16 malicious injury to real property. 1995, malicious
17 injury to real property. 1997, receiving stolen goods.

18 2000, manufacturing marijuana. 2002, failure to
19 stop for a blue light, second offense, and malicious
20 injury to real property. 2003, two counts of -- one
21 count of possession of ice or crack, DUS and possession
22 of marijuana. 2003, assault on a police officer,
23 malicious injury to property, unlawful use of a
24 telephone. 2003, assault on a correctional employee,
25 assault and battery of a high and aggravated nature.

1 2005, assault and battery of a high and aggravated
2 nature.

3 2008 driving under suspension. 2008, possession of
4 drug paraphernalia. 2008, four counts of possession of
5 meth or crack cocaine.

6 Judge, he had been out of the Department of
7 Corrections approximately 15 days when he committed this
8 crime. I believe this criminal history it's atrocious
9 and I do not think he can be a functioning member of our
10 society and I ask that you impose a sentence of life.

11 THE COURT: All right. He had been out of the
12 Department of Corrections 15 days when this incident
13 happened. What was he serving?

14 MS. SIMMONS: He was released on September 11,
15 2011. He was serving time for four counts of possession
16 of ice or crack cocaine.

17 THE COURT: All right. And the reckless homicide
18 was what year? That was two counts of reckless
19 homicide.

20 MS. SIMMONS: Yes, Judge. There were two
21 fatalities involved in that.

22 THE COURT: Okay. All right, Mr. Day anything --
23 first let me say, does anybody else wish to testify?

24 MS. SIMMONS: No, Your Honor.

25 THE COURT: Mr. Day, I would be happy to hear from

1 you.

2 MR. DAY: Your Honor, Mr. Frost is 45 years old.
3 As you can tell, he does have a bad record.

4 THE COURT: Yeah, he does.

5 MR. DAY: It mostly comes from drug use which
6 caused this. The reckless homicides, he was in a car
7 with his best friend driving too fast, someone pulled
8 out in front of him and as a result he couldn't stop ran
9 into a ditch and turned over and his best friend
10 drowned. It was one of those things that certainly
11 should not have happened but it did.

12 He has had an almost lifelong problem with drugs
13 off and on and drugs is what caused just about every one
14 of the things he got into, is he would be using drugs
15 and something would happen. And he spent his time in
16 jail.

17 I would submit to the Court, Your Honor, if you
18 notice all of those, not a single one of those was a
19 trial. When brought before the court he pled guilty.
20 He admitted to what he did and took his punishment. In
21 this case, Your Honor, he stated I'm not guilty of this
22 and that's why we went to trial. Even though he has a
23 bad record, Your Honor, as I said most of it comes out
24 of the use of drugs over the years. I think that with
25 Court ordered a sentence that would allow him to go

1 through the addiction program, et cetera, and the other
2 programs they have, that I believe he can still be a
3 functioning member of society. I realize there's a
4 minimum on this, but that would certainly give him time
5 to break away from the hold of drugs in this case, Your
6 Honor.

7 There was no indication that he had gotten back on
8 drugs when all this happened, so I'm just saying that if
9 we could get beyond that I think he has a chance. We
10 ask the Court to consider that. He's 45, like I said,
11 he's 45 years old.

12 THE COURT: Are you saying he wasn't on drugs when
13 this happened? He wasn't back on drugs when this
14 happened?

15 MR. DAY: Your Honor, he was drinking but he wasn't
16 using drugs, he tells me.

17 THE COURT: Okay.

18 MR. DAY: He said he was trying to stay away from
19 them because as soon as he got around some of those
20 people he was gone, he would have been gone.

21 THE COURT: Okay. All right. Mr. Frost, anything?

22 THE DEFENDANT: I was smoking a little bit of
23 marijuana, but that was about two or three days later or
24 something like that. I wasn't under no cocaine or
25 nothing like that.

1 THE COURT: Okay.

2 THE DEFENDANT: I was trying to stay away from
3 that.

4 THE COURT: Okay. Anything else you want to tell
5 me?

6 THE DEFENDANT: I'm sorry all of this happened.
7 I'm sorry y'all have to be here. Have pity on me.

8 THE COURT: Well, you know, I do have pity on you.
9 And it's not a time for -- Mr. Day, you got anything
10 else you want to say? I didn't mean to interrupt you.

11 MR. DAY: No.

12 THE COURT: I mean, it's not a time for me to
13 preach to you, but there are two ways to look at your
14 record. There's to look at that record and be afraid of
15 you because of you're somebody that's gonna hurt my
16 family or somebody else's family. I don't look at
17 things that way because I would prefer not to be afraid
18 of you. It's just pitiful. I mean, it's a life wasted.
19 What was the first year? '85?

20 MS. SIMMONS: 1984, I believe, Your Honor.

21 THE COURT: '84. How many years have you spent in
22 the Department of Corrections total?

23 THE DEFENDANT: Over 25 years.

24 THE COURT: How many times have you been through
25 the ATU program?

1 THE DEFENDANT: None.

2 THE COURT: Why not?

3 THE DEFENDANT: They ain't never give me or alcohol
4 no drug programs. I ain't never been through none of
5 them. I went to R and E and boom to the prison that I
6 was going to.

7 THE COURT: Okay. All right. Anything?

8 THE DEFENDANT: Excuse me?

9 THE COURT: Yeah, go ahead.

10 THE DEFENDANT: You'll see my beautiful daughter.
11 I did raise one thing. I have a 17-year-old beautiful
12 daughter back there, Emily Cheyenne Frost.

13 THE COURT: Well ---

14 THE DEFENDANT: The rest of me I'm bad I reckon,
15 but I got one thing.

16 THE COURT: Well, my children are my best thing
17 I'll ever do. But, you know, that may be one of the
18 longest records I've ever heard. And you really owed
19 your daughter more than what you done. Again, I mean,
20 it's not a time for me to preach to you. I just, this
21 will be the only time I get to talk with you.

22 SENTENCING BY THE COURT:

23 All right. Well, the jury has found you guilty of
24 criminal sexual conduct with a minor under the age of 11
25 or first degree. I've got the option of 25 years to

1 life. I understand why the Solicitor's Office would ask
2 for life. And quite frankly given your age I, probably
3 we're arguing semantics, but the sentence of the Court
4 is 40 years in the Department of Corrections, give you
5 credit for 195 days. It's mandatory GPS pursuant to
6 South Carolina law.

7 Obviously you have a right to appeal, and I'm sure
8 your attorney who has done a good job and has protected
9 your rights and clearly will explain those rights to
10 you. All right. Good luck to you.

11 MS. SIMMONS: Thank you, Judge.

12 THE COURT: Is the victim still here?

13 MS. SIMMONS: Judge, she is. Yes, sir.

14 (Whereupon, Defendant left courtroom.)

15 THE COURT: Hey, you did the right thing. You're a
16 very strong girl, okay? I'm, I'm pretty amazed. I'm
17 not sure I could have done what you did. You did the
18 right thing, okay, honey?

19 And to his daughter, hey, live your life, okay?

20 All right. What do you got for me now, pleas?

21 MS. SIMMONS: Yes, Judge.

22 THE COURT: I'll let the jury go. You are welcome
23 to stick around.

24 (Whereupon, the trial in the matter of the State of
25 South Carolina v. Steven Gregory Frost was concluded at

1 approximately 2:10 p.m. on September 19, 2012.)

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4 *** THIS ENDS REQUESTED TRANSCRIPT ***

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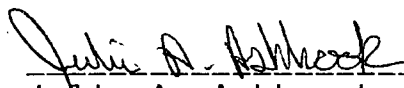
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CERTIFICATE OF REPORTER

I, the undersigned Julie A. Ashbrook, Court Reporter for the Tenth Judicial Circuit Family Court of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record to the best of my ability of all the proceedings and evidence introduced in the hearing and/or trial of the captioned case, relative to appeal, in the Circuit Court for Oconee County, South Carolina, on the 17th, 18th, and 19th day of September, 2012.

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


Julie A. Ashbrook
Family Court Reporter
Tenth Judicial Circuit

FORM 5

STATE OF SOUTH CAROLINA

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

IN THE COURT OF COMMON PLEAS

COUNTY OF Oconee

2015 JAN 14

P 12:50

Steven Frost #133769

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correctional Inst.
2. Name and location of Court which imposed sentence Oconee County Walhalla S.C.
3. Name(s) of co-defendant(s) (if any) NO
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-65-37-549
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 9-19-2012 - 40 years
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty Not Guilty
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Appeal from The Judgment "yes"
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The State of South Carolina court of Appeals.
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. affirmed - June, 25, 2014
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. May 7, 2014 filed June, 25, 2014
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2014-40-258
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) 6 Amendment-
- (b) _____
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) _____
- (b) _____
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. _____
- ii. _____
- iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. no

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) no

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
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. On The back of this sheet of
- ii. paper is the name and
- iii. address of each attorney!
- (b) the proceedings at which each such attorney represented you:
- i. _____
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
- _____
20. Are you now under sentence from any other court that you have not challenged?
- No

R. Daniel Day
Oconee County Public Defender's Office
415 South Pine Street
Walhalla, S.C.
29691

David Alexander
Division of Appellate Defense
1330 Lady Street Suite 401
Columbia, S.C. 29201

STATE OF SOUTH CAROLINA)

County of Oconee)

VERIFICATION

Is, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Stuart Frost

SWORN to and subscribed before me this 06
day of Nov., 2014.

J. Frankler (L.S.)
Notary Public

My Commission Expires: 12.16.2019

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 JAN 14 P 12:50

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I St, 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.

Stuart Frost
Applicant

SWORN or affirmed to and subscribed before me this

06 day of Nov, 2014

Jeff Rankin
Notary Public

My Commission Expires: 12-16-2019

FILED O'CONNOR, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 JAN 14 P 12:50

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Steven Gregory Frost, Appellant.

Appellate Case No. 2012-213043

Appeal From Oconee County
J. Cordell Maddox, Jr., Circuit Court Judge

Unpublished Opinion No. 2014-UP-258
Heard May 7, 2014 – Filed June 25, 2014

AFFIRMED

Appellate Defender David Alexander, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Jennifer Ellis Roberts, both of
Columbia, for Respondent.

PER CURIAM: Steven Gregory Frost appeals his conviction for first-degree criminal sexual conduct (CSC) with a minor less than eleven years of age. Frost argues the trial court erred in requiring the jury to make a finding under section 16-

3-655 of the South Carolina Code (Supp. 2013) that he committed CSC by "intrusion by an object." We affirm pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Byers*, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011) (holding that for an objection to be preserved for appellate review, the objection must be made "with sufficient specificity to inform the circuit court judge of the point being urged by the objector" (citing *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998))); *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("Issues not raised and ruled upon in the trial court will not be considered on appeal."); *id.* at 142, 587 S.E.2d at 694 ("A party may not argue one ground at trial and an alternate ground on appeal."); *State v. Carlson*, 363 S.C. 586, 597, 611 S.E.2d 283, 288 (Ct. App. 2005) ("Arguments not raised to or ruled upon by the trial court are not preserved for appellate review.").

AFFIRMED.

HUFF, THOMAS, and PIEPER, JJ., concur.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF OCONEE	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
	)	
Steven G. Frost,	)	C.A. No. 2015-CP-37-0045
S.C.D.C. No. 133769	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN ¹
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for Post-Conviction Relief filed January 14, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Oconee County Clerk of Court. In June 2012 the Lexington County Grand Jury indicted Applicant for criminal sexual conduct, first degree (CSC first) (2012-GS-37-0549). Daniel Day, Esq., represented Applicant. On September 17-19, 2012, Applicant proceeded to a trial before the Honorable J. Cordell Maddox and a jury. He was found guilty as indicted. Judge Maddox sentenced Applicant to a term of forty (40) years imprisonment.

A timely notice of appeal was filed on September 21, 2012, and an amended notice of appeal was filed on October 8, 2012. On appeal, David Alexander, Esq., represented Applicant. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v.

¹ Appointment of Counsel has been requested.

Frost, Op. No. 2014-UP-258 (S.C. Ct. App. filed June 25, 2014). The Remittitur was issued on July 11, 2014.

II.

In his current Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "6 Amendment"

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCP.

Attached to this return and incorporated herein are the records of the Oconee County Clerk of Court regarding the subject conviction(s), Trial Transcript, Applicant's records from the South Carolina Department of Corrections, and the Record on Appeal. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent interprets Applicant's claim as an allegation of ineffective assistance of trial counsel and submits that it is without merit. In a PCR action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that

the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of trial counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

V.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

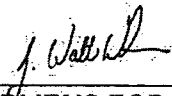
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

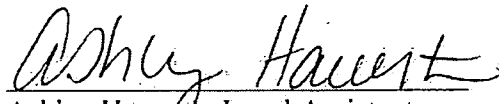
July 16th, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
	)	
	)	2015-CP-37-0045
STEVEN G. FROST, #133769	)	
	)	
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** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Hugh Wingo Welborn, Esquire
PO Box 173
Anderson, SC 29622

DATED this 17th day of July, 2015.


 Ashley Haworth, Legal Assistant
 For Respondent

1 State of South Carolina
2 County of Oconee
3
4 Steven G. Frost,)
5 Applicant,) 2015-CP-37-00043
6 -vs-) September 2, 2015
7 State of South Carolina,)
8 Respondent.)
9 -----) Transcript of Record
10
11

12 B E F O R E:

13 The Honorable Frank R. Addy, Jr., Judge

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

15 John Walter Whitmire, Esquire
16 Attorney for the Respondent

17 Hugh Wingo Welborn, Esquire
18 Attorney for the Applicant

19
20
21 Diane L. Marcengill, RPR, CRR
22 Circuit Court Reporter
23
24
25

I N D E XWitnessesPage

STEVEN FROST

Direct Examination By Mr. Welborn

4

Cross-Examination By Mr. Whitmire

10

Redirect Examination By Mr. Welborn

13

R. DANIEL DAY

Direct Examination By Mr. Whitmire

15

Cross-Examination By Mr. Welborn

18

Reporter's Certificate

21

E x h i b i t s

For the Applicant:

Marked	Description	I.D.	Admitted
--------	-------------	------	----------

1	Letter to Judge Derrick	14	
---	-------------------------	----	--

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 10:37 a.m.)

4 THE COURT: Are we ready to proceed on Mr. Frost's
5 case?

6 MR. WELBORN: Yes, sir.

7 MR. WHITMIRE: May it please the Court. The next
8 matter before your Honor is Steven Frost v. State of
9 South Carolina, 2015-CP-37-45. Mr. Frost was indicted
10 for CSC with a minor in the first degree. He proceeded
11 to trial, was represented by Mr. Daniel Day of the
12 Oconee County public defender's office. He was found
13 guilty. Judge Maddox sentenced him to 40 years
14 imprisonment. A direct appeal ensued where he was
15 represented by appellate defense and elected on
16 published opinion. Of course conviction, sentences
17 were affirmed.

18 Just a brief factual recitation of the case, your
19 Honor. Christy Longworth, applicant's mother, observed
20 defendant with his hand down her adopted nine-year-old
21 daughter's pants, saw it occur in the minor or victim's
22 bedroom. The minor victim testified to the assault,
23 adding that the defendant exposed himself during the
24 altercation. Digital penetration pursued -- or ensued.
25 The State presented testimony from an expert, sexual

Steven G. Frost v. State of South Carolina 2015-CP-37-00043
Steven Frost - Direct

4

1 abuse trauma, Dr. Carter, who testified to the scarring
2 that the victim suffered. Furthermore, in sentencing,
3 defendant gave a brief confession, inculpatory
4 statement.

5 At this time I turn matters over to Mr. Welborn.
6 It's my understanding the only allegation before your
7 Honor today is ineffective assistance of counsel,
8 failure to meet with and prepare the applicant for
9 trial.

10 THE COURT: All right.

11 MR. WELBORN: That's correct. May it please the
12 Court.

13 THE COURT: Yes, sir.

14 MR. WELBORN: We'd call Steven Frost to the stand.

15 THE COURT: Sir, if you would come forward,
16 please, and raise your right hand.

17 STEVEN FROST,

18 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19 THE CLERK: Please state and spell your name for
20 the reporter.

21 THE WITNESS: Steve Frost, F-r-o-s-t.

22 MR. WELBORN: May it please the Court.

23 DIRECT EXAMINATION

24 BY MR. WELBORN:

25 Q Mr. Frost, you are before the Court today after

1 having been convicted of criminal sexual conduct first
2 degree back in September of 2012; is that correct?

3 A Yes, sir.

4 Q And as a result of that, you were sentenced to a
5 term of 40 years incarceration; is that correct?

6 A Yes, sir.

7 Q Now, we've corresponded and we've also talked by
8 phone; is that correct?

9 A Yes, sir.

10 Q And did you know that I had also spoken with
11 someone who says she is your wife on two separate
12 occasions about your case at your permission? Did you
13 know that?

14 A No, sir.

15 Q Okay. You've alleged in your application -- the
16 reason I bring that up is because it was verified by
17 your wife, your allegations were that you never got to
18 meet with your lawyer --

19 A Yes, sir.

20 Q -- Mr. Day, before you were tried; is that
21 correct?

22 A Yes, sir.

23 Q Tell the Court when did you first meet and see for
24 this case Mr. Day, your attorney?

25 A He come on a Friday. I'm not sure what date it

1 was. He come on a Friday, told me we was picking a
2 jury Monday, and I said okay. Then Monday came, about
3 an hour and a half later we picked a jury. The next
4 day was Tuesday, went into court. About an hour and a
5 half later, it was after Tuesday. Wednesday, we went
6 up there Wednesday, and it was over with. 40 years.

7 Q You went to trial?

8 A Yes, sir.

9 Q Now, prior to that Friday that you just
10 referenced, when, if at all, did you see Mr. Day to
11 prepare for this case?

12 A None.

13 Q Did you ask to have a court-appointed attorney to
14 represent you at some point in time?

15 A Yes, sir.

16 Q When did you do that, roughly?

17 A I'm not sure right now.

18 Q Would it have been about a month after you had
19 been arrested and went to jail?

20 A Yes, sir. Yes, sir.

21 Q And you were tried about five months later as
22 you've told me; is that correct?

23 A Yes, sir.

24 Q So during that five-month period of time you did
25 not get to talk to or see a lawyer; is that correct?

1 A Yes, sir.

2 Q And your first time that you saw Mr. Day was on
3 the Friday before you were tried starting the following
4 Monday; is that correct?

5 A Yes, sir.

6 Q Now, did you have some concerns about that?

7 A It was like I didn't even see -- you know, he
8 wouldn't even talk to my witnesses. I gave him some
9 names on my witnesses and some numbers, but they was
10 never even notified or even called.

11 Q When Mr. Day talked to you on that Friday, did you
12 say, "Mr. Day, we can't go forward. I'm -- I'm not
13 ready," or anything to that effect?

14 A Yes. More or less, yes, sir.

15 Q What do you mean "more or less"?

16 A Well, you know, I was giving him all my witnesses'
17 numbers and all, and he acted like he didn't even
18 really, you know, like it wasn't nothing, I mean.

19 Q Well, did you ask him, "Why are you here so late
20 in this procedure as opposed to having met with me
21 earlier?"

22 A No, sir.

23 Q Why did you not ask him that?

24 A I'm not -- I'm not good with the law.

25 Q Well, do you feel you should have met with him

1 ample time before your trial?

2 A Yeah. I could help him prepare my case. Just --

3 Q And it's your testimony you just met with him
4 once?

5 A Yes, sir.

6 Q And so because of that, you feel like you were
7 denied having your right to counsel, to adequate
8 representation and preparation; is that correct?

9 A Yes, sir.

10 Q Are you asking the Court then to grant you
11 post-conviction relief and have a new trial?

12 A Yes, sir.

13 Q Do you understand that that's -- if you prevail,
14 you just get a new trial?

15 A Yes, sir.

16 Q And the sentencing may be better or it may be
17 worse, depending on what the options and the maximum
18 sentence could be; do you understand that?

19 A Yes, sir.

20 Q Now, this is your day in court, so I want to make
21 sure that you tell the Court. This is the only thing
22 you've told me from day one is your concern about not
23 getting to see Mr. Day until right before trial. Is
24 there anything else you want to tell the Court?

25 A I got some witnesses prior to the woman that's

1 sitting there said, which was my mother, Christine
2 Longworth, saying she seen the hand up her, the girl's
3 dress or whatever. I mean, she called, got my brother
4 to call my cousin, Marvin Curly. I usually would go
5 down there and stay there like three or four weeks at a
6 time and come back. She called and get her -- she got
7 my brother to call and see if I messed with any of
8 their kids. I mean, you know, I mean, that's -- I
9 mean, that's -- she's trying to -- I mean, she's trying
10 to -- it's more or less I just got out of prison, and
11 she didn't want to keep me up. If you look at my
12 record, I've been in prison about half my life.

13 Q Now, I'm going to refer to two pages on this
14 transcript. For the Court's education, I'm referring
15 to page 21, line 12, 13 and 14. I know you don't have
16 that in front of you, and you don't read as well as
17 probably I do, so I'm going to read that for you. Are
18 you okay with that?

19 A Yes, sir.

20 Q And in that particular line on page 21, the Court
21 is asking Ms. Simmons, the prosecutor, "Are you ready?"
22 That's line 11. "Yes, your Honor," Ms. Simmons says.
23 And then the Court says, "Defense?" And Mr. Day says,
24 "Yes." And you're telling the Court that he's saying
25 that he's ready to go and you never met with him; is

1 that correct?

2 A Yes, sir.

3 Q All right. I'm going to refer to one more spot.
4 That would be page 35 of the transcript. And line
5 seven, the Court is asking Ms. Simmons, the prosecutor,
6 "I probably should have asked you something earlier
7 about any objections to selection of the jury." Her
8 answer is, "No, your Honor," on line seven. And line
9 eight, Mr. Day says, "None, your Honor." Line nine,
10 the Court says, "All right. We're going start this
11 case tomorrow at 1:00," right? Line 11, Mr. Day, "Yes,
12 sir."

13 Now, you're saying that, in spite of that, you had
14 only met with Mr. Day that one time and yet he was
15 saying he was ready for trial; is that correct?

16 A Yes, sir.

17 Q So you feel that because of these -- he didn't
18 meet with you and talk with you, he wasn't prepared,
19 your right to counsel was violated; is that correct?

20 A Yes, sir.

21 Q Thank you.

22 Answer anything the State or the Court may have.

23 MR. WHITMIRE: May it please the Court.

24 THE COURT: Yes, sir.

25 CROSS-EXAMINATION

1 BY MR. WHITMIRE:

2 Q Good afternoon, Mr. Frost.

3 Mr. Frost, you were convicted, it looks like
4 served a four-year sentence for malicious injury to
5 personal property in 1988; is that correct?

6 A Yes, sir. Yes.

7 Q Was that a plea or trial?

8 A Plea.

9 Q Oconee County?

10 A Yes, sir.

11 Q Do you recall who your attorney was?

12 A I'm not sure. Probably Gruber Sires.

13 Q Did that attorney meet with you more than once?

14 A Yes, sir.

15 Q Okay. Now, in 1991, you had a reckless homicide
16 in Oconee County. Do you recall who your attorney was?

17 A Probably Gruber Sires.

18 Q Plea or trial?

19 A Plea.

20 Q Did you meet with your attorney on more than one
21 occasion?

22 A Yes, sir.

23 Q Now, in 2003 we have a malicious injury to
24 personal property. I'm sorry, crack possession in 2009
25 in Oconee County. Did you meet with your attorney in

1 that case more than one time?

2 A Yes, sir. I fired him then.

3 Q And you fired him. Why did you fire that
4 attorney?

5 A Because he -- he was sitting there telling me -- I
6 mean, he just -- he wasn't -- I had -- it's like --
7 it's warrants. I mean, I wasn't pleased with his
8 results then. I mean, it took me like five times
9 before I could fire him. Then his boss man, which was
10 the head public defender, said that, "I will represent
11 you." I said okay. And he said, "If you're not
12 guilty, we're not going to plead guilty." I said,
13 "Okay. Fine."

14 Q Do you recall who that was? Was that Mr. Gamble?

15 A The head solicitor.

16 Q The head solicitor?

17 A Yes, sir.

18 Q Okay. But you had spent a lot of time trying to
19 get that original attorney fired; is that correct?

20 A I mean, yes, sir. It took me like -- like months.
21 I had to write requests and was faxing them to him.

22 Q So why is it that you're facing a trial for CSC
23 with a minor, looking at a lot of time, and you didn't
24 move to have Mr. Day fired if he only met with you one
25 time?

1 A I did. I mean, I got a -- you have that piece of
2 paper that I mailed you where I asked a judge, I told
3 him I wasn't pleased with -- because he was trying to
4 waiver (sic) my preliminary hearing, and I didn't want
5 it waived.

6 Q Why didn't you bring it up at the start of the
7 trial? You've obviously had some experience with this
8 in the past.

9 A Sir?

10 Q Why didn't you bring that up at the start of your
11 trial with Judge Maddox?

12 A Well, wham bam. Everything was happening so fast,
13 I mean.

14 MR. WHITMIRE: No further questions, your Honor.

15 THE COURT: Any redirect?

16 REDIRECT EXAMINATION

17 BY MR. WELBORN:

18 Q Mr. Frost, you referred a moment ago to the fact
19 that you wrote a letter to me referencing some time on
20 this particular case that you had asked that Mr. Day
21 not waive your preliminary hearing. And you sent that
22 to the -- I guess to Mr. Judge Derrick; is that
23 correct, sir?

24 A Yes, sir.

25 MR. WELBORN: May I approach?

1 THE COURT: Please.

2 BY MR. WELBORN:

3 Q And this was a copy of what you had sent to me
4 which you had also, of course, sent to Judge Derrick;
5 is that correct?

6 A Yes. That's the original copy.

7 MR. WELBORN: Your Honor, I'd move that a copy of
8 this be substituted into the record. And that's our
9 only exhibit.

10 MR. WHITMIRE: Without objection.

11 THE COURT: Without objection that will be
12 Plaintiff's one. And we'll just make a copy and make
13 sure that that's part of the record here in a few
14 moments.

15 (WHEREUPON, Applicant's Exhibit Number 1 was
16 marked for identification.)

17 MR. WELBORN: Okay.

18 THE COURT: Very good.

19 BY MR. WELBORN:

20 Q In your letter to Judge Derrick, you basically
21 told Judge Derrick that you didn't think Mr. Day was
22 representing you correctly; is that right?

23 A Yes, sir.

24 Q Okay.

25 MR. WELBORN: Thank you. That's my redirect, and

1 I'll let that be entered into evidence.

2 THE COURT: Very good.

3 MR. WHITMIRE: The State has no recross.

4 THE COURT: Mr. Frost, thank you. You can step
5 down, sir.

6 Any additional witnesses from the applicant?

7 MR. WELBORN: No, your Honor.

8 THE COURT: Attorney general?

9 MR. WHITMIRE: The State calls Mr. Daniel Day.

10 THE COURT: Sir, come on up, please.

11 R. DANIEL DAY,

12 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

13 THE CLERK: Please state and spell your last name
14 for the reporter.

15 THE WITNESS: It's R. Daniel Day, D-a-y.

16 DIRECT EXAMINATION

17 BY MR. WHITMIRE:

18 Q Good afternoon, Mr. Day.

19 A Sir?

20 Q I said, "Good afternoon."

21 A Afternoon already?

22 Q Getting close.

23 Mr. Day, how long have you practiced law?

24 A 37 years.

25 Q Predominant area of your practice?

Steven G. Frost v. State of South Carolina 2015-CP-37-00043
R. Daniel Day - Direct

1 A Criminal work now.

2 Q Do you recall your representation in this matter?

3 A I do.

4 Q Have you had a chance to review your file in
5 anticipation of testifying today?

6 A I have.

7 Q Do you recall the circumstances of your
8 appointment to Mr. Frost's case?

9 A Yes. He applied, and the case was assigned to me.
10 And, let's see. He was arrested on March 8th of 2012.
11 The offense was October 1st of 2011. We opened the
12 file on March 16th.

13 Q Do you recall how many times you met with
14 Mr. Frost prior to trial?

15 A According to my records, I met with him at length
16 the first time on April 16th. That's after I had met
17 with the solicitor and with Gentry Hawk, who was the
18 investigating officer for the March 16th. There was to
19 be a preliminary hearing on the 25th, but they wanted
20 to reschedule that in May because Mr. Hawk worked
21 Special Olympics, and he wanted to do that, and I
22 agreed to that. And so we had -- the preliminary
23 hearing was held on May 4th, 2012.

24 Q How many other times did you meet with him during
25 the course of your representation?

1 A A couple times after that. It was very short when
2 I was in the jail seeing other people, and Mr. Frost
3 would usually send a message out he would like to see
4 me, and I would speak to him. I didn't have my file
5 with me at that time, but we would discuss what was
6 going on, what evidence we were waiting for, if we had
7 gotten anything.

8 Then on July 10th is when we sat down and went
9 through everything that I had received in discovery,
10 went through everything with him, got the names of
11 witnesses that he wanted and what he thought they would
12 say. We talked about how to find out if he had claimed
13 this was all because his disability checks were being
14 misused by members of the family, and that that was
15 what was causing all this. So we went through in great
16 detail all the evidence that existed at that time.
17 After that, again, it was going back to him very
18 briefly with things I had found out about based upon
19 that, and then it was called for trial in the month of
20 September, I believe.

21 Q By September were you fully prepared to proceed to
22 trial in Mr. Frost's case?

23 A I was. I had received all the discovery including
24 forensics, such as it was, and the testimony of the
25 forensic interviewer. And I had gone over that with

1 Mr. Frost as to what they were going to say and why he
2 said he didn't believe any of that was true, and we
3 were prepared as best we could.

4 Q Final question. Did you try this case to the best
5 of your ability?

6 A I did.

7 MR. WHITMIRE: No further questions. Please
8 answer any questions that Mr. Welborn may have.

9 CROSS-EXAMINATION

10 BY MR. WELBORN:

11 Q Mr. Day, do you have any idea why my client would
12 say you just met with him that one time, any idea
13 whatsoever?

14 A I don't know.

15 Q And you, according to your testimony, you met with
16 him, I think I count five or six times at a minimum
17 just then?

18 A Yes, sir. Some of them were very short in that I
19 was in the jail at the time, and it would be, Here is
20 what I've got. I have received something or I haven't
21 received anything. I hadn't heard from a couple of his
22 witnesses that I had called to see if I could talk to
23 them, and I would let him know what was going on and
24 move on, waiting for the trial to be scheduled.

25 Q So we show testimony that his recollection is just

1 incorrect, that you did meet with him and prepare?

2 A Yes. I would disagree with that.

3 MR. WELBORN: Thank you. That's all I have.

4 MR. WHITMIRE: No redirect. State rests, your
5 Honor.

6 THE COURT: Thank you, sir. You can step down.
7 Thank you for coming. You are free to go.

8 MR. WHITMIRE: Ask Mr. Day be excused and offer
9 our appreciation for him driving all the way from
10 Ocone to do this in Anderson.

11 THE COURT: I feel like I have a pretty good feel
12 for the issues involved in this case. Any final
13 argument from the State on this?

14 MR. WHITMIRE: State rests but would be happy to
15 answer any questions your Honor may have.

16 THE COURT: Anything from the applicant?

17 MR. WELBORN: Your Honor, I would just ask for my
18 piece of evidence to be submitted, and I received back
19 the original there. And I think we've done all we can.
20 Ask the Court to rule.

21 THE COURT: Very good. We will make a copy of
22 that letter. We'll make that an exhibit, as I
23 mentioned a moment ago, and the Court will take this
24 under advisement and, hopefully, have you an order
25 sometime this afternoon or by Friday at the latest.

1 Mr. Frost, pleasure to meet you, sir. Take care.

2 (WHEREUPON, the hearing ended at 10:58 a.m.)

3 ***END OF REQUESTED TRANSCRIPT OF RECORD***

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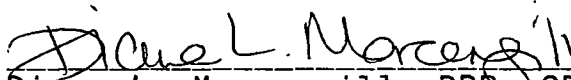
1 Certificate of Reporter
2

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 Oconee County, South Carolina,
10 on the 2nd day of September 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 30, 2015

16
17 
18 Diane L. Marcengill, RPR, CRR
19 Circuit Court Reporter
20
21
22
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24
25

* FAX *



Oconee County Detention Center

INMATE REQUEST TO STAFF

Inmate Name Steven Frost Cell D Date 4/20/12Addressed to: Judge Derrick
Staff Member's name (not medical)

State your request completely. Please give any information that will help us process your request quickly.

Mr. Judge Derrick, I told my Lawyer Mr. Daniel Day is a request from OLC that I did not want my Preliminary Hearing waived on April 20, 2012 at 9:00am. I do not think he is representing me. Therefore I would like to request a new Preliminary Hearing, A new Lawyer, or Charges dropped. Thank you for your time and help in this matter.

Disposition by staff member:

Steven Frost
You need to talk to the Solicitor's Office.

Signature

Date: 5/3/12

Disposition by Director:

Signature

Date: 5/3/12

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF OCONEE	)	TENTH JUDICIAL CIRCUIT
	)	
Steven G. Frost,	)	C.A. No. 2015-CP-37-0045
S.C.D.C. No. 133769	)	
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	(with prejudice)
State of South Carolina,	)	
	)	
Respondent.	)	

FILED OCONEE, SC
CLERK OF COURT
2015 SEP 28 A 11:27

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on January 14, 2015. Respondent's responsive pleadings followed. An evidentiary hearing into the matter was convened on September 2, 2015 at the Anderson County Courthouse. Applicant was present at the hearing and was represented by Hugh Welborn, Esq. Respondent was represented by Walt Whitmire, Esq., of the Office of the Attorney General.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Oconee County Clerk of Court. In June 2012 the Oconee County Grand Jury indicted Applicant for Criminal Sexual Conduct First Degree (CSC First) (2012-GS-37-0549). Daniel Day, Esq., represented Applicant. On September 17-19, 2012, Applicant proceeded to a trial before the Honorable J. Cordell Maddox and a jury, which found Applicant guilty as indicted. Judge Maddox sentenced Applicant to a term of forty (40) years imprisonment.

A timely notice of appeal was filed on September 21, 2012, and an amended notice of appeal was filed on October 8, 2012. On appeal, David Alexander, Esq., represented Applicant.

DM

Copies to:
Atty. (P) Welborn (D) Whitmire ENTER
DSS other

The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Frost, Op. No. 2014-UP-258 (S.C. Ct. App. filed June 25, 2014). The Remittitur was issued on July 11, 2014.

At the PCR hearing, Applicant alleged that he is being held in custody unlawfully for the following reasons:

- (a) Ineffective assistance of counsel for failing to meet with Applicant on a sufficient number of occasions prior to trial.

SUMMARY OF STATE'S EVIDENCE PRESENTED AT TRIAL

The minor victim testified that Applicant assaulted her by digital penetration. She also testified that prior to the assault, Applicant exposed himself to her. **Trial Tr. p.75**. The minor victim's adoptive mother testified that she walked into the child's bedroom and observed Applicant with his hands in the minor victim's pants. **Trial Tr. p.106**. The assault caused physical trauma. Dr. Carter, qualified as an expert in child sexual abuse trauma, testified to the scaring caused by the assault. **App.pp.89-95**. Applicant offered his remorse during the sentencing phase of the trial. **App.p.196**.

SUMMARY OF TESTIMONY

At the PCR hearing, Applicant testified to his impressions of counsel and to his concerns on the competency of representation that he received. Applicant testified to his version of facts that benefited a defense. Applicant testified to his interactions with counsel during the case. According to Applicant, counsel did not meet with him until the week prior trial. Applicant testified that his case was called to trial five months after his arrest. He opined that he could have helped counsel prepare the case if they had met more often.

Counsel testified to his course of conduct during the representation. He briefly detailed his thirty-seven (37) years of experience practicing criminal defense law. He further detailed the



circumstances of his appointment and consultations with Applicant during the representation. Counsel obtained Applicant's case filed on March 12, 2012, eight days after Applicant's arrest. Counsel held a lengthy consultation with Applicant on April 16, 2012. A preliminary hearing followed on May 4, 2012 after counsel had the opportunity to meet with the prosecuting solicitor and law enforcement. Several short meetings at the Oconee County Detention Center followed. On July 10, 2012, counsel held a consultation with Applicant where they reviewed the State's evidence and discovery disclosures. They discussed Applicant's theory of the case: a purported motive for Applicant's family against him. Prior to the September 2012 trial, counsel had fully reviewed and discussed the State's evidence, including the child victim's forensic interview, with Applicant. Counsel was adamant that he fully prepared to try Applicant's case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses and exhibits presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

DM

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, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. 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). After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action.

A.

Applicant's allegation (a) Ineffective assistance of counsel for failing to meet with Applicant on a sufficient number of occasions prior to trial is entirely without merit.

"From counsel's function as assistant to the defendant derive the overarching duty to advocate the defendant's cause and the more particular duties to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution." Strickland, 466 U.S. at 688, 104 S. Ct. 2052.

This Court readily rejects Applicant's claim in light of counsel's convincing account of the pre-trial consultations with Applicant. Counsel testified in a methodical and prepared manner that evidenced his thorough representation on behalf of Applicant. Furthermore, it is simply objectively unreasonable for an experienced attorney to have neglected his client until the eve of trial on a most serious charge that resulted in a presumptive life sentence. Regardless, Applicant

2/11

has failed to meet his most basic burden of production in presenting credible evidence to show how additional attorney/client consultations would have changed the result of trial. Therefore, this allegation is denied and dismissed with prejudice.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

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 notes that that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

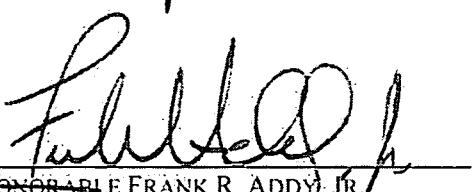
IT IS THEREFORE ORDERED:

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.

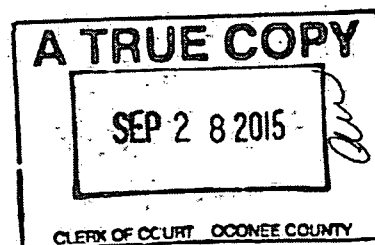
AND IT IS SO ORDERED this 25th day of Sept, 2015.


HONORABLE FRANK R. ADDY, JR.
Presiding Judge
Eleventh Judicial Circuit

Greenwood, South Carolina

2015 SEP 28 A 11:27

FILED
CLERK OF COURT
DOONEE COUNTY, SC



FILED OCOONEE, SC
DEV. DIVISION
CLERK OF COURT

2012 JUN 12 A 8:41

ENTERED
DOOR
COMPUTER

DOCKET NO. 2012GS37 00549

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

JUN 11 2012

Term

THE STATE

vs.

Steven Gregory Frost

LSS

Indictment for

Criminal Sexual Conduct With Minor - Victim
Under 11 Years Of Age- First Degree

SC Code: 16-03-0655(A)(1)
CDR Code: 0385

WITNESSES

Gentry Hawk, Oconee Co Sheriff's Dept.

Amanda Kepler
Amanda Kepler

ARREST WARRANT NUMBER

N138650

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: JUN 11 2012

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF Oconee)

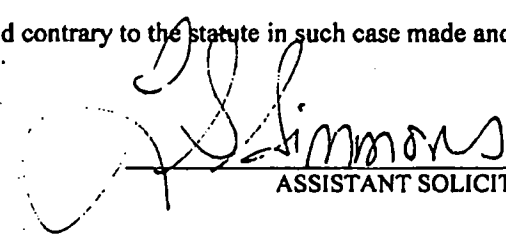
INDICTMENT

At a Court of General Sessions, convened on JUN 11 2012, the Grand Jurors of Oconee County present upon their oath:

**Criminal Sexual Conduct With Minor - Victim Under 11 Years Of Age-
First Degree**

That **Steven Gregory Frost** did in Oconee, South Carolina between **October 1, 2011** and **November 1, 2011**, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a minor in the first degree by engaging in sexual battery with a minor who was less than eleven (11) years of age, to wit: Z.B.L., whose date of birth is January 16, 2003. This is in violation of 16-3-655(A)(1) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR