

ORIGINAL

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Lexington County

JAN 20 2017

Honorable R. Knox McMahon, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DAVID RAY BROWN,

APPELLANT

APPELLATE CASE NO 2016-000170

RECORD ON APPEAL

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1 State of South Carolina) In the Court
2 County of Aiken) Of General Sessions

3
4 Indictment No.: 2016-GS-32-00160
5 2016-GS-32-00161
6 2016-GS-32-00162
7 2016-GS-32-00163

8 State of South Carolina,)
9 Plaintiff.)

10 vs.)

11 Transcript of Record

12 David Ray Brown,)
13 Defendant.)

14 January 19-21 and 25, 2016
15 Lexington, South Carolina

16 B E F O R E:

17 The Honorable R. Knox McMahon, Judge and a jury.

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

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20 Shannon Davis, Assistant Solicitor
21 Attorneys for the State

22 Benjamin A. Stitely,
23 Attorney for the Defendant

24 Brenda J. Sigwald, Circuit Court Reporter
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TUESDAY, JANUARY 19, 2016

THE COURT: All right. Solicitor, if you'd call your first case for trial please.

MS. PATTERSON: Yes, sir. Thank you, Your Honor. The State of South Carolina versus David Ray Brown, Indictment Number 2016-GS-32-160, 161, 162, 163, criminal sexual conduct with a minor in the second degree.

THE COURT: All right. Mr. Stitely, you represent Mr. Brown?

MR. STITELY: That's correct, Your Honor.

THE COURT: And he is present?

MR. STITELY: He is, Your Honor.

THE COURT: All right. Thank you. Thank you very much.

JURY VOIR DIRE

THE COURT: Ladies and gentlemen of the jury panel, if you'd please give me your complete and undivided attention. Also if you would please consider yourselves to be under oath; the oath having been administered by our deputy clerk previously this morning.

We're going to go through a procedure whereby we select the jury, a fair and impartial jury, for the trial of this specific case. You've been generally qualified, no exemptions apply to those who have remained with us, or were exercised, and now we go through another series of

1 questions to determine if you're qualified to serve as a
2 fair and impartial juror in this specific case that has
3 been called for trial.

4 Momentarily I'm going to read the indictments to
5 you. The indictments are not evidence. The indictments
6 are formal and written documents whereby an individual is
7 placed on notice of charges that have been brought against
8 him or her. Indictments contain mere allegations and in no
9 way are they evidence of the allegations contained. The
10 reason I read the indictments to you is because of some of
11 the questions that I will ask you thereafter.

12 The first indictment, 2016-GS-32-00160 reads that
13 David Ray Brown did in Lexington County, South Carolina, on
14 or about November the 8th, 2013, willfully and unlawfully
15 commit a criminal sexual conduct with a minor in the second
16 degree by engaging in a sexual battery with a minor who was
17 at least 14 years of age or less, but who was at least 11
18 years of age; to wit: Vaginal intrusion upon Minor ,
19 date of birth and the defendant was older
20 than the victim in violation of Section 16-3-655(2). That
21 is an indictment for criminal sexual conduct with a minor
22 in the second degree.

23 2016-GS-32-00160 (sic) alleges again criminal
24 sexual conduct with a minor in the second degree being the
25 same named alleged minor, the date being November 11th,

1 2013. As you recall, the first date was November 8th,
2 2013.

3 The next indictment, 2016-GS-32-162 alleges the
4 same named and aged minor, date being November 16th, 2013.

5 The last indictment, 2016-GS-32-00163, the same
6 named minor, the dates covering 1 October, 2013 through 28
7 October, 2013.

8 So there were four, again, charging documents each
9 charging criminal sexual conduct with a minor in the second
10 degree. All allege the same minor, all allege the same
11 type of sexual battery: Vaginal intrusion; the dates being
12 the difference. The first being 1 October, 2013 through
13 October 28th, 2013. The second one being 8 November, 2013;
14 the third alleging 11 November, 2013 and the fourth
15 alleging 16 November, 2013.

16 The Solicitor, excuse me, the State is represented
17 by the Solicitor's Office.

18 Solicitor, will you please stand, introduce
19 yourself and any other members of the solicitor's staff
20 that are going to assist you in the prosecution of this
21 case.

22 MS. PATTERSON: Yes, sir, Your Honor, may it please
23 the Court. My name is Rhonda Patterson. I'm the assistant
24 solicitor here in Lexington. I will be assisted by Shannon
25 Davis, she is also an assistant solicitor in our office.

1 We will also be assisted by Investigator Matt Martin and
2 Nikki Gugel, she'll be our victim's advocate.

3 THE COURT: Thank you. Thank you very much.

4 Mr. Brown is present and represented by Mr.
5 Stitely. If you'd please stand, introduce yourself and
6 your client to the jury panel.

7 MR. STITELY: My name is Ben Stitely. My office is
8 right across the street, Williams Hendrix. This is my
9 client, David Brown.

10 THE COURT: Thank you, Mr. Stitely.

11 Thank you, Mr. Brown.

12 Is any member of the jury panel related by blood or
13 marriage, close personal friends, have any social,
14 business, professional relationship with Assistant
15 Solicitor Patterson and Davis or any employee of the
16 Lexington County Solicitor's Office? If so, please stand.

17 (No one stood.)

18 THE COURT: Is any member of the jury panel related
19 by blood or marriage, have any social, personal, business,
20 professional relationship with Mr. Stitely, Mr. Brown's
21 attorney? If so, please stand.

22 (No one stood.)

23 THE COURT: Has any member of the jury panel ever
24 been represented by or been a party to a lawsuit in which
25 the opposing party was represented by either Ms. Patterson,

1 Ms. Davis, or Mr. Stitely? If so, please stand.

2 (No one stood.)

3 THE COURT: Is any member of the jury panel related
4 by blood or marriage, have any social or professional or
5 business relationship with David Ray Brown, who stood and
6 was introduced to you? If so, please stand.

7 The indictments allege incidents that occurred
8 between 1 October, '13 and 18 November of '13 in Lexington
9 County, named alleged minor, Minor . Does any member
10 of the jury panel have any knowledge about the case from
11 any source whatsoever? If so, please stand.

12 (No one stood.)

13 THE COURT: Does any member of the jury panel have
14 any bias or prejudice towards the parties, that being Mr.
15 Brown, or towards the State of South Carolina? If so,
16 please stand.

17 (No one stood.)

18 THE COURT: Does any member of the jury panel have
19 any bias or prejudice towards the alleged subject matter
20 involved in the trial of the case? If so, please stand.

21 (Several jurors stood.)

22 THE COURT: All right. If you would give me your
23 name and number in the front corner?

24 THE JUROR: Josephine Flickinger, 78.

25 THE COURT: 78. All right.

1 And, yes, ma'am, next to her.
2 THE JUROR: Kelly Temple, 195.
3 THE COURT: 195.
4 And y'all may move over towards the center aisle.
5 Yes, ma'am?
6 THE JUROR: Laura Branting, 39.
7 THE COURT: 39. All right.
8 Yes, ma'am.
9 THE JUROR: Ellen Rav, 167.
10 THE COURT: Say your number again for me?
11 THE JUROR: 167.
12 THE COURT: All right. Yes, ma'am.
13 Yes, sir?
14 THE JUROR: Number 2, Roger Acton.
15 THE COURT: All right. Thank you.
16 Yes, ma'am?
17 THE JUROR: Number 61, Katasha Davis.
18 THE COURT: Ms. Davis. All right.
19 And on the back?
20 THE JUROR: Sandra Wylie, 224.
21 THE COURT: 224, all right.
22 THE JUROR: 47: Richard Chalupa, Number 47.
23 THE COURT: I'm sorry, I missed you, sir. I
24 apologize.
25 And way in the back?

1 THE JUROR: Melissa Ward, 208.

2 THE COURT: 208. Yes?

3 THE JUROR: 204, Mary Venvah.

4 THE COURT: Say again?

5 THE JUROR: 204, Mary Venvah.

6 THE COURT: All right. Thank you.

7 THE JUROR: 63, Tanna Deese.

8 THE COURT: All right.

9 THE JUROR: 169, Jason Rish.

10 THE COURT: All right. Thank you. If y'all will
11 just line up.

12 Yes, ma'am?

13 THE BAILIFF: 78, Your Honor.

14 THE COURT: Good morning.

15 THE JUROR: Good morning.

16 THE COURT: Can you tell me your situation?

17 THE JUROR: My sister was --

18 THE COURT: I'm sorry.

19 THE COURT REPORTER: I can't hear her.

20 THE COURT: Well I do have to take it down on the
21 record. I'm sorry.

22 THE JUROR: My sister was molested when she was a
23 child. And I'm supposed to make a judgement on his
24 innocence or guilt. I would in my heart would have to ask
25 some questions. I don't think the jurors can do that.

1 THE COURT: No. No, ma'am, they can't ask
2 questions. The way a trial works is the jury becomes the
3 judges of the facts. I tell them the law and they decide
4 what the law is -- excuse me, what the facts are and apply
5 it to the law --

6 THE JUROR: Okay.

7 THE COURT: -- based on what they hear in the
8 courtroom.

9 THE JUROR: I don't know -- I don't know if I have
10 the strength for that. I'm quite uncomfortable without my
11 being able to ask questions.

12 THE COURT: Would that on any type of case?

13 THE JUROR: That would be --

14 THE COURT: In other words, when you say ask
15 questions, would that be on any type of case or just this
16 type of case?

17 THE JUROR: This kind of case would be a trigger
18 case. I could more consider not asking questions if I were
19 on possibly something that doesn't overwhelm me.

20 THE COURT: All right. Well, I'm going to set you
21 aside for the trial of this case. Please do not say
22 anything to your fellow jurors.

23 THE JUROR: Thank you so much.

24 THE COURT: All right.

25 Yes, ma'am?

1 THE BAILIFF: 195, Your Honor.

2 THE COURT: Good morning. Tell me your name
3 please?

4 THE JUROR: Kelly Temple.

5 THE COURT: Ms. Temple?

6 THE JUROR: Yes, sir.

7 THE COURT: All right.

8 THE JUROR: That nice lady said let you be the
9 judge --

10 THE COURT: Who is it you're talking about?

11 THE JUROR: Whenever she said if you have a
12 question make sure I ask you. My oldest daughter was a
13 victim.

14 THE COURT: All right. Given that fact, can you
15 set that aside and sit as a fair and impartial juror in the
16 trial of this case based on the evidence and the testimony
17 you hear from the witness stand and the law as I tell you
18 the law is?

19 THE JUROR: If you don't see an issue. But I did
20 want to make you aware.

21 THE COURT: Well it's -- if you can set it aside --
22 you know things happen in life. Bad. If you can set it
23 aside and not make your decision based on what's happened
24 to your family member and just base it on what you hear in
25 the courtroom and the law as I tell you, I think you're

1 qualified.

2 THE JUROR: Okay.

3 THE COURT: If you said no, I can't set it aside,
4 it would affect my decision, you wouldn't be qualified. So
5 you tell me. You know yourself best.

6 THE JUROR: I think it would be difficult.

7 THE COURT: All right. Difficult, may not be
8 enough.

9 THE JUROR: Okay.

10 THE COURT: In other words, are you saying
11 difficult to set it aside?

12 THE JUROR: Correct.

13 THE COURT: I'll set you aside for the trial of
14 this case. Do not say anything to your fellow jurors.
15 Okay. Thank you.

16 Yes?

17 THE BAILIFF: 39, Your Honor.

18 THE COURT: Good morning.

19 THE JUROR: Good morning. I would like to be
20 exempt as I was raped and molested as a young child.

21 THE COURT: And you do not think you can set that
22 aside.

23 THE JUROR: No.

24 THE COURT: Tell me your number again?

25 THE JUROR: 39.

1 THE COURT: All right. I'll set you aside for the
2 trial of this case. Do not say anything to your fellow
3 jurors.

4 All right, yes, sir.

5 THE BAILIFF: 167, Your Honor.

6 THE COURT: Yes, ma'am. Good morning. Tell me
7 your name?

8 THE JUROR: Ellen Rav. My daughter was a victim of
9 rape and she prosecuted the case. We weren't satisfied
10 with the result and I do not think I could be personally
11 fair.

12 THE COURT: That would cause you to be against the
13 State?

14 THE JUROR: Yeah.

15 THE COURT: All right. I'll set you aside for the
16 trial of this case. Do not say anything to your fellow
17 jurors.

18 THE JUROR: Do I get dismissed?

19 THE COURT: Just go back to your seat for now.
20 Yes, sir?

21 THE BAILIFF: Number 2, Your Honor.

22 THE COURT: Good morning. Tell me your name again.

23 THE JUROR: Roger Acton.

24 THE COURT: All right.

25 THE JUROR: I'm just concerned, I've been a part of

1 the task force with Attorney General McMaster on the
2 domestic violence and sexual assault. And we've put
3 together a faith-based, a much more combined effort. I
4 think that was 2006 or '07, something like that. I
5 represented South Carolina at the convention. I was just
6 concerned. I'm not sure how it might impact my decision.

7 THE COURT: Well I guess we're all a sum total of
8 all of life's experiences, but if you're selected for a
9 jury panel, you decide the case based on the evidence and
10 the testimony you hear in this courtroom.

11 THE JUROR: Yes, sir.

12 THE COURT: As you determine it to be and the law
13 as I tell you the law is.

14 THE JUROR: Right.

15 THE COURT: Can you do that?

16 THE JUROR: I believe so. I just wanted you to
17 know that.

18 THE COURT: You've never been on jury duty before?

19 THE JUROR: No, no, not this type of thing. Never
20 officially on one.

21 THE COURT: So you don't know of any reason why you
22 couldn't be fair and impartial for both the State and Mr.
23 Brown?

24 THE JUROR: I should be.

25 THE COURT: I think you can stay with us.

1 THE JUROR: Yes, sir.

2 THE COURT: Number 2 is going to stay with us.

3 THE CLERK: Yes, sir.

4 THE COURT: All right. Yes, ma'am?

5 THE BAILIFF: 61, Your Honor.

6 THE COURT: Ms. Davis?

7 THE JUROR: Yes.

8 THE COURT: All right.

9 THE JUROR: Good morning. I'm an advocate for
10 victims of sexual abuse. So I don't know how I would view
11 it. I could go either way.

12 THE COURT: Well I guess the --

13 (Several people entered the courtroom.)

14 THE COURT: Are those jurors?

15 THE CLERK: No, sir.

16 THE COURT: Are the jurors over there?

17 THE CLERK: I've got the jurors behind them -- all
18 the jurors are sitting -- I think I've got 1, 2, 3, 4
19 sitting over that way.

20 THE COURT: The first row?

21 THE CLERK: No, sir. These first two rows are
22 apparently victims. The third row back is my jurors.

23 THE COURT: The first row is victims. The second
24 row is --

25 THE CLERK: Is victims.

1 THE COURT: Where are my jurors?

2 THE CLERK: Right behind Dave Rosalez, right behind
3 him.

4 THE COURT: The jurors are way back there?

5 THE CLERK: Right there. There's the jurors
6 holding their hands up.

7 THE COURT: Why aren't the jurors on this front
8 row?

9 THE BAILIFF: They put the victims up there, sir,
10 so I moved them back because they brought victims in. I
11 didn't want them close to them, Your Honor.

12 THE COURT: Thank you. Thank you, Mr. Mills.
13 I apologize.

14 THE JUROR: Yes, sir, Your Honor.

15 THE COURT: The question, of course, becomes, given
16 that fact, can you set that aside and sit there as a fair
17 and impartial juror for the trial of this case for both Mr.
18 Brown and the State? Can you make a decision, not on what
19 happened in your life, but based on the evidence and
20 testimony and witnesses testifying in this courtroom and
21 the law as I tell you it is.

22 THE JUROR: I couldn't say yes or no.

23 THE COURT: Well that's fair. There's no right and
24 wrong answer either.

25 THE JUROR: I would say --

1 THE COURT: It's just not your answer.

2 You would say what?

3 THE JUROR: That when my staff does cases, I try to
4 put myself in the background.

5 THE COURT: And you --tell me what you do.

6 THE JUROR: Probation and Parole supervisor.

7 THE COURT: So you work on the second floor?

8 THE JUROR: Yes, sir.

9 THE COURT: You know Ms. Bunge? That's my
10 daughter.

11 THE JUROR: Oh really.

12 THE COURT: Yeah. Surprised that I have a daughter
13 like that, aren't you?

14 I surprised you. In fact, I walked downstairs to
15 see her when we took this break.

16 THE JUROR: I work with her every week.

17 THE COURT: I'm going to set you aside.

18 THE JUROR: Thank you for being with us today.

19 THE COURT: 61, right?

20 THE JUROR: Yes.

21 THE COURT: Yes, sir?

22 THE BAILIFF: 224, Your Honor, 224.

23 THE COURT: All right. Thank you. Good morning.
24 Tell me your name please?

25 THE JUROR: Sandra Wylie.

1 THE COURT: Ms. Wylie. And tell me your situation.

2 THE JUROR: Other than the fact I want to cry, I'm
3 fine. I have nephew under the age of 8 that was taken out
4 of her parents yard and molested by a registered parole
5 offender. At 15, I was molested by a 51 year old that my
6 parents refused to press charges because I allowed it to
7 happen because I was alone with him.

8 THE COURT: Given those facts, do you think you can
9 be a fair and impartial juror in the trial of this case?

10 THE JUROR: I would attempt to, but I'm very angry
11 right at the moment.

12 THE COURT: I'll set you aside on the trial of this
13 case. Do not speak with your fellow jurors about this,
14 okay.

15 What was her number again?

16 THE CLERK: She was 224, Your Honor.

17 THE COURT: All right. Yes, sir?

18 THE CLERK: 47, Your Honor.

19 THE COURT: Good morning. Tell me your name.

20 THE JUROR: Richard Chalupa. I just wanted to
21 inform you based on the subject matter -- my wife, when she
22 was 16, she was a victim of rape. It's just a mess with
23 the counseling and everything during this whole time and
24 I'm just not sure how I would physically respond. I can
25 look at the evidence and stuff, you know, what it has to

1 say, but I don't know what my internal kind of -- self and
2 what I stand for would go for that.

3 THE COURT: If you're selected as a member of the
4 jury, you would have to make a decision based on the
5 evidence and testimony you hear from the witnesses
6 testifying under oath in the courtroom and the law as I
7 tell you the law is. What you would have to do is set
8 aside what happened to your spouse and make your decision
9 solely on the evidence and the testimony you hear in the
10 courtroom. Do you feel like you'd be a fair and impartial
11 juror to Mr. Brown and to the state?

12 THE JUROR: I'd do what I could.

13 THE COURT: I'll set you aside from the trial of
14 this case. Do not say anything to your fellow jurors.

15 THE CLERK: 208, Your Honor.

16 THE COURT: Yes, ma'am, tell me your name, please.

17 THE JUROR: Melissa Ward.

18 THE COURT: Okay. Tell me your situation.

19 THE JUROR: I suffered sexual molestation as a
20 child. My anxiety is already up because of this.

21 THE COURT: You don't feel like you could be a fair
22 and impartial juror in this?

23 THE JUROR: No.

24 THE COURT: Okay. I'll set you aside. Do not say
25 anything to your fellow jurors.

1 THE BAILIFF: 169, Your Honor.

2 THE COURT: Good morning. Tell me your name?

3 THE JUROR: Jason Rish.

4 THE COURT: Tell me your situation.

5 THE JUROR: Sir, I have a daughter who is 12. I
6 don't think I could sit on this trial since I have a child.

7 THE COURT: I'll set you aside for the trial of
8 this case. Do not say anything to your fellow jurors.

9 THE CLERK: 63, Your Honor.

10 THE COURT: Good morning. Tell me your name?

11 THE JUROR: Tanna Deese.

12 THE COURT: Say again?

13 THE JUROR: Tanna Deese.

14 THE COURT: Can you tell me your situation?

15 THE JUROR: I'm not sure I understood the question.

16 THE COURT: Well, basically would you have any bias
17 to Mr. Brown or the State or to the certain matters
18 involved.

19 THE JUROR: Maybe a little about the subject. I
20 was -- I have a small child, but I don't know -- I wanted
21 to make sure that I wouldn't be -- you know.

22 THE COURT: So it's the fact that you have a small
23 child?

24 THE JUROR: Yes, and the evidence subject was where
25 I don't know if I could qualify. I just wanted to ask you.

1 THE COURT: Well, if you're chosen as a member of
2 the jury panel, you will be judge of the facts of the case
3 and you'll listen to evidence and the testimony of the
4 witnesses testifying under oath.

5 THE JUROR: Uh-huh (affirmative response).

6 THE COURT: And you decide the facts applying the
7 law as I tell you the law is uninfluenced by outside -- any
8 outside interference. Not to leave your common sense out
9 and your good judgement, but what you hear in the
10 courtroom.

11 THE JUROR: Okay.

12 THE COURT: And then the jury decides -- you would
13 do it with a backdrop also of being fair and impartial both
14 to Mr. Brown and to the State.

15 THE JUROR: Okay.

16 THE COURT: You think you can do that?

17 THE JUROR: I do believe I can do that.

18 THE COURT: Have you ever been on jury duty before?

19 THE JUROR: I have not.

20 THE COURT: So you don't know of any reason why you
21 cannot be a fair and not be impartial --

22 THE JUROR: No, sir, I don't.

23 THE COURT: -- for Mr. Brown?

24 THE JUROR: No, sir, I do not.

25 THE COURT: Or as to the State?

1 THE JUROR: No, sir, I do not.

2 THE COURT: You can stay with us. Thank you.

3 THE BAILIFF: 204, Your Honor.

4 THE COURT: Good morning. Tell me your name?

5 THE JUROR: Mary Venvah.

6 THE COURT: All right. Can you tell me your
7 situation.

8 THE JUROR: I'm a teacher. I just think it's
9 just -- because I deal with kids it would not be advisable.
10 I don't think I would have good judgment because I would be
11 so concerned about the welfare of the child.

12 THE COURT: Okay. Well, of course the whole
13 backdrop of the question is whether you can be fair and
14 impartial to both the State and Mr. Brown.

15 THE JUROR: Uh-huh (affirmative response).

16 THE COURT: Or if you have any bias or prejudice
17 toward either of the parties or the subject matter.

18 THE JUROR: Uh-huh (affirmative response.)

19 THE COURT: And if you're selected as a member of
20 the jury panel, you would listen to the facts of the case
21 and based on the evidence and the testimony you hear from
22 the witnesses testifying under oath from the witness stand
23 and then the law as I tell you the law is. I understand
24 what you're saying and I'm not, it's not right or wrong,
25 you have no wrong answers to me.

1 THE JUROR: Uh-huh (affirmative response).

2 THE COURT: They're all right. But given, you
3 know, your educational level, your occupation, your
4 personal beliefs and all, everybody is different. When you
5 sit as jury panel, you would be fair and impartial to the
6 State and to the defense and set aside any -- not your good
7 judgment, not your common sense --

8 THE JUROR: Uh-huh (affirmative response).

9 THE COURT: -- set that issue aside --

10 THE JUROR: Uh-huh (affirmative response).

11 THE COURT: Well, just the fact that you're on the
12 jury panel --

13 THE JUROR: If either one would come across in a
14 classroom that --

15 THE COURT: Say that again.

16 THE JUROR: This is an adult. If a student in my
17 class or I would come across this in my classroom.

18 (There was conversation out of the hearing of the
19 court reporter.)

20 THE COURT: I'll set you aside for the trial of
21 this case. Do not talk about this with your fellow jurors.

22 THE BAILIFF: 54, Your Honor.

23 THE COURT: Tell me your name, please?

24 THE JUROR: Staci Cosby.

25 THE COURT: Say it again?

1 THE JUROR: Staci Cosby.

2 THE COURT: Cosby?

3 THE JUROR: Uh-huh (affirmative response).

4 THE COURT: Tell me your situation.

5 THE JUROR: I'm 54. I have a 13 year old daughter
6 and a 16 year old daughter. So I thought I should tell you
7 that.

8 THE COURT: Okay. You don't think that affects
9 your being fair and impartial to either the State or Mr.
10 Brown?

11 THE JUROR: I don't know. It'd be kinda hard to, I
12 mean having two teenage daughters the exact same age, I
13 guess that's --

14 THE COURT: But if you're chosen as a member of
15 this jury panel, you could make your decision based on the
16 evidence and the testimony you hear from the witness stand
17 and the law as I tell you the law is uninfluenced by
18 anything else?

19 THE JUROR: I can definitely try.

20 THE COURT: Have you ever been on jury duty before?

21 THE JUROR: Not in South Carolina; in Maryland. It
22 was a civil case, it was still a different --

23 THE COURT: And you feel that you have any bias or
24 prejudice towards Mr. Brown or the State?

25 THE JUROR: No.

1 THE COURT: And right now you know nothing about
2 the case except going through this procedure; you haven't
3 formed or expressed any opinion about whether Mr. Brown is
4 guilty or not guilty, correct?

5 THE JUROR: Right.

6 THE COURT: And if I told you the law and that the
7 State has the burden of proving its case beyond a
8 reasonable doubt; would you follow the law?

9 THE JUROR: Uh-huh (affirmative response).

10 THE COURT: You wouldn't have any problem with
11 that?

12 THE JUROR: No.

13 THE COURT: Okay. I believe you can stay with us.

14 THE JUROR: Okay.

15 THE BAILIFF: That appears to be all, sir.

16 THE COURT: Thank you.

17 Has any member of the jury panel heard or know
18 anything about the case from any source whatsoever? If so,
19 please stand.

20 (No one stood.)

21 THE COURT: I'm going to call a list of names of
22 potential witnesses in the trial of this case. The
23 question of course is, is any member of the jury panel
24 related by blood or marriage, have any social, business,
25 professional relationship with any of these individuals

1 whose names I call. I would advise if any of these
2 individuals are present when your names are called, if
3 you'd please stand and face the jury panel. I would advise
4 the panel that the witnesses do not, or potential witnesses
5 do not have to be present at this time. So perhaps names
6 will be called and no one stands.

7 Investigator Renee Strickland, formerly of the
8 Lexington County Sheriff's Department. This is
9 Investigator Strickland to my front right. Thank you.

10 Deputy Michael Griggs, Lexington County Sheriff's
11 Department; this is Deputy Griggs also to my front right.

12 Investigator Michael Phipps, Lexington County
13 Sheriff's Department; Paul Meeh, M-E-E-H; South Carolina
14 Law Enforcement Division; Temple Hart, Palmetto Health
15 Richland.

16 Again, ladies and gentlemen, the question is, is
17 any member of the jury panel related by blood or marriage,
18 close personal friend, have any personal, professional,
19 social relationship with any of these parties whose names I
20 just called and will continue to call. If so, please
21 stand.

22 Karen Milbrodt, Verizon Wireless; Daniel Shearer,
23 Lexington County Sheriff's Department; Beth Holliman,
24 Lexington County Sheriff's Department; Candy Kyzer,
25 Lexington County Sheriff's Department.

1 Minor ; this is Ms. Minor to my front
2 right.

3 Thank you, Ms. Minor .

4 Jennifer Dalmeda, Verizon Wireless.

5 Besides -- besides those individuals that have
6 previously come forward, many of whom I set aside, is
7 there -- and I mean come forward on the question that was
8 asked in response to a particular question during this
9 procedure.

10 Is any member of the jury panel or any member of
11 your immediate family ever been a victim of or investigated
12 for or charged with an incident involving a sexual assault;
13 if so, please stand? And that applies to those of you have
14 not previously come forward.

15 (Several jurors stood.)

16 THE COURT: All right. This is -- your number
17 please?

18 THE JUROR: 99.

19 THE COURT: Say it again?

20 THE JUROR: 99.

21 THE COURT: All right. Yes, ma'am, if you'd come
22 forward.

23 Your number please?

24 THE JUROR: 6.

25 THE COURT: All right. Come forward.

1 And yes?

2 THE JUROR: 95.

3 THE COURT: All right. If you'd come forward.

4 THE BAILIFF: 99, Your Honor.

5 THE COURT: 99. All right. Good morning.

6 THE JUROR: Good morning.

7 THE COURT: And your name?

8 THE JUROR: It's Paula Hite.

9 THE COURT: Paula Hite. All right. Tell me --
10 tell me --

11 THE JUROR: I had a brother-in-law who was charged
12 with sexual assault with his two grandchildren.

13 THE COURT: And the timeframe?

14 THE JUROR: It's been a while.

15 THE COURT: Given that fact, can you be a fair and
16 impartial juror in the trial of this case for both Mr.
17 Brown and the State?

18 THE JUROR: Well, you know you think I can. I have
19 a nephew, great nephew that was charged with sexual assault
20 and it was not true so I have both sides.

21 THE COURT: And of course if you are selected for
22 the jury panel you would be one of the judges of the facts
23 and you would decide the case based on the evidence and
24 testimony you hear.

25 THE JUROR: Uh-huh (affirmative response).

1 THE COURT: And witnesses testifying under oath.
2 And, of course, the law as I tell you the law is. Can you
3 set aside those events --

4 THE JUROR: Yeah.

5 THE COURT: -- or non-events.

6 THE JUROR: Well, I think I can, but I just wanted
7 to make sure you knew about that.

8 THE COURT: I believe you can stay with us. Thank
9 you. Thank you very much.

10 Yes, sir?

11 THE BAILIFF: No. 6, Your Honor.

12 THE COURT: Yes, ma'am, your name please?

13 THE JUROR: Rebecca Almond.

14 THE COURT: All right. Ms. Almond?

15 THE JUROR: Years ago when I was younger, my
16 brother was accused of issues with one of the cousins.

17 THE COURT: Can you give me a timeframe?

18 THE JUROR: 35 years ago.

19 THE COURT: Given that fact, can you be a fair and
20 impartial juror in the trial of this case for both the
21 State and the defense?

22 THE JUROR: Yes, sir.

23 THE COURT: Thank you, I believe you can stay with
24 us.

25 THE BAILIFF: 95, Your Honor.

1 THE COURT: Tell me your name please?

2 THE JUROR: Felicia Harper.

3 THE COURT: All right. And tell me your situation.

4 THE JUROR: My daughter's 30 years old. When she
5 was 8 years old, she was molested by a family member.

6 THE COURT: Given that fact, can you be a fair and
7 impartial juror in the trial of this case for both the
8 State and Mr. Brown?

9 THE JUROR: Yes, sir.

10 THE COURT: Thank you. You can stay with us.

11 THE BAILIFF: 79, Your Honor.

12 THE COURT: Yes, ma'am, your name please?

13 THE JUROR: Mary Floyd.

14 THE COURT: Can you tell me about your situation?

15 THE JUROR: Well, my brother's wife's daughter, I
16 guess step-niece, was assaulted by a boyfriend and he got
17 put in prison.

18 THE COURT: Give me a timeframe?

19 THE JUROR: About 5 years ago.

20 THE COURT: Given that fact, can you be a fair and
21 impartial juror in the trial of this case for both Mr.
22 Brown and the State?

23 THE JUROR: Yes, sir.

24 THE COURT: I believe you can stay with us. Thank
25 you very much.

1 THE BAILIFF: 114, Your Honor, 114.

2 THE COURT: Good morning. Can you tell me your
3 name please.

4 THE JUROR: Jacqueline Keisler.

5 THE COURT: All right. Can you tell me what your
6 situation is?

7 THE JUROR: I have an uncle who served time for
8 criminal sexual conduct.

9 THE COURT: Can you tell me a timeframe?

10 THE JUROR: It was about 17 years.

11 THE COURT: Given that fact, can you be a fair and
12 impartial juror in the trial of this case for both the
13 State and the defense?

14 THE JUROR: Yes, I can.

15 THE COURT: You may stay with us.

16 THE BAILIFF: 15, Your Honor.

17 THE COURT: Good morning. Tell me your name
18 please?

19 THE JUROR: Penny Barr.

20 THE COURT: Can you tell me your situation?

21 THE JUROR: I was sexually assaulted when I was
22 between 13 and 16. It never went to court, never was
23 turned in or anything.

24 THE COURT: Given those facts, can you be a fair
25 and impartial juror in the trial of this case for both Mr.

1 Brown and the State?

2 THE JUROR: I believe that I could.

3 I also know a Candy Kyzer, but I don't know that
4 it's the Candy Kyzer that's involved in this case.

5 THE COURT: Ms. Kyzer works for the Lexington
6 Sheriff's Department.

7 THE JUROR: If she's here, then I don't know her.

8 THE COURT: She's an evidence technician in the Oak
9 Grove area of the county.

10 THE JUROR: Okay. Then it's a different lady.

11 THE COURT: I may be confusing Ms. Holliman as far
12 as Oak Grove.

13 THE JUROR: Okay.

14 THE COURT: Okay.

15 THE BAILIFF: 57, Your Honor.

16 THE COURT: Good morning. Tell me your name
17 please?

18 THE JUROR: Lisa Crosby. I'm not sure about my
19 experience, but my deceased stepdaughter, I don't know if
20 she was a victim of rape or not.

21 THE COURT: All right. Given that fact, can you be
22 a fair and impartial juror in the trial of this case for
23 both the State and Mr. Brown?

24 THE JUROR: Uh-huh (affirmative response).

25 THE COURT: You sure?

1 THE JUROR: Yes.

2 THE COURT: Thank you. I think you can stay with
3 us.

4 Any others?

5 (No one stood.)

6 THE COURT: Does any member of the jury panel have
7 any religious or moral beliefs which would prevent you from
8 passing judgment on another individual? If so, please
9 stand.

10 (No one stood.)

11 THE COURT: All right. I decline to ask Number 4,
12 Number 5, and I amended Number 6.

13 Any additional requested voir dire from the State?

14 MS. PATTERSON: No, sir, Your Honor.

15 THE COURT: From the defense?

16 MR. STITELY: Nothing from the defendant, Judge.

17 THE COURT: All right. And finally, ladies and
18 gentlemen, you know yourselves best. You -- the
19 indictments have been published to you, the allegations in
20 the indictments, you know the subject matter, you've been
21 introduced to the witnesses, either by name and personally
22 as far as standing before you or by name only. You know
23 the purpose of this proceeding is to select a fair and
24 impartial jury for the trial of this case for both Mr.
25 Brown and the State.

1 Circling back, as I state, you know yourself best.
2 Does any member of the jury panel know of any reason
3 whatsoever why you feel like you could not be a fair and
4 impartial juror in the trial of this case for both Mr.
5 Brown and the State? If so, please stand.

6 (No one stood.)

7 THE COURT: Thank you. Thank you very much.

8 Madam Clerk, gives us a jury panel please.

9 What are the strikes, Solicitor?

10 MS. PATTERSON: Five for the State; ten for the
11 defense.

12 THE COURT: Do you agree with that, Mr. Stitely?

13 MR. STITELY: I do, Your Honor.

14 THE COURT: Ten for the defense; five for the
15 State. Thank you. Thank you very much.

16 (The jury strike sheets were being printed by the
17 clerk.)

18 THE COURT: All right. Madam Clerk, if you'd give
19 our jury instructions and give us a panel please?

20 THE CLERK: Yes, sir.

21 As I call your name, make sure to bring your
22 personal items. You come forward and stand just like Mr.
23 Dan is, right where he's at and remain there until I give
24 you further instructions.

25 Proceed, Your Honor?

1 THE COURT: Yes, ma'am please.

2 JURY SELECTION

3 THE CLERK: Number 203, Raymond Troche. (Hispanic
4 Male).

5 What say ye for the State?

6 MS. PATTERSON: Please present the juror.

7 THE CLERK: What say ye for the defense?

8 MR. STITELY: Please swear the juror.

9 THE CLERK: Have a seat in the jury box, sir; that
10 way.

11 143, Brianca McGuire. (Black Female).

12 What say ye for the State?

13 MS. PATTERSON: Please excuse the juror.

14 THE CLERK: Return to your seat, please, ma'am.

15 135, Mary Mattox. (White Female).

16 What say ye for the State?

17 MS. PATTERSON: Please present the juror.

18 THE CLERK: What say ye for the defense?

19 MR. STITELY: Please swear the juror.

20 THE CLERK: All right. Have a seat in the jury
21 box.

22 THE COURT: Most people are headed the other way.

23 THE CLERK: 185, Stephanie Sox. (White Female).

24 What say ye for the State?

25 MS. PATTERSON: Please present the juror.

1 THE CLERK: What say ye for the defense?

2 MR. STITELY: Please excuse the juror from the
3 trial of the case.

4 THE CLERK: You may return to your seat, please,
5 ma'am.

6 99, Paula Hite. (White Female).

7 What say ye for the State?

8 MS. PATTERSON: I beg the Court's indulgence.
9 Please present the juror.

10 THE CLERK: What say ye for the defense?

11 MR. STITELY: Please swear the juror.

12 THE CLERK: Have a seat in the jury box, ma'am.

13 87, Keith Grice. (White Male).

14 What say ye for the State?

15 MS. PATTERSON: Please present the juror.

16 THE CLERK: What say ye for the defense?

17 MR. STITELY: Please excuse the juror from the
18 trial of the case.

19 THE CLERK: Return to your seat, please, sir!

20 101, Robert Hook. (White Male).

21 What say ye for the State?

22 MS. PATTERSON: Please present the juror.

23 THE CLERK: What say ye for the defense?

24 MR. STITELY: Swear the juror.

25 THE CLERK: Have a seat in the jury box, sir.

1 123, Naja Levels. (Black Female).

2 What say ye for the State?

3 MS. PATTERSON: Please present the juror.

4 THE CLERK: What say ye for the defense?

5 MR. STITELY: Please swear the juror.

6 THE CLERK: Have a seat in the jury box, ma'am.

7 207, Glenn Walta. (White Male).

8 What say ye for the State?

9 MS. PATTERSON: Please present the juror.

10 THE CLERK: What say ye for the defense?

11 MR. STITELY: Please swear the juror.

12 THE CLERK: Have a seat in the jury box, sir.

13 75, William Eubanks. (White Male).

14 What say ye for the State?

15 MS. PATTERSON: Please present the juror.

16 THE CLERK: What say ye for the defense?

17 MR. STITELY: Please excuse the juror from the
18 trial of the case.

19 THE CLERK: Return to your seat, please, sir.

20 Number 50, Kimberly Clyburn. (White Female).

21 What say ye for the State?

22 MS. PATTERSON: Please present the juror.

23 THE CLERK: What say ye for the defense?

24 MR. STITELY: Please swear the juror.

25 THE CLERK: Have a seat in the jury box, ma'am.

1 Number 80, Holley Fox. (White Female).
2 What say ye for the State.
3 MS. PATTERSON: I beg the Court's indulgence.
4 Please present the juror.
5 THE CLERK: What say ye for the Defense.
6 MR. STITELY: Please swear the juror.
7 THE CLERK: Have a seat in the jury box, ma'am.
8 74, Katherine Ellisor. (White Female).
9 What say ye for the State?
10 MS. PATTERSON: Please present the juror.
11 THE CLERK: What say ye for the defense?
12 MR. STITELY: Please swear the juror.
13 THE CLERK: Have a seat in the jury box, ma'am.
14 134, Samuel Matthews. (White Male).
15 What say ye for the State?
16 MS. PATTERSON: Please present the juror.
17 THE CLERK: What say ye for the defense?
18 MR. STITELY: Please excuse the juror from the
19 trial of the case.
20 THE CLERK: Return to your seat, please, sir.
21 Number 30, Stephanie Bowers. (White Female).
22 What say ye for the State?
23 MS. PATTERSON: Please present the juror.
24 THE CLERK: What say ye for the defense?
25 MR. STITELY: Please swear the juror.

1 THE CLERK: Have a seat in the jury box, ma'am.

2 77, Kenneth Fineberg. (White Male).

3 What say ye for the State?

4 MS. PATTERSON: Please present the juror.

5 THE CLERK: What say ye for the defense?

6 MR. STITELY: What was the number again, Madam

7 Clerk?

8 THE CLERK: 77.

9 MR. STITELY: Please excuse the juror from the
10 trial of the case.

11 THE CLERK: Return to your seat, please, sir. 131,
12 Carla Mack. (Black Female).

13 What say ye for the State?

14 MS. PATTERSON: Please present the juror.

15 THE CLERK: What say ye for the defense?

16 MR. STITELY: Please swear the juror.

17 THE CLERK: Have a seat in the jury box, ma'am.

18 Number 217, Danny Williams. (White Male).

19 What say ye for the State?

20 MS. PATTERSON: Please excuse the juror.

21 THE CLERK: Return to your seat, please, sir.

22 Number 92, Peter Hamel. (White Male).

23 What say ye for the State?

24 MS. PATTERSON: Please present the juror.

25 THE CLERK: What say ye for the defense?

1 MR. STITELY: Please swear the juror.

2 THE CLERK: Have a seat in the jury box, sir.

3 Alternates, Your Honor?

4 THE COURT: One alternate; strikes are one1 and
5 two.

6 THE CLERK: Yes, sir.

7 34, Jayne Boyle. (White Female).

8 Right up here by the podium.

9 What say ye for the State?

10 MS. PATTERSON: Please present the juror.

11 THE CLERK: What say ye for the defense?

12 MR. STITELY: Please swear the juror.

13 THE CLERK: Have a seat in the jury box, ma'am.

14 That's the alternate, Your Honor.

15 THE COURT: Any motions regarding the jury
16 selection process from the State?

17 MS. PATTERSON: Nothing from the State.

18 THE COURT: From the defense?

19 MR. STITELY: No, sir, Your Honor.

20 THE COURT: All right. Momentarily, ladies and
21 gentlemen of the jury panel, in just a moment I'm going to
22 ask you to step to your new temporary home, the jury room.
23 I must give certain instructions to your fellow jurors
24 concerning their jury service for the remainder of the
25 week. With that being said, you may not discuss this case

1 throughout your jury service until you have been directed
2 to do so by the Court. In other words, after you've heard
3 the opening statements by the attorneys, the testimony of
4 the witnesses, closing statements by the attorneys, the law
5 as given by the judge; then and only then would you be
6 allowed to discuss this case with anyone, that includes
7 your fellow jurors, family, friends or anyone else. So
8 during our recesses and I'll give you further instructions
9 for our luncheon recess, you may not discuss the case with
10 your fellow jurors or anyone else.

11 If at any time during the course of these
12 proceedings anyone tries to talk with you about the case,
13 please report that to me immediately. As I say, I will
14 give you further instructions concerning your jury service
15 at the time we take our luncheon recess, but that will
16 suffice for now. If you would please go with your bailiff,
17 he will show you to your new temporary home, your jury
18 room.

19 Thank you. Thank you very much.

20 (The jury left the courtroom at 11:46 a.m.)

21 THE COURT: All right. Call back after 1800 hours;
22 is that correct, Solicitor?

23 MS. PATTERSON: Yes, sir.

24 THE COURT: All right. Ladies and gentlemen, raise
25 your hands back over here that are jurors please.

1 All right. Thank you. Thank you very much.

2 Ladies and gentlemen of the jury panel that were
3 not fortunate enough to be selected as members of this
4 trial, please do not give up; the week is young, there are
5 many cases to be tried. Momentarily, I'm going to release
6 you from your jury service for what little remains of the
7 morning and for the afternoon and the evening. I would ask
8 you to please call back your juror information number after
9 six o'clock, after 1800 hours tonight. If you would please
10 call that number back; you're known as the jury panel. It
11 will prompt you and give you instructions concerning your
12 jury service for the remainder of the week.

13 Are there any questions?

14 With that being said, it has been my pleasure and
15 privilege to be with you on this morning. Thank you very
16 much for your civic pride and civic mindedness. You're now
17 excused. Please call back after six o'clock tonight.

18 Thank you. Thank you very much.

19 (The jury venire left the courtroom.)

20 THE COURT: Are there any jurors remaining in the
21 courtroom?

22 It has always been my understanding just shy of 10
23 years on the bench that the judge runs his courtroom. I
24 think the first couple of years or two, you're not used to
25 the South. I'm used to the South. Therefore, the way a

1 courtroom runs when I'm managing it is the way I want it to
2 run. In the future, no one will sit in front of jurors. I
3 didn't design this building; I'm not an architect in this
4 building.

5 There may not be enough room on the front left for
6 all the jurors. In the future, when I'm in court, the
7 first two rows over there will be cleared. The jury will
8 not sit on the first; no one will. The jury will sit on
9 the second. I don't want any obstruction between me and
10 the jury panel. Further, if any signs are put up in this
11 courtroom, I want to know about it. I didn't know we had
12 reserved seating. I don't object to it, but I want to know
13 about it.

14 I think, not me personally, I don't care what you
15 think about me. I could care less. It has nothing to do
16 with me, but it has to do with this: I think it's
17 disrespectful, I think it's demeaning and I don't think it
18 should be done without asking the judge, whoever it may be,
19 whether it's appropriate or not.

20 With that being said, is the paperwork done,
21 Solicitor?

22 MS. PATTERSON: Yes, sir, Your Honor, but it's my
23 understanding he doesn't want to plea.

24 THE COURT: All right. I'm sorry?

25 MR. STITELY: We're going to have a trial, Judge.

1 I apologize.

2 THE COURT: All right. Mr. Brown is in custody of
3 the Lexington County Sheriff's Department.

4 Are y'all ready for opening?

5 MR. STITELY: Just a couple pretrial matters we'll
6 probably have to take up, Judge; a quick Jackson v. Denno,
7 a quick confirmation on a DNA collection. I think they had
8 a rape shield motion which I don't particularly have an
9 objection to, but a couple things that need to go on the
10 record, Judge.

11 MS. PATTERSON: Yes, sir.

12 PRETRIAL MOTIONS

13 JACKSON V DENNO HEARING

14 THE COURT: You may call your first witness.

15 MS. PATTERSON: Yes, sir, the State calls
16 Investigator Renee Strickland.

17 THE COURT: If you'd come around and be sworn for
18 us please.

19 MR. STITELY: And, Judge, I've a sequestration
20 motion at the appropriate time once we get to the actual
21 trial.

22 THE COURT: Well that would just go to factual
23 witnesses or witnesses that haven't given statements,
24 correct?

25 MR. STITELY: Yes, sir.

Renee Strickland - Direct Examination In Camera by Ms. Patterson

1 THE COURT: All right. Just comply with State v.
2 Carmack.

3 MS. PATTERSON: Yes, Your Honor.

4 THE COURT: Thank you. And, of course, victims can
5 remain.

6 MS. PATTERSON: And Chief Investigator, Your Honor?

7 THE COURT: Yes, sir. Yes, ma'am.

8 MS. PATTERSON: Thank you, Judge.

9 RENE STRICKLAND,
10 having been duly sworn, testified as follows:

11 THE CLERK: Have a seat please, ma'am. Once you're
12 seated state your full name spelling your last please.

13 THE WITNESS: My full name is Marsha Renee
14 Strickland. Last name is spelled S-T-R-I-C-K-L-A-N-D.

15 **DIRECT EXAMINATION - IN CAMERA**

16 BY MS. PATTERSON:

17 Q Investigator Strickland, where are you currently
18 employed?

19 A The South Carolina Attorney General's Office.

20 Q And where were you employed before you were
21 employed by the South Carolina Attorney General's Office?

22 A Lexington County Sheriff's Department.

23 Q And in what capacity were you employed at Lexington
24 County Sheriff's Department?

25 A I was employed in two capacities; one as a major

Renee Strickland - Direct Examination In Camera by Ms. Patterson

1 crimes investigator and the second as a crime scene
2 investigator.

3 Q And did you ever meet with someone named David Ray
4 Brown?

5 A Yes, ma'am.

6 Q And did you meet with him regarding a criminal
7 investigation?

8 A I did.

9 Q When did you meet with him?

10 A January 18th of 2014.

11 Q And where did you meet with him?

12 A At 521 Gibson Road, which is the Lexington County
13 Sheriff's Department headquarters building.

14 Q And do you remember how it came that he, it
15 happened that he came to your office?

16 A Yes, ma'am. He called -- he called me at the
17 Sheriff's Department headquarters and agreed to come and
18 meet at the Sheriff's Department.

19 Q And did he come voluntarily to meet with you?

20 A He did.

21 Q Did he agree to speak with you?

22 A He did.

23 Q Before you spoke with Mr. Brown, did you read him
24 your -- read him his rights?

25 A I did.

Renee Strickland - Direct Examination In Camera by Ms. Patterson

1 Q How do you normally read a person their rights?

2 A Off of a card.

3 Q And did you read, did you read the card verbatim?

4 A Yes, I did.

5 Q And what rights do you -- did you read to him?

6 A I can read them to you.

7 You have the right to remain silent.

8 Anything you say can and will be used against you
9 in a court of law.

10 You have the right to talk to a lawyer and have him
11 present with you while you are being questioned.

12 If you cannot afford to hire a lawyer, one will
13 appointed to you, to represent you before any questioning
14 if you wish.

15 You can decide at any time to exercise these rights
16 and not answer any questions or make any statements.

17 Do you understand each of these rights I have
18 explained to you?

19 Having these rights in mind, do you wish to talk to
20 us now.

21 Q And did you ask Mr. Brown if he understood his
22 rights?

23 A He indicated that he did, yes, ma'am.

24 Q Did he have any followup questions for you --

25 A No.

Renee Strickland - Direct Examination In Camera by Ms. Patterson

1 Q -- regarding his rights?

2 A No.

3 Q And was Ms. -- did you have any arrest warrants on
4 Mr. Brown at this time?

5 A I did not, no, ma'am.

6 Q Was he free to leave?

7 A He was.

8 Q Did he leave your office once he spoke to you?

9 A He did.

10 Q But before he leaved did he agree to speak with
11 you?

12 A He did.

13 Q And did he give you some statements regarding his
14 position of the criminal investigation?

15 A He did.

16 Q Were, who met with Mr. Brown with you?

17 A Detective Chapel also. He and I met with Mr.
18 Brown.

19 Q Did y'all force him to speak with you?

20 A We did not.

21 Q Did you threaten him?

22 A I did not.

23 Q Did you coerce him?

24 A No, ma'am.

25 Q Did you make him any promises?

Renee Strickland - Direct Examination In Camera by Ms. Patterson

1 A We did not, no, ma'am.

2 Q And again, did he waive his rights and agree to
3 speak with you?

4 A He did.

5 Q When he spoke to you, did you understand his
6 speech?

7 A I did, yes, ma'am.

8 Q Was it coherent?

9 A It was.

10 Q Did he have any problems explaining himself?

11 A No, he did not.

12 Q And what statements did he make to you regarding
13 that investigation?

14 A He stated that he -- that he was not familiar with
15 the victim. He also stated that the phone number in
16 question was at one time his phone number.

17 Q And did he say anything else about -- about the
18 investigation?

19 A He stated that regarding -- I questioned him about
20 contact with the victim. He denied any contact with the
21 victim. He -- I also asked him about providing some
22 additional information and he also -- when questioned about
23 matters of issues like Facebook, he said that those things
24 were just conversation.

25 Q Okay. And did he provide you with any other, any

Renee Strickland - Cross-Examination In Camera by Mr. Stitely

1 other information regarding the investigation of this case?

2 A He provided me with a sample, a DNA sample.

3 Q And how did you obtain the sample?

4 A Through what's called a Buccal Swab Collection Kit.

5 Q Please answer any questions that Mr. Stitely may
6 have for you.

7 THE COURT: Thank you. Thank you, Solicitor.

8 Mr. Stitely.

9 MR. STITELY: If it please the Court?

10 **CROSS-EXAMINATION - IN CAMERA**

11 BY MR. STITELY:

12 Q Investigator -- Detective -- Investigator, what is
13 it now? I apologize?

14 A Actually Special Investigator, but Investigator is
15 fine.

16 Q Investigator Strickland, do you have a supplemental
17 report that you did in this case?

18 A I do.

19 Q Do you have it with you?

20 A I do.

21 MS. STITELY: May I approach, Your Honor?

22 THE COURT: Yes, sir.

23 BY MR. STITELY:

24 Q The Miranda that you went over with the individual
25 was right off the card; you didn't do one of those

Renee Strickland - Cross-Examination In Camera by Mr. Stitely

1 advisement forms?

2 A No.

3 Q He denied any physical contact with the victim?

4 A Correct.

5 Q You said that he told you the phone number was his;
6 what kind of phone was it, was it a provider, have a cell
7 phone provider or anything like that or just a number that
8 you had.

9 A A number that I had for him.

10 Q Were you able to followup on that and get the
11 provider records?

12 A I did later in the investigation, yes.

13 Q And the volunteer sample to you and you were the
14 actual collector?

15 A Yes.

16 Q And you can do that through your CSI background?

17 A Correct.

18 MR. STITELY: No other questions, Judge.

19 THE COURT: Redirect?

20 MS. PATTERSON: No, sir, Your Honor.

21 THE COURT: Thank you. Thank you very much,
22 Investigator Strickland.

23 All right. Solicitor, you may call your next
24 witness.

25 MS. PATTERSON: Your Honor, that's all the

1 witnesses we have on the Jackson v. Denno issue.

2 THE COURT: All right. Mr. Stitely, does the
3 defense intend to present any evidence or testimony?

4 MR. STITELY: No, sir, Judge.

5 THE COURT: All right. Solicitor?

6 MS. PATTERSON: Your Honor, it's the State's
7 position at the time that David Ray Brown met with
8 Investigator Strickland, he came there voluntarily, Your
9 Honor, he was not under arrest. He was read his Miranda
10 rights. He was free to leave and he did, in fact, leave
11 after he gave Investigator Strickland the statement. So
12 it's the State's position, Your Honor, that he was not in
13 custody and so that any statements that he give her should
14 be submitted into evidence.

15 THE COURT: Thank you, Solicitor.

16 Mr. Stitely?

17 MR. STITELY: The defendant has no position against
18 that, Judge.

19 THE COURT: All right. Thank you. I would find
20 under State v. Washington and Robbie Parker that the State
21 has met its burden as far as a preponderance of the
22 evidence. It's a voluntary statement. Mr. Brown was not
23 in custody, but he came voluntarily. He was advised of
24 Miranda, he was free to leave, but further, going back into
25 the facts so the officer didn't have warrants for him but

1 at that time at all there was no force, threats, coercion
2 or promises. In my view, Miranda doesn't even apply since
3 he was not in custody. Therefore, it is freely and
4 voluntarily statement of the defendant.

5 All right. You mentioned the DNA, Mr. Stitely.

6 MR. STITELY: Yes, sir. I think that we just
7 actually covered the actual collection. Of course, we'll
8 have to go through the whole process to determine whether
9 it comes in later on. I just wanted to make sure that we
10 had out there when it was actually collected and it
11 appeared to be a voluntary collection.

12 THE COURT: All right.

13 MR. STITELY: There was no hearing mandating it.

14 THE COURT: So you don't need a pretrial motion in
15 that regard?

16 MR. STITELY: No, sir.

17 THE COURT: Any others.

18 MS. PATTERSON: Your Honor, the State did file a
19 rape shield motion on January 7th that was provided to Mr.
20 Stitely. I don't think that's been an issue since the
21 defense has not provided any written motions or proposed
22 any proof to offer such evidence, but the State would just
23 like to make sure that that is clear.

24 With regard to our rape shield motions, Your Honor,
25 the State is seeking to exclude any mention of the victim

1 being previously raped three years ago as she told the SANE
2 nurse, Temple Hart; and we'll also seeking to exclude any
3 opinion evidence, reputation evidence, specific instances
4 of sexual abuse by the victim with persons other than the
5 defendant.

6 In this trial, Your Honor, there will be some text
7 messages presented and the victim submitted and exchanged
8 text messages with the defendant as well as some other
9 males and we would just like for that information to be
10 excluded in this trial, Your Honor.

11 THE COURT: Thank you, Solicitor.

12 Mr. Stitely?

13 MR. STITELY: Your Honor, I just want to see how it
14 plays out. Some of the messages in question relate to him
15 at the same time as other individuals. There's some
16 cross-talk of what's going on, Judge. Some of it may be
17 relevant as an element of completeness as we're coming in.
18 Specifically ones where referencing other boys while
19 speaking allegedly with my client.

20 THE COURT: All right. Well if you, if you think
21 it gets to that point, Mr. Stitely or Solicitor, just make
22 sure you tell me you have a matter of law to take up so we
23 can take it up outside the presence of the jury.

24 MS. PATTERSON: Yes, sir, Your Honor.

25 MR. STITELY: Yes, sir.

1 THE COURT: Any other motions, Solicitor?

2 MS. PATTERSON: That's all the State has, Your
3 Honor.

4 THE COURT: Thank you.

5 Mr. Stitely?

6 MR. STITELY: Nothing, Judge.

7 THE COURT: Are y'all now straight as far as the
8 sequestration?

9 MS. PATTERSON: Yes, sir, Your Honor. We just ask
10 that our victim and our chief investigating officer remain
11 and all other witnesses will sit in the hallway.

12 THE COURT: All right. Thank you. Thank you very
13 much.

14 About how long will it take you to open, Solicitor?

15 MS. PATTERSON: Your Honor, three minutes.

16 THE COURT: Mr. --

17 MR. STITELY: No longer than that, Judge.

18 THE COURT: All right. Well, why don't we just
19 open and then I'll give them their luncheon recess and
20 we'll start, unless you've got a witness that will take us
21 to one o'clock; we can do that. Whichever y'all prefer.

22 MS. PATTERSON: I think the victim will be our
23 first witness and I think she'll be lengthy, Judge.

24 THE COURT: All right. That will be fine. I
25 can't -- I can't start back until 2:30 because I have a

1 Civil hearing at two o'clock.

2 MS. PATTERSON: That's fine.

3 THE COURT: It's already been scheduled.

4 All right. I'm going to appoint Ms. -- let me find
5 my paperwork first. I'm going to appoint Number 74, Ms.
6 Ellisor as foreperson and if you would bring us our jury
7 panel please.

8 THE BAILIFF: Yes, sir.

9 THE COURT: Thank you.

10 (The jury entered the courtroom at 12:07 p.m.)

11 THE COURT: All right. Madam Clerk, will you swear
12 our jury please.

13 (The jury was sworn at 12:08 p.m.)

14 THE CLERK: Please be seated.

15 THE COURT: Is there any member of the jury panel
16 unable to take the oath? If so, please stand.

17 Thank you. Thank you very much.

18 **OPENING REMARKS BY THE COURT**

19 THE COURT: Ladies and gentlemen of the jury panel,
20 the case we're about to try is the case of the State v.
21 David Ray Brown to my front left, the defendant.

22 What I will now say is intended to serve as an
23 introduction to the trial of this case. These remarks are
24 not an instruction on the law in this case. I will
25 instruct you on the law applicable to the case during and

1 at the end of the trial before you retire to consider your
2 verdict. This is merely an explanation of the procedure
3 that we follow in the trial of this case so that you may
4 better understand what may be happening.

5 Mr. Brown is charged by indictments filed in this
6 court for the crimes of criminal sexual conduct with a
7 minor in the second degree. The elements of which will be
8 explained to you later. Again, ladies and gentlemen, the
9 indictments are simply the charges by which the case is
10 brought into court and they are not in any sense evidence
11 of any of the allegations contained therein.

12 Mr. Brown has pled not guilty to these indictments.
13 The State, the party to my front right, therefore, has the
14 burden of proving each of the elements of the indictments
15 beyond a reasonable doubt and it will be your duty, ladies
16 and gentlemen, to decide whether or not the State has met
17 that burden. Your purpose as jurors is to find and
18 determine the facts. You are the sole judges of the facts.
19 If at any time, I make any comment regarding the facts, you
20 must disregard it. You are to determine the facts from the
21 testimony you hear and any other evidence introduced into
22 court. It is up to you to determine the inferences which
23 you feel may properly be drawn from the evidence. It is
24 especially important that you perform your duty of
25 determining the facts diligently and conscientiously

1 because ordinarily, there is no way to correct an erroneous
2 determination of the facts by a jury.

3 On the other hand and with equal emphasis, the same
4 law that makes you the judges of the facts makes me the
5 judge of the law. The law that as given by the Court is
6 the only law you may consider. You must accept and follow
7 it even though you may disagree with it. I cannot tell you
8 what the facts are; you cannot disagree with me about what
9 the law is or what the law should be. Your job is to take
10 the law as I give it to you, apply it to the facts as you
11 find them from the testimony and any other evidence that is
12 introduced. After doing that, you will render your
13 verdicts, true and just verdicts, under the solemn oath
14 that you have just taken as jurors.

15 It is important that you keep an open mind and not
16 decide any issue in the case until all of the evidence has
17 been presented, the parties have made their closing
18 arguments to you and I have instructed you on the law in
19 this case. It is your solemn responsibility to determine
20 the guilt or innocence of the defendant and your verdicts
21 must be based solely on the evidence as it is presented to
22 you in this trial and on the law as I instruct you and at
23 the close of the trial.

24 In just a moment, the solicitor will make what is
25 called an opening statement in which the solicitor will

1 explain to you the issues in the case or at least what the
2 solicitor thinks the issues are in the case.

3 Mr. Stitely, the attorney for Mr. Brown, may also
4 may an opening statement, although he is not required to do
5 so. A criminal defendant in South Carolina, regardless of
6 the seriousness of the charge or charges are always
7 presumed to be innocent and has no burden whatsoever to
8 prove himself or herself innocent. The burden of proof is
9 on and always remains on the State to prove its case or
10 cases beyond a reasonable doubt.

11 What the attorneys tell you during their opening
12 statement is not evidence. What they tell you during their
13 closing argument is not evidence. Their questioning of the
14 witnesses is not evidence. That's the framework by which
15 the witnesses respond. It's the responses of the witnesses
16 that is evidence in the case. However, what the attorneys
17 tell you is -- say to you is very important; and I would
18 ask you to please give them, as I know you will, your
19 strict attention. As I say, it's not evidence in the case,
20 their openings, but it is their contention as to what the
21 issues are. Evidence in the case will be presented to you
22 by the testimony. The responses of sworn witnesses from
23 this witness stand and/or by any exhibits that may be
24 introduced in evidence.

25 From time to time during the trial, no different

1 from others, if one of the attorneys say something like
2 Your Honor, I believe we have a question or -- and I'm not,
3 please don't get me wrong, I'm not calling myself Your
4 Honor, this is the way I have written it only because
5 that's the way you may, of course, hear it -- Your Honor, I
6 believe we have a question of law or a matter of law to
7 discuss with you; or may we approach the bench; or sometime
8 I, myself, might find it necessary to excuse you from the
9 courtroom for a short while so the attorneys and I can
10 discuss a matter of law.

11 The reasons for this is not to hide anything from
12 you. The reason for this is because you are the judges of
13 the facts in the case and sometimes when I am discussing
14 matters of law with the attorneys, it may be necessary for
15 me to make some comment as to the facts in connection with
16 ruling whether or not a particular law applies. As I
17 stated to you before, I am not and will not, but I am not
18 supposed to tell you what I think the facts are. So I will
19 excuse you from the courtroom while these discussions take
20 place so that in no way will you be influenced by anything
21 that I might say or do in connection with the facts.

22 In determining what the true facts are in this
23 case, you must decide whether or not the testimony of the
24 witnesses is believable. It will be my responsibility to
25 rule as a matter of law whether certain testimony is

1 admissible at all or not, in other words, whether you even
2 get to hear it.

3 So that is my responsibility, but once the
4 testimony is admitted, whether or not you believe it, is
5 solely for you, the jury, to determine. In deciding
6 whether to believe a witness, you have a right to consider
7 the interest of any witness, the bias of any witness, the
8 prejudice of any witness, the opportunity for the witness
9 to have seen the matters and things about which the witness
10 may testify and the way the witness acts, the demeanor of
11 the witness while on the witness stand. You have the right
12 to consider anything that is in the record that will help
13 you evaluate the testimony of the witnesses.

14 That means it will be your duty to pay close
15 attention to these witnesses, to observe, to listen to, to
16 pay close attention to the attorneys and to the Court.
17 Don't let your thoughts wander, but give strict attention
18 to the testimony in this case so that at the end of all the
19 testimony, after closing arguments by the attorneys, the
20 instruction on the law by the Court, you will be in that
21 position to determine what the true facts are and to apply
22 the law to those facts and thus render those true and just
23 verdicts.

24 It will be your added duty, Madam Forelady, to
25 preside in the jury room and be the jury spokesperson here

1 in the courtroom. It will also be your duty to write the
2 verdicts and I will give you further instructions about
3 that at the conclusion of the case.

4 Just several administrative matters, ladies and
5 gentlemen, if you cannot hear a witness or see a particular
6 witness, obviously we have a speaker system in the -- in
7 the courtroom. However, those of you further away, just
8 please get my attention or the attention of our fine
9 bailiffs or clerks and we'll certainly try to have them
10 speak up so that you -- you can -- can hear.

11 Additionally -- and I don't know what evidence may
12 or may not be presented -- but many times during a trial,
13 there could be diagrams, photographs, documents presented.
14 It's mainly done electronically now, of course, not like in
15 other peoples days, but if there were a photograph or
16 something of that nature, it could be handed to our
17 foreperson and passed among members of the jury while
18 you're out here in the courtroom in your jury box.

19 You may look at those items all you wish. Keep in
20 mind that if I allow it into evidence, you will also have
21 it with you in your jury room at the time of your
22 deliberations. So looking at it out here will not be the
23 only or the final opportunity you will have to view any
24 documents that may be presented.

25 From time to time, you may see me on my computer.

1 The reason I bring that up is imagine some juror complained
2 that it was annoying. I think it was really more of a
3 complaint that I was annoying; that I was being annoying
4 and it wasn't just me being on the computer. I don't peep,
5 I don't repeat, I don't know what a hashtag or staff dot or
6 whatever those things are. These are good lawyers,
7 experienced lawyers, if I see what I think may be a legal
8 issue lurking down the dusty bend, I will do -- I will do
9 some light research. If I see it real dark there where I
10 can't even see at all he'll do it for me. But I stay
11 focused on the trial of the case which, leads me not quite
12 to my final point.

13 You may sit anywhere you like with the exception of
14 our foreperson and our alternate. If y'all will always
15 maintain those two seats. I need to keep up with 13
16 people. Now, I have observed from being on the bench now
17 for a number of years that jurors can be very, very, very
18 territorial. They like to sit in the same seat each and
19 every time. I like it. You know I like the same seat.
20 You're welcome to do so; you do not have to do so. I do need
21 the foreperson and our alternate to always maintain that
22 seat.

23 So at the end of the day, what I'm in charge of?
24 I'm in charge of taking breaks. That's really what I'm in
25 charge of. I have a real simple solution. When I want to

1 take a break; we take a break. This is not a judicial
2 marathon; it's an important case. It's an important case
3 to Mr. Brown. It's an important case to the State of South
4 Carolina. Regardless of how long or how short it may last,
5 it's an important case to both of the parties. It's an
6 important case to the Court and an important case to Mr.
7 Brown.

8 If at any time, your thoughts start wandering, you
9 need a break, please, please raise your hand. You're
10 probably not the only one. Y'all will take y'all's break;
11 we'll take ours. As I say, this is not any type of
12 judicial marathon.

13 All right. Any objections to anything I've told
14 the jury from the State?

15 MS. PATTERSON: No, sir, Your Honor.

16 THE COURT: Defense?

17 MR. STITELY: Nothing from the defense, Your Honor.

18 THE COURT: Thank you. Thank you very much.

19 Solicitor, you may address the jury.

20 **OPENING STATEMENTS**

21 MS. PATTERSON: May it please the Court, Your
22 Honor.

23 THE COURT: Yes, ma'am.

24 MS. DAVIS: The perfect victim, someone whose
25 young, vulnerable, immature, someone looking for attention,

1 the perfect prey for a social media predator. In this
2 case, Ms. Minor was just that. She was the
3 defendant's perfect victim.

4 In 2003 like most eighth graders, 13 year olds,
5 Minor had a Facebook page. She used it to keep up with her
6 friends, meet new people. Unfortunately she was too young
7 and immature to realize the dangers that are lurking
8 online. In September of that year, she received a friend
9 request from what looked like a cute boy around her age
10 with a screen name of Aaron Justin Feels Good Goodwin.

11 Excited he was interested in her, she accepted his
12 friend request and they began chatting on Facebook. This
13 eventually led to her exchanging phone numbers with him and
14 they texted frequently. At one point, Justin asked Minor
15 to send him naked pictures of herself and being 13 and
16 dumb, she did it. It was stupid and she had no idea of the
17 trouble that was going to come from that later on.

18 In October they decided it was time for them to
19 meet in person. Minor agreed to sneak out of her house at
20 night while her mom was asleep around ten o'clock and she
21 told him to meet her by the deer stand on their property.
22 Again, not a good choice, but she's 13. Time was finally
23 there. She was going to meet her online crush. She walks
24 out to approach him in the darkness and something wasn't
25 right. Instead of being the cute teenage boy that she

1 thought she was talking to on Facebook; instead the
2 defendant, David Ray Brown, a man in his 40's, comes
3 walking towards her, a man nothing like who she thought she
4 was talking to, a man who had no business talking to a 13
5 year old girl all alone. Scared and confused, Minor froze.
6 She didn't know what to do. She should have screamed, she
7 should have run away, but she knew she wasn't supposed to
8 have snuck out of her house, she knew she'd get in trouble
9 with her mom.

10 So again, being 13, not knowing what to do, she
11 stayed. At that point, the defendant began to hug her,
12 fondle her, and eventually forced her to have sex with him.
13 After it was over, embarrassed and in shock, Minor went
14 home and acted like nothing had ever happened. After that
15 night, they continued to text and you'll see from the text
16 messages that Minor seemed to like the attention that the
17 defendant was giving her. She enjoyed texting with him.
18 But what you'll also see is that she gave excuse after
19 excuse as to why she didn't want to have to meet him in
20 person again.

21 Tired of those excuses, the defendant told her that
22 if he -- if she wouldn't come and meet him and have sex
23 with him, he was going to post those nude pictures that he
24 had gotten of her online for everybody to see. She was
25 terrified. She didn't think she had a choice. So she met

1 him three more times and each time they met at her parents
2 house by the deer stand, they had sex. Finally in
3 mid-November, Minor realized he was never going to delete
4 those pictures. He was going to hang them over her head as
5 long as he could, so she might as well tell someone. So
6 she went and told someone at school.

7 After that, Minor had to talk to law enforcement.
8 She had to tell them all these embarrassing things. She
9 had to go to the hospital. She had to have a sexual
10 assault exam. She had to give the underwear she was
11 wearing when she was assaulted to law enforcement, had to
12 tell her parents what happened, her grandparents, she went
13 through a lot.

14 As a result of law enforcement's investigation,
15 they determined that the defendant was a person of interest
16 in this case. They spoke with Minor and she identified him
17 as her attacker. The defendant came in and spoke with law
18 enforcement and agreed to give a DNA swab to them and what
19 do you know; the defendant's DNA was found in Minor's
20 underwear. A 40 year old man's DNA in her panties,
21 somewhere he has no business being.

22 Now, ladies and gentlemen, this case is a perfect
23 example of the dangers of social media and what can happen
24 when a young, vulnerable teenager looking for attention
25 falls into the trap of a predator like the defendant. This

1 type of case is the exact reason that in South Carolina, we
2 have laws to prevent, making it illegal for men in their
3 40's to sleep with a 13 or 14 year old girl and to make it
4 so that a 13 or 14 year old girl cannot consent legally to
5 have sex, not mature enough. That's what it says in the
6 law; 13 or 14 year old girls cannot consent to sex.

7 Now as the Judge told you, we just ask that you
8 listen carefully to all of the evidence, use your common
9 sense and your life experiences and at the end of the
10 trial, the State will have proven beyond a reasonable doubt
11 that the defendant, David Ray Brown, is guilty of four
12 counts of criminal sexual conduct with a minor in the
13 second degree. Thank you for your attention.

14 THE COURT: Thank you. Thank you, Solicitor. Mr.
15 Stitely?

16 MR. STITELY: Yes, Your Honor. May it please the
17 Court?

18 My name is Ben Stitely and I'm a defense lawyer. I
19 work here in Lexington and I've defended everything from
20 speeding tickets to double-homicides; and I only say that
21 as we stand here because, of course, the shock value on a
22 CSC charge is a lot greater than that of someone who got
23 charged with running a red light. It jumps out at you, it
24 raises questions that everyone has in their mind. What's
25 important to tell you right now is that in opening

1 statement, we're just talking. I'm talking to you; Ms.
2 Davis was talking to you. You haven't heard any of the
3 facts. What I say is not evidence; what she told you is
4 not evidence.

5 I will tell you that during the trial, I don't
6 think you're going to hear exactly what she told you.
7 You'll hear that the initial statement of law enforcement
8 is the man that she met in the woods looked like an 18 year
9 old boy. You'll hear that the DNA isn't nearly as
10 conclusive as they're telling you. One thing she didn't
11 tell you is my client volunteered to come down and talk to
12 law enforcement, volunteered to give a sample, volunteered
13 up everything they wanted to have.

14 He denies he did anything wrong. It's the State's
15 burden beyond a reasonable doubt to disprove it. The best
16 example I can give you is like a weather forecast. It's
17 supposed to rain Thursday and Friday; that's a forecast;
18 that's the opening statement of the week. We won't know
19 until Friday whether or not it rained Thursday and Friday.
20 That's your job as jurors to make that determination after
21 you've heard everything, after you've seen everything.

22 The allegations in this case are horrible. It's shocking.

23 Don't let that dissuade you from the facts and the
24 evidence. The burden is on the State. At this point, what
25 the Judge has read you are allegations and nothing more.

1 Until those allegations are proven beyond a reasonable
2 doubt, overcoming everything that you can possibly think is
3 wrong with them to a reasonable degree, then you can make
4 your determination. At this point, I'm just asking you to
5 keep an open mind and listen to the case. Listen very
6 closely to what comes from that witness stand. Look very
7 closely at the documents that come into evidence. Look
8 closely at the pictures that are brought to you. Don't
9 make your decision until the end. You took an oath. It's
10 important to remember that. The burden rests on the State.
11 Thank you.

12 THE COURT: Thank you. Thank you, Mr. Stitely.

13 Ladies and gentlemen, perhaps now -- I understand
14 the first witness may be rather lengthy so perhaps now may
15 be a good time to take our luncheon recess. I'll advise
16 you that during this recess and all other recesses, you're
17 not to discuss this case with others including your fellow
18 jurors, lunch mates, family, friends or anyone else. Do
19 not read, listen, watch any news accounts of the case
20 should there be any. You may not use your computer or
21 cellular phone, which you can't bring in anyway, probably
22 not a computer, or any other electronic device with
23 communication capabilities while in attendance at trial or
24 during deliberations. You may use these devices during
25 lunch breaks, but may not be used to obtain or disclose

1 information that is prohibited.

2 Information which is prohibited includes, but is
3 not limited to the following, information about a party, a
4 witness, an attorney, or court officer, news accounts of
5 the case past or present, information collected through
6 juror research on any topics raised or testimony offered by
7 any witness or information collected through juror research
8 on any other topics that the juror might think would be
9 helpful in deciding the case. As you've heard me say, you
10 decide the case based on the evidence and the testimony of
11 witnesses testifying under oath, any other evidence
12 introduced and the inferences which you feel may properly
13 be drawn, uninfluenced by the outside. In other words,
14 don't do any independent research and don't do any research
15 on the internet.

16 We're going to take a somewhat of an extended
17 luncheon recess. Don't think I have a T-time. I don't
18 play golf anyway. I walk around in the woods with sticks
19 so don't worry about that. I do have a civil hearing at
20 two o'clock; it will take a few minutes. So we're going to
21 bring you back -- I'll give you somewhat of an extended
22 luncheon recess rather than bring you back early and hold
23 you captive. I would ask you if you'd please be back
24 promptly at 2:30; if you'd please be back promptly at 2:30.

25 Any questions.

1 Thank you. Thank you very much for your service
2 and your focus and attention up to this point and
3 throughout the trial of this case. Thank you. You may now
4 be released for your lunch recess.

5 (The jury left the courtroom at 12:34 p.m.)

6 THE COURT: All right. Let's see.

7 Anything additional from the State, Solicitor.

8 MS. PATTERSON: No, sir.

9 THE COURT: From the defense?

10 MR. STITELY: No, sir, we're ready.

11 THE COURT: All right. And as I say, Sheriff, Mr.
12 Brown is in custody of the Lexington County Detention
13 Center.

14 Thank you. Thank you very much. Court will be in
15 recess until 2:30.

16 (A recess was observed for lunch.)

17 THE COURT: All right. The parties are present in
18 the courtroom along with Mr. Brown.

19 Is the jury, all the jury here?

20 THE BAILIFF: Yes, sir.

21 THE COURT: Anything from the State before we bring
22 in our jury, Solicitor?

23 MS. PATTERSON: No, not from the State unless you
24 want to go ahead and address the rape shield matter. The
25 text messages?

1 MR. STITELY: Well, I thought we did; we said we'd
2 wait and see. I think we're okay, Judge, unless
3 something's coming up in the evidence question, I won't
4 really know that until we get there. If it does, we'll
5 bring it to your attention before we go there, Judge.

6 THE COURT: Will it come up with the first witness.

7 MS. PATTERSON: Yes, sir, it will.

8 THE COURT: All right. Well, then let me hear it
9 as a motion in limine. Tell me about it, Solicitor.

10 MS. PATTERSON: Yes, sir, Your Honor.

11 On January 8th, Your Honor, the State filed a
12 motion in limine for compliance with rape shield. There
13 are two different things, Your Honor, that the State would
14 ask if Your Honor limit the admissibility of this evidence.
15 One --

16 THE COURT: Tell me -- tell me the statute number.

17 MS. PATTERSON: Your Honor, the statute is Code
18 16-3-659.1.

19 THE COURT: Give me just a moment.

20 MS. PATTERSON: Yes, sir.

21 THE COURT: All right. And any particular
22 subsection under 16-3-659.1.

23 MS. PATTERSON: Yes, sir, Your Honor. Subsection
24 1.

25 THE COURT: All right. All right. Go ahead,

1 Solicitor.

2 MS. PATTERSON: During the victim's sexual assault
3 examination, she disclosed to the SANE nurse that she had
4 been raped three years prior to this, to the incident dates
5 that we're alleging in the trial and we would ask that,
6 Your Honor, that be excluded. As well, Your Honor, the
7 victim and the defendant engaged in a series of text
8 message communications. We did a phone dump on her phone.
9 We were able to ascertain the text messages and in the text
10 messages, she also texted two, maybe three other young men
11 and some of the language of the text messages would lead
12 someone to imply that she actually had some type of sexual
13 contact with these people.

14 However, the victim will testify that this was
15 merely sexting, and they actually -- that that first of all
16 they did not meet; second of all, they never had sex.
17 Among the text messages were also messages she exchanged
18 with the defendant and they are -- also allude to the times
19 that they met and they engaged in sexual intercourse. We
20 would ask that the text messages with the other
21 participants be excluded, Your Honor, under rape shield.

22 We think that it's barred under rape shield, Your
23 Honor, because there's not actually any evidence to show
24 first of all, that she actually met up with these other
25 people. Second of all, that she actually had sex with

1 these people. It was merely communication. The only
2 person that she exchanged this course of communication
3 with, the only person that she actually met and the only
4 person that she actually had sex with was the defendant,
5 David Ray Brown.

6 THE COURT: All right. Thank you.

7 Mr. Stitely.

8 MR. STITELY: Judge -- and, Judge, if it please the
9 Court, here is my problem with the text messages and it
10 might not be fair really until you see them all, Judge, and
11 it kind of goes into a DNA question here in this case too.
12 And if you do permit me to just kind of proffer how I kind
13 of see this playing out. The DNA profile that they
14 discovered in the underwear that was referenced by the
15 Solicitor in opening statement only points to my client in
16 1 out 210. You know, usually you hear those numbers 1 out
17 of 16 quadrillion; 1 out 210 chances. If you were to look
18 at Lexington alone, that puts 20, 30,000 eligible men that
19 could potentially be the contributor.

20 If you were to probably even to go into Gilbert
21 alone you'd have a couple of hundred that could be possible
22 contributors. In these text messages, she talks about
23 sending pictures to boys.

24 THE COURT: Talks about what?

25 MR. STITELY: Sending pictures. Like it says sent.

1 The whole allegation here is that my client had pictures.
2 She clearly talked about sending pictures to a number of
3 people. Additionally, there's apologies for what happened
4 last night to one of the boys, which is right at the time
5 one of these alleged dates.

6 There's no, I could make the assumption that maybe
7 she was apologizing to the other boy for meeting with him
8 last night and having some kind of encounter. The actual
9 DNA profile in this case, as I said, 1 in 210, Your Honor,
10 I've done plenty of these case, that's nowhere near
11 conclusive and we can, and that's only in people unrelated
12 to Mr. Brown.

13 His family has been in the Lexington area for
14 decades. You know, we're talking about my law clerk and my
15 wife and him went to high school together. My wife is
16 related to half of the people in this county because of
17 where her family is from. We're talking about every
18 possible odds that these other individuals who she's
19 talking to could be the DNA contributors and the fact that
20 she's saying the exact same things, I sent you, sent
21 pictures. She talked about pictures, she talked about
22 apologizing for what they did last night. I think should
23 be able to ask her why the dates line up with the dates of
24 the allegations in the warrants, but there's other
25 individuals.

1 Additionally, the names saved for my client on
2 these text messages is a name that she attributed to it.
3 These aren't messages from my client's phone. There's no
4 cell phone person going to come in and testify that any
5 phone was taken from my client to pull these text messages.
6 These are arbitrary names that she assigns the person in
7 her phone. I think I should have a right to ask, it's
8 possible that she assigned multiple names for different
9 people at different times. We don't know until we ask her
10 on the stand.

11 If you want to have that as a pretrial matter, we
12 can bring it up, but the combination of the fact that the
13 allegations were that he had pictures and clearly she's
14 saying she sent some to other people as well as saying
15 things about last night's activities to other people within
16 the dates in question, I think it does raise a lot of flags
17 which could raise probable cause for a jury to be in
18 question.

19 THE COURT: All right.

20 MR. STITELY: And, Your Honor, also the description
21 she gave law enforcement on at least one occasion matches
22 that of a teenager as the person she met up with.

23 THE COURT: Well, is that on a text message?

24 MR. STITELY: Yeah, that's actually in her
25 statement to the school resource officer, Judge.

1 THE COURT: All right. So I mean you can ask her
2 that anyway, couldn't you?

3 MR. STITELY: Yes, sir, I'm just pointing out that
4 there is more than just me guessing here. Her initial
5 description to the school resource officer says a 5'7" male
6 who's 18 years old is the person who met and had the
7 inappropriate sexual conduct with her.

8 THE COURT: All right. Well, to begin with, the
9 sexual assault three years prior.

10 MR. STITELY: No intent to bring that in, Judge.
11 I'd agree on that. I think it's inappropriate for the
12 trial.

13 THE COURT: All right. Solicitor?

14 MS. PATTERSON: Yes, sir, Your Honor,

15 Also, Your Honor, with regards to that subsection,
16 with that statute, subsection 2 requires that the defendant
17 proposes to offer evidence described in the subsection --
18 The defendant, prior to presenting his defense shall file a
19 written motion to offer proof and he has not done so, Your
20 Honor. We have not gotten any written motions whereas he's
21 going to propose to show that the evidence of specific
22 instances of sexual conduct were, in fact, true. As I
23 stated earlier, the victim is going to testify that she
24 never met these other individuals, she never had sex with
25 these other individuals.

1 He stated that she told the school resource
2 officers, officer, that she met someone that was 18. What
3 she was doing, Your Honor, she was merely describing the
4 first person who she initially -- who she initially met
5 with. But she in fact did tell him that the person
6 appeared older than his Facebook picture and she got
7 scared.

8 THE COURT: What do you mean she was describing the
9 first person she met with; I'm not tracking that.

10 MS. PATTERSON: What happened, Your Honor, she
11 initially got a Facebook request from someone that was
12 older. So she would describe it as being the defendant.
13 She denied his request to friend her and then she got
14 another friend request from this Justin person who appeared
15 to be around her age or up to 18 and that's who she thought
16 she was going to meet and we also have a photograph of that
17 person also and that's who she thought she was going to
18 meet, but then she saw the defendant.

19 So sometimes she would describe who she thought she
20 was going to meet and sometimes she would describe who she
21 actually met and so I think she described both of those
22 persons to the school resource officer.

23 THE COURT: All right.

24 MS. PATTERSON: Furthermore, Your Honor, even
25 though Mr. Stitely doesn't seem to think that the DNA

1 analysis is very strong, our witness will testify, Your
2 Honor, and clear up -- to clear up the matter that that is
3 strong evidence that his client was the major contributor
4 of the DNA results that were discovered on not just one,
5 but two pair of the victim's, victim's underwear. So there
6 was no other person who could have left that in a place
7 where it should not have been, frankly.

8 THE COURT: This is, I thought you could track
9 where a computer message came from to a computer; not
10 necessarily who was on the computer. I thought you could
11 track a Facebook message.

12 MR. STITELY: Judge, the messages they intend to
13 use in this case are text messages just indicating the
14 phone numbers.

15 THE COURT: So there's no Facebook message?

16 MR. STITELY: I don't think the police ever did
17 any.

18 THE COURT: All right. Well then my next question
19 is: I thought you could track, if I call, if I use my
20 phone, it's not a restricted number, and I call or text
21 whoever's phone, I thought that could be tracked.

22 MS. PATTERSON: Your Honor, it's a prepaid phone.
23 What we did, we was able to identify the number that she
24 was, that our victim was exchanging the text messages with.
25 Investigator Strickland was able to find out what number

1 that was. She subpoenaed the subscriber, the carrier, and
2 they informed her that it was a prepaid phone. So they
3 were unable to give her specific subscriber information.

4 THE COURT: Unable to give or it didn't exist.

5 MS. PATTERSON: It didn't exist, Your Honor.

6 However, Investigator Strickland continued with her
7 investigation and she was able to attribute some of the
8 numbers that was called on that pre-paid phone to the
9 defendant. She was able to connect that to the defendant.

10 THE COURT: Tracfone then; how did she track
11 numbers that phone called.

12 MS. PATTERSON: She was able to and we're not going
13 to bring this up, Your Honor, but the defendant had an
14 arrest earlier, three months prior to these incidents.
15 During that arrest, he gave the number that the victim gave
16 as the number that she was texting and receiving the text
17 messages from. She was also able to pull up some
18 information from the defendant's mother's booking
19 information because she had been booked in Lexington County
20 Detention Center as well.

21 That number was also associated with the defendant
22 as being his number as well as some of the numbers that was
23 being called from that phone was being called to the
24 defendant's mom during the time frame of all these text
25 messages.

1 THE COURT: I thought --

2 MS. PATTERSON: Because Verizon was able to --

3 THE COURT: -- I thought he admitted to the officer
4 one time that the phone was his; according to Ms.
5 Strickland's testimony.

6 MR. STITELY: He in fact, tells her, Judge that
7 that phone was seized by law enforcement three months
8 earlier. That's what he told the detective according to
9 her report.

10 MS. PATTERSON: Right. He also told her he had
11 forwarded the number to another phone. Now she was able,
12 from Verizon, she was able to get phone information, just
13 not the subscriber information. But they were able to tell
14 her who was making, well that that number was making calls
15 to other numbers.

16 THE COURT: Well, I go back again, I thought, I
17 thought you could track -- Facebook comes on a computer,
18 right?

19 MR. STITELY: Or a phone now, Judge.

20 THE COURT: Well, I know you can check your
21 Facebook page, but it's the internet, right.

22 MS. PATTERSON: Yes, sir.

23 THE COURT: Correct?

24 MR. STITELY: It's still in theory, if they were to
25 do an extensive enough search, trace it back to the

1 originating cell phone carrier that allowed the internet to
2 be used from that cell phone, but either way, yes.

3 THE COURT: But you don't know whether it's coming
4 from the cell phone or from a computer?

5 MR. STITELY: They could.

6 THE COURT: Excuse me?

7 MR. STITELY: They could, Judge. There is a way.

8 THE COURT: I know they could. I'm saying you
9 don't know if it's coming from a cell phone or a computer.
10 If you track it back to an IP address, it's coming from a
11 computer is what I thought. Maybe all this begs the
12 question, in other words it goes to the weight and not to
13 the admissibility. However, she texts pictures, correct.

14 MS. PATTERSON: Yes, sir.

15 THE COURT: And she texts those pictures to more
16 than one person.

17 MS. PATTERSON: No, sir, Your Honor.

18 THE COURT: She only texts those pictures to one
19 person, one phone number.

20 MS. PATTERSON: Yes, sir.

21 THE COURT: And that's the phone number the State
22 associates with Mr. Brown.

23 MS. PATTERSON: Yes, sir.

24 MR. STITELY: And, Judge, I would disagree with
25 that assessment. Just in looking at the written

1 documentation, she talks about sending, like on -- one in
2 particular on 11/17/2013 to someone who she has in her
3 phone as being a Robert R. da da da da da with a heart
4 saying sending and then talking about getting together. I
5 mean I'm only assuming. I'd like to ask her what are you
6 sending him if, you know, we're not, I'm assuming.

7 Once again, Judge, I don't have it and then she
8 asks another, she's asking later about him getting stuff to
9 the other people.

10 THE COURT: Well don't -- don't y'all have her
11 phone.

12 MS. PATTERSON: Yes, sir, that's what we got the
13 text messages from, her phone.

14 THE COURT: And don't -- you have the text
15 messages.

16 MS. PATTERSON: Yes, sir.

17 THE COURT: So doesn't that indicate the number
18 she's texting.

19 MS. PATTERSON: Yes, sir.

20 THE COURT: The message she's sending.

21 MS. PATTERSON: Yes, sir.

22 THE COURT: And if she's sending any pictures.

23 MS. PATTERSON: It didn't show any pictures.

24 THE COURT: I can text.

25 MS. PATTERSON: Yes.

1 THE COURT: I can't do anything else, but I can
2 text. If I took a picture and I want to text it to
3 somebody else and you go back through my text messages,
4 which I can do too, and you'll see the picture texted them
5 and whether or not I put any message on it.

6 MS. PATTERSON: Yes, sir, Your Honor.

7 THE COURT: That phone want do that.

8 MS. PATTERSON: No, we tried, Investigator Phipps
9 did do an extraction on her phone, but he was unable to
10 retrieve any pictures. He said they may have been deleted.

11 MR. STITELY: And she actually tells the officer
12 she actually deleted a bunch of stuff before she gave him
13 the phone. She told the officer that. So, Judge, there's
14 all kinds of questions I think I have a right to get into
15 that. I'm not trying to reinvent the wheel; I'm just
16 asking for a completeness as to cell phone records I have
17 to be able to be open access for me to ask her about. It
18 would be unfair --

19 THE COURT: Unless --

20 MR. STITELY: -- to pick and choose.

21 THE COURT: I think it's circumstantial evidence,
22 but unless you can associate it with the precise pictures
23 that.

24 MR. STITELY: Here's the problem --

25 THE COURT: She sent to whatever phone number

1 that --

2 MR. STITELY: -- we don't have those pictures
3 either. They were deleted and I -- we never got those
4 either. So there's no proof that she even sent pictures to
5 my client. That's not in evidence anywhere. She deleted
6 all of that too. So that's again only an element of her
7 stating she sent the pictures to my client. We don't have
8 those pictures and neither does the State.

9 THE COURT: Well, that still goes to her
10 credibility.

11 MR. STITELY: Yes, sir, and that it is only fair if
12 she claims to be sending the one when she's talking about
13 sent, when she's talking to these other people on the same
14 date that the alleged allegations with my client arise and
15 then like I said, it's just --

16 THE COURT: How do we know it's the same day?

17 MR. STITELY: It's got the dates on the text
18 messages -- or at least on these logs.

19 THE COURT: It's got dates on text messages --

20 MR. STITELY: Dates, hours, times, yes, sir.

21 THE COURT: That eludes to pictures being sent?

22 MR. STITELY: Something being sent to other males.

23 THE COURT: Come show me the text messages?

24 MR. STITELY: May I approach.

25 THE COURT: Show me the text messages. In fact,

1 y'all decide which test messages specifically it is you're
2 talking about? If he wants to get in under the rule of
3 completeness.

4 MR. STITELY: May I approach, Your Honor. I'll
5 show you.

6 Okay. Judge, this is the way I have it. This is
7 the extraction report.

8 THE COURT: Y'all, make me -- make me copies
9 specifically what it is you want to try to get in under the
10 Rule of completeness. I'm not going to do the outline.

11 MR. STITELY: Judge, we're printing out a copy of
12 the entire text log.

13 THE COURT: All right.

14 MR. STITELY: Another thing, Judge, while they're
15 printing, a lot of these don't even have the intended
16 recipient. Like it doesn't say who she's sending these
17 texts to; that number is not included on the records for
18 some reason, just blank, no sent, no party it was going to,
19 just outgoing messages.

20 (There was a pause in the proceedings.)

21 MR. STITELY: Your Honor, may I approach.

22 THE COURT: Yes, sir.

23 MR. STITELY: Judge, this is a clean copy of what's
24 designated as the extraction report, which I'm guessing
25 without having the witness up here is what they would say

1 they would have pulled from the logs off of her cell phone.

2 I've highlighted excerpts from -- once again, this
3 is the Ms. Minor 's phone, not my client's phone, but it's
4 Ms. Minor 's phone and these are messages to other
5 individuals that she has put names to, a Robert Ardddd and
6 Dalton, I believe it's Galloway or Dalton Harcy, just
7 talking about conducting sexual conduct, getting together,
8 a couple saying about sent, one talking about their
9 anniversary coming up in Christmas. The allegations in
10 this case match the times of the allegations against my
11 client as being the individual who perpetrated some kind of
12 act.

13 Additionally, if you look at these records, Judge,
14 you'll notice that on the first half of them, there is no
15 number showing who the messages were from or to. Just it
16 doesn't say any number and I spoke to the solicitor and she
17 said their person said they weren't able to ascertain how
18 these, who these messages were even sent to, if there isn't
19 a number sat by them. I guess we could get into why they
20 can't ascertain that. But again, I'd only ask permission
21 to be able to go into conversations in the text messages as
22 a whole over that three week span when these allegations
23 came up.

24 And as I said, Judge, the reason I think it's
25 particularly relative is she talks about conducting these

1 sexual acts with at least one, maybe two other people aside
2 from the one she indicates to be my client from her
3 comments. And in the DNA report it says that Mr. Brown is
4 only a 1 in 210 match potentially. And said that's an
5 unrelated individual; and even goes further to say any male
6 relatives may not be excluded at all.

7 THE COURT: For example, on page 1 of 58. There's
8 a text from 3982.

9 MS. PATTERSON: I'm sorry, Your Honor, page 1?

10 THE COURT: Page 1 of 58, Report dated 20 March,
11 2014. Entry No. 7 on that page, the last four numbers
12 3982.

13 MS. PATTERSON: Yes, sir, that was from him.

14 THE COURT: I understand. It's basically an
15 incoming text message that's a love note. What's the
16 admissibility of that?

17 MR. STITELY: Judge, that's the -- that number
18 right there is the one they're alleging to be my client.
19 My biggest, my biggest concern --

20 THE COURT: From Justin Goodwin is alleged to be
21 your client?

22 MR. STITELY: That's what the State's position is.

23 THE COURT: 3982?

24 MR. STITELY: Right. That -- that's what the
25 State's allegations are.

1 THE COURT: Okay. All right. And if they can
2 prove that circumstantially, that's admissible. So again,
3 which one are y'all wanting me to rule on, line by line 1
4 through 58?

5 MR. STITELY: Judge, my -- my concern is it kind of
6 cuts back and forth and it's really hard to read these this
7 way because the first half is the incoming texts and the
8 second half are the outgoing texts, but there's obviously a
9 back and forth talking about meeting and seeing more than
10 one person.

11 THE COURT: Well nobody has directed me to that.

12 MR. STITELY: The back half --

13 THE COURT: That's the point I'm making.

14 MR. STITELY: I'm sorry, Judge --

15 THE COURT: Y'all asking me to rule on something
16 and you're not showing it to me and you're wanting me to
17 wade through it. I'm not going to do that quite frankly.
18 If y'all don't know what you want to admit or what you want
19 to object to, I'm not going to rule. I'm going to rule on
20 specifically what y'all want me to rule on and it doesn't
21 seem to be that either one of you know what that is.

22 MR. STITELY: Judge there in the second half of
23 that, they're highlighted.

24 MS. PATTERSON: Starting on page 30 of 58.

25 THE COURT: Page 30?

1 MR. STITELY: Of 58. Those are the outgoing text
2 messages from Minor 's phone rather than the incoming ones.
3 Once again, Judge, I do have a whole other question of
4 proving incoming messages to a name assigned to them. I
5 think that's more of a question of admissibility once we're
6 actually doing it. The question is whether I can ask her
7 about who she's sending these other texts to, which are
8 clearly derived from her outgoing speaking of sending
9 messages and performing sexual act on multiple individuals
10 within the exact time frame of these allegations, not three
11 years prior or some nebulous period.

12 THE COURT: All right. I'm on page 30 of 58 and
13 you're saying 30 of 58.

14 MR. STITELY: That's where it starts her messages
15 outgoing, Judge, and they're backwards chronological. So
16 you're starting at the end and moving towards the beginning
17 like a backwards timeline. It's kind of hard to follow in
18 that regard.

19 THE COURT: So specifically which is it you object
20 to, Solicitor.

21 MS. PATTERSON: If any of them that says anybody's
22 name except for Justin Goodwin. The ones that says Robert
23 Ardddd, the ones that says Dalton Harcy. Any of them that
24 says anything besides Justin Goodwin, we are objecting to.

25 THE COURT: All right. So when I'm looking at page

1 58 of 58, Entry Number 49 from a Cameron Spires says pinky
2 promise; is that admissible? Do you object to that,
3 Solicitor.

4 MS. PATTERSON: Yes, sir.

5 THE COURT: You think that's admissible, Mr.
6 Stitely?

7 MR. STITELY: I think that any of these that
8 specifically relate in the time period when we have an
9 unidentified male talking about a sexual act or potentially
10 relevant I'd like to be able to ask her about that if you
11 can look at some of these; you don't have to read the whole
12 conversation, Judge. She talks about taking a pregnancy
13 test with Mr. Ardddd, whoever that is, and saying positive
14 or negative. With a different individual she talked about
15 taking a pregnancy test and then he keeps asking positive
16 or negative on it. That was Ardddd if you look at the very
17 last page, she's talking to Mr. Ardddd.

18 THE COURT: All right. I will repeat my question.
19 Entry Number 49, Cameron Spires sent, pinky promise; is
20 that admissible?

21 MS. PATTERSON: We think it's inadmissible.

22 MR. STITELY: And I would think it would be
23 potentially admissible as impeachable evidence as to her
24 allegations of identity of my client as the perpetrator of
25 this crime.

1 THE COURT: So if you send a text message to
2 someone that says pinky promise, that would rise to the
3 level of third party guilt in State v. Parker and State v.
4 Williams, State v. Middleton and State v. Beckham. It's
5 got to be third party guilt. If somebody sends you a text
6 message pinky promise; what in the world would it have to
7 do with DNA, pregnancy, sexual conduct, or frankly I don't
8 know what a pinky promise is, maybe it's something on Urban
9 Dictionary that would mean something -- who knows.

10 MR. STITELY: It's collectively, Judge. I think it
11 rises to the level of a question of third party guilt as
12 fact and identity. Not one individual text; it's so hard
13 to take one text message out of context. She admits to
14 deleting a number of them.

15 THE COURT: So any male -- first off, I guess it
16 boils -- it focuses down to only a particular class of
17 males, not a class of males just because they have -- they
18 are males and they produce male semen, have male DNA that
19 she may potentially know that may potentially or may live
20 in the area of her home. It's not just them; it's only a
21 class of males that you know she communicates with by cell
22 only because you don't even know if she knows them and I
23 don't think you can transmit DNA or at least for the
24 purposes of semen, from cell phone to cell phone and you
25 can transfer it; of course you could have it on one's hand.

1 You can pick one or somebody else's cell phone number, but
2 I'm not -- I'm not tracking that. I'm not tracking it.

3 Why just because she texts a male, is that male
4 some kind of suspect in the serology or DNA. I'm not
5 tracking that.

6 MR. STITELY: And, Judge, this is why and this is a
7 perfect example. If you look at page 35 of 58 of the
8 documents you have.

9 THE COURT: 35 of 58?

10 MR. STITELY: 35 of 58, we're looking at Entry
11 Number 78. It's the perfect example of why I think it's
12 relevant.

13 THE COURT: All right. 30 of 58, Entry Number?

14 MR. STITELY: 78, Judge.

15 THE COURT: All right. And that is a text from the
16 victim to whoever the person in her phone designated as
17 Ardddd which we don't know who that is saying 0 or 1 in
18 shirts and a small or x-small following a conversation
19 about her clothing. One of the pieces of evidence the
20 State intends to put in is clothing provided to her. She's
21 saying coming from my client; right there she's asking
22 another man or telling another man her size of clothing.

23 So then you combine that with the fact she talks to
24 him later about being on top of him and riding him; that's
25 on page, I'll find the exact entry, Judge. On page 39 of

1 58, Entry Number 49 on the third to last on the bottom
2 again to that Robert Ardddd saying I turned around and
3 slowly ride you; and then you have a DNA profile, only 1 in
4 210 unrelated, which fairly eliminates any population of
5 Lexington County alone with the same man who is identified
6 as Ardddd, which we don't know who that is or what that is
7 providing her clothing size to him and the only proof that
8 we're going to have that it's my client is her word because
9 once again, they don't get these off of his cell phone;
10 these are off of her cell phone on a number she's
11 attributing to my client.

12 THE COURT: All right. Solicitor?

13 MS. PATTERSON: Yes, sir, Your Honor. There's
14 still no proof that that actually happened. She is merely
15 sending him a message. As a matter of fact, on page 40 of
16 58, line 16 --

17 THE COURT: What page.

18 MS. PATTERSON: -- 40 of 58.

19 THE COURT: All right.

20 MS. PATTERSON: Line 16 (1), they even, on 16 with
21 the zero under, they're talking about other things and
22 right up under it, she tells him a story, baby, yeah babe.
23 So they're merely sexting, Your Honor. There's no evidence
24 that that actually took place. She's going to testify that
25 it didn't. They're merely just having those sexting

1 conversations via text message.

2 THE COURT: What about page 38 of 58, line 12, And
3 next time bring -- well actually, line -- line 12, Oh
4 goodness, prego test; and then 12(7), And next time bring
5 protection. And then -- what about those two entries:

6 MS. PATTERSON: All of those are to Justin Goodwin,
7 who she -- the number she had when she was sending messages
8 to the defendant.

9 THE COURT: All of those are what?

10 MS. PATTERSON: To the -- to the Justin Goodwin who
11 had actually been David Brown.

12 THE COURT: All right.

13 MR. STITELY: Judge, I think that -- that comment
14 there is further flushed out in page 32 where she's talking
15 to Mr. Arddd again about positive or negative tests,
16 positive or negative. So she's talking to another
17 individual; maybe, it has nothing to do with the pregnancy
18 test, but she's talking about positive or negative, the way
19 my wife always looked at a pregnancy test was it's positive
20 or negative and that's the exact words a woman would
21 typically use.

22 I'm not sure, once again, because she admitted to
23 law enforcement, she being the victim, that she deleted
24 tons of stuff before they got her phone. So even this log
25 is by no means complete would be my argument. But if this

1 is what's left in it, in her conversations dealing with at
2 least three alleged individuals, we don't even have the
3 world's knowledge of what else is out there. I don't
4 intend to just jump outside of everything could exist. I
5 want to stick to the black and the white. And, Judge, it's
6 only further complicated by her initial interaction with
7 the detective, the SANE nurse will testify and, and I'm not
8 saying it doesn't prove one way or another, but this wasn't
9 a physical findings case. There were no physical findings
10 of obvious violence or abuse, which would coincide with a
11 statement of a forcible rape, which is made in one
12 statement.

13 If you look at all the evidence in a whole, which
14 you will hear as the case goes on, it is very possible that
15 the DNA that she is using as an allegation against my
16 client could be one of these other individuals who she
17 talks about performing sexual acts at the exact dates of
18 the allegations of this case.

19 THE COURT: I don't see, the only thing I saw was
20 11/16. At this point, it is not admissible. If you think
21 it becomes admissible during the course of the victim's
22 testimony, we can take it up as a matter of law. I think
23 it's speculative. I think its probative value, if any, is
24 outweighed by its prejudicial effect. I think also
25 16-3-659 -- further, although a notice of intent was not

1 filed under 16-3-659(1)(2), I think there would be a
2 constitutional issue not allowing the defendant to have
3 this hearing on the matters.

4 All right. Mr. Stitely.

5 MR. STITELY: I'm just, just one last point for
6 clarification to make sure we're protected on the record.
7 I think the standard, if we're considering almost like
8 Lyle, the* 403 analysis of prejudicial and probative,
9 should be --

10 THE COURT: No, sir, I'm doing it straight Rule
11 403.

12 MR. STITELY: Yes, sir.

13 THE COURT: Not, not, not Lyle, just Rule 403.

14 MR. STITELY: Okay. I just wanted to clarify that,
15 Your Honor.

16 THE COURT: Because Lyle would have to be clear and
17 convincing I think.

18 All right. Bring us the jury. You all right,
19 Brenda?

20 THE COURT REPORTER: Yes, sir.

21 THE COURT: Bring us the jury, please.

22 (The jury entered the courtroom at 3:28 p.m.)

23 THE COURT: All right. Welcome back, ladies and
24 gentlemen of the jury panel. I hope y'all had a pleasant
25 lunch. I apologize for the delay. I assure you it was not

1 the fault of either of the parties whatsoever. They were
2 not back on time; they were back early. It's not unusual
3 to have to hear some pretrial matters and quite frankly,
4 it's many times very difficult to estimate or guesstimate
5 the amount of time. I try to do it conservatively,
6 however, to preserve both your and the Court's time and use
7 it in an efficient manner.

8 In fact, I was noticing the portrait right behind
9 y'all. That's the late Honorable George Bell Timmerman,
10 who was a World War II Veteran in the Navy. He had a ship
11 shot out from under him. He was a Governor, Lieutenant
12 Governor, Governor of South Carolina, and a Circuit Court
13 Judge in the early 60's through late 80's, early 90's
14 perhaps, and he would always say good trial lawyers can't
15 tell time. I found that to be so true almost like a
16 proverb. I hope it's also true of good trial judges.

17 Be that as it may, we're beginning the trial of the
18 case by the presentation of evidence and testimony by the
19 State in its case in chief. If you would please give the
20 parties, as I know you will, your complete and undivided
21 attention.

22 Solicitor.

23 MS. PATTERSON: Thank you, Your Honor.

24 THE COURT: You may call your first witness.

25 MS. PATTERSON: Thank you, Your Honor. The State

Minor

- Direct Examination by Ms. Patterson

1 calls Minor

2 THE COURT: All right. Ms. Minor , please come
3 around and be sworn for us.

4 Minor

5 having been duly sworn, testified as follows:

6 THE CLERK: Have a seat right there, ma'am. Once
7 you're seated, speak up loud and clear, state your full
8 name, spelling your last on the record, please.

9 THE WITNESS: Minor

10 Minor

11 **DIRECT EXAMINATION**

12 BY MS. PATTERSON:

13 Q Good afternoon, Minor .

14 A Good afternoon.

15 Q How old are you?

16 A 16.

17 Q And when is your birthday?

18 A

19 Q I know you're nervous so just slow down your speech
20 just a little bit, okay? And what grade are you in?

21 A Tenth.

22 Q How are you doing in school?

23 A Good.

24 Q You like school?

25 A Yes, ma'am.

Minor

- Direct Examination by Ms. Patterson

- 1 Q And, Minor , who do you live with?
- 2 A My mom.
- 3 Q What's your mom's name?
- 4 A Valerie.
- 5 Q Anybody else live with you and your mom?
- 6 A No, ma'am, my grandparents live next door.
- 7 Q And what city do you live in?
- 8 A Gaston.
- 9 Q And how long have you lived in Gaston?
- 10 A I've lived there all my life, so --
- 11 Q And Minor , do you do social media?
- 12 A Yes, ma'am.
- 13 Q Did you use social media in 2013?
- 14 A I did Facebook.
- 15 Q And did you have a cell phone back in 2013?
- 16 A Yes, ma'am, I did.
- 17 Q And what did you use your cell phone for?
- 18 A Texting.
- 19 Q Did you ever meet someone who referred to
- 20 themselves as Justin Goodwin?
- 21 A Yes, ma'am.
- 22 Q Do you remember when you met that person?
- 23 A In person?
- 24 Q When did you first come to know of that person's
- 25 name.

Minor

- Direct Examination by Ms. Patterson

- 1 A Maybe in September.
- 2 Q Of what year?
- 3 A 2013.
- 4 Q And how did you come to know that person's name?
- 5 A Facebook.
- 6 Q And once you met on Facebook, did you communicate
- 7 with him?
- 8 A Yes, ma'am.
- 9 Q And how did you communicate?
- 10 A Through text.
- 11 Q And how did you get the number to text him?
- 12 A Facebook.
- 13 Q Did you give him your number?
- 14 A Yes, ma'am, I believe I did.
- 15 Q And how often would you and this Justin person text
- 16 each other?
- 17 A At first it was like maybe twice a week, but then
- 18 it got to everyday.
- 19 Q And was there ever a time when you sent this Justin
- 20 person any pictures of yourself?
- 21 A Yes, ma'am.
- 22 Q And let me back up a minute. Did you ever tell
- 23 Justin how old you were?
- 24 A Yes, ma'am, I did.
- 25 Q Did you ever talk about going to school?

Minor

- Direct Examination by Ms. Patterson

- 1 A Yes, ma'am, I did.
- 2 Q Did you ever tell him what grade you're in?
- 3 A Yes, ma'am.
- 4 Q And how old did you think Justin was?
- 5 A 17, 18.
- 6 Q And going back to the pictures that you sent to
7 Justin, how did you send the pictures to him?
- 8 A Text.
- 9 Q And how many pictures did you send to him?
- 10 A It was more than one; I don't remember how many
11 exactly.
- 12 Q And who were they pictures of?
- 13 A Myself.
- 14 Q And what were you doing in the pictures?
- 15 A I had no clothes on; that's it.
- 16 Q Now, did you ever meet this Justin in person?
- 17 A Yes, ma'am.
- 18 Q And whose idea was it for you two to meet?
- 19 A Our idea.
- 20 Q And do you know how long it was after you met
21 Justin on Facebook that you agreed to meet with him?
- 22 A It was October when we first met.
- 23 Q And when's your birthday again?
- 24 A The of
- 25 Q So how old were you when y'all agreed to meet?

Minor

- Direct Examination by Ms. Patterson

1 A 13.

2 Q And who arranged the meeting?

3 A We did.

4 Q And where were you two to meet?

5 A My field at a deer stand.

6 Q And when you say your field, where is this field
7 located?

8 A Behind and beside my house. It's a big field. So
9 it's like it connects to my yard basically.

10 Q And were you wanting to meet Justin?

11 A Yes, ma'am.

12 Q And what time were you going to meet?

13 A After nine o'clock at night.

14 Q Why were you going to meet so late?

15 A He told me he couldn't get a ride until after nine.

16 Q Now, who was home with you when you agreed to meet
17 Justin?

18 A My mom.

19 Q Did she know you were going out to meet Justin?

20 A No, ma'am.

21 Q Did you tell anybody you were going to meet Justin?

22 A No, ma'am.

23 Q And did you, in fact, meet Justin that night?

24 A Yes, ma'am.

25 Q And tell us what -- how did you get out of the

Minor

- Direct Examination by Ms. Patterson

1 house?

2 A I snuck out through the back door.

3 Q And how did you -- where did you go meet Justin?

4 A Outside behind my house under the deer stand.

5 Q About how far is that away from your house?

6 A It ain't too far, just like not even a 5 minute
7 walk; maybe 2 seconds.

8 Q And whose deer stand is that?

9 A Mine and my Papa's.

10 Q Do you hunt?

11 A Yes, ma'am.

12 Q And so who all lives out there in that area that
13 you live?

14 A Me and my mom in the house and then my grandparents
15 live next door and then before you get to my house is my
16 cousin, Audie, he lives across the field.

17 Q Is everybody related to you that lives out there?

18 A Not everybody, but just Audie on that road.

19 Q How long did it take you to get to where you were
20 going to meet Justin?

21 A A minute.

22 Q And what did you notice about the person -- well
23 did the person come to meet you named Justin?

24 A Yes, ma'am.

25 Q What did you notice about this person?

Minor

- Direct Examination by Ms. Patterson

1 A Well, it was a full moon so I could barely see and
2 when I got there, it wasn't him. I didn't want to say
3 anything because I didn't know what to do. I went out
4 there and he held me first and then he started like to feel
5 on my lady part and, and I told him no, I didn't want to do
6 that. Then he grabbed my --

7 Q Let me stop you for a second; I apologize. And you
8 said you noticed it wasn't him?

9 A Yes, ma'am.

10 Q Do you see the person in this courtroom who you saw
11 that night?

12 A Yes, ma'am.

13 Q And who is he? Where is he?

14 A Right there in the red shirt.

15 MS. PATTERSON: Your Honor, let the record reflect
16 she's identified the defendant, David Ray Brown?

17 THE COURT: So reflected.

18 BY MS. PATTERSON:

19 Q So when you saw this person, what went through your
20 mind?

21 A I was scared. I didn't know what to do.

22 Q So what happened?

23 A When I got there, he started, he hugged me first.
24 Then he felt on my lady part and then I told him I didn't
25 want to do that. Then he grabbed my wrist and pulled me

Minor

- Direct Examination by Ms. Patterson

1 down and then he began to take my pants off and he raped
2 me.

3 Q Okay. And did he say anything to you when you
4 walked up?

5 A He just told me it was going to be okay.

6 Q And when you say he touched your lady part, what do
7 you mean?

8 A Like he tried to get in my pants.

9 Q What did he touch your lady parts with?

10 A His hand.

11 Q Well, do you remember what you were wearing?

12 A Sweat pants and a hoodie.

13 Q And did you scream?

14 A No, ma'am.

15 Q And why not?

16 A I didn't want my mom to hear. I didn't want her to
17 come out and find me. I didn't want her to be upset at me.

18 Q Did you run away?

19 A No, ma'am, I did not.

20 Q Why not?

21 A I was too scared.

22 Q And what did he do to you?

23 A He forced me into sex.

24 Q And where were you when he forced you to have sex?

25 A Under the deer stand.

Minor

- Direct Examination by Ms. Patterson

1 Q And when you say sex, what do you mean?

2 A He put his penis in my vagina.

3 Q And do you know how long you were out there with
4 him that night?

5 A Maybe 2 hours.

6 Q Did you have sex all that time you were out there?

7 A No, ma'am.

8 Q And what were y'all doing?

9 A He talked to me the rest of the time.

10 Q And did you tell anybody what happened?

11 A My old friend, but we ain't friends no more.

12 Q Did you ever tell anybody else that night?

13 A No, ma'am.

14 Q And why not?

15 A Too scared. I was -- I didn't want -- I didn't
16 know what to do.

17 Q And after learning that this Justin wasn't the
18 person you thought he was, did you continue to communicate
19 with him?

20 A Yes, ma'am.

21 Q And why did you do that?

22 A I liked the attention he gave me. He was nice when
23 I did what he wanted me to do and then when I refused he
24 got abusive, but I liked the attention he gave me.

25 Q And what kind of attention was he giving you?

Minor

- Direct Examination by Ms. Patterson

1 A He was nice, complimented me, he told me loves me
2 and things like that.

3 Q And how was he, where was he paying you these
4 compliments?

5 A Through text.

6 Q And did he ever, did y'all ever meet again?

7 A Yes, ma'am.

8 Q Whose idea was it to meet?

9 A Our idea.

10 Q How did you -- so did you want to meet with him?

11 A Not really. I made excuses for a long time.

12 Q What kind of excuses would you make?

13 A I made that my mom caught me one time; I said I was
14 sick; I kept using my brother as an excuse too; like I'd be
15 over at his house or something.

16 Q And you -- how would you relay these excuses to the
17 defendant?

18 A He was wanting me to sneak out again at night and I
19 told him I wouldn't be home or I'd be sick or my mom was
20 mad at me.

21 Q But did you eventually meet with him again?

22 A Yes, ma'am.

23 Q Do you remember when that was in relation to the
24 first time that you met?

25 A It was the beginning of November, 2013.

Minor

- Direct Examination by Ms. Patterson

- 1 Q And how old would you have been?
- 2 A 14.
- 3 Q And what grade would you have been in?
- 4 A Eighth.
- 5 Q What school were you going to at that time?
- 6 A Sandhills Middle, it's in Gaston.
- 7 Q And when you met with him the second time, where
- 8 did you meet?
- 9 A Same place.
- 10 Q And what time did you meet with him?
- 11 A After dark like after nine o'clock.
- 12 Q And again, why did you meet so late?
- 13 A He told me his friend couldn't give him a ride
- 14 until after nine.
- 15 Q And again, how did you get out of the house?
- 16 A Snuck out again.
- 17 Q Who was home?
- 18 A My mom.
- 19 Q Did she know you were out of the house?
- 20 A No, ma'am.
- 21 Q And when you got to that meeting place, what
- 22 happened?
- 23 A The same thing as the first time.
- 24 Q And what was that?
- 25 A He forced me into sex.

Minor

- Direct Examination by Ms. Patterson

1 Q Did you tell anybody what happened that night?

2 A I might have told Robert, he was my good friend
3 then.

4 Q Did you tell your mom?

5 A No, ma'am, I did not.

6 Q And why not?

7 A I didn't want her to be ashamed of me.

8 Q And after the second time that you met, did you
9 still continue to communicate with him?

10 A Yes, ma'am.

11 Q And why did you do that?

12 A I like attention and then I didn't want to say no;
13 well, I did say no a couple of times of Facebook, but he,
14 would get really abusive and threaten me with pictures I
15 sent him.

16 Q Okay. And are those, those pictures you testified
17 about earlier?

18 A Yes, ma'am.

19 Q Did you send him anymore pictures after y'all
20 started meeting?

21 A I did because he would say if I didn't send another
22 one, then he'd expose the first one.

23 Q Do you know how many pictures you sent him at this
24 point, how many pictures you sent to him?

25 A No, ma'am, more than one.

Minor

- Direct Examination by Ms. Patterson

1 Q And what were you doing in those pictures?

2 A Text messaging.

3 Q What were you doing in the pictures?

4 A I had my -- I was naked.

5 Q And you said that you liked the attention that he
6 was giving you, correct?

7 A Yes, ma'am.

8 Q Did he ever compliment you?

9 A Yes, ma'am.

10 Q What kind of things would he say to you?

11 A He said I was beautiful and I was perfect, things
12 like that.

13 Q And did he ever threaten you not to tell anybody?

14 A He just said that if I didn't sneak out that he
15 would expose the pictures.

16 Q And how did that make you feel?

17 A Scared and hurt because I wanted to go to college
18 and he knew I had goals and I know if college found out
19 about people sending nudes, then they'd probably not accept
20 them and I didn't want my college goal to be ruined.

21 Q And how did he know about your goals?

22 A I told him.

23 Q And did you ever say anything to him about these
24 threats to expose your pictures?

25 A We would argue about them, but I didn't bring them

Minor

- Direct Examination by Ms. Patterson

1 up.

2 Q And when would you argue about it?

3 A When I'd make excuses and not see him and not sneak
4 out.

5 Q And what was his response to you?

6 A He'd expose the pictures; that he was done with my
7 games.

8 Q I'm sorry, what did you say?

9 A That he'd expose the pictures on Facebook and that
10 he was done with my games.

11 Q And would you continue to communicate with him over
12 text messages?

13 A Yes, ma'am.

14 Q And did y'all meet a third time?

15 A Yes, ma'am.

16 Q And how -- what was the time frame between meeting
17 the third time and the second time?

18 A Well, the second and third and fourth time I snuck
19 out was a Monday, Thursday, and a Saturday and Sunday
20 night.

21 Q And let's go back to the third time, where did you
22 meet?

23 A Same place as the first and second time..

24 Q Okay. What time would it be?

25 A After nine, in the afternoon -- well after nine at

Minor

- Direct Examination by Ms. Patterson

1 night.

2 Q And where would you meet?

3 A Same places, under the deer stand.

4 Q And what would happen?

5 A Same as first and second time.

6 Q And what was that?

7 A He forced me into sex.

8 Q And what kind of sex?

9 A Regular, forcing his penis in my vagina.

10 Q And the fourth time you said was how long after the
11 third?

12 A The third time I snuck out was on a Thursday and
13 the fourth time was on Saturday night going into Sunday.

14 Q Okay. And the fourth time, whose idea was it for
15 y'all to meet?

16 A Ours.

17 Q And did you want to meet with him?

18 A No.

19 Q Did you tell him you didn't want to meet with him?

20 A I made excuses not to, but I still could.

21 Q And why did you?

22 A Make excuses?

23 Q Why did you meet with him?

24 A Because he would threaten me with the pictures. He
25 would say that if I didn't, he would expose them on

Minor

- Direct Examination by Ms. Patterson

1 Facebook.

2 Q And at this point, how were you feeling about those
3 threats?

4 A I was angry and hurt and confused and scared.

5 Q But you agreed to meet with him?

6 A Yes, ma'am.

7 Q And where did y'all meet?

8 A Same place.

9 Q What time?

10 A After nine.

11 Q And what happened?

12 A Same as the times before.

13 Q And what was that?

14 A Forced me into sex.

15 Q What kind of sex; what do you mean by sex?

16 A He forced his penis in my vagina.

17 Q And after y'all met on this fourth occasion, did
18 y'all communicate again through text messages?

19 A Only for a little because I told them Monday.

20 Q And did you send him any messages?

21 A Yes, ma'am, through text.

22 Q What were your messages related to?

23 A We was arguing about him exposing me because I
24 blocked him on Facebook and he got really mad and I made
25 excuses that my brother did it; not me.

Minor

- Direct Examination by Ms. Patterson

1 Q Okay. And what was his, what would his reaction
2 be?

3 A He would expose me on Facebook.

4 Q And did you believe him?

5 A Yes, ma'am.

6 Q And do you remember what day of the week this
7 fourth time was?

8 A A Saturday going into Sunday.

9 Q Okay. Did you have school that Monday?

10 A Yes, ma'am.

11 Q Did you go to school?

12 A Yes, ma'am.

13 Q And what happened when you got to school?

14 A Well, later in the day -- until I told Ms.
15 Elizabeth.

16 Q And who is Ms. Elizabeth?

17 A She was our mental health, the mental health
18 counselor at school at the time.

19 Q And what did you tell Ms. Elizabeth?

20 A About Justin because I didn't know who it was at
21 that time.

22 Q What did you tell her?

23 A That I was raped and that it wasn't the guy he was
24 saying he was supposed to be.

25 Q Did you -- did you know at that time who it was?

Minor

- Direct Examination by Ms. Patterson

1 A No, ma'am.

2 Q Now let's go back to you had a cell phone, correct?

3 A Yes, ma'am.

4 Q And in your cell phone, did you have contact
5 information?

6 A Yes, ma'am.

7 Q And what did you have the defendant's information
8 listed as?

9 A Justin.

10 Q And why did you have it listed as Justin?

11 A Because that's what I got off of Facebook.

12 Q And did you know at this time it wasn't -- that
13 wasn't his name?

14 A I didn't know at the time.

15 Q Did you ever ask him about that after you met him
16 and saw it wasn't the same person?

17 A I said it to him in person one time, I said Justin,
18 but he acted like he didn't know who it was.

19 Q Okay. Did he ever buy you any gifts or anything?

20 A Yes, ma'am.

21 Q What kind of things would he buy you?

22 A He bought me Hollister clothing and it was a blue
23 hoodie and pink sweatpants.

24 Q And how did he know what to buy you?

25 A Well, Hollister is my favorite store and I told him

Minor

- Direct Examination by Ms. Patterson

1 about Hollister was my favorite store.

2 Q And why did you tell him that that was your
3 favorite store?

4 A I don't remember why I did, but I know I did.

5 Q And when did he give you, did he give you the
6 clothes?

7 A Yes, ma'am.

8 Q And when did he give it to you?

9 A I don't remember what time. I think maybe it was
10 the third time.

11 Q So let's go back to when you went to school that
12 Monday. Do you remember what date that was?

13 A 18th.

14 Q Okay. And you would have been with Justin that
15 Saturday?

16 A Yes, ma'am.

17 Q And what date was that?

18 A The 16th.

19 Q Now after you talked to Ms. Elizabeth, did you talk
20 to anybody else?

21 A Officer Griggs.

22 Q And who was Officer Griggs?

23 A He was the police officer at school.

24 Q And did you tell him what happened?

25 A Yes, ma'am.

Minor

- Direct Examination by Ms. Patterson

1 Q And did you tell him the information that you knew
2 about Justin?

3 A Yes, ma'am.

4 Q And what happened after you talked to Deputy
5 Griggs?

6 A Well, the case, well he reported it and everything
7 and he used my phone to contact Justin. He told him not to
8 call me again; basically a warning and we went to Ms. Renee
9 Strickland at the Lexington Office.

10 Q And what happened when you met with Investigator
11 Strickland?

12 A I told her about everything, but I still didn't
13 know who he was the first time I met with her.

14 Q Were you able to help her identify who the person
15 was?

16 A Not the first time.

17 Q Okay. And how many times did you meet with
18 Investigator Strickland?

19 A I don't remember how many times. It was no more
20 than three maybe.

21 Q Okay. And what happened the first time?

22 A I told her what I knew at the time like me being
23 raped by Justin, but I told her it wasn't -- he didn't look
24 like the person that was on Facebook.

25 Q And did you give her any other information at this

Minor

- Direct Examination by Ms. Patterson

1 meeting?

2 A No.

3 Q Who took you to meet with Ms. Renee?

4 A My mom.

5 Q And were you able to help her identify who the
6 person was?

7 A Not the first time, but I did eventually.

8 Q Okay. And eventually when you were able to help
9 her; how were you able to help her?

10 A Because the real Facebook of him, David the
11 Guitarist friended me in August or September and I blocked
12 him because he was obviously too old. And the contact and
13 friend request send was on my IPAD and I used my IPAD to
14 show Ms. Strickland by the contact with his real Facebook
15 against the fake Facebook.

16 Q So how were you able to remember it was David the
17 Guitarist?

18 A I don't know why, but I remembered it was that one.
19 It's on the contact too.

20 Q And when he asked to be your friend, did you accept
21 him?

22 A No, ma'am.

23 Q And why not?

24 A He was obviously too old.

25 Q And so do you remember when you got the friend --

Minor

- Direct Examination by Ms. Patterson

1 how much longer when you got the friend request from the
2 Justin person?

3 A Maybe a week or two.

4 Q And were you able to give Investigator Strickland
5 any other information?

6 A Not the first time. I gave her the, I took the
7 clothes up there that he had given me.

8 Q You took the clothes and what?

9 A That he gave me and the panties I wore because I
10 washed clothes on Sunday, but I didn't wash all my clothes
11 on that Sunday.

12 Q Okay. And how many pair of panties did you give
13 Ms. Renee?

14 A Two or three.

15 Q And you said the clothes, did you leave the clothes
16 with Ms. Renee?

17 A No, ma'am, she just took pictures of them and gave
18 them back.

19 Q And what did you do with the clothes?

20 A Put them in my closet.

21 Q And what have you done with the clothes since?

22 A Just left them there.

23 Q And after you talked to Ms. Renee and gave her the
24 panties and showed her the clothes, what else happened?

25 A Then we came up here to see you and that was really

Minor

- Direct Examination by Ms. Patterson

1 it.

2 Q And did you still have your cell phone this entire
3 time?

4 A No, ma'am.

5 Q And what happened to your cell phone?

6 A She kept the cell phone for evidence.

7 Q Who?

8 A Ms. Strickland.

9 Q Okay. And after you met with her, did you have to
10 meet with anybody else besides me?

11 A No, ma'am. Oh, yeah, I went to the doctor at the
12 Richland, I believe.

13 Q Okay. So you went to the doctor. What happened at
14 the doctor's office?

15 A They did a rape kit.

16 Q And did anything else -- did they do anything else
17 to you at the doctor's office?

18 A They gave me medicine and they got my panties I
19 wore that day.

20 MS. PATTERSON: Your Honor, may I approach?

21 THE COURT: Yes, ma'am.

22 BY MS. PATTERSON:

23 Q Minor, I'm going to show you what's been marked as
24 State's Exhibit Number 1 for identification purposes only
25 and ask you if you recognize that?

Minor

- Direct Examination by Ms. Patterson

1 A It was are real Facebook.

2 Q Wait a second. Do you recognize this?

3 A (The witness nodded.)

4 Q And how do you recognize this photograph?

5 A It was his real Facebook, David the Guitarist.

6 Q Okay. Does it look like it's been changed or
7 altered in any way?

8 A No, ma'am.

9 Q Does it accurately and fairly represent the picture
10 that you saw on that Facebook?

11 A Yes, ma'am.

12 MS. PATTERSON: Your Honor, at this time, we'd move
13 State's Exhibit Number 1 into evidence?

14 MR. STITELY: Judge, I'm going to object, if this
15 is a picture randomly printed off of Facebook. I think
16 we're going to need a lot more authentication and I don't
17 think she's the one who took the picture off of Facebook.
18 She obviously didn't print that picture and bring it to
19 court. Anyone can put anything on social media sites and
20 random account labeled to David the Guitarist, if that's
21 what we're to assume. I don't even know; there's no
22 foundation for that picture whatsoever.

23 We're talking about a nebulous online site that is
24 a closed account.

25 THE COURT: Solicitor, lay the foundation as to

Minor

- Direct Examination In Camera by Ms. Patterson

1 Defendant Brown. Does that make sense? Or do I need to
2 have the jury step out?

3 MS. PATTERSON: No, it doesn't make sense, I'm
4 sorry.

5 THE COURT: It doesn't make sense?

6 MS. PATTERSON: No, sir. I'm sorry.

7 THE COURT: That's when I saw that face I read your
8 face. I can read language like that.

9 Madam Forelady, ladies and gentlemen, step out
10 momentarily. Do not discuss the case during this brief
11 recess.

12 (The jury left the courtroom at 3:58 p.m.)

13 THE COURT: Thank you of course for sharing with
14 me, Solicitor, that I don't make sense.

15 MS. PATTERSON: I apologize, Your Honor.

16 THE COURT: That's quite all right. I walked right
17 into it. I asked for it.

18 Go through the foundation on the questions again
19 for me please, Solicitor.

20 **DIRECT EXAMINATION - IN CAMERA**

21 BY MS. PATTERSON:

22 Q Do you recognize what's in this photograph?

23 A Yes, ma'am.

24 Q And how do you recognize this?

25 A That was on his real Facebook, David the Guitarist.

Minor

- Direct Examination In Camera by Ms. Patterson

1 Q And does this fairly and accurately -- and where,
2 where did you see this?

3 A Facebook.

4 Q Okay. Did it come across your Facebook?

5 A Yes, ma'am.

6 Q Okay.

7 A That page --

8 Q Speak up.

9 THE COURT: I didn't quite understand you.

10 A The page of David the Guitarist page, they sent me
11 a request.

12 Q And when did you see this request?

13 A September.

14 Q Okay. And what happened when you saw this request?

15 A Declined it because he was obviously too old.

16 Q Okay. And does this fairly and accurately
17 represent the picture that you saw on your Facebook
18 request?

19 A Yes.

20 Q Does it look like it's been changed or altered in
21 any way?

22 A No.

23 THE COURT: And who is that picture of?

24 THE WITNESS: Of David.

25 BY MS. PATTERSON:

Minor

- Direct Examination In Camera by Ms. Patterson

1 Q And do you see him in the courtroom?

2 A Yes, ma'am.

3 Q And where is he sitting?

4 A Right there in the red shirt.

5 THE COURT: All right. So if I'm tracking right
6 then, in September --

7 MS. PATTERSON: Yes, sir.

8 THE COURT: -- that comes across her Facebook page?

9 MS. PATTERSON: Yes, sir.

10 THE COURT: Not from David Brown, but from a third
11 party?

12 MS. PATTERSON: Somebody, yeah, that called
13 themselves David the Guitarist.

14 THE COURT: David the Guitarist?

15 MS. PATTERSON: Yes, sir.

16 THE COURT: So it comes from David the Guitarist to
17 her Facebook account?

18 MS. PATTERSON: Yes, sir.

19 THE COURT: Requesting to be her friend?

20 MS. PATTERSON: Yes, sir.

21 THE COURT: And she turned it down?

22 MS. PATTERSON: Yes, sir.

23 THE COURT: And her testimony is that is a
24 photograph of the defendant, David Brown.

25 MS. PATTERSON: Yes, sir.

Minor

- Direct Examination In Camera by Ms. Patterson

1 THE COURT: All right. Mr. Stitely?

2 MR. STITELY: Judge, it's -- there's a litany of
3 objections to the foundation of this picture. I don't know
4 where they ended up pulling this from. I don't think that
5 picture was removed from her device or anything like that,
6 so I'm guessing this picture was just pulled somewhere off
7 the internet. Unless we're going to have someone from
8 Facebook here to identify where that page, who that profile
9 belonged to, as you said an ID and, when you sign up for
10 Facebook, you have to attach an e-mail, you have to now put
11 a phone number with it.

12 Back when Facebook was started it had to be a
13 college account attached to an actual college e-mail. You
14 don't have to have that anymore. Without any of that
15 foundation, for all we know that could have been someone
16 who sent that to her last month in preparation for trial.
17 It could have been pulled last month in preparation for
18 trial. She didn't print it. She didn't save it back in
19 September. She's not the one who brought that picture to
20 law enforcement.

21 It is my understanding that Detective Strickland
22 found that later on in an internet search of some kind.
23 There is no proof, even if we were to assume it really came
24 from David the Guitarist that my client is the owner of
25 that page, without someone here from Facebook to identify

Minor

- Direct Examination In Camera by Ms. Patterson

1 him as the individual who created it. It's an unfair
2 position to put me in eventually to argue. There's no
3 foundation for it. It could be a family member whose mad
4 at the individual charged with her creating an account
5 saying this is the bad guy who molested my daughter.

6 Without Facebook people here to say who created the
7 account, it's not fair to have pictures entered into
8 evidence.

9 MS. PATTERSON: Your Honor, may I ask her one more
10 question?

11 THE COURT: Yes, ma'am.

12 BY MS. PATTERSON:

13 Q Is this the person that met you the four times by
14 the deer stand by your house?

15 A Yes, ma'am. I still had a picture on my IPAD that
16 connects to the Facebook page. It's still on my iPad for a
17 contact.

18 MS. PATTERSON: So, Your Honor, she's able to
19 identify that this is the defendant, the person that met
20 with her.

21 THE COURT: Yeah, well, she had already done that I
22 thought. I was tracking that she did. It's not -- it's
23 not relevant who took the picture or who posted the
24 picture. Although State v. Kahan, K-a-h-a-n, is a chain of
25 custody case. This -- this young lady has said I recognize

1 that picture and that picture came across my Facebook
2 account in September of '13.

3 MS. PATTERSON: 2013.

4 THE COURT: Of '13 and this individual partying in
5 that photograph, who is identified as David the Guitarist,
6 wanted to be my friend and I did not befriend him because
7 of his age. I think she said, too old. So it doesn't
8 matter who took the picture. I doesn't matter who posted
9 the picture because she goes on to say that is a photograph
10 of David Brown. She's already testified that David Brown
11 is an individual -- is the individual who had sex with her
12 four times by the deer stand. So if -- if -- if -- it's
13 not relevant to who took it or who sent it to her, but it's
14 relevant to the extent that it was sent to her, she turned
15 down the request because of his age and she identifies him
16 as Mr. Brown.

17 Mr. Stitely?

18 MR. STITELY: Your Honor, my problem with the
19 foundation -- let me just give you a real easy example of
20 this. Say I wanted to go after somebody getting whatever
21 set up. I could create a Facebook account that says I am
22 the Lexington County Raper and I rape all these people and
23 just create a page and that would allow the solicitor
24 without any foundation just to go grab that page and say
25 look, this person openly admitted to it on Facebook. This

1 person's the one on Facebook. My problem with the witness
2 saying that that picture belongs to a profile that was a
3 friend of hers or a friend request of hers, it's putting a
4 prejudicial position against my client, where an untenable
5 thing where I can't even argue almost in the negative
6 saying, how do you know who sent it to you because there's
7 no foundation whatsoever.

8 The problem is, Judge, you could create your own
9 case against an individual and I would have no way to
10 defend it without the Facebook people here to say that
11 account belongs to my client or that friend request was
12 sent on a certain date. We don't have any background to
13 it; it was sent some nebulous day in September. That's a
14 reproduction. That's not the actual picture from the
15 request sent in September. I think it would be different
16 if we had a screen capture, which I know they can do and
17 download it off of her computer showing this image coming
18 across her desk September 2013.

19 This is something made for trial prep, but there's
20 absolutely no foundation backdating it back more than three
21 years and it puts me in an untenable position where I can't
22 challenge the veracity of where it came from, who sent it,
23 or overcome an intentional prejudice saying my client had
24 any involvement whatsoever in its production. I mean it's
25 no different than creating a fan page; you see those

1 trailers all the time where they create fan trailers saying
2 this is for the new movie we want to make; it's not real,
3 it's on the internet. That's why they have custodians who
4 can come and say who produced the document -- who produced
5 the document, what IP address it came from, when it was
6 transmitted, how it was received on her device.

7 Without any of that, it's an unfair position with
8 no foundation for me to attack it collaterally or directly.

9 THE COURT: All right. Solicitor?

10 MS. PATTERSON: Your Honor, he evidently took this
11 picture. This is a self -- self -- selfie. So he
12 participated in the making of taking this picture. He can
13 cross-examine and ask the victim if she knows who sent it;
14 she don't know who sent it, but she knows this is what she
15 saw on her Facebook request and she knows this is who she
16 saw at the deer stand each time that they met.

17 THE COURT: I think it goes to the weight not the
18 admissibility. Let me see the picture a minute, Solicitor.

19 To the Court, it does not matter to me who took the
20 picture. What matters is that this young lady testified, I
21 got a friend request from an individual identified as David
22 the Guitarist. Whether David the Guitarist exists or not,
23 and this picture was attached to that. I turned that
24 friend request down because he was too old.

25 MR. STITELY: Judge --

1 THE COURT: That, please let me finish..

2 MR. STITELY: Okay.

3 THE COURT: Yes, sir, go right ahead.

4 MR. STITELY: Judge, I just wanted, if we're going
5 to allow her to do that, I want to be able to ask her what
6 exactly she was looking for if she was accepting random
7 Facebook requests. I mean it's opening a door, saying well
8 why, what were you looking for on Facebook and that brings
9 in this whole line of her texting at least four individuals
10 this time period with sexual -- Judge, it's making the
11 defense almost impossible if you're going to allow things
12 in that are just generated off of the internet. My same
13 problem and we're going to have to come to it, I know it's
14 secondary to this, but the solicitor is next going to ask
15 her to put the text messages in.

16 It's an incomplete log. She admitted to the
17 officer she deleted some of them. The cell phone company
18 doesn't produce more than what was left on her cell phone,
19 but it's not from the cell phone companies specifically so
20 we don't even have a complete record of all of the text
21 messages going on. So once again, I'm in a situation where
22 I'm trying to defend things with only partial evidence with
23 no ability to attack the foundation. It's going to jump
24 into my conversation because we actually talked about it
25 during the break. She's going to ask for the cell phone

1 records to come in too through this witness saying these
2 are my cell phone records taken off of my cell phone, but
3 she admits to the officer that she deleted tons of stuff
4 first.

5 So this is very select messages left by the
6 witness, not a complete record of all of the conversations
7 and that's further flushed out if you listen to her
8 testimony and you believe it as she talked about on direct;
9 it doesn't line up with the text messages and the dates in
10 the text messages. I'll go through that of course in
11 cross, but any case like this without the actual foundation
12 of where these things came from, some kind of proof as to
13 where they generated from, tying them to my client, it's
14 rampant speculation saying my client had anything to do
15 with it.

16 I don't have a problem necessarily with her
17 in-court identification. I think I can attack her on that
18 in -- in cross-examination, but these other identifiers,
19 using her phone, not the actual cellular providers proof
20 that these are the actual messages that were sent, is up
21 for a lot of speculation. And I'll get into it when we're
22 going through with the cell phone person. You can even
23 manufacture all this stuff. There's a free App on the
24 iPhone's now that let you change the incoming number to say
25 whatever you want. I mean it, it's a very hard case in any

1 situation where we can't have the actual foundation proving
2 items originated and where they went.

3 And, Your Honor, I would like to ask, is that the
4 actual picture on the Facebook request or was that a
5 picture pulled off of a profile and when was it pulled off
6 of the profile? Because if that's not the actual picture,
7 if it was pulled off of the profile last year, two years
8 later, that's a big difference. Also if you're
9 Facebooking, you can put when things are up, you know, if
10 you actually subpoena their records, you can even tell when
11 photos are updated, manipulated, who put them on there and
12 all of that and none of that is present in this case,
13 Judge.

14 THE COURT: Rule 901 of the South Carolina Rules of
15 Evidence requirement of authentication or identification.
16 Requirement of authentication or identification as a
17 condition precedent to admissibility is satisfied by
18 evidence sufficient to support a finding that the matter in
19 question is what it purports. Illustration: By way of
20 illustration only and not by way of limitation the
21 following are examples of authentication or identification
22 conforming with requirements of the rule.

23 One, testimony of a witness with knowledge.
24 Testimony that a matter is what it claims to be. Again, I
25 go back, she has testified that this photograph came across

1 as a friend request in September of 2013 and she declined
2 it because of the age. She goes further to say that she
3 accepted, through her other testimony -- she accepted a
4 friend request from a Justin Goodwin or Godwin whatever it
5 was. And then later on in her direct testimony, she says
6 that when she sneaks out to meet Justin by the deer stand,
7 it is not the individual whose picture she had received as
8 being Justin, but it was Mr. Brown and she says that is Mr.
9 Brown's picture. That's all it is.

10 I'm going to rule again. It makes no moment to me,
11 to put the picture up, who posted the picture, who took the
12 picture, who sent it to her; it's circumstantial evidence,
13 Circumstantial evidence, quite frankly, that David Brown
14 saw her somewhere or that -- and is stalking her or
15 tracking her in some manner; because when it says he's too
16 old, that's when the tactic is changed.

17 So with that being said, it doesn't matter to me
18 who posted it; it matters to me her testimony. She has
19 authenticated that photograph as coming across her Facebook
20 page and the credibility is an issue for the jury and not
21 for the Court. Anything further?

22 MS. PATTERSON: No, sir, Your Honor.

23 THE COURT: Mr. Stitely?

24 MR. STITELY: Not on that, Judge, but if you want,
25 just for the record's sake, I'm going to make the same

1 objection to the next picture she's going to put up which I
2 think is the one she's claiming belonging to the account of
3 Justin Goodwin. I'm guessing the ruling will be the same
4 and --

5 THE COURT: I don't know. I haven't seen it. I
6 haven't heard anything about it.

7 MR. STITELY: It's just kind of the same idea,
8 Judge.

9 THE COURT: Well, it's -- is this -- I don't know
10 what ruling would be the same, but I don't know what the
11 objection would be. I mean, I don't predict anything,
12 particularly the future. If you object to it, I'll be
13 delighted to hear your objection.

14 MR. STITELY: And then I guess, I don't know if you
15 want to take it up now or at the appropriate, when it
16 comes, she, being Ms. Patterson, is going to ask for the
17 cell phone log, I guess, to come in and I'm going to have
18 an objection on that as to this is the only thing that
19 they're going to put in is what actually comes from her
20 phone that remained after she deleted a great majority of
21 it.

22 This is not the actual record as produced by the
23 phone company. It's incomplete. It's -- does that make
24 sense, Judge?

25 THE COURT: Uh-huh (affirmative response)..

1 MR. STITELY: She even admits, and I'm guessing she
2 will on cross-examination, that she deleted a number of
3 things before she gives the phone and actually when the
4 officer indicates in her report, she didn't even want to
5 provide her phone because she didn't want them having what
6 was on it. It's an incomplete record that's handpicked and
7 specifically catered to set up the case. It's not a
8 complete record. If the Verizon people come later today
9 and have every single text message that was sent, I don't
10 think I'm going to have an objection because they're going
11 to have a good foundation of all of it on there, but I
12 don't think it would be appropriate just to take the picked
13 and chosen text messages from her phone to admit them as
14 evidence through this witness in particular.

15 And once again, it kind of runs into that second
16 problem, that this is only -- even the stuff that's left is
17 pick and choose of what we wanted to see of her multiple
18 conversations with multiple individuals.

19 THE COURT: I thought I had already ruled.

20 MR. STITELY: Yes, sir. I still have a problem
21 with the admissibility of the phone records coming in
22 through her because like I said, there's no verification
23 that these actually were sent by any outside party. This
24 is just what her phone says. It's not actually the cell
25 phone company's records saying she really even received

1 these.

2 THE COURT: Well, I always thought and they had two
3 Verizon witnesses listed, I always thought they would come
4 through under 803(6) or (5), I'm not sure.

5 MR. STITELY: The business records exception,
6 Judge.

7 THE COURT: Let me --

8 MR. STITELY: And like I said, I don't think I have
9 a problem if Verizon actually can produce these as their
10 records. What they intend to offer are simply in theory
11 like a police look at and photo copies what was left on her
12 cell phone. This is not the actual records.

13 THE COURT: 803(6), Solicitor, I thought they'd
14 come in through the 803(6).

15 MS. PATTERSON: Well, Your Honor, it's my
16 understanding that the cell phone companies do not keep
17 content of the text messages. We have -- we had Minor 's
18 phone extracted with from -- CSI, Investigator Mike Phipps
19 extracted her phone --

20 THE COURT: So these aren't Verizon records; the
21 text messages are not, you're saying the -- the messages
22 themselves, the content of the messages is not retained by
23 Verizon?

24 MS. PATTERSON: Correct, Your Honor.

25 THE COURT: Well, then there's no, there's not, it

1 wouldn't come under 803(6) because there's not records of
2 regularly conducted activity.

3 MR. STITELY: That's not entirely true, Judge. The
4 cell phone company can actually show the messages being
5 sent back and forth.

6 THE COURT: I understand, but not content.

7 MR. STITELY: Correct, Judge, and my problem with
8 this is when you look at the two, there are thousands of
9 missing messages that I don't get to take a look at and Mr.
10 Phipps took these off of her phone, so I still don't think
11 she's going to be the proper witness to put all these cell
12 phone records in.

13 THE COURT: Well, what about Mr. Phipps, Solicitor?

14 MS. PATTERSON: He's going to come, Your Honor, and
15 testify later on, but Minor can testify that these are the
16 messages that she sent, these are the messages that she
17 received. She's able to remember the content of the
18 messages. She's able to relay what was going on, the
19 dates, the numbers that she sent the messages to, the
20 numbers that she received the messages from. And again,
21 Your Honor, I would rely again on Rule 901 requirement of
22 authentication or identification. She's able to testify
23 what the -- that the matter is what we claim that it to be.

24 THE COURT: Are these coming directly off of her
25 cell phone by Detective Phipps.

1 MS. PATTERSON: Yes, sir, Your Honor.

2 THE COURT: Evidence -- you can't prove
3 everything -- that same man taught me that, Judge
4 Timmerman. I will say this. She can testify to it, but it
5 would have to be corroborated by Mr. Phipps that it came
6 off of the phone also.

7 MS. PATTERSON: Yes, sir.

8 THE COURT: All right. She can testify to her
9 memory and say, Oh yeah, I remember A, B, C, and D, which
10 is no issue. Yes, I sent him a text message or no, I
11 didn't. People testify of phone conversations all the
12 time. I called so and so and we had this conversation or
13 that conversation, but if she's used that and viewed that
14 and viewed those documents, then I think they'd have to be
15 authenticated in addition by Detective Phipps. So if they
16 weren't, then all of that testimony is subject to be
17 stricken.

18 MS. PATTERSON: Yes, sir.

19 THE COURT: Okay.

20 MS. PATTERSON: Yes, sir.

21 THE COURT: All right. All right. As far as the
22 picture on 2; what's the objection on 2?

23 MR. STITELY: It's probably the same one about
24 foundation, but if the ruling is along the same lines,
25 you're just having her state that this is the picture she

1 received from this, that would be my objection. Once
2 again, there's no way to link that picture or that Facebook
3 account to my client.

4 I guess I'll bring that up through cross
5 examination, but the State's position is obviously this is
6 who Mr. Brown was pretending to be, but there's no
7 corroboration anywhere that he had that account, access to
8 that picture or anything like that.

9 THE COURT: You all right, Brenda?

10 THE COURT REPORTER: Yes, sir.

11 THE COURT: Bring us our jury please.

12 (The jury entered the courtroom at 4:24 p.m.)

13 THE COURT: All right. Our jury is back present.
14 Thank you, Mr. Stitely.

15 Solicitor.

16 MS. PATTERSON: Thank you, Your Honor.

17 THE COURT: Solicitor, you may continue.

18 MS. PATTERSON: Thank you, Your Honor.

19 THE COURT: Y'all changed seats all but two of you
20 and two of those, two out of three tried to switch seats.

21 MS. PATTERSON: All right, Your Honor. At this
22 time, the State moves State's Exhibit Number 1 be admitted
23 into evidence.

24 THE COURT: State's 1 is in evidence subject to
25 previous objections.

Minor

- Direct Examination by Ms. Patterson

1 (State's Exhibit Number 1 was entered into
2 evidence.)

3 **DIRECT EXAMINATION**

4 BY MS. PATTERSON:

5 Q And I'm going to show you what's been marked as
6 State's Exhibit Number 2 for identification purposes only
7 and ask you to take a look at that. Do you recognize
8 what's in that photograph?

9 A Yes, ma'am.

10 Q And how do you recognize it?

11 A It was the Justin Facebook profile picture.

12 Q And do -- where did you see that picture?

13 A Facebook on Justin's.

14 Q Okay. And is that the Justin that you friended on
15 Facebook?

16 A Yes, ma'am.

17 Q And is that the person that you thought you were
18 going to meet?

19 A Yes, ma'am.

20 Q In October 2013?

21 A Yes, ma'am.

22 Q Okay. Has it been -- does it fairly and accurately
23 represent the picture that you saw?

24 A Yes, ma'am.

25 Q Has it been changed in any way?

Minor

- Direct Examination by Ms. Patterson

1 A No, ma'am.

2 MS. PATTERSON: Your Honor, at this time, we move
3 State's Exhibit No. 2 be admitted into evidence?

4 THE COURT: Mr. Stitely?

5 MR. STITELY: Judge, I would make the same
6 objection, please.

7 THE COURT: All right. Subject to same objection,
8 State's 2 is in evidence.

9 (State's Exhibit Number 2 was entered into
10 evidence.)

11 BY MS. PATTERSON:

12 Q Now, when you saw this picture, State's Exhibit
13 Number 1, did you friend this person on Facebook?

14 A No, ma'am.

15 Q Did you later have the opportunity to see this
16 person?

17 A It was the person who I was going to meet for
18 Justin.

19 Q Did you ever meet this person?

20 A Yes, ma'am.

21 Q And where did you meet this person?

22 A Outside at the deer stand.

23 Q How many times did you meet this person?

24 A Four.

25 Q And is this the person who had sex with you?

Minor

- Direct Examination by Ms. Patterson

1 A Yes, ma'am.

2 Q Now, the picture on State's Exhibit Number 2, where
3 did you see this picture?

4 A Facebook.

5 Q And was this the person you friended on Facebook?

6 A Yes, ma'am.

7 Q Is this the person you thought was Justin?

8 A Yes, ma'am.

9 Q Is this the person you thought you were sending
10 those naked pictures to?

11 A Yes, ma'am.

12 Q Is this the person who you thought you were meeting
13 in October 2013?

14 A Yes, ma'am.

15 Q Is this the person that you met in October, 2013
16 and November 2013?

17 A No, ma'am.

18 Q Now, I'm going to show you what's been marked as
19 State's Exhibits 3 through 8. Do you recognize what's in
20 these photographs?

21 A Yes, ma'am.

22 Q And what does State's Exhibit Number 3 show?

23 A My house, the back of my house.

24 Q Okay. What does State's Exhibit Number 4 show?

25 A Going towards the deer stand looking back at my

Minor

- Direct Examination by Ms. Patterson

1 house.

2 Q And what does State's Exhibit Number 5 show?

3 A The bottom of the deer stand.

4 Q State's Exhibit Number 6?

5 A That's looking from like the deer stand looking at
6 the field.

7 Q And Number 7?

8 A The same with that one.

9 Q And State's Exhibit Number 8, what does that show?

10 A This shows like a little place, it's like nothing
11 plain, it's just dirt and you stand and sit in front of the
12 deer stand, it's a little back towards my house like where
13 I came from.

14 Q And do those pictures fairly and accurately
15 represent your house and the area surrounding your house?

16 A Yes, ma'am.

17 Q Do they look like they've been changed or altered
18 in any way?

19 A No, ma'am.

20 MS. PATTERSON: Your Honor, at this time we move
21 State's Exhibits 3 through 8 be admitted into evidence?

22 MR. STITELY: No objection, Judge.

23 THE COURT: State's 3 through 8 are in evidence
24 without objection.

25 (State's Exhibits Number 3, Number 4, Number 5,

Minor

- Direct Examination by Ms. Patterson

1 Number 6, Number 7, and Number 8 were admitted into
2 evidence.)

3 BY MS. PATTERSON:

4 Q In State's Exhibit Number 3, what does that show
5 again?

6 A Coming from the deer stand looking at the back of
7 my house.

8 Q And does this picture show the door that you --

9 A Yes, ma'am.

10 Q -- snuck out of?

11 A Yes, ma'am.

12 Q Which door?

13 A That one.

14 Q And what does State's Exhibit Number 4 show?

15 A Coming from the deer stand going towards my house;
16 it was taken at the woods behind my house.

17 Q And is that the path that you took to meet the
18 Justin person?

19 A Yes, ma'am.

20 Q And what does State's Exhibit Number 5 show?

21 A Looking at the bottom of the deer stand.

22 Q And does this picture show where you and --

23 A Justin met there.

24 Q Okay. And does it show where y'all had sex?

25 A Yes, ma'am.

Minor

- Direct Examination by Ms. Patterson

1 Q And where was it?

2 A Right there.

3 Q Now I'm going to skip to State's Exhibit Number 8.
4 What does that show?

5 A This is a dry patch around in front of the deer
6 stand and it's like standing there looking at the deer
7 stand in the path towards the road.

8 Q Okay. And can you see in the picture where you and
9 the defendant had sex?

10 A Right there.

11 THE COURT: Show me, Solicitor.

12 BY MS. PATTERSON:

13 Q Now, when you approached the meeting place, where
14 would -- where would y'all initially stand?

15 A Right here.

16 Q So it was out in the opening some; it wasn't
17 directly in the wooded area?

18 A No, ma'am.

19 Q Could you see his face?

20 A Yes, ma'am.

21 Q Could you see what he had on?

22 A Yes, ma'am.

23 Q And what would he wear when he would meet -- meet
24 you?

25 A Gray sweater, jeans, and work boots.

Minor

- Direct Examination by Ms. Patterson

1 Q And did he wear that each time?

2 A Something similar each time.

3 Q In State's Exhibit 6 and 7, what does it show?

4 A Like standing at the deer stand looking out towards
5 the field. This one shows out towards the road, Way
6 is like right there. And then this one just shows the
7 pathway and all coming from the deer stand from the other
8 way.

9 Q Now Way, would you consider that a main
10 road?

11 A Hill is more the main one because
12 Way is dirt.

13 Q Can you see Hill in this photograph?

14 A No, ma'am.

15 Q And where would Road be?

16 A Way?

17 Q Way?

18 A It would be right here. The field stops at this
19 tree right here and goes to the road right there.

20 Q And where is the deer stand in relation to these
21 pictures?

22 A The deer stand, right in front of it. It's not
23 viewed in this. It's like standing in front of the deer
24 stand looking out.

25 Q So there's really nothing out there; that's kind of

Minor

- Direct Examination by Ms. Patterson

1 a deserted place?

2 A Yes, ma'am. My cousin, Audi, lives across the
3 field there.

4 Q Is your cousin's house in this picture?

5 A Yes, ma'am.

6 Q So if you're at the deer stand, could you see your
7 cousin's house?

8 A Yes.

9 Q Now, I'm going to show you State's Exhibit Number 9
10 for identification purposes only. Will you just take a
11 look at that document?

12 A The whole thing?

13 Q Uh-huh (affirmative response). Do you recognize
14 what this document is?

15 A My text messages from -1310 number.

16 Q And whose number is that?

17 A Mine or was mine.

18 Q When did you have that number?

19 A 2013.

20 Q And is that the number that you used to send text
21 messages to this Justin person?

22 A Yes, ma'am.

23 Q And is that the phone that you received messages
24 from the Justin person?

25 A Yes, ma'am.

Minor

- Direct Examination by Ms. Patterson

1 Q Does it look like these messages have been changed
2 or altered in any way?

3 A No, ma'am.

4 Q Do they fairly and accurately represent the
5 messages that you sent and received from Justin?

6 A Yes, ma'am.

7 MS. PATTERSON: Your Honor, at this time we move
8 State's Exhibit Number 9 into evidence?

9 MR. STITELY: Judge, I have an objection to
10 foundation. That is some kind of compiled report from some
11 source. It's not a complete -- a record of a complete of
12 all messages from her phone, it's been manipulated into a
13 different kind of version they originally would have
14 appeared. Obviously she's not who created that document.

15 It would be inappropriate to come in at this time
16 to speak to how that was actually retrieved.

17 THE COURT: All right. Well, subject to my
18 previous ruling, she may testify from the State's 9 at this
19 time. It may be verbally published to the jury, but it is
20 not yet a State's Exhibit.

21 MS. PATTERSON: Yes, sir.

22 THE COURT: It's for identification purposes only
23 and actually, 803(5) is not a bad rule to site for that
24 proposition in State v. Lindsay, from Anderson County. It
25 if refreshes our memory. But you may, you may proceed,

Minor

- Direct Examination by Ms. Patterson

1 Solicitor.

2 MS. PATTERSON: Thank you.

3 THE COURT: As I say, she can testify from it, just
4 not, it can be read, but it's just not a published written
5 document that goes to the jury yet subject to my previous
6 ruling.

7 MS. PATTERSON: I beg the Court's indulgence?

8 THE COURT: Yes, ma'am.

9 (There was a brief pause in the proceedings.)

10 BY MS. PATTERSON:

11 Q Minor , I'm going to hand you State's Exhibit Number
12 9 and ask you to take a look at, take a look at page 35,
13 line 445. Take a look at that. What does that show?

14 A He texted me about the night before.

15 Q Okay. What date is that?

16 A That is the, the text is on the 12th, but the night
17 before was the 11th.

18 Q And what number did you send that text message to?

19 A - -3982.

20 Q And what did you text to that number?

21 A My back is killing me, but for -- Well, my back is
22 killing me for real but all.

23 Q And why, do you know what you were referring to?

24 A The night before about my back.

25 Q And what do you mean the night before?

Minor

- Direct Examination by Ms. Patterson

1 A When I snuck out the 11th.

2 Q Okay. And is that the night that you met the
3 defendant?

4 A Yes, ma'am.

5 Q Y'all had sex by the deer stand?

6 A Yes, ma'am.

7 Q And where would y'all have sex by the deer stand
8 at?

9 A Like around the bottom.

10 Q And what is the next text message?

11 A He sent that to me.

12 Q And what did he say?

13 A Yeah, I'm sorry. I didn't realize that cold hard
14 ground might screw up, sad face.

15 Q And what was the next message?

16 A I'm going to buy you cool things this week from
17 him; that's what he sent me.

18 Q And what did you say to him in response?

19 A It's in the Columbiana Mall.

20 Q And what were you talking about?

21 A I don't remember what exactly; I must have referred
22 to Hollister.

23 Q Okay. And was all those messages sent on the same
24 day?

25 A Yes, ma'am.

Minor

- Direct Examination by Ms. Patterson

1 Q And I bring your attention to page 37, line 518?

2 A Yes, ma'am.

3 Q And who did you give that -- what number did you
4 get that message from?

5 A - -3982.

6 Q And what date was that?

7 A 15th of November.

8 Q And the next message, how many messages did you get
9 from that number?

10 A It was a paragraph, so it was three in that
11 paragraph.

12 Q And look at paragraph 521; what is that message?

13 A Me texting him.

14 Q And what did you text him?

15 A We hung two times in a week.

16 Q And what are you talking about?

17 A We hung out twice in that week; it was a Monday and
18 Thursday.

19 Q And when you refer to hanging out, what do you
20 mean?

21 A When I snuck out those nights.

22 Q And go to page 39, line 635?

23 A 635?

24 Q 635, what date is on that message?

25 A The 17th.

Minor

- Direct Examination by Ms. Patterson

1 Q Of what year?

2 A 2013.

3 Q What month?

4 A November.

5 Q And what does that message say?

6 A It was from him. It said, We're crazy, beautiful,
7 sweet, different, and the best girl I've ever been with,
8 smiley face.

9 Q Was that one of the text messages he would pay you
10 compliments?

11 A Yes, ma'am.

12 Q And go to page 40, line 643?

13 A Yes, ma'am.

14 Q And what did that message refer to; could you read
15 it?

16 A Out loud?

17 Q Yes?

18 A No, not complaining, but just saying like when I
19 ask you to hang out, you always come up with something and
20 it hurts, but when we do get together, it's all worth it,
21 it seems.

22 Q And where did that number and that message come
23 from?

24 A - 3982.

25 Q And did you respond to that message in line 645?

Minor

- Direct Examination by Ms. Patterson

1 A Yes, ma'am.

2 Q What did you say?

3 A I'm sorry. I love you.

4 Q And why did you say that?

5 A Because I guess I was just wanting him to think I
6 was sorry for making excuses.

7 Q Okay. And go down to 646, what message -- what's
8 on that message; what does that message say?

9 A It's from him. It says, No, I didn't, but the
10 third time and I hope it wasn't nothing left behind on me,
11 sad face.

12 Q And did you respond?

13 A Yes, ma'am.

14 Q And what did you respond?

15 A I said, Oh goodness, prego test.

16 Q And what did you mean by prego test?

17 A Because he was referring that's the last night that
18 I snuck out and it happened twice one night. So he's
19 referring to the second time.

20 Q Okay. And go down to 675 on the same page; did you
21 send that message?

22 A Yes, ma'am.

23 Q What date did you send that message to?

24 A The 17th of November, 2013.

25 Q And what did your message say?

Minor

- Direct Examination by Ms. Patterson

- 1 A And did you delete the picture?
- 2 Q Did he respond -- did he respond?
- 3 A Yes, ma'am.
- 4 Q What did he say?
- 5 A Some.
- 6 Q What did you, did you respond?
- 7 A Yes, ma'am.
- 8 Q What did you say?
- 9 A I said why not all.
- 10 Q Did he respond?
- 11 A Yes, ma'am.
- 12 Q What did he say?
- 13 A He said they're too good.
- 14 Q And what are you talking about deleting pictures?
- 15 A A nude picture, the in the nudes that I sent him,
- 16 the nudes.
- 17 Q And go down to 684. Who did you get that message
- 18 from, what number?
- 19 A - -3982.
- 20 Q And what does it say?
- 21 A I'm really upset. I knew why on Facebook you
- 22 blocked me. You're hiding something. Text me when you
- 23 wake up, okay; I'm not happy at all.
- 24 Q Okay. Did you respond to that?
- 25 A Well, it says happy -- I'm not happy at all right

Minor

- Direct Examination by Ms. Patterson

1 now and then I replied.

2 Q And what did you reply?

3 A I said I didn't block you. It's called leave my
4 phone for my brother; he blocked a lot of people and I said
5 going back to sleep.

6 Q Okay. And why did you say you were going back to
7 sleep?

8 A I didn't want to talk about it.

9 Q And go down to 698 on page 41, 698 through 704?

10 A Yes, ma'am.

11 Q Can you read those messages; first of all what date
12 are those messages dated?

13 A The 17th of November in 2013.

14 Q And can you read those messages?

15 A Including the cuss words.

16 Q Can you read 106, 98 first?

17 A Okay. Whatever you're playing me, it's your
18 Facebook and OMG what are you doing. You know I got all of
19 your pictures still. You're playing me out, just playing
20 me for dumb. I -- then goes to 699 saying I ain't gonna
21 play no more. I'm tired of all those night games from you.
22 As much fun as we have together then when we text it's
23 always messed up.

24 And then it goes to 700 and it says I'm about to do
25 this shit and get it over with. It's your Facebook; I knew.

Minor

- Direct Examination by Ms. Patterson

1 something was going on. You know what I'm posting all this
2 shit. I'm sick of you doing this. And then it goes to 701
3 saying I'm sick of you doing this to me. It's your damned
4 Facebook and you blocked me because something -- something
5 going on you don't want me seeing. That's okay, we have
6 friends the same. I'll try, I will find out anyway. So
7 whatever. This is, I'm tired of being an idiot. All of
8 your friends are about to see this shit. Goodbye.

9 Q What are y'all talking about?

10 A The pictures that he didn't delete and he posting
11 them on Facebook because I blocked him and he thinks I'm
12 hiding something.

13 Q And did y'all have any more text conversations
14 about him posting those pictures?

15 A Not right here, but later on it did -- or we did.

16 Q And what kind of things did you tell him about
17 those pictures?

18 A I wanted him to delete them because he kept
19 threatening me of posting them. And I knew that would
20 affect me a lot because we did have friends the same and I
21 know that would affect me in a major way and I would have
22 been more depressed and been more negatively affected.

23 Q Okay. And then you go to page 42, line 727?

24 A Yes, ma'am.

25 Q And could you -- did you -- who sent that text

Minor

- Direct Examination by Ms. Patterson

1 message?

2 A I did.

3 Q And what day did you send it?

4 A The 17th of November in 2013.

5 Q And what did you send?

6 A He had great goals I can't accomplish with those
7 pictures. I'm under a lot of pressure. I'm like I need
8 closure and those pictures be gone. If I'm so amazing then
9 why don't you delete those pictures?

10 Q And what were you talking about in that message?

11 A The goals that I wanted to accomplish going to
12 college. And then like I said I need closure, which I did
13 because the pictures kept a lot of stress on me and making
14 me depressed and cry. And He said I looked amazing, but
15 then I was questioning why he said if I -- if he couldn't
16 delete the pictures and help me.

17 Q And go down to line 737. Who did that message come
18 from?

19 A The same number.

20 Q Okay. And could you start reading where -- the
21 second line where it says you're.

22 A On 737?

23 Q 737 where it says you're.

24 A You're so special to me in my life and I've never
25 felt this way before with any girl ever; is that where

Minor

- Direct Examination by Ms. Patterson

1 you're talking about?

2 Q Yes. Keep reading please.

3 A I know we couldn't hang until you get a couple of
4 years older. Anyways, hang out with friends and family
5 together, but I'm happy as long as we can see each other.
6 It's good -- it's good -- it's good as prize we can still
7 hold, cuddle, be with, talk, kiss, feel, and other things,
8 which is okay with me as long as we can be together. It
9 don't matter about anything else. I need to continue?

10 Q So he told you y'all couldn't be together until you
11 were a couple of years older anyway?

12 A Yes, ma'am.

13 Q Did you ever discuss your age with him?

14 A Yes, ma'am.

15 Q And how old did you tell him you were?

16 A 13 because I was talking on my birthday and then he
17 knew I turned 14 on my birthday.

18 Q Go to page 43. We're almost done, up to line 760.

19 A Yes, ma'am.

20 Q And what date is that?

21 A The 17th.

22 Q And is it from that same number?

23 A Yes, ma'am, the - -3982 number.

24 Q And where -- and can you read the next three text
25 messages -- next four, I'm sorry.

Minor

- Direct Examination by Ms. Patterson

1 A Okay. 760 says I can't babe -- I can't get a ride
2 until at 9 when my friend gets home from work. I told you
3 this before. Tonight will be a good night weather-wise.
4 That's the best time anyways because of our age. Babe
5 please don't start all this. I can be there at 9; we'll
6 hang out a little and I'll give you this stuff and we
7 cuddle for like 30 minutes and that's it. I promise you.
8 I love you babe. Let's just do this. Please show me
9 you're gonna be true to me by coming out tonight. Besides,
10 you need to, you need this test. You said last night we'd
11 hang tonight anyways, let's don't argue and just hang out,
12 okay?

13 Q And what's, and again he's talking about your age,
14 hanging out at night because of your age?

15 A Yes, ma'am.

16 Q And what does he mean he'll give you the stuff; do
17 you know what kind of stuff?

18 A No, ma'am, he said something about a test, but he
19 never did give me tests because we didn't hang out that
20 night.

21 Q Now, I'm going to show you what's been marked as
22 State's Exhibit 10 and 11 and ask you if you recognize
23 this?

24 A Yes, ma'am.

25 Q And what is this?

Minor

- Direct Examination by Ms. Patterson

1 A The clothes he got me from Hollister.

2 Q Okay. And where has these clothes been since 2013?

3 A In my closet, but I washed them to make sure
4 they're clean.

5 Q And how did they get up here today?

6 A I brought them.

7 Q And do they fairly and accurately represent the
8 clothes that you talked about earlier and --

9 A Yes, ma'am.

10 Q -- that you received from the defendant in 2013?

11 A Yes, ma'am.

12 Q Do they look like they've been changed in any way?

13 A No, ma'am.

14 MS. PATTERSON: Your Honor, at this time, we move
15 State's Exhibit 10 and 11 into evidence?

16 MR. STITELY: Judge, I may have a chain question.
17 Her testimony earlier was she gave this to law enforcement
18 at some point. Is it, I just don't know. I can maybe ask
19 one or two clerical clarification questions; if they were
20 given back to law enforcement and then she kept them in her
21 custody?

22 THE COURT: Can you clarify that, Solicitor?

23 MS. PATTERSON: Yes, sir, Your Honor.

24 BY MS. PATTERSON:

25 Q Minor, did you ever leave these with law

Minor

- Direct Examination by Ms. Patterson

1 enforcement?

2 A I took them up there and Ms. Strickland took
3 pictures of them and give them back the same day.

4 Q And have they been in your custody ever since?

5 A Yes, ma'am.

6 Q And did you bring them up here this morning?

7 A Yes, ma'am.

8 MR. STITELY: That's fine. No objection.

9 THE COURT: All right. Is there, I always get
10 these words confused whether they're spungible or
11 non-spungible; they're not drugs, they're not blood,
12 they're not alcohol; they are what they say they are so
13 they would be admissible.

14 BY MS. PATTERSON:

15 Q And Minor, where did you get these?

16 THE COURT: That's 10 and 11, Solicitor?

17 MS. PATTERSON: Yes, sir, Your Honor.

18 THE COURT: 10 and 11 is in evidence without
19 objection.

20 (State's Exhibits Number 10 and Number 11 were
21 entered into evidence.)

22 BY MS. PATTERSON:

23 Q And where did you get these?

24 A From him.

25 Q And who do you mean by him?

Minor

- Direct Examination by Ms. Patterson

1 A Well, I thought it was Justin, but it wasn't
2 Justin, it was David.

3 Q And do you remember when he gave these to you?

4 A Maybe the third time or fourth time; I don't
5 remember exactly.

6 Q And how did he know your sizes?

7 A I guess I told him.

8 Q And how did he know what you liked?

9 A I told him I liked Hollister, but I didn't tell him
10 what.

11 Q I'm going to show you what's been marked as State's
12 Exhibit 12 for identification purposes only and ask you to
13 take a look at it?

14 A This was my phone.

15 Q Okay. And is that the phone that you testified
16 earlier that you gave over to Investigator Strickland?

17 A Yes, ma'am.

18 Q Is this the cell phone that you sent and received
19 the text messages from --

20 A Yes, ma'am.

21 Q -- the Justin person later identified as the
22 defendant?

23 A Yes, ma'am.

24 MS. PATTERSON: I beg the Court's indulgence, Your
25 Honor.

Minor

- Direct Examination by Ms. Patterson

1 THE COURT: Yes, ma'am.

2 (There was a brief pause in the proceedings.)

3 BY MS. PATTERSON:

4 Q I'm going to show you what's been marked State's
5 Exhibit 13 and ask you to take a look at those; do you
6 recognize what's in those pictures and what are those?

7 A My panties.

8 Q State's Exhibit No. 13, do you remember what
9 happened to those panties?

10 A I think I turned them in when I went to the
11 hospital.

12 Q Okay. And 14, 15 and 16; do you know what happened
13 to those panties?

14 A I turned them in to Ms. Strickland.

15 Q Okay. Do they fairly and accurately represent your
16 panties?

17 A Yes, ma'am.

18 Q It doesn't look like they've been, well they have
19 been altered, but those are the panties that you turned in?

20 A Yes, ma'am.

21 Q Minor, please answer any questions Mr. Stitely may
22 have for you, okay?

23 A Yes, ma'am.

24 THE COURT: Thank you, Solicitor. Mr. Stitely?

25 MR. STITELY: Judge, just a couple of things. One,

1 I have a matter of law to address before I question her. I
2 know this is going to take a while. The questioning, of
3 course, is going to take a lot more than 30 minutes. I
4 would guess as well as I have a matter of law I need to
5 address before I begin questioning her if possible.

6 THE COURT: Step out momentarily, ladies and
7 gentlemen. Do not discuss the case during this brief
8 recess.

9 (The jury left the courtroom at 5:02 p.m.)

10 THE COURT: All right. Mr. Stitely?

11 MR. STITELY: Your Honor, if it please the Court.
12 Two things directly dealing with our pretrial motion in
13 limine, regarding the cell phone logs. Now that you've
14 heard direct testimony, I think two of the issues in
15 particular become particularly relevant; specifically where
16 we had a discussion earlier about probative value versus
17 prejudicial value in general. One of the things the
18 solicitor suggested during direct examination while going
19 through State's Exhibit Number 9, was a series of text
20 messages that the victim stated that she had on the early
21 morning hours of 11/12 of 2013; specifically something
22 talking about her back and she asked her what that was
23 referencing and she said earlier that night with Justin,
24 the defendant.

25 If, Your Honor, would look please to page 43 of 58

1 of the document I gave you before, there's a text message
2 from the victim to a Dalton Harcy, Saying, oh my God, at
3 that same hour, at 12:01 A.M. to which if you look at page
4 16 of 58, which is the response from the person noted as
5 Dalton Harcy, he talks about his dick and he says, where,
6 like last time. Literally within two hours of when she
7 says the assault takes place, she texts a message of oh my
8 God with a smiley face and the response is where, again
9 like last time is the answer she receives from another
10 individual.

11 That same individual later in one of the messages
12 they previously referenced, is asking her clothing size and
13 she says a size 1 or zero and he says okay. And then they
14 put into evidence clothing which is the size appropriate
15 which is referenced in the text messages from the other
16 individual who's not alleged to be my client. I'd like the
17 opportunity, even if we're limited directly to those, to
18 specifically ask because it's within the same hour of the
19 direct examination questions, what she's talking with the
20 oh my gosh speaking about the other guy and his penis,
21 where and in the same place again.

22 I think it's particularly relevant exactly with her
23 direct testimony and then the same comment about the
24 clothing.

25 MS. PATTERSON: And what page are you referring to?

1 MR. STITELY: His responses are on page 16 of 58
2 and her initial oh my God text is on 43 that same hour
3 right after midnight on 11/12.

4 Beyond it, Judge, I think their conversation in and
5 of itself, even if we're not going to talk to a sexual
6 nature, obviously would tend to prove some kind of very
7 happy, positive atmosphere that she was experiencing rather
8 than that of an alleged rape victim. Just as an
9 opportunity to cross-examine her as to what was going on
10 because obviously she's having a pleasant conversation
11 about meeting a man and discussed his penis with someone
12 other than my client at the same place again.

13 THE COURT: The first one you referenced is page --

14 MR. STITELY: The first one, Judge --

15 THE COURT: -- 43 of 58?

16 MR. STITELY: Page 43 of 58; it's the one from I
17 don't know who he is, but the one she indicates in her
18 phone as Dalton Harcy.

19 THE COURT: And what number is it to the left?

20 MR. STITELY: No. 20 to 600 at 1, 11, 12, 2013 at
21 12:01 a.m. with an OMG, which in our kid language means oh
22 my God with a smiley face and this is within the same
23 timeframe she testified in direct that she was complaining
24 about her back and then his response, Judge, is found on
25 page 16 --

1 THE COURT: 16 of 58.

2 MR. STITELY: 16 of 58, Judge -- Your Honor, and
3 it's in the very middle and you have to read them
4 backwards; No. 25 to 20, 26 to 24.

5 THE COURT: What do you mean to read them
6 backwards; I have to -- what does that mean?

7 MR. STITELY: Chronologically, you have, if you
8 start with the higher number is actually the first in
9 order. So --

10 THE COURT: 16 of 58 and what parenthetical number?

11 MR. STITELY: 25-2, 25-1, 24-9 and 25-0.

12 THE COURT: No. 25-2?

13 MR. STITELY: It's right in the middle of the page,
14 Judge.

15 THE COURT: 25-2?

16 MR. STITELY: 25-2, 25-1, 25-0, 24-9, and it --

17 THE COURT: And in what order am I to read them?

18 MR. STITELY: He says, I'm guessing that was part
19 of a smiley face; what another, a nude picture of my dick
20 and then where and he says like last time, question mark
21 and this all happens at 12 o'clock hour within 2 hours
22 after the alleged incident where she testified under direct
23 that she was only speaking to my alleged client about
24 having a bad night where she's clearly having a very
25 pleasant conversation meeting with this gentlemen again at

1 the same place and that was not with my client.

2 THE COURT: Well --

3 MR. STITELY: And, Judge, these are --

4 THE COURT: -- I guess a night can be both good and
5 bad, but that text, if it's a receiving text at 12:08:30
6 from Dalton Harcy and at 12:10:31 which is two minutes and
7 one second later, she gets a text from Justin Goodwin that
8 says I -- I -- I just want to hang out, damn, OMFG. I'm
9 changing my number. You're talking all kind of F crazy
10 shit. I'm done. This where you can't text no more. You
11 keep saying call and then I don't know whether, what we're
12 gonna do is. Then Dalton Harcy says, I don't know what
13 it's in response to --

14 MR. STITELY: And, Judge, I think it's kind of a
15 response on page 43 where she even says after he says where
16 at, she says my house. Her response to him, whoever Mr.
17 Harcy is, on 11/12 at 12:07 A.M. she's clearly stating
18 again, where, same place, my house.

19 THE COURT: Mr. Harcy is saying what we gonna --
20 well, I don't know what he's saying, but he said yeah, but
21 I am like really horny, smiley sideways, with a huge boner.
22 And then somewhere over here, that's at 12:08:30, 12:09:21,
23 she says I think you were thinking about Justin, which is
24 even after his like last time, which is 12:08, 12:08 or
25 something from 12:09:21, she says I think you were thinking

1 about Justin, my house, hazel eyes and 32-C. I think I
2 know what that means, or what it used to mean.

3 MS. DAVIS: Your Honor.

4 THE COURT: OMG. Yes, ma'am?

5 MS. DAVIS: If I may? On page 16 of 58, those two
6 messages in the middle that say like last time and where.

7 THE COURT: Uh-huh (affirmative response).

8 MS. DAVIS: Those did not come from Dalton Harcy.
9 There's no name next to the lucky and size, so those are
10 not from him. We're not sure who those are from. So that
11 doesn't go along with the same conversation that Mr.
12 Stitely is saying.

13 MR. STITELY: Judge, it's right there in between
14 them and they were within seconds of him asking where.

15 THE COURT: Well, I mean that's the same thing back
16 up on the Justin Goodwin's at 24:07 and 24:08 where it says
17 what we gonna do.

18 I mean that's, that's between Goodwin and Harcy,
19 but it doesn't tell us anything about whether it is Mr.
20 Goodwin or Mr. Harcy unless somebody can -- those records.

21 MR. STITELY: Judge, in Exhibit 9, they assumed
22 everything to Mr. Goodwin and they went ahead and put it in
23 without any justification from Verizon.

24 THE COURT: So the names not on there; I thought
25 those were just Mr. Goodwin.

1 MR. STITELY: They included parts of the text
2 messages --

3 THE COURT: Please don't interrupt me; read Rule,
4 please, please read Rule, Rule 18 of the South Carolina
5 Rules of Criminal Procedure.

6 So you're telling me now that they plugged things
7 into State's Exhibit Number 9 that cannot be attributed to
8 Justin Goodwin?

9 MR. STITELY: I think that nothing in Number 9
10 would be attributed to Justin Goodwin directly, because once
11 again, all of these are just what this witness --

12 THE COURT: Hand me State's Exhibit Number 9
13 please, Solicitor. Thank you. Thank you, Solicitor.

14 MS. PATTERSON: And all these to and from Justin --

15 THE COURT: Bring, bring the jury out please, Mr.
16 Bailiff.

17 (The jury entered the courtroom at 5:14 p.m.)

18 THE COURT: All right. Madam Forelady, ladies and
19 gentlemen, it looks like it may take me longer perhaps than
20 I anticipated. So rather than keeping you captive any
21 further, I believe I'm going to release you for your
22 evening recess. Please remember do not discuss this case
23 with anyone including your fellow jurors, family, friends
24 or anyone else. Do not read, watch, listen to any news
25 reports about the case, should there be any. Do not use

1 your cellular phone, computer or any other electronic
2 device with any communication capabilities to do any
3 research on -- on prohibited information which includes,
4 but is not limited to, information about the parties, a
5 witness, an officer, a court officer, news accounts about
6 the case, past or present, information collected through
7 juror research on any topic raised or testimony offered by
8 any witness or information collected through juror research
9 on any other topic the juror might think would be helpful
10 in deciding the case.

11 Remember, you decide the case based on the evidence
12 and testimony presented in the courtroom, any physical
13 items of evidence, and any inferences you may think can
14 properly be drawn. Keep an open mind and do not begin your
15 deliberations until you've heard all the evidence, all the
16 testimony, closing arguments by the attorneys and charge on
17 the law by the Court.

18 With that being said, I'm going to release you from
19 jury service for the remainder of the afternoon and
20 evening, ask you to please be back promptly at 9:30 in the
21 morning; if you'd please be back promptly at 9:30. Any
22 questions?

23 Thank you. Thank you very much. I hope you all
24 have a pleasant evening.

25 (The jury left the courtroom at 5:16 p.m.)

1 THE COURT: Are you saying, Mr. Stitely, that
2 State's Exhibit Number 9 for identification purposes only
3 contains substance of text messages that are not
4 circumstantially related to Justin Goodwin, whoever that
5 may be?

6 MR. STITELY: Judge, what I'm stating is within
7 that exhibit, there are items that they cannot identify
8 directly as to being related to the cell phone number
9 attached to Justin Goodwin to the same way the Solicitor's
10 arguing that it's not fair for me to ask questions about
11 these messages, she's sending to random people about
12 where --

13 THE COURT: All right. Show me, show me where I
14 have been sold a bill of goods that these are documents
15 from Justin Goodwin, whoever that may be?

16 MR. STITELY: I'm trying to find the exact place,
17 Judge, because they don't, they don't line up. The
18 document I have with Number 9 don't line up, which is
19 taking me a moment.

20 Judge, I can point out an illustration and this is
21 actually more of an omission even than a, a point of
22 substance. And I'm going to have to go through it line by
23 line, but one thing particular on page 17 of 58 on the
24 actual original document --

25 THE COURT: No, sir. No, sir. I'm -- that

1 document is not in evidence. I -- I'm not -- I'm not --
2 I'm not focused on that document. I rule on the evidence.
3 State's 9 for identification is what I'm referring to.

4 MR. STITELY: State's 9 is an exhibit created by
5 the Solicitor's Office utilizing the actual records. It's
6 nowhere created --

7 THE COURT: I don't care about the extraction
8 report that is not in evidence. That's not what I rule on.
9 I'm talking about State's 9 for identification.

10 MR. STITELY: State's 9 is a fabrication by the
11 Solicitor's Office.

12 THE COURT: Okay. All right. Well, then why have
13 you not filed a report, a complaint with the Office of
14 Disciplinary Counsel if they have introduced a false
15 document and perpetrated a fraud on this Court?

16 MR. STITELY: Number 9 was first seen by me today.
17 My discovery contained the extrapolation report.

18 THE COURT: I'm not going back to discovery. I'm
19 talking about State's 9. There have been not one mention
20 of discovery to this point, Mr. Stitely. I -- I don't know
21 what I'm not communicating here. I rule on evidence.

22 MR. STITELY: Your Honor, what I'm trying to say,
23 there is no way to tell where the information from Number 9
24 came from because it's not what's on the extrapolation
25 report, it's not Verizon's record.

1 THE COURT: I'm not ruling. I'm going to tell you
2 again. Page 1 through 58 is not before me. It was handed
3 to me previously to rule on, not as an exhibit, but is a
4 motion in limine. You have made the accusation when we
5 were talking about the gap between Goodwin and Harcy or
6 Darcy or whatever that it should be attributed to Goodwin
7 because it was right under his name when the solicitor said
8 they were others down there with no name beside it.

9 Y'all can't have it both ways. Either the ones
10 with no names are not attributable or the ones with names
11 with no names are attributable, which neither side can pick
12 and choose that. That's the point, that's what I'm trying
13 to -- to track.

14 MR. STITELY: Yes, sir, and I want it all in. What
15 I'm saying is Number 9 does not even include all the
16 entries that were in her phone. It's selective entries
17 even from the number assigned to Mr. Goodwin.

18 THE COURT: What -- what I was hearing, what I was
19 hearing is you were saying the State's Exhibit Number 9
20 contains entries in it, contains entries in it that are by
21 the State attributable to Justin Goodwin, but they are not
22 attributable because there's no name beside them; that's
23 what I'm hearing.

24 MR. STITELY: That -- yes, and items directly
25 attributable to Justin Goodwin in the detailed report are

1 not in Number 9.

2 THE COURT: You're going back again to the detailed
3 report has not been offered. I know there, there are items
4 in that detailed report that aren't in Number 9, because
5 there's other names; Robert Arddd, Harcy; I understand
6 that, but -- but -- but you're alleging this document's a
7 fraud that has been presented to the Court by an Officer of
8 the Court.

9 MR. STITELY: I'm saying it's an incomplete record.

10 THE COURT: Sir?

11 MR. STITELY: It is an incomplete record.

12 THE COURT: That's not a fraud. There's incomplete
13 evidence offered every day. That's why they offer parts of
14 bullets. That's why they offer drops of blood. I mean
15 there are documents, items offered every day that are
16 incomplete. I know of no prohibition on a rule of
17 incompleteness.

18 MR. STITELY: All I was asking the Court for
19 permission to use the complete record, which is every
20 message.

21 THE COURT: And I have gone through that. No --
22 actually this original motion was -- the original motion
23 was one, very early on 11/12/13 complaining of her back
24 from earlier that night. Oh my God, 12, this is referring
25 to page 43 of 58 and 16 of 58. Then there was an issue

1 referring to someone's dick, where last night and clothing
2 size 1 or 0 and clothing referenced. That was the motion.
3 The motion was not that this come into evidence. That
4 wasn't the motion. This is why the jury was sent out and
5 that's why I read 43 of 58, 16 of 58 and all those entries.

6 Then it went off on the rabbit trail that where
7 there were no names that it couldn't be attributable to
8 anybody, but where it was Justin Goodwin's name, the one
9 right below it should be attributable to him. I took that
10 to mean that there were then items in this document that
11 had been presented to the Court that were attributable to
12 Justin Goodwin that were not attributable Goodwin, that
13 they just filled in a blank. That's what I took it as.

14 At any rate, they say when you got an issue, count
15 from 1 to 10; I'm already counting 1 to 1,000. Court will
16 be in recess until 9:30 in the morning.

17 Thank you. Thank you very much.

18 Young lady. You may step down. You may not
19 discuss your case with anyone because you're subject to
20 cross-examination, redirect examination perhaps. Do you
21 understand? Do you have any questions?

22 THE WITNESS: No, sir.

23 THE COURT: All right. Thank you. Thank you very
24 much. As I say, Court will be in recess until 9:30. If
25 you have anything further you want to present on this

1 issue, you may certainly do so in the morning. I am not
2 going to rule on it now. I'll take it under advisement.

3 Thank you, Mr. Stitely.

4 Thank you, Solicitor.

5 WEDNESDAY, JANUARY 20, 2016

6 THE COURT: All right. Anything further on the
7 issue as to State's 9, Mr. Stitely?

8 MR. STITELY: Your Honor, we looked over it this
9 morning and part of the problem is the times and dates in
10 State's Number 9 are different on the text message than the
11 times and dates on the actual text logs pulled from the
12 phone and what I would like to eventually just power up her
13 phone so we could actually look at it and see what they
14 actually look like on the actual device which the State has
15 put in for ID at this point.

16 So part of the problem is the dates and times
17 indicate different dates and times for the same text
18 messages which kind of cause a great deal of confusion.
19 Beyond that, I think it's a question I have to ask the
20 Sheriff or whichever identity created that document as to
21 how he actually manifested it from whatever records he had,
22 but he hasn't been called as a witness yet. I guess I'll
23 take that up with him at the appropriate time.

24 I still -- before I go into it, because we had the
25 discussion, I would like to ask the witness why within the

1 same hour the State directed her questions about being
2 raped. She was having a very pleasant conversation, even
3 if I leave the sexual elements out of it, with someone
4 else, lots of smiley faces and happy conversation, just to
5 point out that there is a possible bias or a possible
6 motive to conceal if this doesn't show the same story
7 that's been perpetrated through direct examination.

8 It is flushed out at least through her texts with
9 other individuals.

10 THE COURT: All right. Solicitor?

11 MS. PATTERSON: Yes, sir, Your Honor. First of all
12 the cell phone that's put into evidence for identification
13 purposes only, would not have these text messages. These
14 text messages that were extracted were all deleted text
15 messages. They were able to be extracted because of the
16 Cellebrite device that Investigator Phipps used. He
17 didn't -- he extracted the -- the phone with the initial --
18 during the initial investigation in 2013 and did an updated
19 extraction in December of last year upon getting and
20 prepping for trial.

21 Because of new software, new technology, they're
22 able to -- to maybe extract more information. So he did an
23 updated extraction and in doing an updated extraction, he
24 was able to target the number that the victim identified as
25 being the number that she sent text messages to and that

1 she received text messages to and that was the extraction;
2 that's Exhibit Number, Number 9. That's a copy of that
3 extraction. Investigator Phipps, when he testifies, of
4 course he can be questioned about the dates, but that is
5 what came up in the extraction. This isn't anything he was
6 able to manipulate, add to, delete from; this is something
7 merely that came up from that second updated extraction.

8 THE COURT: All right.

9 MS. PATTERSON: And again, if he's trying to get
10 into a conversation she's having with someone else even if
11 it's just merely a friendly conversation, it is the State's
12 position again that he's merely trying to get into
13 reputation, which is protected under rape shield.

14 THE COURT: As far as the conversations within the
15 reasonable time frame of when the victim complains about or
16 when the victim alleges that there has been non-consensual
17 sexual relationships, I think he can get into the fact that
18 during that same period of time in that timeframe, that she
19 was having a pleasant conversation with a third party. I
20 mean that -- that's no more than behavior communicated by
21 telephone. I do not think he can get into the substance of
22 it, of what those conversations were about, but demeanor
23 testimony which I have my own personal views and opinions
24 demeanor testimony.

25 For example, when somebody is a suspect in a

1 homicide and there's many times testimony that that
2 person's behavior was not consistent with the fact that
3 they had just been told their spouse has been found a
4 victim of a homicide. So what -- what you have here is her
5 testifying that this had happened -- had just happened and
6 then you have that communicative behavior and it would be
7 up to the jury to determine if that's consistent --
8 inconsistent or has any value whatsoever.

9 So I think that -- that is admissible. I do not
10 think the subject in any of the conversations I have, any
11 of the text messages that I have reviewed, whether it has
12 to do with sex or it has not to do with sex or there's some
13 inference; none of that is admissible -- none of that. So
14 if a properly framed question is asked about her behavior
15 on those same dates within a very reasonable type
16 timeframe, I think that's admissible.

17 All right. Anything further before we bring in our
18 jury, Mr. Stitely?

19 MR. STITELY: Not at this time, Judge.

20 THE COURT: Solicitor?

21 MS. PATTERSON: No, sir, Your Honor. Thank you.

22 THE COURT: Bring us our jury.

23 Our witness please, Solicitor? Have her come back
24 around.

25 (The witness returned to the witness stand.)

Minor

- Cross-Examination by Mr. Stitely

1 THE COURT: Of course, young lady, you're still
2 under oath.

3 THE WITNESS: Yes, sir.

4 (The jury entered the courtroom at 9:40 a.m.)

5 THE COURT: All right. Welcome back, ladies and
6 gentlemen, I hope y'all had a pleasant evening.

7 As you recall, we're continuing the trial of the
8 case by the presentation of evidence and testimony by the
9 State in its case in chief.

10 I believe we were at the point of the cross
11 examination of Ms. Minor by Mr. Stitely; is that
12 correct, Solicitor?

13 Is that correct, Mr. Stitely?

14 MS. PATTERSON: Yes, sir, Your Honor.

15 MR. STITELY: Yes, sir.

16 THE COURT: All right. With that being said, Mr.
17 Stitely, you may cross-examine the witness.

18 MR. STITELY: Thank you, Your Honor.

19 THE COURT: As I stated in front of the jury.
20 You're still under oath, Ms. Minor .

21 All right. Thank you. Thank you very much.

22 CROSS-EXAMINATION

23 BY MR. STITELY:

24 Q Ms. Minor , my name is Ben Stitely and I have to
25 ask you some questions today.

Minor

- Cross-Examination by Mr. Stitely

1 How are you today?

2 A I'm good.

3 Q Okay. We've never met before. And if I ever speak
4 to quickly, you don't understand what I'm saying, you want
5 me to repeat something, ask me -- say I don't understand
6 and I'll try to fix it, okay?

7 A Yes, sir.

8 Q All right. You're not going to like all the
9 questions I have to ask you, but it's important that I'm
10 thorough --

11 THE COURT: Ask your first question please.

12 BY MR. STITELY:

13 Q Ms. Minor , you remember testifying yesterday,
14 correct?

15 A Yes, sir.

16 Q Okay. And one of the things you talked about
17 initially was that you had to, you used the back door of
18 your house to go outside?

19 A Yes, sir.

20 Q Why did you have to sneak out?

21 A Because my mom won't let me.

22 Q Okay. Would you have been in trouble generally if
23 your mother found out that you were sneaking out to meet
24 boys?

25 A Yes, sir.

Minor

- Cross-Examination by Mr. Stitely

1 Q Okay. What would have happened; you would have
2 been grounded?

3 A My phone would be taken.

4 Q Your phone would be taken. So you wouldn't want
5 your mother to know if you were meeting anyone, correct?

6 A Yes, sir.

7 Q And you said you had a Facebook account back when
8 this happened?

9 A Yes, sir.

10 Q Okay. What was your Facebook name?

11 A Minor

12 Q And that was your profile was under?

13 A Yes, sir, or Minor, my middle name.

14 Q Okay. Did you have any other accounts or any kind
15 of other social media platforms like Twitter or Snap Chat
16 or anything like that?

17 A Not at the time.

18 Q Not at that time. You also had a cell phone you
19 said?

20 A Yes, sir.

21 Q Okay. And what kind of cell phone was it?

22 A It was an iPhone.

23 Q Was it that iPhone that we were talking about
24 earlier that the solicitor showed you?

25 A Yes, sir.

Minor

- Cross-Examination by Mr. Stitely

- 1 Q It's an iPhone 4 or 5?
- 2 A iPhone 4 with the camouflage and orange.
- 3 Q Was that the device you used to text on?
- 4 A Yes, sir.
- 5 Q You also made reference to an iPad yesterday?
- 6 A Yes, sir, an iPad.
- 7 Q Okay. You still have that iPad?
- 8 A Yes, sir.
- 9 Q Did you ever turn it over to law enforcement for
- 10 them to go through?
- 11 A No, sir.
- 12 Q Okay. Did you ever text or send messages via that
- 13 iPad?
- 14 A No, sir.
- 15 Q Did you just check Facebook on it?
- 16 A Yes, sir.
- 17 Q Did you do Facebook messaging on your iPad?
- 18 A No, sir, on my phone.
- 19 Q On your phone is where you did Facebook messaging
- 20 as well?
- 21 A Yes, sir.
- 22 Q Okay. Same phone?
- 23 A Yes, sir.
- 24 Q You said that when you initially talked to Justin,
- 25 you thought he was how old?

Minor

- Cross-Examination by Mr. Stitely

1 A Like 17 or 18.

2 Q Okay. Why do you say like 17 or 18?

3 A I don't remember which one I thought at the time.

4 Q Was it something he said or was it just a guess
5 that you made?

6 A Facebook and what he said.

7 Q What do you mean Facebook?

8 A What his age was on Facebook.

9 Q Okay. And that was just what was posted on his
10 site or his page or whatever?

11 A Yes, sir.

12 Q Okay. And you started talking you said back in
13 September?

14 A Yes, sir.

15 Q Okay. And then you continued to eventually get
16 into a text message conversation?

17 A Yes, sir.

18 Q Did you -- one thing you said yesterday which I
19 thought was kind of interesting, you said you had the same
20 friends. What other friends were also friends with Justin?

21 A It was young people like I go to school with or a
22 grade below me.

23 Q All right. And you said they were friends with
24 Justin too?

25 A He said, but Gabby was. I know for sure that Gabby

Minor

- Cross-Examination by Mr. Stitely

1 was.

2 Q Who is Gabby?

3 A She was my best friend at the time.

4 Q What's Gabby's full name please?

5 A Gabriella Conscia.

6 Q Conscia?

7 A Yes, sir.

8 Q Okay. You said that when you met the individual
9 who you thought was Justin, you did outside of your house?

10 A Yes, sir.

11 Q And I have what's --

12 MR. STITELY: May I approach, Your Honor?

13 THE COURT: Yes, sir, certainly.

14 BY MR. STITELY:

15 Q I have what's been previously entered into evidence
16 as State's Exhibit Number 3 and just make sure I'm not
17 mis-stating to the jury, this was the house that you lived
18 in?

19 A Yes, sir.

20 Q So right over here at the tree line is where the
21 deer stand was?

22 A Back behind it.

23 Q Okay. And when you met the initial individual,
24 where were they?

25 A They were right here. I came out that door.

Minor

- Cross-Examination by Mr. Stitely

1 Q Okay. And that's the back door?

2 A Yes, sir.

3 Q Is that the main door to the house though?

4 A No, sir.

5 Q Okay. And you said it was a full moon?

6 A Yes, sir.

7 Q Okay. So you could see clearly?

8 A Yes, sir.

9 Q And as you described it, the walk over from your
10 house to where the deer stand, you described it as I can
11 get there in about a second. How -- how far would you have
12 guessed it is?

13 A Not even a quarter of a mile.

14 Q Okay. Is it a busy area?

15 A No, sir.

16 Q Lots of car traffic?

17 A Well. Now it is because there's been like a
18 trailer park down the road, but at the time, it wasn't a
19 busy place.

20 Q Okay. So back at the end of 2013, it was pretty
21 quiet?

22 A Yes, sir.

23 Q Okay. No ambient noise like cars and horns and all
24 that?

25 A No, sir.

Minor

- Cross-Examination by Mr. Stitely

1 Q Who else would have been in your house at that
2 time?

3 A My mom.

4 Q Just your mom?

5 A Yes, sir.

6 Q Okay. And you said you had other family that lived
7 across -- across the way?

8 A Yes, sir.

9 Q Okay. It just looks like dirt in the picture, but
10 I guess y'all plant stuff there during the right seasons?

11 A Yes, sir.

12 Q Okay. And that was your uncle?

13 A And my cousin.

14 Q And your cousin?

15 A No, my cousin lived across the road.

16 Q Okay. And your uncle lived across the way?

17 A No, my grandparents did.

18 Q Grandparents, I apologize. All right. How far is
19 it to your cousin's house?

20 A A quarter mile.

21 Q Okay. How far to your grandparents?

22 A Not even a quarter mile. It's like in walking
23 distance.

24 Q Do you know the size of the piece of property; if
25 you don't that's fine?

Minor

- Cross-Examination by Mr. Stitely

1 A No, sir.

2 Q Okay. You referenced a brother yesterday. Did
3 your brother live at home?

4 A No, sir. That was my God brother, not my blood
5 brother, but he did, he wasn't actually there. It was an
6 excuse.

7 Q Okay. That's fine. So he didn't live in the area?

8 A No, sir.

9 Q Okay. And that night -- the night that you went
10 outside, you said it was -- do you remember the exact date
11 the first time?

12 A No, sir, it was before my birthday.

13 Q Okay. The -- and you said it was a full moon?

14 A Yes, sir.

15 Q You could clearly see?

16 A Yes, sir.

17 Q And you said that you noticed right away it was not
18 Justin or Justin wasn't who you thought he was?

19 A Yes, sir.

20 Q Okay. Did you make any mention, any noise, turn
21 around, anything like that?

22 A No, sir.

23 Q Okay. Your mom was straight in the house?

24 A Yes, sir.

25 Q Okay. So by nine o'clock was she already asleep?

Minor

- Cross-Examination by Mr. Stitely

1 A Yes, sir.

2 Q Okay. You also have two other sets of relatives
3 right there within, one within a quarter mile; one in less
4 than quarter of-a mile?

5 A Yes, sir.

6 Q No sound, no call, no, you're not the guy, nothing
7 like that?

8 A No, sir. I did talk though, but it wasn't loud
9 enough for anybody to hear.

10 Q Okay. You actually said you told Robert; who is
11 Robert?

12 A He was like a boyfriend.

13 Q What was Robert's full name?

14 A I don't remember his middle name, but his last name
15 is Ardddd, Robert Ardddd.

16 Q Okay. And you told the Solicitor you told him
17 about it afterwards?

18 A Yes, sir.

19 Q How did you tell him, by phone, by text, in person?

20 A I don't remember.

21 Q Do you know where Robert lives?

22 A In Gilbert.

23 Q One thing you told the solicitor was that a
24 forcible encounter as you described it; is that fair?

25 A Yes, sir.

Minor

- Cross-Examination by Mr. Stitely

1 Q And so later that night, you were having a
2 conversation with the individual on the phone numbers in
3 that Exhibit Number 9, talking about it,, right?

4 A The first night?

5 Q Yes, ma'am, I'm sorry?

6 A The second night.

7 Q The second night. Isn't it also true you were
8 having a very pleasant conversation with someone else that
9 exact same night with like a smiley face, emoticons and
10 whole bunch of other stuff?

11 A I don't remember, but that's possibly true.

12 Q Okay. It wouldn't surprise you if your cell phone
13 records show that you were having a conversation that was
14 pleasant with someone else that night?

15 A It wouldn't surprise me.

16 Q Okay. Would your mom have approved of you being in
17 any of these, any one period, any boy?

18 A She knew that me and Robert were dating.

19 Q But she wouldn't have approved of the sneaking out
20 part?

21 A No, sir.

22 Q One of the things you said to the solicitor during
23 direct examination was that the reason that you kept having
24 these encounters was what?

25 A Because he would threaten me with the pictures I

Minor

- Cross-Examination by Mr. Stitely

1 sent.

2 Q Is there any reason that in Number 9, the cell
3 phone logs, there's not a single reference about using the
4 pictures until after the fourth encounter?

5 A What's the question?

6 Q Is there any reason --

7 MR. STITELY: May I approach, Your Honor?

8 THE COURT: Yes, sir.

9 BY MR. STITELY:

10 Q In looking at Exhibit Number 9, that the first
11 reference, you can look at it, the first reference of the
12 pictures being used wasn't until November 18th, after the
13 last encounter?

14 A I don't know why it's not there, but it was there.
15 I remember.

16 Q So did someone change the records?

17 A No, sir, I think it just like got deleted
18 permanently.

19 Q So some things are in there, but not that?

20 A Yes, sir.

21 Q What else is missing from those records?

22 A The pictures.

23 Q Okay.

24 A It don't show the pictures.

25 Q What other texts are missing?

Minor

- Cross-Examination by Mr. Stitely

1 A None.

2 Q So the only ones missing are the ones where you
3 were being coerced; that's the only texts that are missing
4 out of that whole log are the ones where someone was
5 putting your feet to the fire saying that they were going
6 to use these pictures against you?

7 A Well, the last time that -- the fourth time, when
8 he was threatening me with the pictures, it says it before.
9 Like it says well you always did this. So it's referencing
10 to the past because I wouldn't just say that.

11 Q Why -- and you're sure, positively sure, that these
12 comments about using the pictures happened before the 11th
13 before the 13th and before the 17th?

14 A Yes, sir.

15 Q But they're not in the records?

16 A It references them in the fourth one, but no.

17 Q And that's the only thing that's missing from those
18 records except for the pictures themselves?

19 A Yes, sir.

20 Q Were the pictures taken on the cell phone?

21 A Yes, sir.

22 Q Who deleted the pictures from your cell phone?

23 A I did.

24 Q Okay.

25 A And I deleted them because my brother had my phone

Minor

- Cross-Examination by Mr. Stitely

1 and I wouldn't want my brother seeing anything.

2 Q Okay. Who is your brother?

3 A D.S..

4 Q D.S. ?

5 A D.S. .

6 Q Where did D.S. live?

7 A Outskirts of Pelion.

8 Q Okay. How old is D.S..?

9 A 15.

10 Q When did D.S. have your phone?

11 A He's always had my phone when I went over to my
12 grand mom's house.

13 Q Okay. I guess I'm a little bit confused. You said
14 D.S. wasn't really there, that was just or your brother
15 wasn't there; that was an excuse you used?

16 A Uh-huh (affirmative response).

17 Q He never really had your phone, but he had your
18 phone; which one is it?

19 A No, he has my phone -- like when I go there, when I
20 go there now he has my phone.

21 Q Okay.

22 A But he wasn't there at that time.

23 Q But you just told us the reason you deleted the
24 pictures is because you didn't want D.S. to have them. But
25 the phones been in police custody ever since 2013?

Minor

- Cross-Examination by Mr. Stitely

1 A At the time, the pictures were there, I wanted them
2 deleted so he wouldn't get my phone and see them while we
3 were at his house.

4 Q So did your brother access your phone and play with
5 your phone and use your phone back in November of 2013?

6 A Yes, sir.

7 Q Okay.

8 A He did, but not that night.

9 Q I'm sorry?

10 A He did, but not that night. That was the excuse
11 that night.

12 Q The one text you're referencing when you said my
13 brother was there. But other times then, he could have
14 been sending text messages out on your phone?

15 A I don't get the question.

16 Q Other times during November, he could have been
17 sending texts out on your phone?

18 A He wouldn't send text messages.

19 Q But he would go through your pictures?

20 A I don't know what he would do, but I know for a
21 fact he wouldn't text, he wouldn't text anybody that he
22 knew better.

23 Q Who else had access to your phone?

24 A My mom.

25 Q Okay. Did she go through your phone?

Minor

- Cross-Examination by Mr. Stitely

1 A At times, yes, sir.

2 Q Okay. Did she ever see these texts or calls or
3 whatever, many of these from the individual?

4 A No, sir, I deleted them.

5 Q So you deleted those?

6 A Yes, sir.

7 Q But they seemed to show up where ones of this
8 alleged saying I'm going to show the pictures before the
9 incidents, they are somehow all the way gone?

10 A I don't get the question.

11 Q I'll move on. I apologize. When you talked to law
12 enforcement initially, who was the first officer you spoke
13 with?

14 A Officer Griggs.

15 Q Who is Officer Griggs to you?

16 A He was the security officer at the middle school.

17 Q The school resource officer?

18 A Yes, sir.

19 Q Okay. And when you talked to Officer Griggs, did
20 you show him your cell phone?

21 A Yes, sir.

22 Q And he was the one who sent the message saying
23 don't talk to anyone?

24 A Yes, sir. And he called, but he didn't answer.

25 Q After speaking to Officer -- after speaking to

Minor

- Cross-Examination by Mr. Stitely

1 Officer Griggs, did you tell him you knew who the
2 individual you had met was?

3 A Not at the time because I didn't know who it was
4 until maybe a week later.

5 Q You had met the individual allegedly over a three
6 week span, correct; end of October into middle of November?

7 A Yes, sir.

8 Q And when you talked to Officer Griggs there three
9 days after the last encounter, you didn't know who it was?

10 A I thought it was Justin. I didn't know who --

11 Q But you said you figured it out a week later?

12 A Yes, sir.

13 Q Okay. You said that the message you had received
14 from a friend request back was a time when you had blocked?

15 A Yes, sir.

16 Q But you didn't -- you didn't know that until a week
17 later?

18 A I didn't know it was that person because I didn't
19 look at my iPad contacts.

20 Q Okay. Who was the next law enforcement officer you
21 dealt with?

22 A Ms. Strickland.

23 Q Okay. And where did you meet with Ms. Strickland?

24 A At the Lexington County Office.

25 Q Okay. What was your biggest concern in talking

Minor

- Cross-Examination by Mr. Stitely

1 with Ms. Strickland?

2 A Trying to figure out how -- trying to figure out
3 who it was.

4 Q Okay. Do you remember when you met with her?

5 A No, sir.

6 Q Do you remember not wanting to give her your phone
7 and being worried that she would keep your phone?

8 A Maybe. I was a teenager and I was close to my
9 phone. So of course I'd be worried about my phone.

10 Q Was there anyone else you talked to about this
11 case?

12 A Robert.

13 Q Mr. Ardddd?

14 A Yes, sir.

15 Q How recently did you talk to him about the case?

16 A I don't remember.

17 Q Did you tell law enforcement about Mr. Ardddd?

18 A I don't remember if I did or not.

19 Q You called him your boyfriend back then?

20 A Yes, sir.

21 Q He was someone you would hang out with, actually
22 like --

23 A We never hung out.

24 Q And what about Gabrielle, did you tell anyone about
25 her knowing what was going on?

Minor

- Redirect Examination by Ms. Patterson

1 A I don't remember.

2 Q Thank you, ma'am, that's all the questions I have
3 at this time.

4 THE COURT: Redirect, Solicitor.

5 MS. PATTERSON: Just briefly, Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. PATTERSON:

8 Q And, Minor, those text messages in Exhibit Number
9 9, did you think you had deleted them?

10 A What's --

11 Q Did you delete those messages?

12 A From my phone, yes, ma'am.

13 Q Okay. And whenever you would meet with Justin who
14 turned out to be the defendant, did y'all talk when y'all
15 would meet in person?

16 A Yes, ma'am.

17 Q Did y'all talk about him deleting those pictures?

18 A Yes, ma'am.

19 Q And would you ask him to delete those pictures?

20 A Yes, ma'am, he pinky promised me one time he did.

21 Q And so y'all had those conversations in person as
22 well as through text messages?

23 A Yes, ma'am.

24 Q And your brother, D.S., he didn't live with you and
25 your mother, did he?

Minor

- Redirect Examination by Ms. Patterson

- 1 A No, ma'am.
- 2 Q Where did he live?
- 3 A On the outskirts of Pelion.
- 4 Q And when would you see him?
- 5 A Who do you mean?
- 6 Q When would you see D.S. ?
- 7 A Once in a week or we went to school together so I
- 8 would see him at school, but if I walked up to his house
- 9 kind of like once a week, not even that.
- 10 Q And you said you and Robert, y'all never hung out
- 11 together in person?
- 12 A No, ma'am, we didn't.
- 13 Q How did y'all communicate?
- 14 A Through texts and Skype.
- 15 Q And in Exhibit Number 9, those text messages, have
- 16 you had a chance to look over them?
- 17 A Yes, ma'am.
- 18 Q And yesterday I read just some of them to you,
- 19 didn't I?
- 20 A Yes, ma'am.
- 21 Q Is there more text messages in here than I read out
- 22 to you yesterday?
- 23 A Yes, ma'am.
- 24 Q So there's more text messages other than the ones
- 25 talking about deleting the pictures, correct?

Minor

- Recross-Examination by Mr. Stitely

1 A Yes, ma'am.

2 MS. PATTERSON: I beg the Court's indulgence?

3 THE COURT: Yes, ma'am.

4 MS. PATTERSON: No further questions, Your Honor?

5 THE COURT: Recross?

6 MR. STITELY: Just very briefly.

7 **RECROSS-EXAMINATION**

8 BY MR. STITELY:

9 Q Mr. Arddddd, you don't know his birthday, or
10 anything else we could use to identify him by chance?

11 A No, sir.

12 Q Do you know where he is currently?

13 A No, sir.

14 Q Are y'all still Facebook friends?

15 A No, sir.

16 MR. STITELY: That's all, Judge. Thank you.

17 THE COURT: Thank you. Thank you very much.

18 Thank you, Ms. Minor, you may step down.

19 All right. Solicitor, you may call your next
20 witness.

21 MS. DAVIS: Thank you, Your Honor. We call Michael
22 Griggs.

23 THE COURT: All right. Ladies and gentlemen, based
24 on the ruling of the Court, some of the witnesses are
25 sequestered. So they're outside of the courtroom. When

Michael Griggs - Direct Examination by Ms. Davis

1 other witnesses are testifying, I don't want you to think
2 they're being disrespectful. It may take a few minutes for
3 them to get into the courtroom. Thank you. Thank you very
4 much.

5 All right. If you'd come around and be sworn for
6 us.

7 MICHAEL GRIGGS,
8 having been duly sworn, testified as follows:

9 THE CLERK: Please be seated. State your full
10 name; spell your last name.

11 THE WITNESS: Michael Ray Griggs. G-R-I-G-G-S.

12 **DIRECT EXAMINATION**

13 BY MS. DAVIS:

14 Q Officer Griggs, we see your uniform, but where are
15 you employed?

16 A Lexington County Sheriff's Department.

17 Q And how long have you been with them?

18 A I've been with this department for about almost 10
19 years.

20 Q Okay. And what position are you in currently at
21 the Sheriff's Department?

22 A I'm the resident deputy in Boiling Springs area.

23 Q Have you always been in that position there?

24 A No, ma'am.

25 Q Okay. Tell me about your previous positions with

Michael Griggs - Direct Examination by Ms. Davis

1 the county?

2 A I started out at the -- in Corrections, Resource
3 Officer and also Investigations.

4 Q Okay. And what is your -- do you have any other
5 law enforcement ground other than with the Sheriff's
6 Department?

7 A Yes, ma'am. I spent 8 years with Boone County
8 Sheriff's Department in Columbia, Missouri.

9 Q Okay. So how long altogether have you been
10 involved in law enforcement?

11 A About 16, roughly about 16 years.

12 Q 16 years. Okay. And you mentioned that you were
13 an SRO?

14 A Yes, ma'am.

15 Q Can you tell the jury what that is?

16 A Yes, ma'am. Basically SRO's are the liaison
17 between the school district and the sheriff's department.
18 Our responsibilities are mainly the law enforcement issues
19 that happened at school, brought to our attention at the
20 school. We -- when we're at the school, we eat lunch with
21 these young adults. We -- we try to develop a rapport with
22 them so that they can come to us for any issues happening
23 in the schools. You know, we're in hallways talking to
24 them during the breaks and things like that.

25 So we're there at the school whenever school is in

Michael Griggs - Direct Examination by Ms. Davis

1 session and -- and take care of any issues that may happen
2 at the school or brought to our attention at the school.

3 Q Okay. Were you in the position of a school
4 resource officer in November of 2013?

5 A Yes, ma'am.

6 Q And what school were you stationed?

7 A Sandhills Middle School in Gaston area.

8 Q How long were you at Sandhills Middle?

9 A About 3 and a half years.

10 Q During that time, did you become familiar with a
11 student named Minor ?

12 A Yes, ma'am.

13 Q Do you recall in November of 2013 what grade she
14 was in?

15 A No, ma'am, I sure don't. We were, our school is
16 sixth, seventh, and eighth grade and I do not remember what
17 grade she would have been in.

18 Q So it would have been seventh or eighth grade?

19 A Yes, ma'am.

20 Q Middle school age?

21 A Yes, ma'am.

22 Q And on November 18th of 2013, were you working that
23 day?

24 A Yes, ma'am.

25 Q Would that have been a Monday school day?

Michael Griggs - Direct Examination by Ms. Davis

1 A I don't remember the day of the week, but -- yes,
2 ma'am, it was Monday, yes, ma'am.

3 Q And did you become involved in an investigation
4 regarding Minor that day?

5 A Yes, ma'am.

6 Q How did you become involved in that?

7 A The School District has a mental health worker that
8 goes to the different schools. Ms. Elizabeth Park-Floyd I
9 believe is her last name; I call her Ms. Elizabeth. She
10 came to my office and informed me that she had a student
11 that had told her about a sexual assault that happened to
12 her and she needed to report it to me.

13 Q Okay. And the report of a sexual assault of a
14 student, would that be something that an SRO would be
15 required to deal with?

16 A Yes, ma'am. It's brought to our attention at
17 school, so I would dictate, usually I would just take the
18 initial report on something like that and then forward it
19 on to major crimes or another division to investigate, but
20 I would take the initial report on it.

21 Q Okay. So you take the initial report and pass it
22 on up the chain?

23 A Yes, ma'am.

24 Q Okay. So after you spoke with Ms. Elizabeth, what
25 did you do as a result of that conversation?

Michael Griggs - Direct Examination by Ms. Davis

1 A I got the basic information from Ms. Elizabeth
2 first and then I contacted my supervisor and informed them
3 what I had. That's my standard thing that I do. I tell
4 them I have this going on and I'm going to be doing this,
5 this, and this, just to let them know about it. I also try
6 to contact her, her mom and had to leave a voice message
7 for her mom because a lot of times in an interview like
8 that we'd have the mom or somebody present, but if we can,
9 but the mom wasn't available at that time.

10 Q So before you spoke to Minor , you attempted to
11 contact her parents for consent?

12 A Yes, ma'am.

13 Q And you were unable to get in touch with Ms.
14 Vallie?

15 A Right. Correct.

16 Q So after that did you in fact speak with Minor ?

17 A Yes, ma'am.

18 Q Okay. And where were you when y'all were talking?

19 A We were, me and Ms. Elizabeth talked about it and
20 because of how Miss Minor was affected by this, we decided
21 to do it in her office because she was a little bit more
22 familiar with Miss Minor -- Ms. Elizabeth's office, so I
23 spoke to her in Ms. Elizabeth's office with Ms. Elizabeth
24 present.

25 Q So you attempted to make her as comfortable as

Michael Griggs - Direct Examination by Ms. Davis

1 possible?

2 A Yes, ma'am.

3 Q And this wasn't done in front of her class or any
4 other teachers or anything like that?

5 A No, ma'am, just -- just -- just us three.

6 Q Okay. And tell me how Minor was acting when y'all
7 spoke.

8 A I -- I knew Miss Minor from goofing around with her
9 at school at lunch time and stuff like this and she's
10 normally a very outgoing, jolly, young lady. She was
11 reserved that day. She acted scared to me, kept her head
12 down and her hands folded in her lap kind of in a
13 protective manner.

14 Q So it wasn't the normal Minor that you saw?

15 A No, ma'am.

16 Q We can't talk about what was said during that
17 conversation, but what did you do after that?

18 A After I did the initial interview, I contacted my
19 supervisor again to inform them, you know, of what I had.
20 Also in between this time, he had -- my supervisor had
21 contacted Sergeant Lance from major crimes. I also spoke
22 with Sergeant Lance from major crimes.

23 Q I'm sorry, is -- did you do that because it's major
24 crimes who would end up with the case?

25 A Yes, ma'am.

Michael Griggs - Direct Examination by Ms. Davis

1 Q Okay. I'm sorry.

2 A Yes, ma'am. And because I had a question about her
3 cell phone. So I contacted Sergeant Lance myself and asked
4 him about the cell phone and started the initial
5 investigation from -- from there.

6 Q Okay. And -- and you said that you had a question
7 about her cell phone?

8 A Uh-huh (affirmative response).

9 Q I'm showing you State's Exhibit 12; is this the
10 cell phone that you're --

11 A It looks like the one that I was looking at, yes,
12 ma'am.

13 Q Okay. And this would have been Minor 's phone?

14 A Yes, ma'am, as far as I know. That's the phone
15 that she presented to me as hers.

16 Q So this is the one she gave you?

17 A Yes, ma'am.

18 Q Okay. And what did you do with that phone?

19 A She showed me a -- a text -- a couple of texts on
20 the cell phone to a certain individual and I saw that there
21 was a couple of texts. I asked her not to, per Sergeant
22 Lance, I asked her not to delete any texts. I also advised
23 her to I think I told her mom this also, if she has the
24 opportunity or capabilities of forwarding those texts to
25 another phone to keep them safe to make sure because you

Michael Griggs - Direct Examination by Ms. Davis

1 know, if anything happened to her phone, to forward those
2 texts to another phone or do whatever they can to keep them
3 safe until major crimes or somebody can have, has a chance
4 to take a look at the phone.

5 Q Okay. At any time did you use her phone to attempt
6 to contact anyone?

7 A Yes, ma'am. Minor was very concerned about this
8 individual keeping contact with her on the phone and I
9 spoke with the Sergeant, that's one of the things I spoke
10 with Sergeant Lance about. He advised me that I could do
11 this, to send this person a text saying do not have any
12 more -- introducing and telling who I was, Deputy Griggs
13 with Lexington County, do not have any more contact with
14 Minor. And there was a -- Minor was also concerned about a
15 picture that she had sent and not to disseminate the
16 picture in any way, shape, form or any way whatsoever and
17 not to have any more contact with Minor and that's what I
18 did.

19 Q Did you attempt to contact the individual as well?

20 A Yes, I tried to, I tried to call him first and it
21 went to voicemail and the voicemail, and he had no
22 voicemail set up at the time.

23 Q And were you able to see in Minor's phone the phone
24 number and the contact that you had sent this message to?

25 A Yes, ma'am. Uh-huh (affirmative response).

Michael Griggs - Direct Examination by Ms. Davis

1 Q And do you recall what that was?

2 A I have it in my report if I can refer back to my
3 report?

4 Q You can refer to your report, absolutely.

5 A - -3982.

6 Q And was there a name associated with it?

7 A In Minor 's phone, it was Aaron Goodwin, either
8 Aaron Goodwin or Justin Goodwin; I'm not sure how she had
9 it in the phone.

10 Q Okay. But that would have been who you texted and
11 made a phone call through Minor 's phone?

12 A Yes, ma'am.

13 Q At any point, did you let Minor get on your
14 computer to show you anything?

15 A Yes, ma'am.

16 Q Tell us about that?

17 A During the investigation, I had Minor come to my
18 office and I logged into a Facebook account and had her log
19 into her Facebook account and then because she had met this
20 person on Facebook. I pulled up on the Facebook, Minor 's
21 Facebook account or had her pull it up and then she showed
22 me the individual that, you know, per his Facebook account,
23 the one that she said who had been texting her and such as
24 that.

25 Q Okay. I'm going to show you what's been entered as

Michael Griggs - Direct Examination by Ms. Davis

1 State's Exhibit Number 2?

2 A Uh-huh (affirmative response).

3 Q Do you recognize this?

4 A Yes, ma'am, that was a picture that Minor said was
5 supposed to be of the guy that she had been texting on
6 Facebook or messaging on Facebook. That was a picture of
7 him on his Facebook account.

8 Q Okay. And do you remember what that Facebook
9 account was called?

10 A Justin Feels Good Goodwin, stuff along that line
11 there. Justin Feels Good Goodwin I believe it was.

12 Q This is the one that she said was the fake account?

13 A Yes, ma'am.

14 Q The person she thought she was talking to?

15 A The person she thought she was -- she was
16 corresponding with, yes, ma'am.

17 Q At a later time, did you attempt to pull that
18 Facebook up again?

19 A Yes, ma'am, I did. After I sent the message to
20 him, a little bit later that afternoon I tried to pull up
21 the Facebook account again and it was gone. I could not
22 locate it.

23 Q So the Aaron, Justin Feels Good Goodwin, that
24 Facebook account was gone?

25 A Yes, ma'am.

Michael Griggs - Direct Examination by Ms. Davis

- 1 Q And that was after you sent the text message --
- 2 A Yes, ma'am.
- 3 Q -- on Minor 's phone?
- 4 A Correct.
- 5 Q -- to that person saying no contact with her?
- 6 A Yes, ma'am, that's correct.
- 7 Q And I think you may have spoken about this earlier.
- 8 You did end up getting in touch with Minor 's mother, right?
- 9 A Yes, ma'am. I was able to get in touch with her on
- 10 the phone.
- 11 Q Okay. Did you take Minor 's phone?
- 12 A No, ma'am.
- 13 Q Okay. You had just told her to keep it and keep
- 14 everything in there?
- 15 A Uh-huh (affirmative response). Yes, ma'am, that's
- 16 one of the things I had contacted Sergeant Lance from major
- 17 crimes about; if he wanted me to collect the phone at that
- 18 time or that's why, you know, I told her not to delete any
- 19 texts.
- 20 Q Okay. After you did all these things, did you
- 21 compile a report?
- 22 A Yes, ma'am.
- 23 Q Is that typical protocol in these types of cases?
- 24 A Yes, ma'am.
- 25 Q And why would you do that?

Michael Griggs - Direct Examination by Ms. Davis

1 A Someone has to do the initial report and I'm the
2 one that had the first contact with her as far as law
3 enforcement-wise getting the information from her and
4 basically my job is not to go into detail with her about
5 what had happened, someone else does that. So my job is
6 just to do the initial basic information and gather enough
7 information that that crime is being committed or allegedly
8 to have been committed and then take that information and
9 turn it and let the major crimes or whoever it's assigned
10 to investigate it from there.

11 Q So they would take your initial report and it would
12 go to a detective and they would use that initial
13 information that you got to go and investigate?

14 A Yes, ma'am.

15 Q So someone like Ms. Strickland --

16 A Uh-huh (affirmative response). Yes, ma'am.

17 Q -- would investigate?

18 A Exactly.

19 Q Okay. So it's not your job to recover evidence,
20 anything like that, you just get the initial stuff and pass
21 it on?

22 A Right. If -- if -- if there's -- yes, ma'am,
23 correct. To sum it up, yes, ma'am, that's it.

24 Q Do you remember who picked Minor up from school
25 that day?

Michael Griggs - Direct Examination by Ms. Davis

1 A Her grandfather.

2 Q Do you know if she left early?

3 A We -- she didn't go back to classes. I'm not sure
4 what time. This happened about 1:30 in the afternoon and
5 school lets out at 3 -- 2:50. So she didn't go back to
6 classes that day. I'm not sure what time she was picked
7 up, but --

8 Q And after you wrote your report, would you have
9 done that close in time to when the incident --

10 A Yes, ma'am, I did it that afternoon, yes, ma'am.

11 Q You did it that afternoon?

12 A Yes, ma'am.

13 Q Okay. And who would you have turned your report in
14 to?

15 A I turned it into my sargent at that time and he
16 approves it and it goes to investigations from there.

17 Q Okay. Did you have any follow up with Minor ; did
18 you meet with her again to talk about the case?

19 A No, ma'am. If we talked about it, it was just in
20 passing or something like that, but I normally don't, you
21 know, if the case is not assigned back to me, I normally
22 would not have any more contact with her at any -- you
23 know --

24 Q Regarding the case?

25 A Yes, ma'am.

Michael Griggs - Cross-Examination by Mr. Stitely

1 Q You would leave that to the detective?

2 A Yes, ma'am.

3 Q Okay. And, Officer Griggs, is that the extent of
4 the involvement that you've had in this case?

5 A Yes, ma'am.

6 Q Okay. I have no further questions. Please answer
7 any Mr. Stitely has for you?

8 THE COURT: Thank you, Solicitor. Mr. Stitely?

9 MR. STITELY: Thank you, Judge. May it please the
10 Court?

11 THE COURT: Yes, sir.

12 **CROSS-EXAMINATION**

13 BY MR. STITELY:

14 Q Officer Griggs, Ben Stitely, how are you, sir?

15 A Good to meet you, sir.

16 Q Do you have your supplemental or your reporting
17 officer narrative in front of you?

18 A Yes, sir.

19 Q Okay. I just don't want to put you at a
20 disadvantage while I ask the question about it.

21 A Okay.

22 Q She went through this, but you're pretty much the
23 point on site school resource officer, you get a call from
24 the guidance counselor; you're the law enforcement officer
25 and you're the first to respond?

Michael Griggs - Cross-Examination by Mr. Stitely

1 A Yes, sir.

2 Q Okay. The reason that you do these narrative
3 reports is pretty much to put to pen and paper to exactly
4 what happened, at least from your recollection what you
5 were told?

6 A Yes, sir.

7 Q You don't embellish, you don't add to?

8 A No, sir.

9 Q Okay. Pretty much the expression is you don't have
10 a dog in the fight; you're just reporting the facts as
11 they're given to you?

12 A Yes, sir, I guess that's a way to put it.

13 Q All right. There's just a couple of things I
14 wanted to go over in your initial consult with Miss
15 Minor and you have your report in front of you?

16 A Yes, sir.

17 Q Okay. In the third paragraph, you were talking
18 about she said when she finally met this individual, how
19 did she characterize him as appearing?

20 A Older than what his Facebook profile indicated him
21 to be.

22 Q Now in your report, you said slightly older?

23 A Uh-huh (affirmative response).

24 Q Okay. But you wouldn't have made that up; that
25 would have been what you were told?

Michael Griggs - Cross-Examination by Mr. Stitely

1 A Yes, sir.

2 Q Slightly older than the picture or appeared to be
3 older than his picture; appeared to be older than his
4 picture?

5 A Yes, sir, appeared to be older.

6 THE COURT: May I see the document?

7 MR. STITELY: I wanted to try to use the right
8 words.

9 THE COURT: May I see the document. Excuse me.

10 (The Court was reading the document.)

11 THE COURT: Thank you. Thank you, Mr. Stitely.

12 MR. STITELY: Yes, sir, Your Honor.

13 BY MR. STITELY:

14 Q And then you took off the cell phone and were the
15 majority of the texts on it at that point, or you only saw
16 a select few and you didn't go through the whole text log?

17 A The majority of the texts, according to Minor, had
18 been deleted and that's all; I only saw a few.

19 Q Did you give you any other identifiers as to who
20 Justin was to your recollection?

21 A As far as his Facebook account or the person that
22 she --

23 Q The person that she actually encountered. We look
24 at the last --

25 A Yes, sir, she told me that she described him as a

Michael Griggs - Redirect Examination by Ms. Davis

1 slim build white male that is approximately 5'7", 5 foot 7
2 inches tall and was approximately 18 years old. He had
3 brown hair covering his ears and thought he lived somewhere
4 in the Batesburg/Leesville area.

5 Q No other questions, thank you.

6 MS. DAVIS: Redirect, Your Honor?

7 THE COURT: Yes, ma'am, of course.

8 **REDIRECT EXAMINATION**

9 BY MS. DAVIS:

10 Q Officer Griggs, will you look at that line in your
11 report that Mr. Stitely was referring to?

12 A Okay.

13 Q Will you read that line for us?

14 A Minor said when she met Goodwin, he appeared to be
15 older than his Facebook picture showed him to be.

16 Q Okay. So she didn't say he was slightly older; she
17 said he was --

18 A Right, correct.

19 Q And whenever, is Ms. Parker-Floyd, Ms. Elizabeth,
20 is she still working at Sandhills Middle?

21 A No, ma'am, I believe she's relocated to, she's out
22 of state now.

23 Q Out of state now?

24 A Yes, ma'am.

25 Q Okay. No further questions.

Renee Strickland - Direct Examination by Ms. Patterson

1 MR. STITELY: Nothing further, Your Honor.

2 THE COURT: Nothing further?

3 MR. STITELY: No, sir.

4 THE COURT: Thank you. Thank you very much for
5 being with us, Detective Griggs, and you may step down.

6 All right. You may call your next witness,
7 Solicitor.

8 MS. PATTERSON: The State calls Investigator Renee
9 Strickland.

10 THE COURT: All right. If you'd come around and be
11 sworn for us please?

12 RENEE STRICKLAND,
13 having been duly sworn, testified as follows:

14 THE CLERK: Please be seated, state your full name;
15 spell your last name.

16 THE WITNESS: My name is Marsha Renee Strickland.
17 Last name is spelled S-T-R-I-C-K-L-A-N-D.

18 **DIRECT EXAMINATION**

19 BY MS. PATTERSON:

20 Q And, Ms. Strickland, where are you currently
21 employed?

22 A I'm currently employed with the South Carolina
23 Attorney General's Office.

24 Q And what do you do at the Attorney General's
25 Office?

Renee Strickland - Direct Examination by Ms. Patterson

1 A I'm a Special Investigator.

2 Q And where were you employed prior to your
3 employment with the Attorney General's Office?

4 A Prior to my employment with the Attorney General's
5 Office, I was employed with Lexington County Sheriff's
6 Department and also the State Law Enforcement Division and
7 the City of Cayce Police Department.

8 Q And what was your job when you were employed with
9 the Lexington County Sheriff's Department?

10 A I had two job titles during my tenure at the
11 Sheriff's Department. The first was Crime Scene
12 Investigator and the second was Major Crime Scene
13 Investigator.

14 Q And how long were a Crime Scene Investigator?

15 A Just over a year.

16 Q And what did you do, what were some of your job
17 responsibilities as a Crime Scene Investigator?

18 A As Crime Scene Investigator, I responded to crimes,
19 typically violent crimes, some property crime, and
20 collected evidence, documented the scene and then performed
21 analysis on certain types of evidence, sent evidence to the
22 State Law Enforcement Division and things of that nature.

23 Those kind of cases would be sexual assaults,
24 homicides, certain property crimes, it just depended on
25 what I was called out for.

Renee Strickland - Direct Examination by Ms. Patterson

1 Q And when were you employed or when did you, when
2 were you reassigned to major crimes? I apologize.

3 A I believe it was the later part of 2012.

4 Q And what are some -- what are some of the crimes
5 that major crimes investigate?

6 A Major crimes is mostly what someone would consider
7 like a crime against a person or a violent crime,
8 aggravated assault, sexual assault, sexual assaults
9 involving minors, homicide, domestic violence, things of
10 that nature.

11 Q And how did you come to be involved in the State of
12 South Carolina versus David Ray Brown?

13 A I was assigned this case for investigation as a
14 part of my caseload in Major Crimes.

15 Q Do you know when you got assigned to the case?

16 A The incident was reported on November the 18th so I
17 probably would have been assigned the following morning on
18 the 19th.

19 Q And what year are we referring to?

20 A I'm sorry, 2013.

21 Q Okay. And so what are -- what is the first thing
22 you do when you get assigned to a case?

23 A The first thing I do when I get assigned a case is
24 to try to make contact with the victim. In this case,
25 contact with the victim's mother since she was a minor.

Renee Strickland - Direct Examination by Ms. Patterson

1 Q Okay. And did you do that in this case?

2 A I did.

3 Q And how did you make contact with the victim's
4 mother?

5 A By phone.

6 Q And what did you do after you made contact with her
7 mother?

8 A I scheduled an appointment for them to come in and
9 speak with me and I met with them to speak about, about the
10 case.

11 Q Okay. And where did you meet?

12 A At the Sheriff's Department at 521 Gibson Road in
13 Lexington.

14 Q And who came to this initial meeting?

15 A The victim, Minor , and her mother, Ms.
16 Vallie Seaman.

17 Q And did you speak with Minor about the incident?

18 A I did, yes, ma'am.

19 Q And when you speak with a minor victim, do you do
20 it in the presence of their mother?

21 A It depends. Sometimes yes. I did speak to Minor
22 alone. I spoke with them together and alone.

23 Q Okay. And without saying what she may have told
24 you, was she able to tell you what happened to her?

25 A She was.

Renee Strickland - Direct Examination by Ms. Patterson

1 Q And was she able to tell you when it happened?

2 A She did.

3 Q And when did she tell you?

4 A She told me the incidents had occurred between
5 October of 2013 and November of 2013 in the evening hours.

6 Q Was she able to be even more specific than that?

7 A At that time, I don't recall if we -- if we
8 discussed specific dates. She just gave me the date range
9 of months.

10 Q Okay. Was she able to tell you where it happened?

11 A She was. She indicated that it happened on the
12 property of her residence, which is at 214 Way in
13 Gaston.

14 Q Okay. And were you able to confirm if that was in
15 Lexington County or not?

16 A I was. Yes, it is in Lexington County.

17 Q And did you find out how old Minor was?

18 A I did. She was 13 and then she had just recently
19 had a birthday and turned 14 on the -- I believe it was the
20 of

21 Q Okay. And after speaking to Minor about what
22 happened, when it happened and where it happened, what did
23 you do next?

24 A I began my investigation to try to identify who the
25 suspect was and to get some more information as far as the

Renee Strickland - Direct Examination by Ms. Patterson

1 communication and -- and more information from Minor ,
2 specifics about the case.

3 Q And what was the first thing you did in trying to
4 identify who the person was?

5 A The first thing I did was, I collected, I got
6 Minor 's phone from her mother and had that submitted for --
7 for analysis and I also spoke with Minor and her mother and
8 they were able to provide me with information about a
9 Facebook page that had tried to friend her and she blocked
10 and she recognized this person to be the person that she
11 had met and had had sex with and they provided me with the
12 pictures. I was then able to go and look at the Facebook
13 page myself and confirm with the victim that this is the
14 person that had -- she had had sex with and she had met
15 with.

16 Q Now, let's go back to the cell phone for a minute.
17 I'm going to show you what's been marked as State's Exhibit
18 Number 12 just for identification purposes only and ask you
19 to take a look at this. And do you recognize that?

20 A I do, yes.

21 Q And what is that?,

22 A This is the cell phone that -- that Minor and her
23 mother brought in to give to me.

24 Q Okay. And did you -- did you take a look at the
25 cell phone?

Renee Strickland - Direct Examination by Ms. Patterson

1 A I did initially.

2 Q Were you able to see anything that concerned you?

3 A I saw a few messages and I saw the message that
4 Deputy Griggs had sent, but I knew that she had mentioned
5 deleting messages and so I knew that our Crime Scene
6 Investigation Unit had the capability to further examine
7 the phone. So I took her phone as evidence at that time to
8 submit for further analysis to recover the text messages.

9 Q Okay. And what's the process for submitting that
10 phone for analysis?

11 A I got a consent to search from Minor 's mother and
12 filled out a lab request and that phone was submitted to
13 our evidence department and then it went to Crime Scene
14 Investigator Phipps, who then performed what we call, it
15 can be termed as a cell phone dump, but it's actually a
16 dated extraction and it can pull even deleted data from,
17 from the cell phone.

18 Q And did you, were you able to get that information
19 from Investigator Phipps?

20 A I was, yes.

21 Q And going back to reviewing Minor 's Facebook
22 account -- let me show you what's been entered as State's
23 Exhibit Number 2 and ask you to take a look at this. Do
24 you recognize this?

25 A I do.

Renee Strickland - Direct Examination by Ms. Patterson

1 Q And where did you first see this image?

2 A I saw that image -- Minor and her mother showed
3 that image to me and that was the -- the initial Facebook
4 that she, that she friended and she thought that she was
5 communicating with Justin Goodwin. That is the picture
6 that she was provided with and that's who she thought she
7 was communicating with via text message.

8 Q Okay. And I'm going to show you what's been marked
9 as State's Exhibit Number 1, was entered into evidence as
10 State's Exhibit Number 1. Do you recognize that
11 photograph?

12 A I do.

13 Q And when did you first see this?

14 A I saw that on the Facebook page, David the
15 Guitarist after the victim's mother had sent me information
16 that -- that Minor recognized the individual under the
17 Facebook page, David the Guitarist; that was on his
18 Facebook page.

19 Q And once you got this image, what did you do?

20 A Once I got the image and I confirmed with Minor
21 that that was indeed the person that she had met and had
22 sex with, I continued to attempt to identify him.

23 Q Okay. And were you able to further identify him?

24 A I was. Through the course of my investigation, I
25 was able to positively identify him.

Renee Strickland - Direct Examination by Ms. Patterson

1 Q And who did you find out his real name was?

2 A David Ray Brown.

3 Q And were you able to identify his age?

4 A I was, yes.

5 Q And how old was he?

6 A He was 41 at the time.

7 Q Now, when you got the cell phone extractions and
8 looked at Minor 's text messages, were you able to identify
9 a number associated with the text messaging?

10 A I was.

11 Q And do you remember what that number was?

12 A Yes, it was - -3982.

13 Q And after you got that phone number, what did you
14 do?

15 A I entered that phone number into something that's
16 called phonefinder.net. It is a web based, it's basically
17 a query and you enter a phone number and it tells you the
18 cell phone provider. It doesn't give you any additional
19 information other than who the cell phone provider is and
20 we use that in cases where we just have a phone number to
21 know who to submit a search warrant or any kind of legal
22 compliance to.

23 Q And by using phonefinder, were you able to identify
24 a subscriber to that phone number?

25 A Not a subscriber, but a carrier, which was Sprint.

Renee Strickland - Direct Examination by Ms. Patterson

1 Q Okay. And once you identified Sprint as the
2 carrier, what did you do?

3 A Once I identified Sprint as the carrier, I typed up
4 a search warrant for the phone records and that search
5 warrant was signed by a judge and it was sent to Sprint's
6 Legal Compliance by Detective Chapel.

7 Q Okay. And were you successful in getting
8 information from Sprint?

9 A I was not. They replied back saying that the
10 number had now belonged to Verizon.

11 Q And after you got that information that this was
12 now a Verizon number, what did you do?

13 A I typed up a search warrant for Verizon's Legal
14 Compliance and got it signed by the judge and submitted it
15 to Verizon Legal Compliance.

16 Q And did you receive any information from Verizon?

17 A I did.

18 (State's Exhibit Number 17 was marked for
19 identification.)

20 BY MS. PATTERSON:

21 Q Let me show you what's been marked as State's
22 Exhibit Number 17 for identification purposes only. I ask
23 you to take a look through that document. Do you recognize
24 that document?

25 A I do.

Renee Strickland - Direct Examination by Ms. Patterson

1 Q And what is it?

2 A It's the cell phone records that I received from
3 Verizon Legal Compliance.

4 Q Okay. Does it fairly and accurately represent the
5 documents you received from Verizon Compliance?

6 A It does, yes.

7 Q Does it look like it's been changed?

8 A No.

9 Q And after you received that document, did you
10 review it?

11 A I did.

12 Q Did you see anything that interests you on it?

13 A I did. When I reviewed it, I was specifically
14 looking for detail that would further connect that phone
15 number to David Ray Brown and I noticed a number --

16 MR. STITELY: Judge, I'm going to object at this
17 point. That's not in evidence. We haven't gone through
18 the validity of the document yet. It would be
19 inappropriate for her to talk about its findings at this
20 point until it's actually in evidence.

21 THE COURT: All right. Again, Solicitor, do you
22 intend to call a representative of Verizon that can verify
23 that as business records.

24 MS. PATTERSON: Yes, sir, she'll be here after
25 lunch.

Renee Strickland - Direct Examination by Ms. Patterson

1 THE COURT: Perhaps, we move at a certain rate, she
2 might be required to be here before that, but that's
3 neither here nor there, Solicitor. We'll cross that bridge
4 if we need to. But be that as it may, there will be a
5 person here in that capacity?

6 MS. PATTERSON: Yes, sir.

7 THE COURT: All right. As I ruled yesterday,
8 everything cannot be introduced on a pencil point or pen
9 point, therefore, I will allow you to go into it at this
10 time, although it's only 17 for ID purposes only and with
11 the understanding that if it is not verified through
12 custodian of the records of Verizon, it would be then
13 subject to be stricken from the record.

14 MS. PATTERSON: Yes, sir.

15 THE COURT: And the jury would not consider that
16 possibly.

17 MS. PATTERSON: Yes, sir.

18 THE COURT: All right.

19 MS. PATTERSON: Yes, Your Honor. Thank you.

20 THE COURT: Thank you. I think that will protect
21 you on the record, Mr. Stitely.

22 MR. STITELY: Thank you, Judge.

23 THE COURT: Thank you. You may proceed, Solicitor.

24 BY MS. PATTERSON:

25 Q Did any of the numbers on the phone long interest

Renee Strickland - Direct Examination by Ms. Patterson

1 you?

2 A Yes, ma'am.

3 Q And which number was that?

4 A The number that interests me was - -8259.

5 Q And why did this number become of interest to you?

6 A This number was of interest to me because this was
7 the number that had been reported by David Ray Brown's
8 mother, Jackie Elizabeth Brown, to the Sheriff's Department
9 as a --

10 MR. STITELY: Your Honor, I'm going to object to
11 hearsay on this. I don't know where this is coming from.
12 She's saying according to the Sheriff's Department.

13 THE COURT: The question is why did this number
14 interest you, correct?

15 MS. PATTERSON: Yes, sir.

16 THE COURT: So it's not, it's not being offered for
17 the truth of the matter asserted, it's being offered in my
18 opinion under the continuing conduct of the investigation
19 and under State v. Greene and State v. Davis.

20 So restate your question, Solicitor.

21 BY MS. PATTERSON:

22 Q Did you see any of the -- did any of the numbers on
23 the log interest you?

24 A Yes.

25 Q And which number was that?

Renee Strickland - Direct Examination by Ms. Patterson

1 A - -8259.

2 Q And how -- how did you come across this number?

3 A I found that number on a booking report.

4 MR. STITELY: Judge, I have a matter of law to take
5 up with the Court, please.

6 THE COURT: All right. Before I let the jury step
7 out. Madam Clerk, while the jury is out, will you please
8 order them lunch to be brought in today?

9 THE CLERK: Okay.

10 THE COURT: At one o'clock, 1300 hours.

11 THE CLERK: Okay.

12 THE COURT: We'll take a lunch break no greater
13 than one hour. They, of course, can go out and walk around
14 if they want to, what have you. If they're through with
15 lunch before the one hour is up, all they have to do is
16 knock on the door and we'll reassemble. Take care of them
17 and order something during this recess. When that is
18 complete, let me know and we'll get right back to work.

19 Please do not discuss the case during this brief
20 recess. Thank you very much. Take at least 15 minutes,
21 but if it takes longer, let me know; I'm not going
22 anywhere; I'll be right here. Thank you. Thank you very
23 much.

24 (The jury left the courtroom at 10:41 a.m.)

25 THE COURT: All right. Mr. Stitely?

1 MR. STITELY: Judge, the officer is going into
2 something about a booking sheet. It's totally
3 inappropriate and prejudicial to imply anyone in my case
4 has a criminal record unless they're up there testifying
5 and used for impeachment.

6 THE COURT: Whose booking report?

7 MS. PATTERSON: It's his mother's booking report;
8 it's not his booking report. We're not mentioning anything
9 about his booking report.

10 MR. STITELY: It's obviously creating prejudice,
11 Judge.

12 THE COURT: Number one, there -- his mother is not
13 listed as a witness, number one. Number two, it's offered,
14 if it's solely for the source of when -- where the officer
15 located the phone number, I will be delighted to give
16 whatever curative instruction you would like me to give.
17 The booking report is, A, not being offered, just the
18 source. If it connects the defendant with a person that
19 has a booking report, I will certainly give a curative
20 instruction to the jury that the fact that a relative of
21 the defendant that is associated with that phone number and
22 has a booking report -- the fact that they have a booking
23 report is of no relevancy whatsoever and they're not to
24 consider that, but that is the source.

25 MR. STITELY: Judge, I just think it's very

1 prejudicial in nature the actual implication of a booking
2 report is that they're bad people.

3 THE COURT: And I've ruled.

4 MR. STITELY: Yes, sir.

5 THE COURT: All right. Thank you. Thank you very
6 much. We'll take about a 12 minute recess.

7 The officer can, of course, step down and refresh
8 herself during this brief recess. You may not discuss your
9 case or testimony with anyone during this brief recess.

10 Anything else?

11 MR. STITELY: Not at this time, Judge, thank you.

12 THE COURT: All right. Thank you. Thank you very
13 much.

14 Court will be in recess for 12 minutes unless the
15 jury votes otherwise.

16 (A brief recess was observed.)

17 THE COURT: All right. We good to go?

18 Anything from the State?

19 MS. PATTERSON: No, sir, Your Honor.

20 MR. STITELY: Nothing from the defense, Your Honor.

21 THE COURT: Are they done with their lunch orders?

22 (There was off-the-record conversation about the
23 jury's lunch.)

24 THE COURT: All right. We're ready for our jury.
25 Mr. Stitley? Solicitor?

1 MR. STITELY: Yes, sir.

2 MS. PATTERSON: Yes, sir.

3 THE COURT: All right. I -- in advising the jury
4 concerning the question about the booking report, at this
5 point, they don't know what a booking report is. What I
6 intend to do is advise them that there was a booking
7 report. A booking report is filled out by the detention
8 center officers when the individual is placed under arrest.
9 An individual is placed under arrest who had this phone
10 number, -8259. And that individual -- not even tell
11 them what the relationship is, is a relative of Mr. Brown.

12 I would further tell them that the fact that a
13 relative of Mr. Brown is not relevant to the guilt or --
14 the fact that a relative of Mr. Brown has been arrested and
15 booked into the detention center is not an issue for them
16 to consider as to the guilt of innocence of Mr. Brown, but
17 I'm allowing this testimony solely for the fact that the
18 officer during her investigation identified a phone number
19 that was associated with Mr. Brown.

20 That's generally -- I'm going to try to repeat that
21 as best I can, but that's generally what I'm going to do.

22 All right. Anything before we bring in our jury,
23 Mr. Stitely?

24 MR. STITELY: Nothing, Your Honor.

25 THE COURT: Solicitor?

1 MS. PATTERSON: No, sir.

2 (The jury entered the courtroom at 11:01 a.m.)

3 THE COURT: All right. Welcome back, ladies and
4 gentlemen. Prior to the break, there was a question put to
5 the detective concerning if there was a phone number of
6 some interest that she identified on State's Exhibit Number
7 17. Her response, I believe, was - -8259 and she
8 indicated that the, on the record, the source where she
9 identified that phone number came from a booking report.
10 And I will try to explain this to you artfully, as
11 in-artfully as I speak sometimes.

12 A booking report is a document generated at the
13 detention center when an individual is placed under arrest
14 for a particular charge, whatever the charge may be and
15 it's an identifier; name, address, phone number,
16 occupation, age, such as that, gender, such as that. So
17 you have this booking report with this phone number on it.

18 Now I'm allowing this into evidence because the
19 phone number is the phone number of a relative of Mr.
20 Brown, the defendant. This -8259 is the phone number of
21 a relative of Mr. Brown. Okay. Now, I don't want the
22 facts that, and you cannot -- this fact cannot be part of
23 your deliberation. The fact that Mr. Brown had a relative
24 that was arrested and booked into the jail, the detention
25 center, should not prejudice Mr. Brown whatsoever either

Renee Strickland - Direct Examination by Ms. Patterson

1 one way or the other. As -- as we all know, we aren't
2 responsible for other peoples conducts and other peoples
3 choices they make good or bad. I wish I could be
4 responsible for some of the good ones that my mother and
5 father made, good or bad, be that as it may.

6 So the fact that an individual on trial may have a
7 relative that was booked into the jail is not of relevancy.
8 I'm only allowing this testimony for purposes of the
9 investigation that the officer found this phone number.
10 That was the source in which it was found and that phone
11 number appeared on State's 17 for identification, which was
12 the -3982. Don't -- don't consider the fact that the
13 individual relative of Mr. Brown was arrested. That has
14 nothing to do with whether he's guilty or not guilty.

15 All right. Does that make sense? Questions?

16 (There was no response.)

17 THE COURT: Thank you. Thank you very much.

18 Solicitor, you may ask -- thank you.

19 Any objections, Mr. Stitely.

20 MR. STITELY: No, sir, Judge, thank you.

21 THE COURT: Thank you. Thank you very much.

22 Solicitor, you may ask your next question.

23 MS. PATTERSON: Thank you, Your Honor.

24 BY MS. PATTERSON:

25 Q And what did you notice about this number on the

Renee Strickland - Direct Examination by Ms. Patterson

1 phone log?

2 A That it appeared on the phone log several times
3 during the -- the time frame where the incidents with the
4 victim occurred.

5 Q And what time frame was that?

6 A October through November of 2013.

7 Q Did you find out what type of phones that this was?

8 A Verizon advised me that it was a Trac phone,
9 meaning that it was a prepaid phone.

10 Q And were you able to get a definite subscriber's
11 name?

12 A No, I was not.

13 Q Now, did you review the text messages from the
14 phone dump?

15 A I did.

16 Q Did you see any that concerned you?

17 A Yes, I saw several.

18 Q And what did you do as a result?

19 A As a result, I continued my investigation and once
20 I identified Mr. Brown, I attempted to make contact with
21 him.

22 Q And how did you make this contact?

23 A Another detective and I rode out to his residence
24 to try to meet with him and we actually met with his mother
25 and she said that he was not at home. Mr. Brown then

Renee Strickland - Direct Examination by Ms. Patterson

1 called me at the Sheriff's Department and agreed to meet.

2 Q How did he get your number?

3 A I believe that we left a number; I'm not certain or
4 he may have just called the direct front desk number for
5 the Sheriff's Department.

6 Q And were you able to meet with Mr. Brown?

7 A I was.

8 Q And do you remember what date this was?

9 A I believe it was the 19th of January of 2014.

10 Q And where did y'all meet?

11 A At 521 Gibson Road, which is the Sheriff's
12 Department Headquarters, which was where my office was
13 located.

14 Q Who came to the meeting with Mr. Brown?

15 A Mr. Brown is the only person that I saw.

16 Q And did you -- did he agree to speak with you?

17 A He did.

18 Q Before he spoke with you, did you read him any
19 rights?

20 A I did. I read, I read him his Miranda rights.

21 Q And what are Miranda rights?

22 A They're the advisement of a person's rights as far
23 as the rights that are legally afforded to them before they
24 talk to law enforcement.

25 Q And how did you read him his rights?

Renee Strickland - Direct Examination by Ms. Patterson

1 A I read him his rights verbatim from a card.

2 Q Okay. And what were those rights?

3 A I'll read them to you. You have the right to
4 remain silent. Anything you say can and will be used
5 against you in a court of law.

6 You have the right to talk to a lawyer and have him
7 present with you while you are being questioned. If you
8 cannot afford to hire a lawyer, one will be appointed to
9 represent you before any questions if you wish.

10 You can decide at any time to exercise these rights
11 and not answer any questions or make any statements.

12 Do you understand each of these rights I have
13 explained to you?

14 Having these rights in mind, do you wish to talk to
15 us now.

16 Q And did Mr. Brown understand those rights?

17 A He indicated that he did.

18 Q Did he have any questions for you regarding those
19 rights?

20 A No, he did not.

21 Q And did he agree to speak with you?

22 A He did.

23 Q And was he under arrest at this time?

24 A He was not, no.

25 Q Did you have any arrest warrants for him at this

Renee Strickland - Direct Examination by Ms. Patterson

1 time?

2 A I did not and I had advised him of that.

3 Q So he was free to leave?

4 A He was.

5 Q And did he leave after he spoke with you?

6 A He did.

7 Q And before he left your office that day, did you
8 ask him about that phone number?

9 A I did.

10 Q And what did he say?

11 A He said that that was his phone number and that he
12 had ported, for some reason did not have the original phone
13 and ported that number to another phone and then had lost
14 the phone that he ported the number to and I asked him did
15 he port the number again and he said no.

16 Q Now did you make any, did you ask Mr. Brown any
17 other information this day?

18 A I did. I asked him if he would supply us a DNA
19 sample for comparison.

20 MS. PATTERSON: I beg the Court's indulgence?

21 THE COURT: Yes, ma'am.

22 BY MS. PATTERSON:

23 Q And how was he to provide the DNA sample?

24 A That would be collected in what is called a Buccal
25 Swab Kit.

Renee Strickland - Direct Examination by Ms. Patterson

1 Q And what is a buccal swab?

2 A A buccal swab -- buccal actually means of or
3 pertaining to the mouth or cheek. It's the accepted method
4 for taking a sample of DNA from someone to include or
5 exclude them from -- from the investigation. It's to
6 perform comparative analysis and basically how the test is
7 performed is that the interior of an individual's cheek is
8 swabbed with a cotton swab and that collects the buccal
9 cells from the cheek that contain the DNA.

10 Q And did you take the buccal swab from Mr. Brown?

11 A I did.

12 Q And did you learn how to do buccal swabbing?

13 A I had been performing crime scene, had been a Crime
14 Scene Investigator since 2007 and in that time, I've
15 probably done in the hundreds of buccal swab collections so
16 that was part of my training as a Crime Scene Investigator.

17 Q And why did you want this buccal swab from Mr.
18 Brown?

19 A To compare to any -- any DNA or anything that was
20 generated from the victim's belongings that she had turned
21 in.

22 Q And what did you do once you got the buccal swab?

23 A Submitted that to evidence and then requested that
24 it be sent to SLED for analysis along with the items to
25 compare it to.

Renee Strickland - Direct Examination by Ms. Patterson

1 Q And do you know if that was, in fact, sent over to
2 SLED?

3 A I believe that it was, yes.

4 Q And I think you said earlier that Mr. Brown left
5 your office after speaking with you?

6 A Yes.

7 Q What was Mr. Brown wearing when he came to meet
8 with you?

9 A He was wearing a gray colored sweater or
10 sweatshirt, blue jeans and some work boots.

11 Q And did his attire interest you at all?

12 A It did.

13 Q And why did it interest you?

14 A It was very similar, almost the exact description
15 that Minor had given of the attire that he would wear to
16 come to meet with her.

17 Q Now, we talked about Minor telling you where these
18 incidents occurred and that was at her house?

19 A Correct.

20 Q Did you ever go out to her residence?

21 A I did, yes.

22 Q First I'm going to show you what's been marked as
23 State's Exhibit 18 for ID only and ask you to take a look
24 at that?

25 THE COURT: You don't have a pocket knife?

Renee Strickland - Direct Examination by Ms. Patterson

1 THE WITNESS: They wouldn't let me in with it.

2 (The witness was opening a piece of evidence.)

3 BY MS. PATTERSON:

4 Q Do you recognize what was in that package?

5 A I do.

6 Q And what is that?

7 A This is the Buccal Swab Collection Kit.

8 Q Okay. And who is that a buccal swab sample of?

9 A David Ray Brown.

10 Q And is that -- and what date was that taken?

11 A This was taken on January 18th.

12 Q Of what year?

13 A 2014, I believe I said the 19th earlier, I'm sorry.

14 Q And do you, is that the buccal swab that you took
15 on Mr. Brown?

16 A It is.

17 Q And how do you recognize that?

18 A I recognize it because it has my name on it and it
19 also has my signature and the signature of another
20 detective.

21 Q And does it look like it's been changed or tampered
22 with?

23 A It -- it's different from its original condition
24 because it was sent to SLED for analysis and they would
25 have to break the seal, but everything written on the

Renee Strickland - Direct Examination by Ms. Patterson

1 outside is exactly as it was, the signatures, and Mr.

2 Brown's signature is on it as well.

3 Q Now, when Minor and her mother came to meet with
4 you, besides the phone, were you given any other -- any
5 other evidence from them?

6 A Yes, ma'am. They brought in three pairs of Minor 's
7 underwear.

8 Q I'm going to show you what's been marked as State's
9 Exhibit 14, 15 and 16 for ID only and ask you to take a
10 look at that.

11 A Uh-huh (affirmative response).

12 Q And do you recognize what's in those photographs?

13 A I do, yes, ma'am.

14 Q And what does it appear to be?

15 A These are the three pairs of underwear that Minor
16 and her mother brought to me at the Sheriff's Department.

17 Q And do they look, fairly and accurately represent
18 the underwear that they gave at the Sheriff's Department?

19 A They do. They again look different because they've
20 been analyzed at State Law Enforcement Division, but they
21 do appear to be the same underwear, yes.

22 Q Okay. Other than what was done at SLED, do they
23 look like they've been tampered with in any way in those
24 pictures?

25 A No, not at all.

Renee Strickland - Direct Examination by Ms. Patterson

1 MS. PATTERSON: Your Honor, at this time, we move
2 State's Exhibit 14, 15 and 16 into evidence?

3 MR. STITELY: No objection, Judge.

4 THE COURT: All right. 14, 15 and 16 is in
5 evidence without objection.

6 (State's Exhibits Number 14, Number 15, and Number
7 16 were admitted into evidence.)

8 BY MS. PATTERSON:

9 Q And once again, when you got these, when you got
10 these underwear, what did you do with them?

11 A I submitted those to evidence and then eventually
12 submitted a request for them to be sent to State Law
13 Enforcement Division for further analysis and comparison.

14 Q And do you know of if the underwear were in fact
15 analyzed at SLED?

16 A Yes, ma'am, I believe they were.

17 Q And I'm going to show you what's been marked as
18 State's Exhibit 19 for ID only. Do you recognize what's in
19 that packet?

20 A I do.

21 Q And what is in that packet?

22 A The three pair of underwear.

23 Q Okay. Do they look like they have been changed or
24 altered in any way besides what SLED may have done?

25 A Other than what was necessary to be performed at

Renee Strickland - Direct Examination by Ms. Patterson

1 SLED, no, ma'am.

2 Q Do they fairly and accurately represent what Minor
3 and her mother left with you at the Sheriff's Department?

4 A Yes, they do.

5 MS. PATTERSON: Your Honor, at this time we move
6 State's Exhibit 19 into evidence?

7 MR. STITELY: No objection.

8 THE COURT: State's 19 is in evidence without
9 objection.

10 (State's Exhibit Number 19 was admitted into
11 evidence.)

12 BY MS. PATTERSON:

13 Q And you said you went out to Minor 's house?

14 A I did, yes, ma'am.

15 Q And what did you do when you went out there?

16 A Looked at the area, the location where the deer
17 stand was, the location that Minor indicated that she would
18 meet with the individual or the suspect and engage in
19 sexual intercourse.

20 Q I'm going to show you State's Exhibit 3, 5, 6, 7
21 and 8 and ask you to take a look at those photographs.

22 And were you able to, in fact, see the deer stand?

23 A I was, yes, ma'am.

24 Q And what did you notice about the deer stand, if
25 anything?

Renee Strickland - Direct Examination by Ms. Patterson

1 A What I noticed about the deer stand is it's, it's
2 located around the corner a bit from where the residence
3 is. I could not, I did not have a direct line of sight to
4 the residence if I was located right here where the deer
5 stand was. So it was somewhat concealed with the wooded
6 area between the residence and the deer stand. Surrounding
7 the deer stand is a wide open field. So there's nothing
8 really around the deer stand other than the house which is
9 around the corner here just a bit. It's a very short
10 distance, accessible by walking.

11 Q So is there any trees or anything covering the deer
12 stand?

13 A Around it, but not, you know, not right on top of
14 it, but yeah, they do surround it.

15 Q Did you notice anything about the area in general
16 of around Minor 's house?

17 A The area in general is I would say pretty secluded.
18 It's a rural area. It's a dirt road. The field is
19 actually quite large. There is a main road back over here
20 which would be Road and then the road that she
21 lives which is Way. Other than that, there's really
22 some residences over here, but it's across this very large
23 field.

24 Q And you did confirm that this residence was in
25 Lexington County, correct?

Renee Strickland - Cross-Examination by Mr. Stitely

1 A Yes.

2 MS. PATTERSON: I beg the Court's indulgence, Your
3 Honor?

4 THE COURT: Yes, ma'am.

5 BY MS. PATTERSON:

6 Q When I asked you earlier were you able to confirm
7 David Brown's age; did you confirm his date of birth?

8 A Yes.

9 Q And what was his date of birth?

10 A

11 Q Thank you, Investigator Strickland. Please answer
12 any questions Mr. Stitely has.

13 THE COURT: Thank you. Thank you, Solicitor.
14 Mr. Stitely.

15 MR. STITELY: It please the Court, Your Honor?

16 THE COURT: Yes, sir.

17 **CROSS-EXAMINATION**

18 BY MR. STITELY:

19 Q How are you this morning, Investigator Strickland?

20 A I'm good;/ how are you?

21 Q Doing just fine. Actually I don't have too much
22 for you.

23 Do you have your initial report in front of you?

24 A I do.

25 Q Could you grab that so you can reference it?

Renee Strickland - Cross-Examination by Mr. Stitely

1 A I got it.

2 Q Your initial interview with Miss Minor looks
3 like it took place on, I can't tell, the 22nd or 23rd of
4 November?

5 A 21st and 22nd, I think. We met twice.

6 Q Okay. What was your initial take of her demeanor
7 in your initial consult with her?

8 A Her initial demeanor, she was not upset, she didn't
9 seem afraid. She would -- I would kind of describe it as
10 kind of a flat affect, she didn't convey too much emotion,
11 which is not unusual.

12 Q Looking at line four of the first paragraph, she
13 was not upset, smiled, laughed a few times, she did not
14 seem scared, embarrassed, or disturbed in any way. She was
15 concerned about us keeping her phone for a prolonged period
16 of time. That would be your observation on that date?

17 A Right.

18 Q You don't have any reason to embellish, change, add
19 to this, anything like that?

20 A No, my reason for documenting that is -- is simply
21 to, you know, document the demeanor of the victim. It's
22 not a -- it's not uncommon, you know, and it would be quite
23 common for a child to appear in that manner.

24 Q Okay. When you met with Mr. Brown, he came into
25 your office at the Sheriff's Department?

Renee Strickland - Cross-Examination by Mr. Stitely

- 1 A He did.
- 2 Q He came voluntarily?
- 3 A He did.
- 4 Q Okay. Spoke to you voluntarily?
- 5 A He did.
- 6 Q Provided DNA samples voluntarily?
- 7 A Absolutely.
- 8 Q And y'all went through -- but that's the least
- 9 evasive way of getting DNA, rather than drawing blood, you
- 10 just --
- 11 A Correct and it's the same result.
- 12 Q And we didn't describe it, but really it's just a
- 13 Q-tip in their cheek and that's it?
- 14 A Correct, yeah, a Q-tip swab on the interior of the
- 15 cheek.
- 16 Q And it provides sufficient DNA for the forensic
- 17 people to do whatever they needed?
- 18 A Correct, for comparison.
- 19 Q I imagine you like it more than blood even because
- 20 it's kind of a clean sample, wasn't it? Is that a fair way
- 21 to describe it?
- 22 A Correct, and it's just a less invasive way of
- 23 obtaining DNA from someone.
- 24 Q Okay. One thing you did talk to the solicitor
- 25 about, you said that he said that that was -- I'm bad about

Renee Strickland - Cross-Examination by Mr. Stitely

1 that. Mr. Brown stated to you that at some point that was
2 his number, but he had gotten rid of it months before;
3 correct?

4 A He stated that that was his number and he did not
5 have the original phone for a particular reason and that he
6 had ported the number. He wanted to keep his number so he
7 ported the number to a new phone and then had lost that
8 particular phone. I think he --

9 THE COURT: I apologize. I'm not quite tracking.
10 What number are we talking about?

11 MR. STITELY: That would be the 3982 number, Judge,
12 the one that's referenced in Exhibit Number 17, the Verizon
13 number.

14 THE COURT: ?

15 MR. STITELY: I have it's . The one ending in
16 3982, Judge.

17 THE COURT: ; that's the number your question
18 was about?

19 MR. STITELY: Yes, sir, Your Honor.

20 THE COURT: What was your response again,
21 Detective?

22 THE WITNESS: He said that number did belong, did,
23 in fact, belong to him at one time and that for a
24 particular reason he didn't no longer have the original
25 phone. He then ported that number to a new phone, but he

Renee Strickland - Cross-Examination by Mr. Stitely

1 said that he had lost that phone. I think he said
2 approximately a month prior and I asked him why did you not
3 port the number again to which he provided no explanation.

4 THE COURT: Thank you. I didn't mean to interrupt
5 you.

6 MR. STITELY: I wasn't clear on my question, Judge.
7 I appreciate that.

8 BY MR. STITELY:

9 Q The other thing y'all talked about just briefly was
10 the clothing he would wear. And you said he was wearing
11 jeans, a sweater and work boots?

12 A Correct.

13 Q And is that uncommon for a man who does
14 construction in November or January to be wearing?

15 A No, but it was a gray sweater or sweatshirt, blue
16 jeans and work boots, which is what she had described to
17 me. So I took notice.

18 Q All right. And again, he came voluntarily?

19 A He did.

20 Q Provided his DNA voluntarily?

21 A Correct.

22 Q Left and then later was charged?

23 A Right, correct.

24 Q The last question I have for you, Investigator, and
25 I'm not going to pull them out, the jury saw the pictures.

Renee Strickland - Cross-Examination by Mr. Stitely

1 The underwear in Exhibits 16 through 18, they weren't cut
2 up like that when you saw them; that's what SLED does to do
3 their analysis, correct?

4 A Correct, they have to take cutting samples in order
5 to perform their analysis.

6 THE COURT: I think it's 14, 15, 16 and 19.

7 MR. STITELY: Yes, sir, Judge. Okay. 14
8 through --

9 BY MR. STITELY:

10 Q So when they came to you, were they in a normal
11 condition, weren't all ripped and torn up like they look
12 like in the picture?

13 A No, they appeared like normal underwear.

14 Q Those are all the only questions I have. Thank you
15 very much, Investigator.

16 THE COURT: Redirect, Solicitor?

17 MS. PATTERSON: No, sir, Your Honor.

18 THE COURT: Thank you. You may step down.

19 Solicitor, you may call your next witness.

20 MS. DAVIS: Thank you, Your Honor. The State would
21 call Temple Hart.

22 THE COURT: Temple Hart; is that correct?

23 MS. DAVIS: Yes, sir.

24 THE COURT: All right. If you'd just come around
25 for us please and be sworn.

Temple Hart - Direct Examination by Ms. Davis

1 TEMPLE HART,
2 having been duly sworn, testified as follows:
3 THE CLERK: Please be seated. State your full
4 name.

5 THE WITNESS: My name is Temple Hart.

6 THE COURT: All right. Solicitor?

7 MS. DAVIS: Thank you, Your Honor.

8 **DIRECT EXAMINATION**

9 BY MS. DAVIS:

10 Q Ms. Hart, where are you employed?

11 A Palmetto Health Richland.

12 Q How long have you been there?

13 A 13 years.

14 Q What do you do there?

15 A I'm a Registered Nurse.

16 Q Okay. Tell me about your past employment?

17 A I have been employed with Palmetto Health since I
18 became a Registered Nurse in 2003.

19 Q Have you stayed at the same, I guess y'all, I don't
20 know if you call it units or been at the same type of job
21 the whole time?

22 A The first 7 years I was a Registered Nurse in Labor
23 and Delivery and then from 2010 to 2014, I was a Sexual
24 Assault Nurse Examiner, and in January of 2014 till now, I
25 am a Pediatric Emergency Room Nurse.

Temple Hart - Direct Examination by Ms. Davis

1 Q Okay. And tell me what type of education do you
2 have to have to be a Registered Nurse?

3 A I graduated in 2003 from, with an Associates Degree
4 in Nursing and then in 2009 I got my Bachelor's of Nursing.

5 Q And you said that in November of 2013 you were a
6 Sexual Assault Nurse Examiner; is that right?

7 A Yes, ma'am.

8 Q Okay. Can you tell the jury what that is?

9 A A Sexual Assault Nurse Examiner is a Registered
10 Nurse who has gone through extensive training. There's a
11 40 hour didactic seminar training classroom that you have
12 to do and then from there you have to participate with the
13 community on a Sexual Assault Response Team meetings,
14 courtroom testimony, law enforcement, evidence collection,
15 and then you are guided through six Sexual Assault Nurse
16 Examiner Examinations with an experienced Sexual Assault
17 Nurse Examiner and then you can start on your own.

18 Q So someone who is just a Registered Nurse can't be
19 SAN Examiner?

20 A No, ma'am.

21 Q There's a lot that you have to go through?

22 A Yes.

23 Q And how long were you a SANE Examiner?

24 A January 2010 to January 2014.

25 Q And would that have been at the same hospital?

Temple Hart - Direct Examination by Ms. Davis

1 A Yes, ma'am.

2 Q Okay. During that time, how many Sexual Assault
3 Forensic Examinations did you perform?

4 A According to the database, 262.

5 Q So quite a few?

6 A Yes.

7 Q Let's explain to the jury what goes on during a
8 Sexual Assault Forensic Exam?

9 A Okay. A patient presents to the Emergency Room or
10 they could have just come in as a patient or they could
11 have been referred from a doctor's office, another
12 facility, but they present to the Emergency Room and they
13 are medically cleared by a physician and then the Sexual
14 Assault Nurse Examiner will come down.

15 We go to a private room for an interview. We got
16 through a series of questions beginning with demographics,
17 where they live, how old they are, any medical history, and
18 then they answer a series of questions regarding the sexual
19 assault. They're able to explain to the nurse what
20 happened to them and based on what the patient discloses,
21 helps guide that nurse to know what type of evidence she's
22 looking for or trying to collect, what kind of injuries the
23 patient may have, and how to treat those injuries, any
24 risks the patient may have, for example, sexually
25 transmitted infections and things like that and how to

Temple Hart - Direct Examination by Ms. Davis

1 treat that patient.

2 Q Okay. Is it an invasive procedure?

3 A It is a very personal procedure, yes.

4 Q At one point, were you on call the night of
5 November 19th of 2013?

6 A Yes, ma'am.

7 Q And how does that work; are you on call certain
8 days and there's other nurses?

9 A The Regional Forensic Nurse Examiner Program has
10 five full-time Sexual Assault Nurses and we all take call.
11 It would either have been a 12-hour shift or a 24-hour
12 shift and that particular day I was on call.

13 Q Okay. And during that day, did you come to treat a
14 patient names Minor ?

15 A Yes, ma'am.

16 Q And how did Minor come to be your patient that day?

17 A She presented to the Emergency Room. She was
18 medically cleared and they contacted me to come in and see
19 the patient.

20 Q So for -- in order to be contacted to come see the
21 patient, a sexual assault would have had to have been
22 reported previously?

23 A Yes.

24 Q Okay. And do you recall what time you met with
25 Minor ?

Temple Hart - Direct Examination by Ms. Davis

1 A I don't have the report in my hands right now.

2 Q I'll get you a copy.

3 A Okay.

4 THE COURT: I believe you had your folder.

5 THE WITNESS: I do. I sat it on the bench.

6 THE COURT: Right there. I was wondering when you
7 were going to get back to it.

8 THE WITNESS: I should have just carried it with
9 me.

10 BY MS. DAVIS:

11 Q Okay.

12 A Thank you. I'm sorry, what was your question?

13 Q Do you recall what time you first met with Minor ?

14 A Yes. My exam in the computer database initiated at
15 6:06 p.m.

16 Q And is this computer database -- are you inputting
17 things at the time that you are meeting with a patient?

18 A Yes, ma'am.

19 Q So it's done at the same time?

20 A Yes.

21 Q Okay. And was anyone with Minor when she came?

22 A She came to the Emergency Room with her grandmother
23 and there was also a Sexual Trauma Services Advocate with
24 her.

25 Q And is that normal procedure to have someone like

Temple Hart - Direct Examination by Ms. Davis

1 that there?

2 A Yes.

3 Q Okay. When she first came in, you said that you go
4 through, I guess kind of a medical background --

5 A Yes.

6 Q -- kind of thing and why do you do that?

7 A We begin with a history so that we're able to find
8 out a little bit about the patient, about their, any
9 medical needs they may have, any injuries they may have,
10 and any medical history period.

11 Q Okay. And do you ask them for details regarding
12 the assault?

13 A Yes, we do.

14 Q And why is that important?

15 A In order to treat any injuries, in order to take
16 care of the patient medically, and in order to collect any
17 evidence.

18 Q So these were known for medical diagnosis?

19 A Yes.

20 Q Okay. And did Minor tell you what happened?

21 A Yes, she did.

22 Q Okay. What did she tell you?

23 A She said that she had been raped.

24 Q Okay. Did she disclose to you when that had
25 happened?

Temple Hart - Direct Examination by Ms. Davis

1 A Yes, she did.

2 Q And when did that occur?

3 A She told me that it happened on three separate
4 dates.

5 Q Okay.

6 A November the 11th, November 14th and November 16th.

7 Q Okay. Did she tell you where that assault took
8 place?

9 A She told me that it happened at her house outside.

10 Q Okay. And did she tell you what type of sexual
11 assault it was?

12 A Yes.

13 Q And what type was that?

14 A Penile penetration.

15 Q And did she disclose to you whether or not she knew
16 that person?

17 A She told me that she thought she knew who he was,
18 that she thought it was somebody that she had met on
19 Facebook.

20 Q After getting that medical background, what would
21 you have done next with Minor ?

22 A After we get the medical background, we go into
23 another room, an examination room right next door and the
24 patients undressed and then we look for any injuries and
25 then based on the disclosure of the sexual assault, I

Temple Hart - Direct Examination by Ms. Davis

1 collect evidence based on that disclosure.

2 Q Okay. And based on her disclosure in this case,
3 what -- what type of evidence were you looking for?

4 A We swab her mouth and her vagina and her rectum and
5 collect underwear and we use a couple of tools looking for
6 injuries.

7 Q And do you have to get consent to do that?

8 A Yes, we do.

9 Q From the patient?

10 A Yes, ma'am.

11 Q And what if the patient's a minor?

12 A Well, she has to still accept this examination.

13 Q So if Minor had of said no, I don't want to do it,
14 you couldn't have gone forward?

15 A No, ma'am.

16 Q Was anyone present with Minor when you were doing
17 the physical examination?

18 A With the physical exam, yes.

19 Q Who was present with her?

20 A Her grandmother.

21 Q Okay. And with regard to Minor, what did you do
22 during the physical exam; I know you said you took the
23 swabs, did you do anything else?

24 A We use -- we take pictures and we, so we collect
25 swabs; we use swabs. We use a dye, it's a blue dye, it's a

Temple Hart - Direct Examination by Ms. Davis

1 nuclear dye that adheres to nucleated cells to help enhance
2 visualization of any kind of injuries that you might not be
3 able to see and I collected underwear also.

4 Q Okay. And did you find any trauma or injuries on
5 Minor ?

6 A No, I did not.

7 Q Would you find them every time someone had a sexual
8 assault?

9 A No, I would not and based on the fact that the last
10 sexual assault had been three days, I wouldn't expect to
11 still see injuries.

12 Q So just because she had no injuries, does not mean
13 she was not assaulted?

14 A No, ma'am.

15 THE COURT: Restate that question, Solicitor?

16 BY MS. DAVIS:

17 Q Just because you didn't find injuries, does that
18 mean that she was not assaulted?

19 A No, it does not.

20 Q So you don't expect to find injuries every time?

21 A We do not expect to see injuries every time, no,
22 and the absence of injuries is not unusual.

23 Q Did you use anything to look for any bodily fluids?

24 A We use a UV light and it's just a light that we put
25 on some UV goggles and look to see if anything illuminates,

Temple Hart - Direct Examination by Ms. Davis

1 meaning it's positive that there could be any kind of
2 fluid.

3 Q And would you have done that on her body?

4 A On her body, on her clothing, her underwear.

5 Q Okay. And did you find any area that was positive
6 for UV light?

7 A Yes, I did.

8 Q And what was that?

9 A It was the crotch area of her underwear and
10 genitalia.

11 Q And the evidence that you collected, you said that
12 you did collect those underwear?

13 A Yes, ma'am.

14 Q Okay. I'm showing you what has been marked for ID
15 as State's Exhibit 20. Can you tell me if you recognize
16 this?

17 A May I look it over?

18 Q You may, absolutely.

19 A Inside is a white paper envelope that is inside of
20 the Evidence Collection Kit and on there is a label I
21 placed on there with the patient's name, my name and my
22 writing of what the time. I had put the underwear and
23 sealed them up in this bag.

24 Q Has that sticker been changed in any way?

25 A No.

Temple Hart - Direct Examination by Ms. Davis

1 Q So that would have been the bag that you put the
2 underwear in?

3 A Yes.

4 Q Okay. And you said that you see your writing on
5 it?

6 A I see my writing that I put the time and that I
7 checked, yes, that I was collecting underwear.

8 Q Okay. And what would you have done with this?

9 A Once the sample inside and the underwear were dry,
10 I would put them in the envelope, seal it up, put a label
11 on it, initial the label and put it inside of the kit.

12 Q Okay. And that was done here?

13 A Yes.

14 MS. DAVIS: Your Honor, at this time, the State
15 would move State's Exhibit 20 into evidence?

16 MR. STITELY: No objection, Judge.

17 THE COURT: State's 20 is in evidence without
18 objection.

19 (State's Exhibit Number 20 was entered into
20 evidence.)

21 BY MS. DAVIS:

22 Q I'll give you some gloves.

23 A So they're placed in an envelope and it's folded
24 over just so -- so that it matches up just like that and I
25 initial it.

Temple Hart - Direct Examination by Ms. Davis

1 Q Okay. And you see your initials there?

2 A Yes, T.H.

3 Q Okay. And this would have been sent to be analyzed
4 at SLED?

5 A It would be put inside the kit, locked up in the
6 kit, the kit locked up in our refrigerator until law
7 enforcement comes to get it.

8 Q Okay. If you'll take a look at that? Do you
9 recognize those?

10 A I mean, I can't say that I recognize these
11 underwear. I can only say that I recognize my signature
12 and my procedure for locking them up.

13 Q Okay. So these came from the bag that you signed
14 and sealed up and put in her sexual assault kit that day?

15 A That's correct.

16 Q Okay. And would you -- when you received them,
17 would they have looked like this?

18 A No, I mean they wouldn't be cut up like this or
19 marked. I would just take them directly from the patient,
20 fold them up, put them in the bag and seal it up.

21 Q Okay. So this would have been done for SLED to
22 analyze it, correct?

23 A Correct. I had made a notation that when underwear
24 were collected; this says they were multicolored.

25 Q She has to type down what you say. What were you

Temple Hart - Direct Examination by Ms. Davis

1 saying again, I'm sorry?

2 A I said that I marked that the underwear were
3 multicolored and that there was a UV positive area in the
4 crotch.

5 Q And that would be consistent with the underwear
6 that you just saw?

7 A Yes.

8 Q Okay. If you will take a look at what's been
9 marked as State's ID 21. Do you recognize that?

10 A Yes, I do.

11 Q Can you tell me what that is?

12 A This is another envelope within this kit that has
13 slides inside and multiple envelopes with, that we would
14 collect DNA and then after being dried seal them up and put
15 them back within this envelope and this envelope is sealed,
16 labeled and placed inside.

17 Q Okay. So do you see your initials on there?

18 A Yes, I do.

19 Q And this would be your sticker?

20 A Yes, it is.

21 Q So this would have been the swabs that you took
22 from the victim in this case?

23 A Yes.

24 MS. DAVIS: Okay. Your Honor, at this time, I
25 would move State's Number 21 into evidence.

Temple Hart - Direct Examination by Ms. Davis

1 MR. STITELY: No objection.

2 THE COURT: State's 21 is in evidence without
3 objection.

4 (State's Exhibit Number 21 was entered into
5 evidence.)

6 BY MS. DAVIS:

7 Q And I'm going to show you what's State's Number 22.
8 I think you kind of talked about this a little bit. Tell
9 me what this would be?

10 A That is a South Carolina Evidence Collection Kit.

11 Q Okay. And Number -- State's Number 21 and 20,
12 would they have been in here?

13 A Inside, yes.

14 Q Okay. And do you recognize this as yours?

15 A I do and that's my writing and my label that I
16 printed with her name on it and then these four red
17 stickers with my initials on them and my writing on the
18 back.

19 Q Okay. And the writing on the back would tell you
20 what?

21 A That I sealed the evidence inside there and
22 initialed it and then this chain of custody on the back is
23 where I logged it into our locked refrigerator in our exam
24 room.

25 Q And who has access to that refrigerator?

Temple Hart - Direct Examination by Ms. Davis

1 A The, only the five full-time Forensic Nurses.

2 Q Okay. So no one else can get in there to tamper
3 with anything?

4 A No, ma'am.

5 Q Okay. And you would have initialed each corner?

6 A Yes.

7 Q And do you see that?

8 A Each red seal, yes.

9 Q So this would have been the kit from Minor 's exam?

10 A Yes, ma'am.

11 MS. DAVIS: Your Honor, we'd move in State's No.

12 22?

13 MR. STITELY: No objection.

14 THE COURT: State's 22 is in evidence without
15 objection.

16 (State's Exhibit Number 22 was entered into
17 evidence.)

18 BY MS. DAVIS:

19 Q Now when you, when you said that the underwear were
20 positive for UV light, what would that mean?

21 A That there's some type of body fluid in that area
22 that's illuminating when you have the goggles on and you
23 shine the light on it.

24 Q But you wouldn't be able to tell what type --

25 A No, ma'am.

Temple Hart - Direct Examination by Ms. Davis

1 Q -- of bodily fluid?

2 A No, ma'am.

3 Q And after you collected all the evidence, you put
4 it in the box, which is State's Number 22 and what did you
5 do with it?

6 A It's locked in the secure refrigerator within the
7 examination room and then the examination room is locked
8 and it's all logged in.

9 Q Okay. After you do the physical examination, do
10 you have a post examination with the victim?

11 A When I finish that day, we do not see the victim
12 again.

13 Q Would you have given her any type of treatment in
14 this case?

15 A In this case, based on the disclosure of the sexual
16 assault, yes.

17 Q Okay. And what type of treatment was given to
18 Minor ?

19 A We did some sexual transmission -- sexually
20 transmitted infection testing with urine and blood and gave
21 her prophylactic antibiotics to prevent those diseases.

22 Q Did you give her anything to prevent pregnancy?

23 A Yes, ma'am.

24 Q Was she given any other medication?

25 A She was given antibiotics, Plan B, and also for a

Temple Hart - Cross-Examination by Mr. Stitely

1 yeast infection.

2 Q Now, you said that your standard procedure is to
3 not have any further medical followup with the victim?

4 A That's correct.

5 Q And have you had any other contact with her?

6 A No, ma'am.

7 Q Now as a SANE nurse, is your role to collect
8 evidence for law enforcement?

9 A No, that is part of our training, but my role is as
10 a nurse and to take care of the patient medically.

11 MS. DAVIS: Beg the Court's indulgence?

12 THE COURT: Yes, ma'am.

13 MS. DAVIS: Ms. Hart, I have no further questions.
14 Please answer any Mr. Stitely has for you.

15 THE WITNESS: Okay.

16 THE COURT: Thank you, Solicitor.

17 Mr. Stitely.

18 MR. STITELY: Thank you, Your Honor. Please the
19 Court?

20 THE COURT: Yes, sir.

21 **CROSS-EXAMINATION**

22 BY MR. STITELY:

23 Q Ms. Hart, I'm Ben Stitely. I'm a defense lawyer.
24 Where do you currently work?

25 A Palmetto Richland in the Emergency Room.

Temple Hart - Cross-Examination by Mr. Stitely

1 Q At the ER at the main hospital or Children's
2 Hospital?

3 A It's all one Emergency Room, but it's in the
4 Pediatric side of the Emergency Room.

5 Q I just heard you say you were in Ped's so I was
6 wondering?

7 A Uh-huh (affirmative response).

8 Q The solicitor went over it briefly, but pretty much
9 the job of anyone who works in your field it's to be very
10 copious and make sure you took, pretty much, the best notes
11 possible, correct?

12 A That's correct.

13 Q Because there's potential in any of these cases you
14 may be called forward to recall what you wrote on these
15 documents; is that fair?

16 A That's correct.

17 Q So you want to be very thorough in your logging.
18 You wouldn't add to or subtract from what people tell you.
19 If they told you, you write it in your report, correct?

20 A Yes, sir.

21 Q Okay. You don't embellish, change, try to puff it
22 up or puff it down in any way, correct?

23 A If it's in quotes, it's directly from the patient's
24 mouth.

25 Q All righty. Do you have your report in front of

Temple Hart - Cross-Examination by Mr. Stitely

1 you?

2 A I do.

3 Q Okay. And this is an actual computer document but
4 it's pretty much, you fill it out and it prints out this
5 form?

6 A It's a computer program, yeah.

7 Q I'm looking at the, I'm looking at the report with
8 you, and if you could just flip with me to, I don't know
9 how you have it, it may be the 5th page on yours but the
10 3rd page the way I see it. It's talking about adult --
11 assault history continued; do you see that?

12 A Yes, page 4, it's continued.

13 Q Page 4, yes, ma'am.

14 A Okay.

15 Q Now when you put in that description of the
16 assailant, who was giving that description; is that
17 something you got from law enforcement or something coming
18 directly from the person you're dealing with?

19 A The patient.

20 Q How did she describe her assailant to you?

21 A Well, she gave me his name, his age and --

22 Q What were those two things?

23 A It says Justin Goodwin.

24 Q Okay. What was the age of the assailant?

25 A 16 to 18.

Temple Hart - Cross-Examination by Mr. Stitely

1 Q Okay. What was his race?

2 A Caucasian.

3 Q And she described it as what kind of a -- you had
4 described the relationship?

5 A Brief encounter.

6 Q Okay. She did also tell you that she thought the
7 name was fake, correct?

8 A Correct. She said his Facebook is fake so I don't
9 really know.

10 Q Okay. Had she told you the assailant was a 40 year
11 old man, would you have wrote 40 instead of 16 to 18 or
12 would you have still wrote 16 to 18?

13 A I would write down the age that the patient told
14 me.

15 Q Yes, ma'am. So that's what she told you when you
16 were doing the interview?

17 A She estimated it 16 to 18, yes, sir.

18 Q Okay. The other thing the solicitor and you
19 discussed earlier, is she stated that there were how many
20 sexual assaults?

21 A There was three dates, three different days.

22 Q All in November, correct?

23 A Yes, sir.

24 Q And did she tell you about one in October?

25 A I don't recall. I only have the November dates.

Temple Hart - Cross-Examination by Mr. Stitely

1 Q Okay. Most likely in your normal course of
2 business, if she told you there was an assault in October,
3 you would have noted that as well?

4 A Yes.

5 Q Okay. Just a couple of other things. The actual
6 physical examination in this case was nothing was apparent,
7 like no assault I guess that was physical with injury,
8 correct?

9 A There were no injuries, no, sir.

10 Q When we say injury; bruising, redness, swelling,
11 that kind of injury?

12 A Yes.

13 Q Okay. And you said it's not uncommon for that to
14 be missing in a rape case, correct?

15 A Correct.

16 Q Okay. Let me ask you on the flip side?

17 A Okay.

18 Q There's nothing in this test indicating she
19 absolutely was raped, correct?

20 A That's not, I can't say. I can only go by the
21 patient's disclosure.

22 Q Right, but there's no evidence, physical, that says
23 a sexual assault happened; is that correct?

24 A There's not test for that, just --

25 Q Okay. Was there anything in your examination aside

Temple Hart - Cross-Examination by Mr. Stitely

1 from the victim's statements physically that would indicate
2 anything other than consensual encounters between two
3 individuals?

4 A There's no way of being -- looking at the genitalia
5 and decide if something was consensual or not.

6 Q The UV test of the young lady and her underwear
7 were positive both, you said in her genitalia and the
8 underwear?

9 A Yes, sir.

10 Q You wouldn't know what it was positive for though?

11 A No, I don't.

12 Q Is there any way for you and if you don't know, and
13 I don't think you would, to know which underwear SLED was
14 testing when they assigned numbers to it or you just put
15 your stuff in the envelope and it's out the door?

16 A I labeled my collections, put them in the box and
17 it's -- it's locked up.

18 Q Okay. So you wouldn't know what numbers they
19 assigned to things?

20 A There's no way of me knowing that.

21 Q The last thing y'all went over is you did an STD
22 test and give pre-emptive antibiotics, pre-emptive
23 pregnancy; is that a common practice in any alleged rape
24 case?

25 A Based on the disclosure, there was unprotected

1 sexual intercourse and the risk for pregnancy and
2 infection. So yes, she was treated.

3 Q Nothing physically specific in this case other than
4 that statement?

5 A Physical for pregnancy?

6 Q You didn't find the sperm inside or on?

7 A We don't look for sperm.

8 Q Would you have done the same thing for any
9 individual stating that there was an unprotected sex
10 situation?

11 A That came in as a sexual assault, yes.

12 Q So it wasn't something specific to her; it was the
13 situation of unprotected sexual assault pretty much y'all
14 always go with prophylactic antibiotic and pregnancy, on a
15 female of pertinent age, I guess?

16 A Yes, if there was penile penetration, yes.

17 Q Thank you, ma'am.

18 A You're welcome.

19 THE COURT: Redirect, Solicitor?

20 MS. DAVIS: No, sir, Your Honor. We ask that she
21 be excused.

22 MR. STITELY: No objection.

23 THE COURT: Thank you very much for being with us
24 today, Ms. Hart. You may step down and you may be excused.

25 THE WITNESS: Thank you.

1 THE COURT: All right. Solicitor, you may call
2 your next witness.

3 MS. PATTERSON: Your Honor, may we approach?

4 THE COURT: Yes, ma'am.

5 (There was a bench conference out of the hearing of
6 the jury and the court reporter.

7 THE COURT: Is lunch here; what time will lunch be
8 ready, Madam Clerk?

9 THE CLERK: It's to be picked up at 12:30.

10 THE COURT: All right. Madam Forelady, ladies and
11 gentlemen of the jury, the next witness is a Verizon
12 witness that flew in last night. The Solicitor needs a few
13 minutes to talk with her, him, I forgot already.

14 MS. PATTERSON: Her.

15 THE COURT: All right. So we'll take about a 15
16 minute recess and see if we can get that witness in before
17 your lunch gets here.

18 Okay. We'll take a break. Do not discuss the case
19 during this brief recess. Thank you.

20 (The jury left the courtroom at 11:58 a.m.)

21 THE COURT: Anything from the defense before we
22 take this brief recess?

23 MR. STITELY: Not at all, sir.

24 THE COURT: The State?

25 MS. PATTERSON: Thank you, Your Honor.

1 THE COURT: All right. We'll take about 15
2 minutes. Thank you. Thank you very much.

3 MR. STITELY: Thank you, Judge.

4 (A recess was observed.)

5 THE COURT: Is lunch here?

6 THE CLERK: It should be here any minute. Cynthia
7 has gone to get it. It should be here. She's gone to get
8 it and supposed to have it here by 12:30.

9 THE COURT: Who went to get it?

10 THE CLERK: Cynthia.

11 THE COURT: Ms. Frazier?

12 THE CLERK: Yes, sir. She's supposed to be gone.
13 It's ready. They've gone to get it and bring it back and
14 Betsy is going to help her with that since I'm back.

15 MS. PATTERSON: I apologize.

16 MR. STITELY: I don't mind, of course.

17 THE COURT: I want to start back as soon as you're
18 ready.

19 MS. PATTERSON: Okay.

20 THE COURT: You tell me how long you need.

21 MS. PATTERSON: Okay. All right.

22 THE COURT: And then you tell me about how long you
23 going to need.

24 MS. PATTERSON: I just need probably about 30 more
25 minutes, Your Honor.

1 THE COURT: All right. Well, if lunch gets here at
2 12:30, they'll probably be back ready to go at about 1:15.

3 MS. PATTERSON: That's perfect.

4 THE COURT: And I'll just tell the clerk.

5 THE CLERK: Excuse me, Your Honor.

6 THE COURT: We'll just take our lunch break now.

7 MR. STITELY: I'll be back by one, Judge.

8 THE CLERK: So just stay where you're at.

9 THE COURT: So I told them if they want to get out
10 and walk around, they can certainly do it.

11 MR. STITELY: I'll be back by one. Is that
12 acceptable, Judge, if I come back by one? I'm right across
13 the street if they need me.

14 THE COURT: Thank you very much.

15 (A recess was observed for lunch.)

16 THE COURT: All right. Anything from the State
17 before we bring in our jury, Solicitor?

18 MS. PATTERSON: No, sir.

19 THE COURT: Defense?

20 MR. STITELY: No, sir, Your Honor.

21 THE COURT: Bring them on in.

22 (The jury entered the courtroom at 1:22 p.m.)

23 THE COURT: All right. Ladies and gentlemen, I
24 hope y'all had a pleasant lunch. Welcome back; if you'll
25 please to continue to give the parties your complete and

Karen Milbrodt - Direct Examination by Ms. Patterson

1 undivided attention.

2 Solicitor, you may call your next witness.

3 MS. PATTERSON: Thank you, Your Honor. The State
4 calls Karen Milbrodt.

5 THE COURT: All right. If you'll come around and
6 be sworn for us please?

7 KAREN MILBRODT,

8 having been duly sworn, testified as follows:

9 THE CLERK: Have a seat please, ma'am. Once you're
10 seated, state your full name, spelling your last, please.

11 THE WITNESS: Good afternoon. My name is Karen
12 Milbrodt and Milbrodt is spelled M-I-L-B-R-O-D-T.

13 **DIRECT EXAMINATION**

14 BY MS. PATTERSON:

15 Q Thank you, Ms. Milbrodt. And where are you
16 employed?

17 A I work for Verizon Wireless.

18 Q And where is the Verizon Wireless that you're
19 employed at?

20 A I work at -- out of one of our Tampa office
21 buildings in Florida.

22 Q Okay. And how long have you been employed by
23 Verizon Wireless?

24 A Just over 16 years.

25 Q And what is your job title?

Karen Milbrodt - Direct Examination by Ms. Patterson

1 A I am an analyst, a Senior Analyst in our Executive
2 Relations Office. And one of those responsibilities is I
3 am a records custodian for the business records.

4 Q And I was going to ask you that. So what are some
5 of your other job responsibilities?

6 A If a consumer were to file a complaint with a
7 government agency, like an Attorney General, an SEC, UVB
8 complaint, those complaints would be filed to our office
9 and then I would be assigned the one to investigate and
10 look at it. I also handle our small claims, cases that an
11 attorney is not required, so I do that as well.

12 Q And as -- and as a records custodian, what are some
13 of your responsibilities?

14 A If records are going to be entered into evidence
15 typically in a criminal trial or civil suit, we would
16 receive a subpoena from the requesting party and those
17 records would be produced. If it was forwarded to trial
18 and you need a Verizon Wireless representative to
19 authenticate the records or to explain how to read the
20 records, then that's when a records custodian comes into
21 play. We get a subpoena for that and me or one of my peers
22 would show up.

23 Q And does your company keep the call detail records
24 of the phone calls made by subscribers during its normal
25 and ordinary course of business?

Karen Milbrodt - Direct Examination by Ms. Patterson

1 A Yes.

2 Q And why does your company keep these records?

3 A Predominantly they're for billing records or
4 engineering records.

5 Q And are these records made at the time the calls
6 are made?

7 A Yes, ma'am.

8 Q And do you have access to the records that are kept
9 by Verizon pertaining to each phone call made?

10 A I do.

11 Q And how are these records maintained?

12 A It's an electronic format. So once a call is began
13 and ended, it is stored into a database that we keep.

14 Q Okay. And was your company subpoenaed to bring
15 records relating to the number - -3982 during the time
16 frame of July 1st, 2013 and November 30th, 2013?

17 A We were.

18 Q And what information was requested pursuant to this
19 subpoena?

20 A Incoming and outgoing call details including cell
21 tower information, text messages, incoming and outgoing
22 text message records, subscriber information and that's
23 what I can recollect without looking at the subpoena.

24 Q And were these records able to be located for this
25 particular number?

Karen Milbrodt - Direct Examination by Ms. Patterson

1 A Yes, I believe the subpoena asked for July, but we
2 could only go back as far as September.

3 Q And I'm going to show you what's been marked as
4 State's Exhibit 17 and ask you to take a look at that.

5 A I recognize it.

6 Q And what do you recognize that document to be?

7 A This is a combination of two records that we sent.
8 It's a redaction of the incoming and outgoing call detail
9 as well as the calls by address location. So it's been
10 kind of combined and redacted from the original.

11 Q Okay. And is that the information that you
12 provided to Lexington County Sheriff's Department pursuant
13 to the subpoena?

14 A Yes, where they gathered this information from.

15 Q Okay. And let me show you what's been marked as
16 State's Exhibit 23. Do you recognize that document?

17 A Yes, ma'am.

18 Q And what is that document?

19 A This is the complete file of the incoming and
20 outgoing calls that were made from September to November
21 2013.

22 Q And where did that document come from?

23 A This came from our -- our, like I said, our
24 electronic system that stores these records, our Verizon
25 Wireless Production Department.

Karen Milbrodt - Direct Examination by Ms. Patterson

1 Q And did you send that information to Lexington
2 County Sheriff's Department?

3 A I did.

4 Q And did you send it in that format?

5 A I did.

6 Q Does it look like it's been changed or altered in
7 any way?

8 A It has not.

9 Q Does it fairly and accurately represent what you
10 provided to Lexington County Sheriff's Department?

11 A It does.

12 MS. PATTERSON: Your Honor, at this time, we would
13 move that State's Exhibit Number 23 be entered into
14 evidence.

15 MR. STITELY: No objection to 23, Judge.

16 THE COURT: State's 23 is in evidence without
17 objection.

18 (State's Exhibit Number 23 was entered into
19 evidence.)

20 BY MS. PATTERSON:

21 Q In going back to State's Exhibit 17, did you
22 recognize that information in that exhibit?

23 A I do.

24 Q And what is that information relating to?

25 A Again this is a combination of the incoming and

Karen Milbrodt - Direct Examination by Ms. Patterson

1 outgoing cell calls that were made during a specific date
2 range as well as the corresponding cell towers and the
3 addresses of where those cell towers are located.

4 Q And does that information fairly and accurately
5 represent the information that you provided in State's
6 Exhibit 23 to Lexington County Sheriff's Department?

7 A It is.

8 Q Does it look like it's been changed or altered in
9 any way?

10 A No, it does not.

11 MS. PATTERSON: Your Honor, at this time, we move
12 State's Exhibit Number 17 into evidence.

13 MR. STITELY: Judge, I do some questions about
14 Number 17? She kept referring to it as redacted. So I
15 would object at this point. She's calling it redacted, so
16 obviously there were some changes made.

17 THE COURT: A redaction is not a change; it's
18 something has been removed from the original. It doesn't
19 mean a change.

20 MR. STITELY: I guess I can clarify. That's not a
21 document that Verizon created, so I don't think she, once
22 again, is the proper person to deal with that particular
23 variance on the record.

24 THE COURT: May I see it please.

25 THE WITNESS: Sure.

Karen Milbrodt - Direct Examination by Ms. Patterson

1 Here's the original where those came from. That's,
2 the complete file.

3 THE COURT: This is 23.

4 THE WITNESS: Yes, sir.

5 THE COURT: You just handed me.

6 THE WITNESS: Yes, sir.

7 THE COURT: And you're saying that -- make sure I
8 get this correct -- 17 has been redacted; 17 is a
9 compilation of information from 23.

10 THE WITNESS: Yes, it is, Your Honor.

11 THE COURT: So 17 is information that is contained
12 in 23 like a photograph with just parts of it.

13 THE WITNESS: Correct, yes, sir. There are some
14 columns that are missing from that, that are included on
15 the original.

16 THE COURT: But they're included on 23.

17 THE WITNESS: Yes, sir.

18 THE COURT: All right. Mr. Stitely?

19 MR. STITELY: Judge, I have no problem of course
20 with the original. As she said the other one seems to be
21 incomplete and missing columns. I would object to it.
22 Once again, it's not Verizon's document. I think we need
23 to proffer the person who created it with the missing
24 columns.

25 THE COURT: I think it is Verizon's stuff.

Karen Milbrodt - Direct Examination by Ms. Patterson

1 THE WITNESS: It is. This document was created
2 from our records that we produced.

3 MR. STITELY: Created from but not created by
4 Verizon.

5 THE COURT: Her records are State 23.

6 MR. STITELY: Yes, sir.

7 THE COURT: From her records, there was a creation
8 of State's 17. Under State v. Gullledge which is Judge
9 Short's case out of Chester County when he was still on the
10 circuit bench and not on the appellant bench, would be
11 directly to this proposition.

12 State's 17 is admissible subject to your objection,
13 of course, Mr. Stitely.

14 (State's Exhibit Number 17 was entered into
15 evidence.)

16 MR. STITELY: Thank you, Judge.

17 THE COURT: Thank you. Thank you very much.
18 Solicitor, you may continue.

19 MS. PATTERSON: Thank you.

20 BY MS. PATTERSON:

21 Q In State's Exhibit Number 23, what was the mobile
22 directory number that was referred to in this information?

23 A The telephone number for the records is
24 - 3982.

25 Q Okay. And were you able to provide a specific

Karen Milbrodt - Direct Examination by Ms. Patterson

1 subscriber to this number?

2 A We were not because the telephone number was, the
3 billing party was a reseller called Tracfone. So they are
4 billing the customer and Tracfone is using our network so
5 their customer can make phone calls. That's why we have
6 the network records.

7 Q Okay. And so with a Tracfone, you're not able to
8 obtain who the specific subscriber is; is that correct?

9 A That is correct. We're billing Tracfone for the --
10 for their use of our towers, but Tracfone is billing the
11 consumer so we wouldn't have their billing records as far
12 as listings for the service.

13 Q And what other information are you able to obtain
14 from this, from this log in State's Exhibit 23?

15 A Sure. The log includes what's called a -- the dial
16 digit number and that's the number that the subscriber
17 dialed to make a phone call. It includes the date and time
18 the call is made. It includes information whether it's an
19 incoming or outgoing phone call. It also includes how long
20 the call lasted in seconds and then it includes the cell
21 tower information as far as by a specific number what tower
22 that was and then with another record that we produce, you
23 can sync that up with where the address is of where that
24 cell tower is located in the state.

25 Q And could you explain the cell tower locations to

Karen Milbrodt - Direct Examination by Ms. Patterson

1 the jury please?

2 A I'm --

3 Q What are, what are cell towers?

4 A Cell towers are the part of our network that pass
5 the call along when a call is being made. So you have to
6 be in range of specific tower in order for a phone call to
7 be made. So as you're driving along, your phone is sending
8 out a pulse saying here I am and our network is on when
9 your phone is turned on. It is communicating with a cell
10 tower saying here you are; I have a phone call for you;
11 here you are I have a text for you, I have a e-mail for
12 you. So as long as the phone is on, it's emanating a pulse
13 saying this is where I'm located.

14 Q And do you know how cell towers are strategically
15 placed within an area?

16 A I have a general knowledge of that we're going to
17 place these towers where there's a population. So we're
18 going to cover as many people as possible to be able to
19 make and receive reliable calls anywhere there's a gap in
20 coverage. We're going to hope to fill that gap with a cell
21 tower.

22 Q I'm going to show you what's been marked as State's
23 Exhibit 25 --

24 A Yes, ma'am.

25 Q -- and ask you to take a look at it. Do you

Karen Milbrodt - Direct Examination by Ms. Patterson

1 recognize this?

2 A I do.

3 Q And what is this?

4 A This is a series of incoming and outgoing phone
5 calls that have been pulled off of Exhibit 23.

6 Q Okay. And does it fairly and accurately represent
7 the report in Exhibit 23?

8 A It's identical.

9 Q Does it look like it's been changed or altered in
10 any way?

11 A It has not.

12 MS. PATTERSON: Your Honor, at this time, we move
13 State's Exhibit 25 into evidence?

14 MR. STITELY: No objection, Judge.

15 THE COURT: State's 25 is in evidence.

16 (State's Exhibit Number 25 was entered into
17 evidence.)

18 BY MS. PATTERSON:

19 Q Ms. Milbrodt, I want go over all of these. So I
20 just wanted to bring your attention to a just a couple of
21 these entries.

22 A Yes, ma'am.

23 Q Yes.

24 MS. PATTERSON: Your Honor, permission for the
25 witness to step down?

Karen Milbrodt - Direct Examination by Ms. Patterson

1 THE COURT: Only if I can come down and look at it
2 too?

3 MS. PATTERSON: Yes, sir.

4 THE COURT: Keep your voice up when you're away
5 from the microphone.

6 THE WITNESS: Yes, sir.

7 BY MS. PATTERSON:

8 Q With regard to that first entry, what was the
9 mobile number, mobile directory number?

10 A The mobile directory number is this column and
11 again that's the number we received the subpoena for and
12 it's - -3982 and that number is going to remain
13 constant through all of the records.

14 Q And what number was dialed from that number?

15 A On which day?

16 Q I'm sorry. On the first one, what number did that
17 subscriber number dial out to?

18 A That was - -8259.

19 Q And what date was that?

20 A That was September 20, 2013.

21 Q And how long did that call last?

22 A That lasted 15 seconds in this column.

23 Q And which cell tower was that used, hit off of?

24 A Sure. The first cell face and last serving cell
25 site; I'm sorry, that is the cell site Number 515 running

Karen Milbrodt - Direct Examination by Ms. Patterson

1 off of the Columbia switch.

2 Q And what about the second entry, what was the
3 mobile directory number that was dialed?

4 A The person who made the call was - -3982.

5 Q And which number did it dial?

6 A The same number, - -8259.

7 Q And what was that date?

8 A That was October 3rd, 2013 at 18:58. It's military
9 time, Eastern Standard, Eastern time.

10 Q Okay.

11 A The call was 19 seconds long and it was on her Cell
12 Tower 534 when the call started and 534 when the call
13 ended.

14 Q And what about that very last call on this exhibit;
15 what was the number that was, the mobile directory number
16 it was dialed from?

17 A - -3982.

18 Q And which number did it dial?

19 A - -2310.

20 Q And what date was that?

21 A That was November 10th, 2013 at 11:04, 11:04
22 Eastern time.

23 Q Is that a.m. or p.m.?

24 A p.m.

25 Q And how long was that call?

Karen Milbrodt - Direct Examination by Ms. Patterson

1 A That call was 47 seconds and again it began on Cell
2 Tower 534 and when the call ended they were still on 534.

3 Q Thank you. I'm going to show you what's been
4 marked as State's Exhibit 24 and ask you to take a look at
5 this.

6 A Yes, ma'am, I'm familiar with it.

7 Q And how are you familiar with that?

8 A This was another log that we sent the State and
9 this is the incoming/outgoing log. I'm familiar with it
10 because I received a copy myself.

11 Q Okay. And what does that document show?

12 A This is the incoming and outgoing text message log
13 for the subscriber - -3982 and this is the log from
14 September 21, 2014 through November 18, 2013. So this is
15 all -- this is the incoming/outgoing text logs from two
16 specific numbers.

17 Q And what is the other number associated with that?

18 A - -2310.

19 Q And does that document fairly and accurately
20 represent what you provided to the Lexington County
21 Sheriff's Department pursuant to subpoena?

22 A It is.

23 Q Does it look like it's been changed or altered in
24 any way?

25 A It has not.

Karen Milbrodt - Direct Examination by Ms. Patterson

1 MS. PATTERSON: Your Honor, at this time, we'd move
2 State's Exhibit 24 into evidence.

3 MR. STITELY: Judge, just to verify, I don't know
4 if she said that was a Verizon document that they created.

5 THE WITNESS: It is a Verizon document that we
6 created.

7 MR. STITELY: No objection then.

8 THE COURT: May I see it? This is State's 24?

9 MS. PATTERSON: Yes, sir.

10 THE WITNESS: 25?

11 MS. PATTERSON: 24.

12 THE COURT: All right. State's 24 is in evidence
13 without objection.

14 (State's Exhibit Number 24 was entered into
15 evidence.)

16 BY MS. PATTERSON:

17 Q Now, in providing text message information to a
18 particular phone number, are you able to provide the
19 content of the text messages?

20 A We are, but that is only if we receive a subpoena.
21 We store the actual words that are sent or acronyms that
22 are sent for approximately 3, maximum 5 days. So we would
23 need a subpoena to either produce those -- that record or
24 to hold it or store it; not dispose of it. So we have to,
25 we have to get that fairly quickly after.

Karen Milbrodt - Cross-Examination by Mr. Stitely

1 Q And if a subpoena is not received by your company
2 within a 3 to 5 days, it's -- are you able to obtain the
3 content of the messages?

4 A No, ma'am.

5 THE COURT: And that's 3 to 5 days from when the
6 message was sent; is that --

7 THE WITNESS: That is correct, Your Honor.

8 MS. PATTERSON: Yes, sir.

9 THE COURT: Thank you.

10 MS. PATTERSON: I beg the Court's indulgence?

11 No further questions. Thank you for coming.

12 Please answer any questions Mr. Stitely may have.

13 THE COURT: Thank you, Solicitor.

14 Mr. Stitely.

15 MR. STITELY: May it please the Court, Your Honor?

16 **CROSS-EXAMINATION**

17 BY MR. STITELY:

18 Q Milbrodt?

19 A Yes, sir.

20 Q Ms. Milbrodt, welcome to South Carolina. You said
21 Tampa?

22 A Tampa, Florida.

23 Q You've been in the cell phone games for 16 years
24 with Verizon?

25 A Yes, sir.

Karen Milbrodt - Cross-Examination by Mr. Stitely

1 Q Did you do cell phones before that or --

2 A No, sir.

3 Q Just a couple of very brief questions. One thing
4 the solicitor asked you about, we call them solicitors, but
5 the prosecutor asked you about was subscriber information?

6 A Right.

7 Q And you said that this particular phone, the number
8 -- -3982, the subject of the subpoena belonged to
9 Tracfone?

10 A Correct.

11 Q Are you familiar with that company?

12 A I am.

13 Q Is it a big company, a small company, in the cell
14 phone business?

15 A It's a nationwide company that provides
16 predominantly prepaid service.

17 Q Okay. Does Verizon have frequent dealings, do you
18 personally have frequent dealings with situations involving
19 things like Tracfone companies like that?

20 A I do.

21 Q Do they have a compliance person like you who would
22 track their records?

23 A I don't know that.

24 Q When you sell them, I guess that's my question and
25 if you don't know this, please tell me you don't know.

Karen Milbrodt - Cross-Examination by Mr. Stitely

1 Does Verizon sell them like a number or do you sell
2 them the right to access your network; how does that work?

3 A Right. It could be they could be using our number
4 that we have or if a customer ports in a number from
5 another carrier, say they were a Sprint customer before
6 they were a Tracfone number, it wouldn't be our number
7 specifically, but what we're doing is leasing our towers to
8 their customers so that their customers can make and
9 receive phone calls.

10 Q Okay. Is there any way to know what the situation
11 is on this number from your end?

12 A The situation?

13 Q How the number got on your network or that would
14 just be, that would be outside of what you looked up for
15 today?

16 A Right. That wouldn't be something -- right. We
17 wouldn't know if that number was ported or what have you.

18 Q Okay. Have you ever had to request compliance
19 yourself for any of your cases from any of these companies
20 like Tracfone or Go Phone or any of those?

21 A I'm not sure what you mean by compliance?

22 Q Any kind of documentation, records, anything like
23 that?

24 A I've never had to do that.

25 Q Are you -- we talked about cell phone data, is that

Karen Milbrodt - Cross-Examination by Mr. Stitely

1 your area or cell phone tower data; is that one of your
2 areas of expertise or is that outside the realm of what you
3 really deal with?

4 A No, I work with that.

5 Q Okay. One thing I wanted to ask you about just
6 briefly and if you don't know, once again, please tell me
7 if's it's not something you know about, have y'all run into
8 the problem recently with these cell phones being cloned or
9 people using numbers to send messages from numbers that
10 aren't really there's where someone would have a program
11 that says a number's coming from this particular cell phone
12 number, but it's not?

13 A I have worked with that in the past, though I don't
14 think the right wording is cloning. I -- the word has
15 escaped me, but I'm somewhat familiar with it.

16 Q Okay.

17 A Spoofing, I'm sorry, it's spoofing.

18 Q Spoofing. That's what it's called; that's right.
19 And the cell phone tower data, does your logs that you
20 brought today have a thorough analysis of pointing out
21 where the towers are anything like that or just pretty much
22 as a print record?

23 A No, cell phone tower, we have where the tower is
24 including latitude and longitude. So it's --

25 Q Do you have that stuff with you involving towers

Karen Milbrodt - Cross-Examination by Mr. Stitely

1 515 or 534?

2 A It's not part of this record, but it was one of the
3 records that we sent. It's just some thousands of pages
4 long. So I don't think it was printed for this.

5 Q Okay.

6 A I will say that Exhibit 17 does have cell tower
7 number and part of the address.

8 Q Okay.

9 A And that again is pulled from the evidence or the
10 logs that we sent the solicitor.

11 Q Okay. When did you receive the subpoena -- I don't
12 think that question was asked -- for these records?

13 A I don't know the date. I would have to see the
14 subpoena.

15 Q Okay. You can't say who was making these calls or
16 texts though, correct?

17 A Correct.

18 Q You can't say who was answering them?

19 A Correct.

20 Q In looking at State's Number 25, that was this big
21 thing?

22 A Yes.

23 Q Does this tell you whether or not a call was
24 answered or went to voicemail; is there any way to tell
25 that?

Karen Milbrodt - Cross-Examination by Mr. Stitely

1 A Well, if the call went to voicemail, it would be,
2 there would be an S under the call direction, so that would
3 be forwarded to our voicemail. So that particular bunch of
4 calls did not get sent to voicemail. Can I tell if it was
5 answered? No.

6 Q And that would be more on an incoming call if it
7 would go to your voicemail network, correct?

8 A Correct.

9 Q Okay.

10 A Because that's logged, yes.

11 Q These other numbers that were addressed, the ones
12 that were the dialed digit number, the call receiving from
13 your cell phone number, the -3892. Do you have any
14 compliance for any of those numbers, any records; did you
15 bring those for court today?

16 A If the customer dialed the phone number; do I have
17 records for the number he or she called? Correct?

18 Q Specifically, did you bring records for this
19 - -2310 number?

20 A No records other than what's already included in
21 the records for the number ending 3982.

22 Q Right. So the query was for the mobile number that
23 was making these calls. You don't have the full reports
24 from the numbers receiving the calls?

25 A Making or receiving, yes, sir.

Michael Phipps - Direct Examination by Ms. Patterson

1 Q All right. And once again, you can't say who was
2 making these calls?

3 A Correct.

4 Q Was a request made to Verizon to provide the owner
5 of the receiving numbers?

6 A Not that I'm aware of.

7 Q That's all I have. Thank you for coming.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: Redirect?

10 MS. PATTERSON: No further questions, Your Honor.
11 We ask that this witness be excused.

12 THE COURT: Thank you. Thank you very much for
13 being with us. You may step down and you may be excused.

14 THE WITNESS: Thank you.

15 THE COURT: All right. Solicitor, you may call
16 your next witness.

17 MS. PATTERSON: The State calls Michael Phipps.

18 MICHAEL PHIPPS,

19 having been duly sworn, testified as follows:

20 THE CLERK: Have a seat please, sir. Once you're
21 seated, state your full name, spelling your last please?

22 THE WITNESS: Michael Phipps. P-H-I-P-P-S.

23 **DIRECT EXAMINATION**

24 BY MS. PATTERSON:

25 Q Investigator Phipps, where are you employed?

Michael Phipps - Direct Examination by Ms. Patterson

1 A With the Lexington County Sheriff's Department.

2 Q And what department do you work in at the Lexington
3 County Sheriff's Department?

4 A Our Forensic Services Department.

5 Q And how long have you worked in the Forensic
6 Services Department?

7 A Just over 12 years now.

8 Q And what are some of the things you do in the
9 Forensic Services Department?

10 A I started out as a Crime Scene Investigator; that
11 was my primary responsibility. Recently within the last
12 few years, I've taken on conducting examinations on
13 electronic evidence and starting to move into that full
14 time now.

15 Q And what kind of training did you do to become a
16 Forensic Technology Examiner?

17 A As part of this I belonged with -- to the State's
18 Secret Service Task Force and South Carolina Electronic
19 Crime's Task Force. They host a Task Force within the
20 state and provide training and equipment to local
21 jurisdictions. So I've had several courses that they have
22 conducted.

23 Additionally, I've had courses through a company
24 called SEARCH and also the National White Collar Crime
25 Center; both of those specific to cell phone extractions.

Michael Phipps - Direct Examination by Ms. Patterson

1 Q And how often do you get trained or do you attend
2 any continuing education courses with regard to examining
3 electronics?

4 A Yes, they offer us training periodically in
5 addition to the Task Force, there's also Internet Crimes
6 Against Children Task Force that also provides us training.
7 So it's sporadic, but it's an ongoing yearly thing that we
8 have training that becomes available to us and we take
9 advantage of it.

10 Q And about how many, what are the different types of
11 electronics that you can examine?

12 A Just about anything that's used today we usually
13 categorize them either like a PC, laptop computer, or
14 mobile devices. And then the range of mobile devices in
15 this day and age is just expanding rapidly. I mean you
16 have, obviously cell phones, but GPS, fitness products,
17 just all types of equipment that allows you to communicate.

18 Q And have you ever been qualified as an expert
19 before in court?

20 A I have, yes.

21 Q And in what area have you been qualified as an
22 expert?

23 A Let me refer to my sheet here. In 2014, an expert
24 in Forensic Computer Examination and then twice in 2015,
25 first being an expert in forensic analysis of digital media

Michael Phipps - Voir Dire Examination by Mr. Stitely

1 and an expert in cell phone forensics.

2 Q And what type of courts were those you were
3 qualified as an expert?

4 A The Eleventh Circuit Court, General Sessions.

5 MS. PATTERSON: Your Honor, at this time, we ask
6 that Investigator Mike Phipps be qualified as an expert in
7 Forensic Computer Examination.

8 MR. STITELY: Judge, I don't think a specific
9 foundation sufficient has been laid. We haven't had
10 anything about his educational background.

11 THE COURT: You can certainly voir dire him as to
12 his area of expertise at this time.

13 MR. STITELY: Thank you, Judge.

14 THE COURT: All right. Thank you.

15 **VOIR DIRE EXAMINATION**

16 BY MR. STITELY:

17 Q MR. Phipps, did you get a college degree?

18 A An Associate's Degree, yes, sir.

19 Q Associate's Degree from where?

20 A Midland's Tech.

21 Q In what?

22 A Machine/Tool Technology.

23 Q Is that more line a physical engineering or more of
24 a software side?

25 A It's the, the curriculum that I was in as far as

Michael Phipps - Voir Dire Examination by Mr. Stitely

1 developing training programs in industry technology.

2 Q You have a background in software as well?

3 A A background in computer aided design in that
4 aspect of it, yes.

5 Q Okay. How about hardware and software regarding
6 mobile devices such as cell phones; have you gone through
7 any college classes or further educational classes
8 regarding the hardware or software for mobile devices?

9 A No, sir, not in college. I have since had training
10 in law enforcement for those areas. The first being in
11 2007, Core Skills for Investigation of Cellular Telephones,
12 that course was conducted by the National Consortium for
13 Justice Information and Statistics, then the National White
14 Collar Crime Center in 2014 and Cyber Investigations Basic
15 Cell Phone Investigations.

16 Q Do you have any certificates or documents showing
17 that you have passed these courses or taken any
18 examinations or anything like that?

19 A Not with me, no, sir.

20 MR. STITELY: I have no other questions, Judge. My
21 objection still stands.

22 THE COURT: Your objection what?

23 MR. STITELY: I still have the same objection. I
24 don't think there's sufficient foundation as to the
25 necessary level of expertise. There's no national

1 qualifications, no standards, no graduate degrees, nothing.

2 THE COURT: You didn't ask him about whether or not
3 he was on a National Qualifications Board.

4 Be that as it may, your objection is noted for the
5 record.

6 MS. PATTERSON: And, Your Honor, I apologize. I
7 meant to ask that he be qualified as an expert in Forensic
8 Cell Phone Examination.

9 THE COURT: Along with Forensic Computer Exam.

10 MS. PATTERSON: Yes, sir.

11 THE COURT: All right. Give me just a moment.

12 Well, normally, Madam Forelady, ladies and
13 gentlemen of the jury, a person cannot give opinion
14 testimony, but normally when a witness testifies, they must
15 testify of what they saw, heard, or sensed by smell or
16 something of that nature. However, there is an exception
17 when someone is qualified because of education, training,
18 experience or -- or the like in a particular art, science,
19 profession, craft, or otherwise. They are permitted to
20 give their opinions in the certain areas and the basis for
21 holding those opinions if the Court qualifies them that
22 way.

23 This witness, Investigator Michael Phipps, will be
24 qualified by the Court in the area of Forensic Computer
25 Examination and Forensic Cell Phone Examinations and

Michael Phipps - Direct Examination by Ms. Patterson

1 Analysis to give opinions in those areas and the basis for
2 holding the opinions. That does not mean that you, the
3 jury, must accept the opinions or the basis of the
4 opinions, but it is evidence for you, the jury, to use in
5 any way you deem fit and appropriate. Thank you. Thank
6 you very much.

7 Solicitor, you may continue.

8 MS. PATTERSON: Thank you.

9 **DIRECT EXAMINATION**

10 BY MS. PATTERSON:

11 Q Investigator Phipps, did you receive a request from
12 Detective or Investigator Renee Strickland to extract
13 information from a cell phone related to the case of State
14 v. David Ray Brown?

15 A Yes, ma'am, I did.

16 Q Do you remember when you received this request?

17 A My records indicate that December 20th, 2013, I
18 received a request to examine an iPhone on consent for this
19 case.

20 Q And was anything else provided to you along with
21 this request?

22 A Additional details as far as a target phone number
23 that they were trying to determine if it existed showing up
24 on this particular iPhone.

25 Q And do you remember what that target phone number

Michael Phipps - Direct Examination by Ms. Patterson

1 was?

2 A Yes, ma'am. - -3982.

3 THE COURT: 3982?

4 THE WITNESS: Yes, sir.

5 BY MS. PATTERSON:

6 Q And once you received this request, what did you
7 do?

8 A This instance the device was in our evidence unit.
9 It had been turned in as evidence and secured. I went over
10 the evidence unit and signed the device out; it was on the
11 chain of custody, took it to my lab where we would extract
12 data off of the device using a tool made by a company
13 called Cellebrite.

14 THE COURT: How do you spell that, sir?

15 THE WITNESS: C-E-L-L-E-B-R-I-T-E.

16 THE COURT: Thank you, sir.

17 BY MS. PATTERSON:

18 Q And what type of tool is the Cellebrite?

19 A Cellebrite is a company that specializes in making
20 tools for the cellular industry. When you go to Verizon or
21 any Sprint or any cell phone provider and you have your old
22 phone and you want your old contacts and your photos and
23 that type of stuff transferred to the device, they use a
24 Cellebrite. They also make one that's specific to law
25 enforcement for forensic use and instead of moving stuff,

Michael Phipps - Direct Examination by Ms. Patterson

1 it specializes in just taking data off of the device in a
2 forensically sound manner.

3 Q Okay. And can deleted files be taken off of a
4 cellular device with the Cellebrite?

5 A Potentially you could recover deleted items, yes,
6 ma'am.

7 Q Okay. And could you explain how you're able to
8 extract information from the cell phones using this
9 Cellebrite?

10 A Well, the phone is connected to the device. Back
11 in 2013 when we first examined it, we had a different
12 version than the hardware we're currently running, but the
13 phone is connected to the Cellebrite unit itself, certain
14 settings are placed on the Cellebrite to tell it the
15 model -- make and model that you're trying to track data
16 from and then you ask it to either recover what's called
17 either a logical file system or physical acquisition of the
18 device.

19 Q And what's the difference between a logical file
20 system and the physical extraction?

21 A The logical acquisition is kind of like if you just
22 went through the phone yourself and you looked at the
23 screens and you went into text messages and basically what
24 you see is what you get. It's pulling that information off
25 the phone.

Michael Phipps - Direct Examination by Ms. Patterson

1 File system acquisition or extraction goes just a
2 little bit deeper and it's kind of like when you're on your
3 home computer and you open folders and there's sub folders
4 and there's stuff in there that you really didn't realize
5 was there. So it's gathering that information and then
6 physical is akin to what we do with a Computer Forensic
7 Exam where before the operating system of the phone or
8 device even starts up, the Cellebrite goes in and pulls all
9 the raw data from the binary data. So it's an all
10 inclusive type of acquisition that you can do.

11 Q I'm going to show you what's been marked as State's
12 Exhibit Number 12 for identification purposes. Do you
13 recognize that?

14 A I recognize the case, yes, ma'am. I'd have to see
15 the actual back of the device, to verify 100 percent.

16 Q And you stated that --

17 MR. STITELY: Excuse me. No objection if you want
18 to put it in at this point. I don't think he'd have to
19 pull it apart.

20 THE COURT: I was going to lend him my pocket
21 knife.

22 MS. PATTERSON: Well, Your Honor, we move State's
23 Exhibit --

24 THE COURT: State's 12 --

25 MS. PATTERSON: 12.

Michael Phipps - Direct Examination by Ms. Patterson

1 THE COURT: -- is in evidence without objection?

2 MR. STITELY: No objection, Judge.

3 THE COURT: State's 12 is in evidence without
4 objection.

5 (State's Exhibit Number 12 was entered into
6 evidence.)

7 THE COURT: Thank you. Thank you, Solicitor.

8 MS. PATTERSON: Thank you, Mr. Stitely and Judge.

9 BY MS. PATTERSON:

10 Q Investigator Phipps, do you, is that the phone that
11 you obtained pursuant to the search warrant from
12 Investigator Strickland?

13 A It would have been the phone I signed out from our
14 evidence room, yes, ma'am.

15 Q Okay. And what was the first thing you did when
16 you got the phone?

17 A Well, the first thing we do a physical examination
18 of it and make some notes, is there any damage to the
19 device, record the model number, any type of identifying
20 features to the device. At that point, we, depending on
21 how the phone -- who -- who it's associated with, sometimes
22 we'll just power it up directly, sometimes we'll power it
23 up in -- in isolation, meaning put it in a bag or something
24 that isolates it from the network. In this case, it was
25 under consent so it was just powered on.

Michael Phipps - Direct Examination by Ms. Patterson

1 Q Okay. And do you know when you began your search
2 on this phone?

3 A I'm sorry?

4 Q Do you know when you began the extraction of this
5 phone?

6 A The first time in 2013, it was December 27th was
7 the date of execution. So that's when the exam started.

8 Q And were you able to come across the targeted
9 number that was given to you relating to this case?

10 A Yes, ma'am.

11 Q And what were you able to find relating to that
12 targeted number?

13 A There were various text messages that had been
14 deleted on the device that were recovered that were
15 reconstructed and showed that number was either
16 communicated to or from to this device.

17 Q Now, is there any way to add or delete any text
18 messages with Cellebrite?

19 A No, ma'am. Cellebrite is designed to be
20 forensically sound so that when we connect it to the cell
21 phone that we're examining, there's no way for us to
22 selectively delete anything or add anything to the device.

23 Q And what did you do with that information that you
24 received from that extraction?

25 A We process it with an additional software by

Michael Phipps - Direct Examination by Ms. Patterson

1 Cellebrite called Physical Analyzer and then a spreadsheet
2 type report is generated.

3 Q And what is it -- what is contained in that
4 spreadsheet?

5 A It identifies the various artifacts you would find
6 on the phone. It tries to break down in identifying the
7 contact list, photos, videos, texts, chat screens, music,
8 third party applications that are used for communicating,
9 it breaks them all down and groups them together so that
10 they can be outputted on a report.

11 Q And what did you do with this information once you
12 obtained it from your extraction report?

13 A It's burned to a disc and given to the
14 investigator.

15 Q I'm going to show you what's been entered as
16 State's Exhibit Number 9 and ask you if you recognize this?

17 A I do.

18 Q And what is that?

19 A This is a report from the Cellebrite for this
20 device. This version of the report specifically just
21 outputs any contact between the target number and this
22 device and any references where they find the target number
23 associated on this device.

24 Q Now you say that earlier that the first time you
25 did an extraction that was in 2013; did you do another

Michael Phipps - Direct Examination by Ms. Patterson

1 extraction of this phone?

2 A Yes, we did it in December of 2015. We again
3 signed the item out of evidence, ran it on the Cellebrite
4 and reacquired an image that was again processed in
5 Physical Analyzer.

6 Q And is it common to do a second extraction of a
7 phone?

8 A Yes, in this instance we were dealing with mostly
9 deleted items that were on the phone. The software that
10 Cellebrite puts out, well first off, in 2013 the actual
11 hardware we were using was an older version of Cellebrite.
12 So last year we had a newer piece of hardware in addition
13 to having more updated software. So like anything that
14 advances, there are tools that they use to identify, carve
15 out this information it proves. So that was the reason
16 that we looked at this phone a second time was to see if
17 there was any additional information that could be gained.

18 Q And were you able to gather any additional
19 information from that second extraction?

20 A Yes, there were a few text messages that did not
21 appear on the original output that you can see in the new
22 output.

23 Q So State's Exhibit Number 9, which I handed you,
24 would that be a more complete extraction report?

25 A It's a more recent. This one was December 7th,

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1 2015, and again this one is condensed down to only showing
2 specific contact from that phone number and this device
3 whether incoming or outgoing.

4 Q And what was the other phone, what was the phone
5 number of the phone that you searched?

6 A This phone?

7 Q Yes, sir.

8 A State's 12?

9 Q State's 12, yes, sir.

10 A -2310.

11 Q Were you able, did you also examine some Verizon
12 records associated with this case?

13 A Yes, ma'am, I was supplied with a disc that
14 contained records from Verizon.

15 Q And what, if any, information did you get from the
16 Verizon records that you examined?

17 A Verizon supplied several spreadsheet documents
18 specific to an inquiry for information on a targeted
19 number, which was the - -3982 number. In that
20 document, there was cell site information that showed when
21 that number was on the Verizon network, geographically
22 where it was located, as well as another spreadsheet that
23 had tower data that showed where the towers were physically
24 located.

25 Q I'm going to show you what's entered as State's

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1 Exhibit Number 25 and ask you if you recognize this?

2 A Yes, ma'am, I do.

3 Q And how do you recognize this?

4 A It's a segment of a spreadsheet. This is a
5 condensed version of the spreadsheet taking both tower data
6 and the call log history information.

7 Q Okay. And did you have any cell, the cell site
8 information on this?

9 A We were able to determine where these -- again
10 Verizon provides the information in two separate documents.
11 This document doesn't show where the actual cell tower is
12 located; it just refers to the tower by code and number.
13 You have to refer that coded number back to another
14 document to determine where that is geographically located.

15 Q Okay. So did you -- anybody from Lexington County
16 Sheriff's Department have anything to do with generating
17 this?

18 A We didn't generate it. That's just an excerpt from
19 it.

20 Q Okay. So what --

21 THE COURT: It's a what; say that again?

22 THE WITNESS: It's not --

23 THE COURT: Excerpt from --

24 THE WITNESS: -- an excerpt from it; it's not the
25 entire --

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1 THE COURT: I just didn't understand it.

2 THE WITNESS: Yes, sir.

3 BY MS. PATTERSON:

4 Q So this is an excerpt from the Verizon records?

5 A Correct.

6 Q So you had nothing to do with this?

7 A No.

8 Q You just referred to it during your examination?

9 A That's correct. I take the items you see on that
10 document and then try to determine, based on the cell tower
11 number, where that tower is geographically located.

12 Q And what can you tell us about the location of the
13 cell towers?

14 First of all, let me ask you this. Were you given
15 any information about the victim's address?

16 A Yes, I was given a physical address.

17 Q And what physical address were you given for the
18 victim?

19 A I would have to refer to the map that I drew up.

20 I don't have my notes in front of me right now.

21 Q I'm going to show you what's been marked as State's
22 Exhibit 26 and ask you if you recognize this.

23 A Yes, ma'am, that's a map that I did.

24 Q And why did you create this map?

25 A To visually represent where the towers that were in

Michael Phipps - Direct Examination by Ms. Patterson

1 use are physically located where the victim's address that
2 I was told is located and where 1258 Road is
3 located.

4 Q And how did you generate this map?

5 A The -- the base map I obtained from our county GIS
6 and then basically I did a digital version of just the old
7 fashioned pins on a map. I used a netting software where I
8 just physically drew the features that you see as far as
9 the cell sites, the labeling on the map.

10 Q Okay. And does it fairly and accurately represent
11 what you generated pursuant to this case?

12 A Yes, this is all my work product. The locations
13 for the towers that are labeled on here; they're geographic
14 locations derived from Verizon's records where they say
15 their towers are.

16 Q Okay. And does it look like it's been changed or
17 altered in any way from your generation?

18 A No, ma'am.

19 Q All right.

20 MS. PATTERSON: At this time, we move State's
21 Exhibit 26 into evidence.

22 MR. STITELY: No objection, Judge.

23 THE COURT: State's 26 is in evidence without
24 objection.

25 (State's Exhibit Number 26 was entered into

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1 evidence.)

2 MS. PATTERSON: Your Honor, permission for the
3 witness to step down?

4 THE COURT: Same deal, Solicitor?

5 MS. PATTERSON: Yes, sir.

6 THE COURT: All right. Yes, ma'am, you may step
7 down. Keep your voice up for the microphone.

8 THE COURT REPORTER: He needs to be there. He
9 needs to be over there with you.

10 THE COURT: This looks like a good worker's comp
11 claim.

12 MS. PATTERSON: Oh, geez.

13 THE COURT: Thank you. Thank you, Solicitor.

14 MS. PATTERSON: Thank you.

15 BY MS. PATTERSON:

16 Q So, Investigator Phipps, with regards to that first
17 entry on this report, how does it show the mobile directory
18 number is what?

19 A The, right here in this column, it's shown mobile
20 directory number - -3982.

21 Q And what number did it dial out to?

22 A - -8259.

23 Q And what date was that?

24 A These occurred September, October, November of
25 2013.

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1 Q Okay. And that first entry, what cell site was
2 this phone made from?

3 A The way Verizon breaks it down is they show you
4 where the call initiates on which tower and then if it ends
5 on a different tower, it'll show you that. But in this
6 instance the first serving cell site is Tower No. 515. It
7 also ends on the same tower.

8 Q And what on State's Exhibit 26, where is that cell
9 tower located?

10 A It's the western part of the map here, right there.

11 Q Okay. And also as part of your -- your
12 investigation, did you get an address for the defendant?

13 A Yes, I was told --

14 MR. STITELY: Objection, Judge, hearsay, he was
15 told.

16 THE COURT: What, what's the basis? Where does
17 that come from -- well, let me ask the jury to step out
18 momentarily. Do not discuss the case during this brief
19 recess.

20 (The jury left the courtroom at 2:23 p.m.)

21 THE COURT: Explain to me, Solicitor, the -- the
22 basis of his knowledge of, there's two issues. Of course,
23 there's just a basic hearsay issue, but beyond that he's
24 qualified as an expert and an expert can base their
25 opinions on the type of information they would -- other

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1 experts would rely on in that field. So it's kind of a
2 dual issue going on. What's the basis of his knowledge.

3 MS. PATTERSON: Well on the map that he generated,
4 he noted the defendant's address and the victim's address
5 and he -- he was able to put the cell towers that were
6 around their area and he's going to testify based on
7 Verizon's records where that cell tower was hit when a call
8 was made and when the call ended.

9 THE COURT: Thank you.

10 Mr. Stitely?

11 MR. STITELY: I don't, I don't have a problem with
12 him having the address on the document. My -- the way it
13 was phrased was calling for hearsay and he said. I was
14 told. If he had simply said through my investigation I
15 determined to use the address of this, I don't have a
16 problem with it. It was more of a technical objection just
17 the way he was answering the question because he was
18 straight up using hearsay as the answer.

19 Had he said through my investigation the address of
20 28, I'm sorry, 1250 Road became a point of
21 interest so I used in my map; I don't have a problem with
22 that because that's through his investigation, but he just
23 was answering directly to hearsay. That was my objection,
24 Judge.

25 I don't think I have a problem with him having it

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1 on the map and having knowledge of it, but I think the
2 proper response would be through my investigation I came up
3 with the address of 1250 as an address I wanted to use on
4 my map, but he said I was told and that was just hearsay.

5 THE COURT: Bring us our jury please. Thank you.
6 You got that, Mr. Phipps?

7 THE WITNESS: Yes, sir.

8 (The jury entered the courtroom at 2:27 p.m.)

9 THE COURT: All right. Solicitor, you may
10 continue. Thank you.

11 MS. PATTERSON: Thank you.

12 THE COURT: And thank you, Mr. Stitely.

13 MR. STITELY: Yes, sir.

14 BY MS. PATTERSON:

15 Q Investigator Phipps, on this map that you
16 generated, there are two addresses on here. What is the
17 address in the green?

18 A The address in the green is 214 Way.

19 Q And did you get any information about whose address
20 that was?

21 A Yes, the investigation determined that that address
22 was associated with the victim in this case.

23 Q And what about the second address?

24 A The 1258 Road was an address that was
25 identified as being associated with the suspect in this

Michael Phipps - Direct Examination by Ms. Patterson

1 case.

2 Q Okay. In regards to that first call, what cell
3 tower was that call hit from?

4 A The one -- I'm sorry, rephrase it?

5 Q The first -- I apologize. Relating to the first
6 entry on this board.

7 A Okay. The 515 Tower is this tower right here. In
8 addition to the tower data you see there, it also
9 identifies a particular space on the tower. Cell sites are
10 set up usually divided into three quadrants. If you ever
11 look at a cell site, they have a triangular shape with some
12 antennas on it. Normally there's an antenna array on most
13 sites that face due north, then one off to the southeast
14 and then southwest; but they're not always that way.

15 As you can see from the angles on these, they're
16 skewed a little bit and that information we get from
17 another document that Verizon supplies us that tells us
18 whether it's a standard configuration or whether there's an
19 offset to it. In this instance, you have the 515 tower and
20 this would be Face Number 1. So you can see the first
21 serving cell face is Face 2. So it would be this quadrant
22 down in this direction.

23 Q Okay. And what about the entry on November 5th,
24 2013, what number did that come from?

25 A What number did it originate from?

Michael Phipps - Direct Examination by Ms. Patterson

1 Q Yes.

2 A - -8982.

3 Q And what number did it call?

4 A - -2310.

5 Q And what cell tower did that hit from?

6 A November 5th showing Tower Number 515, the same
7 tower here.

8 Q And whose address is that cell tower close to?

9 A The defendant's.

10 Q And what about the entry on November 10th, 2013?

11 A It's showing the cell site of 534, which would be
12 this cell site and it's showing the Number 1 Face which
13 would be the face in the direction of the victim.

14 Q And what time was that phone call made?

15 A At 2304 hours, just before midnight.

16 Q And how long was that call?

17 A 47 minutes.

18 Q Thank you. Investigator Phipps, based on your
19 expertise, is there any way that any of these cell -- any
20 of the text messages extracted from this cell phone could
21 have been manipulated?

22 A No, the -- the -- the majority of the text messages
23 that were on the device were deleted by somebody. So what
24 we recovered were partial text messages. The only ones we
25 reported were ones that could be reconstructed and

Michael Phipps - Direct Examination by Ms. Patterson

1 associate an actual number with them as well, but nothing
2 was added or taken away from that.

3 MS. PATTERSON: I beg the Court's indulgence.

4 THE COURT: Yes, ma'am.

5 BY MS. PATTERSON:

6 Q I just want to make sure. Look at State's Exhibit
7 Number 9 again and do you recognize that report?

8 A Yes, this is a report that I generated from the
9 second acquisition that was conducted December 7th, 2015.

10 Q Okay. And does that report fairly and accurately
11 represent the report that was extracted during that cell
12 phone extraction?

13 A This document reports out all the contact that is
14 referenced specifically to the device we extracted from and
15 the target phone number.

16 Q Okay. Does it look like it's been changed or
17 altered in any way?

18 A No, ma'am.

19 MS. PATTERSON: Okay. Your Honor, at this time we
20 want to admit State's Exhibit Number 9 into evidence?

21 MR. STITELY: Subject to our previous discussion of
22 that item yesterday.

23 THE COURT: All right. Thank you. Thank you very
24 much, Mr. Stitely.

25 State's 9 is in evidence subject to the previous

Michael Phipps - Cross-Examination by Mr. Stitely

1 objection.

2 (State's Exhibit Number 9 was entered into
3 evidence.)

4 MS. PATTERSON: Investigator Phipps, I have no
5 further questions at this time. Please answer any
6 questions Mr. Stitely may have.

7 THE COURT: Thank you. Thank you, Solicitor.
8 Mr. Stitely.

9 MR. STITELY: Thank you, Judge. If it please the
10 Court?

11 **CROSS-EXAMINATION**

12 **BY MR. STITELY:**

13 Q Is it Investigator or Sergeant Phipps; I don't want
14 to get it wrong?

15 A Investigator.

16 Q Investigator Phipps. Okay. I want to talk a
17 little bit about cell tower stuff. We're going to kind of
18 go backwards if that's all right with you.

19 A Yes, sir, that's fine.

20 Q Exhibit Number 26 was the map that you created,
21 correct?

22 A Yes, sir.

23 Q Okay. In your time as an expert in cell phone
24 data, have you ever received one of the actual tower charts
25 showing the cell phones coming and going from a tower from

Michael Phipps - Cross-Examination by Mr. Stitely

1 one of the providers?

2 A I'm sorry, say that one more time; did I ever see
3 the chart?

4 Q Right. Have you received the map that Verizon can
5 produce showing the actual call volume hitting towers at a
6 certain time?

7 A No, I've never seen one of the documents from
8 Verizon.

9 Q Okay. You've never seen the Pie Charts that show
10 where the calls are coming in from that are hitting the
11 actual towers?

12 A I'm not sure if I even understand what you're
13 asking.

14 Q Well, let's talk a little bit about how cell towers
15 work. In terms of a cell tower, is always a guarantee that
16 your phone is going to hit the closest cell tower?

17 A No, sir, it's not.

18 Q And the reason for that is it kind of works off of
19 what they call a ping situation depending on how busy a
20 tower is. It'll look for a usable tower, like a Tower A is
21 full, they'll jump to Tower B, correct?

22 A Yes, sir.

23 Q Okay. So when you actually look at a chart of what
24 phones are hitting what towers, it actually -- it kind of
25 looks like plots all over a map, correct?

Michael Phipps - Cross-Examination by Mr. Stitely

1 A Okay.

2 Q All right.

3 THE COURT: Is that a yes or a no? An okay?

4 THE WITNESS: I've never seen the map he's
5 referring to and he's describing it to me, so --

6 BY MR. STITELY:

7 Q I'm sorry. So in your training, have you dealt
8 with cell towers and how they actually locate phones?

9 A I understand the theory behind it, yes, sir. I've
10 never seen any specific documents generated by Verizon that
11 your speaking of.

12 Q Or any cell phone provider?

13 A No, sir.

14 Q Okay. So just because a call hits say Tower 515,
15 it doesn't even necessarily mean it's the closest tower to
16 where that cell phone is, correct?

17 A That is correct.

18 Q And you can't see with any degree of any kind of
19 certainty where that phone is; you can just say at that
20 time, that phone used that tower, correct?

21 A Within reason, yes, sir.

22 Q Right. So I could be in theory in the northeast if
23 they had a heck of a storm in the northeast and the closest
24 available cell tower could be in Aiken?

25 A Well there's a --

Michael Phipps - Cross-Examination by Mr. Stitely

1 THE COURT: Wait a minute. Then northeast America?

2 MR. STITELY: Northeast Columbia. I'm sorry.

3 THE COURT: I'm just trying to track.

4 MR. STITELY: Yes, sir. I apologize.

5 THE WITNESS: At some point, there's a physical
6 limitation that a device can never communicate with a
7 tower. So there's a physical limitation there.

8 BY MR. STITELY:

9 Q And one of the things we talked about was tower
10 swapping. That's kind of like you can be driving down the
11 road and all of a sudden your phone kind of cuts out and
12 then it picks back up, correct?

13 A Yes.

14 Q And what that could be is you might be leaving
15 Tower 515 range and hitting Tower 524 potentially?

16 A Yes, sir.

17 Q Okay. Is there any way with any certainty that you
18 can say that those phone calls or text messages originated
19 in any exact location?

20 A Within reason there's a geographical area you would
21 expect it to have originated from, yes, sir.

22 Q Is it impossible to say that could have happened
23 anywhere on your map?

24 A Yes, sir. Again, there's a geographical limit to
25 the range of the phone.

Michael Phipps - Cross-Examination by Mr. Stitely

1 Q Sure.

2 A You can see the scale at the bottom there shows an
3 8 mile range.

4 Q So anywhere within an 8 mile radius?

5 A Well, now I'm not saying that. The map shows a lot
6 more than an 8 mile coverage.

7 Q Okay. Sorry. All right. Did you get any
8 compliance from Verizon specifically showing where their
9 data usage and where their towers were hitting those dates
10 in question to show where the cell phones were actually
11 coming from on those days?

12 A That's not a product that I'm aware of Verizon can
13 provide.

14 Q One last thing before I move on with this issue.
15 You said that the last call on Number 25 was a 47 minute
16 call?

17 A I'm sorry, the last call when?

18 Q On the bottom of the chart, it was the last one.
19 You said it was a 47 minute call is how you read their
20 chart?

21 A Yes, sir.

22 Q Okay. Without going into any of the specifics,
23 look at any of the messages on the cell phones.

24 A The text messages that were recovered?

25 Q Yes, sir.

Michael Phipps - Cross-Examination by Mr. Stitely

1 A Yes, sir.

2 Q Okay. Without going into the context, is it fair
3 to say in the same time frame that you did the extraction
4 that October to November time, there were multiple parties
5 being texted --

6 A Yes, sir.

7 Q -- between the victim's phone and other multiple
8 parties?

9 A Yes, sir.

10 Q Okay. And they were contained in, let me --

11 MR. STITELY: Let me approach, Your Honor?

12 THE COURT: Sure.

13 BY MR. STITELY:

14 Q This is a document that I was handed in discovery.
15 Is this a document that y'all created?

16 A Yeah, it appears to be. It's not what I'm used to
17 seeing how I print it out, yes, sir.

18 Q Okay. Were you asked to do an inquiry into any of
19 the other numbers from that cell phone?

20 A No, sir.

21 Q One of the questions you went over with the
22 solicitor was, can anything be -- I believe her word, I
23 don't want to misquote her -- was manipulated from the
24 Cellebrite translation. And what was the answer to that;
25 can you manipulate things from the phone to a Cellebrite

Michael Phipps - Cross-Examination by Mr. Stitely

1 translates?

2 A Right. The commercial version of Cellebrite allows
3 you to move stuff on and off of a phone and that's the
4 point we're trying to make with the forensic version is
5 that ability doesn't even exist in the forensic version.
6 There's no way that I can intentionally add something or
7 take something off of that phone.

8 Q Would it be logical that very specific texts are
9 the only ones missing in this cell phone dump?

10 A Well, in this instance, 99 percent of what we have
11 are dealing with are deleted to start with and the
12 situation we have with that is that deleted stuff is
13 over-written, so that's not saying that we were able to
14 recover every text that was ever deleted off the phone. So
15 you're going to have holes and missing pieces throughout
16 the recovery.

17 Q But it wouldn't be specifically targeted dealing
18 with any particular contacts that would be missing?

19 A No.

20 Q Were you able to do the Cellebrite thing looking
21 for images?

22 A Yes.

23 Q Did you recover any images?

24 A Yeah, I believe that was reported out in the first
25 extraction.

Michael Phipps - Cross-Examination by Mr. Stitely

1 Q Did you provide those to the State by way of
2 Discoverable Rule 5?

3 A I was, whatever we had at the time. The first
4 report, I'd have to look at the first report. All I have
5 in front of me is the second report done in 2015.

6 THE COURT: You don't have the 2013?

7 THE WITNESS: No, sir, I do not.

8 BY MR. STITELY:

9 Q Do you have any pictures from the 2015 report in
10 front of you?

11 A No, sir. The 2015 report is specifically targeting
12 known contact between this device and the target number.

13 Q Is the 2013 report something you can put your hands
14 to if you had to?

15 A I -- of course don't have it with me here, no, sir.

16 Q But is it somewhere?

17 A It's on my forensic examination computer.

18 MR. STITELY: Beg the Court's indulgence.

19 BY MR. STITELY:

20 Q Through your forensic examination, you can't tell
21 who the owner of the phone is? The target phone? That's
22 not something in your job; you're just pulling the data
23 straight from the phone, correct?

24 A Correct. The only assumption is made on what you
25 see in the documents.

Michael Phipps - Direct Examination by Ms. Patterson

1 Q Thank you. Nothing further, I appreciate it.

2 THE COURT: Redirect, Solicitor?

3 MS. PATTERSON: Just briefly, Your Honor.

4 **REDIRECT EXAMINATION**

5 BY MS. PATTERSON:

6 Q Investigator Phipps, did you review any of those
7 pictures that was extracted from the victim's phone?

8 A Again, I deal with so many cases and that was
9 hundreds of cases ago back in 2013. I'm sure I did look at
10 the photos, but I don't have a direct recollection of the
11 content of the photos.

12 Q So you don't recall if you've seen any pictures
13 that would apply to this case?

14 A I know that, obviously, I would have reported those
15 out had we seen anything back in 2013 that would be
16 immediately associated being involved with this case.

17 Q And do you remember making that report?

18 A Yes, I remember making the report.

19 Q Okay. Do you remember setting out -- well, do you
20 remember giving us any information that you've seen any
21 pictures that may have applied to our case?

22 A I don't have a recollection, no.

23 Q Thank you.

24 THE COURT: Recross?

25 MR. STITELY: No, thank you, Judge.

1 THE COURT: Madam Forelady, ladies and gentlemen,
2 step out, we'll take about a 15 minute recess.

3 (The jury left the courtroom at 2:44 p.m.)

4 THE COURT: I'm trying to, I'm trying to track this
5 December '13 report. I'm a little murky. Was there or was
6 there not photographs.

7 MS. PATTERSON: It was photographs, but it was no
8 photographs that were any naked pictures or anything like
9 that. She may have had pictures of where she lives and
10 pets and things like that. But we were never able to
11 recover any pictures of -- that she described that she sent
12 to the Justin person.

13 THE COURT: Do you have anything, Mr. Stitely?

14 MR. STITELY: Nothing specific to that. I just
15 asked him if there were because I never got any pictures,
16 so I was just verifying that.

17 THE COURT: All right. Well I just wanted to make
18 sure the record is clear and there's no Rule 5 issue. You
19 agree?

20 MR. STITELY: I don't believe so, Judge.

21 THE COURT: And that there is no photographs that
22 where -- that would be Brady? There's none that would be
23 exculpatory, correct?

24 MS. PATTERSON: Correct, Your Honor.

25 THE COURT: All right. I just wanted to get that

1 clear. Thank you. You may step down. Thank you. Thank
2 you for being with us this afternoon.

3 Any objection to the officer, detective being
4 excused.

5 MR. STITELY: No, Judge.

6 MS. PATTERSON: No, sir, Your Honor.

7 THE COURT: How many more witnesses you got,
8 Solicitor?

9 MS. DAVIS: Your Honor, we just have one and he's
10 our DNA expert.

11 THE COURT: All right.

12 MS. DAVIS: So I think he might be kind of lengthy.

13 THE COURT: Is he here?

14 MS. DAVIS: Yes, sir.

15 THE COURT: All right. Well, DNA is not but what
16 46 alleles? So it can't be too long.

17 All right. Well we'll start on him next and then
18 you'll rest after him.

19 MS. DAVIS: I believe so.

20 THE COURT: All right. We'll take about a 12
21 minute recess.

22 MR. STITELY: One thing, Judge, your law clerk had
23 asked for the records. I don't see any particular charges
24 that the defendant would request going forward depending on
25 how the whole of the State's case, I may be asking for

1 lesser, but there will be no other specific requests for
2 charge.

3 MS. PATTERSON: The only thing I have at this point
4 is that date rape is not a defense.

5 THE COURT: All right. We'll reassemble in 12
6 minutes. Thank you. Thank you very much.

7 (There was a brief recess.)

8 THE COURT: All right. Anything before we bring in
9 our jury from the State?

10 MS. DAVIS: No, sir, Your Honor.

11 MR. STITELY: No, sir.

12 THE COURT: Sheriff, step up here for me a minute.
13 All right. Bring us our jury please.

14 (The jury entered the courtroom at 3 o'clock p.m.)

15 THE COURT: All right. Solicitor, our jury is back
16 in place. You may call your next witness.

17 MS. DAVIS: Thank you, Your Honor. The State calls
18 Paul Meeh.

19 THE COURT: All right. If you'll come around and
20 be sworn for us please.

21 PAUL MEEH,
22 having been duly sworn, testified as follows:

23 THE CLERK: Have a seat, sir. Once you're seated,
24 state your full name, spelling your last on the record,
25 please.

Paul Meeh - Direct Examination by Ms. Davis

1 THE WITNESS: My name is Paul Meeh. The last name
2 is M-E-E-H.

3 DIRECT EXAMINATION

4 BY MS. DAVIS:

5 Q Paul, where do you work?

6 A I'm currently employed at SLED.

7 Q How long have you been employed at SLED?

8 A I'm coming on my 9th year now.

9 Q And what do you do there?

10 A Okay. I'm a Forensic Scientist in the DNA
11 Department.

12 Q Have you been in that position the whole time
13 you've been at SLED?

14 A Yes, the same position.

15 Q Super fun?

16 A Oh, no, I didn't mean it that way.

17 Q What did you do before that?

18 A I did Cancer Research for the University of South
19 Carolina. I got my under grad in Biology from there and
20 then in 2000 I started my master's there and in 2003 I got
21 that. That was in Biomedical Science, which is the DNA. I
22 was in Pediatric Cancer and I was doing PhD work for about
23 four years and I got hired away by SLED before I finished
24 my PhD. So I did not finish that, but...

25 Q So you got a master's and an under grad and lots of

Paul Meeh - Direct Examination by Ms. Davis

1 Science?

2 A Correct.

3 Q To be a DNA Analyst, did you have to have specific
4 training other than your school?

5 A I did. So once you get hired on at SLED, you have,
6 it takes about a year and a half to train there. You have
7 to be trained in serology, evidence processing, all the
8 things that lead up to the DNA part and then you begin the
9 DNA training, which the entirety of the training is about a
10 year and a half.

11 Q And you did all that?

12 A I did.

13 Q When did you finish that?

14 A Well, based on the fact that I've been there almost
15 9 years, it's approximately 7 and a half years ago. I
16 don't know the date and time I finished with the testing,
17 but...

18 Q A while ago?

19 A It was. It's been a long time.

20 Q You had parties and stuff?

21 A Yeah. Yes.

22 Q Within the scientific community has the study of
23 DNA been generally accepted and/or recognized?

24 A Very much so. It's very -- it's commonplace now.

25 MS. DAVIS: Your Honor, at this time, we'd like to

Paul Meeh - Direct Examination by Ms. Davis

1 offer Mr. Meeh as an expert in the field of DNA analysis
2 and statistical comparison analysis of DNA?

3 MR. STITELY: Absolutely no objection, Judge.

4 THE COURT: All right. DNA analysis and what,
5 Solicitor?

6 MS. DAVIS: Statistical comparison analysis.

7 THE COURT: All right. Thank you. Again, ladies
8 and gentlemen, you've heard -- you've heard this
9 previously. Normally a person cannot testify to opinion
10 testimony. Normally when a person testifies, they must
11 testify to either what they saw, heard, sensed by smell,
12 something of that nature. However, there is an exception
13 for witnesses qualified as expert witnesses.

14 This witness, Agent --

15 THE WITNESS: Meeh.

16 THE COURT: -- Meeh?

17 THE WITNESS: Yes, sir.

18 THE COURT: All right. Me and drop E-H?

19 THE WITNESS: Yes, sir.

20 THE COURT: Agent Meeh will be qualified as an
21 expert in the area of DNA analysis and statistical
22 comparison analysis to give opinions and to give a basis
23 for those opinions. You do not have to accept the opinions
24 of an expert. However, it's up to you, the jury, to give
25 it whatever weight and credibility you deem appropriate.

Paul Meeh - Direct Examination by Ms. Davis

1 Thank you. Thank you very much.

2 Solicitor, you may continue.

3 MS. DAVIS: Thank you, Your Honor.

4 BY MS. DAVIS:

5 Q What is DNA? And remember you're talking to people
6 that do not have your education?

7 A Sure. DNA is in every cell in your body. You get
8 half of it from your mother and half of it from your
9 father. It -- it's what makes you you. It's the blueprint
10 that your body is built from. Each person is individual
11 except for twins. Twins do share pretty much the exact
12 same DNA, but each individual person has their own, like a
13 fingerprint and that's all we measure. We just measure
14 different areas in the genome ends and compare them to
15 unknowns in evidence.

16 Q So typically, most people have, other than twins
17 you said, have, no one has the same?

18 A Correct. That's right. So it makes each
19 individual person a person.

20 Q And what do you use the DNA analysis for?

21 A We use it to compare things like evidence, say
22 someone had touched this pen; we would swab this pen and
23 look and see what sort of DNA profile we could get from it
24 and then only compare different standards or known's from
25 let's say the jury. If it was a test for me. I would hand

Paul Meeh - Direct Examination by Ms. Davis

1 this pen to one of you and then I would try to tell who,
2 whom had touched the pen.

3 Q What type of body fluids or tissues can get DNA
4 samples from?

5 A Pretty much anything. The only cell that doesn't
6 have DNA is the red blood cell. So that's, we can get it
7 from pretty much anything else.

8 Q So you could get it from saliva, from skin cells --

9 A Yes, semen --

10 Q -- semen?

11 A -- correct.

12 Q Okay. And you obviously do these analysis at SLED
13 where you work?

14 A Yes.

15 Q Do you have your lab there?

16 A Yes.

17 Q Tell me how samples are received for analysis at
18 your department?

19 A We have an Evidence Receiving Department. They
20 just take it in and they bag it into heat sealed pouches
21 and then it's distributed to where it needs to go, whether
22 that be the serology section or to me or to anyone else.

23 Q Okay. So when -- when you get something to -- that
24 needs analysis, I'm going to show you State's 16 and
25 State's 13. Do you receive it like this?

Paul Meeh - Direct Examination by Ms. Davis

1 A I do not. So this sort of evidence right here
2 would go through the Serology Department and what they are,
3 we have an Evidence Processing Department that keeps, it
4 keeps me from having to process hundreds of items like
5 this. We get blankets and big things. Our Evidence
6 Processing Department would -- would pick this up from
7 receiving and then process it for me and they make cuttings
8 and you can see where they've written on the items.

9 I'm sorry. You can see where they've written on
10 the items and to indicate where they've been processing it
11 and then I get cuttings from that.

12 Q Okay. So they wouldn't have come to SLED, the
13 underwear would not have come to SLED like this; this would
14 have been something done by the processing?

15 A Correct. That writing and the cutting and things
16 is our Evidence Processing. I am capable of doing that,
17 but it's just, it's just involved, it's in mass, it's like
18 a factory that they do a bunch of these things a day.

19 Q So you have someone else that's qualified to look
20 to see if there's anything that needs to be sent to you for
21 testing?

22 A Exactly.

23 Q Okay. And when you get it, it would be just the
24 cuttings that they've made out of these?

25 A Correct.

Paul Meeh - Direct Examination by Ms. Davis

1 Q Okay. But you would be able to tell where they
2 came from, how they got there, that type of thing?

3 A Yes. Based on the chain of custody and the
4 reports. I have to review the Serology Reports before I
5 begin my testing so I can know what kind of testing to do.
6 I mean, we have several different kinds and so I base what
7 kind of testing I'm going to do on what they require and
8 what's in the -- what the agency requires that submits it.

9 Q Okay. And do you have a Serology Report for this
10 case with you?

11 MR. STITELY: Judge, we have a matter of law to
12 take up dealing with the Serology Report.

13 THE COURT: All right. Step out please, ladies and
14 gentlemen. Do not discuss the case during this brief
15 recess.

16 (The jury left the courtroom at 3:09 p.m.)

17 THE COURT: All right. Mr. Stitely?

18 MR. STITELY: Your Honor, if it please the Court?

19 I see where the witness is going. I just want to
20 make sure we clear it up ahead of time. My understanding,
21 Mr. Meeh is the actual forensic analyst and what he will
22 testify is that he tested samples on premarked items that
23 came to him with some designation off of this Serology
24 Report. He is not the individual who produced these
25 cuttings. The Solicitor and I had a conversation before

1 trial and I said I didn't need the chain people like Ms.
2 Kyzer and Ms. Holliman, those who come from the Sheriff's
3 Department and says this is how it got to SLED.

4 We're going to have a disconnect from how the items
5 got from say the underwear, to his lab because he's not the
6 one who prepared the samples. So later on when we're
7 talking about what 4.1 really means, we're not going to
8 have the witness here that I can say where did 4.1 really
9 come from. If I'm wrong on that front and he can correct
10 me on that, I just want to make sure we're there now, but
11 it's going to come up like which pair of underwear produced
12 4.1; was it the ones from the -- turned into Detective
13 Strickland or the ones collected by the SANE Nurse and I
14 don't know that this individual would have that knowledge
15 without relying on the Serology Report, without the person
16 who actually did the cuttings, I'm going to have an
17 objection to it.

18 So I just want to preempt before we got into a
19 little bit of a problem. I'm not saying I'm worried about
20 the chain people who brought them to the lab, but if
21 someone else actually manipulated the items and provided
22 them to this witness, I -- I would like to have the
23 opportunity to examine the person who did the manipulating
24 if that makes sense.

25 He might be able to answer it all, Judge. I just

Paul Meeh - Direct Examination In Camera by Ms. Davis

1 wanted to bring it up before it became a question.

2 MS. DAVIS: Judge, the Serology Report is something
3 that Mr. Meeh is going to testify that he has to review in
4 order to do his job. So he uses that as a basis for his
5 opinion in this case and he does have knowledge of which
6 items are which numbers, he received them. They're noted
7 like they are, so he can tell us which pair of underwear,
8 which cutting came from. He's not the one that made the
9 cut-out, but he knows which it goes with as a result of the
10 Serology Report.

11 THE COURT: Mr. Stitely?

12 MR. STITELY: Judge, if you wouldn't mind a quick
13 in-camera just to make sure that he can do that, that way
14 we want have a problem, Judge. I just want to make sure he
15 can do that so we're not missing a piece.

16 THE COURT: All right. Solicitor?

17 **DIRECT EXAMINATION IN CAMERA**

18 **BY MS. DAVIS:**

19 Q And do you have a copy of the Serology Report with
20 you?

21 A I do not. I can answer it. I think I can answer
22 it if I'm allowed to, Judge, is that the way that these are
23 numbered, is they come in as parent items. So parent item
24 4, the cutting would automatically be 4.1 if that makes
25 sense. So I'd know by the container and the parent item.

Paul Meeh - Direct Examination In Camera by Ms. Davis

1 So that would be the best way that I would be able to tell
2 would be the container. So for example, item 5.1, let's
3 say it's a cutting from 5.1. That's going to be in a case
4 or in adhesive pouch numbered 5 and 5.1 could only have
5 come from that. If there were any hair or debris, it would
6 be 5.1.1 or 5.1.2.

7 THE COURT: As I recollect 14, 15 and 16 which is
8 the photographs of the underwear and each pair is
9 different. So if you can't cut, you can't take a cutting
10 from a zebra for example and it be a deer. I mean every --
11 every items is different. As he said, he gets a counted
12 item and then the points go down.

13 MR. STITELY: And I'm good with that.

14 THE COURT: That make sense?

15 MR. STITELY: Yes, Judge.

16 THE COURT: It makes sense to me.

17 MR. STITELY: I'm good with that and looking at it,
18 I just wanted to make sure that we could find out where
19 5. -- because -- right here this is, for example, Judge, in
20 holding Number 20, this is what the SANE Nurse collected.
21 It has the Number 5 on it. So you're saying these would be
22 the originator of what you deemed 5.1?

23 THE WITNESS: Yes, sir.

24 MS. DAVIS: And I will put all of that into
25 evidence.

Paul Meeh - Direct Examination by Ms. Davis

1 MR. STITELY: Then I don't think I have a problem,
2 Judge. I just wanted to make sure we could connect the
3 dots.

4 MR. DAVIS: We will connect the dots.

5 THE COURT: All right. I always like to make sure
6 I'm tracking, Mr. -- nothing wrong with connecting the
7 dots. The only thing wrong with connecting the dots is
8 when there's no dots.

9 MS. DAVIS: Your Honor, while they're out real
10 quick, I believe the State has failed to offer State's
11 Exhibit Number 13 into evidence. I don't believe this --

12 THE COURT: Any objection?

13 MR. STITELY: No objection, Judge.

14 THE COURT: All right.

15 (States Exhibit Number 13 was entered into
16 evidence.)

17 (The jury entered the courtroom at 3:14 p.m.)

18 THE COURT: All right. Our jury is back in place.
19 Thank you, Mr. Stitely.

20 Thank you, Solicitor, you may continue.

21 MS. DAVIS: Thank you, Your Honor.

22 **DIRECT EXAMINATION**

23 BY MS. DAVIS:

24 Q We were talking about what items were actually sent
25 to you for analysis in this case?

Paul Meeh - Direct Examination by Ms. Davis

1 A Would you like me to list them or just refer to
2 them now?

3 Q You go ahead and list them.

4 A Okay. I got a victim buccal swab, which is a
5 standard from the inside of the cheek; and that came from a
6 Sexual Assault Evidence Collection Kit. That's just
7 common, that's part of the kit that they select, it comes
8 from the inside of your cheek.

9 I got a buccal swab from a David Ray Brown. Do you
10 need the item numbers as well?

11 Q Yes.

12 A The victim buccal swab is Item 1.4.

13 David Ray Brown's buccal swab is Item 7.

14 I got a cutting from some panties, which is Item
15 4.1.

16 I also debris from the panties in the form of hair;
17 those were Items 4.2.1., 4.2.2 and 4.2.3.

18 And then I received one more cutting from -- it
19 looks like some other panties and that's item 5.1.

20 Q Now can you explain you're saying 5.1, 7 or, can
21 you explain to us how that's done?

22 A Yeah, so let's say a Sexual Assault Evidence
23 Collection Kit has 10 items in it and it comes in as an
24 envelope and it's just broken down into the different
25 aspects. Each envelope inside of that parent envelope gets

Paul Meeh - Direct Examination by Ms. Davis

1 a number. So it would be 1, 2, 3 so on and so forth. So
2 it could be vaginal swabs would be 1.1, oral swabs would be
3 1.2, and like I said the buccal swab got one which was 1.4.
4 Oftentimes 1.3 is smears that they make in the hospital to
5 look for spermatozoa at the hospital. That's just an
6 example.

7 So item 4.1 that came to me as a cutting from
8 panties item 4. So 4.1 is telling me that it's the first
9 cutting from item 4.

10 Q I'm going to show you what has been marked as
11 State's Exhibit Number 27 for ID purposes; do you recognize
12 this?

13 A I do. I see my own initials on there. Whenever I
14 cut this package open, whenever I close it back, when I
15 seal it, I have to put my initials and the date on it after
16 I work with it. So as you can see here that's my initials
17 and date. I -- it looks like I may have opened it twice
18 for some reason, but that's neither here nor there. It's
19 got both examples and --

20 Q Let me get the scissors?

21 A Sorry, there's so much stuff on the outside that I
22 can't, oh, there's an Item 4.2.

23 (Solicitor handed the witness a pair of scissors.)

24 THE WITNESS: Thank you. All right.

25 So this would be items, there's an Item 2.1 in here

Paul Meeh - Direct Examination by Ms. Davis

1 but there was so semen identified on that and that's why I
2 didn't process it, apparently. That got me concerned for a
3 second.

4 Here's Item 4.1, which I did process and Item 4.2,
5 which is the debris and this had 3 hairs in it and there's
6 4.2.1, .2.2 and .2.3.

7 MS. DAVIS: All right. Your Honor, at this time,
8 we would move in State's No. 27?

9 MR. STITELY: No objection, Judge.

10 THE COURT: State's 27?

11 MS. DAVIS: Yes, sir.

12 THE COURT: 4.1, 4.2.1, 4.2.2, 4.2.3 and 2.1?

13 THE WITNESS: Correct, sir.

14 THE COURT: And those numbers are SLED's numbers?

15 THE WITNESS: Correct.

16 THE COURT: Not our evidence number, but they're
17 your numbers?

18 THE WITNESS: Yes, sir.

19 BY MS. DAVIS:

20 Q We're going to play a matching game. We're going
21 to match where these came from.

22 A Okay.

23 Q So the jury will know what these cuttings are.

24 A Okay.

25 Q Because when you get them, they're just little cuts

Paul Meeh - Direct Examination by Ms. Davis

1 of paper, right?

2 A Or, or it's actually cloth.

3 Q Not paper, cloth?

4 A Yeah, I'm sorry.

5 Q All right. It's here --

6 THE COURT: State's 27 is in evidence without
7 objection?

8 MR. STITELY: Yes, sir.

9 MS. DAVIS: Oh, I'm sorry.

10 THE COURT: I'm sorry.

11 (State's Exhibit Number 27 was entered into
12 evidence.)

13 BY MS. DAVIS:

14 Q So 4.1 you analyzed this?

15 A Uh-huh (affirmative response).

16 Q What was 4.1?

17 A It says cutting from green panties.

18 Q Okay. And then let's set these two to the side.

19 Okay. I'm going to show you what's been entered as
20 State's Number 19. You have the gloves on. We need more
21 space.

22 A It's okay. So I would assume that they're
23 referring to these. These are the green ones. And as you
24 can see these have been processed. They've got writing
25 where the Serologist has identified different areas of

Paul Meeh - Direct Examination by Ms. Davis

1 interest and they've -- the Serologist in this case has
2 actually though, has labeled something as APS negative and
3 APS positive. That's called Acid Phosphatase and that's an
4 indication of semen. So what she would do is put an
5 alternate light source on this and look at the cloth itself
6 and if it shined in a certain spot, she would test it for
7 that APS to see if it -- if it would possibly be semen and
8 it looks like she has several areas that were negative for
9 semen. I guess what she sent me looks like it's from down
10 here in the bottom and crotch area maybe.

11 Q What's on --

12 A There you can see where you cut. She actually
13 labeled 4.1. That's the edge of the cutting there. I
14 don't know if you guys can read that from there, but --

15 Q If they want, they'll be able to look at it in the
16 jury room.

17 A Okay.

18 Q And this writing on the paper, who would this have
19 been done by?

20 A That was actually, again, she would just put the
21 dates and what items she processed in this -- in this batch
22 and the case number.

23 Q So this would be Items 2 through 4?

24 A Correct.

25 Q Of your numbers of SLED's numbers?

Paul Meeh - Direct Examination by Ms. Davis

1 A Correct.

2 Q Okay. So the underwear in your hand right now
3 would be where the cutting came from for what's 4.1 on your
4 report?

5 A Yes.

6 Q Okay. So many bags.

7 All right. I'm going to show you what's been
8 entered as State's Number 20. Open that one up.

9 A So this one is a little bit easier because it looks
10 like it only has a single item in it. It's labeled as
11 Item 5.

12 Q And that would correspond with 5 on your report?

13 A You can see on that yellow label, correct and then
14 so you need me to show 5.1 as well?

15 Q Yes, please.

16 A I can't guarantee that she wrote the cutting
17 number, they don't always do that, but sometimes they'll
18 approximate where they took the cutting from on here.
19 There it is, 5.1.

20 Q So what you analyzed as 5.1 on your report would
21 have come from this pair of underwear?

22 A Correct. And I can't really tell what part of
23 the -- that's correct.

24 Q I don't want the Court Reporter mad at me so I'll
25 get it together.

Paul Meeh - Direct Examination by Ms. Davis

1 THE COURT: No, trust me, you don't want that.

2 MS. DAVIS: No, I do not.

3 BY MS. DAVIS:

4 Q Okay. Let's look at this one. This is State's
5 Number 18 and I believe it's SLED'S Number 7.

6 A And immediately I see my initials and the date and
7 I worked on it. It's a buccal swab. It's a really common
8 kit for us. It's a little package that the buccal swabs go
9 in. They're just a cotton tipped applicators. I see this
10 one is filled out by a David Ray Brown signed; it's Item 7.

11 Q Okay. And Item 7 on your report was listed as?

12 A Buccal swab from David Ray Brown.

13 Q Okay. And that would be the defendant in this
14 case?

15 A Correct.

16 THE COURT: Tell me that State's number again?

17 MS. DAVIS: State's Number 18, Judge.

18 THE COURT: Thank you.

19 BY MS. DAVIS:

20 Q And State's Number 18 and SLED's Number 7, were you
21 able to get a DNA profile for the defendant from this?

22 A Yes, I was.

23 Q All right. This is State's Number 21 and SLED's
24 Number 1. Tell me what that is.

25 A This is the Sexual Assault Evidence Collection Kit

Paul Meeh - Direct Examination by Ms. Davis

1 and this is what comes in hospitals all around the State
2 they have these and you go, unfortunately, you go and visit
3 a nurse and they take the envelopes and things out of here
4 and it's got a protocol to where they can collect the right
5 stuff, if that makes sense after, after a crime.

6 And that -- those are the smears I was referring
7 to. My Item 1.4 would have come from the inside of this
8 white envelope.

9 Q And what is Item 1.4?

10 A It's a buccal swab from the victim.

11 Q And were you able to get a DNA profile from that
12 for the victim?

13 A Yes, I was.

14 Q Okay. I'm going to show you what's been marked for
15 ID purposes only as State's No. 28; do you recognize that?

16 A I do. This is Item 5.1.

17 Q And what would that be?

18 A That was the cutting from the crotch area of the
19 panties.

20 Q I'm showing you the photo of State's Number 13.
21 This would have been your Item 5?

22 A Correct.

23 Q The one that you pulled out?

24 A Yeah, and it was even labeled 5.1 right beside
25 where they cut from it.

Paul Meeh - Direct Examination by Ms. Davis

1 Q Okay.

2 A Correct.

3 Q Where you held up for the jury to see?

4 A Correct.

5 Q So that cutting that you tested came from these
6 underwear?

7 A Yes.

8 Q Okay. Instead of pulling them back out, I thought
9 the photo would be a little easier. And this has your
10 initials?

11 A Yes. Again it has the same where I sealed it and
12 initialed and dated it.

13 Q So it hasn't been changed in any way?

14 A No. And it's still sealed.

15 MS. DAVIS: Your Honor, the State would move
16 State's Number 28 into evidence?

17 MR. STITELY: No objection, Judge.

18 THE COURT: State's 28 is in evidence without
19 objection.

20 (State's Exhibit Number 28 was entered into
21 evidence.)

22 BY MS. DAVIS:

23 Q Okay. We talked about that you were able to get a
24 DNA profile from Item 1.4 and Item 7; 1.4 being the victim
25 and 1.7 being the defendant; is that right?

Paul Meeh - Direct Examination by Ms. Davis

1 A Correct.

2 Q And did you do any type of comparative analysis
3 using those?

4 A I did. I was asked to compare them to the evidence
5 in this case, which was the two cuttings from the panties
6 and the hairs.

7 Q And let's talk about Item 4.1, which would have
8 been this pair of underwear that I'm showing in State's 16.
9 Tell me the results that you have from that comparison
10 analysis?

11 A Well, based on, based on the Serology Report, they
12 said semen indicated, which means they had a test down
13 there that said there was probably some semen there. So
14 that means what I do is called a differential extraction
15 and what that does is try to separate the female cells from
16 the male cells and the way it does that is it tries to
17 separate the female epithelial cells which are like skin
18 cells, but they are usually from the, obviously, the
19 vaginal area, from spermatozoa and it uses different
20 chemicals to do that.

21 If you can imagine spermatozoa, they're tougher,
22 they don't lye as easily as skin cells from the epithelial
23 cells whether their men or women. So I did a differential
24 extraction on that and I attempted STR DNA Profiling.

25 So STR DNA Profiling is the one I was telling you

Paul Meeh - Direct Examination by Ms. Davis

1 guys about that you test the entire, pretty much the entire
2 genome, different stops in the genome to try to compare all
3 over. And in this case, that wasn't exactly successful
4 because the differential extraction didn't work optimally
5 and that happens sometimes. And that's because there
6 probably weren't many spermatozoa there. There was
7 probably semen there, but may the act wasn't finished or
8 ejaculation didn't occur on that exact spot and so we got
9 some enrichment in the male fraction of that and there was
10 possibly some spermatozoa, but we didn't get -- we didn't
11 get a clean male profile from the regular STR DNA type.

12 Q So what did you do as a result of that?

13 A As a result, we move on to what's called Y-Typing
14 and the reason that works really well, it's super
15 sensitive, because it only, it only works on male cells.
16 It's from -- it's on the Y chromosome, which you get from
17 your father and from your grandfather. So females don't
18 have that. You've probably heard a million times that
19 females have two X chromosomes and a male as an X and a Y.

20 Well on the Y testing, what I do is just test
21 several different parts of that Y chromosome and then
22 compare it back to other standards, including myself and
23 police officers around the state to make sure there's no
24 contamination and things like that.

25 Q Tell me about what you do to prevent contamination?

Paul Meeh - Direct Examination by Ms. Davis

1 A Actually a whole lot of steps. To prevent
2 contamination we process evidence first, never at the same
3 time of standards.

4 Q And you're saying standards, is that the known
5 samples like the victim and the defendant?

6 A Correct, that would be the two buccal swabs. So
7 the known standards would be, yeah, the buccal swabs. The
8 evidence would be the non-known's. So the thing that we
9 do, we separate those in time. We never process those
10 together. They're never opened together. We never extract
11 them on the same machines, never in the same volumes so
12 that we don't get tubes mixed up. They're a bunch of
13 steps.

14 And then at the end, we do a contamination check so
15 we have blanks that are built in. We have a data base of
16 all the officers in the State. We have a data base for
17 ourselves obviously in the laboratory. We check against
18 all those things.

19 Q So there's no chance that the known samples could
20 have mixed in with the what we're calling evidence, unknown
21 samples?

22 A It seems unlikely in this case. There's no
23 indication of it based on the reagent blanks, based on the
24 negative amplifications, there's no indication of
25 contamination. It seems unlikely.

Paul Meeh - Direct Examination by Ms. Davis

1 Q And you did all the proper checks for that?

2 A Correct.

3 Q I'm going to show you what has been marked as
4 State's Number 29. See if you recognize this.

5 A I do. This is my report from this case.

6 Q Has it been altered in any way?

7 A Not that I can see at first glance. I don't
8 believe it has been altered.

9 Q Double-check?

10 A It does not appear to have been altered.

11 Q So State's Number 29 would be the report that you
12 gave to law enforcement?

13 A Correct.

14 MS. DAVIS: Your Honor, at this time, the State
15 would move Exhibit Number 29 into evidence?

16 MR. STITELY: No objection, Your Honor.

17 THE COURT: State's 29 is in evidence without
18 objection.

19 (State's Exhibit Number 29 was entered into
20 evidence.)

21 MS. DAVIS: Your Honor, I believe I failed to move
22 State's Number 18 into evidence, which would have been the
23 defendant's buccal swab?

24 MR. STITELY: No objection, Your Honor.

25 THE COURT: All right. 18, State's 18 is in

Paul Meeh - Direct Examination by Ms. Davis

1 evidence without objection.

2 (State's Exhibit Number 18 was entered into
3 evidence.)

4 MS. DAVIS: Thank you.

5 BY MS. DAVIS:

6 Q So if we look at your report and I was going to put
7 it up there, but that seems to be malfunctioning along with
8 all the rest of the equipment we've tried today.

9 Number 4.1 we've established is the same as State's
10 16. All right. Let's talk about your results about the
11 cut out from these underwear that were the victims?

12 A So I performed STR DNA and these are, this is the
13 example where I attempted STR analysis and didn't get a
14 satisfactory result because there wasn't complete
15 separation of the male and female cells and so I moved on
16 to the Y filer that we talked about and I was able to
17 identify a Y profile.

18 Q When you compared 4.1 to the victims known DNA,
19 were you able to find her DNA there?

20 A Yes, that was -- that was part of the test. So in
21 the female fraction of that same test, it matched the
22 victim.

23 Q So these are her underwear?

24 A Correct.

25 Q Okay. All right. Let's talk about the male, the

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1 male part. What was your result from that when you
2 compared it to the defendant?

3 A Well, like I was saying before, the STR portion was
4 insufficient for comparison. I didn't get enough STR, but
5 the Y profile -- so the actual result as it reads from my
6 report is the Y STR DNA profile developed from the sperm
7 fraction of Item 4.1 is a mixture of at least two
8 individuals. The Y STR DNA profile of the major
9 contributor to this mixture matches the Y STR DNA profile
10 of David Ray Brown.

11 Q So you found that the sperm fraction, which you
12 mean would be sperm or semen is the type of sample?

13 A It's enriched for that; that's right. In this
14 example, obviously we didn't get full separation and we got
15 some female carryover into that fraction, a lot of female
16 carryover into that fraction and --

17 Q Would that be abnormal when it's a woman's
18 underwear?

19 A Definitely not. There's so much shedding from that
20 region and the underwear rubbing so close to the skin, it
21 wouldn't be odd at all.

22 Q Okay. So let's talk again about the -- the male
23 part. You -- you said that it matched whose DNA?

24 A David Ray Brown matched the major contributor.

25 Q Okay. So major contributor and minor contributor,

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1 let's talk about that; explain that to the jury please.

2 A Well in simple terms, if, if you were to wear a
3 shirt for a week and then hand me the shirt and I wear it
4 for an hour and we take DNA off of it. I may have put some
5 DNA onto that shirt, but I probably didn't put nearly as
6 much as you did. You probably would have put and I'll say
7 ten times more, maybe twenty times more. And that's what
8 happens in a spot like this. For the sperm fraction of
9 Item 4.1, the Y is a mixture of two individuals, but there
10 was one that's really high that is the major contributor
11 that's really obviously much higher than the other person
12 and then the other is much lower.

13 Q So for you to be able to make that determination,
14 would it have to be a completely differential, one much
15 higher than the other?

16 A Yes, it has to be a profound difference.

17 Q And if you'll look at page 5 of 5 of your report,
18 which would be Table 2, the Y Filer. I wanted to put it up
19 there, but I'll just stand close. You have a copy up there
20 of yours?

21 A I do.

22 Q If you'll explain this to the jury please; what
23 does this show us?

24 A So what that table makes at the very top you see
25 the positions. Those are like little addresses, like a

Paul Meeh - Direct Examination by Ms. Davis

1 street address; it says DY 456, that's a street address of
2 what I tested on the Y chromosome. Each one of those
3 spots, you can tell it says DY 389, it's just a different
4 spot. So each spot comes back with a number and what that
5 number is, is a length. It's like -- imagine railroad
6 tracks or railroad ties. You can identify a city by how
7 many railroad ties or at each of their intersections if you
8 go and measure say five different intersections and it's
9 got fifteen railroad ties at this intersection and thirteen
10 railroad ties at that intersection, it ends up that you can
11 identify a city that way. So that's all we're doing here
12 is we're measuring little spots on that Y chromosome --

13 Q So these --

14 A -- and just seeing how big they are.

15 Q I apologize. I didn't mean to interrupt?

16 A No problem.

17 Q So these would be the points that you would check
18 to see if they matched?

19 A Correct. And where that number is a size; that's
20 it.

21 Q Okay. All right. So the first column says Number
22 7, David Ray Brown. The numbers across in that row, what
23 would those be?

24 A So that's his known standard. That comes from his
25 buccal swab that he submitted.

Paul Meeh - Direct Examination by Ms. Davis

1 Q So this would be his DNA numbers that you used for
2 comparison?

3 A Correct.

4 Q Okay. And then the next line says 4.1S, cutting
5 from panties and that would be 4.1, the pair of underwear
6 that we've discussed?

7 A Correct.

8 Q Okay. And there's some bold and some non-bold
9 numbers; tell us why?

10 A So the bold indicates who was the major
11 contributor. So I was saying if you wore the shirt for a
12 week and I wore it for a day, we'd say I'd bold your
13 numbers in that table if it came back that your DNA was
14 much higher, I would bold your numbers in the table.

15 Q Okay. So let's talk about that. What was the
16 defendant's number in the first column?

17 A 15.

18 Q And what, from 4.1, the victim's underwear, what
19 was it?

20 A 15.

21 Q Okay. Let's go to the next one, his number?

22 A 13.

23 Q And from the underwear?

24 A 13.

25 Q The mate was the major contributor?

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1 A Correct.

2 Q And we go to the next column. What was the
3 defendant's?

4 A 24.

5 Q And what was found on the victim's underwear?

6 A 24 was the major contributor.

7 Q Okay. And is that consistent all the way across?

8 A It is.

9 Q That he, all of the defendant's numbers hit the
10 major contributor numbers for Item 4.1?

11 A Correct.

12 Q So what does that tell us?

13 A That tells us that someone with that Y chromosome,
14 someone with a Y chromosome matching David Ray Brown,
15 contributed to the sperm fraction on those panties or on
16 Item 4.1.

17 Q And that could have come from just a random
18 encounter?

19 A Not this much and not given the fact that it --
20 it's -- in my opinion, it seems to be enriching during that
21 differential extraction, it's enriching for a male
22 fraction. You can see that in my table, the Y chromosome
23 starts to come out when I -- after I do the male fraction
24 on the sperm fraction and, and given the semen from the --
25 from the Serology testing by the possibility of semen,

Paul Meeh - Direct Examination by Ms. Davis

1 those two things together, I would say it's not a random
2 encounter.

3 Q And would you say that especially because of where
4 the sample was taken from?

5 A Definitely. I mean these -- yeah, the crotch of
6 the underwear is something you'd happen to touch I guess or
7 happen to accidentally place semen either.

8 Q Okay. Back to your report. Now you do
9 percentages. Let's talk about that. For number 4.1, the
10 likelihood that it's the defendant's, I think you have 1 in
11 240?

12 A Well, yeah, I need to be clear on that. So the,
13 the actual result is the probability of randomly selecting
14 an unrelated male individual having a Y STR DNA profile
15 matching the major contributor to this item is
16 approximately 1 in 240. Now the reason that's important is
17 because if we went and selected his father, it would match,
18 right. I mean any, any male relative of his would also
19 match, but the 1 in 240 tells us that of the other
20 population, of the entire world population that eliminates
21 99, more than 99 percent of all other people who would not
22 have been able to contribute that.

23 Q So we're saying it's a 99 point above chance that
24 it's the defendant or his male relative?

25 A Exactly. Precisely.

Paul Meeh - Direct Examination by Ms. Davis

1 Q So even though the numbers seem small, 1 in 240, I
2 know 240 people. We probably have 240 in here for jury
3 selection. That's not what it's saying?

4 A Definitely not. Well if you consider that's of men
5 also; it can't be of women. So in the world population and
6 the evidence doesn't exist in a vacuum either. Not
7 everyone has equal chance to have access to the underwear
8 and the statistic is part of the puzzle there. So --

9 Q So as to the underwear of 4.1, your item, to a
10 reasonable degree of scientific certainty, whose DNA did
11 you find on these?

12 A I feel like the major contributor was David Ray
13 Brown.

14 Q The defendant in this case?

15 A Correct, or one of his male relatives.

16 Q Right. From a 13 year old's underwear?

17 A Correct.

18 Q All right. Let's talk about 5.1. I believe that
19 we have established that it's State's Exhibit 13, these
20 underwear?

21 A Yes.

22 Q Which you also found to be the victim's?

23 A Yes.

24 Q All right. Tell me your results about 5.1?

25 A Again, I attempted differential extraction because

Paul Meeh - Direct Examination by Ms. Davis

1 the Serology indicated there was possible semen there. I
2 didn't get the Y STR testing was insufficient again. It
3 actually didn't produce anything foreign to -- to the
4 victim in this case to Minor , but it did, the
5 non-sperm fraction didn't match up so they're definitely
6 her panties. The Y STR profiling again it was partial. I
7 didn't get an entire -- I didn't get an entire Y profile
8 off of this one, but what I did get also matched the Y STR
9 profile of David Ray Brown.

10 Q And was this one a mixture?

11 A It was not a mixture.

12 Q Okay. If we look back at Table 2 from your report,
13 the numbers are consistent again?

14 A Correct.

15 Q On the ones that you were able to get one for?

16 A Yes.

17 Q So the defendant's points match?

18 A Correct.

19 Q And I believe in your, in your report it says 1 in
20 210?

21 A Correct. That's my exact result would be, again,
22 the probability of randomly selecting an unrelated male
23 individual having a Y STR DNA profile matching this item is
24 approximately 1 in 210.

25 Q Okay. And what percentage would that be?

Paul Meeh - Direct Examination by Ms. Davis

1 A It would still be over 99 percent.

2 Q So over 99 percent that it is the defendant or one
3 of the defendant's male relatives?

4 A You have a 99 percent chance of failing if were to
5 go out into the world and select people at random, you'd
6 fail 99 percent of the time -- more than 99 percent of the
7 time based on this statistic.

8 Q So even though these numbers sound small, it's not
9 1 in 206 sextillion?

10 A Correct. So DNR STR testing often generates these
11 massive numbers; it's like killing a fly with a sledge
12 hammer. You can tell when you get my report if you look at
13 the -- the first items, the very first results are items
14 from the victim's underwear 4.1, 5.1 where I matched those
15 items to her and that's that is 1 in 206 sextillion which
16 is a number that is incomprehensible, it's so huge.

17 Now that's a definite match, but it's also a really
18 tough way to test things. You have to test so many spots
19 in the genome, you know 15 or 16 to get it that way. The
20 difference is Y STR testing only counts as 1 of these tests
21 because it's one spot, one chromosome. These addresses are
22 all different. These addresses are all on the Y
23 chromosome. So I can only -- it limits our ability to, it
24 limits the weight of statistics is what I'm trying to
25 imply. But it doesn't limit the way they match. The

Paul Meeh - Cross-Examination by Mr. Stitely

1 match -- if the person is one off, they're excluded. So --

2 Q Okay. So in this case, holding up State's 16 and
3 State's 13, these underwear, which would be your 5.1 and
4 your 4.1 to a reasonable degree of scientific certainty,
5 whose DNA did you find in these underwear?

6 A David Ray Brown and the victim, Minor

7 Q Any doubt in your mind?

8 A Not me personally.

9 MS. DAVIS: I beg the Court's indulgence?

10 THE COURT: Yes, ma'am.

11 MS. DAVIS: Paul, I guess that's all I have for
12 you. Please answer any questions that Mr. Stitely has.

13 THE COURT: Thank you. Thank you, Solicitor.

14 Mr. Stitely.

15 MR. STITELY: Thank you, Judge. Please the Court?

16 **CROSS-EXAMINATION**

17 BY MR. STITELY:

18 Q Mr. Meeh, how are you today?

19 A I'm well; how are you, sir?

20 Q Good. We met briefly during the break.

21 A Yes, sir.

22 Q All right. My DNA knowledge is nowhere near
23 extensive as your own, but I want to go through a couple of
24 questions I have and maybe clear things up. When we talked
25 about these chromosome location matches, those are your key

Paul Meeh - Cross-Examination by Mr. Stitely

1 numbers; your DY, your roadmap?

2 A Correct.

3 Q The way you typically would do -- when you talk
4 about going out to so many was one of the very last things
5 you said?

6 A Uh-huh (affirmative response).

7 Q When you do a DNA profile, you can go 9 markers, 15
8 markers, 23, 2, how many billion markers; how many markers
9 potentially are there?

10 A There are many of those markers. These short
11 tandem repeats will identify all through the genome. The
12 genome is three billion base pairs.

13 Q And pretty much the way it works is almost like a
14 factorial. You hit the first marker, then you go the
15 second marker, but you have to have to one and two to go to
16 three?

17 A Yes, sir.

18 Q Okay. Factorial is the number that you multiply by
19 the repeating number thereafter.

20 So is it fair to say though when you look at say DY
21 S 456 on a male Y is a 15 not probably the most common
22 link?

23 A It might be.

24 Q So there's only so many links typically seen in the
25 male genome, correct?

Paul Meeh - Cross-Examination by Mr. Stitely

1 A There are only so many links in any genome, male or
2 female, correct.

3 Q The way we describe that as we've always heard we
4 are this teenie little piece away from monkeys if you look
5 at our genomes, correct, when you go down, you go 45
6 matches to the 46 chromosomes to this billionth part?

7 A Slightly different. I see what you're saying, but
8 the biology of that is slightly different.

9 Q Okay.

10 A What we're testing here is we're testing a simple
11 length at a short tandem repeat. These are functional
12 elements. There aren't, this isn't something that works on
13 your genome. So all I'm testing is the length.

14 Q But the lengths that exist within the genome are
15 going to be in a common trait across all individuals. Like
16 you might see a 15, 16 or 17 at that genome; it's not like
17 you're going to have a one and 100 typically within any
18 specific test?

19 A Correct. So that's called allele frequency or
20 allele distribution. So, yeah, you'd only have, I mean if
21 you tested 100 different people, you'd only get like a
22 maybe a 14, 15, 16 through 21 I'd say. It'd be a range of
23 sizes.

24 Q So with any of these numbers, finding matching ones
25 at any one particular element is not uncommon?

Paul Meeh - Cross-Examination by Mr. Stitely

1 A No, it's not uncommon.

2 Q It would in fact be a more common scenario,
3 correct?

4 A No, not more common because usually the allele
5 frequencies are around the ten percent range that's a
6 common.

7 Q Okay.

8 A But this isn't a allele frequency. The Y is a
9 haplotype, remember we're testing all of those positions on
10 a single chromosomes as opposed to random positions of the
11 genome.

12 Q Right. Because we're only dealing with the Y?

13 A Correct.

14 Q The male part?

15 A Correct.

16 Q So the actual analysis in this -- and you went over
17 it briefly at the end. You were able to match the female
18 contributor in 4.1 to 1 in 210 sextillion which as we
19 discussed, and a number that probably doesn't exist in a
20 real sense?

21 A Absolutely not.

22 Q And that's, you can say with almost close to
23 definitive certainty that is Ms. Minor 's DNA?

24 A That is -- that is beyond -- yeah. I mean you
25 could do millions of worlds worth of genomes and never see

Paul Meeh - Cross-Examination by Mr. Stitely

1 that one again.

2 Q Okay. Versus the match in 4.1 particularly for the
3 male side was 1 in 240 of randomly selected unrelated male
4 on the paternal side, correct?

5 A It has to be an unrelated male, yeah, it cannot be
6 in his paternal line. That -- the paternal line, anyone in
7 his paternal line, could have contributed this DNA.

8 Q Okay. What about a related male on the paternal
9 line; would it still skew those numbers further?

10 A How closely related?

11 Q That's -- that's going to my next question?

12 A Yeah.

13 Q We live in a kind of small community. When you say
14 an unrelated individual, how unrelated do we have to be to
15 fit into your statistical analysis?

16 A That's a really good question and that's the
17 reason -- so we compute four or five different categories
18 because of this exact thing you're talking about. We also
19 take into account interbreeding which does happen even with
20 humans still today.

21 And so the statistic that I report, this 1 in 246
22 and 1 in 210 is actually really conservative. It's the
23 most conservative I can be up here. So if I test it and
24 say out of 5 I may get one in 10,000 if it's Caucasian and
25 1 in 20,000 if it were to be an African American and 1 in

Paul Meeh - Cross-Examination by Mr. Stitely

1 210 if it's an Hispanic. So I report the Hispanic number
2 just because it's the most conservative.

3 Q And of course that number would be difficult if we
4 had a related relative. You would not be able to say, for
5 example, if it was his father or his son, this DNA doesn't
6 help you at all?

7 A Correct.

8 Q And if it was say a paternal brother's son, it
9 would still be kind of tough?

10 A Correct.

11 Q Okay. Anyone relatively close in his family circle
12 would be tough on this?

13 A It would make it more difficult.

14 Q Right. You said when addressing Ms. Davis's
15 question that you are fairly certain because of the
16 location as well, the female underwear, correct?

17 A Correct.

18 Q Okay. Now this part you may not know, but you have
19 4.1 and 5.1 up there, correct, you saw them there?

20 A Yes, sir.

21 Q Okay. Now 4.1 came from underwear collected that
22 she turned into the investigator that she was wearing on
23 the night of the alleged assault. 5.1 is from underwear
24 she turned in a week later not relating to the sexual
25 assault, but when she went in to see the nurse, not the

Paul Meeh - Cross-Examination by Mr. Stitely

1 underwear she turned into the investigator, but the one she
2 was wearing a couple of days later that was Numbers 13 and
3 16?

4 A So which one was 5, this one was 5.1, right?

5 Q 5.1 was indicated to me as the one that was
6 collected by a Ms. Hart, who was the SANE nurse at the
7 hospital who she met with a week later. 4.1 was the
8 underwear collected that she brought to the investigator,
9 the one she said she was wearing when she was assaulted;
10 you're talking about transference and you talked about
11 unrelated individuals; can you give any degree of certainty
12 when something was placed as far as DNA in any case?

13 A Definitely not. We can't put any time table on
14 that. It lasts a long time.

15 Q And as we talked about the nightmare situation, the
16 hotel comforter that gosh knows what's been put onto it?

17 A That's possible.

18 Q But you don't deal specifically with where the
19 evidence comes from, you just test it as you get it?

20 A In this case, that's correct.

21 Q Okay. Sorry, in this case?

22 A Yes.

23 Q You could do it if you were out in the field
24 though?

25 A Sure.

Paul Meeh - Redirect Examination by Ms. Davis

1 Q Okay. That's all the questions I have. Thank you?

2 A Thank you.

3 THE COURT: Redirect, Solicitor?

4 MS. DAVIS: I beg the Court's indulgence.

5 THE COURT: Yes, ma'am.

6 **REDIRECT EXAMINATION**

7 BY MS. DAVIS:

8 Q Paul, whose DNA did you find on a 13 year old
9 girl's underwear that was submitted to you for analysis?

10 A Minor and David Ray Brown.

11 THE COURT: Recross?

12 MR. STITELY: No. Thank you, Judge.

13 THE COURT: Thank you. Thank you very much for
14 being with us, Agent Meeh. You may step down.

15 Any objections to the officer being excused?

16 MS. DAVIS: No, sir, Your Honor.

17 MR. STITELY: None at all, Judge.

18 THE COURT: Thank you. You may be excused.

19 All right. Solicitor, you may call your next
20 witness.

21 MS. PATTERSON: Your Honor, at this time, the State
22 rests.

23 THE COURT: All right. Thank you. Thank you very
24 much, Solicitor.

25 Ladies and gentlemen, as you just heard, the State

1 has rested. You have heard all the evidence and all the
2 testimony you're going to hear from the State in it's case
3 in chief. I have certain matters I must take up at this
4 point in the trial, so I'm going to ask if you would take
5 about a 20 minute recess. Take about a 20 minute recess.
6 Do not discuss the case during this recess.

7 Thank you. You may go with your bailiff.

8 (The jury left the courtroom at 3:29 p.m.)

9 THE COURT: All right. Motions, Mr. Stitely.

10 MR. STITELY: Yes, Your Honor. At this time, the
11 defendant, of course, would renew any objections made
12 previously in the State's case.

13 In addition, Your Honor, at this time the defendant
14 would make a motion for a directed verdict as the evidence
15 in a whole in the light at the current state is
16 insufficient as a matter of law to proceed forward.

17 THE COURT: Thank you.

18 Solicitor?

19 MS. PATTERSON: Your Honor, at this time in the
20 case, the Court is only concerned with the existence and
21 not the weight of the evidence. The State -- it's the
22 State's position that we have presented sufficient evidence
23 that the defendant committed criminal sexual conduct with a
24 minor in the second degree. We have the dates of birth in
25 evidence from both the victim and the defendant. We have

1 cell phone and text records that relate to a phone number
2 that the defendant identified as being his cell number. We
3 have DNA evidence that matches the defendant's DNA to the
4 victim's panties that she turned into the investigator as
5 well as to the SANE nurse.

6 It is the State's position that we have presented
7 enough evidence for the case to go to the jury at this
8 point, Your Honor -- and that the assaults did occur in
9 Lexington County.

10 THE COURT: Thank you, Solicitor.

11 All right. As to renewal of all your previous --

12 I'm sorry, Mr. Stitely?

13 MR. STITELY: No, Judge, I have to stand up when
14 you're addressing me. I apologize.

15 THE COURT: No, I was, as to your motion concerning
16 renewing all your previous trial objections, I renew all my
17 previous trial rulings in that regard.

18 As to the motion for directed verdict, I would deny
19 that motion based both on direct evidence and substantial
20 circumstantial. As to direct evidence, the victim
21 testified as to her age. The victim testified that there
22 was sexual battery that occurred. The victim identified
23 the defendant as the individual who committed the sexual
24 battery. The State also proved the age; both his date of
25 birth of , I believe it was and his age at the time

1 and also put into evidence the victim's age and it occurred
2 in Lexington County.

3 As to -- I further find and deny the motion that
4 there is substantial circumstantial evidence. As you both
5 pointed out, I am not concerned with the weight of the
6 value of the testimony, but only the existence of the
7 testimony.

8 As the Court within this year, 2016 pointed out in
9 reversing State v. Bennett the limits in which a Court can
10 consider circumstantial evidence when ruling on a directed
11 verdict motion is distinct from the analysis performed by
12 the jury. Within the jury's inquiry, it's necessary that
13 every circumstance relied upon by the Court be proven
14 beyond a reasonable doubt, that all the circumstances so
15 proven be consistent with each other and taken together to
16 point conclusively to the guilt of the accused to the
17 exclusion of every other reasonable hypothesis.

18 However, the trial court views the evidence in a
19 light most favorable for the State and must submit the case
20 to the jury if there is substantial evidence which
21 reasonably tends to prove the guilt of the accused or from
22 which his guilt may be fairly and logically deduced.

23 In this case, there is a pair of -- of underwear I
24 think is depicted in State's Exhibit Number 13, SLED Item
25 No. 4, cutting 4.1, which is a mixture of DNA that matches

1 the buccal swab of the victim and the buccal swab of the
2 defendant. An expert has testified that that is within a
3 reasonable degree of medical certainty, Mr. Brown's DNA.
4 So the motion is respectfully denied.

5 MR. STITELY: Thank you, Judge.

6 **QUESTIONING OF THE DEFENDANT BY THE COURT**

7 THE COURT: Would you have Mr. Brown come around
8 please and be sworn?

9 DAVID RAY BROWN,
10 having been duly sworn, testified as follows:

11 THE COURT: You're David Ray Brown?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And, Mr. Brown, can you read? Can you
14 write?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: How much education do you have?

17 THE DEFENDANT: 8th grade and GED.

18 THE COURT: What type of work do you do?

19 THE DEFENDANT: I've been in construction all my
20 life and sales.

21 THE COURT: You have your GED?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: I'm going to ask you some questions. I
24 need to go over a few things with you. If at any time you
25 don't understand anything I say, please let me know, I'll

1 try to explain it to you. Anytime you want to talk to your
2 lawyer, let me know and I'll allow you to do so; you
3 understand?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And I go over these same things with
6 everyone who is on trial and I require their responses to
7 be under oath, that's why I placed you -- had the clerk
8 place you under oath; you understand?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: We have reached the stage of the trial
11 where the State has rested and your side, the defense now
12 has the opportunity to present evidence for the jury to
13 consider; do you understand where we are in the trial?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: In that regard, your side, you may call
16 witnesses to testify on your behalf. If you choose to
17 testify yourself, you may do so; do you understand?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: No one can force you to testify. You
20 have an absolute right to remain silent; and if you choose
21 not to testify, I will tell this jury that they cannot hold
22 your silence against you in any way. I will tell them that
23 they are not to even discuss that in the jury room; do you
24 understand?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: If your side offers no evidence at all,
2 in other words, if neither you nor anyone on your behalf
3 testifies or offers any exhibits, then Mr. Stitely, your
4 attorney, will get to make the last argument to the jury;
5 do you understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Solicitor, Mr. Stitely, does the
8 defendant have any prior criminal record that would subject
9 him to impeachment under Rule 609?

10 MR. STITELY: I believe he does, Your Honor.

11 THE COURT: And what do y'all think that would be.

12 MS. PATTERSON: He has possession with intent to
13 distribute marijuana first and a contributing to the
14 delinquency of a minor.

15 THE COURT: All right. And tell me the possession
16 PWID marijuana, what does that carry?

17 MS. PATTERSON: Zero to 5 years.

18 THE COURT: All right. And when was that
19 conviction?

20 MS. PATTERSON: That sentence date was April 21st,
21 2004 and he received 5 years, I think suspended to 2 years
22 probation.

23 THE COURT: All right. And then the contributing
24 to the delinquency of a minor?

25 MS. PATTERSON: That's zero to 3 years and that

1 conviction date was August 8th, 2012, and he received 2
2 years suspended to 18 months probation.

3 THE COURT: All right. Thank you.

4 MR. STITELY: We agree with that, Judge.

5 THE COURT: Thank you. Tell me, Solicitor, is
6 contributing to the delinquency of a minor a felony or a
7 misdemeanor?

8 MR. STITELY: It's a statutory misdemeanor in South
9 Carolina, Judge.

10 MS. PATTERSON: Yes, sir.

11 THE COURT: All right. Looking at the general rule
12 of 609(a) the first part of the rule is evidence that a
13 witness other than the accused has been convicted of a
14 crime shall be admitted if the crime was punishable by
15 death or imprisonment in excess of one year under the law.
16 Evidence that an accused has been convicted of such a crime
17 shall be admitted if the Court determines that the
18 probative value of admitting this evidence outweighs it's
19 prejudicial effect to the accused.

20 As to the possession with intent to distribute
21 marijuana, as to that conviction, I will find that the
22 probative value in admitting this evidence does outweigh
23 its prejudicial effect to the accused. As to contributing
24 to the delinquency of a minor, being a misdemeanor, of
25 being a minor victim in this case, I will find that the

1 Solicitor could ask if the accused takes the stand, if he
2 has been convicted of a crime, a misdemeanor crime that
3 carried a sentence of up to 3 years in 2012. I think there
4 would be more of a prejudicial effect identifying that
5 crime as to contributing to the delinquency of a minor. Do
6 you understand my ruling, Solicitor, in that regard?

7 MS. PATTERSON: Yes, sir. Thank you.

8 THE COURT: And you understand it, Mr. Stitely?

9 MR. STITELY: Yeah, I do, Your Honor. Let me
10 explain it to him real quick and make sure.

11 (The defendant was conferring with his attorney.)

12 THE COURT: So if you take the witness stand, Mr.
13 Brown, the Solicitor could ask you or your own attorney
14 could ask you if you have a conviction of possession with
15 intent to distribute marijuana and if you had a conviction
16 of misdemeanor crime that carried a sentence of up to 3
17 years; do you understand?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: If you were to take the stand and if
20 you were to be asked those questions, I will tell the jury
21 that they can only consider that evidence, if they consider
22 it at all, on the issue of whether your testimony is
23 believable or not and for no other purpose; do you
24 understand?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Now, the decision about whether you
2 testify or not is your decision to make and yours alone. I
3 expect that you have conferred with your attorney and
4 perhaps others whose opinions you value on life's important
5 decisions, but the decision about whether you testify or
6 not is your call to make, your decision; do you understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Has anyone exercised any undue
9 influence over you to get you to choose to testify or not
10 to testify?

11 THE DEFENDANT: No, sir.

12 THE COURT: Today, are you under the influence of
13 any medication, drugs, alcohol or anything that negatively
14 affects your thinking ability?

15 THE DEFENDANT: No, sir.

16 THE COURT: Do you suffer from any physical or
17 mental problems that negatively affect your thinking today?

18 THE DEFENDANT: No, sir.

19 THE COURT: Do you have any questions you would
20 like to ask me about your right to testify or not testify?

21 THE DEFENDANT: No, sir.

22 THE COURT: Have you had the opportunity to talk
23 with your attorney about that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you need any more time to talk with

1 your attorney about that?

2 THE DEFENDANT: No, sir.

3 THE COURT: Have you made your decision?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Is it your decision?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And what is your decision?

8 THE DEFENDANT: Not to testify.

9 THE COURT: Not to testify. And that is your
10 decision made of your own free will and accord?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you have any questions you would
13 like to ask me about the decision in which you have made?

14 THE DEFENDANT: No, sir.

15 THE COURT: Thank you. Thank you very much.

16 MR. STITELY: Thank you, Your Honor.

17 THE COURT: I find that Mr. Brown is intelligent
18 although only an eighth grade education, he did complete
19 his GED. He was employed. I did not ask him his age
20 because that is an element of the offense. That's why I
21 didn't ask him his age, but clearly his age is such that
22 he's within the proper jurisdiction of General Sessions
23 Court.

24 So I find his decision to not testify is his to
25 make freely, knowingly, voluntarily, and intelligently.

1 All right. Does the defense intend to offer any
2 evidence or testimony or you renew your motion. Well, let
3 me ask you first, do you intend to offer any evidence or
4 testimony?

5 MR. STITELY: No, Your Honor, the defense does not
6 intend to. At the appropriate time, I don't know if you'd
7 like me to rest on the record or not.

8 THE COURT: Yes, I do.

9 MR. STITELY: At this point, assuming that, I will
10 be renewing my objection now as the evidence in a whole
11 have been heard the State's side and defendant's side and
12 there's insufficient evidence as a whole.

13 THE COURT: All right. So we're done with the
14 testimony?

15 MR. STITELY: Yes, sir.

16 MS. PATTERSON: Yes, sir.

17 MR. STITELY: I'm ready to proceed whenever you
18 are, Judge.

19 THE COURT: I think my preference given the hour is
20 to have y'all close and we'll charge in the morning. I got
21 to be in Columbia from 7:30 until probably 9:45 in the
22 morning. So I'll bring the jury back 10:15. I'll be here.

23 MS. PATTERSON: Yes, sir.

24 THE COURT: I'll be somewhere. With that being
25 said, I'll bring the jury out. I usually tell them again

1 where we're at. Then I'll, after I tell them where we're
2 at and the posture the case, I'll turn my attention to you,
3 Mr. Stitely, and ask if the defendant intends to present
4 any evidence or testimony, you rest formally, I tell them a
5 little bit more and then I'll release them for the day and
6 I'll hear your motions. Okay?

7 MR. STITELY: Yes, sir.

8 MS. DAVIS: Your Honor, just for scheduling
9 purposes, I know that the clerk needs to put something on
10 the message. I've spoken with Kate. She said that you're
11 not going to be here Friday so she didn't think you wanted
12 to start another trial and if that's the case --

13 THE COURT: I would be delighted to start another
14 trial if you want to call the Chief Justice and tell him
15 I'm not coming to mandatory training?

16 MS. DAVIS: I'm not doing that.

17 THE COURT: I've never, I've never tried to do that
18 and I don't think it would be very pleasant.

19 MS. DAVIS: I know he's new, but I'm not doing
20 that. But --

21 THE COURT: I've got mandatory training.

22 MS. DAVIS: Yes, sir. She didn't tell me what it
23 was, but yes, sir, I knew that you weren't going to be here
24 Friday. So we want to release the panel.

25 THE COURT: All right. Good Hope?

1 THE CLERK: Yes, sir.

2 THE COURT: Be that as it may, bring us our jury.

3 MR. STITELY: One other thing real quickly to make
4 sure the record is clear. I do not intend to ask for any
5 lesser included. I don't think that the evidence that
6 played out would fit into any of the categories.

7 THE COURT: All right. Thank you.

8 MR. STITELY: So no additional charge requests from
9 the defendant.

10 THE COURT: Well in that regard, we think alike.

11 MR. STITELY: Yes, sir.

12 (The jury entered the courtroom at 4:16 p.m.)

13 THE COURT: All right. Madam Forelady, ladies and
14 gentlemen of the jury, as you heard before our break the
15 State has rested. I repeat, the State has presented all
16 the evidence and all the testimony the State intends to
17 present in its case in chief.

18 We now move to the defense. In South Carolina a
19 criminal defendant is always presumed to be innocent
20 regardless of the serious nature of whatever offense may
21 be. However, a criminal defendant, if that defendant
22 chooses to do so, may present evidence or testimony, has no
23 burden whatsoever, however, to do so and no burden at all.
24 The burden of proof is on and always remains on the State
25 of South Carolina to prove guilt beyond a reasonable doubt.

1 So we would turn our attention to Mr. Stitely and ask Mr.
2 Stitely does Mr. Brown intend to present any evidence or
3 testimony?

4 MR. STITELY: The defense rests, Judge.

5 THE COURT: All right. The defense rests?

6 MR. STITELY: Yes, sir.

7 THE COURT: Motions are noted for the record.

8 MR. STITELY: Thank you, Judge.

9 THE COURT: With that being said, you've now heard
10 all the evidence and all the testimony you're going to hear
11 in the trial of the case. The posture where the case is at
12 now is closing -- closing arguments by the attorneys to you
13 and then instruction on the law by the Court and then the
14 case will be submitted to you for your deliberations. I'll
15 explain this again to you tomorrow, but the -- the form we
16 follow is the State closes first, being the party bearing
17 the burden of proof, followed by Mr. Stitely on behalf of
18 his client, Mr. Brown, followed by my instructions to you
19 and then submit it to you for your deliberation.

20 Given the hour -- that can take, that process can
21 take a while. Our Court frowns on us starting closing
22 arguments after four o'clock in the afternoon and it is
23 already beyond that time. There was a -- one indication I
24 had that one of the jurors have a work issue in the
25 morning?

1 THE BAILIFF: He has a drug test for work.

2 THE COURT: Can you give me a time frame on that?

3 THE JUROR: I just have return from -- the clinic
4 was at 8:30 and I'll be in Columbia and then return, so it
5 would be 9:30 and 10:00, I would presume.

6 THE COURT: All right. Well, as fate would have
7 it, I have to be in Columbia in the morning too for much
8 the same thing. I don't know what that says about my fate
9 or your fate, but they're tied in together. 10:15?

10 THE JUROR: That would be fine.

11 THE COURT: All right. That -- everybody else is
12 just a great jury. You've been so focused and you all look
13 great so we're going to press on tomorrow. I'll ask you to
14 be back please promptly at 10:15 in the morning, 10:15 in
15 the morning.

16 Remember do not discuss the case. Do not watch any
17 news reports, do not do any research, independent research
18 or on the internet. Okay? Thanks. I hope y'all have a
19 pleasant night and you are excused.

20 (The jury left the courtroom at 4:20 p.m.)

21 THE COURT: All right. Any additional argument as
22 to the motion, Mr. Stitely?

23 MR. STITELY: No, sir.

24 THE COURT: All right. I renew all my previous
25 trial rulings, evidentiary and otherwise and further

1 respectfully deny the motion for directed verdict.

2 Any besides the mistake of age, any other specific
3 requests to charge by the State?

4 MS. PATTERSON: The only thing, Your Honor, of
5 course, is the expert witness charge, circumstantial and
6 direct evidence and I think that's in your standard charge.

7 THE COURT: All right. Thank you. Thank you very
8 much.

9 10:15 in the morning.

10 MR. STITELY: Yes, sir. Thank you.

11 THE COURT: I hope y'all have a pleasant evening.

12 MS. DAVIS: And, Your Honor, the defendant is still
13 in custody?

14 THE COURT: Of course, yes.

15 (Court was in recess for the evening.)

16 THURSDAY, JANUARY 21, 2016

17 THE COURT: Anything before we bring in our jury
18 from the State?

19 MS. PATTERSON: Nothing from the State.

20 THE COURT: Defense?

21 MR. STITELY: No, sir, Your Honor.

22 THE COURT: All right. Thank you.

23 **JURY CHARGE CONFERENCE**

24 THE COURT: What was that request you had,
25 Solicitor, that the mistake of age is not a defense.

1 MS. PATTERSON: Yes, sir, Your Honor, I think --

2 THE COURT: Do you have the precise language?

3 MS. PATTERSON: Yes, sir, and I apologize. I
4 didn't bring the statute, but I think was in the statute.

5 MR. STITELY: It's written in the body of the
6 statute, I believe, Judge. I don't think it's a separate
7 part of the charge.

8 MS. PATTERSON: Yes, sir.

9 MR. STITELY: And for the Court's edification, the
10 Defendant does not intend to argue the mistake of age at
11 any point.

12 THE COURT: Tell me -- tell me then, Solicitor,
13 where in the Statute 16-3-655 it's written, mistake of age
14 is not a defense. First off, I can't find 16-3-655(2).
15 16-3-655 starts off with parenthetical A and then goes to B
16 and then goes to C and then goes to D and under A, B, C, or
17 D, or E, F, G --

18 MS. PATTERSON: Your Honor, I have the --

19 THE COURT: G, let me finish this. G, A through G
20 and I don't see 16-3-655(2). Oh, on the front you have
21 16-3-655(b)(1). It doesn't compute for me either.

22 MS. PATTERSON: Your Honor, I'll have Ms. Davis run
23 and get the statute for me. If you can give me just a
24 second; I apologize. I thought I had it with me.

25 THE COURT: I just want to make sure I'm tracking

1 right. I'm sorry. See that, that's not what it had --

2 Solicitor, if the Defendant is not going to raise
3 that defense, is it relevant?

4 MS. PATTERSON: Your Honor, I'll withdraw the
5 request because I honestly can't find it within the
6 statute.

7 THE COURT: I don't see it in the statute.

8 MR. STITELY: It was there at some point, Judge.
9 I've seen it before. Maybe it was under the old variation
10 of the law that was there. The defense is not arguing
11 mistake of age. I'll put that on the record. If I do, of
12 course, we can reconvene this before the charge, but I do
13 not intend to argue it in closing.

14 THE COURT: 16-1, okay. All right.

15 MR. STITELY: Yes, sir.

16 THE COURT: Anything further?

17 MS. PATTERSON: No, sir.

18 MR. STITELY: If the Solicitor believes I've went
19 there, we can, of course, have a quick conference before,
20 but I don't intend to.

21 THE COURT: All right. Thank you. Thank you,
22 Solicitor.

23 MS. PATTERSON: Thank you, Your Honor.

24 THE COURT: All right. Bring us our jury please.

25 (The jury entered the courtroom at 10:32 a.m.)

1 THE COURT: All right. Welcome back ladies and
2 gentlemen of the jury. I hope y'all had a pleasant
3 evening.

4 Before I begin I would address some remarks to
5 those in the audience. I do not allow any movement in or
6 out of the courtroom while an attorney is addressing the
7 jury. You may certainly leave between the closing
8 arguments; in other words after the closing argument by the
9 State and before Mr. Stitely begins the closing argument on
10 behalf of the defense, you may leave.

11 I do not allow movement in or out when I'm
12 instructing or charging the jury. You may certainly leave
13 before I begin after the closing arguments, but you may not
14 do so if you're in here when I start my instruction to the
15 jury.

16 With that being said, ladies and gentlemen, as you
17 recall we are at the stage of the closing arguments by the
18 attorneys. The proceeding we follow is the solicitor will
19 close first on behalf of the State being the party bearing
20 the burden of proving its case beyond a reasonable doubt,
21 followed by Mr. Stitely on behalf of his client Mr. Brown.
22 Thereafter, followed by my instruction to you. I never
23 know how long the closing arguments will take. If between
24 or even during the closing arguments, of course, if anyone
25 needs to take a break, raise your hand. Y'all can take

1 y'all's break and we'll take ours. If you do not need to
2 we're going to press on until we get through the closings
3 and the instructions to the jury.

4 All right. With that being said, Solicitor, you
5 may address the jury.

6 **CLOSING ARGUMENTS**

7 MS. PATTERSON: Thank you, Your Honor, may it
8 please the Court?

9 THE COURT: Yes, ma'am.

10 MS. PATTERSON: Mr. Stitely.

11 In a short amount of time, the world has gotten a
12 lot faster and a smaller. Thanks to social media, there is
13 so much access to our teenagers. Teenagers are constantly
14 on their phones texting, on Facebook and on social media
15 sites. And guess what? Not only are the teenagers on
16 these sites, but so are predators. Predators wishing to
17 prey and take advantage of young, vulnerable victims.

18 In the fall of 2013, the victim, 13-year-old Minor
19 Minor, an eighth grader at Sandhills Middle School
20 became the perfect victim for the defendant, 41-year-old
21 David Ray Brown. She was young. She was vulnerable. She
22 was unsuspecting. And with those weaknesses, he took
23 advantage of her.

24 He sought her out on Facebook, first as himself and
25 then he sought her posing to be this young man; persuaded

1 her to send naked pictures to him to he could have
2 something to hold over her head. And then to have sexual
3 intercourse with him on four separate occasions until she
4 finally got the courage to tell.

5 Now, David Ray Brown is on trial for four counts of
6 criminal sexual conduct with a minor in the second degree.
7 And the judge will instruct you later on about the elements
8 of those charges. It's the same elements, it's the same
9 crime, but we have four counts because there was four
10 different occasions.

11 Now, when we talk about dates, we talk about on or
12 about. And sometimes in these cases it's really hard to
13 get an exact date, but thanks to the text messages, thanks
14 to Minor 's memory, we're pretty close. And that's why in
15 the body of the indictment, it will say on or about. But
16 we're pretty certain that we have the exact dates as much
17 as we can except for the first time that they met, which
18 Minor remembers being before she turned 14, because her
19 birthday is in October.

20 Now, the elements of criminal sexual conduct with a
21 minor in the second degree is the actor, the defendant,
22 David Ray Brown, engaged in a sexual battery with someone
23 who was at least 11, but older -- but at least 14. And we
24 submit to you that the first occasion Minor was 13 and then
25 she turned 14. She testified to that.

24 Now, the judge will also give you instruction later
25 that as the State, we have the burden of proof. And we

1 have to prove this case beyond a reasonable doubt. Now
2 that's not beyond all doubt because there's very few things
3 we know beyond all doubt. And I just ask of you to use
4 your common sense. Think about all of the testimony that
5 you heard from that witness stand, all these exhibits that
6 you'll be able to carry back and just use your common
7 sense.

8 Now, it's not that I don't think you were paying
9 attention, and I appreciate your attention that you've
10 given us, but as the person who bears the burden, I must go
11 over what you heard over the last two days.

12 First of all, you heard from Minor. She's now 16
13 now, you heard about what happened during the Fall of 2013.
14 She did some up stupid things. Teenagers do. They get on
15 these social media sites and they try to meet people. She
16 remembers sometime in September she got a Facebook request
17 from this image. This older looking guy, this creepy
18 picture.

19 So what does she do, she didn't friend him. She
20 deleted it. A short time later, she gets another friend
21 request from someone who's identified as Justin Feels Good
22 Goodwin. She friends him. She thinks he looks age
23 appropriate. Thinks he's kind of cute. They engage in
24 conversations back and forth through text messages. This
25 person persuades her to do another stupid thing. She sends

1 naked pictures of herself to him. Still thinking it's that
2 second image that she saw, yet she's 13. She does another
3 stupid thing. She agrees to meet with him. Tells him
4 where she lives. Agrees to meet with him out by the deer
5 stand by her house.

6 And when she gets there, who does she see? She
7 sees the defendant, David Ray Brown. Yeah, she you should
8 have screamed. Yeah, she should have ran. But she didn't.
9 She's 13. She's in over her head. She's that perfect
10 example of why the legislature don't let people this age
11 consent. She don't know how to handle it.

12 He holds her down and they have sex. She says she
13 didn't tell. Again, she didn't want her mama to find her
14 out. She didn't want her mama to know that she was meeting
15 boys, she was sending naked pictures, that she was sneaking
16 out of the house. She didn't want her mama to know that.
17 No 13-year-old does. They don't know how to handle that.
18 She's in over her head with this one.

19 And Minor admitted sadly, she kind of liked the
20 attention with the text messages, as long as it was just
21 that, the text messages and she didn't have to see him. He
22 compliment her. And so what did she do? She didn't want
23 to meet with him -- and again, you will have these
24 messages. She makes every excuse not to meet up with him.

25 But then she starts feeling afraid so she agrees to

1 meet up with him. And the last three times, it was all in
2 one week where she met up with him. And what would happen?
3 The same thing. She would sneak out at night because they
4 couldn't meet in the daytime because of their age and
5 you'll also see that in one of the text messages. She
6 would go out by the deer stand -- sneak out of her house,
7 meet him by the deer stand which was just on the edge -- it
8 wasn't like in the woods. So she could see who it was she
9 was meeting. She knew his face. After all they had met up
10 four different times.

11 And they would have sex. Right here on the hard
12 ground. Now Minor is hurt. She's confused. She's in over
13 her head. But then she becomes angry and scared because
14 she starts asking him about deleting these text messages.
15 You'll be able to read what he would tell her about these
16 text messages.

17 He would tell her, you know I have the pictures.
18 It would be a lot worser. But she said you pinky promised
19 that you would delete the pictures. Pinky promise, what a
20 childlike thing to do. But he would still pressure her.
21 She felt pressure her. She didn't know what to do. But
22 luckily, she decided to tell Ms. Elizabeth at school,
23 someone she could trust and she said she told that day
24 because she was supposed to meet him later on that night,
25 even though she had just met with him two days prior or two

1 nights prior. And some of the times may overlap because
2 she would meet him like right before midnight so one day
3 and then the next day would come. And they would be out
4 there for a while because he would talk to her.

5 Another reason why she knew who it was, he would
6 talk to her and she told Ms. Elizabeth, who is a mandatory
7 reporter, and she reported it to the school resource
8 officer, Deputy Griggs. Now Deputy Griggs testified,
9 because unfortunately Ms. Elizabeth has moved out of state.
10 He testified about what he did. He got the ball rolling.
11 He made the report so it could be assigned to major crimes
12 because they deal with cases like this.

13 But he had contact with Minor. He saw her on
14 almost a daily basis so when she talked to him he saw that
15 her demeanor was quite reserved. Said she had her head
16 down and her hands folded, looked like she was in over her
17 head. But she was able to tell him that she met this
18 person on Facebook and when she met up with him he was
19 older.

20 She said she told him about the sexual assaults,
21 she told him about the dates and again Deputy Griggs, he
22 tried to contact that person. He tried to contact the
23 defendant. He called him because Minor gave him that
24 number, that targeted number that we talked about it so
25 much through our testimony, the testimony is that Minor

1 gave deputy Griggs that number.

2 MR. STITELY: Your Honor, I have a matter of law to
3 take up outside the presence of the jury. And I'd ask that
4 sign be taken down while we're doing it.

5 THE COURT: Excuse me.

6 MR. STITELY: The item she put up.

7 THE COURT: Madame Forelady, ladies and gentlemen
8 of the jury, step out momentarily. Do not discuss the case
9 during this brief recess.

10 (The jury left the courtroom at 10:52 a.m.)

11 THE COURT: Yes, sir?

12 MR. STITELY: Your Honor, I hate to interrupt
13 someone during their closing, but that item contains a
14 thing claiming to be David's mother's number. David's
15 mother's number was never entered into evidence during this
16 trial. They had talked about wanting to do it. There
17 going to make some kind of assertion regarding it. Its
18 utterly inappropriate when it's not into evidence. It's
19 written on that exhibit they intend to use during their
20 closing argument.

21 THE COURT: All right. Solicitor?

22 What's your motion?

23 MR. STITELY: Your Honor, I'm making a motion for
24 that not to be shown and I'm making a motion for them to
25 not be able to testify about anything regarding that number

1 on the bottom. It's not evidence. It was not put in
2 evidence through any of the witnesses.

3 MS. PATTERSON: Investigator Stickland testified --

4 THE COURT: All right. I'm ready to rule.

5 MS. PATTERSON: Oh, okay.

6 THE COURT: There is nothing in evidence that it is
7 Mr. Brown's mother, number one. Number two, it's only in
8 evidence that it was a relative of Mr. Brown, unidentified
9 relative of Mr. Brown. Number three, the number is in
10 evidence and the number is -- may be used. That chart for
11 demonstrative evidence referring to it as being David's
12 mother may not be used.

13 MS. PATTERSON: Can I revise the chart to put --

14 THE COURT: You can take time to revise it you can
15 do that.

16 MS. PATTERSON: Thank you, Your Honor.

17 THE COURT: Let me rephrase that. I don't think
18 I'd revise it, I wouldn't use that. I would make another
19 one.

20 MS. PATTERSON: Okay.

21 THE COURT: But you're welcome to the time to do
22 that.

23 All right. So your motion was granted Mr. Stitely.)

24 MR. STITELY: Thank you, Your Honor.

25 (The State made a new demonstrative evidence to

1 show the jury.)

2 MS. PATTERSON: Thank you, Your Honor.

3 MR. STITELY: Sorry, Your Honor.

4 THE COURT: You have any other charts or diagrams
5 you're going to use?

6 MS. PATTERSON: No, sir.

7 MR. STITELY: And I'm sorry, Judge, that was the
8 first time I saw that was when she put it up.

9 THE COURT: Anything further before we bring in our
10 jury from the defense?

11 MR. STITELY: No, sir.

12 THE COURT: State?

13 MS. PATTERSON: No, sir.

14 (The jury entered the courtroom at 10:56 a.m.)

15 THE COURT: All right. Madame Forelady, ladies and
16 gentlemen of the jury, remember, you are the finders of the
17 facts of the case. So it's the individual and collective
18 recollection of the jury as to any testimony by way of
19 sworn witnesses or exhibits or the like. So remember it's
20 your memory. They may comment on the law, the facts,
21 reasonable inferences to be drawn from the facts. With
22 that being said if you would please continue to give the
23 solicitor your complete and undivided attention.

24 Thank you very much, Solicitor.

25 Mr. Stitely.

1 MS. PATTERSON: Thank you, Your Honor.

2 Minor gave this targeted number to Deputy Griggs.
3 He attempted to get in touch with that person but there was
4 no voicemail set up. And you'll get to review that text
5 message when you have his group of text messages back
6 there. And they may be hard to read, but Investigator
7 Phipps put it in a timeline where it may be easier to read,
8 but you take your time and you read those the text
9 messages. You can tell by the content that Minor had sex
10 with the person that she's going back and forth with in the
11 text messages and that person, we submit to you is the
12 defendant, David Ray Brown.

13 Now, Minor, again, she admitted she liked the
14 attention but when you go through the text messages she
15 would give him about being sick, about being at her
16 brother's house, about her brother having an accident,
17 about her mom catching her, and he even called them
18 excuses. I don't like it. Again, you can read all that.
19 So she would get scared she would agree to meet with him
20 over and over again.

21 The confusion of a 13-year-old child. That's
22 understandable. She was in over her head. That's why we
23 have those laws.

24 And you saw her testify. And the judge will talk
25 about demeanor and you get to judge that. You saw her at

1 16, so imagine her in 2013. Quiet, soft spoken, in over
2 her head. Completely in over her head. And taken
3 advantage of and preyed upon by the defendant, David Ray
4 Brown.

5 Now, you also heard from Investigator Stickland.
6 She was an investigator with the sheriff's department. She
7 got the case. She talked with Minor. Talked with her mom.
8 She gathered the cell phone. She got that targeted number
9 as well. Started serving her subpoenas so she could try to
10 find out who was subscribed this number.

11 She got evidence. She started that Facebook
12 search. Her and Minor was able to come up, again with
13 David the Guitarist as being the suspect. She was also
14 able to find out that that was a Tracfone, a prepaid phone,
15 so there was no subscriber information, but what she did
16 notice about the phone records, and you'll have one of
17 those too, that she could connect one of the numbers to one
18 of the defendant's relatives. And that's that -8259
19 number. So one of the defendant's relatives was being
20 contacted by that targeted number. The targeted number
21 that Minor said was the number that she said she texts and
22 received text messages from. A targeted number that the
23 defendant admitted to Investigator Strickland was his
24 number at one time. He said he ported it to a new phone,
25 didn't port it to the phone he currently had, but she said

1 he didn't have an explanation for that.

2 Investigator Strickland also collected the cell
3 phone that would later be extracted by Investigator Phipps.
4 She collected three pair of underwear that was brought in
5 by Minor and her mother. Underwear that was collected and
6 sent to SLED. This is the pair that came back with the
7 result and we'll talk about that later.

8 So Investigator Strickland, she meets with the
9 defendant, he agrees to give her that buccal swab and she
10 testified it's a simple process, you just swab inside of a
11 person's mouth and you collect it in a bag and you send it
12 off to SLED.

13 You also heard from Temple Hart the SANE nurse at
14 Palmetto Richland. Now Minor saw her, told her what
15 happened. She had to find out what happened so she would
16 know how to treat her, how to diagnose her so she could
17 properly treat what, which she said is their main concern.
18 And it's not to collect evidence. However, she was able to
19 collect evidence. She was able to get a rectal swab, a
20 vaginal swab and a buccal swab from Minor. And she also
21 collected that second pair of panties that was tested by
22 SLED. She was able to collect these and Paul Meeh
23 testified about the results that was found on these also.

24 Now, Ms. Hart said that, you know, Minor told her
25 what happened and told her that it was three assaults. And

1 Minor explained to her -- Minor said it was three assaults
2 within the same week. Those are the ones she told her
3 about. Why she didn't tell about the fourth one, I really
4 don't know. She may have been confused. Again she's 14.
5 She's in a situation. She don't know how to handle it.

6 She told her to -- she asked her assailant's name.
7 At this point, all that Minor knew was that his name was
8 Justin and he presented on Facebook to be 18. But she said
9 she didn't know because it was a fake account. And I
10 submit to you again, she was just merely confused about the
11 question. She always knew -- always identified the
12 perpetrator as David Ray Brown.

13 Now, Karen Milbrodt or Milbrodt, and I'll probably
14 butcher her name again. She don't have a dog in this
15 fight. Who was she? She worked at Verizon Wireless as
16 evidence custodian. Came here from Tampa, Florida to
17 testify about the records that she sent to the Lexington
18 County Sheriff's Department pursuant to a subpoena. She
19 gets the subpoena from Investigator Strickland ready
20 regarding this targeted number, - -3982. So what did
21 they do? They get the records that's generated, not for
22 investigative purposes but for their billing and
23 engineering purposes and she gets the number that's related
24 to the targeted number. She gets all the information about
25 that. She's able to say, again, it was a prepaid phone, so

1 we don't have any definite subscriber information, but what
2 we do have is several calls during our time periods that
3 targets a number calling a relative of the defendant's. We
4 also have that targeted number making two calls to Minor 's
5 number, - -2310. So during that same time frame. She
6 tells us about these calls. She also tells us about some
7 cell tower information, which Investigator Phipps testified
8 about as well.

9 Now there was some information about one of the
10 duration of one of those calls on November 10th, 2013, I
11 think Investigator Phipps said 47 minutes, but Ms. Karen
12 said 47 seconds, which would go in line with what when we
13 know happened, based on the text messages. They met you
14 and that call was made, bounced off Tower 534. And Tower
15 534, which is close to where the victim lived. He was in
16 that area. Because they was about to have ONE of those
17 meetings that they were, you know, were having out by the
18 deer stand.

19 And he also complimented her and in the text
20 messages, their talking about some stores, Hollister, I
21 think is in the mall, one of her favorite stores. He buys
22 her some clothes. He's trying to groom her. And she
23 brought these clothes up here this week because she found
24 them in the back of her closet, I think she said.

25 Now, Michael Phipps and Paul Meeh, probably two of

1 the smartest people you'll ever hear from. Both experts in
2 their fields, also helped connect the dots and connect the
3 defendant to the person who committed these assaults on
4 Minor

5 Now Mike Phipps is trained in the use of forensic
6 technology examination. He got this cell phone. They used
7 a device called a Cellebrite to extract information from
8 this phone. And he testified that there's no way to add or
9 delete text messages from this. Now, he tried to retrieve
10 as much information as he could, but as Minor testified,
11 she deleted a lot of information. So those pictures that
12 they talked about, we were unable to find them. However,
13 again through the text messages, you know they existed.

14 And Investigator Phipps said just sometimes memory
15 gets overwritten and so that's probably why he couldn't
16 retrieve them. But we tried. Even tried back in December
17 when the technology had been advanced and updated. But
18 what he was able to get was text message after text message
19 about her asking him to please delete those pictures.
20 Don't mess up my life. He promising to do so, but he
21 wasn't. And then he threatens why he hasn't deleted them.
22 Nothing was added, nothing was deleted from this phone.

23 And we talked about the cell tower information
24 Investigator Phipps was able the testify about as well.

25 Now, Paul Meeh, the expert from SLED, he testified

1 about receiving all this information. He received Minor 's
2 buccal swab, the defendant's buccal swab, or the call it a
3 buccal swab, which those are known samples. Nobody shares
4 DNA but identical twins. So everybody's DNA is difference.
5 So he received Minor 's, he received David Ray Brown's for
6 testing.

7 He also received the victim's panties that we
8 talked about. He received three pair from Investigator
9 Strickland, one pair from the rape kit. Now, before he
10 began any testing, he did what he called a contamination
11 check to make sure there hasn't been any
12 cross-contamination with police officers, anybody that
13 worked with SLED to affect the analysis. And this is just
14 a checks and balances system that SLED has in it's policies
15 to make sure that their testing is accurate.

16 Now, the first test he talked about, and we tried
17 to use it in as simple terms as we could because it can get
18 quite complicated. But he testified about the first test
19 he used, he couldn't get a satisfactory result because the
20 sample was so small. And it has so much of Minor 's DNA,
21 but that's not unusual because those are her panties.

22 An item of clothing that comes in really close
23 intimate contact with a person, so that wasn't unusual for
24 her to happen. Then he used a Y Profiler test which tests
25 the male Y chromosomes. And remember from high school

1 biology, females don't have a Y. You probably thought
2 you'd never use that since you graduated.

3 Well, the Y Profile testing was conducted with the
4 major contributor to be of the defendant, David Ray Brown.
5 On not one, but two sets of her panties. And not just any
6 DNA. The DNA or the spermatozoa. And again, nobody shares
7 the same DNA. And you will have his SLED report back there
8 to look at as well. This chart, the Y Profiler.

9 Now, he testified that the first column is the
10 known sample of David Ray Brown. Now, the 4.1 cuttings
11 that was from the green panties. The 5.1 was from the pink
12 and yellow panties. The panties that Minor had on two days
13 later after she had sex with the defendant. The bold is
14 the major contributor. His numbers match. They match all
15 the way across. This is him. And the defense, they have
16 the last argument because I have the burden of proof. But
17 I'm sure he's going to get up here and talk about these one
18 in 240, one in 210, and saying, that could be anybody.

19 But our experts say no, that's not how it works.
20 That would have to be 210 or 240 people who had access to
21 the crotch of the victim's panties. It's just not a random
22 sample where people will just walk by and touch something.
23 No. Somebody who had intimate contact with her.

24 She didn't say that it was the defendant's brother
25 or daddy. She said it was the defendant who she had sex

1 with. That's whose DNA it was. He had no business there.
2 He had no business in the crotch of her panties. His semen
3 or his sperm. Don't let him side track you with all of
4 this.

5 The judge will also instruct you about direct and
6 circumstantial evidence. And direct evidence is evidence
7 like Minor knew directly what happened. She testified
8 about what happened. Circumstantial evidence is all these
9 pieces that we're connecting to connect this to the
10 defendant. And I submit to you that we have connected the
11 pieces. And all evidence is to be considered and to be
12 weighed when deliberating.

13 Again, don't let him side track you when he gets up
14 here. You paid attention. You listened. If you need to
15 re-listen to testimony you can to that. You'll have all
16 these exhibits. Look at them, go through the text
17 messages, go through the timeline. Look at these charts.
18 And ask yourself what motive does that 13, 14-year-old
19 child have to lie? She don't know him from Adam. Probably
20 wished she'd never have met him. What motive does she have
21 to lie? To pin it on him?

22 And one other thing, and I just remembered. The
23 lady from Verizon was also able to generate this report.
24 This shows all these text messages to and from Minor 's
25 phone and that targeted number during our time frame.

1 Another piece of the puzzle. The defendant would have to
2 be one of the most unluckiest men in the world for him out
3 the of the blue to be identified by 13 then 14-year-old
4 Minor , to have somebody exchange text messages on
5 a phone that he admitted to once having that number. And
6 the calls made to one of his relatives during that time
7 frame, and then have his DNA found in the crotch of two
8 pair of her panties.

9 This was no set up. He is not unlucky. What he
10 is, is guilty. He's guilty of four counts of criminal
11 sexual conduct with a minor in the second degree. And I
12 ask of you to please find him guilty. Thank you.

13 THE COURT: Thank you. Thank you, Solicitor.

14 Mr. Stitely?

15 MR. STITELY: Yes, sir, please the Court. What
16 would be her motive to lie? That's what the solicitor left
17 you.

18 My name the Ben Stitely. Once again, I'm a defense
19 lawyer here in Lexington. And that got me thinking and I
20 want to tell you before hand, if I've said anything in this
21 trial that offends you, if I've asked questions you don't
22 like, I apologize. If I've objected, done it loudly
23 because I've got to do it quick, it's my job. If I don't
24 do it, I miss my window. So don't take anything that I
25 said, hold it against my client. This is me talking, doing

1 my job. And I have to ask the hard questions because
2 that's my job.

3 What would be her motive to lie? I have three
4 kids. I have two little boys and a little girl. The idea
5 of one day my little girl being involved with someone more
6 than double her age is repugnant. It is. Flat out is.
7 I've tried everything from speeding cases to double
8 homicide. You know when I pick a jury, it's kind of weird
9 process and y'all were sitting there on the outside looking
10 in. And the idea is to get twelve fair, unbiased people.
11 As a juror you swore that oath that you would listen to the
12 evidence you wouldn't make any preconceived notions. It's
13 hard to do. Part of being a juror is you bring your real
14 life experiences in it. You bring your common sense in and
15 the judge tells you that's what makes a jury so valuable is
16 every single one of you has a different something in their
17 life that brings a unique panel together.

18 When you pick a jury for certain things, you can
19 just see people's reactions. We all have reactions.
20 You've got to leave those at the door. If someone's told
21 you that person might be a drug dealer, you'll look at that
22 person and say well they might be a drug dealer. When
23 someone says that person murdered someone, we've all
24 watched CSI. You see people perk up, how did they do it?
25 Where did they do it? Was it in the broom closet with the

1 candle stick? When someone says that that man molested a
2 child, it's offensive. The idea the is offensive. And it
3 is.

4 Why would she lie? I think it's the classic
5 question of why any kids lie. When my six year old comes
6 running up the stairs saying my brother hit me and his
7 brother is upstairs, I'm thinking, hmm, why did he lie?
8 She told you, If my mom knew I was sneaking out to meet any
9 boy, I'd have been grounded and she'd have taken away my
10 phone.

11 The devil's in the details when you come to these
12 cases. And the solicitor when through witnesses one by
13 one. I don't like doing that. I don't think that it --
14 because it's a web. Any case is a web. And this case what
15 it really comes down to is why would we have this
16 individual. And the first thing I have to go almost
17 backwards to is the question about the DNA. We talked with
18 Mr. Meeh. Mr. Meeh was good. He was smart, he was on the
19 ball, wasn't afraid to answer any questions. And as he
20 kept saying, well I can't talk about relatives, the
21 solicitor keeps bringing up the fact that obviously there
22 was a lot of Mr. Brown in the area on these cell phones.
23 If it's a relative, it's out of the question. These are
24 all people from the south part of Lexington County that
25 have. There are a couple of names in the county that half

1 of everyone is related to. You have your Shealy's, your
2 Corley's, the Rahall's and Rabons. My wife is related to
3 two people who work in my office. I wouldn't have known
4 that. I didn't know it until three years after I got
5 there. Unrelated male. It's important. The individuals
6 who come to this case before you and testify from the
7 stand, the judge will tell you, you can consider them for
8 any reason they may have a bias.

9 The witness I like to think is completely unbiased,
10 as the solicitor said, without a dog in the fight, are
11 those professionals; your law enforcement officers, your
12 medical examiners. Mr. Griggs was the first officer you
13 heard testify, the nice man who used to be a school
14 resource officer. He was the first responder and I asked
15 him, how did she describe her assailant? 5'7" and
16 approximately 18 years old. How she described her
17 assailant. Not an 18-year-old man. You've heard he's 41
18 he's not 18. That's who the next unbiased individual who
19 speaks to her, describe your assailant.

20 Justin Goodwin, although that may be a fake name
21 because I got on Facebook. Describe his age. Between 16
22 and 18. Ethnicity? Caucasian. Gender? Male. Two
23 individuals who have been told that her assailant was 18.

24 The solicitor was talking to you about what our law
25 is and our CSC, criminal sexual conduct, I apologize, laws

1 are kind of convoluted in a way. If you were 14 or under
2 the age of 14, 13 in Ms. Minor 's case and you were
3 dating an 18-year-old boy, he is guilty just as much as a
4 41 year old under that statute. So it would make sense
5 that an 18-year-old boy would not want to know -- be known
6 that he had a relationship with a 13 year old.

7 She told you the age of consent is 16. Under some
8 of our statutes, you could have sex with a 16 year old, but
9 if a 16 year old sent you a picture, that's the felony.
10 You can have sex with them, but the picture is illegal.
11 That's our law. Ms. Minor testified and I asked her,
12 because you'll get to see the text logs and they're very
13 limited. They're only between the two phone numbers. And
14 I asked her both her and Mr. Phipps there were obviously
15 other conversations. And one of them in particular I asked
16 Ms. Minor about was within that same hour that you were
17 commenting about this alleged assault, you were having a
18 happy-go-lucky conversation with someone else. Well, yeah.

19 How could Mr. Brown be targeted? Unrelated male
20 relative. Someone who's twice been described as an
21 18-year-old. Here's where the facts kind of come in
22 interesting. Detective Strickland told you that the
23 underwear that were brought -- brought to her, excuse me,
24 were collected and tagged. Y'all get to see the DNA sheet.
25 It's Number 4. Number 4 are the underwear collected by

1 Officer Strickland. Those were the panties worn during the
2 alleged assaults, during the sexual encounters. Four days
3 later Ms. Hart collected a pair of panties unrelated to the
4 ones worn during the sexual assaults. They're labeled
5 Number 5.

6 Four days after the assaults, unrelated panties,
7 same DNA. So obviously, if you were to believe the
8 collection reports and you were to believe that the
9 officers and that nice nurse actually did a good job of
10 keeping records, panties worn after the assault, not during
11 the assault had the same male DNA in them as the ones worn
12 during the assaults. Maybe the same person was still
13 seeing her. It would make more sense. One in 210 chances
14 that it was and unrelated person.

15 How unrelated? Anyone in their male line. I said
16 what about a brother's nephew? It'd be difficult, I
17 couldn't tell you that. Second cousin? Too close can't
18 tell you that. We can tell you that Ms. Minor describer
19 her assailant to two individuals as an 18-year-old man.
20 18. Not described as an old man, an old guy -- appeared
21 older than his picture 16 to 18-year-old Caucasian male.

22 It's hard to overcome the shock value of one of
23 these cases. But that's your job as jurors. You swore an
24 oath to consider the evidence every single piece of
25 evidence. You had to listen to the witnesses. The ones

1 who had any with reason to have a bias, those who had any
2 reason to tell something other than the truth. Any reason
3 for those to embellish, to puff, to add to. And that was
4 one of the funny things the solicitor kept saying. She
5 said it to you again in closing arguments.

6 Mr. Phipps said you can't add or delete those text
7 messages. There's not a single text messages, worried
8 about those pictures a day after the alleged last
9 encounter. There's no threats in there. It wasn't my
10 client. That's my position. I'm not saying he mistook her
11 age.

12 She talks about this fast world we live in with
13 social media. We carpool to school and I drive a
14 13-year-old little girl to school with me every day and
15 it's amazing what young people talk about. I say young,
16 I'm not that old. It's a crazy world we live in. There's
17 a stigma that in cases like this. And your job is to wade
18 through it. Consider the evidence. Take a look at it.
19 Look at those numbers. See the dates on them. Number 4,
20 panties from the assault; Number 5 panties from several
21 days later; same DNA on them.

22 Look at the text logs. No mention of threats over
23 these phone calls or these photographs still afterward. I
24 asked Mr. Phipps, where are the pictures. He said, I have
25 them. Where are they? Whatever he recovered. They may

1 not have been the ones we were talking about, but you're
2 the jury, you get to consider what the judge will tell you
3 is evidence in the record, evidence presented, and evidence
4 omitted. They talked about Tracfone couldn't tell whose
5 phone it is. Where's the subpoena to that company? The
6 Verizon lady told us it's a nationwide company. Has
7 compliance people just like her. That's not her job.

8 Where was law enforcement's subpoena to see what
9 credit card was attached to that? They didn't do it. My
10 client volunteered to go down there. I'll come talk to
11 you. Volunteered to give a sample. They didn't fight him.
12 He came down. Take what you want. Have you ever had that?
13 I had that number, I lost it months ago is what he told the
14 detective.

15 It was one of those Tracfones. They didn't tell
16 you when it was switched from Verizon to Sprint of Sprint
17 to Verizon. Maybe whoever found it did the switching.
18 It's all of the facts. And then remember the last thing I
19 talked to Detective Strickland about. Describe the
20 demeanor of Ms. Minor when she talked to you. She was
21 not upset. She smiled and laughed a few times. She wasn't
22 scared, embarrassed or disturbed in any way. Neutral
23 parties observations.

24 Why would she lie? A man's life is on the line.

25 THE COURT: Objection. You can't argue that. They

1 decide the facts. They don't decide anything after the
2 facts. It's improper.

3 MR. STITELY: Your decision on the facts. All of
4 the facts. What you heard and what you didn't hear.
5 Beyond a reasonable doubt. The kind of doubt that would
6 make a reasonable person hesitate to act in making an
7 important discussion in their life.

8 It sounds corny when the judge talks about it, but
9 he'll talk about this robe of righteousness. That
10 reasonable doubt is more than just words. It is an
11 important concept that our entire judicial system is
12 predicated on. More than words. Anyone can accuse you of
13 anything. We put jurors in the box to determine the facts.
14 You talk an oath. And I ask you to take it seriously.

15 Beyond a reasonable doubt. If you have a doubt
16 that causes you to hesitate the act in making this
17 decision, the benefit of the doubt goes to the defendant.
18 That's the constitution. It's been the way our country was
19 founded on and it's existed for more than 230 years. 230
20 years this year. Beyond a reasonable doubt. Thank you.

21 THE COURT: Thank you. Thank you very much
22 Mr. Stitely.

23 JURY CHARGE

24 THE COURT: Madam Forelady, ladies and gentlemen of
25 the jury panel, if you would please give me your complete

1 and undivided attention. The manner in which I instruct or
2 charge a jury in criminal case is I typically charge the
3 general criminal law that applies to all criminal cases of
4 this type first. When I change from one subject matter to
5 the next, for example, when I change from charge, arrest,
6 indictment not evidence to multiple charges to reasonable
7 doubt, I'll give you the subject matter of that area of the
8 law I'm fixing to cover.

9 After I cover the general criminal law, I will then
10 cover the specific charge in the indictment, criminal
11 sexual conduct with a minor in the second degree, and the
12 elements of that offense.

13 And Finally, I will instruct you on the form of the
14 verdict.

15 Typically it's been my estimation that it takes me
16 about a minute a page, depending on the size of the font
17 and I have about 18 or 19 pages to cover, so I'd ask you to
18 please stay focused, stay attentive. Any time, even during
19 my charge you need to take a break, just please let me
20 know.

21 Charge, arrest, indictment not evidence: The
22 indictments charge the defendant with four counts of
23 criminal sexual conduct with a minor in the second degree I
24 remind you that the fact that the defendant was arrested,
25 charged, and indicted in this case is not evidence in this

1 case and cannot be considered by you as evidence of guilt
2 in the case, nor does it create any presumption or
3 inference of guilt. These documents, again, are simply the
4 formal written instruments which contain the charges made
5 against the defendant. They are the formal documents which
6 bring the case before this Court.

7 Multiple charges: The indictments in this case
8 allege same offenses that occurred on several different
9 dates. The charges, of course on each indictment, is
10 criminal sexual conduct with a minor in the second degree.

11 Each indictment charges a separate and distinct
12 offense. You must decide each indictment separately on the
13 evidence and the law applicable to it uninfluenced by your
14 decision as to any other indictment. The defendant may be
15 acquitted or convicted on any or all of the offenses
16 charged. You will be asked to write -- to reach and write
17 a separate verdict of guilty or not guilty for as to each
18 indictment.

19 Presumption of innocence: The defendant has pled
20 not guilty to these indictments, and that plea puts the
21 burden on the state to prove the defendant guilty. A
22 person charged with committing a criminal offense in South
23 Carolina is never required to prove himself innocent.
24 I charge you that it is an important rule of the law that
25 the defendant in a criminal trial, no matter what the

1 seriousness of the charge may be, will always be presumed
2 to be innocent of the crime for which the indictment was
3 issued unless guilt has been proven by evidence satisfying
4 you, the jury, of that guilt beyond a reasonable doubt.

5 This presumption of innocence does not end when you
6 begin your deliberations, but it accompanies the defendant
7 throughout the trial until you reach a verdict of guilt
8 based on evidence satisfying you of that guilt beyond a
9 reasonable doubt.

10 The presumption of innocence has been said to be
11 like a robe of righteousness placed about the shoulders of
12 the defendant which remains with the defendant until it has
13 been stripped from the defendant by evidence satisfying you
14 of the defendant's guilt beyond a reasonable doubt.

15 The presumption of innocence is not a mere legal
16 theory. It is not just a legal phrase. It is a
17 substantial right to which every defendant is entitled
18 unless you, the jury, are satisfied from the evidence of
19 the defendant's guilt beyond a reasonable doubt.

20 Reasonable doubt: What is a reasonable doubt in
21 the law? A reasonable doubt is the kind of doubt that
22 would cause a reasonable person to hesitate to act.
23 The state has the burden of proving the defendant guilty
24 beyond a reasonable doubt. Some of you may have served in
25 the past as jurors in civil cases, where you were told that

1 it is only necessary to prove that a fact is more likely
2 true than not true, which is known as the greater weight or
3 preponderance of the evidence.

4 In criminal cases, the State's proof must be more
5 powerful than that. It must be beyond a reasonable doubt.

6 Proof beyond a reasonable doubt is proof that
7 leaves you firmly convinced of the defendant's guilt.
8 There are very few things in this world that we know with
9 absolute certainty. In criminal cases the law does not
10 require proof that overcomes every possible doubt. If,
11 based on your consideration of the evidence, you are firmly
12 convinced that the defendant is guilty of the crime or
13 crimes charged, you must find the defendant guilty. If on
14 the other hand, you think there is a real possibility that
15 the defendant is not guilty, you must give the defendant
16 the benefit of the doubt and find him not guilty.

17 Duties of jury and trial judge: I remind you that,
18 during this trial, you and I have certain distinct duties
19 to perform. As the trial judge, it is my responsibility to
20 preside over the trial of this case, and I also have the
21 duty to rule on the admissibility of the evidence offered
22 during the trial. You are to consider only the competent
23 evidence before you. If there was any testimony ordered
24 stricken from the record in this case during this trial,
25 you must disregard that testimony. You are to consider

1 only the testimony which has been presented from the
2 witness stand, and any exhibits which have been made a part
3 of the record in this case.

4 I have the additional duty to charge you the law
5 applicable to this case. As the presiding judge, I am the
6 sole judge of the law of this case, and it is your duty as
7 jurors to accept and apply the law as I now state it to
8 you. If you already have any idea as to what the law is or
9 what the law ought to be and it does not agree with what I
10 now tell you the law is, you must abandon and you must set
11 aside your idea because you are sworn, you have taken an
12 oath to accept the law and apply the law exactly as I state
13 it to you.

14 In every case tried in this court before a jury,
15 the jury becomes the sole and the exclusive judge of the
16 facts in a case. A trial judge cannot intimate, state,
17 comment on, or make any statement to a trial jury about the
18 facts in the case. Since you, the jury, are the sole judge
19 of the facts in this case, you are not to infer from what I
20 have said during the progress of this trial in ruling upon
21 the admissibility of evidence, or otherwise, or anything
22 that I say now during the course of this instruction to
23 you, that I have any opinion about the facts in this case.
24 The law does not allow me to have an opinion about the
25 facts in this case. That is a matter solely for you, the

1 jury, to determine.

2 As jurors, it is your duty to determine the effect,
3 the value, the weight, and the truth of the evidence which
4 has been presented during this trial.

5 Direct and circumstantial evidence: There are two
6 types of evidence which are generally presented during a
7 trial: Direct evidence and circumstantial evidence.

8 Direct evidence is the testimony of a person who
9 claims to have actual knowledge of a fact, such as an
10 eyewitness, or an earwitness. It is evidence which
11 immediately establishes the main fact to be proved. I saw
12 this. I heard this. Something from our senses.

13 Circumstantial evidence is proof of a chain of
14 facts and circumstances indicating the existence of a fact.
15 It is evidence which immediately establishes a collateral
16 fact from which the main fact may be inferred.
17 Circumstantial evidence is based on inference and not on
18 personal knowledge or observation.

19 The law, our law, makes absolutely no distinction
20 between the weight or the value to be given to either
21 direct or circumstantial evidence. Nor is there a
22 greater degree of certainty required of circumstantial
23 evidence than of direct evidence. You should weigh all of
24 the evidence in the case, all of the evidence. After
25 weighing all the evidence, if you are not convinced of the

1 guilt of the defendant beyond a reasonable doubt, you must
2 find the defendant not guilty. If after weighing all of
3 the evidence you are convinced of the guilt of the
4 defendant beyond a reasonable doubt, you must find the
5 defendant guilty.

6 Credibility of witnesses: Necessarily, you must
7 determine the credibility of the witnesses who have
8 testified in this case. As you all know, credibility
9 simply means believability. It becomes your duty as jurors
10 to evaluate and to analyze the evidence and determine which
11 evidence convinces you of its truth. In doing that against
12 the backdrop of your individual and your collective common
13 sense and good judgement.

14 In believing and determining the believability of
15 the witnesses who have testified in this case, first, you
16 have no friends to reward and no enemies to punish. You're
17 selected as fair and impartial jurors to sit on a fair and
18 impartial jury.

19 You may believe one witness over several witnesses
20 or several witnesses over one witness. You may believe a
21 part of the testimony of a witness and reject the remaining
22 part of the testimony of that same witness. You may
23 believe the testimony of a witness in its entirety or
24 reject the testimony of a witness in its entirety. You may
25 consider whether or not a witness's testimony has been

1 corroborated by further testimony of other witnesses.
2 Whether by direct or circumstantial evidence. Or whether
3 it's been uncorroborated. You may consider whether any
4 witness has exhibited to you any interest, bias, prejudice,
5 or other motive in this case. You may also consider the
6 manner, the appearance, the demeanor of a witness while on
7 the witness stand.

8 Expert witnesses: And you've already heard an
9 abbreviated version, although this is not necessarily a
10 lengthy instruction, but an abbreviated instruction on
11 this. The rules of evidence ordinarily do not permit
12 witnesses to testify to opinions or conclusions. An
13 exception to this rule exists for witnesses we call expert
14 witnesses.

15 A witness who, by education or experience, has
16 become expert in some art, science, profession, or calling
17 may state an opinion as to relevant and material matter, in
18 which the witness claims to be an expert, and may also
19 state the reasons for holding the opinion, or opinions.
20 You should consider any expert opinion received in evidence
21 in this case and, like any other evidence, give it the
22 weight, the value, you think it deserves.

23 If you decide that the opinion of an expert witness
24 is not based on sufficient education and experience, or if
25 you conclude that the reasons given in support of the

1 opinion are not sound, or that the opinion is outweighed by
2 other evidence, you may disregard the opinion entirely.
3 An expert witness's testimony is to be given no greater
4 weight than that of other witnesses simply because the
5 witness is an expert. Further, you are not required to
6 accept an expert's opinion, even though it is not
7 contradicted.

8 I instruct you and emphasize that the fact the
9 defendant did not testify is not a factor to be considered
10 by you in any way in your deliberation and in your
11 consideration on the question of the guilt or the innocence
12 of the defendant. It must not be considered by you in any
13 manner whatsoever. A defendant has the constitutional
14 right to remain silent, and the assertion of this right
15 must not be considered by you in your deliberations.

16 Again, I repeat, under your oath, you are to draw
17 no conclusion whatsoever from the fact that the defendant
18 in this case did not testify.

19 Madam Forelady, the fact that this defendant did
20 not testify should not even be discussed in the jury room.
21 The burden of proof, as i have stated to you, is on the
22 state. The defendant is not required to prove his
23 innocence. The burden of proof remains on the State to
24 prove guilt beyond a reasonable doubt.

25 Statement of the defendant: A statement alleged to

1 have been made by the defendant has been admitted into
2 evidence in this case. While the Court has determined that
3 the statement is admissible, I instruct you that you make
4 the ultimate decision of whether or not the defendant made
5 the statement. If the defendant did make the statement,
6 you must determine whether the statement was made by the
7 defendant voluntarily and of his own free will. This means
8 that the statement was not caused by pressure, force, fear,
9 threats, coercion, intimidation, or by hope or a promise of
10 leniency or a reward.

11 In determining whether the statement was voluntary,
12 you should consider both the characteristics of the
13 defendant and the details of the questions. Some of the
14 things or factors that you must consider are: The age of
15 the defendant; education; mental ability; IQ, intelligence;
16 background, environment; the place and length of detention;
17 the nature of the questions; and the advice, or lack
18 thereof, to the defendant of his constitutional rights
19 including, but not limited to, the right to remain silent;
20 that any statement could be used against him in a court of
21 law; the right to have a lawyer present; that if he could
22 not afford a lawyer, a lawyer would be appointed to
23 represent him without any cost; and that he could stop
24 making a statement at any time.

25 You must carefully consider all of the surrounding

1 circumstances before you give any weight to any alleged
2 statement.

3 The State has the burden of proving beyond a
4 reasonable doubt that the alleged statement was voluntary.
5 If you determine it was, you may give the statement any
6 further consideration that you deem appropriate and proper.
7 You must decide what weight, if any, should be given to the
8 alleged statement. If you determine the alleged statement
9 was not the free and voluntary statement of the defendant,
10 you should not consider the statement at all.

11 That is the general criminal law that applies to
12 all cases in South Carolina. I assure you the end is in
13 site, ladies and gentlemen. I am now going to cover the
14 specific charge of the indictment.

15 Each indictment, the defendant is charged with
16 second degree criminal sexual conduct with a minor in the
17 second degree. That is, of course the statute in South
18 Carolina under our Code Section 16-3-655 (B)(1).

19 The defendant is charged with second degree
20 criminal sexual conduct with a minor. The state must prove
21 beyond a reasonable doubt that the defendant engaged in a
22 sexual battery with the minor victim.

23 A sexual battery is also defined in the criminal
24 sexual conduct statute. A sexual battery is sexual
25 intercourse, cunnilingus, fellatio, anal intercourse, or

1 any intrusion, however slight, of any part of a person's
2 body or of any object into the genital or anal openings of
3 another person's body, except when the intrusion is
4 accomplished for medically recognized treatment or
5 diagnostic purposes.

6 That is the definition of sexual battery in the
7 criminal sexual conduct statute.

8 The State must then prove beyond a reasonable doubt
9 that: The victim was at 14 years of age or less, but was
10 at least 11 years of age.

11 So the State must prove beyond a reasonable doubt
12 that the defendant engaged in a sexual battery with a
13 victim 14 years of age or less and who is at least 11 years
14 of age.

15 Consent, willingness, indifference, or ignorance on
16 the part of the minor, if any, as to what was taking place,
17 does not in any way affect the charge of criminal sexual
18 conduct with a minor because an unmarried woman under the
19 age of 14 cannot legally consent to sexual intercourse.
20 Consent is not an issue in the case.

21 And finally the form of the verdict. As to each
22 charge, ladies and gentlemen, of criminal sexual conduct
23 with a minor 2nd degree, and there are two possible
24 verdicts which you may find in this case: Guilty or not
25 guilty. There is no significance whatsoever in the order

1 in which I just stated those possible verdicts; it is
2 simply that one must be stated first.

3 Ladies and gentlemen, your verdict must be a
4 unanimous one and when I say unanimous, I don't mean all
5 four indictments have to be the same, but all twelve of you
6 must agree unanimously as to the verdicts as to each count.

7 Madam Forelady, you will have in there this form
8 and it's entitled Verdict Form, page 1, page 2 of 2, 1 of
9 2, 2 of 2. I have listed the indictments chronologically
10 how they were numbered. So Indictment Number, the first
11 one, 2016-GS-32-00160 is the first one numerically and I've
12 placed Indictment Number whatever, as to criminal sexual
13 conduct with a minor and I put in there on or about
14 November 8, 2013, so you would on or about the dates
15 because the indictments don't go back to the jury. You
16 will know which alleged event was being referred to. And
17 I've put the appropriate date corresponding with each
18 indictment: 160, 161, 161, 163. And you can consider them
19 in whatever order you choose. I just numbered them as they
20 were.

21 You determine the facts of the case. In other
22 words, you deliberate, you determine the facts. You then
23 take the facts as you determine to be, using your good
24 judgement and common sense, apply those facts to the law as
25 I have told you the law is.

1 If you after finding your verdicts in the back, you
2 find that the State has not met its burden beyond a
3 reasonable doubt as to count 1, your verdict would be not
4 guilty.

5 If you find the State has met its burden of proving
6 its case beyond a reasonable doubt, your verdict would be
7 guilty.

8 You will see those words appear guilty or not
9 guilty. Again, the order is under each of the indictments.
10 If you find the State has met its burden of proof, I would
11 ask you to check next to the word guilty and circle both
12 you checkmark, Madam Forelady and the word guilty.

13 If the jury's unanimous finding is the State has
14 not met its burden of proving its case beyond a reasonable
15 doubt as to this indictment, I would ask you to check to
16 the left of the two words, not guilty. Circle both the
17 check mark and the two words not guilty. And that goes to
18 the next indictment and the next indictment.

19 And there's a signature page.

20 Once jury has reached unanimous verdict on all four
21 indictments, there's a line on the lower left, presiding
22 juror and the date to be filled in on both pages.

23 Once you've reach that -- one further thing, ladies
24 and gentlemen, your verdict may not be based on passion,
25 prejudice, bias, sympathy or any other improper motive not

1 in evidence in this case.

2 Once you have reached those four unanimous
3 verdicts, I would ask you -- and you've signed the
4 indictments, I would as you, Madame Forelady to knock on
5 the jury room door and inform the bailiff that you have
6 reached a verdict. At that time, we will receive you back
7 into the courtroom.

8 What will happen now, the law requires that I meet
9 with the attorneys one final time outside of your presence
10 before the case is submitted to you for your deliberations,
11 in case I failed to instruct you in some manner or
12 improperly instructed you in some manner. I hope not, of
13 course, but I may have to bring you back out.

14 If I to not have to bring you back out -- everybody
15 looks grace which means our alternate would come out, the
16 evidence that has been introduced would be presented to you
17 and you would then be informed by the clerk to begin your
18 deliberations. Do not begin your deliberations until you
19 are informed by the clerk to do so.

20 If during the course of your deliberations, Madame
21 Forelady, members of the jury, you have any questions if
22 you'd please write out of a note for me, Madame Forelady,
23 and I will respond timely.

24 All right. Thank you. Thank you very much for
25 your focus and attention. You may now go with your

1 bailiff.

2 (The jury left the courtroom at 11:59 a.m.)

3 THE COURT: Any exceptions, Solicitor?

4 MS. PATTERSON: No, sir, Your Honor.

5 THE COURT: Mr. Stitely?

6 MR. STITELY: Nothing from the defense.

7 We looked through the exhibits this morning. I
8 think they're all good to go.

9 Are the exhibits in order?

10 MS. PATTERSON: They're not in order.

11 THE COURT: Are they all present and accounted for?

12 MS. PATTERSON: Yes, sir, they are present.

13 THE COURT: All right. Here's the form of the
14 verdict.

15 MR. STITELY: No objection to the form of the
16 verdict, Judge.

17 MS. PATTERSON: Yes, no objection.

18 THE COURT: All right. We'll be in recess,
19 awaiting our jury's decision.

20 (The jury began their deliberations at 12:01 p.m.)

21 (The alternate was released by the Court.)

22 (It was reported to the Court that the jury had a
23 question.)

24 **JURY QUESTION**

25 THE COURT: The question from the jury is, When did

1 David say he lost his phone?

2 MR. STITELY: Defendant's position is that you
3 instruct the jury they've heard the evidence that was in
4 the record. The only testimony regarding that came from
5 Detective Strickland.

6 THE COURT: I agree with that.

7 MS. PATTERSON: I do too.

8 THE COURT: I agree that that's where the testimony
9 came from Detective Strickland. Now, I think that's the
10 only witness that testified to that. So the question
11 becomes, you want me to let them listen to that testimony?

12 MR. STITELY: Your Honor the at this point instruct
13 them that they've any particular portion of the testimony
14 specifically they'd like to hear they're welcome to it.

15 My request is if they're going to hear a portion of
16 testimony is always they hear the entire witness's
17 testimony.

18 THE COURT: I agree they would have to hear her
19 entire testimony.

20 MR. STITELY: That's my only specific request if
21 we're going the go that route.

22 MS. PATTERSON: Yes, sir. Well, pretty much what
23 he's saying they have to use their own recollection of the
24 testimony unless they want to hear the entire testimony.

25 THE COURT: How long is that testimony?

1 THE COURT REPORTER: Almost an hour.

2 THE COURT: You know I'm not too sure I can't give
3 them an option that they have to hear it all. If they've
4 got a specific question, I can say, well, we'll start it
5 and whenever you hear what you want to hear you can stop
6 it. They're only asking for one part.

7 MR. STITELY: Your Honor, I think it was addressed
8 problematically though, both in her direct and in my
9 cross-examination so we'd have to find excerpts from both
10 sides of the testimony. Because I believe I got up and
11 asked her, And he told you he lost his phone before. And I
12 think in direct exam she made mention of it when she was
13 just going through the direct. I don't remember exactly
14 how it was worded. But I'm pretty sure I asked about it
15 again on cross, so we would have to hear both sides of it.

16 THE COURT: There's so much in there that they
17 won't have to hear.

18 MS. PATTERSON: And I'm not really sure she
19 mentioned the date.

20 THE COURT: She did. She mentioned the date of
21 when -- she didn't mention the date. But she referred it
22 to when she interviewed the defendant, which was January of
23 '14. And I believe he said he had lost it last month. I
24 believe it was her testimony which would put it in December
25 of '13 dated from the date of the interview.

1 MR. STITELY: The testimony as indicated by
2 Investigator Strickland's how she put it on the record
3 according to her report it was he lost it a month after the
4 State had already taken his last one is how it was referred
5 to in her report.

6 THE COURT: I'm not talking about her report, I'm
7 talking about her testimony.

8 MR. STITELY: Yes, sir. And I think she said a
9 month prior.

10 THE COURT: A month prior her interview. I thought
11 that's what I just said.

12 MR. STITELY: I don't think that's exactly how she
13 said it.

14 THE COURT: I don't care how she thinks she said it
15 at this point because she can't testify anymore.

16 MR. STITELY: Yes, sir.

17 THE COURT: I mean I do care but I don't care. I
18 didn't mean that in a rude or unmannerly way whatsoever.

19 Bring me the jury. I'll talk to them.

20 About an hour, Madame Court Reporter?

21 THE COURT REPORTER: About that. There was some
22 time while they were out.

23 THE COURT: You object to me telling them that's
24 where the testimony was at? Just her testimony?

25 MR. STITELY: Your Honor, my objection would be if

1 you intend to tell them that that testimony came from
2 Detective Strickland. It would be the defense request if
3 we hear a portion, we hear all of Detective Strickland's.

4 THE COURT: That's what I intend.

5 Why don't they bring my jury.

6 (The Court left for a brief moment.)

7 (The jury entered the courtroom at 12:47 p.m.)

8 THE COURT: All right. Madame Forelady, ladies and
9 gentlemen, I received your note, your question.

10 One, when did David say he lost his phone. That --
11 the parties agree that that would have been within the
12 testimony of Detective Strickland. What I can do is replay
13 the testimony of Detective Strickland. You can hear it out
14 here. A transcript -- Brenda's the best, but she hasn't
15 done the transcript yet. Brenda have you done that yet?

16 THE COURT REPORTER: No, sir, not yet.

17 THE COURT: Probably be done by this afternoon.
18 But there may be questioning of -- on this particular issue
19 both by the State and by the defense, so I guess what I'm
20 telling you is you'd have to listen to all of the testimony
21 of Detective Strickland. Okay? Because I don't know where
22 in the except it may be within the direct,
23 cross-examination and I don't even recall if there was
24 redirect and recross-examination. All right. Will you key
25 us up, please, Madame Court Reporter.

Renee Strickland - Direct Examination by Ms. Patterson

1 (The court reporter was locating that testimony to
2 be played to the jury.)

3 (The following was played for the jury:)

4 **DIRECT EXAMINATION.**

5 BY MS. PATTERSON:

6 Q And, Ms. Strickland, where are you currently
7 employed?

8 A I'm currently employed with the South Carolina
9 Attorney General's Office.

10 Q And what do you do at the Attorney General's
11 Office?

12 A I'm a Special Investigator.

13 Q And where were you employed prior to your
14 employment with the Attorney General's Office?

15 A Prior to my employment with the Attorney General's
16 Office, I was employed with Lexington County Sheriff's
17 Department and also the State Law Enforcement Division and
18 the City of Cayce Police Department.

19 Q And what was your job when you were employed with
20 the Lexington County Sheriff's Department?

21 A I had two job titles during my tenure at the
22 Sheriff's Department. The first was Crime Scene
23 Investigator and the second was Major Crime Scene
24 Investigator.

25 Q And how long were a Crime Scene Investigator?

Renee Strickland - Direct Examination by Ms. Patterson

1 A Just over a year.

2 Q And what did you do, what were some of your job
3 responsibilities as a Crime Scene Investigator?

4 A As Crime Scene Investigator, I responded to crimes,
5 typically violent crimes, some property crime, and
6 collected evidence, documented the scene and then performed
7 analysis on certain types of evidence, sent evidence to the
8 State Law Enforcement Division and things of that nature.

9 Those kind of cases would be sexual assaults,
10 homicides, certain property crimes, it just depended on
11 what I was called out for.

12 Q And when were you employed or when did you, when
13 were you reassigned to major crimes? I apologize?

14 A I believe it was the later part of 2012.

15 Q And what are some -- what are some of the crimes
16 that major crimes investigate?

17 A Major crimes is mostly what someone would consider
18 like a crime against a person or a violent crime,
19 aggravated assault, sexual assault, sexual assaults
20 involving minors, homicide, domestic violence, things of
21 that nature.

22 Q And how did you come to be involved in the State of
23 South Carolina versus David Ray Brown?

24 A I was assigned this case for investigation as a
25 part of my caseload in Major Crimes.

Renee Strickland - Direct Examination by Ms. Patterson

1 Q Do you know when you got assigned to the case?

2 A The incident was reported on November the 18th so I
3 probably would have been assigned the following morning on
4 the 19th.

5 Q And what year are we referring to?

6 A I'm sorry, 2013.

7 Q Okay. And so what are -- what is the first thing
8 you do when you get assigned to a case?

9 A The first thing I do when I get assigned a case is
10 to try to make contact with the victim. In this case,
11 contact with the victim's mother since she was a minor.

12 Q Okay. And did you do that in this case?

13 A I did.

14 Q And how did you make contact with the victim's
15 mother?

16 A By phone.

17 Q And what did you do after you made contact with her
18 mother?

19 A I scheduled an appointment for them to come in and
20 speak with me and I met with them to speak about, about the
21 case.

22 Q Okay. And where did you meet?

23 A At the Sheriff's Department at 521 Gibson Road in
24 Lexington.

25 Q And who came to this initial meeting?

Renee Strickland - Direct Examination by Ms. Patterson

1 A The victim, Minor , and her mother, Ms.
2 Vallie Seaman.

3 Q And did you speak with Minor about the incident?

4 A I did, yes, ma'am.

5 Q And when you speak with a minor victim, do you do
6 it in the presence of their mother?

7 A It depends. Sometimes yes. I did speak to Minor
8 alone. I spoke with them together and alone.

9 Q Okay. And without saying what she may have told
10 you, was she able to tell you what happened to her?

11 A She was.

12 Q And was she able to tell you when it happened?

13 A She did.

14 Q And when did she tell you?

15 A She told me the incidents had occurred between
16 October of 2013 and November of 2013 in the evening hours.

17 Q Was she able to be even more specific than that?

18 A At that time, I don't recall if we -- if we
19 discussed specific dates. She just gave me the date range
20 of months.

21 Q Okay. Was she able to tell you where it happened?

22 A She was. She indicated that it happened on the
23 property of her residence, which is at 214 Way in
24 Gaston.

25 Q Okay. And were you able to confirm if that was in

Renee Strickland - Direct Examination by Ms. Patterson

1 Lexington County or not?

2 A I was. Yes, it is in Lexington County.

3 Q And did you find out how old Minor was?

4 A I did. She was 13 and then she had just recently
5 had a birthday and turned 14 on the -- I believe it was the
6 of

7 Q Okay. And after speaking to Minor about what
8 happened, when it happened and where it happened, what did
9 you do next?

10 A I began my investigation to try to identify who the
11 suspect was and to get some more information as far as the
12 communication and -- and more information from Minor ,
13 specifics about the case.

14 Q And what was the first thing you did in trying to
15 identify who the person was?

16 A The first thing I did was, I collected, I got
17 Minor 's phone from her mother and had that submitted for --
18 for analysis and I also spoke with Minor and her mother and
19 they were able to provide me with information about a
20 Facebook page that had tried to friend her and she blocked
21 and she recognized this person to be the person that she
22 had met and had had sex with and they provided me with the
23 pictures. I was then able to go and look at the Facebook
24 page myself and confirm with the victim that this is the
25 person that had -- she had had sex with and she had met

Renee Strickland - Direct Examination by Ms. Patterson

1 with.

2 Q Now, let's go back to the cell phone for a minute.
3 I'm going to show you what's been marked as State's Exhibit
4 Number 12 just for identification purposes only and ask you
5 to take a look at this. And do you recognize that?

6 A I do, yes.

7 Q And what is that?

8 A This is the cell phone that -- that Minor and her
9 mother brought in to give to me.

10 Q Okay. And did you -- did you take a look at the
11 cell phone?

12 A I did initially.

13 Q Were you able to see anything that concerned you?

14 A I saw a few messages and I saw the message that
15 Deputy Griggs had sent, but I knew that she had mentioned
16 deleting messages and so I knew that our Crime Scene
17 Investigation Unit had the capability to further examine
18 the phone. So I took her phone as evidence at that time to
19 submit for further analysis to recover the text messages.

20 Q Okay. And what's the process for submitting that
21 phone for analysis?

22 A I got a consent to search from Minor 's mother and
23 filled out a lab request and that phone was submitted to
24 our evidence department and then it went to Crime Scene
25 Investigator Phipps, who then performed what we call, it

Renee Strickland - Direct Examination by Ms. Patterson

1 can be termed as a cell phone dump, but it's actually a
2 dated extraction and it can pull even deleted data from,
3 from the cell phone.

4 Q And did you, were you able to get that information
5 from Investigator Phipps?

6 A I was, yes.

7 Q And going back to reviewing Minor 's Facebook
8 account -- let me show you what's been entered as State's
9 Exhibit Number 2 and ask you to take a look at this. Do
10 you recognize this?

11 A I do.

12 Q And where did you first see this image?

13 A I saw that image -- Minor and her mother showed
14 that image to me and that was the -- the initial Facebook
15 that she, that she friended and she thought that she was
16 communicating with Justin Goodwin. That is the picture
17 that she was provided with and that's who she thought she
18 was communicating with via text message.

19 Q Okay. And I'm going to show you what's been marked
20 as State's Exhibit Number 1, was entered into evidence as
21 State's Exhibit Number 1. Do you recognize that
22 photograph?

23 A I do.

24 Q And when did you first see this?

25 A I saw that on the Facebook page, David the

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1 Guitarist after the victim's mother had sent me information
2 that -- that Minor recognized the individual under the
3 Facebook page, David the Guitarist; that was on his
4 Facebook page.

5 Q And once you got this image, what did you do?

6 A Once I got the image and I confirmed with Minor
7 that that was indeed the person that she had met and had
8 sex with, I continued to attempt to identify him.

9 Q Okay. And were you able to further identify him?

10 A I was. Through the course of my investigation, I
11 was able to positively identify him.

12 Q And who did you find out his real name was?

13 A David Ray Brown.

14 Q And were you able to identify his age?

15 A I was, yes.

16 Q And how old was he?

17 A He was 41 at the time.

18 Q Now, when you got the cell phone extractions and
19 looked at Minor 's text messages, were you able to identify
20 a number associated with the text messaging?

21 A I was.

22 Q And do you remember what that number was?

23 A Yes, it was - -3982.

24 Q And after you got that phone number, what did you
25 do?

Renee Strickland - Direct Examination by Ms. Patterson

1 A I entered that phone number into something that's
2 called phonefinder.net. It is a web based, it's basically
3 a query and you enter a phone number and it tells you the
4 cell phone provider. It doesn't give you any additional
5 information other than who the cell phone provider is and
6 we use that in cases where we just have a phone number to
7 know who to submit a search warrant or any kind of legal
8 compliance to.

9 Q And by using phonefinder, were you able to identify
10 a subscriber to that phone number?

11 A Not a subscriber, but a carrier, which was Sprint.

12 Q Okay. And once you identified Sprint as the
13 carrier, what did you do?

14 A Once I identified Sprint as the carrier, I typed up
15 a search warrant for the phone records and that search
16 warrant was signed by a judge and it was sent to Sprint's
17 Legal Compliance by Detective Chapel.

18 Q Okay. And were you successful in getting
19 information from Sprint?

20 A I was not. They replied back saying that the
21 number had now belonged to Verizon.

22 Q And after you got that information that this was
23 now a Verizon number, what did you do?

24 A I typed up a search warrant for Verizon's Legal
25 Compliance and got it signed by the judge and submitted it

Renee Strickland - Direct Examination by Ms. Patterson

1 to Verizon Legal Compliance.

2 Q And did you receive any information from Verizon?

3 A I did.

4 (State's Exhibit Number 17 was marked for
5 identification.)

6 BY MS. PATTERSON:

7 Q Let me show you what's been marked as State's
8 Exhibit Number 17 for identification purposes only. I ask
9 you to take a look through that document. Do you recognize
10 that document?

11 A I do.

12 Q And what is it?

13 A It's the cell phone records that I received from
14 Verizon Legal Compliance.

15 Q Okay. Does it fairly and accurately represent the
16 documents you received from Verizon Compliance?

17 A It does, yes.

18 Q Does it look like it's been changed?

19 A No.

20 Q And after you received that document, did you
21 review it?

22 A I did.

23 Q Did you see anything that interests you on it?

24 A I did. When I reviewed it, I was specifically
25 looking for detail that would further connect that phone

Renee Strickland - Direct Examination by Ms. Patterson

1 number to David Ray Brown and I noticed a number --

2 MR. STITELY: Judge, I'm going to object at this
3 point. That's not in evidence. We haven't going to
4 through the validity of the document yet. It would be
5 inappropriate for her to talk about its findings at this
6 point until it's actually in evidence.

7 THE COURT: All right. Again, Solicitor, do you
8 intend to call a representative of Verizon that can verify
9 that as business records.

10 MS. PATTERSON: Yes, sir, she'll be here after
11 lunch.

12 THE COURT: Perhaps, we move at a certain rate, she
13 might be required to be here before that, but that's
14 neither here nor there, Solicitor. We'll cross that bridge
15 if we need to. But be that as it may, there will be a
16 person here in that capacity?

17 MS. PATTERSON: Yes, sir.

18 THE COURT: All right. As I ruled yesterday,
19 everything cannot be introduced on a pencil point or pen
20 point, therefore, I will allow you to go into it at this
21 time, although it's only 17 for ID purposes only and with
22 the understanding that if it is not verified through
23 custodian of the records of Verizon, it would be then
24 subject to be stricken from the record.

25 MS. PATTERSON: Yes, sir.

Renee Strickland - Direct Examination by Ms. Patterson

1 THE COURT: And the jury would not consider that
2 possibly.

3 MS. PATTERSON: Yes, sir.

4 THE COURT: All right.

5 MS. PATTERSON: Yes, Your Honor. Thank you.

6 THE COURT: Thank you. I think that will protect
7 you on the record, Mr. Stitely.

8 MR. STITELY: Thank you, Judge.

9 THE COURT: Thank you. You may proceed, Solicitor.

10 BY MS. PATTERSON:

11 Q Did any of the numbers on the phone long interest
12 you?

13 A Yes, ma'am.

14 Q And which number was that?

15 A The number that interests me was - -8259.

16 Q And why did this number become of interest to you?

17 A This number was of interest to me because this was
18 the number that had been reported by David Ray Brown's
19 mother, Jackie Elizabeth Brown, to the Sheriff's Department
20 as a --

21 MR. STITELY: Your Honor, I'm going to object to
22 hearsay on this. I don't know where this is coming from.
23 She's saying according to the Sheriff's Department.

24 THE COURT: The question is why did this number
25 interest you, correct?

Renee Strickland - Direct Examination by Ms. Patterson

1 MS. PATTERSON: Yes, sir.

2 THE COURT: So it's not, it's not being offered for
3 the truth of the matter asserted, it's being offered in my
4 opinion under the continuing conduct of the investigation
5 and under State v. Greene and State v. Davis. So restate
6 your question, Solicitor.

7 BY MS. PATTERSON:

8 Q Did you see any of the -- did any of the numbers on
9 the log interest you?

10 A Yes.

11 Q And which number was that?

12 A - -8259.

13 Q And how -- how did you come across this number?

14 A I found that number on a booking report.

15 MR. STITELY: Judge, I have a matter of law to take
16 up with the Court, please.

17 THE COURT: All right. Before I let the jury step
18 out. Madam Clerk, while the jury is out, will you please
19 order them lunch to be brought in today.

20 THE CLERK: Okay.

21 THE COURT: At one o'clock, 1300 hours.

22 THE CLERK: Okay.

23 THE COURT: We'll take a lunch break no greater
24 than one hour. They, of course, can go out and walk around
25 if they want to, what have you. If they're through with

Renee Strickland - Direct Examination by Ms. Patterson

1 lunch before the one hour is up, all they have to do is
2 knock on the door and we'll reassemble. Take care of them
3 and order something during this recess. When that is
4 complete, let me know and we'll get right back to work.

5 Please do not discuss the case during this brief
6 recess. Thank you very much. Take at least 15 minutes,
7 but if it takes longer, let me know; I'm not going
8 anywhere; I'll be right here. Thank you. Thank you very
9 much.

10 (The tape was stopped at this point.)

11 (The tape continued to play as follows:)

12 THE COURT: All right. Welcome back, ladies and
13 gentlemen. Prior to the break, there was a question put to
14 the detective concerning if there was a phone number of
15 some interest that she identified on State's Exhibit Number
16 17. Her response, I believe, was - -8259 and she
17 indicated that the, on the record, the source where she
18 identified that phone number came from a booking report.
19 And I will try to explain this to you artfully, as
20 in-artfully as I speak sometimes.

21 A booking report is a document generated at the
22 detention center when an individual is placed under arrest
23 for a particular charge, whatever the charge may be and
24 it's an identifier; name, address, phone number,
25 occupation, age, such as that, gender, such as that. So

Renee Strickland - Direct Examination by Ms. Patterson

1 you have this booking report with this phone number on it.

2 Now I'm allowing this into evidence because the
3 phone number is the phone number of a relative of Mr.
4 Brown, the defendant. This -8259 is the phone number of
5 a relative of Mr. Brown. Okay. Now, I don't want the
6 facts that, and you cannot -- this fact cannot be part of
7 your deliberation. The fact that Mr. Brown had a relative
8 that was arrested and booked into the jail, the detention
9 center, should not prejudice Mr. Brown whatsoever either
10 one way or the other. As -- as we all know, we aren't
11 responsible for other peoples conducts and other peoples
12 choices they make good or bad. I wish I could be
13 responsible for some of the good ones that my mother and
14 father made, good or bad, be that as it may.

15 So the fact that an individual on trial may have a
16 relative that was booked into the jail is not of relevancy.
17 I'm only allowing this testimony for purposes of the
18 investigation that the officer found this phone number.
19 That was the source in which it was found and that phone
20 number appeared on State's 17 for identification, which was
21 the -3982. Don't -- don't consider the fact that the
22 individual relative of Mr. Brown was arrested. That has
23 nothing to do with whether he's guilty or not guilty.

24 All right. Does that make sense? Questions?

25 (There was no response.)

Renee Strickland - Direct Examination by Ms. Patterson

1 THE COURT: Thank you. Thank you very much.

2 Solicitor, you may ask -- thank you.

3 Any objections, Mr. Stitely.

4 MR. STITELY: No, sir, Judge, thank you.

5 THE COURT: Thank you. Thank you very much.

6 Solicitor, you may ask your next question.

7 MS. PATTERSON: Thank you, Your Honor.

8 BY MS. PATTERSON:

9 Q And what did you notice about this number on the
10 phone log?

11 A That it appeared on the phone log several times
12 during the -- the time frame where the incidents with the
13 victim occurred.

14 Q And what time frame was that?

15 A October through November of 2013.

16 Q Did you find out what type of phones that this was?

17 A Verizon advised me that it was a Trac phone,
18 meaning that it was a prepaid phone.

19 Q And were you able to get a definite subscriber's
20 name?

21 A No, I was not.

22 Q Now, did you review the text messages from the
23 phone dump?

24 A I did.

25 Q Did you see any that concerned you?

Renee Strickland - Direct Examination by Ms. Patterson

1 A Yes, I saw several.

2 Q And what did you do as a result?

3 A As a result, I continued my investigation and once
4 I identified Mr. Brown, I attempted to make contact with
5 him.

6 Q And how did you make this contact?

7 A Another detective and I rode out to his residence
8 to try to meet with him and we actually met with his mother
9 and she said that he was not at home. Mr. Brown then
10 called me at the Sheriff's Department and agreed to meet.

11 Q How did he get your number?

12 A I believe that we left a number; I'm not certain or
13 he may have just called the direct front desk number for
14 the Sheriff's Department.

15 Q And were you able to meet with Mr. Brown?

16 A I was.

17 Q And do you remember what date this was?

18 A I believe it was the 19th of January of 2014.

19 Q And where did y'all meet?

20 A At 521 Gibson Road, which is the Sheriff's
21 Department Headquarters, which was where my office was
22 located.

23 Q Who came to the meeting with Mr. Brown?

24 A Mr. Brown is the only person that I saw.

25 Q And did you -- did he agree to speak with you?

Renee Strickland - Direct Examination by Ms. Patterson

1 A He did.

2 Q Before he spoke with you, did you read him any
3 rights?

4 A I did. I read, I read him his Miranda rights.

5 Q And what are Miranda rights?

6 A They're the advisement of a person's rights as far
7 as the rights that are legally afforded to them before they
8 talk to law enforcement.

9 Q And how did you read him his rights?

10 A I read him his rights verbatim from a card.

11 Q Okay. And what were those rights?

12 A I'll read them to you. You have the right to
13 remain silent. Anything you say can and will be used
14 against you in a court of law.

15 You have the right to talk to a lawyer and have him
16 present with you while you are being questioned. If you
17 cannot afford to hire a lawyer, one will be appointed to
18 represent you before any questions if you wish.

19 You can decide at any time to exercise these rights
20 and not answer any questions or make any statements.

21 Do you understand each of these rights I have
22 explained to you?

23 Having these rights in mind, do you wish to talk to
24 us now.

25 Q And did Mr. Brown understand those rights?

Renee Strickland - Direct Examination by Ms. Patterson

1 A He indicated that he did.

2 Q Did he have any questions for you regarding those
3 rights?

4 A No, he did not.

5 Q And did he agree to speak with you?

6 A He did.

7 Q And was he under arrest at this time?

8 A He was not, no.

9 Q Did you have any arrest warrants for him at this
10 time?

11 A I did not and I had advised him of that.

12 Q So he was free to leave?

13 A He was.

14 Q And did he leave after he spoke with you?

15 A He did.

16 Q And before he left your office that day, did you
17 ask him about that phone number?

18 A I did.

19 Q And what did he say?

20 A He said that that was his phone number and that he
21 had ported, for some reason did not have the original phone
22 and ported that number to another phone and then had lost
23 the phone that he ported the number to and I asked him did
24 he port the number again and he said no.

25 Q Now did you make any, did you ask Mr. Brown any

Renee Strickland - Direct Examination by Ms. Patterson

1 other information this day?

2 A I did. I asked him if he would supply us a DNA
3 sample for comparison.

4 MS. PATTERSON: I beg the Court's indulgence?

5 THE COURT: Yes, ma'am.

6 BY MS. PATTERSON:

7 Q And how was he to provide the DNA sample?

8 A That would be collected in what is called a Buccal
9 Swab Kit.

10 Q And what is a buccal swab?

11 A A buccal swab -- buccal actually means of or
12 pertaining to the mouth or cheek. It's the accepted method
13 for taking a sample of DNA from someone to include or
14 exclude them from -- from the investigation. It's to
15 perform comparative analysis and basically how the test is
16 performed is that the interior of an individual's cheek is
17 swabbed with a cotton swab and that collects the buccal
18 cells from the cheek that contain the DNA.

19 Q And did you take the buccal swab from Mr. Brown?

20 A I did.

21 Q And did you learn how to do buccal swabbing?

22 A I had been performing crime scene, had been a Crime
23 Scene Investigator since 2007 and in that time, I've
24 probably done in the hundreds of buccal swab collections so
25 that was part of my training as a Crime Scene Investigator.

Renee Strickland - Direct Examination by Ms. Patterson

1 Q And why did you want this buccal swab from Mr.
2 Brown?

3 A To compare to any -- any DNA or anything that was
4 generated from the victim's belongings that she had turned
5 in.

6 Q And what did you do once you got the buccal swab?

7 A Submitted that to evidence and then requested that
8 it be sent to SLED for analysis along with the items to
9 compare it to.

10 Q And do you know if that was, in fact, sent over to
11 SLED?

12 A I believe that it was, yes.

13 Q And I think you said earlier that Mr. Brown left
14 your office after speaking with you?

15 A Yes.

16 Q What was Mr. Brown wearing when he came to meet
17 with you?

18 A He was wearing a gray colored sweater or
19 sweatshirt, blue jeans and some work boots.

20 Q And did his attire interest you at all?

21 A It did.

22 Q And why did it interest you?

23 A It was very similar, almost the exact description
24 that Minor had given of the attire that he would wear to
25 come to meet with her.

Renee Strickland - Direct Examination by Ms. Patterson

1 Q Now, we talked about Minor telling you where these
2 incidents occurred and that was at her house?

3 A Correct.

4 Q Did you ever go out to her residence?

5 A I did, yes.

6 Q First I'm going to show you what's been marked as
7 State's Exhibit 18 for ID only and ask you to take a look
8 at that?

9 THE COURT: You don't have a pocket knife?

10 THE WITNESS: They wouldn't let me in with it.

11 (The witness was opening a piece of evidence.)

12 BY MS. PATTERSON:

13 Q Do you recognize what was in that package?

14 A I do.

15 Q And what is that?

16 A This is the Buccal Swab Collection Kit.

17 Q Okay. And who is that a buccal swab sample of?

18 A David Ray Brown.

19 Q And is that -- and what date was that taken?

20 A This was taken on January 18th.

21 Q Of what year?

22 A 2014, I believe I said the 19th earlier, I'm sorry.

23 Q And do you, is that the buccal swab that you took
24 on Mr. Brown?

25 A It is.

Renee Strickland - Direct Examination by Ms. Patterson

1 Q And how do you recognize that?

2 A I recognize it because it has my name on it and it
3 also has my signature and the signature of another
4 detective.

5 Q And does it look like it's been changed or tampered
6 with?

7 A It -- it's different from its original condition
8 because it was sent to SLED for analysis and they would
9 have to break the seal, but everything written on the
10 outside is exactly as it was, the signatures, and Mr.
11 Brown's signature is on it as well.

12 Q Now, when Minor and her mother came to meet with
13 you, besides the phone, were you given any other -- any
14 other evidence from them?

15 A Yes, ma'am. They brought in three pairs of Minor's
16 underwear.

17 Q I'm going to show you what's been marked as State's
18 Exhibit 14, 15 and 16 for ID only and ask you to take a
19 look at that?

20 A Uh-huh (affirmative response).

21 Q And do you recognize what's in those photographs?

22 A I do, yes, ma'am.

23 Q And what does it appear to be?

24 A These are the three pairs of underwear that Minor
25 and her mother brought to me at the Sheriff's Department.

Renee Strickland - Direct Examination by Ms. Patterson

1 Q And do they look, fairly and accurately represent
2 the underwear that they gave at the Sheriff's Department?

3 A They do. They again look different because they've
4 been analyzed at State Law Enforcement Division, but they
5 do appear to be the same underwear, yes.

6 Q Okay. Other than what was done at SLED, do they
7 look like they've been tampered with in any way in those
8 pictures?

9 A No, not at all.

10 MS. PATTERSON: Your Honor, at this time, we move
11 State's Exhibit 14, 15 and 16 into evidence?

12 MR. STITELY: No objection, Judge.

13 THE COURT: All right. 14, 15 and 16 is in
14 evidence without objection.

15 (State's Exhibits Number 14, Number 15, and Number
16 16 were admitted into evidence.)

17 BY MS. PATTERSON:

18 Q And once again, when you got these, when you got
19 these underwear, what did you do with them?

20 A I submitted those to evidence and then eventually
21 submitted a request for them to be sent to State Law
22 Enforcement Division for further analysis and comparison.

23 Q And do you know of if the underwear were in fact
24 analyzed at SLED?

25 A Yes, ma'am, I believe they were.

Renee Strickland - Direct Examination by Ms. Patterson

1 Q And I'm going to show you what's been marked as
2 State's Exhibit 19 for ID only. Do you recognize what's in
3 that packet?

4 A I do.

5 Q And what is in that packet?

6 A The three pair of underwear.

7 Q Okay. Do they look like they have been changed or
8 altered in any way besides what SLED may have done?

9 A Other than what was necessary to be performed at
10 SLED, no, ma'am.

11 Q Do they fairly and accurately represent what Minor
12 and her mother left with you at the Sheriff's Department?

13 A Yes, they do.

14 MS. PATTERSON: Your Honor, at this time we move
15 State's Exhibit 19 into evidence?

16 MR. STITELY: No objection.

17 THE COURT: State's 19 is in evidence without
18 objection.

19 (State's Exhibit Number 19 was admitted into
20 evidence.)

21 BY MS. PATTERSON:

22 Q And you said you went out to Minor 's house?

23 A I did, yes, ma'am.

24 Q And what did you do when you went out there?

25 A Looked at the area, the location where the deer

Renee Strickland - Direct Examination by Ms. Patterson

1 stand was, the location that Minor indicated that she would
2 meet with the individual or the suspect and engage in
3 sexual intercourse.

4 Q I'm going to show you State's Exhibit 3, 5, 6, 7
5 and 8 and ask you to take a look at those photographs?

6 And were you able to, in fact, see the deer stand?

7 A I was, yes, ma'am.

8 Q And what did you notice about the deer stand, if
9 anything?

10 A What I noticed about the deer stand is it's, it's
11 located around the corner a bit from where the residence
12 is. I could not, I did not have a direct line of sight to
13 the residence if I was located right here where the deer
14 stand was. So it was somewhat concealed with the wooded
15 area between the residence and the deer stand. Surrounding
16 the deer stand is a wide open field. So there's nothing
17 really around the deer stand other than the house which is
18 around the corner here just a bit. It's a very short
19 distance, accessible by walking.

20 Q So is there any trees or anything covering the deer
21 stand?

22 A Around it, but not, you know, not right on top of
23 it, but yeah, they do surround it.

24 Q Did you notice anything about the area in general
25 of around Minor 's house?

Renee Strickland - Direct Examination by Ms. Patterson

1 A The area in general is I would say pretty secluded.
2 It's a rural area. It's a dirt road. The field is
3 actually quite large. There is a main road back over here
4 which would be Road and then the road that she
5 lives which is Way. Other than that, there's really
6 some residences over here, but it's across this very large
7 field.

8 Q And you did confirm that this residence was in
9 Lexington County, correct?

10 A Yes.

11 MS. PATTERSON: I beg the Court's indulgence, Your
12 Honor?

13 THE COURT: Yes, ma'am.

14 BY MS. PATTERSON:

15 Q When I asked you earlier were you able to confirm
16 David Brown's age; did you confirm his date of birth?

17 A Yes.

18 Q And what was his date of birth?

19 A

20 Q Thank you, Investigator Strickland. Please answer
21 any questions Mr. Stitely has?

22 THE COURT: Thank you. Thank you, Solicitor.
23 Mr. Stitely.

24 MR. STITELY: It please the Court, Your Honor?

25 THE COURT: Yes, sir.

Renee Strickland - Cross-Examination by Mr. Stitely

CROSS-EXAMINATION

1
2 BY MR. STITELY:

3 Q How are you this morning, Investigator Strickland?

4 A I'm good; how are you.

5 Q Doing just fine. Actually I don't have too much
6 for you?

7 Do you have your initial report in front of you?

8 A I do.

9 Q Could you grab that so you can reference it?

10 A I got it.

11 Q Your initial interview with Miss Minor looks
12 like it took place on, I can't tell, the 22nd or 23rd of
13 November?

14 A 21st and 22nd, I think. We met twice.

15 Q Okay. What was your initial take of her demeanor
16 in your initial consult with her?

17 A Her initial demeanor, she was not upset, she didn't
18 seem afraid. She would -- I would kind of describe it as
19 kind of a flat affect, she didn't convey too much emotion,
20 which is not unusual.

21 Q Looking at line four of the first paragraph, she
22 was not upset, smiled, laughed a few times, she did not
23 seem scared, embarrassed, or disturbed in any way. She was
24 concerned about us keeping her phone for a prolonged period
25 of time. That would be your observation on that date?

Renee Strickland - Cross-Examination by Mr. Stitely

1 A Right.

2 Q You don't have any reason to embellish, change, add
3 to this, anything like that?

4 A No, my reason for documenting that is -- is simply
5 to, you know, document the demeanor of the victim. It's
6 not a -- it's not uncommon, you know, and it would be quite
7 common for a child to appear in that manner.

8 Q Okay. When you met with Mr. Brown, he came into
9 your office at the Sheriff's Department?

10 A He did.

11 Q He came voluntarily?

12 A He did.

13 Q Okay. Spoke to you voluntarily?

14 A He did.

15 Q Provided DNA samples voluntarily?

16 A Absolutely.

17 Q And y'all went through -- but that's the least
18 evasive way of getting DNA, rather than drawing blood, you
19 just --

20 A Correct and it's the same result.

21 Q And we didn't describe it, but really it's just a
22 Q-tip in their cheek and that's it?

23 A Correct, yeah, a Q-tip swab on the interior of the
24 cheek.

25 Q And it provides sufficient DNA for the forensic

Renee Strickland - Cross-Examination by Mr. Stitely

1 people to do whatever they needed?

2 A Correct, for comparison.

3 Q I imagine you like it more than blood even because
4 it's kind of a clean sample, wasn't it? Is that a fair way
5 to describe it?

6 A Correct, and it's just a less invasive way of
7 obtaining DNA from someone.

8 Q Okay. One thing you did talk to the solicitor
9 about, you said that he said that that was -- I'm bad about
10 that. Mr. Brown stated to you that at some point that was
11 his number, but he had gotten rid of it months before;
12 correct?

13 A He stated that that was his number and he did not
14 have the original phone for a particular reason and that he
15 had ported the number. He wanted to keep his number so he
16 ported the number to a new phone and then had lost that
17 particular phone. I think he --

18 THE COURT: I apologize. I'm not quite tracking.
19 What number are we talking about?

20 MR. STITELY: That would be the 3982 number, Judge,
21 the one that's referenced in Exhibit Number 17, the Verizon
22 number.

23 THE COURT: ?

24 MR. STITELY: I have it's . The one ending in
25 3982, Judge.

Renee Strickland - Cross-Examination by Mr. Stitely

1 THE COURT: ; that's the number your question
2 was about?

3 MR. STITELY: Yes, sir, Your Honor.

4 THE COURT: What was your response again,
5 Detective?

6 THE WITNESS: He said that number did belong, did,
7 in fact, belong to him at one time and that for a
8 particular reason he didn't no longer have the original
9 phone. He then ported that number to a new phone, but he
10 said that he had lost that phone. I think he said
11 approximately a month prior and I asked him why did you not
12 port the number again to which he provided no explanation.

13 THE COURT: Thank you. I didn't mean to interrupt
14 you.

15 MR. STITELY: I wasn't clear on my question, Judge.
16 I appreciate that.

17 BY MR. STITELY:

18 Q The other thing y'all talked about just briefly was
19 the clothing he would wear. And you said he was wearing
20 jeans, a sweater and work boots?

21 A Correct.

22 Q And is that uncommon for a man who does
23 construction in November or January to be wearing?

24 A No, but it was a gray sweater or sweatshirt, blue
25 jeans and work boots, which is what she had described to

Renee Strickland - Cross-Examination by Mr. Stitely

1 me. So I took notice.

2 Q All right. And again, he came voluntarily?

3 A He did.

4 Q Provided his DNA voluntarily?

5 A Correct.

6 Q Left and then later was charged?

7 A Right, correct.

8 Q The last question I have for you, Investigator, and

9 I'm not going to pull them out, the jury saw the pictures.

10 The underwear in Exhibits 16 through 18, they weren't cut
11 up like that when you saw them; that's what SLED does to do
12 their analysis, correct?

13 A Correct, they have to take cutting samples in order
14 to perform their analysis.

15 THE COURT: I think it's 14, 15, 16 and 19.

16 MR. STITELY: Yes, sir, Judge. Okay. 14
17 through --

18 BY MR. STITELY:

19 Q So when they came to you, were they in a normal
20 condition, weren't all ripped and torn up like they look
21 like in the picture?

22 A No, they appeared like normal underwear.

23 Q Those are all the only questions I have. Thank you
24 very much, Investigator?

25 THE COURT: Redirect, Solicitor?

Renee Strickland - Cross-Examination by Mr. Stitely

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

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

3 (The tape was stopped.)

4 THE COURT: All right. Thank you thank you, Madam
5 Court Reporter.

6 Madam Forelady, ladies and gentlemen you may return
7 to your jury room and continue your deliberations.

8 THE FOREPERSON: Judge may I ask a question? If we
9 have to come back out, can we bring something to write
10 notes or no.

11 THE COURT: You may bring pads. You may, yes,
12 ma'am.

13 All right. Thank you.

14 (The jury left the courtroom at 1:43 p.m.)

15 THE COURT: We'll be awaiting our Jury's verdict.

16 (It was reported to the Court that the jury had
17 reached a verdict at 6:28 p.m.)

18 THE COURT: All right. It is my understanding that
19 the jury has reached a verdict in this matter. A verdict
20 can be -- the taking of a verdict can be very emotional for
21 one side, the other, or both. Juries many times have very
22 difficult decisions to make. I allow no display of
23 emotions verbal or change in demeanor or otherwise. If you
24 remain in the courtroom during the taking of the verdict,
25 those in the gallery and you show any display of emotion in

1 any manner, I consider that a contempt of court and would
2 advise that the deputies would take you into custody and I
3 would have a contempt hearing on that.

4 So if you do remain, you're advising me, informing
5 me by not leaving that you can control your emotions during
6 the taking of the verdict.

7 All right. Anything from the State before we bring
8 in our jury, Solicitor?

9 MS. PATTERSON: No, sir.

10 THE COURT: Defense?

11 MR. STITELY: No, sir.

12 (The jury entered the courtroom at 6:32 p.m.)

13 THE COURT: All right. Madame Forelady, has the
14 jury reached verdicts in this case.

15 THE FOREPERSON: Yes, sir, we have.

16 THE COURT: And are those unanimous verdicts?

17 THE FOREPERSON: Yes, sir, they are. Would.

18 THE COURT: Would you sign the -- hand the verdict
19 forms up to the bailiff please, thank you.

20 **VERDICT**

21 THE COURT: All right. David Ray Brown, if you
22 would please stand.

23 In the case of the State of South Carolina versus
24 David Ray Brown, Indictment Number 2016-GS-32-00160 as to
25 the criminal sexual conduct with a minor second degree on

1 or about November 8th 2013, we, the jury unanimously find
2 the defendant guilty.

3 As to Indictment Number 2016-GS-32-00161 as to the
4 criminal sexual conduct with a minor second degree on or
5 about November 11th 2013, we, the jury unanimously find the
6 defendant guilty.

7 As to Indictment Number 2016-GS-32-00162 as to
8 criminal sexual conduct with a minor second degree on or
9 about November 16th 2013, we, the jury unanimously find the
10 defendant guilty.

11 Page 1, signed by our presiding juror, dated
12 today's date.

13 Page 2, as to Indictment Number 2016-GS-32-00163 as
14 to the criminal sexual conduct with a minor second degree
15 on or between October 1, 2013 through October 28, 2013, we,
16 the jury unanimously find the defendant guilty.

17 Page 2, signed by our presiding juror, dated
18 today's date.

19 Thank you, Mr. Brown, you may be seated.

20 Any matters for the jury from the State?

21 MS. PATTERSON: None from the State.

22 THE COURT: From the defense?

23 MR. STITELY: Your Honor, the defendant would ask
24 for a polling of the jury individually, please.

25 ///

POLLING OF THE JURY

THE COURT: All right. Thank you.

Typically when a defendant asks for the polling, typically the clerk conducts the polling but our clerk had a child care matter to attend to so I will poll the jury.

I will ask, I will identify each of you by number.

I would ask you to please raise your right hand when I call your number and name. I will ask you these questions: Are these your verdicts? Are they still your verdicts. Of course, your answer would be yes or no as to the first, yes or no to the second.

I will do that with each and every member of the jury. As I say if you would please raise your hand so I can identify each and every one of you. And if I mis-pronounce a name, I apologize in advance.

Juror Number 203, Mr. Troche? Is that correct?

THE JUROR: Yes, sir.

THE COURT: I need you to raise your right hand.

Are these your verdicts?

THE JUROR: Yes, sir.

THE COURT: Are they still your verdicts?

THE JUROR: Yes, sir.

THE COURT: Thank you.

Juror Number 135, Ms. Mattox.

Are these your verdicts?

1 THE JUROR: Yes, sir.

2 THE COURT: Are they still your verdicts?

3 THE JUROR: Yes, sir.

4 THE COURT: Thank you.

5 Juror Number 99, Ms. Hite.

6 Are these your verdicts?

7 THE JUROR: Yes, sir.

8 THE COURT: Are they still your verdicts?

9 THE JUROR: Yes, sir..

10 THE COURT: Juror Number 101, Mr. Hook.

11 Are these your verdicts?

12 THE JUROR: Yes, sir.

13 THE COURT: Are they still your verdicts?

14 THE JUROR: Yes, sir.

15 THE COURT: Juror Number 123, Ms. Levels.

16 Are these your verdicts?

17 THE JUROR: Yes, sir.

18 THE COURT: Are they still your verdicts?

19 THE JUROR: Yes, sir.

20 THE COURT: Juror Number 207 Mr. Walta.

21 Are these your verdicts?

22 THE JUROR: Yes, sir.

23 THE COURT: Are they still your verdicts?

24 THE JUROR: Yes, sir.

25 THE COURT: Thank you.

1 Juror Number 7, Ms. -- I'm sorry, that's my
2 numbering system.

3 Juror Number 50, Ms. Clyburn.

4 Are these your verdicts?

5 THE JUROR: Yes, sir.

6 THE COURT: Are they still your verdicts?

7 THE JUROR: Yes, sir.

8 THE COURT: Thank you.

9 Juror Number 80, Ms. Fox.

10 Are these your verdicts?

11 THE JUROR: Yes, sir.

12 THE COURT: Are they still your verdicts?

13 THE JUROR: Yes, sir.

14 THE COURT: Juror Number 74, Ms. Ellisor.

15 Are these your verdicts?

16 THE JUROR: Yes, sir.

17 THE COURT: Are they still your verdicts?

18 THE JUROR: Yes, sir.

19 THE COURT: Thank you.

20 Juror Number 30, Ms. Bowers.

21 Are these your verdicts?

22 THE JUROR: Yes, sir.

23 THE COURT: Are they still your verdicts?

24 THE JUROR: Yes, sir.

25 THE COURT: Juror Number 131, Ms. Mack.

1 Are these your verdicts?

2 THE JUROR: Yes, sir.

3 THE COURT: Are they still your verdicts?

4 THE JUROR: Yes, sir.

5 THE COURT: Juror Number 92, Mr. Hamel.

6 Are these your verdicts?

7 THE JUROR: Yes, Your Honor.

8 THE COURT: Are they still your verdicts?

9 THE JUROR: Yes, Your Honor.

10 THE COURT: All right. Is there any member of the
11 jury panel that I did not poll? If so, raise your right
12 hand. All jurors have been polled and have answered each
13 question put to them in the affirmative.

14 Anything further for the jury from the defense, Mr.
15 Stitely?

16 MR. STITELY: No, sir, Your Honor. Thank you thank
17 you very much.

18 THE COURT: All right. Ladies and gentlemen,
19 momentarily I'm going to release you from your jury service
20 for the remainder of the day and of course, the remainder
21 of the week. You do not have to call back, you do not have
22 to come back. Y'all have got quite frankly the full juror
23 experience this week. When you think we go into a short
24 week, a four day week as opposed to a five day week and we
25 only have one trial judge here this week -- we have other

1 judges here, but they're doing other matters this week.

2 However, without your participation in this -- in our, in
3 our criminal and civil justice system we could not be about
4 the very important business of administering that system.

5 It's citizens like yourself throughout the 46
6 counties of South Carolina, week in and week out that
7 resolve disputes between, whether it's the State and one of
8 its citizens or between individuals in civil court or
9 between businesses or individuals and businesses. It's our
10 jury system and quite frankly I think it works. I have
11 great respect for our system of justice, our jury system
12 and it's because of the people that I have the pleasure and
13 privilege of working with. I trust the American people.
14 It's that simple.

15 But with that being said, I do appreciate your
16 service this week. It's been my pleasure and my privilege
17 to be with each and every one of you this week. With that
18 being said, you're now excused for, as I say the remainder
19 of the week. You do not have to call back, you do not have
20 to come back. Thank you. Thank you very much.

21 (The jury left the courtroom at 6:45 p.m.)

22 THE COURT: All right any motions, Mr. Stitely?

23 **POST-TRIAL MOTIONS**

24 MR. STITELY: Yes, sir. At this time the defense
25 would ask to, of course, protect it's record and renew any

1 motions, objections made during the trial.

2 Additionally, we make a motion to set aside the
3 verdict of the jury at this point and request for a new
4 trial.

5 THE COURT: All right. All motions are certainly
6 noted for the record. I would renew all my previous
7 evidentiary trial rulings and rulings as to the directed
8 verdict; and I would respectfully deny the motion to set
9 aside the verdict or for new trial. I think there's,
10 obviously, sufficient evidence from which a jury -- a
11 reasonable jury could reach the verdicts that they did
12 reach.

13 Quite frankly, it's been a long day and a long
14 week. I would prefer not to address Mr. Brown's sentencing
15 today. I would like to do that Monday at some convenient
16 time, whatever y'all want to say.

17 MR. STITELY: I have not objections.

18 THE COURT: I have common pleas nonjury in this
19 courtroom, I believe. And of course, if at that point in
20 time you have anything additional from victim impact or
21 otherwise from the State or anything in mitigation, Mr.
22 Stitely.

23 MR. STITELY: I'd be happy to be here in the
24 morning, Judge. I have a pretty significant plea in
25 Orangeburg in the afternoon, so I would request the morning

1 if possible.

2 THE COURT: All right. Timing?

3 MR. STITELY: You tell me, Judge and I'll be here.

4 THE COURT: All right. Solicitor.

5 MS. PATTERSON: We're here, Your Honor.

6 THE COURT: All right. What if I say -- what if we
7 have him over here about is 1.

8 MR. STITELY: Yes, sir.

9 THE COURT: All right. And if that will give you
10 time the get to Orangeburg, because I never know what kind
11 of crowd I'm going to have show up for nonjury.

12 MR. STITELY: No problem, Judge. We're starting in
13 the afternoon with the plea.

14 THE COURT: All right. Thank you. Thank you very
15 much. With that being said we'll say Monday morning then.

16 Thank you, Solicitor.

17 Thank you, Mr. Stitely.

18 MR. STITELY: Thank you, Your Honor.

19 MS. PATTERSON: Thank you, Your Honor.

20 THE COURT: Mr. Stitely. Mr. Brown's in custody of
21 the Lexington County Detention Center.

22 (Court was in recess for the week.)

23 (The following took place for sentencing:)

24 MONDAY, JANUARY 25, 2016

25 THE COURT: Madame Clerk, do you have the evidence?

1 THE CLERK: Yes, sir, Your Honor.

2 THE COURT: I would like to see State's Exhibit
3 Number 1, State's Exhibit Number 2, State's Exhibit Number
4 29.

5 THE CLERK: It will take me a moment to get it.
6 I've got it in my office, Your Honor. I took it down and
7 inventoried it.

8 THE COURT: Well, would you mind publishing this
9 and I can start on the sentencing hearing and then you'll
10 probably have it up here by then.

11 THE CLERK: Yes, sir.

12 Indictment 2016-GS-32-00160, The State versus David
13 Ray Brown, Indicted for Criminal Sexual Conduct with a
14 minor in the second degree, found guilty on 1/21/2016,
15 sentence was deferred at that time to today.

16 Indictment 2016-GS-32-00161, 201 The State versus
17 David Ray Brown, Indicted for Criminal Sexual Conduct with
18 a minor in the second degree, found guilty on 1/21/2016,
19 sentence was deferred at that time to today.

20 Indictment 2016-GS-32-00162, The State versus David
21 Ray Brown, Indicted for Criminal Sexual Conduct with a
22 minor in the second degree, found guilty on 1/21/2016,
23 sentence was deferred at that time to today.

24 And Indictment 2016- GS-32-00163, The State versus
25 David Ray Brown, Indicted for Criminal Sexual Conduct with

1 a minor in the second degree, was found guilty on
2 1/21/2016, sentence was deferred at that time to today.
3 also.

4 And I will return in just a moment with the
5 evidence, Your Honor.

6 THE COURT: All right. Mr. Stitely, any reason to
7 defer sentencing on Mr. Brown?

8 MR. STITELY: No, sir. There's one thing, just
9 real quick for record clarification and I'm not sure it
10 happened way back in pretrial, we had the extraction
11 report, the Court looked it at it. I don't know if it was
12 made a Court's Exhibit from that pretrial hearing. Your
13 Honor had it, but I don't know if we actually made it an
14 exhibit.

15 THE COURT: I'm -- I did not make it an exhibit.

16 Any objection, Solicitor to making that a Court's
17 Exhibit?

18 MS. PATTERSON: No, sir, Your Honor.

19 MR. STITELY: And I have it -- just for the
20 record's sake, Judge.

21 THE COURT: Certainly.

22 So that will be Court's 1?

23 THE COURT REPORTER: For today's hearing, but it
24 would be 3 for the trial.

25 THE COURT: Three for the trial?

1 THE COURT REPORTER: Yes, sir.

2 THE COURT: What were the other two?

3 THE COURT REPORTER: Two jury questions.

4 THE COURT: You slipped that one in on me. I
5 didn't remember that.

6 Thank you. Thank you very much.

7 MR. STITELY: Nothing else before sentence.

8 THE COURT: All right. If you'd come around,
9 please, Mr. Brown, Mr. Stitely.

10 **SENTENCING**

11 MS. PATTERSON: Your Honor, I do have the sentence
12 sheets.

13 THE COURT: All right.

14 MS. PATTERSON: May I approach.

15 THE COURT: Yes, ma'am, of course.

16 Anything additional from the State, Solicitor?

17 MS. PATTERSON: Yes, sir, Your Honor. At this
18 time, we would ask Your Honor to hear from our victim in
19 the case, Minor , with regard to victim impact.
20 And the State would like the state something on before Your
21 Honor's sentence, after Ms. Minor .

22 THE COURT: All right. Thank you. I will hear
23 from anyone you want me to hear from, Solicitor.

24 All right. This is Minor .

25 MS. PATTERSON: Yes, sir.

1 THE COURT: Miss Minor , I'll be glad to hear
2 from you. Just speak up where I can hear you, okay.

3 THE VICTIM: Yes, sir. Before all this happened in
4 2013, I was always happy and I was quirky, like gullible
5 and smiling and laughing with my friends. Afterwards, I
6 was a quiet and shameful and scared, nervous and hurt. I
7 was really nervous around everybody. I wasn't the normal
8 Minor because the normal Minor was happy and smiling and
9 proud of myself.

10 And when I was feeling shameful and scared and
11 nervous, that became a new Minor for the next two years --
12 until now. And I was afraid of darkness outside. I was
13 scared of the back door. I was -- I couldn't stand having
14 flash backs. It murdered my smile. And me and Mama would
15 run into David at Walmart it could have been worse. He
16 said I could have been killed or kidnapped.

17 Then me and my mom ran into his mother at Walmart
18 and she called me a slut and he told me to tell my mother
19 the truth. That affected me. I was quite nervous and
20 scared of that. I would just like for him to have the
21 maximum amount of punishment, as you would say, if you
22 allow that.

23 THE COURT: Thank you. Thank you Miss Minor .

24 All right. And, Solicitor, first would you tell me
25 Mr. Brown's criminal history, if any.

1 MS. PATTERSON: Yes, sir. In 1990 he had a grand
2 larceny, two counts; a larceny of a vehicle; 1991 he had a
3 burglary first, grand larceny, contributing to the
4 delinquency of a minor. He received 5 years on that
5 burglary; 1999, he had an assault and battery of a high and
6 aggravated nature, a driving under suspension; 2002, he had
7 a possession of marijuana; 2004, he had a possession with
8 intent to distribute marijuana; in 2012 he had an
9 contributing to the delinquency of a minor that was pled
10 down from a criminal sexual conduct. He received 2 years
11 with, suspended to time served, with 18 months probation
12 with that.

13 And I do know, Your Honor, that involved a
14 13-year-old girl as well.

15 On December 16th, 2013 he had a possession of -- I
16 think it was some time of possession with intent to
17 distribute -- I think it was marijuana second offense. He
18 received 5 years suspended to 3 years probation, which he's
19 on probation now, Your Honor, but because this event
20 predated the probation it's not a violation.

21 THE COURT: All right. Solicitor. Do you know of
22 any history of the 1991 contributing to delinquency of a
23 minor.

24 MS. PATTERSON: No, sir, Your Honor. I tried to
25 find out, but I couldn't find out that, as well as the '99