

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Pickens County

Honorable Edward W. Miller, Circuit Court Judge

JOSEPH PETTIGREW SANDERS, IV.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-001795

APPENDIX

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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- 1 Q. I'm sorry.
- 2 A. I do in-kind scholarship, raising nearly ten
- 3 million dollars a year for the girls.
- 4 Q. All right. And was Joey involved in the Miss
- 5 South Carolina Beauty Pageant?
- 6 A. Yes, sir.
- 7 Q. What was his involvement as you know it?
- 8 A. The Producer of the pageant.
- 9 Q. Okay. And how many years that you've been
- 10 volunteering has he been the Producer of the pageant,
- 11 if you know?
- 12 A. Ten or fifteen.
- 13 Q. Okay. Now, I want to take you to Spartanburg,
- 14 some time in May of 2008. Do you recall any kind of
- 15 function there with the Miss South Carolina beauty
- 16 pageant in May?
- 17 A. Yes, sir.
- 18 Q. And what would that have been?
- 19 A. It would have been the May Forum.
- 20 Q. Tell us, just briefly, what that means?
- 21 A. It's where the girls gather and we tell them --
- 22 they turn in paperwork and they are told what to expect
- 23 when the pageant begins.
- 24 Q. And was Joey involved May Forum?
- 25 A. Yes, sir.

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1 Q. Do you recall whether this was before Memorial Day
2 or after Memorial Day?

3 A. It was somewhere around Mother's Day.

4 Q. Okay. And I'm not good on my Mother's Day. Do
5 you know if that was ---

6 A. It usually occurs the second week in May.

7 Q. All right. So that would have been before
8 Memorial Day then?

9 A. Yes, sir.

10 Q. Okay. Now, in addition to -- well, let me ask
11 you, was Joey there that day?

12 A. Yes, sir.

13 Q. Was Anita Gearhart there that day?

14 A. Yes, sir.

15 Q. Did she work for the Pageant as well?

16 A. Yes, sir.

17 Q. Do you know what her involvement with the Pageant
18 was?

19 A. At that time, she was doing the banquet seating.

20 We had a -- we always have a huge banquet where people
21 within the Pageant, the contestants, the Palmetto
22 Princesses, the little girls, their parents attend and
23 she did the seating arrangement.

24 Q. All right. Were you, not a party to, but did you
25 see and/or hear a heated discussion or argument between

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- 1 Mr. Sanders and Ms. Gearhart?
- 2 A. Yes, I was.
- 3 Q. And where was that, please, ma'am?
- 4 A. Outside the main ballroom at the Spartanburg
- 5 Marriott.
- 6 Q. Did it stay in that area, or did it move, the
- 7 argument I'm talking about?
- 8 A. It moved into the Spartanburg temporary office at
- 9 the Marriott.
- 10 Q. When you say the Spartanburg temporary office, the
- 11 temporary of ---
- 12 A. For Miss South Carolina Organization.
- 13 Q. All right. Was ^{Complainant} present?
- 14 A. She was outside talking with me and left to go
- 15 into the office.
- 16 Q. Okay. When -- did Joey and Anita -- well, you
- 17 said they went into the office; right?
- 18 A. Yes.
- 19 Q. And was ^{Complainant} in the office when they got into
- 20 the office?
- 21 A. No, sir. She was out there where I was, but she
- 22 followed them into the office.
- 23 Q. Okay. So as they went in, she went in with them?
- 24 A. Yes, sir.
- 25 Q. Now, did ^{Complainant} ever come out of that office?

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- 1 A. Yes,, she did.
- 2 Q. And what happened when Complainant came out of the
- 3 office?
- 4 A. She asked for the banquet seating book.
- 5 Q. And was anything else mentioned at that point in
- 6 time?
- 7 A. Yes, it was.
- 8 Q. And what was that?
- 9 A. She said, he can't talk to my mother that way.
- 10 I'll get him sooner or later. He's going to pay.
- 11 Q. There's no doubt in your mind that's what she
- 12 said?
- 13 A. No, sir.
- 14 Q. Was anyone else present there when that statement
- 15 was made, other than you and Complainant
- 16 A. Yes, sir.
- 17 Q. Who else was present?
- 18 A. Charlie Kelly.
- 19 Q. And who is he?
- 20 A. He's a volunteer.
- 21 Q. Okay.
- 22 A. And he was sitting -- manning the desk with me.
- 23 Q. Okay. And are you and Mr. Kelly related in any
- 24 way?
- 25 A. No.

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Jacquelyn Ariail Lankford - Cross Examination by Mr. Richardson

1 Q. Are you related to the Sanders in any way?

2 A. No.

3 Q. Okay.

4 MR. DEJONG: The witness is with your, Mr.

5 Robinson.

6 MR. ROBINSON: I have no questions.

7 THE COURT: Solicitor, you may cross examine
8 the witness.

9 **CROSS EXAMINATION**

10 **BY MR. RICHARDSON:**

11 Q. I'm sorry, ma'am. Was the date of that in May of
12 2008?

13 A. Yes, sir.

14 Q. Okay.

15 MR. RICHARDSON: That's all the questions I
16 have.

17 Q. Thank you.

18 THE COURT: Thank you. You may step down,
19 Ms. Lankford.

20 MR. DEJONG: And I ask that she be excused,
21 Your Honor.

22 THE COURT: Without objection.

23 MR. DEJONG: Thank you, Your Honor. The
24 defense would call Mr. Charles Kelley to the stand.

25 MISTER CLERK: Place your left hand on the

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1 bible and raise your right hand. Do you solemnly swear
2 or affirm the testimony you're about to give in this
3 case to be the truth, the whole truth and nothing but
4 the truth, so help you God?

5 MR. KELLEY: I do.

6 MISTER CLERK: If you would have a seat and
7 state your name for the record.

8 MR. KELLEY: Charles Kelley.

9 CHARLES KELLEY,

10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MR. DEJONG:

13 Q. Wonderful. You sit right -- like that in front of
14 the microphone, and we'll all be able to hear you, Mr.
15 Kelley. Where do you live?

16 A. Liberty.

17 Q. All right. Do you know Joey Sanders?

18 A. Yes, sir, I do.

19 Q. Do you know Mr. Joe Sanders and Ms. Gail Sanders?

20 A. Yes, I do.

21 Q. How do you know them?

22 A. My wife and I volunteer with the Miss South
23 Carolina Pageant.

24 Q. All right. Ms. Lankford that just testified, is
25 that your wife?

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- 1 A. No, it's not.
- 2 Q. Okay. All right, sir. Are you related to Ms.
- 3 Lankford in any way?
- 4 A. No, sir, I am not.
- 5 Q. Are you related to the Sanders in any way?
- 6 A. No, sir.
- 7 Q. Are you here under subpoena today, by the way?
- 8 A. No, sir.
- 9 Q. All right. You say, if I understood correctly,
- 10 you volunteer for the Miss South Carolina Beauty
- 11 Pageant?
- 12 A. Yes, sir.
- 13 Q. What kind of work do you do with the Pageant, Mr.
- 14 Kelley?
- 15 A. I've done a lot of things with the Pageant. I've
- 16 been a local Executive Director. I was Miss South
- 17 Carolina's Business Manager for several years.
- 18 Q. Slow down. We can hear you, but slow down a
- 19 little bit, okay?
- 20 A. I'm sorry. I've been a local Executive Director,
- 21 and I have served as the Business Manager for Miss
- 22 South Carolina.
- 23 Q. All right. Now, what were Joey's duties or
- 24 functions with the Miss South Carolina Beauty Pageant,
- 25 if you know?

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1 A. He was the Producer of the pageant.

2 Q. Okay. Do you know how many years he had been
3 producing with the Pageant?

4 A. We've been involved since 1991, and he was
5 Producer then, so at least since 1991.

6 Q. I want to take you to the month of May in the year
7 2008. Were you involved in any kind of volunteer work
8 with the Miss South Carolina Beauty Pageant in May of
9 2008?

10 A. Yes, sir.

11 Q. Okay. And where was that?

12 A. It was at the Spartanburg Marriott Renaissance.

13 Q. Okay. On that particular -- were there a lot of
14 people there?

15 A. Yes, sir.

16 Q. Okay. In particular, was Joey Sanders there?

17 A. Yes, sir.

18 Q. Do you know an Anita Gearhart?

19 A. Yes, sir.

20 Q. Was -- did she work for the Miss South Carolina
21 Beauty Pageant, as well?

22 A. Yes, sir.

23 Q. Do you know Complainant ?

24 A. Yes, sir.

25 Q. Was she around the pageant or did you see her or

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1 -- especially in May of '08, is what I'm talking about?

2 A. Yes, sir.

3 Q. Okay. The function in May '08, May of 2008, do
4 you recall, was that before Memorial Day or after
5 Memorial Day, Mr. Kelley?

6 A. It was before Memorial Day. It's usually the
7 weekend of Mother's Day.

8 Q. All right. And as you were there -- well, you
9 were walking around? What were you doing on this
10 particular day?

11 A. I was sitting at a table with Jackie Lankford. We
12 were passing out tickets.

13 Q. Where was that table in relationship to the
14 temporary office there at the Marriott?

15 A. It was across the hallway from the temporary
16 office.

17 Q. How many feet, if you, if you know?

18 A. Oh, goodness. I don't know. Maybe as far from
19 here to the gentleman at the door.

20 Q. Okay. When you were there seated at that table,
21 I'm not asking you what was said, but did you overhear
22 a discussion between Joey Sanders and Anita Gearhart?

23 A. Yes, sir.

24 Q. Would you say it was a mild discussion, a heated
25 discussion, or what would you say?

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1 A. I would have to say it was a heated discussion.

2 Q. Now, did -- when you first observed that heated
3 discussion, where was Joey Sanders and where was Anita
4 Gearhart?

5 A. They were coming out of the banquet room.

6 Q. Where was Complainant

7 A. She was standing at the edge of the table, where
8 Jackie and I were at.

9 Q. All right. This heated discussion, did it move
10 out of the banquet room area to anywhere else?

11 A. It moved across the hallway into the Miss South
12 Carolina Office.

13 Q. To your knowledge, who all went into the Miss
14 South Carolina Office?

15 A. To my knowledge, it was Joey, Anita and Complainant

16 Q. Okay. Did any of those people at some point in
17 time come out of the office?

18 A. Complainant came out just a few minutes later.

19 Q. And when Complainant came out of that office, where, if
20 you know, did she go?

21 A. She came to the table where Jackie and I were
22 sitting.

23 Q. And what happened next?

24 A. She asked -- she said, Mama wants the book that
25 has the banquet seating in it tonight.

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1 Q. Was anything else said?

2 A. Yes, sir. She said, I'm not -- he's not going to
3 talk to my mother that way. I'll get even with him.
4 Just wait and see.

5 MR. DEJONG: The witness is with you, Mr.
6 Robinson.

7 MR. ROBINSON: I have no Direct Examination.

8 THE COURT: Mr. Richardson, go ahead.

9 MR. RICHARDSON: Thank you, Your Honor.

10 **CROSS EXAMINATION**

11 **BY MR. RICHARDSON:**

12 Q. Just real briefly, sir. I appreciate your being
13 here. She never said anything about getting back at
14 her mother or anything; did she?

15 A. No, she did not.

16 Q. Okay. Thank you.

17 MR. RICHARDSON: That's all the questions I
18 have.

19 THE COURT: Thank you, sir. You may step
20 down.

21 MR. DEJONG: May we approach, Your Honor.

22 THE COURT: Yes, sir.

23 (WHEREUPON, Mr. Richardson, Mr. DeJong, and Mr.
24 Robinson approached the bar.)

25 THE COURT: Madam Forelady, ladies and

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1 gentlemen, I'll ask you if you would go back for a
2 short break. We'll call you back in a few moments.
3 Don't discuss the case at this time.

4 (WHEREUPON, the jury exited the open court at
5 approximately 4:28 p.m.)

6 THE COURT: Thank you, everyone. Let's take
7 a ten minute break.

8 (WHEREUPON, the Court stood at recess for a short
9 break.)

10 THE COURT: Are you ready to proceed, Mr.
11 DeJong?

12 MR. DEJONG: Ready for Mr. Sanders, Your
13 Honor.

14 THE COURT: Everybody else ready? Let's have
15 our jury come in.

16 (WHEREUPON, the jury entered the open court at
17 approximately 4:45 p.m.)

18 THE COURT: Are you ready to call your next
19 witness?

20 MR. DEJONG: I am, Your Honor. May it please
21 the Court. The Defense for Mr. Sanders would call Mr.
22 Joseph Pettigrew Sanders, III. Come around to be
23 sworn, please, sir.

24 MISTER CLERK: Place your left hand on the
25 bible and raise your right hand. Do you solemnly swear

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1 or affirm the testimony you're about to give in this
2 case to be the truth, the whole truth and nothing but
3 the truth, so help you God?

4 MR. SANDERS: I do.

5 MISTER CLERK: If you would have a seat and
6 state your name for the record.

7 MR. SANDERS: Joseph P. Sanders, III.

8 JOSEPH P. SANDERS, III

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MR. DEJONG:

12 Q. What does the P stand for?

13 A. Pettigrew.

14 Q. All right, sir. How old are you, Mr. Sanders?

15 A. Seventy-two.

16 Q. And are you related to Joseph Pettigrew Sanders,
17 IV?

18 A. I am.

19 Q. What's that relationship?

20 A. He's my son.

21 Q. All right. What do you do for a living, Mr.
22 Sanders?

23 A. I'm retired after forty-five years with Bank of
24 America. And I'm a volunteer for the Miss South
25 Carolina Organization.

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1 Q. All right. When you say the Miss South Carolina
2 Organization, what does that mean?

3 A. That includes many functions that we conduct each
4 year, one of which is the pageant competition.

5 Q. All right. So there are other functions other
6 than the Miss South Carolina Beauty Pageant; is that
7 correct?

8 A. Oh, yes, others.

9 Q. What other functions are there? Just briefly
10 share them with us, please, sir?

11 A. Well, we just had the Prince Edward from England
12 to be here for four days. And we have a Palmetto
13 Prince and the Palmetto Princess Program that we
14 conduct. And we have a Teen program as well.

15 Q. All right. Now, the Prince and Princess Program,
16 is that for adults?

17 A. No. That's for children ages six to sixteen.

18 Q. All right, sir. And then the other program you
19 mentioned, which is ---

20 A. Is our Prince Program.

21 Q. Okay. And what age group is that?

22 A. They go from six to twelve.

23 Q. All right, sir. Now, Joey, is he involved with
24 you in this organization?

25 A. Yes, he is.

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1 Q. And how long has Joey been involved with the --
2 with this organization?

3 A. He learned to walk on the stage at the Miss South
4 Carolina Pageant.

5 Q. All right, sir. Well, how old is he?

6 A. He's forty-six.

7 Q. Okay. So you -- are any other family members,
8 other than you and Joey involved in this?

9 A. Yes. My wife, Gail.

10 Q. Okay. So -- and realizing what you told me, Joey
11 walking across the stage, how long has he had, shall we
12 say, a job with this organization?

13 A. Well, he's been a Producer since he was eighteen
14 years old. And he recently -- not recently, but many
15 years ago took over as the Producer for the Miss South
16 Carolina competition.

17 Q. Is he involved in the Prince and Princess Program?

18 A. He is not involved, other than having them on
19 stage in production numbers, to make sure that they are
20 involved in the production side of it, as well.

21 Q. Okay. Now, to your knowledge, other than the
22 pageant and the business you've been describing, has
23 Joey been involved in any other businesses or business
24 attempts?

25 A. Yes. He's involved in a family business for

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- 1 several years until we closed it, know as American
2 Family Mortgage.
3 Q. All right, sir. Now, Mr. Sanders, do you know an
4 Anita Gearhart?
5 A. I do.
6 Q. And how long have you known Ms. Gearhart?
7 A. I've known her since 2005.
8 Q. Okay. Do you know a Complainant ?
9 A. I do.
10 Q. And how long have you known her?
11 A. I've known her ever since they moved to our farm,
12 I believe, in 2006.
13 Q. Okay. So when you say our farm, Joey lives on
14 your property, is that ---
15 A. He -- well, yes, he does.
16 Q. All right, sir. Now, once they, they being Ms.
17 Gearhart and Complainant moved to the farm, did you spend
18 any time with them?
19 A. Well, it was a family decision to bring them
20 there. They were dysfunctional, no support from
21 Complainant father, and we made a decision as a family
22 that we could help them come and have a life by coming
23 down to the farm. We did the same thing with a young
24 man from Bulgaria.
25 MR. RICHARDSON: Your Honor, I'm going to

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1 object to any of that, to the relevance.

2 THE COURT: I overrule the objection.

3 Q. Go ahead, Mr. Sanders.

4 A. We brought a young man from Bulgaria to live with
5 us. We sort of adopted him as a grandson. He later
6 went on and played basketball at Western Kentucky
7 University on a scholarship. He's now a coach at the
8 University of Miami. We're very proud of him.

9 Q. All right, sir. I'm sure you are. Let's just
10 kind of limit ourselves to Ms. Gearhart, Joey, and
11 Complainant.

12 A. All right. Okay.

13 Q. Now, so this decision was made. Now, once again,
14 once they moved in, did you have interaction with
15 Complainant

16 A. Oh, all the time.

17 Q. How did you have interaction with Complainant

18 A. Well, she was in and out of our house. In order
19 to have spending money, we gave her responsibilities
20 and duties helping with the laundry and helping with
21 the cleaning of the house, to provide her with spending
22 money. And, of course, she spent the night at our
23 house numerous times.

24 Q. All right. What was your relationship with
25 Complainant

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- 1 A. Well, I was a, and Complainant has said this, was a
2 grandfather figure to her. I was responsible for
3 taking her places. We took her on family vacations.
4 When our grandson got married, we took her out to Texas
5 for the wedding, along with her mother. And ---
6 Q. Did Joey go on that trip?
7 A. He did.
8 Q. All right. Go ahead, sir.
9 A. And on many occasions because her mother was
10 working, I took her to softball practice.
11 Q. Does the organization you work for, Mr. Sanders,
12 does it have an office?
13 A. Yes.
14 Q. Where is that office located?
15 A. It's in Liberty, South Carolina.
16 Q. Did Complainant ever come to the office?
17 A. Many times after school. I would help her with
18 her homework. She worked on the board table, and I
19 would help her with her homework, before they all left
20 to go home.
21 Q. What did she call you?
22 A. Papa Joe.
23 Q. Now, aside from your relationship with Complainant did
24 you have an opportunity to observe Complainant and Joey's
25 relationship?

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1 A. Yes. They had a very good relationship. We
2 included her in all of the family functions. Any
3 activity that we had on the farm, barbeques, she was
4 included in that. We had a golf cart that I think she
5 wore out going back and forth between our house and
6 Joey's house. She was a happy child, and we tried to
7 provide her with as much security as we knew how.

8 Q. Now, from the time they moved onto the farm until
9 she left, did you ever observe ^{Complainant} exhibit any fear
10 of Joey?

11 A. Oh, no. Never.

12 Q. All right. Did she ever discuss with you anything
13 in appropriate that had been done by Joey?

14 A. No, sir, she didn't. The only thing she has ever
15 said to me was how much she loved Joey.

16 Q. Okay. You have referred to the farm, I believe;
17 is that correct?

18 A. Yes, sir.

19 Q. From time to time, do you have occasion to, as
20 part of the function with the, either the Pageant or
21 any of these other -- my mind just totally went blank.
22 Do you ever have occasion at the farm with regard to
23 the Pageant or any other functions of this
24 organization, to have parties or anything out at the
25 farm?

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1 A. Yes.

2 Q. How many times a year would you say you do that?

3 A. We were -- we had our contestants participate in
4 the Adopt-A-Highway Program. And once a year, we had
5 them down in Liberty picking up trash on the highway.
6 And there was a sign designated The Miss South Carolina
7 Pageant on Adopt-A-Highway sign. And we did both sides
8 for, I guess, a mile or more. After that, we took them
9 all down to the farm for a barbeque and we had
10 activities down there as well. And we did that once a
11 year.

12 Q. Did that have a basic, specific time of the year
13 that you would do that?

14 A. Yes, sir. It was usually in April. We tried to
15 get it in before we had our May meeting in Spartanburg.

16 Q. All right. Did Joey attend those functions?

17 A. Oh, yes.

18 Q. Was he involved in those functions?

19 A. Yes, he was.

20 Q. All right. Let me show you a picture, Mr.
21 Sanders, and ask you, do you recognize that picture?

22 A. Yes.

23 Q. And do you know when that picture was made?

24 A. It was in April of 2008. It was a week -- the
25 28th of April. It was the week before -- or two weeks

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- 1 before we moved to Spartanburg for our May meeting.
- 2 Q. When that picture was made, was -- well, let me
- 3 ask you this, where was the picture made?
- 4 A. It was made in front of my house on the farm.
- 5 Q. Was that in conjunction -- was that just a Sunday
- 6 afternoon picture or in conjunction with any other
- 7 function?
- 8 A. It was a Saturday afternoon picture.
- 9 Q. Okay. And what was going on, if anything, at the
- 10 farm on that day?
- 11 A. That's the day we had our barbeque and had all the
- 12 contestants there.
- 13 Q. Can you identify the people in the picture?
- 14 A. Yes.
- 15 Q. All right. There is one individual, I believe,
- 16 appears to be standing at a tree. Who is that?
- 17 A. That was me when I weighed four hundred pounds.
- 18 Q. All right. You don't weight four hundred pounds
- 19 any more?
- 20 A. Don't weigh four hundred pounds.
- 21 Q. All right, sir. I believe there is one adult lady
- 22 in that picture; is that correct?
- 23 A. Yes.
- 24 Q. Seated in a chair?
- 25 A. Yes.

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1 Q. Who is that?

2 A. That's Anita Gearhart.

3 Q. There is another male seated in a chair in that
4 picture. Who is that?

5 A. That is Joey Sanders.

6 Q. And there is an individual that is seated on the
7 lap of Joey Sanders. Who is that?

8 A. That's Complainant .

9 Q. Does that picture accurately reflect what was
10 going on when that picture was made?

11 A. Yes. I mean, she was comfortable. Doesn't appear
12 to be under any stress.

13 Q. Did anybody ask her to sit in Joey's lap to your
14 knowledge?

15 A. Oh, no, sir.

16 Q. Okay. To your knowledge, was that done on her own
17 volition and voluntarily?

18 A. Oh, sure.

19 Q. All right, sir.

20 MR. DEJONG: I ask to introduce this picture
21 as Defendant Sanders' Exhibit Number 1.

22 MR. RICHARDSON: Without objection.

23 THE COURT: Without objection.

24 MR. ROBINSON: No objection.

25 THE COURT: Exhibit 1 is admitted into

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1 evidence.

2 (WHEREUPON, Defendant Exhibit Number 1 was marked
3 and admitted into evidence.)

4 Q. Does your son have any hobbies?

5 A. I mean, he collects airplanes. He collects toy
6 soldiers. He collects many things.

7 Q. From your -- well, let me ask this question first.

8 Do you and your wife live together, Mr. Sanders?

9 A. Oh, yes, sir.

10 Q. Okay. And I may have asked you, but I don't think

11 I did, what is your wife's first name, please, sir?

12 A. Gail.

13 Q. How long have y'all been married?

14 A. This coming August will be fifty years.

15 Q. All right, sir. Now, did ^{Complainant} interact with
16 your wife?

17 A. Oh, yes.

18 Q. And as to ^{Complainant} and your wife's relationship,
19 what did you observe? Was it good, bad, indifferent?

20 A. Always very pleasant.

21 Q. All right. And aside from ^{Complainant} Ms. Gearhart
22 was in the picture as well; right?

23 A. Oh, yes.

24 Q. What was your relationship with Ms. Gearhart?

25 A. I've always had a very pleasant relationship with

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1 her. I wanted to make sure she was included in all the
2 family activities. Gail and I love Anita Gearhart. We
3 have for a long time, and she is a very pleasant and
4 helpful person, especially when I was going through my
5 illness.

6 Q. All right, sir. And were you able to observe Joey
7 and Ms. Gearhart's relationship?

8 A. Yes.

9 Q. How would you describe that? Good, bad,
10 indifferent?

11 A. Oh, I think it was very good.

12 Q. Did they have arguments from time to time?

13 A. Oh, yes. We all do.

14 Q. All right, sir. All right. Did you ever --
15 anytime you were around Complainant and Joey, did you ever
16 observe Joey exhibit any acts of violence towards
17 Complainant?

18 A. No.

19 Q. Did Complainant ever share with you any acts of
20 violence done by Joey?

21 A. Never.

22 Q. And so that I -- well, did Complainant spend time with
23 you and your wife when Joey wasn't there?

24 A. Oh, sure.

25 Q. Was that rare, frequent?

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1 A. No, it was very frequent.

2 Q. All right. Did you ever observe any acts of
3 violence from Joey directed towards Ms. Gearhart?

4 A. No, I did not.

5 MR. DEJONG: One moment, please, Your Honor.

6 THE COURT: Yes, sir.

7 Q. Joey did not live in the same house as you and
8 your wife; correct?

9 A. No.

10 Q. So his comings and goings y'all didn't keep track
11 of that; did you?

12 A. No. But he always made it a point to tell his
13 mother and I what he was doing, if he was going to
14 leave the farm. We always knew where he was and what
15 he was doing.

16 Q. All right, sir.

17 MR. DEJONG: The witness is with you, Mr.

18 Robinson.

19 THE COURT: You may cross examine.

20 MR. ROBINSON: I have no questions, Your
21 Honor.

22 THE COURT: Solicitor.

23 CROSS EXAMINATION

24 BY MR. RICHARDSON:

25 Q. Good afternoon, sir.

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- 1 A. Good afternoon.
- 2 Q. What -- do you still hold a position with the Miss
- 3 South Carolina Pageant?
- 4 A. I do.
- 5 Q. Okay. What is that?
- 6 A. I'm President and Chief Executive Officer.
- 7 Q. Is that kind of the head honcho?
- 8 A. Whatever honcho is, yes. I'm head of the ---
- 9 Q. Are you the head man?
- 10 A. I am.
- 11 Q. Okay. And is you wife -- did you say she's also
- 12 involved with the Miss South Carolina Pageant?
- 13 A. She is.
- 14 Q. Okay. And what -- does she hold a position?
- 15 A. She's the comptroller, and in the office, one of
- 16 the office secretaries.
- 17 Q. Okay. And do you have any other family members
- 18 that are part of that organization?
- 19 A. When Joey was -- before he resigned, he was a part
- 20 of the organization, as well.
- 21 Q. Okay. But he still continues to do things in the
- 22 organization?
- 23 A. Well, he has an office there, and he continues to
- 24 assist me in the office.
- 25 Q. Okay. So he maintains an office. Where is that

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1 office?

2 A. It's in Liberty.

3 Q. Okay. Is that the headquarters for the Miss South
4 Carolina Pageant?

5 A. It is.

6 Q. Okay. So in essence, although he's resigned, he's
7 still working for the Miss South Carolina Pageant. Is
8 that right?

9 A. He's still working. He's not necessarily working
10 for the Miss South Carolina Pageant, no.

11 Q. Okay. And was that a forced resignation?

12 A. He resigned in the best interest of this
13 organization, based on the allegations that were
14 submitted against him.

15 Q. Okay. And that was due to certain outside
16 pressure; wasn't it?

17 A. I'm sorry?

18 Q. Was that due to certain outside pressure?

19 MR. DEJONG: Your Honor, I realize this is
20 cross, but I don't see the relevance of that question.

21 THE COURT: Overruled.

22 A. I don't know what outside pressure you're
23 referring to, Mr. Richardson.

24 Q. Well, is the Miss South Carolina Pageant -- was
25 there an investigation of any type towards the Miss

- 1 South Carolina Pageant because of these allegations?
- 2 A. You mean in regard to Joey?
- 3 Q. In regards to the entire organization?
- 4 A. Yes.
- 5 Q. Okay.
- 6 A. We do have some.
- 7 Q. Okay. And that was the reason for his
- 8 resignation; is that not right?
- 9 A. No, it was not.
- 10 Q. Okay. To any extent, he did resign?
- 11 A. He did.
- 12 Q. But still works there?
- 13 A. He's still at the office. He has an office there.
- 14 Q. Okay. Now, you said that they live in a house
- 15 that, in essence, is it your house?
- 16 A. I'm sorry?
- 17 Q. That Joey and Ms. Gearhart live in a house. Is it
- 18 your house?
- 19 A. No. He lives in a house that's his house.
- 20 Q. Okay. I misunderstood. Did you provide that
- 21 house for him?
- 22 A. I did not.
- 23 Q. Did he buy that house for them?
- 24 A. He bought that house.
- 25 Q. Okay. Now, does he still live in that house?

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- 1 A. He does.
- 2 Q. And that's in Liberty?
- 3 A. It is.
- 4 Q. Okay. Does Ms. Gearhart still live there?
- 5 A. Ms. Gearhart lives in my home.
- 6 Q. She lives with you?
- 7 A. Yes.
- 8 Q. Okay. And how close are those two homes together?
- 9 A. Two hundred yards.
- 10 Q. Okay. Now, and you're referring to Complainant you
- 11 said she was happy?
- 12 A. Sure.
- 13 Q. Okay. And she seemed okay?
- 14 A. Yes.
- 15 Q. Okay. Did she seem like that she liked where she
- 16 lived?
- 17 A. Yes. Very much so.
- 18 Q. Okay. Did she ever complain about where she
- 19 lived?
- 20 A. She never complained.
- 21 Q. She never complained about where she lived?
- 22 A. She never complained.
- 23 Q. She never complained at all?
- 24 A. No.
- 25 Q. Okay. And you stated that he grew up in the Miss

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- 1 South Carolina Pageant; is that right?
- 2 A. He did, yes.
- 3 Q. Okay. And so this organization, it's fair to say
- 4 that it's a lot of family involvement, is there not?
- 5 A. Me, my wife, and my son until he resigned.
- 6 Q. Okay. But you have friends that also work there?
- 7 A. Well, we have a secretary there, yeah.
- 8 Q. Yeah. But do you have friends that volunteer?
- 9 There's a couple of people that testified. Are those
- 10 friends of yours?
- 11 A. Oh, sure. We have a bunch of volunteers.
- 12 Q. Okay. And it's fair to say that any conviction of
- 13 this nature would be a black eye on that organization;
- 14 would it not?
- 15 A. No. Because it was not related to this
- 16 organization. This was outside the scope of the Miss
- 17 South Carolina Organization, totally.
- 18 Q. Okay. Well, you don't think it'd be a black eye
- 19 on your family?
- 20 A. It would be a disappointment to us, Mr.
- 21 Richardson, if that occurred, yes.
- 22 Q. Okay. And I believe you testified that you knew
- 23 where Joey was all the time. Is that what you
- 24 testified to?
- 25 A. If he left the farm, he usually told us where he

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1 was going.

2 Q. Okay. Well, in 2005, did you know he was going to
3 hotel rooms in Easley?

4 A. I did not know that totally. But, yes, I knew
5 that he provided a room over there when Anita came to
6 town, yes.

7 Q. Well, did you know that he rented rooms on some
8 twenty-nine occasions in a three-month period of time?

9 Did you know that?

10 A. I don't know the number, no.

11 Q. You didn't know that?

12 A. I didn't know -- I don't know the number. Yes, I
13 did know he had rented some rooms there from time to
14 time. Sometimes we'd have people come into town doing
15 business with us, and he would put a room in there --
16 you know, rent the room there. But I don't know how
17 many times, if you're asking me that, no.

18 Q. But you certainly weren't with him when he was
19 going to the hotel; were you?

20 A. No, I was not.

21 Q. So you weren't always with Joey Sanders. You
22 didn't always know where he was, did you?

23 A. Not always. But if he left the farm, I usually
24 knew he was gone.

25 Q. And you lived in a separate residence from him; is

1 that right?

2 A. Yes.

3 Q. So you weren't always there every night of the,
4 every night of the week; were you?

5 A. Mr. Richardson, I'm usually at my home every night
6 of the week, unless it's pageant time.

7 Q. Well, you stated that you never saw him commit any
8 acts of violence on anyone; did you not?

9 A. I did say that.

10 Q. Okay. But you weren't always in the house; were
11 you?

12 A. Whose house?

13 Q. Joey's house?

14 A. I was in there quite a lot, yes.

15 Q. Okay.

16 A. But I wasn't there -- I didn't spend the night
17 there. I didn't spend the day there, no, sir.

18 Q. That's right. You weren't always there?

19 A. No.

20 Q. So you don't -- when you're not there, you don't
21 know what's happening in that house; do you?

22 A. Why, of course, not.

23 Q. And when you're not at the hotels, these twenty-

24 nine times, you don't know what's going on there

25 either; do you?

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1 A. Why, of course, not.

2 Q. Thank you.

3 MR. RICHARDSON: That's all the questions I
4 have.

5 THE COURT: Any redirect?

6 MR. DEJONG: Nothing on redirect, Your Honor.

7 THE COURT: Thank you, Mr. Sanders, you may
8 step down. Madam Forelady, ladies and gentlemen of the
9 jury, this might be a good time for us to break for the
10 evening. Being Wednesday night, I know sometimes folks
11 have obligations. We'll break a little early.

12 I have an obligation the first thing in the
13 morning. We won't be able to start until nine-thirty.
14 If you'll be back in your jury room at nine-thirty,
15 we'll be ready to begin then with the next witness. I
16 remind you again what I have before to refrain from any
17 discussion about the case, any contact about the case
18 through video or otherwise. Remember the purity of the
19 process that you've committed to. Have a good evening,
20 ladies and gentlemen. I'll see you back at nine-thirty
21 in the morning.

22 (WHEREUPON, the jury exited the open court at
23 approximately 5:12 p.m.)

24 THE COURT: Ms. Gearhart and Mr. Sanders, let
25 me remind you again as I did last evening, that we're

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1 continuing with this trial. You're advised to be here
2 in the morning. You're instructed to be here in the
3 morning at nine-thirty. I'll, again, leave you out on
4 your bond. But know that the trial proceeds with or
5 without you. I'd certainly advise you to be here.
6 Have a good evening I'll see you back at nine-thirty in
7 the morning.

8 (WHEREUPON, the court was adjourned for the day.)

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10 (WHEREUPON, court convened with all parties
11 present and the following proceedings were had.)

12 THE COURT: Yes, sir, Mr. DeJong.

13 MR. DEJONG: Your Honor, I'm sure we're way
14 too early to talk about charge requests. However, I
15 would just respectfully ask the Court -- I'm sure
16 you're going to charge on 404(b), prior bad acts. But
17 if possible, I would like to have a copy of that charge
18 prior to closing argument.

19 THE COURT: I'll be glad to give you the
20 pertinent parts of it.

21 MR. DEJONG: Thank you, Your Honor.

22 THE COURT: Could I see the attorneys here
23 just for a minute before we get started.

24 (WHEREUPON, Mr. Richardson, Mr. DeJong, and Mr.
25 Robinson approached the bar.)

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1 (WHEREUPON, the jury entered the open court at
2 approximately 9:48 a.m.)

3 THE COURT: Good morning, ladies and
4 gentlemen. We're now ready to proceed. The Defense
5 may call your next witness, Mr. DeJong.

6 MR. DEJONG: Thank you, Your Honor, may it
7 please the court. Defense would call Mr. Joseph
8 Pettigrew Sanders, IV to the witness stand. Come
9 around and be sworn, please, Mr. Sanders.

10 MISTER CLERK: Place your left hand on the
11 bible and raise your right hand. Do you solemnly swear
12 or affirm the testimony you're about to give in this
13 case to be the truth, the whole truth and nothing but
14 the truth, so help you God?

15 DEFENDANT: I do.

16 MISTER CLERK: If you would have a seat and
17 state your name for the record.

18 DEFENDANT: Joseph Pettigrew Sanders, IV.

19 JOSEPH PETTIGREW SANDERS, IV,

20 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MR. DEJONG:

23 Q. How old are you, Mr. Sanders?

24 A. I'm forty-six, sir.

25 Q. Where do you live?

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- 1 A. Liberty, South Carolina.
- 2 Q. Where in Liberty?
- 3 A.
- 4 Q. All right, sir. Mr. Sanders, have you ever had
- 5 sexual intercourse with Complainant ?
- 6 A. Absolutely not, sir.
- 7 Q. Have you ever touched her inappropriately at any
- 8 time in any way?
- 9 A. Absolutely not, sir.
- 10 Q. All right, sir. Are you currently employed?
- 11 A. I am not, sir.
- 12 Q. Prior to these allegations made, were you
- 13 employed?
- 14 A. Yes, sir, I was.
- 15 Q. Who were you employed with?
- 16 A. The Miss South Carolina Organization.
- 17 Q. How long were you employed with that organization?
- 18 A. I've been involved for many years. Probably for
- 19 the last ten, fifteen.
- 20 Q. What was your involvement with the pageant?
- 21 A. From the start or in the last ten or fifteen
- 22 years?
- 23 Q. Let's limit it to the last ten or fifteen years?
- 24 A. I served as the Executive Director and the
- 25 Executive Producer of the actual competition.

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1 Q. Now, for me, when I think of the pageant, I think
2 of the Miss South Carolina Beauty Pageant.

3 A. Yes, sir. A lot of people do.

4 Q. Are there other functions that this organization
5 is involved in?

6 A. Oh, yes, sir. It's a three hundred and sixty-five
7 day a year organization now, unlike it was in the
8 initial beginning.

9 Q. Okay. What are some of the other functions?

10 A. We have Adopt-A-Highway day. We have various
11 functions throughout the course of the year to kind of
12 bring some visibility and recognition to the Miss South
13 Carolina Organization. We held a wrestling event for a
14 couple of years. I mean, there's been lots of things
15 we've tried to establish in the community for
16 visibility purposes.

17 Q. I guess my question wasn't really clear, and I
18 apologize for that. Are there any other pageants that
19 are produced by this organization?

20 A. We have a teen competition that we've had for the
21 last six years, which is part of the organization. We
22 also have a Palmetto Princess and a Palmetto Prince
23 program that's been around for sixteen years, and the
24 Prince program has been around for about three or four
25 years.

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1 Q. Now, those last three programs you talked about,

2 are those adult programs?

3 A. Oh, no, sir. They're geared to young people.

4 Q. Okay. What ages?

5 A. The teen program is for young ladies who are at

6 least thirteen years of age, and no more than seventeen

7 years of age, if they're a junior in high school. The

8 Palmetto Prince program for young gentlemen is from the

9 ages of six to twelve, and then the Palmetto Princess

10 program is for young ladies, six to sixteen.

11 Q. All right, sir. You may have said, I asked you

12 about your appointment in toto, in total, how many

13 years have you been involved with the pageant?

14 A. Forty-six, sir.

15 Q. Thank you. And you are forty-six?

16 A. I am, sir. Yes, sir.

17 Q. All right. Do you know a Complainant ?

18 A. I do, sir. Yes, sir.

19 Q. Do you know Anita Gearhart?

20 A. I do, sir. Yes, sir.

21 Q. Let's start, please, Mr. Sanders with Ms.

22 Gearhart. How long have you known Ms. Gearhart?

23 A. I met Anita in the summer of 2003 in Myrtle Beach,

24 South Carolina.

25 Q. Tell us a little bit about the circumstances of

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1 the meeting.

2 A. I was in Myrtle Beach trying to recruit some local
3 pageants to participate in the Miss South Carolina
4 competition. And believe it or not, I happened to be
5 in a grocery store ---

6 Q. All right, sir.

7 A. -- and happened to run into Anita. And I think
8 that she told me that she and a girlfriend, along with
9 their children, were down there vacationing from
10 Virginia.

11 Q. And what year was that?

12 A. It was the summer of 2003, sir.

13 Q. All right. Now, after you met her there in the
14 summer of 2003, tell us how -- if the relationship
15 progressed. What happened there?

16 A. Well, I -- before she left, I gave her -- you
17 know, Anita was a very engaging lady and I was
18 fascinated by her years in the medical field. My
19 mother and Anita kind of did the same kind of medical
20 training in the Emergency Room. And when she left, I
21 gave her my business card, and we stayed in touch
22 periodically through emails, through phone calls. You
23 know, not religiously, not weekly, daily, but, you
24 know, ever couple of weeks we would make contact and
25 stay in touch, and it just developed from there.

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1 Q. All right. Did it develop into more than this
2 haphazard, for want of a better term, kind of now, kind
3 of then, did it progress into anything more?

4 A. Well, as the years went on, we became much closer
5 friends and better friends. And, of course, the
6 frequency of our conversations would, you know, be
7 more. And we, you know, maintained a pretty close
8 relationship.

9 Q. And prior to 2005, did you ever go to Virginia to
10 see Ms. Gearhart?

11 A. I did not, no, sir.

12 Q. Okay. Prior to 2005, did she ever come to South
13 Carolina from Virginia?

14 A. She did, yes, sir.

15 Q. Okay. How many times would you say?

16 A. I think that she came down twice. She was going
17 through some surgery at the time and she came a couple
18 of times just to kind of get away and relax and, you
19 know, just talk.

20 Q. All right. So those times before 2005, did she
21 come alone or did she bring someone with her?

22 A. No, sir. She always came alone.

23 Q. All right. Now, you have shared with us -- and
24 what do you go by?

25 A. Joey.

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1 Q. Joey.

2 A. Yes, sir. It's confusing the III and the IV.

3 Q. All right, sir. You have shared with us, Joey,
4 that you worked for the pageant for many years. Have
5 you ever done any other business or attempted any other
6 businesses, other than the pageant?

7 A. Well, for many years, I was a mortgage broker in
8 the State of South Carolina. And when I realized, very
9 early, you know, after my father had been in the
10 banking industry for so long, I realized that something
11 was probably going to happen in the industry. This was
12 not going to be able to support itself and continue in
13 the path. And, unfortunately, we're seeing what
14 happened. I have a hobby. My father had gone to
15 England and bought some toy soldiers for me. And when
16 he brought them back, I was fascinated by them and it
17 developed into a hobby. And along the fall of 2005, I
18 actively tried to pursue that hobby into an actual toy
19 soldier business.

20 Q. When you say you tried to pursue it into a toy
21 soldier business, give me the Reader's Digest Condensed
22 Version. What were you looking at and where were you
23 trying to go with it?

24 A. Well, there were two things. There were two
25 factors. I needed to find someone who was in the toy

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1 soldier business currently. And then I needed to seek
2 out artisans in which to carve out of clay the toy
3 soldiers, have them cast. So it was a dual purpose.
4 It was a purpose to find a business partner, so to
5 speak, that was -- for me with the toy soldier
6 business, and then I needed to search out artisans to
7 actually carve the toy soldiers.

8 Q. All right, sir. And this was in the fall of 05?

9 A. Yes, sir.

10 Q. Let me back up just a moment, please, Mr. Sanders.
11 Can you describe for the jury, please, the house that
12 you live in?

13 A. I live in a very small farmhouse.

14 Q. All right, sir. How many bedrooms?

15 A. It's two bedrooms. It's a living room, a den, a
16 kitchen/laundry room combined, a dining room and a
17 bathroom.

18 Q. All right, sir.

19 A. At the time, I never needed a second bedroom, so
20 the second bedroom was a, for lack of a better word,
21 home office, man cave, so to speak.

22 Q. Okay. Now, give me a time frame of that second
23 bedroom, was a second -- was it your home office?

24 A. Always. I mean, it never was -- it never
25 functioned as a bedroom, ever. I mean, it was always a

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1 home office.

2 Q. All right. Now, in terms of trying to promote and
3 start this business, did you go visit these sales
4 people, artisans, or did they come here? How did that
5 happen?

6 A. No, sir. My schedule with the Miss South Carolina
7 Organization would not allow me a great deal of time to
8 travel and visit these people. So I actually would ask
9 them to come here to meet with me, as their schedule
10 would allow. And that's how that started.

11 Q. Well, when they would come here to meet with you,
12 would they meet with you at your home?

13 A. Oh, no, sir.

14 Q. Where would you meet with them?

15 A. I would meet with them at my office, but they
16 stayed, I think, maybe at the Comfort Inn is what
17 you're asking, yes, sir.

18 Q. Right. Okay. So they might -- those folks might
19 be here for a night or more than one night?

20 A. They could be here for one night, never
21 consecutive nights with the same person. Now, we may
22 have met with one on like a Tuesday and someone else on
23 a Wednesday or someone else on a Thursday. But it was
24 not the same people each night consecutively.

25 Q. Have you ever spent the night at the Comfort Inn?

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- 1 A. No, sir. I have never stayed at the Comfort Inn.
- 2 Q. Okay. Now the State has introduced what is --
- 3 what has been marked as State's Exhibits Number 1,
- 4 Number 2, Number 3, and Number 4, which purports to be
- 5 motel records from the Comfort Inn. And let me show
- 6 those to you just so -- to ask you if you can identify
- 7 those records.
- 8 A. Yes, sir. I've seen these.
- 9 Q. All right, sir. Now you have shared with us that
- 10 you have never spent a night at the Comfort Inn?
- 11 A. No, sir. I've never stayed there.
- 12 Q. Have you made reservations at the Comfort Inn?
- 13 A. Oh, yes, sir. Numerous times.
- 14 Q. How many different people would you say you have
- 15 made reservations for at the Comfort Inn?
- 16 A. Ten, fifteen. Maybe as high as twenty. I'm not
- 17 really sure. Sometimes we met with the same person
- 18 multiple times, so ten, fifteen I would say.
- 19 Q. And over what time frame were you meeting these
- 20 people?
- 21 A. It was in the fall of 2005, so September, October,
- 22 November, or December. That time frame.
- 23 Q. All right, sir. Now, you have had copies of what
- 24 the State has introduced as State's Exhibit 1, 2, 3,
- 25 and 4. Is that correct, sir?

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1 A. Yes, sir.

2 Q. All right. Let me have those back so we don't
3 mess those up. I'm not offering them yet, but I'm
4 getting into testifying. Now, let me show you this
5 packet, Mr. Sanders, and ask you to look at it and tell
6 me what it is, please, sir?

7 A. Well, the first page, Mr. DeJong, is a calendar
8 for September of 2005, with dates highlighted, with
9 stays during that month in that calendar year.

10 Q. My mind drifted. Share that with me one more
11 time, please?

12 A. The first page is a calendar for September 2005,
13 with days highlighted for that month of that calendar
14 year.

15 Q. When you say highlighted for that month, what are
16 the highlights.

17 A. The days of the week in that month that were stays
18 that coincided with the bills from the Comfort Inn.

19 Q. Okay. Okay. I am with you. And is there only a
20 calendar there for one month?

21 A. No, sir. There is a calendar month of the year
22 2005 for September, October, November and December.

23 Q. Did Ms. Gearhart ever bring her daughter from
24 Virginia?

25 A. She brought her twice.

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1 Q. All right. And when Ms. Gearhart brought her
2 daughter from Virginia, did they stay in your home in
3 Liberty?

4 A. Absolutely not, no, sir.

5 Q. Where did they stay?

6 A. They stayed -- I made reservations for them at the
7 Comfort Inn in Easley.

8 Q. All right, sir. And you made the reservations?

9 A. Yes, sir. I did.

10 Q. Did you pay the bill?

11 A. Yes, sir. I always put it on my credit card.

12 Q. All right. Did you sign for that?

13 A. No, sir. I did not.

14 Q. Who signed for it?

15 A. Ms. Gearhart did. I was not there when they
16 arrived. I may have called ahead and made the
17 reservations and when she checked in, she signed the
18 bill for the two times they came to South Carolina.

19 Q. All right, sir. Now are you just remembering that
20 from remembering or do you have something to refresh
21 your memory there?

22 A. No, sir. I have the actual bills where she signed
23 the two times that she came. Once in November and once
24 in December.

25 Q. All right, sir. Now, so we don't get these things

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1 messed up, what months were the -- the two times that

2 they came down ---

3 A. Yes, sir.

4 Q. -- in what months were those two times?

5 A. One was in November and one was in December.

6 Q. All right, sir. Now, let me hand you -- well, I'm

7 just going to hand you all of them, but please make

8 sure we keep these separate.

9 A. Yes, sir.

10 Q. Would you look through there and see if you can

11 find the motel bills from the two times that you say

12 Ms. Gearhart came down with Complainant If you will

13 please, Joey, give them to me one at a time, please,

14 okay?

15 A. All right. Here's the first one in November.

16 Q. Okay. And what you're handing me is part of

17 State's Exhibit Number 4, which Madam Court Reporter

18 has made a pen note on, that would be 4-9 at the

19 bottom; is that correct?

20 A. Yes, sir.

21 Q. Well, let me back up on that. You say that -- and

22 I know I'm -- well, go ahead and finish that up. I

23 don't want to interrupt you.

24 A. Here's the one for December.

25 Q. Of what year?

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- 1 A. Of 2005.
- 2 Q. All right, sir.
- 3 A. With her signature.
- 4 Q. And what you have handed me is part of State's
- 5 Exhibit Number 1 and Madam Court Reporter has put a pen
- 6 notation down on it of 1-3. Is that correct?
- 7 A. Yes, sir. That's correct.
- 8 Q. All right, sir. Now, you say that Ms. Gearhart
- 9 brought Complainant down two times when they stayed at the
- 10 Comfort Inn?
- 11 A. Yes, sir. That's correct.
- 12 Q. Now, have you had an opportunity to review all
- 13 those motel bills, for want of a better term?
- 14 A. Yes, sir. I reviewed them.
- 15 Q. And having made reservations at the Comfort Inn,
- 16 do you know what time check-in time was at the Comfort
- 17 Inn?
- 18 A. Typically, and I think the Comfort Inn is the
- 19 same, is two o'clock in the afternoon. And you have to
- 20 be out by eleven o'clock the following day, or whenever
- 21 your departure time is.
- 22 Q. All right. Sir. Now, in reviewing those bills
- 23 from Comfort Inn, in your review of those bills, is
- 24 there anything on there that would show how many people
- 25 are in the room?

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1 A. Yes, sir. I think on the top of the ---

2 Q. Excuse me. You can refer now to yours if you need

3 to. We'll come back to those. I just don't want to

4 get them mixed up.

5 A. Yes, sir. There is a section at the top that

6 refers to how many people are in the room and the type

7 of people that are in the room, yes, sir.

8 Q. When you say type of people in the room, what do

9 you mean?

10 A. Well, it says one adult and one child.

11 Q. Does it say that on all of those motel bills?

12 A. No, sir. Only on the two with Ms. Gearhart --

13 signed for.

14 Q. Well, how about the others, are there any children

15 on any of the others?

16 A. Absolutely not, no, sir.

17 Q. Okay. Now, the State has said that there were a

18 total of twenty-nine stays. Did you count them?

19 A. I did not count them, no, sir.

20 Q. Okay. However, assuming for the moment that it

21 was twenty-nine, we take two out, that would leave

22 twenty-seven. Is that correct?

23 A. That's correct, yes, sir.

24 Q. Have you reviewed all of the rest of those twenty-

25 seven bills?

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1 A. I have looked at them, yes, sir.

2 Q. Okay. On any of the other twenty-seven bills,
3 were children ever noted on the bill?

4 A. Absolutely not, no, sir.

5 Q. Okay. Was it one adult? Two adults? Did it
6 vary? What was it?

7 A. It was probably only one adult. There were some
8 occasions there were two adults, yes, sir.

9 Q. Okay. And who or why were those reservations
10 made?

11 A. Well, that was in relation to this business that I
12 was trying to start in the fall of 2005 that the
13 business associates, the artisans, you know, folks like
14 that, that we were trying to make contact with.

15 Q. Okay. When you stayed -- well, let me rephrase
16 that. Ms. Gearhart and ^{Complainant} would come to Virginia
17 -- from Virginia to South Carolina?

18 A. Yes, sir. Twice.

19 Q. Okay. And when they came and stayed at the
20 Comfort Inn, would you go to the Comfort Inn to see
21 them?

22 A. Yes, sir. I would pick them up from the Comfort
23 Inn if there was an activity that we wanted to take
24 part of.

25 Q. Did you ever spend time in the room?

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- 1 A. There was an occasion once, that I did while
2 waiting for them both to leave. We did have an
3 opportunity to watch TV. Yes, sir.
- 4 Q. Waiting for them to leave?
- 5 A. Yes, sir.
- 6 Q. Leave to go where?
- 7 A. We were going out to do some sightseeing. They
8 had never been to this part of the, the world, so to
9 speak. And I was going to show them different things
10 in various places while they were here.
- 11 Q. I see. So you all -- everybody was going to
12 leave.
- 13 A. Oh, yeah, yeah. Yes, sir. Yes, sir. Yes, sir.
- 14 Q. All right. Now, did you ever lay on the bed with
15 Ms. Gearhart and Morgan?
- 16 A. No, sir. I did not.
- 17 Q. Were you ever naked in that room?
- 18 A. Absolutely not, no, sir.
- 19 Q. Did you ever have sexual intercourse at Comfort
20 Inn with Anita Gearhart?
- 21 A. Absolutely not, no, sir.
- 22 Q. All right. Let's talk a little bit, before we
23 move forward Joey, let's talk about your medical
24 situation.
- 25 A. Yes, sir.

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1 Q. Do you have medical problems?

2 A. Yes, sir.

3 Q. Briefly describe for the jury your medical
4 problems?

5 A. Diabetes, hypertension, poor circulation in my
6 legs. Mr. DeJong, it's embarrassing, but at the time,
7 I weighed four hundred and fifty pounds. I mean, it
8 was, it was very difficult for me to move. It was very
9 difficult for me to get up and down from seated
10 positions. It's just been a very -- been on a very
11 long, difficult medical hardship.

12 Q. I realize, and it's embarrassing, did you have any
13 sexual problems, Mr. Sanders?

14 A. Yes, sir. I had erectile dysfunction.

15 Q. About when did that erectile dysfunction appear in
16 your life?

17 A. Probably 2000, 2001, somewhere in that time frame.

18 Q. All right. Let me show you what's been marked as
19 Defendant's Exhibit Number 1. Do you recognize that,
20 Joey?

21 A. Yes, sir. I do.

22 Q. All right. And what is that?

23 A. That's a picture taken in my father's home during
24 a Miss South Carolina function. We did Adopt-A-Highway
25 cleanup in Liberty. And this was a function where he

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1 brought all the contestants and various volunteers down

2 to the farm, and we had a big cookout for them.

3 Q. All right. Can you identify the people in that

4 picture for me?

5 A. My father, myself, Complainant and Anita.

6 Q. And where is Complainant seated in that picture?

7 A. She's sitting on my lap, sir.

8 Q. All right. Was that a contrived picture in any

9 way?

10 A. No, sir. This is pretty much how we interacted as

11 a family.

12 Q. In this picture, how much did you weigh then?

13 A. Probably three hundred and eighty pounds, roughly.

14 Q. All right. And when did you -- and, again, I'm

15 sure it's difficult to talk about in public, but we've

16 got to talk about it. When did you go to the doctor

17 with your erectile dysfunction?

18 A. Well, because Anita was a nurse and we had become

19 very close friends, I confided in her my problem and

20 told her that I had had it for a very long time. And

21 she told me that there were possibilities -- she didn't

22 know, but there were possibilities that maybe it could

23 get better with some medication or some kind of medical

24 treatment. She advised me to go see my family

25 physician, which I did. March of 2007 I think is when

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1 I actually went for the first time.

2 Q. Now, did the doctor -- well, let me back up.

3 Which doctor prescribed -- which doctor did you go see?

4 A. My family physician, Dr. Barksdale.

5 Q. Did he ever prescribe you anything for the

6 erectile dysfunction?

7 A. He -- we took several test and one of the things

8 he discovered in the testing process was my

9 testosterone level was extremely low. He prescribed a

10 testosterone jell, for lack of a better word, that I

11 had to rub on two times a day. And even with that

12 regimen of treatment, my testosterone level did not

13 raise hardly any over a period of about six months. So

14 I just, I just confined myself to the fact that it just

15 wasn't going to get any better and it was just

16 something that I had to live with. And, you know, I --

17 you know, it's embarrassing, sir.

18 Q. Yes, sir. And I understand. I'm not trying to

19 embarrass you. Once you started the testosterone

20 treatment ---

21 A. Yes, sir.

22 Q. -- did your erectile dysfunction get any better,

23 get any worse or stay the same?

24 A. It's never, it's never gotten any better. It's --

25 it doesn't work period. I mean, it's not here today,

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1 gone tomorrow. It just -- it's the same all the time.

2 Q. All right, sir. Now, at some point in time, did

3 Ms. Gearhart move from Virginia to South Carolina?

4 A. Yes, sir. She moved in January of '06. I was not

5 in South Carolina when she moved. And she took a job

6 in Easley with Easley Pediatrics. When she actually

7 moved down here in '06, she actually stayed at the

8 Comfort Inn, I think for maybe a couple of weeks while

9 she was trying to find a house to purchase.

10 Q. Did you make those reservations?

11 A. Yes, sir. I did. But I did not see those in this

12 stuff that was presented.

13 Q. Okay. Basically, what was presented was '05; is

14 that correct?

15 A. Yes, sir. Yes, sir.

16 Q. And from what you're saying it was '06 when she

17 would have stayed at the Comfort Inn?

18 A. Yes, sir.

19 Q. Okay. Now did she finally, or did she ever move

20 into your home on Sanders Road or Sanders Drive,

21 whatever that ---

22 A. Yes, sir. She looked very diligently for a house

23 to purchase. And as a matter of fact, she actually

24 signed a contract on a house in Liberty. But

25 unfortunately, this was the time when the housing

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- 1 market was very volatile and financing was just not
2 available. I mean, she'd just started a new job. She
3 was a single mother. Financing just was not available.
4 So I made her an offer and said, look, you know, why
5 don't you move to my house. You can save your money.
6 I think possibly if you get a large enough down
7 payment, that that might help you when you actually
8 find a house that you want to purchase to buy.
- 9 Q. So she did move into your home?
- 10 A. She did, yes, sir.
- 11 Q. About when did she move into your home?
- 12 A. I did not get back from Las Vegas until the middle
13 part of February. It was always a couple of weeks in
14 January and a couple of weeks in February.
- 15 Q. And what year was that?
- 16 A. That was in '06.
- 17 Q. Okay.
- 18 A. And when I got back is when I said, you know --
19 because she'd told me about the trouble that she was
20 having and how she had looked and looked and wasn't
21 having any luck at any kind of mortgage loan. And
22 that's when I made the offer.
- 23 Q. All right, sir. And did she accept the offer?
- 24 A. She did. Reluctantly. I mean, she -- Anita's a
25 very independent -- I don't think that it was something

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1 that she anticipated or planned on then. But it's like
2 I told her, I don't -- there's no reason to rent
3 something when, you know, you can be saving your money
4 to buy.

5 Q. When Ms. Gearhart came down here in '06, moved
6 down here, ---

7 A. Yes, sir.

8 Q. -- did Complainant come with her?

9 A. No, sir. No, she did not.

10 Q. And so that we're clear, I think we are. But when
11 she moved down, was school in session or out of
12 session?

13 A. School was in session, yes, sir.

14 Q. Okay. So did Complainant finally, did Complainant finally
15 move to South Carolina as well?

16 A. Yes, sir.

17 Q. When did Complainant come to South Carolina?

18 A. Complainant must have come the first part of August
19 because the Miss America's Outstanding Teen Competition
20 was held in Orlando in August, and we went on a family
21 vacation to Disney at that same time. So she came
22 right before we left to go to Florida.

23 Q. Did Complainant go with you to that?

24 A. Oh, yes, sir.

25 Q. Okay. So Complainant then, if I'm clear, lived in your

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1 home from some time, August of '06 through some time in
2 '08. Is that correct?
3 A. June of '08, yes, sir.
4 Q. All right. And during that period of time, y'all
5 were living basically together as a family?
6 A. Yes, sir. It was a family unit.
7 Q. All right. Share with the jury, Joey, your
8 relationship, from your perception, your relationship
9 with Complainant
10 A. It was the best.
11 Q. All right.
12 A. I mean, I -- one of the things that I wanted to
13 make very clear from the beginning was I was not
14 Complainant father. That Anita had raised Complainant
15 primarily by herself Complainant entire life, with no
16 influence from Complainant natural father. I, having been
17 around young ladies my entire life, I felt like I
18 offered some sort of insight, and when Anita would have
19 some cares or concerns, she would come to me and ask me
20 what I thought. I did not want to be part of the
21 disciplinary process. Anita had been doing that quite
22 nicely all of Complainant life, so I didn't want to get
23 involved in that. But I did, from time to time, when
24 Anita would come and say, what do you think about this
25 or that, I would tell her what I thought. Now, that

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1 didn't necessarily mean that Anita, you know, followed
2 my advice, but we did talk about it from time to time.

3 Q. To the extent you have just described being
4 involved in the discipline, to your knowledge, was
5 Complainant aware of that?

6 A. We never discussed disciplinary matters in front
7 of Complainant I think that's confusing to children. And
8 I think what it does, is it opens an opportunity for
9 children to play parents against each other at some
10 point, possibly.

11 Q. All right, sir.. Your observations of Complainant did
12 she ever, from your observation, any -- ever exhibit
13 any fear of you?

14 A. No. No, sir. No, if -- you know, we, we, you
15 know, we live a very public life unfortunately or
16 fortunately, however you want to look at it. We -^{com}
17 was always with me with Anita and my family, my
18 parents. You know, it's -- when we actually -- when
19 Anita talked first to me about -- Anita was in a very
20 bad marriage. She was separated in October of '05.
21 She said, Joey, I think that I need to leave Virginia.
22 And I said, well, Anita, you've got a good job. I
23 mean, you know, I unfortunately can't support you. I
24 mean, you're going to have to have a job. So she very
25 diligently started looking for one. As a matter of

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1 fact, one of those visits in November she was down here
2 on job -- that's why she was here, was for a job
3 interview.

4 Q. Go ahead.

5 A. So we, we talked as a family, my mother and my
6 father and myself about the possibility of Anita
7 coming, eventually bringing her child. Is that
8 something that we wanted to do as a family? Is it
9 something that we were prepared to do as a family,
10 which we did. We were glad to do it. I think that we
11 provided Complainant with a very stable home environment.
12 We certainly provided her with as much love as we
13 possibly could give to her. I don't think that even
14 now that Complainant would deny the love that she got from
15 my parents, myself, Anita. So I mean, for all
16 observation purposes, Complainant was a very happy, well
17 adjusted, productive child.

18 Q. Let's go back to the discipline for just a minute,
19 Joey.

20 A. Yes, sir.

21 Q. Even though, as you have shared with this jury,
22 you did not directly participate in the discipline.

23 Did Ms. Gearhart discipline Complainant

24 A. She did discipline Complainant the way she best saw fit
25 at -- for whatever the discipline needed.

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1 Q. Based on your observations, how did Complainant react
2 to that discipline?

3 A. Complainant and her mother was -- had very, very, very
4 heated discussions about the discipline that Anita
5 instilled upon Complainant yes, sir.

6 Q. All right, sir. Did you ever spank Complainant

7 A. Absolutely not, no, sir.

8 Q. Did you ever lay a hand on Complainant in any kind of
9 violent way?

10 A. Absolutely not. No, sir.

11 Q. How about Ms. Gearhart?

12 A. Absolutely not. No, sir.

13 Q. And you said you went to Vegas in January and
14 February of '06?

15 A. Oh, yes, sir.

16 Q. Was that a vacation trip or was that something you
17 did from time to time?

18 A. Well, it was two-fold. Being involved with the
19 Miss South Carolina Organization, my family and I have
20 never had a typical July the 4th family vacation. The
21 Miss American Organization in '06 decided to move from
22 Atlantic City, New Jersey to Las Vegas, Nevada. So my
23 parents and I looked at it as a vacation kind of work
24 situation, and we drove to Las Vegas. So we stopped
25 along the way and enjoyed sightseeing and that kind of

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1 -- shopping. And then went to the Miss America

2 Competition in Las Vegas. And then drove back and did
3 the same thing coming back, sightseeing and kind of
4 enjoying each other's company.

5 Q. Joey, did you ever meet Ms. Gearhart's mother?

6 A. Oh, yes, sir.

7 Q. Well, let me ask you this. Once Ms. Gearhart and
8 Complainant moved to South Carolina, did you ever go to
9 Virginia with them?

10 A. Oh, yes, sir.

11 Q. How many times would you say?

12 A. Probably not more than a half a dozen. It just
13 depending on what was going on with my schedule, when
14 they actually had time to go. I always encouraged, you
15 know, Anita to go as often as she could go. Anita's
16 mother is much like my parents. They're -- she -- they
17 were getting elderly and I know the value of spending
18 as much time -- I've been very fortunate with my
19 parents to have been able to work with them on a daily
20 basis. We live on the same farm. You have to go past
21 my house to get to their house, so they're always
22 stopping on their way home and talking and, you know,
23 visiting. So it's ---
24 Q. When you made these trips to Virginia with Ms.
25 Gearhart and Complainant where did you stay?

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1 A. I always stayed in a separate motel. Usually
2 there was a Holiday Inn that I really liked. It was
3 probably a couple of miles from Anita's mother's home
4 and it was convenient, close to downtown. So I stayed
5 at Holiday Inn.

6 Q. Would Complainant and Anita stay with you at the
7 Holiday Inn?

8 A. Anita sometimes would stay. But once again, they
9 were there to visit her grandmother and mother. I was
10 secondary to the trip, so it just depended -- Complainant
11 never stayed. I mean, Complainant always stayed with her
12 grandmother. It was important that they spend as much
13 time as they could together.

14 Q. Now, when you say Complainant always stayed with her
15 grandmother, which grandmother was that?

16 A. Anita's mother.

17 Q. All right.

18 A. I guess that would be her maternal grandmother.

19 Q. Right. Now, you have described Complainant attitude.
20 Come up to, let's say, late May, June of 2008. Did you
21 ever notice a change in any of that?

22 A. Oh, absolutely, yes, sir.

23 Q. Tell this jury about that.

24 A. Well, Anita and I were out of town with my parents
25 on a trip to Atlantic City with contestants with the

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1 Miss South Carolina Organization. We stopped in
2 Washington on, I guess, it was Friday, Thursday. I'm
3 not sure of the day. We talked to Anita's mother then.
4 Complainant was with friends in South Carolina. Her mother
5 seemed to be okay. We went on to Atlantic City. At
6 some point, on Saturday morning, it may have been
7 Friday morning, I'm not sure of the exact day now,
8 Anita got a frantic phone call from her sister. The
9 minute that she answered the phone and she heard
10 Cindy's voice, I knew something was wrong. And then
11 she just started crying. And I knew by the way that
12 she was acting that something was wrong, had happened
13 to her mother.

14 Q. And had it?

15 A. She informed me after hanging up with her sister
16 that her mother had died.

17 Q. Okay.

18 A. I tried to calm her the best I could. I called my
19 parents. We tried to calm her to see what arrangements
20 we needed to make.

21 Q. I'm sorry to have to interrupt you now. Are you
22 talking about Anita or Complainant

23 A. Anita.

24 Q. Okay. Go ahead.

25 A. Complainant was in South Carolina with friends.

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1 Q. Okay. Where were y'all at this point?

2 A. Atlantic City.

3 Q. Okay. Go ahead.

4 A. Anita wanted to make it very clear with her family
5 that she did not want them contacting Complainant until she

6 had an opportunity to get back to South Carolina and

7 get Complainant to tell her what had happened to her

8 grandmother, Anita's mother. She was very -- it was

9 very, very important to her because she knew how close

10 Complainant was to her mother. She didn't want somebody

11 telling her over the phone. She wanted to actually be

12 with Complainant when she told her. We immediately got on

13 the phone. We made arrangements for Anita to fly from

14 Philadelphia back to South Carolina. And in the course

15 of Anita flying back, members of Anita's family called

16 Complainant and informed her that her grandmother had passed

17 away.

18 Q. To your knowledge did Ms. Gearhart and Complainant go

19 to the grandmother's funeral?

20 A. Immediately upon arrival in Greenville, Anita went

21 and got Complainant and they immediately left to go to

22 Virginia.

23 Q. How long were they gone?

24 A. I think the funeral was on Monday and they came

25 back on Monday. So they were there Saturday, Sunday,

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- 1 Monday.
- 2 Q. Okay. The funeral was on Monday and they came
- 3 back Monday, was that ---
- 4 A. The same day of the funeral, yes, sir.
- 5 Q. Did they go anytime prior to the funeral?
- 6 A. They went a couple of days. Yeah. I think they
- 7 went like on Saturday, Sunday, and then came back on
- 8 Monday after the funeral.
- 9 Q. Now, with regard to Complainant was she the same
- 10 person when she came back from this funeral as before?
- 11 A. Absolutely not, no, sir.
- 12 Q. What difference did you see in Complainant
- 13 A. Complainant was very angry. Complainant was very -- she was
- 14 very defiant. But the thing that I kept -- and Anita
- 15 talked about continuously was -- Anita, she said, Joey,
- 16 she never cried at my mother's funeral. I've never
- 17 seen her cry the first time over my mother's death.
- 18 And we thought that was very odd because of how close
- 19 they were. Unfortunately, during that week after the
- 20 funeral, Anita and I had the conversation several times
- 21 that week -- Complainant was very defiant. She was, she was
- 22 just, she was just a different. She was a different
- 23 child. She was not the Complainant that we left the week
- 24 before going to Atlantic City. She wasn't smiling.
- 25 She wasn't jovial. She wasn't happy. She was just

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1 different.

2 Q. The trip to Atlantic City, was that before or
3 after Memorial Day of 2008?

4 A. It was after.

5 Q. Did you go to Virginia on Memorial Day of 2008 or
6 Memorial Day weekend?

7 A. Oh, yes, sir. We surprised Anita's mother by all
8 coming up there. As a matter of fact, her entire
9 family was there. All the brothers, cousins, everybody
10 was there for that weekend.

11 Q. And again, not to embarrass you, Joey, over the --
12 well, I guess, since '05 to -- we'll come back to that
13 question. Are you and Anita living together at this
14 point?

15 A. No, sir. We're not.

16 Q. Where do you live now?

17 A. I live at

18 Q. And where does Anita live?

19 A. She lives at

20 Q. So y'all -- she moved out of your house when these
21 allegations were made?

22 A. Yes, sir. She did.

23 Q. Okay. And who does she live with?

24 A. She lives with my parents.

25 Q. Okay. From -- when she started coming down here,

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1 let's use '05, until the time that y'all ceased living

2 together in '08, how many times were you and Anita

3 intimate?

4 A. Can we define intimate?

5 Q. Sexual intercourse?

6 A. Zero. Anita Gearhart and I have never, ever had
7 sexual intercourse.

8 MR. DEJONG: The witness is with you, Mr.

9 Robinson.

10 MR. ROBINSON: I have no direct examination
11 for him.

12 THE COURT: You may cross examine, Solicitor.

13 CROSS EXAMINATION

14 BY MR. RICHARDSON:

15 Q. The home that you presently reside in, that's the
16 home in Liberty that you were residing in also in 2005;
17 is that correct?

18 A. That's correct, yes, sir.

19 Q. Okay. I just wanted to make sure I have it
20 straight. You haven't moved anywhere, but Ms.

21 Gearhart's moved out?

22 A. Yes, sir.

23 Q. And that's the home -- did you purchase that from
24 your father?

25 A. I actually purchased it from my aunt when my

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1 grandmother died.

2 Q. Okay. Now, and that's the same house that you
3 continually lived in when Complainant came down and lived
4 with you also?

5 A. Yes, sir.

6 Q. And Complainant came down in 2006; is that correct?

7 A. The summer of '06, yes, sir.

8 Q. Okay. Now, do you remember giving statements to
9 this lady right here?

10 A. I did talk to her once, yes, sir.

11 Q. Okay. And do you remember when you gave that
12 statement telling her that you had met Ms. Gearhart on-
13 line?

14 A. I did not tell her that, no, sir.

15 Q. Well, you've been ---

16 A. I think that I told her ---

17 Q. Go ahead. You can explain yourself.

18 A. I think that I told her that we had, we had an on-
19 going relationship that was through emails and phone
20 calls.

21 Q. Now, did you -- also, you've been in this
22 courtroom, obviously, the entire couple of days we've
23 been in here. That's right?

24 A. Oh, yes, sir.

25 Q. And you heard the testimony of Detective Burgess;

- 1 did you not?
- 2 A. I did. Yes, sir.
- 3 Q. And you also heard the testimony of her in regards
4 to Ms. Gearhart's statement?
- 5 A. Yes, sir.
- 6 Q. Okay. And did you also hear Ms. Burgess testify
7 that Ms. Gearhart also says y'all met on-line?
- 8 A. Yes, sir. But I can't answer for Ms. Gearhart's
9 testimony.
- 10 Q. I understand that. I understand that. The point
11 I'm trying to make is that she said that in two
12 statements that y'all both said you met on-line. Is
13 that not correct?
- 14 A. And I did not tell her that we met on-line, no,
15 sir.
- 16 Q. Okay. But that's what the statements say. Is
17 that not right. And that's what was testified to. Is
18 that not right?
- 19 A. That's what Ms. Burgess said, yes, sir.
- 20 Q. Okay. Now, when you go to the Comfort Inn, you
21 stated that you go there to get rooms for business
22 people. Is that right?
- 23 A. We use the Comfort Inn from time-to-time for
24 business associates, yes, sir.
- 25 Q. Okay. And you would go there and give them a

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1 credit card; would you not?

2 A. I may have gone originally, but if you will look
3 at these bills from the Comfort Inn, which I think the
4 general manager explained to you, that it says on file,
5 on most of them, which means I called and told them
6 that people would be coming and they ran my credit card
7 for those rooms.

8 Q. Okay. But you would tell them how many people
9 were coming. Is that right?

10 A. I, I think ---

11 MR. RICHARDSON: Your Honor, may I approach
12 the witness to get the ---

13 A. -- that the people who went there had to check-in.
14 I don't think that they, that they just walked into a
15 room, no, sir.

16 Q. Okay. So you just generally said, I just want a
17 room.

18 A. Yes, sir.

19 Q. Okay. And the clerk didn't respond, well, how
20 many people?

21 A. Oh, yes, sir.

22 Q. Okay. And you would tell ---

23 A. Because you are charged by the number of people
24 who are in the room.

25 Q. Exactly. And you would tell them how many people;

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1 right?

2 A. Yes, sir.

3 Q. Okay. And, in fact, you would be charged more for
4 a third person than you would for two people; would you
5 not?

6 A. I'm not sure how they charge. I never had three
7 people.

8 Q. Well, you just testified that you get charged for
9 more than one person?

10 A. But I never had three -- you asked if there was
11 three people if it was more of a charge. I don't know
12 if there's more for two, three, four. I know there's
13 more for one.

14 Q. Okay. So you know at least that there's more for
15 one?

16 A. Yes, sir.

17 Q. Okay. And, in fact, not all of these bills and
18 receipts have an authorization on them; do they?

19 A. No. There are a couple signed by me, yes, sir.

20 Q. Okay. And the ones that were signed by you, you
21 had to physically be there to sign it. Is that not
22 right?

23 A. Yes, sir. But I think you will see those were in
24 the very initial beginning when I had not done business
25 with the Comfort Inn before.

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1 Q. Well, I understand that. But you went -- between

2 September and December, you personally went to the

3 Comfort Inn and got a room; did you not?

4 A. A couple of times, yes, sir.

5 Q. And you used your personal credit card?

6 A. Yes, sir.

7 Q. Okay. The times that you were using that card for

8 the Miss South Carolina Pageant, did you get

9 reimbursed?

10 A. I don't have a Miss South Carolina Organization

11 credit card.

12 Q. That was not my question. When you used your card

13 in the Comfort Inn for the Miss South Carolina Pageant,

14 did you ---

15 A. I never used my card at the Comfort Inn for the

16 Miss South Carolina Organization.

17 Q. Okay.

18 A. I don't see how that has relevance to what we're

19 talking about.

20 Q. No, sir. I'm asking the questions, okay? Now,

21 here's my question. Did you use that card for the Miss

22 South Carolina Pageant at the Easley motel?

23 A. Absolutely not, no, sir.

24 Q. Did you ever use that card for business purposes

25 at the Easley motel?

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- 1 A. My personal credit card?
- 2 Q. Yes, sir.
- 3 A. Yeah. I used it when we brought people down that
- 4 we were trying to do business with for the toy soldier
- 5 business.
- 6 Q. Okay. So you used it for business purposes?
- 7 A. I, I don't -- I didn't have a business at that
- 8 time. This was all trying to generate a business.
- 9 Q. Okay.
- 10 A. It was not a business in place at that time.
- 11 There was no business in place.
- 12 Q. And did you ever use it for the Miss South
- 13 Carolina Pageant?
- 14 A. No, sir.
- 15 Q. Now, you stated that you have a -- this erectile
- 16 dysfunction?
- 17 A. Yes, sir. I do.
- 18 Q. Okay. And were you able to have -- did you have
- 19 any problems in 2005?
- 20 A. Yes, sir. I did.
- 21 Q. Okay. Did you have any problems in the spring of
- 22 2005?
- 23 A. I've had a problem, Mr. Richardson, since 2001.
- 24 Q. Could you have sex in 2005?
- 25 A. No, sir. I could not.

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1 Q. Could you have sex in 2004?

2 A. No, sir. I could not.

3 Q. So you didn't have sex at all in those years?

4 A. Mr. Richardson, I haven't had sex in a very long
5 time.

6 Q. And you've been seeing this doctor, I can't
7 remember his name now, it's ---

8 A. Dr. Barksdale.

9 Q. Yes. You've been seeing him since 2002. Is that
10 right?

11 A. That's correct. Yes, sir.

12 Q. Okay. And you never said anything to that doctor
13 until 2007; did you?

14 A. No, sir. It's not something that I would prefer
15 to talk about then, and it's very uncomfortable now,
16 and I only went and talked to him in 2007 because after
17 talking to Anita and getting her perspective on it, she
18 thought that there might be something that could be
19 done medically to help me with the situation.

20 Q. And that's why Anita got you samples of Viagra.
21 Is that right?

22 A. Anita worked at a doctor's office that samples
23 were available. I never requested samples. I watched
24 the commercials on TV. I'm very scared of medicine
25 that has five thousand different side effects, and I

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1 refused to take it.

2 Q. Did you have samples of Viagra?

3 A. She may have had some. I never had them in my
4 possession, no, sir.

5 Q. To any extent, in 2007 is the first time you say
6 anything to your doctor that you've been going to since
7 2002; isn't that right?

8 A. Yes, sir.

9 Q. Okay. And that was in March of 2007; isn't that
10 right?

11 A. I believe so, yes, sir.

12 Q. And in August of 2007, you undergo treatment. Is
13 that right?

14 A. No, sir. I started treatment in March, I believe,
15 or April.

16 Q. Okay. And then also you had some testosterone
17 replacement done, also, in August of 2007?

18 A. I continuously used a testosterone pump. I
19 believe the medical name for it is Androgen.

20 Q. Okay. Well, that's not stated in your doctor's
21 notes, nor did he testify to that.

22 A. Okay.

23 Q. I'm going by what he says. Now you state -- but
24 to any extent you're treating -- you started using some
25 type of pump?

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1 A. I started using some type of gel that you rubbed
2 onto your shoulders twice a day, in the morning and at
3 night.

4 Q. And did you say something about a pump?

5 A. That was an Androgen pump. It comes in a pump.
6 You pump it out into your hands and you rub it on.

7 Q. I got you. Your doctor didn't testify to that.

8 Now ---

9 MR. DEJONG: Your Honor, I object to that.
10 He's testifying on that.

11 THE COURT: Just ask questions, Mr.

12 Richardson, to the witness if you would, please, sir.

13 Q. After August the 1st of 2007, the next time you
14 went to your doctor was in November of 2007. Is that
15 right?

16 A. That's correct.

17 Q. And in November of 2007, you told him you were
18 feeling good. Do you remember that?

19 A. Yes, sir. I was feeling good.

20 Q. And that your mood overall had improved. Do you
21 remember telling him that?

22 A. Yes, sir, I -- my -- I was feeling pretty good,
23 yes, sir.

24 Q. And that -- but you did have a complaint about
25 your knee; didn't you?

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1 A. Yes, sir. My knees have bothered me for a very
2 long time.

3 Q. And the doctor states that otherwise there was no
4 other complaints. Is that right?

5 A. No, sir.

6 Q. So his comment that you made no other complaints
7 is wrong?

8 A. I -- there was nothing else to complain about at
9 that time, Mr. Richardson.

10 Q. Okay. And you did not complain to him or talk to
11 him about any type of erectile dysfunction; did you?

12 A. Mr. Richardson, there was no need to. He had
13 already diagnosed me with it. I had it. I was under
14 treatment for it. It wasn't getting better. There was
15 no reason to continually discuss it with him every time
16 I went.

17 Q. So if you get sick and you're not getting better,
18 that's not a reason to talk to your doctor about it?

19 A. When we first started discussing this erectile
20 dysfunction, he told me it may never, ever get better.

21 That the medicine ---

22 Q. I understand that. But you ----

23 A. -- in my ---

24 MR. DEJONG: Your Honor.

25 Q. I'm go ahead.

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1 THE COURT: He's going to let him finish.

2 A. This medicine and this AndroGel testosterone may
3 or may not have an effect. But when it doesn't work,
4 and it wasn't working, there was no need every time I
5 went to see him to say, by the way, I still have this
6 problem. I mean, I'd learned to accept it. I faced
7 the reality that it was not going to get any better,
8 and I just lived with it.

9 Q. Okay. But the bottom line is at that time, you
10 weren't trying to get any better?

11 A. I had used the medicine he prescribed. My
12 testosterone level was not increasing. It was not
13 helping. I was not going to take Viagra or Cialis to
14 see if that even had any effect, because of the side
15 effects. I learned to live with the disease.

16 Q. And you never talked to him about sending you to a
17 specialists or anything of that nature; did you?

18 A. No, sir. I just accepted the fact that it was
19 what it was and it wasn't going to get any better.

20 Q. Okay. And then conveniently, on June the 17th,
21 you show up and then you do want to talk to him about
22 it; don't you?

23 A. Well, I think it was relative to what was going on
24 at the time to discuss my medical history with him
25 about that.

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1 Q. That's right. And that's medical history that
2 you're giving the doctor?

3 A. Yes, sir.

4 Q. In fact, everything he's got is what you've given
5 him through your mouth?

6 A. Yes, sir.

7 Q. And you state that you never laid on the bed in
8 that hotel room?

9 A. No, sir, Mr. Richardson, I did not lay on the bed
10 in the hotel room.

11 Q. Okay.

12 A. It was very difficult for me to lay down and get
13 up at four hundred and fifty pounds.

14 Q. And did you hear the statement that was read by
15 Ms. Burgess regarding Ms. Gearhart?

16 MR. DEJONG: Your Honor, I'm going to object
17 to that. He's very close to pitting witnesses.

18 MR. RICHARDSON: I'm not pitting. I just
19 asked him if he heard the statement Ms. Gearhart made?

20 THE COURT: I'll allow that question.

21 Q. Did you hear the statement Ms. Gearhart gave?

22 A. I believe so, yes, sir.

23 Q. And you've testified that ^{Complainant} came down, and I
24 believe your words to the detective -- will you agree
25 to this -- was that she never looked back.

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1 A. What do you mean?

2 Q. Those are you words. She never looked back.

3 A. There are two stories to that. There's the story
4 before she went back to Virginia in June and there's
5 the story ---

6 Q. My question is ---

7 MR. DEJONG: Your Honor, I object. Let him
8 answer the question.

9 MR. RICHARDSON: Your Honor, he hasn't
10 answered my question.

11 THE COURT: Rephrase the question. And
12 certainly we can let him -- I think he was not giving a
13 responsive answer to the question. Just state your
14 question, and then certain, Mr. Sanders, you can
15 explain that answer and the answer to the other
16 question.

17 MR. RICHARDSON: Yes, sir, Your Honor.

18 Q. The question being is that when you talked to the
19 detective, you told her that when ^{Complainant} came down
20 here, she never looked back.

21 A. She was very well adjusted and very happy, prior
22 to her grandmother's death, in South Carolina.

23 Q. Okay. And in fact I believe your father testified
24 she never complained; did she?

25 MR. DEJONG: Your Honor, I'm going to object.

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1 A. My father ---

2 THE COURT: Wait, wait just a minute.

3 MR. DEJONG: It's the same thing. The father
4 has testified.

5 THE COURT: I'll allow the question.

6 A. My father was not around Complainant when she got back
7 from Virginia, after her grandmother's death.

8 Q. Okay. For his knowledge of two years of Complainant
9 she never complained is what he testified to?

10 A. Complainant was very happy prior to her grandmother's
11 death and coming back from Virginia.

12 Q. Now, do you recall Ms. Gearhart telling you that
13 Complainant had accused you of touching her?

14 A. She did tell me that Complainant had made that
15 accusation, yes, sir.

16 Q. And you denied it to Ms. Gearhart?

17 A. I denied it then, and I'm denying it now.

18 Q. I understand. At that time you denied it to Ms.
19 Gearhart?

20 A. Absolutely, yes, sir.

21 Q. And at that time, nothing else happened; did it?

22 A. Anita and I had a very long conversation about the
23 accusation.

24 Q. You and Anita did?

25 A. Yes.

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1 Q. And Anita did not move out of the house; did she?

2 A. Can I finish?

3 Q. Well, I didn't realize you weren't finished, but
4 answer that question and then you can finish. She did
5 not move out of the house; did she?

6 A. She did not.

7 Q. Okay.

8 A. Anita and I had a very long conversation about the
9 accusation. Anita went back to Complainant and said,

10 Complainant I want to sit down and talk to you about this
11 accusation. Now, I can only tell you what Anita told
12 me the conversation was. I was not there.

13 Q. Well, then I don't want you to testify to it.

14 A. Okay. Then I can tell you they had a conversation
15 after the accusation was made. Complainant was very happy.

16 She continued to be happy. No, there was no problems.

17 Q. Okay. But you never had a conversation with her;
18 did you?

19 A. With who?

20 Q. Complainant

21 A. I didn't think it was appropriate for me to have a
22 conversation with Complainant about that accusation.

23 Q. So you didn't have any conversation with anybody
24 but Ms. Gearhart; did you?

25 A. Yes.

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1 Q. Yes, you did?

2 A. Yes, I had a conversation with Anita.

3 Q. And that was the only person you had a
4 conversation with about it?

5 A. That is correct, yes, sir.

6 Q. And at that point in time, you let it lay lie;
7 didn't you?

8 A. I did, yes, sir.

9 Q. And you did that knowing that that's a problem?

10 A. I did it based on Anita's conversation with
11 Complainant and Anita's conversation with me after the
12 accusation was made.

13 Q. So you weren't involved after you talked to Anita
14 at all?

15 A. No.

16 Q. Okay.

17 A. She told me what the conversation with Complainant was.

18 Q. And did you ---

19 A. She told me that she addressed it with Complainant
20 fully, that Complainant told her she was just angry over the
21 fact that I wanted Complainant to come to the office to do
22 her homework after school, instead of going home and
23 not doing her homework.

24 Q. Okay. So now we're talking about Complainant being
25 angry about homework?

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1 A. That was what the accusation was made over.

2 Q. Okay. Well, that's a third one. Did you ever
3 tell that to this detective?

4 A. She didn't ask me.

5 Q. Well, she didn't ask you a lot of things, but you
6 told her a lot of things. Did you not tell her that?

7 A. We -- I don't think we discussed -- I don't think
8 that that was brought up.

9 Q. Well, she asked you if Anita had asked you about
10 touching Complainant did she not?

11 A. Yes. And I told her what the conversation with
12 Anita was.

13 Q. And you didn't think it was relevant at that time
14 to talk to her about, well, Complainant was -- we had a
15 conversation and Anita had a conversation and Complainant
16 was mad at me, and that's the whole reason she made
17 this whole thing up?

18 A. I think that Anita addressed that with Ms. Burgess
19 during their conversation.

20 Q. Well, that's speculation. I'm talking about you.

21 A. No. I did not have that conversation with Ms.
22 Burgess.

23 Q. Did you talk to Anita before you came down and had
24 a conversation with Ms. Burgess?

25 A. Anita told me up to that point in time what had

1 happened. Anita was very upset. I said, I think that
2 the best thing that I can do at this point is to go to
3 speak to Rita Burgess myself. Anita made a phone call
4 to Rita Burgess. I did not have Rita Burgess' phone
5 number. She called her. She set up an appointment,
6 and I immediately went.

7 Q. Okay. And so you went -- from that point, you
8 drove to the LEC and there you gave your statement?

9 A. I -- yes, I had a conversation with Ms. Burgess.

10 Q. You had time to think before you got in there to
11 give that statement?

12 A. As much time as you have in ten minutes, I guess,
13 to get to some place.

14 Q. Okay. Well, we're assuming that you just had ten
15 minutes by your time. But bottom line is, is that you
16 had time to think before you got there?

17 A. I guess.

18 Q. It wasn't like the officer showed up on your front
19 porch and immediately started talking to you; was it?

20 A. No, sir.

21 MR. RICHARDSON: Beg the Court's indulgence.

22 Q. And about that point, when you were -- that she's
23 made all of this up now because she's angry about
24 homework, id you ever tell that to your attorneys?

25 MR. DEJONG: Your Honor, I object.

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1 THE COURT: I sustain the objection.

2 MR. RICHARDSON: Thank you. That's all the
3 questions I have.

4 THE COURT: Any redirect?

5 MR. DEJONG: Nothing on redirect, Your Honor.

6 THE COURT: All right. Thank you, sir. You
7 may step down. You may call your next witness.

8 MR. DEJONG: The Defense with regard to Mr.
9 Sanders rest, Your Honor.

10 THE COURT: Madam forelady, ladies and
11 gentlemen, this might be a good time to take a short
12 break. I'll ask you to go back to your jury room.
13 Don't discuss the case at this time. I'll call you
14 back in just a few moments.

15 (WHEREUPON, the jury exited the open court at
16 approximately 10:55 a.m.)

17 THE COURT: Are there any matters we need to
18 take care of before we take a break?

19 MR. DEJONG: Your Honor, I have rested but
20 all of the evidence is not in. I think it would be
21 appropriate for me to make my motions after Mr.
22 Robinson has presented his case, Your Honor.

23 THE COURT: All right. Are there any other
24 matters we need to take care of?

25 MR. DEJONG: I don't have any, other than my

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1 request for the charge.

2 THE COURT: All right. We'll get that for
3 you, and y'all can -- we'll take about a fifteen minute
4 break and I'll talk with you about the -- we'll take a
5 short break.

6 MR. DEJONG: Thank you, Your Honor.

7 (WHEREUPON, the court stood at recess for a short
8 break.)

9 THE COURT: For the record, and I shared with
10 the attorneys at the bench earlier, but earlier in the
11 week one of the jurors indicated that they knew a
12 witness that we did not announce at the start of the
13 trial, Ms. Chapman, and still indicated she could be
14 fair. We've received information from the jury that
15 the witness (sic) who knew a Judy Chapman, it was a
16 different Judy Chapman from that who testified. I
17 wanted the record to reflect that, that there's no
18 familiarity with this particular witness by that
19 particular juror. All right. Mr. Robinson, are you
20 ready to proceed?

21 MR. ROBINSON: Your Honor, as I explained to
22 the Court earlier, last night I was reviewing the
23 comments on the Greenville News, I believe, and a
24 comment was made and I immediately called my client.
25 And we had a witness, her grandson, Justin Eads ,

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1 driven here from Roanoke, Virginia. And I have -- I
2 would ask that I be allowed to use him as a witness in
3 this case. However, in view of, I believe it's Rule
4 613 in this case, I don't believe I can because I --
5 this is the first time I knew about this particular
6 witness. And I wanted to put on the record the Court's
7 ruling on that, which I believe -- I know what it's
8 going to be, but because of the, because of Rule 613.
9 But I had brought him down here.

10 The State has had the opportunity to speak with
11 him, but I think the rule kind of prohibits me from
12 bring him forward. I think if I had know at an earlier
13 date, it might have been different. I would have been
14 able to structure my questions to the alleged victim in
15 this case differently, but due to the lateness of this,
16 I think I am prohibited by the rule against bringing
17 him as a witness because of the -- I was not able to
18 elicit any testimony from the alleged victim in the
19 case regarding that particular topic.

20 THE COURT: All right, sir. I think Rule 613
21 sets forth the guidelines with the case law, and the
22 State would be able to rely on other cases, it must be
23 followed and -- I believe your recollection of the
24 testimony would be the same as mine. All right, sir.

25 Any other matters you need to bring up? Are you

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1 ready to call your first witness?

2 MR. ROBINSON: The Defense is ready, Your
3 Honor.

4 THE COURT: All right. Have our jury come in.

5 (WHEREUPON, the jury entered the open court at
6 approximately 11:38 a.m.)

7 THE COURT: Ladies and gentlemen, we're now
8 ready to proceed with the trial of the case. Mr.
9 Robinson, you may call your first witness.

10 MR. ROBINSON: May it please the Court. Your
11 Honor, the Defense would call Anita Gearhart.

12 MISTER CLERK: Place your left hand on the
13 bible and raise your right hand. Do you solemnly swear
14 or affirm the testimony you're about to give in this
15 case to be the truth, the whole truth and nothing but
16 the truth, so help you God?

17 DEFENDANT GEARHART: I do.

18 MISTER CLERK: If you would have a seat and
19 state your name for the record.

20 DEFENDANT GEARHART: Anita Jordan Gearhart.

21 ANITA JORDAN GEARHART,

22 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION

24 BY MR. ROBINSON:

25 Q. Good morning, Anita.

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1 A. Good morning.

2 Q. Anita, you have a little problem with hearing;

3 don't you?

4 A. Yes, sir, I do.

5 Q. And now if you can't understand or hear anything I

6 say, I'll repeat the question, okay?

7 A. Thank you.

8 Q. You're going to agree with me that if you can't

9 understand it, you'll ask me; right?

10 A. I'm sorry. I'm sorry?

11 Q. I wasn't trying try to trick you. If you don't

12 understand the question that I ask, you will ask me to

13 repeat it; right?

14 A. Yes, sir.

15 Q. Okay.

16 A. Yes, sir.

17 Q. Now, can you hear me now?

18 A. Yes.

19 Q. I'm not like doing a -- doing advertisements for,

20 like, Verizon Wireless, or anything like that, but I

21 want to make sure you can hear me.

22 A. Yes.

23 Q. Anita, what is your educational background?

24 A. I went through Wright Memorial School of Practical

25 Nursing. I'm an LPN.

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- 1 Q. You're an LPN?
- 2 A. Yes, sir.
- 3 Q. All right. And you currently are not working in a
- 4 nursing capacity; correct?
- 5 A. No, sir.
- 6 Q. Where do you work currently?
- 7 A. I've been working at the Miss South Carolina
- 8 Organization office.
- 9 Q. Okay. Now, where did you last work in the nursing
- 10 field?
- 11 A. I was working at Easley Internal Medicine in
- 12 Easley, South Carolina.
- 13 Q. And that was until what date?
- 14 A. My actual employment ended in May of this year.
- 15 Q. Why don't you tell the jury why it ended, as far as
- 16 why you were not able to continue working?
- 17 A. In November '09, I had bi-lateral knee
- 18 replacements. My doctor would not let me go back to
- 19 work. He wanted me to be out of work for six months due
- 20 to the fact that I had bi-lateral knee replacements.
- 21 And my family medical leave had ended after twelve
- 22 weeks.
- 23 Q. Okay. Okay. Did you have bi-lateral knee
- 24 replacement on both knees?
- 25 A. Yes.

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1 Q. Did that make it difficult to walk?

2 A. Very much so.

3 Q. Make it difficult to go, to move around?

4 A. Yes.

5 Q. Now, you heard testimony a few moments ago in terms
6 of living arrangements. Did you and your daughter live
7 in a house together?

8 A. Yes.

9 Q. At some point?

10 A. Yes.

11 Q. Before you had your surgery, did you live in a
12 house in Easley?

13 A. In Easley, yes, sir.

14 Q. Did you reside with Mr. Sanders in that case?

15 A. Not from July of '08 until October of '09.

16 Q. Okay. And where do you currently reside?

17 A. At near Liberty.

18 Q. Is that with Joey Sanders, III, the father?

19 A. Yes.

20 Q. Is that correct?

21 A. And Ms. Gail, yes, sir.

22 Q. And why did you move -- prior to that time, did you
23 live in your own house?

24 A. I'm sorry.

25 Q. Did you live in your own house prior to that time?

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- 1 A. Yes, sir.
- 2 Q. Okay. And why did you have to leave that house and
3 move in with the Sanders?
- 4 A. My lease was up on my house at that time, and due
5 to the fact I was having both knees replaced, my
6 physician with Home Health -- Ms. Gail, Papa Joe and
7 everybody felt like it was in my best interests to stay
8 with someone that could help me get around during that
9 time.
- 10 Q. Okay. Did you have the need of a walker?
- 11 A. Yes.
- 12 Q. Did you need a walker?
- 13 A. I had two weeks of in-patient rehab prior to being
14 discharged home.
- 15 Q. Okay. Now, where were you born originally?
- 16 A. Roanoke, Virginia.
- 17 Q. And Complainant is your daughter; is that correct,
18 Complainant . .
- 19 A. Is my daughter, yes, sir.
- 20 Q. Is your daughter. Okay. Okay. And why don't you
21 tell the jury about Virginia. Was your mother and
22 father in Virginia?
- 23 A. It's my mother and my step-father.
- 24 Q. Your step-father, okay.
- 25 A. Yes, sir.

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1 Q. And when you were in Virginia, did you become

2 married to a man named Steve Gearhart?

3 A. Yes. In May of '05.

4 Q. And when did that -- when did you separate from Mr.

5 Gearhart?

6 A. In October of '05.

7 Q. '05, okay. Now, when did you meet Joey Sanders,

8 IV?

9 A. We actually met, just in passing, in Myrtle Beach.

10 Q. Okay. All right. And what happened after that?

11 Tell me what happened after -- how did the friendship or

12 whatever develop?

13 A. Joey gave me his business card because he was in

14 the mortgage business, just in passing because I love

15 the beach area, was just looking through and trying to

16 find places at the beach. And he gave me his card at

17 that time. And then we started emailing back and forth,

18 and over a period of time became friends.

19 Q. Okay. And did you come down to Easley, South

20 Carolina at some point?

21 A. Yes.

22 Q. You did. Okay. Do you recall ever telling anyone

23 in your family that you were coming down to see a Ryan,

24 and actually went to see Mr. Sanders?

25 A. No.

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- 1 Q. Okay. Who is Ryan?
- 2 A. I do have a friend by the name of Ryan, but he
3 lives in White Falls, Virginia.
- 4 Q. Okay. Now, do you have a sister, Cindy, in Rock
5 Hill?
- 6 A. Yes.
- 7 Q. Did you come down during that period of time when
8 you were in Virginia, come down and see Cindy?
- 9 A. Yes. We saw -- we came during that whole summer
10 and saw my sister very frequently.
- 11 Q. Did Complainant come with you?
- 12 A. Yes. Many times.
- 13 Q. How many times did Complainant come with you?
- 14 A. When we went to see Cindy, almost every time I
15 came.
- 16 Q. Did you ever, did you ever tell your family that
17 you were coming to see Cindy and then go to see Joey?
- 18 A. No.
- 19 Q. Now, when you separated from Mr. Gearhart ---
- 20 A. Yes, sir.
- 21 Q. -- in October of that year ---
- 22 A. Yes, sir.
- 23 Q. -- did you move in with your mother?
- 24 A. Yes.
- 25 Q. So you and Complainant moved in with your mother?

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1 A. Yes.

2 Q. And what brought you to Easley?

3 A. My sister has lived here for fourteen plus years.

4 I have visited her over those years. She knew I loved

5 South Carolina. I had interviewed in Columbia, South

6 Carolina. And I had put out different resumes to

7 different areas in South Carolina, trying to find a job.

8 Q. Okay. Go ahead.

9 A. I had interviewed at one point at Foothills

10 Pediatrics in Powdersville, and Easley Pediatrics in

11 Easley.

12 Q. Okay. And those were interviews for job positions?

13 A. Yes.

14 Q. Okay. Do you remember the dates?

15 A. They were in the fall of '05.

16 Q. Fall of '05?

17 A. Uh-huh (affirmative).

18 Q. And when did you get a job in Easley?

19 A. I was offered a job in Easley in January of '06.

20 Q. Okay. When you came down to Easley in January

21 2006, did Complainant come with you?

22 A. Of '06, no, sir.

23 Q. Where was Complainant

24 A. She was with my mother.

25 Q. Now, at some point Complainant came down here. Is that

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- 1 correct?
- 2 A. Yes, sir.
- 3 Q. Okay. And did she reside with you when she came
4 down here?
- 5 A. Yes, sir.
- 6 Q. Where did you reside when she came here?
- 7 A. I was living at
- 8 Q. And that was with who?
- 9 A. With Joey Sanders.
- 10 Q. Okay. And that was when, in August of 2006?
- 11 A. It was around the first of August, yes, sir.
- 12 Q. Okay. How did things go?
- 13 A. Things seemed to be fine. I mean, Complainant adjusted
14 well. She started school that fall.
- 15 Q. Now, when you came down here for your job
16 interviews or to visit, where did you stay when you came
17 down here?
- 18 A. We usually stayed at the Comfort Inn.
- 19 Q. Okay. And who would come down with you?
- 20 A. I had come down, I know once or twice by myself.
- 21 One time Complainant came with me, and she actually went to
22 the job interview with me at Foothills Pediatrics.
- 23 Q. Okay. Now, when you came down to South Carolina to
24 stay at the Comfort Inn, was that -- was the purpose of
25 that to go to job interviews?

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1 A. I'm sorry?

2 Q. Was the purpose of that to go to job interviews?

3 A. Yes.

4 Q. And that was at places in the area like practices
5 in the area?

6 A. Yes, sir.

7 Q. Is that right?

8 A. Yes, sir.

9 Q. Okay. Now, when you would go to the Comfort Inn,
10 would Joey make a reservation for you?

11 A. Yes.

12 Q. And when you came to the Comfort Inn, did you sign
13 in?

14 A. Yes. I signed myself in.

15 Q. I want you to look at what has been marked in this
16 case -- these State Exhibits regarding the Comfort Inn.
17 And it's State's Exhibit 4, 1, 2, and 3.

18 MR. ROBINSON: May I approach? May it please
19 the Court?

20 THE COURT: Yes, sir.

21 MR. ROBINSON: May I approach the witness,
22 Your Honor.

23 THE COURT: You may.

24 Q. Anita, when you registered at the Comfort Inn, in
25 looking at those, does it show when you registered at

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- 1 the Comfort Inn, if you look at those?
- 2 A. I'm sorry. Can I have my glasses?
- 3 Q. Yes.
- 4 A. I'm sorry. I can't see.
- 5 Q. Would you always sign in when you came to the
- 6 Comfort Inn?
- 7 A. Yes, sir.
- 8 Q. Okay. I want you to tell the jury the dates that
- 9 you signed in, all right, from the State's exhibits?
- 10 A. This is one date, from 12/9/05 to 12/10/95.
- 11 Q. Okay. And how do you know that's when you stayed
- 12 there?
- 13 A. I signed myself in and initialed it.
- 14 Q. Okay. And what other days did you stay there, from
- 15 the hotel records from the Comfort Inn, which are marked
- 16 as State's Exhibits?
- 17 A. And here's the second one from 11/25/05 to
- 18 11/29/05.
- 19 Q. Okay. Okay. Are there any other times in there
- 20 that you stayed at the Comfort Inn?
- 21 A. No, sir.
- 22 Q. Now, during this period of time that you came down
- 23 here and stayed at the Comfort Inn, how many times did
- 24 Complainant come? Did Complainant stay with you each -- Complainant
- 25 stay with you each of those times?

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1 A. Yes.

2 Q. Now, what did you do when she came, when you and
3 she came down here, what did y'all do? Did you get out
4 and see things? What did you do?

5 A. We -- there was one time we went bowling, out to
6 eat. One time we went, and I'm sorry, I don't remember
7 the area in Georgia, but where the Cabbage Patch place
8 is where they do the Cabbage Patch dolls.

9 Q. Right.

10 A. We went there and toured that and visit. And we
11 went to Helen, Georgia and spent the day.

12 Q. Okay. Did Joey ever come in the hotel room when
13 you were there, when Complainant was there?

14 A. Did he ever come ---

15 Q. Come in the hotel room?

16 A. He came in once, yes, sir.

17 Q. And what did he do?

18 A. He actually came in and Joey was a very large man.
19 He sat back up against the headboard, kind of laying
20 back in the bed in, I guess, a comfortable position.

21 Q. Did he lay in the bed?

22 A. He wasn't actually, I guess, laying. It was
23 sitting back, laying up against the headboard.

24 Q. Did you ever see him touch Complainant or fondle Complainant

25 A. No.

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1 Q. Did you ever see him get under the covers with
2 Complainant at any time?

3 A. Never.

4 Q. Did Complainant seem to get along with him pretty well?

5 A. She seemed to like Joey. They -- I mean, she joked
6 with him, picked at him.

7 Q. Did Complainant ever tell you that Joey ever fondled
8 her?

9 A. No.

10 Q. Did Complainant ever tell you that he put his hands
11 between her legs?

12 A. No.

13 Q. Did she ever tell you that he had intercourse with
14 her?

15 A. No.

16 Q. If she had told you that she had intercourse or
17 that he had fondled her, what would you have done?

18 A. You want my initial real instinct?

19 Q. Yes. Why don't you tell the ---

20 A. I probably would have wanted to kill him.

21 Q. Okay. Did you ever have intercourse with Joey?

22 A. No.

23 Q. No sex?

24 A. No.

25 Q. Why?

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1 A. He was unable to.

2 Q. Now, you remember you gave a statement to -- a
3 statement that wasn't recorded to Ms. Burgess. Do you
4 remember that?

5 A. Yes.

6 Q. Now, I think you said in that statement you were
7 intimate three times, remember?

8 A. Yes.

9 Q. Why don't you tell the jury what you meant by
10 intimate?

11 A. Hugging, kissing, embracing.

12 Q. That's it?

13 A. I think that's being intimate with someone, yes,
14 sir.

15 Q. Did you observe how the -- let me withdraw the
16 question. I can't speak. Let's talk about, let's talk
17 about your daughter, Complainant okay?

18 A. Yes, sir.

19 Q. Now, why don't you tell the jury what happened, as
20 far as you observed, since you've known her for, at that
21 point, twelve years, her personality change. What did
22 you start noticing in the spring of 2008?

23 A. Complainant was always usually a very happy go lucky
24 child. We had our typical mother/daughter arguments. I
25 mean, I'm not going to deny that by any means. Complainant

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1 could be very defiant at times when she wanted to be.

2 Q. What did you guys argue about?

3 A. A lot of times it would be over homework, grades,
4 boys. I did get her a cell phone and I had to
5 confiscate that on several occasions.

6 Q. Why?

7 A. I had found inappropriate text messaging with other
8 males and I did not feel like it was appropriate. So I
9 took it away from her.

10 Q. Let's, let's stick on -- do you need some water?

11 A. Please.

12 MR. ROBINSON: May I get her some water, Your
13 Honor?

14 THE COURT: Yes, sir. We'll take care of
15 that.

16 Q. Did you have confrontations with ^{Complainant} about boys?

17 A. Yes.

18 Q. What were the conversations regarding, if you can
19 tell me?

20 A. During the spring of '08, or during the winter of
21 '08, ^{Complainant} had played basketball ---

22 MR. RICHARDSON: Your Honor, may I approach?

23 THE COURT: Yes, sir.

24 (WHEREUPON, Mr. Richardson, Mr. DeJong, and Mr.
25 Robinson approached the bar.)

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1 Q. So tell the jury what changes you noticed in 2008?

2 A. Complainant became more -- I'm not sure of the exact
3 word to use, hostile, belligerent.

4 Q. Was this before your mother died of after?

5 A. It started before my mother died.

6 Q. Started becoming belligerent?

7 A. Yes.

8 Q. Did she at any point have an urge to go to, that
9 you, -- as far as your conversation, go to Virginia?

10 A. Well, she got angry with me. She would constantly
11 threaten, I'm going to move back to Virginia.

12 Q. Okay. What other things were you arguing about at
13 that point? Why was she so hostile towards you?

14 A. I just thought it was typical adolescent behavior.

15 A lot of it -- her room, she wouldn't keep her room
16 tidy. We would have a housekeeper like once every
17 couple of weeks to vacuum and help with that kind of
18 thing.

19 Q. So it was kind of a mother/daughter arguments ---

20 A. Yes.

21 Q. -- about those kind of things; right?

22 A. Yes, sir.

23 Q. Was Complainant -- were Complainant and your mother very
24 close?

25 A. Very much so.

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1 Q. And your mother died when?

2 A. June 6 of '08.

3 Q. Okay. Now, I think you testified that Complainant

4 stayed with her from early 2006 to late July 2006;

5 right?

6 A. Yes.

7 Q. Is that right? Okay. And what happened to Complainant

8 when your mother died?

9 A. I saw a total change in Complainant She became very
10 withdrawn, very angry, and very -- especially towards

11 me. She was very angry towards me.

12 Q. And why do you feel she was angry towards you?

13 MR. RICHARDSON: Objection, Your Honor. He's
14 now calling for speculation.

15 THE COURT: I'll allow her to answer the
16 question if she's able to.

17 A. Complainant actually admitted to me she blamed me for my
18 mother dying?

19 Q. Is that because ---

20 A. Because I'm a nurse and she felt like I could have
21 done something to have prevented it.

22 Q. Okay. Did she express desires after that to move
23 back to Virginia?

24 A. I'm sorry.

25 Q. Did she express a desire at that point, after your

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1 mother died, to move back to Virginia?

2 A. Yes. She felt like she needed to take care of her
3 grandfather.

4 Q. Okay. And what did you tell her when she wanted to
5 go back to Virginia?

6 A. I told her she had to come back home with me.

7 Q. I'm going to go over with you a minute ago -- or
8 for a moment the -- your conversation with Ms. Burgess
9 in this matter. Do you remember having a conversation
10 with Ms. Burgess, who I believe is at the Counsel table?

11 A. Yes, sir.

12 Q. Okay. Let's go over that for a second. Do you
13 remember telling her that Joey at some point had been
14 very loving to her, to Complainant correct?

15 A. Correct.

16 Q. And you also advised her that -- let me make sure
17 this is right. This is what she says you advised her.
18 That Joey was grabbing at her boobs and Anita asked --
19 you had asked Complainant if she told Joey to stop and she
20 said, yes. Is that true. Is that what you said to Ms.
21 Burgess?

22 A. Yes.

23 Q. Now, you also told her that you asked Joey about
24 this touching thing, this touching of the boobs,
25 whatever it was?

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1 A. Yes.

2 Q. Was this an occasion where -- how did -- tell me
3 about that occasion. Were you talking about just like
4 rushing, going by, what was that occasion exactly?

5 A. I'm sorry. I don't understand.

6 Q. As far as this, you advising that she told you that
7 Joey was grabbing at her boobs, and you confronted her,
8 you asked her about that?

9 A. Right.

10 Q. What was that?

11 A. Do you mean Complainant

12 Q. No. What was -- what did she say what he was
13 doing?

14 A. I asked her was he actually grabbing at her breast
15 or was he picking on her, what was the actual
16 consequences of what was going on at the time?

17 Q. Right.

18 A. And Complainant became very hostile with me and could
19 not give me any definite answer as to the circumstances
20 of what had happened.

21 Q. Okay. Okay.

22 A. And I said, Complainant you know, was he actually
23 grabbing at your breast? What was the circumstance?

24 A. And she could not give me a defiant (sic) answer.

25 Q. Okay. And did you then go to Joey?

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1 A. Yes.

2 Q. And did you confront Joey?

3 A. Yes.

4 Q. And Joey denied this?

5 A. Yes.

6 Q. Okay. Now, you also said -- she also puts in her
7 statement here you told her that you've known Joey for
8 five years. Now, you met Joey when? When did you meet
9 Joey?

10 A. It was in the summer of 2003?

11 Q. So about five years. Is that fair? And that you
12 had met him -- let's see, that you had met him on-line.
13 Did you tell her that?

14 A. Well, we had corresponded more on-line. We had
15 just met, an acquaintance, but I did correspond with him
16 on-line.

17 Q. Well, where did you meet him?

18 A. In Myrtle Beach?

19 Q. And did you come down to visit him?

20 A. Yes.

21 Q. In South Carolina at times?

22 A. Yes.

23 Q. Did you go to dinner with him?

24 A. Yes.

25 Q. Now, how many times in that long period of time did

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1 Complainant every come with you?

2 A. She never came down until '05, when I came down
3 with interviews.

4 Q. Okay. And those are the times that you mentioned
5 to the jury that you signed into the hotel. Is that
6 correct?

7 A. Right.

8 Q. Did you ask him at some point if he had any
9 medications for his problem?

10 A. Yes.

11 Q. And what -- he didn't have any medications; did he?
12 Or he didn't take any medications? What did he say
13 about it?

14 A. When I actually started staying with Joey, that's
15 when I found out about his numerous, numerous medical
16 problems and he was very frustrated because of the
17 erectile dysfunction. He was on high doses of insulin.
18 He was on Lipitor. He was on hypertensive medicines,
19 and I explained to him all of that could be part of the
20 problem, just like some of the side effects, and
21 encouraged him to talk to his doctor about it.

22 Q. Now, in your statement, which is what Ms. Burgess
23 wrote in your statement, did you ever tell her that you
24 and Joey would lay in bed together and watch TV?

25 A. Well, that is the same incident where Joey was

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1 leaning up against the back board. He was big. I mean,
2 he could lay prone in the bed, he was so large. But he
3 was laying up against the headboard in the bed.

4 Q. And was Complainant in the bed with him?

5 A. No. She was sitting over on the chair at the -- it
6 had like a little table, dinette area, and she was
7 sitting there.

8 Q. Okay. Now, as far as at point during your
9 interview or after your interview, you saw Complainant is
10 that correct?

11 A. I'm sorry.

12 Q. At some point, either before or after or during
13 your interview with Ms. Burgess, you actually saw
14 Complainant Is that correct?

15 A. Yes.

16 Q. Did you ask her for her cell phone?

17 A. I did.

18 Q. Why?

19 A. Because I knew of the inappropriate texting she had
20 been doing.

21 Q. Okay. That's all fine. That's as much as you have
22 to say, okay? And did you get the cell phone back?

23 A. I did.

24 Q. Did Ms. Burgess ever ask you for the cell phone?

25 A. No, sir.

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1 Q. Okay. Now when you got there to talk to Ms.

2 Burgess, did you know what she was having you there for?

3 A. I'm sorry?

4 Q. Did you know why she had you come to the station,

5 come to the police station?

6 A. When she initially called me, she just said that

7 she needed to talk to me about Complainant

8 Q. Okay. Okay. And that's it?

9 A. And then when I got there, is when she explained to
10 me what was going on.

11 Q. Okay. Now, right now you are currently, you are
12 currently just working for the pageant; correct?

13 A. Yes, sir.

14 Q. And how long is this going to be going on with your
15 knees? When will you be able to go back to work as an
16 LPN?

17 A. I need to see him again in two weeks, and at that
18 time, he'll let me know if I can go back to work as a
19 nurse.

20 MR. ROBINSON: I beg the Court's indulgence.

21 THE COURT: Yes, sir.

22 Q. That's all I have, Ms. Gearhart. Answer any
23 questions the attorneys may have.

24 THE COURT: Mr. DeJong, any questions of the
25 witness?

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1 MR. DEJONG: Just a few. May it please the
2 court.

3 CROSS EXAMINATION

4 BY MR. DEJONG:

5 Q. Ms. Gearhart, if I understood you to say that over
6 the summer of 2005, you and Complainant visited your sister,
7 Cindy?

8 A. Yes, sir.

9 Q. Now, where did Cindy live?

10 A. Rock Hill.

11 Q. All right. When you went to visit Cindy, was that
12 to visit Cindy or was there an ulterior motive of coming
13 to see Joey?

14 A. No, we always was at my sister's house.

15 Q. Okay. And so I'm clear, that question wasn't
16 really clear. When you went to see Cindy, would you see
17 Cindy and then come and see Joey?

18 A. No. We always stayed with Cindy and then came back
19 home.

20 Q. All right. So there were a number of times over
21 that time frame where you did go to see your sister,
22 Cindy?

23 A. Yes, sir.

24 Q. And that was in '05. Okay. Did you ever, coming
25 up to '06 when you, and then later on Complainant, moved in

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- 1 with Joey, from the time that y'all moved in, and more
2 particularly until Complainant left the home in June, did you
3 ever see Complainant exhibit any fear of Joey whatsoever?
4 A. No, sir.
5 Q. Okay. Briefly describe your observation of Joey
6 and Complainant relationship?
7 A. They seemed to be very loving. I mean, Complainant was
8 always hugging on Joey like she would. Complainant was a
9 very loving child. She would hug on him, Papa Joe. I
10 mean, she was never afraid of him.
11 Q. You met -- well, let's not go back all the way
12 there. Let me show you what's been marked State's
13 Exhibit -- excuse me. Defendant's Exhibit Number 1. Do
14 you recognize that, Ms. Gearhart?
15 A. Yes, sir. I do.
16 Q. Can you name the people that are in that picture?
17 A. It's Joe Sanders, III, Joey, Complainant myself and
18 then the family dog, which was Winston.
19 Q. Okay. That's an awfully small picture, but I'm
20 going to try to hold it up here. If you can kind of
21 crane your neck and look around here. The gentleman
22 standing under the tree, who is that?
23 A. That's Papa Joe.
24 Q. And what is his relationship to Joey?
25 A. That's his father.

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1 Q. And in the -- seated in the chair over here, who is
2 that?

3 A. That was me.

4 Q. And seated in the other chair, who was that?

5 A. That was Joey.

6 Q. And who is the other person in the picture?

7 A. Complainant

8 Q. Do you remember when this picture was made?

9 A. That was when we had our Adopt-A-Highway barbeque.

10 Q. Was that picture contrived, staged or anything
11 else?

12 A. No.

13 Q. All right. I want you to look back at that picture
14 again, if you would, please, Ms. Gearhart, that is
15 Defendant's Exhibit Number 1. I want you to look at
16 Joey as he sits in that chair. As you look at it, is he
17 a large man in that chair?

18 A. Yes, sir.

19 Q. Now, in '05 was he larger or smaller than he was in
20 '08?

21 A. Larger.

22 Q. How much larger, if you know?

23 A. He weighed between three eighty and four hundred
24 pounds.

25 Q. All right. Thank you, ma'am. If I may have that

1 back, please. If I understood you correctly, you said
2 you did not become aware of Joey's medical problems
3 until you moved in with him; right?

4 A. We had discussed it when I had came down when we
5 were in an intimate type of situation, when we would
6 kiss or hug and whatever. He then confided in me that
7 he was unable to have sex.

8 Q. All right. And, ma'am, I do not mean to embarrass
9 you in any way, but I've got to ask the question, okay?
10 Did you and Joey ever have sexual intercourse?

11 A. No, sir.

12 Q. Did you ever obtain from your place of employment
13 samples of Viagra or -- I can't even pronounce the other
14 one, but we know medication -- if I say Viagra, we know
15 what medication we're talking about; right?

16 A. Yes, sir.

17 Q. Did you ever provide Joey with samples of that
18 medication or a similar medication during your
19 relationship?

20 A. I had offered to bring home samples. That was one
21 of the things that we -- our doctors would allow us to
22 do, they would give us samples, but he denied them.

23 Q. All right, ma'am. Now, the -- so in one sense, I
24 guess, you and Joey had a relationship, but it was
25 almost a plutonic relationship. Would that be ---

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1 A. Yes.

2 Q. Okay. A deep and abiding friendship, if we said
3 something like that?

4 A. Yes, sir.

5 Q. Okay. But not a sexual relationship?

6 A. No, sir.

7 Q. Okay. Now, you became aware then, I gather, of
8 Joey's medical problem sometime in '05?

9 A. It was probably in '04 when I actually found out
10 about it.

11 Q. And then you encouraged him to go see a doctor?

12 A. That was after I had moved in '06.

13 Q. Was he resistant to that initially?

14 A. He was.

15 Q. Did you keep after him?

16 A. I did. He was very embarrassed.

17 Q. Maybe nag a little bit?

18 A. Being a nurse and knowing his medical problems and
19 the medicines, I knew the side effects, and encouraged
20 him to talk to his doctor about that.

21 Q. Did he finally agree with you or go to the doctor?

22 A. Yes.

23 Q. Do you know when that was, Ms. Gearhart?

24 A. I think Dr. Barksdale said in '07.

25 Q. You have no reason to say it was different than

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1 '07; right?

2 A. Right.

3 Q. Once Joey went to the doctor, were you -- do you
4 know whether or not any treatment was started?

5 A. Yes. Dr. Barksdale drew blood and that's when we
6 found his testosterone level was extremely low.

7 Q. To your knowledge, was any medication prescribed
8 for that?

9 A. Yes. That's when he was placed on the Androgen.

10 Q. Can you give us any -- that is a gel. Is that
11 correct?

12 A. Yes.

13 Q. And where -- that's rubbed onto the body?

14 A. Yes. It comes in a pump bottle and you do so many
15 -- I think it's like five pumps. It's so many grams and
16 you have to rub it on your arm.

17 Q. When you we say a pump bottle, it's kind of like
18 the old hand sanitizer bottles we see everywhere now?

19 A. Yes. Exactly.

20 Q. All right. After Joey went to the doctor and that
21 treatment was started, was there any difference that you
22 could tell as far as Joey's problem?

23 A. No.

24 Q. And so we're clear, and, again, I do not mean to
25 embarrass you, ma'am, any difference in his erectile

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1 dysfunction?

2 A. No.

3 Q. Jumping way back. When Ms. Burgess went out to
4 speak to Complainant you were not home; were you?

5 A. No, sir. I was not.

6 Q. And I think that was on June the ---

7 A. 13th.

8 Q. -- 13th. Thank you, ma'am. Complainant stated that you
9 were in Blacksburg paying tickets, traffic tickets.

10 A. I believe that's what she said.

11 Q. Were you in Blacksburg paying traffic tickets?

12 A. I left the house about ten o'clock that morning to
13 run errands, and I got the call from Ms. Burgess, I
14 think, shortly after twelve-fifteen.

15 Q. All right, ma'am. The question is, were you in
16 Blacksburg?

17 A. No.

18 Q. Do you know where Blacksburg is?

19 A. I know where the exit is.

20 Q. Okay. All right, ma'am. But you were not in
21 Blacksburg that day?

22 A. No.

23 Q. The errands you were running, were those all local
24 errands?

25 A. Yes.

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- 1 Q. Okay. If I understood you correctly, Complainant came
2 with you twice and the two of you stayed in the Comfort
3 Inn?
4 A. Yes, sir.
5 Q. Did you come other times that Complainant didn't come
6 with you?
7 A. Yes, sir.
8 Q. Would you stay in the Comfort Inn?
9 A. Yes, sir.
10 Q. And did Joey make the reservations for you?
11 A. There was other times he did not. I made my own
12 reservation.
13 Q. So where you made your reservation, we wouldn't see
14 that in this paperwork that Mr. Robinson showed you;
15 correct?
16 A. Correct.
17 Q. All right.
18 MR. DEJONG: One moment please, Your Honor.
19 The witness is with your, Mr. Richardson.
20 THE COURT: You may cross examine the witness.
21 MR. RICHARDSON: Thank you, Your Honor.
22 **CROSS EXAMINATION**
23 **BY MR. RICHARDSON:**
24 Q. When did you first start coming to Easley, South
25 Carolina when you were staying in a hotel?

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1 A. It was probably in the fall of '05.

2 Q. Okay. Prior to the fall of '05, had you been to

3 Easley and stayed at the Comfort Inn hotel?

4 A. I'm sorry. I didn't ---

5 Q. I'm sorry. You have ---

6 A. I do have a hearing problem. I'm sorry.

7 Q. All right. If I don't speak loud enough, you just

8 tell me, okay?

9 A. Okay.

10 Q. I'll be more than happy to repeat the question.

11 Prior to the fall of '05, did you come down to Easley,

12 South Carolina and stay in the Comfort Inn?

13 A. I probably had been here once or twice.

14 Q. Okay. And during that time, when you came down

15 those times, that's when ^{Complainant} wasn't with you; right?

16 A. Correct.

17 Q. Now -- and at that time, you were -- she stayed

18 with Steve; right?

19 A. No. She would stay with my mother when I came

20 down.

21 Q. Okay. Were you married to Steve in May of 2005?

22 A. Right.

23 Q. So you would come down when you were still married

24 to Steve; is that right?

25 A. Right.

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1 Q. And so what you're saying is she wouldn't stay with
2 Steve. She would go over to your grandmother's house?

3 A. She preferred to stay with my grandmother. She was
4 afraid of Steve.

5 Q. Okay. Very good. Now, you told the detective,
6 just as Mr. Sanders did, that you met on-line. Do you
7 remember doing that?

8 A. I remember saying that we exchanged on-line. I
9 don't remember that I said we met on-line.

10 Q. Okay. But you had said that you had known Joey
11 Sanders for five years ---

12 A. Correct.

13 Q. -- and what you -- what the statement says is that
14 you met on-line. Was there communication between you
15 and Joey Sanders over the computer?

16 A. Yes. When he gave me his business card, it had his
17 email address and I did email him.

18 Q. Okay. Was that while you were still living with
19 Steve?

20 MR. ROBINSON: Your Honor, Objection.

21 Relevance to this case.

22 THE COURT: Overruled.

23 Q. And was that while you were still living with
24 Steve?

25 A. No. This started in '03.

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1 Q. Well, it started in '03, but did it continue

2 through until you started coming to Easley?

3 A. Well, Joey and I had became friends and we were

4 still friends while I was married to Steve, yes.

5 Q. Okay. And that's what I'm asking you. The

6 correspondence and the talking on-line took place while

7 you were still with Steve. Is that right?

8 A. We usually talked on the phone at that point in

9 time. Very rarely did we email at that point in time.

10 Q. Okay, ma'am. And you were living -- so we're

11 correct, you were living -- at that time you were living

12 in Virginia?

13 A. Correct.

14 Q. Okay. And you were -- you admit to working. You

15 were working in Virginia at that time; weren't you?

16 A. Yes.

17 Q. Okay. And you testified that you came down here

18 for job interviews?

19 A. I did.

20 Q. Okay. Now, -- and you have a sister. Your

21 sister's in Rock Hill?

22 A. Yes, sir.

23 Q. Okay. And what's her name?

24 A. Cindy Hamlet.

25 Q. Okay. And Ms. Hamlet, is she here?

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- 1 A. I'm sorry. Her name's Cindy Collar now. I'm
2 sorry.
- 3 Q. Is she here?
- 4 A. No.
- 5 Q. How do you spell her last name?
- 6 A. C-O-L-L-A-R.
- 7 Q. Now, there was occasion that you would leave Steve
8 to come down to Easley and bring Complainant Is that right?
- 9 A. Not until after he and I separated.
- 10 Q. Okay. But when you separated, where did you live
11 then?
- 12 A. I'm sorry?
- 13 Q. When you separated from Steve, where did you live?
- 14 A. Where did I live?
- 15 Q. Yes, ma'am.
- 16 A. We moved back to my mother's house.
- 17 Q. Okay. Now, you say you were coming down here for
18 job interviews?
- 19 A. Yes.
- 20 Q. All right. And the record that I believe you
21 testified to that one of the times you came down here
22 was, you stayed one day. Is that right?
- 23 A. No. In November, we were here for four days. I
24 had a job interview on that Monday.
- 25 Q. Okay. Well, was that Thanksgiving weekend?

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1 A. I believe it was.

2 Q. Okay. Prior to Thanksgiving weekend, when you were
3 down here for four days, the prior time you were down
4 here for one day. Is that right?

5 A. No. It was for two days.

6 Q. Okay. It was for two days?

7 A. Yes.

8 Q. And that time, ^{Complainant} was with you. Is that right?

9 A. Only in November and December is when ^{Complainant} came
10 down with me.

11 Q. Okay. And how many times did you come total?

12 A. Four maybe, tops.

13 Q. Four times tops? And that was starting in the
14 summer of 2005?

15 A. Well, I was interviewing in -- I had interviewed in
16 Columbia starting in the fall of '05 -- I guess it was
17 actually the fall of '05. I can't remember the exact
18 dates, but it was in the fall of '05, I started job
19 interviewing.

20 Q. Okay. And so you would bring ^{Complainant} down here
21 while you were doing job interviews?

22 MR. ROBINSON: Objection, Your honor.

23 A. She came with me one time for a job interview.

24 Q. All right.

25 A. Because she was out of school.

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- 1 Q. Now, did the defendant -- he had surgery, gastric
2 by-pass. I'm not sure what that is.
- 3 A. Gastric by-pass, yes, sir.
- 4 Q. Do you remember when that was?
- 5 A. September of '07.
- 6 Q. Okay. And how much did he weigh after September of
7 '07.
- 8 A. He had started gradually losing weight. I mean,
9 he's not like -- he had to go every month to be weighed
10 at Dr. Board's office.
- 11 Q. Did he continue to lose weight into 2008?
- 12 A. Yes.
- 13 Q. Okay. Do you recall how much he weighed in 2008?
- 14 A. I think he's gotten down to three hundred and
15 twenty pounds.
- 16 Q. Okay. And during your contact with Mr. Sanders,
17 and you said it was from 2003 through 2005, that y'all
18 were doing some on-line contact and telephone contact?
- 19 A. Correct.
- 20 Q. Okay. Did you know he was married?
- 21 A. I knew he was married, but I also knew that they
22 were in the process of separating.
- 23 Q. Did you know -- and you realize she was still in
24 the house?
- 25 MR. ROBINSON: Your Honor. I'm going to

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1 object. May we approach, Your Honor?

2 THE COURT: Yes, sir.

3 (WHEREUPON, Mr. Richardson, Mr. DeJong, and Mr.

4 Robinson approached the bar.)

5 THE COURT: Sustained.

6 Q. Okay, ma'am. Now, you told the detective that

7 Complainant had told you that the Defendant Sanders had

8 touched her and rubbed her. Is that correct?

9 A. Correct.

10 Q. And so Complainant did tell you that?

11 A. Yes.

12 Q. Okay. And you confronted the Defendant about it?

13 A. I did.

14 Q. Okay. And after that, did you do anything else?

15 A. I had asked Complainant to explain to me exactly what

16 happened. She had lied to me many times about many

17 things. And I ---

18 Q. I didn't ask you that. I'm asking you about this,

19 when she's rubbing on him.

20 A. I'm sorry.

21 Q. When she said that she had been rubbed on to. You

22 had a conversation with the defendant. And then you had

23 a conversation with Complainant Is that right?

24 A. She never said rubbed. I'm sorry.

25 Q. Okay. I'm sorry. What did she say?

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- 1 A. She said that he had brushed or grabbed at her
2 boob. I'm not sure exactly the term that she used.
3 Q. Okay. And then you had a conversation with her
4 about that as a parent?
5 A. Yes. I tried to question her about that.
6 Q. Okay. And you didn't do anything further than
7 that; did you?
8 A. Yes. I talked to Joey about it and I talked to
9 Papa Joe about it. Complainant had become very hostile with
10 me.
11 Q. Well, did you do anything in the ways of talking to
12 a counselor about it?
13 A. No.
14 Q. Did you call the police about it?
15 A. No.
16 Q. Did you have any authority talk to Complainant about it?
17 A. No.
18 Q. In fact, what you did is you took the Defendant's
19 word; didn't you? He denied it and you took his word.
20 Isn't that right?
21 A. Yes.
22 Q. And at that time, you were living in the house with
23 the Defendant. Is that right?
24 A. I was.
25 Q. And was he working at that time?

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1 A. Yes.

2 Q. Was he paying for the house?

3 A. I paid him three hundred dollars a month towards
4 rent. I helped with the finances.

5 Q. So he helped with the house?

6 A. I'm sorry?

7 Q. He paid for the majority of the house?

8 A. I paid for groceries and paid him three hundred
9 dollars a month for rent.

10 Q. Okay, ma'am. And do you remember right now --
11 you've had supervised visitations with Complainant have you
12 not?

13 A. Yes, sir.

14 Q. And those supervised visitations have taken place
15 here in Easley; haven't they?

16 A. Easley and Greenville.

17 Q. Okay. And do you recall having a supervised
18 visitation with her where you discussed with her about
19 you going to jail?

20 MR. ROBINSON: Objection, Your Honor.
21 Relevance.

22 THE COURT: I overrule the objection.

23 A. I don't remember if I did that or not.

24 Q. You don't remember telling her that if this
25 continues, that you may go to jail?

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1 A. No, I do not. I'm sorry.

2 Q. In the Hobby Lobby down in Easley. You do not
3 remember that?

4 A. No, sir.

5 Q. Did you have conversations about this case with
6 Complainant at that time, during that visitation?

7 A. No. We were Court ordered not to discuss the case.

8 Q. So you simply just don't remember if you said to
9 her anything about you going to jail?

10 A. No. We were Court ordered not to discuss the case.

11 Q. And you said that she was making -- talking about
12 wanting to go to Virginia and that that was typical,
13 adolescent behavior; isn't it?

14 A. That's what I contributed it to, yes, sir.

15 Q. I mean, the way she was acting is, it was a typical
16 twelve year old; isn't it?

17 A. That's what I thought it was.

18 Q. You said she was making threats like a typical
19 twelve year old?

20 A. Yes, sir.

21 Q. And she was saying these things -- is it fair to
22 say y'all would get in arguments about things; right?

23 A. Yes, sir.

24 Q. And she would say these things in the heat of
25 passion; wouldn't she?

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1 A. Yes, she would.

2 Q. A lot of things are said in the heat of passion;

3 aren't they?

4 A. Yes, sir.

5 Q. And you're presently living with the Defendant's

6 father?

7 A. Yes.

8 Q. Is that basically next door to the Defendant?

9 A. It's probably -- well, you can't see the houses one
10 from the other.

11 Q. It's in the same area?

12 A. It's in the same area, yes.

13 Q. Okay. I think maybe he said two hundred yards. Is
14 that a fair distance?

15 A. No. Because you can't see the houses. It's more
16 than that.

17 Q. Okay. And you remember going down and talking to
18 Detective Burgess. Is that correct?

19 A. Yes, sir.

20 Q. Okay. And you went in to see Complainant didn't you?

21 A. They brought Complainant in to see me.

22 Q. Okay. They brought Complainant in to see you and the
23 first comment you made to her was, give me your cell

24 phone?

25 A. Correct.

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1 Q. And your next comment was, I'm having it

2 disconnected.

3 A. Correct.

4 Q. And it was at this time, in a police station, where

5 she is a suspected -- been abused of -- sexually abuse,

6 that you decide to take a phone away because of text

7 messages. Is that your testimony?

8 A. Yes, sir.

9 Q. Thank you.

10 MR. RICHARDSON: That's all I have.

11 THE COURT: Any redirect?

12 MR. ROBINSON: Redirect, Your Honor.

13 THE COURT: Yes, sir.

14 **REDIRECT EXAMINATION**

15 **BY MR. ROBINSON:**

16 Q. Without discussing the content, the emails that

17 you're talking about as far as the phone goes, did you

18 consider these inappropriate text messages?

19 A. They're very inappropriate.

20 Q. Okay. In terms of -- as far as your conversation

21 with Joey after she told you that she may have brushed -

22 - he may have either brushed up against her or touch her

23 boob, whatever it was, did you have any reason to

24 believe her?

25 A. No, sir.

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Anita Gearhart - Redirect Examination by Mr. Robinson

1 Q. Now, when you went to talk to Joey about this, did

2 Joey deny it?

3 A. Yes, sir.

4 Q. If you had thought at any time that anything like

5 this was going on, what would you have done?

6 A. I'm sorry. I didn't hear you.

7 Q. If you had thought that anything inappropriate had

8 been done by Joey, what would you have done if she had

9 told you that?

10 A. If I truly had thought something was inappropriate,

11 I would have removed her from the situation.

12 Q. And when you were confronting her about this, about

13 this alleged brushing or touching, grabbing, whatever it

14 is, she just, she just shut down and didn't say

15 anything; didn't she?

16 A. Right. It became an argument because she didn't

17 want to go to the office. She wanted to ride the bus

18 home.

19 Q. And that's what there was a big argument about;

20 right?

21 A. Yes. And that -- this became part of it.

22 MR. ROBINSON: That's all I have.

23 Answer any questions Mr. DeJong has for you.

24 THE COURT: Thank you very much. You may step

25 down.

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1 MR. RICHARDSON: Your Honor, I have -- I'm
2 sorry. I've got -- briefly.

3 THE COURT: Briefly.

4 RECROSS EXAMINATION

5 BY MR. RICHARDSON:

6 Q. Ma'am, the day that this -- you went to the law
7 enforcement center ---

8 A. Yes, sir.

9 Q. Okay. -- you said you were shopping. Is that
10 right?

11 A. I was running errands.

12 Q. You were running errands?

13 A. Yes.

14 Q. Well, when was the last time you saw Complainant that
15 day?

16 MR. ROBINSON: Your Honor, objection. This is
17 something I didn't go into on my Redirect Examination.

18 MR. RICHARDSON: He did absolutely. He asked
19 about the cell phone, and that's what I'm asking.

20 THE COURT: I'll allow it.

21 Q. When did you see her last?

22 A. I left at about ten o'clock that morning.

23 Q. Ten o'clock that morning. Did you have a
24 conversation with Complainant at ten o'clock that morning?

25 A. Yes.

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Anita Gearhart - Recross Examination by Mr. Richardson

1 Q. Okay. You didn't take the cell phone away then;
2 did you?

3 A. No.

4 Q. Okay. Thank you.

5 MR. RICHARDSON: That's all the questions I
6 have.

7 THE COURT: Thank you, ma'am. You may step
8 down. You may call your next witness, Mr. Robinson.

9 MR. ROBINSON: That's the Defendant's case,
10 Your Honor.

11 THE COURT: Anything in Reply?

12 MR. RICHARDSON: Yes, Your Honor. We would
13 call Veronica Sanders to the stand.

14 MR. DEJONG: Your Honor, may we approach?

15 THE COURT: Yes, sir.

16 (WHEREUPON, Mr. Richardson, Mr. DeJong, and Mr.
17 Robinson approached the bar.)

18 MISTER CLERK: Place your left hand on the
19 bible and raise your right hand. Do you solemnly swear
20 or affirm the testimony you're about to give in this
21 case to be the truth, the whole truth and nothing but
22 the truth, so help you God?

23 MS. HUBBARD: I do.

24 MISTER CLERK: If you would have a seat and
25 state your name for the record.

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Veronica Gay Hubbard - Direct Examination by Mr. Richardson

1 MS. HUBBARD: Veronica Gay Hubbard.

2 VERONICA GAY HUBBARD,

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MR. RICHARDSON:

6 Q. Can you just scoot up a little bit to that
7 microphone. It's real hard to hear in this courtroom,
8 okay?

9 A. Okay.

10 Q. And can you repeat your name, please?

11 A. Veronica Gay Hubbard.

12 Q. Okay. Is it Hubbard?

13 A. Hubbard, H-U-B-B-A-R-D.

14 Q. Thank you, ma'am. Ms. Hubbard, where do you live?

15 A. I live in Wellford, South Carolina.

16 Q. Okay. And are you employed?

17 A. I am. I'm employed with SunTrust.

18 Q. Okay. And how long have you been employed with
19 SunTrust?

20 A. Three years.

21 Q. And what do you do for SunTrust?

22 A. I am a branch manager.

23 Q. Okay, ma'am. Now, do you know the Defendant, Joey
24 Sanders?

25 A. Yes, I do.

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Veronica Gay Hubbard - Direct Examination by Mr. Richardson

1 Q. How do you know him?

2 A. He is my ex-husband.

3 Q. Okay. And do you recall when you got married to
4 him?

5 A. I do.

6 Q. And when was that?

7 A. That was in December of '95.

8 Q. Okay. And how long did you live as husband and
9 wife with the Defendant Sanders?

10 A. I was with Mr. Sanders as husband and wife until
11 2005.

12 Q. Okay. And do you recall when in 2005?

13 A. It would have been the late fall of 2005.

14 Q. Okay. Now, were you married to him and living in
15 the house in 2002?

16 A. Yes, I was.

17 Q. In 2002, did y'all have sexual relations?

18 A. Yes, we did.

19 Q. How often would you have sexual relations?

20 A. Once or twice a week.

21 Q. Okay. For 2003, were you married and living with
22 him 2003?

23 A. Yes, I was.

24 Q. Did you have sexual relations?

25 A. Yes, we did.

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1 Q. When would you have sexual relations?

2 A. Once or twice a week.

3 Q. And by sexual relations, so we're clear, I mean
4 complete sexual penetration by the penis. Is that
5 correct?

6 A. Penetration or he would want an oral.

7 Q. Okay. And was he capable those times?

8 A. Yes.

9 Q. I think I left off in '03. 2004, were you married
10 and living with him at that time?

11 A. Yes, I was.

12 Q. Did you have sexual intercourse with him during
13 that period of time?

14 A. Yes, I did.

15 Q. How often?

16 A. About the same, one to two.

17 Q. Okay. Would you also -- would there also be any
18 other type of sexual activity?

19 A. Yes. I have walked in on different occasions with
20 Mr. Sanders being on the phone and he would actually be
21 jacking off.

22 Q. Okay.

23 MR. DEJONG: Your Honor, I object to that.

24 There is, there is -- what relevance is that?

25 MR. RICHARDSON: Your Honor, he's ---

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Veronica Gay Hubbard - Direct Examination by Mr. Richardson

1 THE COURT: I overrule your objection, Mr.

2 DeJong. Just stay with the reply testimony, if you

3 would, please sir.

4 Q. In the year -- I believe the last year I asked you
5 about was 2004?

6 A. Yes, sir.

7 Q. Okay. And was -- in 2002, 2003, 2004, was this all
8 consistent activity?

9 A. Yes, it was.

10 Q. And he was always capable?

11 A. Yes.

12 Q. 2005, did you have sexual intercourse with him in
13 2005?

14 A. Yes.

15 Q. How often?

16 A. Not as often, but at least once every two weeks.

17 Q. Okay. Was he capable at that time?

18 A. Yes.

19 Q. Did he get an erection?

20 A. Yes.

21 Q. Okay. And when you say not often, not that often,
22 what do you mean? Was there a problem?

23 A. There was a problem in our marriage, yes.

24 Q. Okay. Is this when the marriage started to
25 disintegrate?

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Veronica Gay Hubbard- Cross Examination by Mr. DeJong

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1 A. Yes.

2 Q. Okay. At some point in time, did you or Mr.

3 Sanders separate from each other?

4 A. We did.

5 Q. Okay. Do you recall when that was?

6 A. It would have been in July of '05.

7 Q. Okay. When was the last time you had sexual

8 relations with Mr. Sanders?

9 A. It would have been just before we separated.

10 Q. And I know you can't remember the exact date. Can

11 you approximate when, about when it was?

12 A. I would say maybe April or May.

13 Q. Of 2005?

14 A. Of 2005.

15 Q. Okay. And was he capable at that time?

16 A. Yes.

17 Q. And all these times I've referred to, was he ever

18 not capable of having sexual intercourse with you?

19 A. No.

20 Q. Thank you, ma'am.

21 MR. RICHARDSON: That's all the questions I

22 have.

23 Please answer any questions Mr. DeJong may have.

24 THE COURT: You may cross examine the witness.

25 CROSS EXAMINATION

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1 BY MR. DEJONG:

2 Q. Ma'am, you and Joey separated in July of '05?

3 A. Yes.

4 Q. July is not fall then; is it? That's summertime;
5 isn't it?

6 A. Yes.

7 Q. All right. And when were you divorced? When were
8 you divorced?

9 A. January of 2010.

10 Q. Was this an amiable divorce?

11 A. Yes.

12 Q. No contest. No fighting, no nothing?

13 A. Explain.

14 Q. Well, you just both went your separate ways and got
15 a divorce. Is that what you're telling me?

16 A. Yes, sir.

17 Q. There was no argument over property or anything
18 else?

19 A. We went through a mediation.

20 Q. All right. Have you remarried?

21 A. I have not.

22 Q. At the time you separated from Joey, were you
23 having a relationship?

24 A. Not at that exact time, no, sir.

25 Q. Okay. Prior to your divorce, were you having a -

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1 --

2 MR. RICHARDSON: Your Honor, I object on the
3 grounds of relevancy.

4 THE COURT: What's the relevance?

5 MR. DEJONG: It goes to credibility, Your
6 Honor. Mr. Richardson certainly, I think, opened the
7 door for all of that.

8 THE COURT: I overrule the -- I sustain the
9 objection.

10 MR. DEJONG: Thank you, Your Honor. Nothing
11 further.

12 MR. ROBINSON: I have no questions.

13 THE COURT: Thank you, ma'am. You may step
14 - anything else?

15 MR. RICHARDSON: No, sir. Thank you, ma'am.

16 THE COURT: Thank you, ma'am. You may step
17 down.

18 MR. RICHARDSON: Your Honor, may this witness
19 be excused?

20 THE COURT: Without objection. The witness
21 may be excused.

22 MR. DEJONG: No objection.

23 THE COURT: Anything else in reply?

24 MR. RICHARDSON: Nothing further.

25 THE COURT: Madam forelady, ladies and

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Veronica Gay Hubbard- Cross Examination by Mr. DeJong

1 gentlemen, I apologize that I have another matter
2 scheduled today at noon. Some attorneys from Columbia
3 are up here. There's a matter I have to hear. I don't
4 believe it will take very long, but rather than keeping
5 you waiting, it's about lunch time anyhow, I'll let you
6 go to lunch. I'll take care of this matter.

7 You've now heard all of the testimony in the case.
8 You haven't heard anything as far as the law. You
9 haven't heard the closing statements of the attorneys.
10 So, again, you shouldn't be discussing the case at this
11 time, even though all the testimony is in. You
12 certainly need to hear the instruction on the law that I
13 give you and the closing statements of the attorneys.

14 I believe that the matter I have to take care of,
15 as I said, it won't take very long. If you will, be
16 back in your jury room at two-fifteen. I believe we'll
17 be ready to start then. Have a good lunch. I'll see
18 you back at two-fifteen.

19 (WHEREUPON, the jury exited the open court at
20 approximately 12:42 p.m.)

21 THE COURT: Prior to the motions I wanted to
22 clarify one more matter. I don't know if we discussed
23 this on the witness. Mr. Robinson, I understand, too,
24 that the 613 problem confronting you, I think there was
25 also a hearsay issue, too, that would have prevented

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1 that from our earlier discussions. Is that correct,
2 that the testimony would have been hearsay. or is that
3 an issue? I just wanted to make sure the record was
4 protected on both of those, not only a 613, but I think
5 you said the Solicitor had talked to the witness?

6 MR. ROBINSON: Yes.

7 MR. RICHARDSON: Your Honor, I can relate on
8 the record ---

9 THE COURT: Well, just briefly to make sure
10 there was another issue for that testimony, other than
11 613, which obviously is what Mr. Robinson has conceded,
12 but ---

13 MR. RICHARDSON: I would have gone with two.
14 That's 613, but also that the young gentleman's
15 testimony would have been totally hearsay. It was what
16 -- about what another person said to Complainant And, in
17 fact, he told me, his exact word, he doesn't remember
18 what Complainant said. Complainant didn't respond and left.

19 THE COURT: All right. Thank you. Are there
20 any motions at this time?

21 MR. RICHARDSON: None from the State.

22 THE COURT: Any motions?

23 MR. DEJONG: Your Honor, at this point in
24 time, I would move for a directed verdict on behalf of
25 Mr. Sanders, and taking the testimony and evidence in

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1 this case in the light most favorable to the State there
2 is no substantial credible evidence from which a jury
3 could find a verdict of guilty.

4 Basically, Your Honor, I would stand here and argue
5 everything I argued on my motion at the end of the
6 State's case. I would just incorporate that in my
7 motion. At this point in time, in addition, I would
8 simply suggest that the defendant, both defendants have
9 vehemently denied any involvement whatsoever. And,
10 therefore, again I think there is no substantial
11 credible evidence from which a jury could render a
12 verdict of guilty, Your Honor.

13 THE COURT: Mr. Robinson?

14 MR. ROBINSON: May it please the Court. Two
15 things, Your Honor, going back to the -- about the
16 victim, that's Justin Eads that's in the courtroom
17 today. It's unfortunate that we just got the
18 information last night, of course. I will continue, if
19 I find more information regarding that topic, I'll
20 continue to revisit with this court.

21 But, Your Honor, going back and continuing with the
22 directed verdict motion. Again, I know the court is not
23 concerned with the weight of the evidence, but only of
24 the existence of the evidence. But if you look at how
25 Ms. Burgess and the victim, alleged victim, testified,

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1 neither of them put any date past February of 2008,
2 February of 2008. And the parties or the State in this
3 matter has brought an indictment for unlawful conduct
4 under, I believe, 1 -- under Section 1, which is
5 unreasonable risk of harm affecting the child's health,
6 to the life, physical, or mental health on April 15th,
7 2008. There has been absolutely no testimony from
8 either the alleged victim, Ms. Burgess, or anyone that
9 anything happened or anything was done or any harm was
10 done on a -- past February of 2008. And I renew that
11 motion.

12 Directed verdict motions, I know, are an uphill
13 battle because they are looked at in a light most
14 favorable to the State. But, if there is no evidence
15 and all the State has is a mere suspicion of something
16 happening as far as Ms. Gearhart not doing more than
17 what she did or whenever this was, but there's nothing
18 in this record that the State has produced on this one
19 charge that they brought in this case, past February of
20 2008. And giving the State the advantage here, the
21 whole month, nothing past February 28th of 2008.
22 There's absolutely no evidence presented. There's not
23 one item that they presented at all.

24 The statements. The victim in her verbal -- in the
25 statement on the stand, in her written statement that

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1 she gave. In the statement that Ms. Burgess did on the
2 Stand, there's nothing past February of 2008. And
3 because of that, the State has produced or put together
4 an indictment here from April 15, 2008, which is two
5 months, two months after any sort of conduct allegedly
6 took place. And I think in this case, that would --
7 since there is no evidence in this matter, the jury is
8 not entitled to hear a case where there is absolutely no
9 evidence that Ms. Gearhart did anything past February
10 2008. There's no suspicion of any -- there's nothing.

11 And the fact that they're putting this up, in this
12 matter saying, well, if it happened in February 2008,
13 whenever this was, which is the last time they're
14 talking about, it must have happened in April. But
15 there's no testimony that anything happened in April,
16 nothing. I looked through all my notes, all the --
17 everything at all in this case regarding that, and
18 there's not one bit of evidence that anything happened
19 past February 2008. If they had thought about this case
20 and looked at the indictment in this matter, thought
21 about April 15th, they would have crafted their
22 testimony, their questions regarding -- around about
23 this time. There's nothireng in this matter. And
24 because of that, I don't believe this case should be
25 submitted to the jury. I think that a directed verdict

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1 as to Ms. Gearhart is completely, completely
2 appropriate. Thank you.

3 THE COURT: Mr. Richardson, I'll be glad to
4 hear from you.

5 MR. RICHARDSON: Your Honor, I would reiterate
6 what I said previously. The date on there is April --
7 it's on or about. The date is not an element. The
8 child testified that in January or February, in that
9 time period, that she was raped by Defendant Sanders,
10 and then subsequently she told her mother about touching
11 after that date or after the rape.

12 So I think his directed verdict motion is based
13 upon date, which is not an element. I simply have to
14 prove that the crime took place. And that's why on or
15 about is allowed in indictments. And that in the light
16 most favorable to the State, the motion should be
17 denied.

18 THE COURT: All right. As to both motions I
19 rest on my prior analysis. I believe it is a jury
20 verdict. And, again, weighing all of the evidence in
21 the light most favorable to the non-moving party, I'll
22 allow the case to go to the jury.

23 Any other matters we need to take care of other
24 than -- we talked a little bit about charges. I've got
25 verdict forms that I'll be glad for you to review to

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1 make sure they're in proper order. If y'all would come
2 forward just a moment, please? I would like to see the
3 attorneys just a moment to review the verdict forms.

4 (WHEREUPON, Mr. Richardson, Mr. DeJong, and Mr.
5 Robinson approached the bar.)

6 THE COURT: All right. Verdict Forms are in
7 order. All right. As far as this case, we'll be at
8 ease until two-fifteen. I think we've got some matters
9 with the State Grand Jury that we need to take care of.

10 (WHEREUPON, the Court stood at recess for a lunch
11 break.)

12 THE COURT: Yes, sir, Mr. DeJong.

13 MR. DEJONG: Your Honor, I deeply appreciate
14 the Court giving me the charge on the prior bad acts.
15 Is there -- do you give a definition of common scheme of
16 plan in the charge?

17 THE COURT: No, sir.

18 MR. DEJONG: Okay. I just, I just wanted to
19 be sure of that. Thank you, sir.

20 THE COURT: All right, sir. Everybody ready
21 to proceed?

22 MR. RICHARDSON: The State's ready, Your
23 Honor.

24 MR. DEJONG: Logistically -- that's not the
25 proper word, but I'll use it. Logistically, I guess I'm

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1 going first, followed MR. Robinson, followed ---

2 THE COURT: That's the way we've been
3 proceeding. I think that would probably work out best.

4 MR. ROBINSON: Defense is ready.

5 THE COURT: Have the jury come in, Mr. Teal.

6 (WHEREUPON, the jury entered the open court at
7 approximately 2:57 p.m.

8 THE COURT: Madam forelady, ladies and
9 gentlemen, we're now ready to proceed with the stage in
10 the case in which the attorneys have an opportunity to
11 address you in their closing statements. I've told you
12 through, at the beginning of the trial, and since then,
13 that what the lawyers have to say to you is not evidence
14 in the case. All the evidence that's been presented by
15 way of testimony, by way of documents and other papers
16 that are in, photographs, while this is not evidence, I
17 urge you to listen carefully as the attorneys address
18 you. They can perhaps give you some valuable insights
19 to help you in your deliberations that will start soon.
20 After they've had a chance to address you, I'll give you
21 instructions on the law in the case. After that, it
22 will be yours to decide by way of your deliberations.
23 Mr. DeJong, you may address the jury.

24 MR. DEJONG: Thank you, Your Honor. May it
25 please the Court. Mr. Robinson, Mr. Prosecutor.

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CLOSING STATEMENT2 **BY MR. DEJONG:**

3 Madam forelady, ladies and gentlemen of the jury,
4 before I go too much further, I wanted to thank you for
5 being here. Thank you for your patience. Thank you for
6 your attention in a somewhat less than the best of
7 environment in this courtroom. We have all worked here
8 together, but I do thank you sincerely.

9 Over the last two days now, ladies and gentlemen,
10 you have been dragged over some rocky and rough road.
11 You have been exposed to testimony of what we would
12 consider, in most cases, a very private nature. You
13 have heard things that a lot of people would not discuss
14 in the sanctity of their own living room or their own
15 den. And as I asked you when I talked to you, I
16 believe, two days ago, I asked you to keep an open mind
17 and I trust that you have. I would ask you to keep your
18 mind open now, and not let any of those things close
19 your mind. They are difficult. They are not things we
20 like to talk about, and I suspect they are not things
21 that we like to hear. But we are here in on very, very
22 serious business.

23 And as in -- very shortly you start your
24 deliberations in the jury room, I would ask you, ladies
25 and gentlemen, to look at all of the testimony and look

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1 at all of the evidence that you have heard and seen in
2 this case. I would ask you again not to close your mind
3 and focus on any one particular thing, but to keep your
4 mind open. I am not going to stand here and rehash the
5 testimony of every witness that you have heard. You've
6 been a very attentive jury and I thank you for that.
7 But I would like to share with you what I think are a
8 few things that are important.

9 Now, the indictment that His Honor read, and again,
10 I remind you the indictment is not proof against Joey
11 Sanders who is my client. That is not proof against
12 him. They are merely allegations that are brought by
13 the State. I bring that up for this reason, the
14 charges and the allegations in the indictment are
15 charges and allegations as brought by the State that
16 allegedly occurred between January the 1st and I believe
17 June the 1st in the year 2008. Now, you have obviously
18 heard some testimony about alleged incidents that
19 occurred in the Comfort Inn in Easley in 2005. That is
20 oftentimes what we refer to in the law as prior bad
21 acts.

22 Now, His Honor is going to charge you on the law.
23 I am not here to charge you on the law. So you take the
24 law as it comes from His Honor, not from me or any of
25 the other lawyers. You take the law as it comes from

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1 His Honor. But I believe he is going to charge you on
2 those prior bad acts. But first you have to determine
3 whether or not those prior bad acts are true. And I
4 submit to you they are not. But if you were to find
5 that those prior bad acts are true, then you may only
6 use those prior bad acts in your discussions in the jury
7 room only as to two things, intent or common scheme or
8 planning. You may not use those prior bad acts, if you
9 will, those allegations, you may not use them other than
10 for those two reasons.

11 In other words, you cannot convict Mr. Sanders on
12 the allegations of the prior bad acts that they say
13 occurred at the Comfort Inn in Easley. I would ask you
14 to remember that when you start your deliberations.
15 Two things. First, you must determine whether or not
16 they're true, and then if that is determined, which I
17 submit that they are not true, but if that is
18 determined, then they have a limited use in this trial.
19 Mr. Sanders is on trial for allegations that occurred
20 between January the 1st and June the 1st or June the
21 30th of 2008. That's what the trial is about, and
22 that's what I would ask you to focus on in your
23 deliberations.

24 Now, obviously, you may deliberate on those other
25 things. So that goes along with what I shared with you

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1 in my opening remarks to you on presumption of innocence
2 and reasonable doubt. Now, the case has concluded but
3 the -- is concluded as far as the testimony and evidence
4 in this case are concerned. You have been working and
5 your work is going to step up a notch higher here in a
6 little while, okay? But the testimony and evidence then
7 is concluded, but I ask you to remember that the burden
8 of proof is on the State to prove the Defendant's guilt
9 beyond a reasonable doubt. Now, obviously in this
10 case, Mr. Sanders has testified. You had the
11 opportunity of sitting here and listening to Mr.
12 Sanders. The fact that Mr. Sanders testified does not
13 take away that substantial right of presumption of
14 innocence, nor does it change the burden of proof. Once
15 he took the witness stand, that doesn't mean that he now
16 has to prove his innocence. That does not have any
17 bearing on the burden of proof. Under the law of this
18 country, he is certainly entitled to put up a defense.
19 That's what we chose to do, but that does not change the
20 burden of proof.

21 Another issue -- or not necessarily another issue,
22 but another thing I think that His Honor will charge you
23 on is what we call credibility of witnesses. The
24 credibility of witnesses, ladies and gentlemen, is
25 totally up to you. You have had the opportunity of

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1 sitting in this courtroom. Witnesses came and sat in
2 the witness stand, took the oath, and they testified.
3 Now, as you look at the credibility of witnesses, you
4 may believe all of what one witness told you, you may
5 believe nothing of what one witness told you. You may
6 believe some, and you may throw the rest of it out.
7 That is totally up to y'all, your deliberations, and
8 when you start talking about the testimony and the
9 evidence in this case. I don't know the entire list
10 that His Honor's going to give you, but some of the
11 things he will tell you, you can look at their demeanor,
12 I believe, their forthrightness, how they answered the
13 questions, were they hesitant and all of those things,
14 and I'll probably come back and touch on that in just a
15 few moments. But that is another thing and I think that
16 is a critical thing for y'all to look at.
17 Now, let's just briefly review this case,
18 remembering that Mr. Sanders is charged under the
19 allegations of these indictments. First, looking at the
20 State's case. Detective Burgess talked to the alleged
21 victim in this case one time, I believe. Maybe two
22 times, but I believe one. You take it the way you heard
23 it. Basically, ladies and gentlemen, that was the
24 extent of the investigation by law enforcement. I would
25 ask you to remember that these allegations, even by law

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1 enforcement's testimony, the allegations arose basically
2 in the State of Virginia, not that that's where the
3 allegations -- that's where the acts, the alleged acts
4 occurred; but that's when the report, for want of a
5 better term, was first made. Now, then we have Dr. Mary
6 Crosswell. She is the doctor who examined the alleged
7 victim in this case. Dr. Crosswell is a medical
8 examiner or a medical doctor. I don't dispute that, but
9 in the examination of the alleged victim in this case,
10 there was no physical evidence as such of any sexual
11 molestation or abuse. I ask you to remember Dr.
12 Crosswell did say, I believe using her terminology,
13 there was a deep notch or a deep -- I forget exactly the
14 word she used, at the four o'clock position of the
15 alleged victim's hymen. In questioning Dr. Crosswell
16 about that, as I recall, the question was posed to her,
17 if there are not allegations of sexual abuse, does that
18 left notch indicate sexual abuse? And I believe her
19 answer was, no. Indeed, I think Mr. Richardson, the
20 prosecutor, asked her a very similar question. Is that
21 necessarily indicative of sexual abuse? And her answer,
22 as again I recall, was no. Dr. Crosswell testified that
23 she believed she had found genital warts. As it turned
24 out, she said she was wrong. It simply says we can all
25 make mistakes, but that is a fairly -- that isn't even

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1 fairly. I'm going to take that word out. That is a
2 very big mistake in a case such as this, dealing with
3 the lives of people. If that cleft -- and I believe
4 that Dr. Crosswell testified that there were certainly
5 other things that could cause that cleft in the hymen.
6 I find it somewhat fascinating that Dr. Crosswell is a
7 pediatric, a forensic pediatric doctor, who maintains an
8 office at several locations. But as I recall, the
9 several locations were in various places where children
10 bring forth allegations of sexual abuse. And one of
11 those things that goes to the credibility of witnesses
12 that I did leave out, is what bias or prejudice the
13 witness may have in giving their testimony. We live in
14 an age where we hear of sexual molestation everyday.
15 It's a horrible thing, there are no two ways about it,
16 and it does happen. But the point of that is, every
17 case must be looked at, and especially here in the
18 courtroom, every case must be looked at on an individual
19 basis. So I would submit to you that even though Dr.
20 Crosswell testified, there was not much in her testimony
21 to help you out in this case.

22 Then the State brings in their expert of Ms. Shauna
23 Galloway-Williams. And one of the things on the
24 credibility of witnesses that I believe I mentioned a
25 moment ago is their forthrightness in answering

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1 questions. Well, if talking for five minutes in answer
2 to one question is forthrightness, then I guess she was
3 fairly forthright. That young lady could ramble. There
4 are two things, though, about her testimony that strike
5 me. Before I get to those two things, again, I would
6 ask you to remember that she is Executive Director of
7 this organization that again they have several
8 functions, but one of their larger functions is dealing
9 with children who have made allegations of sexual abuse
10 or perhaps physical abuse. I forget exactly what her
11 testimony was. And I think that's a good place to stop
12 for a moment.

13 Let's talk about reasonable doubt. His Honor is
14 going to charge you on what reasonable doubt is. That's
15 the burden of proof the State has and he will charge you
16 as to that. Reasonable doubt is not beyond, I think he
17 says, any doubt. A reasonable doubt, ladies and
18 gentlemen, is such a doubt that would cause a reasonable
19 person in the carrying on or making decisions in their
20 daily affairs, to hesitate to act. You've served on
21 juries before. You may have preponderance of evidence
22 if you were in a civil case. Preponderance of evidence
23 is kind of like that scales of justice. One side tips
24 ever so slightly, that is the preponderance of evidence.
25 Beyond a reasonable doubt is a much higher proof than

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1 beyond -- or by preponderance of evidence. And, again,
2 His Honor will charge you. I took that pause there to
3 share with you reasonable doubt.
4 Now I'm coming back to Ms. Galloway-Williams. In
5 her testimony, ladies and gentlemen, four percent of
6 sexual molestation allegations are false. Now, you
7 might say, well, that's four percent of how many? Well,
8 we don't know, and it doesn't really make any difference
9 because this is what we're talking about, is reasonable
10 doubt. Somebody makes up that four percent. It's not
11 four percent that is off on the Moon, Jupiter, Saturn,
12 or anyplace else. That's four percent of false
13 allegations. Children lie. That is a harsh word. I
14 know it is a harsh word, but Children lie. Where do
15 they get it? I don't know. They're bombarded by it.
16 But certainly four percent of allegations are false. I
17 would submit to you, ladies and gentlemen, that is
18 enough in and of itself to create a reasonable doubt, to
19 hesitate to act. If four percent of sexual molestation
20 allegations are false, which ones are true? Reasonable
21 doubt, hesitate to act. And if there is a reasonable
22 doubt, and you have that hesitation to act, then His
23 Honor will charge you, you must give the benefit of
24 doubt to the Defendant and find him not guilty. I
25 submit that four percent is reasonable doubt.

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1 Let's move forward. She said twenty to twenty-two
2 percent of young people that make allegations recant.
3 Now, they like to gloss over that. They don't want to
4 talk about that. They don't want to talk about false
5 allegations. They want to believe these young people.
6 That's what, I think, Ms. Galloway-Williams said, they
7 want to support these young people. Well, that's fine.
8 But you don't support somebody when they're not telling
9 the truth. And I submit to you that what she says, what
10 Ms. Galloway-Williams says, is not a truth finding
11 function. It is a function to support and bolster what
12 the child is saying. Now, that is basically what the
13 State has presented to you.

14 Well, they introduced some motel bills. Here, we
15 might as well talk about that while we're on the State's
16 -- we're talking about the State's case. Motel bills,
17 you can count them. I think the number of twenty-nine
18 stays at the Comfort Inn are in there. I would ask you
19 to look at those bills, look at them closely. Look at -
20 - not by name who checked in, but by person, that is the
21 numerical number of persons who checked in. Two adults,
22 one adult, one adult, one child, and I think if you look
23 through them, and you'll have them back in the jury room
24 with you, if you look at them, you're going to find that
25 on two occasions there was one adult and one child.

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1 And, of course, you heard Mr. Sanders' testimony as to
2 those other stays. Now, Joey Sanders isn't on trial
3 here -- and, again, I apologize to you, ladies and
4 gentlemen, but I have to talk about it. He is not on
5 trial here as to whether or not he has erectile
6 dysfunction. That's not what the trial is about. Now,
7 obviously you've heard some conflicting testimony on
8 this erectile dysfunction. Dr. Barksdale came in and
9 testified. That has been Joey's family doctor, his
10 personal doctor, for want of a better term, since '07.
11 And in all candor, I think Dr. Barksdale testified that
12 there is no way he could really test for erectile
13 dysfunction. However, he did do blood work on Mr.
14 Sanders and I would ask you to recall that Dr.
15 Barksdale's testimony was that Joey had low testosterone
16 levels. That he treated for that. That testimony you
17 have heard. I am not going to dwell on it. He treated
18 that. As memory serves me, there wasn't much movement
19 in bringing up those low testosterone levels, even after
20 the treatment.

21 Now, obviously, Mr. Sanders' ex-wife came in and
22 testified that they had sex regularly. I would ask you
23 to remember that it's his ex-wife. I mean no offense to
24 any of the ladies on the jury, but it reminded of Mr.
25 Shakespeare, of one of his lines out of one his plays,

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1 that hell hath no fury like a woman scorned. So, again,
2 you have to plug that into the credibility issue. Both
3 Joey and Ms. Gearhart shared with you that he did have
4 this problem. Something I would suggest to you that was
5 not easy for either of them to talk about. Certainly,
6 that part of our life is not something we like to talk
7 about in a courtroom or in public. And, again,
8 sometimes not even in the privacy of our own homes. But
9 nonetheless, it had to be talked about. Now, I'm
10 getting there, so bear with me just a few moments.
11 Let's talk now about the testimony of the alleged
12 victim. And I'm going to talk about this from two basic
13 levels, ladies and gentlemen. I'm going to kind of talk
14 about what the law calls prior bad acts and what Mr.
15 Sanders is actually on trial for. Mostly, in some
16 effort to save time, but to try to kind of bring them
17 together. With regard to the testimony of what we call
18 in the law, prior bad acts, that being what the State
19 has brought before you that allegedly occurred at the
20 Comfort Inn in Easley. You heard the alleged victim
21 testify in this case, when she testified, two things. I
22 forget how many times she said she was here, three,
23 four, more. I don't know. You take what you heard. I
24 submit to you that the motel bills that were introduced
25 by the State as documentation is that she was here two

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1 times. But in listening to her testimony, and one thing
2 Shauna Galloway said is the detail of the allegations.
3 I would ask you to ask yourselves when you're in the
4 jury room what detail did the alleged victim give us?
5 As I recall her testimony the details she gave you is
6 that she and her mother drove down from Virginia. I
7 forget what city. But it was a six hour trip. They
8 would take their bags into the room and within moments,
9 Joey and her mother were having sexual intercourse. I
10 never did quite nail down the time of day.

11 Ladies and gentlemen, I submit to you that that
12 stretches the credulity of any person that would hear
13 that. At that point in time the alleged victim was nine
14 years old. Obviously, her mother's child, her natural
15 child, that would come in, an LPN, and have sex in a one
16 bedroom -- motel room within two minutes of arriving.
17 The alleged victim has already changed into her pajamas,
18 according to her. The time frames, you figure that one
19 out. And then mom takes a shower and she said Joey does
20 what he does. Mom comes out or mom was in the bed with
21 them, whatever. And then they all go out to eat or they
22 do whatever. And all three or four of the instances
23 that the alleged victim testifies to, as to the Comfort
24 Inn, if you notice there was no difference. There was
25 no difference in detail in any one of those times that

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1 she alleged. I think the only thing I picked up, one
2 time she talked about a robe. Again, I submit to you
3 they were only down here, in the Comfort Inn once, and
4 that's for you to decide. So I share that with you
5 because as I shared, you have to determine whether or
6 not the allegations that were made about the Comfort Inn
7 were true before you can move on, even to use some --
8 for the purposes I have shared with you.

9 Then we come to actual allegations for the
10 indictment in the case that we're trying. Allegations
11 that allegedly occurred between January the 1st and June
12 the 1st -- June the 30th of 2008. Again, I'm going to
13 ask you to look at the details. This came from the
14 State's expert. She was the one that talked about
15 details, okay? Look at the detail that the alleged
16 victim shared with you. He took me to the bedroom, took
17 my clothes off and had sex with me. I got up and left.
18 Also, in view of that, I would ask you to consider the
19 size of my client when those allegations were taking
20 place. He was much larger. He's still a large man. If
21 you can see him sitting over at the table, he's a very ,
22 large man. But my understanding is he was even larger
23 then. But that is all the detail. I don't know that it
24 was -- she made those up as to those allegations. It
25 was never clear whether the mom was home or not home. I

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1 think she did say mom wasn't home. How they got to the
2 bedroom, you have no detail on that. Any conversation.
3 This was like this just happened and there was nothing -
4 - the only conversation, according to the alleged
5 victim, is in the middle of it, as I recall, she said
6 that Joey said, well, you know, you can't tell or I'll
7 get in trouble. That was it. No force, no coercion, no
8 nothing else. That was all the details she gave you.
9 Now, what I want to do now is move on a little bit.
10 Again, bear with me just a few more minutes about that.
11 Let's move up to -- I believe her -- I know her last
12 name was Chapman. I believe her first name was Judy
13 Chapman. The lady that volunteers, doesn't get paid for
14 anything, and came to court voluntarily to share with
15 you the conversation she had with the alleged victim in
16 this case. This is a person that is -- if you want to
17 take sides, this was a person that was on the side of
18 Complainant And before we get to that conversation, as I
19 recall, I asked her if she had told Ms. Chapman about
20 talking to people in Virginia about the allegations,
21 whether or not she had shared with Ms. Chapman that she
22 was afraid she was going to jail, not her mother. She
23 denied all of that. She did admit that she had recanted
24 her story. And in that recantation, ladies and
25 gentlemen, I would ask you to look at the circumstances

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1 surrounding that recantation. The circumstances were,
2 as I recall, Ms. Chapman and the alleged victim were
3 sitting on the deck of the foster parents' house. As I
4 recall, Ms. Chapman said they were not talking about
5 these allegations. That the alleged victim in this case
6 got teary eyed. She came forward on her own volition,
7 without questioning and said, I lied. It didn't happen.
8 And Ms. Chapman says, why would you do this? As I
9 recall, her response was because she wanted to go to
10 Virginia.

11 Twenty to twenty-two percent of alleged victims
12 recant. Ms. Galloway-Williams would have you believe
13 that the recanting is no more accurate than false
14 allegations. She did finally agree with me, I think,
15 that young people do have a conscience and perhaps
16 that's what happened in this case. She had a
17 conscience. She'd never exhibited any fear of Joey
18 Sanders, never made any complaints. You've heard about
19 the relationship between her and Joey Sanders. I'm not
20 going to stand here and belabor that. Obviously, it was
21 a very good relationship not only with him, but with his
22 parents. So then when you look at this recantation, I
23 think you have to start looking at the motivation, what
24 would motivate her to come up with these allegations.
25 And in this case, ladies and gentlemen, I would share

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1 with you that I believe from the testimony you could
2 easily deduce there are three great motivators for her
3 to make false allegations. One, she shared with us on
4 the witness stand that before her mother met Joey,
5 although her mother worked, when her mother was home,
6 her mother would basically devote her time to Complainant I
7 asked her, did that bother you? Yes, that bothered me.
8 Jealousy can be a great motivator. I'm not jealous of
9 things, but jealous of time, jealous of attention,
10 jealous of affection. All of those can be great
11 motivators. And, again, please don't forget children
12 have the same emotions that we adults have, anger,
13 jealousy, vengeance, all of those things they have. So
14 I would submit to you, ladies and gentlemen, that
15 certainly jealousy could have been a motivator and made
16 these false allegations.

17 Secondly, anger and vengeance. Maybe we'll just
18 lump those two together. You heard testimony of an
19 episode between Joey and Anita in Spartanburg at one of
20 the pageant functions, where I believe it was described
21 as a heated discussion. And when that was all over, I
22 don't remember the exact words the witness testified,
23 but basically as I recall the words, he is not going to
24 talk to my mother like that. I will, I will get him.
25 Wait and see. You take it as you heard it, words along

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1 those lines. And in that regard, ladies and gentlemen,
2 that was a little bit more of a short span of the
3 jealous factor I was talking to you about a few moments
4 ago. If you will recall that that episode took place,
5 according to the witnesses, I believe it was said by one
6 on Mother's Day of May 2008. There was Memorial Day and
7 then the grandmother's death, and then shortly
8 thereafter, the allegations. So you're talking about
9 that episode within approximately a month to five weeks
10 of when these allegations came out.

11 The third motivator that I think that you have
12 heard in this case is the alleged victim's desire to
13 live in Virginia. Her mother has shared with you and
14 testified that she wanted to live in Virginia. The
15 mother said she could not live in Virginia, that she
16 would not allow that. And as memory serves me, that
17 took place while they were in Virginia at the
18 grandmother's funeral, and then shortly after that,
19 these allegations were made. I find it fascinating,
20 ladies and gentlemen, when we get into that and there
21 was certainly talk of late reporting in this case. By
22 late reporting, the allegations happened and then a long
23 time later it was reported, supposedly. What I find
24 fascinating about that, Ms. Galloway-Williams talked
25 about relationships, this factor and that factor. Well,

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1 if memory serves me, the alleged victim said this
2 happened the very first time they ever came down here to
3 the Comfort Inn, something she says -- not exactly what
4 she said happened in January or February of '08,
5 whenever that was. But certainly she says something
6 happened. Now, two things puzzle me about that. Number
7 one, that young person is in a car with her mother for
8 six hours, driving to Virginia, and the young person
9 never says anything to her mother. And even according
10 to the alleged victim in this case, she and her mother
11 had a relatively close relationship. They talked
12 driving home. Secondly about that, even though she had
13 a good relationship with her mother, from what I heard
14 was, she had a better relationship with her grandmother.
15 That's going back to the '05, but had a better
16 relationship, indeed, lived with her grandmother. I
17 asked her, was your grandmother who you could confide
18 in? Yes, she was. You could confide anything to her?
19 Yes, she was. And, indeed, she was in Virginia without
20 her mother or Joey Sanders present from about January of
21 '06, as I recall, to August of '06. I'd ask you to
22 think about that.

23 Again, ladies and gentlemen, as you deliberate I
24 ask you not to focus on any one particular thing,
25 particular bit of evidence, particular bit of testimony,

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1 but take it as a whole and look at all you have seen and
2 heard, as patiently as you have sat there, and patiently
3 you have. I think when you take and look at it as a
4 whole, the allegations, whatever detail, the recanting,
5 all of that, four percent false allegations, twenty to
6 twenty-two percent recant, the reasonable thing -- when
7 you look at all of that, bring back on both indictments
8 as to Mr. Sanders not guilty. Thank you for your time
9 and your patience.

10 THE COURT: Mr. Robinson, you may address the
11 jury.

12 MR. ROBINSON: May it please the court.

13 CLOSING STATEMENT

14 BY MR. ROBINSON:

15 I would concur with Mr. DeJong, regarding thanking
16 you for listening to this case the past number of days.

17 As I said, my name is Scott Robinson. I represent
18 Anita Gearhart in this case. I've been trying to figure
19 out where to stand here so I can talk to you without
20 putting my notebook down, so I'll stand over here, if
21 it's okay.

22 You know, in thinking about this case, ladies and
23 gentlemen, I want you to, when you go back to the jury
24 room, you should all be -- I think that the people of
25 Pickens County should be disturbed, scared. And the

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1 reason for that is this. Let's take a look at this case
2 and how the case done in general and how it could apply
3 to anybody that's accused of a crime, especially this
4 kind of crime. If a person is mad -- a child is mad at
5 someone, is upset at someone, has an issue with a
6 parent, a brother, father, grandparent, great
7 grandparent, what do they have to do? With this case -
8 - looking at this case, what do they have to do? They
9 can make a statement to the police and DSS. As Mr.
10 DeJong said a few moments ago, this came out of
11 Virginia. Which interestingly, coincidentally, is where
12 the alleged victim in this case wanted to live. So she
13 makes a statement to the police, and that would be Ms.
14 Burgess who is sitting in the courtroom next to the
15 Solicitor.

16 Now, ladies and gentlemen, you may find it odd that
17 they have a tape recorder, but the tape recorder is not
18 on. What was most concerning about this case is that
19 they get the statement from her. She says, yeah, this
20 guy did such and such to me, all this. Doesn't say when
21 as far as with the mother, with her mother. Wants to
22 say she had a -- she was mad. Say a person was mad.
23 She gives a statement to the police. What do the police
24 do? They send her to somebody that the police use,
25 refer her to someone the police use, the police give her

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1 -- and in this case, you listened, and Mr. -- you know,
2 it's interesting to me that Mr. Richardson had a cow
3 over the fact that the witnesses for the defense were
4 all getting background and so forth. They had to get an
5 issue with the background, saying where did you get your
6 background from, making it a big issue. But
7 interestingly, all of his witnesses, the witness that
8 Ms. Burgess talked to, this Ms. Galloway that she said,
9 where did she get her history from? She got it from
10 them. She didn't get it from some independent -- she
11 got her history from DSS and her history from the
12 Sheriff's Department. The same Sheriff's Department
13 that she has testified for a hundred percent of the
14 time. Eight times out of eight times she's testified
15 for them. And for DSS, she testified ninety percent of
16 the time for DSS. Ninety percent of the time. Then
17 they send her to a Ms. Crosswell. What does Ms.
18 Crosswell say to you? Where did you get the case
19 referred from? The Sheriff's Department. Where did you
20 get your history from? The Sheriff's Department and
21 DSS. Now, how is that fair, ladies and gentlemen? How
22 is that just in this case? That means, that means that
23 anyone in this county, anyone in this society can have
24 an allegation made and it just goes on down the line.
25 Think about that. Think about parents, grandparents --

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1 it's going to a point in our society, I would submit,
2 that you can't be alone, anyplace with children.
3 Anyplace. Because people can make allegations. The
4 police are going to follow-up on it, toss them to some
5 person that they have like a medical person. What do
6 they tell the medical person? This person said she had
7 abuse committed. Okay. Both of these people, Galloway,
8 a hundred percent the State, ninety percent, ninety-five
9 percent DSS. Ms. Crosswell, every referral she gets on
10 these cases is from the Sheriff's Department or DSS. So
11 how is justice being done?

12 Let's talk about Ms. Burgess' in this case. They
13 have a statement. Got a statement from the alleged
14 victim in this case. She may have talked to her one
15 more time. She had told, according to what she put in
16 her statement or what she put down, she said that Anita
17 wanted to stop her daughter or prevent her daughter from
18 using texting on the cell phone, sending inappropriate
19 messages to boys. She told her that she did not want
20 her to go to Virginia, like she wanted to go to. She
21 told her to stop hanging out with the wrong people,
22 older boys. Told her all these things. She even had a
23 cell phone that she had was used -- was taken away that
24 day, that time at the law enforcement center, and it was
25 never taken and looked at, nothing. And Mr. DeJong

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1 may have mentioned this, but some key parts of this Ms.
2 Galloway's statements, some key parts were, one, that
3 children lie. The reason we chose this jury, that Mr.
4 DeJong and I -- we chose this jury because all of you
5 had experience with children, grandchildren potentially,
6 but you know that kids lie for reasons. They lie to get
7 things, to cover up things, get themselves out of
8 trouble because they want things. And you know that
9 there are some kids that are just plain bad, that
10 they'll do anything to get what they want. And you
11 heard Ms. Galloway say kids can be manipulative. And I
12 said in the beginning of this case, in my original
13 opening, that you don't check your common sense at the
14 door. You don't check your life experiences, all the
15 things, all the joy, the happiness, the bad times that
16 you've had, you don't just check that at the door. You
17 take all of these experiences in here.

18 I wanted to give you a quote from Ms. Crosswell,
19 which I found very interesting in this theory of how bad
20 the situation is. This is what she said. She said, I
21 have to accept at face value what they tell me. That's
22 what she said. Now how scary is that? Wouldn't it be
23 better for justice to be served, to really investigate,
24 to send her to a doctor who's not connected with you,
25 who doesn't get every single case that you have referred

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1 to you. Why send it? How is justice done? How does
2 the truth come out in a case? When the whole -- the
3 same pattern will be repeated again and again and again.
4 And you get a statement, you get it to your person, this
5 forensic person that you have, that gives you the same
6 history, the same thing from the Sheriff's Department,
7 from DSS, and then they roll it to a doctor that they
8 refer it to, giving the same history again. What do you
9 think the result is going to be? Do you really think
10 there is going to be any other result in this case? No,
11 there's not going to be.

12 So that, ladies and gentlemen, is what I'm asking
13 you to do in this case. I'm asking you to make a
14 statement that you know we're not going to accept this
15 investigation, doctors being used by the Sheriff's
16 Department. They're getting referrals to the Sheriff's
17 Department. Experts, experts that are being used by the
18 Sheriff's Department and DSS. I'm asking you to protect
19 -- I'm asking you to send a message that we're not going
20 to take this anymore. To make a stand that the
21 investigation should be neutral, objective
22 investigations to ensure that people are not accused of
23 things that they're not guilty of.

24 Now, I want you to take -- I'm going to step away
25 for one moment, and I want you to think to yourself, in

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1 your own experiences, how you would react if you went
2 into the courtroom with an alleged -- with someone that
3 was the perpetrator and did all of these nasty things to
4 you, and you had an opportunity to listen to this
5 alleged victim talk. Did she show any emotions when she
6 saw the alleged perpetrator, the alleged perpetrator in
7 this case? Did she break down? Did she cry? Did she
8 get upset? Did she fall over, just couldn't handle
9 herself? Not one time. Not one time did she do that.
10 She was about as cold and calculated as anyone could be.
11 You could tell -- I would submit to you, that was one of
12 the most rehearsed witnesses. Do you have any sense
13 that she was that rehearsed in this case? Did you
14 notice when she viewed, looked out into the audience on
15 that side, on the right-hand side, you saw her just like
16 I did.

17 And as far as her recantation goes, the State is
18 going to make an issue with this Ms. Chapman saying,
19 well, you know, she didn't put this in the report. She
20 had these different issues. So what? So what? You see
21 what he can't tell -- what he's going to have a problem
22 with is because his witness that he put on the stand
23 said, well, you know, people usually recant when you're
24 around the person, the alleged perpetrator, you're
25 around the family or something like that. But here's

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1 the problem with that, ladies and gentlemen, she alleged
2 this. She got taken in June. This was in October.
3 That is, let's see, that is five months away. She was
4 in foster care and that's when she said it. That's when
5 she said to the guardian ad litem. She didn't say it
6 when she was living with this alleged perpetrator, with
7 this person who was giving her all of this stress, all
8 these stressors in there, nothing like that. She was
9 living and she made a voluntary statement to this
10 guardian to make this -- to say that and come forward
11 with the truth. It's interesting, his own witness said
12 -- that would be Ms. Galloway, the witness that the
13 State uses all the time -- she said that eighty percent
14 don't recant. That's what she said. So it's unusual
15 for this recant, so it makes sense.

16 And I want to kind of turn for a second to my case,
17 to the case that I have in this matter. I represent
18 Anita Gearhart. That is the cute little lady over there
19 that is sitting to my left. Anita is a mother. She's
20 also a grandmother. She's from Virginia originally and
21 moved down here to work. Works in Easley, loves South
22 Carolina. But, you know, she couldn't control her
23 daughter. Her daughter wanted to go to Virginia. She
24 wouldn't let her. She wanted to hang out with the wrong
25 boy, wouldn't let her. Wanted to have a cell phone and

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1 send inappropriate messages, wouldn't let her. But my
2 client is charged with unlawful conduct towards a child.
3 In order for the State to establish their case in this
4 matter, they have to establish that on or about April
5 15th of 2008, while being the legal custodian, parent or
6 guardian, placed the child in an unreasonable risk of
7 harm, affecting the child's life, physical or mental
8 health or safety. That's what she's going to have to be
9 guilty of. That's what they say that they're going to
10 prove, they're going to prove in this case.

11 Well, ladies and gentlemen, I don't know if you --
12 I'm sure you've listened to the testimony, but as I
13 recall, as you probably recall, too, this alleged victim
14 never said her mother knew anything about the Comfort
15 Inn incidents that we're talking about here. Said her
16 mother never knew about the fact, anything regarding the
17 place in Easley, nothing. All of their dates actually
18 go up to around -- I think Rita Burgess testified 2005
19 and January and February of 2008, nothing after
20 4/15/2008. No other allegations. But the State has got
21 themselves in this April 15th of 2008. So if you look
22 at the information that they've put forth in this case,
23 what they may be talking about at best is that when
24 Anita told the Sheriff's Deputy that he may have, Mr.
25 Sanders may have brushed up against or grabbed, whatever

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1 it was, her boob, okay? Okay. But they didn't say when
2 this was. They didn't say anything about when this was.
3 We know that it couldn't have been the Comfort Inn. We
4 know it couldn't have been in Easley, but she said her
5 mother didn't know about that. Let's just assume that -
6 - let's just assume that he -- worst case. Say he
7 brushed up against her and touched her boobs or grabbed
8 her boobs. What did she do? She did what any parent
9 would have done. She confronted the guy. Said, wait a
10 second. Did you do this? The guy said, no. Went to
11 the kid and said, what happened? What did the kid do?
12 What did she do? She got all belligerent and said, I'm
13 not going to talk to you about this. I'm not going to
14 say anything about this. So how could she be guilty of
15 this charge when first they don't know when it all
16 occurred, and secondly if they did know it occurred at
17 that date, I mean, what did she do wrong? Because if
18 you listen to the State's case where nothing ever
19 happened after February -- this is from Ms. Burgess
20 herself, nothing happened after February of 2008. How
21 could she -- how could Ms. Anita Gearhart be guilty on
22 April 15th, 2008? That's two months after, after
23 anything's alleged to have happened. How could she be
24 guilty at that time? How could there be any harm? Any
25 unreasonable harm affecting the child's life, physical

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1 or mental health. How could there be? You heard Anita
2 talk about the fact that her mom -- excuse me, that her
3 daughter had lied to her about boys, about school,
4 things like that. What's a parent to do? What's a
5 parent to do? I suggest to you that if you don't know
6 about it, how can you tell anybody about it? If you're
7 told by your daughter that someone brushed up against
8 her or grabbed her boob, what are you going to do?
9 You're going to immediately go out -- think about this.
10 You're going to go out, call the police. He touched her
11 boob. He brushed up against her boob. Now, imagine the
12 practical, practical relevance of that. Let's think of
13 that. Every time you're at a family gathering or you're
14 out, you're getting groceries or in a movie, and someone
15 brushes up -- your boyfriend or husband brushes up
16 against your daughter's -- daughter or granddaughter's
17 chest or grabs her boob, you call the police? Is that,
18 is that what they're trying to say in this case? Is
19 that what's going to happen? You grab someone's --
20 playfully or whatever, it's going to be, you go to jail?
21 You call the police and take the kid away? Is that what
22 you do? Because that's what the State's suggesting.
23 Not that they know when the date is, because they don't
24 know when the date is. All they said is February 2008
25 sometime. That's it. But think of the consequences.

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1 But going back to the theme that I explained when I
2 first started this, think about what the State's asking
3 you to do. Think about the problem with this. Think
4 about the danger of this. You've got statements from a
5 victim. No medical records to support it, none. You've
6 got, you've got a counselor who is referred by the
7 Sheriff's Department and DSS who testifies for the State
8 a hundred percent of the time, to a doctor that gets
9 referred, who says that I have to accept it at face
10 value. Is that, is that justice? Is that really
11 justice? Is that what the people of Pickens County want
12 as justice? Is that what it is? I would suggest to you
13 that that is the wrong way. That's not justice.
14 This case is going to be decided by you, all twelve of
15 you. As I said before, don't check your common sense at
16 the door. In a few moments Mr. Richardson is going to
17 come up here and try to take apart all of my eloquent
18 statements that I made. He'll probably do a good job of
19 it. But I will tell you this is disturbing and it's
20 something that you need to really think about. You need
21 to think about this in terms of what the judge is going
22 to tell you in a second. Because as the Judge told you
23 a moment ago or -- I've lost track of time -- told you
24 Monday, outside of serving in the military in peacetime,
25 this is one of the greatest opportunities that you have

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1 to serve your Country, and to serve your State, and to
2 serve this County. When they put the standard up, it
3 was kind of brought down from the ages from back when
4 the Magna Carta was signed. This idea that people who
5 are accused of crimes, who are accused of offenses,
6 anybody, they are entitled to the presumption of
7 innocence, that everyone is entitled to the presumption
8 of innocence, all hundred people in this courtroom are
9 all entitled to the presumption of innocence when you
10 come court, in a criminal court, that they are presumed
11 innocent and the State has to prove their case beyond a
12 reasonable doubt.

13 So I ask you to look at the evidence in this case,
14 or the complete lack of evidence in this case, the
15 issue, the problem that I'm talking about and send a
16 message in this case. Send a message that this is not
17 the way it's supposed to be done. This is not the way
18 it's supposed to be worked out. I don't want this for
19 my family, my life. It has to be stopped, and it should
20 be stopped here. Thank you.

21 THE COURT: Solicitor, you may address the
22 jury.

23 MR. RICHARDSON: If it pleases the Court,
24 they've been going about an hour. I didn't know if
25 maybe you ---

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1 THE COURT: How long are you going to be
2 going?

3 MR. RICHARDSON: Not near that long.

4 THE COURT: All right.

5 MR. RICHARDSON: Okay.

6 THE COURT: I think the jury -- the jury's all
7 right? Okay. They're okay.

8 MR. RICHARDSON: That is my concern. Thank
9 you, Your Honor.

10 **CLOSING STATEMENT**

11 **BY MR. RICHARDSON:**

(
12 The charges that you have before you today I broke
13 them down in my opening statement, and I'm going to
14 break them down now. Defendant Sanders, the first
15 charge is Criminal Sexual Conduct in the second degree.
16 That charge involves somebody committing a sexual
17 battery on a person who is less than fourteen years of
18 age, but at least eleven years of age. A sexual battery
19 is a penetration in an orifice of the body. In the case
20 that we have before you, we're talking about the little
21 girl's vagina. Consent is not an issue. A twelve-year-
22 old cannot consent to any type of conduct of that
23 nature. Sexual conduct, touching, anything of that
24 nature, they cannot consent. And the Judge will tell
25 you that.

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1 The second charge against the Defendant Sanders was
2 Lewd act on a minor. That is a charge that says it's
3 unlawful for a person to touch a person under the age of
4 sixteen years for lewd and lascivious purposes. The
5 third charge against Ms. Gearhart is unlawful conduct
6 towards a child. The law says it's unlawful to do
7 something that causes unreasonable risks of harm to your
8 health or safety to a minor child. Now, I'm going to be
9 a little bit -- I'm going to try not to stretch it out
10 quite as long as the two other attorneys did. I know
11 y'all have been listening a long time, and I know you've
12 been in this courtroom for several days. I'll try to
13 keep it to twenty minutes, because I'm tired and y'all
14 can hold me to that. I'm keeping it to twenty minutes
15 and you'll get the case, and the Judge will talk to you
16 then. I think somebody once told me that you should
17 never talk longer than a Baptist minister, so I will not
18 do that.

19 Reasonable doubt. The Judge will charge you with
20 reasonable doubt. I have the burden of proof. I gladly
21 accept that burden of proof. Solicitors all of the
22 State of South Carolina accept that burden of proof
23 everyday. And reasonable doubt -- and you've heard it
24 mentioned about common sense. You've heard the defense
25 mention it, I'm not sure, but the Judge may have

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1 mentioned it, in using your common sense. Ladies and
2 gentlemen, I agree with that. Reasonable doubt and
3 common sense in essence are one in the same. As an
4 illustration on that point, I'm not a hunter, I don't
5 hunt. I know a lot of people and in Pickens County a
6 lot of people do. So I use this as an example. If I'm
7 out one day hunting and I have my rifle on my shoulder,
8 and Mr. Robinson and Mr. DeJong were with me, and we're
9 out hunting deer and it's early morning. The fog's
10 rising over the field. And off in the distance I see a
11 deer, a nice big deer, a big buck, antlers. And I say,
12 wow, look at that deer. Mr. DeJong and Mr. Robinson
13 would say, yeah, look at that deer, or any defense
14 attorney. And I pull up my rifle, I pull up my thirty-
15 aught-six and I aim it at that deer, and boom, I shoot
16 that rifle, that gun goes off and everybody hears the
17 recoil, everybody sees the kick of the gun and that deer
18 falls. And I say, man, I have got me a trophy size
19 buck. I just shot that deer dead. Defense counsel will
20 get up here and state, wait a second. There's
21 reasonable doubt here. We didn't see the bullet go in
22 the deer. We're too far away to see any blood. There's
23 a little mist over the thing. We can't see anything
24 regarding that shot. That's reasonable doubt,
25 reasonable doubt. What does your everyday common sense

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1 tell you happened to that deer? Did he have a heart
2 attack or did I shoot him dead?
3 Ladies and gentlemen, in this case I ask that you
4 use your common sense. And that common sense starts
5 with the testimony of a twelve year old girl. The
6 twelve year old girl who has had to come into this
7 courtroom, and in fact she sits in this courtroom right
8 now, and get on this stand and give testimony. Not only
9 twelve individuals in the jury box she does not know,
10 but an entire courtroom. I disagree with Mr. DeJong
11 when he says that when she gave that story she did not
12 give details. Prior bad acts, a scheme. It's what we
13 call a scheme. It's the start of it. It's what the
14 build-up was. He started it in the hotel rooms. That's
15 the common scheme. That's the intent. The judge will
16 tell you that. That's the common scheme and that's the
17 intent. But what does she tell you. Well, she gives
18 you details about coming down with her mother. She
19 gives you details about how that came to be. And we
20 were going to go visit an aunt, a sick aunt. Yeah.
21 There's disagreement. Defendant Gearhart says, no, we
22 never -- that was not the case. Well, where is this
23 nine year old girl getting that from? Is she just
24 pulling this out of the air? Making up the story? That
25 was the deception to come to South Carolina. That was

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1 the start of this entire thing and she gives details
2 about going into the hotel room. She cannot tell you,
3 admittedly -- somebody said something about coaching.
4 She didn't get up here and say a particular day or when
5 it was. She couldn't tell you the month. What she
6 could tell you was that it was 2005 and it was late in
7 2005. And she gives you three stories about times that
8 he, Defendant Sanders, touched her. You know, at one
9 point in time, she states, well I was in the floor. It
10 started when I was in the floor and they were having
11 sex. I'll get to the impotent part in a little bit.
12 They were having sex and how -- and how -- and she said,
13 how I knew it, I could hear it. They were moving.
14 She's giving details about that. And at one point, she
15 states that her mother gets up and goes into the
16 bathroom and she gets into the bed. The mother tells
17 her to get in the bed. She gets in the bed, at which
18 point in time Sanders uses his hand to rub her. If she
19 wants to make this a big fantastic thing, why is she not
20 saying something more than a hand? This is a big deal,
21 a big lie. Well, let's make it a lie. Let's say he put
22 his penis in me, then. She's just telling you what
23 happened. On another occasion, she gives you details
24 somewhat similar, but not totally. One time she was in
25 the chair, and she went from the chair to the floor.

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1 And she fell asleep. And they were having sex again.
2 And she was awakened and her mother told her to get in
3 bed. And then a third detail that she gave, on a third
4 time, was that mom actually got in bed with them. So I
5 absolutely disagree. There are details. And she's
6 given as good as a nine year old memory is going to give
7 three years later. Then she talks about the move down
8 to South Carolina and that it continues to happen in the
9 house. Joey Sanders is rubbing her and he's touching
10 her boobs. She's told you at the hotel where he was
11 putting his finger. But she says, but at the house he
12 was doing more than rubbing and touching type thing.
13 Let's get him, if we're going to lie about this. Well,
14 I'm going to get to that in a minute. This humongous
15 lie that she's made for these reasons that they've
16 discussed. But she admits. She says yeah, he was
17 rubbing me and he was touching me, and he would do that
18 whenever he could. She doesn't say at that point in
19 time, ladies and gentlemen, she doesn't say, yeah, and
20 then he also put his finger in it. She's just telling
21 you what happened. That Joey Sanders, at this point in
22 time, is in the house with Gearhart. And Gearhart is in
23 the house sometimes when he's doing this. And he's over
24 there copping a feel on this ten, eleven year old,
25 twelve year old girl. And she's just telling you what

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1 was happening. She didn't make it grandiose. Then, and
2 everybody admits that her mother went to work down here
3 in January, and it was January or February -- and once
4 again she could not -- one thing about dates. They are
5 not elements of a crime. I do not have to prove dates.
6 That's absolutely not part of it, okay? We have a young
7 girl that's giving us the best time. And the
8 indictments say on or about. They do have a span of
9 time and it says, on or about because even adults, we
10 cannot remember specific dates all the time. The date
11 is not an element. Nowhere in the law does it say that
12 the State of South Carolina or this prosecutor has to
13 prove a date. I have to prove the elements of the
14 crime, but she gets down to the point, right after my
15 mother went to work. Mom was gone.

16 Okay. Now, mom's gone out of the house so his
17 intent, his scheme is now going to get a little worse.
18 And that intent and scheme is to have sexual intercourse
19 with her. I once again disagree, respectfully, with Mr.
20 DeJong. Details were given. You heard the testimony.
21 She said that when it happened, I came home and
22 Defendant Sanders was already there. Mom was at work.
23 And we knocked that down. Mom worked. And mom worked
24 late. And those two -- and he would be home alone with
25 that girl. She states that he was in bed. She's giving

1 details. He was in bed and that he asked her to get him
2 a drink. And she got him a drink and he pulled her onto
3 the bed. She's telling you bits and pieces of
4 everything that happened, in detail. He pulled her into
5 bed. He made comments to her like, you can't tell
6 anybody. And then he had sexual intercourse with her.
7 He got on top. And she stated that. She was twelve
8 years old at the time. Now she's fourteen and she's
9 telling this jury this. And what else did she -- what
10 other little detail did she give? That he rolled over
11 and started playing with himself. Do you remember the
12 testimony, and I'll get to Veronica's -- I can't
13 remember her name, but his ex-wife, Veronica Sanders or
14 Hubbard or something like that, said he was doing the
15 same thing. She said he would do the same thing back
16 when she was with him. He rolls and he starts playing,
17 he starts playing with himself and she gets up and goes
18 to take a shower.

19 Now, after that, she testifies that she tells her
20 mother. At some point in time she tells her mother that
21 she is being rubbed because the Defendant wants her to
22 give him a hug and she didn't want to give him a hug,
23 and this is the reason why she didn't want to give him a
24 hug. So she tells her mother that. And her mother goes
25 to Sanders about it. Now, every -- now people -- she's

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1 disclosed now that something's going on. After that big
2 event, she's disclosed. She tells her mother and her
3 mother, her mother goes to Defendant Sanders, talks to
4 him and that's it. They have a conversation and let's
5 wash it under the table, nothing else is done. No
6 counselors are brought in. If they thought she was
7 making this up, that he's rubbing her breast, no
8 counselors are brought in, no police are talked to, no
9 nothing. She testified, Complainant testified that, in fact,
10 her mother did get mad about it and that they were going
11 to leave, but it never happened. So her mother was
12 concerned about it, but it never happened. She omitted
13 from taking her child out of that house, and that's the
14 unreasonable risk of harm.

15 And the fact of the matter is -- and a little bit
16 more about that is that everybody -- that's admitted.
17 Both of them admitted it on the stand that they told the
18 police officer, Rita Burgess that. That yes, they were
19 told that. And yes, we did nothing about it. Is it
20 just a coincidence? The defense even mentions it. Is
21 it just a coincidence that she would tell them that and
22 nothing else is going on? Finally, a disclosure in the
23 case was not through Complainant thinking about this and
24 trying to make it into something that's going to get her
25 taken out of the house or anything like that. It's a

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1 text message to a friend. That's how it happened.
2 That's what the testimony was. She texted a friend,
3 friend told mother and it went down the line from that.
4 And the officer came to her house, talked to her based
5 upon that. She didn't make the call to the officer.
6 She didn't -- Complainant didn't have any time to think about
7 what she had to say. The officer came, came to the
8 porch and she tells the story that she's told y'all
9 today to this officer. Where did she had time to
10 concoct this amazing story, going all the way back to
11 2005. We're not going to just talk about 2008. She's
12 going all the way back to 2005. She's thinking of all
13 of that in the few minutes that she's with this officer?
14 And then after that, tells the exact same story to this
15 officer again at the Law Enforcement Center. She was
16 taken out of her house and taken to a police station for
17 emergency protective custody. And they make a big deal
18 -- my wife and I love spaghetti and one of the things --
19 if you go in my house and I've got kind of high
20 ceilings. But if you go in my house there's spaghetti
21 up on the ceiling. That's how we figure out if it's
22 done or not. We throw up and see if it sticks. If it
23 sticks, spaghetti done; right? Well, it's kind of like
24 that's the defense here. Let's throw anything up. It's
25 like throwing spit balls at the wall, and let's see what

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1 sticks. They're talking out of both sides of their
2 mouth. At one point in time, they're saying, well, she
3 wants to go to Virginia, and she's made this whole
4 elaborate story up to go to Virginia, which is
5 absolutely incredible to me. And then she wanted to
6 say, well, she got angry at Joey. She got a little bad
7 about homework. So she made it up because of that, too.
8 There was some third reason. Oh, anger and mad and oh,
9 jealousy. Jealousy. She's jealous. These are the
10 reasons. This is the defense's case that this little
11 girl has come into this courtroom and told this story.
12 She's jealous. Well, what do we know? You have the
13 testimony. She was happy in South Carolina. I never
14 heard anybody say she wasn't happy in South Carolina.
15 She was happy all the way through. I think they said
16 that -- somebody testified that she never complained.
17 Everything was fine in South Carolina. And she's made
18 this big story up just to move back to Virginia? She's
19 made this story up -- they're saying that she loved Joey
20 Sanders. So she's made this huge story up on somebody
21 that she loves, to have him subject to a criminal charge
22 of statutory rape? Going to jail, somebody she loves?
23 Is that believable? And she did, ladies and gentlemen,
24 and I brought it out, she did, on a moment, did take
25 back her story to that guardian ad litem. There's no

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1 question about it. I'm not sure why they called the
2 guardian ad litem. She took the story back and I told
3 you she took the story back and she said, well, but
4 afterwards she told the Freemans, no, that's not true.
5 That's not true. She's scared. She's worried her
6 mother's going to go to jail. It's the mother she's
7 lived with. She has a lot -- and what did Shauna
8 Galloway talk about that? There's a lot of reasons for
9 them taking back the statement. And one of the reasons
10 is that pressure is on them. Knowledge of the
11 perpetrator possibly going to jail. Media. This is a
12 media case. The media is all over it. She knows his
13 position in the community. But the fact is, is she
14 immediately came back and said, no, that's not true. It
15 did happen. And the guardian thought so much about it -
16 - she got up there testifying to this, but she thought
17 so much about this, ladies and gentlemen, that she did
18 not put it into one guardian Report. There were two of
19 them. I crossed her on it. These are reports. These
20 are documents that you give to a Judge, and the Judge
21 makes a decision on, and was making a decision on them
22 two individuals over there. She didn't put it in one
23 single report. Did she really believe Complainant
24 retraction? Well, the evidence was in the email; wasn't
25 it? The email she didn't want to talk about. She

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1 talked about a lot of things, and she remembers the
2 specifics of entire conversations that were never
3 written down or put into a guardian ad litem report.
4 She remembers all of that, but she forgets conveniently
5 about her email to her supervisor saying I believe
6 something really did happen. What was the purpose of
7 her testimony? We freely admit that she took it back
8 that time. And Shauna Galloway told us the reasons it's
9 done. They can say whatever they want about Ms.
10 Galloway. She's an expert. She has top credentials.
11 She testified about what she did and the judge said
12 she's an expert witness. She can give her opinion.
13 And Ms. Burgess got this case. She goes out -- I
14 took issue on her being attached Mr. Robinson. She gets
15 a case. She gets a referral and she goes out and she
16 talks to a young girl. A young twelve year old girl.
17 And this young twelve year old girl comes to the door
18 and she says, do we have a minute to talk? Can we talk
19 about these certain allegations? And they sit down on
20 the front porch. She doesn't throw her in the car and
21 take her down to the police station and start that type
22 of stuff. She sits down on her front porch and she asks
23 her questions. Tell me about this. Did Complainant have
24 time to sit down and think up this entire story and all
25 of a sudden she's told the same story that she's told

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1 you folks today, she told to Ms. Burgess. So Ms.
2 Burgess makes a, makes an excellent decision. Do you
3 leave a child in that home? No. And she takes the
4 child, and she takes the child into emergency protective
5 custody. That's a means that we have to protect our
6 children. It doesn't, it doesn't necessarily have to
7 stay that way. There's other court hearings after that
8 where you can challenge that. But that moment she takes
9 the child and the child goes into DSS custody. Complainant
10 tells Rita again the same story in a written statement
11 down at the police station, the same story again. What
12 has Ms. Burgess done wrong in this case? Then --
13 remember I told you, ladies and gentlemen, this is a
14 secret crime. This is not a crime that's caught on
15 video tape. This is not a crime where you have
16 witnesses there. It's a sick, secret crime. And so if
17 it's a secret, a crime such as this has to be handled in
18 certain ways. And she handled it perfectly. This is
19 June, the warrants weren't gotten until August.
20 So what did she do? She starts her investigation.
21 She gets a statement from the child. She allows the
22 defendants to come in. As a matter of fact, both of
23 them come in. She Mirandizes them, like a good police
24 officer should. She tells them their rights. She tells
25 them what the suspicions are. And she says -- and she

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1 listens to their story. At that point in time. she
2 says, okay, now, we have to see the medical -- and I'm
3 going to get to the medical stuff in a minute, but we're
4 going to have to see medical, what's happened. So she
5 sends it on to a medical doctor and also a forensic
6 interview, two experts. And she got those reports. She
7 had the statement of the victim. She knew what the
8 defendants were saying. She went to a judge and she
9 applied for a warrant. Thus, here we are today.

10 In these cases with these children, the child's
11 testimony, the child herself is very important.
12 However, I believe somebody said there was absolutely no
13 medical evidence in this case. Once again, I dispute
14 that. This was drawn by the doctor. Now, ladies and
15 gentlemen, she freely admitted to y'all that there is a
16 notch at the hymen and that that -- I asked her. She
17 told me. That doesn't conclusively mean that there was
18 sexual penetration, but it's highly suspicious in a
19 twelve year old. What did she say? She said that that
20 is an injury that has to be caused by penetration. So
21 we know that she has a notch in her hymen that that has
22 to be caused by penetration. Now, keep in mind she
23 testified, Ms. Crosswell testified that eighty-five
24 percent, eighty-five percent of sexual assault victims
25 have no injury, no trauma. None is found. Fifteen

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1 percent there is trauma found. Ladies and gentlemen,
2 this case before you is one of that fifteen percent.
3 She cannot say it was absolutely by sexual conduct, can
4 never say that. But she can say that there was trauma
5 caused by penetration. Is that just a coincidence?
6 Eighty-five percent of sexually assaulted women have
7 absolutely no injury. So I disagree. I believe, yes,
8 there is medical evidence. It's not conclusive, but it
9 goes along with what Complainant has said. It corroborates
10 her testimony. And any -- and she was very honest and
11 up front with y'all. Any insinuation that -- Mr.
12 Robinson talks about these being referred by the police.
13 Yeah, that's where sexual assaults come, they come into
14 the police station and they refer them to the doctors to
15 see what, if anything, has happened. Ms. Burgess could
16 have just shut down and to everybody, don't listen to
17 any of the defendants. She could have just said, well,
18 the girl said that, and shut down and got a warrant.
19 She didn't do that. She investigated this case as much
20 as sexual assault cases allow us to investigate.

21 Now, the defense put up a doctor, also. Of course,
22 he was a family doctor. Part of the defense, once again
23 we're throwing spaghetti up on the thing, we want to see
24 what sticks. But part of the defense is erectile
25 dysfunction. Well, the doctor said that yeah, he came

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1 in in March of 2007, I think that's right, in March of
2 2007 complaining of erectile dysfunction. In August, he
3 was treated and then in November, the defendant comes
4 back to the doctor. Now, he's treated in August and
5 he's treated in March, too, I think he said. The doctor
6 and the defendant said. He comes back in on November,
7 November 28th, and the doctor read this to y'all. He
8 said he's much improved. His blood -- in general, he's
9 significantly improved. His blood pressure is a little
10 elevated, but his mood is -- overall is improved and
11 then he does make a complaint. The doctor's getting
12 some complaints and he's complaining about his knee.
13 But then -- and this is November after he'd been
14 treated. Otherwise, there's no other complaints,
15 nothing's being said about any erectile dysfunction.
16 And then he doesn't see the doctor again until when?
17 Until after Ms. Burgess brings him in and talks to him
18 and he realizes he's got a problem. So he goes back to
19 the doctor then, you know, this is self-serving, trying
20 to help himself. He goes back to the doctor and then he
21 starts complaining about the dysfunction, in June, June
22 17th, erectile dysfunction. The doctor said that it
23 doesn't mean he can't become erect and that you could
24 still have sex. He did say that. He said you could
25 have problems, but the problems don't mean that you

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1 absolutely all of the time are impotent, meaning you
2 cannot get an erection at all. You know all of that --
3 and another thing, the doctor must not have thought too
4 serious about it, neither did Mr. Sanders. Nobody went
5 to an expert about this. He didn't even have in his
6 notes to refer him to an expert, to a urologist, and he
7 testified that a urologist would come in if the
8 condition is severe or serious. But then he testified
9 he can't ever get an erection. He hasn't had sex since
10 2002.

11 That brings me to my next point, my next point, my
12 next witness. And that is his ex-wife. And she came in
13 -- he testified on the stand that he has not had sex
14 since 2002. He's had this problem. Yet the doctor's
15 notes don't say anything until 2007. He testified he
16 was having no sex. He can't have sex. He has a
17 dysfunction since 2002. So I brought in his ex-wife,
18 and she testified. Yeah, we had it in 2002 twice a
19 week, 2003 twice a week, 2004 twice a week. He
20 masturbated. He had phone sex. He was masturbating
21 while he was having phone sex. 2005, all the way up
22 until, until they separated which was 2006, just before,
23 guess what, Ms. Gearhart comes into the picture. Ladies
24 and gentlemen, she got up there and testified that it
25 was an amicable divorce. They split ways. There was no

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1 animosity. The defense attorney asked her the question.
2 Nobody's fighting. She doesn't have anything to gain
3 today. That thing's over. He did not tell you the
4 truth. He put his hand on that Bible and he did not
5 tell you the truth. He's the one that wanted to make
6 the big sophisticated lie. If he doesn't tell you the
7 truth about that, what else is he not telling you the
8 truth about? Who has something to lose in this case and
9 who has nothing to lose? The Defendants have a lot to
10 lose.

11 You know, Complainant when she testified, when she had
12 to come in her and testify, she had something to lose.
13 I think I'm right on my twenty minutes, so I may, I may
14 go over just a minute. But I'm in the summation now.
15 I'm at the end of my statement. Ladies and gentleman,
16 we are dealing with a twelve year old girl who's been
17 raped. She comes in and tells a story. How many times
18 has she had to tell the story? She's told it to the
19 police officers a couple of times. She's told it to the
20 Department of Social Services. She has told it to the
21 family. She has told it to me, a male prosecutor. She
22 has come into a public forum in front of two cameras and
23 told her story to an entire jury panel, to a male judge,
24 to a clerk of court, to a court reporter, the same
25 story. She should be at home where my daughter is

1 swimming in the local pool. But she's having to be here
2 today. Do you think this is a great thing? Is it not
3 embarrassment? She has to get up here and say that this
4 individual, this man over here had sex with her, and do
5 that publically in front of everybody? That's
6 credibility. We have to protect our children, and
7 that's credibility. And to think that she's made up
8 this entire story so she can get back to Virginia. I
9 mean, that was two or three years ago. Or that she's
10 mad at somebody. It's absolutely incredible. Ladies
11 and gentlemen, I ask that you go back and I ask that you
12 use your common sense in this case and come back with a
13 verdict of guilty on all counts against both Defendants.
14 I went over two minutes. I apologize. Thank you.

15

CHARGE16 **BY THE COURT:**

17 Madam Forelady and ladies and gentlemen of the
18 jury, my instruction to you is probably going to take
19 twenty minutes, twenty to twenty-five minutes. I'm
20 ready to proceed. I don't want to make you
21 uncomfortable. If you need a short break, a five minute
22 break, I'll be glad to give you a break. If you're
23 ready to proceed, I'll give you the instructions on the
24 law.

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1 Part of my job as the trial judge is to give you
2 instructions on the law and that's what I need to do
3 now. We have indictments in this case that charge the
4 Defendant. I will be referring to the Defendant. Of
5 course, it applies to both Defendants. And let me
6 remind you, ladies and gentlemen, the fact that these
7 Defendants in this case have been arrested, they've been
8 charged, they've been indicted, that's not evidence in
9 the case and it should not be considered by you in any
10 way as evidence in the case for guilt.

11 It doesn't create any presumption of guilt. The
12 indictment that brings the case before this court is
13 merely the charging paper. It's the document by which
14 the case is processed until it reaches you, the jury,
15 for final disposition.

16 Now, as to the case of Mr. Sanders, there's two
17 separate indictments alleging separate offenses. One
18 offense, of course, is criminal sexual conduct with a
19 minor in the second degree. The other is committing a
20 lewd act upon a child. And these are separate and
21 distinct offenses. They should be decided by you
22 separately on the evidence and the law applicable,
23 uninfluenced by your decision on the other indictment.
24 In other words, the defendant with two indictments could

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1 be convicted or acquitted on each or both or neither.

2 I'll be asking you to write separate verdict forms for
3 each of the particular charges.

4 The Defendants have entered pleas of not guilty to
5 the indictments and that plea places upon the State the
6 burden of proving guilt beyond a reasonable doubt. A
7 person charged with committing a criminal offense in
8 South Carolina is never required to prove himself or
9 herself innocent. That's an important rule of law. In
10 a criminal trial, no matter how serious the charge may
11 be, a defendant would always be presumed to be innocent
12 of the crime for which the indictment was issued, unless
13 guilt is proven by evidence satisfying you of that guilt
14 beyond a reasonable doubt. Presumption of innocence
15 doesn't end when you begin your deliberations. It
16 accompanies the Defendant throughout the trial until
17 you've reached a verdict of guilt based upon evidence
18 satisfying you of that guilt beyond a reasonable doubt.
19 It may have already been mentioned that the presumption
20 of innocence has often been described as a robe of
21 righteousness that's placed about the shoulders of a
22 Defendant and remains on that Defendant until it's
23 basically been stripped from him or her due to evidence
24 that satisfies you of that guilt beyond a reasonable

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1 doubt. The presumption of innocence is not just a mere
2 legal theory. It's not just a phrase that's tossed
3 about. It is a substantial right to which every
4 defendant is entitled unless you the jury are satisfied
5 of that guilt beyond a reasonable doubt.

6 I've used beyond a reasonable doubt and you may ask
7 what is a reasonable doubt in the law. A reasonable
8 doubt is the kind of doubt that would cause a reasonable
9 person to hesitate to act. Now, the state having the
10 burden of proof beyond a reasonable doubt in this case,
11 the court of general sessions, some of you may in the
12 past have served as a juror with a civil case, a lawsuit
13 between parties. You may have been told it was only
14 necessary to prove a fact was more likely true than not
15 true. That's what we call the greater weight of the
16 evidence or the preponderance of the evidence. In
17 criminal cases, however, the State's proof is more
18 powerful than that, and must be beyond a reasonable
19 doubt. And proof beyond a reasonable doubt is proof
20 that would leave you firmly convinced of the Defendant's
21 guilt. There are very few things in this world that we
22 know with absolute certainty, ladies and gentlemen, and
23 in criminal cases, the law doesn't require proof that
24 overcomes every possible doubt. If, based upon your

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1 consideration of the evidence, you're firmly convinced
2 that the defendant is guilty of the crime charged, then
3 you must find that defendant guilty. If, on the other
4 hand, you think there's a real possibility that the
5 defendant is not guilty, then you must give the
6 defendant the benefit of that doubt and find him or her
7 not guilty.

8 Now I remind you, during the course of this trial,
9 you and I have had certain duties to perform. As the
10 trial Judge, it's been my responsibility to preside over
11 the trial of the case. I've also had the duty to rule
12 upon the admissibility of evidence that's been offered
13 during the trial. You're to consider on the competent
14 evidence that is before you, the testimony that's been
15 presented from the witness stand, the exhibits which
16 have been made a part of the record. My job also is to
17 instruct you on the law applicable to the case. As the
18 presiding Judge, I'm the sole Judge of the law in the
19 case and it's your duty as jurors to accept the law and
20 apply the law exactly as I stated to you now. You may
21 already have an idea of what the law is in a case like
22 this, or even an idea of what the law ought to be in a
23 case like this. If you have such a notion, ladies and
24 gentlemen, and it's different from what I now tell you

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1 the law is, then you must abandon those ideas, because
2 under your oath, you're sworn to accept the law and
3 apply the law exactly as I state it to you.

4 Now, every case that's tried in this courtroom
5 before a jury, that jury becomes the sole, exclusive
6 judge of the facts in a case. A Trial Judge cannot
7 intimate, state or comment on or make any statement
8 whatsoever to a trial jury about the facts in a case.
9 Since you the jury are the sole judges of the facts,
10 you're not to infer from what I've said during the
11 progress of the trial, any rulings I've made on the
12 admissibility of evidence or otherwise, anything I say
13 to you now during the course of this instruction to you,
14 that I have an opinion about the facts in the case. I
15 don't have an opinion about the facts. The Constitution
16 in South Carolina prohibits a trial judge from having an
17 opinion about the facts. That is totally, exclusively
18 left to you and you alone, ladies and gentlemen, to
19 determine what the facts are. It's your duty to
20 determine the effect, and the value and the weight and
21 the truth of the evidence that's been presented during
22 the trial.

23 Now, normally, there's two types of evidence that
24 are presented. There's direct evidence and there's

1 circumstantial evidence. Direct evidence is the
2 testimony of a person who claims to have actual
3 knowledge of a fact, such as an eyewitness. It would be
4 evidence that immediately establishes the main fact to
5 be proved. Circumstantial evidence is proof of a chain
6 of facts and circumstances that indicate the existence
7 of a fact. It's evidence that immediately establishes a
8 collateral fact from which the main fact may be
9 inferred. In other words, it's based on inference and
10 not on personal knowledge or observation. The law makes
11 absolutely no distinction between the weight or value to
12 be given either direct evidence or circumstantial
13 evidence, nor is a greater degree of certainty required
14 of circumstantial evidence than direct evidence. You
15 should weigh all of the evidence, ladies and gentlemen,
16 in the case and after weighing that evidence, if you're
17 not convinced of the guilt of each of these Defendants
18 beyond a reasonable doubt, then, of course, you must
19 find that defendant not guilty.

20 Necessarily, you must determine the credibility of
21 witnesses who've testified in the case. Credibility
22 simply means believability. It's your duty as jurors to
23 analyze and evaluate the evidence and determine which
24 evidence convinces you of its truth. In determining the

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1 believability of witnesses who testify in the case, you
2 can believe one witness over several witnesses, several
3 witnesses over one witness. In your discretion, you can
4 believe part of the testimony of a witness, and you can
5 reject the remaining part of the testimony of that very
6 same witness. You, again, in your discretion, you can
7 believe the testimony of a witness in its entirety or
8 reject it in its entirety. You can consider about
9 witnesses, whether that witness exhibited to you any
10 bias or prejudice or other motive in the case. You can
11 consider the appearance of the witness while on the
12 witness stand, the demeanor of that witness. You can
13 ask yourself, was that witness straight forward or
14 hesitant in answering questions? Was the testimony of
15 that witness consistent or inconsistent? How does the
16 testimony of that witness stacked up against the
17 testimony of other witnesses who testified? Was it
18 strengthened or was it weakened? It's your prerogative,
19 ladies and gentlemen, to determine just what the
20 credibility of the witnesses are.

21 Now, also in this case, there's been expert
22 testimony that has been presented by both parties. As I
23 said to you briefly, the rules of evidence ordinarily
24 would not permit a witness to testify to opinions or

1 conclusions, but there is an exception for what we call
2 expert witnesses. And a witness who by education and
3 experience has become an expert in some art or science
4 or profession or other calling may state an opinion to
5 any relevant material matters to which that witness
6 claims to be an expert and can state the reasons for
7 those opinions. Now, you should consider any expert
8 opinion received into evidence in this case and treat it
9 like any other evidence and give it the weight that you
10 think it deserves. If you decide the opinion of a
11 particular expert was not based upon sufficient
12 education and experience or you conclude the reasons
13 given by the expert did not support the opinion as being
14 sound, or the opinion is outweighed by other evidence,
15 then you may disregard the opinion entirely. An expert
16 witness testimony is to be given no greater weight than
17 that of any other witness simply because the witness is
18 an expert. You're not required to accept an expert's
19 opinion, even though it may be uncontradicted.

20 Now, there has been evidence presented that
21 witnesses who have testified have made prior statements
22 which were not consistent with the witness's present
23 testimony. You may use this evidence to decide whether
24 to believe the witness. You may also use the evidence

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1 of earlier contradictory statements to determine the
2 truth of those statements. Of course, it's up to you to
3 decide whether to believe the earlier statements or the
4 testimony given at trial. If a witness shows to have
5 knowingly testified untruthfully concerning any material
6 matters, you may consider this in determining whether to
7 trust the witness's testimony as to other matters. You
8 may reject all testimony of that witness or give all or
9 part of the testimony the weight that you think it
10 deserves.

11 You've also heard evidence that the Defendant
12 committed a bad act, other than the one for which the
13 defendant is now on trial. Now, this testimony, if you
14 conclude it to be true, may only be considered by you on
15 the question of intent or common scheme or plan and for
16 no other reason, for no other purpose. You may give
17 this evidence the weight and value, if any, which you
18 find it should have on that sole issue of intent or the
19 issue of common scheme or plan. You must not consider
20 the evidence or the commission of other bad acts as
21 proof of the Defendant's guilt of the charge that we're
22 trying today.

23 Now, ladies and gentlemen, in order to establish
24 criminal liability, criminal intent is required. And it

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1 must be proven by the State beyond a reasonable doubt.
2 Criminal intent is always a matter that must be
3 determined by a jury from the circumstances surrounding
4 the situation. There's no way to prove intent to a
5 mathematical certainty. There's no way that medical
6 science can dissect a person's brain and determine what
7 that person had in mind, so the law says that criminal
8 intent may be inferred through the circumstances shown
9 to have existed. It's not necessary to establish intent
10 by direct or positive evidence, but it may be
11 established by inference in the same way as any other
12 fact, by taking into consideration the acts of the
13 parties and all of the facts and circumstances of the
14 case. Criminal intent is a mental state. It's a
15 conscious wrong-doing. It's up to you to determine what
16 the defendant intended to do based upon the
17 circumstances shown to have existed. Criminal intent
18 can arise from inaction or a failure to act and from an
19 indifference to duty.

20 Now, the particular charges in this case, first of
21 all, there's the charge of second degree criminal sexual
22 conduct with a minor and in this particular case, the
23 Defendant Sanders is charged with this offense. The
24 State must prove beyond a reasonable doubt that the

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1 Defendant engaged in a sexual battery with the victim.
2 A sexual battery is sexual intercourse, cunnilingus,
3 fellatio, anal intercourse, or any intrusion, however
4 slight, of any part of a person's body or any of -- any
5 object into the genital or anal openings of another
6 person's body, except when intrusion is accomplished for
7 medically recognized treatment or diagnostic purposes.
8 The state must then prove beyond a reasonable doubt that
9 the victim was at least eleven years old, but not more
10 than fourteen years old at the time of the sexual
11 battery. Consent, willingness, indifference or
12 ignorance on the part of the minor, if any, as to what
13 was taking place does not in anyway affect the charge of
14 criminal sexual conduct with a minor because an
15 unmarried woman under the age of fourteen cannot legally
16 consent to sexual intercourse.

17 Defendant Sanders is also charged with committing a
18 lewd act on a minor. The State must first prove beyond
19 a reasonable doubt that the defendant was over the age
20 of fourteen. Next the State must prove that the
21 defendant willfully and lewdly committed or attempted a
22 lewd or lascivious act on or with the body or its parts
23 of a child under the age of sixteen years, with the
24 intent to arouse, appeal to or gratify the lust, the

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1 passions or sexual desires of the Defendant or of the
2 child. Now willfully means to voluntarily and
3 intentionally with the specific intent to do something
4 the law forbids. Lewd means obscene or lustful,
5 indecent, lecherous. Lascivious means tending to
6 insight lust, lewd, indecent, obscene or tending to
7 deprave the morals in respect to sexual relations.
8 The Defendant Gearhart is charged with unlawful
9 conduct toward a child. The State must first prove
10 beyond a reasonable doubt that the Defendant had charge
11 or custody of the child, was the parent or guardian of
12 the child or was responsible for the care and support of
13 the child. A person responsible for a child's welfare
14 would include the child's parent or guardian, a foster
15 parent. It could be an operator, an employer or a care
16 giver of a public or private residential home, an
17 institution, an agency, a child daycare center or
18 facility. Or it could be an adult who has assumed the
19 role or responsibility of a parent or guardian for the
20 child, but it does not -- but that person would not
21 necessarily have legal custody of the child. And it
22 does not include a person whose only role is the care
23 giver and who's contact is only incidental with the
24 child, such as a babysitter. The State must also prove

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1 beyond a reasonable doubt that the defendant placed the
2 child at unreasonable risk or harm, affecting that
3 child's life or physical or mental health or safety. A
4 child means a person under the age of eighteen for this
5 Statute.

6 Now, Madam Forelady and ladies and gentlemen, you
7 have three different indictments that you're -- that are
8 before you. I have three verdict forms for you to fill
9 out. There's two possible verdicts for each of those,
10 of course, either guilty or not guilty. And I've
11 prepared the verdict forms. Certainly there is no
12 significance in the order in which they're listed. One
13 has to be listed before the other. After you've
14 deliberated on each of the charges, again separately and
15 independently, then Madam Forelady, if the jury finds
16 the State has met its burden of proof, then of course,
17 you'd mark the blank that says guilty, sign your name on
18 behalf of your fellow jurors, date it and that verdict
19 form will be completed. If you find the State on any of
20 these has not met its burden of proof beyond a
21 reasonable doubt, then, of course, your verdict should
22 be not guilty. Again, on each verdict form you should
23 fill it out, check the appropriate block, and sign your
24 name on behalf of your fellow jurors and date it. Now,

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1 all twelve of you must agree upon a verdict. It must be
2 unanimous. Your verdict cannot be based upon sympathy
3 or passion or prejudice, emotion, or any other
4 consideration not in evidence of the case. I remind
5 you, Madam Forelady and ladies and gentlemen, you're
6 free to ask me any question regarding the law of the
7 case, but remember it's impermissible for me to answer
8 any questions that you have regarding the facts of the
9 case. That's your duty and yours alone to be the sole
10 fact finders in the case. Once you have reached the
11 unanimous verdict on each of the charges, please let the
12 bailiffs know by knocking on the door and we'll then
13 receive the verdicts back here in the courtroom. I'll
14 ask now if you would go back to your jury room. Don't
15 start your deliberations just yet. There's one final
16 matter of law I need to take care of with the attorneys.
17 After I do that, hopefully we'll be able to send back to
18 you the verdict forms and the exhibits with instructions
19 to begin your deliberations. I'll ask you to retire to
20 your jury room. Don't start your discussions just yet.

21 (WHEREUPON, the jury exited the open court at
22 approximately 4:30 p.m.)

23 THE COURT: Any exceptions to the charge from
24 the State?

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1 MR. RICHARDSON: None from the State, Your
2 Honor.

3 THE COURT: From the Defense?

4 MR. DEJONG: Not on behalf of Mr. Sanders,
5 Your Honor.

6 THE COURT: Mr. Robinson, any exception to the
7 charge?

8 MR. ROBINSON: No, Your Honor.

9 THE COURT: If you would, please, make sure
10 all the Exhibits are in order. You've reviewed the
11 verdict forms. Make sure, Mr. Robinson, that it says
12 Unlawful Conduct Toward a Child on that one so we can
13 get these back to the jury.

14 THE COURT: At this time, I'm going to have
15 the Defendants taken into custody. I'm going to allow
16 them, if it's not unwieldy for the officers to let them
17 stay out here and, you know, just make sure they're in
18 custody. They don't need to go back to the cell or
19 anything, but don't leave the courtroom, either of you,
20 without escort of the guard, okay? We'll be at ease
21 until we hear from our jury.

22 THE COURT: Ms. Bradish, thank you very much
23 for your service. You're free to go now. Your fellow
24 jurors survived so you won't be able to deliberate. But

1 you're certainly welcome to stay with us. You're free
2 to go for the week. Your jury service is ended. I
3 don't know if you need to statement for your employer.

4 JUROR: Oh, no.

5 THE COURT: If you do, Mr. Welborn will give
6 you one if you need that. We'll be glad for you to stay
7 here. You're free to leave by the same token. Whatever
8 suits you.

9 JUROR: I wish you could leave me in there.

10 THE COURT: I'm grateful that you were able to
11 stay with us. Thank you for your service.

12 JUROR: I certainly enjoyed it. Thank you so
13 much.

14 THE COURT: Thank you, ma'am.

15 (WHEREUPON, the verdict form and exhibits were
16 delivered to the jury at approximately 4:30 p.m.,
17 after which court stood at recess awaiting the
18 verdict of the jury.)

19 (WHEREUPON, the jury entered the open court at
20 approximately 5:15 p.m.)

21 THE COURT: Madam Forelady, I have a notation
22 that you want to see witness Complainant transcript.
23 There's not a transcript. We can play the testimony for
24 you. The same with any testimony. Ms. Hanks can play

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1 the testimony. You can listen to it again. You've
2 asked for Ms. Complainant Detective Burgess's testimony,
3 Ms. Gearhart's testimony. Ms. Hanks has located that
4 now. She'll be glad to play it. After the testimony is
5 played, if at any time you need us to fast forward,
6 repeat it, play it again, stop, please let us know.
7 She'll do her best to try to find what you need. We may
8 have to send you back. I don't know how long it may
9 take. But whatever information you need from the
10 testimony, you -- Madam Forelady, I'll just look to you.
11 If at any time you've heard enough or don't want to hear
12 it, you let me know. The last inquiry was the email.
13 The only -- again, if you need the testimony we can play
14 the testimony. The evidentiary matters are before you.
15 All the evidence is in the case. You have the evidence
16 to examine. We can play whatever testimony you need
17 based upon the notation. We'll start playing Ms.
18 Complainant testimony. You let me know or let Ms. Hanks
19 know when you are -- need to move on to the other
20 testimony of Detective Burgess. And then we'll move to
21 Ms. Gearhart's testimony.

22 All right. If that's what you need we'll be glad
23 to play that. Or if you need to talk about that more,
24 I'll be glad to -- you might have thought there was a

1 transcript. There's not a transcript. There is
2 testimony we have recorded we can play for you.

3 All right. Ms. Hanks, if you would just start
4 playing the testimony of Ms. Complainant please. If the
5 volume needs adjusting, please let us know. We'll be
6 glad to do what we need to, to make sure ...

7 (WHEREUPON, the testimony of Complainant was
8 played in open court for the jury.)

9 MADAM FORELADY: I think that I have talked to
10 all the jurors and they are satisfied after hearing
11 that.

12 THE COURT: Okay. With just hearing that.
13 All right. Let me just mention to y'all, Ms. Garrett,
14 I'm sure would be glad to get you some food if you need
15 that. I'll let you go back and continue your
16 deliberations then. If you need to hear more, we'll be
17 glad to do that and we'll be glad to work with you any
18 way we can. If you need snacks, whatever, let the
19 bailiffs know. All right. With that then I'll ask you
20 to go back and continue your deliberations at this time.

21

22 (WHEREUPON, the jury exited the open courtroom at
23 approximately 6:41 p.m.)

24 THE COURT: All right. We'll be at ease until

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1 we hear from our jury.

2 (WHEREUPON, the Court stood at recess awaiting the
3 verdict of the jury.)

4 THE COURT: The jury has made an inquiry for
5 the record, signed by the foreperson. What does second
6 degree criminal sexual conduct mean? I'll recharge the
7 criminal sexual conduct in the second degree of a minor
8 for the jury again, if you'll have them come in.

9 (WHEREUPON, the jury entered the open court at
10 approximately 7:29 p.m.)

11 THE COURT: Madam Forelady, you have inquired
12 about the -- what does the charge of the criminal sexual
13 conduct mean. I'll give you the law on that again.

14 And, of course, that applies to the Defendant, Mr.
15 Sanders, and he's charged with that offense and second
16 degree criminal sexual conduct with a minor.

17 The State must prove beyond a reasonable doubt that
18 the defendant engaged in a sexual battery with the
19 victim. A sexual battery is sexual intercourse,
20 cunnilingus, fellatio, anal intercourse or any
21 intrusion, however slight of any part of a person's body
22 or any object into the genital or anal openings of
23 another person's body, except when that intrusion is
24 accomplished for medically recognized treatment or

1 diagnostic purposes. The State must also prove beyond a
2 reasonable doubt that the victim was at least eleven
3 years old, but not more than fourteen years old at the
4 time of the sexual battery. Consent, willingness, or
5 indifference or ignorance on the part of the minor, if
6 any, as to what was taking place does not in anyway
7 affect the charge of criminal sexual conduct with a
8 minor because an unmarried woman under the age of
9 fourteen cannot legally consent to sexual intercourse.

10 This is the law as far as the second degree sexual
11 conduct with a minor. I hope that gives you some help.
12 I'll be glad to recharge you on any aspect of the law.
13 I'll ask you if you would to return back to your jury
14 room and continue your deliberation.

15 (WHEREUPON, the jury exited the open court at
16 approximately 7:31 p.m.)

17 THE COURT: Any exceptions to the
18 instructions, from the State?

19 MR. RICHARDSON: None from the State, Your
20 Honor.

21 THE COURT: From the Defense?

22 MR. DEJONG: Nothing on behalf of Mr. Sanders,
23 Your Honor.

24 MR. ROBINSON: No, sir, Your Honor.

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1 THE COURT: All right. We'll be at ease until
2 we hear from the jury.

3 (WHEREUPON, court stood at recess awaiting the
4 verdict of the jury.)

5 THE COURT: Is there anything from the
6 attorneys as far as the verdict?

7 MR. RICHARDSON: Nothing from the State, Your
8 Honor.

9 MR. DEJONG: Nothing on behalf of Mr. Sanders,
10 Your honor.

11 THE COURT: This is a case that has a lot of
12 emotion involved in it from both sides. This is a case
13 that would naturally evoke emotions. I want to make
14 sure that everyone in the courtroom, lawyers, parties,
15 everyone included knows that the jury has listened
16 carefully to this case for this week. They've
17 deliberated. They've reviewed testimony. We're going
18 to respect their decision. I don't know what it may be,
19 and it may bring distress to some and may bring
20 happiness to others. But whatever that verdict is,
21 we're going to show respect to the jury for the work
22 they've done. If anyone in the courtroom feels that
23 they cannot contain their emotion, be it elation or be
24 it sadness, this will be an opportunity for you to

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Charge

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1 excuse yourself from the jury room before the jury comes
2 -- from the courtroom before the jury comes back. I
3 want you to understand that if there's any outburst of
4 any kind that will be a condition of a contempt of Court
5 and will be dealt with accordingly. You can certainly
6 hear the verdict. If you need to, step out within
7 moments of the reading of the verdict. But we're going
8 to show the proper respect for the jury. So if anyone
9 would like to leave now, this will be the time for you
10 to do so. Everybody in the courtroom understands what
11 I'm saying. All right. Let's have our jury come in.

12 (WHEREUPON, the jury entered the open court at
13 approximately 7:29 a.m.)

14 THE COURT: Madam Forelady, I understand the
15 jury has reached a verdict. Is that correct?

16 BY MADAM FORELADY: Yes.

17 THE COURT: Is it a unanimous verdict as to
18 each of the indictments?

19 BY MADAM FORELADY: Yes, sir. It is.

20 THE COURT: If you would please hand the
21 verdict form to the bailiff.

22 THE COURT: Mr. Clerk, you may publish the
23 verdict.

24 THE CLERK: This is the case of State of South

State of South Carolina -vs- Joseph P. Sanders, IV (2010-GS-39-1115 and 1116)
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1 Carolina versus Joseph Pettigrew Sanders, IV, case
2 number 2010-GS-39-1115, as to the charge of Criminal
3 Sexual Conduct with a Minor, Second Degree, we the jury
4 unanimously find the Defendant, Joseph Pettigrew
5 Sanders, IV, not guilty.

6 This is the Case of the State of South Carolina
7 versus Joseph Pettigrew Sanders, IV, case number 2010-
8 GS-39-1116, as to the charge of Lewd Act Upon a Child,
9 we the jury unanimously find the Defendant Joseph
10 Pettigrew Sanders, IV, guilty.

11 This case is the State of South Carolina versus
12 Anita Jordan Gearhart, Case Number 2009-GS-39-355, as to
13 the charge of Unlawful Conduct Toward a Child, we the
14 jury unanimously find the Defendant, Anita Jordan
15 Gearhart, guilty.

16 Is this your verdicts and still your verdict so say
17 you all by raising your right hand?

18 (WHEREUPON, all jurors' rights hands were raised.)

19 THE CLERK: Thank you very much.

20 THE COURT: Thank you. Is there anything that
21 we need to take care of with this jury before they're
22 discharged in this case? Anything from the State?

23 MR. RICHARDSON: Nothing from the State, Your
24 Honor.

1 MR. DEJONG: Nothing on behalf of Mr. Sanders,
2 Your Honor.

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

4 THE COURT: Madam Forelady, ladies and
5 gentlemen of the jury, thank you very much for your
6 work. It's been a pleasure for me to get to work with
7 you. You've been a conscientious group. You've
8 fulfilled the role of fact finders, as judges of the
9 facts, well. I've been honored to get to work with you
10 as a fellow judge. I appreciate your service to our
11 community. It's not every day you may get this
12 opportunity. As difficult as it is, it's a necessary
13 duty that we as citizens perform, as I told you on
14 Monday the importance of jury service, citizen
15 participation. You may recall from your days in Civics
16 that we have three branches of government and one of
17 those, the Legislative Branch that passes laws and they
18 make decisions of what laws we ought to have and what
19 laws we shouldn't have and we as citizens have an
20 opportunity to petition those legislators, ask them
21 about passing laws or repealing laws. The same on the
22 Executive Branch for executing those laws, make sure
23 they're carried out. We can petition. But unless some
24 of you have the opportunity one day, if not already to

State of South Carolina -vs- Joseph P. Sanders, IV (2010-GS-39-1115 and 1116)
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1 serve as a council member on your city council or mayor
2 of your town or get elected Governor of South Carolina
3 or Congress or State Representative to pass the laws,
4 we'll never get the opportunity to do those things. But
5 the third branch, the Judicial Branch, you've directly
6 participated in this week by being judges of the facts.
7 You've been a part of that branch of government in
8 action and I appreciate it so much. It's been a treat
9 to serve with you.

10 Some of you may need statements for your employers.
11 We will not have any jury trials tomorrow. I've got
12 several matters to take care of that will not
13 necessitate a jury. If that's the case, I'm sure Mr.
14 Welborn will have those for you tonight if you need
15 them. If not, you can come back tomorrow and get those.
16 Thank you for your service very much, ladies and
17 gentlemen. I appreciate it. You're dismissed at this
18 time. I will ask the foreperson if you would remain
19 just a moment in the hallway. Mr. Clerk has one more
20 paper that he needs to have you sign. Everyone else,
21 please remain seated while the jury is dismissed.

22 (WHEREUPON, the jury exited the open court at
23 approximately 7:31 p.m.)

24 (WHEREUPON, Court Exhibit Numbers 1 and 2 were

1 marked for identification.)

2 THE COURT: Any matters we need to take care
3 of before sentence is imposed?

4 MR. DEJONG: May it please the Court, Your
5 Honor, on behalf of Mr. Sanders, at this point in time I
6 would move the court to grant a new trial in this
7 matter. The basis of that motion is this, Your Honor.
8 The jury found Mr. Sanders not guilty on the criminal
9 sexual conduct second degree with the minor, for which
10 we are deeply appreciative, and found him guilty of the
11 lewd act. I would submit, Your Honor, that under the
12 indictment in this case, although it only alleges a
13 sexual battery, the testimony was as to penetration and
14 vaginal intercourse. We do not know what goes through a
15 jury's mind when they arrive at a verdict. I've often
16 thought that would be fascinating, but I may never have
17 the opportunity to do that. It could very well be a
18 compromise verdict. I don't know. But the problem, and
19 I think it goes back to the very problem that we see
20 repeatedly on prior bad acts, I think that is confusing
21 to the jury.

22 I think Your Honor certainly gave the appropriate
23 and proper charge. However, under the circumstances of
24 the case, I would submit that the finding of guilt on

State of South Carolina -vs- Joseph P. Sanders, IV (2010-GS-39-1115 and 1116)
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1 the Lewd act would be more in line with the allegations
2 from the motel, prior bad acts, at the Comfort Inn in
3 Easley. Therefore, Your Honor, I would respectfully
4 move for a new trial on that. Overall, Your Honor, with
5 regard to the Lewd act, I would move the Court for a new
6 trial and that the -- and a part goes along with my
7 prior argument, that being that the evidence does not
8 substantiate the verdict, Your Honor.

9 THE COURT: Mr. Richardson, I'll be glad to
10 hear from you on that?

11 MR. RICHARDSON: Your Honor, there was plenty
12 of evidence for which a jury could ascertain that the
13 lewd act was committed. She testified to the touching
14 during the time she was in the home. She also testified
15 during the act when the criminal sexual conduct had
16 happened that he was touching her then, he was rubbing
17 her then, he was feeling her then, and then the sexual
18 battery took place. The jury could easily find that the
19 facts, the testimony was there, the evidence was there,
20 and the jury's verdict should stand.

21 THE COURT: Well, I find that the verdicts are
22 not inconsistent, Mr. DeJong, and I respectfully deny
23 your motion.

24 MR. DEJONG: Thank you, Your Honor.

State of South Carolina -vs- Joseph P. Sanders, IV (2010-GS-39-1115 and 1116)
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1 THE COURT: Anything else?

2 MR. DEJONG: Nothing on behalf of Mr. Sanders,
3 Your Honor.

4 THE COURT: Mr. Robinson?

5 MR. ROBINSON: No, sir, Your Honor.

6 THE COURT: If you'll bring your clients
7 forward we'll be glad to hear from you before
8 sentencing.

9 MR. DEJONG: Come around, Mr. Sanders.

10 (WHEREUPON, Mr. DeJong, Defendant Sanders, Mr.
11 Robinson and Defendant Gearhart approached the
12 bar.)

13 THE COURT: Mr. DeJong, I'll be glad to hear
14 from you. I'll be glad to hear from your client and
15 from anyone else that would like to address the Court.

16 MR. DEJONG: Your Honor, with all due respect,
17 if the victim is going to make a statement or have a
18 statement made on her behalf, I would respectfully
19 request that I be able to speak after that.

20 THE COURT: All right, sir. I'll allow the
21 victim -- does the victim wish to speak?

22 MR. RICHARDSON: She's going to speak through
23 the Victim Witness Advocate.

24 THE COURT: I'll be glad to hear from you,

State of South Carolina -vs- Joseph P. Sanders, IV (2010-GS-39-1115 and 1116)
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1 ma'am.

2 MS. ROPER: Yes, Your Honor. Complainant has asked
3 me to speak on her behalf. She's actually written a
4 statement. I'm just going to read it to the court if
5 that's okay. When this first happened it was very
6 difficult for me to talk about. As time has passed I
7 have found that it is easier for me to deal with. I do
8 not trust people like I once did. I'm always looking
9 over my shoulder to make sure no one wants to harm me.
10 I would like for both of these Defendants to be held
11 accountable for their actions and for justice to be
12 served. I will always be affected by this, as I will
13 have to relive this memory for the rest of my life.
14 However, I do believe that things happen for a reason
15 and I believe that this situation will ultimately make
16 me stronger as a person. I'm determined that I will not
17 always be their victim, but a survivor. I trust that
18 this court will make the right decision and I thank you
19 for your time.

20 THE COURT: All right. Thank you. Anything
21 else from the State?

22 MR. RICHARDSON: Nothing further from the
23 State, Your Honor.

24 MR. DEJONG: Thank you, Your Honor. May it

1 please the Court. Obviously, you've sat through this
2 entire trial with all of us. You have heard the facts.
3 We have heard the jury's verdict. Not that we like it,
4 but as Your Honor said before the verdict came back, at
5 this point in time, we respect that verdict, Your Honor.
6 I'm not going to try to go behind that. Mr. Sanders,
7 Your Honor, is forty-six years of age. He is divorced.
8 He has no children. You heard that he has worked with
9 the Miss South Carolina Beauty Pageant all of his life.
10 And that's pretty much all of his life, forty-six years,
11 never been any kind of allegation like this made in the
12 forty-six years he has been with the pageant, has
13 absolutely no prior criminal record whatsoever that I'm
14 aware of. He has now and has had throughout this trial
15 a great deal of support. These people are all with him.
16 Every one of them would be more than happy to stand here
17 and speak for him. They have shared with me many things
18 about Joey over this week, all of which have been more
19 than positive. Your Honor, in light of his absolutely
20 no prior record, his age, obviously he has a medical
21 condition. He is a severe diabetic, the blood pressure
22 problems, you heard that from Dr. Barksdale, I would
23 certainly ask for the mercy of the Court, Your Honor.

24 THE COURT: Thank you, Mr. DeJong. Mr.

State of South Carolina -vs- Joseph P. Sanders, IV (2010-GS-39-1115 and 1116)
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1 Sanders, anything you want to tell me, sir?

2 MR. SANDERS: (No verbal response.)

3 THE COURT: Mr. Robinson, I'll be glad to hear
4 from you, sir.

5 MR. ROBINSON: Your Honor, I believe the jury
6 -- it was an interesting verdict because the CSC is what
7 allegedly happened at the house sometime in 2008, and
8 the lewd act was what happen back in 2005. It was an
9 interesting verdict because the stuff that happened in
10 2008 is what she allegedly told her mother about,
11 something like that. We're not really sure when that
12 happened. But, Your Honor, she is a Licensed Practical
13 Nurse. She's from Easley. She just had two knee
14 operations, reconstructive knee operations,
15 replacements. We'd ask the court for a probationary
16 sentence in this case, in this matter. I think that
17 she's a good candidate for that, and I believe that that
18 would be a fair sentence in this case, based on the
19 verdict in this matter.

20 THE COURT: Thank you, Mr. Robinson. Ms.
21 Gearhart, anything you want to tell me, ma'am?

22 BY MS. GEARHART: No, sir.

23 THE COURT: Any prior record for Ms. Gearhart?

24 MR. RICHARDSON: Ms. Gearhart has a 1995

State of South Carolina -vs- Joseph P. Sanders, IV (2010-GS-39-1115 and 1116)
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1 embezzlement out of -- it may be Virginia. It's
2 somewhere -- either Virginia or Iowa. Mr. Sanders does
3 not have any prior record.

4 THE COURT: Well, it's certainly a tragic
5 event that occurred, for everyone's lives that have been
6 affected by this.

7 This is 2010-GS-39-1116, the sentence of the court
8 is the defendant be committed to the State Department of
9 Corrections for a period of fourteen years.

10 Case 2009-748, the sentence, the defendant be
11 committed to the State Department of Corrections for a
12 period of seven years.

13 I wish you both the best. I certainly wish the
14 victim the best.

15 MR. DEJONG: Your Honor, would you consider
16 setting an appeal bond on Mr. Sanders?

17 THE COURT: Not tonight.

18 MR. DEJONG: All right.

19 THE COURT: I'll be glad to hear from you
20 later with the condition and so forth and everybody
21 being notified. But I think it might be better to visit
22 that another time.

23 MR. DEJONG: Very well, Your Honor. Thank
24 you.

State of South Carolina -vs- Joseph P. Sanders, IV (2010-GS-39-1115 and 1116)
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1 THE COURT: Court's adjourned until nine
2 o'clock in the morning.

3

4 (END OF REQUESTED TRANSCRIPT OF RECORD)

1

CERTIFICATE OF REPORTER

2

3 I, the undersigned Danette P. Hanks, Official Court
4 Reporter for the Thirteenth Judicial Circuit of the
5 State of South Carolina, do hereby certify that the
6 foregoing is a true, accurate, and complete transcript
7 of record of all the proceedings had and evidence
8 introduced in the trial/hearing of the captioned case,
9 relative to appeal, in the Circuit Court for Pickens
10 County, South Carolina, on the 21st day of June, 2010.

11 This transcript may contain quoted material. Such
12 material is reproduced as read THE speaker.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.

15

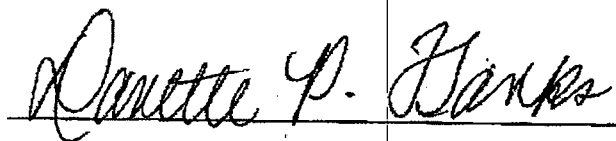
December 3, 2010

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Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of PICKENS)Joseph Pettigrew Sanders IV)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

2013 DEC 17 PM 2 50

IN THE COURT OF COMMON PLEAS

CLERK OF COURT

PICKENS COUNTY

SOUTH CAROLINA

2013-CP-39- 538

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 the applicant was convicted.

1. Place of detention TYGER RIVER CI, SCDC
100-200 PRISON ROAD - ENOREE, SOUTH CAROLINA 29335
2. Name and location of Court which imposed sentence PICKENS COUNTY General Sessions
PICKENS, SOUTH CAROLINA
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-GS-39-1116; LEWD ACT
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 06-24-2010; 14 YEARS
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA 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. JANUARY 30th, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2013-UP-054
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) FAILURE OF THE STATE TO COMPLY WITH DISCOVERY
- (c) STATE FAILED TO COMPLY WITH RULE 5/BRADY/AND DISCOVERY
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) TRIAL COUNSEL FAILED TO INVESTIGATE, PREPARE, PRESENT CASE, RAISE PROPER OBJECTIONS, MAKE ADEQUATE MOTIONS AND ARGUMENTS
- (b) APPELLATE COUNSEL FAILED TO ADEQUATELY PRESENT ALL ARGUMENTS
- (c) STATE FAILED TO PROPERLY COMPLY WITH DISCOVERY
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application: N/A
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify: N/A

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) THESE CLAIMS COULD NOT BE RAISED IN OR DURING THE APPEAL PROCESS.
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. John DeYoung, Esq. Pickens County Public Defender
Pickens County Courthouse, Pickens, South Carolina
 ii. J. Falkner Wilkes, Esq. (864) 292-1292
114 Whitsett Street, Greenville, South Carolina 29601
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. All Trial Proceedings - John DeYoung Esq
 ii. Appeal - J. Falkner Wilkes Esq
 iii. _____

19. State clearly the relief you seek in filing this application:

REVERSAL OF CONVICTION AND A NEW TRIAL

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of PICKENS)

VERIFICATION

2013 DEC 17 PM 2 51
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

I, Joseph Pettigrew Sanders IV 00341505, 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.

Joseph Pettigrew Sanders IV

SWORN to and subscribed before me this 8th
day of December, 2013.

Jan M. Gainey (L.S.)
Notary Public

JAN M. GAINES
NOTARY PUBLIC

My Commission Expires: STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES
JUNE 20, 2016

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

2013 DEC 17 PM 2 51

I, Joseph Pettigrew Sanders IV 00341505, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. Plaintiff in support of my application I declare under penalty of perjury that the following facts are true. SAUNDERS COUNTY SOUTH CAROLINA

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Joseph Pettigrew Sanders IV
Applicant

SWORN or affirmed to and subscribed before me this
8th day of December, 2013.

Jan M. Gaaney
Notary Public

My Commission Expires: STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES
JUNE 20, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

Joseph Pettigrew Sanders, IV,
S.C.D.C. No. 341505,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2013-CP-39-1538**RETURN**

In response to the post-conviction relief application filed December 17, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court's orders of commitment. The Pickens County Grand Jury indicted the Applicant at the June 2010 term of General Sessions for lewd act upon a child (2010-GS-39-1116). John W. DeJong, Esquire represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On June 24, 2010, the Honorable G. Edward Welmaker sentenced the Applicant to fourteen years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Jeffrey Falkner Wilkes, Esquire perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Sanders, Op. No. 2013-UP-054 (S.C. Ct. App. filed January 30, 2013). The Remittitur was sent on February 21, 2013.

Attached herewith and incorporated herein by reference are the records of the Pickens

County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failed to "investigate, prepare, present case, raise proper objections, make adequate motions and arguments."
2. Ineffective assistance of appellate counsel:
 - a. Failed to "adequately present all arguments."
3. "State failed to comply with Rule 5/Brady/and Discovery."

III.

The Respondent asserts the Applicant's allegation that his trial and appellate attorneys were ineffective is without merit. The Respondent asserts the Applicant's attorneys rendered effective assistance well within the standard of "reasonableness within professional norms."

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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386

S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegations of ineffective assistance of counsel probably raise questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve these issues. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

"A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment." Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999) (emphasis added). The Respondent submits the Applicant has failed to either articulate

his Brady issue or meet his burden of proof.

V.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

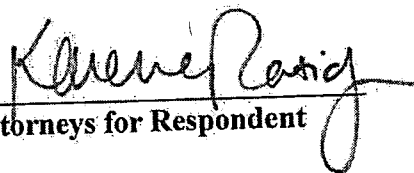
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

5/29, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

2013-CP-39-1538

JOSEPH PETTIGREW SANDERS, IV, 341505)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Joseph Pettigrew Sanders, IV, 341505
Tyger River Correctional Institution
100-200 Prison Road
Enoree SC 29335

DATED this 29th day of May, 2014.


Judy A. C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	2013-CP-39-1538
COUNTY OF PICKENS	)	
	)	
	)	
	)	
	)	
JOSEPH P. SANDERS, IV,	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
THE STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	
_____	)	

April 20, 2015
Pickens, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, JUDGE

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

J. FALKNER WILKES, ESQ.
Attorney for the Applicant

KAREN C. RATIGAN, ESQ.
Assistant Attorney General

CHERYL A. SMITH
Circuit Court Reporter

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P R O C E E D I N G S

MS. RATIGAN: This is Case No. 2013-CP-39-1538.

Mr. Sanders was indicted for second degree criminal sexual conduct with a minor and lewd act upon a child. He was represented on these charges by Mr. Dejong. The case was brought to trial in June of 2010 before Judge Welmaker. Mr. Sanders was found guilty of lewd act and not guilty of the CSC second with a minor. On June 24, 2010, Judge Welmaker sentenced him to 14 years of imprisonment.

I will note this was a joint trial with his codefendant, Anita Gearhart. The notice of appeal was filed. Mr. Wilkes actually represented Mr. Sanders on appeal. The Court of Appeals affirmed conviction and sentence in January of 2013.

The State is ready to proceed. The only thing I would note is that since Mr. Wilkes also represented the applicant on appeal, under ---

THE COURT: Potential for conflict.

MS. RATIGAN: Yeah. Carter vs. State says that there needs to be a waiver by his client of any allegations of ineffective assistance of appellant counsel.

MR. WILKES: If it please the Court, Judge.

THE COURT: Yeah.

MR. WILKES: Way early into the PCR I explained to Mr. Sanders that having done the appeal, if there was an

1 error in the appeal, I would not be the best person to
2 determine that. We've been through the appellate stuff and
3 the PCR stuff, and he has indicated that he would like me
4 to do the PCR.

5 THE COURT: All right. Mr. Sanders, please stand up
6 and raise your right hand.

7 WHEREUPON,

8 JOSEPH P. SANDERS, IV,

9 After first having been duly sworn, testified as follows:

10 THE COURT: Okay. You can put your hand down.

11 You understand that one potential ground of relief for
12 you would be to claim that your appellate lawyer was
13 ineffective in his representation just as you have claimed
14 that your trial lawyer is ineffective. Do you understand
15 that?

16 DEFENDANT SANDERS: Yes, sir.

17 THE COURT: And that if that claim were to appear,
18 then you would be -- there would be a potential conflict of
19 interest because the same attorney that represented you in
20 the appeal is representing you here at the postconviction
21 relief hearing. Do you understand that?

22 DEFENDANT SANDERS: Yes, sir.

23 THE COURT: Now, you can waive any potential conflict.
24 And if you do that, if that claim should arrive, you can't
25 raise it at any later time. Do you understand that?

1 DEFENDANT SANDERS: Yes, sir.

2 THE COURT: All right. What is it you want to do?

3 DEFENDANT SANDERS: To waive.

4 THE COURT: Okay. You want Mr. Wilkes to represent
5 you here?

6 DEFENDANT SANDERS: Yes, sir.

7 THE COURT: And is that your free and voluntary
8 decision?

9 DEFENDANT SANDERS: Yes, sir.

10 THE COURT: Okay. Let's go.

11 MR. WILKES: Mr. Dejong is going to -- I guess he'll
12 testify cross and direct both probably at the same time
13 since we have to get him in and out. I'll call him now..

14 MR DEJONG: My jury's out until 3:00, Your Honor. I'm
15 not trying to rush Your Honor or Mr. Wilkes or anybody
16 else. Built into that time between now and 3:00 is a lunch
17 hour. When I'm at trial, I don't eat lunch anyways, so
18 I've got two hours and 45 minutes.

19 THE COURT: 43 minutes. But yes.

20 MR. DEJONG: 42 minutes. I stand corrected, Your
21 Honor.

22 MR. WILKES: I'll call him now just because if we
23 don't do that, he ends up in trial, then we lose ---

24 THE COURT: Yeah. Let's get it done.

25 All right. Come on around.

1 WHEREUPON,

2 JOHN WILLIAM DEJONG,

3 After first having been duly sworn, testified as follows:

4 THE CLERK: State your full name for the record.

5 THE WITNESS: John, J-O-H-N, William, W-I-L-L-I-A-M,
6 last name Dejong, D-E-J-O-N-G.

7 DIRECT EXAMINATION

8 BY MR. WILKES:

9 Q Did you represent Mr. Sanders in the trial of this
10 case?

11 A I did.

12 Q And how long did you represent Mr. Sanders prior to
13 the actual trial?

14 A Datewise, let me see.

15 Q Roughly.

16 A Several months. We were actually appointed by Judge
17 Welmaker to appoint [sic] Mr. Sanders. He had initially
18 applied for the public defender. I believe, as memory
19 serves me, the clerk's office turned him down, and then
20 Judge Welmaker appointed us to represent him with some
21 remuneration to the public defender fund. I'll get my
22 words together here in a moment. Awaiting disposition,
23 Mr. Sanders was to pay so much a month. I don't remember
24 what it was.

25 Q And did you meet with Mr. Sanders in preparation of

1 the trial?

2 A On more than one occasion.

3 Q Did Mr. Sanders give you the big book of knowledge, so
4 to speak? Did you have one of those?

5 A I think maybe one or two, Mr. Wilkes.

6 Q In the big book, did he give a list of potential
7 witnesses or people that might have information or somehow
8 related to the case?

9 A He might very well have.

10 Q And in the very large book of information, is it
11 possible that that may have been one of the lists in that
12 book?

13 A Yes, sir.

14 Q Okay. Now, if you'll flip over, there's -- I
15 highlighted one name, I think, on there. Probably just
16 one. Do you see the Joseph Rowe?

17 A I see that highlighted, yes, sir.

18 Q And I highlighted that. That was not highlighted in
19 the book.

20 A Right.

21 Q Did you speak with Mr. Joseph Rowe, to your
22 recollection?

23 A I did not.

24 Q Did you speak with a **Nicole Holder**?

25 A The name Joseph Rowe does not ring any bells. The

1 **Nicole Holder** does ring a bell, but I could not say that I
2 talked to her, Mr. Wilkes.

3 Q Okay. Do you have a copy of the witness list, by any
4 chance?

5 A My witness list or the State's witness list?

6 Q Your witness list. If I showed you a copy, would this
7 be -- does that look like y'all's?

8 A It looks like something I would have prepared, yes,
9 sir.

10 Q Okay. And **Nicole Holder** name is on the potential
11 witness list.

12 A It is.

13 Q And I'm not sure if this is yours or your handwriting.

14 A I can tell by the doodles that's my handwriting.

15 Q Okay. All right. And that would have been at, before
16 or during trial. At some point, you comprised that list of
17 handwritten witnesses?

18 A I would suggest this probably was before I prepared my
19 witness list. I'm thinking that this -- the handwritten
20 list may in part have been what I prepared my typewritten
21 list from. Yeah. I'm not exactly sure at this point.

22 Q That list has Nikki on it as well.

23 A It does.

24 Q And under Nikki it has Taylor's name.

25 A Whose name?

1 Q Taylor under Nikki?

2 A Yes. Correct.

3 Q And it has a notation out to the side of it, something
4 about sneaking out of the house, something like that?

5 A Yeah. "Sneaking out of house while in foster care," I
6 believe is what that note says.

7 Q Okay. And that would refer to Taylor King . Does that
8 ring a bell?

9 A That does not ring a bell.

10 Q Do you -- you don't recall speaking with Taylor King ?

11 A I do not.

12 Q Okay. Now, do you recall -- when you say you don't
13 recall, do you have any recollection of conversations with
14 either Mr. Sanders here or his family about Taylor King or
15 Nicole Holder ?

16 A Again, the Nicole Holder is something the other
17 individual -- I'm not saying they did not mention or we did
18 not have conversation, but I don't -- I don't recall that
19 name.

20 Q Do you recall either of those -- or any witnesses that
21 were friends of Complainant the victim in the case -- alleged
22 victim, Complainant that were her friends, personal friends?
23 Do you recall any witnesses that would have been Complainant
24 friends that could have testified as far as Complainant having
25 made up the story?

1 A I'm not sure. Are you asking me did I talk to any of
2 Complainant friends as potential witnesses?

3 Q Yes.

4 A I don't believe I did.

5 Q Okay. Do you recall the family or Mr. Sanders talking
6 about the possibility that some of her friends had talked
7 to her and that she had admitted that she had lied?

8 A That may very well have come up in a conversation.

9 Q Okay. Do you recall the boy that came in from
10 Virginia, the Justin Eads fellow?

11 A I recall him. I do not recall his name.

12 Q Do you recall how he ended up coming to court and what
13 transpired with him?

14 A As memory serves me, Mr. Wilkes, he came through court
15 as I think Ms. Ratigan noted that Mr. Sanders was tried
16 along with Ms. Gearhart, who was the mother of the alleged
17 victim. Mr. Robinson represented her, and I think
18 Mr. Robinson had found him, actually.

19 Q Okay. Do you recall any of the conversations going
20 into chambers and listening to what his testimony would be?

21 A I don't know if there was ever a discussion -- well,
22 Mr. Robinson may have touched on it. I didn't know what
23 his testimony was going to be.

24 The issue surrounding that, as I recall in chambers
25 conference, is whether or not it was going to be first-hand

1 knowledge or hearsay. And I don't -- I know myself,
2 Mr. Robinson, Judge Welmaker and Mr. Richardson were all
3 involved in that, and it was a fairly lengthy chambers
4 conference. And by the time we walked out, either before
5 we walked out or immediately getting back into the
6 courtroom on the record, Mr. Robinson withdrew him as a
7 witness.

8 Q Okay. Now, did you have the opportunity to go over in
9 detail what his testimony would have been?

10 A I did not.

11 Q Okay. And why did you not? Would you have had the
12 opportunity to stop and do that if you wanted?

13 A I'm sure I could have requested from the Court some
14 time to talk to him. I did not.

15 Q And were you aware at the time that Justin Eads
16 testimony was essentially that he had heard her fabricate
17 the plan prior to it being implemented?

18 A I had heard that. And I think that's where the
19 hearsay aspect came in in the chambers conference, whether
20 the alleged victim had actually told him that or somebody
21 else had told him that the alleged victim had told them.
22 Again, my memory's a little fuzzy on that, Mr. Wilkes.

23 Q Let me ask you this. If it had been substantial
24 testimony, would you -- why was there no -- there are two
25 things, one, why was there no proffer of the testimony to

1 at least know what the testimony would have been?

2 A Well, again, I couldn't proffer the testimony because
3 I didn't know what the testimony would be. And I can't
4 speak for Mr. Robinson.

5 Q Okay. Why not a motion to either continue or to at
6 least take the time to find out what exactly the testimony
7 was?

8 A I cannot give you an answer to that other than based
9 on the chambers conference we had. But other than that, I
10 can't tell you, or I have no answer.

11 Q Okay. Any reason why, if it appeared to be important
12 testimony, that could have been gotten through different
13 steps even? But if it was critical testimony, why not a
14 motion for a mistrial to allow whatever needed to be done
15 to ensure he could testify?

16 A I guess on a mistrial, from my perspective, there was
17 no basis for asking for a mistrial.

18 Q Okay. So in other words, you were unaware of the
19 testimony, of the impact of the testimony?

20 A Absolutely.

21 Q Okay. And did -- I think I already asked. Joseph
22 Rowe, you did not contact that individual? You're not
23 familiar ---

24 A I don't believe I did, Mr. Wilkes.

25 Q Okay. All right. The guardian ad litem in the case

1 testified. Do you remember Deborah Chapman, was it?

2 A I don't necessarily remember the name, but I remember
3 the circumstances well, yes, sir.

4 Q And during her testimony -- or at least explain how
5 she popped up.

6 A She actually approached me, as memory serves me. I
7 think I got a phone call from her. She was quite upset.
8 She wanted to talk with me. She wanted to share with me
9 that the alleged victim had at least to her recanted. And
10 certainly I said I wanted to talk to her, which I did. And
11 then, ultimately, we put her on the witness stand.

12 Q And she called you during the trial?

13 A I want to say it was during the trial, Mr. Wilkes. I
14 don't remember how long this trial lasted. I believe it
15 was more than a day, though.

16 Q And there was -- you recall -- it's in the record, but
17 just do you recall the argument over whether she could
18 testify and what the State presented as far as a guardian
19 can't testify?

20 A We got into that, again, in a chambers conference.
21 Some of it may have been placed on the record. I don't
22 recall. But I know on the -- during the chambers
23 conference, there were issues raised about -- by the
24 solicitor, not by myself -- about confidentiality, whether
25 or not she could testify. I don't remember the exact

1 statutory language. And I thought we had all that hashed
2 out before we ever went back into the courtroom.

3 Q And that does appear on the record.

4 The judge ruled that she could, in fact, testify, that
5 it was legal for her to testify, and she testified.

6 A To my understanding, yeah.

7 Q Now, the State, however, proceeded to cross-examine
8 her as though she were a criminal. Do you recall that?

9 A I don't necessarily recall it, but it wouldn't
10 surprise me. Let's put it that way.

11 Q Well, that, too, is on the record.

12 Assuming that my characterization is a little grand
13 but pretty close to the way they approached it, you did not
14 raise an objection ---

15 A Correct.

16 Q --- to their beating on her for breaking the law.

17 A Right.

18 Q Which the judge had already ruled it wasn't.

19 A Right.

20 Q And that went on a good bit.

21 Any reason for not imposing a contemporaneous
22 objection with that line of cross-examination?

23 A I can't. I don't know what my thought process was
24 back then, frankly, other than let the solicitor beat up on
25 her and let the jury take it for whatever it's worth rather

1 than objecting.

2 Q Okay. But if objectionable, you certainly could have
3 posed that objection?

4 A Most certainly, yeah.

5 Q Okay. Now, on character witnesses, did you ever have
6 a conversation with Mr. Sanders about presenting character
7 testimony?

8 A I suspect I did.

9 Q And do you recall Mr. Sanders' position on having some
10 character witnesses?

11 A He wanted some character witness there. I told him I
12 didn't think his character was going to be put in issue and
13 therefore did not call any.

14 Q Okay. Would anything about the trial have prevented
15 you from calling character witnesses? In other words,
16 under the rules, you certainly could have.

17 A True.

18 Q Okay. And that was a decision that you made?

19 A That is correct.

20 Q Okay. And did he concur in that decision?

21 A I don't recall.

22 Q Okay.

23 A I suspect not, but I don't recall.

24 Q Would there be any -- what would have been your
25 reasoning behind not calling at least one or a

1 representative amount of character witnesses?

2 A I can't answer that question. I don't know.

3 MR. WILKES: If I can have just one second, Your
4 Honor.

5 BY MR. WILKES:

6 Q The handwritten note, if you'll look at the bottom of
7 that, the print writing, would that appear to be
8 Mr. Sanders', not yours or somebody ---

9 A It's not mine. I can tell you that.

10 Q Okay. Is it possible that you had that at the trial?

11 A The sheet of paper?

12 Q Yes, sir.

13 A I suspect, based upon the content of what somebody
14 else's handwriting was, it was probably on counsel table.

15 Q Okay. But the witness names, you wrote those?

16 A Everything up to this last line here, including
17 doodles, that's me. Don't know who wrote that, and I don't
18 know if I write -- wrote the "no" in there or somebody else
19 did.

20 Q Very good.

21 A It kind of looks like my "no," but . . .

22 MR. WILKES: May we mark these and introduce them as
23 Exhibit 1, 2, and 3, Your Honor?

24 MS. RATIGAN: That's fine, Your Honor. I have no
25 objection.

1 THE COURT: Without objection.

2 (WHEREUPON, Applicant's Exhibit Nos. 1, 2 and 3 were marked
3 for identification and admitted into evidence.)

4 BY MR. WILKES:

5 Q Did you have an investigator working on the case?

6 Does your office have ---

7 A I had a gentleman that worked at my office whose title
8 was investigator.

9 Q And did he purport to work on cases?

10 A Not really, no. My investigator in my office does
11 -- 98 percent of their work is not investigative work.

12 MR. WILKES: Okay. All right. That's all we have for
13 Mr. Dejong.

14 THE COURT: Okay. Cross?

15 MS. RATIGAN: Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MS. RATIGAN:

18 Q So in talking about the discovery with Mr. Sanders,
19 did you develop a defense?

20 A I suspect I did, yes, ma'am.

21 Q Would it have been, based on the transcript, just that
22 he was innocent?

23 A Correct. Right.

24 Q And also that he had a medical condition that -- he
25 had erectile dysfunction that would have prevented the

1 completion of the act?

2 A That -- I'm sorry, ma'am. Yes. That is correct. I
3 think we had a doctor come in and testify to that.

4 Q Okay. And you had the guardian testify at trial that
5 the victim had recanted to her?

6 A That is correct.

7 Q And did you not also put up witnesses that overheard
8 the victim say that she was going to make your client pay
9 for treating her mother badly, something along those lines?

10 A Would you say that again, please, Ms. Ratigan.

11 Q Did you also put up two witnesses at trial that
12 testified they overheard the victim say that she was going
13 to make Joey pay for having treated her mother badly?

14 A It seems like I did, but I cannot really say that with
15 any great deal of certainty.

16 Q And did you also develop at trial that the victim had
17 wanted to move back to Virginia?

18 A Yes.

19 Q Did Mr. Sanders ever give you names of any fact
20 witnesses that would have been helpful with the case?

21 A I don't recall that, no. If you're speaking about the
22 facts that allegedly occurred in a motel room or whatever,
23 no, ma'am. I guess that would have been the doctor based
24 on his condition that that was not factual within the
25 setting.

1 Q And am I correct that there was no physical evidence
2 in the case?

3 A I don't believe there was.

4 Q So would it be fair to characterize this as just a he
5 said/she said?

6 A Yes.

7 MS. RATIGAN: That's all I have, Your Honor.

8 THE COURT: Any redirect?

9 MR. WILKES: No, sir.

10 THE COURT: Can we release him?

11 MS. RATIGAN: Please, Your Honor.

12 THE COURT: We know where he'll be.

13 MR. WILKES: Subject to recall under unusual
14 circumstances.

15 THE WITNESS: I'll be here.

16 THE COURT: He'll probably be happy to come down here.

17 MR. WILKES: I bet.

18 How long can we go?

19 THE COURT: Well, what do you have?

20 MR. WILKES: I have a number of witnesses. It will
21 take a while. And I've got to go to the bathroom really
22 bad right now.

23 THE COURT: Well, just call your next five witnesses
24 and then we'll -- no. We'll break for lunch. Come back at
25 2:00. Is that enough?

1 MR. WILKES: Yeah. We can finish by then. Thank you.

2 (WHEREUPON, a recess is taken at 12:40 p.m.)

3 MR. WILKES: We call Scott Robinson, Your Honor.

4 THE COURT: All right.

5 WHEREUPON,

6 SCOTT ROBINSON,

7 After first having been duly sworn, testified as follows:

8 THE CLERK: State your full name for the record.

9 THE WITNESS: Scott D. Robinson.

10 DIRECT EXAMINATION

11 BY MR. WILKES:

12 Q Mr. Robinson, did you represent Anita Gearhart, the
13 codefendant in this trial?

14 A I did.

15 Q And during the trial, I asked Mr. Dejong, and he did
16 not have a lot of recall as to the Justin Eads fellow came
17 in right during the trial. Do you recall Justin Eads ?

18 A I recall -- what I recall happening is either Anita
19 Gearhart I think may have told me later that night that the
20 last day of court, that would be before the final day, and
21 I guess they got in kind of -- I don't know how it worked
22 out, but then we got him down here the next morning.

23 Q Okay. And when you say "down here," he was in
24 Virginia?

25 A A different state, as I recall.

1 Q Now, when Justin came to court, did you take him back
2 into the court and try to use him as a witness?

3 A I did.

4 Q And do you recall kind of how that went? When he
5 first came in, did John Dejong, was he aware that he was
6 there and was he in any of the rooms where you talked to
7 Justin?

8 A I'm not sure about that one. It's been a long time.
9 I'm not sure about if he was in there or not.

10 Q When you had a discussion, you, at some point, went
11 and had a discussion apparently in chambers about it.

12 A Yes.

13 Q And was John Dejong with you at that time?

14 A I don't recall independently, but he normally would
15 be.

16 Q Okay.

17 A He would be there back in chambers because he was the
18 counsel for the other codefendant.

19 Q Okay. So when you went into chambers, you would have
20 had to have, I assume, discuss the gist of Justin Eads testimony?

21 A Yes.

22 Q Okay. And John therefore would have, at least at that
23 time, become aware of what the gist of the testimony was.

24 A He would have heard what the testimony was at that
25 time, what it could have been, yes.

1 Q Okay. And from what appears on the transcript, do you
2 recall the conversation in chambers?

3 A I don't recall a specific conversation, but it would
4 have been about what this guy would know.

5 Q Okay.

6 A I think Mr. Richardson would have been there, who was
7 the trial counsel for the State, and I think Mr. Dejong was
8 there, Judge Welmaker and myself.

9 MR. WILKES: Okay. And from that time -- at least at
10 some point on the transcript it's discussed momentarily, so
11 it is on the transcript, Your Honor, some about the
12 witness.

13 THE COURT: Do you got a page?

14 MR. WILKES: I think I do. I might have it with me.
15 I don't see it. It's the testimony -- or, actually, it's
16 not indicated as testimony. I'll find it in just a second.

17 THE COURT: Okay.

18 MR. WILKES: But there is a brief reference to the

19 Justin Eads ---

20 MS. RATIGAN: Page 645.

21 MR. WILKES: 645, she's found.

22 So it was mentioned on the record.

23 BY MR. WILKES:

24 Q The basis of the ruling, the only thing that shows in
25 the record was Rule 613 as far as a prior inconsistent

1 statement. Do you recall that?

2 A I don't have the transcript in front of me. I know
3 that Judge Welmaker made a ruling.

4 Q Okay.

5 A As far as what it was based on, I don't know exactly.

6 Q Okay. But it was in chambers and not on the record,
7 his ruling? You don't recall?

8 A I don't recall.

9 Q Okay. The record will show.

10 Now, there was no motion to continue or motion for
11 mistrial in light of the judge denying that attempt to put
12 ^{Justin Eads} on the witness stand; is that correct? You don't
13 remember?

14 A I don't recall that, but . . .

15 Q Okay. And do you recall -- I think you said it was
16 the last day or the day before the trial, does that sound
17 right, when you learned of ^{Justin Eads} ---

18 A I think at some point, Anita was called or she found
19 out at some point she was to remember something, and I
20 either -- I may have met with her at the jail that night,
21 the last night before the final day after court that day.
22 She may have remembered something. Somebody may have seen
23 something on the TV about this case. And then we -- I
24 would have called -- either I called him or Anita called
25 him, and he came right down the next morning.

1 Q Okay. Do you -- from Virginia?

2 A Wherever it was he came from.

3 Q Where he was from.

4 A Yeah.

5 Q Do you recall going into the conference room with the
6 solicitor and John Dejong even before meeting with the
7 judge in chambers to discuss Justin?

8 A I don't recall that. I don't recall that.

9 MR. WILKES: Very good. We have no other questions
10 for Mr. Robinson.

11 MS. RATIGAN: I have no questions, Your Honor.

12 THE COURT: Thanks. You can step down.

13 THE WITNESS: Thank you, Judge.

14 MR. WILKES: Your Honor, we would call Joey Sanders.

15 THE COURT: All right.

16 WHEREUPON,

17 JOSEPH P. SANDERS, IV,

18 After first having been duly sworn, testified as follows:

19 THE CLERK: State your full name for the record.

20 THE WITNESS: Joseph Pettigrew Sanders, IV.

21 DIRECT EXAMINATION

22 BY MR. WILKES:

23 Q Mr. Sanders, if you'll look at the State's Exhibit --
24 or Applicant's Exhibit 1, 2 and 3, can you tell me, do you
25 recognize any of those?

1 A Can you hand -- I can't ---

2 Q I'm so sorry.

3 A (Reviews documents) Yes, sir.

4 Q Tell me what Exhibit 1 is.

5 A Exhibit 1 is a handwritten list that Mr. Dejong made
6 prior to trial during one of our first meetings together.

7 Q Okay. Tell me everything you know about that list.

8 A It's a list of witnesses that I thought was relevant
9 to my case and could shed light on my charges.

10 Q Okay. Now, there are two individuals in particular at
11 the bottom I'd like to ask you about, and I think it's --
12 one says Taylor and one says Nicole Holder .

13 A Yes, sir.

14 Q All right. Tell me about Nicole Holder . Why is she
15 relevant?

16 A She was Complainant best friend. They spent
17 99.9 percent of all the time together.

18 Q Okay. And the next one it says Taylor. What does it
19 say outside of her name?

20 A Sneaking out of something foster care.

21 Q Okay. And would that identify which Taylor that would
22 be?

23 A Taylor King .

24 Q Okay. And who is Taylor King ?

25 A Taylor King is a good friend of Complainant that played

1 basketball with her, that spent a lot of time with her when
2 she was in foster care at the foster care mom's house.

3 Q And did you talk to John Dejong about Taylor King and
4 Nicole Holder ?

5 A Repeatedly.

6 Q Were they at the trial?

7 A Every day, sir.

8 Q As far as you knew, did John Dejong ever speak with
9 either of them?

10 A No, sir.

11 Q Would you look at Exhibit 2 and tell me what that is?

12 A Also a compiled list of potential witnesses and people
13 that could help with my case.

14 Q And that one has Nicole Holder on it?

15 A Yes, sir. No. 18.

16 Q And will you look at Exhibit -- is it 3, No. 3?

17 A Yes, sir.

18 Q And what would that be?

19 A Also a comprised list of potential witnesses.

20 Q Now, tell me about No. 3. Where did that come from?

21 A It was comprised prior to trial about all the people
22 that possibly could provide any -- any insight into the --
23 the charges.

24 Q How long before trial?

25 A From the very beginning.

1 Q Okay. Would that be months before the trial?

2 A Yes, sir.

3 Q And did you provide that in -- as part of the big book
4 of information you gave John?

5 A To my knowledge, yes, sir.

6 Q Okay. Will you look on there and tell me if Jay
7 Rowe's name, whatever his formal name is, is on there? And
8 I know it is because I highlighted it.

9 A Yes, sir. It's on the second page, the very first
10 one.

11 Q And what is that name?

12 A Joseph W. Rowe, Junior.

13 Q And is that who we referred to as Jay Rowe?

14 A Yes, sir.

15 Q And is that Justin's dad?

16 A That is Justin's dad, yes, sir.

17 Q Now, why would you give that name to John Dejong as a
18 potential witness?

19 A He had information from his son about some allegations
20 that were made that could shed some light on my trial, and
21 I felt like it was best to get him involved as he could
22 help with my case.

23 Q And to your knowledge, did John ever speak with him?

24 A He did not, no, sir.

25 Q Did Justin -- John bring Justin to the trial?

1 A John Dejong or ---

2 Q What is **Jay Rowe** real name?

3 A Joseph.

4 Q Joseph?

5 A Yeah.

6 Q Okay. I'm going to call him **Jay Rowe**.

7 A Yes, sir.

8 Q Did he bring Justin to court during the trial?

9 A Yes, sir.

10 Q Did you learn of what Justin's testimony could be?

11 A Yes, sir.

12 Q And did you talk to John Dejong before the end of the
13 trial about that testimony?

14 A Yes, sir.

15 Q And what was your position on having either Nikki or
16 Taylor or Justin or **Jay Rowe** testify?

17 A I begged to have them testify as they had pertinent
18 information to my case.

19 Q Okay. In the trial of the case -- or at least leading
20 up to the trial of the case, did you talk to Mr. Dejong
21 about character witnesses?

22 A Yes, sir.

23 Q Did you have anybody that would have testified as a
24 character witness?

25 A Hundreds.

1 Q And did you ask John Dejong to have some testify?

2 A Repeatedly.

3 Q Do you know Andy Wright?

4 A Yes.

5 Q Brenda Cisson?

6 A Yes, sir.

7 Q Eddie Cisson?

8 A Yes, sir.

9 Q Deb Rogers?

10 A Yes, sir.

11 Q Would they have been adequate character references
12 during your trial?

13 A They went to court every day, sir.

14 Q Did John Dejong know that?

15 A Yes, sir.

16 MR. WILKES: That's all I have for Mr. Sanders, Your
17 Honor.

18 THE COURT: All right.

19 Cross?

20 CROSS EXAMINATION

21 BY MS. RATIGAN:

22 Q So basically, Mr. Dejong's argument for you at trial
23 was that you were innocent, you never touched Complainant

24 A Yes, ma'am. I suppose so.

25 Q And he also brought up the idea of the medical

1 impossibility for you to have raped her in any way?

2 A Yes, ma'am.

3 Q And in also making your defense, he had the guardian
4 ad litem testify that the victim had recanted, correct?

5 A Yes, ma'am.

6 Q And he also brought out two witnesses that testified
7 they overheard the victim say she was going to make you pay
8 or get you in trouble?

9 A Yes, ma'am.

10 Q And Mr. Dejong also brought out the fact that the
11 victim had stated she just wanted to move back to Virginia?

12 A Yes, ma'am.

13 Q So what were these other witnesses going to testify to
14 that would have been any different than what Mr. Dejong
15 already argued for you?

16 A I believe **Justin Eads** would have testified to scheme and
17 plot of how to get back to Virginia.

18 Q And did you give that name to Mr. Dejong?

19 A **Justin Eads** ?

20 Q Yes.

21 A I gave him his father's name to speak to his father.

22 Q What is his father's name?

23 A **Jay Rowe** .

24 Q Okay. So that's Jay Rowe?

25 A Yes, ma'am.

1 Q And why did you want Mr. Dejong to speak to the father
2 and not to the son?

3 A The son was a minor.

4 Q And how did you know to have Mr. Dejong to talk to Jay
5 Rowe about Justin?

6 A It was part of -- this was brought up way at the very
7 beginning that Justin had this knowledge.

8 Q But how did you know that?

9 A Justin told his dad.

10 Q But how did you know that? That's what I'm saying.
11 Did the dad tell you? Or how did you find out?

12 A Yes. Through my codefendant.

13 Q Oh.

14 A Through my codefendant.

15 Q So your codefendant told you?

16 A Yes.

17 Q When did she tell you that?

18 A From the very beginning.

19 Q Okay. And why did you want **Nicole Holder** and Taylor
20 King to testify?

21 A **Nicole Holder** was the best friend that had absolutely
22 no knowledge whatsoever and spent 99 percent of her time
23 with Complainant

24 Q So basically, she, in your mind, would testify that
25 she'd never heard of any kind of abuse?

- 1 A Yes, ma'am.
- 2 Q Same thing with Taylor?
- 3 A Taylor -- Complainant recanted to Taylor.
- 4 Q Okay. And you asked Mr. Dejong to contact all of
5 these people for you?
- 6 A Yes, ma'am.
- 7 Q And you told him why?
- 8 A Yes, ma'am.
- 9 Q Did you ask Mr. Dejong during the trial why he didn't
10 call these people as witnesses?
- 11 A Yes, ma'am.
- 12 Q And what did he say?
- 13 A Stone silence.
- 14 Q He just didn't answer you?
- 15 A No, ma'am. And I -- I turned and said, "They're in
16 court. They're here. I don't understand."
- 17 Q Did you instruct any of these potential witnesses to
18 contact Mr. Dejong?
- 19 A I gave him all their contact information and told him
20 they were available to be contacted.
- 21 Q That's not what I asked you. Did you ask these
22 witnesses to contact your lawyer?
- 23 A I asked them to come to court.
- 24 Q So that's "no"?
- 25 A No, ma'am.

1 Q And why did you want the character witnesses to
2 testify?

3 A I think that in a he said/she said debate, character
4 is all you have.

5 Q And when you asked Mr. Dejong to put up these
6 character witnesses, what did he say?

7 A My character was not on trial.

8 Q And you believe that if these character witnesses had
9 been called, you would have been found not guilty?

10 A I believe if all of these witnesses had been called,
11 the outcome of my trial would have been much different,
12 yes, ma'am.

13 MS. RATIGAN: That's all I have, Your Honor.

14 THE COURT: Anything else?

15 MR. WILKES: Nothing for Mr. Sanders.

16 THE COURT: Okay.

17 WHEREUPON,

18 **Nicole Holder ,**

19 After first having been duly sworn, testified as follows:

20 THE CLERK: State your full name for the record.

21 THE WITNESS: Nicole Holder .

22 DIRECT EXAMINATION

23 BY MR. WILKES:

24 Q And **Nicole Holder** , do you go by Nikki?

25 A Yes.

1 Q Nicole Holder, you know Joey Sanders?

2 A Yes.

3 Q And how do you know Joey?

4 A I was best friends with his girlfriend's daughter.

5 Q Okay. And who would that be?

6 A Complainant .

7 Q And you -- let's see. You knew her back before the
8 allegations?

9 A Yes.

10 Q Okay. Did you ever -- do you know -- you know and you
11 would recognize Mr. Sanders' lawyer from the trial,
12 wouldn't you? The fellow with the white beard?

13 A Yes.

14 Q Do you remember him? Did he ever speak with you prior
15 to the trial?

16 A No.

17 Q Did you go to court for Mr. Sanders' trial?

18 A Yes. I was there for the trial.

19 Q And how many days were you there for the trial?

20 A I think two.

21 Q Okay. And why were you at the trial?

22 A Because my mom said I may have to go and witness, but
23 she wasn't sure, so we went.

24 Q Okay. And how long had you known Complainant

25 A For two years.

1 Q And what exactly -- how did you know her? What did
2 y'all do together?

3 A Well, we met in the fifth grade because she moved down
4 here from Virginia, and we started getting close. And I
5 started hanging out at her house, and she'd come to mine,
6 and we'd go do stuff with Anita and Joey.

7 Q Okay. And during that time -- tell me a little bit
8 about Complainant. What was she like?

9 A She was really nice, but if she didn't get her way,
10 she was -- she got what she wanted. If she didn't get her
11 way, she'd cry about it. But she was very friendly and
12 everything.

13 Q Okay. Tell me, you had said something about she liked
14 to place curses on people. Tell me about that.

15 A One day I was over at the house, and it was just me
16 and her. And we went outside, and she said that she wanted
17 to put curses on people. So she put -- tried to put a
18 curse on three different people that they would get run
19 over by a car.

20 Q Now, leading up to the time of the allegations, did
21 she ever give any indication to you there was a problem?

22 A No.

23 Q Did she ever give you any indication that there was a
24 plan or desire on her part to leave South Carolina?

25 A Well, she said she really wanted to go to Virginia

1 over the summer to spend time with her cousins and
2 everything, but Anita had already paid for softball camp
3 because Complainant said she wanted to go. And she's very,
4 very, very mad because she wasn't going to get to go to
5 Virginia because Anita said "no."

6 Q Okay. How mad is mad?

7 A Like she was crying, she was so mad. She's very
8 frustrated.

9 Q Okay. And do you believe from your contact with her
10 that she had a plan to get back to Virginia?

11 A I think so. Because whenever she got to her dad's
12 house in North Carolina, we still like talked a little bit,
13 and she said that she didn't think she was going to ---

14 MS. RATIGAN: Objection, Your Honor. It's hearsay.

15 THE COURT: Yeah. Can't say what somebody else said.

16 MR. WILKES: In this case, Your Honor, the question
17 that we're presenting is what her testimony would have been
18 at trial. Complainant testified at trial, so it would not have
19 been hearsay at trial. It would have been appropriate for
20 her to testify at the trial. I'm showing what John Dejong
21 would have presented at trial. We're talking about ---

22 THE COURT: You're trying to get another witness's
23 testimony out of this witness? Is that what you're doing?

24 MR. WILKES: We're talking about the alleged victim
25 and her statements as to trying to get back to Virginia.

1 So at trial, that would have been motive, and it would have
2 been proper ---

3 THE COURT: It might be. But how are you going to get
4 it out of this witness without it being hearsay?

5 MR. WILKES: It would have been -- it would have been
6 an exception to the hearsay rule.

7 THE COURT: What exception?

8 MR. WILKES: The declarant -- the declarant was in --
9 well, it depends on who you call the declarant. The
10 statement was made by **Complainant** . She's the alleged
11 victim. If this witness would have been at trial, she
12 would have been able to testify to that. The alleged
13 victim was at the trial at the time. She would have been
14 allowed to testify.

15 So it's not offered, essentially, for the truth of the
16 matter asserted here. What we are doing is establishing
17 the cross-examination that Mr. Dejong could have done and
18 presented this witness at the trial. She could have
19 testified to this at trial. The point of the PCR is to
20 show what Mr. Dejong could have presented at trial.

21 THE COURT: So you're going to ask this witness to
22 describe what another witness would have said?

23 MR. WILKES: No, no, no, no. Not would have said.
24 What she did say, the alleged victim.

25 MS. RATIGAN: And my whole thing can be summed up that

1 you can ask her based on her conversations with the victim
2 -- not the alleged victim. He's been adjudicated guilty.
3 Based on her conversations with the victim what her
4 perceptions were. I think that's fine. But asking her for
5 a straight-up hearsay I think is objectionable.

6 MR. WILKES: She -- well, I've got it proffered
7 because I think she can testify to it in the PCR because
8 that is the point, that John Dejong could have introduced
9 her testimony at that time. It's not -- it would not have
10 been hearsay at the trial.

11 THE COURT: Why not?

12 MR. WILKES: Because she was present in trial and
13 testified. She could have been asked about the statement.
14 It could have been ---

15 THE COURT: You're talking about this other girl.

16 MR. WILKES: Yes. The victim. Yes.

17 THE COURT: So in other words, that other girl could
18 have testified at trial.

19 MR. WILKES: She did.

20 THE COURT: Okay. But -- and she can testify today.

21 MR. WILKES: She's the victim in the case. She
22 doesn't have to testify today. The question is, what could
23 John Dejong have presented at that time.

24 THE COURT: Yeah. And you bring that witness in to
25 testify today about what she could have said then, but now

1 you're trying to get it in through this witness.

2 MR. WILKES: It's -- yes. It is the statements of the
3 victim. This witness could have testified on Mr. Sanders'
4 behalf at the time to show the motive of the victim in
5 making up the story that she made up.

6 THE COURT: What exception to the hearsay rule do you
7 think it fits under?

8 MR. WILKES: It would not have been hearsay at the
9 trial.

10 THE COURT: It is an out-of-court statement, right?

11 MR. WILKES: It would have been an out-of-court
12 statement, but the declarant would have been in court.

13 THE COURT: And so you think because this is a PCR,
14 the declarant doesn't have to be here and it's still not
15 hearsay.

16 MR. WILKES: I think, for the purposes of the PCR, to
17 show that Mr. Dejong could have brought this witness to
18 court, I don't think that I'm required to bring the victim
19 in to have her testify again to have this witness testify
20 to show the Court what Mr. Dejong had the ability to do.
21 Otherwise, you're requiring me to bring the victim back
22 into court to have her testify again to show simply what
23 this witness would have testified to.

24 THE COURT: I think it's hearsay, but I'll let you put
25 it in the record. Go ahead.

1 MR. WILKES: Thank you.

2 BY MR. WILKES:

3 Q What did Complainant say as far as being in North Carolina?
4 What did she tell you?

5 A She said she hated it. She thought she was going to
6 get to go to Virginia. She didn't like living with her
7 dad. She didn't want to live with her dad. And she was
8 cutting herself with razors because she said she hated it
9 so bad.

10 Q And where did she want to go?

11 A She wanted to go to Virginia.

12 Q Who was the first person that you told that to?

13 A That she was cutting herself?

14 Q No, no. That she had said that.

15 A My mom.

16 Q Okay. And who's your mom?

17 A Diane Holder.

18 MR. WILKES: Very good. Nothing further for
19 Nicole Holder .

20 CROSS EXAMINATION

21 BY MS. RATIGAN:

22 Q So you told your mom, Diane, about the conversation
23 you had with Complainant after she was in North Carolina?

24 A Yes.

25 Q And when did you tell your mom that?

1 A After she told me -- whenever Complainant got to her dad's.
2 That was years ago. I don't remember.

3 Q So that was after she had been -- was that after she
4 made these allegations, I guess?

5 A Yes.

6 Q Okay. But prior to trial?

7 A Yes.

8 Q And you just showed up at court that day because your
9 mom told you to?

10 A She said that I may have to testify.

11 Q But Mr. Dejong never contacted you?

12 A He contacted my mom.

13 MS. RATIGAN: Okay. That's all I have, Your Honor.

14 MR. WILKES: Nothing further, Your Honor.

15 THE COURT: You can step down now.

16 MR. WILKES: Let's try -- Taylor.

17 THE COURT: Who?

18 MR. WILKES: Taylor King

19 WHEREUPON,

20 Taylor King

21 After first having been duly sworn, testified as follows:

22 THE CLERK: State your full name for the record.

23 THE WITNESS: Taylor King

24 THE COURT: Please be seated.

25 ///

DIRECT EXAMINATION

BY MR. WILKES:

Q Taylor King , do you know Complainant ?

A Yes, I do.

Q And how do you know her?

A She was my best friend through middle school.

Q And what type of things would y'all do together?

A We went to movies together, out to dinner, had lots of sleepovers. Basically was together all the time.

Q Now, you know Joey Sanders?

A Yes, I do.

Q How do you know Mr. Sanders?

A He was my basketball coach.

Q Okay. And do you remember going to Mr. Sanders' trial?

A I do.

Q And why were you at Mr. Sanders' trial?

A Support.

Q Okay. Had you ever been contacted by Mr. Sanders' lawyer?

A No.

Q Do you know who Mr. Sanders' lawyer was?

A No.

Q Did you see him in the courtroom?

A I did.

1 Q You would know if you had spoken with him?

2 A Yes.

3 Q Okay. Now, did Complainant ever discuss the allegations
4 with you?

5 A Yes.

6 Q And what did she say to you?

7 MS. RATIGAN: Same objection, Your Honor.

8 THE COURT: Same ruling. Go ahead.

9 BY MR. WILKES:

10 Q What did she say to you?

11 A At first she went along with what she'd been telling
12 everybody else, you know. Joey had touched her, Joey had
13 did, you know, inappropriate things. She told me about,
14 you know, him touching her at the motel and in the kitchen
15 and all that. And then when we really started, you know,
16 hanging out, getting close, she -- we were just hanging out
17 being very open with each other. She got really upset
18 about it. She, you know, started crying, got super upset.
19 She was telling me how she was so sorry that she had done
20 all this. She had wished that she had never done any of
21 it. She shouldn't have lied.

22 Q Okay. Did she tell you why she did it?

23 A She was angry.

24 Q Okay. And did she tell you what she hoped to gain out
25 of it?

1 A She wanted to be up in Virginia with her grandparents.

2 Q Okay. Did she give you any reason why she couldn't
3 back up on what she had said?

4 A She was afraid she was going to go to jail.

5 Q Now, when she told you this, who did you tell that to?

6 A The first person I told was my mother. The next
7 person that I had told was Anita.

8 Q And Anita being Ms. Gearhart, Joey's codefendant in
9 the trial?

10 A Yes, sir.

11 Q Okay. And you appeared at trial every day of the
12 trial?

13 A Every day except for Complainant testimony day. I was
14 sick.

15 Q Okay. And would you have testified if Mr. Dejong had
16 asked you to testify?

17 A Absolutely.

18 MR. WILKES: Nothing further for Taylor King .

19 CROSS EXAMINATION

20 BY MS. RATIGAN:

21 Q So you never were contacted by Mr. Sanders' lawyer?

22 A No, ma'am.

23 Q Do you know if he contacted your parents?

24 A No, ma'am.

25 Q You don't know or he didn't contact?

1 A He did not contact my parents.

2 Q When did the victim -- when did Complainant tell you that
3 she was sorry and she shouldn't have lied?

4 A I can't give you a date. I can just give you what we
5 were doing. It was while we were in school during that
6 year, seventh grade.

7 Q So that was before the trial?

8 A Yes.

9 Q And you told your mom, and then you also told Complainant
10 mom's lawyer?

11 A I told Complainant mother.

12 Q Okay. Why didn't you tell Mr. Sanders' lawyer that
13 the victim had changed her story?

14 A I was -- I mean, when I was here, everything was just
15 so busy, I never got the chance to go up to him and tell
16 him. I didn't know who his lawyer was. I didn't know his
17 name.

18 Q Okay. Well, but you knew that both Complainant mother
19 and Mr. Sanders, you knew they were facing pretty serious
20 charges?

21 A Yes, I did.

22 Q And did you ever tell your mother or anyone that you
23 thought it was important to call the police or call the
24 solicitor to tell them that Complainant had lied?

25 A I did not.

1 MS. RATIGAN: That's all I have, Your Honor.

2 THE COURT: How old are you?

3 THE WITNESS: I'm 20 years old.

4 THE COURT: How old were you then?

5 THE WITNESS: That was seventh grade. I was 13, I
6 think.

7 THE COURT: Tenth grade, wouldn't it be more like 15,
8 maybe, something like that?

9 THE WITNESS: Yeah. 16.

10 THE COURT: Do you got any other questions?

11 MR. WILKES: No, sir.

12 THE COURT: Okay. Thanks. You can step down.

13 THE WITNESS: Thank you.

14 WHEREUPON,

15 JOSEPH ROWE, Jr.,

16 After first having been duly sworn, testified as follows:

17 THE CLERK: State your full name for the record.

18 THE WITNESS: Joseph Lee Rowe, Junior.

19 THE CLERK: Please be seated.

20 DIRECT EXAMINATION

21 BY MR. WILKES:

22 Q Are you commonly referred to as Jay Rowe?

23 A Yes, sir.

24 Q And how do you spell that?

25 A J-A-Y.

1 Q And how do spell Rowe?

2 A R-O-W-E.

3 Q Is Justin your son?

4 A Yes, sir.

5 Q Do you recall Justin coming to you and telling you
6 about something that he was party to at a house in
7 Virginia?

8 A Yes, sir.

9 Q And tell me what that was.

10 MS. RATIGAN: Objection. Hearsay.

11 MR. WILKES: He's here. He'll testify in a minute to
12 it.

13 MS. RATIGAN: Okay.

14 BY MR. WILKES:

15 Q Tell me what that was.

16 A That he had overheard a conversation between my sister
17 Complainant a family friend Megan, that it was a way for her to
18 get back to Virginia to live with my grandfather.

19 Q Okay.

20 A They elaborated a scheme to say that Mr. Sanders had
21 touched her inappropriately. Megan had told her that she
22 needed to go to the school counselor and they would remove
23 her from the home and send her back to Virginia.

24 Q And tell me, now, when he told you this, is this
25 before any allegations?

1 A No, it is not.

2 Q Is this after the allegations are made?

3 A No. I'm sorry. He told me -- yeah. He told me
4 before we found out anything, before we heard anything.
5 I'm sorry.

6 Q Okay. So this would be the plan?

7 A Yes.

8 Q Okay. And what did you do when he told you that?

9 A Honestly, I didn't -- we had just put my grandmother
10 in the ground. We'd just buried her. And honestly, I did
11 not think that she would do something like that.

12 Q Okay. When was the next time that something happened
13 related to that?

14 A I received a phone call from my mother-in-law to pull
15 up the Web site for the news station down here.

16 Q Okay.

17 A And that's when I found out that Mr. Sanders and
18 Ms. Gearhart had gotten arrested.

19 Q Okay.

20 A Once they both were bonded out -- of course
21 Ms. Gearhart is my mother -- I had told her about what
22 Justin had told me.

23 Q Okay.

24 A And I don't know if between her grieving her mother
25 passing and her being arrested, if it just slipped her mind

1 because of everything that was going on at the time. I
2 don't know. But I had told her what Justin had told me.

3 Q Okay. And you ultimately ended up here in the trial?

4 A Justin did.

5 Q Justin did. Okay.

6 So why did he come up?

7 A I was watching -- I don't remember which news Web site
8 it was on the court case, and people were commenting on the
9 case. A lot of rude, vulgar stuff was being said about
10 Mr. Sanders and Ms. Gearhart. So me being the person I am,
11 I defended him.

12 Q Okay.

13 A I defended my mother, I defended Mr. Sanders.

14 Q Okay.

15 A It brought to light what my son had heard.

16 Q Okay.

17 A And I believe it was my mother's attorney had caught
18 wind of it.

19 Q Okay.

20 A My mom, Ms. Gearhart, had called me that evening. It
21 was probably 9:00, 10:00 -- actually, it was at 9:00. I'm
22 sorry. And said that her attorney wanted Justin in court
23 the next morning.

24 Q Okay. So that's how Justin ends up here?

25 A Yes, sir.

1 Q Now, the time that he reported that to you was well
2 before any charges or allegations?

3 A Yes. That would have been approximately the 9th or
4 10th. I'm not sure. I don't remember exactly which day we
5 buried my grandmother. And I believe they were arrested on
6 the 13th, I think it was.

7 Q Okay. And did you ever speak -- Mr. Dejong, Joey's
8 lawyer, did he ever contact you?

9 A No, sir.

10 Q Anybody on his behalf from his office contact you?

11 A No. The only person that ever contacted me was my
12 mother, and that was a relayed message through her
13 attorney.

14 MR. WILKES: Okay. All right. Nothing further of
15 Mr. Rowe.

16 CROSS EXAMINATION

17 BY MS. RATIGAN:

18 Q So Anita Gearhart, that's your mother?

19 A Yes, ma'am, it is.

20 Q And when did your son Justin tell you that he
21 overheard this conversation?

22 A He told me as we were leaving my grandmother's
23 property after the funeral.

24 Q So about when would that have been? Prior to trial?

25 A Time of day or ---

1 Q I mean date.

2 A It's either the 9th or 10th of June 2008.

3 Q 2008?

4 A Yes, ma'am.

5 Q So that was probably about two years before the trial?

6 A Yeah. I believe so.

7 Q And when would you have told your mother about this
8 conversation that Justin heard? Would it have been pretty
9 close in time?

10 A Yeah. So they -- I believe they got arrested on the
11 13th. And as soon as I spoke with her when -- I don't know
12 if it was that night after they got bonded out or if it was
13 the next day or when it actually was, but I had told her
14 then.

15 Q So that would have been back in 2008 still?

16 A Yes, ma'am. Yes, ma'am.

17 Q Okay. And you knew that your mother and Mr. Sanders
18 were both facing pretty serious charges?

19 A Not at first. I didn't know exactly what their actual
20 charges were at the time.

21 Q Okay. But as the case developed as you got closer to
22 trial?

23 A Yes.

24 Q Why did you not contact either your mother's lawyer or
25 Mr. Sanders' lawyer about this conversation?

1 A I didn't know either one of them, to be honest with
2 you. Because, like I said, we were living in Virginia.

3 Q But you didn't think it would be important for your
4 mother's case?

5 A I figured she had told him. I didn't know that she
6 had forgotten about it.

7 Q So she had actually gone to trial and the trial had
8 started before you ever talked to a lawyer about this case,
9 about what Justin told you?

10 A I never talked to any attorney about this case. No
11 one ever contacted me.

12 Q You knew your mother's case had been set for trial,
13 though?

14 A Yes.

15 Q And even though it had been set for trial on these
16 serious charges and you still hadn't talked to her lawyer
17 or anybody else, you still didn't think it was necessary to
18 tell anybody?

19 A Like I said, I thought my mother had told her
20 attorney.

21 Q And you didn't think to contact the police and say you
22 had some information about whether or not these charges
23 could have been cooked up as a scheme?

24 A No, ma'am.

25 MS. RATIGAN: Okay. That's all I have, Your Honor.

1 MR. WILKES: One last question.

2 REDIRECT EXAMINATION

3 BY MR. WILKES:

4 Q Complainant and Megan Wilkerson ---

5 A Uh-huh.

6 Q --- you know both of those people?

7 A Yes, I do.

8 Q Do they live in Virginia?

9 MS. RATIGAN: I'm going to object to this being
10 outside the scope of redirect, Your Honor.

11 MR. WILKES: I move to recall him for the purpose of
12 that question.

13 THE COURT: All right. Just go ahead.

14 THE WITNESS: Megan Wilkerson, the last I heard, lives
15 around Roanoke area in Virginia. Complainant the last I heard,
16 is in the Moyock, North Carolina/Virginia Beach area.
17 Where, exactly, I'm not 100 percent sure.

18 MR. WILKES: Okay. That's all. Thank you.

19 THE COURT: Okay. You can step down.

20 THE WITNESS: Thank you.

21 (Pause in proceedings.)

22 WHEREUPON,

23 Justin Eads,

24 After first having been duly sworn, testified as follows:

25 THE CLERK: Please state your name for the record.

1 THE WITNESS: Justin Eads .

2 THE COURT: Please be seated.

3 DIRECT EXAMINATION

4 BY MR. WILKES:

5 Q Justin, you know Mr. Sanders?

6 A Yes, sir.

7 Q And you know Complainant and Megan Wilkerson

8 A Yes, sir.

9 Q Do you remember when Mr. Sanders, roughly when he was
10 charged with these offenses?

11 A Yes, sir.

12 Q Okay. Before that happened, where were you living?

13 A Roanoke, Virginia.

14 Q Okay. And was Megan Wilkerson , Complainant in
15 Roanoke, Virginia also?

16 A Complainant had lived in South Carolina at the time, and
17 Megan was living in Roanoke.

18 Q Okay. Did Complainant ever go to Virginia?

19 A Yes.

20 Q And why?

21 A The first time was a couple weeks before my
22 grandmother passed away. We had a big cookout. The second
23 time would have been on -- right after June 6th of '08 when
24 my grandmother had passed away.

25 Q Okay. And did you have a chance to sit with Complainant

1 and listen to her concoct a scheme?

2 A Yes, sir, I was.

3 Q Can you tell me what the scheme was?

4 A Her -- she felt that -- at this point, our grandmother
5 had passed away, and our grandfather, she felt like she had
6 -- she had to take over taking care of him.

7 Q Okay. And where was he? Where did he live?

8 A He lived with my grandmother in Roanoke, Virginia.

9 Q Okay. And how was she going to get back to -- she
10 lived with Joey at that time?

11 A Yes, sir.

12 Q How was she going to get back to Roanoke, Virginia?

13 A Her -- she -- we were in the basement at my
14 grandmother's, and she had stated that she would go to her
15 school counselor, and that she would come up with a lie
16 -- that Joey had touched her inappropriately to get back to
17 Roanoke. She thought that was her plan.

18 Q Okay. Now, did she go back to South Carolina after, I
19 guess it would have been, the funeral?

20 A Yes, sir.

21 Q Okay. And where does -- Megan or Complainant do you know
22 where they live now?

23 A I honestly couldn't tell you. I haven't spoke to
24 either one of them in years.

25 Q Okay. Now, did you see Complainant again? Did she make it

1 back to Virginia?

2 A No, sir. Not to my knowledge.

3 Q And have you had any communication with her since?

4 A No, sir.

5 Q Had any contact with Megan Wilkerson ?

6 A No, sir.

7 Q What did you do in response to learning this? What
8 did you tell?

9 A I had told my father coming down the road after the
10 funeral. We had left before Complainant and my grandmother
11 Anita had left, and I had let him know, you know. I was
12 like, you know, we were sitting in the basement like we
13 always do, and I told him, you know, Complainant had told us
14 that she was going to go to school and make these
15 allegations towards Joey.

16 Q And you told your dad. Your dad is who?

17 A Joseph Rowe.

18 Q Okay. Now, when is the next time you had any contact
19 with Complainant

20 A I would have to say when she was living in South
21 Carolina. Around that time was the last time I really had
22 spoken to her.

23 Q Okay. Did you come to the trial?

24 A I was informed the day before or like the day before
25 the last day of the trial that I needed to be here.

1 Q And how did that happen? How did you learn about the
2 trial?

3 A My father, he had left something up on the computer,
4 and I happened to see it. And, you know, there were some
5 things going on online on the news and stuff, and people
6 were saying some pretty vulgar things. And that's when my
7 father had stepped in and put something online, and then
8 the next thing we know, we're getting calls from the
9 attorneys and stuff like that to come down.

10 Q And you went to South Carolina the next day?

11 A That night.

12 Q That night?

13 A That night they called us and told us to be here the
14 next morning at 8:00.

15 Q Okay. And were you in the courtroom?

16 A Yes, sir, I was.

17 Q Do you remember the fellow with the beard, the white
18 beard, Mr. Sanders' attorney?

19 A Yes, sir, I do.

20 Q And you remember Anita's attorney, the dark-haired
21 fellow?

22 A Yes, sir, I do.

23 Q When you went to court, did you speak with both of
24 them? one of them? Who did you speak with?

25 A Yeah. I had spoken [sic] to both of them at one

1 time. And then I had talked to my grandmother's attorney
2 in the judge's chambers.

3 Q Did the guy with the white beard go with you into the
4 chambers?

5 A Honestly, I couldn't remember. I don't think so. He
6 might have.

7 Q Okay.

8 A It's been a good while ago.

9 Q Okay. And were you there to testify in the case?

10 A Yes, sir, I was.

11 MR. WILKES: Okay. Nothing further from Justin Eads.

12 MS. RATIGAN: I have no questions, Your Honor.

13 THE COURT: All right. You can step down. Thanks.

14 MR. WILKES: Thank you, Justin. You can come down.

15 THE WITNESS: Thank you.

16 MR. WILKES: Your Honor, one of the issues at trial
17 was the failure to call character witnesses that my client
18 believed was essential in light of the evidence in the
19 case. I have a bunch. I would like to call a number
20 representative of that large group. Actually, I'd like to
21 call them all, but I'm sure there's not enough time for it.
22 But if I can call a few representative of the group, I
23 would like to do that. We would start by calling DeAnn
24 Wright.

25 THE COURT: Who?

1 MR. WILKES: DeAnn Wright. W-R-I-G-H-T, I believe.
2 WHEREUPON,

3 ELIZABETH DeANN WRIGHT,

4 After first having been duly sworn, testified as follows:

5 THE CLERK: State your full name for the record.

6 THE WITNESS: Elizabeth DeAnn Wright.

7 THE CLERK: Please be seated.

8 DIRECT EXAMINATION

9 BY MR. WILKES:

10 Q Ms. Wright, you know Mr. Sanders?

11 A Yes, sir.

12 Q How long have you known Mr. Sanders?

13 A Since 2003.

14 Q And tell me how you know Mr. Sanders.

15 A My daughter was involved with the Miss South Carolina
16 pageant. She was a Palmetto Princess at 13 years old, and
17 we met Mr. Sanders initially through there.

18 Q Okay. And how long -- how often would you have
19 contact with Mr. Sanders?

20 A Initially, it was just when the pageant had stuff
21 going on. But Taylor was lucky enough to -- worked hard
22 enough and was lucky enough to win Miss South Carolina Teen
23 and Miss America's Outstanding Teen, so we saw Joey for
24 about six months probably literally every day.

25 Q Okay. And during that time, have you formed an

1 opinion as to Joey's -- Mr. Sanders' character?

2 A Yes, sir.

3 Q Tell me about it.

4 A Joey is a compassionate, hard-working man. I never
5 had any issues with leaving Taylor anywhere with him. He
6 -- his character is impeccable. I mean, when he went after
7 something, he went after it full force, follow the rules,
8 knew what he wanted. He installed that in -- he instilled
9 that in my daughter. Taylor's a graduate from Wofford and
10 still uses a lot of what Joey taught her at that time to
11 successfully complete a PA degree.

12 Q And would you have formed an opinion as to his
13 truthfulness?

14 A Yes.

15 Q Would you believe him to be a truthful person?

16 A Yes, sir.

17 Q Are you familiar with his reputation in the community
18 as to his truthfulness?

19 A Yes. I never -- I never questioned his truthfulness.
20 I worked with lots of people within the pageant, and still
21 do, and his character still stands.

22 MR. WILKES: Very good. That's all we have for
23 Ms. Wright.

24 MS. RATIGAN: I have no questions, Your Honor.

25 MR. WILKES: Ms. Wright -- I'm sorry, Your Honor.

1 THE COURT: You may step down. I think we're ---

2 MR. WILKES: You can come on down, Ms. Wright. Thank
3 you.

4 We call Ms. Brenda Cisson.

5 WHEREUPON,

6 BRENDA CISSON,

7 After first having been duly sworn, testified as follows:

8 THE CLERK: State your full name for the record.

9 THE WITNESS: Brenda Crawford Cisson.

10 THE CLERK: Please be seated.

11 DIRECT EXAMINATION

12 BY MR. WILKES:

13 Q Ms. Cisson, spell your last name, please.

14 A C-I-S-S-O-N.

15 Q Ms. Cisson, do you know Joey Sanders?

16 A I do.

17 Q How long have you known Mr. Sanders?

18 A I think I've known him personally since at least 1994
19 or '5.

20 Q How do you know him?

21 A Mainly through the pageant organization. My daughter
22 was a performer for a couple years and later on went
23 through the pageant system. But at that time, as a parent,
24 she was in high school, and they would be gone for like a
25 week and a half or whatever, so I had -- my husband already

1 knew Joey and the Sanders family, but I had met him then.

2 Q Did you spend a lot of time with him over the years?

3 A Yes, sir. Since that time, a whole lot of time. In
4 fact, my daughter lived at the Sanders home. She later won
5 Ms. South Carolina and lived there with them. And my
6 younger daughter also stayed at Joey's house. At that
7 time, he was married to Veronica.

8 Q Okay. And have you an opinion as to Mr. Sanders'
9 character?

10 A Most definitely.

11 Q What would that be?

12 A (I think he is a fine character. I have observed Joey
13 over the years, not only his honesty, but his wisdom about
14 things, his wisdom and the way he would handle things or
15 advice he would give to different people that he would be
16 around.

17 Q And do you have -- are you aware of his reputation in
18 the community for being a truthful person?

19 A I would think that that would be exactly what his
20 reputation would be, but I would also think he would have
21 the reputation of somebody that you can go to for if you
22 needed help in anything. I mean, I always found him to be
23 a caring and tenderhearted person.

24 MR. WILKES: That's all I have of Ms. Cisson.

25 MS. RATIGAN: I have no cross, Your Honor.

1 THE COURT: You don't want to ask something more about
2 his character? Because we're getting far afield from what
3 the rules allow.

4 You may step down. Thank you.

5 MR. WILKES: I would call Eddie Cisson.

6 WHEREUPON,

7 EDDIE CISSON,

8 After first having been duly sworn, testified as follows:

9 THE COURT: All right. Come on around, have a seat.
10 State your name for the record.

11 THE WITNESS: Eddie Cisson.

12 DIRECT EXAMINATION

13 MR. WILKES:

14 Q Mr. Cisson, do you know Mr. Sanders?

15 A Yes, I do.

16 Q Tell me how you know Mr. Sanders.

17 A I was a teacher and a coach at Liberty High School
18 back in -- 1977, '78 I believe were the years. Mr. Sanders
19 was in my science class and my -- my math class and played
20 football there for me.

21 Q Okay. And have you known him ever since?

22 A Yes, I have.

23 Q And are you familiar with his work?

24 A Yes.

25 Q And do you have an opinion as to his character?

1 Briefly.

2 A In all the dealings I've had with Mr. Sanders, his
3 character is unimpeachable.

4 Q Do you have an opinion or do you know of his
5 reputation as far as truthfulness?

6 A In all the dealings I've had with him, he has been
7 sometimes truthful when it wasn't to his advantage to be
8 truthful. In class, for example, if he made a 38 on a
9 test, I'd ask him why and he'd say, "Well, you know, I just
10 didn't study."

11 Q Okay. So you would say he's a truthful person?

12 A Yes.

13 Q Let me ask you this. You were at the trial, were you
14 not?

15 A Yes, I was.

16 Q And would you have testified as a character witness
17 for Mr. Sanders at trial?

18 A Yes, I would.

19 Q And you came today along with a lot of other people
20 who I believe, would you know -- or were here to do the
21 same?

22 A Yes.

23 Q And how many people would you say were out there to
24 testify on his behalf if they were called?

25 A Somewhere close to 50, I would say. Didn't count

1 them, but it appeared there were at least that many.

2 Q Okay. You listened to the trial?

3 A Yes, I did.

4 Q Do you remember or recall the testimony of the
5 guardian ad litem?

6 A Yes, sir.

7 Q Ms. Chapman?

8 A Yes.

9 Q Do you recall the cross-examination of Ms. Chapman?

10 A Yes.

11 Q Could you give me your impression of the impact that
12 the State's cross-examination had from your point of view?

13 MS. RATIGAN: I'm going to object.

14 THE COURT: Sustained.

15 MR. WILKES: Very well. That's all we have of
16 Mr. Cisson.

17 I'd like to at least proffer it, Your Honor. If I may
18 proffer the answer.

19 THE COURT: In no forum I'm aware of would that be
20 admissible. What a layperson's opinion of the impact of
21 other evidence there, that's not relevant. We're not going
22 there.

23 MR. WILKES: Very good. That's all I have for
24 Mr. Cisson.

25 THE COURT: Any cross-examination?

1 MS. RATIGAN: I do not, Your Honor.

2 THE COURT: All right. Thank you.

3 MR. WILKES: Your Honor, there is an issue on the
4 record which was failure to object to the improper
5 cross-examination of the guardian ad litem. It's in the
6 opinion of the Court of Appeals. I believe the opinion of
7 the Court of Appeals was that the issue was not preserved.
8 It was briefed, and we believe that just on the record the
9 Court can see the lack of preservation because of the
10 ruling of the Court of Appeals.

11 THE COURT: I don't have the opinion. I don't have --
12 what's the page number?

13 MR. WILKES: The opinion -- I can give you the
14 opinion. I'm not sure of the page in the bound attorney
15 general material. But the opinion is 2013-UP-054. I have
16 a copy of it I can pass it up.

17 THE COURT: Wait a minute.

18 MR. WILKES: You got it.

19 MS. RATIGAN: It should be in the packet.

20 MR. WILKES: It should be there somewhere.

21 THE COURT: I have the brief of the appellant. Let me
22 see.

23 MR. WILKES: I can hand it up.

24 THE COURT: Hang on, hang on. I don't want any more
25 paper unless I have to have it. Well, I guess you'll have

1 to hand it up because I don't have it. Oh, wait. Give it
2 back to him. I don't want it. Thanks.

3 MR. WILKES: It's No. 3 on page 2, I think. And the
4 ruling -- well, I don't need to read it.

5 THE COURT: Okay. What are you relying on that
6 statement to ---

7 MR. WILKES: That it was not preserved. It was not
8 objected to. And just, in a nutshell, I'll put the
9 argument ---

10 THE COURT: Well, let me just ask the State's
11 representative whether or not she would concede that the
12 testimony that's the subject of this unobjected-to material
13 would, in fact, be objectionable.

14 MS. RATIGAN: I would not concede that, Your Honor.

15 MR. WILKES: She wouldn't concede it objectionable,
16 but I think she would concede it was not preserved. That's
17 the question for appeal is whether it's objectionable.
18 That's our point. We couldn't present that to the Court of
19 Appeals because it wasn't preserved.

20 THE COURT: What testimony are you referring to?

21 MR. WILKES: Testimony of the guardian. The guardian
22 -- there was a big argument over whether the guardian can
23 testify. The State was quoting some old case law under
24 Section 20. John Dejong properly responded with the right
25 argument as far as it being admissible, and it was

1 admitted.

2 It was the guardian ad litem. The State said she
3 cannot testify. She's a guardian and it's confidential.
4 And the Court ruled that she could testify, that it was not
5 confidential. She testified.

6 THE COURT: Wait. Where is the ruling in the record?
7 Do you have that?

8 MR. WILKES: There is no -- oh, there is a discussion
9 in the record on page 588 of the transcript. Nope. That's
10 not it. I'm sorry. Here it is. Sorry. Wrong one.

11 All right. 497 is where the disagreement came up.
12 The actual discussion as to whether it was admissible is on
13 456, line 17 of the transcript.

14 THE COURT: Okay. I've read that.

15 MR. WILKES: All right. And then it comes up again --
16 it kind of disappears off of the transcript off the radar
17 there, but the guardian is allowed to testify. So clearly,
18 probably in chambers or off the record the judge ruled that
19 it was admissible. So that resolved the admissibility
20 problem.

21 But at 497, line 13, the State engaged in what we
22 contend is improper cross-examination, belittling the
23 guardian ad litem, again, about the same thing that the
24 judge had already ruled on, diminishing her testimony in
25 doing so. The State sat there and argued that she was,

1 again, breaking the confidentiality rule. She wasn't
2 allowed to do this. She's breaking the law. And in that
3 cross-examination, they just attacked her on a basis they
4 should not have attacked her on because the judge had
5 already ruled it was admissible.

6 THE COURT: Where is that ruling?

7 MR. WILKES: It's not on the record. It is implicit
8 in the record because she testified. And that's not --
9 should not be a problem for me because she was allowed to
10 testify. The problem that we have and raise is ---

11 THE COURT: You would want to limit your opposing
12 party's cross-examination; is that what you're saying?

13 MR. WILKES: Absolutely, on an improper basis of ---

14 THE COURT: On what basis?

15 MR. WILKES: Because the State's alleging that her
16 testimony is some violation of law to the jury, that she is
17 violating the law, that she should not be breaking the law
18 and testifying, which isn't true. It's incorrect. It
19 should have been objected to. They shouldn't have been
20 allowed to even get into that. And they did. And it's
21 improper cross-examination. It could have been objected to
22 easily. It was not. We briefed the issue, but the Court
23 couldn't rule on it because it wasn't preserved.

24 THE COURT: Okay.

25 Your position, Madam Attorney General?

1 MS. RATIGAN: As to what?

2 THE COURT: He thinks that an objection to that course
3 of examination would have swung the jury's verdict.

4 MS. RATIGAN: Your Honor, I would just note that
5 Mr. Wilkes asked Mr. Dejong why he did not object to this
6 specific issue, and I believe his answer was that he was
7 just going to let the State attack her and let the jury
8 take it for whatever it's worth. Your Honor, I don't
9 believe that -- it's very limited. I think probably less
10 than a page when you actually put it all together,
11 questions about the confidentiality agreement.

12 MR. WILKES: It's improper cross, and it remains an
13 appellate issue but for the lack of objections. So that's
14 completely separate from would it -- there's two parts of
15 that. It could be improper cross had an effect on the
16 outcome of the trial, but the direct appeal issue is
17 separate from that. He was entitled to have ---

18 THE COURT: He had a strategic decision, is what I ---

19 MR. WILKES: I don't think that was strategic. I
20 don't think that's a valid articulation of a strategic
21 decision, not to make a valid objection.

22 THE COURT: Oh, yeah. It goes on all the time.

23 MS. RATIGAN: And you can infer strategy from the
24 record.

25 MR. WILKES: I differ. I don't think that that -- I

1 don't think so.

2 THE COURT: I got your point.

3 MR. WILKES: Thank you.

4 THE COURT: Okay. Next?

5 MR. WILKES: Your Honor, I think there is
6 sufficient ---

7 THE COURT: Do you got any more witnesses, is what ---

8 MR. WILKES: I've got a bunch of witnesses, but they
9 would be character witnesses. And I think I've ---

10 THE COURT: You've already gotten more about his
11 character into the record than should have been allowed.

12 MR. WILKES: Exactly. You've given us lots of leeway,
13 and I think I've made my point on character.

14 Now, at this time, I have a dilemma, and I would make
15 a motion.

16 THE COURT: Yeah.

17 MR. WILKES: I have -- and what the attorney general
18 objects to was some of the hearsay testimony for the
19 purposes of the PCR. The dilemma is, one, Complainant was
20 present at the trial. If Mr. Dejong would have called
21 those witnesses, he had her there for that trial. The
22 dilemma that I have is they are no longer -- or they are
23 not residents of this state. Not really amenable to my
24 power for subpoena. I am at a disadvantage to try and
25 compel a resident of another state to come to court simply

1 to deny the statements so that I can get in to prior
2 inconsistent statement.

3 What I would move for -- rather than to have that be
4 an issue, having established a case where we can show that
5 there was a scheme in advance of an allegation, then the
6 allegation, then an admission that it was a lie and the
7 motive for it, I would move to have the Court keep the
8 record open and grant me an order of discovery to attempt a
9 deposition. Because ---

10 MS. RATIGAN: A deposition of who?

11 MR. WILKES: Complainant . If the courts would require
12 her to testify for the admissibility of the statement.

13 MS. RATIGAN: The judge already let it in. He let
14 them sit and talk about hearsay as much as you wanted. And
15 discovery should take place prior to the hearing, not after
16 the hearing. This is still a civil case.

17 MR. WILKES: I understand. But that's the dilemma I
18 have is I have the potential out-of-state witnesses that I
19 have very little control over subpoena power. And the
20 proposition -- at least of the objection from the State was
21 Complainant not here now. She was at that trial, but she's not
22 here now, so the Court shouldn't consider any of that
23 testimony. And that -- that can be ---

24 MS. RATIGAN: But it's already ---

25 THE COURT: What can you accomplish by doing that?

1 You've already got in the testimony of these other people
2 that she concocted the story.

3 MR. WILKES: I understand that. If the Court
4 considers that testimony, then that's fine. But I just ---

5 THE COURT: Well, how can I not? I heard it.

6 MR. WILKES: Well, I know. But I just want to make
7 sure that if there is -- if there is an issue with having
8 Complainant here today or in this case in the PCR to simply deny
9 it so that they can testify, I could attempt to do that. I
10 don't know ---

11 THE COURT: What?

12 MS. RATIGAN: I don't know that this is necessary,
13 Your Honor.

14 THE COURT: You've gotten in from these other
15 witnesses this ---

16 MR. WILKES: The plan.

17 THE COURT: Yeah.

18 MR. WILKES: Okay. That was my goal.

19 THE COURT: Okay.

20 MS. RATIGAN: I assumes Mr. Wilkes has rested?

21 MR. WILKES: I think I do.

22 MS. RATIGAN: The State would also rest. I'd waive
23 any kind of closing at this point, Your Honor, unless you
24 request it.

25 MR. WILKES: I do not need to make a closing.

1 THE COURT: All right. Thanks.

2 MR. WILKES: Thank you.

3 Do I need to give the page numbers?

4 THE COURT: I read them.

5 MR. WILKES: Very good.

6 MS. RATIGAN: Thank you, Your Honor.

7 THE COURT: Thanks.

8 *****END OF TRANSCRIPT OF RECORD*****

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1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)
4 COUNTY OF PICKENS)
5
6

7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South Carolina,
9 do hereby certify that the foregoing is a true, accurate
10 and complete Transcript of Record of the proceedings had
11 and evidence introduced in the trial of the captioned case,
12 relative to appeal, in the Court of Common Pleas for
13 Pickens County, South Carolina, on the 20th day of April,
14 2015.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.

17
18 May 5, 2016
19
20

21 

22 Cheryl A. Smith, CVR-M

23 Court Reporter
24
25

Witness List

Dr. Bucksdale

Joe Sanders

Ms. ~~sanders~~ Gail Sanders

Joey Sanders

Garthart

Jackie ~~long~~ Langlo Lankford / Brazelle Rd

Charles Kelly -

- D.K.K. ?? / 16 Der + mom

Taylor - sweating out of house while
you posted case

Character

Lynn Deann Wright

Deborah Rogers

Julie Mager

Dawn Smith Jordan

~~Stories~~

~~Stories~~

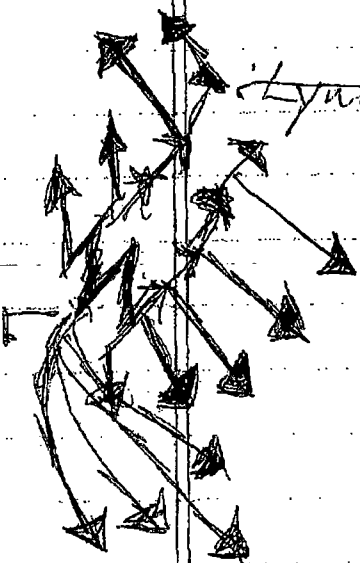
~~Stories~~

PLAINTIFF'S
EXHIBIT
1
9/20/15 CS

Do you think Doug still feels real good

NO

Don't say
she wanted
I will get
him to make what



POTENTIAL WITNESS LIST
STATE VS. JOSEPH PETTIGREW SANDERS IV
INDICTMENT NUMBER(S): INDICTMENTS 10-39-GS-1115 & 1116

1. Joseph P. Sanders IV
2. Joseph P. Sanders III
3. Gail Sanders
4. Dean Wright
5. Taylor Finch
6. Terrell Lankford
7. Jacquelyn Lankford
8. Brenda Cisson
9. Courtney Cisson
10. Julie Mayer
11. Lindley Mayer
12. Deborah Rogers
13. Charles Kelley
14. Dawn Smith Jordan
15. Cindy Bishop
16. Ronda Robertson
17. Diane Chappell
18. Nicole Holder
19. Dr. Marti Loring
20. Dr. Collis Barksdale



Complainant
Currently resides at:

Shawboro, NC 27973
D.O.B: 1995

Mailing address:

Cheapeake, VA 23328

Lisa Ann Howell
(Mike's sister, Complainant aunt)

Va. Beach, VA 23464
Phone:

Cindy and Hamilton Collar
(Anita's sister and brother in law)

Rock Hill, SC 27732

Michelle and Donice Horsley (was Anita's old family friend, called Patsy Thompson and made accusation)

Roanoke, VA 24014
Phone: 9284 (this is the last number I had)

Megan Wilkerson (**Donice Horsley's niece**)

Brooke Hurt (Mike Hurt's oldest daughter, Complainant half-sister)

Salem, VA 24153
(this is the last known address I have)

Lewis Wayne Sinmons (maternal step-grandfather)

Boones Mill, VA 24065
-9595

Anita Jordon Gearhart (natural mother)
Easley, SC 29640

Michael Dale Hurt (natural father)

Shawboro, NC 27973
Phone: -9602

Mailing address:

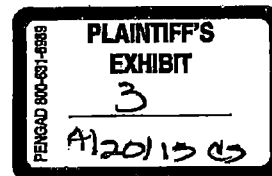
Cheapeake, VA 23328

Patsy & Bill Thompson (Called VA. DSS
On 06/14/2008)
(paternal grandmother and
step-grandfather)

Roanoke, VA 24014
Phone: 7476

Bobbie Jo Hamblett (Cindy's daughter)

Charlotte, NC



Joseph W. Rowe, Jr (Complainant half-brother, Anita's son) Age 34

Salem, Va 24153

Richard Alan Rowe (Complainant half-brother, Anita's son) Age 29

Roanoke, VA 24012

Laura Hammond, DSS Investigator
Pickens Co. Dept. of Social Services

Helena Turner, Case Worker
Human Services Specialist 11
Pickens Co. Dept of Social Services

Patience Johnson
Supervisor
Pickens Co. Dept. of Social Services

Detective Rita Burgess
Criminal Investigations Division
Pickens Co. Sheriff's Office

Barbara and Wayne Freeman
Foster parents from June - January 8, 2009
Easley, SC

Lizabeth Howard, MA
Licensed Professional Counselor

Highland Park, Suite 104
Greenville, SC 29607
Office: -1500

Lt. D. B. Suddeth
Easley Police Dept.

Friends of Complainant **that she supposedly told of the alleged abuse:**

Nicole Holder

Diane (Nikki's Mom)

Josh Davis

Mandy and Greg Davis (Josh's parents), and Justin Davis , (Josh's brother)

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Joseph Pettigrew Sanders, IV,
S.C.D.C. No. 341505,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
C.A. No. 2013-CP-39-1538

ORDER OF DISMISSAL

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2015 AUG -3 A 11:49

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 17, 2013. Respondent made its return on May 29, 2014. An evidentiary hearing was held on April 20, 2015 at the Pickens County Courthouse. Applicant was present and represented by Jeffrey Falkner Wilkes, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented Respondent.

Applicant testified on his own behalf at the PCR hearing. Also testifying were: Nikki Holder, Taylor King, Jay Rowe, Justin Eades, DeAnn Wright, Brenda Cisson, Eddie Cisson, Scott D. Robinson, Esquire, and Applicant's trial counsel, John W. DeJong, Esquire. The Court had before it the trial transcript, the Pickens County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, the return, the appellate records, and Applicant's Exhibits 1-3.

PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Pickens County Clerk of Court. Applicant was indicted at the June 2010 term of the Pickens County Grand Jury for second-degree criminal sexual conduct (CSC)

with a minor (2010-GS-39-1115) and lewd act upon a child (2010-GS-39-1116). He was represented by John W. DeJong, Esquire.

After the State brought the case to trial,¹ Applicant was found guilty of lewd act upon a child and not guilty of second-degree CSC with a minor. On June 24, 2010, the Honorable G. Edward Welmaker sentenced Applicant to 14 years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Jeffrey Falkner Wilkes, Esquire perfected the appeal. The Court of Appeals affirmed Applicant's conviction and sentence. State v. Sanders, Op. No. 2013-UP-054 (S.C. Ct. App. filed January 30, 2013). The remittitur was sent on February 21, 2013.

ALLEGATIONS

In his PCR application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failed to "investigate, prepare, present case, raise proper objections, make adequate motions and arguments."
2. Ineffective assistance of appellate counsel:
 - a. Failed to "adequately present all arguments."
3. "State failed to comply with Rule 5/Brady/and Discovery."

At the start of the PCR hearing, Applicant waived all potential allegations of ineffective assistance of appellate counsel and proceeded solely upon the issue of ineffective assistance of trial counsel. See Carter v. State, 293 S.C. 528, 362 S.E.2d 20 (1987).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the

¹ Applicant had a joint trial with his co-defendant, Anita Gearhart.

opportunity to observe each witness who testified at the hearing, and to closely pass upon 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).

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence."

Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

To establish counsel failed to adequately prepare for trial, applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (finding the failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (denying relief where applicant failed to present

witnesses or specific testimony establishing he would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

A.

Applicant stated he told trial counsel he wanted four particular witnesses to testify at his trial: Nikki Holder, Taylor King, Justin Eades, and Joseph "Jay" Rowe. Applicant stated Holder and King were Victim's friends and Rowe and Eades had information about the allegations. Applicant stated he asked trial counsel to contact these witnesses, but that trial counsel did not speak with any of them. Applicant admitted he never asked these witnesses to contact trial counsel. Applicant stated he also wanted trial counsel to call character witnesses at trial. Applicant stated trial counsel replied that his character was not on trial but Applicant stated if he believed all of his witnesses had been called, the outcome of his trial would have been different. Applicant admitted testimony about the following was elicited at trial: (1) that Victim recanted to a guardian ad litem, (2) that Victim was overheard saying she would get Applicant in trouble, and (3) that Victim wanted to return to Virginia.

Nikki Holder stated she was good friends with Victim for two years. Holder stated Victim "got what she wanted" and was very mad at Applicant because he would not let her go to Virginia for the summer. Holder stated she never spoke to trial counsel, but that he had contacted her mother. Holder stated she went to the trial because her mother said she may have to testify.

Taylor King stated she went to school with Victim and Applicant was her basketball coach. King stated Victim initially said Applicant touched her but later said she had lied because

Applicant's character was unimpeachable and that he would sometimes be truthful when there
 Eddie Clisson stated he had known Applicant since high school. Clisson stated
 reputation for truthfulness.

home for a time. Clisson stated Applicant had fine character, was honest, and would have a
 Brenda Clisson stated her daughter was a pageant contestant and lived at Applicant's
 Applicant was compassionate, had excellent character, and was a truthful person.

DeAnn Wright stated she had a child who was a pageant contestant. Wright stated
 attorney.

defendant were facing serious charges but he did not contact the police or either defense
 and wanted Eades to come to court. Rowe acknowledged he was aware Applicant and co-
 she and Applicant were arrested. Rowe stated co-defendant's attorney called him during the trial
 him this in June 2008 - which was two years before the trial - and he told the co-defendant after
 sexual abuse allegation was a way for her to be able to move to Virginia. Rowe stated Eades told
 Eades said he had overheard a conversation between Victim and Megan Wilkerson that Victim's
 Joseph "Jay" Rowe stated he was Eades' father and the co-defendant's son. Rowe stated
 spoke to both trial counsel and co-defendant's attorney that day.

about this. Eades stated he was told (during the trial) that he needed to appear. Eades stated he
 and that she would lie to a counselor that Applicant touched her. Eades stated he told his father
 he heard Victim say she felt that she needed to move to Virginia to take care of her grandfather
 Justin Eades stated he was the co-defendant's grandson. Eades stated that, in June 2008,
 counsel about Victim's alleged recantation because "everything was busy."

she wanted to go to Virginia. King stated she told her mother and Applicant's co-defendant but
 did not believe it was important to tell the police or Applicant. King stated she did not tell trial

was an advantage not to be.

Scott D. Robinson testified he was the attorney who represented Applicant's co-defendant. Robinson testified the co-defendant told him about Justin Eades during the trial and he was able to have Eades present (though he was from out-of-state). Robinson testified he and trial counsel had a chambers conference about Eades and discussed the gist of his testimony.

Trial counsel testified he represented Applicant for several months before trial. Trial counsel testified he had several meetings with Applicant, who stated he was innocent of the charges. Trial counsel testified he did not recall speaking to Nikki Holder or Taylor King. Trial counsel testified co-defendant's counsel located Justin Eades and the parties had a chambers conference to discuss whether his testimony would be based on first-hand knowledge or hearsay. Trial counsel testified there was no basis upon which to make a motion for a mistrial (based on the Eades issue) and explained he did not proffer Eades' testimony because he did not know what that testimony would be. Trial counsel confirmed Applicant wanted to call character witnesses but stated he did not call any such witnesses because Applicant's character was not put into issue. Trial counsel testified this was a "he said/she said" case and that he argued, among other things, that Applicant had erectile dysfunction. Trial counsel also confirmed evidence was presented at trial that: Victim recanted to the guardian ad litem, Victim was overheard saying she would punish Applicant, and Victim said she wanted to return to Virginia.

B.

Applicant's first contention is that trial counsel failed to investigate and present additional witnesses at trial. Applicant argues trial counsel should have called Nikki Holder to state Victim was mad at Applicant and wanted to return to Virginia. Applicant argues trial counsel should have called Taylor King to state Victim lied about the sexual abuse because she

wanted to return to Virginia. Applicant argues trial counsel should have called Justin Eades to state he overheard Victim say she would lie about sexual abuse because she wanted to return to Virginia and Jay Rowe to state he told co-defendant about this after she and Applicant were arrested.

This Court finds Applicant failed to meet his burden of proving that he is entitled to relief. This Court finds Applicant failed to demonstrate trial counsel was ineffective in this matter and that he was prejudiced as the result of counsel's representation. Applicant's contention is that presenting these four witnesses at trial would have shown Victim planned to lie about Applicant sexually abusing her because she wanted to move back to Virginia. Trial counsel's strategy at trial, however, was to present witnesses to explain Victim lied about the sexual assault because she wanted to (1) return to Virginia and (2) punish Applicant. Trial counsel executed this strategy through the following witnesses: (1) Judy Chapman, the guardian ad litem, who testified Victim said she lied about the sexual assault because she wanted to return to Virginia, (2) Jacquelyn Lankford, who testified she overheard Victim say she would make Applicant "pay," and (3) Charles Kelley, who testified he also overheard Victim say she would "get even" with Applicant. This evidence was all presented to the jury, who weighed the evidence in their deliberations. See State v. Pipkin, 359 S.C. 322, 327, 597 S.E.2d 831, 833 (Ct. App. 2004) (noting the jury is "the finder of fact and weigher of credibility"). It is clear that, regardless of the strong defense theory set forth by trial counsel, the jury simply did not accept Applicant's version of events. See Craven v. Cunningham, 292 S.C. 441, 443, 357 S.E.2d 23, 25 (1987) ("The credibility of witnesses is for the triers of fact"). This Court finds the witnesses presented by Applicant at the PCR hearing (Holder, King, Eades, and Rowe) would have been merely cumulative to the witnesses presented in the defense case and, thus, Applicant cannot

prove he was prejudiced because they did not testify at his trial. See Edwards v. State, 392 S.C. 449, 459, 710 S.E.2d 60, 66 (2011). ("We previously have held where evidence produced during PCR proceedings is cumulative to or does not otherwise aid evidence introduced at trial, no prejudice results from counsel's failure to bring it forward.") (citations omitted).

Further, this Court finds the witnesses presented at the PCR hearing were lacking in credibility. Nikki Holder and Taylor King could not provide reasons why they failed to contact trial counsel when they allegedly had potentially important information germane to Applicant's serious criminal charges. Even more unlikely, Justin Eades (co-defendant's grandson) and Jay Rowe (co-defendant's son) never contacted either co-defendant's attorney or trial counsel prior to trial. Eades and Rowe – though co-defendant and Applicant were facing very serious criminal charges – also never contacted police about what they believed was important information related to this case. Neither trial counsel nor co-defendant's counsel were made aware of the existence of Eades (and Rowe's) potential testimony until after the trial had already begun. This Court finds it strains belief that both the grandson and son of co-defendant – who was being tried with Applicant on these charges – never alerted law enforcement, co-defendant's counsel, trial counsel, or Applicant in order to advise they had information about Victim's possible motivations.

With Eades in particular, trial counsel was not deficient in not having his testimony proffered at trial. Co-defendant's counsel did not hear about Eades from co-defendant until during the joint trial. Both co-defendant's counsel and trial counsel testified there was a chambers conference on the matter. Trial counsel testified he chose not to proffer Eades' testimony because he did not know what Eades would testify about. Based on the circumstances, this Court finds this was a valid strategic decision. Where trial counsel articulates a valid reason

for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995). "Counsel's strategy will be reviewed under 'an objective standard of reasonableness.'" Huggler v. State, 360 S.C. 627, 633, 602 S.E.2d 753, 756 (2004) (citing Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002)). "Courts must be wary of second-guessing counsel's trial tactics." Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992). "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007). Regardless, even assuming arguendo that trial counsel should have proffered Eades' testimony, it (as well as Rowe's testimony) would have clearly been objectionable because it was hearsay. See, e.g., Rule 801(c), SCRE (defining hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted").

C.

Applicant's second contention is that trial counsel failed to investigate and present character witnesses at trial. Applicant argues DeAnn Wright, Brenda Cisson, and Eddie Cisson would have testified at trial about his honesty and truthfulness.

This Court finds Applicant failed to meet his burden of proving that he is entitled to relief. This Court finds Applicant failed to demonstrate trial counsel was ineffective in this matter and that he was prejudiced as the result of counsel's representation. Trial counsel did not call any character witnesses because Applicant's character was not put into issue. It is clear from trial counsel's testimony that he did not call character witnesses because he made the strategic decision to avoid opening the door to character attacks on his client. A strategic or tactical

decision does not have to be articulated by counsel on the record; counsel does not have to personally identify his or her thinking. It is enough that the record show a basis for strategy, not that counsel announce that strategy on the record. Wood v. Allen, 558 U.S. 290, 130 S. Ct. 841 (2010). Regardless, this Court finds the testimony from these three character witnesses would not have changed the outcome of Applicant's trial. Applicant's reputation for honesty and truthfulness were not at issue at trial. Rather, the issue was whether he sexually assaulted Victim over a period of time. This Court finds there is no reasonable probability that testimony from these three character witnesses would have changed the outcome of Applicant's trial. See Johnson v. State, 325 S.C. at 186, 480 S.E.2d at 735; Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625.

D.

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly,

this Court finds Applicant has abandoned any such allegations.

CONCLUSION

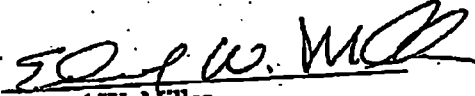
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 12 day of July, 2016.


Edward W. Miller
Presiding Judge
Thirteenth Judicial Circuit

Gville, South Carolina.

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on

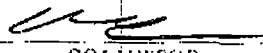
JUN 15 2010

the Grand Jurors of Pickens

County present upon their oath:

That JOSEPH PETTIGREW SANDERS, IV did in Pickens County, between January 1, 2008 and June 1, 2008, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of l., a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-15-140 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

Rita Garner Burgess

Pickens County Sheriff's Office

8/20/2008

ARREST WARRANT NUMBER

J487870

ACTION OF GRAND JURY

JUN 5 2010

May H. Smith
Foreperson of Grand Jury

VERDICT

Rose M. Crawford 6/24/10
Foreperson of Petit Jury Date

DOCKET NO. 2010-GS-39-1116
WDR
The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

JUN 5 2010 TERM 2010

THE STATE

vs.

JOSEPH PETTIGREW SANDERS, IV

Indictment for

2468

LEWD ACT UPON A CHILD

VIOLATION § 16-15-140

ARREST WARRANT

J-487870 3179

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Pickens

THE STATE

08-14228

against

Joseph Pettigrew Iv Sanders

Address:

Liberty, SC 29657-

Phone:

SSN:

Sex: M Race: W Height: 6 2 Weight: 350

DL State: SC DL #:

DOB: 1964 Agency ORI #: SC0390000

Prosecuting Agency: Pickens County Sheriff's Office

Prosecuting Officer: Rita Garner Burgess - 611

Offense: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

Offense Code: 2468

Code/Ordinance Sec: 16-15-0140

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of:

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant 8-20-08 Joseph Pettigrew Iv Sanders

on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Liberty - Pickens County Summary Court
147 B Kay Holcombe Rd
Liberty, SC 29657

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Pickens

Personally appeared before me the affiant Rita Garner Burgess

being duly sworn deposes and says that defendant Joseph Pettigrew Iv Sanders

did within this county and state on or about 03/15/2008

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Pickens) violate the criminal laws of the

in the following particulars:

DESCRIPTION OF OFFENSE Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

The affiant has a statement from the victim, age 12, indicating that on at least one occasion between the dates of March 1, 2008 and April 1, 2008 the defendant did wilfully and lewdly commit an act against the victim by rubbing her breasts, vagina and buttocks. The defendant committed the act with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the defendant or the child. This incident occurred within Pickens County.
1. Incident report #08-14228. 2. Statement from victim. 3. Forensic Interview.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Pickens

Affiant's Address 216 Lec Road
Pickens, SC 29671
Affiant's Telephone (864)898-5500PICKENS COUNTY
SHERIFF'S OFFICE

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 or about 3/15/2008

defendant Joseph Pettigrew Iv Sanders

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Pickens

) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

Having found probable cause and the above affiant having sworn before me, 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
Sworn to and subscribed before me

on 08/15/2008

Signature of Issuing Judge
Bruce E Anders

Judge Code: 7064

Judge's Address 147 B Kay Holcombe Road
Liberty, SC 29657-1543

Judge's Telephone (864)843-5821

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

842