

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
The Honorable Alison Renee Lee, Post-Conviction Relief Judge

Opinion No. 5359 (Ct. App. filed November 12, 2015)

BOBBY JOE REEVES,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

REDACTED APPENDIX

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STATE OF SOUTH CAROLINA) IN THE
COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
FOR THE FIFTH JUDICIAL CIRCUIT

STATE OF S.C.,)

PLAINTIFF,)

- VS -)

BOBBY REEVES,)

DEFENDANT.)

TRANSCRIPT OF RECORD

FILED 09-09-2011

COLUMBIA, S.C.
SEPTEMBER 17, 2002

B E F O R E:

HONORABLE HENRY F. FLOYD, JUDGE

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VICTIM

- DIRECT/MRS. PELLIZARRI

5

1 THE COURT: ALL RIGHT. ARE Y'ALL READY
2 TO PROCEED?

3 MR. STOCKHOLM: YES, YOUR HONOR. MAY I
4 TALK TO OPPOSING COUNSEL?

5 THE COURT: SURE.

6 (AT THIS TIME COUNSEL DISCUSS MATTERS.)

7 MR. STOCKHOLM: WE'RE READY, YOUR
8 HONOR.

9 THE COURT: HAVE YOU GOT YOUR WITNESS
10 LIST?

11 MS. CAMPBELL: YES, SIR.

12 THE COURT: ALL RIGHT. YOU MAY
13 PROCEED.

14 MRS. PELLIZZARI: THANK YOU, YOUR HONOR.

15 THE STATE CALLS VICTIM.

16 (THE FOLLOWING TAKES PLACE OUT OF THE PRESENCE OF THE
17 JURY.)

18 THE COURT: ALL RIGHT. YOU MAY PROCEED.
19 WHEREUPON,

20 VICTIM WHO AFTER BEING FIRST
21 DULY SWORN TO TELL THE TRUTH,

22 TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION

24 BY MRS. PELLIZARRI:

25 Q. GOOD MORNING, VICTIM

VICTIM

- DIRECT/MRS. PELLIZARRI

6

- 1 A. GOOD MORNING.
- 2 Q. VICTIM, HOW OLD ARE YOU NOW?
- 3 A. TWELVE.
- 4 Q. AND WHAT STATE DO YOU LIVE IN NOW?
- 5 A. I DON'T KNOW MY STATES.
- 6 Q. DO YOU LIVE IN SOUTH CAROLINA?
- 7 A. NO.
- 8 Q. DID YOU USED TO LIVE IN SOUTH CAROLINA?
- 9 A. I THINK SO.
- 10 Q. DO YOU THINK SO, OR YOU DID?
- 11 A. YES, I DID.
- 12 Q. DID YOU USED TO LIVE SOMEWHERE BY COLUMBIA?
- 13 COLUMBIA IS WHERE YOU ARE TODAY.
- 14 A. I DON'T KNOW.
- 15 Q. VICTIM, WHAT SCHOOL DO YOU GO TO?
- 16 A. PETTSVILLE MIDDLE.
- 17 Q. WHAT GRADE ARE YOU IN?
- 18 A. THE SIXTH.
- 19 Q. WHO'S YOUR TEACHER?
- 20 A. MRS. POSTELL.
- 21 Q. WHAT'S HER NAME?
- 22 A. MRS. POSTELL.
- 23 Q. AND HOW MANY KIDS ARE IN YOUR CLASS?
- 24 A. SIX OR SEVEN.
- 25 Q. AND DO YOU LIVE IN THE STATE OF GEORGIA NOW?

VICTIM

1 - DIRECT/MRS. PELLIZARRI

7

- 1 A. YES, MA'AM.
- 2 Q. WHO DO YOU LIVE WITH?
- 3 A. MY MOM.
- 4 Q. DO Y'ALL HAVE ANY PETS?
- 5 A. YES.
- 6 Q. WHAT PETS DO YOU HAVE?
- 7 A. A DOG AND PUPPIES; SEVEN PUPPIES, AND MY CAT.
- 8 Q. VICTIM, DO YOU REMEMBER -- WHAT SCHOOL DID YOU GO
- 9 TO BEFORE YOU WENT TO THIS MIDDLE SCHOOL?
- 10 A. HEPSABA ELEMENTARY.
- 11 Q. BEFORE THAT, DO YOU KNOW WHICH SCHOOL YOU WENT TO
- 12 TO?
- 13 A. MCBEAN.
- 14 Q. MCBEAN?
- 15 A. YES.
- 16 Q. IS THAT IN GEORGIA ALSO?
- 17 A. YES.
- 18 Q. DID YOU GO TO SCHOOL HERE WHILE YOU WERE IN SOUTH
- 19 CAROLINA?
- 20 A. YES, MA'AM.
- 21 Q. DO YOU KNOW THE NAME OF IT?
- 22 A. NO.
- 23 Q. YOU DON'T REMEMBER?
- 24 A. NO.
- 25 Q. VICTIM, DO YOU KNOW THE DIFFERENCE BETWEEN THE TRUTH

1 AND A LIE?

2 A. YES, MA'AM.

3 Q. WHAT DOES IT MEAN TO TELL THE TRUTH?

4 A. THE TRUTH IS SOMETHING THAT -- A TRUTH IS NOT A
5 LIE.

6 Q. OKAY. BUT WHAT DOES IT MEAN WHEN YOU TELL THE
7 TRUTH?

8 A. YOU WON'T GET IN TROUBLE FOR TELLING THE TRUTH.

9 Q. IS THE TRUTH SOMETHING THAT HAPPENED OR DIDN'T
10 HAPPEN?

11 A. THE TRUTH. I DON'T KNOW.

12 Q. WHAT IS A LIE? DO YOU KNOW WHAT A LIE IS?

13 A. YOU WON'T GET IN TROUBLE BECAUSE YOU'RE TELLING THE
14 TRUTH.

15 Q. IS THE TRUTH SOMETHING THAT HAPPENED OR DIDN'T
16 HAPPEN?

17 A. THE TRUTH -- I DON'T KNOW.

18 Q. WHAT IS A LIE? DO YOU KNOW WHAT A LIE IS?

19 A. A LIE IS WHEN YOU TELL YOUR FRIENDS THAT YOUR MOM
20 IS UGLY. YOUR MOM IS REALLY NOT UGLY.

21 Q. SO IS A LIE SOMETHING HAPPENED OR DIDN'T HAPPEN?

22 A. A LIE IS SOMETHING THAT DIDN'T HAPPEN.

23 Q. SO, THEN, WHAT IS THE TRUTH?

24 A. SOMETHING THAT DID HAPPEN.

25 Q. AND DO YOU KNOW THE DIFFERENCE BETWEEN TELLING THE

VICTIM

- DIRECT/MRS. PELLIZARRI

9

1 TRUTH AND TELLING A LIE?

2 A. YES.

3 Q. WHAT HAPPENS IF YOU TELL A LIE?

4 A. I GET GROUNDED.

5 Q. WHO GROUNDS YOU?

6 A. MY MOM.

7 Q. AND, VICTIM, DO YOU GO TO CHURCH?

8 A. YES, MA'AM.

9 Q. WHAT CHURCH DO YOU GO TO?

10 A. NEW LIFE BAPTIST.

11 Q. AND DO YOU GO WITH YOUR MOM?

12 A. YES, MA'AM.

13 Q. HOW OFTEN DO Y'ALL GO TO CHURCH?

14 A. LIKE EVERY SUNDAY.

15 Q. AND WHAT DO THEY TELL YOU IN CHURCH ABOUT TELLING
16 LIES?

17 A. (NO RESPONSE.)

18 Q. IS IT GOOD OR BAD TO TELL THE TRUTH?

19 A. OH; IT'S GOOD. I MEAN -- YEAH, IT'S GOOD.

20 Q. AND HOW ABOUT; IS IT GOOD OR BAD TO TELL A LIE?

21 A. BAD.

22 Q. VICTIM, I WANT TO TALK TO YOU A LITTLE BIT ABOUT
23 BOBBY JOE. DO YOU KNOW BOBBY JOE?

24 A. BOBBY REEVES.

25 Q. BOBBY REEVES. NOW, YOU HAVE TO SPEAK UP, OKAY,

VICTIM

- DIRECT/MRS. PELLIZARRI

10

1 VICTIM?

2 A. YES, MA'AM.

3 MR. STOCKHOLM: EXCUSE ME, YOUR HONOR. I
4 OBJECT AT THIS POINT. I DON'T THINK THE YOUNG LADY
5 HAS FULLY ESTABLISHED SHE'S COMPETENT TO TESTIFY.
6 SHE UNDERSTANDS ABOUT TRUTH ALSO.

7 THE COURT: I WOULD OVERRULE THAT
8 OBJECTION.

9 MR. STOCKHOLM: THANK YOU.

10 MRS. PELLIZZARI: THANK YOU, YOUR HONOR.

11 Q. VICTIM, DO YOU KNOW BOBBY REEVES?

12 A. YES, MA'AM.

13 Q. HOW DO YOU KNOW HIM?

14 A. MY MOM AND HIM MET.

15 Q. OKAY. DID YOU EVER LIVE WITH HIM?

16 A. HE LIVED WITH US.

17 Q. HE LIVED WITH YOU?

18 A. YES,

19 Q. NOW, IS THERE A TIME THAT CAME THAT HE DIDN'T LIVE
20 WITH YOU ANY MORE?

21 A. YES, MA'AM.

22 Q. AND DO YOU KNOW -- WAS THAT JUST RECENTLY, OR WAS
23 THAT A LONG TIME AGO?

24 A. A LONG TIME AGO.

25 Q. DO YOU REMEMBER HOW OLD YOU WERE WHEN HE DIDN'T

VICTIM

- DIRECT/MRS. PELLIZARRI

11

1 LIVE WITH YOU ANY MORE?

2 A. NO, MA'AM.

3 Q. WERE YOU IN SCHOOL? DO YOU KNOW?

4 A. I DON'T REMEMBER.

5 Q. WHEN HE STOPPED LIVING WITH YOU, DID YOU STILL SEE
6 HIM? —

7 A. YES, MA'AM.

8 Q. ABOUT HOW OFTEN WOULD YOU SEE HIM?

9 A. EVERY OTHER WEEKEND.

10 Q. WHAT DID YOU USED TO CALL HIM?

11 A. DAD.

12 Q. DID YOU THINK OF HIM LIKE A FATHER?

13 A. YES, MA'AM.

14 Q. SO Y'ALL WERE PRETTY CLOSE?

15 A. YES, MA'AM.

16 Q. AND YOU USED TO SEE HIM ON WEEKENDS?

17 A. EVERY OTHER.

18 Q. EVERY OTHER WEEKEND?

19 A. YES, MA'AM.

20 Q. HOW WOULD YOU GET TO HIS HOUSE?

21 A. HE WOULD COME AND PICK ME UP, OR MY MOM WOULD TAKE
22 ME.

23 Q. NOW, VICTIM, WHERE WOULD YOU SEE HIM? WHERE DID HE
24 LIVE?

25 A. IN COLUMBIA.

- 1 Q. IN COLUMBIA, SOUTH CAROLINA?
- 2 A. YES, MA'AM.
- 3 Q. DID HE EVER COME AND STAY IN GEORGIA WITH YOU?
- 4 A. I DON'T REMEMBER.
- 5 Q. OKAY. WOULD HE COME PICK YOU UP SOMETIMES FROM
- 6 GEORGIA?
- 7 A. YES, MA'AM.
- 8 Q. WHEN YOU WOULD GO TO SEE BOBBY JOE, WHAT WOULD
- 9 Y'ALL DO TOGETHER?
- 10 A. HE WOULD TAKE ME BY THE STORE.
- 11 Q. DID Y'ALL EVER DO ANYTHING ELSE? GO TO THE ZOO OR
- 12 GO ANYWHERE TOGETHER?
- 13 A. YES, MA'AM.
- 14 Q. SO WOULD HE TAKE YOU PLACES?
- 15 A. YES, MA'AM.
- 16 Q. DID YOU EVER -- WHO WOULD GO WITH YOU WHEN YOU WENT
- 17 TO SEE HIM?
- 18 A. ONLY ME.
- 19 Q. ONLY YOU?
- 20 A. YES.
- 21 Q. WOULD YOUR MOM SOMETIMES DROP YOU OFF?
- 22 A. YES, I THINK SO.
- 23 Q. AND WHO WOULD BE IN THE HOUSE WHEN YOU WERE
- 24 VISITING WITH HIM?
- 25 A. JESSIE.

VICTIM

- DIRECT/MRS. PELLIZARRI

13

1 Q. WHO IS JESSIE?

2 A. JESSIE WAS HIS ROOMMATE. BUT HE WAS A HEAVY
3 SLEEPER.

4 Q. IS JESSIE YOUNG OR OLD?

5 A. (NO RESPONSE.)

6 Q. I MEAN, IS HE A CHILD LIKE YOU, OR IS HE AN ADULT?

7 A. ADULT.

8 Q. WOULD YOU EVER SPEND THE NIGHT OVER AT BOBBY'S
9 HOUSE?

10 A. YES, MA'AM.

11 Q. WOULD THAT BE ON MOST OF THE WEEKENDS THAT YOU WENT
12 TO SEE HIM?

13 A. EVERY WEEKEND THAT I WOULD GO TO SEE HIM.

14 Q. YOU WOULD SPEND THE NIGHT THERE?

15 A. YES, MA'AM.

16 Q. WERE THERE EVER TIMES, VICTIM, THAT YOU WERE ALONE
17 WITH BOBBY?

18 A. I DON'T KNOW.

19 Q. YOU DON'T KNOW IF YOU WERE EVER ALONE WITH HIM?

20 A. YOU MEAN, WAS NO ONE IN THE HOUSE?

21 Q. NO. THERE WOULD BE TIMES WHEN YOU WOULD BE
22 TOGETHER; JUST THE TWO OF YOU IN A ROOM?

23 A. YES, MA'AM.

24 Q. VICTIM, AT ANY TIME DID Y'ALL HAVE A SECRET?

25 A. YES, MA'AM.

- 1 Q. WHAT IS A SECRET?
- 2 A. WHAT WAS THE SECRET?
- 3 Q. WHAT IS A SECRET?
- 4 A. SOMETHING THAT IS TOLD BY YOU, AND YOU DON'T TELL
- 5 ANYBODY ELSE.
- 6 Q. DID BOBBY TELL YOU NOT TO TELL ANYONE ELSE ABOUT
- 7 YOUR SECRET.
- 8 A. YES, MA'AM.
- 9 Q. DID YOU TELL YOUR MOM ABOUT YOUR SECRET?
- 10 A. YES, MA'AM.
- 11 Q. DO YOU KNOW HOW OLD YOU WERE WHEN YOU TOLD YOUR
- 12 MOM?
- 13 A. TEN.
- 14 Q. SO THAT WAS ABOUT TWO YEARS AGO?
- 15 A. YES, MA'AM.
- 16 Q. VICTIM, DID SOMETHING HAPPEN TO YOU? DID BOBBY DO
- 17 SOMETHING TO YOU?
- 18 A. YES, MA'AM.
- 19 Q. NOW VICTIM., I'M GOING TO ASK YOU. AND I KNOW THIS
- 20 IS HARD. I'M GOING TO ASK YOU TO TELL US WHAT
- 21 BOBBY DID TO YOU.
- 22 A. THE RIGHT---
- 23 Q. WHAT HAS HE DONE TO YOU?
- 24 A. TOUCHED MY PRIVATE.
- 25 Q. HE TOUCHED YOUR PRIVATE?

VICTIM

- DIRECT/MRS. PELLIZARRI

15

1 A. YES.

2 Q. WAS THAT WITH WHAT?

3 A. HIS HANDS; AND SOMETIMES WITH HIS PRIVATE.

4 Q. WHERE IS YOUR PRIVATE ON YOUR BODY? CAN YOU POINT
5 TO IT?

6 A. (WITNESS DEMONSTRATES BY POINTING.) DOWN THERE.

7 Q. DOWN THERE?

8 A. YES.

9 Q. AND HE WOULD DO THAT WITH HIS HAND?

10 A. YES.

11 Q. WOULD THAT BE OVER YOUR CLOTHES?

12 A. WITHOUT MY CLOTHES.

13 Q. WITHOUT YOUR CLOTHES?

14 A. YES.

15 Q. AND YOU SAID THAT HE WOULD TOUCH YOUR PRIVATE WITH
16 HIS PRIVATE?

17 A. HE WOULD RUB HIS PRIVATE ON MY PRIVATE.

18 Q. WHERE WOULD HIS PRIVATE BE ON HIS BODY?

19 A. RIGHT WHERE I POINTED.

20 Q. DOWN THERE IS WHAT YOU ARE REFERRED TO IT IS?

21 A. YES.

22 Q. AND, AGAIN VICTIM, WOULD YOUR CLOTHES BE ON WHEN HE
23 DID THAT?

24 A. NO, MA'AM.

25 Q. NO, MA'AM? IS THAT WHAT YOU SAID?

VICTIM

- DIRECT/MRS. PELLIZARRI

16

1 A. THEY WOULDN'T BE ON.

2 Q. YOUR CLOTHES WOULD NOT BE ON?

3 A. NO.

4 Q. HOW ABOUT HIS CLOTHES?

5 A. SOMETIMES HIS WEREN'T ON.

6 Q. SOMETIMES HIS WERE ON, AND SOMETIMES THEY WEREN'T?

7 A. YES, MA'AM.

8 Q. DID ANYTHING EVER HAPPEN WHEN HE TOUCHED YOUR
9 PRIVATE?

10 A. (NO RESPONSE.)

11 Q. WAS THERE ANYTHING ELSE THAT HE ASKED YOU TO DO FOR
12 HIM?

13 A. SUCK HIS PRIVATE.

14 Q. HE ASKED YOU TO SUCK HIS PRIVATE?

15 A. YES.

16 Q. WHAT WOULD HAPPEN WHEN YOU DID THAT?

17 A. SOME YELLOW STUFF WOULD COME OUT.

18 Q. WHERE WOULD IT GO?

19 A. SOMETIMES IN MY MOUTH.

20 Q. AND OTHER TIMES WHERE WOULD IT GO?

21 A. ON MY PRIVATE.

22 Q. VICTIM, DID THAT HAPPEN OVER THE JULY FOURTH
23 WEEKEND?

24 A. (NO RESPONSE.)

25 Q. LET'S TALK ABOUT THE LAST TIME THAT YOU SAW BOBBY.

VICTIM

- DIRECT/MRS. PELLIZARRI

17

1 A. OKAY.

2 Q. WHEN YOU WERE AT HIS HOUSE. DO YOU REMEMBER -- WAS
3 THAT THE JULY FOURTH WEEKEND YOU'RE TALKING ABOUT?

4 A. I'LL TELL YOU -- DO YOU WANT ME TO TELL YOU ABOUT
5 JULY THE FOURTH?

6 Q. YES. LET'S START WITH THAT.

7 A. HE STUCK HIS FINGER UP ME.

8 Q. AND DID YOU HAVE YOUR CLOTHES OFF WHEN HE DID THAT?

9 A. YES, MA'AM.

10 Q. IS THAT THE FIRST TIME HE HAD EVER DONE THAT TO
11 YOU?

12 A. YES, MA'AM.

13 Q. DID HE HAVE HIS CLOTHES ON?

14 A. I DON'T KNOW.

15 Q. YOU DON'T REMEMBER?

16 A. NO.

17 Q. DID YOU HAVE ALL OF YOUR CLOTHES OFF?

18 A. I DON'T REMEMBER.

19 Q. WHERE WERE YOU ALL THAT WEEKEND OF JULY THE FOURTH?

20 A. AT HIS HOUSE.

21 Q. HERE IN COLUMBIA?

22 A. YES.

23 Q. AND WAS THAT ABOUT TWO YEARS AGO? THAT WAS BEFORE
24 YOU TOLD YOUR MOM WHAT HAPPENED; RIGHT?

25 A. YES, MA'AM.

- 1 Q. HOW OLD WERE YOU WHEN THAT HAPPENED?
- 2 A. YOU MEAN WHEN IT STARTED?
- 3 Q. NO; DURING THAT FOURTH OF JULY WEEKEND, HOW OLD
- 4 WERE YOU?
- 5 A. I THINK I WAS STILL TEN OR SOMETHING.
- 6 Q. YOU WERE TEN?
- 7 A. I THINK.
- 8 Q. DO YOU KNOW HOW OLD YOU WERE WHEN BOBBY STARTED
- 9 TOUCHING YOU ON YOUR PRIVATE?
- 10 A. WHEN HE STARTED? WHEN IT ALL BEGAN?
- 11 Q. YES.
- 12 A. YES, MA'AM.
- 13 Q. HOW OLD WERE YOU?
- 14 A. FOUR.
- 15 Q. WAS THAT WHILE HE WAS LIVING WITH YOU?
- 16 A. YES, MA'AM.
- 17 Q. DID IT CONTINUE AFTER HE MOVED OUT?
- 18 A. YES, MA'AM.
- 19 Q. AND YOU WOULD GO TO VISIT HIM ON THE WEEKENDS?
- 20 A. (NO RESPONSE.)
- 21 Q. AGAIN, VICTIM, YOU HAVE TO ANSWER YES OR NO.
- 22 A. YES, MA'AM.
- 23 Q. VICTIM, WHERE WOULD THESE THINGS TAKE PLACE?
- 24 A. WHEN IT HAPPENED?
- 25 Q. YES?

1 A. AT HIS HOUSE.

2 Q. WAS THERE ANY SPECIAL PLACE IN HIS HOUSE?

3 A. IN HIS BEDROOM.

4 Q. NOW, VICTIM, WHILE HE WOULD TOUCH YOU, OR WHILE HE
5 WOULD ASK YOU TO SUCK ON HIS PRIVATE, WAS THERE
6 ANYONE ELSE IN THE ROOM?

7 A. NO, MA'AM.

8 Q. WHO WAS IN THE ROOM?

9 A. JUST ME AND HIM.

10 Q. WOULD JESSIE SOMETIMES BE IN THE HOUSE IN ANOTHER
11 PART OF THE HOUSE?

12 A. YES, MA'AM.

13 Q. VICTIM, DID YOU TELL YOUR MOM ABOUT WHAT HAPPENED?

14 A. YES, MA'AM.

15 Q. AND AFTER YOU TOLD YOUR MOM WHAT HAPPENED, DID YOU
16 HAVE TO GO TO THE HOSPITAL?

17 A. I DON'T REMEMBER.

18 Q. YOU DON'T REMEMBER GOING TO THE HOSPITAL?

19 A. MA'AM?

20 Q. I'M JUST ASKING DO YOU REMEMBER IF YOU WENT TO THE
21 HOSPITAL?

22 A. YES, I DID.

23 Q. DO YOU REMEMBER WHAT THEY DID TO YOU AT THE
24 HOSPITAL?

25 A. YES, MA'AM.

VICTIM

: - DIRECT/MRS. PELLIZARRI

20

- 1 Q. WHAT DID THEY DO TO YOU?
- 2 A. THEY EXAMINED ME TO SEE IF ANYTHING WAS WRONG WITH
- 3 ME.
- 4 Q. WHAT PART OF YOUR BODY DID THEY EXAMINE?
- 5 A. DOWN THERE.
- 6 Q. THE SAME PART THAT BOBBY HAD TOUCHED?
- 7 A. YES, MA'AM.
- 8 Q. AND VICTIM, DO YOU REMEMBER TALKING TO A WOMAN IN
- 9 GEORGIA TELLING HER WHAT HAPPENED?
- 10 A. YOU MEAN WHERE I WAS?
- 11 Q. NO; I MEAN, AT THE POLICE?
- 12 A. NO, MA'AM. I REMEMBER TALKING TO A POLICE OFFICER.
- 13 Q. YOU REMEMBER TALKING TO A POLICE OFFICER?
- 14 A. YES.
- 15 Q. WAS THAT IN GEORGIA, OR WAS THAT HERE IN COLUMBIA?
- 16 A. GEORGIA.
- 17 Q. NOW, VICTIM, YOU MENTIONED AMY. WHO IS AMY?
- 18 A. AMY IS THE LADY THAT'S HELPING ME.
- 19 Q. IS SHE YOUR COUNSELOR?
- 20 A. I DON'T KNOW.
- 21 Q. SHE HELPS YOU? YOU TALK TO AMY?
- 22 A. YES.
- 23 Q. WHEN DID YOU FIRST MEET AMY?
- 24 A. I DON'T REMEMBER.
- 25 Q. WAS IT BEFORE OR AFTER YOU TALKED TO THE POLICE?

1 DO YOU REMEMBER?

2 A. AFTER I TOLD THE POLICE.

3 Q. SO IT WAS AFTER YOU TOLD YOUR MOM WHAT HAD
4 HAPPENED?

5 A. YOU MEAN LATER ON OR BEFORE?

6 Q. WHEN YOU FIRST TOLD YOUR MOM WHAT HAD HAPPENED.
7 DID YOU MEET AMY AFTER THAT?

8 A. NO; I MET ANOTHER LADY BEFORE AMY.

9 Q. OKAY. VICTIM, DID BOBBY TELL YOU THAT YOU SHOULD
10 TELL PEOPLE WHAT HAPPENED TO YOU?

11 A. NO. HE TOLD ME NOT TO TELL ANYBODY.

12 Q. WHAT WOULD HE DO? WOULD HE DO ANYTHING TO---

13 A. HE WOULD TAKE ME PLACES IF I DIDN'T TELL ANYBODY..

14 Q. WHAT TYPE OF PLACES WOULD HE TAKE YOU TO?

15 A. THE ZOO.

16 Q. IS THAT THE ZOO HERE IN COLUMBIA?

17 A. YES, MA'AM.

18 Q. WHERE IS FUNNSVILLE? IS THAT HERE IN COLUMBIA,
19 TOO?

20 A. YES.

21 Q. WHAT IS THAT?

22 A. THAT'S A PARK WHERE YOU HAVE LIKE -- THERE'S LIKE
23 GO-CARTS THERE AND GAMES INSIDE; ARCADES.

24 Q. SO HE WOULD TAKE YOU TO THOSE TWO PLACES?

25 A. YES, MA'AM.

VICTIM

- DIRECT/MRS. PELLIZARRI

22

1 Q. AND WOULD HE EVER GIVE YOU ANYTHING OR SAY ANYTHING
2 TO YOU?

3 A. YES.

4 Q. LET'S START. WHAT TYPE OF THINGS WOULD HE SAY TO
5 YOU?

6 A. IF YOU TELL ANYBODY, I'LL GO TO JAIL.

7 Q. AND DID THAT MAKE YOU FEEL HAPPY OR SAD?

8 A. SAD.

9 Q. AND WHAT TYPE OF THINGS WOULD HE GIVE YOU?

10 A. BARBIES.

11 Q. DO YOU LIKE BARBIE DOLLS?

12 A. YES, MA'AM.

13 Q. DID HE GIVE YOU ANYTHING ELSE BESIDES BARBIE DOLLS?

14 A. MONEY.

15 Q. HOW MUCH MONEY DID HE GIVE YOU?

16 A. TWENTY DOLLARS.

17 Q. DID YOU TELL YOUR MOM ABOUT THAT?

18 A. YES, MA'AM.

19 Q. I MEAN WHILE IT WAS HAPPENING OR AFTER THAT JULY
20 THE FOURTH?

21 A. MY MOM KNEW THAT HE WAS GIVING ME MONEY.

22 Q. DID YOU TELL HER WHY HE WAS GIVING YOU MONEY?

23 A. NO; NOT UNTIL I TOLD HER EVERYTHING THAT HAPPENED.

24 MRS. PELLIZZARI: I BEG THE COURT'S
25 INDULGENCE.

1 Q. THANK YOU, VICTIM. PLEASE ANSWER ANY QUESTIONS FOR
2 THE DEFENSE ATTORNEY.

3 THE COURT: CROSS-EXAMINATION?

4 MR. STOCKHOLM: THANK YOU. IF IT PLEASE
5 THE COURT?

6 CROSS-EXAMINATION

7 BY MR. STOCKHOLM:

8 Q. VICTIM, DO YOU KNOW WHO I AM?

9 A. NO, SIR.

10 Q. I'M BOBBY'S ATTORNEY. I'M GENE STOCKHOLM. I'M
11 GOING TO BE ASKING YOU SOME QUESTIONS, ALL RIGHT?
12 AND YOU NEED TO BE VERY CAREFUL WHAT YOU ANSWER;
13 AND YOU NEED TO TELL ME YES OR NO. IS THAT ALL
14 RIGHT?

15 A. YES, SIR.

16 Q. NOW YOU SAID YOU'RE TWELVE?

17 A. YES, SIR.

18 Q. AND YOU LIVE IN GEORGIA NOW?

19 A. YES, SIR.

20 Q. WHAT SCHOOL ARE YOU IN? I COULDN'T HEAR THAT.

21 A. HEPSABAH MIDDLE.

22 Q. WHAT IS THAT?

23 A. HEPSABAH MIDDLE.

24 Q. AND WHAT GRADE IS THAT?

25 A. SIXTH.

- 1 Q. YOU ONLY HAVE SEVEN PEOPLE IN YOUR CLASS?
- 2 A. YES, SIR.
- 3 Q. HOW COME THE CLASS IS SO SMALL?
- 4 A. BECAUSE I'M IN A SPECIAL CLASS.
- 5 Q. AND WHAT IS SPECIAL ABOUT IT, Victim
- 6 A. I DON'T KNOW. IT'S JUST AN I.S.S. CLASS.
- 7 Q. DO YOU KNOW WHAT I.S.S. IS?
- 8 A. NO, SIR.
- 9 Q. DO YOU HAVE TROUBLE IN SCHOOL?
- 10 A. I DON'T KNOW.
- 11 Q. ARE YOU ABLE TO LEARN THINGS QUICKLY?
- 12 A. I DON'T KNOW.
- 13 Q. DO YOU REMEMBER THINGS WELL?
- 14 A. SOMETIMES.
- 15 Q. SOMETIMES?
- 16 A. YES, SIR; IF I PAY ATTENTION.
- 17 Q. AND HOW LONG HAVE YOU BEEN IN THIS SCHOOL RIGHT
- 18 NOW?
- 19 A. JUST THIS YEAR.
- 20 Q. AND WHAT SCHOOL WERE YOU IN BEFORE THAT?
- 21 A. HEPSABAH (PHONETICALLY SPELLED) ELEMENTARY.
- 22 Q. AND WHAT TYPE OF CLASS WERE YOU IN THEN?
- 23 A. I WAS IN A CLASS WITH ALL KINDS OF OTHER STUDENTS.
- 24 Q. HOW BIG WERE THE CLASSES IN THAT?
- 25 A. IN ELEMENTARY?

1 Q. YES?

2 A. THIRTY, TWENTY-NINE.

3 Q. NOW, DO YOU KNOW YOUR ADDRESS OF YOUR HOME IN
4 GEORGIA?

5 A. YES, SIR.

6 Q. WHAT'S YOUR ADDRESS?

7 A.

8 MRS. PELLIZZARI: OBJECTION, YOUR HONOR.
9 I DON'T THINK THAT'S RELEVANT.

10 THE COURT: OVERRULED.

11 Q. WHAT'S YOUR ADDRESS?

12 A.

13 Q. AND WHAT'S THE STREET?

14 A. I DON'T KNOW.

15 Q. HAVE YOU LIVED THERE SINCE YOU LEFT BOBBY?

16 A. NO. I LIVED IN ONE TRAILER BEFORE THAT. AND THEN
17 HE KNEW ABOUT IT; SO WE MOVED TO A DIFFERENT HOME.

18 Q. SO SINCE YOU MOVED FROM COLUMBIA, YOU'VE LIVED IN
19 TWO DIFFERENT PLACE IN GEORGIA?

20 A. I THINK THAT'S THE ONLY TWO.

21 Q. NOW, DOES YOUR MOTHER WORK?

22 A. YES, SIR.

23 Q. WHERE IS SHE WORKING NOW?

24 A. COASTAL CREDIT.

25 Q. AND HOW LONG HAS SHE BEEN WORKING THERE?

- 1 A. I DON'T KNOW.
- 2 Q. IS THAT THE JOB SHE HAD WHEN YOU MOVED TO GEORGIA?
- 3 A. I DON'T KNOW.
- 4 Q. IS YOUR MOTHER MARRIED?
- 5 A. NO, SIR.
- 6 Q. IS SHE DATING ANYONE?
- 7 A. NO, SIR.
- 8 Q. SINCE SHE MOVED TO GEORGIA, HAS SHE BEEN DATING
- 9 ANYONE?
- 10 A. NO, SIR.
- 11 Q. ~~VICTIM~~ , WHO IS YOUR FATHER?
- 12 A. ED.
- 13 Q. DO YOU KNOW ED'S LAST NAME?
- 14 A. .
- 15 Q. HAVE YOU EVER MET HIM?
- 16 A. NO, SIR.
- 17 Q. DOES HE EVER CALL?
- 18 A. YES, SIR.
- 19 Q. DOES HE COME BY TO VISIT YOU?
- 20 A. NO, SIR.
- 21 Q. AS YOU WERE GROWING UP, ED WASN'T AROUND, WAS HE?
- 22 A. NO, SIR.
- 23 Q. YOU CONSIDERED BOBBY TO BE YOUR FATHER, DIDN'T YOU?
- 24 A. YES, SIR.
- 25 Q. WERE YOU UPSET WHEN BOBBY MOVED OUT?

1 A. I DON'T KNOW.

2 Q. AND, VICTIM, YOU SAID YOU KNOW THE DIFFERENCE
3 BETWEEN TELLING A LIE AND TELLING THE TRUTH. NOW,
4 BOBBY AND YOUR MOM; WHEN THEY WENT THEIR SEPARATE
5 WAYS, WERE YOU UPSET BOBBY WASN'T AROUND ANY MORE?

6 A. NO, BECAUSE I GOT TO SEE HIM A LOT.

7 Q. SO YOU WERE HAPPY AS LONG AS YOU GOT TO SEE HIM?

8 A. YES, SIR.

9 Q. NOW WHILE YOU WERE GOING SCHOOL IN COLUMBIA, DID
10 YOU GO TO MIDDLE CREEK ELEMENTARY?

11 A. I DON'T KNOW. I GUESS I DID.

12 Q. AND WHEN YOU WERE GOING TO MIDDLE CREEK, WERE YOU
13 SEEING A DOCTOR?

14 A. I DON'T KNOW.

15 Q. WEREN'T YOU SEEING DR. LEWIS?

16 A. (NO RESPONSE.)

17 Q. THIS DOESN'T SOUND FAMILIAR TO YOU?

18 A. NO, SIR.

19 Q. VICTIM, WERE YOU SEEING ANY DOCTORS IN AUGUSTA WHEN
20 YOU MOVED?

21 A. I DON'T KNOW. I DON'T REMEMBER.

22 Q. NOW, THIS IS BEFORE YOU TOLD YOUR MOM. BUT WHEN
23 YOU MOVED DOWN TO AUGUSTA, DID YOU NOT START SEEING
24 A PSYCHIATRIST?

25 A. YES, I DID.

- 1 Q. AND WHO WAS THAT PSYCHIATRIST?
- 2 A. I DON'T REMEMBER HIS NAME.
- 3 Q. DO YOU REMEMBER WHY YOU WERE SEEING HIM?
- 4 A. NO, SIR.
- 5 Q. DO YOU REMEMBER IF YOU WERE SEEING HIM TWICE A
- 6 MONTH?
- 7 A. I DON'T KNOW.
- 8 Q. ONCE A MONTH?
- 9 A. I DON'T KNOW. IT'S BEEN A LONG TIME.
- 10 Q. NOW, WHEN YOU WERE IN SCHOOL IN COLUMBIA, YOU WERE
- 11 IN REGULAR CLASSES, WEREN'T YOU?
- 12 A. YOU MEAN LIKE NOT SWITCHING CLASSES?
- 13 Q. NO. I MEAN YOU WERE NOT WHAT THEY WOULD CALL A
- 14 SPECIAL NEEDS STUDENT?
- 15 A. NO, SIR.
- 16 Q. AND YOUR CLASSES WOULD BE 30 TO 35 CHILDREN?
- 17 A. YES, SIR.
- 18 Q. DID YOU HAVE ONLY ONE TEACHER AT THAT TIME, OR DID
- 19 YOU HAVE SEVERAL TEACHERS WHO TAUGHT YOU?
- 20 A. I THINK IT WAS ONLY ONE.
- 21 Q. NOW, SINCE YOU TOLD YOUR MOM -- AND THIS IS BACK IN
- 22 AUGUST -- HOW MANY TIMES DO YOU THINK YOU'VE TOLD
- 23 YOUR STORY AGAIN?
- 24 A. I DON'T KNOW.
- 25 Q. TEN?

- 1 A. I THINK.
- 2 Q. COULD IT BE MORE THAN TEN?
- 3 A. (NO RESPONSE.)
- 4 Q. DO YOU KNOW HOW MANY TIMES YOU'VE SEEN MRS. GAIL?
- 5 A. WHO?
- 6 Q. THIS LADY SITTING RIGHT THERE. (INDICATING.)
- 7 A. MAYBE. I DON'T KNOW. A LOT.
- 8 Q. A LOT?
- 9 A. YES, SIR.
- 10 Q. MORE THAN TEN?
- 11 A. YES, SIR.
- 12 Q. NOW, YOU SAID YOU KNOW JESSIE WHEATON; IS THAT
- 13 CORRECT?
- 14 A. YES, SIR.
- 15 Q. AND JESSIE IS BOBBY'S ROOMMATE?
- 16 A. YES, SIR.
- 17 Q. NOW DO YOU REMEMBER GIVING A VIDEOTAPED STATEMENT
- 18 ABOUT WHAT HAPPENED TWO YEARS AGO?
- 19 A. I DON'T KNOW.
- 20 Q. YOU DON'T REMEMBER BEING VIDEOED?
- 21 A. NO, SIR.
- 22 Q. YOU DON'T REMEMBER SOMEONE HAVING A CAMERA LIKE
- 23 THIS GENTLEMAN TO MY LEFT?
- 24 A. NO, SIR.
- 25 Q. DO YOU REMEMBER AT THAT TIME ANYTHING ABOUT WHAT

1 YOU SAID?

2 A. I TRIED TO FORGET ALL OF IT.

3 Q. BUT DO YOU REMEMBER ANYTHING YOU SAID?

4 A. YES. YOU MEAN THE LAST---

5 Q. TWO YEARS AGO WHEN YOU---

6 A. YES; I REMEMBER SOME OF IT.

7 Q. DO YOU REMEMBER SAYING ON VIDEOTAPE YOU COULDN'T
8 REMEMBER THE DATE?

9 A. NO, SIR.

10 Q. HAS ANYONE HELPED YOU REMEMBER THE DATES?

11 A. I DON'T KNOW.

12 Q. VICTIM, HAS ANYONE SUGGESTED TO YOU WHAT THE DATES
13 WERE?

14 A. I DON'T KNOW.

15 Q. NOW, YOU INDICATED THAT YOU GOT MONEY -- \$20,
16 WASN'T IT?

17 A. YES, SIR.

18 Q. DIDN'T BOBBY GIVE YOU MONEY TO GO BUY A BARBIE?

19 A. YES, SIR.

20 Q. AND TWO YEARS AGO WHEN YOU GAVE YOUR VIDEO TAPED
21 STATEMENT, DIDN'T YOU TELL COUNSELOR THAT NOTHING
22 GOT ON YOU?

23 A. I DON'T REMEMBER SAYING THAT.

24 Q. DO YOU REMEMBER TWO YEARS AGO THAT YOU NEVER
25 MENTIONED ANYTHING ABOUT BOBBY USING HIS FINGER?

1 A. I DON'T REMEMBER THAT.

2 Q. WHEN DID YOU FIRST START TELLING PEOPLE THAT BOBBY
3 BEGAN USING HIS FINGER?

4 A. WELL, ME AND MISS DEBBIE; WE PLAYED A GAME. AND IT
5 WAS A GAME. AND I HAD TO GET -- IT'S A ONE FOR
6 YES; AND TWO FOR NO; OR EITHER IT'S TWO FOR YES. I
7 DON'T KNOW. BUT WE PLAYED THAT GAME. AND I
8 REMEMBER SOMETHING THAT HAPPENED ON JULY THE
9 FOURTH.

10 Q. AND WHEN DID YOU PLAY THAT GAME?

11 A. WHEN I WAS -- BEFORE I CAME HERE, LIKE I THINK IT'S
12 TWO OR ONE WEEK AGO. I PLAYED THAT GAME.

13 Q. SO YOU REMEMBERED THIS ONE WEEK AGO?

14 A. YES.

15 Q. AND DID YOU SAY MRS. DEBBIE?

16 A. YES.

17 Q. WHO IS MRS. DEBBIE?

18 A. SHE'S MOM'S FRIEND.

19 Q. DO YOU KNOW MRS. DEBBIE'S LAST NAME?

20 A. BAYNES.

21 MR. STOCKHOLM: YOUR HONOR, I BEG THE
22 COURT'S INDULGENCE AND ASK TO APPROACH, YOUR HONOR.

23 THE COURT: SURE.

24 Q. VICTIM, WHEN BOBBY BOUGHT YOU THE BARBIE, WERE YOUR
25 COUSINS THERE?

1 A. I DON'T THINK SO.

2 Q. WERE YOUR COUSINS AROUND THAT PARTICULAR DAY AT ANY
3 TIME?

4 A. THEY WERE IN -- I THINK THEY WERE IN NORTH AUGUSTA
5 OR GEORGIA.

6 Q. WERE YOUR COUSINS EVER GETTING PRESENTS WHEN YOU
7 WEREN'T?

8 A. NO, SIR.

9 Q. NOW, WHEN YOU WERE IN COLUMBIA, DO YOU KNOW WHERE
10 YOUR MOM WORKED?

11 A. NO, SIR.

12 Q. DID YOUR FAMILY HAVE A LOT OF MONEY, *VICTIM* ?

13 A. I DON'T KNOW.

14 MR. STOCKHOLM: YOUR HONOR, THAT'S ALL I
15 HAVE OF THIS WITNESS.

16 THE COURT: ANYTHING ON RE-DIRECT?

17 MRS. PELLIZZARI: NO, SIR, YOUR HONOR.

18 THE COURT: THAT WILL CONCLUDE THE
19 VIDEOTAPED DEPOSITION. DO YOU WANT TO TAKE HER
20 BACK TO---

21 (AT THIS TIME WITNESS IS TAKEN OUT OF COURTROOM.)

22 THE COURT: ALL RIGHT. ANYTHING BEFORE
23 WE BRING THE JURY IN? WE NEED THE DEFENDANT BACK
24 IN, TOO.

25 MS. CAMPBELL: YES, SIR; WE NEED THE

1 DEFENDANT. JUST FOR THE RECORD, I WILL JUST NOTE
2 AS FAR AS THE DEPOSITION THAT THE DEFENDANT WAS IN
3 THE JURY ROOM; THAT HE DID HAVE THEM MONITOR HIM
4 THERE; THAT HE HAD CO-COUNSEL IN THERE WITH HIM; HE
5 HAD A LAWYER PRESENT AS WELL AS HIS LAWYER THAT WAS
6 QUESTIONING HIM HERE, AND THEY WERE ABLE TO
7 COMMUNICATE. I JUST NOTE THAT FOR THE RECORD.

8 THE COURT: ALL RIGHT. ANYTHING ELSE
9 ABOUT THE DEPOSITION?

10 MR. STOCKHOLM: NO, YOUR HONOR.

11 THE COURT: ALL RIGHT. THE STRIKES WILL
12 BE FIVE AND TEN.

13 (AT THIS TIME JURY PANEL ENTERS COURTROOM.)

14 THE COURT: ALL RIGHT. MY NAME IS HENRY
15 FLOYD. I'VE BEEN ASSIGNED HERE IN RICHLAND COUNTY
16 AS THE CHIEF ADMINISTRATIVE JUDGE FOR GENERAL
17 SESSIONS THIS YEAR. SEATED TO MY LEFT IS NED
18 MILLER WHO IS OUR NEWEST CIRCUIT JUDGE. HE'S FROM
19 GREENVILLE. THE CHIEF JUSTICE ALLOWS NEW JUDGES TO
20 SIT WITH -- I GUESS YOU'D CALL THEM SENIOR JUDGES
21 -- FOR TRAINING PURPOSES OVER A FOUR WEEK PERIOD.
22 SO HE WILL BE HERE THIS WEEK WITH ME. AND
23 HOPEFULLY AFTER THIS TRIAL, HE'LL PROBABLY BE
24 TRYING A CASE BY HIMSELF SO HE CAN GET A LITTLE BIT
25 OF EXPERIENCE IN THAT REGARD. IT'S A GOOD PROGRAM.

MOTIONS

34

1 WE HAVE A NEW JUDGE'S SCHOOL THAT THEY GO THROUGH,
2 AND THEN THEY SPEND FOUR WEEKS WITH VARIOUS JUDGES
3 AROUND THE STATE. SO THAT'S WHY HE'S UP HERE
4 TODAY. AND BECAUSE OF THAT, I MIGHT GO JUST A TAD
5 SLOWER THAN I NORMALLY WOULD TO GIVE HIM AN
6 OPPORTUNITY TO GET SOME INPUT BACK AND FORTH DURING
7 THE COURSE OF THE TRIAL.

8 ALL RIGHT, LADIES AND GENTLEMEN,
9 THE STATE OF SOUTH CAROLINA IS CALLING FOR TRIAL
10 THE CASE OF THE STATE OF SOUTH CAROLINA VS. BOBBY
11 JOE REEVES. MR. REEVES HAS BEEN INDICTED BY THE
12 RICHLAND COUNTY GRAND JURY FOR THE OFFENSE OF
13 CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE FIRST
14 DEGREE AND LEWD AGENT UPON A CHILD. TO EACH ONE OF
15 THESE INDICTMENTS, MR. REEVES PLEADS NOT GUILTY.
16 AND THAT WOULD REQUIRE THE STATE OF SOUTH CAROLINA
17 TO PROVE BY COMPETENT EVIDENCE TO A JURY'S
18 SATISFACTION BEYOND A REASONABLE DOUBT THE
19 FOLLOWING ALLEGATIONS. AS TO THE CSC COUNT, THAT
20 BOBBY JOE REEVES DID IN RICHLAND COUNTY BETWEEN
21 JUNE THE 30TH AND JULY THE 4TH OF 2000 WILLFULLY,
22 UNLAWFULLY, AND FELONIOUSLY COMMIT A SEXUAL
23 BATTERY, TO WIT; SEXUAL INTERCOURSE AND/OR FELLATIO
24 AND/OR INTRUSION HOWEVER SLIGHT OF ANY PART OF A
25 PERSON'S BODY OR OBJECT INTO THE GENITAL OR ANAL

MOTIONS

35

1 OPENINGS OF THE PERSON'S BODY EXCEPT WHEN SUCH
2 INTRUSION IS ACCOMPLISHED FOR A MEDICALLY
3 RECOGNIZED TREATMENT OR DIAGNOSTIC PURPOSES AND
4 THAT THE SAID VICTIM WAS LESS THAN ELEVEN YEARS OF
5 AGE.

6 THE LEWD ACT CHARGE, THE STATE
7 ALLEGES THAT BOBBY JOE REEVES BEING OVER THE AGE OF
8 FOURTEEN DID IN RICHLAND COUNTY ON ABOUT JUNE THE
9 30TH, 2000 AND JULY THE FOURTH, 2000, WILLFULLY AND
10 LEWDLY COMMIT OR ATTEMPT TO COMMIT A LEWD AND
11 LASCIVIOUS ACT UPON OR THE BODY OF ONE VICTIM

12 , A CHILD UNDER THE AGE OF 16 YEARS WITH THE
13 INTENT OF AROUSING, APPEALING TO, OR GRATIFYING THE
14 LUST OR PASSIONS OF FOR SEXUAL DESIRE OF A PERSON
15 OR THE CHILD, TO WIT; THE DEFENDANT RUBBED THE
16 VAGINA OF THE CHILD AND/OR THE DEFENDANT HAD THE
17 CHILD RUB AND TOUCH HIS PENIS.

18 AS I'VE INDICATED, MR. REEVES HAS
19 PLED NOT GUILTY. AND, OF COURSE, HE ENJOYS A
20 PRESUMPTION OF INNOCENCE UNTIL AND UNLESS THE STATE
21 CAN PROVE THESE ALLEGATIONS, AS I SAID, BEYOND A A
22 REASONABLE DOUBT. I NEED TO ASK A SERIES OF
23 QUESTIONS TO DETERMINE YOUR FAIRNESS AND
24 IMPARTIALITY TO SIT IN JUDGMENT OF THIS CASE. IF
25 YOU DO NEED TO RESPOND TO ANY ONE OF THE QUESTIONS,

1 SIMPLY STAND IN PLACE, GIVE ME YOUR NAME, AND THEN
2 WHATEVER THE APPROPRIATE RESPONSE IS. THERE WILL
3 BE A COUPLE OF QUESTIONS THAT ARE SOMEWHAT PERSONAL
4 IN NATURE THAT IF YOU DO NEED TO RESPOND TO THAT,
5 I'LL TAKE YOUR ANSWER DOWN HERE PRIVATELY. FIRST
6 OF ALL IS THERE ANY MEMBER OF THE JURY PANEL WHO IS
7 RELATED BY BLOOD, CONNECTED BY MARRIAGE OR
8 EMPLOYMENT OR A CLOSE PERSONAL ACQUAINTANCE WITH
9 THE DEFENDANT, BOBBY JOE REEVES? MR. REEVES, WOULD
10 YOU STAND AND FACE THE JURY FOR ME, PLEASE, SIR?
11 (DEFENDANT STANDS.) IF SO, PLEASE INDICATE BY
12 STANDING. (NO RESPONSE.) ALL RIGHT. THANK YOU,
13 SIR. IS THERE -- THE SAME QUESTION AS TO
14 POTENTIAL WITNESSES, I'LL CALL THESE OUT IN GROUPS
15 OF FIVE. AND IF ANY OF THOSE WITNESSES ARE PRESENT
16 IN THE COURTROOM, I'D ASK THEM TO STAND. AND THE
17 QUESTION WOULD BE IS THERE ANY MEMBER OF THE JURY
18 PANEL WHO IS RELATED BY BLOOD, CONNECTED BY
19 MARRIAGE OR EMPLOYMENT, OR A CLOSE PERSONAL
20 ACQUAINTANCE WITH ANY OF THESE POTENTIAL WITNESSES:
21 RICHLAND COUNTY SHERIFF'S DEPUTY DALE JONES;
22 VICTIM WHO IS THE ALLEGED VICTIM; DONALD ;
23 AMY GAYLOR; DR. BRUNIE; DR. MAUREEN CLAYBOURNE;
24 JODIE LASHLEY; DR. DENNIS BASH; INVESTIGATOR LEE
25 WOODS; DWAYNE CHRISTY; CHARLOTTE MURTON; JESSIE

JURY QUALIFIED

37

1 WHEATON; JULIA CLOSE; AND A REPRESENTATIVE FROM THE
2 MILL CREEK ELEMENTARY SCHOOL HERE IN RICHLAND
3 COUNTY. IS ANY MEMBER OF THE JURY PANEL RELATED BY
4 BLOOD, CONNECTED BY MARRIAGE OR EMPLOYMENT OR A
5 CLOSE PERSONAL ACQUAINTANCE WITH ANY OF THESE
6 POTENTIAL WITNESSES OR THOSE NAMES RING A BELL AND
7 YOU NEED MORE INFORMATION IN ORDER TO RESPOND TO
8 THE QUESTION? SOME OF THESE WITNESSES ARE FROM THE
9 AUGUSTA, GEORGIA AREA. IF SO, PLEASE INDICATE BY
10 STANDING. (NO RESPONSE.)

11 IS THERE ANY MEMBER OF THE JURY
12 PANEL WHO KNOWS ANYTHING ABOUT THE FACTS OF THIS
13 CASE? IF SO, PLEASE INDICATE. (NO RESPONSE.) IS
14 THERE ANY MEMBER OF THE JURY PANEL WHO KNOWS
15 ANYTHING ABOUT THE FACTS OF THIS CASE? IF SO,
16 PLEASE INDICATE. (NO RESPONSE.) HAS ANY MEMBER OF
17 THE JURY PANEL WHO HAS ANY PARTICULAR INTEREST IN
18 THE OUTCOME OF THIS CASE? IF SO, PLEASE INDICATE.
19 (NO RESPONSE.) IS ANY MEMBER OF THE JURY PANEL TO
20 THIS POINT FORMED OR EXPRESSED ANY OPINION AS TO
21 THE INNOCENCE OR GUILT OF THE DEFENDANT IN THIS
22 CASE? IF SO, PLEASE INDICATE BY STANDING. (NO
23 RESPONSE.) ANY MEMBER OF THE JURY PANEL OR A
24 MEMBER OF YOUR IMMEDIATE FAMILY EMPLOYED BY THE
25 RICHLAND COUNTY SHERIFF'S DEPARTMENT OR ANY STATE,

1 FEDERAL, COUNTY, LOCAL LAW ENFORCEMENT AGENCY? IF
2 SO, PLEASE STAND. (JUROR STANDS.) YES, MA'AM; WILL
3 YOU STAND AND GIVE ME YOUR NAME FIRST?

4 THE JUROR: YES, SIR.

5 THE COURT: YES, MA'AM. WILL YOU PLEASE
6 STAND AND GIVE ME YOUR NAME FIRST?

7 THE JUROR: MY NAME IS PAM JONES; AND I
8 WORK FOR THE DEPARTMENT OF PUBLIC SAFETY IN THE
9 ACCOUNTING OFFICE.

10 THE COURT: BUT YOU ARE NOT A
11 COMMISSIONED OFFICER?

12 THE JUROR: NO, I'M NOT.

13 THE COURT: THANK YOU. I'LL LEAVE YOU IN
14 THE PANEL. ANYONE ELSE? (JUROR STANDS.) YES,
15 MA'AM?

16 THE JUROR: I WORK FOR RICHLAND SCHOOL
17 DISTRICT TWO. I'M NOT SURE IF THAT MAKES A
18 DIFFERENCE.

19 THE COURT: NO, MA'AM; THAT'S FINE.
20 YOU'RE OKAY. ANYBODY ELSE? (NO RESPONSE.) ALL
21 RIGHT. PROSECUTING THE CASE IS DANA PELLIZZARI AND
22 KATHERINE LUCK CAMPBELL, TO MY RIGHT REPRESENTING
23 THE STATE. REPRESENTING THE DEFENDANT IS GENE
24 STOCKHOLM TO MY LEFT. IS THERE ANY MEMBER OF THE
25 JURY PANEL WHO HAS ANY BUSINESS, PERSONAL, SOCIAL

1 OR PROFESSIONAL RELATIONSHIP WITH ANY OF THESE
2 ATTORNEYS? IF SO, PLEASE INDICATE BY STANDING. (NO
3 RESPONSE.) ANY MEMBER OF THE JURY PANEL -- (JUROR
4 STANDS.) YES, MA'AM?

5 THE JUROR: I'VE MET LUCK BEFORE.

6 THE COURT: AND YOUR NAME, PLEASE, MA'AM?

7 THE JUROR: SHARON BELFOY.

8 THE COURT: AND, MA'AM, IN TERMS OF A
9 CASE OR SOMETHING?

10 THE JUROR: NONE AT ALL.

11 THE COURT: ON A SOCIAL BASIS?

12 THE JUROR: RIGHT.

13 THE COURT: THE FACT THAT YOU KNOW HER,
14 WOULD THAT EFFECT YOUR ABILITY TO BE FAIR AND
15 IMPARTIAL?

16 THE JUROR: NO, MA'AM.

17 THE COURT: I'LL LEAVE YOU IN THE PANEL.
18 ANY MEMBER OF THE JURY PANEL HAVE A MEMBER OF THEIR
19 IMMEDIATE FAMILY EMPLOYED IN THE THE FIFTH CIRCUIT
20 SOLICITOR'S OFFICE WITH WHOM BARNEY GEISE IS THE
21 DULY ELECTED SOLICITOR? IF SO, PLEASE INDICATE BY
22 STANDING. (NO RESPONSE.) ANY MEMBER OF THE JURY
23 PANEL OR MEMBER OF YOUR IMMEDIATE FAMILY OR A CLOSE
24 FRIEND -- THAT WOULD HAVE AN IMPACT ON YOU -- BEEN
25 THE SUBJECT OF AN ACT OF SEXUAL VIOLENCE OR A LEWD

1 ACT OR SOMETHING OF THAT NATURE? NOW, IF YOU DO
2 NEED TO RESPOND TO THAT QUESTION, I'LL BE GLAD TO
3 TALK TO YOU. AND IT'S A BROADLY BASED QUESTION;
4 EITHER A MEMBER OF YOUR FAMILY OR SOME CLOSE FRIEND
5 THAT MIGHT HAVE HAD AN IMPACT ON YOU OR YOU
6 YOURSELF. SO DOES ANY MEMBER OF THE JURY PANEL
7 NEED TO RESPOND TO THAT QUESTION? (NO RESPONSE.)
8 ALL RIGHT.

9 YOU HAVE HEARD THE SUBJECT
10 MATTER. YOU'VE MET THE ATTORNEYS; YOU'VE MET THE
11 DEFENDANT; YOU KNOW THE WITNESSES, AT LEAST BY NAME
12 AS TO WHO WILL TESTIFY. IS THERE ANY MEMBER OF THE
13 JURY PANEL WHO IS SENSIBLE OR AWARE OF ANY BIAS OR
14 ANY PREJUDICE IN CONNECTION WITH THIS CASE? IF SO,
15 PLEASE INDICATE BY STANDING. (NO RESPONSE.) ANY
16 MEMBER OF THE JURY PANEL KNOW OF ANY REASON
17 WHATSOEVER WHY HE OR SHE COULD NOT GIVE THE STATE
18 OF SOUTH CAROLINA AND BOBBY JOE REEVES A FAIR AND
19 IMPARTIAL TRIAL? IF SO, PLEASE INDICATE BY
20 STANDING. (NO RESPONSE.) ANYTHING FURTHER FROM
21 THE STATE?

22 MRS. PELLIZZARI: YOUR HONOR, MAY WE
23 APPROACH?

24 THE COURT: SURE.

25 (AT THIS TIME BENCH CONFERENCE IS HELD.)

JURY QUALIFIED

41

1 THE COURT: LET ME ASK -- (JUROR STANDS.)

2 YES, MA'AM?

3 THE JUROR: I'M JOANNE PHINN. I WORK
4 WITH PALMETTO RICHLAND. I DON'T KNOW ANY OF THESE
5 DOCTORS BY NAME, BUT I JUST WANT TO MAKE SURE
6 THERE'S NO PROBLEM.

7 THE COURT: OKAY. THANK YOU, MA'AM. LET
8 ME ASK THE REVERSE SIDE OF THAT QUESTION. HAS ANY
9 MEMBER OF THE JURY PANEL BEEN ACCUSED, OR ANY
10 MEMBER OF YOUR IMMEDIATE FAMILY, CLOSE PERSONAL
11 FRIEND, OR YOU HAVE BEEN ACCUSED OF A CRIMINAL
12 SEXUAL CONDUCT OR LEWD ACT OR THAT SORT OF THING?
13 IF YOU NEED TO RESPOND, I'LL BE GLAD TO TALK TO YOU
14 HERE. (NO RESPONSE.) LASTLY, DOES ANY MEMBER OF
15 THE PANEL KNOW OF ANY REASON WHATSOEVER WHY HE OR
16 SHE COULD NOT GIVE THE STATE OF SOUTH CAROLINA AND
17 BOBBY JOE REEVES A FAIR AND IMPARTIAL TRIAL? (NO
18 RESPONSE.) NOW, ANYTHING FURTHER FROM THE STATE?

19 MRS. PELLIZZARI: NO, SIR. NOW, ANYTHING
20 FURTHER FROM THE STATE?

21 MS. CAMPBELL: NO, SIR.

22 THE COURT: FROM THE DEFENSE?

23 MR. STOCKHOLM: NOTHING FURTHER FROM THE
24 DEFENSE.

25 THE COURT: ALL RIGHT. THE STRIKES ARE

1 FIVE AND TEN. LADIES AND GENTLEMEN, AS THE CLERK
2 WILL RANDOMLY CALL YOUR NAME, IF YOU'D SIMPLY STAND
3 IN PLACE. THEN THE QUESTION WILL BE PUT TO THE
4 STATE WHETHER THEY WISH TO SEAT YOU AS A JUROR OR
5 STRIKE YOU FROM SERVICE. IF THEY SAY SEAT YOU,
6 THEN THE QUESTION IS PASSED TO THE DEFENSE, AND
7 THEY HAVE A RIGHT TO SEAT YOU OR SWEAR YOU AS A
8 JUROR OR STRIKE YOU FROM SERVICE IN THIS CASE. IF
9 EITHER SIDE STRIKES YOU, PLEASE HAVE A SEAT. DON'T
10 BE PERSONALLY OFFENDED BY THAT. THEY HAVE SO MANY
11 STRIKES THAT YOU'RE GOING TO USE. DON'T BE
12 EMBARRASSED BY THAT OR UPSET. YOU CAN EXPECT THEM
13 TO STRIKE SOME. IF BOTH SIDES PASS UPON YOU, WE'D
14 ASK YOU TO COME AROUND AND HAVE A SEAT IN THE JURY
15 BOX UNTIL WE GET A JURY OF TWELVE PLUS ONE
16 ALTERNATE. MR. CLERK?

17 THE CLERK: YES, YOUR HONOR.

18 (JUROR NO. 245, A WHITE MALE, IS CALLED.)

19 MRS. PELLIZZARI: PLEASE PRESENT MR.
20 PERRY.

21 THE CLERK: WHAT SAYS THE DEFENSE?

22 MR. STOCKHOLM: PLEASE SEAT MR. PERRY.

23 THE CLERK: SIR, PLEASE COME AROUND HERE
24 AND HAVE A SEAT HERE IN THE JURY BOX AS DIRECTED BY
25 THE BAILIFF.

1 (JUROR NO. 38, A BLACK FEMALE, IS CALLED.)

2 THE CLERK: WHAT SAYS THE STATE?

3 MRS. PELLIZZARI: PLEASE PRESENT MRS.
4 BROWN.

5 THE CLERK: WHAT SAYS THE DEFENSE?

6 MR. STOCKHOLM: PLEASE SEAT MRS. BROWN.

7 THE CLERK: MA'AM, PLEASE COME AROUND
8 HERE AND HAVE A SEAT AS DIRECTED BY THE BAILIFF.

9 (JUROR NO. 229, A BLACK MALE, IS CALLED.)

10 THE CLERK: WHAT SAYS THE STATE?

11 MRS. PELLIZZARI: PLEASE PRESENT MR.
12 NERO.

13 THE CLERK: WHAT SAYS THE DEFENSE?

14 MR. STOCKHOLM: PLEASE SEAT MR. NERO.

15 THE CLERK: PLEASE COME AROUND, SIR, TO
16 THE JURY BOX.

17 (JUROR NO. 2, A WHITE MALE IS CALLED.)

18 THE CLERK: WHAT SAYS THE STATE?

19 MRS. PELLIZZARI: PLEASE PRESENT MR.
20 ADAMS.

21 THE CLERK: WHAT SAYS THE DEFENSE?

22 MR. STOCKHOLM: PLEASE SEAT MR. ADAMS.

23 THE CLERK: PLEASE COME FORWARD, SIR.

24 ALSO, LADIES AND GENTLEMEN, IF YOU HAVE ANY
25 PERSONAL ITEMS, PLEASE BRING THOSE WITH YOU.

JURY SELECTED

44

1 (JUROR NO. 275, A WHITE MALE, IS CALLED.)

2 THE CLERK: WHAT SAYS THE STATE?

3 MRS. PELLIZZARI: PLEASE PRESENT MR.

4 SIMPSON.

5 THE CLERK: WHAT SAYS THE DEFENSE?

6 MR. STOCKHOLM: PLEASE SEAT MR. SIMPSON.

7 THE CLERK: PLEASE COME FORWARD, SIR.

8 (JUROR NO. 15, A WHITE FEMALE, IS CALLED.)

9 THE CLERK: WHAT SAYS THE STATE?

10 MRS. PELLIZZARI: PLEASE PRESENT MRS.

11 BEASLEY.

12 THE CLERK: WHAT SAYS THE DEFENSE?

13 MR. STOCKHOLM: PLEASE EXCUSE HER FROM
14 THIS TRIAL, YOUR HONOR.

15 THE CLERK: MA'AM, PLEASE HAVE A SEAT
16 THERE WHERE YOU ARE. DEFENSE?

17 (JUROR NO. 54, A WHITE FEMALE, IS CALLED.)

18 THE CLERK: WHAT SAYS THE STATE?

19 MRS. PELLIZZARI: PLEASE PRESENT MRS.

20 CARTER.

21 THE CLERK: WHAT SAYS THE DEFENSE?

22 MR. STOCKHOLM: PLEASE SEAT THE JUROR.

23 THE CLERK: PLEASE COME FORWARD, MA'AM,
24 AND HAVE A SEAT HERE IN THE JURY BOX.

25 (JUROR NO. 321, A WHITE FEMALE, IS CALLED.)

1 THE CLERK: WHAT SAYS THE STATE?

2 MRS. PELLIZZARI: PLEASE PRESENT MRS.

3 WELLS.

4 THE CLERK: WHAT SAYS THE DEFENSE?

5 MR. STOCKHOLM: PLEASE SEAT THE JUROR.

6 THE CLERK: PLEASE COME FORWARD AND HAVE

7 A SEAT HERE IN THE JURY BOX.

8 (JUROR NO. 118, A WHITE FEMALE, IS CALLED.)

9 THE CLERK: WHAT SAYS THE STATE?

10 MRS. PELLIZZARI: PLEASE EXCUSE MRS.

11 BROWN.

12 THE CLERK: PLEASE HAVE A SEAT THERE

13 WHERE YOU ARE.

14 (JUROR NO. 92, A WHITE FEMALE, IS CALLED.)

15 THE CLERK: WHAT SAYS THE STATE?

16 MRS. PELLIZZARI: PLEASE PRESENT MRS.

17 FINE.

18 THE CLERK: WHAT SAYS THE DEFENSE?

19 MR. STOCKHOLM: PLEASE SEAT THE JUROR.

20 THE CLERK: PLEASE COME FORWARD AND HAVE

21 A SEAT HERE IN THE JURY BOX.

22 (JUROR NO. 195, A WHITE MALE, IS CALLED.)

23 THE CLERK: WHAT SAYS THE STATE?

24 MRS. PELLIZZARI: PLEASE STATE MRS.

25 LOVETT.

JURY SELECTED

46

1 THE CLERK: WHAT SAYS THE DEFENSE?

2 MR. STOCKHOLM: PLEASE SEAT THE JUROR.

3 THE CLERK: PLEASE COME FORWARD, MA'AM.

4 (JUROR NO. 351, A WHITE MALE, IS CALLED.)

5 THE CLERK: WHAT SAYS THE STATE?

6 MRS. PELLIZZARI: PLEASE PRESENT MR.

7 REEVES.

8 THE CLERK: WHAT SAYS THE DEFENSE?

9 MR. STOCKHOLM: PLEASE SEAT THE JUROR.

10 THE CLERK: PLEASE COME FORWARD, SIR, AND

11 HAVE A SEAT HERE IN THE JURY BOX.

12 (JUROR NO. 230, A WHITE MALE, IS CALLED.)

13 THE CLERK: WHAT SAYS THE STATE?

14 MRS. PELLIZZARI: PLEASE EXCUSE MR.

15 NOELLE.

16 THE CLERK: HAVE A SEAT THERE WHERE YOU

17 ARE.

18 (JUROR NO. 93, A WHITE FEMALE, IS CALLED.)

19 THE CLERK: WHAT SAYS THE STATE?

20 MRS. PELLIZZARI: PLEASE PRESENT MS.

21 PHINN.

22 THE CLERK: WHAT SAYS THE DEFENSE?

23 MR. STOCKHOLM: PLEASE SEAT THE JUROR.

24 THE CLERK: PLEASE COME FORWARD, MA'AM,

25 AND HAVE A SEAT HERE IN THE JURY BOX.

JURY SELECTED

47

1 (JUROR NO. 192, A BLACK MALE, IS CALLED.)

2 THE CLERK: WHAT SAYS THE STATE?

3 MRS. PELLIZZARI: PLEASE PRESENT MR.

4 LASON.

5 THE CLERK: WHAT SAYS THE DEFENSE?

6 MR. STOCKHOLM: PLEASE SEAT THE JUROR.

7 THE CLERK: PLEASE COME FORWARD AND HAVE

8 A SEAT HERE IN THE JURY BOX.

9 THE COURT: ONE ALTERNATE, MR. CLERK.

10 THE CLERK: YES, YOUR HONOR.

11 (JUROR NO. 166, A WHITE MALE, IS CALLED.)

12 THE CLERK: WHAT SAYS THE STATE?

13 MRS. PELLIZZARI: PLEASE EXCUSE MR.

14 JOHNSON.

15 THE CLERK: PLEASE HAVE A SEAT THERE

16 WHERE YOU ARE.

17 (JUROR NO. 222, A WHITE MALE, IS CALLED.)

18 THE CLERK: DOES THE STATE CHALLENGE FOR

19 CAUSE?

20 MRS. PELLIZZARI: PLEASE PRESENT MR.

21 MUELLER.

22 THE CLERK: PLEASE COME FORWARD, SIR, AND

23 HAVE A SEAT HERE IN THE JURY BOX.

24 THE COURT: ALL RIGHT. ANY EXCEPTION OR

25 OBJECTION TO THE METHOD OF SELECTION OR MANNER OF

1 IMPANELMENT FROM THE STATE?

2 MRS. PELLIZZARI: NO, SIR.

3 THE COURT: FROM THE DEFENSE?

4 MR. STOCKHOLM: NO OBJECTION FROM THE
5 DEFENSE, YOUR HONOR.

6 THE COURT: I FIND THE JURY QUALIFIED IN
7 LIGHT OF THE STATUTORY REQUIREMENTS OF ASTON VS.
8 KENTUCKY, JEDD VS. ALABAMA. ALL RIGHT, LADIES AND
9 GENTLEMEN NOT SELECTED TO SERVE, I'D ASK YOU TO GO
10 BACK TO THE JURY ASSEMBLY ROOM. I THINK THE CIVIL
11 SIDE IS READY TO DRAW NOW. SO I HOPE WE'LL GET TO
12 SEE YOU LATER IN THE WEEK.

13 (AT THIS TIME REMAINDER OF JURY PANEL IS EXCUSED.)

14 THE COURT: ALL RIGHT, LADIES AND
15 GENTLEMEN OF THE JURY; WHEN I ASKED YOU JUST A
16 SECOND -- WELL, Y'ALL COME UP HERE FOR JUST A
17 MINUTE.

18 (AT THIS TIME BENCH CONFERENCE IS HELD.)

19 THE COURT: ALL RIGHT. LADIES AND
20 GENTLEMEN, I'LL ASK YOU IN JUST A SECOND TO STAND.
21 LET THE CLERK SWEAR YOU IN. AND THEN IF YOU'LL
22 JUST REMAIN STANDING AND THEN GO TO THE JURY ROOM.
23 AND WHILE YOU'RE IN THERE, I WANT YOU TO SELECT A
24 FOREPERSON FROM AMONG YOUR NUMBER. DO THAT BY A
25 MAJORITY VOTE. EVERYBODY CAN VOTE EXCEPT FOR THE

1 ALTERNATE. AND WHOEVER YOU SELECT WOULD COME BACK
2 AND HAVE A SEAT WITH THE GENTLEMEN ON THE FRONT ROW
3 WHERE THE BLUE SHIRT IS. THE REST OF YOU MAY SIT
4 WHERE YOU'D LIKE EXCEPT FOR THE ALTERNATE AND THE
5 FOREPERSON. I'D LIKE TO KEEP TRACK WITH THE
6 ALTERNATE ON THE BACK. AND THE REST OF YOU KIND OF
7 SIT WHERE YOU'D LIKE. WATCH THOSE STEPS COMING
8 DOWN BECAUSE THEY'RE KIND OF TRICKY, AND THEY'RE
9 NOT MARKED. IF YOU'LL GIVE US ABOUT FIVE MINUTES,
10 AND THEN WE'LL BE READY TO GO WITH THE TRIAL. SO
11 STAND TO BE SWORN, AND THEN REMAIN STANDING AND GO
12 WITH THE BAILIFF TO THE JURY ROOM.

13 (AT THIS TIME JURY IS SWORN.)

14 THE COURT: ALL RIGHT. WE'LL TAKE A
15 QUICK FIVE MINUTES AND BE READY TO GO.

16 (BRIEF RECESS.)

17 - - - - -

18 THE COURT: ALL RIGHT. BRING THE JURY
19 IN. WHO'S GOING TO BE YOUR FIRST WITNESS? IS THE
20 VIDEO GOING TO BE THE FIRST?

21 MRS. PELLIZZARI: YES, SIR.

22 THE COURT: OKAY. READY TO GO?

23 MR. STOCKHOLM: YES, SIR.

24 THE COURT: ALL RIGHT. Y'ALL CAN HAVE A
25 SEAT. ALL RIGHT. BRING THE JURY IN.

PRELIMINARY REMARKS BY THE COURT

50

1 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

2 THE COURT: ALL RIGHT. Y'ALL MAY HAVE A
3 SEAT.

4 THE BAILIFF: ALL RIGHT. MR. PERRY, I
5 UNDERSTAND THEY SELECTED YOU AS THE FOREPERSON; IS
6 THAT CORRECT?

7 THE FOREPERSON: YES, SIR.

8 THE COURT: YOUR HONOR, THE JURY IS
9 PRESENT.

10 THE COURT: ALL RIGHT, MR. PERRY. I
11 UNDERSTAND THEY SELECTED YOU AS THE FOREPERSON; IS
12 THAT CORRECT?

13 THE FOREPERSON: YES, SIR.

14 THE COURT: I NEEDED TO CONFIRM THAT. ALL
15 RIGHT, MR. FOREMAN AND LADIES AND GENTLEMEN OF THE
16 JURY; HOW MANY OF YOU HAVE SERVED ON A JURY BEFORE?
17 (HANDS ARE RAISED.) ALL RIGHT. THAT'S ABOUT
18 AVERAGE NOWADAYS. OKAY. WELL, LET ME JUST GIVE
19 YOU A THUMB-NAIL SKETCH ABOUT HOW WE'RE GOING TO
20 PROCEED AND A LITTLE BIT ABOUT WHAT YOU CAN EXPECT.
21 AS I'VE INDICATED TO YOU, THERE IS A DISAGREEMENT
22 BETWEEN THE STATE AND THE DEFENDANT IN THIS CASE.
23 AND WHEN WE HAVE THOSE KIND OF DISAGREEMENTS, WE
24 IMPANEL A JURY LIKE YOU LADIES AND GENTLEMEN TO
25 LISTEN TO THE EVIDENCE AND TO RESOLVE THE DISPUTES

PRELIMINARY REMARKS BY THE COURT

51

1 BETWEEN THE PARTIES. THE STATE HAS THE BURDEN OF
2 PROVING THEIR ALLEGATIONS BY COMPETENT EVIDENCE
3 BEYOND A REASONABLE DOUBT. IF THEY CAN DO THAT,
4 THEN THEY'RE ENTITLED TO A CONVICTION AT YOUR
5 HANDS. IF THEY CAN'T DO IT, MR. REEVES IS ENTITLED
6 TO AN ACQUITTAL AT YOUR HANDS. NOW, THE TRIAL IS
7 ESSENTIALLY DIVIDED UP INTO FIVE DIFFERENT PARTS.
8 THE FIRST PART IS THE ATTORNEYS WILL MAKE BRIEF
9 OPENING STATEMENTS TO YOU KIND OF GIVING YOU AN
10 OUTLINE AS TO HOW THEY'RE GOING TO PROCEED AND SOME
11 OF THE THINGS YOU MIGHT EXPECT FROM THEM.

12 AFTER THE OPENING STATEMENTS, WE
13 GO TO THE TESTIMENTARY PHASE OR EVIDENTIARY PHASE
14 WHEN THE WITNESSES GET ON THE STAND AND TESTIFY AS
15 TO WHAT THEY KNOW OR DON'T KNOW ABOUT THE FACTS.
16 AND THERE MAY BE SOME PHYSICAL EVIDENCE FOR YOU TO
17 CONSIDER AS WELL. DURING THAT PHASE, WE HAVE
18 DIRECT EXAMINATION, CROSS-EXAMINATION, RE-DIRECT
19 AND RE-CROSS IF NECESSARY. AFTER THE EVIDENTIARY
20 PHASE AND THE ATTORNEYS GET AN OPPORTUNITY TO MAKE
21 CLOSING SUMMATIONS TO YOU, THAT'S WHERE THEY CAN
22 DISCUSS WITH YOU WHAT THEY THINK THE EVIDENCE HAS
23 SHOWN, OR NOT SHOWN AS THE CASE MAY BE. AND THEY
24 CAN ALSO TALK WITH YOU ABOUT THE APPLICABLE LEGAL
25 PRINCIPLES IN THE CASE. THE FIRST PART OF THE

1 TRIAL, I'LL GIVE YOU A SET OF LEGAL INSTRUCTIONS
2 THAT ARE APPLICABLE TO THE FACTS IN THE CASE; FOR
3 EXAMPLE, I'LL DEFINE FOR YOU WHAT PROOF BEYOND A
4 REASONBLE DOUBT MEANS, WHAT PRESUMPTION OF
5 INNOCENCE MEANS. I'LL GIVE YOU THE ELEMENTS OF THE
6 OFFENSES OF CSC WITH A MINOR FIRST DEGREE AND LEWD
7 ACT SO YOU CAN SEE WHETHER OR NOT THE EVIDENCE THE
8 STATE PRESENTS MATCHES UP WITH THE LEGAL
9 REQUIREMENTS. AND I'LL ALSO GIVE YOU SOME TOOLS TO
10 ASSESS THE CREDIBILITY AND BELIEVABILITY OF THE
11 WITNESSES WHICH IS YOUR PRIMARY FUNCTION IN THE
12 CASE.

13 THEN LASTLY AND MORE IMPORTANTLY,
14 PERHAPS THIS AFTERNOON, OR CERTAINLY EARLY IN THE
15 MORNING, YOU'LL GO BACK AND DELIBERATE AMONG
16 YOURSELVES AND RESOLVE THIS DISPUTE BETWEEN THE
17 STATE AND THE DEFENDANT. NOW, LET ME ASK YOU TO DO
18 THREE THINGS TO PROTECT AND PROMOTE THE INTEGRITY
19 OF THE JURY PROCESS AS WELL AS OUR JUDICIAL
20 SYSTEM. NUMBER ONE; PLEASE DON'T MAKE UP YOUR
21 MIND ABOUT THE OUTCOME OF THIS CASE UNTIL YOU'VE
22 HEARD ALL THE EVIDENCE, THE ARGUMENTS, THE CHARGE,
23 AND MOST IMPORTANTLY YOUR FELLOW JURORS' VIEWS
24 ABOUT THE CASE. THE SECOND THING I'D ASK YOU TO DO
25 IS THAT IN GOING TO BREAK, FOR INSTANCE IN GOING TO

PRELIMINARY REMARKS BY THE COURT

53

1 LUNCH TODAY, OR IF WE DON'T FINISH TODAY AND YOU GO
2 HOME, DON'T DISCUSS THE CASE WITH ANYONE OR ALLOW
3 ANYONE TO DISCUSS IT WITH YOU. YOU'VE BEEN CHOSEN
4 TO DECIDE THIS CASED BASED ON THE MERITS AND THE
5 EVIDENCE THAT'S PRESENTED HERE IN THIS COURTROOM
6 WITHOUT ANY OUTSIDE INFLUENCE. THIRDLY, EVEN
7 THOUGH YOU'RE GOING TO ULTIMATELY MAKE THE
8 DECISION, I WOULD ASK YOU TO NOT TO TALK ABOUT THIS
9 CASE AMONG YOURSELVES WHILE YOU'RE ON BREAK OR YOU
10 GO TOGETHER TO LUNCH OR SOMETHING LIKE THAT. I
11 THINK THE LOGIC OF THAT IS PRETTY APPARENT. BUT,
12 YOU KNOW, IF YOU WERE TO GET BACK HERE IN THE JURY
13 ROOM ON A BREAK AND SAY "WELL, I DIDN'T BELIEVE
14 THIS" OR "I REALLY LIKE THAT WITNESS;" THAT'S A
15 PROCESS BY WHICH YOU'D BE MAKING UP YOUR MIND. AND
16 THAT WOULDN'T BE FAIR UNTIL YOU'VE HEARD ALL THE
17 ARGUMENTS, THE CHARGE, AND MOST IMPORTANTLY YOUR
18 FELLOW JURORS' VIEWS ABOUT THE CASE.

19 LET ME TALK BRIEFLY ABOUT THE
20 VARIOUS ROLES OF THE PEOPLE IN THE COURTROOM. MRS.
21 ADDISON HERE IS THE COURT REPORTER WHO IS TAKING
22 DOWN EVERYTHING THAT'S SAID DURING THE TRIAL. THE
23 FOLKS TO MY RIGHT ARE LAW CLERKS FROM JUDGE MILLER
24 AND MYSELF. THEY HELP DO SOME OF THE RESEARCH AND
25 KEEP US STRAIGHT. OBVIOUSLY YOU'LL FIND OUT WHAT

PRELIMINARY REMARKS BY THE COURT

54

1 THE PROSECUTOR AND THE DEFENSE ATTORNEYS ROLES
2 ARE.

3 LET ME FOCUS ON YOUR ROLE AND MY
4 ROLE SO THAT WE DON'T GET TANGLED UP. OUR SUPREME
5 COURT SAYS THAT A JURY CAN BASE ITS DECISION ON
6 WHAT WE CALL ADMISSIBLE EVIDENCE. THAT'S EVIDENCE
7 THAT EITHER BY RULE OR BY CASE LAW OR BY STATUTE,
8 OUR GENERAL ASSEMBLY OR OUR SUPREME COURT SAYS THAT
9 A JURY COULD CONSIDER. OBVIOUSLY THERE'S ANOTHER
10 TYPE OF EVIDENCE WHICH IS CALLED INADMISSIBLE
11 EVIDENCE WHICH IS CALLED. SOMETIMES IT'S HEARSAY,
12 SOMETIMES IT'S SOMETHING THAT'S NOT RELEVANT,
13 VARIOUS THINGS LIKE THAT. FROM TIME TO TIME THESE
14 ATTORNEYS WILL STAND UP AND OBJECT IF THEY THINK
15 SOME RULE OF EVIDENCE OR PROCEDURE IS BEING
16 VIOLATED, AND IT'S MY RESPONSIBILITY TO RULE ON
17 THAT. AND I'LL EITHER SAY SOMETHING TO THE FACT
18 THAT I'LL SUSTAIN THE OBJECTION WHICH MEANS I AGREE
19 WITH YOU, OR I'LL OVERRULE THE OBJECTION WHICH
20 MEANS I DISAGREE WITH YOU. THERE ARE SOME GRAY
21 AREAS. SOMETIMES HEARSAY IS ADMISSIBLE; SOMETIMES
22 IT'S NOT, AND THEN OTHER THINGS LIKE THAT. I SAY
23 ALL THAT TO TELL YOU THIS: PLEASE DON'T ATTACH ANY
24 SIGNIFICANCE TO THE FACT THAT I MIGHT RULE FOR ONE
25 SIDE OR THE OTHER ON SOME EVIDENTIARY ISSUE. I

1 HAVE TO CALL THEM LIKE I SEE THEM. THE SUPREME
2 COURT CAN CORRECT ME IF I'M WRONG. YOU TAKE WHAT
3 EVIDENCE YOU'RE ENTITLED TO CONSIDER IN THIS CASE
4 AND BASE YOUR DECISION SOLELY UPON THAT.

5 NOW, WE'LL GO UNTIL ONE O'CLOCK AND
6 BREAK FOR LUNCH TODAY AND COME BACK AT TWO, AND
7 THEN CONTINUE ON UNTIL WE -- UNTIL SOME TIME NEAR
8 FIVE O'CLOCK THIS AFTERNOON, AND WE'LL START BACK
9 IN THE MORNING. AND I'LL GIVE YOU A START TIME FOR
10 THAT AS WELL. SO I APPRECIATE YOUR WILLINGNESS TO
11 SERVE. AND WE'LL START WITH THE OPENING ARGUMENTS
12 AND GET RIGHT INTO THE EVIDENTIARY PHASE. MADAM
13 SOLICITOR?

14 MS. CAMPBELL: THANK YOU.

15 OPENING STATEMENT

16 BY MS. CAMPBELL

17
18 FROM THE TIME VICTIM WAS
19 FOUR YEARS OLD UP TO THE TIME SHE WAS TEN, THE MAN THAT
20 SHE LOOKED UP TO AS A FATHER FIGURE SYSTEMATICALLY USED
21 HER AS A SEX TOOL. HE FONDLED HER. HE MADE HER TOUCH
22 HIS PENIS. HE MADE HER PERFORM ORAL SEX ON HIM. AND TO
23 MAKE SURE SHE DIDN'T TELL ANYBODY, HE BOUGHT HER THINGS;
24 HE GAVE HER MONEY. AND HE THREATENED HER THAT IF SHE
25 EVER TOLD THAT IT WOULD BE HER FAULT THAT HE WENT TO

1 JAIL. AND THE MAN WHO DID THAT TO VICTIM ; HIS
2 NAME IS BOBBY JOE REEVES. AND THERE, LADIES AND
3 GENTLEMEN, IS BOBBY JOE REEVES. (INDICATING.)

4 NOW MY NAME IS LUCK CAMPBELL, AND
5 I'M THE ASSISTANT SOLICITOR HERE IN THE FIFTH JUDICIAL
6 CIRCUIT WHICH IS BASICALLY MADE UP OF COLUMBIA AND THE
7 CAMDEN AREA. AND I WILL BE ONE OF THE PROSECUTORS ALONG
8 WITH DANA PELLIZZARI WHO WILL BE PRESENTING EVIDENCE IN
9 THIS CASE. AND AS THE JUDGE HAD TOLD YOU BEFORE YOUR
10 MERE DETERMINATION IN THIS CASE, THERE ARE TWO
11 INDICTMENTS. AND LET ME BE THE FIRST TO TELL YOU; THESE
12 INDICTMENTS, THEY AREN'T EVIDENCE. THE EVIDENCE, LADIES
13 AND GENTLEMEN, COMES FROM THE TESTIMONY, FROM PIECES OF
14 EVIDENCE THAT ARE PUT IN. BUT THESE PAPERS ARE VERY
15 IMPORTANT, THESE INDICTMENTS, BECAUSE THE GRAND JURY
16 HERE IN RICHLAND COUNTY HAS IN EACH OF THESE CASES
17 BECAUSE THERE ARE TWO SEPARATE INDICTMENTS, RETURNED A
18 TRUE BILL SO THAT THIS CASE CAN COME BEFORE YOU. AND
19 VERY SIMPLY, LADIES AND GENTLEMEN, THIS INDICTMENT
20 SERVES A TWO-FOLD PURPOSE BECAUSE IT NOT ONLY PUTS THE
21 DEFENDANT ON NOTICE AS TO WHAT THE STATE WILL PROVE, BUT
22 IT ALSO GIVES US SOME RIGHTS AS WELL AS YOU AS TO WHAT
23 THE ELEMENTS OF THE CRIME ARE AND WHAT WE MUST PROVE.

24 AND IN THIS CASE, LADIES AND
25 GENTLEMEN, WE'LL PROVE THE FOLLOWING CHARGES. AND THE

1 FIRST OF THESE TWO CHARGES IS WHAT WE CALL LEWD ACT UPON
2 A CHILD. AND VERY SIMPLY IN THIS CASE, LADIES AND
3 GENTLEMEN, THE STATE MUST PROVE THAT BOBBY JOE REEVES,
4 THE DEFENDANT IN THIS CASE, DID BETWEEN JUNE THE 30TH OF
5 2000 AND JULY THE FOURTH OF 2000, WILLFULLY AND LEWDLY
6 COMMIT OR ATTEMPT TO COMMIT A LEWD OR LASCIVIOUS ACT
7 UPON THE BODY OF ONE VICTIM WHO WAS LESS THAN 16
8 YEARS OF AGE WITH THE INTENT OF AROUSING AND APPEALING
9 TO GRATIFYING THE LUST AND PASSION OR SEXUAL DESIRES OF
10 EITHER THE CHILD, OR IN THIS CASE HIMSELF. SO VERY
11 SIMPLY, LADIES AND GENTLEMEN, LEWD ACT UPON A CHILD;
12 BOBBIE JOE REEVES DID BACK IN JULY OF THE YEAR 2000
13 ATTEMPT, OR IN THIS CASE COMPLETE A LEWD ACT, A LEWD
14 TOUCHING, UPON A CHILD LESS THAN 16 AND THAT HIS INTENT
15 -- AND THERE'S NO DISPUTE IN THIS CASE WHAT HIS INTENT
16 WAS -- WAS TO GRATIFY HIS OWN DESIRES. THOSE ARE THE
17 ELEMENTS OF THE CRIME OF LEWD ACT UPON A CHILD. BUT IN
18 THIS CASE, LADIES AND GENTLEMEN, THERE IS ANOTHER
19 FACTOR. AND IT IS CALLED CRIMINAL SEXUAL CONDUCT IN THE
20 FIRST DEGREE WITH A MINOR. AND VERY SIMPLY, LADIES AND
21 GENTLEMEN, THAT IS A FANCY WAY OF SAYING THAT IS A RAPE
22 OF A CHILD.

23 THE STATE MUST PROVE THAT AGAIN
24 BOBBIE JOE REEVES DID IN RICHLAND COUNTY ON THOSE SAME
25 DAYS WILLFULLY, UNLAWFULLY, AND FELONEOUSLY COMMIT A

1 SEXUAL BATTERY. A SEXUAL BATTERY IS EITHER SEXUAL
2 INTERCOURSE AND/OR FELACIO AND/OR ANY INTRUSION HOWEVER
3 SLIGHT OF ANY PART OF A PERSON'S BODY OR OBJECT IN THE
4 GENITAL, AND/OR ANAL OPENING OF A PERSON'S BODY UNLESS
5 IT'S FOR MEDICAL REASONS. AND VERY SIMPLY, LADIES AND
6 GENTLEMEN, AS THE JUDGE DEFINES IT TO YOU, THERE IS NO
7 DISPUTE IN THIS STATE, IN THIS AGE, THAT IF A PERSON
8 FORCES ANOTHER PERSON, A CHILD, TO PERFORM ORAL SEX ON
9 HIM, THAT IS SEXUAL BATTERY.

10 YOU WILL ALSO HEAR EVIDENCE OF
11 ANOTHER SEXUAL BATTERY. AND YOU DON'T HAVE TO PROVE
12 THEM BOTH; JUST ONE; BECAUSE WHEN A PERSON CHOOSES TO
13 INSERT ANYTHING INTO THE VAGINAL OPENING OF A TEN YEAR
14 OLD, THAT'S A SEXUAL BATTERY. SO VERY SIMPLY; WE MUST
15 PROVE IN THIS CASE THAT THE DEFENDANT ON OR ABOUT THAT
16 DAY DID PERFORM, OR HAD PERFORMED ON HIM, A SEXUAL
17 BATTERY AND THAT VICTIM WAS THE VICTIM. THOSE
18 ARE THE ELEMENTS OF THE CRIME. LET ME ALSO BE THE FIRST
19 TO TELL YOU; THE BURDEN OF PROOF, AS IT SHOULD BE IN
20 CRIMINAL CASES, IS ON THE STATE OF SOUTH CAROLINA TO
21 PROVE THIS DEFENDANT GUILTY BEYOND A REASONABLE DOUBT.
22 AND THAT'S WHERE THE BURDEN SHOULD BE IN CRIMINAL
23 CASES. AND LET ME TELL YOU, LADIES AND GENTLEMEN, IN
24 THIS CASE PERHAPS MORE THAN ANY OTHER, THE STATE
25 WELCOMES THAT BURDEN.

FORM C-100 • LASEH HEPUKINS PAREN & MFG. CO. 800-622-7900

1 YOU WILL HEAR EVIDENCE ABOUT HOW
2 BACK IN 1991 WHEN VICTIM WAS ONLY EIGHT MONTHS
3 OLD; HER MOTHER, DAWN , MET BOBBY JOE REEVES
4 THROUGH A FRIEND. BOTH OF THEM WERE LOOKING FOR
5 ROOMMATES. THEY WEREN'T INVOLVED, BUT THEY WERE LOOKING
6 FOR SOMEONE TO LIVE WITH THEM. THEY NEEDED TO SHARE
7 EXPENSES. AND WHEN VICTIM WAS EIGHT MONTHS OLD,
8 THEY MOVED IN TOGETHER HERE RICHLAND COUNTY, A RURAL
9 PART OF THIS COUNTY. AND FOR THE NEXT FOUR YEARS, THEY
10 CONTINUED TO LIVE TOGETHER, AND THINGS WERE GOING WELL.
11 YOU WILL HEAR HOW LITTLE VICTIM WAS DOING GREAT. SHE
12 WAS THRIVERING. YOU WILL HEAR HOW BOBBY JOE REEVES
13 PLAYED A MAJOR PART IN HER LIFE EVEN THOUGH HE WASN'T
14 EVEN ROMANTICALLY INVOLVED WITH HER. HE WASN'T HER
15 FATHER. BUT HE TOOK IT UPON HIMSELF, AND THIS CHILD
16 LOOKED UP TO HIM AS IF HE WERE.

17 YOU WILL ALSO HEAR HOW IN 1995
18 BOBBY JOE REEVES DIDN'T LIKE THE FACT THAT DAWN
19 HAD A BOYFRIEND. AND HE MOVED OUT. AND HE MOVED IN
20 WITH ANOTHER MAN HE CONSIDERED HIS BROTHER, A 60 YEAR
21 OLD NAMED JESSIE. BUT HE CONTINUED TO KEEP UP WITH
22 VICTIM. VICTIM'S MOTHER, DAWN, THOUGHT THIS WAS A GOOD
23 THING BECAUSE THE RELATIONSHIP BETWEEN THE TWO OF THEM;
24 SHE ENCOURAGED HIM. SHE WAS HAPPY THAT THIS MAN CHOSE
25 TO CONTINUE TO TAKE AN INTEREST IN HER CHILD BECAUSE HE

1 WAS THE ONLY CONTROLLING FATHER FIGURE IN HER LIFE. AND
2 YOU WILL HEAR HOW FROM THE AGE OF FOUR TO THE AGE OF TEN
3 TWICE A MONTH, SOMETIMES MORE, SOMETIMES LESS,

4 ~~VICTIM~~ WOULD GO VISIT BOBBY JOE REEVES WHERE HE WAS
5 LIVING WITH HIS FRIEND, JESSIE; THAT SHE WOULD GO FOR
6 WEEKENDS AT A TIME; THAT SHE CONTINUED TO CONSIDER THIS
7 MAN A FATHER FIGURE. AND ~~VICTIM~~'S MOTHER, DAWN,
8 ENCOURAGED THIS RELATIONSHIP. IT WAS IMPORTANT FOR HER
9 CHILD. BUT YOU WILL HEAR HOW AS ~~VICTIM~~ GOT OLDER,
10 EIGHT, NINE, TEN; HER BEHAVIOR BECAME A PROBLEM. SHE
11 STARTED ACTING OUT, NOT ONLY AT HER BUT AT SCHOOL. NO
12 ONE COULD UNDERSTAND WHY THIS WAS GOING ON. BUT THE ONE
13 PERSON IN HER LIFE WHO SHE SEEMED TO RESPECT ENOUGH AND
14 CONTINUED TO, AND IT WAS PERCEIVED TO HAVE THE BEST
15 INFLUENCE ON HER, WAS BOBBY JOE REEVES.

16 JULY; INTO JUNE, 2000; BOBBY JOE
17 REEVES WANTED ~~VICTIM~~ TO VISIT THE SET-UP -- FOR ~~VICTIM~~
18 TO GO OVER THERE ON THE FOURTH OF JULY WEEKEND, THAT
19 WEEKEND ENDING JUNE, THE FIRST OF JULY. SHE WAS
20 SUPPOSED TO GO, BUT SHE DIDN'T WANT TO WHICH WAS
21 UNUSUAL. BUT DAWN : CONTINUED TO ENCOURAGE HER
22 CHILD. HE WAS SO GOOD FOR HER. HE SEEMED TO BE THE
23 ONLY ONE SHE RESPECTED. AND SHE TOOK HER CHILD, AND SHE
24 DROPPED HER OFF JUST LIKE SHE HAD SEVERAL TIMES BEFORE,
25 AND SHE STAYED OUT. AND ON JULY THE FOURTH HE RETURNED

1 Victim TO HER HOME, AND HER BEHAVIOR WAS STILL BAD.

2 YOU WILL HEAR HOW ON JULY THE
3 28TH OF THE YEAR 2000, BOBBY JOE REEVES CALLED, HE HAD
4 BEEN OUT OF TOWN, BUT HE WAS BACK, AND HE WANTED TO SEE
5 VICTIM AND THEY SET IT UP. YOU WILL HEAR HOW DAWN
6 WENT AND TOLD HER CHILD THAT SHE WAS GOING TO GO
7 GET TO SEE BOBBY JOE AGAIN. BUT ONCE AGAIN, VICTIM
8 DIDN'T WANT TO GO. AND WHEN DAWN SAT DOWN ON
9 JULY THE 28TH AND ASKED HER CHILD WHAT WAS WRONG, WHY
10 DIDN'T SHE WANT TO GO SEE BOBBY JOE, YOU WILL HEAR HOW
11 HER CHILD FINALLY, RELUCTANTLY AND TEARFULLY, TOLD HER
12 ABOUT THE FONDLING, ABOUT THE TOUCHING, ABOUT THE ORAL
13 SEX THAT HAD BEEN GOING ON FOR THE LAST SIX YEARS AT
14 BOBBY JOE REEVES' HOUSE. AND DAWN UNDERSTANDING
15 THE PAIN; SHE DIDN'T KNOW WHAT TO DO. SHE COULDN'T
16 BELIEVE IT.

17 SHE CALLED HER FRIEND, HER
18 SISTER. WHAT DO I DO? SHE CALLED THE POLICE BEGGING
19 FOR HELP FOR HER CHILD. AND SHE EVEN HAD THE
20 WHEREWITHAL TO CALL UP BOBBY JOE REEVES AND MAKE UP AN
21 EXCUSE WHY VICTIM COULDN'T COME. AND AS HER CHILD SAT
22 THERE, THE ONLY COMFORT SHE COULD GIVE HER AT THAT POINT
23 WAS TO TELL HER SHE'D NEVER HAVE TO SEE HIM AGAIN. YOU
24 WILL HEAR OVER THE NEXT FEW MONTHS, ULTIMATELY YEARS,
25 DAWN DID EVERYTHING SHE SHOULD TO TRY TO GET

1 HELP FOR HER CHILD. YOU WILL HEAR FROM MEDICAL EXPERTS
2 WHO EXAMINED THE CHILD BACK IN JULY WHEN SHE REPORTED IN
3 AUGUST THAT SUMMER. YOU WILL HEAR HOW THE CHILD HAS
4 BEEN IN THERAPY, THE SEXUAL ABUSE EXPERTS, EVER SINCE
5 THIS WAS REPORTED. AND YOU WILL HEAR ABOUT HER SYMPTOMS
6 AND ABOUT HER BEHAVIOR AND HOW IT CORROBORATES THE ABUSE
7 THAT THIS CHILD SUFFERED FOR SO MANY YEARS.

8 NOW, LADIES AND GENTLEMEN, ONCE
9 YOU HAVE HEARD ALL THE EVIDENCE, ALL THE STATE ASKS IS
10 THAT WHEN YOU GO BACK TO THE JURY ROOM, WHEN THE JUDGE
11 WILL TELL YOU IF YOU HAVE REACHED A VERDICT -- AND THE
12 VERDICT COMES FROM THE LATIN PHRASE VERIDICTO; AND VERY
13 SIMPLY TRANSLATED MEANS TO SPEAK THE TRUTH. ALL THE
14 STATE ASKS IS THAT ONCE YOU'VE HEARD THE TESTIMONY IN
15 THIS CASE THAT YOU DO GO BACK AND DELIBERATE AND REACH A
16 VERDICT THAT SPEAKS THE TRUTH. HOLD BOBBY JOE REEVES
17 RESPONSIBLE FOR HIS CHOICES OR HIS ACTIONS. THANK YOU.

18 - - - - -
19 MR. STOCKHOLM: IF IT PLEASE THE COURT,
20 YOUR HONOR?

21 THE COURT: YES, SIR.

22 OPENING REMARKS

23 BY MR. STOCKHOLM

24
25 LADIES AND GENTLEMEN, MY NAME IS

1 GENE STOCKHOM. I'M A DEFENSE ATTORNEY OVER IN WEST
2 COLUMBIA. I WORK WITH A FELLOW NAMED BILLY OSWALD.
3 SEATED TO MY RIGHT IS BOBBY JOE REEVES, THE DEFENDANT IN
4 THIS CASE. THE REASON YOU'RE HERE TODAY IS TO HELP END
5 A TWO YEAR NIGHTMARE THAT BOBBY JOE REEVES HAS BEEN
6 ENDURING SINCE THE POLICE KNOCKED ON HIS DOOR LATE AT
7 NIGHT WITHOUT ANY WARNING AND ARRESTED HIM FOR THESE
8 CHARGES. THE STATE HAS THE BURDEN OF PROOF IN THIS
9 CASE. AND MY CLIENT DOES NOT HAVE TO DO A THING. THEY
10 MUST PRESENT BEYOND A REASONABLE DOUBT THAT MY CLIENT
11 DID WHAT HE WAS ACCUSED OF. THE EVIDENCE FROM THAT
12 THEIR WITNESSES IS GOING TO SHOW HE DID NOT DO IT.

13 YOU'RE GOING TO HEAR FROM MEDICAL
14 PERSONNEL. AND THE MEDICAL PERSONNEL YOU'RE GOING TO
15 HEAR FROM INCLUDING A DOCTOR WHO PERFORMED A
16 COMPREHENSIVE EXAM. YOU'RE GOING TO HEAR FROM MY CLIENT
17 EVEN THOUGH HE DOESN'T HAVE TO TESTIFY. AND HE WILL
18 TELL YOU WHAT HAPPENED AT THAT TIME. YOU'RE GOING TO
19 HEAR FROM THE CHILD. YOU'RE GOING TO HEAR FROM HER
20 MOTHER. WHAT'S GOING TO BE INTERESTING IS WHAT YOU
21 DON'T HEAR. FOR SEVEN YEARS WHILE VICTIM WAS
22 UNDER PSYCHIATRIC AND MEDICAL CARE FOR VARIOUS OTHER
23 AILMENTS, NO COMPLAINTS, NO STRANGE BEHAVIOR, NOTHING TO
24 SUGGEST THAT SHE HAD ANYTHING DONE TO HER. YOU WILL
25 HEAR THAT BECAUSE IT DIDN'T HAPPEN. AND YOU MUST KEEP

1 THAT IN MIND AS THE EVIDENCE IS PRESENTED TO YOU IN THE
2 FIRST PART OF THIS TRIAL THAT THEIR WITNESSES, THEIR
3 DOCTOR, IS GOING THE SAY THERE WAS NO PHYSICAL
4 EVIDENCE.

5 NOW, YOUR'RE GOING TO HEAR ABOUT
6 VICTIM . AND VICTIM HAS SEVERAL DISABILITIES AND SEVERAL
7 PROBLEMS. THEY HAVE BEEN GOING ON FOR A LONG TIME AND
8 HAVE NOTHING TO DO WITH THESE ALLEGATIONS. BOBBY JOE
9 REEVES IS THE ONLY PERSON SHE COULD EVEN RELATE TO AS A
10 FATHER. SHE DOESN'T KNOW HER FATHER. SHE RARELY EVER
11 HEARD FROM HER FATHER. HER FATHER WAS NOT A NICE MAN.
12 I THINK WHEN YOU CONSIDER THIS CASE, YOU SHOULD GO BACK
13 TO WHEN YOU WERE IN HIGH SCHOOL AND WHEN YOU HAD TO READ
14 A BOOK CALLED THE CRUCIBLE. IT'S ABOUT UNFOUNDED
15 ACCUSATIONS AND HOW THEY CAN RUIN A PERSON'S LIFE.
16 THAT'S WHAT THIS CASE IS ABOUT. AND AS TRAGIC AS IT IS
17 THAT VICTIM HAS TO SUFFER FROM WHAT PEOPLE HAVE
18 PLACED IN HER HEAD AND WHAT THEY HAVE TOLD HER, THE
19 MEDICAL EVIDENCE AND TESTIMONY IS GOING TO SHOW IT
20 DIDN'T HAPPEN. AND AGAIN, JUST LIKE THE CRUCIBLE, IT
21 HAS ALMOST DESTROYED AN INNOCENT MAN. THANK YOU VERY
22 MUCH.

23 THE COURT: ALL RIGHT, MR. FOREMAN AND
24 LADIES AND GENTLEMEN OF THE JURY; THE FIRST WITNESS
25 IN THE CASE IS BY WAY OF A VIDEO DEPOSITION OF

1 VICTIM . UNDER THE RULES PROVIDED BY
2 THE LEGISLATURE, A VIDEO DEPOSITION MAY BE TAKEN
3 DURING THAT TIME. THE DEFENDANT IS AFFORDED THE
4 RIGHT OF CROSS-EXAMINATION, THE RIGHT TO HAVE AN
5 ATTORNEY PRESENT. BUT IT WAS DONE EARLIER THIS
6 MORNING OUTSIDE THE PRESENCE OF YOU. HOWEVER, IT
7 WILL BE PRESENTED TO YOU NOW. AND YOU SHOULD
8 CONSIDER THAT TESTIMONY LIKE YOU DO ALL OTHER
9 TESTIMONY IN THE RECORD AND GIVE IT SUCH WEIGHT AS
10 YOU THINK IT DESERVES. MADAM SOLICITOR?

11 (AT THIS TIME VIDEO DEPOSITION OF VICTIM IS
12 PLAYED FOR THE JURY.)

13 THE COURT: IT WILL TAKE A COUPLE OF
14 MOMENTS TO GET THE VIDEO BECAUSE WE DID IT THIS
15 MORNING.

16 MRS. PELLIZZARI: YOUR HONOR, I'D LIKE TO
17 CALL DAWN

18 THE COURT: YES, MA'AM.

19 - - - - -

20 WHEREUPON,

21 DAWN BRIDGETT , WHO AFTER BEING
22 FIRST DULY SWORN TO TELL THE TRUTH,
23 TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION

25 BY MRS. PELLIZZARI:

- 1 Q. GOOD AFTERNOON, DAWN. DAWN, HOW ARE YOU RELATED TO
2 VICTIM ?
- 3 A. SHE'S MY DAUGHTER.
- 4 Q. IS SHE YOUR ONLY CHILD?
- 5 A. YES, MA'AM.
- 6 Q. WHERE DO Y'ALL LIVE NOW? WHAT STATE?
- 7 A. IN GEORGIA.
- 8 Q. AND WHO DO YOU LIVE WITH IN GEORGIA?
- 9 A. JUST ME AND MY DAUGHTER.
- 10 Q. AND WHERE DID YOU LIVE BEFORE THEN?
- 11 A. WE'VE BEEN IN GEORGIA FOR FOUR YEARS. AND WE LIVED
12 IN SOUTH CAROLINA FOR SIX.
- 13 Q. SO YOU LIVED IN SOUTH CAROLINA BEFORE MOVING TO
14 GEORGIA?
- 15 A. YES, MA'AM.
- 16 Q. SO I GUESS YOU MOVED TO GEORGIA IN WHAT, '98?
- 17 A. YES, MA'AM.
- 18 Q. WHILE YOU WERE LIVING IN SOUTH CAROLINA, HOW OLD
19 WAS VICTIM ?
- 20 A. SHE WAS EIGHT MONTHS OLD WHEN I MOVED THERE.
- 21 Q. AND YOU LIVED THERE UNTIL SHE WAS ABOUT SIX?
- 22 A. YES, MA'AM.
- 23 Q. DID SHE ATTEND ANY SCHOOLS HERE?
- 24 A. YES, MA'AM.
- 25 Q. WHAT SCHOOLS DID SHE ATTEND HERE?

1 A. HERE IN SOUTH CAROLINA?

2 Q. YES.

3 A. MILL CREEK.

4 Q. AND THAT WAS FOR WHAT; KINDERGARTEN AND FIRST
5 GRADE?

6 A. YES, MA'AM. AND I BELIEVE PART OF THE SECOND.

7 Q. ALL RIGHT, DAWN; DO YOU WORK?

8 A. YES, MA'AM.

9 Q. WHERE DO YOU WORK?

10 A. COASTAL CREDIT.

11 Q. IS THAT A FULL-TIME POSITION?

12 A. YES, MA'AM.

13 Q. WHAT'S YOUR POSITION THERE?

14 A. I'M A BOOKKEEPER.

15 Q. NOW, DAWN, WHERE DID YOU LIVE IN SOUTH CAROLINA?

16 A. ACTUALLY I LIVED IN SEVERAL DIFFERENT PLACES. BUT
17 MOSTLY IN HOPKINS, SOUTH CAROLINA.

18 Q. WAS IT ALL PRETTY MUCH HERE IN THE COLUMBIA AREA?

19 A. YES, MA'AM.

20 Q. DID YOU LIVE ANYWHERE ELSE OUTSIDE OF COLUMBIA AND
21 THE HOPKINS AREA?

22 A. NO, MA'AM; JUST IN HOPKINS.

23 Q. AND WHAT WAS THE LAST ADDRESS THAT Y'ALL LIVED AT?

24 A. I COULDN'T TELL YOU. I COULD SHOW YOU. BUT IT WAS
25 IN HOPKINS. IT WAS IN A TRAILER.

1 Q. WAS IT HERE IN RICHLAND COUNTY?

2 A. YES, MA'AM.

3 Q. AND, HOW DO YOU KNOW BOBBY JOE REEVES?

4 A. I MET HIM THROUGH A MUTUAL FRIEND.

5 Q. WHEN DID YOU MEET HIM?

6 A. WHEN MY DAUGHTER WAS EIGHT MONTHS OLD.

7 Q. AND DID THERE COME A TIME WHEN THE TWO OF YOU LIVED
8 TOGETHER?

9 A. I MOVED IN WITH HIM, ACTUALLY. I NEEDED A PLACE TO
10 STAY, AND HE NEEDED A ROOMMATE. AND I MOVED IN
11 WITH HIM.

12 Q. JUST YOU?

13 A. IT WAS ME AND MY DAUGHTER.

14 Q. VICTIM

15 A. YES, MA'AM.

16 Q. WHAT WAS YOUR RELATIONSHIP WITH HIM?

17 A. AT FIRST WE WERE JUST ROOMMATES. AND WE GOT TO
18 TALKING A LOT AND BECAME VERY CLOSE FRIENDS. AND
19 WITHIN A MONTH WE WERE LIKE BROTHER AND SISTER.

20 Q. WAS IT A PHYSICAL RELATIONSHIP BETWEEN THE TWO OF
21 YOU?

22 A. NO, MA'AM. IT WAS A BROTHER-SISTER RELATIONSHIP.
23 IT NEVER WENT ANY FURTHER THAN THAT.

24 Q. HOW LONG DID Y'ALL LIVE TOGETHER?

25 A. FOR ABOUT -- UNTIL SHE WAS SIX. ACTUALLY UNTIL SHE

1 WAS FIVE. HE MOVED OUT WHEN SHE WAS FIVE.

2 Q. AND THEN YOU AND VICTIM LIVED HERE FOR ANOTHER YEAR
3 OR SO?

4 A. YES, MA'AM.

5 Q. PRIOR TO MOVING TO GEORGIA?

6 A. YES, MA'AM.

7 Q. AND DID HE CONTINUE LIVING IN THAT SAME AREA OF
8 HOPKINS?

9 A. HE MOVED DOWN THE STREET FROM US.

10 Q. NOW WHEN HE MOVED OUT, DID Y'ALL STAY IN CONTACT?

11 A. YES, MA'AM.

12 Q. DID HE STAY IN CONTACT WITH VICTIM ?

13 A. YES, MA'AM.

14 Q. WHAT TYPE OF RELATIONSHIP DID HE HAVE WITH VICTIM?

15 A. HE WAS LIKE A FATHER TO HER.

16 Q. WHAT DID SHE USED TO CALL HIM?

17 A. SHE TRIED TO CALL HIM DAD SEVERAL TIMES. AND HE
18 WOULD STOP HER EVERY TIME SHE DID IT. BUT SHE
19 CALLED HIM MY BOBBY. THAT WAS HER SAYING.

20 Q. VICTIM -- HE'S NOT HER BIOLOGICAL FATHER?

21 A. NO.

22 Q. WHERE DOES VICTIM 'S BIOLOGICAL FATHER LIVE?

23 A. ARIZONA.

24 Q. DOES SHE HAVE MUCH OF A RELATIONSHIP WITH HIM?

25 A. SHE HAS A PHONE RELATIONSHIP WITH HIM; YES.

1 Q. NOW AFTER BOBBY MOVED OUT, DID Y'ALL CONTINUE TO
2 SEE HIM?

3 A. YES, MA'AM.

4 Q. WOULD VICTIM GO VISIT HIM?

5 A. YES.

6 Q. WOULD SHE EVER GO VISIT HIM BY HERSELF?

7 A. YES, MA'AM. ACTUALLY MY SISTER HAD MOVED IN AFTER
8 HE MOVED OUT. SHE WAS GOING THROUGH A DIVORCE.
9 AND WHEN HER KIDS WENT TO GO SEE THEIR DAD,
10 WENT TO GO SEE BOBBY.

11 Q. HOW OFTEN WAS IT? DO YOU KNOW?

12 A. IT WAS JUST ABOUT EVERY OTHER WEEKEND. IT WASN'T
13 EVERY OTHER WEEKEND, BUT IT WAS ALMOST. I MEAN,
14 THERE WERE TIMES WHEN HE COULDN'T TAKE HER.

15 Q. SO IT WAS A FAIRLY CONSISTENT RELATIONSHIP?

16 A. YES, MA'AM.

17 Q. AND WOULD SHE STAY OVERNIGHT?

18 A. YES, MA'AM.

19 Q. SO SHE WOULD BE THERE FROM FRIDAY NIGHT TO SUNDAY?

20 A. SOMETIMES IT WAS FROM SATURDAY TO SUNDAY.

21 Q. AND DID THAT CONTINUE EVEN AFTER HE MOVED TO
22 GEORGIA?

23 A. YES, MA'AM.

24 Q. HOW WOULD SHE GET -- WELL, DID HE EVER COME TO
25 GEORGIA TO SEE YOU, OR WOULD VICTIM COME HERE TO

1 SEE HIM?

2 A. SOMETIMES HE WOULD COME AND PICK HER UP, OR
3 SOMETIMES I WOULD DRIVE HER UP THERE.

4 Q. BUT MOST OF THE TIMES THEY WERE TOGETHER WERE HERE
5 OR IN GEORGIA?

6 A. THEY WERE IN SOUTH CAROLINA. IT WAS ALWAYS IN
7 SOUTH CAROLINA.

8 Q. AND DO YOU KNOW WHAT TYPES OF THINGS THAT THEY
9 WOULD DO TOGETHER?

10 A. WELL, USUALLY WHEN I WOULD COME TO GET HER, SHE
11 WOULD BRAG ABOUT GOING TO THE ZOO. AND SOMETIMES
12 SHE WOULD HAVE OBJECTS IN HER HAND THAT SHE SAID
13 SHE BOUGHT. AND I ASSUMED, YOU KNOW, THAT HE JUST
14 GAVE HER THE MONEY TO BUY IT.

15 Q. WHAT TYPES OF OBJECTS ARE YOU TALKING ABOUT?

16 A. SHE GAVE ME A GLOBE ONE TIME THAT HAD RIVER BANKS
17 ZOO ON IT. IN FACT, IT IS STILL SETTING IN MY
18 HOUSE. BUT IT HAD ANIMALS IN IT, AND YOU SHAKE IT
19 UP AND IT HAD THE SNOW.

20 Q. ANY OTHER OBJECTS OR GIFTS THAT SHE BROUGHT HOME?

21 A. SHE BOUGHT ME ONE TIME WITH SOME MONEY THAT SHE
22 SAID BOBBY GAVE HER; SHE BOUGHT A LITTLE---

23 MR. STOCKHOLM: OBJECTION TO THAT, YOUR
24 HONOR.

25 THE COURT: SUSTAINED AS TO WHAT SHE

1 SAID. THE JURY WILL DISREGARD.

2 A. SHE BOUGHT ME A PUPPY DOG. IT WAS FROM LADY AND
3 THE TRAMP.

4 Q. DID SHE EVER GET ANY GIFTS FROM BOBBY?

5 A. YES, SHE DID.

6 Q. WHAT TYPE OF GIFTS DID SHE GET?

7 A. THERE WERE BARBIE DOLLS. THERE WAS A DOLL CALLED
8 SKATING SHANNON THAT SHE BROUGHT HOME ONE TIME.
9 THERE WERE STUFFED ANIMALS. SHE GOT A BIG TOOL BOX
10 ONE TIME THAT WAS A PLAY TOOL BOX; SOME KIND OF
11 TOY, SOME BARBIE OR SOMETHING THAT SHE WANTED OUT
12 OF THE STORE.

13 Q. WHAT WAS YOUR RESPONSE TO HER GETTING ALL THE
14 GIFTS?

15 A. WE HAD A COUPLE OF ARGUMENTS OVER IT BECAUSE I FELT
16 LIKE HE WAS SPOILING HER. AND I COULDN'T AFFORD TO
17 GET HER THOSE THINGS. AND I KEPT TELLING HIM NOT
18 TO DO IT. AND HE KEPT TELLING ME THAT HE WANTED TO
19 BECAUSE HE DIDN'T HAVE THE MONEY BEFORE; NOW HE
20 DID; AND HE WANTED TO BE ABLE TO GIVE HER THESE
21 THINGS. AND I KEPT TELLING HIM NO; AND HE KEPT
22 DOING IT.

23 Q. NOW, DAWN; EVER SINCE Y'ALL MOVED OUT OF SOUTH
24 CAROLINA ABOUT FOUR YEARS AGO UNTIL 2000, JULY OF
25 2000, WOULD VICTIM CONTINUE TO SEE HIM?

1 A. YES, SHE WOULD.

2 Q. WHEN WAS THE LAST TIME THAT SHE SAW HIM; DO YOU
3 KNOW?

4 A. THE FOURTH OF JULY WEEKEND.

5 Q. WAS THAT IN THE 2000?

6 A. YES, MA'AM.

7 Q. OKAY. NOW DID SHE COME TO VISIT HIM HERE?

8 A. NO. I DROVE HER UP THERE, AND I STAYED THE NIGHT.

9 Q. UP THERE. YOU MEAN UP HERE?

10 A. UP HERE.

11 Q. TO COLUMBIA?

12 A. YES, MA'AM. AND I STAYED THE NIGHT. AND WE DID
13 FIREWORKS ON SATURDAY, SATURDAY NIGHT. AND I
14 STAYED: AND THEN I LEFT SUNDAY AFTERNOON. SHE
15 STAYED WITH HIM BECAUSE I HAD TO WORK MONDAY. AND
16 THEN TUESDAY WAS THE FOURTH OF JULY. AND HE
17 BROUGHT HER BACK TUESDAY AFTERNOON.

18 Q. NOW, BEFORE THAT JULY FOURTH WEEKEND, DO YOU KNOW
19 HOW LONG IT HAD BEEN SINCE VICTIM HAD SEEN HIM?

20 A. IT HAD BEEN OVER A MONTH. HE HAD A NEW JOB AND WAS
21 CONSTANTLY WORKING, AND HE WASN'T ABLE TO GET HER.

22 Q. DID VICTIM SEE HIM AFTER THAT JULY FOURTH WEEKEND?

23 A. NO.

24 Q. WAS VICTIM ACTING UNUSUAL IN ANY WAY AFTER THAT
25 JULY FOURTH WEEKEND?

1 A. SHE DIDN'T WANT ME TO LEAVE. I KNOW THAT. SHE WAS
2 HAVING PROBLEMS WITH ME LEAVING, AND I DIDN'T HAVE
3 A CHOICE BECAUSE I HAD TO WORK. WHEN SHE CAME
4 BACK, SHE WAS VERY CLINGY. BUT OTHER THAN THAT,
5 NO.

6 Q. DAWN, LET ME TURN YOUR ATTENTION TO LATE JULY OF
7 2000. DURING THAT TIME DID YOU AND VICTIM HAVE A
8 CONVERSATION?

9 A. YES, MA'AM.

10 Q. HOW DID THAT CONVERSATION COME UP?

11 A. VICTIM AND I WERE IN THE CAR GOING HOME. AND I
12 DON'T KNOW HOW WE GOT ONTO THE SUBJECT, BUT WE WERE
13 TALKING ABOUT TEENAGERS AND HOW THEY ARE
14 EMBARRASSED OF THEIR PARENTS AND THEY DON'T WANT
15 THEIR PARENTS TO BE AROUND THEM. AND SHE GOT VERY
16 UPSET. AND BEFORE I KNEW IT SHE HAD HER ARMS
17 AROUND ME. I'M DRIVING DOWN THE ROAD, AND SHE IS
18 GIVING ME A BEAR HUG FROM BEHIND AND CRYING HER
19 EYES OUT SAYING "MOMMY, I'LL NEVER DO THAT TO YOU."

20 MR. STOCKHOLM: OBJECTION, YOUR HONOR.

21 THE COURT: SUSTAINED. MADAM SOLICITOR,
22 INSTRUCT THE WITNESS SHE'S LIMITED TO DATE, TIME,
23 PLACE AND NATURE BUT NOT ANY NAMES.

24 Q. LIMIT IT TO TIME AND PLACE, OKAY?

25 A. OKAY. BUT---

1 Q. LET ME ASK YOU THIS: WHAT WAS VICTIM ---

2 THE COURT: I'LL LET YOU LEAD HER THROUGH
3 THAT IF YOU WANT.

4 Q. WHAT WAS VICTIM'S GROUND TO THE CONVERSATION?

5 A. SHE WAS EXTREMELY UPSET.

6 Q. AND AFTER Y'ALL GOT HOME, DID SHE CONTINUE TO BE
7 UPSET?

8 A. AFTER WE HAD A TALK, SHE SEEMED TO BE FINE.

9 Q. AND THEN LATER ON THAT NIGHT, DID YOU RECEIVE ANY
10 PHONE CALLS?

11 A. YES, I DID.

12 Q. WHO DID YOU GET A PHONE CALL FROM?

13 A. BOBBY.

14 Q. AND WHAT WAS THE CONVERSATION THAT YOU HAD WITH
15 HIM?

16 A. HE WAS ON HIS WAY BACK FROM KANSAS AND WANTED TO
17 TALK TO VICTIM.

18 Q. AND WANTED TO---

19 A. TALK TO VICTIM.

20 Q. LET ME JUST CLARIFY; THE CONVERSATION THAT YOU HAD
21 WITH VICTIM IN THE CAR DIDN'T INVOLVE ANYTHING
22 ABOUT BOBBY?

23 A. NO, IT DID NOT.

24 Q. AND SO WHEN YOU GOT HOME, YOU SAID YOU HAD A
25 CONVERSATION WITH BOBBY. HE WAS ON HIS WAY BACK

1 FROM KANSAS?

2 A. YES, MA'AM.

3 Q. AND WANTED TO SEE VICTIM?

4 A. YES.

5 Q. AND WERE YOU GOING TO ALLOW HER TO SEE HIM?

6 A. YES.

7 Q. DID YOU TALK TO VICTIM ABOUT THAT?

8 A. YES, I DID.

9 Q. AND DID VICTIM END UP GOING WITH HIM?

10 A. NO; SHE REFUSED.

11 Q. AFTER SHE REFUSED, DID YOU FIND THAT UNUSUAL?

12 A. YES, I DID.

13 Q. HAD SHE EVER REFUSED TO GO WITH HIM BEFORE?

14 A. I HAVE NOTICED THAT SHE'S BEEN RELUCTANT TO GO WITH
15 HIM SEVERAL TIMES BEFORE THIS.

16 Q. WAS THAT THE FIRST TIME AFTER JULY THE FOURTH THAT
17 YOU HAD ASKED HER TO GO?

18 A. YES.

19 Q. AND DID YOU TALK TO VICTIM ABOUT WHY SHE DIDN'T
20 WANT TO GO?

21 A. YES, I DID.

22 Q. WHAT DID YOU THINK WHY SHE DIDN'T WANT TO GO?

23 A. THAT IT WAS THE CONVERSATION THAT WE HAD IN THE
24 CAR.

25 Q. AND IS THAT WHAT IT TURNED OUT TO BE?

1 A. NO.

2 Q. AND AGAIN WE HAVE TO LIMIT THIS TO TIME AND PLACE
3 OF WHAT SHE TOLD YOU. WHAT DID SHE TELL YOU? DID
4 SHE TELL YOU ABOUT A SECRET THAT SHE HAD?

5 MR. STOCKHOLM: OBJECTION, YOUR HONOR.

6 THE COURT: SUSTAINED.

7 Q. ACTUALLY, DID SHE TELL YOU SHE HAD A SECRET? THAT
8 JUST REQUIRES A YES OR NO.

9 MR. STOCKHOLM: OBJECTION, YOUR HONOR.

10 THE COURT: SUSTAINED.

11 Q. WHAT DID SHE TELL YOU AGAIN? JUST LIMIT IT TO TIME
12 AND PLACE.

13 A. I DON'T KNOW HOW TO ANSWER THAT.

14 Q. WITHOUT SAYING WHAT HAD HAPPENED TO HER OR WHO HAD
15 DONE SOMETHING TO HER, DID SHE TELL YOU SOMETHING
16 THAT NIGHT?

17 A. YES, SHE DID.

18 Q. WHAT TIME PERIODS DID SHE TELL YOU?

19 A. SHE DIDN'T GIVE ME A TIME PERIOD.

20 Q. NOT THAT NIGHT?

21 A. NO, MA'AM; NOT THAT NIGHT.

22 Q. OKAY. DID SHE EVER GIVE YOU A TIME PERIOD---

23 A. YES, SHE DID.

24 Q. --IN HER LATER CONVERSATIONS?

25 A. YES, SHE DID.

1 Q. WHAT WAS THE TIME PERIOD THAT SHE GAVE YOU?

2 A. THEY WERE INCIDENCES THAT HAD HAPPENED BEFORE THE
3 FOURTH OF JULY. AND I KNOW THEY HAPPENED BECAUSE I
4 HAPPENED TO---

5 MR. STOCKHOLM: OBJECTION, YOUR HONOR.

6 THE COURT: SUSTAINED AS TO HER OPINION.

7 THE JURY WILL DISREGARD IT.

8 Q. THEY WERE INCIDENTS THAT HAPPENED FROM JULY FOURTH?

9 A. NO; THEY HAPPENED BEFORE THE FOURTH OF JULY.

10 Q. DID SHE TELL YOU WHEN THEY STARTED?

11 A. SHE COULDN'T REMEMBER.

12 Q. DID SHE TELL YOU, OR DID YOU ASK HER ABOUT EVENTS
13 THAT HAD OCCURRED?

14 A. YES, MA'AM. I PLAYED A GAME WITH HER. I NAMED
15 EVENTS, AND SHE TOLD ME WHETHER IT HAPPENED ON---

16 MR. STOCKHOLM: OBJECTION, YOUR HONOR.

17 THE COURT: OVERRULED; IF SHE HASN'T GONE
18 ANY FURTHER THAN THAT.

19 Q. DID SHE TELL YOU WHEN IT STARTED?

20 A. SHE COULDN'T REMEMBER.

21 Q. DID SHE TELL YOU; OR DID YOU ASK HER ABOUT EVENTS
22 THAT HAD OCCURRED?

23 A. YES, MA'AM. I PLAYED A GAME WITH HER. I NAMED
24 EVENTS, AND SHE TOLD ME WHETHER IT HAPPENED---

25 MR. STOCKHOLM: OBJECTION, YOUR HONOR.

1 THE COURT: OVERRULED. IF SHE HASN'T
2 GONE ANY FURTHER THAN THAT.

3 MRS. PELLIZZARI: YOUR HONOR, THIS GOES
4 TO THE TIME.

5 THE COURT: ALL RIGHT. I UNDERSTAND.

6 MRS. PELLIZZARI: THANK YOU.

7 Q. YOU CAN JUST---

8 THE COURT: NO; NOW, SHE'S ANSWERED YOUR
9 QUESTION.

10 MRS. PELLIZZARI: I THOUGHT SHE JUST SAID
11 SHE PLAYED A GAME.

12 THE COURT: I KNOW. BUT IF YOU GO
13 FURTHER, YOU VIOLATE THE RULE.

14 Q. DID SHE TELL YOU WHERE THESE INCIDENTS HAD TAKEN
15 PLACE?

16 A. YES, MA'AM.

17 Q. WHERE HAD THEY TAKEN PLACE?

18 A. IN HIS TRAILER IN HIS BEDROOM.

19 Q. LET'S TURN BACK TO THE CONVERSATION THAT YOU HAD
20 WITH VICTIM IN THAT LATE JULY WHEN BOBBY HAD GONE
21 BACK TO KANSAS. AFTER THAT CONVERSATION, WHAT DID
22 YOU DO?

23 A. I IMMEDIATELY CALLED MY SISTER.

24 Q. AND DID YOU MAKE ANY OTHER PHONE CALLS THAT NIGHT?

25 A. YES, MA'AM.

1 Q. WHO DID YOU CALL?

2 A. I CALLED THE COPS.

3 Q. AND DID THE POLICE COME OVER TO YOUR HOUSE THAT
4 NIGHT?

5 A. YES, MA'AM.

6 Q. AND DID YOU TAKE A REPORT THAT NIGHT?

7 A. YES, MA'AM, THEY DID.

8 Q. DID YOU TAKE ANY OTHER ACTION AFTER THAT NIGHT?

9 A. YES, MA'AM. THEY TOLD ME TO TAKE HER TO THE
10 EMERGENCY ROOM THE FOLLOWING MONDAY; AND I DID
11 THAT.

12 Q. AND THAT WAS IN AUGUSTA?

13 A. YES, MA'AM.

14 Q. AND WAS VICTIM EXAMINED ON THAT MONDAY?

15 A. YES, MA'AM.

16 Q. WAS THAT WITH DR. BASH?

17 A. YES, MA'AM.

18 Q. AND AFTER VICTIM'S EXAMINATION WITH DR. BASH; DID
19 SHE HAVE TO GO FOR ANOTHER EXAMINATION?

20 A. YES, MA'AM.

21 Q. AND WHO WAS THE SECOND EXAMINATION WITH?

22 A. WITH DR. CLAYBORNE.

23 Q. DO YOU KNOW WHAT DATE SHE WAS EXAMINED BY DR.
24 CLAYBORNE ON?

25 A. IT WAS A MONDAY AFTER SHE WENT TO THE EMERGENCY

1 ROOM.

2 Q. SO ABOUT THE END OF AUGUST?

3 A. YES, MA'AM.

4 Q. DO YOU KNOW WHY IT TOOK SO LONG TO GET IN WITH DR.
5 CLAYBORNE?

6 A. WHEN I TOOK HER TO THE EMERGENCY ROOM, DR.
7 CLAYBORNE HAD JUST GONE ON VACATION; AND SHE WAS
8 GOING TO BE OFF FOR TWO WEEKS. WHEN DR. CLAYBORNE
9 CAME BACK, IT TOOK ME ANOTHER TWO WEEKS TO GET HER
10 IN TO BE SEEN.

11 Q. YOU WERE TOLD TO SEE DR. CLAYBORNE BY THE PEOPLE AT
12 THE HOSPITAL ON JULY THE---

13 A. AS WELL AS RAPE CRISIS.

14 MRS. PELLIZZARI: I BEG THE COURT'S
15 INDULGENCE.

16 Q. DAWN, WHAT IS VICTIM'S DATE OF BIRTH?

17 A.

18 Q.

19 A. YES, MA'AM.

20 Q. AND WHEN Y'ALL KNEW BOBBY, I GUESS WHEN YOU WERE
21 LIVING WITH HIM AND THEN AFTER HE MOVED OUT, WAS HE
22 LIVE IN RICHLAND COUNTY?

23 A. YES, MA'AM.

24 Q. NOW, DAWN, OVER -- AND I DON'T KNOW IF YOU KNOW
25 WHEN IT ALL STARTED. BUT HAS VICTIM HAD ANY SORT

1 OF BEHAVIORAL PROBLEMS OVER THE YEARS?

2 A. YES, MA'AM.

3 Q. WHAT TYPE OF PROBLEMS HAS SHE HAD?

4 A. IN KINDERGARTEN, SHE STARTED LASHING OUT AT SOME OF
5 THE STUDENTS. AND THE TEACHERS HAD ASKED ME TO
6 TAKE HER TO A PEDIATRICIAN; THAT SHE MIGHT HAVE
7 A.D.H.D.

8 Q. WHAT IS THAT?

9 A. ATTENTION DEFICIT DISORDER.

10 Q. IS THAT WHAT SHE WAS DIAGNOSED WITH?

11 A. YES, MA'AM.

12 Q. WAS SHE TAKING ANY MEDICATION?

13 A. YES, MA'AM; EVERY DAY.

14 Q. AND HAS THAT DIAGNOSIS CHANGED?

15 A. NO, MA'AM.

16 Q. SO SHE CONTINUES TO HAVE A.D.H.D.?

17 A. YES, MA'AM.

18 Q. DOES SHE STILL TAKE MEDICATION FOR IT?

19 A. YES, MA'AM.

20 Q. ANY OTHER PARTICULAR PROBLEMS THAT SHE'S HAVING?

21 A. YES, MA'AM. SHE'S HAD DEPRESSION.

22 Q. IS SHE ON ANY MEDICATION FOR THAT?

23 A. YES, MA'AM.

24 Q. BECAUSE SHE NEEDS TO BE ON IT?

25 A. SHE'S BEEN ON IT FOR THREE YEARS.

1 Q. ANY OTHER PROBLEMS?

2 A. SHE'S FAILED TWO GRADES.

3 Q. DID HER BEHAVIOR CHANGE AFTER THE CONVERSATION THAT
4 YOU HAD WITH HER IN JULY OF 2000?

5 A. NO. IN FACT IT GOT WORSE.

6 Q. THANK YOU. PLEASE ANSWER ANY QUESTIONS THAT MR.
7 STOCKHOLM HAS.

8 THE COURT: ALL RIGHT. MR. FOREMAN AND
9 LADIES AND GENTLEMEN, WE WILL BREAK HERE FOR LUNCH
10 AND ASK YOU TO BE BACK AT TWO O'CLOCK. DON'T
11 DISCUSS THE CASE WITH ANYONE OR ALLOW ANYONE TO
12 DISCUSS IT WITH YOU. AND THE BAILIFF WILL SHOW YOU
13 HOW TO GET BACK IN THE BACK SIDE HERE.

14 (AT THIS TIME, JURY RETIRES TO JURY ROOM.)

15 THE COURT: MRS. , YOU CAN'T
16 DISCUSS YOUR TESTIMONY WITH ANYONE DURING THE LUNCH
17 BREAK; SO JUST TALK ABOUT SOMETHING ELSE OTHER THAN
18 THAT, OKAY? OKAY. WE'LL BE BACK AT TWO O'CLOCK.

19 (LUNCH RECESS.)

20 - - - - -

21 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

22 THE COURT: ALL RIGHT, MRS. . IF
23 YOU'LL GET BACK ON THE WITNESS STAND FOR ME,
24 PLEASE.

25 (WITNESS RETURNS TO WITNESS STAND.)

1 THE BAILIFF: YOUR HONOR, THE WITNESS IS
2 PRESENT.

3 THE COURT: ALL RIGHT. THANK YOU. ALL
4 RIGHT, YOU MAY CROSS-EXAMINE, MR. STOCKHOLM.
5 WHEREUPON,

6 DAWN B. -, WHO AFTER BEING
7 PREVIOUSLY DULY SWORN TO TELL THE TRUTH,
8 TESTIFIED AS FOLLOWS:

9 CROSS-EXAMINATION

10 BY MR. STOCKHOLM:

11 Q. MRS. YOU LIVE IN AUGUSTA AT THIS TIME; IS
12 THAT TRUE?

13 A. YES, SIR.

14 Q. AND WHAT IS YOUR JOB IN AUGUSTA?

15 A. I'M A BOOKKEEPER.

16 Q. HOW LONG HAVE YOU HAD THAT JOB?

17 A. THREE YEARS.

18 Q. WHEN YOU MOVED TO AUGUSTA, IS THAT THE JOB YOU
19 TOOK?

20 A. NO, SIR.

21 Q. WHERE DID YOU WORK WHEN YOU FIRST MOVED TO AUGUSTA?

22 A. I WORKED FOR THE RADDISON HOTEL.

23 Q. AND WHAT DID YOU DO FOR THE RADISON?

24 A. I WAS ACCOUNTS PAYABLE CLERK.

25 Q. IS THAT THE FIRST JOB YOU HAD WHEN YOU MOVED TO

1 AUGUSTA?

2 A. YES, SIR.

3 Q. NOW WHEN YOU MOVED IN WITH MR. REEVES, WHAT JOB
4 WERE YOU AT AT THAT PARTICULAR TIME?

5 A. I WAS WORKING FOR A GAS STATION AS A CASHIER.

6 Q. AND WHERE DID YOU GO TO WORK AFTER THAT?

7 A. I WORKED -- WELL, I CONTINUED TO KEEP WORKING FOR
8 THE DIFFERENT GAS STATIONS; BUT I WENT TO NIGHT
9 SCHOOL TO GET MY ACCOUNTING DEGREE.

10 Q. NOW AT THE TIME YOU WERE WORKING AT THESE VARIOUS
11 GAS STATIONS, WERE YOU IN CONTACT WITH VICTIM 'S
12 FATHER?

13 A. OFF AND ON; YES.

14 Q. DOES HE PAY SUPPORT FOR VICTIM?

15 A. HE COLLECTS SOCIAL SECURITY, AND VICTIM GETS A
16 PORTION OF THAT.

17 Q. HE'S ON DISABILITY?

18 A. YES, SIR.

19 Q. DOES HE EVER VISIT?

20 A. NO, HE DOESN'T.

21 Q. HAS HE EVER VISITED?

22 A. NO, HE'S NEVER LAID EYES ON HER.

23 Q. AND DID HE GET DISABILITY BECAUSE OF ALCOHOLISM?

24 A. NO. IT WAS A CONDITION THAT HE GOT WHEN HE WAS A
25 TEENAGER.

1 Q. WAS HE AN ALCOHOLIC?

2 A. NO. HE WAS A DRUG ADDICT.

3 Q. HE WAS PHYSICALLY ABUSIVE TO YOU, WASN'T HE?

4 A. YES, SIR, HE WAS.

5 Q. AND WHEN YOU FIRST MOVED IN WITH BOBBY, THAT WAS
6 BECAUSE OF FINANCIAL REASONS?

7 A. IT'S BECAUSE MY FATHER HAD LEFT ME WITH NOWHERE TO
8 GO, AND I NEEDED A PLACE TO GO.

9 Q. WHAT HAPPENED WITH YOUR FATHER?

10 A. WE HAD A FALLING OUT. HE WAS GOING THROUGH A
11 DIVORCE.

12 Q. NOW, WHEN VICTIM WAS GOING TO MILL CREEK, WAS SHE
13 SEEING ANY DOCTORS?

14 A. YES, SHE WAS.

15 Q. WHAT DOCTORS WAS SHE SEEING?

16 A. SHE WAS SEEING A PEDIATRICIAN IN EASTOVER.

17 Q. ALL RIGHT. AND WHO WAS THAT?

18 A. I DON'T REMEMBER HIS NAME.

19 Q. WAS SHE SEEING ANY PSYCHIATRISTS?

20 A. NO, SHE WASN'T.

21 Q. WHO IS DOCTOR LEWIS?

22 A. PARDON ME?

23 Q. DR. LEWIS?

24 A. THAT IS THE PSYCHIATRIST SHE STARTED SEEING WHEN I
25 MOVED TO AUGUSTA.

- 1 Q. AND VICTIM IS IN SCHOOL AT THIS TIME IN AUGUSTA;
2 CORRECT?
- 3 A. YES, SIR.
- 4 Q. SHE MADE A REFERENCE TO AN I.S.S. CLASS. DO YOU
5 KNOW WHAT THAT IS?
- 6 A. YES.
- 7 Q. WHAT DOES IT STAND FOR?
- 8 A. IT'S A BEHAVIORAL MANAGEMENT CLASS.
- 9 Q. AND VICTIM DOES HAVE A.D.H.D.; CORRECT?
- 10 A. YES, SIR.
- 11 Q. AND DOES SHE ALSO HAVE A LEARNING DISABILITY?
- 12 A. NO, SIR, SHE DOES NOT.
- 13 Q. HOW DOES SHE DO IN SCHOOL?
- 14 A. RIGHT NOW SHE'S MAKING A'S.
- 15 Q. NOW, WHAT MEDICATION IS Victim TAKING FOR HER
16 A.D.H.D.?
- 17 A. CONCERTA. (PHONETICALLY SPELLED).
- 18 Q. CONCERTA?
- 19 A. YES.
- 20 Q. WHEN SHE WAS LIVING WITH BOBBY AND YOU, DO YOU
21 REMEMBER THE MEDICATION SHE WAS ON THEN?
- 22 A. RITALIN.
- 23 Q. DO YOU KNOW IF SHE WAS EVER ON ADEROL?
- 24 A. YES, SHE WAS.
- 25 Q. AND IF I PRONOUNCE IT WRONG, CORRECT ME;

1 IMIPRAMINE?

2 A. IMIPRAMINE. THAT WAS AN ANTIDEPRESSANT.

3 Q. WHO PUT HER ON THOSE MEDICATIONS? DO YOU REMEMBER?

4 A. DR. LEWIS. ACTUALLY IT WAS A PEDIATRICIAN. HE AND
5 DR. LEWIS WERE TALKING TO EACH OTHER; AND THEY PUT
6 HER ON THE MEDICINE.

7 Q. WHEN SHE WAS ON THE ADEROL, DID Victim EVER HAVE
8 ANY SIDE EFFECTS FROM THE MEDICATION?

9 A. OTHER THAN IT DIDN'T WORK.

10 Q. DID THEY EVER MEDICATE HER TO THE EXTENT SHE BECAME
11 GROGGY?

12 A. NO.

13 Q. WHEN I SAY THEY, I'M REFERRING TO THE PRESCRIPTION
14 THE DOCTOR GAVE HER.

15 A. NO.

16 Q. NOW DURING THE FIVE YEARS OR SO THAT YOU LIVED WITH
17 MR. REEVES, YOU AND YOUR DAUGHTER, WERE YOU ALWAYS
18 EMPLOYED?

19 A. DURING THE TIME THAT I WAS LIVING WITH HIM?

20 Q. YES, MA'AM.

21 A. NO, I WAS NOT.

22 Q. HOW MANY TIMES DURING THAT PERIOD DO YOU THINK YOU
23 WERE UNEMPLOYED?

24 A. THE FIRST TIME I WAS UNEMPLOYED FOR ABOUT THREE
25 MONTHS WHILE I WENT TO DAY SCHOOL.

1 Q. NOW, DID VICTIM EVER TELL YOU SHE WANTED YOU AND
2 BOBBY TO GET MARRIED?

3 A. YES, SHE DID.

4 Q. AND DID SHE EVER SOMETIMES REFER TO BOBBY AS HER
5 BOYFRIEND?

6 A. NO.

7 Q. DID SHE EVERY REFER TO HIM AS "MY BOBBY?"

8 A. YES, SHE DID.

9 Q. AND DID SHE EVER TELL YOU SHE WANTED BOBBY TO BE
10 HER FATHER?

11 A. NO; BUT SHE SAID SHE WANTED HIM TO BE HER HUSBAND.

12 Q. BOBBY WAS THE FATHER FIGURE FOR VICTIM; IS THAT
13 CORRECT?

14 A. YES, SIR.

15 Q. WAS VICTIM POSSESSIVE OF BOBBY?

16 A. YES, SHE WAS.

17 Q. SHE DIDN'T LIKE IT IF OTHER---

18 A. WHEN SHE WAS LITTLE; YES.

19 Q. DID VICTIM EVER GET UPSET WHEN BOBBY HAD A
20 GIRLFRIEND?

21 A. WHEN SHE WAS LITTLE; YES.

22 Q. NOW, WHAT TIME FRAME WAS IT YOU MOVED OUT FROM THE
23 TRAILER?

24 A. WHICH ONE?

25 Q. WHEN YOU AND MR. REEVES HAD SEPARATED.

- 1 A. VICTIM WAS FIVE YEARS OLD.
- 2 Q. DO YOU REMEMBER WHAT YEAR IT WAS?
- 3 A. NO, SIR, I DON'T.
- 4 Q. AND DID YOU SEPARATE OVER A DISPUTE ABOUT A
- 5 BOYFRIEND?
- 6 A. YES, WE DID.
- 7 Q. WAS MR. REEVES UPSET THAT HE WAS STAYING OVER
- 8 EATING FOOD, NOT PAYING ANY RENT?
- 9 A. HE WAS UPSET ABOUT ME HAVING A RELATIONSHIP WITH
- 10 ANOTHER GUY.
- 11 Q. WAS THIS THE ONLY BOYFRIEND YOU HAD IN FIVE YEARS?
- 12 A. NO, SIR.
- 13 Q. HOW MANY WOULD YOU SAY YOU HAD IN THAT TIME PERIOD?
- 14 A. I DON'T KNOW.
- 15 Q. HOW WAS VICTIM'S MOOD WHEN YOU TOLD HER YOU WERE
- 16 MOVING TO AUGUSTA?
- 17 A. SHE DIDN'T WANT TO GO.
- 18 Q. WAS SHE UPSET THAT SHE WAS LEAVING BOBBY?
- 19 A. SHE WAS UPSET THAT SHE WAS LEAVING EVERYTHING
- 20 BEHIND.
- 21 Q. NOW, SHE DID MISS BOBBY, THOUGH?
- 22 A. YES, SHE DID.
- 23 Q. THAT'S WHY YOU WERE HAVING HER COME VISIT EVERY
- 24 COUPLE OF WEEKS; IS THAT CORRECT?
- 25 A. YES, SIR.

1 Q. SHE LOOKED FORWARD TO SEEING BOBBY?

2 A. SOMETIMES; YES.

3 Q. DID YOU EVER HAVE BOBBY TALK TO *VICTIM* ABOUT
4 MISBEHAVING?

5 A. YES, I DID.

6 Q. BOBBY ACTED AS THE FATHER FIGURE?

7 A. YES, HE DID.

8 Q. IF *VICTIM* LIED, WOULD YOU HAVE BOBBY TALK TO HER
9 ABOUT IT?

10 A. NOT ALL THE TIME.

11 Q. BUT HE DID?

12 A. OCCASIONALLY; YES, WHEN I COULDN'T GET HER UNDER
13 CONTROL.

14 Q. SO IF YOU HAD A PROBLEM AND YOU COULDN'T HANDLE IT,
15 YOU'D CALL BOBBY TO TALK TO HER ABOUT IT?

16 A. THAT'S CORRECT.

17 Q. NOW, MRS. , YOU INDICATED THAT THE FATHER OF
18 *VICTIM* WAS ABUSIVE TO YOU?

19 A. YES, SIR.

20 Q. WAS YOUR FATHER ABUSIVE AS WELL?

21 A. I NEVER KNEW MY FATHER UNTIL I WAS 13.

22 Q. WAS HE ABUSIVE TO YOU AFTER THAT TIME?

23 A. YES, HE WAS.

24 MR. STOCKHOLM: YOUR HONOR, MAY I BEG THE
25 COURT'S INDULGENCE?

1 THE COURT: SURE.

2 MR. STOCKHOLM: YOUR HONOR, THAT WOULD BE
3 ALL THE QUESTIONS WE'D HAVE OF THIS WITNESS.

4 THE COURT: ANYTHING ON RE-DIRECT?

5 MRS. PELLIZZARI: YES, YOUR HONOR.

6 RE-DIRECT EXAMINATION

7 BY MRS. PELLIZZARI:

8 Q. DAWN, I'VE JUST GOT ONE QUESTION. WERE YOU MARRIED
9 TO ~~VICTIM~~ 'S BIOLOGICAL FATHER?

10 A. YES, I WAS.

11 Q. HOW OLD WERE YOU THEN?

12 A. I WAS ALMOST 17.

13 Q. AND WHEN YOU TALKED ABOUT ~~VICTIM~~ BEING POSSESSIVE
14 OF BOBBY SINCE SHE WAS LITTLE, WHAT DO YOU MEAN BY
15 WHEN SHE WAS LITTLE?

16 A. TWO, THREE, OR FOUR. IT STOPPED WHEN SHE WAS ABOUT
17 FIVE.

18 Q. AND -- DO YOU SEE BOBBY REEVES IN THE
19 COURTROOM?

20 A. YES, I DO.

21 Q. COULD YOU PLEASE POINT HIM OUT FOR THE JURY AND
22 DESCRIBE WHAT HE'S WEARING?

23 A. A RED SHIRT.

24 MRS. PELLIZZARI: YOUR HONOR, LET THE
25 RECORD REFLECT SHE'S IDENTIFIED THE DEFENDANT.

1 THE COURT: ANYTHING ELSE?

2 MRS. PELLIZZARI: NO, SIR.

3 THE COURT: ALL RIGHT. THANK YOU, MA'AM.
4 YOU MAY STEP DOWN. CALL YOUR NEXT WITNESS, PLEASE.

5 MRS. PELLIZZARI: THE STATE CALLS JODI
6 LASHLEY.

7 - - - - -

8 WHEREUPON,
9 JODI LEE LASHLEY, WHO AFTER BEING
10 FIRST DULY SWORN TO TELL THE TRUTH,
11 TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION

13 BY MRS. PELLIZZARI:

14 Q. GOOD AFTERNOON, MRS. LASHLEY.

15 A. GOOD AFTERNOON.

16 Q. IN JULY OR SAY AUGUST OF 2000, WHERE WERE YOU
17 WORKING?

18 A. AT THE CHILDREN'S ADVOCACY CENTER FOR ABUSED CENTER
19 IN AUGUSTA, GEORGIA.

20 Q. AND AT THAT TIME WHAT WAS YOUR POSITION THERE?

21 A. I WAS THE CHILD ADVOCATE PROGRAM DIRECTOR.

22 Q. AND AS THE PROGRAM DIRECTOR, WHAT WERE YOUR DUTIES
23 AND RESPONSIBILITIES?

24 A. MY MAIN RESPONSIBILITY WAS TO CONDUCT FORENSIC
25 INTERVIEWS WITH CHILDREN.

1 Q. WHAT IS A FORENSIC INTERVIEW?

2 A. IT'S AN INVESTIGATIVE INTERVIEW WHERE WHEN THERE'S
3 EITHER A SUSPICION OR ALLEGATION OF ABUSE, THE
4 DEPARTMENT OF FAMILY AND CHILDREN SERVICES AND/OR
5 LAW ENFORCEMENT WILL REFER THE CHILD TO ME TO DO AN
6 INTERVIEW -- OR WOULD BACK THEN.

7 Q. I'M SORRY?

8 A. OR WOULD BACK THEN.

9 Q. AND YOU'RE NOT WITH THE ADVOCACY CENTER ANY MORE?

10 A. I'M NOT.

11 Q. WHAT ARE YOU DOING NOW?

12 A. I'M AT THE UNIVERSITY OF GEORGIA WORKING ON MY
13 MASTER'S DEGREE IN SOCIAL WORK.

14 Q. AND WHILE YOU WERE -- HOW LONG DID YOU WORK AT THE
15 ADVOCACY CENTER?

16 A. FOR THREE YEARS.

17 Q. AND WERE YOU ALWAYS THE PROGRAM DIRECTOR?

18 A. YES, I WAS.

19 Q. AND DURING YOUR THREE YEARS THERE, WHAT TYPE OF
20 GENERAL -- DID YOU HAVE ANY TYPE OF TRAINING FOR
21 DOING FORENSIC INTERVIEWS?

22 A. YES, I DID. I ATTENDED THREE NATIONAL WEEK-LONG
23 TRAININGS ON FORENSIC INTERVIEWING AS WELL AS
24 NUMEROUS OTHER TRAININGS ON SEXUAL ABUSE.

25 THE COURT: MA'AM, COULD I GET YOU TO

1 MOVE THAT MICROPHONE? I THINK THE COURT REPORTER
2 IS HAVING TROUBLE. JUST SLIDE IT OVER. THANK YOU.

3 Q. SO YOU SAID THAT YOU HAD ATTENDED TRAININGS WHILE
4 YOU WERE WORKING AT THE CHILDREN'S ADVOCACY CENTER?

5 A. YES, I HAD.

6 Q. AND YOU SAID SOME OF THOSE WERE NATIONAL TRAININGS?

7 A. THREE WEEK-LONG NATIONAL TRAININGS ON FORENSIC
8 INTERVIEWING; CORRECT.

9 Q. AND WHEN YOU WERE WORKING AT THE CHILDREN'S
10 ADVOCACY CENTER, WHAT WAS YOUR EDUCATIONAL
11 BACKGROUND AT THE TIME?

12 A. AT THE TIME I HAD A BACHELOR'S DEGREE IN SOCIOLOGY.

13 Q. JODY, HOW MANY FORENSIC INTERVIEWS WOULD YOU
14 ESTIMATE THAT YOU HAVE CONDUCTED DURING THE THREE
15 YEARS THAT YOU'VE BEEN WORKING THERE?

16 A. JUST UNDER A THOUSAND.

17 Q. DID YOU HAVE THE OPPORTUNITY TO INTERVIEW VICTIM
18 ?

19 A. YES, I DID.

20 Q. AND DO YOU KNOW WHAT DATE YOU INTERVIEWED HER?

21 A. THAT WAS AUGUST THE ELEVENTH OF 2000.

22 Q. AND WHERE WAS THAT INTERVIEW TAKING PLACE?

23 A. THAT WAS AT THE SHELTER AND ADVOCACY CENTER FOR
24 ABUSED CHILDREN IN AUGUSTA, GEORGIA.

25 Q. NOW, HOW DID YOU GET CONNECTED WITH VICTIM?

- 1 A. SHE WAS REFERRED TO ME BY THE DEPARTMENT OF FAMILY
- 2 CHILDRENS SERVICES.
- 3 Q. WAS THAT A VIDEO-TAPE INTERVIEW?
- 4 A. YES, IT WAS. ALL OF MY INTERVIEWS HAVE BEEN TAPED.
- 5 Q. AND HOW DOES THAT WORK? I MEAN, WAS SHE SITTING
- 6 RIGHT IN FRONT OF THE VIDEO CAMERA?
- 7 A. NO. WE HAVE THREE ROOMS, ACTUALLY. IT'S THE
- 8 INTERVIEW ROOM WHERE IT'S ME AND THE CHILD ONLY;
- 9 THAT'S IT. AND I TALK WITH THE CHILD. THERE'S A
- 10 MIDDLE, VERY SMALL LITERALLY ONLY A FEW FEET WIDE
- 11 ROOM, WHERE THERE'S A VIDEO CAMERA; AND THERE'S A
- 12 TWO-WAY MIRROR WHERE THE CAMERA CAN SEE INTO THE
- 13 INTERVIEW ROOM. AND THEN THERE'S A THIRD ROOM
- 14 WHERE LAW ENFORCEMENT OR THE DEPARTMENT OF FAMILY
- 15 AND CHILDREN'S SERVICES CAN MONITOR MY INTERVIEW
- 16 WHILE IT'S OCCURRING.
- 17 Q. AND THAT WAS ACTUALLY GOING TO BE MY NEXT QUESTION.
- 18 WHO WAS IN THE ROOM WHEN YOU INTERVIEWED ?
- 19 A. NOBODY ELSE WAS IN THE ROOM WITH ME AND THE CHILD.
- 20 Q. AND IS THAT THE WAY IT IS NORMALLY DONE?
- 21 A. YES; THAT'S CORRECT.
- 22 Q. AND WHY? WHY WOULD YOU INTERVIEW THE CHILD ALONE?
- 23 A. WHY WOULD I INTERVIEW THE CHILD ALONE?
- 24 Q. YES.
- 25 A. IT'S EASIER SOMETIMES WITH KIDS NOT TO OVERWHELM

1 THEM WITH TOO MANY PEOPLE ASKING ABOUT SUCH A
2 PARTICULAR INCIDENT.

3 Q. WAS THAT THE FIRST TIME YOU INTERVIEWED Victim

4 A. YES, IT WAS.

5 Q. HAD YOU HAD A CHANCE TO TALK TO VICTIM BEFORE THE
6 INTERVIEW STARTED?

7 A. I ALWAYS INTRODUCE MYSELF TO THE CHILD FIRST IN THE
8 WAITING ROOM. AND THEN I GO AND TALK WITH LAW
9 ENFORCEMENT OR THE PARENTS FIRST. AND THEN I
10 INTERVIEW THE CHILD. SO, YES, I HAVE TALKED WITH
11 THE CHILD TO INTRODUCE MYSELF IN THE WAITING ROOM.

12 Q. WHAT WAS VICTIM'S DEemeanOR LIKE THAT DAY?

13 A. IN THE INTERVIEW, SHE WAS VERY QUIET. SHE HAD
14 TAKEN IN WITH HER AN ANGEL BUNNY WHICH SHE HELD
15 VERY CLOSELY; AND SHE HID HER FACE IN THAT ANGEL
16 BUNNY A LOT DURING THE INTERVIEW.

17 Q. WHEN YOU SAY SHE WAS VERY QUIET, WAS SHE RESPONSIVE
18 TO YOUR QUESTION?

19 A. I HAD TO ASK A LOT OF DIRECT QUESTIONS. AND SHE
20 WOULD PRETTY MUCH JUST RESPOND BY NODDING HER HEAD
21 OR SAYING YES OR NO.

22 Q. DID YOU GET THE SENSE THAT SHE WANTED TO TALK ABOUT
23 WHAT HAD HAPPENED?

24 A. NO. I GOT THE SENSE THAT SHE WAS RELUCTANT TO TALK
25 ABOUT IT; AND I ACTUALLY ASKED HER THAT IN THE

1 INTERVIEW. AND SHE SAID SHE DIDN'T WANT TO.

2 MR. STOCKHOLM: OBJECTION, YOUR HONOR.

3 THE COURT: BASIS?

4 MR. STOCKHOLM: YOUR HONOR, SHE'S QUOTING
5 WHAT THE YOUNG GIRL SAID. HEARSAY.

6 THE COURT: SUSTAINED.

7 Q. IN YOUR OPINION SHE DIDN'T WANT TO TALK ABOUT IT?

8 A. CORRECT.

9 Q. NOW, JODI, IN TERMS OF WHAT *WITNESS* DID TELL YOU --
10 OF COURSE YOU CAN'T SAY WHO -- BUT DID SHE TELL YOU
11 WHAT HAD HAPPENED TO HER?

12 A. YES. SHE DESCRIBED THREE DIFFERENT TYPES OF SOCIAL
13 CONTACT.

14 Q. AND WHAT WERE THOSE THREE DIFFERENT TYPES OF SEXUAL
15 CONTACT?

16 A. SHE SAID THAT SHE WAS MADE TO---

17 MR. STOCKHOLM: OBJECTION, YOUR HONOR.

18 THE COURT: OVERRULED.

19 A. TO PERFORM ORAL SEX; THAT SHE WAS MADE TO TOUCH THE
20 PRIVATE OF THE PERSON, AND THAT THE PERSON TOUCHED
21 HER PRIVATE.

22 Q. THE PERSON THAT SHE REFERRED TO; IS THAT A MALE OR
23 A FEMALE?

24 A. A MALE.

25 Q. AND DID SHE DESCRIBE WHERE THESE INCIDENTS HAD

1 HAPPENED?

2 A. YES. SHE SAID THAT THEY HAD OCCURRED AT HIS HOUSE
3 IN HIS ROOM. AND SHE DESCRIBED TWO DIFFERENT
4 LOCATIONS. ONE WAS WHEN HE HAD HAD A ROOMMATE
5 NAMED JESSIE, AND ONE WAS WHEN HE WAS LIVING WITH
6 THEM.

7 Q. AND DID SHE DESCRIBE THE TIME PERIOD OF WHEN THIS
8 HAPPENED?

9 A. SHE HAD TOLD ME THAT IT STARTED WHEN SHE WAS AROUND
10 FOUR OR FIVE. AND WHEN I ASKED ABOUT THE LAST
11 INCIDENT, SHE HAD SAID THAT IT WAS DURING HER LAST
12 VISIT.

13 Q. WAS SHE ABLE TO TELL YOU THE EXACT DATE OF HER LAST
14 VISIT?

15 A. SHE WAS NOT.

16 Q. NOW WHEN YOU'RE CONDUCTING FORENSIC INTERVIEWS, ARE
17 YOU TRAINED TO LOOK FOR THE CHILD THAT'S COACHED OR
18 IF THERE'S FABRICATION IN THE STORY?

19 A. YES, I AM.

20 Q. CAN YOU JUST DESCRIBE FOR THE JURY WHAT THAT MEANS
21 BY COACHING AND FABRICATION?

22 A. SURE. WHAT I LOOK FOR, OR WHAT COACHING AND
23 FABRICATION ARE?

24 Q. WHAT THEY ARE FIRST; AND THEN---

25 A. OKAY. WHAT THEY ARE IS, OF COURSE, IF SOMEONE IS

1 FEELING LIKE SOMEONE HAS TOLD THE CHILD TO COME IN
2 AND TELL ME THAT SOMETHING HAS HAPPENED TO THEM. WE
3 CALL THAT COACHING. AND DURING AN INTERVIEW, WHAT
4 I LOOK FOR; THE BIGGEST QUALITY OF WHAT I LOOK FOR
5 IN AN INTERVIEW TO SEE WHETHER OR NOT A CHILD HAS
6 BEEN COACHED TO SAY SOMETHING IS WHAT WE CALL WROTE
7 (PHONETICALLY SPELLED) QUALITY, OR THE STORY JUST
8 SEEMS TO BE THE SAME REGARDLESS OF WHATEVER
9 QUESTIONS I ASK. THEY CAN'T TEND TO GIVE
10 PERIPHERAL DETAILS ABOUT WHAT HAPPENED, OR ELSE
11 THEY JUST CONTINUE TO SAY THE SAME THING BECAUSE
12 THEY DON'T KNOW ANYTHING ELSE BECAUSE THEY'VE BEEN
13 TOLD TO SAY IT.

14 Q. WERE THERE ANY SIGNS THAT VICTIM HAD BEEN COACHED?

15 A. I DID NOT SEE ANY IN HER INTERVIEW; NO.

16 Q. ANY SIGNS THAT VICTIM'S STORY WAS FABRICATED?

17 A. NO, MA'AM.

18 Q. AND IF YOU HAD NOTED, OR IN YOUR OPINION YOU HAD
19 THOUGHT THAT THOSE THINGS HAD OCCURRED, WOULD YOU
20 HAVE NOTED THAT IN YOUR REPORT?

21 A. YES, I WOULD HAVE.

22 Q. AND I WANT TO SHOW YOU -- DID YOU DISCUSS THAT
23 VICTIM HAD TALKED ABOUT HER PRIVATES AND A MALE
24 PRIVATE?

25 A. CORRECT.

1 Q. NOW, JUST TO CLARIFY THAT YOU WERE THINKING ABOUT
2 THE SAME THING THAT WITNESS WAS DESCRIBING; WHAT DID
3 YOU DO? DID YOU SHOW HER ANY DRAWINGS?

4 A. YES, I DID.

5 Q. AND I'M GOING TO SHOW YOU WHAT'S MARKED AS STATE'S
6 EXHIBITS NUMBER ONE AND TWO AND ASK YOU IF THOSE
7 ARE COPIES OF WHAT YOU SHOWED WITNESS?

8 A. THESE ARE COPIES OF THE FRONT. THE ONES THAT I HAD
9 ALSO HAD BACKS.

10 Q. OKAY. OTHERWISE IS IT THE SAME AS THE FRONT?

11 A. YES, MA'AM.

12 MRS. PELLIZZARI: YOUR HONOR, AT THIS
13 TIME WE'D OFFER STATE'S EXHIBITS NUMBER ONE AND TWO
14 INTO EVIDENCE.

15 THE COURT: ANY OBJECTION?

16 MR. STOCKHOLM: I'VE SEEN THEM, YOUR
17 HONOR. NO OBJECTION.

18 MRS. PELLIZZARI: THANK YOU.

19 THE COURT: INTRODUCED AS EVIDENCE.

20 STATE'S EXHIBIT NOS. 1 & 2

21 ADMITTED AS EVIDENCE

22 Q. AND WAS WITNESS ABLE TO DESCRIBE TO YOU OR TO POINT
23 OUT ON THE DIAGRAMS, THE ANATOMICAL DIAGRAM, WHAT
24 SHE REFERRED TO AS PRIVATES?

25 A. YES. SHE CIRCLED THEM. I WROTE THE WORD "PRIVATE"

1 BUT SHE CIRCLED THE BODY PARTS.

2 Q. AND I SEE HERE ON STATE'S EXHIBIT NUMBER ONE; IS
3 THAT YOUR HANDWRITING?

4 A. YES.

5 Q. AND SHE CIRCLED DOWN THERE WHAT SHE REFERRED TO AS
6 THE PRIVATE ON A FEMALE?

7 A. THAT'S CORRECT.

8 Q. AND YOU SAID THAT THE ORIGINAL ONES HAD SOME BACKS
9 ON THEM. DID SHE DESCRIBE ANYTHING ABOUT THE
10 BACKS?

11 A. NO. SHE DID NOT CIRCLE ANY PARTS OF THE BACK.

12 Q. AND, AGAIN, ON STATE'S EXHIBIT NUMBER TWO; THAT'S A
13 DIAGRAM OF A MALE?

14 A. THAT'S CORRECT.

15 Q. AND DID YOU WRITE -- WHO WROTE THE NAME BOBBY
16 REEVES?

17 A. I DID.

18 Q. AND DID YOU ALSO WRITE GROWN-UP?

19 A. YES, I DID.

20 Q. AND, AGAIN, WAS SHE ABLE TO POINT OUT TO YOU ON
21 THIS DIAGRAM WHAT SHE REFERRED TO AS A PRIVATE?

22 A. YES; SHE CIRCLED IT.

23 Q. AND YOU WROTE THE WORD "PRIVATE" ON IT?

24 A. I WROTE THE WORD "PRIVATE."

25 MRS. PELLIZZARI: YOUR HONOR, MAY THESE

1 BE PUBLISHED TO THE JURY?

2 THE COURT: COME UP HERE FOR JUST A
3 SECOND.

4 (AT THIS TIME BENCH CONFERENCE IS HELD.)

5 Q. AND, JODI, JUST ONE OTHER THING. IN YOUR
6 EXPERIENCE WITH INTERVIEWING CHILDREN, I GUESS MOST
7 OF THE INTERVIEWS THAT YOU'VE HAD WERE WITH
8 CHILDREN?

9 A. CORRECT.

10 Q. IN YOUR EXPERIENCE DO CHILDREN DISCLOSE EVERYTHING
11 THAT'S HAPPENED TO THEM AT ONE TIME?

12 A. DURING MY INTERVIEW?

13 Q. YES.

14 A. NO. IT'S PRETTY TYPICAL IF I -- SOME KIDS WILL
15 COME IN, AND THEY'LL TELL EVERY DETAIL OF
16 EVERYTHING THAT HAS HAPPENED. AND OTHER KIDS WILL
17 COME IN AND EITHER NOT TELL EVERYTHING OR NOT FEEL
18 COMFORTABLE ENOUGH TO TELL EVERYTHING. WE LOOK AT
19 DISCLOSURE OF ABUSE AS A PROCESS. AND MANY TIMES,
20 IT WILL BE WHERE THEY'LL LET A LITTLE BIT OUT UNTIL
21 THEY SEE HOW PEOPLE REACT TO IT OR UNTIL THEY SEE
22 HOW PEOPLE ARE EITHER GOING TO SUPPORT THEM OR NOT
23 SUPPORT THEM. AND A LOT OF TIMES IF THEY FEEL
24 SUPPORTED OR THEY FEEL LIKE THEY'RE GOING TO BE
25 BELIEVED, OR THEY FEEL LIKE THEY'RE GOING TO BE

1 UNDERSTOOD, THEN THEY MIGHT FEEL COMFORTABLE ENOUGH
2 TO LET A LITTLE BIT MORE OUT DOWN ON THE LINE.
3 THAT'S WHY IN MY TRAININGS WE ARE TAUGHT THAT
4 DISCLOSURE IS A PROCESS.

5 Q. THANK YOU. THAT'S ALL THE QUESTIONS I HAVE.

6 THE COURT: RE-DIRECT?

7 MRS. PELLIZZARI: I BEG THE COURT'S
8 INDULGENCE. JUST BRIEFLY.

9 CROSS EXAMINATION

10 BY MR. STOCKHOLM:

11 Q. LASHLEY, IS THAT HOW YOU PRONOUNCE IT?

12 A. LASHLEY; CORRECT.

13 Q. MRS. LASHLEY, YOU HAD NEVER MET ~~UTCI~~^{UTCI} PRIOR TO
14 THIS VIDEOTAPING, HAD YOU?

15 A. NO, I HAD NOT.

16 Q. YOU KNEW NOTHING ABOUT HER PRIOR HISTORY,
17 SCHOOLING, MEDICAL HISTORY, OR ANYTHING LIKE THAT?

18 A. PRIOR TO THE APPOINTMENT?

19 Q. CORRECT.

20 A. CORRECT.

21 Q. AND ON THE EXHIBITS THAT WERE ENTERED, YOU WERE THE
22 ONE THAT WROTE THE NAME OF THE DEFENDANT ACROSS IS;
23 IS THAT CORRECT?

24 A. YES, I DID.

25 Q. NOW, WHEN YOU INTERVIEWED HER, SHE NEVER WAS ABLE

1 TO RECALL WHAT DATES SUPPOSEDLY THIS HAPPENED, DID
2 SHE?

3 A. SHE DID NOT GIVE ME ANY SPECIFIC DATES; NO, SIR.

4 Q. AND SHE NEVER MENTIONED ANYTHING ABOUT ANY YELLOW
5 STUFF, DID SHE?

6 A. NO, SHE DID NOT.

7 Q. THAT'S ALL I HAVE. THANK YOU.

8 THE COURT: RE-DIRECT?

9 MRS. PELLIZZARI: I BEG THE COURT'S
10 INDULGENCE. JUST BRIEFLY.

11 RE-DIRECT EXAMINATION

12 BY MRS. PELLIZZARI:

13 Q. WHEN SHE DESCRIBED ~~WITNESS~~, I BELIEVE ONE OF THE
14 QUESTIONS THAT YOU ASKED HER DURING THE INTERVIEW
15 WAS DID ANYTHING COME OUT?

16 A. YES, I DID.

17 Q. AND HER RESPONSE WAS?

18 A. SHE SAID THAT YES, SOMETHING HAD COME OUT OF HIS
19 PRIVATE.

20 Q. THANK YOU.

21 THE COURT: ANYTHING FURTHER?

22 MR. STOCKHOLM: NOTHING.

23 THE COURT: THANK YOU. YOU MAY STEP
24 DOWN. CALL YOUR NEXT WITNESS, PLEASE.

25 MRS. PELLIZZARI: THE STATE WOULD CALL

MOTIONS

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1 AMY GAYLOR.

2 MR. STOCKHOLM: YOUR HONOR, BEFORE THIS
3 WITNESS TESTIFIES, I HAVE A MOTION.

4 THE COURT: ALL RIGHT, MR. FOREMAN AND
5 LADIES AND GENTLEMEN, I'M GOING TO LET YOU GO TO
6 YOUR JURY ROOM FOR A FEW MINUTES. I'VE GOT TO HEAR
7 A LITTLE BIT OF TESTIMONY OUTSIDE OF YOUR PRESENCE.

8 (AT THIS TIME JURY RETIRES TO JURY ROOM.)

9 THE COURT: YES, SIR?

10 MR. STOCKHOLM: IF IT PLEASE THE COURT; I
11 WOULD REVIEW MY MOTION. YOU HAD HEARD IN CHAMBERS
12 A DISCUSSION REGARDING THE FACT THAT MRS. GAYLOR
13 WAS HERE UNDER A SUBPOENA FROM A GEORGIA COURT.
14 SHE IS NOW A STATE WITNESS. WE HAD REQUESTED THE
15 MEDICAL RECORDS OR HER -- EXCUSE ME -- HER NOTES
16 FROM HER VISITS AND TREATMENT WHICH I THINK NUMBER
17 20 TO 40. YOUR HONOR, YOU FELT THAT YOU WOULD NOT
18 BE ABLE TO PROVIDE THEM SINCE THE GEORGIA ORDER WAS
19 ALREADY BRINGING HER HERE. BUT I AGAIN, YOUR
20 HONOR, I BELIEVE THAT I'M ENTITLED TO THOSE RECORDS
21 AS FAR AS SHE IS HERE. I WILL BE ABLE TO
22 CROSS-EXAMINE HER MORE THOROUGHLY IF I HAVE THEM.
23 YOUR HONOR HAD INDICATED BEFORE OFF THE RECORD YOU
24 WERE NOT INCLINED TO GRANT THAT; BUT I DO BRING THE
25 MOTION UP AGAIN, SIR.

1 THE COURT: WELL, I THINK WHAT I SAID WAS
2 THAT SHE'S UNDER THE PROTECTION OF THE GEORGIA
3 COURTS. AND THEY HAVE A STATUTE THERE THAT
4 PROHIBITS HER FROM DIVULGING THAT INFORMATION. AND
5 JUST BECAUSE SHE'S IN THE STATE OF SOUTH CAROLINA,
6 I DON'T THINK I CAN REQUIRE HER TO VIOLATE HER
7 ETHICS OR THE GEORGIA LAW. I DID -- I THINK I
8 AFFORDED Y'ALL THE OPPORTUNITY TO TALK TO HER. AND
9 I DON'T EXACTLY KNOW WHAT YOU DID. YOU INDICATED
10 TO ME THAT Y'ALL DID DO THAT. DO YOU HAVE ANY
11 AUTHORITY AS TO HOW I CAN GET AROUND THAT PROBLEM?
12 I MEAN, THE ONLY REASON SHE'S IN HERE IS SHE'S
13 UNDER AN ORDER FROM A GEORGIA JUDGE WHO SAID THAT
14 CLEARLY IF SHE CAME, SHE COULD NOT TESTIFY TO THOSE
15 NOTES, OR COULDN'T DIVULGE THAT. HELP ME OUT AND
16 I'LL HELP YOU OUT. BUT I DON'T KNOW---

17 MR. STOCKHOLM: YOUR HONOR, ALL I CAN SAY
18 IS I BELIEVE RULE FIVE OF BRADY REQUIREMENTS
19 OVER-RIDE A GEORGIA STATUTE. SHE IS NOW HERE IN
20 SOUTH CAROLINA.

21 THE COURT: I WOULD, MADAM SOLICITOR; IF
22 THERE IS ANYTHING INCONSISTENT IN HER NOTES, I
23 THINK WE HAVE A CONFRONTATION CLAUSE ISSUE THERE
24 THAT SHE WOULD HAVE TO DIVULGE THAT.

25 MS. CAMPBELL: AND HE WENT THROUGH SOME

MOTIONS

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1 QUESTION ABOUT THE INCONSISTENCY OF A CHILD'S
2 STATEMENT. I BELIEVE THE ANSWER WAS EVERYTHING WAS
3 CONSISTENT.

4 MR. STOCKHOLM: YOUR HONOR, SHE SAID
5 GENERALLY CONSISTENT.

6 MS. CAMPBELL: YOUR HONOR, THE ONLY WAY
7 WE GET HER -- WE HAD TO DO AN INTERSTATE SUBPOENA
8 WHERE SHE'S ALLOWED TO COME HERE AND TESTIFY. YOU
9 KNOW, SHE CAN CHALLENGE THAT WHICH SHE DID. THEY
10 DO HAVE A STATUTE THAT SAYS BASICALLY THAT THERE IS
11 -- I MEAN, THEY CAN'T RELEASE THE RECORDS. AND HE
12 DID HAVE THE OPPORTUNITY TO INTERVIEW THE WITNESS
13 AS MUCH AS HE WANTED.

14 THE COURT: WELL, OBVIOUSLY IF THERE'S A
15 CONVICTION IN THIS CASE, LET'S THINK ABOUT WHAT'S
16 GOING TO HAPPEN DOWN ON THE CORNER OF SUMTER AND
17 GERVAIS.

18 MS. CAMPBELL: YES, SIR.

19 THE COURT: WHAT DO WE DO ABOUT THE
20 CONFRONTATION CLAUSE IN A CASE LIKE THIS?

21 MS. CAMPBELL: I WOULD ASSUME THAT'S BEEN
22 ADDRESSED IN GEORGIA. I DIDN'T DO ANY RESEARCH ON
23 THAT BECAUSE OBVIOUSLY THAT HAS BEEN AN ISSUE IN
24 GEORGIA. AND THE STATUTE PREVAILS.

25 THE COURT: HOW DO I KNOW THAT?

1 MS. CAMPBELL: WELL, I CAN GO DO SOME
2 RESEARCH IF YOU WANT ME TO, JUDGE. I THOUGHT THIS
3 ISSUE HAD BEEN ADDRESSED.

4 THE COURT: NO. I MEAN, IT WAS AN OFF
5 THE RECORD TYPE COMMENT.

6 MS. CAMPBELL: AND I'LL BE GLAD TO GO DO
7 RESEARCH AND SEE. I'M SURE THE STATUTE HAS BEEN
8 ADDRESSED UNDER THE GEORGIA LAW AND THINGS OF THAT
9 NATURE.

10 THE COURT: I THINK I'D LIKE TO KNOW THAT
11 BEFORE WE GET TOO FAR DOWN THE ROAD.

12 MS. CAMPBELL: CAN YOU GIVE ME A FEW
13 SECONDS, JUDGE? I CAN GO LOOK IT UP.

14 THE COURT: OKAY. MAYBE SHE KNOWS THE
15 CASE HERSELF. ASK HER.

16 MS. CAMPBELL: DO YOU KNOW THE ANSWER TO
17 THAT?

18 MRS. GAYLOR: NO; I DON'T KNOW THE CODE
19 THAT SPECIFICALLY CITES THAT.

20 MS. CAMPBELL: OKAY.

21 MRS. GAYLOR: I MEAN, I WAS REPRESENTED
22 BY LAWYERS AND---

23 THE COURT: I'VE GOT JUDGE DICKERD'S
24 NUMBER BACK THERE. I'LL TRY HIM RIGHT QUICK. YOU
25 TAKE ABOUT FIVE MINUTES AND SEE IF YOU CAN FIND IT;

1 AND I'LL SEE IF I CAN TALK TO JUDGE DICKER ABOUT
2 IT.

3 (BRIEF RECESS.)

4 THE COURT: ALL RIGHT. AFTER REVIEW OF
5 THE GEORGIA STATUTES AND THE CASE LAW, AND A LITTLE
6 HELP FROM MY FRIEND IN AUGUSTA, WE'RE GOING TO
7 STAND THAT WITNESS DOWN UNTIL THEY CAN SURRENDER
8 THE RECORDS, AT LEAST TO ME IN THE MORNING, AND
9 THEN WE'LL TAKE THAT WITNESS THEN. AND THEN WE'LL
10 FINISH UP WHATEVER WITNESSES THE STATE HAS LEFT FOR
11 TODAY AND STOP.

12 MR. STOCKHOLM: YOUR HONOR, MAY I
13 APPROACH?

14 THE COURT: SURE.

15 (AT THIS TIME BENCH CONFERENCE IS HELD.)

16 THE COURT: OKAY; BRING THE JURY IN.

17 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

18 THE COURT: ALL RIGHT. MR. FOREMAN,
19 LADIES AND GENTLEMEN OF THE JURY, THANK YOU FOR
20 YOUR PATIENCE. UNFORTUNATELY THE PROBLEM WHICH
21 DEVELOPED IS THAT WITH THE WITNESS -- IT'S A
22 QUESTION OF GEORGIA LAW. I DON'T KNOW WHAT THAT IS
23 RIGHT NOW. WE'VE BEEN TRYING TO FIND OUT QUICK
24 ENOUGH SO WE COULD GO AHEAD WITH THAT. WE ARE
25 GOING TO STAND THAT WITNESS DOWN. AND THE STATE

1 CHILDREN UNDER THE AGE OF WHAT?

2 A. SEVENTEEN.

3 Q. AS A PART OF YOUR DUTIES AT THE HOSPITAL, DO YOU
4 PERFORM WHAT WE CALL -- WHAT ARE KNOWN AS SEXUAL
5 ASSAULT EXAMINATIONS?

6 A. YES.

7 Q. TELL THIS JURY A LITTLE BIT ABOUT YOUR EDUCATION
8 AND TRAINING IN THE MEDICAL FIELD.

9 A. LET'S SEE. I ATTENDED MEDICAL SCHOOL AT THE
10 MEDICAL COLLEGE OF OHIO. I DID MY RESIDENCY IN
11 PEDIATRICS AT BOWMAN GRAY, WAKE FOREST. OUT OF
12 RESIDENCY, I STARTED WORKING IN DOING EMERGENCY
13 MEDICINE IN BATON ROUGE. I DID THAT FOR FIVE YEARS
14 BEFORE MOVING TO AUGUSTA. AND I'VE BEEN THERE FOR
15 FOUR YEARS.

16 Q. AND YOUR SPECIALTY IS IN THE FIELD OF EMERGENCY
17 ROOM PEDIATRIC CARE?

18 A. YES.

19 MS. CAMPBELL: YOUR HONOR, AT THIS TIME
20 WE'D OFFER HIM AS AN EXPERT AND AS A DOCTOR WITH
21 SPECIALTY IN PEDIATRIC EMERGENCY CARE.

22 THE COURT: DO YOU WISH TO EXAMINE THE
23 WITNESS ON THAT ISSUE?

24 MR. STOCKHOLM: I HAVE NO OBJECTION.

25 THE COURT: YOU MAY PROCEED.

1 Q. DOCTOR, DID YOU HAVE OCCASION TO COME IN CONTACT
2 WITH A YOUNG LADY NAMED VICTIM

3 A. YES.

4 Q. WHEN DID YOU FIRST SEE MS. VICTIM ?

5 A. JULY THE 31ST OF 2000.

6 Q. JULY THE 31ST OF THE YEAR 2000?

7 A. YES.

8 Q. HOW WAS SHE REFERRED TO YOU? WHAT WAS THE PURPOSE
9 OF YOU SEEING MS. VICTIM ?

10 A. THE PURPOSE OF THE VISIT WAS TO SEE IF THERE WAS
11 ANY PHYSICAL EVIDENCE TO CORROBORATE ALLEGATIONS OF
12 SEXUAL ABUSE.

13 Q. AND WHEN YOU SAW HER ON THE 31ST, WHERE DID YOU
14 COME IN CONTACT WITH HER?

15 A. IN THE EMERGENCY DEPARTMENT.

16 Q. AND TELL THIS JURY HOW YOU PERFORMED THE
17 EXAMINATION ON VICTIM THAT DAY.

18 A. (NO RESPONSE.)

19 Q. WHAT PROCEDURES YOU WENT THROUGH; WHAT YOU WERE
20 LOOKING FOR.

21 A. IT WAS A STANDARD EXAMINATION. THE PATIENT LAYS ON
22 HER BACK. SHE GETS IN WHAT'S CALLED AND FROG LEG
23 POSITION WITH BOTH FEET TOGETHER LIKE THIS
24 (INDICATING) AND AN EXAMINATION IS DONE OF THE
25 GENITALIA.

1 Q. OF THE GENITALIA?

2 A. YES.

3 Q. SO SPECIFICALLY YOU'RE LOOKING FOR FINDINGS OF
4 ABUSE TO THE GENITAL AREA?

5 A. YES.

6 Q. AND IN DOING YOUR EXAMINATION, DO YOU ALSO DO WHAT
7 WE CALL AN INTERNAL -- I GUESS A PELVIC EXAM, OR
8 GENITAL EXAM?

9 A. NOT ON CHILDREN THIS YOUNG.

10 Q. SO WHAT KIND OF SIGNS ARE YOU LOOKING FOR; AND WHAT
11 DID YOU DO IN THIS CASE?

12 A. WHAT YOU'RE LOOKING FOR IS THE GENERAL APPEARANCE
13 OF THE GENITALIA. IN YOUNG CHILDREN, THEY HAVE
14 SOMETHING CALLED A HYMEN WHICH IS A THIN MEMBRANE
15 WHICH CAN LOOK VERY DIFFERENT IN A LOT OF
16 CHILDREN. THERE'S A LOT OF VARIETIES AND WAYS HTAT
17 IT LOOKS. BUT WHAT YOU'RE LOOKING FOR ARE SIGNS
18 THAT THE NORMAL APPEARANCE HAS BEEN ALTERED.

19 Q. AND THAT'S WHAT YOU LOOKED FOR IN THIS CASE WITH
20 VICTIM?

21 A. YES.

22 Q. AND DID YOU NOTE IN, AND YOU DOCUMENTED EVERYTHING
23 YOU DID THAT DAY?

24 A. YES.

25 Q. DID YOU NOTE ANY, I GUESS, ABNORMALITIES WHEN YOU

1 DID YOUR EXAMINATION OF THE HYMEN IN THAT AREA?

2 A. ON MY EXAMINATION, THE HYMEN WAS NO LONGER A THIN
3 MEMBRANE BUT WAS ROUNDED OVER. THAT'S GENERALLY
4 HOW THAT AREA HEALS ITSELF. AND IN ADDITION, THERE
5 WAS WHAT APPEARED TO ME TO BE A HEALING SCAR IN THE
6 MEMBRANE ITSELF AT THE FIVE O'CLOCK POSITION. IF
7 YOU CAN IMAGINE THE AREA BEING A CLOCK, IT WAS AT
8 THE FIVE O'CLOCK POSITION.

9 Q. SO THE APPEARANCE AND WHAT YOU'RE LOOKING AT, YOU
10 LOOK AT IT AS IN A CLOCK. SO IT WOULD BE ROUNDED
11 -- AT THE FIVE O'CLOCK, YOU NOTICED WHAT YOU
12 REFERRED TO AS A HEALING SCAR?

13 A. RIGHT.

14 Q. AND THE HYMEN ITSELF WAS IN WHAT YOU CALL A HEALING
15 CONDITION?

16 A. THAT WAS THE APPEARANCE THAT IT HAD; YES.

17 Q. AND WHAT YOU SAW THAT DAY, COULD YOU DATE OR IN ANY
18 WAY TELL HOW MUCH EARLIER THAT TIME HAD BEEN
19 INFLECTED?

20 A. THE ONLY THING THAT YOU CAN SAY ABOUT THAT IS THAT
21 IT HAD TIME TO HEAL SO THAT IT WAS AT LEAST ONE
22 WEEK BEFORE THAT AND PROBABLY LONGER.

23 Q. SO, DOCTOR, WHAT KIND OF TRAUMA WOULD CAUSE THE
24 INJURIES THAT YOU NOTED ON THAT CHILD ON THE 31ST?

25 A. WELL, CERTAINLY PENETRATION WOULD CAUSE THAT.

1 Q. PENETRATION SUCH AS PENILE PENETRATION?

2 A. ANY KIND OF PENETRATION.

3 Q. DIGITAL PENETRATION?

4 A. ANY KIND OF PENETRATION.

5 Q. AND YOUR FINDINGS WERE CONSISTENT WITH THAT?

6 A. YES.

7 Q. AND AS FAR AS DATING WHAT YOU OBSERVED ON THE 31ST,
8 YOU SAID IT WAS HEALING. SO AT LEAST A WEEK OR
9 OLDER?

10 A. AT LEAST A WEEK.

11 Q. WOULD IT BE CONSISTENT WITH SOME KIND OF
12 PENETRATION APPROXIMATELY THIRTY DAYS EARLIER?

13 A. YES.

14 MS. CAMPBELL: THAT'S ALL I HAVE OF THIS
15 WITNESS.

16 THE COURT: CROSS-EXAMINATION?

17 MR. STOCKHOLM: THANK YOU, YOUR HONOR.

18 CROSS-EXAMINATION

19 BY MS. STOCKHOLM:

20 Q. GOOD AFTERNOON, DOCTOR.

21 A. GOOD AFTERNOON.

22 Q. VERY BRIEFLY, DOCTOR; YOU WORK IN THE EMERGENCY
23 ROOM DOWN IN UNIVERSITY HOSPITAL IN AUGUSTA?

24 A. YES, SIR.

25 Q. AND VICTIM : CAME IN THAT NIGHT ON A

1 RECOMMENDATION FROM THE POLICE DEPARTMENT?

2 A. I DON'T RECALL EXACTLY HOW THEY GOT THERE.

3 Q. OKAY.

4 A. BUT THAT IS A COMMON WAY; YES.

5 Q. AND YOU DID AN INITIAL EVALUATION ON HER; IS THAT
6 CORRECT?

7 A. YES.

8 Q. AND DID YOU FIND ANY BRUISING ON HER?

9 A. NO.

10 Q. ANY BITE MARKS?

11 A. NO.

12 Q. CLAW MARKS?

13 A. NO.

14 Q. AS UNPLEASANT AS IT IS, ANY SPERM?

15 A. NO.

16 Q. AND WHEN YOU WERE DONE BECAUSE YOU DID AN INITIAL
17 EXAM, YOU RECOMMENDED THAT SHE GET A THOROUGH
18 MEDICAL EXAM FROM A DIFFERENT DOCTOR; IS THAT
19 CORRECT?

20 A. WELL, IN THESE CASES WHERE THERE ARE -- IT'S BEEN A
21 LONG TIME PERIOD IN-BETWEEN THE TIME THAT --
22 WHATEVER HAPPENED SUPPOSEDLY HAPPENED IN THE TIME
23 THEY PRESENTED TO US -- WE JUST DO A BASIC
24 SCREENING EVALUATION AND ALWAYS RECOMMEND THAT THEY
25 FOLLOW-UP IN THE SEXUAL ABUSE CLINIC.

1 Q. OBVIOUSLY, DOCTOR, I WAS JUST CURIOUS. I WAS JUST
2 LOOKING AT THE RECORDS THAT HAVE BEEN PROVIDED AND
3 INDICATED THAT, YOU KNOW, SHE GO SEE ANOTHER
4 DOCTOR?

5 A. WELL, AGAIN, WE REFER THEM ALWAYS TO THE SEXUAL
6 ABUSE CLINIC.

7 Q. BUT WHAT YOU DID IS NOT SUBSTITUTE FOR A
8 COMPREHENSIVE MEDICAL EXAM, IS IT?

9 A. IT WAS A SCREENING EXAMINATION.

10 Q. THANK YOU VERY MUCH, DOCTOR.

11 THE COURT: RE-DIRECT?

12 MS. CAMPBELL: JUST A COUPLE OF
13 QUESTIONS.

14 RE-DIRECT EXAMINATION

15 BY MS. CAMPBELL:

16 Q. DOCTOR, IF THIS ALL HAD TAKEN PLACE THIRTY DAYS
17 PRIOR, WOULD YOU EXPECT TO SEE ANY BRUISING?

18 A. NO.

19 Q. WOULD YOU EXPECT TO SEE ANY SPERM?

20 A. NO SIR.

21 Q. AND YOU REFERRED TO A CLINIC. THAT'S WHAT YOU DO
22 IN EVERY SEXUAL ASSAULT CASE; IS THAT CORRECT?

23 A. THAT'S CORRECT SIR.

24 Q. THERE WAS NOTHING UNUSUAL IN THIS CASE?

25 A. NOTHING UNUSUAL.

1 Q. THANK YOU.

2 THE COURT: ANYTHING FURTHER, MR.
3 STOCKHOLM?

4 MR. STOCKHOLM: NOTHING FURTHER.

5 THE COURT: THANK YOU, SIR. YOU MAY STEP
6 DOWN. CALL YOUR NEXT WITNESS.

7 MS. CAMPBELL: THE STATE CALLS DR.
8 CLAIBORNE.

9 - - - - -

10 WHEREUPON,
11 MAUREEN O'BRIEN CLAIBORNE, M.D., WHO
12 AFTER BEING FIRST DULY SWORN TO TELL THE
13 TRUTH, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION

15 BY MS. CAMPBELL:

16 Q. DR. CLAIBORNE, WHERE ARE YOU EMPLOYED?

17 A. I'M EMPLOYED AT THE MEDICAL COLLEGE OF GEORGIA.

18 Q. WHAT DO YOU DO THERE?

19 A. I WORK IN THE GENERAL PEDIATRICS CLINIC. I'M A
20 PEDIATRICIAN. AND I ALSO SERVE AS THE MEDICAL
21 DIRECTOR OF OUR CHILD ABUSE TEAM.

22 Q. TELL THIS JURY A LITTLE BIT ABOUT YOUR EDUCATION
23 AND YOUR TRAINING IN THE MEDICAL FIELD.

24 A. OKAY. I DID MY MEDICAL SCHOOL AT THE MEDICAL
25 COLLEGE OF GEORGIA. I DID A RESIDENCY IN

1 PEDIATRICS AT THE MEDICAL COLLEGE OF GEORGIA. AND
2 AFTER THAT, I JOINED THE FACULTY AT THE MEDICAL
3 COLLEGE OF GEORGIA. I INITIALLY WORKED AT
4 UNIVERSITY HOSPITAL FOR ABOUT 13 YEARS -- 12 OR 13
5 YEARS -- STILL AS AN EMPLOYEE OF THE MEDICAL
6 COLLEGE OF GEORGIA. AND THEN I MOVED PHYSICALLY
7 OVER TO M.C.G.

8 Q. AND, OF COURSE, YOU'VE TESTIFIED OF COURSE AS AN
9 EXPERT IN THE AREA OF PEDIATRICS?

10 A. YES.

11 MS. CAMPBELL: YOUR HONOR, AT THIS TIME
12 WE WOULD OFFER HER AS AN EXPERT IN THE AREA OF
13 PEDIATRICS.

14 MR. STOCKHOLM: NO OBJECTION.

15 THE COURT: WITHOUT OBJECTION. YOU MAY
16 PROCEED ON THAT BASIS.

17 Q. DOCTOR, DID YOU HAVE OCCASION TO COME IN CONTACT
18 WITH VICTIM

19 A. I DID.

20 Q. WHEN DID YOU COME IN CONTACT WITH HER?

21 A. AT THE END OF AUGUST; AUGUST THE 28TH OF 2000.

22 Q. AUGUST THE 28TH?

23 A. YES.

24 Q. HOW WAS SHE REFERRED TO YOU?

25 A. AFTER THEY -- PATIENTS ARE REFERRED TO ME FROM ALL

1 PEDIATRICS AT THE MEDICAL COLLEGE OF GEORGIA. AND
2 AFTER THAT, I JOINED THE FACULTY AT THE MEDICAL
3 COLLEGE OF GEORGIA. I INITIALLY WORKED AT
4 UNIVERSITY HOSPITAL FOR ABOUT 13 YEARS -- 12 OR 13
5 YEARS -- STILL AS AN EMPLOYEE OF THE MEDICAL
6 COLLEGE OF GEORGIA. AND THEN I MOVED PHYSICALLY
7 OVER TO M.C.G.

8 Q. AND, OF COURSE, YOU'VE TESTIFIED OF COURSE AS AN
9 EXPERT IN THE AREA OF PEDIATRICS?

10 A. YES.

11 MS. CAMPBELL: YOUR HONOR, AT THIS TIME
12 WE WOULD OFFER HER AS AN EXPERT IN THE AREA OF
13 PEDIATRICS.

14 MR. STOCKHOLM: NO OBJECTION.

15 THE COURT: WITHOUT OBJECTION. YOU MAY
16 PROCEED ON THAT BASIS.

17 Q. DOCTOR, DID YOU HAVE OCCASION TO COME IN CONTACT
18 WITH VICTIM ?

19 A. I DID.

20 Q. WHEN DID YOU COME IN CONTACT WITH HER?

21 A. AT THE END OF AUGUST; AUGUST THE 28TH OF 2000.

22 Q. AUGUST THE 28TH?

23 A. YES.

24 Q. HOW WAS SHE REFERRED TO YOU?

25 A. AFTER THEY -- PATIENTS ARE REFERRED TO ME FROM ALL

1 OVER. AND SHE HAD ALREADY BEEN INITIALLY EVALUATED
2 IN THE EMERGENCY ROOM, SO SHE WAS SENT TO ME
3 FOLLOW-UP.

4 Q. AND WHAT WAS THE PURPOSE? WHAT WERE YOU DOING
5 SPECIFIC IN YOUR FOLLOW-UP?

6 A. IN THE EMERGENCY ROOM, SHE HAD NOT HAD ANY CULTURES
7 DONE. SO SHE CAME TO ME BECAUSE WE WERE GOING TO
8 DO CULTURES.

9 Q. OKAY. SO THE PURPOSE OF AN ABUSE IS TO DO
10 CULTURES?

11 A. TO DO CULTURES; YES.

12 Q. WHEN YOU SAY YOU WERE DOING CULTURES, WHAT KIND OF
13 THINGS WERE YOU LOOKING FOR?

14 A. WE WERE LOOKING FOR ANY TYPES OF SEXUALLY
15 TRANSMITTED DISEASES. AND SO WE'RE LOOKING FOR --
16 IN THOSE CASES, WE LOOK FOR GONORRHEA AND CLIMITIA,
17 SYPHILIS, MAYBE H.I.V. SOMETIMES IF THERE'S A
18 DISCHARGE, WE MAY LOOK FOR SOME OTHER.

19 Q. IS IT STANDARD FOR A PERSON WHO IS INITIALLY SEEN
20 IN THE EMERGENCY ROOM THAT THEY'RE REFERRED TO YOUR
21 CLINIC?

22 A. IT REALLY DEPENDS ON WHAT WAS SEEN AND DONE IN THE
23 EMERGENCY ROOM. MOST OF THE TIME WE DO DO
24 FOLLOW-UP ON THE KIDS THAT GO THROUGH THE E.R.

25 Q. AND WHEN YOU CONDUCTED YOUR EVALUATION OF VICTIM;

1 THIS WOULD HAVE BEEN A MONTH AFTER HER INITIAL
2 EVALUATION?

3 A. RIGHT.

4 Q. WHAT WERE YOUR FINDINGS, DOCTOR?

5 A. MY FINDINGS WERE THAT -- DO YOU MEAN PHYSICAL
6 FINDINGS OR FINDINGS IN THE HISTORY OR---

7 Q. PHYSICAL FINDINGS.

8 A. PHYSICAL FINDINGS. ON HER GENITAL EXAM, HER HYMEN
9 APPEARED NORMAL. SHE DIDN'T HAVE ANY TEARS OR
10 SCARS. SHE DIDN'T HAVE ANY UNUSUAL DISCHARGE. AND
11 THE RECTAL AREA ALSO APPEARED TO HAVE NORMAL
12 APPEARANCE AND TONE.

13 Q. AND YOU DID THAT EXAMINATION SECONDARY TO THE
14 CULTURE YOU TOOK?

15 A. I DO THE CULTURES -- YES; I DO THE EXAM FIRST. AND
16 THEN I DO THE CULTURES.

17 Q. I'M SORRY. SO EFFECTIVELY YOUR EXAMINATION WAS
18 NORMAL?

19 A. YES.

20 Q. DOCTOR, IN YOUR EXPERIENCE -- AND YOU'VE GOT A LOT
21 OF EXPERIENCE WITH OTHER SEXUAL ABUSE?

22 A. YES.

23 Q. EVEN IF A CHILD, SAY A TEN YEAR OLD CHILD,
24 EXPERIENCES PENILE PENETRATION, TWO MONTHS LATER IS
25 THERE GOING TO BE NECESSARILY ANY EVIDENCE OF THAT?

1 A. WELL, IT OBVIOUSLY DEPENDS ON THE PENILE
2 PENETRATION. WHAT WE KNOW IS THAT AN AWFUL LOT OF
3 CHILD ABUSE, SEXUAL ABUSE IN YOUNGER CHILDREN, IS
4 NOT THE VIOLENT RAPE KIND OF THINGS THAT YOU
5 SOMETIMES SEE IN ADULTS OR IN OLDER KIDS. A LOT OF
6 THE TIME IN YOUNGER KIDS, IT IS MORE OF A COERCION
7 KIND OF THING. AND, YOU KNOW, YES PENILE MAY NOT
8 LEAVE TERRIBLE SCARS AND STUFF. BUT THEN YOU'RE
9 ALSO DEALING WITH CHILDREN WHO HAVE NEVER HAD
10 CONSENSUAL SEX. SO THEY DON'T KNOW EXACTLY WHAT'S
11 ALL THE WAY INSIDE THEM, WHAT IS PART OF THE WAY
12 INSIDE THEM AND WHAT'S TRYING TO GET INSIDE OF
13 THEM. SO, YES, WE NORMALLY SEE NORMAL EXAMS. MOST
14 KIDS WHO HAVE BEEN SEXUALLY ABUSED WILL HAVE NORMAL
15 EXAMS.

16 Q. EXPECIALLY TWO MONTHS AFTER THE FACT?

17 A. YES.

18 Q. AND WE'VE HEARD TESTIMONY ABOUT HOW THERE ARE
19 DIFFERENT STAGES OF HEALING?

20 A. YES.

21 Q. AND TWO MONTHS AFTER THE FACT THE HEALING WOULD
22 HAVE TAKEN PLACE?

23 A. OR IN THE PROCESS; YES. AGAIN, IT WOULD DEPEND
24 UPON THE DEGREE OF HEALING. IF THIS HAD BEEN A
25 VIOLENT RAPE, I WOULD EXPECT THAT I -- YOU KNOW,

1 WITH BLEEDING AND SUTURING, I WOULD EXPECT THAT I
2 WOULD SEE A LOT OF EVIDENCE.

3 Q. FINALLY, DOCTOR, IN DIFFERENT SEXUAL CASES THERE'S
4 DIFFERENT KINDS OF PENETRATION INVOLVED?

5 A. YES.

6 Q. WERE YOUR FINDINGS TWO MONTHS AFTER THE FACT
7 CONSISTENT WITH A CHILD WHO HAD BEEN DIGITALLY
8 PENETRATED?

9 A. YES.

10 Q. I HAVE NOTHING FURTHER.

11 THE COURT: CROSS-EXAMINATION?

12 MR. STOCKHOLM: THANK YOU, YOUR HONOR.

13 CROSS-EXAMINATION

14 BY MR. STOCKHOLM:

15 Q. ESENTIALLY YOUR FINDINGS WERE PHYSICALLY NORMAL; IS
16 THAT CORRECT?

17 A. EXACTLY.

18 Q. AND ALL BLOOD TESTS WERE NEGATIVE; IS THAT CORRECT?

19 A. YES.

20 Q. DOCTOR, THERE'S BEEN A MENTION EARLIER. PERHAPS
21 YOU CAN HELP US OUT. WHAT EXACTLY IS ATTENTION
22 DEFICIT DISORDER?

23 A. IT'S CHILDREN THAT HAVE TROUBLE FOR A LONG TIME
24 KEEPING AN ATTENTION SPAN. THEIR ATTENTION SPAN IS
25 SHORTER THAN OTHER KIDS. SO, YOU KNOW, IT'S JUST A

1 MATTER THAT SOME KIDS CAN'T SIT DOWN TO WATCH A
2 HALF HOUR T.V. SHOW WHEREAS OTHER KIDS CAN SIT DOWN
3 FOR FIVE HOURS AND NEVER GET UP.

4 Q. IS THAT THE SAME AS A.D.H.D.?

5 A. WELL, IT'S VERY CLOSELY RELATED. A LOT OF PEOPLE
6 USE THEM INTERCHANGEABLY. BASICALLY A.D.H.D. IS
7 USUALLY CONSIDERED ATTENTION DEFICIT WITH THE
8 ELEMENTS OF HYPERACTIVITY AS WELL.

9 Q. DO CHILDREN WHO HAVE A.D.H.D.; DO THEY SOMETIMES
10 HAVE SYMPTOMS OF BEING ANXIOUS, EDGY, THINGS LIKE
11 THAT?

12 A. MORE OFTEN YOU SEE THEM AS JUST BUSY, NOT SO MUCH
13 ANXIOUS, BUT JUST BUSY, DOING STUFF. THEY MAY BE
14 VERY HAPPY PEOPLE. THEY JUST ARE NOT SITTING STILL
15 QUITE AS MUCH IN THE CHAIR.

16 Q. HOW ABOUT SYMPTOMS SUCH AS BEING UNHAPPY?

17 A. NO. THEY'RE OFTEN VERY HAPPY KIDS.

18 Q. WHAT ABOUT UNORGANIZED?

19 A. YES. A LOT OF TIMES THEY CAN BE DISORGANIZED.

20 Q. SOMETIMES NOT GOOD IN SOCIAL SETTINGS?

21 A. I WOULD THINK THAT WOULD DEPEND ON HOW STRUCTURED
22 THE SOCIAL SETTING WERE. IF YOU'RE TALKING ABOUT A
23 CLASSROOM, I WOULD THINK THEY'RE NOT AS GOOD. IF
24 YOU'RE TALKING ABOUT RUNNING AROUND A PLAYGROUND
25 WITH FRIENDS, THEY MAY DO FINE.

1 Q. ANY UNUSUAL SENSITIVITY SAY TO SOUNDS OR TOUCH OR
2 THINGS LIKE THAT?

3 A. THAT STRICTLY DEPENDS ON THE CHILD.

4 Q. BUT IT WOULD NOT BE INCONSISTENT WITH AN A.D.H.D.,
5 DOCTOR?

6 A. WELL, IT'S NOT SOMETHING WE USUALLY TALK ABOUT.
7 IT'S NOT A PART OF THE WORK-UP OR PART OF THE
8 DIAGNOSIS. I MEAN, YOU MAY FIND AN A.D.H.D. CHILD
9 THAT HAS SENSITIVITIES, BUT IT'S NOT PART OF THE
10 DIAGNOSIS.

11 Q. HOW ABOUT THE OVERREACTING TO SITUATIONS? IS THAT
12 PART OF A.D.H.D.?

13 A. IT COULD BE.

14 Q. NOW, DOCTOR, A.D.H.D. CAN BE TREATED, CAN'T IT?

15 A. IT CAN BE -- I GUESS IT DEPENDS ON WHAT YOU MEAN BY
16 TREATED. IT CAN BE CONTROLLED FOR SHORT PERIODS OF
17 TIME IN MOST CASES.

18 Q. THERE ARE MEDICATIONS AVAILABLE?

19 A. YES.

20 Q. LIKE HALPIN (PHONETICALLY SPELLED) IS ONE OF THOSE,
21 ISN'T IT?

22 A. I'M NOT FAMILIAR WITH THAT, I'M NOT AN A.D.H.D.
23 SPECIALIST.

24 Q. YOU DON'T KNOW ANY OF THE SIDE EFFECTS OF HEPARIN?

25 A. NO.

1 Q. DO YOU KNOW ANY OF THE SIDE EFFECTS OF HEPARIN
2 (PHONETICALLY SPELLED)?

3 A. NO. THOSE ARE NOT DRUGS I USE IN MY PRACTICE.

4 Q. DOCTOR, WITH YOUR RESULTS, PHYSICAL EXAM,
5 CONSISTENT THAT NOTHING HAPPENED TO THAT LITTLE
6 GIRL?

7 A. YES.

8 Q. THANK YOU.

9 THE COURT: RE-DIRECT?

10 RE-DIRECT EXAMINATION

11 BY MS. CAMPBELL:

12 Q. AND YOUR EXAMINATION TWO MONTHS LATER WAS ALSO
13 CONSISTENT WITH SOME FIND OF PENETRATION?

14 A. IT WOULD BE THE SAME; YES.

15 Q. THANK YOU. NOTHING ELSE.

16 THE COURT: THANK YOU, MA'AM. YOU MAY
17 STEP DOWN. CALL YOUR NEXT WITNESS.

18 MS. PELLIZZARI: THE STATE CALLS DR. CARL
19 BRUNIE.

20 - - - - -

21 WHEREUPON,

22 CARL BRUNIE, M.D., WHO AFTER BEING FIRST
23 DULY SWORN TO TELL THE TRUTH,
24 TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

1 BY MS. PELLIZZARI:

2 Q. GOOD AFTERNOON, DR. BRUNIE.

3 A. GOOD AFTERNOON.

4 Q. WHERE ARE YOU CURRENTLY EMPLOYED?

5 A. I'M IN PRIVATE PRACTICE, CHILD ANALYST AND
6 PSYCHIATRY IN AUGUSTA, GEORGIA.

7 Q. AND WHAT TYPE OF PRACTICE IS THAT?

8 A. I SEE PRIMARILY CHILDREN IN ADOLESCENCE UP TO THE
9 AGE OF EIGHTEEN WITH A VARIETY OF EMOTIONAL
10 PROBLEMS.

11 Q. CAN YOU TELL THE JURY A LITTLE BIT ABOUT YOUR
12 EDUCATIONAL BACKGROUND?

13 A. I ATTENDED THE MEDICAL UNIVERSITY OF SOUTH CAROLINA
14 IN CHARLESTON FROM 1978 TO 1982. FROM 1982 TO
15 1987, I WAS AT THE UNIVERSITY OF TENNESSEE IN
16 MEMPHIS WHERE I DID A YEAR OF INTERNAL MEDICINE IN
17 NEUROLOGY. TWO YEARS OF GENERAL PSYCHIATRY
18 RESIDENCY FOLLOWED BY A TWO YEAR FELLOWSHIP IN
19 CHILD AND ADOLESCENT PSYCHIATRY. MOVED TO AUGUSTA,
20 GEORGIA IN 1987 WHERE I'VE BEEN IN PRIVATE PRACTICE
21 EVER SINCE.

22 Q. HAVE YOU BEEN IN PRIVATE PRACTICE SPECIALIZING WITH
23 CHILDREN?

24 A. CORRECT.

25 Q. SINCE 1987?

1. A. YES, MA'AM.

2 Q. AND YOU ARE A MEDICAL DOCTOR?

3 A. CORRECT.

4 Q. AND ARE YOU A MEMBER OF ANY PROFESSIONAL
5 ORGANIZATIONS?

6 A. I AM.

7 Q. CAN YOU TELL THE JURY A LITTLE BIT ABOUT THOSE;
8 JUST WHICH ONES YOU'RE A MEMBER OF?

9 A. I'M A MEMBER OF THE AMERICAN ACADEMY IN CHILD
10 ADOLESCENT PSYCHIATRY, THE AMERICAN PSYCHIATRIC
11 ASSOCIATION, THE AMERICAN MEDICAL ASSOCIATION AS
12 ARE NATIONAL MEMBERSHIPS. LOCALLY I'M A MEMBER OF
13 THE C.S.R. PSYCHIATRIC SOCIETY AND A MEMBER OF THE
14 RICHLAND COUNTY MEDICAL SOCIETY, THE MEDICAL
15 ASSOCIATION OF GEORGIA ALONG WITH, I'M SURE, A FEW
16 OTHER THINGS.

17 Q. AND YOU'RE LICENSED TO PRACTICE MEDICINE IN THE
18 STATE OF GEORGIA?

19 A. CORRECT.

20 Q. SIR, HAVE YOU EVER TESTIFIED IN COURT BEFORE?

21 A. I HAVE.

22 Q. HAVE YOU EVER BEEN QUALIFIED AS AN EXPERT?

23 A. I HAVE.

24 Q. DO YOU KNOW ABOUT HOW MANY TIMES?

25 A. FIVE OR SIX.

1 MRS. PELLIZZARI: YOUR HONOR, AT THIS
2 TIME WE WOULD OFFER DR. BRUNIE AS AN EXPERT IN
3 CHILD PSYCHIATRY.

4 MR. STOCKHOLM: DO YOU WISH TO EXAMINE
5 THE WITNESS?

6 MR. STOCKHOLM: I HAVE NO OBJECTION.

7 THE COURT: YOU MAY PROCEED ON THAT BASIS.

8 MRS. PELLIZZARI: THANK YOU.

9 Q. DR. BRUNIE, DO YOU KNOW VICTIM ?

10 A. I DO.

11 Q. HOW DO YOU KNOW VICTIM?

12 A. SHE'S BEEN A PATIENT OF MINE. IF I MAY REFER TO MY
13 NOTES?

14 Q. SURE.

15 A. SINCE DECEMBER THE FIRST, 1999.

16 Q. IS SHE A PATIENT OF YOURS NOW?

17 A. SHE IS.

18 Q. HOW OFTEN DO YOU SEE VICTIM?

19 A. APPROXIMATELY ONCE A MONTH.

20 Q. AND WHEN VICTIM FIRST CAME TO YOU BACK IN DECEMBER
21 OF 1999, WHY DID SHE BEGIN SEEING YOU? WAS SHE
22 DISPLAYING SYMPTOMS?

23 A. SHE PRESENTED TO ME WITH A HISTORY OF A LOT OF
24 ANGER, A LOT OF SELF-DIRECTED AGGRESSION, BITING
25 HERSELF. THE PRIMARY PURSUANT TO HER REFERRAL WAS

1 APPROXIMATELY A MONTH PRIOR TO THAT SHE HAD
2 THREATENED TO HURT HERSELF. WHILE AT SCHOOL, SHE HAD
3 BURNED HER ARMS WITH AN ERASER, SHE HAD A LOT OF
4 ANGER, WAS SUFFERING FROM FREQUENT NIGHTMARES AT
5 NIGHT, DIFFICULTY SETTLING DOWN AT NIGHT,
6 ESPECIALLY A LOT OF MOOD SWINGS. EXPERIENCING
7 SIGNIFICANT ANXIETY, OFTEN EXPRESSED FEARS OF SOME
8 HARM COMING TO HER MOTHER. THOSE WERE THE PRIMARY
9 SYMPTOMS.

10 Q. NOW WHEN YOU FIRST BEGAN SEEING VICTIM, DID YOU
11 DIAGNOSE HER WITH ANYTHING; OR HAD SHE BEEN
12 DIAGNOSED IN THE PAST?

13 A. SHE HAD PRESENTED WITH AN INITIAL DIAGNOSIS OF
14 ATTENTION DEFICIT HYPERACTIVITY DISORDER. I FELT
15 THAT IN ADDITION TO THAT THAT SHE CERTAINLY SHOWED
16 EVIDENCE OF WHAT'S CALLED OVERANXIOUS DISORDER OF
17 CHILDHOOD OTHERWISE KNOWN AS GENERALIZED ANXIETY
18 DISORDER IN ADULTS.

19 Q. AND WHEN DID YOU MAKE THAT DIAGNOSIS OF HER?

20 A. I MADE AN INITIAL DIAGNOSIS ON HER INITIAL
21 PRESENTATION ON 12/01/99.

22 Q. NOW, THE SYMPTOMS THAT, OR THE HISTORY THAT SHE
23 PRESENTED WITH, THE ANGER, THE SELF-DESTRUCTION; IN
24 YOUR OPINION DID THAT JIVE JUST WITH THE ATTENTION
25 DEFICIT DISORDER?

1 A. NO, IT DID NOT.

2 Q. AND, SO, YOU FELT LIKE SOMETHING MORE WAS GOING ON
3 WITH HER?

4 A. I FELT LIKE THERE WAS HISTORY THAT I WAS MISSING;
5 YES.

6 Q. ANY OPINIONS AS TO WHAT WAS CAUSING THE SYMPTOMS
7 THAT SHE WAS DISPLAYING?

8 A. WELL, CERTAINLY ONE OF THE THINGS THAT YOU WOULD
9 CONSIDER WITH THAT HISTORY WAS THAT THERE HAD BEEN
10 SOME SORT OF TRAUMA.

11 Q. AND DID YOU QUESTION Victim ABOUT THAT?

12 A. I ROUTINELY INQUIRE WITH ALL CHILDREN ADOLESCENTS;
13 I EVALUATE AS TO ANY HISTORY OF TRAUMA.

14 Q. AND WHAT WAS HER RESPONSE WHEN YOU INITIALLY ASKED
15 HER?

16 A. INITIALLY SHE DENIED THAT.

17 Q. AND AT ANY POINT DID YOUR DIAGNOSIS OF Victim
18 CHANGE?

19 A. YES, IT DID.

20 Q. AND HOW DID THAT HAPPEN? OR WHY DID YOU CHANGE
21 YOUR DIAGNOSIS?

22 A. THE PICTURE BECAME CONSIDERABLY CLEARER AFTER THE
23 MOTHER REPORTED TO ME THAT Victim HAD DISCLOSED THE
24 HISTORY OF SEXUAL ABUSE. AND GIVEN THE FACT THAT
25 SHE NOW HAD A TRAUMA TO EXPLAIN THAT SYMPTOMATOLOGY,

1 I WAS ABLE TO MAKE A DIAGNOSIS OF POST TRAUMATIC
2 STRESS DISORDER.

3 Q. WHAT IS POST TRAUMATIC STRESS DISORDER?

4 A. IT'S SEEN IN INDIVIDUALS WHO HAVE EXPERIENCED SOME
5 SORT OF TRAUMATIC EVENT. IT WILL PRESENT QUITE
6 DIFFERENTLY FROM CASE TO CASE. THERE'S WHAT'S
7 CALLED ACUTE -- AN ACUTE VARIETY IS ALSO A CHRONIC
8 DELAYED VARIETY. THE MOST COMMON SYMPTOMS WILL
9 REVOLVE AROUND DIFFICULTY WITH SLEEPING,
10 EXAGGERATED STARTLE RESPONSE, FREQUENT NIGHTMARES,
11 DIFFICULTY WITH TRUST. A LOT OF TIMES YOU'LL SEE
12 PERVASIVE ANXIETY. YOU WILL ALSO FREQUENTLY SEE A
13 LOT OF ANXIETY. BY ANXIETY I'M TALKING ABOUT STUFF
14 LIKE NEEDING A LOT OF REASSURANCE, BEING FIDGITY.
15 AND THEN YOU WILL ALSO FREQUENTLY SEE WITH THAT A
16 TENDENCY TO BE AVOIDANT; TO HAVE A HARD TIME GOING
17 INTO SITUATIONS THAT IN SOME WAY MIGHT CAUSE A
18 PERSON TO RECALL THE TRAUMATIC EVENT.

19 Q. SO THE -- YOU SAID THAT ONCE ~~VICTIM~~ HAD DISCLOSED
20 ABOUT SEXUAL ABUSE, IT BECAME APPARENT TO YOU THAT
21 A LOT OF THE SYMPTOMS THAT SHE WAS DISPLAYING WERE
22 AS A RESULT OF THAT?

23 A. WELL, IT CERTAINLY MADE THE PIECES OF THE PUZZLE
24 FALL INTO PLACE.

25 Q. AND LET ME ASK YOU THIS, DOCTOR: A CHILD WITH

1 ATTENTION DEFICIT DISORDER OR ATTENTION DEFICIT
2 HYPERACTIVITY ACTIVITY DISORDER; THOSE CHILDREN, DO
3 THEY HAVE MORE OF A TENDENCY TO BE TRUTHFUL OR
4 UNTRUTHFUL THAN ANY OTHER CHILD?

5 A. THERE'S NO CORRELATION THAT I'M AWARE OF.

6 Q. NOW, AFTER VICTIM -- AFTER YOU WERE AWARE THAT
7 VICTIM DISCLOSED ABOUT THE SEXUAL ABUSE, IN YOUR
8 OPINION DID HER CONDITION BECOME BETTER OR DID IT
9 BECOME WORSE?

10 A. SHE ACTUALLY SHOWED SOME DETERIORATION.

11 Q. CAN YOU EXPLAIN TO THE JURY IN WHAT WAY YOU SAW
12 THAT IN HER?

13 A. SHE BEGAN TO CONTINUE TO EXPRESS A LOT OF FEARS
14 TOWARDS HARM COMING TO HERSELF OR HER MOTHER.
15 AGAIN, VERY VAGUELY, SHE BEGAN TO HAVE A LOT MORE
16 NIGHTMARES; STILL A GOT BIT OF ANGER DIRECTED
17 TOWARDS HERSELF AND HER MOM. BUT I SAW THE ANGER
18 BECOMING REALLY MORE DEPRESSION BUT WITH A LOT OF
19 SADNESS. SHE AT TIMES WOULD BE VERY DEPRESSED;
20 WOULD GET IN THE FETAL POSITION SUCKING HER THUMB,
21 ACTING LIKE A MUCH YOUNGER CHILD.

22 Q. BUT AT ANY TIME DID YOU NOTICE THAT HER CONDITION
23 BECAME CONSIDERABLY WORSE THAN OTHERS -- OR, I
24 MEAN, DURING WHAT WAS GOING ON IN HER LIFE?

25 A. WELL, IT APPEARED TO ME THAT THERE WAS SOME

1 CORRELATION WITH THE INCREASED ANXIETY, INCREASED
2 APPREHENSION, MORE AGGRESSION WHENEVER ISSUES
3 RELATED TO THE LEGAL PROCEEDINGS CAME UP.

4 Q. AND, DR. BRUNIE, DID YOU EVER DISCUSS SPECIFICS IN
5 TERMS OF THE SUBSTANCE OF WHAT HAD HAPPENED TO
6 VICTIM WITH HER?

7 A. NO, I DID NOT.

8 Q. AND WHY DIDN'T YOU DO THAT?

9 A. I MAKE APPROPRIATE REFERRALS TO INDIVIDUALS WHO
10 TREAT THESE CASES. AND MY REASON FOR NOT BRINGING
11 THAT UP IS ONE, TO AVOID RETRAUMATIZATION; AND TWO,
12 TO AVOID CONTAMINATING ANY EVIDENCE.

13 Q. AND IN YOUR EXPERT OPINION, DR. BRUNIE, HAS VICTIM
14 SUFFERED SOME TYPE OF TRAUMA?

15 A. YES, SHE HAS.

16 MRS. PELLIZZARI: I BEG THE COURT'S
17 INDULGENCE.

18 CROSS-EXAMINATION

19 BY MR. STOCKHOLM:

20 Q. DOCTOR, DO YOU KNOW ABOUT RITALIN?

21 A. ARE YOU REFERRING TO RITALIN?

22 Q. OR RITALIN?

23 A. CORRECT.

24 Q. IS IT USED FOR A.D.H.D?

25 A. IT IS.

- 1 Q. OKAY. CAN YOU TELL ME, ARE THERE ANY SIDE EFFECTS
2 TO THAT MEDICATION THAT YOU'RE AWARE OF?
- 3 A. AS ANY MEDICATION, THEY HAVE POTENTIAL SIDE
4 EFFECTS; YES, SIR.
- 5 Q. ARE SOME OF THE SIDE EFFECTS TROUBLE FALLING
6 ASLEEP?
- 7 A. CAN BE.
- 8 Q. OKAY. CRANKINESS?
- 9 A. CAN BE.
- 10 Q. OCCASIONAL NERVOUS HABITS LIKE PICKING AT YOUR
11 SKIN?
- 12 A. NOT SO MUCH WITH RIDELIN AS WITH SOME OTHER
13 MEDICATIONS. BUT, YES, POTENTIALLY.
- 14 Q. AND, DOCTOR, I WAS GOING TO ASK YOU ABOUT ANOTHER
15 MEDICATION. AND I'LL PROBABLY MISPRONOUNCE THIS
16 ONE, TOO. BUT IMIPRAMINE OR SOMETHING LIKE THAT?
- 17 A. IMIPRAMINE; YES, SIR.
- 18 Q. OKAY. AND THAT THOSE ARE SOME MEDICATIONS THAT CAN
19 GIVE YOU PROBLEMS -- OR GIVE A CHILD A SIDE EFFECT
20 SUCH AS PICKING AT HIMSELF?
- 21 A. GENERALLY NOT; NO.
- 22 Q. NOW, DO YOU BELIEVE SOME TRAUMA HAPPENED TO ;
23 IS THAT CORRECT?
- 24 A. I DO.
- 25 Q. BUT YOU WERE NOT SURE WHAT IT WAS UNTIL 'S

1 MOTHER INFORMED YOU OF WHAT SHE SUSPECTED IT WAS;
2 IS THAT CORRECT?

3 A. CORRECT.

4 Q. THANK YOU VERY MUCH, DOCTOR.

5 THE COURT: RE-DIRECT?

6 MRS. PELLIZZARI: NO, SIR, YOUR HONOR.

7 WE ASK THAT HE BE EXCUSED.

8 THE COURT: THANK YOU, SIR. YOU MAY STEP
9 DOWN. ANY FURTHER WITNESS FROM THE STATE?

10 MRS. PELLIZZARI: NO, SIR.

11 THE COURT: ALL RIGHT, MR. FOREMAN AND
12 LADIES AND GENTLEMEN, I'M SORRY FOR THIS LITTLE
13 BLIP; BUT THERE'S SOME INFORMATION THAT NEEDS TO
14 BE GOTTEN FROM GEORGIA. SO WE'LL STOP HERE. THE
15 STATE HAS NO WITNESS LEFT; AND WE'LL CERTAINLY
16 FINISH TOMORROW WITHOUT ANY PROBLEMS, PROBABLY
17 BEFORE LUNCH. SO DON'T DISCUSS THE CASE WITH
18 ANYONE OR ALLOW ANYONE TO DISCUSS IT WITH YOU. AND
19 I'D ASK YOU TO BE HERE IN THE JURY ROOM AT 9:30.
20 AND WE'LL SEE YOU THEN. Y'ALL HAVE A NICE EVENING.

21 (AT THIS TIME, JURY IS EXCUSED FOR THE DAY.)

22 THE COURT: ALL RIGHT. LET ME MAKE SURE
23 SO WE'RE NOT MISUSING TIME. AS I UNDERSTOOD FROM
24 THE BENCH CONFERENCE A WHILE AGO, THERE WILL BE NO
25 OTHER CHALLENGE TO THE NEXT WITNESSES' TESTIMONY IN

1 THAT I ASSUME SHE'S GOING TO TESTIFY ABOUT RAPE
2 TRAUMA SYNDROME OR SOME TYPE OF BEHAVIORAL
3 DIAGNOSIS; IS THAT CORRECT?

4 THE SOLICITOR: THAT'S CORRECT, YOUR
5 HONOR.

6 THE COURT: ALL RIGHT. SO THE ONLY ISSUE
7 WITH HER NOW IS THE REVIEW OF THE SO CALLED
8 UNDERLYING NOTES?

9 THE SOLICITOR: YES, SIR.

10 THE COURT: ALL RIGHT, NOW. I HESITATE
11 TO GIVE YOU JUDGE DICKERD'S LAW CLERK'S
12 MEMORANDUM. HOWEVER, I WILL GIVE YOU THE TWO CASES
13 THAT ARE CITED THEREIN. THEY ARE STATE VS. BOBO.
14 AND IT IS CITED AT 256 GEORGIA. AND SHE SHORT-CUT
15 THIS THING. IT'S SOMEWHERE AROUND PAGE 358, 359,
16 360. IT'S ALSO CITED -- THEY CITE A CASE IN ACCORD
17 WITH KING VS. STATE, 273 GEORGIA 258, 2000. AND AS
18 I'VE INDICATED TO YOU, THE PRELIMINARY -- THE
19 CONTROLLING PARAGRAPH WHICH I DON'T MIND SHARING
20 WITH YOU. IT'S IMPORTANT TO NOTE, TOO, THAT THE
21 PRIVILEGE CAN BE OVERCOME WHERE IT STANDS IN THE
22 WAY OF A DEFENDANT'S RIGHT TO CONFRONT A WITNESS
23 AGAINST HIM. IN BO-BO, THE COURT HELD THE
24 STATUTORY PRIVILEGE MUST GIVE WAY WITH
25 COUNTERVEYING (PHONETICALLY SPELLED) AND AND TRUTH

1 SEEKING PROCESS DEMANDS SUCH A RESULT. IN ORDER
2 FOR THE PRIVILEGE TO BE ABROGATED, THOUGH, THE
3 DEFENDANT MUST MAKE A SHOWING OF NECESSITY THAT THE
4 EVIDENCE IN QUESTION IS CRITICAL TO HIS DEFENSE,
5 AND THAT SUBSTANTIALLY CINDER EVIDENCE IS OTHERWISE
6 UNAVAILABLE TO HIM. AND WHILE THIS IS NOT A
7 WAIVER, IT IS AN IMPORTANT EXCEPTION WHERE THE
8 PRIVILEGE WILL NOT APPLY AND IS EXTREMELY LIMITED.
9 SO THAT'S WHERE WE'RE HEADED. ANYTHING ELSE WE CAN
10 DO BEFORE WE---

11 MS. CAMPBELL: YES, SIR, YOUR HONOR. I
12 NEED YOU TO ORDER HER TO GET THE RECORDS.

13 THE COURT: YES, MA'AM. WHERE IS SHE?
14 MA'AM, I AT LEAST OVERNIGHT ORDER YOU TO PRODUCE
15 THE RECORDS HERE IN SOUTH CAROLINA. THERE IS A
16 CASE CALLED STATE VS. BO-BO THAT MAY HAVE SOME
17 IMPACT ON WHETHER THOSE RECORDS ARE DISCOVERABLE.
18 I GAVE -- STATE VS. BO-BO WHICH IS THE GEORGIA CASE
19 CREATES AN EXCEPTION TO THE PRIVILEGE. AND SO IT
20 MAY BE THAT IT'S REQUIRED TO BE GIVEN OVER. EITHER
21 THAT, OR I'LL HAVE TO PROHIBIT YOU FROM TESTIFYING.

22 THE WITNESS: CAN YOU PLEASE SAY THAT
23 AGAIN? I'M SORRY.

24 THE COURT: THE TWO CHOICES I HAVE; HE
25 HAS THE CONSTITUTIONAL RIGHT OF CONFRONTATION HERE

1 IN THIS STATE UNDER THE STATE AND FEDERAL
2 CONSTITUTIONS. SO I HAVE TWO CHOICES. I TAKE THE
3 POSITION WITH REGARDS TO THE STATE VS. BO-BO WHICH
4 I'M SURE THAT YOUR ATTORNEY CAN HELP YOU WITH, OR
5 EITHER I'LL PRECLUDE YOU FROM TESTIFYING. BOTH
6 SIDES -- THE STATE AGREES THAT YOUR TESTIMONY IS
7 PRETTY CLEAR AND NECESSARY TO THEIR CASE. THERE IS
8 ANOTHER WAY AROUND IT. THE MOTHER CAN WAIVE THE
9 PRIVILEGE ON BEHALF OF THE CHILD, AND THAT MAY
10 SOLVE THE PROBLEM. SO LEAVE THOSE RECORDS IN THE
11 MORNING. (AT THIS TIME ATTORNEY STANDS.) YES,
12 SIR?

13 MR. SMITH: YOUR HONOR, RUSH SMITH. MS.
14 GAYLOR GOT IN TOUCH WITH ME ABOUT THE MATTER. IS
15 IT YOUR ORDER THAT SHE GO TO GEORGIA AND PICK UP
16 THE RECORDS FOR PRODUCTION TO BE PRODUCED IN COURT
17 OR FOR YOUR HONOR'S IN CAMERA---

18 THE COURT: INITIALLY TO ME. IT MAY BE
19 MUCH TO DO ABOUT NOTHING. BUT HER TESTIMONY
20 ESSENTIALLY, OR HER COMMENTS IN HER INTERVIEW
21 BETWEEN THE ATTORNEYS WAS THAT HER TESTIMONY WAS
22 GENERALLY CONSISTENT. SO---

23 MS. GAYLOR: MAY I SPEAK TO THAT?

24 THE COURT: NO. I WANT TO SEE THE
25 RECORDS.

1 MR. SMITH: WHEN WE PRODUCE THEM FOR YOUR
2 HONOR'S IN CAMERA REVIEW, COULD SHE HAVE AN
3 OPPORTUNITY TO BE HEARD. SHE'S GOT THE ORDER IN
4 GEORGIA. IF SHE COULD BE HEARD ABOUT PRODUCTION OF
5 THE RECORDS---

6 THE COURT: SHE CAN. THE PROBLEM IS TWO
7 IN THE MIDDLE OF THE TRIAL. YOU KNOW, MY REMEDIES
8 -- THE TWO REMEDIES TO GET AROUND THAT, OVBIOUSLY,
9 IS TO KEEP HER OFF THE STAND OR HAVE THE MOTHER
10 WAIVE THE PRIVILEGE OR STOP THE TRIAL. AND I DON'T
11 WANT TO DO THE THIRD.

12 MR. SMITH: I UNDERSTAND.

13 THE COURT: OKAY. AND YOU CAN TELL YOUR
14 CLIENT THIS IS IN RELIANCE UPON A MEMO THAT WAS
15 DONE FOR JUDGE ALLGOOD. IT'S JUDGE DICKER'S LAW
16 CLERK. SO WE'RE NOT JUST WAIVING IN THE WIND.

17 MR. SMITH: YES, SIR, I UNDERSTAND.

18 THE COURT: ALL RIGHT. ANYTHING ELSE?

19 MS. CAMPBELL: NO, YOUR HONOR. IT'S MY
20 UNDERSTANDING IF WE DON'T PRODUCE, WE CAN'T USE IT;
21 RIGHT?

22 THE COURT: THAT'S RIGHT.

23 MS. CAMPBELL: OKAY.

24 THE COURT: WELL, I MEAN, YOU KNOW SHE
25 MIGHT WELL PRODUCE THEM TO ME AND I FIND THAT

1 THEY'RE NOT A PROBLEM, THEN YOU MIGHT BE ABLE TO
2 USE HER. BUT IF SHE DOESN'T WANT TO DO THAT, THEN
3 THAT'S---

4 MS. CAMPBELL: YES, SIR..

5 THE COURT: AND I UNDERSTAND SHE'S UNDER
6 THE PROTECTION FOR GEORGIA SUBPOENA; SO I'M KIND OF
7 FOXED BOXED IN.

8 MS. CAMPBELL: YES, SIR.

9 THE COURT: AGAIN, THE MOTHER CAN WAIVE
10 IT.

11 MS. CAMPBELL: I UNDERSTAND.

12 THE COURT: ALL RIGHT. YOUR CLIENT IS IN
13 CUSTODY, MR. STOCKHOLM. AND THEN WE'LL START BACK
14 AT 9:30 IN THE MORNING. SO IF YOU NEED TO GET HIM
15 A CHANGE OF CLOTHES OR WHATEVER, THEY'LL DO THAT.
16 I MAKE NO EXCEPTION TO THAT RULE NO MATTER WHO THEY
17 ARE.

18 MR. STOCKHOLM: YES, YOUR HONOR.

19 THE COURT: ANYTHING ELSE?

20 MS. CAMPBELL: NOTHING FROM THE STATE.

21 THE COURT: ALL RIGHT. WE'LL START BACK
22 IN HERE AT 9:30.

23

24

* * * * *

25

(COURT ADJOURNED AT 4:45 P.M.)

1 WEDNESDAY, SEPTEMBER 18, 2002

2

3 THE COURT: OKAY. BRING THE JURY IN.

4 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

5 THE COURT: ALL RIGHT. MRS. FINK HAD A
6 SUDDEN EMERGENCY THIS MORNING. SO YOU'LL HAVE TO
7 TAKE HER PLACE. ALL RIGHT, MADAM SOLICITOR.

8 MS. CAMPBELL: THE STATE WOULD CALL SGT.
9 DALE JONES.

10 - - - - -

11 WHEREUPON,

12 DALE JONES, WHO AFTER BEING FIRST
13 DULY SWORN TO TELL THE TRUTH,
14 TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION

16 BY MS. CAMPBELL:

17 Q. SERGEANT JONES, WHERE ARE YOU EMPLOYED?

18 A. AT THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

19 Q. HOW LONG YOU BEEN WORKING THERE?

20 A. I'VE BEEN THERE FOR APPROXIMATELY 13 YEARS.

21 Q. WHAT DO YOU DO AT THE RICHLAND COUNTY SHERIFF'S
22 DEPARTMENT NOW?

23 A. I'M CURRENTLY THE ADMINISTRATIVE SERGEANT THAT'S IN
24 CHARGE OF THE MAIN DESK AREA WHICH IS THE CENTRAL
25 HUB OF WHERE ALL THE DAILY ACTIVITIES OCCUR FOR THE

1 SHERIFF'S DEPARTMENT.

2 Q. BACK IN THE SUMMER OF THE YEAR 200, WERE YOU
3 WORKING AT A DIFFERENT DEPARTMENT IN THE SHERIFF'S
4 DEPARTMENT?

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

6 Q. WHAT WERE YOU DOING BACK THEN, SIR?

7 A. I WAS AN INVESTIGATOR IN A SPECIALIZED UNIT THAT
8 WORKED ON ELDER AND CHILD ABUSE CASES, PARTICULARLY
9 SPECIALIZED IN SEXUAL ABUSE OF CHILDREN.

10 Q. SO YOU WERE AN INVESTIGATOR, AND YOUR EMPHASIS WAS
11 ON SEXUAL ABUSE OF CHILDREN?

12 A. THAT IS CORRECT, MA'AM.

13 Q. DID YOU BECOME INVOLVED IN AN INVESTIGATION
14 INVOLVING THIS DEFENDANT, BOBBY JOE REEVES?

15 A. YES, MA'AM, I DID.

16 Q. WHEN DID THIS FIRST COME TO YOUR ATTENTION?

17 A. IT WAS BROUGHT TO MY ATTENTION WHEN WE WERE
18 FORWARDED A REPORT ON JULY THE 31ST OF 2000 BY
19 INVESTIGATOR LEE WOODS AT THE RICHMOND COUNTY
20 SHERIFF'S DEPARTMENT IN AUGUSTA, GEORGIA.

21 Q. YOU SAY FROM THE RICHMOND COUNTY SHERIFF'S
22 DEPARTMENT?

23 A. THAT'S CORRECT.

24 Q. AND THAT'S THE AUGUSTA, GEORGIA, AREA?

25 A. THAT'S CORRECT.

1 Q. AND YOU SAID THAT YOU DID AN INCIDENT REPORT. DID
2 IT CONTAIN ALLEGATIONS INVOLVOING A CHILD?

3 A. YES, MA'AM, IT DID.

4 Q. AND WHAT CHILD WAS THAT?

5 A. THAT WAS VICTIM .

6 Q. WHY WAS YOUR AGENCY INVOLVED IF Victim WAS
7 IN AUGUSTA, GEORGIA?

8 A. THE INCIDENT HAD OCCURRED -- THE ALLEGATIONS THAT
9 OCCURRED WAS ACTUALLY HERE IN RICHLAND COUNTY. WE
10 DO THIS QUITE OFTEN WITH OTHER AGENCIES WHERE THEY
11 RECEIVE INFORMATION OR WE WORK A CASE WHERE THE
12 INFORMATION HAS OCCURRED IN ANOTHER AREA, AND WE
13 STARTED IN OUR AREA.

14 Q. IN EVERY CHILD ABUSE CASE, OR WHAT SHOULD HAPPEN IN
15 EVERY CHILD ABUSE CASE; ONCE AN ALLEGATION OF
16 SEXUAL ABUSE IS REPORTED, NO MATTER WHERE IT IS;
17 ARE THERE CERTAIN STEPS THAT ARE THEN TAKEN IN
18 REGARD TO THE INVESTIGATION?

19 A. YES, MA'AM, THEY ARE.

20 Q. CAN YOU EXPLAIN TO THE JURY WHAT STEPS THOSE ARE
21 AND WHY IT'S ARE NECESSARY TO DO THAT?

22 A. WELL, ONE OF THE FIRST THINGS WE WANT TO DO IS MAKE
23 SURE WE HAVE A MEDICAL EXAM TO SEE IF WE HAVE ANY
24 PHYSICAL EVIDENCE AS TO WHAT MAY HAVE OCCURRED TO
25 THAT PARTICULAR INDIVIDUAL. WE ALSO THEN HAVE

1 WHAT'S CALLED A FORENSIC INTERVIEW WHICH IS A
2 SPECIALIZED TRAINED PERSON ON CONDUCTING A SPECIAL
3 TYPE OF AN INTERVIEW WITH A CHILD, ESPECIALLY OF
4 THIS TYPE OF NATURE. WE COMPILE THAT INFORMATION
5 TOGETHER. AND WHAT WE ACTUALLY HAVE IS A TASK
6 FORCE WHERE WE HAVE REPRESENTATIVES FROM THE
7 SOLICITOR'S OFFICE, D.S.S., THE MEDICAL STAFF, A
8 PSYCHIATRIC STAFF, INVESTIGATORS. AND WE ALL
9 REVIEW THIS INFORMATION TO MAKE SURE WE HAVE DONE
10 EVERYTHING POSSIBLE TO HELP WITH THAT CHILD BEFORE
11 WE WENT FORWARD WITH WHATEVER ELSE WE NEEDED TO DO
12 TO PROPERLY PREPARE IT FOR A CASE.

13 Q. YOU MENTIONED THAT A CHILD WOULD BE INTERVIEWED BY
14 A FORENSIC INTERVIEWER OR SOMEONE WITH SPECIAL
15 TRAINING?

16 A. THAT IS CORRECT.

17 Q. DID YOU ACTUALLY INTERVIEW VICTIM IN THIS
18 CASE?

19 A. NO, MA'AM, I DID NOT.

20 Q. AND WHY NOT, SIR?

21 A. WELL, FOR ONE SHE WAS IN A LOCATION IN ANOTHER
22 JURISDICTION. WE RELIED ON THE INDIVIDUALS FROM
23 THAT AREA WHO ARE ALSO SPECIALLY TRAINED TO BE ABLE
24 TO DO THAT PARTICULAR FUNCTION FOR US.

25 Q. SO YOU RELY ON A FORENSIC INTERVIEWER BECAUSE THEY

1 HAVE THE EXPERTISE NECESSARY?

2 A. THAT IS CORRECT, MA'AM.

3 Q. AND THAT WAS DONE IN THIS CASE; IS THAT CORRECT?

4 A. THAT IS CORRECT.

5 Q. OVER THE PERIOD OF THE NEXT MONTH OR SO, DID YOU
6 YOU CONTINUE TO RECEIVE INFORMATION AND REPORT IT
7 IN THIS CASE?

8 A. YES, MA'AM, I DID.

9 Q. AND WHAT, IF ANY, INFORMATION DID YOU RECEIVE FROM
10 THE RICHLAND COUNTY POLICE DEPARTMENT?

11 A. WE RECEIVED THE INFORMATION AS FAR AS THE FACT THAT
12 THERE WERE MEDICAL REPORTS THAT WERE DONE FROM THE
13 HOSPITAL AND THE FOLLOW-UP WITH THE EXPERT LATER,
14 DR. CALLOWAY. AND THEN ALSO WENT TO THE FORENSIC
15 INTERVIEW THAT HAD BEEN CONDUCTED WITH A VIDEOTAPED
16 INTERVIEW THAT WAS DONE AT THAT TIME.

17 Q. AND ONCE YOU HAD RECEIVED THE INFORMATION AND THE
18 EXAMINATIONS HAD BEEN DONE ON THIS CHILD, WERE YOU
19 ABLE TO PROCEED AND OBTAIN WARRANTS IN THIS CASE?

20 A. YES, MA'AM, I WAS.

21 Q. AND WHEN DID YOU ACTUALLY GET WARRANTS FOR THE
22 ARREST OF THE DEFENDANT?

23 A. I ACTUALLY GOT THE WARRANTS ON SEPTEMBER THE 22ND
24 OF 2000; TWO WARRANTS, ONE ON LEWD ACT ON A CHILD
25 UNDER 16, AND ONE ON CRIMINAL SEXUAL CONDUCT ON A

1 MINOR FIRST DEGREE.

2 Q. AND WERE YOU ABLE TO ARREST THE DEFENDANT IN THIS
3 CASE?

4 A. YES, MA'AM, I WAS.

5 Q. AND WHERE DID THAT ARREST THE DEFENDANT?

6 A. AT HIS HOME AT 1103 APRICOT ROAD IN HOPKINS, SOUTH
7 CAROLINA, WHICH IS IN RICHLAND COUNTY.

8 Q. THAT IS IN RICHLAND COUNTY?

9 A. YES, MA'AM, IT IS.

10 Q. IS THAT WHERE THE CHILD INDICATED THE ASSAULTS HAD
11 OCCURRED?

12 A. THAT WAS WHERE THE MOST RECENT ASSAULTS HAD
13 OCCURRED.

14 Q. AND THAT WOULD BE OVER THE JULY FOURTH WEEKEND?

15 A. THAT IS CORRECT, MA'AM.

16 Q. WHAT TIME OF DAY DID YOU ARREST THIS DEFENDANT?

17 A. HE WAS ARRESTED AT 11:00 A.M. IN THE MORNING.

18 Q. AT HIS RESIDENCE?

19 A. YES, MA'AM.

20 Q. THE MAN YOU ARRESTED FOR THESE CRIMES; DO YOU SEE
21 HIM HERE IN COURT?

22 A. YES, MA'AM. HE IS SEATED BESIDE HIS DEFENSE
23 COUNSEL IN A BLUE SHIRT.

24 Q. THANK YOU. I HAVE NOTHING FURTHER.

25 THE COURT: CROSS-EXAMINATION?

1 MR. STOCKHOLM: VERY BRIEFLY.

2 CROSS-EXAMINATION

3 BY MR. STOCKHOLM:

4 Q. DETECTIVE, YOU'RE THE ONE THAT ACTUALLY ARRESTED
5 MR. REEVES; IS THAT CORRECT?

6 A. THAT IS CORRECT, SIR.

7 Q. AND YOU ARRESTED HIM BASED ON WORK THAT WAS NOT
8 DONE BY YOUR DEPARTMENT; IS THAT CORRECT?

9 A. YES, SIR.

10 Q. I HAVE NOTHING FURTHER. THANK YOU, SIR.

11 THE COURT: ANYTHING ELSE?

12 MS. CAMPBELL: NO, SIR.

13 THE COURT: THANK YOU. YOU MAY STEP
14 DOWN. ANYTHING FURTHER FROM THE STATE?

15 MS. CAMPBELL: THE STATE RESTS, YOUR
16 HONOR.

17 THE COURT: I KNOW YOU JUST STEPPED OUT
18 OF HERE. BUT CAN I GET YOU TO STEP IN THE
19 JURY ROOM FOR JUST ABOUT TWO MINUTES, AND THEN
20 WE'LL BE RIGHT BACK OUT.

21 (AT THIS TIME, JURY RETIRES TO JURY ROOM.)

22 THE COURT: ALL RIGHT. MOTIONS?

23 MR. STOCKHOLM: IF IT PLEASE THE COURT,
24 YOUR HONOR? THE DEFENDANT WOULD REQUEST A DIRECTED
25 VERDICT AT THIS STAGE IN THE CASE ON BOTH CHARGES.

MOTIONS

150

1 YOUR HONOR, THE GROUNDS WOULD BE THAT THE EVIDENCE
2 IN THIS CASE -- AND I STILL HAVE A QUESTION, YOUR
3 HONOR, ABOUT THE COMPETENCY OF THE YOUNG GIRL. I
4 DO NOT THINK IT RISES TO THE LEVEL TO SUBMIT IT TO
5 THE JURY. SECOND, YOUR HONOR; I THINK THAT THE
6 STATE HAS FAILED TO PROVE LEWD CONDUCT WITH A
7 MINOR. THE ONLY DATE THE GIRL CAN REMEMBER AFTER
8 SOME PRODDING IS JULY THE FOURTH WHERE SHE
9 INDICATED A FINGER WAS INSERTED IN HER WHICH SHE
10 REMEMBERED LAST WEEK TO BE A SEXUAL BATTERY.
11 THEREFORE, THE LEW CONDUCT CHARGE SHOULD BE
12 DISMISSED, SIR.

13 THE COURT: ALL RIGHT. VIEWING THE
14 EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE STATE,
15 I WOULD DENY YOUR MOTION FOR A DIRECTED VERDICT ON
16 ALL GROUNDS STATED. AS TO THE GIRL'S COMPETENCY;
17 THE PRESUMPTION IS THAT ALL WITNESSES ARE
18 COMPETENT. I LISTENED TO HER TESTIMONY. WHILE SHE
19 MAY BE SOMEWHAT LEARNING DISABLED, SHE CERTAINLY
20 KNOWS THE DIFFERENCE BETWEEN RIGHT AND WRONG. AND
21 SHE WAS CAPABLE OF RECALLING CERTAIN EVENTS. AND
22 THAT WOULD GO TO THE WEIGHT RATHER THAN THE
23 ADMISSIBILITY OF THE EVIDENCE, OKAY? ARE THERE ANY
24 609 ISSUES?

25 MS. CAMPBELL: YOUR HONOR, THE ONLY ISUSE

1 I WOULD BRING OUT AT THIS POINT IT IS MY
2 UNDERSTANDING IS HE'S INTENDING TO PUT THE
3 DEFENDANT UP. IN HIS STATEMENT TO THE POLICE, HE
4 DID MENTION THE OFFER AT ONE POINT TO TAKE A
5 POLYGRAPH. WE WOULD JUST CAUTION THAT WE WILL NOT
6 BE MENTIONING THE POLYGRAPH AND WOULD ASK THAT THEY
7 NOT EITHER.

8 THE COURT: MR. STOCKHOLM, UNLESS YOU'RE
9 PREPARED TO GO UNDER STATE VS. COUNSEL TO SEE IF
10 YOU CAN GET THE POLYGRAPH IN, I WOULD---

11 MR. STOCKHOLM: NO, YOUR HONOR. WE'RE
12 NOT---

13 THE COURT: ALL RIGHT. HE SHOULD BE
14 INSTRUCTED NOT TO DO THAT.

15 MR. STOCKHOLM: WE'RE NOT GOING TO
16 MENTION THAT.

17 THE COURT: AND WOULD HOLD HIM IN
18 CONTEMPT IF HE VIOLATES THAT ORDER.

19 THE COURT: MADAM COURT REPORTER, THERE'S
20 A COURT'S EXHIBIT.

21 COURT'S EXHIBIT NO. 1

22 MARKED FOR IDENTIFICATION

23 THE COURT: THAT IS THE VIDEO INTERVIEW
24 OF THE CHILD, COURT EXHIBIT ONLY. AT A BENCH
25 CONFERENCE, I ADVISED BOTH SIDES THAT IF THE

1 DEFENSE WANTED TO USE THAT, THEY WOULD BE ABLE TO
2 BECAUSE THE CHILD EQUIVOCATED OR DENIED CERTAIN
3 EVENTS. SO UNDER COPELAND, THAT WOULD BE
4 ADMISSIBLE IF THEY CHOOSE TO DO SO. OTHERWISE, IT
5 WOULD BE INADMISSIBLE AS HEARSAY. ARE YOU READY TO
6 PROCEED?

7 MR. STOCKHOLM: WE'RE READY, YOUR HONOR

8 THE COURT: OKAY. BRING THE JURY IN.

9 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

10 THE BAILIFF: YOUR HONOR, THE JURY IS
11 PRESENT.

12 THE COURT: ALL RIGHT. YOU MAY PROCEED.

13 MR. STOCKHOLM: YOUR HONOR, IF IT PLEASE
14 THE COURT, WE WOULD CALL JESSIE WHEATON TO THE
15 STAND.

16 - - - - -
17 WHEREUPON,

18 JESSIE WHEATON, WHO AFTER BEING FIRST
19 DULY SWORN TO TELL THE TRUTH, TESTIFIED
20 AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MS. STOCKHOLM:

23 Q. JESSIE, HOW OLD ARE YOU?

24 A. I'M 62.

25 Q. AND DO YOU KNOW THE DEFENDANT?

1 A. YES.

2 Q. HOW LONG HAVE YOU KNOWN THE DEFENDANT?

3 A. NINETEEN YEARS.

4 Q. ARE YOU ROOMMATES?

5 A. I DIDN'T HEAR.

6 Q. I'M SORRY.

7 MR. STOCKHOLM: YOUR HONOR, HE'S HARD OF
8 HEARING.

9 THE COURT: THAT'S FINE.

10 Q. ARE YOU ROOMMATES?

11 A. WE'VE BEEN LIVING TOGETHER NOW OFF AND ON, A COUPLE
12 OF TIMES DIFFERENT PLACES. THEN RIGHT NOW WE'VE
13 BEEN IN THE SAME PLACE.

14 Q. DO YOU KNOW DAWN ?

15 A. YES.

16 Q. AND DO YOU KNOW VICTIM ?

17 A. YES, I DO.

18 Q. ALL RIGHT. NOW HOW LONG HAVE YOU KNOWN DAWN AND
19 VICTIM

20 A. PROBABLY ELEVEN YEARS AGO; SOMEWHERE ALONG IN THAT
21 NEIGHBORHOOD, MAYBE EVEN A LITTLE LONGER.

22 Q. NOW, DID YOU KNOW DAWN AND VICTIM WHEN THEY LIVED
23 WITH BOBBY REEVES?

24 A. YES.

25 Q. HOW DID VICTIM ACT TOWARDS BOBBY?

1 A. SHE LIKED BOBBY. SHE WANTED REALLY TO MAKE EXACTLY
2 HOW IT WAS. WHEN SHE GOT OLD ENOUGH TO REALLY KNOW
3 -- I REMEMBER WHEN SHE WAS JUST A LITTLE GIRL WHEN
4 SHE FIRST CAME AND STAYED WITH HER MOM AND BOBBY.
5 BUT SHE ACTED TOWARDS BOB IS SHE REALLY WANTED HIM
6 BE A DADDY. SHE WANTED HER MOTHER TO MARRY BOBBY.
7 SO -- AND THAT'S HOW IT WAS.

8 Q. OKAY. HOW LONG DID HER WANTING BOBBY TO BE MARRIED
9 TO HER MOM GO ON; DO YOU KNOW?

10 A. HOW LONG DID IT GO ON?

11 Q. YES, SIR?

12 A. A LONG TIME. ALL THE WAY UP UNTIL THIS THING
13 HAPPENED.

14 Q. WHEN YOU SAY THIS THING, YOU MEAN THIS COURT CASE?

15 A. YES.

16 Q. JESSIE, DO YOU HAVE ANY HEALTH PROBLEMS?

17 A. HEALTH PROBLEMS? I DID. MY BLOOD PRESSURE HAD RAN
18 UP. I HAD TO GO ON AND TAKE PILLS FOR IT. IT
19 CAUSED ME A LITTLE STROKE RIGHT UP IN HERE
20 (INDICATING). AND IT DOESN'T -- PHYSICALLY, NO.
21 THERE'S NONE THERE. IT'S A LITTLE BIT SOMETIMES
22 WHEN I'M TALKING. I KEEP MYSELF FROM GETTING TOO
23 EXCITED.

24 Q. WHAT DID YOU OBSERVE ABOUT VICTIM WHEN SHE WAS
25 AROUND BOBBY?

1 A. SHE WAS -- WANTED NOBODY ELSE, ESPECIALLY ANOTHER
2 GIRL LIKE DAWN'S SISTER. NOW, SHE WOULD HAVE HER
3 GIRLS. THEY WOULD COME AND STAY, YOU KNOW, FOR A
4 DAY. AND SHE DID NOT WANT THEM TO BE AROUND
5 BOBBY. SHE WAS VERY JEALOUS.

6 Q. DID BOBBY EVER HAVE TO DISCIPLINE VICTIM?

7 A. YES. DAWN COULD NOT MAKE HER DAUGHTER REALLY DO
8 KNOW WHAT SHE NEEDED TO BE DONE. SHE'D SCREAM AT
9 HER AND HOLLER, MAYBE 15 OR 25 TIMES; BUT THE GIRL
10 WOULD DO WHAT SHE WANTED TO DO. BOBBY WOULD CALL
11 OUT TO HER MAYBE TWO OR THREE TIMES, AND THE GIRL
12 WOULD STRAIGHTEN OUT, DO RIGHT.

13 Q. DID YOU EVER THINK VICTIM WAS AFRAID OF BOBBY?

14 A. WAS WHAT?

15 Q. AFRAID.

16 A. NO; NO; SHE RESPECTED BOBBY. I WILL SAY THIS: SHE
17 RESPECTED HIM BECAUSE HE NEVER, EVER HURT HER. HE
18 WOULD JUST HOLLER AT HER. SHE'D LISTEN TO HIM.

19 MR. STOCKHOLM: THAT'S ALL I HAVE, YOUR
20 HONOR. PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY
21 HAVE.

22 THE COURT: CROSS-EXAMINATION?

23 CROSS-EXAMINATION

24 BY MS. CAMPBELL:

25 Q. MR. WHEATON?

1 A. YES.

2 Q. HI, MR. WHEATON. I JUST HAVE A FEW QUESTIONS.
3 YOU'RE 62 NOW, SIR?

4 A. SIXTY-TWO.

5 Q. AND YOU'RE A LITTLE HARD OF HEARING?

6 A. WHEN I DIDN'T TAKE MY MEDICINE I'D SAY IN SIX YEARS
7 SINCE THEN. THAT'S WHAT CAUSED A LITTLE STROKE
8 RIGHT UP IN HERE.

9 Q. YES, SIR.

10 A. AND MEMORY SEEMED TO GO BACK GOOD. PHYSICALLY I'M
11 GOOD. I JUST BETTER BE CAREFUL WHEN I'M TALKING.
12 I'M GETTING BETTER ABOUT NOT GETTING EXCITED.

13 Q. YES, SIR. AND THIS HAPPENED ABOUT SIX YEARS AGO?

14 A. WHEN THIS HAPPENED?

15 Q. YES, SIR?

16 A. NO. THIS HAPPENED PROBABLY NOT EVEN A YEAR; MAYBE
17 CLOSE TO A YEAR.

18 Q. ARE YOU EMPLOYED, SIR? DO YOU WORK?

19 A. I'M RETIRED NOW.

20 Q. YOU'RE RETIRED? WHEN DID YOU RETIRE?

21 A. I RETIRED OH, PROBABLY -- THAT'S WHERE I HAVE A
22 PROBLEM THINKING ABOUT IT. I'VE BEEN RETIRED
23 WITHIN THIS YEAR.

24 Q. IN THIS LAST YEAR?

25 A. IN THIS LAST---

1 Q. SO BACK WHEN VICTIM USED TO COME VISIT Y'ALL, YOU
2 WORKED?

3 A. I WORKED FOR SYNTRO (PHONETICALLY SPELLED). I GOT
4 POULTRY, STUFF LIKE THAT, AND LOADED THEM ON THE
5 TRUCK. THAT'S AT THE FARMER'S MARKET.

6 Q. SO THERE WERE TIMES WHEN VICTIM WAS STAYING AT YOUR
7 HOUSE THAT SHE WOULD BE THERE ALONE WITH BOBBY
8 REEVES?

9 A. AT MY HOUSE? THAT'S WHEN I THINK HER MOTHER WANTED
10 HER TO COME DOWN AND STAY THERE MAYBE A WEEKEND.

11 Q. YES, SIR?

12 A. WHERE SHE COULD BE AWAY FROM THEM. AND SHE WOULD
13 SPEND THE NIGHT AND GO BACK THE NEXT DAY OR
14 SOMETHING.

15 Q. THERE WERE TIMES WHEN BOBBY AND VICTIM WERE ALONE
16 IN YOUR HOUSE; IS THAT CORRECT?

17 A. ALONE IN MY HOUSE?

18 Q. YES, SIR. IS IT YOUR HOUSE WHERE YOU LIVE?

19 A. WHAT?

20 Q. WAS IT YOUR HOUSE?

21 A. IT WAS MINE.

22 Q. AND BOBBY MOVED IN WITH YOU; RIGHT?

23 A. RIGHT.

24 Q. AND VICTIM WOULD COME STAY WITH YOU?

25 A. YES; SHE WOULD COME DOWN OR EITHER HE'D GO UP AND

1 GET HER BECAUSE DAWN DIDN'T WANT TO BRING HER DOWN.

2 Q. YES, SIR. AND WHEN SHE WOULD STAY WITH YOU, YOU
3 WEREN'T WITH THEM ALL THE TIME, WERE YOU?

4 A. NO; NOT ALL THE TIME.

5 Q. YES, SIR. THAT'S ALL I'M ASKING. I'M NOT TRYING
6 TO MIX UP ANYTHING, OKAY?

7 A. ALL RIGHT.

8 Q. AND YOU SAID THAT VICTIM RESPECTED BOBBY; IS THAT
9 CORRECT?

10 A. YES.

11 Q. AND IT WAS OBVIOUS THAT SHE ADORED BOBBY REEVES; IS
12 THAT CORRECT?

13 A. YES, SHE DID.

14 Q. AND EVEN WHEN HER MOTHER COULDN'T CONTROL HER, SHE
15 WOULD LISTEN TO BOBBY REEVES?

16 A. YES.

17 Q. WERE YOU THERE THAT LAST WEEKEND WHEN SHE CAME,
18 JULY THE FOURTH?

19 A. THAT LAST WEEKEND?

20 Q. WHEN SHE VISITED YOU. WERE YOU THERE?

21 A. I WAS THERE. I'M SURE I'D BE THERE; YES.

22 Q. AND THERE WAS NO BIG FIGHT BETWEEN BOBBY AND
23 VICTIM, WAS THERE?

24 A. NO; NEVER.

25 Q. NEVER?

1 A. NEVER.

2 Q. SHE ADORED HIM?

3 A. YES.

4 Q. SHE WANTED HIM TO BE HER DADDY?

5 A. YES.

6 Q. AND THAT NEVER CHANGED?

7 A. THAT NEVER CHANGED.

8 Q. THAT'S ALL I HAVE.

9 THE COURT: ANYTHING ON RE-DIRECT?

10 MR. STOCKHOLM: NOTHING ON RE-DIRECT,
11 YOUR HONOR.

12 THE COURT: THANK YOU, SIR. YOU MAY STEP
13 DOWN. CALL YOUR NEXT WITNESS.

14 MR. STOCKHOLM: WE WOULD ASK THAT THE
15 WITNESS BE EXCUSED.

16 THE COURT: WITHOUT OBJECTION.

17 - - - - -

18 MR. STOCKHOLM: YOUR HONOR, WE WOULD CALL
19 BOBBY REEVES TO THE STAND.

20 - - - - -

21 WHEREUPON,

22 BOBBY JOE REEVES, WHO AFTER BEING FIRST
23 DULY SWORN TO TELL THE TRUTH,
24 TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

1 BY MR. STOCKHOLM:

2 Q. BOBBY, HOW OLD ARE YOU?

3 A. THIRTY-SIX.

4 Q. AND WHERE DO YOU LIVE RIGHT NOW?

5 A. I LIVE IN HOPKINS.

6 Q. HOW LONG HAVE YOU LIVED THERE?

7 A. I'VE LIVED THERE, BACK THERE FOR A LITTLE OVER A
8 YEAR NOW SINCE THE HOUSE BURNED.

9 Q. WHERE DO YOU WORK?

10 A. I WORK FOR SCE&G.

11 Q. OKAY. WHAT DO YOU DO FOR S.C.E.&G?

12 A. I'M A STATION ATTENDANT AT A POWER PLANT.

13 Q. AND WHAT IS A STATION ATTENDANT?

14 A. I ASSIST THE OPERATION. I DO THE WALK-DOWNS. I
15 CHECK THE SYSTEM AND MAKE SURE NOTHING IS WRONG
16 WITH IT AS WE ARE WORKING.

17 Q. NOW, HOW FAR DID YOU GO IN SCHOOL?

18 A. I WENT TO THE TWELFTH.

19 Q. AND LET'S JUST START; HOW DID YOU COME TO MEET DAWN
20 AND HER DAUGHTER, *VICTIM*?

21 A. A FRIEND OF OURS INTRODUCED US.

22 Q. WHAT YEAR WAS THAT; DO YOU REMEMBER?

23 A. I THINK IT WAS -- *VICTIM* WAS ABOUT EIGHT MONTHS OLD
24 WHEN I MET HER; MET HER AND DAWN.

25 Q. AND YOU CAN'T SAY WHAT THIS FRIEND SAID. BUT WHAT

1 DID YOU ALL HAVE IN COMMON WHEN YOU MET?

2 A. SHE NEEDED A PLACE, AND I WAS LOOKING FOR SOMEBODY
3 TO KEEP THE HOUSE CLEAN.

4 Q. AND DID SHE AND VICTIM MOVE IN?

5 A. YES, SHE DID.

6 Q. NOW, WHEN VICTIM MOVED IN, HOW DID YOU ALL GET
7 ALONG?

8 A. I GUESS WE GOT ALONG PRETTY GOOD.

9 Q. DID HER MOTHER WORK?

10 A. YES. WHEN SHE FIRST MOVED IN; YES.

11 Q. WERE THERE PERIODS WHEN SHE DIDN'T WORK?

12 A. OFF AND ON; YES.

13 Q. NOW WHEN VICTIM STARTED GOING TO SCHOOL, DID SHE
14 SEE ANY DOCTORS?

15 A. I THINK SHE SEEN THE GUIDANCE COUNSELOR.

16 Q. DID VICTIM HAVE ANY PROBLEMS?

17 A. YES, SHE DID.

18 Q. WHAT WERE THEY?

19 A. JUST SHE JUST, YOU KNOW, COULDN'T SIT STILL. SHE
20 DIDN'T WANT TO DO WHAT SHE WAS TOLD. PRETTY MUCH
21 SHE, JUST, YOU KNOW---

22 Q. NOW YOU'VE HEARD YOURSELF DESCRIBED AS A FATHER
23 FIGURE TO VICTIM. DO YOU THINK THAT'S ACCURATE?

24 A. YES.

25 Q. DID YOU TRY TO TAKE CARE OF HER?

- 1 A. YES, I DID.
- 2 Q. DID YOU BUY HER THINGS?
- 3 A. YES, I DID.
- 4 Q. WHAT KIND OF THINGS DID YOU BUY HER?
- 5 A. ALL KIND OF THINGS. BARBIE DOLLS, STUFFED ANIMALS,
- 6 ALL KIND OF DIFFERENT, YOU KNOW, CHRISTMAS AND---
- 7 Q. WHY DID YOU BUY HER THOSE THINGS?
- 8 A. BECAUSE HER MOM JUST COULDN'T DO IT.
- 9 Q. DID YOU EVER SEE VICTIM'S FATHER?
- 10 A. NO, I HAVE NEVER SEEN HIM.
- 11 Q. HE NEVER CALLED?
- 12 A. YES, HE CALLED. WELL, ACTUALLY HE NEVER CALLED.
- 13 SHE WOULD CALL HIM.
- 14 Q. NOW DID VICTIM HAVE TO GET ON MEDICATION?
- 15 A. YES, SHE DID.
- 16 Q. HOW DID THAT MEDICATION AFFECT HER?
- 17 A. WELL, THE FIRST ONE KIND OF, YOU KNOW, IT KIND OF
- 18 WORKED FOR A LITTLE WHILE. THEN SHE KIND OF SLOWED
- 19 DOWN. AND SHE WAS A LITTLE MORE HANDABLE. THE
- 20 NEXT ONE THEY PUT HER ON -- I DON'T KNOW WHAT THE
- 21 NAME OF IT WAS -- BUT SHE KIND OF GOT REAL
- 22 DEPRESSED.
- 23 Q. NOW, HOW LONG DID YOU AND DAWN AND VICTIM LIVE
- 24 TOGETHER?
- 25 A. THAT'S A VERY GOOD QUESTION. MORE THAN SIX YEARS.

1 I THINK SIX YEARS.

2 Q. AND YOU WERE ROOMMATES; CORRECT?

3 A. YES; ROOMMATES.

4 Q. YOU DID NOT DATE?

5 A. NO; WE DID NOT DATE.

6 Q. DURING THAT TIME, DID MRS. HAVE ANY
7 BOYFRIENDS?

8 A. YES, SHE DID.

9 Q. WHAT CAUSED YOU ALL TO SEPARATE AS ROOMMATES?

10 A. ONE OF THE BOYFRIENDS SHE HAD WAS STAYING
11 FULL-TIME, AND SHE WOULD NOT -- WELL, I ASKED HER
12 IF SHE WOULD GET HIM TO STAY JUST PART-TIME. YOU
13 KNOW, I WORKED NIGHT SHIFT. SHE COULD HAVE STAYED
14 THEN, BUT HE WAS THERE TOO LONG. AND I ASKED HER
15 NOT TO.

16 Q. HAD THIS HAPPENED BEFORE?

17 A. YES. WELL, NOT AS BAD.

18 Q. SO IT WAS SIMPLY ROOMMATES SEPARATED?

19 A. YES.

20 Q. HAD MRS. HAD SEVERAL BOYFRIENDS?

21 A. YES, SHE HAS.

22 Q. HOW MANY WOULD YOU ESTIMATE SHE HAD?

23 MS. CAMPBELL: OBJECTION, YOUR HONOR, TO
24 THE RELEVANCY OF THIS.

25 THE COURT: OVERRULED.

- 1 Q. HOW MANY?
- 2 A. I KNOW ELEVEN.
- 3 Q. NOW DID YOU EVER HAVE TO DISCIPLINE VICTIM?
- 4 A. YES, I DID.
- 5 Q. OKAY. HOW COME YOU HAD TO DO IT?
- 6 A. BECAUSE SOMETIMES SHE WAS JUST TOO WILD AND DAWN
- 7 COULDN'T HANDLE HER.
- 8 Q. BUT YOU'RE NOT HER FATHER; RIGHT?
- 9 A. NO.
- 10 Q. WOULD SHE LISTEN TO YOU?
- 11 A. YES, SIR.
- 12 Q. BEFORE DETECTIVE JONES CAME TO ARREST YOU, DID YOU
- 13 KNOW THERE WAS ANY PROBLEM?
- 14 A. NO, I DID NOT.
- 15 Q. WHAT DO YOU THINK OF THESE CHARGES?
- 16 A. I CAN'T SAY WHAT I REALLY THINK OF THEM.
- 17 Q. DID YOU DO IT?
- 18 A. NO, I DID NOT.
- 19 Q. HAD THERE EVER BEEN A COMPLAINT TO YOUR KNOWLEDGE
- 20 ABOUT HOW YOU TREATED VICTIM DURING THE TIME THAT
- 21 YOU LIVED TOGETHER WITH HER?
- 22 A. NO.
- 23 Q. HOW HAS IT AFFECTED YOUR LIFE?
- 24 A. IT'S KIND OF TURNED IT UPSIDE DOWN. IT'S MADE IT
- 25 HARD TO DEAL WITH.

1 Q. VERY CLEARLY, DID YOU EVER TOUCH THAT LITTLE GIRL?

2 A. NO.

3 Q. PLEASE ANSWER ANY QUESTIONS DEFENSE HAS FOR YOU.

4 THE COURT: CROSS-EXAMINATION?

5 CROSS-EXAMINATION

6 BY MS. CAMPBELL:

7 Q. MR. REEVES, YOU FIRST MET *VICTIM* WHEN SHE WAS EIGHT
8 MONTHS OLD?

9 A. YES, MA'AM.

10 Q. AND YOU LIVED WITH HER FOR THE NEXT SIX YEARS?

11 A. YES, MA'AM.

12 Q. SHE CONSIDERED YOU A FATHER?

13 A. YES.

14 Q. SHE CALLED YOU MY BOBBY?

15 A. YES, SHE DID.

16 Q. AND YOU WERE VERY CLOSE WITH HER?

17 A. YES.

18 Q. AND AS THE YEARS CONTINUED, EVEN AFTER YOU MOVED
19 OUT, AFTER THIS BREAK-UP OR THIS PARTING OF WAYS
20 WITH HER MOTHER, YOU CONTINUED TO SEE HER?

21 A. YES, I DID.

22 Q. HOW OFTEN?

23 A. ONCE EVERY TWO WEEKS. SOMETIMES SHE MIGHT, YOU
24 KNOW, DAWN MIGHT CALL AND SAY CAN YOU GET HER THIS
25 WEEKEND. OR IF I WAS OFF, IT MIGHT BE THREE TIMES

1 A MONTH.

2 Q. WAS THIS A RELATIONSHIP THAT YOU PERPETUATED
3 BECAUSE HER MOTHER WAS JUST DUMPING HER CHILD ON
4 YOU?

5 A. OH, NO.

6 Q. BECAUSE YOU REALLY CARED ABOUT VICTIM?

7 A. YES, I DID.

8 Q. AND YOU WANTED TO CONTINUE TO SEE VICTIM; IS THAT
9 CORRECT?

10 A. YES. I THOUGHT A LOT OF VICTIM.

11 Q. DO YOU HAVE ANY CHILDREN OF YOUR OWN, SIR?

12 A. NO, I DO NOT.

13 Q. YOU DON'T HAVE ANY?

14 A. NO.

15 Q. SO YOU CONTINUED THIS RELATIONSHIP WITH THIS LITTLE
16 GIRL?

17 A. YES.

18 Q. AND OVER THE PERIODS OF THOSE YEARS AFTERWARDS, SHE
19 WOULD COME TO VISIT YOU AT JESSIE WHEATON'S HOUSE?

20 A. YES.

21 Q. SO IT WOULD BE OFTEN YOU AND MR. WHEATON AND Victim
22 IN THE HOUSE?

23 A. YES.

24 Q. AND THEN IF MR. WHEATON HAD TO GO TO WORK OR
25 SOMETHING, HE WOULDN'T BE THERE?

1 A. YES.

2 Q. DURING THIS PERIOD OF TIME -- YOU TALKED ABOUT
3 VICTIM'S BEHAVIOR WAS GETTING TO BE A PROBLEM?

4 A. NOT WITH ME.

5 Q. NOT WITH YOU?

6 A. NO.

7 Q. IT WASN'T A PROBLEM WITH YOU; IT WAS JUST A PROBLEM
8 WITH HER MOTHER?

9 A. I GUESS.

10 Q. BECAUSE SHE WOULD LISTEN TO YOU, WOULDN'T SHE, SIR?

11 A. YES, SHE WOULD.

12 Q. AND SHE WOULD DO WHAT YOU TOLD HER?

13 A. YES.

14 Q. AND THAT WAS VERY IMPORTANT THAT YOU BE ABLE TO
15 DISCIPLINE THIS CHILD?

16 A. NO.

17 Q. THAT WASN'T IMPORTANT?

18 A. NOT AS FAR AS WHAT YOU'RE TRYING TO SAY.

19 Q. WHAT AM I TRYING TO SAY, SIR? I'M SORRY.

20 A. I DISPLINED THE CHILD BECAUSE SHE NEEDED IT.

21 Q. BECAUSE SHE NEEDED IT?

22 A. YES.

23 Q. AND WHEN SHE NEEDED DISCIPLINE, SHE WOULD LISTEN TO
24 YOU, AND SHE WOULDN'T LISTEN TO ANYBODY ELSE; IS
25 THAT CORRECT?

1 A. THAT'S ABOUT RIGHT; YES, MA'AM.

2 Q. BECAUSE SHE LOOKED UP TO YOU AS A FATHER FIGURE?

3 A. YES, MA'AM.

4 Q. AND SOME PEOPLE MIGHT EVEN CHARACTERIZE IT AS SHE
5 WORSHIPED THE GROUND YOU WALKED ON?

6 A. I GUESS.

7 Q. AND YOU MOVED OUT?

8 A. YES.

9 Q. DURING THAT LAST VISIT WHEN SHE CAME TO VISIT YOU
10 THAT LAST JULY THE FOURTH, HER MOTHER BROUGHT HER
11 UP AND DROPPED HER OFF?

12 A. NO, SHE DID NOT.

13 Q. SHE DIDN'T?

14 A. NO, SHE DID NOT.

15 Q. HOW DID ~~VICTIM~~ GET TO YOUR HOUSE?

16 A. I WENT TO AIKEN AND GOT HER.

17 Q. SO YOU WENT AND GOT HER?

18 A. WE MET IN AIKEN AND HAD DINNER.

19 Q. OKAY. DID SHE END UP AT YOUR HOUSE THAT WEEKEND?

20 A. YES, SHE DID.

21 Q. AND WHO ALL WAS AT YOUR HOUSE WHILE SHE WAS THERE
22 THAT WEEKEND?

23 A. ME AND HER AND OFF AND ON JESSIE.

24 Q. AND DID YOU NOTICE ANY CHANGES IN HER BEHAVIOR WHEN
25 SHE WAS THERE THAT WEEKEND?

1 A. NOT REALLY.

2 Q. WHAT TYPES OF THINGS DID YOU DO?

3 A. WELL, WE WENT FISHING THAT WEEKEND.

4 Q. YOU WENT FISHING?

5 A. YES, WE DID.

6 Q. WHAT ELSE DID YOU DO?

7 A. PROBABLY WE WENT TO -- WELL, THE FIRST THING WE
8 DID, WE GET MOVIES WHENEVER SHE COMES UP. WE
9 ALWAYS GO BY AND GET HER SOME MOVIES FROM THE VIDEO
10 STORES. THAT'S THE FIRST THING WE DO WHEN WE GET
11 BACK TO TOWN. AND THEN, LIKE I SAID, WE DONE SOME
12 FISHING. I THINK WE EVEN SAW A MOVIE THAT WEEKEND.

13 Q. HOW DID ~~VICTIM~~ GET HOME ON JULY THE FOURTH?

14 A. I TOOK HER HOME.

15 Q. YOU TOOK HER BACK TO AUGUSTA?

16 A. YES, I DID.

17 Q. AND DURING THE RIDE HOME, OR AT ANY POINT, DID SHE
18 START ACTING DIFFERENTLY TOWARDS YOU?

19 A. NO.

20 Q. WERE YOUR CONSERVATIONS JUST AS THEY ALWAYS WERE?

21 A. YES, MA'AM.

22 Q. DID SHE SEEM RESENTFUL TOWARDS YOU?

23 A. NO, SHE DID NOT.

24 Q. THERE'S BEEN TESTIMONY ABOUT HOW SHE'S JEALOUS OF
25 YOUR GIRLFRIENDS AND THINGS LIKE THAT. IS THAT

1 TRUE?

2 A. YES, IT IS.

3 Q. DID SHE HAVE ANY REASON TO BE JEALOUS OF ANY
4 GIRLFRIENDS THAT WEEKEND?

5 A. MY GIRLFRIENDS? NO. WELL, I SAID I'M GOING TO
6 START DATING A GIRL THAT WEEKEND. THERE WAS A GIRL
7 THAT WORKS AT THE RESTAURANT WHERE WE GO ALL THE
8 TIME TO EAT. AND WE WENT THERE AND ATE. AND I
9 TOLD HER I WAS GOING TO START DATING HER.

10 Q. DO YOU RECALL WHEN YOU GAVE A STATEMENT TO THE
11 POLICE BACK WHEN THIS HAPPENED?

12 A. YES, I DO.

13 Q. AND THEY ASKED YOU WHY DO YOU THINK ~~VICTIM~~ WOULD
14 SAY THINGS LIKE THIS?

15 A. YES.

16 Q. AND YOU TOLD THEM YOU HAD NO IDEA?

17 A. I HAVE NO IDEA.

18 Q. BUT NOW YOU'RE SAYING THAT IT MIGHT BE BECAUSE YOU
19 TOLD THIS CHILD YOU WERE GOING TO START DATING
20 SOMEONE?

21 A. IT COULD BE.

22 Q. AND THIS IS THE FIRST TIME YOU TOLD ANYBODY THAT?

23 A. NO.

24 Q. OKAY. WHEN'S THE FIRST TIME YOU TOLD ANYBODY THAT
25 YOU THINK THE REASON ~~VICTIM~~ MADE UP THESE

1 HORRENDOUS ALLEGATIONS AGAINST YOU IS BECAUSE YOU
2 TOLD THIS TEN YEAR OLD YOU MIGHT START DATING
3 SOMEONE?

4 A. I'VE BEEN SAYING THAT ALL ALONG AFTER I, YOU KNOW,
5 SAT DOWN AND THOUGHT ABOUT IT.

6 Q. AFTER YOU SAT DOWN AND THOUGHT ABOUT IT?

7 A. YES. I SPENT SEVEN DAYS IN THE DETENTION CENTER
8 THINKING ABOUT THIS.

9 Q. OKAY. BUT WHEN THE POLICE ASKED YOU ABOUT IT BACK
10 RIGHT WHEN THEY ARRESTED YOU, YOU DIDN'T TELL THEM
11 THAT?

12 A. HE ASKED ME WHAT WOULD MAKE A TEN YEAR OLD GIRL
13 LIE. AND I SAID RIGHT THEN I DIDN'T KNOW. AND
14 RIGHT THEN, I DIDN'T.

15 Q. DO YOU REMEMBER SIGNING THIS STATEMENT, SIR?

16 A. YES, MA'AM, I DO.

17 Q. YOU DO?

18 A. YES, MA'AM.

19 Q. AND IN THIS STATEMENT, HE ASKED YOU SPECIFICALLY
20 "WHY DO YOU THINK VICTIM WOULD SAY THESE THINGS IF
21 YOU'RE TELLING ME IT DIDN'T HAPPEN?"

22 A. AND LIKE I SAID AGAIN, AT THE TIME I DID NOT HAVE
23 NO IDEA WHY SHE WOULD SAY SOMETHING LIKE THAT.

24 Q. DO YOU REMEMBER WHEN YOU ASKED THEM -- WELL, LET ME
25 ASK YOU THIS, SIR, NOW THAT YOU'VE HAD A CHANCE TO

1 THINK ABOUT IT, AND THIS COULD BE THE REASON; HOW
2 DID ~~VICTIM~~ REACT WHEN YOU SAID THAT YOU WERE GOING
3 TO START DATING SOMEONE?

4 A. THE WAY SHE ALWAYS ACTED.

5 Q. HOW WAS THAT?

6 A. SHE ALWAYS SAID NO.

7 Q. SHE SAID NO?

8 A. YES.

9 Q. SO SHE WAS UPSET?

10 A. YES.

11 Q. SO SHE GOT VISIBLY UPSET. WHEN DURING THAT WEEKEND
12 DID YOU TELL HER?

13 A. THAT JULY THE FOURTH WEEKEND WHEN I TOOK HER HOME.
14 WE WENT TO TWO MOVIES AND DINNER. ME AND HER
15 MOTHER SAT DOWN THERE AND ACTUALLY TALKED TO ~~VICTIM~~
16 ABOUT ME STARTING TO DATE.

17 Q. OKAY. SO NOW THE STORY IS YOU ACTUALLY TALKED TO
18 HER MOTHER ABOUT IT AS WELL?

19 A. YES.

20 Q. AND, AGAIN, THIS IS THE FIRST TIME THIS HAS EVER
21 COME TO LIFE?

22 A. THIS IS THE FIRST TIME I'VE EVER HAD ANYTHING TO DO
23 SINCE THAT RIGHT THERE.

24 Q. WELL, SIR, YOU WERE ARRESTED. YOU SAID YOU SPENT
25 TIME IN THE DETENTION CENTER; RIGHT?

1 A. YES, MA'AM.

2 Q. SO AFTER YOU THOUGHT ABOUT IT -- AND YOU KNEW THESE
3 WERE SERIOUS CHARGES?

4 A. YES, MA'AM, I DO.

5 Q. AND YOU FIGURED OUT WHY VICTIM COULD BE MAKING UP
6 THIS. DID YOU GO TO THIS INVESTIGATOR AND TELL HIM
7 "I KNOW WHY SHE MADE THIS UP?"

8 A. NO, I DIDN'T.

9 Q. SO THE STORY IS YOU TOLD VICTIM. AT WHAT POINT DID
10 YOU TELL VICTIM THAT YOU WERE GOING TO START DATING
11 THE WAITRESS?

12 A. WHEN WE WERE SITTING IN THE RESTAURANT SATURDAY.

13 Q. SATURDAY?

14 A. YES.

15 Q. WAS HER MOTHER THERE?

16 A. NO, HER MOTHER WAS NOT. HER MOTHER DID NOT DROP
17 HER OFF.

18 Q. SO HER MOTHER WAS NOT THERE AND PICKED THE CHILD
19 UP; CORRECT?

20 A. YES; ON THURSDAY NIGHT.

21 Q. AND THIS IS ON SATURDAY?

22 A. YES, MA'AM.

23 Q. AND YOU TELL THIS CHILD WHO IS VERY JEALOUS OF YOU
24 THAT YOU'RE GOING TO START DATING SOMEONE?

25 A. YES, I DID.

1 Q. AND YOU NOTICED -- AND NOW YOU REMEMBER -- YOU
2 NOTICE THAT HER DEMEANOR CHANGED. SHE SAID NO?

3 A. SHE JUST SAID NO.

4 Q. DID SHE BECOME ANGRY?

5 A. NO.

6 Q. SHE DIDN'T BECOME ANGRY?

7 A. SHE JUST SAID NO, I'M NOT, AND THAT'S ALL SHE DOES.

8 Q. SO THIS WAS SOMETHING YOU HAD TOLD HER IN THE PAST
9 THAT YOU WERE GOING TO START DATING PEOPLE?

10 A. WELL, I PICKED AT HER A LITTLE BIT.

11 Q. WAS THIS TIME DIFFERENT FROM THE OTHER TIMES THAT
12 YOU PICKED HER UP?

13 A. YES, BECAUSE THIS TIME I WAS GOING TO START DATING
14 A GIRL.

15 Q. WOULD SHE HAVE KNOWN THAT?

16 A. WELL, YES, I HOPE SO THIS TIME BECAUSE WE TALKED TO
17 HER MOTHER.

18 Q. SO THIS HAPPENED ON SATURDAY. AND THEN THE REST OF
19 WEEKEND HER DEMEANOR CHANGED; SHE WAS UPSET?

20 A. NO.

21 Q. SHE WAS FINE?

22 A. YES.

23 Q. WAS SHE UPSET AT ALL WHEN YOU TOOK HER HOME?

24 A. NO. THE ONLY THING SHE WAS UPSET ABOUT BECAUSE HER
25 MOTHER DIDN'T COME FOR JULY THE FOURTH DINNER.

1 Q. DO YOU REMEMBER WHEN THE POLICE CAME AND ARRESTED
2 YOU?

3 A. YES, I DO.

4 Q. AND THAT WAS ALMOST TWO-AND-A-HALF MONTHS AFTER YOU
5 HAD SEEN VICTIM?

6 A. YES.

7 Q. DURING THAT TIME PERIOD, DID YOU THINK IT STRANGE
8 THAT YOU WEREN'T SEEING VICTIM WHO YOU SAW EVERY
9 OTHER WEEK?

10 A. YES, I DID.

11 Q. AND WHY DID YOU THINK YOU WEREN'T SEEING VICTIM ANY
12 MORE?

13 A. I HAVE NO IDEA.

14 Q. DID YOU MAKE ATTEMPTS TO GO SEE HER?

15 A. NO, I DID NOT.

16 Q. DID YOU MAKE PHONE CALLS TO GO PICK HER UP WHEN YOU
17 RETURNED FROM KANSAS?

18 A. I CALLED DAWN THE NIGHT I RETURNED FROM KANSAS
19 BECAUSE SHE WANTED TO BORROW SOME MONEY FROM ME.

20 Q. OKAY. BUT THAT PHONE CALL WASN'T ABOUT YOU COMING
21 TO GET VICTIM AGAIN?

22 A. IT WAS NOT A CALL ABOUT COMING TO GET VICTIM.

23 Q. AND OVER THE NEXT TWO MONTHS, YOU DIDN'T GET TO SEE
24 VICTIM AND THAT WAS UNUSUAL, WASN'T IT?

25 A. NO; BUT I WAS WORKING, TOO.

1 Q. YOU WERE WORKING?

2 A. YES, MA'AM. I WAS WORKING A LOT THEN.

3 Q. OKAY. SO IT WASN'T -- YOU HAD WORKED BEFORE AND
4 SEEN VICTIM, THOUGH, RIGHT?

5 A. YES.

6 Q. AND YOU HAD DAYS OFF, DIDN'T YOU?

7 A. DURING THE WEEK; YES, MA'AM.

8 Q. DO YOU REMEMBER WHEN YOU WERE ARRESTED BY THIS
9 INVESTIGATOR?

10 A. YES, I DO.

11 Q. AND DO YOU REMEMBER WHAT YOU SAID TO HIM RIGHT
12 THERE WHEN HE ARRESTED YOU?

13 A. NOT RIGHT OFF.

14 Q. YOU DON'T REMEMBER?

15 A. NO.

16 Q. DO YOU REMEMBER WHEN HE CAME IN WITH THE ARREST
17 WARRANTS, AND YOU SAID "I KNEW SOMETHING WAS UP
18 SINCE SHE WOULDN'T TAKE MY CALLS AND HADN'T BEEN TO
19 SEE ME?"

20 A. IT DID NOT SAY THAT THAT I KNOW OF.

21 Q. YOU DIDN'T SAY THAT?

22 A. NOT THAT I KNOW OF.

23 Q. YOU DIDN'T SAY THAT TO THIS SERGEANT RIGHT HERE?
24 (INDICATING.)

25 A. NOT TO HIM THAT I KNOW OF.

1 Q. YOU DIDN'T TELL HIM THAT YOU KNEW SOMETHING WAS UP?

2 A. NO.

3 Q. SO VICTIM WAS UPSET BECAUSE YOU TOLD HER YOU WERE
4 GOING TO DATE SOMEONE?

5 A. VICTIM WAS ALWAYS UPSET ANY TIME I SAID SOMETHING
6 LIKE THAT.

7 Q. SO THIS WASN'T UNUSUAL OR ANYTHING DIFFERENT?

8 A. NO.

9 Q. SO YOU TEASED HER ABOUT DATING OTHER PEOPLE ALL THE
10 TIME?

11 A. FROM TIME TO TIME; YES.

12 Q. AND THIS WEEKEND YOU WERE TEASING HER TOO?

13 A. NO, I WAS NOT TEASING HER.

14 Q. BUT THIS WEEKEND WHEN YOU TOOK HER, EVERYTHING WAS
15 FINE?

16 A. YES.

17 Q. NOTHING WAS DIFFERENT?

18 A. NOTHING WAS DIFFERENT.

19 Q. IT WAS THE SAME AS IT HAD ALWAYS BEEN?

20 A. YES, MA'AM.

21 Q. SHE LOOKED UP TO YOU AS A FATHER FIGURE?

22 A. YES.

23 Q. YOU WERE THE ONE THAT COULD CONTROL HER?

24 A. YES.

25 Q. YOU WERE THE ONE SHE LOOKED UP TO AND WOULD LISTEN

1 TO?

2 A. DO WHAT NOW?

3 Q. SHE WOULD LOOK UP TO YOU AND LISTEN TO YOU?

4 A. YES, SHE WOULD.

5 Q. WHEN SHE WOULDN'T ANYBODY ELSE; NOT EVEN---

6 A. MOST OF THE TIME, YES, MA'AM.

7 MS. CAMPBELL: THAT'S ALL I HAVE.

8 THE COURT: RE-DIRECT?

9 MR. STOCKHOLM: JUST BRIEFLY, YOUR HONOR.

10 RE-DIRECT EXAMINATION

11 BY MR. STOCKHOLM:

12 Q. YOU DIDN'T STOP AND SEE HER ON THE WAY BACK FROM
13 KANSAS, BOBBY?

14 A. NO, I DID NOT.

15 Q. AND HOW COME?

16 A. WHEN I WAS COMING BACK THROUGH, I CALLED HER
17 MOTHER. I WAS IN ATLANTA. I TOLD HER I WAS COMING
18 BACK THROUGH. AND I ASKED HER IF SHE WANTED THE
19 MONEY. AND SHE SAID, "WELL, CALL ME BACK WHEN YOU
20 GET CLOSER." AND WHEN I CALLED HER BACK WHEN I GOT
21 CLOSER, SHE ASKED IF ~~VICTIM~~ WANTED TO GO HOME WITH
22 ME, AND THIS IS, YOU KNOW, NINE OR TEN O'CLOCK AT
23 NIGHT. SHE SAID SHE HAD TO COME BACK THE NEXT
24 DAY. SHE WANTED TO GIVE ME THE MONEY -- I WAS
25 GOING TO GIVE HER SOME MONEY. SHE HAD A RADIO THAT

1 GIVE YOU THE CASE TO DECIDE. SO TAKE ABOUT FIVE
2 MINUTES OR SO, TEN MINUTES.

3 (AT THIS TIME JURY RETIRES TO JURY ROOM.)

4 THE COURT: MOTIONS, MR. STOCKHOLM?

5 MR. STOCKHOLM: I RENEW MY PRIOR MOTIONS,
6 YOUR HONOR, FOR THE RECORD.

7 THE COURT: ALL RIGHT. I WOULD NOTE THAT
8 MOTION AND DENY IT. ANY REQUESTS TO CHARGE
9 SPECIFICALLY?

10 MR. STOCKHOLM: YOUR HONOR, I ONLY HAVE
11 ONE.

12 THE COURT: ALL RIGHT.

13 MR. STOCKHOLM: YOUR HONOR, MAY APPROACH
14 THE BENCH?

15 THE COURT: SURE.

16 (AT THIS TIME BENCH CONFERENCE IS HELD.)

17 THE COURT: DID THE STATE HAVE A POSITION
18 ON THAT?

19 MS. CAMPBELL: YES, SIR. I DON'T THINK
20 IT APPLIES TO THE LAW IN THIS CASE.

21 THE COURT: TELL ME HOW IT DOES.

22 MR. STOCKHOLM: YOUR HONOR, PART OF THE
23 STATE'S THEORY IS THIS HAS BEEN GOING ON OVER A
24 TIME SINCE *VICTIM* WAS FOUR YEARS OLD. SHE'S BEEN
25 SEEN BY GUIDANCE COUNSELORS, TEACHERS. THERE

1 REPORT IT. SO ESSENTIALLY I WOULD BE COMMENTING ON
2 THE FACTS. I WOULD DECLINE TO DO THAT. YOU CAN
3 CERTAINLY ARGUE THAT BECAUSE, I MEAN, THAT'S
4 CLEARLY AN ISSUE IN THE CASE. THERE'S NO
5 CIRCUMSTANTIAL EVIDENCE IN THIS CASE.

6 MS. CAMPBELL: YOUR HONOR, THE MEDICAL
7 EVIDENCE WOULD BE CIRCUMSTANTIAL. THE MEDICAL
8 TESTIMONY OF DR. NASH; THE TEAR; THE HEALING SCAR
9 RATHER. THE CIRCUMSTANTIAL EVIDENCE OF
10 PENETRATION.

11 THE COURT: ALL RIGHT.. ANYTHING ELSE?

12 MR. STOCKHOLM: NOTHING SPECIFIC FROM THE
13 DEFENSE, YOUR HONOR.

14 MS. CAMPBELL: JUDGE, FOR CLARIFICATION;
15 AS PART OF YOUR GENERAL CHARGE ON THE CSC, YOU'LL
16 DO THE STATUTE -- YOU'LL INCLUDE THE STATUTE ABOUT
17 VICTIM MAY NOT BE -- THAT'S WHAT YOU DID LAST TIME.

18 THE COURT: YES, I'LL DO THAT.

19 MS. CAMPBELL: OKAY.

20 THE COURT: LET'S TAKE ABOUT FIVE MINUTES
21 TO LET YOU GET YOUR THOUGHTS TOGETHER; THEN WE'LL
22 COME BACK FOR ARGUMENT.

23 MS. CAMPBELL: THANK YOU.

24 (BRIEF RECESS.)

25 THE COURT: ALL RIGHT. BRING THE JURY

MOTIONS

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1 IN, PLEASE.

2 THE BAILIFF: YOUR HONOR, THE JURY IS
3 PRESENT.

4 THE COURT: THANK YOU.

5 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

6 THE COURT: ALL RIGHT. MR. FOREMAN AND
7 LADIES AND GENTLEMEN OF THE JURY, YOU'VE HEARD ALL
8 THE TESTIMONY UPON WHICH YOU'LL BE ENTITLED TO BASE
9 YOUR DECISION. SO FOR THE NEXT FEW MINUTES, THE
10 ATTORNEYS GET TO MAKE A CLOSING SUMMATION TO YOU.
11 DURING THAT TIME, THEY CAN DISCUSS WITH YOU WHAT
12 THEY THINK THE EVIDENCE SHOWS OR DOESN'T SHOW AS
13 THE CASE MAY BE. THEY CAN ALSO DISCUSS WITH YOU
14 THEIR VIEW OF THE LEGAL PRINCIPLES IN THE CASE.
15 THEY'VE OBVIOUSLY LIVED A LOT LONGER WITH THE CASE
16 THAN YOU AND I HAVE. SO WHAT THEY HAVE TO SAY TO
17 YOU IS IMPORTANT. HOWEVER, A COUPLE OF THINGS
18 ABOUT THE ATTORNEYS' ARGUMENTS TO YOU. FIRST OF
19 ALL, WHAT THEY SAY TO YOU DOES NOT AMOUNT TO
20 EVIDENCE. IT'S MERELY THEIR OPINION OF THE
21 EVIDENCE. YOU BASE YOUR DECISION ON WHAT YOU HEARD
22 OR DIDN'T HEAR FROM THE WITNESS STAND. SECONDLY,
23 IF THEIR VERSION OF FACTS DIFFERS FROM YOUR
24 UNANIMOUS VERSION, OBVIOUSLY YOUR OPINION COUNTS IN
25 THIS CASE.

1 THIRDLY, IF THEIR VERSION OF THE
2 LEGAL PRINCIPALS DIFFERS FROM MY INSTRUCTION, THEN
3 I'D ASK YOU TO FOLLOW MY INSTRUCTIONS BECAUSE JUST
4 LIKE YOU'RE ENTITLED TO JUDGE THE FACTS IN THIS
5 CASE, I'M ENTITLED TO JUDGE THE LAW IN THE CASE.
6 THE ORDER OF ARGUMENT IS THE STATE GETS TO OPEN,
7 AND THE DEFENSE GETS AN ARGUMENT, AND THEN THE
8 STATE GETS A CLOSING ARGUMENT. AFTER THAT, I'LL
9 GIVE YOU THE CHARGE AND THEN GIVE YOU THE CASE TO
10 DECIDE. MADAM SOLICITOR?

11 - - - - -
12 CLOSING ARGUMENT

13 BY MS. CAMPBELL

14 LADIES AND GENTLEMEN, THE FIRST
15 THING I'D LIKE TO DO IS TAKE THIS OPPORTUNITY TO THANK
16 YOU FOR YOUR CONCERN IN THIS CASE BECAUSE THIS ISN'T A
17 MURDER CASE. THIS IS AN IMPORTANT CASE OF BOBBY JOE
18 REEVES BECAUSE THIS IS HIS DAY IN COURT. AND THIS IS
19 VICTIM'S DAY IN COURT. SO I WANT TO THANK YOU
20 FOR YOUR SERVICE. THE TESTIMONY IN THIS CASE IS GOING
21 TO MOVE QUICKLY BECAUSE THE EVIDENCE IS GOING TO BE IN
22 DISPUTE. SO IT HAS MOVED QUICKLY.

23 AS THE JUDGE TOLD YOU AT THIS
24 POINT I WANT TO TALK TO YOU A LITTLE BIT ABOUT THE LAW
25 IN THE CASE, AND THEN THE DEFENSE IS GOING TO GET UP AND

1 ARGUE TO YOU. THEN YOU'LL HEAR FROM MRS. PELLIZZARI
2 ABOUT THE FACTS. LET ME JUST TELL YOU FIRST, IF I SAY
3 ANYTHING, IF I MISQUOTE THE LAW IN ANY WAY, IT'S NOT
4 INTENTIONAL. TAKE THE LAW AS JUDGE FLOYD GIVES IT TO
5 YOU AS I'M DISCUSSING PRINCIPALS. WHATEVER HE SAYS
6 GOES. AND IN THAT SAME WAY, AS YOU LISTEN TO THE
7 ARGUMENTS, IF EITHER SIDE MISCHARACTERIZES THE FACTS,
8 THE TESTIMONY AS YOU'VE HEARD IT, YOU WIN BECAUSE THERE
9 ARE SEVERAL ROLES IN THIS COURTROOM. THE STATES ROLE IS
10 TO PRESENT THE ADMISSIBLE, RELEVANT EVIDENCE IN THIS
11 CASE. THE DEFENSE'S ROLE IS OBVIOUS. THE JUDGE'S ROLE
12 IS TO DETERMINE WHAT IS ADMISSIBLE, WHAT YOU'RE ABLE TO
13 HEAR AS WELL AS TO GIVE YOU THE LAW. THAT LAW YOU'RE
14 GOING TO HAVE TO TAKE BACK THERE, AND YOU'RE GOING TO
15 HAVE TO APPLY THE FACTS.

16 BUT LET'S GET ONE THING STRAIGHT,
17 LADIES AND GENTLEMEN. THE MOST IMPORTANT ROLE IN THIS
18 COURTROOM IS YOURS. THE TWELVE OF YOU INDIVIDUALLY AND
19 ULTIMATELY ARE SELECTED BECAUSE YOU HAVE TO DETERMINE
20 WHO ABUSED THAT LITTLE GIRL. YOU HAVE TO DETERMINE WHAT
21 HAPPENED IN THAT HOUSE OUT IN HOPKINS BACK ON THE
22 WEEKENDS OF JULY FOURTH AND THE 30TH. YOUR ROLE IS BY
23 FAR THE MOST IMPORTANT. AS THE JUDGE TOLD YOU, YOU HAVE
24 NOW HEARD ALL THE EVIDENCE UPON WHICH YOU CAN BASE YOUR
25 VERDICT; THE EVIDENCE. AND THE EVIDENCE IS TESTIMONY,

1 LADIES AND GENTLEMEN, IN THIS CASE AS IN MOST CHILD
2 ABUSE CASES BECAUSE WHEN PEOPLE COMMIT CRIMES SUCH AS
3 THIS, THERE AREN'T VIDEO TAPES. THERE AREN'T EYE
4 WITNESSES OTHER THAN THE VICTIM. SO THE TESTIMONY IS
5 THE EVIDENCE; IT'S NOT QUESTIONS BY THE ATTORNEYS. IT'S
6 NOT SPECULATION OR CONJECTURE. IT NOT SOME FISHING
7 EXPEDITION. IT'S NOT JUST PLAIN WISHFUL THINKING ON
8 THAT PART. THE TESTIMONY, THE EVIDENCE, SWORN
9 TESTIMONY. AND THAT'S WHAT YOU HAVE TO BASE YOUR
10 VERDICT UPON IN THIS COURTROOM.

11 NOW I WANT TO TAKE THIS MINUTE TO
12 APOLOGIZE IF I'VE OFFENDED ANYONE. I GET CAUGHT UP IN
13 THE LEGAL STUFF, AND AT TIMES TESTIMONY IS ADMISSIBLE
14 AND WHEN IT'S NOT ADMISSIBLE. YOU'VE HEARD PARTS OF THE
15 CONVERSATION AND THE HEARSAY EXCEPTION TESTIMONY. IT
16 MAKES THE TESTIMONY SOMEWHAT STILL FAIRLY HARD TO
17 FOLLOW. AT TIMES I'VE BEEN SLOPPY; INARTFUL, CLUMSY IN
18 MY QUESTION. PLEASE DON'T HOLD THAT AGAINST
19 VICTIM. NOW IN CRIMINAL CASES, THEY'RE SOMEWHAT UNIQUE
20 BECAUSE IN EVERY CRIMINAL CASE, THE DEFENDANT HAS AN
21 ABSOLUTE RIGHT, AS HE SHOULD, TO CONFRONT THE WITNESSES
22 IN THE CASE. THE ONLY EXCEPTION IS IN CERTAIN CASES
23 SUCH AS THIS WHEN CHILDREN ARE VULNERABLE. AND THERE IS
24 A SPECIAL EXCEPTION WHERE A CHILD IS ALLOWED TO TESTIFY
25 OUTSIDE YOUR PRESENCE INITIALLY. BUT OTHER THAN THAT,

1 IT'S LIVE TESTIMONY THAT YOU HEAR. WE MUST BRING FORTH
2 EVERYBODY, LAY WITNESSES, EXPERTS; AND THE PURPOSE OF
3 THAT IS VERY IMPORTANT, LADIES AND GENTLEMEN, BECAUSE
4 YOU DIDN'T GET THE REPORTS. YOU DON'T GET THE TEST
5 RESULTS, AND THE REASON IS BECAUSE YOU HAVE THE RIGHT
6 AND YOU HAVE THE DUTY, TO JUDGE TO CREDIBILITY OF EACH
7 AND EVERY WITNESS THE STATE BRINGS BEFORE YOU. AND IN
8 THAT SAME VEIN, IN CRIMINAL CASES THE STATE CAN BRING
9 FORTH SEVERAL WITNESSES. WE CAN'T BRING FORTH WITNESS
10 AFTER WITNESS. SO YOU HAVE HEARD FROM ALL THE RELATIVE
11 WITNESSES WHO HAVE SOMETHING TO ADD.

12 NOW, THE JUDGE HAS TOLD YOU, AND
13 AS I TOLD YOU IN MY OPENING STATEMENT, THE BURDEN OF
14 PROOF IS ON THE STATE OF SOUTH CAROLINA, AND IT SHOULD
15 BE, TO PROVE THIS DEFENDANT, BOBBY JOE REEVES, GUILTY
16 BEYOND A REASONABLE DOUBT. THAT'S HOW IT IS IN OUR
17 COUNTRY, AND THAT'S HOW IT SHOULD BE. AND IN THIS CASE,
18 LADIES AND GENTLEMEN, THAT IS WHAT THE QUESTION IS.
19 WHAT IS GUILTY BEYOND A REASONABLE DOUBT? AND THE
20 COURTS IN OUR STATE AND IN OUR COUNTRY HAVE GIVEN SOME
21 OF THE FOLLOWING DEFINITIONS TO HELP YOU DETERMINE WHAT
22 IS GUILTY BEYOND A REASONABLE DOUBT. IT'S A CASE CALLED
23 STATE STATE VS. DARBY. OUR SUPREME COURT HAS ADOPTED
24 THIS DEFINITION: AND LISTEN TO THE JUDGE AS HE
25 EXPLAINS. WHAT IS REASONABLE DOUBT? AND HE'LL TELL YOU

1 ABOUT THE DIFFERENT LEVELS OF PROOF. BUT IN A CRIMINAL
2 CASE, PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT
3 LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT.

4 NOW THERE ARE VERY FEW THINGS IN
5 THIS WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY. AND IN
6 CRIMINAL CASES, THE LAW DOES NOT REQUIRE PROOF THAT
7 OVERCOMES EVERY POSSIBLE DOUBT. IF BASED ON YOUR
8 CONSIDERATION OF THE EVIDENCE, YOU ARE FIRMLY CONVINCED,
9 FIRMLY CONVINCED, OF THIS DEFENDANT'S GUILT, YOU MUST
10 FIND HIM GUILTY. IF ON THE OTHER AND YOU THINK THERE IS
11 A REAL POSSIBILITY THAT HE'S NOT GUILTY, THEN FIND HIM
12 NOT GUILTY. THAT'S THE DEFINITION. AND THE JUDGE WILL
13 TELL YOU AT END THAT THAT'S HOW OUR COURTS HAVE CHOSEN
14 TO DEFINE OR HELP DEFINE WHAT IS A REASONABLE DOUBT. IF
15 YOU ARE FIRMLY CONVINCED OF THE DEFENDANT'S GUILT.

16 NOW THERE ARE TWO INDICTMENTS IN
17 THIS CASE. AND ALTHOUGH THESE CRIMES OCCURRED IN THE
18 SAME WEEKEND, AS YOU HEARD VICTIM 'S TESTIMONY,
19 THERE ARE TWO SEPARATE CHARGES. AND WHAT ARE THE
20 CHARGES IN THIS CASE? AND THE FIRST ONE THAT I WANT TO
21 TALK ABOUT IS LEWD ACT ON A CHILD. THIS IS CODE SECTION
22 16-15-140 OF OUR CODE OF LAWS. AND VERY SIMPLY IT'S
23 DEFINED AS COMMITTING OR ATTEMPTING A LEWD ACT UPON A
24 CHILD UNDER 16. IT IS AGAINST THE LAW. AND IT IS
25 UNLAWFUL FOR A PERSON OVER THE AGE OF FOURTEEN YEARS TO

1 WILLFULLY AND LEWDLY COMMIT OR ATTEMPT TO COMMIT A LEWD
2 OR LACIVIOUS ACT UPON OR WITH THE BODY OR ITS PARTS OF A
3 CHILD UNDER THE AGE OF SIXTEEN YEARS WITH THE INTENT OF
4 AROUSING OR GRATIFYING THE LUST OR PASSIONS OF SEXUAL
5 DESIRES OF EITHER THE PERSON OR THE CHILD. THAT
6 DEFINITION IS SOMEWHAT CONVOLUTED. WHAT IT BOILS DOWN
7 TO IS IF HE ATTEMPS OR TOUCHES THIS CHILD IN A LEWD
8 MANNER -- AND I SUBMIT, LADIES AND GENTLEMEN, NOBODY IS
9 GOING TO DISPUTE WHEN HE RUBS THE GENITAL AREA, THAT IS
10 A LEWD ACT. WHEN HE MAKES HER RUB HIS PENIS, THAT IS A
11 LEWD ACT. THERE'S NO DISPUTE. BUT I SUBMIT I WILL BE
12 SURPRISED THERE WILL BE ANY DISPUTE THAT THOSE ACTS ARE
13 LEWD ACTS. AND IN OUR STATE AND IN OUR COUNTRY, THAT IS
14 AGAINST THE LAW.

15 NOW LISTEN CAREFULLY TO THE JUDGE
16 BECAUSE HE DEFINES LEWD ACT AND CSC. IT DOESN'T MATTER
17 BECAUSE A TEN YEAR OLD IS A WILLING PARTICIPANT FOR
18 WHATEVER REASON. IT DOESN'T MATTER BECAUSE SHE'LL DO
19 ANYTHING FOR HER -- FOR MY BOBBY. IT DOESN'T MATTER IF
20 SHE COOPERATES BECAUSE THE LAW RECOGNIZES SIMPLY THAT
21 YOU DON'T DO THAT TO A TEN YEAR OLD BECAUSE IT CAUSES
22 THE PROBLEMS, THE LIFELONG PROBLEMS THAT THIS CHILD IS
23 HAVING. THAT IS THE DEFINITION OF LEWD ACT. AND THE
24 SECOND INDICTMENT THAT'S GOING TO BE BEFORE YOU IS
25 CALLED CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE FIRST

1 DEGREE. AND IT DIFFERS FROM CRIMINAL SEXUAL CONDUCT
2 FIRST WHEN AN ADULT IS INVOLVED, WHEN AN ADULT IS THE
3 VICTIM. AND THAT IS SIMPLY THAT NO FORCE HAS TO BE
4 USED. AGAIN, THIS CHILD COOPERATED WILLINGLY, I SUBMIT
5 COERCION COERCIVELY IN THIS CASE. IT DOESN'T MATTER.
6 BECAUSE THE LAW RECOGNIZES THAT THESE CRIMES ARE HARMFUL
7 TO CHILDREN. THEY HAVE LIFELONG AFFECTS UPON CHILDREN.

8 AND WHAT IS CRIMINAL SEXUAL
9 CONDUCT IN THE FIRST DEGREE WITH A MINOR? IF THE ACTOR
10 ENGAGES -- TWO THINGS. IN SEXUAL BATTERY AND THE VICTIM
11 IS LESS THAN ONE. AND THERE IS NO DISPUTE THAT ON THE
12 WEEK OF JULY THE FOURTH THAT SHE WAS TEN YEARS OLD. THE
13 WHOLE TIME ALL THIS WAS HAPPENING, SHE WAS TEN OR LESS.
14 SO WE HAVE TO PROVE THAT THERE WAS A SEXUAL BATTERY AND
15 THAT SHE WAS TEN OR LESS THAN TEN. WHAT IS THE
16 DEFINITION OF SEXUAL BATTERY? IN OUR CODE OF LAWS, IT
17 IS DEFINED IN THE FOLLOWING MANNER: AND AGAIN, THE
18 LANGUAGE IS SOMEWHAT CONVOLUTED. BUT IT'S PRETTY EASY
19 TO UNDERSTAND. IT MEANS SEXUAL INTERCOURSE,
20 CUNNILINGUS, FELACIO, ANAL INTERCOURSE OR ANY INTRUSION
21 -- AND THIS INCLUDES INTRUSION OF ANY DIGIT -- ANY
22 INTRUSION HOWEVER SLIGHT OF ANY PART OF A PERSON'S BODY
23 OR OF ANY OBJECT INTO THE GENITAL AND/OR ANAL OPENINGS
24 OF ANOTHER PERSON'S BODY EXCEPT WHEN IT'S DONE FOR
25 MEDICAL PURPOSES.

1 AND VERY SIMPLY, LADIES AND
2 GENTLEMEN, CONILINGUS AND FELATIO, ORAL SEX. IN THIS
3 CASE PEOPLE HE FORCED HER TO PERFORM ORAL SEX ON HIM.
4 THAT'S SEXUAL BATTERY. THERE'S NO DISPUTE; NO QUESTION.
5 WHEN HE USES HIS FINGER AS SHE SAID TO PUT INSIDE HER,
6 THAT IS AN INTRUSION INTO HER GENITAL AREA. THAT IS
7 SEXUAL BATTERY. WE DON'T HAVE TO PROVE BOTH. I WILL
8 SUBMIT THERE IS ONLY ONE TYPE; WE HAVE TO PROVE ONE OF
9 THOSE. THE JUDGE WILL ALSO TELL YOU THAT THE LAW AS I
10 MENTIONED EARLIER RECOGNIZES THAT THESE TYPES OF CRIMES
11 DON'T TAKE PLACE IN PARKING LOTS; THEY DON'T TAKE PLACE
12 AT THE MALL. THEY HAPPEN BEHIND CLOSED DOORS WHEN NO
13 ONE ELSE IS THERE. AND BECAUSE OF THAT, IT'S PASSED IN
14 OUR CODE OF LAWS; CODE SECTION 16-3657. AND THE JUDGE
15 WILL INSTRUCT YOU IN CRIMINAL SEXUAL CONDUCT CASES, THE
16 TESTIMONY OF THE VICTIM NEED NOT BE CORROBORATED. WHAT
17 DOES THAT MEAN, LADIES AND GENTLEMEN? THE TESTIMONY OF
18 THE VICTIM ALONE IS ENOUGH FOR YOU TO CONVICT HIM.

19 BUT I SUBMIT, LADIES AND
20 GENTLEMEN, LUCKILY BECAUSE THE POLICE DID THEIR JOB IN
21 THIS CASE. AND IT DOESN'T MATTER IF IT'S THE POLICE IN
22 AUGUSTA OR THE POLICE HERE. AND IT DOESN'T MATTER IF
23 IT'S AN EXPERT IN AUGUSTA OR AN EXPERT IN COLUMBIA.
24 THEY DID THEIR JOB. LUCK IN THIS CASE. BECAUSE YOU
25 DON'T HAVE TO JUST JUST RELY, ALTHOUGH I JUST SUBMIT,

1 VICTIM 'S TESTIMONY ALONE IS MORE THAN BEYOND A
2 REASONABLE DOUBT. BUT YOU HAVE SO MUCH MORE THAN THAT
3 IN THIS CASE. THAT IS WHAT THE LAW SAYS. HER TESTIMONY
4 ALONE. AND WE'LL TALK ABOUT ALL THE CORROBORATING
5 EVIDENCE, THE OVERWHELMING CORROBORATING EVIDENCE, IN
6 THIS CASE. NOW IN EVERY CASE THE JUDGE WILL INSTRUCT
7 YOU THERE ARE TWO KINDS OF EVIDENCE. AND YOU DON'T GIVE
8 MORE WEIGHT TO ONE THAN THE OTHER. AND ONE OF THEM --
9 IT'S FUNNY WE JUST TALKED ABOUT THAT, BECAUSE ONE IS
10 DIRECT EVIDENCE, AND THAT'S EYE WITNESS TESTIMONY.
11 THAT'S VICTIM . THAT'S WHAT SHE PERCEIVES FROM
12 HER SENSES. SHE SEES, HEARS, SMELLS, FEELS, TASTES.
13 THAT'S DIRECT EVIDENCE. BUT THERE'S ANOTHER KIND OF
14 EVIDENCE WHICH THERE'S A LOT OF IN THIS CASE. IT'S
15 CALLED CIRCUMSTANTIAL EVIDENCE. NOW WHAT THAT IS IS THE
16 PROOF OF A CHAIN OF CIRCUMSTANCES THAT POINT TO THE
17 EXISTENCE OF THE FACT. AND WHAT IS THE CIRCUMSTANTIAL
18 EVIDENCE IN THIS CASE? THE MEDICAL TESTIMONY. YOU
19 HEARD FROM TWO DOCTORS, AND IT IS SIGNIFICANT WHEN EACH
20 OF THOSE DOCTORS SAW HER. YOU HEARD FROM DR. BASH.
21 WHEN HE SAW HER WHAT HIS FINDINGS WERE. THEY WERE IN A
22 HEALING STATE. REMEMBER THE INJURIES WERE IN A HEALING
23 STATE. AND A MONTH LATER, THEY WERE HEALED.

24 CONSISTENT; CORROBORATED; WHAT
25 SHE SAYS HAPPENED ON JULY FOURTH. PENETRATION? YOU'VE

1 HEARD FROM HER PSYCHIATRIST WHO SAW HER. AND I SUBMIT
2 THIS MAY SEEM MORE CREDIBLE. HE STARTED SEEING HER WAY
3 BEFORE SHE FINALLY HAD THE COURAGE TO COME FORWARD
4 BECAUSE SHE COULDN'T TAKE IT ANY MORE. WHAT MAKES HIM
5 CREDIBLE? HE SUSPECTED IT BECAUSE THE CLASSIC SIGNS OF
6 SEXUAL ABUSE. AS HE SAID TO YOU, ONCE SHE REPORTED, IT
7 JUST ALL MADE IT MAKE SENSE. IT WAS LIKE PIECES OF THE
8 PUZZLE. CIRCUMSTANTIAL EVIDENCE. THAT ALONE INDICATES
9 THE EXISTENCE OF SEXUAL ABUSE. AND THAT'S NOT IN
10 DISPUTE. THE DIRECT EVIDENCE, VICTIM 'S
11 TESTIMONY IS TOTALLY AND COMPLETELY CORROBORATED BY
12 EVERY EXPERT WE HAD.

13 NOW IN CRIMINAL CASES, THE STATE
14 MUST ALSO PROVE CRIMINAL INTENT. AND IN DOING THAT,
15 WHAT IS CRIMINAL INTENT? IT'S HARD BECAUSE IT'S A
16 CONSCIOUS WRONGDOING ON THE PART OF THE DEFENDANT. WE
17 MUST PROVE THAT. AND THE LAW RECOGNIZES THAT WE CAN'T
18 GO INTO THE DEFENDANT'S -- WE CAN'T CUT OPEN HIS HEAD
19 AND DISSECT HIS BRAIN TO FIGURE OUT WHAT HE WAS THINKING
20 WHEN HE WAS DOING THIS STUFF. BUT WHAT THE LAW DOES
21 RECOGNIZE IS YOU CAN LOOK AT THE FACTS, THE
22 CIRCUMSTANCES, WHAT HE SAYS, TO DETERMINE WHETHER OR NOT
23 HE HAD CRIMINAL INTENT. AND I SUBMIT, LADIES AND
24 GENTLEMEN, WHEN A THIRTY YEAR OLD MAN TAKES A TEN YEAR
25 OLD, MAKES HER GIVE HIM ORAL SEX, AND THEN THREATENS

1 THIS CHILD WHO WORSHIPS HIM, THAT REEKS OF CRIMINAL
2 INTENT.

3 NOW YOU ALSO HEARD FROM EXPERT
4 WITNESSES. THE JUDGE WILL TELL YOU THAT IN CERTAIN
5 CASES CERTAIN PEOPLE CAN BE QUALIFIED AS EXPERTS IN
6 THEIR FIELD, THAT THEY'VE HAD CERTAIN TRAINING, CERTAIN
7 SCHOOLING, CERTAIN EXPERIENCE. IT IS VERY IMPORTANT IN
8 THIS CASE BECAUSE YOU'VE NOW HEARD ALL THE EXPERT
9 TESTIMONY YOU CAN CONSIDER. AND THE JUDGE WILL ALSO
10 TELL YOU IN CONSIDERING THE EXPERT'S TESTIMONY, YOU TAKE
11 IT AND YOU JUDGE ITS CREDIBILITY IN THE SAME WAY YOU
12 WOULD ANY WITNESS. BUT I BEG YOU IN THIS CASE, THINK
13 ABOUT THE EXPERTS BECAUSE WE DIDN'T TAKE THIS CHILD
14 OUT. SHE DIDN'T SEE JUST A GENERAL RESIDENT WHO HAS NO
15 EXPERIENCE WITH CHILDREN. SHE DIDN'T SEE JUST A GENERAL
16 EXPERT RESIDENT WHO JUST GOT OUT OF MEDICAL SCHOOL. SHE
17 SAW EXPERTS. LOOK! SCRUTINIZE! THINK ABOUT THEIR
18 TRAINING, THEIR EXPERTISE. AND THE EMERGENCY ROOM
19 PHYSICIAN WHO SPECIALIZES IN PEDIATRICS. YOU HEARD FROM
20 DR. CLAYBORN, ANOTHER PEDIATRICIAN WHO SPECIALIZES IN
21 SEXUAL ABUSE. YOU HEARD FROM THE PSYCHIATRIST, HIS
22 EXPERTISE, HIS DEALING WITH ADOLESCENTS AND CHILDREN.
23 JUDGE THEIR CREDIBILITY, BECAUSE THEY ARE TOTALLY,
24 COMPLETELY, CORROBORATE THIS CHILD IN THIS CASE.

25 NOW, FINALLY, LADIES AND

1 GENTLEMEN, THE JUDGE IS GOING TO INSTRUCT YOU ON
2 CREDIBILITY BECAUSE THAT'S WHAT THIS CASE BOILS DOWN
3 TO. IT'S CREDIBILITY BECAUSE EITHER, LADIES AND
4 GENTLEMEN, YOU BELIEVE VICTIM , OR YOU BELIEVE
5 BOBBY JOE REEVES. THERE'S NO WAY TO MATCH; THERE'S NO
6 INBETWEEN. ONE OF THEM IS NOT TELLING THE TRUTH. AND
7 IN DOING THAT, THE JUDGE WILL TELL YOU, WHEN JUDGING
8 CREDIBILITY, YOU LOOK AT THEIR DEMEANOR; ARE THEY
9 HESTITANT OR FORTHRIGHT; HOW DID THEY APPEAR ON THE
10 STAND? WAS THERE TESTIMONY CORROBORATED BY OTHER
11 TESTIMONY? WAS THEIR TESTIMONY CONSISTENT WITH THE
12 OTHER TESTIMONY? DID THE STORY CHANGE WHEN IT NEEDED
13 TO? LOOK CAREFULLY AT ANY BIAS OR PREJUDICE. PLEASE
14 LOOK AT THIS. DID THEY HAVE SOMETHING TO GAIN OR LOSE?

15 AND I BEG YOU, YOU JUDGE VICTIM
16 .. YOU LOOK AT HER BIAS AND HER PREJUDICE. WHAT
17 ON EARTH DID SHE HAVE TO GAIN? BECAUSE I SUBMIT, LADIES
18 AND GENTLEMEN; AND IT'S UNDISPUTED SHE WORSHIPED THAT
19 MAN. ALL SHE HAD WAS TO LOSE. BUT UNFORTUNATELY FOR
20 HER, HE MADE CHOICES FOR HER THAT AFFECTED HER FOR THE
21 REST OF HER LIFE. ONCE THE DEFENSE -- AND THEY DON'T
22 HAVE TO PUT UP ANYTHING -- IT'S NOT THEIR BURDEN. THE
23 BURDEN IS ON US. BUT ONCE THEY CHOOSE TO PUT UP A
24 DEFENSE, YOU JUDGE THOSE WITNESSES WITH THE SAME
25 SCRUTINY YOU DO THE STATE. IT'S THE SAME LEVEL OF

1 SCRUTINY. IT DOESN'T GET ANY LIGHTER THAN THAT. IS
2 THEIR STORY INCONSISTENT? HAS IT CHANGED? IS IT
3 BELIEVABLE?

4 I'M GOING TO SIT DOWN, LADIES AND
5 GENTLEMEN. PLEASE HOLD BOBBY JOE REEVES RESPONSIBLE FOR
6 HIS ACTIONS. YOU KNOW, PEOPLE PRAY ON CHILDREN BECAUSE
7 THEY'RE VULNERABLE. THEY THINK THEY CAN GET AWAY WITH
8 IT. THAT'S WHAT HE DID. SHOW HIM DIFFERENT. THANK
9 YOU.

10 THE COURT: MR. STOCKHOLM?

11 MR. STOCKHOLM: THANK YOU.

12 - - - - -

13 CLOSING ARGUMENT

14 BY MR. STOCKHOLM

15
16 HELLO, LADIES AND GENTLEMEN OF
17 THE JURY. I NEED TO PREFACE MY REMARKS BY SAYING I ONLY
18 GET TO SPEAK TO YOU ONE TIME, AND THE SOLICITOR WILL
19 SPEAK AGAIN. SO I HAVE TO BE VERY SPECIFIC IN WHAT I
20 SAY. I THINK WHAT I TOLD YOU IN OPENING, THIS WAS ABOUT
21 THE CRUCIBLE**. IT WAS VERY APPROPRIATE. NORMAL WAYLOR
22 (PHONETICALLY SPELLED) WROTE THAT ABOUT UNSOUNDED
23 ACCUSATIONS DURING THE COMMUNIST WITCH HUNTS IN THE
24 FIFTIES. HERE WHAT WE HAVE IS A CASE, OR A NIGHTMARE
25 THAT BOBBY HAS ENDURED FOR THE PAST TWO YEARS ON

1 ALLEGATIONS THAT HE ABUSED . NOW, I HAVE A
2 TENDENCY TO LOOK AT MY NOTES. I ALSO SOMETIMES WAVE MY
3 BOARD AROUND. I DON'T MEAN TO DISTRACT YOU, BUT I DON'T
4 WANT TO MISS ANYTHING. BUT WHEN YOU THINK OF THE
5 CRUCIBLE AND UNFOUNDED ACCUSATIONS, THINK ABOUT THE
6 WITNESSES FOR THE STATE. I DON'T WANT YOU TO CONSIDER
7 MY CLIENT RIGHT NOW. I WANT YOU TO THINK OF THEIR
8 WITNESSES.

9 VICTIM TESTIFIED THAT SHE HAD
10 BEEN ABUSED SINCE SHE WAS FOUR. THAT'S VERY
11 INTERESTING. IN THIS STATE, THE LAW IS IF ANYONE
12 SUSPECTS ABUSE OF A CHILD, THEY'RE SUPPOSED TO REPORT IT
13 TO LAW ENFORCEMENT. WE HEARD FROM THE GUIDANCE
14 COUNSELORS, FROM THE TEACHERS. HER COLUMBIA
15 PEDIATRICIAN DID NOT TESTIFY. NO ONE CAME FORWARD TO
16 SAY AT ANY TIME WHILE VICTIM WAS LIVING WITH BOBBY JOE
17 REEVES THAT HE DID ANYTHING TO HER, ANYONE SUSPECTED
18 ANYTHING. THE REASON IS IT DID NOT HAPPEN.

19 NOW, THE BOOK THAT BOBBY JOE
20 REEVES IS NOW IN, THE SEQUELS OF THE CRUCIBLE REALLY
21 BEGAN ABOUT 16 YEARS AGO WHEN DAWN , VICTIM'S
22 MOTHER, SHE SUFFERED ABUSE AT THE HANDS OF HER FATHER.
23 HE ACTUALLY WAS THE FIRST ONE TO BEGIN WRITING THE
24 SECTION THAT WE'RE DEALING WITH HERE BECAUSE ALL THE
25 TIME THE BOBBY REEVES, AS MRS. ESTIFIED, WAS

1 AROUND VICTIM . SHE RESPECTED HIM. SHE LOVED HIM, AND
2 SHE WAS VERY POSSESSIVE OF HIM. WHEN VICTIM HAD
3 PROBLEMS IN SCHOOL, DOWN IN AUGUSTA, NO ONE CONSIDERED
4 HER ATTENTION DEFICIT DISORDER AND HYPERACTIVITY; NO ONE
5 CONSIDERED THE MEDICATIONS. DR. BRUNIE, THE STATE'S
6 WITNESS -- AND AGAIN I'M FOCUSING ON THE STATE'S WITNESS
7 -- SAID SHE HAD TO HAVE MEDICATION TO BE CONTROLLED AND
8 THOSE SIDE EFFECTS CAN INCLUDE DEPRESSION AND ANXIETY.
9 WELL, THOSE ARE THE SIDE EFFECTS, OR THOSE ARE THE
10 SYMPTOMS THAT THEY'RE LAYING AT THE FEET OF BOBBY JOE
11 REEVES. NO ONE CONSIDERS THAT. AGAIN, IT'S THE SAME
12 THING AS THE CRUCIBLE. IF YOU LOOK HARD ENOUGH, YOU CAN
13 MAKE SOMETHING UP.

14 WHEN VICTIM WAS IN SCHOOL IN
15 AUGUSTA, APPARENTLY THERE WERE NO COMPLAINTS UNTIL THIS
16 INCIDENT, DESPITE THE FACT THAT THEY MAINTAIN SINCE SHE
17 WAS FOUR YEARS OLD, SHE'S BEEN ABUSED IN THIS MANNER.
18 BUT THERE'S BEEN NO TESTIMONY ABOUT THAT. CAN YOU
19 IMAGINE TAKING CARE OF A CHILD FOR ALL THESE YEARS
20 TREATING HER LIKE A FATHER, AND THEN TO BE YANKED OUT OF
21 YOUR HOUSE AND TOLD YOU'RE A CHILD MOLESTER WHEN YOU'VE
22 NEVER DONE ANYTHING IN YOUR LIFE. NOW, DR. BRUNIE SAID
23 THAT HE THOUGHT THAT VICTIM HAD A TRAUMA. BUT HE DIDN'T
24 KNOW WHAT IT WAS UNTIL DAWN TOLD HIM. DAWN
25 , I THINK, HAS HAD A VERY DIFFICULT LIFE. AND I

1 THINK WHEN THINGS STARTED GOING WRONG, SHE IMMEDIATELY
2 THOUGHT WHAT IS HAPPENING BECAUSE SOMETHING HAPPENED TO
3 HER THAT HAPPENED TO ME. BUT, AGAIN, NOW DAWN
4 BEGINS TO HELP WRITE THE CRUCIBLE. SHE BEGINS BY
5 TELLING THE DOCTOR ABOUT THE TRAUMA, OR ALLEGED TRAUMA.
6 DR. BRUNIE JUST SAYS "WELL, I THINK THERE WAS SOME
7 TRAUMA. I DON'T KNOW WHAT IT IS. AND I DID NOT EXPLORE
8 IT WITH HER BECAUSE I LEAVE THAT TO OTHER
9 PROFESSIONALS." WHAT HAPPENS THEN IS YOU GET ANOTHER
10 WRITER IN THE CRUCIBLE. JODIE LASHTON. SHE DOES A ONE
11 TIME INTERVIEW; ONE TIME! THIRTY MINUTES. SAYS "WHAT
12 HAPPENED; DID THIS HAPPEN; DID THAT HAPPEN?" AND THEN
13 WHEN SHE PUTS THE DIAGRAMS IN FRONT OF YOUNG VICTIM.,
14 SAYS "HERE, LET ME WRITE THE NAMES DOWN FOR YOU." SHE
15 ALSO IS HELPING TO WRITE THIS BOOK.

16 THEY TAKE HER TO THE EMERGENCY
17 ROOM TO DR. BASH WHO ADMITS HE IS NOT AS QUALIFIED AS
18 DR. CLAYBORNE. DR. CLAYBORNE WANTS TO DO A
19 COMPREHENSIVE PHYSICAL EXAM. THAT'S WHAT DR. CLAYBORN
20 WAS FOR. AND WHAT DID DR. CLAYBORNE SAY? THEIR WITNESS
21 SAYS PERFECTLY CONSISTENT WITH NOTHING HAPPENING.
22 LADIES AND GENTLEMEN, DR. CLAYBORNE, THEIR EXPERT. HE
23 IS THEIR WITNESS. DR. BASH REPORTED A MARK ON THE
24 INSIDE OF THE HYMEN. AND SURPRISINGLY, IF YOU REMEMBER
25 VICTIM'S TESTIMONY, SHE ONLY REMEMBERED THAT LAST WEEK

1 WHEN SHE WAS UP HERE TALKING TO DEBBIE IN THIS
2 BUILDING. WHO IS DEBBIE? DEBBIE HASN'T TESTIFIED.
3 DEBBIE IS NOT HERE. WE DON'T KNOW WHAT WENT ON. BUT
4 AFTER TWO YEARS, PERHAPS THE MOST IMPORTANT EVIDENCE TO
5 GO ALONG WITH WHAT THE DOCTOR WOULD TESTIFY SURFACES.
6 IS THAT A COINCIDENCE? I WILL LEAVE IT TO YOU.

7 NEXT, WHERE IS HER THERAPIST?
8 WHERE IS THE TREATMENT? WHERE IS THE INTENSIVE THERAPY
9 TO HELP HER GET OUT? NO ONE TESTIFIED ABOUT THAT. NO
10 ONE SAT ON THAT STAND TO BE CROSS-EXAMINED BY ME ABOUT
11 ANY INCONSISTENCIES THAT LITTLE GIRL HAD IN HER
12 STATEMENT. NO ONE TESTIFIED. I'LL LEAVE IT TO YOU WHY
13 NO ONE TESTIFIED ABOUT THAT. NO ONE TESTIFIED ABOUT
14 THAT. THE MAJORITY OF VICTIM'S TESTIMONY -- AND FEEL
15 FREE TO REVIEW IT WHILE YOU'RE IN THE JURY BOX -- OR,
16 EXCUSE ME. WHEN I TRIED -- AND I TRIED TO BE DELICATE
17 WITH HER. I MEAN, SHE HAS HAD A HARD LIFE. THERE IS NO
18 REASON TO MAKE IT WORSE. BUT WHEN I TALKED TO HER AND I
19 WOULD ASK HER SPECIFIC QUESTIONS, EASY QUESTIONS, SHE
20 DIDN'T KNOW. I ASKED HER HER ADDRESS. SHE'S LIVED
21 THERE THREE YEARS. SHE DIDN'T KNOW. I ASKED HER ABOUT
22 PRIOR STATEMENTS SHE MADE. SHE DIDN'T KNOW. I HAD TO
23 GET THE VIDEO THERAPIST TO ADMIT SHE HADN'T MADE CERTAIN
24 STATEMENTS THAT WERE ON THE STAND TWO YEARS AGO. VICTIM
25 DIDN'T KNOW.

1 LADIES AND GENTLEMEN, VICTIM IS
 2 TWELVE YEARS OLD. VICTIM SHOULD KNOW WHERE SHE LIVES.
 3 SHE SHOULD KNOW HER ADDRESS. VICTIM HAD A VERY SET
 4 PROGRAM ON WHAT SHE COULD SAY. VICTIM SAID "I
 5 DIDN'T KNOW." WHAT SHE MEANT WAS "I HAVEN'T BEEN TOLD."
 6 NORMAN MAYLOR WOULD BE VERY PLEASED WITH HOW THE SEQUAL
 7 TO THE CRUCIBLE WAS COMING. BOBBY JOE REEVES, HE'S
 8 BRANDED A CHILD MOLESTER. HE'S LABELED THIS PERVERT FOR
 9 SOMETHING THAT HE DIDN'T DO. THEIR EXPERTS SAY THE SAME
 10 THING. BUT NOBODY CONSIDERS IT. IT'S JUMP FIRST, LOOK
 11 LATER. I ASK YOU, WHEN YOU CONSIDER REASONABLE DOUBT,
 12 AND IT'S A DOUBT THAT YOU HAVE A REASON, THINK OF THE
 13 STATE'S WITNESSES. THINK OF THE FACT THAT THEY SAID
 14 IT'S PERFECTLY PLAUSIBLE, NOTHING HAPPENED, AND FIND HIM
 15 NOT GUILTY. THANK YOU.

16 THE COURT: MRS. PELLIZZARI?

17 MRS. PELLIZZARI: THANK YOU, YOUR HONOR.

18 MAY IT PLEASE THE COURT?

19 THE COURT: YES, MA'AM.

20 - - - - -
 21 CLOSING ARGUMENT

22 BY MRS. PELLIZZARI

23
 24 IT IS OFFENSIVE. IT IS ABSOLUTELY
 25 OFFENSIVE, TO TURN HIM INTO THE VICTIM IN THIS CASE.

1 THE VICTIM IN THIS CASE IS VICTIM . NO DOUBT
2 ABOUT IT! WHOSE LIFE HAS BEEN TURNED UPSIDE DOWN IN THE
3 LAST TWO YEARS? NOT EVEN THE LAST TWO YEARS. I SUBMIT
4 THE LAST EIGHT YEARS WHEN THIS NIGHTMARE BEGAN FOR A
5 YOUNG GIRL AT THE AGE OF FOUR TO BE SEXUALLY MOLESTED BY
6 A MAN THAT SHE WORSHIPPED, A MAN THAT SHE CALLED DADDY,
7 A MAN THAT SHE CALLED MY BOBBY. WHOSE LIFE HAS BEEN
8 TURNED UPSIDE DOWN? NOT HIS! HE'S BEEN OUT ON THE
9 STREET FOR THE LAST TWO YEARS. HE'S BEEN WORKING. HE'S
10 BEEN LIVING HIS LIFE AS NORMAL. HAS VICTIM BEEN
11 LIVING HER LIFE AS NORMAL IN THE LAST EIGHT YEARS?
12 ABSOLUTELY NOT. IT'S ABSOLUTELY OFFENSIVE TO CALL HIM
13 THE VICTIM. AS A PROSECUTOR IN EVERY CASE, A CHILD
14 ANTICIPATES DEFENSES. AND GENERALLY IN CHILD SEXUAL
15 ABUSE CASES, THERE MIGHT BE MAYBE THREE DEFENSES. MAYBE
16 THE FIRST PERSON WOULD SAY "YES, THE CHILD WAS MOLESTED;
17 BUT IT'S BY THE WRONG PERSON, THE WRONG IDENTIFICATION."
18 WELL THAT CERTAINLY DOESN'T WORK HERE BECAUSE THERE'S NO
19 DISPUTE THAT VICTIM AND THE DEFENDANT KNEW EACH OTHER
20 FOR YEARS. SHE'S KNOWN HIM BASICALLY HER WHOLE LIFE,
21 TEN YEARS. SO THAT DEFENSE WON'T WORK HERE.

22 SECOND, MAYBE THE CHILD WAS
23 COACHED WHICH THEY ALLUDED TO IN THEIR CLOSING, COACHED
24 BY MOM. WHY? BECAUSE MOM HAS HAD A HARD LIFE. MOM HAS
25 HAD A LIFE WHERE SHE HAS WORKED, SHE'S GONE TO SCHOOL,

1 SHE'S DONE EVERYTHING THAT SHE COULD DO TO BETTER
2 HERSELF AND MAKE A GOOD LIFE FOR HER AND HER DAUGHTER.
3 WE SHOULD BELIEVE THAT FOR SOME REASON MOM HAS COACHED
4 HER INTO SAYING THAT THINGS THAT SHE SAID. WHY? THEY
5 DON'T GIVE YOU ANY REASON. THEY DON'T GIVE YOU ANY
6 MOTIVE. THERE'S NO DISPUTE THAT DAWN AND THE
7 DEFENDANT LIVED TOGETHER FOR ABOUT FIVE YEARS, HAD A
8 SEPARATE -- A DIFFERENCE OF OPINION ABOUT ROOMMATE
9 ISSUES, AND WENT THEIR SEPARATE WAYS. IS THAT IN THEIR
10 RELATIONSHIP? NO! ACCORDING TO EVERYONE IN THIS CASE,
11 THEY BOTH KEPT IN TOUCH. THEY STAYED FRIENDS. AND IN
12 FACT, ACCORDING TO THE DEFENDANT HIMSELF, HE WAS STILL
13 LENDING HER MONEY, WATCHING AFTER HER DAUGHTER WHEN SHE
14 ASKED. THEY REMAINED FRIENDS. WHAT POSSIBLE MOTIVE
15 WOULD SHE HAVE TO COACH HER DAUGHTER INTO SAYING THINGS
16 LIKE THIS? ABSOLUTELY NONE!

17 SO WE COME TO WHAT IS THE THIRD
18 OFFENSE IN THIS CASE THAT VICTIM IS LYING. AND AGAIN,
19 THEY DIDN'T SAY ANYTHING ABOUT IT. AND MR. REEVES WAS
20 PRETTY SURE ABOUT THE REASON THAT SHE WOULD BE LYING
21 BECAUSE ON THAT LAST JULY FOURTH WEEKEND, HE TOLD HER
22 THAT HE MIGHT BE DATING SOMEONE. FIRST OF ALL, DOES
23 THAT APPEAL TO YOUR COMMON SENSE THAT A GROWN MAN, A MAN
24 THAT HAS GOT HIS OWN LIFE, NOT A FATHER TO THIS CHILD,
25 WILL TELL A TEN YEAR OLD THAT HE WANTED TO START DATING

1 SOMEONE? DOES IT APPEAL TO YOUR COMMON SENSE THAT
2 VICTIM WOULD MAKE UP THIS HORRENDOUS STORY
3 BECAUSE SHE WAS SO UPSET ABOUT HIM WANTING TO DATE
4 SOMEONE. HE EVEN TOLD YOU ON THE STAND HIMSELF; HE TOLD
5 HER THIS BEFORE, AND YET NEVER HAD A REACTION FROM HER.
6 SHE WAS FINE THE ENTIRE WEEKEND. HAD A GOOD WEEKEND
7 TOGETHER. EVERYTHING WAS NORMAL. SHE GOES HOME. DOES
8 IT APPEAL TO YOUR COMMON SENSE THAT A CHILD AT THE AGE
9 WOULD MAKE UP A HORRENDOUS STORY FOR THAT REASON? I
10 SUBMIT TO YOU IT DOESN'T.

11 EVEN THOUGH THEY HAVE TRIED TO
12 TELL YOU THAT VICTIM HAS LIED, THEY'VE TRIED TO TELL YOU
13 THAT SHE'S BEEN COACHED. THERE'S STILL ONE
14 UNCONTRADICTED FACT THAT THEY CAN'T GET AROUND. AND
15 THAT'S THE MEDICAL EVIDENCE IN THIS CASE. AND I'LL TALK
16 ABOUT THAT IN A FEW MINUTES. BUT REMEMBER WHAT DR. BASH
17 SAID WHEN HE EXAMINED VICTIM ABOUT THREE WEEKS AFTER THE
18 LAST TIME SHE HAD SEEN BOBBY REEVES. THERE WAS HEALING
19 SCAR TISSUE IN HER HYMEN. TEN YEAR OLD GIRLS WHO HAVE
20 NOT BEEN SEXUALLY MOLESTED DO NOT HAVE HEALING SCAR
21 TISSUE IN THEIR HYMEN. THERE IS NO OTHER EXPLANATION
22 OTHER THAN SHE WAS PENETRATED. A TEN YEAR OLD. WE'RE
23 NOT TALKING ABOUT A GROWN WOMAN, A SEXUALLY ACTIVE
24 WOMAN. WE'RE TALKING ABOUT A TEN YEAR OLD. THAT JUST
25 DOESN'T HAPPEN ON ITS OWN. AND THAT IS A FACT THAT THEY

1 CANNOT OVERCOME. SO LET'S TALK ABOUT THE FACTS, NOT THE
2 DEFENDANT'S WISHFUL THINKING, NOT INUENDO, NOT
3 SPECULATION, BUT THE FACTS. LET'S START WITH VICTIM
4 BECAUSE AS MRS. CAMPBELL TOLD YOU, AND AS THE JUDGE WILL
5 INSTRUCT YOU, HER TESTIMONY ALONE IS ENOUGH TO CONVICT
6 THE DEFENDANT. AND WE HAVE SO MUCH MORE IN THIS CASE.

7 VICTIM GOT UP, TOLD YOU ABOUT
8 HERSELF, TOLD YOU ABOUT HER LIFE, WHERE SHE LIVES, HER
9 SCHOOL. SHE'S MAKING A'S. VICTIM'S MOM SAID THAT;
10 MAKING GOOD GRADES AT THIS POINT. YOU KNOW, THE DEFENSE
11 WANTS IT BOTH WAYS. THEY FELL JUST ABOUT SHORT OF
12 CALLING HER STUPID, SAYING SHE COULDN'T IDENTIFY HER
13 ADDRESS OR DIFFERENT QUESTIONS THAT SHE COULDN'T ANSWER,
14 THAT SHE'S STUPID, THAT SHE'S IN SPECIAL EDUCATION
15 CLASSES. ON ONE HAND THEY WANT YOU TO BELIEVE THAT.
16 AND ON THE OTHER HAND, THEY WANT YOU TO BELIEVE THAT SHE
17 IS SO INCREDIBLY SMART THAT SHE'S BEEN ABLE TO
18 MANIPULATE THE SYSTEM; THAT SHE KNOWS ENOUGH ABOUT
19 PHYSICAL EXAMS AND MEDICAL FINDINGS TO KNOW THAT WHAT
20 SHE TOLD HER MOTHER WOULD 100 PERCENT BE CORROBORATED BY
21 MEDICAL EXAMS. DO YOU THINK A TEN YEAR OLD HAS THAT
22 KNOWLEDGE? DOES A TEN YEAR OLD KNOW ANYTHING ABOUT A
23 PHYSICAL EXAM AND WHAT ITS FINDINGS WILL REVEAL? NO.
24 AND VICTIM IS NOT SMART ENOUGH TO MANIPULATE THE SYSTEM
25 IN THAT WAY. AND SHE IS NOT MANIPULATING THE SYSTEM.

1 AND SHE'S TELLING YOU THE TRUTH. THE REALITY IS SHE HAS
2 BEEN THE DEFENDANT'S SEX TOY, HIS PROSTITUTE, AND I
3 SUBMIT HIS WHORE FOR THE LAST EIGHT YEARS. AND FOR SIX
4 YEARS, SHE LIVED THAT LIFE UNTIL SHE FINALLY HAD THE
5 COURAGE AND THE STRENGTH TO COME FORWARD AND TELL HER
6 MOTHER AND MAKE IT STOP.

7 WHAT CORROBORATES ~~WITNESS~~ VICTIM ? FIRST,
8 HER MOTHER. HER MOTHER IS THE FIRST ONE THAT SHE
9 TELLS. AND AGAIN, THE DEFENSE WILL HAVE YOU NOT TO
10 BELIEVE WHAT THE MOTHER TELLS YOU BECAUSE SHE'S ALONE
11 WITH A HARD LIFE, A WOMAN WHO'S WORKED, GONE TO SCHOOL
12 TO GET AN ACCOUNTING DEGREE, AND HAS WORKED TO SUPPORT
13 HERSELF AND HER CHILD; THAT YOU SHOULDN'T BELIEVE WHAT
14 SHE TELLS YOU; THAT SHE'S NOT CREDIBLE. WHAT REASON
15 WOULD VICTIM HAVE TO LIE TO HER MOTHER? IT IS SO
16 CONTRADICTORY TO OUR COMMON SENSE. ALL THE TESTIMONY
17 THAT YOU'VE HEARD, UNDISPUTED TESTIMONY, IS THAT VICTIM
18 LOVED BOBBY JOE. SHE DIDN'T HAVE A RELATIONSHIP WITH
19 HER BIOLOGICAL FATHER. AND THERE'S NO DISPUTE THAT SHE
20 THOUGHT OF THIS MAN AS HER FATHER, WORSHIPED HIM, ADORED
21 HIM, LOVED HIM, RESPECTED HIM, LISTENED TO WHAT HE TOLD
22 HER. WHAT REASON WOULD SHE HAVE TO MAKE UP A LIE LIKE
23 THIS AND TO PUT THAT ONLY FATHER FIGURE THAT SHE HAS
24 KNOWN THROUGHOUT HER LIFE OUT OF HER LIFE? BECAUSE AS
25 SHE TOLD YOU, HE TOLD HER "IF YOU TELL, I'LL GO TO

1 JAIL." SHE KNEW THE CONSEQUENCES OF WHAT SHE WAS DOING
2 WHEN SHE WAS DOING IT. WHAT REASON WOULD SHE HAVE TO
3 LIE, TO MAKE UP A STORY LIKE THIS AND PUT THE ONLY MAN
4 THAT SHE HAS LOVED AS A FATHER OUT OF HER LIFE? IT JUST
5 DOESN'T ADD UP. WELL, WHAT DOES SHE HAVE TO GAIN BY
6 LYING? WHAT DOES SHE HAVE TO GAIN? SHE HAS TO GAIN A
7 POLICE INTERVIEW THE NIGHT OF JULY THE 28TH, ANOTHER
8 POLICE INTERVIEW ON AUGUST THE 11TH, A PHYSICAL EXAM, A
9 VAGINAL EXAM ON JULY 31ST, ANOTHER VAGINAL EXAM ON
10 AUGUST 28TH, YEARS OR COUNSELING AND THERAPY. AND THEN
11 FINALLY COMING INTO A COURTROOM AND TELLING A BUNCH OF
12 STRANGERS WHAT THIS MAN DID TO HER. DO YOU THINK SHE'S
13 PROUD OF THAT? DO YOU THINK IT MADE HER HAPPY TO DO
14 THAT? DO YOU THINK IT WAS EASY FOR HER? IF YOU DO, IF
15 YOU THINK SHE'S LYING, THEN FIND HIM NOT GUILTY. SEND
16 HIM BACK INTO THE COMMUNITY. MAYBE HE CAN GO BE A
17 FATHER TO SOMEONE ELSE'S CHILD.

18 SHE TOLD YOU ABOUT LEWD ACTS THAT
19 HAD OCCURRED. AS MS. CAMPBELL EXPLAINED TO YOU WHAT
20 LEWD ACTS ARE; TOUCHING ON HIS PENIS, HIM TOUCHING ON
21 HER PRIVATE, WHAT SHE CALLED IT. SHE CAN'T EVEN GET THE
22 WORDS OUT TO NAME THESE BODY PARTS. SHE TOLD YOU ABOUT
23 THE ORAL SEX THAT SHE HAD TO PERFORM ON HIM AND THE
24 YELLOW STUFF THAT CAME OUT. HOW DOES A TEN YEAR OLD
25 KNOW ABOUT THIS UNLESS IT ACTUALLY HAPPENED TO HER? THE

1 YELLOW STUFF THAT SOMETIMES WENT IN HER MOUTH AND
2 SOMETIMES WENT ON THE FLOOR. A TEN YEARS OLD JUST
3 DOESN'T KNOW THESE THINGS UNLESS SHE HAS LIVED THEM.

4 AND LASTLY, SHE TOLD YOU ABOUT
5 DIGITAL PENETRATION. WHEN HE TRIED TO STICK HIS FINGER
6 IN HER VAGINA THAT LAST WEEKEND THAT SHE WAS WITH HIM.
7 AND AGAIN, 100 PERCENT CORROBORATED BY THE MEDICAL
8 EVIDENCE. THREE WEEKS LATER WHEN A DOCTOR EXAMINED HER,
9 A DOCTOR WHO'S A PEDIATRIC SPECIALIST AND FINDS HEALING
10 SCAR TISSUE. IT JUST DOESN'T HAPPEN ON ITS OWN; NOT ON
11 A TEN YEAR OLD; NOT IN AN UNSEXUALLY ACTIVE TEN YEAR
12 OLD. IT'S JUST NOT GOING TO BE THERE. AND IF *VICTIM*
13 WERE GOING TO LIE, WHY WOULDN'T SHE MAKE IT WORSE? WHY
14 NOT SAY HE HAD SEXUAL INTERCOURSE WITH HER? WHY NOT SAY
15 HE THREATENED HER WITH HER LIFE? WHY NOT MAKE IT WORSE
16 THAN IT WAS? SHE DIDN'T. SHE WAS AS HONEST AS SHE
17 COULD BE. SHE DIDN'T MAKE IT WORSE. SHE DIDN'T MAKE IT
18 ANY BETTER. SHE TOLD YOU AS IT WAS. AND IF THAT LITTLE
19 GIRL IS LYING, THEN SHE AND HER MOM; THEY DON'T NEED TO
20 LIVING IN A TRAILER IN AUGUSTA, GEORGIA. SHE NEEDS TO
21 BE MOVING TO HOLLYWOOD MAKING MILLIONS FOR HER MOTHER.

22 GETTING BACK TO DAWN
23 AFTER SHE IS TOLD BY *VICTIM*, SHE IMMEDIATELY DOES WHAT
24 ANY GOOD PARENT DOES; CALLS HER SISTER, TRIES TO GET
25 SOME HELP; CALLS THE POLICE, GETS LAW ENFORCEMENT

1 INVOLVED; TAKES HER DAUGHTER TO GET A MEDICAL EXAM AS
2 SOON AS THEY TELL HER SHE NEEDS TO; TAKES HER DAUGHTER
3 FOR A PRIVATE MEDICAL EXAM AS SHE'S TOLD; FOLLOWS UP
4 WITH LAW ENFORCEMENT HERE IN RICHLAND COUNTY; DOES
5 EVERYTHING THAT A GOOD PARENT SHOULD DO. DID THE RIGHT
6 THING. AND, YET, WE SHOULDN'T BELIEVE HER. TAKES HER
7 DAUGHTER TO DR. BRUNIE; TELLS DR. BRUNIE WHAT'S BEEN
8 DISCLOSED SO THAT HE CAN TREAT HER FOR WHAT'S REALLY
9 WRONG. THAT BRINGS ME TO DR. BASH, THE EMERGENCY ROOM
10 DOCTOR WHO DID HER EXAM ON JULY THE 31ST. DR. BASH --
11 AND THIS GOES FOR ALL THE EXPERTS -- THEY HAVE NO DOG IN
12 THIS FIGHT. THEY'RE JUST INDEPENDENT PEOPLE DOING THEIR
13 JOB AS THEY SHOULD. DR. BASH EXAMINES VICTIM ON THAT
14 DAY AND FINDS HEALING SCAR TISSUE. AGAIN, THERE'S NO
15 OTHER EXPLANATION FOR IT OTHER THAN VICTIM HAD BEEN
16 PENETRATED BY SOMETHING. AND THAT'S UNDISPUTED
17 TESTIMONY.

18 JODY LASHLEY; A TRAINED
19 PROFESSIONAL. SHE'S BEEN THROUGH TRAINING, SAID SHE'S
20 CONDUCTED NEARLY 1,000 FORENSIC INTERVIEWS; TRAINED TO
21 LOOK FOR COACHING; TRAINED TO LOOK FOR FABRICATION WHICH
22 MEANS LYING. DIDN'T FIND EVIDENCE OF EITHER OF THOSE IN
23 VICTIM. AND AS JODY TOLD YOU, DISCLOSURE IS A PROCESS.
24 IT'S NOT GOING TO HAPPEN OVER NIGHT. IT'S NOT GOING TO
25 BE TOLD BY EVERY CHILD IN ALL ONE CITY, WITHIN A THIRTY

1 MINUTE INTERVIEW. IT'S A PROCESS; A PROCESS THAT
2 CHILDREN GO THROUGH AS THEY FEEL MORE COMFORTABLE WITH
3 PEOPLE. YET WE'RE GOING TO BLAME IT ON VICTIM THAT SHE
4 DIDN'T FEEL COMFORTABLE ENOUGH WITH JODIE THAT DAY TO
5 TELL HER EVERYTHING THAT HAD HAPPENED TO HER AT EVERY
6 SINGLE POINT.

7 THEN WE HAVE DR. CLAYBORNE WHO
8 EXAMINED VICTIM NEARLY A MONTH LATER AT THE END OF
9 AUGUST. AND AGAIN HER FINDINGS ARE 100 PERCENT
10 CONSISTENT WITH DR. BASH. THE ONLY SCAR TISSUE THAT ONE
11 MONTH LATER HAD ALREADY HEALED, AND AGAIN, CONSISTENT
12 WITH VICTIM 'S TIME LINE THAT SHE HADN'T SEEN THE
13 DEFENDANT IN NEARLY TWO MONTHS BY THAT POINT. NOTHING
14 HAD HAPPENED TO HER IN THOSE TWO MONTHS. 100 PERCENT
15 CONSISTENT. DR. CLAYBORNE ALSO TOLD YOU THAT SHE
16 WOULDN'T EXPECT TO FIND ANYTHING UNUSUAL AT THAT POINT
17 UNLESS -- I THINK SHE CALLED IT BRUTAL OR FORCEFUL
18 INTERCOURSE. AND, THANKFULLY, THANKFULLY THAT'S NOT
19 WHAT HAPPENED IN THIS CASE.

20 AND THEN FINALLY DR. BRUNIE; A
21 TRAINED PSYCHIATRIST, A CHILD SPECIALIST, BEEN DOING
22 THIS FOR OVER FIFTEEN YEARS. TOLD YOU THAT HE WAS
23 SEEING VICTIM BEFORE AND AFTER HER DISCLOSURE; IN FACT,
24 AFTER THE DISCLOSURE HER CONDITION ACTUALLY
25 DETERIORATED. AND WHAT DID HE TELL YOU WHEN HE FOUND

1 OUT WHAT VICTIM HAD SAID THAT SHE HAD BEEN SEXUALLY
2 ABUSED? FINALLY ALL THE PIECES FIT TOGETHER. FINALLY
3 IT MADE SENSE. AND IT WASN'T THE ANXIETY OR THE
4 DEPRESSION THAT HE WAS CONCERNED ABOUT. IT WAS THE
5 ANGER, THE INTENSE ANGER THAT VICTIM HAD, THE
6 SELF-HURTING. AND YOU HEARD HIM TALK ABOUT WHEN VICTIM
7 ANY TIME TALKED OF A COURT DATE COMES UP, THIS CHILD,
8 THIS NOW TWELVE YEAR OLD GIRL STILL A CHILD, IS REDUCED
9 TO A FETAL POSITION SUCKING HER THUMB. IS SHE MAKING
10 ALL THIS UP? I MEAN IS SHE ACTING? NO! THESE ARE THE
11 REAL FEELINGS OF A CHILD WHO HAS BEEN SYSTEMATICALLY AND
12 CONSISTENTLY SEXUALLY ABUSED SINCE SHE WAS YOUNG BY A
13 MAN THAT SHE TRUSTED, A MAN THAT SHE TRUSTED LIKE A
14 FATHER.

15 IT'S HARD TO BELIEVE IN OUR
16 SOCIETY, AND WE DON'T WANT TO BELIEVE IT, THAT ANYONE IS
17 A CHILD MOLESTER BECAUSE NEXT TO MURDER, IT'S PERHAPS
18 THE MOST HEINOUS CRIME IN OUR SOCIETY. BUT IT HAPPENED,
19 AND WE KNOW IT HAPPENED. WE KNOW IT'S A REALITY. AND
20 IT'S A REALITY FOR VICTIM . YOU HAVE TO ASK
21 YOURSELF, WHAT DOES A CHILD MOLESTER LOOK LIKE. I MEAN,
22 WE DON'T HAVE STAMPS THAT WE PUT ON PEOPLE'S FOREHEADS
23 BECAUSE THEN THAT WOULD MAKE LAW ENFORCEMENT'S JOB
24 EASY. THAT WOULD MAKE OUR JOB EASY. NO CHILD WOULD
25 THEN BE SEXUALLY ABUSED BECAUSE WE'D ALL KNOW WHO THEY

1 WERE. BUT THESE PEOPLE DON'T WALK AROUND WITH STAMPS ON
2 THEIR HEADS. WE DON'T JUST LOOK INTO SOMEONE'S EYES AND
3 SEE THAT THEY'RE A CHILD MOLESTER. BUT WE KNOW THAT
4 THEY EXIST, AND WE KNOW THAT THEY EXIST AMONG US IN OUR
5 COMMUNITY; AS OUR NEIGHBORS, AS OUR CO-WORKERS, AS OUR
6 PRIESTS. THEY EXIST AMONG US. BUT FORTUNATELY HERE IN
7 THE UNITED STATES, WE HAVE A SYSTEM TO PUT IN PLACE, A
8 SYSTEM THAT ALLOWS THE STATE TO BRING CREDIBLE EVIDENCE
9 BEFORE YOU TO PROVE TO TWELVE IMPARTIAL PEOPLE WHAT
10 HAPPENED IN THIS CASE.

11 AND AS I STATED EARLIER, *VICTIM* 'S
12 TESTIMONY ALONE IS ENOUGH TO CONVICT THE DEFENDANT. BUT
13 IN THIS CASE YOU HAVE SO MUCH MORE. YOU HAVE SO MUCH
14 MORE UNCONTRADICTED EXPERT TESTIMONY ABOUT WHAT *VICTIM*
15 HAS BEEN GOING THROUGH. A YOUNG GIRL WHO AT AGE TWELVE
16 WAS DIAGNOSED WITH POST TRAUMATIC STRESS DISORDER. AND
17 IN DR. GREEN'S OPINION; OH, YES, SHE'S BEEN THROUGH
18 TRAUMA. SHE'S EXPERIENCED TRAUMA. EXPERTS WOULD
19 INDEPENDENTLY CORROBORATE EACH OTHER. THIS DEFENDANT
20 COUNTED A NUMBER OF THINGS. HE COUNTED ON *VICTIM* NOT
21 EVER TELLING THEIR LITTLE SECRET; NOT A LITTLE SECRET, A
22 BIG SECRET. HE COUNTED ON THE FACT THAT HIS
23 MOLESTATION, THAT THE PHYSICAL SCARS WOULD HEAL, BUT
24 THAT THE SCARS ON HER SOUL WOULDN'T. HE COUNTED ON THE
25 FACT THAT SHE WOULD NEVER, EVER BE ABLE TO COME INTO A

1 STERILE COURTROOM ENVIRONMENT AND TELL HER STORY. HE
2 COUNTED ON THE FACT THAT THERE WOULD BE EXPERTS UP
3 THERE; EXPERTS WHO WOULD HAVE THE EDUCATION AND THE
4 TRAINING TO TAKE HER REVELATION AND CALL IT WHAT IT WAS;
5 SEXUAL ABUSE.

6 PERHAPS THE BIGGEST THING THAT HE
7 COUNTED ON WAS THE FACT THAT VICTIM IS A CHILD WITH
8 PROBLEMS, BECAUSE SHE'S GOT ATTENTION DEFICIT DISORDER.
9 THAT'S NOT A DISORDER THAT MAKES HER LIE. IT'S NOT A
10 DISORDER THAT MAKES HER NOT KNOW WHAT'S GOING ON. IT'S
11 A DISORDER. IT'S A HYPERACTIVITY DISORDER THAT SHE
12 TAKES MEDICATION FOR. IT DOESN'T MAKE HER A LIER, AND
13 IT DOESN'T MAKE HER MAKE UP A HORRENDOUS STORY LIKE
14 THIS. AND HE COUNTED ON THE FACT THAT A JURY WOULD
15 NEVER CONVICT HIM OF THIS. BUT HE MISCALCULATED BECAUSE
16 HE WAS HER BOBBY.

17 AS MS. CAMPBELL TOLD YOU, THIS IS
18 AN IMPORTANT DAY, NOT ONLY FOR VICTIM BUT FOR
19 THE DEFENDANT AS WELL. HE'S HAD HIS DAY IN COURT.

20 VICTIM HAS HAD HER DAY IN COURT AS WELL. THE
21 REALITY IS FOR VICTIM. THIS NIGHTMARE BEGAN EIGHT YEARS
22 AGO WHEN HE BEGAN TO GROOM HER AND USE HER FOR HIS OWN
23 SEX TOY, FOR HIS OWN PLEASURES. AND WHAT HE DID WAS HE
24 TOOK A SACRED, BEAUTIFUL LOVE THAT SHOULD EXIST BETWEEN
25 A PARENT AND A CHILD, AND HE TURNED IT INTO A TWISTED,

CHARGE TO THE JURY

BY THE COURT

ALL RIGHT; MR. FOREMAN AND LADIES AND GENTLEMEN OF THE JURY; LET ME REMIND YOU OF A COUPLE OF THINGS THAT I TOLD YOU AT THE OUTSET OF THE TRIAL. FIRST OF ALL, YOU WERE TO BASE YOUR DECISIONS SOLELY ON THE ADMISSIBLE EVIDENCE THAT WAS ALLOWED INTO THE RECORD; AND YOU'RE TO DISREGARD ANY TESTIMONY THAT WAS ORDERED STRICKEN OR WHERE AN OBJECTION WAS SUSTAINED. THE SECOND THING I NEED TO TALK TO YOU ABOUT IS THAT OTHER RESPONSIBILITY THAN PRESIDING OVER THE TRIAL IS TO GIVE YOU A SET OF LEGAL PRINCIPLES THAT ARE APPLICABLE IN THIS CASE. AND UNDER THAT AUTHORITY, YOU ARE TO ACCEPT AND TO APPLY THE LAW AS YOU ARE INSTRUCTED. SO IF YOU HAVE A PRECONCEIVED IDEA AS TO WHAT THE LAW IS OR OUGHT TO BE IN THIS CASE AND THAT DOES NOT NOW AGREE WITH THESE INSTRUCTIONS, THEN I WOULD ASK YOU TO ABANDON YOUR PRECONCEIVED IDEA AND TO APPLY THE LAW AS YOU SWORE TO DO.

NOW, THE SAME CONSTITUTION THAT GIVES ME THE RIGHT TO INSTRUCT YOU ON THE LEGAL PRINCIPLES IN THIS CASE MAKES YOU THE SOLE AND EXCLUSIVE JUDGES OF THE FACTS IN THE CASE. OUR STATE CONSTITUTION CONTAINS A UNIQUE PROVISION THAT PROHIBITS A TRIAL JUDGE

1 FROM MAKING ANY STATEMENT TO OR COMMENTING OR INFERRING
2 TO A TRIAL JURY ABOUT WHAT THE FACTS ARE, ABOUT WHAT
3 YOUR VERDICT SHOULD BE. AND I'VE NOT INTENTIONALLY DONE
4 SO. HOWEVER, IF YOU'VE INFERRED FROM ANYTHING THAT I'VE
5 SAID OR DONE IN PRESIDING OVER THIS TRIAL OR ANYTHING
6 THAT I MIGHT SAY TO YOU NOW THAT I HAVE AN OPINION ABOUT
7 WHAT THE FACTS ARE OR ABOUT WHAT YOUR VERDICT SHOULD BE,
8 I WOULD ASK YOU TO DISREGARD THAT BECAUSE I WOULD NOT
9 WANT TO INVADE YOUR RIGHT AS A FACT-FINDER ANY MORE THAN
10 I'D WANT YOU TO INVADE MY RIGHT AS A LAW GIVER.

11 NOW, LADIES AND GENTLEMEN, AS
12 JURORS IT'S YOUR DUTY TO DETERMINE THE EFFECT, THE
13 VALUE, THE WEIGHT, AND THE TRUTH OF THE EVIDENCE THAT
14 HAS BEEN PRESENTED TO YOU. NECESSARILY YOU WILL HAVE TO
15 ACCESS THE CREDIBILITY OF THE WITNESSES WHO HAVE
16 TESTIFIED HERE. CREDIBILITY IS SIMPLY A LEGALISTIC TERM
17 FOR BELIEVABILITY; WHO DO YOU BELIEVE; WHAT DO YOU
18 BELIEVE. IT IS YOUR DUTY TO TAKE ALL THE ADMISSIBLE
19 EVIDENCE, ANALYZE IT, EVALUATE IT, AND DETERMINE WHAT
20 PORTIONS CONVINCE YOU OF ITS TRUTH.

21 NOW, THE LAW PROVIDES SOME TOOLS
22 TO ASSIST YOU IN ASSESSING CREDIBILITY OR
23 BELIEVABILITY. YOU MAY BELIEVE ONE WITNESS AS AGAINST
24 SEVERAL WITNESSES OR SEVERAL WITNESSES AGAINST ONE. YOU
25 MAY BELIEVE A PART OF A WITNESSES TESTIMONY AND REJECT

1 THE REMAINING PART OF THAT SAME WITNESSES TESTIMONY.
2 FOR A GOOD AND SOUND REASON, LADIES AND GENTLEMEN, YOU
3 MAY BELIEVE A WITNESSES TESTIMONY IN ITS ENTIRETY, OR
4 YOU MAY REJECT A WITNESSES TESTIMONY IN ITS ENTIRETY.
5 YOU MAY CONSIDER WHETHER OR NOT ANY WITNESS HAS
6 EXHIBITED TO YOU ANY INTEREST, ANY BIAS, ANY PREJUDICE,
7 OR OTHER MOTIVE IN THE CASE. YOU MAY ALSO CONSIDER THE
8 DEMEANOR OF THE WITNESS, THAT IS THE MANNER, THE
9 APPEARANCE, THE STYLE OF A WITNESS WHILE HE OR SHE WAS
10 TESTIFYING. AND THAT WOULD INCLUDE SUCH THINGS AS WAS
11 THE WITNESS STRAIGHT-FORWARD, WAS THE WITNESS HESITANT,
12 AND THINGS LIKE THAT WHERE YOU USE YOUR ORDINARY COMMON
13 SENSE. AND OF COURSE, LADIES AND GENTLEMEN, YOU MAY
14 CONSIDER THE OPPORTUNITY FOR KNOWLEDGE ABOUT THOSE
15 THINGS WHICH A WITNESS HAS TESTIFIED TO AS WELL AS THE
16 REASONABLENESS OF THEIR TESTIMONY. NOW, THESE TOOLS,
17 LADIES AND GENTLEMEN, YOU DON'T USE ARBITRARILY, BUT IF
18 IN YOUR GOOD JUDGMENT YOU NEED TO USE ONE OR MORE OF
19 THEM, YOU MAY DO SO BECAUSE YOUR OBJECTIVE IN THIS CASE
20 IS TO FIND THE TRUTH WHETHER IT COMES FROM A WITNESS OR
21 WITNESSES FROM THE STATE OR WITNESS OR WITNESSES FOR THE
22 DEFENDANT.

23 I WOULD TELL YOU HOWEVER, LADIES
24 AND GENTLEMEN, THAT YOU DO NOT DETERMINE TRUTH BY
25 COUNTING THE NUMBER OF WITNESSES WHO MIGHT TESTIFY FOR

1 ONE SIDE OR THE OTHER. NOW, IN JUST A FEW MINUTES,
2 YOU'LL BE UNDERTAKING A DELIBERATION PROCESS. THAT'S
3 WHERE YOU WILL BE ENGAGING IN A DEBATE ABOUT WHAT YOU
4 CONSIDER TO BE TRUE ABOUT THE FACTS IN THIS CASE. WHAT
5 THE LAW SIMPLY REQUIRES OF YOU WHEN YOU DELIBERATE IS
6 THAT YOU EXERCISE YOUR GOOD JUDGMENT. YOU USE YOUR
7 COMMON SENSE, YOUR LOGIC AND REASON, AND YOUR
8 EXPERIENCES IN LIFE. YOU TAKE THOSE ATTRIBUTES AND THEN
9 TEST THE EVIDENCE AND DETERMINE WHAT YOU CONSIDER TO BE
10 THE TRUTHFUL FACTS. AND TO THOSE TRUTHFUL FACTS AS YOU
11 FIND THEM, THEN YOU APPLY THESE LEGAL PRINCIPLES. AND
12 THAT'S HOW YOU WOULD ARRIVE AT YOUR VERDICT.

13 NOW, LADIES AND GENTLEMEN, BY
14 YOUR VERDICT -- YOUR VERDICT SHOULD NOT BE AS A RESULT
15 OF ANY PASSION, PREJUDICE, OR SYMPATHY. AND BY YOUR
16 VERDICT YOU HAVE NO FRIENDS TO REWARD NOR ENEMIES TO
17 PUNISH, BUT RATHER IT SHOULD SPEAK THE TRUTH BASED UPON
18 THE LAW AND THE EVIDENCE IN THE CASE. NOW, THERE ARE
19 TWO TYPES OF EVIDENCE THAT ARE GENERALLY PRESENTED
20 DURING THE TRIAL. ONE IS CALLED DIRECT EVIDENCE. THE
21 OTHER IS CALLED CIRCUMSTANTIAL EVIDENCE. DIRECT
22 EVIDENCE IS THE TESTIMONY OF A PERSON WHO ASSERTS OR
23 CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT SUCH AS AN EYE
24 WITNESS. DIRECT EVIDENCE MAY ALSO BE DERIVED FROM ANY
25 ONE OF OUR FIVE SENSES; TASTE, TOUCH, SOUND, SMELL, OR

1 SIGHT. CIRCUMSTANTIAL EVIDENCE, ON THE OTHER HAND, IS
2 THE PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES
3 INDICATING THE EXISTENCE OF A FACT. THE LAW MAKES
4 ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO
5 BE GIVEN EITHER DIRECT EVIDENCE OR CIRCUMSTANTIAL
6 EVIDENCE NOR IS ANY GREATER DEGREE OF CERTAINTY REQUIRED
7 OF CIRCUMSTANTIAL EVIDENCE THAN THAT OF DIRECT
8 EVIDENCE.

9 YOU SHOULD WEIGH ALL THE EVIDENCE
10 IN THIS CASE; AND AFTER WEIGHING ALL THE EVIDENCE IN THE
11 CASE, IF YOU'RE NOT CONVINCED OF THE GUILT OF THE
12 DEFENDANT BEYOND A REASONABLE DOUBT, YOU MUST FIND HIM
13 NOT GUILTY. NOW CONJECTURE, SPECULATION, SUSPICION, OR
14 PROBABILITY DOES NOT CONSTITUTE CIRCUMSTANTIAL
15 EVIDENCE. I ALSO INSTRUCT YOU, LADIES AND GENTLEMEN,
16 THE FACT THAT THE DEFENDANT WAS ARRESTED, CHARGED, AND
17 INDICTED IN THIS CASE IS NOT EVIDENCE IN THE CASE NOR
18 DOES IT CREATE ANY PRESUMPTION OR INFERENCE OF GUILT IN
19 THE CASE. IT IS MERELY THE PROCEDURAL PROCESS BY WHICH
20 THE STATE HAS LODGED THE CHARGES AGAINST THE DEFENDANT.
21 AND HAVING DONE SO, THEY MUST NOW COME FORWARD AND MEET
22 THEIR BURDEN OF PROOF.

23 THE DEFENDANT HAS PLED NOT GUILTY
24 TO THE TWO INDICTMENTS. AND THOSE PLEAS CAST THE BURDEN
25 OF PROOF UPON THE STATE OF OR SOUTH CAROLINA TO PROVE

1 HIM GUILTY. AND THAT IS BECAUSE A PERSON CHARGED WITH
2 COMMITTING A CRIMINAL OFFENSE IN OUR STATE IS NEVER
3 REQUIRED TO PROVE HIMSELF INNOCENT. IT IS A CARDINAL
4 AND IMPORTANT RULE OF LAW AND EVIDENCE THAT A DEFENDANT
5 IN A CRIMINAL TRIAL, NO MATTER THE SERIOUSNESS OF THE
6 CHARGE MADE AGAINST HIM, WILL ALWAYS BE PRESUMED
7 INNOCENT OF THE CRIMES WITH WHICH HE STANDS INDICTED
8 UNTIL AND UNLESS YOU ARRIVE AT UNANIMOUS VERDICT OF
9 GUILT BASED UPON EVIDENCE SATISFYING YOU OF THAT FACT
10 BEYOND A REASONABLE DOUBT.

11 THE PRESUMPTION OF INNOCENCE,
12 LADIES AND GENTLEMEN, DOES NOT CEASE WHEN YOU RETIRE TO
13 DELIBERATE, BUT IT HAS ACCOMPANIED THE DEFENDANT
14 THROUGHOUT ALL THE PROCEEDINGS AND THROUGHOUT YOUR
15 DELIBERATIONS UNLESS AND UNTIL YOU ARRIVE AT A UNANIMOUS
16 VERDICT OF GUILT BASED UPON EVIDENCE SATISFYING YOU OF
17 THAT FACT BEYOND A REASONABLE DOUBT. OUR SUPREME COURT
18 HAS LIKENED THE PRESUMPTION OF INNOCENCE TO A ROBE
19 RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF A DEFENDANT,
20 AND IT REMAINS WITH HIM AND ASSIGNS HIM TO A CLASS KNOWN
21 AS THE INNOCENT UNTIL THAT PRESUMPTIVE ROBE OF
22 RIGHTEOUSNESS IS STRIPPED FROM HIS PERSON BY EVIDENCE
23 SATISFYING YOU OF THAT FACT BEYOND A REASONABLE DOUBT.

24 THE PRESUMPTION OF INNOCENCE,
25 LADIES AND GENTLEMEN, IS NOT A MERE LEGAL THEORY. IT'S

1 NOT JUST A LEGAL PHRASE. AND IT'S CERTAINLY NOT A
2 TECHNICALITY. IT IS A SUBSTANTIAL RIGHT TO WHICH EVERY
3 CITIZEN IS ENTITLED TO UNLESS YOU, THE JURY, ARE
4 SATISFIED FROM THE EVIDENCE OF HIS GUILT BEYOND A
5 REASONABLE DOUBT. SOME OF YOU MAY HAVE SERVED IN CIVIL
6 CASES WHERE YOU WERE TOLD THAT THE BURDEN OF PROOF IS
7 THAT SOMETHING IS MORE LIKELY TRUE THAN NOT OR BY THE
8 GREATER WEIGHT OR PREPONDERANCE OF THE EVIDENCE. OR
9 PERHAPS YOU SAT IN A CIVIL CASE WHERE A FRAUD ACTION,
10 AND YOU WERE TOLD THAT THE BURDEN OF PROOF IS BY CLEAR,
11 COGENT, AND CONVINCING EVIDENCE. IN A CRIMINAL CASE,
12 HOWEVER, THE STATE MUST PROVE THE GUILT OF THE DEFENDANT
13 BEYOND A REASONABLE DOUBT. AND THAT BURDEN OF PROOF IS
14 MORE POWERFUL THAN THOSE TWO CIVIL BURDENS THAT I HAVE
15 OUTLINED FOR YOU.

16 PROOF BEYOND A REASONABLE DOUBT
17 IS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE
18 DEFENDANT'S GUILT. THERE ARE VERY FEW THINGS IN THIS
19 WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY. AND IN
20 CRIMINAL CASES, THE LAW IS NOT REQUIRED PROOF THAT
21 OVERCOMES EVERY POSSIBLE DOUBT. IF BASED ON YOUR
22 CONSIDERATION OF THE EVIDENCE YOU ARE FIRMLY CONVINCED
23 THAT THE DEFENDANT IS GUILTY OF THE CRIME CHARGED, YOU
24 MUST FIND HIM GUILTY. IF, ON THE OTHER HAND, YOU FEEL
25 THAT THERE IS A REAL POSSIBILITY HE IS NOT GUILTY, YOU

1 MUST FIND GIVE HIM THE BENEFIT OF THE DOUBT AND FIND HIM
2 NOT GUILTY.

3 NOW THE RULES OF EVIDENCE DON'T
4 ORDINARILY PERMIT WITNESSES TO TESTIFY AS TO OPINIONS OR
5 CONCLUSIONS, BUT THERE IS AN EXCEPTION TO THAT RULE
6 KNOWN AS THE EXPERT WITNESS RULE. THOSE ARE WITNESSES
7 WHO BY EDUCATION AND EXPERIENCE HAVE BECOME AN EXPERT IN
8 SOME ART, SCIENCE, PROFESSION OR CALLING. AND THEY MAY
9 TAKE THE STAND AND TESTIFY AS TO AN OPINION ABOUT SOME
10 RELEVANT AND MATERIAL MATTER IN WHICH THEY PROFESS TO BE
11 AN EXPERT. AND THEY MAY GIVE YOU THEIR REASONS FOR THAT
12 OPINION. YOU SHOULD CONSIDER ANY EXPERT OPINION OFFERED
13 IN THE EVIDENCE IN THIS CASE AND GIVE IT SUCH WEIGHT AS
14 YOU THINK IT DESERVES. IF YOU SHOULD DECIDE THAT THE
15 OPINION OF AN EXPERT WITNESS IS NOT BASED UPON
16 SUFFICIENT EDUCATION AND EXPERIENCE, OR IF YOU SHOULD
17 CONCLUDE THAT REASONS GIVEN IN SUPPORT OF THE OPINION
18 ARE NOT SOUND OR THAT THE OPINION IS OUTWEIGHED BY OTHER
19 EVIDENCE, YOU MAY DISREGARD THE OPINION IN ITS
20 ENTIRETY. AN EXPERT'S OPINION IS TO BE GIVEN NO GREATER
21 WEIGHT THAN THAT OF ANY OTHER WITNESS SIMPLY BECAUSE HE
22 OR SHE IS AN EXPERT. AND YOU'RE NOT REQUIRED TO ACCEPT
23 AN EXPERT'S OPINION EVEN THOUGH IT IS UNCONTRADICTED.

24 NOW LADIES AND GENTLEMEN, THERE
25 ARE TWO INDICTMENTS IN THIS CASE. FIRST LET ME DISCUSS

1 WITH YOU THE STATE'S INDICTMENT FOR LEWD ACT ON A MINOR
2 WHICH IS A VIOLATION OF SECTION 16-15-140 OF THE SOUTH
3 CAROLINA CODE. A DEFENDANT IS CHARGED WITH COMMITTING A
4 LEWD ACT ON A MINOR. A MINOR IS A PERSON UNDER THE AGE
5 OF 18. THE STATE MUST FIRST PROVE BEYOND A REASONABLE
6 DOUBT THAT THE DEFENDANT WAS OVER THE AGE OF FOURTEEN.
7 NEXT THE STATE MUST PROVE THAT THE DEFENDANT WILLFULLY
8 AND LEWDLY COMMITTED OR ATTEMPTED A LEWD OR LACIVIOUS
9 ACT ON OR WITH THE BODY OR ITS PARTS OF A CHILD UNDER
10 THE AGE OF 16 WITH THE INTENT TO AROSE, APPEAL TO, OR
11 GRATIFY THE LUST, PASSIONS, OR SEXUAL DESIRES OF THE
12 DEFENDANT OR THE CHILD. WILLFULLY MEANS VOLUNTARILY AND
13 INTENTIONALLY, THE SPECIFIC INTENT TO DO SOMETHING WHICH
14 THE LAW FORBIDS. LEWD MEANS OBSCENE, LUSTFUL, OR
15 INDECENT OR LACIVIOUS. LACIVIOUS MEANS TENDING TO
16 INCITE LUST, INDECENT, OBSCENE OR ATTENDING TO DEPRIVE
17 THE MORALS IN RESPECT TO SEXUAL RELATIONS.

18 WITH REGARD TO THE SECOND
19 INDICTMENT FOR CRIMINAL SEXUAL CONDUCT WITH A MINOR IN
20 THE FIRST DEGREE, THE STATE MUST PROVE BEYOND A
21 REASONABLE DOUBT THAT THE DEFENDANT ENGAGED IN A SEXUAL
22 BATTERY WITH THE VICTIM. SEXUAL BATTERY IS SEXUAL
23 INTERCOURSE, CUNNILINGUS FELACIO, ANAL INTERCOURSE, OR
24 ANY INTRUSION, HOWEVER SLIGHT, OF ANY PART OF A PERSON'S
25 BODY OR OF ANY OBJECT INTO THE GENITAL OR ANAL OPENINGS

1 OF ANOTHER PERSON'S BODY EXCEPT WHEN THE INTRUSION IS
2 ACCOMPLISHED FOR MEDICALLY RECOGNIZED TREATMENT OR
3 DIAGNOSTIC PURPOSES. THE STATE MUST THEN PROVE BEYOND A
4 REASONABLE DOUBT THAT THE VICTIM WAS LESS THAN ELEVEN
5 YEARS OLD AT THE TIME OF THE SEXUAL BATTERY. CONSENT,
6 WILLINGNESS, INDIFFERENCE, OR IGNORANCE ON THE PART OF
7 THE MINOR, IF ANY, AS TO WHAT WAS TAKING PLACE DOES NOT
8 IN ANY WAY AFFECT THE CHARGE OF CRIMINAL SEXUAL CONDUCT
9 WITH A MINOR BECAUSE OF AN UNMARRIED WOMEN UNDER THE AGE
10 OF 16 CANNOT LEGALLY CONSENT TO SEXUAL ACTS.

11 MR. FOREMAN AND LADIES AND
12 GENTLEMEN OF THE JURY, THERE ARE TWO POSSIBLE FORMS OF
13 THE VERDICT. THE ORDER IN WHICH I GIVE THEM TO YOU HAS
14 NO MEANING WHATSOEVER. I MUST GIVE YOU ONE BEFORE I
15 GIVE YOU THE OTHER. AS TO THE CSC WITH A MINOR FIRST
16 DEGREE, IF YOU FIND THE STATE OF SOUTH CAROLINA HAS
17 PROVEN EACH AND EVERY ELEMENT OF THE CRIME CHARGED
18 BEYOND A REASONABLE DOUBT, YOUR VERDICT WOULD BE
19 GUILTY. IF ON THE OTHER HAND YOU FIND THAT THE STATE
20 HAS FAILED TO PROVE EACH AND EVERY ELEMENT OF THE CRIME
21 CHARGED BEYOND A REASONABLE DOUBT, YOUR VERDICT WOULD BE
22 NOT GUILTY. LIKEWISE WITH LEWD ACT ON A CHILD; THE
23 VERDICT FORMS ARE IF YOU FIND THE STATE HAS PROVEN EACH
24 AND EVERY ELEMENT OF THE CRIME CHARGED BEYOND A
25 REASONABLE DOUBT, YOUR VERDICT WOULD BE GUILTY. IF ON

1 THE OTHER HAND YOU FIND THE STATE HAS FAILED TO PROVE
2 EACH AND EVERY ELEMENT OF THE CRIME CHARGED BEYOND A
3 REASONABLE DOUBT, YOUR VERDICT WOULD BE NOT GUILTY.

4 NOW, LADIES AND GENTLEMEN, THESE
5 ARE TWO SEPARATE INDICTMENTS. YOU JUDGE THE EVIDENCE
6 SEPARATELY FROM EACH OTHER. IT IS QUITE POSSIBLE FOR
7 YOU TO REACH ONE VERDICT ON ONE AND A DIFFERENT VERDICT
8 ON THE OTHER ONE DEPENDING UPON YOUR VIEW OF THE
9 EVIDENCE. AGAIN, YOUR VERDICT MUST BE UNANIMOUS. THAT
10 JUST SIMPLY MEANS THAT ALL TWELVE OF YOU MUST AGREE TO
11 THAT VERDICT. MR. FOREMAN, WHEN THE JURY HAS REACHED A
12 UNANIMOUS VERDICT, ON THE BACK OF THE INDICTMENT IS A
13 PLACE TO PUT THE VERDICT. AND I'LL REVERSE THE ORDER
14 WHICH I JUST GAVE TO YOU. YOU'RE TO WRITE THE WORDS
15 GUILTY OR NOT GUILTY AND SIGN YOUR NAME AND PUT THE DATE
16 AS TO EACH INDICTMENT.

17 NOW, DO NOT BEGIN DELIBERATIONS
18 UNTIL YOU GET ANY OF THE PHYSICAL EVIDENCE IN THE CASE.
19 I MIGHT HAVE SAID SOMETHING THAT I MIGHT NEED TO
20 CORRECT. BUT WHEN YOU DO GET THESE INDICTMENTS ALONG
21 WITH THE PHYSICAL EVIDENCE, THEN YOU CAN BEGIN YOUR
22 DELIBERATIONS AND CONTINUE UNTIL YOU ARRIVE AT A
23 VERDICT. IF YOU HAVE A PROBLEM OR A QUESTION DURING THE
24 COURSE OF YOUR DELIBERATIONS, IF YOU'LL WRITE THAT OUT
25 OR LET THE BAILIFF KNOW, WE'LL ATTEMPT TO ANSWER IT TO

1 THE EXTENT THAT WE CAN. WE'LL CHECK ON YOU SOMEWHERE
2 AROUND 12:15 OR 12:20 AND SEE IF YOU WANT TO HAVE LUNCH,
3 BECAUSE NORMALLY WHEN YOU START DELIBERATING, WE WILL
4 FEED YOU IN RATHER THAN SEND YOU OUT. AND, SO, WE'LL
5 CHECK WITH YOU ABOUT 12:15 OR 12:20 ABOUT THAT. IT
6 TAKES US ABOUT 45 MINUTES TO GET AN ORDER IN HERE. SO
7 LET ME ASK YOU NOW TO GO TO YOUR JURY ROOM. DO NOT
8 BEGIN YOUR DELIBERATIONS. DO NOT BEGIN YOUR
9 DELIBERATIONS, HOWEVER, UNTIL YOU GET THESE INDICTMENTS
10 ALONG WITH THE PHYSICAL EVIDENCE. THANK YOU.

11 (AT THIS TIME, JURY RETIRES TO JURY ROOM.)

12 THE COURT: ANY EXCEPTION OR OBJECTION TO
13 THE CHARGE FROM THE STATE?

14 MS. CAMPBELL: YOUR HONOR, THE ONLY THING
15 I THINK WE DISCUSSED ABOUT CHARGING IS IT NEED NOT
16 BE CORROBORATED.

17 THE COURT: I DID FORGET TO DO THAT. I
18 NEED TO TALK ABOUT THE VIDEO DEPOSITION, TOO. ANY
19 OTHER EXCEPTION OR OBJECTION?

20 MR. STOCKHOLM: NOT FROM THE DEFENDANT,
21 YOUR HONOR.

22 THE COURT: I HAD IT SITTING RIGHT HERE
23 IN FRONT OF ME. BRING THEM BACK IN FOR A MOMENT,
24 PLEASE.

25 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

1 THE COURT: I WROTE MYSELF A BIG NOTE TO
2 TELL YOU TWO OTHER THINGS, AND I FLAT FORGOT TO DO
3 IT. SO JUDGE MILLER SAID I OUGHT TO WRITE IT IN
4 RED THE NEXT TIME I SEE IT. A COUPLE OF THINGS.
5 DO NOT TAKE THIS FURTHER INSTRUCTION OUT OF
6 CONTEXT. TAKE IT IN THE CONTEXT OF THE WHOLE
7 CHARGE. LET ME FIRST REMIND YOU ABOUT THE VIDEO
8 TAPED DEPOSITION. THE LEGISLATURE PROVIDES FOR THE
9 TAKING OF A DEPOSITION UNDER CERTAIN
10 CIRCUMSTANCES. AND YOU ARE OBVIOUSLY PRESENTED
11 WITH A DEPOSITION OF THE MINOR CHARGE. YOU
12 CONSIDER HER TESTIMONY JUST LIKE YOU DO ANY OTHER
13 TESTIMONY IN THE RECORD AND GIVE IT SUCH WEIGHT
14 THAT YOU THINK IT DESERVES. WITH REGARD TO SECTION
15 16-3-657, THE CODE PROVIDES THE TESTIMONY OF
16 A VICTIM NEED NOT BE CORROBORATED AND THE
17 PROSECUTION UNDER 16-3-352 THROUGH 16-3-658.
18 AGAIN, IT'S WITHIN YOUR PROVENCE TO BELIEVE ONE
19 WITNESS AS AGAINST SEVERAL OR SEVERAL WITNESSES
20 AGAINST ONE, OR PART; ALL THE STUFF THAT I TOLD YOU
21 JUST A FEW MINUTES AGO. SO HAVING SAID THAT, I'M
22 GOING TO ASK YOU NOW TO BEGIN YOUR DELIBERATIONS.
23 (AT THIS TIME JURY RETIRES TO JURY ROOM TO BEGIN
24 DELIBERATIONS.)

25 THE COURT: YOU ALL CAN BE AT EASE. WITH

VERDICT

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1 RIGHT, MR. FOREMAN AND LADIES AND GENTLEMEN
2 OF THE JURY, THIS WILL CONCLUDE YOUR SERVICE IN
3 THIS CASE, ALSO FOR THE WEEK. WE'RE DRAWING
4 ANOTHER JURY. WE'VE ALREADY GOT A PANEL FOR THAT.
5 SO WE'RE GOING TO RELEASE YOU FROM THE FIRST FLOOR.
6 SO YOU GO BACK TO THE JURY ASSEMBLY ROOM, AND
7 THEY'LL GIVE YOU INSTRUCTIONS ABOUT GETTING PAID
8 AND EXCUSES FOR WORK AND THAT SORT OF THING. YOU
9 PROBABLY DO DESERVE AN EXPLANATION ABOUT THE
10 WITNESS YESTERDAY THAT WAS TAKEN DOWN. GEORGIA
11 HAS A FAIRLY PROTECTIVE PSYCHIATRIST/PSYCHOLOGIST
12 SOCIAL WORKER, PATIENT PRIVILEGE. AND IN MY 29
13 YEARS OF PRACTICE OR EITHER BEING ON THE BENCH,
14 I'VE NEVER SEEN A JUDGE IN A FOREIGN STATE RESTRICT
15 THE TESTIMONY IN ORDER TO GET THAT WITNESS HERE.
16 SHE WAS ORDERED HERE, BUT HE RESTRICTED AND
17 PROTECTED HER PRIVILEGE AS IF THEY WERE IN
18 GEORGIA. WE DON'T HAVE THAT SAME SITUATION HERE.
19 AND SHE WOULD NOT SURRENDER THE NOTES EITHER TO THE
20 STATE OR TO THE DEFENSE ATTORNEY. SO WE DON'T KNOW
21 WHAT THEY SAID. AND YOU CAN'T CROSS-EXAMINE IN A
22 SITUATION LIKE THAT. SO THE STATE RELEASED HER AND
23 SENT HER BACK TO GEORGIA BECAUSE THERE WAS NOTHING
24 THEY COULD DO ABOUT THAT. SO THAT'S WHY SHE DIDN'T
25 TESTIFY. THANK YOU VERY MUCH. ENJOYED WORKING

VERDICT

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1 WITH YOU THIS WEEK. AND THEY'LL GET YOU TO THE
2 FIRST FLOOR AND GET YOU RELEASED.

3 (AT THIS TIME JURY IS EXCUSED.)

4 THE COURT: MOTIONS, MR. STOCKHOLM?

5 MR. STOCKHOLM: IF IT PLEASE THE COURT,
6 YOUR HONOR; WE AT THIS TIME ASK THE COURT TO
7 OVERTURN THE VERDICT ON BOTH CHARGES AND RENDER A
8 NEW TRIAL IN THIS CASE. YOUR HONOR, IN THIS
9 MATTER WE REASSERT OUR MOTION ON DIRECTED VERDICT,
10 YOUR HONOR; FIRST ABOUT COMPETENCY OF THE CHILD.
11 I JUST FEEL LIKE THERE WAS A REAL QUESTION ABOUT IF
12 SHE UNDERSTOOD WHAT WAS GOING ON. SECOND, YOUR
13 HONOR, GIVEN THE TESTIMONY OF THE CHILD, TAKEN
14 VERBATIM, THAT IT WOULD HAVE BEEN A CSC FIRST
15 BECAUSE OF THE SEXUAL BATTERY AND NOT ALSO A LEWD
16 CONDUCT OF THE MINOR. AND ONE OF THOSE CHARGES
17 SHOULD HAVE BEEN DISMISSED. THIRDLY, YOUR HONOR,
18 THE FAILURE FOR THE COURT TO CHARGE MY REQUEST TO
19 CHARGE ABOUT THE DUTY TO REPORT SUSPECTED CHILD
20 ABUSE GIVEN THE FACT THAT IT WAS CRITICAL IN THIS
21 CASE ABOUT WHO THE JURY BELIEVED. AND FINALLY,
22 YOUR HONOR, THE SIMPLE BASIS OF THE EVIDENCE AS A
23 WHOLE DOES NOT SUPPORT THIS VERDICT.

24 THE COURT: AS TO THE TWO CHARGES, AS I
25 RECALL THE SEXUAL BATTERY WOULD INVOLVE THE FELACIO

1 AND THE INSERTION OF HIS FINGER INTO HER VAGINA.
2 THE LEWD ACT COULD HAVE BEEN OTHER FONDLING SHORT
3 OF PENETRATION OR SHORT OF FELACIO. SO THAT'S THE
4 ONLY MOTION THAT GIVES ME SOME CONCERN. I WOULD
5 DENY ALL GROUNDS FOR A NEW TRIAL MOTION.

6 MR. STOCKHOLM: YES, YOUR HONOR.

7 THE COURT: DO YOU WANT TO COME AROUND
8 FOR SENTENCING? MADAM SOLICITOR?

9 MRS. PELLIZZARI: THANK YOU, YOUR HONOR.
10 YOUR HONOR, YOU'VE HEARD ALL THE FACTS IN THIS
11 CASE. MR. REEVES HAS NO PRIOR RECORD. WE JUST
12 LEAVE SENTENCING UP TO YOUR HONOR'S DISCRETION.

13 THE COURT: MR. STOCKHOLM?

14 MR. STOCKHOLM: YOUR HONOR, IF IT PLEASE
15 THE COURT? BOBBY IS 36 YEARS OLD. HE'S BEEN
16 GAINFULLY EMPLOYED. HE HAS BEEN OUT ON BOND FOR
17 TWO YEARS. THEY'VE NEVER HAD A PROBLEM WITH HIM
18 REPORTING AS HE'S BEEN ASKED. HE HAS NO PRIOR
19 CRIMINAL RECORD IN THIS MATTER. THIS IS THE FIRST
20 TIME HE'S REALLY BEEN IN SERIOUS TROUBLE WITH THE
21 LAW. WE WOULD ASK THE COURT TO CONSIDER A
22 PROBATIONARY SENTENCE, YOUR HONOR.

23 THE COURT: HOW OLD ARE YOU, SIR?

24 THE DEFENDANT: DO WHAT?

25 THE COURT: HOW OLD ARE YOU?

VERDICT

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1 THE DEFENDANT: THIRTY-SIX. JUST TURNED
2 36.

3 THE COURT: ALL RIGHT. ON INDICTMENT
4 2002-GS-40-211 ON CRIMINAL SEXUAL CONDUCT IN THE
5 FIRST DEGREE WITH A MINOR. SENTENCE OF THE COURT
6 IS THAT YOU, BOBBY JOE REEVES, BE CONFINED TO THE
7 SOUTH CAROLINA DEPARTMENT OF CORRECTIONS FOR A
8 PERIOD OF FIFTEEN YEARS. I WILL REQUIRE YOU TO
9 REGISTER AS A SEX OFFENDER; WILL REQUIRE YOU TO
10 REGISTER ON THE CHILD ABUSE REGISTRY.
11 00-GS-40-56188, LEWD ACT ON A CHILD; SENTENCE IS
12 FIFTEEN YEARS CONCURRENT. SAME CONDITION, REGISTER
13 AS A SEX OFFENDER, AND REGISTER UNDER THE CHILD
14 ABUSE REGISTRY. SEVEN DAYS CREDIT FOR JAIL TIME.
15 AND I NEED TO TELL YOU, MR. REEVES, YOU'VE EARNED A
16 STRIKE UNDER THE THREE STRIKE RULE, THIS BEING THE
17 MOST SERIOUS OFFENSE. LIKewise, WHEN YOU GET OUT,
18 YOU'RE UNDER COMMUNITY SUPERVISION. IT'S QUITE
19 POSSIBLE IF YOU WERE TO HAVE SOME OTHER WRONGFUL
20 CONDUCT TO BE BACK IN FOR AT LEAST A YEAR AT A TIME
21 NOT TO EXCEED THE MAXIMUM PUNISHMENT UNDER THE
22 STATUTE.

23 MS. CAMPBELL: YOUR HONOR, WE WILL BE
24 SUBMITTING AN ORDER JUST FOR THE SEXUAL TRANSMITTED
25 DISEASE TESTING FOR YOUR SIGNATURE LATER TODAY.

VERDICT

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1 THE COURT: ALL RIGHT. I THOUGHT THEY
2 SAID THEY TESTED HER AT THE HOSPITAL.

3 MS. CAMPBELL: THEY DID A SCREENING, YOUR
4 HONOR. BUT WE ALWAYS FOLLOW UP BECAUSE THE---

5 THE COURT: ALL RIGHT. THEN I WILL ORDER
6 HIM TO SUBMIT TO THE SCREENING FOR SEXUALLY
7 TRANSMITTED DISEASES. ALL RIGHT. GOOD LUCK TO
8 YOU.

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20 * * *END OF TRANSCRIPT OF RECORD* * *

C E R T I F I C A T E

I, THE UNDERSIGNED KATHI W. ADDISON, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD IN THE TRIAL OF THE CAPTIONED CASE IN THE COURT OF GENERAL SESSIONS IN RICHLAND COUNTY, ON THE 17TH AND 18TH DAYS OF SEPTEMBER, 2002.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

MAY 10, 2003


OFFICIAL COURT REPORTER

MY COMMISSION EXPIRES: 2/23/2008

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Henry F. Floyd, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BOBBY JOE REEVES,

APPELLANT

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The indictment for first degree criminal sexual conduct was so poorly drafted that it did not confer subject-matter jurisdiction on the lower court, nor did it state an offense with sufficient certainty and particularity.

STATEMENT OF FACTS

On December 13, 2000, a Richland County grand jury indicted Bobby Joe Reeves for committing a lewd act upon a child. On August 14, 2002, the grand jury indicted Reeves for first degree criminal sexual conduct with a minor. Judge Henry F. Floyd presided at Reeves' jury trial September 17, 2002. The jury found Reeves guilty of both charges, and the judge imposed concurrent fifteen-year sentences.

ARGUMENT

The indictment for first degree criminal sexual conduct was so poorly drafted that it did not confer subject-matter jurisdiction on the lower court, nor did it state an offense with sufficient certainty and particularity.

The first degree criminal sexual conduct indictment in this case reads as follows:

Bobby Joe Reeves did in Richland County between June 30 and July 4, 2000, willfully, unlawfully and feloniously commit a sexual battery to wit: sexual intercourse and/or fellatio and/or any intrusion, however slight, of any part of a person's body or any object into the genital and/or anal opening of a person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes, who at the time was less than eleven years of age. All in violation of S.C. Code of Law Section 16-3-655.

ROA p. *. S.C. Code Section 16-3-655(1) states, "A person is guilty of criminal sexual conduct in the first degree if the actor engages in sexual battery with the victim who is less than eleven years of age." The "sexual battery" language contained in the indictment comes from S.C. Code Section 16-3-651(h).

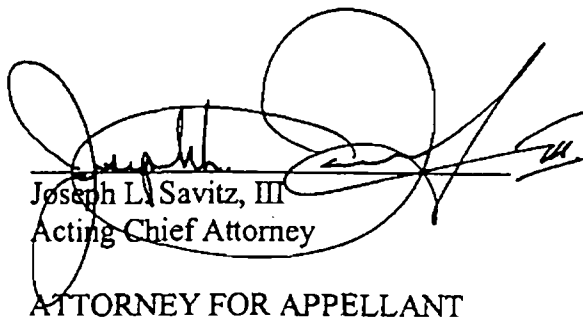
The indictment in this case does not allege a victim, only that Reeves committed a sexual battery. The phrase "who at the time was less than eleven years of age," taken from S.C. Code Section 16-3-655, was merely appended to the definition of sexual battery taken from Section 16-3-651. As written, the indictment is incomprehensible.

"A criminal defendant is entitled to be tried only on indicted offenses." State v. Jones, 342 S.C. 248, 536 S.E.2d 396, 397 (Ct. App. 2000). In South Carolina, "it is a rule of universal observance in administering the criminal law that a defendant must be convicted, if convicted at all, of the particular offense charge in the bill of indictment." State v. Cody, 180 S.C. 417, 186 S.E. 165, 167 (1936). "An indictment is sufficient if it apprises the

defendant of the elements of the offense intended to be charged and apprises the defendant what he must be prepared to meet.” State v. Wilkes, 353 S.C. 462, 578 S.E.2d 717, 718 (2003). “Further, an indictment is sufficient if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon.” Id.

The first degree criminal sexual conduct indictment in this case fails in this regard. Compare State v. Ellison, Ct. App. Opinion No. 3675, filed September 15, 2003. For this reason, the Court should reverse Bobby Joe Reeves’ conviction for first degree criminal sexual conduct.

Respectfully submitted,



Joseph L. Savitz, III
Acting Chief Attorney
ATTORNEY FOR APPELLANT

This 26th day of February, 2004.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Henry F. Floyd, Circuit Court Judge

THE STATE,

RESPONDENT,

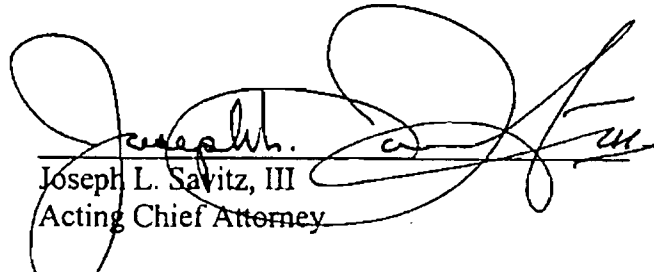
V.

BOBBY JOE REEVES,

APPELLANT

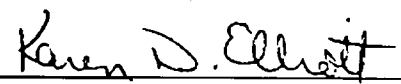
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, this 26th day of February, 2004.



Joseph L. Savitz, III
Acting Chief Attorney
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 26th day of February, 2004.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: March 13, 2007.

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**Appeal from Richland County
Henry F. Floyd, Circuit Court Judge**

THE STATE,

Respondent

v.

BOBBY JOE REEVES,

Appellant

INITIAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

The indictment for first degree criminal sexual conduct was so poorly drafted that it did not confer subject-matter jurisdiction on the lower court, nor did it state an offense with sufficient certainty and particularity.

RESPONDENTS STATEMENT OF THE FACTS

The Appellant, Bobby Joe Reeves, was arrested on September 22, 2000 on an arrest warrant for criminal sexual conduct with a minor. Warrant No. F-056615. In the warrant, the crime was stated as follows:

THAT BETWEEN 06/30/00 & 07/04/00 WHILE AT
HOPKINS SC, IN THE HOPKINS
MAGISTERIAL DISTRICT OF RICHLAND COUNTY, ONE
BOBBY JOE REEVES DID COMMIT THE CRIME OF
CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST
DEGREE INT HAT HE DID ENGAGE IN SEXUAL BATTERY
BY HAVING A 10 YEAR OLD FEMALE CHILD PERFORM
ORAL SEX ON HIM BY INSERTING HIS PENIS INTO HER
MOUTH AND DID RUB HIS PENIS IN THE AREA OF HER
VAGINA. DEFENDANT HAS BEEN IDENTIFIED BY THE
VICTIM AND IS KNOWN BY NAME AND SIGHT BY
VICTIM.
AFFIANT AND OTHERS ARE WITNESS TO PROVE THE
SAME.
RCSD CASE NUMBER 0008-0252-03.

Warrant F056615. R.p. __. The Appellant was also arrested for lewd act upon a child in Arrest

Warrant F056613. On December 13, the Appellant was indicted for "Lewd Act Upon A Child."

In Indictment 2000-GS-40-56188, the crime was described as:

That Bobby Joe Reeves, being over the age of fourteen years (DOB 09-15-66), did in Richland County on or between June 30, 2000 and July 4, 2000, willfully and lewdly commit or attempt to commit a lewd and lascivious act upon or with the body of one *VICTIM* (DOB 03-6-90), a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lusts or passions or sexual desires of the person or of the child. To wit: the defendant rubbed the vagina of the child and/or the defendant had the child rub or touch his penis.

R.p. __. Subsequently, on August 14, 2002, the Appellant was indicted for criminal sexual

conduct with a minor first degree in the following manner:

CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

That Bobby Joe Reeves did in Richland County between June 30 and July 4, 2000, wilfully, unlawfully and feloniously commit a sexual battery to wit: sexual intercourse and/or fellatio and/or any intrusion, however slight, of any part of a person's body or of any object into the genital and/or anal opening of a person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes, who at the time was less than 11 years of age. All in violation of SC Code of Laws § 16-3-655.

R.p. __ (Indictment No. 2002-GS-40-00211).

Prior to the trial, no objection was made to the indictment for criminal sexual conduct. The matter was called to trial on September 17, 2002 before the Honorable Henry F. Floyd. The Appellant was represented by Gene Stockholm. The prosecution was represented by Katherine Luck Campbell, Assistant Solicitor and Dana Pellizzari, Assistant Solicitor of the Solicitor's Office of the Fifth Judicial Circuit.

At the outset of the case, an in camera proceeding was held where the victim, *VICTIM*, was called to testify. Tr. p. 5-32. The matter was videotaped for subsequent presentation before the jury. Tr. 32.

After the deposition, the jury was then qualified and selected. Tr. 32-50. In particular, the indictments were read by Judge Floyd to the jury venire. Tr. 35.. When Judge Floyd set forth the potential witness names for jury qualifications consideration, among others, he stated: .. *VICTIM* ; who is the alleged victim..." Tr. p. 36, ll. 21-22. During the opening statement, the prosecutor, Luck Campbell, described *VICTIM* as the victim. Tr. 55-62. The defense, in its opening, described *VICTIM* as the alleged victim. Tr. 63-65. The state's

evidence was presented addressing ~~Victim~~ as the victim. Tr. 63-149.

The defense made a motion for directed verdict on both charges at the conclusion of the state's case. Tr. 149-150. The motion was denied. Tr. 150-51.

During the defense presentation, the Appellant testified. Tr. 159-178. He denied the charges made by ~~Victim~~. Tr. 163-64. During the final charge, the trial judge described the charges, but did not specifically read the indictments. Tr. 215-226.

The jury convicted of both charges. Tr. 228-29. Although post-verdict motions were made, it did not address the lack of the victim's name in the criminal sexual conduct indictment. Tr. 231-32. He was sentenced to fifteen (15) years concurrent on each indictment with conditions. Tr. 233.

ARGUMENT

- I. **The mere fact that the indictment for criminal sexual conduct with a minor, first degree did not specifically name the child did not divest the court of subject matter jurisdiction on the indictment.**

In his brief before this Court, the Appellant, for the first time, claims Indictment 2002-GS-40-00211 for criminal sexual conduct with a minor - first degree was deficient and did not create subject matter jurisdiction over the offense. In particular, he contended that it "does not allege a victim." Initial Brief of Appellant, p. 5. He further contends that the indictment was "incomprehensible", as written. Brief of Appellant, p. 5. He apparently complains that the language describing sexual battery was merely citing to statutory language.

The first degree criminal sexual conduct indictment in this case reads as follows:

Bobby Joe Reeves did in Richland County between June 30 and July 4, 2000, willfully, unlawfully and feloniously commit a sexual battery to wit: sexual intercourse and/or fellatio and/or any intrusion, however slight, of any part of a person's body or any object into the genital and/or anal opening of a person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes, who at the time was less than eleven years of age. All in violation of S.C. Code of Law Section 16-3-655.

R.p. ____.

In evaluating the sufficiency of an indictment, this Court should "look at the issue with a practical eye in view of the surrounding circumstances." State v. Gunn, 313 S.C. 124, 130, 437 S.E.2d 75, 78 (1993); see also State v. Thompson, 305 S.C. 496, 504 n. 1, 409 S.E.2d 420, 425 n. 1 (Ct.App.1991) (holding when evaluating an indictment, this Court should give "a common sense reading [to] the indictment as a whole"). If the offense is stated with sufficient certainty

and particularity to enable the trial court to know what judgment to pronounce, and the defendant to know what he is called upon to answer, the indictment is sufficient to confer subject matter jurisdiction. Carter v. State, 329 S.C. 355, 362, 495 S.E.2d 773, 777 (1998): "The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet." Browning v. State, 320 S.C. 366, 368, 465 S.E.2d 358, 359 (1995) (citations omitted). "An indictment passes legal muster if it 'charges the crime substantially in the language of the ... statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood....' " State v. Reddick, 348 S.C. 631, 635, 560 S.E.2d 441, 443 (Ct.App.2002) (quoting S.C.Code Ann. §17- 19-20 (1985)).

The Appellant was charged with criminal sexual conduct with a minor in the first degree. In its pertinent part, § 16-3-655 states: " (1) A person is guilty of criminal sexual conduct in the first degree if the actor engages in sexual battery with the victim who is less than eleven years of age...." § 16-3-651(h) states: "Sexual battery" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes. . Criminal sexual conduct: definitions."

The Appellant's initial complaint appears to be that the indictment was deficient because the name of the victim was not set out in the indictment for criminal sexual conduct with a minor, although the phrase : "who at the time was less than 11 years of age all in violation of SC Code of Laws § 16-3-655 " was included in the indictment. It is clear the indictment "charges the

crime substantially in the language of the ... statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood..." It describes the time period, the existence of a sexual battery and the fact that the victim was under the age of 11, as well as the relevant statute, Section 16-3-655. Plainly subject matter jurisdiction in the offense is established.

The failure to name the victim does not remove subject matter jurisdiction. In a number of appellate case, South Carolina courts have approved either correction of the names of the victims or having names substituted. It is implicit in those decisions that the name of the victim was something which could be revised and corrected without affecting the courts jurisdiction. In State v. McGill, 191 S.C. 1, 3 S.E.2d 257 (1939), the court allowed a murder indictment to be amended to change the name of the deceased. As the court stated therein the amendment did not change the nature of the offense charged. "There was no change in the identity of the victim of the homicide, but only in the name. The error being merely a matter of form, therefore not one of substance..." Similarly, the court in State v. O'Neal, 210 S.C. 305, 42 S.E.2d 523 (1947), the court permitted a trial amendment substituting the correct name of the defendant which did not change the offense. The court also held that the failure to object and plead guilty to the charge waived his right to challenge any misnomer. Similarly, a misnomer was allowed to be corrected in State v. Jones, 211 S.C. 319, 45 S.E.2d 29 (1947). Accord, State v. Warren, 330 S.C. 584, 500 S.E.2d 136 (Ct.App. 1998); State v. Johnson, 314 S.C. 161, 166, 442 S.E.2d 191, 194 (Ct.App.1994) (holding an amendment that changed the name of the owner of property listed in an indictment for breach of trust did not change the nature of the offense); State v. Sweat, 221 S.C. 270, 273-74, 70 S.E.2d 234, 235-36 (1952) (holding an amendment to a larceny indictment

did not change the nature of the offense when the name listed as the owner of the stolen goods was changed to the name of the actual owner).

Similarly, in State v. Barnett, 358 S.C.199, 594 S.E.2d 534 (2004), the Court of Appeals held that the indictment originally alleged Clanda James owned the motor vehicle. However, the indictment was amended to name Rosa Daniels as the owner of the motor vehicle. The amendment of the name of the victim under these circumstances was determined to not be a jurisdictional flaw.

In this trial, it was evident that the victim was VICTIM on both offenses. As stated in the Respondents Statement of the Cases, she testified at the trial as the only victim, the state and the defense in their opening statements describes Miss VICTIM as the alleged victim. Importantly, the Appellant in his testimony sought to explain why the charges never happened with the victim. "The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet." Browning v. State, 320 S.C. 366, 368, 465 S.E.2d 358, 359 (1995) (citations omitted). Without question, the victim's name could have been included in the indictment, as it had in the lewd act indictment. However, it is clear that Reeve was contained the necessary elements of criminal sexual conduct with a minor in the first degree and sufficiently described what he must be prepared to meet.

His belated protest is that the indictment could have been made more definite and certain - something which trial counsel below never asked the court to do. He is barred now by his complaint to the form of the indictment, being raised for the first time in the appeal. S.C.Code

Ann. §17-19-90 concerns objections to defects in indictments and states: "Every objection to any indictment for any defect apparent on the face thereof shall be taken by demurrer or on motion to quash such indictment before the jury shall be sworn and not afterwards." No complaint was raised about the lack of the victim's name at the time of trial and none can be raised now.

In Thompson v. State, 357 S.C.192, 593 S.E.2d 139 (2004) is dispositive of his claims. In Thompson, the Court stated:

Petitioner further contends these indictments are insufficient because they do not identify the victim and the co-conspirator, nor do they specify facts upon which the charges are based.

Not all defects in an indictment involve subject matter jurisdiction. Non-jurisdictional defects apparent on the face of the indictment must be timely raised as required by S.C.Code Ann. § 17-19-90 (2003) or they are waived. Hooks v. State, supra; State v. Young, 243 S.C. 187, 133 S.E.2d 210 (1963). While the failure to allege certain circumstances of the crime may be ground to quash an indictment for insufficient notice, such a defect does not necessarily implicate the court's subject matter jurisdiction which is satisfied so long as the elements of the offense are sufficiently stated.

Here, the alleged defects regarding the victim's name, the co-conspirator's identity, and the particular details of the conspiracy are defects that are facially apparent and do not involve the elements of the offense. See State v. McGill, 191 S.C. 1, 3 S.E.2d 257 (1939) (issues concerning the victim's name in an indictment do not involve the court's jurisdiction); State v. Hightower, 221 S.C. 91, 69 S.E.2d 363 (1952) (co-conspirators need not be named); State v. McIntire, 221 S.C. 504, 71 S.E.2d 410 (1952) (facts detailing a conspiracy are not required). Because these defects are not jurisdictional, petitioner cannot raise them for the first time now.

Thompson, supra.

Here as in Thompson, the lack of a victim's name was facially apparent. Because the alleged defect was not jurisdictional, he cannot raise it now. The allegation must be rejected and conviction affirmed.¹

¹The Appellant also complains that the indictment included all the definitions of sexual battery and apparently suggest it was incomprehensible. The record reveals that the victim

CONCLUSION

For all the foregoing reasons, the appeal must be affirmed.

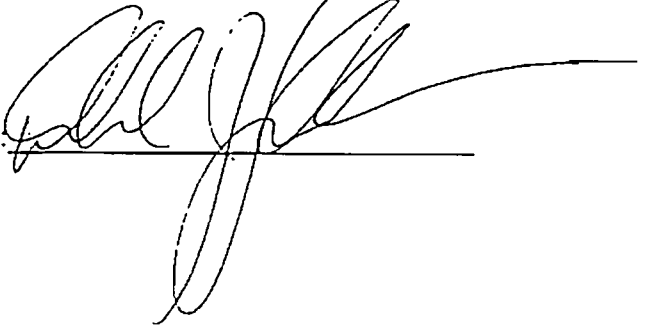
Respectfully submitted,

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

ATTORNEYS FOR RESPONDENT

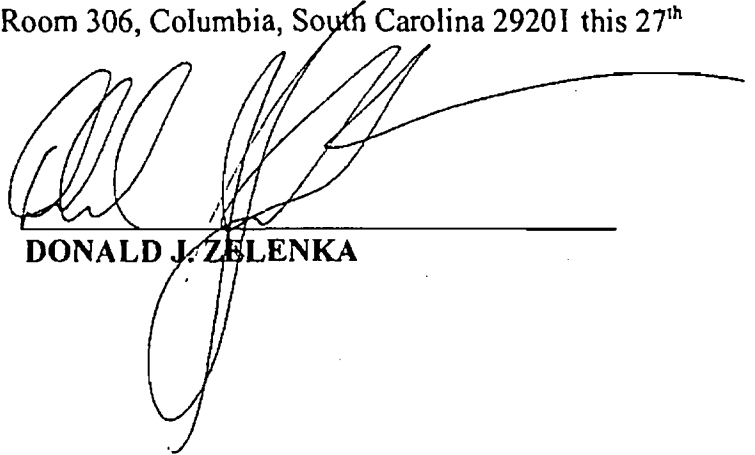
By: 

Columbia, South Carolina
May 27, 2004

testified that he would touch her private with his hands without her clothes, that "he would rub his private on my privates" and that he asked her to "suck his private" and "some yellow stuff would come out...sometimes in my mouth ...[and other times] on my private." Tr.p. 15-17, 19. In the denial of a motion, the Court stated the sexual battery would involve the fellatio and the insertion of his finger into her vagina." Tr.p. 231-232 Plainly, these actions involve various types of sexual battery encompassed in the indictment. If the Appellant's belated "incomprehensible" complaint is that the indictment was not definite enough on the type of sexual battery by its inclusive definition, this claim comes too late and ignores the benefit he receive by the manner of indictment since each separate "battery" could have been charged and subjected him to mor jeopardy - something which his complaint would ask in light of this record. However, if an indictment contains unnecessary allegations, and no objection is raised pursuant to Section 17-10-100, they will be regarded as merely surplusage. *State v. Gilchrist* 54 S.C. 159, 31 S.E. 866. (S.C. 1899). This belated assertion fails to assert a valid claim for relief.

CERTIFICATE OF SERVICE

I, Donald J. Zelenka, hereby certify that I have served the *Initial Brief of Respondent and Designation of Matter* in the foregoing by depositing two (2) copies in the United States mail, postage prepaid, to Joseph L. Savitz, III, Acting Chief Attorney, South Carolina Office of Appellate Defense, 1205 Pendleton Street, Room 306, Columbia, South Carolina 29201 this 27th day of May, 2004.



DONALD J. ZELENA

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Bobby Joe Reeves, Appellant.

Appeal From Richland County
Henry F. Floyd, Circuit Court Judge

Unpublished Opinion No. 2005-UP-099
Submitted February 1, 2005 – Filed February 10, 2005

AFFIRMED

Acting Chief Attorney Joseph L. Savitz III, of
Columbia; for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Donald J.
Zelenka, all of Columbia; and Solicitor Warren
Blair Giese, of Columbia, for Respondent.

PER CURIAM: Bobby Joe Reeves appeals his conviction for first-degree criminal sexual conduct with a minor. He contends the circuit court lacked subject matter jurisdiction to convict him of this offense because the indictment did not identify the victim by name and did not state the offense with sufficient certainty and particularity. We affirm. [1]

FACTS

In 1990, when the victim was eight months old, her mother met Reeves through a mutual friend. For financial reasons, the victim and her mother moved in with Reeves. During this time, the victim became attached to Reeves and viewed him as a father figure. Reeves moved

out of the home when the victim was five years old. Despite the move, Reeves maintained contact with the victim and her mother. The victim had overnight visits with Reeves almost every other weekend.

In 1998, the victim and her mother moved to Georgia. Reeves continued to maintain a relationship with the victim until July 4, 2000. According to the victim's mother, the victim began to act "unusual" after the July 4th weekend. Toward the latter part of July 2000, Reeves contacted the victim's mother to schedule a visit with the victim. When the victim refused to go to Reeves' home, the victim's mother questioned her about her decision. The victim told her mother that Reeves had sexually abused her on several occasions during her visits.

Immediately after this conversation, the victim's mother contacted law enforcement in Augusta, Georgia. On July 31, 2000, the case was referred to the Richland County Sheriff's Department. Ultimately, a Richland County grand jury indicted Reeves for one count of lewd act upon a child and first-degree criminal sexual conduct (CSC) with a minor. A jury convicted Reeves of both charges and the trial judge imposed concurrent, fifteen-year sentences.

DISCUSSION

For the first time on appeal, Reeves challenges his conviction for first-degree CSC with a minor on the ground the indictment was invalid. [2] Specifically, he contends the trial court was divested of subject matter jurisdiction to convict him of this offense because the indictment did not identify the victim by name and did not state the offense with sufficient certainty and particularity. Based on these alleged deficiencies, Reeves characterizes the indictment as "incomprehensible." We disagree.

Issues relating to subject matter jurisdiction may be raised at any time. Browning v. State, 320 S.C. 366, 368, 465 S.E.2d 358, 359 (1995). A circuit court has subject matter jurisdiction if: (1) there has been an indictment that sufficiently states the offense; (2) there has been a waiver of indictment; or (3) the charge is a lesser-included charge of the crime charged in the indictment. Id.; see Brown v. State, 343 S.C. 342, 346, 540 S.E.2d 846, 849 (2001) (stating acts of a court with respect to a matter to which it has no subject matter jurisdiction are void).

South Carolina appellate courts have held the sufficiency of an indictment "must be viewed with a practical eye; all the surrounding circumstances must be weighed before an accurate determination of whether a defendant was or was not prejudiced can be reached." State v. Adams, 277 S.C. 115, 125, 283 S.E.2d 582, 588 (1981), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991).

An indictment is sufficient if it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet. Browning, 320 S.C. at 368, 465 S.E.2d at 359; State v. Gill, 355 S.C. 234, 238, 584 S.E.2d 432, 434 (Ct. App. 2003), cert. denied (Sept. 23, 2004). "Further, an indictment is sufficient if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon." State v. Curtis, 356 S.C. 622, 628-29, 591 S.E.2d 600, 603 (2004). "An indictment phrased substantially in language of a statute which creates and defines the offense is ordinarily sufficient." Id. at 628, 591 S.E.2d at 603; see S.C. Code Ann. § 17-19-20 (2003) ("Every indictment shall be deemed and judged sufficient and good in law which, in addition to allegations as to time and place, as required by

law, charges the crime substantially in the language of the common law or of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood and, if the offense be a statutory offense, that the offense be alleged to be contrary to the statute in such case made and provided.”).

In the instant case, the indictment for first-degree CSC with a minor provided:

That Bobby Joe Reeves did in Richland County between June 30 and July 4, 2000, wilfully, unlawfully and feloniously commit a sexual battery to wit: sexual intercourse and/or fellatio and/or any intrusion, however slight, of any part of a person's body or of any object into the genital and/or anal opening of a person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes, who at the time was less than 11 years of age. All in violation of SC Code of Laws § 16-3-655.

“A person is guilty of criminal sexual conduct in the first degree if the actor engages in sexual battery with the victim who is less than eleven years of age.” S.C. Code Ann. § 16-3-655 (1) (2003). A [s]exual battery’ means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes.” S.C. Code Ann. § 16-3-651(h) (2003).

In terms of Reeves' complaint concerning the State's failure to identify the victim by name, we find this omission did not invalidate the indictment. In several cases, this court and our supreme court have found amendments that corrected the names of victims did not change the nature of the charged offense, and, thus, did not deprive the circuit court of subject matter jurisdiction. See State v. Sweat, 221 S.C. 270, 273-74, 70 S.E.2d 234, 235-36 (1952) (holding nature of offense of larceny was not changed when State amended indictment to change the name of the victim); State v. O'Neal, 210 S.C. 305, 309, 42 S.E.2d 523, 524-25 (1947) (finding amendment to indictment to correct name of defendant did not change the nature of the offense charged); State v. McGill, 191 S.C. 1, 4-5, 3 S.E.2d 257, 258-59 (1939) (finding issues regarding the victim's name in an indictment do not involve the circuit court's jurisdiction); State v. Barnett, 358 S.C. 199, 201 n.1, 594 S.E.2d 534, 535 n.1 (Ct. App. 2004) (holding, in case involving charge of grand larceny of a vehicle, amendment to name of owner of the vehicle was not a jurisdictional flaw); State v. Johnson, 314 S.C. 161, 166, 442 S.E.2d 191, 194 (Ct. App. 1994) (holding amendment to substitute the Corporation for the Foundation involved in charge of breach of trust with fraudulent intent did not deprive the circuit court of subject matter jurisdiction where “nature of the crime charged in the original indictments was not changed by the substitution of the victim in the amended indictments”); cf. State v. Bryson, 357 S.C. 106, 112, 591 S.E.2d 637, 640 (Ct. App. 2003) (concluding amendment to replace name of one victim with another involved in charge of assaulting an officer while resisting arrest divested the circuit court of subject matter jurisdiction given the “amendment replaced the properly indicted count of assaulting an officer while resisting arrest with a second unindicted count of the same crime”).

Although this case involved the omission of the victim's name and not an amendment, we find the principles outlined in the above-cited cases are applicable. Moreover, we believe our supreme court's decision in Thompson v. State, 357 S.C. 192, 593 S.E.2d 139 (2004), is dispositive of this issue. In Thompson, the defendant pleaded guilty to murder, armed robbery,

and two counts of criminal conspiracy. Several years after the plea, Thompson petitioned our supreme court for a writ of certiorari alleging for the first time that the trial court was without subject matter jurisdiction because the indictments charging him with criminal conspiracy were insufficient. One of the grounds raised by Thompson was the fact that the indictments did not identify the victim and the co-conspirator and did not specify facts upon which the charges were based. Our supreme court rejected this contention, finding "the alleged defects regarding the victim's name, the co-conspirator's identity, and the particular details of the conspiracy are defects that are facially apparent and do not involve the elements of the offense." Id. at 196, 593 S.E.2d at 141.

Applying Thompson to the instant case, we hold the State's failure to identify the victim by name did not constitute a jurisdictional defect. [3] Given this holding, we find it was incumbent upon Reeves to raise this challenge prior to trial.

Furthermore, viewing the indictment "with a practical eye," we hold it stated the offense of first-degree CSC with a minor with sufficient certainty and particularity to enable the trial court and Reeves to know what crime was alleged. Both the caption of the indictment and title preceding the body of the indictment identified the charged offense as first-degree criminal sexual conduct with a minor. Additionally, the body of the indictment identified the applicable statute, described the alleged sexual battery in terms of the statute, and identified the age of the victim as less than eleven years old.

In support of his argument, Reeves directs our attention to this court's decision in State v. Ellison, 356 S.C. 33, 586 S.E.2d 596 (Ct. App. 2003). We find, however, that Ellison is distinguishable from the instant case. In Ellison, the defendant was indicted pursuant to an allegation that he sexually assaulted a thirteen-year-old girl. The caption of the indictment and the title preceding the body of the indictment identified the offense as first-degree CSC with a minor. The body of the indictment stated the victim was thirteen years old and the sexual battery was committed using aggravated force and aggravated coercion. Id. at 35, 586 S.E.2d at 597. At the beginning of the trial, the State moved, without objection, to amend the indictment to charge the defendant with first-degree CSC. The trial court instructed the jury on the offense of first-degree CSC and, on its own initiative, charged the jury on second-degree CSC with a minor as a lesser-included offense. Id. at 36, 586 S.E.2d at 597. The jury convicted the defendant of second-degree CSC with a minor.

On appeal, this court vacated the defendant's conviction, finding the trial court was without subject matter jurisdiction to convict the defendant of this offense. Specifically, the court found: 1). second-degree CSC with a minor was not a lesser-included offense of first-degree CSC; and 2). the original indictment did not sufficiently state the offense for which the defendant was indicted. Regarding the insufficiency of the indictment language, we concluded: 1). the body of the indictment contained allegations for second-degree CSC with a minor, first-degree CSC, and second-degree CSC; and 2). the caption and title of the indictment alleged the crime of first-degree CSC with a minor. Id. at 38, 586 S.E.2d at 598. Based on these discrepancies, we held the indictment was unclear as to what judgment the court could pronounce and sentence it could impose. Id. at 38, 586 S.E.2d at 598.

Unlike Ellison, the indictment in the instant case clearly alleged in the caption, title, and body that Reeves was being charged only with first-degree CSC with a minor.

Finally, to the extent Reeves characterizes the indictment as "incomprehensible," we also find

this argument to be without merit. Because the sexual battery described in the indictment merely tracked the language of the definitional statute, Reeves contends he was not apprised of what he was called upon to answer. Initially, we note the fact that indictment used the statutory language weighs in favor of finding the indictment sufficient given it "charges the crime substantially in the language . . . of the statute prohibiting the crime." S.C. Code Ann. § 17-19-20 (2003). Furthermore, the victim alleged Reeves forced her to perform oral sex and digitally penetrated her on one occasion. Thus, the victim's allegations involved different types of sexual battery that are encompassed in the language of the indictment.

CONCLUSION

Based on the foregoing, we find the circuit court had subject matter jurisdiction to convict Reeves of first-degree CSC with a minor. Accordingly, Reeves' convictions and sentences for first-degree CSC with a minor and lewd act upon a minor are

AFFIRMED.

ANDERSON, BEATTY, and SHORT, JJ., concur.

[1] Because oral argument would not aid the court in resolving the issues on appeal, we decide this case without oral argument pursuant to Rule 215, SCACR.

[2] We note Reeves does not appeal his conviction and sentence for lewd act upon a minor. Because he received a concurrent, fifteen-year term of imprisonment, we need not address his issue on appeal. However, given this issue involves questions of subject matter jurisdiction, we decline to apply the "concurrent sentence doctrine." State v. Ervin, 333 S.C. 351, 359, 510 S.E.2d 220, 225 (Ct. App. 1998).

[3] We would also point out that the victim was identified by name in the indictment for lewd act upon a minor, the victim testified during an in camera hearing prior to the trial, and the trial judge identified the victim by name during jury selection.

2005-CP-40-2551

STATE OF SOUTH CAROLINA

County of Richland

In the Court of Common Pleas

Bobby J. REEVES 287423

Full name and prison number (if any) of Applicant,

vs.

STATE

Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEF

BARBARA J. SCOTT
C.C.C. G.S.

2005 MAY 27 AM 9:21

RICHLAND COUNTY
FILED

INSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention PERRY Correctional Institution
430 OAKLAWN RD. PELZER, SC. 29669
2. Name and location of Court which imposed sentence GENERAL SESSIONS Court
Richland County Columbia S.C.
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) C.A. NOS: 00-GS-40-56188
 - (b) C.A. NOS: 00-GS-40-00211
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) SEPTEMBER 18, 2002 15 yrs.
 - (b) SEPTEMBER 18, 2002 15 yrs.
 - (c) _____

5. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty ✓
 - (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
 - i. S.C. Court of APPEALS
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. AFFirmed
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. 2-10-05
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. NONE KNOWN
 - ii. _____
 - iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) N/A
 - (b) _____
 - (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
 - (b) _____
 - (c) _____
10. State concisely and in the same order the facts which support each of the grounds set out in (9):
- (a) NO INVESTIGATION, HE GOT NO EXPECT OF MY OWN, HE DIDN'T
 - (b) ASK THE QUESTIONS HE SHOULD, HE LET EXPERT FOR STATE CHANGE
 - (c) HIS TESTIMONY FROM WHAT HE SAID AT THE START OF HIS TESTIMONY, HE DIDN'T HELP ME FIND THE WITNESSES I NEEDED FOR TRIAL, HE LET THE PROSECUTION COMMIT MIS CONDUCT WITHOUT FIGHTING IT, AND THEY DIDN'T FILE FOR FAST & SPEEDY TRIAL WHEN ASK IF WE COULD GET TO TRIAL ANY FASTER

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? Not know
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
- (d) any other petitions, motions or applications in this or any other Court?

NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. NONE

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. NONE

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. NONE

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. NONE

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. NONE

ii. _____

iii. _____

iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

(a) which grounds have been presented:

i. NONE

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. NONE

ii. _____

iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) Not Appropret at time

(b) _____

(c) _____

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Billy Oswald Pre trial

(b) your trial, if any? GENE Stockholm

(c) your sentencing? GENE Stockholm

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Joseph L. Savitz III

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NONE

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. Billy Oswald Oswald Law firm LLC

P.O. Box 4052 1031 CENTER ST. W. Colu. SC 29171

ii. GENE Stockholm Oswald Law firm LLC

P.O. Box 4052 1031 CENTER ST. W. Colu. SC 29171

iii. JOSEPH L. SAVITZ III Acting Chief Attorney

1205 Pendleton St. Room 306 Columbia, SC 29201

(b) the proceedings at which each such attorney represented you:

i. PRE trial

ii. Trial & Sentencing

iii. APPEAL

18. State clearly the relief you seek in filing this application.

NEW TRIAL on Both Counts (OVERTURN Conviction)

19. Are you now under sentence from any other court that you have not challenged?

NO

County of Greenville

I, Bobby Reeves, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Bobby Reeves

SWORN to and subscribed before me this 11th
day of May, 2005

[Signature]
Notary Public (L.S.)

My Commission Expires: 10 June 2012

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Bobby REEVES, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Bobby Reeves

Applicant

SWORN or affirmed to and subscribed before me this

11th day of May, 2005
[Signature]
Notary Public

My Commission Expires 10 June 2012

20052644

262

Criminal Appeal
20024706
Box # 51-X

ATTORNEY GENERAL'S OFFICE

RECEIVED 6/1/85
ADMINISTRATIVE INSTRUCTIONS
.....FILE.....OPEN.....END
.....HAVE.....COPIES MADE
.....ROUTE TO.....
.....CHECK.....TO A REPORT
.....PEN RECORDS.....CERK RECORDS
.....OTHER.....
.....
.....

Bobby Reeves
PCI Q1A-110 #287423
430 Oaklawn Rd.
Pelzer, SC 29669

May 4, 2005

Joseph L. Savitz, III
Acting Chief Attorney
1205 Pendleton St. Room 306
Columbia, SC 29201

RICHLAND COUNTY
FILED
2005 MAY 27 AM 9:21
BARBARA A. SCOTT
C.C.C. & G.S.

RE: REEVES V STATE, CA/# 2005-UP-099

Dear Mr. Savitz,

This is to advise you that I am requesting you to stop action on my appeal process. I am retracting my request of appeal!

I am going to P.C.R.

I am sending a copy of this with my P.C.R. application to the clerk of court.

I would be happy if you could do this for me and notify me when it is done.

Sincerely,

Bobby Reeves 287423
Bobby Reeves

cc: Clerk of Court
Personal file
Appellate Court

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Bobby Joe Reeves, 287423,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON
PLEAS

2005-CP-40-2551

RETURN

The Respondent, making its Return to the Application for Post-Conviction Relief filed May 27, 2005, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The Applicant was indicted at the December 2000 term of the Richland County Grand Jury for lewd act upon a child (2000-GS-40-56188). The Applicant was also indicted at the August 2002 term of the Richland County Grand Jury for criminal sexual conduct with a minor – first (2002-GS-40-00211). He was represented by Billy Oswald, Esquire and Gene Stockholm, Esquire. On September 18, 2002, the Applicant proceeded to trial after which he was found guilty of criminal sexual conduct with a minor – first and lewd act upon a child. He was sentenced by the Honorable Henry F. Floyd to confinement for a period of fifteen (15) years for criminal sexual conduct – first and fifteen (15) years concurrent for lewd act upon a child.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Reeves, Op. No. 2005-CP-099 (S.C. Ct. App. filed February 10, 2005).

Attached herewith and incorporated herein by reference are the records of the Richland County Clerk of Court regarding the subject conviction, the Applicant's records from the Department of Corrections, the Applicant's trial transcript, and the Applicant's appellate records.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel.

III.

The Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the

basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

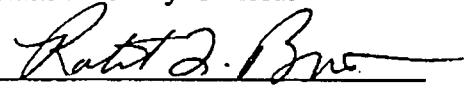
WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ROBERT L. BROWN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

_____, 2005

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

)
) IN THE COURT OF COMMON PLEAS

2005-CP-40-2551

Bobby J. Reeves, 287423

Applicant,

vs

State of South Carolina,

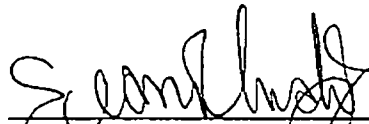
Respondent.

)
)
)
) AFFIDAVIT OF SERVICE BY MAIL
)
)
)
)
)
)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Theresa L. Clement, Esquire
Post Office Box 421
Columbia, South Carolina 29202

DATED this 6th day of January, 2006.



Jean R. Indriago, Legal Assistant
For Respondent

WITNESSES

(S) DALE JONES - RCSD / 5

ARREST WARRANT NUMBER

F056615

270

TRUE BILL
ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 9

VERDICT

Guilty

Foreperson of Petit Jury

Date: 9-18-02

DOCKET NO. 2002-GS-40-00211

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

AUGUST TERM 2002

104

THE STATE
vs.

BOBBY JOE REEVES

Indictment for

CRIMINAL SEXUAL CONDUCT
WITH A MINOR 1ST

SC Code: 16-3-655(1)

CDR Code: 0160

Class FEL/A(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTACHED
TRUE COPY

9/18/02

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

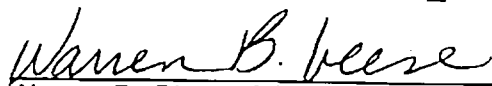
INDICTMENT

At a Court of General Sessions, convened on August 14, 2002, the Grand Jurors of Richland County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

That Bobby Joe Reeves did in Richland County between June 30 and July 4, 2000, wilfully, unlawfully and feloniously commit a sexual battery to wit: sexual intercourse and/or fellatio and/or any intrusion, however slight, of any part of a person's body or of any object into the genital and/or anal opening of a person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes, who at the time was less than 11 years of age. All in violation of SC Code of Laws § 16-3-655.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Warren B. Giese, SOLICITOR

ARREST WARRANT

F- 056615

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

RICHLAND COUNTY

THE STATE

against

BOBBY JOE REEVES

Address: _

HOPKINS SC 29061 - 0000

Phone: _ SSN

Sex: M Race: W Height: 5 11 Weight: 330DL State: SC DL # 003459689DOB: 9/15/66 Agency ORI #: _Prosecuting Agency: RICHLAND COUNTY SHERIFF'SProsecuting Officer: INV DALE L JONES JROffense: SEX/CRIM SEX CONDUCT W/MIN <11YRS-1ST DE Offense Code: 0385Code/Ordinance Sec. 16-03-0655(1)

272's warrant is CERTIFIED FOR SERVICE in the

☒ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

Date: _

RETURN

A copy of this arrest warrant was delivered to
defendant BOBBY JOE REEVESon 09/22/00

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO

HOPKINS MAGISTRATE

6108 CABIN CREEK ROAD

HOPKINS

SC 29061 - 0000

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

RICHLAND COUNTY

Personally appeared before me the affiant INV DALE JONES JR whobeing duly sworn deposes and says that defendant BOBBY JOE REEVESdid within this county and state on 6/30/00State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _)

in the following particulars:

DESCRIPTION OF OFFENSE: SEX/CRIM SEX CONDUCT W/MIN <11YRS-1ST DEI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

THAT BETWEEN 06/30/00 & 07/04/00 WHILE AT HOPKINS
SC, IN THE HOPKINS MAGISTERIAL DISTRICT OF RICHLAND COUNTY, ONE
BOBBY JOE REEVES DID COMMIT THE CRIME OF CRIMINAL SEXUAL CONDUCT
WITH A MINOR 1ST DEGREE IN THAT HE DID ENGAGE IN SEXUAL BATTERY
BY HAVING A 10 YEAR OLD FEMALE CHILD PERFORM ORAL SEX ON HIM BY
INSERTING HIS PENIS INTO HER MOUTH AND DID RUB HIS PENIS IN THE
AREA OF HER VAGINA. DEFENDANT HAS BEEN IDENTIFIED BY THE VICTIM
AND IS KNOWN BY NAME AND SIGHT BY VICTIM.
AFFIANT AND OTHERS ARE WITNESS TO PROVE THE SAME.
RCSD CASE NUMBER 0008-0252-03

Sworn to and subscribed before me

on 9/22/00

Signature of Affiant

Affiant's Address 5622 TWO NOTCH ROAD

COLUMBIA SC 29228 - 0000

Affiant's Telephone 803 691-9000

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

RICHLAND COUNTY

ARREST WARRANT

OCT 05 2000

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 6/30/00defendant BOBBY JOE REEVES

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☐ Municipality of _) as set forth below:DESCRIPTION OF OFFENSE: SEX/CRIM SEX CONDUCT W/MIN <11YRS-1ST DE

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.

Judge's Address HOPKINS MAGISTRATE

HOPKINS SC 29061 - 0000

Signature of Issuing Judge

Judge Code: 789Judge's Telephone 803 783-2424Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.
Bobby Joe Reeves
AKA:
Race: W Sex: M Age: 36
DOB: 9/15/66 SS#: ---
Address: ---
DL# --- SID# ---

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

02-GS-40-00211
A/W#: F056615
Date of Offense: 6-30-00 + 7-4-00
S.C. Code §: 16-3-655(1)
CDR Code #: 011610
☐ CASE RESTORED

SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Criminal Sexual Conduct with a Minor 1st
in violation of § 16-3-655(1) of the S.C. Code of Laws, bearing CDR Code # 011610

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45 0385 (CB)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:
Dana Pellizz
Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months jail time.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ set by SCDPPPS _____

Recipient: _____
*Fine:\$
§14-1-206 (Assessments 100%).....\$
§14-1-211(A)(1) (Surcharge).....\$
§14-1-211(A)(2) (Surcharge).....\$
§56-5-2995 (DUI Assessment).....\$
3% to County (if paid in installments)....\$
TOTAL.....\$

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund.
Other: Register on sex offender
Register on Child Abuse Registry

Barbara A. Scott
Clerk of Court/ Deputy Clerk

Barbara A. Scott
PRESIDING JUDGE
Judge Code: 101516
Sentence Date: 9/18/02

WITNESSES

Inv. Dale Jones, Jr. RCSD

Dale Jones, Jr.

ARREST WARRANT NUMBER

F-056613

274

ACTION OF GRAND JURY

TRUE BILL

Jimmy R. Sellen
Foreperson of Grand Jury

Date:

VERDICT

Guilty

Chris Perry
Foreperson of Petit Jury

Date: 9-18-02

DOCKET NO. 2000-GS-40-56188

The State of South Carolina

County of Richland

00

COURT OF GENERAL SESSIONS

DECEMBER TERM 2000

THE STATE

vs.

BOBBY JOE REEVES

Indictment for

LEWD ACT UPON A CHILD

SC Code: 16-15-140

CDR Code: 2468

CLASS FELONY/D

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST
A TRUE COPY

Burke P. Sackett
C.C.C. P. & G.S.

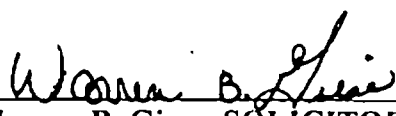
STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT
LEWD ACT UPON A CHILD
§16-15-140
2468

At a Court of General Sessions, convened on December 13, 2000 the Grand Jurors of Richland County present upon their oath:

That Bobby Joe Reeves, being over the age of fourteen years (DOB 09-15-66), did in Richland County on or between June 30, 2000 and July 4, 2000, willfully and lewdly commit or attempt to commit a lewd and lascivious act upon or with the body of one VICTIM (DOB 03-6-90), a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lusts or passions or sexual desires of the person or of the child. To wit: the defendant rubbed the vagina of the child and/or the defendant had the child rub or touch his penis.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Warren B. Giese, SOLICITOR

ARREST WARRANT

F- 056613

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
RICHLAND COUNTY

THE STATE

against

BOBBY JOE REEVES

Address: _____
HOPKINS SC 29061 - 0000

Phone: _____ SSN: _____

Sex: M Race: W Height: 5 11 Weight: 330DL State: SC DL # 003459689DOB: 9/15/66 Agency ORI #: _____Prosecuting Agency: RICHLAND COUNTY SHERIFF'SProsecuting Officer: INV DALE L JONES JROffense: SEX/LEWD ACT, COM/ATTEMPTUPON CHILD <16 Offense Code: 2468Code/Ordinance Sec. 16-15-0140276 warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to law._____
Signature of Judge (L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant BOBBY JOE REEVESon 092200_____
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

HOPKINS MAGISTRATE

6108 CABIN CREEK ROAD

HOPKINS SC 29061 - 0000

STATE OF SOUTH CAROLINA)

☒ County/ ☐ Municipality of
RICHLAND COUNTY)Personally appeared before me the affiant INV DALE JONES JR who
being duly sworn deposes and says that defendant BOBBY JOE REEVES
did within this county and state on 6/30/00 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____)
in the following particulars:DESCRIPTION OF OFFENSE: SEX/LEWD ACT, COM/ATTEMPT UPON CHILD <16
16-15-140I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:THAT BETWEEN 06/30/00 & 07/04/00 WHILE AT
SC, IN THE HOPKINS MAGISTERIAL DISTRICT OF RICHLAND COUNTY, ONE
BOBBY JOE REEVES DID COMMIT THE CRIME OF COMMITTING A LEWD ACT
UPON A CHILD UNDER SIXTEEN IN THAT HE DID MAKE HER TOUCH HIS
PENIS AND RUBBED THE VAGINA AREA OF A 10 YEAR OLD FEMALE CHILD
WITH THE INTENT OF AROUSING AND GRATIFYING HIS OR THE CHILD'S
LUST AND PASSION. DEFENDANT HAS BEEN IDENTIFIED BY THE VICTIM
AND IS KNOWN BY NAME AND SIGHT BY VICTIM.
AFFIANT AND OTHERS ARE WITNESS TO PROVE SAME.
RCSD CASE NUMBER 0008-0252-03.Sworn to and subscribed before me)
on 9/22/00)

Signature of Issuing Judge (L.S.)Signature of Affiant INV Dale Jones Jr
Affiant's Address 5623 TWO NOTCH ROAD
COLUMBIA SC 29223
Affiant's Telephone 803 691-9000

STATE OF SOUTH CAROLINA)

☐ County/ ☐ Municipality of
RICHLAND COUNTY)

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 6/30/00 defendant BOBBY JOE REEVES
did violate the criminal laws of the State of South Carolina (or ordinance of☐ County/ ☐ Municipality of _____) as set forth below:
DESCRIPTION OF OFFENSE: SEX/LEWD ACT, COM/ATTEMPT UPON CHILD <16
16-15-140Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable._____
Signature of Issuing Judge (L.S.)
Judge Code: 789Judge's Address HOPKINS MAGISTRATE
HOPKINS SC 29061 - 0000
Judge's Telephone 803 783-2424
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

Form Approved by
S.C. Attorney General
July 28, 1990
SCCA 518

OCT 05 2000

CLERK OF COURT

ORIGINAL RECORDS

C. C. C. P. & G. B.

STATE OF SOUTH CAROLINA

COUNTY OF Richland

STATE Bobby Joe Reeves VS

AKA: _____

Race: W Sex: M Age: 36

DOB: 9/15/66 SS#: _____

Address: _____

Hopkins S.C. 29061

DL# _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

00 -GS- 40 - 56188

A/W#: ~~FO56613~~ FO56613

Date of Offense: 6-30-00 + 7-4-02

S.C. Code §: 16-15-140

CDR Code #: 2141618

☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Lewd Act upon a child

in violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2141618

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Dana Pellizz
Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ The Defendant is to be given credit for _____ days/months jail time.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:\$ _____

§14-1-206 (Assessments 100%).....\$ _____

§14-1-211(A)(1) (Surcharge).....\$ _____

§14-1-211(A)(2) (Surcharge).....\$ _____

§56-5-2995 (DUI Assessment).....\$ _____

3% to County (if paid in installments)....\$ _____

TOTAL.....\$ _____

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: Register as sex offender
Registered on Child Abuse Registry

PRESIDING JUDGE [Signature]

Judge Code: 101016

Sentencing Date: 9/18/02

ATTEST: Barbara A. [Signature]
Clerk of Court/Deputy Clerk

Court Reporter: K. Addison

White - Clerk

Green - Corrections

C. C. C. F. O. S.

Pink - Defendant

SCCA 217 (1/2001)

CMT1330D

OMCOMITA

SCDC# > 287423

REEVES, BOBBY JOE

SCDC OFFENDER MANAGEMENT SYSTEM

RELEASE DATE SCREEN

06/16/05

C023981

LOC: PERRY

SCDC CLASSIFICATION... VIOLENT

SEXUAL REGISTRY... Y

OFFENDER TYPE... ADULT STRAIGHT SENTENCE SEXUAL PREDATOR... PENDING

DNA STATUS... COMPLETED

CURRENT SENTENCE: 015-00-000

CONSECUTIVE SENTENCE... N

CURRENT SENT START DATE: 09/17/2002

PROJECTED COMPLETION DATES

MAXOUT DATE... 06/14/2015

YOA SIX YEAR DATE... -- / --

INITIAL PAROLE DATE: 00/00/0000

CURRENT EWC... 3 F 5

CURRENT EEC... NOT CURRENTLY EARNING EEC

NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED... 000000

TOTAL EARNED WORK CREDITS... 000235

TOTAL EDUCATION CREDITS... 000000

TOTAL EXTRA EARNED CREDITS... 000

TOTAL SERVICE TIME EARNED... 000989

LABOR CREW/WORK PROG DATE: 99/99/9999

LABOR CREW DISQ REASON:

CURRENT OR PRIOR SEX CONDUCT CONVICT

PFKEYS: 5 HISTORY OF DATE CHANGES

1 Sess 1 167:7:50:33

TNET1154

3/11

0125214

File # 157-95413-1

[illegible]

2* NO PREVIOUS ARRESTS *

100-443887-100

[illegible][illegible]

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

150-275-1747

10-10-68

THE CONSTITUTIONAL PROTECTION

ST. ALBANS, VERMONT, MAY 1, 1900

[illegible]

ON ACCOUNTING DISCIPLINARIES

UN-ASSIGNED TO PRINCIPAL INGRISSE
11/24/01 RANGE TESTED BY REFERENCE OF EVIDENCE

11/23/68, 11/24/68, 11/25/68, 11/26/68, 11/27/68, 11/28/68, 11/29/68, 11/30/68, 12/1/68, 12/2/68, 12/3/68, 12/4/68, 12/5/68, 12/6/68, 12/7/68, 12/8/68, 12/9/68, 12/10/68, 12/11/68, 12/12/68, 12/13/68, 12/14/68, 12/15/68, 12/16/68, 12/17/68, 12/18/68, 12/19/68, 12/20/68, 12/21/68, 12/22/68, 12/23/68, 12/24/68, 12/25/68, 12/26/68, 12/27/68, 12/28/68, 12/29/68, 12/30/68, 12/31/68, 1/1/69, 1/2/69, 1/3/69, 1/4/69, 1/5/69, 1/6/69, 1/7/69, 1/8/69, 1/9/69, 1/10/69, 1/11/69, 1/12/69, 1/13/69, 1/14/69, 1/15/69, 1/16/69, 1/17/69, 1/18/69, 1/19/69, 1/20/69, 1/21/69, 1/22/69, 1/23/69, 1/24/69, 1/25/69, 1/26/69, 1/27/69, 1/28/69, 1/29/69, 1/30/69, 1/31/69, 2/1/69, 2/2/69, 2/3/69, 2/4/69, 2/5/69, 2/6/69, 2/7/69, 2/8/69, 2/9/69, 2/10/69, 2/11/69, 2/12/69, 2/13/69, 2/14/69, 2/15/69, 2/16/69, 2/17/69, 2/18/69, 2/19/69, 2/20/69, 2/21/69, 2/22/69, 2/23/69, 2/24/69, 2/25/69, 2/26/69, 2/27/69, 2/28/69, 2/29/69, 2/30/69, 3/1/69, 3/2/69, 3/3/69, 3/4/69, 3/5/69, 3/6/69, 3/7/69, 3/8/69, 3/9/69, 3/10/69, 3/11/69, 3/12/69, 3/13/69, 3/14/69, 3/15/69, 3/16/69, 3/17/69, 3/18/69, 3/19/69, 3/20/69, 3/21/69, 3/22/69, 3/23/69, 3/24/69, 3/25/69, 3/26/69, 3/27/69, 3/28/69, 3/29/69, 3/30/69, 3/31/69, 4/1/69, 4/2/69, 4/3/69, 4/4/69, 4/5/69, 4/6/69, 4/7/69, 4/8/69, 4/9/69, 4/10/69, 4/11/69, 4/12/69, 4/13/69, 4/14/69, 4/15/69, 4/16/69, 4/17/69, 4/18/69, 4/19/69, 4/20/69, 4/21/69, 4/22/69, 4/23/69, 4/24/69, 4/25/69, 4/26/69, 4/27/69, 4/28/69, 4/29/69, 4/30/69, 5/1/69, 5/2/69, 5/3/69, 5/4/69, 5/5/69, 5/6/69, 5/7/69, 5/8/69, 5/9/69, 5/10/69, 5/11/69, 5/12/69, 5/13/69, 5/14/69, 5/15/69, 5/16/69, 5/17/69, 5/18/69, 5/19/69, 5/20/69, 5/21/69, 5/22/69, 5/23/69, 5/24/69, 5/25/69, 5/26/69, 5/27/69, 5/28/69, 5/29/69, 5/30/69, 5/31/69, 6/1/69, 6/2/69, 6/3/69, 6/4/69, 6/5/69, 6/6/69, 6/7/69, 6/8/69, 6/9/69, 6/10/69, 6/11/69, 6/12/69, 6/13/69, 6/14/69, 6/15/69, 6/16/69, 6/17/69, 6/18/69, 6/19/69, 6/20/69, 6/21/69, 6/22/69, 6/23/69, 6/24/69, 6/25/69, 6/26/69, 6/27/69, 6/28/69, 6/29/69, 6/30/69, 7/1/69, 7/2/69, 7/3/69, 7/4/69, 7/5/69, 7/6/69, 7/7/69, 7/8/69, 7/9/69, 7/10/69, 7/11/69, 7/12/69, 7/13/69, 7/14/69, 7/15/69, 7/16/69, 7/17/69, 7/18/69, 7/19/69, 7/20/69, 7/21/69, 7/22/69, 7/23/69, 7/24/69, 7/25/69, 7/26/69, 7/27/69, 7/28/69, 7/29/69, 7/30/69, 7/31/69, 8/1/69, 8/2/69, 8/3/69, 8/4/69, 8/5/69, 8/6/69, 8/7/69, 8/8/69, 8/9/69, 8/10/69, 8/11/69, 8/12/69, 8/13/69, 8/14/69, 8/15/69, 8/16/69, 8/17/69, 8/18/69, 8/19/69, 8/20/69, 8/21/69, 8/22/69, 8/23/69, 8/24/69, 8/25/69, 8/26/69, 8/27/69, 8/28/69, 8/29/69, 8/30/69, 8/31/69, 9/1/69, 9/2/69, 9/3/69, 9/4/69, 9/5/69, 9/6/69, 9/7/69, 9/8/69, 9/9/69, 9/10/69, 9/11/69, 9/12/69, 9/13/69, 9/14/69, 9/15/69, 9/16/69, 9/17/69, 9/18/69, 9/19/69, 9/20/69, 9/21/69, 9/22/69, 9/23/69, 9/24/69, 9/25/69, 9/26/69, 9/27/69, 9/28/69, 9/29/69, 9/30/69, 10/1/69, 10/2/69, 10/3/69, 10/4/69, 10/5/69, 10/6/69, 10/7/69, 10/8/69, 10/9/69, 10/10/69, 10/11/69, 10/12/69, 10/13/69, 10/14/69, 10/15/69, 10/16/69, 10/17/69, 10/18/69, 10/19/69, 10/20/69, 10/21/69, 10/22/69, 10/23/69, 10/24/69, 10/25/69, 10/26/69, 10/27/69, 10/28/69, 10/29/69, 10/30/69, 10/31/69, 11/1/69, 11/2/69, 11/3/69, 11/4/69, 11/5/69, 11/6/69, 11/7/69, 11/8/69, 11/9/69, 11/10/69, 11/11/69, 11/12/69, 11/13/69, 11/14/69, 11/15/69, 11/16/69, 11/17/69, 11/18/69, 11/19/69, 11/20/69, 11/21/69, 11/22/69, 11/23/69, 11/24/69, 11/25/69, 11/26/69, 11/27/69, 11/28/69, 11/29/69, 11/30/69, 12/1/69, 12/2/69, 12/3/69, 12/4/69, 12/5/69, 12/6/69, 12/7/69, 12/8/69, 12/9/69, 12/10/69, 12/11/69, 12/12/69, 12/13/69, 12/14/69, 12/15/69, 12/16/69, 12/17/69, 12/18/69, 12/19/69, 12/20/69, 12/21/69, 12/22/69, 12/23/69, 12/24/69, 12/25/69, 12/26/69, 12/27/69, 12/28/69, 12/29/69, 12/30/69, 12/31/69, 1/1/70, 1/2/70, 1/3/70, 1/4/70, 1/5/70, 1/6/70, 1/7/70, 1/8/70, 1/9/70, 1/10/70, 1/11/70, 1/12/70, 1/13/70, 1/14/70, 1/15/70, 1/16/70, 1/17/70, 1/18/70, 1/19/70, 1/20/70, 1/21/70, 1/22/70, 1/23/70, 1/24/70, 1/25/70, 1/26/70, 1/27/70, 1/28/70, 1/29/70, 1/30/70, 1/31/70, 2/1/70, 2/2/70, 2/3/70, 2/4/70, 2/5/70, 2/6/70, 2/7/70, 2/8/70, 2/9/70, 2/10/70, 2/11/70, 2/12/70, 2/13/70, 2/14/70, 2/15/70, 2/16/70, 2/17/70, 2/18/70, 2/1

DATE	NAME	STATUS	DEPARTMENT
04/26/05	PERRY	INCARCERATED	ADMINISTRATIVE
05/25/05	KIRKLAND	INCARCERATED	MEDICAL
04/18/05	PERRY	INCARCERATED	MEDICAL
04/13/05	RICHLAND CO.	ABSENT WITH LEAVE (A)	MEDICAL
12/20/04	PERRY	INCARCERATED	MEDICAL
12/29/04	RICHMOND CO.	ABSENT WITH LEAVE (A)	MEDICAL
05/10/05	PERRY	INCARCERATED	ADMINISTRATIVE
04/09/04	KIRKLAND	INCARCERATED	MEDICAL
04/27/04	PERRY	INCARCERATED	ADMINISTRATIVE
04/25/04	KIRKLAND	INCARCERATED	MEDICAL
10/13/03	PERRY	INCARCERATED	ADMINISTRATIVE
10/13/03	KIRKLAND	INCARCERATED	MEDICAL
09/08/03	PERRY	INCARCERATED	ADMINISTRATIVE
09/08/03	KIRKLAND	INCARCERATED	MEDICAL
10/14/02	PERRY	INCARCERATED	ADMINISTRATIVE
05/24/02	KIRKLAND	INCARCERATED	NEW ADMINISTRATION

STORM AND EARNED WORK - WEATLY ASSIGMENTS

DESCRIPTION	START DATE	END DATE	TERMINATION REASON	LOS
CD SERVICE MADE	03/01/04	03/01/04		000
ENTRY BEEN ATTENDED	03/18/03	03/26/04	IMMATE RELEASED	05
ON SERVICE SINCE	01/10/03	07/17/03	IMMATE REQUEST	025

STAFF OF BARNETT EDUCATION CENTER

1970-1971

006-87

SECRET

[illegible]

END OF PAGE

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

BOBBY JOE REEVES, #287423,)
Applicant,)
)
v.)
STATE OF SOUTH CAROLINA,)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 05-CP-40-2551

AMENDED APPLICATION FOR
POST-CONVICTION RELIEF

2010 JUN -2
APR 9: 03
C.C.P.A. G.
BRIDGE

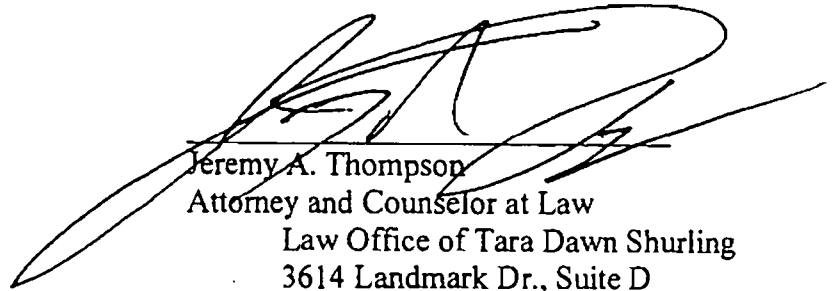
NOW COMES the Applicant in the above-captioned case, acting by and through undersigned counsel, respectfully moving to amend his Application for Post-Conviction Relief. In general, the Applicant would allege that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution, were violated prior to and during his trial as well as on direct appeal. The Applicant would further amend his Application for Post-Conviction Relief to contain the following specific allegations of ineffective assistance of counsel:

1. Trial counsel was ineffective for failing to object to improper prior bad act testimony pertaining to the Applicant's alleged prior abuse of the victim;
2. Trial counsel was ineffective for failing to object to the portions of the State's opening and closing arguments where the prior bad acts were referenced;
3. Trial counsel was ineffective for failing to consult with an expert on gynecology prior to the trial and for failing to present such an expert witness at trial;
4. Trial counsel was ineffective for failing to object to impermissible hearsay testimony pertaining to statements made by the victim about the abuse that went beyond the limited scope of Rule 801(d)(1)(D), SCRE;
5. Trial counsel was ineffective for failing to object to the trial judge's imposition of a lengthy prison sentence because the Applicant exercised his right to a jury trial;
6. Appellate counsel was ineffective for failing to review the transcript after receiving it from the court reporter to ensure that no pages were missing from the original transcript;

7. Appellate counsel was ineffective for consenting to proceed forward with the direct appeal without the entirety of the original transcript; and
8. Appellate counsel was ineffective for failing to move to vacate the Applicant's convictions and sentences and remand for a new trial due to the missing pages.

The Applicant asks that the above-referenced allegations be considered in addition to those allegations previously raised in his original Application for Post-Conviction Relief.

Respectfully submitted,



Jeremy A. Thompson
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This 1st day of June, 2010.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

BOBBY JOE REEVES, #287423,)
Applicant,)
)
v.)
STATE OF SOUTH CAROLINA,)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 05-CP-40-2551

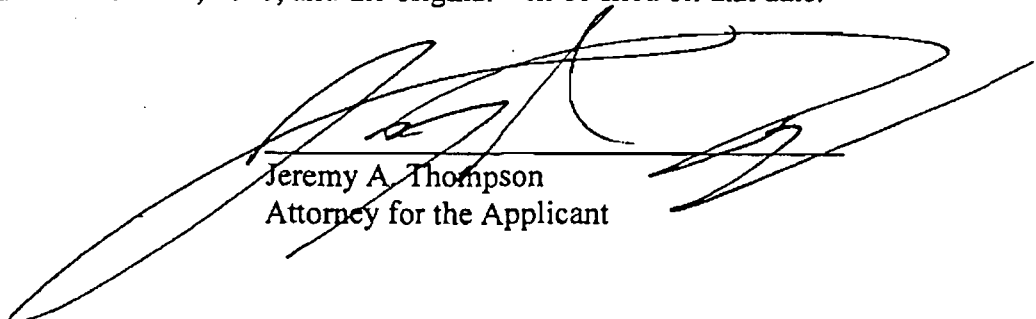
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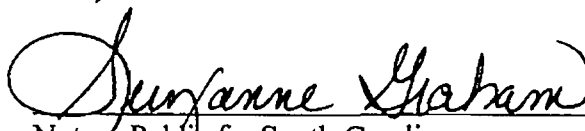
The undersigned hereby certifies that a true copy of the Amended Application for Post-Conviction Relief in the above matter has been served on opposing counsel this 1st day of June, 2010, by electronic mail to:

Brian T. Petrano, Assistant Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211

A true copy of the Amended Application for Post-Conviction Relief will be served via hand-delivery on opposing counsel on June 2, 2010, and the original will be filed on that date.


Jeremy A. Thompson
Attorney for the Applicant

SWORN TO BEFORE ME this 1st day of
June, 2010.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: 3/12/2013

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
County of Richland	)	2005-CP-40-02551
	)	
	)	
Bobby J. Reeves	)	
	)	
Applicant,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
State of South Carolina	)	
	)	
Respondent	)	

June 2, 2010
Columbia, South Carolina

BEFORE:

The Honorable Alison Lee, Judge

APPEARANCES:

Jeremy Thompson, Esq.
Attorney for the Applicant

Brian Petrano, Assistant Solicitor,
Attorney for the State

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

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APPLICANT'S:

No.	Description	ID	EV
1	Letter 1/12/04	26	26
2	Disposition of Matter 2/26/04	26	26
3	Disposition of Matter	26	26

(THERE WERE NO RESPONDENT'S OR COURT'S EXHIBITS)

CERTIFICATE OF REPORTER

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1 THE COURT: Are we ready to begin?

2 MR. PETRANO: I am, Your Honor.

3 MR. THOMPSON: Yes, Your Honor.

4 THE COURT: If we can ask Mr. Reeves if he'll come,
5 step around, please.

6 (Complies)

7 THE COURT: Yes, sir, Mr. Petrano.

8 MR. PETRANO: Thank you, Your Honor. Your Honor,
9 2005-CP-40-02551, Mr. Bobby Joe Reeves. It was a P.C.R.
10 application filed May 27th, 2005.

11 The Applicant was convicted following a jury trial
12 with Judge Floyd on September 17th, 2002. At that time
13 he was represent by Mr. Gene Stockholm of the private
14 bar.

15 He had been indicted for two charges from the
16 August 2002 term of the Richland County grand jury. That's
17 2000-GS-40-56188. It was a lewd act on a minor, and 0211
18 is a criminal sexual conduct with a minor, a victim under
19 11.

20 He received a 15-year sentence. There was a direct
21 appeal. If I could just go back, I wanted to make a note
22 that section 16-3-655(c)(1) has been amended twice, so
23 if you go back to the statute, just note that's happened
24 so long ago.

25 There was a direct appeal. That was affirmed by the

1 South Carolina Court of Appeals. That was opinion
2 number 2005-UP-099, and that remittitur was February 28th,
3 2005. On that, I will turn it over to Jeremy Thompson,
4 the Applicant's current counsel of record.

5 Thank you, Judge.

6 THE COURT: And there is an amended application that
7 was filed yesterday?

8 MR. THOMPSON: This morning, Your Honor, if I may
9 approach?

10 THE COURT: Yes, sir.

11 MR. THOMPSON: May it please the Court.

12 THE COURT: Yes, sir.

13 MR. THOMPSON: For the record, my name is Jeremy
14 Thompson. I have been court appointed to represent the
15 Applicant in this action.

16 He alleges that he received ineffective
17 assistance of counsel in violation of his sixth and 14th
18 amendments to the United States Constitution, as well
19 as the corresponding provisions of the South Carolina
20 Constitution prior to and during the jury trial, as well
21 as during sentencing and then on direct appeal.

22 Mr. Petrano stated -- claims that my client was
23 charged with, just by way of very brief factual
24 background, Your Honor, my client was alleged to have
25 abused -- for lack of a better term -- I don't really know

1 what the right term is for that relationship.

2 It was a roommate's daughter that they lived with -- or
3 he lived with for several years starting when she was a
4 baby, and they moved out when the little girl was about
5 five.

6 He continued to see her until she was about ten, at
7 which point she disclosed that he had made -- he had
8 allegedly abused her, sexually, over the last six
9 years.

10 Just generally, Your Honor, two doctors testified
11 for the State about their findings when they examined the
12 girl. They found -- one found evidence of some trauma
13 about 30 days after the alleged incident. The other one
14 examined her about two months after the fact and found
15 nothing.

16 My client was convicted of criminal sexual conduct
17 with a minor first degree after that and sentenced to 15
18 years in prison.

19 Generally, Your Honor, my client has narrowed his
20 allegations here today in the amended application for post
21 conviction relief, which was filed this morning.

22 Those deal with just a few general areas dealing
23 with the trial itself. Specifically, trial counsel's
24 failure to consult with an expert prior to trial, failure
25 to object to prior bad acts.

1 The testimony about the abuse, going back six years,
2 came in without objection, and testimony about -- given
3 by other witnesses about what the victim told them that
4 we submit, Your Honor, went beyond the time and place
5 exception of Rule 801(d)(1)(d) of the South Carolina
6 Rules of Evidence, and then during sentencing for failure
7 to object to the trial judge's imposition of the
8 sentence, essentially was a punishment for
9 exercising -- for Mr. Reeves existing the right to trial.

10 Finally, Your Honor, on appeal -- and this is
11 something I'm not sure if Mr. Petrano wants to address
12 now, part of the reason this is an '05 filing, and I kind
13 of came late into this game.

14 There were two prior court appointed attorneys
15 before me. There are transcript pages from the transcript
16 which are missing, and had been missing, since the time
17 of the direct appeal.

18 I believe that at some point in time during the P.C.R.
19 proceedings, they attempted to reconstruct the record
20 without much success. I'm not exactly sure what they
21 tried to do with that.

22 MR. PETRANO: Your Honor, that's all, correct. We
23 appeared -- when I say we, actually, the State. This
24 goes with a couple of assistant Attorney General's before
25 me, at least one.

1 The one that I'm thinking is the most recent I was
2 involved with -- and I don't know if the Applicant was
3 transported or not, but that would be Judge Cooper.

4 Just as an officer of the Court, Judge Cooper had
5 his court reporter to look into the matter because we
6 just thought that it was odd that these transcript pages
7 were unavailable.

8 She did. That was Ms. Jenny Williams, with
9 discussion with Ms. Desiree Allen -- and all of this is
10 not new. This is all within the paperwork of the direct
11 appeal, which one of us will be moving to introduce as
12 part of the record, and you made have some before
13 you.

14 There is no -- the pages are gone. The court reporter
15 says there are no notes, no tapes, no back ups. That was
16 basically what was trying to be resolved over the years.

17 Then I don't know if it was a genuine -- as far as
18 a formality -- reconstruction attempt in the sense that
19 there was an order. I don't have anything like that, but
20 it's my understanding that a reconstruction recusal. I
21 don't remember the specifics, because it's not your
22 typical reconstruction where we don't have an entire
23 transcript where people can obviously remember, you know,
24 the case and who was called and what not.

25 It's that what happened on page 228 is --

1 THE COURT: I'm sorry. It's that what happened on
2 page --

3 MR. PETRANO: Just page "x", you know, that's the
4 futile attempt. I don't really remember what actually
5 happened on that page, so it's an attempt to reconstruct
6 those particular missing pages.

7 We made decent but futile attempts, and I'd say
8 that on behalf of the State and in my experience with
9 the case and my review of the file. I hope I'm summarizing
10 it correctly.

11 THE COURT: And I take it that no one had looked at
12 the record that was submitted on appeal to make sure those
13 pages aren't there?

14 MR. PETRANO: We most certainly have, Your Honor.
15 We have appellate counsel. I've got the absolute
16 original, the very original, and no, the pages are not
17 there.

18 In fact, that's part of the appellate record, and
19 we'll get into all of that once we testify to that. From
20 day one, there were missing pages.

21 I think that's one of thing allegations is that they
22 knew that and they went forward.

23 MR. THOMPSON: That's correct, Your Honor.

24 Essentially, the appellate counsel -- we are
25 alleging that appellate couple failed to take the

1 appropriate steps to protect my client's interest on
2 direct appeal; that instead of having the entire
3 transcript, portions of which we believe are
4 critical -- although, I will admit, Your Honor, I think
5 there were only six pages missing from about this
6 240-page transcript, and the exact numbers are 111, 179,
7 181, 214, 228 and 229.

8 Your Honor, the critical thing in those six pages
9 that is missing, in our opinion, Your Honor, is a specific
10 request to charge made by defense counsel.

11 At the bottom of page -- I believe it's 180, it says,
12 "I would like to make this request." You flip to page
13 182 and the judge says, "I'm not going to charge that."

14 We believe that that should have been
15 specifically -- the appellate counsel should have
16 ensured that that page was in the record or asked to take
17 appropriate steps to either reconstruct the record at
18 that point in time -- it would have certainly been a
19 lot easier than now -- or to even argue that fair review
20 of the -- meaningful review of the record could not be
21 had.

22 And with that background in mind, Your Honor, I
23 would call Dr. Fredrick Thompson as the Applicant's
24 first witness.

25 THE COURT: If you'd step forward, please, to be

1 sworn.

2 FREDERICK THOMPSON,

3 after being duly sworn, testified as follows:

4 THE COURT: Thank you. If you'd have a seat, please.

5 State your full name.

6 DIRECT EXAMINATION:

7 BY MR. THOMPSON:

8 Q State your full name?

9 A Fredrick Morris Thompson, III.

10 Q How are you doing this afternoon, Dr. Thompson?

11 A Very well.

12 Q I promise I'll try to get you out of here as quickly
13 as I can.

14 Could you tell the judge a little bit about your
15 educational background, your work experience?

16 A I completed high school in Georgia. I went to
17 Mercer University for four years and then to the Medical
18 College of Georgia for my M.D. degree in 1970.

19 I was on active duty for a year during my medical
20 school training and went to Hawaii on active duty for
21 internship and residency. I completed that in '74, and
22 then spent the next three years in Colorado at Fort
23 Carson.

24 I moved here in 1977, entered private practice here
25 in Lexington County and have been here ever since. I'm

1 currently a member of the group Lexington Women's Care.
2 We are employees of Lexington Medical Center. I practice
3 gynecology. I stopped doing obstetrics about seven or
4 eight years ago.

5 Q And you have been specializing in gynecology
6 throughout that entire time?

7 A Yes. I was board certified by the American college
8 of OB/GYN during my studies.

9 MR. THOMPSON: Your Honor, at this time I'd ask
10 that Dr. Thompson be qualified as an expert in
11 gynecology.

12 THE COURT: Any voir dire or objections?

13 MR. PETRANO: Just very, very briefly.

14 THE COURT: Yes, sir.

15 MR. PETRANO: Doctor, you testified in the Court
16 before as an expert?

17 THE WITNESS: Yes, I have.

18 MR. PETRANO: And what field were you qualified?

19 THE WITNESS: OB/GYN.

20 MR. PETRANO: Were those civil cases, criminal
21 cases?

22 THE WITNESS: I've testified in both criminal and
23 civil cases.

24 MR. PETRANO: And anything in a rape trial?

25 THE WITNESS: No, sir.

1 THE COURT: Yes, sir.

2 MR. PETRANO: No voir dire -- no further voir dire.

3 THE COURT: Any objection?

4 MR. PETRANO: What is the specific expertise? I'm
5 sorry.

6 MR. THOMPSON: Gynecology.

7 MR. PETRANO: No objection.

8 THE COURT: I find him qualified as an expert in
9 gynecology.

10 BY MR. THOMPSON:

11 Q And I meant to ask you this, as well. When was the
12 last time you actually testified in court?

13 A In a civil case or...

14 Q Either.

15 A It's been about ten years.

16 Q Now, Mr. Petrano asked you about rape trauma cases
17 in particular. In your practice, have you had the
18 opportunity to view trauma to the vaginal area?

19 A Yes, I have.

20 Q Too many times to count?

21 A Multiple times. Going back to the early years of my
22 practice, all the staff members in gynecology
23 rotated through the emergency room on rape cases, and on
24 multiple occasions, to collect evidence and to examine
25 patients who had allegedly been raped.

1 Q So you have had the opportunity to do a rape kit
2 yourself?

3 A Yes.

4 Q Personally?

5 A Yes.

6 Q Now, generally speaking, if you -- if an individual
7 has suffered an injury in the vaginal area, how quickly
8 does that area heal? Does it heal any quicker than any
9 other area of the body?

10 A No. I would not say -- depending on that person's
11 just body type and body condition as to how well it
12 would heal. It probably wouldn't heal any faster or any
13 slower than any other area of the body.

14 Q Now, obviously, there are -- are there multiple ways
15 that trauma may occur to that area?

16 A Yes, there are.

17 Q It's not just limited to sex or forcible sex?

18 A No. It could occur through accidental injury.
19 Patients can self-mutilate themselves. They could just
20 fall, for instance, and injure themselves that way. So
21 sex is certainly not -- or sexual play is not the only
22 away the vagina can be injured.

23 Q And I asked earlier if it healed more quickly. I
24 guess perhaps I'm not asking it clearly, but I mean,
25 is -- would there be any difference, for example, if an

1 individual has a cut on their vagina as opposed to the
2 same cut on they're thumb, their thumb or finger? Would
3 it heal any differently in the two areas?

4 A Generally the only difference is that an area that
5 is exposed to the air is going to leave probably an
6 encrusted type lesion. You might see a scab for instance,
7 whereas, the vagina doesn't heal that way.

8 It -- it's a moister environment, and it's not
9 exposed to the air, so it's going to look different than
10 a cut on the finger or exposed part of the body.

11 Q If -- well, and obviously -- no. Well, let me
12 rephrase that question. The lack of subsequent trauma
13 would obviously help an area heal quicker?

14 A Yes, it would. An injury would probably make it more
15 difficult for the areas to heal.

16 Q Now, if you'll recall, what did you have the
17 opportunity to review in this case?

18 A He provided me with certainly a portion -- I'm not
19 sure if it was the entire transcript from the case, and
20 again the missing pages were evident.

21 Q Did you have an opportunity to review at least the
22 victim's testimony, as well as the doctors who
23 testified. Yes, I did.

24 Q Now, the -- if you will recall, the doctor who saw
25 her for the first time, Dr. Bash, if you'll recall, how

1 did he describe the injuries to the victim?

2 A As I best recall -- I do not have a transcript with
3 me, right now -- but he said it was a minor laceration
4 to the -- near the opening of the vaginal area.

5 He didn't describe any, as I recall, any particular
6 bruising or external evidence of trauma, and I think
7 probably made mention of the area, the entry to the vagina
8 are minor, which may or may not be something that would
9 be noticeable on an initial exam of a little girl. For
10 any number of reasons, she may not have an intact
11 hymen, which is an area of skin that basically covers the
12 opening to the vagina.

13 Q It was apparent, though, that Dr. Bash at least
14 observed an injury to her vagina?

15 A I'm sorry?

16 Q It was apparent that Dr. Bash had observed an injury
17 to her vagina?

18 A Yes. He did describe it. He noted it as a minor
19 laceration.

20 Q And if you'll recall -- how long after the alleged
21 abuse occur did Dr. Bash have an opportunity to examine
22 the victim?

23 A According to the timetable, the best I could make out,
24 it was approximately a month.

25 Q And Dr. Claiborne, the second doctor who testified,

1 to the best of your recollection, did she find any injury
2 to the victim?

3 A No. She did describe any injury to the victim at the
4 time of the examination.

5 Q And how much later did she examine the victim?

6 A It was at least two months after the alleged
7 incident.

8 Q And did you also have an opportunity to review the
9 victim's testimony.

10 A Yes, I did.

11 Q And is there some indication in the testimony that
12 she is -- say, I guess, somewhat developmentally
13 challenged?

14 MR. PETRANO: I would object to those outside
15 characterizations.

16 THE COURT: Rephrase the question.

17 MR. THOMPSON: I'll just -- I'll ask a different
18 question, Your Honor.

19 BY MR. THOMPSON:

20 Q You testified earlier that individuals can
21 self-inflict harm to the vaginal; is that correct? A

22 Correct?

23 Q When dealing with developmentally challenged
24 females, does there appear to be a higher or lower rate,
25 generally speaking, of self-inflicted injuries to the

1 vagina?

2 A I would say that you probably are looking -- that
3 that is something that is sometimes noted. I probably
4 can't quote any direct references, but girls, especially
5 than boys, are given to masturbation, and this is
6 probably something that would occur in the course of
7 masturbation that potentially could injure themselves.

8 Q Excuse me.

9 (Pause)

10 Now, obviously, you can't tell if that happened in
11 this case.

12 A No. There's no way to document what was the cause
13 of the injury.

14 Q But that is something that has been known to happen?

15 A Yes.

16 Q Now, going back to Dr. Bash's testimony for a
17 second, Dr. Bash concluded that the injury to the
18 victim was consistent with digital penetration
19 approximately a month earlier. Can you say whether or
20 not that's -- well, let me ask that a different way.

21 Is that possible? Could there have been digital
22 penetration a month earlier?

23 A It is possible.

24 Q To cause that injury?

25 A It is possible.

1 Q And is it also possible that the injury could have
2 been caused by something else?

3 A It could.

4 Q And it have been self-inflicted?

5 A Yes.

6 Q Could it have been accidental?

7 A Yes.

8 Q To the best of your recollection, did Dr. Bash
9 give any testimony about any other causes as to how the
10 injury could have occurred?

11 A Not to my recollection. Again, I would need to
12 review the testimony again. I don't think he did. I think
13 it was led in a different direction that that was the way
14 it was left to the testimony.

15 Q And the same thing with the other doctor,
16 Dr. Claiborne. Did she give any testimony about that?

17 A I don't recall it.

18 Q Now, if -- how -- for an injury to -- for someone to
19 see a physical injury to the vagina a month later, such
20 as Dr. Bash described, how serious do you believe that
21 injury would have had to have been in the first place
22 for it to still be present a month after?

23 A If it was a significant health-threatening injury,
24 it probably would be fairly evident. If it was a minor
25 laceration, a tear, it -- you know, it could be in various

1 stages of healing, and I know that there's ways of
2 categorizing bruises to determine how long the bruise has
3 been there.

4 I don't think that was described in the examination.
5 A laceration would be very difficult to date, I think
6 exactly, as to how long it had been there, and certainly
7 difficult to say what exactly had caused that
8 particular injury if there was not any other evidence of
9 trauma.

10 Q And Dr. Claiborne testified that the -- as you
11 testified earlier that there was -- there was no
12 evidence of physical abuse two months after the alleged
13 abuse; is that correct?

14 A As I recall, he did not see any evidence of injury
15 of any kind when he examined the victim.

16 Q But that doctor also testified that that finding was
17 subsequent with abuse occurring in the past? Is that
18 opinion accurate?

19 MR. PETRANO: I'm going to have to object to that.

20 THE COURT: Rephrase.

21 BY MR. THOMPSON:

22 Q Is a finding of no physical trauma two months after
23 the -- two months after the alleged assault consistent
24 with there being physical abuse two months after?

25 A If you examine the patient, and you didn't see

1 anything to lead you to believe that there is any trauma,
2 I fail to see how you could say that was evidence of
3 abuse.

4 Q Could a finding that could see no physical abuse
5 also be consistent with there being no physical abuse?

6 A I think that would lead you to believe that, yes.

7 Q And if you were to -- if you were to take that
8 physical examination, what would the value to you be
9 of -- that's not the right word.

10 If you were trying to determine whether this
11 individual had been traumatized, just traumatized in the
12 past, what value to you would it be to have a finding two
13 months after the fact of no physical trauma?

14 A I think it would be very difficult to make a
15 statement as to could physical abuse had occurred or not
16 if there were no signs to lead you to believe there was
17 anything out of the ordinary.

18 MR. THOMPSON: Beg the Court's indulgence a moment.

19 (Pause)

20 BY MR. THOMPSON:

21 Q If someone -- if a female had suffered a minor
22 laceration or injury to her vagina, would you expect to
23 see evidence of that laceration 30 days later?

24 A It probably would depend upon the extent of the
25 laceration.

1 I mean, you could categorize a paper cut as a
2 laceration, and out here, to be required for that, it
3 would be far less than a substantial separation of the
4 skin with perhaps deep-tissue injury, that sort of
5 thing.

6 You'd have to categorize, find the extent of the
7 injury, as to how long it would take to heal.

8 Q How serious would you expect the injury to the
9 victim in this case for there to be evidence of it 30 days
10 later?

11 A That would hard to quantify. Again, as I recall,
12 there were no photographs attached to this, so the
13 description of the laceration, again, there's such a
14 variation in how the entrance to the vagina might look.

15 It would be difficult to say was this something
16 that this person had had for a long time or a more recent
17 thing. Obviously, if it was a fresh laceration, it would
18 be fairly obvious, but to say that you would see something
19 30 days later and not 60 days later, it would have to be
20 fairly substantial, I would guess, to see 30 days later
21 in its various stage of healing. After 60 days, it was
22 completely healed.

23 Q Would it be something that you would expect would
24 require -- would it be an injury so severe that you would
25 expect someone to go to a doctor about it?

1 A Again, you're given someone who may or may not have
2 the expected degree of intelligence. There's a fear
3 involved. There's all sorts of reasons why people fail
4 to seek medical attention, but if your child was
5 bleeding, I would think this would alarm them enough
6 that they would probably want to go to a caregiver of some
7 sort. Again, there's a lot of pain involved. Again, there
8 would probably be some reaction.

9 If it was a fairly minor laceration, perhaps it not
10 require any medical attention at all. It would heal on
11 its own.

12 Q If it were a fairly minor laceration, would you expect
13 to see it 30 days later?

14 A Probably not.

15 MR. THOMPSON: Thank you. No further questions.

16 CROSS-EXAMINATION:

17 BY MR. PETRANO:

18 Q So the first thing, unhealthy, generally, physical,
19 as your body is old, they don't eat right, no exercise,
20 poor living conditions, that would affect the length of
21 time that even a minor laceration could heal, right?

22 A There would be a lot of factors involved, yes there
23 would be.

24 Q And that would go toward vaginal laceration, as
25 well?

1 A Yes. And I would think that would qualify as a skin
2 lesion.

3 Q And something you said kind of struck me here. It
4 says no away to document what was the cause of the injury.
5 That would refresh you on the doctor's testimony.

6 When you do rape cases, as you've testified that
7 you've done, how do you document the cause of the
8 injury?

9 A Well, obviously, history plays a part in it.

10 Q How do you get that?

11 A Talking to a patient.

12 Q Okay.

13 A One of the first things that you would do -- then on
14 examination, when you do a rape protocol, it's a matter
15 of gathering information.

16 I think when we first learned these, we didn't do
17 D.N.A. analysis like we do today. We collected hair from
18 the victim. We collected pulled hair from the pubic
19 area for examination. We did swabs. We looked for the
20 presence of sperm, and then just a visual examination
21 to see if there was any evidence of bruising, fresh
22 bruising, like if there was evidence of lacerations in
23 the skin, injury in a similar fashion.

24 Q And one of the first things you indicated was
25 talking to the victim?

1 A Yes.

2 Q Okay. And this is going to sound like a silly
3 question. I'm not trying to be -- but you don't do a rape
4 kit for a fall, right?

5 A No.

6 Q And the suggestion is that the injury is a
7 self-mutilation. Wouldn't it be pertinent to do an
8 examination two months later -- I mean, wouldn't
9 self-mutilation be continuing?

10 A I...

11 Q I'm not asking for a complicated --

12 A Yeah, I would say again it would depend on the
13 feedback. If you did something that caused injury or
14 pain, you might not be inclined to try it again, so that's
15 an interesting question.

16 Q But I thought you said girls more than boys,
17 particularly, masturbate a lot?

18 A Well, that's not uncommon.

19 Q Okay. So that would be something that you would
20 want to follow-up on, right, to see if this is continuing?
21 you'd want to follow along with it, right, to see if this
22 is continuing?

23 You're just saying that masturbation went to far?

24 A I would think in a -- for instance, girls frequently
25 might introduce an object into the vagina. They may use

1 too large an object, and it causes the scope of the skin.

2 So they might say, well, I'm not going to use that
3 again. I'm going to use something smaller and still get
4 the stimulation.

5 Q And there were no photographs or anything for you to
6 take a look at?

7 A Not that I recall seeing any photographs, no, sir.

8 MR. PETRANO: Thank you so much.

9 THE COURT: Any redirect?

10 MR. THOMPSON: No further questions, Your Honor.

11 THE COURT: You may step down. Thank you.

12 MR. THOMPSON: May the witness be excused, Your
13 Honor?

14 THE COURT: Any objection?

15 MR. PETRANO: No, Your Honor.

16 THE COURT: You may be excused. Thank you.

17 THE WITNESS: Your Honor, the Applicant would call
18 Joey Savitz.

19 JOSEPH SAVITZ,

20 after being duly sworn, testified as follows:

21 THE COURT: State your full name, please.

22 THE WITNESS: My name is Joseph L. Savitz,
23 S-A-V-I-T-Z, III.

24 MR. THOMPSON: If I could just get a couple of
25 exhibits marked.

1 (WHEREUPON, Applicant's Exhibits Nos. 1 - 3 were
2 marked for identification only.)

3 MR. PETRANO: No objection.

4 MR. THOMPSON: Your Honor, I'd move this in as one,
5 two, and three.

6 THE COURT: Without objection.

7 (WHEREUPON, Applicant's Exhibits Nos. 1 - 3 were
8 admitted into evidence.)

9 DIRECT EXAMINATION:

10 BY MR. THOMPSON:

11 Q How are you doing this afternoon, Mr. Savitz?

12 A I'm doing well.

13 Q As with the previous witness, I promise to try to
14 get you out of here as quickly as we can.

15 A Take your time.

16 Q What is your current occupation?

17 A I'm a fellow attorney for the State of South
18 Carolina, not on the same side sitting across from you,
19 but I'm counsel at Appellate Defense and criminal
20 appeals for the State. I represent the individual.

21 Q How long have you been working for Appellate
22 Defense?

23 A Over 25 years now, probably about 25-and-a-half
24 years.

25 Q And I believe at the time you represented Mr. Reeves,

1 you were acting chief attorney; is that correct?

2 A It looks like it was, yes.

3 Q Are you still the chief attorney over there?

4 A No. I became chief and tricked Robert Dudek into
5 taking the job. I'm the senior appellate attorney. I
6 have no administrative responsibilities at all. It's a
7 much better set up for me.

8 Q And were you Mr. Reeves' appellate attorney?

9 A Yes. It was.

10 Q Did you have any -- do you have any independent
11 recollection of representing Mr. Reeves?

12 A I remember the issue. I looked at the brief when I
13 got the subpoena. I remember the issue, but I don't
14 remember the facts of the case particularly.

15 Q Now, I don't know -- is it Doo-deck or Dudek?

16 A Dudek.

17 Q Dudek.

18 A Yes.

19 Q I don't know if Mr. Dudek has changed the procedures
20 since he became chief attorney, but in general, when a
21 transcript is received by your office, what happens to
22 it?

23 A Well, what happens is, we order the transcript
24 yourselves, and the court reporter can get a number of
25 extensions. As soon as it comes in, we have a couple of

1 ladies to assign the cases.

2 I specialize in murder cases. I don't know how I
3 ended up with this one, but we have eight attorneys or
4 so. We go on a rotation, except for the murder and the
5 death penalty cases, which I specialize in. The rest of
6 the cases are just kind of assigned randomly.

7 Q And when you get a transcript, does it -- is it given
8 to anybody to ensure that all pages are there?

9 A It's -- now it is. We have since added Dan Stacy
10 who used to be the chief attorney before our chief
11 attorney. We hired him to come back and to take care of
12 stuff like that, make sure we've got most, you know, kind
13 of does the most he can on the front up, because it was
14 a problem at the time this happened. It was up to the
15 attorney who was assigned the case to go through the
16 transcript to see if there were any pages missing or
17 exhibits were needed, things like that. We have changed
18 that.

19 Q But that wasn't your policy in place at the time you
20 were representing Mr. Reeves, is it?

21 A At the time I represented Mr. Reeves, it was up to
22 the attorney to go through the record to see if anything
23 was missing.

24 Q Is there a reason you want to make sure the
25 transcript has all the pages?

1 A Yeah, because you could have an issue. It could be
2 a part of a dismissal. It only takes a wrong line at the
3 wrong time in a trial to result in the worst, so you want
4 as much of the record as you can before you start working
5 on a case.

6 Q And are -- to the best of your knowledge, are court
7 reporters allowed to reuse or destroy their tapes after
8 a certain period of time?

9 A They can destroy their tapes after a certain period
10 of time. What it is now, I'm not sure, but it's not long
11 enough, I don't think.

12 Q And was it -- was it, obviously, it happened
13 frequently enough, you had this problem come up
14 frequently enough that you've actually done a policy now
15 to make sure everything comes in correct?

16 A Right, right. You have court reporters coming and
17 going, and one court reporter will be typing the tapes
18 of another court reporter. Some tape -- court reporters
19 disappear, and you don't have anything.

20 So we've had a lot of experience doing remands,
21 reconstructing records and things like that. It takes
22 a lot of time and doesn't often lead to a positive
23 result, so yeah, we figure it would be cheaper and more
24 sound to do it the front end and clear some of these things
25 up.

1 Q Now, if you could -- well, let me ask you this one
2 more time. Again, you were assigned to represent
3 Mr. Reeves, and as part of that -- as part of that
4 assignment, of course, you had to go through transfers.

5 A That's right.

6 Q If you could, take a look at Applicant's Exhibit two.
7 I believe that's your Designation of Matter. Could you --

8 A Yes.

9 Q Could you tell me when you filed that Designation of
10 Matter? What's the date on that?

11 A The date on this Designation of Matter is
12 February 26th, 2004.

13 Q And if you could, take Applicant's Exhibit 1?

14 A Okay.

15 Q And I think it's -- if you go four pages in?

16 A January the 12th --

17 Q Yes.

18 A -- 2004 letter?

19 Q What does this letter say?

20 A This letter says that we received the transcript
21 from the court reporter -- I'm paraphrasing. We received
22 the transcript from the court reporter, and that
23 several pages were missing from the original, and could
24 she please send them to us.

25 Q And who sent this letter?

1 A That was Karen Elliott, my secretary at the time.

2 Q And so obviously -- when did -- when did they
3 say -- when did y'all say y'all had received the
4 transcript?

5 A It looks like it was on that -- it looks like she
6 finished it, from what she sent us, on May 10th, 2003.
7 Between then and when this letter was sent, I would
8 have read the transcript and noticed that the pages were
9 missing.

10 So as soon as she completed it, she sent it to us.
11 It probably sat in the office for several months until
12 I got to it.

13 Q And if you could, flip to the next page.

14 A Okay.

15 Q What is this document?

16 A This is a -- it looks like on e-mail from Karen, who
17 was my secretary at the time, to the Court of Appeals dated
18 January 2004, January 28th, several weeks after, I
19 guess, the initial letter. "The brief, the designations
20 due, we found several pages missing, the applicable
21 pages. We're asking that you hold it in abeyance until
22 we get the pages," yada, yada, yada, consented to the
23 request.

24 Q So you asked that the appeal be held in abeyance while
25 you got those pages?

1 A Right.

2 Q And this is January 28th, 2004?

3 A Uh-huh.

4 Q Did you ever receive those pages?

5 A Not to the best of my -- obviously, we didn't.

6 Q And did you -- that e-mail came from Karen.

7 Obviously, she did that at your direction?

8 A Yes.

9 Q She sent the e-mail at that time?

10 A I'm responsible for everything that happens in the
11 case, not my secretary.

12 Q Did you -- did you bring your file with you here
13 today?

14 A No, I did not.

15 Q In reviewing your files the other day, did you happen
16 to see if you had gotten anything from the Court of Appeals
17 on this request?

18 A I believe that they did what they -- there is
19 something in here, whether -- it's from Judge Hearn, I
20 believe, which says -- like kind of updating. As we keep
21 looking -- that happens a lot. They'll say okay, we'll
22 hold it in abeyance.

23 It's normally not like a page or two. It's usually
24 like a transcript, a whole hearing transcript or
25 something. It's rare there's just a page missing and the

1 court reporter can't come up with the missing page.

2 You know, the pages were -- it, obviously, was
3 numbered at some point because it had been so numbered.
4 Now, whether they managed to, I don't know.

5 So they said keep us posted on this. I think we
6 finally reached the point where the court reporter said,
7 "I don't know where it is. The tapes are gone. I can't
8 find it. I can't help you."

9 Q Whether -- okay. Well, let me ask you this.
10 After -- well, did the appellate procedure, do you file
11 final briefs first?

12 A No. We file like an initial brief, which contains
13 the designation matter, which I talked about earlier.
14 The final brief is really the initial brief with the pages
15 transposed on the trial transcript to record on appeal,
16 which is usually shorter, because it's now been
17 condensed.

18 Q Now, if you go to just a second page, which is the
19 order on the Court of Appeal on that, could you read the
20 date on top of that?

21 A September 1st, 2004.

22 Q And what are they giving you time to prepare?

23 A What they're giving me time to prepare -- they're
24 giving me time to find the pages that are missing.

25 Q But are they giving you time to find the pages that

1 are missing to do your initial brief or are they giving
2 you time to do the record on appeal?

3 A They're giving me time to -- I believe that this -- I
4 don't know. I don't remember the day. I'm not looking
5 at my brief, so I don't remember if this was -- it came -- I
6 imagine it came before I did the brief. If it didn't,
7 I was wrong about that.

8 Q And again, if I ask you to take a look at your
9 Designation of Matter that's dated February 26th, 2004?

10 A Yes.

11 Q So the order from the Court of Appeals allowing you
12 to hold the case in abeyance came after you had done your
13 initial brief, right?

14 A Yes. Let me just make sure I'm correct about that.
15 Yes.

16 Q So to the best of your recollection, did you ever
17 get anything from the Court of Appeals holding the appeal
18 in abeyance while you were trying to get the transcript
19 before you filed the initial brief?

20 A Based on what I have here before me, no.

21 Q So you went ahead and filed the initial brief
22 without those pages?

23 A Yes, I did.

24 Q Is there any reason why you did that?

25 A Because I didn't have the pages, and there was no -- to

1 the best of my knowledge, there was nobody -- the pages
2 never surfaced. Nobody seems to remember if there was
3 any, you know, what was on the page. There was some just
4 gigantically dynamite, you know, request to charge. It
5 was a result of them, you know, winning the case.

6 Having said that, if there was something on the page
7 that I missed, then that's my mistake. It's not
8 Mr. Reeves' mistake.

9 The issue that I raised is it was focused on the
10 indictment which really didn't require me to have any of
11 the transcript. There's a benefit of that issue at times.
12 It kind of got you away from the facts and so it was, you
13 know, a technicality, loophole.

14 I mean, you win automatically if the indictment is
15 bad at the time. That was a post pre-Gentry era. Of
16 course, there's no concern about indictments and what it
17 alleged.

18 In this indictment, I still feel doesn't allege
19 anything. I mean it's gibberish. It's incoherent. I
20 thought we had a good appeal. I thought we could win on
21 that issue.

22 Unfortunately for Mr. Reeves, the Court didn't agree
23 it was that good of an issue.

24 Q Now, of course, you're not -- you're not ever
25 going to abandon a potential -- a potential meritorious

1 issue, are you?

2 A No. That would be ineffectiveness per se. There
3 would be no reason to bring a remitter in lieu of what
4 I raised.

5 Q And if you'll look at Applicant's Exhibit 3, what is
6 this document?

7 A This looks like Don Zelinka's designation matter.

8 Q And in this Designation Matter, they included the
9 transcript pages that ended up being missing, right?

10 A Yeah, and that is probably why I asked for it to be
11 held in abeyance, because we couldn't find the pages they
12 were asking for.

13 Q Did -- did you ever talk to Mr. Stockholm about this
14 case?

15 A I don't have any recollection of talking with him.
16 I don't know. I probably didn't. I don't know if
17 anybody from my office talked to him or not.

18 Q Did you -- prior to filing your initial brief, did
19 you consider asking for the case to be remanded for a
20 reconstruction hearing to reconstruct the few pages of
21 transcript that were missing?

22 A No, I did not.

23 Q And -- beg the Court's indulgence.

24 If there was a potential meritorious request to
25 charge, would you have wanted to brief that issue?

1 A If there is a meritorious charge on the nonexistent
2 page and I could have gotten by asking for a remand, then
3 I was ineffective.

4 MR. THOMPSON: And, Your Honor, I'm asking
5 Mr. Savitz to read pages 180 and 182.

6 (Pause)

7 BY MR. THOMPSON:

8 Q Okay. On these two pages, what is taking place?

9 A It looks like he is requesting a charge based upon
10 her failure to report the incident sooner, and the judge
11 is saying that he will be charged on the facts and that
12 he's not going to get this.

13 Q Do you think there is enough there on those two
14 pages to present that argument on appeal? Do you --

15 A I mean, in other words -- I don't know -- the only
16 thing -- I have no idea what he's asking.

17 Q There are two --

18 A I mean, there would have to be based on the -- it
19 had to be something based on an evidentiary basis for the
20 judge to deny that. Like I say, I can't --

21 Q But basically what's going on is Mr. Stockholm
22 starts saying I would like this charge. There is a
23 missing page --

24 A Yes.

25 Q -- and the judge says, "I'm not going to charge that."

1 A Yeah, he says -- he says this case has gone on for
2 a long time, we've seen all these people. Then you've
3 got the judge saying, "I'm not going to give you that
4 charge. That sounds like a charge on the facts to me."

5 Q And again, would that -- with that brief
6 discussion, without that page, be sufficient to present
7 any issue --

8 A No.

9 Q -- on appeal?

10 A Not at all.

11 Q With regard to the denial of that charge?

12 A No. I mean, I can't even guess what was actually
13 said. I mean, you can't read it, you know, and figure
14 out what he's asking for. You see it's denied, yes, but
15 not what he's asking for it.

16 Q And again you don't have any independent
17 recollection calling Mr. Stockholm --

18 A No.

19 Q -- asking him what he remembers being requested?

20 A No. I would imagine that did not happen, but I did
21 not call. I don't know if anybody else would have called
22 or not.

23 Q And it's clear from later developments that those
24 pages are just gone?

25 A Yeah.

1 Q If you had discovered that before you filed your
2 initial brief, would you have tried to take some action
3 to try to get the case remanded?

4 A I would have done probably the same thing that we
5 did, but if I had discovered it sooner we would have
6 been able to ask the court reporter to supply those
7 pages.

8 I'll be honest with you, I don't know what happened
9 to them, because honestly, as I say, it's numbered
10 pages, so they existed at some point in time.

11 Where they went to, that's one of the problems. We
12 don't control the court reporters. We don't pay them.
13 We don't really have a whole lot of say in how the court
14 reporters -- and I'm not blaming the court reporter.
15 We don't have a lot of -- all I can do is say I'm
16 missing page whatever, how about sending it to me,
17 and if they've got it, they got it. If they don't, they
18 don't.

19 If I had reason to believe that it was just some
20 incredible charge that he had asked for, that he felt so
21 strongly about that he brought it up again, you know,
22 after the conviction, and said "Judge, I really think
23 that charge would result in an acquittal of something."

24 I don't know if there's anything that you need
25 references to that later indicates, but if I had any reason

1 to think that it was other than just a charge that was
2 asked for and denied, we probably would not -- since we
3 were talking about -- we have a limited -- in a perfect
4 world, yes. We would stop everything, get the pages, go
5 forward, but the situation being what it is now with the
6 number of attorneys that we have and the financing we
7 receive and the time we have, it's every time a page is
8 missing or, you know, we just don't have time to bring
9 to a halt to reconstruct the hearing. We just don't have
10 time to do that.

11 Q I understand. Could you just flip to page 231 for
12 me, right quick?

13 A Yes.

14 Q Read lines 17 through 21.

15 A Seventeen through 21? "And you're saying about the
16 failure to put the charge on our request to charge, I have
17 a duty to report the suspected challenges."

18 Q Is that Mr. Stockholm?

19 A I guess that is what he was asking for.

20 Q And he did bring that back up again after the trial?

21 A Yeah.

22 Q Yes.

23 A But now that I read that, I really don't think it's
24 that hot of a charge. I'm sorry.

25 Q I understand, but the fact of the matter is you still

1 don't have the proposed text of the charge?

2 A No, I do not.

3 Q And would you -- if you had discovered before you
4 filed your initial brief --

5 A Right.

6 Q -- that you were never going to have the text of that
7 potential charge --

8 A Right.

9 Q -- would you have done anything to try to get that
10 charge somewhere on the record that it could be reviewed
11 later on in front of a Court?

12 A Not based on what I just read. Because I mean, if
13 that's what he's asking to charge the jury; that they
14 should find that there is a duty to report, and if they
15 didn't report, they should find that this didn't happen,
16 I mean, that would clearly be a charge on the facts.

17 Well, like I say, I don't know the facts as to what
18 the charge is. We prefer written charges whenever
19 possible.

20 MR. THOMPSON: Beg the Court's indulgence one moment.

21 (Pause)

22 MR. THOMPSON: I have no further questions for this
23 witness, Your Honor.

24 THE WITNESS: Thank you.

25 THE COURT: Any cross?

1 MR. PETRANO: Just real briefly.

2 CROSS-EXAMINATION:

3 BY MR. PETRANO:

4 Q You had mentioned that it was odd that you had this
5 case because you're typically a homicide trier?

6 A Yeah.

7 Q And the opposing attorney on behalf of the State was
8 Bob Zelinka?

9 A Yes.

10 Q He's also capital litigation?

11 A That's right.

12 Q One of the questions I'd like to ask is why is it you
13 two were given this?

14 A I have no recollection why the two of us ended up
15 with this case.

16 Q It's absolutely a non-homicide case?

17 A Yes.

18 Q Okay.

19 A Unless there was another homicide that was out
20 there at the time. I have no idea why we were given
21 this.

22 Q All right. And one guess I had was that he was
23 assigned to an attorney in your office that would just
24 quit or elect or get transferred, you would just pick up
25 the slack?

1 A That's entirely possible.

2 Q And then the same --

3 A That did happen.

4 Q And as an appellate attorney, I think you said
5 25-plus years, about how many briefs have you done, do
6 you think, 1,000, 10,000?

7 A Several thousand.

8 Q And you're limited in what you can argue as to
9 what's in the record, right?

10 A Yes.

11 Q All right. So here is the situation, and we've pretty
12 much touched on it. You got a chance here a blank page,
13 a blank slate.

14 A Uh-huh.

15 Q Insert a dynamite charge for us. What would make a
16 difference here? In your ideal world, what could have
17 been written on there that would have --

18 A Well, on the charge he asked for, if it had been given,
19 that might have worked if you could get the judge to tell
20 the jury not to believe the complaining witness if this
21 happens. I mean, that would be a great charge.

22 Q And would that be a proper charge?

23 A No, it would not be a proper charge, so I can't
24 conceive the charge would have been given. If the charge
25 had been requested and given, the judge would give under

1 the circumstances the -- you know, I imagine there is
2 something they did ask for that I would raise, but not
3 in the context of this.

4 But having said that, you know, I always say if I
5 missed an issue, I mean, it certainly wasn't a strategic
6 decision to abandon a winner. If it was a whamo request
7 to charge that I just missed, then he certainly deserves
8 to have a new trial.

9 Q And speaking of winnable issues, the way you saw
10 it -- I think you testified a few minutes ago, the way
11 you still see it today, despite the Court's ruling, is
12 this indictment issue, right?

13 A I think the indictment was bad. I mean, you can't
14 tell whatever that is. It means --

15 Q There's not a victim in there, is there?

16 A Well, no. The name of the victim is -- you know,
17 you're supposed to be able to say hey, I was convicted
18 of this. I've done my time. You know, when he gets out,
19 if he ever has to show anybody this indictment, I mean,
20 they'll laugh. There is no telling what was alleged. I
21 thought it was bad indictment. I still do.

22 MR. PETRANO: Thank you. Nothing further.

23 MR. THOMPSON: No further questions of this witness,
24 Your Honor.

25 THE COURT: You may step down. Thank you.

1 THE WITNESS: Thank you, Your Honor.

2 MR. THOMPSON: May this witness be excused?

3 MR. PETRANO: I think I subpoenaed him to be here,
4 but he can be excused.

5 THE COURT: No objection.

6 MR. THOMPSON: No objection from us.

7 Your Honor, the Applicant would call Gene
8 Stockholm.

9 GENE STOCKHOLM,
10 after being duly sworn, testified as follows:

11 THE COURT: Thank you. Would you state your full
12 name, please?

13 THE WITNESS: My name is Gene Stockholm.

14 DIRECT EXAMINATION:

15 BY MR. THOMPSON:

16 Q Do you have a copy of the transcript up there,
17 Mr. Stockholm?

18 A No, sir. I haven't seen that in some time.

19 Q Mr. Stockholm, if you could just read the date on that
20 transcript for me?

21 A It says September 17th, 2002.

22 Q So this has been a little less than eight years
23 since this trial occurred?

24 A Yes, sir.

25 Q And do you have a file any longer on this matter?

1 A No, sir, I do not.

2 Q That's because it hit the seven year...

3 A Yes, sir. I -- when the P.C.R. was filed and I
4 received notice of it, I had the file pulled from our storage
5 area. I had appeared a couple of times, and then I heard
6 there was going to be a problem with some pages. Then
7 the file got sent back to storage. The time clicked, and
8 the file was destroyed.

9 Q So do you have much independent recollection of what
10 occurred during this trial?

11 A Only one event.

12 Q What is that, sir?

13 A During the trial, Mr. Reeves had been adamant since
14 I met him that he was not guilty of the charges. There
15 was a -- I cannot remember whether she was the
16 therapist or a counselor who was -- testified in the
17 trial. I did remember the other day it was Amy Gaylor,
18 I think.

19 Ms. Gaylor -- how do I put this? She had a very
20 clipped tone when she spoke, and she also had a very
21 condescending manner. I thought that was directed
22 toward me because I was Mr. Reeves' defense attorney,
23 but she also had the same tone and manner when she talked
24 to the prosecutor and also to Judge Floyd. I still
25 remember her after all these years.

1 Q Now, how did you come to represent Mr. Reeves?

2 A Mr. Reeves originally had been talking to my
3 partner, Billy Oswald. My understanding was that this
4 file had been through several prosecutors at the Richland
5 prosecutor's office. I believe this -- I believe
6 Mr. Reeves had been excused from going to roll call. The
7 case had been around for so long.

8 At some point, my partner was hopeful the case was
9 going to go away. He received a call from the
10 prosecutor's office that it was going to be tried after
11 the summer, which is when I then met Mr. Reeves.

12 Q I take it eventually you did go to trial in September
13 of 2002?

14 A Yes.

15 Q Now, I guess after -- after they said they're going
16 to try to call it, were there any plea offers made in this
17 case?

18 A No, sir. There was only one plea offer made that I
19 was ever aware of.

20 Q When did that occur?

21 A That occurred after some argument regarding Ms. Amy
22 Gaylor between the prosecutor and myself about notes that
23 she had not provided.

24 Q And what was the plea offer?

25 A The plea offer was five years' probation.

1 Q Was there a suspended sentence involved?

2 A I do not remember, sir.

3 Q And you made that offer to Mr. Reeves?

4 A Yes, sir, I did.

5 Q And what was Mr. Reeves' response?

6 A Mr. Reeves was adamant he hadn't done anything
7 wrong.

8 Q And did you talk about that plea offer along with
9 Judge Floyd?

10 A Yes, sir, to see if he would agree to it.

11 Q And was he amenable to agree to it?

12 A Yes.

13 Q Did he give you some indication as to what would
14 happen if Mr. Reeves did not plead guilty?

15 A Yes, sir.

16 Q What did he tell you?

17 A He was going to give him time.

18 Q And still, did you convey that to Mr. Reeves?

19 A Yes, sir.

20 Q But did he still -- did he still insist on going to
21 trial?

22 A Yes, sir. From the first time I met Bobby, he was
23 adamant he didn't do anything wrong.

24 Q Now, were you -- well, I guess let me ask you this.

25 Do you recall what the relationship was between the

1 alleged victim in this case and your client?

2 MR. PETRANO: I'm so sorry to interrupt again, but
3 it's not an alleged victim. He's been convicted. The
4 jury has found him guilty. He's been found guilty. And
5 I apologize, but I understand the case.

6 THE COURT: Your comment is noted.

7 THE WITNESS: As I remember, the child had been the
8 daughter of a roommate of Bobby, and as I remember, Bobby
9 had not approved of the woman's lifestyle. Apparently
10 she either drank or went out a lot or something, but Bobby
11 thought the child deserved better than that, I think.

12 BY MR. THOMPSON:

13 Q And was he alleged to have abused the child over the
14 course of a long period of time?

15 A I don't think so, sir, but I'm not sure.

16 Q Could you please flip to page 18 for me?

17 A All right.

18 Q And whose testimony is this?

19 A I believe the child's.

20 Q And could you read, just to yourself, lines one
21 through 18?

22 A All right.

23 (Pause)

24 Q And in this -- in this line of testimony, does
25 Ms. VICTIM say that she was abused when she was ten?

1 A Yes.

2 Q Does it also say that she was abused, but the abuse
3 started when she was four?

4 A Yes.

5 Q So she testified that she had been abused for over
6 the course of six years by Mr. Reeves. Do you
7 consider that to be potentially harmful testimony?

8 A Yes.

9 Q Is -- and you may not have any independent
10 recollection, but the record will reflect, do you
11 recall ever making an objection to this testimony?

12 A No. I wish I had my file. When I prepared this case
13 for trial, as I do all my trial cases, I have a charge
14 folder. I have a case law folder, such as exceptions,
15 annotated rulings. I wish I had it.

16 Q Obviously, would you have wanted to keep this
17 testimony out?

18 A I think so, yes.

19 Q And again, if this testimony was repeated by
20 witnesses later on in the trial about the length of the
21 abuse, and, Your Honor, I'll just refer to the record as
22 page 78, lines one through 11 and page 99, line seven
23 through 15?

24 THE COURT: I'm sorry, page 78 and what?

25 MR. THOMPSON: Page 99, page 78 lines one through 11

1 and page 99, lines seven through 15.

2 BY MR. THOMPSON:

3 Q If additional witnesses had confirmed her
4 statements that she had been abused over the course of
5 six years, would you want to keep that testimony out, as
6 well?

7 A I remember -- and I'm trying not to confuse this with
8 other cases that I've done regarding research about
9 bolstering the statements of the victim versus
10 corroboration, generally, yes, I would want to keep it
11 out. Just I don't want to tell you the wrong thing, sir.
12 It's been a long time.

13 Q Not just on bolstering grounds, but also on prior bad
14 act grounds?

15 A Yes.

16 Q And again, I know it's been a long time, but do you
17 have any independent recollection of why you might not
18 have done that, why you might not have made those
19 objections?

20 A No, sir. The only thing I remember about this case
21 is still Ms. Gaylor.

22 Q But you wouldn't have had a strategic reason to let
23 the jury hear that your client had been abusing this child
24 for six years?

25 A No, sir.

1 Q And singly, we haven't had any -- I guess you
2 wouldn't have had any strategic reason for not objecting
3 to the -- I mean, if it came in, you couldn't object to
4 it, but for objecting to the State's use of that testimony
5 during its opening statement and closing argument?

6 A Not that I know of.

7 Q And, Your Honor, there -- there may be more. I
8 looked through it. I think I caught them all, but the
9 references made by the State's attorneys are page 55,
10 lines 18 through 21; page 202, lines three through 13;
11 page 206, lines one through six; and page 213, lines 21
12 through 23.

13 If you could, just flip to page 55 for me.

14 A (Complies)

15 Q Read lines 18 through 21.

16 A Yes, sir.

17 Q Is that the solicitor's opening statement to the
18 jury?

19 A Yes, sir.

20 Q And what is the first thing she brings up?

21 A The abuse from four to ten.

22 Q Now, the record will reflect that you objected a
23 number of times throughout the course of the trial to
24 what you would call bolstering. You don't -- the victim's
25 testimony where the State was getting to know the place

1 and time exception for the hearsay rule, do you recall
2 making those objections?

3 A Not really. I remember -- and this might come back
4 to Ms. Gaylor again, that I think she had at one point,
5 outside the jury, started to say something. You know,
6 it was like before we even got her on the stand, she was
7 like -- that's really -- I mean, I'm sorry, sir. That's
8 just pretty much all I remember about this.

9 Q If you could, please, look at page 79, lines 14
10 through 18.

11 A Yes, sir.

12 Q Who is testifying at this point?

13 A Dawn

14 Q And the record will reflect that that was the
15 victim's mother?

16 A I believe that she was, sir.

17 Q And was the State asking Ms. where the
18 victim had told her where the incidents had occurred?

19 A I think so, yes.

20 Q And what was her response?

21 A In his trailer in his bedroom.

22 Q Did you consider objecting to that testimony as
23 going beyond the time and place exception?

24 A I don't know, sir.

25 Q Who do you think he and his was referring to?

1 A Mr. Reeves.

2 Q Do you think that would have been clear to the jury?

3 A Yes, sir.

4 Q Do you think that the references to he and him
5 designates time or place?

6 A No.

7 Q Because that's specifically referring to Mr.
8 Reeves, and again, could you turn to page 99 for me?
9 Well, actually it's starting on page 98. Look at the last
10 line, line -- line six on page 99?

11 A Yes, sir.

12 Q And this is Ms. Lashly, her therapist?

13 A Uh-huh.

14 Q Could you -- could you read her testimony,
15 lines -- well, I guess -- what are they asking her about?

16 A It seems they asked her if she described where
17 the incidents had been happening and then Ms. Lashly said
18 yes. They occurred at his house in his room, two
19 different locations.

20 Q And what were the two different locations?

21 A It doesn't say. One states that he had a roommate
22 named Jessie and one was only Amber, was living with
23 them.

24 Q And again, the same phrase, "In his house in his
25 bedroom" is repeated?

1 A Yes.

2 Q Again, do you have any recollection why you might
3 not have objected to that testimony at that point in time?

4 A No, sir, I do not.

5 Q And even if -- even if the, "In his bedroom" refers
6 to a place and time, the testimony about Jessie was living
7 them, is that referring to a place and time?

8 A No, sir.

9 Q Do you think that would be something that you should
10 have objected to --

11 A It might have been, sir. As I said, I remember
12 doing a lot of research on Lyle, but I just don't have
13 an answer.

14 Q I know you don't have your file with you, but did
15 you have an opportunity to consult with an expert prior
16 to trial --

17 A No, sir.

18 Q -- about the medical testimony that was going to be
19 admitted?

20 A No, sir.

21 Q Did you know if they were going to try to admit
22 evidence of physical trauma?

23 A Yes, sir.

24 Q And do you think that perhaps having an expert
25 would have been helpful to try to counteract their

1 description of how the incident -- how she received that
2 injury?

3 A It might have, sir. As I remember, Bobby was making
4 payments to my partner because he didn't have a lot of
5 money at the time. I do not remember -- I remember -- I
6 think I saw Bobby, met with Bobby several times before
7 we actually got ready for the trial. He had provided me
8 with a witness list, a long list of people who, you know,
9 would have helped him out. I do not remember whether he
10 did that at my request or he just had it ready for me when
11 I met with him.

12 We decided to go that route. I started going down
13 the list. If I'm correct, the entire defense was that
14 the child's mom had been convicted, against Bobby
15 because Bobby had said, "I don't like the lifestyle.
16 You're not treating your daughter well. I want you out
17 of my house", if I remember correctly.

18 Q The only -- you knew going in they were going to
19 bring up evidence that the girl had actually had physical
20 trauma?

21 A Yes.

22 Q Prior.

23 A Yes.

24 Q And did -- did you consider at least talking to
25 somebody who was an expert in the field to try and see

1 if there was any other way to try and counteract that
2 testimony?

3 A Sir, all I remember is there was a question about
4 money. I know I never did talk to an expert, but whether
5 Bobby and I talked about that, I cannot tell you.

6 Q And were you present here for Mr. Savitz's
7 testimony?

8 A Yes.

9 Q Do you happen to recall what that jury charge you
10 requested said?

11 A No, sir. I do know that I had a very thick sub file
12 in my trial book that had the charges with the case law
13 attached to them. Again, that's gone.

14 Q Clearly, those would have been -- would they have
15 been easier for you to recall what that charge was
16 had anybody contacted you while the direct appeal was
17 ongoing?

18 A Well, yes, sir. I would have had my file.

19 Q And you would have had the exact charge --

20 A Yes, sir.

21 Q -- in the file. Were you contacted by anybody
22 during the direct appeal?

23 A I was not contacted by them. I had contacted them
24 several times. Initially Bobby had wanted us to
25 handle the appeal. He was going through his friend

1 Jessie who testified at that time of his trial, I believe.
2 I will say the only reason I remember Jessie's name is
3 I heard you and the Attorney General mention this; so,
4 yes, that's who he is.

5 I had sent him several letters about have you taken
6 the file, what's the status, you know, and copied
7 Bobby. You know, is appellate defense handling this, and
8 then I got a notice they were, but I never had any
9 conversations with anyone from his office.

10 Q When is the first time you found out about the issue
11 with the transcript pages?

12 A It's been some time, sir. I've been up here, I
13 think five or six times with Bobby's P.C.R. The prior
14 attorney, Mr. Mills, and I think the prior Attorney
15 General, the last time was in front of Judge Cooper maybe.
16 They just told me to go away, and they would call me when
17 they needed me. That was over a year, maybe two years
18 ago.

19 Q But you at least found out about the issue on the
20 transcript while the P.C.R. was pending?

21 A Right, because they told me there's missing pieces.
22 They never said what it was.

23 Q But you didn't hear anything about it on direct
24 appeal?

25 A No.

1 Q The rest of it?

2 A No. I never heard anything about it.

3 Q And one final thing going back to what you were
4 testifying earlier about your discussion with Judge
5 Floyd --

6 A Uh-huh.

7 Q -- if you could, flip to page 232 and read lines 14
8 through 22?

9 A "Your Honor, if it please the Court, Bobby is 36
10 years old. He's been gainfully employed and has been out
11 on bond for two years. He has never had a problem and
12 been reporting as he's been asked. He has no prior
13 criminal record in this matter. This is the first time
14 he's really been in serious trouble with the law. We'd
15 ask the Court to consider a probationary sentence, Your
16 Honor."

17 Q Did you ask for the probationary sentence because
18 Judge Floyd had indicated before that he would be
19 inclined to give a probationary sentence?

20 A I'm sure I did.

21 Q And clearly, Judge Floyd did not give a probationary
22 sentence?

23 A No, he did not.

24 Q Did you consider objecting to the sentence imposed
25 as, I guess violative of Mr. Reeves' decision to

1 exercise his right to trial?

2 A No. I did not actually think about that until
3 about two months after Bobby had been sentenced. I was
4 reading the advance sheets. There was something -- and
5 I remember this clearly. There was a case that came down
6 discussing about plea versus trial and the appearance of
7 punishing someone for having a trial. The first thing
8 I thought of was Bobby.

9 In fact, I -- it might have been two attorneys
10 before you, sir, the first attorney who was appointed on
11 the case, I don't think it was Mr. Mills, I had talked
12 with him about that.

13 Q After looking over, I guess, that court ruling,
14 in retrospect, do you think you should have made that
15 objection at the time?

16 A Oh yes.

17 MR. THOMPSON: Beg the Court's indulgence.

18 (Pause)

19 No further questions of this witness, Your Honor.

20 THE COURT: Any cross?

21 MR. PETRANO: No questions.

22 THE COURT: You may step down. Thank you.

23 MR. PETRANO: Your Honor, may this witness be
24 released from his subpoena?

25 MR. THOMPSON: No objection.

1 THE COURT: You may be excused. Thank you.

2 Anything further from the Applicant at this time?

3 MR. THOMPSON: No further witnesses. Just a brief
4 argument, Your Honor.

5 THE COURT: Any by the State?

6 MR. PETRANO: No. We submitted our evidence,
7 testimony, in cross.

8 THE COURT: Instead of taking a break, I'll go ahead
9 and hear your arguments.

10 MR. THOMPSON: Judge, generally we would allege
11 ineffective assistance of counsel in basically five
12 different areas, three dealing with trial counsel's
13 performance during the substantive portion -- prior to
14 and during the substantive portion of the trial, one
15 dealing with ineffective assistance of counsel during
16 the sentencing and also the numerous allegations that I
17 have about appellate counsel to just one general
18 allegation of ineffective assistance of counsel of
19 appellate counsel that there might not be problems with,
20 but with regard to -- leading up to the trial and during
21 the trial, we've alleged that defense counsel was
22 ineffective for failing to consult with an expert both
23 prior to and presenting an expert during the trial.

24 I think it's -- and, Your Honor, you can -- you can
25 read the transcript for yourself. I don't mean to

1 disparage Mr. Stockholm, but it's our honest opinion
2 that the cross-examination of Dr. Bash and Dr. Claiborne
3 by Mr. Stockholm was simply insufficient to counteract
4 the damage that their testimony -- that those two
5 witnesses' testimony did at the trial.

6 I know that the State made specific references to
7 that testimony during closing argument. I don't know if
8 I have them all marked, but I know it's made several
9 times, Your Honor, that they -- there is nothing that the
10 defendants can do in this case because they cannot
11 show -- they cannot dispute the medical testimony. They
12 cannot dispute that there was anything wrong that
13 happened to this girl. It was evidence that she had been
14 abused.

15 There was no evidence put forward in front of the
16 jury that might have explained that this injury may have
17 come from a source other than Mr. Reeves or that the injury
18 itself occurred after the last act of alleged abuse.

19 The evidence is clear during the trial that the last
20 time Mr. Reeves saw VICTIM was on the July 4th,
21 2000 weekend. She was not examined by Dr. Bash until
22 July 31st, 2000, at least at a minimum 27 days, likely
23 longer than that.

24 We believe that it's extremely important, as
25 Dr. Thompson pointed out, testified here earlier today,

1 for the jury to have heard testimony that an injury
2 like -- for someone to be able to see that injury four
3 weeks after it occurred, that it would have had to be a
4 significant and substantial injury. That is not
5 consistent at all with the testimony given in this trial,
6 Your Honor.

7 This girl was not taken to the hospital. She wasn't
8 taken to the doctor. She didn't make any complaints.
9 There was no testimony about anything like that, and that
10 that -- that a medical expert would have been almost
11 required for this trial, Your Honor, to make sure that
12 the State's witnesses under -- no one can dispute that
13 injury had occurred, but to give the jury some way to find
14 that it wasn't committed by Mr. Reeves. That's our
15 argument with respect to the expert, Your Honor.

16 With respect to the hearsay, Rule 801(d)(1)(b) at
17 the South Carolina Rules of Evidence, which is derived
18 from a number of Supreme Court opinions, I believe most
19 prominently, Jolly v. State which apparently had the same
20 arguments, a 1992 case, I believe..

21 That rule states that you -- that in a criminal
22 sexual conduct case, the -- the -- the testimony may be
23 admitted. It's not hearsay; that it's limited to place
24 and time; that the victim -- the alleged victim in a
25 criminal sexual conduct case, that person's hearsay

1 statements can come in so long as they're limited to place
2 and time.

3 We would submit that the testimony given by the
4 victim's mother and therapist saying that these
5 incidents occurred in his trailer in his home, in his
6 bedroom, that's not limited to place and time.

7 I understand -- I'm sure the respondent would argue
8 that in order to give a place, you've got to be able to
9 describe a place, but that subject of limitation, Your
10 Honor, that when you start going beyond the place and
11 start describing a person, a perpetrator, that you need
12 to somehow remove that aspect of that testimony.
13 Otherwise, it's inadmissible.

14 Even if the testimony regarding "in his trailer in
15 his bedroom" is not -- is technically not hearsay, but
16 was admissible, the testimony created by the therapist
17 that -- you know, that one -- she described two
18 different occasions, one was when he had had a roommate
19 named Jessie, and one was when he was living with them.

20 I think that that goes well beyond the scope of time
21 and place, Your Honor, that -- you know, going to
22 describing people that Mr. Reeves lived with, that's not
23 time and place. That's identifying Mr. Reeves as the
24 perpetrator, and that's not permitted.

25 That's exactly why the scope of the rule is as

1 limited as it is, because they don't want
2 corroborating -- the ruling is designed to prevent
3 corroborated testimony given by other witnesses to say
4 the victim said this over and over and over. She said
5 it was the defendant over and over and over and that...

6 THE COURT: And so -- I just want to make sure I
7 understand. So what you're saying that any time there's
8 any description that's attached to it, even if the way
9 it's described is -- is, for example, the one that was
10 used about at the time that he lived with -- at the time
11 he had a roommate, even though there -- there may -- that
12 may be a way of describing a particular time period of
13 when it occurred, because you would be able to identify
14 when that time period is, you're saying that that's
15 inappropriate?

16 MR. THOMPSON: Yes, Your Honor.

17 THE COURT: And so if they can't describe a -- if
18 they can't describe a time period, then it is either a
19 time of day or month and year or date and year, you're
20 saying, therefore, they would not be able to provide
21 testimony at all?

22 MR. THOMPSON: Hearsay testimony, yes, Your Honor.
23 The victim herself could give that testimony and say,
24 "That's when I was abused," and there's no problem with
25 that. It's other witnesses coming in giving that

1 hearsay testimony that goes beyond the scope.

2 THE COURT: So if -- and I understand that you -- I
3 understand it's hearsay, because they're hearing it from
4 the victim, so -- but if the victim describes it as that
5 time period, they cannot repeat those words?

6 MR. THOMPSON: Yes, Your Honor. If, for example, the
7 victim had said it happened when I was at the park with
8 Bobby, that the, "With Bobby" that's impermissible. You
9 can't let that come in by referring to in his bedroom in
10 his -- in his trailer. There is -- it is clearly
11 referring is to Mr. Reeves in the testimony; that they're
12 saying it's him.

13 THE COURT: And so are you saying that it has to be
14 limited to just saying -- that the only testimony they
15 could have said was "in a bedroom", or could they have
16 said, "in a bedroom at his address?"

17 MR. THOMPSON: The address gets a little bit more
18 difficult. I think "in a bedroom" is permissible. "In
19 a bedroom in a trailer," I don't think there is any
20 problem with that, but when you start to get into
21 specifics that actually -- you've got some impeding
22 interest of letting in hearsay information in, but it's
23 limited for specific reasons so that the defendant is not
24 identified as a perpetrator.

25 Once you start to cross that threshold in

1 identifying the defendant as the perpetrator, then it's
2 inadmissible, but just a pure place in time, you know,
3 "8:30 in the morning in a bedroom," that's not
4 inadmissible.

5 And with regard to the prior bad acts, Your Honor,
6 in this case, the only allegation that actually -- the
7 only testimony that's given about what actually occurred
8 over the course of the July 4th weekend, which is what
9 Mr. Reeves was actually prosecuted for, was digital
10 penetration of the victim's vagina.

11 The -- there is numerous -- there is extensive
12 testimony given about her having to touch him and there
13 being oral sex and things of that nature. We believe
14 that all of it should have been inadmissible.

15 I understand the continued elicit intercourse
16 exception, and Mr. Petrano told me earlier that he had
17 State vs. Mathis cued up. It's a long line of cases, State
18 vs. Walls, State vs. Clasby two cases that came out on
19 this just last year.

20 We understand that that evidence, it can be
21 admissible in certain cases, but that in this case, Your
22 Honor, they did not meet the standard that quite
23 frankly -- and I mean no disrespect to the victim in this
24 case, but her testimony was not clear enough to provide
25 a significant enough basis to allow prior bad act

1 testimony to come in.

2 Her testimony is -- you know, "I was abused since
3 I was four." I mean, that's -- that's about the extent.
4 There's not -- there's not incredibly specific testimony
5 about what occurred sufficient to fall within the common
6 scheme or plan exception of Rule 404(b), and that at a
7 minimum, the testimony that -- about the oral sex and the
8 reciprocal touching by her to him; that that has nothing
9 to do with what actually occurred the day of this
10 incident.

11 We would allege, Your Honor, that defense counsel
12 was ineffective for failing to object to both the
13 hearsay testimony and the prior bad acts testimony as
14 that -- because of each, he was -- that my client was
15 clearly deserving of a new trial.

16 With regard to the sentencing, Your Honor,
17 Mr. Stockholm testified here today that he felt that he
18 should have objected, and that this is not something
19 that he thinks of here.

20 It was as soon as he saw a ruling talking about
21 that issue that -- objecting to a sentence imposed,
22 because someone is exercising their right to trial is not
23 something that began in 2002. It started -- there is a
24 long line of cases before that dealing with that issue.

25 We allege that Mr. Stockholm should have made that

1 objection during the trial, and that Mr. Reeves was
2 prejudiced by that, by the failure to make that objection,
3 and that Mr. Reeves should have a new sentencing
4 proceeding.

5 Finally, Your Honor, dealing with the missing pages
6 on the transcript, I recognize that Mr. Savitz has
7 explained that -- or is -- I guess espoused the belief
8 that the issue that Mr. Stockholm raised specifically
9 on page 181 dealing with the missing page -- 181 dealing
10 with a proposed charge; that he does not believe that such
11 an issue would have been meritorious and that he would
12 not have briefed it.

13 Quite frankly, Your Honor, Mr. Savitz has never seen
14 that supposed charge. Mr. Savitz didn't see the colloquy
15 on the record.

16 It never -- he never got it, and I was trying to make
17 the timeline clear, but what happened is he was
18 reviewing the transcript, found the missing pages, asked
19 for them, asked the Court of Appeals to hold the case in
20 abeyance, and then either before getting a ruling -- I
21 don't know what exactly transpired. He doesn't
22 really -- it appears he doesn't really remember.

23 He then filed his initial brief and said, "I'm just
24 not going to worry about getting those pages. I'm going
25 to file the brief."

1 Then only after the State requested that those
2 pages be put in the record and they had -- and then
3 Appellate Defense had to go compile the record on appeal
4 that he says, "Okay. Well, now I'm going to go get those
5 pages."

6 That was when the Court of Appeals allowed him to
7 hold the case in abeyance while he tried to get the
8 pages, but it is clear that he went forward with the
9 appeal without ever getting six pages from the record,
10 one of which includes a proposed charge, one of which is
11 a final page of the State's closing argument, two of which
12 was the actual verdict being read.

13 He went forward without those pages knowingly and
14 made no effort whatsoever to try to reconstruct the
15 record, and due to his ineffectiveness to make sure the
16 record was complete at the appellate stage, we don't know
17 and we can never know what those pages might have
18 entailed and that it was ineffective assistance of
19 counsel for him to go forward with the appeal without
20 asking for a reconstruction hearing, and then barring a
21 reconstruction hearing and not getting anything
22 meaningful out of it for moving to overturn Mr. Reeve's
23 convictions all together, and that Mr. Savitz did not
24 take any of those actions whatsoever.

25 I realize that the direct precedent -- I'm referring

1 to State vs. Ladson, 373 South Carolina 320, 644 S.E. 2d
2 271. That's a Court of Appeals case from 2007.

3 It's a much different case, but there is no
4 transcript and there is no -- that includes reconstruction
5 on remand, but the Court of Appeals in that case said you
6 can vacate a conviction if there is no opportunity for
7 meaningful appellate review.

8 In this case, Your Honor, Mr. Savitz said there would
9 have been no way he could have presented an issue on
10 that jury charge without that page and then without that
11 page missing, 181, there is no way that Mr. Reeves could
12 ever have a meaningful appellate review of his
13 convictions because that was something -- and he said it
14 himself, that if Mr. Stockholm had thought so much about
15 it, and made a bigger issue out of it after the fact,
16 I'm not sure they would have considered it, and then
17 they actually did, Mr. Stockholm did.

18 He raised it again later on, not in the forum necessary
19 to bring it on appeal, but certainly enough to let
20 Mr. Savitz know that, "Hey, I need to go get this
21 transcript page," and he didn't get it.

22 So with all of that in mind, Your Honor, we would
23 ask that you grant Mr. Reeves a new trial and at the bare
24 minimum, grant him a new sentencing proceeding. Thank
25 you.

1 THE COURT: Mr. Petrano?

2 MR. PETRANO: I'm sorry, just a new sentencing
3 proceeding? I'm not trying to...

4 THE COURT: New trial and/or.

5 MR. PETRANO: And what's the --

6 THE COURT: At a minimum -- at a minimum, a new
7 sentence, preferably a new trial.

8 MR. PETRANO: And at this time you're objecting
9 saying punishing for a new trial at the sentencing? I'm
10 not following --

11 MR. THOMPSON: The judge is punishing him for going
12 to trial.

13 MR. PETRANO: I just want to make sure I had that.
14 Sorry for the awkwardness.

15 Judge, I have just a brief run through of all the
16 issues. If you have something specific you want me to
17 cover in detail or just go ahead and get started?

18 THE COURT: Okay. Nothing in particular.

19 MR. PETRANO: Okay.

20 THE COURT: I'm just going to tell you'll at the end,
21 I'm still going to ask you to submit proposed orders.

22 MR. PETRANO: If I could then, just briefly for the
23 record, just get these out?

24 THE COURT: Yes, sir.

25 MR. PETRANO: I just had the hearsay is not

1 ineffective assistance, and there certainly isn't any
2 prejudice. These are just corroborations to time and
3 place. It's 801(d) and Jolly. Jolly is 314 S.C. 17.
4 That's a 1994 case.

5 Saying "It's Bobby's room" or Bobby's truck or the
6 time we went to" -- I think -- what was the example?

7 (Pause)

8 "It happened at the park when I went with Bobby."
9 That's perfectly allowable. That doesn't say it was
10 Bobby that molested her. That just says it was at the
11 time that I went to the park with Bobby. You have to
12 ignore the fact that it's a child just for a moment here.

13 Witnesses frequently correlate time. I mean, it's
14 just -- you don't go by a calendar. I know I can say -- I
15 can base when something happened based on what job I had.
16 That's how I know when it happened.

17 Other people do different things, where they live,
18 where they went to school. That's what this witness did.
19 Then you have a child here, so they don't have a calendar
20 or a checkbook or bank statements to look at.

21 She says where does it -- oh, it was in the trailer.

22 What trailer? What trailer, whose trailer?

23 Bobby's room, not my room, not mom's room, Bobby's room.

24 There's nothing wrong with that. It doesn't say
25 Bobby molested me. It's just where it happened and when.

1 Back to the "when", when was Bobby's place. Well,
2 it was after Jessie lived there. Well, when did Jessie
3 live there? Well, that's a time.

4 Jessie, at some point, did live there, at some
5 point lived there, and perhaps at some point did live there
6 again. So when he lived there is a temporal references.
7 There's nothing improper about that. That's exactly
8 what the case and the statement is all about.

9 That kind of goes towards the same logic of -- Your
10 Honor, goes toward the common scheme or the prior bad acts.
11 That's a common scheme or plan. I'm going to -- State
12 vs. Mathis is pretty much right on point.

13 The trial here, the transcript reflects that he
14 lavished her with gifts, takes her out to places and
15 treats separately from the mom. That's what Mathis is
16 all about. It says that those are admissible, those
17 prior bad acts, it does not relate back to the charge,
18 Your Honor.

19 I'm going to go over to the ineffective assistance
20 of appellate counsel. I'm going to just go right here.
21 There is no prejudice here.

22 You have a great opportunity here. There were two-,
23 300 P.C.R.s filed every year. Here is the transcript.
24 Let's put a blank page on 181. You had the best appellate
25 attorney in the State, Mr. Savitz, who said, "I can't think

1 of anything dynamite here that would have changed it,
2 nothing valid, no instruction that could have made a
3 difference."

4 Then when you brought -- you look at page 231 where
5 it's well, it was that failure to charge, failure to
6 report the child abuse.

7 What did Mr. Savitz say? "That's not that hot of an
8 issue." There's just no prejudice there. No matter what
9 you win, sir, you have an opportunity here to say here
10 is what should have been on those pages. Would it have
11 made a difference? No. There's nothing here to show that
12 it would have made a difference. That's the prejudice
13 analysis there.

14 The State submits that the expert here really didn't
15 offer anything in the sense that it would have changed
16 the outcome of the trial.

17 I mean, it's obvious that people heal differently,
18 and there were suggestions -- I think there was
19 something here, there was no complaints about the victim
20 or no complaints by the victim. That's insulting. He had
21 threatened her and he had bribed her.

22 You can't do those things and then say, hey, hey,
23 she never complained. Also, there was certainly arguments
24 and testimony, and I can't truly write down to a point
25 of when it was suggested that this could have happened

1 by other means, at least from Mr. Stockholm.

2 And finally, there's nothing wrong with a
3 sentencing judge giving a -- less time for someone who
4 pleads guilty, not punishing for somebody going to trial.
5 I'm talking about the opposite. It's rehabilitation is
6 one of our rationales for punishment.

7 One of the first steps towards rehabilitation is
8 admitting your guilt. That's a step in a plea, there's
9 nothing wrong with given someone a favorable sentence for
10 admitting that and taking that first step. Therefore,
11 there's no reason to object there. Nothing wrong with
12 that.

13 I think I've covered it all.

14 (Pause)

15 That's it, Judge. Thank you.

16 MR. THOMPSON: Nothing further, Your Honor.

17 THE COURT: I'm going to ask that you all submit
18 proposed orders. What I would like to see is the case
19 law on the issues of the prior bad acts and the hearsay
20 in particular.

21 I don't know which -- -- well, I think the rest of
22 it, I'll -- it may be on the missing pages, but the
23 State vs. Ladson argument. I think the other things I've
24 got enough of a handle on.

25 If there is -- I don't remember the year that it

1 occurred, but I remember that there was a case from
2 the Supreme Court in which there was a person who was
3 sentenced of -- I don't know whether it was after a plea
4 or after a trial. There was a motion for reconsideration
5 that was filed, I believe, and during that process, the
6 judge reconsidered the sentence and imposed additional
7 time.

8 I don't know whether that's the one that you were
9 talking about for exercising your right, that you were
10 punished, and I think -- I think that one -- and there
11 may be others that I'm just not familiar with.

12 I just remember that one because that one did
13 stick out as being punitive because -- because there
14 was -- the only thing that had changed from the time he
15 was sentenced to a resentencing was the motion for
16 reconsideration, and it was introduced on the record.
17 It appeared to be punitive. I don't know that there may
18 be other cases I'm just not familiar with, something to
19 a bad act.

20 I can tell you off the record who the judge was,
21 because I remember that, too, but I'm not going to say.
22 That's the only one I recall about the sentencing issue.

23 If there are some additional things, I'll be happy
24 to look at this.

25 Time period? How much time do you need?

1 MR. PETRANO: Can we approach on that?

2 THE COURT: Sure.

3 (Whereupon, there was a bench conference.)

4 THE COURT: Anything else we need to take up at this
5 particular point?

6 MR. PETRANO: Not from the State, Your Honor.

7 MR. THOMPSON: Nothing further, Your Honor.

8 THE COURT: Thank you.

9 (Whereupon, the proceedings were concluded.)

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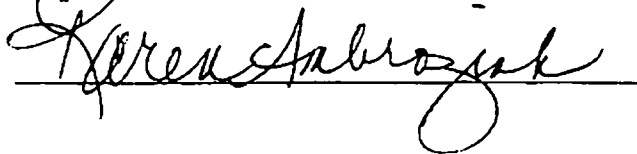
25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF Richland)

I, Karen Ambroziak, Official Court Reporter for the 5th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Common Pleas Court for Richland County, South Carolina, on the 2nd day of June, 2010.

May 12, 2011

A handwritten signature in cursive script, reading "Karen Ambroziak", is written over a horizontal line.

Karen Ambroziak, Court Reporter

My Commission Expires: 04/01/14

ATTORNEY GENERAL'S OFFICE
RECEIVED 9-20-04

ADMINISTRATIVE INSTRUCTIONS

South Carolina Office of Appellate Defense

OPEN _____ END

HAVE _____ COPIES MADE

ROUTE TO

Robert M. Dudek

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Robert M. Dudek

Joseph L. Savitz, III
Acting Chief Attorney

Wanda P. Hagler
Acting Deputy Chief Attorney

1205 Pendleton Street, Room 306
Columbia, S.C. 29201

Telephone: (803) 734-1330
Fax: (803) 734-1397

TRANSCRIPT
PEN RECORDS
OTHER:

September 17, 2004

The Honorable Kenneth A. Richstad
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: The State v. Bobby Joe Reeves

Dear Mr. Richstad:

This letter is to inform you of the status of the missing transcript pages in this case. Desiree Allen's memorandum dated September 2, 2004, states that the tapes have been destroyed. For your convenience, I have enclosed a copy of this memorandum. With opposing counsel's consent, I will be filing the record on appeal without these pages included. Please set our time limits thirty days from September 2, 2004, for the record to be due.

If you have any questions concerning this please contact me.

Sincerely,

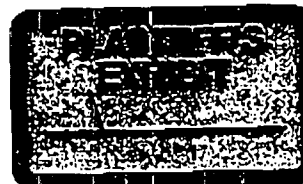
Joseph L. Savitz, III

Joseph L. Savitz, III
Acting Chief Attorney

JLS,III/kde

I do not object

Donald J. Zelenka
Donald J. Zelenka



02-4100



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

September 1, 2004

Acting Chief Attorney Joseph L. Savitz III
Office of Appellate Defense
1205 Pendleton Street, Rm. 306
Columbia, SC 29201

Re: The State v. Reeves, Bobby Joe

Dear Mr. Savitz:

The following Order has been endorsed on your letter dated August 27, 2004, without objection of opposing counsel, in the above-entitled case on appeal.

"Granted. Update every thirty (30) days.

Kaye G. Hearn C.J.
For the Court

By s/ Kenneth A. Richstad
Clerk

September 1, 2004."

The time limits for perfecting this appeal are held in abeyance pending receipt of the missing pages to complete the Record on Appeal. Please provide the Court with a written update on the progress of retrieving the missing pages every thirty (30) days of the date of this letter.

It will be necessary for you to advise the Court upon receipt of the missing pages. The Record on Appeal must be served, within thirty (30) days after receipt of the missing pages, with proof of service immediately provided to this Court.

ATTORNEY GENERAL'S OFFICE

RECEIVED

ADMINISTRATIVE INSTRUCTIONS

FILE ☒ OPEN ☐ END

HAVE ☐ COPIES MADE

ROUTE TO

PEN RECORDS ☐ TRANSCRIPT
CLERK RECORDS ☐

OTHER: Logic

POST OFFICE BOX 11639

COLUMBIA, SOUTH CAROLINA 29201

1015 BOUTWELL STREET

COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1800

FAX: (803) 734-1809

WWW.SCCOLLETS.ORG

pages

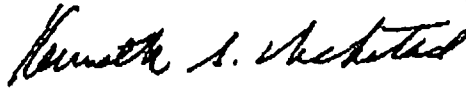
179, 181, 228,

229

Acting Chief Attorney Joseph L. Savitz III
Re: The State v. Reeves, Bobby Joe
September 1, 2004
Page Two

By copy of this letter, all parties are advised of the Court's action.

Very truly yours,


CLERK

/gca

cc: Assistant Deputy Attorney General Donald J. Zelenka

South Carolina Office of Appellate Defense

RECEIVED

Joseph L. Savitz, III
Acting Chief Attorney

Wanda F. Hagler
Acting Deputy Chief Attorney

1205 Pendleton Street, Room 306
Columbia, S.C. 29201

Telephone: (803) 734-1330
Fax: (803) 734-1397

JAN 13 2004
Robert M. Dudek
Robert M. Dudek
Tara S. Taggart

ATTORNEY GENERAL'S

OFFICE OF APPELLATE DEFENDERS

January 12, 2004

Ms. Kathi G. Addison
Circuit Court Reporter
316 Hallsborough Drive
West Columbia, SC 29170-9500

Re: The State v. Bobby Joe Reeves (00-GS-40-00211)
County: Richland County
Judge: Henry F. Floyd
Date of Trial: September 17, 2002

Dear Kathi:

We received the transcript in the above referenced case, which was completed by you on May 10, 2003. Pages 111, 179, 181, 214, 228 and 229 are missing from the original. Would you please send us these pages as soon as possible?

If you have any questions, please do not hesitate to contact me.

Thank you for your assistance in this matter.

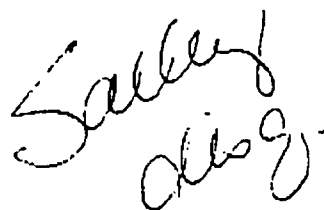
Sincerely,

Karen D. Elliott

Karen D. Elliott
Legal Assistant

cc: SC Court of Appeals
Attorney General's Office
Bobby Joe Reeves

From: Karen Elliott <elliottk@InfoAve.Net>
To: COA <coaextensions@scjd.state.sc.us>
Date: 1/28/2004 2:20:28 PM
Subject: Bobby Joe Reeves



Clerk's Office
South Carolina Court of Appeals

Re: The State v. Bobby Joe Reeves

Dear Mr. Richstad:

The initial brief of appellant and designation of matter in this case are due to be served and filed today. While reviewing the transcript, counsel found several pages missing. A request was made on January 12, 2004, for these missing pages. Therefore, counsel requests that the appeal be held in abeyance until thirty days after receipt of these pages.

By copy of this e-mail, I am requesting Salley W. Elliott consent to this request.

Thank you for your consideration in this matter.

Sincerely,
Joseph L. Savitz, III
Acting Chief Attorney

CC: Salley Elliott <elliott@ag.state.sc.us>, kathy scott <agkscott@ag.state.sc.us>, mark rapoport <agmrapopor@ag.state.sc.us>, karen farrell <agkfarrell@ag.state.sc.us>

ATTORNEY GENERAL'S OFFICE
RECEIVED 7-28-04

ADMINISTRATIVE INSTRUCTIONS

South Carolina Office of Appellate Defense

FILE OPEN END

MAKE COPIES MADE

Joseph L. Savitz, III
Acting Chief Attorney

1205 Pendleton Street, Room 306
Columbia, S.C. 29201

Wanda P. Hagler
Acting Deputy Chief Attorney

Telephone: (803) 734-1330
Fax: (803) 734-1397

ROUTE TO

Robert M. Dudek

Tara C. Clark

Aileen P. Clark

PER RECORDS CLERK RECORDS

Assistant Appellate Defenders

OTHER:

July 28, 2004

Honorable Kenneth A. Richstad
Clerk, S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

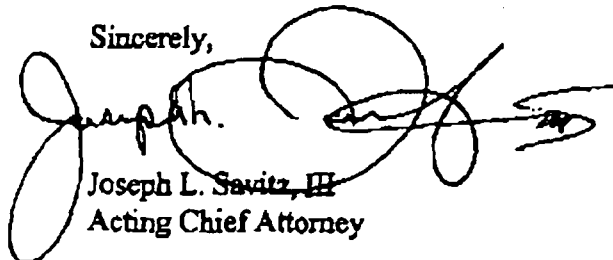
Re: State v. Bobby Joe Reeves

Dear Mr. Richstad:

The record on appeal in this case is due to be served and filed with the Court today. However, we are still trying to locate missing pages that the Attorney General's Office designated to be included in the record on appeal. Therefore, I am requesting an extension until August 27, 2004, in which to serve and file the record.

By copy of this letter, I am informing Donald J. Zelenka, of the Attorney General's Office, of my request.

Sincerely,


Joseph L. Savitz, III
Acting Chief Attorney

JLS,III/kde

cc: Donald J. Zelenka

ATTORNEY GENERAL'S OFFICE

RECEIVED 7-28-04

ADMINISTRATIVE INSTRUCTIONS

South Carolina Office of Appellate Defense

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Joseph L. Savitz, III
Acting Chief Attorney

1205 Pendleton Street, Room 306
Columbia, S.C. 29201

Wanda P. Hagler
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Telephone: (803) 734-1330
Fax: (803) 734-1397

Robert M. Dudek

Tara C. Dugan

Alison P. Clark

Heather D. Dugan

Assistant Appellate Defender

TRANSCRIPT

CLERK REC. FOR

ORDER

July 28, 2004

Ms. Desiree Allen
Court Services Manager
1015 Sumter Street
Columbia, SC 29201

Re: The State v. Bobby Joe Reeves

Dear Desiree:

I am writing in reference to our recent telephone conversation concerning several missing transcript pages in the above referenced case. I am enclosing a copy of the letter sent to Ms. Kathi Addison concerning these pages and I am hoping you will be able locate these pages for us. These pages were designated by the Attorney General's Office to be included in the record on appeal. Therefore, another extension request is being made because we do not have these pages.

Thank you for your assistance in this matter.

Sincerely,

Karen D. Elliott

Karen D. Elliott
Legal Assistant

Enclosure

cc: SC Court of Appeals
Donald J. Zelenka, Esquire

12-4106

ATTORNEY GENERAL'S OFFICE
RECEIVED 8-27-04
ADMINISTRATIVE INSTRUCTIONS
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South Carolina Office of Appellate Defense

Joseph L. Savitz, III
Acting Chief Attorney

Wanda P. Hagler
Acting Deputy Chief Attorney

1205 Pendleton Street, Room 306
Columbia, S.C. 29201

Telephone: (803) 734-1330
Fax: (803) 734-1397

Robert M. Pachak
Robert M. Dudek
Tara S. Taggart
Aileen P. Clark
Eleanor Duffy Cleary
Assistant Appellate Defenders

August 27, 2004

Honorable Kenneth A. Richstad
Clerk, S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: State v. Bobby Joe Reeves

Dear Mr. Richstad:

The record on appeal in this case is due to be served and filed with the Court today. However, we are still trying to locate missing pages that the Attorney General's Office designated to be included in the record on appeal. Therefore, I respectfully request the appeal be held in abeyance until receipt of these pages.

As indicated by his signature below, Donald J. Zelenka, of the Attorney General's Office, does not oppose this request.

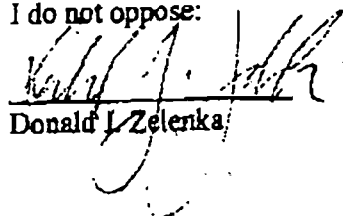
Sincerely,



Joseph L. Savitz, III
Acting Chief Attorney

JLS,III/kde

I do not oppose:


Donald J. Zelenka

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Henry F. Floyd, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BOBBY JOE REEVES,

APPELLANT

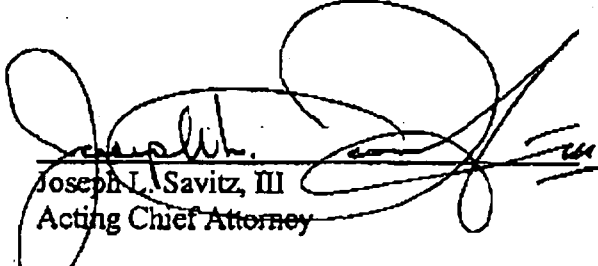
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

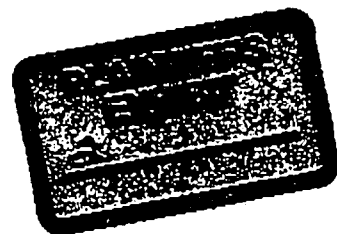
- (1) Indictment for first degree criminal sexual conduct

I certify that this designation contains no matter which is irrelevant to this appeal.

February 26th, 2004


Joseph I. Savitz, III
Acting Chief Attorney

S. C. Office of Appellate Defense
1205 Pendleton Street, Room 306
Columbia, SC 29201
(803) 734-1330
Attorney for Appellant



**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**Appeal from Richland County
Henry F. Floyd, Circuit Court Judge**

THE STATE,

Respondent

v.

BOBBY JOE REEVES,

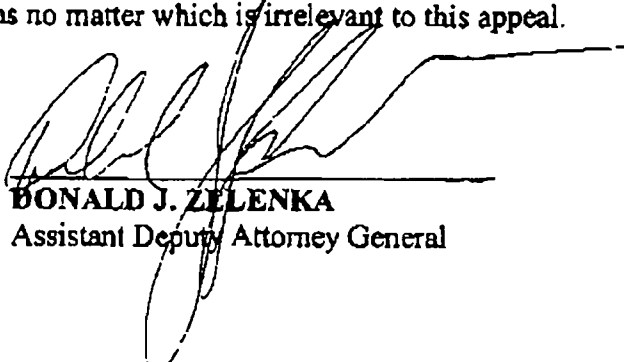
Appellant

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Respondent proposes the following to be included in the Record on Appeal:

1. Arrest Warrant - F-056615.
2. Indictment - 2002-GS-40-0211.
3. Indictment - 2000-GS -40-56188
4. Trial Transcript: pages: 5-38.
Pages : 55-182
Pages : 183-229, 231-233.

I certify that this Designation contains no matter which is irrelevant to this appeal.


DONALD J. ZELENSKA
Assistant Deputy Attorney General

May 27, 2004



RECEIVED
2/17/11

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2005CP4002551

Bobby J #287423 Reeves

vs.

State of South Carolina

Plaintiff

Defendant

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP;
☐ SCRCP (Vol: Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☒ See attached order;☐ Statement of Judgment by the Court;

Dated at Columbia, South Carolina, this _____ day of _____, 2011.

PRESIDING JUDGE

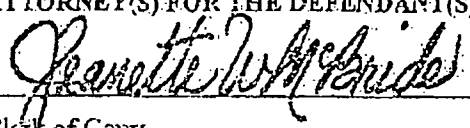
This judgment was entered on the _____ day of _____, 2011, and a copy mailed first class this 3 February 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Theresa Lee Clement
Robert W Mills
Jeremy A Thompson

Brian T Petrano

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)


 Clerk of Court

SCRCP APP-24/FORM 4

SCANNED

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Bobby Joe Reeves, 287423,)

DOCKET NO. 2005-CP-40-02551

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

FILED
2011 FEB -3 AM 9:12
RICHLAND COUNTY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 27, 2005. The Respondent made its Return on or about January 6, 2006. An evidentiary hearing into the matter was convened on June 2, 2010 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Jeremy Thompson, Esquire. Brian T. Petrano, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

The Applicant testified on his own behalf at the hearing. Also testifying were the Applicant's Trial Counsel, Gene Stockholm, Esquire, Applicant's Appellate Counsel, Joseph Savitz, Esquire, and Frederick Morris Thompson, III, M.D. This Court also had before it a copy of the transcript of the Applicant's trial, the records of the Richland County Clerk of Court, the records from Applicant's direct appeal, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The Applicant was indicted at the December 2000 term of the Richland County Grand Jury for lewd act upon a child (2000-GS-40-56188) and was also indicted at the August 2002 term for criminal sexual conduct with a minor, first degree (2002-GS-40-00211). He was represented by Billy Oswald, Esquire and Gene

Stockholm, Esquire. On September 18, 2002, the Applicant proceeded to trial after which he was found guilty of criminal sexual conduct with a minor, first degree and lewd act upon a child. He was sentenced by the Honorable Henry F. Floyd to confinement for a period of fifteen (15) years for criminal sexual conduct, first degree and fifteen (15) years concurrent for lewd act upon a child.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Reeves, Op. No. 2005-UP-099 (S.C. Ct. App. filed February 10, 2005). The facts of the case, as explained by our appellate court, are as follows:

FACTS

In 1990, when the victim was eight months old, her mother met Reeves through a mutual friend. For financial reasons, the victim and her mother moved in with Reeves. During this time, the victim became attached to Reeves and viewed him as a father figure. Reeves moved out of the home when the victim was five years old. Despite the move, Reeves maintained contact with the victim and her mother. The victim had overnight visits with Reeves almost every other weekend.

In 1998, the victim and her mother moved to Georgia. Reeves continued to maintain a relationship with the victim until July 4, 2000. According to the victim's mother, the victim began to act "unusual" after the July 4th weekend. Toward the latter part of July 2000, Reeves contacted the victim's mother to schedule a visit with the victim. When the victim refused to go to Reeves' home, the victim's mother questioned her about her decision. The victim told her mother that Reeves had sexually abused her on several occasions during her visits.

Immediately after this conversation, the victim's mother contacted law enforcement in Augusta, Georgia. On July 31, 2000, the case was referred to the Richland County Sheriff's Department. Ultimately, a Richland County grand jury indicted Reeves for one count of lewd act upon a child and first-degree criminal sexual conduct (CSC) with a minor. A jury convicted Reeves of both charges and the trial judge imposed concurrent, fifteen-year sentences.

State v. Reeves, supra.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody

unlawfully for the following reason:

1. Ineffective Assistance of Trial Counsel
 - a. Failure to Object to Prior Bad Act Testimony;
 - b. Failure to Object to Solicitor's Comments about Prior Bad Acts;
 - c. Failure to Consult with or Present at Trial a Gynecology Expert;
 - d. Failure to Object to hearsay testimony beyond the scope of Rule 801(d)(1)(D) SCRE;
 - e. Failure to Object to Applicant's sentence on the basis that the trial court impermissibly "punished" Applicant for exercising his right to trial;
2. Ineffective Assistance of Appellate Counsel
 - a. Failure to review transcript and ensure no pages were missing;
 - b. Consenting to proceed with the direct appeal without the entirety of the original transcript; and
 - c. Failure to move to vacate convictions and sentences and remand for new trial due to the missing pages 111, 179, 181, 214, 228, and 229.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Further, the Court has observed the witnesses who testified at the hearing and has assessed their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. §17-27-80 (2003).

Applicant's medical expert, Dr. Frederick Thompson, testified at the PCR hearing as an expert in gynecology; however, he was not a rape trauma expert. He has been involved with some rape trauma cases and prepared rape kits. He reviewed the testimony of the medical witnesses from the trial. Injuries to the vagina and surrounding area would not heal faster than any other area and those injuries and lacerations to the area do not scab; they have a different appearance than cuts on other parts of the body. Dr. Bash (from the trial) described a minor laceration examined about a month after the incident. For an injury to still be

ad #3

noticeable one month later; the trauma must be substantial. The injuries described can occur in different ways including being self-inflicted. The literature supports that this occurs particularly in girls who have mental disabilities or handicaps. Dr. Claiborne, at the trial, described what was observed two months after the incident; no trauma was observed. Finally, Dr. Thompson testified that there was "no way to document what was the cause of the injury."

Appellate Counsel, Joseph Savitz, explained his background of over twenty (20) years as an appellate advocate including duties as the chief attorney in the Office of Appellate Defense. He has significant experience with the reconstruction of records for appeal. Those attempts are, in his experience, largely worthless. After requesting that the deadline to file his brief be held in abeyance, he proceeded with the appeal because there was no suggestion that the missing pages contained any "dynamite" issues. He believed the best issue was not one from the trial, but one based on defects in the indictment. Appellate Counsel would never abandon a winning issue, but the other issues in the case were not of any merit and not worth remanding the record for reconstruction. He could not think of a jury instruction issue that could have been inserted into the record that would make a difference. Appellate Counsel, when shown that trial counsel alluded to the rejected instruction later in the transcript (neglect from the mother), testified the issue was simply not a winner. Appellate counsel maintained that he still thinks the indictment is flawed and that was a winnable issue.

Trial Counsel, Gene Stockholm, testified that he received the case the summer before trial. The case was an old one and there had been no plea offers. During the trial the Applicant was offered a plea bargain in which Applicant would receive a suspended sentence and five years of probation, but Applicant refused that deal despite being told that a conviction would result in active time. Trial Counsel testified that the judge informed him that if the judge had to sentence Applicant, Applicant would receive jail time. Counsel communicated this to Applicant at the time of the plea offer.

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Allegation 1c: This Court finds that Applicant has failed to prove deficient performance of Trial Counsel for failure to interview and present a medical expert. Further, Trial Counsel testified that he had not retained a medical expert because Applicant did not have the funds to do so. Dr. Thompson testified in the PCR hearing that he could not determine the cause of the injury. The testimony at trial was the observed injury to Victim's genitals was consistent with some type of penetration. A doctor could not state with certainty the exact cause of the injuries discovered and the determination of the cause of the injury was a question for the jury. The medical evidence described at trial was circumstantial evidence. Dr. Thompson's testimony did not make it any less likely that Applicant had committed the crime, in fact, the substance of his testimony at the PCR hearing only confirmed that the cause of the injuries was unclear. Accordingly, this Court finds that Trial Counsel was not deficient for failure to interview and present a medical expert at trial. This allegation is hereby denied and dismissed.

Allegations 1a, 1b, 1d: This Court finds that Trial Counsel was not defective for failing to make an objection to Victim's Mother's testimony and the child advocate's (Jodi Lashley) testimony that Victim had been assaulted "in [Applicant's] trailer." Trial Counsel did not recall if he considered objecting to the testimony describing the incident location as "his trailer" and "in his bedroom" on the basis that it exceeded time and place limitations. The defense was that Victim's Mother was vindictive and angry because Applicant told her she was not treating Victim right. However, this testimony clearly comports with Rule 801(d)(1)(D) SCRE, and precedent established by the Supreme Court of South Carolina.

We have recognized three exceptions to the rule against hearsay that allows prior consistent statements of a witness to be admitted. First, in criminal sexual conduct cases, when the victim testifies, evidence from other witnesses that she complained of the sexual assault is admissible in corroboration, limited to the time and place of the assault and excluding details or particulars.

State v. Jolly, 314 S.C. 17, 20, 443 S.E.2d 566, 568 (1994) citing Simpkins v. State, 303 S.C. 364, 367, 401 S.E.2d 142, 143 (1991).

The description "in his trailer" or "in his bedroom" clearly refers to a limited place without violating the scope of the rule by testifying to details or particulars. The mere fact that place can be related to a person does not violate the rule. Accordingly, this Court finds that Trial Counsel was not deficient for failure to object to this testimony, after Victim had testified and described the place of assault as "in his trailer." Therefore, this allegation is hereby denied and dismissed.

Applicant further alleged that Trial Counsel was ineffective for failing to object to impermissible prior bad acts testimony elicited by the State, and for failure to object to comments during the Solicitor's closing referring to that prior bad act testimony. Testimony was elicited that the improper conduct with the victim had occurred since she was four or five years old. Details of the prior conduct were not discussed. In South Carolina, evidence of prior bad acts of a defendant is not permitted to prove bad character on the part of the defendant. Rule 404 SCRE. However, such evidence may "be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." Rule 404(b) SCRE; State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923); see also Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003) (explaining that Rule 404 SCRE, constituting the modern expression of the Lyle rule, excludes evidence of other crimes, wrongs, or acts offered to prove character of person in order to show action in conformity therewith. However, the rule creates an exception when testimony is offered to show motive, identity, existence of common scheme or plan, absence of mistake or accident, or intent).

"Where the evidence of the bad acts is so similar to the charged offense that the previous act enhances the probative value of the evidence so as to outweigh its prejudicial effect, it is admissible." State v. Mathis, 359 S.C. 450, 463, 597 S.E.2d 872, 879 (Ct. App. 2004), citing State v. Weaverling, 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999). For more than fifty (50) years, the law in the State of South Carolina has reflected that evidence of prior incidents of improper sexual behavior is generally admissible in trials for sexual crimes. "[A]cts prior and subsequent to the act charged in the indictment, when indicating a continuousness of illicit

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intercourse, are admissible in evidence....' " State v. Weaverling, supra, quoting State v. Richey, 88 S.C. 239, 70 S.E. 729 (1911). "[T]he common scheme or plan exception 'is generally applied in cases involving sexual crimes, where evidence of acts prior and subsequent to the act charged in the indictment is held admissible as tending to show *continued illicit intercourse* between the same parties.' " Mathis 359 S.C. at 463, 597 S.E.2d at 879 (emphasis in original), quoting State v. Weaverling, 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999), quoting State v. Whitener, 228 S.C. 244, 265, 89 S.E.2d 701, 711 (1955). In Mathis, the court recognized this exception to Rule 404(b) where Victim testified that Defendant had propositioned her and made untoward unsolicited advancements on several occasions prior to the incident of Criminal Sexual Conduct for which he was indicted, stating that the "three prior incidents of sexual misconduct by Mathis show the same illicit conduct with the victim over the course of the nine months prior to September 2000. Concomitantly, we conclude the probative value of the evidence regarding Mathis's prior bad acts clearly outweighs the prejudicial effect of admitting the evidence." 359 S.C. at 464-5, 597 S.E.2d at 879-80.

In Applicant's case, the evidence of the prior bad acts was established in the same manner as in Mathis, by testimony of the victim, a clear and logical connection certainly existed, and the evidence of the bad acts was certainly similar enough to the indicted offense so as to enhance the probative value of the evidence to a point at which it would outweigh the prejudicial effect of that evidence. This Court finds that Applicant cannot prove that had Counsel objected to the admission of this evidence the trial judge would have agreed and excluded it. Accordingly, Applicant cannot prove prejudice in Counsel's failure to object to the admission of the prior bad acts evidence. Therefore, this Court finds that this allegation is without merit, and is hereby denied and dismissed.



Applicant next alleges that Counsel was ineffective for failing to object to the State's reference to the prior bad act evidence in its closing argument. The State's closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence. State v. Copeland, 321 S.C. 318,

468 S.E.2d 620 (1996). However, "[a] solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony." Smith v. State, 375 S.C. 507, 523, 654 S.E.2d 523, 532 (2007), quoting Randall v. State, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (2004). In Applicant's case, the Solicitor's remarks referenced evidence contained in the record which was clearly admissible, as discussed hereinabove. Accordingly, there was nothing improper contained in Solicitor's closing argument, and Applicant cannot prove any prejudice resulting therefrom. This argument is hereby denied and dismissed.

Allegation 1e: Applicant further avers that Trial Counsel was ineffective for failing to object to the sentence imposed by the Trial Court on the grounds that Trial Court abused its discretion in improperly considering the fact that Applicant chose to exercise his right to trial by jury, rather than entering a guilty plea. The Applicant argues that he was prejudiced by defense counsel's failure to object. Accordingly, the Applicant contends he is entitled to a new sentencing proceeding. This Court agrees. Defense counsel's failure to object to a trial judge's punishment of a criminal defendant for going to trial constitutes ineffective assistance of counsel. Davis v. State, 336 S.C. 329, 520 S.E.2d 801 (1999).

The record on this issue is clear. Trial counsel testified before this Court that during the trial, the State offered the Applicant a plea bargain in which the Applicant would receive a suspended sentence and probation. Trial counsel and the State's attorney then approached the trial judge to determine whether or not he would accept such a plea bargain. The trial judge informed trial counsel that he would accept the deal; however, if the Applicant rejected the deal and was ultimately convicted by the jury, the trial judge would impose a sentence of incarceration. Trial counsel advised the Applicant of the plea offer, and the Applicant rejected the plea offer.

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During sentencing, trial counsel requested that the trial judge "consider a probationary sentence." Trial counsel testified before this Court that the reason he asked for this sentence was because the trial judge had previously indicated he would impose probation if the Applicant pleaded guilty. Instead of imposing a

probationary sentence, though, the trial judge sentenced the Applicant to fifteen years imprisonment without commenting on the reasons why he was imposing such a sentence. Trial counsel did not raise an objection to this sentence. He testified before this Court that he realized he should have made an objection after he read an appellate decision condemning the practice of punishing a criminal defendant for exercising his right to trial. The prejudice to Applicant was apparent. He was sentenced to concurrent terms of 15 years imprisonment, the maximum sentence for the offense of lewd act upon a child and one-half of the maximum for the offense of criminal sexual conduct with a minor. Following the jury's verdict, the trial judge gave no reason on the record why he chose to impose a fifteen-year imprisonment sentence instead of a lesser sentence. At the bare minimum, Trial Counsel should have asked for the Court to cite the factors that led to the sentence imposed. Consequently, this Court finds that trial counsel was ineffective in failing to object or seek clarification on the reasons for the sentence imposed. Applicant's claim has merit and he is entitled to a new sentencing.

Allegations 2a, 2b, and 2c: This Court finds that Appellate Counsel's performance was not deficient in any regard. Appellate Counsel clearly reviewed the transcript and found that pages were missing. Numerous letters were submitted to this Court indicating that Appellate Counsel attempted to procure the missing pages and requested that the deadline for filing be extended on the grounds that he was waiting for the missing pages. Accordingly, this allegation is hereby denied and dismissed.

Next Applicant alleges that Appellate Counsel was ineffective for failing to move for a new trial on the basis of an incomplete record and for consenting to proceed with the direct appeal without having the entirety of the record. "[T]he inability to prepare a complete verbatim transcript, in and of itself, does not necessarily present a sufficient ground for reversal." State v. Ladson, 373 S.C. 320, 324, 644 S.E.2d 271, 273 (Ct. App. 2007). "A new trial is therefore appropriate if the appellant establishes that 'the incomplete nature of the transcript prevents the appellate court from conducting a "meaningful appellate review".'" Id. at 325, 644

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S.E.2d at 274 (Ct. App. 2007), quoting In re D.W., 171 N.C. App. 496, 615 S.E.2d 90, 94 (2005). The Applicant has failed to prove that not having the six missing pages in his transcript has subjected him to any prejudice, or deprived him of meaningful appellate review. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985) (In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application). This Court finds that Appellate Counsel was not deficient in any fashion in his handling of Applicant's appeal. Accordingly, the allegations that Appellate Counsel offered Ineffective Assistance of Counsel are denied and dismissed.

CONCLUSION

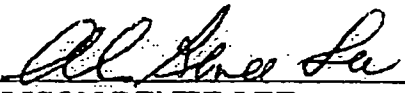
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application with one exception. Applicant is entitled to a new sentencing based upon the allegation that his trial attorney was ineffective for failing to object to the trial judge imposing a harsher sentence after Applicant exercised his right to a jury trial. Therefore, this application for post-conviction relief is granted as to this claim but must be denied and dismissed with prejudice as to the remaining allegations.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The Application for Post-Conviction Relief is granted as stated above. The sentences are vacated and Applicant must be granted a new sentence on the charges;
2. The remaining allegations must be denied and dismissed with prejudice; and
3. The Applicant must be remanded to the custody of the Respondent for further proceedings consistent with this Order.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Fifth Judicial Circuit

February 2, 2011
Columbia, South Carolina.

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STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas.

Alison Renee Lee, Presiding Judge

05-CP-40-2551

RECEIVED

MAR - 8 2011

S.C. Supreme Court

BOBBY JOE REEVES, #287423,

Petitioner,

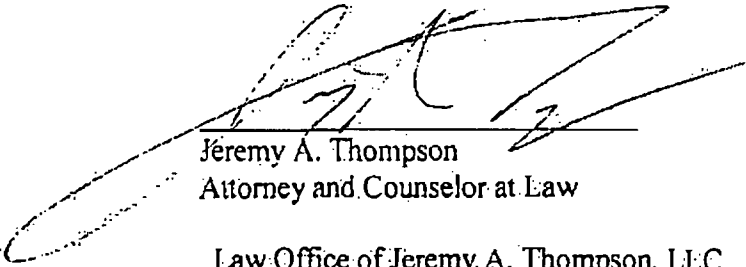
v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Bobby Joe Reeves, #287423, appeals the Order of Dismissal denying his Application for Post-Conviction Relief filed February 3, 2011, and received by counsel on February 7, 2011, issued by the Honorable Alison Renee Lee, presiding judge.



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This 1st day of March, 2011.

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STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Presiding Judge

05-CP-40-2551

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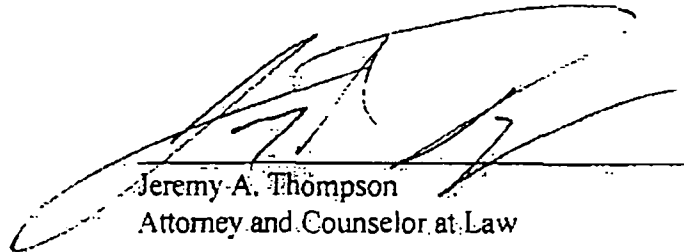
v.

STATE OF SOUTH CAROLINA,

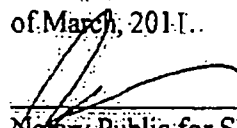
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Petitioner's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Brian T. Petrano, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 1st day of March, 2011.


Jeremy A. Thompson
Attorney and Counselor at Law

SWORN TO BEFORE me this 1 day
of March, 2011.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 11/3/17

