

STATE OF SOUTH CAROLINA
In The Supreme Court

ORIGINAL

APPEAL FROM HORRY COUNTY
Court of Common Pleas

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The Honorable George C. James Jr., Circuit Court Judge

S.C. Supreme Court

Appellate Case No. 2014-002027

STEVEN L. HEWITT,..... RESPONDENT,

v.

STATE OF SOUTH CAROLINA,..... PETITIONER.

APPENDIX

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF GENERAL SESSIONS

09-GS-22-01199

09-GS-22-0302

THE STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

vs.)

STEVEN LEE HEWITT,)

DEFENDANT.)

TRANSCRIPT OF RECORD

MAY 24-26, 2010

GEORGETOWN, SOUTH CAROLINA

BEFORE:

THE HONORABLE, STEVEN H. JOHN, JUDGE; AND JURY

APPEARANCES:

BY: CANDICE A. LIVELY, ESQ.
ATTORNEY FOR STATE

BY: VERDELL BARR, ESQ.
ATTORNEY FOR STEVEN LEE HEWITT

BRENDA R. BABB
Circuit Court Reporter

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1 THE COURT: ALL RIGHT, GOOD AFTERNOON, LADIES
2 AND GENTLEMEN. MY NAME IS STEVEN JOHN, ONE OF THE TWO
3 RESIDENT JUDGES OF THE FIFTEENTH JUDICIAL CIRCUIT WHICH
4 COVERS HORRY AND GEORGETOWN COUNTIES. AS JUDGE CULBERTSON
5 HAS EXPLAINED TO YOU WE'RE HAVING TWO DIFFERENT TERMS OF
6 COURT THIS WEEK. HE'S DOING COMMON PLEAS OR CIVIL COURT
7 AND I'M DOING GENERAL SESSIONS OR CRIMINAL COURT AND YA'LL
8 HAVE BEEN SELECTED TO BE POTENTIAL JURORS IN AN UPCOMING
9 CRIMINAL CASE THAT WE WOULD START TOMORROW MORNING.

10 WHAT WE'RE GOING TO DO NOW IS GO OVER SOME
11 QUESTIONS THAT THE COURT WOULD HAVE FOR YOU. IF YOU NEED
12 TO RESPOND TO THE QUESTION OR ANSWER THE QUESTION WHENEVER
13 THE QUESTION IS ASKED WE'LL ASK THAT YOU STAND, IDENTIFY
14 YOURSELF WITH YOUR NAME AND JUROR NUMBER, IF YOU HAPPEN TO
15 KNOW THAT.

16 ALL RIGHT, THE STATE OF SOUTH CAROLINA HAS
17 BROUGHT TWO CHARGES AS AGAINST THE DEFENDANT STEVEN LEE
18 HEWITT. NOW TO THOSE CHARGES THE DEFENDANT HAS PLED NOT
19 GUILTY. NOW REGARDING THE TWO CHARGES THE STATE HAS
20 CHARGED THAT STEVEN LEE HEWITT DID IN GEORGETOWN COUNTY,
21 STATE OF SOUTH CAROLINA, ON OR ABOUT OCTOBER 1, 2001, AND
22 NOVEMBER 31, COMMIT THE CRIME OF CRIMINAL SEXUAL CONDUCT
23 WITH A MINOR FIRST DEGREE.

24 THE STATE HAS ALSO CHARGED THAT STEVEN LEE HEWITT
25 DID IN GEORGETOWN COUNTY ON OR ABOUT AUGUST 1, 2001 THROUGH

1 ON OR ABOUT NOVEMBER 30TH, 2001, COMMIT THE CRIME OF LEWD
2 ACT UPON A MINOR CHILD.

3 IS THERE ANY MEMBER OF THE JURY PANEL AS A WHOLE
4 THAT WOULD HAPPEN TO KNOW ANYTHING ABOUT THIS PARTICULAR
5 CASE, HAVE ANY INFORMATION OR IS THERE ANYTHING THAT YOU
6 NEED TO BRING TO THE COURT'S ATTENTION REGARDING THIS
7 MATTER AT THIS TIME, IF SO, PLEASE STAND?

8 ALL RIGHT, THE POSSIBLE OR THE POTENTIAL
9 WITNESSES IN THIS PARTICULAR CASE ARE AS FOLLOWS:

10 STEVEN HEWITT, SR.;

11 VICTIM [REDACTED] [REDACTED]

12 KIMBERLY HEWITT;

13 OFFICER GARY TODD OF THE GEORGETOWN SHERIFF'S
14 OFFICE;

15 OFFICER MICHAEL NELSON OF THE GEORGETOWN
16 SHERIFF'S OFFICE;

17 TYRONE DAVIS ASSOCIATED WITH THE GEORGETOWN
18 COUNTY SCHOOL DISTRICT;

19 KATHY MCGROGAN;

20 PATRICIA BROWN;

21 HOPE SMITH;

22 SYBIL HALL;

23 CHUCK BARRINEAU;

24 MELISSA MUSE;

25 STEVE BROWN OF THE FIFTEENTH CIRCUIT SOLICITOR'S

1 OFFICE;

2 JANIE HEWITT;

3 RENEE HOWARD;

4 KATHY MCGROGAN;

5 PATRICIA BROWN;

6 AMANDA BROWN;

7 RONALD COX; AND

8 JASON HAYES.

9 ANY MEMBER OF THE JURY PANEL THAT'S RELATED BY
10 BLOOD OR MARRIAGE, CLOSE PERSONAL FRIENDS, ACQUAINTANCES OF
11 ANY OF THESE POSSIBLE OR POTENTIAL WITNESSES, IF SO, PLEASE
12 STAND?

13 ALL RIGHT, YES, MA'AM, YOUR NAME AND JUROR
14 NUMBER, PLEASE?

15 JURY PANEL MEMBER: BONNIE HUGHES, 135, I KNOW
16 HOPE SMITH.

17 THE COURT: I'M SORRY, YOU KNOW HOPE SMITH?

18 JURY PANEL MEMBER: HOPE SMITH.

19 THE COURT: ALL RIGHT, MA'AM, UNDERSTANDING THAT
20 CAN YOU GIVE TO THE STATE OF SOUTH CAROLINA AND TO THE
21 DEFENDANT A FAIR AND IMPARTIAL TRIAL? CAN YOU BE A FAIR
22 AND IMPARTIAL JUROR IN THIS CASE?

23 JURY PANEL MEMBER: YES, SIR.

24 THE COURT: THANK YOU VERY MUCH, MA'AM. YES,
25 MA'AM, IN THE MIDDLE THERE?

1 JURY PANEL MEMBER: 138, ROBIN JACOBS, I KNOW
2 TYRONE DAVIS.

3 THE COURT: TYRONE DAVIS, ALL RIGHT, MA'AM, CAN
4 YOU GIVE TO THE STATE OF SOUTH CAROLINA AND TO THE
5 DEFENDANT A FAIR AND IMPARTIAL TRIAL? CAN YOU BE A FAIR
6 AND IMPARTIAL JUROR IN THIS CASE?

7 JURY PANEL MEMBER: YES, SIR.

8 THE COURT: THANK YOU VERY MUCH, MA'AM. YES,
9 MA'AM?

10 JURY PANEL MEMBER: JULIE MICHAEL, NUMBER 184, I
11 KNOW MICHAEL NELSON.

12 THE COURT: ALL RIGHT, AGAIN, MA'AM, CAN YOU
13 GIVE TO THE STATE OF SOUTH CAROLINA AND TO THE DEFENDANT A
14 FAIR AND IMPARTIAL TRIAL? CAN YOU BE A FAIR AND IMPARTIAL
15 JUROR IN THIS CASE?

16 JURY PANEL MEMBER: YES, SIR.

17 THE COURT: THANK YOU VERY MUCH. ALL RIGHT, IS
18 THERE ANY MEMBER OF THE JURY PANEL EITHER YOU YOURSELF OR A
19 MEMBER OF YOUR IMMEDIATE FAMILY THAT'S EVER HAD ANY MATTERS
20 HANDLED BY THE FIFTEENTH CIRCUIT SOLICITOR'S OFFICE?
21 REMEMBER THAT'S THE PROSECUTING OFFICE THAT COVERS THIS
22 CIRCUIT WHICH IS HORRY AND GEORGETOWN COUNTIES, IF SO,
23 PLEASE STAND?

24 (NO RESPONSE.)

25 IS THERE ANY MEMBER OF THE JURY PANEL THAT'S EVER

1 HAD ANY MATTERS -- I'M SORRY, ARE YOU RELATED BY BLOOD OR
2 MARRIAGE OR CLOSE PERSONAL FRIENDS OR ACQUAINTANCES OF
3 ANYBODY EMPLOYED AT THE FIFTEENTH CIRCUIT SOLICITOR'S
4 OFFICE WHETHER HERE IN GEORGETOWN OR IN HORRY COUNTY IN
5 CONWAY, IF SO, PLEASE STAND?

6 (NO RESPONSE.)

7 ALL RIGHT, IF YOU WOULD, SOLICITOR, IF YOU'D
8 STAND AND IDENTIFY YOURSELF, PLEASE, MA'AM?

9 MS. LIVELY: SURE, THANK YOU, YOUR HONOR, MY
10 NAME IS CANDICE LIVELY, I'M ASSISTANT SOLICITOR HERE IN
11 GEORGETOWN AND BOTH HORRY COUNTY.

12 THE COURT: ALL RIGHT, AND, MR. BARR, IF YOU
13 WOULD STAND AND IDENTIFY YOURSELF AND YOUR FIRM, PLEASE,
14 SIR?

15 MR. BARR: MY NAME IS VERDELL BARR AND I
16 PRACTICE LAW IN KINGSTREE, SOUTH CAROLINA, UNDER THE FIRM
17 NAME OF BARR AND BARR WITH MY BROTHER CHARLES DAVID BARR.

18 THE COURT: ALL RIGHT, THANK YOU VERY MUCH. IS
19 THERE ANY MEMBER OF THE JURY PANEL THAT IS RELATED BY BLOOD
20 OR MARRIAGE, CLOSE PERSONAL FRIENDS, ACQUAINTANCES OF ANY
21 OF THESE LAWYERS THAT HAVE IDENTIFIED THEMSELVES TO YOU OR
22 REGARDING MR. BARR HAVE YOU EVER BEEN A CLIENT OF HIS OR
23 HIS FIRM, EITHER CURRENTLY OR IN THE PAST, IF SO, IF ANY OF
24 THAT APPLIES TO YOU, PLEASE STAND?

25 (NO RESPONSE.)

1 ALL RIGHT, DOES ANY MEMBER OF THE JURY PANEL
2 BELIEVE YOU HAVE ANY KIND OF PERSONAL, POLITICAL,
3 RELIGIOUS, PHILOSOPHICAL BELIEF THAT YOU BELIEVE WOULD
4 PREVENT YOU FROM BEING A FAIR AND IMPARTIAL JUROR IN THIS
5 CASE, IF SO, PLEASE STAND?

6 (NO RESPONSE.)

7 IS THERE ANY MEMBER OF THE JURY PANEL THAT YOU
8 YOURSELF WERE A FORMER LAW ENFORCEMENT OFFICER OR YOU HAVE
9 A CURRENT FAMILY MEMBER WHO IS NOW OR WAS IN THE PAST IN
10 LAW ENFORCEMENT, IF ANY OF THAT APPLIES TO YOU PLEASE
11 STAND?

12 YES, MA'AM, YOUR NAME AND JUROR NUMBER, PLEASE?

13 JURY PANEL MEMBER: NICOLE KAROS, 148.

14 THE COURT: YES, MA'AM?

15 JURY PANEL MEMBER: MY STEPDAD HAS BEEN ON THE
16 HE VOLUNTEER POLICE FORCE IN OUR HOMETOWN OF BEAUFORT,
17 SOUTH CAROLINA.

18 THE COURT: ALL RIGHT, MA'AM, CAN YOU GIVE TO
19 THE STATE OF SOUTH CAROLINA AND TO THE DEFENDANT A FAIR AND
20 IMPARTIAL TRIAL? CAN YOU BE A FAIR AND IMPARTIAL JUROR IN
21 THIS CASE?

22 JURY PANEL MEMBER: YES, SIR.

23 THE COURT: THANK YOU VERY MUCH, MA'AM. YES,
24 MA'AM, IN THE MIDDLE?

25 JURY PANEL MEMBER: JUROR 100, MY SON IN LAW IS

1 WITH THE DNR.

2 THE COURT: OKAY, AND YOUR NAME AGAIN, MA'AM,
3 IS?

4 JURY PANEL MEMBER: YVONNE GRAHAM.

5 THE COURT: ALL RIGHT, MA'AM, CAN YOU GIVE TO
6 THE STATE OF SOUTH CAROLINA AND TO THE DEFENDANT A FAIR AND
7 IMPARTIAL TRIAL? CAN YOU BE A FAIR AND IMPARTIAL JUROR IN
8 THIS CASE?

9 JURY PANEL MEMBER: YES, SIR.

10 THE COURT: THANK YOU VERY MUCH, YES, SIR, IN
11 THE BACK?

12 JURY PANEL MEMBER: JUROR 119, KENNETH HAWK, I
13 HAVE A NEPHEW WHO IS A DEA AGENT.

14 THE COURT: ALL RIGHT, SIR, CAN YOU GIVE TO THE
15 STATE OF SOUTH CAROLINA AND TO THE DEFENDANT A FAIR AND
16 IMPARTIAL TRIAL? CAN YOU BE A FAIR AND IMPARTIAL JUROR IN
17 THIS CASE?

18 JURY PANEL MEMBER: YES, SIR.

19 THE COURT: THANK YOU VERY MUCH, SIR. ALL
20 RIGHT, IS THERE ANY MEMBER OF THE JURY PANEL, EITHER YOU
21 YOURSELF OR A MEMBER OF YOUR IMMEDIATE FAMILY, A MEMBER OF
22 ANY KIND OF A VICTIMS RIGHTS OR LAW ENFORCEMENT SUPPORT
23 ORGANIZATION? LET ME JUST GIVE YOU SOME EXAMPLES, THIS IS
24 NOT AN EXHAUSTIVE LIST OF ANY KIND BUT JUST EXAMPLES OF
25 WHAT IT IS I'M TALKING ABOUT. YOU'VE GOT CITIZENS AGAINST

1 VIOLENT CRIME, MOTHERS AGAINST DRUNK DRIVING, THE SOUTH
2 CAROLINA LAW ENFORCEMENT OFFICERS ASSOCIATION, SOUTH
3 CAROLINA SHERIFFS ASSOCIATION, JUST SOME KIND OF VICTIMS
4 RIGHTS OR LAW ENFORCEMENT SUPPORT ORGANIZATION, IF SO,
5 PLEASE STAND?

6 (NO RESPONSE.)

7 ALL RIGHT, THE NEXT QUESTION I'M GOING TO ASK,
8 LADIES AND GENTLEMEN, IS I'M GOING TO ASK WHETHER YOU
9 YOURSELF OR A MEMBER OF YOUR IMMEDIATE FAMILY HAS EVER BEEN
10 THE VICTIM OF A CRIME. NOW I AM NOT GOING TO ASK YOU WHAT
11 OCCURRED NOR DO I WANT YOU TO VOLUNTEER ANY INFORMATION TO
12 ME ABOUT WHAT OCCURRED. THE QUESTION WILL BE
13 STRAIGHTFORWARD, WAS IT YOURSELF OR A FAMILY MEMBER, AND
14 THEN I'LL ASK THE QUALIFICATION QUESTION. SO IS THERE ANY
15 MEMBER OF THE JURY PANEL, EITHER YOU YOURSELF OR A MEMBER
16 OF YOUR IMMEDIATE FAMILY, HAS EVER BEEN THE VICTIM OF A
17 CRIME, IF SO, PLEASE STAND?

18 ALL RIGHT, YES, MA'AM, YOUR NAME AND JUROR NUMBER
19 AGAIN, PLEASE?

20 JURY PANEL MEMBER: NICOLE KAROS, 148.

21 THE COURT: AND WAS IT YOURSELF OR A FAMILY
22 MEMBER?

23 JURY PANEL MEMBER: FAMILY MEMBER.

24 THE COURT: CAN YOU GIVE TO THE STATE OF SOUTH
25 CAROLINA AND TO THE DEFENDANT A FAIR AND IMPARTIAL TRIAL?

1 CAN YOU BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

2 JURY PANEL MEMBER: YES, SIR.

3 THE COURT: THANK YOU VERY MUCH, MA'AM. YES,
4 MA'AM?

5 JURY PANEL MEMBER: I'M JANE THOMAS, MY JUROR
6 NUMBER IS 271.

7 THE COURT: AND WAS IT YOURSELF OR A FAMILY
8 MEMBER?

9 JURY PANEL MEMBER: MYSELF.

10 THE COURT: CAN YOU GIVE TO THE STATE OF SOUTH
11 CAROLINA AND TO THE DEFENDANT A FAIR AND IMPARTIAL TRIAL?
12 CAN YOU BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

13 JURY PANEL MEMBER: I'LL GIVE IT MY BEST.

14 THE COURT: ALL RIGHT, MA'AM, AND I APPRECIATE
15 YOU ANSWERING THAT WAY BUT THE RULES REQUIRE ME TO HAVE A
16 YES OR NO?

17 JURY PANEL MEMBER: YES.

18 THE COURT: THANK YOU VERY MUCH, MA'AM. YES,
19 MA'AM?

20 JURY PANEL MEMBER: JUROR NUMBER 149, I'M JOANNA
21 KEELS.

22 THE COURT: AND WAS IT YOURSELF OR A FAMILY
23 MEMBER?

24 JURY PANEL MEMBER: MYSELF.

25 THE COURT: ALL RIGHT, MA'AM, CAN YOU GIVE TO

1 THE STATE OF SOUTH CAROLINA AND TO THE DEFENDANT A FAIR AND
2 IMPARTIAL TRIAL? CAN YOU BE A FAIR AND IMPARTIAL JUROR IN
3 THIS CASE?

4 JURY PANEL MEMBER: YES, SIR.

5 THE COURT: THANK YOU VERY MUCH, MA'AM.

6 ALL RIGHT, LADIES AND GENTLEMEN, I'M GOING TO ASK
7 YOU WHAT I CHARACTERIZE AS MY GENERAL OR CATCH ALL
8 QUESTION, DO YOU KNOW OF ANY REASON, DO YOU HAVE ANY
9 QUESTION IN YOUR MIND, ANY DOUBT IN YOUR MIND THAT YOU
10 BELIEVE YOU CANNOT GIVE TO THE STATE OF SOUTH CAROLINA AND
11 TO THE DEFENDANT A FAIR AND IMPARTIAL TRIAL? THAT IS FOR
12 ANY REASON WHATSOEVER YOU BELIEVE YOU CANNOT BE A FAIR AND
13 IMPARTIAL JUROR IN THIS CASE, IF SO, PLEASE STAND?

14 (NO RESPONSE.)

15 ALL RIGHT, FURTHER QUESTIONS FROM THE STATE?

16 MS. LIVELY: NONE FROM THE STATE, YOUR HONOR.

17 THE COURT: FURTHER QUESTIONS FROM THE DEFENSE?

18 MR. BARR: NOTHING FROM THE DEFENSE, YOUR HONOR.

19 THE COURT: ALL RIGHT, VERY GOOD. ALL RIGHT,
20 LADIES AND GENTLEMEN, WHAT WE'RE GOING TO DO NOW IS FROM
21 THE RANDOM STRIKE SHEET OR WHERE YOUR NAMES HAVE BEEN
22 LISTED IN A RANDOM ORDER THE CLERK OF COURT IS GOING TO
23 CALL VARIOUS NAMES. IF AND WHEN YOUR NAME IS CALLED WHAT
24 YOU'LL NEED TO DO IS STAND AND COME FORWARD AND COME
25 BASICALLY RIGHT TO A PLACE RIGHT IN FRONT OF THE COURT

1 REPORTER RIGHT HERE, JUST RIGHT IN FRONT, STAND RIGHT
2 THERE, YOU TURN AND YOU FACE TO THE BACK OF THE COURTROOM.
3 BASICALLY YOU'LL BE FACING, FACING THE DEPUTY BACK THERE AT
4 THE, AT THE BACK DOOR. AT THAT POINT IN TIME THE CLERK
5 WILL INQUIRE OF THE STATE WHETHER TO PRESENT OR EXCUSE THE
6 JUROR. IF YOU'RE EXCUSED YOU GO BACK AND HAVE A SEAT. IF
7 YOU'RE PRESENTED BY THE STATE THE CLERK WILL INQUIRE OF THE
8 DEFENSE WHETHER TO SEAT OR TO EXCUSE THE JUROR. IF YOU ARE
9 THEREBY SEATED THE CLERK WILL INSTRUCT YOU TO GO TO THE
10 JURY BOX AND HAVE A SEAT SO IF YOU HAVE ANY PERSONAL
11 BELONGINGS, A PURSE, BOOK, OR WHATEVER IT MIGHT BE, IF AND
12 WHEN YOUR NAME IS CALLED PLEASE BRING THAT ALONG WITH YOU
13 BECAUSE IF YOU ARE SEATED WE WILL WANT YOU TO GO DIRECTLY
14 TO THE JURY BOX.

15 ALL RIGHT, MADAM CLERK?

16 MADAM CLERK: IS THIS WHERE YOU'D LIKE THEM TO
17 STAND, JUDGE?

18 THE COURT: YES, MA'AM. YES, SIR, MR. BARR?

19 MR. BARR: YOUR HONOR, VERIFICATION PREEMPTORY
20 STRIKES, 10 AND 5?

21 THE COURT: YES, SIR.

22 MR. BARR: THANK YOU, SIR.

23 MADAM CLERK: JUROR NUMBER 267, KENNETH TERNE.

24 WHAT SAYS THE STATE?

25 MS. LIVELY: PRESENT THE JUROR.

1 MADAM CLERK: WHAT SAY THE DEFENSE?

2 MR. BARR: PLEASE SEAT MR. TERNE.

3 MADAM CLERK: TAKE A SEAT IN THE JURY BOX.

4 JUROR NUMBER 250, CHRISTY SKODRAS.

5 WHAT SAYS THE STATE?

6 MS. LIVELY: PRESENT THE JUROR.

7 MADAM CLERK: WHAT SAYS THE DEFENSE?

8 MR. BARR: PLEASE SEAT THE JUROR.

9 MADAM CLERK: HAVE A SEAT IN THE JURY BOX.

10 JUROR 138, ROBIN JACOBS.

11 WHAT SAYS THE STATE?

12 MS. LIVELY: PRESENT THE JUROR.

13 MADAM CLERK: WHAT SAYS THE DEFENSE?

14 MR. BARR: PLEASE EXCUSE THIS JUROR ON THIS

15 TRIAL.

16 MADAM CLERK: JUROR NUMBER 115, GEORGE GROSS.

17 WHAT SAYS THE STATE?

18 MS. LIVELY: PRESENT THE JUROR.

19 MADAM CLERK: WHAT SAYS THE DEFENSE?

20 MR. BARR: PLEASE EXCUSE THIS JUROR ON THIS

21 TRIAL.

22 MADAM CLERK: YOU MAY RETURN TO YOUR SEAT.

23 JUROR NUMBER 184, JULIE MICHAEL.

24 WHAT SAYS THE STATE?

25 MS. LIVELY: PRESENT THE JUROR.

1 MADAM CLERK: WHAT SAYS THE DEFENSE?

2 MR. BARR: PLEASE EXCUSE THIS JUROR ON THIS
3 TRIAL.

4 MADAM CLERK: YOU MAY RETURN TO YOUR SEAT.
5 JUROR NUMBER 290, LORIS WILLIAMS.

6 WHAT SAYS THE STATE?

7 MS. LIVELY: PRESENT THE JUROR.

8 MADAM CLERK: WHAT SAYS THE DEFENSE?

9 MR. BARR: PLEASE SEAT MR. WILLIAMS.

10 MADAM CLERK: TAKE A SEAT IN THE JURY BOX.

11 JUROR NUMBER 15, JUSTIN BLOMDAHL.

12 WHAT SAYS THE STATE?

13 MS. LIVELY: PRESENT THE JUROR.

14 MADAM CLERK: WHAT SAYS THE DEFENSE?

15 MR. BARR: PLEASE SEAT THE JUROR.

16 MADAM CLERK: PLEASE TAKE A SEAT IN THE JURY
17 BOX.

18 JUROR NUMBER 83, CARMEN FRANKLIN.

19 WHAT SAYS THE STATE?

20 MS. LIVELY: PRESENT THE JUROR.

21 MADAM CLERK: WHAT SAYS THE DEFENSE?

22 MR. BARR: PLEASE SEAT MS. FRANKLIN.

23 MADAM CLERK: TAKE A SEAT IN THE JURY BOX.

24 JUROR NUMBER 100, YVONNE GRAHAM.

25 WHAT SAYS THE STATE?

1 MS. LIVELY: PRESENT THE JUROR.

2 MADAM CLERK: WHAT SAYS THE DEFENSE?

3 MR. BARR: PLEASE EXCUSE THIS JUROR ON THIS
4 TRIAL.

5 MADAM CLERK: YOU MAY RETURN TO YOUR SEAT.

6 JUROR NUMBER 37, RICHARD CHRISTIAN.

7 WHAT SAYS THE STATE?

8 MS. LIVELY: PRESENT THE JUROR.

9 MADAM CLERK: WHAT SAYS THE DEFENSE?

10 MR. BARR: PLEASE EXCUSE THIS JUROR ON THIS
11 TRIAL.

12 MADAM CLERK: YOU MAY RETURN TO YOUR SEAT.

13 JUROR NUMBER 286, HARRY WEATHERFORD, JR.

14 WHAT SAYS THE STATE?

15 MS. LIVELY: EXCUSE THE JUROR FROM THE TRIAL OF
16 THIS CASE.

17 MADAM CLERK: YOU MAY RETURN TO YOUR SEAT.

18 JUROR NUMBER 39, ANTHONY COCKFIELD.

19 WHAT SAYS THE STATE?

20 MS. LIVELY: PRESENT THE JUROR.

21 MADAM CLERK: WHAT SAYS THE DEFENSE?

22 MR. BARR: PLEASE SEAT MR. COCKFIELD.

23 MADAM CLERK: TAKE A SEAT IN THE JURY BOX.

24 JUROR NUMBER 157, WILBUR LAWRENCE, III.

25 WHAT SAYS THE STATE?

1 MS. LIVELY: PRESENT THE JUROR.

2 MADAM CLERK: WHAT SAYS THE DEFENSE?

3 MR. BARR: PLEASE SEAT MR. LAWRENCE.

4 MADAM CLERK: SIR, PLEASE TAKE A SEAT IN THE
5 JURY BOX.

6 JUROR NUMBER 89, VALENCIA FULTON.

7 WHAT SAYS THE STATE?

8 MS. LIVELY: PRESENT THE JUROR.

9 MADAM CLERK: WHAT SAYS THE DEFENSE?

10 MR. BARR: PLEASE SEAT MS. FULTON.

11 MADAM CLERK: TAKE A SEAT IN THE JURY BOX.

12 JUROR NUMBER 154, CATHERINE KING.

13 WHAT SAYS THE STATE?

14 MS. LIVELY: PRESENT THE JUROR.

15 MADAM CLERK: WHAT SAYS THE DEFENSE?

16 MR. BARR: PLEASE EXCUSE THIS JUROR ON THIS
17 TRIAL.

18 MADAM CLERK: YOU MAY RETURN TO YOUR SEAT.

19 JUROR NUMBER 99, EILEEN GRAHAM.

20 WHAT SAYS THE STATE?

21 MS. LIVELY: PRESENT THE JUROR.

22 MADAM CLERK: WHAT SAYS THE DEFENSE?

23 MR. BARR: PLEASE SEAT MS. GRAHAM.

24 MADAM CLERK: PLEASE TAKE A SEAT.

25 JUROR NUMBER 271, JANE THOMAS.

1 WHAT SAYS THE STATE?

2 MS. LIVELY: PRESENT THE JUROR.

3 MADAM CLERK: WHAT SAYS THE DEFENSE?

4 MR. BARR: THE JUROR NUMBER AGAIN, PLEASE?

5 MADAM CLERK: JUROR NUMBER 271.

6 MR. BARR: PLEASE EXCUSE THIS JUROR AT THIS
7 TIME.

8 MADAM CLERK: YOU MAY RETURN TO YOUR SEAT.

9 JUROR NUMBER 106, JOSEPH GRATE.

10 WHAT SAYS THE STATE?

11 MS. LIVELY: PRESENT THE JUROR.

12 MADAM CLERK: WHAT SAYS THE DEFENSE?

13 MR. BARR: PLEASE SEAT MR. GRATE.

14 MADAM CLERK: TAKE A SEAT IN THE JURY BOX.

15 JUROR NUMBER 150, ARTHUR KEITH.

16 WHAT SAYS THE STATE?

17 MS. LIVELY: PLEASE EXCUSE THIS JUROR FROM THE
18 TRIAL OF THE CASE.

19 MADAM CLERK: YOU MAY RETURN TO YOUR SEAT.

20 JUROR NUMBER 298, MARGARET WRITT.

21 WHAT SAYS THE STATE?

22 MS. LIVELY: PRESENT THE JUROR.

23 MADAM CLERK: WHAT SAYS THE DEFENSE?

24 MR. BARR: PLEASE SEAT MS. WRITT.

25 MADAM CLERK: PLEASE TAKE A SEAT IN THE JURY

1 BOX.

2 JUROR NUMBER 263, LINLEY TADLOCK.

3 WHAT SAYS THE STATE?

4 MS. LIVELY: PRESENT THE JUROR.

5 MADAM CLERK: WHAT SAYS THE DEFENSE?

6 MR. BARR: THE COURT'S INDULGENCE?

7 THE COURT: YES, SIR.

8 MR. BARR: PLEASE SEAT MS. TADLOCK.

9 MADAM CLERK: TAKE A SEAT IN THE JURY BOX.

10 THE COURT: ONE ALTERNATE, PLEASE, MA'AM.

11 MADAM CLERK: JUROR NUMBER 92, CAROLYN GEE.

12 WHAT SAYS THE STATE?

13 MS. LIVELY: PRESENT THE JUROR.

14 MADAM CLERK: WHAT SAYS THE DEFENSE?

15 MR. BARR: PLEASE SEAT MS. GEE.

16 THE COURT: MS. GEE, IF YOU WOULD, PLEASE,

17 REMEMBER YOU'RE THE ALTERNATE IN THIS, PLEASE, IN THIS

18 CASE, PLEASE, MA'AM, THANK YOU.

19 ALL RIGHT, ANY OBJECTIONS TO THE JURY AS

20 IMPANELED FROM THE STATE?

21 MS. LIVELY: NOTHING FROM THE STATE, YOUR HONOR.

22 THE COURT: FROM THE DEFENSE?

23 MR. BARR: NOTHING FROM THE DEFENSE, YOUR HONOR.

24 THE COURT: ALL RIGHT, VERY GOOD, I FIND THE

25 JURY HAS BEEN PROPERLY IMPANELED PURSUANT TO BATSON V.

1 KENTUCKY AND JEB V. ALABAMA.

2 ALL RIGHT, LADIES AND GENTLEMEN OF THE JURY IN
3 THIS PARTICULAR CASE, I'M GOING TO ASK THAT YOU GO BACK TO
4 YOUR JURY ROOM IN JUST A FEW MOMENTS AND DO ONE THING FOR
5 ME AND THAT IS GOING TO BE TO SELECT YOUR FOREPERSON FOR
6 THIS PARTICULAR JURY.

7 LET ME TELL YOU VERY BRIEFLY WHAT THE
8 FOREPERSON'S DUTIES AND RESPONSIBILITIES ARE. IF WE'RE
9 HERE IN THE COURTROOM AND THERE'S SOME MATTER THAT THE JURY
10 NEEDS ATTENTION TO, THE WITNESS NEEDS TO SPEAK UP, LAWYERS
11 NEED TO SPEAK UP, OR WHATEVER IT MIGHT BE, THE FOREPERSON
12 ON BEHALF OF THE JURY RAISE THEIR HAND, GETS THE COURT'S
13 ATTENTION AND WE'LL HANDLE THE MATTER WHATEVER IT IS IT
14 MIGHT BE.

15 IF YOU'RE BACK IN YOUR JURY ROOM AND SOME MATTER
16 COMES UP THE FOREPERSON WILL WRITE OUT A NOTE, SIGN IT, GET
17 IT TO THE BAILIFF, IT WILL COME TO ME AND WE'LL HANDLE THE
18 MATTER, WHATEVER IT MIGHT BE.

19 NOW WHEN THE EVIDENTIARY PORTION OF THE TRIAL HAS
20 CONCLUDED AND WE'VE HEARD THE CLOSING ARGUMENTS OF THE
21 ATTORNEYS AND I'VE GIVEN YOU THE LAW THAT YOU'RE GOING TO
22 FIND TO THE FACTS AS YOU SO FIND THEM TO BE IN THIS
23 PARTICULAR CASE AND THEN I SEND THE CASE TO YOU FOR YOUR
24 DELIBERATIONS IN THIS CASE AND YOUR UNANIMOUS DECISION THE
25 FOREPERSON'S DUTIES AND RESPONSIBILITY CHANGE IN THIS

1 REGARD.

2 THE FOREPERSON IS GOING TO ACT LIKE THE CHAIRMAN
3 AT A MEETING TO MAKE SURE THAT EVERYBODY THAT WANTS TO HAS
4 AN OPPORTUNITY TO SPEAK, EVERYBODY'S VOICE HAS AN
5 OPPORTUNITY TO BE HEARD. NOW THE FOREPERSON'S VOICE AND
6 VOTE CARRIES NO MORE WEIGHT THAN ANY OTHER MEMBER OF THE
7 JURY. EVERYBODY IS ON AN EQUAL PLAIN IN THAT REGARD BUT
8 SOMEBODY DOES NEED TO BE IN CHARGE, AND AGAIN IF THERE'S
9 SOME MATTER THAT THE JURY NEEDS ATTENTION TO AGAIN THE
10 FOREPERSON WILL WRITE OUT THAT NOTE, SIGN IT, GIVE IT TO
11 THE BAILIFF, AND AGAIN WE'LL HANDLE THAT MATTER WHATEVER IT
12 MIGHT BE.

13 NOW THE FINAL DUTY AND RESPONSIBILITY OF THE
14 FOREPERSON IS ONCE THE JURY HAS WELL AND TRULY DELIBERATED
15 IN THIS CASE AND REACHED ITS UNANIMOUS DECISION IN THIS
16 PARTICULAR MATTER THE FOREPERSON WILL TAKE THE VERDICT FORM
17 THAT THE COURT WILL HAVE PREPARED FOR YOU AND CHECK THE
18 APPROPRIATE BLOCK OR WRITE OUT THE APPROPRIATE WORD AND
19 THEREAFTER SIGN YOUR NAME AS THE FOREPERSON INDICATING THAT
20 INDEED IS THE UNANIMOUS VERDICT OF THE JURY IN THIS
21 PARTICULAR CASE.

22 SO WITH THAT BIT OF INSTRUCTION I'M GOING TO ASK
23 THAT YOU GO WITH THE BAILIFF TO YOUR JURY ROOM, SELECT YOUR
24 FOREPERSON THEN KNOCK ON THE DOOR AND LET THE BAILIFF KNOW
25 WHO THAT PERSON IS, THANK YOU, AND, MS, GEE, AS THE

1 ALTERNATE YOU CAN VOTE ON THE FOREPERSON, BUT OBVIOUSLY YOU
2 CAN'T BE THE FOREPERSON, ALL RIGHT, THANK YOU VERY MUCH,
3 YA'LL GO AHEAD AND GO. MADAM BAILIFF, YOU WANT THEM TO GO
4 THAT WAY? ALL RIGHT, YA'LL CAN GO THIS WAY, I'M SORRY.

5 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
6 2:35 P.M.)

7 THE COURT: MADAM CLERK, DID JUDGE CULBERTSON
8 GIVE YOU ANY INSTRUCTIONS ABOUT THE BALANCE OF THE JURY OR
9 JUST CALL BACK AFTER SIX?

10 MADAM CLERK: THAT'S IT, YOUR HONOR.

11 THE COURT: ALL RIGHT, VERY GOOD. ALL RIGHT,
12 LADIES AND GENTLEMEN OF THE JURY PANEL THAT WERE NOT
13 SELECTED FOR THIS PARTICULAR CASE, YOU UNDERSTAND WE
14 OBVIOUSLY HAVE CIVIL AND CRIMINAL COURT GOING ON SO WE'LL
15 DEFINITELY NEED TO MAKE USE OF THAT CALL BACK SYSTEM, SO IF
16 YA'LL WOULD CALL BACK THAT JUROR INFORMATION LINE TONIGHT
17 AFTER 6 P.M., FOLLOW THOSE INSTRUCTIONS WHATEVER THEY MAY
18 BE, AND WITH THAT YOU'RE NOW EXCUSED, THANK YOU VERY MUCH.

19 (WHEREUPON, JURY PANEL IS EXCUSED FOR THE
20 EVENING.)

21 THE COURT: SOLICITOR, ANY MATTERS YOU NEED TO
22 BRING UP TO THE COURT IN THE STEVEN HEWITT MATTER AT THIS
23 TIME?

24 MS. LIVELY: YES, YOUR HONOR, JUST SO THAT WE
25 CAN HAVE A CLEAN RECORD ON CERTAIN ISSUES. I DO UNDERSTAND

1 THAT MR. BARR IS REQUESTING A SEQUESTRATION OF THE
2 WITNESSES, THE STATE WOULD RESPOND THAT WE WOULD ALSO WANT
3 SEQUESTRATION OF THE DEFENSE WITNESSES AS WELL, MAKE IT
4 MUTUAL. THE ONLY THING I DO ASK IS THAT MY INVESTIGATOR,
5 GARY TODD, BE ALLOWED TO REMAIN IN THE COURTROOM AND
6 OBVIOUSLY MY VICTIM **VICTIM** **██████████** **██████████** WILL BE ALSO IN THE
7 COURTROOM THROUGH THE DURATION OF THE TRIAL. EVERYBODY
8 ELSE WE WILL AND HAVE THEM PREPARED TO SEQUESTER.

9 THE COURT: ALL RIGHT, SO OBVIOUSLY MR. HEWITT
10 CAN BE HERE UNDER THE VICTIMS RIGHTS ACT, AND THE OFFICER
11 THAT IS YOUR CHIEF INVESTIGATING OFFICER IN THIS PARTICULAR
12 CASE?

13 MS. LIVELY: HE IS, YOUR HONOR, AND ONE OTHER
14 PERSON, STEVEN BROWN ACTUALLY WITH OUR SOLICITOR'S OFFICE.
15 THE ONLY THING HE DID WAS SOME FOLLOW UP STUFF LIKE GETTING
16 THE PICTURES TO SET IT UP TO BEING VIEWED BY THE JURY AS
17 WELL AS ASSISTING WITH THE DIAGRAM FOR THE HOME, SO
18 EVERYTHING HE'S DONE IS MORE OF A TRIAL PREP AND IF I COULD
19 HAVE HIM IN HERE TO USE TO HELP ME WITH ANY TECHNICAL
20 ISSUES?

21 THE COURT: ALL RIGHT, LET'S TALK ABOUT MR.
22 BROWN FIRST. MR. BARR, IS THERE AN ISSUE WITH MR. BROWN
23 BEING IN HERE?

24 MR. BARR: NO, SIR, I WOULD THINK ---

25 THE COURT: I MEAN ANYTHING HE WOULD TESTIFY TO

1 AGAIN, SOLICITOR, WOULD BE JUST LIMITED TO WHAT?

2 MS. LIVELY: JUST BECAUSE MY, MY VICTIM I WANT
3 TO MAKE SURE HE MAY BE ABLE TO IDENTIFY THE DIAGRAM CAUSE
4 MR. BROWN ACTUALLY WENT INTO THE HOME WHERE THE ASSAULT
5 OCCURRED AND HE DID A FULL LAYOUT DIAGRAM. I'M GOING TO
6 HAVE THE WITNESS TESTIFY AND WE'RE GOING TO ACTUALLY HAVE
7 HIM POINTING OUT WHERE EVERYTHING IS IN THE HOME. HE
8 PROBABLY CAN IDENTIFY IT SUFFICIENT ENOUGH FOR THE RECORD
9 IN ORDER FOR IT TO COME IN THROUGH HIM.

10 THE COURT: BUT IT WAS ACTUALLY PREPARED BY MR.
11 BROWN?

12 MS. LIVELY: IT WAS PREPARED BY MR. BROWN SO
13 JUST OUT OF AN ABUNDANCE OF PRECAUTION I PUT HIS NAME ON
14 THERE.

15 THE COURT: ALL RIGHT, VERY GOOD, IS THERE ANY
16 PROBLEM WITH THAT THEN, MR. BARR?

17 MR. BARR: NO, SIR, YOUR HONOR.

18 THE COURT: ALL RIGHT, VERY GOOD.

19 MR. BARR: AND WE WOULD CERTAINLY RECIPROCATE AS
20 FAR AS THE SEQUESTERING.

21 THE COURT: SEQUESTERING WITNESSES, VERY GOOD,
22 SIR.

23 MR. BARR: THANK YOU, SIR.

24 THE COURT: ALL RIGHT, ANY OTHER ISSUES ON
25 BEHALF OF THE STATE?

1 MS. LIVELY: YOUR HONOR, YES, I WOULD ALSO LIKE
2 TO GET THE DATE OF BIRTH OF THE WITNESSES ON THE DEFENSE
3 LIST SO THAT I COULD RUN AN NCIC ON SOME INDIVIDUALS WHO
4 I'M NOT FAMILIAR WITH.

5 THE COURT: ALL RIGHT.

6 MS. LIVELY: I MEAN I WILL ADDRESS THAT WITH THE
7 DEFENSE. I DON'T THINK THAT SHOULD BE A PROBLEM.

8 THE COURT: IS THAT GOING TO BE A PROBLEM, MR.
9 BARR?

10 MR. BARR: NO, SIR, IT SHOULD NOT BE.

11 THE COURT: ALL RIGHT, VERY GOOD, SIR.

12 MS. LIVELY: THAT'S FINE, AND THEN THE OTHER
13 THING IS THAT THE DEFENDANT HAS A PRIOR CRIMINAL HISTORY
14 AND I HAD MENTIONED THIS TO YOUR HONOR WHEN WE WERE IN THE
15 BACK REGARDING THE FACT THAT I HAVE ALREADY ADDRESSED THIS
16 WITH MY VICTIM AS TO WHAT CAN BE SAID ON THE STAND AND I
17 WOULD JUST LIKE THE COURT TO PLACE IT ON THE RECORD THAT WE
18 UNDERSTAND AND DO NOT INTEND TO GO INTO ANY CRIMINAL
19 HISTORY OF THE DEFENDANT. OF COURSE IF HE GETS ON THE
20 STAND THAT'S GOING TO BE A WHOLE OTHER ISSUE BUT UP FRONT
21 MY VICTIM IS AWARE THAT HE IS NOT TO MENTION ANYTHING
22 REGARDING HIS FATHER BEING IN AND OUT OF JAIL AND ANYTHING
23 REGARDING HIS CRIMINAL HISTORY.

24 THE COURT: ALL RIGHT, VERY GOOD.

25 MS. LIVELY: SO I JUST WANT TO PUT THAT ON THE

1 RECORD BECAUSE HE HAS, WE HAVE DISCUSSED THAT AND I DIDN'T
2 WANT YOU TO THINK ANYTHING OUT OF SURPRISE WAS GOING TO
3 COME OUT REGARDING THAT ISSUE.

4 THE COURT: ALL RIGHT, VERY GOOD.

5 MS. LIVELY: AND THAT'S PRETTY MUCH IT. I'VE
6 DECIDED I'M NOT GOING TO AMEND THE CSC FIRST DEGREE
7 INDICTMENT BECAUSE THE LEWD ACT ENCOMPASSES ALL ACTS SO I'M
8 GOING TO GO FORWARD AS EVERYTHING IS STATED IN THE CHARGING
9 DOCUMENTS.

10 THE COURT: VERY GOOD, MA'AM.

11 MS. LIVELY: AND THAT'S IT.

12 THE COURT: ALL RIGHT, MR. BARR?

13 MR. BARR: THAT'S, THAT'S FINE, YOUR HONOR.

14 THE COURT: ALL RIGHT, VERY GOOD, SIR. ALL
15 RIGHT, DO WE HAVE -- THE FOREPERSON FOR THIS PARTICULAR
16 JURY, COUNSEL, THE JURY HAS SELECTED JUROR NUMBER 250, MR.,
17 I'M MUST GOING TO TAKE A STAB AT PRONOUNCING IT, IT'S
18 SKODRAS, S-K-O-D-R-A-S, CHRIS SKODRAS, JUROR NUMBER 250.
19 THE JURY SELECTED HIM AS THE FOREPERSON FOR THE JURY.

20 WHAT I WAS GOING TO DO IS ASK THE JURY TO BE BACK
21 TOMORROW MORNING AT 9:00; IS THAT A PROBLEM, SOLICITOR?

22 MS. LIVELY: THAT'S FINE.

23 MR. BARR: YOUR HONOR, MAY WE APPROACH?

24 THE COURT: YES, SIR, ABSOLUTELY.

25 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE

1 RECORD OUT OF THE HEARING OF THE COURT REPORTER.)

2 THE COURT: WE'LL START TOMORROW MORNING AT
3 9:00.

4 MS. LIVELY: YES, SIR.

5 MR. BARR: YES, SIR.

6 THE COURT: OKAY, THANK YOU. ALL RIGHT, MADAM
7 BAILIFF, COULD YOU ASK THE JURY PANEL TO COME OUT, PLEASE
8 MA'AM.

9 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
10 2:45 P.M.)

11 THE COURT: ALL RIGHT, THE FOREMAN, SIR, CAN YOU
12 TELL ME HOW YOU PRONOUNCE YOUR LAST NAME, PLEASE, SIR?

13 MR. FOREMAN: SKODRAS.

14 THE COURT: SKODRAS?

15 MR. FOREMAN: YES, SIR.

16 THE COURT: ALL RIGHT, SIR, MR. SKODRAS, YOU'VE
17 BEEN SELECTED AS THE FOREPERSON FOR THIS PARTICULAR JURY;
18 IS THAT CORRECT?

19 MR. FOREMAN: YES, SIR.

20 THE COURT: ALL RIGHT, SIR, IF YOU -- THE
21 BAILIFF HAS ALREADY TOLD YOU THAT WILL BE YOUR SEAT DURING
22 THE ENTIRE, IN THE TRIAL, OKAY.

23 MR. FOREMAN: OKAY.

24 THE COURT: AND, MS. GEE, IF YOU WOULD ALWAYS
25 JUST OCCUPY THAT PARTICULAR SEAT WHEN YOU COME BACK FROM

1 THE JURY ROOM, AND, LADIES AND GENTLEMEN, THE REST OF YA'LL
2 JUST FILL IN WHEREVER IT IS. THERE'S NO OTHER ASSIGNED
3 SEAT EXCEPT FOR THE FOREPERSON AND THE ALTERNATE. I JUST
4 ALWAYS NEED TO KIND OF KNOW WHERE, WHERE THEY ARE.

5 WE'LL ACTUALLY USE IT FOR YOUR BREAKS AND FOR
6 YOUR DELIBERATION ROOM THE GRAND JURY ROOM THAT'S DOWN THE
7 HALL BUT WHEN YA'LL REPORT IN THE MORNING YA'LL WILL, THE
8 BAILIFFS AND DEPUTIES WILL DIRECT YOU TO THE GRAND JURY
9 ROOM. IT'S AT THE END OF THIS HALL. IT WON'T ACTUALLY BE
10 THAT ROOM THAT YOU'LL BE USING FOR THE BREAKS AND
11 DELIBERATIONS FOR THIS TRIAL.

12 WE'RE GOING TO START TOMORROW MORNING AT 9:00.
13 THERE'S SOME OTHER MATTERS I HAVE TO TAKE UP THIS AFTERNOON
14 BUT I'D LIKE YOU BACK SO THAT YOU CAN BE CALLED BACK INTO
15 THE COURTROOM TOMORROW MORNING AT 9:00 SO YA'LL NEED TO
16 PLAN IT SO THAT YOU GET HERE A LITTLE BIT, A LITTLE BIT
17 BEFORE THAT SO THAT WE CAN COME INTO THE COURTROOM AT THAT
18 POINT IN TIME.

19 YA'LL DON'T KNOW ANYTHING ABOUT THIS CASE AND
20 THAT'S THE WAY IT SHOULD BE. YOU CAN'T DO ANY WORK ON YOUR
21 OWN. YOU HAVE TO DECIDE THIS CASE SOLELY AND COMPLETELY
22 BASED ON THE EVIDENCE YOU HEAR IN THIS COURTROOM AND FROM
23 NO OTHER SOURCE. THAT MEANS AT ANY POINT IN TIME YOU CAN'T
24 BE LOOKING ANYTHING UP ON THE INTERNET OR TRYING TO TALK TO
25 ANYBODY OR CERTAINLY YOU CAN'T HAVE ANYBODY TALK TO YOU

1 ABOUT THIS CASE. YOU HAVE TO MAKE YOUR DECISIONS BASED
2 SOLELY ON THE EVIDENCE YOU HEAR HERE IN THE COURTROOM AND
3 THE LAW THAT I GIVE TO YOU. I'LL HAVE SOME INSTRUCTIONS
4 FOR YOU TOMORROW MORNING AS TO YOUR GENERAL DUTIES AND
5 RESPONSIBILITIES AND OBVIOUSLY I'LL EXPAND ON THOSE AT THE
6 VERY END BUT I'LL GIVE YOU A GENERAL INTRODUCTION TOMORROW
7 MORNING WHEN YOU GET HERE AS TO YOUR DUTIES AND
8 RESPONSIBILITIES DURING THE COURSE OF THE TRIAL. BUT WITH
9 THAT JUST REMEMBER WHENEVER WE EXCUSE YOU WHETHER IT'S
10 DURING LUNCH OR TO GO HOME TO, REMEMBER DON'T TALK ABOUT
11 THE CASE, DON'T ALLOW ANYBODY TO TALK TO YOU ABOUT IT
12 BECAUSE THEIR INPUT OBVIOUSLY WOULD NOT BE PROPER, ALL
13 RIGHT. I'LL SEE YOU BACK TOMORROW MORNING 9:00, THANK YOU
14 VERY MUCH.

15 (WHEREUPON, THE JURY WAS EXCUSED FOR THE EVENING
16 AT 2:48 P.M.)

17 THE COURT: ALL RIGHT, SOLICITOR, MR. BARR,
18 WE'LL SEE YA'LL BACK TOMORROW MORNING 9:00.

19 MS. LIVELY: THANK YOU, YOUR HONOR.

20 MR. BARR: THANK YOU.

21 THE COURT: THANK YOU VERY MUCH.

22 (WHEREUPON, STATE'S EXHIBIT 1, 2, 3 AND 4 MARKED
23 FOR IDENTIFICATION.)

24 (WHEREUPON, THE TRIAL WAS ADJOURNED AND RESUMES
25 ON MAY 25, 2010 AT 9:00 A.M.)

1 THE COURT: IS THE STATE READY?

2 MS. LIVELY: YES, SIR.

3 THE COURT: DEFENSE?

4 MR. BARR: YES, SIR.

5 THE COURT: ALL RIGHT, WHAT WE'LL TAKE UP IS THE
6 ISSUE OF THE JUROR NUMBER 157, WILBUR LAWRENCE. I HAVE
7 TALKED TO COUNSEL IN CHAMBERS ABOUT THIS MATTER. MR.
8 LAWRENCE SENT US A NOTE ON, I'M GOING TO HAVE THAT NOTE
9 MARKED AS A COURT'S EXHIBIT.

10 (WHEREUPON, COURT'S EXHIBIT NUMBER 1 MARKED FOR
11 IDENTIFICATION.)

12 THE COURT: AS I UNDERSTAND IT BASED ON THE
13 INFORMATION CONTAINED IN THE NOTE FROM THE JUROR AND THE
14 CONVERSATION I HAD WITH COUNSEL IN CHAMBERS, IT IS MY
15 UNDERSTANDING THAT BOTH THE STATE AND THE DEFENSE CONCUR
16 AND ARE IN AGREEMENT THAT THIS JUROR SHOULD BE REMOVED FROM
17 THIS CASE AND SUBSTITUTED, THE ALTERNATE SUBSTITUTED FOR
18 THIS JUROR; IS THAT CORRECT, SOLICITOR?

19 MS. LIVELY: IT IS FROM THE STATE, YOUR HONOR.

20 THE COURT: AND, MR. BARR, ON BEHALF OF THE
21 DEFENDANT?

22 MR. BARR: YES, YOUR HONOR, THAT IS CORRECT.

23 THE COURT: ALL RIGHT, VERY GOOD. ALL RIGHT,
24 COULD YOU ASK JUROR NUMBER 157, MR. WILBUR LAWRENCE, TO
25 COME IN, PLEASE, SIR? DO YOU HAVE THEM IN THE GRAND JURY

1 ROOM?

2 MADAM CLERK: YEAH, BUT THEY CAN'T GET OUT THAT

3 DOOR.

4 THE COURT: THEY CAN'T COME IN THAT DOOR?

5 MADAM CLERK: NO.

6 THE COURT: WHY IS YOU CAN'T COME IN THAT DOOR?

7 THE BAILIFF: IT'S A CLOSET.

8 THE COURT: IT'S A CLOSET?

9 THE BAILIFF: YES, SIR.

10 THE COURT: OKAY, WELL THAT'S A GOOD REASON

11 THEN.

12 (WHEREUPON, JUROR 157 ENTERED THE COURTROOM.)

13 THE COURT: MR. LAWRENCE?

14 JURY MEMBER: YES, SIR.

15 THE COURT: BASED ON THE INFORMATION THAT YOU

16 HAVE RELAYED TO ME I'M GOING TO EXCUSE YOU FROM THE TRIAL

17 IN THIS PARTICULAR CASE. I BELIEVE YOU'RE ON THE JURY

18 PANEL FOR THE WEEK. DO WE KNOW IS THE JURY PANEL COMING

19 BACK TODAY AT ANY POINT IN TIME THAT WE KNOW OF?

20 MADAM CLERK: THEY'RE CALLING IN AFTER SIX

21 TODAY.

22 THE COURT: OKAY, SO YOU JUST NEED TO CALL IN

23 AFTER SIX TODAY AND FOLLOW THOSE INSTRUCTIONS WHATEVER THEY

24 ARE, ALL RIGHT, MR. LAWRENCE.

25 JUROR MEMBER: THANK YOU, SIR.

1 THE COURT: THANK YOU, SIR, APPRECIATE IT VERY
2 MUCH. ALL RIGHT, NOW, SOLICITOR, I UNDERSTAND YOU ALSO HAD
3 ANOTHER MATTER TO BRING TO THE COURT'S ATTENTION AT THIS
4 TIME?

5 MS. LIVELY: YES, SIR, YOUR HONOR, [REDACTED]
6 [REDACTED] IS THE VICTIM IN THE CASE AND HE HAS ADVISED ME
7 THAT HE WAS ON PROBATION FOR AN OFFENSE WHERE HE WAS CAUGHT
8 WITH MARIJUANA. HE TELLS ME IT WAS A SIMPLE POSSESSION
9 MARIJUANA CHARGE. HIS PROBATION IS NOW OVER OR IT'S CLOSE
10 TO BEING OVER. I KNOW HE'S ON -- IT IS OVER, OKAY, AND HE,
11 I'VE GOT HIM IN THE COURTROOM FOR THE PURPOSES OF THIS,
12 THIS MOTION TO KEEP OUT THAT CONVICTION.

13 FIRST OF ALL BASED UPON THE FACT THAT THIS
14 DEFENDANT PLED TO A MATTER THAT CARRIES LESS THAN A YEAR,
15 IT IS FOR SIMPLE POSSESSION OF MARIJUANA WHICH WOULD HAVE
16 NO ISSUES IN REGARDS TO MORAL TURPITUDE OR HIS CREDIBILITY,
17 SO FOR THAT PURPOSE, YOUR HONOR, WE BELIEVE THAT IT WOULD
18 NOT BE ADMISSIBLE AGAINST HIM AND WOULD BE PREJUDICIAL FOR
19 THE DEFENSE TO BE ABLE TO IMPEACH HIM ON THAT ISSUE. SO WE
20 WOULD ASK THE COURT TO MAKE A RULING THAT THAT INFORMATION
21 IS NOT TO BE BROUGHT UP BY THE DEFENSE DURING HIS TESTIMONY
22 OR ANYONE'S TESTIMONY IN THIS TRIAL.

23 THE COURT: ALL RIGHT, NOW, SOLICITOR, YOU
24 INDICATED THAT YOUR CLIENT TOLD YOU THESE MATTERS, DID YOU
25 CONFIRM THAT WITH, WITH YOUR OFFICE OR THE FAMILY COURT

1 SOLICITOR REGARDING THIS PARTICULAR MATTER?

2 MS. LIVELY: WELL I TOLD THEM TO RUN HIS NCIC
3 AND IT DIDN'T COME UP SO I'M HAVING TO, I'M GOING TO HAVE
4 YOU THAT INFORMATION, I'M SORRY BECAUSE LIKE I SAID I TOLD
5 THEM TO RUN AN NCIC AND IT'S NOT ON THERE.

6 THE COURT: ALL RIGHT.

7 MS. LIVELY: SO I WILL FOLLOW UP WITH THE FAMILY
8 COURT, NAJIA BLACK, AND SEE IF SHE CAN GET THAT INFORMATION
9 AND I'M GOING TO HAVE SOMEONE DO THAT RIGHT NOW. I THOUGHT
10 IT MIGHT POP UP ON HERE, SOMETIMES IT DOES, SOMETIMES IT
11 DOESN'T.

12 THE COURT: ALL RIGHT.

13 MS. LIVELY: AND, AND I'LL GET THAT INFORMATION
14 TO CONFIRM WHAT MY CLIENT, MY CLIENT, I'M SORRY, WHAT MY
15 VICTIM IS TELLING ME REGARDING THAT CHARGE.

16 THE COURT: ALL RIGHT, VERY GOOD. AS I
17 UNDERSTAND IT MR. **VICTIM** IS NOT GOING TO BE YOUR
18 FIRST WITNESS; IS THAT CORRECT?

19 MS. LIVELY: THAT'S CORRECT, YOUR HONOR.

20 THE COURT: SO THERE MAY BE A LITTLE BIT OF TIME
21 FOR YOU TO GET THAT INFORMATION?

22 MS. LIVELY: YES, SIR.

23 THE COURT: ALL RIGHT, LET'S, LET'S HOLD OFF ON
24 HEARING FROM YOU, MR. BARR, ON THAT ISSUE AND THE COURT
25 RULING ON THAT MATTER UNTIL WE CONFIRM THAT INFORMATION

1 FROM THE, THROUGH THE SOLICITOR'S OFFICE AS TO ACTUALLY
2 WHAT THE CONVICTION WAS AND, YOU KNOW, WHAT POTENTIAL
3 IMPACT RULE 609 MIGHT HAVE ON IT ONE WAY OR ANOTHER.

4 MS. LIVELY: YES, SIR, THANK YOU.

5 THE COURT: OKAY, THANK YOU. ALL RIGHT, WITH
6 THAT IS THE STATE READY TO PROCEED?

7 MS. LIVELY: OH, I'M SORRY, YES, SIR, YOUR
8 HONOR, ONE OTHER THING WE WANT TO TAKE SOMEBODY OFF OUR
9 WITNESS LIST AND HE BE ALLOWED TO SIT IN HERE ---

10 THE COURT: ALL RIGHT.

11 MS. LIVELY: --- THROUGH THE TRIAL. HIS NAME IS
12 CHUCK BARRINEAU. HE IS THE UNCLE OF THE VICTIM AND THE
13 STATE DOES NOT INTEND TO CALL HIM DURING THE TRIAL OF THIS
14 CASE.

15 THE COURT: ALL RIGHT, VERY GOOD. SO IT'S MR.
16 CHUCK BARRINEAU, ALL RIGHT, VERY GOOD. ALL RIGHT, IS THERE
17 ANYTHING ELSE, SOLICITOR?

18 MS. LIVELY: NO, YOUR HONOR, NOT FROM THE STATE.

19 THE COURT: ALL RIGHT, YES, SIR, MR. BARR?

20 MR. BARR: YOUR HONOR, I BELIEVE THE EXHIBITS
21 HAVE BEEN PREMARKED. I DON'T KNOW WHETHER OR NOT YOU WANT
22 TO TAKE THESE, THE DEFENDANT'S OBJECTIONS TO THESE AS THEY
23 COME UP --

24 THE COURT: I THINK WE BETTER TAKE THEM UP AS
25 THEY COME UP BECAUSE THEN THE COURT WILL BE BETTER ABLE TO

1 GAUGE THEIR CONTEXT WITH THE MATTER AT HAND SO I APPRECIATE
2 YA'LL MARKING THEM AHEAD OF TIME, THAT HELPS, BUT LET'S
3 JUST TAKE UP THE OBJECTIONS AT THE TIME, OKAY.

4 MR. BARR: ALL RIGHT.

5 THE COURT: VERY GOOD, ANYTHING ELSE, MR. BARR?

6 MR. BARR: NOTHING FURTHER, YOUR HONOR.

7 THE COURT: ALL RIGHT, VERY GOOD, ASK THE JURY
8 TO COME IN THEN, PLEASE.

9 MS. LIVELY: AND, YOUR HONOR, I'M GOING TO
10 EXCUSE MY WITNESSES AT THIS TIME.

11 THE COURT: YES, PLEASE.

12 MS. LIVELY: OKAY.

13 (WHEREUPON, STATE'S EXHIBITS NUMBERS 5 AND 6
14 MARKED FOR IDENTIFICATION.)

15 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
16 9:15 A.M.)

17 THE COURT: MS. GEE, YOU CAN MOVE DOWN ONE, ONE
18 SEAT. FOR THE, FOR THE RECORD, MS. GEE, I'M REMOVING YOU
19 FROM YOUR POSITION AS AN ALTERNATE AND PLACING YOU AS ONE
20 OF THE REGULAR MEMBERS OF THE JURY PANEL IN THIS PARTICULAR
21 MATTER. DUE TO MATTERS BROUGHT TO THE COURT'S ATTENTION I
22 HAVE, WITH AGREEMENT OF COUNSEL I'VE REMOVED ONE OF THE
23 JURORS IN THIS PARTICULAR CASE AND WE WILL NOW GO FORWARD
24 WITH THE 12 OF YOU AS THE JURORS IN THIS PARTICULAR CASE.

25 ALL RIGHT, LADIES AND GENTLEMEN, IF YOU WOULD

1 STAND AT THIS TIME THE CLERK OF COURT IS GOING TO
2 ADMINISTER YOUR OATH TO YOU.

3 (WHEREUPON, THE JURY IS SWORN.)

4 THE COURT: IS THERE ANY MEMBER OF THE JURY
5 PANEL THAT DID NOT AFFIRMATIVELY TAKE THE OATH AS GIVEN BY
6 THE CLERK, IF SO, PLEASE STAND AT THIS TIME?

7 NO ONE STANDING. I FIND THE JURY IS PROPERLY
8 SWORN IN THIS PARTICULAR CASE.

9 ALL RIGHT, LADIES AND GENTLEMEN, AS I INDICATED
10 TO YOU YESTERDAY WE ARE GOING TO COMMENCE THE TRIAL OF THE
11 STATE OF SOUTH CAROLINA V. STEVEN LEE HEWITT.

12 NOW THE STATE OF SOUTH CAROLINA HAS CHARGED THIS
13 DEFENDANT WITH TWO CRIMES. ONE OF THOSE BEING LEWD ACT ON
14 A MINOR AND CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST
15 DEGREE. TO THOSE CHARGES THE DEFENDANT HAS PLED NOT
16 GUILTY. THAT MEANS THE BURDEN OF PROOF IN THIS CASE IS NOW
17 AND IS ALWAYS THROUGHOUT THE ENTIRETY OF THIS TRIAL UNTIL
18 YA'LL REACH A DECISION IN THIS MATTER THE BURDEN OF PROOF
19 IN THIS CASE IS ON THE STATE OF SOUTH CAROLINA TO PROVE THE
20 DEFENDANT GUILTY BEYOND A REASONABLE DOUBT.

21 THE DEFENDANT IS PRESUMED INNOCENT. THE
22 DEFENDANT HAS NOTHING TO SHOW TO YOU. THE DEFENDANT HAS
23 NOTHING TO TELL TO YOU. THE STATE, BY THE WITNESSES IT
24 PRESENTS, MUST PROVE THE GUILT OF THE DEFENDANT BEYOND A
25 REASONABLE DOUBT. THAT IS THE STATE'S BURDEN; IT HAS IT

1 AND IT HAS IT UNTIL YOU REACH A UNANIMOUS DECISION IN THIS
2 PARTICULAR MATTER ON BOTH CHARGES.

3 YOU WILL BE CALLED UPON AT THE END TO RENDER A
4 UNANIMOUS DECISION ON BOTH CHARGES THAT ARE LEVIED BY THE
5 STATE AS AGAINST THE DEFENDANT. THAT WILL BE YOUR DUTY AND
6 RESPONSIBILITY. IN FACT IN THIS MATTER YOU COLLECTIVELY
7 ARE GOING TO BE THE JUDGES OF THE FACTS OF THIS PARTICULAR
8 CASE.

9 BASED UPON THE EVIDENCE THAT IS PRESENTED IN THIS
10 MATTER YOU WILL BE CALLED UPON TO WEIGH THE CREDIBILITY,
11 THAT IS THE BELIEVABILITY OF WITNESSES THAT PRESENT
12 THEMSELVES TO YOU, TO LOOK AT ALL THE EVIDENCE THAT IS
13 PRESENTED IN THIS CASE, LOOK AT THAT EVIDENCE AND WEIGH
14 THAT EVIDENCE AGAINST THE STATE'S BURDEN TO PROVE THE
15 DEFENDANT GUILTY BEYOND A REASONABLE DOUBT.

16 YOU MUST MAKE YOUR DECISION BASED SOLELY AND
17 COMPLETELY UPON THE EVIDENCE AND TESTIMONY YOU HEAR IN THIS
18 COURTROOM AND FROM NO OTHER SOURCE.

19 WHEN I EXCUSE YOU I'LL BE TELLING YOU NOT TO TALK
20 ABOUT THIS CASE AMONG YOURSELVES. OBVIOUSLY DON'T ALLOW
21 ANYBODY ELSE TO TALK ABOUT THE CASE WITH YOU. WHEN THE
22 CASE REACHES IT'S CONCLUSION, WE'VE HAD ALL THE EVIDENCE,
23 WE'VE HAD THE CLOSING ARGUMENTS OF THE ATTORNEYS, I'VE TOLD
24 YOU THE LAW THAT YOU'RE GOING TO USE TO APPLY TO THE FACTS
25 AS YOU SO FIND THEM TO BE, THEN YOU WILL HAVE ALL THE TIME

1 YOU DEEM NECESSARY TO TALK ABOUT THIS CASE BEFORE YOU REACH
2 YOUR UNANIMOUS DECISION ON BOTH THOSE CHARGES, BUT IF YOU
3 WOULD DISCUSS THE CASE BEFORE THAT YOU'D BE DISCUSSING IT
4 BEFORE YOU'VE HEARD ALL THE FACTS. YOU'D BE DISCUSSING IT
5 BEFORE YOU KNOW THE LAW THAT YOU HAVE TO APPLY TO THE FACTS
6 AS YOU SO FIND THEM TO BE, AND SOMETIMES WHEN PEOPLE TALK
7 ABOUT SOMETHING AND THEY SET OUT A POSITION SOMETIMES THEY
8 FIND IT HARD TO CHANGE THEIR MIND EVEN THOUGH THE FACTS
9 LATER ON REALLY DICTATED THAT THEY OUGHT TO CHANGE THEIR
10 MIND, SO FOR ALL THOSE REASONS DON'T DISCUSS THE CASE AS
11 BEST YOU CAN. DON'T FORM A FIRM MENTAL OPINION AS TO WHAT
12 YOU BELIEVE OR DON'T BELIEVE UNTIL YOU'VE HEARD ALL THE
13 FACTS OF THE CASE AND YOU KNOW THE LAW THAT YOU HAVE TO
14 APPLY TO THE FACTS AS YOU SO FIND THEM TO BE IN THIS
15 PARTICULAR CASE.

16 NOW BESIDES GIVING YOU THE LAW THAT YOU'RE GOING
17 TO USE IN THIS PARTICULAR CASE ANOTHER JOB THAT I HAVE IS
18 TO GUIDE THE PROCEEDINGS IN THIS CASE. SOMETIMES DURING
19 THE COURSE OF THE TRIAL THE LAWYERS MIGHT RAISE CERTAIN
20 OBJECTIONS OR MOTIONS OR BRING MATTERS TO THE COURT'S
21 ATTENTION. PLEASE REMEMBER THAT I WILL BE, IF I RESPOND TO
22 THOSE MATTERS IN YOUR PRESENCE AND DON'T SEND YOU BACK TO
23 THE JURY ROOM FOR, SO I CAN DISCUS IT MORE FULLY WITH THE
24 LAWYERS, PLEASE REMEMBER I'M TELLING THE LAWYERS HOW THE
25 CASE WILL BE TRIED, HOW THE CASE WILL BE CONDUCTED. I'M

1 NOT MAKING ANY COMMENTS ON THE FACTS BECAUSE THAT'S NOT MY
2 JOB, THAT'S YOUR JOB. THAT'S YOUR JOB AND RESPONSIBILITY
3 TO DECIDE THE FACTS AND EVIDENCE IN THIS CASE, FIND THAT
4 EVIDENCE WHICH CONVINCES YOU OF ITS TRUTH AND THEN AGAIN
5 WEIGH THAT EVIDENCE AGAINST THE STATE'S BURDEN TO PROVE THE
6 DEFENDANT GUILTY OF THE CRIMES CHARGED BEYOND A REASONABLE
7 DOUBT.

8 SO WITH THAT I'M GOING TO TURN IT OVER TO THE
9 ATTORNEYS FOR THEIR OPENING STATEMENTS IN THIS MATTER.
10 SOLICITOR?

11 MS. LIVELY: THANK YOU, YOUR HONOR.

12 **OPENING STATEMENT**

13 **BY MS. LIVELY:**

14 IN THE FALL OF 2001 A SIX-YEAR-OLD CHILD WAS
15 ABOUT TO CELEBRATE HIS SEVENTH BIRTHDAY AND DURING THAT
16 TIME HE HAD ABOUT THREE MONTHS TO SPEND WITH A FATHER HE
17 BARELY KNEW. IN THE FALL OF 2001 THAT CHILD WAS RAPED.
18 THE VIOLATION OF A CHILD'S BODY, THE VIOLATION OF A CHILD'S
19 TRUST, THE VIOLATION OF A CHILD'S LOVE, THAT'S WHY WE'RE
20 HERE TODAY.

21 I'M CANDICE LIVELY AND I WORK FOR THE FIFTEENTH
22 CIRCUIT'S OFFICE. IT'S MY JOB TO BRING THESE CASES BEFORE
23 JURORS LIKE YOU TO TELL YOU SOME OF THE MOST HORRIFYING
24 THINGS THAT HAPPEN IN OUR SOCIETY, BUT I HAVE A BURDEN TO
25 PROVE THESE THINGS TO YOU BEYOND A REASONABLE DOUBT AND I

1 WELCOME THAT BURDEN AND SO DOES OUR LEGISLATURE.

2 THEY DON'T MAKE IT IMPOSSIBLE FOR ME IN CASES
3 LIKE THESE BECAUSE THEY UNDERSTAND THAT CHILDREN ARE OUR
4 MOST VULNERABLE VICTIMS, SO WHAT OUR LEGISLATURE HAS DONE
5 TO HELP ME, TO HELP VICTIMS OF THESE TYPE OF CRIMES, IS WE
6 ACTUALLY HAVE A STATUTE THAT SAYS IF SOMEONE HAS BEEN RAPED
7 AND VIOLATED IT'S NOT NECESSARY FOR US TO HAVE
8 CORROBORATING EVIDENCE IN ORDER TO PROSECUTE THE CASE.

9 AND WHY IS THAT, LADIES AND GENTLEMEN? IT'S
10 BECAUSE SEXUAL ABUSE, RAPES, THEY DON'T HAPPEN FOR EVERYONE
11 TO SEE. THEY HAPPEN IN PRIVATE. THAT'S THE REASON WHY. A
12 LOT OF TIMES WE DON'T KNOW UNTIL SOMEONE, A CHILD, ALL OF A
13 SUDDEN REALIZES, HEY, WHAT HAPPENED TO ME WASN'T RIGHT,
14 WHAT HAPPENED TO ME WAS WRONG, AND AFTER HOLDING IT IN FOR
15 YEARS A CHILD MAY COME FORWARD AND SAY, THIS IS WHY I'M
16 HAVING THESE PROBLEMS. THAT'S THE EVIDENCE YOU'RE GOING TO
17 HEAR TODAY, LADIES AND GENTLEMEN.

18 WE HAVE A YOUNG MAN WHO'S HERE TO TELL YOU WHAT
19 HAPPENED TO HIM WHEN HE WAS THAT CHILD, WHAT HAPPENED TO
20 HIM WHENEVER HE WAS IN THE CUSTODY OF THE DEFENDANT, HIS
21 OWN FATHER, AND IT'S SHOCKING, IT'S HORRIBLE, BUT IT IS
22 YOUR DUTY TO LISTEN.

23 NOW I'M NOT GOING TO BE ABLE TO GIVE YOU DNA
24 EVIDENCE, IT WAS SEVEN YEARS AGO, BUT A LOT OF TIMES IN
25 THESE CASES I DON'T HAVE DNA EVIDENCE. THE CHILD DOESN'T

1 DISCLOSE RIGHT AWAY. THEY DON'T UNDERSTAND WHAT'S HAPPENED
2 TO THEM. THIS IS A A PERSON THEY TRUST. THIS IS A PERSON
3 THAT THEY GO TO THINKING THIS IS MY DAD. MAYBE WHAT
4 HAPPENED, THEY DON'T ABOUT SEX. IF I SAT DOWN AND TALKED
5 TO SOMEBODY, ANYBODY ON THE STREET AND ASK THEM TO TELL ME
6 THEIR MOST RECENT SEXUAL EXPERIENCE WHO WANTS TO TALK ABOUT
7 THAT IN FRONT OF A BUNCH OF PEOPLE THEY DON'T KNOW. THAT
8 WOULD BE MOST EMBARRASSING, HUMILIATING EXPERIENCE. THAT'S
9 WHY I DON'T HAVE THE WITNESS SITTING IN HERE RIGHT NOW. I
10 DON'T WANT HIM TO HAVE TO GET IN FRONT OF YOU AND DEAL WITH
11 THE FACTS OF THIS CASE UNTIL HE HAS TO GET UP ON THAT STAND
12 AND TELL YOU WHAT HAPPENED TO HIM. THAT'S NOT FUN FOR HIM.
13 HE GAINS NOTHING OUT OF IT AT ALL. HE COULD HAVE KEPT THIS
14 TO HIMSELF AND NEVER HAVE TO LOOK ANYBODY IN THE FACE AND
15 TELL THEM WHAT HAPPENED TO HIM, WHAT THAT DEFENDANT DID TO
16 HIM, BUT HE'S COMING HERE. HE'S GOING TO DO IT AND THAT
17 TAKES GUTS.

18 NOW THE DEFENDANT IS CHARGED WITH CRIMINAL SEXUAL
19 CONDUCT WITH A MINOR FIRST DEGREE. THE LAW IS THAT A
20 PERPETRATOR HAS COMMITTED SEXUAL BATTERY ON A CHILD UNDER
21 THE AGE OF 11. VICTIM WAS ONLY SIX TURNING SEVEN,
22 HIS BIRTHDAY IS SEPTEMBER 14TH, WHEN THIS HAPPENED, SO WE
23 MEET THAT, THAT ELEMENT.

24 THE OTHER THING IS A BATTERY. IT CAN BE ANY
25 INTRUSION TO THE CHILD'S BODY, HOWEVER SLIGHT. IT DOESN'T

1 HAVE TO MEAN I HAVE TO GET VERY DOWN TO IT, DOESN'T HAVE TO
2 BE FULL PENETRATION, BUT ANYTHING HOWEVER SLIGHT TO THAT
3 CHILD'S BODY IT'S A VIOLATION OF THE LAW. WE'LL BE ABLE TO
4 SHOW THAT AS WELL THROUGH THE WITNESS STAND.

5 SO, LADIES AND GENTLEMEN, WHEN YOU'RE HEARING
6 THIS EVIDENCE THINK ABOUT WHY WOULD A CHILD COME FORWARD SO
7 MANY YEARS LATER AND JUST PUT THEMSELVES IN A SITUATION TO
8 HAVE TO TALK ABOUT SOMETHING LIKE THIS. THINK ABOUT THAT
9 WHEN HE'S ON THE STAND. IT'S BEEN A LOT OF YEARS SINCE
10 THIS HAS HAPPENED. HE'S HAD A LOT OF COUNSELING AND HIS
11 COUNSELOR WILL BE HERE TO TESTIFY, TOO, ABOUT HIS BEHAVIOR
12 AND ABOUT HOW HE HAS SUFFERED, SO PLEASE JUST KEEP YOUR
13 MINDS OPEN.

14 THE OTHER CHARGE IS LEWD ACT ON A MINOR AND IF
15 PROBABLY IF I HAD TO EXPLAIN IT TO YOU WOULD JUST BE CHILD
16 MOLESTATION, A TOUCHING OF A CHILD FOR SEXUAL
17 GRATIFICATION, KIND OF A CATCH ALL. IT MEANS YOU'RE
18 TOUCHING THAT CHILD FOR THE WRONG REASONS, THAT'S WHAT THAT
19 MEANS AND THAT'S WHAT HE IS ALSO CHARGED WITH.

20 SO, LADIES AND GENTLEMEN, REMEMBER WHAT OUR
21 LEGISLATURE HAS DONE TO TRY TO HELP VICTIMS IN THESE TYPES
22 OF CRIMES COME FORWARD WHETHER IT'S SEVEN YEARS, TWO YEARS,
23 20 YEARS, DOESN'T CHANGE THE FACT IT HAPPENED, DOESN'T
24 CHANGE THE FACT THAT IT HAPPENED AND IT DOESN'T CHANGE THE
25 FACT THAT IT'S YOUR DUTY TO LISTEN TO THE FACTS, GIVE HIM

1 YOUR ATTENTION, TRY TO UNDERSTAND HOW HARD THIS IS FOR HIM
2 AND AFTER YOU HEAR ALL THE EVIDENCE YOU WILL BE FIRMLY
3 CONVINCED THAT THE DEFENDANT IS GUILTY OF THIS CRIME, THANK
4 YOU.

5 THE COURT: ALL RIGHT, MR. BARR.

6 MR. BARR: THANK YOU, YOUR HONOR, IF IT PLEASE
7 THE COURT, ATTORNEY LIVELY.

8 **OPENING STATEMENT**

9 **BY MR. BARR:**

10 AGAIN, LADIES AND GENTLEMEN OF THE JURY, MY NAME
11 IS VERDELL BARR AND I'M HERE TODAY REPRESENTING STEVEN
12 HEWITT, SR., WHO'S SEATED AT THE TABLE RIGHT, RIGHT NEXT TO
13 MY LAW CLERK. WE'D LIKE TO BEGIN BY THANKING YOU FOR YOUR
14 SERVICE TODAY. WE'RE, MOST OF US THAT TRY CASES IN THE
15 COURT SYSTEM THROUGHOUT SOUTH CAROLINA ALWAYS ARE QUICK TO
16 BRAG ON THE JURY SYSTEM BECAUSE WE BELIEVE OURS IS THE BEST
17 SYSTEM FOR FINDING JUSTICE IN THE WHOLE WORLD. SO WE
18 BELIEVE THAT IN SPITE OF WHAT STEVEN HEWITT IS CHARGED WITH
19 THAT BECAUSE YOU'RE HERE HE'S GOING TO RECEIVE A FAIR
20 TRIAL.

21 LET'S START WITH THE, THE NOTION OF WHAT HE'S
22 CHARGED WITH. IT'S A STATUTORY CRIME AND THE JUDGE WILL
23 EXPLAIN THAT TO YOU SEVERAL TIMES TODAY AND I WANT YOU TO
24 PAY ATTENTION TO THAT BECAUSE IT HAS TO DO WITH THE FACT
25 THAT THE JUDGE TOLD YOU ABOUT THE BURDEN OF PROOF, THAT THE

1 STATE HAS TO PROVE EACH AND EVERY SINGLE ELEMENT OF THE
2 CRIME ITSELF. THEY HAVE TO PROVE THAT STEVEN HEWITT, SR.,
3 ACTUALLY DID SOME FORM OF PENETRATION REGARDING HIS SON.
4 THEY HAVE TO PROVE THAT THIS WAS A SEXUAL ACT THAT WAS
5 INTENDED IN SOME WAY TO EITHER GRATIFY HIM OR GRATIFY THE
6 CHILD AND THAT THAT WAS HIS INTENT, THAT HE INTENDED TO DO
7 THAT. THEY HAVE TO MEET THAT BURDEN OF PROOF AND THE JUDGE
8 HAS TALKED WITH YOU SOME TODAY ALREADY ABOUT THE BURDEN OF
9 PROOF.

10 THIS IS A DIFFICULT CASE. EVERYONE IN THIS
11 COURTROOM SYMPATHIZES WITH A CHILD, EVERYONE. IT'S JUST AS
12 NORMAL AND NATURAL AS GETTING UP IN THE MORNING, BUT YOU
13 FACE THE TASK HERE TODAY OF BEING THE TRIERS OF THE FACTS.
14 AS THE TRIERS OF THE FACTS I'M GOING TO ASK YOU ON BEHALF
15 OF MY CLIENT TO NOT ALLOW THE SYMPATHY THAT ALL OF US MAY
16 SHARE FOR **VICTIM** **██████████** **██████████** TO CLOUD THE JUSTICE THAT
17 STEVEN HEWITT, SR., DESERVES IN A CRIMINAL TRIAL. I'M
18 GOING TO ASK YOU TO LISTEN VERY ATTENTIVELY AS THE EVIDENCE
19 COMES IN.

20 THE SOLICITOR TALKED ABOUT THE DELAY IN TIME AND
21 NOT HAVING DNA AND THAT SORT OF THING. I'M GOING TO ASK
22 YOU AS CALM AND ORDINARY CITIZENS TO LOOK AT WHAT THEY
23 HAVE, TO MEASURE THE EVIDENCE BASED ON YOUR COMMON SENSE
24 PERCEPTION. I'M GOING TO ASK YOU VERY CLEARLY TO NOT ALLOW
25 SYMPATHY TO SUBSTITUTE FOR THE LACK OF EVIDENCE, BE IT

OFFICER TODD - DIRECT EXAMINATION BY MS. LIVELY

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1 SCIENTIFIC EVIDENCE OR SIMPLE PROOF OF FACT.

2 THE JUDGE HAS ALREADY TOLD YOU THAT CREDIBILITY,
3 YOURS IS THE OBLIGATION TO DETERMINE IF IT WILL COME RIGHT
4 DOWN TO THE NOTION OF BELIEVABILITY, WHAT YOU CHOOSE TO
5 BELIEVE IN THIS CASE, AND I'M GOING TO ASK YOU TO FOLLOW
6 THE JUDGE'S INSTRUCTIONS VERY, VERY CAREFULLY WHEN IT COMES
7 TO APPLYING THE FACTS OF THE CASE TO THE LAW IN THIS STATE
8 REGARDING THIS TYPE OF CRIME. AND AGAIN IT'S AN EXTREMELY
9 TOUCHY SITUATION, BUT WE'RE TALKING ABOUT FATHER AND SON
10 AND THE OBLIGATION OF A FATHER TO PROTECT A SON AND WHAT
11 MAY OR MAY NOT HAVE HAPPENED. BUT AGAIN I'M GOING TO ASK
12 YOU NOT TO SKIP STEPS, THAT THE STATE DOES NOT HAVE
13 EVIDENCE THAT SHOWS BEYOND A REASONABLE DOUBT THAT **VICTIM**
14 **VICTIM** **████** CAN REMEMBER WHAT HAPPENED IN SEPTEMBER OF
15 2001.

16 I'M GOING TO ASK YOU NOT TO ALLOW OTHERS TO
17 SUBSTITUTE THEIR FEELINGS ABOUT WHAT SHOULD HAVE HAPPENED
18 FOR EVIDENCE, FOR PROOF OF WHAT ACTUALLY DID HAPPEN. I'M
19 GOING TO ASK YOU NOT TO ALLOW SYMPATHY TO SUBSTITUTE FOR
20 THE BURDEN OF PROVING BEYOND A REASONABLE DOUBT THAT STEVEN
21 HEWITT, SR., ACTUALLY DID THIS AND I'M GOING TO ASK YOU TO
22 USE YOUR JUDGMENT TO FIND THE TRUTH, TO SEEK JUSTICE, AND
23 IN THE FINAL ANALYSIS WE'RE GOING TO BE SATISFIED WITH YOUR
24 VERDICT AS BEING THE VERDICT IN THIS CASE AND AGAIN I ASK
25 YOU TO PAY CLOSE ATTENTION AND ON BEHALF OF STEVEN HEWITT,

OFFICER TODD - DIRECT EXAMINATION BY MS. LIVELY

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1 SR. WE THANK YOU.

2 THE COURT: ALL RIGHT, SOLICITOR, YOUR FIRST
3 WITNESS, PLEASE, MA'AM.

4 MS. LIVELY: YES, SIR, YOUR HONOR, THE STATE
5 CALLS GARY TODD TO THE STAND.

6 THE COURT: ALL RIGHT.

7 OFFICER GARY TODD

8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 THE CLERK: PLEASE BE SEATED AND STATE YOUR NAME
10 FOR THE RECORD, PLEASE.

11 THE WITNESS: GARY TODD.

12 DIRECT EXAMINATION

13 BY MS. LIVELY:

14 Q MR. TODD, WHERE DO YOU WORK?

15 A I'M CURRENTLY EMPLOYED WITH GEORGETOWN
16 COUNTY SHERIFF'S OFFICE.

17 Q HOW LONG HAVE YOU WORKED THERE?

18 A TOTAL ALL TOGETHER IN LAW ENFORCEMENT FOR
19 17 YEARS.

20 Q ALL RIGHT, WHAT ARE YOUR DUTIES THERE?

21 A I'M CURRENTLY ASSIGNED IN CRIMINAL
22 INVESTIGATIONS DIVISION, AS FAR AS OTHER DUTIES IS FIREARMS
23 INSTRUCTOR, TASER INSTRUCTOR, AND BASIC INSTRUCTOR, BUT MY
24 ESSENTIAL JOB IS TO INVESTIGATE CRIMES IN THE COUNTY OF
25 GEORGETOWN.

OFFICER TODD - DIRECT EXAMINATION BY MS. LIVELY

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1 Q OKAY, AND WHAT TYPE OF CRIMES DO YOU
2 NORMALLY INVESTIGATE?

3 A IT COULD BE ANYWHERE FROM PETTY LARCENY UP
4 TO HOMICIDE. WE HAVE A VARIETY; WE'RE NOT REALLY
5 SPECIFICALLY BROKEN DOWN IN THE COUNTY WITH DIFFERENT
6 PROPERTY CRIMES, SO IT'S BASICALLY ANYTHING AND EVERYTHING.

7 Q OKAY, NOW DID YOU HAVE AN OPPORTUNITY IN
8 AUGUST OF 2008 TO INVESTIGATE A CRIME INVOLVING THE
9 DEFENDANT STEVEN HEWITT?

10 A THAT'S CORRECT.

11 Q OKAY, WOULD YOU, PLEASE, TELL THIS JURY HOW
12 THAT CASE CAME TO YOU?

13 A I WAS WORKING THAT DAY ON AUGUST THE 8TH,
14 THE TIME WAS AROUND SHORTLY AFTER 1 P.M., AT THE SHERIFF'S
15 OFFICE WHERE I WAS CONTACTED BY THE FRONT DESK THAT MS.
16 KIMBERLY HEWITT WAS, WAS PRESENT THERE AND WANTED TO REPORT
17 AN INCIDENT INVOLVING, REGARDING HER SON WITH A SEXUAL
18 ASSAULT.

19 Q OKAY, AND WHEN YOU RECEIVED THAT CALL WHAT
20 DID YOU DO NEXT?

21 A I WENT AND SPOKE WITH MS. HEWITT AND
22 BASICALLY SHE ADVISED ME OF SOME OF THE FACTS THAT WAS
23 DISCLOSED TO HER AND AT THAT TIME I GATHERED INFORMATION
24 AND I WAS INFORMED THAT HER SON WAS WANTING TO TALK WITH A
25 MALE OFFICER ABOUT WHAT HAD HAPPENED.

OFFICER TODD - DIRECT EXAMINATION BY MS. LIVELY

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1 Q OKAY, SO HE WANTED TO TALK TO A MALE
2 OFFICER?

3 A THAT'S CORRECT, BECAUSE WHEN I SPOKE WITH
4 HER SHE WAS CLEAR ON THAT BECAUSE HE WANTED TO SPEAK WITH A
5 MALE OFFICER AND I HAPPENED TO BE ON CALL THAT DAY AT THE
6 OFFICE SO THEY NOTIFIED ME.

7 Q OKAY, NOW, INVESTIGATOR TODD, DID YOU
8 ACTUALLY MEET WITH [REDACTED] [REDACTED] [REDACTED] ON THAT DAY?

9 A YES, I DID.

10 Q OKAY, AND WAS THERE A RECORDED STATEMENT
11 TAKEN FROM THIS INDIVIDUAL?

12 A THAT'S CORRECT, THERE WAS.

13 Q OKAY, AND HAVE YOU PROVIDED THAT TO ME AS
14 WELL AS TO DEFENSE?

15 A THAT'S CORRECT.

16 Q ALL RIGHT, NOW, INVESTIGATOR TODD, YOU
17 CAN'T TELL ME EXACTLY THE CONTENTS OF THAT STATEMENT BUT
18 COULD YOU, PLEASE, TELL ME DID THE ASSAULT OCCUR IN
19 GEORGETOWN COUNTY?

20 A THAT IS CORRECT, IT WAS, IT WAS IN
21 GEORGETOWN COUNTY.

22 Q OKAY, WHAT AREA?

23 A A COMMUNITY ON SAINT'S DELIGHT ROAD UP AT
24 SAMPIT IN THAT COMMUNITY ON SAINT'S DELIGHT RIGHT AT THE
25 BEGINNING OF THE SAMPIT COMMUNITY JUST PAST 17A, OR

OFFICER TODD - DIRECT EXAMINATION BY MS. LIVELY

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1 ACTUALLY ON 17A WHICH IS SAINT'S DELIGHT ROAD JUST BEYOND
2 NINE MILE CURVE AREA.

3 Q OKAY, SO WAS HE CLEAR ON WHERE IT OCCURRED?

4 A THAT'S CORRECT, HE, HE INDICATED TO ME IT
5 OCCURRED AT HIS GRANDPARENTS RESIDENCE.

6 Q ALL RIGHT, NOW WHAT ABOUT A TIME FRAME,
7 DID, DID [REDACTED] [REDACTED] GIVE YOU A TIME FRAME AS TO WHEN THE
8 ASSAULT OCCURRED?

9 A YES, MA'AM, HE INDICATED TO ME WHEN I ASKED
10 HIM THAT QUESTION THAT IT WAS BACK AT HIS APPROXIMATE AGE
11 THAT TIME OF THE YEAR, WHICH WAS WHEN THE LEAVES WERE
12 CHANGING IN THE FALL, AND HE, HE REMEMBERED THAT BECAUSE
13 THERE WAS SOME LEAVES AND SOME RAKING GOING ON AT THAT
14 PARTICULAR TIME.

15 Q OKAY, DID HE GIVE YOU THE YEAR?

16 A I'D HAVE TO REFER BACK TO MY REPORT.

17 Q PLEASE DO, IF YOUR REPORT REFRESHES YOUR
18 RECOLLECTION PLEASE REFER TO THAT.

19 A WELL AT THE TIME HE JUST INDICATED IT WAS
20 SEVEN YEARS AGO I THINK IS WHAT I HAD PUT DOWN. I DON'T
21 THINK I SPECIFICALLY PUT THE YEAR.

22 MS. LIVELY: MAY I APPROACH, YOUR HONOR?

23 THE COURT: YES, MA'AM.

24 MS. LIVELY: (CONTINUING)

25 Q I'M GOING TO SHOW YOU YOUR REPORT, NOW

OFFICER TODD - CROSS EXAMINATION BY MR. BARR

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1 WOULD THAT REFRESH YOUR RECOLLECTION, INVESTIGATOR TODD, AS
2 TO THE YEAR?

3 A THAT'S CORRECT, THE FALL OF 2001.

4 Q THE FALL OF 2001?

5 A YES, MA'AM.

6 Q AND DO YOU RECALL HOW OLD HE WAS WHENEVER
7 HE CAME TO YOU IN 2008?

8 A I BELIEVE IT WAS 14 IS WHAT I INDICATED, HE
9 WAS 14-YEARS-OLD WHEN I SPOKE WITH HIM.

10 Q WHENEVER YOU GET INFORMATION LIKE THIS
11 REGARDING A CRIME THAT OCCURRED SEVEN YEARS AGO WHAT DO YOU
12 DO AS AN INVESTIGATOR OR WHAT CAN YOU DO?

13 A WELL I SPOKE WITH HIM AND ALSO HIS, HIS
14 PARENTS OR GUARDIAN USUALLY JUST TRY TO GATHER AS MUCH
15 INFORMATION AS YOU CAN AND TRY TO GET SOME OF THE DETAILS
16 FROM THE PERSON THAT I'M DEALING WITH AND USUALLY TRY TO
17 GET SOME SPECIFICS FROM THEM JUST INDICATING POSSIBLY SOME
18 OF THE FACTS, SOME DETAILED INFORMATION THAT THEY CAN BEST
19 RECALL.

20 Q AND DID, WITHOUT TELLING ME WHAT HE SAID,
21 BUT DID THE VICTIM PROVIDE YOU DETAILED INFORMATION
22 REGARDING THE ASSAULT?

23 A THAT'S CORRECT.

24 Q HE DID?

25 A HE DID. HE WAS, HE WAS VERY DETAILED IN

OFFICER TODD - CROSS EXAMINATION BY MR. BARR

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1 SOME SPECIFICS THAT, THAT HE HAD INDICATED TO ME ON, ON THE
2 INCIDENT.

3 Q OKAY, AND BASED ON THE INFORMATION THAT HE
4 PROVIDED TO YOU WHAT, WHAT DID YOU DO IN REGARDS TO SEEKING
5 A WARRANT FOR THIS DEFENDANT?

6 A I CONFERRED WITH INVESTIGATOR MIKE NELSON
7 AND STATEMENTS WERE OBTAINED AND AFFIDAVITS WERE DRAWN UP
8 AND INVESTIGATOR NELSON ACTUALLY ASSISTED AND WAS I BELIEVE
9 THE OFFICER THAT ACTUALLY SIGNED THE WARRANT FOR MR.
10 HEWITT, SR., AND HE WAS CHARGED WITH THAT CRIME.

11 Q WITH CSC WITH A MINOR FIRST DEGREE?

12 A THAT'S CORRECT.

13 Q HAVE YOU HAD ANY FURTHER DEALINGS OR
14 INVESTIGATION REGARDING THE, THE ASSAULT SINCE THE ARREST
15 WAS ACTUALLY EXECUTED?

16 A NO, MA'AM.

17 MS. LIVELY: OKAY, THANK YOU, ANSWER ANY
18 QUESTIONS THE DEFENSE MAY HAVE FOR YOU.

19 THE COURT: ALL RIGHT, MR. BARR.

20 MR. BARR: THANK YOU, YOUR HONOR.

21 CROSS EXAMINATION

22 BY MR. BARR:

23 Q OFFICER TODD, YOU SAID THAT IN YOUR OPINION
24 THAT THE ALLEGED VICTIM PROVIDED YOU WITH DETAILS INVOLVING
25 THIS INCIDENT; IS THAT CORRECT?

OFFICER TODD - CROSS EXAMINATION BY MR. BARR

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1 A YES, SIR.

2 Q OTHER THAN THE NOTION THAT THE SEASON WAS
3 CHANGING DO YOU HAVE ANY INFORMATION, DID YOU OBTAIN ANY
4 INFORMATION ON DATES OR TIMES?

5 A THERE WERE SOME TIMES MENTIONED IN THE
6 INTERVIEW AND THERE WAS, IT WASN'T AN EXACT DATE, THERE WAS
7 APPROXIMATELY TWO TO THREE WEEKS PRIOR BETWEEN BOTH
8 INCIDENTS FROM THE FIRST INCIDENT TO THE SECOND AND HE, HE
9 RECALLED THE SPECIFIC TIMES OF DAY AND WHERE THEY WERE AND
10 PARTS TO THAT.

11 Q WAS ANY RECOLLECTION AGAIN OF A DATE OR
12 MONTH OR A YEAR?

13 A THE YEAR WAS 2001 THAT HE REFERRED TO AND
14 THE FALL BUT HE DIDN'T SAY A SPECIFIC, YOU KNOW, SEPTEMBER
15 THE 1ST, 2001, SEVEN YEARS AGO ON THE EXACT DAY.

16 Q OKAY, IS OR WAS THERE ANY INDICATION OF
17 WITNESSES?

18 A THERE WAS JUST THE TWO, THE VICTIM AND THE
19 SUBJECT.

20 Q NO ONE OTHER THAN THE ALLEGED PERPETRATOR
21 AND THE ALLEGED VICTIM?

22 A THAT'S CORRECT.

23 Q OKAY, AND YOU SAY YOU WERE FIRST CONTACTED
24 BY KIMBERLY HEWITT; IS THAT CORRECT?

25 A THAT'S CORRECT, SHE WAS AT THE SHERIFF'S

OFFICER TODD - REDIRECT EXAMINATION BY MS. LIVELY

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1 OFFICE AND I FIRST SPOKE WITH HER AND SHE HAD INDICATED TO
2 ME THAT HER SON WAS A VICTIM OF A SEXUAL ASSAULT AND WANTED
3 TO SPEAK WITH A MALE, MALE OFFICER.

4 Q OKAY, DID SHE INDICATE TO YOU THAT SHE WAS
5 AN EYEWITNESS OR THAT SHE HAD A FIRST HAND KNOWLEDGE OF
6 THIS ALLEGED INCIDENT?

7 A NOT TO MY KNOWLEDGE.

8 Q OKAY, DURING YOUR INVESTIGATION HAVE YOU
9 BEEN ABLE TO DEVELOP ANY INFORMATION OF ANYONE ELSE WHO
10 KNEW ABOUT ANYTHING INVOLVING THIS FROM 2001 UNTIL 2008?

11 A NO, SIR.

12 Q NO ONE?

13 A NOT TO MY KNOWLEDGE I DIDN'T HAVE ANY, ANY
14 OTHER ONE THAT WERE WITNESS OR HAD KNOWLEDGE OTHER THAN THE
15 MOTHER, YOU KNOW, THAT WAS DISCLOSED THIS INFORMATION THAT
16 SHE LEARNED OF AND BROUGHT IT TO MY ATTENTION AT THE
17 SHERIFF'S OFFICE.

18 Q OKAY, AND THIS ALLEGED INCIDENT LOCATION
19 THAT WOULD HAVE BEEN A GRANDPARENTS HOUSE; IS THAT RIGHT?

20 A THAT'S CORRECT, THE REDDICK'S.

21 Q OKAY, AND THEY ARE BOTH DECEASED; IS THAT
22 CORRECT?

23 A I BELIEVE THAT'S MY UNDERSTANDING NOW THAT
24 THEY'RE BOTH DECEASED.

25 MR. BARR: OKAY, ALL RIGHT, I HAVE NO FURTHER

OFFICER TODD - REDIRECT EXAMINATION BY MS. LIVELY

56

1 QUESTIONS OF THIS WITNESS.

2 THE COURT: ANY REDIRECT?

3 MS. LIVELY: JUST A COUPLE.

4 REDIRECT EXAMINATION

5 BY MS. LIVELY:

6 Q DID, NOW MR. BARR ASKED YOU ABOUT BEING AT
7 THE GRANDPARENTS HOUSE AND, AND SPECIFICS AS TO WHERE IT
8 OCCURRED, DID HE, HE BEING VICTIM TELL YOU EXACTLY
9 WHERE THE ASSAULT TOOK PLACE IN THE HOME?

10 A YES, IF YOU'LL GIVE ME A MINUTE I'LL RECALL
11 THAT.

12 Q ABSOLUTELY. DON'T TELL ME WHAT HAPPENED,
13 JUST TELL ME WHERE.

14 MR. BARR: YOUR HONOR, I WOULD OBJECT, I DIDN'T
15 ASK THAT QUESTION.

16 THE COURT: I APPRECIATE THAT BUT I TAKE IT AS A
17 PROPER SCOPE OF REDIRECT AS TO TIME AND PLACE.

18 THE WITNESS: (CONTINUING)

19 A THE INCIDENT THAT WAS RECALLED I WAS
20 ADVISED BY THE VICTIM THAT IT WAS IN THE LIVING ROOM ON THE
21 FIRST INCIDENT, THE LIVING ROOM AREA INSIDE THE RESIDENCE.

22 MS. LIVELY: OKAY, THANK YOU, THAT'S ALL I HAVE,
23 YOUR HONOR.

24 THE COURT: ANYTHING ON THAT PARTICULAR
25 QUESTION, MR. BARR?

OFFICER TODD - RECROSS EXAMINATION BY MR. BARR

57

RECROSS EXAMINATION

BY MR. BARR:

Q OFFICER TODD, DID YOU ASK THE ALLEGED VICTIM AT THAT TIME TO DIAGRAM OR TO IN ANY WAY GIVE ANY KIND OF RENDITION WHERE THE LIVING ROOM WAS OR WHERE THIS INCIDENT MAY HAVE OCCURRED AT OR WHERE HE MAY HAVE BEEN ASSAULTED AT?

A OTHER THAN JUST BEING SPECIFIC DETAILED ABOUT THE RESIDENCE AND THE INCIDENT ITSELF THAT TOOK PLACE.

Q OKAY, SO YOU DIDN'T ASK HIM TO DRAW A SKETCH OR TO IN ANY WAY INDICATE WHERE IN THE HOUSE THIS OCCURRED?

A NO, SIR, HE JUST TOLD ME.

Q OKAY, AND HE DIDN'T OFFER SUCH INFORMATION AT THAT TIME?

A NO, SIR, I DIDN'T ASK HIM.

MR. BARR: THANK YOU.

THE COURT: ANYTHING ELSE, SOLICITOR?

MS. LIVELY: NOTHING FROM THIS WITNESS, YOUR HONOR.

THE COURT: YOU MAY STEP DOWN, SIR. YOUR NEXT WITNESS, MA'AM?

MS. LIVELY: YES, SIR, STEVEN BROWN.

THE COURT: PLEASE COME AROUND AND BE SWORN,

MR. BROWN - DIRECT EXAMINATION BY MS. LIVELY

58

1 SIR.

2 STEVEN BROWN

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 THE CLERK: PLEASE BE SEATED AND STATE YOUR NAME
5 FOR THE RECORD.

6 THE WITNESS: STEVEN BROWN.

7 DIRECT EXAMINATION

8 BY MS. LIVELY:

9 Q WHERE DO YOU WORK, MR. BROWN?

10 A I WORK RIGHT HERE IN THE FIFTEENTH CIRCUIT
11 SOLICITOR'S OFFICE.

12 Q DID I COME TO YOU AND REQUEST CERTAIN
13 MATTERS REGARDING A CASE INVOLVING THE DEFENDANT STEVEN
14 HEWITT, SR.?

15 A YES.

16 Q OKAY, AND WHAT EXACTLY DID I ASK YOU TO DO
17 TO ASSIST WITH THIS CASE?

18 A I BASICALLY JUST DID A COUPLE OF THINGS IN
19 THIS CASE. I WENT OVER TO THE, TO THE HOUSE WHERE THE
20 INCIDENT OCCURRED AND TOOK A COUPLE OF PICTURES AND I ALSO
21 WENT INSIDE THE HOUSE AND SKETCHED OUT THE HOUSE TO DO MY
22 SKETCH AND OTHER THAN THAT JUST, JUST ASSISTING WITH A
23 COUPLE OF COURTROOM THINGS.

24 Q OKAY, AND YOU'RE GOING TO ASSIST WITH SOME
25 OF THE TECHNICAL STUFF, TOO?

MR. BROWN - DIRECT EXAMINATION BY MS. LIVELY

59

1 A THAT'S CORRECT.

2 Q OKAY --

3 MS. LIVELY: YOUR HONOR, MAY I APPROACH?

4 THE COURT: YES, MA'AM.

5 MS. LIVELY: (CONTINUING)

6 Q I'M GOING TO SHOW YOU FOUR ITEMS AND ASK
7 YOU IF YOU RECOGNIZE WHAT THESE ARE. STATE'S 1, 2, AND 3
8 FIRST OF ALL IF YOU'LL, PLEASE, TELL US WHAT THOSE ARE IF
9 YOU RECOGNIZE THEM?

10 A I DO RECOGNIZE THEM, THESE WERE THE
11 PICTURES THAT I TOOK.

12 Q OKAY, YOU TOOK THOSE PICTURES YOURSELF?

13 A THAT'S CORRECT.

14 Q HOW DID YOU KNOW WHERE TO GO TO TAKE THOSE
15 PICTURES?

16 A I BELIEVE I GOT THAT INFORMATION EITHER
17 FROM YOU OR OFF THE INCIDENT REPORT ITSELF.

18 Q OKAY, ALL RIGHT, AND WHERE IS THAT
19 LOCATION?

20 A THIS IS 1737 SAINT DELIGHT ROAD.

21 MS. LIVELY: YOUR HONOR, THE STATE WOULD MOVE TO
22 INTRODUCE ITEMS 1 THROUGH 3 INTO EVIDENCE AT THIS TIME.

23 THE COURT: ANY OBJECTION TO STATE'S 1 THROUGH
24 3?

25 MR. BARR: YES, YOUR HONOR.

MR. BROWN - CROSS EXAMINATION BY MR. BARR

60

1 THE COURT: WHY DON'T YA'LL COME UP HERE AND
2 TALK TO ME.

3 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
4 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
5 OF THE JURY AND THE COURT REPORTER.)

6 THE COURT: WE'LL HAVE THEM MARKED FOR
7 IDENTIFICATION AT THIS POINT IN TIME.

8 MS. LIVELY: THEY ARE MARKED, YOUR HONOR, AS
9 STATE'S EXHIBITS 1 THROUGH 3.

10 THE COURT: ALL RIGHT, VERY GOOD.

11 MS. LIVELY: THANK YOU.

12 MS. LIVELY: (CONTINUING)

13 Q AND THEN, MR. BROWN, WHAT ELSE WERE YOU
14 ABLE TO DO IN REGARDS TO THE, THE INCIDENT LOCATION?

15 A WELL IN ADDITION TO TAKING THOSE PHOTOS I
16 ALSO WENT INSIDE THE HOUSE AND DID WHAT WE CALL CRIME SCENE
17 SKETCH OF THE HOUSE, I SKETCHED OUT THE HOUSE.

18 Q YOU SKETCHED OUT THE HOUSE?

19 A CORRECT.

20 Q OKAY, AND WHEN DID YOU DO THAT?

21 A I BELIEVE THE DATE IS ON THERE, IT SHOULD
22 HAVE A DATE ON THERE, MAY 13TH.

23 Q OF THIS YEAR?

24 A OH, ABSOLUTELY, IT'S OF THIS YEAR, IT WAS
25 EITHER MAY 13TH OR THE DAY BEFORE. I DON'T KNOW, I

MR. BROWN - CROSS EXAMINATION BY MR. BARR

61

1 PROBABLY WENT TO THE HOUSE THE DAY BEFORE AND THEN DID THE
2 FINAL SKETCH THE NEXT DAY OR I COULD HAVE DONE BOTH THE
3 SAME DAY, SOMETHING TO THAT AFFECT.

4 Q AND WHEN DID YOU PROVIDE ME WITH A COPY OF
5 THIS INFORMATION?

6 A IT'S BEEN PRETTY RECENT, PROBABLY PRETTY
7 CLOSE TO MAY 13TH.

8 Q OKAY, ALL RIGHT, THANK YOU --

9 MS. LIVELY: AND, YOUR HONOR, THE STATE WILL
10 WAIT UNTIL THE PROPER TIME ACTUALLY TO PUT THIS INTO
11 EVIDENCE BUT IT IS MARKED AS STATE'S EXHIBIT NUMBER 4 AT
12 THIS TIME.

13 THE COURT: FOR IDENTIFICATION.

14 MS. LIVELY: FOR IDENTIFICATION ONLY.

15 THE COURT: ALL RIGHT, VERY GOOD.

16 MS. LIVELY: (CONTINUING)

17 Q NOW, INVESTIGATOR BROWN, WAS THAT THE
18 EXTENT OF WHAT YOU ACTUALLY DID IN ASSISTING IN PREPARATION
19 OF THIS CASE FOR TRIAL?

20 A YES, MA'AM.

21 MS. LIVELY: OKAY, THANK YOU, ANSWER ANY
22 QUESTIONS THAT MR. BARR MAY HAVE FOR YOU.

23 THE COURT: CROSS EXAMINATION.

24 CROSS EXAMINATION

25 BY MR. BARR:

MR. BROWN - CROSS EXAMINATION BY MR. BARR

62

1 Q OFFICER BROWN, DO YOU KNOW WHO THE
2 RESIDENT, CURRENT RESIDENT AT THAT LOCATION?

3 A YES, SIR, IT'S MY UNDERSTANDING THAT IT'S,
4 IT'S A YOUNG MAN AND A WOMAN LIVING THERE. THE GUY THAT'S
5 LIVING THERE HIS NAME IS RON CASTLEMAN AND THE WOMAN THAT'S
6 LIVING THERE I BELIEVE HER NAME IS SAMANTHA MANN. IT'S MY
7 UNDERSTANDING THEY WERE RENTING THAT PLACE.

8 Q DO YOU KNOW WHETHER OR NOT THERE'S BEEN ANY
9 RENOVATIONS OR CHANGES IN THE DESIGN AND STRUCTURE OR
10 LAYOUT OF THE HOUSE SINCE 2001?

11 A I SPOKE TO MS. MANN WHEN I WAS THERE
12 SKETCHING IT OUT AND I DO NOT KNOW.

13 Q OKAY, SO IT WOULD BE YOUR TESTIMONY TODAY
14 THAT YOU DON'T HAVE ANY IDEA WHETHER OR NOT WHAT YOU DREW
15 OUT HERE IN 2010 WAS WHAT ACTUALLY APPEARED IN 2001?

16 A YEAH, MS. MANN DID NOT MENTION TO ME THAT
17 THERE WERE ANY CHANGES EITHER WAY.

18 Q OKAY, DID MS. MANN LIVE THERE IN 2005?

19 A I'M GOING TO ASSUME SHE DID NOT.

20 Q OKAY, SO SHE WOULDN'T HAVE ANY IDEA AS TO
21 WHAT MAY HAVE HAPPENED TO THE HOUSE?

22 A I THINK THAT'S FAIR.

23 MR. BARR: ALL RIGHT, THANK YOU.

24 THE COURT: ANYTHING ELSE, SOLICITOR?

25 MS. LIVELY: NO, YOUR HONOR.

MS. SMITH - DIRECT EXAMINATION BY MS. LIVELY

63

1 THE COURT: ALL RIGHT, YOU MAY STEP DOWN, SIR.
2 ALL RIGHT, MA'AM, YOUR NEXT WITNESS, PLEASE, MA'AM.

3 MS. LIVELY: YES, SIR, THE STATE CALLS HOPE
4 SMITH TO THE STAND.

5 THE COURT: PLEASE COME UP HERE TO BE SWORN,
6 MA'AM, THANK YOU, RIGHT UP HERE TO THE BAILIFF.

7 HOPE CUZACK SMITH

8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 THE CLERK: THANK YOU, PLEASE BE SEATED AND
10 STATE YOUR NAME FOR THE RECORD, PLEASE.

11 THE WITNESS: MY NAME IS HOPE CUZACK SMITH.

12 DIRECT EXAMINATION

13 BY MS. LIVELY:

14 Q MS. SMITH, WHERE DO YOU LIVE?

15 A 112 BARBOUR LANE, GEORGETOWN.

16 Q AND HOW LONG HAVE YOU LIVED THERE?

17 A THREE YEARS.

18 Q AND WHO LIVES THERE WITH YOU?

19 A MY HUSBAND AND OUR TWO-YEAR-OLD SON AND

20 VICTIM

21 Q VICTIM

22 A YES.

23 Q AND HE'S THE VICTIM WE'VE BEEN TALKING
24 ABOUT HERE TODAY?

25 A YES.

MS. SMITH - DIRECT EXAMINATION BY MS. LIVELY

64

1 Q NOW, MS. SMITH, WHAT IS YOUR RELATIONSHIP
2 TO VICTIM [REDACTED] [REDACTED]

3 A WELL HIS UNCLE AND I HAVE BEEN LIKE BEST
4 FRIENDS FOR A LONG TIME AND I WAS ALSO HIS YOUTH PASTOR SO
5 A FAMILY FRIEND AND HIS YOUTH PASTOR.

6 Q AND YOU SAID HIS YOUTH PASTOR FOR WHAT
7 CHURCH?

8 A MARYVILLE PENTECOSTAL HOLINESS CHURCH.

9 Q NOW, MS. SMITH, HOW LONG HAS VICTIM [REDACTED]
10 BEEN LIVING WITH YOU AT THIS TIME?

11 A CURRENTLY HE'S BEEN WITH ME SINCE MARCH.

12 Q MARCH OF?

13 A THIS YEAR, NOW HE'S LIVED ON AND OFF WITH
14 ME THROUGHOUT HIS WHOLE LIFE.

15 Q ABOUT HOW MANY YEARS ALL TOGETHER WOULD YOU
16 SAY HE'S ACTUALLY LIVED IN YOUR HOME?

17 A ALL TOGETHER PROBABLY TWO YEARS, TWO OR
18 THREE.

19 Q WOULD YOU TELL THIS JURY BEFORE MARCH OF
20 2010 WHEN THE MOST RECENT TIME WAS THAT HE LIVED WITH YOU?

21 A FROM 2006 TO 2007, THE SUMMER OF 2006 TO
22 THE SUMMER OF 0007.

23 Q HOW OLD WAS VICTIM [REDACTED] AT THAT TIME; DO
24 YOU RECALL?

25 A ELEVEN, GETTING READY TO TURN, NO, 12

MS. SMITH - DIRECT EXAMINATION BY MS. LIVELY

65

1 GETTING READY TO TURN 13, SORRY.

2 Q OKAY, AND TELL THE JURY WHAT KIND OF, WHAT
3 KIND OF ADOLESCENT HE WAS WHEN HE WAS LIVING WITH YOU?

4 A ALL IN ALL HE WAS YOUR TYPICAL PRETEEN, YOU
5 KNOW, BOY. HE WAS JUST ALWAYS FIXING STUFF, GREAT
6 BEHAVIOR. WE NEVER HAD ANY PROBLEMS WITH HIM. HE WOULD
7 SOMETIMES ACT OUT WHEN HE WOULD COME HOME FROM HIS MOM'S
8 AND STUFF LIKE THAT BUT OTHER THAN THAT, YOU KNOW, JUST
9 YOUR TYPICAL TEENAGE BOY AND BUSY.

10 Q AND WHAT, IF ANYTHING, DO YOU KNOW ABOUT
11 HIS RELATIONSHIP, HIS RELATIONSHIP, NOTHING ABOUT THE
12 INCIDENT, HIS RELATIONSHIP WITH HIS FATHER STEVEN, SR.?

13 A I'VE NEVER EVEN NOTICED -- THIS IS THE
14 FIRST TIME I'VE SEEN HIM, SO HE HAD NO RELATIONSHIP WITH
15 HIS DAD WHILE HE WAS WITH ME SO AND WHEN HE DID HAVE A
16 RELATIONSHIP, I MEAN WHEN HE WOULD TALK ABOUT HIS DAD HE
17 WOULD, HE LOVED HIS DAD BUT THEN HE WOULD, HE WAS ANGRY
18 WITH HIS DAD, TOO. SO BUT AS FAR AS I KNOW HE NEVER HAD A
19 RELATIONSHIP WITH HIS DAD AS LONG AS HE WAS WITH ME, SO --

20 Q SO YOU SAY THIS IS THE FIRST TIME YOU MET
21 HIS FATHER?

22 A YEAH OR SEEN HIS FATHER, YES.

23 Q OR SEEN HIS FATHER. NOW, HOPE, WAS THERE A
24 TIME DURING THE YEAR OF 2006 THROUGH 2007 WHEN YOU BECAME
25 AWARE OF SOME PROBLEMS WITH VICTIM

MS. SMITH - DIRECT EXAMINATION BY MS. LIVELY

66

1 A WELL LIKE I SAID, WHEN HE WAS WITH HIS MOM
2 HE WOULD COME HOME AND THEN HE'D START SHOWING OFF A LITTLE
3 BIT OR IF HIS DAD, LIKE WE EVER STARTED TALKING ABOUT HIS
4 DAD HE WOULD GET ANGRY AND STUFF LIKE THAT AND WE WERE JUST
5 TALKING ABOUT WHY WAS HE SO ANGRY, YOU KNOW, ABOUT WITH
6 LIFE AND THAT'S WHEN IT KIND OF CAME OUT THAT ---

7 Q LET ME JUST STOP YOU THERE ---

8 A SORRY.

9 Q I WANT TO MAKE SURE THE JURY UNDERSTANDS.
10 WHEN DID YOU HAVE THIS ENLIGHTENING CONVERSATION WITH

11 **VICTIM** **II**

12 A IT WAS IN APRIL OF 2007.

13 Q OKAY, AND WHY DO YOU REMEMBER THAT?

14 A WELL, I REMEMBER IT BECAUSE WE HAD JUST
15 GOTTEN A NEW MATTRESS AND HE AND I WERE PULLING THE OLD
16 MATTRESS OUT AND PUTTING THE NEW MATTRESS IN, MY HUSBAND
17 WAS WORKING, AND HE JUST GOT SO ANGRY FOR NOTHING AND HE
18 JUST KIND OF HAD A MELT DOWN AND THAT'S HOW IT HAPPENED.

19 Q WITHOUT TELLING ME EXACTLY WHAT HE TOLD
20 YOU, CAN YOU, PLEASE, TELL THIS JURY WHAT HE RELAYED TO YOU
21 IN REGARDS TO WHEN SOMETHING HAD HAPPENED BETWEEN HIM OR
22 WHEN SOMETHING LIKE THAT HAD HAPPENED TO HIM?

23 A HE WAS SEVEN TO EIGHT YEARS OLD.

24 Q AND DID HE TELL YOU WHERE THIS HAD
25 HAPPENED?

MS. SMITH - DIRECT EXAMINATION BY MS. LIVELY

67

1 A AT HIS GRANDMA REDDICK'S HOUSE ON SAINT'S
2 DELIGHT ROAD.

3 Q HAD YOU EVER BEEN OVER THERE?

4 A NO.

5 Q DID YOU KNOW HIS GRANDMA REDDICK?

6 A NO.

7 Q DID YOU KNOW ANYBODY WHO LIVED OVER THERE?

8 A NO, MA'AM.

9 Q YOU HAD NEVER BEEN TO THAT HOME YOURSELF?

10 A NO, MA'AM.

11 Q WERE YOU AWARE OF THE TIME WHENEVER FROM
12 YOUR OWN PERSONAL KNOWLEDGE OF WHEN [REDACTED] WOULD HAVE
13 STAYED OVER THERE?

14 A NO, THAT'S, BECAUSE THAT'S HOW ACTUALLY HOW
15 HE, I FOUND OUT HOW OLD HE WAS BECAUSE THERE WAS A TIME
16 WHENEVER I MOVED AWAY TO CINCINNATI AND I WAS LIKE WHEN DID
17 YOU EVER SEE YOUR DAD AND THAT WAS WHEN HE SAW HIS DAD.

18 Q ALL RIGHT, WAS DURING THAT TIME?

19 A UH-HUH, AND HE WAS SEVEN TO EIGHT YEARS OLD
20 BECAUSE LIKE I SAID I NEVER KNEW OF HIM KNOWING HIS DAD.

21 Q BUT YOU DON'T KNOW FOR SURE, YOU HAVE NO
22 PERSONAL KNOWLEDGE OF WHAT HAPPENED ON THAT, IN THAT HOME
23 GRANDMA REDDICK, CORRECT?

24 A NO.

25 Q NOW AFTER HE DISCLOSED THIS INFORMATION TO

MS. SMITH - DIRECT EXAMINATION BY MS. LIVELY

68

1 YOU WHAT DID YOU DO?

2 A I JUST ENCOURAGED HIM TO, WELL AT THAT TIME
3 I ENCOURAGED HIM TO WRITE ABOUT HIS FEELINGS AND THEN
4 JOURNALING AND STUFF LIKE THAT AND I TRIED TO ENCOURAGE HIM
5 TO LET'S GET HELP AND HE DIDN'T WANT TO TELL ANYONE ELSE.

6 Q DID YOU TELL ANYONE ELSE ABOUT WHAT HAD
7 BEEN DISCLOSED TO YOU?

8 A NO.

9 Q AND WHY NOT?

10 A BECAUSE AT THE TIME I WAS HIS YOUTH PASTOR
11 AND HE TRUSTED ME AND HE WASN'T IN ANY DANGER BECAUSE I
12 KNEW HE WASN'T SEEING HIS --

13 Q HE WASN'T SEEING WHO?

14 A HIS DAD. I DIDN'T KNOW IF I COULD SAY
15 THAT, I'M SORRY.

16 Q THAT'S FINE, AND WHENEVER YOU, SO YOU NEVER
17 ACTUALLY REPORTED ANY OF THIS INFORMATION?

18 A NO.

19 THE COURT: COULD YOU MAKE SURE YOU KEEP YOUR
20 VOICE UP?

21 THE WITNESS: (CONTINUING)

22 A OH, I'M SORRY, NO, MA'AM.

23 Q YOU NEVER REPORTED IT, OKAY. AND HOW MUCH
24 LONGER THE TIME DID HE LIVE WITH YOU AFTER HE HAD DISCLOSED
25 THIS INFORMATION TO YOU; DO YOU RECALL?

MS. SMITH - DIRECT EXAMINATION BY MS. LIVELY

69

1 A SO THAT WAS IN APRIL AND BY THE, DURING THE
2 SUMMER HE MOVED IN, HE MOVED TO HIS, WITH HIS AUNT BERTIE.

3 Q WITH WHOM?

4 A HIS AUNT BERTIE.

5 Q HIS AUNT BERTIE?

6 A YES, SO HE ONLY LIVED WITH US A COUPLE OF
7 MONTHS AFTERWARDS, APRIL TO JUNE.

8 Q DID YOU HAVE ANY PROBLEMS WITH HIM FROM
9 APRIL TO JUNE?

10 A YES, THAT'S WHEN HE STARTED ACTING OUT.

11 Q AFTER HE HAD TOLD YOU THIS?

12 A YEAH, YES, MA'AM.

13 Q NOW YOU SAID HE'S LIVING WITH YOU NOW
14 STARTING MARCH OF 2010?

15 A THAT'S CORRECT.

16 Q AND HOW HAS HE BEEN SINCE HE'S BEEN LIVING
17 WITH YOU NOW?

18 A ACTUALLY HE'S CALM, YOU KNOW, HE'S CALMER,
19 YOU KNOW, JUST, HE'S DOING REALLY GOOD, REALLY, REALLY
20 GOOD, SO HE'S FINISHING UP SCHOOL. HE'S DOING REALLY GOOD
21 SO --

22 Q HAVE YOU HAD ANY, DO YOU HAVE ANY KNOWLEDGE
23 ABOUT WHETHER OR NOT HE'S IN COUNSELING?

24 A YES, HE IS, THE COUNSELOR COMES TO OUR
25 HOUSE.

MS. SMITH - CROSS EXAMINATION BY MR. BARR

70

1 Q OKAY, HOW OFTEN?

2 A ONCE A WEEK, SOMETIMES MORE, SOMETIMES
3 LESS, IT JUST DEPENDS ON THE SCHEDULE AND HOW OFTEN HE
4 NEEDS IT.

5 Q DO YOU KNOW HOW LONG HE'S BEEN IN
6 COUNSELING?

7 A ACTUALLY I'M NOT SURE, I THINK AROUND TWO
8 YEARS, A COUPLE OF YEARS. I THINK HE STARTED COUNSELING IN
9 2008.

10 Q OKAY, THE COUNSELOR DOES COME TO YOUR HOME
11 NOW?

12 A CORRECT.

13 Q THANK YOU, MS. SMITH. PLEASE ANSWER ANY
14 QUESTIONS THAT MR. BARR MAY HAVE FOR YOU.

15 A OKAY.

16 THE COURT: CROSS EXAMINATION, PLEASE.

17 CROSS EXAMINATION

18 BY MR. BARR:

19 Q HOW ARE YOU TODAY, MS. SMITH?

20 A I'M DOING GOOD.

21 Q GOOD, GOOD. I BELIEVE YOU TESTIFIED ON
22 DIRECT EXAMINATION THAT **VICTIM** HAS BEEN IN AND OUT OF YOUR
23 HOUSEHOLD FOR EXTENDED PERIOD OF TIME; IS THAT RIGHT?

24 A CORRECT.

25 Q OKAY, ARE YOU HIS LEGAL GUARDIAN OR HAVE

MS. SMITH - CROSS EXAMINATION BY MR. BARR

71

1 YOU EVER BEEN HIS LEGAL GUARDIAN OR HAVE YOU EVER HAD
2 CUSTODY OF **VICTIM**

3 A NO, NO, SIR.

4 Q OKAY ---

5 A I MEAN AT ONE TIME WHENEVER HE WAS LIVING
6 WITH US FROM 2006 TO 2007 CAUSE THAT WAS THE LONGEST HE HAD
7 STAYED WITH US HIS MOTHER AND WE HAD IT NOTARIZED THAT WAY
8 IF I HAD TO EVER TAKE HIM TO THE EMERGENCY ROOM OR ANYTHING
9 LIKE THAT SHE HAD SIGNED OVER, SIGNED OVER SAYING THAT HE
10 COULD STAY WITH US AND THAT WE HAD PERMISSION TO GET HIM
11 MEDICAL TREATMENT IF NEEDED.

12 Q OKAY, CAN YOU TELL THE COURT AND THE JURY
13 WHY IT WAS THAT THE MOTHER WOULD GIVE YOU THAT AUTHORITY?

14 MS. LIVELY: OBJECTION AS TO KNOWING WHY THE
15 MOTHER WOULD DO SOMETHING LIKE THAT CALLS FOR SPECULATION.

16 MR. BARR: I'LL REPHRASE THE QUESTION.

17 MR. BARR: (CONTINUING)

18 Q WAS THERE ANY DISCUSSION ABOUT WHY **VICTIM**
19 WAS BEING TURNED OVER TO YOU AND YOUR HUSBAND AS OPPOSED TO
20 BEING KEPT BY HIS MOTHER?

21 MS. LIVELY: I JUST OBJECT TO HEARSAY.

22 THE COURT: YOU NEED TO CLARIFY DISCUSSION WITH
23 WHOM.

24 MR. BARR: (CONTINUING)

25 Q DISCUSSION WITH THE MOTHER?

MS. SMITH - CROSS EXAMINATION BY MR. BARR

72

1 MS. LIVELY: IT WOULD STILL BE HEARSAY, YOUR
2 HONOR.

3 THE COURT: I UNDERSTAND THAT, I'M GOING TO
4 ALLOW HER TO ANSWER THE QUESTION. THE QUESTION WAS DID SHE
5 HAVE A DISCUSSION WITH THE MOTHER? I'M GOING TO ALLOW
6 THAT.

7 MS. LIVELY: YES, SIR.

8 THE WITNESS: (CONTINUING)

9 A YES, YES, I HAD SEVERAL DISCUSSIONS, YES.

10 Q OKAY, AND WHAT WAS THAT?

11 THE COURT: SUSTAINED.

12 MS. LIVELY: THANK YOU.

13 MR. BARR: (CONTINUING)

14 Q YOU TESTIFIED THAT YOU BELIEVE THAT **VICTIM**
15 APPEARED TO BE A NORMAL HAPPY CHILD; IS THAT CORRECT?

16 A YEAH, I MEAN HE WAS NORMAL AND HAPPY BUT
17 THEN HE WOULD HAVE, HE WAS ANGRY IN SOME WAYS, TOO, SO --

18 Q AND DO YOU, DO YOU KNOW WHY HE WAS ANGRY?

19 A YES.

20 Q LET ME ASK YOU THIS, YOU TESTIFIED, I
21 BELIEVE, THAT HE HAD NO RELATIONSHIP WITH HIS FATHER, WHAT
22 WAS HIS RELATIONSHIP LIKE WITH HIS MOTHER?

23 A ACTUALLY I MEAN HE, HIS MOM IS A NERVOUS
24 WOMAN AND SOMETIMES **VICTIM** NEEDED TO BE IN A CALM PLACE, A
25 CALM SETTING, AND SO HE WOULD COME OVER TO US A LOT

MS. SMITH - CROSS EXAMINATION BY MR. BARR

73

1 WHENEVER HER NERVES WOULD BE FRAZZLED, I GUESS YOU WOULD
2 SAY.

3 Q IS IT MORE THAN JUST NERVOUSNESS?

4 A SHE, CAN I SAY WHAT SHE FELT LIKE HE NEEDED
5 TO COME STAY WITH US FOR, I MEAN --

6 THE COURT: DO YOU HAVE AN OBJECTION, SOLICITOR?

7 MS. LIVELY: YOUR HONOR, WHAT WAS THE QUESTION
8 AGAIN THAT HE'S ASKING REGARDING, WAS THERE MORE THAN
9 NERVOUSNESS AS TO WHY THE MOTHER WOULD HAVE THE CHILD STAY
10 WITH HER?

11 THE COURT: IN ESSENCE.

12 MS. LIVELY: I WOULD OBJECT TO, IT SOUNDS LIKE A
13 COLLATERAL ISSUE AS WELL, THE MOTHER IS NOT ON TRIAL HERE
14 AND I DON'T SEE WHERE IT'S RELEVANT.

15 MR. BARR: YOUR HONOR, THE WITNESS TESTIFIED ---

16 THE COURT: ALL RIGHT, HOW ABOUT ---

17 THE WITNESS: (CONTINUING)

18 A I MEAN I DON'T MIND.

19 THE COURT: OKAY, HOLD ON A SECOND. WERE YOU
20 GOING TO TELL ME YOU HAVE ACTUAL KNOWLEDGE OR DON'T HAVE
21 ACTUAL KNOWLEDGE.

22 A OF WHY HE STAYED WITH US?

23 THE COURT: YES.

24 A YES.

25 THE COURT: YES OR NO?

MS. SMITH - CROSS EXAMINATION BY MR. BARR

74

1 A YES, I KNOW WHY.

2 THE COURT: VERY GOOD, LADIES AND GENTLEMEN, GO
3 WITH THE BAILIFF TO YOUR JURY ROOM, PLEASE.

4 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
5 10:05 A.M.)

6 THE COURT: ALL RIGHT, MR. BARR, WHY DON'T YOU
7 ASK YOUR QUESTION AGAIN, LET'S GET THE ANSWER AND THEN
8 WE'LL SEE WHERE WE ARE?

9 MR. BARR: (CONTINUING)

10 Q MY QUESTION, ESSENTIALLY, MS. SMITH, IS
11 WHAT WAS THE REASON MS. HEWITT IS GIVING YOU THE AUTHORITY
12 AND ALLOWING STEPHEN TO LIVE WITH YOU?

13 A THAT'S ---

14 THE COURT: MR. BARR, HOLD ON A SECOND, THOSE
15 LITTLE THINGS, THOSE ARE MICROPHONES.

16 MR. BARR: I'M SORRY.

17 THE COURT: SO WHEN YOU'RE DOING THAT ---

18 MR. BARR: I'M SORRY, YOUR HONOR, WILLIAMSBURG
19 COUNTY WE DON'T HAVE EQUIPMENT LIKE THIS.

20 THE COURT: THAT'S OKAY, THAT'S ALL RIGHT. I
21 WANTED TO REMIND YOU SO JUST THOSE TWO LITTLE ---

22 MR. BARR: WE'VE GOT AIR CONDITIONING.

23 THE COURT: BOTH OF THOSE ARE MICROPHONES, ALL
24 RIGHT, SIR.

25 THE WITNESS: (CONTINUING)

MS. SMITH - CROSS EXAMINATION BY MR. BARR

75

1 A AT THAT TIME, AT THAT TIME WHEN HE LIVED
2 WITH US WHEN HE DISCLOSED TO ME SHE FELT LIKE HE NEEDED A
3 GOOD MALE ROLE MODEL CAUSE I WAS MARRIED AT THE TIME CAUSE
4 HE WOULD STAY WITH ME A LOT WHEN I WAS NOT MARRIED AND HE
5 WAS GETTING PRE-PUBERTY AND SHE FELT LIKE HE NEEDED A
6 POSITIVE MALE ROLE MODEL IS HER REASONINGS SO --

7 THE COURT: ANYTHING ELSE THAT YOU WANTED TO ASK
8 HER IN THAT REALM SO WE CAN GET THE ANSWERS OUT NOW, MR.
9 BARR?

10 MR. BARR: (CONTINUING)

11 Q YES. DID **VICTIM** EVER DISCLOSE TO YOU OR
12 DISCUSS WITH YOU THAT HE FELT THAT HIS MOTHER HAD EXTREME
13 EMOTIONAL ISSUES AND THAT BOTH HE AND SHE WERE BEING ABUSED
14 AT HOME BY THE BOYFRIEND?

15 A HE WAS NOT BEING ABUSED. THERE WAS A LOT
16 OF STRESS IN HIS LIFE AND, YES, HIS MOTHER, HE WAS STRESSED
17 OUT BY HIS MOM AND HE JUST NEEDED A STABLE ENVIRONMENT AND
18 SHE WAS ABLE TO ADMIT THAT.

19 Q DID HE EVER DISCLOSE TO YOU THAT HE FELT
20 LIKE HIS MOM WAS EXTREMELY ADDICTED TO ILLICIT DRUGS?

21 A YES.

22 Q YES, OKAY, AND DID HE EVER DISCLOSE TO YOU
23 THAT HE WATCHED HIS MOM OVERDOSE ON DRUGS?

24 A YES, HE ALSO TOLD ME THAT HE SAW HIS DAD DO
25 IT, TOO.

MS. SMITH - CROSS EXAMINATION BY MR. BARR

76

1 Q OKAY, WELL THEN YOUR EARLIER QUESTION AS TO
2 WHETHER OR NOT HE WAS A NORMAL HAPPY CHILD YOUR ANSWER
3 SEEMS A BIT MISLEADING?

4 A OKAY, WELL IN ALL AND ALL CONSIDERING WHAT
5 HE'S GONE THROUGH, YES, HE'S A NORMAL HAPPY CHILD AND I'VE
6 WORKED WITH SOME ROUGH KIDS SO TO ME **VICTIM** IS GREAT.

7 Q BUT NOW YOU SEEM TO BE ---

8 THE COURT: ALL RIGHT, OKAY, LET'S, ALL RIGHT,
9 SOLICITOR, LET ME HEAR FROM YOU.

10 MS. LIVELY: ALL RIGHT, YOUR HONOR, THE, FIRST
11 OF ALL THE USE OF ILLICIT DRUGS BY THE MOTHER I BELIEVE IS
12 FIRST OF ALL IRRELEVANT, IT'S A COLLATERAL ISSUE. IT'S
13 PREJUDICIAL, HAS NOTHING TO DO WITH THIS VICTIM. SHE'S
14 ANSWERED, I THINK, VERY APPROPRIATELY AS TO WHY SHE HAD THE
15 CHILD IN HER HOME AND, YOU KNOW, I ALREADY BROUGHT UP IN MY
16 PRE-TRIALS AND I'M NOT GOING TO BRING UP ABOUT THE
17 DEFENDANT'S ILLICIT DRUG USE SO IF WE'RE GOING TO GO THERE
18 THEN I THINK IT OPENS THE DOOR FOR EVERYTHING AND THEN THIS
19 TRIAL IS GOING GO OFF IN A COMPLETELY DIFFERENT TRACK AS TO
20 WHY WE'RE HERE, SO I DON'T THINK IT'S RELEVANT. I BELIEVE
21 IT'S PREJUDICIAL TO MY VICTIM. I DON'T SEE HOW THIS HAS
22 ANYTHING TO DO WITH HIS DISCLOSURE INVOLVING THIS
23 DEFENDANT.

24 MR. BARR: YOUR HONOR, IT WOULD BE IN HIS BEST
25 POSITION THAT THE PROSECUTION HAS ALREADY OPENED THE DOOR.

MS. SMITH - CROSS EXAMINATION BY MR. BARR

77

1 IT LED THE JURY TO BELIEVE THAT VICTIM [REDACTED] IS A
2 NORMAL-EVERY-DAY CHILD AND IS ONLY SUFFERING FROM PROBLEMS
3 RELATED TO ABUSE BY HIS FATHER WHEN ALL OF THESE THINGS ARE
4 GOING ON HIS LIFE AND THEY'RE ALL IN THE MEDICAL REPORTS
5 AND THEY'RE ALL, I HAVE A REPORT HERE FROM, FROM ---

6 THE COURT: I'M GOING TO, I'M GOING TO ALLOW YOU
7 TO EXPLORE THE ISSUE AS TO THE, THE MOTHER'S EMOTIONAL
8 CONDITION AND PHYSICAL CONDITION. IN HER ANSWER IF AS SHE
9 DID ALREADY DISCLOSES THE FACT THAT MR. HEWITT, SR., ALSO
10 ABUSED ILLEGAL DRUGS THEN THAT'S GOING TO BE THE ANSWER
11 THAT YOU'RE GOING TO RECEIVE FROM THE QUESTION YOU'VE
12 ASKED. I'M NOT GOING TO STOP HER FROM DOING THAT. THAT
13 WILL BE A PROPER RESPONSE TO THE QUESTIONS THAT YOU'VE
14 ASKED. I DON'T KNOW THAT I'M GOING TO ALLOW YOU TO GO ANY
15 FURTHER. I MAY VERY WELL BASED ON THE SOLICITOR'S
16 OBJECTIONS THEREAFTER SUSTAIN ANY FURTHER COMMENTS AND
17 AGAIN REMEMBER, MS. SMITH, YOU CANNOT DISCLOSE WITHOUT
18 FURTHER DIRECTIONS FROM THE COURT WHAT VICTIM [REDACTED] TOLD
19 YOU ABOUT WHAT HE SAYS STEVEN HEWITT, SR., DID TO HIM, ALL
20 RIGHT? ALL RIGHT, ASK THE JURY TO COME IN.

21 MR. BARR: YOUR HONOR, BEFORE THE JURY COMES
22 BACK IN THE WITNESS TESTIFIED THAT THE COUNSELORS ARE
23 ACTUALLY COMING INTO HER HOME.

24 THE COURT: YES, SIR.

25 MR. BARR: AND THAT I'M ASSUMING SHE'S HAVING

MS. SMITH - CROSS EXAMINATION BY MR. BARR

78

1 SOME DISCUSSION WITH THEM AND I REALIZE THE COUNSELORS HAVE
2 NOT YET BEEN CALLED TO TESTIFY --

3 THE COURT: WELL YOU CAN'T GET INTO THE
4 DISCUSSIONS SHE'S HAD WITH THE COUNSELORS.

5 MR. BARR: THANK YOU, SIR.

6 THE COURT: YOU CAN, YOU CAN ASK HER HAVE YOU
7 HAD DISCUSSIONS WITH THE COUNSELOR AND GET A YES OR A NO.

8 MR. BARR: YES, SIR.

9 THE COURT: BUT THEN YOU CAN'T EXPLORE FURTHER.

10 MR. BARR: YES, SIR.

11 THE COURT: ALL RIGHT, VERY GOOD.

12 MR. BARR: ALL RIGHT, THANK YOU.

13 THE COURT: ASK THE JURY TO COME IN.

14 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
15 10:14 A.M.)

16 THE COURT: ALL RIGHT, MR. BARR, YOU MAY RESUME,
17 SIR.

18 MR. BARR: THANK YOU, YOUR HONOR.

19 MR. FOREMAN: YOUR HONOR, MAY I, SOME OF THE
20 JURORS HAVE MENTIONED TO ME THAT WE'RE HAVING A HARD TIME
21 HEARING SOME TESTIMONY.

22 THE COURT: WELL WE'VE TRIED TO REMIND EVERYBODY
23 ABOUT THAT AND HOPEFULLY THAT WILL NOT OCCUR BUT IF YOU
24 AGAIN HAVE THAT PROBLEM YA'LL RAISE YOUR HAND AND LET US,
25 LET US KNOW, OKAY.

MS. SMITH - CROSS EXAMINATION BY MR. BARR

79

1 MR. FOREMAN: THANK YOU.

2 THE COURT: THANK YOU.

3 CROSS EXAMINATION OF MS. SMITH CONTINUED

4 BY MR. BARR:

5 Q MS. SMITH, I BELIEVE WE LEFT OFF AS I ASKED
6 YOU WHY THE MOTHER, KIMBERLY HEWITT, WOULD GIVE YOU
7 PHYSICAL CUSTODY OF THE ALLEGED VICTIM [REDACTED]

8 A IN 2006 TO 2007 SHE FELT LIKE HE NEEDED A
9 POSITIVE MALE ROLE MODEL AND I WAS MARRIED TO A, I'M
10 MARRIED TO A GOOD HUSBAND, A GOOD MAN THAT SHE FELT LIKE
11 WOULD BE A POSITIVE MALE ROLE MODEL FOR HIM.

12 Q TO YOUR KNOWLEDGE KIMBERLY HEWITT ACTUALLY
13 ON ILLICIT DRUGS?

14 A PAIN PILLS, I DON'T, THAT'S WHAT SHE TAKES.

15 Q DID YOU KNOW THAT OF YOUR OWN PERSONAL
16 KNOWLEDGE?

17 A NO, THAT'S JUST WHAT I'VE BEEN TOLD.

18 Q OKAY, ALL RIGHT, AND IN TERMS OF [REDACTED]
19 HEWITT'S SITUATION AT HOME DID HE RELATE TO YOU IN ANY
20 DISCUSSION WHAT WAS GOING ON THERE?

21 MS. LIVELY: I WOULD OBJECT TO HEARSAY, YOUR
22 HONOR.

23 THE COURT: I'M GOING TO ALLOW HER TO ANSWER YES
24 OR NO.

25 THE WITNESS: (CONTINUING)

MS. SMITH - REDIRECT EXAMINATION BY MS. LIVELY

80

1 A YES, YES, SIR.

2 Q YES, HE DID?

3 A YES, SIR.

4 Q OKAY, NOW YOU MENTIONED ON DIRECT
5 EXAMINATION THAT I BELIEVE THAT HE IS IN COUNSELING AND HAS
6 BEEN IN COUNSELING FOR THE LAST TWO YEARS; IS THAT RIGHT?

7 A I BELIEVE IT'S BEEN TWO YEARS OF MY
8 KNOWLEDGE BUT, YES, HE'S IN COUNSELING NOW.

9 Q OKAY, TO YOUR KNOWLEDGE WAS HE IN
10 COUNSELING PRIOR TO THE TIME THAT HE HAD THIS EPIPHANY AND
11 DISCLOSED WHAT HAD HAPPENED PREVIOUSLY?

12 A PRIOR TO NO, NO, SIR, NOT, NOT OF MY
13 KNOWLEDGE.

14 Q OKAY, WHEN HE WAS LIVING WITH YOU DID YOU
15 GET HIS GRADE SCHOOL REPORTS AND THAT TYPE OF THING FROM
16 SCHOOL?

17 A YES, SIR.

18 Q HOW WAS HE DOING IN SCHOOL?

19 A A'S AND B'S.

20 Q OKAY, WAS THERE EVER A POINT THAT THAT
21 CHANGED?

22 A NO, SIR, HE ACTUALLY DID GOOD IN SCHOOL.
23 TOWARDS, LIKE I SAID TOWARDS THE END HE WAS, HE DID REALLY
24 GOOD IN SCHOOL BEHAVIOR WISE BUT THEN TOWARDS THE END HE
25 STARTED ACTING UP A LITTLE BIT IN SCHOOL. IT WAS LIKE THE

MS. SMITH - REDIRECT EXAMINATION BY MS. LIVELY

81

1 LAST MONTH OF SCHOOL.

2 Q NOW WHEN YOU SAY ACTING UP A LITTLE BIT
3 WHAT, WHAT DO YOU MEAN?

4 A BEING THE CLASS CLOWN.

5 Q OKAY ---

6 A THAT'S JUST ---

7 Q AND THIS WAS AT WHAT AGE?

8 A IT WAS IN 2007 SO 12, 13, 12.

9 Q OKAY ---

10 A THIRTEEN, SOMETHING LIKE THAT.

11 Q SO THIS IS BEFORE THE DISCLOSURE IN 2008?

12 A NO, HE DISCLOSED TO ME IN 2007. IT, IT WAS
13 ALL IN ABOUT THE SAME TIME.

14 Q SO IT WOULD BE YOUR TESTIMONY HERE TODAY
15 THAT **VICTIM** **REDACTED** **REDACTED** LIVED WITH YOU FOR A SUSTAINED
16 PERIOD OF TIME AND THAT YOU BELIEVE HE WAS BEHAVING LIKE A
17 NORMAL AVERAGE CHILD AND THAT HE WAS MAKING GOOD GRADES IN
18 SCHOOL AND NOT ACTING OUT?

19 A UH-HUH, AT THAT, WHEN HE WAS LIVING WITH
20 US, YES.

21 MR. BARR: THANK YOU.

22 THE COURT: REDIRECT?

23 REDIRECT EXAMINATION

24 BY MS. LIVELY:

25 Q MS. SMITH, WHAT DID YOU HAVE TO COMPARE

MS. SMITH - REDIRECT EXAMINATION BY MS. LIVELY

82

1 THAT TO IN REGARDS TO YOUR EXPERIENCE WITH CHILDREN OF THAT
2 AGE?

3 A THE KIDS THAT I WORK WITH AT BEING A YOUTH
4 PASTOR MOST OF THEM WERE TOUGH. THEY WERE TOUGH CHILDREN
5 AND SO COMPARED TO THEM HE WAS DOING REALLY GOOD. I MEAN,
6 YES, HE WOULD GET IN TROUBLE BUT COMPARED TO, COMPARED TO
7 MOST CHILDREN HE WAS DOING REALLY GOOD.

8 Q AND WERE YOU AWARE OF HIS LIVING BASED ON
9 WHAT MR. BARR ASKED YOU THE MOTHER'S DRUG USE, WERE YOU
10 AWARE OF THAT FROM WHAT YOU SAW PERSONALLY WITH THE MOTHER?

11 A I SAW BEHAVIORS FROM THE MOTHER, YES.

12 Q AND BASED UPON THAT WERE YOU STILL OF THE
13 OPINION THAT **VICTIM** **VIC** WAS A PRETTY WELL ADAPTED KID FROM
14 THE CIRCUMSTANCES?

15 A HE WAS REALLY WELL ADAPTED. HE STILL IS
16 REALLY WELL ADAPTED. HE'S GOT A GOOD HEAD ON HIS
17 SHOULDERS.

18 MS. LIVELY: THANK YOU, THAT'S ALL I HAVE.

19 THE COURT: ANYTHING ELSE, MR. BARR?

20 MR. BARR: NOTHING FURTHER, YOUR HONOR.

21 THE COURT: YOU MAY STEP DOWN, MA'AM.

22 THE WITNESS: THANK YOU.

23 THE COURT: DO YOU WISH YOUR WITNESS TO BE
24 EXCUSED, SOLICITOR?

25 MS. LIVELY: OH, YES, I'M SORRY, YOUR HONOR,

MS. SMITH - REDIRECT EXAMINATION BY MS. LIVELY

83

1 YES, MAY SHE BE EXCUSED?

2 THE COURT: ALL RIGHT, MS. SMITH, YOU'RE
3 EXCUSED, YOU MAY LEAVE OR STAY AS YOU NOW CHOOSE.

4 THE WITNESS: OKAY, THANK YOU.

5 THE COURT: THANK YOU.

6 MS. LIVELY: YOUR HONOR, THE STATE NEEDS ABOUT
7 FIVE MINUTES IF YOUR HONOR WILL ALLOW ME WITH THE NEXT
8 WITNESS?

9 THE COURT: ALL RIGHT, VERY GOOD. ALL RIGHT,
10 LADIES AND GENTLEMEN, IF YOU'D GO TO YOUR JURY ROOM FOR
11 ABOUT FIVE TO 10 MINUTES AND THEN WE'LL COME BACK AND
12 RESUME, THANK YOU.

13 MS. LIVELY: THANK YOU.

14 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
15 10:21 A.M.)

16 THE COURT: ALL RIGHT, WE'LL BE AT EASE FOR
17 ABOUT FIVE OR 10 MINUTES. SOLICITOR, IF YOU'LL LET ME
18 KNOW, PLEASE MA'AM?

19 MS. LIVELY: I WILL, YOUR HONOR, THANK YOU.

20 THE COURT: THANK YOU.

21 (WHEREUPON, A RECESS WAS TAKEN AND THE FOLLOWING
22 TAKES PLACE ON THE RECORD AFTER THE RECESS.)

23 THE COURT: ALL RIGHT, SOLICITOR, IS THE STATE
24 READY TO PROCEED?

25 MS. LIVELY: WE ARE, YOUR HONOR.

MS. SMITH - REDIRECT EXAMINATION BY MS. LIVELY

84

1 THE COURT: ALL RIGHT, MR. BARR?

2 MR. BARR: YES, YOUR HONOR.

3 THE COURT: VERY GOOD, ASK THE JURY TO COME IN,
4 PLEASE.

5 MS. LIVELY: YOUR HONOR, WE HAD DISCUSSED
6 VICTIM S, POSSESSION OF MARIJUANA BEFORE. THE VICTIM
7 IS GOING TO TESTIFY NEXT, I JUST SOME CLARIFICATION.

8 THE COURT: YEAH, IF YOU'D JUST HOLD THEM UP FOR
9 A COUPLE OF MINUTES, PLEASE.

10 MS. LIVELY: I'M SORRY.

11 THE COURT: GOOD.

12 MS. LIVELY: THANK YOU. WE HAVE A HISTORY
13 REPORT, SIMPLE POSSESSION OF MARIJUANA FIRST OFFENSE,
14 VIOLATION DATE, SORRY, MAY 14TH OF 2008, DISPOSITION DATE
15 HE PLED GUILTY JUNE 3RD OF 2009 AND I HAVE A COPY IF THE
16 COURT WOULD LIKE TO REVIEW IT.

17 THE COURT: ALL RIGHT, IF YOU WOULD WHY DON'T WE
18 MAKE THAT A COURT'S EXHIBIT FOR THE, FOR THE RECORD,
19 PLEASE?

20 MS. LIVELY: YES, SIR.

21 (WHEREUPON, COURT'S EXHIBIT NUMBER 2 MARKED FOR
22 IDENTIFICATION.)

23 THE COURT: ALL RIGHT, MR. BARR, I'LL BE GLAD TO
24 HEAR FROM YOU, SIR.

25 MR. BARR: YOUR HONOR, AND I UNDERSTAND THAT

MS. SMITH - REDIRECT EXAMINATION BY MS. LIVELY

85

1 WE'RE TALKING ABOUT CONVICTIONS VERSUS, VERSUS CHARGES BUT
2 I BELIEVE IT MIGHT BE THE CASE THAT MR. VICTIM [REDACTED]
3 WAS CHARGED WITH, INITIALLY WITH SELLING MARIJUANA TO HIS
4 CLASSMATES AT SCHOOL AND, YOUR HONOR, AS, AS I'M SURE YOU
5 KNOW PLEAS IN FAMILY COURT INVOLVING JUVENILES ESPECIALLY
6 ARE NEGOTIATED TYPE OF SITUATIONS AND THIS IS PROBABLY SOME
7 FORM OF NEGOTIATED PLEA EVEN THOUGH THAT'S WHAT HIS, WHAT
8 HIS RECORD MAY SHOW, AND I'M NOT SURE THAT THAT IS HIS,
9 NECESSARILY HIS COMPLETE RECORD. I NOTICED ON THE RECORD
10 AS WELL THERE'S AN ABHAN CHARGE AS WELL IN 2005.

11 MS. LIVELY: IT WAS 2009.

12 THE COURT: BUT THE VIOLATION DATE WAS 2005.

13 MR. BARR: 2005.

14 THE COURT: DISPOSITION DATE WAS MARCH 14TH,
15 2009, THAT'S DISPOSITION DATE, VIOLATION DATE WAS JULY
16 29TH, 2005.

17 MR. BARR: OKAY, AND, AND, YOUR HONOR, I'M NOT
18 SURE THAT THIS ACCURATELY REFLECTS WHAT, AND I'M NOT TRYING
19 TO BEAT UP ON A SMALL CHILD --

20 THE COURT: AND I APPRECIATE THAT, BUT WE ALSO
21 HAVE TO GO BY WHAT RULE 609 SAYS REGARDING WITNESSES AND IT
22 SAYS "FOR THE PURPOSES OF ATTACKING THE CREDIBILITY OF A
23 WITNESS EVIDENCE THAT A WITNESS OTHER THAN AN ACCUSED HAS
24 BEEN CONVICTED OF A CRIME SHALL BE ADMITTED SUBJECT TO RULE
25 403 IF THE CRIME WAS PUNISHABLE BY DEATH OR IMPRISONMENT IN

MS. SMITH - REDIRECT EXAMINATION BY MS. LIVELY

86

1 EXCESS OF ONE YEAR UNDER THE LAW UNDER WHICH THE WITNESS
2 WAS CONVICTED AND THE EVIDENCE THAT AN ACCUSED HAS BEEN
3 CONVICTED OF SUCH CRIMES SHALL BE ADMITTED IF THE COURT
4 DETERMINES THAT THE PROBATIVE VALUE OF ADMITTING THIS
5 EVIDENCE OUTWEIGHS ITS PREJUDICIAL EFFECT TO THE ACCUSED,
6 AND EVIDENCE THAT ANY WITNESS HAS BEEN CONVICTED OF A CRIME
7 SHALL BE ADMITTED IF IT INVOLVED DISHONESTY OR FALSE
8 STATEMENT REGARDLESS OF PUNISHMENT." AND IT GOES ON TO SAY
9 CONVICTION IN THERE SEVERAL MORE TIMES IN DESCRIBING OTHER
10 MATTERS ABOUT THIS RULE. THE RULE DEALS WITH CONVICTIONS,
11 SOMETHING MIGHT HAVE BEEN PLED DOWN BUT THE RECORD
12 INDICATES THAT HE WAS CONVICTED OF SIMPLE POSSESSION OF
13 MARIJUANA FIRST OFFENSE VIOLATION DATE 5-14-2008 TO WHICH
14 HE PLED GUILTY. THE ASSAULT AND BATTERY AND HIGH AND
15 AGGRAVATED NATURE CHARGE VIOLATION DATE 7-29-2005 WAS
16 DISPOSED OF BY BEING DISMISSED ON MARCH 14TH, 2009,
17 THEREFORE, NEITHER OF THESE MATTERS ARE PROPER TO BE
18 COVERED WITH THE WITNESS UNDER RULE 609 AND I WILL NOT
19 ALLOW YOU TO DO SO.

20 MR. BARR: THANK YOU, YOUR HONOR.

21 THE COURT: ALL RIGHT, ASK THE JURY ---

22 MS. LIVELY: YOUR HONOR?

23 THE COURT: YES, MA'AM?

24 MS. LIVELY: THANK YOU.

25 THE COURT: ASK THE JURY TO COME IN, PLEASE.

MS. SMITH - REDIRECT EXAMINATION BY MS. LIVELY

87

1 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
2 10:37 A.M.)

3 MR. FOREMAN: CAN WE TAKE NOTES?

4 THE COURT: I'LL ADDRESS THAT NOW, IF YA'LL HAD
5 BROUGHT IT UP TO ME EARLIER WE MIGHT HAVE BEEN ABLE TO DO
6 SO.

7 ALL RIGHT, MR. FOREMAN, YOU INDICATED A DESIRE
8 FOR THE JURY TO TAKE NOTES. SINCE WE HAVE ALREADY STARTED
9 THE TRIAL AND WE'VE HAD SEVERAL WITNESSES I'M NOT GOING TO
10 ALLOW IT AT THIS POINT IN TIME. I WILL TELL YOU IT IS THE
11 NORMAL COURSE OF TRIALS IN THIS STATE THAT NOTE TAKING
12 EXCEPT IN MATTERS THAT WE KNOW ARE GOING TO TAKE AN
13 EXTENDED PERIOD OF TIME, MANY DAYS, WE DO NOT ALLOW NOTE
14 TAKING BECAUSE WE FIND THAT OFTEN TIMES JURORS ATTENTION IS
15 DISTRACTED FROM WHAT IS GOING ON AT THAT POINT IN TIME WHEN
16 THEY HAVE THEIR HEAD BURIED TAKING NOTES ON SOMETHING THEY
17 JUST HEARD AND NOT PAYING ATTENTION THEN TO WHAT IS NOW
18 GOING ON. SO NORMALLY EXCEPT WHEN WE KNOW A MATTER IS
19 GOING TO TAKE SOME EXTENDED PERIOD OF TIME WE NORMALLY
20 DON'T ALLOW THAT AND WE'LL JUST CONTINUE WITH THAT IN THIS
21 PARTICULAR CASE, ALL RIGHT?

22 ALL RIGHT, SOLICITOR, YOUR NEXT WITNESS, PLEASE,
23 MA'AM.

24 MS. LIVELY: THANK YOU, YOUR HONOR. THE STATE
25 WOULD CALL PATRICIA BROWN TO THE STAND.

MS. BROWN - DIRECT EXAMINATION BY MS. LIVELY

88

1 THE COURT: ALL RIGHT, MA'AM, IF YOU'D COME UP
2 FORWARD RIGHT UP HERE TO WHERE THE BAILIFF IS, PLEASE,
3 MA'AM.

4 PATRICIA BROWN

5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 MADAM CLERK: THANK YOU, PLEASE BE SEATED AND
7 STATE YOUR NAME FOR THE RECORD, PLEASE.

8 THE COURT: WHEN YOU GET UP HERE, MA'AM, IF
9 YOU'D JUST SCOOT UP AS CLOSE AS YOU CAN TO THE MICROPHONE,
10 KEEP YOUR VOICE UP, PLEASE, MA'AM,

11 THE WITNESS: PATRICIA BROWN.

12 THE COURT: ALL RIGHT, SOLICITOR.

13 MS. LIVELY: THANK YOU, YOUR HONOR.

14 DIRECT EXAMINATION

15 BY MS. LIVELY:

16 Q MS. BROWN, WHERE DO YOU CURRENTLY WORK?

17 A DEPARTMENT OF HEALTH, I MEAN WACCAMAW
18 CENTER FOR MENTAL HEALTH IN GEORGETOWN.

19 Q AND WHAT ARE YOUR DUTIES THERE?

20 A I AM A COUNSELOR THERE.

21 Q HOW LONG HAVE YOU BEEN A COUNSELOR?

22 A SINCE 2004.

23 Q HAVE YOU EVER WORKED AS A SCHOOL BASE
24 COUNSELOR?

25 A YES, I HAVE.

MS. BROWN - DIRECT EXAMINATION BY MS. LIVELY

89

1 Q WHEN?

2 A SINCE 2004.

3 Q OKAY, SO SINCE 2004 YOU HAVE BEEN A SCHOOL
4 BASE COUNSELOR?

5 A YES, I HAVE.

6 Q SPEAK UP JUST A LITTLE BIT SO WE CAN MAKE
7 SURE WE HEAR EVERYTHING, OKAY? THANK YOU. ALL RIGHT,
8 SINCE 2004 YOU'VE BEEN A SCHOOL BASE COUNSELOR FOR WHAT
9 SCHOOL?

10 A GEORGETOWN MIDDLE IN GEORGETOWN.

11 Q WHEN YOU'RE A SCHOOL BASE COUNSELOR WHAT IS
12 IT THAT YOU DO FOR THE SCHOOL?

13 A MAINLY WORK WITH CHILDREN WHO HAVE BEHAVIOR
14 PROBLEMS WITHIN THE SCHOOL ONCE THEY'RE REFERRED BY THE
15 GUIDANCE COUNSELOR THERE.

16 Q OKAY, SO YOU RECEIVE A REFERRAL FROM A
17 GUIDANCE COUNSELOR AND THEN YOU WILL ACTUALLY MEET WITH
18 THAT PARTICULAR CHILD?

19 A YES, I DO.

20 Q YOU DO, OKAY, NOW, MS. BROWN, DID YOU HAVE
21 AN OPPORTUNITY TO GET A REFERRAL IN REGARDS TO **VICTIM**

22 **VICTIM** **VIC** IN 2008?

23 A YES.

24 Q WILL YOU, PLEASE, TELL THIS JURY WHAT THAT
25 REFERRAL WAS FOR?

MS. BROWN - DIRECT EXAMINATION BY MS. LIVELY

90

1 A WELL AT THE TIME HE WAS FAILING HIS CLASS,
2 HE WAS A "A" STUDENT AND JUST HAD A LOT OF BEHAVIOR IN THE
3 CLASSROOM SO THE TEACHER CAME AND REPORTED THAT TO ME AND
4 TO HIS MOM.

5 Q OKAY, SO HE WAS AN "A" STUDENT AND THEN HE
6 STARTED HAVING SOME REAL TROUBLE?

7 A FAILING HIS CLASSES, YES.

8 Q FAILING HIS CLASSES?

9 A AND WE HAD CONCERNS BECAUSE THAT WASN'T,
10 YOU KNOW, BEING AN "A" STUDENT AND FAILING HIS CLASS LIKE
11 THAT SO...

12 Q ALL RIGHT, AND WILL YOU TELL THE JURY ONCE
13 AGAIN WHAT YEAR THAT WAS?

14 A IT WAS IN 2008.

15 Q 2008, OKAY, AND THIS WAS AT GEORGETOWN
16 MIDDLE SCHOOL?

17 A YES.

18 Q SO WHAT DID YOU DO TO ADDRESS THAT
19 REFERRAL?

20 A THE MOM CAME IN AND DID THE APPLICATION AND
21 THEN FROM THERE THEN WE STARTED HAVING, YOU KNOW,
22 COUNSELING SESSIONS IN MY OFFICE.

23 Q YOU DID ACTUALLY MEET WITH **VICTIM** **[REDACTED]**

24 A YES, UH-HUH.

25 Q AT ANY TIME WAS ANY INFORMATION PROVIDED TO

MS. BROWN - DIRECT EXAMINATION BY MS. LIVELY

91

1 YOU THAT RAISED SOME REAL CONCERNS FOR YOU IN REGARDS TO
2 THIS CHILD?

3 A YES, SOME DRAWING THAT WAS GIVEN TO ME, I
4 THINK I WAS OUT OF SCHOOL THAT DAY AND THE NEXT DAY I CAME
5 TO SCHOOL SOME DRAWINGS WAS GIVEN TO ME THAT HE DREW THE
6 DAY BEFORE THAT WHEN I WASN'T THERE.

7 Q OKAY ---

8 A AND, YOU KNOW, THE TEACHES AND PRINCIPAL
9 HAD CONCERN ABOUT THE DRAWING THAT HE DREW THAT DAY.

10 Q OKAY, ALL RIGHT, SO YOU ACTUALLY SAW THESE
11 ITEMS?

12 A YES, UH-HUH.

13 Q AND WHAT DID YOU DO IN REGARDS TO
14 ADDRESSING THOSE ITEMS WITH **VICTIM** **[REDACTED]**

15 A I BROUGHT HIM IN MY OFFICE AND WE TALKED
16 ABOUT THE DRAWING.

17 Q WITHOUT TELLING ME EXACTLY EVERYTHING THAT
18 HE DISCLOSED TO YOU DID HE TELL YOU SOMETHING THAT HAPPENED
19 TO HIM AS A CHILD?

20 A YES, HE DID.

21 Q OKAY, AND WHAT AGE DID HE RELAY TO YOU THAT
22 SOMETHING HAD HAPPENED TO HIM?

23 A HE SAID I THINK AROUND AGE SEVEN.

24 Q AROUND AGE SEVEN?

25 A UH-HUH.

MS. BROWN - DIRECT EXAMINATION BY MS. LIVELY

92

1 Q I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
2 STATE'S EXHIBIT NUMBER 5 AND ASK YOU IF YOU RECOGNIZE THIS
3 PICTURE?

4 A YES, UH-HUH.

5 Q OKAY, AND WHAT PICTURE IS THAT, MS. BROWN?

6 A IT'S THE PICTURE THAT [VICTIM] HEWITT GAVE ME
7 ON THAT, WELL HE DIDN'T GIVE IT TO ME ---

8 Q SPEAK UP.

9 A WELL WHAT HAPPENED WAS THE GUIDANCE
10 COUNSELOR GAVE IT TO ME AND TOLD ME THAT THEY HAD CONCERN
11 THAT I NEEDED TO TALK WITH HIM ABOUT THE PICTURE, SO I
12 BROUGHT HIM IN MY OFFICE AND WE SAT AND WE TALKED ABOUT IT.

13 Q OKAY, SO IS THAT THE PICTURE THAT YOU HAD
14 AND DISCUSSED WITH [VICTIM] [REDACTED]

15 A YES, UH-HUH.

16 Q OKAY, SO YOU RECOGNIZE THAT, THAT PICTURE?

17 A I DO.

18 Q IS THAT AN ACCURATE REPRESENTATION OF A
19 COPY OF THE PICTURE THAT YOU GOT IN 2008?

20 A YES, UH-HUH.

21 Q OKAY.

22 MS. LIVELY: YOUR HONOR, AT THIS TIME THE STATE
23 WOULD MOVE TO INTRODUCE STATE'S EXHIBIT NUMBER 5 INTO
24 EVIDENCE.

25 THE COURT: ALL RIGHT, MR. BARR?

MS. BROWN - DIRECT EXAMINATION BY MS. LIVELY

93

1 MR. BARR: YOUR HONOR, WE WOULD OBJECT.

2 THE COURT: ALL RIGHT, LET ME SEE THE PICTURE,
3 PLEASE?

4 MS. LIVELY: YES, SIR.

5 THE COURT: ALL RIGHT, COME OVER HERE TO THE
6 SIDE FOR A SECOND, PLEASE, IF YOU WOULD.

7 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
8 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
9 OF THE JURY AND THE COURT REPORTER.)

10 MS. LIVELY: THANK YOU, YOUR HONOR.

11 Q (CONTINUING) I'M GOING TO ASK YOU ABOUT
12 STATE'S EXHIBIT NUMBER 5 AGAIN, MS. BROWN. HOW DO YOU KNOW
13 WHO DREW THIS PICTURE?

14 A IT WAS GIVEN TO ME BY THE GUIDANCE
15 COUNSELOR, MS. GREEN, AND SHE SAID THAT SHE, SHE GOT IT
16 FROM [REDACTED] VICTIM TEACHER, MS. HARRISON. MS. HARRISON HAD
17 CONCERNS TO GIVE IT TO HER AND THEN SHE GAVE IT TO ME ON
18 THE NEXT DAY.

19 Q OKAY, THAT'S FINE.

20 MS. LIVELY: I'LL ADDRESS IT FURTHER WITH MY
21 ADDITIONAL WITNESS, YOUR HONOR.

22 THE COURT: ALL RIGHT, VERY GOOD, MARK IT FOR
23 IDENTIFICATION AT THIS TIME.

24 MS. LIVELY: YES, SIR, AS STATE'S 5.

25 MS. LIVELY: (CONTINUING)

MS. BROWN - DIRECT EXAMINATION BY MS. LIVELY

94

1 Q WAS THERE ANYTHING ELSE THAT WAS PROVIDED
2 TO YOU ALONG WITH THAT PHOTO OR ALONG WITH THAT PICTURE,
3 MS. BROWN?

4 A IT WAS A POEM OF SOMETHING, A PARAGRAPH HE
5 WROTE ALSO.

6 Q OKAY, ALL RIGHT, WAS THAT ITEM GIVEN TO YOU
7 AT THE SAME TIME THAT YOU RECEIVED THAT PHOTO?

8 A BOTH WERE GIVEN AT THE SAME TIME.

9 Q OKAY, DID YOU USE THESE ITEMS IN ADDRESSING
10 ISSUES WITH **VICTIM VIC** IN THE COUNSELING SESSIONS?

11 A YES, I DID.

12 Q OKAY, I'M GOING TO SHOW YOU WHAT'S BEEN
13 MARKED AS STATE'S EXHIBIT NUMBER 6 AND ASK YOU IF THIS IS
14 THE POEM THAT YOU RECEIVED?

15 A YES, THIS IS THE POEM, UH-HUH.

16 Q ALL RIGHT, AND ONCE AGAIN WHEN WAS IT THAT
17 YOU RECEIVED THAT POEM?

18 A IT WAS IN FEBRUARY OF '08.

19 Q FEBRUARY OF 2008?

20 A '08, YES, UH-HUH.

21 Q AND DID YOU DISCUSS THIS WITH **VICTIM VICTIM**
22 **VICTI**

23 A YES, I DID.

24 Q AND ONCE AGAIN WHAT DID HE RELAY TO YOU,
25 NOT THE SPECIFICS, BUT THAT SOMETHING HAD OCCURRED TO HIM

MS. BROWN - CROSS EXAMINATION BY MR. BARR

95

1 AT WHAT AGE?

2 A AGE SEVEN.

3 Q OKAY --

4 MS. LIVELY: AND THAT WAS STATE'S EXHIBIT NUMBER
5 6 FOR IDENTIFICATION PURPOSES ONLY, YOUR HONOR.

6 THE COURT: VERY GOOD.

7 MS. LIVELY: THANK YOU.

8 Q (CONTINUING) NOW, MS. BROWN, HOW LONG DID
9 YOU ACTUALLY ACT AS VICTIM VICTIM COUNSELOR?

10 A I THINK UNTIL APRIL THEN HE WAS REFERRED TO
11 ANOTHER COUNSELOR.

12 Q APRIL OF?

13 A 2008.

14 Q 2008?

15 A YES, UH-HUH.

16 Q AND DO YOU KNOW WHO HE WAS REFERRED TO?

17 A MS. KATHY MCGROGAN.

18 Q AND WHERE DOES SHE WORK?

19 A WACCAMAW CENTER FOR MENTAL HEALTH IN
20 GEORGETOWN ALSO.

21 Q OKAY, AND SINCE, SINCE THAT REFERRAL FROM
22 APRIL OF 2008 HAVE YOU HAD ANY OTHER CONTACT OR DEALINGS
23 WITH VICTIM VICTI

24 A NO, MA'AM.

25 MS. LIVELY: THANK YOU, ANSWER ANY QUESTIONS

MS. BROWN - CROSS EXAMINATION BY MR. BARR

96

1 THAT THE DEFENSE MAY HAVE FOR YOU, MS. BROWN.

2 THE COURT: ALL RIGHT, MR. BARR.

3 MR. BARR: THANK YOU, YOUR HONOR.

4 CROSS EXAMINATION

5 BY MR. BARR:

6 Q MS. BROWN --

7 MR. BARR: THE COURT'S INDULGENCE, YOUR HONOR?

8 THE COURT: YES, SIR.

9 MR. BARR: (CONTINUING)

10 Q I BELIEVE IT WAS YOUR TESTIMONY THAT YOU
11 GOT A REFERRAL FROM THE GUIDANCE COUNSELOR AT THE MIDDLE
12 SCHOOL; IS THAT CORRECT?

13 A YES, SIR.

14 Q ON VICTIM [REDACTED] [REDACTED]

15 A YES, SIR.

16 Q OKAY, AS A PART OF THAT REFERRAL DO YOU DO
17 ASSESSMENT OR WORK UP OR WRITE UP OR ANYTHING?

18 A WE DO ASSESSMENTS, YES.

19 Q OKAY, OKAY, AND YOU DID THAT IN HIS CASE?

20 A YES, SIR.

21 Q OKAY, OKAY, NOW I BELIEVE THAT YOU
22 TESTIFIED THAT YOU SAW HIM IN FEBRUARY, IS THAT CORRECT,
23 FEBRUARY, WOULD THAT BE FEBRUARY THE 14TH OF 2008?

24 A HIS CASE WAS OPENED FEBRUARY THAT 11TH OF
25 2008 AND FROM THERE ON WE HAD SESSIONS LIKE PRACTICALLY

MS. BROWN - CROSS EXAMINATION BY MR. BARR

97

1 EVERY WEEK OR SOMETHING LIKE THAT.

2 Q OKAY, AFTER HAVING THIS DISCUSSION WITH THE
3 GUIDANCE COUNSELORS AND WITH **VICTIM** AND RECEIVING THE
4 INFORMATION ABOUT THE ALLEGED INCIDENT DID YOU DISCUSS WITH
5 ANYONE MAKING A REFERRAL OR A REPORT TO LAW ENFORCEMENT?

6 A NOT AT THE TIME I DID NOT.

7 Q COULD YOU EXPLAIN TO THE JURY WHY IF IN
8 FEBRUARY OF 2008 THIS INFORMATION CAME TO YOU WHY IT
9 WOULDN'T BE REPORTED TO LAW ENFORCEMENT?

10 A WELL AT THE TIME **VICTIM** WAS, FATHER WASN'T
11 IN THE HOME WITH HIM AND HE WAS JUST TELLING ME WHAT WAS
12 GOING ON WITH HIM AND AT THE TIME MS. KATHY WORKED MORE
13 WITH THE FAMILY AND THAT'S WHY I REFERRED THE CASE OUT TO
14 HER.

15 Q ANY DISCUSSION WITH MS. KATHY ABOUT THE
16 POSSIBILITY OF REPORTING THIS TO LAW ENFORCEMENT, NOT SO
17 MUCH IN TERMS OF DANGER BUT AS A PAST CRIMINAL ACT?

18 A NO, SIR.

19 Q WAS THIS IN ANY WAY ESCALATED IN TERMS OF
20 ADMINISTRATIVE FASHION, LET'S TALK TO THE SCHOOL PRINCIPAL,
21 OR LET'S TALK TO THE SCHOOL DISTRICT SUPERINTENDENT OR
22 LET'S TALK WITH THE SCHOOL ATTORNEY?

23 A WELL WE HAD OTHER SESSIONS, I MEAN WE
24 TALKED MORE ABOUT WHAT WAS GOING ON WITH HIM AT THE TIME.
25 IT'S NOT LIKE I, HE TOLD ME THAT INFORMATION AND IT WAS

MS. BROWN - CROSS EXAMINATION BY MR. BARR

98

1 JUST DROPPED OR ANYTHING LIKE THAT BUT LAW ENFORCEMENT
2 WASN'T CONTACTED BUT WE HAD DIFFERENT SESSIONS ABOUT THE
3 WAY HE WAS FEELING AND, YOU KNOW, DIFFERENT THINGS LIKE
4 THAT. I MEAN IT'S NOT LIKE I JUST HEARD IT AND JUST LET IT
5 DROP.

6 Q DID YOU GET THE SPECIFIC FEELING THAT THIS
7 MIGHT HAVE BEEN AN OBVIATION AND NOT NECESSARILY THE TRUTH?

8 A NO, I DIDN'T GET THAT FEELING FROM HIM.

9 Q YOU DIDN'T?

10 A NO, I BELIEVE HIM, I BELIEVE WHAT HE SAID
11 WAS TRUE.

12 Q ALL RIGHT, OKAY, NOW YOU SAID THAT THE
13 DRAWINGS AND THE POEM CAME TO YOU --

14 A FROM THE GUIDANCE COUNSELOR FROM THE DAY
15 BEFORE.

16 Q OKAY ---

17 A I THINK HE WAS HAVING SOME BEHAVIOR IN THE
18 CLASSROOM OR SOMETHING OR HE WAS DRAWING AND THE TEACHER
19 SAW IT AND TOOK IT TO GUIDANCE COUNSELOR, SO I WASN'T AT
20 SCHOOL THAT DAY SO THEY GAVE IT TO ME THE NEXT DAY.

21 Q OKAY, ALL RIGHT, YOU DIDN'T SEE HIM, YOU
22 DIDN'T SEE HIM DRAW IT?

23 A NO, I GOT IT FROM GUIDANCE COUNSELOR.

24 Q OKAY, DID YOU ASK HIM ABOUT IT?

25 A YES, I DID AND HE SAID IT WAS HIS DRAWING

MS. BROWN - CROSS EXAMINATION BY MR. BARR

99

1 BECAUSE HE HAD SOME OTHER DRAWING THAT CAME ALONG WITH THAT
2 BUT THOSE WERE THE ONLY TWO PAGES THAT TOOK OUT OF THE BOOK
3 THAT HE HAD.

4 Q DID YOU GET ANY SPECIFIC IDEA FROM HIM AS
5 TO WHAT IT MEANT?

6 A WELL WE TALKED ABOUT IT, WE DID.

7 Q OKAY, AND THERE WAS NO FOLLOW UP DIRECTLY
8 FROM YOUR OFFICE TO KATHY, I THINK IT'S MCGROGAN?

9 A MCGROGAN, YES, UH-HUH.

10 Q MCGROGAN?

11 A UH-HUH.

12 Q IS SHE IN YOUR OFFICE?

13 A YES, SHE IS.

14 Q OKAY, SO YA'LL KIND OF WORK THE SAME
15 OFFICE?

16 A YES, WE DO.

17 Q SHE, THIS BECAME HER CASE RATHER THAN,
18 RATHER THAN YOURS?

19 A RIGHT, BECAUSE SHE WORKED THE WHOLE FAMILY.

20 Q OKAY, WHICH MEANT SHE WOULD HAVE HAD SOME
21 COMMUNICATION WITH THE MOTHER?

22 A RIGHT, AND I WAS IN THE SCHOOL JUST DEALING
23 WITH **VICTIM** BUT ONCE THE CASE WAS TRANSFERRED TO HER SHE
24 WORKED WITH **VICTIM** AND HIS MOM.

25 MR. BARR: OKAY, THANK YOU SO MUCH.

1 THE COURT: REDIRECT?

2 MS. LIVELY: JUST ONE QUESTION.

3 REDIRECT EXAMINATION

4 BY MS. LIVELY:

5 Q MS. BROWN, MR. BARR ASKED YOU ABOUT WHY YOU
6 DIDN'T REPORT THIS TO LAW ENFORCEMENT. UNLESS YOU FEEL
7 THAT THE CHILD IS GOING HOME TO A DANGEROUS SITUATION DO
8 YOU HAVE A DUTY TO REPORT?

9 A WE DON'T, AND THAT'S WHY I SAY HIS FATHER
10 WASN'T IN THE HOME WITH HIM AT THE TIME.

11 Q OKAY, AND THAT'S WHY YOU DIDN'T REPORT IT?

12 A THAT'S WHY.

13 MS. LIVELY: OKAY, THANK YOU, THAT'S ALL THE
14 QUESTIONS I HAVE FOR THIS WITNESS, YOUR HONOR.

15 THE COURT: ANYTHING ON THAT PARTICULAR
16 QUESTION, MR. BARR?

17 MR. BARR: NO, SIR.

18 THE COURT: ALL RIGHT, VERY GOOD, YOU MAY STEP
19 DOWN. DO YOU WISH THE WITNESS TO BE EXCUSED?

20 MS. LIVELY: PLEASE, YOUR HONOR.

21 THE COURT: ANY OBJECTION, MR. BARR?

22 MR. BARR: NONE, YOUR HONOR,

23 THE COURT: ALL RIGHT, MA'AM, YOU'RE EXCUSED,
24 RELEASED FROM SUBPOENA. YOU MAY GO BACK TO YOUR REGULAR
25 DUTIES. ALL RIGHT, SOLICITOR, YOU NEXT WITNESS, PLEASE,

VICTIM [REDACTED] [REDACTED] [REDACTED] - DIRECT EXAM. BY MS. LIVELY

101

1 MA'AM.

2 MS. LIVELY: YES, SIR, YOUR HONOR, THE STATE
3 CALLS **VICTIM** [REDACTED] [REDACTED]

4 THE COURT: ALL RIGHT, SIR, IF YOU'D COME ALL
5 THE WAY UP TO HERE WHERE THE BAILIFF IS, PLEASE, SIR.

6 **VICTIM** [REDACTED] [REDACTED] [REDACTED]

7 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

8 THE CLERK: THANK YOU, PLEASE BE SEATED AND
9 STATE YOUR NAME FOR THE RECORD.

10 THE COURT: ALL RIGHT, SOLICITOR.

11 **DIRECT EXAMINATION**

12 BY MS. LIVELY:

13 Q **VICTIM** PUT YOUR FULL NAME INTO THE RECORD
14 FOR US.

15 A **VICTIM** [REDACTED] [REDACTED] [REDACTED]

16 Q **VICTIM** HOW OLD ARE YOU?

17 A SIXTEEN.

18 Q WHERE DO YOU GO TO SCHOOL?

19 A I'M HOME BOUND.

20 Q I'M SORRY?

21 A I'M HOME BOUND.

22 Q YOU'RE HOME BOUND, OKAY. WHERE DID YOU GO
23 TO SCHOOL BEFORE YOU BECAME HOME BOUND?

24 A GEORGETOWN HIGH SCHOOL.

25 Q YOU SAID YOU'RE 16?

VICTIM [REDACTED] - DIRECT EXAM. BY MS. LIVELY

102

1 A YES, MA'AM.

2 Q COULD YOU TELL US THE NAME OF YOUR PARENTS?

3 A KIMBERLY HEWITT AND STEVEN LEE HEWITT, SR.

4 Q AND IS YOUR FATHER THE DEFENDANT IN THIS
5 CASE?

6 A YES, MA'AM.

7 Q NOW, VICTIM WHERE ARE YOU LIVING RIGHT
8 NOW?

9 A WITH HOPE AND STEVE SMITH.

10 Q HOPE AND STEVE SMITH?

11 A YES, MA'AM.

12 Q OKAY, AND THEY'RE HERE WITH YOU IN THE
13 COURTROOM TODAY, CORRECT?

14 A YES, MA'AM.

15 Q NOW, VICTIM HOW MUCH CONTACT HAVE YOU HAD
16 WITH YOUR BIOLOGICAL FATHER, THE DEFENDANT?

17 A NOT MUCH, EXCEPT MOSTLY WHEN I WAS LITTLE.

18 Q MOSTLY WHEN YOU WERE LITTLE?

19 A YES, MA'AM.

20 Q OKAY, JUST TRY TO SPEAK UP A LITTLE BIT,
21 OKAY?

22 A YES, MA'AM.

23 Q SO THE JURY CAN HEAR YOU, NOW ABOUT HOW OLD
24 WERE YOU WHEN YOU WERE LITTLE DID YOU HAVE CONTACT WITH
25 YOUR FATHER, THE DEFENDANT?

VICTIM [REDACTED] - DIRECT EXAM. BY MS. LIVELY 103

1 A LIKE SEVEN AND EIGHT, IT WAS AROUND THERE
2 SIX, SEVEN, EIGHT, JUST FOR A LITTLE WHILE ON AND OFF.

3 Q ON AND OFF? NOW, VICTIM DO YOU RECALL THE
4 FALL OF 2001?

5 A YES, MA'AM, YES, MA'AM.

6 Q AND IN THE FALL OF 2001 DID YOU HAVE THE
7 OPPORTUNITY TO SPEND SOME TIME WITH YOUR FATHER?

8 A YES, MA'AM.

9 Q WHERE DID YOU SPEND TIME WITH YOUR FATHER?

10 A AT MY GRANDMA REDDICK'S HOUSE.

11 Q YOUR GRANDMA REDDICK'S HOUSE?

12 A YES, MA'AM.

13 Q IS THAT IN GEORGETOWN COUNTY?

14 A YES, MA'AM.

15 Q AND WHEN YOU SPENT TIME WITH YOUR FATHER
16 THERE ABOUT HOW LONG OF A PERIOD OF TIME DID YOU HAVE TO
17 ACTUALLY STAY WITH HIM AT YOUR GRANDMA REDDICK'S?

18 A YOU MEAN LIKE, WELL IT WAS ON THE WEEKENDS.

19 Q IT WAS ON WEEKEND?

20 A YES, MA'AM.

21 Q OKAY, WHEN YOU WOULD SPEND TIME AT YOUR
22 GRANDMA REDDICK'S AND YOUR DAD WAS THERE ON WEEKEND WHO
23 ELSE WOULD BE IN THE HOME?

24 A MY GRANDMA REDDICK AND SOMETIMES MY UNCLE
25 DAVID.

VICTIM [REDACTED] - DIRECT EXAM. BY MS. LIVELY

104

1 Q HOW OLD WAS YOUR GRANDMA REDDICK?

2 A SHE WAS IN HER, SHE WAS OLD, SHE WAS LIKE
3 IN HER 80'S. SHE WAS AN OLDER WOMAN.

4 Q OKAY, SHE WAS OLDER, AND HOW ABOUT YOUR
5 UNCLE DAVID?

6 A I DON'T KNOW, HE WAS PROBABLY 40 OR 50. I
7 DON'T KNOW HOW OLD HE WAS.

8 Q OKAY, NOW DO YOU REMEMBER THAT HOUSE PRETTY
9 WELL?

10 A YES, MA'AM.

11 Q AND IF I SHOWED YOU, AND ACTUALLY HAVE I
12 SHOWN YOU A LAYOUT THAT WAS DONE BY INVESTIGATOR BROWN
13 REGARDING THE HOUSE ITSELF?

14 A YES, MA'AM.

15 Q AND THE LAYOUT THAT I SHOWED YOU WERE YOU
16 ABLE TO LABEL THE ROOMS?

17 A YES, MA'AM.

18 Q WAS IT AN ACCURATE REFLECTION OF WHAT THE
19 HOMES LAYOUT WAS FROM THE TIME WHEN YOU WERE THERE IN THE
20 FALL OF 2001?

21 A YES, MA'AM.

22 Q SO BASED ON THAT DOCUMENT, THE PICTURE THAT
23 I SHOWED YOU WOULD YOU BE ABLE TO ACTUALLY LOOK AT THAT AND
24 LABEL THE ROOMS FOR THIS JURY TO SHOW THE JURY WHAT THAT
25 HOME WAS SET UP LIKE?

VICTIM [REDACTED] - DIRECT EXAM. BY MS. LIVELY

105

1 A YES, MA'AM.

2 Q I'M GOING TO SHOW YOU, WELL LET ME BACK UP
3 FOR A MINUTE. LET ME SHOW YOU STATE'S EXHIBIT NUMBER 1, 2,
4 AND 3, THESE ARE FOR IDENTIFICATION. I WANT YOU TO LOOK AT
5 THESE AND TELL THE JURY IF YOU RECOGNIZE THE HOME THAT IS
6 IN THESE PICTURES, OKAY?

7 A YES, MA'AM.

8 Q ALL RIGHT, IF YOU'LL LOOK AT EACH ONE OF
9 THEM, NUMBER 1.

10 A YES, MA'AM.

11 Q WHAT IS THAT=

12 A THAT'S MY GRANDMA REDDICK'S HOUSE.

13 Q THAT'S YOUR GRANDMA REDDICK'S HOUSE?

14 A YES, MA'AM.

15 Q OKAY, NUMBER 2?

16 A YES, MA'AM, THAT'S MY GRANDMA REDDICK'S
17 HOUSE.

18 Q THAT'S ALSO YOUR GRANDMA REDDICK'S HOUSE;
19 NUMBER 3?

20 A YES, MA'AM, THAT'S HER HOUSE AND HER BARN.

21 Q HER HOUSE AND HER BARN?

22 A YES, MA'AM, THAT'S AT GRANDMA REDDICK'S
23 HOUSE.

24 Q NOW THOSE PICTURES WERE TAKEN RECENTLY DO
25 THEY STILL ACCURATELY REFLECT WHAT THE HOME AND THE YARD

VICTIM [REDACTED] - DIRECT EXAM. BY MS. LIVELY

106

1 LOOKED LIKE AT THE TIME IN 2001?

2 A YES, MA'AM, BESIDES THE BARN WAS GREEN.

3 Q THE BARN WAS GREEN?

4 A THAT'S THE ONLY DIFFERENCE, YES, MA'AM.

5 Q OKAY, BUT WAS THE BARN THERE IN 2001?

6 A YES, MA'AM.

7 Q OKAY, ALL RIGHT.

8 MS. LIVELY: YOUR HONOR, AT THIS TIME THE STATE
9 WOULD MOVE TO INTRODUCE STATE'S 1 THROUGH 3 INTO EVIDENCE.

10 THE COURT: ANY OBJECTION?

11 MR. BARR: YES, YOUR HONOR.

12 THE COURT: GROUNDS?

13 MR. BARR: YOUR HONOR, AGAIN IT'S BEEN TESTIFIED
14 TO THAT THE BOTH DRAWING AND PICTURES WERE TAKEN AND SHOWN
15 TO THE ALLEGED VICTIM PRIOR TO THE TESTIMONY HERE TODAY. I
16 DON'T KNOW THAT THE VICTIM WOULD HAVE MADE AN INDEPENDENT
17 RECOUNT OF THIS OTHER THAN BEING SUBJECTED BY THE
18 PROSECUTOR.

19 THE COURT: ALL RIGHT, I'M GOING TO OVERRULE
20 OBJECTIONS AND ALLOW STATE'S 1 THROUGH 3 INTO EVIDENCE OVER
21 THE OBJECTIONS OF THE DEFENSE, YOU MAY PROCEED.

22 MS. LIVELY: THANK YOU, YOUR HONOR.

23 (WHEREUPON, STATE'S EXHIBITS NUMBERS 1, 2, AND 3
24 ENTERED INTO EVIDENCE.)

25 MS. LIVELY: THANK YOU, YOUR HONOR. YOUR HONOR,

VICTIM [REDACTED] [REDACTED] [REDACTED] - DIRECT EXAM. BY MS. LIVELY

107

1 I ASK THAT I BE ALLOWED TO PUBLISH THOSE TO THE JURY AT
2 THIS TIME.

3 THE COURT: YOU MAY DO SO.

4 MS. LIVELY: ONE THROUGH 3, THEY SHOULD COME UP
5 ON YOUR SCREEN, LADIES AND GENTLEMEN.

6 MS. LIVELY: (CONTINUING)

7 Q OKAY, AND ONCE AGAIN NUMBER 1, **VICTIM**

8 A YES, MA'AM, THAT'S MY GRANDMA REDDICK'S
9 HOUSE.

10 Q THAT'S THE FRONT OF THE HOUSE?

11 A YES, MA'AM.

12 Q OKAY, AND THEN 2?

13 A YES, MA'AM, THAT'S THE FRONT OF THE HOUSE.

14 Q THIS IS ALSO THE FRONT?

15 A THAT'S MY GRANDMA REDDICK'S HOUSE, YES,
16 MA'AM.

17 Q OKAY, THAT'S IT?

18 A YES, MA'AM.

19 Q AND THEN NUMBER 3?

20 A YES, MA'AM, THAT'S MY GRANDMA REDDICK'S
21 HOUSE AND HER BARN.

22 Q WHICH IS NOW RED?

23 A YES, MA'AM.

24 Q ALL RIGHT, NOW, **VICTIM** I ASKED YOU THIS
25 ALREADY AND I'LL JUST GET BACK TO IT, YOU HAD AN

VICTIM - DIRECT EXAM. BY MS. LIVELY

108

1 OPPORTUNITY TO LOOK AT A DIAGRAM OF THE INTERIOR OF THE
2 HOME; IS THAT CORRECT?

3 A YES, MA'AM.

4 Q ALL RIGHT, AND YOU WERE ABLE TO LABEL THAT;
5 IS THAT STILL YOUR TESTIMONY?

6 A YES, MA'AM.

7 Q OKAY, I'M GOING TO SHOW YOU THEN WHAT HAS
8 BEEN MARKED FOR IDENTIFICATION PURPOSES ONLY STATE'S
9 EXHIBIT NUMBER 4 AND ASK YOU IF THAT IS A DIAGRAM OF THE
10 HOME THAT YOU REVIEWED?

11 A YES, MA'AM.

12 Q OKAY, IS IT AN ACCURATE REFLECTION OF THE
13 HOME WHEN YOU STAYED THERE IN 2001?

14 A YES, MA'AM.

15 Q HAVE ANY OF THE ROOMS BEEN ALTERED OR
16 CHANGED IN ANY WAY?

17 A NO, MA'AM.

18 MS. LIVELY: YOUR HONOR, AT THIS TIME THE STATE
19 WOULD MOVE TO INTRODUCE STATE'S EXHIBIT NUMBER 4 INTO
20 EVIDENCE.

21 THE COURT: IS THAT THE SAME OBJECTION, MR.
22 BARR?

23 MR. BARR: YES, SIR, AND ADDITIONALLY, YOUR
24 HONOR, THE REASON WE'RE OBJECTING CAUSE WE FEEL AS IF IT'S
25 MORE PREJUDICIAL THAN IT IS PROBATIVE. I BELIEVE THE STATE

VICTIM [REDACTED] [REDACTED] [REDACTED] - DIRECT EXAM. BY MS. LIVELY 109

1 COULD HAVE HAD THE VICTIM DRAW THE DIAGRAM AS OPPOSED TO
2 THEM DRAWING THE DIAGRAM AND THEN SUGGESTING TO HIM, ASKING
3 HIM WHETHER OR NOT HE COULD POINT OUT THINGS ON THE DIAGRAM
4 ---

5 THE COURT: THAT'S THE SAME OBJECTION.

6 MR. BARR: IT MAY BE BUT ---

7 THE COURT: I OVERRULE YOUR OBJECTION, MR. BARR,
8 THANK YOU. I'M GOING TO ALLOW IT INTO EVIDENCE, STATE'S 4
9 IS IN EVIDENCE WITHOUT OBJECTION, THANK YOU.

10 MS. LIVELY: THANK YOU, YOUR HONOR.

11 THE COURT: I MEAN OVER THE OBJECTION OF
12 DEFENSE, I'M SORRY.

13 MS. LIVELY: THANK YOU, YOUR HONOR.

14 (WHEREUPON, STATE'S EXHIBIT NUMBER 4 ENTERED INTO
15 EVIDENCE.)

16 MS. LIVELY: AND I MAY NEED SOME ASSISTANCE.

17 Q (CONTINUING) SO, **VICTIM** THIS DIAGRAM IS A
18 DIAGRAM OF YOUR GRANDMA REDDICK'S HOUSE?

19 A YES, MA'AM.

20 Q THAT WAS A LONG TIME AGO, HOW DO YOU
21 REMEMBER THAT?

22 A I HAVE A GOOD MEMORY.

23 Q YOU HAVE A GOOD MEMORY?

24 A YES, MA'AM.

25 MS. LIVELY: YOUR HONOR, MAY I ASK THIS WITNESS

VICTIM [REDACTED] - DIRECT EXAM. BY MS. LIVELY

110

1 TO STEP DOWN AND WE'LL TRY TO STAND IN FRONT OF A
2 MICROPHONE FOR THE PURPOSES OF THE COURT REPORTER?

3 THE COURT: I'LL ALLOW HIM TO DO SO BUT JUST
4 NEED TO MAKE SURE YOU KEEP YOUR VOICE UP, OKAY.

5 THE WITNESS: YES, SIR.

6 THE COURT: THANK YOU VERY MUCH. AND, MR. BARR,
7 IF YOU NEED TO MOVE YOU'RE WELCOME TO DO SO, SIR.

8 MR. BARR: YES, SIR, THANK YOU.

9 MS. LIVELY: (CONTINUING)

10 Q YOU NEED TO MAKE SURE YOU SPEAK INTO THIS
11 MICROPHONE, OKAY?

12 A YES, MA'AM.

13 Q ALL RIGHT, CAN YOU HEAR ME FROM THE -- I'M
14 GOING TO LET YOU WRITE ON THIS, **VICTIM** OKAY?

15 A YES, MA'AM.

16 Q ALL RIGHT, PLEASE TELL THE JURY --

17 MS. LIVELY: CAN YOU GUYS HEAR OKAY WITH HIS
18 BACK TO YOU?

19 Q (CONTINUING) PLEASE TELL THE JURY THE
20 LAYOUT OF THE HOME IN REGARDS TO WHERE PEOPLE'S ROOMS WERE
21 AND WHERE YOU WOULD STAY, JUST START WHEREVER IS
22 COMFORTABLE FOR YOU?

23 A YES, MA'AM. THIS IS MY AND MY DAD'S ROOM
24 RIGHT HERE.

25 Q OKAY, HOLD ON JUST A SECOND, WHAT WAS IN

VICTIM [REDACTED] [REDACTED] [REDACTED] - DIRECT EXAM. BY MS. LIVELY

111

1 THAT ROOM, VICTIM

2 A THERE WAS A HOSPITAL BED AND A DESK AND A
3 CLOSET AND A PANTRY.

4 Q OKAY, DID YOU HEAR THAT? NO? SPEAK UP
5 LOUD.

6 A THERE WAS A HOSPITAL BED AND A DESK AND
7 CLOSET AND PANTRY.

8 Q OKAY, THANK YOU. ALL RIGHT, NOW TELL THE
9 JURY WHAT THIS ROOM WAS NEXT TO YOUR FATHER AND YOURSELF?

10 A IT WAS LIKE A LIVING ROOM, IT HAD LIKE OLD
11 PICTURES OF MY GRANDDAD. I ALWAYS THOUGHT LIKE A MEMORIAL
12 ROOM OR SOMETHING.

13 Q A MEMORIAL ROOM?

14 A YES, MA'AM.

15 Q OKAY, WILL YOU WRITE THAT, PLEASE?

16 (WHEREUPON, THE WITNESS COMPLIES.)

17 MS. LIVELY: (CONTINUING)

18 Q ALL RIGHT, SO THAT WAS THE MEMORIAL ROOM
19 BUNCH OF PICTURES OF YOUR GRANDDAD. OKAY, NOW WILL YOU,
20 PLEASE, TELL THE JURY WHAT THIS ROOM WAS HERE ON THE OTHER
21 SIDE OF THE HALL?

22 A IT WAS MY UNCLE DAVID'S ROOM.

23 Q OKAY, UNCLE DAVID'S ROOM?

24 A UNCLE DAVID'S ROOM.

25 Q OKAY, ALL RIGHT, NOW LOUDLY WHOSE ROOM, IF

VICTIM [REDACTED] - DIRECT EXAM. BY MS. LIVELY

112

1 ANYBODY'S, WAS THIS ONE?

2 A THAT WAS MY GRANDMA REDDICK'S ROOM.

3 Q GRANDMA REDDICK'S ROOM. OKAY, WOULD YOU
4 WRITE THAT?

5 (WHEREUPON, THE WITNESS COMPLIES.)

6 MS. LIVELY: (CONTINUING)

7 Q ALL RIGHT, NOW TELL THE JURY WHAT THE
8 REMAINING ROOMS IN THE HOUSE WERE?

9 A THIS WAS LIKE A T.V. ROOM.

10 Q OKAY, LOUDLY.

11 A THIS WAS LIKE A T.V. ROOM RIGHT HERE. THIS
12 WAS THE BACK PORCH; IT WAS SCREENED IN.

13 Q OKAY, BACK PORCH?

14 A YES, MA'AM.

15 MS. LIVELY: DID YOU HEAR THAT, BRENDA, OKAY.

16 Q (CONTINUING) ALL RIGHT --

17 A THIS WAS THE BATHROOM, GUEST BATHROOM.

18 Q GUEST BATHROOM, OKAY?

19 A AND THIS WAS THE KITCHEN.

20 Q KITCHEN, COULD YOU WRITE THAT FOR ME?

21 A AND THIS WAS LIKE A DINING ROOM.

22 Q OKAY, AND ONCE AGAIN NONE OF THIS HAS
23 CHANGED SINCE 2001 FROM THIS, WHAT YOU'RE LOOKING AT IN
24 THIS DIAGRAM?

25 A NO, MA'AM, THE BARN WAS PAINTED BUT THIS

VICTIM [REDACTED] [REDACTED] [REDACTED] - DIRECT EXAM. BY MS. LIVELY

113

1 ALL LOOKS THE SAME.

2 Q OKAY, ALL RIGHT, YOU CAN HAVE A SEAT, OKAY.
3 NOW, **VICTIM** WHEN YOU WERE IN THE HOUSE WHERE WERE THE
4 PLACES THAT YOU WOULD SLEEP?

5 A WE'D SLEEP EITHER IN MINE AND MY DAD'S ROOM
6 OR WE'D SLEEP IN HERE IN THE T.V. ROOM.

7 Q IN THE T.V. ROOM, SO ONE OF THOSE TWO
8 ROOMS?

9 A YES, MA'AM.

10 Q AND GRANDMA REDDICK WOULD BE IN HERE?

11 A YES, MA'AM.

12 Q DID SHE HAVE ANY ISSUES WITH HEARING OR
13 SEEING?

14 A NOT THAT I KNOW OF. I JUST KNOW IT WAS
15 REALLY FOR WHEN I TALKED TO HER FOR HER TO HEAR ME. I'D
16 HAVE TO SAY, REPEAT MYSELF BUT I DON'T KNOW IF SHE HAD
17 HEARING PROBLEMS, I JUST KNOW IT WAS JUST HARD FOR HER TO
18 HEAR ME.

19 Q OKAY, HOW OLD WERE YOU AT THAT TIME,

20 **VICTIM**

21 A LIKE SEVEN OR EIGHT.

22 Q OKAY --

23 A YES, MA'AM.

24 Q ALL RIGHT, NOW, **VICTIM** WHEN YOU WERE THERE
25 IN THE FALL OF 2001 TELL THIS JURY SOMETHING THAT YOU WOULD

VICTIM [REDACTED] - DIRECT EXAM. BY MS. LIVELY

114

1 DO WITH YOUR FATHER DURING THE DAY; WHAT TYPE OF ACTIVITY?

2 A WE WOULD LIKE WORK ON CARS. I REMEMBER WE
3 USED TO BOND, WE BONDOED??? TRUCKS AND STUFF, JUST WORKED
4 OUT IN THE YARD.

5 Q AND HOW DID YOU FEEL ABOUT YOUR FATHER?

6 A I LOVED HIM, I STILL DO.

7 Q IT'S OKAY, WAS THERE ANY PART OF THAT TIME
8 THAT YOU SPENT WITH YOUR FATHER NOT GOOD?

9 A YES, MA'AM.

10 Q WOULD YOU, PLEASE, TELL THIS JURY WHAT
11 HAPPENED WHEN YOU STAYED AT YOUR GRANDMA REDDICK'S HOUSE IN
12 2001?

13 A I WAS MOLESTED WHEN I WOULD STAY THERE --

14 Q ALL RIGHT, OKAY, TELL THE JURY WHAT TIME OF
15 DAY OR NIGHT THAT THIS HAPPENED?

16 A IT HAPPENED IN THE MIDDLE OF THE NIGHT JUST
17 AFTER I'D FALL ASLEEP I WOULD WAKE BACK UP.

18 Q OKAY, SO YOU WOULD BE ASLEEP AND YOU'D WAKE
19 BACK UP?

20 A YES, MA'AM.

21 Q WHAT WOKE YOU UP, VICTIM

22 A MY DAD ONE TIME HE WAS, HE WAS PERFORMING
23 ORAL SEX WHEN I WOKE UP AND HE, HE KNEW WHEN I WOULD WAKE
24 UP AND THEN --

25 Q SO DID HE SAY ANYTHING TO YOU WHEN YOU

VICTIM **VIC** [REDACTED] - DIRECT EXAM. BY MS. LIVELY

115

1 WOULD WAKE UP, **VICTIM**

2 A YES, MA'AM.

3 Q WHAT DID HE SAY TO YOU WHEN YOU WOKE UP?

4 A HE TOLD ME NOT TO SAY ANYTHING OR DAD WOULD
5 GET IN TROUBLE AND HE'D GET SENT AWAY.

6 Q IT'S OKAY, HE SAID DON'T TELL ANYBODY OR
7 DAD WILL GET IN TROUBLE?

8 A YES, MA'AM, AND HE'D GET SENT AWAY.

9 Q GET SENT AWAY. HOW DID YOU FEEL AS A
10 CHILD?

11 A I WAS JUST CONFUSED.

12 Q DID HE TELL YOU ANYTHING ELSE?

13 A YES, MA'AM, HE TOLD ME HE WOULD BUY ME LIKE
14 LITTLE TOY TRUCKS AND STUFF NOT TO SAY NOTHING.

15 Q OKAY, OKAY, AND DID THIS OCCUR IN THE FALL
16 OF 2001?

17 A YES, MA'AM.

18 Q WAS THERE, AND WHEN THAT OCCURRED, **VICTIM**
19 I'M SORRY, I HAVE TO ASK YOU, WHERE WERE YOU WHEN THAT,
20 WHEN HE PERFORMED ORAL SEX ON YOU?

21 A IN ME AND MY DAD'S ROOM.

22 Q IN THIS BEDROOM HERE?

23 A YES, MA'AM.

24 Q OKAY, AND WAS ANYBODY ELSE IN THE ROOM WITH
25 YOU?

VICTIM - DIRECT EXAM. BY MS. LIVELY

116

1 A NO, MA'AM.

2 Q WHY DIDN'T YOU TELL ANYBODY THAT HE HAD
3 MOLESTED YOU?

4 A BECAUSE I WAS CONFUSED AND I JUST, I
5 LISTENED TO HIM WHEN HE TOLD ME NOT TO SAY NOTHING.

6 Q ALL RIGHT NOW, **VICTIM** WAS THERE, WERE
7 THERE ANY OTHER INCIDENTS OR INCIDENT THAT OCCURRED WITH
8 YOUR FATHER?

9 A YES, MA'AM.

10 Q PLEASE TELL THIS JURY ABOUT THE OTHER
11 INCIDENT?

12 A I WAS, I FELL ASLEEP ON THE FLOOR IN THE
13 T.V. ROOM. WE WERE, WE FELL ASLEEP WATCHING T.V. AND MY
14 DAD WAS ON THE COUCH AND I WAS ON THE FLOOR AND HE, WHEN I
15 WOKE UP I WAS ON THE COUCH AND I DIDN'T HAVE UNDERWEAR ON
16 AND HE WAS PUTTING HIS, HIS PENIS INTO MY ANAL AREA AND I
17 JUST TRIED TO ACT LIKE I WAS KIND OF SLEEPING.

18 Q I'M SORRY, **VICTIM** WHAT WAS THAT?

19 A I WAS TRYING TO ACT LIKE I WAS STILL
20 SLEEPING.

21 Q AT ANY TIME DID HE OR DID YOU KNOW HE
22 REALIZED YOU WERE AWAKE?

23 A YES, MA'AM.

24 Q WHAT HAPPENED?

25 A HE GOT UP AND HE PUT HIS, HE PUT HIS

VICTIM [REDACTED] [REDACTED] [REDACTED] - DIRECT EXAM. BY MS. LIVELY 117

1 CLOTHES ON AND HE JUST, HE TOLD ME THE SAME THING THAT IF I
2 EVER TOLD ANYBODY THAT HE WOULD GET SENT AWAY FOR A LONG
3 TIME.

4 Q DID HE TELL YOU ANYTHING ELSE?

5 A YES, MA'AM, HE OFFERED AGAIN THERE WAS
6 THESE LITTLE TOY TRUCKS THAT HAD TRAILERS ON THEM. I USED
7 TO LIKE PLAYING WITH THEM, AND HE GOT ME ONE.

8 Q HE BOUGHT YOU ANOTHER TOY TRUCK WITH A
9 TRAILER?

10 A YES, MA'AM.

11 Q VICTIM I HAVE TO ASK YOU A HARD QUESTION,
12 OKAY?

13 A YES, MA'AM.

14 Q WHEN YOU SAID THAT HE PUT HIS PENIS IN YOUR
15 ANAL AREA DO YOU REMEMBER FEELING IF IT WENT INSIDE OR NOT?

16 A YES, MA'AM, IT DID A LITTLE BIT. I JUST
17 REMEMBER I KIND OF JERKED AWAY ACTING LIKE I WAS STILL
18 SLEEPING.

19 Q AND HOW DID IT FEEL?

20 A UNCOMFORTABLE AND THEN IT HURT, IT DIDN'T
21 FEEL GOOD.

22 Q IT HURT, IT DIDN'T FEEL GOOD?

23 A NO, MA'AM.

24 Q NOW SO HE BOUGHT YOU A LITTLE TOY TRUCK?

25 A YES, MA'AM.

VICTIM [REDACTED] - DIRECT EXAM. BY MS. LIVELY

118

1 Q SO DID YOU TELL ANYBODY THIS HAD HAPPENED
2 TO YOU?

3 A NOT FOR A LONG TIME.

4 Q AND WHY?

5 A I JUST DIDN'T WANT PEOPLE TO THINK
6 DIFFERENT OF ME.

7 Q YOU DIDN'T WANT PEOPLE TO THINK WHAT?

8 A LIKE TO THINK DIFFERENT OF ME. I DIDN'T, I
9 JUST DIDN'T SAY ANYTHING CAUSE AT FIRST HE TOLD ME NOT TO
10 AND I THOUGHT ABOUT IT AND THEN I WAS THINKING THAT I JUST
11 DIDN'T WANT, I DIDN'T WANT ANYTHING TO HAPPEN TO HIM AND I
12 DIDN'T WANT ANYBODY TO THINK DIFFERENT OF ME.

13 Q OKAY, AND HOW HAVE YOU BEEN ABLE TO DEAL
14 WITH THAT OVER THE YEARS?

15 A I'VE TOOK IT DIFFERENT WAYS. I WOULD GET
16 IN TROUBLE AND I WOULD JUST, I'D JUST ACT LIKE I DIDN'T
17 LIKE AUTHORITY BECAUSE I JUST, I JUST TOOK IT A WHOLE BUNCH
18 OF DIFFERENT WAYS.

19 Q OKAY, NOW OTHER THAN THAT TIME THAT YOU
20 STAYED THERE WITH YOUR DAD AT YOUR GRANDMA REDDICK'S HOUSE
21 HAVE YOU HAD CONTACT WITH HIM OVER THE YEARS AFTER THAT?

22 A YES, MA'AM, ONE TIME I GOT A LETTER. I
23 WENT OVER TO MY AUNT MAE'S HOUSE AND HE HAD SENT ME A
24 LETTER AND I RESPONDED TO HIS LETTER AND THAT'S THE ONLY
25 TIME I HAD TALKED TO HIM. I HAVE NOT SEEN HIM IN PUBLIC, I

VICTIM **VIC** [REDACTED] [REDACTED] - DIRECT EXAM. BY MS. LIVELY

119

1 HAVE NOT SEEN HIM ANYWHERE.

2 Q YOU HAVEN'T SEEN HIM IN PUBLIC, YOU HAVEN'T
3 SEEN HIM ANYWHERE?

4 A NO, MA'AM.

5 Q AND NOW, **VICTIM** LET ME JUST ASK YOU JUST A
6 COUPLE OF THINGS JUST TO GO BACK. WHEN YOU WERE IN THE
7 HOME AND THESE ASSAULTS THAT YOU'RE TESTIFYING TO TOOK
8 PLACE DO YOU RECALL WHAT YOU WERE WEARING?

9 A YES, MA'AM.

10 Q WHAT WERE YOU WEARING?

11 A MOST OF THE TIME I'D GO TO BED IN JUST LIKE
12 A WHITE TEE SHIRT TO MY PAJAMA PANTS. I'D JUST, MOST OF
13 THE TIME IT WAS JUST ONE OF HIS BIG WHITE TEE SHIRTS.

14 Q OKAY, AND WHEN YOU WOULD WAKE UP TO HIM
15 WHAT WOULD YOU HAVE ON?

16 A SOMETIMES NOTHING, SOMETIMES JUST A TEE
17 SHIRT.

18 Q SO HAD YOU REMOVED YOUR UNDERWEAR?

19 A NO, MA'AM.

20 Q AND YOU SAID YOU DIDN'T TELL ANYBODY SO YOU
21 NEVER TOLD YOUR GRANDMA REDDICK?

22 A NO, MA'AM. I JUST, I DIDN'T WANT TO UPSET
23 ANYBODY. MY GRANDMA REDDICK I LOVED HER TO DEATH AND I
24 JUST I DIDN'T WANT TO, I DIDN'T WANT ANYBODY TO THINK
25 DIFFERENT OF ME BECAUSE THIS IS I'M HER BOY AND IT DON'T

VICTIM VIC [REDACTED] [REDACTED] - DIRECT EXAM. BY MS. LIVELY 120

1 REALLY, BOYS JUST DON'T COME OUT AND TALK ABOUT THAT AND I
2 JUST DIDN'T EVER THINK IT WAS RIGHT AND AFTER I HAD STARTED
3 TALKING ABOUT IT A LITTLE BIT MORE THEN I FINALLY SAID
4 SOMETHING.

5 Q DO YOU REMEMBER THE FIRST PERSON THAT YOU
6 TOLD THAT THIS HAD HAPPENED TO YOU; WHO WAS THAT, VICTIM

7 A IT WAS MS. HOPE.

8 Q MS. HOPE SMITH?

9 A YES, MA'AM.

10 Q ARE YOU LIVING WITH MS. HOPE SMITH RIGHT
11 NOW?

12 A YES, MA'AM.

13 Q HOW MANY TIMES HAVE YOU LIVED WITH HER IN
14 YOUR LIFETIME; DO YOU RECALL?

15 A TWICE.

16 Q AND HOW DO YOU FEEL LIVING WITH HER?

17 A I LIKE IT, IT'S STABLE. I LIKE STAYING
18 WITH HER. I DON'T HAVE TO WORRY ABOUT A LOT OF STUFF.

19 Q WELL TELL THE JURY THE FIRST TIME WHENEVER
20 YOU TOLD MS. HOPE WHAT HAD HAPPENED; HOW DID THAT COME
21 ABOUT?

22 A WE WERE OUTSIDE SETTING ON HER PORCH AND IT
23 WAS LIKE APRIL CAUSE I REMEMBER IT WAS HOT OUTSIDE AND WE
24 WERE OUTSIDE SITTING ON THE PORCH AND WE WERE JUST TALKING
25 AND I, WE GOT ON THE SUBJECT SOMEHOW, I CAN'T REMEMBER, AND

VICTIM [REDACTED] [REDACTED] [REDACTED] - DIRECT EXAM. BY MS. LIVELY 121

1 I TOLD HER THAT IT HAD HAPPENED TO ME BUT I TRUSTED IN HER
2 THAT SHE WOULD NEVER SAY ANYTHING AND SHE DIDN'T BECAUSE
3 SHE IS MY YOUTH PASTOR AND SHE'S ALSO BEEN A FRIEND OF MY
4 FAMILY FOREVER. SHE'S LIKE MY SECOND MOM.

5 Q SO YOU TRUSTED HER?

6 A YES, MA'AM.

7 Q AND WHY DID YOU ASK HER NOT TO TELL
8 ANYBODY, **VICTIM**

9 A JUST, I DIDN'T WANT ANYBODY TO THINK
10 DIFFERENT ABOUT ME, DIDN'T WANT EVERYBODY KNOWING THAT THIS
11 HAPPENED TO ME. I DIDN'T THINK THAT I WAS JUST, I HAD A
12 REPUTATION, I JUST HAD, IT WAS JUST, I THOUGHT THAT WOULD
13 BE THE RIGHT THING TO DO.

14 Q AND HOW OLD WERE YOU WHEN YOU TOLD MS.
15 HOPE?

16 A I WAS LIKE 12, I CAN'T REMEMBER, SOMEWHERE
17 AROUND THERE. I WAS IN THE 7TH GRADE.

18 Q AND WERE YOU IN COUNSELING AT THE TIME THAT
19 YOU HAD TOLD MS. HOPE?

20 A NO, MA'AM, I DON'T THINK I WAS, I CAN'T
21 REMEMBER.

22 Q OKAY, NOW WHEN YOU TOLD MS. HOPE ABOUT IT
23 AND YOU ASKED HER NOT TO SAY ANYTHING DID YOU EVEN YOU
24 MENTION ANYTHING TO YOUR MOTHER AT THAT POINT?

25 A NO, MA'AM, MY MOM WAS THE LAST PERSON TO

VICTIM [REDACTED] - DIRECT EXAM. BY MS. LIVELY

122

1 FIND OUT, I DID NOT WANT TO TELL HER.

2 Q AFTER YOU TOLD MS. HOPE, WELL WAIT A
3 MINUTE. BEFORE YOU TOLD MS. HOPE WHAT WERE YOUR FRIENDS
4 LIKE IN SCHOOL AND HOW WERE YOU DOING IN SCHOOL AT THAT
5 TIME?

6 A I WAS DOING, I THINK I WAS DOING GOOD IN
7 SCHOOL. I ALWAYS DO GOOD IN SCHOOL WHEN I STAY WITH HER.

8 Q OKAY, SO YOU ALWAYS DO GOOD IN SCHOOL WHEN
9 YOU STAYED WITH HER?

10 A YES, MA'AM.

11 Q DO YOU REMEMBER WHEN YOU STOPPED LIVING
12 WITH MS. HOPE?

13 A THE SUMMER OF 2003 I DECIDED I WANTED TO GO
14 STAY IN RALEIGH, NORTH CAROLINA, WITH MY AUNT BERTIE AND
15 THAT'S WHEN I MOVED OUT.

16 Q OKAY, SO YOU WENT AND STAYED WITH YOUR AUNT
17 BERTIE IN RALEIGH, NORTH CAROLINA?

18 A YES, MA'AM.

19 Q WHEN YOU STARTED TO SCHOOL BACK IN THE FALL
20 WHERE DID YOU, WHERE DID YOU GO AND LIVE AT THAT POINT?

21 A I MOVED BACK IN WITH MY MOTHER.

22 Q AND THAT WAS IN THE FALL OF 2007?

23 A YES, MA'AM.

24 Q I KNOW IT'S HARD TO REMEMBER ALL THE DATES.

25 A YES, MA'AM.

VICTIM [REDACTED] - DIRECT EXAM. BY MS. LIVELY

123

1 Q OKAY, SO FROM THE FALL OF 2007 THROUGH THE
2 SPRING OF 2008 TELL THE JURY WHAT YOUR SCHOOL YEAR WAS LIKE
3 FOR YOU?

4 A I JUST, I GOT TO A POINT WHERE I REALLY
5 DIDN'T CARE ANYMORE. I JUST, I JUST DID WHAT I WANTED TO
6 DO, I LEARNED THE HARD WAY. IT WAS, I WAS IN AND OUT OF
7 BEING IN TROUBLE AND THAT'S WHEN THEY PUT ME IN COUNSELING
8 TO FIGURE OUT WHY I WAS HAVING SO MUCH TROUBLE, PROBLEMS.

9 Q OKAY, AND WHEN YOU WERE IN COUNSELING DID
10 YOU DISCLOSE WHAT HAD HAPPENED TO YOU?

11 A YES, MA'AM.

12 Q WHO DID YOU TELL?

13 A PATRICIA BROWN.

14 Q PATRICIA BROWN?

15 A YES, MA'AM.

16 Q AND DID YOU AND HER DISCUSS THE SPECIFICS
17 OF IT?

18 A YES, MA'AM.

19 Q WHAT DID YOU TELL HER?

20 A I DIDN'T TELL HER DETAILS, I JUST TOLD HER
21 THAT THIS HAPPENED TO ME. I DIDN'T ---

22 Q WHAT HAPPENED TO YOU?

23 A THAT I HAD BEEN MOLESTED. I DIDN'T, I
24 DIDN'T TELL NOBODY THE DETAILS FOR A LONG TIME. I JUST
25 KEPT IT TO MYSELF UNTIL WE, UNTIL I STARTED TALKING ABOUT

VICTIM [REDACTED] [REDACTED] [REDACTED] - DIRECT EXAM. BY MS. LIVELY

124

1 IT. I STILL JUST KEPT GETTING IN TROUBLE, I JUST HELD IT
2 IN.

3 Q DID YOU DO ANYTHING TO TRY AND GET THESE
4 THINGS OFF YOUR CHEST?

5 A YES, MA'AM.

6 Q LIKE WHAT?

7 A I WOULD DRAW PICTURES AND I HAD MY BOOK I
8 WOULD WRITE IN AND I TRIED SMOKING POT BUT I DON'T DO THAT
9 NO MORE, I LEARNED MY LESSON. I GOT IN A LOT OF TROUBLE
10 FOR IT AND I DON'T DO THAT.

11 Q AND ALL OF THESE THINGS THAT WERE HAPPENING
12 TO YOU, **VICTIM** DO YOU KNOW WHY YOU WERE DOING THOSE
13 THINGS?

14 A NO, MA'AM. IT'S JUST LIKE I FELT LIKE I
15 HAD HAD A TOUGH LIFE AND I JUST FELT LIKE EVERYBODY HAD
16 GIVEN UP ON ME SO LIKE I HAD NO IMPROVEMENT WHERE I HAD
17 PEOPLE WAS JUST, I WOULDN'T COME IN AND ASK THEM FOR HELP.

18 Q I'M GOING TO SHOW YOU TWO DOCUMENTS,
19 STATE'S EXHIBIT 6 AND 5, OKAY? AND CAN YOU JUST TELL THE
20 COURT IF THESE DOCUMENTS LOOK FAMILIAR TO YOU?

21 A YES, MA'AM.

22 Q AND ---

23 A I DREW THESE.

24 Q YOU DREW THESE?

25 A AND WROTE THAT, YES, MA'AM.

VICTIM [REDACTED] [REDACTED] [REDACTED] - DIRECT EXAM. BY MS. LIVELY

125

1 Q OKAY, YOU DREW WHAT, TELL ME WHAT --

2 A I DREW THIS.

3 Q OKAY, DON'T SHOW IT TO THE JURY YET.

4 A I DREW THAT AND I WROTE THAT, THE ONE ON
5 THE BACK.

6 Q YOU DREW STATE'S EXHIBIT NUMBER 5?

7 A YES, MA'AM.

8 Q AND WHO WROTE THIS POEM, STATE'S EXHIBIT 6?

9 A I DID.

10 Q YOU DID THAT?

11 A YES, MA'AM.

12 Q OKAY, AND WHERE DID IT COME FROM?

13 A THAT WAS IN MY JOURNAL.

14 Q IN YOUR JOURNAL?

15 A YES, MA'AM. I HAD IT OPEN ON MY DESK AND
16 THEY CAUGHT ME WITH IT AT SCHOOL AND THEY TURNED IT INTO
17 THE GUIDANCE COUNSELOR.

18 Q OKAY, SO THAT'S HOW THE GUIDANCE COUNSELOR
19 GOT IT?

20 A YES, MA'AM.

21 MS. LIVELY: YOUR HONOR, AT THIS TIME THE STATE
22 WOULD MOVE STATE'S EXHIBIT NUMBER 5 AND NUMBER 6 INTO
23 EVIDENCE.

24 THE COURT: ANY OBJECTION?

25 MR. BARR: WITHOUT OBJECTION, YOUR HONOR.

VICTIM [REDACTED] - DIRECT EXAM. BY MS. LIVELY

126

1 THE COURT: ALL RIGHT, STATE'S 5 AND 6 ARE IN
2 EVIDENCE WITHOUT OBJECTION.

3 (WHEREUPON, STATE'S EXHIBITS NUMBERS 5 AND 6
4 ENTERED INTO EVIDENCE.)

5 MS. LIVELY: (CONTINUING)

6 Q I'M GOING TO SHOW YOU STATE'S EXHIBIT
7 NUMBER 5, OKAY, THAT'S THE PICTURE?

8 A OKAY.

9 Q WHO IS THAT SUPPOSED TO BE, VICTIM

10 A ME.

11 Q WHAT DOES THAT PICTURE MEAN?

12 A IT'S JUST I WAS UPSET AND IT MEANS I JUST
13 DIDN'T KNOW WHAT TO DO.

14 Q WHAT'S COMING OUT OF YOUR EYES?

15 A TEARS.

16 Q WHY WERE YOU SAID?

17 A I WAS JUST THINKING ABOUT MY LIFE.

18 Q NOW, VICTIM I'M GOING TO HAND YOU STATE'S
19 EXHIBIT NUMBER 6?

20 A YES, MA'AM.

21 Q THIS IS A POEM THAT YOU WROTE?

22 A YES, MA'AM.

23 Q WHO DOES THAT POEM OR WHO IS THAT POEM
24 ABOUT?

25 A IT'S ABOUT ME.

VICTIM ██████████ - DIRECT EXAM. BY MS. LIVELY

127

1 MS. LIVELY: YOUR HONOR, AT THIS TIME I'D ASK
2 HIM TO READ AND PUBLISH THIS TO THE JURY.

3 THE COURT: YOU MAY DO SO.

4 MS. LIVELY: (CONTINUING)

5 Q YOU CAN READ IT OUT TO THE JURY, VICTIM

6 A "THE BOY NEVER KNEW HATE UNTIL THE DAY THAT
7 HE GOT RAPED. HE ALWAYS SAID THAT HE WOULD FIND THE MSN
8 WHO PUT THOSE IMAGES IN HIS MIND. NOW THE BOY HAS FOUND
9 THE MAN AND HE'S ONLY GRUNTING AND HE IS DEAD. NOW THE BOY
10 IS DONE HE DROPS THE KNIFE AND STARTS TO RUN."

11 Q WHY WAS THAT POEM SO ANGRY, VICTIM

12 A I WAS MAD AT MY DAD BECAUSE I DIDN'T
13 UNDERSTAND WHAT, WHY HE DID IT AND I DIDN'T THINK HE WOULD
14 DO THAT, LIKE HE WAS TWO DIFFERENT PEOPLE.

15 Q WHAT DO YOU MEAN HE WAS TWO DIFFERENT
16 PEOPLE?

17 A IT WAS LIKE HE WAS AWARE OF WHAT, DURING
18 THE DAY TIME HE WAS I LOVED TO BE AROUND HIM, HE WAS A GOOD
19 PERSON, BUT AT NIGHT IT WAS JUST LIKE IT ALL CHANGED. I
20 CAN'T TELL YOU WHY.

21 Q NOW WHEN YOU WERE CONFRONTED WITH THESE
22 ITEMS OUT OF YOUR JOURNAL WAS THAT WHEN YOU TOLD MS. BROWN
23 WHAT HAPPENED TO YOU?

24 A YES, MA'AM.

25 Q NOW AT THAT POINT, VICTIM WHAT HAPPENED IN

VICTIM [REDACTED] - DIRECT EXAM. BY MS. LIVELY

128

1 REGARDS TO YOUR COUNSELING, DID YOU STAY WITH MS. BROWN?

2 A NO, MA'AM, I WAS WITH SOME FRIENDS FOR A
3 LITTLE BIT AFTER THAT AND THEY, THEY SUGGESTED THAT I HAVE
4 MORE INTENSE COUNSELING TO FIGURE OUT WHAT WAS REALLY GOING
5 ON.

6 Q ALL RIGHT, AND WHEN YOU WERE REFERRED TO
7 MORE INTENSE COUNSELING WHERE DID YOU GO?

8 A TO WACCAMAW MENTAL HEALTH.

9 Q AND WHEN YOU WENT TO WACCAMAW MENTAL HEALTH
10 WHO DID YOU SPEAK WITH, WHO DID YOU MEET WITH?

11 A KATHY MCGROGAN.

12 Q KATHY MCGROGAN?

13 A YES, MA'AM.

14 Q ALL RIGHT, AND IS SHE, IS SHE STILL YOUR
15 COUNSELOR?

16 A YES, MA'AM.

17 Q HAS SHE CONTINUED TO BE YOUR COUNSELOR
18 SINCE THAT TIME THAT THAT CAME OUT I BELIEVE IN FEBRUARY OF
19 2008?

20 A YES, MA'AM.

21 Q NOW, VICTIM WHY AT THIS POINT HAD YOU NOT
22 GONE TO THE POLICE ABOUT WHAT HAD HAPPENED TO YOU?

23 A I JUST, I, LIKE I SAID I DIDN'T WANT PEOPLE
24 TO THINK DIFFERENT OF ME. I HAD THAT SAME MIND SET THAT
25 ALL OF MY FAMILY MOST OF THEM THEY ARE HAPPY AND THEY, THEY

VICTIM [REDACTED] [REDACTED] [REDACTED] - DIRECT EXAM. BY MS. LIVELY

129

1 LIVE THEIR LIVES AND I DIDN'T WANT THEM TO THINK LIKE
2 BECAUSE IT HAPPENED TO ME THAT I WAS ANY DIFFERENT.

3 Q YOU DIDN'T WANT TO BE DIFFERENT?

4 A NO, MA'AM.

5 Q NOW WHEN YOU STARTED COUNSELING WITH KATHY
6 MCGROGAN DO YOU RECALL WHEN THAT WAS APPROXIMATELY?

7 A NO, MA'AM, I JUST REMEMBER IT WAS, I JUST
8 REMEMBER IT WAS IN SCHOOL.

9 Q OKAY, IT WAS AFTER FEBRUARY OF '08 WHENEVER
10 MS. BROWN BEGAN COUNSELING YOU?

11 A YES, MA'AM, IT WAS AFTER MS. BROWN.

12 Q AND WHENEVER YOU STARTED YOUR COUNSELING
13 WITH MS. KATHY MCGROGAN AT ANY TIME WERE YOU ON MEDICATION?

14 A YES, MA'AM.

15 Q WILL YOU TELL THIS JURY WHAT KIND OF
16 MEDICATION THAT YOU HAVE BEEN ON?

17 A VYVANSE.

18 Q WHAT'S VYVANSE FOR?

19 A IT IS FOR CONCENTRATION LIKE ANXIETY. IT'S
20 KIND OF LIKE ADDERALL; IT'S TO HELP ME CONCENTRATE, CALM
21 DOWN. I WAS ON SERTRALINE WHICH IS ZOLOFT. IT'S ALSO FOR
22 ANXIETY TO HELP WITH LIKE MOOD SWINGS TO KEEP ME THE SAME
23 THING, CALM, CONTENT, AND I WAS ON SEROQUEL AND IT WAS FOR
24 SLEEP ISSUES, AND HEAVY ANXIETY, MOOD SWINGS, STUFF LIKE
25 THAT, AND I BELIEVE THAT'S ALL I WAS ON, VYVANSE, AND

VICTIM [REDACTED] - DIRECT EXAM. BY MS. LIVELY

130

1 PROZAC.

2 Q AND PROZAC?

3 A YES, MA'AM.

4 Q ARE YOU ON ANY OF THOSE MEDICATIONS NOW?

5 A NO, MA'AM, I DON'T, I DON'T REALLY TAKE
6 THEM THAT MUCH UNLESS I NEED THEM. LIKE IF I CAN'T SLEEP
7 I'LL TAKE MY SEROQUEL OR IF I'M JUST HAVING A REALLY
8 NERVOUS DAY I'LL TAKE ONE OF THOSE TO HELP ME CALM DOWN.

9 Q HAS THE COUNSELING HELPED YOU WITH NOT
10 HAVING TO TAKE THOSE MEDICATIONS NOW?

11 A YES, MA'AM, THE COUNSELOR HAS HELPED ME.

12 Q OKAY, NOW AS A RESULT OF GOING TO
13 COUNSELING WITH MS. KATHY MCGROGAN DID YOU AT ANY POINT
14 DECIDE TO GO TO THE POLICE?

15 A YES, MA'AM.

16 Q WILL YOU TELL THE JURY HOW THAT CAME ABOUT?

17 A ME AND MY MOM AND MOM HAD DROPPED ME OFF AT
18 MS. KATHY'S OFFICE; AND I WAS TALKING WITH MS. KATHY
19 MCGROGAN AND SHE SAID THAT SHE WAS NOT TELLING ME I HAD TO
20 GO BUT SHE WAS SUGGESTING, SHE WAS SAYING IT WOULD BE GOOD
21 FOR YOU, SHE'S SAYING IT WOULD HELP YOU GET OVER THOSE, GET
22 OVER THIS FASTER, SO IT WOULDN'T ALWAYS BE BOTHERING ME;
23 AND I THOUGHT ABOUT IT AND I DECIDED I WOULD GO AND WHEN I
24 WENT I SPOKE TO MR. GARY TODD CAUSE I FELT COMFORTABLE WITH
25 MR. GARY.

VICTIM [REDACTED] [REDACTED] [REDACTED] - DIRECT EXAM. BY MS. LIVELY 131

1 Q OKAY, VICTIM YOU HAVEN'T BEEN IN HERE BUT
2 WE'VE HEARD TESTIMONY THAT ACTUALLY YOUR MOTHER AND YOU
3 WENT TO THE POLICE STATION.

4 A YES, MA'AM.

5 Q SO AT WHAT POINT DID YOU TELL YOUR MOTHER
6 WHAT HAD HAPPENED TO YOU?

7 A I NEVER TOLD MY MOTHER WHAT HAPPENED TO ME,
8 THE DETAILS.

9 Q OKAY ---

10 A I HAVE, SHE KNOWS BUT I NEVER TOLD HER.

11 Q SO YOU'VE NEVER ACTUALLY, NOW WHAT YOU'VE
12 TOLD THIS JURY HERE TODAY TO HER?

13 A NO, MA'AM, NO, I'VE NOT, I DID NOT WANT TO
14 UPSET HER.

15 Q YOU DIDN'T WANT TO UPSET HER?

16 A NO, MA'AM.

17 Q NOW BACK WHEN YOU WENT TO SEE INVESTIGATOR
18 TODD WHY WOULD YOU TALK TO HIM?

19 A I KNOW HIS SON, I KNOW HE'S A GOOD, HE'S A
20 GOOD PERSON. I JUST, I LIKE MR. GARY TODD, I FEEL LIKE I
21 COULD TALK TO HIM.

22 Q OKAY, AND CAN YOU TELL THIS JURY EXACTLY
23 WHAT IT WAS THAT YOU TOLD TO INVESTIGATOR TODD ON, DO YOU
24 REMEMBER WHEN THAT WAS?

25 A NO, MA'AM, I DO NOT.

VICTIM [REDACTED] - CROSS EXAMINATION BY MR. BARR 132

1 Q OKAY, IF I TELL YOU IT WAS IN AUGUST OF
2 2008 WOULD THAT REFRESH YOUR RECOLLECTION IN ANY WAY; WOULD
3 THAT BE RIGHT?

4 A I, I CAN'T REALLY REMEMBER, I WAS GOING
5 THROUGH A LOT AT THAT TIME. I DO REMEMBER TALKING TO HIM.
6 I REMEMBER TELLING HIM ABOUT THE INCIDENTS OF ME BEING
7 MOLESTED. I TOLD HIM ABOUT THOSE, AND THAT'S ALL I DID AND
8 WE FILED CHARGES AND IT'S WENT FROM THERE.

9 Q AND WHENEVER YOU TOLD HIM ON THAT DATE WHAT
10 HAD HAPPENED TO YOU DID YOU PROVIDE HIM ALL THE INFORMATION
11 THAT YOU KNEW AND YOU REMEMBERED FROM SEVEN YEARS BEFORE?

12 A YES, MA'AM, I DID. I TOLD HIM EVERYTHING I
13 COULD REMEMBER.

14 Q WAS WHAT YOU TOLD MR. TODD OR INVESTIGATOR
15 TODD THE TRUTH ABOUT WHAT HAPPENED TO YOU?

16 A YES, MA'AM.

17 Q AND WHAT YOU'RE TELLING THIS JURY HERE
18 TODAY THE TRUTH ABOUT WHAT HAPPENED TO YOU?

19 A YES, MA'AM, IT IS.

20 Q DO YOU HAVE ANY REASON WHATSOEVER TO TELL
21 SOMETHING LIKE THIS TO GET YOUR DAD IN TROUBLE?

22 A NO, MA'AM, I DO NOT. I LOVE MY DAD TO THIS
23 DAY. I JUST DON'T UNDERSTAND WHAT ALL WAS GOING, WHAT IT
24 WAS. HIM AND MY MOM MIGHT HAVE HAD PROBLEMS, THAT WAS
25 THEM. I LOVED BEING AROUND HIM, ME AND HIM. IT'S JUST

VICTIM [REDACTED] - CROSS EXAMINATION BY MR. BARR 133

1 SOME BAD STUFF HAPPENED.

2 Q AND HOW DO YOU FEEL ABOUT HAVING TO BE HERE
3 TODAY AND TELLING THIS JURY WHAT HAPPENED TO YOU?

4 A I'M REAL SCARED.

5 MS. LIVELY: ONE MOMENT, YOUR HONOR.

6 THE COURT: YES, MA'AM.

7 MS. LIVELY: (CONTINUING)

8 Q AND WHERE ARE YOU LIVING RIGHT NOW AGAIN,

9 **VICTIM** ARE YOU LIVING WITH MS. HOPE?

10 A YES, MA'AM.

11 Q IS THAT GOING WELL?

12 A YES, MA'AM.

13 MS. LIVELY: **VICTIM** THANK YOU SO MUCH.

14 A YES, MA'AM.

15 MS. LIVELY: MR. BARR IS GOING TO HAVE SOME
16 QUESTIONS FOR YOU, OKAY?

17 A YES, MA'AM.

18 THE COURT: CROSS EXAMINATION.

19 MR. BARR: THANK YOU, YOUR HONOR.

20 **CROSS EXAMINATION**

21 **BY MR. BARR:**

22 Q **VICTIM** BEAR WITH ME IF I ASK ANY QUESTIONS
23 THAT YOU DON'T UNDERSTAND JUST ASK ME TO REPHRASE IT OR ASK
24 IT AGAIN, OKAY?

25 A YES, SIR.

VICTIM [REDACTED] - CROSS EXAMINATION BY MR. BARR 134

1 Q OKAY, NOW I'LL TRY TO BRIEF, ALL RIGHT?

2 A YES, SIR.

3 Q MS. LIVELY, THE ATTORNEY FOR THE
4 SOLICITOR'S OFFICE, ASKED YOU A FEW MINUTES AGO WHETHER OR
5 NOT YOU RECALLED YOUR CONVERSATION WITH OFFICER TODD IN
6 2008 AND YOU SAID YOU DIDN'T REMEMBER THE TIME THAT THAT
7 HAPPENED?

8 A YES, SIR, I DON'T REMEMBER THE TIME, I JUST
9 REMEMBER THE CONVERSATION.

10 Q YOU REMEMBER THE CONVERSATION BUT YOU DON'T
11 REMEMBER THE TIME?

12 A NO, SIR.

13 Q DO YOU REMEMBER THE TIME OF YEAR?

14 A I JUST REMEMBER I WAS IN SCHOOL.

15 Q YOU WERE IN SCHOOL, OKAY, OKAY, WHAT DO YOU
16 REFERENCE REMEMBERING THE EVENTS IN 2001, **VICTIM** IS THERE
17 ANYTHING, IS THERE ANYTHING GOING ON ---

18 A I REMEMBER IT WAS AROUND MY BIRTHDAY. I
19 REMEMBER THE LEAVES WERE CHANGING AND THEY WERE FALLING. I
20 REMEMBER CAUSE I USED TO RAKE UP THE YARD AND STUFF, CLEAN
21 UP, THAT'S WHAT I REMEMBER.

22 Q OKAY, ALL RIGHT, BUT YOU DON'T REMEMBER
23 DATES AND TIMES EXACTLY?

24 A I DON'T REMEMBER EXACT DATES, I JUST
25 REMEMBER TIME FRAMES.

VICTIM [REDACTED] - CROSS EXAMINATION BY MR. BARR 135

1 Q OKAY, ALL RIGHT. NOW YOU TESTIFIED THAT
2 THIS DIAGRAM, YOU TESTIFIED THAT YOU COULD RECALL THE AREAS
3 FROM THE DIAGRAM; IS THAT RIGHT? I THINK THIS IS STATE'S
4 NUMBER 4, I BELIEVE, THE DIAGRAM?

5 A YES, SIR.

6 Q NOW DID YOU HAVE A DISCUSSION WITH THE
7 SOLICITOR'S OFFICE ABOUT THIS DIAGRAM PRIOR TO TODAY?

8 A OH, YES, SIR.

9 Q OKAY, AND IN THAT DISCUSSION YA'LL WENT
10 OVER ALL OF THIS, RIGHT?

11 A YES, SIR.

12 Q AND THEY POINT OUT TO YOU WHERE THESE
13 VARIOUS ROOMS WERE, DIDN'T THEY?

14 A NO, SIR, I TOLD HER ABOUT WHERE OUR
15 BEDROOMS WERE.

16 Q DID THEY ASK YOU AT ANY POINT TO, TO DRAW
17 THIS FOR THEM?

18 A NO, SIR, THEY DID NOT. IT WAS ALREADY
19 DRAWN.

20 Q OKAY, SO THEY DREW IT AND THEY ASKED YOU TO
21 LOOK AT IT?

22 A YES, SIR. THEY TOLD ME TO DESCRIBE IT IN
23 THE HOUSE TO WHERE THEY CAN GET A MENTAL VIEW OF IT.

24 Q OKAY, NOW IN YOUR TESTIMONY WITH THE
25 SOLICITOR'S OFFICE I THINK YOU TESTIFIED THAT YOUR GRANDMA

VICTIM [REDACTED] - CROSS EXAMINATION BY MR. BARR 136

1 REDDICK LIVED OR SLEPT IN THIS ROOM; IS THAT RIGHT?

2 A YES, SIR.

3 Q OKAY, I'LL HOLD IT UP SO YOU CAN SEE IT.

4 A YES, SIR, RIGHT THERE.

5 Q ALL RIGHT, AND THAT THIS WAS THE T.V. ROOM?

6 A YES, SIR.

7 Q NOW THE T.V. ROOM HAD THE COUCH ON IT; IS
8 THAT CORRECT?

9 A YES, SIR, THAT'S CORRECT, RIGHT.

10 Q OKAY, NOW IN YOUR DISCUSSION WITH OFFICER
11 TODD DID YOU TELL HIM THAT THE FIRST INCIDENT, ALLEGED
12 INCIDENT WITH YOUR FATHER OCCURRED RIGHT HERE?

13 A YES, SIR.

14 Q THAT WOULD HAVE BEEN ON THE COUCH IN THE
15 T.V. ROOM; IS THAT CORRECT?

16 A I CAN'T REMEMBER BUT I TOLD HIM ABOUT THE
17 TWO TIMES IT HAPPENED, YES, SIR, ONE TIME DID HAPPEN THERE.
18 I CANNOT REMEMBER IF I TOLD HIM THE FIRST TIME, ONE TIME
19 HAPPENED IN MINE AND MY DAD'S ROOM.

20 Q OKAY, DO YOU RECALL NOW WHICH WOULD HAVE
21 BEEN THE FIRST TIME?

22 A NO, SIR, I, I JUST REMEMBER THEM HAPPENING,
23 I CAN'T REMEMBER WHICH CAME BEFORE THE OTHER. I REMEMBER
24 MENTAL PICTURES IN MY HEAD SO THAT I CAN RELATE TO IT TO
25 FIGURE IT OUT WHAT TIME IT WAS, BUT I CANNOT, I CAN'T

VICTIM [REDACTED] - CROSS EXAMINATION BY MR. BARR 137

1 REMEMBER REALLY THAT GOOD WHICH ONE WAS FIRST AT THIS
2 MOMENT.

3 Q SO YOU DON'T REMEMBER WHETHER OR NOT YOU
4 TOLD OFFICER TODD THAT THE FIRST TIME WAS ON THE COUCH IN
5 THE T.V. ROOM OR WHETHER OR NOT THE FIRST TIME WAS ---

6 A WAS IN MINE AND MY DAD'S ROOM.

7 Q WAS IN YOUR -- NOW DID YOU TELL HIM IT WAS
8 IN YOUR AND YOUR DAD'S ROOM OR DID YOU TELL HIM IT WAS IN
9 YOUR GRANDFATHER'S ROOM?

10 A IT WAS MY GRANDFATHER'S OLD ROOM.

11 Q OKAY ---

12 A CAUSE HIS HOSPITAL BED WAS IN THERE ---

13 Q OKAY ---

14 A --- AND THAT'S WHAT MADE ME THINK IT WAS
15 HIS OLD ROOM.

16 Q OKAY, ALL RIGHT ---

17 A THAT IS WHERE IT HAPPENED BUT THAT WAS MINE
18 AND MY DAD'S ROOM WHEN WE STAYED THERE.

19 Q OKAY, NOW YOU AND YOUR DAD HAD A DESIGNATED
20 ROOM AT YOUR GRANDPARENTS HOUSE?

21 A THAT IS, THAT WAS HIS ROOM CAUSE HE LIVED
22 THERE. WHEN I WOULD COME AND STAY WITH HIM I SLEPT IN
23 THERE WITH HIM OR WE WOULD SLEEP IN THE LIVING ROOM, FALL
24 ASLEEP WATCHING T.V.

25 Q OKAY, BEFORE THE FALL OF 2001 DO YOU RECALL

VICTIM [REDACTED] - CROSS EXAMINATION BY MR. BARR 138

1 WHEN THE LAST TIME YOU ACTUALLY CAME OVER TO VISIT WITH
2 YOUR GRANDPARENTS OR WITH YOUR DAD?

3 A IT'S BEEN A EXTREMELY LONG TIME SINCE I'VE
4 SEEN MY DAD. I CANNOT TELL YOU EXACTLY WHEN BUT SINCE I'VE
5 SEEN MY DAD FACE TO FACE CAUSE IT HAS BEEN A LONG TIME.

6 Q LET ME MAKE SURE YOU UNDERSTAND THE
7 QUESTION I ASKED YOU. IF I'M CONFUSING YOU TELL ME?

8 A YES, SIR.

9 Q I'M ASKING YOU, THE QUESTION IS BEFORE
10 2001?

11 A BEFORE THE INCIDENT HAPPENED?

12 Q YES, SIR.

13 A WHEN WAS THE LAST TIME I STAYED THERE?

14 Q WHEN WAS THE LAST TIME YOU ACTUALLY CAME TO
15 VISIT WITH YOUR GRANDPARENTS OR YOUR DAD AT YOUR
16 GRANDPARENTS HOUSE?

17 A BEFORE I STARTED STAYING WITH HIM AGAIN.

18 Q DO YOU RECALL THE LAST TIME?

19 A I STAYED WITH HIM ON WEEKENDS.

20 Q YES, SIR, I UNDERSTAND.

21 A AND I DON'T, I DON'T UNDERSTAND WHAT YOU'RE
22 SAYING, LIKE THE WEEKENDS BEFORE THAT, THE TIME BEFORE THAT
23 HAPPENED?

24 Q WELL LET ME TRY TO CLARIFY IT FOR YOU,
25 OKAY? I BELIEVE THAT YOU'RE SAYING THAT THIS ALLEGED

VICTIM [REDACTED] - CROSS EXAMINATION BY MR. BARR 139

1 INCIDENT OCCURRED IN THE FALL OF 2001, SOMETIME IN
2 SEPTEMBER; IS THAT RIGHT?

3 A AUGUST, SEPTEMBER, SOMEWHERE AROUND THERE.

4 Q OKAY, AND I BELIEVE YOU SAID THAT ONE
5 INCIDENT WAS TWO WEEKS PRIOR TO THE OTHER; IS THAT RIGHT?

6 A YES, SIR, SOMEWHERE AROUND THAT TIME.

7 Q OKAY, NOW PRIOR TO THE FIRST INCIDENT,
8 BEFORE THE FIRST INCIDENT, WHEN WAS THE LAST TIME THAT
9 YOU'D ACTUALLY COME TO VISIT WITH YOUR GRANDPARENTS AT
10 THEIR HOUSE?

11 A THE WEEKEND BEFORE, I STAYED WITH THEM ON
12 WEEKENDS.

13 Q OKAY ---

14 A LIKE THE WEEKEND BEFORE THAT FIRST INCIDENT
15 HAPPENED ---

16 Q RIGHT.

17 A IT DIDN'T, WELL WHEN I FIRST STARTED
18 STAYING WITH MY DAD AGAIN IT WASN'T LIKE THAT. I STAYED
19 WITH HIM AND I STAYED WITH HIM FOR A WHILE, A WHILE LIKE
20 MONTHS OR SO AND ON WEEKENDS AND THEN AFTER A WHILE STUFF
21 STARTED HAPPENING. IT'S LIKE STUFF WAS GOOD AND THEN IT'S
22 JUST LIKE HE SNUCK IT IN. I WAS NOT EXPECTING IT TO COME
23 LIKE THAT.

24 Q ALL RIGHT, NOW I BELIEVE YOU TESTIFIED THAT
25 THERE WAS AN INCIDENT WHEREBY YOUR DAD HAD ACTUALLY

VICTIM [REDACTED] - CROSS EXAMINATION BY MR. BARR 140

1 PERFORMED ORAL SEX ON YOU AT SOME POINT IN TIME?

2 A YES, SIR.

3 Q AND YOU WOULD HAVE BEEN BETWEEN SIX AND
4 SEVEN; IS THAT CORRECT?

5 A NO, SIR, I WAS SEVEN AND EIGHT, I WAS
6 AROUND THAT TIME SEVEN OR EIGHT. I DON'T THINK I WAS SIX.

7 Q YOU DON'T THINK YOU WERE COMING UP ON YOUR
8 7TH BIRTHDAY?

9 A NO, I DON'T RECALL BUT I'M PRETTY SURE I
10 WAS NOT SIX, I THINK I WAS LIKE SEVEN AND EIGHT.

11 Q OKAY, OKAY, NOW LET ME ASK YOU AT THAT
12 POINT HAD YOU EVER EXPERIENCED TERMS OF WHAT YOU CAN RECALL
13 ANY FORM OF SEXUAL GRATIFICATION?

14 A NO, SIR, I'VE NEVER BEEN APPROACHED LIKE
15 THAT OR ANYTHING, NO, SIR.

16 Q DID YOU KNOW WHAT AN ERECTION WAS?

17 A NO, SIR, I DID NOT. I DIDN'T UNDERSTAND,
18 LIKE I SAID I WAS CONFUSED.

19 Q OKAY, SO YOU DIDN'T UNDERSTAND ANY OF THAT
20 AT THAT POINT?

21 A IT WAS SOMETHING THAT WAS ALWAYS ON MY MIND
22 TILL I FIGURED IT OUT.

23 Q OKAY, AND YOU FIGURED THAT OUT IN LATER
24 YEARS? OKAY. NOW THE SOLICITOR ASKED YOU WHETHER OR NOT
25 YOUR DAD ACTUALLY PENETRATED YOUR ANUS AND I BELIEVE YOUR

VICTIM [REDACTED] - CROSS EXAMINATION BY MR. BARR 141

1 TESTIMONY WAS THAT HE HAD, THAT HE WAS SOMEWHERE IN YOUR
2 ANAL AREA?

3 A I KNOW HE DID NOT PUT IT ALL THE WAY IN BUT
4 I DO REMEMBER HIM PUTTING IT IN A LITTLE BIT BECAUSE IT, IT
5 OBVIOUSLY WOKE ME UP AND I JERKED AWAY.

6 Q CAN YOU TESTIFY THAT AT THAT POINT YOU
7 PRETEND TO BE ASLEEP?

8 A YES, SIR, I REMEMBER ---

9 Q CAN YOU SHARE WITH US WHY YOU PRETENDED TO
10 BE ASLEEP?

11 A I WAS TRYING TO PRETEND LIKE IT WASN'T
12 HAPPENING.

13 Q OKAY --

14 A I JUST JERKED AWAY.

15 Q OKAY, NOW IS THAT WHEN YOU WERE ACTUALLY
16 AWAKENED?

17 A YES, SIR.

18 Q OKAY, OKAY --

19 A YES, SIR.

20 Q ALL RIGHT, OKAY. NOW YOU'D NEVER AT THAT
21 POINT HAD ANY FORM OF SEXUAL ENCOUNTER WITH ANYONE, HAD
22 YOU?

23 A NO, SIR, I HAVE NOT, I HAD NOT, NO, SIR.

24 Q OKAY, OKAY, NOW YOU, YOU MENTIONED THAT I
25 BELIEVE YOUR FATHER OFFERED YOU SOME TOYS?

VICTIM [REDACTED] - CROSS EXAMINATION BY MR. BARR 142

1 A YES, SIR.

2 Q OKAY, ALL RIGHT --

3 A HE BOUGHT THEM FOR ME.

4 Q OKAY, ALL RIGHT, NOW YOU TESTIFIED, I
5 BELIEVE, THAT, THAT YOU WERE GOING THROUGH SOME STUFF AND
6 THAT YOU WERE GETTING TO, TO GET INTO TROUBLE, 13, 14, THAT
7 AGE, DID YOU HAVE SOME FURTHER CONTACT WITH YOUR FATHER?

8 A I CAN'T REMEMBER WHEN I GOT THAT LETTER
9 FROM MY DAD, I MEAN I DON'T REMEMBER. I GOT ONE LETTER
10 FROM HIM AND IT WAS, HE WAS TELLING ME STUFF LIKE ABOUT
11 WHEN HE GOT OUT OF JAIL AND STUFF IT WAS GOING TO BE
12 BETTER, THAT HE WAS CHANGED OR SOMETHING LIKE THAT, I CAN'T
13 REMEMBER. IT WAS ALL GOOD STUFF AND I WROTE HIM A LETTER
14 BACK AND I TOLD HIM THAT, THAT I STILL LOVED HIM AND I
15 WASN'T SCARED OF HIM OR ANYTHING LIKE THAT, SO AND LIKE I
16 SAID EARLIER I'M NOT SCARED OF MY DAD AND I DO LOVE HIM.

17 Q OKAY, SO NOW YOUR GRADES ARE DROPPING AND
18 YOU'RE HAVING PROBLEMS AND THAT SORT OF THING, DO YOU
19 RELATE THAT TO YOUR FATHER?

20 A I DON'T KNOW THAT THAT HAS ANYTHING TO DO
21 WITH MY FATHER. I WAS UPSET BECAUSE OF ALL THE STUFF THAT
22 HAD HAPPENED BETWEEN US AND HE WAS AN AUTHORITY FIGURE FOR
23 ME CAUSE HE'S MY DAD AND I JUST DIDN'T CARE ABOUT AUTHORITY
24 ANYMORE. I JUST, I'VE ALREADY HAD BEEN LET DOWN AND THAT
25 COULD RELATE TO MY DAD BECAUSE HE WAS JUST NEVER AROUND AND

VICTIM [REDACTED] [REDACTED] [REDACTED] - CROSS EXAMINATION BY MR. BARR 143

1 --

2 Q SO NOW HE'S NEVER AROUND, DID YOU, DID YOU
3 SEE HIM AS A AUTHORITY FIGURE?

4 A I DID WHEN I STAYED WITH HIM BECAUSE HE'S
5 MY DAD, THAT'S WHAT DAD SUPPOSED TO DO.

6 Q I'M GOING TO SHOW YOU NOW WHAT THE STATE
7 HAS MARKED AS EXHIBIT NUMBER 6, I BELIEVE --

8 MR. BARR: PERMISSION TO APPROACH THE WITNESS,
9 YOUR HONOR?

10 THE COURT: YES, SIR.

11 MR. BARR: (CONTINUING)

12 Q I BELIEVE YOU IDENTIFIED THAT AS A POEM YOU
13 WROTE?

14 A YES, SIR.

15 Q WAS, I GUESS THAT'S LINE FIVE, YOU SAID
16 "THE BOY HAS FOUND THE MAN." CAN YOU TELL US WHAT THAT
17 MEANS?

18 A WHEN I WAS THINKING OF IT, WHEN I WROTE
19 THIS I DO REMEMBER WHAT I WAS THINKING. I WAS UPSET, I WAS
20 THINKING ABOUT MY DAD AND ALL THE STUFF THAT HAD HAPPENED
21 AND WHEN IT SAYS HE HAS FOUND ME I WAS HOPING THAT ONE DAY
22 I WOULD BE ABLE TO SEE HIM AGAIN AND TELL HIM HOW I FELT.
23 AT THAT POINT HE WAS DEAD TO ME BECAUSE HE WASN'T THERE.
24 HE WAS JUST LIKE HE WAS NEVER AROUND AND THAT IS WHAT I WAS
25 THINKING WHEN I SAID HE HAS FOUND A MAN, HOPING ONE DAY I

VICTIM VIC [REDACTED] [REDACTED] - CROSS EXAMINATION BY MR. BARR 144

1 WOULD ABLE TO SEE HIM AGAIN AND TELL HIM HOW I FELT.

2 Q NOW THE NEXT LINE "THE BOY IS DONE HE DROPS
3 THE KNIFE AND HE STARTS TO RUN." CAN YOU TELL US WHAT THAT
4 MEANS?

5 A I WAS ANGRY AND I WAS MAD AND THERE WAS
6 JUST A LOT OF EMOTIONS. I DON'T, I CAN'T TELL YOU WHAT IT
7 REALLY MEANS, I JUST, I WAS WANTING TO GET AWAY.

8 Q I DON'T MEAN TO UPSET YOU, I'LL JUST LEAVE
9 THAT ALONE. DID YOU EVER DISCUSS THE SITUATION WITH YOUR
10 AUNT JERRI HEWITT?

11 A MY AUNT JERRI HEWITT?

12 Q YOUR FATHER'S SISTER?

13 A SHE KNOWS WHAT HAPPENED.

14 Q PARDON ME?

15 A SHE KNOWS WHAT HAPPENED, I'VE NEVER TOLD
16 HER DETAILS. I HAVE NOT TOLD A LOT OF PEOPLE DETAILS. SHE
17 DOES KNOW THAT IT HAPPENED AND SHE KNOWS THAT I WAS GOING
18 TO COURT AND EVERYTHING.

19 Q YOU, AT WHAT POINT DID YOU DISCUSS THIS
20 WITH HER; DO YOU RECALL?

21 A I DIDN'T GET TO SEE MY DAD'S SIDE OF THE
22 FAMILY FOR A LONG TIME AND I FINALLY STARTED TALKING TO
23 THEM AGAIN AND WHEN I WENT BACK OVER THERE SHE WAS ASKING
24 ME IF I HAD SEEN MY DAD, IF I HAD TALKED TO HIM AND I TOLD
25 HER, NO. I SAID THAT I DID NOT TALK TO HIM AND SHE WAS

VICTIM [REDACTED] - CROSS EXAMINATION BY MR. BARR 145

1 ASKING ME IF WHAT HE WENT TO JAIL FOR WAS TRUE AND I TOLD
2 HER, YEAH, AND THAT'S ALL I TOLD HER.

3 Q IS THAT ALL YOU TOLD HER?

4 A THAT'S ALL I TOLD HER AND I TOLD HER THAT
5 IT DID HAPPEN, I TOLD HER IT DID HAPPEN.

6 Q OKAY, NOW WHEN YOU WERE REFERRED TO MS.
7 PATRICIA BROWN, I BELIEVE, YOU WOULD HAVE BEEN HOW OLD AT
8 THAT POINT, IF YOU RECALL?

9 A I WOULD SAY I'M JUST THROWING OUT A GUESS,
10 I'M NOT SURE, 14, MAYBE 13, 14, I CANNOT REMEMBER.

11 Q NOW DO YOU REMEMBER IF YOU WERE THAT AGE
12 WHEN YOU MET WITH OFFICER TODD?

13 A NO, SIR.

14 Q NO?

15 A NO, SIR.

16 Q OKAY, COULD YOU SHARE WITH US AGAIN WHY YOU
17 WOULDN'T HAVE TOLD YOUR MAMA?

18 A I DIDN'T WANT MY MOM TO GET UPSET. I'M MY
19 MAMA'S YOUNGEST CHILD, YOU KNOW SHE CALLS, I'M HER BABY AS
20 SHE SAYS, AND SHE SEEMS TO TAKE STUFF A LOT HARDER WHEN I
21 TELL HER SOMETHING. SHE GETS REALLY UPSET AND I JUST, I
22 DON'T LIKE TO SEE HER LIKE THAT. IT UPSETS ME AND I DON'T
23 LIKE TO BE UPSET AND THAT'S WHY I STILL HAVE NOT TOLD MY
24 MAMA TO THIS DAY. SHE KNOWS NO DETAILS; SHE JUST KNOWS IT
25 HAPPENED.

VICTIM [REDACTED] - CROSS EXAMINATION BY MR. BARR 146

1 Q NOW I BELIEVE THE SOLICITOR ASKED YOU WAS
2 IT NOT YOU AND YOUR MOM THAT MADE THE INITIAL REPORT TO THE
3 POLICE?

4 A MY MAMA HAD TO TAKE ME DOWN THERE BECAUSE
5 I'M A MINOR, SHE DROVE ME DOWN THERE. SHE WAS IN THE
6 LOBBY. I WENT AND TALKED WITH MR. GARY TODD BY MYSELF IN
7 THAT ROOM CAUSE I DID NOT WANT HER TO COME WITH ME.

8 Q IN YOUR DISCUSSION WITH MR. GARY TODD DID,
9 DID YOU DISCUSS WITH HIM THE FACT THAT YOUR MOTHER MADE THE
10 REPORT INITIALLY?

11 A MY MAMA DIDN'T MAKE THE INITIAL REPORT, ONE
12 SECOND. I DON'T UNDERSTAND WHAT YOU'RE SAYING. I WENT
13 DOWN THERE, IT WAS MY IDEA TO GO DOWN THERE AND MAKE THE
14 REPORT. MY MAMA HAD TO TAKE ME CAUSE I CAN'T DO IT BY
15 MYSELF.

16 Q NOW YOU UNDERSTAND WHAT IT MEANS TO TELL
17 THE TRUTH; IS THAT RIGHT?

18 A YES, SIR.

19 Q OKAY, OKAY, AND LET ME ASK YOU THIS, WHEN
20 YOU DECIDED TO MAKE THE REPORT AND YOU NEEDED YOUR MOTHER
21 TO TAKE YOU --

22 A YES, SIR.

23 Q YOU AND SHE DIDN'T DISCUSS WHAT YOU WERE
24 GOING FOR?

25 A SHE KNEW THAT ALL THE CIRCUMSTANCES THAT,

VICTIM [REDACTED] [REDACTED] [REDACTED] - CROSS EXAMINATION BY MR. BARR 147

1 LIKE SHE KNEW THAT I HAD BEEN MOLESTED AND BUT SHE KNEW NO
2 DETAILS. I ASKED HER IF SHE COULD TAKE ME.

3 Q YOU'VE SAID THAT SEVERAL TIMES THAT SHE
4 DIDN'T KNOW IT CAUSE YOU DIDN'T TELL HER, HOW DID SHE COME
5 TO KNOW?

6 A SCHOOL, OR COUNSELING BECAUSE WHEN I ---

7 Q DO YOU KNOW WHICH ONE IT IS?

8 A NO, SIR, IT WAS SCHOOL OR COUNSELING, ONE
9 OF THEM TOLD HER. SHE KNEW WHEN I GOT, WHEN THEY CAUGHT ME
10 WITH THAT BOOK THAT HAD ALL THE PICTURES AND POEMS AND
11 STUFF IN IT THEY STARTING GOING ON AND THEN IT CAME OUT. I
12 HAVE NEVER TOLD HER LIKE I SAID.

13 Q OKAY --

14 A I CAN'T TELL YOU HOW SHE FIGURED IT OUT.
15 MY ONLY GUESSES ARE IT'S THE SCHOOL DISTRICT OR COUNSELING.

16 Q SO YOU WOULD BE GUESSING?

17 A YES, SIR, I'M GUESSING.

18 Q OKAY, ALL RIGHT. NOW YOU MENTIONED EARLIER
19 THAT YOUR MOTHER AND YOUR FATHER DIDN'T GET ALONG, BUT YOU
20 HAD ANYTHING TO DO WITH THAT; IS THAT TRUE?

21 A NO, SIR, THEIR FIGHTING DID NOT STOP ME
22 FROM GOING TO STAY WITH MY DAD. IF THEY ARGUED I'D STILL
23 WANT TO GO AND THEY, IF THEY ARGUED THAT HAD NOTHING TO DO
24 WITH ME.

25 Q OKAY, NOW YOU, YOU SAID EARLIER THAT YOU

VICTIM VIC [REDACTED] [REDACTED] - CROSS EXAMINATION BY MR. BARR 148

1 HAD A TOUGH LIFE. COULD YOU TELL US WHAT YOU MEAN BY THAT?

2 A BY BEING SO CONFUSED ALL THE TIME ABOUT WHY
3 ALL THIS STUFF HAPPENED TO ME, THAT IT WAS JUST, IT WAS
4 REALLY STRESSFUL, ALL THE TIME THINKING WHAT WAS, WHAT'S
5 GOING ON, YOU KNOW, THAT'S, LIKE IT WAS JUST STUFF, IT WAS
6 HARD.

7 Q NOW I'M NOT GOING TO ASK YOU TO SAY WHAT
8 YOU SAID TO THE COUNSELORS BUT I'M GOING TO ASK YOU THIS,
9 DID YOU RELATE TO THE COUNSELORS THAT THAT'S WHY YOU'VE HAD
10 A TOUGH LIFE OR DID YOU DISPLAY SOMETHING ELSE TO THEM?

11 A I TOLD THEM JUST LIKE I JUST TALKED TO THEM
12 AND DAYS WOULD GO BY AND I WOULD HAVE DIFFERENT STUFF ON MY
13 MIND AND THAT'S WHAT I WOULD TELL THEM.

14 Q BUT NOW WHAT I'M ASKING YOU IS THE STUFF
15 THAT YOU SAID YOU HAD ON YOUR MIND THAT YOU TALKED TO THEM
16 ABOUT ---

17 A YEAH.

18 Q YOU DIDN'T RELATE TO YOUR DAD, DID YOU?

19 A YES, SIR, SOME OF THE STUFF I RELATED TO MY
20 DAD, SOME OF THE STUFF IT WAS JUST DIFFERENT PROBLEMS. I
21 WAS GROWING UP AND IT WAS JUST A WHOLE BUNCH OF DIFFERENT
22 STUFF.

23 Q DID YOU RELATE TO THE COUNSELORS THAT YOU
24 HAD A SERIES OF OTHER PROBLEMS THAT DIDN'T HAVE ANYTHING TO
25 DO WITH YOUR DAD?

LIVELY

VICTIM [REDACTED] [REDACTED] [REDACTED] - REDIRECT EXAMINATION BY MS.

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1 A NO, SIR.

2 Q PARDON ME?

3 A NO, SIR. I DON'T UNDERSTAND YOUR QUESTION.

4 Q AGAIN I'M NOT ASKING YOU TO SAY

5 SPECIFICALLY WHAT YOU SAID TO THEM, BUT DID YOU RELATE TO

6 THEM THAT YOU HAD A SERIES OF PROBLEMS THAT RELATED TO YOUR

7 MOM AND NOT YOUR DAD?

8 A NO, SIR, I DID NOT SAY ANYTHING LIKE THAT.

9 Q YOU DIDN'T?

10 A NO, SIR.

11 MR. BARR: THANK YOU.

12 THE COURT: REDIRECT?

13 REDIRECT EXAMINATION

14 BY MS. LIVELY:

15 Q **VICTIM** I HAVE TO ASK YOU ABOUT AN ISSUE
16 REGARDING THE ASSAULT IN THE T.V. ROOM, OKAY?

17 A YES, MA'AM.

18 Q IT'S IMPORTANT. NOW YOU TESTIFIED WHEN MR.
19 BARR ASKED YOU ABOUT YOUR FATHER'S PENIS ACTUALLY BEING ON
20 OR AROUND YOUR ANAL AREA; DO YOU RECALL THAT?

21 A YES, MA'AM.

22 Q OKAY, HOW, I MEAN DO YOU RECALL HOW IT FELT
23 WHEN THAT HAPPENED?

24 A YES, MA'AM.

25 Q OKAY, WELL TELL THE JURY?

VICTIM [REDACTED] - RECROSS EXAMINATION BY MR. BARR150

1 A IT FELT UNCOMFORTABLE, LIKE IT, IT WASN'T
2 NORMAL, IT JUST, IT, IT HURT.

3 Q OKAY, AND, AND AT THAT POINT WAS THAT WHEN
4 YOU PULLED AWAY?

5 A YES, MA'AM.

6 Q SO IT HURT?

7 A YES, MA'AM.

8 Q AT THAT POINT BASED ON WHAT YOU TESTIFIED
9 TO AND WHAT YOU'RE SAYING NOW DID YOU FEEL THAT IT HAD
10 ACTUALLY GONE INSIDE OF YOU?

11 A YES, MA'AM.

12 Q ANY DOUBT?

13 A NOT NO DOUBT.

14 MS. LIVELY: THANK YOU.

15 A YES, MA'AM.

16 MS. LIVELY: THAT'S ALL I HAVE OF THIS WITNESS,
17 YOUR HONOR.

18 THE COURT: ANYTHING ON THOSE QUESTIONS, MR.
19 BARR?

20 MR. BARR: YES.

21 **RECROSS EXAMINATION**

22 **BY MR. BARR:**

23 Q **VICTIM** IS IT, IS IT YOUR TESTIMONY THAT IN
24 THIS ALLEGED INCIDENT THAT YOU ATTEMPTED TO PULL AWAY OR
25 THAT YOU PRETENDED TO BE SLEEPING; WHICH ONE IS IT?

VICTIM [REDACTED] - RECROSS EXAMINATION BY MR. BARR151

1 A I WAS DOING BOTH. I WAS ACTING LIKE I WAS
2 SLEEPING AND I JERKED AWAY, LIKE I MOVE AROUND IN MY SLEEP.
3 I PRETEND LIKE I WAS SLEEPING AND I MOVED OVER.

4 Q OKAY, SO NOW IS IT YOUR TESTIMONY THEN THAT
5 EVEN THOUGH YOU WERE MOVING AWAY THAT YOUR FATHER HAD
6 PENETRATED YOU?

7 A IT WAS IN AND THAT'S WHAT WOKE ME UP WHEN
8 IT WENT IN. I WAS SLEEPING AND THAT IS WHAT WOKE ME UP AND
9 MADE ME MOVE OR JERK AWAY.

10 Q SO NOW EVEN THOUGH YOU WERE BETWEEN SIX AND
11 SEVEN YEARS OLD YOU DIDN'T AWAKEN EARLIER?

12 A NO, SIR, I HAD FELT MOVEMENT AND STUFF BUT
13 I WAS SLEEPING, I WAS IN A DEEP SLEEP. I WASN'T PAYING NO
14 ATTENTION AND THEN AFTER THAT HAPPENED THAT WOKE ME UP BUT
15 I PRETENDED LIKE I WAS STILL SLEEPING CAUSE I DIDN'T, I
16 DIDN'T KNOW WHAT WAS HAPPENING AND I THEN JERKED AWAY A
17 LITTLE BIT. I ACTED LIKE I WAS STILL SLEEPING.

18 MR. BARR: NO FURTHER QUESTIONS.

19 THE COURT: ANYTHING ELSE, SOLICITOR?

20 MS. LIVELY: NO, YOUR HONOR.

21 THE COURT: ALL RIGHT, YOU MAY STEP DOWN, THANK
22 YOU VERY MUCH.

23 ALL RIGHT, LADIES AND GENTLEMEN, AT THIS POINT IN
24 TIME WE'RE GOING TO BREAK FOR LUNCH. AS A MATTER OF FACT
25 IT'S GOING TO BE MORE OF AN EXTENDED BREAK. THERE IS A

VICTIM [REDACTED] - RECROSS EXAMINATION BY MR. BARR152

1 MATTER THAT I NEED TO ATTEND THAT DOESN'T RELATE TO THIS
2 PARTICULAR TRIAL, SO I'M GOING TO ASK THAT YOU BE BACK IN
3 YOUR JURY ROOM AT 2:00, BE BACK IN YOUR JURY ROOM AT 2:00
4 AND WE'LL RESUME THIS TRIAL AT THIS POINT IN TIME, THANK
5 YOU. EVERYONE ELSE REMAIN SEATED WHILE THE JURY RETIRES,
6 PLEASE.

7 (WHEREUPON, THE JURY WAS EXCUSED FOR LUNCH AT
8 12:04 P.M.)

9 THE COURT: ALL RIGHT, SOLICITOR, ANYTHING
10 FURTHER AT THIS POINT IN TIME?

11 MS. LIVELY: NO, YOUR HONOR.

12 THE COURT: ALL RIGHT, MR. BARR, ANYTHING ELSE
13 WE NEED TO DO AT THIS POINT IN TIME?

14 MR. BARR: NO, SIR.

15 THE COURT: ALL RIGHT, VERY GOOD. ALL RIGHT,
16 COUNSEL, I'LL SEE YOU BACK AT 2:00 THEN.

17 MS. LIVELY: THANK YOU.

18 THE COURT: THANK YOU VERY MUCH.

19 (WHEREUPON, COURT WAS RECESSED FOR LUNCH AND THE
20 FOLLOWING TAKES PLACE ON THE RECORD AFTER THE LUNCH
21 RECESS.)

22 THE COURT: IS THE STATE READY?

23 MS. LIVELY: YES, SIR.

24 THE COURT: DEFENSE?

25 MR. BARR: YES, YOUR HONOR.

MS. MCGROGAN - DIRECT EXAMINATION BY MS. LIVELY

153

1 THE COURT: ALL RIGHT, VERY GOOD, ASK THE JURY
2 TO COME IN, PLEASE, SIR.

3 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
4 1:59 P.M.)

5 THE COURT: ALL RIGHT, SOLICITOR, YOUR NEXT
6 WITNESS, PLEASE, MA'AM.

7 MS. LIVELY: THANK YOU, YOUR HONOR, THE STATE
8 CALLS KATHY MCGROGAN TO THE STAND.

9 THE COURT: COME UP FORWARD RIGHT HERE TO THE
10 BAILIFF, PLEASE, MA'AM.

11 **KATHY MCGROGAN**

12 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

13 THE CLERK: THANK YOU, PLEASE BE SEATED AND
14 STATE YOUR NAME FOR THE RECORD, PLEASE.

15 THE COURT: WHEN YOU GET SITUATED, MS. MCGROGAN,
16 IF YOU COULD SCOOT YOUR CHAIR UP AS CLOSE AS YOU CAN TO THE
17 MICROPHONE AND SPEAK UP, PLEASE, MA'AM.

18 THE WITNESS: YES, SIR, MY NAME IS KATHY
19 MCGROGAN.

20 THE COURT: ALL RIGHT, SOLICITOR.

21 MS. LIVELY: THANK YOU, YOUR HONOR.

22 **DIRECT EXAMINATION**

23 **BY MS. LIVELY:**

24 Q MS. MCGROGAN, WHERE DO YOU WORK?

25 A I WORK FOR WACCAMAW CENTER FOR MENTAL

MS. MCGROGAN - DIRECT EXAMINATION BY MS. LIVELY

154

1 HEALTH IN GEORGETOWN.

2 Q HOW LONG HAVE YOU WORKED THERE?

3 A I'VE WORKED THERE 10 YEARS.

4 Q AND WHAT ARE YOUR DUTIES THERE?

5 A I'M A CHILD AND ADOLESCENT COUNSELOR, I'M A
6 FAMILY PRESERVATION COUNSELOR.

7 Q AND WILL YOU, PLEASE, TELL THE JURY WHAT,
8 WHAT TYPE OF AN EDUCATIONAL BACKGROUND YOU HAVE?

9 A YES, I HAVE A MASTERS DEGREE IN COUNSELING
10 AND A BACHELORS DEGREE.

11 Q AND DO YOU HAVE ANY CERTIFICATIONS?

12 A YES, I HAVE, I'VE BEEN CERTIFIED IN TRAUMA
13 FOCUS, COGNITIVE BEHAVIORAL THERAPY THROUGH MUSC.

14 Q AND HAVE YOU BEEN LICENSED?

15 A YES, I AM, I'M A LICENSED PROFESSIONAL
16 COUNSELOR WITH THE STATE OF SOUTH CAROLINA.

17 Q OKAY, IN SOUTH CAROLINA?

18 A YES, MA'AM.

19 Q AND HAVE YOU HAD TRAINING IN SEXUAL ABUSE
20 TRAUMA?

21 A YES, I HAVE.

22 Q AND, PLEASE, TELL THE JURY ABOUT THAT?

23 A WELL THAT WAS CONTAINED WITHIN THE TRAUMA
24 FOCUS COGNITIVE BEHAVIORAL THERAPY. IT'S ALL, YOU KNOW,
25 PART OF IDENTIFYING ISSUES SURROUNDING SEXUAL ABUSE,

MS. MCGROGAN - DIRECT EXAMINATION BY MS. LIVELY

155

1 SYMPTOMS, TREATMENT. IT'S ALL CONTAINED IN ONE TRAINING.

2 Q AND HOW MANY CHILDREN OR ADOLESCENTS HAVE
3 YOU COUNSELED OVER THE PAST 10 YEARS?

4 A MY CASELOAD AVERAGES BETWEEN 20 AND 25 ON
5 ANY GIVEN DAY SO OVER TIME I, I JUST COULDN'T EVEN REMEMBER
6 HOW MANY CHILDREN I'VE WORKED WITH IN THOSE 10 YEARS.

7 Q OVER A 100?

8 A OH, YES.

9 MS. LIVELY: YOUR HONOR, AT THIS TIME THE STATE
10 WOULD MOVE TO OFFER KATHY MCGROGAN AS AN EXPERT IN CHILD
11 SEXUAL ABUSE TRAUMA.

12 THE COURT: DO YOU WISH TO VOIR DIRE THE WITNESS
13 OR QUESTION HER CREDENTIALS?

14 MR. BARR: YES, YOUR HONOR, I WOULD.

15 THE COURT: ALL RIGHT, GO AHEAD, SIR.

16 VOIR DIRE

17 BY MR. BARR:

18 Q MS. MCGROGAN, HAVE YOU EVER TESTIFIED AS A
19 PROFESSIONAL OR EXPERT WITNESS IN THE AREA OF SEXUAL ABUSE
20 TRAUMA?

21 A NO, I HAVE NOT.

22 Q OKAY, IN YOUR COURSE OF THIS PROFESSION
23 YOU'VE NEVER TESTIFIED BEFORE IN A COURT OF LAW REGARDING
24 SEXUAL ABUSE TRAUMA?

25 A NO, SIR.

MS. MCGROGAN - DIRECT EXAMINATION BY MS. LIVELY

156

1 MR. BARR: YOUR HONOR, WE DO HAVE SOME QUESTIONS
2 AS TO THIS WITNESS' QUALIFICATIONS TO TESTIFY.

3 THE COURT: DO YOU WANT TO ASK HER SOME FURTHER
4 QUESTIONS OR ARE YOU MAKING A STATEMENT TO ME?

5 MR. BARR: I'M MAKING A STATEMENT TO YOU.

6 THE COURT: ALL RIGHT, VERY GOOD, GO AHEAD, SIR.

7 MR. BARR: IN THAT SHE'S NEVER TESTIFIED
8 PRESENTLY AS AN EXPERT WITNESS ESPECIALLY IN THE FIELD THAT
9 SHE PREPARING TO TESTIFY IN WE WOULD ASK THE COURT NOT TO
10 CERTIFY AS A PROFESSIONAL WITNESS, AS AN EXPERT WITNESS.

11 THE COURT: ALL RIGHT, ANY FURTHER QUESTIONS
12 YOU'D LIKE TO ASK OF THE WITNESS, SOLICITOR?

13 MS. LIVELY: YOUR HONOR, I'LL BE GLAD TO ASK HER
14 SOME MORE QUESTIONS.

15 THE COURT: I WAS JUST ASKING ARE THERE ANY
16 OTHER QUESTIONS YOU'D LIKE TO ASK HER.

17 MS. LIVELY: THAT WAS GOING TO BE EXTENT OF MY
18 GOING INTO HER EDUCATIONAL BACKGROUND AS WELL AS
19 CERTIFICATION AND LICENSURE FOR HER TO BE AN EXPERT IN THIS
20 PARTICULAR AREA, YOUR HONOR.

21 THE COURT: ALL RIGHT, AND THE FIELD AGAIN THAT
22 YOU WANTED HER TO TESTIFY ABOUT WAS WHAT AGAIN, PLEASE,
23 MA'AM?

24 MS. LIVELY: SEXUAL ABUSE TRAUMA.

25 THE COURT: PURSUANT TO RULE 702 I'M GOING TO

MS. MCGROGAN - DIRECT EXAMINATION BY MS. LIVELY

157

1 ALLOW THE WITNESS TO BE QUALIFIED TO GIVE HER OPINION,
2 THANK YOU.

3 MS. LIVELY: THANK YOU, YOUR HONOR.

4 MS. LIVELY: (CONTINUING)

5 Q NOW, MS. MCGROGAN, WHO ARE YOU HERE ON
6 BEHALF OF?

7 A [REDACTED] VICTIM [REDACTED] [REDACTED]

8 Q AND WHY IS THAT?

9 A I'VE BEEN WORKING WITH HIM FOR ABOUT TWO
10 YEARS IN TREATMENT FOR THE ISSUES THAT HE PRESENTED WITH.

11 Q AND TELL THE JURY WHAT THOSE ISSUES WERE
12 THAT HE PRESENTED TO YOU?

13 A WELL WHEN I STARTED WORKING WITH HIM THERE
14 WAS AN ISSUE THAT CAME TO ME THROUGH ANOTHER COUNSELOR THAT
15 [REDACTED] VICTIM WAS EXHIBITING PRETTY SEVERE SYMPTOMS AND THAT THERE
16 WERE SOME FAMILY ISSUES INVOLVED AND THE SCHOOL BASE
17 COUNSELOR FELT LIKE HE NEEDED MORE INTENSIVE TREATMENT SO I
18 STARTED WORKING WITH HIM BACK IN APRIL OF 2008.

19 Q AND WHEN YOU STARTED WORKING WITH HIM IN
20 APRIL OF 2008 WAS HE ON ANY TYPE OF MEDICATIONS?

21 A NOT AT THAT TIME I DON'T BELIEVE SO. I
22 BELIEVE HE HAD OR HE MAY HAVE BEEN ON THE MEDICATION TO
23 TREAT ADHD CAUSE I KNOW HE HAD THE DIAGNOSIS OF ADHD AT
24 THAT POINT.

25 Q OKAY, AND AFTER HE CAME TO, TO YOU AS A

MS. MCGROGAN - DIRECT EXAMINATION BY MS. LIVELY

158

1 REFERRAL WHAT TYPE OF FOCUS DID YOU PUT ON ASSISTING HIM
2 WITH THESE PROBLEMS THAT HE WAS HAVING?

3 A WELL I STARTED REALIZING THAT HE HAD A
4 NUMBER OF ISSUES THAT WERE, THAT I BELIEVED TO INDICATE
5 POST TRAUMATIC STRESS DISORDER SO WE STARTED LOOKING AT THE
6 TRAUMA THAT HAD CAUSED THOSE SYMPTOMS AND STARTED WORKING
7 TOWARDS HELPING HIM DEAL WITH THE TRAUMA THAT HE HAD
8 EXPERIENCED.

9 Q NOW, MS. MCGROGAN, YOU CAN'T TELL THE JURY
10 WHAT [VICTIM] [REDACTED] TOLD YOU, OKAY, WE'VE DISCUSSED THAT?

11 A RIGHT, UH-HUH.

12 Q WILL YOU, PLEASE, TELL THE JURY, HOWEVER,
13 IF HE AT ANY TIME DISCLOSED TO YOU A TIME AND PLACE OF A
14 PARTICULAR EVENT THAT HAD OCCURRED IN HIS CHILDHOOD THAT
15 YOU FOUND TO BE SIGNIFICANT?

16 A YES, HE TOLD ME THAT A TRAUMATIC EVENT HAD
17 OCCURRED AROUND, WHEN HE WAS AROUND AGE SEVEN TO EIGHT AND
18 THAT IT OCCURRED AT HIS GRANDMOTHER'S HOUSE.

19 Q ALL RIGHT, AND, AND WAS HE, WAS HE CLEAR
20 ABOUT THAT?

21 A OH, YEAH, VERY CLEAR, HE, HE REMEMBERED IT.

22 Q AND DID YOU HAVE TO -- I'M SORRY.

23 A HE REMEMBERED IT QUITE WELL.

24 Q AND HAVE YOU SEVERAL DISCUSSIONS REGARDING
25 THAT ISSUE

MS. MCGROGAN - DIRECT EXAMINATION BY MS. LIVELY

159

1 A YES, I HAVE.

2 Q NOW AT THAT TIME WHEN THAT WAS DISCLOSED TO
3 YOU WERE YOU IN ANY POSITION TO REPORT ANYTHING TO LAW
4 ENFORCEMENT?

5 A WELL I REALIZED THAT WHAT **VICTIM** HAD GONE
6 THROUGH HAD NEVER BEEN REPORTED TO LAW ENFORCEMENT SO I
7 ENCOURAGED HIM AND HIS MOTHER TO MAKE A REPORT JUST A
8 COUPLE OF MONTHS AFTER I STARTED WORKING WITH HIM.

9 Q OKAY, AND ARE YOU AWARE OBVIOUSLY THAT,
10 THAT THAT DID ACTUALLY OCCUR?

11 A YES, MA'AM.

12 Q DO YOU KNOW WHEN THAT REPORT TOOK PLACE?

13 A THEY LEFT MY OFFICE IT WAS EARLY AUGUST AND
14 I KNOW THAT THEY CALLED ME UP LATER THAT DAY AND SAID THAT
15 THEY HAD BEEN TO THE SHERIFF'S OFFICE.

16 Q NOW, MS. MCGROGAN, WHAT WERE YOUR, WHAT
17 WERE YOUR ACTUAL GOALS THAT YOU HAD ESTABLISHED IN
18 COUNSELING **VICTIM** **[REDACTED]**

19 A WELL WHEN WE, WHEN I FIRST STARTED WORKING
20 WITH HIM, LIKE I SAID, HE WAS HAVING A NUMBER OF PROBLEMS
21 AT SCHOOL AND AT HOME AND THE GOALS WERE TO HELP HIM NOT BE
22 SO OPPOSITIONAL AT SCHOOL, NOT TO BE OPPOSITIONAL AT HOME,
23 TO BE MORE COMPLIANT WITH, WITH WHAT HIS MOTHER WAS ASKING
24 HIM TO DO AND BE MORE COMPLIANT AT SCHOOL. THOSE WERE THE
25 INITIAL GOALS BUT THEN I, LIKE I SAID AFTER WE, I REALIZED

MS. MCGROGAN - DIRECT EXAMINATION BY MS. LIVELY

160

1 WHAT HE HAD BEEN THROUGH THE GOALS SORT OF SHIFTED INTO
2 HELPING HIM DEAL WITH THE ACTUAL EVENTS THAT OCCURRED.

3 Q AND LET ME ASK YOU THIS SINCE YOU'VE BEEN
4 QUALIFIED IN CHILD SEXUAL ABUSE TRAUMA WAS HIS ISSUES THAT
5 YOU DEALT WITH CONSISTENT WITH A CHILD WHO HAS SUFFERED
6 SOME CHILDHOOD SEXUAL ABUSE?

7 A YES, MA'AM, HE HAS CLASSIC SYMPTOMS OF POST
8 TRAUMATIC STRESS DISORDER. POST TRAUMATIC STRESS HE HAS
9 SEVERAL DIFFERENT SYMPTOMS AND YOU HAVE TO HAVE A NUMBER OF
10 THEM IN ORDER TO QUALIFY FOR THE DIAGNOSIS. **VICTIM** HAS
11 ALMOST ALL OF THEM. HE HAS FLASHBACKS; HE HAS A LOT OF
12 INTRUSIVE THOUGHTS. WHEN HE DOESN'T WANT TO BE THINKING OF
13 A CERTAIN EVENT IT WILL COME INTO HIS MIND AND HE DOESN'T
14 WANT THAT TO HAPPEN. HE HAS A LOT OF DIFFICULTY SLEEPING,
15 FREQUENT NIGHTMARES. HE'S VERY HYPER VIGILANT. HE KEEPS
16 AN EYE ON EVERYTHING THAT'S HAPPENING WHEREVER HE'S AT. HE
17 KIND OF KNOWS EVERYTHING THAT'S HAPPENING AROUND HIM.

18 HE TENDS TO AVOID ANYTHING THAT MIGHT REMIND HIM
19 OF THE EVENT, ANYBODY, PERSONS OR A PLACE HE WILL TEND TO
20 AVOID THOSE THINGS. HE DOESN'T WANT TO TALK A LOT ABOUT
21 THE EVENT. HE IS TRIGGERED BY REMINDERS OF THE EVENT. IN
22 OTHER WORDS IF HE, YOU KNOW, SEES A PERSON OR HEARS A SOUND
23 OR SOMETHING THAT REMINDS HIM OF THE EVENT HE GETS VERY
24 ANXIOUS, VERY, THAT WILL TRIGGER SLEEP DISTURBANCES, THE
25 NIGHTMARES.

MS. MCGROGAN - DIRECT EXAMINATION BY MS. LIVELY

161

1 HE'S HAD A LOT OF DIFFICULTY CONCENTRATING AT
2 SCHOOL AND KEEPING HIS FOCUS ON SCHOOL WORK BECAUSE OF THE
3 FLASHBACKS AND INTRUSIVE THOUGHTS AND ALSO BECAUSE OF THE
4 DISTURBED SLEEP. YOU KNOW HE CAN GO SEVERAL NIGHTS WITHOUT
5 SLEEPING BECAUSE HE'S, HE'S JUST NOT ABLE TO SLEEP, SO HE
6 HAS ALL THOSE SYMPTOMS AND THOSE ARE CLASSIC SYMPTOMS OF
7 POST TRAUMATIC STRESS DISORDER AND THAT WAS ADDED AS A
8 DIAGNOSIS TO HIS TREATMENT ABOUT TWO MONTHS AFTER I STARTED
9 WORKING WITH HIM.

10 Q OKAY, AND YOUR EXPERT OPINION IS THAT
11 CONSISTENT THEN WITH HIS SEXUAL ABUSE?

12 A YES, YES, SEXUAL TRAUMA IS CONSIDERED ONE
13 OF THE TYPES OF TRAUMATIC EVENTS THAT, YOU KNOW, TRIGGERS
14 PTSD SYMPTOMS.

15 Q OKAY, NOW WERE, YOU'RE NOT AUTHORIZED
16 ACTUALLY TO PRESCRIBE HIM ANY MEDICATIONS, WERE YOU?

17 A NO, MA'AM.

18 Q OKAY, EARLIER THERE'S BEEN TESTIMONY BY
19 **VICTIM** HIMSELF THAT HE ACTUALLY WAS ON SOME MEDICATIONS BUT
20 YOU ARE AWARE OF THAT?

21 A YES, MA'AM.

22 Q AND WHAT WERE THOSE MEDICATIONS?

23 A HE'S BEEN, LIKE I SAID I THINK HE TOOK
24 ADDERALL FOR THE ATTENTION DEFICIT DISORDER. HE ALSO BEEN
25 PRESCRIBED SEROQUEL WHICH IS TO HELP ANXIETY AND

MS. MCGROGAN - DIRECT EXAMINATION BY MS. LIVELY

162

1 RESTLESSNESS AT NIGHT, PROZAC WHICH ADDRESSES THE
2 DEPRESSIVE SYMPTOMS, AND I CAN'T REMEMBER, I THINK THERE
3 WAS ANOTHER ONE BUT I'M NOT, I'M NOT, IT'S NOT COMING INTO
4 MY MIND RIGHT THIS MINUTE.

5 Q OKAY, AND DOES HE TAKE THOSE ON A REGULAR
6 BASIS?

7 A YES.

8 Q NOW DO YOU KNOW IF HE'S ON THOSE
9 MEDICATIONS AT THIS TIME?

10 A I DON'T KNOW FOR SURE THAT HE'S, I KNOW
11 THAT HE HAS ACTIVE PRESCRIPTIONS FOR THEM AND, YOU KNOW, AS
12 FAR AS I KNOW HE TAKES THEM.

13 Q HOW OFTEN DO YOU SEE VICTIM FOR COUNSELING?

14 A WHEN I FIRST STARTED WORKING WITH VICTIM I
15 WAS SEEING HIM ABOUT ONCE A WEEK. IN THE LAST TWO TO THREE
16 MONTHS I'VE BEN SEEING HIM ALMOST TWICE A WEEK.

17 Q OKAY, AND HAVE THERE ANY, HAS ANYTHING
18 HAPPENED THAT HAS TRIGGERED YOUR NEEDING TO SEE HIM TWICE A
19 WEEK?

20 A WELL IN PREPARING FOR WHAT, YOU KNOW, IS
21 OCCURRING HERE TODAY, IT'S BEEN VERY STRESSFUL FOR VICTIM
22 TO TALK ABOUT WHAT'S BEEN GOING ON.

23 Q OKAY, SO HAVING TO BE HERE IN COURT?

24 A UH-HUH.

25 Q IS THAT A YES?

MS. MCGROGAN - DIRECT EXAMINATION BY MS. LIVELY

163

1 A YES, MA'AM, I'M SORRY.

2 Q NOW HAVE YOU EVER, ARE YOU FAMILIAR WITH
3 THE TERM DELAYED DISCLOSURE OR DELAYED REPORTING IN REGARDS
4 TO SEXUAL ABUSE TRAUMA?

5 A YES, MA'AM, I AM. YOU KNOW FREQUENTLY
6 CHILDREN DO NOT DISCLOSE WHAT'S HAPPENED TO THEM. WE KNOW
7 THAT ALMOST 60 PERCENT OF CHILDREN DO NOT DISCLOSE ANYTHING
8 ABOUT SEXUAL ABUSE UNTIL THEY'RE ADULTS AND THEN THERE'S A
9 LOT OF FACTORS THAT CONTRIBUTE TO A CHILD NOT DISCLOSING
10 RIGHT AWAY WHAT HAPPENED.

11 Q AND IN YOUR TRAINING AS A CHILD SEXUAL
12 ABUSE COUNSELOR WHAT ARE THOSE FACTORS THAT CAN PLAY INTO A
13 CHILD'S DELAYED REPORTING?

14 A WELL ONE OF THE THINGS THAT'S PROBABLY THE
15 MOST SIGNIFICANT IS, IS WHO THE PERPETRATOR IS IN
16 RELATIONSHIP TO THE CHILD. IF THE PERPETRATOR IS A PARENT
17 WE KNOW THAT THAT REALLY CAN DELAY THE DISCLOSURE BECAUSE
18 THERE ARE SO MANY ISSUES INVOLVED WITH A PARENTAL
19 RELATIONSHIP. FIRST OF ALL THAT PARENT IS AN AUTHORITY
20 FIGURE AND THAT CAN IMPLY THAT, YOU KNOW, IF THE, IF THE
21 CHILD HAS BEEN TOLD DO NOT TELL WHAT HAPPENED HERE, THIS IS
22 COMING FROM A PARENT WHO HAS TOLD THIS CHILD THAT.

23 WE ALSO KNOW THAT, YOU KNOW, CHILDREN TRUST THEIR
24 PARENTS TO KEEP THEM SAFE AND TO TREAT THEM WELL AND IT'S A
25 VERY CONFUSING ISSUE IF A PARENT HAS TRAUMATIZED A CHILD.

MS. MCGROGAN - DIRECT EXAMINATION BY MS. LIVELY

164

1 THEY'RE CONFUSED; THEY DON'T KNOW WHETHER THEY SHOULD TELL.
2 THEY'RE AFRAID GETTING THAT PARENT IN TROUBLE. THEY DON'T
3 WANT TO DISRUPT A FAMILY, YOU KNOW, MAYBE, MAYBE THE FAMILY
4 WILL DISINTEGRATE OR BREAK UP AND THAT WOULD BE ANOTHER
5 TRAUMA TO THE CHILD.

6 WE ALSO KNOW THAT CHILDREN WHEN THEY'RE YOUNG IF
7 THEY'RE ABUSED HAVE DIFFICULTY TALKING ABOUT WHAT HAPPENED
8 TO THEM BECAUSE THEY REALLY DON'T UNDERSTAND WHAT HAPPENED
9 TO THEM AND DON'T HAVE WORDS TO TELL A LOT OF TIMES WHAT
10 EXACTLY HAPPENED TO THEM.

11 Q WELL LET ME ASK YOU ABOUT ---

12 A ALSO -- I'M SORRY, GO AHEAD.

13 Q I'M SORRY, I WAS GOING TO FOCUS BACK ON
14 **VICTIM** SO HOW LONG WAS HIS, DO YOU RECALL FROM YOUR
15 COUNSELING HOW LONG WAS HIS DELAYED DISCLOSURE?

16 A WELL I STARTED SEEING HIM WHEN HE WAS ABOUT
17 14, I THINK HE WAS JUST RIGHT BEFORE HIS 14TH BIRTHDAY AND,
18 OR 15TH BIRTHDAY, SO I GUESS IT HAD BEEN SEVEN OR EIGHT
19 YEARS SINCE IT HAD HAPPENED.

20 Q AND IN YOUR EXPERT OPINION WOULD THAT
21 DELAYED DISCLOSURE SINCE THE, WITH **VICTIM** HAD BEEN
22 UNUSUAL IN SEXUAL TRAUMA?

23 A NOT AT ALL, ESPECIALLY BECAUSE **VICTIM** IS A
24 MALE WE KNOW THAT BOYS TEND TO NOT DISCLOSE BECAUSE THERE'S
25 A WHOLE STIGMA AROUND THE SEXUAL ABUSE OF MALES THAT THEY

MS. MCGROGAN - DIRECT EXAMINATION BY MS. LIVELY

165

1 BE LABELED AND, YOU KNOW, HOMOSEXUAL OR SOMETHING AND
2 THAT'S, THAT'S VERY, YOU KNOW, RESTRICTIVE. THEY DON'T
3 WANT TO TALK ABOUT THAT OR HAVE THAT STIGMA LABELED ON THEM
4 SO THAT'S ANOTHER ISSUE.

5 Q OKAY, ALL RIGHT, SO HOW IS **VICTIM** **████**
6 DOING NOW; YOU SAID YOU HAD BEEN COUNSELING HIM TWICE A
7 WEEK, HOW IS HE DOING?

8 A I THINK HE'S DOING REMARKABLY WELL RIGHT
9 NOW. HE'S BECOME A LOT MORE OPEN ABOUT WHAT HAPPENED AND
10 TALKING ABOUT IT AND BEING ABLE TO COPE EMOTIONALLY A LOT
11 BETTER. WHEN I FIRST STARTED WORKING WITH **VICTIM** HIS MAIN
12 EMOTIONAL COPING SKILL WAS ANGER, THAT'S PRETTY MUCH HOW HE
13 RESPONDED TO EVERYTHING. HE WAS VERY ANGRY AND VERY, VERY
14 IRRITABLE ABOUT EVERYTHING AND I THINK THAT OVER THE LAST
15 YEAR HE HAS LEARNED TO COPE MUCH BETTER, TO THINK THROUGH
16 ACTIONS BEFORE HE FOLLOWS UP ON THEM, JUST BEING ABLE TO
17 TAKE A DEEP BREATH AND TRY TO DECIDE IS THERE ANOTHER
18 CHOICE I CAN DO HERE BESIDES GETTING ANGRY.

19 Q OKAY, AND ARE YOU FAMILIAR WITH THE
20 DOCUMENTS THAT ARE ACTUALLY ALREADY IN EVIDENCE WHICH ARE
21 STATE'S EXHIBIT NUMBER 5 AND NUMBER 6 WHICH ARE A PICTURE
22 AND A POEM?

23 A YES, MA'AM, THOSE WERE THE THINGS THAT WERE
24 FIRST SHOWN TO ME BY THE OTHER COUNSELOR AS A REASON THAT I
25 MIGHT NEED TO GET INVOLVED IN THE CASE.

MS. MCGROGAN - DIRECT EXAMINATION BY MS. LIVELY

166

1 Q OKAY, SO THAT RAISED SOME HUGE CONCERNS?

2 A YES, MA'AM, UH-HUH.

3 Q NOW HAVE YOU DONE ANY FAMILY COUNSELING
4 BETWEEN **VICTIM** AND HIS MOTHER, KIMBERLY HEWITT?

5 A YES, I HAVE, UH-HUH.

6 Q OKAY, ARE YOU AWARE, AND IF YOU ARE NOT, DO
7 YOU HAVE ANY PERSONAL KNOWLEDGE AS TO WHETHER OR NOT SHE
8 WAS INVOLVED IN, IN **VICTIM** COMING FORWARD WITH, WITH THE,
9 WITH THE DISCLOSURE?

10 A I'M NOT SURE I UNDERSTAND EXACTLY WHAT
11 YOU'RE ASKING ME?

12 Q OKAY ---

13 A I THINK I DO BUT I'M NOT SURE.

14 Q DO YOU, WHO KNEW FIRST ABOUT THE
15 DISCLOSURE, WAS IT YOU OR MS. HEWITT?

16 A OKAY, I DID.

17 Q OKAY ---

18 A **VICTIM** WAS VERY RELUCTANT FOR HIS MOTHER TO
19 KNOW ANYTHING ABOUT IT AND SHE WAS RATHER, I MEAN HER EYES
20 GOT, YOU KNOW, BIG AS SAUCERS WHEN. WHEN I TOLD HER. I,
21 YOU KNOW, ASKED HER TO COME BACK INTO THE OFFICE AND SAID
22 WE HAVE AN ISSUE HERE THAT **VICTIM** NEEDS TO GO TO THE LAW,
23 LAW ENFORCEMENT ABOUT AND SHE, SHE WAS JUST, I MEAN SHE WAS
24 VERY INCREDULOUS.

25 Q OKAY, SO I WANT TO MAKE SURE IT'S CLEAR,

MS. MCGROGAN - CROSS EXAMINATION BY MR. BARR

167

1 WERE YOU THE FIRST PERSON THAT TOLD MS. HEWITT, THE MOTHER
2 OF VICTIM [REDACTED]

3 A YES, MA'AM, AS FAR AS I KNOW.

4 Q OKAY, AND DO YOU REMEMBER WHEN THAT WAS?

5 A THAT WOULD HAVE BEEN AUGUST.

6 Q SO IT WAS AUGUST OF '08?

7 A YES, MA'AM.

8 Q AND UNTIL THAT TIME WHAT DID VICTIM [REDACTED]
9 TELL YOU IN REGARDS TO DISCUSSING THIS WITH HIS MOTHER?

10 A WELL HE JUST SAID THAT IT HAPPENED A LONG
11 TIME AGO AND THAT HE DIDN'T REALLY WANT, YOU KNOW, IT HAD
12 ALL BEEN TAKEN CARE OF AND HE DIDN'T REALLY WANT TO TALK
13 ABOUT IT WITH ANYBODY. HE DIDN'T WANT TO TALK REALLY ABOUT
14 IT WITH ME, IT WAS IN THE PAST AND OVER AND DONE WITH AND,
15 YOU KNOW, BUT I FELT LIKE IT HADN'T BEEN TAKEN CARE OF.

16 MS. LIVELY: OKAY, THAT'S ALL THE QUESTIONS I
17 HAVE, MS. MCGROGAN, PLEASE ANSWER ANY QUESTIONS MR. BARR
18 MAY HAVE FOR YOU.

19 THE COURT: CROSS EXAMINATION.

20 MR. BARR: THANK YOU, YOUR HONOR.

21 CROSS EXAMINATION

22 BY MR. BARR:

23 Q MS. MCGROGAN, HOW ARE YOU TODAY?

24 A I'M FINE, THANK YOU.

25 Q GOOD, VICTIM [REDACTED] VICTIM [REDACTED] FILE WAS GIVEN TO YOU

MS. MCGROGAN - CROSS EXAMINATION BY MR. BARR

168

1 IN APRIL OF 2008; IS THAT CORRECT?

2 A THE END OF APRIL, RIGHT.

3 Q AND THE DRAWINGS AND THE POEM AND ALL OF
4 THAT WAS A PART OF THAT FILE AT THAT TIME?

5 A YES, SIR, WELL ACTUALLY THE COUNSELOR THAT
6 HADN'T BEEN PUT INTO THE FILE YET BUT SHE CAME TO ME AND
7 SAID, YOU KNOW, I HAVE, I'M WORKING WITH A CHILD AND THAT
8 THESE THINGS HAVE COME TO LIGHT AND I THINK MAYBE YOU NEED
9 TO GET INVOLVED IN THIS CASE, I'M NOT COMFORTABLE WORKING
10 WITH IT.

11 Q OKAY, SO WHEN WERE YOU FIRST AWARE OF THE
12 ALLEGED SEXUAL BATTERY ON [REDACTED] [REDACTED]

13 A ACTUALLY DURING THE FIRST MEETING WITH
14 [REDACTED] WHICH WAS THE END OF APRIL.

15 Q AND THAT WOULD HAVE BEEN IN APRIL?

16 A RIGHT.

17 Q IS THERE ANY REASON WHY YOU WOULD HAVE
18 WAITED FROM APRIL TILL AUGUST TO HAVE THIS CONVERSATION
19 WITH HIS MOTHER?

20 A YES, THERE IS.

21 Q COULD YOU ELABORATE?

22 A YES, SIR, [REDACTED] WAS, [REDACTED] FATHER WAS
23 IN JAIL AND HE TOLD ME THAT HE THOUGHT HIS FATHER WAS IN
24 JAIL FOR THAT REASON AND IT TURNED OUT THAT WASN'T THE
25 REASON.

MS. MCGROGAN - CROSS EXAMINATION BY MR. BARR

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1 Q OKAY, WHAT WOULD, WHAT DIRECT BEARING WOULD
2 THAT HAVE ON YOUR DECISION TO ENCOURAGE THEM TO GO TO LAW
3 ENFORCEMENT?

4 A WELL A CRIME HAD BEEN COMMITTED THAT HADN'T
5 BEEN REPORTED.

6 Q LET ME ASK THIS ANOTHER WAY. WHY IN APRIL
7 OF 2008 IF YOU BELIEVED A CRIME HAD BEEN COMMITTED THAT YOU
8 WOULD HAVE NOT GONE TO LAW ENFORCEMENT ABOUT A CRIME THAT
9 YOU BELIEVED HAD BEEN COMMITTED?

10 A I BELIEVED IT HAD BEEN ADJUDICATED AT THAT
11 POINT.

12 Q SO YOU'RE SAYING THAT YOU BELIEVED THAT
13 THAT HAD BEEN ADJUDICATED?

14 A SO DID **VICTIM** HE THOUGHT THAT WAS THE
15 REASON HIS DAD WAS IN JAIL.

16 Q OKAY ---

17 A AND THAT'S WHAT HE TOLD ME.

18 Q OKAY, NOW YOU HAVE MADE A CLINICAL
19 DIAGNOSIS, I BELIEVE, THAT IT'S POST TRAUMATIC STRESS
20 SYNDROME AND I BELIEVE YOU TESTIFIED ON DIRECT EXAMINATION
21 THAT THAT DIAGNOSIS WAS MADE SEVERAL WEEKS AFTER YOU HAD
22 STARTED SEEING **VICTIM** IS THAT CORRECT?

23 A YES, SIR, UH-HUH.

24 Q OKAY ---

25 A MAYBE A WEEK, TWO WEEKS, I'M NOT SURE

MS. MCGROGAN - CROSS EXAMINATION BY MR. BARR

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1 EXACTLY WHEN.

2 Q OKAY ---

3 A I KNOW WE CHANGED THE DIAGNOSIS SHORTLY
4 AFTER I STARTED WORKING WITH HIM.

5 Q OKAY, DID YOU HAVE AN EARLIER DIAGNOSIS OR
6 A PRELIMINARY DIAGNOSIS THAT WAS DIFFERENT FROM --

7 A YES, SIR, THE PRESENTING DIAGNOSIS THAT HE
8 WAS PRESENTED WITH WAS ATTENTION DEFICIT DISORDER WHICH HAS
9 A LOT OF THE SIMILAR CHARACTERISTICS IN THAT IT CAUSES A
10 CHILD TO DO A LOT OF IMPULSIVE BEHAVIORS. THEY LACK FOCUS
11 AT SCHOOL. THEY CAN BE OPPOSITIONAL SO THOSE KINDS OF
12 BEHAVIORS IN A CHILD **VICTIM** AGE LOOK LIKE ADHD, HOWEVER
13 ONCE THINGS STARTED COMING TO LIGHT AND, YOU KNOW, THE
14 DIAGNOSIS IS MADE WITH, IN CONFERENCE WITH THE DOCTOR WE
15 FELT IT WAS A GOOD IDEA TO ADD THE DIAGNOSIS OF PTSD
16 BECAUSE WE REALIZED THAT HE WAS HAVING FLASHBACKS; THAT HE
17 WAS HAVING NIGHTMARES; THAT HE WAS HAVING A LOT OF THE
18 SYMPTOMS OF POST TRAUMATIC STRESS DISORDER.

19 Q IN TERMS OF YOUR ORIGINAL DIAGNOSIS DID
20 THAT SEEM CONSISTENT TO YOU WITH WHAT HIS BEHAVIORAL
21 PATTERNS WERE AT THAT TIME?

22 A WELL ACTUALLY I DIDN'T MAKE THE ORIGINAL
23 DIAGNOSIS, THE SCHOOL BASE COUNSELOR WAS THE ONE WHO, WHO
24 HAD THE DIAGNOSIS OF ADHD WHEN SHE, YOU KNOW, WHEN SHE DID
25 THE INTAKE WITH **VICTIM** WE ALWAYS HAVE TO PRESENT WHAT WE

MS. MCGROGAN - CROSS EXAMINATION BY MR. BARR

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1 THINK IS A PRELIMINARY DIAGNOSIS WHEN WE OPEN THE CHART AND
2 THAT WAS MS. BROWN'S DIAGNOSIS AND THEN WHEN I STARTED
3 WORKING WITH [VICTIM] I HAD THE DIAGNOSIS, THE PTSD WAS ADDED
4 ON TO THE ADHD. YOU SEE HE ACTUALLY CARRIES TWO DIAGNOSIS
5 AT THIS POINT.

6 Q OKAY, IN YOUR DIRECT TESTIMONY YOU SAID
7 THAT YOU THOUGHT THAT [VICTIM] REMEMBERED THIS ALLEGED
8 INCIDENT QUITE WELL. WHAT DO YOU BASE THAT ON?

9 A HE TOLD ME SOME THINGS ABOUT IT.

10 Q I'M NOT GOING TO ASK YOU WHAT HE TOLD YOU
11 BUT IN TERMS OF REMEMBERING QUITE WELL, YOUR DECISION THAT
12 HE WAS REMEMBERING QUITE WELL, IS THAT BASED ON ANYTHING
13 YOU'VE INDEPENDENTLY VERIFIED OR JUST THE FACT THAT HE WAS
14 ABLE TO RECITE THINGS TO YOU?

15 A WELL THE FACT THAT HE WAS ABLE TO GIVE ME,
16 YOU KNOW, AN APPROXIMATE YEAR AND, AND A DEFINITE LOCATION
17 WHERE IT HAPPENED.

18 Q OKAY, AND YOU CONSIDER THAT AS REMEMBERING
19 QUITE WELL?

20 A THAT AND HE IDENTIFIED A PIECE OF FURNITURE
21 AND KNEW WHAT THE COLOR OF THE COVER WAS ON A PIECE OF
22 FURNITURE SO WHEN A CHILD HAS, HAS THOSE KIND OF MEMORIES
23 THAT SEEMS PRETTY DETAILED.

24 Q DID YOU VERIFY THAT THAT COLOR WAS CORRECT?

25 A NO, SIR.

MS. MCGROGAN - CROSS EXAMINATION BY MR. BARR

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1 Q OKAY, NOW IN TERMS OF YOUR OVERALL
2 IMPRESSION OF [VICTIM] WHEN HE CAME TO YOU WOULD YOU CONSIDER
3 HIM TO HAVE BEEN A WELL BALANCED FUNCTIONING AGE
4 APPROPRIATE CHILD?

5 A I CONSIDERED [VICTIM] A VERY INTELLIGENT
6 YOUNG MAN WHO WAS EXHIBITING SIGNS OF HAVING A LOT OF
7 ANGER, A LOT OF ANXIETY, THAT HE WAS DEMONSTRATING AS
8 OPPOSITIONAL BEHAVIOR.

9 Q OKAY, AND COULD YOU TELL US IN YOUR OPINION
10 IF, IF HE WAS OPERATING AS A VERY INTELLIGENT CHILD, MAKING
11 A'S, WHETHER OR NOT THAT SOME TRIGGER OR ---

12 A ACTUALLY HE WASN'T MAKING A'S AT THAT
13 POINT. HE WAS, HE WAS DOING POORLY AT SCHOOL. NOW HIS
14 PREVIOUS GRADES LIKE IN ELEMENTARY SCHOOL INDICATED A CHILD
15 WHO WAS VERY CAPABLE OF DOING EXCELLENT WORK. HE HAD BEEN
16 AN HONOR ROLL STUDENT IN ELEMENTARY SCHOOL AND NOW HIS
17 GRADES WERE PLUMMETING SO WE KNEW HE HAD THE CAPABILITY AND
18 BECAUSE OF HIS BEHAVIOR HE WAS BEING DISMISSED A LOT FROM
19 CLASS AND EVERYTHING SO HIS GRADES WERE SUFFERING.

20 Q NOW THIS CHANGE IN BEHAVIOR DO YOU
21 SPECIFICALLY RELATE THAT CHANGE TO ANYTHING INVOLVING THE
22 ALLEGED INCIDENT?

23 A IT'S CONSISTENT WITH WHAT CHILDREN DO WHO
24 ARE, WHO HAVE BEEN SEXUALLY TRAUMATIZED OR TRAUMATIZED IN
25 ANY WAY THAT WHEN THEY START REMEMBERING THINGS THAT THAT'S

1 CONSISTENT WITH THE WAY MANY CHILDREN REACT.

2 Q SO IT'S YOUR DIAGNOSIS THEN THAT IT'S ONLY
3 THEN WHEN HE STARTED REMEMBERING?

4 A HE TOLD ME THAT THAT'S, THAT HE HAD ALWAYS
5 REMEMBERED IT BUT HE ACTUALLY HADN'T TOLD ANYBODY ABOUT IT.
6 HE HAD KIND OF TRIED TO PUT IT OUT OF HIS MIND A LOT AND
7 FINALLY HE TOLD SOMEONE.

8 Q SO HE'S DOING OKAY UP UNTIL THEN BUT THEN
9 ALL OF A SUDDEN EVERYTHING CHANGED?

10 A WELL ALSO MIDDLE SCHOOL CHILDREN ARE
11 PUBERTY STARTS OCCURRING AT THAT POINT AND THAT COMBINED
12 WITH SEXUAL TRAUMA THERE'S A WHOLE LOT OF ISSUES THAT SORT
13 OF IGNITE AT THAT POINT FOR MANY CHILDREN WHO HAVE BEEN
14 SEXUALLY TRAUMATIZED.

15 MR. BARR: I HAVE NO FURTHER QUESTIONS FOR THIS
16 WITNESS.

17 THE COURT: ANY REDIRECT?

18 MS. LIVELY: NO, YOUR HONOR, NOT FROM THE STATE,
19 THANK YOU.

20 THE COURT: DO YOU WISH THE WITNESS TO BE
21 EXCUSED?

22 MS. LIVELY: YES, YOUR HONOR, PLEASE.

23 THE COURT: ANY OBJECTION?

24 MR. BARR: NO OBJECTION, YOUR HONOR.

25 THE COURT: ALL RIGHT, MA'AM, YOU'RE RELEASED

1 FROM YOUR SUBPOENA, YOU MAY GO BACK TO YOUR REGULAR
2 ACTIVITIES.

3 A THANK YOU.

4 THE COURT: YOUR NEXT WITNESS, SOLICITOR.

5 MS. LIVELY: YOUR HONOR, AT THIS TIME THE STATE
6 RESTS.

7 THE COURT: ALL RIGHT, MR. BARR, SOME MATTERS OF
8 LAW YOU NEED TO TAKE UP WITH THE COURT OUTSIDE THE JURY'S
9 PRESENCE?

10 MR. BARR: YES, SIR.

11 THE COURT: VERY GOOD, ALL RIGHT, MR. FOREMAN,
12 TAKE YOUR JURY TO THE JURY ROOM FOR A LITTLE BIT, PLEASE.

13 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
14 2:26 P.M.)

15 THE COURT: ALL RIGHT, MR. BARR, I'LL BE GLAD TO
16 HEAR FROM YOU, SIR.

17 MR. BARR: YOUR HONOR, THE DEFENSE WOULD MOVE AT
18 THIS POINT FOR A DIRECTED VERDICT. I BELIEVE THE STATE'S
19 CASE TAKEN IN THE BEST POSSIBLE LIGHT TO THE STATE WOULD
20 NOT SUGGEST THAT THEY'VE PRESENTED EVIDENCE, ONE, TO THAT
21 WOULD PRESENT A JURY QUESTION ON THE ISSUE OF WHETHER OR
22 NOT THERE WAS PENETRATION. I THINK THE TESTIMONY OF THE
23 ALLEGED VICTIM WAS CERTAINLY VERY UNCLEAR AS TO WHETHER OR
24 NOT HE HAD BEEN PENETRATED, SAYS HE WAS AWAKE AND MOVED
25 AWAY. HE SAYS HE PRETENDED TO BE ASLEEP. YOUR HONOR, I

1 THINK IT WOULD BE DIFFICULT TO ASK THE JURY TO FIND BEYOND
2 A REASONABLE DOUBT THAT STEVEN HEWITT, SR., SEXUALLY
3 ASSAULTED HIS SON.

4 YOUR HONOR, REGARDING THE ELEMENTS OF THE
5 CRIMINAL SEXUAL CONDUCT, I THINK THERE'S NOTHING IN THE
6 RECORD AT THIS POINT THAT WOULD PROVE THAT OR WOULD TEND TO
7 PROVE THAT THERE WAS ANY AROUSAL OR SEXUAL GRATIFICATION ON
8 THE PART OF THE ALLEGED VICTIM. HE TESTIFIED THAT AT HIS
9 AGE HE KNEW NOTHING ABOUT WHAT SEX WAS ALL ABOUT, THAT HE
10 PROBABLY NEVER HAD AN ERECTION OR AN AROUSAL IN HIS LIFE,
11 AND, YOUR HONOR, THERE'S NOTHING IN THE RECORD THAT
12 ESTABLISHES THAT THE DEFENDANT IN ANY WAY INTENDED TO CAUSE
13 ANY FORM OF SEXUAL AROUSAL OR SEXUAL GRATIFICATION ON HIS
14 OWN PART AND FOR THOSE REASONS WE WOULD ASK THAT THE BOTH
15 CHARGES AGAINST STEVEN HEWITT, SR., BE DISMISSED.

16 THE COURT: ALL RIGHT, SOLICITOR, ANY ARGUMENTS?

17 MS. LIVELY: YES, SIR, YOUR HONOR. I BELIEVE
18 THERE'S MORE THAN AMPLE DIRECT AND CIRCUMSTANTIAL EVIDENCE
19 AS TO BOTH ISSUES.

20 FIRST OF ALL ON THE CSC WITH A MINOR FIRST DEGREE
21 IN REGARDS TO PENETRATION I DID ASK [REDACTED] VICTIM [REDACTED] ON
22 REDIRECT IF HE HAD ANY DOUBT THAT THERE WAS SOME LEVEL OF
23 PENETRATION EVEN HOWEVER SLIGHT, THAT MEETS THE BURDEN OF
24 CSC FIRST DEGREE WITH A MINOR.

25 ALSO, YOUR HONOR, THE LEWD ACT ISSUE IT CAN

1 OBVIOUSLY BE INFERRED THAT THE REASON WHY THE DEFENDANT WAS
2 PERFORMING ORAL SEX ON A CHILD EVEN IF THE CHILD IS NOT
3 AWARE IN GETTING SEXUAL GRATIFICATION OUT OF IT THE SEXUAL
4 GRATIFICATION CAN BE BOTH FOR THE DEFENDANT'S BENEFIT
5 EITHER/OR THE CHILD. THAT'S HOW THE STATUTE IS WRITTEN AND
6 CLEARLY PERFORMING ORAL SEX ON A CHILD AS WELL AS THE
7 PENILE ANAL CONTACT WOULD BE MORE THAN SUFFICIENT TO BE
8 PROVIDED TO THE JURY FOR THEM TO INFER IT WAS FOR SEXUAL
9 GRATIFICATION PURPOSES, SO I WOULD DISAGREE WITH MR. BARR
10 AND ASK THIS COURT TO DENY THE MOTIONS.

11 THE COURT: ALL RIGHT, REGARDING A DIRECTED
12 VERDICT BASIC LAW IS A DEFENDANT WOULD BE ENTITLED TO A
13 DIRECTED VERDICT WHEN THE STATE FAILS TO PRODUCE EVIDENCE
14 OF AN OFFENSE CHARGED. MY JOB IS TO BE CONCERNED WITH THE
15 EXISTENCE OF EVIDENCE NOT WITH ITS WEIGHT, TO JUDGE THE
16 WEIGHT OR CREDIBILITY, BELIEVABILITY THAT'S THE JOB OF THE
17 JURY. I'M TO BE LOOKING AT WHETHER OR NOT THE EVIDENCE
18 ACTUALLY EXISTS.

19 IF THERE'S ANY DIRECT EVIDENCE OR SUBSTANTIAL
20 CIRCUMSTANCES EVIDENCE REASONABLY TENDING TO PROVE THE
21 GUILT OF THE ACCUSED THEN THE CASE PROPERLY GOES TO A JURY.

22 A DIRECTED VERDICT MOTION CAN BE GRANTED WHEN THE
23 EVIDENCE MERELY RAISES A SUSPICION THAT THE ACCUSED IS
24 GUILTY. I WILL BE REQUIRED TO GRANT A DIRECTED VERDICT
25 MOTION WHEN THE JURY WOULD BE SPECULATING AS TO THE GUILT

1 OF THE ACCUSED OR EVIDENCE THAT'S SUFFICIENT ONLY TO RAISE
2 A MERE SUSPICION OF GUILT AND SUSPICION IMPLYING A BELIEF
3 OR OPINION AS TO GUILT BASED ON FACTS OR CIRCUMSTANCES
4 WHICH DO NOT AMOUNT TO PROOF.

5 IN THIS PARTICULAR CASE I DO FIND THAT THERE IS
6 SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE AND DIRECT EVIDENCE
7 WHICH IF SO BELIEVED BY THE JURY WOULD REASONABLY TEND TO
8 PROVE THE GUILT OF THE ACCUSED, WOULD TEND TO PROVE HIS
9 GUILT OF CRIMES CHARGED BEYOND A REASONABLE DOUBT. FINDING
10 THAT THIS EVIDENCE EXISTS I, THEREFORE, RESPECTFULLY
11 DECLINE TO GRANT YOUR MOTION FOR A DIRECTED VERDICT.

12 MR. BARR: THANK YOU, YOUR HONOR.

13 THE COURT: FURTHER, ANY FURTHER MOTIONS ON
14 BEHALF OF THE DEFENSE?

15 MR. BARR: NONE, YOUR HONOR.

16 THE COURT: ALL RIGHT, THE DEFENSE HAD LISTED
17 SOME WITNESSES THAT COULD POTENTIALLY BE CALLED. IS THE
18 DEFENSE READY TO START PRESENTING THOSE WITNESSES?

19 MR. BARR: YES, YOUR HONOR.

20 THE COURT: ALL RIGHT, VERY GOOD, AS TO MR.
21 HEWITT, SR., DO YOU HAVE WITNESSES OTHER THAN MR. HEWITT,
22 SR., THAT YOU WOULD BE CALLING?

23 MR. BARR: YES, YOUR HONOR.

24 THE COURT: ALL RIGHT, VERY GOOD. WHAT I'M
25 GOING TO DO THEN IS I'M GOING TO ALLOW YOU TO CALL ALL OF

1 YOUR WITNESSES THAT YOU INTEND TO CALL EXCEPT MR. STEVEN
2 LEE HEWITT, SR. AT THAT POINT IN TIME WHEN YOU HAVE
3 REACHED THE END OF THE WITNESSES THAT COULD BE CALLED
4 EXCEPT FOR MR. HEWITT, SR., I WOULD ASK THAT YOU, PLEASE,
5 NOTIFY ME SO THAT WE CAN TAKE A BREAK AND AT THAT POINT IN
6 TIME I WOULD INQUIRE OF THE DEFENDANT REGARDING HIS
7 CONSTITUTIONAL RIGHTS AS TO HIS TESTIMONY IN THIS
8 PARTICULAR MATTER, ALL RIGHT.

9 MR. BARR: YES, SIR.

10 THE COURT: VERY GOOD. LET'S TAKE A SHORT BREAK
11 FOR FIVE MINUTES AND WE'LL COME BACK IN AND START THE
12 DEFENSE'S CASE.

13 MS. LIVELY: THANK YOU.

14 THE COURT: THANK YOU VERY MUCH.

15 MR. BARR: THANK YOU.

16 (WHEREUPON, A RECESS WAS TAKEN AND THE FOLLOWING
17 TAKES PLACE ON THE RECORD AFTER THE RECESS.)

18 THE COURT: ALL RIGHT.

19 MS. LIVELY: YOUR HONOR, I JUST WANT TO BE SURE
20 THAT THE DEFENSE WITNESSES HAVE BEEN NOTIFIED OF YOUR
21 RULING REGARDING THAT THERE SHOULD BE NO TESTIMONY AS TO
22 THE VICTIM'S CONVICTION FOR SIMPLE POSSESSION OF MARIJUANA.

23 THE COURT: ALL RIGHT.

24 MR. BARR: YOUR HONOR, MAY BE APPROACH?

25 THE COURT: YES, SIR.

1 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
2 RECORD OUT OF THE HEARING OF THE COURT REPORTER.)

3 THE COURT: AS TO THE ISSUE ABOUT THE MARIJUANA
4 I DON'T REALLY KNOW HOW IT WOULD COME UP BUT IT'S ALSO BEEN
5 INTRODUCED AT LEAST IN SOME FASHION BY YOUR CLIENT, I MEAN
6 BY THE VICTIM IN THIS MATTER, SOLICITOR, WHERE THE VICTIM
7 IN THE MATTER INDICATED WHEN HE WAS TALKING ABOUT HOW HE
8 DEALT WITH THE ISSUE THAT HE HAD DONE CERTAIN THINGS AND
9 ONE OF THEM WAS USING MARIJUANA AND THAT HE HAD GOT IN
10 TROUBLE FOR IT.

11 MS. LIVELY: YES, SIR.

12 THE COURT: SO IT MAY NOT BE SUCH THAT IT WAS
13 BROUGHT OUT THAT THERE WAS A CONVICTION, THERE CERTAINLY IS
14 THAT ISSUE IN THAT IN SOME WAY HE GOT IN TROUBLE FOR IT SO
15 THAT CERTAINLY IS A FACT BEFORE THE JURY SO ---

16 MS. LIVELY: YES, SIR.

17 THE COURT: --- BUT WE'LL STILL STICK WITH THE
18 RULE BUT UNDER THE CIRCUMSTANCES IF SOMETHING DID COME UP I
19 WOULD HAVE TO GAUGE IT BY WHAT HAS ALREADY TRANSPIRED IN
20 THIS TRIAL.

21 MS. LIVELY: YES, SIR, THAT'S FINE, THANK YOU.

22 THE COURT: ALL RIGHT, VERY GOOD, ALL RIGHT, ASK
23 THE JURY TO COME IN, PLEASE.

24 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
25 2:40 P.M.)

MS. HOWARD - DIRECT EXAMINATION BY MR. BARR

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1 THE COURT: ALL RIGHT, MR. BARR, YOUR FIRST
2 WITNESS, PLEASE, SIR.

3 MR. BARR: YOUR HONOR, THE DEFENSE WOULD CALL
4 MS. RENEE HOWARD.

5 THE COURT: ALL RIGHT. ALL RIGHT, COME FORWARD
6 UP TO WHERE THE BAILIFF IS, PLEASE, MA'AM.

7 RENEE HOWARD

8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 THE CLERK: THANK YOU, PLEASE BE SEATED AND
10 STATE YOUR NAME FOR THE RECORD, PLEASE.

11 THE WITNESS: RENEE HOWARD.

12 THE COURT: ALL RIGHT, MR. BARR.

13 MR. BARR: THANK YOU, YOUR HONOR.

14 DIRECT EXAMINATION

15 BY MR. BARR:

16 Q MS. HOWARD, HOW ARE YOU TODAY?

17 A I'M OKAY, HOW ARE YOU?

18 Q GOOD, GOOD, WHERE DO YOU LIVE?

19 A I LIVE AT 933 PALMETTO STREET RIGHT UP HERE
20 IN WILLOW BAY.

21 Q IN GEORGETOWN?

22 A YES, SIR.

23 Q DO YOU KNOW THE DEFENDANT STEVEN HEWITT,
24 SR.?

25 A YES, SIR, YES, SIR, MY BROTHER.

MS. HOWARD - DIRECT EXAMINATION BY MR. BARR

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1 Q OKAY, DO YOU KNOW THE ALLEGED VICTIM VICTIM

2 VICTIM

3 A YES, SIR, MY NEPHEW.

4 Q OKAY, ALL RIGHT. I'M GOING TO SHOW YOU
5 WHAT'S BEEN MARKED AS PLAINTIFF'S EXHIBITS 1, 2, AND 3 AND
6 ASK WHETHER OR NOT YOU CAN IDENTIFY THEM?

7 A OKAY, YES.

8 Q OKAY, WHAT DO YOU IDENTIFY THEM AS?

9 A THIS IS THE FRONT OF MY GRANDMOTHER'S HOUSE
10 WHICH IS NOW MY UNCLE'S; AND THIS IS ALSO THE FRONT, FRONT
11 VIEW; AND THEN IS, WAS HER SHED.

12 Q OKAY, THAT'S AT YOUR GRANDMOTHER'S HOUSE?

13 A YES, SIR.

14 Q YOUR GRANDMOTHER'S NAME WAS WHAT?

15 A MYRTLE REDDICK.

16 Q REDDICK?

17 A YES, SIR.

18 Q AND YOUR GRANDFATHER?

19 A ROBERT REDDICK.

20 Q ROBERT REDDICK, OKAY. I'M GOING TO SHOW
21 YOU ALSO THIS DIAGRAM THAT'S BEEN ENTERED AS PLAINTIFF'S
22 EXHIBIT NUMBER 4, I BELIEVE, YES, IT'S BEEN MARKED AS
23 NUMBER 4.

24 A OKAY.

25 Q AND I'M GOING TO ASK YOU TO LOOK AT IT. DO

MS. HOWARD - DIRECT EXAMINATION BY MR. BARR

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1 YOU RECOGNIZE THAT AS BEING A DIAGRAM OF THE INTERIOR
2 LAYOUT OF YOUR GRANDMOTHER AND GRANDFATHER'S HOUSE?

3 A YES, SIR.

4 Q OKAY, NOW I'M GOING TO ASK YOU A QUESTION
5 OR TWO ABOUT THE ACTUAL LAYOUT. I'M GOING TO TRY TO TURN
6 THIS TO WHERE THE JURY CAN ACTUALLY SEE IT. THIS, WOULD
7 THAT BE YOUR GRANDMOTHER'S ROOM?

8 A THAT IS HER ROOM, YES, SIR.

9 Q OKAY, AND THIS WOULD BE A T.V. ROOM OR
10 LOUNGE ADJACENT TO IT?

11 A YES, SIR, SHE JUST HAD T.V. AND A COUCH IN
12 THERE.

13 Q HOW MUCH DISTANCE IS THERE APPROXIMATELY
14 BETWEEN THIS DOOR AND THE INTERIOR OF THIS ROOM?

15 A IT'S PRETTY CLOSE. THE T.V. ROOM IS REALLY
16 SMALL. I DON'T KNOW AS FAR AS FEET BUT I WOULD SAY FROM
17 THIS WALL WOULD BE WHERE THE COUCH IS AND PROBABLY TO RIGHT
18 HERE WOULD BE WHERE THE DOOR IS.

19 Q WHERE THE DOOR IS?

20 A TO GRANDMA'S ROOM.

21 Q TO YOUR GRANDMOTHER'S ROOM?

22 A YES, SIR.

23 Q OKAY, NOW DO YOU RECALL WHETHER OR NOT

24 **VICTIM** **||** **||** **||** REGULARLY VISITED WITH YOUR
25 GRANDMOTHER?

MS. HOWARD - DIRECT EXAMINATION BY MR. BARR

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1 A RECALL I WOULDN'T SAY REGULARLY. HE, HE
2 WENT OVER THERE A FEW TIMES, NOT, NOT THAT OFTEN DURING
3 THAT SPAN.

4 Q OKAY, NOW DO YOU KNOW WHETHER OR NOT OR DO
5 YOU RECALL WHETHER OR NOT THOSE WOULD HAVE BEEN DAY TIME OR
6 NIGHT TIME VISITS?

7 A FROM WHAT I RECALL MOST OF THEM DAY, I,
8 I'VE NEVER RECALLED HIM STAYING THE NIGHT.

9 Q SO ---

10 A I KNOW HE WAS THERE DURING THE DAY A COUPLE
11 OF TIMES, I SAW HIM, BUT I DON'T RECALL HIM STAYING THE
12 NIGHT.

13 Q OKAY, SO YOU DON'T EVER ABSOLUTELY RECALL
14 **VICTIM** **██████████** **██████████** SPENDING THE NIGHT, OVERNIGHT, AT YOUR
15 GRANDMOTHER GRANDFATHER'S HOUSE?

16 A **VICT** NO, I DON'T RECALL.

17 Q OKAY, ALL RIGHT. OKAY, NOW LET ME ASK DID
18 YOUR CHILDREN STAY AT YOUR GRANDMOTHER'S HOUSE?

19 A NO, SIR, WE JUST DIDN'T LEAVE THEM THERE
20 CAUSE THEY WERE YOUNG AND SHE WAS SO OLD.

21 Q OKAY, SO YOU SAID SHE WAS SO OLD,
22 APPROXIMATELY HOW OLD WOULD YOUR GRANDMOTHER HAVE BEEN IN
23 THE YEAR 2001, IF YOU RECALL?

24 A SHE WOULD HAVE BEEN IN HER 70'S, MAYBE MID
25 70'S TO LATE 70'S.

MS. HOWARD - DIRECT EXAMINATION BY MR. BARR

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1 Q OKAY ---

2 A I'M THINKING.

3 Q AND IT WOULD BE YOUR BEST RECOLLECTION THAT
4 AT THAT POINT NONE OF THE GRANDCHILDREN ACTUALLY STAYED
5 OVERNIGHT WITH HER?

6 A I DON'T RECALL THEM SPENDING THE NIGHT, I
7 REALLY DON'T.

8 Q YOUR CHILDREN, YOUR BROTHER'S CHILDREN?

9 A NO, SIR.

10 Q ANYBODY'S CHILDREN?

11 A NO, SIR.

12 Q OKAY, ALL RIGHT. NOW LET ME ASK YOU THIS,
13 DID [VICTIM] [REDACTED] [REDACTED] REGULARLY VISIT WITH ANY OF YOUR
14 FAMILY MEMBERS?

15 A HE VISITED WITH ME QUITE A BIT, I'D GO GET
16 HIM AND HE'D COME STAY WITH ME SOMETIMES. HE, I KNOW HIS
17 MOM TOOK HIM TO GRANDMAMA'S A COUPLE OF TIMES BUT I DON'T
18 THINK IT WAS TOO MANY.

19 Q OKAY ---

20 A I MEAN I'D SAY MAYBE FIVE AFTER THEY
21 SEPARATED, NOT MANY AT ALL.

22 Q OKAY ---

23 A AND THEN AFTER HE GOT OLDER HE JUST DIDN'T
24 REALLY.

25 Q SO IT WOULD BE FAIR TO SAY THAT AFTER THE

MS. HOWARD - DIRECT EXAMINATION BY MR. BARR

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1 SEPARATION IT WAS VERY LITTLE CONTACT?

2 A YES, SIR, NOT MUCH, JUST WITH ME.

3 Q OKAY, OKAY, ALL RIGHT, WOULD MS., HIS
4 MOTHER ALLOW VISITATIONS ON A REGULAR BASIS?

5 A I THINK AT THE BEGINNING BUT THEN SHE AND
6 STEVEN, SR., WERE FEUDING AND THAT KIND OF THING AND THEN
7 SHE DIDN'T TAKE THEM OVER THERE TOO MUCH AFTER THAT.

8 Q OKAY, SO THE FEUDING WAS SORT OF AN ONGOING
9 THING?

10 A YES, SIR, I THINK SO PRETTY MUCH THE LAST
11 TWO YEARS ALWAYS SOMETHING.

12 Q OKAY, OKAY, NOW WERE YOU AWARE OF THE
13 SEXUAL ALLEGATION CHARGE, SEXUAL ALLEGATIONS?

14 A WAS I AWARE, WHAT DO YOU MEAN, WHEN?

15 Q AT ANY POINT DID YOU TALK WITH VICTIM
16 ABOUT THIS ALLEGATION?

17 A YES, SIR, AFTER THE WARRANT WAS TAKEN OUT
18 WE WENT TO A BOND HEARING AT THE JAIL. WHEN I GOT BACK HE
19 CALLED ME AND WE KIND OF DISCUSSED IT THEN.

20 Q OKAY, ALL RIGHT, OKAY, ALL RIGHT. NOW YOU
21 AND YOUR BROTHER GREW UP TOGETHER?

22 A YES, SIR.

23 Q SAME HOUSEHOLD?

24 A YES, SIR.

25 Q OKAY, HOW OLD IS HE NOW?

MS. HOWARD - DIRECT EXAMINATION BY MR. BARR

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1 A MY BROTHER?

2 Q YES?

3 A THIRTY-NINE.

4 Q OKAY, AND HOW OLD ARE YOU?

5 A SOON TO BE 31.

6 Q OKAY, IN THE PROCESS OF YOUR GROWING UP
7 TOGETHER DO YOU RECALL THERE EVER BEING ANY ALLEGATIONS OF
8 ANY KIND OF INAPPROPRIATE TOUCHING?

9 A NO, SIR, NEVER WHATSOEVER.

10 Q OKAY, AFTER THE GROWING UP PROCESS IN THE
11 31 YEARS THAT YOU'VE BEEN ALIVE DO YOU EVER REMEMBER ANYONE
12 SUGGESTING THAT STEVEN HEWITT, SR., WAS HOMOSEXUAL?

13 A NO, SIR, ALL MY FRIENDS EVERYBODY THEY'VE
14 ALL SAID NOTHING.

15 Q OKAY, DO YOU EVER, DO YOU HAVE ANY
16 KNOWLEDGE OF HIM EVER BEING ACTUALLY ACCUSED OTHER THAN
17 THIS INCIDENCE OF BEING A PEDOPHILE, TOUCHING CHILDREN,
18 ANYTHING LIKE THAT?

19 A I THINK HE WAS ACCUSED OF FOR HIS DAUGHTER
20 BUT IT WAS THROWN OUT BECAUSE THEY SAID THERE WASN'T ENOUGH
21 EVIDENCE. THEY, I DON'T THINK THEY DID A TRIAL BUT THEY
22 INVESTIGATED.

23 Q OKAY, AND, AND WHO WAS, WHO MADE THAT
24 COMPLAINT?

25 A I THINK KIM.

MS. HOWARD - DIRECT EXAMINATION BY MR. BARR

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1 Q OKAY, THE WIFE?

2 A I'M NOT POSITIVE, YES, SIR.

3 Q OKAY, NOW IN TERMS OF YOUR CHILDREN HOW
4 MANY CHILDREN DO YOU HAVE?

5 A I HAVE THREE.

6 Q THREE, WHAT AGES?

7 A TEN, FIVE, AND 11 MONTHS.

8 Q TEN, FIVE, AND 11 MONTHS. HAS STEVEN
9 HEWITT, SR., HAD REGULAR CONTACT WITH YOUR CHILDREN?

10 A YES, SIR.

11 Q ALL THE WAY THROUGH THEIR CHILDHOOD?

12 A MANY TIMES, YES, SIR.

13 Q HAS HE BEEN LEFT ALONE WITH YOUR CHILDREN?

14 A YES, SIR.

15 Q HAS HE VISITED WITH YOU AND YOUR CHILDREN
16 ON A REGULAR BASIS?

17 A YES, SIR.

18 Q OKAY, AFTER THIS ALLEGED INCIDENT DID YOU
19 QUERY YOUR CHILDREN AS TO WHETHER OR NOT THEIR UNCLE HAD
20 EVER TOUCHED THEM IN AN INAPPROPRIATE FASHION AND SAID
21 ANYTHING OUT OF THE WAY TO THEM?

22 A YES, I DID.

23 MS. LIVELY: OBJECTION, YOUR HONOR, AS TO SHE'S
24 GOING TO GET INTO WHAT THEY SAID. I KNOW THAT THAT --

25 THE COURT: ALL RIGHT, CAUTION THE WITNESS AS TO

MS. HOWARD - CROSS EXAMINATION BY MS. LIVELY

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1 THE RESPONSE.

2 MR. BARR: (CONTINUING)

3 Q WHAT WAS THEIR RESPONSE?

4 MS. LIVELY: OBJECTION.

5 THE COURT: SUSTAINED.

6 MS. LIVELY: THANK YOU.

7 THE COURT: YOU CANNOT TELL WHAT THEY SAID.

8 MR. BARR: I UNDERSTAND.

9 THE COURT: YOU CAN QUESTION HER --

10 MR. BARR: I'LL REPHRASE THE QUESTION.

11 THE COURT: VERY GOOD.

12 MR. BARR: (CONTINUING)

13 Q DID YOU QUERY THE CHILDREN AS TO WHETHER OR
14 NOT THERE HAD BEEN ANY INAPPROPRIATE RESPONSES?

15 A YES, SIR, I DID.

16 Q ARE YOU STILL COMFORTABLE WITH ALLOWING
17 STEVEN HEWITT, SR., TO BE IN THE PRESENCE OF YOUR CHILDREN?

18 A YES, SIR.

19 Q AND TO BE LEFT ALONE WITH YOUR CHILDREN?

20 A YES, SIR.

21 MR. BARR: OKAY, I HAVE NO FURTHER QUESTIONS OF
22 THIS WITNESS, YOUR HONOR.

23 THE COURT: ALL RIGHT, SOLICITOR, CROSS
24 EXAMINATION.

25 CROSS EXAMINATION

MS. HOWARD - CROSS EXAMINATION BY MS. LIVELY

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1 BY MS. LIVELY:

2 Q SO YOU'RE HIS SISTER, RIGHT?

3 A YES, MA'AM.

4 Q AND GRANDMA REDDICK WAS YOUR GRANDMOTHER OR
5 GREAT GRANDMOTHER?

6 A GRANDMOTHER.

7 Q SHE WAS YOUR GRANDMOTHER, OKAY. SHE WOULD
8 HAVE BEEN THEN [REDACTED] VICTIM [REDACTED] S, GREAT GRANDMOTHER?

9 A GREAT GRANDMOTHER, YES, MA'AM.

10 Q ALL RIGHT, SO YOU CAN CONFIRM THEN THE YEAR
11 OF 2001 THAT [REDACTED] VICTIM [REDACTED] DID ACTUALLY SPEND SOME TIME AT
12 GRANDMA REDDICK'S HOUSE?

13 A I CAN'T CONFIRM IT WAS 2001; I DO KNOW THAT
14 HE DID GO THERE A COUPLE OF TIMES DURING THE DAY. KIM
15 WOULD DROP HIM OFF SOMETIME AS A YOUNG CHILD, I DON'T KNOW
16 WHAT YEAR.

17 Q OKAY, THAT'S FAIR ENOUGH. AND WHEN YOU
18 SAID THAT KIM WOULD DROP HIM OFF WHERE WOULD YOU BE?

19 A WELL I DIDN'T STAY THERE BUT I KNOW I WOULD
20 LIKE MAYBE VISIT AND SEE HIM THERE, YOU KNOW, A LITTLE
21 WHILE OR I TALK TO GRANDMOM AND SHE'D SAY THEY WERE THERE
22 OR STEVIE WOULD TELL ME OR [REDACTED] VICTIM [REDACTED] WOULD TELL ME. I
23 WAS ALWAYS AT HOME.

24 Q OKAY, HOW FAR IS YOUR HOME FROM HER HOME?

25 A WELL AT THAT TIME I LIVED IN THE SAME TOWN

MS. HOWARD - CROSS EXAMINATION BY MS. LIVELY

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1 SO I'D SAY 10 MINUTES.

2 Q OKAY, SO YOU CAN'T SAY FOR SURE THAT

3 [REDACTED] VICTIM [REDACTED] DIDN'T SPEND THE NIGHT OVERNIGHT, CAN YOU?

4 A NO, I CAN'T SAY I DIDN'T KNOW FOR SURE. I
5 SAID I JUST DON'T RECALL HIM EVER DOING THAT.

6 Q ALL RIGHT, AND I DO BELIEVE YOU TESTIFIED
7 THAT YOU BELIEVE THAT MAYBE [REDACTED] VICTIM [REDACTED] HAD STAYED AT
8 GRANDMA REDDICK'S HOUSE MAYBE FIVE TIMES AT THE MOST?

9 A YES, MA'AM, I MEAN IT WASN'T TOO MANY, I DO
10 KNOW THAT, NOT VERY MUCH.

11 Q CAUSE HE HAS NOT HAD A CLOSE RELATIONSHIP
12 WITH HIS FATHER, HAS HE?

13 A NO, MA'AM.

14 Q OKAY, ALL RIGHT, NOW YOU TESTIFIED THAT YOU
15 HAD NOT ENCOUNTERED ANY TYPE OF INAPPROPRIATE TOUCHING BY
16 THE DEFENDANT ON YOU OR YOU'RE SAYING YOUR CHILDREN, RIGHT?

17 A THAT'S CORRECT.

18 Q OKAY, BUT YOU DID TESTIFY THAT YOU'RE AWARE
19 OF THE ALLEGATION THAT HE HAD MOLESTED HIS FOUR-YEAR-OLD
20 DAUGHTER WHEN SHE WAS FOUR AT THE TIME?

21 A I WAS AWARE THAT HE WAS ACCUSED.

22 Q OKAY, HE WAS ACCUSED OF IT?

23 A YES, MA'AM, BUT IT WAS DROPPED.

24 Q IT WAS DROPPED, OKAY. WERE YOU AWARE AS TO
25 IT BEING DROPPED BECAUSE THE CHILD WAS BEING TOO YOUNG TO

MR. COX - DIRECT EXAMINATION BY MR. BARR

191

1 TESTIFY?

2 A NO, MA'AM, I WAS TRYING TO THINK OF WHAT I
3 WAS TOLD.

4 Q AND WHO TOLD YOU, BY THE WAY?

5 A I JUST HEARD FAMILY MEMBERS AND I DON'T
6 KNOW IF I'VE ACTUALLY SEEN THE PAPER WORK ON IT BUT I KNOW
7 THERE WAS AN INVESTIGATION AND THAT IT WAS BEING THROWN
8 OUT, THAT THERE WAS NO EVIDENCE THAT SHE HAD BEEN MOLESTED.

9 Q IT WOULD HAVE BEEN YOUR BROTHER THAT TOLD
10 YOU THERE WAS NO EVIDENCE THAT SHE WAS MOLESTED, WOULDN'T
11 IT?

12 A I MEAN HE MAY HAVE SAID SOMETHING TO ME
13 ABOUT IT BUT I JUST HEARD A LOT OF PEOPLE.

14 Q OKAY, AND YOU'RE HERE TO TESTIFY TO HELP
15 YOUR BROTHER TODAY; ISN'T THAT RIGHT?

16 A NO, MA'AM, I'M HERE TO JUST BE HONEST. I
17 LOVE THEM BOTH, I'M NOT HERE ON A SIDE, HONESTLY.

18 MS. LIVELY: OKAY, THANK YOU.

19 THE COURT: ANYTHING ON REDIRECT, MR. BARR?

20 MR. BARR: NONE, YOUR HONOR, WE WOULD ASK THAT
21 THE WITNESS BE EXCUSED.

22 THE COURT: ANY OBJECTION?

23 MS. LIVELY: NO, YOUR HONOR.

24 THE COURT: ALL RIGHT, MA'AM, YOU'RE RELEASED
25 FROM YOUR SUBPOENA, YOU MAY GO BACK TO YOUR REGULAR

MR. COX - DIRECT EXAMINATION BY MR. BARR

192

1 ACTIVITIES, THANK YOU.

2 ALL RIGHT, MR. BARR, YOUR NEXT WITNESS, PLEASE,
3 SIR.

4 MR. BARR: YOUR HONOR, THE DEFENSE WOULD CALL
5 RONALD COX.

6 THE COURT: COME UP TO WHERE THE BAILIFF IS,
7 PLEASE, SIR, COME RIGHT ON UP TO WHERE THE BAILIFF IS RIGHT
8 THERE.

9 RONALD COX

10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 THE CLERK: THANK YOU, PLEASE BE SEATED AND
12 STATE YOUR NAME FOR THE RECORD, PLEASE.

13 THE WITNESS: MY NAME IS RONALD COX.

14 THE COURT: ALL RIGHT, SIR, YOU'RE GOING TO NEED
15 TO SPEAK UP, OKAY, THANK YOU, GO AHEAD, MR. BARR.

16 DIRECT EXAMINATION

17 BY MR. BARR:

18 Q HOW ARE YOU TODAY, MR. COX?

19 A I'M DOING FINE.

20 Q GOOD. MR. COX, ARE YOU RELATED TO THE
21 DEFENDANT?

22 A YES, SIR.

23 Q STEVEN HEWITT, SR.?

24 A HE'S MY BROTHER.

25 Q HE IS, OKAY, AND HOW OLD ARE YOU, SIR?

MR. COX - DIRECT EXAMINATION BY MR. BARR

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1 A I'M 19.

2 Q OKAY, AND HOW OLD WAS MR. HEWITT WHEN YOU
3 WERE BORN?

4 A TWENTY.

5 Q TWENTY, SO YOU WERE SORT OF THE LAST
6 BUTTON?

7 A YES, SIR.

8 Q OKAY, DID YOU GROW UP IN THE SAME
9 HOUSEHOLD?

10 A YES, SIR.

11 Q OKAY, GROWING UP IN THE SAME HOUSEHOLD DID
12 YOU SHARE THE SAME BED?

13 A YEAH, LIKE MANY TIMES.

14 Q OKAY, DO YOU HAVE ANY RECOLLECTION OF MR.
15 HEWITT IN THE PROCESS OF GROWING UP BEING IN THE SAME
16 HOUSEHOLD, SLEEPING IN THE SAME BED, EVER TOUCHING YOU
17 INAPPROPRIATELY?

18 A NO, SIR.

19 Q OKAY, HAVE YOU EVER, HAS ANYONE EVER
20 SUGGESTED TO YOU OR TOLD YOU OR YOU HEARD A RUMOR OF ANY
21 KIND THAT YOUR BROTHER STEVEN HEWITT, SR., WAS HOMOSEXUAL?

22 A NO, SIR.

23 Q OKAY, HAVE YOU EVER HAD ANY KIND OF
24 INAPPROPRIATE CONTACT WITH HIM IN ANY WAY WHATSOEVER SHAPE
25 OR FORM?

MR. COX - DIRECT EXAMINATION BY MR. BARR

194

1 A NONE AT ALL.

2 MR. BARR: OKAY, PLEASE ANSWER ANY QUESTIONS
3 THAT THE SOLICITOR MAY HAVE.

4 THE COURT: CROSS EXAMINATION.

5 MS. LIVELY: NO QUESTIONS.

6 THE COURT: ALL RIGHT, DO YOU WISH THE WITNESS
7 TO BE EXCUSED, MR. BARR?

8 MR. BARR: YES, YOUR HONOR, PLEASE.

9 THE COURT: ANY OBJECTION?

10 MS. LIVELY: NO, YOUR HONOR.

11 THE COURT: ALL RIGHT, MR. COX, YOU'RE RELEASED
12 FROM YOUR SUBPOENA. YOU MAY LEAVE AS YOU CHOOSE, THANK
13 YOU.

14 A THANK YOU.

15 MR. BARR: YOUR HONOR, MAY WE APPROACH THE
16 BENCH?

17 THE COURT: YES, SIR, ABSOLUTELY.

18 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
19 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
20 OF THE JURY AND THE COURT REPORTER.)

21 THE COURT: LADIES AND GENTLEMEN, THERE'S A
22 MATTER OF LAW I HAVE TO TAKE UP OUTSIDE YOUR PRESENCE AND,
23 MR. FOREMAN, IF YOU'D TAKE THE JURY TO THE JURY ROOM FOR A
24 FEW MOMENTS, PLEASE, THANK YOU.

25 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT

MR. COX - DIRECT EXAMINATION BY MR. BARR

195

1 3:06 P.M.)

2 THE COURT: ALL RIGHT, WOULD YOU PLACE MR.
3 HEWITT UNDER OATH, PLEASE.

4 EXAMINATION OF DEFENDANT HEWITT REGARDING RIGHTS

5 THE COURT: ALL RIGHT, MR. HEWITT, YOU NEED TO
6 SPEAK UP SO I CAN HEAR YOU AND THE COURT REPORTER TAKES
7 DOWN YOUR ANSWERS, SIR.

8 NOW, MR. HEWITT, AND LET THE RECORD REFLECT THAT
9 I AM SPEAKING TO STEVEN HEWITT, SR.

10 AT THIS TIME I'M GOING TO EXPLAIN TO YOU CERTAIN
11 OF YOUR CONSTITUTIONAL RIGHTS. IF AT ANY TIME YOU DO NOT
12 UNDERSTAND ANYTHING, YOU DO NOT HEAR WHAT I AM SAYING, YOU
13 HAVE ANY QUESTIONS I WANT YOU TO INDICATE THAT TO ME. YOU
14 CAN RAISE YOUR HAND, YOU CAN TELL YOUR ATTORNEY, BUT IF
15 YOU'VE GOT ANY QUESTIONS OR DON'T UNDERSTAND OR IN ANY WAY
16 HAVE A CONCERN ABOUT WHAT'S GOING ON YOU NEED TO LET ME
17 KNOW; ARE WE IN AGREEMENT?

18 DEFENDANT HEWITT: YES, SIR.

19 THE COURT: VERY GOOD. WE'VE REACHED THE STAGE
20 IN THE TRIAL WHERE YOU CAN PRESENT YOUR DEFENSE AND YOU
21 HAVE ALREADY DONE SO, STARTED BY DOING SO, ANYWAY BY
22 PRODUCING TWO, TWO WITNESSES IN THIS PARTICULAR MATTER.

23 YOU HAVE THE RIGHT TO CLAIM THE PROTECTION GIVEN
24 TO YOU BY THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE
25 UNITED STATES OF AMERICA. NOW THAT AMENDMENT STATES IN

MR. COX - DIRECT EXAMINATION BY MR. BARR

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1 PART THAT NO PERSON SHALL BE COMPELLED IN ANY CRIMINAL CASE
2 TO BE A WITNESS AGAINST THEMSELVES. THAT MEANS NOBODY CAN
3 MAKE YOU TESTIFY, NOBODY CAN FORCE YOU TO TESTIFY IN THIS
4 CASE. YOU CAN TESTIFY IF YOU WANT TO BUT THAT IS YOUR
5 RIGHT AND YOUR CHOICE TO DO SO; DO YOU UNDERSTAND THAT?

6 DEFENDANT HEWITT: YES, SIR.

7 THE COURT: IN THIS PARTICULAR MATTER IF YOU
8 DECIDE TO TESTIFY YOU'RE GOING TO BE SUBJECT TO THE SAME
9 RULES THAT HAVE GOVERNED ALL THE OTHER WITNESSES THAT HAVE
10 TESTIFIED IN THIS CASE. YOU CAN BE QUESTIONED BY YOUR
11 ATTORNEYS AND BY YOUR ATTORNEY AND YOU CAN BE CROSS
12 EXAMINED BY THE SOLICITOR ON ANY FACTS OR ISSUES THE COURT
13 DEEMS RELEVANT TO THIS PARTICULAR CASE; YOU UNDERSTAND
14 THAT?

15 DEFENDANT HEWITT: YES, SIR.

16 THE COURT: APPARENTLY THIS PARTICULAR WITNESS
17 DOES, OR THE DEFENDANT DOES HAVE A PRIOR CRIMINAL RECORD.
18 SOLICITOR, IS THERE ANYTHING THAT YOU WOULD INTEND TO CROSS
19 EXAMINE HIM ON REGARDING HIS PRIOR RECORD?

20 MS. LIVELY: YES, SIR, YOUR HONOR, WE WERE
21 TRYING TO WRITE DOWN ALL OF THEM, KIND OF CAUGHT ME OFF
22 GUARD. THERE IS A 2004 BURGLARY SECOND DEGREE CONVICTION.
23 THERE IS A 2001 FAILURE TO STOP FOR BLUE LIGHT CONVICTION.
24 HE HAS A CONVICTION FOR FORGERY FIVE COUNTS, THIS WAS BACK
25 IN 1991, HOWEVER IT BEING A CRIME OF MORAL TURPITUDE I

MR. COX - DIRECT EXAMINATION BY MR. BARR

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1 WOULD ASK THE COURT TO ALLOW ---

2 THE COURT: FORGERY WOULD BE A CRIME OF MORAL
3 TURPITUDE NOTWITHSTANDING THE POSSIBLE PUNISHMENT SO I
4 WOULD ALLOW YOU TO DO SO.

5 MS. LIVELY: YES, SIR, SORRY, HE ACTUALLY HAD
6 TWO BURGLARY SECONDS THAT HE PLED TO. THEY WERE TWO
7 SEPARATE WARRANT NUMBERS AND HE'S SHOWING TWO CONVICTIONS
8 IN 2004. WARRANT NUMBER I195887 AND WARRANT I195889, BOTH
9 FOR BURGLARY SECOND DEGREE NON VIOLENT, AND THAT WOULD BE,
10 THAT'S IT.

11 THE COURT: ALL RIGHT, NOW, MR. BARR, REGARDING
12 THE BURGLARY CHARGES AND THE FORGERY CHARGES OR THE FAILURE
13 TO STOP FOR A BLUE LIGHT, IS THERE ANY OF THOSE UNDER RULE
14 609 THAT YOU WOULD CHALLENGE IN ANY, IN ANY WAY?

15 MR. BARR: NO, SIR.

16 THE COURT: ALL RIGHT, TELL ME AGAIN WHEN THE
17 FORGERY CHARGES WERE, PLEASE, MA'AM?

18 MS. LIVELY: 1991, YOUR HONOR.

19 THE COURT: 1991?

20 MS. LIVELY: YES, SIR.

21 THE COURT: AND BASED ON THAT WHEN WAS HE
22 RELEASED FROM CONFINEMENT OR COULD HAVE BEEN RELEASED FROM
23 CONFINEMENT?

24 MS. LIVELY: YES, SIR, LET ME JUST GO BACK AND
25 FLIP TO THAT PAGE AND GIVE ME JUST A MOMENT?

MR. COX - DIRECT EXAMINATION BY MR. BARR

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1 THE COURT: YES, MA'AM.

2 MS. LIVELY: THE CONVICTION, YEAH, OKAY, YES.

3 IT ACTUALLY APPEARS THAT HE HAS A CONVICTION, I APOLOGIZE,
4 I WAS LOOKING AT THIS INCORRECTLY, THE CONVICTION FOR THE
5 FORGERY VALUE LESS THAN \$5,000 WAS IN 2001.

6 THE COURT: 2001?

7 MS. LIVELY: YES, SIR, I APOLOGIZE.

8 THE COURT: NOT 1991?

9 MS. LIVELY: YES, IN 2001 HE HAD ONE, TWO,
10 THREE, FOUR, FIVE FELONY COUNTS, ALL SEPARATE WARRANTS FOR
11 FORGERIES VALUE LESS THAN \$5,000, SO ALL OF THOSE APPEAR
12 WOULD BE, WOULD COME UNDER THE 10 YEARS AS WELL ANYWAY.

13 THE COURT: OKAY, THAT WAS GOING TO BE THE
14 QUESTION I HAD ---

15 MS. LIVELY: YES, SIR.

16 THE COURT: --- REGARDING THE TIME LIMIT, THE 10
17 YEAR LIMITATION, BUT SINCE IT'S 2001 CLEARLY IT FALLS
18 WITHIN THAT AND FURTHER UNDER SECTION (A) (2) IT'S A CRIME
19 OF MORAL TURPITUDE AND, THEREFORE, I WILL ALLOW YOU TO
20 EXAMINE HIM ON THIS.

21 NOW, MR. HEWITT, WHAT THAT MEANS IS IF YOU
22 TESTIFY IN THIS CASE THE STATE WILL BE ALLOWED TO ASK YOU
23 ON CROSS EXAMINATION IF YOU WERE CONVICTED OF THOSE CRIMES
24 AND IN WHAT YEAR. IF YOU ADMIT THAT YOU HAVE BEEN
25 CONVICTED OF THOSE CRIMES THEN THE STATE WOULD NOT BE

MR. COX - DIRECT EXAMINATION BY MR. BARR

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1 ALLOWED TO PURSUE THOSE ANY FURTHER OR QUESTION YOU ANY
2 FURTHER ON THOSE MATTERS; YOU UNDERSTAND THAT?

3 DEFENDANT HEWITT: YES, SIR.

4 THE COURT: AND I'M SAYING FOR THE RECORD THAT I
5 DO FIND THAT THE PROBATIVE VALUE OF ADMITTING THAT KIND OF
6 EVIDENCE OUTWEIGHS ANY PREJUDICE TO YOU AND THAT IT
7 PROPERLY TESTS YOUR BELIEVABILITY AND CREDIBILITY BEFORE
8 THE JURY IN THIS MATTER AND, THEREFORE, I'M GOING TO ALLOW
9 THE STATE TO ASK THOSE, SO, BUT IF YOU ADMIT THAT THEY HAVE
10 OCCURRED THEN THE STATE WOULD NOT BE ALLOWED TO GO ANY
11 FURTHER THAN THAT.

12 NOW IF YOU DECIDE TO TESTIFY THAT DECISION HAS TO
13 BE YOUR DECISION, MADE FREELY, VOLUNTARILY, INTELLIGENTLY
14 MADE, MADE WITH THE KNOWLEDGE OF THE PROTECTIONS GIVEN TO
15 YOU BY THE CONSTITUTION OF THE UNITED STATES OF AMERICA,
16 AND ALSO OBVIOUSLY THE CONSEQUENCES TO YOU REGARDING YOUR
17 DECISION TO TESTIFY IN THIS PARTICULAR MATTER.

18 NOW IF YOU DECIDED NOT TO TESTIFY, IF THAT WAS
19 YOUR CHOICE, I WOULD INSTRUCT AND I WOULD GIVE THE JURY
20 SPECIFIC INSTRUCTIONS THAT THEY CANNOT GIVE THAT FACT THAT
21 YOU DID NOT TESTIFY ANY CONSIDERATION WHATSOEVER AND THAT
22 THERE WAS TO BE ABSOLUTELY NO PREJUDICE TO YOU REGARDING
23 THE MATTER OF NOT TESTIFYING IN THIS MATTER. I WOULD TELL
24 THEM THEY CAN'T TALK ABOUT IT, THEY CAN'T DISCUSS IT AT ALL
25 IN THEIR JURY ROOM; YOU UNDERSTAND THAT?

MR. COX - DIRECT EXAMINATION BY MR. BARR

200

1 DEFENDANT HEWITT: YES, SIR.

2 THE COURT: IT IS LEFT ENTIRELY UP TO YOU TO
3 DECIDE WHETHER OR NOT YOU WANT TO TESTIFY. NOW IF YOU WANT
4 TO TALK TO YOUR ATTORNEY FURTHER OR IF THERE WAS ONE FAMILY
5 MEMBER WHO'S HERE PRESENT THAT YOU WANTED TO TALK TO
6 BRIEFLY TO, BEFORE YOU MADE YOUR DECISION I'LL BE GLAD FOR
7 YOU TO DO SO; WOULD YOU LIKE TO DO THAT?

8 DEFENDANT HEWITT: NO, SIR.

9 THE COURT: ALL RIGHT, SIR, DO YOU UNDERSTAND
10 EVERYTHING WE'VE TALKED ABOUT?

11 DEFENDANT HEWITT: YES, SIR.

12 THE COURT: DO YOU HAVE ANY QUESTIONS?

13 DEFENDANT HEWITT: NO, SIR.

14 THE COURT: DO YOU HAVE ANY QUESTIONS FOR YOUR
15 ATTORNEY AT THIS TIME?

16 DEFENDANT HEWITT: NO, SIR.

17 THE COURT: DO YOU WISH TO TESTIFY IN THIS
18 PARTICULAR CASE?

19 DEFENDANT HEWITT: YES, SIR.

20 THE COURT: VERY GOOD, SIR, ALL RIGHT. YOU CAN
21 HAVE A SEAT. THANK YOU VERY MUCH.

22 ALL RIGHT, MR. BARR, WOULD THAT BE YOUR LAST
23 WITNESS IN THIS PARTICULAR CASE?

24 MR. BARR: YES, YOUR HONOR.

25 THE COURT: ALL RIGHT, VERY GOOD, ALL RIGHT. IS

STEVEN HEWITT, SR. - DIRECT EXAM. BY MR. BARR

201

1 THE DEFENSE THEN READY FOR THE JURY TO COME IN AT THIS
2 TIME?

3 MR. BARR: YES, SIR.

4 THE COURT: ALL RIGHT, THE STATE?

5 MS. LIVELY: YES, SIR.

6 THE COURT: ALL RIGHT, ASK THE JURY TO COME IN,
7 PLEASE.

8 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
9 3:16 P.M.)

10 THE COURT: ALL RIGHT, MR. BARR, YOUR NEXT
11 WITNESS, PLEASE, SIR.

12 MR. BARR: YOUR HONOR, THE DEFENSE WOULD CALL
13 STEVEN HEWITT, SR.

14 THE COURT: ALL RIGHT, SIR, PLEASE COME AROUND
15 TO BE SWORN.

16 STEVEN HEWITT, SR.

17 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

18 THE CLERK: THANK YOU, PLEASE BE SEATED AND
19 STATE YOUR NAME FOR THE RECORD, PLEASE.

20 THE WITNESS: STEVEN LEE HEWITT, SR.

21 DIRECT EXAMINATION

22 BY MR. BARR:

23 Q AND HOW ARE YOU TODAY, MR. HEWITT?

24 A FINE.

25 Q YOU ARE STEVEN HEWITT, SR.; IS THAT

STEVEN HEWITT, SR. - DIRECT EXAM. BY MR. BARR

202

1 CORRECT?

2 A YES, SIR.

3 Q AND YOUR SON [VICTIM] [REDACTED] [REDACTED] TESTIFIED
4 EARLIER IN COURT IN YOUR PRESENCE; IS THAT CORRECT?

5 A YES, SIR.

6 Q OKAY, NOW YOU WERE MARRIED OR YOU ARE
7 MARRIED TO KIMBERLY HEWITT?

8 A YES, SIR, WE'RE STILL MARRIED.

9 Q YA'LL ARE STILL MARRIED?

10 A YES, SIR.

11 Q SEPARATED?

12 A YES, SIR, FOR 15 YEARS.

13 Q OKAY, SO YOU'VE BEEN SEPARATED FOR 15
14 YEARS?

15 A YES, SIR.

16 Q OKAY --

17 THE COURT: JUST REMEMBER TO SPEAK UP, MR.
18 HEWITT.

19 THE WITNESS: (CONTINUING)

20 A YES, SIR.

21 Q OKAY, AND WHAT LED TO THE SEPARATION?

22 A AS FAR AS I REMEMBER WAS SHE STARTED DATING
23 AN OLDER MAN THAT WORKED AT PIGGLY WIGGLY WHERE SHE WORKED
24 AT.

25 Q SINCE THE SEPARATION YOU'VE NEVER RESUMED

STEVEN HEWITT, SR. - DIRECT EXAM. BY MR. BARR

203

1 LIVING TOGETHER; IS THAT CORRECT?

2 A WE WENT BACK TOGETHER I REMEMBER ONE TIME
3 WHEN THE KIDS WERE VERY, VERY YOUNG.

4 Q OKAY, 2001 DID YOUR SON [REDACTED] [REDACTED]
5 REGULARLY VISIT WITH YOUR GRANDPARENTS, THE DERRICK'S?

6 A NO, WHEN [REDACTED] WAS ONE AND MY DAUGHTER WAS
7 AROUND THREE I USED TO SEE MY KIDS EVERY WEEKEND AND THEN
8 AFTER ABOUT THE AGE THREE, [REDACTED] WAS ABOUT THREE, I
9 DIDN'T, THAT'S WHEN ME AND MY WIFE STARTED HAVING A LOT OF
10 COMPLICATIONS IN OUR SEPARATION AND I DIDN'T GET TO SEE
11 THEM; BUT SHE WOULD BRING THEM OUT SOMETIMES WHEN, WHEN SHE
12 WANTED SOMETHING OR NEEDED SOMETHING SHE WOULD COME OUT AND
13 BRING THE KIDS OUT AND THEY ENJOYED SEEING GRANDMOTHER,
14 WE'D DO THINGS OUTSIDE.

15 Q OKAY, DID [REDACTED] [REDACTED] [REDACTED] VISIT WITH
16 YOU AND/OR YOUR GRANDPARENTS IN THEIR HOME OVERNIGHT DURING
17 THE YEAR OF 2001?

18 A NO.

19 Q OKAY, ALL RIGHT, NOW --

20 A HE MIGHT HAVE CAME, I MEAN I WASN'T THERE.

21 Q OKAY --

22 A I WOULDN'T HAVE BEEN PRESENT THERE.

23 Q OKAY --

24 A NOT SAYING HE DIDN'T COME BUT I DON'T KNOW,
25 HE NEVER STAYED THE NIGHT.

STEVEN HEWITT, SR. - DIRECT EXAM. BY MR. BARR

204

1 Q OKAY, ALL RIGHT, NOW YOU'VE HEARD THE
2 EARLIER TESTIMONY ABOUT YOUR BEING ACCUSED OF HAVING
3 IMPROPER CONTACT WITH YOUR DAUGHTER?

4 A YES, SIR.

5 Q WHO MADE THAT ACCUSATION?

6 A MY WIFE, IT WAS ABOUT A WEEK PRIOR SHE WAS,
7 I KEPT CALLING HER AND GOING BY HER APARTMENT UP TO ABOUT
8 3:00 IN THE MORNING AND SHE HAD LEFT THE KIDS AGE THREE AND
9 ONE AND MY STEPSON, HE WAS ABOUT FIVE, ALONE WITH A EIGHT-
10 YEAR-OLD-BABYSITTER AND, AND AFTER SHE DIDN'T COME HOME BY
11 4:00. I WENT IN AND GOT MY TWO KIDS AND CALLED HER MOTHER
12 TO COME GET THE STEPSON CAUSE HE WAS NOT BIOLOGICALLY MINE
13 AND I TOOK THEM AND WE HAD AN EMERGENCY CUSTODY HEARING THE
14 NEXT DAY AND THE JUDGE GOT ON HER FOR NOT BEING HOME WITH
15 HER KIDS THAT TIME OF THE MORNING AND THAT REALLY GOT
16 THINGS STIRRED UP. SO I HIRED G. TURNER PERROW TO GO FOR
17 CUSTODY FOR THE KIDS; AND ON THE SPEAKERPHONE THAT DAY SHE,
18 SHE SAID I WILL SHOW YOU M.F.'ER AND HUNG THE PHONE UP; AND
19 TWO DAYS LATER THOSE ALLEGATIONS WERE BROUGHT FORTH.

20 Q OKAY, AND HAVE THERE BEEN CONSISTENT
21 ALLEGATIONS ABOUT WRONGDOING ON YOUR PART FILED BY YOUR
22 ESTRANGED WIFE?

23 A THIS WENT ON FOR PRETTY MUCH UP UNTIL ABOUT
24 THE LAST FIVE YEARS IT KIND OF COOLED DOWN. SHE WOULD
25 INVITE ME OVER TO SEE THE KIDS THEN WHEN I WOULD GET THERE

STEVEN HEWITT, SR. - DIRECT EXAM. BY MR. BARR

205

1 SHE WOULDN'T OPEN THE DOOR AND THEN THE POLICE WOULD COME
2 AND SLAM ME IN THE GROUND AND STUFF AND ONE OF THE OFFICERS
3 I KNEW TOLD ME THAT SHE CALLED THE NIGHT BEFORE SAYING THAT
4 ---

5 MS. LIVELY: OBJECTION, YOUR HONOR, AS TO
6 HEARSAY AS TO WHAT ANOTHER OFFICER SAID.

7 THE WITNESS: (CONTINUING)

8 A WELL ---

9 Q DON'T TESTIFY AS TO WHAT ---

10 THE COURT: SUSTAINED.

11 THE WITNESS: (CONTINUING)

12 A SHE HAD IT, SHE HAD IT PRIOR SET UP THAT I
13 WAS COMING BY TO HARASS HER OR WHAT NOT AND THOSE KIND OF,
14 THOSE KIND OF JUST LITTLE THINGS LIKE THAT AND THEN SHE
15 WOULDN'T NEVER SHOW UP IN COURT FOR ANY OF THEM. JUST LIKE
16 WAS IT A MONTH, A MONTH AGO I WAS HERE FOR A BOND
17 REVOCATION, I THINK IS WHAT IT IS, WHERE SHE SAID SINCE
18 JANUARY 30TH WHEN I GOT OUT OF JAIL THAT I HAD BEEN COMING
19 BY HER HOUSE BEATING ON THE WINDOWS, SHE WAS SCARED. I WAS
20 STALKING HER, AND SHE DIDN'T CALL THE LAW TILL MARCH 1ST,
21 AND WHEN WE CAME THEN SHE DIDN'T SHOW UP FOR THAT AS WELL.
22 IT'S JUST LIKE, IT'S JUST BEEN TROUBLE EVER SINCE, MAN, I
23 DON'T KNOW.

24 Q OKAY, NOW THE FALL OF 2001 WAS THERE EVER
25 AN OCCASION THAT YOU ATTEMPTED TO PENETRATE YOUR SON ANALLY

STEVEN HEWITT, SR. - DIRECT EXAM. BY MR. BARR

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1 OR THAT YOU ATTEMPTED TO HAVE ORAL SEX WITH HIM AT YOUR
2 GRANDFATHER'S HOUSE?

3 A NO, SIR.

4 Q OKAY, NOW YOU MENTIONED BEING IN JAIL?

5 A YES, SIR.

6 Q YOU'VE BEEN ARRESTED IN THE PAST; IS THAT
7 CORRECT?

8 A YES, SIR, I HAVE, I HAVEN'T HAD A PERFECT
9 RUN MYSELF.

10 Q OKAY, AND YOU'VE HAD CONVICTIONS IN THIS
11 STATE BEFORE; IS THAT CORRECT?

12 A YES, SIR.

13 Q OKAY, YOU'VE HAD CONVICTIONS IN THIS STATE
14 2004 FOR BURGLARY?

15 A YES, SIR, BURGLARY SECOND.

16 Q OKAY, AND YOU'VE BEEN CONVICTED FOR FAILING
17 TO STOP FOR A BLUE LIGHT; IS THAT CORRECT?

18 A YES, SIR.

19 Q OKAY, HAVE YOU EVER BEEN CHARGED WITH OR
20 CONVICTED OF ANY FORM OF SEXUAL CRIME?

21 A NONE OTHER THAN THE ONE WE'VE JUST SPOKEN
22 OF.

23 Q OKAY, AND YOU'RE 39-YEARS-OLD; IS THAT
24 CORRECT?

25 A THIRTY-NINE, YES, SIR.

STEVEN HEWITT, SR. - DIRECT EXAM. BY MR. BARR

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1 Q OKAY, NOW YOU AND I HAVE TALKED ABOUT THE
2 ALLEGATIONS AND THE INCIDENT REPORT IN THIS CASE; IS THAT
3 CORRECT?

4 A YES, SIR.

5 Q OKAY, AND I BELIEVE IT SAYS THAT ON OR
6 ABOUT OCTOBER OF 2001 THESE ALLEGED INCIDENTS OCCURRED WITH
7 YOUR SON?

8 A YES, SIR.

9 Q OKAY, NOW I'VE ALSO DISCUSSED WITH YOU YOUR
10 NCIC REPORT; IS THAT RIGHT?

11 A YES, SIR.

12 Q A RECORD OF ALL YOUR CRIMINAL CONVICTIONS?

13 A YES, SIR.

14 Q IS THAT CORRECT?

15 A YES, SIR.

16 Q I'M GOING TO SHOW YOU THIS DOCUMENT FOR
17 IDENTIFICATION; IS THAT YOUR CRIMINAL HISTORY?

18 A YES, SIR.

19 Q OKAY, NOW OCTOBER OF 2001 WERE YOU ARRESTED
20 ON SEPTEMBER 13TH, 2001?

21 A YEAH, I WAS, I WAS ARRESTED SEPTEMBER 11TH
22 OF 2001 THE DAY THE WORLD TRADE CENTERS FELL, BUT IT WAS ON
23 THE WEEKEND SO IT DIDN'T REGISTER UNTIL THE 13TH.

24 Q OKAY, SO ---

25 A ON A BENCH WARRANT FOR FAILURE TO STOP FOR

STEVEN HEWITT, SR. - DIRECT EXAM. BY MR. BARR

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1 A BLUE LIGHT THAT SAME CHARGE.

2 Q OKAY, DID YOU BOND OUT?

3 A I WAS ON A BENCH WARRANT, I COULD NOT BOND
4 OUT.

5 Q OKAY, SO WHEN DID YOU GET OUT OF JAIL?

6 A I STAYED IN JAIL UNTIL I ACCEPTED A PLEA
7 FOR THREE YEARS SUSPENDED TO ONE YEAR PROBATION ON LIKE
8 NOVEMBER THE 19TH OF 2001.

9 Q SO NOVEMBER THE 19TH OF 2001 YOU WERE IN
10 THE GEORGETOWN COUNTY JAIL?

11 A YES, SIR, FROM SEPTEMBER ---

12 Q AND YOU HAD BEEN IN THERE FOR 62 DAYS; IS
13 THAT CORRECT?

14 A YES, SIR, YES, SIR.

15 Q OKAY, SO OCTOBER OF 2001 YOU WERE A
16 RESIDENT OF THE GEORGETOWN COUNTY JAIL?

17 A YES, SIR.

18 Q AND YOU GOT OUT IN NOVEMBER?

19 A NOVEMBER 19TH.

20 Q NOVEMBER 19TH?

21 A RELEASED TO MY MOTHER'S RESIDENCE AT KENT
22 ROAD IN ANDREWS, THAT WAS WHERE THE PROBATION OFFICER
23 RELEASED ME TO.

24 Q OKAY, SO YOU, THEN YOU HAD TO GO TO
25 ANDREWS?

STEVEN HEWITT, SR. - CROSS EXAMINATION BY MS. LIVELY 209

1 A I WAS IN ANDREWS THEN, YEAH, I HAD TO STAY
2 AT HER RESIDENCE AND WORK IN ANDREWS.

3 Q OKAY, AND YOU WEREN'T LIVING AT YOUR
4 GRANDPARENTS HOUSE?

5 A NO, SIR.

6 Q OKAY, NOW FOR ANY REASONS WHATSOEVER WERE
7 YOU LET OUT ON WORK RELEASE OR ANYTHING AT ALL FROM
8 NOVEMBER 11TH TILL NOVEMBER 19TH?

9 A NO, SIR, A BENCH WARRANT YOU CAN'T GET OUT
10 FOR NOTHING.

11 Q OKAY, AND YOU WERE IN JAIL ON OCTOBER ---

12 A YES, SIR.

13 Q --- OF 2001?

14 A YES, SIR.

15 MR. BARR: ALL RIGHT, PLEASE ANSWER ANY
16 QUESTIONS THE SOLICITOR HAS FOR YOU.

17 A YES, SIR.

18 THE COURT: CROSS EXAMINATION.

19 MS. LIVELY: THANK YOU.

20 CROSS EXAMINATION

21 BY MS. LIVELY:

22 Q AND THESE ALLEGATIONS AND THE WARRANT
23 SPECIFICALLY STATE ON AUGUST OF 2001; ISN'T THAT RIGHT? IF
24 YOU NEED TO SEE A COPY OF YOUR WARRANT AGAIN, MR. HEWITT,
25 I'LL BE GLAD TO PROVIDE IT TO YOU?

STEVEN HEWITT, SR. - CROSS EXAMINATION BY MS. LIVELY 210

1 A I WOULD, I WOULD HAVE TO SEE IT TO ANSWER
2 CORRECTLY, MA'AM.

3 Q I'LL BE GLAD TO. I'M GOING TO SHOW YOU
4 BOTH THE WARRANT AS WELL AS THE INDICTMENTS THAT YOU'VE
5 BEEN CHARGED WITH; THIS, THE FIRST LINE STATES IT WAS IN
6 WHAT?

7 A THE FALL OF 2001.

8 Q THE FALL OF 2001, OKAY, AND THEN IN YOUR
9 INDICTMENT WHAT DATES ARE THEY ALLEGED THAT THESE
10 OCCURRENCES HAPPENED?

11 A ON OR ABOUT AUGUST AND NOVEMBER THE 30TH.

12 Q OF WHAT YEAR?

13 A 2001.

14 Q OKAY, AND THEN ON THIS LEWD ACT ON A MINOR
15 THAT WAS THE CSC FIRST DEGREE, CAN YOU TELL ME WHAT THE
16 DATES ARE FOR THAT?

17 A AUGUST 1ST, 2001 THROUGH NOVEMBER 30TH,
18 2001.

19 Q OKAY, SO FOR THE MONTH OF AUGUST THROUGH
20 THE FIRST OF SEPTEMBER CLEARLY YOU HAVE NO INFORMATION THAT
21 YOU WERE ANYWHERE OR YOU WERE NOT IN THE GEORGETOWN
22 DETENTION CENTER, CORRECT?

23 A NO, I LIVED ON 8TH AVENUE SOUTH IN MYRTLE
24 BEACH AT THAT TIME PRIOR TO COMING BACK TO GEORGETOWN
25 THAT'S WHERE I, I WAS STAYING OVER THERE.

STEVEN HEWITT, SR. - CROSS EXAMINATION BY MS. LIVELY

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1 Q ARE YOU TRYING TO TELL THIS JURY THAT
2 YOU'VE GOT AN ALIBI FOR THIS CASE?

3 A NO, I'M NOT TRYING TO TELL THEM I HAVE AN
4 ALIBI, I'M JUST STATING THE FACTS.

5 Q OKAY, CAUSE IF YOU HAD AN ALIBI CLEARLY YOU
6 WOULD HAVE BEEN JUMPING UP AND DOWN TRYING TO GIVE THAT
7 ALIBI INFORMATION TO THE STATE SO THAT WE COULD CONFIRM
8 THAT ALIBI INFORMATION, WOULDN'T YOU?

9 A NO ONE HAS ASKED ME ANYTHING.

10 Q OKAY, WELL LET ME ASK YOU THIS, IS THAT
11 RENDITION OF YOUR GRANDMA REDDICK'S HOUSE ACCURATE?

12 THE COURT: DO YOU WANT TO SHOW IT TO HIM,
13 PLEASE, MA'AM?

14 MS. LIVELY: YES, IF I MAY.

15 THE WITNESS: (CONTINUING)

16 A IT LOOKS, IT LOOKS CLOSE.

17 Q IT LOOKS CLOSE?

18 A YEAH.

19 Q OKAY, DID YOU AND **VICTIM** **REDACTED** EVER STAY IN
20 YOUR OLD GRANDPA REDDICK'S ROOM WHERE HE HAD THE HOSPITAL
21 BED?

22 A NO, IT WAS AN OLD BED, IT WAS REAL SMALL.
23 I ALWAYS SLEPT ON THE COUCH SO I WOULD WATCH MY GRANDMOTHER
24 CAUSE SHE WAS OLD THAT'S WHERE I SLEPT AT CAUSE I COULD LAY
25 ON THE COUCH AND SEE RIGHT INTO HER BEDROOM AT HER BED.

STEVEN HEWITT, SR. - CROSS EXAMINATION BY MS. LIVELY 212

1 Q AND WOULD VICTIM SLEEP ON THE FLOOR?

2 A VICTIM HE WOULD, IN THE AFTERNOONS
3 BEFORE HIS MOM WOULD COME GET HIM SOMETIMES HE WOULD FALL
4 ASLEEP ON THE FLOOR BUT HE NEVER STAYED THE NIGHT.

5 Q OKAY, SO WE HAVE THAT IF HE FELL ASLEEP
6 THERE NOT, YOU CAN AGREE THAT HE WOULD HAVE BEEN ON THE
7 FLOOR IN THERE IN THE T.V. ROOM WHERE YOU WERE, CORRECT?

8 A NO, HE WAS, THAT'S WHERE HE WOULD FALL
9 ASLEEP AT. WE'D BE WATCHING T.V. OR SOMETHING IN THE
10 AFTERNOON AFTER BEING OUTSIDE ALL DAY HIS MOM WOULD COME
11 AND GET HIM RIGHT AFTER DARK, SOMETIMES MAYBE 9:00.

12 Q OKAY, AND SINCE THAT WAS THE FALL THEN IT
13 WOULD HAVE PROBABLY GOT DARK A LITTLE BIT EARLIER; WOULD
14 YOU AGREE?

15 A I'M NOT ---

16 Q THAN IN THE SUMMER?

17 A I'M NOT KNOWING WHEN IT WAS THAT HE STAYED
18 THERE CAUSE I ONLY SEEN HIM A FEW TIMES.

19 Q I UNDERSTAND THAT, I'M TELLING YOU IN THE
20 FALL OF 2001, OKAY?

21 A YEAH, IT PROBABLY WOULD HAVE GOT DARK AT
22 7:00.

23 Q OKAY, THANK YOU. NOW LET'S TALK ABOUT THIS
24 ALLEGATION WITH YOUR DAUGHTER, SHE WAS ONLY FOUR-YEARS-OLD
25 AT THE TIME SOME ALLEGATION CAME OUT THAT YOU HAD FONDLED

STEVEN HEWITT, SR. - CROSS EXAMINATION BY MS. LIVELY 213

1 HER; IS THAT CORRECT?

2 A NO, MA'AM, IT SAID THREE.

3 Q OH, SHE WAS ONLY THREE?

4 A IT SAYS THREE, WHAT THE PAPER WORK SAID.

5 Q ALL RIGHT, AND WHENEVER THAT OCCURRED YOU
6 WERE ACTUALLY ARRESTED AND INDICTED FOR THAT CHARGE,
7 WEREN'T YOU?

8 A I KNOW I WAS ARRESTED. I DON'T KNOW TOO
9 MUCH ABOUT THE OTHER STUFF BUT I KNOW I WAS ARRESTED.

10 Q AND ISN'T IT TRUE THAT THE REASON WHY THOSE
11 CHARGES WERE DISMISSED IS BECAUSE YOUR DAUGHTER WAS TOO
12 YOUNG TO TESTIFY?

13 A I DON'T KNOW THAT.

14 Q YOU DON'T KNOW THAT?

15 A MY, MY ATTORNEY JUST SAID IT WAS OVER.

16 Q AND DID YOU GET CUSTODY OF YOUR CHILDREN
17 AFTER YOU SAID THAT THIS WAS A FALSE ALLEGATION/ WERE YOU
18 ABLE TO GET CUSTODY OF YOUR KIDS AWAY FROM YOUR WIFE?

19 A NO, THAT CURED IT ALL RIGHT THERE.

20 Q THAT TOOK CARE OF IT?

21 A YEAH, SHE CURED THAT ANY CHANCE OF GETTING
22 CUSTODY WHEN YOU'VE GOT SOMETHING LIKE THAT ON YOUR BACK.

23 Q OKAY, ALL RIGHT. SO ARE YOU SAYING THAT
24 SHE'S THE ONE THAT PUT **VICTIM** UP TO HAVE TO GET UP IN FRONT
25 OF ALL THESE PEOPLE AND TELL THAT THIS HAPPENED?

STEVEN HEWITT, SR. - CROSS EXAMINATION BY MS. LIVELY 214

1 A NO, I'M NOT SAYING THAT, NO, MA'AM, I'M NOT
2 SAYING THAT AT ALL.

3 Q OKAY, YOU'RE JUST SAYING IT DIDN'T HAPPEN?

4 A THAT'S RIGHT.

5 Q WELL I MEAN TELL ME THIS, WHY WOULD YOUR
6 SON LIE?

7 THE COURT: SOLICITOR, YOU KNOW THAT'S AN
8 IMPROPER QUESTION.

9 MR. BARR: OBJECTION, YOUR HONOR.

10 THE COURT: THE JURY WILL DISREGARD THAT. IT IS
11 NOT PART OF THIS CASE, THANK YOU. CONTINUE ON.

12 MS. LIVELY: (CONTINUING)

13 Q LET ME ASK YOU THIS, SIR, HAVE YOU EVER
14 THREATENED ANYBODY IN REGARDS TO COMING TO COURT AND
15 TESTIFYING?

16 A NO, MA'AM.

17 Q YOU HAVEN'T, HAVE YOU EVER THREATENED
18 ANYBODY IN REGARDS TO COME IN AND TESTIFY IN THIS CASE HERE
19 TODAY?

20 A NO, MA'AM.

21 MR. BARR: OBJECTION, YOUR HONOR, ASKED AND
22 ANSWERED.

23 MS. LIVELY: I WANT TO CLARIFY ---

24 THE COURT: MR. FOREMAN, MR. FOREMAN, YOU TAKE
25 YOUR JURY TO THE JURY ROOM, PLEASE, THANK YOU.

STEVEN HEWITT, SR. - CROSS EXAMINATION BY MS. LIVELY 215

1 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
2 3:25 P.M.)

3 THE COURT: MR. BARR?

4 MR. BARR: YOUR HONOR, IT APPEARS AS IF THIS
5 WHOLE LINE OF QUESTIONS IS NOT RELEVANT AND IT'S COMBATIVE.

6 THE COURT: WELL CROSS EXAMINATION IS COMBATIVE.

7 MR. BARR: BUT I THINK THE WITNESS HAS ANSWERED
8 HER QUESTIONS, SHE'S ASKED THE SAME QUESTION AGAIN.

9 THE COURT: SOLICITOR?

10 MS. LIVELY: YES, SIR.

11 THE COURT: YOU ARE MAKING AN ALLEGATION THAT
12 THIS DEFENDANT HAS COMMITTED A CRIME AGAINST THE STATE OF
13 SOUTH CAROLINA?

14 MS. LIVELY: YES, SIR.

15 THE COURT: YOU DIDN'T THINK IT WAS IMPORTANT TO
16 INFORM THE COURT THAT YOU WERE GOING TO TRY AND ASK THAT
17 TYPE OF QUESTION?

18 MS. LIVELY: WELL, YOUR HONOR, IF I MAY BE
19 HEARD?

20 THE COURT: CERTAINLY.

21 MS. LIVELY: THIS INFORMATION CAME TO ME EARLIER
22 TODAY.

23 THE COURT: AND YOU DECIDED TO WITHHOLD IT FROM
24 THE COURT UNTIL NOW SO YOU COULD SPRING IT ON THIS JURY
25 WITHOUT TALKING TO THE COURT ABOUT IT BEFORE?

STEVEN HEWITT, SR. - CROSS EXAMINATION BY MS. LIVELY 216

1 MS. LIVELY: WELL, YOUR HONOR, THAT'S THE REASON
2 WHY I WAS ASKING HIM SPECIFICALLY ---

3 THE COURT: NO, MA'AM, YOUR JOB WAS TO TELL ME
4 THEN IF THE COURT ALLOWED IT YOU COULD ASK IT IN FRONT OF
5 THIS JURY. NOW YOU'RE PUTTING ME IN A POSITION WHETHER OR
6 NOT I NEED TO DECLARE A MISTRIAL BECAUSE OF YOUR IMPROPER
7 ACTIONS. IF YOU WANT TO SAY ANYTHING ELSE I'LL BE GLAD TO
8 HEAR FROM YOU.

9 MS. LIVELY: YES, SIR. I WOULD, THIS DEFENDANT
10 AT THIS TIME WENT TO A NEIGHBOR'S HOME, WHO IS A FAMILY
11 MEMBER, AND THREATENED HIM TO COME TO COURT AND SAY THAT
12 KIM HAD LIED ABOUT WHAT HAD OCCURRED. HE IS TESTIFYING
13 THAT WHAT HAD HAPPENED TO HIS DAUGHTER WAS A LIE AND THAT
14 THAT IS THE REASON WHY THIS VICTIM HAS COME TO COURT AND
15 TESTIFIED THE WAY HE HAS. SO I WAS GOING TO ASK HIM IF HE
16 HAS GONE TO SOMEONE AND ASKED THEM TO COME TO COURT AND
17 TESTIFY IN THAT MANNER, AND I HAD PUT HIM DOWN, I GAVE A
18 COPY OF THE LIST TO MR. BARR. I JUST ADDED HIM AS A
19 POTENTIAL WITNESS. WE WENT AND PICKED HIM UP AND HE IS
20 HERE AND HE'S PREPARED TO TESTIFY THAT THIS DEFENDANT DID
21 ASK HIM TO COME TO COURT AND SAY THAT KIM HEWITT WAS THE
22 REASON WHY THIS INFORMATION BEING BROUGHT OUT BY **VICTIM**
23 **VICT** JUST LIKE SHE DID WITH THE FOUR-YEAR-OLD-DAUGHTER.

24 THE COURT: HE JUST DENIED THAT, THAT HE DID NOT
25 SAY THAT SHE HAD TOLD OR COACHED OR ENCOURAGED **VICTIM**

STEVEN HEWITT, SR. - CROSS EXAMINATION BY MS. LIVELY 217

1 VICTIM TO DO THIS IN ANY WAY. HE DID TESTIFY ABOUT
2 THE ALLEGATIONS ABOUT THE MINOR CHILD. NOW I HAD EXPECTED,
3 PROBABLY SHOULD HAVE THE DEFENSE TO HAVE RAISED SOME
4 OBJECTION WHEN IT FIRST CAME UP AND I SUPPOSE I SHOULD HAVE
5 STEPPED IN, THOUGH IT'S NOT MY JOB TO TRY THE CASE, AND
6 STOP THAT LINE OF QUESTIONS CAUSE THERE'S ABSOLUTELY
7 NOTHING TO DO WITH THIS CASE. NOW THE ISSUE HAS BEEN
8 COMPOUNDED BY YOUR ACTIONS IN THIS MATTER.

9 MS. LIVELY: AND, YOUR HONOR, I TRIED TO ADDRESS
10 THAT BEFORE THIS CASE EVEN STARTED IN REGARDS TO THIS
11 BECOMING ABOUT THE MOTHER AND THE ISSUES WITH THE MOTHER
12 AND JAIL AND DRUGS AND EMOTIONAL ISSUES BECAUSE I WANTED
13 THIS TO STRICTLY ABOUT THE CHILD IN THIS CASE.

14 THE COURT: BUT IT'S ALSO ABOUT HIS, THE
15 VICTIM'S EMOTIONAL STATE AND WHAT WAS GOING ON IN HIS LIFE
16 AT THE TIME HE MADE THESE ALLEGATIONS SO IT WAS PROPER AS
17 TO WHAT OTHER ACTIVITIES ARE GOING ON IN HIS LIFE. THIS
18 ISSUE ABOUT, AND THAT WAS ABOUT HER USE OF OR ALLEGED ABUSE
19 OF NARCOTICS OR PRESCRIPTION DRUGS. NOTHING WAS EVER
20 BROUGHT UP TO ME ABOUT THIS DEFENDANT BEING ACCUSED AT ANY
21 POINT IN TIME OF MOLESTING HIS THREE OR FOUR-YEAR-OLD-
22 DAUGHTER, NOBODY TOLD ME ABOUT THAT. WHEN I FIRST HEARD
23 ABOUT IT WAS WHEN IT POPPED UP IN THIS TRIAL. AGAIN I
24 EXPECTED SOMEBODY TO DO THEIR JOB AND OBJECT AT THAT POINT
25 IN TIME. AGAIN IT'S NOT MY JOB TO TRY THE CASE.

STEVEN HEWITT, SR. - CROSS EXAMINATION BY MS. LIVELY 218

1 MS. LIVELY: YES, SIR.

2 THE COURT: BUT APPARENTLY I SHOULD HAVE BECAUSE
3 THIS NOW, THIS HAS LED US WAY DOWN THE WRONG PATH. I'M
4 GOING TO TAKE A BREAK AND I'M GOING TO DECIDE WHETHER I'M
5 GOING TO DECLARE A MISTRIAL IN THIS CASE, THANK YOU VERY
6 MUCH.

7 (WHEREUPON, A RECESS WAS TAKEN AND THE FOLLOWING
8 TAKES PLACE ON THE RECORD AFTER THE RECESS.)

9 THE COURT: MR. BARR, WHAT'S YOUR POSITION?

10 MR. BARR: YOUR HONOR, MIGHT I HAVE A MINUTE TO,
11 ANOTHER MINUTE TO CONFER WITH MY CLIENT?

12 THE COURT: YES, SIR, CERTAINLY.

13 MR. BARR: YOUR HONOR, I APOLOGIZE TO THE COURT
14 FOR MY TARDINESS IN OBJECTING TO THE QUESTIONS THE
15 SOLICITOR'S OFFICE REGARDING THIS SEPARATE CRIME. THE ONLY
16 NOTICE THAT I'VE GOTTEN IS SHE CAME TO ME AND GAVE ANOTHER
17 NAME AS A POSSIBLE REBUTTAL WITNESS BUT NO, NO DISCUSSION
18 OF THIS ISSUE AT ALL, SO I WOULD ASK THAT THE COURT DECLARE
19 A MISTRIAL.

20 THE COURT: WHY DON'T YA'LL COME AROUND HERE AND
21 TALK TO ME FOR A SECOND, PLEASE.

22 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
23 RECORD OUT OF THE HEARING OF THE COURT REPORTER.)

24 THE COURT: THANK YOU VERY MUCH. ALL RIGHT,
25 ANYTHING FURTHER FROM THE STATE BEFORE I RULE IN THIS

STEVEN HEWITT, SR. - CROSS EXAMINATION BY MS. LIVELY

219

1 MATTER?

2 MS. LIVELY: YES, YOUR HONOR, IF I MAY PLEASE.
3 FIRST OF ALL I DO WANT THE COURT TO KNOW THAT I DID
4 APPROACH MR. BARR IN REGARDS TO A POSSIBLE PLEA AFTER
5 SPEAKING WITH THE VICTIM. EVEN DESPITE THE FACT THAT I
6 DIDN'T WANT TO AND THE POSSIBILITY OF HAVING TO ARGUE
7 AGAINST A MISTRIAL MY VICTIM DID AGREE IF I WOULD OFFER
8 LESS TIME. I DID PRESENT THAT TO MR. BARR AT WHICH TIME HE
9 REJECTED IT, SO, YOUR HONOR, IF YOU ARE READY NOW TO HEAR
10 MY ARGUMENTS.

11 THE COURT: I AM NOW.

12 MS. LIVELY: OKAY, IT IS MY UNDERSTANDING IN
13 GRANTING OF A MISTRIAL IS AN EXTREME MEASURE BY THE COURT.
14 ALSO FOR YOUR HONOR TO KNOW THAT IN REGARDS TO MY QUESTION
15 OF THIS PARTICULAR WITNESS WERE TWOFOLD. FIRST OF ALL IT
16 HAD ALREADY BEEN BROUGHT OUT BY A DEFENSE WITNESS REGARDING
17 THE FOUR-YEAR-OLD-CHILD BEING MOLESTED. IT WAS NOT
18 SOMETHING THE STATE EVER BROUGHT UP IN ITS CASE IN CHIEF.
19 THAT QUESTION CAME OUT ON DIRECT TESTIMONY. I WAS SHOCKED
20 TO HEAR IT AND NEVER EXPECTED TO HEAR AND WASN'T GOING TO
21 GO INTO IT, AND THE INFERENCE OF THAT AND THE WITNESSES WHO
22 TESTIFIED FOR THE DEFENSE WAS THAT THE VICTIM'S MOTHER HAD
23 PUT THE CHILD UP TO TESTIFY OR UP TO MAKING THESE
24 ALLEGATIONS AGAINST THE FATHER. WHENEVER THE FATHER WAS ON
25 THE STAND THE DEFENDANT REGARDING THAT ISSUE HE EVEN

STEVEN HEWITT, SR. - CROSS EXAMINATION BY MS. LIVELY 220

1 TESTIFIED TO THAT FACT AND WHAT I HAVE LEARNED AT LUNCH
2 TIME, AND I HAD STEVEN BROWN GO AND SERVE A SUBPOENA ON A
3 PARTICULAR INDIVIDUAL, WAS THAT THIS DEFENDANT HAD GONE TO
4 THE HOME OF STEVEN KNEESE LAST WEEK AND HAD TOLD HIM THAT
5 HE WAS ASKING IF HE WAS GOING TO TESTIFY AT TRIAL FOR HIM
6 TO TELL THE JURY THAT KIM HAD PUT **VICTIM** UP TO LIE ABOUT
7 THIS MOLESTATION WHICH WOULD GO ALONG WITH THE INFERENCE
8 THAT SHE HAD DONE THIS WITH **VICTIM** AND HAD ALSO DONE THIS
9 IN REGARDS TO THE FOUR-YEAR-OLD-CHILD. THAT IS THE
10 INFERENCE THAT WAS BEING BROUGHT FORTH THROUGH THE DEFENSE
11 WITNESSES AS WELL AS THE DEFENDANT. SO WHEN THE DEFENDANT
12 DENIED THAT THAT WAS THE CASE THAT WAS MY GOOD FAITH
13 REASONING FOR GOING IN AND ASKING HIM IF HE HAD THREATENED
14 ANYBODY ABOUT COMING TO COURT TO TESTIFY ABOUT THAT ISSUE.
15 IT WAS NOT MEANT TO BE IN ANY WAY IMPROPER. I FELT THAT IT
16 WAS A GOOD FAITH BASIS ON INFORMATION THAT I HAD RECEIVED.
17 I HAD PROVIDED MR. BARR WITH THE, WITH THE VICTIMS, NOT THE
18 VICTIMS, I'M SORRY, THE WITNESS' NAME AND SURELY THE
19 DEFENDANT WOULD BE AWARE OF WHO THIS PERSON WAS. I DID NOT
20 EVEN KNOW WHO THIS PERSON WAS UNTIL THAT INFORMATION WAS
21 PROVIDED TO ME AT LUNCH SO, YOUR HONOR, THAT WOULD BE MY
22 GOOD FAITH BASIS AS TO WHY I ASKED THE QUESTION AND I WOULD
23 STATE THAT IF NOTHING ELSE THAT QUESTION BEING ASKED AS IT
24 WAS IF THE COURT WERE TO DEEM THAT IT WAS SUCH A MANIFEST
25 NECESSITY FOR JUSTICE TO GRANT A MISTRIAL THAT I BELIEVE

STEVEN HEWITT, SR. - CROSS EXAMINATION BY MS. LIVELY 221

1 THAT THAT WOULD BE THE MOST EGREGIOUS RESULT TO WHAT HAS
2 OCCURRED HERE UNDER THE CIRCUMSTANCES.

3 I BELIEVE UNDER, THAT THIS COULD EITHER BE CURED
4 THROUGH AN INSTRUCTION BY THE COURT. IT WAS NOT SOMETHING,
5 I MEAN THE DEFENDANT DENIED IT. I ASKED THE QUESTION HE
6 COULD JUST, AND I BELIEVE HE DID DENY IT, THE COURT COULD
7 EITHER ASK THAT THAT BE STRUCK OR THAT I GO NO FURTHER INTO
8 THAT QUESTION SINCE HE DENIED IT AND THEN IF THE COURT AT
9 THAT TIME DEEMS ME BRINGING A REBUTTAL WITNESS REGARDING
10 THAT ISSUE IS IMPROPER WE'LL ADDRESS IT AT THAT TIME. SO,
11 YOUR HONOR, I BELIEVE A MISTRIAL IS NOT APPROPRIATE IN THIS
12 CASE. I BELIEVE THAT CLEARLY THE BASIS FOR ME BRINGING IT
13 WAS NOT TO CATCH ANYONE BY SURPRISE. IT WAS CLEARLY TO
14 ADDRESS ISSUES THAT WERE BROUGHT OUT ON DIRECT BY THE
15 DEFENSE, THAT I'D NEVER EVEN INTENDED TO HAVE TO ADDRESS IT
16 IN THIS TRIAL. I'VE TRIED THIS CASE AS FAIRLY AS I COULD
17 BY NOT ADDRESSING ANY PRIOR ALLEGATIONS. THEY ARE THE ONES
18 THAT BROUGHT IT UP AND THAT WAS THE BASIS FOR ME COMING IN
19 FROM THIS WITNESS TELLING ME THAT HE WAS TRYING TO GET KIM
20 TO SAY **VICTIM** LIED JUST LIKE SHE HAD GOTTEN THE FOUR-YEAR-
21 OLD TO LIE SEVERAL YEARS AGO. THAT WAS THE BASIS FOR ME
22 ASKING THAT QUESTION SO I WOULD ASK THIS COURT TO DENY THE
23 DEFENSE REQUEST FOR A MISTRIAL IN THIS CASE.

24 THE COURT: ALL RIGHT, I'LL BE GLAD TO HEAR FROM
25 YOU, MR. BARR.

STEVEN HEWITT, SR. - CROSS EXAMINATION BY MS. LIVELY 222

1 MR. BARR: YOUR HONOR, I THINK IT'S TOTALLY
2 DIFFERENT TO SAY THAT MR. HEWITT THREATENED SOMEONE ABOUT
3 TESTIMONY AS OPPOSED TO SAYING DID MS. KIMBERLY HEWITT PUT
4 MR. [VICTIM] [REDACTED] UP TO THE TESTIMONY IN THIS CASE.
5 YOUR HONOR, WE'VE BEEN TRYING THIS CASE FOR TWO DAYS AND,
6 AND IT SEEMS CLEAR EVEN FROM THE WITNESSES TESTIMONY MR.
7 [VICTIM] [REDACTED] DENIED THAT HE EVER SHARED THIS WITH HIS
8 MOTHER AND THAT HE EVER HAD ANYTHING TO DO WITH TELLING HER
9 ABOUT THIS. YOUR HONOR, AT THE SAME VERY TIME THE
10 INVESTIGATOR, INVESTIGATOR TODD SAYS RIGHT IN THE REPORT
11 THAT THE INFORMATION HE GOT HE GOT FROM THE MOTHER.

12 YOUR HONOR, IT'S NOT FAR A FIELD, YOU KNOW, TO,
13 TO SAY THAT THERE IS SOME QUESTION ABOUT THE ROLE THAT
14 KIMBERLY HEWITT MAY HAVE PLAYED IN THIS. IN THIS VERY
15 COURTROOM LESS THAN THREE WEEKS AGO WE HEARD A BOND
16 REVOCATION WHERE KIMBERLY HEWITT SAYS THAT, THAT, THAT MR.
17 HEWITT, SR., IS KNOCKING ON HER SON'S WINDOW AND
18 FRIGHTENING HIM TO DEATH. MR. [VICTIM] [REDACTED] TESTIFIES HERE
19 TODAY HE'S NOT AFRAID OF HIS FATHER AND HE HASN'T SEEN HIM.

20 I THINK TO SAY THAT NONE, THAT THE ISSUE
21 INVOLVING WHAT HER ROLE MAY BE IN THIS IS NOT RELEVANT TO
22 THE CASE I DON'T THINK THAT'S THE CASE AT ALL. THE REPORTS
23 CLEARLY COME FROM THE VERY PEOPLE WHO CITE ALL OF THESE
24 INSTANCES WHEREAS THE KID IS TRAUMATIZED BY EVENTS
25 OCCURRING WITH HIS MOTHER BUT THEN TO SUGGEST TO THE JURY

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1 THAT ALL OF THIS IS POST TRAUMATIC SYNDROME FROM SOMETHING
2 THAT HAPPENED 10 TO 12 YEARS AGO OR EIGHT YEARS AGO IS
3 MISLEADING.

4 IF [REDACTED] [REDACTED] IS SUFFERING ALL OF THIS TRAUMA
5 AND THEN ALL OF A SUDDEN HE HAS THIS BREAK THEN HOW DO YOU,
6 AND HE'S NOT SEEING HIS FATHER, THEN YOU SUGGEST TO THE
7 JURY THAT ALL OF THIS IS BECAUSE OF THE FATHER, YOUR HONOR,
8 THAT'S, THAT'S JUST PATENTLY INCORRECT.

9 THE SOLICITOR GIVES ME A NOTE THAT SAYS STEVEN
10 KNEESE REBUTTAL. SHE DOESN'T SAY ANYTHING ABOUT STEVEN
11 KNEESE BEING SOMEONE WHO SAYS THAT [REDACTED] [REDACTED] [REDACTED] I
12 MEAN STEVEN HEWITT, SR., THREATENED HIM OR ANYTHING LIKE
13 THIS. WHAT ELSE WOULD THAT BE OTHER THAN SURPRISE. SHE
14 DOESN'T SAY THAT SHE'S GOING TO ASK HIM QUESTIONS WHETHER
15 OR NOT HE HAS COMMITTED A CRIMINAL ACT OTHER THAN ON THE
16 RECORD WITH THE JURY PRESENT. YOUR HONOR, I DON'T HOW YOU
17 CURE ALL OF THAT.

18 THE COURT: ALL RIGHT, THANK YOU. IN LOOKING AT
19 THE ISSUE OF A MISTRIAL THE APPELLATE COURT'S HAVE
20 INDICATED TO THE TRIAL COURT THAT IT OUGHT TO BE USED WITH
21 GREAT CAUTION AND WITH THE CAUSES STATED IN THE RECORD BY
22 THE TRIAL JUDGE AND A FINDING OF MANIFEST NECESSITY BY THE
23 COURT IN THIS PARTICULAR MATTER.

24 IT'S THE TRIAL COURT'S RESPONSIBILITY WHETHER OR
25 NOT EITHER SIDE RAISES THE ISSUE TO MAKE SURE THAT A FAIR

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1 TRIAL IS HAD IN THE MATTER. IT'S NOT MY JOB TO TRY THE
2 CASE BUT IT IS MY JOB AND MY DUTY AND MY RESPONSIBILITY TO
3 MAKE SURE THAT THIS JURY REMAINS FREE FROM TAINT OF ISSUES
4 THAT HAVE NOTHING TO DO WITH THE MATTER TO BE TRIED.

5 A DEFENSE WITNESS INTRODUCED INTO THIS CASE A
6 MATTER TOTALLY UNRELATED TO THIS PROSECUTION, A MATTER THAT
7 SHOULD NEVER HAVE BEEN RAISED IN THIS COURTROOM AT ALL, AND
8 THAT WAS THE ISSUE ABOUT MINOR DAUGHTER OF THE DEFENDANT
9 AND ANY ALLEGED ACTIONS OF HIM WHEN THE CHILD WAS THREE TO
10 FOUR. THAT'S NOT AN ISSUE IN THIS CASE, SHOULD NOT HAVE
11 BEEN AN ISSUE, SHOULD NEVER HAVE BEEN MENTIONED BY ANYONE.
12 IT WAS RAISED BY A DEFENSE WITNESS AS A RESULT OF A
13 QUESTION ASKED BY THE DEFENSE ATTORNEY.

14 A DEFENDANT CANNOT CAUSE, AND THE COURT CANNOT
15 ALLOW A DEFENDANT TO CAUSE A MISTRIAL BASED ON ITS OWN
16 ACTIONS, AND HE IS RESPONSIBLE, A DEFENDANT IS RESPONSIBLE
17 FOR THE ACTIONS OF HIS WITNESSES AND HIS ATTORNEY.

18 THE ISSUE WAS THEN COMPOUNDED BY THE STATE IN
19 RAISING AN ISSUE TO THE JURY AS TO A POTENTIAL CRIME THAT
20 THE DEFENDANT HAD COMMITTED AGAINST THE STATE OF SOUTH
21 CAROLINA WITHOUT FIRST BRINGING THE MATTER TO THE COURT'S
22 ATTENTION WHEN THERE WAS TIME TO DO SO. THE STATE WAS AT
23 FAULT IN DOING THIS DESPITE THE FACT THAT THE ISSUE
24 PROBABLY CAME UP THROUGH THE ACTIONS OF THE DEFENDANT.

25 THE ISSUE IS NOW WHETHER THE TRIAL COURT CAN CURE

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1 THESE PROBLEMS CAUSED BY THE DEFENSE AND THE STATE, REFOCUS
2 THIS TRIAL ON THE ISSUE OF WHETHER OR NOT THE STATE HAS
3 PRODUCED SUFFICIENT EVIDENCE TO CONVICT THE DEFENDANT OF
4 THE CRIMES CHARGED BEYOND A REASONABLE DOUBT.

5 IT IS MY INTENTION AT THIS TIME TO INSTRUCT THE
6 JURY THAT ANY ISSUE AS TO THE MINOR DAUGHTER OF THE
7 DEFENDANT IS NOT AN ISSUE IN THIS CASE, IS NOT TO BE
8 CONSIDERED BY THEM, SHALL NOT BE TAKEN INTO CONSIDERATION
9 BY THEM. ANY QUESTIONS BY THE DEFENSE OR THE STATE AS TO
10 THOSE ISSUES THE COURT WILL ORDER THAT THOSE ARE STRUCK
11 FROM THE RECORD AND THEY ARE NOT TO CONSIDER THEM.

12 FURTHER I WILL INSTRUCT THEM THAT ANY QUESTIONS
13 THE STATE HAD ABOUT ISSUES OF THE DEFENDANT ATTEMPTING TO
14 HAVE ANOTHER WITNESS TESTIFY IN A CERTAIN MANNER ARE NOT
15 ISSUES IN THIS CASE. IT MIGHT BE ISSUES FOR FURTHER
16 CRIMINAL PROSECUTION OF THE DEFENDANT IN ANOTHER MATTER,
17 IT'S NOT FOR THIS TRIAL AND SUCH WILL NOT BE SPOKEN OF
18 AGAIN IN THIS TRIAL BY ANY PARTY.

19 I RESERVE THE RIGHT TO DECLARE A MISTRIAL UP TO
20 THE TIME THAT THIS MATTER IS PRESENTED TO THE JURY SHOULD I
21 SEE ANY OF THESE ISSUES BEING BROUGHT UP BY THE STATE OR
22 THE DEFENSE IN ANY MANNER OR THE COURT FINDS THAT THE JURY
23 IN THIS MATTER CANNOT PROPERLY FOCUS ON THE ISSUE AT HAND
24 AND DISREGARD THESE PROBLEMS CAUSED BY THE DEFENSE AND THE
25 STATE. THANK YOU VERY MUCH, ASK THE JURY TO COME IN.

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1 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
2 4:16 P.M.)

3 THE COURT: LADIES AND GENTLEMEN OF THE JURY, IN
4 MY JOB IN THIS MATTER AS A TRIAL JUDGE, AND I TOLD YOU IT
5 WAS MY JOB AND DUTY TO CONTROL CERTAIN PROCEEDINGS THAT
6 TAKE PLACE IN THIS TRIAL, I'M GOING TO GIVE YOU SOME
7 INSTRUCTIONS AT THIS POINT IN TIME. IT IS YOUR JOB AND
8 YOUR RESPONSIBILITY TO FOLLOW THESE INSTRUCTIONS EXACTLY.
9 IF IN ANY WAY YOU CANNOT FOLLOW THESE INSTRUCTIONS YOU WILL
10 SO INFORM ME IMMEDIATELY AND I WILL TAKE WHAT ACTION IS
11 NECESSARY REGARDING THE FUTURE CONDUCT OF THIS TRIAL.

12 THERE HAS BEEN INTERPOSED IN THIS TRIAL CERTAIN
13 MATTERS THAT HAVE ABSOLUTELY NOTHING TO DO WITH THIS CASE.
14 YOUR JOB AS I TOLD YOU WAS TO LOOK AT THE FACTS AND
15 EVIDENCE IN THIS CASE ON THE TWO CRIMES THE DEFENDANT HAS
16 BEEN CHARGED WITH. THOSE BEING LEWD ACT ON A MINOR AND THE
17 OTHER OF CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE
18 AND THE FACTS AND THE EVIDENCE WHICH TEND TO BRING LIGHT
19 UPON THOSE ACCUSATIONS BROUGHT AGAINST HIM BY THE STATE.

20 THERE HAS BEEN INTERPOSED IN THIS TRIAL SOME
21 STATEMENTS WHETHER THEY BE TRUE OR NOT ABOUT CERTAIN
22 ACTIVITIES OF THE DEFENDANT WITH SOME OTHER PARTY, A MINOR
23 CHILD. THAT IS NOT PART OF THIS CASE. YOU MAY NOT USE IT
24 IN YOUR DECISION MAKING. YOU MAY NOT THINK ABOUT IT. YOU
25 MAY NOT USE IT TO DECIDE. YOU CERTAINLY MAY NOT TALK ABOUT

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1 IT IN THE JURY ROOM WHEN IT COMES TIME FOR YOU TO MAKE A
2 DECISION.

3 TO DO SO WOULD VIOLATE YOUR OATH AND I WILL BE
4 ASKING YOU IN A MINUTE IF YOU CAN STILL FOLLOW YOUR OATH IN
5 THIS MATTER. WHATEVER YOU SAY I WILL ACCEPT IT AND THERE
6 WILL BE NOTHING THAT WILL COME OF THAT AS TO YOU, BUT I
7 WILL NEED DIRECT AND HONEST ANSWERS FROM YOU.

8 THERE HAS FURTHER BEEN IMPOSED IN THIS TRIAL
9 OTHER MATTERS THAT HAVE ABSOLUTELY NOTHING TO DO WITH THIS
10 TRIAL, THAT IS WHETHER OR NOT THE DEFENDANT ASKED ANOTHER
11 WITNESS WHO IS NOT HERE AND THAT YOU WILL NOT HEAR FROM TO
12 TESTIFY IN A CERTAIN MANNER. THAT IS NOT PART OF THIS
13 CASE. AGAIN YOU MUST NOT USE THIS IN YOUR DECISION MAKING
14 IN ANY WAY. YOU MAY NOT THINK ABOUT IT. YOU MAY NOT TALK
15 ABOUT IT. IT IS NOT PART OF THIS CASE.

16 MR. KENNETH A. TERNE, STAND, PLEASE, SIR; CAN YOU
17 FOLLOW THOSE INSTRUCTIONS THAT THE COURT HAS GIVEN TO YOU
18 EXPLICITLY?

19 JURY PANEL MEMBER TERNE: YES.

20 THE COURT: THANK YOU VERY MUCH. MS. CHRISTY P.
21 SKODRAS, CAN YOU, SIR, FOLLOW THOSE INSTRUCTIONS THE COURT
22 HAS GIVEN TO YOU EXPLICITLY?

23 JURY PANEL MEMBER SKODRAS: YES, SIR.

24 THE COURT: THANK YOU. LORIS E. WILLIAMS, MR.
25 WILLIAMS, CAN YOU FOLLOW THOSE INSTRUCTIONS THE COURT HAS

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1 GIVEN TO YOU EXACTLY?

2 JURY PANEL MEMBER WILLIAMS: YES, SIR.

3 THE COURT: VERY GOOD. JUSTIN T. BLOMDAHL, SIR,
4 CAN YOU FOLLOW THOSE INSTRUCTIONS THE COURT HAS GIVEN TO
5 YOU EXACTLY?

6 JURY PANEL MEMBER BLOMDAHL: YES, SIR.

7 THE COURT: CARMEN B. FRANKLIN, MS. FRANKLIN,
8 CAN YOU FOLLOW THOSE INSTRUCTIONS THE COURT HAS GIVEN TO
9 YOU EXACTLY?

10 JURY PANEL MEMBER FRANKLIN: YES, SIR.

11 THE COURT: THANK YOU, MA'AM. ANTHONY L.
12 COCKFIELD, MR. COCKFIELD, CAN YOU FOLLOW THOSE INSTRUCTIONS
13 THE COURT HAS GIVEN TO YOU EXACTLY?

14 JURY PANEL MEMBER COCKFIELD: YES, SIR.

15 THE COURT: VERY GOOD. VALENCIA N. FULTON, MS.
16 FULTON, CAN YOU FOLLOW THOSE INSTRUCTIONS THE COURT HAS
17 GIVEN TO YOU EXACTLY?

18 JURY PANEL MEMBER FULTON: YES, SIR.

19 THE COURT: THANK YOU. EILEEN GRAHAM, MS.
20 GRAHAM, CAN YOU FOLLOW THOSE INSTRUCTIONS THE COURT HAS
21 GIVEN TO YOU EXACTLY?

22 JURY PANEL MEMBER GRAHAM: YES, SIR.

23 THE COURT: JOSEPH A. GRATE.

24 JURY PANEL MEMBER GRATE: YES, SIR.

25 THE COURT: MR. GRATE, CAN YOU FOLLOW THOSE

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1 INSTRUCTIONS THE COURT HAS GIVEN TO YOU EXACTLY?

2 JURY PANEL MEMBER GRATE: YES, SIR.

3 THE COURT: THANK YOU, SIR. MARGARET D. WRITT.
4 MS. WRITT, CAN YOU FOLLOW THOSE INSTRUCTIONS THE COURT HAS
5 GIVEN TO YOU EXACTLY?

6 JURY PANEL MEMBER WRITT: YES, SIR.

7 THE COURT: THANK YOU. LINLEY R. TADLOCK, MS.
8 TADLOCK, CAN YOU FOLLOW THE INSTRUCTIONS THE COURT HAS
9 GIVEN TO YOU EXACTLY?

10 JURY PANEL MEMBER TADLOCK: YES, SIR.

11 THE COURT: THANK YOU. AND, CAROLYN F. GEE.
12 MS. GEE, CAN YOU FOLLOW THE INSTRUCTIONS THE COURT HAS
13 GIVEN TO YOU EXACTLY?

14 JURY PANEL MEMBER GEE: YES, SIR.

15 THE COURT: VERY GOOD. DOES THE STATE HAVE
16 FURTHER QUESTIONS OF THE DEFENDANT FOR CROSS EXAMINATION?

17 MS. LIVELY: JUST A COUPLE QUESTIONS, YOUR
18 HONOR.

19 THE COURT: VERY GOOD, THE DEFENDANT WILL RESUME
20 THE WITNESS STAND, REMEMBER, SIR, YOU REMAIN UNDER OATH.

21 YOU MAY CONTINUE, MA'AM.

22 MS. LIVELY: THANK YOU, YOUR HONOR.

23 MS. LIVELY: (CONTINUING)

24 Q MR. HEWITT, YOU HAD TESTIFIED ON DIRECT
25 THAT YOU ARE A CONVICTED FELON; IS THAT RIGHT?

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1 A YES, MA'AM.

2 Q AND YOU ACTUALLY TESTIFIED THAT IN 2004 YOU
3 WERE CONVICTED OF BURGLARY SECOND DEGREE TWO COUNTS; IS
4 THAT RIGHT?

5 A YES, MA'AM.

6 Q YOU HAVE OTHER CONVICTIONS, TOO, THOUGH,
7 RIGHT?

8 A YEAH, FAILURE TO STOP FOR A BLUE LIGHT AND
9 FORGERY.

10 Q AND IN 2001 THAT FORGERY WAS FOR FIVE
11 COUNTS OF FORGERY, CORRECT?

12 A YES, MA'AM.

13 Q OVER 1,000 LESS THAN \$5,000?

14 A I GUESS.

15 MS. LIVELY: THANK YOU.

16 THE COURT: ALL RIGHT, SIR, WAIT A SECOND, ANY
17 REDIRECT BY THE DEFENSE?

18 MR. BARR: NO REDIRECT, YOUR HONOR.

19 THE COURT: YOU MAY STEP DOWN, SIR. FURTHER
20 WITNESSES ON BEHALF OF THE DEFENSE AT THIS POINT IN TIME?

21 MR. BARR: NO, SIR, YOUR HONOR, THE DEFENSE
22 RESTS.

23 THE COURT: ANY REDIRECT, I'M SORRY, REPLY
24 WITNESSES BY THE STATE AT THIS POINT IN TIME?

25 MS. LIVELY: NO, YOUR HONOR.

1 THE COURT: THANK YOU, LADIES AND GENTLEMEN,
2 THAT IS THE EVIDENCE AND TESTIMONY THAT WILL BE PRESENTED
3 IN THIS CASE. THE CASE IS NOT OVER WITH. THERE YET
4 REMAINS THE CLOSING ARGUMENTS OF THE ATTORNEYS AND THE
5 COURT'S INSTRUCTION TO YOU ON THE LAW THAT YOU WILL APPLY
6 TO THE FACTS AS YOU SO FIND THEM TO BE IN THIS PARTICULAR
7 CASE.

8 IF WE WOULD PROCEED WITH THOSE MATTERS THEY WOULD
9 TAKE SOME PERIOD OF TIME THEN THE CASE WOULD BE YOURS
10 TONIGHT UNTIL YOU REACH A UNANIMOUS DECISION IN BOTH THESE
11 MATTERS TO BE PRESENTED TO YOU. I DO NOT INTEND TO INTRUDE
12 INTO YOUR PERSONAL LIVES TO THAT DEGREE.

13 I USUALLY TELL THE JURY AT THE VERY BEGINNING
14 WHEN I QUALIFY THE JURY I UNDERSTAND AND KNOW YOU HAVE
15 LIVES OUTSIDE OF THE COURTHOUSE AND I FIND IT UNNECESSARY
16 TO KEEP YOU HERE TONIGHT UNTIL YOU REACH A DECISION IN
17 THESE TWO MATTERS. IT IS PROPER FOR YOU TO COME BACK
18 TOMORROW MORNING, AND I'M GOING GOT HAVE YOU COME BACK
19 TOMORROW MORNING AT 9:00 AT WHICH TIME WE WILL RESUME THIS
20 CASE HAVING THE CLOSING ARGUMENTS OF THE ATTORNEYS, THE
21 INSTRUCTION OF THE LAW, AND THEN I WILL SUBMIT THE CASE TO
22 YOU FOR YOUR DELIBERATIONS AND YOUR UNANIMOUS DECISION AS
23 TO BOTH CHARGES BROUGHT BY THE STATE OF SOUTH CAROLINA AS
24 TO THE DEFENDANT IN THIS MATTER.

25 PLEASE REMEMBER, DON'T TALK ABOUT THIS CASE WITH

1 ANYONE. DO NOT ALLOW ANYBODY TO TALK TO YOU ABOUT IT. YOU
2 CANNOT DO ANY RESEARCH ON YOUR OWN; YOU CANNOT LOOK UP
3 ANYTHING. YOU REMEMBER YOU MUST DECIDE THIS CASE SOLELY
4 AND COMPLETELY BASED ON THE EVIDENCE THE COURT HAS FOUND TO
5 BE PROPER IN THIS CASE AND ALLOW FOR IT TO BE PRESENTED IN
6 THIS PARTICULAR MATTER.

7 WHEN YOU GO HOME I KNOW THE TENDENCY WOULD BE TO
8 SAY TO YOUR HUSBAND, WIFE, BOYFRIEND, GIRLFRIEND, FRIEND,
9 TO WHOMEVER WHAT YOU'RE DOING HERE TODAY. UNINTENTIONALLY
10 THEY GIVE YOU THEIR OPINION ABOUT THIS, THEY DON'T HAVE
11 ONE, YA'LL SHOULD NOT HAVE ONE, SO PLEASE, AS SOON AS THE
12 TRIAL IS OVER WITH YA'LL CAN DISCUSS THIS CASE AS MUCH OR
13 AS LITTLE AS YOU WANT TO, BUT UNTIL THAT TIME PLEASE FOLLOW
14 THESE INSTRUCTIONS. I WILL SEE YOU BACK TOMORROW MORNING
15 IN YOUR JURY ROOM AT 9 A.M. THANK YOU VERY MUCH, YOU'RE
16 NOW EXCUSED.

17 (WHEREUPON, THE JURY WAS EXCUSED FOR THE EVENING
18 AT 4:27 P.M.)

19 THE COURT: ANYTHING FROM THE STATE?

20 MS. LIVELY: NO, SIR.

21 THE COURT: ANYTHING FROM THE DEFENSE?

22 MR. BARR: NO, YOUR HONOR.

23 THE COURT: I WILL RESPECTFULLY PROVIDE TO GRANT
24 A RENEWED MOTION FOR A DIRECTED VERDICT AT THIS TIME BY THE
25 DEFENSE ON THE SAME GROUNDS THAT THE COURT ENUNCIATED

1 EARLIER AS TO THE STANDARD OF A DIRECTED VERDICT. I DO
2 FIND THAT THERE IS SUFFICIENT EVIDENCE AND DIRECT EVIDENCE
3 AND SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE WHICH IF SO
4 BELIEVED BY THE JURY COULD BE USED BY THE JURY TO FIND THE
5 DEFENDANT GUILTY OF THE CRIMES CHARGED BEYOND A REASONABLE
6 DOUBT AND RESPECTFULLY DECLINE TO GRANT A DEFENSE MOTION,
7 RENEWED MOTION FOR A DIRECTED VERDICT.

8 I FURTHER RESPECTFULLY TO DECLINE AT THIS POINT
9 IN TIME TO DECLARE A MISTRIAL AGAIN ASSUMING THERE TO BE
10 NOTHING THAT WOULD TAKE PLACE DURING THE CLOSING ARGUMENTS
11 OF COUNSEL WHICH WOULD CAUSE THE COURT TO RECONSIDER THAT
12 PARTICULAR DECISION.

13 ALL RIGHT ---

14 MR. BARR: YOUR HONOR, IF YOU MAY JUST FOR THE
15 RECORD I WOULD ASK THE COURT TO PLEASE NOTE THAT THE ISSUE
16 INVOLVING THE OTHER SIBLING OF THE ALLEGED VICTIM IS IN THE
17 INVESTIGATIVE REPORT AS INFORMATION GIVEN TO THE
18 INVESTIGATOR BY THE ALLEGED VICTIM.

19 THE COURT: I UNDERSTAND IT'S IN HIS REPORT BUT
20 IT WAS INTRODUCED INTO THE TRIAL. THE JURY DIDN'T HAVE
21 THAT INVESTIGATOR'S REPORT, IT WAS INTRODUCED INTO THIS
22 TRIAL BECAUSE OF A QUESTION YOU ASKED OF ONE OF YOUR
23 DEFENSE WITNESSES. THAT'S WHY IT'S IN THIS TRIAL. ALL
24 RIGHT, ANYTHING FURTHER?

25 MR. BARR: NOTHING FURTHER.

1 MS. LIVELY: NO, YOUR HONOR.

2 THE COURT: ALL RIGHT, NOW LET'S TALK ABOUT THE
3 VERDICT FORM AND THE REQUEST FOR CHARGE IN THIS PARTICULAR
4 MATTER. REGARDING THE VERDICT FORM IS THERE BESIDES THE
5 TWO CRIMES FOR WHICH THE DEFENDANT IS CHARGED, LEWD ACT ON
6 A MINOR AND CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST
7 DEGREE, IS THERE ANY REQUEST OF THE DEFENDANT FOR ANY OTHER
8 CHARGES OR LESSER INCLUDED CHARGE TO BE SUBMITTED TO THE
9 JURY AND, IF SO, WHAT?

10 MR. BARR: YOUR HONOR, MIGHT I HAVE JUST ONE
11 MOMENT TO, I DIDN'T EXPECT THE CASE TO GO THIS FAST, TO
12 SUBMIT THE REQUEST TO CHARGE?

13 THE COURT: WELL WE'LL TALK ABOUT A REQUEST TO
14 CHARGE IN JUST A SECOND, I'M TALKING ABOUT THE VERDICT.
15 I'M TALKING ABOUT THE FORM THAT THE JURY IS GOING TO USE TO
16 REFLECT THEIR UNANIMOUS DECISION ON. OBVIOUSLY YOU GOT A
17 VERDICT FORM WHERE THEY'RE GOING TO BE FACED WITH THE
18 CHARGE OF LEWD ACT ON A MINOR AND IT WILL SAY ON THE CHARGE
19 LEWD ACT ON A MINOR, WE THE JURY BY UNANIMOUS CONSENT FIND
20 THE DEFENDANT, AND YOU GOT TWO CHOICES, NOT GUILTY OR
21 GUILTY. THEY CAN CHECK ONE OF THEM, THEY WILL CHECK ONE OF
22 THEM.

23 WHEN THEY DECIDE THAT THEY WILL GO ON TO CRIMINAL
24 SEXUAL CONDUCT WITH A MINOR FIRST DEGREE. AGAIN ON THE
25 CHARGE OF CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

1 WE THE JURY BY UNANIMOUS CONSENT FIND THE DEFENDANT, AGAIN
2 TWO CHOICES, NOT GUILTY OR GUILTY.

3 NOW BESIDES THOSE TWO CHOICES IS THE DEFENSE
4 ASKING FOR ANY OTHER VERDICT FORM LESSER INCLUDED CHARGE OR
5 ANY OTHER SUBMISSION TO THE JURY, EXCUSE ME, OTHER THAN
6 THOSE TWO VERDICT FORMS?

7 MR. BARR: YES, SIR, YOUR HONOR, OF COURSE THE
8 DEFENSE WOULD, WOULD ESPECIALLY AS IT RELATES TO THE
9 ASSAULT, I WOULD THINK BOTH ABHAN AND, AND SIMPLE ASSAULT
10 WOULD BE CONSIDERED LESSER INCLUDED.

11 THE COURT: WELL I'LL CONSIDER ABHAN. CERTAINLY
12 THERE'S BEEN NO EVIDENCE HERE THAT THE JURY COULD CONSIDER
13 TO CONVICT THE DEFENDANT OF THE CRIME OF ASSAULT AND
14 BATTERY. THAT'S JUST NOT, THAT'S JUST NOT APPROPRIATE.

15 MR. BARR: OKAY, THANK YOU.

16 THE COURT: SOLICITOR, WHAT'S YOUR POSITION AS
17 TO CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE THAT
18 THE JURY SHOULD BE GIVEN THE OPTION TO CONSIDER THE LESSER
19 INCLUDED CHARGE OF ASSAULT AND BATTERY HIGH AND AGGRAVATED
20 NATURE?

21 MS. LIVELY: YOUR HONOR, UNDER STATE V. MATHIS I
22 UNDERSTAND THE DEFENSE REQUEST THAT IT COULD BE A
23 REVERSIBLE ERROR IF THE COURT DOES NOT CHARGE IT SO AT THIS
24 POINT IN TIME IN THE ABUNDANCE OF CAUTION I UNDERSTAND THAT
25 THAT PROBABLY WOULD BE THE BETTER COURSE EVEN THOUGH I

1 WOULDN'T PERSONALLY WOULD LIKE FOR IT TO BE CHARGED BUT I
2 UNDERSTAND THAT IT IS LIKELY THE THING THAT NEEDS TO HAPPEN
3 IN THIS CASE.

4 THE COURT: ALL RIGHT.

5 MS. LIVELY: BUT OBVIOUSLY ABHAN IS NOT A LESSER
6 INCLUDED OF A LEWD ACT.

7 THE COURT: NO, MA'AM, IT IS NOT, THEY WOULD
8 EITHER FIND THE DEFENDANT NOT GUILTY OR GUILTY OF THE CRIME
9 OF LEWD ACT ON A MINOR. THEY WOULD PROCEED ON TO THE NEXT
10 CHARGE CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE.
11 THEY WOULD FIRST DECIDE WHETHER THEY WOULD FIND HIM GUILTY
12 OR NOT GUILTY OF THAT CRIME. IF THEY FOUND HIM NOT GUILTY
13 OF THAT CRIME THEN THEY WOULD OF NECESSITY NEED TO CONSIDER
14 THE LESSER INCLUDED CRIME OF ASSAULT AND BATTERY HIGH AND
15 AGGRAVATED NATURE AS TO THAT ONE PARTICULAR OFFENSE,
16 CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE AND, OF
17 COURSE, THEN THEY WOULD ALSO BE FACED WITH THE CHOICE OF
18 NOT GUILTY OR GUILTY OF THAT PARTICULAR CRIME, SO THAT IN
19 ESSENCE THEN WOULD BE THE VERDICT FORM THAT WOULD BE
20 SUBMITTED TO THE JURY IN THIS PARTICULAR CASE.

21 AS TO REQUEST TO CHARGE I'LL BE GLAD FOR YA'LL IF
22 YOU WANT TO GIVE THOSE TO ME. I'LL CERTAINLY BY HERE BY,
23 THE JURY IS GOING TO BE HERE BY NINE, I'LL BE HERE BY 8:30.
24 YA'LL HAVE THEM, I WANT THEM IN MY HANDS THEN BY 8:30 IN
25 THE MORNING IF YOU HAVE SOMETHING YOU WANT ME TO CONSIDER

1 SO I'D HAVE SOME OPPORTUNITY TO LOOK AT THEM AND TALK ABOUT
2 IT WITH YOU BEFORE THE JURY GETS HERE.

3 AS TO THE PARTICULAR STATUTE IN THE, THAT IS 16-
4 3-657, TESTIMONY OF A VICTIM NEED NOT BE CORROBORATED.
5 THAT'S UNDER, AS THE STATUTE INDICATES, SECTION 16-3-652
6 THROUGH 16-3-658. THAT WOULD BE SOLELY AS THEN TO THE
7 CHARGE OF CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE
8 AND THE COURT WOULD SO INSTRUCT THE JURY AS TO THAT
9 PARTICULAR ISSUE. THAT'S THE CODE SECTIONS OBVIOUSLY. IT
10 DOESN'T APPLY TO LEWD ACT ON A, ON A MINOR AND THE COURT
11 WILL SO INSTRUCT THE JURY.

12 MS. LIVELY: YES, SIR.

13 THE COURT: ANYTHING ELSE THAT THE STATE CAN
14 THINK OF AT THIS POINT IN TIME?

15 MS. LIVELY: YOUR HONOR, I BELIEVE THAT THE
16 LEGAL LASCIVIOUS CHARGE THAT'S TYPICALLY USED BY THE COURT
17 GOES INTO A, THE DEFINITION OF LEGAL LASCIVIOUS. I KNOW
18 I'VE HAD THIS COME UP AT TRIAL BEFORE WHEN THE JURY HAS NO
19 IDEA WHAT LEWD OR LASCIVIOUS MEANS.

20 THE COURT: ALL RIGHT, HOLD ON ONE SECOND, AND
21 LET ME FIND THAT, PLEASE, MA'AM.

22 MS. LIVELY: YES, SIR.

23 THE COURT: WE'LL GO OVER THAT RIGHT NOW AND YOU
24 TELL ME, IT'S FAIRLY SHORT SO WE'LL JUST GO OVER IT RIGHT
25 NOW.

1 THE COURT'S INTENTION WOULD BE "THE DEFENDANT IS
2 CHARGED WITH COMMITTING A LEWD ACT ON A MINOR. A MINOR IS
3 A PERSON UNDER THE AGE OF 18. THE STATE MUST FIRST PROVE
4 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS OVER THE
5 AGE OF 14.

6 NEXT THE STATE MUST PROVE THAT THE DEFENDANT
7 WILLFULLY AND LEWDLY COMMITTED OR ATTEMPTED A LEWD OR
8 LASCIVIOUS ACT ON OR WITH THE BODY OR ITS PARTS OF A CHILD
9 UNDER THE AGE OF 16 YEARS WITH THE INTENT TO AROUSE, APPEAL
10 TO, OR GRATIFY THE LUST, PASSIONS, OR SEXUAL DESIRES OF THE
11 DEFENDANT OR THE CHILD.

12 WILLFUL MEANS VOLUNTARILY AND INTENTIONALLY WITH
13 THE SPECIFIC INTENT TO DO SOMETHING THE LAW FORBIDS.

14 LEWD MEANS OBSCENE, LUSTFUL, INDECENT, OR
15 LECHEROUS. LASCIVIOUS MEANS TENDING TO INCITE LUST OR
16 LEWD, INDECENT, OBSCENE BEHAVIOR OR TENDING TO DEPRAVE THE
17 MORALS IN RESPECT TO SEXUAL RELATIONS."

18 THAT WILL BE THE COURT'S INTENTIONS AS TO THE
19 CHARGE FOR THAT PARTICULAR OFFENSE. IF THERE'S ANYTHING
20 FURTHER THAT THE DEFENSE OR THE STATE WISHES YA'LL GET THAT
21 TO ME TOMORROW MORNING AT 8:30.

22 MS. LIVELY: THAT WILL BE FINE FOR THE STATE,
23 YOUR HONOR.

24 THE COURT: ALL RIGHT, ANYTHING ELSE FROM THE
25 STATE AT THIS POINT IN TIME?

1 MS. LIVELY: NO, YOUR HONOR, BUT I WOULD LIKE TO
2 BE ABLE TO JUST LOOK OVER IT AND I'LL BRING ANYTHING TO YOU
3 AT 8:30 IN THE MORNING.

4 THE COURT: THAT'S GREAT. MR. BARR, ANYTHING
5 ELSE AT THIS POINT IN TIME?

6 MR. BARR: NOTHING FURTHER FROM THE DEFENSE AT
7 THIS POINT IN TIME.

8 THE COURT: ALL RIGHT, VERY GOOD. I'LL SEE
9 YA'LL BACK TOMORROW MORNING AT 8:30, THANK YOU VERY MUCH.

10 MS. LIVELY: THANK YOU, YOUR HONOR.

11 MR. BARR: THANK YOU.

12 (WHEREUPON, COURT WAS ADJOURNED FOR THE EVENING
13 AT 5:30 P.M. AND RESUMES ON MAY 26, 2010 AT 9:00 A.M.)

14 THE COURT: ALL RIGHT, IS THE STATE READY FOR
15 THE JURY?

16 MS. LIVELY: YES, SIR, YOUR HONOR, I DO WANT TO
17 ASK THE COURT IF YOU, CAUSE I JUST HAVEN'T TRIED A CASE IN
18 FRONT OF YOU IN QUITE SOME TIME, IF YOU ACTUALLY PRINT OUT
19 COPIES OF WHAT THE JURY INSTRUCTIONS ARE GOING TO BE FOR ME
20 JUST TO LOOK AT BEFORE WE GET STARTED?

21 THE COURT: NO, MA'AM, I'LL BE GLAD TO GO OVER
22 WITH YOU RIGHT NOW IF YOU'D LIKE ME TO.

23 MS. LIVELY: YES, SIR, JUST BECAUSE I HAVE A
24 LIST OF THEM FROM THE ONES THAT WE TALKED ABOUT YESTERDAY
25 AND I JUST WANTED TO MAKE SURE THAT I DON'T MISSPEAK DURING

1 MY CLOSING REGARDING WHAT YOU'RE PUTTING IN THERE.

2 THE COURT: ALL RIGHT, SOLICITOR, MR. BARR, WHAT
3 I'M GOING TO DO IS TALK TO THE JURY ABOUT WHAT WE NORMALLY
4 TALK TO THEM ABOUT AT THE BEGINNING, THEIR JOB AND
5 RESPONSIBILITIES IN THIS CASE, TALK TO THEM JUDGING THE
6 CREDIBILITY AND BELIEVABILITY OF THE WITNESSES, THE
7 DIFFERENCES BETWEEN DIRECT AND CIRCUMSTANTIAL EVIDENCE. WE
8 HAD A WITNESS THAT WAS QUALIFIED TO GIVE THEIR OPINION,
9 SOMETIMES CALLED AN EXPERT WITNESS. I WILL TELL THEM THAT
10 THEY'RE TO GIVE THAT NO GREATER WEIGHT THAN ANY OTHER
11 WITNESS THAT HAS TESTIFIED AND JUDGE ALL THE WITNESSES THE
12 SAME, JUDGING THEIR CREDIBILITY AND BELIEVABILITY. THE
13 PRIOR RECORD OF THE DEFENDANT IS ONLY FOR THE PURPOSES OF
14 CREDIBILITY AND BELIEVABILITY, HAS NO OTHER WEIGHT OR
15 CONSIDERATION. I WILL TALK TO THEM ABOUT STATEMENTS I TOLD
16 THEM TO DISREGARD AND AGAIN REMIND THEY CANNOT USE THAT IN
17 THEIR DECISION MAKING PROCESS, TALK TO THEM ABOUT THE
18 PRESUMPTION OF INNOCENCE, REASONABLE DOUBT, THE KIND OF
19 DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO
20 ACT, CHARGE THEM LEWD ACT ON A MINOR AS WE DISCUSSED
21 YESTERDAY, FIRST DEGREE CRIMINAL SEXUAL CONDUCT WITH A
22 MINOR, THE TESTIMONY OF THE VICTIM NEED NOT BE CORROBORATED
23 REGARDING THE PROSECUTION OF THAT PARTICULAR CRIME, TALK TO
24 THEM ABOUT THE LESSER INCLUDED OFFENSE OF ASSAULT AND
25 BATTERY HIGH AND AGGRAVATED NATURE, AND FINALLY TALK TO

1 THEM ABOUT GREATER AND LESSER OFFENSES, THAT A REASONABLE
2 DOUBT AS TO WHETHER THE DEFENDANT IS GUILTY OF THE GREATER
3 OR LESSER OFFENSES THEY NEED TO RESOLVE THAT DOUBT IN FAVOR
4 OF THE DEFENDANT, THEN EXPLAIN TO THEM THE VERDICT FORM; IS
5 THERE ANYTHING ELSE THAT THE STATE WISHES ME TO CHARGE?

6 MS. LIVELY: NO, YOUR HONOR, I WAS JUST MAKING
7 SURE THAT YOU WERE GOING TO CHARGE REGARDING THE PRIOR
8 RECORD OF THE DEFENDANT SO I COULD COMMENT ON IT IN MY
9 CLOSING.

10 THE COURT: YES, MA'AM.

11 MS. LIVELY: THAT'S FINE, I BELIEVE THAT THAT,
12 ALL THAT WILL BE SUFFICIENT, THANK YOU.

13 THE COURT: ALL RIGHT, THANK YOU. MR. BARR, IS
14 THERE ANYTHING THAT YOU WOULD LIKE DIFFERENT THAN WHAT WE
15 HAVE JUST TALKED ABOUT?

16 MR. BARR: NO, SIR, YOUR HONOR.

17 THE COURT: ALL RIGHT, VERY GOOD, WITH THAT IS
18 THE STATE READY FOR THE JURY?

19 MS. LIVELY: YES, YOUR HONOR, THE STATE IS
20 READY.

21 THE COURT: AND DEFENSE?

22 MR. BARR: YES, YOUR HONOR.

23 THE COURT: ALL RIGHT, VERY GOOD, ASK THE JURY
24 TO COME IN, PLEASE.

25 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT

1 9:06 A.M.)

2 THE COURT: ALL RIGHT, GOOD MORNING, LADIES AND
3 GENTLEMEN, THE, AS I TOLD YOU WHEN YOU LEFT YESTERDAY THE,
4 WE HAD FINISHED THE EVIDENTIARY PORTION OF THE TRIAL BUT
5 THE TRIAL OBVIOUSLY HAD NOT YET BEEN COMPLETED. WHAT
6 REMAINS ARE THE CLOSING ARGUMENTS OF THE ATTORNEYS AND THE
7 CHARGE ON THE LAW.

8 I WILL REMIND YOU, AS I TOLD YOU EARLIER, THE
9 OPENING AND THE CLOSING ARGUMENTS OF THE ATTORNEYS THEY'RE
10 NOT EVIDENCE. YOU'VE ALREADY HEARD THE EVIDENCE IN THIS
11 CASE BUT THEY'RE IMPORTANT. THEY'RE EACH SIDE, THE CLOSING
12 ARGUMENT IS EACH SIDES SUMMATION OF WHAT THEY BELIEVE THE
13 EVIDENCE HAS SHOWN TO YOU DURING THE COURSE OF THE TRIAL
14 REMEMBERING, OF COURSE, THAT YOU ARE THE JUDGES OF THE
15 FACTS OF THIS PARTICULAR CASE.

16 WE'LL HEAR FIRST FROM THE DEFENSE THEN THE
17 CLOSING FROM THE STATE AND THEN I WILL GIVE YOU THE LAW
18 THAT YOU'LL APPLY TO THE FACTS AS YOU SO FIND THEM TO BE IN
19 THIS CASE. MR. BARR?

20 MR. BARR: THANK YOU, YOUR HONOR.

21 THE COURT: YES, SIR.

22 **CLOSING ARGUMENT**

23 **BY MR. BARR:**

24 MS. LIVELY, LADIES AND GENTLEMEN OF THE JURY, I
25 WANT TO AGAIN SAY THANK YOU FOR YOUR SERVICE IN THIS CASE.

1 I REALIZE IT'S BEEN A RATHER TRYING CASE, HAS NOT BEEN A
2 LONG CASE, I HOPE THAT WE'LL NOT DETAIN YOU FOR THE REST OF
3 THE WEEK. I WANT TO AGAIN SAY THANK YOU ON BEHALF OF MY
4 CLIENT AND BECAUSE I THINK YOU'VE LISTENED ATTENTIVELY TO
5 THIS CASE, AGAIN A VERY DIFFICULT CASE.

6 I TOLD YOU WHEN WE STARTED THAT I WOULD ASK YOU
7 TO STAY WITH THE VERY CORE OF THIS MATTER, WHAT THIS CASE
8 IS REALLY ALL ABOUT. I'D LIKE TO ASK YOU AT THIS POINT TO
9 CONSIDER WHETHER OR NOT THE STATE HAS MET THE BURDEN OF
10 PROOF, AND THE JUDGE EXPLAINED THE BURDEN OF PROOF TO YOU
11 EARLIER, OF PROVING BEYOND A REASONABLE DOUBT THAT THE
12 DEFENDANT HAS COMMITTED EACH AND EVERY ELEMENT OF THIS
13 CRIME, AND I SUBMIT TO YOU THAT THEY HAVE NOT. I'M GOING
14 TO ASK YOU JUST AS STRAIGHTFORWARD AS I CAN TO DOUBT
15 WHETHER OR NOT THIS ACTUALLY HAPPENED.

16 YOU HEARD THE ACTUAL TESTIMONY OF THE PARTIES.
17 YOU HEARD **VICTIM** **██████████** **██████████** ACTUALLY TESTIFY. NOW THE
18 REFERENCE TO THIS HAPPENING WE ASKED HIM ABOUT THE TIME,
19 WHEN, **VICTIM** DID THIS HAPPEN. HE SAYS THE BEST HE CAN
20 RECALL WAS WHEN THE LEAVES BEGAN TO TURN AND THE STATE WENT
21 TO GREAT LENGTH YESTERDAY TO SHOW YOU THE INDICTMENT 8-1 TO
22 SOMETIME IN NOVEMBER, BUT ALL OF YOU LIVE IN GEORGETOWN,
23 ALL OF YOU KNOW THAT THE LEAVES DON'T TURN AT ALL IN
24 GEORGETOWN.

25 YOU HEARD MR. HEWITT ACTUALLY TESTIFY, HEWITT

1 SR., THAT HE WENT TO JAIL IN 9-11-2008, AND HE WAS THERE
2 UNTIL NOVEMBER 19TH, PARDON ME, 2001, HE WAS THERE UNTIL
3 NOVEMBER 19TH, 2001, OKAY. I ASKED HIM DO YOU REMEMBER
4 TIME, DATE, MONTH, YEAR. HE DIDN'T, SO ASKED HIM ABOUT THE
5 SPECIFICS OF HIS DISCUSSION WITH OFFICER TODD ABOUT THIS
6 AND IT APPEARS AS IF EVEN THOUGH HE DOESN'T REMEMBER THE
7 2008 EVENTS THAT HE SAYS HE REMEMBERS SPECIFICALLY THE 2001
8 EVENT SEVEN YEARS LATER. I ASK YOU TO JUST STRAIGHT OUT
9 DOUBT WHETHER OR NOT THAT'S TRUE.

10 I ASKED [VICTIM] [REDACTED] ABOUT THE ORDER OF THE
11 EVENTS AS HE WAS, AS HE GAVE THEM TO THE POLICE OFFICER,
12 OFFICER TODD. OFFICER TODD TESTIFIES AS TO ONE ORDER OF
13 EVENTS; [VICTIM] TESTIFIES IN THE REVERSE ORDER AS TO THE
14 ORDER OF EVENTS. DOES HE TRULY ACTUALLY REMEMBER THIS?
15 AND I ASKED HIM DO YOU ACTUALLY, AND HE SAID THERE'S A LOT
16 OF THINGS IN MY HEAD AND THEY JUST KIND OF COME TO ME.
17 PROOF BEYOND A REASONABLE DOUBT, CRIMINAL STEP, DO WE HAVE
18 PROOF BEYOND A REASONABLE DOUBT.

19 I TOLD YOU WHEN WE STARTED THIS CASE THAT THESE
20 WERE STATUTORY CRIMES. THE LEGISLATURE SAYS YOU HAVE TO
21 HAVE ELEMENTS. IN MAKING A PIE YOU'VE GOT TO HAVE EGGS AND
22 IT'S GOT TO ALL BE IN THERE, OKAY.

23 LEWD ACT ON A MINOR, I ASKED [VICTIM] [REDACTED] [REDACTED]
24 DO YOU RECALL YOUR FATHER PLACING HIS PENIS IN YOUR ANUS,
25 HE SAYS I BELIEVE IT WAS SOMEWHERE IN THE ANAL AREA AND WE

1 HAD A LOT OF DISCUSSION ABOUT THAT. I ASK YOU AS THE TRIER
2 OF THE FACTS TO CONSIDER WHETHER OR NOT THE TESTIMONY WAS
3 DIRECT, CLEAR AND CONCISE, WHETHER OR NOT THERE'S REASON TO
4 DOUBT WHETHER OR NOT [VICTIM] [REDACTED] [REDACTED] WAS SLEEPING AND
5 THEN AWAKENED AS HE GAVE THIS TO THE POLICE OR WHETHER OR
6 NOT HE WAS SLEEPING THEN AWAKENED AND THEN PRETENDED TO GO
7 BACK TO SLEEP AS HE GAVE TO US. PROOF BEYOND A REASONABLE
8 DOUBT, I ASK YOU TO CONSIDER WHETHER OR NOT THERE'S DOUBT
9 AS TO WHETHER OR NOT THIS HAPPENED THE WAY IT WAS
10 PRESENTED.

11 NOW THE JUDGE WILL EXPLAIN TO YOU CREDIBILITY,
12 BELIEVABILITY, AND AT THE VERY CORE OF THIS MATTER YOU'RE
13 GOING TO HAVE TO DECIDE WHETHER OR NOT YOU'RE GOING TO
14 BELIEVE THAT [VICTIM] [REDACTED] [REDACTED] REGULARLY VISITED WITH HIS
15 GRANDPARENTS, WHETHER OR NOT THOSE VISITS WERE DAYTIME AND
16 NOT AT NIGHT. YOU'RE GOING TO HAVE TO DECIDE WHETHER OR
17 NOT YOU BELIEVE THAT STEVEN HEWITT, SR., IS BEING TRUTHFUL
18 WITH YOU.

19 SIX YEARS OLD, SEVEN YEARS OLD, EIGHT YEARS OLD
20 THAT'S, THAT'S A PRETTY YOUNG AGE, AND THEN TO AT AGE 14
21 DECIDE WELL I'M GOING TO REVEAL THIS. I ASKED A DOZEN WAYS
22 TO EVERY WITNESS THAT WENT UP WHAT PROMPTED [VICTIM] [VICTIM]
23 [VICT] TO REVEAL THIS AT THIS TIME. WE GOT EVERYTHING FROM
24 EXPERT TESTIMONY INVOLVING POST TRAUMATIC SYNDROME, TO
25 REACHING PUBERTY, TO A SERIES OF OTHER REASONS.

1 I ASKED [VICTIM] [REDACTED] HE SAYS I'M HAVING A ROUGH
2 LIFE, THINGS AREN'T AS I THOUGHT THEY WOULD BE, I'M THE
3 CLASS CLOWN, I'M MISBEHAVING IN CLASS, I'M NOT DOING WELL,
4 I'M TAKING MARIJUANA. HIS LIFE HAS CHANGED BUT IS HIS LIFE
5 CHANGING BECAUSE OF WHAT MAY OR MAY NOT HAVE HAPPENED TO
6 HIM IN 2001 OR IS HIS LIFE SIMPLY CHANGING.

7 I'M GOING TO ASK YOU TO DOUBT WHETHER OR NOT
8 WITNESS PATRICIA BROWN BELIEVED THAT [VICTIM] [REDACTED] [REDACTED]
9 SUFFERED WHAT THEY'RE TESTIFYING HE ACTUALLY SUFFERED IN
10 2000, IN FEBRUARY 11TH OF 2008 SHE WOULD HAVE GONE TO THE
11 POLICE. SHE SAYS SHE DIDN'T GO TO THE POLICE BECAUSE
12 [VICTIM] [REDACTED] [REDACTED] WAS NO LONGER SUBJECT TO THE HARM AND
13 DANGER BECAUSE HE WASN'T LIVING WITH HIS FATHER.

14 NOW I'M GOING TO ASK YOU ALSO TO NOT BELIEVE
15 KATHY MCGROGAN WOULD START TREATING [VICTIM] [REDACTED] [REDACTED] FOR
16 MATTERS THAT SHE CONSIDERS THIS SERIOUS IN APRIL AND
17 THERE'S NO REPORT TO THE POLICE UNTIL AUGUST. SHE SAYS
18 THAT SHE THOUGHT HE WAS IN JAIL, SHE THOUGHT MR. HEWITT
19 WAS IN JAIL FOR THIS ALREADY, MAYBE, MAYBE NOT. BUT AS THE
20 TRIERS OF THE FACT I'M GOING TO ASK YOU TO DOUBT WHETHER OR
21 NOT THESE SERIOUS MATTERS THAT THEY'RE WILLING TO COME IN
22 AND TESTIFY TO THIS WEEK WAS SIMPLY PUT ON THE BACK BURNER
23 AND IGNORED FOR THAT SPANSE OF TIME IN 2008 AND THAT WE'RE
24 HERE TODAY IN 2010 ON THE ISSUES OF WHAT HAPPENED IN THE
25 FALL OF 2001, AND YOU'RE BEING ASKED TO DECIDE IF MR.

1 STEVEN HEWITT, SR., IS GUILTY OF THESE CRIMES BEYOND A
2 REASONABLE DOUBT.

3 CRIMINAL SEXUAL CONDUCT, TOUCHING OF A PERSON'S
4 BODY OR BODY PARTS IN SUCH A WAY AS TO PROMOTE LUST,
5 PASSION, SEXUAL DESIRE, TO EITHER GRATIFY THE VICTIM OR THE
6 PERPETRATOR. I ASKED [VICTIM] [REDACTED] [REDACTED] DID YOU EVER HAVE
7 ANY KIND OF SEXUAL CONTACT OR ANY KIND OF SEXUAL
8 EXPERIENCE, HE DID NOT, SO THEN WE'RE LEFT WITH STEVEN
9 HEWITT, SR. I PUT UP THE PEOPLE THAT KNOW HIM, THAT KNEW
10 HIM, KNEW HIM ALL OF HIS LIFE, THAT KNOW WHETHER OR NOT HE
11 HAD PEDOPHILE TENDENCY OR WHETHER OR NOT HE EVER HAD THESE
12 KIND OF PROBLEMS. STEVEN HEWITT, SR., HAS BEEN ON THE
13 EARTH 39 YEARS. I'M GOING TO ASK YOU TO DOUBT WHETHER OR
14 NOT A PERSON WHO'S 39-YEARS-OLD HAS ONE PEDOPHILE SEXUAL
15 EXPERIENCE IN 39 YEARS, AND I'M NOT SAYING IT'S NOT
16 IMPOSSIBLE, IT COULD HAVE HAPPENED, BUT WHAT I'M SAYING IS
17 HIS BROTHER GREW UP WITH HIM, SLEPT WITH HIM, LIVED WITH
18 HIM FOR YEARS. HIS SISTER ALLOWS HIM TO BE IN THE PRESENCE
19 OF HER SMALL CHILDREN 10, FIVE AND ONE ALL THE TIME. EVEN
20 IF IT WAS MY BROTHER AND I BELIEVED THAT HE HAD COMMITTED
21 SUCH AN, SUCH AN ACT HE WOULDN'T BABYSIT MY CHILDREN,
22 WOULDN'T HAVE IT, JUST WOULD NOT HAVE IT.

23 I'M GOING TO ASK YOU TO CHOOSE THE TESTIMONY OF
24 STEVEN HEWITT, SR., VERSUS [VICTIM] [REDACTED] [REDACTED] STEVEN
25 HEWITT, SR., WAS VERY DIRECT WITH YOU. HE ADMITTED TO

1 STEALING, FORGING CHECKS, BREAKING INTO HOUSES, BUT HE SAID
2 HE'S NEVER HURT ANYONE, NEVER SEXUAL ABUSED ANYONE, AND
3 NEVER SEXUALLY ABUSED A CHILD. I'M GOING TO ASK YOU TO
4 BELIEVE THAT AND YOU GET TO DECIDE.

5 YOU ARE IN THIS CASE AND THE JUDGE WILL, WILL
6 EXPLAIN THIS TO YOU, YOU ARE THE TRIERS OF THE FACT, THAT
7 FACT IS TO BE APPLIED TO THE LAW THAT HE'S GOING TO GIVE
8 YOU IN THIS CASE.

9 MS. BROWN SAID THAT [REDACTED] WAS, WAS TOLD,
10 [REDACTED] KEEP A JOURNAL, WRITE DOWN THINGS, YOU KNOW TALK,
11 DOCUMENT WHAT YOU FEEL AND YOUR ANGER AND THAT SORT OF
12 THING AND [REDACTED] DRAWS THESE PICTURES OR DRAWS
13 A PICTURE AND WROTE THE POEM. I ASKED HIM, [REDACTED] WHAT
14 DOES THE LANGUAGE IN THIS POEM MEAN, WHAT DOES IT MEAN TO
15 YOU, WHAT ARE YOU SAYING? EXPLAIN THIS. HE SAYS HE'S
16 ANGRY, SAYS HE'S ANGRY ABOUT A LOT OF THINGS.

17 THE JUDGE WILL ALLOW YOU TO TAKE THOSE EXHIBITS
18 INTO YOUR DELIBERATION WITH YOU. I WANT YOU TO READ THOSE
19 THINGS, LOOK AT THEM AND SEE WHETHER OR NOT YOU COME AWAY
20 WITH THE NOTION THAT THIS IS ABOUT HIS DAD. I HAVE FOUND
21 THE MAN, HE'S ON THE GROUND. [REDACTED] IS A VERY BRIGHT
22 KID. I CAN SEE IT IN HIS TESTIMONY, VERY SMART. DO YOU
23 COME AWAY WITH THE IMPRESSION THAT THAT'S WHAT, THAT'S WHAT
24 HE'S TALKING ABOUT.

25 THE PROFESSIONAL WITNESS AND, AND THE OTHER

1 COUNSELORS I THINK WOULD HAVE US TO BELIEVE THAT ALL
2 [REDACTED] TROUBLES GO BACK TO 2001, THE FALL OF 2001. I'M
3 GOING TO ASK YOU NOT TO BELIEVE THAT. THAT'S NOT WHAT THE
4 EVIDENCE IN THIS CASE SHOWS.

5 I'M GOING TO SIT DOWN IN A LITTLE BIT BUT AGAIN
6 IN TERMS OF RECAP THE STATE HAS PRESENTED NO DIRECT
7 EVIDENCE TO EYEWITNESSES THAT THIS OCCURRED. THEY'RE
8 ASKING YOU TO ACCEPT CIRCUMSTANTIAL EVIDENCE. [REDACTED]
9 [REDACTED] DIDN'T DRAW THIS DIAGRAM AND HE TESTIFIED HE
10 DIDN'T DRAW IT. THE DETECTIVE DREW IT AND GOT HIM TO POINT
11 TO CERTAIN LOCATIONS. DID [REDACTED] ACTUALLY
12 REMEMBER THIS OR IS IT BEING SUGGESTED TO HIM? IF [REDACTED]
13 [REDACTED] DOESN'T REMEMBER THE 2008 EVENTS AND THAT THE
14 BEST HE CAN DO IN TERMS OF TAKING US BACK TO WHEN HE SAYS
15 THIS IS HAPPENING IS WHEN THE LEAVES BEGAN TO TURN IN
16 AUGUST 2001 AND IF STEVEN HEWITT, SR., IS IN THE COUNTY
17 JAIL FROM SEPTEMBER 11TH, 2001, TILL NOVEMBER 19TH, 2001,
18 I'M GOING TO ASK YOU TO FIND THAT HE IS NOT GUILTY. THANK
19 YOU SO MUCH.

20 THE COURT: ALL RIGHT, SOLICITOR, CLOSING
21 ARGUMENT?

22 MS. LIVELY: YES, SIR, YOUR HONOR, THANK YOU.

23 CLOSING ARGUMENT

24 BY MS. LIVELY:

25 LADIES AND GENTLEMEN, IT'S BEEN ABOUT 24 HOURS

1 SINCE I GOT UP IN FRONT OF YOU FOR YESTERDAY AND STARTED
2 TALKING TO YOU ABOUT THIS CASE AND THAT IT WAS ABOUT THE
3 RAPE OF A CHILD; AND THE THING IS I REMEMBER MR. BARR IN
4 HIS OPENING SAYING DON'T LET THEM GET ON YOUR SYMPATHIES,
5 MAKE THEM PROVE IT TO YOU, SO THAT'S JUST WHAT WE DID.

6 I PUT **VICTIM** ON THE STAND IN FRONT OF ALL
7 OF YOU, IN FRONT OF THE DEPUTIES, YOUR HONOR, IN FRONT OF
8 HIS FATHER WHO HAS NOT BEEN A FATHER TO HIM HIS WHOLE LIFE,
9 IN FRONT OF ALL THESE PEOPLE IN THIS COURTROOM TO TALK
10 ABOUT THE MOST HORRIFYING EVENT THAT EVER HAPPENED IN THAT
11 CHILD'S LIFE, AND YOU GOT THE CHANCE, AND IT IS YOUR DUTY
12 TO LOOK AT THE PERSON WHO'S TESTIFYING BASED ON THEIR
13 DEMEANOR, BASED ON THEIR TESTIMONY ITSELF, TO DETERMINE IF
14 YOU BELIEVE THAT PERSON, THAT IS SOLELY UP TO YOU. I CAN'T
15 TELL YOU TO BELIEVE HIM. WHETHER I BELIEVE HIM OR NOT IS
16 NOT EVIDENCE. IT'S UP TO ALL OF YOU UNANIMOUSLY, AND THE
17 JUDGE IS GOING TO TELL YOU AS I DID THAT IN CASE OF
18 CRIMINAL SEXUAL CONDUCT FIRST DEGREE WITH A CHILD THAT OUR
19 LEGISLATURE HAS STATED YOU DON'T EVEN NEED CORROBORATING
20 EVIDENCE OTHER THAN THE VICTIM TESTIFYING AND, YOU KNOW,
21 SOME PEOPLE MIGHT THINK IN THEIR MIND THAT'S SCARY. SOME
22 KID COULD JUST SAY I DID SOMETHING LIKE THAT AND I COULD BE
23 CONVICTED. WELL, LADIES AND GENTLEMEN, THAT'S WHY WE HAVE
24 TRIALS BECAUSE YOU'LL GET THE CHANCE AS 12 IMPARTIAL PEOPLE
25 TO SEE THE TESTIMONY, SEE THE VICTIM, AND THEN MAKE YOUR

1 DECISION, SO IT'S NOT AS HAPHAZARD AS SOMEONE CAN JUST SAY
2 IT HAPPENED AND IT HAPPENED.

3 I'VE GOT A BURDEN THAT HAS BEEN PLACED UPON ME
4 AND LIKE I SAID YESTERDAY I WELCOME THAT BURDEN. I BELIEVE
5 THAT WITH EVERYTHING YOU HAVE HEARD THE STATE'S MET ITS
6 BURDEN AND I'M GOING TO LAY IT OUT FOR YOU THE BEST WAY I
7 CAN TO HELP YOU JUST UNDERSTAND HOW EVERYTHING TRULY DOES
8 FIT TOGETHER IN THIS CASE BECAUSE THE DEFENSE THEIR JOB IS
9 TO DEFEND AND IT'S TO CHIP AWAY AT WHAT THE STATE HAS PUT
10 BEFORE YOU, THAT'S THEIR JOB. MY JOB IS TO PUT THE
11 RELEVANT AND ADMISSIBLE EVIDENCE IN FRONT OF ALL OF YOU TO
12 MAKE A FAIR DECISION, THAT'S MY JOB.

13 SO LET ME TELL YOU THERE ARE THE TWO CHARGES, CSC
14 WITH A MINOR FIRST DEGREE, THE CHILD IS UNDER 11 AT THE
15 TIME OF THE ASSAULT. WE HAVE TO PROVE THAT BEYOND A
16 REASONABLE DOUBT. I BELIEVE WE'VE PROVED THAT BEYOND A
17 REASONABLE DOUBT.

18 WE HAVE TO PROVE, WELL HE STATED IT WAS IN 2001,
19 HE WAS AROUND SEVEN YEARS OLD AND HIS BIRTHDAY IS IN
20 SEPTEMBER, SO WE HAVE THAT. THEN YOU HAVE, WE HAVE TO
21 PROVE THAT THERE'S SOME PENETRATION AND I WILL GET INTO
22 THAT IN A MINUTE.

23 LEWD ACT ON A MINOR MEANING THAT SOME OBSCENE ACT
24 MEANT TO AROUSE SEXUAL GRATIFICATION IN EITHER THE CHILD OR
25 THE PERPETRATOR. NOW MR. BARR BRINGS UP THAT HE ASKED

1 **VICTIM** **II** ABOUT THAT AND THOSE ARE TOUGH QUESTIONS BUT
2 HE WAS ONLY AROUND SEVEN YEARS OLD AT THE TIME. HE DIDN'T
3 EVEN KNOW WHAT WAS GOING ON WAS SEXUAL IN NATURE AT ALL BUT
4 YOU WITH YOUR COMMON SENSE CAN INFER OR ASSUME THAT IF
5 SOMEONE IS LICKING SOMEONE'S PRIVATES OR PERFORMING SOME
6 TYPE OF ANAL SEX ON A CHILD THEY'RE DOING IT FOR THEIR
7 SEXUAL GRATIFICATION. YOU'VE GOT COMMON SENSE AND YOU CAN
8 USE IT.

9 NOW I'M GOING TO GET INTO THE TIME LINES OF THE
10 EVENTS CAUSE THAT IS EXTREMELY IMPORTANT. THE INDICTMENT
11 SPECIFICALLY STATES FROM AUGUST OF 2001 THROUGH NOVEMBER OF
12 2001 AND SO THAT YOU UNDERSTAND OUR SUPREME COURT ALLOWS
13 US, THE STATE OF SOUTH CAROLINA, WHEN WE'RE PROSECUTING A
14 CASE TO GIVE A RANGE OF TIME AND WHY IS THAT, BECAUSE OF
15 THE NATURE OF THESE TYPE OF OFFENSES THAT I TOLD YOU
16 YESTERDAY CHILDREN HAVE DELAYED DISCLOSURES. YOU HEARD
17 KATHY MCGROGAN TALK ABOUT THAT. THAT'S WHY I HAD HER
18 TESTIFY. SHE CAN EXPLAIN TO YOU CHILDREN FIRST OF ALL MAY
19 NOT REALIZE THAT THEY'RE BEING SEXUALLY ASSAULTED, MAY NOT
20 REALIZE WHAT WAS HAPPENING THEN IS A CRIME, AND THEN ALL OF
21 A SUDDEN THEY START TO GET TO AN AGE WHERE THEY HEAR ABOUT
22 SEX. THEY MAYBE HAVE GIRLS CALLING THEM OR BOYS CALLING
23 THEM. THEY SEE STUFF ON THE INTERNET OR ON T.V. AND ALL OF
24 A SUDDEN THEY'RE LIKE, WHOA, SOMETHING HAPPENED TO ME AS A
25 KID AND NOW I KNOW IT'S NOT RIGHT. WELL CAN YOU REMEMBER

1 WHAT DAY AND TIME IT HAPPENED, NO. I REMEMBER IT WAS
2 SOMETIME AROUND MAYBE THE LEAVES FALLING. I DON'T KNOW, I
3 WAS AROUND SEVEN YEARS OLD, AROUND MY BIRTHDAY, YOU KNOW,
4 OKAY, WE'RE GOING TO HELP YOU WITH THAT, [REDACTED] [REDACTED] WE'RE
5 GOING TO SAY IT WAS THE TIME YOU HAD CONTACT WITH YOUR
6 FATHER IN 2001.

7 HIS SISTER TOLD YOU HE HAD CONTACT WITH [REDACTED] [REDACTED]
8 [REDACTED] IN THE FALL OF 2001. HE TOLD YOU HE HAD CONTACT WITH
9 HIM AND, GUESS WHAT, THE REASON WHY THAT'S SO IMPORTANT IS
10 BECAUSE HE TELLS YOU HE WENT TO JAIL AND THEN [REDACTED] [REDACTED]
11 TELLS YOU I NEVER TALKED TO OR HAD OTHER CONTACT WITH MY
12 FATHER AGAIN UNTIL HE WROTE ME A LETTER. IT COULDN'T HAVE
13 HAPPENED ANY ANOTHER TIME. WE GOT IT RIGHT. [REDACTED] [REDACTED]
14 GOT IT RIGHT. SO WE HAVE, WE HAVE THE FALL 2001 WHICH WE
15 IN THE INDICTMENT, YOU WILL SEE IT, PUT AUGUST 2001 THROUGH
16 NOVEMBER 2001.

17 NOW I DON'T KNOW YOU CAN, YOU CAN USE YOUR COMMON
18 SENSE IN REGARDS TO THE CREDIBILITY OF WHEN HE WENT TO JAIL
19 AND ALL THAT AND FOR THE FORGERIES. HE HAD FIVE FORGERIES
20 THAT HE PLED GUILTY TO AND WAS SENTENCED TO, BUT WITHOUT A
21 DOUBT IT WASN'T UNTIL SOMETIME IN SEPTEMBER SO WE HAVE THE
22 POSSIBILITY AND THE TIME LINE RIGHT. NOT ONLY THAT [REDACTED] [REDACTED]
23 [REDACTED] TOLD YOU THAT IT HAPPENED PRETTY CLOSE IN PROXIMITY
24 WITHIN TWO WEEKS OF EACH OTHER SO WE HAVE THAT, 31 DAYS IN
25 AUGUST, 30 DAYS IN SEPTEMBER.

1 NOW HE WAS ONLY ABOUT SEVEN YEARS OLD. HE NEVER
2 TELLS. HIS DADDY SAYS, AND HE TOLD YOU HE LOVES HIS DAD.
3 SO SAD, CAUSE HE LOVES HIS DAD EVEN NOW. HE TELLS YOU
4 DADDY TOLD ME DON'T TELL ANYBODY, THEY'LL SEND ME AWAY,
5 I'LL GET IN TROUBLE. HERE IS A KID WHO HAS HAD HARDLY ANY
6 CONTACT WITH HIS FATHER AT ALL IN HIS LIFETIME. HIS FATHER
7 IS FINALLY SPENDING SOME TIME WITH HIM, THEY'RE WORKING ON
8 CARS, THEY'RE OUT IN THE YARD. HE SAID DURING THE DAY HE
9 WAS LIKE THE BEST DAD BUT AT NIGHT HE BECAME A MONSTER.
10 THAT'S THE MEMORY THAT [VICTIM] [REDACTED] HAS OF HIS CHILDHOOD
11 WITH HIS FATHER. THERE'S NO OTHER MEMORY BUT HE REMEMBERS
12 THAT VIVIDLY. THAT STICKS OUT IN HIS MIND AND THERE'S A
13 GOOD REASON FOR THAT.

14 SO THEN WE HAVE ALL THIS TIME PASSES BY, NO
15 CONTACT AT ALL, NO CONTACT AND THAT IS AGREED UPON BETWEEN
16 NOT ONLY THE DEFENSE WITNESSES AND ALSO [VICTIM] [REDACTED] TELLS
17 YOU THAT. NOW HE IS A GREAT STUDENT, HE'S MAKING A'S
18 THROUGHOUT SCHOOL AS A YOUNG CHILD. EVEN MS. HOPE SMITH,
19 WHO, OR WAS HIS YOUTH PASTOR, HE'S LIVING WITH HER NOW,
20 TELLS YOU IN 2006 AND 2007 HE COMES TO STAY WITH HER AGAIN
21 AND HE'S A GOOD KID, BUT THERE'S SOMETHING, SOMETHING GOING
22 ON. SHE CAN'T QUITE PLACE HER HAND ON IT, HER FINGER ON
23 IT, AND [VICTIM] [REDACTED] DISCLOSES TO HER.

24 NOW LET ME TELL YOU THE LAW RESTRICTS THE STATE
25 FROM BEING ABLE TO PUT IN HEARSAY EVIDENCE ABOUT WHAT

1 [REDACTED] VICTIM [REDACTED] SPECIFICALLY TOLD HER AND THERE'S A REASON FOR
2 THAT. WE WANT TO MAKE SURE IN FAIRNESS TO THE DEFENDANT
3 THAT ALL THE EVIDENCE ABOUT EXACTLY WHAT HAPPENED COMES OUT
4 THROUGH THE CHILD. THAT'S A BIG BURDEN ON THAT CHILD BUT
5 WE ACCEPTED THAT. SO EACH ONE OF THE WITNESSES WHO HE
6 DISCLOSED TO THEY'RE NOT SUPPOSED TO TELL YOU WHAT HE SAID.
7 THEY CAN TELL YOU THE TIMING AND THE PLACE THAT IT OCCURRED
8 AND EACH ONE OF YOU, OF THEM THAT GOT UP AND SAID WHAT THEY
9 WERE ALLOWED TO SAY TOLD YOU, INCLUDING HOPE SMITH, THAT IT
10 HAPPENED WHEN HE WAS AROUND SEVEN YEARS OLD AT HIS GRANDMA
11 REDDICK'S HOUSE, AND YOU'LL BE ABLE TO LOOK AT THE PICTURES
12 THAT EVERYONE, INCLUDING THE DEFENSE, AGREED THIS IS
13 GRANDMA REDDICK'S HOUSE, NO DOUBT ABOUT THAT. THIS IS THE
14 INTERIOR OF GRANDMA REDDICK'S HOUSE, AND THIS IS THE OTHER
15 THING.

16 WHENEVER THIS WAS GIVEN TO [REDACTED] VICTIM [REDACTED] AFTER MY
17 INVESTIGATOR WENT OUT THERE AND HE TESTIFIED THAT HE DID
18 THE DIAGRAM THAT WAS IN MAY OF 2009, THIS, OR 2010, THAT'S
19 THIS MONTH, HE WAS ABLE TO, AFTER NINE YEARS, DIAGRAM THE
20 ENTIRE HOUSE THAT HE HAD ONLY SPENT MAYBE A FEW WEEKENDS IN
21 WHEN HE WAS ABOUT SEVEN YEARS OLD AND THE DEFENSE IS SAYING
22 WELL MAYBE THE STATE SUGGESTED TO HIM WHAT THE INSIDE OF
23 THE HOUSE LOOKED LIKE. I TELL YOU IF HE WOULD NOT HAVE
24 BEEN ABLE TO DIAGRAM THIS AS IN LABEL THEN THERE WOULD HAVE
25 BEEN NO REASON TO BRING IT, BUT HE COULD DIAGRAM IT. HE

1 DID IT ON HIS OWN. I DON'T KNOW WHERE ALL THESE ROOMS ARE
2 OR WHAT THEY ARE. HE TOLD YOU, HE LABELED IT BECAUSE HE
3 REMEMBERS WHERE THOSE HORRIFYING EVENTS TOOK PLACE. HE'S
4 NEVER FORGOTTEN IT AND WHENEVER THE DEFENDANT AND HIS
5 SISTER WERE ASKED ABOUT IT THEY CONFIRMED, YES, HE GOT IT
6 RIGHT. SO A KID WHO WAS ONLY SIX OR SEVEN YEARS OLD
7 REMEMBERS WHERE HE WAS ASSAULTED AND WAS ABLE TO LABEL IT
8 AND YOU CAN LOOK AT THAT AND IT IS IMPORTANT BECAUSE IT
9 GOES TO THE CORROBORATION WHICH I DON'T EVEN HAVE TO
10 PROVIDE IN A CSC WITH A MINOR FIRST DEGREE. ALL YOU HAVE
11 TO DO IS HEAR THE TESTIMONY OF THE VICTIM, **VICT** BUT WE DO
12 HAVE CORROBORATION HERE. WE DO HAVE HIS MEMORY. WE DO
13 HAVE OTHER EVIDENCE THAT THE STATE HAS PROVIDED AND DIRECT
14 EVIDENCE INCLUDES TESTIMONY FROM THAT WITNESS STAND.

15 IT DOESN'T HAVE TO BE DNA. IT DOESN'T HAVE TO BE
16 A VIDEO TAPE OF THE ASSAULT TAKING PLACE. IT'S CHILD
17 ABUSE, LADIES AND GENTLEMEN, IT HAPPENS IN PRIVATE. THAT'S
18 WHY HIS TESTIMONY IS DIRECT EVIDENCE AND OTHER WITNESSES
19 WHO TESTIFIED GAVE YOU DIRECT EVIDENCE AS WELL. SO HE, HE
20 HAS HIS FIRST DISCLOSURE HERE AND HE TELLS YOU I DIDN'T
21 WANT HER TO TELL ANYBODY, ESPECIALLY MY FAMILY. I DIDN'T
22 WANT ANYONE TO KNOW. I DIDN'T WANT ANYONE TO KNOW I WAS
23 DIFFERENT, SO WE HAVE THE FIRST DISCLOSURE.

24 THEN, AND HE'S ABOUT 13 YEARS OLD AT THAT TIME,
25 THEN IN THE FALL OF 2007 AND 2008 HE STARTS SCHOOL, STILL

1 HASN'T STARTED COUNSELING, BUT HE STARTS HAVING PROBLEMS IN
2 SCHOOL, GRADES ARE DROPPING, SO THAT'S WHEN PATRICIA BROWN
3 COMES IN. SHE WORKS AT THE SCHOOL. SHE'S A SCHOOL BASE
4 COUNSELOR AND THAT'S HER JOB. WHEN THEY SEE THAT SOME KIDS
5 ARE HAVING TROUBLE THEY WANT TO INTERVENE AND SAY, HEY,
6 WHAT'S GOING ON, HOW CAN I HELP YOU TO DO BETTER, TO GET
7 BACK ON TRACK. HE WAS A GOOD STUDENT AND HE WAS BECOMING
8 THE CLASS CLOWN, HE WAS ACTING OUT. THIS IS A KID HE'S
9 PREPUBESCENT SO HORMONES ARE RAGING, YOU'VE GOT ALL KIND
10 OF STUFF GOING ON AND MS. MCGROGAN TELLS YOU THAT, TOO,
11 THERE WERE OTHER ISSUES OBVIOUSLY INTERTWINED WITH WHAT WAS
12 GOING ON WITH [REDACTED] VICTIM [REDACTED] SO WE HAVE THIS GOING ON. A
13 COUNSELOR, MS. PAMELA BROWN, GETS INVOLVED, AND SHE TELLS
14 YOU I WORKED WITH HIM.

15 SHE HAS NOTHING TO GAIN BY BEING HERE. SHE HAD
16 TO COME AWAY FROM HER JOB TO BE HERE. SHE HAS NO BIAS IN
17 THIS CASE. YOU GET THE CHANCE TO LOOK AT THAT AND
18 DETERMINE IF YOU THINK SHE HAD A REASON TO COME IN HERE AND
19 TELL YOU WHAT SHE SAID OTHER THAN SHE WAS DOING HER JOB.
20 SHE TOLD YOU FROM THAT WITNESS STAND FROM A QUESTION FROM
21 THE DEFENSE DO YOU THINK THIS WAS SOME AFTER, OKAY, LET ME
22 BACK UP. REMEMBER THE PICTURE AND THE POEM THAT TRIGGERED
23 THE SCHOOLTEACHER TO GET IN TOUCH WITH MS. BROWN? SAY,
24 WHOA, WE HAVE A REAL PROBLEM HERE. SCHOOLS RECOGNIZE THAT
25 STUFF IMMEDIATELY NOW, I MEAN AFTER THE COLUMBINE THING,

1 AFTER, YOU KNOW, ALL THE SCARY STUFF THAT CAN HAPPEN TO
2 KIDS YOU'VE GOT TO RECOGNIZE THAT THERE'S AN ISSUE. AND
3 WHEN YOU READ THAT POEM THINK TO YOURSELF WHETHER OR NOT
4 YOU HAVE A DOUBT AS TO WHAT THAT POEM MEANT AND IF A
5 TEACHER OR EVEN ANYONE OF US IN THIS COURTROOM WERE TO LOOK
6 AT THAT POEM WHAT IN THE WORLD WOULD IT DO, SEND UP SOME
7 RED FLAGS, ESPECIALLY FOR THE TEACHERS WHO WERE DEALING
8 WITH THIS KID IN THEIR CLASS, SO THEY TELL MS. BROWN.

9 MS. BROWN STEPS IN AND, GUESS WHAT, WE HAVE A
10 SECOND DISCLOSURE. WE HAVE HIM TELLING MS. BROWN AND HE
11 TOLD YOU WHAT HE SAID. I TOLD HER I WAS MOLESTED. HE
12 DIDN'T GIVE HER ANY OTHER DETAILS BUT AFTER THE DEFENSE GOT
13 UP AND QUESTIONED HER HE SAID AFTER SEEING THOSE PICTURES
14 AND THE POEM DO YOU THINK THIS MAY HAVE BEEN SOME IDEATION
15 OR SOMETHING OF A TEENAGE KID, AND SHE SAID IT FROM THAT
16 STAND, NO, I BELIEVE HIM, AND SHE KNEW THIS WAS BEYOND HER
17 EXPERTISE. THAT'S WHEN HE WAS REFERRED TO MS. KATHY
18 MCGROGAN. SHE HAS YEARS OF EXPERIENCE DEALING WITH SEXUAL
19 ABUSE TRAUMA. SHE HAS YEARS OF TRAINING, CERTIFICATION.
20 SHE'S LICENSED TO HANDLE THIS. SHE STEPS IN IN APRIL OF
21 2008.

22 WE HAVE SOMEBODY NEW WHO'S GOING TO TRY AND HELP
23 **VICTIM** **||** SHE STEPS IN AND SHE SAYS AROUND MAY, I MEAN
24 SHE ALREADY KNOWS WHY THE REFERRAL IS THERE SO SHE KNOWS
25 THERE'S AN ALLEGATION OF SEXUAL ABUSE. SHE KNOWS THAT HE'S

1 HAVING PROBLEMS IN SCHOOL. SHE KNOWS THAT ALL OF THESE
2 THINGS ARE GOING ON. SHE KNOWS THAT HE'S GOT THE PRIOR
3 DIAGNOSIS FOR ADHD SO SHE HAS ALL OF THIS INFORMATION AT
4 HER DISPOSAL TO GO IN AND MEET WITH THIS KID AND TALK TO
5 HIM ABOUT WHAT'S GOING ON AND, GUESS WHAT, NOT ONLY DOES HE
6 HAVE THAT DIAGNOSIS BUT THEN HE'S ALSO DIAGNOSED WITH POST
7 TRAUMATIC DISORDER AND THAT BASICALLY MEANS THAT THERE WAS
8 SOME TRAUMATIC EVENT IN THE CHILD'S LIFE THAT HAS NOW
9 CAUSED HIM TO NOT BE ABLE TO COPE AND SHE TOLD YOU THAT,
10 SLEEPLESSNESS, NIGHTMARES, INABILITY TO FOCUS, THINGS LIKE
11 THAT. HE TESTIFIED I'VE BEEN ON ZOLOFT, PROZAC. I'VE BEEN
12 ON SLEEP MEDICATIONS. HE'S ON SOMETHING FOR THE ADHD.
13 HE'S NOT ON IT NOW BUT WHEN ALL OF THIS STARTS BUBBLING UP
14 INSIDE OF THIS KID WHO IS, YOU KNOW, BECOMING A TEENAGER
15 REALIZING WHAT HAD HAPPENED TO HIM WAS WRONG THAT'S
16 WHENEVER IT CONSUMED HIM. HE SAID HE WAS STRESSED; HE WAS
17 CONFUSED; HE WAS ANGRY. ALL OF THAT MAKES SENSE, LADIES
18 AND GENTLEMEN, AS TO WHY IT DIDN'T COME OUT BEFORE. SO
19 THEN WE HAVE BASICALLY, I'LL CALL IT A THIRD DISCLOSURE BUT
20 BASICALLY WHAT IT IS IS HE GOES IN AND DISCUSSES IT WITH
21 ANOTHER PERSON, OKAY.

22 SO THEN MS. MCGROGAN TELLS YOU AN INTERESTING
23 FACT. SHE SAID I THOUGHT HE WAS ALREADY IN JAIL FOR THIS
24 AND IT HAD BEEN ADJUDICATED, HE BEING THE DEFENDANT. WHEN
25 SHE FOUND OUT AND WAS TALKING TO **VICTIM** **████** HER COUNSELING

1 WAS GOAL ORIENTED IN HELPING HIM TO RESOLVE IT. WHAT HELPS
2 HIM TO RESOLVE IT, TO ACCEPT WHAT'S HAPPENED, TO TALK ABOUT
3 IT, SO YOU CAN MOVE ON.

4 AFTER MONTHS OF DOING THAT, AFTER FINALLY HIS
5 MOTHER WHO HAD NEVER BEEN TOLD WAS TOLD BY MS. MCGROGAN
6 WHAT HAPPENED THAT WAS THE TRIGGER AND THE TIME WHEN THE
7 POLICE WERE INVOLVED.

8 THE COUNSELORS UNLESS THEY FEEL LIKE A CHILD IS
9 IN DANGER OR GOING HOME TO A PERPETRATOR ARE NOT GOING TO
10 REPORT IT TO THE POLICE. THEY HAVE A DUTY TO DISCLOSE WHEN
11 THEY BELIEVE A CHILD IS IN DANGER BUT OTHER THAN THAT
12 THEY'RE COUNSELORS. THEY HAVE CONFIDENTIALITY ISSUES.
13 THEY'RE THERE FOR THE CHILD. THEIR JOB IS NOT LAW
14 ENFORCEMENT. THEIR JOB IS NOT TO GO SEE THAT THE PERSON IS
15 ARRESTED. THEY'RE THERE FOR THE CHILD. THEY DID THE RIGHT
16 THING FOR HIM. THEY COUNSELED HIM AND HE WAS THE ONE THAT
17 WAS ABLE TO GO AND MAKE THE REPORT. HE WAS THE ONE THAT
18 HAD TO STICK HIS NECK OUT THERE AND COME FORWARD AND SEE IT
19 THROUGH AND THAT'S WHAT HE DID. SO IN AUGUST OF 2008,
20 ALMOST SEVEN YEARS TO THE DAY ALMOST, IF WE KNEW THE DAY,
21 LAW ENFORCEMENT GARY TODD, AND AGAIN HE CAN'T TELL YOU
22 EXACTLY WHAT [VICTIM] [REDACTED] TOLD YOU BECAUSE WE'RE BOUND BY
23 THE RULES AND THAT'S FINE BUT HE DID TELL YOU THE TIMING.
24 HE DID TELL YOU THERE WERE TWO EVENTS, ONE HAPPENED IN THE
25 BED IN GRANDMA REDDICK'S ROOM, ONE HAPPENED ON THE COUCH IN

1 THE T.V. ROOM, SAME THING EVERY SINGLE TIME AND IT IS SO
2 VIVID TO HIM BECAUSE IT WAS THE ONLY MEMORY WITH HIS FATHER
3 WERE THESE TERRIBLE MEMORIES. THAT'S WHY HE'S ABLE TO
4 REMEMBER THAT. THAT'S WHY HE'S NOT CONFUSED ON IT AND YOU
5 COULD SEE IT. YOU COULD SEE IT FROM THAT STAND AND DELAYED
6 DISCLOSURE IT'S NORMAL. IT'S EXPECTED AND LIKE I SAID
7 THAT'S WHY MS. MCGROGAN TESTIFIED ABOUT IT.

8 SO I WOULD TELL YOU NOW THAT WE'VE CLEARLY MET
9 THE BURDEN OF PROOF AND NOW IT'S NOT BEYOND ALL POSSIBLE
10 DOUBT CAUSE SOME OF YOU MIGHT EVEN THINK, WOW, I WONDER IN
11 2001 IF THERE WERE SOME LEAVES FALLING, MAYBE IT WAS KIND
12 OF A COOL, YOU KNOW, FALL OR SOMETHING LIKE THAT. THAT'S
13 FINE, YOU KNOW, THIS IS THE THING. WHAT YOU HAVE TO LOOK
14 AT IS WHAT'S REASONABLE. IS IT REASONABLE TO THINK THAT
15 THIS YOUNG MAN 16 YEARS OLD IS GOING TO MAKE SOMETHING LIKE
16 THIS UP TO HAVE TO GET IN FRONT OF A JURY AND PEOPLE AND
17 TALK ABOUT IT.

18 IS IT REASONABLE TO THINK THAT THIS YOUNG MAN
19 WANTS PEOPLE TO THINK HE'S DIFFERENT BECAUSE HE HAD A
20 HOMOSEXUAL EXPERIENCE WITH HIS FATHER AT THE AGE OF SEVEN,
21 WHO WANTS TO TALK ABOUT THAT? IS IT REASONABLE TO THINK
22 THAT THE PERSON THAT HE TOLD YOU ABOUT ON THAT STAND THAT
23 HE STILL LOVES SEATED OVER THERE WHO'S NEVER BEEN A FATHER
24 TO HIM, EVEN THOUGH HE LOVES HIM THAT HE'S GOING TO WANT TO
25 GET ON THAT STAND AND GET HIM IN TROUBLE. OH, AND LET'S

1 THINK ABOUT THIS. HERE'S A MOTIVE. MAYBE [REDACTED] [REDACTED]
2 WANTED HIS DAD TO BE OUT OF THE PICTURE SO HE WOULDN'T SEE
3 HIM ANYMORE. WELL OBVIOUSLY THAT'S NOT A MOTIVE. HE
4 HASN'T SEEN HIS DAD SINCE HE WAS SIX OR SEVEN YEARS OLD SO
5 THAT'S NOT A MOTIVE TO DO THIS.

6 YOU WOULD HAVE TO BELIEVE THAT HE WOULD PUT
7 HIMSELF IN THIS POSITION FOR WHAT REASON AND I WOULD TELL
8 YOU THAT REASON WOULD BE TO TELL THE TRUTH WHICH IS WHAT HE
9 TOLD YOU HE DID. IT WOULD BE TO GET THIS OUT OF HIS
10 SYSTEM. IT WOULD BE FOR HIM TO BE ABLE TO MOVE ON WITH HIS
11 LIFE, TO BE A MAN, TO HAVE A CHANCE TO NOT BE DIFFERENT,
12 THAT IS WHY HE CAME TO YOU. THAT IS WHY HE TESTIFIED. IT
13 DOESN'T MAKE SENSE AS TO WHY ANYBODY WOULD DO IT SO,
14 PLEASE, THINK ABOUT THAT WHEN YOU'RE DELIBERATING ON THE
15 FACTS BECAUSE THE FACTS ARE CLEAR.

16 HIS SISTER SAID HE WAS THERE, THE DEFENDANT SAID
17 THE CHILD WAS THERE, [REDACTED] [REDACTED] SAID HE WAS THERE. IT
18 HAPPENED. THOSE TRUCKS THAT HE BOUGHT FOR HIM WAS TO KEEP
19 HIM QUIET, TO MAKE HIM THINK THAT HE WAS STILL A GOOD DADDY
20 AND HE DID IT AGAIN. A VIOLATION OF A CHILD, A VIOLATION
21 OF A TRUST AND LOVE, FIND HIM GUILTY, LADIES AND GENTLEMEN.

22 HE'S GUILTY OF A LEWD ACT; HE'S GUILTY OF
23 CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE BASED ON
24 EVEN JUST WHAT [REDACTED] [REDACTED] TOLD YOU. ANAL PENETRATION, I
25 HATE TO TALK ABOUT IT, BUT HE TOLD YOU IT HURT, IT WAS

1 UNCOMFORTABLE. THERE'S NO DOUBT IT WENT INSIDE AND I
2 DIDN'T WANT TO HAVE TO REPEAT THAT BUT IT'S A PART OF WHAT
3 I HAVE TO PROVE TO YOU.

4 MOST OF ALL I'M JUST GOING TO TELL YOU THANK YOU
5 FOR LISTENING TO EVERYTHING. THESE ARE VERY DIFFICULT
6 CASES FOR EVERYBODY, ESPECIALLY **VICTIM** **████** BUT I KNOW ONE
7 THING, HE STOOD UP, HE'S DONE IT, AND HE CAN MOVE ON NOW.
8 LOOK AT THE POEM, LOOK AT THE PICTURES, LOOK AT THE
9 DIAGRAM, TALK ABOUT IT, IF YOU WANT TO HEAR ANY OF THE
10 TESTIMONY OVER AGAIN THAT'S YOUR RIGHT, CONSIDER EVERYTHING
11 AND COME BACK GUILTY ON ALL COUNTS, AND I THANK YOU.

12 **JURY CHARGE**

13 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN,
14 IT'S MY RESPONSIBILITY NOW TO GIVE YOU THE LAW THAT YOU'RE
15 GOING TO USE AND APPLY IT TO THE FACTS AS YOU SO FIND THEM
16 TO BE IN THIS CASE.

17 NOW I TOLD YOU THAT YOU WERE THE JUDGES OF THE
18 FACTS AND THAT I WOULD NOT INTERPOSE MY OPINION AS TO THE
19 FACTS IN THIS CASE BECAUSE THAT'S NOT MY JOB. THAT'S NOT
20 MY RESPONSIBILITY, THAT'S YOUR JOB, AND YOUR
21 RESPONSIBILITY.

22 NOW IN THAT SAME VEIN AS TO THE LAW IF YOU CAME
23 INTO THIS COURTROOM WITH ANY PRECONCEIVED IDEAS OF WHAT THE
24 LAW IS, WHAT IT OUGHT TO BE, WHAT IT SHOULD BE, WHAT YOU
25 HOPE IT WOULD BE YOU'LL DISREGARD THAT. YOU WILL TAKE THE.

1 LAW AS I NOW GIVE IT TO YOU AND APPLY IT TO THE FACTS THAT
2 YOU FIND TO BE TRUE IN THIS PARTICULAR MATTER.

3 I TOLD YOU AT THE VERY BEGINNING ONE OF YOUR JOBS
4 AND DUTIES AND RESPONSIBILITIES IN THIS CASE WAS TO JUDGE
5 THE CREDIBILITY, THAT IS THE BELIEVABILITY OF THE WITNESSES
6 THAT HAVE TESTIFIED BEFORE YOU IN THIS PARTICULAR TRIAL.
7 YOU CAN BELIEVE ONE WITNESS AGAINST SEVERAL, SEVERAL
8 AGAINST ONE. YOU CAN BELIEVE A PORTION OF WHAT A WITNESS
9 SAYS, DISREGARD THE REMAINING PORTION OF IT. IF YOU'VE GOT
10 A GOOD SOUND REASON FOR DOING SO YOU CAN DISREGARD IN ITS
11 ENTIRETY THE TESTIMONY OF A PARTICULAR WITNESS.

12 NOW LOOKING AT CREDIBILITY AND BELIEVABILITY OF A
13 WITNESS YOU LOOK AT CERTAIN THINGS. YOU LOOK AT WHETHER OR
14 NOT THAT WITNESS HAS EXHIBITED TO YOU ANY KIND OF INTEREST,
15 BIAS, MOTIVE, PREJUDICE, THAT THEY MIGHT HAVE IN GIVING YOU
16 THE TESTIMONY THEY GAVE YOU FROM THE WITNESS STAND.

17 YOU CAN CONSIDER THEIR APPEARANCE, THE MANNER IN
18 WHICH THEY TESTIFIED, THEIR DEMEANOR, HOW THEY, HOW THEY
19 CAME ACROSS TO YOU. OF COURSE YOU TAKE INTO CONSIDERATION
20 THE OPPORTUNITY FOR KNOWLEDGE, HOW DID THEY COME ABOUT THAT
21 INFORMATION THAT THEY GAVE YOU FROM THE WITNESS STAND.

22 YOUR OBJECTIVE, LADIES AND GENTLEMEN, IS TO FIND
23 THE TRUTH. OBVIOUSLY THAT IS A MENTAL PROCESS. IF YOU
24 THINK ABOUT IT, THOUGH, IT'S SOMETHING YOU DO EVERY SINGLE
25 DAY OF YOUR LIFE. WHEN SOMEBODY TELLS YOU SOMETHING YOU'RE

1 AUTOMATICALLY JUDGING WHETHER OR NOT YOU BELIEVE THEM AND
2 HOW DO YOU DO THAT, YOU USE YOUR GOOD COMMON SENSE, YOUR
3 GOOD JUDGMENT THAT YOU USE IN CONDUCTING YOUR OWN AFFAIRS.
4 THAT'S WHAT WE'RE ASKING YOU TO DO, USE YOUR GOOD COMMON
5 SENSE, USE YOUR GOOD JUDGMENT, APPLY IT TO THE FACTS AND
6 EVIDENCE YOU'VE HEARD IN THIS CASE, FIND THAT EVIDENCE
7 WHICH CONVINCES YOU OF ITS TRUTH AND THEN YOU'RE GOING TO
8 HAVE TO WEIGH THAT EVIDENCE AGAINST THE STATE'S BURDEN TO
9 PROVE THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT OF THE
10 CRIMES CHARGED.

11 YOU DON'T HAVE ANY FRIENDS TO REWARD. YOU DON'T
12 HAVE ANY ENEMIES TO PUNISH. YOUR VERDICT CAN'T BE THE
13 RESULT OF ANY KIND OF PASSION, PREJUDICE, OR SYMPATHY. IT
14 HAS TO BE AN EXAMINATION OF THE FACTS AND EVIDENCE AND
15 FINDING THOSE FACTS AND EVIDENCE WHICH CONVINCE YOU OF
16 THEIR TRUTH.

17 THERE ARE TWO TYPES OF EVIDENCE THAT ARE
18 PRESENTED IN VIRTUALLY EVERY SINGLE CASE THAT'S TRIED.
19 THEY'RE CALLED DIRECT AND CIRCUMSTANTIAL EVIDENCE.

20 DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO
21 ASSERTS OR CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT.

22 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF
23 FACTS INDICATING THE EXISTENCE OF A FACT.

24 THE LAW DOESN'T MAKE ANY DISTINCTION BETWEEN THE
25 TWO. YOU WEIGH ALL THE EVIDENCE THE SAME. YOU LOOK AT ALL

1 THE EVIDENCE THE SAME, FIND THAT EVIDENCE WHICH CONVINCES
2 YOU OF ITS TRUTH.

3 IN THIS CASE I ALLOWED ONE WITNESS, SOMETIMES
4 THEY'RE CALLED EXPERT WITNESSES, I NORMALLY QUALIFY THEM TO
5 GIVE THEIR OPINION CAUSE THAT'S WHAT WE'RE ACTUALLY
6 ALLOWING THEM TO DO, CAUSE NORMALLY WE DON'T ALLOW
7 WITNESSES TO GIVE THEIR OPINION ABOUT THINGS. THEY HAVE TO
8 TELL YOU ABOUT WHAT THEY ACTUALLY KNOW. JUST BECAUSE THE
9 COURT QUALIFIED A PARTICULAR WITNESS TO BE AN EXPERT IN A
10 PARTICULAR FIELD OR TO GIVE THEIR OPINION DOESN'T GIVE ANY
11 SPECIAL STATUS. YOU JUDGE ALL THE WITNESSES THE SAME. YOU
12 LOOK AT ALL THE WITNESSES THE SAME. YOU JUDGE ALL THEIR
13 CREDIBILITY AND BELIEVABILITY THE SAME, AND AGAIN FIND THAT
14 EVIDENCE WHICH CONVINCES YOU OF ITS TRUTH.

15 DURING THE COURSE OF THIS TRIAL THERE WAS
16 EVIDENCE OR TESTIMONY PRESENTED OF A PRIOR CONVICTION OF
17 THE DEFENDANT OF ANOTHER CRIME. NOW THIS EVIDENCE IS
18 ADMITTED ONLY FOR A LIMITED PURPOSE AND YOU CANNOT CONSIDER
19 THAT EVIDENCE FOR ANY OTHER PURPOSE EXCEPT FOR THE PURPOSE
20 FOR WHICH IT WAS ADMITTED. IT MAY BE CONSIDERED BY YOU FOR
21 THE PURPOSE OF EVALUATING THE CREDIBILITY OR THE
22 BELIEVABILITY OF THE TESTIMONY PRESENTED AND FOR NO OTHER
23 PURPOSE. YOU CANNOT AND YOU MUST NOT CONSIDER A PRIOR
24 RECORD OF A DEFENDANT AS ANY EVIDENCE OF THE GUILT OF THE
25 CRIME FOR WHICH HE IS NOW CHARGED. YOU GIVE THAT EVIDENCE

1 THE WEIGHT YOU THINK IT DESERVES, THE WEIGHT YOU CONSIDER
2 IT SHOULD BE GIVEN. WHETHER THAT IS OF MEANING TO YOU OR
3 NOT YOU GIVE IT THE WEIGHT THAT YOU BELIEVE IT SHOULD HAVE.

4 I SPECIFICALLY DIRECTED YOU DISREGARD CERTAIN
5 MATTERS THAT WERE PRESENTED IN THIS COURTROOM. I AGAIN
6 INSTRUCT YOU THAT YOU MUST FOLLOW THOSE INSTRUCTIONS.
7 THOSE MATTERS HAVE, AS I TOLD YOU, NOTHING TO DO WITH THE
8 TRIAL IN THIS PARTICULAR CASE. BY YOUR OATH AND BY YOUR
9 STATEMENTS TO ME YOU HAVE INDICATED AND TOLD ME YOU WILL DO
10 SO. IF YOU ALLOW IT TO IMPACT YOUR DECISION IN ANY WAY YOU
11 WOULD NOT BE DOING YOUR JOB, YOU WOULD BE VIOLATING YOUR
12 OATH, SO YOU MUST DISREGARD THOSE MATTERS PRESENTED.

13 I TOLD YOU AT THE VERY BEGINNING THE DEFENDANT
14 PLED NOT GUILTY TO THE CRIMES CHARGED, THAT THE DEFENDANT
15 IS PRESUMED INNOCENT OF THE CRIMES FOR WHICH THE STATE HAS
16 BROUGHT AGAINST HIM. THAT PUT THE BURDEN OF PROOF ON THE
17 STATE OF SOUTH CAROLINA TO PROVE THE DEFENDANT GUILTY
18 BEYOND A REASONABLE DOUBT. I TOLD YOU THE DEFENDANT HAS
19 NOTHING TO SHOW TO YOU; THE DEFENDANT HAS NOTHING TO PROVE
20 TO YOU.

21 IN A TRIAL A DEFENDANT NEED NOT TESTIFY IN A CASE
22 BECAUSE THE STATE HAS THE BURDEN OF PROOF TO PROVE THE
23 DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. THAT'S THE
24 STATE'S BURDEN AND THAT BURDEN STAYS WITH THE STATE UP TO
25 AND UNTIL YOU BELIEVE FROM THE EVIDENCE THAT YOU FIND TO BE

1 TRUE THE STATE HAS PROVED TO YOU THE GUILT OF THE DEFENDANT
2 BEYOND A REASONABLE DOUBT.

3 THAT PRESUMPTION OF INNOCENCE IT'S LIKENED TO A
4 ROBE OF RIGHTEOUSNESS. IT'S PLACED ON THE SHOULDERS OF THE
5 DEFENDANT AT THE START OF THE TRIAL AND IT STAYS ON THE
6 SHOULDERS OF THE DEFENDANT UNTIL YOU BELIEVE THE STATE HAS
7 STRIPPED THAT ROBE OF RIGHTEOUSNESS FROM THE SHOULDERS OF
8 THE DEFENDANT BY PROOF BEYOND A REASONABLE DOUBT.

9 THAT PRESUMPTION OF INNOCENCE ISN'T JUST SOME
10 LEGAL THEORY. IT ISN'T JUST SOME LEGAL PHRASE. IT'S A
11 SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT, TO WHICH EVERY
12 AMERICAN IS ENTITLED UNLESS YOU THE JURY BELIEVE AND ARE
13 SATISFIED FROM THE EVIDENCE OF THE GUILT OF THE DEFENDANT
14 BEYOND A REASONABLE DOUBT.

15 WHAT'S REASONABLE DOUBT? REASONABLE DOUBT IS THE
16 KIND OF DOUBT THAT WOULD CAUSE AN ORDINARY REASONABLE
17 PERSON TO HESITATE TO ACT.

18 PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT
19 LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT.

20 NOW THERE ARE VERY FEW THINGS WE CAN KNOW WITH
21 ABSOLUTELY CERTAINTY AND THE LAW DOESN'T REQUIRE THE STATE
22 OF SOUTH CAROLINA TO GIVE YOU THAT KIND OF PROOF. WHAT IS
23 REQUIRED IS IF BASED UPON YOUR CONSIDERATION OF THE
24 EVIDENCE YOU ARE FIRMLY CONVINCED THAT THE DEFENDANT IS
25 GUILTY OF THE CRIME CHARGED YOU MUST FIND THE DEFENDANT

1 GUILTY. ON THE OTHER HAND IF YOU ARE NOT FIRMLY CONVINCED
2 THAT THE DEFENDANT IS GUILTY OF THE CRIME CHARGED YOU MUST
3 GIVE THE DEFENDANT THE BENEFIT OF THE DOUBT AND FIND HIM
4 NOT GUILTY.

5 THE STATE HAS BROUGHT, LEVIED TWO CHARGES AGAINST
6 THE DEFENDANT AND I'LL TALK ABOUT THOSE NOW. ONE OF THOSE
7 IS LEWD ACT ON A MINOR, A MINOR BEING A PERSON UNDER THE
8 AGE OF 18. THE STATE HAS TO PROVE TO YOU BEYOND A
9 REASONABLE DOUBT THAT THE DEFENDANT, A PERSON THAT
10 COMMITTED THE CRIME, WAS OVER THE AGE OF 14.

11 NEXT, THE STATE HAS TO PROVE TO YOU THAT THE
12 DEFENDANT WILLFULLY AND LEWDLY COMMITTED OR ATTEMPTED A
13 LEWD OR LASCIVIOUS ACT ON OR WITH THE BODY OR ITS PARTS A
14 CHILD UNDER THE AGE OF 16 WITH THE INTENT TO AROUSE OR
15 APPEAL TO OR GRATIFY THE LUST, THE PASSION, OR THE SEXUAL
16 DESIRES OF THE DEFENDANT OR THE CHILD.

17 NOW WILLFULLY THAT MEANS VOLUNTARILY,
18 INTENTIONALLY, WITH THE SPECIFIC INTENT TO DO WHAT THE LAW
19 FORBIDS THE PERSON TO DO.

20 LEWD MEANS OBSCENE, LUSTFUL, INDECENT, LECHEROUS.

21 LASCIVIOUS MEANS TENDING TO INCITE LUST OR LEWD
22 OR INDECENT OR OBSCENE BEHAVIOR OR TENDING TO DEPRAVE THE
23 MORALS IN RESPECT TO SEXUAL RELATIONS.

24 THE OTHER CRIME THE DEFENDANT IS CHARGED WITH IS
25 CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE. THE

1 STATE HAS TO PROVE BEYOND A REASONABLE DOUBT THAT THE
2 DEFENDANT ENGAGED IN A SEXUAL BATTERY WITH THE VICTIM.

3 NOW THAT SEXUAL BATTERY IS, IT CAN BE SEXUAL
4 INTERCOURSE, CUNNILINGUS, FELLATIO, ANAL INTERCOURSE, ANY
5 INTRUSION, HOWEVER SLIGHT OF ANY PART OF A PERSONS BODY OR
6 ANY OBJECT INTO THE GENITAL OR ANAL OPENINGS OF ANOTHER
7 PERSONS BODY EXCEPT OBVIOUSLY WHEN THAT'S ACCOMPLISHED FOR
8 MEDICAL PURPOSE. THE STATE HAS TO THEN PROVE TO YOU BEYOND
9 A REASONABLE DOUBT THAT THE VICTIM WAS LESS THAN 11 YEARS
10 OLD AT THE TIME OF THE SEXUAL BATTERY.

11 CONSENT, WILLINGNESS, INDIFFERENCE, IGNORANCE ON
12 THE PART OF THE MINOR, IF ANY, AS TO WHAT WAS TAKING PLACE
13 DOES NOT IN ANY WAY AFFECT THE CHARGE OF CRIMINAL SEXUAL
14 CONDUCT WITH A MINOR FIRST DEGREE BECAUSE A MINOR UNDER THE
15 AGE OF 14 CANNOT LEGALLY CONSENT.

16 REGARDING CRIMINAL SEXUAL CONDUCT WITH A MINOR
17 FIRST DEGREE, THAT PARTICULAR CHARGE ONLY, THE TESTIMONY OF
18 A VICTIM NEED NOT BE CORROBORATED. IT DOES NOT LESSEN THE
19 STATE'S BURDEN TO PROVE ALL THE ELEMENTS TO YOU BEYOND A
20 REASONABLE DOUBT BUT THE TESTIMONY NEED NOT BE
21 CORROBORATED.

22 THERE IS BY LAW A LESSER INCLUDED OFFENSE OF
23 CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE. IF YOU
24 FIND THE STATE OF SOUTH CAROLINA HAS NOT PROVEN TO YOU
25 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT COMMITTED THE

1 CRIME OF CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE
2 ON THAT PARTICULAR CHARGE ONLY YOU MAY THEN AND WILL BE
3 REQUIRED IF YOU FOUND HIM NOT GUILTY OF THAT CHARGE
4 CONSIDER THE CRIME OF ASSAULT AND BATTERY HIGH AND
5 AGGRAVATED NATURE.

6 ASSAULT AND BATTERY HIGH AND AGGRAVATED NATURE IS
7 AN UNLAWFUL ACT OF VIOLENT INJURY TO THE PERSON OF ANOTHER
8 ACCOMPANIED BY CIRCUMSTANCES OF AGGRAVATION.

9 AN ASSAULT OCCURS WHEN A PERSON UNLAWFULLY
10 ATTEMPTS OR OFFERS TO COMMIT A VIOLENT INJURY ON ANOTHER
11 PERSON AND HAD THE ABILITY TO COMPLETE THE ATTEMPTED
12 INJURY. THE ASSAULT IS THE INTENTIONAL CREATION OF
13 REASONABLE FEAR OF IMMEDIATE BODILY HARM.

14 A BATTERY, THAT IS THE ACTUAL UNLAWFUL TOUCHING
15 OF ANOTHER PERSON BY A PERSON WHO HAS COMMITTED THE
16 ASSAULT. THE ASSAULT IS THE OFFER, THE BATTERY IS THE
17 COMPLETION OF THE ACT.

18 AN UNLAWFUL TOUCHING CAN BE CAUSED BY A PART OF
19 THE ACCUSED BODY OR BY ANY OBJECT THE ACCUSED PUTS IN
20 MOTION. AGAIN THE BATTERY IS THE COMPLETION OF THE ASSAULT
21 AND IT CAN BE DONE IN HOWEVER SLIGHT OR RUDE OR ANGRY OR
22 RESENTFUL MANNER WITHOUT LEGAL JUSTIFICATION FOR DOING SO.

23 THE STATE HAS TO PROVE TO YOU ALSO SOME
24 CIRCUMSTANCE OF AGGRAVATION. A CIRCUMSTANCE OF AGGRAVATION
25 COULD INCLUDE ANY ONE OF THE FOLLOWINGS THINGS OR ANYTHING

1 ELSE THAT YOU WOULD CONSIDER TO BE AGGRAVATION.

2 IT COULD BE THE USE OF A DEADLY WEAPON, THE
3 INFLECTION OF A SERIOUS BODILY INJURY, A GREAT DISPARITY
4 BETWEEN THE AGES OF THE PARTIES, A GREAT DISPARITY BETWEEN
5 THE PHYSICAL CONDITION OF THE PARTIES, DIFFERENCES IN THE
6 GENDER OF THE PARTIES, INDECENT LIBERTIES OR FAMILIARITIES
7 WITH A PERSON, A PURPOSEFUL INFLECTION OF SHAME OR
8 DISGRACE. ALL THOSE WOULD BE EXAMPLES OF AN AGGRAVATION,
9 AND AGAIN THAT HAS TO BE PROVED TO YOU BY THE STATE BEYOND
10 A REASONABLE DOUBT.

11 THE LAW ALSO REQUIRES THAT IF YOU HAVE A
12 REASONABLE DOUBT AS TO WHETHER A PERSON CHARGED WITH A
13 CRIME IS GUILTY OF A GREATER OR A LESSER OFFENSE IT IS YOUR
14 DUTY TO RESOLVE THAT DOUBT IN FAVOR OF THE DEFENDANT AND
15 FIND THE DEFENDANT GUILTY OF THE LESSER OFFENSE IF THAT IS
16 YOUR VIEW OF THE EVIDENCE AND AGAIN IT HAS BEEN PROVEN TO
17 YOU BY THE STATE BEYOND A REASONABLE DOUBT.

18 THAT, LADIES AND GENTLEMEN, IS THE LAW THAT
19 YOU'RE GOING TO USE TO APPLY TO THE FACTS AS YOU SO FIND
20 THEM TO BE. NOW THE COURT HAS HAD PREPARED FOR YOU A
21 VERDICT FORM. IT'S TWO PAGES AND IT'S VERY
22 STRAIGHTFORWARD. IT HAS THE CAPTION OF THE CASE ON HERE,
23 AND NUMBER ONE, IT HAS LEWD ACT ON A MINOR. ON THE CHARGE
24 OF LEWD ACT ON A MINOR WE THE JURY BY UNANIMOUS CONSENT
25 FIND THE DEFENDANT, AND THERE'S TWO CHOICES, I OBVIOUSLY

1 PUT ONE BEFORE THE OTHER, YOU DON'T ASSIGN ANYTHING TO
2 THAT, NOT GUILTY OR GUILTY. MR. FOREMAN, WHEN YOUR JURY
3 MAKES A UNANIMOUS DECISION ON THAT PARTICULAR CHARGE YOU
4 THEN CONTINUE ON TO THE SECOND PAGE.

5 ON THE SECOND PAGE IT HAS CRIMINAL SEXUAL CONDUCT
6 WITH A MINOR FIRST DEGREE. ON THE CHARGE OF CRIMINAL
7 SEXUAL CONDUCT WITH A MINOR FIRST DEGREE WE THE JURY BY
8 UNANIMOUS CONSENT FIND THE DEFENDANT, AGAIN TWO CHOICES NOT
9 GUILTY OR GUILTY. IF, REMEMBER THIS ONE HAS THAT LESSER
10 INCLUDED OFFENSE, SO IF YOU'VE FOUND THE DEFENDANT NOT
11 GUILTY OF CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE
12 YOU MUST THEN CONSIDER THE NEXT CHARGE OF ASSAULT AND
13 BATTERY HIGH AND AGGRAVATED NATURE. OBVIOUSLY IF YOU FOUND
14 HIM GUILTY THAT WOULD BE THE END OF YOUR DELIBERATIONS, YOU
15 KNOCK ON THE DOOR AND LET THE BAILIFFS KNOW. IF YOU FOUND
16 THE DEFENDANT GUILTY OF THAT, NOT GUILTY OF CRIMINAL SEXUAL
17 CONDUCT WITH A MINOR FIRST DEGREE THEN YOU GO ON TO ASSAULT
18 AND BATTERY HIGH AND AGGRAVATED NATURE, ON THE LESSER
19 INCLUDED CHARGE OF ASSAULT AND BATTERY HIGH AND AGGRAVATED
20 NATURE WE THE JURY BY UNANIMOUS CONSENT FIND THE DEFENDANT,
21 AND AGAIN THE TWO CHOICES, NOT GUILTY OR GUILTY.

22 SO, MR. FOREMAN, WHEN YOUR JURY HAS WELL AND
23 TRULY DELIBERATED ON ALL THESE MATTERS AND REACHED THEIR
24 UNANIMOUS DECISION YOU WILL CHECK THE APPROPRIATE BLOCKS ON
25 THIS FORM. YOU WILL SIGN YOUR NAME, PUT TODAY'S DATE,

1 KNOCK ON THE DOOR AND LET THE BAILIFF KNOW THAT YOUR JURY
2 HAS REACHED A UNANIMOUS DECISION ON BOTH THESE MATTERS.

3 NOW I HAVE SAID UNANIMOUS I DON'T HOW MANY TIMES
4 IN MY OPENING AND HERE NOW. IT MEANS EXACTLY WHAT YOU
5 THINK IT MEANS. IT MEANS TWELVE ZERO. IT DOESN'T MEAN
6 ELEVEN ONE, TEN TWO, ANY COMBINATION THEREOF. UNANIMOUS
7 MEANS EVERYBODY AGREES. WHEN THIS VERDICT IS RENDERED IT
8 IS THE VERDICT OF EACH AND EVERYONE OF YOU SO, MR. FOREMAN,
9 WHEN YOU CHECK THE BLOCKS AND SIGN YOUR NAME YOU ARE
10 TELLING THE COURT, JUDGE, EVERY SINGLE MEMBER OF THE JURY
11 AGREES WITH THIS, IT IS THE VERDICT OF EVERY SINGLE MEMBER
12 OF THE JURY.

13 ALL RIGHT, I'M GOING TO ASK YOU, MR. FOREMAN, TO
14 TAKE YOUR JURY TO YOUR JURY ROOM BUT YOU DO NOT BEGIN YOUR
15 DELIBERATIONS UNTIL THE BAILIFF HANDS TO YOU THE VERDICT
16 FORM AND THE EXHIBITS. WHEN THE BAILIFF DOES THAT THEN YOU
17 MAY BEGIN YOUR DELIBERATIONS, TAKE YOUR JURY TO THE JURY
18 ROOM, PLEASE, THANK YOU.

19 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
20 10:15 A.M.)

21 THE COURT: EXCEPTIONS, DELETIONS, ADDITIONS TO
22 THE CHARGE FROM THE STATE?

23 MS. LIVELY: NONE FROM THE STATE, YOUR HONOR.

24 THE COURT: FROM THE DEFENSE?

25 MR. BARR: NONE FROM THE DEFENSE, YOUR HONOR.

1 THE COURT: ALL RIGHT, VERY GOOD. IF YA'LL WILL
2 CHECK WITH THE COURT REPORTER AND MAKE SURE WE HAVE ALL THE
3 EXHIBITS AND I'LL HAND THE VERDICT FORM AND WE'LL GIVE IT
4 TO THE JURY AND WE'LL BE EASE FOR A FEW MINUTES, THANK YOU
5 VERY MUCH.

6 MS. LIVELY: THANK YOU.

7 (WHEREUPON, THE VERDICT FORMS AND EXHIBITS WERE
8 DELIVERED TO THE JURY ROOM AND WITH INSTRUCTIONS TO BEGIN
9 DELIBERATIONS AT 10:17 A.M.)

10 (WHEREUPON, THE JURY KNOCKED WITH A QUESTION AT
11 11:08 A.M.)

12 THE COURT: SOLICITOR, I NEED YA'LL TO COME HERE
13 AND TALK TO ME.

14 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
15 RECORD OUT OF THE HEARING OF THE COURT REPORTER.)

16 WE HAVE A QUESTION FROM THE JURY AND I TALKED TO
17 COUNSEL AND BASED UPON THE QUESTION PRESENTED IT'S PURELY A
18 FACTUAL QUESTION WHICH THE COURT CANNOT ANSWER NOR IS IT
19 REFLECTED BY EVIDENCE THAT IS CONTAINED IN THE, IN THE
20 RECORD, SO REPLAYING THE TESTIMONY WOULD NOT ANSWER THEIR
21 FACTUAL QUESTION. SO I'M GOING TO TELL THEM AND WRITE ON
22 THE NOTE FROM THE JURY THAT THEY MUST DECIDE THE CASE
23 SOLELY BASED ON THE FACTS AND EVIDENCE ALREADY PRESENTED
24 AND THEN RESUBMIT THAT NOTE TO THE JURY.

25 ANYTHING ELSE FROM THE STATE?

1 MS. LIVELY: NO, AND NO OBJECTION TO THAT, YOUR
2 HONOR.

3 THE COURT: FROM THE DEFENSE?

4 MR. BARR: NOTHING FURTHER FROM THE DEFENSE,
5 YOUR HONOR.

6 THE COURT: ALL RIGHT, VERY GOOD.

7 (WHEREUPON, THE COURT'S RESPONSE TO THE JURY'S
8 QUESTION WAS DELIVERED TO THE JURY WITH INSTRUCTIONS TO
9 CONTINUE DELIBERATIONS AT 11:16 A.M.)

10 (WHEREUPON, THE JURY KNOCKED WITH A VERDICT AT
11 11:29 A.M.)

12 THE COURT: I UNDERSTAND THEY HAVE A VERDICT IN
13 THE OTHER MATTER IF WE CAN GET EVERYBODY IN THE COURTROOM
14 AND WE'LL BE BACK IN JUST A MINUTE.

15 ALL RIGHT, I UNDERSTAND THAT THE JURY HAS
16 RETURNED A VERDICT IN THIS MATTER. IS THE STATE READY TO
17 PROCEED?

18 MS. LIVELY: THE STATE IS READY, YOUR HONOR.

19 THE COURT: THE DEFENSE?

20 MR. BARR: DEFENSE READY, YOUR HONOR.

21 THE COURT: ALL RIGHT, VERY GOOD. I WILL SAY TO
22 THE PERSONS ASSEMBLED IN THE COURTROOM I DO NOT KNOW WHAT
23 THE VERDICT OF THE JURY IS, WHATEVER THE VERDICT OF THE
24 JURY IS IT WILL BE RECEIVED WITH RESPECT AND IT WILL BE
25 RECEIVED WITH SILENCE. WE HAVE ASKED THE JURY TO DO A VERY

1 DIFFICULT TASK. WE WILL ACCEPT THEIR WORK AND ACT
2 ACCORDINGLY. IF YOU CANNOT FOLLOW THESE INSTRUCTIONS I AM
3 GIVING YOU NOW THE OPPORTUNITY TO LEAVE THE COURTROOM. ANY
4 VIOLATION OF THIS WILL SUBJECT THE PERSON TO BE HELD IN
5 CONTEMPT OF COURT. IF YOU WISH TO LEAVE THE COURTROOM
6 PLEASE DO SO AT THE TIME. ALL RIGHT, ASK THE JURY TO COME
7 IN, PLEASE.

8 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
9 11:38 A.M. TO DELIVER ITS VERDICT AS TO DEFENDANT
10 STEVEN LEE HEWITT, SR.)

11 THE COURT: ALL RIGHT, MR. FOREMAN, HAS YOUR
12 JURY REACHED THE VERDICTS IN THESE MATTERS?

13 MR. FOREMAN: YES, WE HAVE, YOUR HONOR.

14 THE COURT: COULD YOU HAND THE VERDICT FORMS TO
15 THE BAILIFF, PLEASE?

16 ALL RIGHT, MR. CLERK, YOU MAY PUBLISH THE
17 VERDICT.

18 THE CLERK: THE DEFENDANT PLEASE STAND. THE
19 STATE OF SOUTH CAROLINA V. STEVEN LEE HEWITT INDICTMENT
20 NUMBER 2009-GS-22-1199 ON THE CHARGE OF LEWD ACT OF A MINOR
21 WE THE JURY BY UNANIMOUS CONSENT FIND THE DEFENDANT GUILTY.

22 THE STATE OF SOUTH CAROLINA V. STEVEN LEE HEWITT
23 INDICTMENT NUMBER 2009-GS-22-02 AS TO, ON THE CHARGE OF
24 CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE WE THE
25 JURY FIND THE DEFENDANT UNANIMOUSLY GUILTY.

1 LADIES AND GENTLEMEN OF THE JURY, WAS THIS YOUR
2 VERDICT AND IS IT STILL YOUR VERDICT AND, IF SO, PLEASE
3 RAISE YOUR RIGHT HAND?

4 (WHEREUPON, ALL JURORS RESPONDED AFFIRMATIVELY.)

5 THE CLERK: THANK YOU.

6 THE COURT: THE JURY HAVING AFFIRMED THEIR
7 VERDICT DOES THE STATE WISH THE JURY POLLED?

8 MS. LIVELY: NOT THE STATE, YOUR HONOR, THANK
9 YOU.

10 THE COURT: DOES THE DEFENSE WISH THE JURY
11 POLLED?

12 MR. BARR: YES, YOUR HONOR.

13 THE COURT: ALL RIGHT, MR. CLERK, IF YOU WOULD
14 POLL THE JURY, PLEASE, SIR.

15 THE CLERK: LADIES AND GENTLEMEN, AS I CALL YOUR
16 NAME I'LL ASK YOU TO STAND AND I'LL ASK YOU A QUESTION I'LL
17 ASK YOU TO RESPOND, PLEASE.

18 MR. CHRISTY SKODRAS?

19 JURY PANEL MEMBER: YES, SIR.

20 THE CLERK: WAS THIS YOUR VERDICT AND IS IT
21 STILL YOUR VERDICT?

22 JURY PANEL MEMBER: YES.

23 THE CLERK: THANK YOU. MR. KENNETH TERNE, WAS
24 THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?

25 JURY PANEL MEMBER: YES.

1 THE CLERK: THANK YOU. MR. LORIS WILLIAMS, WAS
2 THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?

3 JURY PANEL MEMBER: YES.

4 THE CLERK: THANK YOU. MR. JUSTIN BLOMDAHL, WAS
5 THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?

6 JURY PANEL MEMBER: YES.

7 THE CLERK: THANK YOU. MS. CARMEN FRANKLIN, WAS
8 THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?

9 JURY PANEL MEMBER: YES.

10 THE CLERK: THANK YOU. ANTHONY COCKFIELD, WAS
11 THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?

12 JURY PANEL MEMBER: YES.

13 THE CLERK: THANK YOU. MS. VALENCIA FULTON, WAS
14 THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?

15 JURY PANEL MEMBER: YES.

16 THE CLERK: THANK YOU. MS. EILEEN GRAHAM, WAS
17 THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?

18 JURY PANEL MEMBER: YES.

19 THE CLERK: THANK YOU. MR. JOSEPH GRATE, WAS
20 THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?

21 JURY PANEL MEMBER: YES.

22 THE CLERK: THANK YOU. MS. MARGARET WRITT, WAS
23 THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?

24 JURY PANEL MEMBER: YES.

25 THE CLERK: THANK YOU. MS. LINLEY TADLOCK, WAS

1 THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?

2 JURY PANEL MEMBER: YES, SIR.

3 THE CLERK: THANK YOU. MS. CAROLYN GEE, WAS
4 THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?

5 JURY PANEL MEMBER: YES, SIR.

6 THE CLERK: THANK YOU, YOUR HONOR, THE JURY HAS
7 BEEN POLLED.

8 THE COURT: ALL RIGHT, VERY GOOD.

9 MR. BARR: THANK YOU, YOUR HONOR.

10 THE COURT: THE JURY HAVING AFFIRMED THEIR
11 VERDICT THROUGH POLLING IS THERE ANYTHING FURTHER AS TO THE
12 JURY FROM THE STATE?

13 MS. LIVELY: NO, YOUR HONOR, THANK YOU.

14 THE COURT: AS TO THE JURY FROM THE DEFENSE?

15 MR. BARR: NO, SIR, YOUR HONOR.

16 THE COURT: ALL RIGHT, VERY GOOD. ALL RIGHT,
17 LADIES AND GENTLEMEN, I WANT TO THANK YOU FOR YOUR SERVICE
18 IN THIS PARTICULAR WEEK. YOU UNDERSTAND WE'RE STILL HAVING
19 CIVIL COURT WITH JUDGE CULBERTSON AND I KNOW HE'S IN A
20 TRIAL. I DON'T KNOW WHAT THE STATUS OF THAT IS OR THE REST
21 OF HIS PARTICULAR WEEK SO THE BEST I CAN TELL YOU IS TO
22 CALL BACK THAT JUROR INFORMATION LINE TONIGHT AFTER 6:00.
23 MY EXPECTATION I THINK IS GOING TO BE THAT YOU'LL BE
24 EXCUSED FROM JURY SERVICE FOR THE REMAINDER OF THE WEEK BUT
25 JUDGE CULBERTSON IS IN THE MIDDLE OF A TRIAL RIGHT NOW SO I

1 DID NOT WANT TO DISTURB HIM. SO IF YOU'LL CALL BACK THAT
2 JUROR INFORMATION LINE TONIGHT AFTER 6 P.M., FOLLOW THOSE
3 INSTRUCTIONS AS THEY MAY BE AND IF THAT INDEED IS YOUR JURY
4 SERVICE FOR THIS WEEK I WANT TO THANK YOU AS YOUR PRESIDING
5 JUDGE AND ONE OF THE RESIDENT JUDGES. YOU DID EXACTLY WHAT
6 THE COURT ASKED YOU TO DO, THAT IS TO WELL AND TRULY
7 DELIBERATE IN THIS CASE AND REACH A UNANIMOUS VERDICT AND I
8 WANT TO THANK YOU FOR YOUR SERVICE. YOU ARE NOW EXCUSED,
9 THANK YOU VERY MUCH.

10 (WHEREUPON, THE JURY WAS EXCUSED FOR THE EVENING
11 AT 11:44 A.M.)

12 THE COURT: MOTIONS OF BEHALF OF THE DEFENSE?

13 MR. BARR: NOT AT THIS TIME, YOUR HONOR.

14 THE COURT: ALL RIGHT, SIR, AS TO THE MATTER AT
15 HAND THE COURT WOULD STATE THAT I WOULD DECLINE TO GRANT
16 ANY NEW TRIAL IN THIS MATTER THERE BEING, OF COURSE, NO
17 JUDGMENT NOTWITHSTANDING THE VERDICT AVAILABLE IN A
18 CRIMINAL TRIAL. I FIND THAT THE, THERE'S COMPETENT
19 EVIDENCE IN THIS MATTER TO SUSTAIN THE JURY'S VERDICT AND
20 BASED UPON THAT I WILL NOT SUBSTITUTE MY JUDGMENT FOR THAT
21 OF THE JURY AND OVERTURN THE VERDICT AND, THEREFORE, WILL
22 NOT GRANT A NEW TRIAL IN THIS MATTER.

23 ALL RIGHT, IS THE STATE READY TO PROCEED WITH
24 SENTENCING?

25 MS. LIVELY: YES, YOUR HONOR.

1 THE COURT: DEFENSE?

2 MR. BARR: YES, YOUR HONOR.

3 THE COURT: SOLICITOR, I'LL BE GLAD TO HEAR FROM
4 YOU?

5 MS. LIVELY: YES, SIR, YOUR HONOR, THIS MATTER
6 WAS A VERY DIFFICULT ONE TO BRING FOR THE VICTIM INVOLVED
7 OBVIOUSLY. YOUR HONOR HAS HEARD ALL THE EVIDENCE, YOU'VE
8 HEARD THE VICTIM SPEAK. HE'S TOLD ME HE DOES NOT WISH TO
9 MAKE A STATEMENT AT THIS TIME. HE FEELS LIKE OBVIOUSLY
10 HE'S BEEN HURT AND THE JURY FOUND THAT TO BE TRUE.

11 THIS DEFENDANT HAS A PRIOR RECORD. YOU'VE HEARD
12 THAT FROM FIVE COUNTS OF FORGERY IN 2001, FAILURE TO STOP
13 FOR A BLUE LIGHT IN 2004, TWO COUNTS OF BURGLARY SECOND
14 DEGREE NON VIOLENT 2004. HE HAD A PAROLE REVOCATION IN
15 2007. HE'S BEEN, HE'S BEEN IN THE SYSTEM AND HE KNOWS AND,
16 YOUR HONOR, WHAT I AM ASKING THE COURT TO CONSIDER IS THE
17 STATE DID MAKE A REASONABLE AND FAIR OFFER IN THIS CASE TO
18 AVOID HAVING TO GO TO TRIAL OF 15 YEARS. YOUR HONOR THEN
19 WE SPOKE IN CHAMBERS OR IN THE BACK AND I EVEN WENT ALONG
20 WITH TALKING TO MY VICTIM AND SAYING WOULD YOU BE AGREEABLE
21 TO SOMETHING LESS AND THE IDEA OF HAVING TO GO THROUGH A
22 TRIAL AGAIN HE SAID IF YOU WANT TO OFFER SOMETHING LESS HE
23 SAID I'VE SAID MY PEACE. I OFFERED HIM 13 YEARS TO AVOID
24 GOING IN FRONT TO GET A VERDICT AND DESPITE MY NOT WANTING
25 TO BUT BECAUSE OF MY VICTIM HE STILL LOVES HIS FATHER BUT

1 HE, HE WANTED HIM TO TAKE RESPONSIBILITY FOR WHAT HE DID.
2 SO, YOUR HONOR, I DO KNOW THAT THE VICTIM'S MOTHER DOES
3 WANT TO ADDRESS THE COURT AT THE APPROPRIATE TIME BUT WE'RE
4 ASKING YOUR HONOR TO OBVIOUSLY USE YOUR DISCRETION,
5 SENTENCE HIM ACCORDINGLY. I BELIEVE THAT THIS TYPE OF A
6 CRIME HE'S BEEN, HE WAS FOUND GUILTY ON BOTH COUNTS, THE
7 LEWD ACT AS WELL AS CSC WITH A MINOR FIRST DEGREE, WE'RE
8 ASKING THAT THIS COURT POSE A SUBSTANTIAL SENTENCE.

9 THE COURT: ALL RIGHT.

10 MS. LIVELY: AND THEN LIKE I SAID LET ME KNOW
11 WHEN THE APPROPRIATE TIME WOULD BE FOR THE VICTIM'S MOTHER
12 TO APPROACH AND SPEAK.

13 THE COURT: AS TO THAT, SOLICITOR, I WOULD BE
14 GLAD TO HEAR FROM THE VICTIM IN THIS MATTER. FOR WHATEVER
15 REASONS THE VICTIM'S MOTHER DID NOT TESTIFY IN THIS
16 PARTICULAR CASE. I SEE NO PURPOSE FROM HEARING FROM HER AT
17 THIS POINT IN TIME. I BELIEVE IN COMPLIANCE WITH THE
18 VICTIM'S RIGHTS ACT I WILL BE GLAD AND IF THE VICTIM WISHES
19 TO ADDRESS ME I WILL BE GLAD FOR HIM TO DO SO BUT I WILL
20 NOT HEAR FROM HER. MR. BARR?

21 MR. BARR: YOUR HONOR, IF IT PLEASES THE COURT,
22 I THINK MR. HEWITT'S RECORD IS IN EVIDENCE AND THERE'S NO
23 POINT IN DELVING INTO THAT. WE'D LIKE TO POINT OUT TO THE
24 COURT THAT IN SPITE OF HIS RECORDS, IN SPITE OF HIS RECORD
25 HE'S NEVER BEEN CHARGED WITH OR CONVICTED OF VIOLENT CRIMES

1 AND UP UNTIL TODAY AND THAT HE IS 39 YEARS OLD, YOUR HONOR,
2 A SUBSTANTIAL SENTENCE AT THIS POINT IS A LIFE SENTENCE IN
3 THIS CASE. WE'D ASK THAT THE COURT DOES CONSIDER A, A MORE
4 LENIENT SENTENCE THAN THE POSSIBLE MAXIMUM RANGE OF
5 SENTENCE IN, IN THIS CASE. I WOULD ALSO ASK IF THE COURT
6 WOULD HEAR FROM THE DEFENDANT IN THIS CASE REGARDING,
7 REGARDING SENTENCING AT SOME POINT ---

8 THE COURT: BE GLAD TO DO SO.

9 MR. BARR: --- IF HE WISHES TO DO THAT. YOUR
10 HONOR, THIS IS A VERY TRAGIC SITUATION AND IT'S A FAMILY
11 SITUATION AND I THINK THAT MR. HEWITT HAS REDEEMING
12 QUALITIES AND FOR THOSE REASONS I WOULD ASK THAT THE COURT
13 CONSIDERS A MORE LENIENT SENTENCE THAN THE MAXIMUM
14 SENTENCE.

15 THE COURT: MR. HEWITT, IS THERE ANYTHING YOU
16 WANT TO ADD TO WHAT YOUR ATTORNEY HAS ALREADY SAID, SIR?

17 DEFENDANT HEWITT: NO, SIR.

18 THE COURT: ALL RIGHT, SIR, DO YOU HAVE THE
19 SENTENCING SHEET, SOLICITOR?

20 MS. LIVELY: I DID, I'VE PROVIDED THEM TO THE
21 DEFENSE, YOUR HONOR, I WILL HAND THEM UP.

22 THE COURT: 2009-GS-22-302 THE STATE OF SOUTH
23 CAROLINA COUNTY OF GEORGETOWN V. STEVEN LEE HEWITT
24 REGARDING THE CRIME OF CRIMINAL SEXUAL CONDUCT WITH A MINOR
25 FIRST DEGREE, MR. HEWITT, I'VE HEARD WHAT WAS SAID ON YOUR

1 BEHALF BY YOUR ATTORNEY AND I LISTENED TO THE STATE AND
2 OBVIOUSLY THROUGHOUT THE FACTS OF THIS PARTICULAR CASE. I
3 FIRST WANT TO SAY THE SENTENCE THE COURT IMPOSES HERE DO
4 NOT TAKE INTO CONSIDERATION WHATSOEVER ANY OFFERS MADE BY
5 THE STATE TO THE DEFENDANT REGARDING A PLEA BARGAIN. IT IS
6 THE CONSTITUTIONAL RIGHT OF ANY DEFENDANT TO HAVE A JURY
7 TRIAL AND THE COURT WOULD NOT AND WOULD NEVER PUNISH ANYONE
8 FOR EXERCISING THEIR CONSTITUTIONAL RIGHTS TO HAVE A JURY
9 TRIAL SO, THEREFORE, I AM NOT TAKING INTO CONSIDERATION ANY
10 PLEA BARGAINS THAT MIGHT HAVE BEEN OFFERED TO THE DEFENDANT
11 IN ADVANCE.

12 THE SENTENCE REFLECTS THIS COURT'S EVALUATION OF
13 THIS MATTER AND THE SERIOUSNESS OF THE CRIMES COMMITTED,
14 THE RELATIONSHIP BETWEEN THE DEFENDANT AND THE VICTIM, THE
15 HARM THAT IT HAS CAUSED, THEREFORE, THE DEFENDANT IS
16 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS TERMINATE
17 TERM OF 25 YEARS. THE DEFENDANT IS GIVEN CREDIT FOR TIME
18 HE HAS ALREADY SERVED.

19 REGARDING THE LEWD ACT ON A MINOR THE DEFENDANT
20 IS COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS
21 TERMINATE TERM OF 15 YEARS CONCURRENT WITH 09-302, THANK
22 YOU VERY MUCH.

23 MS. LIVELY: THANK YOU, YOUR HONOR.

24 MR. BARR: THANK YOU, YOUR HONOR.

25 THE COURT: AS NECESSARY THE COURT IS PLACING

1 THE DEFENDANT ON THE SEX OFFENDER REGISTRY AND THE CHILD
2 ABUSE REGISTRY, THANK YOU VERY MUCH.

3 MS. LIVELY: THANK YOU.

4 (WHEREUPON, COURT'S EXHIBIT NUMBER 1 MARKED.)

5 END OF REQUESTED TRANSCRIPT- - - -
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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED BRENDA R. BABB, OFFICIAL COURT REPORTER THE SOUTH CAROLINA COURT ADMINISTRATION, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR HORRY CONWAY, SOUTH CAROLINA.

I DO FURTHER CERTIFY THAT I AM NEITHER KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

September 30, 2010

Brenda R. Babb

BRENDA R. BABB, CVR

OFFICIAL REPORTER

DOCKET NO. 2009-GS22-01199 ✓

The State of South Carolina

County of Georgetown

Candice Lively 08G00923

COURT OF GENERAL SESSIONS

NOVEMBER, 2009 TERM

THE STATE

VS.

STEVEN LEE HEWITT

1737 St. Delight Road
Georgetown, SC 29440

DOB: [REDACTED]

SSN: [REDACTED] W/M

Vendell Barr

ATTORNEY: ~~Fox, J. Eric~~

Indictment for

LEWD ACT ON A MINOR

J. Gregory Hembree, Solicitor

WITNESSES

Georgetown County Sheriff's Office

REST WARRANT NUMBER

DIRECT INDICTMENT

CDR: 2468 §16-15-0140

DOI: September 1, 2008

ACTION OF GRAND JURY

True

Foreperson of Grand Jury Jennifer Brown
Date: 11-4-09

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

At a Court of General Sessions, convened on November 4, 2009, the Grand Jurors of Georgetown County present upon their oath:

LEWD ACT ON A MINOR CHILD

CDR: 2468 16-15-0140

That Steven Lee Hewitt, date of birth; 5/4/71, did in Georgetown County on or about August 1, 2001 through on or about November 30, 2001, willfully and lewdly commit a lewd or lascivious act upon or with the body of a child, less than sixteen (16) years of age, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of said defendant or of the victim, in violation of Section 16-15-0140, S. C. 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.


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

290

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Georgetown

VS.

Steven Lee Hewitt

AKA:

Race: W

DOB:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Lewd Act on a Minor <16

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS2201199

A/W#: 2009GS2201199

Date of Offense: 9/1/2008

S.C. Code § : 16-15-0140

CDR Code #: 2468

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 2468

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Lively, Candice

SC Bar# 12123

Defendant

Attorney for Defendant

SC Bar# 545

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 ~~days~~ years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

§ 47.12 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

§ 90.7 (SCCA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90Clerk of Court/ Deputy Clerk Keith A. MossCourt Reporter: Brenda Babb

SCCA/217 (11/2009)

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ 10.00 beginning 1 month release

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge Lee H. OrrJudge Code: 129Sentence Date: 5/26/10

DOCKET NO. 2009GS2200302 ✓

The State of South Carolina

County of Georgetown

T. Andrew 08G00923

COURT OF GENERAL SESSIONS

MARCH, 2009 TERM

THE STATE

vs.

STEVEN LEE HEWITT

1737 St. Delight Road
Georgetown, SC 29440

DOB: [REDACTED]

SSN: [REDACTED] W/ M

Verdell Barr

ATTORNEY: ~~Fox, J. Eric~~

Indictment for

CSC WITH A MINOR 1ST

J. Gregory Hembree, Solicitor

WITNESSES

Georgetown County Sheriff's Office

ARREST WARRANT NUMBER

J512561

CDR: 0385 §16-03-0655(A)(1)

DOI: September 1, 2008

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury *J. Gregory Hembree*
Date: *3/4/09*

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

INDICTMENT

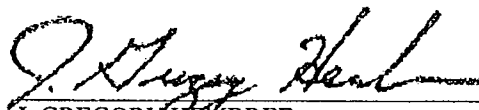
At a Court of General Sessions, convened on March 4, 2009, the Grand Jurors of Georgetown County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

CDR: 0385 16-03-0655(A)(1)

That Steven Lee Hewitt did in Georgetown County, State of South Carolina, on or about August 1, 2001 and November 30, 2001, 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 is less than eleven (11) years of age, to wit: inserting his penis into the victim's rectum, in violation of Section 16-3-655(A)(1), [formerly Section 16-3-655(1)], S. C. 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.


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Georgetown
 STATE VS.
Steven Lee Hewitt

INDICTMENT/CASE#: 2009GS2200302A/W#: J512561Date of Offense: 9/1/2008S.C. Code § : 16-03-0655(A)(1)CDR Code #: 0385

AKA:

Race: W

DOB: [REDACTED]

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Criminal Sexual Conduct w/ Minor 1st Degree☒ CONVICTED OF or ☐ PLEADS

SENTENCE SHEET

in violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☒ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Lively, Candice12123 St 7 North
SC Bar#

Defendant

545
Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 47.12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ 90.7 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (11/2009)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 100.00 beginning mo. after release

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge

Judge Code:

Sentence Date:

SCANNED

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF GeorgetownSteven Lee Hewitt Sr. 303003

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

2012 CP 22 00864

IN THE COURT OF COMMON PLEAS

ART 1, Sect 9 SC CONST,
 RIGHT TO A Speedy Remedy
 IS INVOKED by Applicant

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 Lieber Correctional Institute
2. Name and location of Court which imposed sentence General Sessions/Georgetown
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a)	<u>09-GS-22-01199</u>	CLERK OF COURT L. MAY WHITE GEORGETOWN COUNTY, S.C.
(b)	<u>09-GS-22-0302</u>	
(c)	_____	
5. The date upon which sentence was imposed and the terms of the sentence:

(a)	<u>May 26, 2010 / 25 yrs 85% CSC w/minor 1st</u>
(b)	<u>May 26, 2010 / 15 yrs 85% Lewd act upon minor</u>

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty guilty was found
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Court of Appeals of South Carolina
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction was affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Filed February 29, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. STATE V. HEWITT, 2012 UP 217 (AFFIRMED) 2/29/12.
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel
 (b) Prosecutorial misconduct
 (c) ~~Prosecutorial misconduct~~

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) See attached
 (b) See attached
 (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 i. N/A
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. N/A
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. N/A
 ii. _____
 iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. W/R _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. W/R _____
- 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?
- W/R _____
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. W/R _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. W/R _____
- 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) W/R _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? NO
- (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? NO

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. Eric Fox

ii. Vercell Barr

iii. LaNelle Cantey DuRant

(b) the proceedings at which each such attorney represented you:

i. Bond &

ii. Trial

iii. Appellate defender

19. State clearly the relief you seek in filing this application:

A new trial

20. Are you now under sentence from any other court that you have not challenged?

No

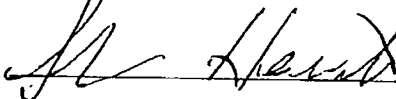
STATE OF SOUTH CAROLINA

County of DORCHESTER

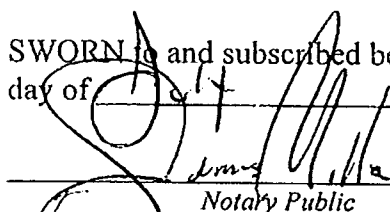
VERIFICATION

2012 CP 22 00864

I, _____, 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.



SWORN to and subscribed before me this 27th
day of July, 2012.

 (L.S.)
Notary Public

My Commission Expires: Oct 12, 2016

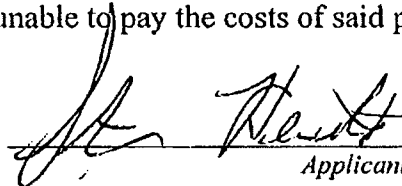
FILED
GEORGETOWN COUNTY, S.C.
2012 AUG 14 AM 11:41
ALMA Y. WHITE
CLERK OF COURT

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

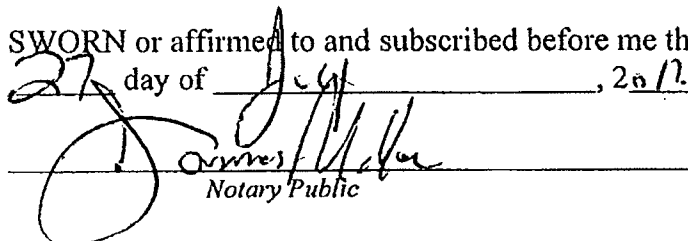
2012 CP 22 00864

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
27 day of July, 2012.


Notary Public

My Commission Expires: Oct 12, 2016

FILED
GEORGETOWN COUNTY, S.C.
2012 AUG 16 AM 11:43
ALMA Y. WHITE
CLERK OF COURT

FILED
GEORGETOWN COUNTY, S.C. 2012 CP

STATEMENT OF FACTS

2012 AUG 14 AM 11:44

ALMA Y. WHITE
CLERK OF COURT

THE DEFENDANT STEVEN LEE HEWITT SR. IS
CHARGED WITH CRIMINAL SEXUAL CONDUCT
WITH A MINOR AND LEWD ACT UPON A
MINOR, which alleged occurred between
IN THE FALL OF 2001^① THAT

(TRANS (pg 5)) STEVEN LEE HEWITT DID IN
Georgetown County ON OR ABOUT OCTOBER
2001 AND NOVEMBER 31, COMMIT CRIME &
CRIMINAL SEXUAL CONDUCT WITH A MINOR
DeeDee, (LINE 20 - 23)

[AND] THAT STEVEN LEE HEWITT DID IN
Georgetown County ON OR ABOUT AUGUST
ON OR ABOUT NOVEMBER 30, 2001 COMMIT C
OF LEWD ACT ON A MINOR CHILD. (pg 5
(pg 6 LINE 2))

THESE ALLEGATIONS CSC AND LEWD ACT
WERE BASED SOLELY UPON THE UNCORROBORATED
TESTIMONY OF DEFENDANT SON STEVEN LEE
HEWITT JR. WHO MADE INITIAL POLICE
REPORT ON AUGUST 8, 2008 TRANS. pg
LINE 8 - 18.

AND THE JURY CONVICTED DEFENDANT
ON MAY 26, 2010. HE WAS SENTENCED TO

① SEASON OF FALL STARTS ON SEPTEMBER 22

TWENTY FIVE YEARS (CSC) AND ~~IS~~ FIFTEEN YEARS (LEWD ACT). HIS COUNSEL ~~CHARLES~~ VERDELL BARR (ESQ) WHO FILED NOTICE OF APPEAL. LANELE C. DURANT (ESQ) OF INDIGENT DEFENSE BRIEFED THE ISSUE.

" DID TRIAL COURT ERRL IN NOT GRANTING A MISTRIAL WHEN THE SOLICITOR ASKED APPELLANT ON CROSS EXAMINATION IF HE HAD EVER THREATENED ANYONE IN REGARDS TO WHEN TESTIFYING IN HIS CASE. (2)

SC COURT OF APPEALS AFFIRMED THE CONVICTION, STATE V. STEVEN HEWITT UP OP. # 2012-UP-117 (2/29/12)

THIS POST CONVICTION RELIEF APPLICATION FOLLOWS, PUR 17-27-10 (ET. ESQ) (PROSE)

② SC COURT OF APPEALS HELD THE ISSUE WAS NOT PRESERVED FOR REVIEW

ISSUES

④ ①

TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN HE INTRODUCED ALLEGATIONS THAT DEFENDANT COMMITTED A SIMILAR ACT OF C.R. SEXUAL CONDUCT ON HIS FOUR YEAR OLD DAUGHTER, THAT WAS INHERENTLY PREJUDICIAL TO DEFENDANT AND DENIED HIM A RIGHT TO A FAIR TRIAL.

[@ PG. 186 - L. 15 - 25]

④ *

② TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN HE FAILED TO OBJECT TO THE SOLICITOR BEING, TO TESTIFY, WITHOUT CROSS EXAMINATION

" ISN'T IT TRUE THE REASON WHY CHARGES WERE DISMISSED IS B. YOUR DAUGHTER WAS TOO YOUNG TO TESTIFY " (TRANS PG 213 L. 10 - 1

* IN RE TO ALLEGATIONS LISTED IN

① ABOVE, THAT DEFENDANT HAD HIS FOUR YEAR OLD DAUGHTER (PG 21 PG 13 - L. 12) THIS WAS INHERENTLY AND DENIED DEFENDANT'S RIGHT TO A

④ *

③ TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN HE FAILED TO OBJECT TO THE TRIAL COUNSEL'S

OF THE TRIAL COURT'S CURATIVE INSTRUCTION
IN REGARDS TO SOLICITING UNFOUNDED
ACCUSATION THAT DEFENDANT HAD
THREATENED A WITNESS IN THIS CASE.
(TR. PG 214, L. 13-20)

HAVE YOU EVER THREATENED ANYBODY
IN REGARDS TO COMING TO COURT AND
TESTIFYING?

NO, MA'AM.

HAVE YOU EVER THREATENED ANYBODY
IN REGARDS TO COME IN AND TESTIFY
IN THIS CASE HERE TODAY.

DEFENSE COUNSEL OBJECTED SAYING IT HAD
BEEN ASKED AND ANSWERED (PG 214 L. 21)
AND ASKED FOR A MISTRIAL (PG 218, L. 12-15)
STATING ERROR COULD NOT BE CURED.
(TR. 222)

THE COURT THEN GAVE A CURATIVE
INSTRUCTION.

TRIAL COUNSEL DID NOT ENTER A
CONTEMPORANEOUS OBJECTION AND RENEW
REQUEST FOR MISTRIAL AND THUS ERROR
WAS NOT PRESERVED FOR APPELLATE REVIEW

SEE ATTACHED ORDER OF SC COURT
OF APPEALS EXHIBIT #1) APPELLANTS BRIEF

COUNSEL'S FAILURE TO OBJECT AND REVIEW
MOTIONS FOR MISTRIAL DEPRIVED APPELLATE
OF DIRECT REVIEW AND DEPRIVED
DEFENDANT OF A FAIR TRIAL.

ISSUE OF DEFENDANT THREATENING WITNESSES
WAS NOT CURED BY INSTRUCTIONS AND
COUNSEL SHOULD HAVE REVIEWED MOTION
FOR A MISTRIAL ⊕

IT MUST BE NOTED THE EVIDENCE IN
THIS CASE WAS TOTALLY UNCORROBORATED
AND IT WAS VICTIM WORD AGAINST THAT
OF HIS FATHER THEREFORE THE ERROR
WAS NOT HARMLESS BUT HAD A
SUBSTANTIAL AND INJURIOUS EFFECT ON
THE VERDICT.

- ④ TRIAL COUNSEL PROVIDED INEFFECTIVE
ASSISTANCE OF COUNSEL WHEN HE
FAILED TO OBJECT TO THE "FATAL VARIANCE"
IN THE ALLEGATIONS AS TO TIME OF
CSC BEING OCTOBER 1, 2001 ~~AND~~ ^{AND} THE
NOVEMBER 30, 2001 AND THE PROOF
INTRODUCED THAT CSC OCCURRED BETWEEN
AUGUST 1, 2001 AND SEPTEMBER 11, 2001

The FATAL VARIANCE between INDICTMENT AND PROOF DENIED DEFENDANT OPPORTUNITY TO PREPARE HIS ALIBI DEFENSE AS HE COULD HAVE SHOWN HE WAS ELSEWHERE (IN JAIL) @ TIME OF ALLEGATION BUT TIME FRAME WAS ENLARGED OUTSIDE OF PARAMETERS LISTED IN INDICTMENT. THIS DENIED DEFENDANT DUE PROCESS RIGHT TO "NOTICE" OF TIME OF OFFENSE. (TRANS. PG 5, L. 23 - 25)

⑤ TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN HE FAILED TO REQUEST A JURY INSTRUCTION ON ALIBI WHEN DEFENDANT TESTIFIED @ PG 210 L. 23 - HE LIVED IN MYRTLEBEACH AT THAT TIME

⑥ TRIAL COUNSEL FAILED TO CONDUCT A INVESTIGATION IN THE TWO MONTHS HE WAS DEFENDANTS COUNSEL AND THUS HE FAILED TO ~~BE~~ DISCOVER

⑦ THAT DAVID REDDICK AND JACK REDDICK WHO LIVED IN HOUSE WHERE VICTIM TESTIFIED HE SPENT THE NIGHT WHEN HE WAS "Molested" THAT VICTIM HAD

NEVER SPENT THE NIGHT AT THAT HOUSE AT ALL, NEVER. THIS WOULD HAVE DIRECTLY CONTRADICTED THE VICTIM TRIAL TESTIMONY.

② SUBSTANTIATED DEFENDANT'S ALIBI THAT HE WAS IN MYTLE BEACH FROM MAY 2001 TO THE DAY HE WAS ARRESTED SEPT 11, 2001 AND HAD NO OPPORTUNITY TO COMMIT CRIME PERIOD AND HE WAS NOT AT GRANDMOTHER HOUSE BETWEEN THAT TIME. ④

③

CONCLUSION

BASED ON CUMULATIVE EFFECT OF TRIAL COUNSEL'S ERRORS IN FAILING TO OBJECT, FAILURE TO MOVE FOR MISTRIAL AND FAILURE TO INVESTIGATE DEFENDANT WAS DENIED A FAIR TRIAL AND PREJUDICED TO EXTENT THERE IS A REASONABLE PROBABILITY RESULT OF PROCEEDING WOULD HAVE BEEN DIFFERENT. STICKLAND v. WASHINGTON
105 SCT 2052 (1984)

STEVEN HEWITT

① THIS IS CORROBORATED BY BENEFIT WARRANTS
IN ESSENCE DEFENDANT ON THE RUN

Work

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS

12-CP-22-864

Steven Lee Hewitt, Sr., 303283)

Applicant,)

v.)

RETURN

State of South Carolina,)

Respondent.)

Respondent, making its Return to the application for post conviction relief (PCR) filed August 14, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to a conviction from Georgetown County. In November 2009, the Applicant was indicted for lewd act on a minor (2009-GS-22-1199) and criminal sexual conduct first (0302). Eric Fox, Esquire, and Verdell Barr, Esquire, represented the Applicant. On May 26, 2010, the Applicant was tried and convicted before the Honorable Steven H. John and a jury. Judge John imposed a sentence of twenty-five years imprisonment on the criminal sexual conduct charge, and fifteen years on the lewd act charge, to be served concurrently. Applicant appealed and the South Carolina Court of Appeals affirmed his conviction and sentence and the case was remitted to the lower court by letter dated March 16, 2012.

Attached herewith and incorporated herein are the records of the Georgetown County Clerk of Court regarding the subject conviction. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant alleges that he is being held in custody unlawfully because of ineffective assistance of trial counsel. Applicant seeks a new trial as a result of this proceeding.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second,

counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, 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.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

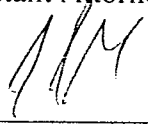
Respectfully submitted,

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11/19, 2012.

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS

2012-CP-22-864

STEVEN LEE HEWITT, ST., #303283)

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** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Paul Archer, Esquire
233 Muirfield Dr.
Pawleys Island, SC 29585

DATED this 19TH day of November, 2012.


 Norma Bigbee, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
2 COUNTY OF GEORGETOWN) CASE NO: 2012-CP-22-0864
3 PCR HEARING

4 -----
5 B E F O R E: The Honorable George C. James
6 March 21, 2014
7 -----

8 STEVEN HEWITT,
9 Claimant/Applicant,
10 vs.

 ORIGINAL

11 STATE OF SOUTH CAROLINA,
12 Respondent.
13 -----

14 APPEARANCES:

15 Tristan Shaffer, Esq.
16 For the Claimant/Applicant.

17 Joshua L. Thomas, Esq.
18 For the Respondent.
19 (Office of the Attorney General)

20
21
22 Court Reporter:
23 Natalie Dahl, RPR
24
25

I N D E X

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EXHIBITS

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MARKED

1

Poem

15

THE COURT AND ATTORNEYS

P R O C E E D I N G S

1
2 MR. THOMAS: Steven Hewitt versus the State of
3 South Carolina. Mr. Hewitt was indicted in 2009 for
4 lewd act and CSC with a minor first degree. He was
5 represented on that charge by Verdell Barr. He went
6 to trial on May 24 through 26th, 2010 and was
7 convicted as indicted. The Honorable Steven H. John
8 gave him 15 years on the lewd act and 25 years on the
9 CSC with a minor, concurrently.

10 An appeal was filed by LaNell DuRant from the
11 Office of Appellant Defense. The Court of Appeals
12 affirmed the conviction in Unpublished Opinion
13 2012-UP-117. Mr. Hewitt filed his PCR in August of
14 2012 alleging ineffective assistance of counsel and
15 prosecutorial misconduct. He is represented by
16 Tristan Shaffer, and the State is ready to proceed.

17 I would ask that at the end of the hearing we
18 hold the record open. Mr. Barr has passed away and we
19 are in the process of getting a copy of his file.

20 MR. SHAFFER: We have no objection to that.

21 THE COURT: Mr. Shaffer, anything you want to put
22 on the record before you call your first witness?

23 MR. SHAFFER: Yes, Your Honor. I actually tried
24 to sort of do a memorandum on this, and I did write
25 it. It is not very put together, so I'm not going to

THE COURT AND ATTORNEYS

1 submit it to the Court.

2 This case is -- Your Honor, to be a hundred
3 percent honest, there is a whole bunch of wrong with
4 it. Your Honor, briefly, some of the main stuff we'll
5 hit on is the fact that trial counsel for some reason
6 decided to introduce -- my client was alleged to have
7 sexually assaulted his son, that is what he was there
8 for. This was a delayed disclosure case. This came
9 about six years after the incident allegedly occurred,
10 okay.

11 Mr. Barr, first of all, one of the issues is that
12 he thought that it -- I'm not sure what he was
13 thinking, but for some reason he decided to introduce
14 the fact that there were previous allegations that my
15 client was previously charged with sexually assaulting
16 his daughter. I certainly don't think that is a valid
17 trial strategy, but we'll get to that.

18 THE COURT: Was the motivation to prove that
19 prior allegations were withdrawn?

20 MR. SHAFFER: We'll see what the State has to
21 come up with on that. I'm not sure what they are
22 going to argue with it. I don't want to speculate
23 what they'll argue. Basically, this was introduced
24 through a witness. Then, two witnesses later, toward
25 the end of my client's testimony at the trial, Judge

THE COURT AND ATTORNEYS

1 John actually sua sponte took up a motion for a
2 mistrial. He ordered that the Court leave -- he
3 basically said, you know, I've been waiting for
4 someone to do their job, none of this should have come
5 in, I'm going to take up a motion for mistrial.

6 THE COURT: He raised it himself?

7 MR. SHAFFER: Yes. He went in the back, thought
8 about it and came back out and said, well, I can't
9 grant a mistrial because you are the one that brought
10 it up and the Defendant can't bring up his own
11 mistrial. He gave the curative instruction. After
12 the curative instruction, no objection was made to
13 it --

14 THE COURT: Curative instruction to disregard the
15 evidence about the daughter?

16 MR. SHAFFER: Yes, Your Honor. It went just from
17 the allegation of the daughter to also some
18 allegations of witness intimidation as well.

19 THE COURT: That he introduced?

20 MR. SHAFFER: That came real close to being
21 introduced, I'll say that. It was certainly touched
22 on. Certainly the reason for why the charge didn't go
23 forward, the Solicitor directly asked, Is it because
24 she was too young to testify, because she was three,
25 four at the time. So that is one issue we have --

THE COURT AND ATTORNEYS

1 actually two issues. One is the ineffective
2 assistance of counsel for bringing it up originally,
3 and the second is for ineffective assistance of
4 counsel for failure to object to the curative
5 instructions being insufficient. The Court of Appeals
6 found that based off the fact he did not object to the
7 curative instruction, they weren't going to look --
8 they said, essentially, any issue of a mistrial would
9 be waived.

10 THE COURT: What was wrong with the curative
11 instruction in and of itself?

12 MR. SHAFFER: I don't think you can ever unring
13 that bell, Your Honor.

14 THE COURT: In other words, he should have boot
15 strapped a mistrial motion on the curative
16 instruction?

17 MR. SHAFFER: Yes, sir.

18 THE COURT: But the curative instruction itself
19 was okay?

20 MR. SHAFFER: Your Honor, I wouldn't say it was
21 okay. I mean, I think that there is nothing
22 specifically wrong with the language.

23 THE COURT: That is what I'm talking about.

24 MR. SHAFFER: Yes, Your Honor. I just don't see
25 how you could ever disregard that. The other problem

THE COURT AND ATTORNEYS

1 is that essentially my client finished testifying at
2 the point the curative instruction had been given, so
3 he was sitting up there for most of his testimony at
4 trial while everyone in the jury is saying he's a
5 repeat offender -- or thinking that. So I certainly
6 think that there is a -- the timing as well, being so
7 far into it, I mean, essentially the defense's case
8 had been presented in the time between it came up and
9 the time between the time of the curative instruction.
10 I think that definitely would have some bearing on the
11 fact that essentially it couldn't unring the bell,
12 Your Honor.

13 Those are two issues. There is another issue
14 regarding Mr. Barr. He didn't object -- of course,
15 this is a sexual assault case with a child so they had
16 an expert and counselor come in. They had the school
17 counselor -- actually, she was assigned to schools.
18 She was from Waccamaw Mental Health, but she was
19 assigned to schools, and she came in and vouched for
20 his credibility.

21 Then, we have an expert who was qualified as a
22 sex abuse expert, which I certainly don't think that
23 is a valid field of expertise, but --

24 THE COURT: Was this before or after Kromah?

25 MR. SHAFFER: Before Kromah, but, Your Honor, it

THE COURT AND ATTORNEYS

1 is -- yeah, it is before Kromah as for the
2 qualification, Your Honor. I think that this issue
3 has been going around actually since the late '80s. I
4 think there is a case called Dawkins, Dempsey -- there
5 is two Dawkins cases, a PCR Dawkins and a right to
6 appeal Dawkins. It is the same guy. One is like 1988
7 appeal, the other is 2001. He ended up getting
8 granted PCR in.

9 So I certainly think the issue was there
10 beforehand, but he initially elicited from one of the
11 two, the counselor --

12 THE COURT: Mr. Barr being "he"?

13 MR. SHAFFER: Yes. Mr. Barr decided to ask her
14 if she thought he was telling the truth, the victim.

15 THE COURT: Asked one of the two people?

16 MR. SHAFFER: Yes, Your Honor, the counselor.
17 Related to the later counselor, the expert in sex
18 abuse, it was a little more discrete, but there was
19 extensive testimony involving his diagnosis with PTSD
20 and why it is consistent with a child sex abuse case,
21 because of the PTSD case, which I believe Dempsey
22 directly quotes to that. I can hand that to the
23 Court; I actually have a copy of it. I mixed up
24 everything I had, Your Honor, please forgive me.

25 THE COURT: That's okay.

THE COURT AND ATTORNEYS

1 MR. SHAFFER: I'll hand up the two Dawkins cases,
2 the '88 recognizes -- '89 and the 2001, Your Honor.
3 The '89 case recognizes, although this is in a little
4 bit different kind of context. What it was was
5 essentially a child sex abuse case. They brought in a
6 psychologist to question him about the, you know --
7 about his symptoms, which is consistent with what
8 happened here. In that case, the judge didn't allow
9 it to go forward, the trial court didn't. They moved
10 for a mistrial. The Court of Appeals said, yes, it
11 was error for the solicitor to bring this stuff up and
12 to try to -- improve the victim's credibility based
13 off of his symptoms, but that it wasn't abusive
14 discretion because the curative instruction adequately
15 covered the issue, and it was not abusive discretion
16 not to grant mistrial. So it is a little bit
17 different procedural posture.

18 Then in 2001 he was granted relief based on the
19 fact that they were potentially vouching between all
20 of the witnesses and the victim.

21 THE COURT: Why did it take 12 years between
22 opinions in Dawkins?

23 MR. SHAFFER: Your Honor, sometimes it takes
24 awhile. I'm sorry, I don't have a better answer than
25 that. That was one of the other issues.

THE COURT AND ATTORNEYS

1 THE COURT: So the first one is the introduction
2 that he had been accused of molesting a daughter,
3 second one is failure to object to a curative charge,
4 which is really not a separate ground, just part of
5 that first one, and the third one was asking one of
6 those experts if that he or she thought the child was
7 telling the truth?

8 MR. SHAFFER: Well, asking one of the experts
9 that and then allowing the evidence from the other
10 expert, which essentially did the same thing. Because
11 the second expert that came up actually got qualified
12 as an expert, and then -- which in and of itself is
13 probably a grounds for a PCR because there is really
14 no reason for them to qualify someone in that
15 situation as an expert in it.

16 THE COURT: Qualify as an expert in what?

17 MR. SHAFFER: Sex abuse trauma.

18 THE COURT: Well, that hadn't always been the
19 law, has it?

20 MR. SHAFFER: Your Honor, I think that --

21 THE COURT: They call it "rape trauma."

22 MR. SHAFFER: Yes, Your Honor.

23 THE COURT: There are rape trauma experts that
24 can testify to what the typical signs of a victim are.
25 That is proper, isn't it?

THE COURT AND ATTORNEYS

1 MR. SHAFFER: I think that might -- I think that
2 currently might be proper to do it. I don't think it
3 is proper when you have the person talk about the
4 specific symptoms of that victim, Your Honor, because
5 basically she would say, well, he has post-traumatic
6 stress syndrome, you know.

7 THE COURT: That is kind of what Kromah gets
8 into.

9 MR. SHAFFER: Yes, Your Honor. And I think that
10 was the law prior to this case going to trial.

11 THE COURT: So you say it was wrong to have them
12 qualified or allow them to be qualified and testify
13 about that particular victim's symptoms?

14 MR. SHAFFER: That's correct.

15 THE COURT: All right.

16 MR. SHAFFER: Therefore, one is -- there's
17 another one regarding -- Mr. Hewitt's son at this time
18 had two pending charges whenever this stuff came out,
19 a charge for assault and battery of a high and
20 aggravated nature, and then a marijuana distribution
21 charge. He had those around the same time that this
22 came out, Your Honor. The Court did not allow Mr.
23 Barr to get into it, but the reason that they did not
24 allow Mr. Barr to get into it, and Mr. Barr never
25 actually requested to get into it, the State moved to

THE COURT AND ATTORNEYS

1 prevent him from being able to talk about it, but the
2 Court ruled under 609 that it was improper to present
3 prior charges because they weren't convictions. The
4 Court misapplied the rule or -- not misapplied 609,
5 that was a correct ruling on 609, but the problem is
6 that he didn't look at why it should have been
7 relevant. It was relevant to show motivation to lie,
8 Your Honor. My client's contention has been that,
9 essentially, his son lied to get out of trouble.

10 THE COURT: So the charges were pending in the
11 same county, or another county?

12 MR. SHAFFER: Your Honor, I think they were
13 pending wherever it came out, but by the time he went
14 to trial, I think he pled to a lesser marijuana
15 charge, I believe simple possession of marijuana. So
16 they were pending whenever this came out, but by the
17 time it went to trial, it had been resolved.

18 THE COURT: But he's saying it was relevant to
19 show motivation to say what happened in the first
20 place?

21 MR. SHAFFER: Yes, Your Honor. And the first
22 alleged disclosure -- there were several disclosures,
23 at least two. The first alleged disclosure happened
24 right after he had gotten in trouble with the people
25 he lived with. So I think that he got in trouble

THE COURT AND ATTORNEYS

1 because he was acting out and then he made the
2 disclosure. Our contention is that, essentially, he
3 very well could have made a second disclosure whenever
4 he got in trouble for the criminal charges as well. I
5 believe it was ineffective for failing to essentially
6 make the right argument having admitted.

7 THE COURT: How old was the victim when the
8 offense allegedly occurred?

9 MR. SHAFFER: Six.

10 THE COURT: How old was the victim when he
11 disclosed it?

12 MR. SHAFFER: Thirteen.

13 THE COURT: Seven years later?

14 MR. SHAFFER: Yes.

15 THE COURT: So as a juvenile, he had an ABHAN and
16 a distribution charge against him, but by the time of
17 the trial, which was some period of time later, those
18 charges were resolved?

19 MR. SHAFFER: That's correct.

20 THE COURT: Mr. Barr, what should he have done?

21 MR. SHAFFER: He should have argued under 404(b).
22 It also would have been proper under, I guess, a
23 biased theory, motivation to lie theory.

24 THE COURT: All right. Was there any proffer
25 made or a request to ask the witness or the victim

THE COURT AND ATTORNEYS

1 those questions in a proffer?

2 MR. SHAFFER: No, Your Honor. There is the
3 improper closing argument, which I'll get into more
4 with Mr. Hewitt. There is quite a few things that I
5 believe were improper about the closing argument.
6 Court's indulgence.

7 THE COURT: Are numbers one through five
8 something that will be resolved by me by going through
9 the transcript and listening to arguments, or is there
10 witnesses?

11 MR. SHAFFER: There will be witnesses as well.

12 THE COURT: Okay.

13 MR. SHAFFER: Actually, there is another issue
14 that I mentioned to Josh earlier this week that it
15 actually came up at the last hearing prior to Mr. Barr
16 passing away.

17 THE COURT: So you had a hearing in this case
18 before?

19 MR. SHAFFER: We didn't actually have a hearing,
20 we had it scheduled; it got continued. It was in
21 August or September of last year.

22 THE COURT: Okay.

23 MR. SHAFFER: Mr. Hewitt's sister testified, and
24 she's here today. She also had some -- she was given
25 some advice by Mr. Barr, apparently, to limit some of

THE COURT AND ATTORNEYS

1 the things she talked about. Basically, the victim
2 ended up recanting later, and she was given the advice
3 not to bring it up at trial, that it would be improper
4 to bring it up at trial. I think he was ineffective
5 for that.

6 THE COURT: Okay.

7 MR. SHAFFER: He failed to -- there is State's
8 Exhibit -- I believe State's Exhibit 5, Your Honor, at
9 the trial, which the school got involved, to give you
10 background. The school got involved when -- the
11 school got involved whenever the alleged victim,
12 Mr. Hewitt's son, drew this picture and wrote this
13 poem that was introduced at trial. It was State's
14 Exhibit 6, sorry.

15 THE COURT: Not 5?

16 MR. SHAFFER: That's correct. May I pass it up?

17 THE COURT: Yes, sir.

18 MR. SHAFFER: Do you have any objection?

19 MR. THOMAS: I can stipulate to it.

20 (Court's Exhibit 1 marked.)

21 THE COURT: What was wrong with the poem?

22 MR. SHAFFER: I don't believe that the poem
23 should have been admitted. He didn't make a proper
24 objection to it under 401 for relevance, 403 or 802,
25 Your Honor. Technically, the poem itself is hearsay.

THE COURT AND ATTORNEYS

1 I think a picture of a boy crying has no relevance,
2 and I think it is highly prejudicial as well. I don't
3 see where either of those are relevant.

4 THE COURT: How did they come in? What witness?

5 MR. SHAFFER: I believe through the son. They
6 tried to introduce them originally through the school
7 counselor.

8 MR. THOMAS: From my recollection, they tried to
9 introduce them through the school official and there
10 was an objection, and they finally introduced them
11 through the victim.

12 THE COURT: So that would avoid the hearsay part?

13 MR. THOMAS: Absolutely.

14 MR. SHAFFER: Regarding -- well, I think that
15 then through the victim it would have been a prior
16 inconsistent statement, which is inappropriate. I
17 don't think that there was really any motivation to
18 why or happening between that time and the time of the
19 trial, Your Honor.

20 THE COURT: Okay.

21 MR. SHAFFER: I apologize. This is a little
22 complicated.

23 (A brief pause in the proceedings.)

24 MR. SHAFFER: I apologize, I'm just making sure I
25 covered everything. I believe they got into some

THE COURT AND ATTORNEYS

1 hearsay statements outside of time and place regarding
2 the expert who testified -- there was a long
3 discussion about whether or not the client was in jail
4 and why the two counselors did not report him to the
5 police immediately. There was a long discussion
6 whether or not he was in jail, so basically they
7 identified him.

8 THE COURT: Who was in jail?

9 MR. SHAFFER: Whether or not Mr. Hewitt was in
10 jail -- the counselors originally thought that
11 Mr. Hewitt had already been prosecuted for this
12 wherever they found out about the disclosure. Based
13 off of that, they did not inform the authorities, and
14 there is long discussions with both counselors about
15 this. Basically, by doing that, they more or less
16 implicated Mr. Hewitt by essentially pointing the
17 finger at him. There is certainly some testimony that
18 came from hearsay outside of place and time regarding
19 the two conversations.

20 THE COURT: They complicated him by referencing
21 the fact that he was in jail, so they didn't report
22 right away?

23 MR. SHAFFER: Yes.

24 THE COURT: What was he in jail for?

25 MR. SHAFFER: He wasn't in jail. They thought he

THE COURT AND ATTORNEYS

1 was in jail. Basically, it went something like this
2 in both of the conversations: Well, we didn't report
3 him to the police right away, and the reason we didn't
4 report him is that we thought Mr. Hewitt was already
5 in jail, therefore, the victim was safe and there was
6 no reason to report him to the police. So,
7 essentially, they think or corroborated the statements
8 involving who the perpetrator was -- or who the
9 perpetrator was by doing that.

10 (A brief pause in the proceedings.)

11 MR. SHAFFER: Court's indulgence.

12 (Mr. Shaffer and Mr. Hewitt confer.)

13 MR. SHAFFER: In addition to the fact that I
14 think the prior charges would have been relevant, you
15 know, directly relevant, Your Honor, to show
16 motivation to lie, there was also some indication that
17 they would have been relevant to impeach, basically
18 they opened the door to it. They questioned him about
19 his mental state pretty extensively. They questioned
20 him about -- he even said at one point, yeah, I tried
21 to smoke pot, but then I didn't do it anymore after
22 that. So there is some -- it also would have gone to
23 impeachment value as well.

24 MR. THOMAS: What page is that?

25 MR. SHAFFER: 124, Lines 7 through 10. He

STEVEN HEWITT - DIRECT EXAMINATION

1 actually opened the door several times into it. I can
2 get into all of the times that he opened the door, if
3 you would like.

4 THE COURT: I'll need it eventually, but I'll
5 leave that up to you.

6 MR. SHAFFER: If you would like, I can get it in
7 through him.

8 THE COURT: Okay.

9 MR. SHAFFER: Okay. I believe that is the main
10 issues that we're going to talk about, Your Honor.

11 THE COURT: Call your first witness.

12 MR. SHAFFER: Applicant calls Steven Hewitt.

13 (STEVEN HEWITT, having been duly sworn,
14 testified as follows:)

15 MR. SHAFFER: Is there any way he can bring his
16 stuff up there with him?

17 THE COURT: Yes.

18 THE CLERK: State and spell your last name.

19 THE WITNESS: Hewitt with two T's.

20 MR. MYERS: Yes, sir.

21 THE COURT: H-E-W-I-T-T?

22 MR. MYERS: Yes, sir.

23 DIRECT-EXAMINATION

24 BY MR. SHAFFER:

25 Q All right. Mr. Hewitt, you are currently --

STEVEN HEWITT - DIRECT EXAMINATION

1 where are you currently housed at?

2 A Leiber CI.

3 Q How long -- what is your sentence?

4 A How long is my sentence? Twenty-five years.

5 Q All right. This is only off of this charge,
6 correct?

7 A Yes.

8 Q Now, you were represented by Mr. Barr?

9 A Yes, sir.

10 Q And when did you first -- tell me this. When did
11 you first get notification that your son made these
12 allegations against you?

13 A It was about September. It was right after the
14 time my sister said that Kim stopped by and said he got
15 in trouble and might be going away, so maybe a month
16 later. I think it was in August when she was selling
17 camouflage and was told that.

18 THE COURT: Who is Kim?

19 MR. MYERS: My ex-wife.

20 Q (MR. SHAFFER) How did you first learn about the
21 charges?

22 A I was just told I had a retainer on me for CSC.
23 I was not notified who it was for two months, so I had
24 to just stress the issue. I had no clue who it would
25 have been.

STEVEN HEWITT - DIRECT EXAMINATION

1 Q Who was the first attorney on this?

2 A Eric Fox.

3 Q And how long did he represent you?

4 A For about a year-and-a-half.

5 Q And how many times did you see him?

6 A Once.

7 Q Were you out on bond?

8 A I was incarcerated.

9 Q And you were in Georgetown?

10 A Georgetown Detention Center, yes, sir.

11 Q How did you come to retain -- Mr. Barr was
12 retained, correct?

13 A Yes, sir. I couldn't never get in touch with
14 Eric Fox. The whole time I was there, I didn't know
15 anything about case because I was never interviewed by
16 the investigator, never given any paperwork, warrants
17 or anything. When I got out -- I bonded out, and in
18 February of 2010 I couldn't get in touch with Eric Fox.
19 I left a message to call back, and he never did. So my
20 sister's dad had used Verdell before, so I went and
21 seen him and gave him \$300 down.

22 Q You went to see him?

23 A Yeah, I went to his office in Kingstree.

24 Q And you bonded out at that point?

25 A Yeah, I was out. We went to his office. This

STEVEN HEWITT - DIRECT EXAMINATION

1 was maybe -- what had happened is my wife made an
2 allegation that I was coming to my son's window beating
3 on the window and scaring him and he was afraid for his
4 life, so I hired Verdell Barr initially for that. When
5 we went to trial for the bond, she wasn't present. He
6 had it dismissed. In trial, he said he hadn't seen me
7 in years and he wasn't scared of me. It was just a
8 false allegation.

9 Q Tell me this. You hired Verdell Barr, when was
10 this?

11 A This was maybe one month before trial.

12 Q Okay. And how much did you pay Mr. Barr?

13 A Probably \$500. I told him to get an extension so
14 I would have more time to pay, but he said he was ready
15 for trial, even though we never spoke. I gave him a
16 few papers I had and some questions to ask that would
17 verify that my son never stayed at my grandmother's
18 house, because if he had, he would know the answers to
19 these questions, but he didn't ask any of these
20 questions.

21 I talked to him maybe one, two times. It was
22 about money. We never went over the case or anything.
23 I said there is no way you're ready. He said, no, I'm
24 ready to go to trial. I'm prepared. I didn't know
25 enough about the law, you know, I just went along with

STEVEN HEWITT - DIRECT EXAMINATION

1 it.

2 Q Mr. Barr -- at your bond reconsideration
3 hearing -- or not reconsideration -- reformation --

4 A Uh-huh.

5 Q At your bond hearing, he actually moved for a
6 speedy trial as well?

7 A Yeah, because I already put the motion in, and it
8 was granted by a judge. It was granted in -- I bonded
9 out initially six months prior, so that would have been
10 about April -- excuse me, September the year before, in
11 2009. I bonded out, but when I bonded out they bring
12 me up for child support because I was incarcerated and
13 I couldn't pay child support, so they violated me on
14 child support and gave me six months. The judge
15 granted me speedy trial prior to that. So I was
16 probably nine months -- he gave him six months and they
17 said they would have me in trial by that day, but they
18 missed it. It was granted by a judge and signed, and I
19 have the paperwork at home somewhere.

20 Q How many times did you meet him before trial?

21 A I went to see him at his office and the day of
22 the bond reformation.

23 Q You never saw him any other time until you went
24 to court?

25 A Until we went to court.

STEVEN HEWITT - DIRECT EXAMINATION

1 Q Did he tell you what his defense was going to be?

2 A No.

3 Q Did he tell you whether or not there was an offer
4 in the case?

5 A No.

6 Q Had there been an offer when Mr. Fox represented
7 you?

8 A I didn't know there was an offer until I got my
9 file. It showed I was offered two pleas back -- I was
10 offered 15 years twice that would expire Christmas
11 of --

12 MR. THOMAS: Object to this line of questioning.
13 There is no allegations of an un-conveyed plea offer,
14 and I think we are getting far from the issues.

15 THE COURT: I'm having trouble following his line
16 of talking. He's talking about things that certainly
17 are perhaps relevant, but I don't understand -- he's
18 moving from one time frame to another without being
19 responsive to a question, that is the problem I have.
20 Is there ineffective assistance of counsel alleged for
21 failure to relay a plea offer?

22 MR. SHAFFER: Now, there is. I was aware there
23 was an offer in the case, and I just wanted to put
24 that in the record. I was aware at some point after
25 talking to Mr. Hewitt that there was a 15-year offer.

STEVEN HEWITT - DIRECT EXAMINATION

1 Perhaps I did not get the fact that he did not learn
2 of that offer until after he got locked up. I think
3 that might be my fault.

4 THE COURT: So does Mr. Fox have to be here?

5 MR. THOMAS: I'll object to that its entirety,
6 because it wasn't pled. This is the first I've heard
7 about it. I could have gotten the Solicitor in,
8 Mr. Fox in. This is ambushing me. I had no idea this
9 would be an allegation, and I'll objection.

10 THE COURT: Ambush has some degree of intent to
11 it, and I don't think Mr. Shaffer is intending to
12 ambush you.

13 MR. THOMAS: No. No.

14 THE COURT: I guess I need to know, are you going
15 to say -- are you going to elicit testimony that your
16 client would have accepted the plea?

17 MR. SHAFFER: Your Honor, I'm not sure or not.

18 THE COURT: Accept the offer.

19 MR. SHAFFER: I know he said he was offered 15
20 years whenever I talked to him, because I wrote it
21 down.

22 THE COURT: I'll allow the question because it
23 has to be in the record. To the point I consider it,
24 I'll deal with that later.

25 MR. SHAFFER: Thank you.

STEVEN HEWITT - DIRECT EXAMINATION

1 Q Whenever you went to trial, did you provide --
2 you had been in contact with your son prior to trial?

3 A Yes.

4 Q You had letters from your son?

5 A I had letters where he was writing me. I had a
6 probation violation --

7 THE COURT: See, that is the problem I have. No.
8 No. No. Just a second. It is your witness and your
9 questioning, but the question is: Did you receive
10 letters from your son, the answer is, Yes. Now, then
11 your lawyer can follow up and ask, but getting into a
12 probation violation, just to be frank, that is not
13 doing me any good because I can't follow all of that.

14 THE WITNESS: Sorry.

15 THE COURT: Let your lawyer ask questions, you'll
16 answer and he'll ask you other questions.

17 Q (MR. SHAFFER) You provided those letters to Mr.
18 Barr?

19 A Yes, sir.

20 Q And during your trial, did Mr. Barr ever ask you
21 whether or not to bring up the prior allegations of
22 abuse against your daughter?

23 A Huh-huh.

24 Q Did he ever ask your consent to do it?

25 A No.

STEVEN HEWITT - DIRECT EXAMINATION

1 Q Did you ever give any consent to do it?

2 A No, sir.

3 Q Did you ever talk about that?

4 A No, sir.

5 Q How did he know about that?

6 A From speaking with my sister.

7 Q But you didn't give him that information?

8 A No.

9 Q Related to the -- I apologize. Related to the
10 experts, did you ever speak to him about how he should
11 cross-examine those experts or the two counselors?

12 A No. May I add that I did see -- I asked him -- I
13 said some things that I had seen that wasn't right. I
14 tried to speak to him, and he told me if I interrupted
15 him again, he was listening, that he would have me
16 removed out of the courtroom. I was trying to counsel
17 with him about things that I saw and heard that were
18 impeaching in some areas.

19 Q What things specifically did you ask him to --

20 A Well, one was the first disclosure. The first
21 disclosure -- my son testified first and I said that
22 when he told Ms. Hoge they were sitting on the front
23 porch just talking and it came up. Ms. Hoge testified
24 that the first time they were -- her husband was at
25 work and they were moving a mattress out of the

STEVEN HEWITT - DIRECT EXAMINATION

1 bedroomed and putting a new mattress in, and he got
2 angry and broke down and started crying.

3 Q So there was inconsistent testimony?

4 A Yes. Yes.

5 Q You asked him to bring that up?

6 A Yes.

7 Q Did he?

8 A No. He told me if I interrupted he would have me
9 out of the courtroom.

10 Q Did you ever ask him anything else?

11 A No.

12 THE COURT: Who is Ms. Hoge?

13 MR. SHAFFER: The first person who disclosed --

14 THE COURT: A counselor or family member?

15 MR. SHAFFER: She is actually the person that
16 Mr. Hewitt's son was living with at the time of the
17 first -- very first disclosure. She never went
18 forward to the police or never closed it to anyone
19 else, Your Honor.

20 THE COURT: But she testified?

21 MR. SHAFFER: Yes, Your Honor, she did testify.

22 THE COURT: All right.

23 Q (MR. SHAFFER) I know you have done quite a bit of
24 work on this. You said that you believe that there
25 was vouching by the Solicitor in the closing argument?

STEVEN HEWITT - DIRECT EXAMINATION

1 A Yes, sir.

2 Q Could you point specifically to the page and line
3 of parts that you think of vouching?

4 A One is 558.

5 Q Excuse me, could you repeat the page number?

6 A 258, excuse me. I'm sorry, 258. 16.

7 THE COURT: Line 16?

8 MR. MYERS: Line 16 is when she commented on the
9 non-expert witness saying, yes, I believe him, and
10 then she goes on to say, yeah, this was beyond her
11 expertise. That is when she referred to Cathy
12 McLaughlin who has years of experience dealing with
13 sexual abuse trials, years of certification and
14 training, licensed to handle this.

15 Q (MR. SHAFFER) All right. That is one section. Can
16 you go to the next section?

17 A Going down to the next section of it -- oh, yes,
18 I see it now. We have someone who is going to try to
19 help **VICTIM** she steps in and says, Around
20 May -- I mean she already knows why the referral is
21 there and she --

22 Q I apologize. What is the next section you think
23 is vouching?

24 THE COURT: May I ask the witness that if you are
25 going to read, so the court reporter knows you are

STEVEN HEWITT - DIRECT EXAMINATION

1 reading something, let her know what page number, line
2 number, and if you are going to read, read it slowly,
3 because it doesn't help if you can't understand.

4 THE WITNESS: I understand, sir. This is the
5 first time. Wow.

6 (A brief pause in the proceedings.)

7 THE COURT: Take your time.

8 A It's not so much as I would say on the same lines
9 of what I just read to you, it's just more along the
10 lines that I've heard just -- I don't know -- really
11 don't know what to say about it.

12 Q (MR. SHAFFER) Which section are you talking about?

13 A Hold on. Let me see. I don't know if this would
14 be the same. 259, 22 and 23. Where she states that,
15 So then Ms. McLaughlin tells you an interesting fact --
16 I'm not exactly sure on the vouching of that, but.
17 257.

18 THE COURT: 257?

19 MR. MYERS: Yes, sir, 15.

20 THE COURT: Line 15?

21 Q You are talking about the part where it says, She
22 has nothing to gain from being here?

23 A Yes, sir. She had to come away from her job to
24 be here. She has no bias in the case.

25 Q You said that she commented -- "she" being the

STEVEN HEWITT - DIRECT EXAMINATION

1 Solicitor in this case -- in the closing argument she
2 commented on facts that were not in evidence or
3 misconstrued facts not in evidence?

4 A Yes. Yes. Yes.

5 Q Where are those?

6 A Let me see now. May I -- I'm not sure where it
7 is in the transcript. It would be in my sister's
8 testimony and it would be in mine where neither of us
9 stated that my son was ever with me in the year of
10 2000. I can find that for you, but reading right now
11 on 262, 16 through 18, she states, His sister said he
12 was there. The Defendant said that the child was
13 there, **VICTIM** **██████████** said he was there. It happened.

14 We never testified that he was there. My
15 sister's testimony was that she didn't know that he
16 was there or not, because he would stay with her. So
17 that is one incident of that.

18 MR. SHAFFER: Your Honor, if you would allow, I
19 think this may be quicker if you allow me later to
20 send you a list --

21 THE COURT: If you have the list, you can kind of
22 prod the witness, but I don't think --

23 MR. THOMAS: Your Honor, if he wants to read off
24 the page numbers and line, I'll stipulate that the
25 Applicant thinks those are instances of vouching.

STEVEN HEWITT - DIRECT EXAMINATION

1 MR. SHAFFER: I think it is better I move on. He
2 wanted me to preserve issues that he thought were
3 vouching --

4 THE COURT: I haven't seen any vouching yet.
5 There may be some argument that the Solicitor was
6 arguing facts not in the record, but the judge tells
7 the jury that lawyers are not witnesses. I don't
8 think he'll prevail on the PCR by presenting improper
9 vouching alone.

10 MR. SHAFFER: That is improper vouching for the
11 closing argument.

12 THE COURT: I haven't seen it in any of the
13 excerpts he's referenced yet. If you want to keep
14 going, I'll leave it up to you.

15 MR. SHAFFER: Your Honor, related to -- I'll move
16 on to another topic.

17 Q Tell me this, Mr. Hewitt. When were you indicted
18 for, what time period? When you were arrested, when
19 did they tell you this happened?

20 A They told me it happened in the fall of 2001,
21 October.

22 Q Where were you in October of 2001?

23 A I was in Georgetown County Detention Center.

24 Q Did they later amend the indictment to include
25 the time you were not in Georgetown County Detention

STEVEN HEWITT - DIRECT EXAMINATION

1 Center?

2 A Yes, sir.

3 Q Was that after you informed Mr. Fox that you were
4 in the Georgetown County Detention Center at the time?

5 A Yeah. That is when I wanted him to do an alibi.

6 Q Okay. Are you aware of your own personal
7 knowledge of any independent investigation that was
8 conducted by Verdell Barr?

9 A He spoke --

10 MR. THOMAS: I'll object, before he answer.
11 There is no allegations of failure to investigate.

12 THE COURT: You always ask the lawyers if they
13 did Brady Rule 5 when it is not really relevant, so
14 I'll allow it.

15 A He spoke with my sister.

16 Q Are you aware of anything else?

17 A No, sir.

18 MR. SHAFFER: I have no further questions at this
19 time.

20 THE COURT: Mr. Thomas.

21 MR. THOMAS: Beg the Court's indulgence one
22 moment.

23 (A brief pause in the proceedings.)

24 MR. THOMAS: May it please the Court.

25 THE COURT: Yes, sir.

STEVEN HEWITT - CROSS-EXAMINATION

CROSS-EXAMINATION

1

2 BY MR. THOMAS:

3 Q You had an opportunity to tell Mr. Barr your
4 version of events, didn't you?

5 A All we spoke about, sir -- I'll say no.

6 Q So you never told him that your defense was that
7 you never molested your son?

8 A Well, yeah, that is all I could tell him. There
9 was no events or anything. I had no clue of anything
10 more than what was written on the warrant.

11 Q Did you tell Mr. Barr you were somewhere else
12 when this happened?

13 A Yes, sir.

14 Q You told him that you were in jail so you
15 couldn't possibly have been the one that molested your
16 child and you wanted an alibi; is that your testimony
17 on direct?

18 A I never told him that I couldn't be the one that
19 molested my child, because I'm not saying my child was
20 ever molested. I'm saying I was in jail and there is
21 no way I could have done it if it happened.

22 Q So then why -- and for the Court's edification
23 this is Page 211 starting at Line 1 -- the Solicitor
24 asks you if you had an alibi for this charge, and you
25 told her, no, you weren't trying to say you had an

STEVEN HEWITT - CROSS-EXAMINATION

1 alibi. So if you had an alibi, why did you say that
2 under oath?

3 A I didn't have an alibi for August 1st and
4 November 19th.

5 Q So you didn't have -- okay.

6 A I had an alibi for October, the following year,
7 that was on the warrant.

8 Q Your whole theory is that you are not guilty?

9 A Yes.

10 Q You don't think you should be sitting in jail for
11 this crime?

12 A Nope.

13 Q So from day one you wanted to come to trial and
14 prove your innocence?

15 A Yes, sir.

16 Q You said you never told Mr. Barr about prior
17 accusations?

18 A No, sir.

19 Q He got that information from your sister?

20 A Yes, sir.

21 Q You said you filed a speedy trial motion?

22 A Yes, sir. From Georgetown County Detention
23 Center.

24 Q So it's safe to say you wanted this over with?

25 A I was ready to go to trial and show that I was

STEVEN HEWITT - CROSS-EXAMINATION

1 not guilty.

2 Q So you knew when you hired Mr. Barr the trial was
3 going to be in a month?

4 A No.

5 Q When did you think the trial was going to be?

6 A Once we were prepared to go to trial. That is
7 why when he told me we were going to go at the set
8 date, I said, We can't be ready, and he said he was
9 ready for trial.

10 Q Your whole theory is that your son made up these
11 accusations to get out of trouble?

12 A Well, that is not really a theory. That is what
13 my son told me. I'm just saying.

14 Q That is what --

15 A Well, it wasn't so much he did it to get out of
16 trouble --

17 Q Mr. Hewitt, the theory you have espoused today
18 and that your defense was this entire time, is that
19 your son was making up the charges to get out of the
20 trouble that he was in?

21 A Well, at first I was saying he was making up the
22 allegations, because I wasn't aware of the charges at
23 the time.

24 THE COURT: Say that again now.

25 THE WITNESS: At first, I was -- all I had to go

STEVEN HEWITT - CROSS-EXAMINATION

1 on is he was making it up because I didn't know about
2 the prior charges at the time that he -- all I knew
3 is -- my sister said that he was in some trouble,
4 might be going away. I didn't know what the charges
5 were or what "going away" meant or any of that,
6 because he was only like 14 or 15. That came to me
7 later.

8 THE COURT: That's your sister?

9 THE WITNESS: Yes, sir.

10 Q (MR. THOMAS) How long did you hear that from your
11 sister? How long before you were arrested on this
12 charge did you hear that?

13 A Maybe one month.

14 Q So you are arrested one month after your sister
15 told you that your wife said your son was in trouble?

16 A Well, yeah. I had a container (sic) on me. They
17 picked me up December 1, 2009. My sister told me this
18 maybe, I don't know, October or November, maybe two
19 months, because the allegations come out like in
20 September.

21 Q You are familiar with Hope Smith's testimony at
22 trial; you reviewed that?

23 A Yes, sir.

24 Q So her testimony at trial was basically that your
25 son confided in her in April of 2007 that you had

STEVEN HEWITT - CROSS-EXAMINATION

1 molested him?

2 A Yeah. She stated that he said that, yeah, and
3 she was his youth pastor, is why she did not bring it
4 to the police's attention.

5 Q It wasn't brought to the police's attention until
6 2008, fall of 2008? You were arrested, I believe,
7 September 2009?

8 A 2008, December 1st.

9 THE COURT: Wait a minute. For your son?

10 THE WITNESS: Yeah.

11 THE COURT: I thought he said December 9, 2009 he
12 was arrested?

13 THE WITNESS: December 1, 2008 is when they
14 picked me up.

15 THE COURT: You said a minute ago you were picked
16 up December 9, 2009.

17 THE WITNESS: December 1, 2008, I'm sorry.

18 THE COURT: All right. December 1, 2008.

19 THE WITNESS: Yes, sir.

20 THE COURT: All right.

21 MR. THOMAS: I apologize, Your Honor. He was
22 arrested -- the warrant was sworn in September of
23 2008.

24 A August 8th.

25 Q (MR. THOMAS) We'll agree to disagree, but we agree

STEVEN HEWITT - DIRECT EXAMINATION

1 you were arrested December 1, 2008?

2 A Yes, sir.

3 MR. THOMAS: I believe that is all I have on
4 cross-examination. Thank you.

5 THE COURT: Redirect?

6 MR. SHAFFER: Yes, Your Honor.

7 REDIRECT-EXAMINATION

8 BY MR. SHAFFER:

9 Q Are you aware what year your son was originally
10 charged with the ABHAN?

11 A 2008.

12 Q It wasn't 2005?

13 A Oh, the ABHAN. Yes, sir.

14 Q It was 2005?

15 A ABHAN, yes, sir. He was on bond for that when he
16 got the --

17 Q But that wasn't disposed of until 2009, right?

18 A Uh-huh.

19 Q You commented you wanted to go to trial, right?

20 A Yes, sir.

21 Q Did you want the prior allegations of your
22 daughter to come up at the trial?

23 A I wouldn't say I wanted them to, but it didn't
24 really matter to me if it was brought up, but I'm not
25 the one that decides all of that stuff, you know.

STEVEN HEWITT - CROSS-EXAMINATION

1 Q Okay.

2 MR. SHAFFER: No further questions.

3 THE COURT: Anything else, Mr. Thomas?

4 RECROSS-EXAMINATION

5 BY MR. THOMAS:

6 Q Is it safe to say that you believe that your
7 ex-wife and your son were making up these allegations
8 to get you in trouble?

9 A Not to get me in trouble, no, sir.

10 Q But you agree that they fabricated them?

11 A I can't agree who fabricated it with them,
12 because I do not know. I just know that it is not
13 true.

14 MR. THOMAS: That is all I have.

15 MR. SHAFFER: May I bring up -- well, I'll save
16 it for argument, Your Honor.

17 THE COURT: Okay.

18 MR. SHAFFER: No further questions from this
19 witness.

20 THE COURT: You can step down. Any additional
21 witnesses?

22 MR. SHAFFER: Yes, Your Honor, one.

23 THE COURT: Okay.

24 MR. SHAFFER: Renee Howard, Your Honor.

25 THE COURT: R-E-N-E-E?

RENEE HOWARD - DIRECT EXAMINATION

1 MS. HOWARD: Yes, Your Honor.

2 (RENEE HOWARD, having been duly sworn,
3 testified as follows:)

4 THE CLERK: Please be seated and state and spell
5 your name for the record.

6 THE WITNESS: Renee Howard, R-E-N-E-E,
7 H-O-W-A-R-D.

8 DIRECT-EXAMINATION

9 BY MR. SHAFFER:

10 Q Ms. Howard, you testified at trial, correct?

11 A I did.

12 Q And you're Mr. Hewitt's sister, right?

13 A Yes.

14 Q Prior to trial, did you speak with Verdell Barr?

15 A Yes, I did.

16 Q How many times did you speak with him about
17 Mr. Hewitt's case?

18 A I don't know exactly how many times. I probably
19 spoke to him maybe two, three. One was with Stevie and
20 the other two was on the phone and at the courtroom
21 before the trial, the room in there.

22 Q Okay. And can you tell us the one in person with
23 Stevie, do you recall the substance of that
24 conversation? What did you say?

25 THE COURT: Who is "Stevie"?

RENEE HOWARD - DIRECT EXAMINATION

1 MR. SHAFFER: Mr. Hewitt, I apologize.

2 THE COURT: Okay.

3 THE WITNESS: Ask that again.

4 Q (MR. SHAFFER) The one that you spoke with
5 Mr. Hewitt in person, could you tell us what you
6 informed Mr. Barr about there about the case?

7 A It's been awhile. I don't remember informing him
8 too much actually in person at his office. I informed
9 him probably more over the phone or in here. The first
10 visit at the office was more or less money, that kind
11 of thing, and he said we would meet again.

12 Q How much money did he get paid at that time?

13 A I think he paid him \$300 at that time.

14 Q Okay. And when you spoke to him over the phone,
15 do you recall what you informed him about the case?

16 A I know things that I told him, but I don't know
17 if he was on the phone or in this room.

18 Q What did you tell him about the case?

19 A All right. I did inform him that I had spoke to
20 VICTIM, [REDACTED] and that he had told me that it was not
21 true, what they were accusing his father of. I told
22 him that, you know, that that needed to be brought up.
23 He told me he couldn't bring it up, it was hearsay.

24 Q He said he could not?

25 A Yes. He said, We cannot bring it up at trial,

RENEE HOWARD - CROSS-EXAMINATION

1 that is hearsay. But VICTIM VICTIM said it to me, and I
2 explained that to him. Oh, he also said, He'll just
3 say no. I said, How will you know? He told me, He'll
4 probably just say the truth again.

5 Also, I said to him that they had tried this
6 before, that his wife tried before to get Stevie --
7 Steven in trouble with the daughter, because that was
8 tried many years ago. She accused him of that, she
9 tried to get him sent away a long time ago, and I told
10 him those kinds of things.

11 Q But he told you not to bring up the fact that
12 VICTIM gave a different story to you?

13 A That is correct. We couldn't bring it up.

14 MR. SHAFFER: No further questions.

15 THE COURT: Cross-examination?

16 CROSS-EXAMINATION

17 BY MR. THOMAS:

18 Q Good morning, Ms. Howard.

19 A Good morning.

20 Q In your conversations with Mr. Barr, was sort of
21 your discussion about Mr. Hewitt's defenses that they
22 were going to be deny everything? Was that the defense
23 you guys talked about?

24 A Honestly, we didn't talk about a defense.

25 Q Did you talk about any -- I know you talked about

RENEE HOWARD - CROSS-EXAMINATION

1 you wanted to testify at trial, correct?

2 A Yeah, because I felt that I knew a lot of what
3 was going on.

4 Q Did you talk about anybody else that maybe could
5 be called to trial, any of the character witnesses?

6 A I didn't, but I heard Stevie -- or Steven talk to
7 him in the office that day about several friends and
8 teachers and different people he thought he could get
9 as character witnesses. He told Steven -- yeah, Steven
10 wrote some of them down that day, got phone numbers,
11 that kind of thing.

12 Q As far as your testimony goes, I know you said
13 you discussed with Mr. Barr about what **VICTIM** **[REDACTED]**
14 said to you, did you -- did Mr. Barr tell you in your
15 testimony at trial to bring up the fact that there was
16 a prior accusation?

17 A Yes.

18 Q So he did tell you that you should say that?

19 A He did. He told me that back in the room right
20 before trial.

21 MR. THOMAS: That is all I have. Thank you.

22 THE COURT: Wait just a second.

23 MR. SHAFFER: One last question.

24

25

RENEE HOWARD - REDIRECT/RECROSS EXAMINATION

REDIRECT-EXAMINATION

BY MR. SHAFFER:

Q If Mr. Barr told you not to say about what **VICTIM** **VICTIM** had told you, would you have testified to that if he asked you?

A Yes, I would have.

MR. SHAFFER: No further questions.

THE COURT: Wait just a second. Anything else, Mr. Thomas?

MR. THOMAS: Just one follow up.

RECROSS-EXAMINATION

BY MR. THOMAS:

Q Did he tell you why he wanted you to bring that up?

THE COURT: About the daughter?

A Yeah, I'm thinking. I don't think he really gave a reason. I think he just thought it needed to be brought out kind of for motivation that it was tried before, but dropped.

MR. THOMAS: Thank you.

MR. SHAFFER: I apologize, can I -- since they went sort of in a new area --

THE COURT: I was going to ask that question anyway. I was going to ask her if Mr. Barr explained why she should bring up the daughter's accusation.

RENEE HOWARD - REDIRECT and EXAMINATION BY THE COURT

REDIRECT-EXAMINATION

BY MR. SHAFFER:

Q Did he explain that to you, or are you just speculating as to what he was thinking?

A He didn't explain it, I was just speculating that.

MR. SHAFFER: Nothing further.

THE COURT: Anything else from the State?

MR. THOMAS: Nothing else, Your Honor.

THE COURT: Okay. Any objection to me perhaps asking her questions?

MR. SHAFFER: None, Your Honor.

MR. THOMAS: No objection.

EXAMINATION

BY THE COURT:

Q You told Mr. Barr that you had spoken to VICTIM VICTIM and VICTIM told you the allegations weren't true?

A That is correct.

Q And when did VICTIM tell you that in relation to the trial, if you can remember?

A He told me right after Steven had been charged for it. He called me.

Q Right after?

A Yeah. It maybe would have been a few weeks, a

RENEE HOWARD - EXAMINATION BY THE COURT

1 week. It was before, you know, we even came close to
2 coming to trial.

3 Q Before your brother was arrested?

4 A No.

5 Q But it was -- do you know the year it was?

6 A It was whatever year that Steven got the warrant,
7 because it was right after the warrant was brought out.

8 Q Sometime in 2008, then?

9 A Yeah. If that is when the warrant was out. We
10 got the -- I read the warrant and then he -- little
11 Steve, **VICTIM** **[REDACTED]** called me and talked to me about
12 it.

13 Q Did you ever tell the prosecutor or the police
14 that?

15 A No. I never talked to the police about the whole
16 thing. I never had a chance. The prosecutor didn't
17 ask, and I was only told to answer what I was asked.

18 THE COURT: Mr. Shaffer, any follow-up?

19 MR. SHAFFER: No.

20 MR. THOMAS: Nothing, Your Honor.

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

22 MR. SHAFFER: Applicant rests, and I would like
23 to make a brief argument.

24 THE COURT: Wait just a second. Do you have any
25 witnesses?

THE COURT AND ATTORNEYS

1 MR. THOMAS: At this time I would just -- I'll
2 renew my objection to that line of questioning about
3 the plea offer that may or may not have been in this
4 case. If Your Honor -- I ask that that be stricken,
5 but if you are going to consider that, I ask to leave
6 it open to reconvene this at a later time. If that
7 is --

8 THE COURT: There has been no testimony that the
9 Defendant would have taken the plea.

10 MR. THOMAS: Absolutely.

11 MR. SHAFFER: Your Honor, I was a little shocked
12 by it, so I didn't want to say that there wouldn't be
13 any issue with it, but because of the fact he
14 testified that he was going to go to trial one way or
15 another, I think that --

16 THE COURT: Kind of a moot point.

17 MR. SHAFFER: Yes, Your Honor. I'm not making
18 the allegation, Your Honor.

19 MR. THOMAS: In that case, the State rests.

20 THE COURT: If you want to recall him and put it
21 on the record, that is fine. I know you are
22 objecting, but I'm trying to make a record complete,
23 and we can proffer if you want. He can stay where he
24 is, if he has a microphone.

25 MR. THOMAS: Just note my objection to even the

STEVEN HEWITT - REDIRECT and RECROSS-EXAMINATION
1 proffer.

2 THE COURT: I understand. You are still under
3 oath, Mr. Hewitt.

4 MR. HEWITT: Yes, sir.

5 REDIRECT-EXAMINATION

6 BY MR. SHAFFER:

7 Q Had you known about the plea offer for 15 years,
8 what would you have done? Would you have accepted it?

9 A I wouldn't say accept the 15 years, but it would
10 have given me an opportunity to discuss plea
11 arrangements, because if it was zero to 25, just to get
12 it over with maybe something less and probation or
13 something. But I was left in the dark to this thing
14 until I was in prison. Once I got in prison, I find
15 out about the case when I got discovery.

16 THE COURT: Okay.

17 MR. SHAFFER: Nothing further.

18 THE COURT: Mr. Thomas, you are not waiving your
19 objection by asking him questions.

20 MR. THOMAS: As long as I'm not waiving my
21 objection.

22 RECROSS-EXAMINATION

23 BY MR. THOMAS:

24 Q So you would have admitted your guilt if you
25 could have gotten a lesser sentence?

STEVEN HEWITT - REDIRECT EXAMINATION

1 A I wouldn't have been admitting saying I did it,
2 but to get things over. I'm 42 years old.

3 Q But you understand to enter a plea of guilt, you
4 have to admit you are guilty?

5 A You have to admit guilty, you would say that.

6 Q So you would have admitted you were guilty if you
7 could have gotten a lesser jail sentence?

8 A I wouldn't say that. I said it would be a time
9 to negotiate a plea, but there was no time to negotiate
10 it.

11 MR. THOMAS: That is fine. Thank you.

12 MR. SHAFFER: Can I?

13 THE COURT: Yes, sir.

14 REDIRECT-EXAMINATION

15 BY MR. SHAFFER:

16 Q If they gave you a chance to get out tomorrow,
17 would you lie to get out?

18 A Yeah. Over 25 years, I sure would.

19 MR. THOMAS: Could you repeat the question --
20 that's fine.

21 THE COURT: The court reporter can, but that is
22 for another time. Any other questions of the witness,
23 Mr. Shaffer?

24 MR. SHAFFER: Nothing further.

25 MR. THOMAS: Nothing from the State.

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1 THE COURT: Any witnesses for the State, other
2 than holding it open for perhaps Mr. Barr's file?

3 MR. THOMAS: I'll get with his office if we can
4 get a copy. I'm not sure it is relevant or necessary,
5 but that is my only thing.

6 THE COURT: Mr. Shaffer, your argument.

7 MR. SHAFFER: Your Honor, this might have been
8 the most anticlimactic PCR hearing I've done in a
9 awhile because I put the good issues up front and
10 didn't ask my client about them, and that is because
11 they speak for themselves. The record in this case is
12 horrific, and I'm not doing that to throw my arms or
13 try to make it sound worse than it is, it really is.
14 Mr. Barr had no business trying this case, or at least
15 he didn't prepare like he did. I didn't know him
16 personally. He might have been a fine trial attorney,
17 but he did not show that certainly in this case.

18 This has to be probably the second worse
19 transcript I've ever read. I ask that the Court look
20 at -- you know, examine the transcript and look at it.
21 Mr. Barr does everything that Kromah and cases that
22 came before this case even came out said that the
23 Solicitor can't do. He did that for no good reason.
24 I'm assuming the State has the position regarding the
25 child sex abuse allegations, the daughter's

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1 allegations, that somehow his strategy was to show
2 that the wife had planned it or put it in the
3 daughter's head and now it is putting it in the son's
4 head, but, Your Honor he specifically denies that
5 statement on the record during his testimony. Your
6 Honor, I can point to the page where he says, No, that
7 is not what I'm claiming at all.

8 THE COURT: Who is saying that?

9 MR. SHAFFER: Mr. Hewitt. Mr. Hewitt at trial
10 says -- was asked that question -- and I'm going to
11 215, and I'll start around 21. I think that was it.
12 I apologize, it is 213, Your Honor.

13 THE COURT: 213.

14 MR. SHAFFER: Around 16. He mentions, Did you
15 have custody of the children? No. The prior
16 allegation cured that.

17 THE COURT: Line 16?

18 MR. SHAFFER: Yes, Your Honor. Actually,
19 beginning at 23, I apologize, on Page 213. Okay. All
20 right. So you're saying that she's the one that put
21 **VICTIM** up to this to get up in front of all of these
22 people and tell that this happened. Mr. Hewitt's
23 answer was, No, I'm not saying that. No, ma'am, I'm
24 not saying that at all.

25 That clearly wasn't the strategy that Mr. Hewitt

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1 had adopted, and I'm not sure why Mr. Barr would have
2 adopted the same strategy without talking to him
3 first. It also doesn't make sense with other facts
4 unrelated to that specific question, on 204, Your
5 Honor -- on 204, Mr. Hewitt admits that his
6 relationship with his wife has been pretty good for
7 the last five years preceding the trial.

8 So, I mean, it doesn't make any sense that he
9 would argue, oh, well, the wife helped set the son up
10 to do this, you know, that that would be a valid trial
11 strategy. I don't think it would be, you know, under
12 objective standard of reasonableness what a normal
13 attorney or, you know, average attorney would have
14 done. Regardless of that, I also think that, you
15 know -- not only that, it doesn't even -- he's not
16 even consistent in the strategy, Your Honor. It
17 doesn't prove anything whenever he specifically denies
18 that that is what was going on, Your Honor.

19 THE COURT: You are saying that at least he and
20 his lawyer should have been on the same page?

21 MR. SHAFFER: Well, if you are going to have a
22 trial strategy where you let in a prior sex allegation
23 into a sex abuse case, I think he probably should have
24 gone at least over it with his client. You know, I
25 don't see where it would be a valid trial strategy

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1 anyway, Your Honor.

2 THE COURT: Sometimes if it's the same alleged
3 victim and they made a false allegations in the past
4 and they are making another one, sometimes that is
5 debatable.

6 MR. SHAFFER: In this situation though, it is a
7 different victim. There is another thing I would like
8 to bring up on that point. Another reason why that
9 trial strategy is just bad on its face, he wasn't even
10 living with the mother at the time he first disclosed.
11 He wasn't living with his mother at the time of the
12 second disclosure. He was living with another lady.
13 His mother was in and out of his life. It just is not
14 a consistent theory with the evidence that was
15 presented.

16 I certainly think it was very, very prejudicial
17 to introduce that evidence. I know the State is going
18 to try to claim that the curative instruction would
19 have cured it, but sometimes curative instructions
20 don't cure things. Obviously that is why we have
21 mistrial. If a curative instruction magically wiped
22 it out of the minds of the jury every time one was
23 given, then, you know, we wouldn't need a mistrial, we
24 would just have curative instructions.

25 In this situation, you know -- I mean, there is a

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1 Florida case that I had cited to, and I don't seem to
2 have a copy of it right now, basically it says in this
3 very situation that is a bell you cannot unring, Your
4 Honor. Once it is out there, it is out there. I
5 can't see where that would be a good trial strategy.

6 We have that, and we have the fact that, you
7 know, he's doing exactly what the Solicitors can't do
8 under Kromah, under Jennings, Dawkins, MC, a long line
9 of cases that say you can't do this in child sex abuse
10 cases, and the attorney is doing it. The defense
11 attorney is actually doing it. He is bringing this
12 stuff out.

13 Your Honor, I certainly don't think that that was
14 a reasonable trial strategy. Basically it just
15 allowed witnesses to corroborate the testimony of the
16 victim. There was no reason to ask a question, well,
17 do you believe him. I don't see if a Solicitor asked
18 that question if the question would even let that
19 question go in; I can't imagine it. It was
20 inappropriate, inappropriate for him to ask, but, you
21 know, there was no one going to object to it on the
22 State's side, obviously.

23 THE COURT: The witness said yes, I believe him?

24 MR. SHAFFER: Yes, Your Honor. I also think that
25 Judge John, you know -- essentially what he made the

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1 ruling on was the fact that the defense brought up the
2 improper information. He said I can't grant you a
3 mistrial because of the fact that you brought it up,
4 and a Defendant cannot get his own -- cause his own
5 mistrial.

6 Your Honor, that goes back to the other issue, I
7 know, but, you know, this goes back to the allegations
8 against the daughter. I mean, I think that his words
9 are sort of telling whenever he says I've been waiting
10 around for someone to do their job, that is exactly
11 what Judge John says to the attorneys on the record.
12 He says I've been waiting for somebody to do their
13 job, but since they haven't, I'll have to take up a
14 motion for a mistrial.

15 THE COURT: What page is that on?

16 MR. SHAFFER: 217, Your Honor, 1 through 8, Your
17 Honor. The ruling is a couple of pages later where he
18 says specifically, You can't cause your own mistrial.
19 Doing their job is 24 and 25. The ruling the sua
20 sponte mistrial was 224, 5 through 17. He states --
21 this is Judge John stating, The defense witness
22 introduced this caused a matter -- to cause a matter
23 totally unrelated to the prosecution at matter that
24 should never have been raised in the courtroom at all,
25 and that this issue about the minor daughter of the

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1 Defendant and the alleged action of him when the child
2 was three or four, this is not an issue in this case,
3 should not have been an issue, should never have been
4 mentioned by anyone. It was raised by defense witness
5 as a result of a question asked by the defense
6 attorney. A Defendant cannot cause the -- and the
7 Court cannot allow a Defendant to cause a mistrial
8 based on his own actions. He is responsible -- a
9 Defendant is responsible for the actions of his
10 attorney -- of -- a Defendant is responsible for the
11 actions of his witness and his attorney.

12 I mean, basically Judge John makes my case for a
13 PCR on that point right there. I mean, clearly this
14 is something that never should have come into any sex
15 abuse case. It shouldn't have been talked about for
16 three witnesses, because it was talked about with
17 three different witnesses.

18 THE COURT: Allegations made by the daughter was
19 talked about by three witnesses?

20 MR. SHAFFER: Yes, Your Honor, or talked about --
21 I'm not sure if there was a witness in between, but it
22 was talked by the sister and talked by Mr. Hewitt,
23 during his testimony.

24 THE COURT: Because his lawyer asked him?

25 MR. SHAFFER: Yes. Actually, because the -- I

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1 think his lawyer asked him and then the
2 cross-examination. Basically, they made it until the
3 end of the defense's testimony before Judge John cut
4 it off. They were about to introduce another witness,
5 so Judge John cut it off, Your Honor.

6 THE COURT: All right. The failure to object to
7 a curative charge, that is really not a PCR ground.
8 Because if he had objected to the curative charge,
9 Judge John would have said the same thing, I'm giving
10 the charge to cure what you did, you can't object to
11 the content of it except to bootstrap a mistrial
12 motion. Anything you have, Mr. Thomas?

13 MR. THOMAS: I think Mr. Shaffer anticipated my
14 arguments and brought it out.

15 THE COURT: What is the possible advantages to be
16 gained by asking at least two witnesses, hey, he's
17 been accused of this before? What is the possible
18 advantages?

19 MR. THOMAS: Your Honor, I think it is clear from
20 the record, the entire record of the trial, that this
21 defense's strategy was, I didn't do that and someone
22 is lying. I think the reason he asked that question
23 is to show that that prior allegation was levied
24 against him, it was dismissed and granted. This is
25 all just from my reading of the record as a whole. I

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1 can't speculate as to what Mr. Barr was thinking, but
2 he knew about it beforehand, discussed it with the
3 witness that brought it out originally. He knew that
4 was going to be the response to the question. I think
5 it is to show -- and I think the record supports the
6 defense of the family having a tendency, a history of
7 lying to get him in trouble when they feel it benefits
8 them and suits them, and I feel that is why he asked
9 the question.

10 THE COURT: How old was the daughter when she
11 made the allegations?

12 MR. THOMAS: If I understand, the daughter might
13 have -- I'm not sure that the daughter made the
14 allegation. I think the mother made the allegation on
15 behalf of the daughter.

16 MR. SHAFFER: She was three or four. The mother
17 -- the daughter made the allegations. According to
18 the question that was asked by Ms. Livesay,
19 essentially they did not prosecute because of the fact
20 that -- I'm assuming Ms. Lively (sic) would have known
21 that was because she was at the Solicitor's Office --
22 they did not prosecute because the daughter was too
23 young to testify.

24 MR. THOMAS: You know, our position is that it's
25 clear from the record that was the trial strategy.

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1 Even if that is a deficient trial strategy, he's not
2 prejudiced because Judge John issued a curative
3 instruction. It is one of the more thorough curative
4 instructions I've ever seen. It starts on Page 226.
5 He has each juror stand up and he polls them
6 individually about whether they can disregard the two
7 things he tells them to disregard, and he reiterates
8 it in his closing on Page 267.

9 THE COURT: If that was your trial strategy,
10 wouldn't it be nice to tell your client about it so he
11 could at least nuance his answers to the question
12 properly? The Defendant said, No, we've been getting
13 along great the last five years.

14 MR. THOMAS: I think his testimony here today was
15 that the son was in trouble and the son made up the
16 allegations, so maybe not necessarily the mother.

17 THE COURT: But that doesn't have anything to do
18 with a three-year-old different person making an
19 allegation. They don't have the motivation to do
20 anything except what mama tells them to do, if they
21 are lying.

22 MR. THOMAS: I agree. It is not directly on
23 point, but it shows a history of the other members of
24 his family lying for their benefit, to his detriment,
25 which is I think is what it looks like the trial

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1 strategy might have been. He might not have discussed
2 it --

3 THE COURT: I would agree with you if you had a
4 13-year-old girl and 15-year-old boy, two years apart,
5 making things up, but a three-year-old girl is not
6 going to know how to conspire with anybody.

7 MR. THOMAS: I think the way the allegation was
8 couched was that the mother coached her into making
9 that allegations, making that. So I think it was
10 Mother made this up before to get herself out of
11 trouble to get back at me, son is doing the same thing
12 now, and that is, you know, just a little speculative.

13 THE COURT: Tenuous.

14 MR. THOMAS: At best, on my part. But there was
15 a curative instruction at the end of the day to
16 disregard it.

17 THE COURT: Page 260?

18 MR. THOMAS: It begins on 226, and it is
19 reiterated in the charge on Page 267, starting at Line
20 4.

21 THE COURT: 226, sorry. Now, is it of any
22 evidentiary input that Judge John basically said, hey,
23 I'd grant a mistrial if they hadn't done it to
24 themselves?

25 MR. THOMAS: I don't think you can put any weight

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1 on that. I mean, they did it to themselves.

2 THE COURT: Technically, he shouldn't have given
3 a curative charge at all, because the Defendant
4 brought it up.

5 MR. THOMAS: That is their -- I mean, he never
6 asked for a curative on the evidence -- the cure --
7 the mistrial motion that Mr. Barr made for a mistrial
8 didn't even relate to this evidence about the prior
9 allegation; it related to a witness tampering
10 question.

11 THE COURT: I understand that, but the curative
12 charge was about the prior allegations?

13 MR. THOMAS: And Judge John took it upon himself
14 to issue it. It was never requested by the defense or
15 the State. It was sua sponte. Judge John felt that
16 was a trial error and raised it himself, and Mr. Barr
17 never actually asked for that.

18 THE COURT: But he thought it was a terrible
19 error by Mr. Barr to bring that in?

20 MR. THOMAS: He did, but it was, again,
21 Mr. Barr's case to try.

22 THE COURT: Okay.

23 MR. SHAFFER: Your Honor, I'll be short. The
24 only thing I would say is that Judge John by giving
25 curative instruction did the best he could. I don't

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1 think it was enough. I think that, honestly, there
2 has to be some sort of -- I mean, this is the kind of
3 case a PCR is made for whenever you have this much
4 egregious of an error. There is multiple errors.

5 THE COURT: What is the cite on U.S. versus
6 Cronic?

7 MR. SHAFFER: I think especially -- I apologize,
8 I don't have the site with me right now.

9 THE COURT: I can find it. It is all over the
10 place. C-R-O-N-I-C. It is frequently cited, that is
11 what I mean by "all over the place."

12 MR. THOMAS: Your Honor, I know flipping through
13 one of the old cases that cites it, it is at least 466
14 U.S., somewhere in the 650 range.

15 THE COURT: Okay. That is when the deficiencies
16 are so egregious, it just says there was not even an
17 adversarial process.

18 MR. THOMAS: There is three categories: When you
19 deny him counsel altogether, when counsel is there,
20 but not really doing anything, and three is when the
21 State interferes with it.

22 MR. SHAFFER: I think the second prong might go
23 to that. I also think, you know, under Cronic itself
24 the time frame -- Mr. Hewitt indicated that he had
25 been retained about a month ahead of time. He had

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1 spoken to him three times. I don't think that that is
2 sufficient to try this case as well, Your Honor.

3 THE COURT: Well, here is the cautionary tale on
4 that. We have defendants all the time who, I think,
5 and I'm not saying Mr. Hewitt did it, because it is
6 not even in evidence, but they strategically get their
7 lawyer fired when they know they are getting ready to
8 go to trial, and usually they say, I want a paid
9 lawyer. They get that paid lawyer and they make a
10 speedy trial motion, or the client made the speedy
11 trial motion, and he is getting what he asked for from
12 a lawyer who has been on the case for a month. So
13 that in and of itself is not going to get him
14 anywhere. It is the performance at trial that is the
15 key, not the timing of getting him retained and ready.
16 I don't grant continuances when a Defendant says, hey,
17 I just got a new lawyer, who is not ready. I'm going
18 to say, Tough, you did that.

19 MR. THOMAS: If I could be hear on that. Brevity
20 of consultation is not ineffective assistance of
21 counsel.

22 THE COURT: I agree. This is a performance of
23 trial case, not a brevity of consultation.

24 MR. THOMAS: And his testimony was, Mr. Barr said
25 I'm ready.

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1 THE COURT: Except they say that Mr. Barr should
2 have let his client in on the strategy of putting in
3 the prior allegations.

4 MR. THOMAS: And, Your Honor, the only testimony
5 we have that he didn't is from the Applicant himself.
6 I mean, the sister, she speculated as to what the
7 reasons were, but clearly Mr. Barr let her know that
8 was coming in.

9 MR. SHAFFER: There was no indications that he
10 let him know, Your Honor.

11 THE COURT: All right. Anything else, Gentlemen?

12 MR. SHAFFER: Court's indulgence.

13 (Mr. Shaffer and Mr. Hewitt confer.)

14 THE COURT: We talked about the prior
15 allegations.

16 MR. THOMAS: Your Honor --

17 THE COURT: Well, we didn't talk about failure to
18 argue the Defendant's -- excuse me, the victim's
19 motivation should have argued on 404(b) and under a
20 biased theory, or at least a proffer should have been
21 requested.

22 MR. THOMAS: Just on that point, Your Honor --
23 I'll let Mr. Shaffer say his piece -- but my position
24 is, obviously, that the prior evidence of the victim's
25 drug use, it was not introduced by the State on Page

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1 124. Mr. Barr did argue that in his closing on Page
2 246. Again, I think that the non-admission of the
3 criminal record, the conviction for marijuana is
4 proper under Rule 609. It carried less than a year.
5 It wasn't impeachable.

6 THE COURT: Why in the world would a defense
7 lawyer ever ask a counselor, Do you believe him?

8 MR. THOMAS: Your Honor, I think that was -- the
9 point of that was that was a counselor that was close
10 to him and friends with him, and that it is to show
11 her motivation to lie for him or take what he says at
12 face value. Not a question I would ask, but I think
13 it could be supported by the strategy.

14 THE COURT: Did he follow up and say, Of course
15 you believe him, ma'am, because you are close friends
16 with him, you would do anything to help him, wouldn't
17 you?

18 MR. SHAFFER: No, Your Honor. He just asked, Do
19 you believe him, was there any -- basically was there
20 anything problematic, or words similar to that effect,
21 and then --

22 MR. THOMAS: Your Honor, for your -- that is on
23 Page 98, starting at Line 6.

24 THE COURT: Where he asked if he believed her?

25 MR. THOMAS: Yes, sir. The line of questioning

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1 that is in is regarding sort of the reason why it was
2 never reported to police at that time.

3 MR. SHAFFER: Your Honor, that brings up an
4 interesting point. I didn't raise this because I
5 didn't think it is necessary there. I don't even see
6 where any of that would be relevant. Even if it goes
7 to whether or not they reported it to the police, or
8 when they reported it to the police, I don't think
9 that that is relevant in any way. Certainly I don't
10 think that would be a reasonable trial strategy to
11 present that.

12 Basically, because of the fact that they talk
13 about why didn't you report it to the police, it got
14 into a whole bunch of vouching issues, not so much of
15 this witness, but the other one, Ms. McGrogan
16 (phonetic). She got into basically a whole bunch of
17 issues where she talked about -- basically identified
18 the Defendant through that, Your Honor. I don't see
19 it particularly relevant, and I put that in terms of
20 outside of time and place, but.

21 THE COURT: Anything else?

22 MR. THOMAS: I need to run through each of the
23 allegations, Your Honor, that he raised in the
24 beginning. We talked about the allegations of the
25 daughter, talked about the curative instruction. As

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1 far as the objection to the qualifications of her as
2 an expert, for the record, State versus Schumpert, 312
3 S.C. 502, '93 case, rape trauma experts can be
4 qualified as rape trauma experts.

5 THE COURT: But he said not to testify about this
6 victim's symptoms.

7 MR. THOMAS: I think Schumpert said they are
8 completely entitled to testify as to those symptoms.
9 The expert in Schumpert -- and I can pass a copy up to
10 Your Honor.

11 THE COURT: I think supreme court has alerted
12 everybody. They are really frowning on any of this
13 testimony.

14 MR. SHAFFER: Your Honor, since you did mention
15 that, Ms. Lively is at the Children's Law Center. I
16 hear an oral argument Mr. Duckett said essentially
17 that the supreme court needs to draw a bigger line in
18 the sand than they did. I understand in Kromah they
19 pretty much cut this out, Ms. Lively at the
20 Solicitor's conference said even though you can't
21 qualify them as a forensic interviewer, you should
22 qualify them as a child abuse trauma expert. I mean,
23 that's essentially what she's informing solicitors to
24 do.

25 THE COURT: That is what Kromah says you can do.

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1 MR. SHAFFER: As a child abuse trauma expert?

2 MR. THOMAS: For the record, I passed up to Your
3 Honor a copy of Kromah as well Schumpert. Kromah
4 being 401 S.C. 340. You are right, Kromah does say
5 that you can qualify -- you can't qualify them as a
6 forensic interviewer, because that is not a real
7 qualification, but you are allowed to qualify as a
8 rape trauma expert or a psychologist or someone who
9 diagnoses an actual injury. Kromah goes on and bullet
10 points -- because the Court wanted to be very clear
11 about the things you can and cannot do when you
12 qualify someone as expert -- Kromah is about vouching
13 the credibility of the victim.

14 In this case, she doesn't vouch at any point.
15 She never says he made a compelling finding or I
16 believe him. She says I diagnosed him with PTSD based
17 on things he told me and based on his behavior. The
18 bullets in Kromah says that forensic interviewer can
19 talk about the time, day and circumstances of the
20 interview, personal observations regarding demeanor
21 and behavior and statements that occurred with
22 personal knowledge. A forensic interviewer can say
23 those things.

24 In this case, we have a psychologist who is
25 qualified as an expert on rape trauma, and she's

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1 diagnosing him with PTSD based on her observation of
2 him. She doesn't vouch whether or not there is any
3 truth to it. She does say it is consistent with that
4 type of abuse. But, again, that is under Schumpert,
5 something that is completely okay.

6 THE COURT: Okay. The last case I had was
7 Memorial Day week of last year when I let a rape
8 trauma expert testify to exactly that. She never
9 examined the little boy, but she testified to the
10 general symptoms or characteristics of a child sex
11 abuse victim. I thought that was okay under Kromah.
12 I would not let anybody be qualified as a forensic
13 interviewer, but I thought my reading of Kromah is
14 that other testimony was okay. But then again, I'll
15 deal with all of that when I read these cases.

16 MR. SHAFFER: Your Honor, related -- one of the
17 probably -- honestly, Ms. McGrogan's testimony as a
18 whole, there is a lot of instances where it is, but
19 one specifically I would like to comment on is 161,
20 Lines 10 through 14. You know, the question is: In
21 your expert opinion, is that consistent with his sex
22 abuse? Yes. Yes. Sexual trauma is considered one
23 type of traumatic event that, you know, triggers PTSD
24 syndromes.

25 What she is saying is not related to generally

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1 this is what happens, it is saying related to him
2 specifically, yes, that is consistent with being
3 sexually abused.

4 THE COURT: And I don't think Kromah answered
5 that question yet, that is why the supreme court is
6 saying you guys on the state side better watch out
7 what you do with all these experts.

8 MR. THOMAS: You know, that is --

9 THE COURT: I agree with you that that might be
10 improper, or it might not be.

11 MR. SHAFFER: Your Honor, related -- I think
12 Dawkins -- first Dawkins and then Dempsey relate
13 directly to that. Thank you.

14 THE COURT: Okay. Anything else, Mr. Thomas?

15 MR. THOMAS: As far as the -- I think we've
16 decided -- the only other issue I have left is
17 pictures and the poem. I think those were properly
18 admitted.

19 THE COURT: Okay. I thought that the poem might
20 have helped the Defendant because it says he didn't
21 know who abused him, but now he's found out, and he's
22 dead.

23 MR. THOMAS: That is my position. He pointed
24 that out in closing, the inconsistency in closing
25 arguments.

ARGUMENTS

1 THE COURT: Okay. So I don't know whether that
2 is going to get you very far because the poem, when I
3 read it, the boy is talking about somebody he didn't
4 know, didn't even know who it was.

5 MR. SHAFFER: Your Honor, I think it is a
6 double-edged sword that weighed heavily against him
7 versus the other direction.

8 THE COURT: All right. I do appreciate your
9 arguments. Mr. Hewitt, if Mr. Shaffer hasn't
10 explained the procedure, I'll review all of this.
11 There is a lot to review. I'll make a decision. It
12 will be essentially one of two things. If I rule in
13 your favor, you will get a new trial.

14 MR. HEWITT: Great.

15 THE COURT: The State can appeal that order. If
16 I rule against you, rule in the State's favor, your
17 lawyer can educate you on the procedural deadlines for
18 moving for reconsideration by me or appealing --
19 and/or appealing to the Court of Appeals, Supreme
20 Court.

21 MR. HEWITT: Yes, sir.

22 THE COURT: And, Mr. Shaffer, you can educate him
23 on those appeal deadlines.

24 MR. SHAFFER: Thank you, Your Honor.

25 THE COURT: I'll hold the record open until

ARGUMENTS

1 Mr. Thomas had a chance to determine whether or not --
2 both of you have a chance to determine whether or not
3 Mr. Barr's file is relevant. If anything in that file
4 leads either of you to conclude that additional
5 testimony is warranted, the record will be open for
6 that, too. I would like an idea of how much time you
7 want to do that.

8 MR. THOMAS: I will contact his office next week,
9 Your Honor, and 30 days might be long, but maybe 14.

10 THE COURT: If you need an order from me, I don't
11 know who the trustee of the file is --

12 MR. THOMAS: His brother.

13 THE COURT: I can order the trustee to do certain
14 things, but I don't want to do that.

15 MR. THOMAS: I don't think that is necessary.
16 The office -- he wrote me a letter and said he had a
17 copy of the file, so it might be an issue of going and
18 getting it and making a copy or something. So it
19 shouldn't be a problem.

20 THE COURT: Thank you.

21 (Whereupon, the proceedings concluded, but the
22 record remained open.)
23
24
25

CERTIFICATE OF REPORTER

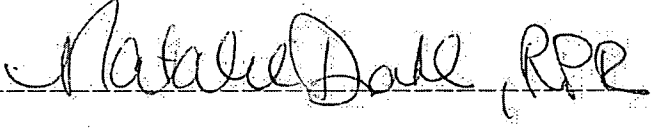
State of South Carolina)

County of Georgetown)

I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the matter of the captioned case, relative to appeal, for Georgetown County, South Carolina, on the 21st day of March, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 24, 2014


Natalie Dahl, RPR

Court Reporter

The Boy

The Boy never knew hate
 Until the Day that He got raped
 He always Said that he would find...
 The man who Put those images in his mind.
 Now the boy has found the Man.
 Hes on the ground and he is dead.
 Now the Boy is done he drops the knife
 and starts to run.

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Steven L. Hewitt,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2012-CP-22-0864

**ORDER GRANTING
POST-CONVICTION RELIEF**

This matter is before the Court pursuant to an application for post-conviction relief timely filed by the applicant. The State filed a return. An evidentiary hearing was convened at the Georgetown County Courthouse on March 21, 2014. The applicant was present in court and represented by Tristan M. Shaffer, Esq. The Respondent was represented by Joshua L. Thomas, Esq., Assistant Attorney General.

PROCEDURAL HISTORY

The applicant is presently confined in the South Carolina Department of Corrections pursuant to an order of commitment from Georgetown County. The applicant was indicted in November 2009 for one count of criminal sexual conduct with a minor, first degree (2009-GS-22-0302) and one count of lewd act on a minor (2009-GS-22-1199). He was initially represented by Eric Fox, Esq., and was represented at trial by Verdell Barr, Esq. Mr. Barr, now deceased, will be referred to herein as "trial counsel". The applicant was tried May 24-26, 2010, and the jury found him guilty of the indicted offenses. Trial judge Steven H. John sentenced the applicant to twenty-five years on the CSC charge and fifteen years concurrently on the lewd act charge. The applicant appealed, the Court of Appeals affirmed his convictions (see 2012-UP-

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ALMA Y. WHITE
CLERK OF COURT

117, filed February 29, 2012), and the case was remitted to the lower court by letter dated March 16, 2012. The application for post-conviction relief was timely filed.

ALLEGATIONS

The applicant's allegations are summarized in each relevant section of the court's Findings of Fact and Conclusions of Law. The applicant seeks a new trial arising from ineffective assistance of counsel.

STANDARD OF REVIEW

In a post-conviction relief proceeding, the applicant bears the burden of proving his or her allegations by a preponderance of the evidence. Caprood v. State, 338 S.C. 103, 109-110, 525 S.E.2d 514, 517 (2000); Rule 71.1(e). 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 v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The correct measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 441, 334 S.E.2d at 814. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case." Caprood, 338 S.C. at 109, 525 S.E.2d at 517 (citations omitted). 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). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. When a defendant challenges his conviction after a trial, the proper consideration is whether there is a reasonable probability that, absent the errors, the fact-finder would have had a reasonable doubt respecting guilt. Smith v. State, 375 S.C. 507, 515, 654 S.E.2d 523, 527-28 (2007) (citations omitted). In order to receive relief, an applicant must prove both ineffective assistance and resulting prejudice. See, e.g., Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007).

Brief Summary of Factual Background

The applicant is the victim's biological father. In 2008, the victim, the applicant's son, age fourteen, made allegations that the applicant had sexually abused him when he (the victim) was approximately seven years old. The victim was born in 1994.

The PCR Hearing

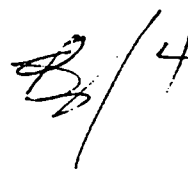
At the PCR hearing, this court had before it the applicant's PCR file, including all pleadings filed, the records of the Georgetown County Clerk of Court regarding the conviction, the Applicant's records from the South Carolina Department of Corrections, and the trial transcript. At the hearing, this court heard the testimony of the applicant and Renee Howard. Trial counsel passed away prior to the PCR hearing, so his testimony was unavailable. The court has carefully considered all of the testimony presented and weighed the same according to credibility. The court also considered the arguments of counsel as to the relevant facts and applicable case law.

Set forth below are the relevant findings of fact and conclusions of law, as required by S.C. Code § 17-27-80 (2003):

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Testimony of Prior Molestation Charge

The applicant claims trial counsel was ineffective in eliciting testimony from witness Renee Howard, the applicant's sister, that the applicant had previously been charged with molesting his four year old daughter but that the charges had been dismissed for lack of evidence. It is conceivable that trial counsel was attempting to establish that the applicant's estranged wife had prompted a report of false molestation charges with regard to the daughter and that, therefore, the wife was behind a false report of charges with regard to the instant victim, the applicant's son. That was a very risky strategy to begin with, but counsel's implementation of this strategy fell below accepted professional norms, primarily because there was no substance to the strategy and no effective preparation for its proper implementation. Trial counsel first put the issue of the prior molestation charge involving the daughter in front of the jury through Ms. Howard. The instant allegations involving the instant victim were made by him in 2008, two years prior to the trial. When the applicant testified, trial counsel asked him, "Okay, have there been consistent allegations about wrongdoing on your part filed by your estranged wife?" The applicant answered "This went on for pretty much up until about the last five years it kind of cooled down." He went on to testify that his wife would set things up to look like he was harassing her; for example, he testified she would invite him over to see the children and when he would arrive, she would not come to the door, and then the police would come and apprehend him. The applicant's testimony that his wife's action "kind of cooled down" five years prior to the trial belies trial counsel's supposed strategy that the wife was behind the instant allegations



made two years before trial. In addition, on cross-examination, the prosecutor asked the applicant, "So are you saying that she's the one that put [victim] up to have to get up in front of all these people and tell that this happened?" The applicant responded "No, I'm not saying that, no ma'am, I'm not saying that at all." This answer was inconsistent with any strategy designed to blame the wife for prompting the victim to make false allegations, and it definitely gutted any such trial strategy. As employed, the strategy was horribly prejudicial to the applicant. The applicant testified that he did not consent to trial counsel bringing up the allegations concerning his daughter. He claims he talked to trial counsel in advance of trial one or two times, and only then about payment of attorney's fees. It is obvious from the hearing testimony that trial counsel did not adequately prepare the applicant to testify in order to carry out the proposed strategy. If there was not to be adequate preparation and counseling of the applicant about the effective use of such a risky strategy so as to make sure his own testimony fit the narrative, the strategy should not have been employed at all. I conclude that even if the strategy was valid trial strategy, the applicant has established trial counsel's implementation of the strategy fell below accepted professional norms.

During cross-examination of the applicant at trial, the prosecutor asked him "... have you ever threatened anybody in regards to coming to court and testifying?" The applicant replied he had not and the prosecutor asked the question again. After objection, the trial judge sent the jury out and admonished the prosecutor for not bringing such an accusation to the court's attention beforehand. The trial judge took a break. After resuming the trial outside the jury's presence, he again expressed his displeasure with the State for asking such a question and also stated he could not understand why the allegations of molestation of the daughter were even brought up. After much discussion, the trial judge brought the jury in and exhaustively instructed the jury that it

was not to consider any evidence of the prior molestation charge and was not to consider any evidence of witness intimidation. To the extent applicant now claims that trial counsel was ineffective for failing to object to the curative instruction, that claim is denied. The trial judge gave the applicant more relief at that stage than he deserved, as trial counsel was the one who created the entire reason for the curative instruction as to the prior molestation charge. This court would also conclude that the prosecutor's question about witness intimidation was not improper in the first instance, and the curative instruction that the jury was to disregard that line of questioning was only beneficial to the applicant. Therefore, there was no ineffective assistance for trial counsel's failure to object to that portion of the curative charge.

As noted above, the applicant did not deserve a curative instruction concerning the prior molestation charge, as the issue was brought out by applicant's trial counsel. In State v. Warren, 341 S.C. 349, 534 S.E. 2d 687 (2000), the Supreme Court held that the defendant was not entitled to a curative instruction not to consider evidence of sex abuse of another victim when the evidence "was introduced largely through the questioning conducted by [defense counsel]." 341 S.C. 351. (It is interesting to note that the Supreme Court stated at the end of the Warren opinion, "We express no opinion whether [defendant] may be entitled to relief in a collateral proceeding.")

However, since the trial judge in the instant case did give a curative instruction, it must be determined whether the instruction sufficiently cured any prejudice brought to bear by the evidence of the prior molestation allegation. There are numerous appellate cases in which it has been held that when a jury is given a curative instruction that it is to disregard certain evidence, it is assumed that the jury will obey the instruction and the error is deemed to be cured. However, the rule has been stated somewhat differently by our Supreme Court in several cases, e.g., "An

instruction to disregard incompetent evidence is usually deemed to have cured the error **unless on the facts of the particular case** it is probable that, notwithstanding the instruction, the accused was prejudiced." State v. Bell, 293 S.C. 391, 360 S.E. 2d 706 (1987), citing State v. Craig, 267 S.C. 262, 227 S.E.2d 306 (1976); State v. Smith, 290 S.C. 393, 350 S.E.2d 923 (1986) (emphasis added). The trial judge gave the curative instruction and then questioned each juror as to whether he or she could follow the instruction. All of the jurors replied that they could follow the instruction not to consider the evidence of the prior molestation charge. Under the circumstances, the judge did the best he could to attempt cure the prejudice brought about by trial counsel. However, I conclude that under the facts of this particular case, any prejudice brought upon the applicant by his own attorney was not sufficiently cured by the judge's instruction that the evidence be disregarded. The evidence that the applicant had been accused of sexual abuse perpetrated upon another child of his was simply too inflammatory. Evidence of guilt in the instant case was certainly not overwhelming. While the jurors stated they could disregard the evidence, I, again, conclude the facts and circumstances in this case are such that the applicant was irreparably prejudiced by the introduction of the evidence and the curative instruction did not cure the prejudice.

For whatever it is worth, an examination of the colloquy between the attorneys and the trial judge reveals that, more than likely, if the prior molestation charge had been introduced by the State instead of by applicant's trial counsel, the trial judge would have declared a mistrial. (Transcript, page 224, lines 5-17). Outside the jury's presence and prior to giving the curative instruction, the trial judge stated, "A defense witness introduced into this case a matter totally unrelated to this prosecution, a matter that should never have been raised in this courtroom at all.... should not have been mentioned by anyone." In determining that he would not declare a

mistrial and that he would instead give the curative instruction, he stated, "A defendant cannot cause, and the court cannot allow a defendant to cause a mistrial based on its own actions, and he is responsible, a defendant is responsible for the actions of his witnesses and his attorney." The trial judge realized the dire prejudice the introduction of the evidence caused to the applicant, but his hands were tied at that time. He could have easily echoed the sentiments of the Supreme Court in Warren that he "express[ed] no opinion as to whether [applicant] may be entitled to relief in a collateral proceeding." The PCR proceeding is the contemplated collateral proceeding, and this is one of those relatively rare circumstances in which the curative instruction did not cure the prejudice it was designed to cure.

II. Testimony of Patricia Brown

I further conclude that the applicant has met his burden of proving he is entitled to relief on the ground that trial counsel elicited from State's witness Patricia Brown that she believed the allegations made by the victim. Ms. Brown was employed by Waccamaw Center for Mental Health and worked as a school-based counselor for Georgetown Middle School. Upon referral from that school's guidance counselor, she began seeing the victim in early 2008. He confided in her that he had been sexually abused at around the age of seven. She acted as his counselor for a short time until he was referred to another counselor in the same group in April 2008. On cross-examination, applicant's trial counsel asked the witness, "Did you get the specific feeling that this might have been an obviation (sic) and not necessarily the truth?" The witness replied "No, I believe him, I believe what he said was true." (Transcript, page 98, lines 6-11). Our appellate courts have definitively ruled that in child sex abuse cases, prosecutors are forbidden from having witnesses such as Ms. Brown vouch for the credibility of the victim. See State v. Jennings, 394 S.C. 473, 716 S.E. 2d 91 (2011); see also Smith v. State, 386 S.C. 562, 689 S.E.2d

629 (2010) (forensic interviewer's hearsay testimony impermissibly corroborated the victim's testimony because the outcome of the case hinged on the victim's credibility regarding the identification of the perpetrator). Even though Ms. Brown did not testify as an expert, the same rationale would apply.

In Smith, the PCR applicant was convicted of CSC with a minor, second degree. At the trial, the forensic interviewer testified without objection that the child victim's statement was believable and that the child had no reason to lie. The Supreme Court concluded that there was no valid trial strategy for not objecting to the evidence and concluded that prejudice resulted in light of the prosecutor's repeated emphasis of the forensic interviewer's statement that the child was credible. In the instant case, I conclude there was no valid trial strategy that was furthered by eliciting testimony that Ms. Brown believed the victim. The testimony would certainly not have been admissible if the State had tried to have it admitted. While the State did not later emphasize Ms. Brown's belief that the victim was credible, I conclude the applicant has established the prejudice prong of Strickland. It is undeniable that the issue of the victim's credibility was of paramount importance in this case, and for trial counsel to elicit this testimony bolstering the victim's credibility was extremely prejudicial. The above-discussed evidence that the applicant had been accused of molesting his daughter, coupled with Ms. Brown's testimony that she believed the victim, was devastating to the defendant's position that the victim fabricated the accusations against the applicant.

III. Failure to Elicit Testimony that Victim Admitted He Fabricated the Allegations

The applicant is also entitled to relief on his claim that counsel was ineffective for advising witness Renee Howard to not mention during her testimony that the victim had told her that he fabricated the allegations against the applicant. She testified at the PCR hearing that trial

counsel told her this statement made by the victim was hearsay and that she was not to bring it up. It is apparent that this alleged statement would have been admissible under Rule 801 (d) (1) (A), SCRE, which provides that an out of court statement is not hearsay if the declarant testifies at the hearing, is subject to cross-examination concerning the statement, and the statement is inconsistent with the declarant's testimony. The declarant victim could have been cross-examined about the alleged statement as contemplated by Rule 613 (b), SCRE when he testified during the State's case-in-chief. If he had admitted telling Ms. Howard he fabricated the allegations, the inquiry would have ended there, but the defendant would have obviously benefitted from this admission. If the victim denied making the statement or equivocated, extrinsic evidence of the statement would have been admissible through Ms. Howard under Rule 613 (b). See Sheppard v. State, 357 S.C. 646, 661, 594 S.E. 2d 462, 471 (2004); State v. Rice, 375 S.C. 302, 317, 652 S.E. 2d 409, 416 (Ct. App, 2007). I find credible Ms. Howard's testimony that trial counsel instructed her to not mention the statement during her testimony. I conclude that trial counsel was simply not aware of or had misinterpreted the relevant hearsay rules governing the admissibility of prior inconsistent statements. The jury could have considered the prior inconsistent statement as substantive evidence that the crimes alleged did not occur. The victim's credibility was the key to this case. The absence of this admissible evidence was prejudicial to the applicant, as there is a reasonable probability that the outcome of the trial would have been different if the evidence had been properly presented.

The applicant also testified at the PCR hearing that the victim admitted to him he had made up the allegations "to get out of trouble". The transcript reveals (pages 34 and 84-85) that the victim was charged with possession of marijuana on May 14, 2008, several months before he made the allegations. He was adjudicated guilty in Family Court on June 3, 2009. He was

charged with ABHAN in 2005. The ABHAN charge was dismissed on March 14, 2009. Both charges were still pending at the time the victim made the subject allegations in 2008 but had been disposed of by the time of the May 2010 trial.

The State moved *in limine* (page 34, Transcript) to prohibit evidence of the marijuana conviction on the basis that Rule 609, SCRE, would not allow its admission on the issue of credibility since the offense carried a maximum prison term of less than one year and it was not a crime of dishonesty. The trial judge excluded evidence of the marijuana conviction pursuant to the restrictions in Rule 609, and the trial excluded admission of the ABHAN charge because it did not result in a conviction (Transcript, pages 85-86). Trial counsel did not argue any other ground for the admission of these two criminal charges. The applicant claims counsel was ineffective for failing to argue that the victim could be cross-examined on these two charges pursuant to either Rule 404 (b), SCRE, or for the purpose of establishing the victim's bias or motivation to lie.

I conclude that the evidence was likely not admissible under Rule 404 (b). However, there is no real doubt that the evidence was admissible under Rule 608 (c), which provides that "[b]ias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced." Admission of the evidence would have also been subject to a Rule 403 analysis to determine if the probative value of the evidence was substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. I conclude the evidence would have been admissible under Rule 608 (c) as evidence of the victim's motive to misrepresent, i.e., his motive to fabricate the charges. I conclude the evidence would have survived a Rule 403 analysis. The victim was a boy of ten or eleven when he was charged with the ABHAN offense and he was thirteen or fourteen when

charged with the marijuana offense. His allegations against the applicant were made in late 2008, when both charges were pending. The same solicitor's office that was prosecuting these two charges was also prosecuting the applicant. The probative value of this evidence was that the victim had a motive to fabricate the charges in order to ease any blame or punishment he may receive for the two charges against him. This probative value was certainly not substantially outweighed by the dangers contemplated in Rule 403. At the least, the trial judge could have given a limiting instruction to the jury that the evidence was to be considered, if at all, only on the issue of the victim's credibility. Trial counsel's failure to pursue this avenue of admissibility fell below accepted professional norms, and if the evidence had been introduced, there is a reasonable probability the outcome of the trial would have been different.

In addition, the applicant asserts the State opened the door to the use of the evidence when the victim testified on direct examination that he didn't tell anyone the details of the molestation for a long time, and kept it to himself, and that he "was in and out of being in trouble", "kept getting in trouble", and "I got in a lot of trouble for smoking pot". (Transcript, pages 123-124). The solicitor asked the victim, "Do you know why you were doing these things?" The victim replied, "No ma'am. It's just like I felt like I had had a tough life and I just felt like everybody had given up on me so like I had no improvement where I had people was just, I wouldn't come in and ask them for help." (Transcript, page 124, lines 11-17). He then testified about a drawing he made showing tears coming out of his eyes; he said that drawing depicted him as "upset and it means I just didn't know what to do." He further testified that he was sad because "I was just thinking about my life." (Transcript, page 126, lines 9-17). When his drawing and poem were seen by school officials, the victim was referred to a school counselor, and he first made the allegations. This testimony opened the door to trial counsel

cross-examining the victim about the existence of the two pending charges and how the two pending charges might have also caused the victim to be upset with his life, etc. Trial counsel's failure to pursue this opening of the door fell short of accepted professional norms, and prejudice resulted because there is a reasonable probability the outcome of the trial would have been different if the evidence had been introduced.

IV. Failure to Object to Testimony Exceeding Scope Permitted by Rule 801 (d) (1) (D)

The applicant also claims entitlement to relief arising from trial counsel's failure to object to witness testimony that exceeded the time and place limitations mandated by Rule 801 (d) (1) (D), SCRE. Patricia Brown was employed by Waccamaw Center for Mental Health and was a school-based counselor at Georgetown Middle School. She counseled the victim beginning in 2008. She testified he told her he was sexually abused at age seven. She then referred the victim to Kathy McGrogan in April, 2008. She was qualified as an expert in child sexual abuse trauma. On cross-examination, trial counsel asked Ms. McGrogan why she waited from April 2008 until August 2008 to report the allegations to law enforcement and she replied that the applicant was in jail and that she was under the impression that he was in jail for sexually abusing the victim, and that therefore, there was no need to report what had already been adjudicated. (Transcript, pages 168-169). Even though it was likely apparent to the jury that the victim told these witnesses that the applicant was the perpetrator, case law and Rule 801 (d) (1) (D) clearly stand for the proposition that corroborating witnesses may only testify as to time and place factors, and may not testify that the victim identified the defendant as the perpetrator. Huggler v. State, 360 S.C. 627, 602 S.E. 2d 753 (2004); Watson v. State, 370 S.C. 68, 634 S.E. 2d 642 (2006); State v. Jeffcoat, 350 S.C. 392, 565 S.E. 2d 321 (Ct. App. 2002). Ms. McGrogan directly implicated the applicant as the perpetrator named by the victim, and trial counsel did not object to the

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testimony, even though he elicited the testimony himself. At the least, he should have either not asked the question that elicited the statement, or he should have asked the trial judge to instruct the jury to disregard the inadmissible testimony. There was no trial strategy that could have been furthered by not doing so. Relief is granted on this ground. Coupled with the other errors noted herein, the failure to object to this evidence was prejudicial to the applicant.

V. Vouching by Solicitor During Closing Argument

The applicant has not established any basis for relief as to his claim for relief arising from trial counsel's failure to object to certain portions of the solicitor's closing argument. The applicant claims the solicitor vouched for the victim's credibility on four occasions (Transcript, page 257, line 15; page 258, line 16; page 259, lines 22-23; and page 262, lines 16-18). The court concludes that none of these comments were objectionable.

VI. Failure to Object to Qualification of Child Sexual Abuse Trauma Expert

The applicant claims trial counsel should have objected to the qualification of Ms. McGrogan as an expert in the field of child sexual abuse trauma. Relief is denied on this claim. In State v. Schumpert, 312 S.C. 502, 435 S.E. 2d 859 (1993), the defendant claimed error in the admission of rape trauma evidence to prove rape actually occurred. The Supreme Court expressly ruled that "both expert testimony and behavioral evidence are admissible as rape trauma evidence to prove a sexual offense occurred when the probative value of such evidence outweighs its prejudicial effect." 312 S.C. at 506. Schumpert has not been overruled or modified. If presented to the jury in accordance with Rule 801 and case law prohibiting the witness from vouching for the victim's credibility, the probative value of the trauma evidence and the behavioral evidence in this case outweighed its prejudicial effect. Certainly, under Rule

403, SCRE, the probative value was not substantially outweighed by the danger of unfair prejudice, etc.

As to any other allegations of ineffective assistance of counsel, I conclude that the applicant has either abandoned them or has not met his burden of proving them by the greater weight of the evidence. The court also denies the applicant's claim under U.S. v. Cronin, 466 U.S. 648 (1984) that trial counsel failed to subject the State's case to meaningful adversarial testing, so as to make the adversarial process presumptively unreliable.

CONCLUSION

As discussed above, the applicant has met his burden of establishing both prongs of Strickland. For the foregoing reasons, the applicant's application for post-conviction relief is granted and the matter is referred to the Georgetown County Court of General Sessions for a new trial.

AND IT IS SO ORDERED.

June 26, 2014


George C. James, Jr., Circuit Judge

STATE OF SOUTH CAROLINA)
 COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTEENTH JUDICIAL CIRCUIT

Steven L. Hewitt, Sr., #303283,)

Case No. 2012-CP-22-864

Applicant,)

v.)

State of South Carolina,)

Respondent.)

**MOTION TO ALTER OR AMEND
 JUDGMENT PURSUANT TO RULE
 59(e), SCRPC**

Respondent, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, moves the Court to amend its order granting post-conviction relief. As a threshold matter, the Order Granting Post-Conviction Relief was filed on July 11, 2014, and received by Respondent on July 16, 2006. In support of this motion, Respondent would show as follows:

Respondent respectfully requests the Court amend its order because it grants relief, in part, based on a ground not raised by Applicant. In Part III of its findings of fact, the Court found "applicant is entitled to relief on his claim that counsel was ineffective for advising witness Renee Howard to not mention during her testimony that the victim had told her that he fabricated the allegations against the applicant." (Order p. 9). However, Applicant never alleged counsel was ineffective in this regard. In his application, Applicant alleged counsel was ineffective in the following regards:

1. Introduced allegations of prior similar acts.
2. Failed to object to solicitor's questions about prior similar acts.
3. Failed to object to solicitor's accusations of threatening a witness.
4. Failed to object to a fatal variance in the indictment.
5. Failed to request a jury instruction on alibi.
6. Failed to investigate.

At the evidentiary hearing, Applicant proceeded on the following allegations of ineffective assistance of counsel:

1. Improper elicited testimony about a prior accusation of criminal sexual conduct with a minor by another victim.
2. Failure to move for a mistrial because a curative instruction was not sufficient to cure any prejudice from the introduction of the prior accusation of criminal sexual conduct with a minor by another victim.
3. Failure to object to the qualification of Ms. McGrogan as an expert in the field of child sex abuse trauma.
4. Improperly elicited testimony from Ms. Brown that vouched for the victim's credibility.
5. Failure to introduce the victim's pending criminal charges.
6. Failure to object to the introduction of a picture and poem drawn and written by the victim.
7. Failure to object to testimony outside the scope of time and place.
8. Failure to object to the solicitor's improper vouching.

Accordingly, Applicant never alleged counsel was ineffective in advising Renee Howard to not testify to her conversations with the victim. Furthermore, Renee Howard's testimony at the evidentiary hearing regarding her conversation with the victim came in response to the Court's questioning of her. Therefore, the issue of whether counsel was ineffective in this regard was not raised by Applicant as a ground for relief.

WHEREFORE, Respondent respectfully requests the Court amend its order to delete the finding of ineffectiveness in that regard.

Respectfully submitted,

ALAN WILSON
Attorney General

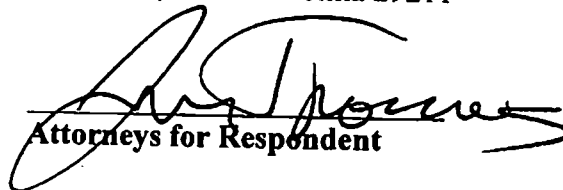
JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
Bar No. 100777

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

By:

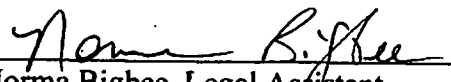

Attorneys for Respondent

July 18, 2014

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	)	
	)	
	)	2012-CP-22-864
STEVEN L. HEWITT, SR., #303283	)	
	)	
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 Respondent's Rule 59(e) SCRCF, Motion in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid: The Honorable Alma Y. White, Georgetown Clerk of Court, P.O. Drawer 479, Georgetown, SC 29442 and Tristan Michael Shaffer, Esquire, 4701 Oleander Drive, Myrtle Beach, SC 29577.

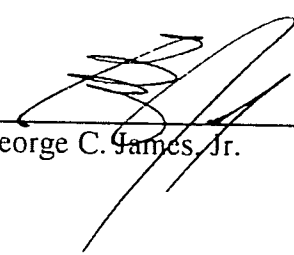
DATED this 18TH day July, 2014.


 Norma Bigbee, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GEORGETOWN) FIFTEENTH JUDICIAL CIRCUIT
Steven L. Hewitt, Sr., #303283,) 12-CP-22-864
Applicant,)
vs) ORDER
State of South Carolina,)
Respondent,)
_____)

The State's Motion to Alter or Amend dated July 12, 2014 is denied.

AND IT IS SO ORDERED.



George C. James, Jr.

July 21, 2014

FILED
GEORGETOWN COUNTY, S.C.
2014 AUG 13 PM 3:15
ALMA Y. WHITE
CLERK OF COURT