

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Darlington County

Honorable G. Thomas Cooper, Circuit Court Judge

RECEIVED

MAY 16 2017

S.C. SUPREME COURT

LARRY JAMES TYLER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002364

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHNNY JAMES
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, Sc 29201

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
 COUNTY OF DARLINGTON) 2013-GS-16-00603
) 2013-GS-16-00604
) 2013-GS-16-00605
) 2013-GS-16-00606
) 2013-GS-16-00608

STATE OF SOUTH CAROLINA)
) PLAINTIFF)
 vs.) TRANSCRIPT OF RECORD)
))
 LARRY TYLER)
) DEFENDANT)

February 25-27, 2013
 Darlington, South Carolina
 VOLUME 01 OF 03

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE; and a jury.

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

JOHN W. HOLT, IV., ASSISTANT SOLICITOR
 Attorney for the State

PATTI MCKENZIE PARKER, ASSISTANT SOLICITOR
 Attorney for the State

RICHARD JONES, PUBLIC DEFENDER
 Attorney for the Defendant

DORIS BROWN,

Victim [REDACTED]

JASMINE [REDACTED],

TYQUAN BROWN,

GEORGITA BROWN,

ERIC HODGES,

SHAWN TUNSDALL,

RUSS HARRELL, Darl. Cty. Sheriff's Office

HATTIE O. GORDON
Circuit Court Reporter

MASTER INDEX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

VOLUME 01: FEBRUARY 25, 2013

Voir Dire of the Jury	6
Selection of the Jury	10
Colloquy	16
Certificate of Reporter	18

VOLUME 02: FEBRUARY 26, 2013

Colloquy	21
Opening Statement by Ms. Parker	30
Opening Statement by Mr. Jones	38

DORRIS BROWN

Direct By Mr. Holt	43
Cross By Mr. Jones	46
Redirect By Mr. Holt	50

Victim ██████████

Direct By Mr. Holt	51
Cross By Mr. Jones	56
Redirect By Mr. Holt	59

JASMINE ████████ M ████████

Direct By Ms. Parker	60
--------------------------------	----

TYQUAN BROWN

Direct By Ms. Parker	68
Cross By Mr. Jones	74

1	GEORGITA BROWN	
2	Direct By Mr. Holt	79
3	Cross By Mr. Jones	84
4	ERIC HODGES	
5	Direct By Mr. Holt	85
6	Cross By Mr. Jones	91
7	SHAWN TUNSDALL	
8	Direct Mr. Holt	95
9	Colloquy	97
10	RUSS HARRELL	
11	Direct By Mr. Holt	98
12	Cross By Mr. Jones	113
13	Rédirect By Mr. Holt	125
14	Colloquy	126
15	Certificate of Reporter	135
16		
17	<u>VOLUME 03: FEBRUARY 27, 2013</u>	
18	Colloquy	138
19	Closing Statement by Mr. Holt	141
20	Closing Statement by Mr. Jones	158
21	Charge of the Court	172
22	Verdict of the Jury	186
23	Colloquy	188
24	Sentence of the Court	189
25	Certificate of Reporter	195

STATE'S EXHIBITS

	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1				
2	1	Computer Tower	21	104
3	2	Cell Phone	21	101
4	3	Cell Phone Charger	21	101
5	4	Cell Phone Box	21	101
6	5	Evidence Report	21	110
7	6	Letter - 10/03/2011	21	108
8	7	Search Warrant	21	110
9	8	Letter - 10/13/2011	21	
10	9	Blue Underwear	21	112
11	10	Phone Report	68	110
12	11	Text Message Log	68	102
13	12	DVD - Larry Tyler Statement	89	91
14	13	Photo Spread	98	106
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

VOIR DIRE OF THE JURY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: I guess under the recent Court decision I might better call the case. We will err on the side of caution today.

MR. HOLT: That's how I live, Judge.

THE COURT: Okay. All right. If I can have the attention of the jury panel, we are calling the case for trial -- there are five different indictments, ladies and gentlemen. All of them have been true billed by the Grand Jury of Darlington County. And they're entitled the State v. Larry James Tyler. We under that he is present in Court.

Mr. Tyler, if you will stand and face the jury to see if anybody might be related to you. Thank you, sir. You may be seated. Indictments, I'll take them as I come to them. 2013-603, the State v. Larry James Tyler. It's for criminal solicitation of a minor under Section 16-15-342 of our Code of Laws 1976 as amended.

Indictment 2013-605, contributing to the delinquency of a minor under Section 16-17-490 of our Code of Laws.

2013-607, State v. Larry James Tyler. As to disseminating harmful material to minors. And that's Section 16-15-385(a), (b) and 16-15-0 of our Code of Laws.

2013-604, the State v. Larry James Tyler. It's for sexual exploitation of a minor, second-degree, under

1 Section 16-15-405(a).

2 And then Indictment 2013-608, the State v. Larry
3 James Tyler. The charge of disseminating obscene material
4 to a minor 12 years or age or younger under 16-15-355 of
5 our Code of Laws.

6 As I said Mr. Tyler is present in Court represented
7 by Mr. Rick Jones of the Darlington County Bar. And we
8 will proceed with the jury trial in this matter. That
9 means I've got to ask you some additional questions.
10 First of all, is anybody on the jury panel related by
11 blood or marriage or have any business, social, religious
12 or fraternal relationship or connection with the
13 Defendant, Larry James Tyler? If so we need you to stand
14 at this time.

15 Is anyone on the jury panel connected by blood or by
16 marriage -- that is related by blood or by marriage or
17 have any business, social, religious or fraternal
18 connection or relationship with any of the following
19 individuals: Ernestine Witherspoon? If they're present
20 in Court we need them to stand. Some of them are not.
21 **Victim** [REDACTED] Jasmine **M** [REDACTED], Georgita Brown, Russ
22 Harrell, Shawn Tunstall; that's T-U-N-S-T-A-L-L, Larry
23 Stivender; that's S-T-I-V-E-N-D-E-R, Eric Hodges with law
24 enforcement. He was here. Dorris Brown, Jesse
25 **M** [REDACTED], Tyquan Brown and Chase McDaniel.

1 The potential witnesses may be seated. All right.
2 I've got one juror standing. Yes, sir:

3 POTENTIAL JUROR: Dorris Brown rents a lot from me.

4 CLERK OF COURT: That's Juror Number 100, Grover
5 Milligan.

6 THE COURT: The fact that potential witness rents a
7 lot from you would that affect your ability to be a fair
8 and impartial juror in this trial should you be selected?

9 POTENTIAL JUROR: No, sir.

10 THE COURT: Thank you, sir. Anyone else? Just
11 taking a casual glance at the indictments looks like the
12 time period on these alleged offenses were back in 2011.
13 I see one that says, "July the 1st to September 24th."
14 See another same date. It appears that all of them are
15 those same dates, and the allegations -- let me pose this
16 question: Does anybody have any personal knowledge or
17 developed any opinion about these cases?

18 Does anybody on the panel know of any reason, if you
19 have any biased or formed an opinion whereby you could not
20 be both fair and impartial to the Defendant, Larry James
21 Tyler, and the State of South Carolina? If you feel like
22 you could not be fair and impartial for any reason, that
23 you may have developed an opinion on or have any bias
24 against law enforcement or against the Defendant in any
25 kind of way now is the time to let me know, but don't make

1 any kind of comment until I ask you to.

2 All right. I'm going to open it up even a little
3 wider. Does anybody know of any reason, whatsoever, that
4 you feel like you could not be a fair and impartial juror
5 on this matter. If so we need you to raise your right
6 hand or either stand.

7 Is there any further inquiry from the state?

8 MR. HOLT: No, sir, Your Honor.

9 THE COURT: Defense?

10 MR. JONES: No, sir.

11 THE COURT: Oh, I forget one thing. I'm sorry. Got
12 Solicitor Holt, John Holt, and we've got Attorney Rick
13 Jones. Is anybody presently represented by either of
14 these attorneys or by the Solicitor or the Public
15 Defender's office? If so we need you to raise your right
16 hand? Or you have been represented in the past raise your
17 right hand.

18 CLERK OF COURT: Got somebody got their hand up.

19 THE COURT: All right. If y'all will stand and just
20 answer the question.

21 CLERK OF COURT: If you will give your juror number
22 and name, please.

23 POTENTIAL JUROR: 109, Joseph Rhodes.

24 THE COURT: All right. Who were you represented by?

25 POTENTIAL JUROR: Rick Jones.

Selection of the Jury

10

1 THE COURT: Thank you, sir. Yes, sir.

2 POTENTIAL JUROR: Juror 40, Cameron Felkel. I was
3 represented by Rick Jones.

4 SELECTION OF THE JURY

5 THE COURT: Thank you, sir. Anyone else? All right.
6 I don't have the statute right here in front of me. Five
7 and five or five and ten?

8 MR. JONES: I think it's five and five.

9 MR. HOLT: Five and five, Judge.

10 THE COURT: All right.

11 CLERK OF COURT: When your name is called if you will
12 bring whatever you brought with you today. You will come
13 forward and stand right -- face back out this way for me,
14 please. Juror Number 67, Vernessa Jackson. If you will
15 come forward, please. What sayest the State.

16 MR. HOLT: Please present Ms. Jackson.

17 CLERK OF COURT: Defense, what sayest the Defense.

18 MR. JONES: Please seat the juror.

19 CLERK OF COURT: Please have a seat in this jury box
20 for me, please, Ms. Jackson. Thank you. Juror Number 45,
21 Robin Galloway. If you will come forward please.

22 MR. HOLT: Mr. Clerk, what was the number?

23 CLERK OF COURT: Forty-five. What sayest the State.

24 MR. HOLT: Please present Miss Galloway.

25 CLERK OF COURT: What sayest the Defense.

Selection of the Jury

11

1 MR. JONES: Please seat the juror.

2 CLERK OF COURT: Please have a seat in the jury box
3 for me, Miss Galloway. Thank you. Juror Number 129,
4 Kellie Tolson. What sayest the State.

5 MR. HOLT: Please present Ms. Tolson.

6 CLERK OF COURT: What says the Defense.

7 MR. JONES: Please excuse the juror.

8 CLERK OF COURT: You've been excused from this
9 particular case, Ms. Tolson. If you would just have a
10 seat back out in the audience for me, please. Juror
11 number 62, Hattie Hughes. If you will come forward,
12 please. If you will stand right here for me, please.
13 What sayest the State.

14 MR. HOLT: Please present Ms. Hughes.

15 CLERK OF COURT: What sayest the Defense.

16 MR. JONES: Please seat the juror.

17 CLERK OF COURT: Please have seat in the jury box for
18 me, Miss Hughes. Juror Number 42, Ronald Gainey. What
19 sayest the State.

20 MR. HOLT: Please present Mr. Gainey.

21 CLERK OF COURT: What sayest the defense.

22 MR. JONES: Please seat the juror.

23 CLERK OF COURT: Please have a seat in the jury box
24 for me, Mr. Gainey. Juror Number 49, Mary Gilbert. What
25 sayest the State.

Selection of the Jury

12

1 MR. HOLT: Please present Ms. Gilbert.

2 CLERK OF COURT: What sayest the Defense.

3 MR. JONES: Please seat the juror.

4 CLERK OF COURT: Please have a seat in the jury box
5 for me, Miss Gilbert. Juror Number 121, Melody Smith.

6 What sayest the State.

7 MR. HOLT: Please excuse Miss Smith.

8 CLERK OF COURT: You're excused from this particular
9 case, Miss Smith. Thank you. If you would please have a
10 seat back in the audience for me, please. Juror Number
11 131 Beatrice Waiters. What sayest the State.

12 MR. HOLT: Please present Ms. Waiters.

13 CLERK OF COURT: What sayest the Defense.

14 MR. JONES: Please seat the juror.

15 CLERK OF COURT: Please have a seat in the jury box
16 for me, Ms. Waiters. Juror Number 133, Donte West. What
17 sayest the State.

18 MR. HOLT: Excuse this juror.

19 CLERK OF COURT: You're excused from this case,
20 Mr. West. Thank you. Juror Number 117, Christopher
21 Shields. What sayest the State.

22 MR. HOLT: Please present Mr. Shields.

23 CLERK OF COURT: What sayest the Defense.

24 MR. JONES: Please seat the juror.

25 CLERK OF COURT: Please have a seat in the jury box,

Selection of the Jury

13

1 Mr. Shields. Juror Number 104, Robert Parker. What
2 sayest the State.

3 MR. HOLT: Please excuse Mr. Parker.

4 CLERK OF COURT: You're excused from this case,
5 Mr. Parker. Thank you. Juror Number 81, Tamara Kelly.
6 What sayest the State.

7 MR. HOLT: Please present Ms. Kelly.

8 CLERK OF COURT: What sayest the Defense.

9 MR. JONES: Please excuse the juror.

10 CLERK OF COURT: You're excused from this case, Ms.
11 Kelly. Thank you. Juror Number 18, James Byrd. What
12 says the State.

13 MR. HOLT: Please present Mr. Byrd.

14 CLERK OF COURT: What sayest the Defense.

15 MR. JONES: Please seat the juror.

16 CLERK OF COURT: Please have a seat in the jury box
17 for me, Mr. Byrd. Juror Number 111, Kemberlee Robinson.
18 What sayest the State.

19 MR. HOLT: Please present Ms. Robinson.

20 CLERK OF COURT: What sayest the Defense.

21 MR. JONES: Please excuse the juror.

22 CLERK OF COURT: Been excused from this case,
23 Miss Robinson. Thank you. Juror Number 138, Patricia
24 Winburn. What sayest the State.

25 MR. HOLT: Please present Ms. Winburn.

Selection of the Jury

14

1 CLERK OF COURT: What sayest the Defense.

2 MR. JONES: Please seat the juror.

3 CLERK OF COURT: Please have a seat in the jury box
4 for me, Miss Winburn. Juror Number 112, Michael Salvo.
5 What sayest the State.

6 MR. HOLT: Please present Mr. Salvo.

7 CLERK OF COURT: What sayest the Defense.

8 MR. JONES: Please seat the juror.

9 CLERK OF COURT: Please have a seat in the jury box.
10 For me. Juror Number 92, Timothy Martin. What sayest the
11 State.

12 MR. HOLT: Please excuse the juror.

13 CLERK OF COURT: You're excused from this case,
14 Mr. Martin. Thank you. Juror Number 113, Julia Scipio.
15 What sayest the State.

16 MR. HOLT: Please present this juror.

17 CLERK OF COURT: What sayest the Defense.

18 MR. JONES: Please excuse this juror.

19 CLERK OF COURT: You're excused from this particular
20 case, Ms. Scipio. Juror Number 91, Hugh Marshall. What
21 sayest the State.

22 MR. HOLT: Please present Mr. Marshall.

23 CLERK OF COURT: What sayest the Defense.

24 MR. JONES: Please seat the juror.

25 CLERK OF COURT: Please have a seat in the jury box,

Selection of the Jury

15

1 Ms. Marshall. Juror Number 63, John Huneycutt. What
2 sayest the State.

3 MR. HOLT: Please present Mr. Huneycutt.

4 CLERK OF COURT: What says the Defense.

5 MR. JONES: Please seat the juror.

6 CLERK OF COURT: Please have a seat in the jury box,
7 Mr. Huneycutt. All right. We're going to select two
8 alternates. Strikes are one and two on each one. Juror
9 Number 110, Teejay Richards Schandel. What sayest the
10 State.

11 MR. HOLT: Please excuse the juror.

12 CLERK OF COURT: Been excused from this case, Mr.
13 Schandel. Thank you. Juror Number 17, Rodney Burkhart.
14 Is there any show for cause from the State.

15 MR. HOLT: There is none.

16 CLERK OF COURT: What sayest the Defense.

17 MR. JONES: Please seat the juror.

18 CLERK OF COURT: Please have a seat in the first
19 chair outside the jury box for me, Mr. Burkhart. Next
20 alternate. One and two again. Juror Number 83,
21 Christopher King. What sayest the State.

22 MR. HOLT: Please present Mr. King.

23 CLERK OF COURT: What sayest the Defense.

24 MR. JONES: Excuse this juror.

25 CLERK OF COURT: Been excused from this particular

Colloquy

16

1 case, Mr. King. Juror Number Ten, Ginny Bottenus.

2 MR. JONES: What number, Mr. Clerk?

3 CLERK OF COURT: Juror Ten. What sayest the State.

4 MR. HOLT: Please present Ms. Bottenus.

5 CLERK OF COURT: What sayest the Defense.

6 MR. JONES: Please excuse this juror.

7 CLERK OF COURT: You're excused from this particular
8 case. Juror Number 74, David Johnson. What sayest the
9 State.

10 MR. HOLT: Please present Mr. Johnson.

11 CLERK OF COURT: Any show for cause from the Defense.

12 MR. JONES: None whatsoever.

13 THE COURT: Okay.

14 CLERK OF COURT: Okay. You have a seat in the second
15 chair outside the jury box for me, Mr. Johnson.

16 THE COURT: Thank you, Mr. clerk.

17 CLERK OF COURT: Yes, sir.

18 THE COURT: Any motions concerning jury selection?

19 MR. HOLT: None from the State, Your Honor.

20 MR. JONES: No, sir.

21 COLLOQUY

22 THE COURT: I apologize. I normally during the jury
23 qualification process I introduce any elected or appointed
24 officials we have. I didn't do that this morning, but
25 we've got Sheriff Byrd and we've got our Chief Public

Colloquy

17

1 Defender, Michael Stephens, present. Like to thank them
2 for being here. Any other elected officials I've
3 overlooked? Sometimes they're in and out. Usually the
4 coroner steps in, but I haven't seen him this morning.

5 All right. Ten o'clock in the morning. We've taken
6 care of all the details? We've got a bunch of other
7 things that are scheduled today. We're going to have to
8 go through those. So we can't start this case until in
9 the morning, okay. Thank y'all very much.

10 Before you go don't let anybody approach you in any
11 kind, form or fashion to discuss this case with you.
12 Immediately notify law enforcement should anybody make
13 such an attempt. That includes in person, over the
14 telephone, over the internet or any kind of way, third
15 person included. Thank you.

16 (WHEREUPON, the jury panel was excused from the
17 courtroom at 11:11 a.m.)

18 END OF TRANSCRIPT OF RECORD
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF DARLINGTON) 2013-GS-16-00603
) 2013-GS-16-00604
) 2013-GS-16-00605
) 2013-GS-16-00606
) 2013-GS-16-00608

STATE OF SOUTH CAROLINA)
) PLAINTIFF)
) vs.) TRANSCRIPT OF RECORD
))
LARRY TYLER)
) DEFENDANT)

February 25-27, 2013
 Darlington, South Carolina
 VOLUME 02 OF 03

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE; and a jury.

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

JOHN W. HOLT, IV., ASSISTANT SOLICITOR
 Attorney for the State

PATTI MCKENZIE PARKER, ASSISTANT SOLICITOR
 Attorney for the State

RICHARD JONES, PUBLIC DEFENDER
 Attorney for the Defendant

DORIS BROWN,

Victim [REDACTED]

JASMINE [REDACTED] M

TYQUAN BROWN,

GEORGITA BROWN,

ERIC HODGES,

SHAWN TUNSDALL,

RUSS HARRELL, Darl. Cty. Sheriff's Office

HATTIE O. GORDON
Circuit Court Reporter

Colloquy

21

1 (WHEREUPON, State's Exhibit Nos. 1 THROUGH 9 were
2 marked for identification only.)

3 COLLOQUY

4 THE COURT: All jurors are recorded?

5 BAILIFF: Yes, sir.

6 THE COURT: We ready to proceed?

7 MR. JONES: Judge, we have one matter before the jury
8 comes out.

9 THE COURT: All right.

10 MR. JONES: In the indictment dealing with
11 photographs there are 41 photographs listed on that
12 indictment. Forty of them came from a computer at Mr.
13 Tyler's house. One of them came from the e-mail account
14 obviously not at Mr. Tyler's house. The State this
15 morning, actually last night, gave me a disk with all of
16 the pictures on it. I saw them -- I had not seen one of
17 the pictures before.

18 That picture is the one that came from the -- mail
19 account which is included on the indictment. I would ask
20 the Court to either exclude that picture as not being
21 timely provided or in the alternative give the Defendant a
22 continuance on this matter.

23 Now, and I understand what the State is probably is
24 going to respond, is that I am Mr. Tyler's second
25 attorney. Prior to September he was represented by

1 another attorney in our office. And to be honest, I have
2 not spoken with that attorney as to whether or not she
3 viewed that picture. But that's the problem I have. I
4 have viewed the picture. I understand it. I've gone over
5 it with my defendant. He certainly understands it, but
6 that -- understands it. But that picture is significantly
7 different than any of the other pictures on the
8 indictment.

9 For those reasons I would ask for the relief
10 requested.

11 THE COURT: Solicitor.

12 MR. HOLT: And, Your Honor, I'm certainly objecting
13 to this. It's a little bit of a complicated, confused
14 matter. You're looking at at least six sources for
15 photographs in this case. Several cell phones, computer,
16 and also an e-mail account. At numerous times, two to
17 three times, I went with the Public Defender's Office, be
18 it the previous attorney or Mr. Jones, and looked at all
19 the evidence that Deputy Russ Harrell had collected in
20 this matter at the Sheriff's Office.

21 This photograph was certainly one of them. It was,
22 however, blown up more because when they downloaded it
23 from the e-mail they were able to expand it. I have made
24 it available. We've looked at it together. I'm 100
25 percent position of that, and I don't think anybody would

Colloquy

23

1 say I'm a known, vociferous liar.

2 This picture has been known. What I have done was
3 organized everything into a concise disk that Deputy
4 Harrell provided for me, and made that available to Mr.
5 Jones. We're talking about, literally, hundreds of
6 pictures. I got 41 in the indictment. Forty were hard
7 drives on his computer, and that originally was 41.

8 Mr. Jones objected to one photograph that showed sex,
9 but the young ladies face was not visible. I took that
10 off and inserted the one from if Yahoo account which was
11 visible. They certainly -- a continuance isn't going to
12 allow them to do anything with this, and what's even more
13 important, Judge, is that I have taken that photo, Ms.
14 Wooten has, and I've allowed her to put it in thumb nail
15 size just like all the other photos on the computer.

16 And then allowed her to mix all those photos up at
17 her pleasure and then they -- the jury can see that. You
18 know, this is the second time they've asked for a
19 continuance. The first time was for their own computer
20 expert. They asked Judge Baxley for those monies. Those
21 monies were provided. They've had the computer expert
22 look at Mr. Tyler's computer. Certainly not going to use
23 him because all the evidence that he collected helps my
24 case.

25 I have not subpoenaed any of that, and I'm not

1 bothering anything but these 41 pictures from the computer
2 that pertains to just that one indictment; that picture
3 number -- you know, file names confuses me, but that file
4 name was on the indictment. The only difference here is
5 that it was not a hard copy at his house, but what they
6 call a poor man's storage unit, which is you e-mail
7 something to yourself. And then at any time you can go
8 back through your e-mail. You've got access to it just as
9 if it was on your computer.

10 But a continuance in this matter would not help
11 anybody and would not accomplish anything.

12 THE COURT: Anything?

13 MR. JONES: No response, Your Honor.

14 THE COURT: Well, I'd might could help you if it had
15 been slipped in last night, be as explained there we're
16 going on with the case.

17 MR. JONES: Yes, sir. Your Honor, and I don't know
18 if the Solicitor has already done it; but one of the
19 indictments has been withdrawn as I understand it.

20 MR. HOLT: One of the indictments has been withdrawn,
21 Your Honor. It is a disseminating obscene material to a
22 minor. There is -- that indictment was withdrawn as a
23 result of a argument set forth by Ms. Wooten. He's
24 indicted for disseminating harmful materials to minors as
25 well.

Colloquy

25

1 THE COURT: All right. I've got 608, disseminating
2 obscene material to the minor 12 years of younger. And
3 606 disseminating harmful material to minors.

4 MR. HOLT: We keep 608 -- 606, and the State is
5 getting rid of 608, disseminating obscene.

6 THE COURT: Material to a minor 12 years. All right.

7 MR. JONES: Your Honor, may I do one additional thing
8 before you bring the jury in? Ms. Wooten is working on
9 those pictures. May I see her status before we start?

10 THE COURT: Sure.

11 MR. HOLT: And what Mr. Jones is talking about is
12 I've allowed her to rearrange the evidence that best
13 suits.

14 MR. JONES: They will be ready in just a moment, Your
15 Honor. We're ready to begin, Your Honor.

16 (WHEREUPON, the jury panel enters the courtroom 10:17
17 a.m.)

18 THE COURT: Good morning. Good to see everyone
19 reported safely this morning with all the rain and
20 hydroplaning going on out there. It was a real challenge,
21 wasn't it? Thank you for coming in, and we're getting
22 ready to start this trial.

23 First thing I have to do is to get you sworn, and
24 then we'll get started. Also I need to put on the record
25 that I'm appointing Miss Winburn foreperson of the jury.

1 She can switch chairs later. We will go ahead and put you
2 under oath, and then we'll take care of seating later.

3 (WHEREUPON, the jury panel was sworn in at
4 10:18 a.m.)

5 THE COURT: Thank you, Mr. Clerk. And good morning.
6 We are ready to get started. We are going to go through
7 several different phases in this trial, and that's what
8 I'm going to talk with you about in a brief opening
9 statement to you from the Court to let you know how we're
10 going to proceed.

11 First of all, both sides will be given an opportunity
12 to make brief opening statements to you to outline their
13 positions in the case. Opening statement is basically an
14 outline. After that will come the evidentiary portion of
15 the case where you will receive the evidence. Evidence
16 may take many different forms. It may be testimony from
17 this witness stand, it may be documents. It may be
18 photographs or other physical type items.

19 Whatever the evidence is it is your duty to listen
20 and observe the evidence because you will be the finders
21 of the facts in this trial. I am the judge of the law.
22 The end result of any trial is to reach a verdict.
23 Verdict is a Latin derivative word which means a true
24 saying. So it can be said that a trial is a search for
25 the truth.

Colloquy

27

1 Now, how do you reach a verdict. You determine the
2 evidence that is true. Apply the law of the case that I
3 will provide to you and then after your deliberations you
4 will reach a verdict based on what you have found. No one
5 else in the Court will be allowed to find the facts except
6 you, the jury. Now, evidence will come from the witness
7 stand and from the exhibits introduced to you.

8 What the attorneys say, not necessary evidence. They
9 may quote the evidence or refer to it, but their
10 statements are not necessarily the evidence. The truth of
11 the evidence, of course, is up to you to decide what is
12 true and what is not. After the evidentiary part of the
13 case will come the time for closing arguments where both
14 sides will be given ample opportunity to try to persuade
15 you to see the evidence as they see it.

16 After that will come the Judge's charge of the law
17 where I will give you the law of the case. Even though
18 you may not agree with what the law is you're under your
19 duty under your oath to follow the law of the State of
20 South Carolina as I give it to you.

21 This is a criminal case. I tell you this time that
22 the Defendant is under a presumption of innocence as any
23 other defendant in the United States under our
24 constitutional law. Therefore, with that presumption of
25 innocence it is up to the State to have the burden of

1 proof in this case. And the State must prove to you
2 beyond a reasonable doubt the guilt of the defendant on
3 each and every indictment. In this particular indictment
4 I think we've got four.

5 As far as breaks we will try to break ever hour or
6 so. Give you time to stretch. We'll have some coffee,
7 and maybe some refreshments back there in the back for you
8 when those times come along. We'll probably break around
9 12:30 or 1:00 for lunch. We'll take about an hour and 15
10 minutes or so. And then we'll come back and try to finish
11 up the day around 5:00. Maybe a little before. Maybe a
12 little after though we're not going to run late.

13 Those days of running court until 8:00 or
14 nine o'clock at night are not here any more because
15 people's lives are so complicated now. Not only do you
16 have your own welfare to look after. You've got your
17 family to look after, and we know you've got other
18 obligations. And also the Court staff have evening
19 obligations. So about 18, 20 years ago we started phasing
20 out the late night work because it was causing too many
21 problems.

22 Now, sometimes if caught on timing wrong we may have
23 to go a little bit longer. But we will try do abide by
24 regular hours as much as possible. Don't think this case
25 is going to take to long time, but we will take the

Colloquy

29

1 necessary time to make sure that you have all the evidence
2 presented to you and give you time to ponder it and
3 deliberate it.

4 Don't fall asleep on me. If you fell like you're
5 going to doze off especially after lunch raise your hand
6 and we will take a coffee break or whatever. Give you
7 time to recuperate. You fall asleep cause all kinds of
8 problems. If you need a break before we have a regular
9 break let me know. We will take care of that.

10 Lot of jurors ask about taking notes. I'll go ahead
11 and talk with you about that. Personally, I don't care.
12 Some judges don't want you taking note, but I will tell
13 you this. Remembering my days in college and law school
14 you had to be careful taking notes because you will sit
15 there and you will have your mind set on what you're
16 writing down. And you miss something that's said while
17 you're writing.

18 So, personally, if I was on a jury I wouldn't keep
19 notes. But I'll leave that up to you. But there is one
20 rule that you have to go by, one cardinal rule, and that
21 is you can't share them with anybody else. You can refer to
22 them yourself, but you're not to discuss your notes with
23 anyone else or share them.

24 Once again, do not allow anybody to approach you in
25 any form or fashion and discuss this case with you. In

Opening Statement by Ms. Parker

30

1 fact I'm going to instruct you at this time don't
2 deliberate this case until you're asked to at the
3 conclusion. So should anybody try to approach and discuss
4 this case with you do not discuss it with them and
5 immediately let me know of that approach.

6 I think I've covered everything that I need to cover
7 now. I'll give you a full charge on the all the things
8 that I have briefly mentioned to you here about the burden
9 of proof. And also the actual statutes that are concerned
10 here in that charge of law.

11 All right. With that said the State has the burden
12 of proof. They get to start first here, so Solicitor, the
13 floor is yours.

14 OPENING STATEMENT BY MS. PARKER

15 MS. PARKER: Thank you, Your Honor. May it please
16 the Court. Mr. Jones. Ladies and gentlemen of the jury,
17 good morning. My name Patti McKenzie Parker, and I work
18 here at the Solicitor's Office here in Darlington County.
19 I work for Will Rogers. He's our elected Solicitor and we
20 have four counties that make up our circuit, and
21 Darlington being one of them.

22 I work primary here in Darlington, and I work with
23 John Holt who is seated at our table, and you will be
24 hearing a lot from him later today as well. And, ladies
25 and gentlemen, in this case we represent the State of

Opening Statement by Ms. Parker

31

1 South Carolina, and it's our burden of proof to show you
2 the evidence and to convince you beyond a reasonable doubt
3 that the defendant has broken the law.

4 Now, the defendant has all sorts of charges, several
5 indictments, that we called for trial. And you will hear
6 a little bit more about those later. But as I woke up
7 early this morning and as I was thinking late last night
8 what I wanted to tell you here this morning the only thing
9 I could think to tell you is what happened. I just kind
10 of wanted to in simple terms tell you the facts as the
11 State intends to prove and tell you a series of events or
12 the story, if you will, that we intend to show here today.

13 The Defendant is seated with his defense attorney,
14 Rick Jones. Now, this case all started with an
15 infatuation the Defendant had with a ten year old girl. A
16 little ten year old girl named **Victim** and
17 her sister, Jasmine, go over to the Defendant's residence
18 where he stayed with his mother, with their grandmother.

19 So Miss Dorris, their grandmother, takes them over
20 there with her and she's visiting with Miss Ernestine, who
21 is the Defendant's mother. And they go there on occasion,
22 and Miss Dorris and Miss Ernestine go to church together.
23 And Miss Dorris takes her granddaughters over there from
24 time to time. And that's how this Defendant have had
25 access to them. That's how he has seen them and had

Opening Statement by Ms. Parker

32

1 interaction with them. That's how he knows them.

2 And through that interaction over there at his
3 residence he has developed some odd infatuation with a ten
4 year old girl. Takes pictures of her. He's friendly with
5 her. You might say a little too friendly, and also with
6 her sister. But he doesn't pay her sister as much
7 attention as he has her.

8 In one of those visits over there at the house at
9 some point he gives **Victim** a cell phone. And he gives her
10 an old cell phone, and you will hear testimony from **Victim**
11 and her sister. They go through the phone and what they
12 see in the phone. There were some nude pictures of
13 himself saved in that phone. Pictures of him wearing
14 nothing but a Speedo.

15 Also in that phone you will hear about some text
16 messages that were saved drafts in the text message box
17 that read like a love letter to **Victim** Dear **Victim** so forth
18 and so forth. I won't tell you exactly the wording of the
19 letter, but there is mention of how he loves her, making
20 her his wife in bed with him and so forth. Very
21 inappropriate things in that phone that he gives **Victim**

22 Her sister, Jasmine, can back that up. Her
23 grandmother, Miss Dorris, is made aware that he has given
24 her this phone. And when they tell her what's in it she
25 immediately takes it from them and she gives it back to

Opening Statement by Ms. Parker

33

1 the Defendant. That's all they know about the phone for
2 some time; that some time during the summer of 2011 at one
3 of those visits where the girls where over at his house.

4 Now, somewhere in that timeframe, still in the summer
5 of 2011 he gives that same phone to Tyquan Brown, and you
6 will hear testimony from Tyquan. Tyquan is Jasmine's and
7 **Victim** cousin. He's connected to the family. He's their
8 cousin. He's over at the Defendant's house. And the
9 Defendant is like, hey, you want a phone. He gives him
10 the phone. He says, "Okay," and he takes it and he's
11 going to clean it up. You know, clean it off. Buy some
12 minutes for it. It's one of those phones you can buy
13 minutes to add to it.

14 And he just got a new phone. When he goes in the
15 phone he sees these disturbing pictures. He starts to
16 look at them. He's just going the clean the phone up
17 because he's going to use it for himself. And then Tyquan
18 as he goes through the phone sees these text messages
19 talking about **Victim** in reference to loving **Victim**. Well, it
20 can be any other girl named **Victim**. Not necessarily my
21 little cousin.

22 And then as he continues to read he sees mention of
23 you're just a little girl and don't tell anybody
24 especially Jasmine. He knows that this Defendant is
25 talking about his little cousin. So he immediately takes

Opening Statement by Ms. Parker

34

1 the phone. Well, immediately he calls their mother, the
2 little girl's mother. He calls their mother. Let's her
3 know what's going on. She comes over. She gets the phone
4 from Tyquan, and she immediately calls the police out of
5 concern for what she saw in that phone.

6 The police get involved and get search warrants.
7 Search warrants are executed at the residence. You will
8 hear testimony and you will see evidence of what they
9 found in the Defendant's bedroom. Particularly, bring
10 your attention to his computer in his bathroom and its
11 pictures and digital files, if you will, that were on his
12 hard drive. Because what was found on his computer leads
13 him to a whole another set of charges that he's also on
14 trial here for this week for possession and use of those
15 files that were on that computer. Files that contain nude
16 or partially nude pictures of minors.

17 I will go ahead and warn you that it's going to be
18 disgusting. You need to go ahead and brace yourself a
19 little bit. It's not something you see every day when we
20 show you that evidence. But all that will be at some
21 point in time later today. I want you to keep in mind the
22 two things I've already mentioned. Two things going on
23 here that I want to draw your attention to.

24 One, he gave a cell phone to a little girl. You will
25 hear testimony about that, and that testimony, from

Opening Statement by Ms. Parker

35

1 several witnesses, so it will be corroborated testimony.
2 It will be backed up.

3 And, Two, he had in his possession he had those
4 digital files on that hard drive on that -- in a new
5 computer that he had at the residence. And they found
6 other hard drives, and they found an old computer. It's
7 the State's theory that this was anew computer that had
8 just been registered that he just set up, and all these
9 files were on this computer.

10 Now, I'm sure that the Defense is going to come up
11 here in a few minutes, and they're probably going to
12 concede that there are some things that are inappropriate
13 here; that you may not like some of the things that his
14 client has done. But he is probably going to try to
15 convince you that what we have going on here doesn't rise
16 to the level of criminal conduct. But the State is going
17 to contend throughout the course of this trial that it
18 does.

19 It does rise to the level of criminal conduct because
20 not every case that we try in this courtroom involves a
21 case where the child has been touched. Thank God this is
22 not a case where a child has been touched, but there are
23 some actions that the Defendant did; some thing that he
24 did that are in violation of the laws of South Carolina.

25 He stepped into violating the law when he gave that

Opening Statement by Ms. Parker

36

1 girl the cell phone with what is defined as harmful
2 materials. And then you will hear about the computer that
3 was at his residence. And I'll go ahead and tell you, you
4 know, that we guess sometimes, and it's not exactly like
5 an episode on t.v, and I don't know if any of you have
6 ever served on juries before, but it doesn't exactly go
7 like Law and Order or Matlock.

8 And we don't do it like that, but it's not as
9 entertaining or exciting as even when you think we might
10 get to a point where the movement or excitement or we
11 might object or something might be overruled and we get to
12 rolling it still won't be as interesting as it is on t.v.
13 And I just want to go ahead and warn you. And this is a
14 case where a lot of the evidence you hear is going to come
15 from the witness stand.

16 And there is no complicated D.N.A. or highly
17 scientific things going on in this case. This is going to
18 be a case that is going to be composed of a lot of
19 testimony. And then, of course, we will have some
20 pictures for you to look at as well.

21 But I do ask for your attention throughout the trial;
22 that you pay close attention to what the witnesses are
23 saying as they testify, to keep in mind that you are the
24 judge of credibility. You are the judge of credibility.
25 Do you find that the witness is credible. Throughout the

Opening Statement by Ms. Parker

37

1 course of this trial you will hear the Defendant's own
2 statement. What he said happened, and you ask yourselves
3 do I find him credible. Does what he says jibe with
4 everything that's going on.

5 And, ladies and gentlemen, I just ask you to consider
6 the chain of events, consider the facts as you will see
7 them as a whole, and use your common sense. You didn't
8 check your common sense in downstairs at the metal
9 detector. You brought it up here with you. Your life
10 experiences, your common sense, that's the greatest
11 strength of a jury. When you all come together, the
12 different paths of your life, the different educational
13 levels, your different experiences, and you really think
14 about what we're showing you here in this courtroom today.

15 And the Defense is probably going to urge you to
16 isolate things. To take this one little thing and it's
17 over here by itself. Or this little thing and it's over
18 here by itself. But I'm asking you to take the facts and
19 look at them as a whole, and use your common sense and
20 what is going on here. And then the Judge is going to
21 charge you the law.

22 And you will apply the facts to the law, and the
23 State is going to ask you, after you have heard all the
24 evidence, we're going to ask you at the closing of this
25 trial to find the Defendant; that man seated right over

Opening Statement by Mr. Jones

38

1 there, guilty of disseminating harmful materials to a
2 minor, criminal solicitation of a minor, sexual
3 exploitation of a minor and contributing to the
4 delinquency of a minor.

5 And if I've missed an indictment I apologize, but he
6 has several charges and you will hear more about that
7 later. I thank you this morning for your attention, and
8 we look forward to working with you throughout the course
9 of this trial. Thank you.

10 THE COURT: Thank you, Solicitor. Mr. Jones.

11 MR. JONES: Thank you, Your Honor.

12 OPENING STATEMENT BY MR. JONES

13 MR. JONES: Madam Forelady and ladies and gentlemen
14 of the jury, my name is Rick Jones, and along with me
15 Julie Wooten who is in the back finishing up some work we
16 are here representing Mr. Larry Tyler who is seated at the
17 table with me. And I appreciate the Solicitor telling you
18 what I'm going to say, but I'm going to start off saying
19 it anyway, okay.

20 Several things I want you to pay close attention to:

21 Number One, the Judge told you in his opening remarks
22 several things. Three of them I want to emphasize before
23 I tell you anything else:

24 Number One, and all of them are bedrock principles of
25 the criminal justice system. Not only in Darlington

Opening Statement by Mr. Jones

39

1 County, State of South Carolina, United States of America.
2 Three of them. You've heard them on book titles and
3 you've seen them on television and you just heard the
4 Judge say them.

5 Number One, Mr. Larry Tyler walked into this
6 courtroom today presumed to be innocent. He is innocent.
7 That presumption stays with him throughout the course of
8 the trial. There is only one way that presumption can be
9 taken away from him and that is if the State of South
10 Carolina, represented by the Solicitors who have the
11 principle, burden of proof.

12 They're the ones seated closest to you. They're the
13 ones who start. They're the ones to present things first
14 because they have the burden of proof. And they have to
15 meet that burden of proof as to each and every element of
16 each and every offense that the Defendant is charged with
17 before that presumption of innocence can be taken from
18 Mr. Tyler.

19 The other thing, Number Three, as the Judge told you,
20 is that the standard of proof that the State must -- that
21 they bear and must meet to the satisfaction of all of you
22 unanimously is that they must prove that Mr. Tyler is
23 guilty beyond a reasonable doubt. If you will remember
24 nothing other than those three principles Mr. Tyler is
25 presumed to be innocent. The State has the burden of

1 proof. And the standard that they bear in presenting that
2 proof to each and every one of you is beyond a reasonable
3 doubt.

4 You will remember those three things cause I'm going
5 to say them again when we finish this trial. I'm not
6 going to go back over what the Solicitor just said as to
7 the evidence. I also was trying to think last night and
8 this morning what I was going to say to you to open this
9 case. The only thing I could think about was the title of
10 a Shakespeare play, Much Adieu About Nothing. All right.

11 You've got the situation that the State has charged
12 Mr. Tyler with four separate crimes all beginning with
13 what they call an infatuation between Mr. Tyler and a
14 little girl. They are related. They are distantly
15 related. It began when the little girl's mother was
16 visiting her relative who is Mr. Tyler's mother.
17 Frequently. They're friends. They're relatives. They go
18 to church together. They visit regularly.

19 The children were over there. I believe there was
20 all kind of interaction. None of which was appropriate --
21 inappropriate. Excuse me. None of which was
22 inappropriate. Some time along that June or July of last
23 year -- no. Excuse me. 2011 a cell phone came into the
24 picture. An older cell phone, and that phone apparently
25 got into the hands of the little ten year old girl. And

Opening Statement by Mr. Jones

41

1 as she's fooling with the phone she sees some pictures
2 which are not particularly appropriate. So we are told.

3 And I don't know if we'll hear, but I don't know if
4 she says, "Grandmother, look." Grandmother says, "Give
5 that phone back." That's the end of the situation. Two
6 or three months later here comes the phone again in the
7 hands of not the little girl but another relative. Some
8 pictures.

9 The pictures are deleted. We don't have those
10 pictures. They're not here. We have, obviously, we have
11 some testimony about that. No pictures. We then get to a
12 text message that appears to be inappropriate. And the
13 other child takes the phone to his cousin's mother and
14 says, "Look at here," and it all goes crazy from there.

15 All right. At that point in time then you have
16 searches. You have the police swooping in grabbing
17 everything that's electronic in Mr. Tyler's house. And
18 they find some pictures that they think are offensive.
19 Have nothing whatsoever to do with this little girl.
20 Nothing. And they grab the pictures. Like the computer
21 they grab it and analyze it and do all sorts of thing.
22 And they say, "These are bad. We need to arrest him. We
23 need to charge him with these crimes."

24 Most of the photographs that you will see -- we never
25 get to see the photographs which apparently were offensive

1 to the little girl which were handled very well earlier in
2 the situation when grandmother said, "Give that phone back
3 to him." What we will see are some pictures that came off
4 of his computer. And then there is another picture that's
5 not on the computer that's floating around in space. And
6 I'll be the first on to tell you that I do not understand
7 computers. I don't type very well, but I'm able to get
8 around in computers.

9 But people who know computers say that there were
10 certain pictures on there. Then these other pictures are
11 out in cyber space on an e-mail account. They're not
12 anywhere near that computer, but they're in an account over
13 here. That picture is also there, and it's not very nice.

14 One good thing the last time I looked at a coin it
15 has two sides to it. And I will ask you as triers of the
16 facts, of the facts. Y'all's job -- everybody's got a job
17 here today. His Honor is to make sure all the rules are
18 followed. To make sure we don't get out of line. To
19 do -- to be the judge of the law. Y'all's job equally if
20 not more important is to be the judges of the facts. You
21 got to figure out what happened. That's your job.

22 And then as the Solicitor did say at the end of all
23 of the evidence which is presented and you figure out what
24 happened the Judge will tell you what the law is. You put
25 the two of them together and come back with a verdict.

Dorris Brown - Direct by Mr. Holt

43

1 You were chose yesterday from a big group of people.
2 You were individually chosen, all right. We want you
3 here. We appreciate your presence. The Judge has said
4 this case is not going to be very long, but it is
5 extremely important to all parties here today. We're
6 happy that you're here. What I would ask you is, again,
7 something that the Judge said. Don't make up your minds
8 until we're finished with the case and the Judge has told
9 you to go back and make your deliberations. Thank you.

10 THE COURT: Thank you. You may proceed with your
11 witness.

12 MR. HOLT: Thank you very much, Your Honor. At this
13 time the State would like to call Miss Dorris Brown to the
14 stand.

15 THE COURT: Miss Brown, if you will come around and
16 be sworn please.

17 DORRIS BROWN, after being duly sworn, testified
18 as follows:

19 DIRECT EXAMINATION

20 BY MR. HOLT:

21 Q. Miss Brown, would you please give your whole name for
22 the jury?

23 A. Dorris Brown.

24 Q. And where do you live?

25 A. In Darlington.

1 Q. And, okay. How long have you lived in Darlington?

2 A. About 20 years.

3 Q. Okay. And you have a -- you got any nick names or
4 alias you go by especially at work?

5 A. Yeah. They call me Granny at B&B in Darlington.

6 Q. And, Granny, how many grandchildren do you have?

7 A. Seven.

8 Q. Okay. And do you often take them to visit other
9 people?

10 A. Yes.

11 Q. How about **Victim** and Jasmine, are they your
12 grandchildren?

13 A. Yes.

14 Q. And have you ever taken them to visit Mr. Tyler's
15 mother?

16 A. Yes.

17 Q. And what is her name?

18 A. Ernestine Witherspoon.

19 Q. And why are you and Ms. Ernestine Witherspoon?

20 A. Cause I met her through by another sister going to
21 her house.

22 Q. And what else do y'all do together? Anything?

23 A. We go to church and conventions.

24 Q. And right. And did you ever, when you were going to
25 visit Ms. Ernestine, did you ever take **Victim** and Jasmine

Dorris Brown - Direct by Mr. Holt

45

1 with you?

2 A. Yes. All the time.

3 Q. All right. And did they and you enjoy going
4 visiting?

5 A. Yes.

6 Q. All right. And at any time did anybody ever warn you
7 off or tell you not to visit Ms. Ernestine?

8 A. No.

9 Q. All right. And during any of those visits did the
10 Defendant ever talk to you in a -- I mean Mr. Larry Tyler
11 over there. Did he ever talk to you? Invite you
12 anywhere? Want you to go other places with him?

13 A. Well, once he asked me to go with -- me and the kids
14 go to the movie with him, but I wouldn't.

15 Q. Okay. And did any of those times you went over there
16 did Mr. Tyler ever give the children a gift?

17 A. Yes.

18 Q. And what did he give them?

19 A. A phone.

20 Q. And did you or did you not make the children give the
21 phone back or did you let them keep it? And if not why?

22 A. Well, when they got in the car they said, "Grandma,
23 he gave us a phone and Jazz said naked men on there." And
24 she tried to show it to me, and I couldn't so I said, "I
25 don't see no naked pictures. Give that phone back to him.

1 Q. Okay. But did the children have the phone when they
2 entered the house?

3 A. No.

4 Q. Did they have the phone when they left the house?

5 A. Yeah.

6 Q. And what did make them do with that phone?

7 A. Give it to me, and I carry it back in the house.

8 Q. All right. And have you ever gone back and visit Ms.
9 Ernestine?

10 A. About three times with other people.

11 Q. Okay. And have you -- did you take the girls with
12 you after that?

13 A. No.

14 MR. HOLT: Beg the Court's indulgence, Your Honor.
15 Just one second.

16 BY MR. HOLT:

17 Q. Ms. Brown, please answer any questions the defense
18 counsel might have?

19 CROSS-EXAMINATION

20 BY MR. JONES:

21 Q. All right. Hi, Ms. Brown. I don't have but a few
22 questions. My name is Rick Jones, and I'm representing
23 Mr. Tyler. Aren't you related to Mr. Tyler's mother?

24 A. Yes. Through by paper adoption.

25 Q. Say that again?

Dorris Brown - Cross by Mr. Jones

47

1 A. By paper through adoption. Not blood.

2 Q. Okay. All right. And if you said it I apologize. I
3 didn't hear it. How many times do you think during the
4 summer of 2011 did you visit with Miss Witherspoon at her
5 house?

6 A. Well, a lot of times because I had the kids on my
7 days off from work. And we would go out there and I would
8 do things for her. Help her out.

9 Q. Once or twice a week maybe?

10 A. About twice a week.

11 Q. Okay. And during those visits how many times would
12 Ms. **Victim** and Ms. Jasmine go with you?

13 A. Just about every time.

14 Q. Okay. All right. And do you remember how many times
15 they had been visiting or y'all had been visiting with
16 Ms. Witherspoon before the telephone came up?

17 A. Good little bit.

18 Q. Okay. They had been over there quite a bit?

19 A. Yeah, with me.

20 Q. Okay. When y'all were over there what interactions
21 would you have with Mr. Larry Tyler?

22 A. Well, we sit down and talk and they let me know how
23 they was and how they got involved with me cause I didn't
24 even know them before.

25 Q. Okay.

- 1 A. So it was just like a family thing, you know.
- 2 Q. Nothing out of the ordinary?
- 3 A. No.
- 4 Q. Okay. Do you know what Mr. Tyler did -- does for a
5 living? Did he work?
- 6 A. He was a mechanic.
- 7 Q. Okay. And did you have any idea about any artistic
8 talent that he had?
- 9 A. He drew.
- 10 Q. Drew pictures?
- 11 A. Yes.
- 12 Q. Did he ever draw anything for you?
- 13 A. He draw one of Victim and gave it to me.
- 14 Q. Was anything wrong with that picture?
- 15 A. No.
- 16 Q. Okay. Did he ever take any pictures of any of y'all?
- 17 A. Yeah, he took pictures. A whole lot. Every time he
18 come out there on the cell phone.
- 19 Q. Okay. Now, the day that the cell phone came up when
20 is the first time that you heard that the children had a
21 cell phone?
- 22 A. When we left out the house and they got in the car
23 and they showed it to me?
- 24 Q. Okay. Now, you said that they said there was a
25 picture of a naked lady on the phone. Did you see that

Dorris Brown - Cross by Mr. Jones

49

1 picture?

2 A. Yeah, I glanced and quickly turned my head.

3 Q. And what you do?

4 A. Got the phone from them and carry it back in the
5 house.

6 Q. And that was the end of it?

7 A. Yeah.

8 Q. Okay. You didn't call the police?

9 A. No.

10 Q. Did either of the children say anything about a text
11 message to you?

12 A. No.

13 Q. Did you see anything about a text message on that
14 telephone?

15 A. No.

16 Q. How long do you think that phone was in the
17 children's actual possession?

18 A. About ten minutes while we were in the car.

19 Q. Okay. And during that time they popped it open and
20 saw a picture of a naked lady and said, "Grandma, oops."
21 You got the phone and took it back in the house?

22 A. Took it back in the house and put it back on the
23 table.

24 Q. Thank you.

25 MR. JONES: That's all I have.

REDIRECT EXAMINATION

1 BY MR. HOLT:

2 Q. Do you think the girls had the phone while they were
3 in the house?
4

5 A. No, I didn't see it.

6 Q. Okay. Did Larry give you permission or ask your
7 permission to give the girls the phone?

8 A. No.

9 Q. So an older adult just gave your grandbabies a phone?

10 A. Yeah.

11 Q. Without asking you?

12 A. Right.

13 Q. And he take pictures of you when you were just by
14 yourself with his cell phone?

15 A. No.

16 Q. When he took pictures of you who was with you?

17 A. Everybody in the house. Me and the kids and his
18 grandma -- his mother.

19 MR. HOLT: Thank you very much.

20 THE COURT: Nothing further.

21 MR. JONES: I have nothing further.

22 THE COURT: Thank you very much. You may step down.

23 MR. HOLT: If it please the Court, Your Honor, we'd
24 like to call Victim [REDACTED] to the stand.

25 THE COURT: All right. Come around and be sworn,

Victim ██████████ - Direct by Mr. Holt

51

1 please.

2 ██████████ Victim ██████████ after being duly sworn,
3 testified as follows:

4 CLERK OF COURT: Speak up so everybody can hear you,
5 okay.

6 DIRECT EXAMINATION.

7 BY MR. HOLT:

8 Q. ██████████ Victim what's your whole name?

9 A. ██████████ Victim ██████████

10 Q. And how old are you?

11 A. Twelve.

12 Q. And who do you live with, ██████████ Victim

13 A. My mom and my daddy.

14 Q. And how many brothers and sisters you got?

15 A. I got two brothers and two sisters.

16 Q. What are their names?

17 A. Frankie and Justice, Garrett and Sherell.

18 Q. All right. Now, Jazz, is that short for Jasmine?

19 A. Yes, sir.

20 Q. And she's your sister?

21 A. Yes, sir.

22 Q. How old is she?

23 A. Ten.

24 Q. And how about your grandmother. Is she here today?

25 A. Yes.

1 Q. Was it her we just talked to on the stand?

2 A. Yes.

3 Q. Now, during the summertime do you go and visit a lot
4 with your grandmother?

5 A. Yes.

6 Q. You spend a lot of time with her?

7 A. Yes.

8 Q. Did she ever take you with her to Ms. Ernestine's
9 house?

10 A. Yes.

11 Q. About how many times do you think y'all went over
12 there?

13 A. A lot.

14 Q. All right. And if any of those times were you around
15 the Defendant in this case, Larry Tyler?

16 A. Yes.

17 Q. And what would Larry do when he was around with
18 y'all?

19 A. Take pictures.

20 Q. Would the grown ups be in the room when he was taking
21 those pictures?

22 A. Yeah.

23 Q. Were the grown ups in the room every time he took
24 pictures of you?

25 A. No.

Victim ██████████ - Direct by Mr. Holt

53

1 Q. So sometimes he would take pictures of just you?

2 A. Me, him and my sister.

3 Q. All right. And did you ever talk with Larry?

4 A. Yes.

5 Q. And did he ever like to play games with y'all?

6 A. Yes.

7 Q. And what were some of the games that he would play we
8 y'all?

9 A. Racing.

10 Q. Well, how would you play racing?

11 A. He said that if he win he get a hug, and if we win we
12 get a dollar.

13 Q. Let me ask you something, Victim did you ever win?

14 A. No.

15 Q. So you never got a dollar, did you?

16 A. No.

17 Q. But you got a lot of hugs, didn't you?

18 A. Yes.

19 Q. All right.

20 MR. HOLT: Permission to approach, Your Honor?

21 THE COURT: Sure.

22 BY MR. HOLT:

23 Q. Victim I want to show you what's been previously
24 marked as State's Exhibit Two. And I want to ask you do
25 you recognize that?

- 1 A. Yes.
- 2 Q. And without talking too much about what it is have
3 you ever seen it before?
- 4 A. Yes.
- 5 Q. Did somebody give it to you?
- 6 A. Yes.
- 7 Q. Who gave it to you?
- 8 A. Him.
- 9 Q. When you say 'him' -- look over there. Who do you
10 mean 'him'?
- 11 A. Larry.
- 12 Q. All right. And when he gave it to you what did he
13 say?
- 14 A. What he was like, 'this is a phone if y'all want it',
15 and we took it.
- 16 Q. And when you say, "we" who was with you?
- 17 A. Me and my sister.
- 18 Q. And were any adults around?
- 19 A. My aunt and my grandma.
- 20 Q. And were they in the same room?
- 21 A. Yeah.
- 22 Q. Okay. Now, when did y'all look in the phone?
- 23 A. After he gave it to us.
- 24 Q. And did you look at it when you were in the house?
- 25 A. Yes.

Victim ██████████ - Direct by Mr. Holt

55

1 Q. About how long did you have it before you left?

2 A. About ten minutes.

3 Q. And then how long were y'all in the car looking at
4 it?

5 A. When we got in the car we told our grandma, and she
6 didn't really want to look at the pictures. And then she
7 took it and took it back in the house.

8 Q. Now, you say pictures like there were more than one.
9 What kind of pictures did you see on that phone?

10 A. Girl in bikinis and one of him.

11 Q. And when the picture was of Mr. Larry what did it
12 look like?

13 A. It was some blue underwear.

14 Q. Did he have a shirt on?

15 A. I don't remember.

16 Q. But you remember he was in blue underwear?

17 A. Yes.

18 Q. All right. Let me ask you this. You said you would
19 take your sister, Victim over there?

20 A. Yes.

21 Q. And your grandmother. Between you and I mean your
22 sister, Jasmine. You've got me confused. Between the two
23 of y'all who do you think Mr. Larry liked more?

24 A. Me.

25 Q. And why would you say that?

1 A. Because he took more pictures of me.

2 MR. HOLT: Beg the Court's indulgence, Your Honor.

3 BY MR. HOLT:

4 Q. Victim did Larry ever draw any pictures of you?

5 A. No. He had took a picture and he gave it to me on a
6 sheet of paper.

7 Q. All right. Victim please answer any questions that
8 the other side has, okay.

9 CROSS-EXAMINATION.

10 BY MR. JONES:

11 Q. Hey, Ms. Victim I just want to ask you a couple of
12 questions, okay?

13 A. Okay.

14 Q. Okay. You said you went over to the house of
15 Miss Witherspoon and Mr. Tyler a lot? Did you ever go
16 over there by yourself?

17 A. No.

18 Q. Always with at least your grandmother and most of the
19 time with your sister?

20 A. Yes, sir.

21 Q. Okay. All right. And how big is that house?

22 A. It's not real big, but it's not small.

23 Q. Okay. Any idea how many rooms are in the house?

24 A. I think two bedrooms.

25 Q. When y'all were there where were you most of the

Victim ██████████ - Cross by Mr. Jones

57

1 time?

2 A. Either outside or in the living room.

3 Q. Okay. And when the pictures were being taken you
4 said your mother and your aunt -- your aunt is
5 Miss Witherspoon?

6 A. No.

7 Q. Who is your aunt?

8 A. My Aunt Julian.

9 Q. Who?

10 A. My Aunt Julian.

11 Q. Joanne? Did she usually go with you, too?

12 A. Sometimes.

13 Q. Okay. So she doesn't live there?

14 A. No.

15 Q. Where does she live?

16 A. In Darlington.

17 Q. Okay. So when you were at this house there was at
18 least Ms. Witherspoon and your grandmother and sometimes
19 you Aunt Jolean. So there were at least three other
20 adults beside Mr. Tyler at the house; is that right?

21 A. Yes.

22 Q. Is that a yes?

23 A. Yes.

24 Q. You've got to say yes so this lady can take it down.
25 Yes or no. Now, when you were racing was that inside or

1 outside?

2 A. Outside.

3 Q. Okay. All right. And when the pictures were being
4 taken you said that your grandmother and your -- Ms.
5 Witherspoon were always there?

6 A. Yes.

7 Q. Okay. All right. Now, how many times do you think
8 you went over there before this cell phone came up? How
9 many times did you go over there before this cell phone
10 came into your possession?

11 A. It was quite a bit.

12 Q. Okay. Now, I believe you said earlier that you had
13 the cell phone for about ten minutes, and I believe you
14 said that Mr. Tyler said -- that you said Mr. Tyler gave
15 it you and your sister; is that correct?

16 A. Yes.

17 Q. Did he tell you to look at the pictures on that
18 telephone?

19 A. No.

20 Q. Did he say anything about the pictures on the
21 telephone?

22 A. No.

23 Q. Did you pick a phone from a group of phones or did he
24 just say, "Here"?

25 A. He just gave that one to us.

Victim ██████████ - Redirect by Mr. Holt

59

1 Q. Okay. And I believe that when you were looking at
2 the pictures on the telephone you were in the presence of
3 your grandmother and at least Ms. Witherspoon. Did I hear
4 that correct?

5 A. Yes.

6 Q. Okay. Did you say anything about those pictures in
7 front of Miss Witherspoon and your grandmother at that
8 time?

9 A. No.

10 Q. All right. So after these ten minutes or so then
11 y'all walked out and got in the car?

12 A. Yes, sir.

13 Q. All right. Is that when you said something about the
14 pictures?

15 A. Yes.

16 Q. Okay.. And what did your grandmother do?

17 A. She took it back in the house.

18 Q. All right. And that was the end of it?

19 A. Yes.

20 Q. Okay. Oh, was there a text message that you read on
21 that telephone that day?

22 A. I didn't read it.

23 Q. Okay. Thank you.

24 REDIRECT EXAMINATION

25 BY MR. HOLT:

1 Q. So you didn't read the text messages. Did you see
2 one?

3 A. I didn't. I didn't -- we just looked at the
4 pictures.

5 Q. So y'all didn't have it long enough to go through the
6 entire phone?

7 A. No.

8 Q. All right. Thank you very much, Victim

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

10 MS. PARKER: Your Honor, at this time the State calls
11 Jasmine M.

12 THE COURT: Come around and be sworn, please.

13 JASMINE M after being duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MS. PARKER:

17 Q. Good morning?

18 A. Good morning.

19 Q. You okay?

20 A. Yes.

21 Q. Do you need some water?

22 A. No.

23 Q. Can you tell the Court your full name?

24 A. Jasmine M.

25 Q. Okay. And, you know, we may need to get you to speak

Victim ██████████ - Redirect by Mr. Holt

61

- 1 up or adjust the microphone. Can you slide your chair a
2 little bit closer to the rail. I don't think that's
3 moving. Okay. Can you tell us your full name?
4 A. Jasmine ████████ M ████████.
5 Q. Now, that's better. Jasmine, how old are you?
6 A. Ten.
7 Q. Okay. And what grade are you in in school?
8 A. Fifth.
9 Q. Jasmine, where do you go to school?
10 A. Brockington.
11 Q. I think we're having a little difficulty hearing you.
12 I'm going to ask you that last question again, okay.
13 Where do you go to school?
14 A. Brockington.
15 Q. So your in the fifth grade at Brockington Elementary;
16 is that right?
17 A. Yes, ma'am.
18 Q. Is that here in Darlington?
19 A. Yes.
20 Q. And where do you live?
21 A. Darlington.
22 Q. And who do you live with?
23 A. My mommy and daddy.
24 Q. Okay. And do you have any brothers or sisters?
25 A. Yes.

- 1 Q. Tell us about that?
- 2 A. I've got two sisters and two brothers.
- 3 Q. Is one of your sisters here today?
- 4 A. Yes.
- 5 Q. What's her name?
- 6 A. Victim [REDACTED]
- 7 Q. Okay. And is your grandmother here today?
- 8 A. Yes.
- 9 Q. And what's her name?
- 10 A. Dorris Brown.
- 11 Q. Okay. Jasmine, I want to talk to you a little bit
- 12 about the summer of 2011. Can you tell us about places
- 13 you used to go with your grandma?
- 14 A. Mr. Larry's house.
- 15 Q. Okay. You said, "Mr. Larry's house," and who are you
- 16 talking about? Who is Mr. Larry?
- 17 A. My grandmother said he was cousin on papers.
- 18 Q. He's your cousin on papers. Okay. Is Mr. Larry in
- 19 the courtroom today?
- 20 A. Yes.
- 21 Q. And do you -- could you point him out? Do you see
- 22 where he's sitting?
- 23 A. Yes.
- 24 Q. And please point him out.
- 25 A. (WHEREUPON, witness points).

Victim ██████████ - Redirect by Mr. Holt

63

1 Q. Seated over there at the Defense table?

2 A. Yes.

3 Q. Now, tell me about going to Mr. Larry's house. What
4 would y'all do over there?

5 A. We used to look at his drawings, and he would take
6 pictures. We used to race.

7 Q. Okay. You're going to have to slow down, sweetie,
8 cause I don't even think I understood the first thing you
9 said. You said three things kind of fast. Show down a
10 little bit. Tell me what y'all used to do?

11 A. We used to take pictures and race and look at his
12 drawings.

13 Q. Look at his drawings? Okay. Would y'all go over
14 there and eat Sunday dinner or stuff like that?

15 A. No, ma'am?

16 Q. So y'all would just go over and visit?

17 A. Yes.

18 Q. And your grandmother, Miss Dorris, is she friends
19 with Miss Ernestine?

20 A. Yes.

21 Q. And who is Miss Ernestine?

22 A. She goes to the Hall with my grandma.

23 Q. She goes to the what we your grandma?

24 A. Hall.

25 Q. To the Hall. Okay. Was that Ms. Ernestine's house

1 y'all were going to?

2 A. Yes.

3 Q. Okay. Now, let's talk about things you said you
4 would do other there. The Defendant, Mr. Larry, would
5 take pictures. Who would he take pictures of?

6 A. My Sister, Victim and me.

7 Q. And who would you say -- did he take more pictures of
8 Victim than you or more of you than Victim or is it about
9 equal?

10 A. More of Victim

11 Q. More of Victim Tell me about some of the games y'all
12 used to play. Did Mr. Larry ever play with y'all?

13 A. Yes, we would race. He said if he win he get a hug,
14 and if we win we get a dollar.

15 Q. Did you ever get a dollar?

16 A. No.

17 Q. Jasmine, who is the more outgoing? Who talks more,
18 you or Victim

19 A. Me.

20 Q. Okay. You're the talker in the family?

21 A. Yes.

22 Q. You a little nervous here today?

23 A. Yes.

24 Q. Now, I know to show you what's been marked as State's
25 Exhibit Two. And I'm just going to ask you do you

Victim ██████████ - Redirect by Mr. Holt

65

1 recognize that? Have you seen that item before?

2 A. Yes.

3 Q. And what is that item?

4 A. What Mr. Larry gave Victim and me.

5 Q. This is the phone that Mr. Larry gave you and Victim

6 A. Yes.

7 Q. And when did he give y'all that phone? You don't
8 have to know the precise date. Where were you when he
9 gave you that phone?

10 A. At his house.

11 Q. Okay. And what did he say when he gave you the
12 phone, if he said anything at all? What did he, if
13 anything, what did he say?

14 A. He just gave it to us.

15 Q. He just gave it to y'all. Did you -- do you know a
16 lot about cell phones?

17 A. Yes.

18 Q. So what did y'all first do with the cell phone?

19 A. Looking at pictures.

20 Q. You said, 'looking at pictures'. What kind of
21 pictures did you see on the phone?

22 A. Some girls with bathing suits on. One of them with
23 him with some blue drawers on.

24 Q. Okay. So some girls in bathing suits, and a picture
25 of him with some blue drawers on? Is that what you said?

1 A. Yes.

2 Q. How long did you -- how long did y'all have an
3 opportunity to look through the phone?

4 A. About ten minutes.

5 Q. And at any point did you let an adult know about the
6 phone or about the pictures?

7 A. I let my grandma know.

8 Q. How did those pictures make you feel?

9 A. Uncomfortable.

10 Q. Uncomfortable. And what did you tell your grandma?

11 A. I said, "Grandma, there are some naked pictures of
12 him."

13 Q. Okay. And when you told her that what happened to
14 the phone?

15 A. She said, "Give the phone back," and she took it and
16 she took it in the house.

17 Q. Was that the last time you saw the phone until just a
18 minute ago?

19 A. Then he give it to my cousin.

20 Q. Okay. But did you see the phone when he gave it to
21 your cousin?

22 A. After he gave it to him.

23 Q. Okay. Okay. I may have already asked you this, but,
24 Jasmine, who when y'all were over at the house and Mr.

25 Larry was over there who did he pay the most attention to?

Victim
Victim

- Redirect by Mr. Holt

67

1 A. [REDACTED].

2 Q. Did you get a lot of hugs from him?

3 A. Not that much.

4 Q. How about [REDACTED]

5 A. Yes.

6 Q. Did you ever talk to your mom about that?

7 A. I told my daddy.

8 Q. What did you say?

9 A. Me and my sister. She said, "He keep on hugging us."

10 Q. Okay. So you did tell your daddy?

11 A. Yes.

12 Q. That's all the questions I have for you, Jasmine.

13 And please answer any questions Mr. Jones may have.

14 MR. JONES: Can I have one second, Your Honor? Can I
15 have one second?

16 THE COURT: Yes, sir.

17 MR. JONES: I have no questions, Your Honor.

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

19 MS. PARKER: Your Honor, at this time the State would
20 like to call Tyquan Brown.

21 THE COURT: Come around and be sworn, please.

22 TYQUAN BROWN, after being duly sworn, testified
23 as follows:

24 (WHEREUPON, State's Exhibit Nos. 10 AND 11 were
25 marked for identification only.)

DIRECT EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MS. PARKER:

Q. Please state your full name for the record.

A. Tyquan Brown.

Q. Tyquan, I want to make sure that everybody can hear, so you may have to speak up a little bit or you can lean in towards the microphone. Tyquan, how old are you?

A. Twenty-one.

Q. Okay. And what's your relationship to some of the witnesses that have already testified here today? Dorris Brown, Jasmine and **Victim**

A. **Victim** and Jasmine is my cousin, and Dorris is my aunt.

Q. Okay. And I wanted to ask you do you know the Defendant, Larry Tyler, in this case?

A. I don't know him. I met him when I went out there one time with my Aunt Dorris.

Q. So you met him once before?

A. Yes, ma'am.

Q. And when you said when you went out there please explain what you're talking about when you went out there?

A. When I went to his mother's house.

Q. Okay. So when did you go to his mother's house?

A. I don't know exactly when, what the date was but ---

Q. That's okay.

A. I only went out there one time and that was the time

Tyquan Brown - Direct by Ms. Parker

69

1 he gave us the phone.

2 Q. Okay. And whose home is that? Do you know
3 Mrs. Ernestine?

4 A. No, ma'am.

5 Q. Okay. So you went out there with?

6 A. With my Aunt Dorris.

7 Q. Okay. And was the Defendant there the one time you
8 went out there?

9 A. Yes, ma'am.

10 Q. And I'm going to show you what's been marked as
11 Exhibit Two. Just tell me if you recognize it?

12 A. Yes. This is the phone.

13 Q. And what is that?

14 A. The cell phone that he gave me.

15 Q. Okay. You may have to speak up. Tell me one more
16 time what it is?

17 A. The cell phone he gave me.

18 Q. And tell me about him giving you the phone. What
19 was -- did you buy it from him?

20 A. No, ma'am. He just came and asked. He was like, 'do
21 y'all want a cell phone'. And my mom was like, 'yeah'.
22 So he gave it to us, and my mom gave it to me because she
23 already had one. So I didn't look in the phone until I
24 got home. When I got home I was going through the phone
25 cleaning it out and deleting the stuff that he had.

1 First thing I went through was the pictures; and then
2 after I deleted some of them out I was going through the
3 text messages and reading them and deleting them off the
4 phone.

5 Q. Okay. And I'm going to stop you right there. Let's
6 talk about the phone for a minute. Why did you want the
7 phone? Were you going to use it?

8 A. Yes. I wasn't going to use it, but then he giving it
9 to us. At the time I didn't have one.

10 Q. Okay. So you didn't have a phone?

11 A. No, ma'am.

12 Q. So you were going to clean this one out and get you
13 some minutes for it?

14 A. Yes, ma'am.

15 Q. Now, tell me about the picture in the phone that you
16 saw? And describe as best you can as much detail as you
17 can and just what you remember. Okay?

18 A. I know it was a picture with him in a blue Speedo.
19 Some pictures of some women. I think I scene a picture of
20 a kid, another kid, or something in there.

21 Q. So there were several pictures?

22 A. Yes, ma'am. But I deleted most of them because I
23 just thought it was just some -- that dude had just had a
24 whole bunch of crazy stuff on his phone. I just deleted
25 it.

Tyquan Brown - Direct by Ms. Parker

71

1 Q. Okay. Just his pictures you were going to delete
2 them cause you were going to use the phone?

3 A. Yes, ma'am.

4 Q. Now, tell us about what you saw that was most -- of
5 most concern to you in the phone that prompted you to stop
6 what you were doing?

7 A. The messages that were saved as drafts was what
8 really caught my attention up cause like **Victim**, **Victim** One,
9 **Victim** Two, **Victim** Three. Cause I know that's my little
10 cousin's name. So I ---

11 Q. What's **Victim** One, **Victim** Two and **Victim** Three? How do
12 those appear?

13 A. It was like saved as like separate text messages and
14 drafts.

15 Q. In the drafts. When you say, 'drafts' is that a
16 folder?

17 A. Yeah, it was like a folder. Like a text message that
18 was typed up but it was never sent or nothing.

19 Q. Okay. And what about the text messages caught your
20 attention other than the name **Victim** If there was anything
21 else that caught your attention?

22 A. That was the only thing that really caught my
23 attention.

24 Q. Did you read -- did you read them?

25 A. Yeah, I went through and started reading them. At

1 the same time I'm thinking like maybe it's another **Victim**
2 Maybe he's not talking about my cousin. Then I scene
3 where he was like, "I know this is wrong because you're a
4 little girl" and all type of stuff like that saying
5 that -- talking about he want her in his bed and that she
6 a kid. But what really stood out to me was when he was
7 like, "Don't tell Jasmine because you know she will tell"
8 or something like that.

9 Q. Okay.

10 A. And that's how I really know he was talking about my
11 cousin because he was saying a little girl and that -- she
12 might -- don't tell Jasmine because she will tell.

13 Q. And you knew the relationship between **Victim** and
14 Jasmine?

15 A. Yes, ma'am.

16 Q. What did you do after you saw that?

17 A. I called my cousin, Georgita.

18 Q. And who is -- you called Georgita. And who -- what
19 is relation -- what is her relationship to **Victim** and
20 Jasmine?

21 A. Their mother.

22 Q. That's their mother, okay. And why did you call her?

23 A. Because the -- I didn't think that was right because
24 like she is a little kid. And I felt that was wrongs, and
25 my cousin anyway. So I had to call and tell my aunt -- my

Tyquan Brown - Direct by Ms. Parker

73

1 cousin that -- what I seen because I know if he put stuff
2 like that down sooner or later he was going to take a
3 chance on what he was plotting or whatever.

4 Q. Did you give the phone to Georgita.

5 A. Yes, ma'am.

6 Q. I'm going to show you what's been marked as State's
7 Exhibit 10 -- I'm no going to show you 10. Just State's
8 Exhibit 11, and look at that for a second and just tell me
9 if you recognize it?

10 A. This is exactly what I seen.

11 Q. Okay. What's that on that document?

12 A. Talking about **Victim**

13 Q. Without reading it or anything just in general what's
14 on the document?

15 A. Basically he was saying that ---

16 Q. It is -- I don't want you to read it. Just -- are
17 those the text messages that you saw?

18 A. Oh, yes. Those are the text messages that I saw.

19 Q. Okay. Do they appear to be altered or changed in any
20 way other than being put in graft in this particular
21 format? They're not physically on the phone, but other
22 than has the text been changed or altered in any way?

23 A. That's exactly what I saw.

24 Q. Exactly what you saw?

25 A. Um hum.

1 Q. Please answer any questions the Defense may have.

2 CROSS-EXAMINATION

3 BY MR. JONES:

4 Q. Mr. Brown, you're 21 years olds; is that correct?

5 A. Yes, sir.

6 Q. And you went, according to your testimony, you went
7 over to Ms. Witherspoon's house one time?

8 A. Yes, sir.

9 Q. Who were you with?

10 A. My Aunt Dorris.

11 Q. All right. And is that Dorris Brown that just
12 testified?

13 A. Yes, sir.

14 Q. Okay. And what was your purpose in going over there?

15 A. I was just riding with her. She asked me to ride
16 with her so I said, yeah.

17 Q. And how long do you think you were there?

18 A. No more than an hour or so.

19 Q. Okay. Just visiting?

20 A. Yes, sir.

21 Q. All right. During the visit did the subject of a
22 cell phone come up?

23 A. We wasn't talking about it. He just came out of
24 nowhere and just asked if we wanted one.

25 Q. All right. Okay. And you said 'us' twice and 'we'

Tyquan Brown - Cross by Mr. Jones

75

1 one time. Did he give the cell phone to Dorris?

2 A. No, sir.

3 Q. Who did he give the phone to?

4 A. He was really just asking in general me and my
5 mother.

6 Q. All right. Stop a minute. Was your mother there?

7 A. Yeah, she was there, but she didn't get the cell
8 phone or nothing.

9 Q. All right. I'm going to ask you some more questions.
10 What is your mother's name?

11 A. Debra Brown.

12 Q. Say it again?

13 A. Debra Brown.

14 Q. Debra Brown. All right. So it's you, Dorris Brown,
15 and Debra Brown at Ms. Witherspoon's house that one time?

16 A. Yes, sir.

17 Q. Very good. Now, was she there when the talk about
18 the cell phone was going on?

19 A. Yes. She was sitting right there beside me.

20 Q. Okay. And you said a little while ago that your mom
21 gave you the phone?

22 A. Yeah, she acted like -- she gave it to me like soon
23 as he gave it to her. She handed it right to me, and she
24 was like, "You want this phone."

25 Q. Mr. Tyler gave your mother, Debra Brown, that

1 telephone?

2 A. Yes.

3 Q. Okay. How old is your mother.

4 A. Thirty-eight.

5 Q. Thirty-eight years old. You mother gave you that
6 telephone?

7 A. Yeah. It was basically like he handed it to her and
8 she gave it to me, like, 'hold this. You can have this.
9 I ain't want this'.

10 Q. Okay. All right. Did you start fooling with it
11 right then or did you ---

12 A. I ain't look in the phone until I got home.

13 Q. Okay.

14 A. The phone I think -- the phone wasn't on and I think
15 it was dead. It was still in the box and all. Same as
16 that box he gave us and all.

17 Q. Very good. And Mr. Tyler brought the box out and
18 said, "Here"?

19 A. Yes, sir.

20 Q. Mother took possession, and she said, "Here" and she
21 gave it to you?

22 A. Yes, sir.

23 Q. All right. Did Mr. Tyler tell you to deliver that
24 phone to Dorris Brown, Victim [REDACTED] or anybody?

25 A. No, sir.

Tyquan Brown - Cross by Mr. Jones

77

1 Q. Did he say anything about the telephone other than
2 here?

3 A. No, sir.

4 Q. Okay. Thank you. When you got to looking at the
5 pictures and saw there were some women and a picture of
6 him in a blue Speedo you deleted them; is that right?

7 A. Yeah. Well, I don't think I deleted the picture with
8 the Speedo. I think that was still in there.

9 Q. Okay.

10 A. Because I think I leave the text messages and other
11 stuff in there.

12 Q. All right. Let's talk about the text messages a
13 minute. You called it a draft. You know what a draft is?

14 A. Yes, sir.

15 Q. Tell me again?

16 A. A text saved in the phone but not sent.

17 Q. Not sent to anybody?

18 A. Not sent. It's just sitting there under the draft
19 like miss, miss and it had **Victim** One, **Victim** Two **Victim** Three
20 or something like that.

21 Q. Did Mr. Tyler tell you, "Hey, Tyquan, when your
22 mother gives you this telephone take it over and let
23 either **Victim** or Jasmine or somebody like at this text
24 message?

25 A. No, sir.

1 Q. Okay. You saw the text and decided you better
2 deliver that text message to her mother?

3 A. I didn't sent it. I called her and gave her the
4 phone.

5 Q. Okay. So it never get sent to anybody?

6 A. No, sir.

7 Q. Thanks.

8 MS. PARKER: No further questions for this witness.

9 JUROR: Your Honor, may we be excused for a second?

10 THE COURT: Yes, sir. You may step down, and we will
11 take about 10, 12 minutes.

12 (WHEREUPON, the jury panel was excused from the
13 courtroom at 11:26 a.m.)

14 (WHEREUPON, Court is in recess at 11:26 a.m. and
15 reconvenes at 11:43 a.m.)

16 THE COURT: All right. Ready to go?

17 MR. HOLT: Yes, sir, Your Honor. I was just trying
18 to get be this thing to print. I was in the middle of
19 that. I'm sorry I'm late.

20 THE COURT: No, you're all right. I think we're a
21 little bit early. You ready for the jury?

22 MR. HOLT: Yes, sir.

23 THE COURT: Bring them on.

24 (WHEREUPON, the jury panel enters the courtroom at
25 11:47 a.m.)

Georgita Brown - Direct by Mr. Holt

79

1 THE COURT: All right. Got everybody?

2 MR. HOLT: Thank you very much, Your Honor. Please
3 the Court. State would like to call Ms. Georgita Brown to
4 the stand.

5 THE COURT:

6 GEORGITA BROWN, after being duly sworn,
7 testified as follows:

8 CLERK OF COURT: Have a seat.

9 DIRECT EXAMINATION

10 BY MR. HOLT:

11 Q. Would you please give your whole name for the jury?

12 A. Georgita Brown.

13 Q. How old are you, Mr. Brown.

14 A. Thirty-seven.

15 Q. Who is your momma?

16 A. Dorris Brown.

17 Q. And who are you married to?

18 A. Jesse [REDACTED] M

19 Q. And how many children do you have?

20 A. Four?

21 Q. And what were their names?

22 A. Quintel, Justice, Victim and Jasmine.

23 Q. And who are the two youngest daughters?

24 A. Victim and Jasmine.

25 Q. And were you here earlier today when they testified?

1 A. Yes.

2 Q. All right, and do you know the Defendant in this
3 case, Larry Tyler?

4 A. No.

5 Q. All right. How did you come to know about the
6 Defendant?

7 A. This was a Saturday morning. I was off, and I sleep
8 on Saturday cause I'm not working. And the phone was
9 ringing, ringing, ringing, and I finally answered the
10 phone and it was my cousin, Ty. And he called, and Ty
11 kind of talks like he mumbling, so I didn't really
12 understand what he was saying. But he was like something
13 with a cell phone.

14 And I was like, 'what is it,' and he was like
15 something about **Victim**. So I said I'm going to get the cell
16 phone see what you're talking about. So when I get over
17 there I -- he showed me the pictures, and it was like a
18 couple of pictures -- which I didn't really realize what
19 it was cause I never, ever met the defendant.

20 And it was like pictures of him with just a blue like
21 Speedo on, and he didn't have on any over clothes. And
22 then he said, "And then there are some drafts in the
23 phone." So as I was reading the drafts I was getting
24 very, very disturbed because I was like I'm getting ready
25 to call the police.

Georgita Brown - Direct by Mr. Holt

81

1 Q. All right. And let me stop you right there.

2 MR. HOLT: Permission to approach, Your Honor?

3 THE COURT: Sure.

4 BY MR. HOLT:

5 Q. If I can show you what's been previously marked as
6 State's Exhibits Two and Four and just ask you do you
7 recognize those?

8 A. Yes. Those are the phones they gave him.

9 Q. Okay. And if I could ask you to look at State's
10 Exhibit 11. And if you could just tell me for the sake of
11 the jury do you recognize those text messages?

12 A. These are the drafts that were in the phone.

13 Q. All right. And then after you saw the drafts did you
14 become upset or aggravated? What happened next?

15 A. Very angry.

16 Q. And what did you do then.

17 A. Call the police immediately.

18 Q. All right. And where did you meet the police?

19 A. In the parking way of Roses.

20 Q. And what did you tell the police?

21 A. I told them I didn't really understand. I knew it
22 wasn't right was I saw, but I didn't know the laws of how
23 it would work. But this was about my daughter, and she's
24 only ten years old. And I told them I never, ever met the
25 guy because they were going out there with my mother.

1 And I told them, I said this is something that we try
2 to pre-vent because we don't let them go places like that
3 so we thought they were safe with my mother. And then
4 when I got that phone I was just very -- I lost it.

5 Q. All right. And who specifically in the police
6 department did you speak to?

7 A. Mr. Hodges.

8 Q. And what did you see done?

9 A. Say it again?

10 Q. What did you see done? Like what happened next?

11 A. He was -- I could tell he was a little disturbed
12 about it as well cause he said, "Don't feel bad about what
13 you did. You know you did the right thing by calling me,"
14 and he told me to go get the box for the phone. And then
15 that's when I saw the man, which I never saw him. My
16 auntie was in the car with me, and she told me, "There he
17 is right there ---"

18 Q. Okay, and who is her son?

19 A. Her son is not here. Tyquan is her grandson.

20 Q. Tyquan, okay. So your auntie is with you?

21 A. Yeah.

22 Q. And you said when I rudely interrupted you you said
23 that she had spotted Larry Brown?

24 A. Mr. Larry Tyler.

25 Q. Larry Tyler. I apologize. Who did you get the phone

Georgita Brown - Direct by Mr. Holt

83

1 from?

2 A. I got the phone from Tyquan.

3 Q. So then you had the phone, right?

4 A. Yes.

5 Q. Physically in your possession?

6 A. Yes.

7 Q. And that's the phone. And who did you give the phone
8 to?

9 A. In Eric Hodges.

10 Q. Okay. And what happened after you saw Larry Tyler?

11 A. When I saw Larry Tyler I went back to the parking lot
12 where Mr. Hodges was waiting and told him that I saw the
13 man around the corner at the garage.

14 Q. And what did you see Eric Hodges do after that?

15 A. I saw him talking to him, and I saw him looking that
16 the guy's phone. And I just saw the guy holding his head
17 down and just like -- he just -- I don't know.

18 Q. All right. And after reading the text messages and
19 looking at the pictures would you have felt comfortable
20 sending **Victim** back over there?

21 A. No.

22 Q. And would you have allowed **Victim** to go with your momma
23 back over to that man's house?

24 A. Never, ever begin.

25 Q. All right. Thank you very much. Ms. Georgita,

1 please answer any questions that Mr. Jones and them might
2 have.

3 A. All right.

4 CROSS-EXAMINATION.

5 BY MR. JONES:

6 Q. Ms. Brown, I might have heard something different,
7 but you said, 'telephones'. Are we talking about more
8 than one phone?

9 A. No, one telephone.

10 Q. That one right there?

11 A. Yes.

12 Q. And your relationship with Tyquan Brown and you is
13 what again?

14 A. He's my cousin.

15 Q. Okay. And the other person you mentioned was Joanne?

16 A. Yes, that's my aunt. That's my mother's sister.

17 Q. And what is her last name?

18 A. Brown.

19 Q. She's Brown too, okay. And to your knowledge was she
20 ever at Ms. Witherspoon's house? Did she have anything to
21 do with this other than what you're talking about right
22 now?

23 A. Yes, she was. She was over there.

24 Q. Okay. So she went on occasion also?

25 A. Yes.

Eric Hodges - Direct by Mr. Holt

85

1 Q. All right. And when is this event that you're
2 describing? When did it happen?

3 A. I'm not sure as far as -- what do you mean? When did
4 I get the phone?

5 Q. Yes, ma'am.

6 A. It was in September, but I'm not sure exactly what
7 the specific date was.

8 Q. And that's September of not last year ---

9 A. Of 2011.

10 Q. --- but the year before. Okay. Thank you.

11 MR. JONES: That's all I have.

12 MR. HOLT: No redirect, Your Honor.

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

14 MR. HOLT: At this time the State would like to call
15 Deputy Eric Hodges to the stand.

16 THE COURT: Come around and be sworn, please.

17 ERIC HODGES, after being duly sworn, testified
18 as follows:

19 DIRECT EXAMINATION

20 BY MR. HOLT:

21 Q. Deputy, would you give your whole name for the jury,
22 please?

23 A. Eric Anthony Hodges.

24 Q. And where are you currently employed...

25 A. The Darlington County Sheriff's Office.

1 Q. And how long have you been employed there?

2 A. Probably about -- off and on probably about 16 and a
3 half years.

4 Q. Okay. And before that where were you employed?

5 A. I worked at Darlington Police Department for about
6 six and a half years.

7 Q. Probably about how long have you been in law
8 enforcement.

9 A. This July it will be 24 years.

10 Q. And what's your current rank?

11 A. I'm lieutenant over the Criminal Investigation
12 Division.

13 Q. And explain what that job is and then explain the
14 difference between a responding officer and an
15 investigating officer?

16 A. Okay. My job description, I supervise the officers
17 in the Criminal Investigation Division. We have 11
18 criminal investigators. We also have I think 10 narcotic
19 investigators. There is a lieutenant over criminal and
20 there is a lieutenant over narcotics. And then we have a
21 division commander which is a captain.

22 Q. And who is your captain?

23 A. Captain John McLeod.

24 Q. Okay. And as an investigator how is that job
25 different from a deputy that one might see in his uniform

Eric Hodges - Direct by Mr. Holt

87

1 and out on the street?

2 A. Most of the times when the individual calls for a law
3 enforcement the first responder is usually a uniformed
4 deputy on patrol.

5 Q. And then later on they call investigators in?

6 A. Yes, sir.

7 Q. Specifically, how did you become involved in the
8 case at hand here today?

9 A. On September the 24th of 2011 I was actually filling
10 in as a supervisor on the shift. And dispatch dispatched
11 me to the old Roses -- well, it's the Roses Express right
12 there off of Pearl Street in Darlington in reference to me
13 meeting with a Ms. Georgita Brown.

14 Q. And when -- you were in the courtroom when Ms..
15 Georgita Brown was telling her story, right?

16 A. Yes, sir.

17 Q. All right. So pick us up where she left off. She
18 calls you. And I'd like to direct your attention to
19 what's been marked as State's Exhibits Two and Four. And
20 I'd like to ask you do you recognize them. And then I'd
21 like to ask you what you did after you saw them?

22 A. Okay. Yes, I recognize -- State's Exhibit Two is the
23 cell phone, and State's Exhibit Four is the box that the
24 cell phone had come in.

25 Q. All right. After you spoke with Georgita Brown what

1 did you do then?

2 A. Well, while speaking with Miss Brown and getting the
3 information from her I went on the internet to get some
4 information on Mr. Larry Tyler. And what I did was go
5 through the South Carolina Department of Motor Vehicles
6 website, and right then I learned that his driver's
7 license for South Carolina was suspended.

8 I asked Ms. Brown about the charger for the cell
9 phone. She stated it, the charger and the box, was at
10 Tyquan's house. They went and picked the cell phone up,
11 and I'm still at Roses parking lot. And whenever
12 Miss Brown came back she said that she just saw Larry
13 Brown near some garage off of Lucas Street which is right
14 around the corner from where we were at.

15 I then got in my vehicle and went to Lucas Street. I
16 observed Mr. Tyler pulling into this garage off of Lucas
17 Street. I activated my blue lights, identified myself,
18 and told him that I had an investigation. I asked for his
19 driver's license. He then presented me with a Florida
20 driver's license. I then asked him where was his South
21 Carolina Driver's license, and he told me he didn't have
22 one.

23 Well, at that time I had dispatch do a name and date
24 of birth check through D.M.V. system. And after I did
25 that, of course, his driver's license for South Carolina

Eric Hodges - Direct by Mr. Holt

89

1 came back suspended.

2 Q. He had told you he didn't even have one for South
3 Carolina?

4 A. Yes, sir. Okay. At that time I told him that he was
5 being placed under arrest for driving under suspension. I
6 then advised him of his Miranda rights, and I told him
7 there was another investigation i was working on. Also he
8 stated that he understood his rights and he would be
9 willing to answer some questions.

10 Q. All right.

11 (WHEREUPON, State's Exhibit No. 12 was marked for
12 identification only.)

13 MR. HOLT: And permission to approach, Your Honor.

14 BY MR. HOLT:

15 Q. I want to show you what's before previously marked as
16 State's Exhibit 12, and I'm going to ask you have you ever
17 seen that before?

18 A. Yes, sir.

19 Q. And without telling me what it is, since the last
20 time you've seen it have there been any changes,
21 alterations, deletions occurred to it?

22 A. Only thing State's Exhibit sticker on it.

23 Q. And there is label on there, correct.

24 A. Yes, sir.

25 Q. Who put that label on there?

1 A. Okay. I did.

2 Q. Did you create that?

3 A. Yes, sir.

4 Q. All right.

5 MR. HOLT: And, Your Honor, at this time the State
6 would ask to public that to the jury or show it to Deputy
7 Hodges before we move it into evidence.

8 MR. JONES: I've got no objection.

9 THE COURT: Let me make sure that screen is turned
10 where everybody can see it.

11 MR. HOLT: Yes, sir, Your Honor.

12 THE COURT: Probably going to need to move that
13 podium, too.

14 (WHEREUPON, State's Exhibit Number 12 played in open
15 court for the Jury.)

16 BY MR. HOLT:

17 Q. Deputy Hodges, after the investigation did you have a
18 chance to do anything else pertaining to this case?

19 A. We got -- had a search warrant done for Mr. Tyler's
20 residence and I think also his -- the vehicle that he had
21 driven.

22 Q. What else did you find? Anything else? A note?

23 A. There were pictures that were found off the computer
24 and off -- I think off some other phones.

25 Q. All right. And then that part in there in the story

Eric Hodges - Cross by Mr. Jones

91

1 where you were asking him is he telling you the whole
2 truth. Is it your belief he was not?

3 A. No, sir.

4 Q. All right.

5 MR. HOLT: Your Honor, at this time the State would
6 State's Exhibit 12 in evidence?

7 MR. JONES: No objection.

8 THE COURT: Without objection.

9 (WHEREUPON, State's Exhibit No. 12 was admitted into
10 evidence.)

11 BY MR. HOLT:

12 Q. All right and then -- Deputy Hodges, I don't have any
13 further questions at this time. Please answer any the
14 Defense might have.

15 A. Okay.

16 CROSS-EXAMINATION

17 BY MR. JONES:

18 Q. Lieutenant, I've got a couple of questions about the
19 date of that statement was in September, correct?

20 A. Yes, sir.

21 Q. All right. And was it the same day or maybe a day
22 after your contact with Mr. Georgita Brown?

23 A. The same day.

24 Q. Okay. So that's September?

25 A. Um hum.

1 Q. In this statement I believe that you said the date of
2 the text message was 2000 -- was August of 2011; do you
3 recall that.

4 A. We have an introduction of Video Recorded Statement
5 Form and on the form I stated the statement is in
6 reference to a lewd act case. Case Number 201109-0597
7 which occurred in Darlington County on August through
8 September 2011.

9 Q. Okay. Does that include the time period that the
10 young ladies talked about this morning; that August
11 through September period?

12 A. No, sir. When I actually did this recorded statement
13 I put August but it should have been through July. From
14 July to August.

15 Q. So you found out that what the young ladies were
16 talking about this morning actually happened in July of
17 2011?

18 A. It happened sometime -- we did the incident time from
19 between July and September the 21st when we actually got
20 the phone because they could not give us a specific date
21 when this incident occurred. They said it happened
22 sometime between July and August.

23 Q. Okay. Do you have an opinion as to when the incident
24 that the young ladies were talking about happened?

25 A. It happened before September the 21st.

Eric Hodges - Cross by Mr. Jones

93

1 Q. Okay. Now, the other -- I have a couple things. You
2 said that when you first made contact with Mr. Tyler he
3 was at a garage. Is that where he worked as a mechanic?

4 A. No, sir.

5 Q. Where was that?

6 A. That's -- it's on a street called Lucas Street which
7 is -- I think that's in the city limits of Darlington.

8 Q. Okay. But that was not where he was at work?

9 A. I don't think he was working there. He was just
10 pulling in a van.

11 Q. All right. Did you later find out that that cousin
12 he was talking about whose name his did not know, did you
13 find out that that was in fact Debra Brown who was Tyquan
14 Brown's mother?

15 A. I found that out later. Yes, sir.

16 Q. Okay. And according to that statement Ms. Debra
17 Brown, Ms. Dorris Brown and Mr. Tyquan Brown all visited
18 Larry Tyler's mother, Ms. Witherspoon, when this phone was
19 exchanges; is that correct?

20 A. I found that out later.

21 Q. Okay.

22 A. Usually, when we spoke to Tyquan is that he got the
23 phone.

24 Q. But in fact Ms. Brown got it?

25 A. Well, they were there together.

1 Q. Okay. And do you have a date when that occurred?

2 A. Can I look at my notes?

3 Q. Oh, absolutely.

4 A. Okay. No I don't think I have the specific date in
5 my report, but it was sometimes the week of -- leading up
6 to that Saturday.

7 Q. All happened sometime between July ---

8 A. No.

9 Q. --- and September?

10 A. No. No.

11 Q. Okay.

12 A. When I spoke to Georgita Brown about the phone she
13 has spoke with Tyquan earlier that day, and the
14 information I got was that Tyquan got this phone that
15 week -- that week there.

16 Q. So all of that happened pretty close to when you
17 spoke that Georgita Brown?

18 A. Yes.

19 Q. Okay. But the other event happened prior to that
20 time?

21 A. Yes, sir.

22 Q. Sometime prior to that time?

23 A. Yes, sir.

24 Q. Between July and September?

25 A. Yes, sir.

Shawn Tunsdall - Direct by Mr. Holt

95

1 Q. Okay.

2 MR. JONES: One second, please, Your Honor. That's
3 all I have. Thank you.

4 MR. HOLT: No further questions, Your Honor. At this
5 time the State would request if we could have one more
6 witness who is going to take about eight minutes before we
7 break for lunch.

8 THE COURT: You may step down. Thank you very much.

9 MR. HOLT: The State would like to call Shawn
10 Tunsdall to the stand.

11 SHAWN TUNSDALL, after being duly sworn,
12 testified as follows:

13 DIRECT EXAMINATION

14 MR. HOLT: All right. And, Deputy, if you could just
15 give us your name, your rank and number of years in law
16 enforcement, who you currently work with, and what kind of
17 task force you're on?

18 A. Okay. I'm Sergeant Shawn Tunsdall. I'm a narcotics
19 investigator with the Darlington County Sheriff's Office.
20 Been in law enforcement this June will be 18 years. The
21 last two and half years I've been assigned to the U.S,
22 Department of Justice Drug Enforcement Administrative Task
23 Force. I'm a Federal Task Force Officer, and I am tasked
24 to essentially do narcotics investigations on a federal
25 level.

1 Q. Okay. And what is one of the perks of being on that
2 federal task force?

3 A. The D.E.A. does have some real nice forensic
4 equipment and what not, and every now and then again the
5 Sheriff's Office asks for -- requests to borrow some of
6 that equipment. One piece of that equipment is actually
7 is called a Cell Bright with is a universal forensic
8 extraction device.

9 I am asked from time to time to come over and extract
10 cell phone data for a criminal case.

11 Q. And do you recognize what has been marked as State's
12 Exhibits Two and Four?

13 A. Yes, sir.

14 Q. And did you use what you call your Cell Bright on
15 that phone?

16 A. Yes, sir.

17 Q. And the information that you uncover what did you do
18 with it?

19 A. The actual data, the machine itself, it's real
20 simple. Anybody that has a Verizon phone that's ever
21 taken their phone to the phone store and had a new phone
22 purchased and you need to get your old stuff off your old
23 phone and put it on your new one they have the exact same
24 equipment. The same machine. You plug the phone into
25 this box. It extracts the data onto a thumb drive and at

Colloquy

97

1 that point in time I just placed it inside my laptop
2 computer and burned a disk of it and gave it into
3 evidence.

4 Q. All right.

5 A. And what it is it's essentially -- it's just anything
6 that's on the actual phone.

7 Q. And just to be clear did you do that for the phone in
8 question here, State's Exhibit Two?

9 A. Yes, sir.

10 Q. And you turned the evidence over to evidence with the
11 Darlington County Sheriff's Office?

12 A. Yes, sir.

13 Q. All right?

14 MR. HOLT: No further questions, Your Honor.

15 MR. JONES: I have none.

16 THE COURT: You may step down.

17 THE WITNESS: Thank you, Your Honor.

18 COLLOQUY

19 THE COURT: All right, ladies and gentlemen, we will
20 break for lunch. I've got a little matter I've got to fit
21 in. So I'm going to ask you to be back here at 2:10.
22 Give you a little over an hour. Lots of places to eat
23 around close by and as well out on the Bypass. So we'll
24 see you back here at 2:10. You will report back to the
25 room back here.

1 (WHEREUPON, the jury panel was excused from the
2 courtroom 12:48 p.m.)

3 THE COURT: All right.. Court in recess until 2:00.

4 (WHEREUPON, Court was in recess at 12:50 p.m.)

5 (WHEREUPON, State's Exhibit No. 13 was marked for
6 identification only.)

7 THE COURT: Everybody coming in needs to get on in
8 here.

9 (WHEREUPON, the jury panel enters the courtroom at
10 2:07 p.m.)

11 THE COURT: Welcome everybody back. I remind you now
12 if you need to take a break let me know cause I know after
13 lunch some of you may take naps and it's going to be
14 tempting. Don't fall asleep on us. Solicitor.

15 MR. HOLT: Thank you very much, Your Honor. At this
16 time the State would like to call Deputy Russ Harrell to
17 the stand.

18 RUSS HARRELL, after being duly sworn, testified
19 as follows:

20 DIRECT EXAMINATION

21 BY MR. HOLT:

22 Q. Deputy, could you please give your whole name for the
23 jury?

24 A. Russell Roger Harrell.

25 Q. And where are you currently employed?

Russ Harrell - Direct by Mr. Holt

99

1 A. The Darlington County Sheriff's Office.

2 Q. And what's your current occupation within the
3 Sheriff's Office?

4 A. I'm a forensic investigator and work in evidence.

5 Q. As well as what?

6 A. I'm over evidence, too.

7 Q. Okay. All right. And how did you become involved in
8 the case at hand today?

9 A. I was called -- I was working that day for a little
10 extra, for overtime. Lieutenant Hodges was working on
11 this case, and me, being the forensic person and having
12 knowledge of computers and digital items, he notified me
13 to assist him with it.

14 Q. All right. And how did you provide assistance?

15 A. I went to -- a search warrant was obtained, and
16 myself and some fellow investigators went to the residence
17 of Mr. Larry Tyler.

18 Q. All right. And at the residence what did you
19 collect? What did you leave with?

20 A. I left with numerous thing. I left with a computer,
21 hard drive, cell phones, various other digital items and
22 some paperwork.

23 Q. And how many cell phones?

24 A. There were three that were -- well, it was a bag of
25 them. I can't recall exactly.

1 Q. Three to four or four to five?

2 A. About three to four.

3 Q. Three to four. All right. I want to show you what's
4 been previously marked as State's Exhibits Four and
5 State's Exhibit Two. And I want you to tell me have you
6 ever seen those objects before, and that's all I want you
7 to tell me?

8 A. Yes, I have seen State's Exhibit Three.

9 Q. Since the last time that you have seen them have they
10 been changed or altered in any way?

11 A. They have not.

12 Q. All right. And could you tell the jury what they
13 are?

14 A. State's Exhibit Three is the charger for the phone.
15 And State's Exhibit Four is the box for the phone that was
16 delivered to evidence in. And State's Exhibit Two is the
17 phone itself.

18 Q. All right.

19 MR. HOLT: And, Your Honor, at this time the State
20 would ask for those to be placed into evidence.

21 MR. JONES: No objection.

22 THE COURT: In without objection.

23 MR. HOLT: That's Two, Three and Four.

24 (WHEREUPON, State's Exhibit Nos. 2 through 4 were
25 admitted into evidence.)

Russ Harrell - Direct by Mr. Holt

101

1 BY MR. HOLT:

2 Q. And were you able to recover any data off of State's
3 Exhibit Two?

4 A. Yes, with the assistance of Sergeant Shawn Tunsdall
5 data was obtained off of this particular phone.

6 Q. Were you able to get photographs?

7 A. No photographs.

8 Q. Okay. But were you able to get saved text message
9 drafts?

10 A. Yes, sir.

11 Q. All right. And I'd like to show you what have
12 previously been marked as State's Exhibit 11, and I'd
13 like you to look at it, and I'd like you to tell me as
14 well as the jury if you recognize it?

15 A. Yes, I recognize State's Exhibit 11.

16 Q. And have you ever seen it before?

17 A. Yes, I have.

18 Q. And has it been changed or altered or any deletions
19 made since last you saw it?

20 A. It's the exact same format as what was on the data
21 disk that was obtained from the phone other than for the
22 purpose of Court it has been made larger.

23 Q. Okay.

24 MR. HOLT: And, Your Honor, at this time the State
25 would ask to move State's Exhibit 11 into evidence.

Russ Harrell - Direct by Mr. Holt

102

1 MR. JONES: I don't have any objection.

2 THE COURT: In without objection.

3 (WHEREUPON, State's Exhibit No. 11 was admitted into
4 evidence.)

5 BY MR. JONES:

6 Q: Deputy Harrell, could you read to the jury State's
7 Exhibit 11, please, and then tell us one more time what it
8 is, where it came from, how you got it, and then read it
9 to the jury.

10 A. State's Exhibit 11 is retrieved data from a phone of
11 **Victim** ██████████ that was given to me by Lieutenant Eric
12 Hodges into evidence. And the texts are as follows:

13 Number One: It was in the status folder is sent.
14 Folder is sent. Type is outgoing. Text reads as follows:
15 "**Victim** Two, to fall in love with a little girl as young as
16 you are, but I can't stop my heart from loving you, girl.
17 I wish I had another hour alone with you and nobody knew."

18 Number Two: Says it's unsent in the drafts folder.
19 Type is outgoing. Reads J5, "Me in trouble. Please,
20 **Victim** especially don't tell Jazz. She will surely tell
21 someone. This is just between you and me, my love."

22 Number Three: Unsent status. Drafts folder. Type
23 is outgoing. J4: "Never want to be apart from each other
24 ever again. I love you, little angle. Wish I could make
25 you my wife. If I could you -- if I could you would be in

Russ Harrell - Direct by Mr. Holt

103

1 my bed tonight. Don't get me.

2 Number Four says it's unsent. Folder is draft. Type
3 is outgoing. J3: "Where we were. I would how you how
4 much I love you, **Victim** by holding you close to me and
5 plant a kiss on your lovely lips so powerful that we both
6 would never."

7 Q. All right. Now, the phone that you took those off,
8 State's Exhibit Two -- I apologize.

9 A. Number Five -- excuse me. It's unsent, drafts and
10 also outgoing: "**Victim** you were so beautiful. Please
11 don't tell anyone what I am telling you. First time I
12 ever saw you, **Victim** I fell for you. I know a man should
13 not suppose."

14 Q. All right. Now, the phone that you took those off of
15 was it hooked up? Would he -- would Mr. Tyler have been
16 able to send those messages?

17 A. If the phone was operational at the time you could
18 send it..

19 Q. So if it was not operational how would you be able to
20 deliver those type of messages to another individual?

21 A. Simply have it charged up and turned on. That's like
22 handing somebody a letter.

23 Q. All right. Now, if I could show you --

24 MR. HOLT: Or, Your Honor, if the witness can come
25 down and look at what's been marked as State's Exhibit

1 One. And if you could tell the jury have you ever seen
2 State's Exhibit One before?

3 A. Yes, I have seen State's Exhibit One before.

4 Q. And since the last time you've seen it what's
5 happened with it?

6 A. It's been analyzed for forensic analysis.

7 Q. All right. And have there been any changes,
8 altercations, or deletions made to the machine or the
9 information?

10 A. No.

11 Q. All right.

12 MR. HOLT: Your Honor, at this time we would like to
13 put State's Exhibit One into evidence?

14 MR. JONES: May I look at it? I don't have any
15 objection.

16 THE COURT: In without objection.

17 (WHEREUPON, State's Exhibit No. 1 was admitted into
18 evidence.)

19 BY MR. HOLT:

20 Q. All right. And, now, I'm going to show you what's
21 been marked as State's Exhibit 13. Can you tell the jury
22 what State's Exhibit 13 is, what size they are, and have
23 there been any changes made since the last time you've
24 seen it?

25 A. State's Exhibit 13 are photos obtained from this

Russ Harrell - Direct by Mr. Holt

105

1 lap -- this desk top. And they are -- typically thumb
2 nails are small, and they have not been changed in any
3 way. They're a little smaller on this thing for the
4 purposes of testimony.

5 Q. All right. And before you get into that let me show
6 you one more thing. State's Exhibit Nine, did you create
7 this document?

8 A. State's Exhibit Nine is a letter from Yahoo as a --
9 from the e-mail section that is response back to me that
10 comes with a disk whenever you request information from a
11 given Yahoo account.

12 Q. And did you request information?

13 A. I did.

14 Q. On whose account?

15 A. On the Defendant, Larry Tyler.

16 Q. And did they send you information?

17 A. That did.

18 Q. And has that paperwork been changed or altered by
19 anyone other than yourself since last you've seen it?

20 A. This is the original copy.

21 THE COURT: Your Honor, at this time the State would
22 ask to put State's Exhibit Nine into evidence.

23 MR. JONES: Without objection.

24 THE COURT: In without objection.

25 BY MR. JONES:

1 Q. All right. Let's got back to State's Exhibit 13.
2 The photographs represented in those thumb nails are they
3 entirely from the computer or are some of them also from
4 the e-mail?

5 A. The majority of them appear on the computer. Some
6 are in both places.

7 MR. HOLT: Your Honor, at this time the State would
8 ask to place State's Exhibit 13 into evidence?

9 MR. JONES: Your Honor, I'm not sure if I understood
10 what he said. The majority are on the computer, and some
11 are in both places. What are both places?

12 THE WITNESS: I'll clarify. Some are in the e-mail
13 and the computer. They're in both places.

14 BY MR. HOLT:

15 Q. But to be clear everything on State's Exhibit 13 is
16 off the computer save for one that was off the e-mail?

17 A. Correct.

18 MR. JONES: No objection.

19 BY THE COURT: In without objection.

20 (WHEREUPON, State's Exhibit No. 13 was admitted into
21 evidence.)

22 MR. HOLT: Thank you very much.

23 BY MR. HOLT:

24 Q. Now, State's Exhibit 13, how did you find it? What
25 is it? And why is it significant?

Russ Harrell - Direct by Mr. Holt

107

1 A. It was found through forensic analysis of the
2 computer, and that was conducted and saved on to a disk
3 that contains all the information of where it came from,
4 what part of the computer, and all the things like that.
5 And it was obtained in Columbia at Secret Service.

6 Q. And when you noticed those pictures what did you
7 think you needed to do?

8 A. I felt that it was proper that -- to proceed with
9 legal proceedings on this matter because they, in my
10 opinion and having worked past cases, what shouldn't be on
11 a grown man's computer.

12 Q. All right. And what are the images of if you were to
13 describe them to the jury?

14 A. They're of -- they're predominantly of girls that are
15 below the age of ten.

16 Q. And in what kind of positions are the females in?

17 A. They're posed in unnatural position, and scantily
18 clad. Some with bare butts.

19 Q. One photo is not. What is going on in that other
20 photo?

21 A. It's a young girl in a kneeling position, and anal
22 sex is being performed.

23 Q. Okay. All right. Thank you very much.

24 MR. HOLT: Your Honor, at this time the State --
25 well, I want to ask some more questions before we publish

1 it to the jury.

2 BY MR. HOLT:

3 Q. If I could get you to look at State's Exhibit Six,
4 State's Exhibit Seven, State's Exhibit Five, 10. Without
5 getting into directly what they are can you tell me if
6 you've ever seen them before?

7 A. Yes.

8 Q. All right. And have there been any changes,
9 alterations or deletions made since the last time you've
10 seen them?

11 A. They have not been.

12 Q. And what is Number Six?

13 A. Number Six is a letter that I drafted to send to
14 Yahoo requesting information from their servers.

15 MR. HOLT: I'd like to put Six in evidence, please,
16 Your Honor.

17 MR. JONES: I don't have any objection action.

18 THE COURT: In without objection.

19 (WHEREUPON, State's Exhibit No. 6 is admitted into
20 evidence.)

21 BY MR. HOLT:

22 Q. And the next?

23 A. State's Exhibit Ten is the phone's information that
24 belongs to this -- classified on this thing as the
25 victim's phone, and it gives the phone's information such

Russ Harrell - Direct by Mr. Holt

109

1 as the model and I.D. numbers and various other things.

2 Q. And just by way of asking you a question. Interrupt
3 right here. Did you ever look at a phone that the
4 Defendant had on his person?

5 A. I did. During the course of this search warrant I
6 did.

7 Q. And off the top of your head can you tell me what the
8 screen saver was on that?

9 A. We, after we went to the house, we checked the
10 vehicle. It's kind of standard because he was driving it
11 and located some additional phones. And on the screen
12 saver of that phone was a photo of **Victim** **[REDACTED]**

13 Q. All right.

14 MR. HOLT: Now, I'd like to put -- place Seven into
15 evidence, Your Honor.

16 BY MR. HOLT:

17 Q. What number are you reading from? I'm sorry.

18 A. Ten.

19 MR. HOLT: Number Ten into evidence.

20 MR. JONES: Ten was what? Let me see. Okay, while
21 I'm here let me look at Seven. These are the search
22 warrants. Thank you. I don't have no objection.

23 THE COURT: In without objection.

24 (WHEREUPON, State's Exhibit No. 10 was admitted into
25 evidence.)

1 BY MR. HOLT:

2 Q. And the next one.

3 A. State's Exhibit Five is the evidence property report
4 that Lieutenant Hodges filled out whenever he submitted
5 this phone to evidence.

6 MR. HOLT: And I'd like to place that into evidence,
7 Your Honor.

8 MR. JONES: Again without objection.

9 THE COURT: It's in.

10 (WHEREUPON, State's Exhibit No. 5 was admitted into
11 evidence.)

12 BY MR. HOLT:

13 Q. And then in your hand is Number Seven. Can you just
14 tell me what that is?

15 A. State's Exhibit Seven is the search warrant that I
16 drafter to send to Yahoo to obtain information.

17 MR. HOLT: And, Your Honor, at this time I'd like to
18 place that into evidence.

19 MR. JONES: No objection.

20 THE COURT: In without objection.

21 (WHEREUPON, State's Exhibit No. 7 was admitted into
22 evidence.)

23 BY MR. HOLT:

24 Q. Deputy Harrell, were the pictures you say are off the
25 computer, some of them shared on the internet, and one of

Russ Harrell - Direct by Mr. Holt

111

1 them was strictly from an e-mail. Were there other places
2 you also gained access to photographs by the Defendant?

3 A. That were other phones that has assorted photos, but
4 not necessarily questionable in nature.

5 Q. Okay. How about photos of the Defendant himself?

6 A. Yes.

7 Q. While looking through the computer were you privy to
8 any of those photographs?

9 A. There were Defendant photos in there, yes?

10 Q. And how did you look in those photo? What was he
11 wearing?

12 A. There were some of him in men's underwear, and some
13 with no clothing.

14 Q. Okay..

15 MR. HOLT: Now, I want to approach the witness, Your
16 Honor.

17 BY MR. HOLT:

18 Q. Hand you State's Exhibit Nine, and can you tell me
19 did you collect that and have you seen it before?

20 A. State's Exhibit Nine is an item that I collected,
21 yes.

22 Q. All right. And have there been any changes made to
23 it since last you saw it?

24 A. There have been no changes. Sealed it.

25 Q. All right. Now, what is the significance of State's

1 Exhibit Nine and why did you collect that?

2 A. State's Exhibit Nine is a pair of men's bikini
3 underwear. Normally, you would not necessarily pick that
4 item, but I had information based on the photos from
5 Lieutenant Hodges that this is what he was supposed to be
6 wearing. So it's an identifying -- possibly identifying
7 thing to him.

8 MR. HOLT: And, Your Honor, at this time we would
9 like to place State's Exhibit Nine into evidence?

10 MR. JONES: No objection.

11 THE COURT: In.

12 (WHEREUPON, State's Exhibit No. 9 was admitted into
13 evidence.)

14 BY MR. HOLT:

15 Q. What else did you collect from the scene, Deputy
16 Harrell?

17 A. I had hard drives and various other paperwork that
18 may have ---

19 Q. So there was paper there?

20 A. Yes.

21 Q. Were there pens there as well?

22 A. Drawing pens?

23 Q. Well, if the Defendant had wanted to write something
24 down he could have used any amount of paper at his house?

25 A. That is correct.

1 Q. Okay. What else did you see?

2 A. He had drawings and various newspaper, magazine
3 clippings. I think in some cases he had actually drawn
4 the clipping on to use as something to copy off of.

5 Q. So you could tell he was interested in art work?

6 A. Well, giving credit, he was very good at it.

7 Q. All right?

8 MR. HOLT: Beg the Court's indulgence, Your Honor.

9 BY MR. HOLT:

10 Q. Deputy Harrell, please answer any questions the
11 Defense may have.

12 MR. JONES: Thank you. Judge, if you can -- if we
13 can have a minute to hook something up?

14 CROSS-EXAMINATION

15 BY MR. JONES:

16 Q. All right. Now, and I'm sorry, Deputy Harrell, you
17 rank is?

18 A. Sergeant.

19 Q. Sergeant. Sergeant, back in August, September of
20 2011 you were both a forensic investigator and in charge
21 of evidence?

22 A. Correct.

23 Q. Okay. And in that position you came into possession
24 of the items that we're talking about here today? Some of
25 the items that we're talking about today?

1 A. That is correct.

2 Q: Okay. Specifically, the bag of cell phones, where
3 was the bag of cell phones? Do you know? Did you collect
4 it or did someone. ---

5 A. I collected everything that was there.

6 Q. Where was it when you collected it?

7 A. I have to reference my notes. I believe it was in
8 the closet.

9 Q. Okay. And do you recall whether or not some of the
10 phones were in a box or just laying out by themselves?

11 A. It was a phone in the box, which I believe that phone
12 was actually in the vehicle which I had collected that box
13 as well cause I didn't know which -- I didn't know -- I
14 hadn't seen this phone yet, so I didn't know if that was
15 the box that they were looking for.

16 Q. But the three to four phones include that phone?

17 A. No. Those are phones that were in our possession --
18 we couldn't get to work.

19 Q. Very good.

20 A. They were just kind of scattered about.

21 Q. Just old phones?

22 A. Just old phones.

23 Q. All right. Where did you get that from?

24 A. This phone came from Lieutenant Hodges.

25 Q. Okay. and when Lieutenant Hodges gave you that

Russ Harrell - Cross by Mr. Jones

115

1 telephone I believe he labeled it, did he not? When you
2 described it you described it as [Victim] phone. Where did
3 that description come from?

4 A. It was on his -- it was described as the victim's
5 phone, and I later learned that's what her name was.

6 Q. Okay.. All right. Now, you were present this morning
7 during the testimony?

8 A. I was.

9 Q. Did you hear any time from the time that Mr. Tyquan
10 Brown said that he got possession of that telephone until
11 Lieutenant Hodges got possession of that telephone. Did
12 you hear at any time when Miss [Victim] [REDACTED] had
13 possession of that telephone?

14 A. During those two time periods, no.

15 Q. Okay. So the phone actually came from I believe Ms.
16 Brown, Ms. Georgita Brown, did not?

17 A. I believe that's what I heard this morning.

18 Q. Okay. All right. Just wanted to make clear because
19 I did not understand why it was labeled as Ms. [Victim]
20 [REDACTED]'s phone when she didn't have it. Okay.

21 Now, you also said that you got some photos from this
22 computer hard drive. Is that -- was the hard drive where
23 there is a missing piece in this computer?

24 A. The hard drive is actually inside the computer.

25 Q. Is it still there? Has it been replaced?

- 1 A. It's not been replaced. It's the original hard
2 drive.
- 3 Q. I'm sorry. Was it taken out in order to be examined?
- 4 A. Yes. Yes. Cause you have to remove it and then put
5 it back in.
- 6 Q. Did you do all that?
- 7 A. I was there when it was completed.
- 8 Q. All right. Very good. So that computer is pretty
9 much just like it was whenever it came from Mr. Tyler's
10 house?
- 11 A. That is correct.
- 12 Q. And Item Number -- all right, and specifically
13 referring to Exhibit -- State's Exhibit Number 13 which
14 are the pictures. I believe you said that some were on
15 the computer and some were someplace else?
- 16 A. Correct.
- 17 Q. Tell me again where the someplace else is?
- 18 A. It was in e-mail.
- 19 Q. Okay. And I think there is one picture on this that
20 I heard Solicitor Holt say came from the e-mail; is that
21 correct?
- 22 A. That is correct.
- 23 Q. And everything else came from that computer?
- 24 A. That is correct.
- 25 Q. Okay. Now, in looking at -- you just examined those

Russ Harrell - Cross by Mr. Jones

117

1 pictures that are on State's Exhibit 13; is that correct?

2 A. That is correct.

3 Q. All right. And if you had to pick the worse picture
4 on that page which one would you pick?

5 A. The worse one would be the girl being -- having anal
6 sex, I suppose.

7 Q. All right. And where did that picture come from?

8 A. That was collected from his e-mail.

9 Q. Okay. So it was not on that computer?

10 A. No. It was under a password protect -- under his
11 password with his name and his registration.

12 Q. But, again, it does not come from that computer?

13 A. No.

14 Q. Okay. And you came into possession of that photo as
15 a result of your subpoena sent to Yahoo; is that correct?

16 A. That is correct.

17 Q. Okay. But everything else came from this computer?

18 A. Physically from the hard drive. Yes.

19 Q. Excellent. All right. Now, you said that you were
20 the one who made the determination that it was proper to
21 proceed with legal proceedings concerning those pictures;
22 is that correct?

23 A. That is correct. Well, I consulted with Lieutenant
24 Hodges who is the case -- lead investigator in the case,
25 naturally.

1 Q. Okay. And just tell me briefly how was the
2 determination made? What, I guess maybe I would ask do
3 you have training or do you have other experience in
4 determining what is or is not actionable as far as
5 pictures such as that?

6 A. I worked other cases in the past. I have had 200
7 hours of computer training that involves some of this. And
8 based on some of the legal standards that I've read it fit
9 the criteria.

10 Q. Okay, and, again, I'm not trying to trick you. I'm
11 just want to know how the determination was made?

12 A. Right.

13 Q. And what I heard is that you kind of made that
14 determination based on past experience?

15 A. Right.

16 Q. All right. Now, you also said that several of the
17 pictures on Item 13 are children under ten. How do you
18 know that?

19 A. To me it's visible in some cases. I have a daughter
20 myself. I know what a young child looks like. It's just
21 they're young children.

22 Q. Okay. And under ten is just something -- that's a
23 determination that you put on?

24 A. It is.

25 Q. Okay. Didn't come from the computer? Didn't come

Russ Harrell - Cross by Mr. Jones

119

1 from any place else that you know of? It's just your
2 opinion that some of those pictures are children who are
3 under the age of ten?

4 A. That's correct. Under the age of ten.

5 Q. All right. And that they are actionable? In other
6 words they are deemed worthy of legal proceedings?

7 A. Correct.

8 Q. Okay. How many other cases do you think that you
9 have made such a determination during your career?

10 A. I would say in the past few years at least seven or
11 eight.

12 Q. All right. If I can in your opinion is this an
13 actionable picture? And you can get down if you need.

14 Come over here and look at it?

15 A. It can be questionable or it could be argued as being
16 art.

17 Q. Okay. And if I told you that that was 12 year-old
18 Brooke Shields in the movie Pretty Baby which is available
19 on Netflix would you argue with me?

20 A. I would not.

21 Q. Okay. All right. Could I have Number One, please.
22 Is that actionable?

23 A. No.

24 Q. Why?

25 A. Because it's not a live person. It's art work.

1 Q. All right. Even though it's a very young girl with a
2 bare butt?

3 A. Correct.

4 Q. Art is the reason it's not.

5 CLERK OF COURT: I think you've got some that can't
6 see.

7 THE WITNESS: Oh, I'm sorry.

8 BY MR. JONES:

9 Q. Could you flip back to the first one. All right. So
10 that has artistic value as well as perhaps the first
11 picture. All right. How about Number 27. How about
12 that? Anything wrong with that?

13 A. No, sir.

14 Q. All right. And you may want to stay right there
15 cause I'm going to show you a couple more?

16 A. Okay.

17 Q. How about 28, 29, 30, 31 and 32. Anything wrong with
18 that?

19 A. No, sir. No, sir.

20 Q. Okay.

21 A. No, sir. Doesn't have a shirt on, but doesn't show
22 anything.

23 Q. Do you have a picture -- I mean an opinion as to her
24 age?

25 A. She's younger than 18.

Russ Harrell - Cross by Mr. Jones

121

1 Q. If I told you she was ten year old model appearing in
2 Vogue Magazine would you have an objection to that?

3 A. I haven't seen the magazine.

4 Q. But would you disagree?

5 A. I don't disagree.

6 Q. All right. How about 17 through 26? You have
7 trouble with that one?

8 A. No, I don't.

9 Q. Any of those?

10 A. No, sir.

11 Q. That one?

12 A. No, sir.

13 Q. That one?

14 A. I got a problem with it.

15 Q. Okay?

16 A. It's a little disturbing.

17 Q. How about that one?

18 A. No, sir.

19 Q. How about that one dressed as a hooker?

20 A. Not for -- no, sir.

21 Q. Okay. That's the one you had a little problem with.

22 A. I wouldn't necessarily dress my child that way, but
23 it's not -- and I wouldn't pursue anything for it. It's
24 not right in my opinion, but ...

25 Q. All right. How about Number -- oh, excuse me. How

1 about that one?

2 A. Same thing applies. No. No.

3 Q. All right. How about Numbers Three through Eight.

4 No problem?

5 A. No problem.

6 Q. Okay.

7 A. No. Pretty standard in today's society.

8 Q. How about him?

9 A. No problem.

10 Q. Okay?

11 A. No. No. No.

12 Q. Little naked kid flying around there?

13 A. No, sir.

14 Q. Okay. Artistic value? Is that -- would that be your

15 opinion on that?

16 A. That would be correct. Yes, sir.

17 Q. And how about Number Ten. Problem with those guys?

18 A. No, sir.

19 Q. All right. Have any trouble with him?

20 A. No, sir.

21 Q. Got underwear on?

22 A. He's also a grown fellow.

23 Q. All right. Thank you. Now, the actionable photos

24 that came from that computer excluding and let me get you

25 to describe what road and what picture you said did not

Russ Harrell - Cross by Mr. Jones

123

1 come from the computer or the camera on Exhibit 13?

2 A. It's count, I guess.

3 Q. Please.

4 A. Would be number 12 from the top. There are five
5 across each direction and then one has -- the one after
6 that would be Number 13.

7 Q. And we're going left to right?

8 A. As you read.

9 Q. So it's Number 12. Photo Number 12 on Exhibit?

10 A. Thirteen.

11 Q. Thirteen, okay. All right. With the exception of
12 that picture everything else came from the computer. And
13 do you have an idea on the Photo Number 12 that came as a
14 result of your subpoena how that photo got on to e-mail?

15 A. If I remember correctly it was sent from Verizon if I
16 remember correctly.

17 Q. Is that in a report somewhere?

18 A. It's actually on the e-mail, but it was sent from
19 some other location.

20 Q. Okay.

21 A. I can say that for certain.

22 Q. All right. And can you tell how it was received?

23 Was I received as -- here is my point. Was it received,
24 and I don't know much about this so. When I get an e-mail
25 if it comes to me it just -- it appears, right. If it's

1 something that I'm not supposed to know about it comes on
2 S.P.A.M. Can you tell if that one went to S.P.A.M. or
3 went to his regular e-mail or do you have an opinion about
4 that?

5 A. At this point I don't believe -- it was not in SPAM.
6 Those were -- a lot of these things were in folders. He
7 had folders with **Victim**'s name in his e-mail and various
8 other folders that were separated by his different topics.

9 Q. Okay. And in those folders were any of the other
10 pictures or just Item Number 12?

11 A. I ran across -- on State's Exhibit 13, Number Six was
12 also replicated there to an e-mail.

13 Q. On a separate e-mail?

14 A. Separate e-mail.

15 Q. Okay. And do you know where that came from?

16 A. I'm certain of the origin.

17 Q. Okay. All right. Another question or two. When you
18 were talking earlier about the decision to take action on
19 certain photos. Did you have all of those photos at that
20 time?

21 A. Yes.

22 Q. Okay. Even the one that was not on the computer?

23 A. Correct.

24 Q. You had all of them when that decision was made?

25 A. Yes, sir.

Russ Harrell - Redirect by mr. Holt

125

1 Q. Okay?

2 MR. JONES: Your Honor, if I can have one second,
3 please. I do have one or two more questions.

4 BY MR. JONES:

5 Q. When you said you actually commented on his ability
6 as an artist; is that correct?

7 A. I did.

8 Q. Was there anything inappropriate about any of the
9 drawings that he made?

10 A. The drawings that I ran across there were not.

11 Q. Were not, okay. But he has some artistic talent?

12 A. He is -- I will admit that, yes.

13 Q. Thank you?

14 MR. JONES: Nothing further, Your Honor. Thank you.

15 MR. HOLT: Just briefly, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. HOLT:

18 Q. Deputy, there was some talk from the Public Defender
19 on cross about those e-mails indicating that they could
20 have come from anywhere. But earlier when you were
21 talking about how some e-mail photographs were shared with
22 some of the hard copy photographs are you implying that
23 there were some I his e-mail that were later saved to his
24 computer?

25 A. They were either saved in his computer or came from

1 another source, but they were ---

2 Q. The same pictures?

3 A. Same pictures, but different file sizes.

4 Q. So if somebody has e-mails of a picture and also has
5 those same exact pictures hard wired onto their computer
6 what's logic tell you they do with their e-mail pictures?

7 A. Save them.

8 Q. Okay.

9 MR. HOLT: Now, if I can approach, Your Honor.

10 BY MR. HOLT:

11 Q. And I want to look -- there is a lot of talk about
12 this anal sex picture, and that was an e-mail picture,
13 right?

14 A. That's correct.

15 Q. But all of these pictures were either saved on his
16 computer or from an e-mail?

17 A. That's correct.

18 Q. All right. And?

19 MR. HOLT: I guess that would be it, Your Honor. If
20 I could just publish this to the jury. No further
21 questions.

22 MR. JONES: I have nothing, Your Honor. No recross.

23 COLLOQUY

24 THE COURT: You may step down. Ladies and gentlemen
25 of the jury, I'm going to let y'all view that. As soon as

Colloquy

127

1 you are through if you will individually step back to your
2 room. We're going to take about ten-minutes. All right.
3 Court's in recess, but remember the jury is present until
4 they step back.

5 (WHEREUPON, the jury panel was excused from the
6 courtroom at 2:51 p.m.)

7 (WHEREUPON, Court was in recess at 2:51 p.m. and
8 reconvened at 3:05 p.m.)

9 THE COURT: We're ready.

10 (WHEREUPON, the jury panel enters the courtroom at
11 3:05 p.m.)

12 THE COURT: Ladies and gentlemen of the jury, bare
13 with me just a minute. You rest?

14 MS. PARKER: Yes. I'm pretty confident that as long
15 as we have all of our exhibits in. I'm pretty confident
16 we have. The State rests.

17 THE COURT: Okay. With that said we're going to stop
18 now and let y'all go on cause I've got to put some matters
19 of law on the record. And we will resume in the morning,
20 okay. We'll stick with ten o'clock since the weather is
21 still pretty iffy cause I know everybody had to take their
22 time getting here this morning. We'll go with 10:00
23 instead of 9:30. I don't know when this system is going
24 to move out. So with that said y'all have a good
25 afternoon. Be careful driving home, and we'll see you at

1 10:00 in the morning and we'll finish the case up then.

2 Remember don't talk to anybody.

3 (WHEREUPON, the jury panel was excused from the
4 courtroom 3:07 p.m.)

5 MR. JONES: Your Honor, at this time the Defense
6 would make a motion for a directed verdict as to all
7 charges. Specifically, as to Indictment 2013-GS-16-0604
8 which is sexual exploitation of a minor second degree.

9 Your Honor, we would submit the State has failed to
10 present any evidence, any competent evidence, leading to
11 the guilt of this defendant. If only evidence is actually
12 the pictures themselves and the opinion evidence of
13 Sergeant Russ Harrell.

14 As to contributing to the delinquency of a minor,
15 Your Honor, specifically, that indictment which is
16 2013-16-0605. It alleges the act of the defendant in
17 giving the minor, **Victim** [REDACTED] a cell phone causing
18 her to become incorrigible.

19 Your Honor, the only testimony that was in -- that
20 was presented today from either Ms. **Victim** [REDACTED] or
21 Ms. Jasmine **M** [REDACTED] was that for about ten minutes they
22 had possession of the red cell phone which contained, I
23 believe both of them said, a picture of the Defendant in
24 bikini underwear and a lady in a bathing suit.

25 And for that reason we fail -- we feel that the State

Colloquy

129

1 as failed in its burden to move that the Defendant is
2 guilty of contributing to the delinquency of a minor.

3 Your Honor, as to Indictment 2013-GS-16-0603,
4 criminal solicitation, Your Honor, that specifically says
5 that the Defendant communicate with Miss **Victim** [REDACTED]
6 for the purpose of or with the intent of persuading,
7 inducing, inticing or coercing a person to engage or
8 participate in a sexual activity.

9 The only testimony that even hints of that is the
10 text message which Miss **Victim** [REDACTED] specifically said
11 on the stand she never saw. I don't think, and again,
12 Tyquan Brown and Sergeant Harrell all confirmed that the
13 text message was contained as a draft and had never been
14 sent to anyone. And again, there is no proof at all that
15 the youngster saw that text or read that text.

16 I think the only person that got communicated to was
17 Tyquan Brown when he was erasing things. And then his
18 testimony was he gave it to Miss **Victim** [REDACTED] s mother
19 who read it. Never sent directly to Miss **Victim** [REDACTED] or
20 given to her by way of giving her the telephone.

21 And last, Judge, 2013-GS-16-0606 is disiminating
22 harmful material to a minor specifically alleges that the
23 Defendant on or about July through September knowing the
24 character or content of the material cell phones presented
25 or distribute to the minor, **Victim** [REDACTED] material that

1 is harmful. Or that the Defendant did allow the minor to
2 review or peruse the material that is harmful to the
3 minor; specifically did knowingly give a cell phone to a
4 juvenile female which contained nudity. Particularly
5 photographs of himself.

6 And there is absolutely no testimony -- I think the
7 only mention of nudity that I recall was in the
8 interrogation of the Defendant. I believe Lieutenant
9 Hodges said nude pictures, but the child specifically says
10 bikini underwear and a lady in the bathing suit. That's
11 the only evidence was presented that she may have had
12 something in her hand that could potentially possess a nude
13 picture of the Defendant.

14 No evidence whatsoever to that charge. For all those
15 reasons we would ask that Your Honor direct a verdict in
16 favor of the Defendant on all four charges. Thank you.

17 THE COURT: Solicitor.

18 MR. HOLT: Judge, I've got to be honest with you. I
19 don't know how I can respond. I don't remember all the
20 objections from the start to respond first. So what I'm
21 going to do is just go through each indictment and explain
22 to you what evidence there is in my favor. And why I --
23 contributing to the delinquency of a minor, when gave the
24 young lady the cell phone with text messages and pictures
25 of himself in the bikini briefs he did so to propart.

1 himself or to herself as to willingly injure or endanger
2 the morals or healths of the minor, Judge. It's clear as
3 day.

4 And the statute and if you look at the bottom right
5 here in the indictment, "Or so deport himself to willingly
6 injure or endanger her morals or her health or the morals
7 and health of others." I guess that what I'm saying is
8 that common sense tells us is that the letter that was
9 saved in the drafts in the cell phone was meant for the
10 young lady.

11 You know, there is testimony that there were six or
12 seven cell phones in that house; that there was pen and
13 paper there; and that there was numerous e-mails. So this
14 Defendant clearly had every ability to write down his
15 feelings or beliefs in any other way. Common sense says
16 putting it in a text message in a phone that don't work
17 and keeping it under your pillow is crazy.

18 You know, and the fact that this one girl out of six
19 phones gets that phone he was pitching woo, and I think
20 that's been the State's position from the very beginning.
21 and the fact that he sent to a ten year old girl pictures
22 of himself in bikini briefs and a letter explaining his
23 love and his desire to kiss her so that she would never
24 again know anything more powerful I believe were the
25 words. I'm not quite so sure. He was definitely willing

1 to comport her morals in that one. That's contributing to
2 the delinquency of a minor. I believe it's correctly
3 indicted.

4 Criminal solicitation of a minor, again, for the
5 text, Judge. He is definitely asking her to engage in
6 activities with him. I mean why else would he talk about
7 taking her to the bed, laying her down. And I think, you
8 know, my -- what I have to meet here is I've got a
9 scintilla of evidence in that proports to show this is
10 true. And I say that not only do I have more than a
11 scintilla, but I've enought to get past reasonable doubt
12 in the mind of any jury with common sense.

13 Sexual exloitation of a minor. Judge, I think you're
14 looking at 41 photographs. Mr. Jones had a very
15 compelling slide show of a lot of nice looking stuff. But
16 if Your Honor, as the jury has, makes himself available to
17 look at those photographs they are clearly a girls under
18 the age of ten in what I would call pornographic poses
19 with the clothes on. Does that in itself meet this? No.
20 Does the fact that one of these girls is having anal sex
21 meet this? And I would say above and beyond.

22 You know, all I would need would be one photograph to
23 get past this: I put all of those photographs, named
24 them, and I have them in the indictment. And I certainly
25 have more than a scintilla of evidence here.

Colloquy

133

1 Desiminating harmful material to minors, Judge, if
2 the child's grandmother, Ms. Dorris, so believed that that
3 phone from the brief glimpse she saw of it needed to go
4 back into that house. Those two girls had that phone, and
5 there was something on there that they didn't need -- so
6 much so that the child's guardian got up and gave the
7 phone back to the people that had just given it to them.

8 I've got that in evidence. I've got the fact that he
9 wore those bikini briefs in photos into evidence, and I've
10 got the fact that he wrote a ten year old girl a love
11 letter all in that phone. All under that one activity,
12 and then he desiminated it to the children. And I might
13 add out of the presence of the grandmother. Grandma
14 wasn't aware of it until they were on their way out of the
15 house.

16 So, certainly, I hope I'd answered the objections.
17 It was like I said, I did not think to make notes on each
18 objection as he worked his way down the four indictments.
19 I did not believe that I have the fifth indictment, and
20 when Miss Whooten spoke with me I gladly threw it away,
21 desiminating obscene materials. But I do believe that I
22 have diseminating harmful materials, Your Honor.

23 THE COURT: All right. Y'all let me think about it.
24 I may have some questions for you in the morning.

25 MR. HOLT: Yes, sir.

1 THE COURT: All right. We're adjourned until 10:00.
2 in the morning. Or we're in recess. Excuse me.

3 MR. HOLT: Thank you, Judge.

4 END OF TRANSCRIPT OF RECORD
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

I, HATTIE O. GORDON, Official Court Reporter for the 4th 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 Darlington County, South Carolina, on the 26th day of February, 2013.

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

June 19, 2013



HATTIE O. GORDON, Court Reporter

STATE OF SOUTH CAROLINA)	
)	COURT OF GENERAL SESSION
<u>COUNTY OF DARLINGTON</u>)	2013-GS-16-00603
		2013-GS-16-00604
		2013-GS-16-00605
		2013-GS-16-00606
		2013-GS-16-00608

STATE OF SOUTH CAROLINA)	
PLAINTIFF)	
vs.)	TRANSCRIPT OF RECORD
LARRY TYLER)	
<u>DEFENDANT</u>)	

February 25-27, 2013
Darlington, South Carolina
VOLUME 03 OF 03

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE; and a jury.

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

JOHN W. HOLT, IV., ASSISTANT SOLICITOR
Attorney for the State

PATTI MCKENZIE PARKER, ASSISTANT SOLICITOR
Attorney for the State

RICHARD JONES, PUBLIC DEFENDER
Attorney for the Defendant

DORIS BROWN,

Victim [REDACTED]

JASMINE [REDACTED] M

TYQUAN BROWN,

GEORGITA BROWN,

ERIC HODGES,

SHAWN TUNSDALL,

RUSS HARRELL, Darl. Cty. Sheriff's Office

HATTIE O. GORDON
Circuit Court Reporter

COLLOQUY

1
2 THE COURT: In regards to your motion for directed
3 verdict, Mr. Jones, I do have some concerns. However, why
4 there is a choak on some of these alleged offenses. The
5 way that those particular statutes are worded. What I'm
6 going to do at this time I'm going to deny your motion for
7 directed verdict. But I am going to reserve the right to
8 step back in at any time even after the jury verdict to
9 review your motions. I'm not slamming the door on it
10 right now. I'm going to let the jury take a look at it.

11 MR. JONES: Yes, sir.

12 THE COURT: And first of all I apologize to everyone
13 for getting started a little bit tardy this morning, but I
14 had inventory that I had to sign off on before I left the
15 office. Couldn't help it. Wasn't my fault. All right.
16 ready?

17 MR. JONES: Yes, Your Honor.

18 MR. HOLT: Yes, sir, Your Honor.

19 THE COURT: All right.

20 MR. JONES: Judge, did you want to talk to Mr. Tyler
21 about testifying?

22 THE COURT: Yeah. Hold up just a minute. Okay, Mr.
23 Jones.

24 MR. JONES: Yes, sir.

25 THE COURT: Have you discussed with Mr. Tyler his

Colloquy

139

1 Fifth Amendment rights about testifying?

2 MR. JONES: I have, Your Honor.

3 THE COURT: In your opinion does he understand your
4 advice?

5 MR. JONES: Yes, sir.

6 THE COURT: In that correct, Mr. Tyler?

7 MR. TYLER: Yes, Your Honor.

8 THE COURT: I need to speak with you just a minute
9 about that to make sure we are absolutely crystal clear.
10 Under the Fifth Amendment of the United States
11 Constitution you have the right to remain silent. A
12 defendant when he comes into Court to testify his own
13 defense if he so desires. But you do have a United States
14 constitutional right as well as a State constitutional
15 right to remain silent.

16 If you do it can't be held against you in any way,
17 and I will instruct the jury so. If you were to take the
18 stand and testify you would be treated as any other
19 witness, and you could be cross-examined and impeached
20 just as any other witness as far as the law of evidence
21 and procedures would allow.

22 Any decision to waive your right or either way,
23 whether you decide to testify or not testify, has to be
24 made solely by you. It needs to be freely, voluntarily
25 and intelligently entered by you. Do you have any

1 questions about those rights?

2 MR. TYLER: No, sir,

3 THE COURT: Do you understand everything that I've
4 said and Mr. Jones?

5 MR. TYLER: Yes, I understand.

6 THE COURT: You we elect, as I understand it, not to
7 testify?

8 MR. TYLER: Yes, sir.

9 THE COURT: And that's your sole decision?

10 MR. TYLER: That's my decision.

11 MR. JONES: Thank you, sir.

12 THE COURT: All right.

13 (WHEREUPON, the jury panel enters the courtroom at
14 10:34 a.m.)

15 THE COURT: Good morning, everyone. I want to thank
16 you for your patience this morning. I know we are just a
17 little bit late getting started this morning, but I had to
18 take up so matters of law, and I had some issues that
19 didn't have anything to do with this case that I had to
20 resolve before we got started. Like I said it had nothing
21 to do with this matter.

22 So thank you for your patience. At this time both
23 sides have rested and we will move on to closing
24 arguments.

25 CLOSING STATEMENT BY MR. HOLT

Closing Statement by Mr. Holt

141

1 MR. HOLT: Thank you very much, Your Honor if it
2 pleases the Court. Mr. Jones. I am so happy that the sun
3 is out today. I know yesterday was boring and on top of
4 that kind of dreary and a lot of the evidence in this case
5 is what I would call the opposite of exciting. Nothing
6 cool happened. I think you found out yesterday that real
7 life trials are not at all what you see in the movies. In
8 the movies and Matlock and Law and Order you see little
9 snippets of stuff. And yesterday you had to sit through
10 the entirety of the story.

11 Yesterday was like a movie in the fact that you heard
12 a different viewpoint eight or nine times of people who
13 got involved in this matter along and along the way as it
14 escalated. And I'm sure a lot of you are thinking right
15 now what's our job. What are we supposed to do. I think
16 you know some of what happened here. And you have a
17 pretty good grasp on the facts, but you might not
18 understand what your purpose is here.

19 It's like many Miss Parker said when she did her
20 opening, "You're here specifically to bring common sense,"
21 and common sense indicative of what people in this county
22 refer to as common sense. You're 12 people chosen at
23 random to view the law. In a little bit, after Mr. Jones
24 gets up here and the Judge tells you the law he's going to
25 ask you to go back in that room and decide what happened.

1 And what I'm going to do right now through my closing
2 is go over the facts with you just briefly. It's not
3 going to be a rehash of everything, and then I'm going to
4 go over the law. And I'm going to tell you why I believe
5 Mr. Tyler is guilty of several crimes. And I'm going to
6 give you the specific evidence and the specific reason I
7 believe that. Hopefully, it won't be as boring as
8 yesterday was, but I want to talk a little bit about what
9 we know. I want to talk specifically about the facts.

10 If we go through every witness won't take me but a
11 second. We met Miss Dorris.

12 JUROR: Can you close those blinds?

13 MR. HOLT: I that better, y'all? Okay. I'm sorry.
14 I've never been interrupted in my close before. I hope I
15 can get it back. What do we know specifically? We start
16 with Miss Dorris. Ms. Dorris is the grandmother whose got
17 a job and is involved in her church. And I think that
18 came through. What's she doing? She's taking her
19 grandbabies with her when she's not at work. She's
20 babysitting them, and she's also going around and visiting
21 other ladies in her church. I think Larry's mother is
22 Ernestine McFadden.

23 And that's where the children, **Victim** and Jasmine,
24 first come into contact with Larry. That's pretty much
25 all Miss Dorris can tell us, but she does tell us that one

Closing Statement by Mr. Holt

143

1 day they went to that house. The girls did not have a
2 cell phone when they went in, and when they had left Larry
3 had given them a cell phone. And I asked Miss Dorris,
4 "Did Larry ask you for permission?" She said, "No," and
5 right there is where your common sense as adults from this
6 neighborhood should know or this county, you know, that's
7 not quite right; an adult giving a juvenile a cell phone
8 and not talking about it with the guardian that was with
9 them.

10 Now, what was on the cell phone. Both girls
11 testified that there were pictures on the cell phone of
12 individual in his underwear, okay. And we know from later
13 on in the trial that those pictures were deleted by
14 Tyquan. But we're not talking about that right now. We
15 just want to talk about we know for a fact certain that
16 they told us that there were photographs on that phone.

17 We also know that one of them testified, and you can
18 correct me if I'm wrong, that there were messages on that
19 phone that they did not read. I think one of the girls
20 testified to that. And if you remember differently feel
21 free to remember what you heard and saw and what you
22 believe you heard and saw.

23 And then next we'll talk about the girls. And I
24 think you can realize how innocent and simple minded the
25 girls are. It's on a ten year old level, man. Larry is

1 going to go racing with them. They tell a story about
2 that. That's one of the things they remember. And if he
3 wins he gets a hug, but if they win they get a dollar.
4 Now, it sounds innocent enough to hear him tell it, but I
5 think when the later thing are revealed like what was on
6 his computer and what was on his mind in that text
7 message, your common sense, the wheels should start
8 turning, okay.

9 And I don't think that there are any of y'all in the
10 jury today who are going to bet or wager that Larry
11 probably didn't have no dollars in his pocket. I don't
12 think Larry was planning on winning one -- losing any of
13 those races where he could get a hug, okay.

14 Talked about the girls. Talked about the phone.
15 What came next, Tyquan. You could kind of see him getting
16 older. There are the girls, and then there is somebody
17 Tyquan's age, who is around 21. Later on after Dorris
18 takes the phone back in that Larry gave them, after they
19 tell their grandma that there are naked pictures on that
20 phone Dorris makes them give the phone back.

21 Phone is sitting back around Larry's house. He
22 failed at his attempt to get it into the girl's hand or
23 for them to keep it any length of time. Tyquan's got it
24 now. Tyquan is going through it. Tyquan tells you, and
25 Tyquan's got no reason to lie at all. He's got no dog in

Closing Statement by Mr. Holt

145

1 this fight. You judge people based on what they say and
2 what you hear, but also think about what their motivations
3 are any time somebody speaks to you during a trial.

4 You know that got no difference for me. My
5 motivations are obvious. I want y'all to find him guilty.
6 But Tyquan says, "There are pictures on the phone.
7 They're nasty. I don't want to look at them. I'm
8 deleting them cause I want the phone. I don't have one."
9 But what does he say then? "I get to the messages and
10 there is a draft saved in that phone. And they are
11 messages that are not right.

12 So like any reasonable person Tyquan push delete.
13 Tyquan calls Georgita Brown, **Victim**'s momma, and he says,
14 "You've got a problem here. You need to look at it." And
15 Ms. Parker said, "Tyquan, why did you do that?" And
16 Tyquan said, "Because I didn't want anything to happen
17 further." And that's was a reasonable person's belief of
18 the messages.

19 Now, I'm going to show you just briefly some things
20 we talked about. He is the messages you heard yesterday,
21 okay. It's one messages that you will see starts off with
22 **Victim** All right. And then you've got a five, a four, a
23 three. What I've gone and down we're going to look at
24 those messages in the correct order. And I want to read
25 this with y'all what the message was.

Closing Statement by Mr. Holt

146

1 "Victim" you are so beautiful. Please don't tell
2 anyone what I am telling you. The first time I ever say
3 you, "Victim" I fell for you. I know a man should not
4 suppose to fall in love with a little girl as young as you
5 are but I can't stop my heart from loving you, girl. I
6 wish I had just an hour alone with you and nobody knew
7 where we were. I would -- I would how you know how much I
8 love you, "Victim"

9 By holding you close to me and planting a kiss upon
10 your lovely lips so powerful that we both would never,
11 never want to be apart from each other ever again. I love
12 you, little angle. I wish I could make you my wife. If
13 you could would you be in my bed tonight.

14 Don't get me in trouble, please, "Victim" Especially
15 don't tell Jazz. She will surely tell someone. This is
16 just between you and my, my love.

17 You know, as you can see that's Larry. Larry Tyler
18 is the man of over 50 years. I think we all remember what
19 "Victim" looked like yesterday. A ten year old girl. This is
20 his letter to her, all right. And the part in his
21 self-serve video statement where he tells you it was
22 therapeutic to write this, and this is just something he
23 was keeping up with. Remember, he had pad, pen, e-mail,
24 paper, probably a journal. He had everything in his house
25 to therapeutically write stuff down.

Closing Statement by Mr. Holt

147

1 This is not a journal entry. Let me tell you how
2 journal entries start. "Dearest Journal, today I saw a
3 really cute girl. I wish I had more hair. Sincerely,
4 John Holt, Assistant Solicitor." That is how things go.
5 This is a letter to somebody. This is a letter where
6 you're communicating your desires to someone. This is a
7 letter that Tyquan read and immediately and reasonably
8 assumed that things are going to escalate. I need to tell
9 another adult. And that's where Georgita Brown came into
10 it, **Victim** mother.

11 Georgita immediately calls the place. She gets
12 Investigator Hodges involved. Investigator Hodges goes
13 through. He looks at more evidence. They go to the home.
14 They find more phones. And let me just interject this
15 right here. There are three or four phones in the house.
16 Do you think that it's coincidence that when he was giving
17 phone away to the young girls he gave them a phone with
18 this message on it?

19 Because I think when you run that through your common
20 sense of all the things he could have given her that this
21 is the one phone that's got this on it along with pictures
22 of him in a blue Speedo. I don't think that you're going
23 to go through all the phones and find that. So I think
24 that you're going to go through the one that he intended
25 for **Victim** to have and this is what was on it.

1 So Deputy Hodges gets him in. They go through the
2 video statement. What's he say on the video statement?
3 "I'm infatuated with her. I just think the world of her.
4 I was writing this down as therapy for my own mind. I
5 didn't think anything would see it or anybody would get
6 it?"

7 Deputy Hodges goes, "What's up with the pictures on
8 the phone? The pictures that the girls saw and that
9 Tyquan saw?" And he goes, "They were just, you know, just
10 random pictures of my phone of me in bikini briefs." You
11 know, just run that statement through your common sense
12 filter. Just run it through there and see does it add up.
13 All right.

14 Now, that's pretty much the evidence except for, you
15 know, Deputy Harrell was at the end. And Shawn Tunsdall
16 was in there just to let you know that they tried to get
17 everything they could off the cell phone. They ran it
18 through federal stuff. Then Russ Harrell testified to he
19 got the pictures off the phone, and you're going to see
20 them. I don't know where they are right now, but you will
21 have plenty of time to look at them. Although I don't
22 think you'd like to.

23 But he got those pictures off of the computer, and
24 then Deputy Harrell was also smart enough to check his
25 e-mail. You know, but any way we'll get to that in a

Closing Statement by Mr. Holt

149

1 minute. What I want to talk about now is criminal
2 solicitation of a minor, and the Judge is going to explain
3 to y'all the law how it is, okay. Listen to everything
4 the Judge tells you. But I'm going to show you a picture
5 of the law, and I'm going to tell you how I see it.

6 Eighteen or older; that's Larry. Commits the offense
7 of criminal solicitation of a minor if he knowingly
8 contacts or communicates or attempts, okay. I don't have
9 to prove to you that the girls got these messages. And
10 they said that there were messages on the phone. Tyquan
11 saw the messages, okay. He attempted to get that message
12 that we just read to **Victim** All right.

13 Attempt to contact or communicate with a person who
14 is under the age of 18 for the purposes or intent of
15 persuading, inducing, enticing or coercing the person to
16 engage or participate in sexual activity.

17 Play the end game out here, folks, okay. This was
18 stopped part way, and that's a good thing. And I'm not
19 going to be upset about that, but this was stopped part
20 way before Larry could get out what he really wants.
21 Think about what that message tells us. Larry, what were
22 you really after? "Wish I could make you my wife. If I
23 could you would be in my bed tonight." What does a
24 husband and wife do in their bed at night?

25 "I would -- I think it's supposed it be I would show

Closing Statement by Mr. Holt

150

1 you how much I love you, **Victim** by holding you close to me
2 and plant a kiss upon your lovely lips so powerful that we
3 would never, never want to be apart from each other
4 again."

5 And then what is probably without a doubt the worse
6 one, "I wish I had just an hour with you and nobody knew
7 where we were". Okay. The complete purpose of putting
8 that text message in that phone and then giving that phone
9 to a ten year old girl is that she is going to go through
10 it. She is going to read how much you love her. She is
11 going to look at those pictures of you in your Speedos and
12 your body. And this is the thing she's going to want,
13 okay.

14 Don't try to make this make sense, all right, cause
15 it doesn't in our world. All right. This was his plan.
16 This was his design. He was soliciting her for the end
17 game of sexual gratification on his own part. All right.
18 Disseminating harmful materials to minors and exhibiting
19 harmful performance to a minor. The Judge is going to
20 tell you the law. Judge is going to tell you what a
21 harmful material is. Listen to it, okay. But I'm sitting
22 here telling you present to a minor material that is
23 harmful to minors. His own body in a Speedo.

24 Mr. Jones put up a bunch of men in Speedos yesterday.
25 He put up a bunch of young ladies in different dress for

Closing Statement by Mr. Holt

151

1 Art House Magazine. And between me and you he probably
2 most excited before this trial. Knowing Mr. Jones as I do
3 probably could wait for the exchange. It's the little
4 things about this being my place of work that I was
5 fortunate about one of them. But what I will tell you is
6 is that context is king.

7 And those photos of those men in the Speedo and
8 swimsuit, a bunch of them in robes changing clothes or
9 getting ready tells your mind, the average person in
10 Darlington County, tell your mind one thing, and then a
11 man in his Speedo alone in his room gives that photo to a
12 ten year old girl that's a different context. And that
13 should tell your mind another thing. And there is no way
14 you do not find him guilty of this.

15 Second degree sexual exploitation of a minor defined.
16 All right I not going -- this is the longest -- this first
17 one doesn't really apply. That's for people that produce
18 the material that was on this computer. And you're going
19 to see 41 photographs small as I can make them on a piece
20 of paper. All of them without a doubt young children.
21 One of them engaged in anal sex, okay.

22 Distributes, transports, exhibits, receives. Russ
23 Harrell testified it was on his e-mail. He also testified
24 some of the pictures were on his e-mail and saved to his
25 personal computer, okay. So what does that tell y'all?

1 E-mail is a transportation device where he exchanges them,
2 saves them to his computer and/or sends them out. It
3 can't tell anybody with common sense anything else.
4 That's what was happening there, okay.

5 Either he was distributing it. He was transporting
6 it. E-mailed it to himself, okay. Exhibits, had to look
7 at it on his computer. receives, and you want to tell me
8 it was just an e-mail then I'll say, 'fine.' I'll settle
9 for receives. So is can be any one of those. It doesn't
10 have to be all of them. All you have to do is find one of
11 them.

12 And what you're going to hear from the Defense, this
13 was just some type of weird situation that could never
14 happen again in a million years. Nothing was going on.
15 But I want you to ask yourselves common sense people from
16 Darlington County how many e-mails have you gotten with
17 naked children on it. How many e-mails have you gotten by
18 mistake that have naked children engaged in sexual
19 activity on them. Okay. I don't know. I'm saying I
20 ain't never had none. I'm saying you judge that and run
21 it through your common sense filter and see what you come
22 up with.

23 Contributing to the delinquency of a minor. There
24 are ten things. I put three up there that I think fit the
25 situation. "It shall be lawful for any person over 18.

Closing Statement by Mr. Holt

153

1 years of age, Larry is 50, to knowingly and willfully
2 encourage, aid or cause to do any act which shall cause of
3 influence a minor to violate any laws." Okay. Statutory
4 rape. He would be violating that law if Larry got his end
5 game. That's what he's encouraging her to do with that
6 text message and with those photographs.

7 "To associate with immoral persons." I'll tell you
8 who's immoral, okay. Somebody whose got child porn on
9 their computer, and is out to sleep with a nine -- ten
10 year old girl. Doesn't get much more than that.

11 "To so deport himself or herself as to willingly
12 injure or endanger his or her morals." The end game that
13 Larry was after couldn't damage her morals go out for the
14 rest of her life more than anything else I can think of.
15 I don't know what I could think of that would so deport
16 herself like that.

17 Now, it was quick trial. It was a quick closing, all
18 right. You've scene all the evidence. You know how I
19 view the law. You're going to go back there and discuss
20 it. But what I do not want you to go back there and do is
21 believe that any other situation is reasonable doubt.
22 You walk outside of your house in the morning that there
23 is a fine white powdery substance all over the ground, all
24 over the roofs of the houses, all over your car, and
25 you're sitting here thinking to yourself, 'I'm a

1 reasonable person. It must have snowed last night'.

2 Your neighbor comes up to you, "man, there was a
3 crazy accident last night. An ice truck fell over. I
4 tried to clean it out my yard with dynamite, and I woke up
5 and it all looks like this." Okay. You know what I'm
6 thinking? I'm thinking my neighbor is an idiot, and
7 that's not reasonable. All right.

8 Reasonable doubt, and I'm going to read this for you
9 just cause I like hearing it. And there is a lot of the
10 different charges and a lot of different ways the Judge
11 can charge you the law, okay. He, might not use this. If
12 anything I say or do conflicts with what the Judge tells
13 you after we all sit down go with what the Judge say. But
14 I know for a fact that there is going to be one charge
15 that some judges use, and it describes reasonable doubt in
16 a way that makes a lot of sense.

17 "It is not an imaginary or a fanciful doubt or a weak
18 doubt. It is a substantial doubt. It is a doubt with
19 which the words imply. A doubt for which you can give or
20 assign a reason based on the evidence in this case. A
21 reasonable doubt is not any sort of doubt. You and I know
22 from everyday life experiences that you may have a doubt
23 about any matter that arises no matter how trivial a
24 matter it may be, okay.

25 Reasonable doubt is not an all out excuse to look

Closing Statement by Mr. Holt

155

1 past one, two, three, four, five pieces of evidence in a
2 row. You can't just say, this could have happened to
3 anybody. Anybody could have had a letter on their phone
4 to a ten year old girl. Anybody could have had pictures
5 of themselves on the phone. Anybody could have also
6 mistakenly got internet photos off an e-mail site of
7 little girls. That could have happened to anybody, okay.
8 It's not reasonable, and it doesn't make sense.

9 There are a couple of other things I want to talk
10 about with you before I sit down. I'm pretty proud of
11 myself for finishing this quick, but you know just three
12 or four cell phones and the girl happens to get the one
13 that has the message on it. And, you know, Mr. Jones made
14 a big stink about we can't prove that that message was on
15 that cell phone when the girls got it. Okay.. But I'm
16 telling you it's unreasonable to think otherwise.

17 The message was clearly a message to another person.
18 It was not a journal entry, okay. That message was
19 intended by Larry for **Victim**. Why else would it say, "**Victim**
20 please, don't tell Jazz. Surely she will tell somebody?"
21 Don't write like that in your journal, okay. And somebody
22 whose got pen and paper, internet, e-mail, all this stuff
23 in their house is not going to go charge up an old phone,
24 put it on there, and then sit it down and give that phone
25 away.

1 If, like the Defense proclaims, he put that message
2 on that phone soon or close into the time he gave it to
3 Tyquan. I would say if he did it one or two days ago you
4 wouldn't turn around and give the phone away. What he
5 did, and what the State proves -- believes it proves is
6 that he put the phone on there -- put the message on the
7 phone, put the pictures on the phone, gave it to **Victim**
8 hoping beyond reason and beyond hope and however his mind
9 worked that she was going to go home that night looking
10 through that phone, find that message, look at those
11 pictures and desire him the way he desired her.

12 That's reasonable, y'all. That's how he's thinking.
13 Okay. It's reasonable that that's what happened. What's
14 not reasonable is that a day or two before he have it to
15 Tyquan he went down and put all this on a phone that he
16 was going to throw away but instead at the last minute
17 decided to give to somebody. That's unreasonable. That
18 doesn't make sense.

19 Dorris, Miss Dorris, did he take pictures with y'all?
20 Yeah, he loved to take pictures with everybody. Did he
21 ever take a picture of you by yourself, Miss Dorris? Why,
22 no, he didn't. So every picture he took of you, his
23 momma's friends, you had your grandbabies in it? Yeah.
24 Miss Dorris like **Victim** and Jasmine didn't see what was
25 happening. But in the light of day when all of it gets

Closing Statement by Mr. Holt

157

1 put together the path that Larry Tyler was taking becomes
2 painfully obvious.

3 And the conclusion he wanted is shown on his
4 computer. What he was after, this -- always remember that
5 the Defendant, he tells half truths in his video
6 statement. Self-serving truths just like anybody who is
7 confessing to something. You walk into a little room.
8 Y'all got common sense. You've been around children. You
9 walk in and kid's face is covered in cookies. Two cookies
10 were on the shelf. All the other cookies where in a jar.
11 You look at the boy and say, "Did you eat them cookies out
12 the jar? No, I sure didn't", cause he ate the cookies
13 that were off the floor or somewhere. You know how kids
14 are.

15 But he ain't lying. You know, Larry, do you got a
16 South Carolina driver's license? No. He ain't lying.
17 Its suspended. He gives Eric the Florida driver's
18 license, but at the same time Eric is going to look up and
19 find out that he's got a suspended driver's license in
20 South Carolina. Don't let the half truths pile on as much
21 as wanting to believe a stupid set of facts. Don't let
22 either one of those cloud your judgment.

23 And before I sit down I cannot tell you enough how
24 much this text message was intended for **Victim** It is not,
25 not a journal entry. Nothing about this message screams

1 journal. You don't tell your journal not to tell on you.
2 Please don't tell anybody. Please don't get me in
3 trouble. Please love me. If I can get you alone where
4 nobody knew for just an hour. These are the things he was
5 attempting to communicate with **Victim** And the pictures
6 just further prove it in my mind.

7 Ladies and gentlemen, y'all please give Mr. Jones all
8 your attention. He's a much better attorney than me.
9 Somebody I look up to. And keep an open mind when you go
10 back in the room. And thank you so much.

11 CLOSING STATEMENT BY MR. JONES

12 MR. JONES: All right. We're about down to the wire.
13 I told you yesterday when we started that I was going to
14 remind you again about the three principles I think we
15 ought to be concentrating on.

16 Number One, Mr. Tyler walked in here yesterday and
17 remains presumed to be innocent by everyone in this
18 courtroom. Bedrock.

19 Number Two, Mr. Tyler has absolutely nothing to prove
20 to anybody here. The State has the burden of proof, and
21 the standard that they have to use and exceed to convince
22 each and every one of you Mr. Tyler is guilty of anything
23 is that they have to make the proof beyond a reasonable
24 doubt. That's what reasonable doubt is all about up
25 there.

Closing Statement by Mr. Jones

159

1 All right. Here we go. We've got two separate
2 crimes charged in this situation. You're going to take
3 back to your room several things, but four pieces of paper
4 will be the indictment which are the papers that got us
5 started. That's how we begin a criminal trial on the
6 fifth floor in Darlington County. This piece of paper is
7 not evidence. It's just a charging paper that starts it
8 off. That's why we're here. You will have each of these
9 back with you when you go to your room.

10 Three of them have to do with the situation the State
11 claims to have happened between Mr. Tyler and **Victim**

12 **██████████** The fourth has to do with the pictures that
13 were also introduced into evidence. Let's concentrate a
14 minute on the three that deal with Mr. Tyler and **Victim**

15 **██████████** It was interesting as Mr. Holt was talking
16 that he finished by telling you that I was going to tell
17 you that that message, the text message that he showed to
18 you, never got to the child.

19 The interesting part about it is because that's where
20 the State case fails. It fails totally. Now, let me say
21 before I say anything else is this situation a little
22 strange, a little odd? Is it a little creepy? Is it a
23 little uncomfortable? No question. Is it criminal? Not
24 at all because where the State's case fails on these three
25 indictments has to do with disseminating or getting this

Closing Statement by Mr. Jones

160

1 information from Mr. Tyler to Ms. [Victim]

2 And let me tell you right up front where I think it
3 fails. And I'm not going to run over every single piece
4 of evidence that was presented. You heard all of the
5 witnesses yesterday starting with Miss Brown and I think
6 ending with Mr. Harrell -- Sargent Harrell. But where it
7 fails came about as you listened to the statement that was
8 played yesterday of the interview with Mr. Tyler done by
9 Lieutenant Hodges.

10 And where Ms. Brown, Miss [Victim] Miss
11 Jasmine [M] and I believe one of other witness was
12 Tyquan Brown. The time periods don't work. The actual
13 charging paper says, "Sometime between July 1st and
14 September 24 2011 all this stuff happened. And the State
15 would have you believe that all that got jammed together
16 and happened all at one time.

17 But if you listen to the witnesses and how they
18 explain what happened the young girls and their
19 grandmother going to visit Ms. Witherspoon who is Larry's
20 mother who is related somehow to Miss Dorris Brown. All
21 of that was happening early on in the game which I think
22 is reasonable to assume would be sometime in the July 1st
23 2011 period of time. There is no other reason to have
24 that date on there unless something was going on at that
25 particular point in time.

Closing Statement by Mr. Jones

161

1 If that is correct and as the witnesses say they're
2 not real sure what date it was, but somebody came up with
3 July 1st until September 24th. September 24th is real
4 clear because that's when Ms. Georgita Brown, who is
5 **Victim** mother, received information from Tyquan Brown
6 about that text message. And if you listen real closely
7 in the statement as Lieutenant Hodges is questioning
8 Mr. Tyler he says, now, he says this message got put on
9 that phone in August of 2011 which is a good month after
10 the whole situation began sometime on or about July 1st
11 2011.

12 Why is that important? It's extremely important
13 because that's the early day is when the young girl was
14 visiting with Larry's mother. That's when the incident
15 occurred where the phone gets to young **Victim**
16 And the most interesting part about that particular
17 incident was Miss Dorris Brown, the grandmother.

18 The girls come out -- I think everybody who was there
19 at that incident, Ms. Dorris Brown, **Victim**
20 Jasmine **M** all testified that the telephone that
21 got to the girls; that phone was in their possession
22 around ten minutes. As I heard the testimony all of that
23 time was in the presence of everybody. All the adults
24 were there as they had the telephone in their hands.

25 And they get ready to leave and they walk out to the

1 car and **Victim** says there is a picture of a lady in a
2 bathing suit, and I don't know even know if she said
3 'Larry' or 'a man' in a Speedo. And grandmom says, "Give
4 me that phone," and she takes the phone and takes it back
5 inside and says, 'here'. Case closed. Done. It's over.
6 All right. Did the children go back around him? No.
7 That's -- as I said that's creepy. Don't want any part of
8 that, but kids not going back over there. Does Miss Brown
9 go back over there? Oh, yes, many times.

10 And let me jump to the other case. Excuse me. Let
11 me jump to the end date which is September 24th. A day or
12 two before that she's back over there again visiting with
13 Ms. Witherspoon and Larry. And if I had that right Mr.
14 Tyquan Brown, and I think his mother's name is Debra, but
15 they're all at the house. And if I heard the testimony
16 Debra needed a telephone. Either Debra or Tyquan, one of
17 the two of them, needed a telephone.

18 Larry says, "I got a phone." Goes back, gets Item
19 Number Two or Four, whichever one it is. Says, "Here.
20 Take the telephone." And the phone is not in there. Is
21 it inside the phone? Oh, I'm sorry. Okay. And here
22 comes the little red telephone which we saw yesterday, and
23 this telephone comes out. And Miss Debra Brown, I think
24 Tyquan said 38 years old now, so about a year and a half
25 ago she's 36, 37, somewhere in that neighborhood.

Closing Statement by Mr. Jones

163

1 Says, "That's a nice phone. Tyquan, here." And then
2 Dorris Brown who was there a month or so before and had a
3 problem with this phone, did she say anything? Says, "Oh,
4 my gosh. That's the telephone that we had a situation
5 with." But doesn't say a thing. Okay. Great. Take the
6 telephone. Telephone goes home.

7 Tyquan testifies I'm going through the phone. He's
8 decided he's got a cell phone. He didn't have one before.
9 Now he's got one. He's going through seeing what's on it.
10 Deleting everything, and he comes to a message. The
11 message that was played up here which never got
12 disseminated. And the reason I'm using that word is you
13 read the words off the indictment. Never got delivered or
14 never got into the hands of the person that the State says
15 it was intended for.

16 Again, is it an odd situation? It's as Odd as it can
17 be, and you read the words that Mr. Holt put up there.
18 But they never were delivered to anybody. Strange, yes.
19 Criminal, no.

20 Well, then it gets a little odder because Tyquan
21 says, "Hum, this has to be my cousin. Let me call their
22 mother and say, 'I've got something strange you need to
23 see'." He reads or I'm not -- I don't remember exactly if
24 me read the words to momma or mamma said, 'I'll be right
25 there'. And they meet somewhere. She reads the words,

1 and as a good mother does she flips out. She says, "Oh,
2 my gosh." She calls the police, and Lieutenant Hodges
3 comes and it all goes basserk from there.

4 The message, however strange it was and written for
5 whatever reason it was written, never got delivered to
6 Miss **Victim** [REDACTED] It just didn't. It didn't exist at
7 the time that she had the telephone in her hand. And was
8 not intended for her when the phone was given to Debra
9 Brown, a 38 year-old woman, who was visiting in the home
10 with Ms. Dorris Brown and her son, Tyquan. Didn't get
11 delivered.

12 I don't care how crazy the message was. You can
13 write it on the walls in big red letter. It's your fault.
14 Strange, yes. You can write it on the wall, and as long
15 as this young lady doesn't see it or you don't attempt to
16 get her in there and show her the message there is nothing
17 wrong with that. It's just that it's strange. It's not
18 criminal. That's where the State's case falls completely
19 apart because they can't make that jump. And that --
20 that's where the reasonable doubt comes in. That's what
21 reasonable doubt is all about.

22 Mr. Hold would have you believe that there is only
23 one path. There is only one way from Point A to Point B,
24 and that is straight through, but this is a gap that can't
25 be reasonably filled in. That's where reasonable doubt

Closing Statement by Mr. Jones

165

1 comes about. But we're not over because at this point in
2 time the police, they're jumping all over Mr. Tyler.
3 They've got him in custody. They're interrogating him.
4 They're going through the situation. I don't believe you.
5 That's not reasonable. It didn't happen like that.

6 And then they say, "You got anything else on your
7 computer?" Well, yeah -- no. Excuse me. You got
8 pictures of Ms. Victim on your computer? Grandmother
9 test -everybody testified he took pictures all the time.
10 He was an artist. Even Sergeant Harrell said he was a
11 good artist. He's got all kinds of picture. So you got
12 pictures on the computer. You better tell us the truth
13 cause we're going to look at that computer.

14 They issue a search warrant, and they take everything
15 electronic out of that house and they go through it. And
16 then you come up with Exhibit 13. And they're not
17 pleasant. They're really aren't. And I show those
18 pictures yesterday to show you that in most of these
19 situations these children are graduates of the Toddler in
20 Tiara pictures that I was showing yesterday. Except for
21 one. There is one bad picture on there. There is one
22 really bad picture on there. But guess what? That's not
23 on the computer. That's not on this machine right here.
24 Where was it? It's out there in outer space. It's on an
25 e-mail. It's nowhere on this computer. Nowhere.

1 And if you recall yesterday when I asked Sargent
2 Harrell, "Can you tell me where that e-mail came from."
3 As I recall the only specificity he would give is was that
4 it came from a Verizon account somewhere. Was it S.P.A.M?
5 Don't know. There is no source of that e-mail message.
6 But it is odd that it's not here where the other imagines
7 were. It's out there in outer space, and you're going to
8 have this and you're going to take it back to your room
9 and you're going to take a look at it.

10 And if you would I want to go through those pictures
11 yesterday that we were looking at. And it wasn't done for
12 entertainment value. It really wasn't. It was done to
13 show you that's not obscene. That's not as bad as these
14 pictures right here. That's a 12 year old girl in 1978 in
15 the movies. And you can go on Netflix right now and get
16 that movie and watch it as soon as you get the movie or
17 the disk or the streaming or whatever it is. You can get
18 it today.

19 But Mr. Tyler is charged. He's charged with it. I
20 think this girl is six years old. If I'm not mistaken
21 that's Danny Lynn. Excuse me. She's ten years old. She
22 was a Vogue Magazine model. Most of these pictures are of
23 her. Ten years old. That's Vogue Magazine. Vogue
24 Magazine. A beautiful little girl. That little girl,
25 same thing. Vogue Magazine. Are they illegal?

Closing Statement by Mr. Jones

167

1 Sargent Harrell said, "Hum. I'm uncomfortable with
2 some of these. I'm a little uncomfortable with some of
3 these." This one, y'all can watch this one any night of
4 the week. These are little -- tiny little girls
5 pretending like they're big girls. That why I say these
6 are graduates. This is the next stage. This is what
7 they're doing after they start to develop.

8 I've learned an awful lot. I didn't know who the
9 devil Honey Boo Boo was, but we got Honey Boo Boo. We've
10 got Toddler's in Tiaras. And now we got the graduates.
11 All right, come in this way. I think that's her:

12 I'm a little uncomfortable with that, too, on
13 television any night of the week. This girl dressed up
14 like a hooker, for God's sake. Everybody's seen that
15 movie. It's a great move. This girl probably she's -- I
16 don't know. I didn't ask Sergeant Harrell how old he
17 thought she was. Two or three years old dressed up like a
18 hooker on television for anybody to see? Yeah. We've got
19 the graduates.

20 Again, what's going on there. These girls are two or
21 three years old. Sergeant Harrell says these are about
22 ten. One of the things you're going to do is you're going
23 to decide how old these children are. If they're children
24 indeed or if they're just young looking adults. That's
25 part of what you've got to do. I went through a bunch of

1 other pictures. Some of them are clearly artistic.

2 Flip back if you will. Go to Number Ten. Okay. I
3 don't know what exhibit number that was. They took the
4 man's underwear out of his closet when they swooped into
5 his house. Because everyone said, the little girls
6 said -- the only people that said naked of anything was
7 Lieutenant Hodges. All of the other witnesses said a
8 ladies in bathing suits. Man in his Speedo underwear.

9 This guy -- this guy won a million dollars last
10 season on Survivor. This -- I do happen to know this
11 show. I, for some reason, I like it. And I'm not crazy
12 about this guy. He's as aggravating as he can be. But
13 tonight you can turn it on at eight o'clock, and you can
14 watch for an hour a man in his Speedo underwear all night
15 long on Channel 13.

16 Is it enticing? Is it doing something wrong? Well,
17 I'm not crazy about it either, but he's aggravating enough
18 where I can have to watch until he gets kicked off.
19 That's what we're doing. We are jumping to all kinds of
20 conclusions as a result of a creepy e-mail that's never --
21 that was a draft. Tyquan was the first one that called it
22 a draft. What's a draft? Oh, that's one that didn't get
23 sent. Didn't go anywhere.

24 And I'll submit to you that the evidence, if you
25 really think about what everybody said, it wasn't even.

Closing Statement by Mr. Jones

169

1 there when the little girls were in the house. It wasn't
2 there. And then it gets -- the whole phone gets handed to
3 somebody who is 38 years old and ends up in a 21 year
4 old's hand. And he's the one that says, "Hum. Very odd,"
5 and then blows -- then it goes all to pieces from there.

6 Ladies and gentlemen, I am not in any way trying to
7 say that the message that is at the crux of this whole
8 situation, I don't think the Speedo bathing suit, I don't
9 think we're -- that's not the crux of this situation. The
10 crux of the situation is this very inappropriate text
11 message that was written for whatever reason. And you
12 heard Mr. Tyler on his statement say, 'just thoughts'.

13 For whatever reason it's not criminal to have
14 thoughts. It is criminal to have actions. And the
15 State's case fails in a very crucial part of the three
16 indictments dealing with the text messages and the
17 pictures are supposed to be disseminated to Ms. Victim
18 because they didn't get disseminated. Pictures, yes. I
19 don't think there is any problem with that. But, again,
20 you watch it on t.v. There is nothing criminal about
21 that.

22 That text message did not get disseminated, period.
23 And if, ladies and gentlemen, you take the State's case
24 and find Mr. Tyler guilty based on what the State would
25 have you believe happened, and I asked a young girl that

1 works in my office if they ever heard of 1984 which I grew
2 up with. They said, 'no' but the Thought Police and Big
3 Brother are very clear concepts to all of us. And you've
4 got the Thought Police jumping on Mr. Tyler's thoughts and
5 trying to criminalize them even though they never went
6 anywhere and didn't get delivered.

7 And then you've got Big Brother swooping in and
8 grabbing everything off of this and the stuff from outer
9 space and coming up with a separate charge dealing with
10 the pictures. And, ladies and gentlemen, that's not what
11 we're all about. That's why when I talk about the three
12 concepts every time I get up to talk to a jury I believe
13 in those concepts. The Judge believes in the concepts.
14 Our country was founded on the -- on those concepts.

15 You can't make those tremendous leaps and stay true
16 to those concepts; that are a defendant is presumed to be
17 innocent when he walks into Court. I don't care what he's
18 charge with, period. And he stays like that until the
19 State meets their burden of proof of proving him guilty
20 beyond a reasonable doubt. It's just not words. They are
21 bedrock concepts of our country.

22 And that's why, as I said yesterday, y'all were not
23 chose at random. Y'all started randomly through being
24 close, but when you walked up here and stood in front of
25 both the State and Mr. Tyler you weren't random at all at

Closing Statement by Mr. Jones

171

1 that point in time. They said, "Yes, that's a reasonable
2 person. Yes, that's a reasonable person." And you were
3 chosen to set here because we just about finished our
4 work. And as the Judge gives you the law you are to apply
5 to all of fact you've got to go back and first of all
6 figure out what you think the fact are.

7 And, Number Two, see if those facts meet the law that
8 the Judge gives you. And I would urge and encourage you
9 as you begin talking and begin remembering what the
10 witnesses said and review the evidence that you've got
11 read what's in these indictments. And then see if the
12 State has met its burden of proof.

13 We are -- you are not the thought police. And I am
14 not trying to say anything derogatory about the Darlington
15 County Sheriff's Department because they are wonderful
16 people and it is a wonderful department, but they got a
17 little over zealous in this situation because of a creepy
18 e-mail that never went anywhere.

19 The only person it could have been delivered to would
20 have been Ms. Debra Brown who was 37 years old, and I
21 believe Mr. Tyler said, "Oh, I didn't know it was on
22 there. I forgot it was on there." Ladies and gentlemen,
23 I would encourage you, as you review your evidence, to
24 remember the three concepts that I spend a considerable
25 amount of time talking about, and come back with the only

1 verdict that I think you can come back with and that is
2 not guilty as to all four of these indictments. Thank
3 you.

4 THE COURT: The next phase of the trial will be the
5 Judge's charge of the law. We're going to take a brief
6 recess and come back.

7 (WHEREUPON, the jury panel was excused from the
8 courtroom at 11:23 a.m.)

9 (WHEREUPON, Court is in recess at 11:23 a.m. and
10 reconvenes at 11:34 a.m.)

11 (WHEREUPON, the jury panel enters the courtroom at
12 11:34 a.m.)

13 CHARGE OF THE COURT

14 THE COURT: Ladies and gentlemen, it now becomes my
15 duty as the presiding judge in this case to charge you the
16 law applicable to the case. The State of South Carolina
17 charges the defendant with the following offenses: Under
18 Indictment 2013-604, sexual exploitation of a minor,
19 second-degree; 2013-606, disseminating harmful material to
20 minors; 2013-605, contributing to the delinquency of a
21 minor; 2013-603, criminal solicitation of a minor.

22 The indictments that I hold in my hand are not
23 evidence in this case. They are simply the written
24 instrument by which these cases were processed into the
25 Court system for trial. To those indictments and the

Charge of the Court

173

1 charges contained therein the defendant has entered
2 plea -- pleas of not guilty.

3 Ladies and gentlemen, a plea of not guilty placed the
4 burden of proof upon the State of South Carolina to prove
5 the defendant guilty beyond a reasonable doubt. The
6 defendant is presumed to be innocent unless and until the
7 State has established guilt beyond a reasonable doubt. A
8 person charged with committing a criminal offense in South
9 Carolina is never required to prove himself innocent.

10 It is a vital important rule of the law that the
11 defendant in a criminal trial no matter how grave or
12 serious maybe the offense for which he is charged is
13 always be presumed innocent unless and until his guilt has
14 been proven beyond a reasonable doubt.

15 Presumption of innocence is a legal proof of
16 innocence. The presumption of innocence remains with the
17 defendant at all times from the moment of his arrest,
18 throughout the trial proceeding and goes into the jury
19 room with you and remains with the defendant, even then,
20 unless and until you the jury reach a verdict of guilty
21 based on the evidence which the State has presented
22 satisfying you of the defendant's guilt beyond a
23 reasonable doubt. The burden of proof is upon the State
24 of South Carolina to establish guilt by evidence to your
25 satisfaction beyond a reasonable doubt. The State must

Charge of the Court

174

1. prove the defendant guilty beyond a reasonable doubt.

2. Now, let me speak with you about the term,
3. 'reasonable doubt'. The term, 'reasonable doubt' should
4. be given its plain and ordinary meaning. The State has
5. the burden of proving the defendant guilty beyond a
6. reasonable doubt. Some of you may have served as jurors
7. in civil cases where you were told that it is only
8. necessary to prove the fact is more likely than true than
9. not. Such as by the greater weight or preponderance of
10. the evidence as I said in a civil trial.

11. In criminal cases the State's proof must be more
12. powerful than that. It must be beyond a reasonable doubt.
13. Proof beyond a reasonable doubt is proof that leaves you
14. firmly convinced of the defendant's guilt. There are very
15. few things in this world that we know with absolute
16. certainty. And in criminal cases the law does not require
17. proof that overcomes every possible doubt. The law does
18. not require that.

19. If base on your consideration of the evidence you are
20. firmly convinced that the defendant is guilty of the
21. particular crime charged in the indictment you must find
22. him guilty. If on the other hand you conclude there is a
23. real possibility that he is not guilty you must give the
24. defendant the benefit of the doubt and find the defendant
25. not guilty.

Charge of the Court

1 By the constitution and laws of the State of South
2 Carolina you the jury are the sole judges of the facts and
3 evidence in this case. I am not permitted to intimate any
4 opinion that may have in the case or to show you any
5 feelings that I may have concerning the case. I am not
6 permitted to indicate to you how I may feel about the
7 testimony and evidence presented.

8 I tell you now that I do not have an opinion in this
9 case nor am I entitled to have an opinion under the law.
10 I have made numerous trial rulings on matters of evidence
11 and law. Some so it may have been in your presence.
12 Please do not derive any inference from any rulings I have
13 made as to any opinion or feelings that I may have on the
14 facts. Once again, I do not have an opinion or feeling on
15 the facts. I'm not entitled, under the law, to express my
16 feelings or opinion.

17 In determining what the facts are in this case you of
18 necessity must pass upon the credibility of the witnesses
19 who have testified. You are the sole judges of the
20 credibility of the witnesses who took the witness stand.
21 Credibility in the law means believability. Can I believe
22 this witness, question. Is this witness credible is a
23 question. The value and weight to be given to their
24 testimony is of your sound discretion. You alone must
25 decide the force and affect and the truth of the

1 testimony.

2 In making a determination as to the credibility of a
3 witness there are many factors that you may and should
4 take into consideration such as the appearance or manner
5 of the witness. Has he or she gave testimony from the
6 witness stand. This is known in the law as the demeanor
7 of the witness. Did the witness have any interest in the
8 outcome of the trial. Was the witness forthright or
9 hesitant. Was the witness' testimony consistent or did it
10 contain discrepancies.

11 What was the ability of the witness to know about the
12 facts concerning which he or she gave testimony. Did the
13 witness have cause or reason to be biased or prejudice in
14 favor of the testimony that he or she gave. Was the
15 testimony of the witness corroborated and made stronger by
16 other testimony and evidence or was it made weaker and
17 impeached by other testimony and evidence presented.

18 As jurors you have the right to believe a small
19 portion of a witness' testimony and disregard the larger
20 portion. Or you may believe a larger portion of a
21 witness' testimony and disregard the smaller portion. You
22 may believe a witness' testimony in its entirety or you
23 may completely reject a witness' testimony in its
24 totality. Not doing that arbitrarily, but if you have
25 sound reason in the record for doing so. You may believe

Charge of the Court

177

1 the testimony of a single witness against that of many.
2 witnesses or many witnesses as against the one.

3 Most certainly you do not determine the method -- the
4 manner of credibility or believability merely by counting
5 the number of witnesses for either side. Throughout this
6 entire process you have but one single objective, and that
7 is to seek the truth regardless from what source that
8 truth may come from.

9 By the very same constitution and laws which make you
10 the finders of the facts and the evidence in this case I
11 as the trial judge are the sole and only instructor in the
12 law. You must accept as correct the law as I charge it to
13 you to be the correct law. In that regard neither you nor
14 I should be concerned with what the law ought to say in
15 this State as far as our opinion is concerned. But rather
16 what I charge you the law actually is in this state.

17 You must accept under your oath the law as I charge
18 it to you in this particular charge. The defendant is
19 entitled to every inference in his favor which can
20 reasonable be drawn from the evidence. When two
21 inferences may be drawn from the same set of facts, one
22 consistent with a verdict of guilty and one inconsistent
23 with a verdict of not guilty, the defendant is entitled to
24 the inference which is consistent with a verdict of not
25 guilty.

1 I charge you that you cannot find the defendant
2 guilty based on suspicion or conjecture or speculation no
3 matter how strong. A conviction can only be based upon
4 proof of guilt beyond a reasonable doubt. If the proof
5 does not meet that standard you must find the defendant
6 not guilty.

7 Now, ladies and gentlemen, there are four different
8 charges here, so you will have to take up each of the
9 charges separately in your deliberations and reach
10 separate verdicts on each and every charge.

11 Now, I'm going to charge you the specific law on
12 these offenses. And, once again, I'm going to ask you to
13 pay close attention. Some of these have some very
14 detailed sentences and wording in here that you have to
15 pay close attention to. I will go over each one, and then
16 there are some definitions I want to cover with you. And
17 then I'll talk with you about reaching a verdict on the
18 various with indictments.

19 Now, I'm going to start out with sexual exploitation
20 of a minor, second degree. That's under Section
21 16-15-405(A) of our Code of Laws of 1976 as amended. I
22 ask you once again to play close attention to these
23 charges cause I am not allowed to give you a written copy
24 of these later on. Our law in South Carolina doesn't
25 allow that. I can repeat this charge to you, go back

Charge of the Court

179

1 other them if you need me to, but if you will I'll try to
2 be as concise as I can be if you will please pay close
3 attention to me.

4 An individual commits the offense of second-degree
5 sexual exploitation of a minor if knowing the character or
6 content of the material he or she records, photographs,
7 films, develops, duplicates, produces or creates digital
8 electronic file material that contains a visual
9 representation of a minor engaging in sexual activity. Or
10 distribute, transports, exhibits, receives, sells,
11 purchases, exchanges or solicits material that contains a
12 visual representation of a minor engaged in sexual
13 activity.

14 In a prosecution under this section the trier of
15 fact, which is you the jury, may infer that a participant
16 in sexual activity depicted in a material as a minor
17 through its title, text, visual representation or
18 otherwise is a minor. That's that indictment.

19 Next indictment is 2013-0606, disseminating harmful
20 material to minors. A person commits the offense of
21 disseminating harmful material to minors if knowing the
22 character or content of the material he or she sells,
23 furnishes, presents or distributes to a minor material
24 that is harmful to minors. Or allows a minor to review or
25 peruse material that is harmful to minors. A person does

1 not commit an offense under this subsection when he
2 employs a minor to work in a theater if the minor's
3 parents or guardians consents to the employment and if the
4 minor is not allowed in the viewing area when material
5 harmful to minors is shown.

6 The next section. A person commits the offense of
7 exhibiting harmful performance to a minor if with or
8 without consideration and knowing the character or
9 contents of the performance he allows a minor to view a
10 live performance which is harmful to minors.

11 The next offense charges criminal solicitation of a
12 minor under 16-15-342. A person 18 years of age or older
13 commits the offense of criminal solicitation of a minor if
14 he knowingly contacts or communicates with or attempts to
15 contact or communicate with a person who is under the age
16 of 18 or a person reasonably believed to be under the age
17 of 18 for the purpose of or with the intent of persuading,
18 inducing, enticing or coercing the person to engage or
19 participate in a sexual activity as defined in Section
20 16-15-375(5). Or a violent crime as defined in Section
21 16-1-60. Or with the intent to perform a sexual activity
22 in the presence of the person under the age of 18 or
23 person reasonably believed to be under the age of 18.

24 Now, I'm going to come back in just a minute to
25 16-15-375(5) which involves a definition that I just

Charge of the Court

181

1 quoted to you in this particular statute. Part of that
2 paragraph I just read to you also quotes 16-160 which
3 would not be of any applicable manner in this case. I
4 will come back to that cause the next thing I want to do
5 is go to the fourth offense charged and read you that
6 statute. And that is for contributing to the delinquency
7 of a minor.

8 . . . Once again, 16-17-490, it shall be unlawful for any
9 person over 18 years of age to knowingly and willfully
10 encourage, aid or cause or do any act which shall cause or
11 influence a minor to violate any law or municipal
12 ordinance to become and to be encouragible or ungovernable
13 or habitually disobedient and beyond the control of his or
14 her parent, guardian, custodian or other lawful authority
15 to become and be habitually truant.

16 Two, without just because and without the consent of
17 his or her parent, guardian or other custodian repeatedly
18 desert his or her home or place of abode. To engage in
19 any occupation which is in violation of the law. To
20 associate with immoral or vicious persons. To frequent
21 any place existence of which is in violation of the law.
22 To habitually use obscene or profane language. To beg or
23 solicit funds in any public places under any pretense. To
24 so deport himself or herself as to willfully injure or
25 endanger his or her morals or health or the morals or

1 health of others.

2 Now, back to the definition. When I read that
3 statute a few minutes ago to you, 16-15-342, you heard me
4 mention as defined in 16-15-375(5). And I'll read that to
5 you. One again the definition. Sexual activity includes
6 any of the following acts or simulation thereof:

7 A. Masturbation whether done alone or with another
8 human or animal.

9 B. Vaginal, anal or oral intercourse whether done
10 with another human or animal.

11 C. Touching in an act of apparent sexual stimulation
12 or sexual abuse of the clothed or unclothed genitals,
13 pubic area or buttock of another person. Or the clothed
14 or unclothed breast of a human female.

15 D. An act or condition that depicts bestiality,
16 sado-machoist abuse, meaning strangulation or torture by
17 or upon a person who is nude or clad in undergarments or
18 in costume which reveals the pubic hair, anus, vulva,
19 genital or female breast nipple. Or with conditions of
20 being fettered, bound or otherwise physically restrained
21 on the part of the one so clothed.

22 E. Excretory function.

23 F. The insertion of any part of a person's body
24 other than the male sexual organ. Or of any objects into
25 another person's anus or vagina except when done as part

Charge of the Court

183

1 of a recognized medical procedure.

2 Six, sexually explicit nudity means the showing of:

3 A. Uncovered or less than opaquely covered human
4 genitals, pubic hair or buttock or the nipple or any
5 portion of the areola of the human female breast, or.

6 B. Covered human male genitals in a discernibly
7 turgid state.

8 These definitions, of course, by the statutes, Code
9 of Laws of the State of South Carolina.

10 All right. As I already said it will be your duty to
11 discuss, deliberate these matters. You will take up each
12 and every indictment separately. You will reach verdicts
13 on each and every one of the indictments. It will be two
14 possible verdicts on these indictments; that will either
15 be not guilty or guilty, and give no weight as to how I
16 numerically say that. It has to be stated in some form.

17 Some type crimes have lessor included offenses, and
18 you could have more than two possible verdicts. On these
19 two possible verdict, Mr. Foreman -- Madam Forelady, it
20 will be your duty after the jury has deliberated and
21 reached a verdict to go to the back of the indictments.
22 In the lower left hand corner it says, 'verdict'. It will
23 be your duty to write in the applicable verdict, sign your
24 name and date it.

25 Once y'all have reach verdicts on all four

Charge of the Court

184

1 indictments we need you to knock on the door and let us
2 know, and we will receive the verdict at that time. I
3 charge you that the verdict you reach on each of these
4 indictments must be a unanimous verdict. All 12
5 deliberating jurors must be in agreement on the particular
6 verdict rendered.

7 Madam Forelady, if you need to take a break, somebody
8 needs to step out for a minute to the restroom or
9 whatever, cease your deliberations until all 12 are back.
10 Should you have someone who refuses to deliberate, that's
11 why I have two alternates. As soon as you discover that
12 that may be the case, which rarely happens, please notify
13 the bailiff and he will let me know and I will take
14 corrective measures.

15 Once again, make sure all 12 jurors are present when
16 you're deliberating. I'm going to ask you not to
17 deliberate until I send these indictments back to you
18 along with the exhibits. We've got to check in with
19 counsel one last time. If you have any questions let the
20 bailiff know. I need you to write it down on a piece of
21 paper so I can review and try to respond to your question,
22 whatever it may be.

23 I know that's been a lot to listen to. A lot of
24 technical language. Some words in there you very seldom
25 hear, and if ever in your lifetime. I apologize for that,

Charge of the Court

185

1. but that's just the nature of the law. Sometimes the way
2. they draft it. With that said, y'all give me a minute or
3. two. Check in with counsel. Mr. Bailiff, I need the two
4. alternates to be put in another room for a few minutes
5. until we make sure we can get started here.

6. Oh, one thing. One thing I left out. I'm sorry. I
7. should have cover this earlier. I talked to you about the
8. credibility of evidence -- of witnesses. I need to talk
9. to you about constitutional rights concerning the
10. Defendant to elect not to testify. In a case where the
11. defendant elects not to testify that should not even be
12. discussed by you in the jury room. Every one of us as
13. American citizens has a Fifth Amendment constitutional
14. right to remain silent.

15. A defendant in a criminal case has a constitutional
16. right to elect not to testify that cannot mitigate against
17. him in any form or fashion. I instruct you at this time
18. that cannot even be discussed in the jury room. And Madam
19. Forelady, if anybody were to attempt to do that you
20. deliberations should immediately be stopped because it
21. would be highly improper. That's why I'm charging you at
22. this time. Okay.

23. (WHEREUPON, the jury panel was excused from the
24. courtroom 12:02 p.m.)

25. THE COURT: All right, gentlemen, that's stretched my

Verdict of the Jury

186

1 limits about English vocabulary. Anything else? Y'all
2 check off the evidence.

3 (WHEREUPON, the jury panel was excused from the
4 courtroom to begin deliberations 12:04 p.m.)

5 (WHEREUPON, Court is in recess at 12:04 p.m. and
6 reconvenes at 12:48 p.m.)

7 (WHEREUPON, the jury panel enters the courtroom at
8 12:48 p.m.)

9 VERDICT OF THE JURY

10 CLERK OF COURT: Madam Forelady, have you reached a
11 verdict.

12 JURY FOREPERSON: Yes, sir, we have.

13 CLERK OF COURT: Thank you. Hand that up to the
14 Court, please.

15 THE COURT: Well, it's all signed and dated. You may
16 publish the verdict.

17 CLERK OF COURT: Your Honor, this is Case Number
18 2013-GS-16-0604, State of South Carolina v. Larry James
19 Tyler. Indicted for sexual exploitation of a minor,
20 second-degree. We the jury unanimously find the Defendant
21 guilty. Signed, Foreperson, Patricia Winburn.
22 February 27th 2013. If this was your verdict please so
23 signify by raising your right hand, please. All 12 jurors
24 have raised their right hand.

25 Case Number 2013-GS-16-0603, the State of South

Verdict of the Jury

187

1 Carolina v. Larry James Tyler for obscene criminal
2 solicitation of a minor. We the jury unanimously find the
3 Defendant guilty. Signed, Foreperson, Patricia Winburn.
4 February 27th 2013. If this is your verdict please so
5 signify by raising your right hand, please. All 12 jurors
6 have raised their right hand.

7 Your Honor, this is Case Number 2013-GS-16-0605, the
8 State of South Carolina v. Larry James Tyler. Indicted
9 for contributing to the delinquency of a minor. We the
10 jury unanimously find the Defendant guilty. Signed,
11 Foreperson, Patricia Winburn. February 27th 2013. If
12 this is your verdict would you so signify by raising your
13 right hand, please. All 12 jurors have raised their right
14 hand.

15 Case Number 2013-GS-16-0606, the State of South
16 Carolina v. Larry James Tyler. Indicted for disseminating
17 harmful materials to minors. We the jury unanimously find
18 the Defendant guilty. Signed, Patricia Winburn.
19 February 27th 2013. If this is your verdict would you
20 please so signify by raising your right hand, please. All
21 12 jurors have raised their right hand.

22 THE COURT: Thank you, Mr. Clerk. Thank you, ladies
23 and gentlemen of the jury for your service. Thank you
24 once again for your patience and helping us get this case
25 disposed of. Anything before the jury?

1 MR. HOLT: No, sir, Your Honor. I don't have
2 anything for the jury.

3 MR. JONES: We'll waive polling, Your Honor.

4 THE COURT: All right. With that said if you're
5 drawn on a jury in the future we hope you will come and
6 help us again. Won't have to worry about the rest of this
7 year, but in the future if you are with hope you will be
8 able to come in and help us.

9 One final thing. Thank you so much for coming in and
10 volunteering your time to do a very important
11 constitutional duty as well as a right. I know it can be
12 a very difficult situation to have to reach the decision
13 that jurors are called upon. But it's the best system
14 that's ever been developed. Protects both the rights of
15 the State and the individual defendants.

16 You're free to go at this time. The Clerk will need
17 to check with you. I think they got some expense checks
18 ready?

19 CLERK OF COURT: Yes, sir.

20 COLLOQUY

21 THE COURT: If you would like to say for the next
22 portion of this trial which is what we call mitigation and
23 sentencing, we will hear both from the State and Defense
24 concerning the sentencing aspect of this case. You're
25 welcomed to stay. You can sit where you are. If you want

Colloquy

189

1 to leave you're welcomed to leave. If you're more
2 comfortable you can step back and sit with the alternates
3 where they're sitting. I'll leave that totally up to you.
4 Feel free to do whatever you so desire in that regard.
5 Officially, you are dismissed.

6 (WHEREUPON, the jury panel was excused from the
7 courtroom at 12:53 p.m.)

8 MR. JONES: Judge, I renew our motion for directed
9 verdict as to all charges on the same grounds that I
10 stated yesterday afternoon. Or in the alternative I make
11 a motion for a new trial based on the same grounds.

12 THE COURT: Anything from the State?

13 MR. HOLT: Before sentencing, Your Honor, the
14 entirety of the family has been here through the whole
15 three days. I would like if somebody can go get them from
16 Jewels cause I know the mother and the grandmother want to
17 speak. And they're both eating lunch. They were at a
18 table right beside me. If you could send somebody just to
19 let them know and give them the opportunity to catch up
20 I'd appreciate it.

21 THE COURT: We'll do better than that. Sentencing is
22 deferred until five minute to 2:00.

23 (WHEREUPON, a short break was taken.)

24 SENTENCE OF THE COURT

25 MR. HOLT: Thank you very much, Judge.

1 THE COURT: All right.

2 MR. HOLT: Your Honor, this is just a continuation of
3 the trial earlier today. We are here for the sentencing
4 of Larry Tyler.

5 THE COURT: All right. You may proceed.

6 MR. HOLT: And, Judge, first and foremost I want to
7 make you aware that in Texas he was convicted of a sexual
8 crime in the interest of a child with touching. And I
9 don't exactly know how to ready that crime, and I sure
10 don't have what he pled to. Could have been something
11 else, but he is on the sex registry. And it was dealing
12 with children, and I have Ms. Dorris here and Ms.
13 Georgita. You met both of them. And Mr. Jesse. He is
14 Victim father, Judge.

15 And I think I can speak for the family. I know some
16 of them may want to say something, but they're all
17 certainly aware that this was a rare instance where
18 something like this came to light before something
19 horrible was done. And I know Your Honor is aware that
20 normally when we're here at trial it's after something
21 horrible has been done. And I know that they're grateful
22 for that.

23 But I just ask you, Judge, when you feel its
24 appropriate you can ask the family if they would like to
25 say anything or hear them out.

Sentence of the Court

191

1 THE COURT: Be glad to hear from you. I just need
2 your name for the record.

3 MS. G. BROWN: I'm Georgita Brown. I would just like
4 to say that I'm glad that Officer Hodges and the Solicitor
5 are on our side trying to help us and make sure that
6 nothing like this can happen to nobody else's child. And
7 I'm glad that it didn't take place with mine.

8 THE COURT: Thank you.

9 MR. [REDACTED] I'm Jesse [REDACTED] I'm Victim's
10 father. I just want to thank everybody for the hard work
11 that they did. And I feel like justice has been served.

12 THE COURT: Thank you. Mr. Hodges? Captain?
13 Mr. Jones.

14 MR. JONES: Well, Your Honor, there is not too much
15 more to say. I you certainly heard all the evidence. Did
16 not hear Mr. Tyler is 60 years old. Has returned to
17 Darlington County after some years away. Lives with his
18 elderly mother who has been very supportive of him. She's
19 been here for him ever since he's been incarcerated.

20 Our office worked very closely with him. Most
21 recently, in the last couple of months, and he and I began
22 working together. He has been at the Detention Center
23 since September 24th 2011. I believe it was about -- a
24 little over 14 months, Your Honor. We felt from the
25 beginning that there were certainly elements of the crimes

1 charged that were incapable of proof beyond a reasonable
2 doubt. Still have that belief, and as I said in my
3 closing extremely inappropriate text messages which again
4 we did not feel had been communicated or even an attempt
5 had been made to communicate with the young child. Jury
6 obviously felt otherwise, Your Honor.

7 We would ask that you be as lenient as possible on
8 Mr. Tyler. His mother does depend on him. She has --
9 she's had it pretty rough the last few years, and I
10 believe she might want to say something.

11 MS. WITHERSPOON: Yes, Your Honor.

12 THE COURT: Tell this lady your name.

13 MS. WITHERSPOON: My name is Ernestine Witherspoon,
14 and I'm Larry Tyler's mother. And I thank everyone for
15 all the things, but this year and a half that I've been
16 without Larry. He came here back here to take care of me
17 because I was not being able to walk. And when he came I
18 was under hospice, and he started taking care of me and
19 giving me the right kind of food and taking me out every
20 day and I got up.

21 And I know that I was a foster mother for Darlington
22 County for 40 something years, and I know how you feel
23 about children. And I still love them and wouldn't want
24 anything to happen to any child. And when the children
25 would come to visit me with their parents all of us stayed

Sentence of the Court

193

1 right there in the living room. I always keep an eye on
2 children when they're around me.

3 And what Larry did is wrong, but please give us a
4 chance because I do need him home with me because I don't
5 want to go in the nursing home. And he was there to take
6 care of me. I'm 78 year-old, and the conditions I have I
7 don't think it I would do good in that nursing home for
8 very long.. And I appreciate everything. Thank you.

9 THE COURT: Thank you for being here.

10 MR. TYLER: I just want to say that all of this is
11 come up to what looks as though I was trying to coerce a
12 child, but I was not. And as the evidence showed even the
13 victims themselves stated that the message wasn't there.
14 I know the whole gist of this trial has been the text
15 message that I wrote. It was just something that I had
16 written, but never had I intention of anyone to see that.
17 Or -- and especially the victim.

18 So after that it just snowballed into all of the rest
19 of this which is just outrageous. I mean I never had any
20 intentions of doing anything else with any child, and my
21 life has been quite different since my first offense. And
22 it's just no way I was going to touch a child or attack a
23 child again.

24 So I just wanted to say I'm sorry to the family for
25 thinking that that was something that I was planning on

Sentence of the Court

194

1 doing or intending to do. It was not. And I'm sorry that
2 all of this ever had to come to this.

3 THE COURT: Okay. Just looking so we will all be on
4 the same page here. Contributing can carry up to ten
5 years. All the rest carry up to ten years. 405, there is
6 no suspension on number two, and potential fines up to
7 \$5,000. On contributing that's up to \$3,000.

8 2013-603, 604, 606, the sentence of the Court is you
9 be confined in the State Department of Corrections for a
10 period of eight years. Those are concurrent sentences,
11 and get credit for 523 days.

12 On the contributing, the 605 indictment, the sentence
13 is three years. Concurrent. Same credit.

14 MR. JONES: Thank you, sir.

15 MR. HOLT: Thank you, Judge.

16 END OF TRANSCRIPT OF RECORD
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

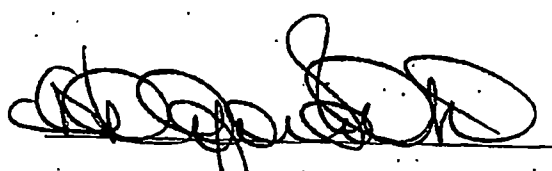
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)

I, HATTIE O. GORDON, Official Court Reporter for the 4th 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 Darlington County, South Carolina, on the 27th day of February, 2013.

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

June 12, 2013



HATTIE O. GORDON, Court Reporter

COPY

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF ~~DARLINGTON~~ DARLINGTON)

LARRY JAMES TYLER
Full name and prison number (if any) of Applicant.)

15CP160016

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention EVANS CORRECTIONAL INSTITUTION

2. Name and location of Court which imposed sentence
DARLINGTON CO. GENERAL SESSIONS COURT

3. Name(s) of co-defendant(s) (if any)
N/A

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

- (a) 2013-GS-16-00603 - CRIMINAL SOLICITATION OF A MINOR
- (b) 2013-GS-16-00609 - SEXUAL EXPLOITATION OF A MINOR
- (c) 2013-GS-16-00608 - CRIMINAL SOLICITATION OF A MINOR
- (d) 2013-GS-16-00607 - SEXUAL EXPLOITATION OF A MINOR

FILED
2015 JAN -2 AM 8:49
SCOTT E. SULLIVAN
CLERK OF COURT/R.M.C.
DARLINGTON COUNTY, S.C.

Revised 3/2003
CLERK OF COURT/R.M.C.
DARLINGTON COUNTY, S.C.
MATERIALS TO A MINOR

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) FEBRUARY 27, 2013 ; 8 YEARS' IMPRISONMENT FOR
- (b) 2013-CS-16-603, 604, 606 ; 3 YEARS' IMPRISONMENT
- (c) FOR 2013-CS-16-605. ALL CONCURRENT.

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

YES - PARTIAL, INCOMPLETE APPEAL

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

- i. SOUTH CAROLINA COURT OF APPEALS
- ii. _____
- iii. _____

(b) the result in each such Court to which you appealed:

- i. CONVICTION OF
- ii. CONTRIBUTING (2013-CS-16-605) WILL BE
- iii. AFFIRMED DUE TO INCOMPETENT COUNSEL.

(c) the date of each such result:

- i. _____
- ii. _____
- iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. _____
- ii. _____
- iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) ALL OTHER ISSUES CONTAINED HEREIN NOT PRESENTED
- (b) TO THE APPELLATE COURT BY APPELLATE COUNSEL WHO
RENDERED INEFFECTIVE ASSISTANCE.

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) SEE PAGE 5, ET. SEQ
- (b) _____
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) SEE PAGE 5, ET. SEQ
- (b) _____
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof: N/A

GROUND FOR RELIEF

GROUND ONE: DEFENDANT'S TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE BY FAILING TO OBJECT TO THE CONSOLIDATION OF TRIALS. DEFENDANT WAS ENTITLED TO HAVE SEVERED.

IT IS VERY CLEAR THAT DEFENDANT WAS ENTITLED TO HAVE TWO (2) SEPARATE TRIALS, BUT WAS ONLY PERMITTED ONE UNFAIR, PREJUDICIAL TRIAL.

ONE TRIAL COULD HAVE ENCOMPASSED DEFENDANT'S CHARGES OF CONTRIBUTING TO THE DELINQUENCY OF A MINOR, CRIMINAL SOLICITATION OF A MINOR, AND DISSEMINATING HARMFUL MATERIAL TO A MINOR. ACCORDING TO THE STATE, THESE CHARGES WERE ALLEGED TO HAVE BEEN COMPLETED WITH THE TRANSFER OF A CELL PHONE FROM DEFENDANT TO THE UNDER AGE JADA MCCULLOUGH, IN OR AROUND JULY 2011.

THE SECOND TRIAL, ALTHOUGH BASED ENTIRELY ON EVIDENCE ILLEGALLY OBTAINED BY A SEIZURE WARRANT, WOULD HAVE BEEN FOR SEXUAL EXPLOITATION OF A MINOR. THAT CHARGE, ENTIRELY UNRELATED TO THE AFOREMENTIONED CELL PHONE TRANSACTION, STEMS FROM PHOTOS FOUND ON DEFENDANT'S COMPUTER AND E-MAIL ACCOUNT.

ALL EVIDENCE RELATED TO ONE TRIAL WOULD HAVE BEEN INADMISSABLE IN THE OTHER TRIAL, PRESUDICIAL AND INFLAMMATORY. DEFENDANT WAS UNDUKLY PRESUDICED BY THE CONSOLIDATION OF TRIALS FROM INCIDENTS ENTIRELY UNRELATED TO ONE ANOTHER.

GROUND TWO: DEFENDANTS TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE BY FAILING TO CHALLENGE THE VALIDITY OF THE SEARCH OF APPELLANTS HOME, COMPUTER AND E-MAIL AS WELL AS THE ADMISSABILITY OF ANY EVIDENCE SEIZED AS A RESULT OF SAID SEARCH.

DEFENDANT'S HOME COMPUTER, (HARD DRIVE) AND HIS E-MAIL WERE SEARCHED PURSUANT TO A WARRANT OR WARRANTS THAT WERE MORE OR LESS AUTHORIZATIONS FOR POLICE TO GO ON A FISHING EXPEDITION.

COUNSEL FAILED TO ATTACK THE VALIDITY OF THE SEARCH OF APPELLANT'S COMPUTER AND HIS E-MAIL, SPECIFICALLY, ON THE GROUNDS THAT ANYTHING POSSIBLY EXISTING THEREIN WOULD HAVE NOTHING WHATSOEVER TO DO WITH THE CELL PHONE AT ISSUE, THE CONTENTS OF THAT PHONE, OR THE ACTUAL TRANSFER OF THAT PHONE.

CONSEQUENTLY, DORCHESTER COUNTY SHERIFF DEPARTMENT'S EXPLORATORY SEARCH PRODUCED PHOTOS THAT WERE RELIED UPON BY THE JURY TO CONVICT

APPELLANT. THE APPELLANT WAS THEREBY PREJUDICED.

GROUND THREE: DEFENDANT'S TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE BY FAILING TO OBJECT, SPECIFICALLY TO THE ADMISSION OF ~~ANY PHOTOS OBTAINED FROM DEFENDANT'S E-MAIL ACCOUNT WHICH IS NOT ON HIS COMPUTER, ALL OF WHICH WERE IRRELEVANT AND INFLAMMATORY.~~

IT WAS CLEAR FROM THE TESTIMONY OF DEPUTY RUSSELL HARRELL THAT ALL PHOTOS EXTRACTED FROM DEFENDANT'S COMPUTER HARD DRIVE WERE GROUPED INTO STATE'S EXHIBIT "13", ALONG WITH A PHOTO RETRIEVED FROM DEFENDANT'S E-MAIL, WHICH DEPICTED A YOUNG LADY PRESUMABLY ENGAGING IN ANAL SEX.

DEPUTY HARRELL CLEARLY INDICATED THAT NONE OF THE PHOTOS TAKEN FROM DEFENDANT'S COMPUTER WERE OF SUCH CHARACTER AS TO REACH THE LEVEL OF CHILD PORNOGRAPHY. HARRELL HIMSELF STATED HE WOULD NOT PURSUE CRIMINAL ACTION ON THE BASIS OF SAID PHOTOS.

THE PHOTOS FROM DEFENDANT'S COMPUTER HAD NO PROBATIVE VALUE TO THE OFFENSES, CHARGES UPON DEFENDANT. THEIR INTRODUCTION WAS SOLELY INTENDED TO PREJUDICE DEFENDANT'S JURY; THE PHOTOS COULD NOT HAVE PROVEN ANY FACT NECESSARY TO CONVICT.

DEFENDANT'S TRIAL COUNSEL FAILED TO SEEK THE PHOTO'S EXCLUSION FROM TRIAL ON THE BASIS OF RELEVANCE. AS A RESULT, THE STATE - MUCH TO THE DETRIMENT OF THE DEFENDANT - ARGUED THAT THE PHOTOS WERE PARAGRAPHIC.

GROUND FOUR: DEFENDANT'S TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE BY FAILING TO REMEDY THE DOUBLE SEPARATE VIOLATIONS WITH RESPECT TO DEFENDANT'S CRIMINAL SOLICITATION OF A MINOR AND CONTRIBUTING TO THE DELINQUENCY OF A MINOR CONVICTION.

THE OFFENCE OF CRIMINAL SOLICITATION OF A MINOR, AND THAT OF CONTRIBUTING TO THE DELINQUENCY OF A MINOR (UNDER §16 ARE ONES AND THE SAME. BOTH INVOLVE A COMMUNICATION OR ATTEMPTED COMMUNICATION; BOTH INVOLVE A MINOR; AND BOTH INVOLVE THE INTENT OF DRAWING THE MINOR INTO A SEXUAL ENCOUNTER.

THE FACT THAT ONE OF THESE OFFENSES IS A FELONY AND THE OTHER IS A MISDEMEANOR IS OF NO SIGNIFICANCE. WHERE THE ACT INVOLVED IS A SEXUAL ENCOUNTER, THE OFFENSE OF CRIMINAL SOLICITATION OF A MINOR IS EMBRACED IN SUBSECTION (10) OF THE STATUTE DEFINING CONTRIBUTING TO THE DELINQUENCY OF A MINOR.

DEFENDANT'S TRIAL COUNSEL, EVIDENTLY UNAWARE OF THE SIMILARITIES IN THE TWO OFFENSES, FAILED TO OBJECT TO DEFENDANT'S DUPLICATE CONVICTIONS.

GROUND FIVE: DEFENDANT'S APPELLATE COUNSEL RENDERED INEFFECTIVE ASSISTANCE ON APPEAL BY ABANDONING ON APPEAL DEFENDANT'S PROPERLY PRESERVED MOTION FOR DIRECTED VERDICT ON ALL COUNTS DUE TO INSUFFICIENT EVIDENCE, AND BY REFUSING TO SUBMIT DEFENDANT'S ARGUMENT ON APPEAL AS TO THE SUFFICIENCY OF THE EVIDENCE.

AT TRIAL, DEFENDANT'S ATTORNEY MOVED FOR A DIRECTED VERDICT ON ALL CHARGES ON THE GROUNDS THE STATE FAILED TO INTRODUCE SUFFICIENT EVIDENCE TO SUPPORT ANY OF THE CHARGES. THE COURT TOOK THE MOTION UNDER ADVISEMENT, BUT LET THE CASE GO TO THE JURY WITHOUT A DIRECTED VERDICT.

DEFENDANT'S TRIAL COUNSEL PROPERLY ARGUED THAT THE STATE FAILED TO PROVE ITS CASE AGAINST THE DEFENDANT. WHEN DEFENDANT REALIZED THAT APPELLATE COUNSEL'S ARGUMENT ON APPEAL WAS ESSENTIALLY ONE OF LITTLE RELEVANCE AS TO ONLY THE CONTRIBUTING CHARGE (SEE BELOW), DEFENDANT ATTEMPTED TO SUBMIT A PRO SE ARGUMENT AS TO THE SUFFICIENCY OF EVIDENCE ON ALL COUNTS, WHICH THE DEFENDANT

INCORPORATES HEREIN BY THIS REFERENCE.
 APPELLATE COUNSEL MADE NO EFFORT TO ENSURE
 DEFENDANTS RIGHT TO REVIEW OF HIS CLAIMS
 WERE HONORED.

APPELLATE COUNSEL'S SOLE ARGUMENT ON
 APPEAL AMOUNTED TO AN ABANDONMENT OF TRIAL
 COUNSEL'S CHALLENGE TO THE SUFFICIENCY OF
 THE EVIDENCE. INDEED, THE STATE'S
 RESPONSIVE BRIEF NOTES THE IRRELEVANCE OF
 APPELLATE COUNSEL'S ARGUMENT:

IT IS INTERESTING TO NOTE THAT ON APPEAL,
 APPELLANT SPECIFICALLY ARGUES NO
 EVIDENCE EXISTS TO SUPPORT SUBSECTION
 (1)-(9) OF THE CONTRIBUTING TO THE
 DELINQUENCY OF A MINOR STATUTE. IT IS TELLING
 THAT HE MAKES NO CONTENTION REGARDING THE STATE'S
 FAILURE TO PROVE SUBSECTION (10) INDEED, THIS
 FAILURE TO ARGUE REGARDING THE ONE SUBSECTION
 THAT SEEMS TO APPLY IN THIS CASE MAY ACT AS A
 WAIVER.

BRIEF OF RESPONDENT, AT P. 10.

IT IS INTERESTING THAT THE STATE'S ATTORNEY
 IMMEDIATELY RECOGNIZED THE INADEQUACY OF
 APPELLATE COUNSEL'S BRIEF ON APPEAL. IT APPEARS
 THE STATE ACTUALLY CONCEDES THE INEFFECTIVENESS
 OF APPELLATE COUNSEL.

GROUND SIX: DEFENDANTS CONVICTIONS ON ALL
 COUNTS ARE NOT SUPPORTED BY SUFFICIENT CREDIBLE
 EVIDENCE, TO SUSTAIN THE VERDICTS OF GUILTY.

DEFENDANTS INCORPORATES HEREIN BY THIS REFERENCE
HIS ARGUMENT AS SUBMITTED TO, BUT REJECTED BY
THE COURT OF APPEALS.

- i. _____
- ii. _____
- iii. _____

iv. _____
 (d) the date of each such disposition:

- i. _____ *N/A*
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____ *N/A*
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____ *N/A*
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____ *N/A*
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) *COUNSEL ON APPEAL WAIVED THE ISSUES BY NOT*

(a) CHALLENGING SAID ISSUES ON APPEAL; THE APPELLATE
(b) COURT REJECTED MY PRO SE INPUT.

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? POORLY; RICHARD JONES, PUBLIC DEFENDER
- (c) your sentencing? " ; " " " "
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? POORLY
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. TRIAL COUNSEL: RICHARD JONES
 - ii. DARLINGTON CO. PUBLIC
 - iii. DEFENDER'S OFFICE
- (b) ~~the proceedings at which each such attorney represented you:~~
 - i. APPELLATE COUNSEL:
 - ii. SC COMMISSION ON INDIGENT DEFENSE
 - iii. APPELLATE DIVISION

19. State clearly the relief you seek in filing this application:

REVERSAL OF ALL CONVICTIONS / DISMISSED w/ PREJUDICE.

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of ~~ANDERSON~~ DARLINGTON)

VERIFICATION

I, LARRY JAMES TYLER, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Larry J. Tyler

SWORN to and subscribed before me this 3rd day of December, 2014

S Dullow (L.S.)
Notary Public

My Commission Expires: 2/24

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, LARRY JAMES TYLER, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Larry J. Tyler
Applicant

SWORN or affirmed to and subscribed before me this
3rd day of December, 2014.

S Dullen
Notary Public

My Commission Expires: 2/24

FILED
2015 JAN -2 AM 8:49
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

15CP160016

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT I HAVE THIS DAY SERVED
 COUNSEL FOR THE OPPOSING PARTIES A COPY OF THE
 FORGING DOCUMENTS BY FIRST CLASS UNITED
 STATES MAIL IN A PROPER ADDRESSED
 ENVELOPE WITH ADEQUATE POSTAGE THEREON.
 THE INDIVIDUALS SERVED ARE:

S. C. ATTORNEY GENERAL
 BOX 11549
 COLUMBIA, S. C. 29211

THIS DAY OF DECEMBER, 2014
29TH

Larry J. Tyler

LARRY J. TYLER 354459



SCOTT B. SUGGS
 CLERK OF COURT/R.O.D.
 DARLINGTON COUNTY, S.C.

2015 JAN -2 AM 8:49

FILED

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON)	FOURTH JUDICIAL CIRCUIT
)	
Larry James Tyler, #354459,)	2015-CP-16-0016
)	
Applicant,)	
)	
v.)	RETURN AND MOTION TO DISMISS
)	WITHOUT PREJUDICE
State of South Carolina,)	
)	
Respondent.)	
)	

In response to the post-conviction relief (PCR) application that Larry James Tyler (Applicant) filed January 2, 2015, the State (Respondent) would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. Applicant was indicted during the February 2013 term of the Darlington County Grand Jury for criminal solicitation of a minor (2013-GS-16-0603), sexual exploitation of a minor (2013-GS-16-0604), contributing to the delinquency of a minor (2013-GS-16-0605), and disseminating harmful material to minors (2013-GS-16-0606). Richard Jones, Esquire, represented Applicant. Applicant proceeded to trial, and a jury found him guilty as indicted. On February 27, 2013, the Honorable Paul M. Burch sentenced Applicant to concurrent terms of imprisonment of eight years for each charge, except contributing to the delinquency of a minor, for which Judge Burch sentenced him to three years' imprisonment.

Applicant filed a notice of appeal on March 4, 2013. Applicant filed this PCR application on January 2, 2015, while his direct appeal was pending before the South Carolina

Court of Appeals.¹

II.

Applicant filed this PCR application on January 2, 2015, citing several grounds for relief, including ineffective assistance of counsel. Applicant filed this PCR application even though his direct appeal was pending before the South Carolina Court of Appeals. Pursuant to Rule 71.1(b), SCRPC, an application for post-conviction relief cannot be made while an appeal from the conviction or sentence is pending. *See also Al-Shabazz v. State*, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (“The applicant may not bring a PCR action while a direct appeal is pending.”). Therefore, Respondent submits this PCR application must be dismissed *without prejudice*.

III.

Respondent denies each allegation not expressly admitted, qualified or explained.

IV.

WHEREFORE, Respondent moves to dismiss this application without prejudice because Applicant filed this application while his direct appeal was pending.

(Signatures on the following page)

¹ The South Carolina Court of Appeals affirmed Applicant’s convictions on January 14, 2015. *State v. Tyler*, Op. No. 2015-UP-025 (S.C. Ct. App. filed Jan. 14, 2015). The remittitur was issued on January 30, 2015.

Respectfully submitted,

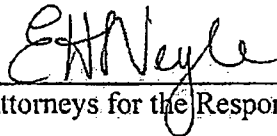
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ELIZABETH H. NEYLE
Staff Attorney

P.O. Box 11549
Columbia, S.C. 29211

By: 
Attorneys for the Respondents

May 15, 2015

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DARLINGTON)
)
)
)
 LARRY JAMES TYLER, 354459)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS


2015-CP-16-0016

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss** of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Larry James Tyler, 354459
 Evans Correctional Institution
 Post Office Box 2951202
 Bennettsville SC 29512**

DATED this 15th day of May, 2015.


 Judy A. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
 COUNTY OF DARLINGTON) 2015-CP-16-0016

LARRY JAMES TYLER)
) APPLICANT)
))
) vs.)
)) TRANSCRIPT OF RECORD
))
 STATE OF SOUTH CAROLINA)
) RESPONDENT

July 18, 2016
 Chesterfield, South Carolina

B E F O R E:

THE HONORABLE G. THOMAS COOPER, JUDGE.

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

LANCE S. BOOZER, ESQUIRE
 Attorney for the Applicant

J. RUTLEDGE JOHNSON, ASSISTANT ATTORNEY GENERAL
 Attorney for the Respondent

J RICHARD JONES, Chief Public Defender

HATTIE O. GORDON
 Circuit Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

Colloquy 4

LARRY TYLER

 Direct By Mr. Boozer 11

 Cross By Mr. Johnson 29

RICK JONES

 Direct By Mr. Johnson 34

 Cross By Mr. Boozer 41

Colloquy 46

Certificate of Reporter 49

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

EXHIBITS

NO EXHIBITS WERE MARKED OR ADMITTED INTO THE RECORD

COLLOQUY

1
2 MR. JOHNSON: May it please the Court. James Tyler
3 v. the State of South Carolina. Case Number
4 2015-CP-16-0016. Mr. Tyler was indicted at the 2013 --
5 February 2013 term of the Darlington County Grand Jury for
6 criminal solicitation of a minor, second-degree sexual
7 exploitation of a minor, contributing to the delinquency
8 of a minor, and dissemination of harmful material to a
9 minor.

10 On February 27th 2013 he proceeded to trial pursuant
11 to which he was found guilty. The Honorable Paul M. Burch
12 sentenced him to concurrent terms of eight years
13 imprisonment for each charge except the contributing to
14 the delinquency of a minor for which he received three
15 years.

16 There was a timely notice of appeal filed on his
17 behalf. The Court of Appeals affirmed his conviction.
18 The remitter was thereafter issued on January the 30th
19 2015. We filed this immediate action January 2nd 2015.
20 The State filed its return on September 10th 2015. The
21 State has a motion to dismiss this case as moot.

22 Your Honor, Mr. Tyler has maxed out his Department of
23 Corrections. I believe he maxed out in March or April of
24 this year, and there are no further issues because he has
25 maxed out that sentence. Apparently, he is being held

1 over for the sexually violent predator hearing which is a
2 collateral subsequent and not proper for P.C.R. forum.

3 Also, I know that he's challenging that he is on the
4 sex offender registry, however, he does have a prior lewd
5 act on an minor I believe from 1993 which would keep him
6 on that registry regardless. So, Your Honor, we would
7 move to dismiss that case as moot.

8 THE COURT: Mr. Boozer.

9 MR. BOOZER: Court's indulgence, Your Honor. Thank
10 you, Your Honor. If it pleases the Court. Lance Boozer
11 on behalf of the Applicant, Mr. Larry Tyler. Judge, first
12 of all with regards to the motion to dismiss I don't
13 believe that that was anything that was formal in the
14 files. It was my understanding that that was just a
15 formal motion that was made today. So, certainly, we want
16 to note, however, I don't believe that is neither here nor
17 there because the Applicant's position in this has nothing
18 to do with any sort of collateral consequence of the
19 S.V.P. status that may occur after the conviction at
20 trial. His desire is to challenge actions that happened
21 at his trial. And what he seeks is a new trial. That's
22 what he wants.

23 THE COURT: He's already maxed out his sentence?

24 MR. BOOZER: He has already maxed out his sentence.
25 That certainly was something that he and I have discussed.

1 He could potentially go back to trial, get the same thing
2 he's already received or even more time if we were to go
3 back to trial and everything just went horribly wrong for
4 him. Of course, he could go back to trial and be found
5 innocent of the charges which would therefore deny that
6 conviction on his record, you know, those charges. He
7 wouldn't be subject to do any sort of monitoring or
8 registration.

9 THE COURT: When did he file his application?

10 MR. JOHNSON: Your Honor, his application was filed
11 January of 2015.

12 THE COURT: He filed his application January of 2015?

13 MR. JOHNSON: Correct, Your Honor. And then, of
14 course, he had an appeal following his conviction and then
15 immediately files his P.C.R. application.

16 THE COURT: All right. And he maxED out in April or
17 May?

18 MR. JOHNSON: I'll get that date for you, Your Honor.

19 MR. BOOZER: Your Honor, my client indicates that he
20 was released over to Darlington County custody in May of
21 2016.

22 THE COURT: From Department of Corrections?

23 MR. BOOZER: From the Department of Corrections, yes,
24 Your Honor. So, Judge, in this, first, I don't believe
25 this motion dismiss would be appropriate. If he wants to

1 go back and challenge the trial conviction that's
2 certainly up to him. That's what's he's indicated that he
3 wants to do knowing that there is a possibility of getting
4 more time. He's not concerned that he maxed out his
5 sentence. He's just concerned with the fact that he
6 doesn't feel like his lawyer did certain things properly
7 at trial, and he wants to continue pursuing the remedy
8 which is a new trial.

9 MR. JOHNSON: And, Your Honor, just to clarify even
10 though the State not filed a formal motion. Under Rule
11 56(B) state that, "A party against whom a claim is
12 asserted may at any time move with or without supporting
13 affidavits or summary judgment in his favor as to any or
14 all or any part thereof."

15 Of course, under 56(C), "If there is no issue of
16 material fact the moving party, here the Respondent, is
17 entitled to judgment as a matter of law. Our contention
18 is that he has maxed out his sentence.

19 THE COURT: Well, how about the fact that he filed
20 his application and it's just taken a year to -- for this
21 matter to come to Court? I mean why would he not be
22 entitled to relief based on his application even though he
23 has maxed out? Is there any case law that would indicate
24 that he loses his rights as his post conviction relief
25 rights that he claims simply because his sentence has

1 maxed out?

2 MR. JOHNSON: I don't have case law on hand, Your
3 Honor, but it would just logically follow that ---

4 THE COURT: I understand. But I think this ---

5 MR. JOHNSON: He maxed out.

6 THE COURT: --- probably happens a lot. It's not --
7 I know it's not unique in my experience, but I can't
8 frankly because most of those cases the Applicant does
9 withdraw. But if he chooses not to withdraw he's made
10 certain allegations that were timely. I assume they were
11 timely. You haven't raised that issue.

12 MR. JOHNSON: Yes, sir. He timely filed.

13 THE COURT: Are you prepared to go forward today if I
14 don't grant your motion to dismiss?

15 MR. JOHNSON: I don't believe so. Let me make sure.

16 THE COURT: Well, how about Mr. Boozer?

17 MR. BOOZER: Judge, I believe that my correspondence
18 with the Attorney General's Office was that this was just
19 really going to be a motion. There is another issue in
20 this case aside from the motion to dismiss submitted by
21 the Attorney General's Office.

22 THE COURT: There is another what?

23 MR. BOOZER: There is another motion that is pending
24 which is motion for approval of funds and production of
25 Rule Five materials which we would have to take up before

1 Your Honor today. And if that is granted this would delay
2 the proceedings for a year because he feels that he needs
3 these materials to prepare for a full P.C.R. hearing.
4 What he's about to request in this motion will -- he
5 believes will assist in his future P.C.R. hearing as he
6 moves forward, Your Honor.

7 MR. JOHNSON: Your Honor, just a way of saying I am
8 prepared to go forward today. I prepared this case, Your
9 Honor.

10 THE COURT: But you have no, other than the logical
11 argument that you make, nothing to prevent him from going
12 forward if we were on the street.

13 MR. JOHNSON: In all candor to the Court, Your Honor,
14 no, we don't, Your Honor. That's why I prepared this
15 case.

16 THE COURT: I'm just going to assume that he's on the
17 street regardless of whatever condition he finds himself
18 in.

19 MR. JOHNSON: And then also, Your Honor, they have to
20 find that discovery would be granted since Your Honor
21 knows that in non-capital P.C.R. cases there is no
22 discovery unless leave by the Court.

23 THE COURT: All right. We'll hear that.

24 MR. JOHNSON: Yes, sir.

25 MR. BOOZER: Your Honor.

1 THE COURT: Yes.

2 MR. BOOZER: My client just indicated to me that
3 initially we were here for a motion, of course, on
4 approval of some funding to obtain what he requested which
5 was a preliminary transcript as well as grand jury
6 proceeding transcripts.

7 Another part of the request which he is making to
8 this Court or which we made via motion was for access to
9 responses to Rule Five requests from his General Sessions
10 case. Mr. Tyler's indicated to me that he would prefer to
11 drop that, to withdraw those motions, and to proceed as
12 the Attorney General is prepared for a hearing today and
13 to go ahead and proceed with the hearing. If the State's
14 witness is here go ahead and have a full hearing into the
15 merits of this P.C.R. matter.

16 THE COURT: Is that correct, Mr. Tyler?

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

18 THE COURT: Is that correct?

19 MR. TYLER: That is correct, Your Honor.

20 THE COURT: Okay. The motion to dismiss is denied.

21 MR. JOHNSON: Thank you, Your Honor.

22 THE COURT: Let's proceed.

23 MR. JOHNSON: Yes, sir.

24 THE COURT: All right. Mr. Johnson, are you ready to
25 proceed?

1 MR. JOHNSON: Yes, Your Honor.

2 THE COURT: Go ahead.

3 MR. JOHNSON: I feel I've adequately introduced the
4 case.

5 THE COURT: Okay. You feel you've adequately
6 introduced the case?

7 MR. JOHNSON: Yes, sir.

8 THE COURT: All right. Mr. Boozer.

9 MR. BOOZER: Thank you, Your Honor. If it pleases
10 the Court. I would call the Applicant, Mr. Larry Tyler,
11 to the stand.

12 THE COURT: Come around, Mr. Tyler. Come on up here.
13 Put -- place your left hand on the Bible. Raise your
14 right hand.

15 LARRY TYLER, after being duly sworn, testified
16 as follows:

17 THE COURT: All right, sir. Have a seat in the
18 witness box and state your full name.

19 MR. TYLER: My full name is Larry James Tyler.

20 DIRECT EXAMINATION

21 BY MR. BOOZER:

22 Q. Good afternoon, Mr. Tyler. How are you doing today?

23 A. I'm doing fine.

24 Q. All right. If you would for me just speak up. Keep
25 your voice up so everyone can hear you.

- 1 A. Okay.
- 2 Q. All right. Mr. Tyler, do you know what you're doing
3 here today?
- 4 A. Yes.
- 5 Q. And what is that?
- 6 A. It's a post conviction relief request to the Court to
7 reconsider the facts in my criminal case.
- 8 Q. Well, you filed what's called an application for post
9 conviction relief; is that right?
- 10 A. Yes.
- 11 Q. And you understand that an application for post
12 conviction relief it, under most circumstances, the only
13 remedy that, if this Court agrees with everything that you
14 allege in your application, the only thing that this Court
15 can do, respectfully, is give you is a new trial; you
16 understand that?
- 17 A. Yes.
- 18 Q. And do you understand that if you start over you go
19 back to day one and have a new trial; that there is a
20 possibility that if you're convicted, of course, that you
21 could get more time than you've already done?
- 22 A. I understand.
- 23 Q. Okay. You also understand that if you go back to
24 trial that there is also, of course, you can be found
25 innocent if the jury agrees with the case; is that

1 correct?

2 A. Yes.

3 Q. All right. And tell us now. Have you maxed out your
4 sentence which was originally the charges you were already
5 convicted of? Have you maxed that sentence out?

6 A. Yes, sir, I have.

7 Q. All right. And are you being held at the moment?

8 A. Yes.

9 Q. Why are you being held right now?

10 A. Because the State enhanced the charge from a
11 non-violent to a violent, and has considered me as a
12 sexually violent predator.

13 Q. Are you currently under the custody of the South
14 Carolina Department of Corrections or someone else?

15 A. Not under the custody of South Carolina Department of
16 Corrections, but I'm under Court order.

17 Q. Okay.

18 A. By a Judge.

19 Q. Okay. Where are you currently housed?

20 A. In Darlington Detention Center.

21 Q. And since we're here, sitting here today, knowing the
22 only thing you can get is a new trial, do you still want
23 to go forward with your P.C.R. case?

24 A. Yes, I do.

25 Q. Why do you want to go forward?

1 A. Because I felt like the attorney that was
2 representing me did not present the evidence as he should
3 have. I felt like my procedural due process was violated.
4 And once the -- I get a new trial they will see that even
5 at the beginning in the indictment was an invalid
6 indictment because of the lies that the police officer
7 said to the grand jury.

8 Q. Let's do this. Who represented you at trial?

9 A. Attorney Rick Jones.

10 Q. Okay. And when were you first arrested on these
11 charges?

12 A. Sometime in November. I think the 29th of 2011.

13 Q. All right. Was Mr. Jones your first attorney or was
14 someone else representing you?

15 A. He was the first.

16 Q. He was your first lawyer?

17 A. Yes.

18 Q. All right. When was your trial?

19 A. It was February 2013.

20 Q. Between the time you were arrested and the time --
21 was Mr -- scratch that. Strike that, please. Was
22 Mr. Jones appointed or retained to represent you?

23 A. He was appointed.

24 Q. All right. Do you know when he was appointed to
25 represent you?

1 A. I'm not sure the exact day, but it was probably
2 sometime in maybe November or December.

3 Q. Okay.

4 A. Of 2011.

5 Q. I'm sorry?

6 A. Of 2011.

7 Q. Between the time that he was first appointed to
8 represent you and between -- and your trial date how many
9 times do you think you either met with or spoke with
10 Mr. Jones?

11 A. Maybe, probably twice.

12 Q. All right. What would you discuss during those
13 meetings?

14 A. If I can recall he discussed, basically, the evidence
15 that he said the police had on me. But he never, one
16 time, said anything about that indictment which was a lie
17 and that was the basic thing that they focussed all of
18 their evidence on; that illegal indictment and that lie
19 that the police officer said on me.

20 Q. Did you discuss any -- did your discuss the evidence
21 in the case?

22 A. Yes.

23 Q. Did you discuss the indictment?

24 A. I never seen the indictment. I just saw the
25 indictment about last month or two months ago.

1 Q. Did your attorney ever indicate to you that you could
2 move to dismiss any indictment or anything like that?

3 A. No.

4 Q. Squash the indictments?

5 A. No. No, he didn't.

6 Q. Did you receive any sort of Rule Five response to
7 anything that you requested discovery-wise?

8 A. Yes, I received one Rule Five, and it also said on it
9 that I was nude. The police officer said I was nude in
10 some photographs. And I kept telling my attorney. I
11 said, "You need to look into that. I wasn't nude. Look
12 at the pictures. I'm not nude in the pictures. How can
13 that police officer say that." And he never did say
14 anything. He never did say anything about the Rule Five,
15 the indictment or what the police officer said at the
16 preliminary hearing.

17 Q. Well, regarding what you're discussing right now, you
18 being nude or not nude in some sort of photos, what
19 did your lawyer do to challenge that at the trial?

20 A. Nothing. He did mention that the police officer was
21 the only one who said I was nude, but he never mentioned
22 that the police officer said that to the grand jury to get
23 an indictment.

24 Q. Let me ask you this. Obviously, you filed your
25 P.C.R. application, correct?

1 A. Yes.

2 Q. Okay. What are your allegations against your
3 attorney or what are your allegations on your P.C.R.
4 application?

5 A. That he was ineffective, and he did not investigate
6 all the evidence.

7 Q. And I know -- I don't believe you have anything with
8 your today. Do you have a file with you today?

9 A. No, sir.

10 Q. All right?

11 MR. BOOZER: Your Honor, I respectfully request a
12 little bit of leeway on the upcoming questions on his
13 allegations?

14 THE COURT: Go ahead. I have his application if
15 that's what you need.

16 MR. BOOZER: It is, Your Honor. Thank you.

17 BY MR. BOOZER:

18 Q. Mr. Tyler, do you have a copy of your P.C.R.
19 application in front of you?

20 A. Yes, sir, I do.

21 Q. Okay. And go through, please, if you would your
22 allegation for the Court. What's your first allegation?

23 A. Let me see. I'm trying to find what page that's on.
24 Okay, the first ground, Ground One, "Defendant's trial
25 counsel rendered ineffective assistance by failing to

1 object to the consolation of trial's defendants was
2 entitled to have served."

3 Q. Okay. Let me stop you there. And I think you may
4 have misspoke on a couple of those things, but did you say
5 that your lawyer was ineffective for his failure to object
6 to the consolidation of your trials that you thought
7 should have been severed?

8 A. Yes.

9 Q. All right. Explain that allegation to the Court.
10 What do you mean by that?

11 A. Well, that when the prosecution charge me for these
12 things the -- my attorney did not object. It was very
13 clear that the Defendant was entitled to have two separate
14 trials but was only committed one, unfair, prejudicial
15 trial.

16 One trial could have encompassed Defendant's charges
17 of contributing to the delinquency of a minor, criminal
18 solicitation of a minor and disseminating harmful material
19 to a minor. According to the State these charges were
20 alleged to have been completed with the transfer of a cell
21 phone from the Defendant to the underaged, Victim.

22 , in or around July the 20th -- July 2011.

23 Q. Okay. Mr. Tyler, you had some separate charges,
24 correct?

25 A. Yes.

1 Q. All right. Did you -- what you're saying is that you
2 wanted to have your lawyer ask for a separate trial on
3 these charges?

4 A. Yes, because the trials being serve together would
5 prejudice the jury to make the jury believe that I
6 committed the first charge.

7 Q. Did you have any discussion was your attorney prior
8 to the trial about filing any sort of motion to sever,
9 have separate trials, on these charges?

10 A. Oh, yeah, I Wrote him several letters. He never made
11 any responses, but told him that he needed to make a
12 motion that -- to have separate trials so that there would
13 be no possibility of the jury being prejudiced.

14 Q. Was one ever made to your knowledge, a motion?

15 A. No.

16 Q. Okay. Now, tell us about your second allegation?

17 A. The second allegation, Ground Two, "The Defendant's
18 trial counsel rendered ineffective assistance by failing
19 to challenge the validity of the search or the Appellant's
20 home computer and e-mail as well as the admissibility of
21 any evidence seized by a result of said search."

22 Q. All right. Now, tell the Court. Explain that
23 allegation and what you feel like your lawyer did or
24 didn't do to assist you with your trial?

25 A. Well, because of the invalid first indictment they

1 didn't have any legal right to get a search warrant and go
2 get all the rest of my property, and so ---

3 MR. JOHNSON: Object, Your Honor. That's not
4 addressable as a direct appeal issue. That calls for a
5 legal cause or legal conclusion.

6 THE COURT: Overruled. I'll allow it. Go ahead,
7 sir.

8 MR. TYLER: And so here again they were adding more
9 charges without having the legal right to do that.

10 BY MR. BOOZER:

11 Q. Is that everything With regard to that allegation?

12 A. Yes.

13 Q. Okay. Tell the Court what your third allegation is?

14 A. On Ground Three, "Defendant's trial counsel rendered
15 ineffective assistance by failing to object specifically
16 to the admission of any photos obtained from Defendant's
17 e-mail account which is not on his computer. All of which
18 were irrelevant and inflammatory."

19 Q. Explain that allegation to the Court.

20 A. Well, they didn't get my mother's computer which I
21 was using, and then they did a investigating on the hard
22 drive. And they couldn't find anything so they got
23 another search warrant for my Yahoo account. And that's
24 not on my hard drive. That's a Cloud, evidential material
25 but then they found a picture which they indicated or

1 admitted or were saying that it was child pornography
2 which it wasn't, but they said it was.

3 And then use that as another charge against me. So I
4 just thought it was illegal for them to even go to that
5 next step to get a search warrant for my Yahoo account.
6 And then find what they call evidence to make another
7 charge against me.

8 Q. Okay. Did you have a discussion with your attorney
9 about what you're alleging in that allegation?

10 A. No, I didn't. I didn't.

11 Q. Is there anything else regarding that specific
12 allegation that you need to make His Honor aware of?

13 A. Well, Deputy Harold, at the trial testified that all
14 of the websites that they found and the picture they found
15 which they say it was child pornography. He admitted that
16 the website said, "Everyone on this site are 18 years old
17 and older. So the pictures that they said was child
18 pornography weren't because all the people in it were over
19 18 years-old.

20 Q. Explain to the Court what your fourth allegation is.

21 A. "The Defendant's trial counsel rendered ineffective
22 assistance by failing to remedy the double jeopardy
23 violations with respect to Defendant's criminal
24 solicitation of a minor and contributing to the
25 delinquency of a minor conviction."

1 Q. Okay. Again, I'm going to ask you to, please,
2 explain that allegation?

3 A. Well, I guess it means to -- the charge that they
4 were putting on me seemed like they were making it twice
5 or the same charge twice.

6 Q. Okay.

7 A. I think that's the way to put it. I'm not quite
8 sure.

9 Q. Well, did you fill this out, these allegations?

10 A. Yes.

11 Q. Okay. Did you have any discussion with your attorney
12 about what you feel like is a double jeopardy violation
13 with regard to these two charges?

14 A. No, I didn't. I didn't have any discussion at all.

15 Q. Did he raise any issue to you about that?

16 A. No.

17 Q. Did he make any sort of motion before the Court that
18 he felt that this was a double jeopardy violation?

19 A. No, he didn't.

20 Q. Okay. Explain your fifth allegation?

21 A. "The Defendant's counsel rendered ineffective
22 assistance on appeal by abandoning on appeal Defendant's
23 properly preserved motion for a directed verdict on all
24 counts due to insufficient evidence."

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

1 that was the exact issued raised on appeal, and therefore,
2 under Ashley v. State and Simmons v. State it's not proper
3 for this forum.

4 THE COURT: How about that, Mr. Boozer?

5 MR. BOOZER: Judge, I would submit on behalf of the
6 Applicant I believe he can certainly claim that it or
7 allege that it was not raised; that it was properly raised
8 even if it weren't. If he believes that there was a
9 better way to make the argument to get it before the Court
10 I believe he can testify to that and make that allegation.

11 THE COURT: All right. I'll overrule the objection.

12 BY MR. BOOZER:

13 Q. Explain what you mean by that allegation.

14 A. Well ---

15 Q. Let me stop you before you say that. Did you file an
16 appeal following your trial conviction?

17 A. Yes, Rick Jones did.

18 Q. Did you have another lawyer representing you on the
19 appeal?

20 A. Yes, sir.

21 Q. And who was that?

22 A. I can't remember his name.

23 Q. Okay. Was it Mr. Robert Paycheck?

24 A. Yes. Yes, sir.

25 Q. All right. Did you hire Mr. Paycheck or was he

1 appointed to represent you?

2 A. He was appointed.

3 Q. Did you ever speak with Mr. Paycheck?

4 A. No, I never did.

5 Q. Did you correspond with him?

6 A. Yes, I wrote him several times, and I pointed out the
7 fact to him that, you know, the main thing that should be
8 addressed in this appeal is the lie and the illegal or
9 invalid indictment.

10 Q. And what was his response to that?

11 A. His response was ---

12 MR. JOHNSON: Objection. That's hearsay, Your Honor.

13 THE COURT: All right. Sustain that.

14 BY MR. BOOZER:

15 Q. Mr. Tyler, you allege that you conveyed to Mr.
16 Paycheck to raise certain issues?

17 A. Yes.

18 Q. Were certain issues -- was that issue specifically
19 raised at your ---

20 A. Very strongly.

21 Q. Okay. What issues did Mr. Paycheck raise on appeal?

22 A. He only raised the issue of the directed verdict. It
23 was proper for the Judge to override and not make a
24 decision on the directed verdict. And I told him that
25 that was not true. I didn't know very much about the law,

1 but k know that him not making a decision on the request
2 from Rick Jones was not right

3 Q. And did you ask him to make a specific argument on
4 appeal?

5 A. Yes, I did.

6 Q. What were those specific arguments you wanted to
7 argue?

8 A. Mainly, that the directed verdict was not considered,
9 and even the Judge did say later on in the trial, he says,
10 "I may not make a decision now, but I may later on." And
11 Rick Jones never brought that up.

12 'Judge, now I'd like for you to make the decision on
13 this directed verdict', and he never did.

14 Q. Were there anything else you asked Mr. Paycheck to
15 raise?

16 A. Trying to think. At the moment I know I did ask him,
17 but I can remember what they were right now.

18 Q. Okay. Are there any other allegations that we have
19 not covered that you have raised in your P.C.R.
20 application that you want to bring before the Court?

21 A. Except he -- and I did not mention that in the sense
22 you sent me a copy of the indictment a couple months ago.
23 I didn't mention to you that we should bring this up in
24 the P.C.R. trial that I never got an indictment. I never
25 seen one until two months ago, and I think that that was

1 illegal.

2 A. And I think you started off your testimony with
3 regards to saying that felt like your lawyer should have
4 had tried to dismiss or have the indictment quashed?

5 A. Yes.

6 Q. Is that what you're referring to?

7 A. Yes.

8 Q. And why specifically is it that you wanted that?

9 A. Because that's what the Sheriff's Department based
10 all of the charges on that indictment that was not valid.
11 You can't go lying to the grand jury.

12 Q. Is it your position that you believe that there were
13 false statements in the indictment?

14 A. Yes.

15 Q. Okay. Did you have a preliminary hearing in your
16 case?

17 A. Yeah, and that was another thing. My preliminary
18 hearing, and I've learned little things about the law
19 since I've gotten into this situation, is that they were
20 supposed to have it within 20 days of my arrest. My
21 preliminary hearing wasn't until months after I was
22 arrested.

23 Q. What occurred at your preliminary hearing?

24 A. Same thing; that Officer Eric Hodges told ---

25 MR. JOHNSON: Objection to hearsay, Your Honor.

1 Anything the officer said.

2 THE COURT: Well, he testified to something. If he
3 testified to something I'm going to allow it in.

4 MR. TYLER: Officer Eric Hodges told the grand
5 jury -- I mean told the preliminary hearing that I was
6 nude in photographs and that I presented to this underaged
7 child and Chelsea, who was Rick Jones' assistance, told me
8 not to say anything ---

9 MR. JOHNSON: Objection to hearsay again, Your Honor.

10 THE COURT: Overruled.

11 BY MR. BOOZER:

12 Q. Continue.

13 A. And I didn't say anything at the preliminary hearing,
14 and I didn't know anything about the law, and I didn't
15 know I could speak then and I didn't. And she didn't
16 object when the officer was telling them that I was nude
17 in photographs.

18 Q. And you felt that that wasn't true?

19 A. No. Of course not. I mean he ---

20 Q. Do you feel ---

21 A. He didn't even show -- he didn't even show the
22 evidence to the grand jury. He just said it. I said -- I
23 was saying to myself, 'show him the picture. Show him the
24 picture', and she wouldn't do anything.

25 Q. Do you feel that your lawyer, and I'm looking for a

1 passage here, but do you feel that your lawyer did
2 everything to challenge or to project that argument to the
3 jury?

4 A. He didn't do a thing. I mean the basic point was at
5 the initial charge assumed that I was nude in photographs
6 by the police officer. He didn't emphasize that enough.
7 He didn't stress that enough, and he didn't say that this
8 was the main reason he got the indictment on that
9 statement that I was nude in photographs.

10 Q. Okay. Is there anything else that we have not
11 covered today that you want to bring to His Honor's
12 attention?

13 A. I can't think of it. I'm kind of nervous right now
14 so I can't think.

15 Q. That's understandable. This is your time to do that,
16 you understand?

17 A. Yes.

18 Q. I want to make sure that we cover all of your
19 allegations. We've been through your allegations in your
20 application and through your testimony today. Is there
21 anything else regarding your lawyer's assistance at trial
22 or prior to trial or anything else that you would like to
23 testify to today that has been raised in your application?

24 A. I just believe that -- no. It's nothing else that I
25 can really think of, but I just feel like I would like to

1 say, you know, that injustice has happened to me
2 tremendously, and the people who were supposed to protect
3 me, the police and the lawyer, did not defend me. They
4 actually made me become guilty. They destroyed my faith
5 in the police and has destroyed my faith in authority.
6 I'm sorry.

7 Q. Is there anything else, though, about your P.C.R.
8 application? I understand that this is emotional. Is
9 there anything else with regard to your allegations? Have
10 we covered everything?

11 A. Yes, sir, I think so.

12 Q. Thank you, Mr. Tyler. Please answer any questions
13 the Attorney General may have.

14 A. Okay.

15 MR. JOHNSON: May it please the Court, Your Honor.

16 THE COURT: Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. JOHNSON:

19 Q. One allegation you stated is that appellate counsel
20 did not properly argue the directed verdict motion,
21 correct?

22 A. Yes.

23 Q. Because the Judge never ruled on it, correct?

24 A. That is correct.

25 Q. Do you have a copy of your transcript?

1 A. Yes.

2 Q. If you will turn to Page 138 for me, please, sir?

3 A. My transcript? No, I don't have it.

4 MR. JOHNSON: Your Honor, may I approach?

5 THE COURT: Here is your transcript.

6 MR. TYLER: Okay.

7 THE COURT: Just turn to the pages he asks you to
8 turn to.

9 MR. TYLER: All right.

10 BY MR. JOHNSON:

11 Q. Page 138, and I'm looking at Line Five.

12 THE COURT: Take your time.

13 MR. TYLER: Okay.

14 BY MR. JOHNSON:

15 Q. Will you read that for me, please, sir?

16 A. Well, those particular statutes are worded.

17 Q. Are we looking at the same page?

18 MR. JOHNSON: May I approach the witness, Your Honor?

19 BY MR. JOHNSON:

20 Q. Yeah, if you would read that sentence starting with,
21 'what' and ending with 'verdict', please.

22 A. "What I'm going to do at this time I'm going to deny
23 your motion for directed verdict."

24 Q. So he did rule on the directed verdict motion,
25 correct?

1 A. But he says, "I am going reserve ---

2 Q. Was that a yes?

3 A. Huh?

4 THE COURT: Let him answer the question.

5 MR. JOHNSON: I need a verbal response, Your Honor.

6 THE COURT: Yeah, I heard him.

7 MR. TYLER: The Judge also goes on to say, "But I am
8 going to reserve the right to step back in at any time and
9 even after the jury verdict to review your motion."

10 Q. But he did deny at that point?

11 A. Yes.

12 Q. Okay. And you have no proof here today that you
13 wrote appellate counsel saying that you wanted the invalid
14 indictment argued on appeal, do you?

15 A. No.

16 Q. And at trial the prosecution never said that they had
17 pictures of you nude, correct? They just said that they
18 had a picture of you in a blue speedo, is that correct?

19 A. That's correct.

20 Q. Okay. And they also said they had -- found pictures
21 of underage girls on the hard drive in sexual positions,
22 correct?

23 A. Yes.

24 Q. Okay.

25 A. And it wasn't on the hard drive. It was on the Cloud

1 in my Yahoo e-mail. So nothing was found on the hard
2 drive.

3 Q. On your account?

4 A. Yes.

5 Q. Okay. And then there is also testimony from a Daquan
6 Brown who states that he found on your cell phone that you
7 or you wrote in letters that you knew it was wrong that
8 you had some type of relationship or wanted to have a
9 relationship with the victim in this case, correct?

10 A. Yes.

11 Q. And, please, don't tell her little sister. Because
12 then she will tell somebody else?

13 A. Yes.

14 Q. Okay. And you're also aware that your attorney
15 argues on that directed verdict motion that none of this
16 should be linked to you and that the whole case should be
17 kicked out, right? He argued that you're innocent of
18 these charges?

19 A. Yes.

20 Q. Okay. But the Judge denied that, right?

21 A. Right.

22 Q. Okay. And he also argued in closing arguments the
23 same thing, correct?

24 A. Yes.

25 Q. But the jury still found you guilty in this case?

1 A. Yes.

2 Q. Okay.

3 MR. JOHNSON: That's all I have of this witness, Your
4 Honor?

5 THE COURT: Any redirect?

6 MR. BOOZER: No redirect, Your Honor.

7 THE COURT: All right, sir. Anything else you want
8 to tell the Court?

9 MR. TYLER: Not at this time.

10 THE COURT: Thank you very much.

11 MR. TYLER: Thank you.

12 THE COURT: Let me have those documents back. Thank
13 you. You may have a seat, sir. Next witness.

14 MR. BOOZER: No further witnesses on behalf of the
15 Applicant, Your Honor.

16 THE COURT: All right. State have any witnesses?

17 MR. JOHNSON: Yes, Your Honor.

18 THE COURT: You may proceed.

19 MR. JOHNSON: State calls Rick Jones, please.

20 RICHARD JONES, after being duly sworn, testified
21 as follows:

22 THE COURT: Have a seat in the witness box and state
23 your full name for the record, please.

24 THE WITNESS: My name is J. Richard Jones.

25

DIRECT EXAMINATION

1 BY MR. JOHNSON:

2 Q. Mr. Jones, how long have you been practicing law?

3 A. Since November of 1976.

4 Q. What is your current occupation?

5 A. I am a public defender in Florence County.

6 Q. And how long have you been a P.D. for the Public

7 Defender?

8 A. I was part time beginning in 1993. Full time

9 beginning in 2009.

10 Q. And roughly estimate how many cases you have been

11 involved in?

12 A. Lots.

13 Q. You ever been involved in a child sexual case before?

14 A. I have.

15 Q. And dissemination of child pornography type cases?

16 A. I have.

17 Q. And solicitation of minor cases?

18 A. Yes, sir.

19 Q. Okay. And when did you become involved in this case?

20 A. It was sometime after Mr. Tyler was arrested. His

21 initial attorney was Miss Chelsea McNeill who was an

22 assistant with our office in Darlington.

23 Q. And how soon after did you go meet with Mr. Tyler?

24 A. I don't have the documentation, but I met with him

25 very shortly after I was appointed to represent him.

1 Q. And could you estimate how many times you met with
2 him?

3 A. Probably at the jail six, seven, eight. Somewhere in
4 that neighborhood.

5 Q. And did you discuss -- did you receive Rule Five and
6 Brady material?

7 A. Ms. McNeill had already received all of that and I
8 think shared all of that with him.

9 Q. So you discussed all the evidence that the State had
10 against him?

11 A. In detail.

12 Q. The pictures?

13 A. All of them.

14 Q. The phone? The text messages?

15 A. Yes.

16 Q. Okay. And then, of course, the hard drive and then
17 his Yahoo account?

18 A. Yes.

19 Q. And in sharing all of this did you develop some type
20 of trial strategy?

21 A. Absolutely.

22 Q. What would that be?

23 A. Mr. Tyler, as he said today, was firmly convinced
24 that he had done nothing wrong. In talking with him and
25 reviewing in the information that we had one of the

1 interesting things about the case is that the two,
2 particularly as dealing with his dealings with the young
3 lady that he was accused of the various things, was that
4 except for a very, very brief period of time in the
5 automobile after the young ladies left the house with the
6 telephone, none of this information was really
7 dissimilated to the young ladies.

8 So it was not communicated to them. So our trial
9 strategy was basically that these were thoughts that were
10 not meant to be shared with anybody and just inadvertently
11 got discovered by their cousin.

12 Q. By the what?

13 A. By the young lady's cousin.

14 Q. Cousin?

15 A. Yes, sir.

16 Q. Now, that would be Quan?

17 A. It was. And I don't know if that is clear, but what
18 had happened is that Mr. Tyler lived with his mother. The
19 young ladies visited with their grandmother who is related
20 to his mother, and at some point in time he gave the young
21 ladies telephone. When they got -- when they were leaving
22 to the car I think they tried to open the telephone.

23 They begin to see some things and said, "Oops, we
24 probably shouldn't have this," and grandmother took it
25 away, walked it back in the house and gave it back to him.

1 And that was kind of the end of the situation until the
2 phone got given, if you will, to Tyquan, and then Tyquan
3 was going through the telephone; found a whole lot of
4 things because he was deleting things as he began the
5 discover them. And to the text messages and realized that
6 they were about his cousins. And that's when he -- I
7 think he told his mother who told the mother of the
8 children.

9 Q. Is that how it ended up in the police's hands?

10 A. Yes.

11 Q. Okay. And then they -- then law enforcement gets a
12 search warrant for the phone, correct?

13 A. Correct.

14 Q. And did they get a search warrant for the house?

15 A. Correct.

16 Q. And then they get the search warrant for the
17 computers?

18 A. Correct.

19 Q. And then the Yahoo account?

20 A. Absolutely.

21 Q. And then based upon all that indictments come along?

22 A. Yes.

23 Q. Did you review these indictments?

24 A. All of them.

25 Q. Did you see anything that you would have challenged

1 in these indictments?

2 A. I think ---

3 Q. If you need a copy I can certainly ...

4 A. Well, I think that -- I'm not so sure. I don't have
5 one, but I think the thing Mr. Tyler is talking about, I
6 did not see a problem. His main concern was that Mr. Russ
7 Harold, who was, basically, the evidence guy and the
8 investigator with the Sheriff's Department said he was
9 naked on one of them. When in fact he had on like some
10 bikini underwear, I think. We talked about that.

11 One of the interesting asides on the situation is we
12 hired a computer expert to review everything that we had,
13 and the computer expert found a whole lot more damaging
14 information on his computer than the State had found.
15 Some of this was -- we all met at the Detention Center
16 with Mr. Tyler. The computer expert then going through
17 what he had. We tried to basically shut him down which we
18 did, and we didn't really want to talk to him any more
19 because he had found an awful lot more stuff on the
20 computer than S.L.E.D. or the F.B.I.

21 Q. --- search warrant?

22 A. Yes, sir. Well, the computer was in the possession
23 of the Sheriff's Office and then ---

24 Q. They had it?

25 A. Yes, sir. And then we had the computer hard drive

1 examined by our expert.

2 Q. Got it. You certainly wouldn't want to bring that
3 out at trial?

4 A. We didn't want any of that at trial. And might say
5 the information, the pictures, that Mr. Tyler talks about,
6 there was only one bad picture, and we got the State to
7 agree to kind of let us present. We had a young lady
8 working with us that was very good with computers and she
9 imaged those pictures and basically buried that picture
10 kind of in a grouping to minimize it on Mr. Tyler's behalf
11 and the State agreed.

12 Q. And not to be explicit, but that's the one with the
13 anal sex with the young child?

14 A. Yes. That was an awful picture. Yes.

15 Q. And you discussed all of this with Mr. Tyler?

16 A. In detail.

17 Q. And he still denied any culpability?

18 A. Absolutely.

19 Q. Okay. So you saw no reason to attempt to quash these
20 indictments?

21 A. I did not.

22 Q. It's a dumb question, but if you had seen something
23 would you have moved to quash it?

24 A. Absolutely.

25 Q. I guess we'll go through his allegations. The first

- 1 allegation he said that there were separate charges and he
2 wanted separate trials. And I guess that's the letters
3 and also the Yahoo account?
- 4 A. Correct.
- 5 Q. Did you see any reason to attempt to sever those
6 trials?
- 7 A. I did not.
- 8 Q. And why is that?
- 9 A. Again, based on the theory that we had developed,
10 first of all, the information we felt had not been
11 sufficiently communicated to the young lady on the four
12 charges dealing with her. And the exploitation, the
13 pictures, except for one, we felt we could minimize.
- 14 Q. Did you have any reason to challenge the validity of
15 the search and the search warrants?
- 16 A. I really did not.
- 17 Q. But you did research those issues?
- 18 A. I did. Ms. McNeill did most of that.
- 19 MR. JOHNSON: Court's indulgence, Your Honor.
- 20 BY MR. JOHNSON:
- 21 Q. Did you discuss a potential double jeopardy
22 violation?
- 23 A. I do not remember that. No.
- 24 Q. Did you see any potential double jeopardy violation?
- 25 A. I do not remember that. No.

1 Q. Do you believe all four of these charges are distinct
2 from one another?

3 A. I do.

4 Q. They all have common elements?

5 A. There is commonality in the -- in reading the appeal
6 I think they call it you kind of start with the grooming
7 and you end with the act, and there were just various
8 attempts to get to that stage.

9 Q. But they certainly had different elements?

10 A. All of them. Correct.

11 Q. And then you argued extraneously on the directed
12 verdict motion?

13 A. Absolutely.

14 Q. And the same with the clothing?

15 A. Yes.

16 Q. And the jury still found Mr. Tyler guilty?

17 A. They did.

18 MR. JOHNSON: No further questions at this time, Your
19 Honor.

20 THE COURT: Mr. Boozer.

21 MR. BOOZER: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. BOOZER:

24 Q. Mr. Jones, how are you?

25 A. Very well. Thank you.

1 Q. Good. What conversation if any did you have with Mr.
2 Tyler about trying to challenge the search?

3 A. Specifically, I do not remember details of a
4 conversation other than in just strategizing about the
5 trial, period.

6 Q. Did he ever raise any concerns to you about the
7 search or how the search occurred?

8 A. Again, I do not specifically recall that either.

9 Q. Do you recall Mr. Tyler ever taking issue with, and
10 you may have said this a moment ago in regards to Mr.
11 Harold, but in regards to what was stated in the
12 indictment and what was stated at his preliminary hearing
13 setting?

14 A. He always said, "I wasn't naked."

15 Q. Was there a preliminary hearing? Do you recall?

16 A. I do not recall that. Ms. McNeill represented him
17 for a good period of time until I was assigned.

18 Q. So if there was one you wouldn't remember anything
19 from this hearing itself?

20 A. No.

21 Q. Going back to the indictments, did you sit down and
22 ever review the indictments with Mr. Tyler?

23 A. I don't remember reading them word for word with him.
24 I certainly went through all of the charges. Mr. Tyler is
25 a very intelligent young man, and he had a good grasp on

1 the situation. And, again, I think that's where our trial
2 strategy came from is, Number One, the pictures, except
3 for one, were not bad. And, Number Two, there was very
4 little if any communication of his thoughts in his e-mails
5 and pictures and otherwise with the young ladies or the
6 young lady specifically.

7 Q. Was there ever a plea offer in the case prior to the
8 trial?

9 MR. JOHNSON: Objection, Your Honor. That's not part
10 of the allegation. That's outside the scope of direct
11 examination.

12 THE COURT: Well, I'd be interested to no. Go ahead.

13 MR. JONES: I don't remember ever soliciting a plea
14 offer for Mr. Tyler because he never was guilty in his
15 mind.

16 BY MR. BOOZER:

17 Q. And that would be my question. Was he asking for you
18 to get some sort of plea or did he want accept the plea or
19 was he -- did he want a trial the entire time?

20 A. The entire time.

21 MR. BOOZER: Beg the Court's indulgence, Your Honor.

22 BY MR. BOOZER:

23 Q. Mr. Jones, going back to the indictments. I mean do
24 you know why you wouldn't have, if you didn't, do you know
25 why you wouldn't have reviewed those, gone over those,

1 with Mr. Tyler?

2 A. I don't remember reading them word for word with him.
3 I do remember discussing the various charges contained in
4 the indictments. If that answers your question.

5 Q. Okay. Earlier, and I may have misheard, did you
6 indicate that Ms. McNeill probably who -- is the one who
7 reviewed the Rule Five materials with Mr. Tyler or would
8 that have been you?

9 A. I think -- well, I did as we prepared for trial. We
10 went through every document that we had, every piece of
11 paper that we had. Ms. McNeill was his attorney at the
12 time that the information was received, most of the
13 information. And perhaps I'm assuming that she went
14 through it with him or at least provided it to him, but he
15 and I discussed the entire case in detail as we prepared
16 for trial.

17 Q. Do you have any recollection or memory of there being
18 an issue where there were maybe two responses to Rule Five
19 requests to produce?

20 A. I think we were supplemented, but again, not
21 specifically. But I do think that we got some information
22 on another occasion rather than the initial.

23 Q. And Mr. Tyler has indicated through to me that do you
24 have any recollections of this being an initial production
25 of Rule Five disclosure in which information was some sort

1 of date present with regard to a message supposedly
2 written to .Victim , and then there was a later production
3 where the date was removed?

4 A. I vaguely remember something about that, and I think
5 it had to do with the various visits that the grandmother
6 and Mr. Tyler's mother made where the children were
7 present over the summertime. Yes.

8 Q. Okay. Did you see any cause for concern or reason to
9 bring that to the Court's attention?

10 A. I did not.

11 Q. Did you have a discussion with Mr. Tyler about that?

12 A. I don't recollect one, but I do remember the
13 situation about the dates at some point in time.

14 Q. Did you indicate that there was a motion to sever or
15 was not one made?

16 A. I did not make one. No.

17 Q. Okay. Do you think that with these two incidents or
18 separate charges that there would have been a reason to
19 make that motion?

20 A. Perhaps. I don't remember that being an issue that
21 we discussed in detail. No.

22 Q. Going along with that, perhaps, I guess what would
23 your reason, looking at it, what would it be to make that
24 request?

25 A. Well, as Ms. Tyler says, you know, perhaps one would

1 lead the jury to believe the other.

2 Q. Do you think that that could have been the case in
3 this case?

4 A. I didn't see it. No.

5 Q. Thank you, Mr. Jones.

6 MR. JOHNSON: That's all the questions I have.

7 THE COURT: All right. Let me ---

8 MR. JOHNSON: One moment, Your Honor.

9 BY MR. JOHNSON:

10 Q. Mr. Jones, is the reason you didn't see the motion to
11 sever is that based on your experience and the facts in
12 this case?

13 A. And the development of the trial strategy with Mr.
14 Tyler. Yes.

15 Q. Thank you.

16 MR. JOHNSON: No further questions, Your Honor.

17 COLLOQUY

18 THE COURT: If you can, Mr. Jones, you're familiar
19 with the four different indictments?

20 MR. JONES: Yes, sir.

21 THE COURT: Just how could you have separated them?
22 I mean if you can -- if that's not an unfair question?
23 You want to see them?

24 MR. JONES: Well, no, sir, I recall. Three dealt
25 with his attempted communication with the young lady, and

1 one dealt with the picture.

2 THE COURT: We've got disseminating, contributing.

3 MR. JONES: And the solicitation of a minor.

4 THE COURT: Exploitation.

5 MR. JONES: In my mind the exploitation dealt with
6 the picture of the young lady involved in a sexual act.

7 The disseminating, the solicitation of a minor and
8 contributing all dealt with the young lady.

9 THE COURT: So there is some distinction there?

10 MR. JONES: There is some distinction there, yes,
11 sir.

12 THE COURT: Okay. But in your mind was it a
13 significant enough distinction on which a Court could
14 separate these?

15 MR. JONES: I did not think so, Your Honor.

16 THE COURT: Okay. Thank you. Anything further?

17 MR. BOOZER: Nothing further, Your Honor.

18 MR. JOHNSON: Nothing from the State, Your Honor.

19 THE COURT: You may step down.

20 MR. JONES: Thank you.

21 MR. JOHNSON: The State has no further witnesses.

22 THE COURT: Anything in reply?

23 MR. BOOZER: Nothing in reply, Your Honor.

24 THE COURT: Thank you very much, counsel. I will
25 expect proposed orders within 30 days. Thank you very

1 much.

2 MR. BOOZER: Thank you, Judge.

3 MR. JOHNSON: Thank you, Your Honor.

4 END OF TRANSCRIPT OF RECORD

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Handwritten signature/initials

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DARLINGTON)
)
 Larry James Tyler,)
 S.C.D.C. No. 354459,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
OF THE FOURTH JUDICIAL CIRCUIT

2015-CP-16-0016

ORDER OF DISMISSAL

FILED
 2016 NOV -4 AM 11:35
 SCOTT B. SUGGS,
 CLERK OF COURT/REG.
 DARLINGTON COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 2, 2015. Respondent made its return on September 10, 2015. An evidentiary hearing was held on July 18, 2016, at the Chesterfield County Courthouse. Applicant was present and represented by Lance Boozer, Esquire. J. Rutledge Johnson, Esquire, of the South Carolina Office of the Attorney General represented Respondent.

Applicant and his trial counsel, J. Richard Jones, Esquire, testified at the hearing. The Court had before it Applicant's trial transcript, the Darlington County Clerk of Court records, the South Carolina Department of Corrections records, Applicant's appellate records, and the Return.

PROCEDURAL HISTORY

Applicant is no longer confined in the South Carolina Department of Corrections. In February 2013, the Darlington County Grand Jury indicted Applicant for criminal solicitation of a minor (2013-GS-16-603), second-degree sexual exploitation of a minor (2013-GS-16-604), contributing to the delinquency of a minor (2013-GS-16-605), and disseminating harmful material to minors (2013-GS-16-606).

Handwritten signature/initials

J. Richard Jones, Esquire, represented Applicant. On February 25, 2013, Applicant proceeded to trial before the Honorable Paul M. Burch and a jury. On February 27, 2013, the jury found Applicant guilty as indicted. Judge Burch sentenced Applicant to concurrent terms of imprisonment of eight years for each charge, except contributing to the delinquency of a minor, for which Judge Burch sentenced him to three years imprisonment.

Applicant filed a timely notice of appeal, and Robert M. Pachak, Esquire, of the Office of Appellate Defense, perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on January 14, 2015. State v. Tyler, Op. No. 2015-UP-025 (S.C. Ct. App. filed January 14, 2015). The remittitur was returned to the circuit court on January 30, 2015.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing SCRPC 71.1(e)). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d


2

at 814.

First, the applicant must show that counsel's performance "fell below an objective standard of reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, Counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; see Strickland v. Washington, 466 U.S. 668, 688, 692, 104 S. Ct. 2052, 2065, 2067 (1984) ("[T]he defendant must show that counsel's representation fell below an objective standard of reasonableness [and] . . . any deficiencies in counsel's performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution."); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) ("PCR applicant must prove: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that the deficient performance prejudiced the applicant's case.").

And "where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Watson v. State, 370 S.C. 68, 72, 634 S.E.2d 642, 644 (2006 (citing Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992))). "Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds


from the rebuttable presumption that counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (quoting Strickland, 466 U.S. at 690, 104 S.Ct. 2052). "Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Id. (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). "Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) (citing Goodson v. United States, 564 F.2d 1071 (4th Cir. 1977)).

This Court will now address each allegation of ineffective assistance of counsel:

Applicant alleged trial counsel failed to object to the consolidation of trials that Applicant was entitled to have severed; failed to challenge the validity of the search of Applicant's home, computer, and email as well as the admissibility of any evidence seized as a result of the search; failed to object to the admission of any photos obtained from Applicant's email account that were not on his computer; and failed to remedy alleged double jeopardy violations with respect to Applicant's convictions.

I. Alleged failure to object to consolidation of trials

At the hearing, Applicant claimed Trial Counsel was ineffective for failing to move to sever the charges. Applicant claims that he was entitled to two different trials based on the four indictments involved in the case. Trial Counsel testified that he did not see any reason to object to the consolidation of Applicant's charges into one trial nor to make a motion to sever the matter into two trials. Trial Counsel testified that all four of the indictments resulted from related



incidents and a subsequent search warrant of Applicant's home and computer. Trial Counsel also stated that he was familiar with all four of the indictments and felt prepared to handle all of them.

"Generally, when offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place, and character, the trial [court] has the discretion to order the indictments tried together, but only so long as the defendant's substantive rights are not prejudiced." State v. Cutro, 365 S.C. 366, 374, 618 S.E.2d 890, 894 (2005).

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to move to sever the charges to be without merit. This Court finds Trial Counsel's performance to be well within "reasonable professional norms." Trial Counsel noted that all charges stemmed from the same events and one search warrant. This Court agrees with Trial Counsel's assertion and finds that there was no reasonable basis to make a motion to sever the charges.

Additionally, this Court finds Applicant can show no prejudice as a result of Trial Counsel's alleged deficiency for failing to file a motion to sever the charges. Notably, the Trial Judge charged the jury that "there are four different charges here, so you will have to take up each of the charges separately in your deliberations and *reach separate verdicts on each and every charge.*" (Tr. Vol. 3 p. 178 lines 7-10) (emphasis added). It is clear that the trial judge instructed the jury to decide Applicant's guilt beyond a reasonable doubt as to each individual charge. This Court finds that Counsel's performance was reasonable according to professional standards. As a result, Applicant can show no prejudice. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

II. Alleged failure to challenge the validity of the search of Applicant's home, computer, and email and to quash the indictments

5/1/05

Applicant asserts that Trial Counsel was ineffective for failing to challenge the validity of the search of Applicant's home computer and email. Applicant alleges that the investigators had no legal right to search his home computer and email. Additionally, Applicant asserts that Trial Counsel was ineffective for failing to challenge the indictments. Applicant claims the indictments were invalid since the search of his of his home computer and email were illegal. Trial Counsel testified that he saw no reason to challenge the validity of the search warrants nor a reason to quash the indictments.

This Court finds Applicant has failed to meet his burden of establishing trial counsel was ineffective for failing to challenge the validity of the search warrants. Trial Counsel testified that he saw no reason why the warrant or indictments would be invalid. The investigators in this case obtained the search warrant after the Victim's mother turned in the cell phone due to the troubling photos and messages. (Tr. Vol. 1 p. 88-90). Therefore, this Court finds Trial Counsel acted within "reasonable professional norms." Further, this Court finds Applicant can show no prejudice as a result of Trial Counsel's alleged deficiency for failing to challenge the search warrant and indictments. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

III. Alleged failure to object to the admission of photos obtained from the search of Applicant's home computer and email

Applicant asserts that Trial Counsel was ineffective for failing to challenge the admission of photos and messages obtained from the search of Applicant's home computer and email. Applicant claims the photos and email messages admitted into evidence that were procured from his email cloud account were inflammatory to the jury. During Applicant's trial, Trial Counsel did make a motion to exclude one of the photos in particular that the State was trying to admit into evidence; however, the Trial Judge denied Trial Counsel's motion. (Tr. Vol. 1 p. 21-22).

Trial Counsel also testified that his strategy for trial was to minimize the worst photos by introducing them himself rather than the State. As part of his trial preparation, he hired a computer expert to assess what was on the computer so that he would be prepared for whatever the State would try and enter into evidence.

This Court finds Applicant has failed to meet his burden of establishing Trial Counsel was ineffective for failing to challenge the admission of photos obtained from the search of Applicant's computer and email cloud account into evidence. Further, this Court finds Applicant can show no prejudice. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

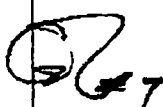
IV. Alleged failure to remedy potential double jeopardy violations

Applicant alleges that Trial Counsel was ineffective for failing to challenge alleged double jeopardy violations involved in his trial. Trial Counsel testified that he doesn't recall there being any issues with double jeopardy in Applicant's case because there is no commonality between the charges or elements.

This Court finds Applicant has failed to meet his burden of establishing Trial Counsel was ineffective for failing to challenge alleged double jeopardy violations. Further, this Court finds Applicant can show no prejudice. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

Ineffective Assistance of Appellate Counsel

Applicant alleges he was denied effective assistance of appellate counsel in that appellate counsel failed to raise all meritorious issues that could have been raised on appeal. This Court finds Applicant has failed to make a prima facie showing that appellate counsel was ineffective. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v.



Lucey, 469 U.S. 387, 396 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (citing Jones v. Barnes, 463 U.S. 745 (1983)). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones, 463 U.S. at 753. Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226, 1235 (4th Cir. 1985).

The applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, 302 S.C. at 537, 397 S.E.2d at 526; Strickland, 466 U.S. at 687. When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

This Court finds that Applicant has failed to meet his burden of establishing Appellate Counsel was ineffective for allegedly abandoning Applicant's preserved motion for directed verdict on appeal. This Court finds that Applicant has failed to show that Appellate Counsel's decision was not strategic. Further, the failure to appeal all trial errors is not ineffective assistance of counsel. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

All Other Allegations

As to any additional allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present

any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

CONCLUSION


Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial or appeal. Trial and Appellate counsel were not deficient in any manner, and Applicant was not prejudiced by their representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 2nd day of November 2016.


 G. THOMAS COOPER, JR.
 Presiding Judge
 Fourth Judicial Circuit

Camden, South Carolina.

2016 NOV -4 AM 11:35
 SCOTT B. SUGGS
 CLERK OF COURT/R.O.D.
 DARLINGTON COUNTY, S.C.
 FILED

WITNESSES

Eric Hodges

Darlington County Sheriff

Law Enforcement Case #:

495

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
DAR0937

ARRESTED ON: Direct Presentment

ACTION OF GRAND JURY

True Bill

Grand Jury Foreperson

Date

S. B. Suggs
FEB 21 2013

VERDICT

All Guilty

Petit Jury Foreperson

Date

Patricia J. Wimber
2/27/13

DOCKET NUMBER:
2013-GS-16-0603

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
February 2013

THE STATE

vs.

Larry James Tyler

INDICTMENT FOR

Obscene / Criminal solitation of a minor

§16-15-0342

CDR Code: 3129

TRUE CERTIFIED COPY:

Sgt. B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

INDICTMENT FOR

Obscene / Criminal solitation of a minor

§16-15-0342

At a Court of General Sessions, convened on February 21, 2013, the Grand Jurors of Darlington County present upon their oath:

CRIMINAL SOLICITATION OF A MINOR

CDR: 3129 16-15-342(A)(E)

That Larry James Tyler, a person eighteen years of age or older, did in Darlington County, on or about July 1, 2011 to September 24, 2011, knowingly contact or communicate with or attempt to contact or communicate with Victim _____, a person who is under the age of eighteen, or a person reasonably believed to be under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity as defined in Section 16-15-375(5), or with the intent to perform a sexual activity in the presence of that person, in violation of Section 16-15-342, S. C. Code of Laws, 1976, as amended.

TRUE CERTIFIED COPY
Scott B. Jagger
CLERK OF COURT/AMC
DARLINGTON COUNTY, S.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

William B. Rogers, Jr.
WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

Eric Hodges

Darlington County Sheriff

Law Enforcement Case #:

495

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
DAR0938

ARRBSTED ON: Direct Presentment

ACTION OF GRAND JURY

True Bill

Grand Jury Foreperson

Date

FEB 21 2013

VERDICT

All Guilty

Petit Jury Foreperson

Date

Patricia H. Williams
2/27/13

DOCKET NUMBER:
2013-GS-16-0604

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
February 2013

THE STATE

vs.

Larry James Tyler

INDICTMENT FOR

Sex / Sexual exploitation of a minor, Second degree

§16-15-0405(A)

CDR Code: 0380

TRUE CERTIFIED COPY

W. B. Rogers, Jr.
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)

INDICTMENT FOR

Sex / Sexual exploitation of a minor, Second degree

§16-15-0405(A)

At a Court of General Sessions, convened on February 21, 2013, the Grand Jurors of Darlington County present upon their oath:

SEXUAL EXPLOITATION OF A MINOR, SECOND DEGREE

CDR: 0380 16-15-0405(D)

That Larry James Tyler did in Darlington County on or about July 1, 2011 to September 24, 2011, knowing the character or content of the material, did distribute, transport, exhibit, receive, sell, purchase, exchange, or solicit material that contains a visual representation of a minor engaged in sexual activity, or he did record, photograph, film, develop, duplicate, produce, or create digital electronic file material that contains a visual representation of a minor engaged in sexual activity, to include image number(s):

448595.jpg (Russian Website); 549632, Z51G3mh4YO; Z5163mh4YO (image file #2); wcfYVtY4N; WcfY1VtY4N (image 2); tn85972_61_2205; #1-005.jpg; #2-006.jpg; #5-20.jpg.jpeg; #6-216.jpg; #7-22.jpg.jpeg; #8-221.jpg; #9-Copy-231.jpg; #12-47.jpg.jpeg; #13-68.jpg.jpeg; #14-82.jpg.jpeg; #15-02.jpg.jpeg; #16-03.jpg.jpeg; #17-Cherish006.jpg; #18-cutie.jpg.jpeg; #19-stella0012.jpg; #20-sugar.jpg; #21-sugar0013.jpg; #22-sugar0018.jpg; #26-tn32.jpg.jpeg; #27-tncherish010.jpg.jpeg; #28-tndarling0017.jpg.jpeg; #29-tndarling0018.jpg.jpeg; #30-tnliliana0007.jpg.jpeg; #31-tnliliana0017.jpg.jpeg; #32-tnliliana0025.jpg.jpeg; #33-tnlolly0002.jpg.jpeg; #34-tnlolly0003.jpg.jpeg; #35-tnlolly0017.jpg.jpeg; #36-tnlolly0028.jpg.jpeg; #37-tnpeach0016.jpg.jpeg; #38-tnpeach0026.jpg.jpeg; #39-tnpeach0027.jpg.jpeg; #40-tnstella0031.jpg; #11-416c85285a.jpg.jpeg, in violation of Section 16-15-0405, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

TRUE CERTIFIED COPY,

Scott B. Suggs
CLERK OF COURT/IMC
DARLINGTON COUNTY, S.C.

William B. Rogers, Jr.
WILLIAM B. ROGERS, JR.
SOLICITOR

1900528
WITNESSES

Eric Hodges

Darlington County Sheriff

Law Enforcement Case #:

495

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
DAR0939

ARRESTED ON: Direct Presentment

ACTION OF GRAND JURY

TRUE BILL

Grand Jury Foreperson

S. Bullock

Date

FEB 21 2013

VERDICT

All Guilty

Peit Jury Foreperson

Patricia A. Williams

Date

2/27/13

DOCKET NUMBER:
2013-GS-16-0605

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
February 2013

THE STATE

vs.

Larry James Tyler

INDICTMENT FOR

Minor / Contributing to the delinquency of a minor

§16-17-0490

CDR Code: 0048

TRUE CERTIFIED COPY

Scott B. Sizer
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DARLINGTON) INDICTMENT FOR
)
) Minor / Contributing to the delinquency of a minor
)
) §16-17-0490

At a Court of General Sessions, convened on February 21, 2013, the Grand Jurors of Darlington County present upon their oath:

CONTRIBUTING TO DELINQUENCY OF MINOR

CDR: 0048 16-17-0490

That Larry James Tyler, being over eighteen (18) years of age, did in Darlington County, on or about July 1, 2011 to September 24, 2011, knowingly and willfully encourage, aid, or cause or influence one Victim , a minor, to violate a law or municipal ordinance; or to become incorrigible or ungovernable and beyond the control of her parents or guardian; or to become habitually truant, or to without just cause and without consent of her parent or guardian to repeatedly desert her home; or to engage in an occupation which is in violation of the law; or to associate with immoral or vicious persons, or to frequent a place the existence of which is in violation of law; or to habitually use obscene or profane language; or to beg or solicit alms in a public place under pretence; or to so deport herself to willfully injure or endanger her morals or health or the morals or health of others, in violation of Section 16-17-490, S. C. Code of Laws, 1976, as amended.

TRUE CERTIFIED COPY.
Scott A. Seger
 CLERK OF COURT/CLERK
 DARLINGTON COUNTY, S.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

William B. Rogers, Jr.

WILLIAM B. ROGERS, JR.
 SOLICITOR

189002
WITNESSES

Eric Hodges

Darlington County Sheriff

Law Enforcement Case #:

495

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
DAR0940

ARRESTED ON: Direct Presentment

ACTION OF GRAND JURY

TRUE BILL

Grand Jury Foreperson

Date

J. B. Smith
FEB 21 2013

VERDICT

All Guilty

Petit Jury Foreperson

Date

Patricia A. Winkler
2/27/13

DOCKET NUMBER:
2013-GS-16-0606

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
February 2013

THE STATE

vs.

Larry James Tyler

INDICTMENT FOR

Obscene / Disseminating harmful material to minors

§16-15-0385(A)(B); 16-15-0

CDR Code: 0378

TRUE CERTIFIED COPY

Sam B. Sayer
CLERK OF COURT/FMG
DARLINGTON COUNTY, S.C.

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
 COUNTY OF Darlington)
 STATE VS.)
Larry James Tyler)
 AKA:)
 Race: Black Sex: M Age: 60)
 DOB: -1953 SS#: _____)
 Address: _____)
 City, State, Zip: _____)
 DL#: _____ SID#: _____)

IN THE COURT OF GENERAL SESSIONS

0-10

INDICTMENT/CASE#: 2013-GS-16-0604
 A/W#: DAR0938
 Date of Offense: 7/1/2011
 S.C. Code §: 16-15-0405(A)
 CDR Code #: 0380

SENTENCE SHEET

CONVICTED OF or PLEADS

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Sex / Sexual exploitation of a minor, Second degree

in violation of § 16-15-0405(A) of the S.C. Code of Laws, bearing CDR Code # 0380
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory OPS(CSC §17-25-45
 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] 77415 [Signature] 3192
Holt, John SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 8 days/months/years or under the Youthful Offender Act not to exceed 1 years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. 523 days
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 Set by SCDPPPS _____

PTUP [Signature]
 _____ days/months Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 prmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prab)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUT Breath Test Pcc)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$ 3.90
TOTAL	\$ 133.90

Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk Michelle Norton
 Court Reporter: Hattie Gordon
 SCCA/217 (03/2011)

Presiding Judge [Signature]
 Judge Code: 2048
 Sentence Date: 2-27-13

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

0-3

COUNTY OF Darlington
STATE VS.
Larry James Tyler
AKA:
Race: Black Sex: M Age: 60
DOB: -1953 SS#:
Address:
City, State, Zip:
DL#: SID#:

INDICTMENT/CASE#: 2013-GS-16-0605
A/W#: DAR0939
Date of Offense: 7/1/2011
S.C. Code § ; 16-17-0490
CDR Code #: 0048

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Minor / Contributing to the delinquency of a minor

CONVICTED OF or PLEADS

In violation of § 16-17-0490 of the S.C. Code of Laws, bearing CDR Code # 0048
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45
w/minor (st or Lewd Act)

The charge is As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
ATTEST: [Signatures] 77495 3192
SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 3 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.
CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 523 days
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

PTUP
date/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5 %), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce, Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ca, Proviso 90.5 (SCCA Surecharge) \$5, 3% to County (if paid in installments) \$3.90, TOTAL \$133.90

Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk: Michelle Norton
Court Reporter: Hattie Gordon
SCCA/217 (03/2011)

Presiding Judge: [Signature]
Judge Code: 2048
Sentence Date: 2-27-13

STATE OF SOUTH CAROLINA)
 COUNTY OF Darlington)
 STATE OF VS.)
 Larry James Tyler)
 AKA:)
 Race: Black Sex: M Age: 60)
 DOB: 1953 SS#:)
 Address:)
 City, State, Zip:)
 DL#: SID#:)

IN THE COURT OF GENERAL SESSIONS

0-10

INDICTMENT/CASE#: 2013-CIS-16-0606
 A/W#: DAR0940
 Date of Offense: 7/1/2011
 S.C. Code §: 16-15-0385(A)(B); 16-15-0
 CDR Code #: 0378

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
 TO: Obscene / Disseminating harmful material or exhibiting harmful performance to minors

in violation of § 16-15-0385(A)(B); 16-15-0 of the S.C. Code of Laws, bearing CDR Code # 0378
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor 1st or 2nd Act)

The charge is: As Indicted, Lesser included Offense, Defendant Waives Presentment to Grand Jury, (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] 77495 Defendant [Signature] 3192 Attorney for Defendant
 Holt, John SC Bar# [] [] SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 8 days/months/years or under the Youthful Offender Act not to exceed 1 years
 and/or to pay a fine of \$ 100.00; provided that upon the service of 8 days/months/years and/or payment
 of \$ 100.00; plus costs and assessments as applicable; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 52 days
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-2(-)114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$3.90
TOTAL	\$133.90

Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk Michelle Naxton
 Court Reporter: Hattie Gordon
 SCCA/217 (03/2011)

Presiding Judge [Signature]
 Judge Code: 2048
 Sentence Date: 2-27-13

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Larry James Tyler, Appellant.

Appellate Case No. 2013-000466

Appeal From Darlington County
Paul M. Burch, Circuit Court Judge

Unpublished Opinion No. 2015-UP-025
Heard October 8, 2014 – Filed January 14, 2015

AFFIRMED

Appellate Defender Robert M. Pachak, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Jennifer Ellis Roberts, both of
Columbia, for Respondent.

PER CURIAM: In this appeal from his conviction of contributing to the delinquency of a minor, Appellant Larry James Tyler (Appellant) argues the trial court erred in denying his directed verdict motion because the State failed to

present substantial circumstantial evidence that Appellant violated section 16-17-490 of the South Carolina Code (2003). We find the case was properly submitted to the jury because Appellant gave ten-year-old Minor and her eight-year-old sister a cell phone containing (1) draft text messages indicating his desire to have Minor alone in his bed; and (2) a picture of Appellant in blue underwear, which Minor characterized as a "naked" picture. Furthermore, the evidence shows Appellant employed "grooming" tactics with Minor—calculated behavior that intentionally breaks down appropriate physical boundaries until victimization is possible.

Therefore, we affirm pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006) ("When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight."); *State v. Smith*, 359 S.C. 481, 490, 597 S.E.2d 888, 893 (Ct. App. 2004) ("In reviewing the denial of a motion for a directed verdict, this court must view the evidence in the light most favorable to the State, and if there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, we must find that the case was properly submitted to the jury."); *State v. Rodriguez*, 279 S.C. 106, 108–09, 302 S.E.2d 666, 667 (1983) (rejecting the argument that because the minor resisted appellant's advances, the minor did not "wilfully" injure her morals as defined by section 16-17-490 of the South Carolina Code); *id.* at 109, 302 S.E.2d at 667 ("We do not believe the legislature intended the statute to apply only when the minor is a willing participant. The evidence shows appellant encouraged the victim to wilfully injure her morals; that she chose not to cooperate is of no consequence.").

AFFIRMED.

WILLIAMS, GEATHERS, and McDONALD, JJ., concur.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 30, 2015

The Honorable Scott B. Suggs
1 Public Sq Rm B4
Darlington SC 29532-3213

REMITTITUR

Re: The State v. Tyler, Larry James
Lower Court Case No. 2013GS1600603, 2013GS1600604,
2013GS1600605, 2013GS1600606
Appellate Case No. 2013-000466

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
Jennifer Ellis Roberts, Esquire
Robert M. Pachak, Esquire
The Honorable Paul M. Burch

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Darlington County

Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LARRY TYLER,

APPELLANT

APPELLATE CASE NO. 2013-000466

FINAL BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUE ON APPEAL.....	3
STATEMENT OF THE CASE	4
STATEMENT OF THE FACTS	5
ARGUMENT	7
CONCLUSION.....	10

TABLE OF AUTHORITIES

Cases

<u>Evans-Smith v. Taylor</u> , 19 F.3d 899 (4 th Cir 1994).....	9
<u>Jackson v. Virginia</u> , 443 U.S. 307, 99 S.Ct. 2781 (1979).....	8
<u>State v. Brown</u> , 267 S.C. 311, 227 S.E.2d 674 (1976)	8
<u>State v. Edwards</u> , 298 S.C. 272, 379 S.E.2d 888 (1989), <u>cert. denied</u> , 493 U.S. 895, 110 S.Ct. 246 (1989).....	8
<u>State v. Littlejohn</u> , 228 S.C. 324, 89 S.E.2d 924 (1955).....	8
<u>State v. Matarazzo</u> , 262 S.C. 662, 207 S.E.2d 93, <u>cert. denied</u> , 420 U.S. 945 (1974).....	9
<u>State v. Totherow</u> , 263 S.C. 275, 210 S.E.2d 228 (1974).....	8
<u>State v. Turner</u> , 117 S.C. 470, 109 S.E. 119 (1921)	8
<u>United States v. Ortiz</u> , 445 F.2d 1100 (10 th Cir 1971)	9
<u>United States v. Varoz</u> , 740 F.2d 772 (10 th Cir. 1984).....	9

Constitutional Provisions

U.S. Const. amend. XIV	8
------------------------------	---

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to grant a directed verdict to the charge of contributing to the delinquency of a minor when the State failed to present any substantial evidence beyond a reasonable doubt that appellant did anything to make the minor delinquent as alleged by the indictment?

STATEMENT OF THE CASE

Appellant was convicted of obscene/criminal solicitation of a minor, sexual exploitation of a minor in the second degree, contributing to the delinquency of a minor, and disseminating harmful material to minors after a jury trial held before the Honorable Paul M. Burch on February 25 – 27, 2013, in Darlington County. Respective sentences of eight (8) years, eight (8) years, eight (8) years, and three (3) years were imposed. Richard Jones, Esquire, was trial counsel. John Holt, Esquire, and Patti Parker, Esquire, were the assistant solicitors.

This appeal follows.

STATEMENT OF FACTS

Doris Brown testified that she was the grandmother of the minor and the minor's younger sister. She would take them over where appellant lived with his mother, Ernestine Witherspoon, to visit. At one visit, appellant gave the minor a cell phone. On their way home in the car, the minor's sister said there was a picture of a naked man on the phone. Ms. Brown took the phone back to where appellant lived. (R. 16, line 21 – R. 19, line 7).

The minor testified that she was twelve years old. She said they went to visit a lot at where appellant lived. He was always taking pictures of them with his cell phone. She said they played a racing game. If appellant won, he would get a hug from her. If he lost, he would have to pay her a dollar. Appellant always won. She identified the cell phone appellant gave her and said when they got in the car with their grandmother, they noticed pictures on the phone. One was a girl in a bikini. The other one was a picture of appellant with blue underwear. (R. 25, line 8 – R. 28, line 17). She did not read or see any text messages. (R. 33, lines 1 – 4).

The minor's younger sister testified next. She said she was ten years old. She, too, said appellant would take pictures of them. He took more of her sister. She also testified about the cell phone appellant gave them. She saw pictures of girls with bathing suits and a picture of appellant with blue drawers. (R. 33, line 23 – R. 39, line 1).

Tyquan Brown testified that he was twenty-one and a cousin of the minor and her sister. He went to where appellant lived just one time and appellant gave him the cell phone. In addition to the pictures, he noticed some inappropriate drafted text messages that appellant had written about/to the minor. He called the minor's mother and told her what he found. He also gave her the phone. (R. 40, line 22 – R 46, line 5).

Georgita Brown, the minor's mother, testified she saw the pictures and saw the drafts. She called the police and met Deputy Hodges at a local Roses. She gave him the cell phone. (R. 52, line 11 – R. 56, line 9).

Deputy Hodges said they got a search warrant for appellant's residence and his vehicle. There were pictures that were found off of appellant's computer and some of his other phones. (R. 63, lines 17 – 24).

Sergeant Tunsdall testified that he used an extraction device to extract data off of appellant's cell phone. The data was placed on a thumb drive and then entered into his laptop so he could burn a disk from it for evidence. (R. 68, line 18 – R. 70, line 3).

Deputy Harrell testified he worked in forensics and collected appellant's computer, a hard drive, and several cell phones. (R. 72, lines 4 – 25). He went over the unsent drafted text messages concerning the minor that appellant drafted. (R. 75, line 6 – R. 76, line 13). Next, he discussed photos taken off appellant's desktop computer. Most of the images were of young girls under ten years of age. At least one image was pornographic. (R. 77, line 20 – R. 80, line 22).

ARGUMENT

The trial court erred in refusing to grant a directed verdict to the charge of contributing to the delinquency of a minor because the State failed to present any substantial evidence beyond a reasonable doubt that appellant did anything to make the minor delinquent as alleged by the indictment.

At the conclusion of the State's case, defense counsel moved for a directed verdict to the charge of contributing to the delinquency of a minor. (R. 101, lines 14 – 18). The indictment alleged the following:

That Larry James Tyler, being over eighteen (18) years of age, did in Darlington County, on or about July 1, 2011, to September 24, 2011, knowingly and willfully encourage, aid, or cause or influence one [minor], a minor, to violate a law or municipal ordinance; or to become incorrigible or ungovernable and beyond the control of her parents or guardian; or to become habitually truant, or to without just cause and without consent of her parent or guardian to repeatedly desert her home; or to engage in an occupation which is in violation of law; or to associate with immoral or vicious persons, or to frequent a place of existence of which is in violation of law; or to habitually use obscene or profane language; or to beg or solicit alms in a public place under pretense; or to so deport herself to willfully injure or endanger her morals or health or the morals or health of others, in violation of Section 16-17-490, S.C. Code of Laws, 1976, as amended.

As defense counsel noted, the only testimony by the minor was that she was given a cell phone for about ten minutes and she saw a picture of appellant in blue briefs and a woman in a bathing suit. That did not show that appellant contributed to the delinquency of a minor. (R. 101, line 19 – R. 102, line 2).

The trial judge said he wanted to think about the motion overnight. (R. 106, lines 23 – 24). The next day, he said he had some concerns, but he denied the motion. He did say he

reserved the right to review the motion. (R. 111, lines 2 – 10). Denying the directed verdict motion was error.

Due process as guaranteed by the Fourteenth Amendment requires “that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof—defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense.” Jackson v. Virginia, 443 U.S. 307, 316, 99 S.Ct. 2781, 2787 (1979).

Our Court has held:

[T]he trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced. [Emphasis added].

State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924, 926 (1955); State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989), cert. denied, 493 U.S. 895, 110 S.Ct. 246 (1989).

In applying this standard, our Court has held that evidence which is “sufficient to raise a strong suspicion of the guilt of the accused” is not sufficient to constitute “any evidence from which the guilt of the accused may be fairly and logically deduced.” State v. Totherow, 263 S.C. 275, 210 S.E.2d 228, 230 (1974). See, also, State v. Turner, 117 S.C. 470, 109 S.E. 119, 120 (1921). The motion for a directed verdict should be granted, therefore, “where evidence merely raises a suspicion of guilt, or is such to permit the jury to merely conjecture or to speculate as to the accused’s guilt.” State v. Brown, 267 S.C. 311, 227 S.E.2d 674, 677 (1976), citing State v. Matarazzo, 262 S.C. 662, 207 S.E.2d 93,

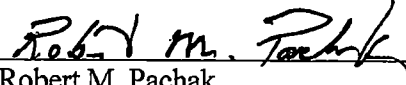
cert. denied, 420 U.S. 945 (1974). “If the evidence is consistent with both innocence and guilt it cannot support a conviction.” United States v. Varoz, 740 F.2d 772, 775 (10th Cir. 1984); United States v. Ortiz, 445 F.2d 1100, 1103 (10th Cir 1971). Guilt is only to be found when there is a “rationally supportable state of near certitude.” Evans-Smith v. Taylor, 19 F.3d 899, 906 (4th Cir 1994).

Appellant did not cause the minor “to violate a law or municipal ordinance.” He did not cause her “to become incorrigible or ungovernable beyond the control of her parents.” He did not make her “become habitually truant” or to “repeatedly desert her home; or to engage in an occupation which is in violation of the law.” He did not make her “associate with immoral or vicious persons, or to frequent a place the existence of which is in violation of law.” He also did not cause her “to habitually use obscene or profane language; or to beg or solicit alms in a public place.” Appellant simply did not cause the minor to become delinquent because she was not delinquent.

CONCLUSION

A directed verdict should be granted.

Respectfully submitted,


Robert M. Pachak
Appellate Defender

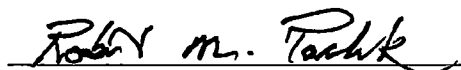
ATTORNEY FOR APPELLANT

This 16th day of October, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 16th, 2013



Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Darlington County
Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

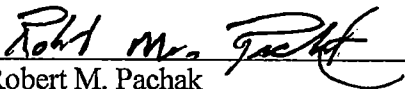
V.

LARRY TYLER,

APPELLANT

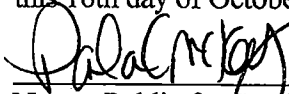
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 16th day of October, 2013.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 16th day of October, 2013.



Notary Public for South Carolina (L.S.)
My Commission Expires: July 24, 2022.