

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Charleston County

APR 12 2017

William Jeffrey Young, Circuit Court Judge SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JOHN CLEVELAND, JR.,

APPELLANT

APPELLATE CASE NO 2016-001978

RECORD ON APPEAL

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State of South Carolina)
) Transcript of Record
) 2015-GS-10-00019
vs.)
John Cleveland, Jr.,)
)
 Defendant.)

Charleston, South Carolina

The Honorable William Jeffrey Young, Presiding
Judge; and a Jury.

Ted Corvey, Assistant Solicitor
Scott Maynor, Assistant Solicitor
Attorneys for the State

CIRCUIT COURT REPORTER

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(Marked at the conclusion of trial.)

1 Tuesday, October 13, 2015

2 (WHEREUPON, the jury panel enters the courtroom at
3 approximately 2:25 p.m.)

4 THE COURT: Thank you, ladies and gentlemen.
5 Please take your seats. Welcome back, to some of you.

6 Solicitor, are you ready to proceed? Call your
7 next case.

8 MR. CORVEY: Your Honor, the State calls the case
9 of John Cleveland, Jr. May I approach?

10 THE COURT: You may.

11 (A document was handed to the Court.)

12 THE COURT: All right. Ladies and gentlemen, we
13 are about to begin the case of the State vs. John
14 Cleveland, Jr. who is charged with failure to register as
15 a sex offender third offense.

16 Ladies and gentlemen, the indictment reads as
17 follows, and this is under indictment 2015-GS-10-0019,
18 the indictment reads in Charleston County South Carolina
19 on or about December 31, 2013 the defendant, John
20 Cleveland, Jr., did fail to register as a sex offender
21 with the Charleston County Sheriff's Department after
22 being instructed to do so as required by Section 23-3-400
23 et seq of the South Carolina Code of Laws 1976 as
24 Amended, to wit.

25 So, ladies and gentlemen, let me remind you, the

1 fact that the defendant failed to register as a sex
2 offender and is indicted for that in no way is indicative
3 that he committed this crime. The State has the burden
4 of proving each and every allegation of this beyond a
5 reasonable doubt. And, ladies and gentlemen, it will be
6 your job to determine whether the State has done that.

7 Now, ladies and gentlemen, you are not under oath.

8 So, Mike, would you please place them under oath.

9 (WHEREUPON, the jury was given their oath.)

10 THE COURT: Thank you. Everyone has accepted the
11 oath.

12 Ladies and gentlemen, as I told another jury panel
13 the reason that you are under oath is this is such a
14 crucial stage of the trial, and, you know, like a
15 building must have a firm foundation so must a jury be a
16 firm foundation of the trial of this case to be
17 productive of the State who is trying the case, and the
18 defendant who is on trial, and these questions that I'm
19 getting ready to ask you will be the basis by which these
20 attorneys build a jury that they believe to be fair and
21 unbiassed and will deliberate and render a true and just
22 verdict.

23 Now, ladies and gentlemen, the first question I
24 have is has anyone on the jury panel ever been related by
25 blood or marriage or have a close personal or business

1 relationship with the defendant, John Cleveland, Jr.?

2 Mr. Cleveland, if you'd please stand and face the
3 jury.

4 (The defendant stood.)

5 THE COURT: All right. Thank you. You may be
6 seated.

7 Thank you. No one is standing.

8 Ladies and gentlemen, this is a list of possible
9 witnesses in this case, and I'm going to go through this
10 list and then I'm going to ask you basically the same
11 question; Jason Bowen of the Charleston County Sheriff's
12 Office, Bob Stober of the Charleston County Sheriff's
13 Office, and Sarah -- is it Lippe?

14 MR. MAYNOR: Lippe.

15 THE COURT: Lippe of the -- or just Sarah Lippe.
16 Ladies and gentlemen, is there any member of the jury
17 panel related by blood or marriage or has had a close
18 personal or business relationship with any of these
19 potential witnesses? If so, please stand.

20 All right. Thank you. No one is standing.

21 Mr. Corvey, would you like to introduce yourself
22 and your staff.

23 MR. CORVEY: Good morning -- good afternoon, ladies
24 and gentlemen. My name is Ted Corvey. I'm an Assist
25 Solicitor here in the Ninth Judicial Circuit. Assisting

1 me in this case will be Assistant Solicitor Scott Maynor..

2 THE COURT: Thank you.

3 Mr. Gailliard?

4 MR. GAILLIARD: Good afternoon, ladies and
5 gentlemen. My name is Robert L. Gailliard. I'm an
6 attorney in private practice here in Charleston. My
7 office is on Romney Street.

8 THE COURT: Thank you.

9 Has any member of the jury panel ever been related
10 by blood or marriage or had a close personal or business
11 relationship or ever been represented by these attorneys
12 or the Solicitor's Office of the Ninth Judicial Circuit?
13 If so, please stand.

14 All right. Thank you. No one is standing.

15 Has any member of the jury panel either formed or
16 expressed any opinion about any issue that is involved in
17 this case? If so, please stand.

18 Thank you, ladies and gentlemen. No one is
19 standing.

20 Have you or any member of your family ever been the
21 victim of or charged with a violent crime? If so, please
22 stand, or if you'd like to speak with me privately I'll
23 be glad to hear it.

24 Yes, sir. Would you like to come down?

25 POTENTIAL JUROR: I can just --

1 THE COURT: Okay. Yes, sir. What's your name and
2 number?

3 POTENTIAL JUROR: My number is 114, Mike Gianoni.
4 I have a brother-in-law that has been charged with a
5 violent crime.

6 THE COURT: And would the fact that you have a
7 brother-in-law who is charged with a violent crime make
8 it so that you can't be fair and impartial to the State
9 or the defendant in this particular case?

10 POTENTIAL JUROR: No.

11 THE COURT: Thank you, sir.

12 Yes, ma'am?

13 POTENTIAL JUROR: I have a brother that was charged
14 with a violent crime.

15 THE COURT: Thank you. The fact that you've had a
16 brother who was charged with a violent crime make it so
17 that you can't be fair and impartial to the State or the
18 defense in this case?

19 POTENTIAL JUROR: No.

20 THE COURT: Thank you, ma'am. What was your name
21 and number again?

22 POTENTIAL JUROR: Dana Brown, 37.

23 THE COURT: Okay. Thank you.

24 Is there any member of the jury panel who is aware
25 of any bias or prejudice towards either the State or the

1 defendant in this case? If so, please stand.

2 (There was no response.)

3 THE COURT: Thank you. Is there any member of the
4 jury panel who was also on the grand jury that indicted
5 this case? If so, please stand.

6 Thank you. No one is standing.

7 Is there any member of the jury panel who is a
8 member of or a contributor to any group which has as its
9 primary concern the promotion of law enforcement or
10 victims' rights? These groups would certainly include
11 but not be limited to Mothers Against Drunk Drivers,
12 Students Against Drunk Drivers or Citizens Against
13 Violent Crime, or any other like group. If so, please
14 stand.

15 Yes, sir. State your name --

16 POTENTIAL JUROR: 114, Mike Gianoni. Yes. I've
17 contributed to groups like that in the past.

18 THE COURT: Okay. Would the fact that you have
19 given money to these groups make it so that you can't be
20 fair and impartial to the State or the defendant?

21 POTENTIAL JUROR: No.

22 THE COURT: Thank you, sir.

23 Has any member of the jury panel or your family
24 members ever had any criminal charges adjudicated by the
25 Ninth Circuit Solicitor's Office? If so, please stand.

1 Yes, ma'am. State your name and number.

2 POTENTIAL JUROR: 158, Claudia Johnson.

3 THE COURT: Yes, ma'am.

4 POTENTIAL JUROR: Possession of narcotics.

5 THE COURT: Okay. And who was that?

6 POTENTIAL JUROR: Me.

7 THE COURT: You. Okay. And it was prosecuted by
8 the Solicitor's Office?

9 POTENTIAL JUROR: Well, the case was dropped.

10 THE COURT: Okay. All right. Would the fact that
11 that happened make it so that you can't be fair and
12 impartial to the State or the defendant?

13 POTENTIAL JUROR: I can be fair and impartial.

14 THE COURT: You can. Thank you, ma'am.

15 Does any member of the jury panel have any
16 immediate relatives or close friends who are currently
17 incarcerated? If so, please stand.

18 (There was no response.)

19 THE COURT: Thank you. Does any member of the jury
20 panel know of any reason whatsoever why he or she should
21 not serve as a juror in this case with particular
22 emphasis being placed on your ability to be fair and
23 impartial to both the State and the defense? If so,
24 please stand.

25 (There was no response.)

1 THE COURT: All right. Thank you.

2 Does the State have any additional questions they
3 would like for me to ask?

4 MR. CORVEY: None from the State.

5 THE COURT: Does the defense have any additional
6 questions it would like me to ask?

7 MR. GAILLIARD: No, Your Honor.

8 THE COURT: All right. Thank you.

9 All right, ladies and gentlemen, as some of you
10 have seen, when your name is called, please come to the
11 podium. Each side will have an opportunity to strike
12 you. Please don't take it personally if you are stricken
13 from this jury. Like I said, each side has some idea as
14 to what they are looking for. They can strike you for
15 any reason or no reason except for race or gender.
16 Please bring all your personal items with you when you
17 come forward.

18 We will have 12 primary jurors and two alternates.
19 Five and five.

20 THE CLERK: Ladies and gentlemen, like the Judge
21 said, if your name is called, please come up to the
22 podium. I'll have you stand and face the parties. I'm
23 going to ask the parties questions, after which I'll
24 either ask you to have a seat in the jury box or ask you
25 to have a seat back in the audience.

1 Juror number 119. Marc Girault, 119.

2 (A white male came forward.)

3 THE CLERK: What say you for the State?

4 MR. CORVEY: Please seat the juror.

5 THE CLERK: What say you for the defendant?

6 MR. GAILLIARD: Please seat this juror.

7 THE CLERK: Mr. Girault, please have a seat in the
8 jury box. You've been selected as a juror in the case.

9 Juror number 206. Jamie Mitchum, 206.

10 (A white female came forward.)

11 THE CLERK: What say you for the State?

12 MR. CORVEY: Please seat the juror.

13 THE CLERK: What say you for the defendant?

14 MR. GAILLIARD: Please seat this juror.

15 THE CLERK: Ms. Mitchum, please have a seat in the
16 jury box. You have been selected as a juror in this
17 case.

18 Juror number 72. Nicholas Costa, 72.

19 (A white male came forward.)

20 THE CLERK: What say you for the State?

21 MR. CORVEY: Please seat the juror.

22 THE CLERK: What say you for the defendant?

23 MR. GAILLIARD: Please seat this juror.

24 THE CLERK: Mr. Costa, please have a seat in the
25 jury box. You have been selected as a juror in this

1 case.

2 Juror number 330. Brock Williams, 330.

3 (A white male came forward.)

4 THE CLERK: What say you for the State?

5 MR. CORVEY: Please excuse the juror.

6 THE CLERK: What say you for the defendant?

7 THE COURT: Did he say excused?

8 THE CLERK: Excused? You excused the juror?

9 MR. CORVEY: Yes, sir.

10 THE COURT: Okay, sir. Please have a seat back in
11 the audience. You have been excused for the trial of
12 this case.

13 Juror 342. Marvin Wright, 342.

14 (A black male came forward.)

15 THE CLERK: What say you for the State?

16 MR. CORVEY: Please seat the juror.

17 THE CLERK: What say you for the defendant?

18 MR. GAILLIARD: Please seat this juror.

19 THE CLERK: Mr. Wright, please have a seat in the
20 jury box. You have been selected as a juror in this
21 case.

22 Juror number 145. Michael Horan, 145.

23 (A white male came forward.)

24 THE CLERK: What say you for the State?

25 MR. CORVEY: Please seat the juror.

1 THE CLERK: What say you for the defendant?

2 MR. GAILLIARD: Please seat the juror.

3 THE CLERK: Mr. Horan, please have a seat in the
4 jury box. You have been selected as a juror in this
5 case.

6 Juror number 316. John Walker, 316.

7 (A black male came forward.)

8 THE CLERK: What say you for the State?

9 MR. CORVEY: Please seat the juror.

10 THE CLERK: What say you for the defendant?

11 MR. GAILLIARD: Please seat this juror.

12 THE CLERK: Mr. Walker, please have a seat in the
13 jury box. You've been selected as a juror in this case.

14 Juror number 305. Fredrick Tillman, 305.

15 (A white male came forward.)

16 THE CLERK: What say you for the State?

17 MR. CORVEY: Please seat the juror.

18 THE CLERK: What say you for the defendant?

19 MR. GAILLIARD: Please excuse this juror.

20 THE CLERK: Mr. Tillman, please have a seat back in
21 the audience. You've been excused from the trial of this
22 case.

23 Juror number 87. Willa Dobbins, 87.

24 (A white female came forward.)

25 THE CLERK: What say you for the State?

1 MR. CORVEY: Please seat the juror.

2 THE CLERK: What say you --

3 MR. GAILLIARD: Please seat this juror.

4 THE CLERK: Ms. Dobbins, please have a seat in the
5 jury box. You have been selected as a juror in this
6 case.

7 Juror number 15. James Barron, 15.

8 (A black male came forward.)

9 THE CLERK: What say you for the State?

10 MR. CORVEY: Please seat the juror.

11 THE CLERK: What say you for the defendant?

12 MR. GAILLIARD: Please seat this juror.

13 THE CLERK: Mr. Barron, please have a seat in the
14 jury box. You have been selected as a juror in the case.

15 Juror number 158. Claudine Johnson, 158.

16 (A black female came forward.)

17 THE CLERK: What say you for the State?

18 MR. CORVEY: Please excuse the juror.

19 THE CLERK: Ms. Johnson, please have a seat back in
20 the audience. You have been excused from the trial of
21 this case.

22 Juror number 31. Charles Bright, 31.

23 (A white male came forward.)

24 THE CLERK: What say you for the State?

25 MR. CORVEY: Please seat the juror.

1 THE CLERK: What say you for the defendant?

2 MR. GAILLIARD: Please excuse this juror.

3 THE CLERK: Mr. Bright, please have a seat back in
4 the audience. You have been excused from the trial of
5 this case.

6 Juror number 148. Sharon Humphries, 148.

7 (A white female came forward.)

8 THE CLERK: What say you for the State?

9 MR. CORVEY: Please seat the juror.

10 THE CLERK: What say you for the defendant?

11 MR. GAILLIARD: Please seat this juror.

12 THE CLERK: Ms. Humphries, please have a seat in
13 the jury box. You have been selected as a juror in this
14 case.

15 Juror number 315. Douglas Wagoner, 315.

16 (A white male came forward.)

17 THE CLERK: What say you for the State?

18 MR. CORVEY: Please seat the juror.

19 THE CLERK: What say you for the defendant?

20 MR. GAILLIARD: Please seat this juror.

21 THE CLERK: Mr. Wagoner, please have a seat in the
22 jury box. You have been selected as a juror in this
23 case.

24 Juror number 147. Cynthia Hull, 147.

25 (A white female came forward.)

1 THE CLERK: What say you for the State?

2 MR. CORVEY: Please seat the juror.

3 THE CLERK: What say you for the defendant?

4 MR. GAILLIARD: Please seat this juror.

5 THE CLERK: Ms. Hull, please have a seat in the
6 jury box. You have been selected as a juror in this
7 case.

8 Juror number 291. Thomas Strock, 291.

9 (A white male came forward.)

10 THE CLERK: What say you for the State?

11 MR. CORVEY: Please seat the juror.

12 THE CLERK: What say you for the defendant?

13 MR. GAILLIARD: Please excuse this juror.

14 THE CLERK: Mr. Strock, please have a seat back in
15 the audience. You have been excused from the trial of
16 this case.

17 That's three strikes for the defendant.

18 Juror 281. David Sperry, 281.

19 (A white male came forward.)

20 THE CLERK: What say you for the State?

21 MR. CORVEY: Please seat the juror.

22 THE CLERK: What say you for the defendant?

23 MR. GAILLIARD: Please seat this juror.

24 THE CLERK: Mr. Sperry, please have a seat in the
25 jury box. You have been selected as a juror in this

1 case.

2 Now picking for the first alternate. The strikes
3 are one and two.

4 Juror number 246. Jeffery Reynolds, 246.

5 (A white male came forward.)

6 THE CLERK: What say you for the State?

7 MR. CORVEY: Please seat the juror.

8 THE CLERK: What say you for the defendant?

9 MR. GAILLIARD: Please seat this juror.

10 THE CLERK: Mr. Reynolds, please have a seat in the
11 jury box. You have been selected as a juror.

12 Now picking for the second alternate. The strikes
13 are one and two.

14 Juror number 73. Sheila Costello, 73.

15 (A white female came forward.)

16 THE CLERK: What say you for the State?

17 MR. CORVEY: Please seat the juror.

18 THE CLERK: What say you for the defendant?

19 MR. GAILLIARD: Please seat this juror.

20 THE CLERK: Ms. Costello, please have a seat in the
21 jury box. You have been selected as a juror in this
22 case.

23 Your Honor, the jury has been selected and are
24 seated.

25 THE COURT: All right, ladies and gentlemen. You

1 all have been selected as the jury for this case. Right
2 now I'm going to send you back to the jury room but
3 please don't discuss anything about the case.

4 I've got a few matters I need to take up with the
5 attorneys but while you are back there if you all could
6 pick who you want to be the foreperson of the jury, and
7 the foreperson will, of course, be the spokesperson here
8 in court and would lead the deliberations at the
9 appropriate time and write down the verdict form, but
10 I'll give you more instructions on that at a later point
11 in time.

12 But, ladies and gentlemen, I'm going to send you
13 back for just a few minutes and then bring you back out
14 here and talk to you a little more. Thank you, ladies
15 and gentlemen. The foreperson of the jury can be any of
16 the primary jurors. It cannot be the alternate. Thank
17 you very much.

18 (WHEREUPON, the jury leaves the courtroom at
19 approximately 2:45 p.m.)

20 THE COURT: Thank you. You may be seated.

21 Are there any objections to the jury that has been
22 selected or the manner in which they have been selected,
23 from the State?

24 MR. CORVEY: None from the State, Judge.

25 THE COURT: Mr. Gailliard?

1 MR. GAILLIARD: No, Your Honor.

2 THE COURT: All right. That will be our jury.

3 All right. Ladies and gentlemen, again, I'm sorry
4 some of you weren't selected to be on the jury but you
5 might have an opportunity tomorrow morning to be selected
6 for one more jury for the week. That will be the last
7 opportunity that you would have to serve as jurors. So
8 you need to call back after 6 o'clock tonight. You all
9 got a number that will have a recording and if you could
10 just follow the instructions on that recording.

11 Ladies and gentlemen, have a wonderful afternoon
12 and thank you for your contribution to your justice
13 system. Thank you, ladies and gentlemen.

14 (WHEREUPON, the jury panel leaves the courtroom.)

15 THE COURT: All right. What I'm going to do now is
16 I'll bring them back in in just a few minutes. Give them
17 a few more minutes, excuse them for this afternoon to
18 come back at two o'clock tomorrow, and then I'll listen
19 to your motion and then I'll give you a ruling on it. I
20 might take it under advisement. All right?

21 You want to see if they are ready?

22 (WHEREUPON, the jury enters the courtroom at
23 approximately 2:50 p.m.)

24 THE COURT: You all can sit anywhere you want to.
25 Concert seating, I guess, not reserved seating, except

1 for the foreperson.

2 THE BAILIFF: Juror 145 is the foreperson, Your
3 Honor.

4 THE COURT: All right.

5 THE BAILIFF: And all are present.

6 THE COURT: You are Mr. Horan, right?

7 THE FOREPERSON: Correct.

8 THE COURT: Thank you, Mr. Horan, for being the
9 foreperson.

10 Ladies and gentlemen, we still have some pretrial
11 matters to take up in this case then I have some other
12 things I have to do tomorrow morning. So I'm going to
13 release you now with instructions that you be back here
14 at two o'clock tomorrow and then we'll start on this case
15 and hopefully we could be done by Thursday. That way it
16 won't interfere with anybody's weekend or any more of
17 your clean up work that you might be having to do as a
18 result of that storm.

19 Ladies and gentlemen, please do not do any
20 independent research on this. Don't go telling everybody
21 you got jury duty because what happens is you go, I've
22 got jury duty, and they go, You know, when I was a juror
23 this is what happened. Well, you don't need to hear what
24 happened in their case. This is a unique case and the
25 evidence will give you all you'll need to know to render

1 a verdict at the appropriate time.

2 So, ladies and gentlemen, have a nice evening. Go
3 to your jobs in the morning or don't go to jobs, whatever
4 you want to do. I won't tell anybody. But be back here
5 at two o'clock tomorrow. Okay? Thank you, ladies and
6 gentlemen.

7 (WHEREUPON, the jury leaves the courtroom at
8 approximately 2:52 p.m.)

9 THE COURT: All right. Are you ready to argue your
10 motion, Mr. Gailliard?

11 MR. GAILLIARD: Yes, Your Honor. We handed up a
12 short memorandum in a case. We are moving to dismiss
13 this action in that the State cannot prove and the
14 defendant was not required to register in that he is
15 entitled to what's known as the sweetheart exception.

16 Apparently, the offense that we are taking about
17 occurred back in 1986. He was convicted some time after
18 that in 1987, sentenced under the Youthful Offender Act,
19 and it was not until he was released from the Department
20 of Corrections in 2001 based upon some further conviction
21 that had nothing to do with any kind of sex act that
22 apparently he was told that he had to register.

23 I don't see anything in the indictment or anywhere
24 else that indicates that he was given any kind of
25 registry form as is required under the statute or that he

1 was told that he had to register based upon the 1987
2 conviction under the Youthful Offender Act and without
3 that, which is jurisdictional, they can't proceed with
4 this case.

5 THE COURT: All right. Mr. Corvey?

6 MR. CORVEY: Thank you, Your Honor. First, Judge,
7 the State's position would be that the argument as to the
8 sweetheart exception is irrelevant in this case. I think
9 there's an abundance of evidence in the record and I
10 think we can call testimony to supplement the record in
11 this case to show that he's had ample notice with regard
12 to his requirements to be on the registry.

13 The conviction occurred in 1987. He did not have
14 the Department of Corrections stint until the late 90's
15 at which point he must have been told and as it's always
16 difficult in these cases it can be a little difficult to
17 try to track back when notice was provided or when notice
18 was not provided.

19 What I do know, however, is that Mr. Cleveland
20 signed up at the Charleston County Sheriff's Office
21 shortly after being released from prison in 2001 and
22 acknowledged several aspects of the registry on this
23 form. If I may approach, Your Honor?

24 THE COURT: Yes.

25 (A document was handed to the Court.)

1 MR. CORVEY: This is his initial paperwork with the
2 Charleston County Sheriff's Office regarding his
3 requirement to register. Since that time, Judge, he's
4 been intermittently registering with the Sheriff's
5 Office.

6 The way that that process works, Judge, is they do
7 -- given his conviction he's required to appear four
8 times a year. During each one of those convictions they
9 go through a registration process in which he
10 acknowledges when his next registration date is and
11 confirms a number of identifying information as well as
12 providing ID, an occasional taking a picture.

13 Once a year in an offender's birth month they go
14 through a little bit more of an intensive registration.
15 If I may approach, Judge?

16 THE COURT: Yes.

17 (A document was handed to the Court.)

18 MR. CORVEY: This was from his registration in June
19 of 2013, and from June of 2013 his next registration date
20 would have been September of 2013. He made that
21 registration date. If I may approach?

22 THE COURT: Yes.

23 (A document was handed to the Court.)

24 MR. CORVEY: The second page of this indicates his
25 signature and the Sheriff's Office indicates that his

1 next registration date was in December of 2013. That's
2 the date in question in which he missed. So with regard
3 to notice I think that's a moot point at this point of
4 the proceeding.

5 With regard to the sweetheart exception, that is a
6 carved out exception that is well recognized; however,
7 for it to be applicable the victim has to be within a
8 certain age range. The victim in this case was 12. Your
9 Honor, if I may approach?

10 THE COURT: Mr. Gailliard, you are saying that she
11 was 16? Your memorandum says she was 16 at the time or
12 was that just if she was 16?

13 MR. GAILLIARD: She was above 14 according to our
14 understanding.

15 THE COURT: Is there any exception that allows for
16 a 14 year old?

17 MR. GAILLIARD: The statute says 14, 14 or older.

18 THE COURT: Then I guess the question is is for me
19 to make that determination I would have to retry the
20 case.

21 MR. GAILLIARD: Well, I don't know that you have to
22 retry the case but there needs to be some evidence in
23 front of the Court to indicate whether or not he meets
24 the exception and the Court has to first determine --

25 THE COURT: But I don't know that -- if he was

1 charged with the criminal offense of doing that then that
2 wouldn't be an issue of mine. This issue is just whether
3 he registered or not.

4 MR. CORVEY: Well, Judge, I think I kind of put the
5 cart a little bit before the horse because ultimately I
6 still would contend that her age is irrelevant. I
7 believe she was 12. I actually spoke with her today and
8 confirmed her birth date of being [REDACTED].

9 However, as the Hazel case indicates as the
10 difficulty can arise with these cases where the sexual
11 conviction that places one on the registry predates the
12 actual existence of the registry there aren't findings of
13 facts as to these things so the appropriate remedy would
14 be a declaratory judgment.

15 However, as the Hazel case that Mr. Gailliard
16 mentioned -- or his motion makes clear the real
17 determinations regarding what version of the statute
18 applies to an offender is when they are eligible to begin
19 registering. Here in this case South Carolina adopted
20 the registry in 1994.

21 Mr. Cleveland wasn't incarcerated at that point.
22 He was at that point not known to the system. They
23 weren't going out en masse and finding everyone who had a
24 prior sex offense. He was not able to be properly
25 noticed until later 2000's. However, he was eligible for

1 the registry until 1994 and under that version of the act
2 there was no sweetheart exception. So I don't think it
3 would be applicable to him regardless whether or not we
4 took Mr. Gailliard's argument that the victim was 16 in
5 this case.

6 THE COURT: Yeah, assuming that would be true.

7 MR. CORVEY: Even withstanding that was true the
8 State's position would be that he's not eligible for the
9 exemption. And further, Your Honor, if I may approach?
10 I'm handing up the indictment, the original arrest
11 warrant and sentencing sheet for his 1986 conviction, and
12 I also had some investigators track down information
13 regarding the victim today. I also spoke with her on the
14 phone, with another member of my office present. She
15 confirmed her birth date.

16 (Documents handed to the Court.)

17 THE COURT: Anything else, Mr. Gailliard?

18 MR. GAILLIARD: Yes, Your Honor. I'd ask the Court
19 to forgive me. I need to actually put the right case
20 with this but the case law indicates and it is a
21 requisite to this requirement that the defendant be given
22 what's known as a preregistration form and that he has to
23 sign that, and I don't know that the State ever presented
24 that in all their papers saying that he was informed of
25 his requirement to register.

1 The fact that he did register does not get past
2 that requisite that they made sure prior to his release
3 that he signed the form. They were supposed to notify
4 him both verbally and get his written signature saying --
5 on the preregister form, signed and dated by the
6 defendant advising him of the registry requirement. If
7 they don't have that they can't go forward.

8 THE COURT: Well, what I mean though is if he's
9 already been registering, I mean, that would be like
10 saying, you know, that having a driver's license is
11 pretty much evidence that you passed the driver's test.
12 So the thing is self authenticating to some extent.

13 The fact that he had registered several times
14 before would indicate to the Court that he knew he had to
15 register because, you know, most people don't just go
16 register if they didn't have to. The fact that he
17 registered several times indicates to the Court that he
18 knew he has to register and that's why he did it. I'm
19 going to read over your cases. I'm going to take the
20 matter under advisement.

21 MR. GAILLIARD: I'll present you with the case --

22 THE COURT: That will be fine.

23 MR. GAILLIARD: -- that indicates this about the
24 requirement of the preregistry form being signed and
25 dated by the appellant which advises him of the

1 registration requirement.

2 THE COURT: And I can understand that argument if
3 the first time he was supposed to register he didn't
4 register. That would be a very good argument for that.
5 But I don't know that that argument holds a whole lot of
6 water for somebody who has already been registering.

7 MR. GAILLIARD: All right. I'll just present that
8 case to Your Honor tomorrow.

9 THE COURT: Thank you so much.

10 Anything further from the State?

11 MR. CORVEY: Just briefly, Judge, just to kind of
12 sum up, just to kind of go back to this. I think that
13 Mr. Gailliard's motion and his claims that his client
14 does not have to register are irrelevant in this case.
15 It's not a matter that's contained in the indictment and
16 it really doesn't have anything to do with the underlying
17 charge. I don't think there's any dispute that
18 Mr. Cleveland is, in fact, on the sex offender registry
19 and as a part of being on that registry he was required
20 to register quarterly. What we are here about is to
21 determine whether or not he came December of 2013 and
22 registered.

23 You know, I think the matter for declaratory
24 judgment would have been appropriate in another posture
25 of the case per chance and in addressing that the State's

1 position would be that the sweetheart exception that
2 Mr. Gailliard described is inapplicable to his client
3 since it wasn't enacted until the 1988 -- or 1998 version
4 of the statute. We believe that he was eligible under
5 the 1994 version of the statute and therefore any
6 exceptions or requirements must be against him under that
7 version of the statute.

8 Secondly, Your Honor, the exception doesn't apply
9 to victims who are 12 years old. So I think we have
10 provided ample documentation to indicate that at the time
11 of the conviction, at the time of the offense the victim
12 of the crime for which he was placed on the registry was
13 under the age of 14, was in fact 12.

14 THE COURT: All right. Thank you. I'm going to
15 take this matter --

16 MR. GAILLIARD: One further argument.

17 THE COURT: Yes, sir.

18 MR. GAILLIARD: Clearly, there is an equal
19 protection argument here that has to be made. The State
20 only, only requires persons who are convicted and
21 sentenced before they go back and look into their past.
22 For someone who was with Mr. Cleveland committed the same
23 offense and according to the solicitor would be required
24 to register they never notify, and they don't. So we
25 have to make an equal protection argument there that they

1 can't say, okay, the only people who we are going to
2 require to register are those who managed to get into
3 some criminal trouble and we have them in the Department
4 of Corrections and now we can say, okay, now we know that
5 you committed -- they could -- that's selecting out a
6 class of person and saying, okay, we are going to apply
7 the law to you and no one else, and his equal protection
8 argument has to prevail in that situation.

9 THE COURT: All right. Like I said, I'll take it
10 under advisement. If you all will be back at 1:30.
11 That's a half an hour before when I'll give you my
12 ruling.

13 MR. GAILLIARD: Thank you very much, Your Honor.

14 THE COURT: Thank you all.

15 MR. CORVEY: Judge, one more thing. I think
16 there's a matter of bond. My office's position would be
17 that trial has started at this point.

18 THE COURT: Well, the jury hadn't been sworn yet.

19 MR. CORVEY: Okay. That's true.

20 THE COURT: We are still in pretrial matters. I
21 would remind you, Mr. Gailliard, to explain to your
22 client if he doesn't show up tomorrow we are still moving
23 forward with this case. I'm going to leave him now
24 because the trial has not technically started and the
25 jury has not been sworn.

1 MR. CORVEY: Understood, Judge. And, Judge, if you
2 wouldn't mind if I could make additional copies of the
3 documents.

4 THE COURT: Certainly, I'll give all of these back.
5 Make me a copy of everything.

6 MR. GAILLIARD: I need a copy of them myself.

7 THE COURT: And he needs a copy.

8 MR. CORVEY: I will scan them all in via PDF in one
9 document and e-mail them to your clerk. Thank you,
10 Judge.

11 THE COURT: Thank you.

12 MR. GAILLIARD: That's it for today, Your Honor?

13 THE COURT: That's it for the day.

14 MR. GAILLIARD: Thank you very much.

15 THE COURT: You all have a nice day.

16 MR. GAILLIARD: See you all at 1:30 tomorrow.

17 (WHEREUPON, the trial was recessed for the day.)

18 Wednesday, October 14, 2015

19 THE COURT: All right. This is the case of John
20 Cleveland, Jr. or State vs. John Cleveland, Jr., under
21 indictment 2015-GS-10-0019 on the charge of failure to
22 register as a sex offender.

23 Bailiff, could you please go call in the courthouse
24 halls three times the name of the defendant.

25 (PAUSE.)

1 THE BAILIFF: No answer, Your Honor.

2 THE COURT: All right. Mr. Corvey, are you ready
3 to proceed?

4 MR. CORVEY: Yes, sir, Your Honor.

5 THE COURT: Mr. Gailliard, have you heard from your
6 client today?

7 MR. GAILLIARD: Your Honor, I spoke with him on
8 three separate occasions today.

9 THE COURT: Do you think he's intending to come or
10 you don't know? You're just surprised he's not here, I
11 guess.

12 MR. GAILLIARD: The last conversation I had with
13 him he was to meet me here at one o'clock in courtroom
14 3B.

15 THE COURT: Okay. So let the record reflect that
16 it is now 2:30 and he is not present. Like I said, we
17 will proceed in his absence.

18 Mr. Corvey, you may call your first witness
19 concerning the bond.

20 MR. CORVEY: Thank you, Your Honor. With regards
21 to the bond, if I may approach?

22 THE COURT: Yes, sir.

23 MR. CORVEY: Your Honor, I'm handing up to the
24 Court the bail proceeding form, the second page, which he
25 signed the second page of which he acknowledges that his

1 failure to show up at trial at the top could result in a
2 trial in his absence.

3 THE COURT: Do you object to these going in?

4 MR. GAILLIARD: No, Your Honor, I do not.

5 THE COURT: Okay. Very well.

6 MR. CORVEY: I'm also handing the Court a letter
7 that was mailed to Mr. Cleveland on September 11, 2015
8 requiring his presence at the trial this week. A copy of
9 that letter was also sent to his attorney, Mr. Robert
10 Gailliard, at the address that he had on file with my
11 office.

12 THE COURT: All right. And Mr. Gailliard as an
13 officer of this Court has stated that he has talked to
14 his client, informed his client to be here today, at
15 least one o'clock. As the trial judge I spoke with the
16 defendant yesterday and told him that he had to be here
17 today or we would try the case in his absence. So I find
18 that the defendant had adequate knowledge. He had
19 absolute knowledge to be here today. He has chosen not
20 to proceed. The wheels of justice will not be slowed by
21 his dilatory actions and therefore we will proceed. All
22 right. Thank you.

23 Anything further, Mr. Gailliard?

24 MR. GAILLIARD: No, Your Honor.

25 THE COURT: Okay. Thank you.

1 Bring our jury.

2 (WHEREUPON, Court's Exhibit Numbers 1 and 2 were
3 marked and made a part of the record.)

4 (WHEREUPON, the jury enters the courtroom at
5 approximately 2:35 p.m.)

6 THE BAILIFF: The jurors are present and seated,
7 Your Honor.

8 THE COURT: All right. Thank you.

9 Good afternoon, ladies and gentlemen. I hope you
10 had a good morning and a good evening last night.

11 Mike, would you please swear our jury.

12 (WHEREUPON, the jury was given their oath.)

13 THE CLERK: Let the record reflect that all 14
14 jurors took their oath.

15 THE COURT: Very well. Thank you.

16 Well, ladies and gentlemen, before we begin this
17 trial I want to tell you that this trial might be
18 different from what you might expect. You know, most
19 people never have an opportunity to attend and
20 participate in an actual trial as you are today and may
21 think from watching TV, movies or reading in books that
22 trials are always full of high drama, intense action and
23 riveting circumstance.

24 Now, while all these things might be true at times
25 this trial is not for entertainment. This is a real

1 trial which is a fundamental part of our democracy and
2 it's a search for the truth in an effort to make sure
3 that justice is done. In searching for the truth and
4 ensuring that justice is done is often slow, deliberate
5 and repetitive, the exact opposite of what you seen on
6 TV, movies or read in books.

7 Now, ladies and gentlemen, this courtroom is a
8 place of honor that is dedicated to the protection and
9 preservations of our citizens' rights through what has
10 been called and I truly believe in the bottom of my heart
11 to be the greatest justice system ever created by
12 mankind.

13 The attorneys who are appearing before you are
14 advocates for the parties that they represent but first
15 and foremost they are officers of this Court who are
16 sworn to uphold the integrity and the fairness of our
17 judicial system and to help you in your search for the
18 truth.

19 Ladies and gentlemen, you should expect them to be
20 professional, competent and ethical in the representation
21 of their client's interest and, ladies and gentlemen, I
22 remind you that you just took an oath to listen to the
23 evidence in this case and to reach a fair and just
24 verdict, and you are expected to be professional,
25 reasonable and ethical as well.

1 Now, ladies and gentlemen, what I'm going to tell
2 you now is intended to serve as an introduction of the
3 trial of this case. These remarks are not a charge on
4 the law. I'll charge you the law that is applicable to
5 this particular case at the end of the trial. This is
6 merely an explanation of the procedures that you will
7 follow so you may better understand what is happening.

8 Now, ladies and gentlemen, let me tell you up front
9 that you will not be allowed to take notes during this
10 trial and therefore it's very important that you listen
11 closely throughout this trial.

12 Now, ladies and gentlemen, the defendant in this
13 case is charged by indictment filed in this Court with
14 failure to register as a sex offender. The specific
15 elements will be explained to you later.

16 Now, ladies and gentlemen, the indictment charging
17 the defendant, as I told you before, is only the document
18 by which this case is brought into court and is not in
19 any sense evidence of any of the allegations contained
20 therein. The defendant has pled not guilty, therefore
21 the State has the burden of proving each and every
22 allegation of the charge in the indictment beyond a
23 reasonable doubt. And, ladies and gentlemen, it will be
24 your job to determine whether the State has met that
25 burden.

1 Now, ladies and gentlemen, your purpose is to
2 determine the facts in this case. You are to determine
3 the facts from the testimony you hear from this witness
4 stand and any other evidence that is introduced here in
5 court, and it will be up to you as jurors to determine
6 the inferences which you feel may be properly drawn from
7 the evidence.

8 Now, ladies and gentlemen, it's especially
9 important that you perform your duty diligently and
10 conscientiously because ordinarily there is no way for --
11 there's no way to correct an erroneous determination of
12 facts by a jury. On the other hand but with equal
13 emphasis the same law that makes you the judges of the
14 facts makes me the judge of the law, and the law given to
15 you by me is the only law that you may consider.

16 Ladies and gentlemen, you must accept the law as I
17 give it to you and apply it even though you might
18 disagree with it.

19 Now, ladies and gentlemen, and I'll make an
20 agreement with you right now that I will not tell you
21 what the facts are and you cannot disagree with me about
22 what the law is or what the law ought to be. Your job is
23 to take the law as I give to it you, apply it to the
24 facts as you find them and after listening to the
25 witnesses and the other evidence and after hearing that

1 evidence you will deliberate and render a just verdict
2 under the solemn oath that you just took as jurors.

3 Now, ladies and gentlemen, until I advise you to
4 begin your deliberation at the conclusion of this case
5 you must not discuss the case with others including your
6 fellow jurors except when authorized to do so by me. You
7 may not use a computer, cellular phone or other
8 electronic device with communications capabilities while
9 in attendance at trial or during your deliberations.

10 Now, of course, these devices may be used during
11 breaks, lunch breaks or when you go home for the evening
12 but still they can't be used to disclose any information
13 about the case when you are not in court, and information
14 about the case would include but certainly not be limited
15 to information about a party, a witness, an attorney or
16 court officer, any news accounts about the case or any
17 information collected through juror research.

18 Ladies and gentlemen, after the case is submitted
19 to you you must discuss it only in the jury room with
20 your fellow jurors. And, ladies and gentlemen, the
21 attorneys and the parties in this matter are advised that
22 they aren't to talk to you at all. So if you see one of
23 them out there in the little common square at four
24 corners of the law and they don't even speak, well, they
25 are not being unfriendly. They are just following my

1 instructions.

2 Now, ladies and gentlemen, it's very important that
3 you keep an open mind and not decide any issue in this
4 case until all of the evidence has been presented, the
5 attorneys have given you their close arguments and I have
6 charged you on the law of this case. And, ladies and
7 gentlemen, it's your responsibility to determine the
8 guilt or innocence of the defendant and your verdict must
9 be based solely on the evidence as it is presented in
10 this courtroom and on the law as I give it to you.

11 Now, ladies and gentlemen, in just a few minutes
12 the solicitor will make what is known as an opening
13 statement where he will explain to you what he believes
14 the issues are in this case. The attorney for the
15 defendant may also make an opening statement, although
16 he's not required to do so. But I do, again, remind you
17 what the attorneys tell you during their opening
18 statements is not evidence. It's only their contention
19 as to what they believe the issues are in this case.

20 Now, ladies and gentlemen, from time to time during
21 this trial you may hear one of the lawyers say something
22 like, Your Honor, I believe we have a question or a
23 matter of law to discuss with you or, Your Honor, may we
24 approach the bench, or sometimes I might find it
25 necessary to excuse you from the courtroom for a short

1 period of time while the attorneys and I discuss a matter
2 of law, and the reason for this, as I said, you are the
3 judges of the facts and sometimes when we are discussing
4 a matter of law it may be necessary for me to make some
5 comment on the facts as to whether a particular law
6 applies and as I said I'm not supposed to tell you what
7 the facts are so I will excuse you from these
8 conversations so that you will in no way be influenced by
9 anything that I say or do in connection with the facts.

10 And, ladies and gentlemen, also during the trial
11 you may hear one of the attorneys make an objection to
12 certain evidence that is about to be presented. Whether
13 I sustain, which is to grant the objection, or overrule,
14 which would be to deny the objection, should not be
15 construed that I favor one side over the other. I do
16 not. Nor should you infer that the objecting party is
17 trying to hide something from you.

18 Ladies and gentlemen, in this court as in all
19 situations in life there are specific rules that must be
20 followed and the attorneys as officers of this Court are
21 merely trying to follow the rules of evidence in making
22 their objections and I am only ruling based upon what I
23 believe the law of the State of South Carolina to be
24 concerning the evidence being presented.

25 Now, ladies and gentlemen, in determining what the

1 true facts are or the facts are in this case you must
2 decide whether or not the testimony of a witness is
3 believable. It will be my responsibility to rule as a
4 matter of law as to whether certain testimony is
5 admissible but once the testimony is admitted whether or
6 not you decide to believe it would be entirely up to you
7 to determine.

8 Ladies and gentlemen, in deciding whether to
9 believe a witness you have a right to consider the
10 interest of any witness, the bias of any witness, the
11 prejudice of any witness and the opportunity for the
12 witness to have actually observed the matters and things
13 about which the witness may testify, and you may consider
14 how the witness acts on the witness stand.

15 Ladies and gentlemen, you have a right to consider
16 anything that is in the record that will help you
17 evaluate the testimony of the witnesses. That means as
18 jurors it is your duty to pay close attention to the
19 witnesses, to observe the witnesses, to listen to the
20 witnesses and to pay close attention to the attorneys and
21 to the Court.

22 Ladies and gentlemen, please don't let your
23 thoughts wander but please give strict attention to the
24 testimony so that at the end of all the testimony and
25 after the argument of counsel and the charge on the law

1 by me you will then be in a position to determine what
2 the true facts are and to apply the law to those facts
3 and thus render a true and just verdict.

4 Mr. Foreman, in addition to your duties as a
5 regular juror it will also be your duty to preside in the
6 jury room and to be the jury spokesperson here in court.
7 Like I said, you'll also write down the verdict but I'll
8 give you specific instructions on that at the appropriate
9 time.

10 Now, in order to preserve everyone's rights I will
11 give the parties an opportunity to object to anything
12 that I have stated to you.

13 Does the State have any objections to anything I've
14 stated to this jury?

15 MR. CORVEY: No objection, Your Honor.

16 THE COURT: Does the defense have any objection to
17 anything I stated to the jury?

18 MR. GAILLIARD: None.

19 THE COURT: Thank you.

20 All right, ladies and gentlemen. We will now begin
21 the trial of this case.

22 Mr. Corvey, for the State -- excuse me.

23 MR. MAYNOR: Good afternoon, ladies and gentlemen.

24 First of all, thank you for being here. I'm sure you'd
25 much rather be somewhere else on this beautiful day. My

1 name is Scott Maynor. I'm an assistant solicitor with
2 the Ninth Circuit sitting with Ted Corvey, right here,
3 who's also an assistant solicitor for the Ninth Circuit.

4 We brought this case before you today because this
5 case is about public safety, it's about public welfare.
6 It's about you, it's about me, it's about the defendant,
7 Mr. John Cleveland, Jr. He's been charged with failing
8 to register. When I say failing to register, failing to
9 register as a sex offender.

10 The law in South Carolina says that each sex
11 offender has a duty to register with the Sheriff's
12 Office. Sometimes that duty is biannually, sometimes
13 quarterly, depending on the type of crime.

14 Mr. John Cleveland, Jr. was convicted in 1997 with
15 criminal sexual conduct with a minor second degree. We
16 are not here to relitigate that case. He's already been
17 convicted of it. He is here today about failing to
18 register as a sex offender.

19 Now, regarding the facts a little bit. Like I
20 said, January 13, 1987 he was convicted with criminal
21 sexual conduct with a minor in the second degree.
22 Subsequently, by the laws of South Carolina which require
23 you to register with the Sheriff's Office for a time he
24 did register. He registered enough to know that he was
25 supposed to register, how to do it and most importantly

1 when he was supposed to do it. Because he was convicted
2 of that type of crime he was required to register four
3 times a year.

4 One of those times was in September of 2013, and
5 another one of those times was in December of 2013. I'm
6 going to fast forward from '87 to 2013. September 18,
7 2013 he came to the Sheriff's Office and registered, just
8 like any other time that he was supposed to. He
9 acknowledged during that registration that he was
10 supposed to register then, when he was supposed to
11 register next and any differences that may have come or
12 gone in the time in between.

13 He signed during that registration in
14 acknowledgment forms stating that he knew he was supposed
15 to come in and register in December of 2013. So December
16 becomes critically important for this case whether or not
17 he came in and he registered. He didn't. December came
18 and it went.

19 Bob Stober from the Sheriff's Office even gave him
20 a courtesy call towards the end of the month on December
21 27. He left him a voicemail. He said, Mr. John
22 Cleveland, Jr., you know, you're required to register and
23 you will be breaking the law if you don't. He didn't
24 hear from him, and a month later on January 27th
25 Charleston County Sheriff's Office filed charges against

1 him for failing to register as a sex offender.

2 So I'm going to tell you about who you are going to
3 hear from. First, you're going to hear from the
4 Charleston County Clerk of Court, an individual who is
5 going to tell you that he was, in fact, convicted of the
6 crime that I said he was in 1987.

7 Then we're going to call Jason Bowen from the
8 Charleston County Sheriff's Office who works in sex
9 offender registry. He's going to tell you how the
10 registration process works. He's going to tell you about
11 this case. He's going to tell you about registering with
12 John Cleveland, Jr. at an earlier time.

13 Then you're going to hear from Bob Stober who also
14 works for the sex offender registry. He was the one who
15 registered with Mr. Cleveland in September and was also
16 responsible for his registration process in December that
17 never happened. So as the State, we have the burden to
18 prove this to you beyond a reasonable doubt.

19 Now, that doesn't mean we have to prove it to you
20 beyond all certainty because as you probably know most
21 things in life can't be proved beyond all certainty, with
22 absolute certainty. But what it does mean is that we
23 must firmly convince you of the fact and that he did, in
24 fact, fail to register as a sex offender.

25 So I'd ask that you listen carefully to the

1 witnesses, listen carefully to Mr. Corvey and
2 Mr. Gailliard and also review the evidence when you get
3 it back into the jury deliberation room very carefully
4 because we believe that after you've heard everything and
5 seen everything you will be firmly convinced that
6 Mr. Cleveland, Jr. did fail to register as a sex
7 offender, and for that we would request that you find him
8 guilty at the end of this trial. Thank you.

9 THE COURT: Thank you.

10 Mr. Gailliard?

11 MR. GAILLIARD: May it please the Court, Your
12 Honor?

13 THE COURT: Yes, sir.

14 MR. GAILLIARD: Mr. Foreman, ladies and gentlemen
15 of the jury, I represent the defendant, John Cleveland,
16 Jr., and as you've heard he was -- he actually pled
17 guilty to an offense back in 1987. I'm going to ask you
18 to listen to some particular information. In 1987 there
19 was no act that required --

20 MR. CORVEY: Objection, Your Honor.

21 THE COURT: Sustained. You want to come forward.

22 (WHEREUPON, a bench conference was had off the
23 record.)

24 THE COURT: Objection is sustained.

25 MR. GAILLIARD: Ladies and gentlemen of the jury,

1 you are to determine whether or not my client actually
2 registered or did not register, and I'll ask you to
3 consider all the evidence before you to make up your
4 mind. Thank you.

5 THE COURT: Thank you.

6 The State may call its first witness.

7 MR. CORVEY: The State calls Sarah Lippe.

8 SARAH LIPPE, after having been duly sworn,
9 testified as follows:

10 THE CLERK: State your full name and then spell
11 your last name for the record.

12 THE WITNESS: Sarah Lippe, L-i-p-p-e.

13 DIRECT EXAMINATION

14 BY MR. CORVEY:

15 Q. Good afternoon, Ms. Lippe. Where do you work?

16 A. I work at the Clerk of Court's Office downstairs.

17 Q. What is your job at the Clerk of Court's Office?

18 A. I am the case management supervisor over General
19 Sessions.

20 Q. Could you please describe for the jury a little bit
21 about what your roles and duties are on a day-to-day
22 basis on this job?

23 A. Sure. Our office is responsible for maintaining
24 court records, specifically my department, General
25 Sessions, handles criminal cases that happen here in

1 Charleston County, so that would be everything from an
2 arrest warrant to motions and various orders that are
3 filed in the case.

4 Q. And how are those records stored?

5 A. I'm sorry?

6 Q. How are those records stored?

7 A. They are stored physical -- the physical files are
8 in our office and anything older than currently 1996 is
9 on microfilm, and those are kept at a warehouse that we
10 pull them from.

11 Q. And with regard to this case, did you review any
12 records pertaining to this case?

13 A. I did.

14 Q. Did you review an indictment in this case from
15 1986?

16 A. Yes.

17 MR. CORVEY: Your Honor, may I approach?

18 THE COURT: You may.

19 Q. I'm handing you what's been premarked as State's
20 Exhibit 1. What is that, Ms. Lippe?

21 A. This is an indictment for John Cleveland. It's a
22 1987 indictment, and the charge is criminal sexual
23 conduct with a minor second degree, and it also has the
24 sentencing information.

25 Q. Did you also review documents pertaining to

1 Mr. Cleveland's sentence in 1987?

2 A. Yes.

3 MR. CORVEY: Your Honor, may I approach?

4 THE COURT: Yes.

5 Q. Now I'm handing you what's been premarked as
6 State's Exhibit 3. What is that?

7 A. That is the sentencing sheet for the indictment
8 that you just handed me.

9 Q. How do you know that that indictment pertains to
10 that sentencing sheet?

11 A. Each case is given a specific indictment number and
12 the indictment numbers on these two match.

13 Q. And are both those documents in the same or
14 substantially similar condition as when you reviewed
15 them?

16 A. Yes..

17 MR. CORVEY: Your Honor, at this time, the State
18 moves to admit 1 and 3 into evidence.

19 THE COURT: Mr. Gailliard, any objection?

20 MR. GAILLIARD: No, Your Honor.

21 THE COURT: Without objection State's 1, 2 and 3?

22 MR. CORVEY: Just 1 and 3.

23 THE COURT: One and 3 are admitted. Thank you.

24 (WHEREUPON, State's Exhibit Numbers 1 and 3,
25 Documents, were admitted into evidence.)

1 BY MR. CORVEY:

2 Q. Now, with regard to those documents combined what
3 does it indicate?

4 A. It indicates that the defendant listed as John
5 Cleveland pled guilty to the charge of criminal sexual
6 conduct with a minor second degree and was given a YOA
7 sentence not to exceed six years, and it was dated May 5,
8 1987.

9 MR. CORVEY: No further questions.

10 THE COURT: Mr. Gailliard, any cross-examination?

11 MR. GAILLIARD: None from this witness, Your Honor.

12 THE COURT: Thank you. You may step down.

13 Any objection to this witness being excused?

14 MR. CORVEY: None from the state.

15 MR. GAILLIARD: None from the defense, Your Honor.

16 THE COURT: Thank you. You may be excused. Have a
17 nice day, Ms. Lippe.

18 You may call your next witness.

19 MR. CORVEY: The State calls Deputy Jason Bowen.

20 ROBERT J. BOWEN, after having been duly
21 sworn, testified as follows:

22 THE CLERK: Please state your full name and spell
23 your last name for the record.

24 THE WITNESS: Robert James Bowen, B-o-w-e-n.

25 DIRECT EXAMINATION

1 BY MR. CORVEY:

2 Q. Good afternoon, Deputy Bowen.

3 A. Good afternoon.

4 Q. Where do you work?

5 A. I work at the Charleston County Sheriff's Office.

6 Q. How long have you been with the Sheriff's Office?

7 A. I've been with the Sheriff's Office for about 14
8 years now.

9 Q. Did you work with any other law enforcement
10 agencies prior to that?

11 A. I did. I was a police officer briefly in
12 Smithfield, North Carolina for about six months prior to
13 moving here.

14 Q. Now, what type of training have you received to
15 become a law enforcement officer?

16 A. We receive our basic academy training and then once
17 we have completed several months at the academy we come
18 back and we are trained with a field training officer in
19 the field to learn essentially procedures of how to be a
20 law enforcement officer, and then beyond that there's
21 additional advanced training depending on what our
22 position is.

23 Q. And what is your position with the Sheriff's
24 Office?

25 A. I'm currently a detective.

1 Q. In what unit, as far as what do you go about
2 investigating?

3 A. Currently, I investigate, I'm assigned to our
4 Special Victims Unit and also part of the State's
5 Internet Crimes Against Children Task Force. I primarily
6 investigate special victims sex crimes as well as crimes
7 against youth involving any type of technology.

8 Q. And in that role do you do any work with the Sex
9 Offender Registry Unit?

10 A. Previously I did. I was assigned to the sex
11 offender registry for about two years. The sex offender
12 registry is part of our investigations division, and I
13 was the detective assigned to the sex offender registry.

14 Q. And when you were working with the registry what
15 were your day-to-day roles as a detective with that unit?

16 A. Day-to-day was primarily registering offenders as
17 they came in, basically helping check them in, checking
18 the information that they provided against what was
19 already in the registry, updating and registering any new
20 offenders who may have moved to our area, and then my
21 primary role was if an offender failed to register or
22 there was some update that was found to have not been
23 made in their record it fell on me as the sworn deputy to
24 investigate that and make charges if appropriate.

25 Q. And were you working with the registry unit in

1 December of 2013?

2 A. Yes, I was.

3 Q. And in your role with that unit did you have
4 occasion to become involved in this case?

5 A. I did.

6 Q. Before we go into this case specifically, could you
7 just kind of generally describe the registration process
8 for the jury, just kind of from start to finish when the
9 offender comes in to check in with you all's office.

10 A. Sure. So typically we had open registration hours
11 and those are well published and published to the
12 offenders in advance. In fact, we also send them
13 reminder cards prior to their due date for registration.
14 They would come in, we had a waiting area, sign in to let
15 us know that they were here and waiting. Once they
16 signed in we would call them in the order that they came
17 in to register.

18 Once we called them in we got a photo ID, typically
19 their driver's license. As part of the process we would
20 run a criminal history check to see if any new crimes had
21 been added to their criminal history. Once all that was
22 completed we would have the offender come in and sit down
23 with us and go through the information in the registry to
24 determine if any changes had occurred since their last
25 registration.

1 Q. Now, with regard to when an offender actually comes
2 in how long does that process normally take as far as if
3 I'm coming in to register? How long would it take?

4 A. It typically takes in the area of about 15 minutes
5 if they are a registrant who had already registered with
6 us and it was more or less a routine reregistration. At
7 the end of that registration, I should add, after we've
8 gone through everything that's in the registry we would
9 print a copy of the registry and we would keep one in --
10 an actual physical copy in our file that we hold for each
11 registrant. We would have them sign and date indicating
12 that they were there and registered and that page also
13 included the next registration date that they were due to
14 come in and register, and so they were acknowledging that
15 we had told them that.

16 We also gave every registrant a copy of that. And
17 all of that, because the information was already in the
18 system and there's typically not any changes that we
19 weren't aware of, it took about 15 minutes or so.

20 Q. And how often do registrants need to come in and
21 check in with you all's office?

22 A. It depends on their conviction. As was mentioned
23 during opening arguments, some registrants register
24 biannually. Every registrant registers on their birth
25 month and if they were biannual they would register six

1 months after that, and if they were quarterly they would
2 register their birth month and then every three months
3 after that.

4 Q. Now, are any of the registration dates more
5 intensive than just your normal 15-minute check in?

6 A. The birth month registration was a little longer.
7 We would print out a full copy of the registration at
8 that time whereas on the in-between months it would be an
9 abbreviated copy that was primarily that date -- or that
10 page indicating their next date to come in for
11 registration. During their birth month we would print
12 the entire registration packet, again provide them with a
13 copy. We would keep a copy.

14 We would also take their photo in our office with a
15 digital camera and that was our way of updating the
16 online photo to ensure that what was being shown online
17 was an accurate image of the registrant. After that they
18 were required to go to the jail for a photo as well, on
19 that birth month registration.

20 Q. Now, let's talk a little bit about the steps you
21 would take during a registration to verify who an
22 individual is, briefly describe that, but what sort of
23 things did you do to ensure that if I came in that I was
24 who I was saying I was?

25 A. Right. So we would start by getting the copy of

1 the driver's license and we would obviously look at that.
2 That would also be an indicator for me if there was any
3 address changes that -- you know, there may be a new
4 address on the driver's license that we didn't have
5 previously in the system. Obviously, we make sure the
6 photo matches the person that I'm looking at. Our
7 registration database has a copy of that digital photo
8 that I mentioned so that was another way of verifying it.

9 We ran the criminal history of the person and
10 because we saw most of our registrants every three months
11 it didn't take long for us to get familiar with the
12 person, and honestly, what they looked like and a little
13 bit of their history and background.

14 Q. And, now, during that time when you'd have them
15 kind of confirm information for you what type of
16 questions were you asking them?

17 A. So we would ask the questions basically who they
18 were, where they lived, what their address and things
19 were. My personal way of going about it was to ask open
20 ended questions instead of asking them do you still live
21 at 123 any street. I would ask what is your current
22 address, because they couldn't see my screen, and that
23 was my way of making sure that I was getting what I felt
24 like would be the most accurate information possible.
25 And I would just go through the database page by page,

1 field by field and ask each question; do you have any new
2 tattoos, do you have a new job, do you have any new cars,
3 all of the things that were required by the registry.

4 Q. And before going specifically into a little bit
5 about this case, with regard to the annual registration
6 is there a list of -- would you go over their
7 requirements with them annually?

8 A. Yeah. As part of the printout they are required to
9 initial each page and that is their indication that they
10 have looked at each page and verified that the
11 information is accurate. It has a list, a full list of
12 requirements of what's required for each registrant under
13 the registry to include telling them how soon after they
14 moved they must register, things like if they purchased a
15 new vehicle that they had to notify us of that.

16 And that wasn't a full registry. They just simply
17 had to come in and fill out a form. But that annual
18 registration did have a copy that was given to each
19 registrant of the full requirements for it to be
20 considered a complete registration and for them to stay
21 in compliance with the registry.

22 Q. And did they have to initial off on those forms?

23 A. They did. On the pages that just required the date
24 -- or the date of birth, the address and things initialed
25 at the bottom but on the pages that had the requirement

1 they had to initial next to each requirement. It was
2 much akin to a contract.

3 Q. Now, with regard to this case, are you familiar
4 with how long Mr. Cleveland had been registering with
5 you all's office?

6 A. Not specifically but it had been a number of years
7 before prior to me.

8 Q. If I provide you with copy of the original
9 registration would that help your memory?

10 A. Yes, it would.

11 MR. CORVEY: Your Honor, may I approach?

12 THE COURT: Yeah.

13 (A document was handed to the witness.)

14 A. So Mr. Cleveland's original registration, if I'm
15 reading this right because this is not the document that
16 I saw day to day, it has been updated since, but it
17 appears to be January 22nd, 2001, was the date of his
18 original registration with us.

19 Q. And with regard to these documents are these (the
20 type of documents people were using to register at that
21 period?

22 A. They were.

23 Q. And having reviewed that document does that appear
24 to be in the same or substantially similar condition as
25 in you all's files?

1 A. Yes, it does.

2 MR. CORVEY: Your Honor, the State moves State's
3 Exhibit 8 into evidence.

4 THE COURT: Any objection?

5 MR. GAILLIARD: None, Your Honor.

6 THE COURT: So number 8?

7 MR. CORVEY: Yes, State's 8.

8 THE COURT: Exhibit number 8 is admitted without
9 objection.

10 (WHEREUPON, State's Exhibit Number 8, a Document,
11 was admitted into evidence.)

12 By MR. CORVEY:

13 Q. Now, Deputy Bowen, I'm showing you what's been
14 entered as State's 8. This is the original registration
15 form that he filled out when first registering with the
16 Sheriff's Office?

17 A. That's correct. It likely would have been filled
18 out by the person working the registration for him but
19 with his information, yes.

20 Q. And then showing you the second page of State's 8,
21 did Mr. Cleveland sign?

22 A. He did.

23 Q. And directing your attention to the bottom part of
24 the form, does that detail some of his requirements as
25 far as the registry is concerned?

1 A. It does. Number three shows that he's required to
2 register annually for life. Number four makes him -- or
3 relays that the registration is not complete until he has
4 his photo taken. Number five indicates that any time he
5 moves he must update his address within 10 days of
6 establishing the new address.

7 Q. And are those his initials next to each line?

8 A. It appears to be.

9 Q. Now, you mentioned that you guys notify each
10 registrant of their next registration date in several
11 ways but you also mentioned that you mailed them a card?

12 A. Yes.

13 Q. Would you recognize a copy of that card if I showed
14 it to you?

15 A. I would.

16 MR. CORVEY: Your Honor, may I approach?

17 THE COURT: You may.

18 Q. What is that?

19 A. This is the postcard that we mailed out, and
20 Mr. Stober typically handled it but I'm very familiar
21 with them. These are the postcards that we mailed out
22 usually the month prior to the registrant's scheduled
23 registration month. So if he was scheduled to register
24 in December he should have gotten a copy of this in
25 November.

1 We did have it set up so that the return service
2 was accepted, that way if it went to an address that the
3 post office knew the offender no longer lived at it
4 kicked back to us. That was another indicator to us that
5 there might be a problem either with the address or
6 something and we would clarify that with a phone call, if
7 we could. If we couldn't get the offender on a phone
8 call when they came in to register we would ask them,
9 Hey, why did your card come back to us and you not get
10 it.

11 Q. And is this an accurate representation of what
12 would have been sent to Mr. Cleveland?

13 A. It is.

14 MR. CORVEY: Your Honor, the State moves State's
15 Exhibit 4 into evidence.

16 THE COURT: Any objection, Mr. Gailliard?

17 MR. GAILLIARD: No, Your Honor.

18 THE COURT: Without objection, State Exhibit Number
19 4 is admitted.

20 (WHEREUPON, State's Exhibit Number 4, a Document,
21 was admitted into evidence.)

22 BY MR. CORVEY:

23 Q. What does that depict?

24 A. That is the card that Mr. Cleveland would have
25 received in the mail. The top line above his name was

1 mostly for our reference. That is his sex offender
2 registrant number in the database. You can see it would
3 have printed his name and whatever his current address
4 that we have on file. It had our contact information
5 over to the left so that they could call us at any time,
6 and, of course, the return address.

7 Q. Then on the backside of that card?

8 A. On the backside was so that the registrants would
9 have easy access to exactly what dates and times we were
10 registering during the month. Our typical registration
11 days as you can see were Tuesday, Wednesday and Thursday,
12 and in the morning from 9:00 until 11:30, and in the
13 afternoon from 1:30 to 4:00 each of those days, except
14 for Thursday.

15 Q. Now, were you the person in the registry office who
16 performed Mr. Cleveland's June 2013 annual registration?

17 A. Yes, I believe I was.

18 Q. Now, would you recognize a copy of that annual
19 registration if I showed to it you?

20 A. I would.

21 MR. CORVEY: Your Honor, may I approach?

22 THE COURT: You may.

23 Q. I'm handing you what's been premarked State's
24 Exhibit 5. You want to review that document?

25 A. Yes.

1 Q. Does that accurately -- fairly and accurately
2 reflect the document that you went over with
3 Mr. Cleveland in June 2013?

4 A. It does.

5 MR. CORVEY: Your Honor, at this time the State
6 moves Exhibit 5 into evidence.

7 THE COURT: Mr. Gailliard, any objection?

8 MR. GAILLIARD: No, Your Honor.

9 THE COURT: State's Exhibit Number 5 is admitted
10 into evidence.

11 (WHEREUPON, State's Exhibit Number 5, a Document,
12 was admitted into evidence.)

13 BY MR. CORVEY:

14 Q. Now, you already described for the jury the process
15 in general but I just want to go over a few of the
16 details of this packet with you. Now, you mentioned
17 earlier that registrants were either classified tier two
18 or tier three registrants. Can you go over the
19 difference between that again.

20 A. So it's defined by the particular crime that they
21 commit. Our tier two registration is simply a class of
22 crimes for which they would have to register biannually
23 or every six months, again, based on their date of birth,
24 and the tier three would be the quarterly registration.

25 Q. And with regard to tier three, is criminal sexual

1 conduct with a minor in the second degree a tier three
2 registration class?

3 A. Yes, it is.

4 Q. So then Mr. Cleveland would have had to report
5 quarterly to register?

6 A. Correct.

7 Q. Now, when I was asking you about the registration
8 generally you indicated that every time someone would
9 come in that you would go over a number of requirements
10 that they have, have them initial it and compared it to a
11 contract. I'm showing you the sixth page of his
12 registration packet. What does that reflect?

13 A. That is the page that I was referencing. As you
14 can see the offenders had to initial next to each
15 requirement. If they had any questions we never rushed
16 them. I always gave them time to read over it. Most,
17 because it was so routine, would initial it and not have
18 any questions. We always make sure if there had been any
19 law updates or changes to make sure that we pointed that
20 out to them. But we allowed them whatever time they
21 needed to look it over and also answer any questions for
22 them.

23 Q. And the initials you see on that page, would those
24 be Mr. Cleveland's?

25 A. They are.

1 Q. Showing you the next page. This is just kind of
2 more of the same?

3 A. Yes, it is.

4 Q. The following page, what does this reflect?

5 A. This is the page that both notified the offender of
6 their next registration time and also showed their
7 acknowledgement of that. So you can see this was from
8 his June registration. May I?

9 Q. Yeah.

10 A. You can see here the birth month shows for June
11 that he would register in September, December and March
12 (indicated) and since he was registering in June his next
13 registration was to be during the month of September.

14 This is the preprinted date printed by the database
15 that shows he was in our office on June 14th. He signed
16 it with his own signature. Now, we often printed in the
17 offender's name because depending on their handwriting it
18 may or may not be clear, and my signature is the one
19 below his.

20 Q. Then that would be his signature on the line --

21 A. Correct. This would be Mr. Cleveland's signature.

22 Q. And in signing that was that an acknowledgment of
23 him understanding when his next registration date was?

24 A. Yes, because my way of presenting it to each
25 registrant was your next time to come in is in the month

1 of September. Do you have any questions? And sometimes
2 they would ask us if they had travel or doctor's
3 appointments or anything like that so that was our
4 opportunity to discuss that with them, and then they
5 would sign that indicating that we had had that
6 conversation and they had been given this page.

7 Q. And would that signature also have been an
8 acknowledgments of all the requirements that we went over
9 on the previous two pages?

10 A. It would because those two pages directly preceded
11 this page.

12 Q. And I want to redirect your attention to the first
13 page of the requirements. Above the first initial, what
14 does that line say?

15 A. It says I understand that I am required to register
16 and I must, in capital letters.

17 Q. Now, Deputy Bowen, within the Sheriff's Office how
18 did you guys kind of internally keep track regarding when
19 someone would come in, when they needed to come in or any
20 contact you have with the registrant?

21 A. So on each folder we kept -- each offender had a
22 folder, much like you might see at a doctor's office. It
23 had their name and it had their date of birth, and also a
24 number for each month that they were supposed to
25 register. To make it easier on ourselves we color coded.

1 The quarterly registration or tier three was purple and
2 the biannual were blue folders.

3 If we were in this case during the month of
4 November -- and Mr. Stober had put together quite a list,
5 a rotating list of the offenders using, I believe, excel
6 but we would go through and manually -- even with the
7 list we would verify against the list, actually open our
8 file drawers and pull every folder that was scheduled to
9 register for December.

10 Q. And then did you also in addition to that keep any
11 case notes regarding each case?

12 A. We did. So each offender has what we call case
13 notes and it was typically simply a one line entry of any
14 contact or any pertinent information involving that
15 offender and their registration. For example, each time
16 they came in to register we made an entry on that log
17 that said they registered and it also showed who the
18 technician or registration personnel that registered.

19 The other thing that it would show is if they were
20 late for registration and we made a phone call to remind
21 them or see if there was some problem and we would
22 document it on that log.

23 Q. Now, would you recognize -- well, I guess let me
24 ask this question. Is each case notes specific to an
25 individual registrant?

1 A. Yes, it is.

2 Q. Would you recognize those notes if I showed them to
3 you?

4 A. I would.

5 MR. CORVEY: Your Honor, may I approach?

6 THE COURT: You may.

7 Q. Deputy Bowen, I'm handing you what's been premarked
8 as State's 7. What is that?

9 A. These are the case notes for Mr. John Cleveland,
10 Jr.

11 Q. And do those kind of track all of the Sheriff's
12 Office contact with regard to him needing to register?

13 A. They do. In fact, they start January 22nd, 2001
14 and it shows that he was a new registrant with us, and it
15 tracks his registration all the way through, and these
16 are current registrations. So this one goes all the way
17 through August 2015.

18 Q. And is that a fair and accurate representation of
19 the case notes?

20 A. It is.

21 MR. CORVEY: Your Honor, at this time the State
22 moves State's 7 into evidence?

23 THE COURT: Any objection, Mr. Gailliard?

24 MR. GAILLIARD: No, Your Honor.

25 THE COURT: Without objection State's Exhibit

1 Number 7 is admitted.

2 (WHEREUPON, State's Exhibit Number 7, a Document,
3 was admitted into evidence.)

4 BY MR. CORVEY:

5 Q. Now, I want to show you the case notes, paying
6 particular attention to the time period in question.

7 Starting in -- you indicated that you had done the
8 registration in June of 2013?

9 A. That's correct.

10 Q. Could you indicate just by drawing on your line or
11 where that registration shows up in the case notes?

12 A. So kind of under -- trying to underline it, here
13 you can see on the left it indicates June 14th he came
14 in. He came in for his quarterly registration. We
15 collect an annual registration fee from each registrant.
16 He didn't have it at this time so we made a note that he
17 would come in and pay that by the end of the month,
18 again, trying to work with the registrants, and it has my
19 name indicating that I'm the one that registered him.

20 Q. And then since his birth month is June when would
21 his next registration date have been?

22 A. It would have been during the month of September.

23 Q. Do the case notes indicate whether or not he made
24 that registration?

25 A. Yes. You can see one line up from that on

1 September 18, and over to the right it indicates that
2 Mr. Stober registered him. It was his quarterly
3 registration. He also had still not paid his
4 registration fee for that year. So Mr. Stober was again
5 giving him another extension on that registration fee.

6 Q. And then since he registered in September his next
7 registration would have been in December?

8 A. That's correct.

9 Q. And did Mr. Cleveland show in December ever to
10 register?

11 A. He did not. You can see the entries one up. Each
12 year the Sheriff's Office is required by law to complete
13 an address verification to ensure that the information
14 that the registrant gives us is actually correct. We go
15 out and knock on the door and see if they actually live
16 there.

17 December 3rd an address verification was attempted.
18 You can see that was attempted by Deputy Chaves. That
19 number next to that is the incident number that he would
20 have called out on the radio, and the current resident
21 stated that he had not lived there for at least a year.
22 That actually would be a registry violation because he
23 came in in December. We would have likely tried to
24 rectify that during the registration. However, that did
25 actually put him out of compliance with the registry.

1 He had not shown up by the end of the month so
2 often times our main goal was to garner compliance, not
3 so much issue warrants and arrest people, primarily
4 because of sheer volume of registrants that we have. So
5 on December 27th we left a voicemail with the phone
6 number that we had on file for him to come in and
7 register by January 8th. He did not come in by January
8 23rd, as you can see the next line up.

9 One of the things that I do to prevent myself from
10 placing an arrest warrant on somebody who might have been
11 in jail was we would check jail records both locally and
12 for the State, and I did not see any indication that he
13 had been incarcerated, at least -- when it says at least
14 since the last registration, so that would have meant
15 since September 18th.

16 So on January 27th, the next line up, I issued a
17 warrant for failure to register. This number would be
18 the case number and this is the warrant number for the
19 arrest warrant that was issued.

20 Q. Now, with regard to -- you mentioned that your
21 office is really just interested in compliance. Would it
22 be fair to say that your office is just looking more for
23 accountability with their requirement?

24 A. Yes. The registry is for public information so we
25 feel it's incumbent upon us to get as accurate as -- have

1 the information be as accurate as possible. In a show
2 of, I suppose grace, if you will, we try to be
3 understanding, and that was part of the use of the case
4 notes, to see how compliant an offender had been.

5 Obviously, if they had been coming in every time
6 for registration and never had any failure to register
7 convictions we could say, okay, look, you didn't make it.
8 You need to do better. And even in this case we
9 documented we tried to call, the cards had gone out. So
10 we document each attempt at compliance and if we can't
11 garner any compliance through that then we issue the
12 warrant for failure to register.

13 Q. Now, you had indicated that Mr. Cleveland had been
14 registering with your office since 2001. Would he have
15 been coming in quarterly since that time?

16 A. No. There had been changes in the registration
17 along the way.

18 Q. But he would have been made aware in June when his
19 next three registration deadlines were?

20 A. Yes. You remember that last page where it showed
21 his date of birth? It shows every month that he was to
22 register during the year, and to me that was always the
23 easiest because it was 3, 6, 9, 12, and it was that
24 simple.

25 Q. Is that the page you were talking about?

1 A. It is.

2 Q. Exhibit 5?

3 A. Yeah.

4 Q. Would a similar thing have been given to him in
5 September?

6 A. Yes, it would have.

7 Q. Now, with regard to his address, would updating his
8 address with the Sheriff's Office have been in the list
9 of musts that he initialed?

10 A. It would, and that would have -- that was always a
11 requirement from the initial registration. As you saw on
12 the initial 2001 registration he initialed the paragraph
13 that said you must update the Sheriff's Office with the
14 new address within 10 days.

15 Q. Now, with regard to compliance, you know, obviously
16 things come up. If a registrant was regularly checking
17 in, was having a problem making it a certain month, would
18 you issue a warrant for that?

19 A. No. We don't let it go too long because obviously
20 at any time anybody can abscond but if we are able to
21 reach them by telephone or they call in to us and say I
22 can't make it this month, I've been working a lot this
23 month, I'll be in the first week of the next month, we
24 gave them that grace period.

25 Q. Then we sort of saw on the case notes too even if

1 they didn't appear and didn't make contact there was
2 still efforts to try to reach them before issuing a
3 warrant?

4 A. That's correct.

5 MR. CORVEY: A moment of the Court's indulgence,
6 Your Honor.

7 THE COURT: Yes, sir.

8 BY MR. CORVEY:

9 Q. And, now, it seems like an obvious question but
10 with regard to his physical location, he was in
11 Charleston County and required to register in Charleston
12 County?

13 A. That's correct, and that's based on their address,
14 their home address.

15 Q. And so his registration location would have been at
16 the Sheriff's Office in Charleston County?

17 A. That's correct.

18 MR. CORVEY: No further questions.

19 THE COURT: Mr. Gailliard?

20 MR. GAILLIARD: Yes, Your Honor. Just a couple.

21 CROSS-EXAMINATION

22 BY MR. GAILLIARD:

23 Q. Now, Detective Bowen, you got this list here of
24 case notes, and this is the State's 7. It lists January
25 27, 2014 failure to register third. Tell us when the

1 second failure to register occurred. I can't seem to
2 figure that out.

3 A. Without having his criminal history in front of me
4 I didn't use this as the basis to determine that charge.
5 I'd need his criminal history in front of me to tell you
6 that.

7 Q. Okay. So --

8 A. I can't tell you that from just this document but
9 this was not the only document used to determine the
10 subsequent charges.

11 Q. So you can't tell me from that particular document;
12 is that right?

13 A. That's correct.

14 Q. Now, on number 5, which is an NCIC entry quality
15 check registration, you signed off on that; is that
16 correct, as the original operators name? Is that you, J.
17 Bowen?

18 A. I'd need to see it.

19 Yes.

20 Q. Okay. Does that indicate that the information in
21 that packet is accurate?

22 A. It does.

23 Q. It does. Would you turn to the second page and
24 tell us the age that you got listed for the victim.

25 MR. CORVEY: Objection, Your Honor, relevance.

1 THE COURT: Sustained.

2 BY MR. GAILLIARD:

3 Q. Now, Officer Bowen, did the defendant's tier
4 registration change any time since he was required to
5 register?

6 A. It did.

7 Q. Tell us about that, when and when this occurred,
8 the subject change.

9 A. It would be best if I had the registration notes.

10 Q. Which one do you need?

11 A. Number 7, sir.

12 (A document was handed to the witness.)

13 A. Thank you. Yes, sir. On October 3rd, 2012 I
14 updated his file and his record to tier three. Prior to
15 that he had been incarcerated for at least a year. There
16 had been some changes in the registration during his
17 incarceration and so when he came back after he was
18 released and resumed his registration that's when his
19 file would have been updated to correctly follow the tier
20 system.

21 Q. But you said changes in the registration. You are
22 talking about the act itself; is that correct?

23 A. No, I'm not. The SLED regulations that govern the
24 registration.

25 Q. All right. Now, in this larger packet here,

1 State's Exhibit Number 5, is the defendant's address
2 anywhere in that packet?

3 A. Yes, it is. It's on page two.

4 Q. And what address is that?

5 A. [REDACTED], North Charleston, South
6 Carolina 29405.

7 Q. And is that the address that you all used to send
8 the postcard to him?

9 A. That would have been his address of record, yes.

10 Q. All right. Now, if a defendant, say, is in Medical
11 University or some other hospital what is his
12 requirements as far as registering?

13 A. If he's in the hospital we have registrants all the
14 time call us and say, hey, I'm not hospital. I'm not
15 going to make registration. We document that within
16 their file. They know that when their registration
17 months are so it's not uncommon for a family member or
18 the registrant to call from their own hospital room and
19 notify us that they are in the hospital. But the
20 registration requirement still stands because we have no
21 way of knowing they are in the hospital. There's not any
22 online or jail indicator of that.

23 MR. GAILLIARD: Your Honor, those are all the
24 questions for this witness.

25 THE COURT: Thank you.

1 Any redirect, Mr. Covey?

2 MR. CORVEY: Briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. CORVEY:

5 Q. You indicated that his registration changed during
6 a period of incarceration to quarterly?

7 A. Yes.

8 Q. And that was in 2012?

9 A. Yes.

10 Q. So from, I guess, then December 2012 through the
11 period where he failed to register in December 2013 he
12 would have been made aware of each registration when he
13 needed to be there?

14 A. That's right. So he registered after his release
15 in October of 2012. He registered one, two, three, four
16 times quarterly since the update to quarterly
17 registration before December 2013 when he failed to
18 register.

19 Q. And then on each of those registration occasions
20 that grid that showed their registration months, would
21 something similar to that have been provided on each of
22 those occasions?

23 A. Every time.

24 Q. And every time would he have been told his next
25 registration date?

1 A. Yes, and he would have signed it each time as well.

2 Q. And then with regard to Mr. Cleveland's address, we
3 discussed this previously, which is to be clear, would
4 have been his responsibility to update his address with
5 your office?

6 A. That's correct, as required under actual law.

7 Q. And, in fact, that was in that list of must things
8 that he must do?

9 A. That's correct.

10 Q. And, in fact, he failed to do that?

11 A. He had failed to do that because when we attempted
12 to complete his address check for that year it was noted
13 that he had not lived at the address he had placed on
14 file with us for at least one year prior.

15 Q. And despite not having a correct address on file he
16 had still made several registration dates prior to
17 failing to come in December of 2013?

18 A. That's correct, and that's not uncommon again
19 because each registrant knows when they are supposed to
20 come in and register and if they are trying to not update
21 or hide their current address from us they'll come in and
22 register and that way it doesn't raise any red flags and
23 we'll catch it eventually during the annual address
24 check.

25 Q. And prior to the annual address check when he would

1 come in previously, for example, when you met with him
2 June 2013, he would have given you his address at that
3 point?

4 A. That's correct.

5 Q. And so for it to still be wrong in December of
6 2013 --

7 MR. GAILLIARD: Your Honor, I'm going to object to
8 leading this witness --

9 THE COURT: Rephrase your question. Rephrase it.

10 Q. When Mr. Cleveland would have come in in June of
11 2013, would he have been required to give his current
12 address?

13 A. He would have, and so the address in the system
14 would have been based on the information that
15 Mr. Cleveland had given me.

16 Q. Are they required as a registrant to provide
17 correct information?

18 A. They are, and I believe it's noted in the packet
19 that they must be truthful as part of their registration.
20 Giving a false address is essentially a failure to
21 register because they failed to register the correct
22 address and there's actually -- if I remember correctly
23 without looking at statute, there is a specific statute
24 for providing false information for the registrant.

25 MR. CORVEY: No further questions, Your Honor.

1 THE COURT: Any recross?

2 MR. GAILLIARD: No, Your Honor.

3 THE COURT: Thank you. You may step down.

4 All right. Ladies and gentlemen, I think now is a
5 good time for a recess. We will take about a 15-minute
6 break. If you want to -- if you need to smoke they'll
7 make arrangements for you to do it outside. So please do
8 not discuss anything about the case while you are back
9 there. Ladies and gentlemen, see you in about 15
10 minutes. Thank you.

11 (WHEREUPON, the jury leaves the courtroom at
12 approximately 3:45 p.m.)

13 THE COURT: Thank you. Court is in recess for 15
14 minutes.

15 (WHEREUPON, a brief recess was taken.)

16 THE COURT: You're going to have one more witness
17 today?

18 MR. CORVEY: Yes, Judge.

19 THE COURT: All right. Then we will argue and
20 charge in the morning.

21 MR. CORVEY: Okay.

22 THE COURT: All right. Let's bring our jury in,
23 Gene.

24 (WHEREUPON, the jury enters the courtroom at
25 approximately 4:10 p.m.)

1 THE COURT: Thank you. Please be seated.

2 All right. The State may call its next witness.

3 MR. MAYNOR: The State calls Bob Stober.

4 THE COURT: Come forward and be sworn.

5 ROBERT STOBER, after having been duly sworn,
6 testified as follows:

7 THE CLERK: If you'll state your full name and
8 spell your last name for the record.

9 THE WITNESS: Robert Stober, S-t-o-b-e-r.

10 THE COURT: You may proceed.

11 DIRECT EXAMINATION

12 BY MR. MAYNOR:

13 Q. Mr. Stober, can you tell the jury where you work.

14 A. I work for the Charleston County Sheriff's Office.

15 Q. And how long have you been working there?

16 A. Over eight years now.

17 Q. Did you have any prior law enforcement experience
18 before that?

19 A. No, sir.

20 Q. What did you do before that?

21 A. An interesting career. I did a number of things, a
22 marketing officer for a major New York City bank during
23 most of my years.

24 Q. And what do you do at the Charleston County
25 Sheriff's Office?

1 A. I'm a civilian investigator assigned to sex
2 offender registry.

3 Q. How long have you been with that unit?

4 A. About eight years.

5 Q. And can you explain your duties in the registry.

6 A. My part of the registry is one to register
7 offenders which you heard about earlier. I also do a lot
8 of administrative duties in the background, organizing
9 files making sure that those reminders get sent out to
10 the offenders and an awful lot of correspondence
11 electronically, verbally and in running with other law
12 enforcement agencies around the coast dealing with sex
13 offenders that move between jurisdictions.

14 Q. And I know you said you worked there the last eight
15 years but did you specifically work there during the
16 months of September 2013 through January 2014?

17 A. Yes, sir, I did.

18 Q. And did you have any involvement with this case
19 with John Cleveland, Jr.?

20 A. Yes, sir.

21 Q. And does your office keep records in the registry?
22 I assume they do.

23 A. Yes, sir, we do.

24 Q. Can you kind of explain the process by which you go
25 through those records with the offender.

1 A. When an offender comes in to register one we verify
2 his identify. We also then go through all the
3 information. Much of it is pedigree information; name,
4 address, Social Security number, weight, height, physical
5 description, tattoos, where those tattoos are located.
6 We also look at employment, volunteer and education if an
7 offender is attending school. He or she is required to
8 disclose that fact to us, also.

9 We then take a look at vehicles, any vehicle that
10 an offender owns or operates must be disclosed to us. So
11 when we get to that phase of the registration we go
12 through each vehicle; are you still driving the Dodge
13 Charger, do you still own that Ford pick-up truck, do you
14 have any other new vehicles, have you added any or sold
15 any? That type of information.

16 Q. And when you were working this case, the John
17 Cleveland, Jr. case, did you happened to work with his
18 paperwork with him personally?

19 A. Yes, sir. I registered him as early as June 2008,
20 specifically I remember that one, and each registration
21 we go through the same step by step registration where we
22 go through -- today it's all organized on computer. I go
23 through a bunch of -- all the information is on the
24 screen. I bring up a screen, I go through the answers on
25 that screen, go to the next one, we go to the answers on

1 that screen until we get to the end.

2 Q. Do you sign that paperwork with him?

3 A. I do.

4 Q. What are you attesting to when you sign the
5 paperwork?

6 A. I am attesting that I saw that offender sign his
7 name above my signature on that page further down that we
8 saw earlier.

9 Q. And when he signs it what is he attesting to?

10 A. He's attesting to the fact that he has told me the
11 truth with all the questions we have discussed and that
12 he has reviewed the information on that form and that it
13 is true and correct.

14 Q. And did you do that paperwork in this case?

15 A. I registered him on several occasions, yes.

16 Q. Did you do any paperwork?

17 A. I have --

18 Q. I'm sorry. Go ahead.

19 A. I have not done all his registrations.

20 Q. Did you do his paperwork in September 2013?

21 A. Yes, sir, I did.

22 MR. MAYNOR: Your Honor, may I approach the
23 witness?

24 THE COURT: You may.

25 Q. Mr. Stober, I'm going to hand you what's been

1 marked as State's Exhibit 6. Can you tell me what that
2 is?

3 A. That is a copy of the registration document
4 completed by Mr. Cleveland on September 18 of 2013.

5 Q. And how do you know that's what that is?

6 A. I've looked at the offender's name at the top.
7 I've seen that his signature is on it and I see that my
8 signature is on it just below his.

9 Q. Is that a fair and accurate copy to your knowledge
10 of the records that you produced with Mr. Cleveland back
11 in September of 2013?

12 A. Yes, sir, it is.

13 MR. MAYNOR: Your Honor, the State moves to admit
14 State's Exhibit 6.

15 THE COURT: Any objection, Mr. Gailliard?

16 MR. GAILLIARD: No, Your Honor.

17 THE COURT: Without objection State's Exhibit
18 Number 6 is admitted into evidence.

19 (WHEREUPON, State's Exhibit Number 6, a Document,
20 was admitted into evidence.)

21 MR. MAYNOR: Permission to publish?

22 THE COURT: You may.

23 BY MR. MAYNOR:

24 Q. Mr. Stober, will you walk me through this form sort
25 of top to bottom and identify what this form is about and

1 what it means.

2 A. This form is what we call an NCIC check sheet, and
3 it's no NCI list. It is NCIC, National Crime Information
4 Center. Today the sex offender registry is regulated by
5 federal regulations, and if you look at the very top
6 right up on there it says NCIC, the next one says NCIC
7 next to regulations. The check marks in red going down
8 the left-hand column are my check marks. You may notice
9 that I'm left handed so I make left-handed check marks
10 and those items that are checked are items that I
11 actually reviewed with the offender on that day.

12 Q. And does your signature appear on this sheet?

13 A. It does, sir, at the bottom it says original
14 operator's name and that is my signature and the date.

15 Q. Is that --

16 A. 9-18-2013.

17 Q. Is that the red pen right there?

18 A. That is my red pen, sir.

19 Q. And I'm going to flip to the second page of this
20 exhibit. We've already seen something like this but can
21 you also explain this sheet as well.

22 A. This is the shorter form of the registration
23 document that we have. Detective Bowen showed you an
24 annual review where we do many, many pages. When it's
25 not the offender's birth month, unless something is

1 radically wrong, we do an abbreviated one. We go through
2 all the questions but we go to a one-page registration
3 document. In the middle there is the table that says
4 birth month and then redefines what months the offender
5 needs to register in as earlier explained.

6 The next bold line is my next registration will be
7 in the month of, and that is my printing, December 2013.
8 Moving down we have offender signature. I always put an
9 X there showing the offender where to sign. Next thing I
10 see is John Cleveland's signature which is consistent
11 with all the signatures that I can remember in his file,
12 and the next line is S-O-R, sex offender registry
13 personnel signature and that again is my signature.

14 Q. What date exactly was this document produced?

15 A. This document was produced on September 18, 2013.

16 I can tell that in this case because the date is machine
17 produced. I have no control over it. It comes out of a
18 computer already dated, so there's no question about what
19 date that offender and I were together in the office.

20 Q. And can you identify this sex offender registration
21 number in the top right corner?

22 A. Each offender is assigned a registration number
23 when they first register in the system. The system began
24 back in 1994, I believe, and I believe they started with
25 number one. This number, 7,247, indicates that the

1 offender has been registered for quite a while. We
2 changed our numbering system today. The numbers we are
3 using today are in the 2,332,000 numbers, but I don't get
4 excited about that. There are not that many of them. We
5 have about 800 active offenders in Charleston County, and
6 about 20,000 in the state active.

7 Q. Thank you. I'm going to flip to the next page of
8 this document. Is that same number, that registration
9 number appear on that document?

10 A. It certainly does. If you look at the top just to
11 the left of the picture you will see status active.
12 Below that the registration number, 7,247, the same
13 number that is on the registration document itself.

14 Q. And does Mr. Cleveland's date of birth also appear
15 on this report?

16 A. It certainly does. If you go down under offender
17 information you find his name, Cleveland Jr., John, his
18 place of birth, then his date of birth, [REDACTED].

19 Q. And does it also provide the risk class of
20 Mr. Cleveland?

21 A. Yes, sir, it does. If you go to the bottom of that
22 first column about five lines below his date of birth it
23 says risk, slash, class, adult tier three offender.

24 Q. And let me go back to the last page that we just
25 looked at, and you said that his birth date was in?

1 A. September, I believe.

2 Q. No. I'm sorry. Could you take another look back
3 at his date of birth?

4 A. [REDACTED] I'm sorry. June.

5 Q. The month of June. And can you identify on here
6 this grid here where it has the month of June?

7 A. If you go halfway down on the birth month we have
8 the month of June. If you work horizontal to the right
9 they are required to -- he is required to register in his
10 births month then second quarter of September, third
11 quarter is December, fourth quarter is March, and that
12 brings him back to his birth month.

13 Q. And this document also provides that Mr. Cleveland
14 acknowledged and signed right below where it said my next
15 registration will be in the month of December?

16 A. Yes, sir.

17 Q. Thank you, Mr. Stober. A couple more questions for
18 you.

19 MR. CORVEY: Your Honor, may I approach the
20 witness?

21 THE COURT: You may.

22 Q. I'm going to show you what's already been moved
23 into evidence as State's Exhibit 7. Do you recognize
24 that?

25 A. I do.

1 MR. MAYNOR: Your Honor, permission to publish
2 State's Exhibit 7.

3 THE COURT: Certainly. It's in evidence.

4 Q. Just briefly, Mr. Stober. Can you identify where
5 on this document you may have indicated contact with
6 Mr. Cleveland, Jr.?

7 A. My earlier testimony, sir, on the next page I
8 indicated that I registered him in June of 2008. It is
9 the item just -- I can't see it now.

10 Q. Keep going.

11 A. Yes. Just below the big white box there's the date
12 June 12, 2008. It says warrant served, registration
13 registered by Stober. That's me. The number out in the
14 far right column is an incident number. We no longer use
15 those. At the time whenever we registered an offender we
16 got an incident number from the potential inspection from
17 that registration.

18 Q. And can you identify on this first page an entry
19 you made in September of 2013.

20 A. Yes, sir, I can. Now, it's up on the screen on
21 September 18 of 2013. It says quarterly registration and
22 fee by 10-1-13, and my name, Stober, indicates that on
23 that day that the offender was in the office, completed
24 the registration following the steps that I outlined
25 earlier, and I also made the note that he did not pay the

1 150-dollar annual fee but that he and I agreed that he
2 would bring it back by October 1, 2013.

3 Q. Can you also explain your entry in the month of
4 December 2013?

5 A. In December 2013, at that point he had not
6 registered as required in the month of December. Again,
7 as explained earlier, our goal is compliance. Our goal
8 is to understand where these people are and we will do
9 everything possible to help them stay compliant, and in
10 order to address that issue I attempted to call him at
11 the last known phone number that we had.

12 Nobody answered the phone. It did have a
13 voicemail. I left a message advising him that he needed
14 to register with us not later than January 8, 2014. You
15 might notice that that is beyond the month that he was
16 required to register and again we will do our best to
17 keep people compliant. That's our responsibility in the
18 registry to you and to the other residents of Charleston
19 County.

20 Q. Mr. Stober, were you required to give Mr. Cleveland
21 a courtesy call, if I may call it that?

22 A. No, sir.

23 Q. So just to sort of backtrack, did John Cleveland,
24 Jr. register with you in the sex offender registry in
25 September 2013?

1 A. Yes, sir.

2 Q. Was he required to register in December of 2013?

3 A. Yes, sir.

4 Q. Did he register in 2013 on the month of December?

5 A. No, sir, he did not.

6 MR. MAYNOR: Court's indulgence?

7 THE COURT: Yes.

8 BY MR. MAYNOR:

9 Q. Mr. Stober, did you notify Mr. Cleveland, Jr. of
10 his registration in December?

11 A. Yes, sir. We would have performed a computer
12 generated postcard which you've seen earlier that would
13 have been mailed to all registrants required to register
14 in that month. Again, that is not required by law. That
15 is something we go above and beyond.

16 Q. Thank you, Mr. Stober. Answer any question
17 Mr. Gailliard has.

18 THE COURT: Mr. Gailliard?

19 MR. GAILLIARD: Your Honor, no questions for this
20 witness.

21 THE COURT: Thank you. You may step down.

22 THE WITNESS: Thank you, Your Honor.

23 MR. CORVEY: The State rests, Your Honor.

24 THE COURT: All right. Thank you.

25 All right. Ladies and gentlemen, this is a good

1 time to break for the day. So I'm going to dismiss you
2 for the evening with instructions that you get a good
3 night's sleep and be back here at 9:30 tomorrow morning
4 and we will finish up the case.

5 Thank you, ladies and gentlemen. Please do not
6 discuss this case with anybody. Don't do any independent
7 research. Keep your minds clear, pure so you can come
8 back in here and you can hear the rest of the evidence.
9 Thank you, ladies and gentlemen.

10 (WHEREUPON, the jury leaves the courtroom at
11 approximately 4:28 p.m.)

12 THE COURT: Thank you. You may be seated.

13 Mr. Gailliard, are there any motions to be made at
14 this time?

15 MR. GAILLIARD: No, Your Honor, not at this time.

16 THE COURT: Okay. All right. Thank you. I think
17 the State has rested. You don't want to make a motion at
18 this point?

19 You've rested; is that correct?

20 MR. CORVEY: That's correct, Judge. The State
21 rests.

22 THE COURT: Okay.

23 MR. GAILLIARD: I'll make a statutory motion to
24 dismiss at this point, Your Honor.

25 THE COURT: Okay. Thank you. Respectfully denied.

1 Thank you. Just want to make sure you're covered.

2 MR. CORVEY: 9:30 tomorrow, Your Honor?

3 THE COURT: 9:30.

4 MR. GAILLIARD: I suspected the Court denied my
5 motions?

6 THE COURT: Yes, sir. I respectfully denied.

7 MR. CORVEY: Your Honor, I have prepared a bench
8 warrant.

9 THE COURT: Yes. If you can get ahold of your
10 client, Mr. Gailliard, it's not over until it's over.

11 (WHEREUPON, the trial was recessed for the day.)

12 Thursday, October 15, 2015

13 THE COURT: Good morning, everyone. You can take
14 your seats. Has everyone had an opportunity review the
15 charge?

16 MR. CORVEY: I have no exceptions or additions from
17 the State.

18 THE COURT: Any objections?

19 MR. GAILLIARD: No exceptions, Your Honor.

20 THE COURT: Very well. I guess you are going to
21 rest when they come out?

22 MR. GAILLIARD: That's correct, Your Honor.

23 THE COURT: Well, what we'll do, do you want to go
24 ahead and renew your motion right now so when they come
25 out I don't have to send them back out?

1 MR. GAILLIARD: Yes, Your Honor. Certainly. I'm
2 going to renew my notion to dismiss that I made at the
3 beginning of the trial and renew that at the end of the
4 State's case.

5 THE COURT: And based upon there has been no
6 evidence changing that my ruling will be the same. So
7 when you come out and rest then I'll tell the jury that
8 that's all the evidence. You get last argument because
9 you put up no evidence. So are you all ready to begin?

10 MR. CORVEY: Ready to proceed.

11 THE COURT: All right. Let's bring them in.

12 (WHEREUPON, the jury enters the courtroom at
13 approximately 9:45 a.m.)

14 THE BAILIFF: All seated, Your Honor.

15 THE COURT: All right. Thank you.

16 Good morning, ladies and gentlemen. I hope you all
17 had a nice evening. It certainly feels nice out this
18 morning. I guess all on its way being the 15th of
19 October it would certainly be expected.

20 Is the State ready to proceed this morning?

21 MR. CORVEY: The State is ready, Judge.

22 THE COURT: The defense ready?

23 MR. GAILLIARD: Yes, Your Honor.

24 THE COURT: Mr. Gailliard?

25 MR. GAILLIARD: The defense rests at this time,

1 Your Honor.

2 THE COURT: All right. Thank you.

3 All right. Ladies and gentlemen, the State rested
4 yesterday and the defense has now rested so all the
5 testimony that you're going to hear in this case has now
6 been heard and now the attorneys will give you their
7 closing arguments and I will then charge you the law that
8 is to be applied in this case, and then you will be sent
9 back to your jury room to begin your deliberations.

10 Mr. Corvey, for the State.

11 MR. CORVEY: Thank you, Judge. May it please the
12 Court.

13 Good morning, ladies and gentlemen. Again, my name
14 is Ted Corvey on behalf of the South Carolina, and Scott
15 Maynor on behalf of the Ninth Judicial Circuit. I
16 sincerely appreciate you all coming here and paying
17 attention to this. I know it's been a long week and we
18 sincerely appreciate the attention you give. We
19 certainly couldn't do our jobs without your assistance
20 and for that I'm very grateful.

21 As you all know we're here for the case of State of
22 South Carolina vs. John Cleveland for failing to register
23 as a sex offender. Now, before getting into a little bit
24 about the facts of this case I want to touch on something
25 that Mr. Maynor mentioned in his opening.

1 We are here because the State of South Carolina
2 established the sex offender registry in 1994 to protect
3 the community. In fact, the legislature said it better
4 than I could. The intent of this article is to promote
5 the State's fundamental right to provide for the public
6 health, welfare and the safety of its citizens. The sex
7 offender registry provide law enforcement with the tools
8 needed in investigating criminal offenses. Statistics
9 show that sex offenders often pose a high risk of
10 reoffending. Additionally, law enforcement's efforts to
11 protect communities, conduct investigations and apprehend
12 offenders who commit sex offenses are impaired by the
13 lack of information about these convicted offenders who
14 live within the law enforcement agency's jurisdiction.

15 Now, we are not here to punish Mr. Cleveland for
16 his past wrongdoings. We are here the decide whether or
17 not he committed a new wrongdoing in failing to abide by
18 the law of the State.

19 In establishing the sex offender registry the
20 legislature gave the State Law Enforcement Division the
21 right to promulgate regulations about how the registry
22 will conduct business, how it will be handled by the
23 sheriffs in each county, and what sort of informations
24 and what obligations those sheriff's offices can hold
25 offenders liable for.

1 State code 23-3-450 provides that the offenders
2 shall register with the sheriff in each county in which
3 he resides. An offender shall not be considered to be
4 registered until all information prescribed by SLED has
5 been provided to the sheriff.

6 Now, within that obligation to register with the
7 sheriff of each county there is a duty. There is a duty
8 that Mr. Cleveland has to contact the sheriff's office in
9 order to register. You heard from both Deputy Bowen and
10 Mr. Stober about how easy it is to register. It takes 15
11 minutes. Come in, provide the information, they go over
12 this list of pre-required questions, check in with you
13 and then you go home.

14 Now, with regards to this duty and with regards to
15 what the law says it is the duty of the offender to
16 contact the sheriff in order to register. If the
17 offender fails to register or provide notification of a
18 change in address then he is guilty for failing to
19 register as a sex offender.

20 Now, one caveat before touching on these two
21 points. This is the law as I see it but Judge Young will
22 shortly charge you on the law that is applicable in this
23 case and that's the law you must decide but for me I
24 found it easy to break it down into two steps. For the
25 State to prove its case all we had to show and all we

1 have to show is that Mr. Cleveland was on the sex
2 offender registry and that he failed to register in
3 December 2013.

4 Now, you heard testimony from Ms. Sarah Lippe with
5 Charleston Clerk of Court's Office and we entered into
6 evidence State's Exhibit 1 and State's Exhibit 3 through
7 her testimony. State's Exhibit 1 was the indictment that
8 brought Mr. Cleveland into the judicial system on the
9 charge of sexual misconduct with a minor in the second
10 degree in 1986. State's Exhibit 3 is his sentencing
11 sheet. He pled guilty to that offense.

12 As a result, after the sex offender registry was
13 established by our State as the law in this State he was
14 required to register quarterly for life as a tier three
15 sex offender. In 2001, he was notified of those
16 requirements and came into the Sheriff's Office. He
17 signed a document acknowledging that from here on out for
18 the rest of his life he had to come every three months to
19 the Sheriff's Office in Charleston County and register.
20 He signed, he acknowledged certain obligations that he
21 has. He acknowledged that this is a responsibility that
22 he now must conduct as being a citizen of the State of
23 South Carolina.

24 I understand that I'm required to register with the
25 sheriff of the county in which I reside annually for

1 life. In 2001 he was made aware of his obligations.
2 He's been made aware of those obligations at each
3 opportunity and each time he has come in to register with
4 the Sheriff's Office in Charleston County for quite
5 sometime.

6 In his June 2013 annual registration with Deputy
7 Jason Bowen they went over his information and they
8 confirmed it. He didn't provide his updated address,
9 which is a violation of the statute. They then also went
10 over a long list that you can see up there.
11 Mr. Cleveland acknowledged with his initials and
12 ultimately his signature as his understanding of all the
13 obligations and requirements upon him.

14 I think the most telling line of that whole
15 document is right there at the top, All offenders must
16 register biannually or quarterly for life, and
17 Mr. Cleveland acknowledged that I understand that I am
18 required to register and I must present myself in person
19 to register.

20 I don't think anything could be clearer. In an
21 effort to make sure that it was clear they go over these
22 things with him every single time he comes in.

23 The end of that June registration he was made aware
24 not only of what his registration dates or months were
25 for the rest of the year, June, September, December and

1 March, he was then told my next registration month is in
2 September 2013. He acknowledged that, he signed off on
3 that. He also acknowledged acceptance of the fact that
4 he would have to register in December of 2013 and March
5 of 2014 before the next year begins.

6 So he comes in in September, meets with Bob Stober.
7 They again go over much of the same information. He
8 still fails to update his address and he acknowledges
9 that he understands his obligations and he understands
10 that he must come in in December of 2013 to register with
11 the Sheriff's Office. He never shows.

12 As a result, the Sheriff's Office didn't
13 immediately on January 1st issue a warrant. They took
14 several steps, several steps they are not required to by
15 law. The only thing that is required by law and the only
16 obligations that are placed by the Sheriff's Office are
17 to have registries, and certain duties and obligations
18 and legal aspects of the registry that they must abide
19 by, but they don't have to provide extra contact.

20 They don't have to call. They don't have to send
21 letters notifying them of the best time to register, when
22 the line will be shortest in order to make it as easiest
23 as possible on those offenders which have to abide by
24 this requirement as being citizens of the State of South
25 Carolina. Not only that, they don't have to call him and

1 give him extra time.

2 They didn't have to take steps to allow him to come
3 in in December after Deputy Chaves with the Sheriff's
4 Office went to his home and found out that he hadn't been
5 living there for a year. For one year he hadn't notified
6 the Sheriff's Office. He hadn't been fulfilling his
7 obligations as being required to register.

8 Even then they wait. Bob Stober calls him shortly
9 after Christmas, says if you can get here in early
10 January no worries. We just want to make sure you are
11 compliant. We don't want you to fall out of compliance.
12 We want you to abide by your obligations and we want to
13 help you in any way we can to do so. Still even then
14 they give him more time.

15 It's not until late January that Deputy Bowen
16 starts his investigation and realizes that this
17 defendant, Mr. Cleveland, hasn't been locked up anywhere.
18 He's not anywhere. He's just not abiding by his
19 obligations. So then finally in January, late January,
20 January 27 Deputy Bowen issues the warrant for failure to
21 register.

22 Now, I know this has been a long week for you guys.
23 It's not easy to get drawn out of your daily lives to
24 come in and judge another person about what they do but
25 we are here because what the legislature said. We are

1 here because the requirements placed on those who have in
2 their past made mistakes, committed certain offenses that
3 place them on the sex offender register have obligations.
4 They have to come in and register, and we are here for
5 the safety of the community.

6 We are here because Mr. John Cleveland failed to do
7 what he acknowledged that he must quarterly for life. He
8 failed to do two simple things. He was on the registry
9 and he failed to register. Through the State's case we
10 have proved those two aspects, and because of that,
11 because we've proved that he was on the sex offender
12 registry for his conviction in 1987 for a sexual
13 misconduct with a minor in the second degree and because
14 we proved that he failed to register in December 2013 you
15 must find the defendant, John Cleveland, guilty.

16 THE COURT: Thank you.

17 Mr. Gailliard?

18 MR. GAILLIARD: May it please the Court, Your
19 Honor?

20 THE COURT: Yes, sir.

21 MR. GAILLIARD: Mr. Foreman, ladies and gentlemen
22 of the jury, the Judge will charge you later that the
23 defendant's absence is not to be taken against him, and
24 that the State has to prove beyond a reasonable doubt
25 every issue that they have raised, and after you've had a

1 chance to consider that we'd ask you to come back with a
2 verdict. Thank you.

3 THE COURT: All right. Thank you.

4 All right. Ladies and gentlemen, all the testimony
5 and the evidence to be presented to you in this case has
6 now been presented to you. The attorneys have given
7 their closing arguments. Now is the time where I will
8 charge you the law that is to be applied in this
9 particular case.

10 Ladies and gentlemen, I remind you that during this
11 trial you and I have certain duties to perform. As the
12 trial judge it is my responsibility to preside over the
13 trial of this case and I also have the duty to the rule
14 on the admissibility of evidence that is offered during
15 this trial. You are to consider only the competent
16 evidence that was presented from the witness stand or any
17 exhibits that are made part of the record, and if there
18 was any testimony ordered stricken from the record during
19 this trial you must disregard it because, like I said,
20 you are only to consider the testimony from the witness
21 stand and any exhibits or any stipulations of counsel.

22 Now, ladies and gentlemen, I have the additional
23 duty to charge you the law that is to be applied in this
24 case and as the presiding judge I am the sole judge of
25 the law of this case and it is your duty as jurors to

1 accept and apply the law exactly as I now state it to
2 you. If you already have some idea as to what the law is
3 or what the law ought to be and it does not agree with
4 what I now tell you the law is you must abandon that idea
5 because you were sworn to accept and apply the law
6 exactly as I now state it to you.

7 Now, ladies and gentlemen, in every case tried
8 before a jury, you, the jury, become the sole and
9 exclusive judges of the facts in the case. As the trial
10 Judge, I cannot infer, comment or in any way make any
11 statement to a trial jury about the facts of the case.

12 Since you are the jury, as I said, you are the sole
13 judges of the facts and you are not to infer by anything
14 that I have said during the progress of this trial in
15 ruling on the admissibility of evidence or otherwise, or
16 anything that I now say during the course of these
17 instructions that I have any opinion about the facts of
18 the case. The law simply does not allow me to have an
19 opinion about the facts of the case. That's a matter
20 solely for you as jurors to determine and as jurors it is
21 your duty to determine the effect, the value and the
22 weight, and the truth of the evidence which has been
23 presented during this trial.

24 Now, ladies and gentlemen, the indictment in this
25 case alleges one offense against the defendant, failure

1 to register as a sex offender under indictment
2 2015-GS-10-19. And I'll remind you, the fact that the
3 defendant was arrested, charged and indicted is not
4 evidence in this case and cannot be considered by you as
5 evidence of guilt nor does it create any presumption or
6 inference of guilt. The indictment is simply the formal
7 written instrument; while it contains the charges made
8 against the defendant and it is the formal document that
9 brings this case into court.

10 Now, ladies and gentlemen, the defendant has pled
11 not guilty to the charge in the indictment and that plea
12 puts the burden on the State to prove the defendant
13 guilty. A person charged with committing a criminal
14 offense in South Carolina is never required to prove
15 himself innocent and I charge you, ladies and gentlemen,
16 that's an important rule of law that a defendant in a
17 criminal trial no matter what the seriousness of the
18 charge might be will always be presumed to be innocent
19 for the crime for which the indictment was issued unless
20 it has been proved by evidence satisfying you of that
21 guilt beyond a reasonable doubt.

22 Presumption of innocence does not end when you
23 begin your deliberations but it accompanies the defendant
24 throughout the trial until you reach a verdict of guilt
25 based on evidence satisfying you of that guilt beyond a

1 reasonable doubt.

2 Presumption of innocence is like a robe of
3 righteousness that is placed about the shoulders of a
4 defendant and it remains with that defendant again until
5 it has been stripped by evidence satisfying you of that
6 defendant's guilt beyond a reasonable doubt.

7 The presumption of innocence is not a mere legal
8 theory. It's not just a legal phrase but it is a
9 substantial right to which every defendant is entitled
10 unless, again, you, the jury, are satisfied from the
11 evidence of the defendant's guilt beyond a reasonable
12 doubt.

13 As I said earlier, the State has the burden of
14 proving the defendant guilty beyond a reasonable doubt.
15 Some of you may have served as jurors on civil cases
16 where you were told that it is only necessary to prove
17 that a fact was more likely true than not true such as by
18 the greater weight or the preponderance of the evidence.

19 In criminal cases, however, the State's proof must
20 be more powerful than that. As I said, it must be beyond
21 a reasonable doubt. Now, proof beyond a reasonable doubt
22 is proof that leaves you firmly convinced of the
23 defendant's guilt.

24 Ladies and gentlemen, there are very few things in
25 this world that we know with absolute certainty and the

1 law in a criminal case does not require that proof --
2 does not require proof that overcomes every possible
3 doubt. If based upon your consideration of the evidence
4 you are firmly convinced that the defendant is guilty of
5 the crime charged you must find the defendant guilty. If
6 on the other hand you think there's a real possibility
7 that the defendant is not guilty then you must give the
8 defendant the benefit of doubt and find him not guilty.

9 Ladies and gentlemen, there are two types of
10 evidence that are generally presented during a trial.
11 There's direct evidence and there's circumstantial
12 evidence. Direct evidence is the testimony of a person
13 who claims to have actual knowledge of a fact such as an
14 eyewitness. It is evidence which immediately establishes
15 the main fact to be proved.

16 Circumstantial evidence is proof of a chain of
17 facts and circumstances indicating the existence of a
18 fact. And, again, crimes may be proved by circumstantial
19 evidence. The law makes absolutely no distinction
20 between the weight or value to be given to either direct
21 or circumstantial evidence, however, to the extent that
22 the State relies on circumstantial evidence all of the
23 circumstances must be consistent with each other and when
24 taken together point conclusively to the guilt of the
25 accused beyond a reasonable doubt.

1 If these circumstances merely portray the
2 defendant's behavior as suspicious the proof has failed
3 and the State has the burden of proving the defendant
4 guilty beyond a reasonable doubt, as I said, and this
5 burden rests on the State regardless of whether it relies
6 on direct evidence, circumstantial evidence or some
7 combination of the two.

8 Now, ladies and gentlemen, I instruct you and I
9 emphasize the fact that the defendant did not testify is
10 not to be considered by you in any way in your
11 deliberation and your consideration of the question of
12 guilt or innocence of the defendant. It must not be
13 considered by you in any manner whatsoever.

14 Ladies and gentlemen, the defendant has the
15 constitutional right to remain silent and the assertion
16 of this right must not be considered by you in your
17 deliberations. And I repeat, under your oath you are to
18 draw no conclusion whatsoever from the fact that the
19 defendant did not testify in this case and the fact that
20 the defendant did not testify should not even be
21 discussed in the jury room.

22 The burden of proof, as I've stated, is on the
23 State to prove the defendant guilty beyond a reasonable
24 doubt and the defendant never has to prove his innocence.

25 Now, ladies and gentlemen, under the laws of this

1 State a defendant may be tried even if the defendant does
2 not attend the trial but the fact that the defendant is
3 not present may not be considered against a defendant in
4 any manner whatsoever.

5 Now, as to the credibility of witnesses, ladies and
6 gentlemen, you must determine the credibility of those
7 witnesses who have testified in this case, and
8 credibility simply means believability. And it becomes
9 your duty as jurors to analyze and to evaluate the
10 evidence and determine which evidence convinces you of
11 its truth.

12 In determining the believability of witnesses who
13 have testified in this case you may believe one witness
14 over several witnesses or several witnesses over one
15 witness. You may believe a part of the testimony of a
16 witness and reject the remaining parts of the testimony
17 of that same witness. You may believe the testimony of a
18 witness in its entirety or reject the testimony of a
19 witness in its entirety.

20 And, ladies and gentlemen, you may consider whether
21 any witness has exhibited to you any interest, bias,
22 prejudice or other motive in this case. You may also
23 consider the appearance and the manner of a witness while
24 on the witness stand.

25 Now, ladies and gentlemen, the defendant in this

1 case is charged with failure to register for the sex
2 offender registry and the State must prove beyond a
3 reasonable doubt that the defendant did not register for
4 the sex offender registry.

5 This is a statutory offense and Section 23-3-400
6 et seq of the South Carolina Code of Laws requires that
7 any person residing in South Carolina that has been
8 convicted or pled guilty to the offense of among other
9 things criminal sexual conduct must register with the
10 sheriff for the sex offender registry.

11 Now, ladies and gentlemen, there are two possible
12 verdicts which you may find in this case on the charge of
13 failure to register as a sex offender. Under indictment
14 2015-GS-10-19 not guilty or guilty.

15 Ladies and gentlemen, there's no significance
16 whatsoever in the order that I state the verdicts. It's
17 just that one must be stated first.

18 Now, ladies and gentlemen, your verdict must be
19 unanimous. All 12 of you must agree, and your decision
20 must not be based on sympathy, passion, prejudice or any
21 other consideration that is not in evidence in this case.

22 And, Mr. Foreman, when the jury does reach a
23 verdict if you would please check the appropriate box,
24 sign your name at the bottom, date it and then knock on
25 the jury room door and let the bailiffs know that you

1 have reached a verdict, and then you will be brought back
2 into the courtroom for the publication of your verdict.

3 Now, ladies and gentlemen, I ask that you return to
4 the jury room but please do not begin your deliberations.
5 There's still some matters that I have to take up with
6 the attorneys.

7 Now, ladies and gentlemen, what I just read to you
8 I am going to send a copy back to the jury room in case
9 you need to refer to it and recollect anything that I
10 stated to you over the last 10 minutes. All right?
11 Thank you, ladies and gentlemen.

12 (WHEREUPON, the jury leaves the courtroom at
13 approximately 10:10 a.m.)

14 THE COURT: Are there any objections to the charge?

15 MR. CORVEY: None from the State, Your Honor.

16 MR. GAILLIARD: No objections to the charge, Your
17 Honor.

18 THE COURT: All right. Thank you. If you all want
19 to get together and make sure the right evidence goes
20 back and we will send them back to begin their
21 deliberations. Court is at ease pending the call of the
22 Court.

23 (WHEREUPON, the evidence and verdict form was taken
24 to the jury at approximately 10:15, and they were
25 instructed to begin their deliberations.)

1 (WHEREUPON, court was in recess pending the verdict
2 from the jury.)

3 THE COURT: Thank you. Please take your seats.
4 The jury has got a verdict. Let's bring them in and find
5 out what it is.

6 (WHEREUPON, the jury enters the courtroom at
7 approximately 10:30 a.m.)

8 THE BAILIFF: All jurors are present, Your Honor.

9 THE COURT: All right. Thank you.

10 Mr. Foreman, has the jury reached a verdict?

11 THE FOREMAN: We have, Your Honor.

12 THE COURT: Is it unanimous?

13 THE FOREMAN: It is, Your Honor.

14 THE COURT: Please hand it to the bailiff.

15 (PAUSE.)

16 THE COURT: Please publish the verdict.

17 THE CLERK: Yes, sir. The verdict form in the
18 matter of State of South Carolina vs. John Cleveland,
19 Jr., defendant, we, the jury, by unanimous agreement find
20 the defendant, John Cleveland, Jr., on the charge of
21 failure to register as a sex offender guilty. Signed by
22 the foreperson of the jury on the 15th of October 2015.

23 Ladies and gentlemen of the jury, if this was your
24 verdict, please raise your right hand.

25 Thank you. Please let the record reflect that all

1 12 jurors raised their right hand.

2 THE COURT: Mr. Gailliard, do you request polling
3 of the jury?

4 MR. GAILLIARD: No, Your Honor, I do not.

5 THE COURT: All right. Then the verdict stands.

6 Ladies and gentlemen, let me take this opportunity
7 to thank you for reaching a verdict. Some jurors can't
8 do that and you all did what you were charged to do. You
9 listened to the evidence, you listened to the law and
10 whether or not I think your verdict is correct it doesn't
11 matter. It's your verdict, and again, I thank you all
12 for coming together and doing that.

13 Ladies and gentlemen, there's a lot of important
14 things going on in Charleston right now but nothing is
15 more important than making sure that justice is done and
16 the truth in this matter came forward.

17 Ladies and gentlemen, I've always told you you
18 can't talk about the case as you were going out. You can
19 talk with anybody you want to about the case as much as
20 you want to or as little as you want to.

21 Ladies and gentlemen, they are going to pay you
22 \$10 a day and that really doesn't hail in comparison to
23 the service that you've done to your County and State.

24 Ladies and gentlemen, I tell people that what makes
25 America great is not the politicians, it's not judges,

1 it's not the lawyers but it's people like you all who
2 come from your homes and everyday life to come here and
3 you don't know each other before you get here, you are
4 thrown together and it's amazing combined intelligence
5 that juries have sometimes.

6 Ladies and gentlemen, I thank you all. I tell
7 people I have the greatest job in the world because every
8 day I go to work I get to stand and sit between these two
9 flags. Now, these flags are really just pieces of cloth -
10 but what they represent is so much greater. Thousands
11 and thousands of people have died and bled for the cause
12 that's America that says that free people determine their
13 own destiny and in America only free citizens determine
14 whether someone else is guilty or not. It's not the
15 State, it's not the prosecutors, it's not judges, it's
16 not the police but free citizens like you all.

17 So, ladies and gentlemen, you didn't have to die
18 and bleed for this today but you did all that you can do
19 and I want to tell you that because you did such a great
20 job you can't serve as a juror for the next year and you
21 don't have to for the next three years, if you don't want
22 to do it.

23 Now, ladies and gentlemen, it would my honor to
24 shake your hands as you all go out of here. You all are
25 finished for the week so you do not have to come back at

1 any other point in time.

2 Ladies and gentlemen, again, thank you. You've
3 been great citizens for not trying to wiggle out of jury
4 duty, and I hope you leave out of here and have a better
5 understanding of your judicial system and thank you very
6 much. You all have a great day.

7 (The jury was excused.)

8 THE COURT: Mr. Gailliard, any posttrial motions?

9 MR. GAILLIARD: No, Your Honor.

10 THE COURT: All right. Thank you. The Court is
11 adjourned.

12 (Off the record conversation.)

13 MR. MAYNOR: Your Honor, with regard to sentencing,
14 do we just come back for --

15 THE COURT: I'll do it and seal it. You want to
16 make an argument concerning sentencing because you all
17 need to give me the verdict form.

18 MR. GAILLIARD: We ask that the Court go towards
19 the three years rather than the five and give him credit
20 for the time served and pretrial confinement.

21 THE COURT: How much pretrial confinement did he
22 have?

23 MR. CORVEY: I have two days.

24 MR. GAILLIARD: Oh, no. It was 90 days, Your
25 Honor.

1 THE COURT: Okay. Well, they can verify that. He
2 wasn't in on something else, on another charge?

3 MR. CORVEY: He was in on assault and battery at
4 some point, Your Honor, but on the sex registry I only
5 have two or three days.

6 THE COURT: Okay.

7 MR. GAILLIARD: Of course, Your Honor, we would
8 contend that confinement is confinement and all of these
9 charges were pending at that time so.

10 THE COURT: What I'll do is I'm going to check
11 credit for time served then somebody will figure it out.
12 Is that the verdict form or the sentencing sheet?

13 MR. MAYNOR: It is, Your Honor.

14 MR. GAILLIARD: Do I need to sign this, Your Honor?

15 THE COURT: You don't. The jury took care of it.

16 MR. GAILLIARD: You all have a wonderful day.

17 THE COURT: You all, too. Thank you.

18 (WHEREUPON, the trial was concluded.)

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C E R T I F I C A T E

1

2

3 I, Sharon L. Vizer, Official Court Reporter for the
4 Ninth Judicial Circuit of the State of South Carolina, do
5 hereby certify that the foregoing is a true, accurate and
6 complete transcript of record of all the proceedings had
7 and the evidence introduced in the trial of the captioned
8 case in Circuit Court on the 13th, 14th and 15th day of
9 October 2015.

10 I do further certify that I am neither of kin, counsel
11 nor have an interest to any party hereto.

12

13

January 11, 2017

14

s/Sharon L. Vizer

15

SHARON L. VIZER

16

CIRCUIT COURT REPORTER

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25

1 STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
2 COUNTY OF CHARLESTON) CASE NO. 2015-GS-10-019

3

4 STATE OF SOUTH)
CAROLINA,)
5) Transcript of Record
6 Plaintiff,)

7 vs.)

8 JOHN CLEVELAND,) Date: July 18, 2016
JUNIOR,)

9 Defendant.

10 * * * * *

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13 B E F O R E:

14 The Honorable Deadra Jefferson

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Denise J. Lauder, RPR

24

Ninth Judicial Circuit

25

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A P P E A R A N C E S

3

4 REPRESENTING THE STATE OF SOUTH CAROLINA:

5

6

TED CORVEY, ASSISTANT SOLICITOR

7

Ninth Circuit Solicitor's Office

8

101 Meeting Street

9

Charleston, SC 29401

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11 REPRESENTING THE DEFENDANT:

12

13

SHIRENE HANSOTIA, ESQUIRE

14

PUBLIC DEFENDER'S OFFICE

15

101 Meeting Street

16

Charleston, SC 29401

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9 INDEX OF EXHIBITS

10
11 (No exhibits were offered or
12 marked for identification.)

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1 (The following proceedings were had
2 July 18, 2016, in re State v. Cleveland, Charleston
3 County General Sessions Court, Charleston, South
4 Carolina.)

5 THE COURT: Case number 2015-GS-10-019,
6 State of South Carolina v. John Cleveland, Junior.
7 The offense is sex offender violation.

8 MR. CORVEY: I have the indictment
9 number, Judge, 2015-GS-10-00 --

10 THE COURT: Yeah, I have that. I was
11 looking at something else. He was charged with
12 failure to register, sex offender third offense.
13 He was tried in his absence by Judge Young, that
14 would be Jeffrey Young, on 10/15/15, and he was
15 sentenced to five years in the State Department of
16 Corrections. The jury found him guilty, the
17 verdict form is also enclosed in the sealed
18 sentence.

19 Having been tried in your absence, sir,
20 the only thing left for this Court's determination
21 is imposition of sentence, which was done by Judge
22 Young on October 15th of '15. So you are sentenced
23 to the State Department of Corrections for a period
24 of five years.

25 You will get credit for any time that

1 you've served pursuant to 24-13-40, and I'm sure
2 Ms. Hansotia will go over everything with you.

3 MS. HANSOTIA: Can he say anything on
4 the record, Your Honor?

5 THE COURT: For what purpose?

6 MS. HANSOTIA: He just wants to be able
7 to explain something.

8 THE COURT: There is nothing I can do.
9 The only purpose of this court is to impose
10 sentence when someone has been tried in their
11 absence. I have no authority to change Judge
12 Young's sentence. You will have to file an appeal.

13 Thank you.

14 THE DEPUTY: You can talk to him
15 downstairs.

16 MS. HANSOTIA: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 You can file a motion for
19 reconsideration with Judge Young if you want to,
20 Ms. Hansotia.

21 (These proceedings were concluded at
22 11:25 a.m.)

23

24

25

1 CERTIFICATE OF REPORTER

2

3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 26th day of November, 2016 at
13 Charleston, Charleston County, South Carolina.

14

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16

17

S/Denise Lauder
Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
August 2, 2017

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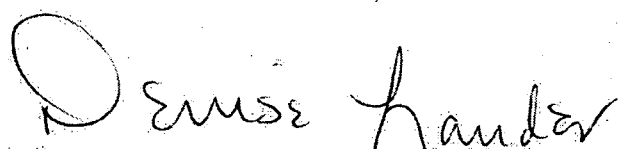
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16 

17 S/Denise Lauder
18 Carol Denise Lauder
19 Registered Professional
20 Reporter, CP
21 My Commission expires
22 August 2, 2017
23
24
25

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

STATE OF SOUTH CAROLINA)

vs.)

JOHN CLEVELAND, JR.)

Defendant)

COURT OF GENERAL SESSIONS

DOCKET NO. 2015-GS-10-0019

TRANSCRIPT OF RECORD

September 16, 2016
Charleston, South Carolina

B E F O R E:

THE HONORABLE WILLIAM JEFFREY YOUNG, JUDGE

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

TED CORVEY, ESQ.
Attorney for the StateSHIRENE C. HANSOTIA, ESQ.
Attorney for the DefendantJOYCE C. RUEGER, CVR-M
Circuit Court Reporter

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No exhibits were introduced

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1 PROCEEDINGS

2 THE COURT: The State versus John Cleveland.

3 MS. HANSOTIA: Good morning.

4 THE COURT: Yes ma'am, you may proceed. This is
5 your motion.

6 MS. HANSOTIA: Good morning, Your Honor. Thank
7 you, may it please the court? We're here on a motion to
8 reconsider. Just a little bit of background procedurally
9 Mr. Cleveland was tried in his absence. I'm going to get
10 into a little bit of the reasons behind that. His
11 attorney at the time was Mr. Robert Gailliard. He was
12 absent at the time and was brought into custody I believe
13 a few months back and I was assigned to the case as a
14 public defender basically to have the sentencing
15 unsealed. And I am now handling the motion to
16 reconsider; but just to give you a little background.

17 THE COURT: Okay.

18 MS. HANSOTIA: He is just -- now getting back to
19 his case he was sentenced in 1987 to a youthful offender
20 act program according to Mr. Cleveland ---

21 THE COURT: --- I'm not concerned about that. I'm
22 concerned about the hearing that happened last year. I
23 don't need to go all the way back because I didn't take
24 it all the way back. He wasn't here for his trial last
25 year.

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1 MS. HANSOTIA: Right.

2 THE COURT: So what's your point on that?

3 MS. HANSOTIA: Okay. Just to give you a little
4 background on that Your Honor the reason he did miss the
5 trial is he was going through a very difficult divorce
6 and he had some -- he has been hospitalized for some
7 mental health issues. He has lived here all his life.
8 He's got two grown kids; 22 and 30. He does have his
9 high school diploma and he's worked as a barber. He's
10 got a year of training in that field.

11 He's also struggled, Your Honor, with an addiction
12 to crack. He did get help in rehab and completed a life
13 skills program in York County that was 14 weeks long and
14 he's currently in a program at SCDC called ARP; a rehab
15 program. He does want to speak with you, Your Honor. He
16 has some things that he would like to say if you're
17 willing to hear him out.

18 THE COURT: I will. But let me hear from the State
19 first.

20 MR. CORVEY: Yes, Your Honor. ---

21 THE COURT: --- if I remember he was given notice
22 of the hearing.

23 MR. CORVEY: Well Judge it's even worse than that.
24 I don't remember the exact timing of how the trials fell
25 that week but we came in one afternoon and I believe it

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1 was a Thursday. We had picked a jury and we had some
2 pretrial motions. They were denied. We were then due to
3 start back either later that afternoon or the next
4 morning.

5 THE COURT: And he was here for that is that ---

6 MR. CORVEY: --- and he was here for that ---

7 THE COURT: --- yes, that's right.

8 MR. CORVEY: And just failed to arrive for the
9 trial. And it's somewhat ironic given what the charge
10 was. I mean failure to register to me is somewhat of a
11 strict liability defense, as much of one as we have in
12 criminal law in South Carolina, for him to then not
13 appear for the trial I think speaks volumes.

14 THE COURT: Yes, I knew there was something -- so
15 he was here?

16 MR. CORVEY: Yes, sir.

17 THE COURT: He had notice of the hearing. We
18 actually struck a jury. We went through pretrial
19 hearings which may not have turned out the way he wanted
20 but then the next day when he was on notice to be here
21 for trial he decided to do something else is that
22 correct?

23 MR. CORVEY: That's correct, Judge.

24 THE COURT: Is that your understanding of what
25 happened?

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1 MS. HANSOTIA: I was not here, but yes I think.

2 THE COURT: Okay.

3 MS. HANSOTIA: And I believe, Your Honor he just
4 would like to speak briefly. I think that we've gone
5 over these issues but what bothers him I believe most is
6 that he believes he shouldn't have been put on the sex
7 registry in the beginning ---

8 THE COURT: --- that's not before me ---

9 MS. HANSOTIA: --- I understand ---

10 THE COURT: --- he had to appeal that.

11 MS. HANSOTIA: I understand ---

12 THE COURT: --- all I'm concerned about is he
13 wasn't here when he had been here and then decided for
14 whatever reason that he didn't want to come before this
15 court that day. But I'll give him an opportunity to
16 speak. Yes, sir?

17 MR. CLEVELAND: Yes sir, Your Honor. I understand
18 because you gave me a direct order that I ---

19 THE COURT: --- I did ---

20 MR. CLEVELAND: --- that I was supposed to be in
21 court the next day ---

22 THE COURT: --- I really talked to you.

23 MR. CLEVELAND: Yes sir; and I accepted that. At
24 that point in time I really thought I was coming for a
25 motion for -- I didn't know we was going for trial. I

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1 had two different attorneys in the midst of this case and
2 Mr. Gilliard had me fire my public defender on this case.
3 And then when I had come into court with Mr. Gilliard now
4 he telling me I'm facing a jury trial today. We never
5 prepared for nothing. And so in the whole case today was
6 the first day, Your Honor, I finally got a clear
7 understanding of why I'm even on the registry first and
8 foremost. It's not before you. I disrespected your
9 court by not being here that day.

10 THE COURT: You did.

11 MR. CLEVELAND: I really did. And I'm explaining to
12 you why. Mentally I wasn't competent to stand no trial.
13 I wasn't competent to do nothing. I was messed up. And
14 so here today now I've got another lady who is
15 representing me to the best of her abilities and she
16 don't even know what's going on.

17 Me and Mr. Gilliard spoke. I told Mr. Gailliard I
18 said Mr. Gailliard listen I don't know what is going on
19 but it was something about money from the first start.
20 Mr. Gailliard was trying to sue the Department of
21 Corrections for me being on the registry. So here today
22 now he's not here to help represent me or say anything on
23 the behalf of why I'm even standing before you today,
24 which is like crazy because I spoke to Mr. Gailliard that
25 morning and I said Mr. Gailliard listen I can't beat 12

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1 people. There is no way. I signed the document. The
2 State -- listen sir, you did your job. I signed the
3 document saying that I want to register as a sex offender
4 for the rest of my life. But in 1987 when I was
5 sentenced to this charge sir I was a youthful offender.
6 We had promiscuous young people sex. The same victim in
7 this charge, Your Honor, was a member of the church that
8 I was a minister in that ministry. He called her, the
9 State did call her to verify her age.

10 Mr. Gailliard comes in here with a motion on him for
11 some sweetheart law when the age differential so that
12 morning when he found out about what was going on Mr.
13 Gailliard really threw me under the bus. So here it is
14 now I'm asking Mr. Gailliard if he would talk to the
15 State and say, hey I violated, I'm wrong, I'm guilty,
16 I'll do me. If I did wrong I'll do wrong, Your Honor.

17 But I asked Mr. Gailliard if he could actually
18 possibly talk to the State where I could be sentenced to
19 the second offense which would give me a year day for day
20 sentence. Right now I'm standing before you with five
21 years at 47 years olds day for day. I could never get
22 probation. I could never get any kind of nothing in the
23 state for five years.

24 THE COURT: But you realize the way you could
25 address that would have been to come to court. You

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1 thumbed your nose at this court. You said I don't like
2 what's going on and guess what? I'm going out of here
3 and I ain't coming back.

4 MR. CLEVELAND: Your Honor ---

5 THE COURT: --- I mean tell me what message does
6 that send to young people that if you don't like the way
7 it's going you just run?

8 MR. CLEVELAND: Your Honor, the message that it
9 gives me ---

10 THE COURT: --- I mean you ---

11 MR. CLEVELAND: --- the message that it gives me I'm
12 going to tell you the message for me I've been doing time
13 for so long. I'm tired ---

14 THE COURT: --- well, that's because you keep
15 messing up.

16 MR. CLEVELAND: Your Honor, I understand your point
17 of view. I'm tired; I'm 47 years old. I'm tired. I've
18 done time and time and time. And this actually
19 transpired when I was a kid. I've never really ---

20 THE COURT: --- no you weren't. This was last
21 year; you weren't a kid last year. You were 46 years old
22 last year. You had been in court. You knew you had to
23 be here and you just decided you had something else do
24 to. So this is not about when you were a kid. This was
25 last year. This was less than a year ago. You made the

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1 conscious choice to do what you wanted to do rather than
2 what I told you to do. Now tell me where does that leave
3 me?

4 MR. CLEVELAND: I have to respect that sir, and just
5 go to the next procedure that I can possibly go to.

6 THE COURT: And that's what you're going to have to
7 do because I did everything right that day, the State did
8 everything right, you did everything wrong and there is a
9 penalty for that. Motion to reconsider is denied. Thank
10 you. You have ten days to appeal my order.

11 *****END OF TRANSCRIPT OF RECORD*****
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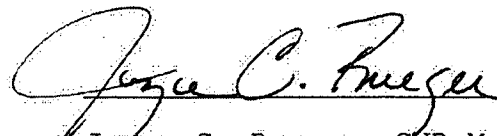
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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of General Sessions for Charleston County,
South Carolina on the 16th day of September, 2016.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

October 18, 2016



Joyce C. Rueger, CVR-M

Court Reporter

AMH20140909773

WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER

2014001673B

ARREST WARRANT NUMBER

2014A1010900046

DATE OF ARREST

September 4, 2014

ACTION OF GRAND JURY

Nancy H. K...
Foreperson of Grand Jury
Date:

JAN 13 2015

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2015GS1000019

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

January Term 2015

THE STATE

vs.

JOHN CLEVELAND, JR.

DOB: [REDACTED]

B/M

Indictment for

Failure to Register Sex Offender
- 3rd OffenseATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
[Signature]
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

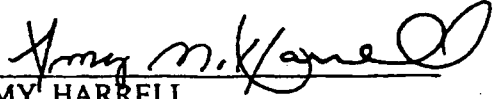
INDICTMENT

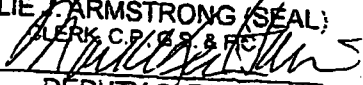
At a Court of General Sessions, convened on January 12, 2015 the Grand Jurors of Charleston County present upon their oath:

Failure to Register Sex Offender- 3rd Offense

That in Charleston County, South Carolina, on or about December 31, 2013, the Defendant, JOHN CLEVELAND, JR., did fail to register as a sex offender with the Charleston County Sheriff's Department after being instructed to do so, as required by Section 23-3-400, et. seq. of the South Carolina Code of Laws (1976) as amended, to wit: failed to report for registration; in violation of Section 23-3-470 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.

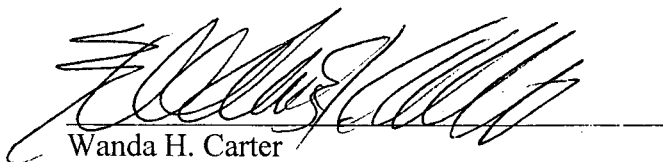

AMY HARRELL
ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
JULIE ARMSTRONG (SEAL)
CLERK C.P. & S. & J.C.
By 
DEPUTY CLERK

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 12th day of April, 2017.

RECEIVED

APR 12 2017

SC Court of Appeals